START

Title: FEDERAL REGISTER.

Volume: 61 Issues: 37-45
PAGES: 6917-9088

Date: FEBRUARY 23 - MARCH 6, 1996

UMI Number: 2575.00

Note: REEL NO. 3 OF 11

UMI
300 North Zeeb Road
Ann Arbor, MI 48103

VOL
61

ISS
37

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2–23–96
Vol. 61 No. 37

federal register

Friday
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2-23-96
Vol. 61 No. 37
Pages 6917-7064

federal register

Friday
February 23, 1996

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 96–005–1]

Cattle Exportations; Tuberculosis and Brucellosis Test Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations concerning exportation of livestock by eliminating requirements for pre-export diagnostic tests for tuberculosis and brucellosis in certain cattle being exported from the United States directly to slaughter. Slaughter cattle affected will be those exported from States free of brucellosis or tuberculosis and those exported to countries that have a disease surveillance system equivalent to that of the United States and that agree to share with the United States any findings of brucellosis or tuberculosis in U.S. origin cattle. We believe that these test requirements can be eliminated without compromising the integrity of our brucellosis and tuberculosis surveillance systems. This rule will facilitate the movement of U.S. slaughter cattle to foreign countries.

DATES: Interim rule effective February 15, 1996. Consideration will be given only to comments received on or before April 23, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–005–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–005–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–3294.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. Section 91.5 requires, among other things, that cattle intended for exportation be tested for tuberculosis and bruceliosis. We are amending the regulations to remove these testing requirements for cattle exported directly to slaughter in a foreign country, if the receiving country has a disease surveillance system equivalent to that of the United States, as determined by the Administrator of the Animal and Plant Health Inspection Service (APHIS), and if the receiving country agrees to share any findings of brucellosis or tuberculosis in U.S. origin cattle with APHIS. Also, we are amending the regulations to remove these testing requirements for any cattle moving directly to slaughter from a State designated as free of tuberculosis or brucellosis in 9 CFR 77.1 or 78.41, respectively.

Currently, all cattle exported from the United States, including cattle shipped directly to slaughter, must be tested for brucellosis and tuberculosis. Testing ensures that any diseased cattle will be detected and prevented from leaving the United States. Additionally, detection of disease in any cattle intended for export would alert APHIS to the possible presence of disease in the herd of origin, and allow us to take action to contain and eradicate the disease.

Cattle moving directly to slaughter present a negligible risk of transmitting either brucellosis or tuberculosis to other cattle. Although we would still want the cattle tested to ensure that we have information about any possible source of these diseases in the United States, the tests could be conducted in the receiving country, if that country has a disease surveillance system equivalent to that of the United States, as determined by the Administrator, APHIS, and the country agrees to share any findings of tuberculosis and brucellosis with APHIS. Further, cattle intended for export directly to slaughter from a Class Free State for brucellosis or an Accredited-Free State for tuberculosis would present a negligible risk of carrying brucellosis or tuberculosis, respectively. Therefore, we believe it is unnecessary to require testing, prior to export, for brucellosis if the cattle are moved directly from a Class Free State for brucellosis, or for tuberculosis if the cattle are moved directly from an Accredited-Free State for tuberculosis.

The primary effect of this rule would be on cattle moved directly to slaughter in Mexico and Canada. Nearly all cattle exported for slaughter are exported to Mexico and Canada. The Administrator has determined that Canada has a surveillance system for both tuberculosis and brucellosis that is equivalent to that of the United States, and Canada will share any findings of tuberculosis and brucellosis in U.S. origin cattle with APHIS. The Administrator also has determined that Mexico has a surveillance system for tuberculosis that is equivalent to that of the United States, and Mexico will share any findings of tuberculosis in U.S. origin cattle with APHIS. Mexico is still developing a brucellosis surveillance system, so cattle moving directly to slaughter in Mexico will continue to require brucellosis tests, unless they are moving from a Class Free State, as designated in 9 CFR 78.41.

Miscellaneous

We are making minor editorial changes for clarity and consistency.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. This rule will relieve restrictions on the exportation of slaughter cattle by removing certain pre-export testing requirements. U.S. cattle exporters will benefit economically if the restrictions are removed in time for them to take

advantage of current favorable marketing conditions. In addition, State veterinary officials from all four States bordering Mexico—Arizona, California, New Mexico, and Texas—have requested that we make these changes to facilitate the export of slaughter cattle, as we have other means to obtain the test results.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule relieves restrictions and is, therefore, expected to have a favorable economic impact on small entities. The need to make this rule effective in time for U.S. exporters of slaughter cattle to take advantage of a favorable marketing situation makes timely compliance with sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. The final rule for this action will include an analysis of the economic impact of this rule on small entities and will address any comments we receive on the economic impact of the rule on small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, and Transportation.

Accordingly, 9 CFR part 77 is amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 124b, 134f, 136. 136a, 612, 613, 614, and 618; 46 U.S.C. 466a and 466b; 49 U.S.C. 1509(d); 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 91.5 is amended as follows:

a. By revising paragraph (a) to read as set forth below.

b. By revising paragraph (b) to read as set forth below.

c. In paragraph (c), the first sentence, by adding a comma after the words "foreign country".

§ 91.5 Cattle.

* * * * *

(a) *Tuberculosis.* All cattle over 1 month of age shall be negative to a caudal intradermal tuberculin test using 0.1 ml. of tuberculin with a reading obtained 72 hours (plus or minus six hours) after injection as prescribed in Veterinary Services Memorandum 552.15 "Instructions and Procedures for Conducting Tuberculin Tests in Cattle," section VIII A.[2]

(1) *Provided that,* such tests are not required for any of the following:

(i) Cattle exported directly to slaughter in a country that has a tuberculosis surveillance system equivalent to that of the United States, as determined by the Administrator, and that agrees to share any findings of tuberculosis in U.S. origin cattle with APHIS; and

(ii) Cattle exported directly to slaughter from a State designated as an Accredited-Free State in 9 CFR 77.1.

(2) The Administrator has determined that the following countries have a tuberculosis surveillance system that is equivalent to that of the United States: Canada and Mexico.

(b) *Brucellosis.* All cattle over 6 months of age shall be negative to a test for brucellosis conducted as prescribed in "Standard Agglutination Test Procedures for the Diagnosis of Brucellosis"[2] or "Supplemental Test Procedures for the Diagnosis of Brucellosis."[2]

(1) *Provided that,* such tests are not required for any of the following:

(i) Official vaccinates of dairy breeds under 20 months of age;

(ii) Official vaccinates of beef breeds under 24 months of age;

(iii) Steers and spayed heifers;

(iv) Cattle exported directly to slaughter in a country that has a brucellosis surveillance system equivalent to that of the United States, as determined by the Administrator, and that agrees to share any findings of brucellosis in U.S. origin cattle with APHIS; and

(v) Cattle exported directly to slaughter from a State designated as a Class Free State in 9 CFR 78.41.

(2) The Administrator has determined that the following country has a brucellosis surveillance system that is equivalent to that of the United States: Canada.

* * * * *

§ 91.8 [Amended]

3. In § 91.8, footnote 4 and its reference are redesignated as footnote 3.

Done in Washington, DC, this 15th day of February 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–4148 Filed 2–22–96; 8:45 am]

BILLING CODE 3410–34–P

[2] Copies of this publication may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import-Export, 4700 River Road, Riverdale, Maryland 20737–1231.

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Regulation K; Docket No. R–0862]

International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Section 202(e)(7) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA or Act) provides that the Board, in consultation with the Treasury, develop and publish criteria to be used in evaluating the operations of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis. This final rule amends Regulation K on international banking operations to set out such criteria pursuant to section 202(e)(7) of FDICIA.

EFFECTIVE DATE: March 25, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen M. O'Day, Associate General Counsel (202/452–3786), Sandra L. Richardson, Managing Senior Counsel (202/452–6406), John W. Rogers, Attorney (202/452–2798); Michael G. Martinson, Assistant Director (202/452–3640), Elizabeth H. Roberts, Manager (202/452–3846), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For users of Telecommunication Device for the Deaf (TDD), please contact Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System (Board or Federal Reserve), 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Section 7(e)(7) of the International Banking Act (IBA) was added by the Foreign Bank Supervision Enhancement Act (FBSEA) and requires the Board, in consultation with the Treasury Department, to publish criteria to be used in evaluating the operations of any foreign bank in the United States that the Board has determined is not subject to comprehensive, consolidated supervision by its home country supervisor. A determination by the Board that a foreign bank is not subject to comprehensive, consolidated supervision is a sufficient ground, in and of itself, for the Board to require, or with respect to federal branches or agencies to recommend, termination of the foreign bank's U.S. branches, agencies, or commercial lending company subsidiaries. However, termination of its U.S. operations is not mandatory in these circumstances. Instead, in enacting section 7(e)(7) of the IBA, Congress recognized that there may be factors in particular cases that militate against termination of a foreign bank's U.S. operations.

On December 13, 1994, the Board published for comment a proposed amendment to Regulation K (the Proposed Rule), 59 FR 64171, setting forth criteria to be used in evaluating whether a foreign bank's U.S. operations, in the absence of comprehensive, consolidated supervision, should be terminated or permitted to continue and, if the latter, whether any supervisory constraints should be placed upon the bank in connection with those operations.

The Proposed Rule further provided that any foreign bank found not to be subject to comprehensive, consolidated supervision may be required to enter into and comply with an agreement to conduct its U.S. operations in accordance with restrictions the Board may determine to be appropriate in order to assure the safety and soundness of such operations. Prior to imposing any such restrictions, whether through written agreement or otherwise, the Board would consult with the Office of Comptroller of the Currency (OCC) or the relevant state banking authorities. In appropriate circumstances, the OCC or the relevant state banking authorities may join in any such agreement. If any requirements imposed in such an agreement were not adhered to, the U.S. banking operations of the foreign bank would be subject to further enforcement action, including potentially the issuance of an order terminating the activities of its U.S. offices or transmittal of a recommendation to the OCC for such termination.

The Board received six public comments with regard to the Proposed Rule. Comments were submitted by two Members of Congress, an association of state banking supervisors, three trade associations, and one domestic bank. The comments focused on the following general topics: maintaining flexibility in the evaluation process, as well as in the supervisory responses to a determination that a foreign bank is not subject to comprehensive, consolidated supervision; taking into account a country's progress towards a system of comprehensive, consolidated supervision; excluding representative offices from evaluation under the criteria; providing notice to a foreign bank prior to making a comprehensive, consolidated supervision determination; clarifying relevant state banking regulators for purposes of consultation under the rule; and evaluating a foreign bank's overall financial condition. The comments are discussed further below.

Flexibility

The commenters generally endorsed the flexibility indicated by the Board in proposing to take into account a wide variety of criteria in evaluating whether a foreign bank's U.S. operations should be terminated or permitted to continue when that foreign bank is not subject to comprehensive, consolidated supervision.

Several commenters urged the Board to apply the criteria and develop any subsequent supervisory response on a case-by-case basis, taking into account the unique circumstances of the foreign bank concerned, rather than developing a "standardized" response based upon a foreign bank's country of origin. The commenters further urged the Board explicitly to endorse the case-by-case approach to such determinations, either in the final rule or in commentary to the final rule.

As the Board indicated in the preamble to the Proposed Rule, determinations with regard to whether a foreign bank is subject to comprehensive, consolidated supervision will be made in the context of the supervision and regulation of the foreign bank's existing U.S. operations. A case-by-case approach to such determinations was contemplated in the Proposed Rule and the Board continues to believe that this is the appropriate basis on which such determinations should be made. That said, an adverse determination with regard to whether a particular bank is subject to comprehensive, consolidated supervision will suggest that further inquiry may be appropriate with regard to the nature and scope of supervision of other banks with the same home country supervisor.

Progress Towards Comprehensive, Consolidated Supervision

The commenters also noted that many foreign supervisors have reacted to passage of the FBSEA by undertaking initiatives to institute systems of comprehensive, consolidated supervision. The commenters urged the Board to take into account as an additional criterion whether the foreign bank's home country supervisor was making progress towards comprehensive, consolidated supervision as outlined in the minimum standards for the supervision of international banking groups and their cross-border establishments published by the Basle Committee on Banking Supervision. The Board considers this to be an appropriate suggestion and the final rule has been amended to include such a criterion.

Supervisory Response

Several commenters were concerned that imposing a requirement that a foreign bank conduct its U.S. banking operations on the basis of such operations being in a net-due-to position vis-a-vis the parent should not be the standard supervisory response stemming from a determination that a foreign bank is not subject to comprehensive, consolidated supervision. The commenters noted generally that such a requirement could be extremely damaging to the business of a foreign bank. These commenters also noted that the Board, in the

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preamble to the Proposed Rule, indicated that it was appropriate, in developing the proposed criteria, to take into account the panoply of tools available to the Board and other banking regulators to regulate the operations of foreign banks not yet subject to comprehensive, consolidated supervision. One commenter recommended that the Board clarify that it only would use specific supervisory agreements in cases where it has safety and soundness concerns regarding the U.S. operations of a foreign bank, not solely on the basis that the foreign bank's home country supervisor does not exercise comprehensive, consolidated supervision.

The Proposed Rule provided that any foreign bank that the Board determines is not subject to comprehensive, consolidated supervision may be required to conduct its U.S. operations subject to such restrictions as the Board, having taken into account the criteria, determines to be appropriate in order to assure the safety and soundness of the bank's U.S. operations. 59 FR 64173. The Board stated in the preamble to the Proposed Rule that requiring a foreign bank to conduct its U.S. banking operations in a net-due-to position vis-a-vis the rest of the organization would be one means of assuring the safe and sound operation of the bank's U.S. offices. The Board also noted that other operational requirements also could be imposed, such as collateralization of affiliate transactions, asset maintenance requirements, increased asset pledges, and liquidity requirements. Which of these operational requirements, if any, would be imposed upon a foreign bank's offices in the United States following a determination that the bank is not subject to comprehensive, consolidated supervision would be determined in light of the circumstances of each case.

Representative Offices

Two commenters asked the Board to consider the implications of the Proposed Rule as regards representative offices, arguing that the criteria should not apply to foreign banks that operate only representative offices in the United States. The Board notes that the FBSEA permits the approval of applications to establish representative offices even in the absence of comprehensive, consolidated supervision. The absence of comprehensive, consolidated supervision would not mean necessarily that any action would be taken under the criteria in relation to a bank with only representative offices in the United States. If, however, supervisory concerns should arise in relation to such a bank, the criteria would apply.

Notice to Foreign Bank

One commenter noted that language in the preamble to the Proposed Rule could imply that a Board determination as to comprehensive, consolidated supervision may be made without notice to the foreign bank other than when expeditious action is necessary or in connection with an application requiring such determination. The commenter further stated that the strength of support assessment to be made in connection with the Supervisory Program for the U.S. Operations of Foreign Banking Organizations presents an opportunity for a comprehensive, consolidated supervision determination to be made unbeknownst to the foreign bank. This commenter recommended that the final rule confirm that a foreign bank will always receive notice and an opportunity to provide its views and relevant information when a comprehensive, consolidated supervision determination is being made and expeditious action in the public interest is not necessary.

As the Board indicated in the Proposed Rule, all determinations with regard to whether a foreign bank is subject to comprehensive, consolidated supervision will be made in the context of the supervision of the foreign bank's U.S. operations or, of course, in connection with an application. Just as is the case with other such determinations, a foreign bank generally will have an opportunity to provide its views and any information it considers relevant during the course of the application, supervision, or examination process. Information gained in the course of the supervisory process will be available to the Board when making the determination of whether a foreign bank is subject to comprehensive, consolidated supervision. Any action that might result from a determination, such as a decision to terminate or to begin enforcement proceedings, would provide the foreign bank with an opportunity to provide further information to the Board.

State Banking Regulators

One commenter noted that the criteria do not specify which state banking regulator would be the "relevant" banking regulator in those cases where a foreign bank has operations in more than one state. This commenter, therefore, recommended that the Board clarify that the "relevant" state regulator includes all state bank regulators where the foreign bank in question has offices. This amendment is consistent with the intention underlying the subject provision of the Proposed Rule and the final rule has been amended accordingly.

Evaluation of Financial Condition

One commenter indicated that due regard should be accorded different accounting systems used by the foreign bank when evaluating the soundness of the foreign bank's financial condition, particularly if the accounting treatments differ from U.S. generally accepted accounting principles. The Board considers that no amendment to the Proposed Rule is necessary to address this point. The Board notes that it approaches the evaluation of a foreign bank's financial condition with sufficient flexibility to accommodate such accounting differences, yet with sufficient rigor to reach a view regarding whether the foreign bank's overall financial strength is equivalent to that required of U.S. banks seeking to engage in similar activities.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the rule.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the final rule would not have a significant impact on a substantial number of small entities that are subject to its regulation.

List of Subjects in 12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

For the reasons outlined above, the Board is amending 12 CFR Part 211 as set forth below:

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for Part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1841 *et seq.*, 3101 *et seq.*, 3901 *et seq.*

2. A new § 211.30 is added to Subpart B to read as follows:

§ 211.30 Criteria for evaluating the U.S. operations of foreign banks not subject to consolidated supervision.

(a) *General.* Pursuant to the Foreign Bank Supervision Enhancement Act, Pub.L. 102–242, 105 Stat. 2286 (1991), the Board shall develop and publish criteria to be used in evaluating the operations of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis.

(b) *Criteria.* Following a determination by the Board that, having taken into account the standards set forth in § 211.24(c)(1) of this subpart, a foreign bank is not subject to comprehensive, consolidated supervision by its home country supervisor, the Board shall consider the following criteria in determining whether the foreign bank's U.S. operations should be permitted to continue and, if so, whether any supervisory constraints should be placed upon the bank in connection with those operations:

(1) The proportion of the foreign bank's total assets and total liabilities that are located or booked in its home country, as well as the distribution and location of its assets and liabilities that are located or booked elsewhere;

(2) The extent to which the operations and assets of the foreign bank and any affiliates are subject to supervision by its home country supervisor;

(3) Whether the appropriate authorities in the home country of such foreign bank are actively working to establish arrangements for the comprehensive, consolidated supervision of such bank and whether demonstrable progress is being made;

(4) Whether the foreign bank has effective and reliable systems of internal controls and management information and reporting, which enable its management properly to oversee its worldwide operations;

(5) Whether the foreign bank's home country supervisor has any objection to the bank continuing to operate in the United States;

(6) Whether the foreign bank's home country supervisor and the home country supervisor of any parent of the foreign bank share material information regarding the operations of the foreign bank with other supervisory authorities;

(7) The relationship of the U.S. operations to the other operations of the foreign bank, including whether the foreign bank maintains funds in its U.S. offices that are in excess of amounts due to its U.S. offices from the foreign bank's non-U.S. offices;

(8) The soundness of the foreign bank's overall financial condition;

(9) The managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors and the integrity of its principal shareholders;

(10) The scope and frequency of external audits of the foreign bank;

(11) The operating record of the foreign bank generally and its role in the banking system in its home country;

(12) The foreign bank's record of compliance with relevant laws, as well as the adequacy of its money laundering controls and procedures, in respect of its worldwide operations;

(13) The operating record of the U.S. offices of the foreign bank;

(14) The views and recommendations of the Office of the Comptroller of the Currency or the state banking regulators in those states in which the foreign bank has operations, as appropriate;

(15) Whether the foreign bank, if requested, has provided the Board with adequate assurances that such information will be made available on the operations or activities of the foreign bank and any of its affiliates as the Board deems necessary to determine and enforce compliance with the International Banking Act, the Bank Holding Company Act, and other applicable federal banking statutes; and

(16) Any other information relevant to the safety and soundness of the U.S. operations of the foreign bank.

(c) *Restrictions on U.S. operations.*—(1) *Terms of agreement.* Any foreign bank that the Board determines is not subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor may be required to enter into an agreement to conduct its U.S. operations subject to such restrictions as the Board, having considered the criteria set forth in paragraph (b) of this section, determines to be appropriate in order to assure the safety and soundness of its U.S. operations.

(2) *Failure to enter into or comply with agreement.* A foreign bank that is required by the Board to enter into an agreement pursuant to paragraph (c)(1) of this section and either fails to do so or fails to comply with the terms of such agreement may be subject to enforcement action in order to assure safe and sound banking operations under 12 U.S.C. 1818, or to termination or a recommendation for termination of its U.S. operations under § 211.25 (a) and (e) of this subpart and section (7)(e) of the IBA (12 U.S.C. 3105(e)).

By order of the Board of Governors of the Federal Reserve System, February 15, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–3910 Filed 2–22–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 27

[Docket No. 93–ASW–2; Special Condition 27–ASW–1]

Special Condition: Eurocopter Deutschland Model EC135 Helicopter, Full Authority Digital Engine Control

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special condition.

SUMMARY: This special condition is issued for the Eurocopter Deutschland Model EC135 helicopter. This helicopter will have a novel or unusual design feature associated with the Turbomeca Arrius 2B or United Technologies Pratt & Whitney PW 206B engines with a full authority digital engine control (FADEC) system. This special condition contains additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: March 25, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Carroll R. Wright, Federal Aviation Administration (FAA), Rotorcraft Standards Staff, Fort Worth, Texas 76193–0111; telephone (817) 222–5120.

SUPPLEMENTARY INFORMATION:

Background

Eurocopter Deutschland, Munich, Germany, submitted an application on October 31, 1990, for a Type Certificate for the Model BO–108 (EC135) helicopter to the FAA Brussels Certification Office through the German Luftfahrt-Bundesamt Authorities (LBA). Notice of Proposed Special Condition 27–ASW–1 was published, based on this application, for protection of systems that perform critical functions from High Intensity Radiated Fields (HIRF). Due to delays and a redefinition of the proposed helicopter, a new application was submitted for Type Certification of the EC135 B–1 and D–1 helicopter on December 12, 1994, through the German LBA Authorities to the FAA Brussels Aircraft Certification Office. The Model EC135 is a 5–7 passenger, two engine, 5,511-lb

maximum take-off gross weight, normal category helicopter. This model helicopter may be equipped with either the Turbomeca Arrius 2B or the United Technologies Pratt & Whitney PW 206B engines. Both of these type engines utilize a FADEC system.

Type Certification Basis

The certification basis established for the Model EC135 includes:

1. 14 Code of Federal Regulations (CFR) 21.29.

2. 14 CFR part 27, Amendment 30, dated October 3, 1994; and the following additional requirements to part 27, Amendment 30:

a. Section 27.65 with the following changes: the introductory portion of § 27.65(b)(2) is changed to read "The steady rate of climb must be determined," and § 27.65(b)(2)(ii) is changed to read "Within the range from sea level up to the maximum altitude for which certification is requested."

b. Section 27.1141 plus a new requirement that "Each control must be able to maintain any set position without (1) Constant attention; or (2) Tendency to creep due to control loads or vibration."

c. Additional requirements for rotor brake controls state that (1) It must be impossible to apply the rotor brake inadvertently in flight, and (2) There must be means to warn the crew if the rotor brake has not been completely released before takeoff."

3. Applicable paragraphs of part 29, Amendment 36, dated January 31, 1996; as follows: 29.861(a), 29.901(c), 29.903 (b), (c), (e), 29.908(a), 29.917(b), (c)(1), 29.927(c)(1), 29.953(a), 29.1027(a), 20.1045(a)(1), (b), (c), (d), (f), 29.1047(a), 29.1181(a), 29.1189(c), 29.1191(a)(1), 29.1193(e), 29.1305(a)(6), (b), 29.1309(b)(2)(i), (d), 29.1331(b), 29.1351(d)(2).

4. Noise Requirements of part 36 Noise Standards Appendix J amended by Amendments 36–1 through the latest amendment in effect at the time of certification.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Model EC135 helicopter because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.101(b)(2) establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b) and become a part of the type certification basis, as provided by § 21.101(b)(2). In addition to the applicable airworthiness regulations and special conditions, the Model EC135 helicopter must comply with the noise certification requirements of part 36 and the engine emission requirements of Special Federal Aviation Regulation (SFAR) 27.

Discussion of Comments

Notice of Proposed Special Condition No. SC–93–SW was published in the **Federal Register** on January 22, 1993 (58 FR 5666). Two comments were received from the manufacturer. One comment corrected the name of the manufacturer. The other comment stated that the laboratory test option should satisfy this special condition for VFR including operation below 500 feet AGL. The FAA agrees with both comments. The name is corrected in this final special condition, and the other comment does not require a change to the rule as proposed. Therefore, except for the name change, the special condition is adopted as proposed.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Feature

The Eurocopter Deutschland Model EC135 helicopter has been identified as incorporating one and possibly more electrical or electronic systems that will be performing functions critical to the continued safe flight and landing of the helicopter. FADEC is an electronic device that performs the critical functions of engine control. The control of the engines is critical to the continued safe flight and landing of the helicopter during visual flight rules (VFR) and instrument flight rules (IFR) operations.

If it is determined that this helicopter will incorporate other electrical or electronic systems performing critical functions, those systems also will be required to comply with the requirements of this special condition.

As discussed above, these special conditions are applicable initially the Model EC135 helicopter. Should Eurocopter Deutschland apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects only one unusual or novel design feature on one series of helicopters. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the affected helicopter.

List of Subjects in 14 CFR Parts 21 and 27

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C.(g), 40113, 44701, 44702, and 44704.

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the Eurocopter Deutschland Model EC–135 helicopter.

Protection for Electrical/Electronic Systems From High Intensity Radiated Fields.

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on February 9, 1996.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–3976 Filed 2–22–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–NM–20–AD; Amendment 39–9493; AD 96–02–05]

Airworthiness Directives; McDonnell Douglas Model DC–9 and Model DC–9–80 Series Airplanes; Model MD–88 Airplanes; and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 and Model DC–9–80 series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes, that currently requires visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly, and replacement of the assembly, if necessary. That amendment was prompted by several occurrences of failure of the rudder pedals adjuster hub assembly due to broken detent lugs. This amendment provides an optional terminating action for the required inspections, and expands the applicability of the existing AD to include additional airplanes. The actions specified by this AD are intended to prevent loss of rudder pedals control and reduction of braking capability.

DATES: Effective March 25, 1996.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of March 25, 1996.

The incorporation by reference of McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 1, dated February 3, 1992, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 22, 1993 (57 FR 60116, December 18, 1992).

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Augusto Coo, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5225; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 92–27–07, amendment 39–8441 (57 FR 60116, December 18, 1992), which is applicable to certain McDonnell Douglas Model DC–9 and Model DC–9–80 series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes, was published in the **Federal Register** on April 6, 1995 (60 FR 17489). The action proposed to continue to require visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly, and replacement of the assembly, if necessary. The action also proposed to expand the applicability of the existing AD to include additional airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposed rule.

Two other commenters also support the proposed rule, but request that the FAA allow the replacement of the magnesium casting rudder pedal adjuster hub assembly with an aluminum assembly, as described in McDonnell Douglas DC–9 Service Bulletin 27–325, as terminating action for the requirements of this AD.

The FAA concurs. The FAA has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 27–325, Revision 1, dated November 30, 1994, which describes procedures for replacement of the rudder pedal adjustment hub assembly in the rudder pedal mechanism. The FAA has determined that replacement of the existing magnesium casting with a new aluminum part, as specified in the service bulletin, provides optional terminating action for the repetitive inspections required by this AD. Accordingly, the FAA has revised the final rule to add a new paragraph (c) to specify this optional terminating action.

McDonnell Douglas Alert Service Bulletin number "A27–325," Revision 1, was inadvertently omitted in paragraph (a) of the proposed rule and a typographical error in the date of that alert service bulletin also appeared in paragraph (a) of the proposed rule. Additionally, McDonnell Douglas DC–9 Alert Service Bulletin number "A27–325," Revision 2, dated January 27, 1995, was inadvertently omitted in paragraph (b) of the proposed rule. The FAA has revised the final rule to correct these typographical errors.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 909 Model DC–9 and Model DC–9–80 series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes of the affected design in the worldwide fleet. The FAA estimates that 561 airplanes of U.S. registry will be affected by this AD, that it would take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures the cost impact of this AD on U.S. operators is estimated to be $180 per airplane.

The actions specified in this AD previously were required by AD 92–27–07, which was applicable to approximately 373 airplanes. Based on the figures discussed above, the cost impact of the current requirements of that AD on U.S. operators is estimated to be $67,140. In consideration of the compliance time and effective date of AD 92–27–07, the FAA assumes that operators of the 373 airplanes subject to that AD have already initiated the required actions. This AD action adds no new costs associated with those airplanes.

This AD action is applicable to approximately 188 additional airplanes. Based on the figures discussed above, the new costs to U.S. operators that are imposed by this AD are estimated to be $33,840. This figure is based on assumptions that no operator of these additional airplanes has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8441 (57 FR 60116, December 18, 1992), and by adding a new airworthiness directive (AD), amendment 39–9493, to read as follows:

96–02–05 McDonnell Douglas: Amendment 39–9493. Docket 95–NM–20–AD. Supersedes AD 92–27–07, Amendment 39–8441.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), –82 (MD–82) –83 (MD–83), and –87 (MD–87) series airplanes; Model MD–88 airplanes; and Model C–9 (military) series airplanes; as listed in McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 2, dated January 27, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent loss of rudder pedals control and reduction of braking capability, accomplish the following:

(a) For airplanes listed in McDonnell Douglas Alert Service Bulletin A27–325, Revision 1, dated February 3, 1992: Prior to the accumulation of 15,000 landings or within 270 days after January 22, 1993 (the effective date of AD 92–27–07, amendment 39–8441), whichever occurs later, conduct a visual and eddy current inspection to detect cracks of the rudder pedals adjuster hub assembly, part number 4616066, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 1, dated February 3, 1992, or Revision 2, dated January 27, 1995.

(1) If no cracks are detected as a result of the inspections required by this paragraph, repeat the inspections at intervals not to exceed 3,500 landings.

(2) If cracks are detected as a result of the inspections required by this paragraph, prior to further flight, replace the rudder pedals adjuster hub assembly, part number 4616066, with a new assembly having the same part number, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 2, dated January 27, 1995. Thereafter, conduct visual and eddy current inspections of the replacement rudder pedals adjuster hub assembly in accordance with this paragraph.

(b) For airplanes listed in McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 2, dated January 27, 1995, and not subject to paragraph (a) of this AD: Prior to the accumulation of 15,000 landings or within 270 days after the effective date of this AD, whichever occurs later, conduct a visual and eddy current inspection to detect cracks of the rudder pedals adjuster hub assembly, part number 4616066, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 1, dated February 3, 1992, or Revision 2, dated January 27, 1995.

(1) If no cracks are detected as a result of the inspections required by this paragraph, repeat the inspections at intervals not to exceed 3,500 landings.

(2) If cracks are detected as a result of the inspections required by this paragraph, prior to further flight, replace the rudder pedals adjuster hub assembly, part number 4616066, with a new assembly having the same part number, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 2, dated January 27, 1995. Thereafter, conduct visual and eddy current inspections of the replacement rudder pedals adjuster hub assembly in accordance with this paragraph.

(c) Installation of the aluminum rudder pedal adjustment hub assembly in the rudder pedal mechanism between stations X=69 and X=120.000 in the flight compartment, in accordance with McDonnell Douglas DC–9 Service Bulletin 27–325, Revision 1, dated November 30, 1994, constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO. Alternative methods of compliance previously granted for AD 92–27–07, Amendment 39–8441, continue to be considered as acceptable alternative methods of compliance with this amendment.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 2, dated January 27, 1995; McDonnell Douglas DC–9 Service Bulletin 27–325, Revision 1, dated November 30, 1994; and McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 1, dated February 3, 1992. Revision 2 of McDonnell Douglas DC–9 Alert Service Bulletin A27–325 contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–22	2	Jan. 27, 1995.
23–30	1	Feb. 3, 1992.

Revision 1 of McDonnell Douglas DC–9 Service Bulletin 27–325 contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–22	1	Nov. 30, 1994.
23–28	Original	Sept. 13, 1993.

The incorporation by reference of McDonnell Douglas DC–9 Alert Service Bulletin A27–325, Revision 1, dated February 3, 1992, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of January 22, 1993 (57 FR 60116, December 18, 1992). The incorporation by reference of the remainder of service documents is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 25, 1996.

Issued in Renton, Washington, on January 17, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–844 Filed 2–22–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–262–AD; Amendment 39–9515; AD 96–04–04]

Airworthiness Directives; Airbus Model A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A340 series airplanes. This action requires repetitive inspections to detect corrosion and cracking of the shortening mechanism pins in the main landing gear (MLG), and repair or replacement, if necessary. It also requires replacement of the shortening mechanism pin and retraction mechanism pins; the forward pintle pin; the shortening mechanism bellcrank pin; and the bellcrank subassembly of the shortening mechanism. This amendment is prompted by reports of failure of the shortening mechanism pins due to improper grinding of the chrome plating during manufacture, which led to the initiation of stress corrosion and cracks. The actions specified in this AD are intended to prevent failure of these pins, which could lead to a significant reduction of the shock absorber capability or damage to various components of the MLG, and eventually could lead to the failure of the MLG.

DATES: Effective March 11, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 11, 1996.

Comments for inclusion in the Rules Docket must be received on or before April 23, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–262–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A340 series airplanes. The DGAC advises that there have been two cases of failure of the shortening mechanism pin of the main landing gear (MLG) assembly on in-service airplanes.

In one case, investigation revealed that the pin had broken into three parts, the chrome plating was detached from the base metal around the breaks, and heavy corrosion was present on all of the fracture surfaces. A metallurgical analysis of the broken pin concluded that the pin fractures were the result of cracks in the pin's chrome plating and subsequent stress corrosion. The cracks in the chrome plating most likely occurred as a result of "grinding abuse" when the pin was ground during manufacture. The subsequent penetration of moisture through the cracks to the base metal initiated the stress corrosion and the local detachment of the chrome plating.

In the second case, investigation revealed that the pin had failed as a result of damage caused by stress corrosion.

The DGAC also advises that similar "grinding abuse" may also be present on some forward pintle pins installed on the main strut and dressings of certain affected airplanes, and on the shortening mechanism bellcrank pins of the bellcrank subassembly of the MLG.

Failure of the shortening mechanism pin on the MLG could result in substantial damage to the shortening mechanism, the shock absorber, and the inner top side of the main fitting. This condition could lead to a significant reduction of the shock absorber capability, and eventually could lead to the failure of the MLG.

Likewise, failure of the forward pintle pins or the shortening mechanism bellcrank pins could also result in damage to the shortening mechanism and/or the surrounding area and components, and eventually could lead to the failure of the MLG.

Airbus Industrie has issued the following service bulletins that contain procedures to address this problem:

1. Airbus Service Bulletin A340–32–4050, dated April 10, 1995; and Revision 1, dated May 17, 1995. These service bulletins describe procedures for conducting repetitive visual inspections to detect cracks and corrosion of the shortening mechanism pins. The inspection procedures also call for a one-time lubricating of the affected shortening mechanism links. The service bulletins also describe procedures for replacement of the shortening mechanism pin and retraction mechanism pins of the MLG (left- and right-hand side) with pins that are properly chrome-plated and not susceptible to problems associated with corrosion. (These service bulletins refer to Messier-Dowty Service Bulletins A33/34–32–29 and A33/34–32–30 for more detailed procedural instructions.)

2. Airbus Service Bulletin A340–32–4058, dated April 10, 1995; and Revision 1, dated May 17, 1995. These service bulletins describe procedures for removing discrepant forward pintle pins and replacing them with new or reworked pintle pins that are not susceptible to the problems associated with corrosion. This replacement will ensure the integrity of the affected components of the MLG. (These service bulletins refer to Messier-Dowty Service Bulletins A33/34–32–28 and A33/34–32–32 for more detailed procedural instructions.)

3. Airbus Service Bulletin A340–32–4062, dated May 17, 1995. This service bulletin describes procedures for replacing discrepant shortening mechanism bellcrank pins with new or serviceable pins that are not susceptible to the problems associated with corrosion. It also describes procedures for replacing the bellcrank subassembly of the shortening mechanism of the MLG. These replacements will ensure the integrity of the affected components of the bellcrank and the MLG. (This service bulletin refers to Messier-Dowty Service Bulletins A33–34–32–44 and A33/34–32–45 for more detailed procedural instructions.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive (CN) 94–244–012(B)R3, dated July 19, 1995, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this

type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of the MLG. This AD requires, initially, repetitive visual inspections to detect damage or cracks of the shortening mechanism pivot pin, and replacement, if necessary. It also requires a one-time lubrication (greasing) of the MLG shortening mechanism main links.

This AD also requires replacement of the following items:

1. The shortening mechanism pivot pin, and the retraction mechanism pins of the MLG on the left- and right-hand sides (after these replacements are accomplished, the required repetitive visual inspections are terminated);
2. The forward pintle pin fitted to the MLG;
3. The shortening mechanism bellcrank pin of the MLG; and
4. The bellcrank subassembly of the shortening mechanism of the MLG.

These actions are required to be accomplished in accordance with the service bulletins described previously.

None of the Model A340 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, the following costs could be expected:

Inspection of the shortening mechanism pivot pin would require approximately .5 work hour to accomplish the required actions, at an average labor charge of $60 per work hour. Based on these figures, the cost impact of this inspection requirement would be $30 per airplane per inspection cycle.

Replacement of the shortening mechanism pivot pin and retraction mechanism pins would require approximately 118 work hours per airplane to accomplish, at an average labor charge of $60 per work hour. Based on these figures, the cost impact of this replacement requirement would be $7,080 per airplane.

Replacement of the forward pintle pin would require approximately 92 work hours per airplane to accomplish, at an average labor charge of $60 per work hour. Based on these figures, the cost impact of this replacement requirement would be $5,520 per airplane.

Replacement of the shortening mechanism bellcrank pin and bellcrank subassembly would require approximately 13 work hours per airplane to accomplish, at an average labor charge of $60 per work hour. Based on these figures, the cost impact of this replacement requirement would be $780 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.**

All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–262–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–04–04 Airbus: Amendment 39–9515. Docket 95–NM–262–AD.

Applicability: Model A340 series airplanes; having manufacturer's serial numbers (MSN) 002 through 009 inclusive, 011, 013 through 016 inclusive, 018 through 029 inclusive, 031 through 036 inclusive, or 038; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent collapse of the main landing gear, accomplish the following:

(a) For airplanes having MSN 005 through 009 inclusive, 011, 013 through 016 inclusive, 018 through 029 inclusive, 031 through 034 inclusive, or 038: Accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD:

(1) Within 7 days after the effective date of this AD, perform a visual inspection to detect corrosion and cracks of the shortening mechanism (pivot) pins of the main landing gear (MLG), in accordance with Airbus Service Bulletin A340–32–4050, dated April 10, 1995, or Revision 1, dated May 17, 1995.

(i) If no corrosion or cracking is found, repeat the inspection thereafter at intervals not to exceed 7 days.

(ii) If any corrosion or cracking is found, prior to further flight, replace the shortening mechanism pin and the retraction mechanism pin with a new pin in accordance with the service bulletin. Accomplishment of this replacement constitutes terminating action for the repetitive inspections required by paragraph (a)(1)(i) of this AD.

(2) Within 7 days after the effective date of this AD, perform a one-time lubrication (greasing) of the MLG shortening mechanism main links in accordance with the service bulletin.

(b) Prior to the accumulation of 1,500 total landings, or within 3 months after the effective date of this AD, whichever occurs later, but no later than 12 months after the effective date of this AD, accomplish the requirements of paragraphs (b)(1), (b)(2), and (b)(3) of this AD, as applicable.

(1) For airplanes having MSN 005 through 009 inclusive, 011, 013 through 016 inclusive, 018 through 029 inclusive, 031 through 034 inclusive, or 038: Replace the shortening mechanism pivot pin, and the retraction mechanism pins of the MLG, left- and right-hand side, in accordance with Airbus Service Bulletin A340–32–4050, dated April 10, 1995, or Revision 1, dated May 17, 1995.

(2) For airplanes having MSN 021 through 029 inclusive, or 031 through 034 inclusive: Replace the forward pintle pins fitted to the MLG in accordance with Airbus Service Bulletin A340–32–4058, dated April 10, 1995, or Revision 1, dated May 17, 1995.

(3) For airplanes having MSN 002 through 009 inclusive, 011, 013 through 016 inclusive, 018 through 029 inclusive, or 031 through 036 inclusive: Replace the shortening mechanism bellcrank pin of the MLG in accordance with Airbus Service Bulletin A340–32–4062, dated May 17, 1995.

(c) For airplanes having MSN 002 through 009 inclusive, 011, 013 through 016 inclusive, 018 through 029 inclusive, or 031 through 036 inclusive: Prior to the accumulation of 7,250 total landings, or within 3 months after the effective date of this AD, whichever occurs later, replace the bellcrank subassembly of the shortening mechanism of the MLG in accordance with Airbus Service Bulletin A340–32–4062, dated May 17, 1995.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with the following Airbus service bulletins, which contain the following list of effective pages:

Airbus service bulletin and date	Page No.	Revision level shown on page	Date shown on page
A340–32–4050, April 10, 1995	1–15	(Original)	April 10, 1995.
A340–32–4050, Revision 1, May 17, 1995	1, 2, 5, 10	1	May 17, 1995.
	3, 4, 6–9, 11–15	(Original)	April 10, 1995.
A340–32–4058, April 10, 1995	1–10	(Original)	April 10, 1995.
A340–32–4058, Revision 1, May 17, 1995	1–3, 7–9	1	May 17, 1995.
	4–6, 10	(Original)	April 10, 1995.
A340–32–4062, May 17, 1995	1–10	(Original)	May 17, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 11, 1996.

Issued in Renton, Washington, on February 7, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–3149 Filed 2–22–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–77–AD; Amendment 39–9518; AD 96–04–06]

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires replacement of the relays in the forward electronics rack of the braking system of the landing gear with new relays. This amendment is prompted by reports of loss of the systems of the braking/steering control unit (BSCU) on these airplanes due to electrical overvoltage of the relays. The actions specified by this AD are intended to prevent such electrical overvoltage of the relays, which could result in the loss of the BSCU systems, and subsequent loss of the antiskid functions and nose wheel steering of the airplane.

DATES: Effective March 25, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 25, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the

Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles D. Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes was published in the **Federal Register** on October 20, 1995 (60 FR 54202). That action proposed to require replacement of certain relays in the forward electronics rack 90VU of the braking system of the landing gear with new relays.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

The commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 87 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $10,440, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–04–06 Airbus Industrie: Amendment 39–9518. Docket 95–NM–77–AD.

Applicability: Model A320 series airplanes on which Airbus Modification 23611 (reference Airbus Service Bulletin A320–32–1115) has not been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an electrical overvoltage of the relays, which could result in the loss of the braking/steering control unit (BSCU) systems, and subsequent loss of the antiskid functions and nose wheel steering of the airplane, accomplish the following:

(a) Within 10 months after the effective date of this AD, replace relays 24 GG and 25 GG in the forward electronics rack 90VU of zone 120 of the braking system of the landing gear with new relays, in accordance with Airbus Service Bulletin A320–32–1115, Revision 2, dated September 21, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with Airbus Service Bulletin A320–32–1115, Revision 2, dated September 21, 1994, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–4, 13	2	Sept. 21, 1994.
5–12	1	Apr. 22, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 25, 1996.

Issued in Renton, Washington, on February 12, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–3614 Filed 2–22–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–NM–191–AD; Amendment 39–9519; AD 96–04–07]

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes Equipped With SOGERMA–SOCEA Pilot, Co-Pilot, and Third Occupant Seats

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes. This amendment requires repetitive inspections to detect distortion and/or cracks on the attachment brackets of the backrest recline control locks of certain seats. It also provides for an optional modification which, if accomplished, terminates the repetitive inspections. This amendment is prompted by a report of failure of the bracket of the backrest recline control lock on a seat due to fatigue-related cracking. The actions specified by this AD are intended to prevent fatigue-related cracking and/or distortion, which could result in failure of the seat backrest attach fitting, and the subsequent uncommanded 50° angle recline of the pilot or co-pilot seat; this situation could lead to the temporary inability of the pilots to control the airplane.

DATES: Effective March 25, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 25, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2146; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes was published in the **Federal Register** on June 2, 1995 (60 FR 526678) as a supplemental notice of proposed rulemaking (NPRM). That action proposed to require repetitive inspections to detect distortion and/or cracks on the attachment brackets of the backrest recline control locks of certain seats. It also proposed an optional modification which, if accomplished, would terminate the repetitive inspection requirement.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Three commenters support the proposal.

Request To Withdraw the Proposal

One commenter requests that the proposal be withdrawn. This commenter contends that an AD is not justified based on only one incident of failure that occurred on one seat. The commenter considers that issuing an AD to address only this one occurrence is a misapplication of the AD process.

The FAA does not concur with the commenter's request. The FAA points out that the seat backrest recline lock mechanism currently is not the subject of routine maintenance to determine the presence of distortion or cracking. Therefore, cracking and distortion potentially could be present or developing on these components throughout the affected fleet. While it is true that there has been only one incident of failure of the lock mechanism identified so far, the FAA finds that the unsafe condition presented by such failure is likely to exist or develop on other products of this same type design. According to section 39.1 ("Airworthiness Directives") of the Federal Aviation Regulations (FAR) (14 CFR 39.1), the issuance of an AD must be based on just such a finding. Further, it is within the FAA's authority to issue AD's to require actions to address unsafe conditions that are not otherwise being addressed (or addressed adequately) by normal maintenance procedures. The intent of this AD is to ensure that maintenance procedures include inspections of the backrest recline lock mechanism.

Request To Extend Compliance Time

Another commenter, an operator, requests that the compliance time for the initial inspection be extended. This commenter plans to accomplish the terminating modification at a time that coincides with its normally scheduled maintenance checks and, therefore, requests that the compliance time for the inspection be extended to June 1997.

The FAA does not concur with this commenter's request. Based on the unsafe condition associated with the failure of the lock mechanism (uncommanded 50° angle recline of the pilot or co-pilot seat), the FAA considers that the compliance time for the inspection, as proposed, represents the most appropriate interval of time allowable for the affected airplanes to continue to operate prior to accomplishing that inspection without compromising safety. The FAA also finds that, in order to ensure continuing operational safety, these inspections must be repeated at regular intervals until a terminating modification is installed. However, paragraph (c) of the final rule does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment.

Explanation of New Service Information

On March 22, 1995, SOGERMA–SOCEA issued Revision 2 of Service Bulletin 25–233. Revision 2 completely supersedes Revision 1, which was referenced in the supplemental NPRM as the appropriate source of service information. This new revision describes new procedures for modification of the backing of the control locks attachment fittings of the seat backrest recline. This modification involves installing certain nuts, lock nuts, back plates, fittings, and flat washers on the seat bottoms. Accomplishment of this modification eliminates the need for repetitive inspections of the lock mechanism. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, approved this revision of the service bulletin; and the FAA has revised paragraph (b) of the final rule to cite Revision 2 as the appropriate source of service information for accomplishing the terminating modification. Modifications that were accomplished in accordance with Revision 1 of the service bulletin prior to the effective date of the final rule are considered acceptable for compliance.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has

determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 49 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $11,760, or $240 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that is provided by this AD, the number of hours required to accomplish it would be approximately 1 per airplane, at an average labor charge of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the optional terminating action on U.S. operators would be $60 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96-04-07 Airbus Industrie: Amendment 39-9519. Docket 94-NM-191-AD.

Applicability: Model A310 and A300-600 series airplanes equipped with SOGERMA-SOCEA pilot, co-pilot, and third occupant seats; as listed in SOGERMA-SOCEA Service Bulletin 25-229, dated November 26, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracks and/or distortion in the seat bracket of the backrest recline control lock, which could result in failure of the seat backrest attach fittings, the uncommanded 50° angle recline of the pilot or co-pilot seat, and, subsequently, lead to the temporary inability of the pilots to control the airplane, accomplish the following:

(a) Prior to the accumulation of 10,000 total flight hours or within 500 flight hours after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect distortion and/or cracks on the attachment brackets of the backrest recline control locks of certain seats, in accordance with SOGERMA-SOCEA Service Bulletin 25-229, dated November 26, 1993.

(1) If no bracket is distorted or cracked, repeat the inspection thereafter at intervals not to exceed 5,000 flight hours.

(2) If any bracket is distorted or cracked, prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Replace both of the brackets and their associated attachment fittings with new parts, in accordance with SOGERMA-SOCEA Service Bulletin 25-229, dated November 26, 1993. Thereafter, repeat the inspection at intervals not to exceed 5,000 flight hours. Or

(ii) Modify the backing of the control locks attachment fittings of the seat backrest recline, in accordance with SOGERMA-SOCEA Service Bulletin 25-233, Revision 2, dated March 22, 1995. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

Note 2: Modification of the backing of the control locks attachment fittings of the seat backrest recline that was accomplished in accordance with SOGERMA-SOCEA Service Bulletin 25-233, Revision 1, dated March 22, 1995, prior to the effective date of this AD, is considered acceptable for compliance with paragraph (a)(2)(ii) of this AD.

(b) Modification of the backing of the control locks fittings of the backrest recline in accordance with SOGERMA-SOCEA Service Bulletin 25-233, Revision 2, dated March 22, 1995, constitutes terminating action for the repetitive inspection requirements of this AD.

Note 3: Modification of the backing of the control locks attachment fittings of the seat backrest recline that was accomplished in accordance with SOGERMA-SOCEA Service Bulletin 25-233, Revision 1, dated March 22, 1995, prior to the effective date of this AD, is considered acceptable for compliance with paragraph (b) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and replacements shall be done in accordance with SOGERMA-SOCEA Service Bulletin 25-229, dated November 26, 1993. The modification shall be done in accordance with SOGERMA-SOCEA Service Bulletin 25-233, Revision 2, dated March 22, 1995, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1-4, 6-16	2	Mar. 22, 1995.
5	Original ..	Sept. 14, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 25, 1996.

Issued in Renton, Washington, on February 12, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-3613 Filed 2-22-96; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 95-NM-89-AD; Amendment 39-9522; AD 96-04-10]

Airworthiness Directives; Airbus Model A320-231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320-231 series airplanes, that requires modification of the fire wall of each engine. This amendment is prompted by a report of a fire in the engine of an in-service airplane due to the fire wall being improperly sealed during production. The actions specified by this AD are intended to prevent propagation of a fire through a gap (opening) in the fire wall in the event of an engine fire, as a result of improperly sealed fire wall.

DATES: Effective March 25, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 25, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2589, fax (206) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320-231 series airplanes was published in the **Federal Register** on November 8, 1995 (60 FR 56270). That action proposed to require modification of the fire wall of each engine on these airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposal.

One commenter requests that the proposal be withdrawn. This commenter, International Aero Engines, states that its records indicate that all engines installed on affected airplanes worldwide have been modified already in accordance with the procedures that were proposed in the notice. In light of this, the commenter considers that an AD to require modification of the engines is unnecessary.

The FAA does not concur. This commenter did not provide specific data to the FAA to verify that all affected airplanes have been modified. Without that data, this AD is necessary to ensure that all airplanes currently on the U.S. Register, as well as any airplane later imported and placed on the U.S. Register, are modified in accordance with the AD. Further, it is the responsibility of the FAA to ensure that the configuration that resulted in the addressed unsafe condition is corrected and is not reintroduced into the U.S. fleet either through production, repair, or overhaul; this AD is the appropriate vehicle for doing that.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 108 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $12,960, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96-04-10 Airbus Industrie: Amendment 39-9522. Docket 95-NM-89-AD.

Applicability: Model A320–231 series airplanes on which Airbus Modification 23929 (reference Airbus Service Bulletin A320–78–1009) has not been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent propagation of a fire through a gap (opening) in the fire wall as a result of an improperly sealed fire wall in the event of an engine fire, accomplish the following:

(a) Within 9 months after the effective date of this AD, modify the fire wall of each engine in accordance with Airbus Service Bulletin A320–78–1009, dated October 14, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Airbus Service Bulletin A320–78–1009, dated October 14, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 25, 1996.

Issued in Renton, Washington, on February 14, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–3836 Filed 2–22–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–215–AD; Amendment 39–9521; AD 96–04–09]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F28 Mark 0100 series airplanes, that requires an inspection to detect the presence of a drain hole in certain mounting frames of the auxiliary power unit (APU). If a drain hole is present, the AD requires an inspection to detect corrosion of the mounting frame, and eventual replacement of the mounting frame. This amendment is prompted by a report indicating that corrosion was found on a number of mounting frames of the APU. The actions specified by this AD are intended to prevent such corrosion, which could lead to failure of the frame and consequently render the APU inoperative and/or create a potential fire hazard.

DATES: Effective March 25, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 25, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on December 20, 1994 (59 FR 65514). That action proposed to require an inspection to detect the presence of a drain hole in certain mounting frames of the auxiliary power unit (APU). If a drain hole is present, the action proposed to require an inspection to detect corrosion of the mounting frame, and eventual replacement of the mounting frame.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

Another commenter requests that the FAA withdraw the proposal for what this commenter perceives as lack of justification. This commenter purports that corrosion of the APU frame will not result in a critical safety of flight condition. The commenter contends that, even if the subject frame were to fail completely, the APU cannot fall or lean enough to sever any fuel or electrical lines; therefore, the possibility that the failure of the mounting frame could become a potential fire hazard is simply conjecture. Based on these assertions, the commenter considers that no unsafe condition exists, and requests that the FAA review its justification for the proposed rule to ensure that it is sufficient to satisfy the requirements of part 39 of the Federal Aviation Regulations (FAR).

The FAA does not concur with either the commenter's request or assertions.

First, the FAA points out that the existing design of the drain hole on certain APU mounting frames allows the accumulation of moisture on the frame. These frames have been found to be particularly sensitive to corrosion caused by such moisture accumulation. Corrosion of these frames could cause them to fail, especially when exposed to higher loads during airplane touchdown.

Second, the Rijksluchtvaartdienst (RLD) (which is the airworthiness authority for the Netherlands) and the FAA, have determined that, if a mounting frame were to fail due to associated corrosion, the APU could be displaced and consequently sever APU fuel lines located in the adjacent area. The leaking fuel could then pose a fire hazard. This is the unsafe condition that this AD intends to prevent. In addition, the APU could be rendered inoperative because of the failure of its support assembly. If it were inoperative, electrical power may not be available during flight, or both electrical and pneumatic power may not be available when the airplane is on the ground, when such power is needed via the APU.

Third, although there have been no reported cases of inoperative APU's or fuel leakage caused by the problems associated with the failure of the APU mounting frames, the potential for them to occur still exists. In fact, when Fokker examined the subject APU mounting frames removed from in-service airplanes, it found that up to 73% of the thickness at the place of the drain holes in these frames was fretted away. This reduced thickness, which is attributed to the typical effects of corrosion, weakens the integrity of the frames and, consequently, can lead to their failure.

Finally, according to section 39.1 of the FAR (14 CFR 39.1), the issuance of an AD is based on the finding that an unsafe condition exists and that condition is likely to exist or develop in aircraft of a particular type design. The responsibilities placed on the FAA by the Federal Aviation Act do not limit it from making any unsafe condition the proper subject of an AD—regardless of whether or not the unsafe condition has actually occurred in service and led to an incident or accident. When sufficient data exist to demonstrate that an unsafe condition is likely to exist or develop on other products of the same type design, the issuance of an AD is appropriate in order to address that potential unsafe condition and to prevent its occurrence.

This same commenter also requests clarification as to the applicability of the proposed rule. The commenter points out that, although both the proposed AD and the parallel Dutch AD are applicable to all Fokker Model F28 Mark 0100 series airplanes, the referenced Fokker service bulletin calls out only certain airplanes (serial numbers 11244 through 11402) in its effectivity listing. This commenter knows of four airplanes on which the suspect frames were found, but these airplanes were not included in the service bulletin's effectivity listing. The commenter believes that the service bulletin should be revised to specify that all airplanes must be inspected.

The FAA does not concur that additional action is necessary. Since in-service experience has shown that APU mounting frames are regularly removed from and (re-) installed on aircraft upon removal of the APU, the FAA has determined that the suspect frames could be installed on any Fokker Model F28 Mark 0100 airplane. In light of this, the applicability of the AD, which makes all airplanes subject to the requirements, is correct. In any case, where there are differences between the AD and the service bulletin, the AD prevails.

One commenter requests that the rule be revised to extend the compliance time for replacement of the mounting frames from the proposed 30 days or 90 days (depending upon the results of the inspection for corrosion) to one year for all cases. The commenter states that Fokker has indicated that it has only 2 frames in stock to support the replacement requirement. In addition, the lead time for procurement of a replacement frame is minimum of 127 days.

The FAA concurs that some adjustment to this compliance time can be made. Reports received by the FAA indicate that most airplanes already have been inspected in accordance with the requirements of this AD, and have been found not to have the suspect APU mounting frames installed. Therefore, the FAA considers that only a limited number of replacement mounting frames actually will be required. However, the FAA acknowledges that timely parts availability may be a problem for some operators. In light of this, the FAA finds that the compliance time for replacement of the frame can be extended to 9 months for cases where no corrosion is found on the frame, and to 3 months for cases where corrosion is found. The FAA finds that safety will not be compromised by the extension of these compliance times. The final rule has been revised accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 119 airplanes of U.S. registry will be affected by this AD, that it will take approximately 13 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $92,820, or $780 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–04–09 Fokker: Amendment 39–9521. Docket 94–NM–215–AD.

Applicability: All Model F28 Mark 0100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of certain mounting frames of the auxiliary power unit (APU), which could render the APU inoperative and may lead to a potential fire hazard, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a detailed visual inspection to detect the presence of a drain hole in frame member M of the mounting frames, having part number (P/N) D67050–407, of the auxiliary power unit (APU), in accordance with Fokker Service Bulletin SBF100–49–022, dated August 27, 1992.

(1) If no drain hole(s) is present, no further action is required by this AD.

(2) If any drain hole is present, prior to further flight, perform a detailed visual inspection to detect corrosion on the mounting frame of the APU, in accordance with the service bulletin.

(i) If no corrosion is detected, within 9 months after accomplishing the visual inspection, replace the mounting frame with a new mounting frame in accordance with the service bulletin.

(ii) If any corrosion is detected, within 3 months after accomplishing the visual inspection, replace the mounting frame with a new mounting frame in accordance with the service bulletin.

(b) As of the effective date of this AD, no person shall install on any airplane a mounting frame, having P/N D67050–407, that has a drain hole in frame member M.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on December 14, 1994.

(e) The inspection and replacement shall be done in accordance with Fokker Service Bulletin SBF100–49–022, dated August 27, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 25, 1996.

Issued in Renton, Washington, on February 14, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–3835 Filed 2–22–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–CE–59–AD; Amendment 39–9520; AD 96–04–08]

Airworthiness Directives; Air Tractor, Incorporated Models AT–802 and AT–802A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Air Tractor, Incorporated (Air Tractor) Models AT–802 and AT–802A airplanes. This action requires repetitively replacing the main landing gear legs. Failure of the main landing gear legs on an AT–802A prompted this action. The actions specified by this AD are intended to prevent possible failure of the main landing gear legs, which, if not detected and corrected, could result in loss of control of the airplane during landing operations.

DATES: Effective April 12, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 12, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Air Tractor Incorporated, P.O. Box 485, Olney, Texas 76374; telephone (817) 564–5616, facsimile (817) 564–2348. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–59–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bob May, Aerospace Engineer, FAA, Aircraft Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5155, facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Air Tractor, Incorporated (Air Tractor) Models AT–802 and AT–802A airplanes was published in the **Federal Register** on October 5, 1995 (60 FR 52130). The action proposed to require repetitively replacing the main landing gear legs in accordance with Snow Engineering Company Service Letter (SL) 104A, dated July 29, 1995.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 18 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 12 hours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $2,816 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $63,648 ($3,536 per airplane). This figure is based on the assumption that no affected airplane owner/operator has replaced the main landing gear legs and does not take into account the number of repetitive replacements each operator would incur over the life of the airplane. The FAA has no way of determining how many main landing gear replacements each owner/operator will incur.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Ad No. 96–04–08 Air Tractor Incorporated: Amendment 39–9520; Docket No. 95–CE–59–AD.

Applicability: Model AT–802 and AT–802A Airplanes (all serial numbers), certificated in any category:

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required upon the accumulation of 3,000 landings or within the next 25 landings after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 3,000 landings.

Note 2: If the number of landings is not known, calculate by multiplying three landings per one hour time-in-service (TIS).

To prevent possible failure of the main landing gear legs, which could result in loss of control of landing operations and possible loss of the airplane, accomplish the following:

(a) Replace the main landing gear legs, Air Tractor part number (P/N) 40091–2, in accordance with Air Tractor Service Bulletin (SB) 104A, dated July 29, 1995.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Fort Worth Aircraft Certification Office, FAA, Aircraft Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Aircraft Certification Office.

(d) The replacements required by this AD shall be done in accordance with Air Tractor Service Bulletin 104A, dated July 29, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Air Tractor Incorporated, P.O. Box 485, Olney, Texas 76374. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(e) This amendment (39–9520) becomes effective on April 12, 1996.

Issued in Kansas City, Missouri, on February 13, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–3886 Filed 2–22–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–30–AD; Amendment 39–9523; AD 96–04–11]

Airworthiness Directives; Boeing Model 757–200 Series Airplanes Equipped With Rolls Royce Model RB211–535E4/E4B Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 series airplanes. This action requires a revision to the Airplane Flight Manual to ensure that the flightcrew activates the engine cowl thermal anti-ice (CTAI) system for both engines at the top of descent to avoid engine rundown (loss of engine power). This amendment is prompted by reports that, after the flightcrew activated the engine CTAI during descent, engine rundown occurred due to unknown reasons. The actions specified in this AD are intended to ensure that the flightcrew activates the engine cowl thermal anti-ice system for both engines prior to descent; activation of the engine CTAI system in the middle of descent could result in a compressor stall and subsequent engine rundown of multiple engines.

DATES: Effective March 11, 1996.

Comments for inclusion in the Rules Docket must be received on or before April 23, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–30–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information concerning this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Nancy Hanowski, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington; telephone (206) 227–2684; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received at least seven reports of engine rundown (loss of engine power) on Boeing Model 757–200 series airplanes equipped with Rolls Royce Model RB211–535E4/E4B engines. These incidents occurred while the airplanes were in flight, at an altitude between 24,000 and 29,000 feet.

In four of the seven incidents, dual engine events occurred in which one of the engines stalled and "recovered" to produce usable thrust; the other engine stalled, ran down to sub-idle power, and was subsequently shutdown.

In six of the seven incidents, the flightcrew activated the engine cowl thermal anti-ice system (CTAI) for both engines during the middle of the descent, which resulted in either single or dual engine compressor stalls and subsequent engine rundowns.

In the seventh incident, the flightcrew increased engine power from a minimum flight idle to a slightly higher power when both engines stalled; one of the engines returned to normal thrust level, and the other engine ran down to sub-idle power.

The cause of these engine rundown incidents has not been conclusively proven. However, ice accumulation on the engine is one possible cause that is

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being investigated. Rolls Royce (the manufacturer of the subject engines) is continuing to conduct tests and evaluations to determine the exact cause of engine rundowns.

FAA's Considerations

Data gathered from the reported incidents have led the FAA to consider that activation of the engine CTAI system for both engines during the middle of descent may result in a compressor stall and subsequent loss of multiple engine power. Operation of the engine at a higher idle thrust level, from the beginning of the descent, will increase the compressor stall margin and, thus, reduce the risk of compressor stall. A higher idle thrust level also will increase the airflow through the compressor and, thus, reduce the susceptibility of the compressor to rain and icing. Activation of the engine CTAI system at the beginning of descent has the effect of increasing the idle thrust level.

Based on this, the FAA finds that, prior to idle descent above flight level (FL) 200 (20,000 feet), activation of the engine CTAI system for both engines is necessary in order to operate the engine at a higher idle thrust level. This action will reduce the risk of engine stall and rundown during idle descent.

In addition, the FAA finds that, below FL 200, operation of the engine at low idle thrust level using normal engine CTAI system procedures will maintain the necessary icing protection for the engine and will provide adequate stall protection.

Explanation of the Requirements of the AD

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 757–200 series airplanes, equipped with Rolls Royce Model RB211–535E4/E4B engines, of the same type design, this AD is being issued to ensure that the flightcrew activates the engine cowl thermal anti-ice system for both engines prior to descents above flight level (FL) 200. This AD requires revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include information instructing the flightcrew to activate the engine cowl thermal anti-ice system for both engines prior to descent. The AFM limitation procedures will reduce the risk of a variety of suspected causes for engine rundown.

This AD action is considered to be interim action. Rolls Royce has advised the FAA that it currently is developing a modification that will positively address the unsafe condition addressed by this AD for the various suspect causes. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–30–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–04–11 Boeing: Amendment 39–9523. Docket 96–NM–30–AD.

Applicability: Model 757–200 series airplanes, equipped with Rolls Royce Model RB211–535E4/E4B engines; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To reduce the risk of engine rundown during idle descents, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Limitations Section 1

In order to reduce the risk of engine rundown during idle descents, activate the engine cowl thermal anti-ice system for both engines prior to idle descents above flight level (FL) 200. Below FL 200, use normal engine cowl thermal anti-ice system procedures (as defined in the AFM).

Note: The Master Minimum Equipment List (MMEL) for Model 757 series airplanes currently specifies that an airplane may be dispatched with an engine anti-ice valve locked in the closed position. The requirement of this section to activate the engine cowl thermal anti-ice system prior to descent will prevent the dispatch of airplanes with an engine anti-ice valve locked in the closed or open position. Where differences exist between the current specification of the MMEL and the requirements of this AFM limitation, the AFM limitation prevails."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 11, 1996.

Issued in Renton, Washington, on February 15, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–3950 Filed 2–22–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–16–AD; Amendment 39–9524; AD 96–04–12]

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH DG–500M Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Glaser-Dirks Flugzeugbau GmbH (Glaser-Dirks) DG–500M sailplanes. This action requires replacing the airbrake control hook-up shaft with a part of improved design. Reports of cracks in the welding of the lever to the torsion tube of the airbrake control prompted this action. The actions specified in this AD are intended to prevent an unintended extension of the airbrakes caused by failure of the lever to the torsion tube of the airbrake control, which could result in flutter, excessive rate of descent, and loss of control of the sailplane.

DATES: Effective March 29, 1996.

Comments for inclusion in the Rules Docket must be received on or before April 19, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–16–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Glaser-Dirks Flugzeugbau GmbH, Im Schollengarten 19–20, D–78646 Buchsal-UnterGrombach 4, Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–16–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Herman Belderok, Project Officer, Sailplanes, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: The Luftfarht-Bundesant (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Glaser-Dirks DG–500M sailplanes. The LBA reports cracks in the welding of the lever to the torsion tube of the airbrake control. In one instance, the airbrake control failed, resulting in an unintended airbrake extension. If not detected and corrected, a cracked lever to the torsion tube of the airbrake control could result in an unintended extension of the airbrakes with subsequent possible flutter, excessive rate of descent, and loss of control of the sailplane.

Glaser-Dirks Technical Note (TN) No. 843/3–2, dated October 28, 1992, contains information about replacing the airbrake control hook-up shaft (part number 5 St 57) on DG–500M sailplanes with an airbrake control hook-up shaft of improved design (part number 5 St 57 change b). The LBA classified this technical note as mandatory and issued LBA AD 92–358, dated October 30, 1992, in order to assure the continued airworthiness of these sailplanes in Germany.

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Glaser-Dirks DG–500M sailplanes of the same type design registered in the United States, this AD requires replacing the airbrake control hook-up shaft (part number 5 St 57) with an airbrake control hook-up shaft of improved design (part number 5 St 57 change b). Accomplishment of the replacement is in accordance with the applicable maintenance or service manual. Improved design airbrake control hook-up shafts may be obtained from Glaser-Dirks on an exchange basis.

None of the DG–500M sailplanes affected by this action are on the U.S. Register. All sailplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers this rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject sailplanes are imported and placed on the U.S. Register.

Should an affected sailplane be imported and placed on the U.S. Register, accomplishment of the required replacement and inspection would take approximately 8 workhours at an average labor charge of $60 per workhour. Parts are provided by Glaser-Dirks at no cost on an exchange basis. Based on these figures, the total cost impact of this AD would be $480 per sailplane that would become registered in the United States.

Since this AD action does not affect any sailplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to

comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–16–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96–04–12 Glaser-Dirks Flugzeugbau GmbH: Amendment 39–9524; Docket 95–CE–16–AD.

Applicability: DG–500M sailplanes (serial numbers 5E30M14 through 5E60M25), certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required prior to further flight after the effective date of this AD, unless already accomplished.

To prevent an unintended extension of the airbrakes caused by failure of the lever to the torsion tube of the airbrake control, which could result in flutter, excessive rate of descent, and loss of control of the sailplane, accomplish the following:

(a) Replace the airbrake control hook-up shaft (part number 5 St 57) with an airbrake control hook-up shaft of improved design (part number 5 St 57 change b). Accomplishment of the replacement is in accordance with the applicable maintenance or service manual.

Note 2: Glaser-Dirks Technical Note No. 843/3–2, dated October 28, 1992, references an exchange program where improved design airbrake control hook-up shafts may be obtained at no cost.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Glaser-Dirks Flugzeugbau GmbH, Im Schollengarten 19–20, D–78646 Buchsal-UnterGrombach 4, Germany; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment (39–9524) becomes effective on March 29, 1996.

Issued in Kansas City, Missouri, on February 15, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–3970 Filed 2–22–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Parts 121, 125, and 135

[Docket No. 25154; Reference Amendments 121–236; 125–19; 135–47]

Removal of Burn Ointment From First-Aid Kits

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments to a final rule.

SUMMARY: On January 12, 1994, the FAA published a final rule with request for comments [59 FR 1780] that revised the regulations concerning first aid kits required on board air carrier, air taxi, and commercial aircraft to remove the burn compound from the list of items required for the kits. The rule was effective upon publication and the comment period closed March 14, 1994. This action responds to those comments received as a result of that final rule and completes that rulemaking.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Regulatory Branch, Air Transportation Division, Flight Standards Service, FAA, 800 Independence Ave., SW., Washington, DC 20591, telephone: (202) 267–3747.

SUPPLEMENTARY INFORMATION:

Background

On December 5, 1986, the Air Transport Association (ATA) submitted a petition to delete the burn compound (burn ointment) from the first aid kits required to be carried on each aircraft operated under part 121 of the Federal Aviation Regulations. In the petition ATA noted that the application of ice or cold water is the preferred treatment for minor burns. As part of the supporting data, the petition included a request from Western Airlines to delete the burn ointment from their first aid kits and instructions from other carriers' flight manuals advising flight attendants not to use the burn ointment unless requested to do so by passengers. ATA stated that the burn ointment normally has an expiration date, which requires replacement, inspection, and record-keeping. Later, ATA submitted a letter to the docket from the American Red Cross that supported their position that burn ointment retains heat, causing the burn to worsen in some cases. Additional information submitted by ATA noted that the March 1987 meeting of the ATA Cabin Safety Panel each member present stated that cold water or ice, rather that the burn ointment, was the preferred method of treatment for burns.

A summary of ATA's petition was published in the **Federal Register** on February 20, 1987, [52 FR 5309]; the comment period closed April 20, 1987. The only comments received were those cited above.

In issuing a final rule removing the burn ointment from the first aid kits, the FAA agreed with industry practice. It stated that in the limited situation of treating minor burns aboard aircraft, cold water is the preferred treatment. Therefore, the requirement for burn ointment should be eliminated to spare air carriers the unnecessary expense of having to maintain an unneeded item. Further, because that final rule action was a minor amendment in which there was not expected to be any public disagreement, the FAA found that public notice and comment were unnecessary. Because it was relieving, the rule was made effective upon publication.

Discussion of Comments Received

Two comments were received on the final rule. Water Jel Technologies (Water Jel) comments that the revisions to the regulations were timely; however, the recommendation is flawed and should be amended to reflect the current protocol for the care of minor burns. Water Jel believes that burns occur so frequently that some burn preparations are necessary. This commenter urges the FAA to require instead a water-based burn product for the first aid kit.

Industrial Safety Equipment Association (ISEA) comments that the removal of burn compound from first aid kits is not justified by the record, which cites the burden of maintaining the kits and the protocol of treating minor burns. ISEA believes that the majority of burn ointments and compounds sold in FAA kits are water-soluble products that have no expiration dates. ISEA states that the pain-relieving benefits of water soluble burn ointments clearly outweigh the cost of maintaining them in first aid kits used on aircraft. ISEA recommends that 14 CFR parts 121, 125, and 135 be amended to add the words 'water soluble' to the description of the burn ointment.

FAA Response to Comments

The FAA agrees with commenters that a water-based compound may provide additional, longer lasting treatment for a burn until medical attention is provided. The incidence of burns aboard aircraft, however, does not support such a requirement. With the elimination of smoking aboard aircraft, the vast majority of burns occur when hot beverages are spilled. These are usually minor burns, and cold water provides sufficient relief to passengers. Therefore, the FAA finds that the final rule should be retained, as amended.

Issued in Washington, DC on February 13, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

[FR Doc. 96–3977 Filed 2–22–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 88F–0316]

Indirect Food Additives; Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 3–iodo–2–propynyl-*N*-butylcarbamate as an antifungal preservative in adhesives for food contact applications. This action responds to a petition filed by the Troy Chemical Corp.

DATES: Effective February 23, 1996; written objections and requests for a hearing by March 25, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–216) Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3080.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 25, 1988 (53 FR 43043), FDA announced that a food additive petition (FAP 8B4088) had been filed by the Troy Chemical Corp., 72 Eagle Rock Ave., P.O. Box 366, East Hanover, NJ, 07936–0366 (formerly One Avenue L, Newark, NJ 07105–3895), proposing that the food additive regulations be amended to provide for the safe use of 3–iodo–2–propynyl butyl carbamate as an antifungal preservative in adhesives for food contact applications.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the more accurate name for the additive is 3–iodo–2–propynyl-*N*-butylcarbamate (CAS Reg. No. 55406–53–6), that the proposed food additive use is safe, that the additive will achieve its intended technical effect, and that § 175.105 *Adhesives* (21 CFR 175.105) of the food additive regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 25, 1996, file with the Dockets Management Branch

(address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 175.105 is amended in paragraph (c)(5) by alphabetically adding the following new entry to the table to read as follows.

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
3-Iodo-2-propynyl-N-butyl carbamate (CAS Reg. No. 55406-53-6)	For use only as an antifungal preservative.

Dated: February 8, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96-4068 Filed 2-22-96; 8:45 am]

BILLING CODE 4160-01-F

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Modifications to Role of National Labor Relations Board's Administrative Law Judges Including: Assignment of Administrative Law Judges as Settlement Judges; Discretion of Administrative Law Judges to Dispense With Briefs, to Hear Oral Argument in Lieu of Briefs, and to Issue Bench Decisions

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board (NLRB) issues a final rule permanently implementing its recent experimental modification to its rules authorizing the use of settlement judges and providing administrative law judges (ALJs) with the discretion to dispense with briefs, to hear oral argument in lieu of briefs, and to issue bench decisions.

EFFECTIVE DATE: March 1, 1996.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Room 11600, Washington, D.C. 20570. Telephone: (202) 273-1940.

SUPPLEMENTARY INFORMATION: On September 8, 1994, the Board issued a Notice of Proposed Rulemaking (NPR) which proposed certain modifications to the Board's rules to permit the assignment of ALJs to serve as settlement judges, and to provide ALJs with the discretion to dispense with briefs, to hear oral argument in lieu of briefs, and to issue bench decisions (59 FR 46375). The NPR provided for a comment period ending October 7, 1994.

On December 22, 1994, following consideration of the comments received to the NPR, the Board [1] issued a notice implementing, on a one-year experimental basis, the proposed modifications (59 FR 65942). The notice provided that the modifications would become effective on February 1, 1995, and would expire at the end of the one-year experimental period on January 31, 1996, absent renewal by the Board.

On December 1, 1995, following a review of the experience to date with the modifications and the views of the NLRB's Advisory Committee on Agency Procedure, the Board issued a notice proposing to make the modifications permanent upon expiration of the one-year experimental period on January 31, 1996 (60 FR 61679). The notice provided for a period of public comment on this proposal, until December 29, 1995.

Thereafter, in light of the shutdown of Agency operations due to the lack of appropriated funds, on January 19, 1996, the Board extended from December 29, 1995, until January 25, 1996, the deadline for filing comments (61 FR 1314). The same day, the Board also extended the experimental period from January 31, 1996, until March 1, 1996, to provide the Board time to consider any comments that were filed (61 FR 1281).

The Board received only one comment in response to its December 1, 1995 notice, from William K. Harvey of Jackson, Shields, Yeiser & Cantrell, Cordova, Tennessee. The comment recommended that the Board make the modification regarding settlement judges permanent and that settlement judges be used in more cases. The comment recommended, however, that the Board modify the requirement that all parties consent to the procedure by requiring any party who objects to the appointment of a settlement judge to show good cause for such objection and allowing the chief or associate chief judge to consider the reasons stated and grant or deny the motion notwithstanding the stated opposition. The comment also recommended that the settlement judge be given the authority and discretion to postpone the scheduled hearing where the settlement judge determines that a brief postponement would serve the purposes of settlement.

With respect to the modification permitting bench decisions, the comment urged that this modification be abolished, citing in support two ALJ bench decisions which the comment asserts were terse and confusing.[2] Alternatively, the comment recommended that the Board adopt a rule that such decisions will never be published in Board reports.

Having carefully considered the foregoing comment, we have decided, consistent with and for the reasons stated in the December 1, 1995 notice, to implement, on a permanent basis and without change, the experimental modification to the Board's rules with respect to both settlement judges and bench decisions. As indicated in the December 1, 1995 notice, many of the issues raised by the comment were considered by the NLRB Advisory Committee on Agency Procedure, and either the Management or the Union-side Panel of the Advisory Committee indicated strong opposition to the modifications to the settlement judge procedure proposed in the comment. Thus, as indicated in that notice, the Management-side Panel indicated strong opposition to modifying the current consensual aspect of the settlement judge procedure, and the Union-side Panel indicated strong opposition to providing the settlement judge with the authority to postpone the trial date. In light of the views of the Advisory Committee, we do not believe the procedure should be modified as recommended by the comment at this time.

With respect to the bench decision procedure, as indicated in the December 1, 1995 notice, in the vast majority of cases during the experimental period involving a bench decision either no exceptions were filed to the ALJ's bench decision or the Board short-form adopted the decision. In those cases where no exceptions were filed to the ALJ's bench decision, the decision was not published in Board reports consistent with the Board's historical practice where no exceptions are filed. The other decisions were published pursuant to the Board's usual procedure, and we believe that publishing such decisions, on balance, is generally beneficial to the public and should be continued where appropriate.

Accordingly, we conclude that the experimental modifications should be permanently implemented without change.

As required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the NLRB certifies that these rules will not have a significant impact on small business entities.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

29 CFR Part 102 is amended as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for 29 CFR Part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.35 is revised to read as follows:

§ 102.35 Duties and powers of administrative law judges; assignment and powers of settlement judges.

(a) It shall be the duty of the administrative law judge to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice affecting commerce as set forth in the complaint or amended complaint. The administrative law judge shall have authority, with respect to cases assigned to him, between the time he is designated and transfer of the case to the Board, subject to the Rules and Regulations of the Board and within its powers:

(1) To administer oaths and affirmations;

(2) To grant applications for subpoenas;

(3) To rule upon petitions to revoke subpoenas;

(4) To rule upon offers of proof and receive relevant evidence;

(5) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(6) To regulate the course of the hearing and, if appropriate or necessary, to exclude persons or counsel from the hearing for contemptuous conduct and to strike all related testimony of witnesses refusing to answer any proper question;

(7) To hold conferences for the settlement or simplification of the issues by consent of the parties, but not to adjust cases;

(8) To dispose of procedural requests, motions, or similar matters, including motions referred to the administrative law judge by the Regional Director and motions for summary judgment or to amend pleadings; also to dismiss complaints or portions thereof; to order hearings reopened; and upon motion order proceedings consolidated or severed prior to issuance of administrative law judge decisions;

(9) To approve a stipulation voluntarily entered into by all parties to the case which will dispense with a verbatim written transcript of record of the oral testimony adduced at the hearing, and which will also provide for the waiver by the respective parties of their right to file with the Board exceptions to the findings of fact (but not to conclusions of law or recommended orders) which the administrative law judge shall make in his decisions;

(10) To make and file decisions, including bench decisions delivered within 72 hours after conclusion of oral argument, in conformity with Public Law 89-554, 5 U.S.C. 557;

(11) To call, examine, and cross-examine witnesses and to introduce into the record documentary or other evidence;

(12) To request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(13) To take any other action necessary under the foregoing and authorized by the published Rules and Regulations of the Board.

(b) Upon the request of any party or the judge assigned to hear a case, or on his or her own motion, the chief administrative law judge in Washington, D.C., the deputy chief judge in San Francisco, the associate chief judge in Atlanta, or the associate chief judge in New York may assign a judge who shall be other than the trial judge to conduct settlement negotiations. In exercising his or her discretion, the chief, deputy chief, or associate chief judge making the assignment will consider, among other factors, whether there is reason to believe that resolution of the dispute is likely, the request for assignment of a settlement judge is made in good faith, and the assignment is otherwise feasible. Provided, however, that no such assignment shall be made absent

[1] Chairman Gould and Members Devaney and Browning; Members Stephens and Cohen dissenting in part.

[2] *The Riverboat Hotel*, 319 NLRB No. 30 (Sept. 29, 1995); and *Kinco, Ltd.*, 319 NLRB No. 56 (Oct. 23, 1995) (Member Cohen dissenting in relevant part).

the agreement of all parties to the use of this procedure.

(1) The settlement judge shall convene and preside over conferences and settlement negotiations between the parties, assess the practicalities of a potential settlement, and report to the chief, deputy, or associate the status of settlement negotiations, recommending continuation or termination of the settlement negotiations. Where feasible settlement conferences shall be held in person.

(2) The settlement judge may require that the attorney or other representative for each party be present at settlement conferences and that the parties or agents with full settlement authority also be present or available by telephone.

(3) Participation of the settlement judge shall terminate upon the order of the chief, deputy, or associates issued after consultation with the settlement judge. The conduct of settlement negotiations shall not unduly delay the hearing.

(4) All discussions between the parties and the settlement judge shall be confidential. The settlement judge shall not discuss any aspect of the case with the trial judge, and no evidence regarding statements, conduct, offers of settlement, and concessions of the parties made in proceedings before the settlement judge shall be admissible in any proceeding before the Board, except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless voluntarily produced or obtained pursuant to subpoena.

(5) No decision of a chief, deputy, or associate concerning the assignment of a settlement judge or the termination of a settlement judge's assignment shall be appealable to the Board.

(6) Any settlement reached under the auspices of a settlement judge shall be subject to approval in accordance with the provisions of § 101.9 of the Board's Statements of Procedure.

3. Section 102.42 is revised to read as follows:

§ 102.42 Filings of briefs and proposed findings with the administrative law judge and oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which may include presentation of proposed findings and conclusions, and shall be included in the stenographic report of the hearing. In the discretion of the administrative law judge, any party may, upon request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge, who may fix a reasonable time for such filing, but not in excess of 35 days from the close of the hearing. Requests for further extensions of time shall be made to the chief administrative law judge in Washington, D.C., to the deputy chief judge in San Francisco, California, to the associate chief judge in New York, New York, or to the associate chief judge in Atlanta, Georgia, as the case may be. Notice of the request for any extension shall be immediately served on all other parties, and proof of service shall be furnished. Three copies of the brief or proposed findings and conclusions shall be filed with the administrative law judge, and copies shall be served on the other parties, and a statement of such service shall be furnished. In any case in which the administrative law judge believes that written briefs or proposed findings of fact and conclusions may not be necessary, he or she shall notify the parties at the opening of the hearing or as soon thereafter as practicable that he or she may wish to hear oral argument in lieu of briefs.

4. In § 102.45, paragraph (a) is revised to read as follows:

§ 102.45 Administrative law judge's decision; contents; service; transfer of case to the Board; contents of record in case.

(a) After hearing for the purpose of taking evidence upon a complaint, the administrative law judge shall prepare a decision. Such decision shall contain findings of fact, conclusions, and the reasons or basis therefor, upon all material issues of fact, law, or discretion presented on the record, and shall contain recommendations as to what disposition of the case should be made, which may include, if it be found that the respondent has engaged in or is engaging in the alleged unfair labor practices, a recommendation for such affirmative action by the respondent as will effectuate the policies of the Act. The administrative law judge shall file the original of his decision with the Board and cause a copy thereof to be served on each of the parties. If the administrative law judge delivers a bench decision, promptly upon receiving the transcript the judge shall certify the accuracy of the pages of the transcript containing the decision; file with the Board a certified copy of those pages, together with any supplementary matter the judge may deem necessary to complete the decision; and cause a copy thereof to be served on each of the parties. Upon the filing of the decision, the Board shall enter an order transferring the case to the Board and shall serve copies of the order, setting forth the date of such transfer, on all the parties. Service of the administrative law judge's decision and of the order transferring the case to the Board shall be complete upon mailing.

* * * * *

Dated, Washington, D.C., February 16, 1996.

By direction of the Board:[3]

John J. Toner,

Executive Secretary.

Dissenting Opinion of Member Cohen

I agree with the rule concerning settlement judges. However, I do not agree with the rule which gives judges the power to issue bench decisions and the related power to preclude written briefs.

In my dissent from the promulgation of the experimental rule (a dissent joined by former Member Stephens), I set forth Board law which holds that bench decisions are contrary to the provisions of Section 10(c) of the Act.[4] My colleagues, in apparent recognition of this fact, chose to summarily overrule that Board law. However, as I noted in my dissent, if Section 10(c) forbids bench decisions, the Board is without statutory power to establish a rule which permits such decisions.[5]

My colleagues have not answered this threshold problem. Further, even if they were to do so (to their satisfaction), that does not end the matter. The issue will undoubtedly be the subject of litigation in the federal courts, delaying the prompt enforcement of Board orders. Thus, the rule is at cross-purposes with its stated goal—the prompt resolution of unfair labor practice cases. Further, in my prior dissent, I set forth other concerns about the rule. At this juncture, I cannot say with certainty whether these concerns have been borne out by experience. During the experimental time frame, there have been only 10 bench decisions out of the 400 decisions issued (2.5%). However, that very paucity of decisions bespeaks an important point. Our judges, to their credit, have exercised prudent restraint in exercising the power to issue bench decisions. Accordingly, for the most part, problems have not surfaced.[6] As long as such restraint is exercised, my concerns may well be allayed. I am hopeful, and cautiously optimistic, that this will be the case.

* * * * *

[FR Doc. 96–4155 Filed 2–22–96; 8:45 am]

BILLING CODE 7545–01–P

[3] Chairman Gould and Members Browning and Fox; Member Cohen dissenting in part. Member Cohen's partial dissent is attached.

[4] *Plastic Film Products Corp.*, 232 NLRB 722 (1977); *Local Union No. 195*, 237 NLRB 931 (1978).

[5] See *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 842, 843 (1984).

[6] However, there was a substantial problem, in my view, in *Kinco*, 319 NLRB No. 56.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 187

[CGD 89–050]

RIN 2115–AD35

Vessel Identification System; Effective Date Change

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule: change in effective date.

SUMMARY: On April 25, 1995, the Coast Guard published an interim final rule in the Federal Register (60 FR 20310) for establishing a vessel identification system and prescribing guidelines for State vessel titling systems. The effective date of the interim final rule was April 24, 1996. This document suspends the effective date of the guidelines for the State vessel titling systems for a period of two years.

EFFECTIVE DATES: This document is effective February 23, 1996. 33 CFR part 187, subpart D, is suspended through April 23, 1998. All other provisions of the interim final rule will become effective on April 24, 1996, as stated in the interim final rule.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Richard Ferraro, Project Manager, Information Resources Division (G–MIR–3), Office of Marine Safety, Security and Environmental Protection, (202) 267–0386, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: One provision of the interim final rule prescribes the procedures for obtaining certification of compliance with guidelines for State vessel titling systems. Many comments pointed out that compliance of the States with these guidelines may create undue hardship upon the marine industry where titling, vessel documentation, mortgage recording, and lending institutions are concerned. The delay in the effective date until April 24, 1998, was deemed necessary in order to allow the Coast Guard, States, and the public time to further review the complexities of the State titling guideline issues identified during review of the comments received regarding this interim final rule. A delay of two years should provide sufficient time to complete the rulemaking on vessel titling guidelines.

All other provisions of the interim final rule will become effective on April 24, 1996.

Accordingly, under the authority of 46 U.S.C. 2103; 49 CFR 1.46, 33 CFR part 187, subpart D is suspended effective February 23, 1996 through April 23, 1998.

Dated: February 14, 1996.

Joseph H. Angelo,

Director for Standards, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 96–3895 Filed 2–22–96; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024–AC31

Denali National Park and Preserve, Alaska

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is publishing final regulations for Denali National Park, Alaska, that will require mountain climbers to register a minimum of 60 days before any climb on Mount McKinley and Mount Foraker. Mountaineering in the park has increased dramatically over the last ten years and climbing-related injuries and deaths have correspondingly increased. By requiring advance registration, the Denali park staff will be able to provide information to prospective mountaineers in advance of their climb. This may include information on the specific dangers they may face, how to prepare and equip, other safety related issues, and requirements concerning resource protection issues such as litter removal and human waste disposal. Currently, climbers are required to register, but may do so as late as the day they depart for the mountain.

EFFECTIVE DATE: This final rule becomes effective on March 25, 1996.

ADDRESSES: Comments should be addressed to: Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali National Park, AK 99755.

FOR FURTHER INFORMATION CONTACT: Steve Martin, Superintendent, Denali National Park and Preserve. Telephone 907–683–2294.

SUPPLEMENTARY INFORMATION:

Background

Denali National Park was first established as Mt. McKinley National Park on February 26, 1917. A separate Denali National Monument was proclaimed on December 1, 1978. These two park areas were combined, reconfigured and established as Denali National Park and Preserve on December 2, 1980, encompassing approximately 6.5 million acres. Prior to achieving its current configuration, the land the park now encompasses was recognized for its unique ecological value and designated an International Biosphere Reserve in 1976. That designation has since been expanded to encompass the entire 6.5 million acre park and preserve. The park contains North America's highest mountain, 20,320 foot Mount McKinley. Mount Foraker, at 17,400 feet, and numerous large glaciers of the Alaska Range are also a part of this park's subarctic ecosystem. Wildlife includes caribou, Dall sheep, moose, grizzly bears and wolves.

The first ascent of Mount McKinley occurred in 1913. Climbing continued to be a popular activity, although on a small scale, after the park was established. However, during the last ten years, mountaineering in the park has increased dramatically. The number of Mount McKinley climbers has risen from 695 in 1984 to 1277 in 1994 and 1,220 in 1995. With the numbers of climbers increasing, the number of accidents, rescues and resource-related problems have also increased. Since 1932, a total of 85 mountaineers have perished on the slopes of Mount McKinley; 28 percent of these deaths (24) have occurred since 1990. Recent years have also seen an increase in climbing-related deaths on Mount Foraker and the other Alaska Range peaks located in the park. In 1990, eight mountaineers were rescued on Mount McKinley. In sharp contrast, the number of mountaineers rescued increased to 28 in 1992, 27 in 1994 and 21 in 1995. Studies by the NPS showed that the major reason climbers got into trouble on the mountain and required rescue was their unfamiliarity with the hazards unique to Mount McKinley. Specifically, extreme weather conditions, weather changeability and the other hazards associated with climbing in such northerly latitudes caught the climbers unprepared. The NPS determined that climbers need better education and information prior to their climbs and that an appropriate time frame was necessary to convey this information to the climbing community. Climbers from 38 countries registered to climb Mount McKinley in 1995. With so many climbers seeking permits, adequate lead time required to fulfill the requests lengthens. The 60 day pre-registration period will provide sufficient opportunity for the Denali park staff to provide the necessary information to prospective

mountaineers on the dangers they may face climbing in the park, how to prepare and equip themselves for the climb, other safety related issues and requirements concerning resource protection issues such as litter removal and human waste disposal.

On September 13, 1995, the NPS published the proposed regulation that will require mountain climbers to register a minimum of 60 days before any climb on Mount McKinley and Mount Foraker (60 FR 47513). The comment period closed on November 13, 1995. No comments were received during the comment period. When this rule becomes final, it will replace the interim rule that was published on March 31, 1995, in the **Federal Register**. (60 FR 16579).

Drafting Information

The primary authors of this final rule are Dennis Burnett, Washington Office of Ranger Activities, National Park Service and Brenda Bussard of Denali National Park and Preserve, National Park Service.

Paperwork Reduction Act

This final rule does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined that this final rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which compromise the nature and character of the area or causing physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

List of Subjects in 36 CFR Part 13

Alaska, National Parks, reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I, Part 13 is amended as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; *§ 13.65(b) also issued under 16 U.S.C. 1a–2(h), 1361, 1531.*

Subpart C—Special Regulations—Specific Park Areas in Alaska

2. Section 13.63 is amended by revising paragraph (f) to read as follows:

§ 13.63 Denali National Park and Reserve.

* * * * *

(f) *Mountain climbing.* Climbing on Mount McKinley or Mount Foraker without registering, on a form provided by the Superintendent, at least 60 days in advance of any climb is prohibited.

Dated: February 6, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–4162 Filed 2–22–96; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[A–94–13; FRL–5425–8]

RIN 2060–AE07

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for 1996 Model Year Emission Standards for Heavy-Duty Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule announces the availability of nonconformance penalties (NCPs) for the Light-Duty Truck 3 (LDT3) particulate matter (PM) standard taking effect in the 1996 model year. The availability of these NCPs will allow manufacturers of LDT3 whose vehicles or engines fail to conform with the 1996 PM standard, but do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty. The associated upper limit for the LDT3 PM standard will be the previous standard of 0.13 grams per mile (g/mi).

A concurrent, but separate rulemaking addresses the availability of NCPs for the 1998 and later model year oxides of nitrogen (NO_X) standard for Heavy-Duty Diesel Engines (HDDEs), the 1996 and later model year NO_X standard for LDT3 and the 1996 urban bus PM standard.

EFFECTIVE DATE: This rule will become effective March 25, 1996.

ADDRESSES: Public Docket: Copies of materials relevant to this rulemaking proceeding are contained in Public Docket A–94–13 at the Air Docket of the US Environmental Protection Agency, Room M1500, 401 M Street, SW, Washington, DC 20460, and are available for review in Room M1500 between the hours of 8:00 a.m. and 5:30 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Orehowsky, Manufacturers Operations Division (6405–J), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, telephone (202) 233–9292.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Section 206(g) of the Clean Air Act (the Act), 42 U.S.C. 7525(g), requires EPA to issue a certificate of conformity for HDEs or Heavy-Duty Vehicles (HDVs) which exceed an applicable section 202(a) emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays an NCP established by rulemaking. Congress adopted section 206(g) in the Clean Air Act Amendments of 1977 as a response to perceived problems with technology-forcing heavy-duty emissions standards. (It should be noted, however, that the existence of NCPs does not change the criteria under which the standards have been and will be set under section 202.) Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause. If strict standards were maintained, then some manufacturers, "technological laggards," might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this potential problem. The laggards would have a temporary alternative that would permit them to sell their engines or vehicles by payment of a penalty. This penalty is based in part, on the money saved from

the production of noncomplying engines, would protect conforming manufacturers from the competitive disadvantage of making more costly engines which comply with technology forcing standards.

Under section 206(g)(1) of the Clean Air Act, NCPs may be offered for HDVs or HDEs. The penalty may vary by pollutant and by class or category of vehicle or engine.

HDVs are defined by section 202(b)(3)(C) of the Clean Air Act as vehicles in excess of 6,000 pounds gross vehicle weight rating (GVWR). The light-duty truck (LDT) classification includes trucks that have a GVWR of 8,500 lbs or less. Therefore, certain LDTs may be classified as HDVs. Historically, LDTs between 6,001 and 8,500 pounds GVWR have been considered Heavy Light Duty Trucks (HLDTs). Based on various new requirements established by the Clean Air Act Amendments of 1990, HLDTs have been further subdivided into groups by weight.

The HLDTs are divided at 5750 lbs Adjusted Loaded Vehicle Weight (ALVW) which is the average of the curb weight and the GVWR. The HLDTs that are up through 5750 lbs ALVW are called Light Duty Trucks 3 (LDT3). Those above 5750 lbs ALVW but less than or equal to 8500 lbs GVWR are Light Duty Trucks 4, or LDT4. The LDT3 and LDT4 subclasses make up the HLDT vehicle class. Since NCPs are only offered for heavy duty vehicles or engines, this notice addresses only emission standards for light duty trucks of the LDT3 and LDT4 categories.

Section 206(g)(3) of the Clean Air Act requires that NCPs:

(1) Account for the degree of emission nonconformity;

(2) Increase periodically to provide incentive for nonconforming manufacturers to achieve the emission standards; and

(3) Remove the competitive disadvantage to conforming manufacturers.

Section 206(g) authorizes EPA to require testing of production vehicles or engines in order to determine the emission level on which the penalty is based. If the emission level of a vehicle or engine exceeds an upper limit of nonconformity established by EPA through regulation, the vehicle or engine would not qualify for an NCP under section 206(g) and no certificate of conformity could be issued to the manufacturer. If the emission level is below the upper limit but above the standard, that emission level becomes the "compliance level," which is also the benchmark for warranty and recall liability; the manufacturer who elects to pay the NCP is liable for vehicles or engines that exceed the compliance level in-use, unless, for the case of HLDTs, the compliance level is below the in-use standard. The manufacturer does not have in-use warranty or recall liability for emissions levels above the standard but below the compliance level.

II. Background

A. The Generic Nonconformance Penalty Rule

The generic NCP rule (Phase I) established three basic criteria for determining the eligibility of emission standards for nonconformance penalties in any given model year. See 40 CFR 86.1103–87. First, the emission standard in question must become more difficult to meet. This can occur in two ways, either by the emission standard itself becoming more stringent, or due to its interaction with another emission standard that has become more stringent.

Second, substantial work must be required to meet the emission standard. EPA considers "substantial work" to mean the application of technology not previously used in that vehicle or engine class/subclass, or a significant modification of existing technology, to bring that vehicle/engine into compliance. EPA does not consider minor modifications or calibration changes to be classified as substantial work.

Third, a technological laggard must be likely to develop. A technological laggard is defined as a manufacturer who cannot meet a particular emission standard due to technological (not economic) difficulties and who, in the absence of NCPs, might be forced from the marketplace. EPA will make the determination that a technological laggard is likely to develop, based in large part on the above two criteria. However, these criteria are not always sufficient to determine the likelihood of the development of a technological laggard. An emission standard may become more difficult to meet and substantial work may be required for compliance, but if that work merely involves transfer of well-developed technology from another vehicle class, it is unlikely that a technological laggard would develop.

The above three criteria were used to determine eligibility for NCPs in Phase II of the NCP rulemaking (50 FR 53454, December 31, 1985), in Phase III of the NCP rulemaking (55 FR 46622, November 5, 1990) concerning the 1991 model year HDE standards, and in Phase IV of the NCP rulemaking (58 FR 68532, December 28, 1993) concerning HDVs and HDEs subject to the 1994 and later model year emission standards for particulate matter (PM).

As in the previous NCP rules, EPA is specifying values for the following parameters in the NCP formula for each standard: COC_{50}, COC_{90}, MC_{50}, and F. The NCP formula is the same as that promulgated in the Phase I rule.

COC_{50} is an estimate of the industry wide average incremental cost per engine (references to engines are intended to include vehicles as well) associated with meeting the standard for which an NCP is offered, compared with meeting the upper limit. COC_{50} is based on typical engine technology, as nearly as EPA can identify it. As in the previous NCP rules, costs include additional manufacturer costs and additional owner costs. The other NCP rules did not include certification costs in the calculation of COC_{50}, and none will be allowed in this document because both complying and noncomplying manufacturers must incur certification costs.

COC_{90} is EPA's best estimate of the 90th percentile incremental cost per engine associated with meeting the standard for which an NCP is offered, compared with meeting the associated upper limit. COC_{90} is based on a near worst case technology, as nearly as EPA can identify it. COC_{90}, like COC_{50}, includes both manufacturer and owner costs, but not certification costs.

MC_{50} is an estimate of the industry wide average marginal cost of compliance per unit of reduced pollutant associated with the least cost effective emission control technology installed to meet the new standard. MC_{50} is measured in dollars per g/BHP-hr for HDEs and in dollars per gram per mile (g/mi) for LDTs.

F is a factor used to derive MC_{90}, the 90th percentile marginal cost of compliance with the NCP standard for engines in the NCP category. MC_{90} is defined as being the slope of the penalty rate curve near the standard and is equal to MC_{50} multiplied by F. For this rulemaking, as was the case in the previous NCP rules, EPA has determined that no reasonable estimate of MC_{90} can be made based on existing marginal cost data and has thus set F at a presumptive value of 1.2. This approach was generally supported by commentaries on the past NCP rulemakings.

B. Notice of Proposed Rulemaking

In the Notice of Proposed Rulemaking (NPRM) (59 FR 43074, August 22, 1994), EPA identified the Tier I Heavy Light

Duty Trucks (HLDT) standards becoming effective in 1996, the 1996 Urban Bus PM standard of 0.05 g/bhp-hr, and the 1998 Heavy Duty Engine (HDE) NO_X standard of 4.0 g/bhp-hr as new standards for which it has statutory authority for considering NCPs. EPA then applied the three generic NCP criteria to each of those emission standards.

The Agency identified the 1996 LDT3 PM standard of 0.10 g/mi as satisfying the required NCP criteria and, therefore, proposed to make NCPs available for that standard. The Agency also proposed upper limits for that standard and numerical values to be used in the calculation of the NCP for the associated vehicles.

EPA did not propose NCPs for the other new standards because they did not meet all three of the generic NCP criteria.

NCPs were not considered for the Tier 1 "in-use" standards since NCPs are a mechanism to allow manufacturers to certify engine families, not to assist manufacturers in complying with "in-use" standards.

C. Final Rule—Availability of NCPs

1. Standard for Which NCPs Will Be Offered

a. 1996 Tier 1 PM Standard for Diesel LDT3

EPA recognizes that the new PM standard of 0.10 g/mi at full useful life represents an increase in stringency over the prior standard of 0.13 g/mi at full useful life for diesel-fueled LDT3, satisfying the first eligibility criterion. Based on discussions with General Motors, the only current manufacturer of diesel-fueled vehicles in this class, EPA believes that the addition of catalytic converter technology to these engines will probably not bring them into compliance with the new standard. Significant work will be required for another technology, such as a Variable Geometry Turbocharger, to be adapted for use on these vehicles. This is especially true when considering the interrelationship of the NO_X and PM emissions of diesel-fueled engines, as stated above. For these reasons, EPA believes that a technological laggard may develop and is offering NCPs for diesel-fueled LDT3 at the full useful life for the new PM standard. The proposed penalty rates are discussed below.

2. Standards for Which NCPs Were Not Proposed

a. 1996 Tier 1 PM Standard for Non-Diesel Fueled LDT3

There is no previous PM standard for non-diesel fueled LDT3. Thus the new PM standard of 0.10 g/mi at full useful life represents an increase in stringency. However, non-diesel fueled vehicles emit very low levels of particulate matter and will not require any additional emission control technology to meet this standard. Thus, substantial work is not required and there is not a likelihood that a technological laggard will develop. Therefore, EPA did not propose NCPs for these vehicles.

b. 1996 Tier 1 Non-Methane Hydrocarbon (NMHC) Standard for LDT3

Since there is no NMHC standard for earlier model year LDT3, the new NMHC standard represents an increase in stringency over the THC standard for previous model years, satisfying the first eligibility criterion. EPA acknowledges that one manufacturer has indicated that it may have difficulty complying with this standard. Based on the manufacturer's planned strategy, however, EPA does not believe that substantial work, as described above, will be necessary to meet the new standard for either the intermediate useful-life level of 0.32 g/mi or the full useful-life level of 0.46 g/mi, since it does not represent a major modification of existing technology. EPA also does not believe that a technological laggard is likely to develop, based on discussions with vehicle manufacturers. For these reasons, EPA did not propose NCPs for this standard.

c. 1996 Tier 1 CO Standard for LDT3

EPA recognizes that the new CO standard of 6.4 g/mi at full useful life represents an increase in stringency over the prior standard of 10 g/mi at full useful life for LDT3, satisfying the first eligibility criterion. Based on 1993 model year certification levels, only one manufacturer is currently producing LDT3 vehicles which would not meet the new standard at full useful life. Since this manufacturer does not anticipate difficulty in meeting the new CO standards, EPA does not believe that a technological laggard is likely to develop. The half useful-life standard of 4.4 g/mi is considered by EPA and manufacturers to be less difficult to meet than the full useful life standard. For these reasons, EPA did not propose NCPs for these standards.

d. 1996 Tier 1 Non-Methane Hydrocarbon (NMHC) Standard for LDT4

There is no NMHC standard for earlier model year LDT4. Both EPA and vehicle manufacturers believe that the NMHC standard represents an increase in stringency over the THC standard for previous model year LDT4, satisfying the first eligibility criterion. The same manufacturer that expressed concern in meeting the NMHC standard for LDT3 has similar concerns in meeting this standard and will use a similar strategy to lower the emissions. For the same reasons stated in the above discussion of the NMHC standard for LDT3, EPA did not propose NCPs for the NMHC standard at either the intermediate or the full useful life.

e. 1996 Tier 1 CO Standard for LDT4

EPA recognizes that the new CO standard of 7.3 g/mi at full useful life represents an increase in stringency over the prior standard of 10 g/mi at full useful life for LDT4, satisfying the first eligibility criterion. Based on discussions with current manufacturers of affected vehicles, EPA believes that manufacturers will not have difficulty in meeting the new standard. Since there are no 1993 model year LDT4 with CO certification levels higher than the new standard at full useful life, EPA does not believe that a technological laggard is likely to develop. The half useful-life standard of 5.0 g/mi is generally considered by EPA and manufacturers to be less difficult to meet than the full useful life standard of 7.3 g/mi. For these reasons, EPA did not propose NCPs for these standards.

f. 1996 Tier 1 NO_X Standard for LDT4

EPA recognizes that the new NO_X standard of 1.53 g/mi at full useful life represents an increase in stringency over the prior standard of 1.7 g/mi at full useful life for LDT4, satisfying the first eligibility criterion. Based on discussions with current manufacturers of affected vehicles, and based on the fact that there were no model year 1993 LDT4 certified which would exceed the new standard at full useful life, EPA believes that substantial work, as described above, will not be required of manufacturers and that a technological laggard is not likely to develop. The half useful-life standard for non-diesel vehicles of 1.10 g/mi is generally considered by EPA and manufacturers to be less difficult to meet than the full useful life standard. For these reasons, EPA did not propose NCPs for the new LDT4 NO_X standards.

g. 1996 Tier 1 PM Standard for LDT4

EPA recognizes that the new PM standard of 0.12 g/mi at full useful life represents an increase in stringency over the prior standard of 0.13 g/mi at full useful life for LDT4, satisfying the first eligibility criterion. As in the case of non-diesel LDT3, no work should be required to meet the new PM standard for non-diesel LDT4. And based on discussions with the single, current manufacturer of diesel-fueled LDT4 vehicles and on 1993 model year certification levels, EPA does not believe that a technological laggard is likely to develop or that substantial work, as described above, will be required to meet the new PM standard. For these reasons, EPA did not propose NCPs for the new LDT4 PM standard.

3. Standards Addressed in a Concurrent NCP Rulemaking

a. 1996 Tier 1 NO_X Standard for LDT3
b. 1996 Urban Bus PM Standard
c. 1998 HDDE NO_X Standard

EPA's analysis of the issues concerning NCPs for these standards and EPA's response to comments received in this rulemaking on these standards are contained in a Direct Final Rule published elsewhere in this **Federal Register** notice. The Direct Final Rule approves NCPs for the above, three standards.

III. Summary and Analysis of Comments

Written comments were received from five entities during the comment period: General Motors Corporation, Detroit Diesel Corporation, Engine Manufacturers' Association, Navistar, and Mack Truck.

A. Availability of Nonconformance Penalties and Penalty Rates

Heavy Light Duty Trucks 3 PM Standard

General Motors agrees with EPA's conclusion that NCPs are justified for the new LDT3 PM standard. GM stated that the proposed penalty rates were not reasonable for two reasons. First, GM stated "the basic technology determined to be necessary to achieve the emission improvement required by the standard includes technology (oxidizing catalyst) that is already being used to achieve the current PM standard. Thus, the oxidizing catalyst costs included in the penalty rate determinations needs to be removed and the penalty rates modified to include only the other technology believed needed to achieve the 1996 PM standard." EPA agreed with this suggestion since GM is the only manufacturer in this market segment. Since GM was not able to specify what technology would be needed to meet the standard, the penalty rates in this Final Rule reflect EPA's best determination of the technology believed necessary for a manufacturer already using catalyst technology, but still unable to attain the standard.

EPA believes that vehicles unable to achieve the standard with catalyst technology will need to rely on variable geometry turbocharger technology, improved oil control, and additional work in optimizing engine calibrations.

Second, GM argues that since the new Tier 1 standard effectively increases the test weight used in testing vehicles of this class, this fact should be accounted for in determining the penalty rates and the upper limit for the LDT3 PM NCP. While EPA believes the said effect to be plausible, it is likely a relatively small effect. And, in the absence of any manufacturer-supplied data in support of that claim, this component was not considered in determining the NCPs for this Final Rule.

IV. Penalty Rates

This rule is the most recent in a series of NCP rulemakings. The discussion of penalty rates in the Phase IV rulemaking (58 FR 68532, December 28, 1993), Phase III rulemaking (55 FR 46622, November 5, 1990), the Phase II rulemaking (50 FR 53454, December 31, 1985) as well as the Phase I rulemaking (50 FR 35374, August 30, 1985) are incorporated by reference.

The derivation of the 1996 Tier 1 LDT3 PM standard cost parameters are described in a support document entitled "Calculation of Nonconformance Penalty Rates for 1996 and Later Model Year LDT3 Particulate Matter (PM), LDT3 Oxides of Nitrogen (NO_X), 1996 and Later Model Year Urban Bus Particulate Matter (PM), and 1998 and Later Model Year HDDE Oxides of Nitrogen (NO_X) Standards," which is available in the public docket for this rulemaking. The associated upper limit of 0.13 g/ini PM, the previous PM standard, was determined as per section 86.1104–91 of the Code of Federal Regulations.

V. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action." This regulation will not have an annual effect on the economy in excess of $100 million and will not cause a major increase in the price of HDEs above those that would otherwise occur from compliance with the emission standards themselves. This regulation is intended to assist manufacturers that are having difficulty developing and marketing vehicles which comply with the 1996 Tier 1 PM standard for LDT3. Without this rule, a manufacturer experiencing difficulty in complying with this new emission standard (after the use of credits) has only two alternatives: fix the nonconforming engines for the associated model years or not sell them at all. NCPs provide manufacturers with additional time to bring their engines into conformity.

In addition, NCPs are calculated to deprive nonconforming manufacturers of any cost savings and competitive advantages stemming from marketing a nonconforming engine. Thus, NCPs will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

VI. Economic Impact

Because the use of NCPs is optional, manufacturers have the flexibility and will likely choose whether or not to use NCPs based on their ability to comply with emissions standards. If a HDE manufacturer elects not to use NCPs, the manufacturer and its customers will not incur any additional costs related to NCPs.

NCPs remedy the potential problem of having a manufacturer forced out of the marketplace due to that manufacturer's inability to conform to new, strict emission standards in a timely manner. Without NCPs, a manufacturer which has difficulty certifying HDEs in conformance with emission standards or whose engines fail a SEA has only two alternatives: fix the nonconforming engines, perhaps at a prohibitive cost, or prevent their introduction into commerce. The availability of NCPs provides manufacturers with a third alternative: continue production and introduce into commerce upon payment

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of a penalty for an engine that exceeds the standard until an emission conformance technique is developed.

Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers to have increased flexibility. A decision to use NCPs may be a manufacturer's only way to continue to introduce HDEs into commerce. Hence, NCPs may be considered to have no adverse economic impact.

VII. Environmental Impact

When evaluating the environmental impact of this rule, one must keep in mind that, under the Clean Air Act, NCPs are a consequence of enacting new, more stringent emissions requirements for heavy duty engines. Emission standards are set at a level that most, but not necessarily all, manufacturers can achieve by the model year in which the standard becomes effective. Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause, and allowed manufacturers of heavy-duty engines to certify nonconforming vehicles/engines upon the payment of an NCP, under certain conditions. This mechanism would allow a manufacturer(s) who cannot meet technology-forcing standards immediately to continue to manufacture these nonconforming engines while they tackle the technological problems associated with meeting new emission standard(s). Thus, as part of the statutory structure to force technological improvements without driving manufacturers out of the market, NCPs provide flexibility that fosters long-term emissions improvement through the setting of lower emission standards at an earlier date than could otherwise be possible. By design, NCPs encourage the technological laggard that is using NCPs to reduce emission levels to the more stringent standard as quickly as possible.

VIII. Compliance With Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., the Administrator is required to either perform a regulatory flexibility analysis or certify that this regulation will not have a significant impact on a substantial number of small business entities. None of the affected manufacturers could be classified as small. Moreover, as already discussed, the NCP program can be expected to benefit manufacturers.

Some small entities do exist as manufacturers' contractors for the testing of engines for Production Compliance Audits (PCAs). It is EPA's practice to conduct PCA scheduling (namely, tests per day limitations) in such a way as to consider the staff and manpower capabilities of such contractors and avoid any problems. The result is that these entities are not adversely affected. Thus, I certify that this rule will not have any adverse economic impact on a substantial number of small entities.

IX. Information Collection Requirements

This rule requires that manufacturers perform certain record keeping and submit certain reports to EPA. The Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq., provides that reporting and recordkeeping requirements be approved by OMB before they can be enforced by EPA. The information collection requirements in this proposed rule have been addressed in previous rulemaking and approved by OMB (OMB control no. 2060–0132). However, any person wishing to comment on these requirements is invited to do so. Comments on these requirements should be submitted to Chief, Information Policy Branch, Mail Code 2136, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460 and to Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, 726 Jackson Place, NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

X. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternative and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling official of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duties on any of these governmental entities or the private sector. In addition, the UMRA excludes from the definition of "Federal private sector mandate" duties that arise from participation in a voluntary Federal program. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: February 12, 1996.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 86, is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 206, 207, 208, 215, 216, 217, 301(a), Clean Air Act as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

2. Section 86.1105–87 of subpart L is amended by revising paragraph (e), adding paragraph (g) and adding and reserving paragraph (h) to read as follows:

§ 86.1105–87 Emission standards for which nonconformance penalties are available.

* * * * *

(e) The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (a) and (b) of this section are expressed in December 1984 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (c) and (d) of this section are expressed in December 1989 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraph (f) of this section are expressed in December 1991 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (g) and (h) of this section are expressed in December 1994 dollars. These values shall be adjusted for inflation to dollars as of January of the calendar year preceding the model year in which the NCP is first available by using the change in the overall Consumer Price Index, and rounded to the nearest whole dollar in accordance with ASTM E29–67 (reapproved 1980), Standard Recommended Practice for Indicating Which Places of Figures are to be Considered Significant in Specified Limiting Values. The method was approved by the director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document is available from ASTM, 1916 Race Street, Philadelphia, PA 19103, and is also available for inspection as part of Docket A–91–06, located at the Central Docket Section, EPA, 401 M Street, SW, Washington, DC or at the office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register on January 13, 1992. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

* * * * * * *

(g) Effective in the 1996 model year, NCPs will be available for the following emission standard:

(1) Light-duty truck 3 diesel-fueled vehicle at full useful life (as defined in § 86.094–2) particulate matter emission standard of 0.10 g/mi.

(i) The following values shall be used to calculate an NCP for the standard set forth in § 86.094–9(a)(1)(ii) in accordance with § 86.1113–87(a):

(A) COC_{50}: $441.

(B) COC_{90}: $1,471.

(C) MC_{50}: $14,700 per gram per mile.

(D) F: 1.2.

(ii) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.094–9(a)(1)(ii) in accordance with § 86.1113–87(h): 0.093.

(2) [Reserved]

(h) [Reserved]

[FR Doc. 96–4040 Filed 2–22–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 86

[A–94–13; FRL–5425–9]

RIN 2060–AE07

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for 1996 and 1998 Model Year Emission Standards for Heavy-Duty Vehicles and Engines—Part II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This final rule makes nonconformance penalties (NCPs) available for the 1998 and later model year Heavy-Duty Engine (HDE) oxides of nitrogen (NO_X) standard for Heavy-Duty Diesel Engines (HDDEs), the 1996 and later model year Light-Duty Truck 3 (LDT3) NO_X standard, and the 1996 and later model year Urban Bus particulate matter (PM) standard. The availability of NCPs will allow manufacturers whose vehicles or engines fail to conform with these emission standards, but do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty. The associated upper limit will be the previous standard (5.0 grams per brake horsepower-hour (g/BHp-hr) NO_X for HDDEs, 1.7 grams per mile (g/mi) NO_X for LDT3s, and 0.07 g/BHp-hr PM for urban buses).

A final rule published elsewhere in this **Federal Register** document addresses other emission standards for which NCPs have been considered and establishes NCPs for the 1996 PM standard for LDT3.

EFFECTIVE DATE: This final rule will be effective April 23, 1996 unless notice is received by March 25, 1996 that adverse or critical comments will be submitted or that an opportunity to submit such comments at a public hearing is requested. If such comments or a request for a public hearing are received by the Agency, EPA will then publish a subsequent **Federal Register** document withdrawing from this action only those items which are specifically listed in those comments or in the request for a public hearing.

ADDRESSES: Public Docket: Copies of materials relevant to this rulemaking proceeding are contained in Public Docket A–94–13 at the Air Docket of the US Environmental Protection Agency, Room M1500, 401 M Street, SW, Washington, DC 20460, and are available for review in Room M1500 between the hours of 8:00 a.m. and 5:30 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Orehowsky, Manufacturers Operations Division (6405–J), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, telephone (202) 233–9292.

SUPPLEMENTARY INFORMATION: EPA believes that the use of a direct final rule is appropriate because the changes made are expected to be non-controversial. The direct final rule will allow the Agency to finalize such changes in a timely manner, allowing NCPs to be available before the start of production of affected vehicles.

I. Statutory Authority

Section 206(g) of the Clean Air Act (the Act), 42 U.S.C. 7525(g), requires EPA to issue a certificate of conformity for HDEs or Heavy-Duty Vehicles (HDVs) which exceed an applicable section 202(a) emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays an NCP established by rulemaking. Congress adopted section 206(g) in the Clean Air Act Amendments of 1977 as a response to perceived problems with technology-forcing heavy-duty emissions standards. (It should be noted, however, that the existence of NCPs does not change the criteria under which the standards have been and will be set under section 202.) Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause. If strict standards were maintained, then some manufacturers, "technological laggards," might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this potential problem. The laggards would have a temporary alternative that would permit them to sell their engines or vehicles by payment of a penalty. This penalty is based in part, on the money saved from the production of non complying engines, would protect conforming manufacturers from the competitive disadvantage of making more costly

engines which comply with technology forcing standards.

Under section 206(g)(1) of the Clean Air Act, NCPs may be offered for HDVs or HDEs. The penalty may vary by pollutant and by class or category of vehicle or engine.

HDVs are defined by section 202(b)(3)(C) of the Clean Air Act as vehicles in excess of 6,000 pounds gross vehicle weight rating (GVWR). The light-duty truck (LDT) classification includes trucks that have a GVWR of 8,500 lbs or less. Therefore, certain LDTs may be classified as HDVs. Historically, LDTs between 6,001 and 8,500 pounds GVWR have been considered Heavy Light Duty Trucks (HLDTs). Based on various new requirements established by the Clean Air Act Amendments of 1990, HLDTs have been further subdivided into groups by weight.

The HLDTs are divided at 5750 lbs Adjusted Loaded Vehicle Weight (ALVW) which is the average of the curb weight and the GVWR. The HLDTs that are up through 5750 lbs ALVW are called Light Duty Trucks 3 (LDT3). Those above 5750 lbs ALVW but less than or equal to 8500 lbs GVWR are Light Duty Trucks 4, or LDT4. The LDT3 and LDT4 subclasses make up the HLDT vehicle class. Since NCPs are only offered for heavy duty vehicles or engines, this notice addresses only emission standards for light duty trucks of the LDT3 and LDT4 categories.

Section 206(g)(3) of the Clean Air Act requires that NCPs:

(1) Account for the degree of emission nonconformity;

(2) Increase periodically to provide incentive for nonconforming manufacturers to achieve the emission standards; and

(3) Remove the competitive disadvantage to conforming manufacturers.

Section 206(g) authorizes EPA to require testing of production vehicles or engines in order to determine the emission level on which the penalty is based. If the emission level of a vehicle or engine exceeds an upper limit of nonconformity established by EPA through regulation, the vehicle or engine would not qualify for an NCP under section 206(g) and no certificate of conformity could be issued to the manufacturer. If the emission level is below the upper limit but above the standard, that emission level becomes the "compliance level," which is also the benchmark for warranty and recall liability; the manufacturer who elects to pay the NCP is liable for vehicles or engines that exceed the compliance level in-use, unless, for the case of HLDTs, the compliance level is below the in-use standard. The manufacturer does not have in-use warranty or recall liability for emissions levels above the standard but below the compliance level.

II. Background

A. The Generic Nonconformance Penalty Rule

The generic NCP rule (Phase I) established three basic criteria for determining the eligibility of emission standards for nonconformance penalties in any given model year. See 40 CFR 1103–87. First, the emission standard in question must become more difficult to meet. This can occur in two ways, either by the emission standard itself becoming more stringent, or due to its interaction with another emission standard that has become more stringent.

Second, substantial work must be required to meet the emission standard. EPA considers "substantial work" to mean the application of technology not previously used in that vehicle or engine class/subclass, or a significant modification of existing technology, to bring that vehicle/engine into compliance. EPA does not consider minor modifications or calibration changes to be classified as substantial work.

Third, a technological laggard must be likely to develop. A technological laggard is defined as a manufacturer who cannot meet a particular emission standard due to technological (not economic) difficulties and who, in the absence of NCPs, might be forced from the marketplace. EPA will make the determination that a technological laggard is likely to develop, based in large part on the above two criteria. However, these criteria are not always sufficient to determine the likelihood of the development of a technological laggard. An emission standard may become more difficult to meet and substantial work may be required for compliance, but if that work merely involves transfer of well-developed technology from another vehicle class, it is unlikely that a technological laggard would develop.

The above three criteria were used to determine eligibility for NCPs in Phase II of the NCP rulemaking (50 FR 53454, December 31, 1985), in Phase III of the NCP rulemaking (55 FR 46622, November 5, 1990) concerning the 1991 model year HDE standards, and in Phase IV of the NCP rulemaking (58 FR 68532, December 28, 1993) concerning HDVs and HDEs subject to the 1994 and later model year emission standards for particulate matter (PM).

As in the previous NCP rules, EPA is specifying values for the following parameters in the NCP formula for each standard: COC_{50}, COC_{90}, MC_{50}, and F. The NCP formula is the same as that promulgated in the Phase I rule.

COC_{50} is an estimate of the industry wide average incremental cost per engine (references to engines are intended to include vehicles as well) associated with meeting the standard for which an NCP is offered, compared with meeting the upper limit. COC_{50} is based on typical engine technology, as nearly as EPA can identify it. As in the previous NCP rules, costs include additional manufacturer costs and additional owner costs. The other NCP rules did not include certification costs in the calculation of COC_{50}, and none will be allowed in this proposed rule because both complying and noncomplying manufacturers must incur certification costs.

COC_{90} is EPA's best estimate of the 90th percentile incremental cost per engine associated with meeting the standard for which an NCP is offered, compared with meeting the associated upper limit. COC_{90} is based on a near worst case technology, as nearly as EPA can identify it. COC_{90}, like COC_{50}, includes both manufacturer and owner costs, but not certification costs.

MC_{50} is an estimate of the industry wide average marginal cost of compliance per unit of reduced pollutant associated with the least cost effective emission control technology installed to meet the new standard. MC_{50} is measured in dollars per g/BHP-hr for HDEs and in dollars per gram per mile (g/mi) for LDTs.

F is a factor used to derive MC_{90}, the 90th percentile marginal cost of compliance with the NCP standard for engines in the NCP category. MC_{90} is defined as being the slope of the penalty rate curve near the standard and is equal to MC_{50} multiplied by F. For this rulemaking, as was the case in the previous NCP rules, EPA has determined that no reasonable estimate of MC_{90} can be made based on existing marginal cost data and has thus set F at a presumptive value of 1.2. This approach was generally supported by commentaries on the past NCP rulemakings.

B. Notice of Proposed Rulemaking

In the Notice of Proposed Rulemaking (NPRM) (59 FR 43074, August 22, 1994), EPA identified the Tier I Heavy Light-Duty Trucks (HLDT) NO_X standard of 0.98 g/mi becoming effective in 1996, the 1998 HDE NO_X standard of 4.0 g/BHp-hr, and the 1996 Urban Bus PM standard of 0.05 g/BHp-hr as new standards for which it has statutory authority for considering NCPs. EPA did not propose to offer NCPs for these standards because, based on the information available at the time of the proposed rulemaking, these standards did not meet the criteria for offering NCPs.

C. Summary and Analysis of Comments

Based on comments to the NPRM received by EPA, EPA has decided to offer NCPs for the 1996 Light Duty Trucks 3 (LDT3) NO_X standard of 0.98 g/mi for diesel-fueled vehicles, the 1998 HDE NO_X standard of 4.0 g/BHp-hr for HDDEs, and the 1996 Urban Bus PM standard of 0.05 g/BHp-hr.

1. Heavy Light Duty Trucks 3 NO_X Standard

General Motors, the only manufacturer in this market, commented that NCPs are justified for this standard since "* * * the NO_X standard change is large (1.7 g/mi to 0.98 g/mi) * * *" and "attempts to reach significantly lower NO_X levels with the current technology results in very poor engine combustion control with significant increased smoke * * *" GM goes on to state that new technology is required which "concentrates on new EGR systems and control interfaces between this EGR technology and the fuel control system * * *"

EPA agrees with GM's assessment that current EGR flow rates cannot be increased to limit NO_X emissions without changes to the fuel control system. Driveabiliity problems will occur at higher EGR flow rates unless the fuel control system is adjusted to account for these higher EGR flow rates. EPA believes that GM will need to recalibrate the engine computer to better control fuel delivery rates to allow for improved driveability at increased EGR flow rates. EPA also believes that air-to-air aftercooling will be necessary to further reduce NO_X emissions below the standard.

EPA acknowledges that the stringency of the NO_X standard for this class of trucks has increased. Also, significant work will be involved in developing the appropriate fuel system calibration to allow for increased EGR flow. Further work will be necessary to develop air-to-air aftercooling which is new to this segment of the truck market. Since the previously mentioned technology may not be developed by the start of the 1996 model year, a technological laggard may develop. For these reasons, EPA is offering NCPs for 1996 LTD3 NO_X standard.

2. 1996 HDDE Urban Bus PM Standard

Detroit Diesel Corporation (DDC) commented that they are capable of achieving 0.05 g/BHp-hr in development engines using only a catalytic converter, but they need new technology to ensure that production engines would be capable of satisfying the new standard during Selective Enforcement Audit (SEA) testing. The Engine Manufacturers Association (EMA) stated that for the 1996 model year Urban Bus Engine PM standard the three criteria for offering NCPs are met.

In the 1996 model year the PM standard applicable to Urban Bus Engines becomes more stringent. EPA acknowledges that new technologies need to be developed to provide for a compliance margin for SEA testing. These technologies include improving aftertreatment devices such as catalysts and traps and new turbocharger designs. EPA believes that substantial work will be involved in developing this diesel fueled technology. Particulate traps have not proven to be durable. Catalysts have reduced PM emissions but further reductions are necessary. Low inertia turbochargers are being developed but have yet to be offered in the urban bus market and their effectiveness is uncertain.

EPA believes that Urban Bus Engine manufacturers will need to employ the unproven technology mentioned in the preceding paragraph to ensure compliance with this standard, thus; EPA believes a technological laggard is likely to develop and will be offering NCPs.

3. 1998 HDE NO_X Standard

EMA commented that "based on the information presently available, it is likely that certain engine manufacturers and/or certain engine families may not be able to meet the 4.0 g/bhp-hr NO_X standard in 1998". Mack Truck suggested that NCPs should be offered for this standard since they were offered for the 1988 and 1991 NO_X standards. DDC commented that several of their most advanced engines are using credits to meet the 1994 standards. Because of the NO_X-PM trade off and the stringency of the 1994 PM standard, none of their engines are capable of generating NO_X credits which could be used toward the 1998 NO_X standard. This could result in DDC having to discontinue several of its engine ratings in 1998. Navistar commented that a commercially important engine may not be finished in time causing an interruption in manufacturing. Navistar stated that NCPs would allow such an engine to be put into commerce.

In the 1998 model year the NO_X standard applicable to HDEs will become more stringent. EPA believes that this increase in stringency will require the HDE manufacturers to employ new emission control technology (e.g., oxidation catalysts, improved turbochargers, modifications to the fuel injection systems, or engine calibration changes). These new technologies will require substantial work. Also based on manufacturers' comments to the Notice of Proposed Rulemaking (59 FR 43074, August 22, 1994), EPA now believes that a technological laggard may develop. Therefore, EPA has decided to offer NCPs for the 1998 model year HDE NO_X standard.

III. Standards Addressed in a Concurrent NCP Rulemaking

a. 1996 Tier 1 Standards for LDT3 other than diesel NO_X

b. 1996 Tier 1 Standards for LDT4

IV. Penalty Rates and Upper Limits

This rule is the most recent in a series of NCP rulemakings. The discussion of penalty rates in the Phase IV rulemaking (58 FR 68532, December 28, 1993), Phase III rulemaking (55 FR 46622, November 5, 1990), the Phase II rulemaking (50 FR 53454, December 31, 1985) as well as the Phase I rulemaking (50 FR 35374, August 30, 1985) are incorporated by reference.

The derivation of the proposed cost parameters is described in a support document entitled "Calculation of Nonconformance Penalty Rates for 1996 and Later Model Year LDT3 Particulate Matter (PM), LDT3 Oxides of Nitrogen (NO_X), 1996 and Later Model Year Urban Bus Particulate Matter (PM), and 1998 and Later Model Year HDDE Oxides of Nitrogen (NO_X) Standards" which is available in the public docket for this rulemaking. The associated upper limits of 1.7 g/mi NO_X and 0.12 g/mi PM for diesel LDT3, 5.0 g/BHp-hr NO_X for HDDEs, and 0.07 g/BHp-hr PM for urban bus engines were determined from the previous standards as per Section 86.1104–91 of the Code of Federal Regulations (CFR).

V. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

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(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action." This regulation will not have an annual effect on the economy in excess of $100 million and will not cause a major increase in the price of HDEs above those that would otherwise occur from compliance with the emission standards themselves. This regulation is intended to assist manufacturers that are having difficulty developing and marketing vehicles which comply with the 1996 Tier 1 PM standard for LDT3s. Without this rule, a manufacturer experiencing difficulty in complying with this new emission standard (after the use of credits) has only two alternatives: fix the nonconforming engines for the associated model years or not sell them at all. NCPs provide manufacturers with additional time to bring their engines into conformity.

In addition, NCPs are calculated to deprive nonconforming manufacturers of any cost savings and competitive advantages stemming from marketing a nonconforming engine. Thus, NCPs will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

VI. Economic Impact

Because the use of NCPs is optional, manufacturers have the flexibility and will likely choose whether or not to use NCPs based on their ability to comply with emissions standards. If a HDE manufacturer elects not to use NCPs, the manufacturer and its customers will not incur any additional costs related to NCPs. NCPs remedy the potential problem of having a manufacturer forced out of the marketplace due to that manufacturer's inability to conform to new, strict emission standards in a timely manner. Without NCPs, a manufacturer which has difficulty certifying HDEs in conformance with emission standards or whose engines fail a SEA has only two alternatives: fix the nonconforming engines, perhaps at a prohibitive cost, or prevent their introduction into commerce. The availability of NCPs provides manufacturers with a third alternative: continue production and introduce into commerce upon payment of a penalty for an engine that exceeds the standard until an emission conformance technique is developed.

Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers to have increased flexibility. A decision to use NCPs may be a manufacturer's only way to continue to introduce HDEs into commerce. Hence, NCPs may be considered to have no adverse economic impact.

VII. Environmental Impact

When evaluating the environmental impact of this rule, one must keep in mind that, under the Clean Air Act, NCPs are a consequence of enacting new, more stringent emissions requirements for heavy duty engines. Emission standards are set at a level that most, but not necessarily all, manufacturers can achieve by the model year in which the standard becomes effective. Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause, and allowed manufacturers of heavy-duty engines to certify nonconforming vehicles/engines upon the payment of an NCP, under certain conditions. This mechanism would allow a manufacturer(s) who cannot meet technology-forcing standards immediately to continue to manufacture these nonconforming engines while they tackle the technological problems associated with meeting new emission standard(s). Thus, as part of the statutory structure to force technological improvements without driving manufacturers out of the market, NCPs provide flexibility that fosters long-term emissions improvement through the setting of lower emission standards at an earlier date than could otherwise be possible. By design, NCPs encourage the technological laggard that is using NCPs to reduce emission levels to the more stringent standard as quickly as possible.

VIII. Compliance With Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., the Administrator is required to either perform a regulatory flexibility analysis or certify that this regulation will not have a significant impact on a substantial number of small business entities. None of the affected manufacturers could be classified as small. Moreover, as already discussed, the NCP program can be expected to benefit manufacturers.

Some small entities do exist as manufacturers' contractors for the testing of engines for Production Compliance Audits (PCAs). It is EPA's practice to conduct PCA scheduling (namely, tests per day limitations) in such a way as to consider the staff and manpower capabilities of such contractors and avoid any problems. The result is that these entities are not adversely affected. Thus, I certify that this rule will not have any adverse economic impact on a substantial number of small entities.

IX. Information Collection Requirements

This rule requires that manufacturers perform certain record keeping and submit certain reports to EPA. The Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq., provides that reporting and record keeping requirements be approved by OMB before they can be enforced by EPA. The information collection requirements in this proposed rule have been addressed in previous rulemaking and approved by OMB (OMB control no. 2060–0132). However, any person wishing to comment on these requirements is invited to do so. Comments on these requirements should be submitted to Chief, Information Policy Branch, Mail Code 2136, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460 and to Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, 726 Jackson Place, NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

X. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternative and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duties on any of these governmental entities or the private sector. In addition, the UMRA excludes from the definition of "Federal private sector mandate" duties that arise from participation in a voluntary federal program. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: February 12, 1996.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 86, is amended as follows:

PART 86–CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 206, 207, 208, 215, 216, 217, 301(a), Clean Air Act as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

2. Section 86.1105–87 of subpart L is amended by adding paragraphs (g)(2) and (3) and paragraph (h), reading as follows:

§ 86.1105–87 Emission standards for which nonconformance penalties are available.

* * * * *

(g) * * *

(2) Light-duty truck 3 diesel-fueled vehicle at full useful life (as defined in § 86.094–2) oxides of nitrogen emission standard of 0.98 g/mi.

(i) The following values shall be used to calculate an NCP for the standard set forth in § 86.094–9(a)(1)(ii) in accordance with § 86.1113–87(a):

(A) COC_{50}: $654.

(B) COC_{90}: $779.

(C) MC_{50}: $908 per gram per mile.

(D) F: 1.2.

(ii) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.094–9(a)(1)(ii) in accordance with § 86.1113–87(h): 0.082.

(3) 1996 Urban Bus (as defined in § 86.094–2) particulate matter emission standard of 0.05 g/BHp-hr.

(i) The following values shall be used to calculate an NCP for the standard set forth in § 86.094–9(a)(1)(ii) in accordance with § 86.1113–87(a):

(A) COC_{50}: $576.

(B) COC_{90}: $6,569.

(C) MC_{50}: $28,800 per gram per brake horsepower-hour.

(D) F: 1.2.

(ii) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.094–9(a)(1)(ii) in accordance with § 86.1113–87(h): 0.500.

(h) Effective in the 1998 model year, NCPs will be available for the following emission standard:

(1) Petroleum-fueled diesel heavy-duty engine oxides of nitrogen standard of 4.0 grams per brake horsepower-hour.

(i) For petroleum-fueled light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $833.

(*2*) COC_{90}: $1,513.

(*3*) MC_{50}: $833 per gram per brake horsepower-hour.

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.094–9(a)(1)(ii) in accordance with § 86.1113–87(h): 0.039.

(ii) For petroleum-fueled medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $444.

(*2*) COC_{90}: $1,368.

(*3*) MC_{50}: $444 per gram per brake horsepower-hour.

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.094–9(a)(1)(ii) in accordance with § 86.1113–87(h): 0.043.

(iii) For petroleum-fueled heavy heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $1,086.

(*2*) COC_{90}: $2,540.

(*3*) MC_{50}: $1,086 per gram per brake horsepower-hour

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.094–9(a)(1)(ii) in accordance with § 86.1113–87(h): 0.039.

(2) [Reserved]

[FR Doc. 96–4039 Filed 2–22–96; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 951128281–5281–01; I.D. 112795A]

Groundfish Fishery of the Bering Sea and Aleutian Islands Area, Trawl Closure to Protect Red King Crab

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; response to comments.

SUMMARY: NMFS responds to comments received on an inseason adjustment

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closing a portion of the Bering Sea to all trawl vessels to protect red king crab. NMFS published this inseason adjustment in the **Federal Register** on December 11, 1995, for a 30-day comment period. No change in the trawl closure was made as a result of the comments received.

EFFECTIVE DATE: The inseason adjustment is effective January 20, 1996, through March 31, 1996.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION:

NMFS published an inseason adjustment in the **Federal Register** on December 11, 1995 (60 FR 63451) that implemented a closure to all trawl vessels in part of the Bristol Bay area located in the Bering Sea. The closure area encompasses an area between 56° and 57° N. lat. and between 162° and 164° W. long., and is intended to protect female red king crab, in view of the declining Bristol Bay red king crab stocks. One letter of comments on the inseason adjustment was received within the comment period, which ended January 10, 1996, and is summarized in the "Response to Comments" section, below. After review of the comments received, NMFS determined that no change to the inseason adjustment is warranted.

Response to comments

Comment 1: Closure of areas that experience high red king crab bycatch rates is supported.

Response: NMFS agrees.

Comment 2: The North Pacific Fishery Management Council (Council), NMFS, and the Alaska Department of Fish and Game (ADFG) should consider implementing regulations that provide appropriate management tools for controlling bycatch of crab in the crab fisheries as well as other causes of crab mortality.

Response: The current Fishery Management Plan for the Commercial King and Tanner Crab Fisheries (FMP) defers the right to implement bycatch limits of other species of crab in the directed crab fisheries to the State of Alaska. Proposals to implement crab bycatch limits in directed crab fisheries could be addressed to the State of Alaska Board of Fisheries and the Alaska Department of Fish and Game or proposals could be made to the North Pacific Fishery Management Council for amendments to the current FMP.

Comment 3: Regulations that authorize inseason adjustments at § 675.20(e) specify that the selection of inseason management measures, including time/area closures, must be based on the least restrictive action necessary to protect the species in need of conservation protection and allow fisheries to continue for other species. Therefore, the trawl closure implemented under the December 11, 1995, inseason adjustment should prohibit only bottom trawling, not pelagic trawling, in the closed area. The seasonal timing of the closure is supported to allow other fisheries with low bycatch of red king crab to be prosecuted later in the year.

Response: The authority for various types of inseason adjustments is provided in regulations at 50 CFR 675.20(e). However, the specific regulatory authority under which the December 11, 1995, inseason closure was promulgated (§ 675.20(e)(1)(iv)) does not require that the least restrictive action be implemented. Furthermore, justification for applying the interim closure to pelagic trawl operations is provided in the publication of the inseason adjustment.

Comment 4: NMFS and the Council should begin to collect data and pursue analyses of conservation benefits of red king crab bycatch reduction measures, impacts on groundfish target fisheries that may be affected by time/area closures, and impacts on bycatch of other species by potentially displaced groundfish fisheries.

Response: NMFS collects a variety of fisheries data that may be used to analyze the impacts of bycatch of groundfish and non-groundfish species. These data were used as the basis for the analysis supporting the inseason adjustment and are provided in the environmental assessment/regulatory impact review/initial regulatory flexibility analysis prepared for this action.

Dated: February 16, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–3965 Filed 2–22–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 61, No. 37

Friday, February 23, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 95–093–1]

Pork and Pork Products From Mexico Transiting the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow fresh, chilled, and frozen pork and pork products from the Mexican State of Yucatan to transit the United States, under certain conditions, for export to another country. Currently, we allow such pork and pork products from the Mexican States of Sonora and Chihuahua to transit the United States for export. Otherwise, fresh, chilled, or frozen pork and pork products are prohibited movement into the United States from Mexico because of hog cholera in Mexico. Yucatan, like Sonora and Chihuahua, appears to be a low risk area for hog cholera, and we believe that fresh, chilled, and frozen pork and pork products from Yucatan could transit the United States with minimal risk of introducing hog cholera. This action would facilitate trade.

DATES: Consideration will be given only to comments received on or before April 23, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–093–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–093–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–5097.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of certain animal diseases. Section 94.9 of the regulations prohibits the importation of pork and pork products into the United States from countries where hog cholera exists, unless the pork or pork products have been treated in one of several ways, all of which involve heating or curing and drying.

Because hog cholera exists in Mexico, pork and pork products from Mexico must meet the requirements of § 94.9 to be imported into the United States. However, under § 94.15, pork and pork products that are from certain Mexican States and that are not eligible for entry into the United States in accordance with the regulations may transit the United States for immediate export if certain conditions are met. This provision was added to the regulations in 1992, following a United States Department of Agriculture investigation of the hog cholera situation in Sonora, Mexico, and a determination that pork and pork products from Sonora could transit the United States, under certain conditions, with minimal risk of introducing hog cholera. The Mexican State of Chihuahua was included in this provision in a final rule published in the **Federal Register** on November 15, 1995 (60 FR 57313–57315, Docket No. 95–037–2).

Mexico's Director of Animal Health has requested that we allow pork and pork products from the Mexican State of Yucatan to transit the United States for export under the same conditions that currently apply to pork and pork products from Sonora and Chihuahua. In response, officials of the Animal and Plant Health Inspection Service (APHIS) met recently in Yucatan with Mexican representatives knowledgeable in disease prevention, epidemiology, and diagnostic methods. The team reviewed the hog cholera situation in Yucatan (discussed below) and recommended granting Mexico's request.

The last outbreak of hog cholera in the Mexican State of Yucatan occurred in 1982. Vaccination for hog cholera was discontinued in 1993. Mexico officially recognized Yucatan as free of hog cholera in April 1995.

The team found two factors contributing to Yucatan's apparent success in remaining free of hog cholera: Yucatan's location and controls by the Division of Animal Health on the movement into Yucatan of pork, pork products, and live swine.

Yucatan is located in a fairly isolated position at the tip of a peninsula, surrounded by the Gulf of Mexico to the north, the Mexican State of Campeche to the southwest, and the Mexican State of Quintana Roo to the southeast. Campeche is in the control phase of its hog cholera program, in which swine are still being vaccinated for the disease. Quintana Roo is in the eradication phase of its hog cholera program, in which no cases of hog cholera have been detected for at least 12 months and a prohibition on vaccination for hog cholera has been instituted.

As required by the Mexican Government, Yucatan and other States recognized by Mexico as free of hog cholera may only import live swine and pork from other hog cholera-free States and countries. The Mexican Government requires shipments from hog cholera-free countries to be accompanied by a certificate of origin issued by that country's veterinary authorities and by a certificate of import issued by the Mexican veterinary authorities. Yucatan and other States recognized by Mexico as being free of hog cholera also require and issue their own permits and health certificates, further ensuring the origin of imported products. In addition, live swine and pork imported into these hog cholera-free States must be shipped in sealed trucks, and all shipments are inspected at inspection stations located either on State lines or at international ports of entry.

Under these circumstances, we believe that there would be little, if any, risk of introducing hog cholera into the United States by allowing pork and pork products from Yucatan to transit the

United States for export under the same conditions that currently apply to pork and pork products from Sonora and Chihuahua.

These conditions will be as follows:

1. Any person wishing to transport pork or pork products from Yucatan through the United States for export must first obtain a permit for importation from APHIS. The application for the permit tells APHIS who will be involved in the transportation, how much and what type of pork and pork products will be transported, when they will be transported, and the method and route of shipment.

2. The pork or pork products must be sealed in Yucatan in a leakproof container, with a serially numbered seal approved by APHIS. The container must remain sealed at all times while transiting the United States.

3. The person moving the pork or pork products through the United States must inform the APHIS officer at the United States port of arrival, in writing, of the following information before the pork or pork products arrive in the United States: The times and dates that the pork or pork products are expected at the port of arrival in the United States, the time schedule and route of the shipments through the United States, and the permit number and serial numbers of the seals on the containers.

4. The pork or pork products must transit the United States under Customs bond.

5. The pork or pork products must be exported from the United States within the time period specified on the permit.

Any pork or pork products exceeding the time limit specified on the permit or transiting in violation of any of the requirements of the permit or the regulations may be destroyed or otherwise disposed of at the discretion of the Administrator, APHIS, pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111).

We believe that applying these same safeguards to shipments of pork and pork products from Yucatan would prevent tampering with the shipments, ensure that the shipments actually leave the United States, and otherwise ensure that shipments would not present a risk of introducing hog cholera. Therefore, we are proposing to amend § 94.15 to allow pork and pork products from the Mexican State of Yucatan to transit the United States for export under the same conditions that currently apply to pork and pork products from Sonora and Chihuahua.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would allow fresh, chilled, and frozen pork and pork products from the Mexican State of Yucatan to transit the United States, under certain conditions, for export to another country. It has been determined that Yucatan is a low risk area for hog cholera and has the veterinary infrastructure necessary to monitor for the presence of the disease.

There appears to be little risk of hog cholera exposure from shipments of pork and pork products from Yucatan transiting the United States. Assuming that proper risk management techniques continue to be applied in Mexico, and that accident and exposure risk would be minimized by proper handling during transport, the risk of exposure to hog cholera from pork in transit from Mexico through the United States would be minimal.

Shipments of pork and pork products from Yucatan transiting the United States would most likely be ocean shipments to Miami with final destinations in the Caribbean and South America. Because no overland transit of pork and pork products through the United States would be expected as a result of this rulemaking, no increase in United States trucking or other United States-based economic activity would be expected.

Both the United States and Mexico are net pork importers. United States pork imports represent approximately 2 to 3 percent of production, and Mexican imports represent 7 to 8 percent of production. With favorable income growth expected in Mexico due to trade liberalization, meat imports, including pork products, are expected to grow and limit Mexican pork exports. However, facilitating export opportunities for the Mexican pork industry may provide incentives for continued efforts to eradicate hog cholera from infected Mexican States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY; PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.15 [Amended]

2. In § 94.15, paragraph (b), the introductory text and paragraph (b)(2) would be amended by removing the words "Chihuahua or Sonora" and adding the words "Chihuahua, Sonora, or Yucatan" in their place.

Done in Washington, DC, this 20th day of February 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–4147 Filed 2–22–96; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Regulation K; Docket No. R–0916]

International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule and request for comments.

SUMMARY: The Board proposes to amend Regulation K to implement a provision of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (the Interstate Act) that amended the International Banking Act of 1978 (the IBA) by adding a new subsection regarding the management of shell branches of foreign banks by such banks' U.S. offices. The provision prohibits foreign banks from using their U.S. branches or agencies to manage types of activities through offshore offices that could not be managed by a U.S. bank at its foreign branches or subsidiaries. This prohibition applies with respect to those offshore offices that are "managed or controlled" by a foreign bank's U.S. branches or agencies.

DATES: Comments must be received on or before March 25, 1996.

ADDRESSES: Comments should refer to Docket No. R–0916, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Day, Associate General Counsel (202/452–3786), Sandra L. Richardson, Managing Senior Counsel (202/452–6406), Janet S. Crossen, Senior Attorney (202/452–3281), Legal Division; Michael G. Martinson, Assistant Director, Division of Banking Supervision and Regulation (202/452–3640), Board of Governors of the Federal Reserve System. For users of Telecommunication Device for the Deaf (TDD) *only*, please contact Dorthea Thompson, (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: In the Interstate Act, Congress amended section 7 of the IBA (12 U.S.C. 3105) to prevent a foreign bank from using a U.S. branch or agency to manage types of activities at offshore offices that are managed or controlled by the foreign bank's U.S. branch or agency if those types of activities could not be managed by a U.S. bank at its foreign branches or subsidiaries. The proposed rule implements section 7(k) of the IBA and defines the term "managed or controlled" for purposes of the restrictions on activities set out in that section.

The Board notes that section 7(k) does not confer upon foreign banks any right to manage activities at an offshore office from a U.S. office. The Board will continue to monitor relationships between the U.S. and offshore offices of foreign banks in the supervisory process in order to determine whether such activities are consistent with considerations relating to the safety and soundness of the U.S. operations of the foreign bank and its affiliates and compliance with law. Board staff is reviewing the use made of offshore shell branches by foreign and U.S. banks in order to gain insight into the purposes they currently serve and what, if any, supervisory risks they might pose.

Definition of "Managed and Controlled"

For purposes of the proposed rule, a non-U.S. office is considered to be "managed or controlled" by a U.S. branch or agency of a foreign bank if a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that non-U.S. office, resides at the U.S. branch or agency. This definition is consistent with that adopted by the Federal Financial Institutions Examination Council with respect to the Supplement (FFIEC 002S) to the quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) for the purpose of determining which U.S. branches or agencies of foreign banks "manage or control" offshore offices and thus must complete the FFIEC 002S. 57 FR 61907, Dec. 29, 1992.

In accordance with this definition, the restrictions on activities imposed by new section 7(k) of the IBA apply to those offshore offices for which a U.S. branch or agency has substantial responsibility with regard to assets or liabilities or recordkeeping. The Board considers that a determination that the restrictions apply should be made with regard to where substantive decision-making authority or responsibility for recordkeeping lies. For example, consistent with the approach taken with regard to the FFIEC 002S, a U.S. branch or agency would be deemed to "manage or control" its offshore office if (1) the manager for the U.S. branch or agency and the manager for the offshore office are the same person or there is other significant overlap in personnel; (2) substantial responsibility for decisions regarding either assets or liabilities of the offshore office resides with staff in the U.S. branch or agency; or (3) recordkeeping systems for either assets or liabilities of the offshore office are maintained in the U.S. branch or agency. The restrictions, however, generally would not apply with respect to offshore branches that are full-service facilities managed or controlled by staff located at the offshore office or at locations other than in the United States. Furthermore, the fact that an offshore office manager may report to a U.S. branch or agency manager pursuant to reporting lines established by the foreign bank will not, by itself, necessarily mean that the offshore office would be considered to be "managed or controlled" by the U.S. branch or agency for the purposes of restrictions on activities.

Types of Activities

Section 7(k) restricts the activities that U.S. branches or agencies of foreign banks may manage through an offshore office to those types of activities that U.S. banks may manage at their foreign branches and subsidiaries, that is, those authorized under U.S. banks' state or federal charters and regulations issued by the chartering or regulatory authorities (the States, the Board, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency). In addition, foreign branches and subsidiaries of member banks may engage in activities and make and hold investments under sections 25 and 25A of the Federal Reserve Act.

Consistent with section 7(k), the proposed amendment to Regulation K, 12 CFR Part 211, refers to the types of activities conducted and not the various procedural or quantitative supervisory requirements that may apply when a particular activity is conducted by a U.S. bank at its foreign branches or subsidiaries. Section 7(k) by its terms regulates conduct of the U.S. branch or agency of the foreign bank. It does not extend U.S. supervisory requirements to non-U.S. offices of foreign banks as such offices are not supervised or regulated by the Board. Supervision of such non-U.S. offices remains the responsibility of the home country supervisor.

Request for Comments

The Board requests comments on the proposed rule, in particular with respect to the proposed definition of "managed or controlled" and the approach contemplated for determining the types of activities that may be conducted by

U.S. branches or agencies through their offshore offices.

Paperwork Reduction Act

The proposed rule does not require any "collection of information," as that term is defined in the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Board certifies that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Board of Governors proposes to amend 12 CFR Part 211 as set forth below.

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for 12 CFR Part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1841 *et seq.*, 3101 *et seq.*, 3901 *et seq.*

2. Section 211.20 is amended by removing "and" at the end of paragraph (b)(8), by removing the period at the end of paragraph (b)(9) and adding "; and" in its place, and by adding a new paragraph (b)(10) to read as follows:

§ 211.20 Authority, purpose, and scope.

* * * * *

(b) * * *

(10) The management of shell branches (12 U.S.C. 3105(k)).

* * * * *

3. Section 211.24 is amended by adding a new paragraph (g) to read as follows:

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.

* * * * *

(g) *Management of shell branches.* (1) A state-licensed branch or agency shall not manage, through an office of the foreign bank which is located outside the United States and is managed or controlled by such state-licensed branch or agency, any type of activity that a bank organized under the laws of the United States or any State is not permitted to manage at any branch or subsidiary of such bank which is located outside the United States.

(2) For purposes of this paragraph (g), an office of a foreign bank located outside the United States is "managed or controlled" by a state-licensed branch or agency if a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that non-U.S. office, resides at the state-licensed branch or agency.

(3) The types of activities that a state-licensed branch or agency may manage through an office located outside the United States that it manages or controls include the types of activities authorized to a U.S. bank by state or federal charters, regulations issued by chartering or regulatory authorities, and other U.S. banking laws, including the Federal Reserve Act, and the implementing regulations, but U.S. procedural or quantitative requirements that may be applicable to the conduct of such activities by U.S. banks shall not apply.

By order of the Board of Governors of the Federal Reserve System, February 15, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–3911 Filed 2–22–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 203, 256, and 260

RIN 1010–AC13

Royalty Relief for Outer Continental Shelf Leases in the Gulf of Mexico

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Outer Continental Shelf Deep Water Royalty Relief Act (Act) authorizes the Secretary of the Interior (Secretary) to modify the terms of certain existing leases and to establish new terms for leases in water depths of 200 meters or greater in parts of the Central and Western Gulf of Mexico. This document solicits recommendations and comments on rules that would implement the new authority under the Act.

DATES: MMS will consider all comments we receive by April 8, 1996. We will begin reviewing comments at that time and may not fully consider comments we receive after April 8, 1996. Please note, we expect that the 180-day time limit the Act imposes to issue regulations will preclude granting extensions of the 45-calendar-day comment period.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the Act or for other information regarding this notice, contact Walter Cruickshank, Chief, Offshore Minerals, Analysis Division, Minerals Management Service, at either Mail Stop 4013, 1849 C Street, NW; Washington, DC 20240, or telephone: (202) 208–3822. You may also access the text of the Act from the MMS homepage on the World Wide Web at http://www.mms.gov/whatsnew.html. Because of the Act's complexity, readers should have a copy of the Act available when reviewing this notice.

SUPPLEMENTARY INFORMATION:

Summary of Legislative Provisions

On November 28, 1995, the President signed the Act (Pub. L. 104–58). The Act authorizes the Secretary to modify the royalty or net profit share terms of certain existing leases and to offer new leases subject to the Act's provisions for royalty suspension volumes in water depths of 200 meters or greater in parts of the Central and Western Gulf of Mexico. The Act directs the Secretary to promulgate implementing regulations within 180 days of enactment. MMS and the Secretary are making every effort to meet this deadline. Given the complexities of the Act and the time constraints for implementation, how should MMS best address the issues the Act raises in a timely fashion?

The purpose of this notification is to solicit recommendations and comments from the oil and natural gas industries, Federal agencies, State and local governments, environmental groups, academia, and the public on the general administrative and regulatory framework for fulfilling the Secretary's responsibilities under the Act.

(**Special Note:** Oil and natural gas industry trade associations are encouraged to act as coordinators for information responses from member companies pertaining to this notice.)

Recommendations and detailed comments are also solicited on certain issues or technical questions that are necessary to establish workable rules and regulations to implement the Act.

This notification focuses on those new responsibilities related to granting royalty relief for leases located in water depths of 200 meters or greater. Rules resulting from this rulemaking process may also include provisions clarifying existing authorities and policies for reducing royalty rates on existing leases in water depths of less than 200 meters. In addition to this written notice, MMS will conduct a 2-day public meeting in March 1996 to solicit additional written and oral comments pertaining to this topic. The meeting is tentatively scheduled to be held in New Orleans, Louisiana. MMS officials from the Gulf of Mexico Regional and Herndon, Virginia, Headquarters offices will conduct it. Further details will be made available in the near future in a **Federal Register** Notice as well as through the MMS Gulf of Mexico Regional Information Office at 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394 telephone (504) 736–2595.

The MMS has scheduled a lease sale for April 24, 1996 for the Central Gulf of Mexico which includes tracts that are subject to the provisions of this Act. The MMS will publish an interim rule to implement the legislative requirements prior to the sale. Please send us your comments and recommendations on how we should implement the provisions of section 304 of the Act as soon as possible so that they may be considered as we develop the interim rule.

This advance notice of proposed rulemaking solicits comments, recommendations, and specific remarks on issues and topics. We will carefully evaluate all timely received responses as we develop a rule to implement the Act. The Act contains three major provisions with respect to new and existing leases. New leases include tracts leased as the result of a sale held after the legislation's enactment on November 28, 1995. Existing leases are defined as all other leases.

(1) Section 302 clarifies the Secretary's pre-existing authority to reduce royalty rates on existing leases to promote development, increase production, and encourage production of marginal resources on producing and non-producing leases. This provision applies only to leases in the Gulf of Mexico, west of 87 degrees, 30 minutes West longitude.

(2) Also, Section 302 provides that "new production" from existing leases in water depths of 200 meters or greater qualifies for royalty suspensions if the Secretary determines that the new production would not be economic in the absence of royalty relief. The Secretary must then determine the appropriate royalty suspension volume on a case-by-case basis, subject to specified minimums for non-producing leases. This provision applies only to leases in the Gulf of Mexico, west of 87 degrees, 30 minutes West longitude.

(3) Section 303 establishes a new bidding system that allows the Secretary to offer tracts with royalty suspensions for a period, volume or value determined by the Secretary. All tracts offered within 5 years of the date of enactment in water depths of 200 meters or greater in the Gulf of Mexico, west of 87 degrees, 30 minutes West longitude, must be offered under the new bidding system (Section 304).

Regulatory Objectives

In implementing the Act's provisions related to existing and new oil and natural gas leases in water depths of 200 meters or greater in certain areas of the Gulf of Mexico, MMS seeks to establish a regulatory program that:

(1) promotes development or increased production, including marginal resources, on producing or non-producing leases;

(2) fulfills the purposes of the Outer Continental Shelf Lands Act, as amended, including its requirement to insure the public a fair and equitable return on the resources of the Outer Continental Shelf (OCS);

(3) establishes a set of objective criteria to render fair and forthright decisions to individual lessees;

(4) establishes a simple and concise application process requiring only the data and information necessary to evaluate properly the specific circumstances addressed by the application and to ensure compliance with payment obligations;

(5) uses procedures for the submission and review of applications similar to those MMS used in consideration of royalty relief for all leases regardless of water depth; and

(6) minimizes the personnel required for both lessees and MMS to carry out the Act's activities.

Issues and Informational Needs

The specific circumstances associated with existing and future OCS oil and natural gas exploration, development, and production activities require the MMS to make several critical determinations in formulating the regulations to implement royalty relief for deep-water leases. Some of the determinations MMS must make affect all circumstances addressed under the legislation, while others apply only to specific lease circumstances.

Hence, for the purpose of soliciting comments and recommendations, this notice seeks input on all relevant issues and topics, including (I) Common Technical Issues, (II) Existing Deep-water Leases, and (III) New Leases (*i.e.*, leases resulting from sales conducted after November 28, 1995). The issues raised below will help MMS implement the Act but may not become part of future regulations.

I. Common Technical Issues

(1) The Act sets minimum suspension volumes based on the water depth of leases in a field eligible for royalty relief. What water depth data should MMS use for royalty relief classification purposes? The options range from prelease MMS-determined water depth boundaries based on published Gulfwide bathymetric data to postlease tract-specific data. Should MMS determine water depths for new and existing leases in the same way?

a. If you recommend that MMS use published bathymetric data, what are the best or most acceptable data sets available?

b. If you recommend that MMS use prelease data, how should MMS handle possible inconsistencies with postlease tract-specific water depth data that may become available on a block?

c. If you recommend that MMS use postlease data, what should be the nature and timing of the data?

d. What water depth on a block should MMS use to determine the royalty relief to be granted, *e.g.*, shallowest, deepest, average, or location of production facility?

e. How would MMS and bidders decide on the fair value of a tract if the tract's water depth isn't specified at the time of sale? How could MMS assure the receipt of fair market value if the royalty suspension volume could change after the lease award?

(2) Should MMS use a standard conversion factor *e.g.*, British Thermal Units (BTU), in computing barrels of oil equivalent for determining relief volumes, or should MMS make the calculations on a case-by-case basis?

a. If you recommend one or more standard conversion factors, specify the factor(s) and rationale for its/their use.

b. If you recommend case-by-case analyses, how should MMS base specific decisions and how should MMS address production stream variances over time? How should MMS determine factors for new leases or existing leases that have never produced?

(3) Should MMS consider a fixed time period for evaluating economic viability of proposals, or should MMS use specific case-by-case projections of the productive life of the field? If you

recommend a stipulated time limit, what should that limit be and why?

(4) What specific criteria should MMS consider in determining whether existing leases or units are economically viable?

a. Should MMS base such criteria upon case-by-case circumstances or more generic industry standards?

b. If you recommend case-by-case analyses, what publicly available economic analysis models might MMS employ in making such determinations in a manner that would yield results acceptable to the diverse companies operating leases on the OCS?

c. If you recommend industry standards, identify specific criteria (*e.g.*, return on investment, return on equity, etc.) and the basis for specific levels of acceptability.

(5) For existing leases, the Act states that royalty relief determinations can be on a lease or unit basis.

a. How should MMS treat applications for an individual lease that comprises only a portion of a geologic structure common to several leases or unleased tracts?

b. Should MMS require joint applications where such leases are not unitized?

c. Should MMS change its regulations addressing unitization in these circumstances?

d. When a lease is added to a unit that already has a royalty suspension, how should MMS modify the approved royalty relief to recognize the water depth, production projections, and/or other data relating to the added lease?

(6) How should MMS treat nonlease costs (*e.g.*, pipelines, shared production systems, etc.) in determining economic viability?

(7) How should MMS determine gas/oil ratios for non-producing leases for determining economic viability? Similarly, how should MMS determine gas/oil ratios for "new production" from producing leases?

II. Existing Deep-Water Leases

(1) The Act requires the Secretary to define clearly the information required for a complete application.

a. What information should MMS require for an application to be considered complete?

b. What minimum amount and types of information do you think MMS needs to make a determination of economic viability?

c. How should MMS establish the reasonableness of the amount and timing of projected production, costs, and revenues?

(2) The Act states that, in determining the need for and amount of royalty relief, the Secretary must consider the increased technological and financial risk of deep-water development.

a. Identify specific "technological and financial risks" of deep-water development that MMS should consider in determining economic viability of leases or units addressed by the legislation.

b. Are such risks tract-specific or industry-wide?

c. How do such risks vary with water depth?

d. What means are available for quantifying such risks?

e. How should MMS account for such risks in the application and decision process?

f. How should MMS differentiate between the "technological and financial risks" of non-producing leases with approved Development Operations Coordination Documents (DOCD) and those of leases without approved DOCD's?

(3) Similarly, the Act requires the Secretary to consider all costs associated with exploring, developing, and producing the lease when determining economic viability.

a. What costs should be included and how should they be "considered"? Please provide the rationale for your answer.

b. Should such costs be tract-specific or industry-wide?

c. What means are available for quantifying such costs?

d. At what point should such costs be considered "sunk costs" for determining allowable costs in the application and decision process?

(4) For existing leases, the suspensions cease when oil or natural gas prices exceed specified ceilings. When leases produce both oil and natural gas or related products, and only one of the ceiling prices is reached, should the MMS lift the suspension for the entire production or just the product for which the price ceiling is reached? For tracts offered in upcoming sales, should price ceilings affect suspension volumes in the same ways as for existing leases and units?

(5) The Secretary must redetermine the need for or the volume of relief when the lessee applies prior to the commencement of the "new production" and a significant change occurs in the factors upon which the original determination was made.

a. Identify specific factors and what should constitute "significant" changes that would require reconsideration of the original determination the Secretary made.

b. Should MMS establish a limit on the number of redetermination applications or a minimum time stipulation between redeterminations?

c. Are there any circumstances in which the Secretary should redetermine the suspension volume without an applicant's request?

(6) The second part of the definition of new production includes any production resulting from lease activities pursuant to a supplement to an approved DOCD that would "expand production significantly beyond the level anticipated" in a prior approved DOCD.

a. How should MMS determine the amount of "any production . . . that would expand production significantly beyond the level anticipated" in the prior DOCD?

b. Should MMS make this determination on anticipated reserves or production levels?

c. How should MMS determine the "start date" for "new production" from this category of existing leases?

d. How should MMS quantify the level of "significant" expanded production for purposes of royalty relief determinations for this category of leases? Assuming MMS grants royalty relief, how should MMS allocate production between the baseline production level and the "expanded" production level?

e. What costs, if any, incurred prior to November 28, 1995, or prior to the date of an application for royalty relief, should MMS include in determining economic viability?

f. How should MMS consider production quantities and revenues for past production?

g. For leases with approved DOCD's, how should MMS determine the "level of anticipated production" if not specifically stated in the DOCD? Should MMS make this determination on anticipated reserves or production levels (*e.g.*, barrels of oil per day, annual production, etc.)?

h. Should MMS require that all future DOCD's include the level of anticipated production?

III. New Leases Issued as the Result of Lease Sales Conducted After November 28, 1995

Provisions included in the legislation require that MMS employ a bidding system for any lease sale within five years of November 28, 1995, which provides for suspensions of royalty payments in water depths of 200 meters or greater for stipulated minimum volumes of production. The suspension volumes in section 304 of the Act were based on MMS analyses of fields at various water depths, consistent with the way in which investment decisions

on deep water development projects are made.

(1) The provisions of the Act dealing with existing leases allow the Secretary to grant suspensions on an individual lease or unit basis. However, section 304 of the Act (Lease Sales) refers to "tracts" and "leases" (plural). How should MMS apply the royalty suspension volumes to tracts offered for sale?

(2) Is there any basis for MMS to offer suspension volumes larger than the minimums specified in the Act?

Dated: February 20, 1996.

Bob Armstrong,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 96–4106 Filed 2–22–96; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Chapter I

[CGD 85–080]

RIN 2115–AC22

Small Passenger Vessel Inspection and Certification

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: On January 10, 1996, the Coast Guard published on Interim Final Rule (IFR) containing a complete revision to the regulations governing small passenger vessels. As discussed below, the Coast Guard will hold four public meetings on the dates and at the locations specified below in order to give the public an opportunity for oral presentations.

DATES: The meetings will be held on the following dates from 10:00 a.m. to 4:00 p.m.:

—March 19, 1996; St. Louis, Missouri.
—April 10, 1996; Oakland, California.
—April 23, 1996; Mobile Alabama.
—April 30, 1996; New Haven, Connecticut.

ADDRESSES: The meetings will be held on the dates and at the locations identified below:

—St. Louis, Missouri, Tuesday, March 19, 1996. Robert A. Young Federal Building, Second Floor Auditorium, 1222 Spruce St., St. Louis, MO 63103. Telephone No. (314) 539–3091.
—Oakland, California; Wednesday, April 10, 1996. Oakland Federal Building, Third Floor Conference Center, 1301 Clay Street, Oakland, CA 94612. Telephone No. (510) 238–4800.
—Mobile, Alabama; Tuesday, April 23, 1996. Mobile Civic Center, Meeting Room 16, 401 Civic Center Drive, Mobile AL 36602. Telephone No. (334) 434–7261.
—New Haven, Connecticut; Tuesday, April 30, 1996. Navy/Marine Corps Reserve Center, Classroom #4, 30 Woodward Ave, New Haven, CT 06512. Telephone No. (203) 467–5322.

FOR FURTHER INFORMATION CONTACT: LT Eric Christensen, Project Manager, Office of Marine Safety, Security and Environmental Protection, (G–MOS–2), phone (202) 267–1181, telefax (202) 267–4570.

SUPPLEMENTARY INFORMATION: The IFR published on January 10, 1996, was in response to numerous comments received to a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** [54 FR 4412] on January 30, 1989, and Supplemental Notice of Proposed Rulemaking (SNPRM) published in the **Federal Register** [59 FR 1994] on January 13, 1994. The IFR stated that the Coast Guard planned to hold at least one public meeting on this rulemaking, in addition to receiving written comments, and solicited recommendations for dates and meeting sites. In response to the public comments received, the Coast Guard will hold a total of four public meetings.

In the preamble of the IFR (page 882), the Coast Guard solicited public comment on several requirements established in the IFR. Specifically, the Coast Guard would like more input on the following parts of 46 CFR:

—Part 179: Construction equivalency for wooden hull vessels, p. 971.
—Sections 119.530 and 182.530: Spaces requiring a bilge high level alarm, pp. 927 and 995.
—Sections 122.420 and 185.420: Documentation of crew training, pp. 938 and 1007–1008.
—Sections 122.520 and 185.520: Documentation of abandon ship and man overboard drills and training, pp. 940–941 and 1009–1010.
—Sections 122.524 and 185.524: Documentation of fire fighting drills and training, pp. 941 and 1010.
—Sections 122.728 and 185.728: Documentation of EPIRB testing, pp. 943 and 1012.

In addition, the Coast Guard is soliciting input on open hatch protection and non-skid surfaces for stairways discussed in the preamble under §§ 116.900 and 177.900 "Guards for exposed hazards", p. 875.

Attendance is open to the public. With advanced notice, and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed above under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted prior to, during, or after the meeting. If time permits, the Coast Guard intends to hold a question and answer period following the oral presentations. As stated in the IFR (page 864), the Coast Guard will receive written comments through June 10, 1996.

Dated: February 15, 1996.

Joseph J. Angelo,

Director for Standards, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 96–3893 Filed 2–22–96; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 95–185; CC Docket No. 94–54; FCC 96–61]

Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers and Equal Access and Interconnection Obligation Pertaining to Commercial Mobile Radio Service Providers

AGENCY: Federal Communications Commission.

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: In this *Supplemental Notice of Proposed Rulemaking*, the Commission requests comments on the implications of the Telecommunications Act of 1996 on the proposals and topics for comment regarding interconnection between local exchange carriers and commercial mobile radio service providers as identified in the Notice of Proposed Rulemaking (*Notice*), CC Docket Nos. 95–185 and 94–54, 61 FR 03644 (Feb. 1, 1996). The Commission requests the parties to address the extent to which the recent legislation may affect the jurisdictional discussion in the *Notice*. The intended effect of the Commission's action is to receive input on the implications of the Telecommunications Act of 1996 on these issues.

DATES: Comments are due on or before March 4, 1996, reply comments are due on or before March 25, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: James Coltharp, Wireless Telecommunications Bureau, at (202) 418–0600.

SUPPLEMENTARY INFORMATION: This *Supplemental Notice of Proposed Rule Making* in CC Docket Nos. 95–185 and 94–54, adopted February 16, 1996, and released February 16, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street, N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

Synopsis of Supplemental Notice of Proposed Rulemaking

The Commission released the *Notice*, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers and Equal Access and Interconnection Obligation Pertaining to Commercial Mobile Radio Service Providers, *Notice of Proposed Rulemaking*, CC Docket Nos. 95–185, 94–54, FCC 95–505, 61 FR 03644 (Feb. 1, 1996) (*Notice*), on January 11, 1996, prior to the enactment of the Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56 (1996). Since the release of the *Notice*, interested parties have requested the Commission to extend the dates for filing comments and reply comments. In light of these events, the Commission asks for additional comment in this proceeding and revises the pleading cycle accordingly.

2. The National Association of Regulatory Utility Commissioners ("NARUC") and GTE Service Corporation ("GTE") have filed motions to extend the dates that initial and reply comments are due in the above-referenced dockets. Specifically, NARUC requests that the date that initial comments are due be extended four (4) days from February 26, 1996 to March 1, 1996 and the date reply comments are due be extended from March 12, 1996 to March 24, 1996. GTE requests that the dates for filing initial and reply comments be extended one month to March 26, 1996 and April 26, 1996, respectively. The Cellular Telecommunications Industry Association ("CTIA") has filed a response opposing GTE's request, but not opposing NARUC's request. Ameritech Operating Companies ("Ameritech") filed comments in support of GTE's motion.

3. NARUC states that the present deadline of February 26, 1996 for filing initial comments falls two days before the conclusion of its previously scheduled winter meeting. NARUC states it was planning to use its winter meeting to reach a consensus on the issues raised in these dockets. With respect to the date for filing reply comments, NARUC states that the deadline does not give its members sufficient time to review initial comments and formulate a response. NARUC notes that it frequently takes a week for some of its western members to receive copies of comments, and that many of its state commission members have procedural rules requiring several days notice for approval of pleadings before they can be filed.

4. GTE argues that due to the complexity of the issues raised in these dockets it needs more time to adequately address these issues. GTE also asserts that it needs additional time to respond in light of the recently enacted Telecommunications Act of 1996. GTE requests a 30 day extension of each of the filing deadlines.

5. CTIA states that GTE's request would significantly delay the timely resolution of the issues raised in these dockets. Ameritech contends that it needs additional time to review the new legislation and it also states that it is in the process of negotiating several interconnection agreements which will be relevant to the Commission's analyses.

6. The Commission agrees with GTE and Ameritech that the Telecommunications Act of 1996 may have an impact on this proceeding and should be considered by parties formulating their comments and reply comments. Therefore, the Commission is issuing this *Supplemental Notice of Proposed Rulemaking* to seek comments on the implications of the Telecommunications Act of 1996 on the Commission's proposals and topics for comment regarding interconnection between local exchange carriers and commercial mobile radio service providers as identified and outlined in the *Notice*. The Commission requests the commenters to particularly address the extent to which the recent legislation may affect the jurisdictional discussion in the *Notice*.

7. The deadlines for the filing of all comments and reply comments in this proceeding are revised. The Commission recognizes that NARUC is attempting to overcome concrete timing problems beyond its own control and that granting an extension permits NARUC to develop a consensus position and ensures that each of its members has a chance to actively participate in these proceedings. The Commission believes that the extension will provide commenters adequate time to consider the additional questions and to prepare comments in light of the new legislation. GTE, however, has not presented a sufficient justification for extending by 30 days each of the filing deadlines. Granting its motion would jeopardize the timely resolution of the issues raised in these dockets. Accordingly, initial comments will be due on March 4, 1996 and reply comments will be due on March 25, 1996.

8. Comments and reply comments should be captioned in CC Docket No. 95–185 only. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before March 4, 1996, and reply comments on or before March 25, 1996. To file formally in this proceeding, parties must file an original and four copies of all comments, reply comments, and supporting comments. For each Commissioner to receive a personal copy of the comments, parties must file an original and nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

Ex Parte Rules—Non-Restricted Proceeding

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules, 47 CFR §§ 1.1202, 1.1203, 1.1206.

Ordering Clauses

It is ordered that, pursuant to Sections 1, 4, 201–205, 215, 218, 220, 303(r) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201–205, 215, 218, 220, 303(r) and 332, and the Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996), an order and supplemental notice of proposed rulemaking is hereby adopted.

It is further ordered that, the motions for extension of time filed by NARUC and GTE are granted to the extent described herein and otherwise denied.

It is further ordered, that comments in CC Docket No. 95–185 will be due March 4, 1996 and reply comments will be due March 25, 1996.

List of Subjects in 47 CFR Part 1

Communications common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–4182 Filed 2–22–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 20

[CC Docket No. 94–102, DA 96–198]

Compatibility of Wireless Services With Enhanced 911

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission seeks additional comment in wireless Enhanced 911 (E911) rulemaking proceeding. On February 13, 1996, the Cellular Telecommunications Industry Association (CTIA) and three principal public safety organizations—National Emergency Number Association (NENA), Association of Public-Safety Communications Officials (APCO), and National Association of State Nine One One Administrators (NASNA)—jointly filed a Consensus Agreement as an *ex parte* presentation, urging the Commission to adopt their agreement in this proceeding. Additional comment is sought to assist the Commission in determining whether to adopt the Consensus Agreement, in whole or in part. The effect of adopting the Consensus Agreement would be to bring the timely deployment of E911 services to wireless customers, in two phases, within five years after adoption of final rules.

DATES: Comments must be filed on or before *March 4, 1996* and reply comments must be filed on or before *March 11, 1996.*

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Won Kim, Policy Division, Wireless Telecommunications Bureau, (202) 418–1310.

SUPPLEMENTARY INFORMATION:

February 16, 1996.

Additional Comment Sought: Commission Seeks Additional Comment in Wireless Enhanced 911 Rulemaking Proceeding Regarding "Consensus Agreement" Between Wireless Industry Representatives and Public Safety Groups

[CC Docket No. 94–102]

Comments Due: March 4, 1996.
Replies Due: March 11, 1996.

On February 13, 1996, the Cellular Telecommunications Industry Association (CTIA) and three principal public safety organizations—National Emergency Number Association (NENA), Association of Public-Safety Communications Officials (APCO), and National Association of State Nine One One Administrators (NASNA)—jointly filed an *ex parte* presentation titled "Public Safety-Wireless Industry Consensus: Wireless Compatibility Issues, CC Docket 94–102," urging the Commission to adopt their agreement in this proceeding.[1] The full text of the Consensus Agreement (including exhibits), the NPRM,[2] comments, and reply comments are available for inspection and duplication during regular business hours in the FCC Reference Center, Federal Communications Commission, 1919 M Street, N.W., Room 239, Washington, D.C. 20554. Copies may also be obtained from International Transcription Service, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

Pursuant to Section 1.415(d) of the Commission's Rules, 47 CFR § 1.415(d), the Commission seeks additional comment in wireless Enhanced 911 (E911) rulemaking proceeding. Specifically, the Commission seeks comment on the Consensus Agreement filed by wireless industry representatives and public safety groups. In the NPRM, the Commission proposed to adopt rules requiring, *inter alia*, that Commercial Mobile Radio Service (CMRS) providers of real time voice services offer E911 access and features to mobile radio callers in three phases within five years after adoption of final rules. Comments on the NPRM were filed on January 9, 1995, and reply comments were filed on March 17, 1995. Although the comments supported the Commission's broad goal to require wireless compatibility with E911, the views of wireless service industry and public safety organizations differed, *inter alia*, regarding the proposed phase-in schedules for various E911 features. In order to address these differences, CTIA and public safety organizations initiated negotiations regarding wireless compatibility issues and related matters. The Consensus Agreement outlines the consensus reached on issues regarding wireless compatibility with E911 systems as a result of these negotiations.

Additional comment is sought to assist the Commission in determining whether to adopt the Consensus Agreement, in whole or in part. The Consensus Agreement proposes a two-step implementation schedule for E911. In Phase I, within twelve or eighteen months after the adoption of the Order, the Agreement proposes implementation of cell site information, calling party automatic number identification (ANI), 911 availability from any service initialized mobile radio handset, 911 access for speech and hearing-impaired callers using text telephone (TTY) devices, and call-back capability. Under Phase II, within five years after the adoption of the Order, the Agreement proposes to require achievement of automatic location of wireless callers within 125 meters (derived using root mean square calculations). In addition, the Consensus Agreement requests the Commission: (1) to declare that state and local 911 fees and taxes are not barred as a matter of law and that such fees and taxes should not discriminate between wireline and wireless carriers; and (2) to resolve carrier and public safety legal liability issues. The Consensus Agreement also suggests consumer education rather than equipment labeling to inform customers regarding wireless compatibility with E911 features. Commenters are invited to address any legal, factual, and policy issues associated with the request to adopt the Consensus Agreement.

Comments on these additional issues must be filed no later than March 4, 1996. Reply comments must be filed by March 11, 1996. All comments should be filed with the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, referencing CC Docket No. 94–102 and the Consensus Agreement. Filings should be accompanied by proof of service upon the parties in this proceeding. The list of the parties may be obtained from the

[1] "Public Safety-Wireless Industry Consensus: Wireless Compatibility Issues, CC Docket 94–102," filed by CTIA, NENA, APCO, and NASNA on February 13, 1996 ("Consensus Agreement").

[2] *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, Notice of Proposed Rulemaking, 59 Fed. Reg. 54878 (1994) ("NPRM").

Office of the Secretary by referencing CC Docket No. 94–102.

For further information, contact Won Kim at (202) 418–1310, Wireless Telecommunications Bureau, Policy Division.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–4229 Filed 2–22–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD20

Endangered and Threatened Wildlife and Plants; Proposed Special Rule for the Conservation of the Northern Spotted Owl on Non-Federal Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of the Draft Environmental Alternatives Analysis for the Proposed Special Rule for the Conservation of the Northern Spotted Owl on Non-Federal Lands and Extension of Public Comment Period on the Proposed Special Rule.

SUMMARY: The Service has prepared a Draft Environmental Alternatives Analysis (EAA) for the proposed special rule for the conservation of the northern spotted owl on non-Federal lands in California and Washington. The proposed special rule was published in the **Federal Register** on February 17, 1995 (60 FR, No. 33, Page 9484). The implementing regulations for threatened wildlife generally incorporate the prohibitions of Section 9 of the Endangered Species Act (Act) of 1973, as amended, for endangered wildlife, except when a "special rule" promulgated pursuant to Section 4(d) of the Act has been issued with respect to a particular threatened species. At the time the northern spotted owl, *Strix occidentalis caurina*, (spotted owl) was listed as a threatened species in 1990, the Fish and Wildlife Service (Service) did not promulgate a special Section 4(d) rule and, therefore, all of the Section 9 prohibitions, including the "take" prohibitions, became applicable to the species. Subsequent to the listing of the spotted owl, a Federal Late-Successional and Old-growth (LSOG) forest management strategy (Plan) was developed and then formally adopted on April 13, 1994, in a Record of Decision (ROD) that amended land management plans for Federal forests in northern California, Oregon, and Washington. Although this proposed rule refers to the Federal LSOG forest strategy as the "Forest Plan", it is noted that the strategy is not a stand-alone management plan but rather effected a series of amendments to Forest Service and Bureau of Land Management planning documents. In recognition of the significant contribution the Plan does make toward spotted owl conservation and management, the Service proposed a special rule, pursuant to Section 4(d) of the Act, to replace the blanket prohibition against incidental take of spotted owls with a narrower, more tailor-made set of standards that reduce prohibitions applicable to timber harvest and related activities on specified non-Federal forest lands in Washington and California.

The Service seeks comments from the interested public, agencies, and interest groups on the Draft EAA and for its proposed 4(d) rule. The comment period for the proposed rule has been extended repeatedly since the proposed rule's publication in February of 1995, and will be extended one more time to coincide with the end of the public comment period on the Draft EAA.

DATES: Comments from all interested parties must be received by April 8, 1996.

ADDRESSES: Comments and materials concerning this Draft Environmental Alternatives Analysis and the proposed rule should be sent to Mr. Michael J. Spear, Regional Director, Region 1, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. The complete file for this proposed rule will be available for public inspection, by appointment during normal business hours, at the U.S. Fish and Wildlife Service, Office of Technical Support for Forest Resources, 333 S.W. 1st Avenue, 4th Floor, Portland, Oregon 97204, (503/326–6218).

FOR FURTHER INFORMATION CONTACT: Mr. Curt Smitch, Assistant Regional Director, Region 1, U.S. Fish and Wildlife Service, 3704 Griffin Lane S.E., Suite 102, Olympia, Washington 98501, (206/534–9330); or Ron Crete, Office of Technical Support for Forest Resources, 333 S.W. 1st Avenue, Portland, Oregon 97232–4181, (503/326–6218).

SUPPLEMENTARY INFORMATION: The Service has prepared a draft document called an Environmental Alternatives Analysis (EAA) that describes and analyzes the potential environmental effects of the proposed special rule and six alternatives for the conservation of the northern spotted owl on non-Federal lands in Washington and California. Each alternative would revise to varying degrees the Federal prohibitions and exceptions regarding the incidental take of spotted owls on non-Federal lands in California and Washington. The proposed rule, analyzed in the Draft EAA as Alternative 3, was published in the **Federal Register** on February 17, 1995 (60 FR, No. 33, Page 9484). The new document was prepared as a draft EAA rather than as a draft Environmental Impact Statement (EIS) because in the 1995 Rescissions Act signed in July of 1995, Congress specifically exempted the Service from preparing an EIS under the National Environmental Policy Act (NEPA) for this action, While not subject to the provisions of NEPA as a matter of law, the Draft EAA nevertheless follows the same general format and addresses the same range of issues as is generally found in a draft EIS.

The Service believes that it is important to seek public comment on the environmental analysis it has conducted on the various alternative approaches to this proposed action. Therefore, a 45-day comment period is provided.

The implementing regulations for threatened wildlife generally incorporate the prohibitions of Section 9 of the Endangered Species Act (Act) of 1973, as amended, for endangered wildlife, except when a "special rule" promulgated pursuant to Section 4(d) of the Act has been issued with respect to a particular threatened species. When the northern spotted owl, *Strix occidentalis caurina*, (spotted owl) was listed as a threatened species in 1990, the Fish and Wildlife Service (Service) did not promulgate a special 4(d) rule. Therefore, all of the Section 9 prohibitions for endangered species were made applicable to the spotted owl throughout its range, including the prohibitions against "take" that apply to endangered species under the Act.

Subsequent to the listing of the spotted owl, a new Federal forest management strategy was developed and proposed by the Forest Ecosystem Management Assessment Team (FEMAT), which was established by President Clinton following the April 2, 1993, Forest Conference, in Portland, Oregon. FEMAT outlined those options in the report, *Forest Ecosystem Management: An Ecological, Economic, and Social Assessment*, which drew heavily upon previous scientific studies conducted on the northern spotted owl. On July 1, 1993, the President identified "Option 9" in the FEMAT Report as the preferred alternative for managing

Federal LSOG forests in northern California, Oregon, and Washington.

The Final Supplemental Environmental Impact Statement on FEMAT was completed in February 1994, and the Record of Decision was signed on April 13, 1994. This process culminated in the formal administrative adoption of Alternative 9 as the President's Forest Plan. This Plan was viewed as providing a firm foundation for the conservation needs of the spotted owl, especially in light of the net addition of approximately 600,000 acres of Federal forest lands to protected reserve status between its original formulation in the FEMAT Report and the Record of Decision.

Despite enhanced owl protection under the final Forest Plan, however, the Service believed that some supplemental support from non-Federal forest lands remained necessary and advisable for owl conservation in certain parts of the range of the owl.

The Service published a Notice of Intent (NOI) in the **Federal Register** (58 FR, Page 69132) on December 29, 1993, to issue a 4(d) rule on the spotted owl, and sent out a mailer advising the public of its intention to prepare an Environmental Impact Statement (EIS) on the proposal. In response, the Service received and evaluated more than 8,500 public comments. Taking these comments into consideration, and based upon additional analyses, the Service subsequently proposed a special rule that would reduce the prohibition against incidental take of spotted owls in the course of timber harvest and related activities on specified non-Federal forest lands in Washington and California.

The Service did not include Oregon within the geographic scope of the proposed special rule at the request of the Oregon Congressional delegation. The Service was asked to wait for state officials and private landowners to develop an alternative owl conservation strategy for the state. By excluding Oregon altogether from the proposed special rule, the Service retained for Oregon the original level of protection against take for the owl established when the species was listed on June 26, 1990.

Although the release of this Draft EAA represents another important milestone in the development of a 4(d) rule for the northern spotted owl, the Service wants to reiterate that the ability to finalize such a rule, providing relief to non-Federal landowners, is directly dependent upon the continued strength of the President's Forest Plan, as well as the continued viability of the assumptions underlying that Plan. Should litigation or legislative enactments ultimately nullify key elements of the Forest Plan, the Service would have to reassess its ability to finalize any 4(d) rule.

The Draft EAA is being mailed to all persons who previously requested a copy. A 35 page Executive Summary also is available by calling (503) 326–6218. The document, including all maps, tables, charts, and graphs, is available on the Internet's World Wide Web at http://www.rl.fws.gov/4deaa/welcome.html.

Dated: February 15, 1996.

Michael J. Spear,

Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 96–4116 Filed 2–22–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[I.D. 021496A]

Caribbean Fishery Management Council; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearing; request for comments.

SUMMARY: The Caribbean Fishery Management Council (Council) will convene one public hearing on alternatives for closed areas to protect spawning aggregations of red hind in an area off Mayaguez, PR.

DATES: Written comments will be accepted on or before March 15, 1996. The public hearing will be on March 7, 1996, from 7 p.m. to 10 p.m.

ADDRESSES: Written comments should be sent to and copies of the document with the alternatives to be considered are available from Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Ave., Suite 1108, San Juan, PR 00918. The hearing will be held at the Joyuda Plaza Hotel, Cabo Rojo, PR.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolón, (809) 766-5926; Fax (809) 766 6239.

SUPPLEMENTARY INFORMATION:

Background

The Council will be holding a public hearing on alternatives for closed areas to protect the spawning aggregations of the red hind grouper during the period December 1 through February 28 of each consecutive year. The current regulation that implements the Fishery Management Plan for the Shallow Water Reeffish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP) establishes a closed area off Mayaguez, PR to protect the spawning grounds of this species of grouper. Recent information obtained by the Council indicates that the fish aggregations are taking place in other sites outside the present closed area. The Council will be considering alternatives to the closed area that could be more effective in protecting the red hind spawning aggregations while causing less burden to fishers.

The following alternatives will be considered: (1) No action. Keep the same area of seasonal closure (Amendment 2 of the FMP, 1993). (2) close an area of 1 1/2 miles (2.41 kilometers (km)) radius around "Buoy 8." The area will be closed to all fishing from December 1 to February 28 of each year. (3) close an area of 1 1/2 miles (2.41 km) radius around "Buoy 6." The area will be closed to all fishing from December 1 to February 28 of each year; (4) close an area of 1 1/2 miles (2.41 km) radius centered around a buoy to be deployed in the area known as "El Bajo de Sico" to all fishing between December 1 and February 28 of each year, and (5) close all three areas mentioned above to all fishing between December 1 and February 28 of each year.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids, please contact Miguel A. Rolón at (809) 766-5926 (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 15, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–4168 Filed 2–22–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 61, No. 37

Friday, February 23, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 16, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Department Clearance Officer, USDA, OIRM, Ag Box 7630, Washington, DC 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

Food and Consumer Service

- *Title:* National Food Stamp Program Survey.

Summary: This survey will collect data to help understand the Food Stamp Program client population's needs and views on a variety of matters.

Need and Use of the Information: Data are to be used to improve the Food Stamp Program administration, and make policy decisions that affect nutrition issues.

Description of Respondents: Individuals or households.

Number of Respondents: 9,530.

Frequency of Responses: Reporting—On occasion.

Total Burden Hours: 4,731.

Food and Consumer Service

- *Title:* School Food Purchase Study.

Summary: This study is designed to provide statistically valid national estimates of food acquisitions made by schools participating in the National School Lunch and School Breakfast Programs. It will also identify food purchase practices used by the schools.

Need and Use of the Information: Results of this study will provide important information to policymakers and program administrators as they make decisions regarding the future of school food programs.

Description of Respondents: Not for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 400.

Frequency of Responses: Reporting; One-time only.

Total Burden Hours: 5,200.

Forest Service

- *Title:* Customer and Use Survey Techniques For Operations, Management Evaluation and Research: A Contingent Behavior Extension—Addendum.

Summary: Data will be collected in an attempt to evaluate the linking of revealed and stated preference information in estimating the demand for, and nonmarket use values of, natural resources.

Need and Use of the Information: What will be learned from this experiment can be used in better designing and implementing future valuation work in a wide array of efforts around the country.

Description of Respondents: Individuals or households.

Number of Respondents: 33,500.

Frequency of Responses: Reporting—On occasion.

Total Burden Hours: 4,965.

Emergency Processing of This Submission Has Been Requested by *March 1, 1996.*

Rural Utilities Service

- *Title:* Prospective Large Power Service.

Summary: Rural Utility Service (RUS) borrowers supply electric power and energy to industrial consumers. Electric borrowers often enter into special contracts with commercial and industrial consumers for the retail sale of electricity. These contracts require significant plant investments. RUS review of a loan application establishes the method to determine the adequacy of rates for serving large power loads.

Need and Use of the Information: Review is intended to protect the interests of the government as a secured lender; to show feasibility of providing service to prospective large power consumers, check adequacy of rate based on amount of investment in facilities; show method used to obtain financing for construction; and show contract terms, rates, and minimum change.

Description of Respondents: Business or other for-profit.

Number of Respondents: 5.

Frequency of Responses: On occasion.

Total Burden Hours: 22.

Farm Service Agency

- *Title:* Payment Limitation and Determination of Eligibility of Foreign Individuals or Entities to Receive Program Benefits—7 CFR 795, 1497, and 1498.

Summary: Regulations require an "activity engaged in farming" status determination be made for individuals or entities with respect to a particular farming operation in order for them to be considered a person eligible for program payments from Price Support Programs, Production Adjustments, and Conservation Reserve Programs.

Need and Use of the Information: Information is needed so maximum payment eligibility can be determined for the Price Support Production Adjustments and Conservation Reserve Programs. The information collected will be used to determine eligibility and for general statistical purposes.

Description of Respondents: Farms; State, Local, or Tribal Government.

Number of Respondents: 356,800.

Frequency of Responses: Reporting; Annually.

Total Burden Hours: 307,985.

Foreign Agricultural Service

- *Title:* Emergency Import Relief From Duty-Free Imports of Perishable Products From Andean Countries.

Summary: The Andean Trade Preference Act necessitates a regulation be in place which provides a procedure for requesting temporary emergency relief from imports of duty-free perishable products pending completion of an ITC import relief request.

Need and Use of the Information: Information will be used by USDA in assessing whether imports of a perishable product(s) from an Andean country are entering the United States in such increased quantities as to be a substantial cause of serious injury or threat thereof to a domestic industry producing a like perishable product.

Description of Respondents: Business or other for-profit; Individuals or households.

Number of Respondents: 2.

Frequency of Responses: Recordkeeping; Reporting—On occasion.

Total Burden Hours: 46.

Cooperative State Research, Education, and Extension Service

- *Title:* Application for Authorization to Use the 4–H Name and/or Emblem.

Summary: The 4–H name and emblem are controlled by an Act of Congress. Those requesting use of the 4–H name and emblem must apply for approval.

Need and Use of the Information: The collection of this information is used to determine whether the applicant's use will meet the regulatory requirements and whether an authorization for use should be granted.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 40.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 40.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 96–4120 Filed 2–22–96; 8:45 am]

BILLING CODE 3410–01–M

Farm Service Agency

List of Warehouses and Availability of List of Cancellations and/or Terminations

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of publication.

SUMMARY: Notice is hereby given that the Farm Service Agency has published a list of warehouses licensed under the United States Warehouse Act (7 U.S.C. 241 *et seq.*) as of December 31, 1995, as required by section 26 of that Act (7 U.S.C. 266). A list of cancellations or terminations that occurred during calendar year 1995 is also available. Interested parties may obtain a copy of either list from the person listed below.

FOR FURTHER INFORMATION CONTACT: Mrs. Judy Fry, Farm Service Agency, Warehouse and Inventory Division, U.S. Department of Agriculture, AG CODE 0553, P.O. Box 2415, 5962–South Agriculture Building, Washington, D.C. 20013–2415, telephone: 202–720–3822.

Signed at Washington, D.C., on February 14, 1996.

Alan King,

Acting Administrator, Farm Service Agency.

[FR Doc. 96–4119 Filed 2–22–96; 8:45 am]

BILLING CODE 3410–05–P

Forest Service

Intergovernmental Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC) will meet on March 7, 1996, at the Howard Johnson Airport Hotel, 7101 NE 82nd Avenue, Portland, Oregon 97220. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:00 a.m. on March 7 and continue until 12:00 Noon. Agenda items to be discussed include, but are not limited to: (1) a progress report on riparian reserve evaluation methods and techniques and (2) discussions on implementation of the Rescission Bill. The IAC meeting will be open to the public. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–326–6265).

Dated: February 14, 1996.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 96–4076 Filed 2–22–96; 8:45 am]

BILLING CODE 3410–11–M

Southwest Oregon Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on March 6, 1996 at the Brookings Inn Best Western, Brookings, Oregon. The meeting will begin at 9:30 a.m. and continue until 4:45 p.m. Agenda items to be covered include: (1) Recommendations for revising standards and guides for large woody material; (2) Local area issues presentation; (3) Public forum. All Province Advisory committee meetings are open to the public, interested citizens are encouraged to attend, and (4) Monitoring Subcommittee report, and Grazing Standards and Guides.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kurt Austermann, Province Advisory Committee staff, USDI, Medford District, Bureau of Land Management, 3040 Biddle Rd., Medford, Oregon 97504, phone 541–770–2200.

Dated: February 14, 1996.

James T. Gladen,

Forest Supervisor, Designated Federal Official.

[FR Doc. 96–4111 Filed 2–22–96; 8:45 am]

BILLING CODE 3410–11–M

Conformity Determination for the Proposed Carlota Copper Project, Pinal and Gila Counties, AZ

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: In accordance with the federal Conformity Rule (November 15, 1993, 40 CFR 51.850–51.860), the United States Department of Agriculture, Forest Service—Tonto National Forest (Tonto NF) has reviewed the air quality analysis conducted for the proposed Carlota Copper Project to be located within the Hayden/Miami, Arizona, planning area that has been designated a nonattainment area for particulate matter less than 10 microns in aerodynamic diameter (PM_{10}) and sulfur dioxide (SO_2). The Tonto NF's review has been conducted consistent with the requirements of 40 CFR Part 93, Subpart B: "Determining Conformity of General Federal Activities to State or Federal Implementation Plans (SIP)", issued on November 30, 1993.

The Tonto NF has determined that total annual emissions of SO_2 from the proposed project are less than the *de minimis* mission threshold (40 CFR Part 93) that triggers the requirement to conduct a conformity determination.

Annual PM_{10} emissions have been determined to exceed the PM_{10} *de minimis* threshold and the Tonto NF has prepared a conformity determination for this pollutant. As per the requirement in 40 CFR 93.153(h)(1), this **Federal Register** notice lists the proposed activities that are presumed to conform and the basis for the presumptions. A comprehensive presentation of the bases for the conformity presumptions are included in the report, "Conformity Determination: Carlota Copper Project," USDA, Forest Service—Tonto National Forest, February, 1996. This document

is currently available for public review and comment.

DATES: Public comment period ends March 25, 1996.

ADDRESSES: The report, "Conformity Determination: Carlota Copper Project," USDA, Forest Service—Tonto National Forest, February, 1996, is available for public review at the following locations: Tonto National Forest Supervisor's Office, Phoenix, AZ; Globe Ranger District Office, Globe, AZ. All comments should be in writing and sent to: Forest Supervisor, Tonto National Forest, 2324 E. McDowell Road, Phoenix, AZ 85006.

FOR FURTHER INFORMATION CONTACT: Paul M. Stewart, Tonto National Forest, 2324 E. McDowell Road, Phoenix, AZ 85006, (602) 225–5200.

SUPPLEMENTARY INFORMATION:

I. Background

The Carlota Copper Company has submitted a Plan of Operations (1992) and a subsequent Update to the Plan of Operations (1993) to the Globe Ranger District of the United States Department of Agriculture (USDA) Forest Service—Tonto National Forest (Tonto NF) for the construction, operation, and reclamation of the Carlota Copper Project (project), a copper mining and processing operation. The proposed project is located on lands administered by the Tonto NF. Specifically, the project is located in Gila and Pinal Counties, approximately 7 miles west of Miami, Arizona.

A portion of the project is proposed to be located in the northern part of an area that has been designated by the United States Environmental Protection Agency (EPA) as a nonattainment area for the annual and 24-hour National Ambient Air Quality Standard (NAAQS) for particulate matter less than 10 microns in aerodynamic diameter (PM_{10}). The first phase of the PM_{10} nonattainment designation occurred August 7, 1987, (52 FR 29383) when EPA identified and listed the Group I and Group II areas in each state. The Hayden/Miami planning area was designated a Group I area. A Group I area is an area that has been estimated by EPA to have a 95 percent or greater probability of exceeding the PM_{10} standards. (Hayden Area SIP/PM_{10}, p. 14).

On March 15, 1991, EPA designated all Group I areas as "nonattainment" for PM_{10}. At the same time, EPA announced that all areas designated as nonattainment for PM_{10} were classified as "moderate" nonattainment areas. Therefore, the Hayden/Miami planning area is classified as a moderate nonattainment area for PM_{10}. A moderate area is a nonattainment area that the Administrator has determined can practicably attain the NAAQS for PM_{10} by the attainment date for moderate areas (as expeditiously as practicable but no later than the sixth calendar year after the area's designation as nonattainment). (Clean Air Act, Section 188 a–c.) The Hayden/Miami planning area consists of:

- Townships: T4S, R16E; T5S, R16E; T6S, R16E,
- The portion of Township T3S, R16E that does not lie on the San Carlos Indian Reservation, and
- The rectangle formed by, and including Townships: T1N, R13E; T1N, R15E; T6S, R13E; T6S, R15E.

The portion of the project area that is within the moderate nonattainment area is in the rectangle formed by the four townships. Specifically, the project area is located within Township T1N, R13E.

The area has also been classified as a Priority 1A Region (40 CFR 52.120) for sulfur dioxide (SO_2). States are required to prepare and submit a SIP that demonstrates attainment and maintenance of the NAAQS in Priority I Regions. The Priority 1"A" classification is for any area that has been designated a Priority 1 region primarily because of emissions from a single source. In this case, the designation is based on copper smelting operations in Hayden, Arizona. The area is in attainment of all other criteria pollutants: carbon monoxide, nitrogen dioxide, lead, and ozone.

Section 110 of the Clean Air Act requires that the State of Arizona prepare and submit to the EPA a State Implementation Plan (SIP) to reduce particulate emissions to achieve and maintain attainment of both the SO_2 and PM_{10} NAAQS. The Arizona Department of Environmental Quality (ADEQ) has developed a PM_{10} SIP designed to reduce and maintain ambient concentrations of PM_{10} to levels below the NAAQS for PM_{10}. EPA has proposed partial approval of the Hayden/Miami PM_{10} SIP. To date, there has been no final approval of the SIP. ADEQ is in the process of developing the SO_2 SIP.

Due to the proposed location of the project in the nonattainment area and the Tonto NF's affirmative role as Federal Land Manager, the Tonto NF has the responsibility under the Conformity Rule (November 15, 1993, CFR 51.850–51.860) to make a determination as to whether the proposed project conforms with all aspects of the applicable SIP for the area. The Tonto NF has reviewed the air quality analysis conducted for this project consistent with the requirements of 40 CFR Part 93 Subpart B: "Determining Conformity of General Federal Actions to State or Federal Implementation Plans (SIP)", issued on November 30, 1993.

The Tonto NF has determined that total annual emissions of SO_2 from the project are less than the *de minimis* emission threshold (40 CFR Part 93) that triggers the requirement to conduct a conformity determination. Therefore, although the Hayden area has been designated a nonattainment area for SO_2, a conformity determination for SO_2 emissions is not required. Annual PM_{10} emissions have been determined to exceed the *de minimis* threshold and the Tonto NF has determined that a conformity determination is required for PM_{10}.

II. Requirements of the Conformity Determination

The purpose of the conformity analysis is to establish the Carlota Copper Project's conformity with the Hayden area PM_{10} SIP, thereby demonstrating that total direct and indirect emissions from the project will not:

- cause or contribute to any new violation of any standard in the area,
- interfere with provisions in the applicable SIP for maintenance of any standard,
- increase the frequency or severity of any existing violation of any standard in any area, or
- delay timely attainment of any standard or any required interim emission reductions or other milestones in the SIP for purposes of

(a) a demonstration of reasonably further progress (RFP),
(b) a demonstration of attainment, or
(c) a maintenance plan.

For the purposes of a conformity determination, direct and indirect emissions are defined as follows (40 CFR 93.152):

- Direct Emissions: Those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and occur at the same time and place as the action;
- Indirect Emissions: Those emissions of a criteria pollutant or its precursors that:

1. Are caused by the Federal action, but may occur later in time and/or maybe further removed in distance from the action itself but are still reasonably foreseeable; and
2. The Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency.

For the Carlota Copper Project, the Tonto NF has determined that the emissions inventory prepared for the air quality analysis includes the total of direct and indirect emissions from the project. The Tonto NF has determined that the emissions of concern with regard to PM_{10} SIP conformity of the emission sources at the proposed Carlota Copper Project are restricted to PM_{10} emissions. The basis for designation of the area as nonattainment was PM_{10} emissions (not precursors) from mining activities (associated with smelting activities in Hayden, AZ). Precursors of PM_{10} were also not incorporated in the SIP analysis for the nonattainment area. The Tonto NF maintains that a conformity determination based on PM_{10} emissions will be adequate to assess SIP conformity and to protect the PM_{10} NAAQS at the process area boundary.

Emissions from process and non-process sources at the project are direct emissions under the definition above. The Tonto NF has determined that the hourly and annual emission estimates prepared for the air quality analysis are representative of PM_{10} emission rates over the life of the project and that the distribution of emission sources in the modeling analysis is representative of the spatial extent of the emissions sources over the life of the project. Further, the Tonto NF has not identified any other emissions or emissions sources that the Tonto NF can practicably control or maintain control of due to a continuing program responsibility at the project. The report, "Conformity Determination: Carlota Copper Project," USDA, Forest Service—Tonto National Forest, February 1996, includes a detailed description of emission sources and controls at the project.

The PM_{10} nonattainment designation for the Hayden/Miami planning area is a result of expected exceedances of the PM_{10} NAAQS proximate to the copper smelting activities in the town of Hayden. As a result, the "design value" (i.e., the predicted ambient level of PM_{10} upon which the controls in the SIP are based) pertains to particulate levels in Hayden, as opposed to the proposed project site. Furthermore, particulate emission control measures in the SIP pertain only to control of PM_{10} emissions at two specific copper smelters (and associated activities) located in Hayden. Hayden is located in the southern tip of Gila County, approximately 25 miles south of the proposed project.

The results of the impact modeling analysis used for this conformity determination indicate that the Carlota Copper Project is not expected to cause any increase in ambient PM_{10} levels in the Hayden area. The most distant receptor to the south of the project (in the direction of Hayden) is approximately 6 miles due south of the center of the proposed process area. The maximum predicted 24-hour and the annual average PM_{10} impacts at this receptor are predicted to be less than 6.8 μ/m^3 and 0.3 μ/m^3, respectively. Hayden is four times further away from the Carlota Copper Project that this receptor. The model results suggest that particulate impacts at Hayden, 25 miles to the south of the project, would be negligible (or zero). (The report, "Conformity Determination: Carlota Copper Project," USDA, Forest Service—Tonto National Forest, February 1996, includes a description of modeling approach, presents the results of the modeling analyses, and includes printouts of the input and output files of the modeling analyses.)

On November 10, 1994, ADEQ petitioned EPA to re-align the Hayden/Miami PM_{10} nonattainment are boundary. Based on topographical and climatological differences, as well as no monitored exceedances of the PM_{10} NAAQS in the Miami area, ADEQ requested that Townships T1N, R13E–R15E and T1S, R13E–R15E be excluded from the nonattainment area. This area includes the proposed Carlota Copper Project area. This petition, and the history of monitored compliance with the NAAQS in Miami, underscores the fact that the air quality issues addressed in the SIP do not pertain to air quality issues in the project area.

Based on this information, the Tonto NF has determined that this conformity determination is to establish through a local modeling analysis that PM_{10} emissions from the proposed project will not create any new exceedances of the PM_{10} NAAQS. The other conformity criteria (listed in the first paragraph of this section) are not applicable to the Carlota Copper Project due to the conditions of the nonattainment area, the ambient levels of PM_{10} at the project site, and the source specific controls in the SIP.

The final Conformity Rule (40 CFR 93) specifically allows for the use of a local modeling analysis for a conformity determination. 40 CFR 93.158.a.4.i stipulates:

> Where the State agency primarily responsible for the applicable SIP determines that an area-wide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on local air quality modeling analysis * * *

Paragraph (b) requires that the local air quality modeling analysis must show that an action does not cause or contribute to any new violation of any standard in any area, nor does the action increase the frequency or severity of any existing violation of any standard in any area. Paragraph (b) also requires that requirements and milestones in the SIP must not be violated. (There are no requirements or milestones that apply to any sources other than the identified smelter sources in Hayden.) A complete air quality analysis and identification of any necessary mitigation measures is also required by paragraph (b).

Lastly, paragraph (b) requires that a local air quality analysis must meet the applicable requirements of 40 CFR 93.159, *Procedures for Conformity Determinations of General Federal Actions*. The applicable requirements of 93.159 are:

- The analysis must be based on the latest and most accurate emission estimation techniques available for stationary and area sources of emissions, defined as the latest emission factors specified by EPA in AP–42 ("Compilation of Emission Factors"), unless more accurate emission data are available (93.159.b.2);
- The analysis must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986) including supplements (93.159.c); and
- The analysis must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur the year during which total emissions are expected to be the greatest on an annual basis (93.159.d.2).

As an option to a modeling analysis, 40 CFR 93.158 allows an action to fully offset its emissions within the same nonattainment area through a revision to the applicable SIP or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant (93.158.a.5.iii). The Tonto NF has determined that since the local modeling analysis satisfies the requirements of paragraph (b) and because there is not a fully approved SIP for the Hayden/Miami are that could be revised to include offsets, the local modeling analysis allowed for in 93.158.a.4 is adequate for determining the conformity of the action.

III. Presumption of Conformity

The Globe Ranger District of the United States Department of Agriculture (USDA) Forest Service—Tonto National Forest has reviewed the air quality

analysis conducted for the Carlota Copper Project (consistent with the requirement of 40 CFR Part 93, "Determining Conformity of General Federal Actions to State or Federal Implementation Plans (SIP)", issued on November 30, 1993.

For purposes of emissions of sulfur dioxide (SO_2), the project is proposed to be located in an area designated as nonattainment for SO_2, although there is not an approved SO_2 SIP for the nonattainment area. The Tonto NF has reviewed the air quality analysis and determined that predicted direct and indirect emissions of SO_2 are 26 tons per year. This is below the *de minimis* level of 100 tons per year for SO_2 as defined in the general conformity rule (40 CFR 93.153). Since the proposed facility conforms with the allowed emissions limitation, no further conformity determination was deemed necessary.

For purposes of emissions of particulate matter with aerodynamic diameter less than 10 microns (PM_{10}), the project is proposed to be located in an area designated as a moderate nonattainment area of PM_{10}. The air quality analysis for the project indicates that predicted direct and indirect emissions of PM_{10} exceed the *de minimis* level for moderate PM_{10} areas (100 tons per year). Therefore, the Tonto NF has reviewed the local PM_{10} emissions modeling analysis for the project and has determined the following:

- The methods for estimating direct and indirect emissions from the project meet the requirements of 40 CFR 93.159. The emissions scenario used in the air quality analysis is expected to produce the greatest off-site impacts on a daily and annual basis. (A detailed description of the emission sources and detailed emissions inventory tables are included in the report, "Conformity Determination: Carlota Copper Project," USDA, Forest Service—Tonto National Forest, February, 1996.)
- The local PM_{10} emissions modeling methodology is appropriate for determining whether emissions from the project will cause or contribute to any new violation of the PM_{10} National Ambient Air Quality Standard (NAAQS) and meet the requirements of 40 CFR 93.159. (A detailed description of the local PM_{10} emissions modeling methodology is included in the report, "Conformity Determination: Carlota Copper Project," USDA, Forest Service—Tonto National Forest, February, 1996.)
- The results of the modeling analysis predict maximum 24-hour ambient concentrations at the process area boundary to be 110.8 μ/m^3. This is below the 24-hour PM_{10} NAAQS of 150 μ/m^3. (A detailed description of the modeling analysis results and the printouts of the model input and output files are included in the report, "Conformity Determination: Carlota Copper Project," USDA, Forest Service—Tonto National Forest, February, 1996.)
- The results of the modeling analysis predict the maximum average annual ambient concentration at the process area boundary to be 36.9 μ/m^3. This is below the annual PM_{10} NAAQS standard of 50 μ/m^3.
- The action does not cause or contribute to any new violation of any standard in any area (40 CFR 93.158.b.2.i).
- The action does not increase the frequency or severity of any existing violation of any standard in any area (40 CFR 93.158.b.2.ii).
- The action does not violate any requirements or milestones in the SIP (no requirements or milestones are applicable to the project (40 CFR 93.158.c).

Based on these determinations, the activities at the Carlota Copper Project is presumed to conform to the applicable SIPs for the project area. The list of activities at the Carlota Copper Project that are presumed to conform include:

Process	Non-process
Primary crusher system.	Topsoil removal.
Conveyor systems	Topsoil unloading to stockpiles.
Secondary crusher system.	Blast hole drilling.
Boiler	Blasting.
Back-up generator	Loading/unloading of ore and mine rock.
	Hauling or ore and mine rock.
	Combustion emissions from mobile equipment.
	Travel of mine equipment other than haul trucks.
	Haul road maintenance.

This presumption of conformity assumes that adequate activity limits, emission limits, emission controls, and monitoring requirements will be included in the Air Installation Permit for the Carlota Copper Project and will be adequately enforced by the issuing agency, the Arizona Department of Environmental Quality.

Dated: February 13, 1996.

Charles R. Bazan,

Forest Supervisor.

[FR Doc. 96–3804 Filed 2–22–96; 8:45 am]

BILLING CODE 3400–11–M

Natural Resources Conservation Service

Coon Creek Watershed, MN; Notice of Intent To Deauthorize Federal Funding

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR 622), the Natural Resources Conservation Service gives notice of the intent to deauthorize Federal funding for the Coon Creek Watershed project, Anoka County, Minnesota.

FOR FURTHER INFORMATION CONTACT: William Hunt, State Conservationist, Natural Resources Conservation Service, Suite 600, 375 Jackson St., St. Paul, MN, telephone (612) 290–3675.

Coon Creek Watershed, Minnesota

Notice of Intent To Deauthorize Federal Funding

SUPPLEMENTARY INFORMATION: A determination has been made by William Hunt, State Conservationist, that the proposed works of improvement for the Coon Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from William Hunt, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

Dated: January 16, 1996.

William Hunt,

State Conservationist.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

[FR Doc. 96–4097 Filed 2–22–96; 8:45 am]

BILLING CODE 3410–16–M

Pasture Creek Watershed, Montana; Deauthorization of Federal Funding

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of deauthorization of Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR 622), the Natural Resources Conservation Service gives notice of the deauthorization of Federal funding for the Pasture Creek Watershed project, McCone County, Montana, effective on December 19, 1996.

FOR FURTHER INFORMATION CONTACT: Richard J. Gooby, State Conservationist, Natural Resources Conservation Service, 10 East Babcock Street, Room 443, Bozeman, Montana, 59715, telephone 406–587–6813.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: February 12, 1996.

Shirley J. Elliott,

Acting State Conservationist.

[FR Doc. 96–3870 Filed 2–22–96; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Monthly Wholesale Trade Survey

ACTION: Proposed agency information collection activity; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 23, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ronald Piencykoski, Bureau of Census, Room 2626–FOB 3, Washington, DC 20233–6500, (301) 457–2779.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Monthly Wholesale Trade Survey represents firms primarily engaged in merchant wholesale trade in the United States by selected kinds of business. This survey provides the only continuous measure of monthly wholesale sales, end-of- month inventories, method of inventory valuation and stock sales ratios. The survey also provides data for a valuable comparison for use with the 5-year wholesale census. The Bureau of Economic Analysis (BEA) uses this information on methods of valuation and changes in the valuation methods to improve the inventory valuation adjustments applied to estimates of the gross domestic product (GDP).

The survey currently uses a sample design that includes both fixed and rotating panels. Larger firms are requested to report sales and inventories each month, putting them in the fixed panel category. Smaller firms belong to one of three rotating panels that are contacted every third month and report data from the two most recent months. In this way, we obtain eight months of data through four contacts per year for the smaller firms. Under the current system, we release a preliminary estimate one month, and then revise it with a final estimate one month later. Revisions can be relatively large due to imbalances in the rotating panels and differential response bias between current and previous month reports.

We plan to implement a totally fixed panel design for the next sample revision starting in early 1997. Under this new design, all reporting units will report each month. By going to a totally fixed panel design, we will greatly minimize preliminary-to-final revisions caused by the rotating panels.

The fixed panel design will allow for better analysis of data since we will be able to more readily pinpoint unusual responses by reviewing each reporting unit's data each month. By using a simplified estimation scheme, the new design will also allow easier computation of an individual firm's effect on the total estimates.

The fixed panel design will also give us better estimates when reconciling differences with other surveys. When we reconcile smaller firms with the Annual Trade Survey, (OMB Approval #0607–0195), we will have twelve months of data rather than eight. This fixed panel design will allow for better comparisons between these closely related surveys.

II. Method of Collection

We collect this information by mail, facsimile machine, and telephone.

III. Data

OMB Number: 0607–0190.

Form Number: B–310(97).

Type of Review: Regular submission.

Affected Public: Merchant wholesale firms in the United States.

Estimated Number of Respondents: 3,110 per month.

Estimated Time Per Response: 7 minutes.

Estimated Total Annual Burden Hours: 4,354 hours.

Estimated Total Cost: The total cost in fiscal year 1996 for the Current Wholesale Trade Survey is $629,000 all borne by the Bureau of the Census. The cost to the respondents is estimated to be $67,052 based on the median hourly salary of $15.40 for accountants and auditors. (January 1995 Bureau of Labor Statistics publication "Employment and Earnings," $15.40 represents the median hourly wage of the full-time wage and salary earnings of accountants and auditors).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 20, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–4165 Filed 2–22–96; 8:45 am]

BILLING CODE 3510–07–P

Bureau of the Census

Current Retail Sales and Inventory Survey

ACTION: Proposed agency information collection activity; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before April 23, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Nancy Piesto, Bureau of the Census, Room 2632-FOB 3, Washington, DC 20233–6500, (301) 457–2708.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Current Retail Sales and Inventory Survey provides estimates of monthly sales and end-of-month merchandise inventories of retail stores in the United States by selected kinds of business. The survey also provides sales estimates for selected states, metropolitan areas and cities. The Bureau of Economic Analysis (BEA) uses this information to prepare the National Income and Products Accounts, and to benchmark the annual input-output tables. Statistics provided from the Retail Sales and Inventory Survey are used to calculate the gross domestic product (GDP).

The survey currently uses a sample design that includes both fixed and rotating panels. Larger firms are requested to report sales and inventories each month, putting them in the fixed panel category. Smaller firms belong to one of three rotating panels that are contacted every third month and report data from the two most recent months. In this way, we obtain eight months of data through four contacts per year for the smaller firms. Under the current system, we release a preliminary estimate one month, and then revise it with a final estimate one month later. Revisions can be relatively large due to imbalances in the rotating panels and differential response bias between current and previous month reports.

We plan to implement a totally fixed panel design for the next sample revision starting in early 1997. Under this new design, all reporting units will report each month. By going to a totally fixed panel design, we will greatly minimize preliminary-to-final revisions caused by the rotating panels.

The fixed panel design will allow for better analysis of data since we will be able to more easily pinpoint unusual responses by reviewing each reporting unit's data each month. By using a simplified estimation scheme, the new design will also allow easier computation of an individual firm's effect on the total estimates.

The fixed panel design will also give us better estimates when reconciling differences with other surveys. When we reconcile smaller firms with the Annual Retail Trade Survey, (OMB Approval #0607–0013), we will have twelve months of data rather than eight. Also, firms in the Advance Monthly Retail Sales Survey (OMB Approval #0607–0104)—a subsample of the Current Retail Sales and Inventory Survey—are requested to report one month of data every month. Under the fixed panel design, all firms in the Advance Monthly Retail Sales Survey will now be included in the Current Retail Sales and Inventory Survey each month.

This fixed panel design will allow for better comparisons between these closely related surveys.

II. Method of Collection

We collect this information by mail, fax, and telephone follow up.

III. Data

OMB Number: 0607–0717.
Form Number: B–101(97),B–102(97),B–103(97), B–111(97), B–111(97)L, B–112(97), B–113(97), B–114(97).
Type of Review: Regular Submission.
Affected Public: Retail firms in the United States.
Estimated Number of Respondents: 11,464 per month.
Estimated Time Per Response: 12.2 minutes.
Estimated Total Annual Burden Hours: 27,972 hours.
Estimated Total Cost: The total cost in fiscal year 1996 for the Current Retail Sales and Inventory Survey is $5,035,999 all borne by the Bureau of the Census. The cost to the respondents is estimated to be $430,768 based on the median hourly salary of $15.40 for accountants and auditors. (January 1995 Bureau of Labor Statistics publication "Employment and Earnings," $15.40 represents the median hourly wage of the full-time wage and salary earnings of accountants and auditors).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 20, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–4164 Filed 2–22–96; 8:45 am]

BILLING CODE 3510–07–P

Foreign-Trade Zones Board

[Docket 10–96]

Proposed Foreign-Trade Zone—Yuma County, Arizona Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Yuma County Airport Authority, Inc. (YCAA), (an Arizona non-profit civic corporation), to establish a general-purpose foreign-trade zone in Yuma County, Arizona, within the San Luis Customs port of entry on the U.S.-Mexico border. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 9, 1996. The applicant is authorized to make the proposal under Section 44–6501 of the Arizona Revised Statutes.

The proposed zone would be located on a 79-acre site within the Yuma International Airport complex, which is owned by Yuma County and leased to YCAA. The applicant plans to develop the first phase of the zone by constructing a 20,000 square foot multi-tenant building.

The application contains evidence of the need for zone services in the Yuma area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as fresh fruits and vegetables, seed and plants, citrus and meat. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on April 3, 1996, at 9:00 a.m., at the Yuma Civic & Convention Center, 1440 West Desert Hills Drive, Yuma, Arizona.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 18, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 3, 1996.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Yuma County Library, 350 South 3rd Avenue, Yuma, Arizona 85364
Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: February 13, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–4170 Filed 2–22–96; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 11–96]

Proposed Foreign-Trade Zone—Sioux Falls, South Dakota Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Governor's Office of Economic Development of the State of South Dakota, to establish a general-purpose foreign-trade zone at sites in Sioux Falls, South Dakota, within the Sioux Falls Customs port of entry (authorized in 1995). The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 12, 1996. The applicant is authorized to make the proposal under South Dakota Codified Law, Chapter 37–28.

The proposed new zone would consist of 5 sites (392 acres) in the City of Sioux Falls: *Site 1* (130 acres)—Joe Foss Field, 2801 Jaycee Lane; *Site 2* (123 acres)—Sioux Falls Development Foundation Park III, 4th Avenue N.; *Site 3* (125 acres)—Sioux Falls Development Foundation Park IV, north of East Benson Road, west of Interstate 229; *Site 4* (7 acres, 2 parcels)—Burns Moving & Storage, 4205 N. 4th Avenue and N. 2nd Avenue and 54th Street; and, *Site 5* (7 acres, 2 parcels)—Parker Transfer and Storage, Inc., 1700 F Avenue and 3703 West Tickman Street.

The application contains evidence of the need for foreign-trade zone services in the Sioux Falls area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activity. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on May 8, 1996, 9:00 a.m., Sioux Falls City Hall, Council Chambers, 224 West 9th Street, Sioux Falls, South Dakota.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 23, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 7, 1996.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Sioux Falls Development Foundation, 200 North Phillips Avenue, Suite 101, Sioux Falls, SD 57102
Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: February 14, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–4171 Filed 2–22–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Determination Not To Revoke Antidumping Duty Orders and Findings Nor To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination not to revoke antidumping duty orders and findings nor to terminate suspended investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: February 23, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on December 4, 1995, we published in the **Federal Register** a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Objections or requests for review were originally due by December 31, 1995. However, due to the partial government shutdown from December 16, 1995, through January 6, 1996, the time frame to either object or request a

review was extended 22 days. Such requests for review or objections to our intent to revoke were therefore due by January 22, 1996. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–351–602
Brazil
Certain Carbon Steel Butt-Weld Pipe Fittings
Objection Date: December 8, 1995, January 16, 1996
Objector: Hackney Inc., Tube Forgings of America Inc., et. al.
Contact: Thomas Schauer at (202) 482–4852

A–428–062
Germany
Animal Glue and Inedible Gelatin
Objection Date: January 11, 1996
Objector: Hudson Industries Corporation
Contact: Karen Park at (202) 482–3578

A–588–405
Japan
Cellular Mobile Telephones and Subassemblies
Objection Date: December 6, 1995
Objector: Motorola Inc.
Contact: Charles Riggle at (202) 482–0650

A–588–811
Japan
Drafting Machines and Parts Thereof
Objection Date: December 11, 1995
Objector: Vemco Corporation
Contact: Mathew Blaskovich at (202) 482–5831

A–588–068
Japan
Steel Wire Strand
Objection Date: January 11, 1996
Objector: Florida Wire & Cable Company
Contact: Kris Campbell at (202) 482–3813

A–614–502
New Zealand
Low-Fuming Brazing Copper Rod & Wire
Objection Date: December 6, 1995
Objector: Copper & Brass Fabricators Council
Contact: Karin Price at (202) 482–3782

A–583–508
Taiwan
Porcelain-On-Steel Cooking Ware
Objection Date: January 11, 1996
Objector: General Housewares Corporation
Contact: Amy Wei at (202) 482–1131

Dated: February 9, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–4172 Filed 2–22–96; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[I.D. 021596A]

Environmental Impact Statement (EIS) for the Proposed Consolidation of NOAA Facilities in Juneau, AK

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an EIS; request for comments.

SUMMARY: NOAA announces its intention to prepare an EIS in accordance with the National Environmental Policy Act of 1969 for the proposed consolidation of NOAA/NMFS facilities in Juneau, AK. The University of Alaska may also develop facilities as part of the proposed consolidation.

DATES: Written comments on the intent to prepare and EIS will be accepted on or before March 25, 1996. Scoping meetings are scheduled as follows:

1. March 29, 1996, 1 p.m., Federal Building, Juneau, AK.
2. May 24, 1996, 1 p.m., Federal Building, Juneau, AK.
3. May 24, 1996, 5 p.m., Centennial Hall, Juneau, AK.

ADDRESSES: Written comments on suggested alternatives and potential impacts should be sent to John Gorman, Responsible Program Manager, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668 or to Robb Gries, Contract Office Technical Representative, NOAA, Facilities and Logistics Division, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115.

Scoping meetings will be held as follows:

1. NOAA/NMFS personnel - Friday, March 29, 1996, 4th Floor Conference Room, Federal Building, 709 West 9th Street, Juneau, AK, 1–4 p.m.
2. NOAA/NMFS personnel - Friday, May 24, 1996, 4th Floor Conference Room, Federal Building, 709 West 9th Street, Juneau, AK, 1–4 p.m.
3. Open to the public - Friday, May 24, 1996, Centennial Hall, 101 Egan Drive, Juneau, AK, 5 p.m.–10 p.m.

SUPPLEMENTARY INFORMATION:

The proposed action would involve consolidation of NOAA/NMFS offices, laboratory, and enforcement facilities in Juneau, AK. NOAA operations are currently in four space assignments in the Federal Building and at an aging, overcrowded Commerce-owned laboratory facility at Auke Bay. The NOAA/NMFS portion of the facility will be about 91,628 net square ft (8,512.5 square meters) in size and constructed on 28 acres (11.3 hectares (ha)) of Commerce-owned property at Auke Cape. The 28 acre (11.3 ha) site is situated on saltwater (Auke Bay) and will require access and utility improvements. Approximately 273 NOAA/NMFS related personnel would be housed in the consolidated facilities. The University of Alaska School of Fisheries and Ocean Sciences is interested in collocating 22,000 net square ft (2,044 square meters) of laboratory, classroom, and office space with NOAA/NMFS at Auke Cape. The University of Alaska space would house about 90 faculty, staff, and students. The EIS will examine three alternative locations for the proposed consolidation and also evaluate the proposed action with and without University of Alaska participation. The no action alternative will also be evaluated. The agency's preferred alternative is to locate on approximately 28 acres (11.3 ha) of agency-owned land at Auke Cape/ Indian Point on Auke Bay.

To identify the scope of issues that will be addressed in the EIS and to identify potential impacts on the quality of the human environment, public participation is invited by providing written comments to NMFS and attending the scoping meeting.

Public Information Meetings:

Additional public information meetings and community workshops on the proposed project will be held in Juneau beginning in March. These meetings will be held in various locations and will be advertised in local Juneau newspapers.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to John Gorman or Robb Gries (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 15, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–4167 Filed 2–22–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 081195B]

Small Takes of Marine Mammals Incidental to Specified Activities; McDonnell Douglas Aerospace Delta II Vehicles at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of modification of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA), issued to the U.S. Air Force (USAF) on September 19, 1995, to take small numbers of marine mammals by harassment incidental to launches of McDonnell Douglas Aerospace (MDA) Delta II vehicles at Space Launch Complex 2W (SLC–2W), Vandenberg Air Force Base, CA (Vandenberg), has been modified.

EFFECTIVE DATE: The authorization is effective from September 19, 1995, until September 19, 1996.

ADDRESSES: The application, authorization and modification are available for review in the following offices: Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, 301–713–2055, or Irma Lagomarsino, 301–980–4016.

SUPPLEMENTARY INFORMATION:

Background

On July 12, 1995, NMFS received an application from the USAF requesting an authorization for the harassment of small numbers of harbor seals and potentially for other pinniped species incidental to launches of Delta II vehicles at SLC–2W, Vandenberg. These launches would place Department of Defense, National Aeronautic and Space Administration (NASA), and commercial, medium-weight payloads into polar or near-polar orbits. MDA/ NASA intends to launch four to five Delta IIs during the period of this proposed 1-year authorization.

Background information and rationale was provided with the notice of receipt of the application and proposed authorization that was published on August 18, 1995 (60 FR 43120) and are not repeated here. A 30-day public comment period was provided on the application and proposed authorization. After review of the comments received on the application, NMFS concluded that the taking will not result in more than the harassment (as defined by the MMPA Amendments of 1994) of a small number of harbor seals, California sea lions, and northern elephant seals, would have only a negligible impact on the species, and would result in the least practicable impact on the stock. Accordingly, NMFS determined that the requirements of section 101(a)(5)(D) of the MMPA had been met and the incidental harassment authorization was issued on September 19, 1995 (60 FR 52653, October 10, 1995).

Summary of Request

Section 6(b) of the IHA requires the USAF to observe harbor seal activity on haulouts in the vicinity of SLC–2W before and after each Delta II launch and to record launch noise levels at nearby harbor seal haulouts. On January 24, 1996, NMFS received a request from the USAF to amend section 6(b) by removing the requirement for recording launch noises at coastal harbor seal haulouts.

The first launch of a Delta II vehicle under the IHA occurred on November 4, 1995. NMFS and the USAF received a preliminary report on noise measurements recorded at various distances from SLC–2W during this launch. These results indicate that launch noise was similar to noise recorded at the same distances during another Delta II launch at the Kennedy Space Center, FL, in July 1992. Furthermore, the USAF indicated that these noise levels correspond closely with a predictive model that was run prior to the launch to calculate launch noise levels at various distances from the launch pad.

Based on this information, it appears that noise levels from launches of Delta II space vehicles are predictable and consistent. The USAF has indicated that the azimuth for subsequent Delta II launches during the authorization period will be similar to the November 4, 1995, launch. The noise level measurements taken during the November 4, 1995, launch therefore appear to be applicable to the remaining Delta II launches during the authorization period.

Because the empirical data support the predictive model, additional acoustic measurements are unnecessary for monitoring the impact of Delta II launches on nearby harbor seal haulouts. Accordingly, on January 31, 1996, NMFS amended section 6(b) of the IHA as follows:

b. Observations on harbor seal activity at harbor seal haulouts in the vicinity of SLC–2 and Purisima Point or in the absence of pinnipeds at that location, at another nearby haulout, must commence at least 72 hours prior to any planned launch and continue for a period of time not less than 48 hours subsequent to launching.

As a result of this modification, the monitoring of noise levels during the remaining launches of Delta II space vehicles from SLC–2W will not be necessary through September 19, 1996. However, the USAF will be required to comply with all of the other conditions of the IHA, including observations of harbor seal activity, as required in the IHA.

Dated: February 15, 1996.

Ann D. Terbush,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–4166 Filed 2–22–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 021596B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of two applications for scientific research permits (P605 and P606).

SUMMARY: Notice is hereby given that Ms. Pamela A. Petrusso, in collaboration with the U.S. Bureau of Reclamation at Red Bluff, CA (BOR), and the Contra Costa Water District at Concord, CA (CCWD) have applied in due form for permits to take juvenile, endangered, Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on either of these applications must be received on or before March 25, 1996.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310–980–4016).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: Ms. Petrusso and CCWD request permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

Ms. Petrusso, a graduate assistant of Michigan State University (P605), requests a 2-year permit to determine the physical condition of juvenile chinook salmon rearing in mainstem habitats between Keswick Dam and Red Bluff on the Sacramento River. Listed juvenile salmon will be captured and handled indirectly during run-of-the-river sampling activities. Any adipose fin-clipped juveniles collected, including juvenile, listed, hatchery-produced, winter-run chinook salmon, will be sacrificed and provided to the U.S. Fish and Wildlife Service at Red Bluff, CA for coded-wire tag extraction. The proposed project will contribute to BOR's efforts to reduce migration impediments to the four runs of Sacramento River chinook salmon by providing baseline data for interpretation of the results of entrainment studies. In addition, the study will advance the understanding of the early life history and ecology of young chinook salmon in the upper Sacramento River.

CCWD (P606) requests a 5-year permit to monitor its Mallard Slough pumping facility for the presence of listed juvenile salmon in compliance with the California ESA requirements imposed by the California Department of Fish and Game. Listed juvenile salmon may be captured and handled during bimonthly sampling from February 15 to July 31 each year within the Mallard Slough intake channel and in the adjacent San Joaquin River channel. Any adipose fin-clipped juveniles collected, including juvenile, listed, hatchery-produced, winter-run chinook salmon, will be sacrificed and provided to the U.S. Fish and Wildlife Service at Stockton, CA for coded-wire tag extraction. Sampling will not occur if Delta water quality conditions do not allow the operation of the Mallard Slough facility. The monitoring results will indicate the relative abundance of sensitive fish species and allow CCWD to modify operation of the Mallard Slough facility as necessary to minimize potential entrainment losses.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on either application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these application summaries are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: February 16, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–4161 Filed 2–22–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 020196D]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification to permit no. 854 (P211F).

SUMMARY: Notice is hereby given that Permit No. 854, issued to the Oregon Department of Fish and Wildlife, Marine Science Drive, Bldg. 3, Newport, OR 97365, has been modified.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/712–2289);

Director, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150);

Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4015); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

SUPPLEMENTARY INFORMATION: The subject modification has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 854 authorizes scientific research on Steller sea lions (*Eumetopias jubatus*) over a 5-year period.

The Permit, as modified, reduces the number of Steller sea lion pups to be weighed, measured, marked, flipper tagged, hot-branded, and have blood drawn from 200 to 100 annually, and authorizes 100 Steller sea lions of any sex or age to be weighed, measured, marked, flipper tagged, hot-branded, and have blood drawn annually.

Issuance of this modified permit as required by the Endangered Species Act of 1973 was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act.

Dated: February 14, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–4160 Filed 2–22–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 25, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740

SUPPLEMENTARY INFORMATION: On October 20 and December 29, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 54612 and 67351) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46 - 48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Acquisition & Distribution of D-Cell Batteries (6135–00–835–7210), Defense General Supply Center, Richmond, Virginia

Grounds Maintenance, Department of Veterans Affairs Medical Center, 801 South Marion Street, Lake City, Florida.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–4142 Filed 2–22–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 25, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Case, Plotting Board
1220–01–055–6137
NPA: North Bay Rehabilitation Services, Inc., San Rafael, California at its facility in Rohnert Park, California
Web Door Assembly
5340–02–000–0319
NPA: Rauch Rehabilitation & Developmental Services, Inc., New Albany, Indiana
Envelope, Wallet
7530–00–NIB–0260 20" × 26"
7530–00–NIB–0261 25" × 31"
7530–00–NIB–0262 30"×42"
(Requirements for the Defense Mapping Service, Bethesda, MD)
NPA: Blind Industries, Inc., Buffalo, New York
Panel Marker, Aerial Liaison
8345–00–567–3323
NPA: North Bay Rehabilitation Services, Inc., San Rafael, California at its facility in Rohnert Park, California
Wipes, Scrubber
M.R. 588
NPA: Mississippi Industries for the Blind, Jackson, Mississippi

Services

Food Service
U.S. Naval Home
Gulfport, Mississippi
NPA: Allied Enterprises of Harrison County, Long Beach, Mississippi
Janitorial/Custodial
AMSA #32
100 Stephens Road
Wilkes-Barre, Pennsylvania
NPA: United Rehabilitation Services, Inc., Wilkes-Barre, Pennsylvania
Recycling Service
for the following locations:
Cape Canaveral Air Force Station, Florida
Jonathon Dickinson Missile Tracking Annex, Florida
Malabar Tracking Annex, Florida
NPA: ARC-Brevard, Inc., Rockledge, Florida
Operation of SERVMART
Fleet and Industrial Supply Center
Agana, Guam
NPA: Able Industries of the Pacific, Agana, Guam

Beverly L. Milkman.

Executive Director.

[FR Doc. 96–4141 Filed 2–22–96; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Inventions

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. Copies of the patents cited are available from the Commissioner of

Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR, OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent No. 5,489,200: COMPRESS/MELT PROCESSOR FOR CONTAMINATED PLASTIC WASTE; filed 29 November 1994; patented 6 February 1996.

Patent No. 5,488,278: LOAD LIMIT SYSTEM FOR MECHANICAL LINEAR ACTUATOR; filed 23 September 1994; patented 30 January 1996.

Dated: February 12, 1996.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 96–4107 Filed 2–22–96; 8:45 am]

BILLING CODE 3810–FF–P

Board of Advisors to the Superintendent, Naval Postgraduate School; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, California, will meet on 1-2 May, 1996, in Hermann Hall (Bldg 220) at the School. All sessions will be open to the public.

The purpose of the meeting is to elicit the advice of the board of the Navy's Postgraduate Education Program. The board examines the effectiveness with which the Naval Postgraduate School is accomplishing its mission: To this end, the board will inquire into the curricula; instruction; physical equipment; administration ; state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the Naval Postgraduate School as the board considers pertinent.

For further information concerning this meeting contact: Ms. Jan Kleinschmidt, Naval Postgraduate School, Monterey, California 93943-5000, Telephone Number: (408) 656-2512.

Dated: February 13, 1996

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 96–4071 Filed 2–22–96; 8:45 am]

BILLING CODE 3810–FF–F

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, February 28, 1996. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:00 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 11:00 a.m. at the same location and will include a presentation on the Neshaminy Creek Basin Study and management options, discussion of proposed DRBC computer system and GIS, the Commission's 1996 meeting schedule and public dialogue.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Holdover Project: Crompton & Knowles Colors Incorporated, D–95–8 (Revised).* A request to revise the applicant's recently approved 0.22 million gallons per day (mgd) industrial wastewater treatment plant (IWTP) expansion docket to increase the average monthly allowable copper concentration limits from 0.50 milligrams per liter (mg/l) to 1.0 mg/l. The applicant requests the limit on the basis of demonstration of best practicable treatment provided by its IWTP that serves the applicant's dyestuff and special chemical manufacturing operation. The plant is located in Robeson Township, Berks County, Pennsylvania and will continue to discharge to the Schuylkill River. This hearing continues that of January 24, 1996.

2. *Merrill Creek Owners Group (MCOG) D–77–110 CP (Amendment 9).* An application for inclusion of the Grays Ferry Cogeneration Partnership's 173 megawatt cogeneration plant (an oil/natural gas fueled combustion turbine approved by Docket No. D–95–32 on June 28, 1995) as a Designated Unit to Table A (Revised) of the Merrill Creek Reservoir project, to enable releases from the reservoir to make up for consumptive water use of the plant during drought periods. The MCOG expects the Grays Ferry Cogeneration plant to have a maximum monthly consumptive water use of 267,840 gallons per day (gpd) during winter and 60,480 gpd during summer. The plant is situated on the site of an existing cogeneration facility which was formerly part of the PECO Energy Company's Schuylkill Generating Station, in the City of Philadelphia, Pennsylvania. Merrill Creek Reservoir is located in Harmony Township, Warren County, New Jersey.

3. *Borough of Doylestown D–79–18 CP RENEWAL 3.* An application for the renewal of a ground water withdrawal project to supply up to 50 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 7, 8, 9, 10, 12 and 13. Commission approval on March 27, 1991 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 50 mg/30 days. The project is located in the Borough of Doylestown, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

4. *Evesham Municipal Utilities Authority D–93–12 CP RENEWAL.* An application for approval of a ground water withdrawal project to supply up to 23 mg/30 days of water to the applicant's distribution system from new Well No. 12 screened in the PRM Aquifer, and to retain the existing withdrawal limit of 136 mg/30 days from all wells. The project is located in Evesham Township, Burlington County, New Jersey.

5. *Village of Wurtsboro D–94–25 CP.* An application for approval of a ground water withdrawal project to supply up to 2.5 mg/30 days of water to the applicant's distribution system from new Well Nos. 2 and 3, and to limit the withdrawal from all wells to 6.0 mg/30 days. The project is located in the Village of Wurtsboro, Sullivan County, New York.

6. *Warminster Township Municipal Authority D–94–40 CP.* An application for the approval of a ground water withdrawal project to supply up to 18 mg/30 days to the applicant's distribution system from new Well Nos. 43, 44 and 45; and to increase the existing withdrawal limit from all wells from 98.46 mg/30 days to 114 mg/30 days. The project is located in Warminster Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

7. *Old York Country Club D–95–3.* An application for approval of a ground water and surface water withdrawal project to supply up to 8 mg/30 days of water to the applicant's golf course irrigation system from new Well Nos. 1 and 2, and to limit the withdrawal from the man-made storage reservoirs to 8 mg/30 days. The project is located in Chesterfield Township, Burlington County, New Jersey.

8. *Delaware Avenue Enterprises, Inc. D–95–61.* A project to construct a multi-purpose marine terminal on the Delaware River which will entail removal of existing deteriorated pier structures, construction of approximately 1,750 linear feet of new bulkheading, filling approximately 2.3 acres of open water, and dredging approximately 197,760 cubic yards. The project is located immediately upstream of the Walt Whitman Bridge (encompassing Piers 103 through 108) in the City of Philadelphia, Philadelphia County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: February 13, 1996.

Susan M. Weisman,

Secretary.

[FR Doc. 96–4094 Filed 2–22–96; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 23, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 16, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Report of Randolph-Sheppard Vending Facility Program.
Frequency: Annually.
Affected Public: Individuals or households; Business or other for-profit; Federal Government; State, local or Tribal Gov't, SEAs or LEAs.
Reporting Burden and Recordkeeping:
Responses: 51.
Burden Hours: 739.
Abstract: The information is needed to evaluate the effectiveness of the program and to promote growth. The information is transmitted to State agencies to assist in the conduct and expansion of the program at the State level.

Office of Management

Type of Review: Reinstatement.
Title: GEPA 424 Biennial Report on the Distribution of Federal Education Funds.
Frequency: Biennially.
Affected Public: Federal Government; State, local or Tribal Government, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 144.
Burden Hours: 3,436.
Abstract: Section 424 of the General Education Provisions Act (GEPA) requires States to report on the distribution of funds for State-administered Federal education programs. The U.S. Department of Education is required to report to Congress the distribution of State- and Federally-administered Federal education funds.

[FR Doc. 96–4055 Filed 2–22–96; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 25, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or

waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 16, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: 1996 National Postsecondary Student Aid Study.
Frequency: On occasion.
Affected Public: Individuals or households; business or other for-profit; not for Profit institutions.
Reporting Burden and Recordkeeping:
Responses: 1.
Burden Hours: 36,191.
Abstract: This study collects data from a sample of students in postsecondary institutions, including institutional financial aid data on sample students, and a sample of students' parents. It collects data to determine how students and their families finance postsecondary education, and to describe characteristics of enrolled postsecondary students, addressing important issues in this area. This collection is for institutional student, and parent data.

Office of Management

Type of Review: Revision.
Title: Waiver Guidance under Goals 2000.
Frequency: On occasion.
Affected Public: State, Local or Tribal Government, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 300.
Burden Hours: 6,000.
Abstract: This information provides guidance to schools, LEAs and SEAs on the submission of requests for waivers of statutory and regulatory requirements.

[FR Doc. 96–4056 Filed 2–22–96; 8:45 am]
BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.
ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 25, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 16, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: New.
Title: Equity in Athletics Disclosure Act.
Frequency: Annually.
Affected Public: Not-for-profit institutions.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 1,800.
Burden Hours: 9,900.
Abstract: The Equity in Athletics Disclosure Act amended the Higher Education of 1965, as amended, to require coeducational institutions of higher education that participate in a Title IV, HEA program to make available annually a report on institutional financing and student participation in men's and women's intercollegiate athletic teams.

Office of Postsecondary Education

Type of Review: Revision.
Title: New Application for Grants under the Student Support Services Program.
Frequency: Every Three Years.
Affected Public: Not-for-profit institutions.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 1,115.
Burden Hours: 11,150.
Abstract: Information requested from eligible institutions of higher education is needed to provide department program officers with necessary information to make funding decisions and to determine compliance with authorizing legislation and program regulations.

[FR Doc: 96–4057 Filed 2–22–96; 8:45 am]
BILLING CODE 4000–01–P

Jacob K. Javits Gifted and Talented Students Education Program

AGENCY: Department of Education.
ACTION: Notice of proposed priorities.

SUMMARY: The Secretary proposes an absolute priority and a competitive preference priority under the Jacob K. Javits Gifted and Talented Students Education Program. The Secretary takes this action to focus Federal financial assistance on specific approaches to identifying and serving gifted and talented students. The Secretary may use these priorities in FY 1996 and subsequent years.

DATES: Comments must be received on or before March 25, 1996.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Linda Jones, U.S. Department of Education, 555 New Jersey Avenue, N.W., Room 500, Washington, D.C. 20208–5645. Comments may also be sent through the Internet to (Javits_Grant@ed.gov).

FOR FURTHER INFORMATION CONTACT: Linda Jones or Janet Williams. Telephone: (202) 219–2153 or (202) 219–1674. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Jacob K. Javits Gifted and Talented Students Education Program is designed to build nationwide capability in gifted and talented education and encourage rich and challenging curricula for all children.

The Secretary seeks to improve the education of gifted and talented children, and to promote the use of strategies developed in gifted and talented education programs to help improve the education of all students. The Secretary believes that improving the education of gifted and talented students is an integral part of achieving the National Education Goals, which require that every student attain higher standards of academic excellence. The Secretary is particularly concerned that the educational needs of gifted and talented students from populations historically underserved by gifted and talented education programs be addressed. In addition, the Secretary wants to see gifted and talented education programs contribute to systemic education reform by modeling coordinated systems of challenging standards and assessments, curricula, and teacher preparation aligned with those standards to improve education. The Secretary believes that the use of challenging content and performance standards is the most promising way to raise students' achievement.

Therefore, the Secretary proposes an absolute priority that would support the development of model demonstration programs that focus on economically disadvantaged children, children with limited English proficiency, or children with disabilities. Each project would be required to involve a school or schools that serve at least 50 percent low-income children and to incorporate professional development of staff and training of parents into the program. In addition, the program must be based on challenging content and performance standards in one or more of the core subject areas, and include a comprehensive improvement plan for each school involved in the project.

The Secretary proposes a competitive priority to direct financial assistance to projects that primarily benefit areas that have been designated as Empowerment Zones or Enterprise Communities in accordance with Section 1391 of the Internal Revenue Code (IRC), as amended by Title XIII of the Omnibus Budget Reconciliation Act (OBRA) of 1993.

Background on Empowerment Zone and Enterprise Community Program—(EZ/EC)

The Empowerment Zone and Enterprise Community program is a critical element of the Administration's community revitalization strategy. The program is the first step in rebuilding communities in America's poverty-stricken inner cities and rural heartlands. It is designed to empower people and communities by inspiring Americans to work together to create jobs and opportunity.

The Departments of Agriculture (USDA) and Housing and Urban Development (HUD) have designated empowerment zones and enterprise communities, which are communities located within the cities and counties listed in the appendix.

The Empowerment Zones and Enterprise Communities were designated based on locally-developed strategic plans that comprehensively address how the community will link economic development with education and training, as well as how community development, public safety, human services, and environmental initiatives together will support sustainable communities. Designated areas will receive Federal grant funds and substantial tax benefits and will have access to other Federal programs. (For additional information on the Urban EZ/EC program contact HUD at 1–800–998–9999 and for the rural EZ/EC program contact USDA at 1–800–645–4712.)

The Department of Education is supporting the Empowerment Zone and the Enterprise Community initiative in a variety of ways. It is encouraging zones to use funds they already receive from Department of Education programs (including Title I of the Elementary and Secondary Education Act, the Safe and Drug-Free Schools and Communities Act, the Adult Education Act, and the Carl D. Perkins Vocational and Applied Technology Education Act) to support the comprehensive vision of their strategic plans. In addition, the Department of Education is giving preferences to EZ/ECs in a number of discretionary grant programs that are well suited for inclusion in a comprehensive approach to economic and community development.

The Empowerment Zone initiative and the Jacob K. Javits Gifted and Talented Students Education Program share some common features. Both programs are concerned with the educational advancement of students caught in high-poverty communities. Under the Javits Gifted and Talented Education Program, at least one-half of the grants in any given year must serve students who are economically disadvantaged, limited English proficient or who have disabilities. Communities that have been designated as Empowerment Zones or Enterprise Communities have demonstrated a capacity for the type of planning that allows communities to use, where appropriate, methods and materials developed in gifted and talented programs to improve the educational opportunities for all children.

The Secretary believes that the limited resources available under the Jacob K. Javits Gifted and Talented Students Education Program will have the greatest impact if the funds are directed to communities that have the greatest need and have already established comprehensive community development plans. Therefore, the Secretary establishes the following competitive priority to focus Federal funds on gifted and talented projects that would address the needs of Empowerment Zones or Enterprise Communities.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under this priority for fiscal year 1996 will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition

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only applications that meet this absolute priority:

Proposed Absolute Priority—Model Programs

Projects that establish and operate model programs to serve gifted and talented students in schools in which at least 50 percent of the students enrolled are from low-income families. Projects must include students who may not be served by traditional gifted and talented programs, including economically disadvantaged students, limited English proficient students, and students with disabilities. The projects must incorporate high-level content and performance standards in one or more of the core subject areas as well as utilize innovative teaching strategies. The projects must provide comprehensive ongoing professional development opportunities for staff. The projects must incorporate training for parents in ways to support their children's educational progress. There must also be comprehensive.evaluation of the projects' activities.

Proposed Competitive Preference Priority—Empowerment Zone or Enterprise Community

Within this proposed absolute priority concerning model projects, the Secretary, under 34 CFR 75.105(c)(2)(i), proposes to give preference to applications that meet the following competitive priority. The Secretary proposes to award five (5) points to an application that meets this competitive priority. These points would be in addition to any points the application earns under the evaluation criteria for the program:

Projects that implement model programs in one or more schools in an Empowerment Zone or Enterprise Community or that primarily serve students who reside in the EZ or EC. Applicants must ensure that the proposed program relates to the strategic plan and will be an integral part of the Empowerment Zone or Enterprise Community program.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 500, 555 New Jersey Avenue, N.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Applicable Regulations

(a) 34 CFR Parts 74, 75, 77, 79, 80, 81, 85 and 86; and (b) the final regulations for Standards for the Conduct and Evaluation of Activities Carried Out by the Office of Educational Research and Improvement (OERI)—Evaluation of Applications for Grants and Cooperative Agreements and Proposals for Contracts, published on September 14, 1995 in the **Federal Register** (60 FR 47808), to be codified at 34 CFR Part 700.

Note: The regulations in 34 CFR Part 791 previously applicable to this program will no longer apply to this program.

Program Authority: 20 U.S.C 8032–8036.

(Catalog of Federal Domestic Assistance Number 84.206A, Jacob K. Javits Gifted and Talented Students Education Program)

Dated: February 16, 1996.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

Appendix—Empowerment Zones and Enterprise Communities

Empowerment Zones (EZ)

Georgia: Atlanta
Illinois: Chicago
Kentucky: Kentucky Highlands*
Maryland: Baltimore
Michigan: Detroit
Mississippi: Mid Delta*
New York: Harlem, Bronx
Pennsylvania/New Jersey: Philadelphia, Camden
Texas: Rio Grande Valley*

Supplementol Empowerment Zones (SEZ)

California: Los Angeles
Ohio: Cleveland

Enterprise Communities (EC)

Alabama: Birmingham
Alabama: Chambers County*
Alabama: Greene, Sumter Counties*
Arizona: Phoenix
Arizona: Arizona Border*
Arkansas: East Central*
Arkansas: Mississippi County*
Arkansas: Pulaski County
California: Imperial County*
California: Los Angeles, Huntington Park
California: San Diego
California: San Francisco, Bayview, Hunter's Point
California: Watsonville*
Colorado: Denver
Connecticut: Bridgeport
Connecticut: New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County*
Florida: Tampa
Florida: Miami, Dade County
Georgia: Albany
Georgia: Central Savannah*
Georgia: Crisp, Dooley Counties*
Illinois: East St. Louis
Illinois: Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville
Louisiana: Northeast Delta*
Louisiana: Macon Ridge*
Louisiana: New Orleans
Louisiana: Ouachita Parish
Massachusetts: Lowell
Massachusetts: Springfield
Michigan: Five Cap*
Michigan: Flint
Michigan: Muskegon
Minnesota: Minneapolis
Minnesota: St. Paul
Mississippi: Jackson
Mississippi: North Delta*
Missouri: East Prairie*
Missouri: St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque
New Mexico: Moro, Rico Arriba, Taos Counties*
New York: Albany, Schenectady, Troy
New York: Buffalo
New York: Newburgh, Kingston
New York: Rochester
North Carolina: Charlotte
North Carolina: Halifax, Edgecombe, Wilson Counties*
North Carolina: Robeson County*
Ohio: Akron
Ohio: Columbus
Ohio: Greater Portsmouth*
Oklahoma: Choctaw, McCurtain Counties*
Oklahoma: Oklahoma City
Oregon: Josephine*
Oregon: Portland
Pennsylvania: Harrisburg
Pennsylvania: Lock Haven*
Pennsylvania: Pittsburgh
Rhode Island: Providence
South Carolina: Charleston
South Carolina: Williamsburg County*
South Dakota: Beadle, Spink Counties*
Tennessee: Fayette, Haywood Counties*
Tennessee: Memphis
Tennessee: Nashville
Tennessee/Kentucky: Scott, McCreary Counties*
Texas: Dallas
Texas: El Paso
Texas: San Antonio
Texas: Waco
Utah: Ogden
Vermont: Burlington
Virginia: Accomack*
Virginia: Norfolk
Washington: Lower Yakima*
Washington: Seattle
Washington: Tacoma
West Virginia: West Central*
West Virginia: Huntington
West Virginia: McDowell*
Wisconsin: Milwaukee

*Denotes rural designee.

Enhanced Enterprise Communities (EEC)

California: Oakland
Massachusetts: Boston
Missouri/ Kansas: Kansas City, Kansas City
Texas: Houston

[FR Doc. 96–4061 Filed 2–22–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Final Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel

AGENCY: Department of Energy.

ACTION: Notice of Availability.

SUMMARY: The Department of Energy (DOE) and the Department of State have completed the final Environmental Impact Statement (EIS) on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel. The final EIS was prepared in compliance with requirements under the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality regulations implementing NEPA, 40 CFR Parts 1500–1508, and the DOE Implementing Procedures, 10 CFR Part 1021. The Department of State was a cooperating agency in preparing this EIS. The analyses demonstrate that the potential impacts on the environment, workers and the general public of implementing any of the alternative management approaches analyzed in the EIS would be small and within applicable Federal and state regulatory limits. The final EIS identifies the preferred alternative of the Departments of Energy and State for the management of foreign research reactor spent nuclear fuel.

DOE has completed general distribution of the document to interested Members of Congress, appropriate Federal agencies, the Governors of affected states, leaders of affected Indian tribes, interested local and state public officials, and organizations and persons who are known to have an interest in the subjects addressed in the final EIS. DOE has filed the final EIS with the Environmental Protection Agency (EPA), which is also publishing a Notice of Availability in today's **Federal Register**. The final EIS is also available to the public in DOE reading rooms and designated information locations, which are identified in this notice. DOE plans to issue a Record of Decision on the final EIS no sooner than thirty days after EPA publishes a Notice of Availability of the EIS in the **Federal Register**.

ADDRESSES: Requests for copies of the final EIS and for further information on the final EIS should be directed to the Center for Environmental Management Information, P.O. Box 23769, Washington, D.C. 20026–3769. Copies of the final EIS may also be obtained by following instructions given below under "Supplementary Information", or by calling 1–800–736–3282. Addresses of DOE Public Reading Rooms, and other locations where the final EIS will be available for public review, are listed below under **SUPPLEMENTARY INFORMATION.**

General information on the DOE NEPA process may be obtained from: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), United States Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0001. Ms. Borgstrom may be reached by phone at (202) 586–4600, or by leaving a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

DOE issued the draft Environmental Impact Statement on April 21, 1995. The draft analyzed environmental impacts and policy issues associated with the proposed adoption and implementation of a policy for management of spent nuclear fuel from foreign research reactors. The public comment period on the draft EIS ran from April 21, 1995 to July 20, 1995. During this period, DOE held 17 public meetings in 16 cities nationwide in order to obtain public comments on the draft EIS. The draft EIS was made available to the public by mailings to persons known to have expressed interest in reviewing the document, and by providing copies for public review at DOE Reading Rooms and other designated information locations. More than 1,250 commentors, including a broad spectrum of private citizens, organizations, local, state, and Federal officials, Native American Tribes, and public interest groups commented on the draft EIS. The public comments are contained in Volume 3 of the final EIS. DOE and the Department of State responses to those comments are also provided in Volume 3, as well as a description of the changes made to the final EIS in response to the comments on the draft.

The public comments on the draft EIS were considered both individually and collectively by the Department of State. Some comments resulted in modifications to the EIS. For other comments, DOE explained why a change to the EIS was not warranted. Most responses to such comments describe government policy, indicated that the comment refers to subjects beyond the scope of the EIS, explain the relationship of this EIS to other NEPA related documents, refer commentors to information in the EIS, answer technical questions, or further explain technical issues.

The final EIS evaluates the potential impacts on the environment, workers, and the public that could result from the proposed action, which is to adopt a policy to manage spent nuclear fuel from foreign research reactors to support United States nuclear weapons nonproliferation policy. The analyses demonstrate that the potential impacts on the environment, workers and the general public of implementing any of the alternative management approaches analyzed in the EIS would be small and within applicable Federal and state regulatory limits.

The goal of the proposed action is intended to reduce the risk of diversion of highly enriched uranium for use in nuclear weapons by reducing the amount of highly enriched uranium in international commerce. All the spent nuclear fuel under consideration contains uranium enriched in the United States, much of it highly enriched uranium. Highly enriched uranium can be used directly to make simple nuclear weapons.

The proposed action has three Management Alternatives:

Management Alternative 1. Under this alternative, foreign research reactor spent nuclear fuel which contains uranium enriched in the United States would be accepted and managed in the United States.

Management Alternative 2. This alternative consists of facilitating the management of foreign research reactor spent nuclear fuel overseas. This would require clear and binding agreements between the United States and one or more foreign governments to ensure compliance with United States nuclear weapons nonproliferation policy. Under this alternative there are two subalternatives: one is to provide in country assistance to foreign nations that are able to store spent nuclear fuel in their own countries, and the other is to provide assistance in reprocessing spent nuclear fuel overseas in facilities operated under international safeguards sufficient to satisfy United States nuclear weapons nonproliferation concerns.

Management Alternative 3. This alternative is a combination of the implementation components of both Management Alternatives. An example hybrid alternative is evaluated in the EIS and involves encouraging the reprocessing of as much foreign research reactor spent nuclear fuel as possible at Western European reprocessing facilities, and accepting the remainder of the foreign research reactor spent nuclear fuel for management in the United States in existing facilities at the Savannah River Site and at the Idaho National Engineering Laboratory.

No Action Alternative. In the No Action Alternative, the United States would neither accept foreign research reactor spent nuclear fuel nor provide technical assistance or financial incentives for overseas management. If no action were taken to adopt a policy to manage foreign research reactor spent nuclear fuel, no environmental impacts would occur in the United States. However, failure to accept spent nuclear fuel would increase the amount of highly enriched uranium available in civilian commerce.

Preferred Alternative

The preferred alternative is for the United States to accept and manage U.S.-enriched foreign research reactor spent nuclear fuel (slightly less than 20 metric tons) from forty-one countries. The spent fuel would be managed at the Savannah River Site in South Carolina (about 19 metric tons of aluminum-based spent fuel) and the Idaho National Engineering Laboratory (about 1 metric ton of non-aluminum-based spent fuel). Spent fuel currently stored or to be generated within a ten-year period would qualify for acceptance; however, shipments of spent fuel generated during this ten year period could occur for an additional three years. The preferred ports of entry are the military ports of the Charleston Naval Weapons Station, South Carolina, and the Concord Naval Weapons Station, California.

Availability of Copies of the Final EIS

The final EIS has been distributed to interested Federal, State, local agencies, and individuals throughout the country, and to libraries, local planning offices, and civic institutions in potentially affected areas. A complete copy of the final EIS and a list of reference documents may be reviewed at any of the public reading rooms and information locations listed below. Copies of the final EIS and the EIS Summary are available on request by calling DOE's Center for Environmental Management Information at 1–800–736–3282 (1–800–7–EM DATA).

The final EIS, including appendices, is approximately 4000 pages in length, and is separately bound into the following portions:

Summary of the EIS (80 pages)

Volume 1 (494 pages)

Chapter 1. Introduction
Chapter 2. Proposed Action and Alternatives
Chapter 3. The Affected Environment
Chapter 4. Policy Considerations and Environmental Impacts
Chapter 5. Applicable Laws, Regulations and Other Requirements
Chapter 6. List of Preparers
Chapter 7. Agencies Consulted
Chapter 8. References
Chapter 9. Glossary

Volume 2 (1111 pages)

Appendix A—Environmental Justice Analysis
Appendix B—Foreign Research Reactor Spent Nuclear Fuel Characteristics and Transportation Costs
Appendix C—Marine Transport and Associated Environmental Impacts
Appendix D—Selection and Evaluation of Potential Ports of Entry
Appendix E—Evaluation of Human Health Effects of Overland Transportation
Appendix F—Description and Impacts of Storage Technology Alternatives
Appendix G—Background Documents
Appendix H—General Provisions of Transportation Planning for the Shipments of Foreign Research Reactor Spent Nuclear Fuel

Volume 3 (2230 pages)

Public Comments and Department of Energy Responses
Part 1—Overview, Governments, and Native American Groups
Public Comments and Department of Energy Responses
Part 2—Organizations and Foreign Entities
Public Comments and Department of Energy Responses
Part 3a—Individuals (2.7–1 through 2.7–530)
Public Comments and Department of Energy Responses
Part 3b—Individuals (2.7–531 through 2.7–1080)
Public Comments and Department of Energy Responses
Part 4—Public Hearings

The 80-page EIS Summary is available for review for those who do not wish to examine the entire final EIS. When requesting copies of the final EIS, please indicate whether you wish to receive only the summary, or the entire final EIS.

DOE Public Reading Rooms

U.S. Department of Energy, Headquarters, Freedom of Information Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020
Monday–Friday: 9:00 a.m. to 4:00 p.m.

U.S. Department of Energy, Oakland Operations Office, Environmental Information Center, 1301 Clay Street, Room 700 North, Oakland, CA 94612, (510) 637–1762
Monday–Friday: 8:30 a.m. to 5:00 p.m.

U.S. Department of Energy, Rocky Flats Operations Office, Front Range Community College Library, 3645 W. 112th Avenue, Level B, Center or the Building, Westminster, CO 80030, (303) 469–4435
Monday–Tuesday: 10:30 a.m. to 6:30 p.m., Wednesday: 10:30 a.m. to 4:00 p.m., Thursday–Friday: 8:00 a.m. to 4:00 p.m.

U.S. Department of Energy, Idaho Operations Office, Public Reading Room, 1776 Science Center Drive, Idaho Falls, ID 83402, (208) 526–9162
Monday–Friday: 8:00 a.m. to 5:00 p.m.

U.S. Department of Energy, University of Illinois at Chicago Library, Public Reading Room, Government Documents Section, 801 South Morgan Street, Chicago, IL 60607, (312) 996–2738
Monday–Friday: 8:00 a.m. to 10:00 p.m., Saturday: 10:00 a.m. to 5:00 p.m.

U.S. Department of Energy, National Atomic Museum, Public Reading Room, 87117 Wyoming Boulevard, SE (Kirtland AFB), Albuquerque, NM 87185, (505) 845–4378
Monday–Friday 9:00 a.m. to 5:00 p.m.

U.S. Department of Energy, Nevada Operations Office, Public Reading Room, Coordination and Information Center, 3084 South Highland Drive, Las Vegas, NV 89106, (702) 295–0731
Monday–Friday: 7:00 a.m. to 4:00 p.m.

U.S. Department of Energy, Fernald Operations Office, Public Reading Room, Public Environmental Center, JANTER Building 10845, Hamilton-Cleves Highway, Harrison, OH 44503, (513) 738–0164
Monday and Thursday: 9:00 a.m. to 8:00 p.m., Tuesday, Wednesday, Friday: 9:00 a.m. to 4:30 p.m., Saturday: 9:00 a.m. to 1:00 p.m.

U.S. Department of Energy, Savannah River Operations Office, Public Reading Room, University of South Carolina—Aiken Campus, Grigg-Graniteville Library, 2nd Floor, 171 University Parkway, Aiken, SC 29801, (803) 641–3320
Monday–Thursday: 8:00 a.m. to 11:00 p.m., Friday: 8:00 a.m. to 5:00 p.m., Saturday: 10:00 a.m. to 5:00 p.m., Sunday: 2:00 p.m. to 11:00 p.m.

U.S. Department of Energy, Oak Ridge Operations Office, Public Reading Room, 55 Jefferson Avenue, Oak Ridge, TN 37831, (615) 576–1216
Monday–Friday: 8:00 a.m. to 11:30 a.m. and 12:30 p.m. to 5:00 p.m.

U.S. Department of Energy, Richland Operations Office, Public Reading Room, Washington State University Tri-Cities, 100 Sprout Road, Room 130W, Richland, WA 99352. (509) 376–8583
Monday–Friday: 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m.

Other Information Locations

Concord Branch Library, 2900 Salvio Street, Concord, CA 94519, (510) 646–5455
Monday and Thursday: 12:00 noon to 9:00 p.m., Tuesday–Wednesday: 10:00 a.m. to 6:00 p.m., Friday–Saturday: 1:00 p.m. to 5:00 p.m.

George A. Smathers Libraries, Library West, University of Florida Library, Room 241, P.O. Box 11701, Gainsville, FL 32611–7001, (904) 392–0367
Monday–Thursday: 8:00 a.m. to 9:30 p.m., Friday: 8:00 a.m. to 5:00 p.m., Saturday: closed; Sunday: 2:30 p.m. to 9:30 p.m. (Hours may vary during semester breaks)

Jacksonville Public Library, Documents Department, 122 North Ocean Street, Jacksonville, FL 32202, (904) 630–2665
Monday–Thursday: 10:00 a.m. to 8:00 p.m., Friday–Saturday: 10:00 a.m. to 6:00 p.m., Sunday: 1:00 p.m. to 5:00 p.m.

Atlanta Public Library, Government Documents Section, 1 Margaret Mitchell Square, Atlanta, GA 30303, (404) 730–1700
Monday: 9:00 a.m. to 6:00 p.m., Tuesday–Thursday: 9:00 a.m. to 8:00 p.m., Saturday: 10:00 a.m. to 5:00 p.m.

Reese Library, Augusta College, 2500 Walton Way, Augusta, GA 30904–2200, (706) 737–1744
School Hours: Monday–Thursday: 7:45 a.m. to 10:30 p.m., Friday: 7:45 a.m. to 5:00 p.m., Saturday: 9:00 a.m. to 5:00 p.m., Sunday: 1:30 p.m. to 9:30 p.m.
Summer Hours: Monday–Friday: 8:00 a.m. to 5:00 p.m.

Chatham-Effington-Liberty Regional Library, 2002 Bull Street, Savannah, GA 31401, (912) 234–5127,
Monday–Thursday: 9:00 a.m. to 9:00 p.m., Friday: 9:00 a.m. to 6:00 p.m., Saturday: 10:00 a.m. to 6:00 p.m.

Boise Public Library, Government Documents Section, 715 South Capitol Boulevard, Boise, ID 83702, (208) 384–4023
Monday, Friday: 10:00 a.m. to 6:00 p.m., Tuesday–Thursday: 10:00 a.m. to 9:00 p.m., Saturday: 1:00 p.m. to 5:00 p.m.

Idaho National Engineering Laboratory, Oversight Program Library, Idaho Department of Health & Welfare, 1410 North Hilton, Third Floor, Boise, ID 83706, (208) 334–0498
Monday–Friday: 8:00 a.m. to 5:00 p.m.

Idaho Falls Public Library, 457 Broadway, Idaho Falls, ID 83402, (208) 529–1462
Monday–Thursday: 8:00 a.m. to 7:00 p.m., Friday: 8:00 a.m. to 5:00 p.m., Saturday: 9:00 a.m. to 1:00 p.m.

Pocatello Public Library, 812 East Clark Street, Pocatello, ID 83201, (208) 232–1263
Monday–Thursday: 10:00 a.m. to 9:00 p.m., Friday–Saturday: 10:00 a.m. to 6:00 p.m.

Twin Falls Public Library, Reference Desk, 434 Second Street East, Twin Falls, ID 83301, (208) 733–2964
Monday–Thursday: 10:00 a.m. to 6:00 p.m., Friday: 10:00 a.m. to 5:00 p.m., Saturday: 12:00 noon to 5:00 p.m.

Amargosa Valley Community Library, HCRoute 69, Box 401–T, 829 Farm Road, Amargosa Valley, NV 89020, (702) 372–5340
Monday: 1:00 p.m. to 9:00 p.m., Tuesday–Friday: 9:00 a.m. to 5:00 p.m.

Carson City Public Library, 900 North Roop Street, Carson City, NV 89701, (702) 887–2244 or (702) 887–2245
Monday, Friday, and Saturday: 10:00 a.m. to 6:00 p.m., Tuesday–Thursday: 10:00 a.m. to 9:00 p.m.

Nye County Nuclear Waste Repository, Project Office, P.O. Box 1767, 475 St. Patrick Street, Tonopah, NV 89049, (702) 482–8183
Monday–Friday: 8:00 a.m. to Noon; 1:00 p.m. to 5:00 p.m.

Brunswick County Government Center, Mr. Wyman Yelton, City Manager, P.O. Box 249, 45 Court House Drive, NE, Bolivia, NC 28422, (910) 252–4331
Monday–Friday: 8:30 a.m. to 5:00 p.m.

Pembroke State University Library, 1 University Drive, Pembroke, NC 28372, (910) 521–6265
Monday–Thursday: 8:00 a.m. to 11:00 p.m., Friday: 8:00 a.m. to 5:00 p.m., Saturday: 10:00 a.m. to 5:00 p.m., Sunday: 2:00 p.m. to 10:00 p.m.

D.H. Hill Library, North Carolina State University, P.O. Box 7111, Raleigh, NC 27695–7111, (919) 515–3364
Monday–Thursday: 7:00 a.m. to 1:00 a.m., Friday: 7:00 a.m. to 9:30 p.m., Saturday: 9:30 a.m. to 6:30 p.m., Sunday: 1:00 p.m. to 1:00 a.m.

New Hanover County Puhlic Library, Attn: Daniel Horn, 201 Chestnut Street, Wilmington, NC 28401, (910) 341–4390
Monday–Thursday: 9:00 a.m. to 9:00 p.m., Friday: 9:00 a.m. to 6:00 p.m., Saturday: 9:00 a.m. to 5:00 p.m., Sunday: 1:00 p.m. to 5:00 p.m.

Brantford Price Millar Library, Portland State University, 934 S.W. Harrison, Portland, OR 97201, (503) 725–4617
Monday–Friday: 8:00 a.m. to 10:00 p.m., Saturday: 10:00 a.m. to 10:00 p.m., Sunday: 11:00 a.m. to 10:00 p.m.

Charleston County Main Library, 404 King Street, Charleston, SC 29403, (803) 723–1645
Monday–Thursday: 9:30 a.m. to 9:00 p.m., Friday–Saturday: 9:30 a.m. to 6:00 p.m., Sunday: 2:00 p.m. to 6:00 p.m.

South Carolina State Library, 1500 Senate Street, Columbia, SC 29201, (803) 734–8666
Monday–Friday: 8:15 a.m. to 5:30 p.m., Saturday: 9:00 to 1:00 p.m.

Berkeley County Library,100 Library Street, Monks Corner, SC 29461, (803) 722–3550
Monday and Wednesday–Friday: 8:30 a.m.–6:00 p.m., Tuesday: 8:30 a.m. to 8:30 p.m., Saturday: 9:00 a.m. to 5:00 p.m.

Otranto Regional Library, 2261 Otranto Road, North Charleston, SC 29418, (803) 572–4094
Monday–Thursday: 10:00 a.m.–8:00 p.m., Friday and Saturday: 10:00 a.m.–6:00 p.m., Sundays: 2:00 p.m.–5:00 p.m. (until Memorial Day)

Clinton Public Library, 118 South Hicks Street, Clinton, TN 37716, (615) 457–0519
Monday, Thursday: 10:00 a.m. to 8:00 p.m., Tuesday, Wednesday, Friday, Saturday: 10:00 a.m. to 5:00 p.m.

Lawson McGhee Public Library, 500 West Church Avenue, Knoxville, TN 37902, (615) 544–5750
Monday–Thursday: 9:00 a.m. to 8:30 p.m., Friday: 9:00 a.m. to 5:30 p.m., Saturday–Sunday: 1:00 p.m. to 5:00 p.m.
Memphis/Shelby County Public Library and Information Center, 1850 Peabody Avenue, Memphis, TN 38104, (901) 725–8800
Monday–Thursday: 9:00 a.m. to 9:00 p.m., Friday–Saturday: 9:00 a.m. to 6:00 p.m.,
Oak Ridge Public Library, Civic Center, Oak Ridge, TN 37830, (615) 482–8455
Monday–Thursday: 10:00 a.m. to 9:00 p.m., Friday: 10:00 a.m. to 6:00 p.m., Saturday: 9:00 a.m. to 6:00 p.m., Sunday: 2:00 p.m. to 6:00 p.m.
Rosenberg Library, Attn: Judy Young, 2310 Sealy Avenue, Galveston, TX 77550–2296, (409) 763–2526
Monday–Thursday: 9:00 a.m. to 9:00 p.m., Friday–Saturday: 9:00 a.m. to 6:00 p.m., Sunday: 1:00 p.m. to 5:00 p.m.
Houston Public Library, Attn: Social Sciences, 500 McKinney, Houston, TX 77002, (713) 247–2222
Monday–Friday: 9:00 a.m. to 9:00 p.m., Saturday: 9:00 a.m. to 6:00 p.m., Sunday: 2:00 p.m. to 6:00 p.m.
Hampton Public Library, 4207 Victoria Boulevard, Hampton, VA 23669, (804) 727–1154
Monday–Thursday: 9:00 a.m. to 9:00 p.m., Friday–Saturday: 9:00 a.m. to 5:00 p.m.
Newport News Public Library; Grissom Branch, 366 Deshazor Dr., Newport News, VA 23602, (804) 886–7896
Monday–Thursday: 9:00 a.m. to 9:00 p.m., Friday–Saturday: 9:00 a.m. to 6:00 p.m.
Kirn Library, 301 East City Hall Ave., Norfolk, VA 23510, (804) 441–2429
Monday–Thursday: 9:00 a.m. to 9:00 p.m., Friday: 9:00 a.m. to 5:30 p.m., Saturday: 9:00 a.m. to 5:00 p.m.
Portsmouth Public Library, Main Branch, 601 Court St., Portsmouth, VA 23704, (804) 393–8501
Monday–Thursday: 9:00 a.m to 9:00 p.m, Friday–Saturday. 9:00 a.m to 5:00 p.m.
Owen Science & Engineering Library, Washington State University, Pullman, WA 99164–3200, (509) 335–4181
School Hours: Monday–Thursday: 8:00 a.m. to 11:00 p.m., Friday: 8:00 a.m. to 9:00 p.m., Saturday: 12:00 noon to 9:00 p.m., Sunday: 12:00 noon to 11:00 p.m.
Summer Hours: Monday, Thursday: 7:30 a.m. to 11:00 p.m., Tuesday, Wednesday, Friday: 7:30 a.m. to 6:00 p.m., Saturday–Sunday: 12:00 noon to 6:00 p.m.
Seattle Public Library, 1000 Fourth Avenue, Seattle, WA 96104, (206) 386–4636
Monday–Thursday: 9:30 a.m. to 9:00 p.m.; Friday–Saturday: 9:30 a.m. to 6:00 p.m., Sunday: 1:00 p.m. to 5:00 p.m.
Suzzallo Library, SM25, University of Washington Libraries, University of Washington, Seattle, WA 98185, (206) 543–9158
Monday–Thursday: 7:30 a.m. to 12:00 midnight, Friday: 7:30 a.m. to 6:00 p.m., Saturday: 9:00 a.m. to 5:00 p.m., Sunday: 12:00 p.m. to 12:00 midnight
Foley Center, Gonzaga University, East 502 Boone Avenue, Spokane, WA 99258, (509) 328–4220, extension 3125
School Hours: Monday–Thursday: 8:00 a.m. to 12:00 midnight, Friday–Saturday: 8:00 a.m. to 9:00 p.m., Sunday: 11:00 a.m. to 12:00 midnight
Summer Hours: Monday–Friday: 8:00 a.m. to 9:00 p.m., Saturday: 10:00 a.m. to 6:00 p.m., Sunday: 1:00 p.m. to 7:00 p.m.
Pierce County Library, 300 512th Street, East Tacoma, WA 98446, (206) 536–6500
Monday–Friday: 8:00 a.m. to 5:00 p.m.
Tacoma Public Library, 1102 Tacoma Avenue South, Tacoma, WA 98402, (206) 591–5666
Monday–Thursday: 9:00 a.m. to 9:00 p.m., Friday–Saturday: 9:00 a.m. to 6:00 p.m.

Issued in Washington, DC on February 20, 1996.

Jill E. Lytle,

Deputy Assistant Secretary for Nuclear Materials and Facility Stabilization Environmental Management.

[FR Doc. 96–4205 Filed 2–21–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

Energy Research Financial Assistance Program Notice 96–11; Atmospheric Radiation Measurement (ARM) Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research, U.S. Department of Energy (DOE), hereby announces its interest in receiving applications to support the experimental and theoretical study of radiation and clouds in conjunction with the Atmospheric Radiation Measurement (ARM) Program as part of the U.S. Global Change Research Program (USGCRP). The purpose of the ARM Program is to improve the treatment of radiation and clouds in the models used to predict future climate, particularly the General Circulation Models (GCMs). This notice requests applications for grants to support:

(Category 1): Continuation and enhancement of activities previously funded by DOE under Energy Research Financial Assistance Grant Program Notice No. 91–9 published in the **Federal Register** March 8, 1991, and Notice No. 93–14 published in the **Federal Register** April 1, 1993.

(Category 2): The modeling of clouds and radiation including aerosol effects for use in General Circulation Models (GCMs) and related models. Analysis of ARM and other data for refining, supporting, and validating model development are key aspects of research sought in this category. These activities should be closely tied to the analysis and use of data from the current and planned facilities at the three Cloud and Radiation Testbed sites: the first is centered near Lamont, Oklahoma; the second will have instruments first on the Island of Manus, Papua, New Guinea, and later on other islands or buoys in the Tropical Western Pacific; and the third site in the North Slope of Alaska region.

(Category 3): The development of new analytic methods and derived data products which combine ARM data and, if appropriate, other data such as satellite data to support the efforts of ARM Science Team members. Of high current interest are new algorithms and procedures that can be automated for the processing of ARM data streams. Successful applications will involve algorithms that take advantage of current or projected ARM instrumentation, or which will provide insight into new data streams of high credibility and useability to the ARM Science Team.

(Category 4): The development of advanced instrumentation for high accuracy/precision radiometric observations and for profiling of all three phases of water in the atmosphere and lower stratosphere. Short wave radiometry is of particular present interest.

(Category 5): The use of ARM data to support activities in other programs with goals related to those of ARM through unfunded participation in the ARM Science Team.

DATES: Formal applications submitted in response to this notice must be received by 4:30 PM, EST, May 16, 1996, to permit timely consideration for award in fiscal year 1997.

ADDRESSES: Formal applications should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 96–11. This address also must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when handcarried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Patrick A. Crowley, Office of Health and Environmental Research, Environmental Sciences Division, ER–74, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone: (301) 903–3069, fax (301) 903–8519, or by Internet address, pat.crowley@oer.doe.gov.

SUPPLEMENTARY INFORMATION: One of the major scientific objectives of the Environmental Sciences Division (ESD) is to improve the performance of predictive models of the Earth's climate and to thereby make predictions of the response of the climate system to increasing concentrations of greenhouse gases. This program is one element of a major effort to improve the quality of current models and to support the development of sets of climate models capable of making regional prediction of climate and climate change. The major component of the ARM Program is an experimental testbed for the study of models of the terrestrial radiation field, properties of clouds, the full life cycle of clouds, and the incorporation of these process-level models into climate models. This testbed is referred to as the Cloud and Radiation Testbed (CART). The first ARM CART site began operation in calendar year 1992, with instruments spread over an area of approximately 60,000 sq. km., centered on Lamont, Oklahoma. The Tropical Western Pacific (TWP) site will consist initially of island-based suites of instrumentation focused on cloud and radiative properties in the tropical ocean environment. The first of the TWP Atmospheric Radiation and Clouds Stations (ARCS) will be operating by the end of calendar year 1996 on the island of Manus, Papua New Guinea, and the second on Nauru in 1997. Instrumentation more representative of the CART site in Oklahoma will be deployed to the vicinity of Point Barrow, on the North Slope of Alaska late in 1997 or early 1998.

To ensure that the program meets the broadest needs of the research community and the specific needs of the DOE, ESD, successful applicants will participate as ARM Science Team members along with selected scientists from other ESD programs that relate to the ARM Program. Costs for participation in ARM Science Team meetings and subcommittee meetings should be based on two trips of 1 week each to Washington, D.C., and two trips of 3 days each to Chicago, Illinois.

Successful applicants for continuation or enhancement of previously awarded grants, Category 1, will demonstrate (a) continued relevance of their work to the goals of the ARM Program; (b) the quality and relevance of work conducted under previous support to the goals of the ARM Program, including a listing of publications and presentations; and (c) relevant contribution to the development of the ARM program, particularly the design and development of CART facilities, as a result of previous funding. Applications should include a special section covering items (b) and (c) entitled "Accomplishments Under Previous Support."

Successful applicants for grants in support of Category 2 will demonstrate the role of their research in the improvement of GCMs and/or related models and delineate the path that their results will take to make those improvements. Successful applicants will be involved in one or more of three activities: (a) The development of models and parameterization of radiative transfer or cloud processes, including aerosol effects, or the testing of these models in GCMs or process-level models; (b) experimental studies at CART facilities to test elements of models and their performance or to obtain key laboratory data; or (c) the analysis of existing data, including field data and satellite data, to support model development or testing.

Successful applicants for participation in Category 3, the development of new analytic methods and derived data products, will demonstrate how the proposed efforts support the ARM Science Team members involved in the other categories of research. Applications in this area must recognize that the program has a developed infrastructure for data treatment and distribution. The support looked for in this area involves a deeper more sophisticated algorithmic approach than presently in use. The successful applications will accent a strong scientific approach to the problem of data fusion.

Because ARM is well into its intended life cycle, successful applicant for participation in the ARM instrument development program, Category 4, will meet either (1) immediate and near-term needs of the ARM Program for improved radiometric sensors, both broad-band and spectrally resolved or for instruments capable of high-precision radiometric calibration, or (2) immediate and near-term needs of the ARM Program for improved systems for the measurement of the spatial distribution of all three phases of water, with particular emphasis on vertical profiles. In each case the application should contain, in appropriate detail, a discussion of the accuracy and precision of the proposed measurement methodology as a function of wavelength or altitude respectively, and the relevance of the proposed measurements to test models of atmospheric radiative processes. It has been suggested that the data available from the array of instruments planned or in place in the program suffer from too little short wave data. Applications which address this concern in the near term are anticipated to be of high interest.

Successful applicants for participation in the adjunct ARM Science Team, Category 5, will apply ARM data to research programs of interest to DOE and related to ARM goals, but which are funded by other sources. While ARM data is available through the ARM Data Archive at Oak Ridge National Laboratory, ARM Science Team participation provides investigators the opportunity to receive tailored data products from the ARM Experiment Center at Pacific Northwest Laboratory and the opportunity to participate in the design of ARM facilities and experiments. While there will not be funds to support the research of applicants under this portion of this notice, some funds may be available to support the travel of successful applicants to participate in ARM Science Team activities as indicated below. Preference will be given to participants whose goals are related to the general goals of ARM outlined above; Global Energy and Water Experiment (GEWEX) and its associated programs; the study of aerosols and their effect on the radiative transfer, including visibility studies; and the transfer of UV–B radiation through the atmosphere.

The efforts proposed in support of all five categories should have as a focus the conduct of research using the CART facilities either in operation or being

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developed for ARM. Successful applicants will participate in the continuing development of the detailed experimental approaches for CART and guide the evolving development and acquisition of the experimental equipment.

It is anticipated that approximately $5,000,000 will be available for awards for the combined activity under Categories 1, 2, 3, and 4 above in fiscal year 1997, contingent upon availability of appropriate funds. Multiple year funding of awards is expected, also contingent upon availability of funds. The allocation of funds among the three categories above will depend on the number and quality of the applications received. It is anticipated that a substantial fraction of the funds will support continuation of existing research under Category 1 above. Typical ESD awards are $200,000 per year, but range from $50,000 to $600,000.

Information about development, submission, and the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Energy Research Financial Assistance Program. The Application Guide is available from the U.S. Department of Energy, Office of Health and Environmental Research, Environmental Sciences Division, ER–74, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone requests may be made by calling (301) 903–4902. Electronic access to ER's Financial Assistance Guide is possible via the Internet using the following e-mail address: http://www.er.doe.gov/

Collaborative applications are encouraged. Awards are anticipated to begin on or about November 1, 1996.

The technical portion of the application should not exceed twenty-five (25) doubled-spaced pages. For applicants under Category 4 above, the "Accomplishments Under Previous Support" section should not exceed ten (10) additional double-spaced pages. An abstract of less than 200 words must be included with the application. Lengthy appendices are discouraged.

Technical information on the ARM Program is available from the ARM Program Office at Pacific Northwest Laboratory, P.O. Box 999, Richland, WA 99352, telephone (509) 375–6964, or from the Office of Scientific and Technical Information, P.O. Box 62, Oak Ridge, TN 37831, telephone (615) 576–8401.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, D.C., on February 13, 1996.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 96–4143 Filed 2–22–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP96–185–000]

ANR Pipeline Company; Notice of Application

February 16, 1996.

Take notice that on February 12, 1996, ANR Pipeline Company ("ANR"), 500 Renaissance Center, Detroit, Michigan 48243, filed an abbreviated application ("Application") pursuant to Section 7(b) of the Natural Gas Act ("NGA"), as amended, for an order granting permission and approval to abandon by sale ("spinoff") to GPM Gas Corporation ("GPM") certain gathering facilities and a 15.1 mile pipeline segment which is currently functionalized as transmission, all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR has requested that the Commission issue an order to be effective July 1, 1996.

ANR states that it has entered into a Purchase and Sale Agreement (Agreement) wherein ANR has agreed, subject to necessary Commission authorizations, to sell the GPM certain of ANR's gathering facilities and the 15.1 mile segment of transmission pipeline. These facilities are comprised of five discrete areas in northwest Oklahoma: (i) Laverne; (ii) Lovedale; (iii) Woodward; (iv) Korfman; and (v) Weatherford. GPM, in turn, will assume all operations of these facilities and provide gathering services through them.

In addition, GPM has requested of ANR that ANR request the FERC to provide confidential treatment to the following information otherwise to have been included in the public filing of this application.

1. The price to be paid by GPM to ANR for the assets being abandoned and the terms relating to those payments, which are contained in the Agreement and in Exhibit Y to the abandonment application; and

2. The price and term for which GPM will provide gas gathering service to ANR as to gas ANR is obliged to purchase or otherwise controls for a period from the date of the abandonment and continuing for an agreed time beyond expiration of the "default contract" (the two year period following the abandonment and transfer), which is contained in exhibits to the Agreement (Schedule F, Tab 1).

With respect to its remaining southwest gathering facilities, in an application filed contemporaneously with this Application in Docket No. CP96–186–000, ANR states that it is proposing to: (1) Abandon such facilities by transfer or "spindown" to ANR Field Services Company; or (2) refunctionalize them to transmission. ANR states that due to the bulk and nature of the documents involved and the large service list in this case certain material has been omitted from certain of the filed copies and the service copies of the filing. ANR states that these materials will be available for public inspection at the following locations:

ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243, Contact: Bruce C. Hopper, Telephone: 313/496–2492

ANR Pipeline Company, 2000 M Street, N.W. #300, Washington, DC 20036, Contact: Jens Faaborg, Telephone: 202/331–4612

ANR Pipeline Company, Nine Greenway Plaza, Houston, Texas 77046, Contact: Steven R. Anderson, Telephone: 713/877–7625

GPM Gas Services Company, B. J. Miller, 210 Park Avenue #2500, Oklahoma City, OK 73102–5627, Telephone: 405/270–8192

Any person desiring to be heard or to make any protest with reference to said application should on or before March 8, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must filed a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

FR Doc. 96–4044 Filed 2–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–186–000]

ANR Pipeline Company; Notice of Application

February 16, 1996.

Take notice that on February 12, 1996, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, for authority (1) to abandon by transfer to ANR Field Services Company (ANR Field Services), its affiliate, certain certificated and non-certificated facilities and (2) to refunctionalize certain facilities as transmission facilities and for a finding that the facilities to be transferred to ANR Field Services will be non-jurisdictional, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that, historically, it purchased substantial natural gas supplies in its Southwest area (in Oklahoma, Texas, and Kansas). ANR also purchased production in Wyoming. To connect these supplies, ANR constructed extensive gathering systems into the producing areas of these states. ANR asserts that the location, extent, and configuration of these systems were specifically designed and operated to support the merchant function. Some of the gathering facilities constructed were contiguous and some were non-contiguous.

ANR indicates that as a result of Order No. 636 and unbundling, it no longer has a merchant function and does not desire to be a provider of gathering services in this region. Accordingly, ANR no longer has a need to own and operate its Southwest gathering facilities either to access system supply or provide gathering services. Therefore, ANR proposes to "spin down" certain of its Southwest Area facilities currently classified as gathering to ANR Field Services. ANR states that it has entered into a purchase and sale agreement with ANR Field Services whereby ANR Field Services will assume ownership and operation of transferred facilities and will provide gathering services. The agreement provides that the facilities will be sold at the net book value of the assets. The facilities proposed to be transferred include 530 miles of pipeline, 2,700 horsepower of compression and appurtenant facilities, and metering and/or recording equipment at 351 locations.

In conjunction with the proposed transfer, ANR also requests that the Commission make a finding that such facilities will be non-jurisdictional facilities and that the service to be provided through such facilities will not be subject to the Commission's jurisdiction. ANR asserts that the facilities proposed to be transferred are gathering facilities and exempt from Commission jurisdiction pursuant to Section 1(b) of the Natural Gas Act. In support of this assertion, ANR states that it has presented evidence that the facilities qualify as gathering facilities consistent with the Commission's Modified Primary Function Test.[1]

ANR also proposes to refunctionalize certain facilities which are presently classified for rate and accounting purposes as gathering facilities, but which ANR asserts should be classified as transmission under the Commission's Modified Primary Function Test.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 8, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4045 Filed 2–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–141–000]

CNG Transmission Corporation; Notice of Section 4 Filing

February 16, 1996.

Take notice that on February 9, 1996, CNG Transmission Corporation (CNG) tendered for filing, pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering service provided through specified uncertificated facilities which CNG will abandon by sale to Ashland Exploration, Inc. CNG states that no contract for transportation of service with CNG will be canceled or terminated because delivery of gas will occur further downstream of the current delivery points.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed no later than February 21, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

[1] Citing *Amerada Hess Corporation*, 52 FERC ¶61,268 (1990).

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4049 Filed 2–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–5–000]

OkTex Pipeline Company; Notice of Tariff Filing

February 16, 1996.

Take notice that on January 24, 1996, OkTex Pipeline Company (OkTex) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 38, with an effective date of January 24, 1996.

OkTex states that the filing is being made to modify page 38 of OkTex's tariff which reflect changes in corporate officers and their relationship with marketing affiliates.

OkTex states that a copy of the filing has been sent to all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4046 Filed 2–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–135–001]

Southern Natural Gas Company; Notice of Filing To Correct Pagination of Tariff Sheets

February 16, 1996.

Take notice that on February 14, 1996, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of February 1, 1996:

First Revised Sheet No. 16a
First Substitute Eighteenth Revised Sheet No. 30
First Substitute Second Revised Sheet No. 41a

Southern states that the revised tariff sheets are being filed in order to reflect changes in the pagination of the above sheets. Southern states that the text contained in the body of the tariff sheets has not been changed.

Southern states that copies of the filing were served upon all affected transportation customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4048 Filed 2–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER89–672–010, et al.]

Public Service Company of Indiana, Inc., et al.; Electric Rate and Corporate Regulation Filings

February 15, 1996.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of Indiana, Inc.

[Docket No. ER89–672–010]

Take notice that on January 17, 1996, Public Service Company of Indiana, Inc. filed certain information as required by the Commission's order issued on June 28, 1990, and pursuant to Section T of their Transmission Service Tariff. Copies of PSI's informational filing are on file with the Commission and are available for public inspection.

2. Vantus Energy Corporation

[Docket No. ER95–1614–003]

Take notice that on February 1, 1996, Vantus Energy Corporation filed a revision to its Rate Schedule FERC No. 1 as required by the Commission's December 13, 1995, order in Docket No. ER95–1625–000.

Comment date: February 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Tampa Electric Company

[Docket No. ER96–721–000]

Take notice that on February 9, 1996, Tampa Electric Company (Tampa Electric) amended its filing in this docket. Tampa Electric tendered an amendment to the power sales contract with Georgia Power (Georgia Power) and a service agreement with Georgia Power under Tampa Electric's point-to-point transmission service tariff.

Tampa Electric proposes that the contract, as amended, be made effective on March 1, 1996, and that the service agreement be made effective on July 19, 1996.

Copies of the filing have been served on Georgia Power and the Florida Public Service Commissions.

Comment date: February 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER96–1027–000]

Take notice that on February 6, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Companies), filed a Service Agreement between GPU and CENERGY, INC (CENERGY) dated January 5, 1996. This Service Agreement specifies that CENERGY has agreed to the rates, terms and conditions of the GPU Companies' Energy Transmission Service Tariff accepted by the Commission on September 28, 1995 in Docket No. ER95–7091–000 and designated as FERC Electric Tariff, Original Volume No. 3.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date February 6, 1996, for the Service Agreement. GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania and on CENERGY.

Comment date: February 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER96–1028–000]

Take notice that on February 6, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Companies), filed a Service Agreement between GPU and Citizens Lehman Power Sales (Citizens) dated January 5, 1996. This Service Agreement specifies that Citizens has agreed to the rates, terms and conditions of the GPU Companies' Energy Transmission Service Tariff accepted by the Commission on September 28, 1995 in Docket No. ER95–7091–000 and designated as FERC Electric Tariff, Original Volume No. 3.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date February 6, 1996, for the Service Agreement. GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania and on Citizens.

Comment date: February 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Illinois Power Company

[Docket No. ER96–1029–000]

Take notice that on February 7, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Koch Power Services Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of February 1, 1996.

Comment date: February 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Illinois Power Company

[Docket No. ER96–1030–000]

Take notice that on February 7, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Western Gas Resources Power Marketing, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of February 1, 1996.

Comment date: February 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER96–1031–000]

Take notice that on February 7, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Point-to-Point Transmission Service Tariff (the Tariff) entered into between Cinergy and Valero Power Services Company.

Comment date: February 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER96–1033–000]

Take notice that on February 7, 1996, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and Eastex Power Marketing, Inc. FPL requests an effective date of February 19, 1996.

Comment date: February 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER96–1034–000]

Take notice that on February 7, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement between NMPC and Noram Energy Services (Noram). This Service Agreement ., specifies that Noram has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and Noram to enter into separately scheduled transactions under which NMPC will sell to Noram capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of January 26, 1996. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Noram.

Comment date: February 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Power and Light Company

[Docket No. ER96–1035–000]

Take notice that on February 7, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing an Agreement dated January 31, 1996, establishing Coastal Electric Services Company as a customer under the terms of WP&L's Point-to-Point Transmission Tariff.

WP&L requests an effective date of January 31, 1996 and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: February 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Power Company

[Docket No. ER96–1036–000]

Take notice that on February 7, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Tennessee Valley Authority, Inc. (TVA). Duke states that the TSA sets out the transmission arrangements under which Duke will provide TVA non-firm transmission service under its Transmission Service Tariff.

Comment date: February 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Power Company

[Docket No. ER96–1037–000]

Take notice that on February 7, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly owned subsidiary, Nantahala Power and Light Company, and American Electric Power Service Corp. (AEP). Duke states that the TSA sets out the transmission arrangements under which Duke will provide AEP firm transmission service under its Transmission Service Tariff.

Comment date: February 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4118 Filed 2–22–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–194–001 and Docket No. CP96–027–000]

Northern Border Pipeline Company and Natural Gas Pipeline Company of America; Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Northern Border Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

February 16, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Northern Border Project.[1] These facilities total 500.7 miles of pipeline, 304,750 horsepower of compression, meter stations, and other appurtenant facilities. This EIS will be used by the Commission in its decision-making process to determine whether to approve the project.

We are asking a number of Federal agencies to indicate whether they wish to cooperate with us in the preparation of the EIS. These agencies are listed in appendix 1 and may choose to participate once they have evaluated each proposal relative to their agencies' responsibilities.[2]

Summary of the Proposed Project

Northern Border Pipeline Company (Northern Border) wants to expand the capacity of its existing facilities in Montana, North Dakota, South Dakota, Minnesota, and Iowa, and extend its system into Illinois, to transport up to an additional 1,226.3 million cubic feet per day (MMcf/d) of natural gas to two interstate pipeline companies and five local distribution companies. Northern Border requests Commission authorization, in Docket No. CP95–194–001, to construct and operate the following facilities needed to transport those volumes:

- 181.5 miles of 42- and 36-inch-diameter pipeline loop and appurtenant facilities in three segments in Montana, North Dakota, South Dakota, Minnesota, and Iowa;[3]
- 243.1 miles of new 36- and 30-inch-diameter pipeline extension and appurtenant facilities in Iowa and Illinois;
- eight new compressor stations with a total of 213,000 horsepower (hp) of compression in Montana, North Dakota, South Dakota, Minnesota, and Iowa;
- modifications at four existing compressor stations with a total of 80,000 hp of additional compression, and modifications at three existing compressor stations with no additional horsepower in Montana, North Dakota, South Dakota, and Minnesota; and
- nine new meter stations, modifications at one existing meter station, five new pig launcher/receivers, and two new side valves in Iowa and Illinois.

Northern Border also proposes to acquire land as sites for four future compressor stations in Iowa and Illinois. Northern Border has also indicated that new communication towers may be required for remote operation of some facilities, but has not identified potential sites for these towers.

Natural Gas Pipeline Company of America (Natural) wants to expand the capacity of its existing facilities in Iowa and Illinois to transport up to an additional 345 MMcf/d of natural gas to one interstate pipeline company and four local distribution companies. Natural requests Commission authorization, in Docket No. CP96–027–000, to construct and operate the following facilities needed to transport those volumes:

- 76.1 miles of 36-inch-diameter loop in two segments in Iowa and Illinois; and
- modifications at two existing compressor stations with a total of 11,750 hp of additional compression in Iowa and Illinois.

The general locations of the project facilities are shown in appendix 2. If you are interested in obtaining detailed maps of a specific portion of the project contact Laura Turner at the address below. A detailed listing of the facilities is in appendix 3.

Land Requirements for Construction

Pipelines

The proposed loops would be built adjacent to Northern Border's and Natural's existing pipelines, using as much of the existing rights-of-way as possible. Approximately 77 percent of Natural's proposed loops would be installed in a previously used pipeline trench within Natural's existing right-of-way.[4] Northern Border's proposed pipeline extension in Iowa and Illinois would be built on entirely new pipeline right-of-way, with approximately 25 percent of its route adjacent to or within other existing rights-of-way.

Northern Border and Natural would use rights-of-way ranging in width from 75 to 100 feet for standard pipeline construction. Additional temporary work space would generally be used where the pipelines would cross roads, railroads, streams, and rivers. An estimated 6,080 acres would be disturbed during pipeline construction. After construction, the disturbed area would be restored, and a permanent right-of-way (0 to 50 feet wide) in addition to existing rights-of-way would be maintained. Existing land uses on the remainder of the disturbed area, as well as most land uses on the permanent rights-of-way, such as agriculture and open areas, would be allowed to continue following construction.

Aboveground Facilities

Construction of new compressor stations would require up to approximately 20 acres each beyond the pipeline right-of-way. Modifications to existing compressor stations would require from 0 to 10 acres each within existing station boundaries.

Construction of new meter stations and launcher/receivers and the modification of an existing meter station would require from 1 to 3 acres each. Construction of new side valves would require up to 0.3 acre each within the pipeline right-of-way.

The EIS Process/Environmental Issues

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The EIS we are preparing will give the Commission the information to do that. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the

[1] Northern Border Pipeline Company's and Natural Gas Pipeline Company of America's applications were filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426 or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] A loop is a segment of pipeline that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the pipeline system.

[4] The old pipeline has been removed from the trench.

scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. We encourage State and local government representatives to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues under each topic that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by the applicants. These issues are listed below. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis.

- Geology and Soils.

—Seismology and soil liquefaction.
—Prime farmland soils.
—Erosion control.
—Topsoil/subsoil mixing.
—Soil compaction.
—Drain tiles and ditches.
—Revegetation of non-agricultural areas.

- Water Resources.

—204 crossings of waterbodies, canals, and drainages.
—16 crossings of waterbodies and canals 100 feet wide or greater, including: the Iowa, Cedar, Mississippi, Rock, Green, Fox, DuPage, and Des Plaines Rivers; Spring, Mud, Coal, and a tributary to Oat Creeks; and the Illinois and Michigan, and Hennepin Canals.
—Effect on groundwater and surface water supplies.

- Biological Resources.

—Effect on wildlife and fisheries habitat.
—Effect on federally listed endangered and threatened species, including Indiana bat, bald eagle, Higgin's eye pearly mussel, eastern prairie fringed orchid, and western prairie fringed orchid.
—Effect on wetland habitat.

- Cultural Resources.

—Effect on historic and prehistoric sites.
—Native American and tribal concerns.

- Socioeconomics

—Effect of construction workforce on surrounding areas.
—Impact on property values.

- Land Use.

—Effect on farming.
—Effect on residences and recreation areas.
—Effect on public lands, including areas owned or managed by the Bureau of Land Management; Luke's Wetland, the Maynes Grove Conservation Area, the Comet Trail, Blanchard Island, the Hennepin Canal Parkway State Park, and the Illinois and Michigan Canal State Park.
—Effect of above ground facilities on visual aesthetics.

- Air Quality and Noise.

—Effect on local air quality and noise environment as a result of construction.
—Effect on local and regional air quality and local noise environment and as a result of operation of new and additional compression.

- Reliability and Safety.

—Assessment of hazards associated with natural gas pipelines.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in a Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for these proceedings. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received.

Public Participation and Scoping Meetings

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426;
- Reference Docket No. CP95–194–001;
- Send a copy of your letter to: Ms. Laura Turner, EIS Project Manager, Federal Energy Regulatory Commission, 888 First Street, NE, Room 7M–02, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before April 1, 1996.

In addition to sending written comments, you may attend public scoping meetings. We will conduct public scoping meetings at three locations. Meetings will be held at the following times and locations:

Date	Time	Location
March 26, 1996	7:00 p.m.	Channahon, Illinois
March 27, 1996	7:00 p.m.	Princeton, Illinois
March 28, 1996	7:00 p.m.	Walcott, Iowa

The meeting in Channahon, Illinois will be held at the Channahon Junior High School. The meeting in Princeton, Illinois will be held at the Bureau County Metro Center. The meeting in Walcott, Iowa will be held at the American Legion.

The purpose of the scoping meetings is to obtain input from state and local governments and from the public. Federal agencies have formal channels for input into the Federal Process (including separate meetings where appropriate) on an interagency basis. Federal agencies are expected to transmit their comments directly to the FERC and not use the scoping meetings for this purpose.

Northern Border and Natural will be invited to present a description of their proposals at the scoping meetings. Interested groups and individuals are encouraged to attend the meetings and present oral comments on the environmental issues which they believe should be addressed in the Draft EIS. The more specific your comments,

the more useful they will be. Anyone who would like to make an oral presentation at the meeting should contact the EIS Project Manager identified at the end of this notice to have his or her name placed on the list of speakers. Priority will be given to those persons representing groups. A list will be available at the public meetings to allow for non-preregistered speakers to sign up. A transcript will be made of the meetings and comments will be used to help determine the scope of the Draft EIS.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 4).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late interventions. You do not need intervenor status to have your scoping comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested and/or potentially affected by the proposed project. It is also being sent to all potential right-of-way grantors to solicit focused comments regarding environmental considerations related to the proposed project.[5] As details of the project become established, representatives of Northern Border and Natural will directly contact landowners, communities, and public agencies concerning any other matters, including acquisition of permits and rights-of-way.

If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EISs, please return the Information Request (appendix 5). If you do not return the Information Request you will be taken off the mailing list.

Additional information about the proposed project is available from Ms. Laura Turner, EIS Project Manager, at (202) 208–0916.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4043 Filed 2–22–96; 8:45 am]

BILLING CODE 6717–01–M

[5] Natural has supplied a preliminary landowner list. This list is based on the ownership of the land containing the existing right-of-way. A supplemental mailing will be made, if necessary, after the route has been surveyed.

[Project No. 1988]

Pacific Gas and Electric Company; Notice of Extending Time To Comment on Draft EA

February 16, 1996.

The Federal Energy Regulatory Commission (FERC) issued a Draft Environmental Assessment (DEA) for relicensing the Hass-Kings Hydroelectric Project, FERC Project No. 1988, on November 30, 1995. This hydropower project is located on the North Fork of the Kings River near Fresno, California.

In response to a letter filed by the California Department of Fish and Game, and supported by other parties to the proceedings, FERC is extending the comment period on the DEA until March 1, 1996.

Anyone wishing to comment in writing on the DEA must do so no later than March 1, 1996. Comments should be addressed to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Reference should be clearly made to: Hass-Kings Hydroelectric Project (Project No. 1988).

For further information, please contact Frankie Green at (202) 501–7704.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4047 Filed 2–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP69–169–000, et al.]

Western Gas Interstate Company, et al. Natural Gas Certificate Filings

February 15, 1996.

Take notice that the following filings have been made with the Commission:

1. Western Gas Interstate Company

[Docket No. CP69–169–000]

Take notice that on February 6, 1996, Western Gas Interstate Company (Western) filed a request to discontinue the Presidential Permit granted to Western in Docket No. CP69–169–000.[1]

On March 20, 1969, the Commission authorized Western to construct and operate facilities, pursuant to Executive Order 10485, on the international boundary between Mexico and the United States in Dona Ana County, New Mexico. The authorized facilities included a 2-inch natural gas pipeline in Dona Ana County, New Mexico, commencing at a point of connection with El Paso Natural Gas Company's 4½-inch El Paso Brick Company pipeline and extending therefrom to a point on the United States-Mexico international boundary line, together with related metering facilities.

These facilities, however, were never constructed and the Presidential Permit was never activated. Accordingly, Western respectfully requests that the Commission discontinue the Presidential Permit.

Comment date: March 7, 1996, in accordance with Standard Paragraph F at the end of this notice.

2. Koch Gateway Pipeline Company

[Docket No. CP96–180–000]

Take notice that on February 8, 1996, Koch Gateway Pipeline Company (Koch) P.O. Box 1478, 600 Travis Street, Houston, Texas 77251–1478, filed in Docket No. CP96–180–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to operate a delivery tap, located in St. Charles Parish, Louisiana, as a certificated delivery point, under Koch's blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch states that it originally constructed the delivery tap pursuant to Section 311(a) of the Natural Gas Policy Act to be used for the delivery of gas to Louisiana Gas Service (LGS), a local distribution company pursuant to Subpart B of Part 284 of the Commission's Regulations. Koch states that it installed a 2-inch delivery tap and metering facilities on its Baton Rouge-New Orleans line in St. Charles Parish, Louisiana in order to facilitate timely deliveries to LGS who, in turn serves the St. Rose City Gate. Koch states that certification of the facilities will provide LGS with the additional flexibility of being able to use these facilities as a delivery point under LGS's blanket transportation agreement with Koch.

Koch further states that it provides interruptible Section 311 transportation service to LGS pursuant to Koch's ITS rate schedule. Koch indicates that once these facilities are certificated, Koch will also provide Rate Schedule NNSSCO transportation since LGS proposes to add this delivery point to its existing NNSSCO transportation agreement with Koch. Koch asserts that the volume delivered to this new point under the NNSSCO agreement will be within the certificated entitlement of that existing service. Additionally, Koch states that the estimated construction cost is $31,860 for which Koch will be reimbursed.

Comment date: April 1, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. K N Interstate Gas Transmission Co.

[Docket No. CP96–181–000]

Take notice that on February 9, 1996, K N Interstate Gas Transmission Co. (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP96–181–000 a request pursuant to Sections 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.212) for authorization to install and operate minor delivery tap facilities on its main transmission system in Colorado and Nebraska under a blanket certificate issued in Docket No. CP83–140–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N Interstate proposes to install and operate ten new delivery taps and appurtenant facilities in Washington County, Colorado and Buffalo, Dawson, Hall, Harlan, Phelps and Sheridan Counties, Nebraska. Eight taps will become new delivery points pursuant to an existing transportation agreement between K N Interstate and K N Energy Inc. (K N Energy) and will facilitate the delivery of natural gas to K N Energy for sale to new direct retail customers in Colorado and Nebraska. The other two taps will become delivery points under a new transportation service agreement between K N Interstate and Interenergy Corporation (Interenergy) and will facilitate the delivery of natural gas to Interenergy for sale to new direct retail customers in Nebraska. The gas volumes delivered at these new points will be within the current maximum transportation quantities for K N Energy and Interenergy. K N Interstate states that its existing FERC Gas Tariff does not prohibit additional delivery points and that there is sufficient capacity to accomplish deliveries without detriment or disadvantage to existing customers.

Comment date: April 1, 1996, in accordance with Standard Paragraph G at the end of this notice.

4. CNG Transmission Corporation

[Docket No. CP96–184–000]

Take notice that on February 12, 1996, CNG Transmission Corporation (CNGT), 445 West Main Street, Clarksburg, West Virginia 26301, filed an application with the Commission in Docket No. CP96–184–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by sale approximately 2.5 miles of two- and four-inch diameter pipeline in Burnside Township, Clearfield County, Pennsylvania, which was authorized in Docket No. CP80–293–000, all as more fully set forth in the application which is open to the public for inspection.

CNGT proposes to abandon by sale to its affiliate, CNG Producing Company (CNG Producing), Lines 2274, 2275, 2277, 2340, and a portion of 2269 at the net book value of $42,166. Since these five gathering lines connect wells to other lines owned by CNGT, CNGT also request that upon abandonment the subject lines would function as nonjurisdictional facilities owned by CNG Producing. CNGT states that the lines operate between 110–150 psig. CNGT also states that two other producers who have production located along these lines have consented to the proposed transfer to CNG Producing.

Comment date: March 7, 1996, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4117 Filed 2–22–96; 8:45 am]

BILLING CODE 6717–01–P

[1] The Presidential Permit granted to Western by the Commission was part of a four-part order, 41 FPC 385 (1969), approving applications concerning the exportation of natural gas from the United States to Mexico. The other three applications contained in the order concern currently operating facilities and are not subject to this request.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5429–5]

Agency Information Collection Activities Under OMB Review; Renewal of OMB No. 2070–0017

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that

the Information Collection Request (ICR) described below has been forwarded to the Office of Management and Budget (OMB) for an expedited review. As a result of the Government shutdown in December, the Office of Prevention, Pesticides and Toxic Substances (OPPTS) was unable to complete and forward a request to renew the approval of this Information Collection Request (ICR) in a timely manner. In order to minimize a lapse in OMB approval, and given the continuing nature of the ICR, as well as the absence of any issues, OPPTS is requesting an expedited review and approval for this ICR. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument. A **Federal Register** notice proposing this submission and seeking public comments on this ICR was published on September 29, 1995 (60 FR 50568). EPA did not receive any comments in response to that notice.

DATES: Comments must be submitted on or before March 24, 1996.

FOR FURTHER INFORMATION OR A COPY CALL:
Sandy Farmer at EPA, 202–260–2740, and refer to EPA ICR No. 1031.

SUPPLEMENTARY INFORMATION:

Title: TSCA Section 8(c) Health and Safety Data Reporting Rule (OMB Control No. 2070–0017, EPA ICR No. 1031). This is a request for extension of a currently approved information collection which expires on February 28, 1996.

Abstract: Section 8(c) of the Toxic Substances Control Act (TSCA) requires companies that manufacture, process, or distribute chemicals to maintain records of significant adverse reactions to health or the environment alleged to have been caused by such chemicals. Since section 8(c) includes no automatic reporting provision, EPA can obtain and use the information contained in company files only by inspecting those files or requiring reporting of records that relate to specific substances of concern. Therefore, under certain conditions, and using the provisions found in 40 CFR part 717, EPA may require companies to report such allegations to the Agency.

EPA uses such information on a case-specific basis to corroborate suspected adverse health or environmental effects of chemicals already under review by EPA. The information is also useful to identify trends of adverse effects across the industry that may not be apparent to any one chemical company.

Responses to the collection of information are mandatory (see 40 CFR part 717). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to range between 0.25 hours and 8.0 hours per response, depending upon the requirements that the collection places on each respondent. This estimate includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Respondents/Affected Entities: Those that manufacture, process, import or distribute in commerce chemical substances or mixtures.

Estimated No. Of Respondents: 7,397.

Estimated Total Annual Burden on Respondents: 30,287 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses. Please refer to EPA ICR No. 1031 and OMB Control No. 2070–0017 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: February 15, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–4145 Filed 2–22–96; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–5413–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 05, 1996 Through February 09, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–AFS–L65173–ID

Rating LO, Lower South Fork Salmon River Post-Fire Project, Fire-Killed and Imminently Dead Timber Harvesting, Implementation and COE Section 404 Permit Issuance, Payette National Forest, Mc Call Ranger District, Idaho and Valley Counties, ID.

Summary: EPA's abbreviated review revealed no concerns with the proposed project.

ERP No. D–AFS–L65247–AK

Rating EC2, Lab Bay Project Area Timber Harvest, Implementation, COE Section 404, EPA NPDES and Coast Guard Bridge Permits Issuance, Thorne Bay Ranger District, Ketchikan Administrative Area, Tongass National Forest, Prince of Wales Island, AK.

Summary: EPA expressed environmental concerns regarding the direct and cumulative impacts to water quality from construction and operation of a new LTF on the west side of Thorne Island, and the continued operation of LTFs existing. The Final EIS should address site specific bark accumulation and potential impacts to the marine environment.

ERP No. D–AFS–L65249–AK

Rating EO2, Northwest Baranof Timber Sale (s), Implementation, NPDES, Coast Guard Bridge, COE Section 10 and 404 Permits, Tongass National Forest, Sitka Ranger District, Baranof Island, AK.

Summary: EPA expressed environmental objections based on water quality impacts, especially to impaired waters and riparian areas. The final EIS should address effects to degraded waters, effects of timber harvest and road construction, the Fish and Wildlife Service dive survey information for LTF sites, and the effects of logging camp and LTF removal.

ERP No. D–AFS–L65250–ID

Rating LO, White Sand Planning Area Ecosystem Management Project, Implementation, Clearwater National Forest, Powell Ranger District, Idaho County, ID.

Summary: EPA's abbreviated review has revealed no concerns with the proposed project.

ERP No. D–AFS–L65252–OR

Rating EC2, Hoodoo Master Plan, Plan of Operation Approval and Special-Use-Permit Issuance, Willamette National Forest, McKenzie Ranger District, Linn County, OR.

Summary: EPA expressed environmental concerns over potential impacts to air and water from land-use under the proposed expansion. The final EIS needs to further characterize these impacts and appropriate mitigation measures.

ERP No. D–BLM–L60102–OR

Rating EC2, Tucker Hill Perlite Quarry Project, Implementation, Mining Plan of Operation, Approval, Town of Lakeview, Lake County, OR.

Summary: EPA expressed environmental concerns regarding tribal issues and noise impacts to this site and suggests additional mitigation measures be included in the final EIS.

ERP No. D–COE–K36114–CA

Rating EC2, Magpie Creek Channel Section 205 Flood Control Investigation Project, Improvements, Implementation, National Economic Development Plan and Levee Plan, NPDES Permit Issuance, McCellan Air Force Base, City of Sacramento, Sacramento County, CA.

Summary: EPA expressed environmental concerns over the lack of information regarding potential non-structural alternatives to increase the level of flood protection. EPA also requested additional discussion or data in the final EIS regarding air quality impacts and mitigation.

ERP No. D–UAF–C11011–NY

Rating EC2, Griffis Air Force Base (AFB) Disposal and Reuse, Implementation, Oneida County, NY.

Summary: EPA expressed environmental concerns regarding the reuse plans for Installation Restoration Program sites and potential contamination issues. EPA also noted discrepancies regarding the extent of wetlands at the site. Accordingly, additional information must be provided in the final EIS.

ERP No. DS–FHW–E40010–SC

Rating EO2, Mark Clark Expressway Facility Construction, Sam Rittenberg Boulevard (SC–7) to Folly Road (SC–171) crossing the Stono River, Updated Information concerning the last portion of the Charleston Inner Belt Freeway, Funding and COE Sections 404 and 10 Permits and US Coast Guard Bridge Permit Issuance, Chareston County, SC.

Summary: EPA expressed environmental objection due to the potential estuarine and freshwater wetland impact. EPA requested that the final EIS contain an acceptable mitigation plan.

Final EISs

ERP No. F–AFS–L65237–ID

Thunderbolt Wildfire Recovery Project, Implementation, Boise and Payette National Forests, Valley County, ID.

Summary: EPA continues to find the proposed project environmentally unsatisfactory due to the potential adverse impacts to water quality and the spawning and rearing habitat for the federally endangered Snake River spring/summer Chinook salmon in the South Fork Salmon river. EPA will continue to work with the USFS and follow the results of any monitoring efforts.

ERP No. F–DOE–L05212–WA

Columbia Wind Farm #1 Project, Construction and Operation of a 25 Megawatt (MW) Wind Power Project in the Columbia Hills Area, Conditional-Use-Permit, NPDES Permit and COE Section 404 Permit, Klickitat County, WA.

Summary: EPA had no comment to the proposed action. Review of the Final EIS was not deemed necessary.

ERP No. F–FHW–B40065–RI

Quonset Point/Davisville Industrial Park Highway Access Improvement, RI–4 Freeway between North Kingstown and East Greenwich, Funding, Kent and Washington Counties, RI.

Summary: EPA expressed concern regarding longterm maintenance of stormwater management structures and water quality monitoring.

ERP No. F–FHW–L40185–WA

WA–520 Corridor Improvements, Construction and Reconstruction, between 104th Avenue N.E. and West Lake Sammamish Parkway (Formerly WA–901), Funding and COE Section 404 Permit, the Cities of Bellevue and Redmond, King County, WA.

Summary: EPA had no objection to the preferred alternative as described in the EIS.

Dated: February 20, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–4153 Filed 2–22–96; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5413–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed February 12, 1996 Through February 16, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960076, Draft EIS, NPS, CA, Manzanar National Historic Site (NHS), General Management Plan, Implementation, Inyo County, CA, Due: April 23, 1996, Contact: Dan Olson (415) 744–3968.

EIS No. 960077, Draft EIS, COE, NC, Cape Fear-Northeast Cape Fear Rivers Feasibility Study for Deepening of the Wilmington Harbor Ship Channel, Navigation Improvement, New Hanover and Brunswick Counties, NC, Due: April 08, 1996, Contact: Frank Yelverton (910) 251–4640.

EIS No. 960078, Final EIS, AFS, ID, Secesh River Subdivision Access Roads, Implementation, Special-Use-Permit, Idaho County, ID, Due: March 25, 1996, Contact: Randy Swick (208) 634–0400.

EIS No. 960079, Draft EIS, BLM, NM, Copper Flat Mining Project, Construction and Operation of New Ore Facilities, Hillsboro Mining District, Sierra County, NM, Due: April 15, 1996, Contact: Russell Jentgen (505) 525–4351.

EIS No. 960080, Draft EIS, AFS, OR, ID, Hells Canyon National Recreation Area (HCNRA), Comprehensive Management Plan, Implementation, Wallowa-Whitman National Forest, Nez Perce and Payette National Forests, Bake and Wallowa Counties, OR and Nez Perce and Adam Counties, ID, Due: May 23, 1996, Contact: Kurt Wiedenmann (541) 523–1296.

EIS No. 960081, Final EIS, AFS, WA, First Creek Basin Restoration Project, Implementation, Wenatchee National Forest, Chelan Ranger District, Chelan County, WA, Due: March 25, 1996, Contact: John Lampereur (509) 682–2576.

EIS No. 960082, Final EIS, BLM, MT, WY, Express Crude Oil Pipeline Project, Construction, Operation and Maintenance, Issuance of Right-of-

Way Grant, Hill, Chouteau, Fergus, Judith Basin, Wheatland, Golden Valley, Stillwater and Carbon Counties, MT and Bighorn, Washakies, Hot Springs, Freemont and Watrona Counties, WY, Due: March 25, 1996, Contact: Don Oggard (307) 347–9871.

EIS No. 960083, Draft Supplement, COE, NC, Wilmington Harbor Channel Widening and Navigation Improvement, Updated Information, Cape Fear River, Port of Wilmington, New Hanover and Brunswick Counties, NC, Due: April 08, 1996, Contact: Hugh Heine (910) 251–4070.

EIS No. 960084, Final EIS, UAF, MI, K. I. Sawyer Air Force Base (AFB) Disposal and Reuse, Implementation, Marquette County, MI, Due: March 25, 1996, Contact: William Myers (210) 536–5630.

EIS No. 960085, Final EIS, UAF, CA, March Air Force Base, Disposal of Portions, NPDES and COE Section 404 Permits, Riverside County, CA, Due: March 25, 1996, Contact: Jonathan D. Farthing (210) 536–3668.

EIS No. 960086, Final EIS, DOE, Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel, Implementation, United States and Abroad, Due: March 25, 1996, Contact: Charles Head 1–(800)–736–3282.

Dated: February 20, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–4152 Filed 2–22–96; 8:45 am]

BILLING CODE 6560–50–U

[FRL 5428–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740.

Please refer to the EPA ICR No..

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 0940.12; Air Quality Networks, Monitoring and Quality Precision; was approved 12/07/95; OMB No. 2060–0084; expires 03/31/96.

EPA ICR No. 1761.01; Fleet Average Non-Methane Organic Gases (NMOG) Credit Program; was approved 12/07/95; OMB No. 2060–0345; expires 12/31/98.

EPA ICR No. 1488.03; Superfund Site Evaluation and Hazard Ranking System; was approved 07/31/95, expires 07/31/98.

EPA ICR No. 1619.02; EPA Indoor Environmental Quality Questionnaire; was approved 01/31/96; OMB No. 2060–0244; expires 01/31/99.

EPA ICR No. 1617.02; Servicing of Motor Vehicle Air Conditioners; was approved 01/31/96; OMB No. 2060–0247; expires 01/31/99.

EPA ICR No. 1506.06; Standards of Performance for New Stationary Sources: Municipal Waste Combustors; was approved 01/31/96; OMB No. 2060–0210; expires 01/31/99.

EPA ICR No. 1633.09; Acid Rain Program under the Clean Air Act Amendments of 1990, Title IV; was approved 01/31/96; OMB No. 2060–0258; expires 01/31/99.

OMB Disapprovals

EPA ICR 1745.01; Criteria for Classification of Solid Waste Disposal Facilities and Practices—40 CFR Part 257; was disapproved 07/31/95.

EPA ICR No. 1766.01; Hazardous Waste Identification Rule for Process Waste (Proposal); was disapproved 01/31/96.

Correction

EPA ICR No. 1170.05; Collection of Economic and Program Support Data; was approved 11/02/95; OMB No. 2070–0034; expires 08/31/98. In the November 15, 1995 **Federal Register**, the OMB No. 2040–0034 was incorrect.

Dated: February 15, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–4035 Filed 2–22–96; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission; Comments Requested

February 20, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 23, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: None.

Title: Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force.

Form No.: None.

Type of Review: New Collection.

Respondents: Businesses or other for Profit.

Number of Respondents: 60.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 60 Hours.

Needs and Uses: In the Declaratory Ruling issued in RM–8181, the Commission requires that local exchange carriers, among other things, notify their customers of the change in status of inmate-only customer premises equipment (CPE). This is necessry to ensure that correctional facility customers are aware of change in regulatory status of inmate-only payphones.

OMB Approval Number: 3060–0096.

Title: Application for Ship Radio Station License.

Form No.: FCC 506.

Type of Review: Revision to an existing collection.

Respondents: Individuals or households; Businesses or other for-profit; State, Local or Tribal Government; Non-profit institutions.

Number of Respondents: 106,192.

Estimated Time Per Response: 22 minutes.

Total Annual Burden: 38,653 hours.

Needs and Uses: FCC Rules require that applicants file the FCC 506 to apply for a new or modified ship radio station license. The form can also be used to renew a station license. The FCC 506A is used by the applicant as a temporary operating authority until the ship radio station license is received.

This form is required by the Communications Act of 1934, as amended; International Treaties and FCC Rules 47 CFR Parts 1.922, 1.925 and 80.19.

Editorial changes will be made to the instructions to include the mailing location for feeable applications and the addition of the toll free 800 number for the Consumer Assistance Branch in Gettysburg, PA. Item 24 of FCC 506 will be revised to collect the length of ship in meters in lieu of feet. Item 27 will be deleted and the drug certification made part of the certification text. These revisions will not increase the burden time for application completion.

OMB Approval Number: 3060–0532.

Title: Scanning Receiver Compliance Exhibit, 2.975(a)(8), 2.1033(b)(12).

Form No.: None.

Type of Review: Extension of existing collection.

Respondents: Businesses or other for-profit; Small businesses or organizations.

Number of Respondents: 40.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 40 hours.

Needs and Uses: An exhibit accompanying a Form 731 Application for Equipment Authorization is required, in order to determine the compliance of applicants requesting authorization to market scanning receivers and frequency converters with Congressionally mandated regulations. These regulations prohibit the marketing of radio scanners capable of intercepting, or being modified to intercept, cellular telephone conversations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–4228 Filed 2–22–96; 8:45 am]

BILLING CODE 6712–01–P

Notice of Public Information Collections Submitted to OMB for Review and Approval

February 16, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c)ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 25, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0204.

Title: Section 90.38(b) Physically handicapped "Special Eligibility Showing".

Form No.: N/A.

Type of Review: Reinstatement of a previously approved collection.

Respondents: Individuals or households.

Number of Respondents: 20.

Estimated Time Per Response: 5 minutes.

Total Annual Burden: 1 hour.

Total Annualized Cost per respondent: The costs for this collection is for a physician to the required certification. The estimated costs is $50 per respondent.

Needs and Uses: Section 90.38(b) provides that persons claiming eligibility in the Special Emergency Radio Service on the basis of being physically handicapped must present a physician's statement indicating that they are handicapped. Submission of this information is necessary to ensure that frequencies are reserved for licensing to handicapped individuals. Commission personnel use the data to determine applicant eligibility.

OMB Approval No.: 3060–0020.

Title: Application for Ground Station Authorization in the Aviation Services.

Form No.: FCC 406.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit; Small businesses or organizations; Individuals or households; State or Local Governments.

Number of Respondents: 1,600.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 1,600 hours.

Total Annualized Cost per respondent: The costs for renewal applications is $85; the costs for new applications is $100.

Needs and Uses: FCC Rules require the collection of this information on new, modifications, renewal with modifications and assignments of Ground Station Authorizations. Data is used to update the existing database and make efficient use of the frequency spectrum. Data is also used by the Commission for enforcement and interference resolution. The data collected is required by the Communications Act of 1934, as amended; International Treaties and FCC Rules 47 CFR 1.922, 1.924, 87.21 and 87.31. The Commission is revising the form to collect only metric measurement in lieu of English measurements and to add a space for the applicant to provide a FAX number. The number of responses and estimated burden remains unchanged.

OMB Approval Number: None.

Title: Past Performance Evaluation (in compliance with the Federal Acquisitions Regulations (FAR)).

Form No.: N/A.

Type of Review: Emergency Submission for a New Collection.

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Respondents: Individuals or households, business or other for-profit;small businesses or organizations, federal government, and State, local or Tribal government.

Number of Respondents: 50.

Estimated Time Per Response: 15 minutes (.25 hours per response).

Total Annual Burden: 125 hours total annual burden.

Needs and Uses: The information required by the FAR will be used by the Commission to evaluate past performance of potential offerors for various government contracts. The evaluation information will be used for determining responsibility and as a comparison of which offeror provides the best value for the Government. The Commission will focus on information that demonstrates quality of performance relative to the size and complexity of the procurement under consideration. The Commission requested and received OMB clearance for this collection on February 12, 1996.

OMB Approval No.: 3060–0329.

Title: Equipment Authorization - Verification (47 CFR 2.955).

Form No.: N/A.

Type of Review: Reinstatement of previously approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 5,655.

Estimated Time Per Response: 18 hours.

Total Annual Burden: 101,790.

Total Annualized Cost per respondent: The average costs per respondent for testing equipment to determine performance compliance is $4,000 Approximately 5% of the costs ($200) of the cost is attributable to the information collection.

Needs and Uses: The Commission rules require verification of compliance to established technical standards for certain Part 15 and 18 devices. Technical data is gathered and retained by the equipment manufactures in order to verify compliance with these regulations. The information may be used to determine that the equipment marketed complies with the applicable Commission rules and that the operation of the equipment is consistent with the initially documented test results. The information is essential to controlling potential interference to radio communications.

OMB Approval No.: 3060–0398.

Title: Equipment Authorization Measurement Standards (47 CFR 2.948, 15.117(g)(2), 15.117(g)(3).

Form No.: N/A.

Type of Review: Reinstatement of previously approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 420.

Estimated Time Per Response: 27.5 hours.

Total Annual Burden: 9,350 hours.

Needs and Uses: Certain measurement standards and practices are required by the Commission in order to establish uniformity between the technical standards for various non-licensed operators. Specifically Part 2 of the rules requires a filing of a test site description by individuals performing equipment testing in support of a request for equipment authorization. The information is used by the Commission to ensure that data accompanying all requests for equipment authorization are valid, and that proper test procedures were used. Testing ensures that potential interference to radio communication is controlled.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–4098 Filed 2–22–96; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1102–DR]

Idaho; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Idaho (FEMA–1102–DR), dated February 11, 1996, and related determinations.

EFFECTIVE DATE: February 13, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Idaho, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 11, 1996:

Idaho County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Rsponse and Recovery Directorate.

[FR Doc. 96–4139 Filed 2–22–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1102–DR]

Idaho; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Idaho (FEMA–1102–DR), dated February 11, 1996, and related determinations.

EFFECTIVE DATE: February 11, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 11, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Idaho, resulting from severe storms and flooding on February 6, 1996, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Idaho.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation Grant Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs. You may also provide direct Federal assistance, if warranted at 100 percent Federal funding for the first 72 hours following declaration.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Douglas Gore of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Idaho to have been affected adversely by this declared major disaster:

Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties and the Nez Perce Reservation for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–4138 Filed 2–22–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1099–DR]

Oregon; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oregon (FEMA–1099–DR), dated February 9, 1996, and related determinations.

EFFECTIVE DATE: February 12, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is changed to read as follows: February 4, 1996, and continuing.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–4129 Filed 2–22–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1099–DR]

Oregon; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oregon, (FEMA–1099–DR), dated February 9, 1996, and related determinations.

EFFECTIVE DATE: February 12, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oregon, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1996:

Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, and Yamhill Counties for Public Assistance and Hazard Mitigation (already designated for Individual Assistance)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–4127 Filed 2–22–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1099–DR]

Oregon; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oregon, (FEMA–1099–DR), dated February 9, 1996, and related determinations.

EFFECTIVE DATE: February 14, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oregon, is hereby amended to include Public Assistance and Hazard Mitigation for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1996:

Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, and Yamhill Counties for Public Assistance and Hazard Mitigation (already designated for Individual Assistance)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–4127 Filed 2–22–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1099–DR]

Oregon; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oregon (FEMA–1099–DR), dated February 9, 1996, and related determinations.

EFFECTIVE DATE: February 9, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 9, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Oregon, resulting from high winds, severe storms and flooding on January 26, 1996, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Oregon.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance and Hazard Mitigation Assistance in the designated areas. I further authorize you to provide direct Federal assistance for the first 72 hours at 100 percent Federal funding, should you consider it warranted.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Richard A. Buck of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine that following areas of the State of Oregon to have been

affected adversely by this declared major disaster:

Benton, Clackamas, Clatsop, Columbia, Hood River, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Sherman, Tillamook, Umatilla, Union, Wasco and Yamhill Counties and the Warm Springs Reservation for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–4126 Filed 2–22–96; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1093–DR]

Pennsylvania; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania, (FEMA–1093–DR) dated January 21, 1996, and related determinations.

EFFECTIVE DATE: February 13, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Pennsylvania, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 21, 1996:

Beaver, Cambria, Lancaster, and Warren Counties for Public Assistance (already designated for Individual Assistance and Hazard Mitigation)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–4135 Filed 2–22–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1101–DR]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–1101–DR), dated February 13, 1996, and related determinations.

EFFECTIVE DATE: February 13, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 13, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Vermont, resulting from ice jams and flooding beginning on January 19, 1996, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Individual Assistance may be added at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alma Armstrong of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Vermont to have been affected adversely by this declared major disaster:

Addison, Bennington, Chittenden, Franklin, Lamoille, Orange, Orleans, Rutland, Washington, Windham, and Windsor Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–4137 Filed 2–22–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1098–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1098–DR) dated January 27, 1996, and related determinations.

EFFECTIVE DATE: February 9, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 27, 1996:

Highland County for Individual Assistance (already designated for Public Assistance and Hazard Mitigation);

Warren County and the Cities of Buena Vista and Harrisonburg for Public Assistance (already designated for Individual Assistance and Hazard Mitigation); and

Fauquier and Greene Counties and the City of Clifton Forge for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Craig Wingo,

Division Director, Infrastructure Support Division.

[FR Doc. 96–4130 Filed 2–22–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1100–DR]

Washington; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington (FEMA–1100–DR), dated February 9, 1996, and related determinations.

EFFECTIVE DATE: February 12, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Washington, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1996:

Adams, Benton, Grays Harbor, King, Snohomish, and Wahkiakum Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–4134 Filed 2–22–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1100–DR]

Washington; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington (FEMA–1100–DR), dated February 9, 1996, and related determinations.

EFFECTIVE DATE: February 14, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Washington, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1996:

The Yakima Indian Reservation for Individual Assistance, Public Assistance, and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–4133 Filed 2–22–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1100–DR]

Washington; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington, (FEMA–1100–DR), dated February 9, 1996, and related determinations.

EFFECTIVE DATE: February 13, 1996

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Washington, is hereby amended to include Public Assistance and Hazard Mitigation for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1996:

Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Grays Harbor, King, Kittitas, Klickitat, Lewis, Pierce, Skamania, Snohomish, Thurston, Wahkiakum, Walla Walla, Whitman, Yakima for Public Assistance and Hazard Mitigation (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–4132 Filed 2–22–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1100–DR]

Washington; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA–1100–DR), dated February 9, 1996, and related determinations.

EFFECTIVE DATE: February 9, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 9, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Washington, resulting from high winds, severe storms and flooding on January 26, 1996 and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance and Hazard Mitigation Assistance in the designated areas Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert C. Freitag of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Washington to have been affected adversely by this declared major disaster:

Asotin, Clark, Columbia, Cowlitz, Kittitas, Klickitat, Lewis, Pierce, Skamania, Thurston, Walla Walla, Whitman and Yakima Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–4131 Filed 2–22–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1096–DR]

West Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia, (FEMA–1096–DR), dated

January 25, 1996, and related determinations.

EFFECTIVE DATE: February 14, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of West Virginia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 25, 1996:

Raleigh County for Individual Assistance and Hazard Mitigation; and
Mason County for Public Assistance (already designated for Individual Assistance and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–4136 Filed 2–22–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Dresdner Bank AG; Notice to Engage in Certain Nonbanking Activities

Dresdner Bank AG, Frankfurt, Germany (Dresdner), has provided notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to acquire 100 percent of the voting interests in RCM Capital Management, California Limited Partnership (RCM Management), and RCM Capital Trust Company (RCM Trust), both of San Francisco, California, and thereby engage in the following nonbanking activities: providing investment and financial advisory services pursuant to 12 CFR 225.25(b)(4); performing functions or activities that may be performed by a trust company pursuant to 12 CFR 225.25(b)(3); and providing certain administrative services to investment companies. These activities will be conducted worldwide.

The Board previously has determined that these activities are closely related to banking. See 12 CFR 225.25(b)(3), and (4); Mellon Bank Corporation, 79 Fed. Res. Bull. 626 (1993) (providing administrative and other services to investment companies); Barclays PLC, 82 Fed. Res. Bull. 158 (1996) (providing advisory and administrative services to proprietary mutual funds). Dresdner would engage in these activities in accordance with the limitations and conditions established by the Board's regulations and orders. Dresdner also has proposed that RCM Management be permitted to purchase for its fiduciary accounts shares of investment companies that are advised and administered by RCM Management. The Board previously has issued proposed amendments to its interpretation regarding investment advisory activities (12 CFR 225.125(g)) that would permit such purchases, under certain circumstances. *See* 59 FR 67554 (December 30, 1994).

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Dresdner "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8). Dresdner believes that the proposal would produce public benefits that outweigh any potential adverse effects. In particular, Dresdner maintains that the proposal would not materially reduce competition in the relevant markets and would enable Dresdner to offer its customers a broader range of products. Dresdner also maintains that its proposal would not result in any adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act. Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than March 8, 1996. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, February 16, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–4051 Filed 2–22–96; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has given notice under § 225.23(a)(2) or (e) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (e)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding this application must be received not later than March 7, 1996.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire Norwest Investment Services, Inc., Minneapolis, Minnesota, through its subsidiary, Victoria Securities Company, Victoria, Texas, and thereby engage in securities brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 16, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–4052 Filed 2–22–96; 8:45 am]

BILLING CODE 6210–01–F

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for 14 March 1996 at 10:00 a.m. the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001 to discuss various projects affecting the appearance of Washington, D.C., including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, D.C. 15 February 1996.

Charles H. Atherton,

Secretary.

[FR Doc. 96–4110 Filed 2–22–96; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Dietary Supplement Labels Commission; Meeting

AGENCY: Office of Disease Prevention and Health Promotion, HHS.

ACTION: Commission on Dietary Supplement Labels: Announcement of Appointment; Notice of Meeting #2; Opportunity to Provide Comments.

SUMMARY: The Department of Health and Human Services (HHS) is (a) providing notice of the second meeting of the Commission on Dietary Supplement Labels, and (b) soliciting oral and written comments.

DATES: (1) The Commission will meet March 8, 1996, from 8:30 a.m. to 4:30 p.m. Central Time at the Radisson Hotel Salt Lake City Airport (Utah). (2) Written comments on the scope and intent of the Commission's objectives may be submitted up to 5:00 p.m. e.s.t. on June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Fisher, Ph.D., Executive Director, Commission on Dietary Supplement Labels, Office of Disease Prevention and Health Promotion, Room 738G, Hubert H. Humphrey Building, 200 Independence Avenue SW. Washington, D.C. 20201, (202) 205–5968.

SUPPLEMENTARY INFORMATION:

Commission's Task

Public Law 103–417, Section 12, authorized the establishment of a Commission on Dietary Supplement Labels whose seven members have been appointed by the President. The appointments to the Commission by the President and the establishment of the Commission by the Secretary of Health and Human Services reflect the commitment of the President and the Secretary to the development of a sound and consistent regulatory policy on labeling of dietary supplements.

The Commission is charged with conducting a study and providing recommendations for regulation of label claims and statements for dietary supplements, including the use of supplemental literature in connection with their sale and, in addition, procedures for evaluation of label claims. The Commission is expected to evaluate how best to provide truthful, scientifically valid, and nonmisleading information to consumers in order that they may make informed health care choices for themselves and their families. The Commission's study report may include recommendations on legislation, if appropriate and necessary.

Announcement of Meeting

The Commission's second meeting will be March 8, 1996, 8:30 a.m. to 4:30 p.m. Central Time. The meeting will be held at the Radisson Hotel Salt Lake City Airport Coventary Room, (Utah). The agenda will include (a) oral comments from interested parties and the general public, (b) identification of additional information needs, and (c) discussion of dietary supplement label information.

Public Participation at Meeting

The meeting is open to the public. However, space is limited. Both oral and written comments from the public will be accepted, but oral comments at the meeting will be limited to a maximum of five minutes per presenter; thus, organizations and persons that wish to make their views known to the Commission should use the time for oral presentation to summarize their written comments. Members of the Commission may wish to question the presenters following each oral presentation. Please request the opportunity to present oral comments in writing and provide nine (9) copies of the written comments from which the oral presentation is abstracted to the address above by March 4, 1996. If you will require a sign language interpreter, please call Sandra Saunders (202) 260–0375 by 4:30 e.s.t. on March 4, 1996.

Written Comments

By this notice, the Commission is soliciting submission of written comments, views, information and data pertinent to Commission's task. Comments should be sent to Kenneth D. Fisher, Executive Director of the Commission at the Office of Disease Prevention and Health Promotion, Room 738G, Hubert Humphrey Building, 200 Independence Avenue SW., Washington D.C. 20201, 5:00 p.m. e.s.t. on June 30, 1996.

Dated: February 15, 1996.

Claude Earl Fox,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), U.S. Department of Health and Human Services.

[FR Doc. 96–4101 Filed 2–22–96; 8:45 am]

BILLING CODE 4160–17–M

Food and Drug Administration

[Docket No. 96F–0051]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to expand the safe use of oxidized bis(hydrogenated tallow alkyl)amines as a process stabilizer for polypropylene homo- and copolymers and high-density polyethylene homo- and copolymers intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by March 25, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA305), Food and Drug Administration, 12420 Parklawn Dr., Rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW.,

Washington, DC 20204–0002, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5)(21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6B4491) has been filed by Ciba-Geigy Corp., 540 White Plains Road, P.O. Box 2005, Tarrytown, N.Y. 10591–4311. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers* (21 CFR 178.2010) to expand the safe use of oxidized bis(hydrogenated tallow alkyl)amines as a process stabilizer for polypropylene homo- and copolymers and high-density polyethylene homo- and copolymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 25, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 8, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center For Food Safety and Applied Nutrition.

[FR Doc. 96–4063 Filed 2–22–96; 8:45 am]

BILLING CODE 4160–01–P

[Docket No. 91F–0264]

Stockhausen, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 9B4149), proposing that the food additive regulations be amended to provide for the safe use of N-((3-dimethylamino)propyl)-2-propenamide, polymer with 2-propenoic acid, sodium salt as a dispersing aid in paper and paper coatings intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 1, 1991 (56 FR 36185), FDA announced that a food additive petition (FAP 9B4149) had been filed on behalf of Stockhausen, Inc., 2401 Doyle St. (formerly 2408 Doyle St.), Greensboro, NC 27406. The petition proposed to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of N-((3-dimethylamino)propyl)-2-propenamide, polymer with 2-propenoic acid, sodium salt as a dispersing aid in paper and paper coatings intended for use in contact with food.

Stockhausen, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: February 8, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–4062 Filed 2–22–96; 8:45 am]

BILLING CODE 4160–01–P

[Docket No. 95D–0216]

International Conference on Harmonisation; Final Guideline on Quality of Biotechnological Products: Analysis of the Expression Construct in Cells Used for Production of r-DNA Derived Protein Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is publishing a final guideline on the quality of biotechnological products entitled "Analysis of the Expression Construct in Cells Used for Production of r-DNA Derived Protein Products." The guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guideline is intended to describe the types of information that are considered valuable in assessing the structure of the expression construct used to produce recombinant deoxyribonucleic acid (r-DNA) derived proteins.

DATES: Effective February 23, 1996. Submit written comments at any time.

ADDRESSES: Submit written comments on the guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guideline are available from the Division of Communications Management (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1012. An electronic version of this guideline is also available via Internet by connecting to the CDER file transfer protocol (FTP) server (CDVS2.CDER.FDA.GOV).

FOR FURTHER INFORMATION CONTACT:

Regarding the guideline: Elaine C. Esber, Center for Biologics Evaluation and Research (HFM–30), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0641.

Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input

from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of August 21, 1995 (60 FR 43496), FDA published a draft tripartite guideline entitled "Analysis of the Expression Construct in Cells Used for Production of r-DNA Derived Protein Products." The notice gave interested persons an opportunity to submit comments by October 5, 1995.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies at the ICH meeting held on November 29, 1995.

The guideline presents guidance regarding the characterization of the expression construct for the production of r-DNA protein products in eukaryotic and prokaryotic cells. The guideline is intended to describe the types of information that are considered valuable in assessing the structure of the expression construct used to produce r-DNA derived proteins. The guideline is not intended to cover the entire quality aspect of r-DNA derived medicinal products.

In the past, guidelines have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Although this guideline does not create or confer any rights for or on any person and does not operate to bind FDA, it does represent the agency's current thinking on the production of r-DNA derived protein products.

As with all of FDA's guidelines, the public is encouraged to submit written comments with new data or other new information pertinent to this guideline. The comments in the docket will be periodically reviewed, and, where appropriate, the guideline will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the final guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the guideline follows:

Analysis of the Expression Construct in Cells Used for Production of r-DNA Derived Protein Products

I. Introduction

This document presents guidance regarding the characterization of the expression construct for the production of recombinant DNA (r-DNA) protein products in eukaryotic and prokaryotic cells. The document is intended to describe the types of information that are considered valuable in assessing the structure of the expression construct used to produce r-DNA derived proteins. The document is not intended to cover the entire quality aspect of r-DNA derived medicinal products.

The expression construct is defined as the expression vector containing the coding sequence of the recombinant protein. Segments of the expression construct should be analyzed using nucleic acid techniques in conjunction with other tests performed on the purified recombinant protein for assuring the quality and consistency of the final product. Analysis of the expression construct at the nucleic acid level should be considered as part of the overall evaluation of quality, taking into account that this testing only evaluates the coding sequence of a recombinant gene and not the translational fidelity nor other characteristics of the recombinant protein, such as secondary structure, tertiary structure, and posttranslational modifications.

II. Rationale for Analysis of the Expression Construct

The purpose of analyzing the expression construct is to establish that the correct coding sequence of the product has been incorporated into the host cell and is maintained during culture to the end of production. The genetic sequence of recombinant proteins produced in living cells can undergo mutations that could alter the properties of the protein with potential adverse consequences to patients. No single experimental approach can be expected to detect all possible modifications to a protein. Protein analytical techniques can be used to assess the amino acid sequence of the protein and structural features of the expressed protein due to posttranslational modifications such as proteolytic processing, glycosylation, phosphorylation, and acetylation. Data from nucleic acid analysis may be useful because protein analytical methods may not detect all changes in protein structure resulting from mutations in the sequence coding for the recombinant protein. The relative importance of nucleic acid analysis and protein analysis will vary from product to product.

Nucleic acid analysis can be used to verify the coding sequence and the physical state of the expression construct. The nucleic acid analysis is performed to ensure that the expressed protein will have the correct amino acid sequence, but is not intended to detect low levels of variant sequences. Where the production cells have multiple integrated copies of the expression construct, not all of which may be transcriptionally active, examination of the transcription product itself by analysis of m-RNA or c-DNA may be more appropriate than analysis of genomic DNA. Analytical approaches that examine a bulk population of nucleic acids, such as those performed on pooled clones or material amplified by the polymerase chain reaction, may be considered as an alternative to approaches that depend on selection of individual DNA clones. Other techniques could be considered that allow for rapid and sensitive confirmation of the sequence coding for the recombinant protein in the expression construct.

The following sections describe information that should be supplied regarding the characterization of the expression construct during the development and validation of the production system. Analytical methodologies should be validated for the intended purpose of confirmation of sequence. The validation documentation should, at a minimum, include estimates of the limits of detection for variant sequences. This should be performed for either nucleic acid or protein sequencing methods. The philosophy and recommendations for analysis expressed in this document should be reviewed periodically to take advantage of new advances in technology and scientific information.

III. Characterization of the Expression System

A. Expression Construct and Cell Clone Used to Develop the Master Cell Bank (MCB)

The manufacturer should describe the origin of the nucleotide sequence coding for the protein. This should include identification and source of the cell from which the nucleotide sequence was originally obtained. Methods used to prepare the DNA coding for the protein should be described.

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The steps in the assembly of the expression construct should be described in detail. This description should include the source and function of the component parts of the expression construct, e.g., origins of replication, antibiotic resistance genes, promoters, enhancers, and whether or not the protein is being synthesized as a fusion protein. A detailed component map and a complete annotated sequence of the plasmid should be given, indicating those regions that have been sequenced during the construction and those taken from the literature. Other expressed proteins encoded by the plasmid should be indicated. The nucleotide sequence of the coding region of the gene of interest and associated flanking regions that are inserted into the vector, up to and including the junctions of insertion, should be determined by DNA sequencing of the construct.

A description of the method of transfer of the expression construct into the host cell should be provided. In addition, methods used to amplify the expression construct and criteria used to select the cell clone for production should be described in detail.

B. Cell Bank System

Production of the recombinant protein should be based on well-defined MCB and Working Cell Banks (WCB). A cell bank is a collection of ampoules of uniform composition stored under defined conditions, each containing an aliquot of a single pool of cells. The MCB is generally derived from the selected cell clone containing the expression construct. The WCB is derived by expansion of one or more ampoules of the MCB. The cell line history and production of the cell banks should be described in detail, including methods and reagents used during culture, in vitro cell age, and storage conditions. All cell banks should be characterized for relevant phenotypic and genotypic markers, which could include the expression of the recombinant protein or presence of the expression construct.

The expression construct in the MCB should be analyzed as described below. If the testing cannot be carried out on the MCB, it should be carried out on each WCB.

Restriction endonuclease mapping or other suitable techniques should be used to analyze the expression construct for copy number, for insertions or deletions, and for the number of integration sites. For extrachromosomal expression systems, the percent of host cells retaining the expression construct should be determined.

The protein coding sequence for the recombinant protein product of the expression construct should be verified. For extrachromosomal expression systems, the expression construct should be isolated and the nucleotide sequence encoding the product should be verified without further cloning. For cells with chromosomal copies of the expression construct, the nucleotide sequence encoding the product could be verified by recloning and sequencing of chromosomal copies. Alternatively, the nucleic acid sequence encoding the product could be verified by techniques such as sequencing of pooled c-DNA clones or material amplified by the polymerase chain reaction. The nucleic acid sequence should be identical, within the limits of detection of the methodology, to that determined for the expression construct as described in section III.A., and should correspond to that expected for the protein sequence.

C. Limit for In Vitro Cell Age for Production

The limit for in vitro cell age for production should be based on data derived from production cells expanded under pilot plant-scale or full-scale conditions to the proposed in vitro cell age or beyond. Generally, the production cells are obtained by expansion of the WCB; the MCB could be used to prepare the production cells with appropriate justification.

The expression construct of the production cells should be analyzed once for the MCB as described in section III.B., except that the protein coding sequence of the expression construct in the production cells could be verified by either nucleic acid testing or analysis of the final protein product. Increases in the defined limit for in vitro cell age for production should be supported by data from cells that have been expanded to an in vitro cell age that is equal to or greater than the new limit for in vitro cell age.

IV. Conclusion

The characterization of the expression construct and the final purified protein are both important to ensure the consistent production of a r-DNA derived product. As described above, analytical data derived from both nucleic acid analysis and evaluation of the final purified protein should be evaluated to ensure the quality of a recombinant protein product.

Glossary of Terms

Expression Construct

The expression vector that contains the coding sequence of the recombinant protein and the elements necessary for its expression.

Flanking Control Regions

Noncoding nucleotide sequences that are adjacent to the 5' and 3' end of the coding sequence of the product that contain important elements that affect the transcription, translation, or stability of the coding sequence. These regions include, e.g., promoter, enhancer, and splicing sequences, and do not include origins of replication and antibiotic resistance genes.

Integration Site

The site where one or more copies of the expression construct is integrated into the host cell genome.

In Vitro Cell Age

Measure of time between thaw of the MCB vial(s) to harvest of the production vessel measured by elapsed chronological time in culture, by population doubling level of the cells, or by passage level of the cells when subcultivated by a defined procedure for dilution of the culture.

Master Cell Bank (MCB)

An aliquot of a single pool of cells that generally has been prepared from the selected cell clone under defined conditions, dispensed into multiple containers, and stored under defined conditions. The MCB is used to derive all working cell banks. The testing performed on a new MCB (from a previous initial cell clone, MCB, or WCB) should be the same as for the MCB unless justified.

Pilot Plant Scale

The production of a recombinant protein by a procedure fully representative of and simulating that to be applied on a full commercial manufacturing scale. The methods of cell expansion, harvest, and product purification should be identical except for the scale of production.

Relevant Genotypic and Phenotypic Markers

Those markers permitting the identification of the strain of the cell line that should include the expression of the recombinant protein or presence of the expression construct.

Working Cell Bank (WCB)

The WCB is prepared from aliquots of a homogeneous suspension of cells obtained from culturing the MCB under defined culture conditions.

Dated: February 16, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–4064 Filed 2–22–96; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline

is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. March 11, 1996, 8 a.m., Holiday Inn—Gaithersburg, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Sociometrics, Inc., 301–608–2151. The availability of appropriate accommodations cannot be assured unless prior notification is received.

Type of meeting and contact person. Closed committee deliberations, 8 a.m. to 9 a.m.; open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–420), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1287, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), General Hospital and Personal Use Devices Panel, code 12520.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 4, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will: (1) Discuss and make recommendations on the classification of two unclassified preamendments devices, percutaneously implanted long-term catheters, and implanted intravascular infusion ports; and (2) discuss a premarket notification submission for an antimicrobial coated latex examination glove.

Closed committee deliberations. FDA staff will present to the committee trade secret and/or confidential commercial information regarding present and future FDA issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Joint Meeting of the Antiviral Drugs Advisory Committee and the Dermatologic and Ophthalmic Drugs Advisory Committee (Ophthalmic Drugs Subcommittee)

Date, time, and place. March 14, 1996, 1 p.m., and March 15, 1996, 8:30 a.m., Holiday Inn—Gaithersburg, Whetstone and Goshen Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Closed committee deliberations, March 14, 1996, 1 p.m. to 5 p.m.; open committee discussion, March 15, 1996, 8:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 4 p.m.; Ermona B. McGoodwin or Liz Ortuzar, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Antiviral Drugs Advisory Committee, code 12531.

General function of the committees. The Antiviral Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections. The Dermatologic and Ophthalmic Drugs Advisory Committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of dermatologic and ophthalmic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 8, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Closed committee deliberations. On March 14, 1996, the Antiviral Drugs Advisory Committee will discuss trade secret and/or confidential commercial information relevant to pending new drug applications (NDA's). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Open committee discussion. On March 15, 1996, the Antiviral Drugs Advisory Committee and an ophthalmic drugs subcommittee of the Dermatologic and Ophthalmic Drugs Advisory Committee will meet jointly to discuss data relevant to NDA 20–638 Vistide™ (cidofovir, intravenous, Gilead Sciences, Inc.) for treatment of cytomegalovirus (CMV) retinitis in patients with AIDS.

Blood Products Advisory Committee

Date, time, and place. March 21 and 22, 1996, 8 a.m., Holiday Inn—Bethesda, Versailles Ballrooms II and III, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open committee discussion, March 21, 1996, 8 a.m. to 9:10 a.m.; open public hearing, 9:10 a.m. to 9:40 a.m., unless public participation does not last that long; open committee discussion, 9:40 a.m. to 11:15 a.m.; open public hearing, 11:15 a.m. to 12:15 p.m., unless public participation does not last that long; open committee discussion, 12:15 p.m. to 3 p.m.; open public hearing, 3 p.m. to 4 p.m., unless public participation does not last that long; open committee discussion, 4 p.m. to 5 p.m.; open committee discussion, March 22, 1996, 8 a.m. to 11:30 a.m.; open public hearing, 11:30 a.m. to 12:15 p.m., unless public participation does not last that long; open committee discussion, 12:15 p.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 3 p.m.; Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3514, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area) Blood Products Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data,

information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 15, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On March 21, 1996, the committee will hear agency updates on Creutzfeldt-Jakob Disease and blood safety, peripheral blood hematopoietic stem cell products intended for transfusion, and a summary of regulatory issues related to human reproductive tissue. Labeling issues regarding testing for antibody to hepatitis C virus antigen by an "HCV 3.0" assay will be reviewed and discussed in the morning and in the afternoon, there will also be a discussion of clinical claims for the Roche Amplicor HIV Monitoring Test™. On March 22, 1996, the committee will review and discuss implications of non-lipid enveloped viruses in blood products.

Closed committee deliberations. On March 22, 1996, the committee will review trade secret and/or confidential commercial information relevant to current and pending products. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. March 25, 1996, 8:30 a.m., Holiday Inn—Gaithersburg, Goshen Room, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact John Sellman, Sociometrics, Inc., 301–608–2151. The availability of appropriate accommodations cannot be assured unless prior notification is received.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4:30 p.m.; Gail G. Gantt, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), General and Plastic Surgery Devices Panel, code 12519.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 18, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss and vote on a premarket approval application for a resorbable translucent membrane for use as an adjuvant in abdominopelvic surgery.

Closed committee deliberations. FDA staff will present to the committee trade secret and/or confidential commercial information regarding present and future FDA issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: February 15, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–4067 Filed 2–22–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0357]

Medical Devices; Investigational Devices; Interagency Agreement Between the Food and Drug Administration and the Health Care Financing Administration; Categorization of Investigational Devices for Coverage under Medicare; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of an interagency agreement between FDA and the Health Care Financing Administration (HCFA) and a list of all FDA-approved investigational device exemptions (IDE's) and their corresponding categorization determinations for possible Medicare reimbursement. This list was compiled in accordance with the categorization criteria set forth in the interagency agreement. The HCFA/FDA interagency agreement regarding investigational devices describes procedures by which FDA will assist HCFA in identifying nonexperimental/investigational devices that are potentially covered by Medicare under a final rule recently issued by HCFA extending coverage to certain devices and related services. FDA is making the interagency agreement and the list of FDA-approved IDE's and their categorization determinations available to IDE sponsors and the public.

DATES: The HCFA final rule "Medicare Program; Criteria and Procedures for Extending Coverage to Certain Devices and Related Services" became effective on November 1, 1995. The HCFA/FDA interagency agreement became effective on September 8, 1995.

ADDRESSES: Submit written requests for a copy of the interagency agreement and the categorization list to the Division of Small Manufacturers Assistance (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your request. Copies of the interagency agreement and the categorization list are available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857 between 9 a.m. and 4 p.m., Monday through Friday. Copies of a facsimile of this information are available from the Center for Devices and Radiological Health's (CDRH's) Facts on Demand (1–800–899–0381). This information may also be obtained from the electronic docket administered by the Division of Small Manufacturers Assistance and is available to anyone with a video terminal or personal computer (1–800–252–1366, 1–800–222–0185, or 1–301–594–2741). Requests for reconsideration of the categorization of an IDE should be submitted in the same manner as an IDE supplement and should reference the IDE number, and be submitted in triplicate to: IDE Document Mail Center (HFZ–401), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: John Ensign, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 19, 1995 (60 FR 48417), HCFA published a final rule in which it announced that it would consider for Medicare coverage certain devices with an FDA-approved IDE that have been categorized as nonexperimental/investigational. An FDA-approved IDE application permits a device which otherwise could not be lawfully shipped without marketing clearance, to be shipped lawfully for the purpose of conducting a clinical trial in accordance with section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) and 21 CFR parts 812 and 813.

Under section 513 of the act (21 U.S.C. 360c), all devices must be classified into one of three regulatory classes: Class I (general controls), Class II (special controls), or Class III (premarket approval). For the purposes of consideration for reimbursement under the Medicare program and in accordance with the procedures set forth in the HCFA final rule published on September 19, 1995, FDA has categorized all FDA-approved IDE's into either Category A (experimental/investigational) or Category B (nonexperimental/investigational). An experimental/investigational (Category A) device refers to an innovative device believed to be in Class III for which "absolute risk" of the device type has not been established (that is, initial questions of safety and effectiveness have not been resolved, and the FDA is unsure whether the device type can be safe and effective). A nonexperimental/investigational (Category B) device refers to a device believed to be in Class I or Class II, or a device believed to be

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in Class III for which the incremental risk is the primary risk in question (that is, underlying questions of safety and effectiveness of the device type have been resolved), or it is known that the device type can be safe and effective because, for example, other manufacturers have obtained FDA approval for that device type. The specific criteria used to categorize the IDE's are set forth in Attachment A of the HCFA/FDA interagency agreement. In order to facilitate the processing of Medicare claims, FDA and HCFA encourage IDE sponsors to provide the IDE application numbers to the hospitals and clinical investigators participating in the sponsors' clinical investigations.

According to the September 19, 1995, HCFA final rule, IDE's which have been placed in Category B by FDA would be eligible for Medicare coverage consideration. The final coverage decision, however, will encompass other factors and thus will be made by HCFA.

By this notice, FDA is making available a list of all FDA-approved IDE's, the corresponding categorization determination (Category A or Category B), and the rationale for the determination. FDA will update this list as circumstances require and will make the revised list available through the electronic docket and Facts on Demand (details above), and in the Dockets Management Branch (address above). As set forth in the September 19, 1995, final rule, an IDE sponsor may seek reconsideration of a categorization determination by submitting a request for re-evaluation to FDA: Requests for re-evaluation should be submitted in the same manner as an IDE supplement to the IDE Document Mail Center (address above). IDE sponsors may submit this request for re-evaluation at any time, i.e., there is no time limit for submitting a reconsideration request to FDA. Further information about categorization, its effect on Medicare reimbursement, and appeal of a categorization determination, is contained in the September 19, 1995, final rule cited above.

Dated: February 12. 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health

[FR Doc. 96–4066 Filed 2–22–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Submitted for Collection of Public Comment: Submission for OMB Review

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Granting and Withdrawal of Deeming Authority to Private Nonprofit Accreditation Organizations and the Clinical Laboratory Improvement Act (CLIA) Exemption Under State Laboratory Programs; *Form No.:* HCFA R–185; *Use:* The information required is necessary to determine whether a private accreditation organization/State licensure program standards and accreditation/licensure process is equal to or more stringent than those of CLIA; *Frequency:* Other (initial application/as needed); *Affected Public:* Not-for-profit institutions, State, local, or tribal government.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: January 24, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–4105 Filed 2–22–96; 8:45 am]

BILLING CODE 4120–03–P

Submitted for Collection of Public Comment: Submission for OMB Review

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension; *Title of Information Collection:* Sole Community Home Health Agencies (HHA) at 42 CFR424.22(b)(2), (f) and (g); *Form No.:* HCFA R–85; *Use:* These regulations implement the rules for participation of HHAs in Medicare and the establishment and review of plans of care for home health services. These regulations make it easier for certain HHAs to meet certification and plan of care requirements. *Frequency:* Annually; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 20; *Total Annual Hours:* 40.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 16, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration..

[FR Doc. 96–4104 Filed 2–22–96; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–73]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: February 23, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12,1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: February 16, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 96–4113 Filed 2–22–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invitation for Proposals

AGENCY: Department of the Interior, Office of the Secretary.

SUMMARY: The Exxon Valdez Oil Spill Trustee Council is inviting the submission of proposals for projects for the fiscal year 1997 for restoration of resources and services injured by the Exxon Valdez oil spill.

DATES: Proposals are due April 15, 1996, at 5:00 p.m.

ADDRESSES: Exxon Valdez Oil Spill Trustee Council, 645 "G" Street, Suite 401, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT: Sandra Schubert, Exxon Valdez Oil Spill Trustee Council, (907) 278–8012 or toll free at (800) 478–7745.

SUPPLEMENTARY INFORMATION: Following the Exxon Valdez oil spill in March 1989, a Trustee Council of three state and three federal trustees, including the Secretary of the Interior, was formed. The Trustee Council prepared a restoration plan for the injured resources and services within the oil spill area. The restoration plan calls for annual work plans identifying projects to accomplish restoration. The Trustee Council is inviting proposals for projects to be included in the fiscal year 1997 work plan.

The publication explaining this invitation, Invitation to Submit Restoration Proposals for Federal Fiscal Year 1997, is available from the Exxon Valdez Oil Spill Trustee Council at the address listed above.

Dated: February 16, 1996.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 96–4053 Filed 2–22–96; 8:45 am]

BILLING CODE 4310–10–M

Exxon Valdez Oil Spill Public Advisory Group Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group.

DATES: March 13, 1996, at 9:00 a.m.

ADDRESSES: First floor conference room, 645 "G" Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The agenda will include a review of current restoration activities and plans for the fiscal year 1997 restoration work plan.

Dated: February 16, 1996.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 96–4054 Filed 2–22–96; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Land Management

[CA–010–06–1220]

Bakersfield Resource Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Bakersfield Resource Advisory Council.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and the Federal Land Policy and Management Act of 1976 (sec. 309), the Bureau of Land Management Bakersfield Resource Advisory Council will meet in Placerville, California.

DATES: March 6–7, 1996, beginning at 8:00 a.m. both days.

ADDRESS: Best Western Placerville Inn, 6850 Greenleaf Drive, Placerville, California. From Highway 50 take the Missouri Flat Road Exit. At the bottom of the exit ramp take two immediate left turns and one immediate right turn and you are there.

SUPPLEMENTARY INFORMATION: The Bakersfield Resource Advisory Council is a 12 member council appointed by the Secretary of the Interior to give counsel and advice regarding planning and management of public land resources to the District Manager of the Bureau of Land Management Bakersfield District. The Council will meet to discuss standards and guidelines for grazing operators on public land, community based planning on the 'Inimim Forest, land exchange proposals in the Folsom Resource Area, and land title and access issues in the Yuba

Goldfields along the Yuba River. There will be a field trip to the South Fork of the American River on Wednesday afternoon, March 6. Due to logistical limitations, the field trip will be for Council members only, but the rest of the meeting is open to the public. Anyone wishing to address the Council about any public land issue may do so during the public comment period beginning at 10 a.m., March 7, 1996 or at any time during the meeting at the discretion of the Council Chairman. Written comments may be submitted at the meeting, or to the address below.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, Bakersfield District, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 805–391–6010.

Dated: February 12, 1996.

Ron Fellows,

District Manager.

[FR Doc. 96–4091 Filed 2–22–96; 8:45 am]

BILLING CODE 4310–40–M

Notice of Meeting Cancellation

AGENCY: Lower Snake River District, Bureau of Land Management, Interior.

ACTION: Notice of meeting cancellation.

SUMMARY: The Lower Snake River District Resource Advisory Council has cancelled its meeting scheduled for February 24, 1996 at the Idaho State Office of the Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706. The meeting has not been rescheduled.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Lower Snake River District Office (208–384–3393).

Barry Rose,

Public Affairs Specialist.

[FR Doc. 96–4075 Filed 2–22–96; 8:45 am]

BILLING CODE 1020–86–P

[UT–912–06–0777–52]

Notice of Meeting of the Utah Resource Advisory Council

AGENCY: Bureau of Land Management, Utah

SUMMARY: The Utah Resource Advisory Council will conduct a field trip and meeting on March 22–23, 1996. Council members will assemble on March 22 at 8:00 a.m. at the BLM's Cedar City District Office, 176 East D.L. Sargent Drive, Cedar City, Utah, and depart for an all-day field tour of BLM lands in the Beaver River Resource Area and the Beaver Dam Slope. The Council will reconvene on March 23 (8:00 a.m.) at the Southern Utah State University, Hunter Conference Center, 351 Center Street, Cedar City. Topics of discussion will include Standards and Guidelines for grazing management. The session will conclude at approximately 1:00 p.m. The session is open to the public. Any public attending the field sessions must provide their own transportation, meals and overnight accommodations. Opportunities for the public to address the council members will take place at 11:30 a.m. on March 23.

FOR FURTHER INFORMATION CONTACT: Don Banks, Utah State Office, Bureau of Land Management, 324 S. State St., Salt Lake City, 84111; phone (801) 539–4021.

Dated: February 15, 1996.

William G. Lamb,

Utah BLM State Director.

[FR Doc. 96–4069 Filed 2–22–96; 8:45 am]

BILLING CODE 4310–DQ–P

[ID–060–1610–00]

Notice of Change of Mailing Address

AGENCY: Bureau of Land Management, Salmon Field Office, Idaho.

SUMMARY: The Bureau of Land Management, Upper Columbia-Salmon Clearwater Districts, Salmon Field Office including Fire Dispatch, warehouse, Lemhi Resource Area and Challis Resource Area will have a new mailing address effective March 4, 1996. The address will change from P.O. Box 430, Salmon, Idaho 83467 to Rt. 2, Box 610, Salmon, Idaho 83467.

DATES: Effective March 4, 1996.

ADDRESSES: New address will be: Bureau of Land Management, Upper Columbia-Salmon Clearwater Districts, Salmon Field Office, Rt. 2, Box 610, Salmon, Idaho 83467.

FOR FURTHER INFORMATION CONTACT: Lori Shulenberger, (208) 756–5463.

Dated: February 16, 1996.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 96–4077 Filed 2–22–96; 8:45 am]

BILLING CODE 4310–GG–M

[AZ–930–06–1020–00]

Intent To Prepare an Arizona Statewide Plan Amendment, To Develop State Standards for Rangeland Health and Guidelines for Grazing Management

AGENCY: Bureau of Land Management.

ACTION: Modified notice of intent to extend scoping period and notice of meetings.

SUMMARY: The Arizona Bureau of Land Management published a **Federal Register** notice of intent to prepare a Statewide plan amendment to develop state Standards for Rangeland Health and Guidelines for Grazing Management on February 1, 1996, Vol. 61, No. 22, pages 3728–3729. The scoping period is extended and four open house public meetings will be held.

DATES: Comments will be accepted throughout the Statewide plan amendment and NEPA analysis process. However, comments received after March 22, 1996 may not be reflected in the alternatives considered or issues analyzed in the plan amendment and associated NEPA document released for public review and comment.

ADDRESS: Any comments or requests to be placed on the mailing list should be sent to: Standards and Guidelines (AZ-930); Bureau of Land Management; P.O. Box 16563; Phoenix, AZ, 85011–6563.

FOR FURTHER INFORMATION CONTACT: Clint Oka or Ken Mahoney; Co-Team Leaders; Bureau of Land Management (AZ-930); P.O. Box 16563; Phoenix, AZ, 85011–6563; phone (602) 650–0513.

SUPPLEMENTARY INFORMATION: The BLM's new grazing administration regulations (43 CFR Part 4100), which became effective August 21, 1995, provide for the development of state Standards for Rangeland Health and Guidelines for Grazing Management. These Standards and Guidelines are to be approved and implemented through an integrated planning and NEPA process using an interdisciplinary team of specialists pursuant to BLM's Planning Regulations (43 CFR Part 1600). All existing land use plans for public lands in the State of Arizona will be amended. At this point in time, it is undecided what level of NEPA analysis (EA-level or EIS-level) will be needed.

Public Meetings

Four open house public meetings will be held. Their locations and schedules are as follows:

March 4, 1996: 3:00 p.m. to 8:00 p.m.; Interagency Office and Information Center; 345 E. Riverside Dr.; St. George, UT.

March 5, 1996: 3:00 p.m. to 8:00 p.m.; Bureau of Land Management Kingman Resource Area Office; 2475 Beverly Ave.; Kingman, AZ.

March 12, 1996: 3:00 p.m. to 8:00 p.m.; Bureau of Land Management Safford District Office; 711 14th Ave.; Safford, AZ.

March 13, 1996: 3:00 p.m. to 8:00 p.m.; Bureau of Land Management Arizona State Office; 3707 N. 7th St.; Phoenix, AZ.

Dated: February 15, 1996.

Phillip D. Moreland,

Acting Deputy State Director, Resource Planning, Use and Protection Division.

[FR Doc. 96–4114 Filed 2–22–96; 8:45 pm]

BILLING CODE 4310–FB–P

[NM–030–1430–01; NMNM95066]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action; R&PP Act Classification.

SUMMARY: The following public land in Dona Ana County, New Mexico has been examined and found suitable for classification for lease or conveyance to Las Cruces School District under the provision of the R&PP Act, as amended (43 U.S.C. 869 et seq.). Las Cruces School District proposes to use the land for a school site.

T. 22 S., R. 2 E., NMPM
Sec. 33, lot 2, W½SE¼NW¼.
Containing 45.64 acres, more or less.

DATES: Comments regarding the proposed lease/conveyance or classification must be submitted on or before April 8, 1996.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at the address above or at (505) 525–4349.

SUPPLEMENTARY INFORMATION: Lease or conveyance will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. On or before April 8, 1996, interested persons may submit comments regarding the proposed lease/conveyance or classification of the land to the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a school site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a school site.

Dated: February 20, 1996.

Linda S.C. Rundell,

District Manager.

[FR Doc. 96–4218 Filed 2–22–96; 8:45 am]

BILLING CODE 4310–VC–P

[CO–056–1220–04]

Notice of Interim Management for Protection of Wild and Scenic River Values

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management, Canon City District, San Luis Resource Area has determined that 41 miles of the Rio Grande River in Colorado was eligible for consideration as a potential addition to the National Wild and Scenic River System. This determination was made as a part of the San Luis Resource Management Plan process in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), 43 CFR 1600, the Guidance for the Identification and Evaluation of Potential Additions to the National Wild and Scenic Rivers System, the USDI–USDA Final Revised Guidelines for Eligibility, Classification and Management of River Areas, and BLM Manual Section 1623.41A2d.

SUMMARY: In December, 1991 the Resource Management Plan (RMP) was finalized for the San Luis Resource Area of Colorado. Assessment of potential additions to the National Wild and Scenic River System was included in this planning effort. A total of 32 streams or segments of streams were analyzed and a 41 mile segment of the Rio Grande River in Colorado met the eligibility criteria. This segment of the river is "free-flowing" and has "outstandingly remarkable values," therefore, this stretch needs adequate interim protection until a final decision is reached.

The 41-mile segment of the Rio Grande River, which is the last 41 miles of this river within Colorado, has been tentatively classified as follows: the upper 33 miles meets the "Scenic" classification criteria, and the lower 8 miles meets the "Wild" classification criteria. These tentative classifications are based on conditions of the river corridor as they existed at the time of the study.

Management activities and authorized uses will not be allowed to adversely affect the eligibility or classification of this river. Management prescriptions for this river corridor should provide for protection in three ways:

1. The free-flowing characteristics of the river cannot be modified, to the extent that BLM is authorized under law to control stream impoundments and diversions.

2. Outstandingly remarkable values will be protected, and to the extent practicable, enhanced.

3. Management and development of the river corridor cannot be modified to the degree that eligibility or classification is changed.

A study report was prepared and included in the appendix to the proposed resource management plan/final environmental impact study and documents the application of the Eligibility/Classification/Suitability Criteria.

The study report was included as an integral part of the RMP process documentation. The determination within the RMP was a preliminary administrative recommendation for designation or non-designation depending on the suitability analysis. The recommendation will receive further review and possible modification by the Director of the BLM, the Secretary of the Interior and the President of the United States. Final decisions have been reserved by the U.S. Congress.

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DATES: Interim protective management on public lands along this 41-mile river corridor will exist for a period not exceeding 5 years from the date of this notice or until such time as a final decision has been made, whichever occurs first.

ADDRESSES: Interested parties may obtain more information by writing to the District Manager, Canon City District, 3170 East Main St., Canon City, CO 81212 or the Area Manager, San Luis Resource Area, 1921 State Ave., Alamosa, CO 81101.

FOR FURTHER INFORMATION CONTACT: Area Manager at (719) 589–4975.

Donnie R. Sparks,

District Manager.

[FR Doc. 96–4093 Filed 2–22–96; 8:45 am]

BILLING CODE 4310–JB–M

Minerals Management Service

Public Hearings on the Draft Environmental Impact Statement for the Proposed Oil and Gas Leasing Program for 1997 to 2002

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of dates and locations of public hearings on the draft environmental impact statement for the proposed Outer Continental Shelf Oil and Gas Leasing Program for 1997 to 2002.

On February 9, 1996, the Minerals Management Service announced in the **Federal Register** (Notice 61 FR 28) the availability of the draft Environmental Impact Statement (EIS) for the "Proposed Outer Continental Shelf Oil and Gas Leasing Program for 1997 to 2002." The notice indicated that the dates, times, and locations of public hearings on the draft EIS would be announced at a later date. This notice provides that information.

The purpose of these hearings is to receive specific comments on the adequacy of the draft EIS and to provide the Secretary of the Interior with additional information from both public and private sectors to help evaluate fully the potential environmental effects of the proposed program.

The public hearings are scheduled for the following dates and times at the following locations:

March 21, 1996

Borough Assembly Chambers, Barrow, Alaska, 7:00 p.m., Contact: Robin Cacy—(907) 271–6070 or 1–800–764–2627

A teleconference will be held with the villages of Pt. Hope, Point Lay, Wainwright, Kaktovik, and Nuiqsut simultaneously with the Barrow Hearing.

March 26, 1996

Wyndham Warwick Hotel, 5701 Main Street, Houston, Texas, 7:00 to 9:00 p.m., Contact: Janet Diaz—(504) 736–2540

March 27, 1996

MMS Gulf of Mexico Regional Office, 1201 Elmwood Park Blvd., Rm. 115, New Orleans, Louisiana, 1:00 to 3:00 p.m., Contact: Janet Diaz—(504) 736–2540

March 28, 1996

Adam's Mark Hotel, 64 South Water Street, Mobile, Alabama, 7:00 to 10:00 p.m., Contact: Janet Diaz—(504) 736–2540

March 28, 1996

City Council Chambers, Homer Alaska, 7:00 p.m., Contact: Robin Cacy—(907) 271–6070 or 1–800–764–2627

April 3, 1996

Yakutat High School Auditorium, Yakutat, Alaska, 7:00 p.m., Contact: Robin Cacy—(907) 271–6070 or 1–800–764–2627

April 9, 1996

MMS Alaska Region Conference Room, 949 East 36th Avenue, Anchorage, Alaska, 12:00 noon, Contact: Robin Cacy—(907) 271–6070 or 1–800–764–2627.

A teleconference will be held with the communities of Cordova Kenai/ Soldotna, Ninilchik, Port Graham/ Nanwalek, and Seldovia simultaneously with the Anchorage Hearing.

April 11, 1996

City Hall, Kivalina, Alaska, 1:00 p.m., Contact: Robin Cacy—(907) 271–6070 or 1–800–764–2627.

Interested individuals, representatives of organizations, and public officials who wish to testify at the hearings are requested to contact the person listed above for the particular location at least 5 days prior to the hearings. A hearing officer will be in charge at each hearing site. Time limitations may make it necessary to limit the length of each oral presentation to 10 minutes or less. An oral statement may be supplemented, however, by a more complete statement which should be submitted to the hearing officer at the time of the oral presentation. After the presentation of oral statements by those who have preregistered, if time is still available during the period of time listed for the hearings, other individuals will be given an opportunity to be heard. Each hearing will begin at the specified time and will recess when all speakers have had an opportunity to testify. If there are no additional speakers, the hearing will adjourn immediately after the recess.

Written comments on the draft EIS, including comments from individuals unable to present oral statements or to attend the hearings, will be accepted until May 9, 1996. All written comments should be mailed to Director, Minerals Management Service, 381 Elden Street, MS–4320, Herndon, Virginia 22070–4817, Attention: Richard Wildermann. Hand deliveries to the Department of the Interior may be made to Room 4227 Main Interior Building, 1849 C Street, NW., Washington, D.C. 20240. Envelopes or packages should be marked "1997–2002 Oil and Gas Program draft EIS."

After the public hearing testimony and written comments on the draft EIS have been reviewed and analyzed, a final EIS will be prepared. The comment period for the draft EIS closes May 9, 1996.

Dated: February 20, 1996.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 96–4102 Filed 2–22–96; 8:45 am]

BILLING CODE 4310–MR–P

De Minimis Amount for Recoupments on Federal Offshore Mineral Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of amount.

SUMMARY: This notice establishes the amount below which a royalty payor is not required to follow the statutory recoupment procedures. The Minerals Management Service (MMS) issued regulations governing recoupment of overpayments on Federal offshore mineral leases. Those regulations provide that MMS will publish a notice establishing de minimis amounts where it is not cost effective to process the recoupment request.

FOR FURTHER INFORMATION CONTACT: Randall Drake, Financial Compliance Branch, Compliance Verification Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3670, Denver, Colorado, 80225–0165, telephone number (303) 231–3139, fax number (303) 231–3372.

SUPPLEMENTARY INFORMATION: The Royalty Management Program of the Minerals Management Service (MMS) established regulations at 30 CFR Part 230 (59 FR 38365, July 28, 1994, effective August 29, 1994) implementing Section 10 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1339.

Section 10 requires that requests for refunds or credits of excess payments on Federal offshore leases be authorized only if (1) a request for refund or credit is filed within 2 years after the making of the payment, and (2) 30 days expire after both Houses of Congress are notified of the refund request, 43 U.S.C. § 1339.

In the regulations, MMS identified certain transactions not subject to Section 10. Under one of those exceptions, the regulations at 30 CFR § 230.461(h) permit payors to file credit adjustments for de minimis amounts without filing requests for refunds with MMS. Those rules provide that MMS periodically will publish in the **Federal Register** what the de minimis threshold is. By **Federal Register** notice (60 FR 20504) dated April 26, 1995, the threshold was established at $250. Based on the cost experience for fiscal year 1995, MMS is increasing the de minimis threshold to $2,500. From recent experience, this would reduce the number of refund requests MMS processes from 1900 to 900 annually. It also should be recognized that the $2,500 de minimis threshold is applicable only to OCS leases which produce large volumes of oil and gas relative to onshore leases.

Under these procedures, payors may make credit adjustments for $2,500 or less for each Outer Continental Shelf (OCS) lease and report month without filing a request with MMS. A credit adjustment for a lease within a unit may exceed $2,500 of credits during 1 report month, provided the net credit adjustment for that month considering all positive and negative adjustments for leases in the unit is less than $2,500. For example, if leases A and B are part of a unit, a payor may submit a credit adjustment of $10,000 for lease A and a payment of $8,000 for lease B within the same report month. Since the two leases within the unit net to a credit of $2,000, the payor is within the de minimis amount. As provided by the regulations, the overpayment recoupments must be made within 2 years of the date MMS received the payment.

Dated: February 15, 1996.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 96–3949 Filed 2–22–96; 8:45 am]

BILLING CODE 4310–MR–P

Electronic Data Interchange in the Royalty Management Program

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of an EDI presentation.

SUMMARY: The Minerals Management Service (MMS) is giving an Electronic Data Interchange (EDI) presentation in Houston, Texas, on March 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Y. Matthews, Systems Management Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165 MS 3140, Denver, Colorado, 80225–0165, telephone numbers (800) 619–4593, (303) 275–7036, fax number (303) 275–7099 or e-mail Barbara Matthews@smtp.mms.gov.

DATES: The EDI presentation is Thursday, March 21, 1996.

LOCATION: Hyatt Regency Houston, 1200 Louisiana Street, Houston, Texas, 77002, Phone Number: 713–654–1234.

SUPPLEMENTARY INFORMATION: MMS is offering an EDI presentation at no cost to companies and interested parties that intend to implement or pilot EDI with MMS. The EDI presentation will be held in conjunction with the American Petroleum Institute (API), Petroleum Industry Data Exchange (PIDX) REGS Work Group meeting in Houston, Texas. The API PIDX REGS Work Group meeting is scheduled for March 19–21, 1996.

Instructors are MMS employees of the Royalty Management Program, System Management Division.

AGENDA: Morning Session 9:00 a.m.–11:30 a.m. Subject: MMS EDI activities, capabilities, current status and implementation planning and schedules. Afternoon Session 1:00 p.m.–4:00 p.m. Subject: EDI technical issues related to mapping and electronic exchange of regulatory data, and funds transmittal with MMS via EDI.

All EDI Presentation attendees will be provided copies of the current MMS EDI Implementation Guides.

If you are planning to attend this EDI Presentation, please leave a message for Barbara Matthews at the telephone and FAX numbers in the information contact section of this notice no later than March 13, 1996.

Dated: February 16, 1996.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 96–4112 Filed 2–22–96; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Indian Memorial Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a scheduled meeting of the Little Bighorn Battlefield National Monument Advisory Committee (a.k.a. Indian Memorial Advisory Committee). Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: March 19–21, 1996, from 10:00 a.m.–5:00 p.m. on 03/19/96, 8:00 a.m.–5:00 p.m. on 03/20/96, and 8:00 a.m.–12:00 p.m. on 03/21/96.

ADDRESSES: Doubletree Club Hotel Denver West, 137 Union Blvd., Lakewood, Colorado 80228. (303) 969–9900.

AGENDA: Introduction/opening remarks, administrivia, minutes from last meeting, discuss follow-up actions from last meeting, review of design competition language/draft text of competition document, set design competition timetable, discuss fund-raising strategy and promotional materials. The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with: Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, Montana 59022, telephone (406) 638–2621. Minutes of the meeting will be available for public inspection four weeks after the meeting at the Office of the Superintendent of Little Bighorn Battlefield National Monument.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established under Title II of the Act of December 10, 1991, for the purpose of advising the Secretary on the site selection for a memorial in honor and recognition of the Indians who fought to preserve their land and culture at the Battle of Little Bighorn, on the conduct of a national design competition for the memorial, and "* * * to ensure that the memorial designed and constructed as provided in section 203 shall be appropriate to the monument, its resources and landscape, sensitive to the history being portrayed and artistically commendable."

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Sutteer, Chief, Office of American Indian Trust Responsibilities, Intermountain Field Area Office.

National Park Service, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 969–2511.

Dated: February 15, 1996.

Gerard Baker,

Designated Federal Officer, Little Bighorn Battlefield National Monument, National Park Service.

[FR Doc. 96–4163 Filed 2–22–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed partial consent decree in *United States* v. *John Morrell & Company*, Civil Action No. 96 4011 was lodged on January 5, 1996 with the United States District Court for the District of South Dakota. The proposed partial consent decree provides injunctive relief for violations of the Clean Water Act (the Act), 33 U.S.C. 1251 *et seq.* These violations stem from Morrell's inadequate reporting and recordkeeping practices and Morrell's exceedances of its National Pollutant Discharge Elimination System ("NPDES") permit contrary to the requirements of Section 308(a)(A) of the Act, 33 U.S.C. 1318(a)(A). The settlement requires Morrell to comply with the act and its permit limitations for twelve consecutive months, complete a pollution prevention and waste minimization audit, and hire and retain qualified personnel to operate the waste water treatment plant.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *John Morrell & Company*, Civil Action No. 96 4011, DOJ Ref. *#90–5–1–1–3973.*

The proposed consent decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 18th Street, North Tower Suite 945, Denver, Colorado, 80202 and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $11.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section.

[FR Doc. 96–4089 Filed 2–22–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 7, 1996, a proposed Consent Decree in *United States* v. *Penta Wood Products, Inc.*, Civil Action No. 96–C–0112C, was lodged with the United States District Court for the Western District of Wisconsin. This consent decree represents a settlement of claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9606, 9607, against Penta Wood Products, Inc. (Penta Wood) for past response costs incurred by the United States for removal actions at the Penta Wood facility and for Penta Wood's failure to comply with an administrative order issued to it pursuant to Section 106 of CERCLA, 42 U.S.C. 9606.

Under this settlement, Penta Wood will pay the United States $37,400. In addition, Penta Wood will make further payments in the event that the company obtains additional funds through its good faith efforts to collect outstanding accounts receivable and/or sell certain pieces of equipment owned by the company. Finally, Penta Wood is required to transfer full ownership of a wastewater treatment unit to EPA, which EPA has been using in its efforts to clean up the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Penta Wood Products, Inc.*, D.J. Ref. 90–11–3–1369.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Wisconsin, 660 West Washington Ave., Suite 200, Madison, WI 53701–1585, and at Region 5, Office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, IL 60604, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $9.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–4096 Filed 2–22–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of a Modification of Consent Decree Pursuant to Clean Water Act

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a Consent Decree in *United States* v. *Sweat*, et al., Docket No. 2:94–1673 (D.S.C.), was lodged with the United States District Court for the District of South Carolina on February 7, 1996.

The United States brought this action against the Estate of Richard Sweat, Sr. and Sweat's Dirt Hauling, Inc. The complaint alleges that Richard Sweat, Sr. and Sweat's Dirt Hauling, Inc. engaged in the unpermitted filling, clearing, and excavation of between 30 and 50 acres of wetlands along the Ashley River near Summerville, South Carolina, in violation of sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311, 1344. The United States intends to enter into a Consent Decree to resolve the liability for those violations. The Consent Decree (1) prohibits further section 404 violations by the defendants, and (2) provides for a restrictive covenant precluding development of certain wetland areas formerly owned by Richard Sweat, Sr. In return, the United States agrees that the provisions of the Consent Decree constitute a full settlement of the violations alleged in the complaint.

The Department of Justice will receive, until thirty (30) days from the date of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the United States Department of Justice, Assistant Attorney General, Environment and Natural Resources Division, 10th Street and Pennsylvania Avenue, NW, Washington, DC 20530, to the attention of Ronald M. Spritzer, Senior Attorney, Environmental Defense Section, and should refer to *United States* v. *Sweat*, et al., Docket No. 2:94–1673 (D.S.C.), and DJ Reference No. 90–5–1–1–4133.

The proposed Consent Decree may be examined at the Clerks's Office, United States District Court for the District of South Carolina, Hollings Judicial Center, 81 Broad Street, Charleston, South Carolina 29401, during regular business hours, or a copy may be requested from Ronald M. Spritzer at (202) 514–3977.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 96–4090 Filed 2–22–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Bethlehem Steel Corporation; Research Institute of Industrial Science and Technology; and Pohang Iron and Steel Co., Ltd.

Notice is hereby given that, on August 30, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the consortium filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the cooperative research and development venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Bethlehem Steel Corporation, Bethlehem, PA; Research Institute of Industrial Science and Technology, Pohang, KOREA; and Pohang Iron & Steel Co., Ltd., Pohang, KOREA. The general areas of planned activity by the venture are research and development projects in the field of basic iron and steelmaking technologies and processes.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–4086 Filed 2–22–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Cigarette Ignition Propensity Joint Venture

Notice is hereby given that, on May 4, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Cigarette Ignition Propensity Joint Venture ("the Joint Venture") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of maintaining the application of the Act to the Joint Venture. Specifically, the American Tobacco Company has merged into the Brown Williamson Tobacco Corporation, and is no longer a member of the Joint Venture. In addition, the Joint Venture has adopted an Amendment to its initial Joint Research and Development Agreement; that Amendment extends the existence of the Joint Venture until September 30, 1996.

No other changes have been made in either the membership or planned activity of the group research project. The Joint Venture intends to file additional written notifications disclosing all changes in membership.

On January 7, 1991, the Joint Venture filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 4, 1991 (56 FR 4301).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–4084 Filed 2–22–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consortium for Vehicle Electronics

Notice is hereby given that, on July 24, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Consortium for Vehicle Electronics, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Chrysler Corporation, Highland Park, MI; AVEX Electronics, Inc., Huntsville, AL; AlliedSignal Corporation, Morristown, NJ; Delco Electronics Corporation, Kokomo, IN; Auburn University, Auburn University, AL; and AMP–AKZO Company, Greenville, SC.

The purpose of the Consortium is the development of material and process technologies to support robust, low-cost, packaging technologies for electronics.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–4078 Filed 2–22–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Inter Company Collaboration for AIDS Drug Development

Notice is hereby given that, on May 18, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Inter Company Collaboration for AIDS Drug Development ("The Collaboration") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission reflecting changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the new members of the Collaboration are: Gilead Sciences, Inc., Foster City, CA; Ciba-Geigy Limited, Basle, Switzerland; and the Upjohn Company, Kalamazoo, MI.

No other changes have been made in either the membership or planned activities of the Collaboration. Membership in the Collaboration remains open, and the Collaboration intends to file additional written notifications disclosing all changes in membership.

On May 27, 1993, the Collaboration filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 6, 1993 (58 FR 36223).

The last notification was filed with the Department on April 19, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 25, 1994 (59 FR 27033).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–4087 Filed 2–22–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Joint Industry Program

Notice is hereby given that, on October 25, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute (SwRI) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objective of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the venture which shall be known as the Joint Industry Program are: CXR Company, Ltd., Hiroshima, JAPAN; Electric Power Research Institute, Palo Alto, CA: TEAM, Inc., Alvin, TX: Texaco, Inc., Port Arthur, TX; and Tokyo Gas Company, Ltd., Tokyo, JAPAN. General planned activities are to develop a cost effective nondestructive evaluation technique whose capabilities include the nonintrusive inspection of the entire cross section of pipe and to develop a field-deployable production model magnetostrictive sensor for inspecting and detecting corrosion in insulated piping systems without removal of insulation.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–4085 Filed 2–22–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Plantstep, Inc.

Notice is hereby given that, on October 31, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PlantSTEP, Inc., has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identity of the new member of PlantSTEP, Inc., is EA Systems, Inc., Alameda, CA.

No changes have been made in the planned activities of PlantSTEP, Inc. Membership remains open, and the members intend to file additional written notifications disclosing all changes in membership.

On March 10, 1995, PlantSTEP, Inc., filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 25, 1995 (60 FR 38059).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–4079 Filed 2–22–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Fuel Filtration Cooperative Research Program

Notice is hereby given that, on May 4, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of a party to its group research project entitled "Fuel Filtration Cooperative Research Program". The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SwRI advised that Cummins Engine Company, Inc., Columbus, IN (effective March 13, 1995) has become a party to the group research project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI intends to file additional written notifications disclosing all changes in membership.

On October 5, 1994, SwRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 30, 1994 (59 FR 67733–34).

The last notification was filed with the Department on February 10, 1995. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 24, 1995 (60 FR 20120).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–4088 Filed 2–22–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Universal Instruments Corporation

Notice is hereby given that, on July 20, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Universal Instruments Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following are new members: Acuson, Inc., Mountainview, CA; AEG Schneider Automation, Andover, MA; Digital Equipment Corporation, Maynard, MA; and International Business Machines, Endicott, NY.

No other changes have been made in either the membership or the planned activity of the group research project. Membership in the venture remains open, and the parties intend to file additional written notifications disclosing all changes in the membership or planned activities.

On January 16, 1995, Universal Instruments Corporation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 20, 1995 (60 FR 19779).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–4083 Filed 2–22–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Wilfred Baker Engineering, Inc.: Petroleum/Chemical Processing Joint Agreement

Notice is hereby given that, on July 24, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Wilfred Baker Engineering, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Occidental Chemical Corporation, Dallas, TX has joined the joint venture.

No other changes have been made in either the membership or planned activities of the venture.

On March 14, 1995, Wilfred Baker Engineering, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 11, 1995 (60 FR 25252).

The last notification was filed with the Department on June 22, 1995. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 18, 1995 (60 FR 65069).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–4082 Filed 2–22–96; 8:45 am]

BILLING CODE 4410–01–M

Immigration and Naturalization Service

[INS No. 1725R–96]

Notice of Change of Location of Citizens' Advisory Panel Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Change of meeting location.

SUMMARY: The Immigration and Naturalization Service (Service) in accordance with the Federal Advisory Committee Act [5 U.S.C. App. 2] and 41 CFR 101–6.1001–101–6.1035 (1992), has established a Citizens' Advisory Panel (CAP) to provide the Department of Justice with recommendations on ways to reduce the number of complaints of abuse made against employees of the Service, and to minimize or eliminate the causes for those complaints. This notice announces the CAP's forthcoming meeting and the agenda for the meeting.

DATES: February 26–27, 1996 at 8:00 a.m.

ADDRESSES: Chester Arthur Building, 425 I Street, NW., Washington, DC 20001, Sixth Floor Conference Room.

FOR FURTHER INFORMATION CONTACT: Susan B. Wilt, CAP Designated Federal Official (DFO), Immigration and Naturalization Service, Room 3260, Chester Arthur Building, 425 I Street NW., Washington, DC 20536, Telephone (202) 616–7072.

SUPPLEMENTARY INFORMATION: Pursuant to the charging language of the Senate Appropriations Committee Report 102–331 on the FY 1993 Budget for the Immigration and Naturalization Service, Department of Justice, the Service established a Citizens' Advisory Panel for the purpose of providing recommendations to the Attorney General on ways to reduce the number of complaints of abuse made against employees of the Service and, most importantly, to minimize or eliminate the causes for those complaints. The CAP is authorized by the Attorney General to (1) accept and review civilian complaints made against Service employees, and (2) review the systems and procedures used by the Service for responding to such complaints. (February 11, 1994 at 59 FR 6658)

Summary of Agenda

The principal purpose of the meeting is to set forth recommendations on the Immigration and Naturalization Service's complaint process, education and the development of training, the current training curriculum, and training policies and procedures for Service employees.

Public Participation

The CAP meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the CAP DFO at least 2 days prior to the meeting by contacting the DFO at (202) 514–2373. Any hearing-challenged individuals wishing to attend please contact the DFO by February 20, 1996 so services can be arranged.

Any member of the public may file a written statement with the CAP DFO before the meeting. Materials submitted at the meeting should be submitted in 20 copies. Members of the public will not be permitted to present oral statements at the meeting.

Minutes of the meeting will be available on request from the CAP DFO.

Dated: February 15, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–3972 Filed 2–22–96; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–31,635]

Distribution and Auto Service, Incorporated; Seattle, WA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Distribution and Auto Service, Incorporated, Seattle, Washington. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–31,635; Distribution and Auto Service, Inc. Seattle, Washington (February 9, 1996)

Signed at Washington, D.C. this 12th day of February, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4150 Filed 2–22–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,835]

Energy Fuels Nuclear, Inc. Denver, CO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 29, 1996 in response to a worker petition which was filed on behalf of workers at Energy Fuels Nuclear, Inc.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–31,836, A, B & C). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 9th day of February 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4156 Filed 2–22–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations

will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than March 4, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than March 4, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 5th day of February, 1996.

Russell Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 02/05/96]

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,838	General Mills Inc. (Wkrs)	Golden Valley, MN	01/05/96	Redemption of Coupons.
31,839	Champion Products (Comp)	Scottsboro, AL	01/11/96	Sweatshirts and Sweatpants.
31,840	Tektronix, Inc (Wkrs)	Beaverton, OR	01/09/96	T.V. and Telescopes, Test Tubes.
31,841	New River Furniture (Wkrs)	Galax, VA	12/13/95	Upholstered Furniture.
31,842	DDJ Manufacturing (Comp)	Madera, PA	01/09/96	Ladies' Skirts, Slacks, Shorts.
31,843	Pauline Handbags (Wkrs)	New York, NY	01/10/96	Ladies' Handbags.
31,844	Ertl Company (The) (UAW)	Dyersville, IA	01/12/96	Molded Toys.
31,845	G-Tee (Wkrs)	Cullman, AL	01/09/96	Knit Sportswear—T-Shirts.
31,846	Maybelle Manufacturing (Comp)	Gulfport, MS	01/08/96	Ladies' Sportswear.
31,847	Burton Golf, Inc (BBF)	Jasper, AL	01/10/96	Golf Bags.
31,848	La-Del Manufacturing (Wkrs)	Lawrenceburg, TN	01/02/96	Ladies' Sportswear.
31,849	Tultex Corp (Wkrs)	Marion, NC	01/04/96	Jersey Shorts, Fleece Sweatshirts.
31,850	Crown Cork & Seal Co. (IAM)	Philadelphia, PA	01/04/96	Sanitary and aerosol cans.
31,851	Ditto Apparel of Calif (Comp)	Colfax, LA	01/23/96	Ladies' and Juniors Jeans.
31,852	Anne Rashel Sportswear (Wkrs)	Albany, KY	01/26/96	Ladies' Sportswear and Dresses.
31,853	Mikes Blocks (Comp)	Forks, WA	01/17/96	Cedar Shakes and Shingles.
31,854	Tri-Lakes, Ltd (Comp)	Houston, MS	01/15/96	Jeans, Shirts.
31,855	Kiddie Kloes, Inc (Wkrs)	Lansford, PA	01/04/96	Girl's Dresses and Sportswear.
31,856	Central Penn Sewing (Comp)	Bloomsburg, PA	01/18/96	Industrial Sewing Machines.
31,857	Douglas County, Inc (Comp)	Winchester, OR	01/12/96	Framing Lumber.
31,858	Square D Company (Comp)	Lexington, KY	01/17/96	Safety Switches.
31,859	Standard Textile Contract (Comp)	Knoxville, TN	01/19/96	Henley Shirts and Sweatshirts.
31,860	UCAR Carbon Co., Inc (IUOE)	Columbia, TN	01/15/96	Graphite Electrodes and Connector Pins.
31,861	W.E. Stephens Mfg (Comp)	Pulaski, TN	01/19/96	Ladies' Denim Jeans.
31,862	Healthtex, Inc (Comp)	Warrenton, GA	01/18/96	Children's Sportswear.
31,863	WDC Holdings, Inc (USWA)	Attleboro Falls, MA	01/16/96	Metal Mesh Handbags.
31,864	Adrian Manufacturing (Comp)	El Paso, TX	01/05/96	Children's wear.
31,865	Monticello Mfg/Oxford (Wkrs)	Monticello, GA	01/08/96	Men's and Ladies' Slacks and Shorts.
31,866	Hughes/JVC Technology (Wkrs)	Carlsbad, CA	12/15/95	Image Light Amplifier.
31,867	Leggoons, Inc (Comp)	Vandalia, MO	01/09/96	Sports and Leisure Wear.
31,868	Robertshaw Controls Co (Wkrs)	Long Beach, CA	01/11/96	Gas Heat Control Valves.
31,869	MK Rail (Wkrs)	Mountaintop, PA	01/24/96	Locomotives.
31,870	American Olean Tile Co (Wkrs)	Lansdale, PA	01/24/96	Ceramic Wall Tile.
31,871	Acco USA (IBT)	Hinsdale, IL	01/18/96	Office Products.
31,872	Lewistown Specialty Yarns (Comp)	Lewistown, PA	01/22/96	Polyester Yarn.
31,873	Briggs Industries Inc (Comp)	Robinson, IL	01/12/96	Bathroom Bowls, Tanks, Sinks.
31,874	SeaCraft Instruments (Wkrs)	Batavia, NY	01/23/96	Circuit Boards.
31,875	Rivera Mfg (Wkrs)	Pontotoc, MS	01/25/96	Men's and Boy's Shirts.
31,876	Ca-Ce-Len Mfg, Inc (Comp)	Granger, TX	01/18/96	Garments.
31,877	Red Kap Industries (Wkrs)	Amory, MS	01/26/96	Work Uniforms.
31,878	Klear Knit of Statesville (Comp)	Statesville, NC	01/19/96	Knitted Men's Outerwear.
31,879	Rayloc (Wkrs)	Atlanta, GA	01/09/96	Water Pumps and Brake Shoes.
31,880	K-mart Fashion Dist. (ILGWU)	North Bergen, NJ	01/15/96	Admin, Dist. of Store Merchandise.
31,881	Herman Kay Co., Inc (UNITE)	Secaucus, NJ	01/22/96	Ladies' Coats.
31,882	American Contract Sewing (Wkrs)	Eufaula, OK	01/02/96	Children's Sportswear.
31,883	Dalow Industries (Wkrs)	Long Island Cty, NY	01/15/96	Jewelry.
31,884	Niagara Falls Business (Wrks)	Niagara Falls, NY	01/05/96	Printing Business Forms.
31,885	Warner's (Wkrs)	Sylvania, GA	01/03/96	Ladies' Intimate Apparel.
31,886	Anchor Glass Container (GMPAW)	Houston, TX	01/19/96	Containers.
31,887	Healthtex, Inc (Comp)	Luverne, AL	01/18/96	Children's Sportswear.

[FR Doc. 96-4149 Filed 2-22-96; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,322]

Magnetek, Main St. Plant and the Former Employees of the Main St. Plant Temporarily Employed at the Universal Drive Plant, Owosso, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on November 30, 1994, applicable to all workers of Magnetek, Main St. Plant, located in Owosso, Michigan. The notice was published in the **Federal Register** on December 16, 1994 (59 FR 65077).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Magnetek has two locations in Owosso, Main St. Plant and Universal Drive. The workers of the Universal Drive location have not been certified as eligible to apply for TAA program benefits. Information provided by the company shows that when the Main Street plant closed, some of the Main St. plant workers were asked to temporarily continue their employment at the Universal Drive location until the phase out of the main St. operations was completed. Upon completion of the Main St. phase out, the former Main St. workers were separated from employment at the Universal Drive location. Based on these new findings, the Department is amending the certification to cover the workers at Magnetek's Main St. plant that were temporarily employed at the Universal Drive plant.

The intent of the Department's certification is to include all workers of Magnetek who were adversely affected by increased imports.

The amended notice applicable to TA-W-30,322 is hereby issued as follows:

All workers of Magnetek, Main St. Plant, and the former workers of the Main St. Plant that were temporarily employed at the Universal Drive Plant who became totally or partially separated from employment on or after August 26, 1993, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of February 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96-4159 Filed 2-22-96; 8:45 am]

[TA-W-31,704]

Parker & Parsley Petroleum USA, Incorporated; Midland, Texas and Operating at Various Locations in the Following States: TA-W-31,704A Texas (Except Midland), TA-W-31,704B Pennsylvania, TA-W-31,704D Wyoming, TA-W-31,704C North Dakota, TA-W-31,704E Oklahoma; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on February 2, 1996, applicable to all workers of Parker & Parsley Petroleum USA, Incorporated located in Midland, Texas. The notice will soon be published in the **Federal Register**.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers of Parker & Parsley Petroleum are engaged in employment related to the production of crude oil and natural gas. New information provided by the company shows that worker separations have occurred at the subject firm's operations at other locations in Texas, and in the States of Pennsylvania, North Dakota, Wyoming and Oklahoma. Based on this new information, the Department is amending the certification to cover workers of Parker & Parsley Petroleum USA, Incorporated at those locations.

The intent of the Department's certification is to include all workers of Parker & Parsley who were adversely affected by increased imports.

The amended notice applicable to TA-W-31,704 is hereby issued as follows:

All workers of Parker & Parsley Petroleum USA, Incorporated, Midland, Texas (TA-W-31,704); and operating at various locations in Texas, except Midland (TA-W-31,704A) Pennsylvania (TA-W-31,704B); North Dakota (TA-W-31,704C); Wyoming (TA-W-31,704D); and Oklahoma (TA-W-31,704E) who became totally or partially separated from employment on or after June 30, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 12th day of February, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96-4151 Filed 2-22-96; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-31,896]

Rivera Manufacturing, Pontotoc, MS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 12, 1996 in response to a worker petition which was filed on February 12, 1996 on behalf of workers at Rivera Manufacturing, Pontotoc, Mississippi.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA-W-31,875). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 12th day of February, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96-4158 Filed 2-22-96; 8:45 am]

BILLING CODE 4510-30-M

[NAFTA-00718]

Paxport Mills, Incorporated, Tacoma, WA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance, hereinafter called (NAFTA-TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on December 8, 1995 in response to a petition filed by the company on behalf of workers at Paxport Mills, Incorporated located in Tacoma, Washington. The workers produced red cedar fencing.

In a letter dated February 2, 1996, the petitioner requested that the petition for NAFTA-TAA be withdrawn because the workers had already been certified under the timber program of another government program. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

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Signed at Washington, DC, this 13th day of February 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4157 Filed 2–22–96; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State:

Volume IV

Michigan
MI950047 (Feb. 23, 1996)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
NY950034 (Feb. 10, 1995)

Volume II

None

Volume III

Alabama
AL950034 (Feb. 10, 1995)
Florida
FL950009 (Feb. 10, 1995)
Georgia
GA950053 (Feb. 10, 1995)

Volume IV

Michigan
MI950001 (Feb. 10, 1995)
MI950005 (Feb. 10, 1995)
MI950012 (Nov. 03, 1995)
MI950030 (Feb. 10, 1995)
MI950031 (Feb. 10, 1995)
MI950062 (Dec. 15, 1995)

Volume V

None

Volume VI

Alaska
AK950001 (Feb. 10, 1995)
AK950002 (Feb. 10, 1995)
California
CA950032 (Feb. 10, 1995)
Idaho
ID950001 (Feb. 10, 1995)
ID950002 (Feb. 10, 1995)
Oregon
OR950001 (Feb. 10, 1995)
OR950004 (Feb. 10, 1995)
OR950017 (Dec. 15, 1995)
Washington
WA950001 (Feb. 10, 1995)
WA950002 (Feb. 10, 1995)
WA950005 (Feb. 10, 1995)
WA950007 (Feb. 10, 1995)
WA950008 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 16th day of February 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–3964 Filed 2–22–96; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and Time: March 15, 1996; 8:30 am–5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 970, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Gilbert B. Devey, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 16, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–3987 Filed 2–22–96; 8:45 am]

BILLING CODE 7555–01–M

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (#1173).

Date and Time: March 13, 14, 15, 1996; 9:00 to 5:00 Wednesday and Thursday and 9:00 to Noon on Friday.

Place: Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Open.

Contact Person: Sue Kemnitzer, Executive Secretary, Room 585, NSF, 4201 Wilson Blvd., Arlington, Va. 22230. Phone (703) 306–1382.

Minutes: May be obtained from the contact person at the above address.

Purpose of Meeting: To advise NSF on policies and activities of the Foundation to encourage full participation of women, minorities, and persons with disabilities currently underrepresented in scientific, engineering, professional, and technical fields and to advise NSF concerning implementation of the provisions of the Science and Engineering Equal Opportunities Act.

Agenda: To discuss national policy issues, including the importance of science and engineering to the national interest; overview of the areas of Social, Behavioral, and Economic Sciences; the Computer and Information Science and Engineering; and the Education and Human Resources; and update from the affirmative action task force.

Dated: February 20, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–4103 Filed 2–22–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on March 7–9, 1996, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 27, 1995 (60 FR 58393).

Thursday, March 7, 1996

8:30 A.M.–8:45 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 A.M.–10:00 A.M.: Regulatory Guidance Documents Related to Digital Instrumentation and Control Systems (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed Regulatory Guides, Standard Review Plan Sections, and Branch Technical Positions related to digital instrumentation and control systems.

Representatives of the nuclear industry will participate, as appropriate.

10:15 A.M.–11:45 A.M.: Reactor Vessel Annealing (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Department of Energy (DOE) regarding the details of the DOE pilot projects for annealing reactor vessels.

Representatives of the nuclear industry will participate, as appropriate.

11:45 A.M.–12:15 P.M.: Adequacy of Individual Plant Examinations (IPEs) (Open)—The Committee will continue its discussion with representatives of the NRC staff regarding the IPE review process and findings.

Representatives of the nuclear industry will participate, as appropriate.

1:15 P.M.–2:45 P.M.: Applicability of RELAP5/MOD3 Code for the AP600 Design (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and its consultants regarding the staff program to evaluate the applicability of the RELAP5/MOD3 Code to perform accident/transient analyses of the AP600 design.

A portion of this session may be closed to discuss Westinghouse proprietary information applicable to this matter.

2:45 P.M.–3:45 P.M.: Fire Protection Issues (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and its consultants regarding a PRA model associated with the risk of fires during a self-induced station blackout and scoping analyses to evaluate the effectiveness of degraded-fire barriers in mitigating the consequences of a fully developed fire.

Representatives of the nuclear industry will participate, as appropriate.

4:00 P.M.–4:45 P.M.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS

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business, and organizational and personnel matters relating to the ACRS staff.

A portion of this session may be closed to discuss the qualification of candidates nominated for appointment to the ACRS, organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

4:45 P.M.–7:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting as well as proposed reports on Resolution of Multiple System Responses Program (MSRP) issues, and on Conformance of Operating Plants to NRC Safety Goals.

Friday, March 8, 1996

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M.–9:45 A.M.: Probabilistic Risk Assessment (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and its consultants regarding the PRA framework document, its relationship to pilot applications, and the use of PRA in the regulatory decision-making process.

Representatives of the nuclear industry will participate, as appropriate.

9:45 A.M.–10:15 A.M.: Resolution of Generic Safety Issue 78, Monitoring of Fatigue Transient Limits for the Reactor Coolant System (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the measures taken to correct an error in the PRAISE Code, which was used to verify the results of a parametric study on risk associated with fatigue failure of primary coolant pressure boundary components.

10:30 A.M.–11:00 A.M.: Future ACRS Activities (Open)—The Committee will discuss recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

11:00 A.M.–11:15 A.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports. These responses are expected to be received from the EDO before the meeting.

11:15 A.M.–12:15 P.M.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting as well as proposed report on Resolution of the Multiple System Responses Program (MSRP) issues, and on Conformance of Operating Plants to NRC Safety Goals.

1:15 P.M.–7:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting as well as the proposed reports on other matters noted above.

Saturday, March 9, 1996

8:30 A.M.–12:00 Noon: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting as well as the proposed reports on other matters noted above.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 27, 1995 (60 FR 49925). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Public Law 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), to discuss Westinghouse proprietary information per 5 U.S.C. 552b(c)(4), and to discuss matters the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed; whether the meeting has been cancelled or rescheduled; the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 A.M. and 4:15 P.M. EST.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the "NRC MAIN MENU." Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: February 16, 1996.

John C. Hoyle,

Acting Advisory Committee Management Officer.

[FR Doc. 96–4058 Filed 2–22–96; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Financial Disclosure Statement: OMB 3220–0127

Under Section 10 of the Railroad Retirement Act and Section 2(d) of the Railroad Unemployment Insurance Act, the RRB may recover overpayments of annuities, pensions, death benefits, unemployment benefits, and sickness benefits that were made erroneously. An overpayment may be waived if the beneficiary was not at fault in causing the overpayment and recovery would cause financial hardship. The regulations for the recovery and waiver of erroneous payments are contained in 20 CFR parts 255 and 340.

The RRB utilizes Form G–423, Financial Disclosure Statement, to obtain information about the overpaid beneficiary's income, debts, and expenses if that person indicates that (s)he cannot make restitution for the overpayment. The information is used to determine if the overpayment should be waived as wholly or partially uncollectible. If waiver is denied, the information is used to determine the size and frequency of installment payments. The beneficiary is made aware of the overpayment by letter and is offered a variety of methods for recovery. One response is requested of each respondent. Completion is voluntary.

The RRB proposes to revise Form G–423 to include a request for information which would identify tangible and intangible property previously held by the beneficiary whose ownership was transferred to other parties in the last two years. Minor editorial changes are also being proposed to the Paperwork Reduction/Privacy Act notices utilized with Form G–423.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form No.(s)	Annual responses	Time (min)	Burden (hrs)
G–423 ...	2,100	85	2,975

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–4108 Filed 2–22–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26472]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 16, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 11, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Cinergy Corp. (70–8521)

Cinergy Corp., a registered holding company ("Cinergy"), 139 East Fourth Street, Cincinnati, Ohio 45202, has filed a post-effective amendment to its declaration previously filed under sections 6(a), 7, 32 and 33 of the Act and rule 53 thereunder.

By order dated January 11, 1995 (HCAR No. 26215) ("January 1995 Order"), the Commission authorized Cinergy to issue and sell from time to time through January 31, 1997, in an aggregate principal amount at any one time outstanding not to exceed $375 million ("Aggregate Debt Limitation"), and within certain parameters set out in the Commission's order and Cinergy's declaration as amended, (1) unsecured short-term promissory notes to banks and other financial institutions, (2) commercial paper to commercial paper dealers and financial institutions, and (3) unsecured demand promissory notes to banks evidencing Cinergy's reimbursement obligation in respect of letters of credit issued by such banks on Cinergy's behalf (such bank borrowings, commercial paper sales and letter of credit transactions being collectively referred to as "Short-Term Financings").

By order dated September 21, 1995 (HCAR No. 26376) ("September 1995 Order"), the Commission also authorized Cinergy and Investments to invest the proceeds of the Short-Term Financings in certain special purpose subsidiaries ("Intermediate Subsidiaries"). Under the terms of that order, the Intermediate Subsidiaries were authorized exclusively to acquire and hold, directly or indirectly, securities of, and/or provide services to, exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs"). The September 1995 Order also provided that the aggregate outstanding principal amount of such investments would not at any time exceed $115 million (the "Investment Limitation"). The September 1995 Order further provided that any such investment would be made only if Cinergy's "aggregate investment" in all EWGs, FUCOs and Intermediate Subsidiaries, after giving effect to such investment, would not exceed 50% of Cinergy's "consolidated retained earnings," as each are defined in rule 53(a) under the Act ("50% Limit").

The Commission issued a notice on February 1, 1996 (HCAR No. 26467) of a post-effective amendment ("Amendment") to the application-declaration approved in the September 1995 Order. In that amendment, Cinergy and Investments seek, among other things to amend the Investment Limitation and make investments in Intermediate Subsidiaries subject only to the 50% Limit.

Cinergy now requests a supplemental order limited to modifying the January 1995 Order in the following respects. First, Cinergy proposes that the expiration date of the authorization period be extended from January 31, 1997 to December 31, 1999. Second, Cinergy requests authority to engage in Short-Term Financing Transactions in an aggregate principal amount at any time outstanding not to exceed $1 billion.

Third, Cinergy requests authority to apply proceeds of Short-Term Financing Transactions, up to the full amount of the proposed increased Aggregate Debt Limitation noted above, to make direct and indirect investments in EWGs and FUCOs as well as in Intermediate Subsidiaries. Any such investment would be subject to the 50% Limit.

MCN Corporation (70–8731)

MCN Corporation ("MCN"), located at 500 Griswold Street, Detroit Michigan 48226, a Michigan public utility holding company exempt under section 3(a)(1) pursuant to rule 2 from all provisions of the Act except section 9(a)(2), has filed an application under sections 9(a)(2) and 10 of the Act.

MCN currently owns all of the issued and outstanding common stock of two public utility companies as defined in the Act: Michigan Consolidated Gas Company ("MichCon") and Citizens Gas Fuel Company ("Citizens"), both of which are organized and operate virtually exclusively in the state of Michigan.[1] MichCon is subject to regulation by the Michigan Public Service Commission ("Michigan PSC") with regard to rates and other corporate matters and Citizens is subject to regulation by the City of Adrian, Michigan with respect to rates and by the Michigan PSC with regard to other corporate matters.[2]

MCN requests authorization to acquire a 1% general partnership interest and a 46.5% limited partnership interest in Southern Missouri Gas Company, L.P. ("SMGC"), a Missouri limited partnership (the "Partnership") which will construct, own and operate a gas pipeline and distribution system (the "System") in southern Missouri.[3]

MCN states that it will make a capital contribution of up to $10.6 million[4] in return for its acquisition of a 47.5% aggregate interest in SMGC (the "Acquisition"). MCN will also provide credit support to the Partnership during construction of the System.[5] The remaining interests in SMGC will be owned by Tartan Management Company of Missouri, L.C. or its successors ("Tartan") which will acquire a 1% general partnership interest and a 4% limited partnership interest, and Torch Energy Marketing, Inc., a Delaware corporation, ("Torch"), or its successors, which will acquire a 47.5% limited partnership interest. MCN states that Tartan will make a capital contribution of 15 natural gas service franchises held in its name[6] and Torch will make a capital contribution of up to $10.6 million in return for their aggregate 52.5% in interests.[7]

Upon consummation of the Acquisition, SMGC will be a public utility subsidiary of MCN organized and operating exclusively in Missouri and subject to regulation by the Missouri Public Service Commission with regard to rates and other corporate matters. MCN anticipates that, when fully developed and providing service to all 15 franchised communities, the SMGC System will have over 300 miles of trunk pipeline and distribution piping serving over 10,000 customers in Missouri.

The Southern Company (70–8789)

The Southern Company ("Southern"), 270 Peachtree Street, N.W., Atlanta, Georgia 30303, a registered holding company, has filed a declaration under sections 6(a), 7, 32 and 33 of the Act and rules 42, 53 and 54 thereunder.

Southern proposes to issue and sell short-term and term-loan notes ("Notes") and commercial paper from time to time prior to April 1, 2001, in an aggregate principal amount at any time outstanding not to exceed $2 billion.[8]

[1] MichCon is engaged in the distribution, transmission and storage of natural gas to approximately 1.1 million customers in Michigan and Citizens provides natural gas distribution services to the City of Adrian, Michigan. MichCon and Citizens provide retail gas distribution services primarily to residential and small volume commercial customers and transportation services to large volume commercial and industrial customers. MichCon also provides intrastate transportation services to other gas utilities, gas marketers and producers.

[2] MCN states that formal approval by the Michigan PSC of the proposed acquisition described below is not required under Michigan law but notes that the staff of the Michigan PSC has stated in a letter that it does not object to the acquisition.

[3] The System is currently under construction and owned by Tartan Energy Company of Missouri, L.C., a Missouri limited liability company ("TEC"), which holds fifteen local franchises for providing natural gas service issued by the Missouri Public Service Commission ("MPSC"). These licenses were originally held by TEC's predecessor, Tartan Energy Company, L.C., ("Tartan's Predecessor Company") which was merged with and into TEC in accordance with an order of the MPSC dated September 29, 1995. Prior to the merger, Tartan's Predecessor Company obtained an order (the "MPSC April Order") from the MPSC authorizing an initial $39 million of expenditures to develop the System to serve approximately 9,000 customers in ten of the franchised communities. Construction of the System to seven of the communities ("Phase One Construction") began in March 1995 and is expected to cost $35 million. The MPSC also issued an order dated September 13, 1995 (the "MPSC September Order") authorizing expansion of the System to serve the five additional franchised communities. Construction of the System for these five communities and one of the original ten communities ("Phase Two Construction") is scheduled to begin in the spring of 1996 and is expected to cost $8 million. MCN states that it is unable to predict when construction of the System for the final two franchised communities ("Phase Three Construction") will begin since it is contingent on planned highway construction which will be undertaken by unaffiliated third parties in the area where the Partnership intends to build the System for these two communities. Applicant states that, while the Partnership intends to construct the full System, it is possible that the highway construction may make it uneconomical to complete construction to the final two communities. Applicant currently estimates that the Phase Three Construction would cost $3 million, and, in any event, would not exceed $10 million.

The MPSC April Order authorizes a maximum of $24 million in debt financing (plus interest during construction), with the financing being recourse to the System only. It also requires that at least $15 million of construction funding be in the form of equity contributions from the project partners. The order calls for at least an initial $8 million equity contribution by the project partners, followed by expenditure of up to $24 million in debt financing and at least $7 million in equity funding. It also specifies that the System must maintain a 40% equity ratio. Applicant states that MCN and Torch will equalize their equity contributions to the Partnership to $8 million each in apportioning equity by the end of 1996. The MPSC September Order permits additional debt financing for the additional construction, and, like the MPSC April Order, requires that the System maintain a 40% equity ratio. The additional equity necessary to complete the Phase Two Construction while maintaining a 40% equity ratio is estimated to be $1.2 million and will be contributed equally by MCN and Torch. Applicant estimates that an additional equity contribution of between $600,000 and $2 million from each of MCN and Torch would be required to complete the Phase Three Construction while maintaining a 40% equity ratio.

Applicant states that ownership of the System and its assets, along with the franchises held by TEC, will be transferred from TEC to the Partnership prior to consummation of the proposed acquisition described herein and that, upon such transfer, the terms of the MPSC April Order will be applicable to the Partnership. Ultimately, through a series of transactions involving the creation and dissolution of Tartan Limited Partnership of Missouri as an "Interim Entity," TEC will be merged with and into the Partnership, leaving the Partnership as the surviving entity, and the franchises currently held by TEC will be transferred to Tartan.

[4] MCN states that the funds for its capital contribution will come from funds allocated to MCN's capital expenditure program for the appropriate fiscal year.

[5] Specifically, in order to facilitate the initial debt financing of the Partnership, MCN has agreed to cause the Partnership to maintain a positive net worth and has agreed to provide the Partnership with funds (either as equity or a loan) if the Partnership is unable to make timely payments under its credit facility. MCN states that it does not expect that any payments will be required under this credit support arrangement, but notes that Torch has agreed to contribute to MCN 50% of any payments made by MCN thereunder.

[6] See footnote 3, above.

[7] The terms of a partnership agreement among MCN, Tartan and Torch will provide that the limited partners will take no part in the management or control of SMGC's business and the general partners will have exclusive management and control of the business of the Partnership in accordance with the provisions of the Missouri Uniform Limited Partnership Act. Tartan will serve as operator of the SMGC System in accordance with the terms and conditions set forth in a construction and management agreement. Tartan has filed a Form U–3A–2 with the Commission to claim an exemption under section 3(a)(1) from all provisions of the Act except section 9(a)(2). Torch has submitted a no-action letter request to the Division of Investment Management asking the Division to state that it will not recommend enforcement action under the Act upon Torch's acquisition of a 47.5% limited partner interest in the SMGC Partnership.

[8] Southern is currently authorized to issue and sell Notes and commercial paper in an aggregate principal amount at any one time outstanding of up to $1 billion, from time to time prior to April 1, 2000. Holding Co. Act Release Nos. 26004 (Mar. 15, 1994) and 26346 (Aug. 1, 1995). These orders would be superceded by the authorization requested in this proceeding.

Borrowings would be made from one or more banks or other lending institutions and would be evidenced by Notes, dated as of the date of borrowing (or, in the case of a grid Note, as of the date of the initial borrowing), that would mature not more than seven years from the date of issue. The interest rate would be at the lender's prevailing rate offered to corporate borrowers of similar quality, which would not exceed the prime rate; the London Interbank Offered Rate plus up to ¾ of 1%; the lender's certificate of deposit rate plus up to 1%; or a rate, not in excess of the prime rate, established by bids obtained from lenders. Southern may pay commitment fees not exceeding ½ of 1% of the unused portion of a lender's commitment, and may be required to maintain compensating balances with some lenders in lieu of fees. Notes may not be prepayable, or may be prepayable with payment of premiums not in excess of the stated interest rate on the Note.

Commercial paper would be sold directly by Southern to or through dealers, and would be issued in the form of promissory notes having varying maturities not in excess of nine months. Commercial paper would not be prepayable prior to maturity. The discount or interest rate per annum on commercial paper would not be in excess of the rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturity sold by issuers to commercial paper dealers. Southern may pay a commission not in excess of ⅛ of 1% to dealers selling the commercial paper as principal. Dealers may reoffer commercial paper at a discount rate of up to ⅛ of 1% per annum less than the prevailing discount rate to the issuer (or an equivalent rate if sold on an interest-bearing basis).

The net proceeds of the issuance of Notes and commercial paper would be used by Southern (a) to invest in subsidiaries in accordance with authorizations obtained in separate proceedings and/or in accordance with applicable exemptions, and (b) to make additional investments, directly or indirectly, in one or more exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs"), as defined in sections 32 and 33 of the Act; provided that the sum of (i) the outstanding amount of proceeds of the sale of Notes and/or commercial paper at any time invested by Southern in EWGs and FUCOs, (ii) the net proceeds of sales of new common stock used for the purpose of making such investments,[9] and (iii) the principal amount of any securities of any EWGs or FUCOs in respect of which Southern has provided a guarantee,[10] when added to Southern's "aggregate investment" (as defined in rule 53) in all EWGs and FUCOs, shall not exceed, at any point in time, 50% of Southern's "consolidated retained earnings" (as defined in rule 53).[11] Southern states that the proposed increase in the amount of borrowings and commercial paper is required primarily to enable it to fund possible future investments in EWGs and FUCOs, subject to the above limitation as it may be modified.

Georgia Power Company (70–8795)

Georgia Power Company ("Georgia"), 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308, an electric utility subsidiary company of The Southern Company, a registered holding company, has filed a declaration under sections 6(a), 7 and 12(d) of the Act and rules 42, 44, and 54, thereunder.

Georgia proposes to issue and sell from time-to-time, prior to January 1, 2003, short-term and/or term-loan notes to lenders, commercial paper to or through dealers and/or issue non-negotiable promissory notes to public entities for their revenue anticipation notes in an aggregate principal amount at any one time outstanding of up to $1.7 billion.

Georgia states that any proposed borrowings may be, and any such borrowings in excess of its charter limits on short-term unsecured debt would be, secured by a subordinated lien on certain assets of Georgia. In no circumstances will Georgia have unsecured borrowings outstanding at any one time that exceed applicable charter limitations.

Georgia proposes to borrow from certain banks or other lending institutions. The institutional borrowings will be evidenced by notes to be dated as of the date of such borrowings and to mature in not more than seven years after the date of issue, or by "grid" notes evidencing all outstanding borrowings from each lender to be dated as of the date of the initial borrowing and to mature not more than seven years after the date of issue. Georgia proposes that any note evidencing such borrowings may not be repayable, or that it may be prepaid with payment of a premium that is not in excess of the stated interest rate on the borrowing to be prepaid, which premium in the case of a note having a maturity of more than one year may thereafter decline to the date of the note's final maturity.

Borrowings will be at the lender's prevailing rate offered to corporate borrowers of similar quality. Such rates will not exceed the prime rate or: (1) LIBOR plus up to ¾ of 1%; (2) the lender's certificate of deposit rate plus up to 1%; or (3) a rate not to exceed the prime rate to be established by bids obtained from the lenders prior to a proposed borrowing. However, with respect to borrowings with a maturity in excess of one year, the rate will not exceed the yield for a comparable maturity Treasury note plus 1%. Compensation for the credit facilities may be provided by fees of up to ½ of 1% per annum of the amount of the facility. Compensating balances may be used in lieu of fees to compensate certain of the lenders.

Georgia also may effect short-term borrowings in connection with the financing of certain pollution control facilities through the issuance by public entities of their revenue bond anticipation notes. Under an agreement with each such public entity, the entity would effectively loan to Georgia the proceeds of the sale of such revenue bond anticipation notes, having a maturity of not more than one year after date of issue, and Georgia may issue its non-negotiable promissory note therefor. Such note would provide for payments to be made at times and in amounts which shall correspond to the payments with respect to the principal of, premium, if any, and interest, which shall not exceed the prime rate, on such revenue bond anticipation notes, whenever and in whatever manner the same shall become due, whether at stated maturity, upon redemption or declaration or otherwise. Georgia requests that the Commission reserve jurisdiction over short-term borrowings for this purpose, pending completion of the record.

Georgia also proposes to issue and sell commercial paper to or through dealers from time-to-time prior to January 1, 2003. Such commercial paper will be in the form of promissory notes with varying maturities not to exceed nine months. The commercial paper notes will be issued in denominations of not less than $100,000 and will not by their terms be prepayable prior to maturity.

Pursuant to prior Commission orders dated March 31, 1992, November 30,

[9] These sales of common stock are authorized in Holding Co. Act Release Nos. 26349 (Aug. 3, 1995) and 26347 (Aug. 2, 1995).

[10] These guarantees are authorized in Holding Co. Act Release No. 26468 (Feb. 2, 1996).

[11] Southern has requested authorization in File No. 70–8725 to increase this limitation to 100% of its consolidated retained earnings. If granted, this increased limitation would apply to the financing authorization in this proceeding.

1993, February 16, 1994 and August 2, 1995 (HCAR Nos. 25507, 25932, 25989, and 26348, respectively), Georgia may effect short-term borrowings through April 1, 1996 ("Prior Authority"). Georgia proposes that the authorization sought in this matter would supersede and replace, with respect to Georgia, the Prior Authority effective immediately upon the date of the Commission's order.

The proceeds from the proposed borrowings will be used by Georgia for working capital purposes, including the financing in part of its construction program. None of the proceeds from any borrowing or from the sale of any of the notes will be used by Georgia, directly or indirectly, for the acquisition of any interest in an "exempt wholesale generator" or a "foreign utility company", as those terms are defined in sections 32 and 33 of the Act, respectively.

Mississippi Power Company (70–8797)

Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, an electric utility wholly owned subsidiary company of The Southern Company, a registered holding company, has filed a declaration under sections 6(a), 7 and 12(d) of the Act and rules 42, 44, and 54 thereunder.

Mississippi proposes to issue and sell from time-to-time, prior to January 1, 2003, short-term and/or term-loan notes to lenders, commercial paper to or through dealers and/or issue non-negotiable promissory notes to public entities for their revenue anticipation notes in an aggregate principal amount at any one time outstanding of up to $350 million.

Mississippi states that any proposed borrowings may be, and any such borrowings in excess of its charter limits on short-term unsecured debt would be, secured by a subordinated lien on certain assets of Mississippi. In no circumstances will Mississippi have unsecured borrowings outstanding at any one time that exceed applicable charter limitations.

Mississippi proposes to borrow from certain banks or other lending institutions. The institutional borrowings will be evidenced by notes to be dated as of the date of such borrowings and to mature in not more than seven years after the date of issue, or by "grid" notes evidencing all outstanding borrowings from each lender to be dated as of the date of the initial borrowing and to mature not more than seven years after the date of issue. Mississippi proposes that any note evidencing such borrowings may not be prepayable, or that it may be prepaid with payment of a premium that is not in excess of the stated interest rate on the borrowing to be prepaid, which premium in the case of a note having a maturity of more than one year may thereafter decline to the date of the note's final maturity.

Borrowings will be at the lender's prevailing rate offered to corporate borrowers of similar quality. Such rates will not exceed the prime rate or: (1) LIBOR plus up to ¾ of 1%; (2) the lender's certificate of deposit rate plus up to 1%; or (3) a rate not to exceed the prime rate to be established by bids obtained from the lenders prior to a proposed borrowing. However, with respect to borrowings with a maturity in excess of one year, the rate will not exceed the yield for a comparable maturity Treasury note plus 1%. Compensation for the credit facilities may be provided by fees of up to ½ of 1% per annum of the amount of the facility. Compensating balances may be used in lieu of fees to compensate certain of the lenders.

Mississippi also may effect short-term borrowings in connection with the financing of certain pollution control facilities through the issuance by public entities of their revenue bond anticipation notes. Under an agreement with each public entity, the entity would effectively loan to Mississippi the proceeds of the sale of the revenue bond anticipation notes, having a maturity of not more than one year after date of issue, and Mississippi may issue its non-negotiable promissory note therefor. The note would provide for payments to be made at times and in amounts which shall correspond to the payments with respect to the principal of, premium, if any, and interest, which shall not exceed the prime rate, on such revenue bond anticipation notes, whenever and in whatever manner the same shall become due, whether at stated maturity, upon redemption or declaration or otherwise. Mississippi requests that the Commission reserve jurisdiction over short-term borrowings for this purpose, pending completion of the record.

Mississippi also proposes to issue and sell commercial paper to or through dealers from time-to-time prior to January 1, 2003. Such commercial paper will be in the form of promissory notes with varying maturities not to exceed nine months. The commercial paper notes will be issued in denominations of not less than $50,000 and will not by their terms be prepayable prior to maturity.

Pursuant to prior Commission orders dated March 31, 1992, November 30, 1993, February 16, 1994 and August 2, 1995 (HCAR Nos. 25507, 25932, 25989, and 26348, respectively), Mississippi may effect short-term borrowings through April 1, 1996 ("Prior Authority"). Mississippi proposes that the authorization sought in this matter would supersede and replace, with respect to Mississippi, the Prior Authority effective immediately upon the date of the Commission's order.

The proceeds from the proposed borrowings will be used by Mississippi for working capital purposes, including the financing in part of its construction program. None of the proceeds from any borrowing or from the sale of any of the notes will be used by Mississippi, directly or indirectly, for the acquisition of any interest in an "exempt wholesale generator" or a "foreign utility company," as those terms are defined in sections 32 and 33 of the Act, respectively.

Savannah Electric and Power Company (70–8799)

Savannah Electric and Power Company ("Savannah"), 600 East Bay Street, Savannah, Georgia 31401, an electric utility subsidiary company of The Southern Company, a registered holding company, has filed a declaration under sections 6(a), 7 and 12(d) of the Act and rules 42, 44, and 54 thereunder.

Savannah proposes to issue and sell from time-to-time, prior to January 1, 2003, short-term and/or term-loan notes to lenders, commercial paper to or through dealers and/or issue nonnegotiable promissory notes to public entities for their revenue anticipation notes in an aggregate principal amount at any one time outstanding of up to $90 million.

Savannah states that any proposed borrowings may be, and any such borrowings in excess of its charter limits on short-term unsecured debt would be, secured by a subordinated lien on certain assets of Savannah. In no circumstances will Savannah have unsecured borrowings outstanding at any one time that exceed applicable charter limitations.

Savannah proposes to borrow from certain banks or other lending institutions. Such institutional borrowings will be evidenced by notes to be dated as of the date of such borrowings and to mature in not more than seven years after the date of issue, or by "grid" notes evidencing all outstanding borrowings from each lender to be dated as of the date of the initial borrowing and to mature not more than seven years after the date of issue. Savannah proposes that any note evidencing such borrowings may not be prepayable, or that it may be prepaid with payment of a premium that is not in excess of the stated interest rate on the borrowing to be prepaid, which premium in the case of a note having a maturity of more than one year may thereafter decline to the date of the note's final maturity.

Borrowings will be at the lender's prevailing rate offered to corporate borrowers of similar quality. The rates will not exceed the prime rate or: (1) LIBOR plus up to ¾ of 1%; (2) the lender's certificate of deposit rate plus up to 1%; or (3) a rate not to exceed the prime rate to be established by bids obtained from the lenders prior to a proposed borrowing. However, with respect to borrowings with a maturity in excess of one year, the rate will not exceed the yield for a comparable maturity Treasury note plus 1%. Compensation for the credit facilities may be provided by fees of up to ½ of 1% per annum of the unused amount of the facility.

Savannah also may effect short-term borrowings hereunder in connection with the financing of certain pollution control facilities through the issuance by public entities of their revenue bond anticipation notes. Under an agreement with each public entity, the entity would effectively loan to Savannah the proceeds of the sale of such revenue bond anticipation notes, having a maturity of not more than one year after date of issue, and Savannah may issue its non-negotiable promissory note therefor. The note would provide for payments to be made at times and in amounts which shall correspond to the payments with respect to the principal of, premium, if any, and interest, which shall not exceed the prime rate, on such revenue bond anticipation notes, whenever and in whatever manner the same shall become due, whether at stated maturity, upon redemption or declaration or otherwise. Savannah requests that the Commission reserve jurisdiction over short-term borrowings for this purpose, pending completion of the record.

Savannah also proposes to issue and sell commercial paper to or through dealers from time-to-time prior to January 1, 2003. The commercial paper will be in the form of promissory notes with varying maturities not to exceed nine months. The commercial paper notes will be issued in denominations of not less than $30,000 and will not by their terms be prepayable prior to maturity.

Pursuant to prior Commission orders dated March 31, 1992, November 30, 1993, February 16, 1994 and August 2, 1995 (HCAR Nos. 25507, 25932, 25989, and 26348, respectively), Savannah may effect short-term borrowings through April 1, 1996 ("Prior Authority"). Savannah proposes that the authorization sought in this matter would supersede and replace, with respect to Savannah, the Prior Authority effective immediately upon the date of the Commission's order.

The proceeds from the proposed borrowings will be used by Savannah for working capital purposes, including the financing in part of its construction program. None of the proceeds from any borrowing or from the sale of any of the notes will be used by Savannah, directly or indirectly, for the acquisition of any interest in an "exempt wholesale generator" or a "foreign utility company," as those terms are defined in sections 32 and 33 of the Act, respectively.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4124 Filed 2–22–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36852; File No. SR–Amex–95–38]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Transactions in Currency Warrants by Registered Options Traders

February 15, 1996.

On September 29, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide that proprietary transactions executed on the Amex in currency warrants shall be governed by, and effected in accordance with, Amex Rule 958 (Options Transactions of Registered Traders).

Notice of the proposed rule change was published for comment and appeared in the **Federal Register** on December 7, 1995.[3] No comments were received on the proposal. This order approves the proposal.

[1] 15 U.S.C. § 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR § 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 36535 (Nov. 30, 1995), 60 FR 62911.

I. Description of the Proposal

The Amex proposes to amend Commentary .12 to Rule 111 (Restrictions on Registered Traders), Commentary .14 to Rule 114 (Registered Equity Market Makers) and Commentary .10 to Rule 958 (Options Transactions of Registered Traders) to provide that proprietary transactions executed on the Amex in currency warrants shall be governed by, and effected in accordance with, Rule 958.

In 1992, the Exchange amended its rules to permit regular members to register as a Registered Trader under Rule 958[4] to engage in supplemental market making activity in stock index warrants and certain other non-options derivative products. The Exchange enacted these changes to conform its rules to those of other markets, and to provide additional liquidity to the market for the Exchange's Portfolio Depositary Receipts and LOR SuperUnits. Due to the limited purpose of the 1992 rule changes, the Exchange did not seek at that time to extend this treatment to the trading of listed currency warrants by Registered Traders.

At present, the only traders (other than the assigned specialist) permitted to trade currency warrants on the Amex are Registered Equity Market Makers ("REMMs") under the Exchange's equity trading rules, pursuant to the provisions of Rule 114 (which includes applicable provisions of Rule 111). Under the proposed rule changes, regular members wishing to engage in supplemental market making activity in currency warrants could register as a Registered Trader under Rule 958 and be assigned the particular currency warrant requested ("assigned security"). Once registered under Rule 958, a ROT may trade the assigned security of his own account pursuant to the provisions of that Rule.

In contrast to REMMs trading pursuant to Rules 111 and 114, Rule 958 imposes continuous affirmative market making obligations upon Registered Traders.[5] In particular, Rule 958(b) requires that Registered Trader transactions constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair

[4] *See* Securities Exchange Act Release No. 30768 (June 2, 1992). A Registered Trader under Rule 958 is also referred to as a Registered Options Trade ("ROT").

[5] Moreover, as with options and stock index warrants, the Exchange believes it is inappropriate to apply the stabilization requirements applicable to REMMs to market maker transactions in currency warrants (*see* Amex Rule 950, which excludes the application of Rules 111 and 114 to transactions in options).

and orderly market and that no Registered Trader should enter into transactions or make bids or offers that are inconsistent with such a course of dealings.[6] In recognition of this, such market makers are designated as specialists on the Exchange for all purposes under the Act (*See* Rule 958, Commentary .01), and are entitled to good faith market maker margin with respect to transactions effected on the Amex trading floor in these assigned securities.[7] The Exchange anticipates that application of Rule 958 requirements to supplemental Exchange market making by its members in currency warrants will encourage additional competition, thereby enhancing liquidity in such securities, and also eliminate an anomalous regulatory disparity between currency and stock index warrant trading.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[8] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, and dealers. Because the proposed rule change would impose specialist obligations on Registered Traders as specialists for the purpose of trading currency warrants, the Commission also believes that the proposal is consistent with Section 11(b) and Rule 11b–1 under the Act, which provide that the rules of a national securities exchange may permit members to be registered as specialists, subject to the requirement of maintaining fair and orderly markets in their specialty securities.

The Commission notes that the proposed rule change will conform the treatment of currency warrants to that of stock index warrants and other non-options derivative products. As a result, Registered Traders that trade currency warrants on the Amex under Rule 958 will assume continuous affirmative and negative market making obligations and be treated as specialists under the Act, including for margin purposes. This allows the extension and application of good faith margin treatment for such transactions, thereby helping to attract more market makers and liquidity in currency warrants. Furthermore, the stabilization requirements applicable to REMMs will not apply to a Registered Trader's transactions in currency warrants. Because of the duty imposed on Registered Traders that all such transactions must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, the Commission believes it is appropriate not to apply these provisions to Registered Traders. In this respect, the Commission notes that Amex Rule 127, Minimum Fractional Changes, will continue to apply to transactions in currency warrants as will Rule 958(c)(i), which addresses bid-ask differentials.

In summary, the Commission believes that the market making obligations of an ROT together with the extension of good faith margin could help to increase the depth and liquidity of the Amex currency warrant market.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–Amex–95–38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4121 Filed 2–22–96; 8:45 am]

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[6] *See also* Rule 958(c) which, among other things, imposes additional requirements when a ROT is in the trading crowd to make competitive bids and offers as reasonably necessary to contribute to the maintenance of a fair and orderly market.

[7] Market maker margin for certain off-floor initiated transactions may also be available. *See* Commentary .01 to Rule 958.

[8] 15 U.S.C. § 78f(b)(5) (1982).

[9] 15 U.S.C. § 78s(b)(2) (1988).

[10] 17 CFR § 200.30–3(a)(12) (1994).

[Release No. 34–36851; File No. SR–CHX–96–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Acting as Agent for Members and Member Organizations

February 15, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 7, 1996, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XXI, Rule 13 of the CHX's rules relating to the CHX acting as agent for certain persons.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In Securities Exchange Act Release No. 36684 (January 5, 1996), 61 FR 1195 (January 17, 1996) (File No. SR–CHX–95–27), the Commission approved a proposed rule change by the Exchange relating to its decision to withdraw from the clearance and settlement and securities depository businesses conducted by its subsidiaries, among other things. In Securities Exchange Act Release No. 36723 (January 16, 1996), 61 FR 1803 (January 23, 1996) (File No. SR–CHX–95–29), the Commission approved a proposed rule change by the Exchange making certain changes to its rules that were necessitated by its withdrawal from those businesses. One change related to the adoption of a new Article XXI, Rule 13 that permits the Exchange to act as agent on behalf of specialists, market makers, and floor brokers.[1] However, it has become apparent that the Exchange needs the flexibility to be able to provide this service to qualified non-floor members that are members of a Qualified Clearing Agency (as that term is defined in the CHX rules).[2] Thus, the purpose of the proposed rule change is to expand the scope of this agency service.

[1] Specifically, Article XXI, Rule 13 authorizes the Exchange to enter into agreements with specialists, market makers, or floor brokers to perform various functions on behalf of and as agent for them. Such functions may include making deposits or withdrawals from a bank account, borrowing securities, providing and keeping reports and records, and performing special cashiering functions, among other things.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[3] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(e)(6) thereunder.[5]

A proposed rule change filed under Rule 19b–4(e)(6) does not become operative prior to thirty days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. In conjunction with the Exchange's recent withdrawal from the securities clearance and depository businesses, the Commission approved new CHX Article XXI, Rule 13, which permits the CHX to act as agent on behalf of specialists, market makers, and floor brokers. As it subsequently has become apparent to the Exchange that the CHX needs the flexibility to be able to act as agent on behalf of non-floor members that are members of a Qualified Clearing Agency, the CHX requests that the Commission accelerate the implementation of the proposed rule change so that it may take effect prior to the thirty days specified under Rule 19b–4(e)(6)(iii).[6] The Commission finds that the proposed rule change is consistent with the protection of investors and the public interest and therefore has determined to make the proposed rule change operative as of the date of this order.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–96–05 and should be submitted by March 15, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4122 Filed 2–22–96; 8:45 am]

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[2] *See* CHX Article XXI, Rule 4, Interpretation and Policy .03.

[3] 15 U.S.C. 78f(b)(5).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(e)(6).

[6] 17 CFR 240.19b–4(e)(6)(iii).

[Release No. 34–36856; File Nos. SR–MCC–96–01 and SR–MSTC–96–01]

Self-Regulatory Organizations; Midwest Clearing Corporation; Midwest Securities Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Relating to the Termination Dates for Services Provided by Midwest Clearing Corporation and Midwest Securities Trust Company

February 16, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 29, 1996, the Midwest Clearing Corporation ("MCC") and the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR–MCC–96–01 and SR–MSTC–96–01) as described in Items I, II, and III below, which items have been prepared primarily by MCC and MSTC. On February 8, 1996, MCC and MSTC filed amendments to the proposed rule changes to make technical corrections not affecting the substance of the proposals.[2] The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

MCC and MSTC propose to notify their participants of the transition dates selected for the final termination of MCC's and MSTC's services.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, MCC and MSTC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statement may be examined at the places specified in Item IV below. MCC and MSTC have prepared summaries, set forth in section (A), (B) and (C) below, of the most significant aspects of such statements.[3]

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letters from George T. Simon, Foley & Lardner (counsel to MCC/MSTC), to Jerry Carpenter, Senior Attorney, Division of Market Regulation, Commission (January 26, 1996).

[3] The Commission has modified the text of the summaries prepared by MCC and MSTC.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

On January 5, 1996, the Commission approved proposed rule changes filed by MCC, MSTC, and Chicago Stock Exchange, Incorporated ("CHX") regarding a decision by MCC, MSTC, and CHX to terminate as of January 15, 1996, securities clearing, depository, and other services offered by CHX, MCC, MSTC, and the Securities Trust Company of New Jersey, a CHX subsidiary, in conjunction with an agreement with the National Securities Clearing Corporation and The Depository Trust Company.[4]

MCC and MSTC propose to issue an Administrative Bulletin listing the termination dates for various MCC and MSTC services.[5] The bulletin advises MCC and MSTC participants that they should have alternative clearing and/or depository arrangments in advance of MCC/MSTC's last service date and that participant action taken after the last day for the MCC/MSTC service will result in rejected and/or reclaimed instructions. In addition, the bulletin notes that MCC and MSTC will continue to perform limited security processing functions until all participant positions have been eliminated. Furthermore, the bulletin advises that MCC and MSTC recognize that certain firms may have a small number of safekeeping positions remaining at MSTC and that MCC/MSTC intend to work with each firm on a case-by-case basis to convert or exit the positions.

MCC and MSTC believe that the proposed rule changes are consistent with Section 17A of the Act and the rules and regulations thereunder because they will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

MCC and MSTC do not believe the proposed rule changes will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

Written comments on the proposals have not been solicited or received.

III. Date of the Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule changes have become effective pursuant to Section 19(b)(3)(A)(i)[6] of the Act and pursuant to Rule 19b–4(e)(1)[7] promulgated thereunder because each proposal constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule of MCC and MSTC. At any time within sixty days of the filing of such rule changes, the Commission may summarily abrogate such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of MCC. All submissions should refer to the file numbers SR–MCC–96–01 and SR–MSTC–96–01 and should be submitted by March 15, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4125 Filed 2–22–96; 8:45 am]

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[Release No. 34–36857; File No. SR–MSRB–96–1]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–37 on Political Contributions and Prohibitions on Municipal Securities Business

February 16, 1996.

On January 16, 1996,[1] the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a notice of interpretation concerning rule G–37[2] on political contributions and prohibitions on municipal securities business (hereafter referred to as "the proposed rule change").[3] The Board has requested accelerated approval of the proposed rule change because the clarifications provided in the proposed rule change are needed to eliminate uncertainty over the specific application of rule G–37 to certain situations.

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[4] Securities Exchange Act Release No. 36684 (January 5, 1996), 61 FR 1195, [File Nos. SR–MCC–95–04 and SR–MSTC–95–10] (order approving proposed rule changes).

[5] The Administrative Bulletin is attached as Exhibit A to MCC's and MSTC's respective proposed rule changes and is available in the Commission's Public Reference Room or through MCC or MSTC.

[6] 15 U.S.C. 78s(b)(3)(A)(i) (1988).

[7] 17 CFR 240.19b–4(e)(1) (1995).

[8] 17 CFR 200.30–3(a)(12) (1995).

[1] On February 14, 1996, the MSRB filed Amendment No. 1 with the Commission. Amendment No. 1 withdraws question-and-answer number 3, as well as certain language in the filing pertaining thereto. *See* Letter from Jill C. Finder, Assistant General Counsel, MSRB, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC (February 14, 1996) ("February 14 Letter").

[2] *MSRB Manual*. General Rules, rule G–37 (CCH) ¶3681.

[3] The Board published the interpretation as originally submitted in the January 1996 MSRB Reports (Vol. 16, no. 1, pp. 31–34). The interpretation is also available for inspection and copying at the Commission's public reference room and at the Board.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item III below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On April 7, 1994, the Commission approved rule G–37, concerning political contributions and prohibitions on municipal securities business.[4] Since that time, the Board has received inquiries concerning the application of the rule. In order to assist the municipal securities industry and, in particular, brokers, dealers and municipal securities dealers in understanding and complying with the provisions of the rule, the Board has published five prior notices of interpretation which set forth, in question-and-answer ("Q&A") format, general guidance on rule G–37.[5]

In July 1995, the Board published a Q&A notice in *MSRB Reports* which addressed the issue of when a municipal finance professional would be "entitled to vote" for an issuer official candidate, and, thus be able to make a *de minimis* contribution without causing a two-year ban on municipal securities business with that issuer.[6] The Board stated that a municipal finance professional is entitled to vote for an official of an issuer if the issuer official is on the ballot in the locality in which the municipal finance professional may vote. Since publication of this "entitled to vote" interpretation, the Board has received comments from dealers concerning the burden this interpretation has placed on their compliance departments. Upon further review, the Board has decided to withdraw this interpretation and to issue a new interpretation. Accordingly, a municipal finance professional is "entitled to vote" for an issuer official if the municipal finance professional's principal residence is in the locality in which the issuer official seeks election. In such instances, a municipal finance professional is able to make a *de minimis* contribution without resulting in a ban on municipal securities business. For example, if an issuer official is a governor running for re-election, then anyone residing in that state may make a *de minimis* contribution to the official without causing a ban on municipal securities business with that issuer. In the example of an issuer official running for President, anyone in the country may contribute the *de minimis* amount to the official's Presidential campaign. By focusing on the municipal finance professional's principal residence for determining permissible *de minimis* contributions, this interpretation should allow any interested municipal finance professional to participate in the political process where he or she lives without resulting in a ban on municipal securities business.

In prior filings with the Commission, the Board stated that it will continue to monitor the application of rule G–37, and, from time to time, will publish additional notices of interpretations, as necessary.[7] Recently, the Board has received several inquiries concerning the applicability of rule G–37 when a person makes a contribution to an issuer official on behalf of others. This situation includes, but is not limited to, the following examples:

1. A municipal finance professional signs a check drawn on a joint account and sends it as a contribution to an issuer official, along with a writing which states that the contribution is being made, in whole or in part, on behalf of the other holder of the joint account (who is not a municipal finance professional).

2. Both holders of a joint account, one of whom is a municipal finance professional, sign a check and send it as a contribution to an issuer official.

The Board is of the view that, in these and similar situations, if a municipal finance professional has his or her name associated with a contribution, then this creates, at the very least, the appearance that the contribution is being given by the municipal finance professional. Accordingly, the Board believes that, for purposes of rule G–37, it is appropriate to attribute such a contribution to the municipal finance professional. If the contribution exceeds, or does not qualify for, the $250 *de minimis* exception set forth in rule G–37(b), then the two-year ban on municipal securities business will be triggered.

In addition to questions concerning making contributions to issuer officials on behalf of other persons, the Board has received other questions and comments concerning (i) making contributions to a candidate who later loses the election; (ii) reporting requirements for holding companies; and (iii) making payments to a national political party for its non-federal account. In light of these questions, the Board has determined that it is necessary to provide further guidance to the municipal industry. Accordingly, the Board is publishing a sixth set of questions and answers.[8]

The Board believes the proposed rule change is consistent with section 15B(b)(2)(C) of the Securities Exchange Act of 1934 ("Act"), which provides that the Board's rules shall:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers, and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board did not publish or solicit comments on the proposed rule change. However, the Board has received five letters addressing some of the issues contained in the proposed rule change. Letters were received from the following:

Chemical Securities Inc. ("Chemical")
J.C. Bradford & Co. ("JC Bradford")
Morgan Keegan & Company, Inc. ("Morgan Keegan")
Raymond James & Associates, Inc. ("Raymond James")

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[4] *See* Securities Exchange Act Release No. 33868 (April 7, 1994); 59 FR 17621 (April 13, 1994). The rule applies to contributions made on and after April 25, 1994.

[5] *See MSRB Reports*, Vol. 14, No. 3 (June 1994) at 11–16; Vol. 14, No. 4 (August 1994) at 27–31; Vol. 14, No. 5 (December 1994) at 8; Vol. 15, No. 1 (April 1995) at 21; and Vol. 15, No. 2 (July 1995) at 3–4. *See also MSRB Manual, supra* n.2, at ¶3681.

[6] *MSRB Reports*, Vol. 15, No. 2 (July 1995) at 3–4.

[7] *See, e.g.*, Securities Exchange Act Release No. 35879 (June 21, 1995), 60 FR 33447 (June 28, 1995) (Notice of Filing and Immediate Effectiveness of SR–MSRB–95–11).

[8] *See* February 14 Letter.

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Wolf, Robert R. ("Mr. Wolf")

As noted previously, in the Q&A notice published in July 1995, the Board provided clarification of its *de minimis* exception with regard to determining when a municipal finance professional is "entitled to vote" for an issuer official. In general, the Board stated that a municipal finance professional is entitled to vote for an issuer official (incumbent or candidate) after determining that the issuer official's name has been placed "on the ballot" for the primary or general election of the locality in which the municipal finance professional may vote. If the incumbent or candidate is not "on the ballot," then any contribution given to that issuer official by a municipal finance professional would trigger the rule's two-year ban on municipal securities business.

All of the commentators expressed concern over this "entitled to vote" interpretation. In general, the commentators believe that it creates confusion and will make compliance with the rule more burdensome. Chemical notes that "the process of running for office begins well in advance of a person actually having their name placed 'on the ballot' and that, under the Board's current interpretation, municipal finance professionals would be precluded from contributing 'early money' to campaign efforts." Chemical further notes that in some jurisdictions "a candidate's name is not placed 'on the ballot' until very late in the election process—sometimes days before the election." Chemical argues that because the procedures for placing a candidate on the ballot vary from jurisdiction to jurisdiction, compliance with the "on the ballot" standard will not be uniform. Therefore, Chemical suggests that the appropriate standard should be "whether the official is a candidate for an office for which the MFP is eligible to vote."

JC Bradford also is concerned about the Board's "entitled to vote" interpretation, particularly as it applies to an issuer official's campaign for the U.S. Presidency. JC Bradford states that the interpretation "has the practical effect of prohibiting any contribution from a municipal finance professional until such time as . . . [the issuer official] has qualified for the Presidential primary ballot in the state of residence of the municipal finance professional. At the moment . . . [the issuer official] qualifies for the ballot, a de minimis contribution, impermissible to that point, suddenly becomes permissible. . . . [This] is both arbitrary and capricious."

Morgan Keegan and Raymond James both state that the interpretation has made their compliance efforts significantly more difficult. Mr. Wolf, a registered representative with Morgan Keegan, notes that because of the peculiarities of certain state laws vis-a-vis the Board's interpretation, he is effectively prohibited from making a *de minimis* contribution until after an election. Mr. Wolf argues that "this cannot be the way the rule is intended to operate. . . ."

Board's Response

In light of the concerns expressed by these and other commentators, and upon further review, the Board has decided to withdraw its previous "entitled to vote" interpretation and to issue a new interpretation. Accordingly, a municipal finance professional is "entitled to vote" for an issuer official if the municipal finance professional's principal residence is in the locality in which the issuer official seeks election. In such instances, a municipal finance professional may make a *de minimis* contribution without triggering the ban on municipal securities business. For example, if an issuer official is a governor running for re-election, then anyone residing in that state may make a *de minimis* contribution to the official without causing a ban on municipal securities business with that issuer. In the example of an issuer official running for President, anyone in the country may contribute the *de minimis* amount to the official's Presidential campaign. The focus on the principal residence of municipal finance professionals for *de minimus* contributions should allow interested municipal finance professionals to participate in the political process where they live.

If the Board discovers that dealers or municipal finance professionals are soliciting municipal finance professionals to make *de minimis* contributions for Presidential elections, in contravention of rule G–37(c), then the Board may consider additional rulemaking in this area.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–96–1 and should be submitted by March 15, 1996.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Board has requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The Commission has reviewed the MSRB's proposed rule change and believes, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board. Specifically, the Commission believes the proposal is consistent with Section 15B(b)(2)(C) of the Act,[9] which provides in pertinent part that, the rules of the Board shall be designed to remove impediments to and perfect the mechanism of a free and open market in municipal securities; and not be designed to permit unfair discrimination between customers, issuers, municipal securities brokers or municipal securities dealers.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The clarifications provided by the proposed rule change are needed to eliminate uncertainty over the specific application of rule G–37, particularly with respect to the previous interpretation of "entitled to vote." These clarifications are intended to reduce compliance burdens and costs relating to the previous interpretation. The Commission believes that accelerated approval of the proposed rule change will help to clarify applicable guidelines for those who wish to participate in the political process through financial means. The issues addressed in the questions and answers will assist dealers in understanding the requirements of rule G–37, and will thereby facilitate compliance with the rule.

[9] 15 U.S.C. 78o–4.

Based on the foregoing, the Commission deems it appropriate to approve the proposed rule change on an accelerated basis, pursuant to Section 15B of the Act and the rules and regulations thereunder.[10]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change SR–MSRB–96–01 be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4123 Filed 2–22–96; 8:45 am]

BILLING CODE 8010–01–M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines and commentary. Request for public comment. Notice of hearing.

SUMMARY: The Commission is considering promulgating certain amendments to the sentencing guidelines and commentary. This notice sets forth the proposed amendments and a synopsis of the issues addressed by the amendments as well as additional issues for comment. The Commission seeks comment on the proposed amendments, alternative proposed amendments, and any other aspect of the sentencing guidelines, policy statements, and commentary. The Commission may submit amendments to the Congress not later than May 1, 1996.

DATES: The Commission has scheduled a public hearing on the proposed amendments set forth in this notice and on the money laundering proposals set forth in the notice dated January 2, 1996, (see 61 F.R. 79–83). Testimony at the public hearing shall be limited to only those amendments. The public hearing is scheduled for March 11, 1996, at 1:00 p.m. at the Education Center (concourse level), South Lobby, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE., Washington, DC 20002–8002.

A person who desires to testify at the public hearing should notify Michael Courlander, Public Information Specialist, at (202) 273–4590 not later than February 27, 1996.

Written testimony for the hearing should be received by the Commission not later than March 6, 1996. Comment on the amendments and issues set forth in this notice (relating to penalties for child pornography and sex crime offenses) also may be submitted after the public hearing, but not later than March 29, 1996, in order to be considered by the Commission in the promulgation of amendments and in the possible submission of those amendments to the Congress by May 1, 1996.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Information.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. § 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. § 994(o). If guideline amendments are promulgated, those amendments are submitted to Congress not later than the first day of May pursuant to 28 U.S.C. § 994(p).

The proposed amendments are presented in this notice in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates alternative proposals; for example, a proposed enhancement of [3][4][5] levels means a proposed enhancement of either three, four, or five levels. The Commission invites comment and suggestions for appropriate policy choices where bracketed text is indicated. Second, the Commission has highlighted certain issues for comment and invites suggestions for specific amendment language.

As set forth more fully in its notice dated September 22, 1995, (see 60 FR 49316–17), the Commission currently is engaged in a comprehensive guideline assessment and simplification effort. This project is expected to be a two-year initiative that may produce amendments in the 1996–97 amendment cycle for submission to Congress not later than May 1, 1997. During this initial year of the project, the Commission generally plans to promulgate no guideline amendments, except as may be necessary to implement legislation enacted by Congress. The amendments presented in this notice are proposed in order to implement congressional directives in the Sex Crimes Against Children Prevention Act of 1995. (For additional amendments proposed in response to enacted legislation, see the notice dated January 2, 1996, 61 FR 79–83).

Authority. 28 U.S.C. § 994(a), (o), (p), (x).

Richard P. Conaboy,

Chairman.

Child Sex Offenses

Chapter Two, Part G (Offenses Involving Prostitution, Sexual Exploitation of Minors, and Obscenity)

1. Synopsis of Proposed Amendments: The Sex Crimes Against Children Prevention Act of 1995 contains several directives to the Commission to amend the current guidelines relating to the sexual exploitation of minors. The amendment set forth below implements sections 2 and 3 of the Act. Those sections direct the Commission to increase by at least two levels the base offense level in the current guidelines for offenses involving the sexual exploitation of minors under sections 2251 and 2252 of title 18, United States Code, and for offenses under sections 2251(c)(1)(A) and 2252(a) of such title if a computer was used to transmit certain notices or advertisements of visual depictions involving minors engaged in sexually explicit conduct or to transport or ship those visual depictions.

In addition to implementing the congressional directives, the amendment set forth below includes a proposal to clarify that if an adjustment under § 2G2.1(b)(2) applies because of the nature of the defendant's relationship with the minor involved in the offense, § 3B1.3 does not apply based on an abuse of a position of trust; § 3B1.3 may nevertheless apply based on the use of a special skill.

(A) Proposed Amendment: Section 2G2.1(a) is amended by striking "25" and inserting "[27][28][29]".

The Commentary to § 2G2.1 captioned "Statutory Provisions" is amended by striking "§ 2251(a), (b), (c)(1)(B)" and inserting "§§ 2251(a), (b), (c)(1)(B), 2258(a), (b)".

The Commentary to § 2G2.1 captioned "Application Notes" is amended in Note 3 by inserting "based on an abuse of a position of trust" after "Use of Special Skill)".

Section 2G2.2(a) is amended by striking "15" and inserting "[17][18][19]".

[10] *Id.*

[11] 15 U.S.C. 78s(b)(2).

Section 2G2.2(b) is amended by adding at the end the following new subdivision:

"(5) If a computer was used to transmit the notice or advertisement of the material or to transport or ship the material, increase by [2][3][4] levels.".

The Commentary to § 2G2.2 captioned "Statutory Provisions" is amended by inserting ", 2258(a), (b)" after "2252(a)(1)–(3)".

Section 2G2.4(a) is amended by striking "13" and inserting "[15][16][17]".

Section 2G2.4(b) is amended by adding at the end the following new subdivision:

"(3) If the defendant's possession of the material resulted from the defendant's use of a computer, increase by [2][3][4] levels.".

(B) Additional Issues for Comment: The Commission invites comment on whether § 2G2.1 should be amended to add an enhancement to the offense level for the use of a computer comparable to the enhancement for the use of a computer directed to be added to §§ 2G2.2 and 2G2.4 by the Sex Crimes Against Children Prevention Act of 1995. Such an amendment to § 2G2.1 would, for example, apply to the use of a computer to solicit the participation of minors in sexually explicit conduct.

In addition, the Commission invites comment on whether the guidelines in Chapter Two, Part G, Subpart Two should be amended to add an application note for each such guideline comparable to the application note included in each of the guidelines of Chapter Two, Part A, Subpart Three (Criminal Sexual Abuse) which indicates that an upward departure may be warranted if the defendant's criminal history includes a prior sentence for conduct that is similar to the instant offense.

2. Synopsis of Proposed Amendments: The proposed amendments set forth below as Option 1 and Option 2 implement the directive contained in section 4 of the Sex Crimes Against Children Prevention Act of 1995. That section directs the Commission to increase by at least three levels the base offense level for offenses involving the transportation of minors with intent to engage in criminal sexual activity under section 2423(a) of title 18, United States Code.

In an effort to further the Commission's goal of simplifying the operation of the guidelines, Option 2 also consolidates §§ 2G1.1 (Transportation for the Purpose of Prostitution or Prohibited Sexual Conduct) and 2G1.2 (Transportation of a Minor for the Purpose of Prostitution or Prohibited Sexual Conduct). As proposed under Option 2, the base offense level for offenses covered by § 2G1.2 is decreased from the current level of 16 to a proposed level of 14 in order to effectuate the consolidation of §§ 2G1.2 and 2G1.1 (which currently has a base offense level of 14). However, Option 2 does not reduce the overall offense level for offenses covered by § 2G1.2 because the specific offense characteristic related to the age of the victim is proposed to be increased by two levels to compensate for the reduction in the base offense level. That specific offense characteristic would then be increased by another three, four, or five levels to implement the directive contained in section 4 of the Sex Crimes Against Children Prevention Act of 1995. Additionally under Option 2, the specific offense characteristics and cross references that now apply only to § 2G1.2 are added to § 2G1.1.

In addition, Option 1 and Option 2 both clarify that if an adjustment under § 2G1.2(b)(4) applies because of the nature of the defendant's relationship with the minor involved in the offense, § 3B1.3 does not apply based on an abuse of a position of trust; § 3B1.3 may nevertheless apply based on the use of a special skill.

(A) Proposed Amendment—Option 1: Section 2G1.2(a) is amended by striking "16" and inserting "[19][20][21]".

The Commentary to section 2G1.2 captioned "Statutory Provisions" is amended by striking "2423" and inserting "2423(a)".

The Commentary to section 2G1.2 captioned "Application Notes" is amended in Note 6 by inserting "based on an abuse of a position of trust" after "Use of Special Skill)".

(B) Proposed Amendment—Option 2 (Consolidation of §§ 2G1.1 and 2G1.2): Subpart One of Part G of Chapter Two is amended by striking §§ 2G1.1 and 2G1.2 and inserting the following:

"§ 2G1.1. Transportation for the Purpose of Prostitution or Prohibited Sexual Conduct.

"(a) Base Offense Level: 14.

"(b) Specific Offense Characteristics.

"(1) If the offense involved the use of physical force, or coercion by threats or drugs or in any manner, increase by 4 levels.

"(2) If the offense involved the transportation of a person who (A) has not attained the age of twelve years, increase by [9][10][11] levels; (B) has attained the age of twelve years but has not attained the age of sixteen years, increase by [7][8][9] levels; or (C) has attained the age of sixteen years but has not attained the age of eighteen years, increase by [5][6][7] levels.

"(3) If subsection (b)(2) applies, and the defendant was a parent, relative, or legal guardian of the minor, or if the minor was otherwise in the custody, care, or supervisory control of the defendant, increase by 2 levels.

"(c) Cross References.

"(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production).

"(2) If the offense involved criminal sexual abuse, attempted criminal sexual abuse, or assault with intent to commit criminal sexual abuse, apply § 2A3.1 (Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse).

"(3) If the offense did not involve transportation for the purpose of prostitution, and neither subsection (c)(1) nor (c)(2) is applicable, use the offense guideline applicable to the underlying prohibited sexual conduct. If no offense guideline is applicable to the prohibited sexual conduct, apply § 2X5.1 (Other Offenses).

"(d) Special Instructions.

"(1) If the offense involved the transportation of more than one person, Chapter Three, Part D (Multiple Counts) shall be applied as if the transportation of each person had been contained in a separate count of conviction.

"(2) For the purposes of this guideline, 'transportation' includes (A) transporting a person for the purpose of prostitution or prohibited sexual conduct, and (B) persuading, inducing, enticing, or coercing a person to travel for the purpose of prostitution or prohibited sexual conduct.

"Commentary

"Statutory Provisions: 8 U.S.C. § 1328; 18 U.S.C. §§ 2421, 2422, 2423(a).

"Application Notes:

"1. 'Sexually explicit conduct', as used in this guideline, has the meaning set forth in 18 U.S.C. § 2256.

"2. The enhancement for physical force, or coercion, anticipates no bodily injury. If bodily injury results, an upward departure may be warranted. See Chapter Five, Part K (Departures).

"3. 'Coercion', as used in this guideline, includes any form of conduct that negates the voluntariness of the behavior of the person transported. This factor would apply, for example, where the ability of the person being transported to appraise or control conduct was substantially impaired by drugs or alcohol. In the case of transportation involving an adult, rather than a minor, this characteristic generally will not apply where the alcohol or drug was voluntarily taken.

"4. For the purposes of § 3B1.1 (Aggravating Role), the persons transported are considered participants only if they assisted in the unlawful transportation of others.

"5. For the purposes of Chapter Three, Part D (Multiple Counts), each person transported is to be treated as a separate victim. Consequently, multiple counts involving the transportation of different persons are not to be grouped together under § 3D1.2 (Groups of Closely-Related Counts). Special instruction (c)(1) directs that if the relevant conduct of an offense of conviction includes more than one person being transported, whether specifically cited in the count of conviction or not, each such person shall be treated as if contained in a separate count of conviction.

"6. Subsection (b)(3) is intended to have broad application and includes offenses involving a minor entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this adjustment, the court should look to the actual relationship that existed between the defendant and the child and not simply to the legal status of the defendant-child relationship.

"7. If the adjustment in subsection (b)(3) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) based on an abuse of a position of trust.

"8. The cross reference in subsection (c)(1) is to be construed broadly to include all instances where the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

"9. The cross reference at subsection (c)(3) addresses the unusual case in which the offense did not involve transportation for the purpose of prostitution and neither subsection (c)(1) nor (c)(2) is applicable. In such case, the guideline for the underlying prohibited sexual conduct is to be used, e.g., § 2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape) or Attempt to Commit Such Acts) or § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact). If there is no offense guideline for the underlying prohibited sexual conduct, § 2X5.1 (Other Offenses) is to be used.".

(C) Additional Issue for Comment: The Commission invites comment on whether, as an alternative to the proposed amendments set forth above as Option 1 and Option 2, the Commission should apply the enhanced offense level required by the congressional directive only if the defendant is convicted of 18 U.S.C. 2243(a). Note that section 4 of the Sex Crimes Against Children Prevention Act of 1995 directs the Commission to increase by at least three levels the base offense level for an offense under 18 U.S.C. 2243(a). As proposed for comment under Option 1, the enhanced base offense level (increasing the current level of 16 to a proposed level of 19, 20, or 21) would apply to all offenses to which § 2G1.2 currently applies, not just offenses under 18 U.S.C. 2243(a). Similarly, as proposed for comment under Option 2, the enhanced specific offense characteristic related to the age of the victim (increasing the current levels by three, four, or five levels, in addition to the two-level increase for that specific offense characteristic proposed to be made under Option 2 as a result of the consolidation of §§ 2G1.2 and 2G1.1) would apply to all offenses to which § 2G1.2 currently applies.

[FR Doc. 96–4050 Filed 2–22–96; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF STATE

[Public Notice No. 2338]

Shipping Coordinating Committee, Marine Environment Protection Committee and Associated Bodies; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Wednesday, March 27, 1996, in Room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593. The purpose of the meeting is to prepare for discussions regarding the new Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) addressing the control of air pollution from ships. These discussions will take place during the Thirty-eighth session of the Marine Environment Protection Committee of the International Maritime Organization (IMO) scheduled for July 01–10, 1996, at IMO Headquarters in London, England.

Among other things, items of particular interest are: application of the new Annex; criteria and procedures for the establishment of special areas to reduce sulphur oxide emissions; survey and certification issues; reduction of nitrogen oxide emissions from marine engines; shipboard incinerators; ozone depleting substances; fuel oil quality; and volatile organic compound emissions during loading operations. The U.S. Safety of Life at Sea (SOLAS) Working Group supports the U.S. Representative to the IMO Committee in developing the U.S. position on those issues raised at the IMO Committee meetings. Because of the impact on domestic regulations through development of these international agreements, the U.S. SOLAS Working Group serves as an excellent forum for the public to express their ideas. All members of the maritime community are encouraged to send representatives to participate in the development of U.S. positions on those issues affecting your maritime industry and remain abreast of all activities ongoing with the IMO.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Wayne Lundy, U.S. Coast Guard Headquarters, Commandant (G–MMS), 2100 Second Street, S.W., Washington, DC 20593–0001 or by calling: (202) 267–2206.

Dated: February 14, 1996.

Charles A Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 96–4074 Filed 2–22–96; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice No. 2335]

U.S. International Telecommunication Advisory Committee (ITAC); Renewal

The Department of State has renewed the Charter of the United States International Telecommunication Advisory Committee (ITAC). This advisory committee will continue to obtain the views and advice of American experts and interested parties with respect to a broad range of technical, operational and administrative questions in the telecommunications and information sector. ITAC's focus is on U.S. participation in the work of international treaty organizations, primarily the International Telecommunication Union (ITU) and the OAS Inter-American Telecommunication Commission (CITEL).

The committee's principal work, which is to develop, coordinate and recommend contributions to and positions for international meetings and conferences, has been a major factor in ensuring effective U.S. preparations for the relevant international activities. The Under Secretary for Management has determined that the committee is necessary and in the public interest.

Membership in the ITAC is unlimited and may include representatives of all parties interested in the telecommunications and information fields or in the work of ITAC, including U.S. Government agencies, recognized operating agencies, service providers, manufacturers, users, associations, academia, and the public in general. The committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with section 10(d) of the FACA, 5 U.S.C. §§ 552b(c)(1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting date.

For further information, please call: Richard E. Shrum, ITAC Chairman and Director, Office of Multilateral Affairs, International Communications and Information Policy, (202) 647–0050; fax (202) 647–7407.

Dated: February 13, 1996.

Vonya B. McCann,

U.S. Coordinator, Communications and Information Policy.

[FR Doc. 96–4072 Filed 2–22–96; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 96–2–28; Dockets OST–95–586 and 95–585]

Applications of Sun Pacific International, Inc., for Issuance of Certificate Authority; Notice of Order to Show Cause

AGENCY: Department of Transportation.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Sun Pacific International, Inc., fit, willing, and able, and (2) awarding it certificates of public convenience and necessity to engage in interstate and foreign charter passenger air transportation.

DATES: Persons wishing to file objections should do so no later than February 26, 1996.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–95–585 and 95–586 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590, (202) 366–1064.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96–4081 Filed 2–22–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Highway Administration

Environmental Impact Statement; Erie County, New York

AGENCY: Federal Highway Administration, New York State Department of Transportation.

ACTION: Notice of Intent.

SUMMARY: The action to be evaluated by this Environmental Impact Statement is the rehabilitation or reconstruction of the Peace Bridge U.S. Plaza and Connecting Roadways to improve circulation and increase capacity for the processing of commercial and passenger vehicles at the international border with Canada.

FOR FURTHER INFORMATION CONTACT: Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, (518) 431–4127; or Robert J. Russell, Regional Director, New York State Department of Transportation, Region 5, 125 Main Street, Buffalo, New York 14203, (716) 847–3238; or Clifford T. Elwood, Capital Projects Manager, Buffalo and Fort Erie Public Bridge Authority, Peace Bridge Plaza, Buffalo, New York 14213–2494, (716) 884–6752.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Buffalo and Fort Erie Public Bridge Authority (BFEPBA) and the New York State Department of Transportation (NYSDOT), will evaluate various Plaza alternatives which consider building placement, vehicle circulation patterns, and improved ingress and egress. Each option calls for a major renovation of the 17-acre international toll plaza including toll booths, administration buildings and primary and secondary inspection operations performed by the U.S. Customs Service and the Immigration and Naturalization Service. Alternatives include potential expansion of the existing Plaza to accommodate space requirements for primary and secondary vehicle inspection, vehicle circulation and processing. Connecting roadway alternatives consider improved ingress and egress patterns to the Plaza to facilitate improved on-site circulation, closure of Moore and Baird Drives within the Historic Front Park, and improved connections between I–190, local roadways, and the Peace Bridge Plaza. The environmental, socio-economic, and engineering viability implications of each alternative will be examined. The no action alternative will also be analyzed as a base line for gauging the impacts of the Plaza and roadway reconfiguration alternatives.

Input from federal, State, local governments, local agencies, private organizations, and the community will be solicited during the development of the Environmental Impact Statement (EIS). A public scoping meeting and a formal public hearing will be scheduled. Public notice will be given to identify the time and place for the meeting and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, questions, and suggestions are invited from all interested parties. They should be directed to the BFEPBA, NYSDOT or FHWA at the address provided above.

Issued on February 13, 1996.

Stanley Gee,

Assistant Division Administrator, Federal Highway Administration, Albany, New York.

[FR Doc. 96–4073 Filed 2–22–96; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Otero County, New Mexico

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Otero County, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Bird, Environmental Planning Engineer, Federal Highway Administration, P.O. Box 25246, Denver, Colorado 80225, telephone 303–969–5909.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Lincoln National Forest and the New Mexico State Highway and Transportation Department, will prepare an environmental impact statement (EIS) on a proposal to improve New Mexico Forest Highway (FH) 45, Sacramento River Road. The portion to be improved extends 13.1 miles from Sunspot to Timberon in Otero County, New Mexico. The FHWA is the lead agency. The USDA-Forest Service, Lincoln National Forest, will assist the FHWA in the preparation of the environmental impact statement.

Improvements are being considered to provide a safe, all-weather facility for the existing and projected traffic demand. Alternatives under consideration include (1) taking no action, (2) the improvement of the existing facility to appropriate American Association of State Highway and Transportation Officials (AASHTO) design criteria, and (3) other alternatives that may be developed during environmental process.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens. A public scoping meeting and a public hearing will be held in the project area. Information on the time and place of public meetings and hearings will be provided in the local news media and by letter to individuals and agencies that have expressed interest in the proposal. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 6, 1996.

Dated: February 15, 1996.

Larry C. Smith,

Division Engineer, FHWA, Denver, Colorado.

[FR Doc. 96–4092 Filed 2–22–96; 8:45 am]

BILLING CODE 4910–22–M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, D.O.T.

ACTION: List of Applications for modification of exemptions or application to become a party to an exemption; Correction.

SUMMARY: Notice of Application No. 10933–P Laidlaw Environmental Services, Inc. should have appeared at page 1985 of the February 13, 1996 **Federal Register.**

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

[FR Doc. 96–4080 Filed 2–22–96; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974; Computer Matching Program

AGENCY: Financial Management Service, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 552a, the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of a Financial Management Service (FMS) program of computer matches.

EFFECTIVE DATE: March 25, 1996.

ADDRESS: Comments or inquiries may be submitted to the Debt Management Services, Financial Management Service, 401 14th Street, SW, Room 151, Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, Debt Management Services, (202) 874–6660.

SUPPLEMENTARY INFORMATION: FMS is the central disbursing source for the Federal Government and currently receives recurring and non-recurring payment certification records from departments and agencies of the Government. FMS has a "system of records" (as defined in the Privacy Act of 1974) for specific recurring benefit payments entitled, "Payment Issue Records for Regular Recurring Benefit Payments" identified as Treasury/FMS .002.

FMS has been designated by the Office of Management and Budget as the lead agency in credit management and debt collection for the Federal Government.

Centralized administrative offset was specifically recommended by the President's Council on Integrity and Efficiency in a report dated March 22, 1995. The Treasury Offset Program takes advantage of FMS' dual roles as the primary disbursing agency for the Federal Government, and the lead agency for debt collection within the Government. The Treasury Offset Program is one of the key elements in the Department of the Treasury's reinvention initiative to improve collection of non-tax debts owed to the United States.

NAME OF SOURCE AGENCY:

Financial Management Service.

NAME OF RECIPIENT AGENCY:

Financial Management Service.

BEGINNING AND COMPLETION DATES:

This program of computer matches will commence not earlier than the fortieth day after copies of the Computer Matching Agreement are provided to the Congress and OMB unless comments dictate otherwise. The program of computer matches will conclude at the end of the eighteenth month after the beginning date.

PURPOSE:

The purpose of this program of computer matches is to identify payments made to civil service annuitants which are subject to offset to reduce outstanding delinquent debts owed to the Federal Government, and to offset such payments where appropriate.

AUTHORITY:

Authority for this program of computer matches is granted under 31 U.S.C. 3716.

CATEGORIES OF INDIVIDUALS COVERED:

Individuals receiving benefits in the form of regular recurring payments authorized by the Office of Personnel Management, individuals who are indebted to the United States and whose debts may be collected by offset in accordance with 31 U.S.C. 3716.

CATEGORIES OF RECORDS COVERED:

Included in this program of computer matches is information concerning the

debtor contained in the Debt Collection Operations System (Treasury/FMS .014) including name, taxpayer identification number, the amount of the indebtedness, the name and address of the agency who is principally responsible for collecting the debt, and the name, phone number and address of an agency contact. Information contained in Payment Issue Records for Regular Recurring Benefit Payments (Treasury/FMS .002) which shall be included in this program of computer matches shall be limited to information concerning individuals receiving civil service annuities and shall include name, taxpayer identification number, mailing address, and the amount of payment.

Dated: February 14, 1996.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

[FR Doc. 96–4109 Filed 2–22–96; 8:45 am]

Billing Code: 4810–35–F

Office of the Comptroller of the Currency

[Docket No. 96–04]

Independent Regulatory Appeals Process

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing in final form its guidelines that permit national banks to appeal certain OCC decisions and actions. These appeals guidelines are required by the Riegle Community Development and Regulatory Improvement Act of 1994. These final guidelines supersede the OCC prior appeals policy as set forth in Banking Circular No. 272.

EFFECTIVE DATE: February 23, 1996.

FOR FURTHER INFORMATION CONTACT: Heidi Thomas, Legislative Counsel, Legislative and Regulatory Activities Division, 202–874–5090, or Carol Connelly, Office of the Chief National Bank Examiner, 202–874–5350, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

A. Background

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325 (12 U.S.C. 4806) (Act), which was signed into law on September 23, 1994, requires the OCC, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Federal Reserve Board (Federal banking agencies), and the National Credit Union Administration to establish an independent internal appellate process. This process must be available to review material supervisory determinations made at insured depository institutions or credit unions that the agency supervises.

Specifically, the Act defines "independent appellate process" in section 309(f)(2) (12 U.S.C. 4806(f)(2)) as a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review.

In addition, the Act defines "material supervisory determinations" in section 309(f)(1) (12 U.S.C. 4806(f)(1)) to include determinations relating to (1) examination ratings, (2) the adequacy of loan loss reserve provisions, and (3) loan classifications on loans that are significant to an institution. This definition expressly excludes a determination to appoint a conservator or receiver for an insured depository institution or a decision to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831o). Section 309(g) of the Act (12 U.S.C. 4806(g)) expressly provides that the Act's requirement to establish an appeals process does not affect the authority of the Federal banking agencies to take enforcement or supervisory actions against an institution.

Finally, section 309(b) of the Act (12 U.S.C. 4906(b)) requires that the Federal banking agencies hear and decide appeals expeditiously and ensure that appropriate safeguards exist for protecting the appellant from retaliation by Federal banking agency examiners.

On December 22, 1994, the OCC published in the **Federal Register** for notice and comment proposed guidelines for this appellate process (59 FR 66067), as required by section 309(c) of the Act (12 U.S.C. 4806(c)). These procedures modified and clarified the OCC's existing national bank appeals procedures, described in Banking Circular No. 272 (June 11, 1993), to make them consistent with the requirements of the Act.

Pursuant to this notice and request for comments, the OCC received three comment letters from interested parties. These comment letters generally supported the OCC's proposed guidelines and concluded that they satisfied the requirements of the Act. However, the commenters suggested some changes, several of which the OCC has addressed in the final guidelines.

B. Comments

1. Examiner Retaliation

To prevent examiner retaliation, the proposed guidelines required the OCC Ombudsman to contact the appellant bank to inquire whether it believes that OCC examiners have taken actions against it in retaliation for its appeal. The Ombudsman must contact the bank within: (1) six months after the date the Ombudsman, Deputy Administrator, or Deputy Comptroller issues a final written response to an appeal; and (2) six months after the date of completion of the first examination following an appeal. In addition, national banks that believe they are the subject of retaliation because of their appeal may, at any time, seek redress with the Ombudsman.

The commenters agreed that these procedures provide appropriate safeguards to protect the appellant bank from retaliation by agency examiners, as required by the Act. However, the commenters suggested that the guidelines also should state specifically that examiner retaliation is unacceptable and unprofessional and should provide for disciplinary sanctions or otherwise describe what "appropriate action" may ensue if the Ombudsman determines that retaliation has occurred. In addition, one commenter suggested permitting the Ombudsman to exclude from the next examination any personnel involved in the appealed decision.

The OCC strongly agrees that any form of examiner retaliation is unacceptable and unprofessional. The OCC also agrees that, in some cases, it may be appropriate to exclude from the next examination of the bank personnel involved in the appealed decision. Therefore, the final guidelines provide that the Ombudsmen may recommend to the Comptroller that the next examination of a national bank not include personnel involved in a decision appealed by that bank. The Comptroller will make the final decision on exclusion.

The proposed guidelines required the Ombudsman, upon determining that retaliation has occurred, to forward the complaint to the District Administrator, Deputy Comptroller, or Inspector General for appropriate action. The final guidelines require the Ombudsman to forward these complaints to the Senior Deputy Comptroller for Bank Supervision Operations or the Inspector General. The OCC believes that retaliation complaints are better handled by senior staff in the Washington Office than in the District Office where the retaliation is alleged.

In addition, the final guidelines more specifically refer to "disciplinary" action consistent with OCC policies and procedures. The OCC believes, however, that further description of particular disciplinary actions is outside the scope of these guidelines.

2. Scope of Appeal

Except as otherwise provided, the proposed guidelines permitted national banks to seek review of all agency decisions and actions, including material supervisory determinations. Section 309(f)(1) of the Act (12 U.S.C. 4806(f)(1)) defines "material supervisory decisions" as determinations relating to examination ratings, the adequacy of loan loss reserve provisions, and loan classifications on loans that are significant to an institution.

The proposed guidelines did not allow a national bank to seek review of an agency decision or action involving the appointment of a receiver or conservator, or a decision that is enforcement-related, including a decision to take prompt corrective action pursuant to section 38 of the FDI Act (12 U.S.C. 1831o). The proposed guidelines also expressly excluded preliminary examination conclusions communicated to the national bank prior to the issuance of either a Final Report of Examination or other written communication from the OCC. The OCC believes that, until these preliminary conclusions become final, they are not "material supervisory determinations" for purposes of the appellate procedures.

The commenters stated that, in general, the scope of appealable matters under the proposed guidelines is appropriate and reasonable. However, one commenter requested the OCC to clarify that national banks may appeal informal enforcement actions under the guidelines. The OCC believes, however, that distinguishing between formal and informal enforcement actions or decisions could be counterproductive, and could improperly influence what would otherwise be OCC supervisory judgements concerning the appropriate enforcement action in a particular case. Currently, the OCC excludes informal enforcement decisions and actions from appeals pursuant to Banking Circular 272. This exclusion has proved to be workable and the OCC believes that it is appropriate. Therefore, both formal and informal enforcement actions will continue to be excluded from the scope of appealable matters available under the final guidelines.

Some commenters also requested that the OCC not tie the definition of significant loan classification to a set percentage of the portfolio classified. The commenters also opposed a definition that is more narrow or more restrictive than that used by any other agency in implementing their guidelines. These comments do not apply to the OCC's proposed guidelines, which permit appeals of all types of loan classifications. The OCC agrees that the definition should not be narrowed and therefore will continue to permit appeals of all types of loan classifications.

3. Timing of Appeal

The proposed guidelines required the District Administrator, the Deputy Comptroller, and the Ombudsman, absent any extenuating circumstances, to issue a written response within 45 calendar days of the filing of an appeal. In addition, the Ombudsman must issue a written response to a second-tier appeal, an appeal by a national bank of an appeal decision made by a District Administrator or Deputy Comptroller, within 30 calendar days of the filing of that second-tier appeal. These time periods are longer that those specified in Banking Circular 272. Based on its current experience with the appeals process, the OCC found that some additional time is necessary to hear and decide appeals.

Commenters, in general, agreed that the new time periods meet the Act's requirement that appeals be heard and decided expeditiously. However, two of the commenters suggested that the OCC increase the amount of time in which a national bank may file a second-tier appeal. The proposed guidelines required that a national bank file a second-tier appeal within 15 calendar days of receiving a decision from the District Administrator or Deputy Comptroller. The commenters stated that, due to intervening business, vacations, or holidays, a national bank may not be able to determine whether to file a second appeal within this time period. The OCC agrees that providing additional time for filing second-tier appeals is reasonable. Therefore, the final guidelines provide that a national bank may file a second-tier appeal within 30 calendar days after receiving the decision from the District Administrator or Deputy Comptroller.

C. Other Modifications to Proposed Guidelines

The OCC has made the following additional modifications to the proposed guidelines:

1. Liaison Activity

To comply with section 309(d)(2) of the Act (12 U.S.C. 4806(d)(2)), the OCC has modified the proposed guidelines to specifically state that, in addition to hearing and deciding appeals, the Ombudsman is available to act as a liaison between the OCC and any affected person with respect to any problem that party may have in dealing with the OCC resulting from its regulatory activities. In so doing, the Ombudsman will ensure that safeguards exist to encourage persons to come forward and to preserve their confidentiality. In practice, the Ombudsman informally acts as a liaison. This modification to the final guidelines formalizes this activity and notifies other interested persons of the availability of the Ombudsman for that purpose.

2. Recommendations of Policy Changes

The final guidelines state that the Ombudsman may report weaknesses in OCC policy to the Comptroller, and may make recommendations regarding changes in OCC policy.

3. Reference to Banking Bulletin OCC 96–18

In order to clarify that other OCC appeals processes are available for national banks, the final guidelines include a statement advising national banks that they may obtain a separate OCC Bulletin, OCC 96–18, that consolidates all OCC appeals processes that national banks may follow to appeal agency decisions and actions. Specifically, this OCC Bulletin consolidates these final appeals guidelines, the Shared National Credit Appeals Process, and a new process for appealing fair lending-related decisions. The final guidelines specifically reference the availability of this separate fair lending appeals process.

4. Stay of Decisions and Actions Pending an Appeal

The proposed guidelines provided that, as a general rule, the filing of an appeal serves to stay all agency decisions and actions until the appeal is resolved. The final guidelines specifically provide that this stay does not allow a corporate matter subject to an appeal to be approved simply by the passage of time. In addition, the final guidelines provide that an appropriate OCC official, in addition to the Ombudsman, may put the disputed agency decision into effect while the appeal is still pending.

5. Appeals on Behalf of Individuals

To ensure that appealable OCC actions and decisions relating to an individual as opposed to a national bank are not excluded from the appeals

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process, the final guidelines specify that in the case of an appealable matter relating specifically to an individual, such as section 914 of FIRREA or Change in Bank Control Act notices, a national bank may file an appeal on behalf of that individual.

6. Scope of Appealable Matters

To further define the scope of those OCC decisions that are subject to the appeals process, the final guidelines state that formal and informal rulemakings pursuant to the Administrative Procedure Act (5 U.S.C. 500 *et seq.*) and requests for agency records or information under, and submissions of information to the OCC that are governed by, the Freedom of Information Act (5 U.S.C. 552 or 12 CFR Part 4) are not appealable matters. These matters are governed by separate statutory and regulatory procedural requirements and are not included in the scope of matters appealable to the Ombudsman.

The final guidelines also emphasize that, although preliminary examination conclusions are not appealable, a national bank is encouraged to discuss any concerns or disagreements regarding these conclusions with its examiner-in-charge or its supervisory office.

7. Appeal of Decisions on Corporate Applications

Because appeals of corporate decisions are now made though the National Bank Appeals Process, the final guidelines delete all references to the appeal of corporate decisions as a separate appeals process. In addition, the final guidelines provide that banks that choose not to file their appeal of corporate application decisions directly with the Ombudsman must file with the Deputy Comptroller for Bank Organization and Structure (BOS), rather than with the District Deputy Comptroller, District Administrator or Deputy Comptroller for Multinational Banking or Special Supervision, as in other cases.

8. Recusal of Ombudsman

The proposed guidelines provided that in cases where the Ombudsman should be recused from reviewing the decision under appeal, the Ombudsman must transfer the appeal to the Senior Deputy Comptroller for Bank Supervision Policy. The final guidelines instead provide that, in such cases, the appeal must be transferred to a senior official designated by the Comptroller. The OCC has made this change to ensure that, in all cases, the appeal will be heard by a neutral reviewer.

D. Effect of Final Guidelines

This notice supersedes the current OCC appeals policy as set forth in Banking Circular No. 272. These final guidelines, however, do not supersede any other existing appeals procedures available under current law. All of the OCC's currently available regulatory appeals processes for national banks, including these final guidelines, are consolidated in OCC Bulletin 96–18, available through the OCC's Communications Division, 250 E. Street, SW:, Washington DC 20219–0001; phone—(202) 874–4700, fax—(202) 874–5263.

The following is the text of the OCC's Appeals Process for National Banks:

National Bank Appeals Process

I. Policy

The OCC is responsible for fostering the safety and soundness of the national banking system, monitoring, and enforcing national banks' compliance with laws and regulations, and encouraging competitiveness, integrity, and stability of financial services provided by the national banking system. In fulfilling this mission, it is the OCC's policy to maintain open and ongoing communication with both the institutions it supervises and other affected persons, and to foster the fair and equitable administration of the supervisory process.

If a disagreement arises during the supervisory process, the OCC will attempt to resolve the dispute fairly and expeditiously in an informal, amicable manner. If disagreements cannot be resolved through informal discussions, national banks and Federal branches and agencies of foreign banks (collectively referred to as "national banks" for purposes of these guidelines) are encouraged, and the examiner involved in the dispute should specifically encourage the national bank, to seek a further review of the OCC decisions or actions in dispute.

These guidelines establish a process through which a national bank can seek such a review. A critical element in this appeals process is the OCC Ombudsman. The Ombudsman is outside the bank supervision area and reports directly to the Comptroller of the Currency. With the prior consent of the Comptroller, the Ombudsman may supersede any appealable agency decision or action during the resolution of an appealable matter. The Ombudsman also may report weaknesses in OCC policy to the Comptroller, and may make recommendations regarding changes in OCC policy.

The procedures established in these guidelines provide national banks a fair and expeditious review of agency decisions and actions while ensuring that no one is disadvantaged by filing an appeal. If a national bank has a question as to whether it should make use of this appeal authority, it should contact the Ombudsman.

In addition, the Ombudsman is available to act as a liaison between the OCC and any affected person with respect to any problem such person may have in dealing with the OCC resulting from its regulatory activities.

Interested parties should direct all communications with the Ombudsman to the following address: Office of the Ombudsman, 1000 Louisiana Street, Suite 950, Houston, Texas 77002–5008; phone—(713) 650–0475, fax—(713) 650–6248.

II. Procedures

A. Filing An Appeal

A national bank may seek review of appealable matters by filing an appeal with either its immediate supervisory office or with the OCC's Ombudsman.[1] The choice of where to file is a matter within the sole discretion of the bank, except as indicated below. All appealable matters can be received in either location. However, in cases where the District Administrator or Deputy Comptroller directly or indirectly participated in making the decision under review or directly or indirectly reports to the agency official who made the decision under review, the District Administrator or Deputy Comptroller must transfer the appeal to the Ombudsman. In addition, in cases where the Ombudsman should be recused from reviewing the decision under appeal, the Ombudsman shall transfer the appeal to a senior official designated by the Comptroller. The procedures for filing an appeal under the two options are outlined below.[2]

[1] In the case of an appealable matter specifically relating to an individual as opposed to a national bank, such as section 914 of FIRREA or Change in Bank Control Act notices, a national bank may file an appeal on behalf of that individual.

[2] The process by which national banks may appeal OCC decisions to make a referral to the Department of Justice (DOJ) or a notification to the Department of Housing and Urban Development (HUD) regarding fair lending-related matters is described separately in OCC Bulletin 96–18. In general, national banks may file an appeal to the Ombudsman for reconsideration of a fair lending decision within 15 calendar days of the date of the written notification from the Senior Deputy Comptroller for Bank Supervision-Operations of the OCC's intention to make a referral to DOJ or a notification to HUD.

1. Supervisory Office Appeals

If a disagreement concerning an OCC supervisory decision or action cannot be resolved informally, a national bank may file an appeal with its immediate supervisory office. Except as indicated below, a community bank or a regional bank seeking appeal under this option should file the appeal with the District Administrator or Deputy Comptroller of the OCC District in which the bank is headquartered. A bank in the Multinational Banking or Special Supervision programs using this option should file an appeal with the Deputy Comptroller for the program in the Washington Office. A national bank seeking appeal of a corporate application decision under this option shall file its appeal with the Deputy Comptroller for Bank Organization and Structure (BOS) in the Washington, DC office. In cases where the District Administrator or Deputy Comptroller directly or indirectly participated in making the decision under review or directly or indirectly reports to the agency official who made the decision under review, the District Administrator or Deputy Comptroller must transfer the appeal to the Ombudsman after advising the appellant.

An appellant national bank must submit information in writing fully describing the matter in dispute and setting forth its basis for requesting an appeal. Upon receipt of an appeal, the appropriate District Administrator or Deputy Comptroller, or a designee who has not directly or indirectly participated in making the decision in dispute and is not directly or indirectly responsible to the agency official who made the decision under review, will contact the OCC employee(s) involved in the matter under appeal. The OCC employee(s) shall submit written or oral information concerning the basis of the appeal. If requested by a senior official of the national bank filing the appeal, the appropriate District Administrator or Deputy Comptroller shall arrange a meeting or a telephone call to more fully discuss the appeal and related issues.

In the absence of any extenuating circumstances, the appropriate District Administrator or Deputy Comptroller shall issue a written response within 45 calendar days of the filing of the appeal. Immediately after the response is issued, the District Administrator or Deputy Comptroller shall forward to the Ombudsman a copy of all relevant material considered in the preparation of the response, including any written submission by the bank.

If the national bank disagrees with the response from the District Administrator or Deputy Comptroller, a senior official of the bank may further appeal the matter to the Ombudsman. The bank shall file written notice of this second-tier appeal within 30 calendar days of receiving the response from the appropriate District Administrator or Deputy Comptroller.

After receipt of a second-tier appeal, the Ombudsman shall review any material considered by the appropriate District Administrator or Deputy Comptroller in the preparation of the initial response. The Ombudsman shall contact the national bank to ensure that the OCC is in possession of all relevant material. If requested by either OCC management involved in the dispute or a senior official of the national bank filing the appeal, the Ombudsman shall arrange a meeting or a telephone call to more fully discuss the appeal and related issues. In the absence of any extenuating circumstances, the Ombudsman shall issue a written response to the second-tier appeal within 30 calendar days of the filing of that appeal.

2. Appeals to the Ombudsman

When a disagreement concerning an OCC supervisory decision or action cannot be resolved informally and a national bank chooses not to file an appeal with its immediate supervisory office, the national bank may file an appeal directly with the Ombudsman. In a case where the Ombudsman should be recused from reviewing the decision under appeal, the Ombudsman shall transfer the appeal to a senior official designated by the Comptroller. In such a case, the procedures outlined below apply.

A national bank filing an appeal with the Ombudsman must submit information in writing fully describing the matter in dispute. After receipt of an appeal, the Ombudsman shall contact the OCC management official involved in the dispute. That management official shall submit written material and relevant OCC documents pertaining to the basis of the appeal within 10 calendar days of the notice from the Ombudsman. The Ombudsman shall contact the national bank to ensure that the OCC is in possession of all relevant materials. If requested by either OCC management involved in the dispute or a senior official of the national bank filing the appeal, the Ombudsman shall arrange a meeting or a telephone call to more fully discuss the appeal and any related issues. In the absence of any extenuating circumstances, the Ombudsman shall issue a written response to the appeal within 45 calendar days of the filing of the appeal by the national bank.

B. Follow-Up by Ombudsman

After the Ombudsman, Deputy Administrator, or Deputy Comptroller renders a decision on an appeal, the Ombudsman shall contact the appellant bank to inquire whether the bank believes OCC examiners have taken actions against the bank in retaliation for its appeal. The Ombudsman shall make these contacts (1) six months after the date the Ombudsman, Deputy Administrator or Deputy Comptroller issues a final written response to an appeal, and (2) six months after the date of completion of the first examination of the appellant bank following its appeal. Of course, a national bank may contact the Ombudsman at any time during or after the appeal if the bank reasonably believes that an OCC examiner is taking action against it in retaliation for its appeal.

Upon identifying or learning of any possible retaliatory action, the Ombudsman shall investigate the complaint. In the absence of any extenuating circumstances, the Ombudsman must complete investigations within 30 days. If the Ombudsman determines that retaliation has occurred, the Ombudsman shall forward the complaint to the Senior Deputy Comptroller for Bank Supervision Operations or Inspector General for appropriate action, including disciplinary action consistent with OCC policies and procedures.

In addition, the Ombudsman may recommend to the Comptroller that the next examination of a national bank exclude personnel involved in a decision appealed by that bank. The Comptroller shall make the final decision on any exclusion.

C. Appealable Matters

Except as otherwise provided, a national bank may seek a review of any agency decision or action, including a material supervisory determination. Examples of material supervisory determinations include determinations relating to:

- Examination ratings;
- The adequacy of loan loss reserve provisions; and
- Loan classifications on loans that are significant to an institution.

A national bank may not appeal to the Ombudsman or its immediate OCC supervisory office:

- Appointments of receivers and conservators;
- Preliminary examination conclusions communicated to the national bank prior to the issuance of

either a final Report of Examination or other written communication from the OCC;[3]

- Enforcement-related actions or decisions, including decisions to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o);
- Formal and informal rulemakings pursuant to the Administrative Procedure Act, 5 U.S.C. 500 *et seq.*; and
- Requests for agency records or information under, and submissions of information to the OCC that are governed by, the Freedom of Information Act, 5 U.S.C. 552 or 12 CFR Part 4.

An enforcement-related action or decision commences, and therefore becomes unappealable, when the national bank receives notice from the OCC indicating its intention to pursue available remedies under applicable statutes or published enforcement-related policies of the OCC. Such policies include OCC's Policy for Corrective Action (PPM 5310–3)(REV), Civil Money Penalty Policy (PPM 5000–7)(REV), and Securities Enforcement Policy (PPM 5310–5). These policies are available on request from the OCC's Communications Division, 250 E. Street, SW., Washington DC 20219–0001; phone—(202) 874–4700, fax—(202) 874–5263. For purposes of these guidelines only, remarks in a Report of Examination do not constitute notice of intent to pursue enforcement remedies.

III. Effect of Filing An Appeal

As a general rule, the filing of an appeal concerning an appealable matter with either the national bank's immediate supervisory office or with the Ombudsman serves to stay all agency decisions and actions until the appeal is resolved. A stay does not allow a corporate matter subject to an appeal to be approved simply by the passage of time. In the appropriate circumstances, however, the Ombudsman or the appropriate OCC official may put the disputed agency decision or action into effect while the appeal is still pending.

IV. Other OCC Appeals Processes

The appeals process established by these guidelines does not supersede any other existing appeals procedures available under current law. Matters that are subject to an OCC appeals process designed specifically for the issue in dispute, such as review of Shared National Credit findings and fair lending-related decisions, are appealable to the Ombudsman when the OCC decision is final under the specifically designed appeals procedures.

These final appeals guidelines, the process to appeal Shared National Credit decisions, and the appeals process for fair lending-related decisions are consolidated in OCC Bulletin 96–18, available through the OCC's Communications Division, 250 E. Street, SW., Washington DC 20219–0001; phone—(202) 874–4700, fax—(202) 874–5263.

V. Liaison Activity of Ombudsman

In addition to hearing and deciding appeals brought by national banks, the Ombudsman is available to act as a liaison between the OCC and any affected person with respect to any problem or question the party may have in dealing with the OCC resulting from the OCC's regulatory activities.[4] The Ombudsman will either provide the requested information or direct the person to the appropriate point of contact. In so doing, the Ombudsman will ensure that safeguards exist to encourage persons to come forward and to preserve the confidentiality of those seeking information or identifying a concern.

Dated: February 15, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 96–4023 Filed 2–22–96; 8:45 am]

BILLING CODE 4810–33–P

[3] A national bank is encouraged to discuss any concerns or disagreements regarding preliminary examination conclusions with its examiner-in-charge or its supervisory office.

[4] Interested parties may also contact the OCC's Customer Assistance Unit, located in the OCC's Washington office, to report any problems or concerns they may have regarding national banks. The Unit's telephone number is 800–613–6743. In addition, interested persons may also comment on proposed OCC rulemakings published in the **Federal Register** for notice and comment by filing written comments with the OCC, as described in the rulemaking.

DEPARTMENT OF VETERANS AFFAIRS

Loan Guaranty: Percentage to Determine Net Value

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This notice provides information to participants in the Department of Veterans Affairs (VA) Loan Guaranty Program concerning the percentage to be used in determining whether the Secretary will accept conveyance of a foreclosed property. The new percentage is 15.11 percent.

EFFECTIVE DATE: The new percentage is effective January 22, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard A. Levy, Assistant Director for Loan and Property Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7344.

SUPPLEMENTARY INFORMATION: VA regulations concerning the payment of loan guaranty claims are set forth at 38 CFR 36.4300, et seq. The formulas for determining whether VA will offer the lender an election to convey the property to VA are set forth at 38 CFR 36.4320. A key component of this is the "net value" of the property to the Government, as defined in 38 CFR 36.4301. Essentially, "net value" is the fair market value of the property, minus the total of the costs the Secretary estimates would be incurred by VA resulting from the acquisition and disposition of the property for property taxes, assessments, liens, property maintenance, administration, and resale. Each year VA reviews the average operating expenses incurred for properties acquired under 38 CFR 36.4320 which were sold during the preceding three fiscal years and the average administrative cost to the Government associated with the property management activity. Administrative cost is based on the average holding time for properties sold during the preceding fiscal year. Property improvement expenses are estimated on an individual case basis at the time the net value is estimated. VA also includes in the net value calculation an amount equal to the gain or loss experienced by VA on the resale of acquired properties during the prior fiscal year. VA annually updates the net value percentage and publishes a notice of the new percentage in the **Federal Register**. For Fiscal Year 1995, the percentage was 11.18 percent. For Fiscal Year 1996, the percentage will be 15.11 percent, based upon the operating expenses incurred, exclusive of estimated property improvement expenses which are accounted for separately in each case, for Fiscal Years 1993, 1994, and 1995, and property resale experience for Fiscal Year 1995. Accordingly, VA will subtract 15.11 percent from the fair market value of the property to be foreclosed in order to arrive at the "net value" of the property to VA. This new percentage will be used in "net value" calculations made by VA on and after January 22, 1996. This is the date the new percentage was issued to VA filed stations for use in these calculations.

Approved: February 12, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 96–4100 Filed 2–22–96; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 61, No. 37
Friday, February 23, 1996

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, February 20, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: February 20, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96-4248 Filed 2-21-96; 11:51 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, February 27, 1996, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Report of actions approved by an officer of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum re: Quarterly Budget Variance Summary Report.

Discussion Agenda

Personnel matters.

Memorandum and resolution re: Proposed amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which would incorporate an incremental measure for market risk and provide additional guidance to institutions about how the multiplication factor used to calculate capital requirements for market risk under the internal models approach would be adjusted if *ex post* comparisons of internal model estimates with actual trading results indicate that the internal model does not produce satisfactory results.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942-3132 (Voice); (202) 942-3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: February 20, 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96-4249 Filed 2-21-96; 11:51 am]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:15 a.m., Wednesday, February 28, 1996, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 21, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-4272 Filed 2-21-96; 1:39 pm]

BILLING CODE 6210-01-P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, February 28, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda:

Because of its routine nature, no discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed amendment to the outstanding proposal to revise the Federal Reserve Board's risk-based capital guidelines to incorporate a measure for market risk (proposed earlier for public comment; Docket No. R-0884).
2. Any items carried forward from a previously announced meeting.

Discussion Agenda.

Please Note That No Discussion Items Are Scheduled for This Meeting.

Note: If the items are moved from the Summary Agenda to the Discussion Agenda, discussion of the items will be recorded. Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: February 21, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-4273 Filed 2-21-96; 1:39 pm]

BILLING CODE 6210-01-P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-96-03]

TIME AND DATE: February 29, 1996 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731-TA-740 (Preliminary) (Sodium Azide from Japan)—briefing and vote.
5. Outstanding action jackets:
   1. CO69-95-001, Proposal on delegation of budget authority.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: February 21, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96-4271 Filed 2-21-96; 1:39 pm]

BILLING CODE 7020-02-P

RAILROAD RETIREMENT BOARD

Notification of Item Added to Agenda

On February 20, 1996, the Board voted unanimously to add one item to its agenda for the February 21, 1996 Board Meeting:

(11) Occupational Disability Travel.

Dated: February 20, 1996.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96-4241 Filed 2-21-96; 2:28 pm]

BILLING CODE 7905-01-M

Corrections

Federal Register
Vol. 61, No. 37
Friday, February 23, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. PY-96-002]

Tentative Voluntary Poultry Grade Standards

Correction

In notice document 96–3350 beginning on page 5975 in the issue of Thursday, February 15, 1996 make the following correction:

On page 5975, in the third column, under **DATES**, in the third line "1996" should read "1997".

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

Foreign-Trades Zone Board

[Docket A(32b)-1-96]

Foreign-Trade Zone 87–Lake Charles, LA, Subzone 87A, Conoco, Inc.; Request for Modification of Restrictions (Oil Refinery Complex)

Correction

In notice document 96–1997 beginning on page 3669 in the issue of Thursday, February 1, 1996, make the following correction:

On page 3670, in the first column, in the last line, "March 30, 1996" should read "March 4, 1996".

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 620

[Docket No. 9601-26016-6016-01; I.D. 012696C]

RIN 0648-XX41

General Provisions for Domestic Fisheries; Closes Block Island Sound to All Fishing

Correction

In rule document 96–2043 appearing on page 3602, in the issue of Thursday, February 1, 1996, make the following correction:

On page 3602, in the second column, under **SUPPLEMENTARY INFORMATION:**, in the second paragraph, in the fifth line, "are may" should read "area will".

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-7122-00-5499; AZA 28639]

Notice of Availability of Final Environmental Impact Statement (EIS), Proposed Tailings & Waste Rock Disposal Areas, Cyprus Bagdad Copper Corporation, Bagdad, Arizona

Correction

In notice document 95–2127 appearing on page 3942 in the issue of Friday, February 2, 1996, in the second column, the **DATES** section is corrected to read as follows:

DATES: Thirty (30) days after publication of the Notice of Availability in the **Federal Register** by the Environmental Protection Agency, the BLM will be issuing a Record of Decision. This will be followed by a 30-day appeal period.

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94-19]

Terrence E. Murphy, M.D.; Revocation of Registration

Correction

In notice document 96–1559 beginning on page 2841, in the issue of Monday, January 29, 1996, make the following correction:

On page 2841, in the 3d column, in the 1st paragraph, in the 14th line, "consistent" should read "inconsistent".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 108, 110, 111 and 112

[CGD 94-108]

RIN 2115-AF24

Electrical Engineering Requirements for Merchant Vessels

Correction

In proposed rule document 96–2149 beginning on page 4132, in the issue of Friday, February 2, 1996, make the following corrections:

1. On page 4139, in the second column, in the second paragraph, in the second line, "§111.150-19," should read "§111.105-19,".

PART 108 [Corrected]

2. On page 4144, in the first column, under the part heading, after the first paragraph, the authority citation was omitted and should have appeared as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306; 49 CFR 1.46.

§110.01-1 [Corrected]

3. On the same page, in the second column, in the section title, "**§110.01 General.**" should read "**§110.01-1 General.**"

4. On the same page, in the same column, in §110.01-1 (b), in the third line, "alternations" should read "alterations".

§110.10-1 [Corrected]

5. On page 4146, in the third column, in §110.10-1, in the table, in the third paragraph, in the entry entitled "NEMA WC 30, Color Coding of Wires and Cables, 1976", at the end of the entry the number "11.70-3(a)." should read "111.70-3(a).".

6. On the same page, in the same column, in the fourth paragraph, in the entry entitled "NFPA 70, The National Electrical Code, 1996", at the end of the entry, in the eighth line of the numbers listed, "111.107(a)" should read "111.107-1(a)".

§111.60-2 [Corrected]

7. On page 4153, in the first column, in §111.60-2, in the first paragraph, in the seventh line, "cable's" should read "cables,".

§111.60-4 [Corrected]

8. On the same page, in the second column, in §111.60-4 (b), in the third line, "(0.33²)" should read "(0.33 mm^2)".

§111.60-23 [Corrected]

9. On the same page, in the 3d column, in §111.60-23 (a)(1), in the 12th line, "pits," should read " mud pits,".

§111.105-17 [Corrected]

10. On page 4157, in the third column, in §111.105-17 (a), in the first line from the top, after the word "all" insert "hazardous".

§111.105-29 [Corrected]

11. On the same page, in the same column, in §111.105-29 (c), in the fifth line, "§111.105-31(1)." should read "111.105-31(l).".

§112.39-1 [Corrected]

12. On page 4160, in the first column, in the first line, paragraph "115" should read "155".

§112.43-3 [Corrected]

13. On the same page, in the same column, in the amendment to remove §112.43-3, "11243-3" should read "112.43-3".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95-ANM-16]

Amendment of Class E Airspace; Ogden, UT

Correction

In rule document 96–850 beginning on page 1706 in the issue of Tuesday, January 23, 1996, make the following corrections:

§ 71.1 [Corrected]

On page 1707, in the 1st column, in § 71.1:

1. In the 13th line, "C-" should read "V-".

2. Lines 7 and 8 from the bottom should read "101, southeast along V-101 to V-288, west along V-288 to V-484,".

3. In the 2d line from the bottom, "areas" should read "area".

BILLING CODE 1505–01–D

$$\text{Percent reduction} = \frac{E_B - \frac{(E_{pp} \times P_B)}{P_{pp}}}{E_B} \times 100\%$$

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5272–1]

RIN 2060–AD–94

National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries

Correction

In rule document 95–20252 beginning on page 43244 in the issue of Friday, August 18, 1995, make the following corrections:

§ 63.640 [Corrected]

1. On page 43261, in the third column, in § 63.640(h)(5)(iii), in the second and third lines, "June 18, 2001" should read "February 18, 2001".

§ 63.642 [Corrected]

2. On page 43267, in the first column, in § 63.642(g), the equation should read as follows:

$$E_A = 0.02\Sigma EPV_1 + \Sigma EPV_2 + 0.05\Sigma ES_1 + \Sigma ES_2 + \Sigma EGLR_{1C} + \Sigma EGLR_2 + (R)\Sigma EMV_1 + \Sigma EMV_2 + \Sigma EWW_{1C} + \Sigma EWW_2$$

§ 63.652 [Corrected]

3. On page 43283, in § 63.652(j)(1)(ii), the equation should read as follows:

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Part II

Department of the Treasury

31 CFR Part 103

Amendments to the Bank Secrecy Act; Regulations Regarding Tribal Gaming; Final Rule and application to Tribal Gaming; Final Rule and Application to Tribal Casinos; Notice

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DEPARTMENT OF THE TREASURY

31 CFR PART 103

RIN 1506–AA07

Amendments to the Bank Secrecy Act; Regulations Regarding Tribal Gaming

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Final rule.

SUMMARY: The Financial Crimes Enforcement Network ("FinCEN") is amending the regulations implementing the Bank Secrecy Act to include casinos operated by or on behalf of Indian tribes within the definition of financial institution set forth in those regulations. The amendments extend the reporting and recordkeeping requirements and anti-money laundering safeguards of the Bank Secrecy Act to tribal casinos.

EFFECTIVE DATE: The final rule is effective August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Leonard C. Senia, Senior Financial Enforcement Officer, Office of Regulatory Policy and Enforcement, FinCEN, (703) 905–3931, or Joseph M. Myers, Attorney-Advisor, Office of Legal Counsel, FinCEN, (703) 905–3590.

SUPPLEMENTARY INFORMATION:

Background

This final rule amends the regulations implementing the statute popularly known as the "Bank Secrecy Act," Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330. The final rule: (i) amends the definition of "casino" in 31 CFR 103.11(n)(7)(i) to include explicitly casinos operating on Indian lands; (ii) amends the regulatory definitions of "person" and "United States" in 31 CFR 103.11(z) and 103.11(nn), respectively; (iii) adds definitions of the terms "Indian Gaming Regulatory Act," "State," and "Territories and Insular Possessions" in 31 CFR 103.11(rr), 103.11(ss), and 103.11(tt), respectively; and (iv) makes a conforming change to the recordkeeping and retention requirements of 31 CFR 103.36(b)(7) to reflect the regulatory system contemplated by the Indian Gaming Regulatory Act (IGRA). The amendments reflect the terms of section 409 of the Money Laundering Suppression Act of 1994 (the "MLSA"), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325.

FinCEN published a notice of proposed rulemaking (the "Notice") in the **Federal Register** on August 3, 1995 (60 FR 39665) proposing the amendments to the Bank Secrecy Act regulations that are the subject of this final rule. Only four comments were submitted in response to the Notice. These comments were submitted, respectively, by a staff attorney at the National Indian Gaming Commission, by the governments of two states within which tribal lands are located, and by one tribal casino.

The only substantive change made to the rule is the postponement of the rule's effective date until August 1, 1996. FinCEN believes that the delayed effective date will provide tribes and tribal casino management companies with a reasonable amount of time to implement operating and staff training programs for Bank Secrecy Act compliance. In this connection, FinCEN is publishing in today's **Federal Register** a notice of a tribal casino Bank Secrecy Act compliance conference to be held in April of this year.

Explanation of Provisions

A. Definition of "Casino"

The definition of casino is amended to include explicitly casinos operating on Indian lands. Under this amendment, the term "casino" now includes any casino duly licensed or authorized to do business under the IGRA or other federal, state, or tribal law or arrangement affecting Indian lands.

The general need for and appropriateness of treatment of casinos as financial institutions for purposes of the Bank Secrecy Act have been accepted since the mid-1980s. The Department of the Treasury has made clear the need to prevent casinos, which offer to their customers a variety of financial services such as deposit or credit accounts, check cashing and currency exchange services, from being used as a vehicle for money laundering. The potential risk of money laundering in casinos on Indian lands is not any less than the risk of money laundering in state-licensed casinos. Thus, this final rule makes casinos operating on Indian lands subject to the full set of reporting and recordkeeping provisions, and anti-money laundering safeguards, of the Bank Secrecy Act to which other casinos in the United States are subject.

The amendments make it clear that the term "casino", as applied to tribal lands, includes not only tribal casinos created in conformity with IGRA. The term also includes casinos operating on Indian lands under a view that compliance with the Indian Gaming Regulatory Act is unnecessary or inconsistent with inherent tribal rights; such non-IGRA sanctioned tribal casinos are not exempted from the terms of the Bank Secrecy Act. In its comments, the State of California specifically noted its approval of this language in the amendments, and cited the fact that a significant number of casinos on Indian lands within its borders were operating Class III gaming without the tribal-state compact required by IGRA.

The other changes in the definition of casino are designed simply to list explicitly the three classes of government authorities that can authorize or license casinos subject to the Bank Secrecy Act. The changes are intended neither to expand nor contract the coverage of the Bank Secrecy Act to casinos operating under state authority or under the authority of various United States territories or possessions.

Recognizing the need to proceed thoughtfully in adopting the rules of the Bank Secrecy Act to the realities of the operation of casinos on Indian lands, the Notice specifically sought comment about whether any part of the Bank Secrecy Act applicable to casinos generally did not accurately reflect the way tribal casinos operate. Few comments were received on this issue; the comments that were received indicated that tribal casinos operate similarly to non-tribal casinos, and that both tribal and non-tribal casinos should be treated uniformly under the Bank Secrecy Act.

The State of California commented that the term "casino" should be defined to include Indian gaming establishments engaging in bingo, lotteries, and pari-mutuel wagering. As outlined in the Notice, the retention at this time of the term "casino," rather than substitution in 31 CFR 103.11(n)(7)(i) of the broader authorizing language of 31 U.S.C. 5312(a)(2)(X), is intentional. The Department of the Treasury generally has sought to apply the Bank Secrecy Act to gaming establishments that provide both gaming and an array of financial services for their patrons. Activities such as bingo, lotteries, and pari-mutuel wagering, are not generally offered in casino-like settings and may create different problems for law enforcement, tax compliance, and anti-money laundering programs than do full-scale casino operations. Consequently, although the MLSA grants the Department of the Treasury authority to extend the Bank Secrecy Act to the full range of gaming establishments in the United States, FinCEN intends at this time to concentrate on taking the initial step of extending the existing Bank Secrecy Act structure to true casino-like establishments operating on Indian lands. (Of course, a full-scale casino that happens to offer, *inter alia*, pari-mutuel wagering, for example, is included within the definition of "casino" with respect to all of its gaming activities.)

FinCEN also sought comment on how compliance by tribal casinos with the requirements of the Bank Secrecy Act could best be examined and enforced. Aside from a suggestion from the one tribal casino commenter that external auditors were best suited to examine for compliance with the Bank Secrecy Act, FinCEN received no other responses to this question. The Internal Revenue Service is generally responsible for auditing the Bank Secrecy Act compliance by casinos and has full authority to audit such compliance by tribal casinos.

FinCEN also received comments seeking: (i) clarification of the terms "gross annual gaming revenue" and "gaming day" in the casino definition; (ii) an increase in the $1 million threshold in the definition of casino; and (iii) reconsideration of certain casino recordkeeping and verification rules withdrawn on March 12, 1993. Because the scope of these comments goes beyond the scope of the Notice, these comments are not addressed in this final rule.

As outlined in the Notice, the uniform treatment of state-licensed and tribal casinos is a necessary prelude to the consideration of broader issues affecting the application of the BSA to the entire gaming industry. Those issues include whether clarifications should be made in the definition of casino as new types of gaming develop (or whether the term "casino" is sufficiently elastic to encompass such developments [1]), whether special rules should be formulated for small casinos, and how best to implement with respect to casinos the suspicious transaction reporting and anti-money laundering program rules authorized in the amendments made to the Bank Secrecy Act by the Annunzio-Wylie Anti-Money Laundering Act of 1992, Title XV of the Housing and Community Development Act of 1992, Pub. L. 102–550, and by the Money Laundering Suppression Act.

B. Conforming Chonges in "Meaning of Terms"

Changes are made to the definition of "person" and "United States" in 31 CFR 103.11 (z) and (nn), and definitions of the terms "Indian Gaming Regulatory Act", "State", and "Territories and Insular Possessions" are added to § 103.11 as new paragraphs (rr), (ss), and (tt), respectively. These definitions are added as required corollaries to the new casino definition.

C. Additions to Record Maintenance Requirements

Conforming language is added to the requirement of 31 CFR 103.36(b)(7) that casinos retain all records, documents, or manuals required to be maintained under state and local laws or regulations. The new language recognizes that a casino on tribal lands will retain certain documents because tribal rules or tribal-state compacts, rather than state regulation, require their retention. The amendment simply conforms the recordkeeping and retention requirements to this fact.

D. Effective Date

Compliance with the reporting and recordkeeping provisions, and anti-money laundering safeguards of the Bank Secrecy Act, will depend in large part on the operating and staff training programs put in place at tribal casinos. The amendments made by the final rule will become effective on August 1, 1996, to allow tribes and their management enterprises a reasonable amount of time to train their staff members and to establish programs designed to comply with the requirements of the Bank Secrecy Act. As noted above, FinCEN also is publishing in today's **Federal Register** a notice of a tribal casino compliance conference to be held in April of this year.

Special Analyses

It has been determined that this final rule (i) is not subject to the "budgetary impact statement" requirement of section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) and (ii) is not a significant regulatory action as defined in Executive Order 12866. It is not anticipated that this final rule will have an annual effect on the economy of $100 million or more. Nor will it affect adversely in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. The final rule is neither inconsistent with, nor does it interfere with, actions taken or planned by other agencies. Finally, the final rule raises no novel legal or policy issues.

Because this final rule affects only Indian gaming establishments with gross annual gaming revenues in excess of $1 million, it is hereby certified that this final rule is not likely to have a significant economic impact on a substantial number of small entities.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Adoption of Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR Part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. Section 103.11 as amended at 60 FR 228, 60 FR 44144, and 61 FR 4331 effective April 1, 1996, is further amended by revising paragraphs (n)(7)(i), (z), and (nn), and adding paragraphs (rr), (ss), and (tt) to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(n) * * *

(7)(i) *Casino.* A casino or gambling casino that: Is duly licensed or authorized to do business as such in the United States, whether under the laws of a State or of a Territory or Insular Possession of the United States, or under the Indian Gaming Regulatory Act or other federal, state, or tribal law or arrangement affecting Indian lands (including, without limitation, a casino operating on the assumption or under the view that no such authorization is required for casino operation on Indian lands); and has gross annual gaming revenue in excess of $1 million. The term includes the principal headquarters and every domestic branch or place of business of the casino.

* * * * *

(z) *Person.* An individual, a corporation, a partnership, a trust or estate, a joint stock company, an

[1] For example, an establishment that claimed to be a gambling "club" rather than a casino because it simply offered customers an opportunity to gamble with one another, but that in practice funded certain customers so that other customers were in effect gambling against "house" money, and that offered its customers financial services of various kinds, could well be a casino under present law. If so, such a "club" would violate the Bank Secrecy Act now (that is, without the need for further regulatory changes) if it failed to report currency transactions in excess of $10,000, or allowed a customer to deposit funds in a player bank account without requiring customer identifying information.

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association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

* * * * *

(nn) *United States.* The States of the United States, the District of Columbia, the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States.

* * * * *

(rr) *Indian Gaming Regulatory Act.* The Indian Gaming Regulatory Act of 1988, codified at 25 U.S.C. 2701–2721 and 18 U.S.C. 1166–68.

(ss) *State.* The States of the United States and, wherever necessary to carry out the provisions of this part, the District of Columbia.

(tt) *Territories and Insular Possessions.* The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and all other territories and possessions of the United States other than the Indian lands and the District of Columbia.

§ 103.36 [Amended]

3. Section 103.36(b)(7) is amended by adding after the words "state and local laws or regulations" the words ", regulations of any governing Indian tribe or tribal government, or terms of (or any regulations issued under) any Tribal-State compacts entered into pursuant to the Indian Gaming Regulatory Act, with respect to the casino in question".

Dated: February 14, 1996.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 96–3888 Filed 2–22–96; 8:45 am]

BILLING CODE 4820–03–P

DEPARTMENT OF THE TREASURY

Bank Secrecy Act Application to Tribal Casinos

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice.

SUMMARY: The Financial Crimes Enforcement Network ("FinCEN") is announcing its sponsorship, in Orlando, Florida, in April of this year, of a Bank Secrecy Act compliance conference for persons wishing to learn more about the application of Bank Secrecy Act regulations to tribal casinos later this year.

DATES: The conference will be held on April 4–5, 1996.

ADDRESSES: The conference will be held at the Holiday Inn, 6515 International Drive, Orlando, Florida 32819.

FOR FURTHER INFORMATION CONTACT: Leonard C. Senia, Senior Financial Enforcement Officer, Office of Regulatory Policy and Enforcement, FinCEN, (703) 905–3931.

SUPPLEMENTARY INFORMATION: Published elsewhere in today's **Federal Register** is the text of a final rule which subjects certain tribal casino operations to various regulatory requirements promulgated under the statute popularly known as the "Bank Secrecy Act," Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330. The final rule will become effective on August 1, 1996.

In order to provide a timely forum at which these regulatory requirements can be explained in depth, FinCEN will sponsor a 1½ day compliance conference on April 4–5, 1996, in Orlando, Florida. Representatives from the National Indian Gaming Association, the National Indian Gaming Commission, the American Gaming Association, and various casino regulatory authorities will also participate. The speakers will address such subjects as the specific components of a Bank Secrecy Act compliance program for casinos, the development of effective internal controls, the need for on-going training of casino personnel, and methods to recognize and report potentially suspicious transactions.

There will be no charge for attendance at the conference. However, space is limited. Any individual interested in attending should submit a written request by March 8, 1996, indicating their name, address, and, if applicable, tribal casino affiliation. Requests may be mailed to Leonard Senia, U.S. Department of the Treasury, FinCEN, 2070 Chain Bridge Road, Suite 200, Vienna, Virginia 22182–2536, or submitted to Mr. Senia by telefax, at (703) 905–3690.

Dated: February 14, 1996.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 96–3887 Filed 2–22–96; 8:45 am]

BILLING CODE 4820–03–P

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Part III

Department of Housing and Urban Development

24 CFR Parts 510, 511, and 590
Streamlining of Affordable Housing Programs; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Parts 510, 511, and 590

[Docket No. FR–3938–F–01]

RIN 2506–AB76

Streamlining of Affordable Housing Programs

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This rule revises the regulations for certain affordable housing programs within the Office of Community Planning and Development to eliminate outdated provisions and to streamline and simplify the remaining provisions.

EFFECTIVE DATE: March 25, 1996.

FOR FURTHER INFORMATION CONTACT: Gordon McKay, Director, Office of Affordable Housing Programs, Room 7168, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–2685; TTY: 1–800–877–8339. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: President Clinton's memorandum of March 4, 1995, titled "Regulatory Reinvention Initiative" directed heads of Federal departments and agencies to review all existing regulations to eliminate those that are outdated and modify others to increase flexibility and reduce burden. As a part of HUD's overall effort to reduce regulatory burden and streamline the content of title 24 of the Code of Federal Regulations, this rule revises 24 CFR parts 510, 511, and 590 to eliminate outdated provisions and to streamline and simplify the remaining provisions.

Part 510—Section 312 Rehabilitation Loan Program

Part 510 is eliminated except for § 510.105(h). Authority to make loans under the Section 312 Rehabilitation Loan Program was repealed as of October 1, 1991. However, since there are still loan collection functions associated with the program, § 510.105(h) is retained and revised to refer to loan assumption, which it still governs. Section 510.105(h) is also revised to change "Area Manager" to "Assistant Secretary for CPD," and to delete reference to local loan approval officers and to the statutory authority to approve loans because the collection functions are now administered centrally. The waiver provision in § 510.104 is being consolidated into the Department-wide waiver regulation being promulgated separately.

Part 511—Rental Rehabilitation Grant Program

Section 511.3, "Technical Assistance," is eliminated because authority to make new grants under the program was repealed as of October 1, 1991, and no more technical assistance will be made available.

Section 511.5, "Waivers," is being consolidated into the Department-wide waiver regulation being promulgated separately.

In § 511.10, paragraph (d) is eliminated to remove a minimum project cost. This amendment will facilitate the use of small amounts of leftover program funds. A conforming change is made to § 511.11(a). Paragraph (a) of § 511.11 is also revised to remove the inflexible repayment requirement for incomplete projects. The last two sentences of § 511.11(c)(2)(iii) are deleted for conforming reasons. Also, paragraph (g) of § 511.11 (which lists the programs with which program grant amounts may not be used) is removed because the programs listed are governed by federally-imposed rent regulatory agreements or requirements and use of program funds in conjunction with these programs is not statutorily prohibited.

Subpart D is eliminated, except for § 511.33(c). Sections 511.30, 511.31, and 511.34 relate to formula allocations, which are no longer being made. In § 511.33, the references to reallocations in paragraphs (a), (b), and (d) are no longer applicable, since there is no remaining authority to "reallocate funds." Section 511.33(c) becomes a separate section regarding the deobligation of rental rehabilitation grant amounts. In § 511.33(c), the former first two sentences and the former fifth and sixth sentences are deleted because those provisions are now out of date and unnecessary. For similar reasons, in the former third (now second) sentence (requiring consultation with the grantee prior to deobligation), the reference to a reasonable start-up time for implementing a new program is deleted. In the former fourth (now first) sentence, the word "will" is changed to "may" and each of the time periods referred to therein is extended by one year, and clarifications are made. This assumes that the discretionary one-year extensions permitted by the former regulation were granted, and it authorizes, but no longer requires, HUD to deobligate uncommitted or unexpended grant funds after the extended time periods have expired. Finally, a new third sentence is added which authorizes the applicable HUD field office to direct a grantee to proceed to close-out its rental rehabilitation program and to deobligate remaining funds when the field office determines, after consultation with the grantee, that any remaining uncommitted funds cannot be committed within a reasonable time, only small amounts of funds remain, and any incomplete projects cannot be completed within a reasonable time. The net effect of these changes is to empower HUD field offices and grantees with the necessary authority and flexibility to close out rental rehabilitation programs on an orderly, but timely, basis.

The first three sentences of § 511.50 regarding a State's election to administer a State allocation are deleted because they are no longer needed; all such allocations have already been made.

For similar reasons, in § 511.51(a), the phrase "that elects to administer its allocation in accordance with § 511.50" and paragraph (d) (regarding State administration of rental rehabilitation grant program for cities receiving a formula allocation) are deleted.

Section 511.52, "HUD-administered program," is eliminated because the authority to make new grants was repealed as of October 1, 1991. However, the rest of subpart F contains continuing, substantive requirements for States using grants obligated prior to repeal and, therefore, is retained.

Section 511.76(h)(2) is revised to allow grantees increased flexibility by permitting the use of program income for other affordable housing projects (which might include State or locally assisted projects) and does not limit them to using this program income for only RRP, HOME, HOPE, or CDBG activities.

Section 511.77(a) is revised to remove language regarding obligating funds for any fiscal year.

Section 511.80(a) is revised to eliminate the introductory reference to reallocations under § 511.33 because reallocations are no longer available under the program.

Section 511.81(b) is eliminated. The annual performance report is still required for grantees which are still actively expending funds, but the content of the report need not be specified in regulations.

Section 511.82(c)(2) is eliminated because conditioning the use of Rental Rehabilitation grant amounts from a succeeding fiscal year's allocation as a corrective or remedial action is no longer possible.

Section 511.82(d) is revised to remove the first sentence referring to reallocation of grant amounts that become available from a succeeding fiscal year's allocation, because funds may not be reallocated to other grantees after October 1, 1991.

Part 590—Urban Homesteading Program

Section 590.1 is revised to reflect that authority to reimburse Federal agencies for transfer of additional properties to LUHAs under this part was repealed effective October 1, 1991.

Section 590.3, "Waiver authority," is being consolidated into the Department-wide waiver regulation being promulgated separately.

Section 590.5 is revised to remove the definitions of "Federally-owned property," "FmHA," "RTC," and "VA," since no additional properties may be transferred from any source.

In § 590.7, paragraphs (a), (b), and (c) are revised to remove unnecessary provisions and to streamline and conform the remaining provisions.

The following sections are eliminated because the authority to transfer properties under the program was repealed as of October 1, 1991, and the sections are no longer necessary:

§ 590.9 "Listing of Federally-owned properties"
§ 590.11 "Applications"
§ 590.13 "Standards for HUD review and approval of a local urban homesteading program"
§ 590.15 "Urban homesteading program participation agreement"
§ 590.17 "Transfer of HUD-owned property"
§ 590.18 "Reimbursement to FmHA, VA and RTC"
§ 590.21 "Reservation of funds"

Section 590.19, "Use of Section 810 funds," is revised to eliminate the first two sentences which reference the use of Section 810 funds. With no Section 810 funds available, discussion of fund use is unnecessary.

In § 590.23, paragraphs (a) and (c) are revised, and paragraph (d) is removed, to streamline the provisions by removing unnecessary regulatory detail regarding close-out.

In § 590.29, paragraphs (a) and (c) are revised to streamline the language regarding the review of LUHA performance.

In § 590.31, paragraph (c) is deleted, since conditioning a future participation request is no longer possible.

Other Matters:

Environmental Review. This rulemaking does not have an environmental impact. This rulemaking simply amends existing regulations by streamlining and simplifying the provisions and does not alter the environmental effect of the regulations being amended. Findings of No Significant Impact with respect to the environment were made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of the implementing regulations. Those findings remain applicable to this rule and are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Flexibility Act. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities because this rule pertains to the administrative matter of streamlining and simplifying provisions in title 24 of the Code of Federal Regulations.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12606, The Family. The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being.

List of Subjects

24 CFR Part 510

Lead poisoning, Loan programs—housing and community development, Relocation assistance, Reporting and recordkeeping requirements, Social security, Urban renewal.

24 CFR Part 511

Administrative practice and procedure, Grant programs—housing and community development, Lead poisoning, Low and moderate income housing, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 590

Government property, Housing, Intergovernmental relations, Low and moderate income housing, Reporting and recordkeeping requirements, Urban renewal.

Accordingly, the Department amends title 24 of the Code of Federal Regulations, subtitle B, chapter V, parts 510, 511, and 590, as follows:

PART 510—SECTION 312 REHABILITATION PROGRAM

1. The authority for part 510 is revised to read as follows:

Authority: 42 U.S.C. 1452b and 3535(d).

PART 510—[AMENDED]

2. Part 510 is amended as follows:

a. All sections of part 510 are removed, except for § 510.105(h) (1), (2), and (3) which is redesignated as § 510.1 (a), (b), and (c), "Multi-family property loans."

§ 510.1 [Amended]

b. In newly redesignated § 510.1(a), the phrase "Area Manager" is removed and, in its place, the phrase "Assistant Secretary for CPD" is added; the phrase ", or the approving officer where a locality has local section 312 loan approval authority," is removed; and the phrase "under section 312(a)(3) for approval" is removed and, in its place, the phrase "for assumption" is added.

PART 511—RENTAL REHABILITATION GRANT PROGRAM

3. The authority for part 511 continues to read as follows:

Authority: 42 U.S.C. 1437o and 3535(d).

§§ 511.3 and 511.5 [Removed and Reserved]

4. Sections 511.3 and 511.5 are removed and reserved.

§ 511.10 [Amended]

5. In § 511.10, paragraph (d) is removed and reserved.

6. Section 511.11 is amended by removing the last two sentences of paragraph (c)(2)(iii), by removing and reserving paragraph (g), and by revising paragraph (a), to read as follows:

§ 511.11 Project requirements.

(a) *Rehabilitation.* To receive assistance under this part, a project must require rehabilitation, measured by whether the project before the assisted rehabilitation does not meet the rehabilitation standards under § 511.10(e). If a project is terminated before completion of rehabilitation (as defined in § 511.2), whether voluntarily

by the grantee or otherwise, amounts equal to the rental rehabilitation grant amounts already dispersed for the project under the C/MI System are not eligible project costs, whether or not the grantee has already expended such grant amounts to pay for project costs. If such amount is not repaid, the grantee may be subject to corrective and remedial actions under § 511.82.

* * * * *

§§ 511.30, 511.31, 511.34 [Removed and Reserved]

7. Sections 511.30, 511.31 and 511.34 are removed and reserved.

8. Section 511.33 is revised to read as follows:

§ 511.33 Deobligation of rental rehabilitation grant amounts.

(a) Before deobligating grant amounts, HUD will consult with the affected grantee and take into account factors such as timing of the grantee's program year; the timing of State distributions to State recipients, if applicable; the timing of expected project approvals for projects in the grantee's pipeline; climatic or other considerations affecting rehabilitation work schedules; and other relevant considerations. In addition to any remedial deobligation under § 511.82, HUD may deobligate any rental rehabilitation grant amounts that are not:

(1) Committed to specific local projects within 3 years of the date of obligation of the grant under § 511.21(d) (4 years in the case of a State that distributes rental rehabilitation grant amounts to State recipients); or

(2) Expended for eligible costs within 5 years of such date of obligation (6 years in the case of a State that distributes rental rehabilitation grant amounts to State recipients).

(b) After such consultation, the HUD field office may direct the grantee to proceed with program closeout and may deobligate remaining unexpended grant amounts if the field office determines that any uncommitted funds will not be committed within a reasonable time, only small amounts of funds remain unexpended, or completion of uncompleted projects appears infeasible within a reasonable time. None of the time periods referred to in this section are extended by any suspensions of project set-ups or other remedial action imposed by HUD under this part.

§ 511.50 [Amended]

9. In § 511.50, paragraph (a) is amended by removing the first three sentences.

§ 511.51 [Amended]

10. In § 511.51, paragraph (a) is amended by removing the phrase "that elects to administer its allocation in accordance with § 511.50," and paragraph (d) is removed.

§ 511.52 [Removed and Reserved]

11. Section 511.52 is removed and reserved.

12. In § 511.76, paragraph (h)(2) is revised to read as follows:

§ 511.76 Program income.

* * * * *

(h) * * *

(2) Program income on hand at the time of program closeout or earned after program closeout may be contributed to HOME or HOPE program grantees as a cash matching contribution in accordance with applicable HOME or HOPE program rules, or may be used for activities that would be eligible under other affordable housing activities, as determined by the recipient.

13. In § 511.77, the introductory sentence is removed, and paragraph (a) is revised, to read as follows:

§ 511.77 Grant closeout.

(a) Each individual fiscal year rental rehabilitation grant will be closed out when all grant amounts for the grant to be closed out have been drawn down and expended for completed projects and/or administrative costs, or grant amounts not drawn down and expended have been deobligated by HUD.

* * * * *

§ 511.80 [Amended]

14. In § 511.80, paragraph (a) is amended by removing the phrase "In addition to reviewing grantee performance for purposes of making reallocations under § 511.33," from the first sentence.

§ 511.81 [Amended]

15. In § 511.81, paragraph (b) is removed and reserved.

§ 511.82 [Amended]

16. In § 511.82, paragraph (c)(2) is removed and reserved, and the first sentence of paragraph (d) is removed.

PART 590—URBAN HOMESTEADING

17. The authority citation for part 590 continues to read as follows:

Authority: 12 U.S.C. 1706e; 42 U.S.C. 3535(d).

18. Section 590.1 is revised to read as follows:

§ 590.1 General.

This part applies to the completion of activities remaining under the Urban Homesteading Program authorized under section 810(b) of the Housing and Community Development Act of 1974 (12 U.S.C. 1706e). Authority to reimburse Federal agencies for transfer of additional properties to LUHAs under this part was repealed effective October 1, 1991.

§§ 590.3, 590.9, 590.11, 590.13, 590.15, 590.17, 590.18, and 590.21 [Removed and Reserved]

19. Sections 590.3, 590.9, 590.11, 590.13, 590.15, 590.17, 590.18, and 590.21 are removed and reserved, and the first and second sentences of § 590.19 are removed.

§ 590.5 [Amended]

20. Section 590.5 is amended by removing the definitions of "Federally-owned property," "FmHA," "RTC," and "VA."

§ 590.7 [Amended]

21. Section 590.7 is amended as follows:

a. Paragraph (a) is removed and reserved;

b. Paragraph (b)(6) is amended by removing the last two sentences;

c. Paragraph (b)(8) is amended by removing the phrase "consistent with the coordinated approach to neighborhood improvement";

d. Paragraph (c)(1) is amended by removing the second sentence, and to remove the phrase "as described in §§ 590.13–.15 of this part" from the third sentence;

e. Paragraph (c)(2)(i) is amended by removing the phrase "VA, FmHA and RTC as described in § 590.11(a)(7)";

f. Paragraph (c)(2)(iii) is revised; and

g. Paragraphs (c)(3) and (c)(4) are removed, to read as follows:

§ 590.7 Program requirements.

* * * * *

(c) * * *

(2) * * *

(iii) Designate, and enter into a written agreement with, a qualified community organization (as defined in the Act) to act as LUHA in accordance with this part.

22. Section 590.23 is amended by revising paragraph (a), and by removing the last sentence of paragraph (c) and paragraph (d), to read as follows:

§ 590.23 Program close-out.

(a) *Initiation of close-out.* The LUHA shall institute close-out procedures, as prescribed by HUD.

* * * * *

23. In § 590.29, paragraph (a) introductory text, paragraph (a)(4), and paragraph (c) are revised to read as follows:

§ 590.29 HUD review of LUHA performance.

(a) HUD may review the performance of each active LUHA as necessary, as determined by HUD, to determine whether:

* * * * *

(4) The LUHA is making reasonable progress in moving properties through the stages of the homesteading process, including acquisition, homesteader selection, conditional conveyance, rehabilitation, and final conveyance.

* * * * *

(c) LUHAs shall supply data and make available records necessary for HUD's monitoring of the LUHA's local urban homesteading program.

§ 590.31 [Removed and Reserved]

24. In § 590.31, paragraph (c) is removed and reserved.

Dated: February 13, 1996.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–3962 Filed 2–22–96; 8:45 am]

BILLING CODE 4210–29–P

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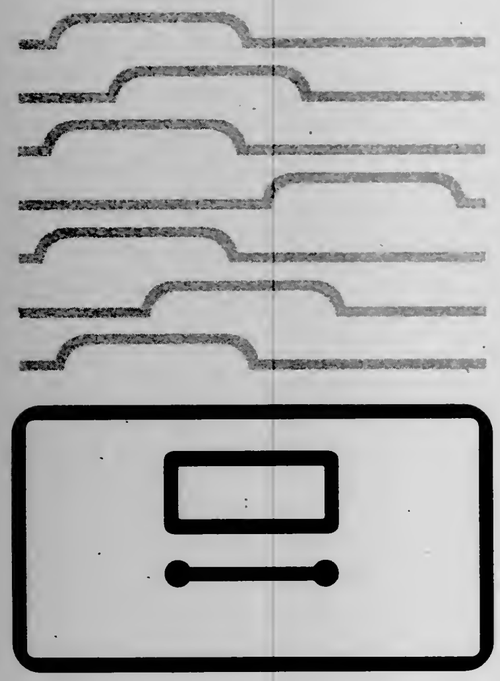
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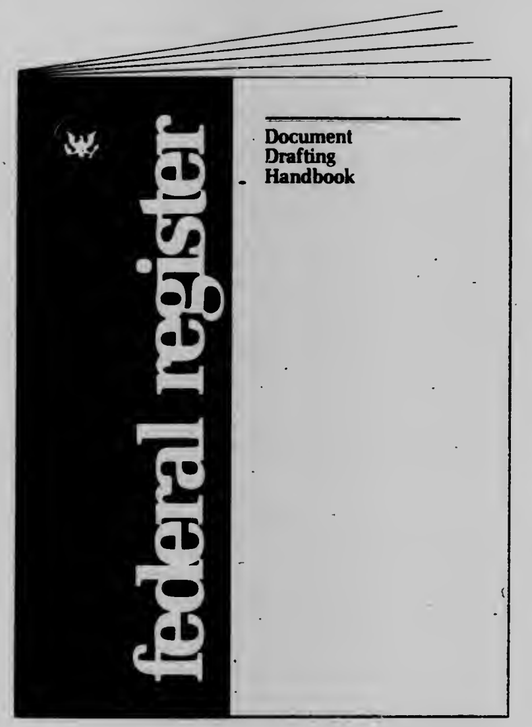
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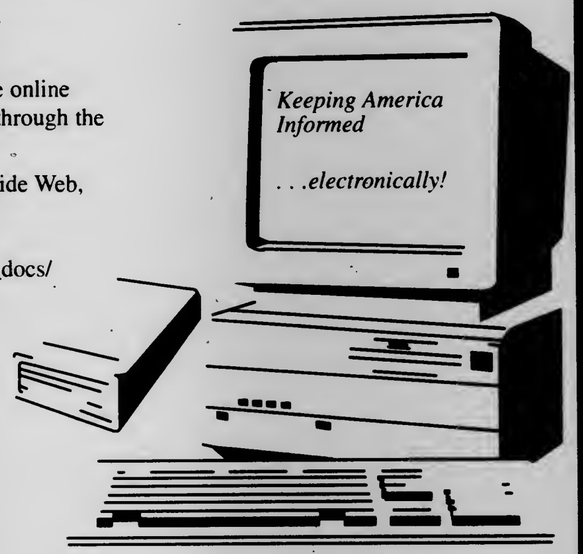
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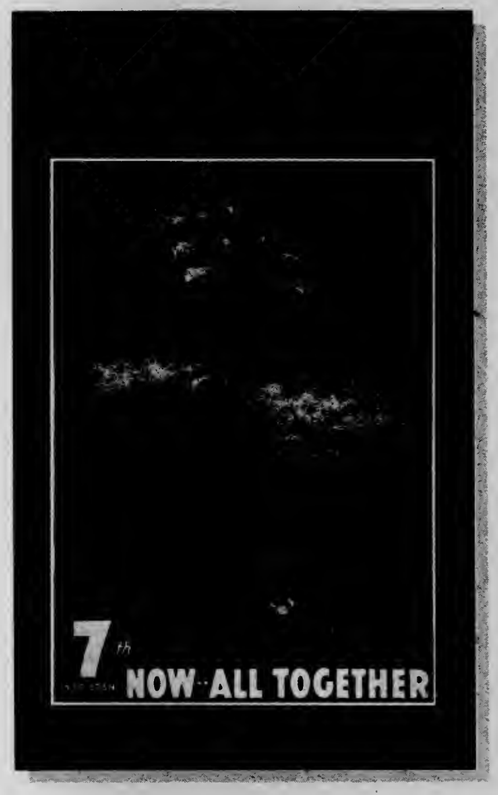
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

[Two Sessions]

WHEN: March 12, 1996 at 9:00 am and March 26, 1996 at 9:00 am

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

5 CFR Chapter LXII

29 CFR Parts 1600 and 1650

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Equal Employment Opportunity Commission

AGENCY: Equal Employment Opportunity Commission (EEOC or Commission).

ACTION: Interim rule with request for comments.

SUMMARY: The Equal Employment Opportunity Commission, with the concurrence of the Office of Government Ethics (OGE), is issuing a regulation for employees of EEOC that supplements the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The EEOC is also repealing its existing agency standards of conduct regulations that have been superseded by OGE's Standards of Ethical Conduct, OGE's financial disclosure regulation and this interim rule.

DATES: This rule is effective on February 26, 1996. Written comments on the interim rule must be received on or before April 26, 1996.

ADDRESSES: Comments should be submitted to the Office of the Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507. Copies of comments submitted by the public will be available for review at the Commission's Library, room 6502, 1801 L Street, NW., Washington, DC between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Associate Legal Counsel, Thomas J. Schlageter, Assistant Legal Counsel, or Kathleen Oram, Senior Attorney, at (202) 663–4669 or TDD (202) 663–7026. This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to EEOC's Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) for codification at 5 CFR part 2635. See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583 with an additional grace period extension at 59 FR 4779–4780. The Standards, effective February 3, 1993, set uniform ethical conduct standards applicable to all executive branch personnel.

Section 2635.105 of the uniform Standards authorizes agencies, with the concurrence of OGE, to publish agency-specific supplemental regulations that are necessary to properly implement their respective ethics programs. The Commission, with OGE's concurrence, has determined that the following interim supplemental rule is necessary for successful implementation of its ethics program.

II. Analysis of the Regulations

Section 7201.101 General

Section 7201.101 explains that the regulations apply to all employees of the EEOC, including members of the Commission and the General Counsel, and that they supplement the OGE Standards.

Section 7201.102 Prohibited Outside Employment

5 CFR 2635.802 provides that an employee shall not engage in outside employment if it is prohibited by agency supplemental regulation. The Commission is issuing § 7201.102 as a supplemental regulation. This section details three categories of prohibited outside employment for EEOC employees. First, the section prohibits EEOC employees from engaging in any outside employment with persons currently and substantially affected by the employee's performance of his or her official duties because the person is a party or representative of a party to a particular matter involving specific parties. This provision prohibits employees from working for a charging party, respondent, or attorney representing either. Second, the section prohibits EEOC employees from receiving any compensation for representational services or the rendering of advice or analysis regarding any equal employment law or its application. Finally, the section prohibits EEOC employees from engaging in outside employment involving any particular matter pending at EEOC or any equal employment opportunity case in which EEOC or the Federal government is a party. This final prohibition is not intended to prevent EEOC employees from providing behind-the-scenes assistance (e.g., conducting legal research, drafting documents, giving advice or other non-advocacy work) to immediate family members in matters pending at EEOC or any equal employment opportunity case in which EEOC or the Federal government is a party. The Commission has determined that these three prohibitions, which are similar to prohibitions that have applied to EEOC employees under superseded 29 CFR 1600.735–204, will help to ensure that reasonable persons will not questions the impartiality and objectivity of EEOC's employees.

While the second and third prohibitions of this section do no apply to special Government employees, the prior approval section discussed below does apply to them. This acknowledges the transitory or part-time nature of the service special Government employees provide EEOC, but also enables EEOC to carefully review all outside employment interests of special Government employees on a case-by-case basis to ensure that violations of applicable statutes and regulations do not occur.

Section 7201.103 Prior Approval for Outside Employment

Under 5 CFR 2635.803, agencies may, by supplemental regulation, require employees to obtain prior approval before engaging in outside employment or activities. Under superseded 29 CFR 1600.735–204, the Commission has had a requirement for prior approval of compensated and other outside employment activities. Because this requirement has helped to ensure that employees' outside activities conform to

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applicable statutes and regulations, the Commission will continue to require prior approval. Section 7201.103 provides that an EEOC employee, including a special Government employee, must obtain advance written approval from his or her Deputy Ethics Counselor or designee before engaging in any outside employment. In addition to that approval, employees must also obtain prior written approval from the Designated Agency Ethics Official or designee to engage in compensated outside employment, the uncompensated practice of law or uncompensated outside employment that involves representational services or the rendering of advice or analysis regarding any equal employment law, or to serve as an officer or director of an organization whose activities are devoted substantially to equal employment opportunity matters.

"Employment" is broadly defined in § 7201.103(d) to cover any form of non-Federal employment or business relationship involving the provision of personal services, including writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organizations, unless such activities involve the provision of professional services or advice, are for compensation other than reimbursement of expenses, or the organization's activities are devoted substantially to matters relating to equal employment law and the employee will serve as officer or director of the organization.

Section 7201.103(c) provides that approval will not be granted if the outside employment is expected to involve conduct inconsistent with or prohibited by any statute or federal regulation, including 5 CFR part 2635 and these supplemental regulations.

III. Repeal and Redesignation of Portions of the EEOC Conduct Regulations and Related Modifications

The Commission is replacing its existing standards of conduct regulations at 29 CFR part 1600 and replacing them with a cross-reference to 5 CFR parts 2634 and 2635 and to the supplemental regulations at 5 CFR part 7201 adopted by this interim rule. With the exception of subpart E and the material that was preserved pending the issuance of this interim rule by the notes following 5 CFR 2635.403(a) and 2635.803, part 1600 was superseded by OGE's two executive branch-wide regulations, the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and Financial Disclosure, Qualified Trusts, and Certificates of Divestiture For Executive Branch Employees, 5 CFR part 2634. See 57 FR 11800–1130, as amended at 57 FR 21854–21855 and 57 FR 62605. EEOC is redesignating subpart E of part 1600, Procedures for the Collection of Debts by Salary Offset, as subpart A of 29 CFR part 1650.

IV. Matters of Regulatory Procedure

The Commission has determined that these rules relate solely to agency organization, procedure and practice. In addition, similar rules have been applicable to Commission employees under EEOC's superseded standards of conduct contained at 29 CFR part 1600. Therefore, the requirements of the Administrative Procedure Act are not applicable. EEOC is publishing its supplemental ethics regulation as an interim rule to effect a smooth transition from its standards of conduct to OGE's Government-wide standards of conduct regulation.

In promulgating this interim rule, the Commission has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has not been reviewed by the Office of Management and Budget under that Executive order as it deals with agency organization, management, and personnel matters and is not, in any event, deemed "significant" thereunder. As required by the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this interim rule will not have a significant impact on small business entities. In addition, the Commission has determined that this interim rule does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

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5 CFR Part 7201

Conflict of interests, Government employees.

29 CFR Part 1600

Conflict of interests, Government employees.

29 CFR Part 1650

Debt collection.

Dated at Washington, DC, this 8th day of February 1996.

For the Equal Employment Opportunity Commission.

Gilbert F. Casellas,

Chairman.

Approved: February 16, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Equal Employment Opportunity Commission, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 29, chapter XIV, of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

1. A new chapter LXII, consisting of part 7201, is added to Title 5 of the Code of Federal Regulations to read as follows:

5 CFR Chapter LXII—Equal Employment Opportunity Commission

PART 7201—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sec.

7201.101 General.
7201.102 Prohibited outside employment.
7201.103 Prior approval for outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.802 and 2635.803.

§ 7201.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to all employees of the Equal Employment Opportunity Commission (EEOC), including members of the Commission and the General Counsel, and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

§ 7201.102 Prohibited outside employment.

(a) No employee of the Equal Employment Opportunity Commission may engage in outside employment with a person who is currently and substantially affected by the employee's performance of his or her official duties because the person is a party or representative of a party to a particular matter involving specific parties.

(b) No employee of the Equal Employment Opportunity Commission, other than a special Government employee, may receive compensation for representational services, or the rendering of advice or analysis, regarding any equal employment law or its application.

(c) No employee of the Equal Employment Opportunity Commission, other than a special Government employee, may engage in outside employment involving a particular matter pending at EEOC or an equal employment opportunity matter in which EEOC or the Federal Government is a party. An employee may, however, provide behind-the-scenes assistance to immediate family members in matters pending at EEOC or equal employment opportunity matters in which EEOC or the Federal government is a party.

§ 7201.103 Prior approval for outside employment.

(a) Before engaging in any outside employment, with or without compensation, an employee of the Equal Employment Opportunity Commission must obtain written approval from his or her Deputy Ethics Counselor or designee.

(b) In addition to approval under paragraph (a) of this section, an employee must obtain prior written approval from the Designated Agency Ethics Official or designee to engage in:

(1) Compensated outside employment;

(2) The uncompensated practice of law; or

(3) Uncompensated outside employment that involves representation or the rendering of advice or analysis regarding any equal employment law, or serving as an officer or director of an organization whose activities are devoted substantially to equal employment opportunity matters.

(c) Approval will not be granted if the outside employment is expected to involve conduct inconsistent with or prohibited by a statute or Federal regulation, including 5 CFR part 2635 and this part.

(d) For purposes of this section, "employment" means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization unless:

(1) The employee's participation involves the provision of professional services or advice;

(2) The employee will receive compensation other than reimbursement of expenses; or

(3) The organization's activities are devoted substantially to matters relating to equal employment law and the employee will serve as officer or director of the organization.

29 CFR CHAPTER XIV—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PART 1600—[AMENDED]

2. The authority citation for part 1600 is revised to read as follows:

Authority: 5 U.S.C. 7301.

3. Subparts A through D, consisting of §§ 1600.735–101 through 1600.735–106, 1600.735–201 through 1600.735–206, 1600.735–301, and 1600.735–401 through 1600.735–406, respectively, and appendix A to part 1600 are removed.

4. A new § 1600.101 is added to read as follows:

§ 1600.101 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Equal Employment Opportunity Commission (EEOC) are subject to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the EEOC regulation at 5 CFR part 7201, which supplements the executive branch-wide standards, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

PART 1650—[AMENDED]

1. The authority citation for part 1650 is revised to read as follows:

Authority: 5 U.S.C. 5514; 31 U.S.C. 3720A; 5 CFR 550.1101.

2. Subpart E of part 1600 is redesignated as new subpart A in part 1650 as indicated in the table below:

Old section	New section
1600.735–501	1650.101
1600.735–502	1650.102
1600.735–503	1650.103
1600.735–504	1650.104
1600.735–505	1650.105
1600.735–506	1650.106
1600.735–507	1650.107
1600.735–508	1650.108
1600.735–509	1650.109
1600.735–510	1650.110
1600.735–511	1650.111
1600.735–512	1650.112
1600.735–513	1650.113
1600.735–514	1650.114
1600.735–515	1650.115
1600.735–516	1650.116
1600.735–517	1650.117
1600.735–518	1650.118
1600.735–519	1650.119

[FR Doc. 96–4115 Filed 2–23–96; 8:45 am]
BILLING CODE 6750–06–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[FV96–989–1IFR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1995–96 Crop Year for Natural (Sun-Dried) Seedless, Zante Currant, and Other Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes final free and reserve percentages for 1995–96 crop Natural (sun-dried) Seedless (NS), Zante Currant (ZC), and Other Seedless (OS) raisins. The percentages are 79 percent free and 21 percent reserve, 70 percent free and 30 percent reserve, and 51 percent free and 49 percent reserve for NS, ZC, and OS raisins, respectively. These percentages are intended to stabilize supplies and prices and to help counter the destabilizing effects of the burdensome oversupply situation facing the raisin industry. This rule was unanimously recommended by the Raisin Administrative Committee (Committee), the body which locally administers the marketing order.

DATES: This interim final rule becomes effective February 26, 1996, and applies to all NS, ZC, and OS raisins acquired from the beginning of the 1995–96 crop year. Comments which are received by March 27, 1996 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, or faxed to 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

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FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: 209–487–5901 or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: 202–205–2830.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule establishes final free and reserve percentages for NS, ZC, and OS raisins for the 1995–96 crop year, beginning August 1, 1995, through July 31, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 4,500 producers in the production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts (from all sources) are less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than eight handlers, and a majority of producers, of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining eight handlers have sales less than $5,000,000, excluding receipts from any other sources.

The order prescribes procedures for computing trade demands and preliminary and final percentages that establish the amount of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Committee. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free tonnage raisins.

While this rule may restrict the amount of NS, ZC, and OS raisins that enter domestic markets, final free and reserve percentages are intended to lessen the impact of the oversupply situation facing the industry and promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released under the preliminary percentages and the final percentages, the order specifies methods to make available additional raisins to handlers by requiring sales of reserve pool raisins for use as free tonnage raisins under "10 plus 10" offers, and authorizing sales of reserve raisins under certain conditions.

The Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specifies that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal is met by the establishment of a final percentage which releases 100 percent of the computed trade demand and the additional release of reserve raisins to handlers under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use.

Pursuant to section 989.54(a) of the order, the Committee, which is responsible for local administration of the order, met on August 15, 1995, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and by adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. As specified in section 989.154, the desirable carryout for each varietal type shall be equal to the shipments of free tonnage raisins of the prior crop year during the months of August, September, and one fourth of October. If the prior year's shipments are limited because of crop conditions, the total shipments during that period of time during one of the three years preceding the prior crop year may be used. In accordance with these provisions, the Committee computed and announced 1995–96 trade demands of 257,314 tons, 2,208 tons, and 1,047 tons for NS, ZC, and OS raisins, respectively.

As required under section 989.54(b) of the order, the Committee met on October 3, 1995, and computed and announced preliminary crop estimates and preliminary free and reserve percentages for NS and ZC raisins which released 65 percent of the trade demand since the field prices had not been established, and 85 percent of the trade demand for OS raisins because the field price had been established. The preliminary crop estimates and preliminary free and reserve percentages were as follows: 335,118 tons, 50 percent free, and 50 percent reserve for NS raisins; 3,696 tons, 39 percent free, and 61 percent reserve for ZC raisins; and 2,197 tons, 40 percent free, and 60 percent reserve for OS raisins. The Committee authorized the Committee staff to modify the preliminary percentages to release 85 percent of the trade demand when the field prices were established for NS and ZC raisins. The preliminary percentages for NS and ZC raisins were adjusted soon thereafter to 65 percent free, 35 percent reserve, and 51 percent free and 49 percent reserve, respectively.

Also at that meeting, the Committee computed and announced preliminary crop estimates and preliminary free and reserve percentages for Dipped Seedless, Oleate and Related Seedless, Golden Seedless, Sultana, Muscat, and Monukka raisins. It determined that the supplies of these varietal types would be less than or close enough to the computed trade demands for each variety, and that volume control percentages would not be necessary to maintain market stability for these varietal types.

On January 12, 1996, the Committee recommended final percentages of 79 percent free, 21 percent reserve for NS raisins; 70 percent free, 30 percent reserve for ZC raisins; and 51 percent free, 49 percent reserve for OS raisins.

Pursuant to section 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release less than the computed trade demand for each varietal type. The Committee also computed interim free and reserve percentages at the January 12, 1996, meeting.

Interim percentages were announced as 78.75 percent free, 21.25 percent reserve for NS raisins; 69.75 percent free, 30.25 percent reserve for ZC raisins; and 50.75 percent free, 49.25 percent reserve for OS raisins. That action released most, but not all, of the computed trade demand for NS, ZC, and OS raisins.

Under section 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type.

The Committee's final estimate of 1995–96 production of NS raisins is 325,808 tons. Dividing the computed trade demand of 257,314 tons by the final estimate of production results in a final free percentage of 79 percent and a final reserve percentage of 21 percent for NS raisins.

The Committee's final estimate of 1995–96 production of ZC raisins is 3,158 tons. Dividing the computed trade demand of 2,208 tons by the final estimate of production results in a final free percentage of 70 percent and a final reserve percentage of 30 percent for ZC raisins.

The Committee's final estimate of 1995–96 production of OS raisins is 2,048 tons. Dividing the computed trade demand of 1,047 tons by the final estimate of production results in a final free percentage of 51 percent and a final reserve percentage of 49 percent for OS raisins.

The free and reserve percentages established by this interim final rule will apply uniformly to all handlers in the industry, whether small or large, and there are no known additional costs incurred by small handlers. Although raisin markets are limited, they are available to all handlers, regardless of size. The stabilizing effects of the percentages impact both small and large handlers positively by helping them maintain and expand markets.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's recommendations and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The relevant provisions of this part require that the percentages designated herein for the 1995–96 crop year apply to all NS, ZC, and OS raisins acquired from the beginning of that crop year; (2) handlers are currently marketing 1995–96 crop raisins of these varietal types and this action should be taken promptly to achieve the intended purpose of making the full trade demand quantities computed by the Committee available to handlers; (3) handlers are aware of this action, which was unanimously recommended by the Committee at an open meeting, and need no additional time to comply with these percentages; and (4) this interim final rule provides a 30-day period for written comments and all comments received will be considered prior to finalization of this interim final rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended to read as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 989.249 is added to Subpart—Supplementary Regulations to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 989.249 Final free and reserve percentages for the 1995–96 crop year.

The final percentages for standard Natural (sun-dried) Seedless, Zante Currant, and Other Seedless raisins acquired by handlers during the crop year beginning on August 1, 1995, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

Varietal type	Free percentage	Reserve percentage
Natural (sun-dried) Seedless	79	21
Zante Currant	70	30
Other Seedless	51	49

Dated: February 20, 1996.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–4180 Filed 2–23–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF STATE

Bureau of Consular Affairs, Overseas Citizens Services

[Public Notice 2337]

22 CFR Part 94

International Child Abduction

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends regulations regarding incoming parental abduction cases pursuant to the Hague Convention on the Civil Aspects of International Child Abduction. Incoming cases will be processed by a non-governmental organization with oversight by the Department of State.

EFFECTIVE DATE: December 21, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie Rowe, Director of the Office of Children's Issues, Room 4811, U.S. Department of State, Washington, D.C. 20520. Tele: 202–647–2688.

SUPPLEMENTARY INFORMATION: Since 1988, the Bureau of Consular Affairs has served as the U.S. Central Authority under the Hague Convention on the Civil Aspects of International Child Abduction. As U.S. Central Authority, the Office of Children's Issues is responsible for processing all Hague Convention applications seeking the return of children wrongfully removed or retained in the United States or any other Hague Convention contracting state. In addition, the U.S. Central Authority is responsible for facilitating access rights under the Convention. The Office of Children's Issues processes approximately 700 Hague Convention applications annually; roughly 300 of these cases are incoming cases, i.e., applications for the return of a child wrongfully removed to or retained in the United States.

The processing of incoming Hague applications requires case officers to communicate with foreign Central Authorities about incoming cases, to determine the whereabouts of children wrongfully taken to the United States, to attempt to promote voluntary return of abducted children, and to facilitate the initiation of judicial proceedings with a view toward securing the return of abducted children. Many of the case officer functions involve extensive contact with local law enforcement officials, social service agencies, legal aid organizations and local bar associations.

The Office of Children's Issues has recently entered into an agreement with the Department of Justice's Office of Juvenile Justice and Delinquency Prevention, and the National Center for Missing and Exploited Children (National Center). Under this agreement, the National Center will assist the U.S. Central Authority in fulfilling its responsibilities under the Hague Convention.

The National Center, a non-governmental organization, is a national resource center and clearinghouse that provides technical assistance to parents seeking to locate and recover children missing in the United States. For more than ten years, the National Center has been performing case management and analysis functions for domestic abductions; it handles more than 1,200 parental child abduction cases annually. By agreement with the Department of Justice, the National Center provides legal technical assistance, maintains a toll-free hotline as well as an online information network, and operates a photo distribution service.

Transferring specified case officer functions to the National Center with respect to incoming Hague Convention cases will result in the provision of better service to parents seeking the return of children under the Convention. Parents will benefit from the National Center's expertise in finding missing children and liaising with contacts in the local law enforcement and social services communities.

This transfer of case officer functions to the National Center will not in any way alter the role of the State Department as U.S. Central Authority under the Hague Convention. The Office of Children's Issues will continue as the U.S. Central Authority under the Convention and will retain ultimate responsibility for all incoming cases. Under the agreement, all inherently governmental functions, including matters of Hague Convention interpretation and policy direction are to be carried out by the Department of State. Congressional and White House correspondence as well as media relations will continue to be handled by the Office of Children's Issues.

This rule was published as an interim rule in the **Federal Register** on December 21, 1995. Comments were requested, and none were received. It is being adopted without change. This rule was published as an interim rule rather than a proposed rule because the Department of State determined that publication of a proposed rule was unnecessary, as the transfer of responsibility over incoming Hague Convention cases to the National Center would primarily affect workload distribution and management of U.S. Central Authority functions. The Department of State's Office of Children's Issues will continue to perform all inherently governmental functions of the U.S. Central Authority.

This rule is exempt from E.O. 12866, but nonetheless has been reviewed and found to be consistent with the objectives and policies thereof. This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5. U.S.C. 605(b). In addition, this rule will not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended. Nor does this rule have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith.

List of Subjects in 22 CFR Part 94

Infants and children.

For the reasons set forth in the preamble, the interim rule amending 22 CFR part 94 published on December 21, 1995 (60 FR 66073), is adopted as a final rule without change.

Dated: February 13, 1996.

Mary A. Ryan,

Assistant Secretary of State for Consular Affairs.

[FR Doc. 96–4192 Filed 2–23–96; 8:45 am]

BILLING CODE 4710–06–M

Office of the Legal Adviser

22 CFR Part 181

[Public Notice 2344]

Coordination and Reporting of International Agreements: Determination Not To Publish Certain Agreements

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is issuing final regulations providing that certain international agreements other than treaties will not be published in United States Treaties and Other International Agreements or in the Treaties and Other International Acts Series.

EFFECTIVE DATE: February 26, 1996.

ADDRESSES: Inquiries should be sent to the Assistant Legal Adviser for Treaty Affairs, Office of the Legal Adviser, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Karen Ghaffarkhan or Wynne Teel, Office of the Legal Adviser, (202) 647–2044.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of October 23, 1995, the Department of State proposed regulations to amend 22 CFR Part 181 to list categories of international agreements that will not be published in the United States Treaties and Other Agreements. No comments were received on the proposed regulations. Accordingly, the Department adopts the proposed regulations, effective immediately. Technical corrections have been made in two areas of the regulations. The authorities cited have been revised to reflect the replacement of 22 U.S.C. 2658 by 22 U.S.C. 2251a, as well as the codification of Public Law 103–236. An incorrect reference in the authority for the regulations as previously issued (22 U.S.C. 3312) has also been deleted. In addition, the regulations' reference in Section 181.8(a)(9) to Executive Order No. 12356 has been changed to Executive Order No. 12958, which currently governs classification of documents for national security purposes. Further background on these regulations may be found in the Department's notice of proposed regulations.

List of Subjects in 22 CFR Part 181

Treaties.

For the reasons set forth above, Part 181 is amended as follows:

1. The authority citation for Part 181 is revised to read:

Authority: 1 U.S.C. 112a, 112b; and 22 U.S.C. 2651a.

2. The heading of Part 181 is revised to read:

PART 181—COORDINATION, REPORTING AND PUBLICATION OF INTERNATIONAL AGREEMENTS

3. The first sentence of § 181.1(a) is revised to read:

§ 181.1 Purpose and application.

(a) The purpose of this part is to implement the provisions of 1 U.S.C. 112a and 112b, popularly known as the Case-Zablocki Act (hereinafter "the Act"), on the reporting to Congress, coordination with the Secretary of State and publication of international agreements. * * *

* * * * *

4. A new § 181.8 is added to read:

§ 181.8 Publication.

(a) The following categories of international agreements will not be published in United States Treaties and Other International Agreements:

(1) Bilateral agreements for the rescheduling of intergovernmental debt payments;

(2) Bilateral textile agreements concerning the importation of products containing specified textile fibers done under the Agricultural Act of 1956, as amended;

(3) Bilateral agreements between postal administrations governing technical arrangements;

(4) Bilateral agreements that apply to specified military exercises;

(5) Bilateral military personnel exchange agreements;

(6) Bilateral judicial assistance agreements that apply only to specified civil or criminal investigations or prosecutions;

(7) Bilateral mapping agreements;

(8) Tariff and other schedules under the General Agreement on Tariffs and Trade and under the Agreement of the World Trade Organization;

(9) Agreements that have been given a national security classification pursuant to Executive Order No. 12958 or its successors; and

(b) Agreements on the subjects listed in paragraphs (a) (1) through (9) of this section that had not been published as of February 26, 1996.

(c) Any international agreements in the possession of the Department of State, other than those in paragraph (a)(9) of this section, but not published will be made available upon request by the Department of State.

Dated: February 16, 1996.

Robert E. Dalton,

Assistant Legal Adviser for Treaty Affairs.

[FR Doc. 96–4235 Filed 2–23–96; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 96–005]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between October 1, 1995 and December 31, 1995, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between October 1, 1995 and December 31, 1995, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The complete text of these temporary regulations may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander Stephen J. Darmody, Executive Secretary, Marine Safety Council at (202) 267–1477 between the hours of 8 a.m. and 3 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation.

Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. These safety zones, special local regulations and security zones have been exempted from review under E.O. 12866 because of their emergency

nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period October 1, 1995 and December 31, 1995, unless otherwise indicated.

Stephen J. Darmody,

Commander, U.S. Coast Guard, Executive Secretary, Marine Safety Council.

QUARTERLY REPORT

Docket No.	Location	Type	Effective date
Charleston 95–072	Charleston, SC	Safety Zone	12/2/95
Corpus Christi 95–004	Corpus Christi, TX	Safety Zone	8/31/95
Corpus Christi 95–005	Corpus Christi, TX	Safety Zone	9/15/95
Hampton Roads 95–071	Hampton Roads, VA	Safety Zone	10/3/95
Hampton Roads 95–072	Hampton Roads, VA	Safety Zone	10/24/95
Hampton Roads 95–075	Hampton Roads, VA	Safety Zone	10/16/95
Honolulu 95–005	Mamala Bay, Oahu, HI	Safety Zone	12/20/95
Honolulu 95–006	Oahu, HI	Safety Zone	12/31/95
Houston 95–007	Houston, TX	Safety Zone	8/23/95
Houston 95–008	Houston, TX	Safety Zone	8/27/95
Huntington 95–003	Kanawha River, M. 31.1 to M. 67.7	Safety Zone	12/5/95
LA/Long Beach 95–009	San Pedro Bay, CA	Safety Zone	10/27/95
LA/Long Beach 95–010	San Pedro Bay, CA	Safety Zone	11/18/95
LA/Long Beach 95–011	San Pedro Bay, CA	Safety Zone	12/7/95
LA/Long Beach 95–012	San Pedro Bay, CA	Safety Zone	12/25/95
Miami 95–063	Fort Lauderdale, FL	Safety Zone	10/9/95
Miami 95–067	Fort Lauderdale, FL	Safety Zone	11/6/95
Miami 95–074	Miami, FL	Security Zone	12/8/95
New Orleans 95–029	Mississippi River, M. 92.5 to M. 93.5	Safety Zone	10/10/95
New Orleans 95–024	New Orleans, LA	Security Zone	8/1/95
New Orleans 95–027	Florida Avenue Bridge, New Orleans, LA	Safety Zone	10/18/95
New Orleans 95–028	Mississippi River, M. 332.5 to M. 334.5	Safety Zone	10/20/95
New Orleans 95–036	Mississippi River, M. 228.5 to M. 230.6	Safety Zone	12/16/95
Philadelphia 95–076	Marcus Hook, PA	Safety Zone	10/24/95
Philadelphia 95–082	Delaware Bay, Salem River, NJ	Safety Zone	12/12/95
Philadelphia 95–088	Marcus Hook, PA	Safety Zone	12/16/95
San Francisco Bay 95–006	San Francisco, CA	Safety Zone	10/5/95
San Francisco Bay 95–007	San Francisco, CA	Safety Zone	10/7/95
San Francisco Bay 95–008	San Francisco, CA	Safety Zone	10/10/95
San Francisco Bay 95–009	San Francisco, CA	Safety Zone	10/7/95
01–95–150	East River, NY	Security Zone	10/4/95
01–95–154	Hudson River, NY	Safety Zone	10/26/95
01–95–155	Hudson River, NY and NJ	Security Zone	10/21/95
01–95–157	East River, NY	Security Zone	10/21/95
01–95–158	Greenwich Harbor, CT; Oyster Bay, NY	Safety Zone	10/8/95
01–95–158	Boston, MA	Safety Zone	12/31/95
01–95–159	Martha's Vineyard, MA	Safety Zone	10/6/95
01–95–160	Martha's Vineyard, MA	Safety Zone	10/6/95
01–95–162	Bayville, NY	Safety Zone	11/18/95
01–95–166	Boston, MA	Security Zone	10/28/95
01–95–172	Port of New York and New Jersey	Security Zone	11/29/95
01–95–175	New Bedford, MA	Safety Zone	12/31/95
01–95–184	Queens, NY	Security Zone	10/20/95
01–95–187	Morgan, NJ	Safety Zone	11/3/95
02–95–019	Allegheny, Monongahela, M. .3; Ohio, M. .5	Special Local	10/7/95
05–95–068	Camp Lejeune, NC	Safety Zone	10/31/95
05–95–077	Marcus Hook Range Channel, Philadelphia, PA	Anchorage Area	10/31/95
05–95–078	Norfolk, VA	Special Local	11/25/95
05–95–083	Gibbstown, NJ	Safety Zone	12/5/95
07–95–063	San Juan, PR	Special Local	10/8/95
07–95–066	San Juan, PR	Special Local	10/22/95
07–95–070	Pompano Beach, FL	Special Local	12/10/95
07–95–071	Charleston, SC	Safety Zone	12/2/95
07–95–075	Rada Fajardo, PR	Special Local	12/16/95
08–95–025	Clear Lake, TX	Special Local	12/9/95
13–95–046	Benton, WA	Safety Zone	10/4/95
13–95–047	Benton, WA	Safety Zone	10/12/95
13–95–048	Queets, WA	Safety Zone	10/3/95
13–95–049	Queets, WA	Safety Zone	10/11/95
13–95–052	Benton, WA	Safety Zone	10/18/95
13–95–053	Benton, WA	Safety Zone	10/26/95
13–95–054	Queets, WA	Safety Zone	10/17/95
13–95–056	Queets, WA	Safety Zone	10/24/95
13–95–057	Seattle, WA	Safety Zone	12/20/95

[FR Doc. 96–4277 Filed 2–23–96; 8:45 am]
BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5425–4]

Clean Air Act (CAA) Operating Permit Program Revision for the State of Nebraska, City of Omaha, and Lincoln-Lancaster County Health Department (LLCHD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: Final full approval of Nebraska's Title V program was published on October 18, 1995. The document contains three administrative errors and omits two items, all in Appendix A of 40 CFR part 70, "Approval Status of State and Local Operating Permit Programs." This document corrects those deficiencies.

EFFECTIVE DATE: This rule will become effective on March 27, 1996.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air & Radiation Docket and Information Center, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: At 60 FR 53875, published October 18, 1995, items (a), (b), and (c) in Appendix A contain the following errors or omissions:

(a) Concerning the Nebraska Department of Environmental Quality, this section should have cited the state's amended Title V rules submitted June 14, 1995 (referenced in section III.A and III.C.1 of the notice). Also, in III.A.C.1.a, the regulations included should read "41" instead of "40–44";

(b) Concerning the city of Omaha, this section lists a submission dated April 19, 1995. Instead, the correct date is April 19, 1994. Additionally, a finalized delegation contract between the state and the city of Omaha effective June 26, 1995, should have been cited; and

(c) LLCHD submitted its Title V program on November 12, 1993, instead of the notice's date of November 15, 1993. Finally, the cited supplemental correspondence is dated June 23, 1994, not June 27, 1994.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: February 6, 1996.

Dennis Grams,

Regional Administrator.

Correction of Publication

Accordingly, the regulations (FR Doc. 95–25844) published at 60 FR 53872–53875 on October 18, 1995, are corrected as follows:

Appendix A to Part 70—[Corrected]

On page 53875, in the second column, in appendix A to part 70, the entry for the state of Nebraska, the city of Omaha, and Lincoln-Lancaster County Health Department is corrected to read as follows:

* * * * *

State of Nebraska; City of Omaha; Lincoln-Lancaster County Health Department

(a) The Nebraska Department of Environmental Quality submitted on November 15, 1993, supplemented by correspondence dated November 2, 1994, and August 29, 1995, and amended Title V rules submitted June 14, 1995.

(b) Omaha Public Works Department submitted on November 15, 1993, supplemented by correspondence dated April 18, 1994; April 19, 1994; May 13, 1994; August 12, 1994; and April 13, 1995. A delegation contract between the state and the city of Omaha became effective on June 6, 1995.

(c) Lincoln-Lancaster County Health Department submitted on November 12, 1993, supplemented by correspondence dated June 23, 1994. Full approval effective on November 17, 1995.

* * * * *

[FR Doc. 96–3859 Filed 2–23–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 70

[PR001; FRL–5428–8]

Clean Air Act Final Full Approval of Operating Permits Program: The Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final full approval.

SUMMARY: The EPA is promulgating full approval of the operating permits program submitted by the Commonwealth of Puerto Rico for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: This action is effective March 27, 1996.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final full approval as well as the Technical Support Document are available for inspection during normal business hours at the following locations:

EPA Region II, 290 Broadway, 21st Floor, New York, New York 10007–1866, Attention: Steven C. Riva.

EPA Region II, Caribbean Field Office, Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, Stop 22, San Juan, Puerto Rico 00907–4127, Attention: Jose Ivan Guzman.

Puerto Rico Environmental Quality Board, Air Programs Area, Eurobank Building, 431 Ponce de Leon Avenue, Hato Rey, PR 00910, Attention: Francisco Claudio.

FOR FURTHER INFORMATION CONTACT: Christine Fazio, Permitting and Toxics Support Section, at the above EPA office in New York or at telephone number (212) 637–4015. Jose Ivan Guzman of the Caribbean Field Office can be reached at (809) 729–6951, extension 223.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the Clean Air Act ("the Act"), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that States develop and submit operating permits programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. If a state does not have an approved program by two years after the November 15, 1993 date, EPA must establish and implement a Federal program.

On November 14, 1995, the EPA proposed full approval of the Operating Permits Program submitted for Puerto Rico. (See 60 FR 57204). Two comment letters were received on the Proposed Approval Notice. None of the comments regarded EPA's proposed approval of Puerto Rico's Title V program; in fact, both commenters supported EPA's proposed full approval. The comments,

however, deal with implementation of the program and EPA's responses are below. In this notice, the EPA is taking final action to promulgate full approval of the Operating Permits Program for Puerto Rico.

II. Final Action and Implications

A. Analysis of State Submission

On November 14, 1995, the EPA proposed full approval of PREQB's Title V Operating Permits Program. The program elements discussed in the proposed notice are unchanged from the analysis in the Full Approval Notice and continue to fully meet the requirements of 40 CFR part 70.

B. Response to Public Comments

1. Comment by Eli Lilly and Company

Eli Lilly and Company (Lilly) asked EPA to clarify that the terms "modifications under any provision of Title I of the Act" and "case by case determination" as they appear in Puerto Rico's Title V regulation (Part VI of the Regulation for the Control of Atmospheric Pollution (RCAP)) do not include minor new source review requirements. As stated by Lilly, in both a June 20, 1995 letter from Mary Nichols, Assistant Administrator for Air and Radiation, to members of Congress and a November 7, 1995 letter from Lydia Wegman, Deputy Director of the Office of Air Quality Planning and Standards, to William Becker of STAPPA/ALAPCO, the EPA has clarified that EPA's current interpretation of Title I modification does not include modifications subject to minor new source review. While the Puerto Rico Environmental Quality Board (PREQB) did not define Title I modification in its regulation, by letter dated January 24, 1996, PREQB confirmed that it plans to follow EPA's current interpretation of Title I modification. PREQB, therefore, does not consider modifications subject to its minor new source review program to be Title I modifications. Accordingly, under Puerto Rico's Title V program, changes subject to minor new source review can be processed following minor modification procedures (See RCAP Rule 606(b)(2)) and are eligible for the operational flexibility provisions of RCAP Rule 607 provided the changes meet the other eligibility criteria of RCAP Rules 606(b)(2) and 607.

2. Comment by the Puerto Rico Manufacturer's Association

The Puerto Rico Manufacturer's Association (PRMA) raised several questions regarding implementation of the Title V program.

a. The PRMA requested that PREQB adopt EPA's July 10, 1995 "White Paper for Streamlined Development of Part 70 Permit Applications" ("White Paper") as part of the Title V approval process in order to provide sources a clear and duly notified directive and to avoid random application of the White Paper. PRMA requested that EPA Region II assist PREQB in the implementation of Puerto Rico's Title V program consistent with the White Paper guidelines.

Although EPA encourages states to implement the White Paper, EPA does not require a state to adopt the White Paper as part of EPA's program approval. The White Paper was drafted as guidance and, therefore, cannot be relied upon to create any rights enforceable by any party. Nevertheless, PREQB has "adopted" the White Paper. In other words, PREQB has included the White Paper as part of its Title V docket and has committed, at least during the early phases of program implementation, to follow all the guidelines of the White Paper. The EPA does agree with the commenter that EPA should work with Puerto Rico on the implementation of the Program consistent with the White Paper and EPA will work closely with PREQB (as well as the PRMA) on this streamlined implementation.

b. The PRMA proposed that the current state operating permits which Title V applicants are complying with (issued under RCAP Rule 204) be presumptively defined to incorporate new source review (NSR) permit terms and conditions. Because PREQB often revises the operating permit without first reviewing the terms of the corresponding preconstruction permit, this practice has resulted in operating permits with terms and conditions which supersede and render obsolete the original preconstruction permits. In addition, searching for the old NSR permits would be extremely burdensome to both PREQB and the applicant.

The EPA agrees that for minor NSR requirements, applicants and PREQB can use the existing state operating permits in lieu of minor NSR permits in defining the applicable requirements under minor New Source Review. PREQB's practice is that the minor NSR permit expires after one year and all conditions roll into the operating permit, and then only the operating permit conditions are revised as a result of plant modifications. Therefore, it would be impractical to require applicants to use only minor NSR permits, instead of the operating permits, as the basis for determining their applicable requirements. EPA supports PRMA's suggestion and has stated on page 15 of the White Paper: "Where a permitting authority has already converted the NSR permit into an existing State operating permit before incorporation into the part 70 permit, the terms of the current permit to operate will presumptively define how NSR permit terms should be incorporated into part 70 permits." However, this flexibility does not necessarily apply to Major NSR and PSD or to minor NSR permits which were used in a final PSD non-applicability determination. First, if there are inconsistencies between the source's operating permit and a Major NSR or PSD permit, the conditions in the NSR or PSD permit take precedence and must be included as an applicable requirement in the source's Title V application. Second, the flexibility to use the state operating permit in lieu of the minor NSR permit to define the applicable requirement when the minor NSR permit was used in a final PSD non-applicability determination will be decided on a case by case basis.

c. The PRMA suggested that current operating permit terms that are environmentally insignificant and irrelevant and are not required under federal laws or regulations or under federally enforceable conditions of the RCAP ("the SIP") should be considered as appropriate exclusions from part 70 permits (or could remain on the state-only side of part 70 permits). PRMA also suggested that current operating permit conditions that do not implement federal regulatory requirements and objectives, or that may have been provided in good faith by sources in permit applications, are also good candidates for exclusion from part 70 permits.

As correctly cited by PRMA, the White Paper states that NSR permit terms (or operating permit terms if being used in lieu of a minor NSR permit) that are obsolete, extraneous, environmentally insignificant or otherwise not required by the SIP or a federally enforceable NSR program need not be incorporated into part 70 permits. The White Paper also explains and provides examples of the above types of permit conditions. For instance, NSR terms regulating construction activity during the building or modification of a source, where the construction is long completed and the statute of limitations on construction-phase activities has run out, may no longer be necessary for inclusion in a part 70 permit. Another example of information that may not need to be incorporated into a part 70 permit is information incorporated by reference from an application for a preconstruction permit, as long as this information is not needed to enforce NSR permit terms. The White Paper states that sources as part of their Title V application could propose which conditions of the minor NSR permit (or operating permit if being used in lieu of minor NSR permit) should be considered for revision, deletion or state-only status. PREQB could then agree or disagree with the suggestions while reviewing and drafting the permit (note: this process could be delayed until the first renewal if necessary). PREQB as part of its issuance of the part 70 permit (including the public participation process) could then simultaneously revise the minor NSR (or operating) permit. As a note, EPA does not believe that most of Puerto Rico's operating permits include irrelevant or extraneous terms. EPA believes there should only be a few cases where the procedure discussed in the White Paper will take place. Because most decisions will need to be made on a case by case basis, EPA will work closely with PREQB on the issuance of these permits. It should be noted that PSD permits are not minor NSR permits. If any applicant believes their PSD permit contains extraneous conditions, the applicant must request a revision of the PSD permit from EPA (the permitting authority for PSD in Puerto Rico) before excluding the condition from its Title V application.

d. The PRMA requested that certain rules of the RCAP which are currently included as part of Puerto Rico's approved SIP be considered state enforceable only as those rules are not necessary for Puerto Rico's strategy to achieve and maintain compliance with the National Ambient Air Quality Standards. The rules suggested for deletion include Rule 404—Fugitive Emissions, Rule 411—Hydrogen Sulfide, Rule 418—Waste Gas Disposal, Rule 419—Volatile Organic Compounds, Rule 420—Objectionable Odors, Rule 421—Increment Of Progress, and Rule 424—Roof Surface Coating.

With Puerto Rico's submittal of the revised RCAP for approval into the SIP, Puerto Rico requested that the above rules be deleted from the SIP. The EPA agrees that all the above rules except Rule 404 should be state enforceable only. Rule 404 is required for compliance with Puerto Rico's PM–10 SIP (See 60 FR 28333, May 31, 1995). EPA plans to delete Rules 411, 418, 419, 420, and 421 from the SIP when EPA makes its final SIP determination on the revised RCAP. Rule 424 on Roof Surface Coating was never approved into the SIP and is currently state enforceable only. In the meantime, while EPA processes Puerto Rico's regulation for SIP approval, applicants can, for purpose of application completeness, propose to address requirements of Rules 411, 418, 419, 420, and 421 as state enforceable only. If requesting that the conditions of these 5 rules be state enforceable only, applicants should provide a notation in their application which states "pending deletion from the SIP". However, PREQB may not issue Title V permits with state enforceable only conditions for these five rules until after EPA has approved Puerto Rico's SIP revision. EPA will expedite the processing of this SIP in order not to adversely impact Puerto Rico's schedule for issuing permits.

C. Options for Approval/Disapproval

The EPA is promulgating full approval of the Operating Permits Program submitted to the EPA by the PREQB on November 15, 1993 with supplemental packages on March 22, 1994 and April 11, 1994 and a revised regulation on September 29, 1995. Among other things, the PREQB has demonstrated that the program will be adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR part 70.

Requirements for approval, specified in 40 CFR § 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by the EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, an expeditious compliance schedule, and adequate enforcement ability, which are also requirements under part 70. In a letter dated December 29, 1994, PREQB requested delegation through 112(l) of all existing 112 standards and all future 112 standards for both part 70 and non-part 70 sources and infrastructure programs. In the letter, PREQB demonstrated that they have sufficient legal authorities, adequate resources, the capability for automatic delegation of future standards, and adequate enforcement ability for implementation of section 112 of the Act for both part 70 sources and non-part 70 sources. Therefore, the EPA is also promulgating full approval under section 112(l)(5) and 40 CFR part 63.91 to Puerto Rico for its program mechanism for receiving delegation of all existing and future section 112(d) standards for both part 70 and non-part 70 sources, and section 112 infrastructure programs that are unchanged from Federal rules as promulgated.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final full approval, including the public comments received and reviewed by EPA on the proposal, are contained in the docket maintained at the EPA Regional Offices in New York and Puerto Rico and at PREQB. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final full approval. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 of the Unfunded Mandates Act requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule

The EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to

State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: February 6, 1996.

Jeanne M. Fox,

Regional Administrator.

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Puerto Rico in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Puerto Rico

(a) The Puerto Rico Environmental Quality Board submitted an operating permits program on November 15, 1993 with supplements on March 22, 1994 and April 11, 1994 and revised on September 29, 1995; full approval effective on March 27, 1996.

(b) [Reserved]

* * * * *

[FR Doc. 96–4255 Filed 2–23–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 704

[OPPTS–82047; FRL–4982–7]

Revocation of Anthraquinone Recordkeeping and Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document announces the revocation of the Toxic Substances Control Act (TSCA) section 8(a) information gathering rule on anthraquinone (CAS number 84–65–1), issued in the **Federal Register** of June 4, 1987. Data, as developed under the first tier of testing of an associated TSCA section 4 test rule (40 CFR 799.500), did not meet the hazard triggers for the second tier of testing under that rule. Thus, the section 8(a) reporting requirement, which has served as a mechanism to gather production/import level information that provided the basis for a production/import level trigger for the second tier of testing, is no longer needed.

EFFECTIVE DATE: This final rule takes effect on February 26, 1996.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Regulatory History

On November 29, 1984 (49 FR 46931), the Interagency Testing Committee (ITC) designated anthraquinone for priority testing consideration and recommended chemical fate and ecological effects testing. In response, EPA proposed a TSCA section 4 test rule and a TSCA section 8(a) reporting and recordkeeping rule for anthraquinone (50 FR 46090, November 6, 1985). These rules were finalized on June 4, 1987 (52 FR 21018), and codified at 40 CFR 799.500 and 704.30, respectively.

Under section 4(a)(1)(B) of TSCA, EPA required tiered testing. The first tier included: Water solubility; acute toxicity to chinook salmon or coho salmon, bluegill, and rainbow trout; acute toxicity to the invertebrates *Daphnia magna* or *D. pulex* and oyster; marine sediment toxicity to the amphipod *Rhepoxynius abronius*; and oyster bioconcentration. A second tier of testing would have been triggered if the Tier I test results met certain criteria and if the information reported under the section 8(a) rule indicated production/import volume in excess of 3 million lbs/yr. The second tier of tests included: Chronic toxicity in fish, chronic toxicity in Daphnia, biodegradability in sludge systems, and biodegradation rate. In the section 8(a) rule, EPA required that manufacturers (including importers) of anthraquinone submit an annual report to EPA stating the volume of anthraquinone manufactured or imported during their latest corporate fiscal year.

The last Tier I testing was submitted to EPA on August 21, 1989. Results of the Tier 1 tests, as conducted, did not meet the hazard triggers for Tier 2 testing, and Tier 2 testing was not triggered. The anthraquinone test rule had a sunset date of August 21, 1994, and was removed from the Code of Federal Regulations (CFR) by a final rule issued on June 19, 1995 (60 FR 21917). Because requirements under the test rule ended on August 21, 1994, there is no need for the continued annual reporting of production and import volumes of anthraquinone under 40 CFR 704.30.

II. Revocation of Anthraquinone Recordkeeping and Reporting Requirements

EPA is revoking the section 8(a) recordkeeping and reporting requirements at 40 CFR 704.30.

III. Analyses Under E.O. 12866, the Unfunded Mandates Act of 1995, the Regulatory Flexibility Act, and the Paperwork Reduction Act

Because this action eliminates certain requirements, this action is not significant within the meaning of Executive Order 12866 (58 FR 51735, October 4, 1993), and does not impose any Federal mandate on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reasons, pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), it has been determined that this action will not have a significant impact on a substantial number of small entities. Additionally, because this rule eliminates reporting requirements, this action does not affect requirements under the Paperwork Reduction Act, 44 U.S.C. 3501.

IV. Public Docket

A record has been established for this rulemaking under docket number "OPPTS–82047." A public version of this record, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

List of Subjects in 40 CFR Part 704

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 31, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I is amended to read as follows:

PART 704—[AMENDED]

1. The authority citation for part 704 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

§ 704.30 [Removed]

2. Section 704.30 is removed.

[FR Doc. 96–4251 Filed 2–23–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8364

[CA–059–1220–00]

Closure and Restriction Orders

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Emergency closure of certain public lands to motorized vehicle use in Shasta County, California.

SUMMARY: The BLM is prohibiting persons for an indefinite period from operating motorized vehicles on approximately 882 acres of public land that has been acquired from a private landowner through an exchange. This closure on motorized vehicle use will protect the natural environment of the public lands until BLM has conducted site specific inventories on the property and designated suitable roads for motorized vehicles to travel.

DATES: This emergency motorized vehicle closure will take effect February 26, 1996.

FOR FURTHER INFORMATION CONTACT: Charles M. Schultz, Area Manager, Bureau of Land Management, 355 Hemsted Drive, Redding, CA 96002.

SUPPLEMENTARY INFORMATION: The BLM acquired 882 acres of private land within sections 26, 27, 34 and 36 of T. 31 N., R. 6 W., of the M.D.M on January 31, 1996 from Sierra Pacific Industries, Inc. Appropriate uses of this property will be determined, in part, through the preparation of a management plan for the region. Until this management plan is completed and appropriate roads and trails are delineated, the four parcels are closed from entry and use by motorized vehicles. Exceptions to this closure include: emergency vehicles, fire suppression and rescue vehicles, BLM operation and maintenance vehicles, law enforcement vehicles, and other motorized vehicles specifically approved by an authorized officer of the Bureau of Land Management.

The authority for this closure and rule making is 43 CFR 8364.1. Any person who fails to comply with a closure order or rule making is subject to arrest and fines of up to $100.000 and/or imprisonment not to exceed 12 months.

Charles M. Schultz,

Redding Area Manager.

[FR Doc. 96–4193 Filed 2–23–96; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF DEFENSE

48 CFR Part 231

[DFARS Case 95–D309]

Defense Federal Acquisition Regulation Supplement; Allowability of Costs

AGENCY: Department of Defense (DOD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to prohibit use of fiscal year 1996 funds to reimburse a contractor for costs paid by the contractor to an employee for a bonus or other payment in excess of the normal salary paid to the employee, when such payment is part of restructuring costs associated with a business combination.

DATES: *Effective date:* February 26, 1996.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before April 26, 1996, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulation Council, Attn: Ms. Sandra G. Haberlin, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D309 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds paragraph (f)(1) to DFARS Section 231.205–6 to implement Section 8122 of the Fiscal Year 1996 Defense Appropriations Act (Pub. L. 104–61). Section 8122 prohibits DOD from using fiscal year 1996 funds to reimburse a contractor for costs paid by the contractor to an employee for a bonus or other payment in excess of the normal salary paid by the contractor to the employee, when such payment is part of restructuring costs associated with a business combination. The interim rule clarifies that the prohibition does not apply to severance and early retirement incentive payments.

B. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Compelling reasons exist to promulgate this rule without prior opportunity for public comment. This rule implements Section 8122 of the Defense Appropriations Act for Fiscal Year 1996 (Pub. L. 104–61), which was effective upon enactment on December 1, 1995. However, comments received in response to the publication of this rule will be considered in formulating the final rule.

C. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because most contracts awarded to small entities are awarded on a competitive fixed-price basis and cost principles, therefore, do not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any new reporting or recordkeeping requirements which require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 231

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 231 is amended as follows:

1. The authority citation for 48 CFR part 231 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205–6 is amended by adding paragraph (f)(1) to read as follows:

231.205–6 Compensation for personal services.

* * * * *

(f)(1) Costs for bonuses or other payments, that are in excess of the normal salary paid by the contractor to the employee and that are part of

restructuring costs associated with a business combination, are unallowable under DOD contracts funded by fiscal year 1996 appropriations (Pub. L. 104–61). This limitation does not apply to severance payments or early retirement incentive payments. (See 231.205–70(b) for the definitions of "business combination" and "restructuring costs.")

[FR Doc. 96–4197 Filed 2–23–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 950725189–5260–02; I.D. 022096C]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure of a Commercial Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure of a commercial fishery for king mackerel.

SUMMARY: NMFS closes the commercial hook-and-line fishery for king mackerel in the exclusive economic zone (EEZ) in the Florida west coast sub-zone. This closure is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: February 21, 1996, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act.

Catch limits recommended by the Councils and implemented by NMFS for the Gulf of Mexico migratory group of king mackerel set the commercial quota of king mackerel in the Florida west coast sub-zone at 865,000 pounds (392,357 kg). That quota was further divided into two equal quotas of 432,500 pounds (196,179 kg) for vessels in each of two groups by gear types—vessels fishing with run-around gillnets and those using hook-and-line gear.

Under 50 CFR 642.26(a), NMFS is required to close any segment of the king mackerel commercial fishery when its allocation or quota is reached, or is projected to be reached, by publishing notification in the **Federal Register**. NMFS has determined that the commercial quota of 432,500 pounds (196,179 kg) for Gulf group king mackerel for vessels using hook-and-line gear in the Florida west coast sub-zone was reached on February 20, 1996. The trip limit was previously reduced to 50 fish on January 24, 1996, when 75 percent of the quota was taken (January 29, 1996; 61 FR 2728). Hence, the commercial fishery for king mackerel for such vessels in the Florida west coast sub-zone is closed effective 12:01 a.m., local time, February 21, 1996, through June 30, 1996, the end of the fishing year.

The Florida west coast sub-zone extends from the Alabama/Florida boundary (87°31′06″ W. long.) to: (1) the Dade/Monroe County, Florida boundary (25°20.4′ N. lat.) from November 1 through March 31; and (2) the Monroe/Collier County, Florida boundary (25°48′ N. lat.) from April 1 through October 31.

NMFS previously determined that the commercial quota of king mackerel from the western zone of the Gulf of Mexico was reached and closed that segment of the fishery on September 5, 1995 (60 FR 47100, September 11, 1995). Subsequently, NMFS determined that the commercial quota of king mackerel for vessels using run-around gillnet gear in the Florida west coast sub-zone of the eastern zone of the Gulf of Mexico was reached and closed that segment of the fishery at noon on February 12, 1996. Thus, with this closure, all commercial fisheries for king mackerel in the EEZ are closed from the U.S./Mexico border through the Florida west coast sub-zone through June 30, 1996.

Except for a person aboard a charter vessel, during the closure, no person on board a vessel permitted to fish under a commercial allocation may fish for, retain, or have in possession in the EEZ Gulf group king mackerel from the closed zones. A person on board a charter vessel may continue to fish for king mackerel in the closed zones under the bag limit set forth in § 642.24(a)(1)(i), provided the vessel is under charter and the vessel has an annual charter vessel permit, as specified in § 642.4(a)(2). A charter vessel with a permit to fish on a commercial allocation is under charter when it carries a passenger who fishes for a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones taken in the EEZ, including those harvested under the bag limit, may not be purchased, bartered, traded, or sold. This prohibition does not apply to trade in king mackerel from the closed zones that were harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 642.26(a) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 20, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–4216 Filed 2–21–96; 9:31 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 38
Monday, February 26, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 95–084–1]

RIN 0579–AA77

Permanent Private Quarantine Facilities for Horses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking; withdrawal.

SUMMARY: We are soliciting public comment on the need for and appropriate standards for the establishment of permanent private quarantine facilities for horses imported into the United States. We are also giving notice that we are withdrawing a previously published proposed rule that would have allowed the operation of permanent private quarantine facilities for horses, added new requirements for approval of temporary private quarantine facilities for horses, and required the government to collect payment from each privately operated quarantine facility for services provided by the government at the facility.

DATES: Consideration will be given only to comments received on or before April 26, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–084–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–084–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, Unit 39, 4700 River Road, Riverdale, MD 20737, (301) 734–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various communicable diseases. The regulations require that certain animals be quarantined upon arrival in the United States as a condition of importation. There are two types of quarantine facilities for animals being imported into the United States: Government operated facilities and privately operated facilities. The regulations contain requirements for the approval of temporary private quarantine facilities for horses; however, the regulations do not provide for the approval of permanent private quarantine facilities for horses.

Withdrawal of Previous Proposal

On September 6, 1989, we published in the **Federal Register** (54 FR 36986–36996, Docket No. 85–061) a proposed rule that would have allowed the operation of permanent private quarantine facilities for horses, added new requirements for approval of temporary private quarantine facilities for horses, and required the government to collect payment from each privately operated quarantine facility for services provided by the government at the facility. However, on August 2, 1990, we published in the **Federal Register** (55 FR 31484–31562, Docket No. 90–023) a final rule that reorganized all of part 92, including those sections concerning quarantine facilities for horses, so that the proposed provisions are no longer consistent with the current part 92 format. In addition, because of the amount of time that has elapsed since publication of the proposed rule, some of the proposed provisions may no longer be appropriate. For these reasons, we are withdrawing the proposed rule and reopening public discussion of the issues.

Comments Requested

There appears to be occasional public demand for quarantine services for horses other than those available at existing federal facilities. It also appears that temporary private quarantine facilities may not be able to fill this demand because such facilities are established, approved, and operated by importers to handle horses imported for a particular event. We are requesting comments on the need for permanent private quarantine facilities for horses. We are also requesting comments on appropriate specific standards for the establishment of permanent private quarantine facilities for horses in order to meet any existing unfulfilled demand for quarantine services.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 21st day of February 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–4247 Filed 2–23–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–14]

Proposed Establishment of Class E Airspace; Auburn, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Auburn, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 7 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Auburn Municipal Airport, Auburn, CA.

DATES: Comments must be received on or before March 25, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal

Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–14, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments as self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AWP–14." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area at Auburn, CA. The development of GPS SIAP at Auburn Municipal Airport has made this proposel necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the Instrument Departure Procedure and the GPS RWY 7 SIAP at Auburn Municipal Airport, Auburn, CA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Auburn, CA [New]

Auburn Municipal Airport, CA
(Lat. 38°57'10"N, long. 121°04'55"W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of Auburn Municipal Airport and within 4.3 miles each side of the 291° bearing from the Auburn Municipal Airport extending from the 4.3-mile radius to 5.6 miles northwest of the Auburn Municipal Airport.

* * * * *

Issued in Los Angeles, California, on February 8, 1996.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–4269 Filed 2–23–96; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 145 and 147

Financial Reporting and Debt-Equity Ratio Requirements for Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing to amend several provisions of its Rule 1.10, which governs financial reporting requirements for futures commission merchants (FCMs) and introducing brokers (IBs). The proposed rule amendments would require that financial reports which need not be certified by an independent public accountant be filed within 17 business days of the end of the reporting period, which is generally the end of a month, a quarter or a six-month period. The Commission is also proposing to require that certified financial reports be filed within 60 calendar days of the fiscal year end. Currently, the Commission allows 45 and 90 calendar days for the filing of uncertified and certified financial reports, respectively. In addition, the Commission is proposing to delete the provision which permits a self-regulatory organization to allow its member FCMs file financial reports on a semiannual rather than a quarterly basis. The Commission is further proposing to amend the debt-equity ratio rule such that the 30 percent minimum equity requirement would apply to all of a firm's capital, rather than only to that portion of a firm's capital necessary to meet the minimum financial requirement. These proposed rule amendments would conform the Commission's rules to the corresponding rules of the Securities and Exchange Commission (SEC) and the Commission's proposals are part of its ongoing efforts to harmonize its financial rules with those of the SEC to the extent practicable. These proposals are also part of a series of rulemaking proceedings related to the discussions at the Commission's roundtable on capital issues last September. The Commission anticipates that it will next address harmonization of early warning notices among the Commission, the SEC and self-regulatory organizations as well as capital charge based upon five percent of unsecured receivables from foreign brokers.

DATES: Comments on the proposed amendments must be received on or before March 27, 1996.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Please refer to "Financial Reporting Cycle/Debt-Equity Ratio Amendments."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, at the address listed above. Telephone: (202) 418–5439.

SUPPLEMENTARY INFORMATION:

I. Financial Reporting Requirements for FCMs and IBs

A. Background

The Commission's minimum financial requirements are premised upon the concept that an FCM or an IB must maintain compliance with these requirements at all times.[1] An FCM or IB that is not in compliance with the minimum financial requirements, or is unable to demonstrate such compliance, must immediately cease doing business unless it can immediately demonstrate an ability to achieve compliance, in which case the Commission or the firm's designated self-regulatory organization (DSRO)[2] may, in its discretion, allow the firm up to 10 business days to achieve compliance without having to cease doing business.[3]

As part of the system of surveillance to assure that FCMs and IBs are maintaining compliance with their financial requirements, the Commission has established various reporting and recordkeeping requirements, and these begin when a firm applies for registration. An applicant for registration as an FCM must file a financial report certified by an independent public accountant[4] which shows that the applicant meets the minimum financial requirement for an FCM.[5] An applicant can meet this requirement in either of two ways, by filing: (1) A certified financial report as of a date not more than 45 days preceding its filing; or (2) an uncertified financial report as of a date not more than 45 days preceding its filing, accompanied by a certified financial report as of a date not more than one year preceding its filing.[6] After a firm is granted registration as an FCM, it generally must file uncertified financial reports on a quarterly or semiannual basis and a certified financial report as of its fiscal yearend.[7] If an FCM's adjusted net capital is below the "early warning" level (*i.e.*, 150 percent of the minimum requirement), it must file a financial report as of the close of business for the month during which such event takes place and as of the close of business for each month thereafter until three successive months have elapsed during which its adjusted net capital is at all times equal to or in excess of the early warning level.[8]

Commission rules also provide that the Commission or a DSRO can request a special financial report upon written notice.[9] In addition to the required financial reports, the Commission requires FCMs to make and keep as a record, but not file, a monthly computation of its adjusted net capital

[1] The statutory authority for the minimum financial requirements, Section 4f(b) of the Commodity Exchange Act (Act), 7 U.S.C. 6f(b) (1994), provides in pertinent part that:

Notwithstanding any other provisions of this chapter, no person desiring to register as futures commission merchant or as introducing broker shall be so registered unless he meets such minimum financial requirements as the Commission may by regulation prescribe as necessary to insure his meeting his obligation as a registrant, and each person so registered shall at all times continue to meet such prescribed minimum financial requirements * * *.

[2] The term "self-regulatory organization" (SRO) means a contract market or a registered futures association (National Futures Association (NFA) is currently the only registered futures association). 17 CFR 1.3(ee)(1995). A DSRO is the SRO, where an FCM or IB is a member of more than one SRO, that is delegated the responsibility under a plan approved by the Commission to monitor and audit such FCM or IB for compliance with minimum financial and related reporting requirements and to receive the financial reports necessitated by such requirements. 17 CFR 1.3(ff)(1995); see also 17 CFR 1.52(1995).

[3] See 17 CFR 1.17 (a)(3), (a)(4) and (a)(5) (1995).

[4] The Commission's rules relating to qualifications and reports of accountants are set forth in 17 CFR 1.16 (1995).

[5] The Commission recently proposed to increase the minimum required dollar amount of adjusted net capital for an FCM from $50,000 to $250,000. 60 FR 63995 (Dec. 13, 1995).

[6] An FCM or applicant therefor generally must file its financial report on Form 1–FR–FCM. However, the Commission also provides an FCM or applicant therefor that is also a securities broker or dealer the option of filing a copy of its Financial and Operational Combined Uniform Single (FOCUS) Report, Part II, filed with the SEC in lieu of Form 1–FR–FCM. See Commission Rule 1.10(h), 17 CFR 1.10(h)(1995). The Commission and the SEC are continuing to pursue efforts to develop a single financial reporting form that would be adopted by both agencies. If such a form were to require statements and schedules in addition to those currently required, the agencies may revisit the filing timetables but would continue to pursue harmonization to the extent practicable.

[7] Although Commission Rule 1.10(b)(1)(i) specifies a quarterly financial reporting requirement for FCMs, Commission Rule 1.52(a) permits a DSRO to determine the number of financial reports it receives from member FCMs so long as such reports are required on at least a semiannual basis. Currently, the New York Mercantile Exchange, the New York Cotton Exchange and the Kansas City Board of Trade permit member FCMs to file semiannual financial reports. Less than ten percent of FCMs (approximately 20 out of 258) file semiannually. As discussed below, the Commission is proposing to delete that provision of Rule 1.52(a).

[8] Commission Rule 1.12(b)(3). The Commission has proposed to redesignate paragraph (b)(3) of Rule 1.12 as paragraph (b)(4) and to add a new paragraph (b)(3). 60 FR 63995, 63999. If the Commission adopts those rule changes proposed last December prior to or simultaneously with the proposed amendment to Rule 1.12 concerning the due date for filing monthly financial reports set forth in this release, the latter amendment would appear in the redesignated Rule 1.12(b)(4).

[9] Commission Rule 1.10(b)(4). The Commission would generally make such a request if a firm were experiencing financial difficulties. In extraordinary circumstances, such as the October 1987 market break, the Commission has requested all firms to file a special financial report.

and its minimum financial requirement.[10]

An applicant for registration as an IB, in addition to the filing options available to an FCM applicant with respect to submitting a certified financial report no more than 45 days old or an uncertified financial report no more than 45 days old accompanied by a certified financial report no more than one year old, has the option of submitting a guarantee agreement entered into with an FCM. Most IBs choose the guarantee agreement option and when registered are often referred to as "guaranteed introducing brokers" or "IBGs."[11] As such, they have no further financial reporting requirements. The minority of registered IBs which raise their own capital and are often referred to as "independent introducing brokers" or "IBIs," are subject to financial reporting and recordkeeping requirements. An IBI must file an unaudited financial report as of mid-year and a certified financial report as of the fiscal yearend.[12] An IBI is not subject to that portion of the early warning requirements in Commission Rule 1.12 which mandates that notice and monthly financial reports be filed when adjusted net capital is less than 150 percent of the minimum requirement.[13] However, like an FCM, an IBI is subject to a request for a special financial report upon written notice by the Commission or a DSRO pursuant to Commission Rule 1.10(b)(4) and must prepare and maintain a monthly adjusted net capital and minimum financial requirement computation in accordance with Commission Rule 1.18.

The time frame within which registered FCMs and IBIs must submit interim unaudited financial reports is 45 days after the quarter or six-month period, and the certified yearend financial report must be filed within 90 days. FCMs subject to monthly reporting under the early warning rule must file reports within 30 days, and the monthly adjusted net capital and minimum financial requirement computations must be prepared by FCMs and IBIs within 30 days. If a special report is requested upon written notice by the Commission or a DSRO pursuant to Commission Rule 1.10(b)(4), such a report must be furnished within the time period specified in the notice.

B. Proposed Rule Amendments

1. Financial Reporting Cycle

The Commission is proposing to amend its financial reporting requirements for FCMs and IBIs such that interim unaudited financial reports would be due within 17 business days, rather than the current 45 calendar days, of the "as of" date, and the certified financial report as of the fiscal yearend would be due within 60, rather than 90, calendar days of the fiscal yearend. *See* proposed amendments to Commission Rules 1.10(b)(1) (i) and (ii). There will be no change in the requirement that applicants for registration as an FCM or an IB submitting only a certified financial report file such a report as of a date not more than 45 days prior to the date on which the report is filed, since that is a shorter timeframe than the proposed 60-day period for certified reports of registered firms.[14] However, if an applicant for registration as an FCM or an IB chooses the option of submitting a certified financial report that is no more than one year old accompanied by a recent uncertified financial report, the Commission's proposed amendments to Rules 1.10 (a)(2)(i)(B) and (a)(2)(ii)(B) would require that the latter have an "as of" date not more than 17 business days, rather the current 45 calendar days, prior to the date upon which it is filed. Similar treatment would be accorded to an IBG whose guarantee agreement with an FCM is terminated and who is seeking to become an IBI under proposed amendments to Commission Rules 1.10 (j)(8)(i)(B) and (j)(8)(ii)(B).

Certain unaudited financial reports are filed as of a monthend, where an FCM is filing financial reports under the early warning provision and where a firm succeeds to the business of an FCM or IBI (Rule 1.10 (a)(3)(i) and (a)(3)(ii)(A)). Such reports are now due within 30 and 45 calendar days, respectively. The Commission is proposing to amend these rules so that such unaudited financial reports, like a normal quarterly or semiannual report, would be due within 17 business days.

The monthly computation of adjusted net capital and minimum financial requirement which FCMs and IBIs must prepare in accordance with Commission Rule 1.18 is currently required to be made available for inspection within 30 days. Since these computations do not involve the preparation of all of the statements and schedules included in a Form 1–FR–FCM or a Form 1–FR–IB, the Commission is proposing to shorten the time period within which FCMs and IBIs must make available for inspection their monthly computations to 10 business days. The Commission also notes that this proposed shorter time period would conform the requirement pertaining to monthly computations to the SEC's requirement for filing Part I of the FOCUS Report, which is discussed below.

The Commission is also proposing to delete that portion of Rule 1.52(a) which permits an SRO to allow its member FCMs to file financial reports semiannually rather than quarterly. The Commission believes that this rule amendment would be consistent with the concept that financial reporting should be made more quickly than currently required so that such data does not become stale when it is reported to regulators. As noted above, relatively few firms are now filing only semiannually so the Commission does not believe that this rule amendment would cause undue hardship for a substantial number of FCMs.

The Commission was prompted to review its rules relating to the financial reporting cycle to assure that such rules are up-to-date in light of the speed and complexity of today's markets and available information technology following the roundtable on capital issues held on September 18, 1995, during which several matters relating to minimum financial and related reporting requirements were discussed. Several participants in the roundtable discussion stated that there should be greater harmonization of CFTC/SEC requirements in several areas such as financial reporting cycles.[15] The proposed rule amendments that would make the CFTC reporting cycle for registered FCMs and IBIs 17 business days for unaudited financial reports and 60 calendar days for certified financial reports would conform Commission Rule 1.10 to the corresponding SEC rules governing the filing of the FOCUS Report, Part II or Part IIA.[16]

The SEC also requires monthly filing within 10 business days after the end of each month of Part I of the FOCUS Report by every securities broker or dealer who clears or carries customer accounts.[17] Although the Commission's requirement under Rule 1.18(b) that FCMs and IBIs prepare and make available for inspection monthly computations of adjusted net capital and the minimum financial requirement is not precisely analogous to the SEC requirement for filing a FOCUS Report, Part I on a monthly basis, the proposed amendment of Commission Rule 1.18 to require preparation of the monthly computations within 10 business days, rather than the current 30 calendar days, is also intended to promote harmonization between CFTC and SEC rules.

There is no specific analogue in the SEC's early warning rule[18] to the requirement under the CFTC's early warning rule for monthly filings of financial reports referred to above. (As noted in the preceding paragraph, SEC rules require that all firms which clear or carry customer accounts file a monthly FOCUS Report, Part I.) Since the Commission is proposing to require that routine interim financial reports be submitted within 17 business days of the "as of" date, the Commission believes that financial reports on firms that are required to report under the early warning provisions and thereby subject to enhanced scrutiny should not be filed on a longer time cycle. The Commission is therefore proposing that monthly financial reports required by Rule 1.12 be submitted within 17 business days of the monthend, rather than the current 30 calendar days.

The Commission does not believe that these amendments to the financial reporting cycle should be an undue hardship for FCMs and IBIs. Many of these firms are dually registered as securities broker-dealers or introducing brokers and are thus already subject to the SEC reporting timeframes.[19] Beyond the issue of conforming the filing cycles with the SEC, the Commission also believes that these proposed rule amendments are appropriate in light of the increasing rapidity and complexity of today's financial markets. FCMs and IBIs are required to be in compliance with minimum financial standards on a moment-to-moment basis and being required to formally demonstrate such compliance on a quicker schedule than is currently required is appropriate and achievable given advances in information technology.

2. Other Proposed Amendments

The Commission is also proposing two other minor amendments to the financial reporting requirements in Rule 1.10, both of which pertain to IBs. Currently, an applicant for registration as an IB that intends to operate pursuant to a guarantee agreement with an FCM must file a copy of the guarantee agreement with the regional office of the Commission nearest the principal place of business of the applicant (except that an applicant under the jurisdiction of the Commission's Western Regional Office in Los Angeles must file a copy with the Commission's Southwestern Regional Office in Kansas City).[20] This requirement is in addition to the requirement to file the original of the guarantee agreement with the registration application submitted to NFA. The Commission is proposing to amend Rule 1.10(c) to eliminate the requirement that a copy of a guarantee agreement be filed with a Commission regional office. An IB's status as an IBG can be readily discerned by Commission staff from contacting NFA's Information Center or by accessing the registration database. An IBG has no ongoing financial reporting requirements, so the Commission believes that no purpose is served by continuing to maintain copies of guarantee agreements. The Commission further believes that this amendment to Rule 1.10(c) will ease filing burdens on IB applicants and record maintenance burdens on the Commission's staff.

The other proposed amendment to the financial reporting requirements would eliminate Rule 1.10(i). Rule 1.10(i) provides an IBI or an applicant which is also a country elevator an alternative to satisfy its financial reporting obligation by filing, in lieu of filing a Form 1–FR–IB, a copy of a compilation report of financial statements of warehousemen for purposes of Uniform Grain Storage Agreements, prepared in accordance with requirements of the U.S. Department of Agriculture. This provision was adopted when the Commission first adopted rules to govern IBs in 1983[21] and has never been utilized. The Commission believes it is appropriate to delete this provision as a means of streamlining and simplifying Rule 1.10. References to Rule 1.10(i) in other Commission rules would likewise be eliminated.[22]

II. Proposed Amendments to Debt-Equity Ratio Requirements

A. Proposed Rule Amendments

Commission Rule 1.17(d) sets forth the debt-equity ratio requirement, which requires that at least 30 percent of an FCM's or IBI's *required* debt-equity total must consist of equity capital.[23] Thus, if

[10] Commission Rule 1.18. As with other records required to be kept by the Act or rules thereunder, such record is open to inspection by any representative of the Commission or the U.S. Department of Justice. 17 CFR 1.31 (1995).

[11] As of November 30, 1995, of the registered IBs, 1,087 operated pursuant to a guarantee agreement with an FCM and 390 were raising their own capital. An IBG must introduce all accounts to its guarantor FCM. 17 CFR 1.57(a)(1)(1995).

[12] An IBI can file its financial reports using Form 1–FR–IB, which is shorter than Form 1–FR–FCM largely because an IBI, unlike an FCM, cannot handle customer funds and thus schedules related to segregation of customer funds are irrelevant to an IBI. For an IBI that is also a securities broker or dealer, it has the option under Commission Rule 1.10(h) to file a copy of its FOCUS Report, Part IIA, filed with the SEC in lieu of Form 1–FR–IB.

[13] The Commission recently proposed to increase the minimum required dollar amount of adjusted net capital for an IBI from $20,000 to $30,000. 60 FR 63995, 63996, 64000.

[14] The Commission has also determined not to propose an amendment to the timeframe for filing an uncertified financial report that must accompany an FCM's or IBI's request to withdraw its registration where such request is based upon the firm's having ceased engaging in activities requiring registration. Such a financial report must have an "as of" date not more than 30 days prior to the date of the withdrawal request. See Commission Rule 3.33(c)(1) which, as discussed below, is proposed to be amended for another reason.

[15] The other areas mentioned at the roundtable with respect to harmonization included debt-equity ratio requirements, which are discussed more fully below, early warning requirements and risk assessment data elements. The Commission is expecting to receive more input from the industry concerning harmonization of CFTC, SEC, and self-regulatory organization rules relating to early warning notices following the next meeting of the Intermarket Financial Surveillance Group (IFSG). IFSG was formed in 1988 to provide a coordinating body to address financial surveillance issues relevent to both futures and securities markets and includes representatives of the principal futures and securities exchanges as well as NFA and the National Association of Securities Dealers, Inc. The Commission has outstanding proposals to amend the early warning notice requirements. 59 FR 66822 (Dec. 28, 1994). As to risk assessment data elements, the Commission's staff will continue to consult with staff from the SEC and other financial regulators concerning appropriate data elements. See also 60 FR 63995, 63998.

[16] *See* 17 CFR 240.17a–5 (a)(2)(ii), (a)(2)(iii), and (d)(5)(1995). As to an applicant for registration as a securities broker or dealer or an introducing broker, the SEC does not require submission of a financial report with the registration application. Instead, an inspection is conducted by a self-regulatory organization within six months after a firm is registered to determine whether the firm is operating in conformity with applicable financial responsibility rules. See 17 CFR 240.15b1–1 and 240.15b2–2 (1995).

[17] Part I of the FOCUS Report consists of two pages upon which a firm reports key financial and operational data in summary form including items such as subordinated debt, net profit or loss, ownership equity, partners' capital, non-allowable assets, net capital and haircuts. The FOCUS Report Part I contains side-by-side columns for each month of the year to allow visual month-to-month comparison of key items. Part II or Part IIA of the FOCUS Report requires several pages of in-depth computations of a firm's financial condition and minimum requirements.

[18] 17 CFR 240.17a–11 (1995).

[19] As of November 30, 1995, almost one-half of FCMs (approximately 120 out of 258) and one-third of IBIs (approximately 141 out of 390) were dually registered with the SEC.

[20] The geographic coverage of jurisdiction of the Commission's regional offices is set forth in 17 CFR 140.2 (1995).

[21] 48 FR 35248, 35263, 35282 [Aug. 3, 1983]

[22] See proposed deletions of Rules 1.10(g)(3), 145.5(d)(1)(i)(G) and 147.3(b)(4)(i)(A)(7) as well as proposed amendments to Rules 1.10(g)(5), 1.18 (a) and (b), and 3.33(c)(1).

[23] In addition to certain subordinated debt as described more fully below, equity capital includes the following:

(1) In the case of a corporation, the sum of its par or stated value of capital stock, paid in capital in excess of par, retained earnings, unrealized profit and loss, and other capital accounts;

(2) In the case of a partnership, the sum of its capital accounts of partners (inclusive of such partners' commodity interest and securities accounts subject to the provisions of Rule 1.17(e) concerning restrictions on withdrawals of equity capital), and unrealized profit and loss; and

(3) In the case of a sole proprietorship, the sum of its capital accounts and unrealized profit and loss.

Continued

an FCM's required debt-equity total amount is $1 million, it must maintain equity capital as defined in the Commission's rules of $300,000. No matter how much adjusted net capital is actually maintained by an FCM or IBI, the thirty percent equity requirement currently applies only to the amount of required debt-equity total. Accordingly, if an FCM has a $1 million adjusted net capital requirement and actually maintains $5 million in adjusted net capital (*i.e.*, it has $4 million in "excess" adjusted net capital), the entire $4 million amount above the minimum requirement could consist of debt subject to satisfactory subordination agreements in accordance with Commission Rule 1.17(h).[24]

When the Commission originally proposed what is now Rule 1.17(d) in 1977, the debt-equity ratio requirement was patterned upon the SEC rule and would have applied to a firm's debt-equity total.[25] However, in response to comments that "it would be inappropriate to penalize a firm that maintains capital in the form of satisfactory subordination agreements, which is in excess of the minimum required by regulation," the Commission revised its proposal. As adopted, Rule 1.17(d) provides that the required debt-equity total to which the 30 percent equity capital requirement applies means a firm's debt-equity total less its excess adjusted net capital.[26]

Several of the panelists at the capital roundtable on September 18, 1995 urged the Commission to pursue greater harmonization between CFTC and SEC financial rules and related reporting requirements and the debt-equity ratio requirement was one area referred to in this regard. The Commission also notes that the general international standard is to apply the debt-equity ratio requirement to all of a firm's capital.[27] The Commission believes that it is important for its rules to conform to international standards with respect to the quality of capital.

Accordingly, in light of these developments and its own reconsideration of the issue, the Commission has determined to propose to amend Rule 1.17(d) to require that the 30 percent debt-equity ratio requirement apply to an FCM's or IBI's debt-equity total. The Commission notes that, as referred to above, a large proportion of FCMs and IBIs are also securities brokers or dealers and thus already subject to the SEC rule concerning the debt-equity ratio.[28] The Commission further notes that Rule 1.17(d)(1) provides that certain subordinated debt may qualify as equity capital if specified conditions are met, in addition to those which apply to subordinated debt in general. These additional conditions are: (1) The lender must be a partner or stockholder of the FCM or IBI; (2) the initial term of the debt must be at least three years, and there must be a remaining term of not less than twelve months;[29] (3) the governing subordination agreement does not contain most of the otherwise permissible provisions relating to accelerated maturity; (4) the governing subordination agreement allows no special prepayment of the debt (*i.e.*, prepayment before one year from the date such subordination agreement becomes effective); end (5) the debt in question is maintained as equity capital subject to the provisions on withdrawal of equity capital contained in Commission Rule 1.17(e). If a firm is organized as a partnership, however, additional conditions (3) and (4) need not be met for subordinated debt to qualify as equity capital, if the partnership agreement provides that the capital contributed pursuant to a satisfactory subordination agreement as defined in Commission Rule 1.17(h) shall in all respects be partnership capital subject to the provisions restricting the withdrawal thereof set forth in Commission Rule 1.17(e).

B. Request for Comment

Following the capital roundtable in September, the Chicago Mercantile Exchange (CME), on behalf of the IFSG, submitted a letter to the Commission's Division of Trading and Markets dated October 31, 1995 supporting the goal of conforming the rules of the Commission and the SEC concerning the debt-equity ratio requirement. CME also requested in that letter, and in a similar letter of the same date to the SEC's Division of Market Regulation, that the financial rules of each agency be amended such that goodwill net of amortization could be subtracted from the denominator when a firm calculates its debt-equity ratio.[30] Since the SEC has not yet made such a change in its rule and since the Commission's intention in this proposal is to conform its rule to that of the SEC concerning the debt-equity ratio requirement, the Commission is not proposing to incorporate the CME's request in the proposed amendment to Rule 1.17(d). However, the Commission's staff will discuss this matter with staff of the SEC. The Commission also specifically requests comment upon the CME's suggestion, which could be accommodated by amending Rule 1.17(d)(2) to define debt-equity total as equity capital as defined in Rule 1.17(d)(1) *less goodwill net of amortization* plus total subordinated debt, and whether the Commission should adopt such a rule amendment in conjunction with or irrespective of action taken by the SEC. The Commission staff also notes, however, that information provided by CME based upon studies of several SROs indicates that the number of firms reporting goodwill as an asset is quite small.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments proposed herein would affect FCMs and IBIs. The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.[31]

With respect to IBs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBs should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.[32] The proposed amendments to Rules 1.10 and 1.18 relate to the time within which financial reports must be filed and monthly financial computations must be prepared, but would not increase the number of reports or records. Accordingly, these proposed amendments should impose no additional requirements on an IBI. In addition, the proposed amendment to Rule 1.17(d) for an IBI would conform the Commission's requirement to that of the SEC. More than one-third of the IBIs are also subject to the jurisdiction of the SEC and therefore the proposed amendment to Rule 1.17(d) should have no impact on the financial operations of these IBIs. Thus, if adopted, these proposals would not have a significant economic impact on a substantial number of IBs. Therefore, pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that these proposed rule amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1990, (PRA) 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. While the amendments proposed herein have no burden, Rules 1.10, 1.12, 1.17, and 1.18 are part of a group of rules with the following burden.

The burden associated with the collection required by Rules 1.10, 1.12, 1.17 and 1.18 (3038–0024), including these proposed amendments, is as follows:

Average Burden Hours Per Response (FCMs)	7.00
Average Burden Hours Per Response (IBs)	5.00
Number of FCM Respondents	785.00
Number of IB Respondents	542.00
Frequency of Response	5.00

Persons wishing to comment on the estimated paperwork burden associated with these proposed rule amendments should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5170.

"Debt-equity total" means equity capital as described above plus the outstanding principal amount of subordinated debt which does not qualify as equity capital. The "required debt-equity total" means debt-equity total less the amount by which a firm's adjusted net capital exceeds the minimum required. 17 CFR 1.17(d)(1995).

[24] 17 CFR 1.17(h) (1995).

[25] 42 FR 27166, 27177 (May 26, 1977).

[26] 43 FR 39956, 39965, 39976 (Sept. 8, 1978).

[27] This is the recommendation of Working Party No. 3 of the Technical Committee of the International Organization of Securities Commissions (IOSCO). See Report of the Technical Committee of IOSCO, "Capital Requirements for Multinational Securities Firms," XV Annual Conference of IOSCO, Santiago, Chile 1990.

[28] See n.19 *supra*. The Commission notes that the SEC definition of equity capital does not include, in the case of a partnership, partners' securities accounts. See 17 CFR 240.15c3–1(d)(1995).

[29] Subordinated debt entered into today with a maturity date of January 1, 2000 could, therefore, qualify as equity capital if all other requirements were met. On January 1, 1999, however, such subordinated debt would no longer be counted as equity capital unless an extension of the maturity date had been agreed to by the parties, since the remaining term of the debt would be less than one year at that time.

[30] CME stated in its letters that it was making this request because, by definition, goodwill is an intangible asset acquired in a business combination which represents the excess "going concern" value over the fair value of a firm's net assets, it lacks separability from the firm itself, and its value is often indefinite, indeterminate and subject to wide fluctuation.

[31] See 47 FR 18618, 18619 (Apr. 30, 1982.)

[32] See 48 FR 35248, 35275–78 (Aug. 3, 1983).

List of Subjects

17 CFR Part 1

Commodity futures, minimum financial requirements.

17 CFR Part 3

Commodity futures, reporting and recordkeeping requirements.

17 CFR Part 145

Freedom of information, exceptions.

17 CFR Part 147

Sunshine Act, exceptions.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4f, 4g and 8a(5) thereof, 7 U.S.C. 6f, 6g and 12a(5), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.10 is amended by revising paragraphs (a)(2)(i) (A) and (B), (a)(2)(ii) (A) and (B), (a)(3)(i), (a)(3)(ii)(A), (b)(1)(i), (b)(1)(ii) and (c), by removing and reserving paragraph (g)(3), by revising paragraph (g)(5), by removing and reserving paragraph (i), and by revising paragraphs (j)(8)(i)(B) and (j)(8)(ii)(B) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

(a) * * *

(2) * * *

(i) * * *

(A) A Form 1–FR–FCM certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which such report is filed; or

(B) A Form 1–FR–FCM as of a date not more than 17 business days prior to the date on which such report is filed and a Form 1–FR–FCM certified by an independent public accountant in accordance with § 1.16 as of a date not more than 1 year prior to the date on which such report is filed.

(ii) * * *

(A) A Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which such report is filed; or

(B) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which such report is filed and a Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than 1 year prior to the date on which such report is filed; or

* * * * *

(3)(i) The provisions of paragraph (a)(2) of this section do not apply to any person succeeding to and continuing the business of another futures commission merchant. Each such person who files an application for registration as a futures commission merchant and who is not so registered in that capacity at the time of such filing must file a Form 1–FR as of the first monthend following the date on which his registration is approved. Such report must be filed with the National Futures Association, the Commission and the designated self-regulatory organization, if any, not more than 17 business days after the date for which the report is made.

(ii) * * *

(A) Each such person who succeeds to and continues the business of an introducing broker which was not operating pursuant to a guarantee agreement, or which was operating pursuant to a guarantee agreement and was also a securities broker or dealer at the time of succession, who files an application for registration as an introducing broker, and who is not so registered in that capacity at the time of such filing, must file with the National Futures Association either a guarantee agreement with his application for registration or a Form 1–FR–IB as of the first monthend following the date on which his registration is approved. Such Form 1–FR–IB must be filed not more than 17 business days after the date for which the report is made.

* * * * *

(b) *Filing of financial reports.* (1)(i) Except as provided in paragraphs (b)(3) and (h) of this section, each person registered as a futures commission merchant must file a Form 1–FR–FCM for each fiscal quarter of each fiscal year unless the futures commission merchant elects, pursuant to paragraph (e)(2) of this section, to file a Form 1–FR–FCM for each calendar quarter of each calendar year. Each Form 1–FR–FCM must be filed no later than 17 business days after the date for which the report is made: *Provided, however,* That any Form 1–FR–FCM which must be certified by an independent public accountant pursuant to paragraph (b)(2) of this section must be filed no later than 60 days after the close of each

futures commission merchant's fiscal year.

(ii) Except as provided in paragraphs (b)(3) and (h) of this section, and except for an introducing broker operating pursuant to a guarantee agreement which is not also a securities broker or dealer, each person registered as an introducing broker must file a Form 1–FR–IB semiannually as of the middle and the close of each fiscal year unless the introducing broker elects pursuant to paragraph (e)(2) of this section to file a Form 1–FR–IB semiannually as of the middle and the close of each calendar year. Each Form 1–FR–IB must be filed no later than 17 business days after the date for which the report is made: *Provided, however,* That any Form 1–FR–IB which must be certified by an independent public accountant pursuant to paragraph (b)(2) of this section must be filed no later than 60 days after the close of each introducing broker's fiscal year.

* * * * *

(c) *Where to file reports.* The reports provided for in this section will be considered filed when received by the regional office of the Commission nearest the principal place of business of the registrant (except that a registrant under the jurisdiction of the Commission's Western Regional Office must file such reports with the Southwestern Regional Office) and by the designated self-regulatory organization, if any; and reports required to be filed by this section by an applicant for registration will be considered filed when received by the National Futures Association and by the regional office of the Commission nearest the principal place of business of the applicant (except that an applicant under the jurisdiction of the Commission's Western Regional Office must file such reports with the Southwestern Regional Office): *Provided, however,* That information required of a registrant pursuant to paragraph (b)(4) of this section need be furnished only to the self-regulatory organization requesting such information and the Commission, and that information required of an applicant pursuant to paragraph (b)(4) of this section need be furnished only to the National Futures Association and the Commission: *And, provided further,* That any guarantee agreement entered into between a futures commission merchant and an introducing broker in accordance with the provisions of this section need be filed only with and will be considered filed when received by the National Futures Association.

* * * * *

(g) * * *

(3) [Reserved]

* * * * *

(5) The independent accountant's opinion and a guarantee agreement filed pursuant to this section will be deemed public information.

* * * * *

(i) [Reserved]

(j) * * *

(8) * * *

(i) * * *

(B) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which the report is filed and a Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which the report is filed.

* * * * *

(ii) * * *

(B) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which the report is filed and a Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which the report is filed.

* * * * *

3. Section 1.12 is amended by revising paragraph (b)(3) to read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

* * * * *

(b) * * *

(3) For securities brokers or dealers, the amount of net capital specified in Rule 17a–11(b) of the Securities and Exchange Commission (17 CFR 240.17a–11(b)), must file written notice to that effect as set forth in paragraph (g) of this section within five (5) business days of such event. Such applicant or registrant must also file a Form 1–FR–FCM (or, if such applicant or registrant is registered with the Securities and Exchange Commission as a securities broker or dealer, it may file, in accordance with § 1.10(h), a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, in lieu of Form 1–FR–FCM) or such other financial statement designated by the National Futures Association, in the case of an applicant, or by the Commission or the designated self-regulatory organization, if any, in the case of a registrant, as of the close of business for the month during which such event takes place and as of the close of business for each month thereafter until three (3) successive months have elapsed during which the applicant's or registrant's adjusted net capital is at all times equal to or in the excess of the minimums set forth in this paragraph (b) which are applicable to such applicant or registrant. Each financial statement required by this paragraph (b) must be filed within 17 business days after the end of the month for which such report is being made.

* * * * *

4. Section 1.17 is amended by revising the introductory text of paragraph (d) and by removing paragraph (d)(3) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

* * * * *

(d) Each applicant or registrant shall have equity capital (inclusive of satisfactory subordination agreements which qualify under this paragraph (d) as equity capital) of not less than 30 percent of the debt-equity total, provided, an applicant or registrant may be exempted from the provisions of this paragraph (d) for a period not to exceed 90 days or for such longer period which the Commission may, upon application of the applicant or registrant, grant in the public interest or for the protection of investors. For the purposes of this paragraph (d):

* * * * *

5. Section 1.18 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.18 Records for and relating to financial reporting and monthly computation by futures commission merchants and introducing brokers.

(a) No person shall be registered as a futures commission merchant or as an introducing broker under the Act unless, commencing on the date his application for such registration is filed, he prepares and keeps current ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting his asset, liability, income, expense and capital accounts, and in which (except as otherwise permitted in writing by the Commission) all his asset, liability and capital accounts are classified into either the account classification subdivisions specified on Form 1–FR–FCM or Form 1–FR–IB, respectively, or, if such person is registered with the Securities and Exchange Commission as a securities broker or dealer and he files (in accordance with § 1.10(h)) a copy of his Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, in lieu of Form 1–FR–FCM or Form 1–FR–IB, the account classification subdivisions specified on such Report, or categories that are in accord with generally accepted account ing principles. Each person so registered shall prepare and keep current such records.

(b) Each applicant or registrant must make and keep as a record in accordance with § 1.31 formal computations of its adjusted net capital and of its minimum financial requirements pursuant to § 1.17 or the requirements of the designated self-regulatory organization to which it is subject as of the close of business each month. An applicant or registrant which is also registered as a securities broker or dealer with the Securities and Exchange Commission may meet the computation requirements of this paragraph (b) by completing the Statement of Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA. Such computations must be completed and made available for inspection by any representative of the National Futures Association, in the case of an applicant, or of the Commission or designated self-regulatory organization, if any, in the case of a registrant, within 10 business days after the date for which the computations are made, commencing the first monthend after the date the application for registration is filed.

* * * * *

6. Section 1.52 is amended by revising paragraph (a) to read as follows:

§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.

(a) Each self-regulatory organization must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered futures commission merchants. Each self-regulatory organization other than a contract market must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered introducing brokers. Each contract market which elects to have a category of membership for introducing brokers must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered introducing brokers. Each self-regulatory organization shall submit for Commission approval any modification or other amendments to such rules. Such requirements must be the same as, or more stringent than, those contained in §§ 1.10 and 1.17 of this part and the definition of adjusted net capital must be the same as that prescribed in § 1.17(c) of this part: *Provided, however,* A designated self-regulatory organization may permit its member registrants which are registered with the Securities and Exchange Commission as securities brokers or dealers to file (in accordance with § 1.10(h) of this part) a copy of their Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, in lieu of Form 1–FR: And, provided further, A designated self-regulatory organization may permit its member introducing brokers to file a Form 1–FR–IB in lieu of a Form 1–FR–FCM.

* * * * *

PART 3—REGISTRATION

7. The authority citation for Part 3 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23; 5 U.S.C. 552, 552b.

Subpart A—Registration

8. Section 3.33 is amended by revising paragraph (c)(1) to read as follows:

§ 3.33 Withdrawal from registration.

* * * * *

(c)(1) Where a futures commission merchant or an introducing broker which is not operating pursuant to a guarantee agreement is requesting withdrawal from registration in that capacity and the basis for withdrawal under paragraph (a)(1) of this section is that it has ceased engaging in activities requiring registration, the request for withdrawal must be accompanied by a Form 1–FR–FCM or a Form 1–FR–IB, respectively, which contains the information specified in § 1.10(d)(1) of this chapter as of a date not more than 30 days prior to the date of the withdrawal request: *Provided, however,* That if such registrant is also registered with the Securities and Exchange Commission as a securities broker or dealer, it may file a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA (in accordance with § 1.10(h) of this chapter), in lieu of Form 1–FR–FCM or Form 1–FR–IB. Any financial report submitted pursuant to this paragraph (c)(1) must contain the information specified in § 1.10(d)(1) of this chapter as of a date not more than 30 days prior to the date of the withdrawal request.

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

9. The authority citation for Part 145 continues to read as follows:

Authority: Pub. L. 89–554, 80 Stat. 383, Pub. L. 90–23, 81 Stat. 54, Pub. L. 93–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); Pub. L. 99–570, unless otherwise noted.

§ 145.5 [Amended]

10. Section 145.5 is amended by removing and reserving paragraph (d)(1)(i)(G).

PART 147—OPEN COMMISSION MEETINGS

11. The authority citation for Part 147 continues to read as follows:

Authority: Sec. 3(a), Pub. L. 94–409, 90 Stat. 1241 (5 U.S.C. 552b); Sec. 101(a)(11), Pub. L. 93–463, 88 Stat. 1391 (7 U.S.C. 4a(j)(Supp. V 1975)), unless otherwise noted.

§ 147.3 [Amended]

12. Section 147.3 is amended by removing and reserving paragraph (b)(4)(i)(A)(*7*).

Issued in Washington, D.C. on February 20, 1996 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–4236 Filed 2–23–96; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. 96N–0002]

"Draft Document Concerning the Regulation of Placental/Umbilical Cord Blood Stem Cell Products Intended for Transplantation or Further Manufacture into Injectable Products;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Availability of draft document.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Draft Document Concerning the Regulation of Placental/Umbilical Cord Blood Stem Cell Products Intended for Transplantation or Further Manufacture into Injectable Products (December 1995)." This draft document is intended to identify an approach that FDA believes is appropriate for the regulation of placental/umbilical cord blood stem

cell products for transplantation and to provide an opportunity for interested persons to submit written comments on the draft document. This document is in response to numerous inquiries regarding the agency's regulatory approach to cord blood stem cell products. The draft document was distributed at the public workshop held on December 13, 1995, as announced in the **Federal Register** of November 24, 1995 (60 FR 58088). FDA has since made editorial changes to the draft document but the content and technical information remains unchanged.

DATES: Written comments by April 26, 1996.

ADDRESSES: Submit written requests for single copies of the draft document entitled "Draft Document Concerning the Regulation of Placental/Umbilical Cord Blood Stem Cell Products for Transplantation or Further Manufacture into Injectable Products" to the Division of Congressional and Public Affairs (HFM–44), Office of Communication, Training and Manufacturers Assistance, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, or call FDA's automated information system at 1–800–835–4709. Send one self-addressed adhesive label to assist that office in processing your requests. Persons with access to the INTERNET may request the document be sent by return E-mail by sending a message to "CORDSTEM@A1..CBER.FDA.GOV". The draft document may also be obtained through INTERNET via File Transfer Protocol (FTP). Requesters should connect to the Center for Drug Evaluation and Research (CDER) FTP using the FTP. The Center for Biologics Evaluation and Research (CBER) documents are maintained in a subdirectory called CBER on the server, "CDVS2.CDER.FDA.GOV" (150.148.24.202). The "READ.ME" file in that subdirectory describes the available documents, which may be available as an ASCII text file (*.TXT), or WordPerfect 5.1 document (*.w51), or both. A sample dialogue for obtaining the READ.ME file with a test based FTP program would be:

```
FTP CDVS2.CBER.FDA.GOV
LOGIN ANONYMOUS
<ANY PASSWORD> <"YOUR EMAIL ADDRESS">
BINARY
CD CBER
GET READ.ME
EXIT
```

The draft document may also be obtained by calling the CBER FAX information system (FAX-On-Demand) at 1–800–835–4709 from a touch tone telephone. Submit written comments on the draft document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of all comments are to be submitted, except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft document and received comments are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sharon A. Carayiannis, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

I. Introduction

Traditional bone marrow transplantation, involving the extraction of bone marrow by aspiration from bone cavities and processing by density gradient centrifugation, is increasingly being supplanted by novel sources of stem cells and biotechnologic procedures to purify and expand hematopoietic stem cells. Human cord blood, which is enriched with pluripotent hematopoietic stem cells, has recently emerged as an alternative source of hematopoietic stem cells for patients who are unable to obtain stem cells from allogeneic donors. Although availability of cord blood stem cells may reduce some constraints on bone marrow transplantation, the ultimate safety and efficacy of cord blood stem cell transplantation has yet to be determined.

Recently, the agency has received numerous inquiries regarding the regulatory approach to cord blood stem cell products. Cord blood stem cells for transplantation in autologous or allogeneic recipients is an emerging area with complex medical issues, including issues raised by the banking of such cells for possible future transplantation. Unlike bone marrow donors who are at least several years old with a medical history, cord blood is obtained from a newborn donor without an established medical history. Existing FDA statutory authorities apply to these new products and allow FDA to see that areas such as quality control, quality assurance, safety, purity, potency, and efficacy are appropriately addressed prior to marketing.

FDA is announcing the availability of a draft document that includes discussions of the following: (1) The applicable legal authorities in the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act; (2) FDA's approach to the regulation of human cord blood stem cells intended for transplantation; (3) FDA's approach to the regulation of cord blood stem cells as source material for further manufacture; (4) FDA's approach to the regulation of ancillary products used for production of cord blood stem cells; and (5) a request for public comments on the regulatory approach.

II. Comments

FDA is providing for comment the draft document prepared by the Office of Blood Research and Review and the Office of Therapeutics Research and Review in CBER. FDA does not intend the draft document to be all-inclusive. This draft document does not bind FDA and does not create or confer any rights, privileges, or benefits on or for any person.

FDA recognizes that cord blood stem cell products used for hematologic transplantation constitute a new and emerging scientific area. FDA will review and consider written comments on the regulatory approach set forth in the draft document. FDA specifically invites public comment on the approach for regulation of cord blood stem cells as source material for further manufacture and for regulation of ancillary products used in the production of cord blood stem cells, as discussed in the draft document.

Interested persons may, on or before April 26, 1996, submit to the Dockets Management Branch (address above) comments on the draft document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft document and received comments are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FDA will consider any written comments received in determining whether amendments to, or revisions of, the document are warranted.

Dated: February 13, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–4065 Filed 2–23–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 203, 256, and 260

Announcement of Public Meeting on Public Law 104–58, Outer Continental Shelf (OCS) Deep Water Royalty Relief Act, and Its Effect on OCS Natural Gas and Oil Resource Management

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Outer Continental Shelf Deep Water Royalty Relief Act (Act) authorized the Secretary of the Interior to modify the terms of certain existing leases and to establish new terms for leases in water depths of 200 meters or greater in the Gulf of Mexico west of 87 degrees 30 minutes West longitude. The Minerals Management Service (MMS) will hold a public meeting at the Westin Canal Place, Vieux Carré Theatre, 100 Rue Iberville, New Orleans, Louisiana 70130, on March 12–13, 1996 to receive written and oral comments on this topic.

Both individual and joint MMS-industry panel discussions will be used to cover the full range of options. The first day will concentrate on tracts offered for lease after November 28, 1995. The second day will be reserved for detailed discussion of options for royalty volume suspensions on existing leases. Topics will include options for: (1) Application and eligibility requirements; (2) review and approval process; (3) economic viability; and (4) definition of "new production." These topics are also the subject of an Advance Notice of Proposed Rulemaking, which will be published in the **Federal Register** February 23, 1996 and which will be accessible on the MMS homepage on the World Wide Web.

All interested parties are invited to attend both sessions, but it would be especially valuable for those who may prepare the bids for upcoming Gulf of Mexico lease sales or who may want to apply for relief on existing leases to attend. Those wishing to attend any part of the 2-day session may register in advance and should indicate which day(s) they plan to be present. (Seating is limited to 295.) Reservations should be made no later than March 6, 1996, to Mary Carter, Gulf of Mexico Regional Office, Minerals Management Service, Elmwood Towers Building, 1201 Elmwood Park Boulevard, Jefferson, Louisiana 70123—(504) 736–2675, or facsimile (504) 736–2647.

DATES: Tuesday, March 12 and Wednesday, March 13, 1996, 9 a.m. to 4:30 p.m.

ADDRESSES: The Westin Canal Place, Vieux Carré Theatre, 100 Rue Iberville, New Orleans, Louisiana 70130—(504) 566–7006 or 1–800–228–3000. Contact person: Mary Carter, (504) 736–2675.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Cruickshank, Chief, Offshore Minerals Analysis Division, Minerals Management Service, at either Mail Stop 4013, 1849 C Street, NW., Washington, DC 20240 or telephone: (202) 208–3822. You may access the text of the Advance Notice of Proposed Rulemaking from the MMS homepage on the World Wide Web at http://www.mms.gov/whatsnew.html.

Dated: February 20, 1996.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 96–4215 Filed 2–23–96; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–96–008]

RIN 2115–AE46

Special Local Regulation: Winter Harbor Lobster Boat Race, Winter Harbor, ME

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent special local regulation for the Winter Harbor Lobster Boat Race. The event is held annually on the second Saturday in August, in the waters of Winter Harbor, Winter Harbor, ME. This regulation is needed to protect the boating public from the hazards associated with high speed powerboat racing in confined waters.

DATES: Comments must be received on or before April 26, 1996.

ADDRESSES: Comments should be mailed to Commander (b), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, MA 02110–3350, or may be hand delivered to Room 428 at the same address, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant (jg) B.M. Algeo, Chief, Boating Affairs Branch, First Coast Guard District, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD01–96–008), the specific section of the proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½" x 11" unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (b), First Coast Guard District at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Discussion of Proposed Amendments

The Winter Harbor Lobster Boat Race is a local, traditional event that has been held for more than thirty years in Winter Harbor, ME. In the past, the Coast Guard has promulgated individual regulations for each year's running of the race. Given the recurring nature of the event, the Coast Guard desires to establish a permanent regulation for this event. The proposed regulation would establish a regulated area on Winter Harbor and would provide specific guidance to control vessel movement during the race.

This event includes up to 50 power-driven lobster boats and draggers competing in heats on a marked course at speeds approaching 25 m.p.h. The event typically attracts approximately 75 spectator craft. The Coast Guard will assign a patrol to the event, and the race course will be marked. However, due to the speed, large wakes, and proximity of the participating vessels, it is necessary to establish a special local regulation to

control spectator and commercial vessel movement within this confined area. Spectator craft are authorized to watch the race from any area as long as they remain outside the designated regulated area.

The proposed section will be effective annually on the second Saturday in August, between 8 a.m. and 2 p.m. or as published in a Coast Guard Notice to Mariners. A rain date is established for the following Sunday during the same time period. In emergency situations, provisions may be made to establish safe escort by a Coast Guard or designated Coast Guard vessel for vessels requiring transit through the regulated area.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the limited duration of the race, the extensive advisories that will be made to the affected maritime community, and the minimal restrictions which the regulation places on vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impacts of this proposal and concluded that, under paragraph 2.B.2.e.34(h) of COMDTINST 16475.1B, (as revised by 59 FR 38654, July 29, 1994) this proposal is a regulation issued in conjunction with an annually issued regatta or marine parade permit and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.114, is added to read as follows:

§ 100.114 Winter Harbor Lobster Boat Race, Winter Harbor, ME.

(a) *Regulated Area.* The regulated area includes all waters of Winter Harbor, ME, within the following points (NAD 83):

Latitude	*Longitude*
44°23'07" N.	068°04'52" W.
44°22'12" N.	068°04'52" W.
44°22'12" N.	068°05'08" W.
44°23'07" N.	068°05'08" W.

(b) *Special Local Regulations.* (1) The Coast Guard patrol commander may delay, modify, or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area unless participating in the event or unless authorized by the Coast Guard patrol commander.

(3) Vessels encountering emergencies which require transit through the regulated area should contact the Coast Guard patrol commander on VHF Channel 16. In the event of an emergency, the Coast Guard patrol commander may authorize a vessel to transit through the regulated area with a Coast Guard designated escort.

(4) All persons and vessels shall comply with the instructions of the Coast Guard on-scene patrol commander. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon hearing five or more short blasts from a U.S. Coast Guard vessel, the operator of a vessel shall proceed as directed. Members of the Coast Guard Auxiliary may also be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective period.* This section is in effect from 8 a.m. to 2 p.m. annually on the second Saturday in August, unless otherwise specified in a Coast Guard Notice to Mariners. In case of inclement weather, this section will be in effect the following Sunday at the same time, unless otherwise specified in a Coast Guard Notice to Mariners.

Dated: February 13, 1996.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 96-4276 Filed 2-23-96; 8:45 am]

BILLING CODE 4910-14-M

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46 CFR Part 108, 110, 111, 112, 113, and 161

[CGD 94-108]

RIN 2115-AF24

Electrical Engineering Requirements for Merchant Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; extension of comment period.

SUMMARY: As a result of requests from a national trade association, the Coast Guard will hold a public meeting and extend the comment period for a proposed rule published on February 2, 1996, an additional 15 days beyond the original 45 day comment period on its proposed electrical engineering regulations for merchant vessels.

DATES: The meeting will be held March 25, 1996, and will begin at 9 a.m. Comments must be received on or before April 2, 1996.

ADDRESSES: The meeting will be held in room 2230, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Written comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 94-108), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001 or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Project Manager, Design and Engineering Standards Division (G-MMS), (202) 267-2206.

BACKGROUND INFORMATION:

Proposed Electrical Engineering Regulations

As a part of the President's Regulatory Reinvention Initiative, the Coast Guard issued a notice of proposed rulemaking published on February 2, 1996 (61 FR 4132) to amend its current electrical engineering regulations to reduce the regulatory burden on the marine industry, purge obsolete and out-of-date regulations, and eliminate requirements that create an unwarranted differential between domestic and international standards. The proposed rulemaking would harmonize, where possible, the electrical engineering regulations with the recent amendments to the International Convention for the Safety of Life at Sea, 1974, as amended. Additionally, the proposed rulemaking would dramatically revise certain prescriptive electrical equipment design, specification, and approval requirements and replace them with performance-based requirements that incorporate international standards.

Public Meeting

A national trade association requested a public meeting to afford vessel and equipment designers, builders, and owners the opportunity to present comments in person and to let the project managers interact with the affected industry segments. The national trade association also indicated that many of its vessel owners will be affected by these proposed electrical engineering regulations and have not had adequate time to fully evaluate their impact.

The Coast Guard will hold a public meeting on March 25, 1996. The public is invited to comment on the technological and economic feasibility of the proposed electrical engineering regulations.

Attendance is open to the public. With advance notice, and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed above under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted prior to, during, or after the meeting.

Extension of Comment Period

To accommodate the request for a public meeting, the Coast Guard is extending the comment period and holding a public meeting. Persons unable to attend the public meeting are encouraged to submit written comments. The comment period is extended until April 2, 1996.

Dated: February 20, 1996.

Joseph J. Angelo,

Director for Standards, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 96-4275 Filed 2-23-96; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 73

[MM Docket No. 91-151; RM-7557]

Television Broadcasting Services; Victoria and New Braunfels, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document denies a proposal by KVCT(TV), Inc., former licensee of television Station KVCT, Channel 19, Victoria, Texas, proposing the reallotment of Channel 19 to New Braunfels, Texas, and modification of the Station KVCT license to specify New Braunfels as the community of license. *See* 56 FR 269681, June 12, 1991. With this action, the proceeding is terminated.

DATES: The proposed rule is withdrawn February 26, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418-2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 91-151, adopted January 25, 1996, and released February 16, 1996. The full text is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96-3945 Filed 2-23-96; 8:45 am]

BILLING CODE 6712-01-F

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Notices

Federal Register
Vol. 61, No. 38
Monday, February 26, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review; Notice of Application

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 96–00001." A summary of the application follows.

Summary of the Application

Applicant: Trustech, Inc., 611 West 6th Street, AT&T Center #2151, Los Angeles, California 90017–3101.

Contact: Don K. Pyon, Chief Executive Officer.

Telephone: (213) 896–0099.

Application No.: 96–00001.

Date Deemed Submitted: February 15, 1996.

Members (in addition to applicant): Don K. Pyon, Chief Executive Officer and Ik Hwan Son, President.

Trustech, Inc. seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

(A) U.S. MADE WEAPON SYSTEMS AND THEIR SPARE PARTS (including but not limited to: All Types of Small Arms and Equipment for Army Special Operations Forces (ARSOF), Thermal Imaging Airborne Laser Designation (TIALD) System, Special Operations Communication Assemblages (SOCA), Tactical Missile and Precision Strike Munitions, Brilliant Anti-Armor Submission (BAT), Improved TOW Weapon System (TOW–2B), Multiple Launch Rocket System (MLRS)-M270, Improved Fire Control System (IFCS), Sense and Destroy Armor (SADARM), Hellfire II Missile, and HYDRA 70 Rocket System for Cobra Helicopters);

(B) MILITARY AIRCRAFT COMPONENTS AND SPARE PARTS;

(C) MILITARY COMMUNICATION SYSTEMS INCLUDING FIELD TRANSMITTERS AND RADARS (including but not limited to: Battlefield Surveillance Systems, Upgraded E–3 AWACS Sentry with situation display consoles (SDC), a better Radar Jamming System, Upgraded Joint Tactical Information Distribution System (JTIDS), Tactical Digital Information Link (TADIL), AN/TPQ–36(37) Mortar Locating Radar, Hunter Short-Range Unmanned Aerial Vehicle (UAV), NAVSTAR Global Positioning Systems (GPS), Artillery Target Survey Systems, Moving Target Firing Systems, Fire Range Distance Surveyor Systems, Battlefield Communications (Tactical Transmitters), Digital Transmission Assemblages (AN/TRC Series), Advanced Field Artillery Tactical Data System (AFATDS), Army Data Distribution System (ADDS), Satellite Tactical Communications (SATCOM), Single Channel Ground and Airborne Radio Systems (SINCGARS), and Army Tactical Command and Control System (ATCCS));

(D) NIGHT VISIONS FOR COMBAT PERSONNELS AND THERMO WEAPON SIGHT (including but not limited to: Second Generation Forward-Looking Infrared Radar (FLIR), Night Visions for Aviators, Mini Eyesafe Laser Infrared Observation Set, Thermo Weapon Sight, and Night Vision Goggle and Infra Red Aiming Light);

(E) MILITARY TRAINING AND SIMULATION SYSTEMS (including but not limited to: Tank/APC Driving Training System, War Game Simulation-Short Range, Tracking Training Set, Artillery L/O Set, Electronic Warfare Training Systems, and TOW Firing Training Systems);

(F) C4I SYSTEMS AND ITS COMPONENTS; and

(G) ALL KINDS OF DEPARTMENT OF DEFENSE SURPLUS ITEMS-SALES BY THE U.S. DEPARTMENT OF DEFENSE'S DEFENSE REUTILIZATION MARKETING SERVICE (including but not limited to: metal scrap, waste paper-recyclable, used and unused aircraft parts and components).

2. Services

All services.

3. Export Trade Facilitation Services (as They Relate to the Export of Products and Services)

All trade-facilitating services in connection with the export of Products, including but not limited to consulting, financing, insurance, advertising, foreign exhibiting and demonstration, trade documentation, countertrade and offsetting services, packing and crating, assembly, customs brokerage, market research and coordination.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

Trustech, Inc. may:

1. Coordinate the participation of various domestic Suppliers in foreign trade exhibitions through the sharing of trade information that is generally available to the public.

2. Provide Export Trade Facilitation Services to domestic Suppliers.

3. Enter into exclusive agreements with domestic Suppliers to arrange for the export of Products to foreign customers in response to foreign invitations to bid. "Exclusive" means that Trustech, Inc. may agree not to represent any competitors of the Supplier without the Supplier's authorization, and the Supplier may agree not to otherwise sell, directly or indirectly, into Export Markets in which Trustech, Inc. serves the Supplier.

4. Enter into exclusive agreements with foreign customers to select domestic Suppliers of Products in order to match foreign buyer specifications. "Exclusive" means that Trustech, Inc. may agree to sell Products only to that foreign customer, and that foreign customer may agree not to buy those Products from anyone other than Trustech, Inc.

5. Establish export prices for domestic Suppliers seeking to respond to a foreign bid opportunity.

6. Contract with other Export Intermediaries and consultants for the arrangement of the export of the Products of domestic Suppliers to the Export Markets.

7. Meet and negotiate with domestic Suppliers concerning the terms of their participation in each bid, invitation or request to bid, or other sales opportunity in the Export Markets.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Supplier" means a person who produces, provides, or sells a Product and/or Service.

Dated: February 20, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 96–4284 Filed 2–23–96; 8:45 am]

BILLING CODE 3510–DR–P

Minority Business Development Agency

Business Development Center Applications: West Palm Beach, Oklahoma City, and San Diego

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellations.

SUMMARY: The Minority Business Development Agency is cancelling the announcements to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the West Palm Beach, Oklahoma City, and San Diego MBDCs. These solicitations were originally published in the **Federal Register**, Monday, December 4, 1995, Vol. 60, No. 232, 62073 and Thursday, December 7, 1995, Vol. 60, No. 235, 62826.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: February 15, 1996.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 96–4202 Filed 2–23–96; 8:45 am]

BILLING CODE 3510–21–M

National Institute of Standards and Technology

Visiting Committee on Advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet on Tuesday, March 12, 1996, from 8:30 a.m. to 5:00 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include presentations on the impact of the recent Federal Government shutdown on industry, the public, and NIST; the NIST mission; the impact of advancing technology on metrology needs; the search for productivity improvements at United Technologies; and a laboratory tour.

DATES: The meeting will convene March 12, 1996, at 8:30 a.m. and will adjourn at 5:00 p.m.

ADDRESSES: The meeting will be held in Lecture Room A, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Chris E. Kuyatt, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, (301) 975–6090.

Dated: February 20, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–4282 Filed 2–23–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 021396D]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold meetings.

DATES: The meetings will be held on March 12, 1996. See **SUPPLEMENTARY INFORMATION** for specific meetings and times.

ADDRESSES: The meetings will be held at the Norfolk Airport Hilton, 1500 N. Military Highway, Norfolk, VA 23502.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: The Council's Bluefish Industry Advisory Subcommittee (Subcommittee) will meet on March 12, from 8:00 a.m. until 12 noon. The Subcommittee will meet jointly with the Atlantic States Marine Fisheries Commission (ASMFC) Bluefish Advisory Panel. The Council's Coastal Migratory Committee (Committee) will meet on March 12, from 1:00 p.m. and will adjourn at approximately 5:00 p.m. The Committee will meet jointly with the ASMFC Bluefish Management Board.

The purpose of the meetings is to review scoping comments and management issues for Amendment 1 to the Bluefish Fishery Management Plan.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331, at least 5 days prior to the meeting date.

Dated: February 20, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–4285 Filed 2–23–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 021696B]

North Pacific Fishery Management Council; Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) newly appointed Improved Retention/ Improved Utilization Committee (Committee) will hold their first meeting February 27–28, 1996.

DATES: The meeting will be held on February 27–28, 1996, beginning at 9:00 a.m. on February 27, and concluding by 5:00 p.m. on February 28.

ADDRESSES: The meeting will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Seattle, WA, Room 2079, Building 4.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff; telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Committee will review proposed measures to improve retention and utilization in the groundfish fisheries and discuss implementation aspects of the measures. The Committee is scheduled to provide recommendations to the Council in April.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: February 21, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–4283 Filed 2–21–96; 2:50 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on C4ISR Integration

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on C4ISR Integration will meet in closed session on April 3, 1996 at Strategic Analysis, Inc., Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will assist the internal DoD process by providing advice to the DoD on all aspects of C4ISR integration.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: February 20, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–4206 Filed 2–23–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board FFRDC & UARC Independent Advisory Task Force

AGENCY: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board FFRDC & UARC Independent Advisory Task Force will meet on March 1, 1996 at The MITRE Corporation, 202 Burlington Road, Bedford, Massachusetts, in Open session from 8:00 a.m.–2:00 p.m. and in Closed session from 2:00 p.m.–4:00 p.m.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the closed portion of this meeting the Task Force will receive classified briefings. For further information or if you would like to attend the open session, contact the DSB Secretariat at (703) 695–4157.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly a portion of this meeting will be closed to the public.

Dated: February 20, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–4207 Filed 2–23–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Logistics Modernization

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Logistics Modernization will meet in open session on March 18–19, 1996 at the Institute for Defense Analyses (IDA), 1801 N. Beauregard Street, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition & Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call LTC Kerry M. Brown at (703) 697–7980.

Dated: February 20, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–4208 Filed 2–23–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

U.S. Army Command and General Staff College (CGSC) Advisory Committee

AGENCY: U.S. Army Command and General Staff College.

ACTION: Notice of Open Meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name: U.S. Army Command and General Staff College (CGSC) Advisory Committee.

Date: 1–3 April 1996.

Place: Bell Hall, Room 113, Fort Leavenworth, Kansas 66027–1352.

Time: 1700–2200, 1 April 1996; 0730–2100, 2 April 1996; 0730–1400, 3 April 1996.

Proposed Agenda

1700–2200, 1 April: Review of CGSC educational program.
0730–2100, 2 April: Continuation of review.
0730–1030, 3 April: Continuation of review.
1030–1130, 3 April: Executive Session.
1300–1400, 3 April: Report to Commandant.

The purpose of the meeting is for the Advisory Committee to examine the entire range of college operations and, where appropriate, to provide advice and recommendations to the College Commandant and faculty.

The meeting will be open to the public to the extent that space limitations of the meeting location permit. Because of these limitations, interested parties are requested to reserve space by contacting the Committee's Executive Secretary: Phillip J. Brooks, USACGSC Advisory Committee, Bell Hall, Room 123, Fort Leavenworth, Kansas 66027–1352; Phone: (913) 684–2741.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–4219 Filed 2–23–96; 8:45 am]

BILLING CODE 3710–08–M

Availability of Non-Exclusive, Exclusive or Partially Exclusive Licenses (Azabicyclooctanes, Preparations and Derivatives)

AGENCY: U.S. Army, ARDEC, Picatinny Arsenal, New Jersey.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses under the following patent applications and any continuations, divisions or continuations in part of the same—

Attorney Doc. No. DAR 36–93
Attorney Doc. No. DAR 36–93A
Attorney Doc. No. DAR 36–93B
Attorney Doc. No. DAR 36–93C
Attorney Doc. No. DAR 36–93D
Subject: Azabicyclooctanes, Preparations and Derivatives
Inventors: P. Dave, et al
Field: 10 March 1995

Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Goldberg, Chief, Intellectual Property Division, Legal Office, AMSTA–AR–GCL, U.S. Army ARDEC, Picatinny Arsenal, NJ 07806–5000. Phone: (201) 724–6590.

SUPPLEMENTARY INFORMATION: Written objections must be filed within three (3) months from the date of this notice in the **Federal Register.**

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–4222 Filed 2–23–96; 8:45 am]

BILLING CODE 3710–08–M

Availability of Non-Exclusive, Exclusive or Partially Exclusive Licenses (Organo-Fluoro Compounds and Processes)

AGENCY: U.S. Army, ARDEC, Picatinny Arsenal, New Jersey.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses under the following patent applications and any continuations, divisions or continuations in part of the same—

Attorney Doc. No. DAR 29–95AP
Attorney Doc. No. DAR 29–95BP
Attorney Doc. No. DAR 29–95CP
Attorney Doc. No. DAR 29–95DP
Subject: Organo-Fluoro Compounds and Processes
Inventors: F. Forohar, et al
Filed: 22 November 1995

Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Goldberg, Chief, Intellectual Property Division, Legal Office, AMSTA–AR–GCL, U.S. Army, ARDEC, Picatinny Arsenal, NJ 07806–5000. Phone: (201) 724–6590.

SUPPLEMENTARY INFORMATION: Written objections must be filed within three (3) months from the date of this notice in the **Federal Register.**

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–4221 Filed 2–23–96; 8:45 am]

BILLING CODE 3710–08–M

Availability of Non-Exclusive, Exclusive or Partially Exclusive Licenses (Selective Nitration)

AGENCY: U.S. Army, ARDEC, Picatinny Arsenal, New Jersey.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses under the following patent applications and any continuations, divisions or continuations in part of the same—

Attorney Doc. No. DAR 29–94P
Title: Selective Nitration of Aromatic Rings, etc.
Inventors: T. Kwok, et al
Filed: 22 Aug 1995
Attorney Doc. No. DAR 13–95P
Title: Selective Nitration of Aromatic Compounds
Inventors: T. Kwok, et al
Filed: 22 Aug 1995

Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Goldberg, Chief, Intellectual Property Division, Legal Office, AMSTA–AR–GCL, U.S. Army, ARDEC, Picatinny Arsenal, NJ 07806–5000. Phone: (201) 724–6590.

SUPPLEMENTARY INFORMATION: Written objections must be filed within three (3) months from the date of this notice in the **Federal Register.**

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–4220 Filed 2–23–96; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Decision to Interconnect With Sierra Pacific Power Company's Alturas Transmission Line Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: On February 16, 1996, BPA made a final decision to execute an

Interconnection and Operations and Maintenance Agreement with Sierra Pacific Power Company (SPPCo) and PacifiCorp to interconnect BPA's Malin-Warner 230-kilovolt (kV) line at the proposed SPPCo's Hilltop Substation. BPA also decided to sign a Construction Reimbursable Agreement with SPPCo to achieve the interconnection. Pursuant to such reimbursable agreement, BPA will construct a 2.81-kilometer (1.8-mile), 230-kV double circuit H-frame transmission line from BPA's existing line to the proposed SPPCo's Hilltop Substation. BPA will also build part of a 230-kV substation in SPPCo's proposed Hilltop Substation. BPA has prepared a Record of Decision describing these decisions in accordance with the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations implementing NEPA (40 CFR 1500 et seg.), and Department of Energy regulations implementing the statute (10 CFR 1021). The Bureau of Land Management (BLM), Susanville, California, was the lead federal agency for the Environmental Impact Report/Environmental Impact Statement (EIR/EIS) preparation, and BPA was a cooperating agency. The BLM executed a separate ROD for their decisions on February 9, 1996. BPA adopted the Alturas Transmission Line Environmental Impact Statement (DOE/EIS–0256) and published an adoption notice in the **Federal Register** on February 2, 1996 (61 FR 3933, Feb. 2, 1996).

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION, CONTACT: Richard Stone, Environmental Specialist—ECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number (503) 230–3797, fax number (503) 230–5699.

Public Availability: This ROD was distributed to agencies and individuals on the project mailing list on February 23, 1996.

Issued in Portland, Oregon, on February 15, 1996.

Randall W. Hardy,

Administrator and Chief Executive Officer.

[FR Doc. 96–4279 Filed 2–23–96; 8:45 am]

BILLING CODE 6450–01–P

Amendatory Agreement to the 1981 Power Sales Contracts

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: BPA has decided to provide certain of its Federal and public agency customers with an opportunity to amend their 1981 Power Sales Contracts. The Amendatory Agreement addresses changes in the electric power marketplace and the changing needs of BPA's customers. In offering the Amendatory Agreement, BPA will facilitate business relationships with its customers, improve the long-term attractiveness of BPA as a power supplier, enhance BPA's competitiveness, and provide public benefits. This decision is a direct application of BPA's earlier decision to use a market-driven approach for participation in the increasingly competitive electric power market.

This notice announces the availability of the ROD to offer the Amendatory Agreement to the 1981 Power Sales Contracts. This decision is consistent with BPA's Business Plan, the Business Plan Final Environmental Impact Statement (BP EIS) (DOE/EIS–0183, June 1995), and the Business Plan ROD (August 15, 1995).

ADDRESSES: Copies of this ROD, the BP EIS, and the Business Plan ROD may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION, CONTACT: Katherine S. Pierce—ECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number (503) 230–3962, fax number (503) 230–5699.

Issued in Portland, Oregon, on February 16, 1996.

Randall W. Hardy,

Administrator and Chief Executive Officer.

[FR Doc. 96–4280 Filed 2–23–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER96–1049–000]

Allegheny Power Service Corporation on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company; Notice of Filing

February 20, 1996.

Take notice that on February 8, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, the Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Service Agreements to add Aquila Power Corporation, Enron Power Marketing, Inc., Heartland Energy Services, Koch Power Services, Inc., Morgan Stanley Capital Group Inc., Phibro Inc., and Rainbow Energy Marketing Corporation as Customers under Allegheny Power's Point-to-Point Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission. Allegheny Power proposes to make service available to Aquila Power Corporation, Enron Power Marketing, Inc., Heartland Energy Services, Phibro Inc., and Rainbow Marketing Corporation as of January 8, 1996. Service will be made available to Koch Power Services, Inc. as of January 26, 1996, and to Morgan Stanley Capital Group Inc. as of January 29, 1996.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 12, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4212 Filed 2–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER94–1328–007, ER94–1450–009, ER94–1539–008, ER94–1597–005, ER95–378–002, ER95–784–002, ER96–359–001 (not consolidated)]

Global Petroleum Corporation, Coastal Electric Services Company, Equitable Power Service Company, Gulfstream Energy, LLC, Westcoast Power Marketing, Inc., J. Anthony & Associates Ltd. and Global Petroleum Corporation; Notice of Filing

February 20, 1996.

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 31, 1996, Global Petroleum Corporation filed certain information as required by the Commission's July 12, 1994, order in Docket No. ER94–1328–000.

On February 12, 1996, Coastal Electric Services Company filed certain information as required by the Commission's September 29, 1994, order in Docket No. ER94–1450–000.

On February 5, 1996, Equitable Power Service Company filed certain information as required by the Commission's September 8, 1994, order in Docket No. ER94–1539–000.

On January 31, 1996, Gulfstream Energy, LLC filed certain information as required by the Commission's November 21, 1994, order in Docket No. ER94–1597–000.

On February 9, 1996, Westcoast Power Marketing, Inc. filed certain information as required by the Commission's April 20, 1995, order in Docket No. ER95–378–000.

On February 5, 1996, J. Anthony & Associates Ltd. filed certain information as required by the Commission's May 31, 1995, order in Docket No. ER95–784–000.

On February 5, 1996, Global Petroleum Corporation filed certain information as required by the Commission's December 20, 1995, order in Docket No. ER96–359–000.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4211 Filed 2–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ID–2943–000]

David M. Lawrence; Notice of Filing

February 20, 1996.

Take notice that on February 13, 1996, David M. Lawrence (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Director—Pacific Gas and Electric Company
Director—Hewlett-Packard Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 12, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4213 Filed 2–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–179–000]

Pacific Gas Transmission Company; Notice of Request Under Blanket Authorization

February 20, 1996.

Take notice that on February 8, 1996, Pacific Gas Transmission Company (PGT), 2100 Southwest River Parkway, Portland, Oregon 97201, filed in Docket No. CP96–179–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to install a new tap and meter set near Moyie Springs, Idaho for delivery of gas to The Washington Water Power Company (WWP), under PGT's blanket certificate issued in Docket No. CP82–530–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in request on file with the Commission and open to public inspection.

According to PGT, WWP requested that a 2-inch tap and meter set with appurtenant facilities be constructed to allow WWP an additional supply point for its Bonners Ferry distribution system. These needed facilities will let WWP provide more reliable service to the Moyie Springs and Bonners Ferry area which has been experiencing supply disruptions from flooding on the Kootenai River.

PGT states that the facilities will be located immediately adjacent to PGT's existing right-of-way near Moyie Springs on land owned by WWP. The station will consist of a fenced and graveled yard, an 8-by-16 foot building housing gas pressure regulation and metering facilities, approximately 150 feet of 2-inch buried pipe and a slab-mounted gas heater. Construction will be from April 1, 1996 to June 1, 1996. The proposed tap will have no impact on PGT's peak day or annual deliveries and there is sufficient capacity to accomplish deliveries without detriment or disadvantage to existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4210 Filed 2–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TX96–5–000]

United States Department of Energy, Western Area Power Administration (Colorado River Storage Project—Customer Service Center); Notice of Filing

February 20, 1996.

On February 14, 1996, the United States Department of Energy, Western Area Power Administration, Colorado River Storage Project—Customer Service Center (Western) filed with the Federal Energy Regulatory Commission an application requesting that the Commission order Public Service Company of New Mexico (PNM) to provide transmission services pursuant to Section 211 of the Federal Power Act.

Western is seeking 107 megawatts of firm, flexible bidirectional point-to-point transmission between the Four Corners/Shiprock area and its customers' points of receipt in New Mexico, extending until June 1, 2047.

Copies of this notice have been sent to PNM Plains Electric Generation and Transmission Cooperative, Inc.; the County of Los Alamos; the United States Department of Energy; Kirtland Air Force Base (AFB); the City of Gallup; Holloman AFB; Lea County Electric Cooperative; Roosevelt County Electric Cooperative; Farmers Electric Cooperative; Central Valley Electric Cooperative; Cannon AFB; and the New Mexico Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 15, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4214 Filed 2–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–152–008, et al.]

North American Energy Conservation, et al.; Electric Rate and Corporate Regulation Filings

February 16, 1996.

Take notice that the following filings have been made with the Commission:

1. North American Energy Conservation, Calpine Power Marketing, Inc., Proven Alternatives, Inc., Wilson Power & Gas Smart, Inc., K Power Company, Duke Energy Marketing Corporation

[Docket No. ER94–152–008, Docket No. ER94–1545–004, Docket No. ER95–473–003, Docket No. ER95–751–004, Docket No. ER95–792–002, Docket No. ER96–109–003 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 30, 1996, North American Energy Conservation filed certain information as required by the Commission's February 10, 1994 order in Docket No. ER94–152–000.

On January 29, 1996, Calpine Power Marketing, Inc. filed certain information as required by the Commission's March 9, 1995 order in Docket No. ER94–1545–000.

On February 5, 1996, Proven Alternatives, Inc. filed certain information as required by the Commission's March 29, 1995 order in Docket No. ER95–473–000.

On January 17, 1996, Wilson Power & Gas Smart, Inc. filed certain information as required by the Commission's April 25, 1995 order in Docket No. ER95–751–000.

On January 17, 1996, K Power Company filed certain information as required by the Commission's June 19, 1995 order in Docket No. ER95–792–000.

On January 30, 1996, Duke Energy Marketing Corporation filed certain information as required by the Commission's December 14, 1995 order in Docket No. ER96–109–000.

2. Wisconsin Electric Power Company

[Docket No. ER96–19–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on February 12, 1996, tendered for filing a revised Western Joint Use of Transmission Agreement (Agreement) between itself and Upper Peninsula Power Company (UPPCO). The November 20 Agreement increases the compensation that Wisconsin Electric will pay UPPCO for the use of its facilities in Michigan's Upper Peninsula. A Certificate of Concurrence from UPPCO is included in the filing.

Wisconsin Electric requests an April 1, 1996 effective date.

Copies of the filing have been served on UPPCO, the Cooper Range Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: February 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. PECO Energy Company

[Docket No. ER96–641–000]

Take notice that on February 8, 1996, PECO Energy Company (PECO) amended its filing in this docket by submitting substitute new versions of its Network Integration Service Tariff and its Point-to-Point Transmission Service Tariff to replace those originally tendered for filing on December 20, 1995.

PECO requests an effective date of February 18, 1996, which was the date originally requested for effectiveness on December 20, 1995.

PECO states that copies of this filing have been supplied to all parties in this docket and to the Pennsylvania Public Utility Commission.

Comment date: February 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Alabama Power Company

[Docket No. ER96–671–000]

Take notice that on February 2, 1996, Alabama Power Company tendered for an amendment in the above-referenced docket.

Comment date: February 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Gateway Energy Marketing

[Docket No. ER96–795–000]

Take notice that on February 6, 1996, Gateway Energy Marketing tendered for filing an amendment to its January 16, 1996 filing in the above-referenced docket.

Comment date: February 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. American Electric Power Service Corporation

[Docket Nos. ER96–1032–000 and ER95–1596–001]

Take notice that on February 7, 1996, the American Electric Power Service Corporation (AEPSC) tendered for filing a request to transfer Service Agreements under Point-to-Point Transmission Service Tariff filed in Docket ER95–1596–000, to a new Docket (referenced above) to be considered separately.

AEPSC expects the Point-to-Point Transmission Tariff will be designated in Docket No. ER93–540–000 to supplement or replace AEPSC FERC Electric Tariff Original Volume No. 1. AEPSC requests waiver of notice to permit the Service Agreements to be made effective as of January 1, 1996.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: February 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Minnesota Power & Light Company

[Docket No. ER96–1038–000]

Take notice that on February 5, 1996, Minnesota Power & Light Company, tendered for filing signed Service Agreements with the following:

Coastal Electric Services Company
Delhi Energy Services, Inc.
KN Marketing
Tennessee Valley Authority
Industrial Energy Applications, Inc.
Koch Power Services, Inc.
Wisconsin Public Service Corporation

Under its Wholesale Coordination Sales Tariff to satisfy its filing requirements under this tariff.

Comment date: March 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER96–1039–000]

Take notice that on February 8, 1996, Cinergy Services, Inc. (CIN), tendered for filing on behalf of its operating company, PSI Energy, Inc. (PSI), a First Supplemental Agreement, dated January 1, 1996, to the Interconnection Agreement, dated July 1, 1994, between Rainbow Energy Marketing Corporation (REMC) and PSI.

The First Supplemental Agreement revises the definitions for Emission Allowances and provides for Cinergy Services to act as agent for PSI. The following Exhibit has also been revised:

B. Power Sales by Cinergy

Cinergy and REMC have requested an effective date of March 1, 1996.

Copies of the filing were served on Rainbow Energy Marketing Corporation, the Public Service Commission, the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: March 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. CoEnergy Trading Company

[Docket No. ER96–1040–000]

Take notice that on February 8, 1996, CoEnergy Trading Company (CTC), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective no later than 60 days from the date of its filing.

CTC intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where CTC sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. CTC is not in the business of generating, transmitting, or distributing electric power.

Comment date: March 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER96–1041–000]

Take notice that on February 8, 1996, Northern States Power Company-Minnesota (NSP–M) and Northern States Power Company-Wisconsin (NSP–W) jointly tendered and request the Commission to accept two Transmission Service Agreements which provide for Limited and Interruptible Transmission Service to Electric Clearinghouse, Inc.

NSP requests that the Commission accept for filing the Transmission Service Agreements effective as of January 9, 1996. NSP requests a waiver of the Commission's notice requirements pursuant to Part 35 so the Agreements may be accepted for filing effective on the date requested.

Comment date: March 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corporation

[Docket No. ER96–1042–000]

Take notice that on February 8, 1996, the American Electric Power Service Corporation (AEPSC), tendered for filing service agreements, executed by AEPSC and the following parties, under the AEP Companies' Power Sales Tariffs: (1) Carolina Power & Light Company, (2) Edison Sault Electric, and (3) PECO Energy Services Company (Parties).

The Power Sales Tariff has been designated as FERC Electric Tariff, Original Volume No. 2, effective October 1, 1995. AEPSC requests waiver of notice to permit the Service Agreements to be made effective as of January 1, 1996.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commission of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: March 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Public Service Corporation

[Docket No. ER96–1043–000]

Take notice that on February 8, 1996, Wisconsin Public Service Corporation, tendered for filing an executed service agreement with JPower, Inc. and PECO Energy Company under its CS–1 Coordination Sales Tariff.

Comment date: March 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Public Service Corporation

[Docket No. ER96–1044–000]

Take notice that on February 8, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and JPower, Inc. The Agreement provides for transmission service under the Comparable Transmission Service Tariff, FERC Original Volume No. 7.

WPSC asks that the agreement become effective retroactively to the date of execution by WPSC.

Comment date: March 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER96–1046–000]

Take notice that on February 9, 1996, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (the CSW Operating Companies) tendered for filing Point-to-Point Transmission Service Tariffs and Network Integration Transmission Service Tariffs for their transmission systems. The CSW Operating Companies state that the Tariffs are submitted to offer the transmission and ancillary services that are contemplated by the *pro forma* tariffs published in the Commission's Open Access NOPR in Docket No. RM95–8–000.

The CSW Operating Companies state that the Tariffs were served on the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Louisiana Public Service Commission, and the Arkansas Public Service Commission.

Comment date: March 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Houston Lighting & Power Company

[Docket No. ER96–1047–000]

Take notice that on February 9, 1996, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with Delhi Energy Services, Inc. (Delhi) for Economy Energy and Emergency Power Transmission Service under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service to, from and over certain HVDC

Interconnections. HL&P has requested an effective date of January 19, 1996.

Copies of the filing were served on Delhi and the Public Utility Commission of Texas.

Comment date: March 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Public Service Corporation

[Docket No. ER96–1050–000]

Take notice that on February 9, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing executed Transmission Service Agreements between WPSC and LG&E Power Marketing Inc. The Agreements provide for transmission service under the Comparable Transmission Service Tariff, FERC Original Volume No. 7.

WPSC asks that the agreements become effective retroactively to the date of execution by WPSC.

Comment date: March 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Southern Company Services, Inc.

[Docket No. ER96–1051–000]

Take notice that on February 9, 1996, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed a revised Sheet No. 12 to Southern Companies' Network Integration Service Transmission Tariff and a revised Sheet No. 21 to Southern Companies' Point-to-Point Transmission Service Tariff. The purpose of the revisions is to delete a provision in order to conform the tariffs to the Commission's *pro forma* tariffs.

Comment date: March 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER96–1052–000]

Take notice that on February 9, 1996, Northern States Power-Minnesota (NSP–M) and Northern States Power Company-Wisconsin (NSP–W) jointly tendered and request the Commission to accept two Transmission Service Agreements which provide for Limited and Interruptible Transmission Service to LG&E Power Marketing Inc.

NSP requests that the Commission accept for filing the Transmission Service Agreements effective as of January 19, 1996. NSP requests a waiver of the Commission's notice requirements pursuant to Part 35 so the Agreements may be accepted for filing effective on the date requested.

Comment date: March 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Northeast Utilities Service Company

[Docket No. ER96–1053–000]

Take notice that on February 12, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide short-term firm transmission service to CNG Power Services Corporation (CNG) under the NU System Companies' Transmission Service Tariff No. 5.

NUSCO states that a copy of this filing has been mailed to CNG.

NUSCO requests that the Service Agreement become effective February 15, 1996.

Comment date: March 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Public Service Electric and Gas Company

[Docket No. ER96–1054–000]

Take notice that on February 12, 1996, Public Service Electric and Gas Company (PSE&G), tendered for filing an initial rate schedule to provide fully interruptible transmission service to Catex Vitol Electric, L.L.C., for delivery of non-firm wholesale electrical power and associated energy output utilizing the PSE&G bulk power transmission system.

Comment date: March 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4230 Filed 2–23–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2225–008 Washington]

PUD No. 1 of Pend Oreille County; Notice of Public Scoping Meeting

February 20, 1996.

The Federal Energy Regulatory Commission (FERC or Commission) will hold a public scoping meeting on March 20, 1996, pursuant to the preparation of an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) for a license amendment for the Sullivan Creek Project on Sullivan Creek near Metaline Falls, Washington. The proposed amendment is add hydroelectric generation facilities to a non-generating project.

Scoping Meetings

The scoping meeting will be held on Wednesday March 20, 1996 at the Cutter Building, 302 Park Avenue, Metaline Falls, Washington. The scoping meeting will begin at 7:00 p.m. and is expected to last until approximately 10:00 pm. Prior to the meeting a notice will be published in the Spokane Chronicle.

Objectives

At the scoping meeting, staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) determine the relative depth of analysis for issues to be addressed in the EIS; (3) identify resource issues that are not important and do not require detailed analysis; (4) solicit all available information from the meeting participants, especially quantifiable data on site-specific and cumulative impacts on the resources at issue; and (5) listen to statements from experts and the public on issues that should be analyzed in the EIS.

Procedures

The meetings will be recorded by a stenographer and the notes will become part of the formal record of the Commission proceeding on the Sullivan Creek Project. Before each meeting starts, individuals who intend to make statements during the meeting will be asked to sign in to clearly identify themselves for the record.

Everyone in attendance is encouraged to participate during public meetings. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session. All speakers will be provided at least five minutes to present their views.

People choosing not to speak or are unable to attend the scoping meetings but wish to express an opinion, as well as speakers unable to summariza their positions within their allotted time, may submit written statements at the meeting for inclusion in the public record.

Information Requested

Federal, state, and local resource agencies and other interested groups or individuals are requested to forward to the Commission, or to present at the scoping meetings, any information they believe will assist us in conducting an accurate and thorough analysis of the environmental consequences of amending the license for the Sullivan Creek Project. The types of information requested include, but are not limited to, the following:

- Existing information, data, reports, any other EIS or similar study, or resource plans relevant to the licensing activities for the Sullivan Creek Project; and
- Information, data, or professional opinions that may contribute to identifying significant environmental issues and other environmental issues that are determined not significant.

To be useful in preparing the EIS, the Commission must receive written information no later than April 22, 1996. Additionally, any information that can be submitted before the scoping meeting would be greatly appreciated. Written comments should be addressed to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

All filings sent to the Secretary of the Commission should contain an original and eight copies. Failure to file an original and eight copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. The first page of all filings should prominently display the words "Sullivan Creek Hydroelectric Project, Project No. 2225–008" at the top of the page. For further information, please contact Rebecca Martin at (202) 219–2650.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4209 Filed 2–23–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5429–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D)), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 27, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1772.01.

SUPPLEMENTARY INFORMATION:

Title: Information Collection Activities Associated with EPA's Energy Star Buildings Program; EPA ICR No. 1772.01. This is a new collection.

Abstract: EPA's Energy Star Buildings Program is a voluntary program for increasing the energy efficiency of existing commercial and industrial buildings. The program encourages businesses, state and local governments, and other organizations to participate in a partnership with EPA to make cost-effective energy-efficiency improvements in their buildings. In return, EPA provides technical support to help program participants apply proven technologies to achieve maximum efficiency at the lowest cost. EPA also publicly recognizes participants for their efforts and publicizes their achievements. The goal of the program is to reduce utility-generated emissions by reducing the energy consumed in commercial and industrial buildings.

Participation in the program is initiated by signing an Energy Star Buildings Memorandum of Understanding (MOU). The MOU is used to establish participation in the program and agreement to the terms of participation. Other than the name of the organization, signature, and date, no other information is requested on the MOU. The Energy Star Buildings MOU is an addendum to the Green Lights MOU, which requests more detailed information. The burden associated with the Green Lights MOU was covered in ICR No. 1614 and is not covered in this ICR.

As a condition of program participation, partners agree to complete and submit to EPA an annual facility report on each building undergoing energy efficiency improvements. On the annual reports, partners provide information such as building name, building use, building size, stage of project completion, project cost, and historical and current energy use and cost. EPA uses the annual facility reports to track project implementation efforts and to obtain data on the costs and benefits of the energy efficiency improvements made. This information is used to calculate the amount of utility-generated emissions prevented, evaluate program effectiveness, and publicize partner achievements and program results.

EPA will also collect additional technical information from some partners concerning the specific energy-efficiency improvements made. This collection will include information such as systems upgraded, technologies used, equipment costs, building age and construction, utility and fuel rates, financial and economic criteria used to evaluate and select energy-efficiency upgrades, types and sources of project financing, and rates of return. EPA will use this information to evaluate and refine its technical strategies and implementation support tools. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 17, 1995 and no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7.25 hours for the MOU, 4.8 hours for the Annual Facility Report, and 8 hours for the Additional Technical Information. These estimates include the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

MOU

Respondents/Affected Entities: Those entities who voluntarily join the EPA Energy Star Buildings program.

Estimated Number of Respondents: 191.

Estimated Total Annual Burden on Respondents: 1,385 hours.

Frequency of Collection: One time per respondent.

Annual Facility Report

Respondents/Affected Entities: Participants in the EPA Energy Star Buildings program.

Estimated Number of Respondents: 353.

Estimated Total Annual Burden on Respondents: 2,697 hours.

Frequency of Collection: Annually.

Additional Technical Information

Respondents/Affected Entities: Selected participants in the EPA Energy Star Buildings program.

Estimated Number of Respondents: 35.

Estimated Total Annual Burden on Respondents: 280 hours.

Frequency of Collection: Annually.

Total Number of Respondents and Hours

Total Number of Responses: 579.

Total Burden Hours: 4,362 hours.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1772.01 and OMB Control No. 2060–XXXX in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE, Regulatory Information Division (2136), 401 M. Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: February 20, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–4260 Filed 2–23–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5429–7]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (P.L. 92–463), the U.S. Environmental Protection Agency gives notice of a meeting of the Good Neighbor Environmental Board.

The Good Neighbor Environmental Board was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico.in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The Board meets twice annually.

Members of the public are invited to provide oral and/or written comments to the Board. Time will be provided at the meeting to obtain input from the public.

DATES: The Board will meet on April 4–5, 1996. The Board will meet on April 4 from 8:30 a.m. to 5:00 p.m. and on April 5 from 8:30 a.m. to 2p.m.

ADDRESSES: Las Cruces Hilton Hotel, 705 S. Telshor Blvd, Las Cruces, New Mexico 88011. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION: Contact Mr. Robert Hardaker, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–2477.

Dated: February 8, 1996.

Robert Hardaker,

Designated Federal Officer, Good Neighbor Environmental Board.

[FR Doc. 96–4259 Filed 2–23–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–54302]

Proposed Administrative Settlement under the Comprehensive Environmental Response, Compensation, and Liability Act; in the Matter of: Groveland Wells Nos. 1 and 2 Superfund Site; Groveland, MA

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative order on consent to Bardon Trimount, Inc. and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative order on consent to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* Notice is being published to inform the public of the proposed *de minimis* landowner settlement and of the opportunity to comment. The *de minimis* landowner settlement is intended to resolve the liability under CERCLA of Bardon Trimount, Inc. for injunctive relief or for reimbursement of response costs under Sections 106 or 107(a) with regard to the remedial action, and the EPA response costs associated with the remedial action at the Groveland Wells Nos. 1 and 2 Superfund Site in Groveland, Massachusetts.

DATES: Comments must be provided on or before March 27, 1996.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCH, Boston, Massachusetts 02203, and should refer to: In the matter of: Groveland Wells Nos. 1 and 2 Superfund Site, Groveland, MA, U.S. EPA Docket No. CERCLA–I–96–1014.

FOR FURTHER INFORMATION CONTACT: Rona H. Gregory, U.S. Environmental Protection Agency, J.F.K. Federal Building, Mailcode RCH, Boston, Massachusetts 02203, (617) 565–3051.

SUPPLEMENTARY INFORMATION: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9601 *et seq.*, notice is hereby given of a proposed administrative order on consent concerning the Groveland Wells Nos. 1 and 2 Superfund Site in Groveland, MA. The *de minimis* landowner settlement was approved by EPA Region I on October 16, 1995, subject to review by the public pursuant to this Notice. Bardon Trimount, Inc., the Settling Respondent, has executed a signature page committing it to participate in the settlement. Under the proposed settlement, the Settling Respondent is required to give EPA an irrevocable right of access to its property, to secure all institutional controls and not to assert any claims of taking or inverse condemnation of private property. EPA believes the settlement is fair and in the public interest.

EPA is entering into this agreement under the authority of CERCLA Section 101 *et seq.* which provides EPA with authority to consider, compromise, and settle a claim under Sections 106 and 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice will have approved this settlement in writing prior to the agreement becoming effective. EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from Rona H. Gregory, U.S. Environmental Protection Agency, JFK Federal Building, Mailcode RCH, Boston, Massachusetts 02203, 617–565–3051.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCH, Boston, Massachusetts (U.S. EPA Docket No. CERCLA–I–96–1014).

Dated: January 25, 1996.

John DeVillars,

Regional Administrator.

[FR Doc. 96–4257 Filed 2–23–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5429–6]

Notice of Proposed Administrative Cost Recovery Agreement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act, Regarding the Hi View Terrace Site, West Seneca, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative agreement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency ("EPA") Region II announces a proposed administrative settlement pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1), and the inherent settlement authority of the Attorney General of the United States, relating to the Hi View Terrace Site (the "Site"), West Seneca, Erie County, New York. This notice is being published to inform the public of the proposed settlement and of the opportunity to comment.

The settlement, memorialized in an Administrative Cost Recovery Agreement ("Agreement"), is being entered into by EPA and the National Fuel Gas Distribution Corporation (the "Respondent"). Under the Agreement, the Respondent shall pay EPA the sum of $75,000 in reimbursement of a portion of the response costs incurred by EPA with respect to the Site. Respondent shall also pay the Department of the Interior $25,000 to settle potential claims for natural resource damages at the Site.

DATES: EPA will accept written comments relating to the proposed settlement for a period of thirty days from the date of publication of this notice..

ADDRESSES: Comments should reference the Hi View Terrace Superfund Site and EPA Index No. II–CERCLA–95–0225. Comments should be sent to: Carol Y. Berns, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, New York, 10007–1866, Telephone: (212) 637–3177.

FOR FURTHER INFORMATION CONTACT: Carol Y. Berns, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, New York, 10007–1866, Telephone: (212) 637–3177.

Dated: February 2, 1996.

William J. Muszynski

Acting Regional Administrator.

[FR Doc. 96–4256 Filed 2–23–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5429–9]

Proposed CERCLA Section 122(h) Administrative Order on Consent for the Old City Landfill Site in Columbus, IN

AGENCY: U.S. Environmental Protection Agency ("U.S. EPA").

ACTION: Proposal of CERCLA Section 122(h) Administrative Order on Consent for the Old City Landfill Site in Columbus, Indiana.

SUMMARY: US EPA proposes to address the potential liability of three parties under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99–499, for past costs incurred in connection with the Old City Landfill Site ("the Site") located in Columbus, Indiana. The U.S. EPA proposes to address the potential liability of Arvin Industries, Inc., the City of Columbus, Indiana, and Cummins Engine Company by execution of a CERCLA Section 122(h) Administrative Order on Consent ("AOC") prepared pursuant to 42 U.S.C. 9622(h). The key terms and conditions of the AOC may be briefly summarized as follows: (1) The parties agree to pay U.S. EPA $42,071.00 in satisfaction of claims for past costs incurred at the Site by U.S. EPA; (2) The parties agree to waive all claims against the United States that arise out of response activities conducted at the Site; and (3) U.S. EPA affords the parties a covenant not to sue for past costs incurred at the Site and contribution protection as provided by CERCLA Sections 113(f)(2) and 122(h)(4) upon satisfactory completion of obligations under the AOC. The Site is on the National Priorities List, and no further response activities by US EPA are anticipated at this time. U.S. EPA previously transferred responsibility for the Site to the State of Indiana. The Attorney General has approved the Settlement.

DATES: Comments on the proposed AOC must be received by U.S. EPA by March 27, 1996.

ADDRESSES: A copy of the proposed AOC is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Andrew Warren at (312) 353–5485, prior to visiting the Region 5 office.

Comments on the proposed AOC should be addressed to Andrew Warren, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code CS–29A), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Andrew Warren at (312) 353–5485, of the U.S. EPA Region 5 Office of Regional Counsel.

A 30-day period, commencing on the date of publication of this notice, is open pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i), for comments on the proposed AOC. Comments should be sent to the addressee identified in this notice.

David A. Ullrich,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 5

[FR Doc. 96–4258 Filed 2–23–96; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

February 16, 1996.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub.

L. 96–511. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0421.
Expiration Date: 02/28/99.
Title: New Service Reporting Requirements Under Price Cap Regulation.
Estimated Annual Burden: 1280 total annual hours; 20 hours per respondent; 16 respondents.
Description: Price cap carriers filing new service tariffs are subject to a quarterly reporting requirement which commences six months after initiation of new services. The net revenue data report is useful to the public and the Commission in determining the reasonableness of rates for new services. These reports are used to compare actual operating results with projections.

OMB Control No.: 3060–0536.
Expiration Date: 05/31/96.
Title: Rules and Requirements for Telecommunications Relay Services (TRS) Interstate Cost Recovery.
Form No.: FCC Form 431.
Estimated Annual Burden: 46,3000; 9.26 hours per respondent (average); 5000 respondents.
Description: The Americans with Disabilities Act of 1990 requires the Commission to ensure that telecommunications relay services are available, to the extent possible, to individuals with hearing and speech disabilities in the United States. To fulfill this mandate, the Commission adopted rules which require the provision of TRS services, set minimum standards for telecommunications relay services (TRS) providers and establish a shared-funding mechanism for recovering the costs of providing interstate TRS. See 47 CFR Sections 64.601–64.605. FCC Form 431 is used in implementing the shared-funding program for the recovery of interstate TRS relay services costs. All common carriers must contribute to the TRS fund and complete FCC Form 431. The information is used to administer the program. The 1995 TRS Fund Worksheet (FCC Form 431) has been updated to include the new expiration date. Please note that the **1996** edition of the FCC Form 431 is not available for public use.

OMB Control No.: 3060–0540.
Expiration Date: 05/31/96.
Title: Tariff Filing Requirements for Nondominant Common Carriers.
Estimated Annual Burden: 202,500 total annual hours; 40.5 hours per respondent; 5000 respondents.
Description: 47 CFR Part 61, Sections 61.20 - 61.23 contain tariff filing requirements for nondominant common carriers. Section 203 of the Communications Act requires that carriers file schedules indicating the rates, terms, and conditions of their service offerings. The purpose of the filing requirement is so that the Commission, customers, and interested parties can ensure that the service offerings of communications common carriers comply with the requirements of the Communications Act.

OMB Control No.: 3060–0681.
Expiration Date: 02/28/99.
Title: Toll-Free Service Access Codes—CC Docket No. 95–155.
Estimated Annual Burden: 664,070 total annual responses; .166 hours per response (average); 4,000,000 respondents.
Description: In the Notice of Proposed Rulemaking issued in CC Docket No. 95–155, the Commission solicited public comment on how toll free numbers should be reserved, assigned, and used. The NPRM also proposed several information collections to advance the efficient use of toll free numbers, facilitate planning, permit more effective analysis of anticipated number exhaustion and prevent fraud. The entities affected include Responsible Organizations, 800 service providers, third party agents, individuals, and/or the administrator of the SMS/800 database. OMB approved several of the proposed requirements including the proposed recordkeeping, reporting and certification requirements contained in the NPRM.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 96–4181 Filed 2–23–96; 8:45 am]
BILLING CODE 6712–01–F

Second Meeting of the WRC–97 Advisory Committee

AGENCY: Federal Communications Commission.
ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–97 Advisory Committee will be held on Friday, March 8, 1996, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 1997 World Radiocommunication Conference.

DATES: March 8, 1996; 2:30 p.m.–5:00 p.m.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Cecily C. Holiday, FCC International Bureau, Satellite and Radiocommunication Division, at (202) 418–0719.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the Advisory Committee for the 1997 World Radiocommunication Conference to provide advice, technical support and recommendations relating to the preparation of recommended United States proposals and positions for the 1997 World Radiocommunication Conference (WRC–97). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the second meeting of the WRC–97 Advisory Committee.

This meeting will continue the organization of the Advisory Committee. It will also review the results of recent meetings of the International Telecommunication Union Radiocommunication Sector relating to international preparations for WRC–97 and provide an update on the FCC's preparatory process for WRC–97.

The WRC–97 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. Further information regarding the WRC–97 Advisory Committee is available on the World Wide Web at: http://www.fcc.gov/Bureaus/International/WWW/WRC97/wrc97.html.

The proposed agenda for the first meeting is as follows:

Agenda

Second Meeting of the WRC–97 Advisory Committee, Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington, D.C. 20554, March 8, 1996; 2:30 p.m.–5:00 p.m.

1. Opening Remarks
2. Approval of Agenda
3. Report on Recent ITU–R Meetings (CPM, RAG, SCRPM)
4. Update on FCC Preparatory Process for WRC–97
5. Final Advisory Committee Structure & Introduction of IWG Chairs
6. Advisory Committee Meeting Schedule
7. Other Business

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 96–4183 Filed 2–23–96; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL TRADE COMMISSION

[File No. 961 0022]

Litton Industries, Inc.; Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.
ACTION: Consent agreement.

SUMMARY: This Consent Agreement, accepted subject to final Commission approval, settles alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition arising from Litton's proposed acquisition of all of the voting securities of PRC Inc., in a transaction valued at approximately $425 million. The proposed complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, in the market for the research, development, manufacture and sale of Aegis destroyers for the United States Department of the Navy. The proposed consent order would, among other things, require Litton to divest all of the assets relating to the provision of systems engineering and technical assistance services ("SETA Services") in support of the U.S. Department of the Navy's Aegis destroyer program. In addition, Litton has signed an Interim Agreement providing that the terms of the Consent Agreement will become effective immediately.

DATES: Comments must be received on or before April 26, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room H–159, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ann B. Malester, FTC/S–2308, Washington, DC 20580 (202) 326–2682.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of: Litton Industries, Inc., a corporation. File No. 961–0022.

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Litton Industries, Inc. ("Litton") of PRC Inc. ("PRC"), and it now appearing that Litton, hereinafter sometimes referred to as "Proposed Respondent," is willing to enter into an agreement containing an order to divest certain assets, and providing for certain other relief:

It is hereby agreed by and between Proposed Respondent Litton, by its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Litton is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware with its principal executive offices located at 21240 Burbank Boulevard, Woodland Hills, California, 91367–6675.

2. Proposed Respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed Respondent waives:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. any claims under the Equal Access to Justice Act.

4. Proposed Respondent shall submit, within thirty (30) days of the date this Agreement is signed by Proposed Respondent, an initial compliance report, as contemplated by Rules 2.33 and 4.9(b)(7) of the Commission's Rules of Practice and Procedure, 16 CFR 2.33 and 4.9(b)(7), duly signed by the Proposed Respondent, setting forth in precise detail the manner in which Proposed Respondent will comply with Paragraphs II and III of the proposed consent order, when and if entered. Among other things, the report shall include a full and complete description of the efforts planned or underway to comply with the terms and conditions of the proposed order, including:

(1) a list of the firms to which Proposed Respondent (i) has offered, and (ii) intends to offer, the SETA Services Operations;

(2) the actions, procedures and directives Litton will employ to comply with Paragraphs II.G., II.H., II.I., and III of the proposed consent order.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Proposed Respondent shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed Respondent has read the proposed complaint and order contemplated hereby. Proposed Respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed Respondent further understands it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final. By signing this Agreement, Proposed Respondent represents that the relief contemplated by this Agreement can be accomplished.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. "Respondent" or "Litton" means Litton Industries, Inc.; its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Litton, and their respective directors, officers, employees, agents and representatives, successors, and assigns.

B. "Ingalls" means Ingalls Shipbuilding, Inc., a subsidiary of Litton, with its principal place of business at 100 W. River Road, Pascagoula, Mississippi, 39568–0149, which is engaged in, among other things, the research, development, manufacture and sale of Aegis destroyers to the United States Department of the Navy, and its subsidiaries, divisions, groups and affiliates controlled by Ingalls, and their respective directors, officers, employees, agents and representatives, successors and assigns.

C. "Bath Iron Works" means Bath Iron Works Corporation, a subsidiary of General Dynamics Corporation, with its principal place of business at 700 Washington Street, Bath, Maine, 04530, which is engaged in, among other things, the research, development, manufacture and sale of Aegis destroyers to the United States Department of the Navy, and its subsidiaries, divisions, groups and affiliates controlled by Bath Iron Works, and their respective directors, officers, employees, agents and representatives, successors and assigns.

D. "PRC" means PRC Inc., a Delaware corporation with its principal place of business at 1500 Planning Research Boulevard, McLean, Virginia, 22102, which is engaged in, among other things, the provision of SETA Services to the United States Department of the Navy in support of the Aegis destroyer shipbuilding program, its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by PRC, and their respective directors, officers, employees, agents and representatives, successors, and assigns.

E. "Commission" means the Federal Trade Commission.

F. "Acquisition" means Litton's acquisition of all of the voting securities of PRC pursuant to a Stock Purchase Agreement dated December 13, 1995.

G. "SETA Services Operations" means all assets, properties, business and goodwill, tangible and intangible, held by PRC and used in the provision of SETA Services to the United States Department of the Navy under contract N00024–94–C–6430, including, without limitation, the following:

1. all rights, obligations and interests in contract N00024–94–C–6430 between the Naval Sea Systems Command and PRC;

2. all customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, financial information, technical information, management information and systems, software, software licenses, inventions, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;

3. all rights, title and interests in and to owned or leased real property, together with appurtenances, licenses and permits;

4. all rights, title and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

5. all rights under warranties and guarantees, express or implied;

6. all books, records, and files;

7. all data developed, prepared, received, stored or maintained under contract N00024–94–C–6430 or any predecessor contract or subcontract to support the Aegis shipbuilding program, including the Aegis technical library; and

8. all items of prepaid expense.

H. "SETA Services" means systems engineering and technical assistance services provided by PRC to the United States Department of the Navy in support of the Aegis destroyer shipbuilding program.

I. "Non-public Aegis Information" means any information not in the public domain furnished by Ingalls or Bath Iron Works or any other company to PRC in its capacity as provider of SETA Services under contract N00024–94–C–6430 and any predecessor contract.

II

It is further ordered That:

A. Litton shall divest, absolutely and in good faith, within ninety (90) days of the date Litton signs this order, the SETA Services Operations, and shall also divest such additional ancillary PRC assets as are necessary to assure the continued ability of the acquirer to provide SETA Services.

B. Litton shall divest the SETA Services Operations only to an acquirer that receives the prior approval of the Commission and of the United States Department of the Navy, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continued provision of SETA Services in the same manner as provided by PRC at the time of the proposed divestiture, at no increased cost to the United States Department of the Navy, and to remedy the lessening of competition alleged in the Commission's complaint.

C. Pending divestiture of the SETA Services Operations, Litton shall take such actions as are necessary to ensure the continued provision of SETA Services, and to maintain the viability and marketability of the assets used to provide SETA Services, and to prevent the destruction, removal, wasting, deterioration or impairment of the assets used to provide SETA Services, and to prevent the disclosure of Non-public Aegis Information.

D. Upon reasonable notice from the acquirer or from the United States Department of the Navy to respondent, respondent shall provide such technical assistance to the acquirer as is reasonably necessary to enable the acquirer to provide SETA Services in substantially the same manner and quality as provided by PRC prior to divestiture. Such assistance shall include reasonable consultation with knowledgeable employees and training at the acquirer's facility for a period of time sufficient to satisfy the acquirer's management that its personnel are appropriately trained in the skills necessary to perform the SETA Services Operations. Respondent shall convey all know-how necessary to perform the SETA Services Operations in substantially the same manner and quality employed or achieved by PRC prior to divestiture. However, respondent shall not be required to continue providing such assistance for more than one (1) year from the date of the divestiture. Respondent shall charge the acquirer at a rate no more than its own costs for providing such technical assistance.

E. At the time of the execution of a purchase agreement between Litton and a proposed acquirer of the SETA Services Operations, Litton shall provide the acquirer with a complete list of all current full-time, non-clerical, salaried employees of PRC engaged in the provision of SETA Services on the date of the purchase agreement. Such list shall state each such individual's name, position, address, telephone number, and a description of the duties of and work performed by the individual in connection with the SETA Services Operations.

F. Litton shall provide the proposed acquirer with an opportunity to inspect the personnel files and other documentation relating to the individuals identified in Paragraph II.E. of this order to the extent permissible under applicable laws. For a period of six (6) months following the divestiture, Litton shall further provide the acquirer with an opportunity to interview such individuals and negotiate employment contracts with them.

G. Litton shall provide all current employees identified in Paragraph II.E. of this order with financial incentives to continue in their employment positions pending divestiture of the SETA Services Operations, and to accept employment with the acquirer at the time of the divestiture. Such incentives shall include continuation of all employee benefits offered by Litton until the date of the divestiture, and vesting of all pension benefits.

H. For a period of two (2) years commencing on the date of the individual's employment by the acquirer, Litton shall not rehire any of the individuals identified in Paragraph II.E. of this order who accept employment with the acquirer.

I. Prior to divestiture, Litton shall not transfer any of the individuals identified in Paragraph II.E. of this order whose employment responsibilities involve access to Non-public Aegis Information from SETA Services Operations to any other positions.

III

It is further ordered That:

A. Respondent shall not, absent the prior written consent of the proprietor of Non-Public Aegis Information, provide, disclose, or otherwise make available to Ingalls or any other entity any Non-Public Aegis Information.

B. PRC shall use any Non-Public Aegis Information only in its capacity as provider of technical assistance to the acquirer, pursuant to Paragraph II.D. of this Order, unless PRC obtains the prior written consent of the proprietor of the Non-Public Aegis Information.

IV

It is further ordered That:

A. If Litton has not divested, absolutely and in good faith, and with the prior approval of the Commission and the United States Department of the Navy, the SETA Services Operations within ninety (90) days of the date Litton signs this order, the Commission may appoint a trustee to divest the SETA Services Operations. In the event that the Commission or the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, Litton shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph IV shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Litton to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph IV.A., Litton shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Litton, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Litton has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Litton of the identity of any proposed trustee, Litton shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the SETA Services Operations.

3. Within ten (10) days after appointment of the trustee, Litton shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph IV.B.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission and of the United States Department of the Navy. If, however, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the SETA Services Operations, or to any other relevant information, as the trustee may request. Litton shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Litton shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Litton shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission and to the United States Department of the Navy, subject to Litton's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer as set out in Paragraph II of this order, provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission and the United States Department of the Navy determine to approve more than one such acquiring entity, the trustee shall divest the SETA Services Operations to the acquiring entity or entities selected by Litton from among those approved by the Commission and the United States Department of the Navy.

7. The trustee shall serve at the cost and expense of Litton, without bond or other security unless paid for by Litton, on such reasonable and customary terms and conditions as the Commission or a count may set. The trustee shall have

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the authority to employ, at the cost and expense of Litton, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Litton, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the SETA Services Operations.

8. Litton shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph IV.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the SETA Services Operations.

12. The trustee shall also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability, viability and competitiveness of the SETA Services Operations.

13. The trustee shall report in writing to Litton and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

V

It is further ordered That Respondents shall comply with all terms of the Interim Agreement, attached to this order and made a part hereof as Appendix I. Said Interim Agreement shall continue in effect until the provisions in Paragraphs II and III are complied with or until such other time as is stated in said Interim Agreement.

VI

It is further ordered That within thirty (30) days after the date this order becomes final and every thirty (30) days thereafter until Litton has fully complied with Paragraph II and IV of this order, Litton shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and IV of this order. Litton shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and IV including a description of all substantive contacts or negotiations for the divestiture required by this order, including the identity of all parties contacted. Litton shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture.

VII

It is further ordered That, for the purpose of determining or securing compliance with this order, Litton shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Litton, relating to any matters contained in this order; and

B. Upon five (5) days' notice to Litton, and without restraint or interference from Litton, to interview officers, directors, or employees of Litton, who may have counsel present, regarding any such matters.

VIII

It is further ordered That until Litton has completed all of its obligations under this order, Litton shall notify the Commission at least thirty (30) days prior to any proposed change in the Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

IX

It is further ordered That, notwithstanding any other provision of this Order, this Order shall terminate ten (10) years from the date this Order becomes final.

Appendix I

In the Matter of: Litton Industries, Inc., a corporation. File No. 961–0022.

Interim Agreement

This Interim Agreement is by and between Litton Industries, Inc. ("Litton"), a corporation organized and existing under the laws of the State of Delaware, and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

Premises

Whereas, Litton has proposed to acquire one hundred percent of the voting securities of PRC Inc., a subsidiary of Black & Decker Corporation; and

Whereas, the Commission is now investigating the proposed acquisition to determine if it would violate any of the statutes the Commission enforces; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its Complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving competition during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm and divestiture or other relief resulting from a proceeding challenging the legality of the proposed acquisition might not be possible, or might be less than an effective remedy; and

Whereas, Litton entering into this Interim Agreement shall in no way be construed as an admission by Litton that the proposed acquisition constitutes a violation of any statute; and

Whereas, Litton understands that no act or transaction contemplated by this Interim Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Interim Agreement.

Now, Therefore, Litton agrees, upon the understanding that the Commission has not yet determined whether the proposed acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, as follows:

1. Litton agrees to execute and be bound by the terms of the Order contained in the Consent Agreement, as if it were final, from the date Litton signs the Consent Agreement.

2. Litton agrees to deliver, within three (3) days of the date the Consent Agreement is accepted for public comment by the Commission, a copy of the Consent Agreement and a copy of this Interim Agreement to the United States Department of Defense and to General Dynamics Corporation.

3. Litton agrees to submit, within thirty (30) days of the date the Consent Agreement is signed by Litton, an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by Litton setting forth in detail the manner in which Litton will comply with Paragraphs II and III of the Consent Agreement.

4. Litton agrees that, from the date Litton signs the Consent Agreement until the first of the dates listed in subparagraphs 4.a and 4.b, it will comply with the provisions of this Interim Agreement:

a. Ten (10) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules;

b. The date the Commission finally issues its Complaint and its Decision and Order.

5. Litton waives all rights to contest the validity of this Interim Agreement.

6. For the purpose of determining or securing compliance with this Interim Agreement, subject to any legally recognized privilege and applicable United States Government national security requirements, and upon written request, and on reasonable notice, to Litton made to its principal office, Litton shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Litton and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Litton relating to compliance with this Interim Agreement; and

b. Upon five (5) days' notice to Litton and without restraint or interference from it, to interview officers, directors, or employees of Litton, who may have counsel present, regarding any such matters.

7. This Interim Agreement shall not be binding until accepted by the Commission.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted subject to final approval an agreement containing a proposed Consent Order from Litton Industries, Inc. ("Litton"), under which Litton will be required to divest all of the assets relating to the provision of systems engineering and technical assistance services ("SETA Services") in support of the United States Department of the Navy's Aegis destroyer program. In addition, Litton has signed an Interim Agreement providing that the terms of the Consent Agreement will become effective immediately.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the proposed Consent Order and the comments received, and will decide whether it should withdraw from the proposed Consent Order or make final the proposed Order.

Pursuant to a Stock Purchase Agreement dated December 13, 1995, Litton proposed to acquire all of the voting securities of PRC Inc., in a transaction valued at approximately $425 million. The proposed Complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the market for the research, development, manufacture and sale of Aegis destroyers for the United States Department of the Navy.

Litton is one of only two manufacturers of the Aegis destroyer, and PRC is the Navy's sole supplier of SETA Services for the Aegis program. In its capacity as SETA contractor for the Aegis program, PRC is charged with the responsibility for, among other things, developing technical and other specifications for Aegis destroyer procurements, assessing bid and other proposals submitted by the two Aegis destroyer manufacturers, and evaluating the cost and quality performance of the two Aegis destroyer producers. If the proposed acquisition takes place, Litton, one of the two Aegis destroyer manufacturers, would become the Aegis SETA contractor as well.

The proposed acquisition of PRC by Litton raises antitrust concerns in two areas. First, to perform the function of SETA contractor for the Aegis program, it is necessary for PRC to obtain a great deal of highly competitively sensitive information, including detailed cost data, from the two Aegis destroyer manufacturers, Litton and General Dynamics. If Litton acquires PRC, and thus becomes the SETA contractor, Litton will have access to this information from its only Aegis destroyer competitor, General Dynamics. Access to this information may enable Litton to raise Aegis destroyer prices by bidding less aggressively than it otherwise would. Second, if Litton assumes the role of Aegis SETA contractor, it may be able to anticompetitively favor itself and disfavor General Dynamics in a variety of ways, such as setting unfair procurement specifications or submitting unfair performance evaluations.

The proposed Consent Order requires Litton to divest PRC's SETA contract for the Aegis program, and all of PRC's assets associated with the performance of that contract, within ninety (90) days of the date Litton signed the Consent Order. The proposed Consent Order states that this divestiture shall be to an acquirer approved by the Commission and the United States Department of the Navy. If Litton fails to divest the assets within ninety (90) days, a trustee may be appointed to accomplish the divestiture. The proposed Consent Order also requires Litton to provide technical assistance to the acquirer for a period of one (1) year, at the request of the United States Department of the Navy or of the acquirer.

The Order also requires Litton to provide the Commission a report of compliance with the divestiture provisions of the Order within thirty (30) days following the date the Order becomes final, and every thirty (30) days thereafter until Litton has completed the required divestiture.

The purpose of this analysis is to facilitate the public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

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By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga, Litton Industries/ PRC, File No. 961 0022

I agree with my colleagues that the consent agreement that the Commission accepts today for purposes of soliciting public comment properly addresses the anticompetitive implications of the proposed transaction. I concur in the Commission's action except to the extent that Paragraph II.B. of the proposed order makes the Department of the Navy a participant with the Commission in giving antitrust approval to any divestiture proposed under Paragraph II.A. of the order.

With due deference to the Department of Defense and in full recognition that the Department of the Navy has the power to decide with which firms it will contract for the provision of goods and services vital to the national security, no persuasive argument has been presented to suggest that the Navy has or should have a role in deciding the competitive implications of a particular divestiture. In addition, no showing has been made that this case is unique, that national security issues or concerns relating to the integrity of the AEGIS destroyer program, to the extent they may be affected by this order, could not have been addressed, as they apparently have been in other defense-related transactions,[1] without inclusion of the Department of the Navy as a necessary participant in a decision committed by statute to the Commission.

The need to obtain technical assistance in reviewing commercial transactions in sophisticated markets is not uncommon. Nor should the Commission forget that national security is the province of the country's defense agencies. The Commission might well find it necessary to consult with the Department of the Navy both to assess the viability of a proposed buyer of the PRC assets to be divested and to ensure that a proposed transaction is not inconsistent with national security. I would have preferred, however, to accommodate that need in this case by means other than making the Department of the Navy a partner with the Commission in interpreting and applying a final order of the Commission.

[FR Doc. 96–4186 Filed 2–23–96; 8:45 am]

BILLING CODE 6750–01–M

[1] *See* Lockheed Corporation, C–3576, decision and order (May 9, 1995); *See also* ARKLA, Inc., 112 F.T.C. 509 (1989).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Times and Dates: 1 p.m.–4 p.m., March 18, 1996. 8:30–3:30 p.m., March 19, 1996.

Place: Wyndham Garden Hotel-Buckhead, 3340 Peachtree Road, NE, Atlanta, Georgia 30326.

Status: Closed: 1–2 p.m., March 18, 1996, and 8:30–9 a.m., March 19, 1996; Open: 2–4 p.m., March 18, 1996, and 9 a.m.–3:30 p.m., March 19, 1996.

Purpose: The Committee will continue to make recommendations on policy, strategy, objectives, and priorities including the balance and mix of intramural and extramural research; advise on the implementation of a national plan for inquiry prevention and control, the development of new technologies and their application; and review progress toward injury prevention and control.

Matters to be Discussed: The meeting will convene in closed session from 1–2 p.m. on March 18, 1996. The purpose of this closed session is for the Science and Program Review Work Group to consider Injury Control Research Center grant applications recommended for further consideration by the CDC Injury Research Grant Review Committee. On March 19, 1996, from 8:30 a.m. to 9 a.m., the meeting will convene in closed session in order for the full Committee to vote on a funding recommendation. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552(c) (4) and (6) title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463. Following the closed session of the Work Group, there will be discussions on future grant program announcements, ad hoc committee reports, and updates on further progress on standing Work Group issues. Following the closed session of the full Committee, the Committee will discuss (1) an update from the Director, National Center for Injury Prevention and Control (NCIPC); (2) biomechanics and injury control; (3) reports from the Family and Intimate Violence Subcommittee and the Science and Program Review Work Group; and (4) updates on injury issues from other Federal agencies.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Mr. Thomas A. Bartenfeld, Acting Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K60, Atlanta, Georgia 30341–3724, telephone 770/488–4230.

Dated: February 15, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–4239 Filed 2–23–96; 8:45 am]

BILLING CODE 4163–18–M

Advisory Committee for Injury Prevention and Control (ACIPC): Family and Intimate Violence Prevention Subcommittee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: ACIPC Family and Intimate Violence Prevention Subcommittee.

Time and Date: 9 a.m.–11:45 a.m., March 18, 1996.

Place: Wyndham Garden Hotel-Buckhead, 3340 Peachtree Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available.

Purpose: To provide and make recommendations to ACIPC and the Director, National Center for Injury Prevention and Control (NCIPC), regarding feasible goals for prevention and control of family and intimate violence. The Subcommittee makes recommendations regarding policies, strategies, objectives and priorities; and advises on the development of a national plan for family and intimate violence and the development of new technologies and their subsequent application.

Matters to be Discussed: The Subcommittee will discuss the funding of community-based and extramurual research projects as well as discuss the Subcommittee's role on issues related to charter renewal.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Ms. Denise Johnson, Acting Team Leader, Family and Intimate Violence Prevention Team, Division of Violence Prevention, NCIPC, CDC, 4770 Buford Highway, NE, M/S K60, Atlanta, Georgia 30341–3724, telephone 770/488–4410.

Dated: February 15, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–4238 Filed 2–23–95; 8:45 am]

BILLING CODE 4163–18–M

Request for Nominations of Candidates to Serve on the National Vaccine Advisory Committee, Department of Health and Human Services

The Public Health Service (PHS) is soliciting nominations for possible membership on the National Vaccine Advisory Committee (NVAC). This committee studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the States; recommends research priorities and other measures the Director of the National Vaccine Program should take to enhance the safety and efficacy of vaccines; advises the Director of the Program in the implementation of sections 2102, 2103, and 2104, of the PHS Act; and identifies annually for the Director of the Program the most important areas of government and non-government cooperation that should be considered in implementing sections 2102, 2103, and 2104, of the PHS Act.

Nominations are being sought for individuals engaged in vaccine research or the manufacture of vaccines or who are physicians, members of parent organizations concerned with immunizations, or representatives of State or local health agencies, or public health organizations. Federal employees will not be considered for membership. Members may be invited to serve a four-year term.

Close attention will be given to minority and female representation; therefore nominations from these groups are encouraged.

The following information is requested: name, affiliation, address, telephone number, and a current curriculum vitae. Nominations should be sent, in writing, and postmarked by March 15, 1996, to: Gloria A. Kovach, Committee Management Specialist, NVAC, National Vaccine Program Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, M/S D28, Atlanta, Georgia 30333. Telephone or facsimile submission cannot be accepted.

Dated: February 15, 1996.

Carolyn J. Russell,

Director, Management Services and Analysis Office, Centers for Disease Control and Prevention.

[FR Doc. 96–4217 Filed 2–23–96; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 96F–0053]

Eastman Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Eastman Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of dimethyl 1,4-cyclohexanedicarboxylate as a monomer in polyester resins employed in adhesives as components of articles intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by March 27, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4481) has been filed by Eastman Chemical Co., P.O. Box 1994, Kingsport, TN 37662. The petition proposes to amend the food additive regulations in § 175.105 Adhesives (21 CFR 175.105) to provide for the safe use of dimethyl 1,4-cyclohexanedicarboxylate as a monomer in polyester resins employed in adhesives as components of articles intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 27, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 8, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–4286 Filed 2–23–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96F–0052]

Milliken & Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Milliken & Co. has filed a petition proposing that the food additive regulations be amended to provide for the additional safe use of dimethyldibenzylidene sorbitol as a clarifying agent for propylene homopolymers and high-propylene copolymers articles intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by March 27, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6B4495) has been filed by Milliken & Co., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) to provide for the additional safe use of dimethyldibenzylidene sorbitol as a clarifying agent for olefin polymers complying with § 177.1520 (21 CFR 177.1520), items 1.1, 3.1, and 3.2, for contact with food under condition of use A, described in Table 2 of § 176.170(c) of this chapter.

The potential environmental impact of this action is being reviewed. To

encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 27, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 8, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–4188 Filed 2–23–96; 8:45 am]

BILLING CODE 4160–01–P

Cooperative Arrangement Between the Food and Drug Administration and New Zealand Covering Seafood

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a Cooperative Arrangement between FDA and the Ministry of Health and the Ministry of Agriculture of New Zealand. The purpose of the Cooperative Arrangement is the recognition of each as competent authorities, having systems to ensure safe, wholesome, and truthfully labeled fish and fishery products.

DATES: The agreement became effective December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Janet J. Walraven, Office of Seafood (HFS–416), Food and Drug Administration, 200 C. St., SW., Washington DC 20204, 202–418–3160.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this cooperative arrangement. Because this arrangement only encourages each party to achieve compliance with the other's regulatory requirements, it does not contain a determination of equivalency subject to the Uruguay Round Agreements Act (see 19 U.S.C. 2578a).

Dated: February 16, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

225–96–2004

Cooperative Arrangement Between Department of Health and Human Services, The Food and Drug Administration, United States of America and The Ministry of Agriculture and The Ministry of Health, New Zealand, to Ensure The Safety of Imported Fish and Fishery Products

The Department of Health and Human Services, Food and Drug Administration of the United States of America
on the one part, and
The Ministry of Agriculture, and The Ministry of Health of New Zealand
on the other part,

Desiring to safeguard public health and to ensure wholesomeness and properly labeled fish and fishery products;

Recognizing that the United States, represented by the Department of Health and Human Services, Food and Drug Administration (FDA), and New Zealand represented by the Ministry of Agriculture (MAF) and the Ministry of Health (MH), as competent authorities, each have systems to ensure safe, wholesome and properly labeled fish and fishery products;

Noting that these control measures arise from authorities that are the United States Federal Food, Drug, and Cosmetic Act (FFD&C Act), Public Health Service Act (PHS Act), and Fair Packaging and Labeling Act; and the New Zealand Meat Act 1981 and Food Act 1981;

Noting that these control measures are implemented by regulations under the aforementioned authorities that are the New Zealand Fish Export Processing Regulations 1995 and Title 21 of the United States Code of Federal Regulations;

Reaffirming that training programs and audits are in place in both countries that provide trained and qualified inspection forces which are the New Zealand Circuit Inspector Training program, supported by an inspector audit program, and FDA investigator and laboratory analyst education and training requirements with ongoing performance evaluation;

Noting that the organizations, FDA and MAF and MH, have resources to carry out the compliance programs, policies and laboratory support activities that are funded in New Zealand by government appropriation and fee-for-service arrangements and funded in the United States by government appropriation at the Federal and State level;

Noting that the United States FDA has carried out extensive comparative reviews of the New Zealand control system and has verified the performance of that system, and New Zealand has issued a finding of acceptability of the United States FDA control system;

Noting that New Zealand fish and fishery products have met U.S. FDA standards in the past based on FDA import inspections;

Noting that this arrangement offers benefits for both consumer protection and trade in that it is an effective and efficient tool for enhancing the safety of imports while reducing the resources that need to be expended to monitor imports from the countries involved.

Have reached an understanding that the NZ export controls enhance the likelihood of compliance by NZ seafood with FDA's safety, quality, and labeling requirements; that the FDA processor controls for seafood enhance the likelihood of compliance by US seafood with NZ MH safety, quality, and labeling requirements; and that the FDA, MAF and MH plan to take this understanding into account in determining frequency of border checks when fish and fishery products are offered for entry into their respective countries.

I. Substance of Arrangement

A. Definitions

1. *Fish* means fresh or saltwater finfish, crustaceans, mollusks, and other forms of aquatic animal life (including, but not limited to, jellyfish, sea cucumber, sea urchin, frog, alligator, aquatic turtle), but excluding birds and mammals, where such animals are intended for human consumption.
2. *Fishery* products means any edible human food product consisting in whole of fish or a product containing a portion of fish, including fish that has been processed in any manner, in which the characterizing ingredient is fish.
3. *Fresh* means or implies that the food is unprocessed, that the food is in its raw state, and that it has not been frozen or subjected to any form of thermal processing or any other form of preservation.
4. *Fresh frozen* means that the food was quickly frozen while still fresh.
5. *Participants* means the United States Food and Drug Administration (FDA) and New Zealand's Ministry of Agriculture (MAF) and New Zealand Ministry of Health (MH).
6. *Transparency* refers to the ability to have access to relevant information about regulatory and technical measures so that their meanings, applications, and requirements are clear. It can be accomplished through the mutual exchange of information and assistance between trading partners, whereby each provides the other with the texts of legal, regulatory (except in-process legal and regulatory actions), and technical measures, guidance documents, and other information that apply to the commodities subject to the arrangement.
7. *Wholesomeness* means the food is not filthy, putrid, decomposed, or otherwise unfit for food.

B. Scope

This arrangement covers:

1. Fish and fishery products intended for human consumption except fresh and fresh frozen (molluscan) shellfish.
2. Food safety, wholesomeness, and labeling requirements for the fish and fishery products covered.

C. General Principles

1. The participants understand that each one of their country's systems to ensure safe, wholesome and properly labeled fish and fishery products enhances the likelihood that exported fish and fishery products will comply with the other country's safety, quality and labeling requirements. The participants intend to take this understanding into account in determining the frequency of border checks when fish and fishery products are offered for entry into their respective countries.
2. The participants intend to exchange information to ensure transparency as described in Annex A.
3. The participants intend to establish procedures for cooperation as described below.
   a. The participants plan to meet regularly, at least every two years, to ensure that the basis for the arrangement continues to exist.
   b. In cases of serious and immediate concern with respect to public health or safety, the participants intend to notify the designated Liaison Officers immediately, and written confirmation of the concerns to the Liaison Officers should follow within 48 hours.
   c. Where a Participant has concerns regarding a potential risk to public health, consultations regarding the situation should, upon request of that Participant, take place as soon as possible, and in any case within 14 days, of such a request. Each Participant will endeavor in such situations to provide all the information necessary to reach a mutually acceptable solution.
4. Nothing in this arrangement will in any way abrogate the responsibility or authority of the U.S. Food and Drug Administration under section 801 of the Federal Food, Drug and Cosmetic Act to examine any food product being offered for entry into the United States or under any other law administered by FDA. Neither will it abrogate the responsibility or authority of the New Zealand Government Minister of Agriculture pursuant to The Meat Act 1981 or the Minister of Health pursuant to the Food Act 1981.
5. Nothing in this arrangement precludes either the U.S. FDA, MAF or MH of New Zealand from exercising responsibility to ensure the safety, wholesomeness, or properly labeled seafood and seafood products being allowed to enter that country's commercial marketing channels.
6. All activities undertaken pursuant to this arrangement are to be conducted in accordance with the laws and regulations of the United States and of New Zealand and are subject to the availability of personnel, resources and appropriated funds.

D. Specific Responsibilities

1. MAF intends to provide FDA with:
   a. a list of premises licensed by MAF to process fish and fishery products for export. MAF intends to update this list as needed for the FDA Liaison, Office of Seafood.
   b. a government health certificate for each consignment of fish and fishery products exported to the United States.
   c. an annual summary showing results of compliance audits conducted by the MAF Compliance Group for fish and fishery products, to the attention of the FDA Liaison, Office of Seafood.
   d. in the event that the U.S. establishes a mandatory U.S. seafood Hazard Analysis Critical Control Points (HACCP) program, N.Z. MAF intends to demonstrate to the FDA Liaison, Office of Seafood, how their system implements and ensures that fish and fishery products are produced under a HACCP-based program in compliance or equivalent with the U.S. seafood HACCP program.
2. FDA intends to provide MAF with:
   a. a list of U.S. seafood processing firms found to require official U.S. Government regulatory action and further details upon request. FDA intends to update this list as needed.
   b. an annual report of FDA Field Seafood Accomplishments.
   c. in the event that the U.S. establishes a mandatory U.S. seafood HACCP program, a copy of the requirements of that program.

E. Audits

It is understood that each participant will strive to facilitate the other participant's reasonable access to any sites in the exporting country that are involved in the export of fish and fishery products for the purpose of auditing the exporting country's seafood regulatory system, of verifying that applicable elements of the arrangement are being met, and of carrying out checks on the continued compliance with the arrangement and system by producers and exporters of fish and fishery products to the importing country. The cost of on-site visits will be the responsibility of the visiting participant.

Some factors to be considered in auditing both countries' seafood regulatory systems are presented in Annex A.

F. Cooperation procedures

The Participants undertake to resolve differences by:

1. Use of professional judgment as well as objective criteria, with attempts made to resolve differences by technical discussions at the appropriate level; and
2. Where issues remain unsolved after technical discussions as stipulated above, the participants intend to schedule discussions between the Director, Office of Seafood of the U.S. FDA and either the Chief Meat Veterinary Officer of the New Zealand Ministry of Agriculture, or the Manager of Food Administration, New Zealand Ministry of Health, or their designees. The nature of the issue will determine the competent New Zealand authority.

G. Application

1. The Participants plan to maintain communications so that the terms of this arrangement are fulfilled.
2. The Participants intend to document communications and decisions. Those matters that need to be referred to a higher level will be identified and referred to that level.
3. Whenever specific issues requiring attention are identified, the participants intend to establish a timetable to resolve those issues.

II. Participants

a. The U.S. Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857, U.S.
b. Ministry of Agriculture, ASB Bank House, 101–103 The Terrace, P.O. Box 2526, Wellington, New Zealand; Ministry of Health, Food Administration, P.O Box 5013, 133 Molesworth St., Wellington, New Zealand

III. Liaison Officers

A. New Zealand Ministry of Agriculture:

The Ministry of Health, the body responsible for the safety of domestic and imported food products, defers to the Ministry of Agriculture to act as liaison officers with the U.S. FDA related to matters of U.S. fish and fishery products imported to New Zealand.

Chief Meat Veterinary Officer, Ministry of Agriculture, ASB Bank House, 101–103 The Terrace, P.O. Box 2526, Wellington, New Zealand, Phone: 011–64–4–4744125, FAX: 011–64–4–4744240

Counsellor (Veterinary Services), New Zealand Embassy, 37 Observatory Circle N.W., Washington, DC 20008, United States of America, Phone: (202) 328–4861, FAX: (202) 332–4309

B. United States Food and Drug Administration:

Director, Office of Seafood, Center for Food Safety and Applied Nutrition, 200 C Street, S.W., Washington, DC 20204, United States of America, Phone: (202) 418–3133, FAX: (202) 418–3196

Director, International Activities Staff, Center for Food Safety and Applied Nutrition, 200 C Street, S.W., Washington, DC 20204, United States of America, Phone: (202) 205–5042, FAX: (202) 205–0165

IV. Period of Arrangement

Cooperation under this arrangement will begin on the last date of signature of the

participants. After the first year the participants plan to evaluate the arrangement, thereafter, no less than once every five years. It may be amended by mutual written consent or terminated by either participant upon a 60 day written notice to the other participant.

This Arrangement is not intended to create any legal obligations under international law. **In Witness Whereof** the undersigned, being duly authorized by their respective Government agencies, have signed this Cooperative Arrangement.

FOR THE FOOD AND DRUG ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES
UNITED STATES OF AMERICA
William B. Schultz,
Title: Deputy Commissioner for Policy.
Date: December 20, 1995
Place: Rockville, Maryland

FOR THE MINISTRY OF AGRICULTURE NEW ZEALAND
L. J. Wood
Title: Ambassador of New Zealand
Date: December 20, 1995
Place: Rockville, Maryland

FOR THE MINISTRY OF HEALTH NEW ZEALAND
L. J. Wood
Title: Ambassador of New Zealand
Date: December 20, 1995
Place: Rockville, Maryland

Annex A

I. Performance Verification

The United States FDA, and the New Zealand's MAF and MH, understand that the participants of the importing country can audit the exporting country's seafood control system to verify that the terms of the arrangement are being met. These system checks may take place upon request of the participants of the importing country. The costs of system check visits are the responsibility of the visiting participant.

Verification may take the form of:

- ongoing exchange of information toward continuing transparency;
- reviewing the competent authorities' compliance/audit programs;
- verifying the efficacy of the total program in meeting the requirements of the importing country;
- checks of products on importation at an appropriate frequency;
- program checks.

II. Information Exchange/Transparency

A. Participants intend to cooperate and exchange information in scientific areas.
B. The participants intend to put in place a system for the uniform and systematic exchange of information, so as to provide assurance and engender confidence in each other and to demonstrate the efficacy of the programs controlled.
C. In particular the liaison officials intend to provide each other copies of:

1. Proposed changes in requirements developed by each side where they affect the other party before they become effective.
2. Changes in requirements including:
   a. legislation
   b. rules
   c. enforcement policy documents
   d. guidelines
   e. methods and procedures for sampling and analysis
   f. inspection procedures
   g. notice of surveillance programs or assignments requiring sampling at importation of a fish or fishery product (i.e., for data base development)
3. Documentation regarding any fish or fishery products from the other country found to be in non-compliance with requirements upon importation including information on:
   a. product name
   b. manufacturer/shipper name
   c. processor name
   d. reason for detention
   e. product lot and certificate number (if applicable)
   f. sampling procedures
   g. methods of analysis and confirmation
   h. port of entry
4. Documents regarding any fish or fishery product found to be in non-compliance by the exporting country after exportation to the other (e.g., recalls):
   a. product
   b. manufacturer/shipper name
   c. processor name
   d. reason for recall
   e. product lot and certificate number (if applicable)
   f. consignee(s)
   g. dates
   h. amount shipped

[FR Doc. 96–4187 Filed 2–23–96; 8:45 am]
BILLING CODE 4160–01–F

[Docket No. 94P–0206]

Determination that Evans Blue Dye Injection Was Not Withdrawn from Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that Evans Blue Dye Injection, an approved new drug application (NDA) held by Parke-Davis & Co., a division of Warner-Lambert Co., was not withdrawn from sale for reasons of safety or effectiveness and is relisting the drug in its publication entitled "Approved Drug Products with Therapeutic Equivalence Evaluations." This will allow sponsors to submit abbreviated new drug applications (ANDA's) for Evans Blue Dye Injection.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1049.

SUPPLEMENTARY INFORMATION: In 1984, Congress passed into law the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the listed drug, which is a version of the drug that was previously approved under an NDA. Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(6)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)). Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

On June 6, 1994, the New World Trading Corp. submitted a citizen petition (Docket No. 94P–0206/CP1) under 21 CFR 10.25(a) and 10.30 requesting that the agency determine whether Evans Blue Dye Injection was withdrawn from sale for reasons of safety or effectiveness and, if the agency determines that the drug was not withdrawn from sale for reasons of safety or effectiveness, to relist the drug in the "Approved Drug Products with Therapeutic Equivalence Evaluations." Evans Blue Dye Injection was the subject of approved NDA 8–041 held by Parke-Davis & Co., a division of Warner Lambert Co. Evans Blue Dye Injection was withdrawn from sale in June 1978, and the NDA was withdrawn, with the consent of the sponsor, in a notice published in the **Federal Register** of November 15, 1990 (55 FR 47807).

FDA has reviewed its records and, under §§ 314.161 and 314.162(c), has determined that Evans Blue Dye Injection was not withdrawn from sale for reasons of safety or effectiveness and will relist Evans Blue Dye Injection in the "Discontinued Drug Product List" contained in the "Approved Drug Products with Therapeutic Equivalence Evaluations." The "Discontinued Drug Product List" lists, among other items, drug products that have had their approvals withdrawn for reasons other than safety and efficacy subsequent to being discontinued from marketing. ANDA's that refer to Evans Blue Dye Injection may be submitted to the agency.

Dated: February 15, 1996.
William K. Hubbard,
Associate Commissioner for Policy Coordination.
[FR Doc. 96–4287 Filed 2–23–96; 8:45 am]
BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Circulatory System Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. March 4, 1996, 8:30 a.m., Gaithersburg Hilton, Salons D and E, 620 Perry Pkwy., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Hilton. Attendees requiring overnight accommodations may contact the hotel at 301–977–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Sociometrics, Inc., 301–608–2151. The availability of appropriate accommodations cannot be assured unless prior notification is received.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4:30 p.m.; Ramiah Subramanian, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8320, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Circulatory Systems Devices Panel of the Medical Devices Advisory Committee, code 12625.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 26, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss general issues related to two premarket approval applications: (1) A stent for a peripheral vascular use, and (2) an angioplasty balloon.

FDA regrets that it was unable to publish this notice 15 days prior to the March 4, 1996, Circulatory System Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency feels that the issue needs to be brought to public discussion urgently, and qualified members of the Circulatory System Devices Panel of the Medical Devices Advisory Committee were available at this time, the agency decided that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. March 7, 1996, 3 p.m., Food and Drug Administration, Bldg. 29, conference room 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open committee discussion, 3 p.m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5:30 p.m., unless public participation does not last that long; Nancy T. Cherry or Sandy Salins, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area). Vaccines and Related Biological Products Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person.

Open committee discussion. The committee will discuss the influenza virus vaccine formulation for 1996 and 1997.

FDA regrets that it was unable to publish this notice 15 days prior to the March 7, 1996, Vaccines and Related Biological Products Advisory Committee meeting. Because the agency feels that the issue needs to be brought to public discussion urgently, and qualified members of the Vaccines and Related Biological Products Advisory Committee were available at this time, the agency decided that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. March 28 and 29, 1996, 8:30 a.m., Quality Hotel, Maryland Ballroom, 8727 Colesville Rd., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, March 28, 1996, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; open public hearing, March 29, 1996, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; Leander B. Madoo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Pulmonary-Allergy Drugs Advisory Committee, code 12545.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 15, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On March 28, 1996, the committee will discuss Zeneca Pharmaceuticals' new drug application (NDA) 20–547 for Accolate® (zafirlukast) tablets. The proposed indication for Accolate® is as an oral anti-inflammatory agent for use in the prophylaxis and chronic treatment of asthma and as a first-line maintenance therapy in patients with asthma who are not adequately controlled by PRN β2-agonist alone. On March 29, 1996, the committee will discuss 3M Pharmaceuticals' NDA 20–503 for Epaq™, an albuterol metered-dose inhaler which is the first to utilize a hydrofluoroalkane propellent. The proposed indication is for treatment or prevention of bronchospasm in patients with reversible obstructive airway disease.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: February 16, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–4189 Filed 2–23–96; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Science Board to the Food and Drug Administration

Date, time, and place. March 28 and 29, 1996, 8:30 a.m., Sheraton National Hotel, North Ballroom, 900 South Orme St. (Columbia Pike and Washington Blvd.), Arlington, VA.

Type of meeting and contact person. Open committee discussion, March 28, 1996, 8:30 a.m. to 2:30 p.m.; open public hearing, 2:30 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 5 p.m.; open committee discussion, March 29, 1996, 8:30 a.m. to 10:30 a.m.; open public hearing 10:30 a.m. to 11:30 a.m., unless public participation does not last that long; open committee discussion, 11:30 a.m. to 1:30 p.m. For the March 28, 1996, agenda contact Susan Homire, Office of Science (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD, 20857, 301–827–3340; for the March 29, 1996, agenda contact Mary Gross, Office of External Affairs (HF–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD, 20857, 301–827–3440; or, FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Science Board to the Food and Drug Administration, code 12603.

General function of the board. The board shall provide advice primarily to the agency's Senior Science Advisor, and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency-sponsored intramural and extramural scientific research programs.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the board. Those desiring to make formal presentations must notify the contact person before March 14, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, and the names and addresses of proposed participants. Each presenter will be limited in time and not all requests to speak may be able to be accommodated. All written statements submitted in a timely fashion will be provided to the board.

Open board discussion. On March 28, 1996, the board will discuss issues related to the safety in the testing of biomaterials used in products regulated by FDA; including strategies by which the agency can prepare for new developments in biomaterials science and the use of novel materials in device and medical implant products. On March 29, 1996, the board will discuss financial disclosure by clinical investigators. For further information on the agenda of this meeting see a document entitled "Financial Disclosure by Clinical Investigators; Reopening of the Comment Period and Notice of Meeting," published elsewhere in this issue of the **Federal Register.**

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: February 16, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–4288 Filed 2–23–96; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Alternative Medicine Program Advisory Council; Notice of Meeting

Pursuant to sec. 10(d) of the Federal Advisory Committee Act (FACA), as amended (Title 5, U.S.C. Appendix 2), notice is hereby given of the meeting of the Alternative Medicine Program Advisory Council on February 26, 1996, from 8 am to 5 pm and on February 27 from 8 am to 11 am in Conference Room 6, Building 31A, the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public. The purpose of the meeting will be to discuss activities of the Office of Alternative Medicine and strategic planning for alternative medicine research. Attendance by the public will be limited to space available.

Ms. Beth Clay, Committee Management Officer, Office of Alternative Medicine, NIH, 6120 Executive Boulevard, Suite 450, Rockville, Maryland 20892–9904, phone (301) 594–1990, fax (301) 402–4741, E-Mail: bethclay@helix.nih.gov, will finish the meeting agenda, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Clay at the above location immediately.

This notice is being published less than15 days prior to the meeting due to the partial shutdown of the Federal Government and resultant administrative difficulties, and the need to proceed with the meeting as scheduled to address important issues in a timely manner.

Dated: February 21, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4357 Filed 2–23–96; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Drug Testing Advisory Board of the Center for Substance Abuse Prevention in March 1996.

The meeting agenda will include discussion of announcements and reports of administrative, legislative, and program developments. It will also include reviews of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, a portion of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(2), (4), and (6) and 5 U.S.C. Appendix 2, section 10(d).

A summary of this meeting and roster of committee members may be obtained from: Ms. Vera L. Jones, Committee Management Officer, CSAP, Rockwall II Building, Room 7A 140, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–9542.

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: Drug Testing Advisory Board.

Meeting Date(s): March 27, 1996.

Place: Ramada Inn—Rockville, 1775 Rockville Pike, Rockville, Maryland 20857.

Open: March 27, 1996 8:30 a.m.–10:00 a.m.

Closed: March 27, 1996 10:00 a.m.—Adjournment.

Contact: Donna M. Bush, Ph.D.; Parklawn Building, Room 13A–54; Telephone: (301) 443–6014.

Dated: February 20, 1996.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 96–4231 Filed 2–23–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit From Brett Real Estate, Robinson Development Company, Incorporated, Orange Beach, Alabama—Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Fish and Wildlife Service is correcting an error placed in the Notice of Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit from Brett Real Estate/Robinson Development Company, Incorporated, Orange Beach, Alabama, which appeared in the **Federal Register** on January 20, 1996 (61 FR 1400).

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch at (404) 679–7110.

SUPPLEMENTARY INFORMATION: In January 19, 1996, the Service announced the availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit from Brett Real Estate, Robinson Development Company, Incorporated (61 FR 1400). The permit number PRT–809898 was assigned to the application. Within the Supplementary Information of the original **Federal Register** notice, a statement was made that: "The Applicant's property contains designated critical habitat for the Alabama beach mouse (ABM)." Upon review of the designated critical habitat of the ABM (§ 17.95(a) of title 50, Code of Federal Regulations), it has been determined that the land encompassed by the pending application does not contain designated critical habitat for the ABM. The statement is in error and is not germane to the Service's review of the application for effects to the ABM. Comments on the application must be received on or before February 20, 1996.

Dated: February 20, 1996.

Jerome M. Butler,

Acting Regional Director.

[FR Doc. 96–4240 Filed 2–23–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[WY–930–5101–00–K012, WYW–128830]

Notice of Availability of the Final Environmental Impact Statement for the Express Pipeline

AGENCY: Bureau of Land Management, Interior.

SUMMARY: A Final Environmental Impact Statement (EIS) for Express Pipeline, Inc., to construct, operate, and maintain a 24-inch pipeline on public lands to transport crude oil between Wild Horse, Alberta, and Casper, Wyoming. A right-of-way grant for the pipeline to cross public lands in Montana, and Wyoming, would be issued by the Bureau of Land Management, Worland District, in accordance with Section 501 of the Federal Land Policy and Management Act of 1976.

The Bureau of Land Management and the Montana Department of Environmental Quality (DEQ) are co-leads for the EIS. Other cooperating agencies for the EIS include the Army Corps of Engineers and the Bureau of Reclamation. The final EIS document was prepared by Greystone, a third-party contractor, under the provisions of Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended. The EIS has been prepared in an abbreviated format; that is, the alternatives considered in the draft EIS and the environmental effects of those alternatives, have not been reprinted in the EIS. It is necessary, therefore, to use both the draft and final documents for a complete review. Copies of the draft EIS and the final EIS can be obtained from the BLM's Worland District Office or the Montana Department of Environmental Quality at the addresses listed below.

DATES: Written comments on the EIS will be accepted for 30 days following the date the Environmental Protection Agency (EPA) publishes the notice of filing of the final EIS in the **Federal Register**, which is expected to be between February 23, 1996, and March 1, 1996.

ADDRESSES: Copies of the final EIS may be reviewed at the following locations: Lewistown District BLM Office, 80 Airport Road, (contact Robert Padilla, Realty Specialist), Lewistown, Montana; Worland District BLM Office, 101 South 23rd Street, (Don Ogaard, BLM Project Manager), Worland, Wyoming; Casper District BLM Office, 1701 East "E" Street, (Pat Moore, Realty Specialist), Casper, Wyoming; Montana State Department of Environmental Quality (DEQ) (Art Compton), 1520 East 6th Avenue, Helena, Montana, and county and city libraries along the proposed pipeline route.

FOR FURTHER INFORMATION CONTACT: Don Ogaard, BLM Project Manager, Bureau of Land Management, Worland District Office, P.O. Box 119, 101 South 23rd Street, Worland, Wyoming 82401–0119, telephone 307–347–9871; or Art Compton, Chief, Energy Division, Montana Department of Environmental Quality, 1520 East 6th Avenue, Helena, Montana, telephone 406–444–6791.

SUPPLEMENTARY INFORMATION: Express Pipeline, Inc., proposes to construct, operate, and maintain a 24-inch pipeline from Wild Horse (located on the border between Montana and Canada) to Casper, Wyoming, to transport Canadian crude oil. Nationwide, the demand for and consumption of petroleum in the United States has exceeded production for more than 20 years. In recent years, this gap has been widening as the demand for crude oil increases while domestic production declines.

Because of this, the United States needs to locate additional, dependable sources of crude oil. The overall purpose of the proposed pipeline is to address the needs of refineries in the United States, particularly in the Rocky Mountain Region, and the producers of Western Canada. The Express Pipeline, Inc., would provide a new source of crude oil to refineries located throughout the Rocky Mountain Region and other parts of the United States through the existing network of pipelines. Before Express Pipeline can construct the pipeline, it must obtain numerous Federal, State, county, and local permits. Because the route crosses public land administered by the BLM and the Bureau of Reclamation, Express Pipeline must obtain a right-of-way grant from the Federal Government. As part of the process for granting the permits, these agencies must consider Express's proposal under NEPA. Regulations implementing NEPA (40 CFR 1500) encourage agencies to incorporate any previous NEPA analyses by reference to eliminate repetitive discussions of the same issues and to focus on specific issues of the proposal. The proposed pipeline would follow the routes of two other pipelines for which EIS's were previously issued by Federal agencies. Accordingly, this final EIS incorporates by reference the PGT/PG&E and Altamont Natural Gas Pipeline Projects Final EIS (FERC 1991) and the Amoco Carbon Dioxide Projects Final EIS (BLM 1989).

The final EIS is a supplement to the draft EIS, published on August 18, 1995, and contains the following material:

- Incorporates by reference most of the material presented in the draft EIS and identifies the changes to the draft EIS required as a result of additional information.
- Public comments subsequent to publishing of the draft EIS.
- The corrections and additions to the draft EIS.
- Comments received on the draft EIS.
- Responses to the comments.

The BLM and Montana DEQ received 161 comments on the draft EIS. Ten supported the project, six provided information and did not state a position on the project, and 145 either opposed the project, suggested alternative routes, or expressed various concerns with the draft EIS. Of the latter 145 comments, all but 12 were concerned with the adequacy of the socio-economic impact analysis. Three express primarily environmental concerns and nine were from landowners concerned with effects on private lands. The Environmental Protection Agency, based on procedures they use to evaluate the adequacy of the information in an EIS, gave the draft EIS a rating of EC–2 (Environmental Concern, Insufficient Information).

No substantive changes were made to the proposed action. The BLM has agreed to evaluate all subsequent phases under complete NEPA procedures. This final EIS is not a decision document.

A Record of Decision will be prepared and made available to the public following the 30 day comment period provided above.

Dated: February 20, 1996.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 96–4237 Filed 2–23–96; 8:45 am]

BILLING CODE 4310–22–P

[OR–050–06–1220–00; GP6–0060]

Notice of Oregon Off-Highway Vehicle Designation

AGENCY: Prineville District Office, Deschutes Resource Area, Interior.

ACTION: Notice given relating to limiting motorized vehicle use on public lands north of Prineville Reservoir.

SUMMARY: Notice is hereby given relating to limiting the use of motorized vehicle use on approximately 2,200 acres of public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989 and regulations contained in 43 CFR Part 8340.

The following lands under administration of Bureau of Land Management are designated as limited, as a result of decisions made in the BLM Upper Prineville Reservoir Activity Plan and Record of Decision for the Brothers/LaPine Resource Management Plan/Environmental Impact Statement.

These public lands are all located in T. 16S, R. 17E., W.M.:

Section 11: public lands south of O'Neil Cr. and west of Paulina Highway. Section 13: public lands west of Paulina Highway, and all public lands in Sections 14, 15, 22, 23, 24 and 27. All motorized vehicle use (includes passenger, four-wheel drive, motorcycle, three-wheel and quad) is limited in the following manner on these public lands:

1. No motorized vehicle use is permitted from December 1st through March 31st.

2. Motorized vehicle use is restricted to designated routes marked with "designated route" signs.

These restrictions are being implemented in a cooperative effort with the Bureau of Reclamation, Oregon Department of Fish and Wildlife and adjacent private land owners to reduce soil erosion and improve mule deer winter range.

This designation is effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the Prineville District Manager. Information and maps of this area are available at the BLM Prineville District Office, 3050 East Third Street, Prineville, Oregon, 97754, Telephone (541) 416–6700.

Dated: January 26, 1996.

Donald L. Smith,

Acting District Manager.

[FR Doc. 96–4070 Filed 2–23–96; 8:45 am]

BILLING CODE 4310–33–M

National Park Service

Notice of Inventory Completion for Native American Human Remains and Funerary Objects in the Possession of Big Cypress National Preserve, National Park Service, Ochopee, FL

AGENCY: National Park Service.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of an inventory of human remains and funerary objects in the possession of Big Cypress National Preserve, National Park Service, Ochopee, FL.

The human remains and funerary objects were collected from seven sites by National Park Service archeologists in 1977. A detailed inventory and assessment of the human remains and funerary objects has been made by the staff of Big Cypress National Preserve and representatives of the Miccosukee Tribe of Indians and the Seminole Tribe of Florida. No known individuals were identified.

Twenty-seven human cranial bone fragments representing the remains of at least one individual were surface collected from a site near U.S. Highway 41 in Collier County. Also collected from the vicinity of the grave were one lead fragment, one iron container, and one safety pin. The site was identified as a historic period grave dating to the early 20th Century. The name of the site is being withheld at the request of the Miccosukee Tribe of Indians.

Eleven human cranial bone fragments representing at least two individuals were surface collected from the Seminole Camp site. In addition to the bone fragments, one side plate from a percussion rifle, one bullet, fourteen plastic buttons, one bone pin, one iron nail, one brass barrel hoop, one brass boot buckle, one iron fragment, and 434 glass beads were collected from the vicinity of the grave. This site was identified as a grave dating to the late 19th or early 20th Century.

One iron nail, three iron fragments, and 4,565 glass beads were collected from a back country site in Monroe County. Several human bone fragments and a casket bier were noted by the archeologists investigating the site but were not collected. The site was identified as a historic period (early 20th Century) grave site. The name of the site is being withheld at the request of the Miccosukee Tribe of Indians.

Three glass beads and one piece of whiteware ceramic were collected from the vicinity of the grave at a site north of East Slough. Human remains were observed by the archeologists but not collected. This site was identified as a historic period grave dating between 1920 and 1930. The name of the site is being withheld at the request of the Miccosukee Tribe of Indians.

A china doll and two glass beads were collected from the vicinity of a grave at the Doll Site. No human remains were observed by the archeologists, but subsequent consultation with representatives of the Miccosukee Tribe of Indians identify the site as the location of a burial dating to the early 20th Century.

One iron nail, one metal pan, one stoneware jug fragment, a Dietz glass kerosene lantern vase, one brass kettle base modified to use as a dish, one animal bone, and one piece of Busycon shell were collected from the vicinity of a grave at the Dietz Site. Human remains were observed by the archeologists but not collected. This site was identified as a historic period grave dating to the late 19th or early 20th Century.

The six sites listed above are located within the territory historically occupied by the Miccosukee and have been identified as earlier occupation areas by representatives of the Miccosukee Tribe of Indians. No lineal descendants have been identified by representatives of the Miccosukee Tribe of Indians.

Three cranial fragments and over one hundred other skeletal fragments representing at least one individual were collected at Turner River #5, a burial island site. One fragment of glazed earthenware was recovered with the human remains. Based on the state of preservation and the type of objects collected, this burial has been dated sometime before A.D. 1860. Representatives of the Miccosukee Tribe of Indians have identified the area around Turner River #5 as being occupied by the Seminole at the time the site was in use. In addition, possible lineal descendants may exist among the unaffiliated, independent Seminole and Miccosukee people who currently reside in the area. Good faith efforts to consult with representatives of the Seminole Tribe of Florida have been unsuccessful.

Based on the above mentioned information, officials of the Big Cypress National Preserve have determined that, pursuant to 43 CFR 10 (d)(1), the human remains listed above represent the physical remains of at least four individuals of Native American ancestry. Officials of the Big Cypress National Preserve have also determined that, pursuant to 25 U.S.C 3001(3)(A) and (B), the 5,042 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Big Cypress National Preserve have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the human remains and funerary objects from the first six sites and the Miccosukee Tribe of Indians. Officials of the Big Cypress National Preserve have determined that there is a relationship of shared group identity which can be reasonably traced between the human remains and the funerary object from Turner River #5 and the Seminole Tribe of Florida.

This notice is being sent to the Miccosukee Tribe of Indians and the Seminole Tribe of Florida. Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and funerary objects should contact Wallace Hibbard, Superintendent, Big Cypress National Preserve, HCR 61, Box 110, Ochopee, FL 33943, telephone: (813) 695–2000, before March 27, 1996. Repatriation of the human remains and funerary objects to the Miccosukee Tribe of Indians and the Seminole Tribe of Florida may begin after that date if no additional claimants come forward.

Dated: February 16, 1996.

C. Timothy McKeown,

Acting Departmental Consulting Archeologist, Archeology and Ethnography Program.

[FR Doc. 96–4198 Filed 2–23–96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Indian Gardens Cemetery (Cross Village) in Emmet County, Michigan, in the Possession and Control of the Putnam Museum of History and Natural Science, Davenport, IA

AGENCY: National Park Service.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C 3003 (d), of the completion of the Inventory of Human Remains and Associated Funerary Objects from Indian Gardens Cemetery (Cross Village), Emmet County, Michigan, which are in the possession and control of the Putnam Museum of History and Natural Science, Davenport, IA.

The detailed inventory and assessment of the partial remains of a burial from a cemetery in the historical

Cross Village area has been made by the Putnam Museum professional staff and the Michigan State Archeologist professional staff in consultation with the Grand Traverse Bay Band of Chippewa and Ottawa and the Little Traverse Bay Band of Odawa Indians. Although the skull and mandibles are currently curated at the Michigan Historical Center, the Michigan Historical Center acknowledges the Putnam Museum's continued control over the disposition of these remains.

The human remains from Indian Gardens Cemetery (site 20EM77) consist of a minimum of two individuals. No known individuals were identified. The 281 cultural items associated with these individuals include: trade silver (Astor fur trade money, bracelets, armbands, earrings, buttons, a two-bar cross, and washer broaches); one copper bell; one pair of scissors; one pewter spoon; one brass spoon; one spyglass; one rifle barrel; one pistol; one gun stock; one brass gun plate with partial stock; one brass gun decoration; one pocket knife; one clay pipe; one mirror in wooden frame; loomed wampum; knives; cloth, ribbon and leather fragments; iron and copper kettles; lock of hair with silver ornaments; six strike-a-lights; wood comb; four ax heads; and a locket with chain.

Site 20EM77, known as Indian Gardens Cemetery, has been identified as part of Cross village, a known Odawa village in the 18th and 19th centuries. The cultural items with this burial place the time of interment to the early 19th century. The Putnam Museum's accession records indicate the burial was disturbed in 1897 by Henry J. Atkinson. In 1900, Mr. Atkinson sold the burial to E.D. and W.C. Putnam in Habour Springs, MI and donated the same year to the then-Davenport Academy of Sciences (now the Putnam Museum). Visual examination of the human remains by the Michigan State Archeologist's Office professional staff indicate these individuals are Native American. Evidence from both the Grand Traverse Band and the Little Traverse Band indicates this village is directly affiliated with the Little Traverse Band of Odawa.

Based on the above information, officials of the Putnam Museum of History and Natural Science have determined that, pursuant to 43 CFR 10 (d)(1), the human remains listed above represent the physical remains of at least two individuals of Native American ancestry. Putnam Museum officials have also determined that, pursuant to 25 U.S.C. 3001 (3)(A) and (B), the 281 items listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony. Lastly, Putnam Museum officials have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the Native American human remains and associated funerary objects and the Little Traverse Bay Band of Odawa Indians.

This notice has been sent to officials of the Little Traverse Bay Bands of Odawa Indians and the Grand Traverse Bay Band of Chippewa and Ottawa. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Carmen Langel, Curatorial Assistant, Putnam Museum of History and Natural Science, 1717 West 12th Street, Davenport, Iowa, 52804, telephone (319) 324–1934 before March 27, 1996. Repatriation of these human remains and associated funerary objects to the Little Traverse Bay Bands of Odawa Indians may begin after this date if no additional claimants come forward.

Dated: February 16, 1996.

C. Timothy McKeown,

Acting Departmental Consulting Archeologist, Archeology and Ethnography Program.

[FR Doc. 96–4199 Filed 2–23–96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of Hubbell Trading Post National Historic Site, National Park Service, Ganado, AZ

AGENCY: National Park Service.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003(d), of the completion of the inventory of human remains and associated funerary objects in the control of the National Park Service, Hubbell Trading Post National Historic Site, Ganado, AZ.

A detailed assessment and inventory of the human remains and associated funerary objects has been made by professional staff of the National Park Service in consultation with representatives of the Apache Tribe of Oklahoma, the Fort McDowell Mohave-Apache Tribe, the Fort Sill Apache Tribe, the Hopi Tribe, the Jicarilla Apache Tribe, the Mescalero Apache Tribe, the Kaibab Paiute Tribe, the Navajo Nation, the San Carlos Apache Tribe, the Pueblo of Jemez, the Pueblo of Laguna, the Pueblo of Nambe, the Pueblo of Pojoaque, the Pueblo of San Ildefonso, the Pueblo of Tesuque, the Southern Ute Tribe, the Ute Mountain Ute Tribe, the White Mountain Apache Tribe, and the Zuni Tribe.

Human remains representing four individuals were recovered along with 970 funerary objects from a site approximately half a mile from Hubbell Trading Post in 1971 and 1978. No known individuals were identified. Funerary objects include one hemispherical bowl resembling later Zuni ware, one Kana'a bowl, one White Mound bowl, two Lino bowls, one Lino seed jar, 135 potsherds, two pieces of yellow ochre, five olivella shell beads, 808 beads possibly made from juniper berry seed, one flake, one grinding stone, one polishing stone, nine chipped stone fragments, and two animal bone fragments.

The above-mentioned materials have been dated between AD 400 and the Basketmaker/Pueblo Period transition in AD 900. This period is recognized as the time the territorial units of the western Anasazi were still in development. Because Anasazi territories in this region did not become well-defined until after AD 900, artifactual evidence does not allow specific identification of a single culturally affiliated Indian tribe. However, examination of cultural materials (e.g., ceramics, stone tools, and other items) and oral history regarding traditional and religious practice indicate probable cultural affiliation between the human remains and associated funerary objects and various Pueblo Indian groups. The oral traditions of both the Hopi Tribe and the Zuni Tribe indicate affiliation with Basketmaker and Anasazi sites.

Human remains representing one individual were recovered in 1972 from Wide Reed, a pueblo ruin located east of Hubbell Trading Post. No known individual was identified. No funerary objects are present.

The Wide Reed site has been identified as a Pueblo III Period Kayenta Anasazi site, dating to AD 1145–1345. Archeological evidence—including ceramics and architecture—and oral traditions suggests that Kayenta Anasazi are culturally affiliated with the Hopi Tribe. The Zuni Tribe also claim affiliation with this site based on oral tradition. The National Park Service evidence shows that in addition to the traditional data linking the descendants of Wide Reed with modern Hopi and Zuni, Navajo oral tradition indicates ancestral ties to this site.

Based on the above mentioned information, officials of the Hubbell Trading Post National Historic Site have determined that, pursuant to 43 CFR 10 (d)(1), the human remains listed above represent the physical remains of at least five individuals of Native American ancestry. Historic Site officials have also determined that, pursuant to 25 U.S.C. 3001 (3)(A) and (B), the 970 items listed above are reasonably believed to have been placed with or near individual human remains at or near the time of death as part of the death rite or ceremony. Historic Site officials have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the four Native American human remains and 970 associated funerary objects from the site one half mile from Hubbell Trading Post and the Hopi Tribe and the Zuni Tribe. Further, Historic Site officials have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the one individual from Wide Reed and the Hopi Tribe, the Zuni Tribe, and the Navajo Nation.

This notice has been sent to officials of the Apache Tribe of Oklahoma, the Fort McDowell Mohave-Apache Tribe, the Fort Sill Apache Tribe, the Hopi Tribe, the Jicarilla Apache Tribe, the Mescalero Apache Tribe, the Kaibab Paiute Tribe, the Navajo Nation, the San Carlos Apache Tribe, the Pueblo of Jemez, the Pueblo of Laguna, the Pueblo of Nambe, the Pueblo of Pojoaque, the Pueblo of San Ildefonso, the Pueblo of Tesuque, the Southern Ute Tribe, the Ute Mountain Ute Tribe, the White Mountain Apache Tribe, and the Zuni Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Nancy Stone, Superintendent, Hubbell Trading Post National Historic Site, P.O. Box 150, Ganado, AZ 86505; telephone: (520) 755–3254, before *thirty days after publication in the* **Federal Register**. Repatriation of the human remains and associated funerary objects to the Hopi Tribe, Zuni Tribe, or Navajo Nation may begin after that date if no additional claimants come forward.

Dated: February 16, 1996.

C. Timothy McKeown,

Acting Departmental Consulting Archeologist, Archeology and Ethnography Program.

[FR Doc. 96–4200 Filed 2–23–96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Intent to Repatriate a Cultural Item in the Possession of the Cheney Cowles Museum, Spokane, WA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005(a)(2), of the intent to repatriate a cultural item in the possession of the Cheney Cowles Museum, Spokane, WA which meets the definition of "sacred object" under Section 2 of the Act.

The Thunder Bundle consists of weasel and ermine skins, two feather fans, small hide and cloth bundles, drum, four pipe stems, grizzly claw necklace, six rattles, whip, and a parfleche pouch.

Authorized representatives of the Blackfeet Business Council acting on behalf of the Blackfeet Confederacy (including the Piegan and Blood First Nations of Canada) have been provided copies of museum records and have viewed the bundle in person. These representatives, including traditional religious leaders and a direct descendent of one of the original keepers of the bundle, have verified it is the Thunder Bundle of the Blackfeet Confederacy. Evidence submitted by the representatives of the Blackfeet Nation indicates the last proper keeper of the bundle was No Coat in 1899.

The whereabouts of the bundle were not known between 1899 and 1977 when the Thunder Bundle was donated to the Museum of Native American Cultures by Mr. Myron Sammons of Scottsdale, AZ. In 1992, the Cheney Cowles Museum assumed stewardship of the Museum of Native American Cultures collections by permission of the Washington State Attorney General.

Based on the above-mentioned information, officials of the Eastern Washington State Historical Society/ Cheney Cowles Museum have determined that, pursuant to 25 U.S.C. 3001(3)(C), this cultural item is a specific ceremonial object which is needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Eastern Washington State Historical Society/Cheney Cowles Museum have also determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between this item and the Blackfeet Nation.

This notice has been sent to officials of the Blackfeet Nation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Mr. Glenn Mason, Director, Cheney Cowles Museum, 2316 W. First Avenue, Spokane, WA 99204, telephone (509) 456–4931 ext. 104 before March 27, 1996.Repatriation of this object to the Blackfeet Nation on behalf of the Blackfeet Confederacy may begin after that date if no additional claimants come forward.

Dated: February 16, 1996.

C. Timothy McKeown,

Acting Departmental Consulting Archeologist, Archeology and Ethnography Program.

[FR Doc. 96–4201 Filed 2–23–96; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–382]

Certain Flash Memory Circuits and Products Containing Same; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and provisional acceptance of motion for temporary relief.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on January 11, 1996, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of SanDisk Corporation, 3270 Jay Street, Santa Clara, CA 95054. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flash memory circuits and products containing same by reason of alleged infringement of claims 1, 2, 3 or 4 of U.S. Letters Patent 5,418,752 and claims 27, 32, or 44 of U.S. Letters Patent 5,172,338. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337. The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

The motion for temporary relief requests that the Commission issue a temporary exclusion order and temporary cease and desist orders prohibiting the importation into and the sale within the United States after importation of certain flash memory circuits and products containing same

that infringe claim 1 of U.S. Letters Patent 5,418,752 during the course of the Commission's investigation.

ADDRESSES: The complaint and motion for temporary relief, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: John M. Whealan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Final Rules of Practice and Procedure, 19 CFR 210.10. The authority for provisional acceptance of the motion for temporary relief is contained in section 210.58, 19 CFR 210.58.

Scope of Investigation

Having considered the complaint and the motion for temporary relief, the U.S. International Trade Commission, on February 20, 1996, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain flash memory circuits and products containing same by reason of infringement of claims 1, 2, 3 or 4 of U.S. Letters Patent 5,418,752 or claims 27, 32, or 44 of U.S. Letters Patent 5,172,338, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) Pursuant to section 210.58 of the Commission's Final Rules of Practice and Procedure, 19 CFR 210.58, the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the complaint, be provisionally accepted and referred to the presiding administrative law judge for investigation.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—SanDisk Corporation, 3270 Jay Street, Santa Clara, California 95054.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint and motion for temporary relief are to be served:

Samsung Electronics Company, Ltd., Samsung Main Building, 10th Floor, 250, 2–ka Taepyung-Ro Chung-Ku, Seoul, Korea

Samsung Semiconductor, Inc., 3655 North First Street, San Jose, California 95134–1707

(c) John M. Whealan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401P, Washington, D.C. 20436, shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation and temporary relief proceedings instituted, the Honorable Sidney Harris is designated as the presiding Administrative Law Judge.

Responses to the complaint, the motion for temporary relief, and the notice of investigation must be submitted by the named respondents in accordance with sections 210.13 and 210.59 of the Commission's Final Rules of Practice and Procedure, 19 CFR 210.13 and 210.59. Pursuant to 19 CFR 201.16(d), 210.13(a) and 210.59 of the Commission's Final Rules of Practice and Procedure, such responses will be considered by the Commission if received not later than 10 days after the date of service by the Commission of the complaint, the motion for temporary relief, and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint, in the motion for temporary relief, and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary relief, and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, motion for temporary relief, and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: February 20, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–4223 Filed 2–23–96; 8:45 am]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

Report to Congress on Abnormal Occurrences July–September 1995; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires NRC to disseminate information on abnormal occurrences (AOs) (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of public health and safety). During the third quarter of CY 1995, the following incidents at NRC licensed facilities were determined to be AOs and are described below, together with the remedial actions taken. Each event is also being included in NUREG–0090, Vol. 18, No. 3 ("Report to Congress on Abnormal Occurrences: July–September 1995"). This report will be available at NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC, about three weeks after the publication date of this **Federal Register** Notice.

Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

95–7 Medical Brachytherapy Misadministration at Marshfield Clinic in Marshfield, Wisconsin

One of the AO reporting guidelines notes that administering a therapeutic dose from a sealed source such that the calculated total treatment dose differs from the prescribed total treatment dose by more than 10 percent and the actual dose is greater than 1.5 times the prescribed dose can be considered an AO.

Date and Place—June 8, 1995; Marshfield Clinic; Marshfield, Wisconsin.

Nature and Probable Consequences—A patient was prescribed a dose of 1640 centigray (cGy) (1640 rad) for a low dose rate brachytherapy treatment of the cervix using cesium-137 sources.

After the sources were implanted, but prior to completion of the treatment, the physician entered the wrong date for removal of the sources into the final treatment plan. Because of this error the treatment was extended for an additional day. As a result, the calculated administered dose was 2440 cGy (2440 rad) which was

approximately 50 percent greater than the prescribed dose.

The physician informed the patient of the misadministration both verbally and in writing. The licensee evaluated the consequences of the misadministration and determined that there would be no adverse health effects.

An NRC medical consultant evaluated the consequences of the misadministration and agreed with the licensee's conclusion.

Cause or Causes—The licensee failed to notice that the planned explant time documented in the final treatment plan did not represent the prescribed treatment time documented in the written directive. Also, the licensee's written directive/low dose rate brachytherapy log form, used to record events occurring during low dose rate brachytherapy treatments, did not contain a location to document the prescribed time for source removal.

Actions Taken To Prevent Recurrence

Licensee—The licensee revised its written directive/low dose rate brachytherapy log form to include documentation of the actual implantation time, and the time for the prescribed and actual removal of sources. Additionally, the revised form will include verification of such times by a licensee staff member.

NRC—NRC conducted an inspection and reviewed the circumstances surrounding the misadministration. NRC also retained a medical consultant to review the case. A Confirmatory Action Letter was issued which confirms that the licensee will verify that its authorized users meet training and experience requirements. A Notice of Violation was issued with five Severity Level IV violations.

* * * * *

95–8 Medical Brachytherapy Misadministration at Providence Hospital in Southfield, Michigan

One of the AO reporting guidelines notes that a therapeutic exposure to any part of the body not scheduled to receive radiation can be considered an AO.

Date and Place—July 25, 1995; Providence Hospital; Southfield, Michigan.

Nature and Probable Consequences—A patient was prescribed a dose of 1230 centigray (cGy) (1230 rad) for a palliative manual brachytherapy treatment of the brain using an iridium-192 seed.

After implantation, confirmatory x-rays were taken but could not confirm the location of the seed and the treatment was terminated about 31 hours after implantation. The licensee determined that the seed was implanted about 4 centimeters (1.57 inches) from the intended treatment site of the brain. Consequently, the wrong treatment site received an unintended radiation dose of about 739 cGy (739 rad) and the tumor received only about 72 cGy (72 rad).

The licensee determined that no adverse health effects would result from the misadministration. An NRC medical consultant has reviewed the case but has not yet submitted a report to NRC. The licensee notified the referring physician and the patient about the misadministration.

Cause or Causes—The licensee said that the seed became detained at the elbow of the applicator during implantation and changed direction. The physician consequently encountered resistance while inserting the source and assumed that it reached the intended treatment site. A confirmatory x-ray taken at the time of insertion did not show the location of the source. (The licensee had used a fluoroscope [real time imaging] during simulation of the treatment, but a fluoroscope was not used to observe the actual seed implantation.)

Actions Taken To Prevent Recurrence

Licensee—The licensee reported that when using this type of applicator in the future, fluoroscopy will be used to assure proper implantation of radioactive material.

NRC—NRC conducted an investigation to review the circumstances surrounding the misadministration. The NRC staff is currently reviewing the inspection results for possible violations, and enforcement action is pending.

* * * * *

95–9 Ingestion of Radioactive Material by Research Workers at the National Institutes of Health in Bethesda, Maryland

One of the AO reporting guidelines notes that a moderate exposure to, or release of, radioactive material licensed by or otherwise regulated by the Commission can be an abnormal occurrence.

Date and Place—June 28, 1995; National Institutes of Health (NIH); Bethesda, Maryland.

Nature and Probable Consequences—A pregnant research employee became internally contaminated with phosphorus-32 (P–32) and was sent to a local hospital for treatment.

NRC formed an Augmented Inspection Team (AIT), which included a medical consultant, to review the incident. The medical consultant stated, based on the licensee's initial report, that there would not be any adverse health consequences to the researcher or the fetus. Also, an NRC scientific consultant at the Oak Ridge Institute for Science and Education's Radiation Internal Dose Information Center was consulted. An independent assessment was also performed by Lawrence Livermore National Laboratories.

The licensee subsequently found that 26 individuals (in addition to the pregnant researcher) were also contaminated. The Federal Bureau of Investigation (FBI), the NRC's Office of Investigations (OI), and the NIH Police Department are currently investigating the event. The AIT has concluded its inspection efforts. OI continues to work with the FBI.

Cause or Causes—Because of the ongoing investigation, NRC has not reached a final conclusion as to the cause of the event.

Actions Taken to Prevent Recurrence

Licensee—The licensee continues to investigate the incident. The licensee performed bioassay sampling to identify the isotope, calculate preliminary estimates of intake, and determine the scope of the contamination. In addition, the licensee will take actions to enhance security for handling radioactive materials.

NRC—In addition to forming an AIT, NRC subsequently conducted a special inspection to determine the effectiveness of NIH security over radioactive materials.

NRC also issued two Confirmatory Action Letters. The first confirmed the actions that the licensee would take to reduce the possibility of further ingestion and to determine the extent of the contamination. The second confirmed the actions that the licensee would take in response to the special inspection that reviewed the NIH security policy for handling radioactive materials.

* * * * *

Dated at Rockville, MD, this 20th day of February 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–4227 Filed 2–23–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–400]

Shearon Harris Nuclear Power Plant; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–63, issued to the Carolina Power & Light Company (the licensee), for operation of the Shearon Harris Nuclear Power Plant located in Wake and Chatham Counties, North Carolina.

The proposed amendment would allow a one-time extension for the performance of the trip actuating device operational test for one of the safety injection manual initiation switches. Technical Specification (TS) 4.3.2.1, Engineered Safety Features Actuation System (ESFAS) Instrumentation, requires that each instrumentation channel and interlock and the automatic actuation logic and relays be demonstrated operable by performance of surveillance requirements specified in TS Table 4.3–2. Table 4.3–2, Item 1.a requires that a trip actuating device operational test be performed for Safety Injection (SI) manual initiation at least every 18 months. The licensee discovered on February 12, 1996, that only three of the four switch contacts have been tested in the required 18-month periodicity. The fourth switch contact was last tested on May 3, 1994. With the advent of the surveillance requirement grace period, this surveillance test for the fourth switch contact would have to be performed prior to March 16, 1996. However, this surveillance test cannot be performed at power. Therefore, the licensee is requesting a one-time extension of the surveillance test interval to avoid a plant shutdown. The exigent circumstances exist because the licensee did not discover the test discrepancy until February 12, 1996.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This change does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve any design or material changes to the plant. The change does not in any way affect the automatic ESFAS [Engineered Safety Features Actuation System] initiation; it only affects one of the two redundant switches. If one switch fails to function, operators can use the other switch. This change simply requests a one-time extension for the surveillance interval for one of two contacts from the manual Safety Injection [SI] switch on Main Control Board panel C. A redundant switch is available with two operable contacts on Main Control Board panel A.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not alter the performance of the Engineered Safety Features Actuation System. The proposed change does not involve any new equipment or modifications to existing plant equipment. Further, the change will not affect the manner in which any safety related systems perform their functions. Extension of the surveillance frequency of the manual SI actuation switch does not affect or create any new accident scenarios. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed change does not affect a margin of safety as defined in the Bases to the Technical Specifications. The automatic ESFAS is not affected by this one-time technical specification change. The change does not alter the setpoints for any plant parameters that initiate safety injection, nor does it alter any coincidental logic. Sufficient system functional capability is still available from diverse parameters.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 27, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public

document room located at the Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing.

The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mr. Eugene V. Imbro: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, and to W.D. Johnson, Vice President and Senior counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 16, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room, located at the Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina.

Dated at Rockville, Maryland, this 20th day of February 1996.

For the Nuclear Regulatory Commission.

Ngoc B. Le,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–4225 Filed 2–23–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. Part 110]

Notice of Receipt of Assurances From EURATOM Under Section 109B of the Atomic Energy Act

In the matter of general and specific licenses authorizing exports of nuclear reactor components, substances, and items under section 190b of the Atomic Energy Act to EURATOM.

By order issued December 28, 1995, effective January 1, 1996, the Nuclear Regulatory Commission ("Commission") suspended general and specific licenses issued under Section 109b of the Atomic Energy Act of 1954, as amended (AEA), and 10 CFR Part 110, to export nuclear reactor components, substances, and items to EURATOM. The suspension was necessary due to the expiration on December 31, 1995 of the safeguards, peaceful use, and retransfer assurances required for such exports under Section 109b. The Commission suspended the licenses until such time that EURATOM provided the necessary assurances to the U.S. This notice is to inform section 109b specific and general licensees that, on February 16, 1996, the assurances required under Section 109b were received from EURATOM. On that date, accordingly, the Commission's suspension order expired by operation of law.

Dated at Rockville, Maryland this 20th day of February 1996.

For the Nuclear Regulatory Commission.

Carlton R. Stoiber,

Director, Office of International Programs.

[FR Doc. 96–4226 Filed 2–23–96; 8:45 am]

BILLING CODE 7590–01–M

Uranium Mill Facilities: Availability of Final "Staff Technical Position on Alternate Concentration Limits for Title II Uranium Mills"

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of its final "Staff Technical Position on Alternate Concentration Limits for Title II Uranium Mills." The purposes of this final Staff Technical Position (STP) are to provide: (1) Guidance on NRC staff's interpretation of the applicable regulations for establishing alternate concentration limits (ACLs) at uranium mills and tailings impoundment sites regulated under Title II of the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978; (2) a Standard Format and Content Guide for ACL applications; and (3) standard criteria and procedures for ACL application reviews by NRC and Agreement States.

The final STP on ACLs for Title II uranium mills represents a revised and updated version of NRC's draft final STP, which was announced in the **Federal Register** on March 21, 1994 (59 FR 13345). The revisions were made largely in response to comments that NRC received on the draft final STP.

The final STP on ACLs for Title II uranium mills was prepared pursuant to the regulatory requirements for groundwater protection in Criterion 5 of Appendix A to 10 CFR Part 40, and is therefore only applicable to uranium mills and mill tailings impoundment sites regulated under Title II of UMTRCA. However, NRC will use the same technical approach in reviewing ACL applications for uranium mills and mill tailings impoundment sites that are regulated under Title I of UMTRCA, with modifications to reflect differences between UMTRCA's Title I and Title II programs.

Effective immediately, the staff will use this final STP instead of the draft final STP in reviewing ACL applications on file as well as new ACL applications.

ADDRESSES: Copies of the final STP on ACLs for Title II uranium mills may be requested by writing to: Mr. Joseph J. Holonich, Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, Mailstop T7J–9, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or by calling (301) 415–7238.

FOR FURTHER INFORMATION CONTACT: Dr. Latif S. Hamdan, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, Mailstop T7J–9, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–6639.

SUPPLEMENTARY INFORMATION: Persons interested in commenting on the final STP on ACLs for Title II uranium mills may provide written comments to Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, Mailstop T7J–9, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments received will be considered in any future revisions of the STP. There is no date set for expiration of the comment period.

Dated at Rockville, Maryland, this 14th day of Febuary, 1996.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–4224 Filed 2–23–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36859; File No. SR–NASD–95–62]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Amending the Prompt Receipt and Delivery of Securities Interpretation Relating to Short Sales

February 20, 1996.

I. Introduction

On January 11, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change [1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act") [2] and Rule 19b–4 thereunder.[3] The rule change amends the Prompt Receipt and Delivery of Securities Interpretation ("Interpretation") issued by the NASD Board of Governors under Article III, Section 1 of the NASD Rules of Fair Practice.[4] The NASD proposes to amend the Interpretation to provide that under certain circumstances members may rely on "blanket" or standing assurances as to stock availability to satisfy their affirmative determination requirements under the Interpretation.

Notice of the proposed rule change, as amended, together with its terms of substance was provided by issuance of a Commission release [5] and by publication in the **Federal Register**.[6] One comment letter was received in response to the Commission release, in support of the NASD's proposal. This order approves the proposed rule change.

II. Description

On September 12, 1994, the SEC approved an NASD rule change that amended the Interpretation.[7] As part of that rule change, the NASD amended the Interpretation to make clear that the use of a "blanket" or standing assurance that securities are available for borrowing is not acceptable to satisfy the affirmative determination requirement ("standing assurance provision").[8] Based upon feedback from a broad spectrum of NASD members, the effective date of the standing assurance provision was postponed so as to give the NASD an opportunity to reexamine the issue.[9]

Accordingly, after reexamination, the NASD is now proposing to replace the standing assurance provision with a new provision. Specifically, under the amendment, a member may rely on a "blanket" or standing assurance that securities will be available for borrowing on settlement date to satisfy its affirmative determination

[1] The proposed rule change initially was submitted on December 27, 1995, but was amended subsequent to its original filing. The amendment corrected a technical error in the proposed amended language and is available for copying in the Commission's Public Reference Room.

[2] 15 U.S.C. § 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] NASD Manual, Rules of Fair Practice, Art. III, Sec. 1, (CCH) ¶2151.04

[5] Securities Exchange Act Release No. 36717 (January 16, 1996).

[6] 61 FR 1805 (January 23, 1996).

[7] Securities Exchange Act Release No. 34653 (September 12, 1994), 59 FR 47965 (September 19, 1994).

[8] These "blanket" or standing assurances often are sent via facsimile to member firms.

[9] See Securities Exchange Act Release Nos. 35207 (January 10, 1995), 60 FR 3445 (January 17, 1995); and 36245 (September 18, 1995), 60 FR 49307 (September 22, 1995).

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requirement under the Interpretation, provided: (1) The information used to generate the "blanket" or standing assurance is less than 24 hours old; and (2) the member delivers the security on settlement date. The amendment also provides that, should a member relying on a "blanket" or standing assurance fail to deliver the security on settlement date, the NASD will deem such conduct inconsistent with the terms of the Interpretation, absent mitigating circumstances adequately documented by the member.

III. Comments

As noted above, the Commission received one comment letter in response to the NASD's proposed rule change. The law firm of Rosenman & Colin, on behalf of a number of firms, expressed strong support for the NASD's proposal.[10] The Firms believe that the ability to rely on "blanket" or standing assurances that securities are available for borrowing avoids the potential burdens that would be placed on the systems and personnel of clearing firms, institutional lenders, and introducing firms if the ban on such standing assurances becomes effective. The Firms believe that reliance on standing assurances will enable firms to continue to conduct business effectively, while minimizing situations where a member fails to deliver securities on settlement date. In addition, the Firms support the provision that will allow a member that relies on a standing assurance to present mitigating circumstances if a fail to deliver situation occurs. Further, the Firms note that it is important for the policies of the NASD and the New York Stock Exchange ("NYSE") to be consistent with respect to the affirmative determination requirement, especially for firms with dual membership.

IV. Discussion

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(b)(6) of the Exchange Act.[11] Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

The amendment allows firms to utilize standing assurances in satisfying their affirmative determination requirements. According to the commenter, many firms have effective compliance procedures that incorporate the use of standing assurances. The amendment provides members the flexibility to determine whether it is appropriate to rely on a standing assurance in a given situation. The proposal, however, also puts members on notice that reliance on standing assurances may be deemed conduct inconsistent with the Interpretation under certain circumstances. The Commission believes that this flexible approach will act not only to ease compliance burdens where appropriate, but also to protect against conduct inconsistent with the purposes of the Interpretation.

In addition, the NASD's amendment conforms the Interpretation to the NYSE's interpretation of its own affirmative determination rule.[12] The Commission believes that consistent application of both rules will result in more efficient compliance with such rules.

V. Conclusion

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval is appropriate given the fact that the amendment provides for greater flexibility while not compromising the integrity of the Interpretation, and conforms the NASD's Interpretation with current NYSE practice.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the instant rule change SR–NASD–95–62 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

[10] Letter from Donald M. Nisonoff, Special Counsel, Rosenman & Colin, to Jonathan G. Katz, Secretary, SEC (February 15, 1996). The letter was submitted on behalf of Nomura Securities International, Inc., CS First Boston, Bear, Stearns & Co., PaineWebber Incorporated, Pershing Division of Donaldson, Lufkin & Jenrette, Jefferies & Company, Inc., OTA Limited Partnership, and Susquehanna Brokerage Services, Inc. ("the Firms").

[11] 15 U.S.C. 78o–3(b)(6).

[12] See NYSE Rule 440C; NYSE Information Memo 91–41 (October 18, 1991).

[13] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4261 Filed 2–26–96; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Request

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 96–511, as amended (Pub. L. 104–13 effective October 1, 1995), The Paperwork Reduction Act. Since the last list was published in the **Federal Register** on February 16, 1996, the information collections listed below have been proposed or will require extension of the current OMB approvals:

(Call the SSA Reports Clearance Officer on (410) 965–4142 for a copy of the form(s) or package(s), or write to her at the address listed below)

SSA Reports Clearance Officer: Charlotte S. Whitenight.

Missing & Discrepant Wage Reports Letter & Questionnaire—0960–0432. The information collected on forms SSA–L93, SSA–95 and SSA–97 will be used by the Social Security Administration to contact employers reporting more wages to IRS than they reported to SSA. Employers' compliance with the SSA request will enable SSA to properly post employees' wage records. The respondents are employers with missing or discrepant wage reports.

Number of Respondents: 385,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 192,500 hours.

Written comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Charlotte S. Whitenight, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: February 20, 1996.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 96–4246 Filed 2–23–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice 2342]

Agency Information Collection Activities; Form JF–45 Overseas Schools—Approval of Funding to Support Special Educational Programs Plan for Activities During the School Year: Proposed Collection; Comment Request (for the Advance 60-Day Notice): Office of Overseas Schools

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days from the date of publication in the **Federal Register**. Request written and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If a copy of the proposed collection instrument with instructions is not published in this notice please contact the agency representative listed below if you wish to receive a copy.

Overview of this information collection:

Action: The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

Summary: The Office of Overseas Schools of the Department of State (A/OS) is responsible: (a) For supporting our overseas missions by determining that adequate educational opportunities exist for dependents of U.S. government personnel stationed abroad and when necessary providing financial and technical assistance to improve elementary and secondary education at post for USG dependents; and (b) for assisting American-sponsored overseas schools demonstrate U.S. educational philosophy and practice. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.

Originating office—Office of Overseas Schools.

Title of information collection—U.S. State Department Overseas School—Approval of Funding To Support Special Educational Programs Plan For Activities During the School Year.

Frequency—Annually.

Form Number—JF–45.

Respondents—The 190 Overseas American sponsored schools.

Estimated number of respondents—190.

Average hours per response—0.25.

Total estimated burden hours—47.50.

44 U.S.C. 3504(h) does not apply.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Charles S. Cunningham (202) 647–0596. Comments and questions should be directed to (OMB) Jefferson Hill (202) 395–3176.

Dated: February 12, 1996.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 96–4234 Filed 2–23–96; 8:45 am]

BILLING CODE 4710–24–M

[Public Notice No. 2343]

Agency Information Collection Activities: Form JF–61 Overseas Schools—Grant Status Report: Proposed Collection; Comment Request (for the Advance 60-Day Notice): Office of Overseas Schools

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days from the date of publication in the **Federal Register**. Request written and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If a copy of the proposed collection instrument with instructions is not published in this notice please contact the agency representative listed below if you wish to receive a copy.

Overview of this information collection:

Action: The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

Summary: The Office of Overseas Schools of the Department of State (A/OS) is responsible: (a) For supporting our overseas missions by determining that adequate educational opportunities exist for dependents of U.S. government personnel stationed abroad and when necessary providing financial and technical assistance to improve elementary and secondary education at post for USG dependents; and (b) for assisting American-sponsored overseas schools demonstrate U.S. educational philosophy and practice. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.

Originating office—Office of Overseas Schools.

Title of information collection—U.S. State Department.

Overseas School—Grant Status Report.

Frequency—Annually.

Form Number—JF–61.

Respondents—The 190 Overseas American sponsored schools.

Estimated number of respondents—190.

Average hours per response—0.25.

Total estimated burden hours—47.50.

44 U.S.C. 3504(h) does not apply.

Additional Information or Comments: Copies of the proposed forms and

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supporting documents may be obtained from Charles S. Cunningham (202) 647–0596. Comments and questions should be directed to (OMB) Jefferson Hill (202) 395–3176.

Dated: February 12, 1996.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 96–4233 Filed 2–23–96; 8:45 am]

BILLING CODE 4710–24–M

[Public Notice 2339]

Bureau of Political-Military Affairs, Office of Nuclear Energy Affairs; Interagency Procedures for the Implementation of the U.S.-IAEA Safeguards Agreement

This notice sets forth U.S. agency procedures for implementation of the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, with Protocol (IAEA INFCIRC/288), hereinafter referred to as the Agreement.

For additional information, contact Alex Burkart (phone: 202–647–4413). Office of Nuclear Energy Affairs, Bureau of Political-Military Affairs (PM/NE), Department of State, Washington, DC 20520.

A. Coordination

(1) IAEA Steering Committee.

(a) The interagency mechanism for coordinating policy and resolving disputes relating to the implementation of the Agreement shall be the IAEA Steering Committee (ISC), which is concerned generally with IAEA policy matters. The ISC is composed of representatives from the Department of State (State), the Department of Energy (DOE), the Nuclear Regulatory Commission (NRC), the Arms Control and Disarmament Agency (ACDA), the Department of Defense (DOD), the Office of Management and Budget (OMB), and the staff of the National Security Council (NSC) and the intelligence community (IC). The ISC is chaired by the U.S. Representative to the IAEA or such other official as may be designated by the Secretary of State. Representatives of the agencies which are ISC members are designated by the respective heads of such agencies. The ISC shall meet at such intervals set by the ISC and at any time at the request of any ISC member.

(b) In the event any question of interpretation of the Agreement affecting NRC arises which is not resolved by the ISC, the NRC shall seek and be bound by guidance from the President. Neither this provision, nor any other provision in these procedures, shall in any way alter the responsibilities of the NRC or in any way limit the existing authorities and responsibilities of the NRC.

(2) Subgroup on IAEA Safeguards in the U.S.

(a) The ISC shall establish a subcommittee known as the Subcommittee on International Safeguards and Monitoring (SISM). This subcommittee will, in turn, establish the Subgroup on IAEA Safeguards in the U.S. (SISUS). SISUS shall be composed of representatives from State, ACDA, the NRC and DOE. The NRC will appoint the Chair of the SISUS. Each agency shall designate its respective representatives to serve on the SISUS.

(b) The SISUS shall monitor implementation of the Agreement, carry out responsibilities specifically prescribed in these procedures, and undertake such other working level activities as may be designated by the SISM or the ISC.

(3) Negotiating Team.

(a) The Negotiating Team shall be composed of the members of the Subgroup or their designates. Designates must be full-time Government employees of the Agency of the member. For negotiations with regard to NRC licensed or certified facilities, the NRC member will be the head of the Negotiating Team. For negotiations with regard to DOE facilities not licensed and subject to DOE orders, the DOE member will be the head of the Negotiating Team.

(b) The Negotiating Team shall negotiate with the IAEA the Subsidiary Arrangements and the Transitional Subsidiary Arrangements (collectively referred to as the Arrangements), and undertake such other responsibilities as may be designated by the SISM or the ISC.

(c) Counsel and other agency officials may participate in Negotiating Team activities at the request of their respective agency representative.

B. Communications

As provided in the Arrangements, normally, official communications on matters relating to implementation of the Agreement from the IAEA are to be addressed to State through the Mission of the United States of America to the IAEA (Mission), and from State are to be addressed to the IAEA through the Mission. An officer in PM/NE and an officer in the Mission shall be assigned responsibility for communications to and from the IAEA in connection with implementation of the Agreement. In the event of the occurrence of unexpected circumstances, communications may be undertaken, as appropriate, other than as set forth in this Section of the procedures.

C. Regulation of NRC Licensed or Certified Facilities and Management of DOE License-Exempt Facilities

(1) For implementation of the Agreement.

(a) The NRC shall be responsible for maintaining necessary regulations applicable to NRC licensed or certified facilities; and

(b) DOE shall be responsible for maintaining appropriate mechanisms applicable to DOE license-exempt facilities.

(2) Requirements contained in the Arrangements shall be implemented as follows:

(a) With respect to an NRC licensed or certified facility, through the promulgation of regulations, the incorporation of appropriate amendments to licenses and the issuance of such orders as may be necessary to assure compliance; and

(b) With respect to a DOE license-exempt facility, through the promulgation of appropriate mechanisms.

D. Facility Attachments and Transitional Facility Attachments

The responsible agency (RA) is the NRC for NRC licensed or certified facilities and the DOE for DOE license-exempt facilities.

(1) Preparation. The RA shall participate with the IAEA in preparation of the material for the draft facility attachment and transitional facility attachment (collectively referred to as the draft attachment) for each facility selected by IAEA, under Article 39 of the Agreement or Article 2 of the Protocol. The RA shall consult with the facility operator and, as appropriate, arrange for such operator to participate in the preparation of the material for the draft attachment for such facility. The RA shall provide the Negotiating Team an opportunity to take part in preparation with the IAEA of the draft facility attachment for use in negotiation.

(2) Negotiation. The draft attachment shall be approved by the Negotiating Team for negotiation. Each facility attachment or transitional facility attachment (collectively referred to as the attachment) shall be negotiated with the IAEA by the Negotiating Team under the guidance of the SISM. In the course of these negotiations, the operator of the facility will be consulted and views and interests of each such operator will be considered. The facility operator will be given the opportunity to review and comment on the attachment before it is agreed to by the U.S. Agreement shall be indicated by the ISC Chair or his designee initialing the attachment.

E. Information To Be Provided to the IAEA

(1) Reports on the status of nuclear material required to be submitted to the IAEA pursuant to the Agreement at specified intervals or occasions shall be compiled and submitted as follows:

(a) Review and transmission of initial reports and periodic accounting reports, including amplifications and clarifications thereof, in accordance with Codes 3.3 and 3.4 of the Arrangements, shall be the obligation of the RA. These reports shall be prepared on computer diskette by the Nuclear Materials Management and Safeguards System (NMMSS) operated jointly by NRC and DOE. The RA shall make arrangements for submission of the necessary data from each facility operator to NMMSS, which shall compile consolidated reports and send the diskette to the RA for review and transmission to PM/NE for delivery to the IAEA. The RA shall consult and provide to PM/NE, and PM/NE shall provide to the IAEA, the telex address and the telephone number of appropriate personnel to be available for use by the IAEA in seeking clarifications and amplifications (including questions concerning reported data) of the accounting reports.

(b) The RA shall prepare and transmit special reports, including amplifications and clarification thereof, in accordance with Code 3.5 of the Subsidiary Arrangements. The RA shall send each report to PM/NE to permit PM/NE to decide if any further review is needed prior to transmission by PM/NE to the IAEA and whether the report should be referred to the ISC for its consideration.

(c) In the event a material unaccounted for (MUF) at any facility selected by the IAEA under the Agreement exceeds the IAEA limits or the limits specified in 74.31(c)(5) or 74.59(f)(1)(i), whichever is smaller, the ISC shall determine in satisfying the terms of the Agreement what information if any relating to any U.S. investigation of the MUF is to be transmitted to the IAEA.

(2) Information other than reports described in paragraph (1) of this Section includes completed Design Information Questionnaires and other information needed in connection with design review, changes in design, and requirements with respect to radiological protection; and notification of an intended withdrawal (Agreement Article 12(a)) and of an international transfer (Agreement Article 89). The RA shall be responsible for obtaining such required information and ensuring that it is prepared in prescribed format for transmission to the IAEA in accordance with Codes 3.1, 3.2, 3.6, and 3.7 of the Subsidiary Arrangements and Codes 3.1 and 3.2 of the Transitional Subsidiary Arrangements. Such information and notification shall be transmitted to the IAEA by State.

(3) The Agreement shall not be construed to permit the communication to the IAEA of Restricted Data controlled by the Atomic Energy Act of 1954, as amended.

F. Eligible List

(1) The list of eligible U.S. facilities provided to the IAEA under Agreement Article 1(b) (eligible list) shall be reviewed by the SISUS from time to time to determine if any addition or removal of a facility should be made. The RA shall be responsible for informing the SISUS of any change in the status of any facility, relative to possible addition to, or removal from, the eligible list. The SISUS shall recommend to the ISC changes to be made in the eligible list. In the event that any ISC member agency believes that for national security reasons a particular urgency exists relative to the removal of a facility from the eligible list, such agency may, where disagreement develops or where immediate affirmative action is deemed essential and cannot be accommodated by the ISC, seek to have the President decide regarding such proposed removal.

(2) Any changes in the eligible list shall be submitted to the IAEA by PM/NE through the Mission as provided in Agreement Article 34, after the following notification by State to the Congress:

(a) For any addition, after 60 days notice to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs, which notice shall include an explanation of the basis on which the determination to make the addition was made, and if the Congress has not during said 60-day period passed a concurrent resolution of disapproval; and

(b) For any deletion, after notification to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs.

(3) State shall provide each of the ISC member agencies with a copy of the eligible list and changes thereto. The NRC shall make it available for inspection in the NRC Public Document Room.

G. IAEA Consultants

(1) The Director General of the IAEA, in selecting any facility under the Agreement, may seek to consult with the United States in the interest of avoiding discrimination among U.S. facilities in accordance with Agreement Article 2(c). Moreover, the U.S. and IAEA may likely consult to insure compliance with Agreement Article 22; and the United States may request consultations in accordance with Agreement Article 80. All matters concerning any such consultation shall be considered by the SISM on the basis of recommendations by the SISUS.

(2) In addition to consultations contemplated in paragraph (a) of this Section, PM/NE shall arrange for periodic consultations between the SISUS and the IAEA, in accordance with Agreement Article 19, to review progress in implementation of the Agreement and to consider any matter relevant to the Agreement which either party to the Agreement may raise.

H. Matters Raised by Facility Operators

Any question, complaint or request from a facility operator shall be directed to the RA. The RA shall consider the matter in accordance with its established procedures. Any questions from a facility operator concerning any interpretation of the Agreement or the Arrangements, any question relating to the payment of invoices by the IAEA to the facility operator, and any request from a facility operator with respect to exemption or termination of safeguards, other than as provided for in an attachment, shall be addressed to the RA. The RA will advise SISUS of such question or request for consideration. If necessary the matter will be referred to the SISUS, the Negotiating Team, or the SISM/ISC for consideration or resolution.

I. Matters Raised by the IAEA

Any question, complaint, or request concerning implementation of the Agreement which is received from IAEA Headquarters by the Mission in accordance with Codes 1.1 of the Arrangements, and is not otherwise provided for in these procedures, shall be transmitted to PM/NE. PM/NE shall refer such matters to the SISUS for consideration and recommendation or resolution. The Chair of the SISUS will communicate these matters to the Negotiating Team, the SISM, and the RA, as appropriate.

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J. Matters Concerning IAEA Inspectors

(1) Any question, complaint or request for assistance from any IAEA inspector, while performing inspection activities in the United States, which is not resolved by personnel at the facility in question or through the RA contact, shall be referred to SISUS. The IAEA shall be provided with the names of designated officials in the NRC, DOE and PM/NE for this purpose, including 24-hour telephone number information. The designated official contacted shall advise the RA as soon as possible whenever so contacted, to determine whether any immediate action is appropriate and to obtain any necessary assistance from the appropriate RA official. If time and circumstances permit, the matter may be referred to the SISUS and, in any event, the SISUS shall be advised of the matter and its resolution.

(2) Any question, complaint or request from a facility operator concerning an action by an IAEA inspector shall be addressed to the RA. This shall be undertaken in the first instance by contacting an appropriate RA official, if present at the facility. If necessary, a designated official at RA headquarters shall be consulted. If not resolved by such consultation, the matter will then be addressed as described in Section H above.

(3) The RA shall be responsible for ensuring compliance with footnotes to Codes 3.2 of the Arrangements with respect to safety, radiation protection, and medical care of IAEA staff members carrying out functions under the Agreement.

K. Designation of IAEA Inspectors

Each proposal by the IAEA for designation of one or more inspectors for service in the United States which is received by the Mission shall be referred to the SISUS for consideration. If consensus cannot be reached, the matter will be referred to the SISM. State shall provide the U.S. response to each such proposal to the Misston for transmittal to the IAEA. PM/NE shall maintain the list of IAEA inspectors formally designated for service in the United States and shall provide copies of the list, and changes as they occur, to each ISC member agency. The NRC and DOE may provide copies of such lists to facility operators under their respective jurisdictions for their information.

L. Notification of IAEA Inspections and Visits

NRC and DOE shall consult and provide to PM/NE, and PM/NE shall provide the IAEA, the name, telex address, and telephone number of an appropriate official and alternate to be contacted by the IAEA for advance, informal coordination and planning of any inspection or visit. This official shall coordinate preparation for each inspection or visit with any facility involved and provide timely responses directly to the IAEA. Such coordination shall be in preparation for the formal advance notification of each IAEA inspection and visit (Agreement Article 81 and Protocol Article 11(b)) which, when received by the Mission, shall be provided to State by telegram, with the NRC and DOE as information addresses. SISUS shall maintain a schedule of each planned IAEA inspection or visit and provide copies to the ISC member agencies upon request. The operator of each facility to be inspected or visited shall be so informed by the RA. The RA shall also arrange for the IAEA inspector to be accompanied by one or more RA representatives. The RA shall, to the extent possible, accommodate requests by SISUS members to be present during inspections. Should the IAEA elect to perform unannounced inspections, the RA, when notified by the facility, shall make a determination of the need to send a representative to the site as soon as practical.

M. Reports by the IAEA

Reports by the IAEA, in accordance with Agreement Articles 41, 64 and 88, of its inspections and other safeguards activities in the United States, when received by the Mission, shall be transmitted to State. PM/NE shall provide copies to the ISC member agencies and the Chair of the SISIS, and shall also maintain a file of such reports. The SISUS shall review these reports and determine any needed action.

N. Implementation Reports

SISUS, on the basis of information collected by the NRC and DOE and information obtained from the IAEA, may prepare periodic reports concerning implementation of the Agreement, including, inter alia, pertinent statistics, lists of facilities inspected, and other relevant data for the information of government agencies, the Congress and the public.

O. Agreement Article 22

State shall institute steps as necessary to suspend, for the duration of the Agreement, the application of IAEA safeguards in the United States under other safeguards agreements with the IAEA. State shall maintain a list of the agreements, required by Code 3.8.1 of the Subsidiary Arrangements, under which the application of such safeguards has been suspended and shall provide this list and all subsequent changes to each ISC member agency. DOE shall prepare the reports required by Codes 3.8:2 and 3.8.3 of the Subsidiary Arrangements for delivery of these reports to State for transmission by State to the IAEA within the time limits stipulated in Codes 3.8.2 and 3.8.3 DOE shall also be responsible for the monitoring function called for in footnote 3 of Code 3.8 of the Subsidiary Arrangements and for reporting, at least annually, to State the results of such monitoring.

P. Role of These Procedures and Their Modification

(1) Scope. These procedures are for the purpose of interagency coordination and shall not affect the internal coordination mechanism of any agency. These procedures establish requirements solely applicable to certain agencies of the United States Government, rather than individuals, and, accordingly, are not rules within the meaning of the Administrative Procedure Act.

(2) Amendment. These procedures may be amended from time to time by the ISC.

Dated: February 15, 1996.

Richard J.K. Stratford,

Director, Office of Nuclear Energy Affairs, Bureau of Political-Military Affairs, United States Department of State.

[FR Doc. 96–4232 Filed 2–23–96; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets OST–95–676 and OST–95–677]

Applications of Falcon Air Express, Inc., for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (order 96–2–34).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Falcon Air Express, Inc., fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than March 4, 1996.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–95–676 and OST–95–677 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, (202) 366–2343.

Dated: February 20, 1996.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96–4250 Filed 2–23–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Proposed Information Collection; Request Submitted for Public Comment; Federal Aviation Administration Acquisition Management System

ACTION: Notice of intent to comment on the Federal Aviation Administration Acquisition Management System.

SUMMARY: The Federal Aviation Administration is submitting for public comment the following proposal for collection of information under the provisions of the Paperwork Reduction Act [44 USC Chapter 35].

DATES: Written comments must be submitted on or before 22 April 1996. Written comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

ADDRESSES: Comments on any of these collections may be mailed or delivered in duplicate to the FAA at the following address: Ms. Judith Street, Federal Aviation Administration, Office of Business Information and Consultation, Corporate Information Division, 800 Independence Avenue, Washington, D.C. SW 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street at (202) 267–9895.

In addition, the proposed Acquisition Management System and executive summary are located: On the internet @: http://www.faa.gov/asu/asu100/acq-reform/acq__home.htm. The internet E-Mail address is 9__Acquisition __Reform @ mail.hq.faa.gov.

SUPPLEMENTARY INFORMATION: The FAA has developed the new Acquisition Management System that makes it necessary for information collection in order to comply with Public Law 104–50. FAA's new acquisition management system was developed to address the unique needs of the agency and, at a minimum, provide for more timely and cost-effective acquisitions of equipment and materials.

Type of Review: New.

OMB Number: 2120–TBD.

Number of Respondents: 3,338.

Responses per respondent: varies: 1 to 12.

Annual responses: 4,500.

Average burden per response: varies: 15 min. to 2 weeks.

Annual burden hours: 333,292.

Affected Public: Individuals, businesses, not-for-profit institutions, federal government.

Frequency: varies: on occasion and monthly.

Respondent's Obligation: varies: voluntary, required to obtain or retain benefits, mandatory.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Issued in Washington, DC., on February 22, 1996.

Steve Hopkins,

Acting Manager, Corporate Information Division, ABC–100.

[FR Doc. 96–4262 Filed 2–21–96; 4:27 pm]

BILLING CODE 4910–13–M

Kansas City International Airport, Kansas City, Missouri, Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Kansas City, Missouri, for Kansas City International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Kansas City International Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before August 7, 1996.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is February 9, 1996. The public comment period ends April 9, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Moira D. Keane, Federal Aviation Administration, Airports Division, ACE–615B, 601 E. 12th Street, Kansas City, MO 64106 (816) 426–4731. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Kansas City International Airport are in compliance with applicable requirements of Part 150, effective February 9, 1996. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before August 7, 1996. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Kansas City, Missouri, submitted to the FAA on August 14, 1995, noise exposure maps, descriptions and other documentation which were produced during the Kansas City International Airport Master Plan and F.A.R. Part 150 Noise Compatibility Study. It was requested that the FAA review this

material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Kansas City, Missouri. The specific maps under consideration are 1998 aircraft Noise Exposure Maps in the submission. The FAA has determined that these maps for Kansas City International Airport are in compliance with applicable requirements. This determination is effective on February 9, 1996. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Kansas City International Airport, also effective on February 9, 1996. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 7, 1996.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, D.C. 20591

Federal Aviation Administration, Airports Division, 601 E. 12th Street, Kansas City, MO 64106

Aviation Department, Administrative Offices, Department of Planning & Development, Kansas City International Airport, 1 International Square, Kansas City, MO 64153.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Kansas City, Missouri on February 9, 1996.

George A. Hendon,

Manager, Airports Division.

[FR Doc. 96–4266 Filed 2–23–96; 8:45 am]

BILLING CODE 4910–13–M

[Docket No. 28472]

Policy and Procedures Concerning the Use of Airport Revenue

AGENCY: Federal Aviation Administration (FAA), Transportation.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: This document proposes a statement of policy and procedures concerning the use of airport revenue. This document discusses in detail the requirement that revenue at public airports that have received Federal grants generally be used only for airport purposes. The document proposes definitions of "airport revenue" and "revenue diversion," and discusses the permitted and prohibited uses of airport revenue, and the procedures for monitoring compliance with the revenue use requirement. A statement of policy is required by the Federal Aviation Administration Authorization Act of 1994. The FAA is issuing a proposed policy and requesting public comment because of substantial public and industry interest in the subject matter. While the policy statement proposed is not made effective at this time, statutory requirements relating to the use of airport revenue remain in effect and will be enforced by the FAA. Airport sponsors may assume that the FAA would act consistently with the views expressed in this document in any enforcement action for revenue diversion taken before a final policy statement is issued.

DATES: Comments must be received by April 26, 1996.

ADDRESSES: Comments should be mailed, in quadruplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28472, 800 Independence Avenue, SW., Washington, DC 20591. All comments must be marked: "Docket No. 28472." Commenters wishing the FAA to acknowledge receipt of their comments must include a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 28472." The postcard will be date stamped and mailed to the commenter.

Comments on this Notice may be examined in room 915G on weekdays, except on Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Benedict D. Castellano, Manager, Airport Safety and Compliance Branch, AAS–310, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591, telephone (202) 267–8728; or Jonathan W. Cross, Airports Law Branch, AGC–610, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3473.

SUPPLEMENTARY INFORMATION: This proposed statement of policy and related procedures is being published pursuant to section 112(a) of the Federal Aviation Administration Authorization Act of 1994, Pub. L. No. 103–305 (August 23, 1994) (1994 Authorization Act). That section requires the Secretary to establish policies and procedures assuring the "prompt and effective enforcement" of the requirement relating to the use of airport revenue (also called the "revenue retention requirement") (49 U.S.C. 47107(b)) and the requirement that airports be as self-sustaining as possible (49 U.S.C. 47107(a)(13)), and of the Airport Improvement Program (AIP) sponsor assurances made under these sections. Section 112 includes specific guidance and requirements for the mandated policies and procedures.

For convenience, the term "sponsor" is used throughout this document to mean the state or local government body obligated under an airport grant agreement. For purposes of the proposed policy statement the term is generally interchangeable with the term "airport owner or operator" used in some statutes. A sponsor may be an entity that exists only to operate the airport, such as an airport authority established by state law. Other airports are owned by a state, county, or city government and operated by an agency of that government, in which case the state, county, or city is the sponsor, rather than the subordinate agency.

The Airport and Airway Improvement Act of 1982

Under the Airport and Airway Improvement Act of 1982, as amended (AAIA), part of title V of the Tax Equity and Fiscal Responsibility Act, Public Law 97–248, repealed and reenacted without substantive change, Public Law 103–272 (July 5, 1994), 49 U.S.C. 47101, et seq., as amended by Public Law 103–305 (August 23, 1994), public agencies receiving Federal grants for airport development since September 3, 1982, are required to comply with the revenue retention requirement, section 511(a)(12) of the AAIA, now codified at 49 U.S.C. 47107(b).

As originally enacted in 1982, the revenue retention assurance required airport owners to use "* * * all revenues generated by the airport * * * for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property." The plain purpose of section 511(a)(12) was to prevent an airport owner or operator who receives Federal assistance from using airport revenues for expenditures unrelated to the airport. Thus, according to the requirement, a grant recipient could not use airport revenues to pay for "capital or operating costs" that were not airport-related. According to a recent House Report,

> The rationale for [the revenue retention requirement] is that the Federal AIP program can underwrite only about 20% to 30% of the total capital development needed by airports. To ensure the maximum effectiveness of the AIP program, airports should also spend all of the money they generate to operate and develop the airport. A federal grant should not furnish an opportunity for an airport to use federal funds to replace other airport generated funds, and then use the latter for general governmental purposes, resulting in no net capital improvements for the federal grant dollars expended.

H.R. Rep. No. 103–240, 103d Cong., 1st Sess. 14 (1993).

The original revenue retention requirement also contained an exception, or "grandfather" provision, permitting the use of airport revenue for non-airport purposes in certain cases in which the use predates the AAIA. Specifically, revenue use restrictions did not apply where pre-September 3, 1982, covenants or assurances in debt obligations previously issued by the airport owner or operator, or provisions in governing statutes enacted before September 3, 1982, that control the owner's or operator's financing, provided for the use of revenues from any of the airport owner's or operator's facilities, including the airport, to support not only the airport but also the airport owner's or operator's general debt obligations or other facilities.

The House and Senate Conference Reports on the AAIA describe the revenue retention requirement in section 511(a)(12) as follows:

> One [requirement] is that airports receiving assistance under this program must dedicate all revenues generated by the airport for the capital [and] operating costs of that airport, the local airport system, or other local facilities which are owned by the owner or operator of the airport and used for the transportation of passengers or property. The provision is designed to ensure that airport systems which are receiving Federal assistance are utilizing all locally generated revenue for the systems which they operate. Airports that are part of a unified ports authority are exempt from this requirement if covenants or assurances in previously issued debt obligations or controlling statutes require that these funds are available for use at other port facilities.

However, airport users should not be burdened with "hidden taxation" for unrelated municipal services.

This provision is not intended to apply to revenue generated by facilities which are located on airport property but are unrelated to air operations or services which support or facilitate air transportation. It would accordingly not apply to revenue generated by such facilities as a water reservoir or a convention center which happen to be located on airport property, but which serve neither the airport nor any air transportation purpose. It would apply to such facilities as terminal concessions and parking lots serving the terminal or other air transportation purposes.

H.R. Conf. Rep. No. 97–760, 97th Cong., 2d Sess. pt. 3,697,712 (1982); see also, S. Rep. No. 97–494, vol. 2, 97th Cong., 2d Sess. 28 (1982).

The Airport and Airway Safety and Capacity Expansion Act of 1987

The Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223 (December 30, 1987), amended the revenue retention requirement by requiring that such local facilities be "directly and substantially related to actual air transportation of passengers or property." This amendment narrowed the permissible uses of airport revenues to expenditures that are not only "directly" but also "substantially" related to actual air transportation, to further assure that such revenues are not diverted for general expenses. The 1987 Act also required local taxes on aviation fuel enacted after December 30, 1987, to be spent on the airport, and slightly modified the grandfathering language to clarify its application only to pre-September 3, 1982, debt obligations or legislation controlling financing. The 1987 Act's legislative history reaffirms the earlier statement that § 511(a)(12) is not intended to apply to revenue generated by facilities located on airport property but unrelated to air operations or services that support or facilitate air transportation. H.R. Conf. Rep. No. 100–484, 100th Cong., 2d Sess. 63 (1987), reprinted in 1987 U.S.C.C.A.N. 2638; see also, H.R. Rep. No. 100–123 (II), 100th Cong., 2d Sess. 14, reprinted in 1987 U.S.C.C.A.N. 2601, 2613.

The Federal Aviation Administration Authorization Act of 1994

Several provisions of the Federal Aviation Administration Authorization Act of 1994, Public Law 103–305 (August 23, 1994), address revenue diversion. Section 110 adds a policy statement to Title 49, Chapter 471, "Airport Development," concerning the requirement that airports be as self-sustaining as possible. That section restates the requirement and also states that in establishing new fees, rates, and charges, and generating revenues from all sources, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system

purposes and for other purposes for which airport revenues may be spent under section 47107(b) of this title, including reasonable reserves and other funds to facilitate financing and cover contingencies.

Section 111 adds a new sponsor assurance. Airport owners or operators will now be required to submit to the Secretary and make available to the public an annual report listing all amounts paid by the airport to other units of government and the purposes for the payments. Airport owners or operators must also make available a listing of all services and property provided to other units of government and the amount of compensation received for provision of each such service and property. Section 111 also requires the Secretary to issue a simplified format for reporting applicable to airports to assist in public understanding of airport finances and to provide information concerning the amount of any revenue surplus, the amount of concession-generated revenue, and other information required by the Secretary. The Secretary is also required to provide an annual summary of the financial reports to various Congressional committees. See, H.R. Conf. Rep. No. 103–677, 103d Cong., 2d Sess. 68 (1994).

Section 112(a) requires the Secretary to establish policies and procedures that will assure the prompt and effective enforcement of the statutory provisions in 49 U.S.C. 47107, subsections (a)(13) (the requirement that airports be as self-sustaining as possible) and (b) (the revenue retention requirement) and the sponsor assurances made under such subsections. Section 112(a) also sets forth four prohibited forms of revenue diversion, which are included in the proposed policy statement.

Section 112(b) amends 49 U.S.C. 47111, "Payments under project grant agreements," and requires the Secretary to withhold approval of any new grant application, or any proposed modification that would increase funding, and withhold approval of any new application to impose a Passenger Facility Charge (PFC), if after notice and opportunity for hearing, the Secretary has found a violation of 49 U.S.C. 47107(b), as further defined by 49 U.S.C. 47107(l), or a violation of the assurance made under 49 U.S.C. 47107(b), and the sponsor has not taken corrective action to cure the violation. Section 112(b) also authorizes the Secretary to seek enforcement through writ of injunction in United States district court for any violation of Title 49, Chapter 471, or the sponsor assurances made under that Chapter.

Section 112(c) authorizes the Secretary to impose civil penalties up to a maximum of $50,000 on airport sponsors for violations of the revenue retention requirement. Civil penalties may not be imposed on any individual and the Secretary has the authority to compromise the penalties. See, H.R. Conf. Rep. No. 103–677, 103d Cong., 2d Sess. 67–68 (1994).

Section 112(d) requires the Secretary, in administering the 1994 Authorization Act's revenue diversion provisions and the AIP discretionary grants, to consider the amount being lawfully diverted pursuant to the grandfathering provision by the sponsor compared to the amount being sought in discretionary grants in reviewing the grant application. Consequently, in addition to the prohibition against awarding grants to airport sponsors that have illegally diverted revenue, the Secretary must now consider the lawful-diversion of airport revenues by airport sponsors under the grandfather provision as a factor militating against the distribution of discretionary grants to the airport, if the amounts being lawfully diverted exceed the amounts so lawfully diverted in the first year after enactment of section 112, adjusted for inflation.

Section 112(e), which amends the Anti-Head Tax Act, 49 U.S.C. 40116(d)(2)(A), prohibits a State, political subdivision, or an authority acting for a State or political subdivision from collecting a new tax, fee, or charge which is imposed exclusively upon any business located at an airport or operating as a permittee of the airport, other than a tax, fee, or charge utilized for airport or aeronautical purposes.

Investigation by the House Committee on Appropriations

In December 1993, the Surveys and Investigations Staff of the United States House of Representatives presented a report to the Committee on Appropriations concerning the diversion of airport revenues from commercial air service airports in the United States. The staff stated in the report that out of 30 airports investigated, airport revenue was being diverted at 17 airports. The staff recognized, however, that most of the revenue was being diverted lawfully under the grandfather provision. The report stated that of the approximately $900 million that was diverted, $641.3 million was lawfully diverted under the grandfather exception (according to the DOT General Counsel's Office), and $140.8 million was diverted under the grandfather exception where the sponsors themselves proclaimed the exception. The report stated that $111.7 million of the $900 million total was diverted at airports where the sponsors did not appear to meet the statutory exception. The report stated that more FAA oversight was needed to assure that sponsors comply with the conditions required by Federal law on the use of airport revenue. The DOT Office of the Inspector General (OIG) has conducted audits of 13 of the 30 airports investigated by the committee staff.

Investigation by the Department of Transportation's Office of the Inspector General

On March 7, 1994, the DOT OIG released a report concerning the FAA's monitoring of the use of airport revenues at 22 airports throughout the United States. That report concluded that FAA monitoring was not adequate to ensure fee and rental structures were maintained that made airports as self-sustaining as possible, or that airport revenues were used only for the capital and operating costs of the airports. Where the OIG report indicated actual cases of potential revenue diversion, the FAA has investigated and taken action to restore the sponsor to compliance. At airports where the OIG cited the failure to charge fair market value for aeronautical facilities, the FAA finds this latter practice consistent with the Policy Regarding Airport Rates and Charges issued in February 1995, which limits a sponsor's total charges to aeronautical users to the total cost of services provided, and the proposed revision of the policy issued in September 1995. The self-sustaining obligation does not require a sponsor to charge aeronautical users more than its aeronautical costs. The OIG recommended that the FAA increase its monitoring of airport sponsors. It should be noted that more than 2,500 airports are subject to such monitoring. The FAA expects to continue to work with the OIG on these issues.

Airport Revenue

Background

In addressing the requirement that airport revenue be used for certain purposes, it is first necessary to make clear which funds received by an airport sponsor "* * * all revenues generated by the airport," within the meaning of 49 U.S.C. 47107(b). Airports generate revenues for the sponsor, for air carriers, and for commercial tenants. While the income received by air carriers and tenants for sales and business activity on the airport is not "airport revenue," within the meaning of section 47107(b), most revenue received by the sponsor as airport owner and operator *is* considered airport revenue. the airport sponsor receives payments for the use of the airport in the form of landing fees, land and facility rental, and, in some cases, a share of the gross receipts or profit (e.g., concession fees or royalties) from the commercial tenant. The sponsor may receive revenue from the sale of real or personal airport property. A sponsor may also receive income from an airport-related facility that is not on the airport property map, commonly referred to as "Exhibit A," but that supports the operation of the airport, such as a remote parking lot or downtown terminal funded from airport revenues. Sometimes, the airport sponsor directly engages in a commercial activity and thus receives all of the gross receipts of the commercial activity rather than just the rental it would receive as landlord.

FAA Internal Orders

The FAA routinely issues internal guidance to its employees in the form of nonregulatory directives, including handbooks. Orders do not seek to prescribe conduct for persons outside the agency, and they incorporate provisions for deviation from the stated guidance by agency personnel.

The Airport Improvement Program (AIP) Handbook, FAA Order 5100.38A (October 24, 1989), and Airport Compliance Requirements, FAA Order 5190.6A (October 2, 1989), both contain provisions that address the use of airport revenue. The agency believes in most cases that the statements in these orders are consistent with the proposed policy; however, to the extent that there is any apparent inconsistency, the final policy statement will take precedence and the orders will be revised to reflect the policies adopted. The final policy would also supersede any other inconsistent statements of agency policy appearing in correspondence or other form.

Definition of Airport Revenue

Under this proposed policy, the following types of fees, charges, rents, or other payments received by or accruing to the sponsor (revenue) are considered to be "airport revenue:"

(1) *Revenue from air carriers, tenants, transferees, and other parties.* Airport revenue includes all revenue received by the sponsor for the activities of others or the transfer of rights to others relating to the airport, including revenue received:

(a) for the right to conduct an activity on the airport or to use or occupy airport property;

(b) for the sale, transfer, or disposition of real airport property not acquired with Federal assistance or personal airport property not acquired with Federal assistance, or any interest in that property, including sale through a condemnation proceeding;

(c) for the sale of (or sale or lease of rights in) sponsor-owned mineral, natural, or agricultural products or water to be taken from the airport; or

(d) for the right to conduct an activity on, or for the use or disposition of, real or personal property or any interest therein owned or controlled by the sponsor and used for an airport-related purpose but not located on the airport;

(2) *Revenue from sponsor activities.* Airport revenue generally includes all revenue received by the sponsor for activities conducted by the sponsor itself as airport owner and operator, including revenue received:

(a) from any activity conducted by the sponsor on airport property acquired with Federal assistance;

(b) from any aeronautical activity conducted by the sponsor; or

(c) from any nonaeronautical activity conducted by the sponsor on airport property not acquired with Federal assistance, up to an amount appropriately attributable to the use of the property (such as the amount of rent that would be charged a commercial tenant).

In general, revenue received by the sponsor for an airport activity is "airport revenue." However, in consideration of legislative history, a distinction is made where the sponsor itself undertakes an activity on airport property not acquired with Federal assistance, if the activity is not related to air operations or services that support or facilitate air transportation. In that case, as represented in subparagraph (2)(c) of the definition, only an amount properly attributable for the use of airport property, such as the rent that a commercial tenant would pay, would be considered airport revenue. Subparagraph (2)(c) of the definition of "airport revenue" results from legislative history that indicates the revenue retention requirement is not intended to apply to all revenue generated by facilities that are located on airport property but are "* * * unrelated to air operations or services which support or facilitate air transportation." H.R. Conf. Rep. No. 97–760, 97th Cong., 2d Sess. pt. 3, 697,712 (1982). The language states that the requirement would therefore not apply to revenue generated by facilities such as a "* * * water reservoir or a convention center which happen to be located on airport property, but which serve neither the airport nor any air transportation purpose." Id.

In a typical airport situation, a commercial enterprise earns gross income on the airport and then makes a payment to the airport sponsor for the use of the facility and the right to conduct business on the airport. The gross income to the enterprise is not airport revenue, but the payments to the sponsor are. We read the report language concerning the conference center and reservoir to apply not to this typical situation, which would result in free use of airport property, but rather to the special case in which a local government is the airport sponsor and is at the same time conducting a nonaeronautical enterprise on the airport (such as a convention center). In this latter case the sponsor is technically receiving all of the gross receipts of the enterprise. Since the report language indicates that such gross receipts should not be considered airport revenue, we read the legislative history to mean that only the amount properly attributable for the use of the airport property (such as the amount of facility or land rental a commercial tenant would pay) would be considered to constitute airport revenue. The remaining gross receipts would not be airport revenue and could be used for non-airport purposes. This interpretation is consistent with the report language, and ensures that the airport receives an equivalent amount for the commercial use of property whether the property is used by a private tenant or by the sponsor itself. If the sponsor activity is related to air transportation, then the entire amount of gross receipts would be airport revenue, as represented in subparagraphs (2)(a) and (2)(b) of the definition.

Airport revenue does not include Passenger Facility Charges received by a sponsor as public agency in accordance with 49 U.S.C. 40117 and 14 C.F.R. part 158. Also, the disposition of land acquired by Federal donation or with Federal assistance is governed by specific requirements included in the agreement between the United States and the sponsor relating to such land. Specific provisions applying in both cases are more restrictive than the general restrictions on use of airport revenue under section 47107(b).

Use of Proceeds From the Sale of Airport Land

Background

An airport sponsor that acquires real property for airport purposes may do so through any of four methods. First, the airport sponsor may receive a Federal grant which will typically pay a percentage of the project costs. Second,

the property may be conveyed to the airport sponsor by the Federal Government for no consideration through the Surplus Property Act or through cost-free transfers pursuant to airport aid statutes. Third, the airport sponsor may acquire property for the airport paid for by the general governmental or municipality funds or donated privately. Fourth, the airport sponsor may utilize airport revenues to acquire the property or to reimburse its general funds for an acquisition.

Use of proceeds resulting from the sale of real property acquired through the first and second methods described above is generally straightforward. In those examples, the use of sales proceeds is likely to be governed by special provisions contained in the agreement between the United States and the sponsor. As a general rule, such proceeds must be applied to the airport and be used for aeronautical purposes or, in the case of grant-acquired land, returned to the Aviation Trust Fund.

Use of sale proceeds resulting from the sale of real property acquired with government or municipal funds, airport revenues, or by private donation, requires greater discussion. The paramount issue is whether the sales proceeds from airport real property fall within the scope of the revenue retention requirement's language, "* * * all revenues generated by the airport," 49 U.S.C. 47107(b), where the property was not donated by the United States or acquired with Federal assistance. This language is not defined in the AAIA or subsequent statutes. Thus, the Secretary has the authority to define airport revenue in a manner consistent with the purposes of 511(a)(12) of the AAIA and 49 U.S.C. 47107(b). As stated in the proposed policy, we propose that the term "* * * all revenues generated by the airport * * *" should include proceeds from the sale of all property donated by the United States or acquired with Federal financial assistance.

The revenue retention requirement should be read in the overall context of the statute and underlying Federal policy—i.e., that users of the airport system should pay for the cost of that system, and that airports should be self-sustaining (see, 49 U.S.C. 47107(a)(13)), and that users should not be forced to pay "hidden taxes" to finance other state and municipal programs. If sales proceeds from parcels of realty are treated as airport revenue, the goal of self-sustainability is furthered; more resources are available to fund the capital and operating costs of the airport system; and airport users are not indirectly providing financial support for other state and municipal programs. Finally, this interpretation alleviates the potential need for Federal discretionary grants to fund capital improvements that could be funded from the proceeds from the sale.

This treatment is especially appropriate in the context of the fourth method—property purchased with airport revenue, including the case where airport revenues are used to reimburse the sponsor's general (nonairport) fund—to assure that the sale does not lead to the use of airport revenue indirectly for non-airport purposes.

For several reasons, the proposed policy draws no distinction between property acquired with airport revenue (directly or indirectly) and property acquired with sponsor general funds or by donation. First, the inclusion of the proceeds from the sale of all airport property is most consistent with the purposes of the revenue retention and self-sustaining grant assurances. Second, in practice it may be difficult to determine whether a particular parcel of property was acquired with airport revenue, directly or indirectly. Finally, in the case of property acquired for the airport with general funds, an airport sponsor may in any event recoup its unreimbursed capital contributions and operating expenses from airport revenues, and it may do so regardless of when the expenses were incurred. This interpretation results from a February 1991, opinion from the United States Department of Justice (DOJ), Office of Legal Counsel, concerning a proposed long-term lease of the Albany Airport, Albany County, New York. The DOJ opinion is discussed further below. While an airport sponsor could not recoup from airport revenues the value of privately donated land under this policy, it could recoup its own capital contribution.

FAA Internal Orders

To avoid possible ambiguity regarding our policy concerning sales proceeds, relevant portions of FAA Order 5190.6A, "Airport Compliance Requirements," (October 2, 1989), and FAA Order 5100.38A, "Airport Improvement Handbook" (October 24, 1989), are discussed below. To the extent that there is any inconsistency between the provisions of these orders and this Policy, the Policy takes precedence and the orders will be revised to reflect the policies adopted in this statement.

Paragraph 7–18 of the Compliance Handbook states that in the context of land not acquired with Federal assistance (appearing on Exhibit A), "* * * there is no required disposition of net revenues from sale or disposal. However, in view of the ADAP [Airport Development Aid Program]/AIP requirement that airports become as financially self-sustaining as possible, the FAA should encourage the owner to use any net revenues for needed airport development and to consider an exchange of released property for needed property.

As written, this statement did not fully reflect the FAA's operational implementation of § 511(a)(12) on a day-to-day basis, and is facially inconsistent with the policy being proposed in this document. As stated above, the Compliance Handbook will be modified to conform to the final policy adopted.

In actual past practice, the FAA discouraged the use of sale proceeds for non-airport purposes, even for property acquired through private capital or sponsor donation. While paragraph 7–18 states, "* * * there is no required disposition of net revenues from sale or disposal * * *," that paragraph also provides that FAA should encourage the sponsor to devote the proceeds to the airport. Thus, the agency routinely encouraged sponsors to apply sales proceeds for the capital and operating costs of the airport. Sale approvals were not generally provided without such a promise by the sponsor.

In short, although the statement "* * * there is no required disposition of net revenues from sale or disposal * * *" appears in the Compliance Handbook, the agency did not traditionally allow sponsors to exercise the implied discretion. Rather, the agency actively promoted the policy of strongly encouraging the sponsor to devote the proceeds to the airport, through its power to grant releases.

Paragraph 630 of the AIP Handbook provides that, "[a]irport revenue does not include proceeds from the sale of real property owned by the sponsor." This statement is correct in context because it refers to real property acquired with AIP funds. In the case of such land, specific statutory provisions governing proceeds of sale take precedence over the general requirement of § 511(a)(12). Those statutory provisions are incorporated into AIP grant agreements. Again, as a general rule, such proceeds must be applied to the airport and be used for aeronautical purposes. Thus, while the statement indicates that proceeds in this context are not airport revenue, it does not mean that the use of those proceeds is not restricted.

How the Proposed Policy Addresses Use of Sale Proceeds

Proceeds from the sale of airport real property are considered airport revenue, and are addressed in the "Definitions" and "Examples of Airport Revenue" sections of the proposed policy, as discussed above.

Paragraph C of the Applicability section in the proposed policy addresses the sale, or other transfer of ownership or control, of a publicly owned airport. Paragraph C states that such a transfer would require FAA approval in accordance with the AIP sponsor assurances and general government contract law principles. Because the proceeds of a sale or other transfer of airport property are considered airport revenue, the FAA would condition its approval of the transfer on the parties' assurance that the proceeds of sale will be dedicated to airport use. However, the FAA would take into consideration the specific elements of the proposed transfer, in determining what action would represent appropriate and sufficient compliance with the revenue use requirements of 49 U.S.C. 47107(b) under the circumstances. The FAA also invites the parties to a prospective transfer of airport property to discuss with the FAA, as early as possible in the planning stages, the effect of Federal requirements on the proposed transaction. There is no intent to hinder or prevent additional private participation in the ownership, operation, or financing of airports. The FAA welcomes proposals to do so and is committed to working with interested parties to ensure compliance with Federal laws and regulations.

Recoupment of Unreimbursed Capital or Operating Costs of the Airport

In 1990, the FAA and the Department sought the assistance of the United States Department of Justice, Office of Legal Counsel (DOJ) in applying section 511(a)(12) to the situation in which an airport sponsor seeks to use airport revenue to recoup past unreimbursed contributions to the capital and operating costs of the airport. The issue arose from a request to the FAA from Albany County, New York to transfer the Albany County Airport to a private joint venture. The joint venture proposed to lease the airport for 40 years, with an option to renew. In exchange for the lease, the County was to receive annual lease payments, which would be applied to the airport. In addition, it was to receive an initial payment of $30 million, which would be applied for general expenditures. The joint venture planned to recoup the $30 million payment and lease payment from landing fees or other airport generated revenues. Albany County justified the use of the $30 million for general expenditures under section 511(a)(12) on the grounds that the County had made unreimbursed contributions to the airport of equal or greater amounts.

Prior to the Albany proposal, the FAA had not construed section 511(a)(12) to permit recoupment in the circumstances described by Albany. After reviewing the statute, its legislative history and purpose, the DOJ advised, in a memorandum dated February 12, 1991, that section 511(a)(12) did not preclude recoupment of a sponsor's past unreimbursed contributions to the capital and operating costs of an obligated airport. The DOJ also advised that the FAA could oversee the rates charged to airport users by the joint venture—including the extent to which the rates could reflect the $30 million payment to Albany County—to ensure that these rates remained fair and reasonable. The DOJ opinion was based on the facts of the Albany County case, where the County sought recoupment of the amount originally contributed and did not seek interest on that amount. To date, the FAA has not permitted recoupment of amounts in excess of the original contribution (or the value of land at the time of contribution). That policy continues in effect pending issuance of a final policy statement in this docket. In developing a final policy on revenue diversion, the FAA will consider comments on the current agency policy on recoupment of contributions, as well as on the implications of allowing recoupment of not only the original contribution but also interest or an inflationary adjustment, or, in the case of original contributions in the form of land, allowing recoupment of the current market or inflation-adjusted value of the contributed land.

Petition for Rulemaking by Lehigh-Northampton Airport Authority

On April 3, 1995, the FAA received a Petition for Notice and Comment rule Making filed by counsel on behalf of Lehigh-Northampton Airport Authority, the owner and operator of Lehigh Valley International Airport. Petitioner urged the agency to provide for "pre-enforcement" notice and comment procedures prior to the promulgation of this policy statement. While styled a petition for rulemaking, petition's submission does not urge the adoption of any particular rule. Rather, the petition could be more accurately described as a legal memo supporting the use of notice and comment rulemaking procedures in the promulgation of this policy.

Technically, the policy statement is not rulemaking and does not require advance publication or public comment before issuance. However, to the extent the petition requests that the FAA's revenue diversion policy statement be issued as a proposal for public comment before adoption, the petition is granted. While the proposed policy statement is not made effective at this time, it should be recognized that longstanding statutory requirements relating to the use of airport revenue remain in effect and will be enforced. Airport sponsors may assume that the FAA would act consistently with the views expressed in this document in any enforcement action for revenue diversion taken before a final policy statement is published.

Policy Statement Concerning Airport Revenue

For the reasons discussed above, the Federal Aviation Administration proposes to adopt the following statement of policy concerning the use of airport revenue:

Policies and Procedures Concerning the Use of Airport Revenue

I. Introduction

The Federal Aviation Administration (FAA) issues this document to fulfill the statutory provisions in section 112 of the Federal Aviation Administration Authorization Act of 1994, Public Law 103–305 (August 23, 1994), 49 U.S.C. 47107(l), to establish policies and procedures on the generation and use of airport revenue. The sponsor assurance prohibiting the unlawful diversion of airport revenues, also known as the revenue retention requirement, was first mandated by Congress in 1982. Simply stated, the purpose of that assurance, now codified at 49 U.S.C. 4710(b), is to prevent an airport owner or operator receiving Federal assistance from using airport revenues for expenditures unrelated to the airport. The policies outlined in this Policy Statement generally reflect the standards that the FAA has traditionally applied in determining whether airport revenue use is consistent with Federal requirements.

II. Applicability of the Policy

A. The policy and procedures on the use of airport revenue are applicable to all public agencies that have received a grant for airport development since September 3, 1982, under the Airport and Airway Improvement Act of 1982

(AAIA), as amended repealed and recodified without substantive change Public Law 103–272 (July 5, 1994), 49 U.S.C. 47101, *et seq.* Grants issued under that statutory authority are commonly referred to as Airport Improvement Program (AIP) grants.

B. The policies and procedures do not apply to:

1. Operators of privately-owned airports that have received grants while under private ownership;

2. Operators of publicly-owned airports that have received grants only for planning (*i.e.*, not for land acquisition or development/construction of facilities).

C. FAA approval of the sale, or other transfer of ownership or control, of a publicly owned airport is required in accordance with the AIP sponsor assurances and general government contract law principles. The proceeds of a sale of airport property are considered airport revenue (except in the case of property acquired with Federal assistance, the sale of which is subject to other restrictions under the relevant grant contract or deed). When the sale proposed is the sale of an entire airport as an operating entity, the request may present the FAA with a complex transaction in which the disposition of the proceeds of the transfer is only one of many considerations. In its review of such a proposal, the FAA would condition its approval of the transfer on the parties' assurances that the proceeds of sale will be used for the purposes required under section 4717(b). Because of the complexity of an airport sale or privatization, the provisions for ensuring that the proceeds are used for the purposes of section 47107(b) may need to be adapted to the special circumstances of the transaction. For example, in the sale of a public airport to a private entity, FAA assumes that the public owner could not simply retain all proceeds for general use; however, it may also be inappropriate to simply return the proceeds to the private buyer to use for operation of the airport. Accordingly, the disposition of the proceeds would need to be structured to meet the requirements of section 47107(b) given the special conditions and constraints imposed by the fact of a change in airport ownership. In considering and approving such requests, the FAA will remain open and flexible in specifying conditions on the use of revenue that will protect the public interest and fulfill the requirements and objectives of section 47107(b) without unnecessarily interfering with the appropriate privatization of airport infrastructure.

It is not the intention of the FAA to effectively bar airport privatization initiatives through application of the statutory requirements for use of airport revenue. Proponents of a proposed privatization or other sale of airport property clearly will need to consider the effects of Federal statutory requirements on the use of airport revenue, fair and reasonable fees for airport users, disposition of airport property, and other policies incorporated in Federal grant agreements. The FAA assumes that the proposals will be structured from the outset to comply with all such requirements, and this proposed policy is not intended to add to the considerations already involved in a transfer of airport property.

Privatization proposals can be expected to be subject to great individual variation, however, and it may be difficult for prospective parties to a particular proposal to determine how the proposed transaction might be affected by various Federal requirements, including restrictions on the use of airport revenue. While any transfer of airport property or change of sponsorship at a Federally assisted airport will require FAA approval before implementation, the FAA invites parties to a prospective proposal for privatization or transfer of an entire airport to contact the FAA as early as possible in the process. At an early stage in the planning process the FAA could discuss the effect of Federal requirements and identify revisions that would avoid potential problems for the parties.

Early contact on prospective transfers would also assist the FAA. The FAA has received very few inquiries about specific proposals for the privatization of an entire airport, and we would welcome discussions on the effects of various requirements on any such transaction. (We note that the consideration by Orange County, California, of the sale of John Wayne Airport involved a transaction between two county agencies and did not involve a transfer to a private owner.) Discussion with parties interested in potential airport privatization projects will assist the FAA in developing future policy that promotes the objectives of Administration policy on public-private partnership for infrastructure development.

III. Related Requirements

A. Policy on Airport Rates and Charges

Before receiving an AIP grant for airport development, the sponsor must assure, pursuant to 49 U.S.C. 47107(a)(1), that the airport will be made available on fair and reasonable terms without unjust discrimination. Title 49 of the U.S.C. 47107(a)(13), similarly obligates the sponsor to maintain a fee and rental structure that will make the airport as self-sustaining as possible under the circumstances existing at the airport.

Pursuant to section 113 of the Federal Aviation Administration Authorization Act of 1994, the Federal Aviation Administration, in conjunction with the Office of the Secretary of Transportation, has established a "Policy Regarding Airport Rates and Charges," for use in determining whether an airport fee is reasonable. This policy lists and explains the principles that the Department of Transportation (DOT) and the FAA use in defining Federal policy with respect to fair and reasonable, and not unjustly discriminatory airport fees charged by Federally-assisted airports to air carriers and other aeronautical users. See, 60 FR 6906 (February 3, 1995); 60 FR 47012 (September 8, 1995). The policy also addresses the obligation to make the airport as self-sustaining as possible.

B. The 1994 and 1995 DOT Appropriations Acts

Section 328 of the 1994 DOT Appropriations Act and section 325 of the 1995 DOT Appropriations Act included provisions mandating that no funds provided by the Acts (i.e., all transportation funding) be made available to any State, municipality, or subdivision "* * * that [unlawfully] diverts revenue generated by a public airport." See, Public Law 103–122, 107 Stat. 1223 (October 27, 1993), and Public Law 103–331, 108 Stat. 2492 (September 30, 1994).

C. Rulemaking Proceedings

1. 14 C.F.R. Part 302, Subpart F—Rules Applicable to Proceedings Concerning Airport Fees

Also pursuant to section 113, the DOT recently published procedural rules for handling complaints by air carriers and foreign air carriers seeking a determination of the reasonableness of certain airport fees. It also establishes rules that would apply to requests by the owner or operator of an airport for such a determination. See, 60 FR 6919 (February 3, 1995).

2. Proposed 14 C.F.R. Part 16, "Rules of Practice for Federally Assisted Airport Proceedings

On June 9, 1994, a notice of proposed rulemaking was issued to establish rules of practice for the filing of complaints and adjudication of compliance matters involving Federally assisted airports. Pending completion of that rulemaking, FAA continues to employ existing 14 C.F.R. Part 13. *See,* section on "Sanctions for Noncompliance," below. See also, 59 FR 29880 (June 9, 1994); 59 FR 47568 (September 16, 1994).

D. Reporting Airport Financial Data

The format to be used in reporting certain financial data in accordance with section 111(a)(4) of the 1994 Authorization Act, 49 U.S.C. 47107(a), is currently being developed.

E. Compliance Supplement for Single Audits of State and Local Governments

In an effort to augment FAA's revenue monitoring capabilities, the agency intends to review and amend, as necessary, the audit procedures set forth in the Compliance Supplement for Single Audits of State and Local Governments to address the use of airport revenue. The FAA believes that the inclusion of appropriate indicators of revenue diversion in the suggested procedures for independent financial audits will enhance the effectiveness of agency compliance efforts.

IV. Statutory Requirements for the Use of Airport Revenue

A. The General Requirement, 49 U.S.C. § 47107(b)

The current provisions restricting the use of airport revenue are found at 49 U.S.C. 47107(b), as amended by Public Law 103–305. These provisions require the Secretary, prior to approving a project grant application for airport development, to obtain written assurances. Subsection (b)(1) requires the airport owner or operator to assure that:

> * * * local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of—
>
> (A) the airport;
>
> (B) the local airport system; or
>
> (C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

49 U.S.C. 47107(b)(1).

Subsection (b)(2) provides an exception to the requirements of Subsection (b)(1) for airport owners or operators having certain financial arrangements in effect prior to the enactment of the AAIA. This provision is commonly referred to as the "grandfather" provision. It states:

> Paragraph (1) of this subsection does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

49 U.S.C. 47107(b)(2).

B. New Statutory Revenue Diversion Prohibitions

In section 112 of the FAA Authorization Act of 1994, 49 U.S.C. § 47107(l)(2) (A–D), Congress expressly prohibited the diversion of airport revenues through:

1. Direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport;

2. Use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;

3. Payments in lieu of taxes or other assessments that exceed the value of services provided; or

4. Payments to compensate non-sponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

C. Passenger Facility Charges and Revenue Diversion

The Aviation Safety and Capacity Expansion Act of 1990 authorized the imposition of a passenger facility charge (PFC) of up to $3 per enplaned passenger, with the approval of the Secretary.

While PFC revenue is not characterized as "airport revenue" for purposes of this policy, specific statutory and regulatory guidelines govern the use of PFC revenue, as set forth at 49 U.S.C. 40117, "Passenger Facility Fees," and 14 CFR Part 158, "Passenger Facility Charges" (for purposes of this policy, the terms "passenger facility fees" and "passenger facility charges" are synonymous). These provisions are more restrictive than 49 U.S.C. 47107(b), in that they provide that PFC revenue may only be used to finance the allowable costs of approved projects. The PFC regulation specifies the kinds of projects that can be funded by PFC revenue and the objectives these projects must achieve to receive FAA approval for use of PFC revenue. They prohibit expenditure of PFC revenue for other than approved projects, or collection of PFC revenue in excess of approved amounts.

V. Definitions

A. Airport Revenue

All fees, charges, rents, or other payments received by or accruing to the sponsor (revenue) for any one of the following reasons are considered to be "airport revenue:"

(1) *Revenue from air carriers, tenants, transferees, and other parties.* Airport revenue includes all revenue received by the sponsor for the activities of others or the transfer of rights to others relating to the airport, including revenue received:

(a) for the right to conduct an activity on the airport or to use or occupy airport property;

(b) for the sale, transfer, or disposition of real airport property not acquired with Federal assistance or personal airport property not acquired with Federal assistance, or any interest in that property, including sale through a condemnation proceeding;

(c) for the sale of (or sale or lease of rights in) sponsor-owned mineral, natural, or agricultural products or water to be taken from the airport; or

(d) for the right to conduct an activity on, or for the use or disposition of, real or personal property or any interest therein owned or controlled by the sponsor and used for an airport-related purpose but not located on the airport;

(2) *Revenue from sponsor activities.* Airport revenue generally includes all revenue received by the sponsor for activities conducted by the sponsor itself as airport owner and operator, including revenue received:

(a) from any activity conducted by the sponsor on airport property acquired with Federal assistance;

(b) from any aeronautical activity conducted by the sponsor; or

(c) from any nonaeronautical activity conducted by the sponsor on airport property not acquired with Federal assistance, up to an amount appropriately attributable to the use of the property (such as the amount of rent that would be charged a commercial tenant).

B. Unlawful Revenue Diversion

Unlawful revenue diversion is the use of airport revenue for purposes other than the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, unless that use is grandfathered under 49 U.S.C. 47107(b)(2) and the use does not exceed the limits of the 'grandfather' clause. When such use is so grandfathered, it is known as lawful revenue diversion.

In many cases, in their consideration of the many details of a particular airport's financial decisions and use of airport funds, the FAA or the OIG may

find that the airport could have obtained a higher value for use of airport property by the sponsor, or could have paid the sponsor less for administrative services to the airport, for example. Technically, the difference in actual and ideal amounts could be considered unlawful revenue diversion under this policy. However, the FAA will not devote enforcement resources to situations in which the amounts involved are insignificant.

VI. Examples of Airport Revenue

A. Airport revenue includes, but is not limited to, revenue from:

1. service fees, landing fees, usage fees, fuel flowage fees;

2. proceeds from lease, rental, or other contractual agreements relating to the airport;

3. proceeds from the sale of fuel or other aviation products or services by the sponsor;

4. local taxes on aviation fuel enacted after December 30, 1987;

5. interest earned on investment of surplus, escrowed, or restricted airport funds;

6. subject to the Applicability provisions and except as provided for in subparagraph B., below, sale of airport property shown on the airport property map (commonly referred to as the Exhibit A in the grant application submission) including condemnation of property for another public purpose; and,

7. net income received from Federal surplus property conveyed to the sponsor for the development of income from non-aviation businesses.

B. While not considered to be airport revenue, the proceeds from the sale of land donated by the United States or acquired with Federal grants must be used in accordance with the agreement between the FAA and the sponsor. Where such an agreement gives the FAA discretion, FAA may consider this policy as a relevant factor in specifying the permissible use or uses of the proceeds.

VII. Uses of Airport Revenue

A. Permitted Uses of Airport Revenue

Airport revenue may be used for:

1. The capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property. Such costs may include reimbursements to a state or local agency for the costs of services actually received and documented, subject to the terms of this policy statement. Operating costs for an airport may be both direct and indirect and may include all of the expenses and costs that are recognized under the generally accepted accounting principles and practices that apply to the airport enterprise funds of state and local government entities.

2. The repayment to the airport owner (which may or may not be the sponsor) of funds contributed by the owner for capital and operating costs of the airport and not heretofore reimbursed.

3. Purposes other than capital and operating costs of the airport, the local airport system, or other local facilities owned or operated by the sponsor and directly and substantially related to the air transportation of passengers or property, if the "grandfather" provisions of 49 U.S.C. 47107(b)(2) are applicable to the sponsor and the particular use. Examples of grandfathered airport sponsors may include, but are not limited to, a port authority or state department of transportation which owns or operates other transportation facilities in addition to airports, and which have pre-September 3, 1982, debt obligations or legislation governing financing and providing for use of airport revenue for non-airport purposes. Such sponsors may have obtained legal opinions from their counsel to support a claim of grandfathering. Previous DOT interpretations have found the following examples of pre-AAIA legislation to provide for the grandfather exception:

(a) Bond obligations and city ordinances requiring a five percent "gross receipts" fee from airport revenues. The payments were instituted in 1954 and continued in 1968.

(b) A 1955 state statute for the assessing of a five percent surcharge on all receipts and deposits in an airport revenue fund to defray central service expenses of the state.

(c) City legislation authorizing the transfer of a percentage of airport revenues, permitting an airport-air carrier settlement agreement providing for annual payments to the city of 15 percent of the airport concession revenues.

(d) A 1957 state statutory transportation program governing the financing and operations of a multi-modal transportation authority, including airport, highway, port, rail, and transit facilities, wherein state revenues, including airport revenues, support the state's transportation-related, and other, facilities. The funds flow from the airports to a state transportation trust fund, composed of all "taxes, fees, charges, and revenues" collected or received by the state department of transportation.

(e) A port authority's 1956 enabling act provisions specifically permitting it to use port revenue, which includes airport revenue, to satisfy debt obligations and to use revenues from each project for the expenses of the authority. The act also exempts the authority from property taxes but requires annual payments in lieu of taxes to several local governments and gives it other corporate powers. A 1978 trust agreement recognizes the use of the authority's revenue for debt servicing, facilities of the authority, its expenses, reserves, and the payment in lieu of taxes fund.

B. Consideration of Lawful Diversion of Revenues in Awarding Discretionary Grants

Airport owners or operators who lawfully divert airport revenue in accordance with the "grandfather" provision should be aware that 49 U.S.C. 47115(f) requires the Secretary of Transportation to consider such usage as a factor militating against the approval of an application for discretionary funds when, in the airport's fiscal year preceding the date of application for discretionary funds, the Secretary finds that the amount of revenues used by the airport for purposes other than capital or operating costs exceeds the amount used for such purposes in the airport's first fiscal year ending after August 23, 1994, adjusted by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

VIII. Prohibited Uses of Airport Revenue

Prohibited uses of airport revenue include but are not limited to:

A. Direct or indirect payments, other than payments that reflect the value of services and facilities provided to the airport, that are not based on a reasonable, transparent cost allocation formula calculated consistently for other units or cost centers of government.

B. Use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems.

C. Payments in lieu of taxes, or other assessments, that exceed the value of services provided or are not based on a reasonable, transparent cost allocation formula calculated consistently for other units or cost centers of government.

D. Payments to compensate nonsponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

E. Loans of airport funds to a state or local agency at less than the prevailing rate of interest.

F. Land rental to, or use of land by, the sponsor for nonaeronautical purposes at less than the amount that would be charged a commercial tenant.

G. Impact fees assessed by a nonsponsoring governmental body that the airport sponsor is not obligated to pay or that exceed such fees assessed against commercial or other governmental entities.

IX. Monitoring and Compliance

A. Detection of Revenue Diversion

To detect whether airport revenue has been diverted from an airport, the FAA will depend primarily upon four sources of information:

1. Annual report on revenue use submitted by the sponsor under the provisions of 49 U.S.C. 47107(a)(19), as amended;

2. Findings of annual single audits conducted in accordance with OMB Circular A–128, "Audits of State and Local Governments;"

3. Investigation following a third party complaint; and

4. DOT Office of Inspector General audits.

B. Investigation of Revenue Diversion: No Formal Complaint Filed

When no formal complaint has been filed, but the FAA has an indication from one or more of these sources that airport revenue has been or is being diverted unlawfully, the FAA will notify the sponsor of the possible diversion and request that it respond to the FAA's concerns. The FAA action will depend on the response received from the sponsor:

1. *Admission of unlawful revenue diversion.* If the sponsor admits to unlawful diversion, the FAA will require the diverted amount and associated interest to be remitted to the airport account within a reasonable period of time. If the sponsor complies, the FAA will take no further action.

2. *Denial of revenue diversion or claim that diversion is "grandfathered."* If the sponsor denies that it has diverted airport revenue, or asserts that the diversion at issue is lawful under the exemption provisions of 49 U.S.C. 47107(b)(2), as amended, the FAA will review the information and arguments submitted by the sponsor.

(a) If the FAA determines that there is no unlawful diversion of revenue, the FAA will notify the sponsor and take no further action.

(b) If the FAA makes a preliminary finding that there has been diversion of airport revenue not exempted under Section 47107(b)(2), and the sponsor accepts that determination, the FAA will request the sponsor to take corrective action. If the sponsor complies, the FAA will take no further action.

3. *Continuing dispute.* If the FAA makes a preliminary finding that there has been diversion of airport revenue not exempted under Section 47107(b)(2), and the sponsor continues to dispute the FAA preliminary determination or does not take the corrective action requested by the FAA, the FAA will complete its investigation.

(a) If the FAA ultimately finds no occurrence of unlawful revenue diversion, the FAA will notify the sponsor and take no further enforcement action.

(b) If, after further investigation determined to be necessary, the FAA finds that there is reason to believe that there is or has been unlawful diversion of airport revenue that the sponsor refuses to terminate or correct, the FAA will issue an appropriate order proposing enforcement action.

4. *Audit or investigation by the Office of the Inspector General.* An indication of revenue diversion brought to the attention of the FAA in a report of audit or investigation issued by the DOT Office of the Inspector General (OIG) will be handled in accordance with paragraphs B.1 through B.3 above. However, the FAA will first respond to the OIG in accordance with established agency procedures and will resolve outstanding issues in the report before notifying the sponsor of the contents of the report and seeking corrective action.

C. Complaints Filed Under 14 CFR Part 13

When a formal complaint is filed against a sponsor for revenue diversion, the FAA will follow the procedures in part 13 for service of the complaint on the sponsor and investigation of the complaint. After review of submissions by the parties, investigation of the complaint, and any additional process provided in a particular case, the FAA will either dismiss the complaint or issue an appropriate order proposing enforcement action.

D. The Administrative Enforcement Process

Currently, enforcement of the requirements imposed on sponsors as a condition of the acceptance of Federal grant funds or property is accomplished through the administrative procedures set forth in 14 C.F.R. part 13, "Investigation and Enforcement Procedures." Under part 13, the FAA has the authority to receive complaints, conduct informal and formal investigations, compel production of evidence, and adjudicate matters of compliance within the jurisdiction of the Administrator. If, as a result of the investigative processes described in paragraphs B and C above, the FAA finds that there is reason to proceed with enforcement action against a sponsor for unlawful revenue diversion, an order proposing enforcement action is issued by the FAA and under 14 C.F.R. 13.20. That section provides for the opportunity for a hearing on the order.

E. Sanctions for Noncompliance

As explained above, if the FAA makes a preliminary finding that airport revenue has been unlawfully diverted and the sponsor declines to take the corrective action (which usually would involve crediting the diverted amount to the airport account with interest), the FAA will propose enforcement action. A decision whether to issue a final order making the action effective is made after hearing, if a hearing is elected by the respondent. The actions required by or available to the agency for enforcement of the prohibitions against unlawful revenue diversion are:

1. *Withhold future grants.* The Secretary may withhold approval of an application in accordance with 49 U.S.C. 47106(e) if the Secretary provides the sponsor with an opportunity for a hearing and, not later than 180 days after the later of the date of the grant application or the date the Secretary discovers the noncompliance, the Secretary finds that a violation has occurred. The 180-day period may be extended by agreement of the Secretary and the sponsor or in a special case by the hearing officer.

2. *Withhold approval of the modification of existing grant agreements that would increase the amount of funds available.* A supplementary provision in section 112 of the 1994 Authorization Act, 49 U.S.C. 47111(e), makes mandatory not only the withholding of new grants but also withholding of a modification to an existing grant that would increase the amount of funds made available, if the Secretary finds a violation after hearing and opportunity to cure.

3. *Withhold payments under existing grants.* The Secretary may withhold a payment under a grant agreement for 180 days or less after the payment is due without providing for a hearing. However, in accordance with 49 U.S.C. 47111(d), the Secretary may withhold a payment for more than 180 days only if he or she notifies the sponsor and

provides an opportunity for a hearing and finds that the sponsor has violated the agreement. The 180-day period may be extended by agreement of the Secretary and the sponsor or in a special case by the hearing officer.

4. *Withhold approval of an application to impose a passenger facility charge.* Section 112 also makes mandatory the withholding of approval of any new application to impose a passenger facility charge under 49 U.S.C. 40117. Subsequent to withholding, applications could be approved only upon a finding by the Secretary that corrective action has been taken and that the violation no longer exists.

5. *Terminate availability of all Federal transportation funds appropriated in Fiscal Years 1994 and 1995.* Provisions of the DOT Appropriations Acts for Fiscal Years 1994 and 1995 prohibit the award of funds to a state or local subdivision that diverts revenue generated by a public airport. This provision would prohibit payment on any Federal transportation grant, including grants for highway and transit projects.

6. *File suit in United States district court.* Section 112(b) provides express authority for the agency to seek enforcement of an order in Federal court.

7. *Assess civil penalties.* Under section 112(c) of Public Law 103–305, codified at 49 U.S.C. 46301(a) and (d), the Secretary has statutory authority to impose civil penalties up to a maximum of $50,000 on airport sponsors for violations of the AIP sponsor assurance on revenue diversion. The Secretary intends to use this authority only after the airport sponsor has been given a reasonable period of time, after a violation has been clearly identified to the airport sponsor, to take corrective action to restore the funds or otherwise come into compliance before a penalty is assessed, and only after other enforcement actions, such as withholding of grants and payments, have failed to achieve compliance. Any civil penalty action under this section would be adjudicated under 14 C.F.R. part 13, Subpart G.

Issued in Washington, DC on February 20, 1996.

David L. Bennett,

Director, Office of Airport Safety and Standards.

[FR Doc. 96–4270 Filed 2–23–96; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Emergency Evacuation Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss emergency evacuation issues.

DATES: The meeting will be held on March 21, 1996 at 9 a.m. Arrange for oral presentations by March 11, 1996.

ADDRESSES: The meeting will be held at McDonnell Douglas, 1735 Jefferson-Davis Highway, suite 1200, Crystal City, Virginia.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Office of Rulemaking, FAA, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held on March 21, 1996, at McDonnell Douglas, 1735 Jefferson-Davis Highway, suite 1200, Crystal City, Virginia. The agenda for the meeting will include:

- Opening Remarks.
- A review of the activities of the Performance Standards Working Group.
- A discussion of future activities and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by March 11, 1996, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Emergency Evacuation Issues or by bringing the copies to her at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on February 20, 1996.

Ava Robinson,

Assistant Executive Director for Emergency Evacuation Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–4264 Filed 2–23–96; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Technical Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Technical Management Committee meeting to be held March 13, 1996, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue NW., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Remarks; (2) Review and Approval of Summary of the Previous Meeting; (3) Systems Management Working Group Report to the Technical Management Committee; (4) Consider and Approve: a. Proposed Final Draft, Standards for Airport Security Access Control Systems, RTCA Paper No. 019–96/TMC–207 (previously distributed), prepared by SC–183; b. Proposed Final Draft, Design Guidelines and Recommended Standards for the Implementation and Use of AMS(R)S Voice Services in a Data Link Environment, RTCA Paper No. 040–96/TMC–209 (previously distributed), prepared by SC–165; c. Proposed Disposition of Draft, Change 2 to RTCA DO–181A, Minimum Operational Performance Standards for Air Traffic Control Radar Beacon System/Mode Select (ATCRBS/MODE S) Airborne Equipment, RTCA Paper No. 041–96/TMC–210 (previously distributed), prepared by SC–147; (5) Take Action on Open Items from Previous Meeting; Presentation by Mr. Frank Price, Cochair of the Informal South Pacific Air Traffic Services Coordinating Group (ISPACG); (6) Other Business; (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on February 20, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–4268 Filed 2–23–96; 8:45 am]

BILLING CODE 4810–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Sacramento Metropolitan Airport, Sacramento, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Sacramento Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 27, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA. 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA. 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas P. Engel, Director, Department of Airports, County of Sacramento, at the following address: 6900 Airport Boulevard, Sacramento, California 95837. Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Sacramento under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA. 94010–1303; Telephone: (415) 876–2805. the application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from Sacramento Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 22, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Sacramento was not substantially complete within the requirements of § 158.25 of Part 158. The following are required to complete the application: adequate information to support environmental determinations pursuant to Section 7 of the Endangered Species Act of 1973, as it relates to Terminal Road, Phase 1, and Terminal Road, Phase 2, Projects. The County of Sacramento has not submitted supplemental information to complete this application. The FAA will approve or disapprove the application, in whole or in part, no later than April 19, 1996.

The following is a brief overview of the use application number AWP–97–04–C–00–SMF.

Level of proposed PFC: $3.00.

Charge effective date: July 1, 1996.

Estimated charge expiration date: June 30, 2026.

Brief description of the impose and use projects: Terminal Roads Phase 1, Aircraft Apron Expansion, Terminal Roads Phase 2A, Terminal Roads Phase 2B, Rehabilitate Existing Roads, Airport System Revenue Bond Issuance Costs, and Debt Service Reserve Funding and Interest Expense for Projects in Passenger Facility Charge Application Number 4.

Total estimated net PFC revenue to be used on these use projects: $96,224,000.00.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA. 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Sacramento.

Issued in Hawthorne, California, on February 12, 1996.

Robert C. Bloom,

Acting Manager, Airports Division, Western Pacific Region.

[FR Doc. 96–4267 Filed 2–23–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Savannah International Airport, Savannah, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Savannah International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 27, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Campus Building, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Patrick S. Graham, Executive Director of the Savannah Airport Commission, at the following address: 400 Airways Avenue, Savannah, Georgia 31408.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Savannah Airport Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine M. Nelmes, Program Manager, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747; (404) 305–7148. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Savannah International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 15, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Savannah Airport Commission was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 5, 1996. The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Charge effective date: July 1, 1992.

Proposed charge expiration date: May 31, 2016.

Total estimated PFC revenue for projects in this application: $1,469,445.

Total estimated PFC revenue for the airport: $51,378,084.

Application number: 96–02–C–00–SAV.

Brief description of proposed project(s): Revise Master Plan; Helipad; reconstruct runway 9/27; north and south perimeter fence.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators filing or required to file FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Savannah Airport Commission.

Issued in Atlanta, Georgia on February 15, 1996.

Dell T. Jernigan,

Manager, Atlanta Airports District Office.

[FR Doc. 96–4265 Filed 2–23–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration, Federal Transit Administration

Participation in the Intelligent Transportation Systems Model Deployment Initiative

AGENCY: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), DOT.

ACTION: Notice; request for participation.

SUMMARY: On January 10, 1996 Secretary of Transportation Federico Peña announced a major Intelligent Transportation Systems (ITS) deployment goal, called Operation TimeSaver, to reduce the travel time of Americans by at least 15 percent through deployment of a complete Intelligent Transportation Infrastructure in 75 of the Nation's largest metropolitan areas. To support this goal, the DOT is seeking applications from public and private sector partnerships to demonstrate and showcase model deployments of a fully integrated, metropolitan-area Intelligent Transportation Infrastructure. These model deployments will demonstrate the benefits of integrated transportation management systems that feature a strong regional, multimodal traveler information services component.

Applications in response to this notice will be assessed, using the selection criteria set forth below, to determine (1) the proposed model deployment's potential for showcasing the benefits of an integrated Intelligent Transportation Infrastructure in metropolitan areas; (2) the proposed partnership's ability to achieve the goals of the model deployment within the required time frame; (3) the responsiveness of the proposed technical and management approaches for the model deployment; and (4) the appropriateness of the Federal role proposed for the project.

A Request for Information (RFI), published in the Commerce Business Daily on July 31, 1995, requested public comment on the proposed model deployment initiative, along with other issues potentially impacting ITS deployment. Responses to the RFI have been incorporated into this notice, which was developed jointly by the FHWA, the FTA, and the DOT ITS Joint Program Office.

DATES: Applications to participate in the model deployment initiative must be received by 4:00 p.m., e.t. on April 30, 1996.

ADDRESSES: Applications to participate in the model deployment initiative should be submitted directly to the Federal Highway Administration, Office of Traffic Management and ITS Applications, Model Deployment Team, HTV–3, 400 Seventh St. SW., Room 3400, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Toni Wilbur, FHWA, Office of Traffic Management and ITS Applications, Model Deployment Team, (202) 366–2199; or Mr. Walter Kulyk, FTA, Office of Mobility Innovation, (202) 366–4991; or Mr. Michael Halladay, ITS Joint Program Office, (202) 366–6503; or Mr. Robert Robel, FHWA Office of Contracts and Procurement, (202) 366–4227; or Ms. Beverly Russell, FHWA, Office of the Chief Counsel, (202) 366–1355, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The DOT has a strong interest in improving the performance of the Nation's surface transportation system. Thus, the Department has taken the lead in conducting ITS research, development, and operational testing activities to lay the foundation for the application of existing and emerging communications, surveillance, control strategies, and position location technologies to improve the efficiency of the surface transportation system. In addition, four locations were designated as ITS Priority Corridors by the DOT in March 1993 using the specific criteria contained in Section 6056(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) Public Law 102–240, 105 Stat. 1914 (1991), as amended. These corridors are—the Northeast Corridor centered along I–95 and stretching through six states from Maryland to Connecticut; a Midwest Corridor centered around the Chicago metropolitan area and stretching from Gary, Indiana, to Milwaukee, Wisconsin; the Houston, Texas, metropolitan area; and a southern California Corridor centered around I–5/I–10 from Los Angeles to San Diego. The ITS Priority Corridors are intended to provide national test beds for ITS systems and technologies, and, over the long term, establish an ITS infrastructure in the Nation's most congested areas that will support continuing deployment of ITS user services.

The DOT will continue to support ITS research, operational testing, and Priority Corridor activities to obtain the performance and technical data needed to support local investment decisions. Early results from this phase of the program have laid the foundation to begin deployment of a range of ITS products and services.

As a next step toward ITS deployment, the DOT is soliciting applications to establish two or three metropolitan area "model deployments" of an Intelligent Transportation Infrastructure that supports integrated transportation management systems and features a strong, regional, multimodal traveler information services component. These model deployments are to be demonstrations and showcases of the measurable benefits resulting from the application of an integrated, region-wide approach to transportation management and the provision of traveler information services. The model deployments will provide improved transportation management and increased levels of service to the traveling public through the integration of the traditional functions of traffic signal control; transit, freeway, and incident management; emergency services management; and regional, multimodal traveler information services. Where appropriate based on local needs, electronic fare payment and electronic toll collection functions should also be included.

It is recognized that interest in participating in the metropolitan area model deployment initiative is high. Due to funding limitations, only two or three sites can be selected, and the metropolitan area model deployment initiative will not be repeated in future years. However, preparation of a well thought-out model deployment application, whether selected for

participation in the DOT initiative or not, lays an important foundation of inter-jurisdictional, inter-agency and public/private cooperation that will greatly facilitate the deployment of an Intelligent Transportation Infrastructure in the metropolitan area. Thus, the preparation of applications, and the necessary underlying dialogue among relevant public and private entities, is encouraged.

Since metropolitan areas are the venues for much of the Nation's economic activity and offer the potential for early demonstration of ITS benefits, this first model deployment initiative is focused on metropolitan locations. A future model deployment initiative focusing on commercial vehicle operations is planned. Initiatives that focus on rural applications of ITS systems and technologies are also planned.

I. Objective

The objective of this initiative is to demonstrate two or three model deployments of a metropolitan area Intelligent Transportation Infrastructure that feature fully integrated transportation management systems and strong regional, multimodal traveler information services component. In addition to introducing the public to the benefits of ITS products and services, the sites would serve as "showcases" for key local decision makers across the U.S. and would support tours and seminars focused on the benefits of Intelligent Transportation Infrastructure investments by both the public and private sectors.

The model deployment sites will also provide a setting for conducting rigorous evaluations of the benefits of an integrated, metropolitan area Intelligent Transportation Infrastructure. Thus, the design of the model deployment must facilitate access to the data needed to conduct an evaluation. A separate initiative will fund one or more independent evaluation contractors to evaluate the effectiveness of the model deployments in meeting national ITS program goals as set forth in the National ITS Program Plan, dated March, 1995. These goals include—improving the safety and operational efficiency of the Nation's surface transportation system; reducing energy and environmental costs associated with traffic congestion; enhancing present and future productivity; enhancing the personal mobility, convenience and comfort of the surface transportation system; and creating an environment in which the development and deployment of ITS can flourish.

II. Approach

The DOT will select approximately two or three metropolitan areas for model deployments of an Intelligent Transportation Infrastructure that would support integrated operation and management of roadway and transit resources, and the provision of regional, multimodal traveler information services. The proposed model deployments should focus on the use of currently available technologies and strengthened institutional ties. Federal ITS funding will be used to promote partnerships with the private sector, particularly the telecommunications industry, and to integrate existing communications, traffic surveillance, and information management functions to support a regional transportation management system that features dissemination of current, multimodal traveler information.

Funding

The model deployment sites selected through this solicitation will be supported with some of the Federal funds appropriated for ITS in fiscal years (FYs) 1996 and possibly 1997. Federal ITS funding in FY 1996 for support of the model deployment initiative is expected not to exceed $20 million. The amount of available Federal ITS funding in FY 1997 is currently unknown. Thus, applications should be modular and discuss how the model deployment could be effectively implemented with only FY 96 funding, and expanded with additional funding in FY 97.

It is anticipated that available Federal ITS funding will support two, or possibly three, model deployment sites. Applications that offer the greatest potential for demonstrating all aspects of an integrated Intelligent Transportation Infrastructure (including both the institutional and technological aspects) for the least Federal ITS dollars will be considered the most desirable.

Federal ITS funding for the model deployment initiative would support—

1. System design and integration of the data collection elements of the existing transportation management functions (e.g., freeway management, traffic adaptive signal control, incident management, transit management and electronic fare collection, traveler information services, and electronic toll collection where applicable);

2. Creation of a regional multimodal transportation information system that would support public sector transportation management needs;

3. Creation of a data repository of current, multimodal traveler information for dissemination through a variety of delivery mechanisms;

4. Public relations and outreach activities to highlight the availability and benefits of the integrated transportation management system to local consumers, public transportation agencies, and other public and private organizations;

5. Project partners' activities in working with the independent evaluation contractor(s) during the system design, implementation, and operational phases to ensure that the system will provide the capabilities and data access needed to measure benefits.

Total Federal ITS funding is not to exceed 50% of the total cost of the model deployment initiative. The remaining 50% would be provided by a combination of non-ITS Federal-aid, State, local, and private funding. Specifics on funding requirements for the model deployment program are contained in Section III of this document under the heading, Financial Plan.

Eligibility

Participants in the model deployment program will be selected based upon the evaluation criteria contained in Section IV of this document. Partnerships representing any metropolitan area are eligible to apply, including metropolitan areas within one of the ITS Priority Corridors designated by the DOT under the criteria established by the ISTEA. If an ITS Priority Corridor location is selected, it is expected that any additional Federal ITS funding provided under the model deployment initiative would be used in conjunction with State, local, private, and previously authorized ISTEA Priority Corridor funds to achieve the objectives of the model deployment program.

Partnership Arrangements

The DOT will generally work with the lead public agency participating in the partnership (State, city or regional agency, depending on the site) to ensure an up front commitment to providing the needed Intelligent Transportation Infrastructure within the parameters of the emerging National ITS Architecture. The DOT will also ensure that needed institutional and partnership arrangements are in place and required funding is available, that the project can be completed within the required time frame, and that the private sector is involved as an infrastructure provider (e.g., communications), as a franchisee (e.g., for information dissemination), or in another capacity contributing significant resources to the project.

Schedule

It is the intent of the DOT that all proposed project agreements and institutional and partnership arrangements are in place by the conclusion of the National ITS Architecture development in July 1996 so that design and construction could begin immediately. The goal is for the sites to have an Intelligent Transportation Infrastructure that supports integrated transportation management systems and regional traveler information services, operational by the end of calendar year 1997.

Project Evaluation

The DOT will conduct a rigorous, independent evaluation of the consumer acceptance of traveler information services and products supported by the model deployments, and the impact and cost effectiveness of an integrated, metropolitan area Intelligent Transportation Infrastructure on achieving local and National ITS program goals. The independent evaluation may be conducted using existing DOT resources, or, as part of another solicitation, the DOT may contract with one or more independent evaluation contractor(s) to evaluate the model deployments.

Note: Successful respondents to the model deployment solicitation are not precluded from bidding on the independent evaluation contract, if such a solicitation is issued, but would not be allowed to participate in the evaluation of their own model deployment effort.

III. Instructions to Applicants

An application to participate in the model deployment initiative shall not exceed 75 pages in length including title, index, tables, maps, appendices, abstracts, and other supporting materials. A page is defined as one side of an 8½ by 11 inch paper, with a type font no smaller than 12 point. Applications greater than 75 pages will not be accepted. Twenty-five copies plus an unbound reproducible copy of the application shall be submitted. The cover sheet or front page of the application shall include the name, address, and phone number of an individual to whom correspondence and questions about the application may be directed.

Applications shall include both a Technical Plan and a Financial Plan that describe how the proposed initiative will meet the objectives of the model deployment program within the specified time frame and budget. Both the Technical and Financial Plans should describe a phased, modular approach that would effectively achieve the basic objectives of the model deployment initiative with only FY 1996 Federal ITS funding, and that could be expanded with additional FY 1997 Federal ITS funding to include other features or capabilities that would more effectively demonstrate and showcase a comprehensive, metropolitan area Intelligent Transportation Infrastructure.

Respondents are expected to provide the following information, to the extent applicable and appropriate:

Technical Plan

1. Inter-agency, Inter-jurisdictional, and Public/Private Cooperation and Partnership Arrangements

Applications should describe the existing institutional and partnership arrangements that will be integral to the performance of the functions required by the model deployment. The description should include multi-jurisdictional and multi-agency public sector partnerships, public/private sector partnerships, and private sector partnerships.

The application should also describe new institutional and partnership arrangements established to support full deployment of regional transportation management and travel information services. Emphasis should be placed on the anticipated impact of new institutional arrangements on the integration of existing transportation management systems and on the respondents ability to acquire, share, and use data across multi-modal and multi-jurisdictional boundaries. The application should describe the means to be used for converting Araw@ data into useful travel information, and the institutional arrangement for implementing these means.

All needed partnership arrangements and institutional agreements to support the proposed model deployment should be documented with signed Memorandums of Understanding (MOUs) that clearly define responsibilities and relationships. Copies of the MOUs should be included in the application.

Business relationships with the private sector, for example as infrastructure providers, or as providers of traveler information services or products, are strongly encouraged. The role of the private sector, and the financial and institutional arrangement(s) under which they are integrated into the project, must be clearly described and documented with signed MOUs.

Partners are also strongly encouraged to seek participation from certified Minority Business Enterprise firms, Women Business Enterprise firms, Disadvantaged Business Enterprise firms, Historically Black Colleges and Universities, Hispanic Serving Institutions, and other minority colleges.

2. Technical Approach for the Metropolitan Area ITS Model Deployment

Applications should provide a concise description of the proposed operational concept for the metropolitan area model deployment that will build on existing infrastructure and institutional arrangements to provide an Intelligent Transportation Infrastructure that supports *integrated* transportation management systems and the delivery of regional, multimodal traveler information services. Applications should describe the methods and capabilities included in the design of the model deployment that will allow for the measurement of expected benefits.

Applications should also specifically describe the transportation management functions, capabilities, and infrastructure that are currently planned and funded, or must be added, upgraded, or enhanced to support the model deployment, in the following areas: Traffic signal control, freeway management, transit management, incident management, regional, multimodal traveler information services, electronic fare payments (if applicable), and electronic toll collection (if applicable).

Systems integration and enhanced data/information interconnectedness supporting improved transportation management and the generation of traveler information services are crucial elements of the model deployment program. Applications should provide a comprehensive but concise description of the enhanced systems integration and data fusion/integration capabilities that will be used to interconnect existing or proposed communication channels to support improved performance of ITS transportation management functions and the provision of regional multimodal traveler information services.

The proposed system should include provisions for adherence to the privacy principles developed by, and available from, ITS AMERICA, 400 Virginia Avenue SW, Suite 800, Washington, D.C. 20024, telephone (202) 484–4847. The document is also available on the Internet at http://weber.ucsd.edu/~pagre/its-privacy.html. Where the privacy principles conflict with applicable Federal and state law, the latter shall prevail.

3. Management and Staffing Plan

Applications should include a management and staffing plan that focuses on successfully addressing the following:

(a) Timing—A key goal of the metropolitan area ITS model deployment program is to have an operational system in place supporting improved transportation management and regional traveler information services by the end of calendar year 1997. Thus, the application should provide a management plan, schedule, and evidence of a commitment to have the system operational within 18 months of the award of funds.

(b) Compatibility with the local transportation planning and environmental clearance processes—Activities required to implement the proposed model deployment within the specified time frame should be compatible with existing transportation plans and programs. Endorsement by the Metropolitan Planning Organization (MPO) that the proposed project(s) is consistent with the adopted plan and Transportation Improvement Program (TIP) for the region is required prior to the award of federal funds.

(c) Staffing—The application should include a commitment to hire or assign a full-time program manager and adequate full-time staff to the project to ensure timely deployment and operation of an integrated system. Qualifications of proposed staff should be included in the application.

(d) Partnership arrangements—The management plan should include a clear description of the lines of responsibility, authority, and communication among the participants in the model deployment.

(e) Operations and maintenance—The application should include a commitment and operational plan to provide long-term operations and maintenance of the model deployment for at least 5 years after completion of the Federal initiative.

4. Description and Estimate of the Transportation Impacts of the Existing Metropolitan Area ITS Functions

Applications should describe the existing ITS travel information services and transportation management functions, as appropriate, in the metropolitan area, and their estimated impacts on transportation service and performance. Applications should focus on descriptions of the existing data and information integration schemes which allow interaction, if any, among these various functions:

(a) Traffic Signal Control: The description of the metropolitan area's existing traffic signal control functions should address capabilities that might include, but need not be limited to—

1. Adjusting "green" time for each approach to respond to demand, and coordinating signal operations to maximize person and vehicular throughput;

2. Implementing "time of day" signal timing patterns to optimize operations along major arterial routes throughout signalized networks;

3. Operational (or currently funded plans for Transitioning to) traffic signal systems with adaptive, "real-time" response capabilities;

4. Using advanced technologies to increase safety at railroad and light rail transit grade crossings;

5. Providing priority routing for emergency services vehicles;

6. Coordinated/integrated operation of arterial and freeway control systems;

7. Demonstrated inter-jurisdictional and inter-agency cooperation and the sharing of traffic flow data to expand signal coordination on a regional basis.

(b) Freeway Management: The description of the metropolitan area's existing freeway management functions should address capabilities that might include, but need not be limited to—

1. Monitoring traffic conditions on the freeway system;

2. Identifying recurring and non-recurring flow impediments;

3. Implementing control and management strategies, such as ramp metering or lane control;

4. Providing travelers with timely, critical information through infrastructure-based dissemination means currently in use in the area (e.g., changeable message signs, highway advisory radio, etc.);

5. Providing other transportation agencies and adjoining jurisdictions with traffic flow information that has the potential for impacting on their operations.

(c) Transit Management: The description of the metropolitan area's existing transit management functions should address capabilities that might include, but need not be limited to—

1. Managing transit vehicle fleets through the use of hardware/software systems, both on-board and dispatching center-based;

2. Application of automatic vehicle location, advanced communication, passenger counting, computer-aided dispatching, electronic vehicle diagnostic and security management technologies;

3. Providing real-time transit information to the traveling public and other agencies performing related transportation management functions;

4. Providing paratransit services and flexible schedule services.

(d) Incident Management: The description of the metropolitan area's existing resources and operational concept for proactively managing incident response should address capabilities that might include, but need not be limited to—

1. Accurately detecting and verifying the location of incidents occurring on freeways and major arterial routes;

2. Assisting emergency vehicles to the incident location;

3. Clearing incidents and restoring normal traffic flows while concurrently ensuring safety and optimal emergency unit access;

4. Maintaining effective and commonly accepted policies governing the roles of emergency response, law enforcement, incident clearance and traffic control entities both within the metropolitan area and the region.

(e) Electronic Fare Payments (if applicable): The description of the metropolitan area's existing electronic fare payment functions should address capabilities that might include, but need not be limited to—

1. Use (or planned and funded implementation) of payment systems not requiring exact change;

2. Use (or planned and funded implementation) of a single fare payment medium for public transportation services, perhaps including paratransit operations, publicly subsidized parking (park and ride), publicly or privately operated parking facilities, or toll facilities.

(f) Electronic Toll Collection (if applicable): The description of the metropolitan area's existing electronic toll collection functions should address capabilities that might include, but need not be limited to—

1. Use of electronic toll collection systems that enable toll payment without requiring a vehicle to stop;

2. Implementation of systems that provide vehicle classification and data collection/storage for billing;

3. Regional coordination of toll collection enabling cross jurisdictional electronic payment;

4. Use of data provided by transponder-equipped vehicles to provide travel times or other data to support transportation management functions.

(g) Multimodal Traveler Information Services: The description of the metropolitan area's regional, multimodal traveler information

services should address all aspects of this activity to the extent that they currently exist or are funded and planned for the near future. There is special interest in gaining a clear understanding of inter-jurisdictional arrangements and private sector roles, if any, in providing traveler information. The nature of institutional arrangements resulting in the provision of travel-related data streams, and/or processed information, from public sources to private sector entities is of particular interest.

5. Evaluation Plan

Applications should include a draft evaluation plan that demonstrates an understanding of the importance of ensuring that the proposed system provides the capabilities and data access needed to measure the expected benefits of the model deployment. Applications should describe low-risk methods to work with the independent evaluation contractor(s) to ensure that benefits are measurable. A demonstrated understanding of the role of the evaluation should be evident in the organizational and management approach of the application.

Applications should identify the goals of the proposed model deployment concept in terms as explicit as possible (e.g., reduce congestion by 10 percent when measured against a baseline of current levels of service). If available, applications should provide information on demonstrated benefits of existing transportation management functions already in place (e.g., favorable benefit/cost ratios, reduced congestion, increased safety, etc.).

In the absence of existing baseline data to support a rigorous evaluation of the model deployment, applications should provide a draft plan for collecting these data. Refinement of the draft plan and actual data collection will be the responsibility of the independent evaluation contractor.

6. National ITS System Architecture

Applications should provide a statement of intent to implement and demonstrate a system that is consistent with the National ITS Architecture, including any national ITS standards, protocols, or standards requirements as these emerge from the final stages of the National ITS Architecture Development Program. Paper copies of the Architecture Definition Documents, the draft Standards Requirements Document, and the Standards Development Plan from the Architecture Development Program are available from ITS AMERICA, 400 Virginia Avenue SW, Suite 800, Washington, D.C. 20024, telephone (202) 484–4847. Electronic copies are available on the ITS AMERICA Internet Home Page, http://www.itsa.org. These documents provide insight into the definition of the National Architecture, and the emerging approaches being taken towards standardizing interfaces that would support the integration of transportation management components.

Financial Plan

The application shall provide an in-depth description and assessment of the total cost of achieving the objectives of the model deployment initiative, and the partnership's plans for raising the matching funds required by this solicitation. The Financial Plan should describe a phased approach that delineates what will be accomplished with only FY 96 Federal ITS funding, and what additional features or capabilities will be added with additional Federal ITS funding in FY 97.

The application shall provide a statement of commitment from the proposed project partners that required funding levels will be available. All financial commitments, from both the public and private sectors, should be documented in signed MOUs and included in the application.

Based on the assumption that adequate funding, comprised of no more that 50 percent Federal ITS funds, plus locally matched amounts is available to support the model deployment, applications should provide a comprehensive but concise plan for design, acquisition (including innovative contracting procedures such as design-build), construction, and/or other procurement actions to improve the systems integration of the functions needed to support a regional, metropolitan area Intelligent Transportation Infrastructure. These functions include traffic signal control, freeway management, transit management, incident management, emergency response, railroad grade crossing safety, traveler information services for users in the metropolitan area and the surrounding region, and, if applicable, electronic toll collection, and electronic fare payment.

The application shall provide a sound financial plan for continued long-term operations and maintenance of the system for at least 5 years following completion of the Federal ITS model deployment initiative in December 1997.

The budget should show the requested Federal ITS funding and proposed partnership match funding by fiscal year for the activities shown on the tables below. The matching funds should be further divided into public and private contribution amounts in the tables, as well as the source and type of contribution described in the application.

TOTAL MODEL DEPLOYMENT FUNDING

Activities	Total amount		Source and description of matching funds	
	Federal ITS funds	Matching funds	Public	Private
Design				
Procurement/Deployment				
Operation/Maintenance				
Evaluation Support				
Project Management				
Outreach/Showcasing				
Total				

FY 96 MODEL DEPLOYMENT FUNDING

Activities	FY 96 funding		Source and description of matching funds	
	Federal ITS funds	Matching funds	Public	Private
Design				
Procurement/Deployment				
Operation/Maintenance				
Evaluation Support				
Project Management				
Outreach/Showcasing				
Total				

FY 97 MODEL DEPLOYMENT FUNDING

Activities	FY 97 funding		Source and description of matching funds	
	Federal ITS funds	Matching funds	Public	Private
Design				
Procurement/Deployment				
Operation/Maintenance				
Evaluation Support				
Project Management				
Outreach/Showcasing				
Total				

NON-FEDERAL ITS FUNDING FOR CONTINUED OPERATIONS AND MAINTENANCE, FY 1998 THRU FY 2002 BY FISCAL YEAR

FY 98		FY 99		FY 00		FY 01		FY 02	
Amount	Source	Amount	Source	Amount	Source	Amount	Source	Amount	Source

Note to applicants: In accordance with § 6058 of the ISTEA (105 Stat. 1914, 2194), the maximum share of a project funded from Federal funds, including ITS funds, cannot exceed 80 percent. In order to maximize available Federal ITS dollars and be consistent with agency policy, prospective partners in a model deployment must increase their cost share to 50 percent. Additional funds provided over the statutorily required 20 percent minimum may come from a variety of funding sources and may include the value of federally-supported projects directly associated with the model deployment. Note that funding identified to support operations and maintenance of the system beyond the components supporting the model deployment, or following completion of the Federal ITS model deployment initiative in FY 97, will not be considered as part of the partnership's cost share contribution.

The statutorily required 20 percent cost share must be from non-federally derived funding sources and must consist of either cash, substantial equipment contributions that are wholly utilized as an integral part of the project, or personnel services dedicated full-time to the model deployment project for a substantial period, as long as such personnel are not otherwise supported with Federal funds. The non-federally derived funding may come from State, local government, or private sector partners. In an ITS partnership, as with other DOT cost-share contracts, it is inappropriate for a fee to be included in the proposed budget as part of a partners' contribution to the project. This does not prohibit appropriate fee payments to vendors or others who may provide goods or services to the partnership. It also does not prohibit business relationships with the private sector which result in revenues from the sale or provision of ITS products or services.

The DOT, the Comptroller General of the U.S., and, if appropriate, the States have the right to access all documents pertaining to the use of Federal ITS funds and non-Federal contributions. Non-Federal partners must submit sufficient documentation during final negotiations and on a regular basis during the life of the model deployment project to substantiate these costs. Such items as direct labor, fringe benefits, material costs, consultant costs, subcontractor costs, and travel costs should be included in that documentation.

IV. Evaluation Criteria

Applicants must submit an acceptable Technical Plan and Financial Plan that both provide sound evidence that the proposed partnership can successfully meet the objectives of the model deployment initiative. The following criteria, listed in decreasing order of relative importance, will be used in selecting metropolitan areas for the model deployment program. Note that criteria numbers 3, 4 and 5 have equal importance in the evaluation.

Technical Plan

1. Institutional Integration and Partnership Arrangements (25 Percent)

Applications will be evaluated on the following criteria:

(a) Demonstration of a strong commitment by the State, local operating agencies, Metropolitan Planning Organization, and relevant public transportation agencies to the deployment and operation of an integrated multimodal transportation

management system that takes advantage of private resources as much as possible. In addition to the State and Metropolitan Planning Organizations, additional points will be awarded to those applications demonstrating strong commitment by those entities responsible for freeway management, arterial street management, public transportation services, incident management, and emergency management services as appropriate.

(b) Demonstration of a high degree of existing cooperation and information sharing among State and local traffic, transit, emergency management, and other relevant public agencies.

(c) Demonstration of established working relationships among city, county, and State transit and traffic agencies for management of transportation and the dissemination of travel information services.

(d) Demonstration of a public/private partnership committed to the development of a comprehensive, regional transportation management system that supports the collection and dissemination of current, intermodal traveler information from a variety of sources and through a variety of delivery mechanisms.

(e) Partnerships that involve the commitment and participation of the telecommunications industry and private-sector information service providers, as appropriate, will receive additional points. Examples of such cooperation might include the provision of privately-owned communications capacity to transportation operating agencies, partnerships involving radio or television traffic information services, or integration of traveler information applications with other privately-provided information delivery systems such as cable TV, interactive video, America Online, CompuServe, Prodigy, etc. An estimate of the number (or percentage) of homes, businesses and/or vehicles reached with such services should be provided. Private sector information delivery mechanisms or products at the participating site should be innovative and state-of-the-art, but not require additional development or extensive modification to support the traveler information system.

(f) Demonstration of participation by certified Minority Business Enterprise firms, Women Business Enterprise firms, Disadvantaged Business Enterprise firms, Historically Black Colleges and Universities, Hispanic Serving Institutions, or other minority colleges.

2. Technical Approach To Achieve Deployment of a Full Complement of Metropolitan Area ITS Functions: (20 Percent)

Applications will be evaluated on the following criteria:

(a) A technical approach that responds to demonstrated congestion, safety, and mobility needs deemed critical to the metropolitan area, and as documented in studies performed through the local transportation planning process, as part of an FHWA sponsored ITS Early Deployment Planning study, or equivalent.

(b) An operational concept and technical approach that will maximize the integration and information sharing among existing transportation management functions to achieve the goal of providing the traveling public with improved transportation management and regional, multimodal traveler information services.

3. Management and Staffing Plan: (15 Percent)

Applications will be evaluated based on the following criteria:

(a) A sound management plan and organizational approach that will ensure that an integrated transportation management system, featuring regional, multimodal traveler information services, is operational by December 1997.

(b) Applications should demonstrate that projects to support the model deployment initiative have been, or can be, included in the local transportation planning process as needed to ensure that the system is operational by December, 1997. Examples include demonstration that needed major capital improvement projects are included in a conforming Transportation Plan and listed within the annual element of the TIP for the region. Applications should also demonstrate that initiatives key to the model deployment have been, or can be, advanced through both systems and project-level environmental review processes as appropriate.

(c) A commitment to hire or assign a full-time program manager and adequate full-time staff to the project to ensure timely deployment of the project. Proposed staff should have expertise in relevant technical areas such as systems engineering and integration; telecommunications; traffic, freeway and transit management; computer science; and information management.

4. Level of Sophistication and Degree of Integration of Existing Metropolitan Area ITS Functions: (15 Percent)

Applications will be evaluated based on the degree to which both public and privately-provided communications, traffic surveillance, information management, and other components are already in place to support as many of the following ITS functions as appropriate to the specific metropolitan area: traffic signal control, freeway management, transit management, incident management, regional, multimodal traveler information services, electronic fare payment, and electronic toll collection.

Examples of specific indicators of the level of sophistication of the existing transportation management functions might include—

(a) Proactive, coordinated freeway and traffic management to respond to recurring and non-recurring congestion;

(b) The use of ITS technologies to improve safety at railroad grade crossings;

(c) Electronic sharing of traffic flow data with the general public and among adjoining jurisdictions and agencies within a metropolitan area to provide regional traffic signal coordination;

(d) A repository of current, comprehensive roadway and transit performance data that supports pre-trip and en-route traveler information services;

(e) A regional policy and operations agreement that defines specific responsibilities for all aspects of incident management and emergency response;

(f) The use of ITS technologies to improve transit fleet management and performance;

(g) Electronic sharing of real time transit information with the general public (e.g., scheduling information, on-time performance, etc.);

(h) The use of electronic toll collection systems to reduce congestion at toll facilities, and perhaps to monitor traffic flow;

(i) The use of electronic fare payment systems to increase customer convenience.

5. Draft Plan for Evaluation of the Benefits of the Model Deployment: (15 Percent)

Applications will be evaluated based upon the respondents' draft evaluation plan and the importance placed by the respondents on the ability to measure the benefits expected from the model deployment. Specific indications of the importance of measurable benefits are—

(a) Organizational and management approach for ensuring the proposed system provides the capabilities needed to measure the expected benefits of the model deployment;

(b) A draft plan for collecting baseline data from the existing system before implementation of the model deployment. (Note that actual data collection will be the responsibility of the independent evaluation contractor);

(c) Organizational and management approach for conducting their part of evaluation activities;

(d) Demonstrated understanding of the role of evaluation in the model deployment initiative;

(e) Respondent's proposed methods for interfacing the system design process with the system evaluation process.

6. National ITS Systems Architecture: (10 Percent)

Applications will be evaluated based on a demonstrated understanding of the on-going National ITS Systems Architecture development effort, and a commitment to showcasing the architecture, especially focussing on how an integrated transportation management system will be designed with appropriate communications and interfaces consistent with the national architecture.

Financial Plan

Applications will be evaluated based on the following criteria:

(a) A sound financial plan to support timely deployment of the project and continued, long-term operations and maintenance of the system. Applications which provide a strong element of innovative financing, and/or a strong commitment by the private sector to share in funding project development and operations, will receive additional points in the scoring.

(b) A realistic identification of needed improvements or extensions to the communications, surveillance, data collection capabilities, and/or transportation management functions needed to support a fully integrated transportation management system as required by the model deployment program. Applications should identify already designated or available Federal-aid, State, local and/or private funding to provide these needed improvements or extensions.

(c) A clear identification of the proposed funding for the project, and a commitment that no more than 50% of the total project cost will be supported by Federal ITS funds.

Authority: 23 U.S.C. 315; 49 CFR 1.48; Pub. L. 102-240, Secs. 6051-6059.

Issued on: February 7, 1996.

Rodney E. Slater,

Federal Highway Administration.

Gordon J. Linton,

Federal Transit Administration.

[FR Doc. 96-4184 Filed 2-23-96; 8:45 am]

BILLING CODE 4910-13-P

Research and Special Programs Administration

[Docket PS-147]

Notice of Request for Reinstatement of an Expired Information Collection

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Research and Special Programs Administration's (RSPA) intention to request reinstatement of an information collection in support of the Office of Pipeline Safety (OPS) for Recordkeeping for Liquid Natural Gas (LNG) Facilities.

DATES: Comments on this notice must be received on or before April 26, 1996.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, (202) 366-4046.

SUPPLEMENTARY INFORMATION:

Title: Recordkeeping for Liquid Natural Gas (LNG) Facilities.

OMB Number: 2137-0048.

Expiration Dote of Approval:

Type of Request: Reinstatement of an information collection.

Abstract: 49 USC 60103 Standards for liquefied natural gas pipeline facilities delegates the responsibility for ensuring safe operation of LNG facilities to the Secretary of Transportation. Regulations for enforcing this legislation are found in 49 CFR 193 Liquefied Natural Gas Facilities: Federal Safety Standards. These regulations include recordkeeping requirements that allow Federal and State inspectors to ensure that these facilities are operated and maintained in a safe manner.

Estimate of Burden: The average burden hours per response is 120.

Respondents: LNG facility operators.

Estimated Number of Respondents: 150.

Estimated Number of Responses per Respondent: 400.

Estimated Total Annual Burden on Respondents: 18,000 hours.

Copies of this information collection can be reviewed at the Dockets Unit, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques. Send comments to Marvin Fell, OPS, RSPA, U.S. Department of Transportation, 400 Seventh Street SW., Room 2335, Washington, DC. 20590.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also be a matter of public record.

Issued in Washington, DC on February 16, 1996.

Cesar De Leon,

Deputy Associate Administrator, Office of Pipeline Safety.

[FR Doc. 96-4185 Filed 2-23-96; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

February 15, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Special Request: In order to conduct the survey described below in early March 1996, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by February 23, 1996. To obtain a copy of this information collection, please write to the IRS Clearance Officer at the address listed below. Internal Revenue Service (IRS)

OMB Number: 1545-1432.

Project Number: PC:V 96-001-G.

Type of Review: Revision.

Title: Performance Development System Customer Satisfaction Survey.

Description: The survey will be used to determine, before the targeted development/training experiences and Performance Development System (PDS) process are made available on a nationwide basis, whether they have a positive effect on the level of taxpayer satisfaction. The results of the survey will be used to evaluate the PDS process in decisions regarding its nationwide roll-out.

Respondents: Individuals or households.

Estimated Number of Respondents: 17,300.

Estimated Burden Hours Per Respondent: 2 minutes, 15 seconds.

Frequency of Response: Other.

Estimated Total Reporting Burden: 649 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–4245 Filed 2–23–96; 8:45 am]

BILLING CODE 4830–01–P

Submission for OMB Review; Comment Request

February 12, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0078.

Form Number: CF 1302 and CF 1302A.

Type of Review: Reinstatement.

Title: Cargo Declaration (1302); and Cargo Declaration (Outward with Commercial Forms) (1320A).

Description: Customs Forms 1302 and 1302A are used by the master of a vessel to list all inward cargo onboard and for the clearance of all cargo on board with commercial forms.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 5,600.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 11,662 hours.

Clearance Officer: Norman Waits, (202) 927–1551, U.S. Customs Service, Printing and Records Management Branch, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Monagement Officer.

[FR Doc. 96–4244 Filed 2–23–96; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

Proposed Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–SF, U.S. Income Tax Return for Settlement Funds (Under Section 468B).

DATES: Written comments should be received on or before April 26, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Settlement Funds (Under Section 468B).

OMB Number: 1545–1394.

Form Number: 1120–SF.

Abstract: Form 1120–SF is used by settlement funds to report income and taxes on earnings of the fund. The fund may be established by court order, a breach of contract, a violation of law, an arbitration panel, or the Environmental Protection Agency. The IRS uses Form 1120–SF to determine if income and taxes are correctly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of OMB approval.

Affected Public: Businesses.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 26 hrs., 43 min.

Estimated Total Annual Burden Hours: 26,710.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: February 14, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–4175 Filed 2–23–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: National Cemetery System, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery System (NCS), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Number: 2900–0357.

Title and Form Number: Gravesite Reservation Survey, VA Form Letter 40–12.

Type of Information Collection: Extension of a currently approved collection.

Needs and Uses: The form letter is used to determine whether individuals holding gravesite reservations in national cemeteries wish to continue the reservation and whether their eligibility for the reservation has been affected.

Affected Public: Individuals or households.

Estimated Annual Burden: 833 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Biennially.

Estimated Number of Respondents: 10,000 respondents.

ADDRESSES: Copies of these submissions may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–4412.

Comments and recommendations concerning the submissions should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer by no later than March 27, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 565–4412.

Dated: February 14, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–4195 Filed 2–23–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: National Cemetery System, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery System (NCS), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Number: 2900–0546.

Title and Form Number: Adjacent Gravesite Set-Aside Survey (1 Year), VA Form Letter 40–40.

Type of Information Collection: Extension of a currently approved collection.

Needs and Uses: The information requested by the form letter is needed to determine if individuals holding gravesite set-asides in national cemeteries wish to retain the set-aside and whether their eligibility for the set-aside has been affected.

Affected Public: Individuals or households.

Estimated Annual Burden: 6,334 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 38,000 respondents.

ADDRESSES: Copies of these submissions may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–4412.

Comments and recommendations concerning the submissions should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer by no later than March 27, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 565–4412.

Dated: February 14, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–4194 Filed 2–23–96; 8:45 am]

BILLING CODE 8320–01–P

Sunshine Act Meetings

Federal Register
Vol. 61, No. 38
Monday, February 26, 1996

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, February 29, 1996

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, February 29, 1996, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, Subject

1—International—Title: Preemption of Local Zoning Regulation of Satellite Earth Stations/Implementation of Section 207 of the Telecommunications Act of 1996 (IB Docket No. 95–59). Summary: The Commission will consider revisions to its rule preempting certain local zoning regulation of satellite earth station antennas. It also proposes an additional rule preempting private, non-governmental, restrictions that impair reception by satellite antennas less than one meter in diameter.

2—International—Title: Streamlining the International Section 214 Authorization Process and Tariff Requirements (IB Docket No. 95–119). Summary: The Commission will consider streamlining the international Section 214 authorization process and tariff requirements.

3—Office of Engineering and Technology—Title: Amendment of Parts 74, 78 and 101 of the Commission's Rules to Adopt More Flexible Standards for Directional Microwave Antennas. Summary: The Commission will consider proposing to modify the fixed service microwave rules to make them compatible with new emerging technologies for directional antennas.

4—Common Carrier—Title: Federal-State Joint Board on Universal Service. Summary: Pursuant to the Telecommunications Act of 1996, the Commission will consider referring the issue of the definition of "universal service" to the Federal State-Joint Board.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Service, Inc., at (202) 857–3800. Audio and video tapes of this meeting can be purchased from Telspan International at (301) 731–5355.

Dated: February 22, 1996.
Federal Communications Commission.
William F. Caton,
Acting Secretary.

[FR Doc. 96–4427 Filed 2–22–96; 2:19 pm]
BILLING CODE 6712–01–P–M

Corrections

Federal Register
Vol. 61, No. 38
Monday, February 26, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–119–001]

Equitrans, L.P.; Notice of Corrected Tariff Sheets Filing

Correction

In notice document 96–3774 appearing on page 6638 in the issue of Wednesday, February 21, 1996, the docket number should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP95-11-003]

Williams Natural Gas Company; Notice of Amendment

Correction

In notice document 96–3643 beginning on page 6366 in the issue of Tuesday, February 20, 1996 the Docket number should have appeared as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. FR–3933–N–03]

Fair Market Rents for the Section 8 Housing Assistance Payments Program—Fiscal Year 1996

Correction

In rule document 96–3763 beginning on page 6690 in the issue of Wednesday, February 21, 1996, make the following correction:

On page 6690, in the third column, in the third paragraph, in the seventh line, "not" shoud read "now".

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Correction

In notice document 96–3170 beginning on page 5570 in the issue of Tuesday, February 13, 1996, make the following correction:

On page 5571, in the second column, in the seventh line from the top, "(60 days from publication)" should read "April 15, 1996".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 25, 36, and 97

[Docket No. 28404; Notice No. 95–17]

RIN 2120–AD40

1–g Stall Speed as the Basis for Compliance with Part 25 of the Federal Aviation Regulations

Correction

In proposed rule document 96–415 beginning on page 1260 in the issue of Thursday, January 18, 1996, make the following corrections:

1. On page 1260, in the second column, under the heading **Background**, in the first paragraph, in the first line "(V^2)" should read "(V_S)".

2. On page 1261, in the second column, in the first paragraph, the fifth line from the end of paragraph should read "g stall speeds to obtain minimum operating speeds equivalent to the speeds that have been found acceptable in ".

§25.103 [Corrected]

3. On page 1265, in the third column, §25.103(c), in the second line from the bottom, "patch" should read "path".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8632]

RIN 1544-AM00

Section 482 Cost Sharing Regulations

Correction

In rule document 95–30617 beginning on page 65553 in the issue of Wednesday, December 20, 1995, make the following correction:

§ 1.482-0 [Corrected]

1. On page 65557, in the 2d column, in § 1.482-0, the 24th line should read "(d) Costs.".

2. On the same page, in the 3d column, in the same section, the 22d line should read "(8) Examples.".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8647]

RIN 1545-AS51

Withholding of Tax on Dispositions of U.S. Real Property Interests by Foreign Persons

Correction

In rule document 95–30871 beginning on page 66076 in the issue of Thursday, December 21, 1995, make the following correction:

§ 1.1445-5 [Corrected]

On page 66077, in § 1.1445-5(c)(1)(iii)(B), in the table, in the last column, in the first and last entries replace the leaders with "-0-".

BILLING CODE 1505–01–D

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Part II

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

February 1, 1996.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of February 1, 1996, of three deferrals contained in one special message for FY 1996. This message was transmitted to Congress on October 19, 1995.

Rescissions

As of February 1, 1996, no rescission proposals were pending before the Congress.

Deferrals (Attachments A and B)

As of February 1, 1996, $113.2 million in budget authority was being deferred from obligation. Attachment B shows the status of each deferral reported during FY 1996.

Information From Special Message

The special message containing information on the deferrals that are covered by this cumulative report is printed in the **Federal Register** cited below:

60 FR 55154, Friday, October 27, 1995

Alice M. Rivlin,

Director.

Attachments

BILLING CODE 3110–01–P

ATTACHMENT A

STATUS OF FY 1996 DEFERRALS
(in millions of dollars)

	Budgetary Resources
Deferrals proposed by the President.....	122.8
Routine Executive releases through February 1, 1996... (OMB/Agency releases of $9.6 million, partially offset by cumulative positive adjustment of $4 thousand.)	-9.6
Overturned by the Congress.....	---
Currently before the Congress.....	113.2

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ATTACHMENT B
Status of FY 1996 Deferrals - As of February 1, 1996
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Releases(-): Cumulative OMB/Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 2-1-96
FUNDS APPROPRIATED TO THE PRESIDENT								
International Security Assistance Economic support fund and international Fund for Ireland	D96-1	75,000		10-19-95	9,816		4	65,388
DEPARTMENT OF STATE								
Other United States emergency refugee and migration assistance fund	D96-3	40,486		10-19-95				40,486
SOCIAL SECURITY ADMINISTRATION								
Limitation on administrative expenses	D96-2	7,321		10-19-95				7,321
TOTAL, DEFERRALS		122,807	0		9,816		4	113,194

[FR Doc. 96-4174 Filed 2-23-96; 8:45 am]
BILLING CODE 3110-01-C

federal register

Monday
February 26, 1996

Part III

Department of Energy

10 CFR Part 600
Financial Assistance Rules; Regulatory Reduction; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 600

RIN 1991–AB23

Financial Assistance Rules; Regulatory Reduction

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today issues a final rule to amend its Financial Assistance Rules (Rules) to streamline, simplify, and improve the DOE financial assistance process. The rules have been rewritten to eliminate coverage that is unnecessary and to retain only that coverage that is considered suitable for a regulation.

EFFECTIVE DATE: This final rule will be effective March 27, 1996.

FOR FURTHER INFORMATION CONTACT: Cherlyn D. Seckinger, Office of Policy (HR–51) Office of Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue SE., Washington, D.C. 20585 (202) 586–8246.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Changes to the Proposed Rule
III. Review Under Executive Order 12612
IV. Regulatory Review
V. Review Under the Regulatory Flexibility Act
VI. Review Under the Paperwork Reduction Act
VII. Review Under the National Environmental Policy Act
VIII. Review Under Executive Order 12778

I. Background

In the August 8, 1995 issue of the **Federal Register** (60 FR 40323), DOE published a proposed rule to amend its financial assistance rules by revising Subpart A to simplify and streamline the financial assistance process in keeping with Departmental and Government-wide initiatives to improve the way the Department does business. The changes that are published today with minor modifications primarily affect DOE internal procedures contained in Subpart A pertaining to the solicitation, evaluation, and award processes, and have little or no impact on requirements applicable to applicants and recipients of DOE financial assistance. In most instances, the amended rule omits detailed internal procedures for DOE officials, and instead establishes standards or basic requirements that are of primary interest to members of the public. Also, the patent, data and copyright provisions in Subparts A and B have been updated to reflect the recent changes in the Department of Energy Acquisition Regulations and to clarify how the Intangible Property provisions in Section 600.136 of Subpart B apply to commercial organizations.

This rulemaking is part of DOE's ongoing efforts to streamline its regulatory systems and re-engineer its business processes. In June 1995, the Secretary of Energy Advisory Board's Task Force on Strategic Energy Research and Development issued a report on the Department's energy research and development programs. Consistent with the recommendations provided in this report, the Department currently is examining the activities, processes, and burdens associated with awarding and administering all nonlaboratory research and development contracts and financial assistance awards. As recommendations for conducting these activities more efficiently and effectively are developed, it is possible the Department will propose further revisions to its Financial Assistance Rules.

II. Discussion of Changes to the Proposed Rule

No public comments were received in response to the Notice of Proposed Rulemaking. However, DOE has made non-substantive modifications to the proposed rule. Those modifications deserving explanation are described below. The rule has also been amended to make some minor technical changes to correct and update citations and cross-references.

First, the definition of "project" will be retained in Section 600.3, *Definitions*. The reason for retaining it is that the term "project" is a basic financial assistance term of art.

Second, it appears that the unsolicited proposal criteria contained in the existing rule at 600.14(e) were not included in the new Section 600.6, *Eligibility*, contrary to what was stated in the preamble of the proposed rule. While not specifically identified as unsolicited proposal criteria, one of the criteria for justifying noncompetitive financial assistance under Section 600.6(c)(7) provides the basis for acceptance of an unsolicited proposal. The criterion states that a proposed project must be a unique or innovative idea, method, or approach which would not be eligible for financial assistance under a recent, current, or planned solicitation, and must be inappropriate for a competitive solicitation. For purposes of clarification, we have added the term "unsolicited proposals" in Section 600.6(c)(7) in this criterion.

Third, the address for obtaining the guide on preparation and submission of unsolicited applications has been included in the rule under Section 600.10, *Form and content of applications*. Since DOE is moving toward the electronic submission of applications, the requirement in section 600.10(d) for a "signed application" has been revised. The first complete sentence in Section 600.10(d) now reads "DOE may return an application which is not signed, either in writing or electronically, by an official authorized to bind the applicant." Section 600.16, *Legal authority and effect of an award*, has been revised similarly in order to permit the use of an electronic process. The requirement to send a written review summary to an applicant, upon request, in Section 600.13(c), *Merit review*, has been deleted because it duplicates the requirement in Section 600.19, *Notification to unsuccessful applicants*. Section 600.19 requires DOE to provide an applicant who is not selected for award a written notice which briefly explains why the application was not selected and offers the applicant the opportunity for a more detailed explanation upon request. Because the requirement in Section 600.19 systematically provides information to an unsuccessful applicant, we have retained that coverage, but deleted the notification requirement under merit review. Section 600.29(b)(1) has been rewritten to clarify that each fixed obligation award may *neither* exceed $100,000 nor exceed one year in length. As proposed, it could be interpreted to be *either/or*.

The existing DOE financial assistance rules applied cost sharing requirements only to cooperative agreements based on the Federal Nonnuclear Energy Research and Development Act. Since then the Energy Policy Act of 1992 was enacted which also requires cost sharing for research, development and demonstration projects carried out under this Act. The proposed rule extended cost sharing requirements to grants as a way of leveraging Federal funds in times of declining budgets. While today's final rule retains this cost sharing policy, it allows for exceptions to meet specific programmatic needs or requirements on a single-case or class basis with the approval of the cognizant program Assistant Secretary or designee.

III. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government.

If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's rule revises certain policy and procedural requirements. However, DOE has determined that this rulemaking will not have a substantial direct effect on the institutional interests or traditional functions of States.

IV. Regulatory Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

V. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses, small organizations, and small governmental jurisdictions. DOE has concluded that the rule only affects small entities as they apply for and receive financial assistance, and does not create additional economic impact on small entities as a whole. DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

VI. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, or OMB implementing regulations at 5 CFR Part 1320.

VII. Review Under the National Environmental Policy Act

DOE has concluded that this rule falls into a class of actions (categorical exclusions A5) that are categorically excluded from National Environmental Policy Act (NEPA) review because they would not individually or cumulatively have significant impact on the human environment, as determined by the Department's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331–4335, 4341–4347 (1976)). Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

VIII. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2 (a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any revisions for the exhaustion of such administrative proceedings, and defines the terms. DOE certifies that today's rule meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

List of Subjects in 10 CFR Part 600

Accounting; Administrative practice and procedure; Government contracts; Grant programs, Indians, Intergovernmental relations; Loan programs, Lobbying; Penalties; Reporting and recordkeeping requirements.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Part 600 of Chapter II, Title 10 of the Code of Federal Regulations is amended as set forth below:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for Part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1005 (31 U.S.C. 6301–6308), unless otherwise noted.

Subpart D—[Removed and Reserved]

2. The existing Subpart D Cooperative Agreements (§§ 600.300 through 600.307) is removed and reserved.

Part 600 is further amended as set forth below:

§ 600.112 [Amended]

3. Section 600.112(c) is amended by revising the parenthetical phrase "(see § 600.31 (b) and (c))" to read "(see § 600.26 (b) and (c))."

4. Section 600.136 is revised to read as follows:

§ 600.136 Intangible property.

(a) Recipients that are institutions of higher education, hospitals, and other non-profit organizations are subject to the following:

(1) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.

(2) Recipients are subject to applicable regulations governing patents and inventions. (See 10 CFR 600.27)

(3) DOE has the right to:

(i) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(ii) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(4) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of DOE. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 600.134(g).

(b) Recipients that are commercial entities shall follow the provisions set forth at 10 CFR 600.27.

§ 600.204 [Amended]

5. In § 600.204 revise "§ 600.405" to read "§ 600.205".

§ 600.221 [Amended]

6. In § 600.221(g)(2) revise "§ 600.443(c)" to read "§ 600.243(c)".

§ 600.224 [Amended]

7. In § 600.224(b)(4) revise "§ 600.425(g) to read "§ 600.225(g)".

8. In § 600.224(e)(2)(ii) revise "§ 600.422" to read "§ 600.222".

§ 600.225 [Amended]

9. In paragraph (e) of § 600.225, revise "§ 600.434" to read "§ 600.234".

10. In paragraph (f) of § 600.225, revise "§§ 600.431 and 600.432" to read "§§ 600.231 and 600.232".

§ 600.226 [Amended]

11. In paragraph (c) of § 600.226 revise "§ 600.436" to read "§ 600.236".

§ 600.230 [Amended]

12. In paragraph (b) of § 600.230 revise the parenthetical expression "(see § 600.422)" to read "(see § 600.222)".

13. In § 600.230(d)(4) revise "§ 600.436" to read "§ 600.236".

14. In § 600.230(f)(2) revise "§ 600.422" to read "§ 600.222".

§ 600.232 [Amended]

15. In § 600.232(c)(3) revise "§ 600.425(a)" to read "§ 600.225(a)".

16. In § 600.232((g)(2) revise "§ 600.432(e)" to read "§ 600.232(e)".

§ 600.236 [Amended]

17. In paragraph (c) introductory text of § 600.236, revise "§ 600.436" to read "§ 600.236".

18. In § 600.236(d)(2) revise "§ 600.436(d)(2)(i)" to read "§ 600.236(d)(2)(i)".

§ 600.237 [Amended]

19. In § 600.237(a)(3) revise "§ 600.442" to read "§ 600.242".

20. In § 600.237(c) revise "§ 600.410", "§ 600.411", "§ 600.421", and "§ 600.450" to read "§ 600.210", "§ 600.211", "§ 600.221", and "§ 600.250" respectively.

§ 600.241 [Amended]

21. In paragraph (b) of § 600.241 revise "§ 600.441(e)(2)(iii)" to read "§ 600.241(e)(2)(iii)".

22. In § 600.241(e)(1)(i) revise "§ 600.441(d)" to read "§ 600.241(d)".

23. In § 600.241(e)(1)(ii) revise "§ 600.441(b)(3)" to read "§ 600.241(b)(3)".

24. In § 600.241(e)(2)(ii) revise "§ 600.41(d)" to read "§ 600.241(d)".

25. In § 600.241(e)(2)(iii) revise "§ 600.441(b)" to read "§ 600.241(b)".

26. In § 600.241(e)(3) revise "§ 600.441(b)(2)" to read "§ 600.241(b)(2)".

§ 600.243 [Amended]

27. In paragraph (d) of § 600.243, revise the parenthetical expression "(see § 600.435)" to read "(see § 600.235)".

§ 600.244 [Amended]

28. In paragraph (b) of § 600.244, revise "§ 600.443" to read "§ 600.243".

§ 600.250 [Amended]

29. In § 600.250(b)(5) revise "§ 600.432(f)" to read "§ 600.232(f)".

§ 600.251 [Amended]

30. In § 600.251 (c) revise "§ 600.442" to "§ 600.242".

31. In paragraph (d) of § 600.251 revise "§§ 600.431 and 600.432" to read "§§ 600.231 and 600.232".

32. In paragraph (e) of § 600.251 revise "§ 600.426" to read "§ 600.226".

§ 600.402 [Amended]

33. § 600.402 is amended in paragraph (d) by revising "§§ 600.25, 600.153, 600.242, and 600.305" to read "§§ 600.21, 600.153, and 600.242".

§ 600.403 [Amended]

34. In paragraph (c), of § 600.403 revise "§§ 600.126, 600.226, and 600.305" to read "§§ 600.126 and 600.226".

§ 600.405 [Amended]

35. In § 600.405(b)(2)(ii)(C), revise "§ 600.424 of subpart E" to read "§ 600.224 of subpart C".

§ 600.415 [Amended]

36. Section 600.415 is amended, in the first sentence, by revising "§ 600.436 of subpart E" to read "§ 600.236 of subpart C".

Part 600 is further amended as set forth below:

37. Subpart A is revised to read as follows:

Subpart A—General

Sec.

600.1 Purpose.
600.2 Applicability.
600.3 Definitions.
600.4 Deviations.
600.5 Selection of award instrument.
600.6 Eligibility.
600.7 Small and disadvantaged and women-owned business participation.
600.8 Solicitation.
600.9 Notice of program interest.
600.10 Form and content of applications.
600.11 Intergovernmental review.
600.12 Generally applicable requirements.
600.13 Objective merit review.
600.14 Conflict of interest.
600.15 Authorized uses of information.
600.16 Legal authority and effect of an award.
600.17 Contents of award.
600.18 Recipient acknowledgement of award.
600.19 Notification to unsuccessful applicants.
600.20 Maximum DOE obligation.
600.21 Access to records.
600.22 Disputes and appeals.
600.23 Debarment and suspension.
600.24 Noncompliance.
600.25 Suspension and termination.
600.26 Funding.
600.27 Patent and data provisions.
600.28 Restrictions on lobbying.
600.29 Fixed obligation awards.
600.30 Cost sharing.

Subpart A—General

§ 600.1 Purpose.

This part implements the Federal Grant and Cooperative Agreement Act, Pub. L. 95–224, as amended by Pub. L. 97–258 (31 U.S.C. 6301–6308), and establishes uniform policies and procedures for the award and administration of DOE grants and cooperative agreements. This subpart (Subpart A) sets forth the policies and procedures applicable to the award and administration of grants and cooperative agreements.

§ 600.2 Applicability.

(a) Except as otherwise provided by Federal statute or program rule, this part applies to applications, solicitations, and new, continuation, and renewal awards (and any subsequent subawards).

(b) Any new, continuation, or renewal award (and any subsequent subaward) shall comply with any applicable Federal statute, Federal rule, Office of Management and Budget (OMB) Circular and Governmentwide guidance in effect as of the date of such award.

(c) Financial assistance to foreign entities is governed, to the extent appropriate, by this part and by the administrative requirements and cost principles applicable to their respective recipient type, e.g, governmental, non-profit, commercial.

§ 600.3 Definitions.

Amendment means the written document executed by a DOE contracting officer that changes one or more terms or conditions of an existing financial assistance award.

Award means the written document executed by a DOE Contracting Officer, after an application is approved, which contains the terms and conditions for providing financial assistance to the recipient.

Budget period means the interval of time, specified in the award, into which a project is divided for budgeting and funding purposes.

Continuation award means an award for a succeeding or subsequent budget period after the initial budget period of either an approved project period or renewal thereof.

Contract means a written procurement contract executed by a recipient or subrecipient for the acquisition of property or services under a financial assistance award.

Contracting Officer means the DOE official authorized to execute awards on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

DOE Patent Counsel means the Department of Energy Patent Counsel assisting the Contracting Officer in the review and coordination of patents and data related items.

Financial Assistance means the transfer of money or property to a recipient or subrecipient to accomplish a public purpose of support or stimulation authorized by Federal statute. For purposes of this part, financial assistance instruments are grants and cooperative agreements and subawards.

Head of Contracting Activity or HCA means a DOE official with senior management authority for the award and administration of financial assistance instruments within one or more DOE organizational elements.

Nonprofit organization means any corporation, trust, foundation, or institution which is entitled to exemption under section 501(c)(3) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual (except that the definition of "nonprofit organization" at 48 CFR 27:301 shall apply to the use of the patent clause at Section 600.27).

Objective merit review means a thorough, consistent and independent examination of applications based on pre-established criteria by persons knowledgeable in the field of endeavor for which support is requested.

Program rule means a rule issued by a DOE program office for the award and administration of financial assistance which may describe the program's purpose or objectives, eligibility requirements for applicants, types of program activities or areas to be supported, evaluation and selection process, cost sharing requirements, etc. These rules usually supplement the generic policies and procedures for financial assistance contained in this part.

Project means the set of activities described in an application, State plan, or other document that is approved by DOE for financial assistance (whether such financial assistance represents all or only a portion of the support necessary to carry out those activities.)

Project period means the total period of time indicated in an award during which DOE expects to provide financial assistance. A project period may consist of one or more budget periods and may be extended by DOE.

Recipient means the organization, individual, or other entity that receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

Renewal award means an award which adds one or more additional budget periods to an existing project period.

Research and development means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions and commercial organizations. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

§ 600.4 Deviations.

(a) General. (1) A deviation is the use of any policy, procedure, form, standard, term, or condition which varies from a requirement of this part, or the waiver of any such requirement, unless such use or waiver is authorized or precluded by Federal statute. The use of optional or discretionary provisions of this part, including special restrictive conditions used in accordance with §§ 600.114 and 600.212, are not deviations. Awards to foreign entities and the waiver of the cost sharing requirements in § 600.30 or the patent requirements of § 600.27 are not subject to this section.

(2) A single-case deviation is a deviation which applies to one financial assistance transaction and one applicant, recipient, or subrecipient only.

(3) A class deviation is a deviation which applies to more than one financial assistance transaction, applicant, recipient, or subrecipient.

(b) The DOE officials specified in paragraph (c) of this section may authorize a deviation only upon a written determination that the deviation is—

(1) Necessary to achieve program objectives;

(2) Necessary to conserve public funds;

(3) Otherwise essential to the public interest; or

(4) Necessary to achieve equity.

(c) Approval procedures. (1) A deviation request must be in writing and must be submitted to the responsible DOE Contracting Officer. An applicant for a subaward or a subrecipient shall submit any such request through the recipient.

(2) Except as provided in paragraph (c)(3) of this section—

(i) A single-case deviation may be authorized by the responsible HCA. Any proposed single-case deviation from the requirements of § 600.27 concerning patents or data shall be referred to the DOE Patent Counsel for review and concurrence prior to submission to the HCA.

(ii) A class deviation may be authorized by the Deputy Assistant Secretary for Procurement and Assistance Management or designee. Any proposed class deviation from the requirements of § 600.27 concerning patents or data shall be forwarded through the Assistant General Counsel for Technology Transfer and Intellectual Property or designee.

(3) Whenever the approval of OMB, other Federal agency, or other DOE office is required to authorize a deviation, the proposed deviation must be submitted to the Deputy Assistant Secretary for Procurement and Assistance Management or designee for concurrence prior to submission to the authorizing official.

(d) Notice. Whenever a request for a class deviation is approved, DOE shall publish a notice in the **Federal Register** at least 15 days before the class deviation becomes effective. Whenever a class deviation is contained in a proposed program rule, the preamble to the proposed rule shall describe the purpose and scope of the deviation.

(e) Subawards. A recipient may use a deviation in a subaward only with the prior written approval of a DOE Contracting Officer.

§ 600.5 Selection of award instrument.

(a) If DOE has administrative discretion in the selection of the award instrument, the DOE decision as to whether the relationship is principally one of procurement or financial assistance shall be made pursuant to the Federal Grant and Cooperative Agreement Act as codified at 31 U.S.C. 6301–6306. A grant or cooperative agreement shall be the appropriate instrument, in accordance with this part, when the principal purpose of the relationship is the transfer of money or property to accomplish a public purpose of support or stimulation authorized by Federal statute. In selecting the type of financial assistance instrument, DOE

shall limit involvement between itself and the recipient in the performance of a project to the minimum necessary to achieve DOE program objectives.

(b) When it is anticipated that substantial involvement will be necessary between DOE and the recipient during performance of the contemplated activity, the award instrument shall be a cooperative agreement rather than a grant. Every cooperative agreement shall explicitly state the substantial involvement anticipated between DOE and the recipient during the performance of the project. Substantial involvement exists if:

(1) Responsibility for the management, control, or direction of the project is shared by DOE and the recipient; or

(2) Responsibility for the performance of the project is shared by DOE and the recipient.

(c) Providing technical assistance or guidance of a programmatic nature to a recipient does not constitute substantial involvement if:

(1) the recipient is not required to follow such guidance;

(2) the technical assistance or guidance is not expected to result in continuing DOE involvement in the performance of the project; or

(3) The technical assistance or guidance pertains solely to the administrative requirements of the award.

(d) In cooperative agreements, DOE has the right to intervene in the conduct or performance of project activities for programmatic reasons. Intervention includes the interruption or modification of the conduct or performance of project activities. Suspension or termination of the cooperative agreement under §§ 600.162 and 600.243 does not constitute intervention in the conduct or performance of project activities.

§ 600.6 Eligibility.

(a) General. DOE shall solicit applications for financial assistance in a manner which provides for the maximum amount of competition feasible.

(b) Restricted eligibility. If DOE restricts eligibility, an explanation of why the restriction of eligibility is considered necessary shall be included in the solicitation, program rule, or published notice. Except when authorized by statute or program rule, if the aggregate amount of DOE funds available for award under a solicitation or published notice is $1,000,000 or more, such restriction of eligibility shall be supported by a written determination initiated by the program office and approved by an official no less than two levels above the initiating program official and concurred in by the Contracting Officer and legal counsel. Where the amount of DOE funds is less than $1,000,000, the cognizant HCA and the Contracting Officer may approve the determination.

(c) Noncompetitive financial assistance. DOE may award a grant or cooperative agreement on a noncompetitive basis only if the application satisfies one or more of the following selection criteria:

(1) The activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another Federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity.

(2) The activity is being or would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity.

(3) The applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

(4) The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

(5) The award implements an agreement between the United States Government and a foreign government to fund a foreign applicant.

(6) Time constraints associated with a public health, safety, welfare or national security requirement preclude competition.

(7) The proposed project was submitted as an unsolicited proposal and represents a unique or innovative idea, method, or approach which would not be eligible for financial assistance under a recent, current, or planned solicitation, and if, as determined by DOE, a competitive solicitation would not be appropriate.

(8) The responsible program Assistant Secretary (or official of equivalent authority), with the approval of the Deputy Assistant Secretary for Procurement and Assistance Management, determines that a noncompetitive award is in the public interest. This authority may not be delegated.

(d) Approval requirements. Determinations of noncompetitive awards shall be approved, prior to award, by the initiating program official, by the responsible program Assistant Secretary (or official of equivalent authority) or designee, who shall be not less than two organizational levels above that of the project officer, by the Contracting Officer and shall be concurred in by local legal counsel. Where the amount of DOE funds is less than $1,000,000 for a noncompetitive financial assistance award, the determination shall be approved by the cognizant HCA and the Contracting Officer. Concurrence for a particular award or class of awards of $1,000,000 or less may be waived by local legal counsel.

(e) Documentation requirements. A determination of noncompetitive financial assistance (normally prepared by the responsible program official) explaining the basis for the proposed noncompetitive award shall be placed in the award file.

§ 600.7 Small and disadvantaged and women-owned business participation.

(a) DOE encourages the participation in financial assistance awards of small businesses, including those owned by socially and economically disadvantaged individuals and women, of historically black colleges, and of colleges and universities with substantial minority enrollments.

(b) For definitions of the terms in paragraph (a) of this section, see the Higher Education Act of 1965, and 15 U.S.C. 644, as amended by the Federal Acquisition Streamlining Act (FASA), and implementing regulations under FASA issued by the Office of Federal Procurement Policy.

(c) When entering into contracts under financial assistance awards, recipients and subrecipients shall comply with the requirements of Section 600.144 or Section 600.236, as applicable.

§ 600.8 Solicitation.

(a) General. A solicitation for financial assistance applications shall be in the form of a program rule or other publicly available document which invites the submission of applications by a common due date or within a prescribed period of time.

(1) A Program Assistant Secretary (or official of equivalent authority) may annually issue a program notice describing research areas in which financial assistance is being made available. Such notice shall also state whether the research areas covered by the notice are to be added to those listed in a previously issued program rule. If they are to be included, then applications received as a result of the notice may be treated as having been in response to that previously published program rule. If they are not to be included, then applications received in response to the notice are to be treated as unsolicited applications. Solicitations may be issued by a DOE Contracting Officer or program office with prior concurrence of the contracting office.

(2) DOE shall publish either a copy or a notice of the availability of a financial assistance solicitation in the **Federal Register**. DOE shall publish solicitations or notices in the Commerce Business Daily when potential applicants include for-profit organizations or when there is the potential for significant contracting opportunities under the resulting financial assistance awards.

(b) Subawards. In accordance with the provisions of the applicable statute and program rules, if a DOE financial assistance program involves the award of financial assistance by a recipient to a subrecipient, the recipient shall provide sufficient advance notice so that potential subrecipients may prepare timely applications and secure prerequisite reviews and approvals.

(c) Contents of solicitation. Each solicitation shall provide information as may be necessary to allow potential applicants to decide whether to submit an application, to understand how applications will be evaluated, and to know what the obligations of a recipient would be. At a minimum, each solicitation must include:

(1) A control number assigned by the issuing DOE office;

(2) The amount of money available for award and, if appropriate, the expected size of individual awards broken down by areas of priority or emphasis, and the expected number of awards;

(3) The type of award instrument or instruments to be used;

(4) The Catalog of Federal Domestic Assistance number for the program;

(5) Who is eligible to apply;

(6) The expected duration of DOE support or the period of performance;

(7) An application form or the format to be used, location for application submission, and number of copies required;

(8) The name of the responsible DOE Contracting Officer (or, for program notices or solicitations issued by the program office, the program office contact) to contact for additional information, and, as appropriate, an address where application forms may be obtained;

(9) Whether loans are available under the DOE Minority Economic Impact (MEI) loan program, 10 CFR part 800, to finance the cost of preparing a financial assistance application, and, if MEI loans are available, a general description of the eligibility requirements for such a loan, a reference to Catalog of Federal Domestic Assistance Number 81.063, and the name and address of the DOE office from which additional information and loan application forms can be obtained;

(10) Appropriate periods or due dates for submission of applications and a statement describing the consequences of late submission. If programs have established a series of due dates to allow for the comparison of applications against each other, these dates shall be indicated in the solicitation;

(11) The types of projects or activities eligible for support;

(12) Evaluation criteria and the weight or relative importance of each, which may include one or more of the following or other criteria, as appropriate:

(i) Qualifications of the applicant's personnel who will be working on the project;

(ii) Adequacy of the applicant's facilities and resources;

(iii) Cost-effectiveness of the project;

(iv) Adequacy of the project plan or methodology;

(v) Management capability of the applicant;

(vi) Sources of financing available to the project. Any requirement concerning cost sharing shall be clearly stated (See also § 600.30, Cost Sharing). Cost sharing is generally encouraged. However, unless cost sharing is required by the solicitation, it shall not be considered in the evaluation process and shall be considered only at the time the award is negotiated.

(vii) Relationship of the proposed project to the objectives of the solicitation;

(13) A listing of program policy factors, if any, indicating the relative importance of each, if appropriate. Examples of program policy factors are:

(i) Geographic distribution;

(ii) Diverse types and sizes of applicant entities;

(iii) A diversity of methods, approaches, or kinds of work; and

(iv) Projects which are complementary to other DOE programs or projects;

(14) References to or copies of:

(i) Statutory authority for the program;

(ii) Applicable rules, including the appropriate subparts of this part;

(iii) Other terms and conditions applicable to awards to be made under the solicitation, including allowable and unallowable costs and reporting requirements;

(iv) Policies and procedures for patents, data, copyrights, audiovisual productions and exhibits;

(v) Any required assurances not included in the application form;

(15) The deadline for submission of required or optional preapplications;

(16) Date, time, and location of any briefing for applicants;

(17) Required presubmission reviews and clearances, including a statement as to whether review under E.O. 12372, "Intergovernmental Review of Federal Programs", is required.

(18) Dates by which selections and awards are expected to be made and whether unsuccessful applications will be returned to the applicant or be retained by DOE and for what period of time;

(19) A statement that DOE is under no obligation to pay for any costs associated with preparation or submission of applications if an award is not made. If an award is made, such costs may be allowable as provided in the applicable cost principles (See §§ 600.127 and 600.222);

(20) A statement that DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to the solicitation; and

(21) Any other relevant information, including explanatory information or factual basis for justifications required by this part.

§ 600.9 Notice of program interest.

(a) General. (1) DOE may publish periodic Notices of Program Interest in the **Federal Register** and other media, as appropriate, which describes broad, general, technical problems and areas of investigation for which DOE may award grants or cooperative agreements.

(2) DOE shall evaluate any application submitted under a Notice of Program Interest as an unsolicited application.

(b) Contents. The notice shall include:

(1) A brief description of the areas of interest for which DOE may provide financial assistance;

(2) A statement about how resulting applications will be evaluated and the criteria for selection and funding;

(3) An expiration date with an explanation that such a date does not represent a common deadline for applications but rather that applications may be submitted at any time before the notice expires; and

(4) The location for application submission.

§ 600.10 Form and content of applications.

(a) General. Applications shall be required for all financial assistance projects or programs.

(b) Forms. Applications shall be on the form or in the format and in the number of copies specified in a program rule, in the solicitation, or in these regulations. (See also §§ 600.112 and 600.210.) For unsolicited applications, a guide for preparation and submission is available from Field/Headquarters Support Division, Office of Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

(c) Contents of an application. In general, a financial assistance application shall include:

(1) A facesheet containing basic identifying information. The facesheet shall be the Standard Form (SF)424 or other approved DOE application form;

(2) A detailed narrative description of the proposed project, including the objectives of the project and the applicant's plan for carrying it out;

(3) A budget with supporting justification; and

(4) Any required preaward assurances.

(d) Incomplete applications. DOE may return an application that:

(1) Is not signed, either in writing or electronically, by an official authorized to bind the applicant; or

(2) Omits any information or documentation required by statute, program rule, or the solicitation, if the nature of the omission precludes review of the application.

(e) Supplemental information. During the review of a complete application, DOE may request the submission of additional information only if the information is essential to evaluate the application.

§ 600.11 Intergovernmental review.

Intergovernmental review of DOE financial assistance shall be conducted in accordance with 10 CFR part 1005.

§ 600.12 Generally applicable requirements.

(a) Except as expressly exempted by Federal statute or program rule, recipients and subrecipients of DOE financial assistance shall comply with all generally applicable requirements to which they are subject. Generally applicable requirements include, but are not limited to, the requirements of this part, Federal statutes, the OMB Circulars and other Governmentwide guidance implemented by this part, Executive Orders, and the requirements identified in appendix A of this part.

(b) Provisions shall be made to design and construct all buildings, in which DOE funds are used, to meet appropriate seismic design and construction standards. Seismic codes and standards meeting or exceeding the provisions of each of the model codes listed in this paragraph are considered to be appropriate for purposes of this part. These codes provide a level of seismic safety that is substantially equivalent to the National Earthquake Hazards Reduction Program (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Buildings, 1988 Edition (Federal Emergency Management Administration 222 and 223). Revisions of these model codes that are substantially equivalent to or exceed the then current or immediately preceding edition of the NEHRP Recommended Provisions (which are updated triennially) shall be considered to be appropriate standards. The model codes are as follows:

(1) 1991 Uniform Building Code, of the International Council of Building Officials,

(2) 1992 Supplement to the National Building Code, of the Building Official and Code Administrators International.

(3) 1992 Amendments to the Standard Building Code, of the Southern Building Code Congress International.

§ 600.13 Objective merit review.

(a) General. (1) It is the policy of DOE that any financial assistance be awarded through a merit-based selection process. Objective merit review means a thorough, consistent and independent examination of applications based on pre-established criteria by persons knowledgeable in the field of endeavor for which support is requested.

(2) Each program office must establish an objective merit review system covering the financial assistance programs it administers. Objective merit review of financial assistance applications is intended to be advisory and is not intended to replace the authority of the project/program official with responsibility for deciding whether an award will be made. It is expected that the cognizant project/program officer(s) who will select or be in the direct chain of supervision recommending selection or rejection of applications will not be a part of the objective review group. The objective merit review system must set forth the relationship between the reviewing individuals, or the review committees or groups, program/project management involved with directly advising the selection official with respect to program/project policy considerations and the selection official who has the final decision-making authority. In defining this relationship, the system must set out, as a minimum, the decision-making and documentation processes to be followed by the selection official in accepting or rejecting objective merit review recommendations.

(b) Each formal review system must contain the following elements:

(1) Basic review standards. Applications should undergo an initial review for conformance with technical and administrative requirements stated in the notice or solicitation and for funding availability. For applications which pass the initial review, the DOE evaluation shall be in accordance with stated evaluation criteria set forth in the applicable program rule or notice, solicitation, or, where appropriate, the unsolicited proposal criteria in § 600.6(c)(7).

(2) Applications which have successfully completed an initial review are normally subjected to an objective merit review by a group comprised of three or more professionally and technically qualified persons. This advisory review is limited to technical and/or cost matters and should be separate from any programmatic review of program/policy factors involved in making a selection/rejection decision.

(3) The reviewers of any particular application may be any mixture of federal or non-federal experts, including individuals from within the cognizant program office, except those involved in approving/disapproving the application. The DOE shall select external (non-DOE Federal or non-federal) reviewers on the basis of their professional qualifications and expertise.

(c) Reviewers with interest in application being reviewed. Reviewers must comply with the requirements for the avoidance of conflict of interest established in § 600.14.

(d) Outside reviewers. An outside reviewer shall be required to sign, either in writing or electronically, a written statement agreeing to use the application information only for review and to treat it in confidence except to the extent that the information is available to the general public without restriction as to its use from any source, including the applicant. Further, the reviewer shall be required to agree to comply with any notice or restriction placed on the application. Upon completion of the review, the reviewer shall return all copies of the application (or abstracts, if any) to DOE; and unless authorized by DOE, the reviewer shall not contact the applicant concerning any aspect of the application.

§ 600.14 Conflict of interest.

Any person who participates in the review of applications for DOE financial assistance or in the administration of DOE financial assistance shall comply with 1010.101(a) and 1010.302(a)(1) of the DOE rules on the conduct of employees and special employees (consultants) at 10 CFR part 1010. Current and former DOE employees who participate in any aspect of the financial assistance process shall comply with all applicable requirements of 10 CFR part 1010.

§ 600.15 Authorized uses of information.

(a) General. Information contained in applications shall be used only for evaluation purposes unless such information is generally available to the public or is already the property of the Government. The Trade Secrets Act, 18 U.S.C. 1905, prohibits the unauthorized disclosure by Federal employees of trade secret and confidential business information.

(b) Treatment of application information. (1) An application may include technical data and other data, including trade secrets and/or privileged or confidential commercial or financial information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than application evaluation. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages _____ of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data herein to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

(2) Unless a solicitation specifies otherwise, DOE shall not refuse to consider an application solely on the basis that the application is restrictively marked.

(3) Data (or abstracts of data) marked with the Notice under paragraph (b)(1) of this section shall be retained in confidence and used by DOE or its designated representatives as specified in § 600.13 solely for the purpose of evaluating the proposal. The data so marked shall not be disclosed or used for any other purpose except to the extent provided in any resulting award, or to the extent required by law, including the Freedom of Information Act (5 U.S.C. 552) (10 CFR part 1004). The Government shall not be liable for disclosure or use of unmarked data and may use or disclose such data for any purpose.

(4) The Government shall obtain unlimited rights in the technical data contained in any application which results in an award except those portions of the technical data which the applicant asserts and properly marks as proprietary data, or which are not directly related to or will not be utilized in the project and are deleted from the application with the concurrence of DOE.

(5) The clause at 48 CFR 52.227–23, which applies only to technical data and not to other data such as privileged or confidential commercial or financial information shall apply to every award.

§ 600.16 Legal authority and effect of an award.

(a) A DOE financial assistance award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Contracting Officer.

(b) DOE funds awarded under a grant or cooperative agreement shall be obligated as of the date the DOE Contracting Officer signs the award; however, the recipient is not authorized to incur costs under an award prior to the beginning date of the budget period shown in the award except as may be authorized in accordance with §§ 600.125(e) or 600.230 of this part. The duration of the DOE financial obligation shall not extend beyond the expiration date of the budget period shown in the award unless authorized by a DOE Contracting Officer by means of a continuation or renewal award or other extension of the budget period.

§ 600.17 Contents of award.

Each financial assistance award shall be made on a Notice of Financial Assistance Award (DOE F 4600.1) which contains basic identifying and funding information together with attachments including a budget, any special terms and conditions, and any other provisions necessary to establish the respective right, duties, obligation, and responsibilities of DOE and the recipient, consistent with the requirements of this part.

§ 600.18 Recipient acknowledgement of award.

(a) After signature by the DOE Contracting Officer, the award shall be sent to the recipient. The recipient shall acknowledge acceptance by returning a copy signed either in writing or electronically. No DOE funds shall be disbursed until the award document signed by the recipient is received by DOE.

(b) In the event a recipient declines an award, DOE shall deobligate the funds obligated by the award after providing the applicant with at least two weeks written notice of DOE's intention to deobligate.

(c) After the recipient acknowledges the award, the terms and conditions of the award may be amended only upon the written request or with the written concurrence of the recipient unless the amendment is one which DOE may make unilaterally in accordance with a program rule or this part.

§ 600.19 Notification to unsuccessful applicants.

DOE shall promptly notify in writing each applicant whose application has not been selected for award or whose application cannot be funded because of the unavailability of appropriated funds. If the application was not selected, the written notice shall briefly explain why the application was not selected and, if for grounds other than unavailability of funds, shall offer the unsuccessful applicant the opportunity for a more detailed explanation upon request.

§ 600.20 Maximum DOE obligation.

(a) The maximum DOE obligation to the recipient is—

(1) For monetary awards, the amount shown in the award as the amount of DOE funds obligated, and

(2) Any designated property.

(b) DOE shall not be obligated to make any additional, supplemental, continuation, renewal, or other award for the same or any other purpose.

§ 600.21 Access to records.

(a) In addition to recipient and subrecipient responsibilities relative to access to records specified in §§ 600.153 and 600.242, for any negotiated contract or subcontract in excess of $10,000 under a grant or cooperative agreement, DOE, the Comptroller General of the United States, the recipient and the subrecipient (if the contract was awarded under a financial assistance subaward), or any of their authorized representatives shall have the right of access to any books, documents, papers, or other records of the contractor or subcontractor which are pertinent to

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that contract or subcontract, in order to make audit, examination, excerpts, and copies.

(b) The right of access may be exercised for as long as the applicable records are retained by the recipient, subrecipient, contractor, or subcontractor.

§ 600.22 Disputes and appeals.

(a) Informal dispute resolution. Whenever practicable, DOE shall attempt to resolve informally any dispute over the award or administration of financial assistance. Informal resolution, including resolution through an alternative dispute resolution mechanism, shall be preferred over formal procedures available in 10 CFR Part 1024, to the extent practicable.

(b) Alternative dispute resolution (ADR). Before issuing a final determination in any dispute in which informal resolution has not been achieved, the Contracting Officer shall suggest that the other party consider the use of voluntary consensual methods of dispute resolution, such as mediation. The DOE dispute resolution specialist is available to provide assistance for such disputes, as are trained mediators of other federal agencies. ADR may be used at any stage of a dispute.

(c) Final determination. Whenever a dispute is not resolved informally or through an alternative dispute resolution process, DOE shall mail (by certified mail) a brief written determination signed by a Contracting Officer, setting forth DOE's final disposition of such dispute. Such determination shall contain the following information:

(1) A summary of the dispute, including a statement of the issues and of the positions taken by the Department and the party or parties to the dispute; and

(2) The factual, legal and, if appropriate, policy reasons for DOE's disposition of the dispute.

(d) Right of appeal. (1) Except as provided in paragraph (f)(1) of this section, the final determination under paragraph (c) of this section may be appealed to the Financial Assistance Appeals Board (the Board) in accordance with the procedures set forth in 10 CFR part 1024.

(2) If the final determination under paragraph (c) of this section involves a dispute over which the Board has jurisdiction as provided in paragraph (f)(2) of this section, the Contracting Officer's determination shall state that, with respect to such dispute, the determination shall be the final decision of the Department unless, within 60 days, a written notice of appeal is filed.

(3) If the final determination under paragraph (c) of this section involves a dispute over which the Board has no jurisdiction as provided in paragraph (f)(1) of this section, the Contracting Officer's determination shall state that, effective immediately or on a later date specified therein, the determination shall, with respect to such dispute, be the final decision of the Department.

(e) Effect of appeal. The filing of an appeal with the Board shall not stay any determination or action taken by DOE which is the subject of the appeal. Consistent with its obligation to protect the interests of the Federal Government, DOE may take such authorized actions as may be necessary to preserve the status quo pending decision by the Board, or to preserve its ability to provide relief in the event the Board decides in favor of the appellant.

(f) Review on appeal. (1) The Board shall have no jurisdiction to review:

(i) Any preaward dispute (except as provided in paragraph (f)(2)(ii) of this section), including use of any special restrictive condition pursuant to §§ 600.114 or 600.212;

(ii) DOE denial of a request for a deviation under §§ 600.4, 600.103, or 600.205 of this part;

(iii) DOE denial of a request for a budget revision or other change in the approved project under §§ 600.125, 600.127, 600.222, or 600.230 of this part or under another term or condition of the award;

(iv) Any DOE action authorized under §§ 600.162(a) (1), (2), (3) or (5); or §§ 600.243 (a)(1), (a)(3) for suspensions only; or § 600.162(a)(4) or § 600.243(a)(4) for actions disapproving renewal applications or other requests for extension of time or additional funding for the same project when related to recipient noncompliance, or such actions authorized by program rule;

(v) Any DOE decision about an action requiring prior DOE approval under § 600.144, or § 600.236 of this part or under another term or condition of the award;

(vi) A DOE decision not to make a continuation award, which decision is based on the insufficiency of available appropriations;

(vii) Any matter which is under the jurisdiction of the Patent Compensation Board (10 CFR 780.3);

(viii) Any matter which may be heard by the Invention Licensing Appeals Board (10 CFR 781.65 and 781.66); and

(ix) Any other dispute not described in paragraph (f)(2) of this section.

(2) In addition to any right of appeal established by program rule, or by the terms and conditions (not inconsistent with paragraph (f)(1) of this section) of an award, the Board shall have jurisdiction to review:

(i) A DOE determination that the recipient has failed to comply with the applicable requirements of this part, the program statute or rules, or other terms and conditions of the award;

(ii) A DOE decision not to make a continuation award based on any of the determinations described in paragraph (f)(2)(i) of this section;

(iii) Termination of an award for cause, in whole or in part, by DOE;

(iv) A DOE determination that an award is void or invalid;

(v) The application by DOE of an indirect cost rate; and

(vi) DOE disallowance of costs.

(3) In reviewing disputes authorized under paragraph (f)(2) of this section, the Board shall be bound by the applicable law, statutes, and rules, including the requirements of this part, and by the terms and conditions of the award.

(4) The decision of the Board shall be the final decision of the Department.

§ 600.23 Debarment and suspension.

Applicants, recipients, subrecipients, and contractors under financial assistance awards may be debarred and suspended for the causes and in accordance with the procedures set forth in 10 CFR part 1036.

§ 600.24 Noncompliance.

(a) Except for noncompliance with nondiscrimination requirements under 10 CFR part 1040, whenever DOE determines that a recipient has not complied with the applicable requirements of this part, with the requirements of any applicable program statute or rule, or with any other term or condition of the award, a DOE Contracting Officer shall provide to the recipient (by certified mail, return receipt requested) a written notice setting forth:

(1) The factual and legal bases for the determination of noncompliance;

(2) The corrective actions and the date (not less than 30 days after the date of the notice) by which they must be taken.

(3) Which of the actions authorized under §§600.122(n), 600.162(a) or § 600.243(a) of this part DOE may take if the recipient does not achieve compliance within the time specified in the notice, or does not provide satisfactory assurances that actions have been initiated which will achieve compliance in a timely manner.

(b) DOE may take any of the actions set forth in § 600.121(n,), § 600.162(a), or § 600.243(a) of this part concurrent with the written notice required under paragraph (a) of this section or with less than 30 days written notice to the recipient whenever:

(1) There is evidence the award was obtained by fraud;

(2) The recipient ceases to exist or becomes legally incapable of performing its responsibilities under the financial assistance award; or

(3) There is a serious mismanagement or misuse of financial assistance award funds necessitating immediate action.

§ 600.25 Suspension and termination.

(a) Suspension and termination for cause. DOE may suspend or terminate an award for cause on the basis of:

(1) a noncompliance determination under §§ 600.24, 600.122(n), 600.162(a), or § 600.243(a); or

(2) an suspension or debarment of the awardee under § 600.23.

(b) Notification requirements. Except as provided in § 600.24, 600.162(a), or § 600.243(a) before suspending or terminating a award for cause, DOE shall mail to the awardee (by certified mail, return receipt requested) a separate written notice in addition to that required by §§ 600.24(a), 600.162(a), or § 600.243(a) at least ten days prior to the effective date of the suspension or termination. Such notice shall include, as appropriate:

(1) The factual and legal bases for the suspension or termination;

(2) The effective date or dates of the DOE action;

(3) If the action does not apply to the entire award, a description of the activities affected by the action;

(4) Instructions concerning which costs shall be allowable during the period of suspension, or instructions concerning allowable termination costs, including in either case, instructions concerning any subgrants or contracts;

(5) Instructions concerning required final reports and other closeout actions for terminated awards (see §§ 600.170 through 600.173 and §§ 600.250 through 600.252);

(6) A statement of the awardee's right to appeal a termination for cause pursuant to § 600.22; and

(7) The dated signature of a DOE Contracting Officer.

(c) Suspension. (1) Unless DOE and the awardee agree otherwise, no period of suspension shall exceed 90 days.

(2) DOE may cancel the suspension at any time, up to and including the date of expiration of the period of suspension, if the awardee takes satisfactory corrective action before the expiration date of the suspension or gives DOE satisfactory evidence that such corrective action will be taken.

(3) If the suspension has not been cancelled by the expiration date of the period of suspension, the awardee shall resume the suspended activities or project unless, prior to the expiration date, DOE notifies the awardee in writing that the period of suspension shall be extended consistent with paragraph (c)(1) of this section or that the award shall be terminated.

(4) As of the effective date of the suspension, DOE shall withhold further payments and shall allow new obligations incurred by the awardee during the period of suspension only if such costs were authorized in the notice of suspension or in a subsequent letter.

(5) If the suspension is cancelled or expires and the award is not terminated, DOE shall reimburse the awardee for any authorized allowable costs incurred during the suspension and, if necessary, may amend the award to extend the period of performance.

(d) Termination by mutual agreement. In addition to any situation where a termination for cause pursuant to §§ 600.24, 600.160 through 600.162 or §§ 600.243 through 600.244 is appropriate, either DOE or the awardee may initiate a termination of an award (or portion thereof) as described in this paragraph. If the awardee initiates a termination, the awardee must notify DOE in writing and specify the awardee's reasons for requesting the termination, the proposed effective date of the termination, and, in the case of a partial termination, a description of the activities to be terminated, and an appropriate budget revision. DOE shall terminate an award or portion thereof under this paragraph only if both parties agree to the termination and the conditions under which it shall occur. If DOE determines that the remaining activities under a partially terminated award would not accomplish the purpose for which the award was originally awarded, DOE may terminate the entire award.

(e) Effect of termination. The awardee shall incur no new obligations after the effective date of the termination of an award (or portion thereof), and shall cancel as many outstanding obligations as possible. DOE shall allow full credit to the awardee for the DOE share of noncancellable obligations properly incurred by the awardee prior to the effective date of the termination.

(f) Subgrants. Awardees shall follow the policies and procedures in this section and in §§ 600.24, 600.160 through 600.162 or §§ 600.243 through 600.244 for suspending and terminating subgrants.

§ 600.26 Funding.

(a) General. The project period during which DOE expects to provide award support for an approved project shall be specified on the Notice of Financial Assistance Award (DOE Form 4600.1).

(b) Budget period and continuation awards. If the project period is 12 months or less, the budget period and the project period shall be coextensive. Multiyear awards, including formula awards, shall generally be funded annually within the approved project period. Funding for each budget period within the project period shall be contingent on DOE approval of a continuation application submitted in accordance with a schedule specified by DOE. A continuation application shall include:

(1) A statement of technical progress or status of the project to date;

(2) A detailed description of the awardee's plans for the conduct of the project during the coming year; and

(3) A detailed budget for the upcoming budget period, including an estimate of unobligated balances. A detailed budget need not be submitted if the new or renewal application contained future-year budgets sufficiently detailed to allow DOE to review and approve the categories and elements of cost. Should the award have a change in scope or significant change in the budget, DOE may request a detailed budget.

(4) DOE shall review a continuation application for the adequacy of the awardee's progress and planned conduct of the project in the subsequent budget period. DOE shall not require a continuation application to compete against any other application. The amount and award of continuation funding is subject to the availability of appropriations.

(c) Renewal awards. Discretionary renewal awards may be made either on the basis of a solicitation or on a noncompetitive basis. If DOE proposes to restrict eligibility for a discretionary renewal award to the incumbent grantee, the noncompetitive award must be justified in accordance with § 600.6(b)(2). Renewal applications must be submitted no later than 6 months prior to the scheduled expiration of the project period unless a program rule or other published instruction establishes a different application deadline.

(d) Extensions. Unless otherwise specified in the award terms and conditions, recipients of financial assistance awards, except recipients of SBIR awards (See § 600.181), may extend the expiration date of the final budget period of the project (thereby extending the project period) if

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additional time beyond the established expiration date is needed to assure adequate completion of the original scope of work within the funds already made available. A single extension, which shall not exceed twelve (12) months, may be made for this purpose, and must be made prior to the originally established expiration date. The recipient must notify the cognizant DOE Contracting Officer in the awarding office in writing within ten (10) days of making the extension.

§ 600.27 Patent and data provisions.

(a) General. Financial assistance shall be awarded and administered by DOE in compliance with the patent and data provisions of this section (See also §§ 600.136 and 600.234.) To the extent not otherwise provided in this part, the policies, procedures and clauses referenced for contracts in 48 CFR part 927 and 41 CFR part 9–9 shall normally be applicable to the award and administration of Departmental grants and cooperative agreements. Copies of 41 CFR part 9–9 are available by contacting the DOE Patent Counsel.

(b) Required clauses. In all solicitations and awards both for the support of research, development, and demonstration and for other efforts, the DOE Contracting Officer shall consult the DOE Patent Counsel for applicable patent and data clauses from those listed below and/or for modifications thereto. In reading each 48 CFR part 27 and 48 CFR part 952 patent and data clause selected for inclusion in a solicitation or award, the term "contract" when referring to a prime contract shall be read as "award." The term "contractor" shall be read as referring to the "awardee." The term "subcontract" shall be read as "subaward or a procurement contract under an award or subaward and/or a procurement subcontract under an awardee's or subawardee's contract." The term "Acquisition" with respect to the Long Form Patent Rights Clause shall be read as "Retention." The terms "offerors" and "quoters" shall be read as "applicants," and "proposal" and "quotation" shall be read as "application."

(1) *Patent clauses.* (i) (Short Form Patent Clause). Incorporate the clause at 48 CFR 952.227–11 for awards to a domestic small business firm or nonprofit organization as defined at 48 CFR 27.301. In accordance with 35 U.S.C. 202(a)(ii), the DOE may issue an exceptional circumstances determination. To implement any exceptional circumstances determination, DOE will modify 48 CFR 952.227–11 to retain greater rights in subject inventions. Such modifications will be only to the extent necessary to implement the exceptional circumstances determination.

(ii) (Long Form Patent Clause). For awards to a large business firm or other organization, other than a domestic small business firm or nonprofit organization as set forth in 48 CFR 27.301, incorporate the clause at 48 CFR 952.227–13.

(iii) The notice of Right to Request Patent Waiver at 48 CFR 952.227–84 shall also be inserted in all solicitations to advise applicants of their rights to request in advance of, or within 30 days after the award is signed, a waiver of all or any part of the rights of the United States with respect to subject inventions. For unsolicited applications, DOE shall provide this notice to the applicant prior to award.

(2) *Data Clauses (includes copyright provisions)* (i) Rights in Data—General. (A) Incorporate 48 CFR 52.227–14 with Alternates I and V. Solicitations shall also include the Representation of Limited Rights Data and Restricted Computer Software clause at 48 CFR 52.227–15.

(B) In awards for grants and cooperative agreements with institutions of higher education, hospitals, and other non-profit organizations, the following paragraph (c) will be used in lieu of the provisions in 48 CFR 52.227–14(c):

(c) Copyright. (1) Data first produced in the performance of the award. Except as otherwise specifically provided in this award, the recipient may establish claim to copyright subsisting in any data first produced in the performance of this award. When claim to copyright is made, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgement of Government sponsorship (including award number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The recipient grants to the Government a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. The right to publish includes the right to publicly distribute. The right to use the work for Federal purposes includes the right to prepare derivative works.

(C) For grants and cooperative agreements with commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations, the provisions of the following paragraph (d)(3) shall be used in addition to the provisions in 48 CFR 52.227–14:

(d)(3) The Recipient agrees not to establish claim to copyright in computer software first produced in the performance of this award without prior written permission of the Contracting Officer. When such permission is granted, the Contracting Officer shall specify appropriate terms to assure dissemination of the software. The recipient shall promptly deliver to the Contracting Officer or to the DOE Patent Counsel designated by the Contracting Officer a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled, and other terms pertaining to the computer software to which claim to copyright is made.

(D) If programmatic needs on a particular award require the delivery to the Government of limited rights data or restricted computer software, Alternates II or III of 48 CFR 52.227–14 shall also be added.

(ii) Restriction on Disclosure and Use of Data. Insert the Notice at § 600.15(b)(1) in all solicitations.

(iii) Rights to Application Data. As discussed at § 600.15(b)(5), incorporate 48 CFR 52.227–23.

(iv) Additional data requirements. Incorporate 48 CFR 52.227–16. In the event all technical data requirements are known in advance of and are set forth in the agreement or, the award is for the performance of basic or applied research and is to be performed solely by a university or college as discussed in 48 CFR 27.406(b), 48 CFR 52.227–16 does not need to be incorporated.

(3) *Authorization and consent.* Incorporate 48 CFR 52.227–1 or Alternates I or II, as appropriate, in accordance with the guidance in 48 CFR 927.201–1 and 48 CFR 27.201.

(4) *Patent indemnity.* Incorporate the clause set forth in 48 CFR 52.227–3, as appropriate, in accordance with the guidance in 48 CFR 27.203–1 and 48 CFR 27.203–3.

(5) *Filing of Patent Applications-Classified Subject Matter.* Incorporate the following paragraphs in any solicitation or award which covers, or is likely to cover, classified subject matter:

Classified Inventions

(a) The recipient shall not file or cause to be filed on any invention or discovery conceived or first actually reduced to practice in the course of or under this award in any country other than the United States, an application or registration for a patent without first obtaining written approval of the Contracting Officer.

(b) When filing a patent application in the United States on any invention or discovery conceived of or first actually reduced to practice in the course of or under this award, the subject matter of which is classified for reasons of security, the awardee shall observe all applicable security regulations covering the transmission of classified subject matter. When transmitting the patent application to the United States Patent and Trademark Office, the awardee shall, by separate letter, identify by agency and agreement number the award(s) which require security classification markings to be placed on the application.

(6) *Notice and Assistance Regarding Patent and Copyright Infringement.* Incorporate the clause at 48 CFR 52.227–2, in accordance with the guidance in 48 CFR 27.202, in all awards in excess of $100,000 for construction, research, development, and demonstration work which is to be performed within the United States, its possessions, or Puerto Rico.

(7) *Royalty Information.* Incorporate 48 CFR 52.227–6.

(8) *Refund of Royalties.* As discussed in 48 CFR 927.206, incorporate the clause at 48 CFR 952.227–9 in solicitations and awards where the Contracting Officer believes royalties will have to be paid by the awardees or subawardee or contractor at any tier.

(9) *Subawards and contracts under award.* The recipient shall include the applicable clauses of this section in any subaward or contract awarded under the award and assure that the applicable clauses are also included by subrecipients in contracts.

§ 600.28 Restrictions on lobbying.

Procedures regarding restrictions on lobbying activities of applicants and recipients are contained in 10 CFR 601.110.

§ 600.29 Fixed obligation awards.

(a) General. This section contains provisions applicable to the award of financial assistance instruments on a fixed amount basis. Under a fixed obligation award, funds are issued in support of a project without a requirement for Federal monitoring of actual costs subsequently incurred.

(b) Provisions applicable to fixed obligation awards. Financial assistance awards may be made on a fixed obligation basis subject to the following requirements:

(1) Each fixed obligation award may neither exceed $100,000 nor exceed one year in length.

(2) Programs which require mandatory cost sharing are not eligible.

(3) Proposed costs must be analyzed in detail to ensure consistency with applicable cost principles.

(4) Budget categories are not stipulated in making an award. However, budgets are submitted by an applicant and reviewed for purposes of establishing the amount to be awarded.

(5) Payments must be made in the same manner as other financial assistance awards, except that when determined appropriate by the cognizant program official and contracting officer a lump sum payment may be made.

(6) Recipients must certify in writing to the contracting officer at the end of the project that the activity was completed or the level of effort was expended, however should the activity or effort not be carried out, the recipient would be expected to make appropriate reimbursements.

(7) Periodic reports may be established for each award so long as they are not more frequently than quarterly.

(8) Changes in principal investigator or project leader, scope of effort, or institution, must receive the prior approval of the Department.

§ 600.30 Cost sharing.

In addition to the requirements of § 600.123 or § 600.224, the following requirements apply to research, development, and demonstration projects:

(a) When DOE awards financial assistance for research, development, and demonstration projects where the primary purpose of the project is the ultimate commercialization and utilization of technology by the private sector and when there are reasonable expectations that the recipient will receive significant present or future economic benefits beyond the instant award as a result of the performance of the project, cost sharing shall be required. Unless the cost sharing is required by statute, a waiver of the requirement on a single-case or class basis may be approved by the cognizant Program Assistant Secretary or designee.

(b) Except as provided in section 3002 of the Energy Policy Act of 1992, 42 U.S.C. 13542, or program rule, DOE will decide, on a case-by-case basis, the amount of cost sharing required for a particular project.

(c) Factors in addition to those specified in § 600.123 or § 600.224, which may be considered when negotiating cost sharing for research, development, and demonstration projects include the potential benefits to a recipient resulting from the project and the length of time before a project is likely to be commercially successful.

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February 26, 1996

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107

Hazardous Materials Pilot Ticketing Program; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. HM–207E, Amdt No. 107–36]

RIN 2137–AC70

Hazardous Materials Pilot Ticketing Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: To streamline administrative procedures, cut costs, and reduce regulatory burdens on persons subject to Federal hazardous materials transportation law, RSPA is implementing a pilot program for ticketing of certain hazardous materials transportation violations. RSPA will issue tickets for violations that have little or no direct impacts on safety. Persons receiving a ticket may pay the ticket, respond informally to RSPA or request a formal hearing before a Department of Transportation Administrative Law Judge (ALJ). Penalties will be substantially reduced for persons who elect to pay the amounts assessed in the tickets.

This final rule is consistent with the recommendation in the National Performance Review (DOT02.01) to streamline the enforcement process by implementing pilot programs to offer greater flexibility in enforcement methods. RSPA's pilot ticketing program will cut costs, simplify the processing of certain Hazardous Materials Regulations (HMR) violations, and achieve compliance through more efficient and effective processes. The pilot ticketing program allows recipients to more easily respond to allegations of HMR violations.

EFFECTIVE DATE: May 15, 1996.

FOR FURTHER INFORMATION CONTACT: John J. O'Connell, Jr., Director, Office of Hazardous Materials Enforcement, (202) 366–4700; or Nancy E. Machado, Office of the Chief Counsel, (202) 366–4400, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW, Washington DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The Research and Special Programs Administration (RSPA) is the administration within the Department of Transportation (DOT) primarily responsible for implementing the Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101–5127. RSPA does this by issuing and enforcing the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180. Under delegations from the Secretary of Transportation [49 CFR Part 1], the authority for enforcement under Federal hazardous materials transportation law (Federal hazmat law), 49 U.S.C. 5101–5127, is shared by RSPA and each of the four modal administrations: the Federal Highway Administration, the Federal Railroad Administration, the Federal Aviation Administration, and the United States Coast Guard. RSPA has primary jurisdiction over packaging manufacturers, reconditioners, and retesters (except with respect to bulk packagings, which are the responsibility of the applicable modal administration) and a shared authority over shippers of hazardous materials. RSPA does not enforce regulations applicable exclusively to motor carriers, rail carriers, air carriers or vessel carriers.

RSPA's Office of the Chief Counsel (OCC) may initiate administrative proceedings for violations of the HMR, and these proceedings may result in a civil penalty, an order directing compliance actions, or both. 49 CFR 107.307. Administrative proceedings are initiated by mailing a notice of probable violation (NOPV) to a person believed to have violated the HMR. 49 CFR 107.311. The notice specifies the alleged violation(s) of the HMR, states the proposed penalty, and includes a copy of the inspection/investigation report. Within 30 days of receiving the notice, the recipient of the notice may admit the allegations by paying the proposed penalty, make an informal response, or request a formal hearing. 49 CFR 107.313, 107.315.

The recipient who chooses to respond informally submits a written response to the OCC to contest the alleged violations or the proposed penalty. The OCC considers the inspection report, the response, and any additional evidence obtained to determine whether the recipient committed the alleged violations and, if so, the appropriate penalty in accordance with the statutory criteria for penalty determination, 49 U.S.C. 5123(c). See also RSPA's civil penalty guidelines at 60 FR 12139 [March 6, 1995]. If the recipient requests an informal conference, an opportunity is provided to supplement the written response in person or by telephone with the OCC attorney and the inspector. Information obtained by the OCC during the informal conference becomes part of the case file. The Chief Counsel then issues an order finding a violation or violations and, for each violation found, assesses a civil penalty. The order may be appealed to the RSPA Administrator. See generally 49 CFR 107.317, 107.325(b).

Alternatively, the recipient may request a formal administrative hearing on the record before an ALJ from DOT's Office of Hearings. At the conclusion of the hearing, the ALJ determines whether the alleged violations have been committed and, if so, imposes a penalty in accordance with the statutory assessment criteria. Either party may appeal a decision of the ALJ to the RSPA Administrator. See generally 49 CFR 107.319, 107.325(a).

At any time during an informal or a formal proceeding, RSPA and the recipient of the notice may agree upon an appropriate resolution of the case. 49 CFR 107.327.

II. Proposed Rule

On August 21, 1995, RSPA published a notice of proposed rulemaking (NPRM) under Docket HM–207E [60 FR 43430] seeking public comment on a proposal to implement a pilot program for ticketing certain violations of the HMR. On October 17, 1995, RSPA extended the comment period for an additional 30 days. *See* 60 FR 53729.

Under the proposed rule, the Associate Administrator for Hazardous Materials Safety would be authorized to issue tickets for certain HMR violations that are currently handled through the civil penalty process. Violations eligible for inclusion in the pilot ticketing program would be those that do not have a substantial impact on safety. Because this program is designed to ease administrative and regulatory burdens on persons subject to enforcement proceedings under the HMR, violations currently eligible, under 49 CFR 107.309, for letters of warning generally would not be included in the pilot ticketing program.

The NPRM contained a proposal for a two-year pilot program. At the end of two years, RSPA would evaluate the program in terms of cost savings, time savings, and impact on the effectiveness of its compliance program. The proposed rule also suggested a number of violations for inclusion in the pilot ticketing program, including, among others, operating under an expired exemption, failing to register, failing to maintain training records, and failing to file incident reports. RSPA indicated that, based on comments received and experience gained through administration of the pilot ticketing program, additional types of violations might be added to the program. These violations would not be processed under the pilot ticketing program if more serious violations also are alleged. Furthermore, a previous ticketing violation will be considered a "prior" violation in the event of a future violation of the HMR by the same party.

In the proposed rule, RSPA indicated an expectation that the Associate Administrator for Hazardous Materials Safety would delegate ticketing authority to the Director, Office of Hazardous Materials Enforcement (OHME), who may redelegate that authority. RSPA field inspectors would conduct inspections as at present. Supervisory inspectors then would evaluate field inspector reports and issue tickets to parties when appropriate. Consequently, tickets would not be issued on the spot by inspectors following an inspection but would be issued shortly thereafter. The ticketing process would be limited to those cases involving violations identified as meeting safety risk criteria for ticketing established by the Associate Administrator.

A ticket would include a statement of the facts supporting the alleged violation. In addition, the ticket would set forth the maximum penalty provided by statute, the proposed penalty determined according to the RSPA civil penalty guidelines, *see* 60 FR 12139 [March 6, 1995], and the ticket penalty amount. The ticket would state that the recipient must pay the penalty or request a hearing within 30 days of receipt of the ticket.

RSPA proposed that the civil penalty contained in the ticket would be substantially less than the penalty that would be proposed under current procedures or that could be imposed by an ALJ at a hearing. RSPA also stated that if the recipient pays the ticket amount and states that action to correct the violation has been taken, the matter would be closed and there would be no further agency action. If the recipient elects not to pay the ticket and requests a hearing, RSPA would forward the case file to a Coast Guard Hearing Officer who would review the case in accordance with Coast Guard procedures set forth at 33 CFR 1.07. The Hearing Officer would not be bound by the reduced penalty amount in the ticket and could impose a civil penalty as high as the proposed penalty determined under RSPA's civil penalty guidelines. The Hearing Officer's factual findings and legal conclusions in a particular case would apply solely to that case. A person could appeal the decision of the Hearing Officer to the Commandant, United States Coast Guard.

RSPA also stated in the proposed rule that a recipient would waive a right to a hearing by failing to respond to the ticket within 30 days. Moveover, failure to respond would be deemed an admission of the violation, and the reduced penalty would be owed to RSPA. An unpaid penalty or a penalty imposed by the Coast Guard Hearing Officer or the Commandant on appeal would constitute a debt owed to the United States Government.

III. Discussion of Comments

RSPA received 31 written comments on the NPRM. The comments were submitted by chemical manufacturing companies, trade associations, transporters and private individuals. Commenters uniformly supported RSPA's efforts to streamline administrative procedures, cut costs and reduce regulatory burdens.

Approximately half of the commenters supported RSPA's proposal but with various recommended changes. The remainder opposed the proposal, and some suggested alternative means of improving current enforcement procedures.

The commenters predominantly addressed the following issues: (1) Violations under the pilot ticketing program; (2) authority to issue tickets; (3) the time-frame for issuing a ticket; (4) the time-frame for responding to a ticket; (5) the option to respond informally; (6) processing by Coast Guard Hearing Officers; (7) civil penalty amounts; and (8) reduced cost/burden.

A detailed discussion of the comments, and RSPA's response to them, is provided in the following summary.

A. Violations Under the Pilot Ticketing Program

1. Impact on Safety

RSPA received numerous comments concerning RSPA's statement in the NPRM that, under the pilot ticketing program, it would issue tickets for violations that do not have "substantial impacts" on safety. RSPA stated that these violations might include, among others, operating under an expired exemption, failing to register, failing to maintain training records, and failing to file incident reports.

The commenters generally questioned why the agency would expend limited resources on enforcing regulations that do not have substantial impacts on safety. Several suggested that the regulations in question either be eliminated or that enforcement efforts with respect to violations of those regulations be limited to the issuance of warning letters.

RSPA disagrees that these regulations should be deleted from the HMR or that enforcement actions should be limited to warning letters. The registration, exemption renewal and training record requirements are mandated by Federal hazmat law, which also mandates that a civil penalty be imposed for violations of any provisions of that law or the HMR. In addition, although violations of these regulations, in and of themselves, may not have a substantial or direct impact on safety, their enforcement has important, indirect effects on safety.

An exemption is an official authorization to do something, for a two-year period, that is not authorized under the HMR. 49 U.S.C. 5117(a)(2). See also 49 CFR 107.119(a). Renewal is necessary to keep the exemption in effect and to allow RSPA to ascertain that practices authorized under the exemption still provide an equal or greater level of safety than the HMR. As part of the renewal process, an application must contain all relevant shipping and accident experience related to activities under an exemption. 49 U.S.C. 5117(b). See also 49 CFR 107.105(a)(5).

The failure of hazardous materials offerors or transporters to register with RSPA, when required, affects RSPA's ability to identify and monitor those who are subject to the registration requirements. It also affects RSPA's ability to collect fees that are distributed for public sector planning and training for States, Indian tribes and local communities, to deal with hazardous materials emergencies, particularly those involving transportation. See 49 U.S.C. 5108(g); 49 CFR Part 110. These State and local programs affect safety. Failure to register directly affects these programs.

Failing to maintain training records, similarly, does not directly impact safety. Nevertheless, training records are the means of verifying that hazmat employees have been trained to recognize and identify hazardous materials, have knowledge of specific requirements of the HMR applicable to functions they perform, and have knowledge of emergency response information, self-protection measures and accident prevention methods and procedures. Federal hazmat law states:

> After completing the training, each hazmat employer shall certify, with documentation the Secretary of Transportation may require by regulation, that the hazmat employees of the employer have received training and have been tested on appropriate transportation areas of responsibility • • •

49 U.S.C. 5107(c). See also 49 CFR 172.704(d). Unquestionably, the training required under the HMR directly impacts safety, and the training records

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requirement enables verification that the training is being conducted.

Generally, failing to file incident reports also does not directly impact safety. Nonetheless, RSPA requires that incident reports be filed as a means for it to evaluate the effectiveness of its regulatory program and to determine the need for regulatory changes to address new or emerging hazardous materials transportation safety problems. The requirement to file incident reports directly supports RSPA's safety initiatives and is one of the only means for RSPA to obtain detailed information concerning hazardous materials incidents.

As supported by the above discussion, RSPA does not agree that regulations that do not have a direct or substantial impact on safety, in and of themselves, necessarily should be deleted from the HMR or enforced only through the issuance of warning letters.

2. Definitive List of Violations Subject to Ticketing

Five commenters asked that RSPA establish a definitive list of violations subject to the pilot ticketing program. RSPA believes that there is a legitimate need for flexibility during the initial two years of this program. Consequently, RSPA will not establish a definitive list of violations, but will begin the program by addressing the violations discussed above. Based on experience gained through administration of the pilot ticketing program, additional types of violations may be added or certain types of violations deleted from the program. At the end of the two-year pilot program, RSPA will evaluate the program in terms of cost savings, time savings, and effectiveness.

Finally, at the request of one commenter, RSPA wishes to clarify that tickets will not be issued for violations it believes to be willful.

B. Authority To Issue Tickets

One commenter asked that RSPA clarify who would issue tickets under the pilot program. Another commenter expressed concern that RSPA might delegate ticketing authority to "others," including States. The NPRM indicated that the Associate Administrator for Hazardous Materials Safety would issue tickets. It is common practice to provide authority in regulations to the highest level agency official responsible for a particular program. It is then that official's choice whether to retain that authority or to delegate it. Presently, it is contemplated that the Associate Administrator will delegate this authority to the Director, OHME, who will delegate this authority to OHME supervisory inspectors. RSPA does not intend to delegate ticket-writing authority to any entity outside the agency. Although States, local governments and Indian tribes often incorporate the HMR by reference into their own regulations, they usually do not incorporate RSPA's procedural regulations but instead use their own existing procedures for handling violations of State and local and Indian tribe regulations.

Three commenters also expressed concern that the proposed pilot ticketing program would lead to a ticket-writing frenzy by RSPA inspectors, who would find it easy to write tickets in order to provide a tangible record of the inspectors' enforcement activities. One of the three commenters stated that the program may encourage inspectors to focus on "perceived non-threatening technical violations that have in the past often been cooperatively and summarily addressed."

RSPA does not require its inspectors to initiate a certain number of enforcement actions, and job performance is not measured by the number of enforcement actions that result from their inspections. Also, at the inspector level, discovery of ticketing or other types of violations results in the same amount of work for that inspector. Consequently, there is no incentive for an inspector to focus on ticketing violations to the exclusion of other, more serious violations.

C. Time-Frame for Issuing a Ticket

Several commenters were concerned that the NPRM did not specify a time-frame within which tickets would be issued after the agency's discovery of an apparent violation. One commenter suggested that RSPA issue tickets within 60 days of discovery of an apparent violation. RSPA agrees that establishing a goal for the timely issuance of tickets would be useful to both the agency and the regulated community. Consequently, RSPA will endeavor to issue tickets as expeditiously as possible, generally within 60 days after an apparent violation has been discovered.

D. Time-Frame for Responding to a Ticket

In the NPRM, RSPA proposed to require a response to a ticket within 30 days of the date the ticket was received. Several commenters remarked that the 30-day time period was too short and asked that it be extended to either 45 or 60 days in order to allow sufficient time for the ticket recipient to investigate the violations alleged in the ticket. One commenter remarked that 30 days would not be sufficient time for a ticket to "find its way through [an] organization to the right place to be either appealed or paid." Others cited mail delays, holidays and business travel as reasons why the response time should be longer than 30 days. RSPA agrees that a 30-day response time may be too short in some instances and, therefore, agrees that 45 days is a more suitable time-frame for responding to a ticket.

E. Option to Respond Informally; Processing by Coast Guard Hearing Officers

Numerous commenters objected to the two limited options for responding to a ticket, as proposed in the NPRM. RSPA proposed to allow persons to either pay the ticket or to request a hearing before a Coast Guard Hearing Officer who would review the case in accordance with Coast Guard procedures. One commenter strongly recommended that DOT consider an intermediate option for resolving tickets prior to burdensome, costly, last-resort court proceedings. Another stated that the two-year pilot program is worthwhile, but that the proposed rule should be modified to ensure that due process rights are preserved where there is a reasonable basis to dispute alleged violations. This commenter asked that RSPA's pilot ticketing program include procedures for filing an informal response or request for hearing under RSPA's current informal response and hearing procedures at 49 CFR 107.317 and 49 CFR 107.319, respectively. The commenter added that the informal response option eliminates the need to engage an attorney and to go through the costly hearing process.

Many of these same commenters, in addition to others, also objected to RSPA's proposal to forward cases to Coast Guard Hearing Officers for processing under Coast Guard procedures where a person elects not to pay a ticket and requests a hearing. These objections were based on the fact RSPA's proposal would require the industry to familiarize itself with a new set of procedures, thereby increasing the regulatory burden on the industry. Also, many commenters questioned the Coast Guard's familiarity with the HMR to the extent it applies to transportation other than by water. One commenter stated that RSPA's proposal should be modified to include the right to appeal to the RSPA Administrator, rather than to the Commandant of the Coast Guard, in order to have some uniformity in penalty amounts for similar violations. Another commenter stated that the OCC and DOT's ALJs are well qualified to evaluate the substance of HMR violations and to assess appropriate penalty levels and should be involved in the pilot ticketing program rather than the Coast Guard.

RSPA does not agree with those commenters who question Coast Guard Hearing Officers' ability to efficiently process RSPA ticketing cases. The HMR requirements with respect to exemption renewal, registration, incident reporting and training records apply to, among others, carriers by vessel. Nevertheless, after reviewing all the comments, RSPA has decided that it would be more efficient and cost-effective, and in the interest of the industry and the agency, to keep the pilot ticketing program within RSPA and to use essentially the same current procedures outlined above, if a person elects to contest a ticket. Specifically, if a person elects to contest a ticket, that person may do so, within 45 days of receiving the ticket, by making an informal response under 49 CFR 107.317 or requesting a formal hearing under 49 CFR 107.319.

The ticket will be the functional equivalent of an NOPV, and contested matters will be handled by the OCC as at present. The OCC will not be bound by the reduced penalty amount shown on the ticket and could impose a penalty as high as the proposed penalty determined under RSPA's civil penalty guidelines, which is also shown on the ticket. In no case will the OCC seek a penalty greater than the highest penalty amount shown on the ticket.

Anyone choosing to contest a ticket will have the case processed by the OCC as at present. In this way, RSPA provides a streamlined process for those who do not wish to contest an alleged violation and leaves the present system intact for those who wish to contest an alleged violation and avail themselves of the current, familiar procedures.

F. Civil Penalty Amounts

1. Amount of Penalty Reductions

RSPA stated in the NPRM that penalties under the pilot ticketing program would be "substantially less than the penalty that would be proposed under current procedures or that could be imposed by an ALJ at a hearing." Several commenters noted that RSPA did not quantify the percentage or dollar amount of the reduced penalties. Two commenters stated that the key to a successful pilot ticketing program is substantially reduced penalties that serve as an inducement for companies to accept civil penalty responsibility in return for eliminating costs associated with contesting the violation. Commenters suggested that penalties assessed under the pilot ticketing program be at least 50 percent less than the penalties that would be assessed under current procedures.

RSPA agrees that penalties under the pilot ticketing program should be sufficiently low to provide an incentive to pay. Therefore, RSPA will continue to calculate a penalty as it does under its current procedures and guidelines, but it will reduce that penalty by 50 percent where the violation at issue is processed under this program. Nevertheless, the ticketing program is a pilot program and RSPA later may decide to reduce ticketing penalties by more or by less than 50 percent of the penalty calculated under current procedures and guidelines, based on experience with the program. In no case will a penalty be less than $250.

One commenter suggested that RSPA waive or reduce penalties even further when ticket recipients demonstrate compliance, within a specific time period, with the HMR. Federal hazmat law requires that a penalty be assessed where a violation of the regulations occurs. Specifically, Section 5123 of Federal hazmat law states:

> A person that knowingly violates this chapter or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of at least $250 but not more than $25,000 for each violation.

49 U.S.C. 5123.

2. Incentives to Pay or Not Pay Tickets

Several commenters voiced concern regarding RSPA's proposal to assess penalties under the pilot ticketing program that are substantially less than the penalties that would be proposed under current procedures or that could be imposed by an ALJ at a hearing. They stated that the disparity in civil penalty amounts, plus the threat of having the penalty increase if a person contests a ticket, serves to create an economic incentive to simply pay the ticket despite the violation history that doing so would create. Several other commenters reached the opposite conclusion and stated that the disparity would not create an economic incentive to pay the ticket because paying the penalty would affect one's violation history and could result in higher penalties for future violations. Instead, these commenters predicted a rise in the numbers of hearings and suggested that, to avoid this result, RSPA not count ticketing violations as prior violations. Some commenters also voiced concern that lower penalties would provide an economic incentive for companies not to comply with the HMR; in other words, it would cost less to pay the penalty than to comply with the HMR.

RSPA does not agree that reduced penalties for ticketing violations will be an economic incentive to pay tickets at the expense of one's violation history. The pilot ticketing program, with its reduced penalties, provides a streamlined procedure for those who might not dispute that a violation has occurred--for example, failure to register or to renew an exemption—but who would dispute the proposed penalty, under current procedures, as too high. Under the pilot ticketing program, these people have the option of admitting the violation and paying a substantially lower civil penalty. Because RSPA has decided, in response to numerous comments, to authorize an informal response and to leave the pilot ticketing program within RSPA, those who dispute a ticket can choose to make an informal response or they may request a formal hearing and the case will be handled under current OCC procedures. Consequently, lower ticket penalties provide an opportunity for those who do not contest the violation but who would contest the amount of the penalty under current procedures to pay lower ticket penalties and avoid OCC involvement. Nevertheless, any person who receives a ticket may choose to have the case processed under existing OCC procedures.

Likewise, RSPA does not agree that counting ticketing violations as prior violations in future cases will result in an increased number of requests for formal hearings, or even in an increase in the number of informal responses. Under current OCC procedures, the violations that have been identified for processing under the pilot ticketing program already count as prior violations. Indeed, Federal hazmat law requires RSPA to consider violation histories when assessing civil penalties. 49 U.S.C. 5123.

In the NPRM, RSPA proposed to continue counting ticketing violations as prior violations, and RSPA reaffirms that position here. Nevertheless, RSPA agrees that ticketing violations should be given less weight, in the event of future violations, than more serious non-ticketing violations. Therefore, RSPA intends initially to give prior ticketing violations only one-half the weight of prior non-ticketing violations. In the future, RSPA may decide to give more or less weight to ticketing violations as it gains experience with this pilot program.

Finally, RSPA does not agree that lower ticket penalties will provide an economic incentive for people not to comply with the HMR. The amount of the penalty, the violation history that will result from non-compliance, and

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the processing of repeat violations by the OCC should be incentive enough to comply with the HMR.

3. Penalty Guidelines

Two commenters questioned whether using RSPA's March 6, 1995 civil penalty guidelines as proposed in the NPRM is contrary to RSPA's own pronouncements regarding the meaning and use of its guidelines. One commenter noted that RSPA proposed to have the ticket include "the proposed penalty determined according to the RSPA civil penalty guidelines" but that RSPA stated in the preamble to the guidelines that they were "merely informational, [and] not finally determinative of any issues or rights, and do not have the force of law." 60 FR 12139. The commenter questioned whether utilizing the penalty guidelines to discourage ticket recipients from contesting alleged violations converts those guidelines into determinative rules under *United States Telephone Association* v. *FCC*, 28 F.3d 1232 (D.C.Cir. 1994) and *Used Equipment Sales, Inc.* v. *Department of Transportation*, 54 F.3d 862 (D.C. Cir 1995).

RSPA did not intend to imply in the NPRM that the penalty guidelines would be used in any way that differs from current procedure. As noted in the preamble to the penalty guidelines:

> These guidelines are a preliminary assessment tool used by RSPA personnel, and they create no rights in any party. They contain baseline amounts or ranges for violations that frequently have been cited in RSPA hazmat NOPVs. When a violation not described in the guidelines is encountered, it sometimes is possible to determine a baseline penalty by analogy to a similar violation in the guidelines.
>
> Even when the guidelines are applicable to a violation, the use of the guidelines is only a starting point. They promote consistency and generally are used to provide some standard for imposing similar penalties in similar cases. However, no two cases are identical, and ritualistic use of the guidelines would produce arbitrary results and, most significantly, would ignore the statutory mandate to consider several specific assessment criteria. Therefore, regardless of whether the guidelines are used to determine a baseline amount for a violation, RSPA enforcement and legal personnel must apply the statutory assessment criteria to all relevant information in the record concerning any alleged violation and the apparent violator. These criteria are in 49 U.S.C. 5123 and 49 CFR 107.331.
>
> * * * the guidelines are not binding on RSPA or Department of Transportation personnel. Enforcement personnel and staff attorneys generally use the guidelines as a starting point for penalty assessment. However, they, the Chief Counsel, administrative law judges (ALJs) and the RSPA Administrator may deviate from the guidelines where appropriate, and are legally bound only by the statutory assessment criteria.

60 FR 12139. At the time the penalty guidelines final rule and the NPRM in this matter were published, RSPA was aware of the D.C. Circuit Court opinion in *United States Telephone Ass'n* v. *FCC*, cited above. RSPA reviewed the *FCC* case and discussed, in the preamble to the penalty guidelines final rule, why the penalty guidelines are a policy statement and, therefore, not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* *See* 60 FR 12139.

In fact, RSPA published its guidelines as an informational appendix to its rules and not as a regulation. Also, RSPA does not use its guidelines in a rote fashion to automatically determine a proposed penalty but instead applies the statutory criteria and the guidelines to all of the particular evidence in each case to arrive at a proposed penalty. Consequently, use of RSPA's penalty guidelines as a starting point when assessing civil penalties either under current procedures or under the pilot ticketing program does not turn the guidelines into rules that would require notice and comment. RSPA's actions are consistent with both of the cited cases.

G. Reduced Cost/Burden

A significant number of commenters stated that the pilot ticketing program, as proposed, would not accomplish RSPA's stated goals of streamlining administrative procedures, cutting costs and reducing regulatory burdens on persons subject to the HMR. These commenters said that the pilot ticketing program, as proposed, could be counterproductive and would ultimately create another layer of administrative procedures, add costs and increase regulatory burdens on the industry. Many commenters thought that the pilot ticketing program, as proposed, would unnecessarily complicate the enforcement process for ticketing violations. Many commenters stated that they did not see any real savings to either the Federal Government or the regulated industry under the proposal.

As discussed above, RSPA agrees that the pilot ticketing program, as proposed, would have added another layer of procedures and might not have resulted in the cost savings RSPA originally anticipated. Consequently, RSPA has modified the proposal as outlined above, *i.e.*, RSPA will keep the pilot ticketing program within the agency and will continue to have the OCC process contested cases under current procedures. RSPA believes that this streamlined procedure will result in the cost savings and reduced regulatory burden that RSPA originally anticipated when it published its proposal.

Specifically, anyone who opts to pay a ticket will realize immediate cost savings in that the proposed penalty will be half of what it would have been under current procedures. Also, the ticket recipient avoids the need to make a detailed written response to the agency (other than a statement of corrective action) and avoids the subsequent written and oral communications that arise during OCC processing of cases. The formal hearing process is bypassed, and legal fees are avoided. Furthermore, there is no OCC or post-ticket OHME involvement in the enforcement action where a ticket recipient opts to pay a ticket. The OCC avoids having to issue an NOPV, hold an informal conference, respond to compromise offers, issue an order, participate in ALJ proceedings, draft a decision on appeal, and issue a close-out letter. OHME avoids involvement in the informal conference and formal hearings, and will not have to interact with the OCC on factual and technical issues.

Where a ticket is contested, current procedures would apply. Nevertheless, there will be some savings to the OCC who will not be required to issue an NOPV but can rely on the ticket to have provided notice of the alleged violations to the ticket recipient. Furthermore, when the OCC receives a case from OHME, the package will not only contain the ticket but a response to the ticket which may set forth corrective action and may contain a compromise offer. This information will allow the OCC to begin processing the case at a more advanced stage than otherwise would be the case and will reduce overall processing time.

H. Miscellaneous

In discussing the pilot ticketing program, one commenter made two statements that require a response. First, the commenter stated that the NPRM is silent on the consequences of paying a civil penalty without "the requested admission of guilt." RSPA does not require an admission of guilt either under the pilot ticketing program or under current procedures. In either case, when a person pays a civil penalty, the case is closed and counts as a prior violation in the event of a future violation of the HMR. No admission of guilt is required.

The same commenter questioned whether the agency will require evidence of corrective action under the pilot ticketing program. RSPA currently requests and encourages persons who have violated the HMR to submit evidence of corrective action to the agency. RSPA will continue this practice under the pilot ticketing program. The exit briefing form that RSPA inspectors leave with a person at the end of an inspection contains language encouraging the submission of documented corrective action to the agency as soon as possible. The ticket, like an NOPV, will also contain similar language. In the event that a ticket is paid but no evidence of corrective action has been submitted, the agency will send a letter to the ticket recipient again encouraging the submission of documented corrective action—just as it does in non-ticketing cases where payment is made in response to an NOPV. Under current procedures, RSPA receives some documented corrective action in virtually all of its enforcement cases.

Several commenters also questioned the relationship between RSPA's pilot ticketing program and tickets issued for violations of State and Federal motor carrier safety regulations. As stated above, the authority for enforcement under Federal hazmat law, 49 U.S.C. 5101–5127, is shared by RSPA and each of the four modal administrations. RSPA has primary jurisdiction over packaging manufacturers, reconditioners and retesters (except with respect to single-mode bulk packagings, which are primarily the responsibility of the applicable modal administration) and a shared authority over shippers of hazardous materials. RSPA does not enforce Federal or State motor carrier safety regulations. To the extent that motor carriers are affected by RSPA's pilot ticketing program, it generally will be because of: (1) Their shipper activities; (2) their failure to comply with the HMR's carrier incident reporting requirements; or (3) their failure to comply with the HMR's registration requirements.

IV. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore is not subject to review by the Office of Management and Budget. The rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The changes adopted in this rule do not result in any additional costs to persons subject to the HMR, but result in modest cost savings to a small number of them and to the agency. Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism") and does not have sufficient Federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule does not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses or other organizations.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 107 is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for Part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

2. In § 107.307, paragraph (a) is revised to read as follows:

§ 107.307 General.

(a) When the Associate Administrator for Hazardous Materials Safety and the Office of the Chief Counsel have reason to believe that a person is knowingly engaging or has knowingly engaged in conduct which is a violation of the Federal hazardous material transportation law or any provision of this subchapter or subchapter C of this chapter, or any exemption, or order issued thereunder, for which the Associate Administrator for Hazardous Materials Safety or the Office of the Chief Counsel exercise enforcement authority, they may—

(1) Issue a warning letter, as provided in § 107.309;

(2) Initiate proceedings to assess a civil penalty, as provided in either §§ 107.310 or 107.311;

(3) Issue an order directing compliance, regardless of whether a warning letter has been issued or a civil penalty assessed; and

(4) Seek any other remedy available under the Federal hazardous material transportation law.

* * * * *

§ 107.307 [Amended]

3. In addition, in § 107.307, in paragraph (b), the wording "Office of Chief Counsel" is revised to read "the Associate Administrator for Hazardous Materials Safety and the Office of the Chief Counsel".

§ 107.309 [Amended]

4. In § 107.309, at the beginning of paragraph (a), the wording "In addition to the initiation of proceedings under § 107.307 for the imposition of sanctions or other remedies, the" is revised to read "The".

5. Section 107.310 is added to read as follows:

§ 107.310 Ticketing.

(a) For an alleged violation that does not have a direct or substantial impact on safety, the Associate Administrator for Hazardous Materials Safety may issue a ticket.

(b) The Associate Administrator for Hazardous Materials Safety issues a ticket by mailing it by certified or registered mail to the person alleged to have committed the violation. The ticket includes:

(1) A statement of the facts on which the Associate Administrator bases the conclusion that the person has committed the alleged violation;

(2) The maximum penalty provided for by statute, the proposed full penalty determined according to RSPA's civil penalty guidelines and the statutory criteria for penalty assessment, and the ticket penalty amount; and

(3) A statement that within 45 days of receipt of the ticket, the person must pay the penalty in accordance with paragraph (d) of this section, make an informal response under § 107.317, or

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request a formal administrative hearing under § 107.319.

(c) If the person makes an informal response or requests a formal administrative hearing, the Associate Administrator for Hazardous Materials Safety forwards the inspection report, ticket and response to the Office of the Chief Counsel for processing under §§ 107.307–107.339, except that the Office of the Chief Counsel will not issue a Notice of Probable Violation under § 107.311. The Office of the Chief Counsel may impose a civil penalty that does not exceed the proposed full penalty set forth in the ticket.

(d) Payment of the ticket penalty amount must be made in accordance with the instructions on the ticket.

(e) If within 45 days of receiving the ticket the person does not pay the ticket amount, make an informal response, or request a formal administrative hearing, the person has waived the right to make an informal response or request a hearing, has admitted the violation and owes the ticket penalty amount to RSPA.

6. In § 107.311, paragraph (a) is revised to read as follows:

§ 107.311 Notice of probable violation.

(a) The Office of Chief Counsel may serve a notice of probable violation on a person alleging the violation of one or more provisions of the Federal hazardous material transportation law or any provision of this subchapter or subchapter C of this chapter, or any exemption, or order issued thereunder.

* * * * *

Issued in Washington, DC on February 12, 1996 under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Acting Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 96–4203 Filed 2–23–96; 8:45 am]

BILLING CODE 4910–60–P

federal register

Monday
February 26, 1996

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 1 et al.

Extending Overwater Operations With a Single Long-Range Communication System and a Single Long-Range Navigation System; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 91, 121, 125, and 135

RIN 2120–AF12

[Docket No. 27474; Amendment No. 1–44, 91–249, 121–254, 125–25 and 135–61]

Extended Overwater Operations With a Single Long-Range Communication System (LRCS) and a Single Long-Range Navigation System (LRNS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Federal Aviation Regulations for certain overwater operations for air carriers, commercial operators, and general aviation operators of large and of turbine-powered multiengine airplanes. It defines and clarifies requirements for using long-range navigation systems (LRNS) and long-range communication systems (LRCS) and sets forth criteria for navigation and communication equipment for certain overwater operations. Under this rule, air carriers and commercial operators are authorized to use a single LRCS and a single LRNS for extended overwater routes detailed in their operations specifications. Affected general aviation operators, who already are authorized to use a single LRCS when they have two very high frequency (VHF) communication systems, are authorized to use a single LRNS in overwater operations in the Gulf of Mexico, the Caribbean Sea, and part of the western Atlantic Ocean. This rule gives the FAA greater flexibility in responding to advances in aviation technology and changes in the operational environment and allows operators to conduct extended overwater operations without carrying unnecessary communication and navigation equipment.

EFFECTIVE DATE: February 26, 1996.

FOR FURTHER INFORMATION CONTACT: Daniel V. Meier, Jr., Project Development Branch, AFS–240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3749.

SUPPLEMENTARY INFORMATION:

Background

Air traffic in the Gulf of Mexico, the Caribbean Sea, and part of the western Atlantic Ocean (subsequently referred to in this document as the geographic area) has increased substantially during the last 20 years. With this increase has come corresponding technological advances inherent with more modern aircraft and improved navigation and communications systems.

Advances in aircraft technology have increased the overall speed and functional reliability of modern airplanes. These high-speed airplanes can cover routes in the geographic area much more quickly than their predecessors. Because of their higher speeds, they also can cover greater distances during the time between hourly fixes. Thus, the number of routes in the geographic area where time between reliable fixes was 1 hour or more has been reduced for these airplanes. Similarly, the airplane's exposure to the loss of its LRNS before the next reliable fix can be obtained is reduced. Since such aircraft also routinely operate at higher altitudes en route, they can conduct very high frequency (VHF) communications at greater ranges from their corresponding ground facilities than their predecessors.

Advances in avionics have resulted in increasingly accurate and dependable navigation systems, using inputs from Loran C, Omega/very low frequency (VLF), inertial navigation, or reference systems (INS), and, most recently, the global positioning satellite navigation system (GPS). Each navigation system typically gives instantaneous readouts of position, ground speed, wind, and waypoint progress. Radio communication systems have enjoyed similar advances. Bulky vacuum tube units have given way to miniaturized units with transistors, precise frequency selection, and high reliability, which produce the same or greater transmitting power than older models. In addition, the proliferation of VHF communication facilities within the geographic area ensures that many routes now can be flown with a VHF communications gap of no more than 30 minutes.

The increased reliability of modern LRNS reduces navigation errors. Sophisticated flight management systems (FMS) integrate control and navigation systems of an airplane and combine several navigation inputs to provide greater position reliability. The multiple navigation inputs into an FMS increase the accuracy of the system, and its reliability when compared to earlier navigation systems which only received a single source input. If the LRNS fails on an airplane using such sophisticated equipment, navigation errors inherent in dead-reckoning procedures from the moment of the failure until the next reporting point or fix should be well within the navigational performance capability required for the route to be flown.

Just as navigation systems have experienced several enhancements, ongoing developments in data link and satellite technology also have resulted in enhanced communications. The airborne equipment that aircraft use has improved due to advances in avionics reliability and miniaturization. These smaller units mean less weight on board the airplane.

The FAA believes that the probability that an airplane would experience a failure of both its single long-range communications system (LRCS) and its single LRNS when suitable navigation aids cannot be received is minimal. Advanced technology notwithstanding, however, a single LRCS could fail during a flight segment in which the airplane is operated beyond the range of VHF radio communication equipment. Even if such a failure did occur, the increased density of other air traffic in the vicinity could provide the affected airplane with some backup VHF communications with ATC. Moreover, regardless of the number of other aircraft in the area, if the flightcrew adheres to proper operational procedures, failure of the LRNS should not lead to an increased potential for conflict between aircraft before the airplane could come into range of suitable navigation aids (e.g. non-directional beacon, very high frequency omnirange (VOR), etc.).

Because of the increased speeds and higher altitudes at which airplanes now operate, improved equipment, improved reliability, and greater accuracy of LRNS systems, the FAA has concluded that, where exposure time for a critical equipment failure is 1 hour or less, the following is true:

- The probability of a failure is less than the probability of a failure with less modern equipment;
- With the accuracy of the present equipment, operators have better knowledge of their position if a failure does occur.

All of the factors discussed above have brought about the need to update the regulations to conform current technology to the types of operations that are currently being authorized. Namely, the FAA has found that operations in the geographic area can be conducted without the burden of additional navigation and communication systems carried in the aircraft. Therefore, on a case-by-case basis, and with certain conditions and limitations, the FAA has allowed a number of operators to conduct operations in the geographic area with a single LRCS and a single LRNS. To

date, such operations have had no adverse effect on safety.

General Discussion of Current Requirements for Extended Overwater Operations

General Aviation Operations

With one exception, set forth in § 91.511(d), 14 Code of Federal Regulations part 91, subpart F, the FAA currently requires large and turbine-powered multiengine airplanes engaged in overwater operations to be equipped with two independent communication and two independent navigation systems. Communication equipment must be appropriate to the facilities to be4 used and able to transmit to and receive from at least one surface facility at any place on the route. Navigation equipment must be able to provide the pilot with the information necessary to navigate the airplane within the airspace assigned by ATC. Under the exception in § 91.511(d), if a route requires the use of both VHF and LRCS communication equipment, and the airplane has two VHF transmitters and two VHF receivers, then only one LRCS transmitter and one LRCS receiver is required for communications.

Air Carrier and Commercial Operations

Parts 121, 125, and 135 also require airplanes engaged in extended overwater operations to be equipped with two independent communication and two independent navigation systems. Like part 91, parts 125 and 135 require that the communication equipment be appropriate to the facilities to be used and capable of transmitting to and receiving from at least one ground facility at any place on the route. Although the regulatory language differs somewhat, part 121 contains essentially the same requirements for communication equipment. Specifically, part 121 requires two independent communication systems able to communicate, under normal operating conditions, with (1) at least one appropriate ground station from any point on the route and with (2) appropriate traffic control facilities from any point in the airspace within which the flights are intended. These communication systems also must be able to receive meteorological information from any point en route. Unlike part 91, however, parts 121, 125, and 135 do not allow the use of a single LRCS where the airplane is also equipped with two VHF radios or systems. Thus, if a route requires use of both VHF and LRCS, airplanes operating under parts 121, 125, and 135 must have two VHF radios and two LRCS.

Section 121.349(b) allows for the use of a single automatic direction finder (ADF) when two VOR navigation units are installed and VOR navigation aids are so located and the airplane is so fueled that, in the case of a failure of the ADF, the flight may proceed safely to a suitable airport by means of VOR aids. In all other cases, when use of ADF, VOR navigation equipment, or both, is needed for primary navigation, the current rules for parts 121, 125, and 135 require the airplane to be equipped with two ADF and two VOR navigation units, as appropriate.

General Discussion of the Rule

The FAA is expanding, under certain conditions, the authority for air carriers and commercial operators to amend their operations specifications to use a single LRCS and a single LRNS. The FAA has determined that, for the time being, the authority will be limited to the geographic area. This limitation is based primarily on the ready availability of navigation and communication facilities within the geographic area, which provide a crucial buffer in the event of a communication or navigation failure. In appropriate circumstances, the FAA may expand the areas in which operations with a single LRCS and a single LRNS will be permitted for part 121, 125, and 135 operators.

Aside from the current authority set forth in §§ 91.511(d) and 121.349(b), this rule does not change the general requirements under parts 91, 121, 125, and 135 for two VHF communication systems and two each of any appropriate navigation systems required for the route to be flown except in the geographic area. The FAA has concluded that, by maintaining these requirements, air transportation safety is not compromised.

The FAA is amending part 91 and creating operation specification authority for operators under parts 121, 125, and 135 based on the factors mentioned above and on the operator's ability to maintain two-way communications with ATC and, where appropriate, the certificate holder's dispatch office. Without such factors, ATC's ability to control airplanes in the geographic area would be adversely impacted, increasing the potential for air traffic conflicts. The flightcrew must be able to notify ATC of an LRNS failure and must be able to tell ATC whether the flightcrew can reliably fix the airplane's position using other means.

Part 91

As a result of changes in technology, the operational environment described, and experience gained with exemptions allowing a single LRNS, the FAA has concluded that part 91 operators of large and of turbojet multiengine airplanes should be able to operate safely with a single LRCS and a single LRNS in the geographic area. In conducting operations in the geographic area, these general aviation operators should consider how long they may be without two-way VHF communications. For flight planning purposes, the FAA recommends that this gap should not exceed 30 minutes. The operator also should consider whether the position of the airplane can be reliably fixed at least once each hour if the LRNS fails.

Parts 121, 125, and 135

The FAA believes that the only appropriate method for authorizing single LRCS/single LRNS operations for part 121, 125, and 135 certificate holders is through FAA-approved authorizations, which will be set forth in the certificate holder's operations specifications. This method of approval is necessary because it will provide both the FAA and the certificate holder greater flexibility in dealing with varied equipment configurations, possible reclassification of airspace operating areas, changes in navigational requirements, and changes in air traffic separation standards.

The FAA has authorized these operations in the past and has determined that controlling a VHF communication gap through operations specifications will provide an equivalent level of safety. Loss of the single LRNS still requires each operator to reliably fix the airplane's position at least once each hour if the flight is continued and to navigate within the required degree of accuracy over any authorized route.

Definition of LRNS and LRCS

In the proposal, the FAA defined an LRNS as an electronic navigation unit that is approved for use under instrument flight rules (IFR) as a primary means of navigation and has at least one source of navigational input, such as INS, Omega/very low frequency, and Loran C. In this definition, the FAA did not limit the scope of acceptable LRNS to radio-based or ground-based systems. Such nonradio, nonground-based systems as INS are included within the scope of acceptable alternatives as long as the system chosen has been approved for use under IFR. If approved, GPS or similar

navigation systems also could fall within this definition. Where ADF or VOR radio navigation is impractical or unusable, the FAA interprets the current regulations to require the airplane to be equipped with two LRNS for extended overwater operations. This final rule changes this dual LRNS requirement. For parts 121, 125, and 135, authorization for a single LRNS and a single LRCS will be approved in the certificate holder's operations specifications. Since affected part 91 operators do not use operations specifications, they would be authorized to use a single LRNS, but only in the geographic area.

Although not defined in the proposal, the FAA has determined that, for clarity, LRCS, like LRNS, should be defined in the final rule. The FAA defines an LRCS as a long-range communication system that uses satellite relay, data link, high frequency, or other approved communication system which extends beyond line of sight. The FAA also has determined that the definitions for LRNS and LRCS would be better placed in part 1, Definitions and Abbreviations, for easy reference of all affected operators and to avoid the redundancy of repeating the definitions in all affected parts. Therefore, the definitions for LRCS and LRNS will be added to § 1.1, General definitions. These definitions will be added to this section, in appropriate alphabetical order, following the currently listed definition of "load factor."

Conditions and Limitations for All Operators

Because part 91 operators are not required to have operations specifications, this rule limits general aviation single LRNS operations to the geographic area. The areas of operation covered in this rule for affected general aviation operators include the Gulf of Mexico, the Caribbean Sea, and the Atlantic Ocean west of a line which extends from 44°47'00" N / 67°00'00" W to 39°00'00'N / 67°00'00"W to 38°30'00"N /60°00'00" W south along the 60°00'00" W longitude line to the point where the line intersects with the northern coast of South America. This geographic area does not include the North Atlantic Minimum Navigational Performance Specifications (NAT/MNPS) airspace, where operations are governed by § 91.705 and appendix C to part 91.

Limitations for air carrier and commercial operations will be set forth in the certificate holders' operations specifications. As in the case of general aviation operations, the area of operation for air carrier and commercial operators will not include NAT/MNPS airspace. At a minimum, these operators must always comply with International Civil Aviation Organization (ICAO) requirements for the area of operations.

Discussion of Comments

On October 5, 1993, the FAA published a notice proposing to allow extended overwater operations with single LRCS and single LRNS (58 FR 51938). The FAA received six comments on the proposal. The National Business Aircraft Association, Inc. (NBAA), the Aircraft Owners and Pilots Association (AOPA), and the Air Transport Association (ATA) expressed support with recommendations. Northwest Airlines expressed neither support nor opposition but did provide a recommendation. The Boeing Commercial Airplane Group acknowledged the proposal but had "no comment" and an aviation consulting firm was opposed to the proposal. These comments are discussed as follows:

NBAA

The NBAA indicated that it "strongly supports" the proposed changes to allow single LRNS and LRCS. It recommended, however, that proposed § 121.99 be incorporated into parts 91, 125, and 135 since these parts also require the latitude to access new technology communication links without being tied solely to HF.

FAA response: This rule is intended to affect use of LRNS and LRCS for extended overwater operations. The FAA recognizes that additional updates to the rules are needed in view of advances in technology, such as GPS. Such changes will be addressed in future rulemaking initiatives.

AOPA

AOPA supported the proposal and recommended that the requirement for an LRCS be eliminated entirely for certain aircraft in flight conditions where no more than a 30-minute gap in two-way communications exists. AOPA supported its recommendation by stating that LRCS equipment is cumbersome and expensive. According to the commentor, LRCS equipment is often adversely affected by precipitation and other weather conditions. Further, in overwater areas, pilots relay transmissions to ATC through other aircraft and do not depend on their LRCS.

FAA response: The FAA acknowledges that an LRCS has some disadvantages; however, these disadvantages are offset by the necessity for communications when an airplane is operating in extended overwater beyond the range of VHF ground-based communications. While airplanes operating in accordance with § 91.511 are not involved in the carriage of persons or cargo for compensation or hire, these airplanes nevertheless share airspace in the geographic area with air carriers which are engaged in transporting passengers and cargo. Therefore, the FAA considers it necessary for safety that all aircraft operating in the geographic area be able to communicate with ATC at all times.

ATA

The ATA supported the proposal indicating that it would provide administrative and economic relief from an unnecessary regulatory burden. Apparently in reference to the 15-day comment period however, the commentor noted that, in future proposals, the FAA must abide by the requirements of the Administrative Procedures Act (APA). Northwest echoed this comment regarding the APA.

FAA response: In allotting the 15-day comment period, the FAA was responding to the large number of requests for relief from the aviation industry. The FAA considered it to be in the best interest of safety and the public to expedite the regulation by every means possible. The FAA did not violate any requirements of the APA, which does not require specific comment periods for rulemaking.

Northwest Airlines

Northwest Airlines suggested that the proposed rule be amended to allow operations in NAT/MNPS airspace for flights to and from SLATIN along or west of A632. According to the commentor, the area of NAT/MNPS airspace traversed by A632 is within VHF coverage except for an area of non-coverage located on either side of the mid point of A632 between Bermuda and the mainland of the U.S. The commentor asserted that this non-coverage area can be traversed within 6 minutes. Northwest further indicated that extending the boundary of the area below 27°00'00" N from longitude 60°00'00" W, would include the island of Barbados and thereby preclude any confusion regarding coverage of the total Caribbean island chain. Lastly, Northwest indicated that the coordinates describing operations under part 91 do not have the same boundaries as defined by part 91, appendix C. According to the commentor, this presents confusion to ATC with respect to the different requirements for air carrier and general aviation operations.

FAA response: The route from SLATIN along A632 to approximate 38°30'00" N and 67°30'00" W is NAT/MNPS airspace and, as such, is governed by ICAO agreements which require redundant navigation and communication systems. It is not within the scope (authority) of this rule to alter those agreements. This airspace represents an extremely small part of the total geographic area considered in this rule and can be crossed in 6 minutes by a turbine-powered air transport category airplane. Airlines may operate through this airspace with one LRNS and one LRCS provided they obtain a letter of agreement with ATC. These operations have been successful in the past and the FAA does not consider it to be in the public interest for the U.S. government to file a difference with ICAO.

The boundaries defined in the rule represent a general oceanic area, outside NAT/MNPS airspace, in which a single LRNS and single LRCS may be used when an airplane is unable to navigate by reference to standard ICAO navigational aids such as VOR or ADF. The location of the island of Barbados outside the western boundary of the geographic area does not exclude it from operations conducted under this regulation since VOR coverage extends well into the geographic area.

The commentor's concern regarding possible conflict between the requirements of part 91, appendix C and the boundaries of the geographic area of the rule is unfounded. Part 91, appendix C refers to operations within NAT/MNPS airspace whereas the regulation limits operation to airspace outside NAT/MNPS airspace.

Aviation Consulting Firm

George Rabe & Associates, the aviation consulting firm opposed to the proposal indicated that some of the more modern communication and navigation systems are an improvement; however, some are not. Nonetheless, according to the commentor, since smaller airlines cannot afford to purchase the more expensive communication and navigation systems, they do not have the luxury of operating with enhanced accuracy and reliability provided by the more sophisticated systems. This commentor stated that the economic arguments of the proposal are not justified given that GPS is expected to bring down costs and that some operators will still conduct operations requiring the use of dual LRNS and LRCS. Moreover, according to this commentor, increased air traffic and reduced separation standards should bring forth a requirement for improved navigation safety not a reduction in safety standards. Indicating that errors are not mechanical but human, this commentor recommended maintaining the requirement for dual LRNS and LRCS and also improving training requirements.

FAA response: The FAA realizes that cost differences exist among LRNS and LRCS equipment and that there may be some differences in accuracy; however, all equipment used for operations under this rule must meet certain standards of approval established by the FAA. These standards serve to assure that an acceptable level of safety is maintained regardless of the cost and availability of the equipment.

The safe operation of LRNS and LRCS is a part of the operators' approved training program and is assured by FAA inspection and surveillance. Knowing that mistakes in navigation occasionally will be made, the FAA established certain operational factors in the rule to minimize any potential threat to safety which may result from potential errors.

One of the major factors considered in this rule is the question of economic burden to the air transportation industry. The FAA believes that this rule will relieve the airlines of a significant cost burden. If GPS LRNS units, and subsequently approved operations, present a cost savings above other, more prevalent, systems in use today, the FAA would certainly favor such a potential.

Economic Summary

This final rule reduces costs to operators by eliminating the requirements for two LRCS and two LRNS in the Gulf of Mexico, part of the western Atlantic Ocean, and the Caribbean Sea (the geographic area). Savings will come from reduced avionics costs, reduced fuel consumption from less aircraft weight, and reduced risk of flight cancellations due to inoperative equipment.

The FAA estimates the fleet size operating in the geographic area will be approximately 158 airplanes in 1995. The FAA assumes that the size of the fleet serving the geographic area will grow by 5.5 percent annually over the 10-year period, 1995–2004. Although the fleet composition varies from jumbo jets to smaller twin-engine turboprop planes, commercial operators most often use Boeing 727's in the geographic area. In addition to the scheduled commercial fleet, general aviation and non-commercial operators operating in the geographic area will gain some relief from this rule as well. The FAA, however, does not have an accurate measure of the size of the fleet operating in the geographic area.

Each commercial operator will save approximately $17,000 per airplane in equipment costs and will reduce aircraft weight 20 pounds per airplane by eliminating one LRCS; each commercial operator will save about $36,000 per airplane in equipment costs and will reduce aircraft weight 20 pounds per airplane by eliminating one LRNS. For existing airplanes with equipment made redundant by this rule, the resulting avionics cost savings will total about $53,000 per converted airplane. The FAA also estimates that each additional pound on an airplane costs an operator an additional 15 gallons of fuel annually. Assuming a converted airplane removes two 20-pound pieces of equipment, the reduction in weight will save 600 gallons of fuel each year. Using a 1993 average jet fuel price of $.675 per gallon, the reduction in weight of 600 gallons of fuel per year will result in annual savings totaling over $400 per converted airplane.

Additional savings from the rule will also come from reduced flight cancellations as operators experience fewer equipment failures as a result of the reduced equipment requirements. Cost reduction resulting from the prevention of a cancellation depends on passenger time, passenger handling costs, lost revenue, and operating costs. The approximate cost of a Boeing 727 cancellation is estimated to equal just over $28,000. The FAA, however, does not have an accurate estimate for the number of flight cancellations attributable to non-functioning LRCS or LRNS for airplanes operating in the geographic area from which to estimate the total cost savings resulting from reduced cancellations.

The FAA assumes that 50 percent of the commercial fleet serving the geographic area will reduce the equipment in its airplanes to only one LRCS and one LRNS, and that this conversion will occur during the first 2 years after implementation of the rule. Thereafter, the FAA assumes that one-half the airplanes added to the commercial fleet will be placed in service with only one LRCS and one LRNS. The FAA further assumes that the savings resulting from reduced fuel expenditure applies to the equipment conversion of 50 percent of the fleet converting to a single LRCS and a single LRNS.

In each of the first 2 years after the rule becomes effective, the industry will reduce avionics costs by over $2 million. Over the decade 1995–2004, the total savings in 1993 dollars for reduced avionics requirements will exceed $6.7

million. The fuel savings resulting from airplane weight reduction will add another $389,000 in reduced costs, bringing the total cost savings in 1993 dollars for this final rule to more than $7.1 million. The net discounted savings for the decade 1995–2004, will total just over $5.7 million.

The FAA has determined that no safety problem exists with the reduction in requirements for dual LRCS and dual LRNS for certain overwater operations. In the past two decades, the FAA has granted limited exemption from the requirements for dual LRCS and LRNS to certain qualified operators operating in the geographic area. No airplane operating under exemption has had an accident which can be attributed to having only one LRCS or one LRNS. During that time, the accuracy and reliability of navigation equipment has continuously improved. Thus, the FAA believes that this rule presents no degradation in aviation safety in the geographic area.

International Trade Impact Analysis

Domestic air carriers will receive a negligible cost reduction, but there will be no impact on foreign operators. Hence, this rule will have no effect on the sale of foreign aviation products or services in the U.S. or on the sale of U.S. products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that government regulations do not needlessly and disproportionately burden small businesses. The RFA requires the FAA to review each rule that may have "a significant economic impact on a substantial number of small entities."

FAA criteria define "a substantial number" as not less than eleven nor more than one-third of the small entities subject to the rule. Among air carriers, a small entity is defined as one which owns, but does not necessarily operate, nine or fewer aircraft. The criteria define "a significant impact" as follows: $102,000 for scheduled air carriers with 60 or more seats; $57,000 for scheduled air carriers with fewer than 60 seats.

This amendment is wholly cost relieving. By eliminating the need for two LRCS and LRNS in the geographic area, the estimated cost savings to an operator is $53,000. This savings is less than the threshold amount for small, scheduled operators.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule would not have federalism implications requiring the preparation of a Federalism Assessment.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices (SARP) to the maximum extent practicable. For this amendment, the FAA has reviewed the SARP of Annex 6, Parts I and II, applicable to international commercial air transportation operations and international general aviation operations respectively. The FAA has determined that this rule would not present any differences.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Statement, the FAA has determined that this regulation is not significant under Executive Order 12866. In addition, it is certified that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects

14 CFR Part 1

Air Transportation.

14 CFR Part 91

Aircraft, Airmen, Airports, Air traffic control, Aviation safety.

14 CFR Part 121

Air Carriers, Aircraft, Airmen.

14 CFR Part 125

Aircraft, Airmen, Aviation safety.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 1, 91, 121, 125, and 135 as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

1. The authority citation for part 1 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

2. Section 1.1 is amended by adding the following definitions:

§ 1.1 General definitions.

* * * * *

Long-range communication system (LRCS). A system that uses satellite relay, data link, high frequency, or another approved communication system which extends beyond line of sight.

Long-range navigation system (LRNS). An electronic navigation unit that is approved for use under instrument flight rules as a primary means of navigation, and has at least one source of navigational input, such as inertial navigation system, global positioning system, Omega/very low frequency, or Loran C.

* * * * *

PART 91—AIR TRAFFIC AND GENERAL OPERATING RULES

3. The authority citation for part 91 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

4. In § 91.11, paragraph (a) introductory text is amended by removing "paragraphs (c) and (d)" and by adding "paragraphs (c), (d), and (f)", in its place and new paragraph (f) is added to read as follows:

§ 91.511 Radio equipment for overwater operations.

* * * * *

(f) Notwithstanding the requirements in paragraph (a)(2) of this section, a person may operate in the Gulf of Mexico, the Caribbean Sea, and the Atlantic Ocean west of a line which extends from 44°47'00" N / 67°00'00" W to 39°00'00" N / 67°00'00" W to 38°30'00" N / 60°00'00" W south along the 60°00'00" W longitude line to the point where the line intersects with the northern coast of South America, when:

(1) A single long-range navigation system is installed, operational, and appropriate for the route; and

(2) Flight conditions and the aircraft's capabilities are such that no more than a 30-minute gap in two-way radio very high frequency communications is expected to exist.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

5. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40105, 40113, 44701–44702, and 44704–44705.

6. The first sentence of § 121.99 is revised to read as follows:

§ 121.99 Communication facilities.

Each domestic and flag air carrier must show that a two-way radio communication system is available at points that will ensure reliable and rapid communications, under normal operating conditions over the entire route (either direct or via approved point-to-point circuits) between each airplane and the appropriate dispatch office, and between each airplane and the appropriate air traffic control unit except as specified in § 121.351(c).

* * *

7. Section 121.351 is amended by revising paragraph (a) and adding new paragraph (c) to read as follows:

§ 121.351 Radio and navigation equipment for extended overwater operations and for certain other operations.

(a) Except as provided in paragraph (c) of this section, no person may conduct an extended overwater operation unless the airplane is equipped with the radio communication equipment necessary to comply with § 121.349, an independent system that complies with § 121.347 (a)(1), and two long-range navigation systems when VOR or ADF radio navigation equipment is unusable along a portion of the route.

(b) * * *

(c) Notwithstanding the requirements of paragraph (a) of this section, installation and use of a single LRNS and a single LRCS may be authorized by the Administrator and approved in the certificate holder's operations specifications for operations and routes in certain geographic areas. The following are among the operational factors the Administrator may consider in granting an authorization:

(1) The ability of the flightcrew to reliably fix the position of the airplane within the degree of accuracy required by ATC,

(2) The length of the route being flown, and

(3) The duration of the very high frequency communications gap.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

8. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40104, 40105, 44113, 44701–44705, 44707–44714, 44716–44717, 44722.

9. Section 125.203 is amended by adding the phrase "Except as provided in paragraph (e) of this section," at the beginning of the first sentence of paragraph (c) introductory text and adding a new paragraph (e) to read as follows:

§ 125.203 Radio and navigation equipment.

* * * * *

(e) Notwithstanding the requirements of paragraph (c) of this section, installation and use of a single long-range navigation system and a single long-range communication system for extended overwater operations in certain geographic areas may be authorized by the Administrator and approved in the certificate holder's operations specifications. The following are among the operational factors the Administrator may consider in granting an authorization:

(1) The ability of the flightcrew to reliably fix the position of the airplane within the degree of accuracy required by ATC,

(2) The length of the route being flown, and

(3) The duration of the very high frequency communications gap.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

10. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40105, 44113, 44701–44705, 44707–44717, 44722, and 45303.

11. Section 135.165 is amended by adding a new paragraph (d) to read as follows:

§ 135.165 Radio and navigation equipment: Extended overwater or IFR operations.

* * * * *

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, installation and use of a single long-range navigation system and a single long-range communication system, for extended overwater operations, may be authorized by the Administrator and approved in the certificate holder's operations specifications. The following are among the operational factors the Administrator may consider in granting an authorization:

(1) The ability of the flightcrew to reliably fix the position of the airplane within the degree of accuracy required by ATC,

(2) The length of the route being flown, and

(3) The duration of the very high frequency communications gap.

Issued in Washington, D.C., on February 20, 1996.

David R. Hinson,

Administrator.

[FR Doc. 96–4263 Filed 2–23–96; 8.45 am]

BILLING CODE 4910–13–M

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Federal Register

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Monday, February 26, 1996

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869–026–00001–8)	$5.00	Jan. 1, 1995
3 (1994 Compilation and Parts 100 and 101)	(869–026–00002–6)	40.00	[1] Jan. 1, 1995
4	(869–026–00003–4)	5.50	Jan. 1, 1995
5 Parts:			
1–699	(869–026–00004–2)	23.00	Jan. 1, 1995
700–1199	(869–026–00005–1)	20.00	Jan. 1, 1995
1200–End, 6 (6 Reserved)	(869–026–00006–9)	23.00	Jan. 1, 1995
7 Parts:			
0–26	(869–026–00007–7)	21.00	Jan. 1, 1995
27–45	(869–026–00008–5)	14.00	Jan. 1, 1995
46–51	(869–026–00009–3)	21.00	Jan. 1, 1995
52	(869–026–00010–7)	30.00	Jan. 1, 1995
53–209	(869–026–00011–5)	25.00	Jan. 1, 1995
210–299	(869–026–00012–3)	34.00	Jan. 1, 1995
300–399	(869–026–00013–1)	16.00	Jan. 1, 1995
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900–999	(869–026–00016–6)	32.00	Jan. 1, 1995
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400–999	(869–022–00197–3)	35.00	Oct. 1, 1994
1000–1199	(869–026–00201–1)	18.00	Oct. 1, 1995
1200–End	(869–026–00202–9)	15.00	Oct. 1, 1995
50 Parts:			
1–199	(869–022–00200–7)	25.00	Oct. 1, 1994
200–599	(869–026–00204–5)	22.00	Oct. 1, 1995
600–End	(869–026–00205–3)	27.00	Oct. 1, 1995

Title	Stock Number	Price	Revision Date
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[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.

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2–27–96
Vol. 61 No. 39

federal register

Tuesday
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VOL
61

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2–27–96
Vol. 61 No. 39
Pages 7193–7406

federal register

Tuesday
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VOL
61
ISS
39
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1996
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Rules and Regulations

Federal Register
Vol. 61, No. 39
Tuesday, February 27, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 404

RIN 0563–AB13

Noninsured Crop Disaster Assistance Program

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation ("FCIC") hereby revises and makes final its regulations to provide a noninsured crop disaster assistance program ("NAP") to protect producers of crops for which insurance is not available. NAP provides a level of protection that, in most respects, is comparable to the catastrophic risk protection program offered to producers of insurable crops.

EFFECTIVE DATE: February 22, 1996.

FOR FURTHER INFORMATION CONTACT: For further information and a copy of the Regulatory Impact Analysis to the noninsured crop disaster assistance program, contact Diana Moslak, Federal Crop Insurance Corporation, Regulatory and Procedural Development Staff, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 720–0713.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Departmental Regulation 1512–1

This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 2000.

This rule has been determined to be "significant" for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget ("OMB").

Regulatory Impact Analysis

A Regulatory Impact Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that the final NAP rule incorporates three significant changes when compared with the interim rule. First, the final NAP rule defines an "area" for NAP triggering purposes as at least 320,000 acres, at least $80 million crop value, or the county, as determined by the Manager, FCIC. The interim rule used only the 320,000-acre and $80 million value mechanisms. Second, the final rule allows different types or varieties of a crop or commodity to be treated as separate eligible crops. Previously, all types and varieties were treated as a single eligible crop. Third, the interim rule only provided NAP coverage for seeded forage crops. The final rule expands NAP coverage to include both seeded and native forage, except on state and Federal lands where NAP coverage is restricted to seeded forage.

Increasing the choices for defining NAP areas by adding a "county-level" option, providing greater flexibility in the definition of a crop, providing coverage for both seeded and native forage, and including the retroactivity provisions will increase NAP outlays. Some offset is provided by language that requires a five-producer minimum in the definition of a NAP area. The expected annual outlays under these regulations are about $95 million to $145 million, averaging $120 million. The cost associated with the forage issue depends on the future of the Livestock Feed Program, as discussed in the analysis.

Although expected to result in higher Federal outlays, these changes are designed to improve the equity in NAP payments among growers. Experience in 1995 and interim rule comments indicate that various areas and crop types would not receive NAP payments under the interim rule, despite significant losses. In addition, some producers may not have received payments due to perils that were omitted from the crop insurance policy.

The improvements in equity are associated with changes in administrative costs. Program administration will likely be easier for FSA offices with the county designation added to the list of area definition options. However, additional administrative costs will be associated with the determination of losses by crop type, as well as the determination of losses qualifying for payment due to NAP coverage of both seeded and native forage.

Paperwork Reduction Act of 1995

This final rule amends the information collection requirements previously approved by OMB under OMB control number 0563–0016 through May 31, 1998. This rule increases the producer (respondent) audience participation due to increased availability for NAP assistance for seeded and native forage. This coverage excludes native forage on any federal or state owned lands, and any crops for which insurance is available in the county, that is affected by natural disaster and is not insurable under the producer's crop insurance policy. All of the forms cleared under OMB control number 0563–0016 represent the required forms to determine eligibility and losses qualifying for payment due to NAP coverage.

Revised reporting estimates and requirements for usage of OMB control number 0563–0016 will be submitted to OMB for approval under the provisions of 44 U.S.C. 35. Public comments are due by April 22, 1996.

The title of this information collection is "Noninsured Crop Disaster Assistance Program, Claim For Indemnity, Field Inspection And Appraisal Requirements." The information requested is required for proper administration of the Noninsured Crop Disaster Assistance Program. The burden for the NAP Program is reported on an as needed basis when disaster situations arise. The reporting burden for this collection of information is estimated to average 42 minutes per response for each of the 8.5 responses from approximately 15,172,500 respondents. The total annual burden on the public for this information collection is 10,620,750 hours.

The comment period for information collections under the Paperwork Act of 1995 continues through April 22, 1996. Comments are requested on the

following aspects of the Information Collection: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Bonnie Hart, Advisory and Corporate Operations Staff, Regulatory Review Group, Farm Service Agency, U.S. Department of Agriculture, Washington, D.C. 20250. Copies of the information collection may be obtained from Bonnie Hart at the above address. Telephone (202) 690–2857.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. Most producers will be able to certify to their historical production levels at the time of application based on existing records, or they may elect to base their initial coverage on transitional or assigned yields. The amount of data collected from applicants will only be that needed to establish an acceptable yield, determine the number of acres planted, and determine the eligibility of the producer, crop, and acreage. The information required and time of collection is statutory. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 780 and 7 CFR part 11, must be exhausted before any judicial action may be brought regarding the provisions of this regulation. The provisions of this rule that are not more restrictive than the interim rule will be effective retroactive to May 18, 1995, the date of publication of the interim rule. The provision in § 404.13 regarding the requirement that an "area" consist of a minimum of five producers before it can be approved is not effective retroactively.

Environmental Evaluation

This action is not expected to have any significant impact on the quality of the human environment, health, and safety: Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

On October 13, 1994, the Federal Crop Insurance Act was amended by the Federal Crop Insurance Reform Act of 1994 ("Act"). This regulation provides the provisions necessary to carry out the noninsured crop disaster assistance program ("NAP") requirements of the Act. NAP replaces the Disaster Payment Program (7 CFR part 1477) and the Tree Assistance Program (7 CFR part 1478).

On May 18, 1995, FCIC published an interim rule in the **Federal Register** at 60 FR 26669 to add provisions to implement NAP. Following publication of that interim rule, the public was afforded 60 days to submit written comments, data, and opinions. On August 7, 1995, FCIC extended the comment period for the NAP regulations to August 18, 1995 (60 FR 40055). The comments received and FCIC responses are as follows:

Comment: § 404.5(b) Thirty-six comments received from state FSA offices recommended that section 404.5(b) be amended to allow the Administrator of FSA to review and approve or disapprove the state FSA committee recommendation of area eligibility.

Response: The Act specifies that FCIC will make determinations of area eligibility. The provision will not be changed.

Comment: § 404.5(c) Thirty-six comments received from state FSA offices recommended that section 404.5(c) be amended to allow county and State FSA committees to establish yields and prices.

Response: The Act specifies that FCIC shall establish yields and prices. The provision will not be changed.

Comment: § 404.7(e) Five comments, two from trade associations and three from other interested parties, were received suggesting that the definition of "Aquacultural species" contained in section 404.7(e) be changed to allow aquaculture on lands that are not privately owned or in waters that are not a "controlled environment." One comment from an interested party requested clarification of "private property in water in a controlled environment" stating that fish are grown for human consumption in privately owned net pens (property) in sea water which is controlled by the net pens but owned by the nation or state. The state leases the bedlands under the cages to the private operator so that the cages can be set in place and moored. FCIC was urged to reconsider the proposed definition to explicitly allow caged fish and shellfish operations on state leased lands and waters.

Response: The definition provides for coverage of aquaculture that is produced in a controlled aquacultural environment. A controlled environment may include net pens on leased lands provided that the lease vests in the lessee all the rights and benefits of ownership of the leased land and does not merely provide a license to gather the aquacultural species found in the pen. Therefore, the provision will not be changed.

Comment: § 404.7(e) Two comments were received, one from a state government office and one from a trade association, stating that the definition of "Aquacultural species" excludes ornamental fish and aquatic plant industries from the NAP. The state government official recommended that section 404.7(e) be changed to include nonfood farm-raised fish and aquatic plants.

Response: The Act limits NAP to crops produced for food or fiber. The provision will not be changed.

Comment: § 404.7(l) Four comments received from trade associations stated that many floricultural, nursery, turfgrass sod, and tree crops are produced in "crop years" ranging over several "calendar years." The trade associations suggested that the definition of "crop year" contained in section 404.7(l) be amended to clarify that losses occurring in a given calendar year will be covered even though the plant may not be harvested (or be ready to harvest) during that given year.

Response: The definition has been modified to clarify and explain how crops produced over multiple calendar years will be eligible for NAP.

Comment: § 404.7(n) Four comments received from trade associations requested clarification of the definition of "Eligible crop" contained in section 404.7(n) which states in part that "In the case of a crop that historically has multiple plantings in the same crop year that are planted or are prevented from being planted on the same or different acreage will be considered different crops for determining NAP payments. This does not apply to a replacement crop." The trade associations stated that it is their interpretation that this provision is to provide that a loss is ineligible for NAP coverage even if the grower harvests other plantings in the same year.

Response: The definition has been modified to clarify that each planting of a crop with multiple plantings in the same crop year will be considered as a separate crop eligible for NAP payments.

Comment: § 404.7(p) One comment received from an USDA agency suggested that the definition of "FCIC" contained in section 404.7(p) be changed to reflect FCIC as a separate and distinct corporate entity.

Response: By definition, FCIC is a separate and distinct corporate entity. Therefore, no change is required.

Comment: § 404.7(q) One comment received from a trade association suggested that the definition of "good farming practices" contained in section 404.7(q) be changed to include alternative farming practices and innovations that are supported by research or practice appropriate to the type of farming undertaken.

Response: The definition allows alternative farming practices and innovations that are supported by data from the Cooperative State Research, Education, and Extension Service (CSREES). Therefore, no change is required.

Comment: § 404.7(r) and (ee) One comment was received from a state FSA office regarding the definitions for "Harvested" which excludes harvest by grazing except for "Seeded pasture" which is limited to "an annual crop intended for use as grazing only by domestic animals," contained in sections 404.7(r) and 404.7(ee), respectively. The state FSA official expressed concern that these definitions exclude nearly all forage crops harvested by grazing. The state FSA official suggested that eligibility for noninsured crop disaster assistance be based on crop yields and losses, not the method of harvest, and that grazing not be excluded from the "Harvest" definition.

Response: With respect to the definition of "Harvested," the intent is to define the term to include only those means of removing the crop that result in costs being incurred by the producer. Section 404.9(c) authorizes FCIC to reduce the NAP payment as a result of costs not incurred by the producer, such as harvesting. Because grazing does not result in a cost to the producer, it is not considered as "harvested". With respect to the definition of "Seeded pasture," FCIC has changed the term to "Forage" to include both seeded and native forage crops that are harvested or grazed. Grazed forage will be eligible for NAP payments at reduced rates. Forage is defined as land covered with grass or other vegetation, produced under such range management practices as are necessary to sustain sufficient quality and quantity of grass or vegetation each year to be suitable for grazing or mechanical harvest to feed livestock in a commercial operation. NAP coverage for forage on any Federal or state owned lands is restricted to seeded forage.

Comment: § 404.7(r) One comment received from a congressional office stated that the definition of "Harvested" contained in section 404.7(r) is silent on disaster assistance to producers of crops that are harvested over multiple years and recommended a provision be added to embrace disaster assistance for crops harvested over multiple years.

Response: The paragraph has been modified to clarify when crops produced and harvested over multiple years are considered harvested.

Comment: § 404.7(v) Two comments received from aquaculture producers recommended that the NAP provisions cover loss of fish due to storms causing low pressure and heaving, hot humidity; cloudy weather causing low oxygen; high temperatures causing loss of appetite; drought causing water evaporation and stale water; diseases; and failure of equipment or down power lines due to lightening, storms, or wind stopping the aeration of oxygen.

Response: To qualify for NAP assistance, the Act provides that losses of the noninsured commodity be attributable to drought, flood, or other natural disaster, as determined by the Secretary. The definition of natural disaster has been modified to include eligible crop losses that may be attributable to damaging weather or adverse natural occurrences and related conditions.

Comment: § 404.7(y) Two comments were received regarding the definition of "Prevented planting" contained in section 404.7(y) as follows:

(1) One comment received from a USDA state office requested clarification of the definition of "Prevented planting" contained in section 404.7(y) which states in part, "The natural disaster that caused the prevented planting may occur prior to the planting period for the crop in the area, but must not occur earlier than the planting period for such crop the prior crop year." The state government official suggested that section 404.7(y) be

amended to specify whether a natural disaster that occurred in one year and carried over into the next year will receive NAP coverage.

(2) One comment received from a trade association stated that the requirement that "most producers in the surrounding area must have also been unable to plant the eligible crop in order for a producer to be eligible for a NAP payment" may impose an additional requirement not supported by the Act especially when a producer is otherwise eligible for NAP benefits and can show that planting was not feasible due to a natural disaster. The trade association suggested that this requirement be deleted from the definition of "Prevented planting."

Response: The definition has been modified to allow for the coverage of prevented planting when the cause of the prevented planting occurred after the final planting date of the previous crop year and before the final planting date of the crop year for which a NAP payment is requested. For crops with multiple plantings in 1 crop year, the cause of the prevented planting must occur after the planting of the previous planting period and before the final planting date of the current planting period. Further the paragraph has been amended to eliminate the requirement that most producers in the surrounding area must have also been unable to plant the eligible crop or other crops during the same planting period in order for a producer to be eligible for a prevented planting payment.

Comment: § 404.9(c) Five comments were received regarding section 404.9(c) which specifies that "FCIC will adjust the NAP payment rate for crops that are produced with significant and variable expenses that are not incurred because the crop acreage was prevented from being planted or planted but not harvested" as follows:

(1) Four comments received from trade associations suggested section 404.9(c) be clarified by providing the criteria to be used in determining potential reductions in the NAP payment rate for costs not incurred by the producer as a result of the crop acreage being prevented from planting or planted but not harvested The trade associations also suggested that the regulations specify the person or office ultimately responsible for making the NAP payment rate reduction determinations as it relates specifically to specialty crops.

(2) One comment received from a USDA agency suggested that the rule include specifics for calculating the adjustment in the NAP payment rate and that the method used be similar to those included in the 1994 *ad hoc* disaster program.

Response: The Act requires the development of a payment rate for a crop that is produced with a significant and variable harvesting expense that takes into consideration the stage of the crop at the time of loss; for example, not planted, planted but not harvested, or harvested. Because of all the variations that exist between crops, it is not possible to list all the factors that affect the costs associated with producing all crops. FCIC will approve all variable payment factors whether applicable to specialty or other crops. The method used in determining payments under the 1994 *ad hoc* disaster program will be taken into consideration.

Comment: § 404.11(a) Fifty-four comments, one from a congressional office, fourteen from producers, one from a trade association, one from a county FSA committee, one from a state FSA committee, and thirty-six from state FSA offices, were received requesting section 404.11(a) be changed to allow NAP benefits for seed crops, specifically grass, clover, alfalfa and legume seed crops and any other crop grown commercially for seed. The one comment received from the state FSA committee stated that legislation does not specifically exclude seed crops which are ultimately used for the production of crops for human consumption or livestock feed and. therefore, should be added to the list of crops eligible for NAP benefits.

Response: The Act specifies that the term "eligible crop" will include each commercial crop or other agricultural commodity (except livestock) that is produced for food or fiber. Seed crops are not produced for food or fiber. Further, the Act specifically included the exceptions to the food or fiber requirement. Crops not specifically included in the exception are not eligible for NAP. The provision will not be changed.

Comment: § 404.11(a) One comment received from a producer suggested that section 404.11(a) be changed to allow NAP payments by crop type rather than treating as a single eligible crop all types and varieties of a crop. This producer stated that the farmer who raises several types of a crop, as opposed to a farmer who raises only one type, may not qualify for a NAP payment if one type does not meet the 50 percent individual loss requirement. The producer also questioned whether crops such as tomatoes, basil, or flowers grown in a greenhouse would be eligible for NAP because pumpkins used for decoration are not covered by NAP, but flowers are, and whether indian corn, strawberry corn, or blue corn are eligible crops under the NAP. The producer recommended all crops and corn grown outside be eligible for NAP payment.

Response: The paragraph has been revised to allow FCIC to treat different types and varieties of a crop or commodity as separate eligible crops provided they have significantly different prices or yields. The determination of whether a crop is eligible for NAP payments is not based on whether a crop is grown indoors or outdoors. The Act specified that crops grown for food or fiber, or included on the list of exceptions, are eligible regardless of where grown. This provision will not be changed.

Comment: § 404.11(a)(3) One comment received from a timber producer requested section 404.11(a)(3) be changed to include walnut trees planted for timber purposes as a crop eligible for NAP benefits.

Response: FCIC cannot expand the list of crops eligible for NAP payments beyond those crops designated by the Act. The provision will not be changed.

Comment: § 404.11(a) One comment was received from a FSA district director regarding sections which specify that eligible crops are those crops grown for food and fiber and then lists additional crops such as floriculture, ornamental nursery crops, Christmas trees, turfgrass sod, and industrial crops as eligible crops for NAP benefits. The FSA district director suggested that all of the exceptions to the crops produced for food or fiber be deleted or the provisions be broadened to include all crops produced for commercial purposes.

Response: The named crops, in addition to crops produced for food or fiber, are specified by the Act and, therefore, must be included. Further, the list of named crops cannot be expanded beyond those specified in the Act.

Comment: § 404.11(b)(3) One comment was received from a USDA agency regarding section 404.11(b)(3) which provides for NAP payments in the case of delayed plantings caused by a natural disaster. The USDA agency official states that since the Act provides "that an eligible crop means each commercial crop or other agricultural commodity (except livestock) for which the Catastrophic Risk Protection (CAT) Plan of Insurance is not available, and that is produced for food or fiber," there are no statutory exceptions. The USDA agency official recommends that if a crop is insurable under CAT, there should be no exceptions to cover losses from delayed plantings for NAP crops.

Response: The commentator may have misinterpreted the provision. A crop that is not insurable under CAT because the natural disaster causing the damage was not an insurable cause of loss under CAT may be covered for the natural disaster under NAP, provided that all the other eligibility requirements are satisfied.

Comment: § 404.11(b)(6) Four comments were received from trade associations requesting FCIC to clarify the exemption contained in section 404.11(b)(3). The trade associations stated that the Clean Water Act and the swampbuster provisions provide exemptions from many of the features of current wetlands policy that affect agriculture. Perennial specialty crops were excluded from exemption resulting in discrimination against a large segment of American agriculture without any environmental benefit or preservation of wetlands. To avoid a similar situation, the trade associations requested the FCIC to clarify the exemption contained in this section to ensure past problems are not repeated and that specialty crops are not inappropriately excluded from NAP benefits.

Response: The regulations at section 12.5 of this title, incorporated into this rule by reference, contain the exceptions authorized by the Secretary for all USDA programs. It would be inappropriate for a clarification of section 12.5 to appear in this rule.

Comment: § 404.13 Sixty-three comments, fifteen from producers, three from trade associations, three from state government offices, two from congressional offices, one from a county FSA office, one from a county FSA committee, one from a state FSA committee, one from a district director, and thirty-six from state FSA offices, were received regarding section 404.13 which specifies the minimum area of 320,000 acres or a geographical area with a minimum average value of at least $80 million for all crops produced annually and other interrelated provisions contained in section 404.19.

(1) Fifteen comments received from producers, two from trade associations, three from state government offices, one from a congressional office, one from a county FSA office, one from a county FSA committee, one from a state FSA committee, one from a district director, and thirty-six from state FSA offices stated that the minimum area requirement (320,000 acres or $80 million value) contained in section 404.13 coupled with the 35 percent area-wide yield loss requirement contained in section 404.19(c) is excessively large.

(2) One comment received from a producer recommended elimination of the area stating that if a small farm is wiped out by hail damage and the 35 percent area loss does not trigger, the farmer could possibly lose 100 percent of his crop with no compensation. One FSA district director stated that a producer would not be covered under the NAP for crop losses resulting from isolated storms such as hailstorms or thunderstorms. The FSA district director also stated that NAP discriminates against producers of noninsured crops because of the unavailability of insurance coverage in some states.

(3) Thirty-six comments received from state FSA offices recommended elimination of the area if statutorily permissible. If not statutorily permissible, the state FSA offices recommended the county FSA committee with state FSA committee concurrence be given the authority to delineate an area (with no minimum acreage) based on the agriculture in the county and the natural disaster affected area. One of the state FSA offices recommended using certain towns in determining the disaster area and states and suggested that "no disaster be smaller than a single town and none larger than where the disaster actually occurred." Another state FSA office stated that the 35 percent area loss requirement is not comparable to the catastrophic level of protection and recommended a smaller minimum area size or elimination of the area and reconsideration of the 35 percent area loss requirement.

(4) One comment received from a producer recommended the regional FSA office define an area.

(5) One comment received from a producer recommended that FSA committees decide if there is a payable loss.

(6) Three comments received from state government officials, one from a county FSA office, and one from a state FSA committee recommended the area be modified to provide assistance to localized areas that cannot meet the minimum area and area eligibility requirements.

(7) One comment received from a county FSA committee recommended the NAP be administered more like the CAT whereby eligibility is on an individual unit basis.

(8) One comment received from a trade association stated that the current provisions for defining an "area" are too burdensome. The trade association suggested the "area" be defined as a county with added exceptions to address situations wherein part of one county and part of another county could constitute an "area."

(9) One comment received from a congressional office stated that producers should not be denied coverage because an insufficient number of producers in the vicinity suffered similar losses. The comment suggested that section 404.13(d) be changed to allow eligibility for NAP benefits to be determined by local circumstances defined by the county FSA committee so as not to use acreage to deny NAP coverage for small diversified agricultural operations.

Response: The Act requires the average yield in the "area" be reduced by at least 35 percent before a crop is eligible for NAP payments. An area cannot be defined as a farm or town and comply with the intent of NAP, which is to provide protection against widespread disasters, not individual losses. The requirement that there be an area affected by a disaster and the amount of loss cannot be changed administratively. However, in response to comments received, the provision will be amended for clarity and changed to include "county" as an option when defining the area. In order to maintain program consistency, FCIC will continue to determine the expected area yield, the approved yields, and approve the "area" designation. To ensure program integrity, this section is also being amended to require that an approved area within the United States consist of a minimum of five producers of crops for which the area is designated.

Comment: § 404.15(b) One comment received from a trade association suggested section 404.15(b) be expanded to include special yield determination examples for organic and nonorganic and sustainable and traditional farming practices.

Response: FCIC is authorized to make yield adjustments based on different farming practices, which would include organic and nonorganic. Irrigated and nonirrigated are merely used as examples. However, the provision will be revised to avoid the perception that only irrigated and nonirrigated practices shall be considered.

Comment: § 404.15(d) One comment was received from a state government official regarding section 404.15(d) which states in part that "Approved yields for the eligible crop will be based on the producer's actual production history in accordance with the provisions of 7 CFR part 400, subpart G." The state government official states that to require the submission of 4 consecutive years production for producers who may have had a disaster in 2 consecutive years is not fair. The state government official recommended

that section 404.15(d) be amended to allow a producer who has more than 4 consecutive years of production records on noninsured crops to submit production records for any 4 of those years.

Response: The Act requires that approved yields be based on the producers actual production history over a period of at least the previous 4 consecutive years of production records and not more than 10 consecutive years of production records. Producers can only use assigned yields when records are not available. If the producer has had a disaster, production records will be available. Therefore, this provision will not be changed.

Comment: § 404.15(g) Three comments were received regarding section 404.15(g) as follows:

(1) One comment received from a producer recommended section 404.15(g) be amended to allow the FSA committee to determine the production records a producer must submit.

(2) One comment received from a trade association recommended section 404.15(g) be amended to include some intent to defraud or deceive when assessing criminal and civil actions against the producer for failure to provide adequate records.

(3) One comment was received from a state FSA committee recommending that section 404.15(g)(2) be changed to delete for use as adequate records "contemporaneous measurements, truck scale tickets, contemporaneous diaries, etc." Justification for this change was that such production information is not an adequate record for use in yield determination, is not verifiable, and makes administering the program more difficult. The state FSA committee suggested that unless the producer can provide verifiable production evidence, this production information not be considered as an adequate record for use in yield determination.

Response: Producers are not required to submit a specific type of record. The rule simply provides examples of record that may be considered acceptable to FCIC for the purposes of substantiating claims for NAP payments or yield certification. FCIC will consider all available sources of information including recommendations from county and state FSA committees; however, FCIC will make the determination as to whether the documentation provided is adequate. The applicable criminal and civil sanctions have an intentional or wilful requirement with respect to the providing of false or inaccurate information, including a false claim that records exist. In response to the comments, the paragraph has been revised to require the producers to submit records that are acceptable to FCIC. If the information is not reliable or verifiable, the records will not be considered acceptable. No other change to the provision will be made.

Comment: § 404.17(b)(6) One comment was received from a producer recommending section 404.17(b)(6) be changed to require the producer to report planting dates only for those crops planted after the final acreage reporting date and to allow the county FSA committee to determine whether a producer planted late.

Response: It has been determined that if the acreage report does not contain a certification as to the date the crop being reported was planted, it will be difficult to determine if the crop was planted after the final acreage reporting date or final planting date established for insurance purposes. Information as to the date of planting should be readily available when the acreage report for the crop is filed. Accordingly, the paragraph is not changed.

Comment: § 404.17(b)(8) One comment was received from a producer recommending section 404.17(b)(8) be changed to allow a producer to prove yields at the application for NAP benefits date rather than at acreage reporting date.

Response: Because NAP payments are based on the actual production history of the producer, it is necessary to require producers to annually report the acreage and production of crops. Further, such information will be used to develop insurance products for those crops for which insurance is currently not available. Producers unable to provide adequate documentation of their yield will have a yield assigned in accordance with section 519 of the Act.

Comment: Two comments from trade associations were received regarding section 404.19(a). The comments are as follows:

(1) One comment received from a trade association suggested section 404.19(a) address the standards the Secretary will use in determining the natural disasters eligible for NAP payments. The trade association raises this issue in light of complaints that sustainable and alternative practices have been treated unfairly in the past.

(2) One comment received from a trade association suggested section 404.19(a)(3) address the standards that will be used to exclude NAP assistance for the failure of the producer to follow good farming practices. According to the trade association sustainable and alternative agricultural practices are frequently and erroneously labeled as not "good farming practices" simply because they may be different from the traditional approach in the area. The trade association suggested section 404.19(a)(3) provide specificity on this point and provide producers with guidance as to what evidence they should present in order to show that their alternative methods were appropriate.

Response: The definition of "natural disaster" has been clarified to include both weather related and other natural occurrences or their consequences which may cause or accelerate the destruction or deterioration of a crop. Further, the definition of "good farming practices" allows alternative farming practices and innovations that are supported by data from the Cooperative State Research, Education, and Extension Service (CSREES). Therefore, a change is not required.

Comment: § 404.19(c)(1) Six comments, five from trade associations and one from a state FSA committee, were received regarding section 404.19(c)(1) which specifies that "The quantity will not be reduced for any quality consideration unless a zero value is established." One trade association recommended section 404.19(c)(1) be changed to include quality adjustment for hay crops in the disaster calculation for NAP payment. Four trade associations recommended FCIC develop a more flexible approach that focuses on the value of the damaged but not "dead" crop and whether the crop will be marketable in the future at a reasonable price. The state FSA committee recommended the same quality loss guidelines provided under CAT be also available to producers under the NAP.

Response: Many of the crops eligible for quality adjustments under the crop insurance program have generally accepted grades and standards upon which to base such adjustments. There are no such generally accepted grades and standards for most NAP crops. Therefore, no change is made.

Comment: Seven comments, one from a state government official, one from a producer, one from a FSA district director, and four from trade associations, were received regarding section 404.19(c)(2). The comments are as follows:

(1) One comment was received from a state government official regarding section 404.19(c)(2) which states that "A prevented planting NAP payment will be made if the producer is prevented from planting more than thirty-five percent (35%) of the total eligible acreage intended for planting to the eligible crop." The state government official recommended the provision be changed to specify the percentage of guarantee that will be paid to a producer. The state government official suggested the guarantee be specified at a rate of not less than 65 percent for producers who are prevented entirely from planting a crop.

(2) Two comments, one from a producer and one from an FSA district director, were received regarding section 404.19(c)(2)(A) which states that "Eligible crop acreage will not exceed 100% of the simple average of the number of acres planted to the crop by the producer in the loss area during the years used to determine the approved yield, unless FCIC has previously agreed in writing to approve acreage exceeding this limit." The producer requested FCIC reconsideration of this provision in light of crop rotations and the planting of other crops. The FSA district director stated the provision discriminates against producers of noninsured crops because a producer of an insured crop is not subject to this restriction.

(3) Four comments were received from trade associations regarding section 404.19(2)(D)(i) which specifies that NAP payments for prevented planting will not be available for "tree crops and other perennials." The trade associations stated it is arbitrary and capricious to exclude turfgrass sod, floricultural, and ornamental nursery crops as perennials ineligible for NAP prevented planting. Because many of these crops can be produced in a period ranging from a few months to several years, depending upon the area of the country and a wide variety of agronomic considerations, the trade associations suggested a more flexible approach be developed by FCIC.

Response: Section 519(d)(1) of the Act limits the production eligible for payment to less than 50 percent of the producer's approved yield. Section 404.23 is added to specify how losses will be paid to producers eligible for prevented planting or reduced yield NAP payments. In § 404.19, paragraphs (c)(2) (A), (B), and (C) have been deleted and acreage which was prevented from planting due to a natural disaster, and the producer can prove was intended to be planted, may be eligible for NAP payments. Tree crops and perennials may be eligible for prevented planting NAP payments provided the producer can prove adequate resources were available, or on order, to plant, grow, and harvest the crop, if applicable.

Comment: § 404.21(a). Two comments, one from a state FSA committee and one from a trade association were received regarding section 404.21(a) which specifies that "Any person with a share in the eligible crop who would be entitled to a NAP payment must make application and provide a notice of damage or loss within 15 calendar days after the occurrence of the prevented planting (the end of the planting period) or damage to the crop." The state FSA committee stated that the 15-day notification is too limiting and suggested the provision be changed to allow for a 30- or 45-day notification period. The trade association also stated that the 15-day notice of damage was too restrictive.

Response: The time period for providing notice of loss is comparable to the insurance requirement and allows for timely inspection of the damaged crop, if necessary. Longer time periods may make it difficult to accurately assess the extent of the damage and prevent the producer from destroying the crop and putting the acreage to another use.

Comment: § 404.27(a). One comment received from a state government official suggested that section 404.27(a) be amended by replacing the words "erroneously represented" with the words "knowingly misrepresented". Justification for this change was that the provision implies that a farmer who unwittingly benefited from another's action could face cruel and unduly harsh penalties due to acts of which he or she was totally unaware.

Response: The paragraph has been clarified to replace "erroneously represented" with "misrepresented." Further, the paragraph has been revised to require that producers "knowingly" adopt, participate, or benefit from a scheme or device to conform to the requirement of the Act.

Comment: § 404.27(c)(2). One comment received from a trade association suggested section 404.27(c)(2) be amended to include the "knowing" or "intentional" submission of false information.

Response: Since section 404.27(a) has already been revised to require a "knowing" adoption, participation, or benefiting from the scheme or device, a change is not required here.

Comment: § 404.29(a). One comment received by a trade association suggested section 404.29(a) include a provision to provide for refund of monies by the producer as a result of an FCIC error and that such provision not require the producer to pay interest or pay the money back "on demand." The trade association suggested that after a set period of time FCIC should not be allowed to recompute and correct its own mistakes and should within that set period of time establish an equitable repayment schedule agreed upon by the parties involved.

Response: There is a statute of limitation that governs the period within which FCIC can bring an action to recover funds that are owed to it. Further, since NAP is a government funded program, payments cannot be made or retained that are not authorized by law.

Comment: § 404.33. Two comments, one from a state government official and one from a trade association, were received regarding section 404.33 as follows:

(1) One comment from a state government official suggested that this section be amended by removing the words "The appeal, reconsideration, or review of all determinations made under this part . . ." and inserting in its place the words "Any determination made by the agency, which the producer believes to be adverse to his or her participation in the program, can be appealed, reconsidered, or reviewed by the agency." The state government official also suggested that the words "must be in accordance with part 780 of this title or the regulations promulgated by the National Appeals Division, whichever is applicable" be replaced with a new paragraph to read as follows:

"All appeals will be heard under the new regulations that are published for the National Appeals Division, including the right of a producer to participate in mediation with the agency. If the appeal is in a state with a certified mediation program, then the agency must notify the producer in writing, of his or her right to mediation."

(2) One comment received from a trade association suggested this section include appeal rights through the National Appeals Division on whether the designation of an area is appealable. The trade association also suggested that these regulations provide more specific guidance in keeping with the National Appeals Division regulations particularly notice provisions, timeframes, and any informal appeal options.

Response: Since the National Appeals Division has specific jurisdictional requirements, no change is necessary. Further, the Act requires that informal appeal processes in effect on the date of its enactment remain in effect and producers are provided their choice of forums. Mediation is available under 7 CFR part 780. Rules of general applicability are not appealable and the area designation is a rule of general applicability. Since the notice, timeframe, and informal appeal options

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are specifically stated in the referenced part and regulation, it would be redundant to include them here.

Comment: One comment received from an USDA agency recommended that participation in the NAP be linked to other price support, production adjustment, conservation programs, and the CAT program. Justification for this change was to provide equitable treatment to all producers and to be consistent with the Act which requires the FCIC to establish a NAP program to provide coverage equivalent to the CAT program.

Response: The Agency determined that it would not require linkage between CAT and NAP unless specifically required by the Act.

Comment: One comment received from a USDA agency recommended an administrative fee similar to the CAT program be charged producers prior to the time they receive benefits under the NAP. Justification for this charge was to ensure fair and equitable treatment of all producers and to help cover administrative costs for delivering the program.

Response: The comment cannot be implemented because the Act does not authorize collection of fees from NAP producers.

Comment: One comment received from a USDA agency suggested that a producer should have a history of growing the crop in order to receive NAP benefits. Justification for this change was to ensure that a producer has the knowledge, expertise, and intent to produce the crop.

Response: This suggestion would have the affect of penalizing new producers. FSA's operating procedure delegates to the county committees the responsibility of determining that good farming practices were used in producing the crop. If good farming practices were not used or the producer cannot prove that a crop was intended for planting, the producer is ineligible for NAP payments.

Comment: One comment received from a USDA agency recommended limits be placed on producers from receiving NAP benefits on acreages that substantially increased over the previous year's planting. Justification for this change was to help prevent producers from significantly expanding planted acres on certain crops on the basis of the NAP benefits available.

Response: The Act does not provide for limiting NAP benefits if a producer increases acreage of a crop. The Act only limits the use of assigned yields when the crop acreage in the county has significantly increased from previous years.

Comment: One comment received from a trade association stated that since producers must file annual acreage reports it is imperative that they be notified on the availability of NAP. The trade association suggested post-disaster sign-up for the first few years of this program.

Response: The Act requires producers to annually provide records of previous years acreage, yield, and production. Further, producers are required to file acreage reports showing the current crop years planted and prevented planted acreage. These requirements cannot be changed. Under the Act, producers are not required to submit an application for payment until the application deadline, which occurs after the loss has occurred.

With the exception of a few minor editorial or technical corrections, other changes made by FCIC are as follows:

(1) Removed the reference to the definitions for actual yield, adjusted yield, and replacement crop at § 404.7(b), (c), and (dd) because those terms are not relevant to this program;

(2) Removed the reference to the definition for master yield at § 404.7(u) because there are no master yields under NAP;

(3) Added a definition for CAT, FSA, NASS, and NAP in § 404.7 for clarity;

(4) Added a definition for ornamental nursery crop at § 404.7 to clarify which nursery crops are covered;

(5) Added a provision to § 404.11 which makes NAP assistance available for any crop for which insurance is available in the county, that is affected by natural disaster that is not insurable under the producer's crop insurance policy for clarity even though such coverage was available under the interim rule;

(6) Revised § 404.13 for clarity, added "county" as an option for area designations, and require a minimum number of producers for NAP areas within the United States;

(7) Added § 404.23 to clarify how NAP payments are calculated and redesignated the remaining sections accordingly.

Good cause is shown to make this rule effective upon public filing with the **Federal Register**, and without the 30-day period required by the Administrative Procedure Act. The interim rule implemented the NAP requirements mandated by the amendments to the Federal Crop Insurance Act by the Federal Crop Insurance Reform Act of 1994. This final rule needs expedited implementation in order to facilitate the processing of pending applications for NAP benefits. Therefore, good cause is shown to make this rule effective in less than 30 days after publication.

List of Subjects in 7 CFR Part 404

Agricultural commodities, Disaster assistance, Reporting and recordkeeping requirements.

Final Rule

Accordingly, 7 CFR Part 404 is revised to read as follows:

PART 404—NONINSURED CROP DISASTER ASSISTANCE PROGRAM—REGULATIONS FOR THE 1995 AND SUCCEEDING CROP YEARS

Sec.

404.1 General statement.
404.3 Applicability.
404.5 Administration.
404.7 Definitions.
404.9 Coverage.
404.11 Eligibility.
404.13 Area.
404.15 Yield determinations.
404.17 Acreage report.
404.19 Loss requirements.
404.21 Application for payment and notice of loss.
404.23 Payments for reduced yield and prevented planting.
404.25 Multiple benefits.
404.27 Payment and income limitations.
404.29 Misrepresentation, scheme and device, and fraud.
404.31 Refunds to the Corporation.
404.33 Cumulative liability.
404.35 Appeals.
404.37 Exemption from levy.
404.39 Estates, trusts, and minors.
404.41 Death, incompetence, or disappearance.
404.43 OMB control numbers.

Authority: 7 U.S.C. 1506(l), 1506(p).

§ 404.1 General statement.

The Federal Crop Insurance Act, as amended by the Federal Crop Insurance Reform Act of 1994, requires the Federal Crop Insurance Corporation to implement a noninsured crop disaster assistance program to provide eligible producers of eligible crops with protection comparable to the catastrophic risk protection plan of crop insurance. NAP is designed to help reduce production risks faced by producers of crops for which Federal crop insurance under the Act is not available. NAP will reduce financial losses that occur when natural disasters cause a catastrophic loss of production or prevented planting of an eligible crop. Payment eligibility is based on an expected yield for the area and the producer's approved yield based on actual production history, or a transitional yield if sufficient production records are not available. Production for both the applicable area expected yield and the individual producer approved yield for the unit must fall below specified percentages in order to be eligible for payments under this part.

§ 404.3 Applicability.

The provisions contained in this part are applicable to each eligible producer and each eligible crop, acreage, or cause of loss for which CAT coverage is not otherwise available.

§ 404.5 Administration.

(a) The NAP program will be administered under the general supervision of the FCIC, and will be carried out through state and county committees and offices of the Farm Service Agency, or other local USDA offices as designated by FCIC.

(b) The state FSA committee will, in accordance with this part, recommend the geographical size and shape of the area where a natural disaster has occurred, and whether the area eligibility requirement has been satisfied. The recommendation of eligibility must be approved by FCIC.

(c) FCIC will determine all yields and prices under this part.

(d) No delegation herein to a state or county FSA committee will preclude the FCIC Manager from determining any question arising under NAP or from reversing or modifying any determination made by a state or county FSA committee.

§ 404.7 Definitions.

Act—The Federal Crop Insurance Act as amended. (7 U.S.C. 1501 *et seq.*)

Actual production history—Refer to 7 CFR part 400, subpart G, except that the terms of subpart G will read as follows when referring to NAP:

Insurance Terms	NAP Terms
Agent	Local office representative
Claim	Application for payment
claim for indemnity	Application for payment
Indemnity payment	NAP payment
Insurable acreage	Eligible acreage
Insurable cause	Natural disaster
Insurable crop	Eligible crop
Insurance company	Provider
Insurance purposes	NAP purposes
Insured	Eligible producer
Insured producer	Eligible producer
Uninsurable acreage	Ineligible acreage
Uninsurable production.	Ineligible production
Uninsured cause of loss appraisal.	Assigned production
Uninsured production	Ineligible production

APH—Actual production history.

Approved yield—An APH yield calculated and approved by FCIC, used to determine any NAP payment in accordance with 7 CFR part 400, subpart G.

Aquacultural species—Any species of aquatic organism grown as food for human consumption or fish raised as feed for fish that are consumed by humans, and which is propagated and reared in an aquatic medium by a commercial operator on private property in water in a controlled environment.

Area—The geographic region recommended by the state FSA committee, and approved by FCIC in accordance with § 404.13, where a natural disaster has occurred which may qualify producers in the area for NAP payments.

Assigned yield—A yield assigned for a crop year in the base period, in accordance with 7 CFR part 400, subpart G, if the producer does not file an acceptable production report by the production reporting date.

Average market price—The price, or dollar equivalent on an appropriate basis; for example, pound, bushel, ton, for an eligible crop established by FCIC for determining NAP payments. Such price will be on a harvested basis without the inclusion of transportation, storage, processing, packing, marketing or other post-harvest expenses and will be based, in part, on historical data.

CAT—A catastrophic risk protection plan of insurance offered by FCIC authorized under section 508(b) of the Act and 7 CFR part 402.

CCC—The Commodity Credit Corporation.

County expected yield—The eligible crop yield established by the State FSA committee and approved by FCIC for the county. Such yield information may be obtained from NASS, CSREES, credible nongovernmental studies, yields in similar areas, and similar reference material. For planted annual crops, such yield will be based on the acreage planted for harvest.

Crop year—The period of time within which the crop is normally grown and designated by the calendar year in which the crop is normally harvested in the area. For crops harvested over two calendar years, the crop year will be the calendar year in which the majority of the crop would have been harvested. For crops grown over more than two calendar years, each year in the growing period will be considered as a separate crop year designated by the calendar year in which the crop sustained a loss. For crops for which CAT is available, the crop year will be as defined by CAT.

CSREES—The Cooperative State Research, Education, and Extension Service.

Eligible crop—An agricultural commodity for which CAT is not available and which is commercially produced for food or fiber as specified in this part. Eligible crop shall also include floricultural, ornamental nursery, and Christmas tree crops, turfgrass sod, and industrial crops. In the case of a crop that historically has multiple plantings in the same crop year that are planted or are prevented from being planted, each planting may be considered a different crop for determining NAP payments. In the case of a crop that has different varieties or types, each variety or type may be considered a separate crop for determining NAP payments, if FCIC determines there is a significant difference in price or yield between the varieties or types.

Expected area yield—The eligible crop yield established and approved by FCIC for the geographic area.

Forage—Land covered with grass or other vegetation, produced under such range management practices as are necessary to sustain sufficient quality and quantity of grass or vegetation each year to be suitable for grazing or mechanical harvest to feed livestock in a commercial operation. NAP benefits for forage produced on any Federal or state owned lands are available only for seeded forage.

FCIC—The Federal Crop Insurance Corporation, a wholly owned Government corporation within the Farm Service Agency (FSA), United States Department of Agriculture.

FSA—Formerly the Consolidated Farm Service Agency; now the Farm Service Agency of the United States Department of Agriculture.

Good farming practices—The cultural practices generally used in the area for the crop to make normal progress toward maturity and produce at least the individual unit approved yield. The practices are normally those recognized by CSREES as compatible with agronomic and weather conditions in the area.

Harvested—A single harvest crop is considered harvested when the producer has, by hand or mechanically, removed the crop from the field. Crops with multiple harvests in one year or harvested over multiple years are considered harvested when the producer has, by hand or mechanically, removed at least one mature crop from the field. The crop is considered harvested once it is taken off the field and placed in a truck or other conveyance. (Exceptions: Hay is considered harvested when in the bale, whether removed from the field or not. Grazing is not considered harvesting for

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the purpose of determining a payment rate factor.)

Livestock—Any farm or other animal excluding aquacultural species and, including but not limited to domestic avian, ruminant, equine, and swine species grown or maintained for any purpose.

Local office—The FSA office or other USDA office designated by FCIC.

NASS—The National Agricultural Statistics Service, an agency of the United States Department of Agriculture.

Native forage—Grass or other vegetation occurring naturally without seeding.

Natural disaster—Means damaging weather, including but not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof; or adverse natural occurrence such as earthquake, flood, or volcanic eruption; or related condition, including but not limited to heat, insect infestation, or disease, which occurs as a result of an adverse natural occurrence or damaging weather occurring prior to or during harvest that directly causes, accelerates, or exacerbates the destruction or deterioration of an eligible crop, as determined by the Secretary.

NAP—The noninsured crop disaster assistance program.

Operator—The person who is in general control of the farming operation on the farm during the crop year.

Ornamental nursery crop—A decorative plant grown in a container or controlled environment for commercial sale.

Person—A person as defined in 7 CFR part 1497, subpart B.

Prevented planting—The inability to plant a crop with proper equipment during the planting period for the crop or commodity. A producer must prove that the producer intended to plant the eligible crop and that such crop could not be planted due to natural disaster reasonably related to the basis for the area designation under § 404.13, as determined by the FCIC Manager. The natural disaster that caused the prevented planting must have occurred after the final planting date for the previous crop year and before the final planting date for the crop year in which a request for NAP payment was made. For crops with multiple plantings in a single crop year and one crop has been harvested, the natural disaster must occur, after the harvest of the harvested crop and before the end of the planting period for the next planting of the crop.

Producer—A person who, as owner, landlord, tenant, or sharecropper, is entitled to share in the production from the eligible commodity or in the proceeds thereof.

Production report—A written record showing the commodity's annual production and used to determine the producer's yield for NAP purposes. The report contains yield history by unit, if applicable, including planted acreage for annual crops, eligible acreage for perennial crops, and harvested and FCIC appraised production for the previous crop years. This report must be supported by verifiable written records, measurement of farm-stored production, or by other records of production approved by FCIC. Information contained in an application for payment is considered a production report for the unit for the crop year for which the application was filed.

Qualifying gross revenues means:

(1) With respect to a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the annual gross income for the calendar year from such operations; and

(2) With respect to a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the person's total gross income from all sources.

Reseeded or replanted crop—The same crop planted on the same acreage after the first planting of the crop has failed.

Seeded forage—Acreage which is mechanically seeded with grasses or other vegetation at regular intervals, at least every 7 years, in accordance with good farming practices.

Share—The producer's percentage of interest in the eligible crop as an owner, operator, or tenant at the beginning of the crop year. For the purposes of determining eligibility for NAP payments, the producer's share will not exceed the producer's share at the earlier of the time of loss or the beginning of harvest. Acreage or interest attributed to a spouse, child, or member of the same household may be considered part of the producer's share unless considered a separate person.

Transitional NAP yield ("T" Yield)—An estimated yield based on the county expected yield adjusted for individual producers as determined by FCIC. The T-yield will be used in the approved yield calculation process when less than four consecutive crop years of actual or assigned yields are available. (See APH).

Unit—For the noninsured crop disaster assistance program, all acreage of the eligible crop in the county for the crop year:

(1) In which the person has 100 percent crop share; or

(2) Which is owned by one person and operated by another person on a share basis.

(Example: If, in addition to the land the person owns, the person rents land from five landlords, three on a crop share basis and two on a cash basis, the person would be entitled to four units, one unit for each crop share lease and one unit which includes the two cash leases and the land owned by the person.) Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop on such land will be considered as owned by the lessee. No unit other than that stated herein will be permitted.

§ 404.9 Coverage.

(a) Producers who are eligible to receive NAP payments for crop years 1995 through 1998 will receive coverage against loss in yield greater than 50 percent of the producer's approved yield for the eligible crop payable at 60 percent of the established average market price for the crop.

(b) Producers who are eligible to receive NAP payments after crop year 1998 will receive coverage against loss in yield greater than 50 percent of the producer's approved yield for the eligible crop payable at 55 percent of the established average market price for the crop.

(c) FCIC will adjust the NAP payment rate for crops that are produced with significant and variable expenses that are not incurred because the crop acreage was prevented from being planted or planted but not harvested.

(d) NAP payments will be determined by unit based on the production of all acreage of that crop (planted and eligible prevented from being planted) in the unit.

(e) Each producer's NAP payment will be based on the producer's share of the eligible crop.

§ 404.11 Eligibility.

Eligible crops under this part will be any commercial agricultural crop, commodity, or acreage of a commodity grown for food or fiber for which CAT is not available under 7 CFR part 402 unless excluded by paragraph (b) of this section. Different types or varieties of a crop or commodity may be treated as a separate eligible crop, if FCIC determines there is a significant difference in price or yield.

(a) NAP payments will be made available for:

(1) Any commercial crop grown for food;

(2) Any commercial crop planted and grown for livestock consumption, including but not limited to grain and forage crops;

(3) Any commercial crop grown for fiber, excluding trees grown for wood, paper, or pulp products;

(4) Any commercially produced aquacultural species;

(5) Floriculture crops;

(6) Ornamental nursery crops;

(7) Christmas tree crops;

(8) Turfgrass sod;

(9) Industrial crops; and

(10) Any crop, for which crop insurance under the Act is available in the county, that is affected by a natural disaster that is not insurable under the producer's crop insurance policy.

(b) NAP payments will not be available:

(1) For losses of livestock or their by-products;

(2) To any person who has qualifying gross revenues in excess of $2 million;

(3) For any acreage in any area for any crop for which CAT is available, unless the loss was caused by a natural disaster that is not covered under CAT and all other eligibility requirements for NAP are satisfied;

(4) To any person who, in accordance with chapter VII of 7 CFR and section 1764 of the Food Security Act of 1985, has been convicted under Federal or state law of planting, cultivating, growing, producing, harvesting or storing a controlled substance in any applicable crop year;

(5) Producing an agricultural commodity in any crop year on a field on which highly erodible land is predominant, unless the person is exempt under the provisions of § 12.5 of this title; or

(6) Producing an agricultural commodity in any crop year on converted wetland, unless the person is exempt under the provisions of § 12.5 of this title.

(c) Any tenant, landlord, or producer on the unit separate from the person determined to be ineligible under this provision will remain eligible for NAP payments for their share of the crop unless such tenant, landlord, or producer on the unit is:

(1) Also convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance;

(2) Also in violation of chapter XII of the Food Security Act of 1985 and the regulations issued thereunder; or

(3) Otherwise determined by FCIC to be ineligible for NAP payments.

§ 404.13 Area.

(a) For the purposes of this part, acreage affected by a natural disaster, or any adjustment thereto, will be included in the area recommended by the state FSA committee and submitted to FCIC for approval, regardless of whether the commodity produced on the affected acreage suffered a loss.

(b) Except for eligible areas identified in paragraph (f) of this section, an approved area shall include at least five producers of crops on separate and distinct farms for which the area has been approved for the payment of NAP benefits. Notwithstanding this provision, FCIC may approve an area having fewer than five producers if the Manager determines that such area will suffer significant economic consequences as a result of the disaster.

(c) An area may be designated as follows:

(1) A county;

(2) Aggregated acreage that is at least 320,000 acres; or

(3) Aggregated acreage with not less than $80 million average value for all crops produced annually.

(d) If the aggregated acreage affected by the natural disaster does not meet the minimum requirement specified in paragraph (c)(2) or (3) of this section, the aggregated acreage will be expanded by adding acres from around the affected acreage, until the minimum requirement is met.

(e) The area may not be defined in any manner that intentionally includes or excludes producers or crops.

(f) In lieu of the paragraph (a) and (c) of this section, for eligible areas outside the United States, the area shall include 10 or more producers of the crop. Notwithstanding this provision, FCIC may approve an area outside the 50 United States having fewer than 10 producers of the crop for which the area is requested if the Manager determines that such area will suffer significant economic consequences as a result of the disaster.

§ 404.15 Yield determinations.

(a) FCIC will establish expected area yields for eligible crops for each county or area for which the NAP is available, using available information, which may include, but is not limited to, NASS data, CSREES records, credible nongovernment studies, yields in similar areas, and reported approved yield data. For planted annual crops, such yields will be based on the acreage planted for harvest.

(b) FCIC may make county yield adjustments taking into consideration different yield variations due to different farming practices in the county such as: irrigated, nonirrigated, organic, nonorganic; different types and varieties of a crop; and intended use.

(c) In establishing expected area yields for eligible crops:

(1) If the approved area corresponds to a single county, the expected area yield will be the yield established by FCIC for that county, including any adjustments permitted by this section; or

(2) If the approved area encompasses portions of a county or more than one county, the expected area yield will be the weighted average of the yields established by FCIC for those counties in the area, including any adjustments permitted by this section.

(3) FCIC may adjust expected area yields if:

(i) The cultural practices, including the age of the planting or plantings, are different from those used to establish the yield.

(ii) The expected area yield established on a state or county level is determined to be incorrect for the area.

(d) FCIC will establish approved yields for purposes of providing assistance under this part. Approved yields for the eligible crop will be based on the producer's actual production history in accordance with the provisions of 7 CFR part 400, subpart G.

(e) The approved yield established for the producer for the year in which the NAP payments are offered will be equal to the average of the consecutive crop year yields, as established by FCIC, reported and certified of that producer for that eligible crop.

(f) If a producer receives an assigned yield for a year of natural disaster because production records were not submitted by the production reporting deadline, the producer will be ineligible to receive an assigned yield for the year of the next natural disaster unless adequate production records for the eligible crop from the previous one or more years, as applicable, are provided to the local office. The producer shall receive a zero yield for those years the producer is ineligible to receive an assigned yield.

(g) FCIC will select certain producers on a random or targeted basis and require those selected to provide records acceptable to FCIC to support the information provided. Producers may also be required to support the yield certification at the time of loss adjustment or on post-audit. Each certification must be supported by records acceptable to FCIC. Failure to produce records acceptable to FCIC will result in FCIC establishing the yield in accordance with APH and may subject the producer to criminal and civil false claims actions under various Federal statutes as well as refund of any amount received. In addition, sanctions as set

out at 7 CFR part 400, subpart R may be imposed for false certification. Records acceptable to FCIC may include:

(1) commercial receipts, settlement sheets, warehouse ledger sheets, or load summaries if the eligible crop was sold or otherwise disposed of through commercial channels provided the records are reliable or verifiable; and

(2) such documentary evidence as is necessary in order to verify the information provided by the producer if the eligible crop has been sold, fed to livestock, or otherwise disposed of other than through commercial channels such as contemporaneous measurements, truck scale tickets, and contemporaneous diaries, provided the records are reliable or verifiable.

(h) Any producer who has a contract to receive a guaranteed payment for production, as opposed to delivery, of an eligible crop will have the production adjusted upward by the amount of the production corresponding to the amount of the contract payment received.

(i)(1) Producers will not be eligible to receive an assigned yield if the average of the crop in a county for the crop year has increased by more than 100 percent over any year in the preceding seven crop years, unless:

(i) The producer provides adequate records of production costs, acres planted, and yield for the crop year for which NAP payments are being sought.

(ii) FCIC determines that the records provided under this paragraph are inadequate, FCIC may require proof that the eligible crop could have been marketed at a reasonable price had the crop been harvested.

(2) The provisions of this section will not apply if:

(i) The crop has been inspected prior to the occurrence of a loss by a third party acceptable to FCIC; or

(ii) The FSA county executive director, with concurrence of the FSA state director, makes a recommendation for an exemption from the requirements and such recommendation is approved by FCIC.

§ 404.17 Acreage report.

(a) Producers must file one or more acreage reports annually at the local office no later than the date specified by FCIC for each crop the producer will want made eligible for the NAP program. The acreage report may be filed by the farm operator. Any producer will be bound by the acreage report filed by the farm operator unless the producer files a separate acreage report prior to the acreage reporting date.

(b) That acreage report must include all of the following information:

(1) All acreage in the county of the eligible crop (for each planting in the event of multiple planting) in which the producer has a share;

(2) The producer's share at the time of planting or the beginning of the crop year;

(3) The FSA farm serial numbers;

(4) The crop, practice, and intended use;

(5) All persons sharing in the crop (including the identity of any person having a substantial beneficial interest in the crop (refer to 7 CFR part 400, subpart Q) and the person's employer identification number or social security number, if the person wishes to receive any payment under the Act);

(6) The date the crop was planted;

(7) Acreage prevented from being planted; and

(8) Production from the previous crop year. (For example: The producer reported the crop acreage planted in 1995. The producer must then report the 1995 production for that acreage by the 1996 acreage reporting date for the crop.)

(c) A person's failure to submit the required information by the designated acreage reporting dates may result in the denial of NAP payments. If there is a change of ownership, operation, or share within the farming operation after the acreage reporting date, the local office must be notified not later than 30 calendar days after the change and proof of the change must be provided in order to maintain eligibility for payments under this part.

§ 404.19 Loss requirements.

(a) To qualify for payment under this part, the loss or prevented planting of the eligible crop must be due to a natural disaster as defined at § 404.7.

(b) NAP assistance will not cover losses due to:

(1) The neglect or malfeasance of the producer;

(2) The failure of the producer to reseed or replant to the same crop in the county where it is customary to reseed or replant;

(3) The failure of the producer to follow good farming practices for the commodity and practice;

(4) Water contained or released by any governmental, public, or private dam or reservoir project, if an easement exists on the acreage affected for the containment or release of the water;

(5) Failure or breakdown of irrigation equipment or facilities; or

(6) Except for tree crops and perennials, inadequate irrigation resources at the beginning of the crop year.

(c) A producer of an eligible crop will not receive NAP payments unless the projected average or actual yield for the crop, or an equivalent measurement if yield information is not available, in the area falls below 65 percent of the expected area yield. Once this area, and all other, eligibility requirements have been satisfied:

(1) A reduced yield NAP payment will be made to a producer if the total quantity of the eligible crop that the producer is able to harvest on the unit is less than 50 percent of the approved yield for the crop due to natural disaster reasonably related to the basis for the area designation under § 404.13, as determined by the FCIC Manager, factored for the share of the producer for the crop. Production from the entire unit will be used to determine whether the producer qualifies for a NAP payment. The quantity will not be reduced for any quality consideration unless a zero value is established.

(2) A prevented planting NAP payment will be made if the producer is prevented from planting more than 35 percent of the total eligible acreage intended for planting to the eligible crop. Producers must have intended to plant the crop and prove that they were prevented from planting the crop due to natural disaster reasonably related to the basis for the area designation under § 404.13 and the producer may be required to prove that such producer had the resources available to plant, grow, and harvest the crop, as applicable.

(d) NAP payments for prevented planting will not be available for:

(1) Tree crops and other perennials, unless the producer can prove resources were available to plant, grow, and harvest the crop, as applicable;

(2) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes; or

(3) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by USDA.

§ 404.21 Application for payment and notice of loss.

(a) Any person with a share in the eligible crop who would be entitled to a NAP payment must provide a notice of damage or loss within 15 calendar days after the occurrence of the prevented planting (the end of the planting period) or recognizable damage to the crop. For the 1995 crop year only, the notice must be filed within the later of July 3, 1995, or 15 days after the occurrence of the prevented planting or damage to the crop. The notice must be filed at the local office serving the area where the producer's unit is located. The farm operator may provide the notice for all producers with an interest in the crop. All producers on a farm will be bound by the operator's filing or failure to file the application for payment unless the individual producers elect to timely file their notice.

(b) Applications for NAP payments must be filed, on our form, by the applicant with the local office no later than the first acreage reporting date for the crop in the crop year immediately following the crop year in which the loss occurred.

(1) If the producer chooses not to harvest the crop, all eligible acres and crop units for which the producer intends to make an application for payment must be left intact until the units have been appraised or released by an FCIC loss adjuster.

(2) If the producer harvests the crop, the producer must provide such documentary evidence of crop production as FCIC may require which may include leaving representative samples of the crop for inspection.

(c) Failure to make timely application or to supply the required documentary evidence shall result in the denial of NAP payments.

(d) Payments under this part may be assigned by the eligible producer only on our form and such assignment is effective only when approved by FCIC. Failure of FCIC to make payment in accordance with such assignment will not give rise to any liability on the part of FCIC to the assignee.

§ 404.23 Payments for reduced yields and prevented planting.

In the event that the area loss requirement has been satisfied for the crop and either:

(a) The producer has sustained a loss in yield in excess of 50 percent of the producer's approved yield established for the crop the NAP low yield payment will be determined by:

(1) Multiplying the producer's approved yield by the total eligible acreage planted to the eligible crop;

(2) Multiplying the product of paragraph (a)(1) of this section by 50 percent;

(3) Subtracting the total production from the total eligible acreage from the result in paragraph (a)(2) of this section;

(4) Multiplying the product of paragraph (a)(3) of this section by the producer's share of the eligible crop;

(5) Multiplying the result of paragraph (a)(4) of this section by the applicable payment factor in accordance with § 404.9(c);

(6) Multiplying the result in paragraph (a)(5) of this section by :

(i) For the 1995 through 1998 crop years, 60 percent of the average market price, as determined by FCIC, or any comparable coverage, as determined by FCIC; or

(ii) For the 1999 and subsequent years, 55 percent of the average market price, as determined by FCIC, or any comparable coverage, as determined by FCIC; or

(b) The producer has been unable to plant at least 35 percent of the acreage intended for the eligible crop, the NAP payment will be determined by:

(1) Multiplying the producer's acreage intended to be planted to the eligible crop by 35 percent;

(2) Subtracting the result in (b)(1) of this section from the number of eligible prevented planting acres as determined in § 404.19 (c) (2);

(3) Multiplying the result of (b)(2) of this section by the producer's share of the eligible crop;

(4) Multiplying the producer's approved yield by the result of (b)(3) of this section;

(5) Multiplying the result of (b)(4) of this section by the approved prevented planting payment factor in accordance with § 404.9(c);

(6) Multiplying the result of (b)(5) of this section by:

(i) For the 1995 through 1998 crop years, 60 percent of the average market price, as determined by FCIC, or any comparable coverage, as determined by FCIC; or

(ii) For the 1999 and subsequent years, 55 percent of the average market price, as determined by FCIC, or any comparable coverage, as determined by FCIC.

§ 404.25 Multiple benefits.

(a) If a producer is eligible to receive NAP payments under this part and benefits under any other program administered by the Secretary for the same crop loss, the producer must choose whether to receive the other program benefits or NAP payments. The producer is not eligible for both. Such election does not relieve the producer from the requirements of making a production and acreage report.

(b) Applicable programs include, but are not limited to, the Emergency Livestock Feed Assistance Program and any other program determined by FCIC to compensate the producer for the same crop loss.

§ 404.27 Payment and income limitations.

NAP payments made to eligible producers are subject to the following provisions:

(a) For the purpose of making such payments, the term "producer" will be considered to mean the term "person" as determined in accordance with 7 CFR part 1497, subpart B.

(b) No person shall receive payments for a crop year under this part in excess of $100,000.

(c) A person who has qualifying gross revenues in excess of $2 million for the previous calendar year shall not be eligible to receive NAP payments under this part.

(d) Simple interest on payments to the producer which are delayed will be computed on the net payments ultimately found to be due, from and including the 61st day after the latter of the date the producer signs, dates, and submits a properly completed application for payment on the designated form, the date disputed applications are adjudicated, or the date the area is approved for NAP payments. Interest will be paid unless the reason for failure to timely pay is due to the producer's failure to provide information or other material necessary for the computation or payment. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1 of each year and may vary with each publication.

§ 404.29 Misrepresentation, scheme and device, and fraud.

(a) If FCIC determines that any producer has misrepresented any fact or has knowingly adopted, participated in, or benefitted from, any scheme or device that has the effect of defeating, or is designed to defeat the purpose of this part, such producer will not be eligible to receive any payments applicable to the crop year for which the scheme or device was adopted.

(b) If any misrepresentation, scheme or device, or practice has been employed for the purpose of causing FCIC to make a payment which FCIC otherwise would not make under this part:

(1) FCIC will withhold all or part of the payment that would otherwise be due.

(2) All amounts paid by FCIC to any such producer, applicable to the crop year in which the offense occurred, must be refunded to FCIC together with interest and other amounts as determined in accordance with this part.

(3) FCIC may impose such other penalties or administrative sanctions as authorized by section 506(n) of the Federal Crop Insurance Act, as amended

or available under 7 CFR part 400, subpart R.

(c) Scheme and device may include, but is not limited to:

(1) Concealing any information having a bearing on the application of the rules of this part;

(2) Submitting false information to the FCIC or any county or state FSA committee; or

(3) Creating fictitious entities for the purpose of concealing the interest of a person in the farming operation.

§ 404.31 Refunds to the Corporation.

(a) In the event that there is a failure to comply with any term, requirement, or condition for payment made in accordance with this part, or the payment was established as a result of erroneous information provided by any person, or was erroneously computed, all such payments or overpayments will be refunded to FCIC on demand, together with interest.

(b) Interest will accrue in accordance with the provisions of 7 CFR § 1403.9.

(c) Interest on any amount due the FCIC found to have been received by the producer as a result of fraud, misrepresentation, scheme or device, or presenting a false application for payment will start on the date the producer received the payment.

(d) Recovery of delinquent debts and set off will be in accordance with 7 CFR part 1403.

(e) If FCIC determines it is necessary to contract with a collection agency or to employ an attorney to assist in collection, the producer will pay all the expenses of collection.

(f) All amounts paid will be applied first to the payment of expense of collection, second to the reduction of any penalties which may have been assessed, then to the reduction of accrued interest, then to the reduction of the principal balance.

§ 404.33 Cumulative liability.

(a) The liability of any producer for any payment or refunds, which is determined in accordance with this part to be due to FCIC, will be in addition to any other liability of such producer under any civil or criminal fraud statute or any other statute or provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 1014, and 31 U.S.C. 3729.

(b) All producers on the unit receiving payments under this part will be jointly and severally liable to repay any unearned NAP payments.

§ 404.35 Appeals.

The appeal, reconsideration, or review of all determinations made under this part, except the designation of an area for which there is no appeal rights because it is determined a rule of general applicability, must be in accordance with part 780 of this title.

§ 404.37 Exemption from levy.

Any payment that is due any person under this part will be made without regard to questions of title under state law and without regard to any attachment, levy, garnishment, or any other legal process against the crop, and the proceeds thereof, which may be asserted by any creditor, except statutory liens of the United States.

§ 404.39 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible will be eligible for NAP payments under this part only if such person meets one of the following requirements:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 404.41 Death, incompetence, or disappearance.

In the case of death, incompetence or disappearance, of any person who is eligible to receive NAP payments in accordance with this part, such payments will be disbursed in accordance with part 707 of this title.

§ 404.43 OMB control numbers.

These regulations amend the information collection requirements previously approved by the Office of Management and Budget ("OMB") under OMB control number 0563–0016.

Done in Washington, D.C., on February 22, 1996.

Suzette M. Dittrich,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–4411 Filed 2–22–96; 3:00 pm]

BILLING CODE 3410–FA–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1690–95]

RIN 1115–AD91

Immigrant Petitions; Children of Widows or Widowers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adopts without change an interim rule published in the **Federal Register** on July 31, 1995, by the Immigration and Naturalization Service ("the Service"), which amended the Service's regulations by providing clarifying language and procedures for according immigrant status to children of widows or widowers who were not previously eligible for immigration benefits as derivative immediate relatives. This rule was necessary to enhance family well-being by promoting the family unity relationship between the child and his or her widowed mother or father.

EFFECTIVE DATE: This final rule is effective February 27, 1996.

FOR FURTHER INFORMATION CONTACT: Ramonia Law-Hill, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 "I" Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: On July 31, 1995, the Commissioner of the Immigration and Naturalization Service published in the **Federal Register** at 60 FR 38947–38948 an interim rule with request for comments. The rule implemented section 219(b) of the Immigration and Nationality Technical Corrections Act of 1994, Public Law 103–416, dated October 25, 1994. The rule enabled the child of a widow or widower to be included in the widow or widower's petition and to accompany or follow to join the widow or widower to the United States as a derivative immediate relative. The rule enhanced family well-being by promoting the family relationship between the child and his or her widowed mother or father.

The public was provided with a 60-day comment period which ended on September 29, 1995. No comments were received. Accordingly, the Service is adopting the interim rule as a final rule without change.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commissioner of the Immigration and Naturalization Service, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely adopts without change an interim rule which has been in effect since July 31, 1995.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section (6)(a)(3)(A).

Executive Order 12612

The regulation will not have a substantial direct effect on the States, on the relationships between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

This regulation will enhance family well-being by promoting the family unity relationship between the child and his or her mother or father.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Aliens, Immigration, Petitions.

Accordingly, the interim rule amending 8 CFR part 204 which was published in the **Federal Register** on July 31, 1995, at 60 FR 38947–38948 is adopted as a final rule without change.

Dated: February 16, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–4338 Filed 2–26–96; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 95–052DF]

RIN 0583–AC02

Use of Sorbitol in Cooked Roast Beef Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to add cooked roast beef products to the list of products in which sorbitol is permitted. This action is being taken in response to a petition requesting that FSIS allow the use of up to 2 percent sorbitol both as a sweetener and to reduce charring in cooked roast beef products. The sorbitol will be added to a solution of ingredients that are pumped into the beef prior to cooking.

DATES: This rule will be effective on April 29, 1996 unless FSIS receives written adverse comments or written notice of intent to submit adverse comments on or before March 28, 1996. If critical comments are received, the final rulemaking document will be withdrawn and a proposed rulemaking document will be published.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments to: FSIS Docket Clerk, Docket #95–052DF, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 4352, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250–3700. Please submit one original and two copies of written adverse comments.

FOR FURTHER INFORMATION CONTACT: Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 254–2565.

SUPPLEMENTARY INFORMATION: Under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), FSIS provides mandatory inspection of meat and meat food products prepared for distribution in commerce. The Act prohibits the addition of any substance to any meat or meat food product that may render the product adulterated (21 U.S.C. 610). Section 318.7(a)(1) of the Federal meat inspection regulations (9 CFR 318.7) prohibits the use of any substance in the preparation of any product unless its use is approved in section 318.7(c)(4) of the Federal meat inspection regulations, which is the chart of substances acceptable for use in the preparation of products, or unless it is approved elsewhere in the regulations or by the Administrator, FSIS.

FSIS was petitioned to approve the use of sorbitol in cooked roast beef products in the same amount currently approved for other meat and meat food products. The petitioner requested that FSIS amend § 318.7(c)(4) of the Federal meat inspection regulations to allow the use of up to 2 percent sorbitol both as a sweetener and to reduce charring in cooked roast beef products, excluding the formula weight of water or ice. The sorbitol will be added to a solution of ingredients that are pumped into beef prior to cooking.

Charring is an adverse effect that occurs when sugar-related substances are subjected to prolonged heat treatment. Sorbitol is a common sugar alcohol; it can be found in foods like apples and pears. It is about half as sweet as sucrose and is often used as a substitute sweetener in reduced-sugar food products, such as sugar-free candy and other food products for diabetics. Sorbitol is listed in 21 CFR 184.1835 as a substance generally recognized as safe for use as an anticaking agent, humectant, flavoring agent, and for various other uses, when used in accordance with good manufacturing practices. Sorbitol does not posses the same chemical makeup as do sugars that carmelize, i.e., brown and char in the presence of high heat. It is this characteristic of sorbitol that reduces charring in cooked roast beef products and other meat products.

The petitioner conducted informal sensory testing using various levels of sorbitol in roast beef product formulations.[1] Tests were conducted by using informal visual and taste panels. The visual panel measured the amount of charring that took place on roast beef products treated with sorbitol by evaluating the browning of products after they were treated and cooked. The sweetness was measured by a separate panel; that panel tasted the test products after they were treated and cooked. The test data show that 2 percent sorbitol accomplishes both charring reduction and suitable sweetness.

After reviewing the petitioner's technical data and information, the Administrator, FSIS determined that the chart of approved substances in 9 CFR 318.7(c)(4) should be amended to allow

[1] Information regarding the informal sensory testing is available in the FSIS Docket Room, USDA, 14th & Independence Avenue, SW., Room 4352, South Agriculture Building, Washington, DC 20250–3700.

the use of sorbitol for the purposes and in the amounts requested by the petitioner. The technical data demonstrates the efficacy of sorbitol for these uses. Sorbitol is a substance generally recognized as safe by the Food and Drug Administration. The Administrator, FSIS, has determined that the use of sorbitol (1) will not render the product adulterated or misbranded or otherwise not in compliance with the requirements of the Act; and (2) is functional and suitable for the product, and is permitted at the lowest level necessary to accomplish the stated effect. Accordingly, FSIS is amending the chart of approved substances in 9 CFR 318.7(c)(4) to allow the use of sorbitol as a sweetener and to reduce charring in cooked roast beef products at a level not more than 2 percent of the weight of the formula, excluding the formula weight of water or ice.

FSIS expects no adverse public reaction resulting from this change in regulatory language. Therefore, unless adverse or critical comments, or a notice of intent to submit adverse comments are received within 30 days, the action will become final 60 days after publication in the **Federal Register.** The proposed rulemaking notice will establish a comment period.

Executive Order 12866

This direct final rule has been determined to be not significant and therefore and was not reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

This direct final rule has been have reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) from imposing any marking or packaging requirements on federally inspected meat products that are in addition to, or different than, those imposed under the FMIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States.

This direct final rule is not intended to have retroactive effect.

There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this direct final rule. However, the administrative procedures specified in 9 CFR §§ 306.5 must be exhausted prior to any judicial challenge of the application of the provisions of this direct final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA.

Effect on Small Entities

The Administrator has made an initial determination that this direct final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The direct final rule will permit the use of sorbitol as a sweetener and to reduce charring in cooked roast beef products. The sorbitol will be added to a solution of ingredients that are pumped into the beef prior to cooking. This amendment will provide cooked roast beef processors with an additional, alternative substance that can be used to sweeten their product while at the same time reducing charring that may occur during the cooking process. The use of sorbitol as a sweetener and to reduce charring in cooked roast beef products will be voluntary. Small manufacturers opting to use sorbitol for these purposes will be required to revise their product labels. Decisions by individual manufacturers on whether to do so will be based on their conclusions that the benefits outweigh the costs.

Paperwork Requirements

Abstract: FSIS has reviewed the paperwork and recordkeeping requirements in this direct final rule in accordance with the Paperwork Reduction Act. This rule requires manufacturers opting to use sorbitol as a sweetener and to reduce charring in cooked roast beef products to revise their product labels and submit such labeling to FSIS for approval.

Estimate of Burden: Establishments must develop product labels in accordance with the regulations. To receive approval of the labels, establishments must complete FSIS Form 7234–1. FSIS program employees review FSIS Form 7234–1 to ensure that information on the labels complies with the regulations. FSIS estimates that it will take 60 minutes to design and develop modified product labels in accordance with the proposed regulations and 15 minutes to prepare FSIS Form 7234–1 and submit it, along with the label, to FSIS or to a label expediter who will deliver the form and label to FSIS.

Respondents: Meat establishments.

Estimated Number of Respondents: 315 meat establishments.

Estimated Number of Responses per Respondent: FSIS estimates that each establishment would modify about 2 product labels.

Estimated Total Annual Burden on Respondents: 788 hours.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Lee Puricelli, Paperwork Specialist, see address above, and Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection.

For the reasons set out in the preamble, 9 CFR part 318 is amended as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Section 318.7(c)(4) is amended by adding to the chart of substances, under the Class of Substance "Flavoring agents; protectors and developers," the substance sorbitol to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
Flavoring Agents; protectors and developers.	Sorbitol . . .	To flavor, to facilitate the removal of casings from product, and to reduce carmelization and charring.	As provided in part 319 of this subchapter, cooked roast beef, cured pork products, and cooked sausage labeled frankfurter, frank, furter, wiener, and knockwurst.	Not to exceed 2 percent of the weight of the formula, excluding the formula weight of water or ice, when used in accordance with 21 CFR 184.1835.

Done at Washington, DC, on: February 20, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–4303 Filed 2–26–96; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ACE–16]

Amendment to Class E Airspace; Hastings, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Hastings, NE, to accommodate a planned Standard Instrument Approach Procedure (SIAP) at the Hastings Municipal Airport. This action will provide for additional controlled airspace necessary for the planned SIAP utilizing the Global Positioning System (GPS).

EFFECTIVE DATE: 0901 UTC June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On December 20, 1995, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E airspace area at Hastings, NE (60 FR 65602). The proposed action would provide additional controlled airspace to accommodate the new SIAP to Hastings Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order of 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the Class E airspace area at Hastings, NE, by providing additional controlled airspace for aircraft executing the new SIAP to the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that his rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995 and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Hastings, NE [Revised]

Hastings Municipal Airport, NE
(Lat. 40°36'16" N., long. 98°25'39" W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Hastings Municipal Airport and within 2 miles each side of the 338° bearing from the Hastings Municipal Airport extending from the 6.7-mile radius to 10 miles north of the airport and within 2 miles each side of the 143° bearing from Hastings Municipal Airport extending from the 6.7-mile radius to 10 miles southeast of the airport, and within 3 miles each side of the 219° bearing from Hastings Municipal Airport extending from the 6.7-mile radius to 10 miles southwest of the airport

* * * * *

Issued in Kansas City, MO, on January 24, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 96–4383 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ACE–15]

Amendment to Class E Airspace; Carroll, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Carroll, IA, to accommodate a planned Standard Instrument Approach Procedure (SIAP) at the Arthur N. Neu Airport. This action will provide for additional controlled airspace necessary for the planned SIAP utilizing the Global Positioning System (GPS).

EFFECTIVE DATE: 0901 u.t.c. June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On December 20, 1995, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E airspace area at Carroll, IA (60 FR 65603). The proposed action would provide additional controlled airspace to accommodate the new SIAP to Arthur N. Neu Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 to FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995. which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the Class E airspace area at Carroll, IA, by providing additional controlled airspace for aircraft executing the new SIAP to the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Carroll, IA [Revised]

Arthur N. Neu Airport, IA
(Lat 42°02'46" N., long 94°47'20" W)
Carroll NDB
(Lat 42°02'42" N., long. 94°47'07" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Arthur N. Neu Airport and within 2.6 miles each side of the 142° bearing from the Carroll NDB extending from the 6.5-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO on January 24, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 96–4382 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–13]

Amendment to Class E Airspace; Webster City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Webster City, IA to accommodate a planned Standard Instrument Approach Procedure (SIAP) at the Webster City Municipal Airport. This action will provide for additional controlled airspace necessary for the planned SIAP utilizing the Global Positioning System (GPS).

EFFECTIVE DATE: 0901 UTC April 25, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On November 3, 1995, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E airspace area at Webster City, IA (60 FR 62053). The proposed action would provide additional controlled airspace to accommodate the new SIAP to Webster City Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the Class E airspace area at Webster City, IA, by providing additional controlled airspace for aircraft executing the new SIAP to the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Webster City, IA [Revised]

Webster City Municipal Airport, IA
(Lat. 42°26'12" N., long. 93°52'10"W)
Webster City NDB
(Lat 42°26'29"N., long. 93°0'10"W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Webster City Municipal Airport and within 2.6 miles each side of the 155° bearing from the Webster City NDB extending from the 6.4-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO on January 22, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 96–4381 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–12]

Amendment to Class E Airspace; Clinton, IA

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Clinton, IA to accommodate a planned Standard Instrument Approach Procedure (SIAP) at the Clinton Municipal Airport. This action will provide for additional controlled airspace necessary for the planned SIAP based on the Global Positioning System (GPS).

EFFECTIVE DATE: 0901 UTC April 25, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On November 3, 1995, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E airspace area at Clinton, IA (60 FR 61667). The proposed action would provide additional controlled airspace to accommodate the new SIAP to Clinton Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Clinton, IA, by providing additional controlled airspace for aircraft executing the new SIAP to the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995 and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Clinton, IA [Revised]

Clinton Municipal Airport, IA
(Lat. 41°49'52"N., long. 90°19'45"W)
Davenport VORTAC
(Lat. 41°42'30"N., long. 90°29'01"W)
Clinton NDB
(Lat. 41°49'43"N., long. 90°19'40"W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Clinton Municipal Airport and within 1.8 miles each side of the 044° radial of the Davenport VORTAC extending from the 6-mile radius to the VORTAC and within 4.5 miles each side of the 316° bearing from the Clinton NDB extending to 10.5 miles northwest of the NDB and within 1 mile each side of the 146° bearing from the Clinton Municipal Airport extending from the 6-mile radius to 9.5 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO on January 22, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region

[FR Doc. 96–4380 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–11]

Amendment to Class E Airspace; Charles City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Charles City, IA to accommodate a planned Standard Instrument Approach Procedure (SIAP) at the Charles City Municipal Airport. This action will provide for additional controlled airspace necessary for the planned SIAP utilizing the relocated Non-directional Radio Beacon (NDB).

EFFECTIVE DATE: 0901 U.T.C. April 25, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On December 1, 1995, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E airspace area at Charles City, IA (60 FR 61666). The proposed action would provide additional controlled airspace to accommodate the new SIAP to Charles City Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the Class E airspace area at Charles City, IA, by providing additional controlled airspace for aircraft executing the new SIAP to the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Charles City, IA [Revised]

Charles City Municipal Airport, IA
(Lat. 43°04'21"N, long. 92°36'39"W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Charles City Municipal Airport.

* * * * *

Issued in Kansas City, MO on January 22, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 96–4379 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–14]

Amendment to Class E Airspace; Atlantic, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Atlantic, IA, to accommodate a planned Standard Instrument Approach Procedure (SIAP) at the Atlantic Municipal Airport. This action will provide for additional controlled airspace necessary for the planned SIAP utilizing the Global Positioning System (GPS).

EFFECTIVE DATE: 0901 UTC June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO, 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On December 20, 1995, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E airspace area at Atlantic, IA (60 FR 65604). The proposed action would provide additional controlled airspace to accommodate the new SIAP to Atlantic Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the Class E airspace area at Atlantic, IA, by providing additional controlled airspace for aircraft executing the new SIAP to the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air):

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995 and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Atlantic, IA [Revised]

Atlantic Municipal Airport, IA
(Lat. 41°24'26"N., long. 95°02'49"W)
Atlantic NDB
(Lat. 41°24'14"N., long. 95°02'47"W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Atlantic Municipal Airport and within 4 miles each side of the 315° bearing from the Atlantic NDB extending from the 6.4-mile radius to 8.3 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO on January 24, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 96–4378 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 93

[Docket No. 28473]

High Density Traffic Airports; Slot Allocation and Transfer Method

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Statement of policy.

SUMMARY: This policy statement is necessary to address the impact of airport closings and slow-downs upon slot utilization requirements due to the severe winter storm that affected several High Density Rule Traffic airports during the period January 7 through January 12, 1996.

EFFECTIVE DATE: February 27, 1996.

FOR FURTHER INFORMATION CONTACT: Patricia R. Lane, Manager, Air Traffic Rules and Airspace Law Branch, AGC–230, Regulations Division, Office of the Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3491.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 1992, the FAA published in the **Federal Register** (57 FR 37308), an amendment to the minimum slot usage requirement of § 93.227(a) of the Federal Aviation Regulations (14 CFR 93.227(a)). This amendment increased the minimum slot usage percentage from 65 percent to 80 percent, effective January 1, 1993. A slot that is not used or operated a minimum of 80 percent of the time within the bimonthly reporting period is subject to withdrawal by the FAA.

From January 7 through 12, 1996, several airports, including three of the High Density Traffic airports, were forced to close or significantly slow down operations because of severe weather conditions along the east coast of the United States. Due to the airport closings and slow downs, many air carriers and commuters were unable to operate their slots. Many of the carriers have expressed concerns that they will not be able to reach the 80 percent minimum usage requirement due to their inability to operate their slots during those 6 days.

Even though the 80 percent minimum usage requirement takes various adverse factors into account, such as occasional mechanical problems and bad weather, the blizzard that forced the closure and slow down of operations of the airports was an extraordinary weather system of great intensity and duration and should not be considered as a normal bad weather occurrence. The FAA has decided, based on the extreme adverse weather, that operators should not be penalized if they are unable to reach the 80 percent minimum usage requirement due to the 6-day airport closure/slow-down.

This document announces FAA's policy that will allow slot holders and operators to report the slots as being used for all 6 days. In this way, no operator will be in jeopardy of losing a slot merely because the airport was closed or operations were significantly reduced.

Statement of Policy

When an operator submits its bi-monthly use-or-lose report, it may designate any slot scheduled for operation at a High Density Traffic airport from January 7 through January 12, 1996, as operated. The FAA's Office of Chief Counsel, Slot Administration Office will verify that the submitted slot was scheduled, and the FAA will treat as used any slot that the holder-of-record or operator-of-record was schedule to operate over the specified 6 day period.

Issued in Washington, DC on February 21, 1996.

Nicholas G. Garaufis,

Chief Counsel.

[FR Doc. 96–4384 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8642]

RIN 1545–AR48; 1545–AR93

Recognition of Gain or Loss by Contributing Partner on Distribution of Contributed Property or Other Property; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 8642), which were published in the **Federal Register** on Tuesday, December 26, 1995 (60 FR 66727) relating to the recognition of gain or loss on certain distributions of contributed property by a partnership, and to the recognition of gain on certain distributions to a contributing partner.

EFFECTIVE DATE: January 9, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen J. Coleman at (202) 622–3060, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 704 and 737 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8642), which are the subject of FR Doc. 95–30870, is corrected as follows:

§ 1.737–3 [Corrected]

1. On page 66737, column 2, § 1.737–3 (e), second paragraph from the bottom of the column, the paragraph designated "(e) *Example 1.*" is correctly designated "Example 1."

2. On page 66737, column 3, § 1.737–3 (e), paragraph (i) of *Example 2,* line 4, the language "nondepreciable real property to the" is corrected to read "nondepreciable real property located in the United States to the".

3. On page 66737, column 3, § 1.737–3 (e), paragraph (ii) of *Example 2,* line 2, the language "Property B, nondepreciable real property," is corrected to read "Property B, nondepreciable real property located outside the United States,".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–4177 Filed 2–26–96; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Parts 31 and 301

[TD 8636]

RIN 1545–AN57

Time for Furnishing Wage Statements on Termination of Employer's Operations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations [TD 8636] which were published in the **Federal Register** for Thursday, December 21, 1995 (60 FR 66139). The final regulations relate to the time for furnishing wage statements to employees and for filing wage statements with the Social Security Administration upon the termination of an employer's operations.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jean M. Casey, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 6051, 6071, and 6081 of the Internal Revenue Code.

Need for Correction

As published, TD 8636 contains a typographical error that is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations which is the subject of FR Doc. 95–30685, is corrected as follows:

On page 66140, column 2, in the preamble under the paragraph heading "*Additional month to provide Forms W–2 and W–3 to SSA*", last line, the language "the final Form 941 is due." is corrected to read "the end of the quarter."

Cynthia E. Grigsby

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–4176 Filed 2–26–96; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Part 334

Albemarle Sound, Pamlico Sound, and Adjacent Waters, North Carolina; Danger Zones/Restricted Areas for Naval Aircraft Operations

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is re-establishing a danger zone as a restricted area in the waters off of Harvey Point, Perquimans County, North Carolina. The area designated as the Harvey Point danger zone was disestablished by the Corps in 1988. Due to subsequent surveys of the area by the Navy, it has been determined that unexploded ordnance could exist and in the interest of safety to the public, the area should be closed to certain activities. The re-establishment of the danger zone as a restricted area will allow the public to enter the area but will prohibit any bottom disturbing activities such as dredging, clamming, crabbing, seining or anchoring. Due to the risk of damage to property or injury to the public, good cause exists to make this restricted area regulation effective upon publication in the **Federal Register**.

EFFECTIVE DATE: February 27, 1996.

ADDRESSES: HQUSACE, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Yelverton of the Corps Wilmington District at (910) 251–4480, or Mr. Ralph Eppard, Regulatory Branch, CECW–OR at (202) 761–1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is promulgating a regulation under 33 CFR 334.412 re-establishing an area that was previously a danger zone, as a restricted area in the waters off of Harvey Point, Albemarle Sound, North Carolina.

Background

In accordance with a request by the Navy, the Corps deleted the regulations in 33 CFR 334.410(b)(1) which established a target and bombing danger zone on the north shore of Albemarle Sound, on November 29, 1988 (53 FR 47952–47953). The area was no longer being used by the Navy. This amendment was made prior to promulgation of procedural regulations now found in 33 CFR 334.5 Disestablishment of a danger zone, by the Corps. Pursuant to these regulations, the Agency requesting revocation of a danger zone area shall certify that the area is suitable for use by the public. Harvey Point was previously used as a target and bombing site by the Navy, so the possibility of live ordnance in the mud below the water exists. In the interest of public safety, the Navy requested that the area be established as a restricted area until such time as a thorough survey of the area can be completed and any dangerous ordnance, if any, is removed. The restricted area as established today will allow the public to use the area for recreational and commercial uses, including fishing, swimming, water skiing, boating and other activities provided the activity does not disturb the bottom. Those activities which are specifically prohibited include dredging, clamming, crabbing, seining and anchoring. Upon completion of additional surveys by the Navy and, if appropriate, any subsequent cleanup, the area will be returned to unrestricted public use. An editorial change is also being made to the regulations in 33 CFR 334.410 which reflects a change in the Naval Command responsible for enforcing these danger zones and the added restricted area.

Agency Decision To Adopt the Amendments Without Opportunity for Public Comment and Participation in Rulemaking

The Corps has determined that implementation of final rulemaking for the Harvey Point restricted area will protect the public from possible hazards resulting from previous uses of the area. Nothing will be served by delaying the effective date of the rule. We have found it to be in the National interest to restrict the public use of the prior

Harvey Point danger zone and will remove the restricted area upon notification by the Navy that its surveys and any required cleanup have been completed.

Economic Assessment and Certification

This final rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply. These final rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps has determined that the economic impact of the changes to the restricted area will have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, no significant economic impact on small entities.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Transportation, Waterways.

For the reasons set out in the preamble, 33 CFR Part 334 is amended as set forth below.

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3)

2. Section 334.410 is amended by revising paragraph (d)(4) as follows:

§ 334.410 Albemarle Sound, Pamlico Sound, and adjacent waters, NC; danger zones for naval aircraft operations.

* * * * *

(d) The regulations. * * *

(4) *Enforcing agency.* The regulations in this section shall be enforced by the Commander, Naval Air Force, U.S. Atlantic Fleet, and such agencies as he/she shall designate.

3. Section 334.412 is added to read as follows:

§ 334.412 Albemarle Sound, Pamlico Sound, Harvey Point and adjacent waters, NC; restricted area.

(a) The area. Beginning on the north shore of Albemarle Sound and the easternmost tip of Harvey Point; thence southeasterly to Day Beacon number 3; thence southeasterly to latitude 36°03′06″, longitude 76°16′43″; thence southwesterly to latitude 36°02′18″, longitude 76°19′30″; thence southwesterly to latitude 36°04′18″, longitude 76°20′20″; thence 23°15′ True to the shore; and thence northeasterly along the shore to the point of beginning.

(b) The regulations. The restricted area described in this section is the inactive Harvey Point target range which was disestablished as a danger zone. The area will be open to public access for recreational and commercial uses, except that dredging, clamming, crabbing, seining, and anchoring of all vessels and any other activity which could result in disturbing or penetrating the bottom is prohibited.

(c) Enforcing agency. The regulations in this section shall be enforced by the Commander, Naval Air Force, U.S. Atlantic Fleet, and such agencies as he/she shall designate.

Dated: February 14, 1996.

Stanley G. Genega,

Major General, USA, Director of Civil Works.

[FR Doc. 96–4347 Filed 2–26–96; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 0, 1, 2, 3, 13, 14, 17, and 36

RIN 2900–AH81

Delegation of Authority to Regional Counsels

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Office of General Counsel has changed its field structure from 52 District Counsel offices to 23 Regional Counsel offices. Previously, each District Counsel office was headed by a District Counsel who was authorized to take various actions on behalf of the Department of Veterans Affairs (VA). The new Regional Counsel offices are each headed by a Regional Counsel. In accordance with the provisions of 38 U.S.C. 512, this document delegates to the Regional Counsels the same authority and responsibility to act for VA as was previously granted to District Counsels. This document also sets forth the jurisdiction and address of each Regional Counsel.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Howard Lem, Assistant General Counsel (026), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 565–4885.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 553, there is a basis for dispensing with prior notice and comment and for dispensing with a 30-day delay of the effective date since this final rule constitutes a rule of agency organization, a non-substantive rule.

The Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment, which constitutes a rule of agency organization, is a non-substantive rule. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604,

List of Subjects

38 CFR Part 0

Conflict of interests.

38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government employees, Government property, Infants and children, Inventions and patents, Investigations, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

38 CFR Part 2

Authority delegations (Government agencies).

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

38 CFR Parts 13 and 14

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs-health, Health care, Homeless, Medical and dental schools, Medical devices, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

38 CFR Part 36

Condominiums, Housing, Indians, Individuals with disabilities, Loan program-housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: February 14, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 0, 1, 2, 3, 13, 14, 17, and 36 are amended as set forth below:

1. The authority citation for parts 0, 1, 2, 3, 13, 14, 17, and 36 continue to read as follows:

Authority: 38 U.S.C. 512.

PART 0—STANDARDS OF ETHICAL CONDUCT AND RELATED RESPONSIBILITIES

2. Remove the words "District Counsel" and add in their place "Regional Counsel" wherever they appear.

PART 1—GENERAL PROVISIONS

3. Remove the words "District Counsel" and add in their place "Regional Counsel" wherever they appear.

4. Remove the words "District Counsels" and add in their place "Regional Counsels" wherever they appear.

PART 2—DELEGATIONS OF AUTHORITY

5. Remove the words "District Counsel" and add in their place "Regional Counsel" wherever they appear.

6. Remove the words "District Counsels" and add in their place "Regional Counsels" wherever they appear.

PART 3—PENSIONS, BONUSES, AND VETERANS' RELIEF

7. Remove the words "District Counsel" and add in their place "Regional Counsel" wherever they appear.

PART 13—VETERANS BENEFITS ADMINISTRATION, FIDUCIARY ACTIVITIES

8. Remove the words "District Counsel" and add in their place "Regional Counsel" wherever they appear.

PART 14—LEGAL SERVICES, GENERAL COUNSEL

9. Remove the words "District Counsel" or "District Council" and add in their place "Regional Counsel" wherever they appear.

10. Remove the words "District Counsels" and add in their place "Regional Counsels" wherever they appear.

11. In § 14.501, add a new paragraph (f) to read as follows:

§ 14.501 Functions and responsibilities of Regional Counsels.

* * * * *

(f) The jurisdictions and addresses of Regional Counsels are as follows:

(1) *Region 1:* (JURISDICTION) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island; (ADDRESS) JFK Federal Bldg., Room E213, Boston, MA 02203.

(2) *Region 2:* (JURISDICTION) New Jersey, Metropolitan New York City; (ADDRESS) 800 Poly Place, Building 14, Brooklyn, NY 11209.

(3) *Region 3:* (JURISDICTION) District of Columbia; Fairfax, Virginia; Arlington, Virginia; Alexandria, Virginia; Martinsburg, West Virginia; and Maryland; (ADDRESS) 849 International Drive, Suite 200, Linthicum, MD 21090.

(4) *Region 4:* (JURISDICTION) Pennsylvania, Delaware; (ADDRESS) 1000 Liberty Ave., Pittsburgh, PA 15222.

(5) *Region 5:* (JURISDICTION) Georgia, South Carolina; (ADDRESS) 730 Peachtree Street, N.E., Atlanta, GA 30365.

(6) *Region 6:* (JURISDICTION) Florida, Puerto Rico; (ADDRESS) P.O. Box 5002, Building 22, Room 333, Bay Pines, FL 33504.

(7) *Region 7:* (JURISDICTION) Ohio, West Virginia (excluding Martinsburg, West Virginia); (ADDRESS) 1240 East Ninth Street, Room 1225, Cleveland, OH 44199.

(8) *Region 8:* (JURISDICTION) Arkansas, Tennessee; (ADDRESS) Federal Courthouse Annex, 110 9th Ave., S., Nashville, TN 37203.

(9) *Region 9:* (JURISDICTION) Alabama, Mississippi; (ADDRESS) 1500 E. Woodrow Wilson Dr., Jackson, MS 39216.

(10) *Region 10:* (JURISDICTION) Illinois, Iowa; (ADDRESS) VA Medical Center, Bldg. 50, P. O. Box 127, Hines, IL 60141.

(11) *Region 11:* (JURISDICTION) Michigan, Wisconsin; (ADDRESS) Patrick V. McNamara Federal Bldg., Suite 1460, 477 Michigan Ave., Detroit, MI 48226.

(12) *Region 12:* (JURISDICTION) Kansas, Missouri, Nebraska; (ADDRESS) 1 Jefferson Barracks Drive, St. Louis, MO 63125–4185.

(13) *Region 13:* (JURISDICTION) Oklahoma, Northern Texas; (ADDRESS) 1400 N. Valley Mills Dr., Waco, TX 76799.

(14) *Region 14:* (JURISDICTION) Louisiana, Southern Texas; (ADDRESS) 6900 Almeda Road, Houston, TX 77030.

(15) *Region 15:* (JURISDICTION) Minnesota, North Dakota, South Dakota; (ADDRESS) VA Medical Center, One Veterans Drive, Bldg. 73, Minneapolis, MN 55417.

(16) *Region 16:* (JURISDICTION) Colorado, Wyoming, Utah, Montana; (ADDRESS) Box 25126, 155 Van Gordon Street, Denver, CO 80225.

(17) *Region 17:* (JURISDICTION) Lower California; (ADDRESS) 11000 Wilshire Blvd., Los Angeles, CA 90024.

(18) *Region 18:* (JURISDICTION) Upper California, Hawaii, Central and Northern Nevada, and Philippine Islands; (ADDRESS) VA Medical Center, 4150 Clement Street, Bldg. 210, San Francisco, CA 94121.

(19) *Region 19:* (JURISDICTION) Arizona, Southern Nevada, and New Mexico; (ADDRESS) 3225 N. Central Ave., Rm. 305, Phoenix, AZ 85012.

(20) *Region 20:* (JURISDICTION) Idaho, Oregon, Washington, Alaska; (ADDRESS) 1220 SW Third Ave., Portland, OR 97204.

(21) *Region 21:* (JURISDICTION) New York (except Metropolitan New York City), Vermont; (ADDRESS) 120 LeBrun, Buffalo, NY 14215.

(22) *Region 22:* (JURISDICTION) Indiana, Kentucky; (ADDRESS) 575 N. Pennsylvania Street, Room 309, Indianapolis, IN 46204.

(23) *Region 23:* (JURISDICTION) North Carolina, Virginia (excluding Fairfax, Arlington, and Alexandria); (ADDRESS) 251 N. Main Street, Winston-Salem, NC 27155.

12. In § 14.518, paragraph (a), remove the word "district" and add in its place "region".

PART 17—MEDICAL CHARGES, WAIVERS, AND COLLECTIONS

13. Remove the words "District Counsel" and add in their place "Regional Counsel" wherever they appear.

PART 36—LOAN GUARANTY

14. Remove the words "District Counsel" and add in their place "Regional Counsel" wherever they appear.

[FR Doc. 96–4304 Filed 2–26–96; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AG23

Veterans Education: Implementation of the Veterans' Benefits Act of 1992 and the Department of Defense Authorization Act for Fiscal Year 1993 in the Post-Vietnam Era Veterans' Educational Assistance Program

AGENCIES: Department of Defense and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends the educational assistance and educational benefits regulations of the Department of Veterans Affairs (VA). It makes changes concerning measurement of training time, duplication of benefits, advance payment for work study, and permission for some service members who participated in the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) to instead elect to receive benefits under the Montgomery GI Bill—Active Duty. These changes restate statutory requirements.

EFFECTIVE DATES: The effective dates of the changes made by this final rule are as follows:

October 23, 1992: § 21.5058.

October 29, 1992: §§ 21.5023, 21.5145, 21.5231, and 21.5250.

July 1, 1993: § 21.5270.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: Regulations concerning VA-administered educational assistance and educational benefits are contained in 38 CFR Part 21. The Veterans' Benefits Act of 1992 (Pub. L. 102–568) amends educational assistance provisions under VEAP and amends other provisions that affect work-study under that program. The National Defense Authorization Act for Fiscal Year 1993 (Pub. L. 102–484) allows some VEAP participants to receive benefits under the Montgomery GI Bill—Active Duty. This document contains a number of changes to the regulations which merely reflect certain changes made by these public laws. These changes to the regulations are as follows.

Under Public Law 102–568, the limit on the amount of money that VA can pay in advance on a work-study contract has been changed. Formerly, that limit was 40 percent of the total amount payable under the contract. Now the limit is the lesser of 40 percent of the total amount payable under the contract or 50 times the applicable minimum hourly wage in effect on the date the contract is signed. Changes are made to 38 CFR 21.5145 to reflect these statutory provisions.

Public Law 102–484, among other things, provides that a veteran who has been discharged under the Voluntary Separation Incentive or Special Separation Benefit programs before October 23, 1992, was eligible on or before October 23, 1993 to elect to receive educational assistance under the Montgomery GI Bill—Active Duty in lieu of any other educational assistance, including VEAP. Changes are made to § 21.5058 to reflect these statutory changes.

Previously, § 21.5023 allowed for veterans receiving assistance under the Government Employees' Training Act (GETA) also to receive assistance under VEAP if the VEAP training occurred other than during duty hours. However, under Pub. L. 102–568 payment under VEAP is now prohibited for veterans receiving assistance under GETA regardless of whether the veteran is a full-time or part-time employee. Changes are made to § 21.5023 to reflect this statutory change.

Several provisions of Public Law 102–568 apply to VEAP. These are prohibition of receipt of educational assistance while the veterans is training under the Service Members Occupational Conversion and Training Act; a change in the ending date of the award of educational assistance when the veterans die during the period covered by an advanced payment of educational assistance; prohibition of approval of a nonaccredited course offered by independent study and prohibition of approval of an enrollment in such a course; and measurement of nonaccredited courses not leading to a standard college degree. Changes are made to 38 CFR 21.5231, 21.5250, and 21.5270 to reflect these changes.

The effective dates of the various changes made by this final rule reflect the effective dates of the corresponding statutory changes.

Nonsubstantive changes are made for purposes of clarity.

This final rule reflects statutory changes and, therefore, is not subject to the provisions of 5 U.S.C. 552, or 553, including the notice and comment provisions.

The Secretary of Veterans Affairs and the Secretary of Defense hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The changes made by the final rule restate statutory changes. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

The Catalog of Federal Domestic Assistance number for the program affected by this final rule is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 11, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

Samuel E. Ebbesen,

Lieutenant General, USA, Deputy Assistant Secretary (Military Personnel Policy), Department of Defense.

For the reasons set out in the preamble, 38 CFR part 21, subpart G is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

1. The authority citation for part 21, subpart G is revised to read as follows:

Authority: 38 U.S.C. 501(a), Chapter 32, unless otherwise noted.

§ 21.5023 [Amended]

2. In § 21.5023, paragraph (b) is amended by removing "and whose full salary is being paid to him or her while so training".

§ 21.5058 [Amended]

3. In § 21.5058, paragraph (a) is amended by adding the heading "General."

4. In § 21.5058 paragraphs (b) and (c) are revised to read as follows:

§ 21.5068 Resumption of participation.

* * * * *

(b) *Disenrollment in order to participate in other educational programs.* A person who elects to disenroll in order to receive educational assistance allowance under 38 U.S.C. chapter 34 or to receive an officer adjustment benefit payable under § 21.4703 may not reenroll if he or she has negotiated a check under the provisions of law governing the program elected in lieu of the Post-Vietnam Era Veterans' Educational Assistance Program. A person who elects to disenroll in order to receive educational assistance under the Montgomery GI Bill—Active Duty, as provided in § 21.7045, may not reenroll.

(Authority: 38 U.S.C. 3018A, 3018B, 3202(1), 3222)

(c) *Reenrollment permitted following some disenrollments.* (1) Except as provided in paragraph (b) of this section, a person who has disenrolled may reenroll, but will have to qualify again for minimum participation as described in § 21.5052(a).

(2) If a person does reenroll, he or she may "repurchase" entitlement by tendering previously refunded contributions which he or she received upon disenrollment, subject to the conditions of § 21.5052(f).

(Authority: 38 U.S.C. 3221, 3222)

5. In § 21.5145, paragraph (e) is revised to read as follows:

§ 21.5145 Work-study program.

* * * * *

(e) *Payment in advance.* VA will pay in advance an amount equal to the lesser of the following:

(1) 40 percent of the total amount payable under the contract; or

(2) An amount equal to 50 times the applicable minimum hourly wage in effect on the date contract is signed.

(Authority: 38 U.S.C. 3241, 3485)

* * * * *

§ 21.5231 [Amended]

6. Section 21.5231, is amended by removing "in the same manner as it is applied in the administration of chapters 34 and 36".

7. In § 21.5250, the introductory text of paragraph (a) and paragraph (a)(3) are revised, and paragraph (a)(16) is added, to read as follows:

§ 21.5250 Courses.

(a) In administering benefits payable under 38 U.S.C. chapter 32, VA and, where appropriate, the State approving agencies shall apply the following sections.

* * * * *

(3) Section 21.4252—Courses precluded.

* * * * *

(16) Section 21.4267—Approval of independent study.

* * * * *

8. In § 21.5270, paragraphs (b) and (j) are removed and reserved; and the introductory text and paragraph (c) are revised, to read as follows:

§ 21.5270 Assessment and pursuit of courses.

In the administration of benefits payable under 38 U.S.C. chapter 32, VA shall apply the following sections.

* * * * *

(c) Section 21.4272—Collegiate course measurement.

(Authority: 38 U.S.C. 3241, 3688)

* * * * *

[FR Doc. 96–4196 Filed 2–26–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–32–7238; FRL–5430–1]

Approval of and Promulgation of Implementation Plans; Louisiana

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Louisiana's request to grant an exemption for the Baton Rouge ozone nonattainment area from the applicable nitrogen oxides (NO_X) transportation conformity requirements. On July 25, 1995, Louisiana submitted to the EPA a State Implementation Plan (SIP) revision request for an exemption (under section 182(b)(1) of the Clean Air Act (Act)) from the transportation conformity requirements for NO_X for the Baton Rouge ozone nonattainment area, which is classified as serious. The State of Louisiana bases its request for Baton Rouge upon a modeling demonstration that additional NO_X reductions would not contribute to attainment in the nonattainment area.

EFFECTIVE DATE: This final rule will be effective on February 12, 1996.

ADDRESSES: Copies of the SIP revision, public comments and the EPA's responses are available for inspection at the following address:

U.S. Environmental Protection Agency, Region 6, Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, H. B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne McDaniels or Mr. Quang Nguyen, U.S. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION:

I. Background

Clean Air Act section 176(c)(3)(A)(iii) requires, in order to demonstrate conformity with the applicable SIP, that transportation plans and transportation improvement programs (TIPs) contribute to emissions reductions in ozone nonattainment areas during the period before control strategy SIPs are approved by the EPA. This requirement is implemented in 40 CFR 51.436 through 51.440 (and 93.122 through 93.124), which establishes the so-called "build/no-build test." This test requires a demonstration that the "Action" scenario (representing the implementation of the proposed transportation plan/TIP) will result in lower motor vehicle emissions than the "Baseline" scenario (representing the implementation of the current transportation plan/TIP). In addition, the "Action" scenario must result in emissions lower than 1990 levels.

The November 24, 1993, final transportation conformity rule [1] does not require the "build/no-build test" and "less-than-1990 test" for NO_X as an ozone precursor in ozone nonattainment areas where the Administrator determines that additional reductions of NO_X would not contribute to attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. Clean Air Act section 176(c)(3)(A)(iii), which is the conformity provision requiring contributions to emission reductions before SIPs with emissions budgets can be approved, specifically references Clean Air Act section 182(b)(1). That section requires submission of State plans that, among other things, provide for specific annual reductions of volatile organic compounds (VOC) and NO_X emissions "as necessary" to attain the ozone standard by the applicable attainment date. Section 182(b)(1) further states that its requirements do not apply in the case of NO_X for those ozone nonattainment areas for which the EPA determines that additional reductions of NO_X would not contribute to ozone attainment.

As explained below, the EPA, through an amendment to its transportation conformity rule, has changed the procedural mechanism through which a NO_X exemption from transportation conformity would be granted. Instead of a petition under section 182(f), transportation conformity NO_X exemptions for ozone nonattainment areas that are subject to section 182(b)(1) need to be submitted as SIP revision requests. The Baton Rouge ozone nonattainment area is classified as serious and, thus, is subject to section 182(b)(1).

The EPA published, on August 29, 1995, an interim final rule (60 FR 44762) which amended the transportation conformity rule and changed the statutory authority from section 182(f) to section 182(b)(1) of the Act for areas that are subject to section 182(b)(1). The interim final rule was effective immediately upon publication and provides the means for exempting areas subject to section 182(b)(1) from the NO_X provisions of the transportation conformity rule. In conjunction with the interim rule, the EPA published a proposal providing for further amendments to the transportation conformity rule and describing how the EPA intended to process section 182(b)(1) NO_X waivers (60 FR 44790). On November 14, 1995, the EPA published a final rule (60 FR 57179), after completing notice-and-comment rulemaking, that includes the provisions of the August 29, 1995, interim rule. The November 14, 1995, rule also addresses the NO_X budget requirement.

The July 25, 1995, SIP revision request from Louisiana has been submitted to meet the requirements of section 182(b)(1). A public hearing on this SIP revision request was held on June 29, 1995. The EPA proposed to approve the SIP revision request on October 6, 1995 (60 FR 52348).

The Baton Rouge serious ozone nonattainment area includes the following parishes: East Baton Rouge, West Baton Rouge, Pointe Coupee, Livingston, Iberville, and Ascension. In evaluating the SIP revision request, the EPA considered whether additional NO_X reductions would contribute to attainment of the ozone standard in the Baton Rouge modeling domain, which includes all or part of 20 parishes in Louisiana and covers both attainment as well as nonattainment parishes.

As outlined in the relevant EPA guidance, the use of photochemical grid modeling is the recommended approach for testing the contribution of NO_X emission reductions to attainment of the ozone standard.

A summary of the urban airshed modeling (UAM) demonstration and the EPA's review of the modeling and submittal are contained in the October 6, 1995, proposed rule (60 FR 52348) and the accompanying Technical Support Document. The modeling results show, on a directional basis, that application of NO_X controls in the Baton Rouge ozone nonattainment area would exacerbate peak ozone concentrations in the modeling domain.

II. Public Comments

In August 1994, three environmental groups (Natural Resources Defense Council (NRDC), Sierra Club, and Environmental Defense Fund (NRDC et al.)) submitted joint adverse comments on the proposed approvals of NO_X exemptions for the Ohio and Michigan ozone nonattainment areas. The comments addressed the EPA's general policy regarding NO_X exemptions. The commenters requested that these comments be addressed in all EPA rulemakings dealing with NO_X exemptions. The EPA responded to these comments in a final rulemaking approving a section 182(f) NO_X exemption for the Baton Rouge area. *See* 61 FR 2438, dated January 26, 1996. The technical basis (i.e., UAM demonstration) for the Baton Rouge section 182(b)(1) transportation conformity NO_X exemption is the same as for the section 182(f) exemption. (Please refer to the January 26, 1996, section 182(f) final approval (61 FR 2438) for Baton Rouge for a summary of the NRDC's comments and the EPA's responses.)

In addition, shortly after the close of the 30-day public comment period, the New York State Department of Environmental Conservation (NYSDEC) submitted a letter to the EPA expressing opposition to the proposed Baton Rouge transportation conformity NO_X exemption. For the public record, the EPA has elected to respond to those comments in this rulemaking. The following discussion summarizes the NYSDEC comments and provides the EPA's responses to the comments.

Comment: The NYSDEC expressed concern regarding the claim that VOC only controls reduce ozone levels and geographic extent of ozone exposure since modeling in the northeast shows a need for NO_X reductions as well as VOC to reduce regional ozone. The NYSDEC also questioned certain model assumptions; namely, whether the Federal motor vehicle control program (FMVCP) is assumed in future year (1996 and 1999) emission inventories, and the adequacy of modeling across-the-board reductions for a specific source category exemption.

Response: In the modeling demonstration, the State included in the attainment year (1999) projected emissions inventory the emission reductions expected to result from the Federal Motor Vehicle Emission Control Program. Although the state did not model the mobile emission reductions that would result from transportation conformity, per se, the across-the-board reductions modeled (i.e., a 100 percent reduction in both point source VOC and NO_X emissions combined) far exceed the reductions that would be expected to result from transportation conformity alone. (In the Baton Rouge modeling domain, point source VOC emissions alone comprise 46 percent of the total projected anthropogenic VOC inventory, and point source NO_X emissions alone comprise 57 percent of the total projected NO_X inventory.)

The EPA believes that the State has satisfied the requirements of Chapter 4 of the December 13, 1993, guidance document, "Guideline for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)," by simulating conditions resulting from three emission reduction scenarios (i.e., substantial VOC reductions, substantial NO_X reductions, and substantial VOC/NO_X reductions combined). Consistent with the guidance, the State has demonstrated that, on a directional basis, the areawide predicted maximum 1-hour ozone concentration for each day modeled under the substantial VOC reductions alone strategy is less than or equal to that from substantial NO_X reductions alone or VOC and NO_X reductions combined.

Comment: The NYSDEC stated that there have been voluntary early NO_X reductions from point sources between 1990 and 1994, which seems to imply that improvements in air quality would be affected by these voluntary NO_X reductions as well.

Response: As part of the modeling demonstration, the State included the early NO_X reductions from point sources that had occurred between 1990 and 1994. Since doing so did not alter the conclusion, the EPA believes the State has adequately demonstrated that any additional NO_X reductions would not contribute to attainment of the ozone standard and, therefore, has met the Act's requirements for receiving a NO_X waiver.

[1] "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act," November 24, 1993 (58 FR 62188).

Comment: The NYSDEC stated that area source NO_X inventories modeled appeared low by two orders of magnitude, i.e., 0.2 percent versus 20 percent.

Response: The projected area source NO_X inventory modeled (1.0 tons/day) is correct. Area source NO_X emissions comprise only 0.2 percent of the total projected NO_X inventory (479.0 tons/day). Point, on-road mobile, and non-road mobile source NO_X emissions comprise 67.7 percent, 15.4 percent, and 16.7 percent of the total projected NO_X emissions inventory, respectively.

Comment: The NYSDEC urged the EPA to undertake a review of the regional consistency between Baton Rouge and other southeast areas, and that action on the exemption petition be delayed until this review is complete.

Response: The EPA has taken steps to assure that downwind areas will not be negatively impacted by NO_X exemptions. The EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_X emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that the NO_X emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State or in another nonattainment area within the same State. This action would be independent of any action taken by the EPA on a NO_X exemption request under section 182(f) or section 182(b)(1). That is, EPA action to grant or deny a NO_X exemption request under section 182(f) or 182(b)(1) for any area would not shield that area from EPA action to require NO_X emission reductions, if necessary, under section 110(a)(2)(D).

The State of Louisiana is included in the superregional photochemical modeling of the eastern United States (U.S.) currently being conducted by the EPA, States, and other agencies as part of the Ozone Transport Assessment Group (OTAG). The OTAG assessment process, which is scheduled to end at the close of 1996, will evaluate regional and national emission control strategies using improved regional modeling analyses. The goal of the OTAG is to reach consensus on additional regional and national emission reductions that are needed to support efforts to attain the ozone standard in the eastern U.S. Upon completion of the modeling, the EPA will evaluate the modeling results and their implications concerning NO_X versus VOC emission controls. The results of this modeling may supersede the UAM demonstration that the EPA is using as the basis for granting this waiver. To continue the waiver for all NO_X source categories, the modeling must continue to show attainment of the ozone standard without the use of additional NO_X controls. The final modeling may demonstrate attainment of the ozone standard using a subset of the possible NO_X emission controls. In this situation, the EPA may continue the waiver for the remaining "non-controlled" NO_X sources under section 182(f)(2) of the CAA.

Comment: The NYSDEC disagrees that the NO_X waiver rule should be a Table 3 action for signature by the Regional Administrator and, because of the national implications of the NO_X exemption, believes it should be a Table 1 action.

Response: The NO_X waiver for transportation conformity is a SIP revision request submitted by the State of Louisiana. SIP revisions have been delegated to the Regional Administrator for signature under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. This NO_X waiver is applicable only for the purpose of relieving the need to meet the interim transportation conformity test for the Baton Rouge area. In addition, the policy related to processing the NO_X waivers for transportation conformity has been coordinated at the national level.

III. Effective Date

This rulemaking is effective as of February 12, 1996. The Administrative Procedure Act, 5 U.S.C. 553(d)(1), permits the effective date of a substantive rule to be less than thirty days after publication if the rule "relieves a restriction." Since the approval of the section 182(b)(1) transportation conformity NO_X exemption for the Baton Rouge ozone nonattainment area is a substantive rule that relieves the restrictions associated with the CAA Title I requirements to control NO_X emissions, the transportation conformity NO_X exemption approval may be made effective upon signature by the Regional Administrator.

IV. Final Action

The comments received were found to warrant no significant changes from the proposed to final action on this NO_X exemption request. The primary difference between the proposed and final rulemaking is the addition of the statement that the EPA may require NO_X emission controls in general or on a source-specific basis under section 110(a)(2)(D) of the CAA if future ozone modeling demonstrates that such controls are needed to achieve the ozone standard in downwind areas. Based on subsequent modeling results, the EPA may rescind all or part(s) of the transportation conformity NO_X waiver. Approval of the exemption waives the Federal requirements for transportation conformity applicable to the Baton Rouge ozone nonattainment area. To maintain the waiver, future modeling must demonstrate attainment of the ozone standard without the use of additional NO_X emission controls. (The modeling may demonstrate the need for some NO_X emission controls, necessitating the need for reducing the coverage of the waiver.) Should the EPA rescind the exemption, the State would be required to begin implementing the transportation conformity NO_X requirements.

V. Miscellaneous

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds. (*Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976; 42 U.S.C. 7410(a)(2)).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, the EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

The EPA's final action will relieve requirements otherwise imposed under the CAA and, hence, does not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. This action also will not impose a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial rule, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2) of the CAA).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Conformity, Oxides of nitrogen, Ozone, Transportation conformity.

Dated: February 12, 1996.

Jane N. Saginaw,

Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

3. Section 52.992 is amended by adding paragraph (c) to read as follows:

§ 52.992 Areawide nitrogen oxides (NO_X) exemptions.

* * * * *

(c) The LDEQ submitted to the EPA on July 25, 1995, a revision to the SIP, pursuant to section 182(b)(1), requesting that the Baton Rouge serious ozone nonattainment area be exempted from the transportation conformity NO_X requirements of the CAA. The Baton Rouge nonattainment area consists of East Baton Rouge, West Baton Rouge, Pointe Coupee, Livingston, Iberville, and Ascension Parishes. The exemption request was based on photochemical grid modeling which shows that additional reductions in NO_X would not contribute to attainment in the nonattainment area. On February 12, 1996, the EPA approved the State's request for an areawide exemption from the transportation conformity NO_X requirements.

[FR Doc. 96–4289 Filed 2–26–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MI28–02–7224; FRL–5324–4]

Approval and Promulgation of Implementation Plan; Michigan

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule; correction.

SUMMARY: On July 26, 1994 the USEPA published a final rule approving Michigan's 1990 base year ozone emission inventory for the Grand Rapids and Muskegon nonattainment areas submitted as a revision to the Michigan state implementation plan (58 FR 37944). The supplementary information to the final rule included errors on the totals of volatile organic compounds (VOC) emissions. The intent of this document is to provide the correct VOC emission totals.

Specifically, on page 37946 of the final rule, the table "Daily VOC Emissions From All Sources" incorrectly lists the total VOC emissions in tons per summer weekday (tpd) for the Grand Rapids and Muskegon as 199.29 and 58.53, respectively. The correct total VOC emissions are 203.29 tpd for Grand Rapids, and 59.38 tpd for Muskegon.

EFFECTIVE DATE: This correction is effective February 27, 1996.

FOR FURTHER INFORMATION CONTACT: Charles C. Hatten, Environmental Engineer, Regulation Development Section, Air and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6031.

List of Subjects in 40 CFR Part 52

Environmental protection, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 10, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 96–4394 Filed 2–26–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 799

[OPPTS–42111I; FRL–4988–0]

RIN 2070–AB94

Withdrawal of Certain Testing Requirements for Office of Water Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the final test rule for the Office of Water Chemicals in 40 CFR 799.5075 by rescinding the 90-day and 14-day testing requirements for chloroethane. The testing requirements are being rescinded because the Agency has received data adequate to meet the data needs for which the test rule was promulgated.

DATES: This amendment shall become effective on February 27, 1996. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern (daylight or standard as appropriate) time on February 27, 1996.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA is amending the final test rule for the Office of Water Chemicals in 40 CFR 799.5075 by rescinding: (1) The 90-day subchronic testing requirement for chloroethane, and (2) the 14-day testing requirement for chloroethane.

I. Background

In the **Federal Register** of September 21, 1995 (60 FR 48948) (FRL–4972–3), EPA proposed rescinding the 90-day subchronic testing requirement for chloroethane and the 14-day testing requirement for chloroethane. EPA promulgated the rule (FRL–4047–2) establishing these testing requirements pursuant to TSCA section 4(a), and published the final rule in the **Federal**

Register on November 10, 1993 (58 FR 59667).

EPA proposed rescinding the testing requirements for chloroethane because it received a 14-day single oral dose study from the Dow Chemical Company on May 1, 1995. This study, entitled "Ethyl Chloride Palatability and 14-day Drinking Water Toxicity Study in Fischer 344 Rats", concluded that there were no toxicological effects from the drinking water administration of chloroethane to the treated rats at the level of practical saturation. After submission of additional information requested by the Agency (Refs. 2, 2a, 3, and 4), EPA reviewed the study and concluded that the study was adequate to meet the data needs for which the test rule was prepared, to establish a Health Advisory for chloroethane for EPA's Office of Water (Ref. 5). Therefore, EPA is rescinding the 90-day and 14-day testing requirements for chloroethane. The final test rule for Drinking Water Contaminants Subject to Testing ("the Office of Water Chemicals test rule"), which EPA is now amending, is codified in 40 CFR 799.5075.

II. Public Comments

EPA received one public comment from the Dow Chemical Company, the test sponsor for chloroethane, which agreed with the Agency proposal.

III. Amended Testing Requirements

The Office of Water Chemicals test rule at 40 CFR 799.5075 is amended to delete the 14-day and the 90-day subchronic testing requirement for chloroethane. Specifically, parties subject to the test rule will no longer have to comply with 40 CFR 799.5075 (a)(1), (c)(1)(i)(A), and (c)(2)(i)(A).

IV. Economic Analysis

Eliminating these testing requirements will reduce testing costs. Therefore, this amendment should not cause adverse economic impact.

V. Rulemaking Record

EPA has established a docket for this rulemaking (docket number OPPTS–42111I). This docket contains the basic information considered by EPA in developing this rule, appropriate Federal Register notices, and the comment received on the proposal. The rulemaking record includes the following:

(1) Letter from Annette L. Hayes of Latham Watkins to Amber L. Aranda, U.S.E.P.A. transmitting April 28, 1995 Dow Chemical Study (May 1, 1995) (with attachment:).

(a) Dow Chemical Company. Study titled "Ethyl Chloride: Palatability and 14-Day Drinking Water Toxicity Study in Fischer 344 Rats" (April 28, 1995).

(2) Facsimile note from Roger A. Nelson, USEPA to Dr. Lynn Pottenger, The Dow Chemical Company requesting information (June 7, 1995) (with attachment:).

(a) Memorandum from Jennifer Orme-Zavaleta, U.S.E.P.A. to Frank Kover, U.S.E.P.A. requesting additional data (June 5, 1995).

(3) Letter from Lynn Pottenger, The Dow Chemical Company to Roger Nelson, U.S.E.P.A., RE: Questions on Chloroethane Study Report (June 9, 1995).

(4) The Dow Chemical Company. Report Addendum to Ethyl Chloride: Palatability and 14-Day Drinking Water Toxicity Study in Fischer 344 Rats (June 9, 1995).

(5) Memorandum from Jennifer Orme-Zavaleta, U.S.E.P.A. to Frank Kover, U.S.E.P.A. Office of Water Review (July 14, 1995).

(6) The Dow Chemical Company. Comment on docket number OPPTS–42111H (FRL–4972–3) (October 16, 1995).

VI. Public Docket

The docket for this rulemaking is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Room B–607 Northeast Mall, 401 M Street SW., Washington, DC 20460.

VII. Other Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this test rule would not have a significant impact on a substantial number of small businesses because the amendment would relieve a regulatory obligation to conduct certain chemical tests.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This rule reduces enforceable duties on any of these governmental entities or the private sector by revoking rules requiring testing.

D. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this test rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB Control number 2070–0033. This rule would reduce the public reporting burden associated with the testing requirement under the final test rule. A complete discussion of the reporting burden is contained at 58 FR 59680, November 10, 1993.

List of Subjects in 40 CFR Part 799.

Environmental protection, Chemicals, Chemical export, Hazardous substances, Health effects, Laboratories, Provisional testing, Reporting and recordkeeping requirements, Testing, Incorporation by reference.

Dated: February 11, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides, and Toxic Substances.

Therefore, 40 CFR, chapter I, subchapter R, is amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5075 is amended by revising paragraphs (a)(1), (c)(1)(i)(A), (c)(2)(i)(A), and (d)(1) to read as follows:

§ 799.5075 Drinking water contaminants subject to testing.

(a) *Identification of test substance.* (1) 1,1,2,2-tetrachloroethane (CAS No. 79–34–5), and 1,3,5-trimethylbenzene (CAS No. 108–67–8) shall be tested as appropriate in accordance with this section.

* * * * *

(c) *Health effects testing*—(1) *Subacute toxicity*—(i) *Required testing.* (A) An oral 14-day repeated dose toxicity test shall be conducted with 1,1,2,2-tetrachloroethane, and 1,3,5-trimethylbenzene in accordance with § 798.2650 of this chapter except for the provisions in § 798.2650 (a), (b)(1), (c), (e)(3), (e)(4)(i), (e)(5), (e)(6), (e)(7)(i), (e)(7)(iv), (e)(7)(v), (e)(8)(vii), (e)(9)(i)(A), (e)(9)(i)(B), (e)(11)(v), and (f)(2)(i). Each substance shall be tested in one mammalian species, preferably a rodent, but a non-rodent may be used. The species and strain of animals used in this test should be the same as those used in the 90-day subchronic test required in paragraph (c)(2)(i) of this section. The tests shall be performed using drinking water. However, if, due to poor stability or palatability, a drinking water test is not feasible for a given substance, that substance shall be administered either by oral gavage, in the diet, or in capsules.

* * * * *

(2) *Subchronic toxicity*—(i) *Required testing.* (A) An oral 90-day subchronic toxicity test shall be conducted with 1,3,5-trimethylbenzene in accordance with § 798.2650 of this chapter except for the provisions in § 798.2650 (e)(3), (e)(7)(i), and (e)(11)(v). The tests shall be performed using drinking water. However, if, due to poor stability or palatability, a drinking water test is not feasible for a given substance, that substance shall be administered either by oral gavage, in the diet, or in capsules.

* * * * *

(d) *Effective date.* (1) This section is effective on December 27, 1993, except for paragraphs (a)(1), (c)(1)(i)(A), (c)(1)(ii)(A), (c)(1)(ii)(B), (c)(2)(i)(A), and (c)(2)(ii)(A). The effective date for paragraphs (a)(2), (c)(1)(ii)(A), (c)(1)(ii)(B), and (c)(2)(ii)(A) is September 29, 1995. Paragraphs (a)(1), (c)(1)(i)(A), and (c)(2)(i)(A) are effective February 27, 1996.

* * * * *

[FR Doc. 96–4254 Filed 2–26–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7185

[ID–933–1430–01; IDI–08955–01, IDI–08932–02, IDI–14647–02]

Public Land Order No. 7157, Correction; Partial Revocation of Public Land Order Nos. 1992 and 2588, and Bureau of Land Management Order Dated January 28, 1952; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct an error in the land description in Public Land Order No. 7157.

EFFECTIVE DATE: February 27, 1996.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

The land description in Public Land Order No. 7157, 60 FR 45372–45373, August 31, 1995, is hereby corrected as follows:

On page 45372, third column, second line from the top of the page which reads "S½NW¼ and E½SE¼" is hereby corrected to read "S½NW¼ and E½SW¼."

Dated: February 13, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–4331 Filed 2–26–96; 8:45 am]

BILLING CODE 4310–GG–P

43 CFR Public Land Order 7186

[ID–933–1430–01; IDI–05280 01]

Partial Revocation of Public Land Order No. 1374; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 152.60 acres of National Forest System land withdrawn by the Department of Agriculture, Forest Service, for the Johnson Park Administrative Site in the Payette National Forest. The land is no longer needed for the purpose for which it was withdrawn. This action will open the land to surface entry and mining, and will permit the Forest Service to dispose of the land by exchange. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: March 28, 1996.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 1374, which withdrew National Forest System land for the Forest Service's Johnson Park Administrative Site, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 17 N., R. 2 W.,

Sec. 30, lots 3 and 4, and E½SW¼.

The area described contains 152.60 acres in Washington County.

2. At 9 a.m. on March 28, 1996, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, including

location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: February 13, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–4330 Filed 2–26–96; 8:45 am]

BILLING CODE 4310–GG–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC39

Exemption From Garnishment for Temporary Housing Assistance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule establishes that all financial assistance provided under the Disaster Housing Program is exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver.

EFFECTIVE DATE: March 28, 1996.

FOR FURTHER INFORMATION CONTACT: Laurence W. Zensinger, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4262, (facsimile) 202–646–2730.

SUPPLEMENTARY INFORMATION: Financial assistance provided under the Disaster Housing Program is not currently exempt from garnishment. Financial assistance under the Individual and Family Grant (IFG) Program is exempt from garnishment as specified in 44 CFR 206.131(l). The purpose of financial assistance provided under the Disaster Housing Program is to aid the applicant in obtaining safe housing following a Presidentially declared disaster. When financial assistance provided to an applicant is garnished, the housing needs of the applicant remain unmet. Regulatory exemption from garnishment serves the intent of the Disaster Housing Program. This final rule provides needed protection for applicants who are awarded assistance.

FEMA previously published this as a proposed rule (69 FR 43740, August 23, 1995), inviting comments. We received one brief postcard comment in support of the proposed rule. We are publishing the final rule with no changes from what we published in the proposed rule.

National Environmental Policy Act

This final rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735. To the extent possible this final rule adheres to the regulatory principles set forth in E.O. 12866, but it has not been reviewed by the Office of Management and Budget under the provisions of E.O. 12866.

Paperwork Reduction Act

This final rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This final rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of § 2(b)(2) of E.O. 12778.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance, Housing.

Accordingly, 44 CFR part 206 is amended as follows:

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

Subpart D—Temporary Housing Assistance

1. The authority citation for part 206 is revised to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329, 5 U.S.C. App. 1; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412, as amended; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Section 206.101(g) is amended to add introductory text to read as follows:

§ 206.101 Temporary housing assistance.

* * * * *

(g) *Forms of Temporary Housing Assistance.* All proceeds received or receivable by the applicant under § 206.101 shall be exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver. No rights under this provision are assignable or transferable.

* * * * *

Dated: February 20, 1996.

William C. Tidball,

Associate Director, Response and Recovery.

[FR Doc. 96–4416 Filed 2–26–96; 8:45 am]

BILLING CODE 6718–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1823 and 1852

RIN 2700–AB68

Drug and Alcohol Testing of Contractor Employees

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule implements the Civil Space Employee Testing Act of 1991, which requires NASA contractors to institute and maintain a program for achieving a drug and alcohol-free workforce. Contractor programs shall provide for preemployment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of contractor employees responsible for safety-sensitive, security, or National security functions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance.

EFFECTIVE DATE: March 28, 1996.

FOR FURTHER INFORMATION CONTACT: David K. Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Background

The Civil Space Employees Testing Act of 1991, Public Law 102–195, sec. 21, 105 Stat. 1616 to 1619, requires NASA to prescribe regulations that require testing of NASA contractor employees conducting safety-sensitive, security, and National security functions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. NASA published a proposed rule on July 13, 1993, 58 FR 37697. Public comments on the proposed rule have been considered in developing this rule.

Changes to Rule

A definition has been added to 1823.570–2 for the phrase "use, in violation of applicable law or Federal regulation, of alcohol." The definition of "employee in a sensitive position" has been expanded to include any applicant who is interviewed for a sensitive position.

In response to public comments, 1823.570–3 has been revised to add a contract threshold of $5 million, clarify application of the clause, and revise the exception for "commercial products" to cover "commercial items." The exception for contracts performed outside the U.S. has been removed. However, the clause has been revised to address testing outside the U.S.

Editorial changes have been made to 1823.570–4 to shorten and, in response to a public comment, clarify the section.

In response to a public comment, paragraph (b) of the clause at 1852.223–74 has been revised to remove the discussion of NASA Management Instruction (NMI) 3792.3B, "NASA Plan for a Drug-Free Workplace." Appendix C of the NMI, sets forth guidelines that NASA follows in making determinations as to which of its employees are in sensitive positions. A contractor may follow these NASA guidelines in making determinations as to which of its employees performing on the contract are "employee(s) in a sensitive position." However, there is no need for NASA to include this guidance in the contract.

In response to a public comment, paragraph (b) has been revised to allow establishment of testing and rehabilitation programs in cooperation with other contractors or organizations.

To give contractors flexibility in tailoring their programs to test for the use of controlled substances that pose the greatest threat to safety, security, or National security, paragraph (b)(3) of the clause requires testing only for marijuana and cocaine but allows the contractor to test for other controlled substances.

Paragraph (b)(4) of the clause incorporates testing procedures established by the Department of Transportation in 49 CFR part 40.

Paragraphs (c) and (d) of the clause are combined and clarified.

In response to public comments, a paragraph addressing labor agreements has been added. It uses language from the Department of Energy rule at 10 CFR 707.15 and the NASA rule proposed for NASA employees (58 FR 36159, July 6, 1993, proposed for 14 CFR 1272.104).

In response to public comments, paragraph (g) has been revised to state that the clause does not apply to any subcontract for commercial items.

Starting Date for Drug and Alcohol Testing

NASA requested comments on the amount of time that contractors will need, following contract award, to begin their drug and alcohol testing programs in order to meet the requirements of the proposed contract clause. Estimates included "12 to 18 months," "24 to 36 months," or longer. Negotiation of labor agreements was cited as requiring considerable time. Based on these comments, NASA has revised the clause to address labor agreements. The rule does not otherwise specify the amount of time that is considered reasonable for implementing the required testing. As with other elements of contract performance, it is anticipated that the contractor will make sufficient progress on implementing this program to ensure contract performance.

Procedural Requirements

Review Under the Regulatory Flexibility Act

The rule was reviewed under the Regulatory Flexibility Act of 1980. NASA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Review Under the Paperwork Reduction Act

Under 5 CFR 1320.5(b)(2)(i), NASA is required to inform potential persons who are to respond to the collection of information that such persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Under 5 CFR 1320.5(b)(2)(ii)(C), this paragraph meets that display requirement by providing the following statement: information collection associated with this rule has been approved under OMB Control Numbers 2700–0085 and 2700–0089.

List of Subjects in 48 CFR Parts 1823 and 1852

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1823 and 1852 are amended as follows:

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

1. The authority citation for 48 CFR Parts 1823 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

2. Subpart 1823.5 is added to read as follows:

Subpart 1823.5—Drug-Free Workplace

Sec.

1823.570 Drug- and alcohol-free workforce.
1823.570–1 Scope.
1823.570–2 Definitions.
1823.570–3 Contract clause.
1823.570–4 Suspension of payments, termination of contract, and debarment and suspension actions.

1823.570 Drug- and alcohol-free workforce.

1823.570–1 Scope.

Sections 1823.570 to 1823.570–4 set forth NASA requirements for mandatory drug and alcohol testing of certain contractor personnel under section 203, National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473, 72 Stat. 429; and Civil Space Employee Testing Act of 1991, Public Law 102–195, sec. 21, 105 Stat. 1616 to 1619.

1823.570–2 Definitions.

As used in this subpart *employee* and *controlled substance* are as defined in FAR 23.503. The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements of 1823.570 to 1823.570–4 and the clause at 1852.223–74.

Employee in a sensitive position means a contractor or subcontractor employee who has been granted access to classified information; a contractor or subcontractor employee in other positions that the contractor or subcontractor determines could reasonably be expected to affect safety, security, National security, or functions other than the foregoing requiring a high degree of trust and confidence; and includes any employee performing in a position designated "mission critical" pursuant to the clause at 1852.246–70. The term also includes any applicant

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who is interviewed for a position described in this paragraph.

Use, in violation of applicable law or Federal regulation, of alcohol includes having, while on duty or during a preemployment interview, an alcohol concentration of 0.04 percent by weight or more in the blood, as measured by chemical test of the individual's breath or blood. An individual's refusal to submit to such test is presumptive evidence of use, in violation of applicable law or Federal regulation, of alcohol.

1823.570–3 Contract Clause.

The contracting officer shall insert the clause at 1852.223–74, "Drug- and Alcohol-Free Workforce," in all solicitations and contracts containing the clause at 1852.246–70, "Mission Critical Space Systems Personnel Reliability Program," and in other solicitations and contracts exceeding $5 million in which work is performed by an employee in a sensitive position. However, the contracting officer shall not insert the clause at 1852.223–74 in solicitations and contracts for commercial items (see FAR parts 2 and 12).

1823.570–4 Suspension of payments, termination of contract, and debarment and suspension actions.

The contracting officer shall comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and debarment and suspension of a contractor relative to failure to comply with the clause at 1852.223–74. Causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are the following:

(a) The contractor fails to comply with paragraph (b), (c), or (d) of the clause at 1852.223–74; or

(b) Such a number of contractor employees in sensitive positions having been convicted of violations of criminal drug statutes or substantial evidence of drug or alcohol abuse or misuse occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug- and alcohol-free workforce.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.223–74 is added to read as follows:

1852.223–74 Drug- and alcohol-free workforce.

As prescribed in 1823.570–3, insert the following clause:

Drug- and Alcohol-Free Workforce

(March 1996)

(a) *Definitions.* As used in this clause the terms "employee," "controlled substance," "employee in a sensitive position," and "use, in violation of applicable law or Federal regulation, of alcohol" are as defined in 48 CFR 1823.570–2.

(b) (1) The Contractor shall institute and maintain a program for achieving a drug- and alcohol-free workforce. As a minimum, the program shall provide for preemployment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of contractor employees in sensitive positions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. The Contractor may establish its testing or rehabilitation program in cooperation with other contractors or organizations.

(2) This clause neither prohibits nor requires the Contractor to test employees in a foreign country. If the Contractor chooses to conduct such testing, this does not authorize the Contractor to violate foreign law in conducting such testing.

(3) The Contractor's program shall test for the use of marijuana and cocaine. The Contractor's program may test for the use of other controlled substances.

(4) The Contractor's program shall conform to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (59 FR 29908, June 9, 1994) and the procedures in 49 CFR part 40, "Procedures for Transportation Workplace Drug Testing Programs," in which references to "DOT" shall be read as "NASA", and the split sample method of collection shall be used.

(c) (1) The Contractor's program shall provide, where appropriate, for the suspension, disqualification, or dismissal of any employee in a sensitive position in any instance where a test conducted and confirmed under the Contractor's program indicates that such individual has used, in violation of applicable law or Federal regulation, alcohol or a controlled substance.

(2) The Contractor's program shall further prohibit any such individual from working in a sensitive position on a NASA contract, unless such individual has completed a program of rehabilitation described in paragraph (d) of this clause.

(3) The Contractor's program shall further prohibit any such individual from working in any sensitive position on a NASA contract if the individual is determined under the Contractor's program to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance and the individual meets any of the following criteria:

(i) The individual had undertaken or completed a rehabilitation program described in paragraph (d) of this clause prior to such use;

(ii) Following such determination, the individual refuses to undertake such a rehabilitation program;

(iii) Following such determination, the individual fails to complete such a rehabilitation program; or

(iv) The individual used a controlled substance or alcohol while on duty.

(d) The Contractor shall institute and maintain an appropriate rehabilitation program which shall, as a minimum, provide for the identification and opportunity for treatment of employees whose duties include responsibility for safety-sensitive, security, or National security functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

(e) The requirements of this clause shall take precedence over any state or local Government laws, rules, regulations, ordinances, standards, or orders that are inconsistent with the requirements of this clause.

(f) For any collective bargaining agreement, the Contractor will negotiate the terms of its program with employee representatives, as appropriate, under labor relations laws or negotiated agreements. Such negotiation, however, cannot change the requirements of this clause. Employees covered under collective bargaining agreements will not be subject to the requirements of this clause until those agreements have been modified, as necessary; provided, however, that if one year after commencement of negotiation the parties have failed to reach agreement, an impasse will be determined to have been reached and the Contractor will unilaterally implement the requirements of this clause.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts in which work is performed by an employee in a sensitive position, except subcontracts for commercial items (see FAR parts 2 and 12).

(End of clause)

[FR Doc. 96–4428 Filed 2–26–96; 8:45 am]
BILLING CODE 7510–01–M

Proposed Rules

Federal Register
Vol. 61, No. 39
Tuesday, February 27, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 319 and 381

[Docket No. 92–024E]

RIN 0583–AB51

Food Standards: Requirements for Processed Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term—Extension of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; extension of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is extending the comment period for the proposed rule, "Food Standards: Requirements for Processed Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term" for an additional 90 days. This action responds to requests to allow additional time for comments.

DATES: Comments must be received on or before May 28, 1996.

ADDRESSES: Written comments should be sent in triplicate to, Policy, Evaluation and Planning Office, Attn: FSIS Docket Clerk, DOCKET No. 92–024P, Room 4352, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be directed to Mr. Charles R. Edwards, Director, Product Assessment Division, at (202) 254–2565.

FOR FURTHER INFORMATION CONTACT: Mr. Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION: On December 29, 1995, FSIS published the proposed rule "Food Standards: Requirements for Processed Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term" (60 FR 67474). The rule proposes to establish a general definition and standard of identity for standardized meat and poultry food products that have been modified to qualify for use of certain expressed nutrient content claims as part of the product name. These products would be identified by a nutrient content claim, such as "fat free," in conjunction with an appropriate standardized product name, e.g., "fat free frankfurter." The general standard proposes to set requirements that would allow for modified versions of standardized meat and poultry food products, i.e., "substitute standardized products." These products would be formulated and processed with ingredients otherwise not in, or in amounts greater than that allowed by FSIS regulatory food standards in 9 CFR parts 319 and 381, subpart P.

FSIS reiterates that the standard of identity proposed would require that a modified meat or poultry product: (1) In general, possess performance characteristics that are similar to those of the product for which it substitutes, (2) contain the stipulated amount of a mandatory ingredient (e.g., meat or poultry) that is required to be in the traditional standardized food, and (3) is labeled to convey the allowed differences between the substitute and standardized product.

FSIS will be considering broader reform of its standards system that would provide firms greater flexibility in product formulation while fully informing consumers regarding the content of the product. As part of its overall standards reform strategy, FSIS is developing an Advance Notice of Proposed Rulemaking (ANPR) that will ask questions and solicit information about alternative regulatory approaches to standards including revising or eliminating meat and poultry content requirements.

In the interest of receiving information pertaining to food standards, FSIS is extending the comment period for the proposed rule an additional 90 days. This action responds to requests to extend the comment period.

Done at Washington, DC, on: February 22, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–4414 Filed 2–22–96; 3:35 pm]
BILLING CODE 3410–DM–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AEA–09]

Proposed Revocation of Class D Airspace and Class E4 Extensions; Plattsburgh AFB, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revoke Class D airspace designated as a surface area for Plattsburgh Air Force Base, New York. The proposed rule would also include revocation of the Class E4 surface areas designated as an extension to Class D airspace. As a result of the Base Realignment and Closure program, this airport has eliminated all flight operations.

DATES: Comments must be received on or before March 28, 1996.

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, AEA–530, Docket No. 95–AEA–09, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430. An informal docket may also be examined during normal business hours in the System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AEA–09". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments received will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71). This proposed rule would revoke existing Class D airspace and associated Class E4 airspace extensions, at Plattsburgh AFB, Plattsburgh, NY. Class D and Class E airspace designations are published in Paragraph 5000 and 6004, respectively, of FAA Order 7400.9C, dated August 17, 1995 and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part.71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995 and effective September 16, 1995, is amended as follows:

Paragraph 5000—Subpart D—Class D airspace areas designated as a surface area for an airport.

* * * * *

AEA NY D Plattsburgh, NY [Removed]

* * * * *

Paragraph 6004—Subpart E—Class E airspace designated as an extension to a Class D area.

* * * * *

AEA NY E4 Plattsburgh, NY [Removed]

* * * * *

Issued in Jamaica, New York, on January 29, 1996.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 96–3982 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AEA–11]

Proposed Revocation of Class D Airspace and Class E5 Airspace; Calverton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revoke Class D airspace designated as a surface area for Calverton Airport, Naval Weapons Industrial Reserve Plant (NWIRP), on Long Island, New York. The air traffic control tower is no longer operating, and there are no current plans to reestablish a tower control function at this airport. The proposed rule would also include revocation of the Class E5 airspace extending upward from 700 feet above the surface of the earth. The airport use was associated with the aircraft repair facilities at the Calverton Airport. Recent reductions in these functions have resulted in termination of flight operations at Calverton Airport.

DATES: Comments must be received on or before March 28, 1996.

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, AEA–530, Docket No. 95–AEA–11, FAA Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430. An informal docket may also be examined during normal business hours in the System Management Branch, AEA–530, FAA Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, System Management Branch, AEA–530, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AEA–11". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments received will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, AEA–530, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71). This proposed rule would revoke existing Class D surface airspace and overlying Class E5 airspace designated as extending upward from 700 feet above the surface, at Calverton Airport, NY. The air traffic control tower and the instrument operations, which this airspace was supporting, no longer exist. Flight operations at this airport have ceased. Class D and Class E airspace designations are published in Paragraph 5000 and 6005, respectively, of FAA Order 7400.9C, dated August 17, 1995 and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995 and effective September 16, 1995, is amended as follows:

Paragraph 5000—Subpart D—Class D airspace areas designated as a surface area for an airport.

* * * * *

AEA NY D Calverton, NY—[Removed]

* * * * *

Paragraph 6005—Subpart E—Class E airspace designated as airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Calverton, NY—[Removed]

* * * * *

Issued in Jamaica, New York, on January 29, 1996.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 96–3981 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AEA–13]

Proposed Establishment of Class E5 Airspace Clinton CO Airport, Plattsburgh, NY., and Revocation of Class E5 Airspace, Plattsburgh AFB, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify Class E5 airspace extending upward from 700 feet above the earth for Clinton County Airport, Plattsburgh, New York. There is existing E5 airspace for both the Plattsburgh AFB and Clinton County Airport. As result of the Base Closure and Realignment Program, the Plattsburgh AFB has closed, necessitating redesign of the Class E5 airspace.

DATES: Comments must be received on or before March 28, 1996.

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, AEA–530, Docket No. 95–AEA–13, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430. An informal docket may also be examined during normal business hours in the System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111 John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

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SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AEA–13". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments received will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishing Class E5 airspace at Clinton County Airport and revoking the existing E5 airspace at Plattsburgh AFB, Plattsburgh, NY, to accommodate current SIAPs and for IFR operations at the Clinton County Airport. The Plattsburgh AFB has closed and the VALCOUR TACAN has been decommissioned. The Clinton County Airport has a VOR or GPS RWY 19 SIAP and an ILS RWY 1 SIAP. The modification and description proposed would be based on existing navigation devices, and would accommodate these SIAPs and instrument flight rules (IFR) operations at Clinton County Airport. Class E5 airspace areas extending upward from 700 feet or more above the earth are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995 and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 Amended

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995 and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the earth.

* * * * *

AEA NY E5 Plattsburgh, NY [Removed]

Plattsburgh AFB, Plattsburgh, NY

* * * * *

AEA NY E5 Plattsburgh, NY [New]

Clinton County Airport, Plattsburgh, NY
(Lat. 44°41'15" N, long. 73°31'28" W)
Plattsburgh VORTAC
(Lat. 44°41'06" N., long. 73°31'22" W)

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of Clinton County Airport and within 4.4 miles each side of the Plattsburgh VORTAC 350° radial extending from the 9.5-mile radius of the Clinton County Airport to 12 miles north of the VORTAC and 4 miles each side of the Plattsburgh VORTAC 155° radial extending from the 9.5-mile radius of the Clinton County Airport to0 18.5 miles southeast of the VORTAC.

* * * * *

Issued in Jamaica, New York, on January 29, 1996.

John S. Walker,

Manoger, Air Traffic Division.

[FR Doc. 96–3974 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Post-Investigation Retention and Use of Confidential Business Information From Investigation on Unfair Practices in Import Trade; Decision Not to Issue Final Rules

AGENCY: U.S. International Trade Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Commission will not adopt at this time changes to certain rules for investigations and related proceedings under section 337 of the Tariff Act of 1930. The proposed amendments would have codified a proposed new policy of allowing counsel who are signatories to an administrative protective order (APO) to retain certain confidential business information (CBI) from an investigation for prescribed periods and to use that CBI for certain limited purposes.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. Hearing-impaired individuals can obtain information concerning the proposed rulemaking by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking was published at 60 FR 7723 (Feb. 9, 1995). The American Bar Association's Section on International Law and Practice and the ITC Trial Lawyers Association were the only organizations that commented on the proposed rules. The Commission has determined not to resolve these rules issues through rulemaking at this time. Post-investigation use and retention of CBI will continue to be governed by the terms of the APO issued by the presiding administrative law judge in each investigation.

By Order of the Commission.

Dated: February 13, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–3953 Filed 2–26–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF DEFENSE

Corps of Engineers

33 CFR Part 334

Chesapeake Bay Off Fort Monroe, VA, and Canaveral Harbor Adjacent to the Navy Pier at Port Canaveral, FL; Restricted Areas

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps proposes to amend the regulations which establish a restricted area in the waters off of Fort Monroe, which is located at Hampton Roads in the Chesapeake Bay. The purpose of the amendment is to increase the size of the restricted area to protect sensitive test equipment operated by the Navy in that area. The equipment is susceptible to damage by commercial fishing vessels, anchoring and dragging. The Corps also proposes to amend the regulations which establish a restricted area in Canaveral Harbor in the waters adjacent to the Navy pier at Port Canaveral, Florida. This amendment concerns the replacement of a warning light system in the Canaveral area. The change is necessary because the existing rules refer to a red ball displayed on the Port Canaveral water tower which has been dismantled. The light has been relocated.

DATES: Comments must be submitted on or before April 12, 1996.

ADDRESS: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard, Regulatory Branch, CECW–OR at (202) 761–1783, or questions concerning the Fort Monroe restricted area may be directed to Ms. Alice G. Riley of the Norfolk District at (804) 441–7389, and questions concerning the Port Canaveral restricted area may be directed to Ms. Shirley Stokes of the Jacksonville District at (904) 232–1668.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is proposing to amend the regulations in 33 CFR Part 334. The Commanding Officer, Naval Surface Warfare Center, Dahlgren Detachment, Fort Monroe, Virginia has requested an amendment to the regulations in 334.360, which establish a restricted area in the Chesapeake Bay off Fort Monroe, Virginia. The restricted area was established in 1948 and last amended October 31, 1990. The last revision resulted in reducing the size of the restricted area to accommodate Coast Guard Range lights. According to the Navy, this change if approved, will slightly enlarge the area over that in effect prior to the 1990 change. The restricted area is necessary to protect Government-owned test equipment. The Navy maintains an underwater test range used to develop underwater sensors at that site off Fort Monroe, Virginia. There is no prohibition on vessels transiting the area. The restriction on anchoring, trawling, fishing and dragging in the restricted area remain unchanged. In paragraph (b)(1), of the regulations, the words "danger zone" are incorrect and replaced by "restricted area". Also in subparagraph (b)(1) we are identifying a local Agency to contact in the event further information is necessary regarding the area or the prohibitions listed.

The Commanding Officer, Naval Ordnance Test Unit, Cape Canaveral, Florida, has requested the regulations which establish a restricted area in the waters adjacent to the Navy pier at Port Canaveral, Florida, be amended to delete a reference to a red warning light on a water tower and replace it with a new warning light system. The regulation will be amended to show that the area will be closed when a red square flag (bravo), and depending on the status of the hazardous operation, either an amber or red beacon, steady burning or rotating, day or night, is displayed from any of the three berths along the wharf. No other changes to these regulations are proposed.

Copies of all comments received in response to proposed changes to 33 CFR 334.360 will be available for inspection at the Norfolk District Office located at Fort Norfolk, 803 Front Street, Norfolk, Virginia. Comments received in response to the proposed change to 33 CFR 334.530 will be available for inspection at the Jacksonville District Office at 400 West Bay Street, Jacksonville, Florida.

Economic Assessment and Certification

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply. These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps expects that the economic impact of the changes to the restricted areas will have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

National Environmental Policy Act Certification

An environmental assessment will be prepared for these proposed actions. We have preliminarily concluded, based on the minor nature of these proposed amendments that the action will not have a significant impact to the human environment, and preparation of an environmental impact statement is not required. Copies of the environmental assessment may be reviewed at the District Offices listed at the end of **SUPPLEMENTARY INFORMATION**, above.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Transportation, Waterways.

For the reasons set out in the preamble, 33 CFR Part 334 is proposed to be amended as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.360 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 334.390 Chesapeake Bay off Fort Monroe, Virginia; restricted area, U.S. Naval Base and Naval Surface Weapons Center

(a) The area. Beginning at latitude 37°01'03", longitude 076°17'52"; thence to latitude 37°01'00", longitude 076°16'11"; thence to latitude 36°59'43", longitude 076°16'11"; thence to latitude 36°59'18", longitude 076°17'52"; thence to latitude 37°00'05", longitude 076°18'18"; thence north along the seawall to the point of beginning.

(b) The regulations. (1) Anchoring, trawling, fishing and dragging are prohibited in the restricted area, and no object, either attached to a vessel or otherwise, shall be placed on or near the bottom unless authorized by the Facility Manager, Naval Surface Warfare Center, Dahlgren Division Coastal Systems Station Detachment, Fort Monroe, Virginia.

* * * * *

3. Section 334.530 is amended by revising paragraph (b)(2) to read as follows:

§ 334.530 Canaveral Harbor adjacent to the Navy Pier at Port Canaveral, Fla.; restricted area.

* * * * *

(b) * * *

(2) The area will be closed when a red square flag (bravo), and depending on the status of the hazardous operation, either an amber or red beacon, steady burning or rotating, day or night, when displayed from any of the three berths along the wharf.

* * * * *

Dated: February 13, 1996.

Joseph G. Graf,

Colonel, U.S. Army, Executive Director of Civil Works.

[FR Doc. 96–4346 Filed 2–26–96; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 264, 265, and 266

[EPA/OSW–FR–95– ; SWH–FRL–5430–5]

CEMS Demonstration Announcement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for proposals.

SUMMARY: The Office of Solid Waste, U.S. Environmental Protection Agency, plans to conduct a demonstration of particulate matter (PM) and total mercury (Hg) Continuous Emissions Monitoring Systems (CEMS) for stack monitoring of hazardous waste combustors (e.g., incinerators, cement kilns, and light-weight aggregate kilns that burn hazardous waste). The purpose of this notice is to solicit proposals from vendors that are interested in participating in the demonstration. EPA will select vendors to participate in the demonstration based on specified evaluation criteria.

DATES: Proposals must be submitted by May 7, 1996.

ADDRESSES: Vendors must submit an original and two copies of their proposal to H. Scott Rauenzahn, U.S. Environmental Protection Agency, 401 M Street, SW (5302W), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For information on this request for proposals, contact H. Scott Rauenzahn in the Office of Solid Waste at 703–308–8477 (FAX: 703–308–8433).

SUPPLEMENTARY INFORMATION: EPA plans to conduct a demonstration to determine whether PM and total Hg CEMS are sufficiently developed for use to document compliance with emission standards for hazardous waste combustors. The demonstration has two phases: (1) demonstration of ability to comply with the Agency's draft performance specifications; and (2) demonstration of long term endurance over a period of six months to one year.

I. CEMS Performance Specifications

The Agency's draft performance specifications contain requirements for: a one-week test period for calibration and zero drift; relative accuracy assessment against EPA manual reference methods; a calibration error check (if applicable); an interference test (if applicable); and demonstration to the EPA that other requirements, such as response time and data recorder scale, are met. The draft specifications are available on EPA's Technology Transfer Network (TTN). The files are *PM—PS.ZIP* for PM and *HG—PS.ZIP* for Hg. They can be found in the Emission Measurement Technical Information (EMTIC) bulletin board's "Continuous Emissions Monitoring" area.

The dial-in number for the TTN BBS is (919) 541–5742. That number can accommodate 14.4k kbps. Settings are 8 (Data), No parity, 1 (Stop), and Full duplex. The BBS can be reached on the internet via TELNET at "ttnbbs.rtpnc.epa.gov". The system is off-line Mondays from 8 am until 12 noon ET. For help using the BBS, dial (919) 541–5384.

In addition, the draft performance specifications are available in the EPA RCRA Docket, Docket number F–96–RCSP–FFFFF. The docket is located at U.S. Environmental Protection Agency, Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. The RCRA Docket is open from 9 a.m. to 4 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling 703–603–9230. The public may copy a maximum of 100 pages from any document at no cost. Additional copies cost $0.15 per page.

II. Description of the Demonstration

EPA seeks vendors to participate in the demonstration that will supply, install, and operate the CEMS at no charge to the government. The Agency will select participants based on their proposals according to the selection criteria discussed below. The test site(s) will be selected by EPA. EPA will also provide site coordination and oversight, and will conduct the manual method reference measurements.

The vendors will conduct the demonstration under EPA oversight, and will provide to EPA at no charge and before removing the CEMS from the test site all data and information on the design of the CEMS and its operation and maintenance during the demonstration. EPA will present the results of the demonstration in a report.

At least one CEMS of each type (PM and total Hg) that participates in the demonstration will be selected for a long term (e.g., 6–12 month) endurance test.

The testing is scheduled to start in May 1996.

III. Vendor Proposals

Proposals should contain the following: a detailed description of the design, operation, and maintenance of the CEMS; the performance specifications of the device (including calibration and zero drift, detection limits, range, and accuracy); a detailed description of the calibration procedure(s) and standards; vendor generated test data pertinent to CEMS performance and calibration; field data demonstrating performance; a description of how the vendor will meet the responsibilities of supplying, installing, and operating the CEMS; and a statement that the vendor accepts the conditions of the program as presented in this notice.

EPA will select vendors for participation in the demonstration using the criteria presented below. Vendors selected after a preliminary selection must submit a site-specific installation plan based on site-specific information that the Agency will provide. This plan should include details such as: (1) the strategy to be used for handling the problem of liquid aerosol if the site uses

a low temperature, wet air pollution control system; or (2) how adequate purge air and temperature would be maintained to prevent fouling of the optics or optical access, if applicable. In other words, the site-specific installation plan should describe all measures that would be taken to ensure compliance with the performance specifications if the site itself bought the CEMS.

EPA will review the site-specific installation plans and make a final selection of participants.

IV. Selection Criteria

EPA will use the following selection criteria as guidelines for choosing CEMSs to participate in the demonstration and endurance tests. Each CEMS will be scored on a scale of 1 to 10 on each criterion (10 being the best score), and a total score calculated using the weighting factors indicated in brackets. Starting from the highest scoring CEMS and working down, as many CEMSs will be selected for participation as possible commensurate with the resources available and the capacity of the test site to accommodate additional CEMSs.

A prerequisite for consideration is that a CEMS must be able to monitor PM or Hg continuously and record measurements over the specified averaging periods. For this effort, EPA defines a CEMS as sampling the stack gas continuously and making measurements every 15 seconds. One minute block averages are calculated by averaging the four previous 15-second readings. Rolling averages are then calculated every minute using all one-minute averages obtained during the averaging period. The averaging periods are 10-minute, one-hour (60 minutes), and 2-hours (120 minutes) for PM, and 10 hours (600 minutes) for Hg. Only CEMSs that have a data availability factor of at least 90% [1] will be considered, unless no CEMSs can perform at that level.

Phase I: Selection Criteria for the Demonstration Test

(1) *Commercial Availability.* The CEMS should be commercially available as documented by product literature, a list of installation locations, and references. A CEMS that has been installed and successfully field demonstrated to meet performance specifications similar to those referenced here at more than 100 stacks will receive the highest score. One that is available as a prototype only, with no firm commercialization plans in place that would lead to availability within the year, will receive the lowest score. [25%]

(2) *Vendor Support.* The CEMS should be provided, installed, and operated by the vendor at no charge to the government. It is expected that the vendor will have personnel on-site to run the CEMS, carry out CD and ZD checks if needed, perform the CE check (if applicable), monitor CEMS performance during RA testing, and provide any trouble shooting or maintenance that may be required. It is also expected that all data will be recorded and copies provided to EPA at the test site and at no charge: CD and ZD checks (if automatic adjustments are made the CD or ZD before adjustment or the amount of adjustment must be recorded), CE tests, RA tests, and interference checks. Willingness to guarantee all of the above will receive the highest score, none of the above the lowest score. [25%]

(3) *Potential for CEMS to Meet Performance Specifications.* Documentation supplied by the vendor in the proposal should provide an indication that the CEMS can be expected to: (1) meet the performance specifications for CD, ZD, CE, RA, interferences, recorder scale, and response time; and (2) meet detection limits of less than 7.0 mg/dscm for PM and 5.0 µg/dscm for Hg. Recorder scale (and span) should be greater than or equal to 210 mg/dscm and 1400 µg/dscm respectively for PM and Hg. The response time, the time interval between the start of a step change in the system input and the time when the data recorder displays 95 percent of the final stable value, should not exceed 2 minutes. Ability to meet all of the specifications will receive the highest score, ability to meet none of the specifications will receive the lowest score. [35%]

(4) *Other Performance Requirements.* The CEMS design (as evaluated from information supplied in the proposal pertaining to a description of the CEMS and measurement principle and/or supplied test data) should be appropriate relative to the requirements of the performance specification and the application to monitoring stack emissions from hazardous waste combustors (i.e., hazardous waste incinerators and hazardous waste burning cement and light-weight aggregate kilns). For PM CEMSs, this means:

(a) The CEMS should be maximally sensitive to PM in the 0.1 to 10 µ size range; and

(b) The CEMS should not be sensitive to liquid water aerosol.

For Hg CEMS this means:

(a) The CEMS vendor must have demonstrated, at a minimum, the ability of the CEMS to detect vapor phase Hg, Hg on PM, and $HgCl_2$, and report the sum of these concentrations as total Hg; and

(b) No interferences (see performance specification). [15%]

Modifications to Installation Plan. Vendors that the Agency selects based on the criteria discussed above for participation in the demonstration test must submit an installation plan. The proposed installation described in the plan must be appropriate relative to the requirements of the performance specification and the application to monitoring stack emissions from the hazardous waste combustor that the Agency specifies. In particular, factors such as flue gas conditions (whether it is a saturated low temperature stream, for example) and purge requirements (flow rate and temperature to ensure that optics and access are not fouled) must be taken into account in the installation plan. If EPA determines that the proposed installation plan is not appropriate, the vendor may be required to revise the plan. If the vendor is unwilling to make the necessary changes, the CEMS may be dropped from the test program.

Phase II: Selection Criteria for the Endurance Test

The Agency will select CEMSs for participation in the long-term endurance test based on: (1) performance of the CEMS during the demonstration test in terms of ability to meet the performance specifications [75%]; and (2) maintenance requirements based on vendor information and experience gained during the demonstration test [25%].

V. Disclaimer

Neither acceptance by EPA for participation in this demonstration nor successful completion of the demonstration shall guarantee that EPA or any other federal agency or government entity shall accept any instrument, or related procedure or technology, or any portion thereof, for the purpose of the measurement of emissions from any regulated facility.

Dated: February 1, 1996.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 96–4388 Filed 2–26–96; 8:45 am]

BILLING CODE 6560–50–P

[1] Since a source would not be allowed to burn hazardous waste if the CEMS is not measuring and recording data, the CEMS must have a high data availability factor.

Notices

Federal Register

Vol. 61, No. 39

Tuesday, February 27, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to American Medical Products of Burlingame, California, an exclusive license for U.S. Patent Application Serial No. 08/145,546 filed November 4, 1993 and U.S. Patent Application Serial No. 08/423,911 filed April 13, 1995, both entitled "Hypoallergenic Natural Rubber Products from *Parthenum argentatum* (Gray) and other Non-*Hevea brasiliensis* Species." Notice of Availability for U.S. Patent Application Serial No. 08/145,546 was published in the **Federal Register** on June 21, 1994. Serial No. 08/423,911 is a division of Serial No. 08/145,546.

DATES: Comments must be received on or before April 29, 1996.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as American Medical Products has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 96–4424 Filed 2–26–96; 8:45 am]

BILLING CODE 3410–03–M

Forest Service

California Coast Province Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The California Coast Province Advisory Committee (PAC) will meet on March 7 and 8, 1996, at the Brass Rail Inn, 3188 Redwood Drive, Redway, California. On March 7 the meeting will begin at 8:30 a.m. and continue until 5:00 p.m. On March 8 the meeting will begin at 8:00 a.m. and conclude at 4:00 p.m. Agenda items to be covered include: (1) Fuels treatment presentation; (2) North Fork Eel River watershed presentation; (3) Discussion of Fiscal Year 1997 watershed restoration project selection; (4) Develop Northwest Forest Plan implementation monitoring team; (5) Report and recommendation from timber salvage subcommittee; (6) Agency updates on implementing the Northwest Forest Plan; (7) Public comment; and (8) Develop agenda for next meeting. If time allows, additional items may be discussed, including update on coho salmon Memorandum of Understanding and draft Klamath Province Advisory Committee letter concerning rechartering Province Advisory Committees. All California Coast Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Daniel Chisholm, USDA, Forest Supervisor, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, California 95988, (916) 934–3316 or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, California 95988, (916) 934–3316.

Dated: February 12, 1996.

Daniel K. Chisholm,

Forest Supervisor.

[FR Doc. 96–4406 Filed 2–26–96; 8:45 am]

BILLING CODE 3410–FK–M

Yakima Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yakima PIEC Advisory Committee will meet on March 7, 1996 at the Cle Elum Ranger District Office, 803 W. 2nd Street, Cle Elum, Washington. The meeting will begin at 9 a.m. and continue until 4 p.m. This meeting will include discussion of the ten key issues addressed by the Snoqualmie Pass Adaptive Management Area Environmental Impact Statement. If time allows, further discussion of management of dry eastside forest ecosystem will occur. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Mélody Lane, Wenatchee, Washington 98801–5933, 509–662–4335.

Dated: February 13, 1996.

Paul Hart,

Designated Federal Official, Wenatchee National Forest.

[FR Doc. 96–4354 Filed 2–26–96; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Grain Inspection Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting.

Name: Grain Inspection Advisory Committee.

Date: March 20–21, 1996.

Place: Holiday Inn, Kansas City Airport, 11832 Plaza Circle, Kansas City, MO.

Time: 8:30 a.m. March 20–21.

Purpose: To provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA) with respect to the implementation of the U.S. Grain Standards Act.

The agenda includes: (1) GIPSA financial status, (2) Soft Red Winter Wheat Standards, (3) Agency Strategic Plan, (4) Quality Assurance and Control Program Enhancements, (5) Domestic Program Trends and (6) Research Activities.

The meeting will be open to the public. Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact the Administrator, GIPSA, U.S. Department of Agriculture, P.O. Box 96454, Room 1094—South Building, Washington, D.C. 20090–6454, telephone (202) 720–0219 or FAX (202) 205–9237.

Dated: February 21, 1996.

James R. Baker,

Administrator.

[FR Doc. 96–4309 Filed 2–26–96; 8:45 am]

BILLING CODE 3410–EN–M

Natural Resources Conservation Service

Starkweather Watershed Cavalier and Ramsey Counties, North Dakota; Intent to Deauthorize Federal Funding

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Intent to Deauthorize Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR 622), the Natural Resources Conservation Service gives notice of the intent to deauthorize Federal funding for the Starkweather Watershed Project in Ramsey and Cavalier Counties, North Dakota.

FOR FURTHER INFORMATION CONTACT: Scott Hoag, Jr., State Conservationist, Natural Resources Conservation Service, 220 E. Rosser Avenue, P.O. Box 1458, Bismarck, North Dakota, 58502–1458. Phone number: 701–250–4441.

SUPPLEMENTARY INFORMATION: A determination has been made by Scott Hoag, Jr., that the proposed works of improvement for the Starkweather Watershed Project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Scott Hoag, Jr., State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: February 16, 1996.

Ronald D. Sando,

Acting State Conservationist.

[FR Doc. 96–4095 Filed 2–26–96; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 5:00 p.m. on Wednesday, March 13, 1996, at the North Carolina Mutual Insurance Company, 411 West Chapel Hill Street, Durham, North Carolina 27701. The purpose of the meeting is to review a draft report on racial tensions in North Carolina, discuss civil rights progress and/or problems in the State, and plan for the next project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Asa Spaulding, Jr., 919–233–7612 or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 14, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–4376 Filed 2–26–96; 8:45 am]

BILLING CODE 6355–01–P

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 10:00 a.m. to 12:00 p.m. and from 1:30 p.m. to 4:30 p.m. on Thursday, March 14, 1996, at the Quality Inn, Meeting Room, 125 Calhoun Street, (Downtown), Charleston, South Carolina 29401. The purpose of the meeting is to discuss civil rights progress and/or problems in the State; discuss followup to the report, *Perceptions of Racial Tensions in South Carolina*; hold a brief orientation session for the newly appointed committee; and beginning at 1:30 p.m., discuss with top city and county officials racial tensions in the Charleston area.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Milton Kimpson, 803–779–2597, or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 14, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–4377 Filed 2–26–96; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF COMMERCE

[Docket No. 960220034–6034–01]

RIN 0690–XX02

USTTA Foreign Service Policy; Reduction In Force

AGENCY: Department of Commerce.

ACTION: Notice.

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SUMMARY: The Department of Commerce is announcing internal regulations governing reduction in force (RIF) procedures for Foreign Service Officers of the United States Travel and Tourism Administration (USTTA). The Under Secretary for Travel and Tourism is responsible for determining the size and composition of the operating Foreign Service workforce. The regulations will apply if, due to lack of work, shortages of funds, insufficient personnel ceiling, or reorganization, the Under Secretary decides a reduction in force is necessary.

DATES: This policy was issued as Department of Commerce Personnel Bulletin 900–1 on February 15, 1996.

FOR FURTHER INFORMATION CONTACT: Gary Jacobs, Office of Human Resources Management, Department of Commerce, Washington, DC 20230, 202–482–4286.

SUPPLEMENTARY INFORMATION: This policy was issued as Department of Commerce Personnel Bulletin 900–1 on February 15, 1996. This notice is given in order to comply with the requirement of section 181 of Public Law 103–236. If the Under Secretary for Travel and Tourism determines circumstances require applying reduction in force procedures to separate a Foreign Service employee due to lack of work, shortage of funds, insufficient personnel ceiling, or reorganization, the following policy will apply.

Elizabeth W. Stroud,

Director for Human, Resources Management.

Personnel Bulletin 900–1

Section 1. Purpose

This sets policy for reduction-in-force in the U.S. Travel and Tourism Administration (USTTA) for members of the Foreign Service holding career or career candidate appointments, as approved by the Director, OPM, on February 13, 1996.

Section 2. Authority

.01 Section 611 of the Foreign Service Act of 1980, as amended, "Reduction in Force" provides the legal authority for conducting a reduction in force in the Foreign Service.

.02 The Under Secretary for Travel and Tourism is responsible for determining the size and composition of the operating Foreign Service workforce. The Under Secretary is authorized to decide whether circumstances require applying reduction in force (RIF) procedures to separate a Foreign Service employee due to lack of work, shortage of funds, insufficient personnel ceiling, or reorganization. The Under Secretary must determine the number of employees to be separated at each class level.

Section 3. Coverage

.01 These regulations apply to all members of the Foreign Service (SFS and FS) in USTTA holding career or career-candidate appointments under Chapter 3 of the Foreign Service Act of 1980, as amended.

.02 Employees serving on non-career limited appointments are not covered by these regulations. Should the Under Secretary decide that a RIF is necessary, these employees are the first to be separated from the Foreign Service, provided they are in a class that has been selected for reduction.

Section 4. Definitions

.01 Competitive Area

The organizational and geographic boundaries within which FS employees compete for job retention. The competitive area for Foreign Service employees in USTTA is worldwide within USTTA.

.02 Competitive Level

A competitive level is the set of all jobs within a competitive area that are similar enough in duties, qualification requirements, pay schedules and working conditions that the incumbent of one position could successfully perform the critical elements of any other position upon entry into it, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee. Competitive levels in USTTA consist of all Officers in a class.

.03 Reduction in Force (RIF)

A personnel action that releases a Foreign Service employee by separation. This release is due to a lack of work, shortage of funds, insufficient personnel ceiling, or reorganization.

.04 Retention Register

A listing of all employees in each competitive level in the order of their retention standing.

Section 5. RIF Announcement

.01 General RIF Announcement

Management may, at its discretion, issue an advance organization-wide general information notice to alert employees that a reduction in force may be necessary. If issued, this general notice should contain information concerning the reason for the RIF, the scope of the RIF, including the number of employees to be released, the competitive levels from which they are to be released, and the timing of the RIF.

.02 Specific RIF Notice

A specific notice must be sent to individual employees stating that the employee is to be released as a result of a reduction in force action, and explaining how the employee's name was reached. The specific RIF notice is issued by the servicing Human Resources Office at least 60 days before the effective date of the RIF separation. The notice must include information on the employee's right to appeal the RIF to the Foreign Service Grievance Board or to the Merit Systems Protection Board (MSPB), but not to both. In the event of an exigency, the Director for Human Resources Management may approve a shortened specific notice period, but in no case will the shortened period be less than 30 days.

Section 6. Establishing Retention Register/Order of Release

.01 The servicing Human Resources office prepares a retention register for each competitive level, ordering employees within each level based on their tenure of employment, veteran preference, length of service and performance, as follows:

(1) By tenure group I, and tenure group II;

(2) Within each tenure group by veteran preference subgroup, including subgroup AD, subgroup A, and subgroup B; and

(3) Within each subgroup by a combination of points credited for performance and years of service, as described below.

.02 Groups are defined as follows:

(1) Group I includes employees serving on career appointments under section 302 or 305 of the Act.

(2) Group II includes employees serving on career candidate appointments.

.03 Subgroups are defined as follows:

(1) Subgroup AD includes veteran preference eligible employees who have a compensable service-connected disability of 30 percent or more.

(2) Subgroup A consists of preference eligibles not included in subgroup AD. A retired member of the uniformed service is considered a preference eligible only if that person meets the criteria stated in 5 CFR 351.503.

(3) Subgroup B includes all non-preference eligible employees.

.04 Within each subgroup, employees are credited with points for length of service and performance, as follows:

(1) Employees receive one point for each full year of completed Federal Service. The servicing Human Resources Office will establish a service date for each competing employee in accordance with the procedures in 5 CFR 351.503.

(2) Credit for performance will be based on the results of each of the previous 5 Selection Boards. Points are weighted because competition is more difficult as one moves upward through the ranks of the Foreign Service. Employees receive points for being on a list of those recommended for promotions, whether promoted or not.

- An MC recommended for promotion receives 65 points.
- An OC recommended for promotion receives 55 points.
- A Class One recommended for promotion receives 45 points.
- A Class Two recommended for promotion receives 35 points.
- A Class Three recommended for promotion receives 25 points.
- A Class Four recommended for promotion receives 15 points.
- Those not recommended for promotion and not low-ranked receive 10 points.
- Officers who are low-ranked receive no points.

(5) Points are given also for awards that are recommended by each of the previous 5 Selection Boards.

- A Sustained Superior Performance Award or cash award (SSPA) receives 3 points.
- A Meritorious Step Increase (MSI) receives 5 points.
- Performance Pay (SFS only) receives 5 points.
- Presidential Award (SFS only) receives 10 points.

.05 Employees are rank-ordered within subgroup based on the number of points received. Those with the fewest points go to the bottom of the list and are released first. Those with the most points are at the top of the list and are the last to be released.

.06 FS employees compete for retention only within their competitive level. There is no right to displace employees in another competitive level.

Section 7. Breaking Ties in Retention Standing

.01 The first tie breaker is among those with equal points within a subgroup is to release first anyone who has been low-ranked during the previous 5 years.

.02 If needed, the next tie breaker is use results of Selection Boards, prior to the last 5 Boards being considered, for up to 2 additional years. As soon as the tie is broken, for example in year 6, the officer with the least number of points is be released first.

.03 If after all of the above, there is still a tie, the tie will be broken based on a lottery.

Section 8. Extension of Effective Date of RIF

Management may allow an employee to remain on the rolls for up to a year past the effective date of the RIF for the needs of the service. For example, if serious disruptions would occur in overseas staffing, management could approve a one-year extension of the appointment of an employee reached for release from the competitive level.

Section 9. Transfer of Function

.01 This section is applicable when the work of one or more employees is moved from one competitive area to another as a transfer of function regardless of whether or not the movement is made under authority of a statute, Executive order, reorganization plan, or other authority.

.02 Reduction in force procedures will be used in the losing competitive area to identify the employees to be transferred.

Section 10. Access to Retention Records

All employees covered by these regulations are entitled to review retention registers.

Section 11. Benefits/Placement Assistance

.01 Any employee at Class One or higher, who is separated through RIF, is eligible for an immediate annuity in accordance with Section 806 of the Foreign Service Act of 1980, as amended. Officers below the Class One level are eligible for an immediate annuity if they meet the age and service requirements for voluntary retirement.

.02 Otherwise, they receive severance benefits in accordance with Section 609(b) of the Foreign Service Act of 1980, as amended, as follows:

(1) A payment equal to one-twelfth of a year's salary at his or her current salary rate for each year of service and proportionately for a fraction of a year, but not to exceed a total of one year's salary at the officer's current rate and, (2) a refund of the contributions made by the officer to the Foreign Service Retirement and Disability Fund (FSRD), except that in lieu of a refund an officer who has at least 5 years of service credit toward retirement under the FSRD system may elect to receive an annuity, beginning at age 60. Those enrolled in the Foreign Service Pension System (FSPS), who have completed at least 5 years of creditable service, may elect to receive a deferred annuity at age 62.

.03 An officer cannot receive an immediate annuity and severance benefits.

Section 12. Right to Appeal

.01 An employee has the right to appeal the RIF action to the Merit Systems Protection Board (MSPB) or use the Foreign Service grievance procedure, but not both.

.02 MSPB Appeals.

Appeals to MSPB must be filed during the 30 calendar days beginning with the day after the effective date of the RIF action.

.03 Foreign Service Grievance Board.

Grievances are limited to cases of violation or inappropriate use of RIF authority by the Agency. Such grievances are initiated at the Agency level with the Office of Foreign Service Personnel, and must be submitted within 20 days after the effective date of the Reduction-in-Force. The filing of a grievance does not change the effective date of the action proposed in this notice.

[FR Doc. 96–4373 Filed 2–26–96; 8:45 am]

BILLING CODE 3510–88–P

Foreign-Trade Zones Board

[Order No. 802]

Expansion of Foreign-Trade Zone 70, Detroit, Michigan, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Greater Detroit Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 70, for authority to expand its general-purpose zone to include jet fuel storage and distribution facilities at the Detroit Metropolitan Wayne County Airport was filed by the Board on May 4, 1995 (FTZ Docket 20–95, 60 FR 25886, 5/15/95); and,

Whereas, notice inviting public comment was given in **Federal Register** a'nd the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 70 is approved, subject to the Act and the

Board's regulations, including Section 400.28.

Signed at Washington, DC, this 20th day of February 1996.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Choirman, Foreign-Trade Zones Board.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 96–4417 Filed 2–26–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–122–601]

Brass Sheet and Strip From Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from one respondent, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on brass sheet and strip from Canada. The review covers one manufacturer/exporter of the subject merchandise to the United States for the period January 1, 1994 through December 31, 1994.

We have preliminarily determined that U.S. sales have not been made below the normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the NV. Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: February 27, 1996.

FOR FURTHER INFORMATION CONTACT: Karen H. Park or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On January 12, 1987, the Department published in the **Federal Register** (52 FR 1217) the antidumping duty order on brass sheet and strip (BSS) from Canada. On January 12, 1995, the Department published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of this antidumping duty order for the period of January 1, 1994 through December 31, 1994 (60 FR 2941). We received a timely request for review from the respondent, Wolverine Tube (Canada), Inc. (Wolverine). On February 15, 1995, the Department initiated a review of Wolverine (60 FR 8629). The period of review (POR) is January 1, 1994 though December 31, 1994.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act.

Scope of the Review

Imports covered by the review are shipments of BSS, other than leaded and tin BSS. The chemical composition of the covered products is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C2000. Products whose chemical composition is defined by other C.D.A. or U.N.S. series are not covered by this order.

The physical dimensions of the products covered by this review are BSS of solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coil, wound-on-reels (traverse wound), and cut-to-length products are included. During the review period such merchandise was classifiable under Harmonized Tariff Schedule (HTS) subheadings 7409.21.00 and 7409.29.00. Although the HTS subheadings are provided for convenience and for Customs purposes, the written description of the scope of this order remains dispositive.

Pursuant to the final affirmative determination of circumvention of antidumping duty order, we determined that brass plate used in the production of BSS falls within the scope of the antidumping duty order on BSS from Canada. *See Bross Sheet and Strip from Canada: Final Affirmative Determination of Circumvention of Antidumping Duty Order*, 58 FR 33610 (June 18, 1993).

The review covers one Canadian manufacturer/exporter, Wolverine, and the period January 1, 1994 through December 31, 1994.

United States Price (USP)

In calculating USP for Wolverine, the Department treated respondent's sales as export price (EP), as defined in section 772(a) of the Act, because the subject merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation.

We calculated EP based on packed, delivered, duty-paid prices to unaffiliated customers in the United States. We made deductions from the gross unit price, where appropriate, for inland freight—plant/warehouse to port of exit, brokerage and handling, international freight, and U.S. customs duty, in accordance with section 772(c)(2)(A) of the Act. We added to the gross unit price packing costs for shipment to the United States, where applicable, pursuant to section 772(c)(1)(A) of the Act.

No other adjustments to USP were claimed or allowed.

Cost of Production Analysis

Because the Department disregarded sales below the cost of production (COP) in the last completed review of Wolverine, we have reasonable grounds to believe or suspect that sales below the COP may have occurred during this review. See Section 773(b)(2)(A)(ii) of the Act and *Brass Sheet and Strip from Canada; Final Results of Antidumping Administrative Review*, 60 FR 49582 (September 26, 1995). Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of Wolverine.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general and administrative expenses (SG&A) and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment. We relied on the home market sales and COP information provided by Wolverine in its questionnaire responses.

We compared COP to the reported home market prices on a product-specific basis, less any applicable movement charges, and rebates. In accordance with section 773(b)(1) of the Act, in determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made within an extended period of time in substantial quantities, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of

Wolverine's home market sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of Wolverine's home market sales of a given product were at prices less than the COP, we disregarded the below-cost sales because we determined that the below-cost sales were made within an extended period of time in "substantial quantities", in accordance with section 773(b)(2)(B) of the Act, and because we determined that the below-cost home market sales of a given product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

The results of our cost test indicated that within an extended period of time, for certain home market products, more than 20 percent of the home market sales were sold at prices below the COP. In addition, no evidence was presented to indicate that below-cost prices would permit the recovery of all costs within a reasonable period of time. Thus, we excluded these below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Normal Value (NV)

Based on a comparison of the aggregate quantity of home market and U.S. sales, and absent any information that a particular market situation in the exporting country does not permit a proper comparison, we determined that the quantity of foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like products were first sold for consumption in the exporting country.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual transactions to the monthly weighted-average price of sales of the foreign like product. We compared EP sales to sales in the home market of identical merchandise.

We based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the EP, in accordance with section 773(a)(1)(B)(i) of the Act. We made adjustments, where applicable, for expenses incident to placing the foreign like product in condition packed ready for shipment to the place of delivery to the purchaser and home market credit expenses, in accordance with section 773(a)(6)(B)(ii) of the Act. We increased home market price by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act and reduced it by home market packing costs in accordance with section 773(a)(6)(B) of the Act. Prices were reported net of value-added taxes (VAT) and, therefore, no adjustment for VAT was necessary. In accordance with section 773(a)(6)(C) of the Act, we increased NV by adding U.S. credit expense. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/Exporter	Period	Margin (percent)
Wolverine Tube (Canada), Inc	1/01/94–12/31/94	0.00

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will issue the final results of the administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing, within 180 days of issuance of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping dumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of BSS from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Wolverine will be the rate established in the final results of administrative review; (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in these reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews, the cash deposit rate will be 8.10 percent, the "all others" rate established in the LTFV investigation (52 FR 1217, January 12, 1987).

This notice serves as a preliminary reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: February 22, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–4418 Filed 2–26–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–817]

Notice of Postponement of Preliminary Determination: Antidumping Duty Investigation of Foam Extruded PVC and Polystyrene Framing Stock From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch or Erik Warga, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–3773, or (202) 482–0922, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA)

Postponement of Preliminary Determination

On February 16, 1996, petitioner, Marley Mouldings, made a timely request that the Department of Commerce postpone until Friday, May 3, 1996, its preliminary determination in this investigation. Accordingly, pursuant to section 733(c)(1)(A) of the Act, we have done so.

This notice is published pursuant to section 733(c)(2) of the Act.

Dated: February 20, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary for Investigations, Import Administration.

[FR Doc. 96–4419 Filed 2–26–96; 8:45 am]

BILLING CODE 3510–DS–P

Florida International University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–100. *Applicant:* Florida International University, Miami, FL 33199. *Instrument:* Electron Microscope, Model CM200. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 60 FR 58330, November 27, 1995. *Order Date:* December 27, 1994.

Docket Number: 95–102. *Applicant:* State University of New York at Buffalo, Amherst, NY 14260. *Instrument:* Electron Microscope, Model JEM-2010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 60 FR 58330, November 27, 1995. *Order Date:* March 17, 1995.

Docket Number: 95–107. *Applicant:* U.S. Department of Commerce, Gaithersburg, MD 20899. *Instrument:* Electron Microscope, Model CM300. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 60 FR 62390, December 6, 1995. *Order Date:* September 16, 1994.

Docket Number: 95–108. *Applicant:* VA Medical Center of Gainesville, Gainesville, FL 32608-1197. *Instrument:* Electron Microscope, Model CM100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 60 FR 62390, December 6, 1995. *Order Date:* September 25, 1995.

Docket Number: 95–112. *Applicant:* The Scripps Research Institute, La Jolla, CA 92037. *Instrument:* Electron Microscope, Model CM100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 60 FR 62390, December 6, 1995. *Order Date:* August 29, 1995.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 96–4420 Filed 2–26–96; 8:45 am]

BILLING CODE 3510–DS–F

Rutgers University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–101. *Applicant:* Rutgers University, Piscataway, NJ 08855. *Instrument:* Chlorophyll Fluorescence Measuring System, Model PAM 101. *Manufacturer:* Walz (Mess- und Regeltechnik), Germany. *Intended Use:* See notice at 60 FR 57222, November 14, 1995. *Reasons:* The foreign instrument provides: (1) fluorescence rate measurements under sunlight conditions, (2) flash trigger control variable between 100 msec and 10 000 sec, and (3) high kinetic resolution at 100 Hz. *Advice Received From:* National Institutes of Health, January 29, 1996.

Docket Number: 95–103. *Applicant:* University of Virginia, Charlottesville, VA 22906. *Instrument:* SIR Mass Spectrometer, Model OPTIMA. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* See notice at 60 FR 58330, November 27, 1995. *Reasons:* The foreign instrument provides continuous flow gas chromatography-combustion and an internal precision of 0.01 per mil for 5 bar μl of CO_2. *Advice Received From:* National Institutes of Health, January 30, 1996.

Docket Number: 95–106. *Applicant:* Pennsylvania State University, University Park, PA 16802. *Instrument:* Cold Stage for Time-of-Flight SIMS. *Manufacturer:* Kore Technology, Ltd., United Kingdom. *Intended Use:* See notice at 60 FR 62390, December 6, 1995. *Reasons:* The foreign instrument provides vibrational stability to allow imaging with spatial resolution to 20 nm and a demountable sample holder. *Advice Received From:* National Institutes of Health, January 30, 1996.

Docket Number: 95–110. *Applicant:* National Institutes of Standards and Technology, Gaithersburg, MD 20899. *Instrument:* Mass Spectrometer, Model JMS-700. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 60 FR 62390, December 6, 1995. *Reasons:* The foreign instrument provides high precision measurements of the ratios of intensities of two or more ions from compounds eluting from capillary gas chromatography columns and double-focusing magnetic sector geometry with resolution to 60 000. *Advice Received From:* National Institutes of Health, January 30, 1996.

Docket Number: 95–111. *Applicant:* University of Wisconsin-Madison, Madison, WI 53706. *Instrument:* Mode-locked Solid State Laser. *Manufacturer:* Microlase Optical Systems, Ltd., United Kingdom. *Intended Use:* See notice at 60 FR 62390, December 6, 1996. *Reasons:* The foreign instrument provides: (1) a resonator with passive mode-locking capability, (2) short pulse duration < 300 femtoseconds, and (3) frequency doubling to 660 nanometers. *Advice Received From:* National Institutes of Health, January 31, 1996.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 96–4421 Filed 2–26–96; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

[I.D. 021596C]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The meetings will be held March 11–15, 1996.

ADDRESSES: The meetings will be held at the Red Lion Hotel - Columbia River, 1401 North Hayden Island Drive, Portland, OR 97217; telephone: (503) 283–2111.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The Council meeting will begin on March 12, at 8:00 a.m. in a closed session (not open to the public) to discuss litigation. The open session begins at 8:30 a.m. The Council meeting will reconvene at 8:00 a.m. each day, March 13 through March 15. The meetings may continue each day into the evening hours, if necessary, to complete business.

The following items are on the Council agenda:

A. Call to Order

B. Salmon Management

1. Review of 1995 Fisheries and Summary of 1996 Stock Abundance Estimates;

2. Preliminary Definition of 1996 Management Options;

3. Status of Reviews to Determine Causes of Stock Declines for Several Puget Sound Chinook Stocks, Strait of Juan de Fuca Coho, and Quillayute Chinook;

4. Adoption of 1996 Management Options for Salmon Technical Team Analysis;

5. Schedule of Hearings and Appointment of Hearing Officers; and

6. Adoption of 1996 Management Options for Public Review.

C. Groundfish Management

1. Status of Federal Regulations;

2. Pacific Whiting Acceptable Biological Catch/Harvest Guideline for 1996;

3. Pacific Whiting Allocation and Management After 1996;

4. Status of Plan Amendments to Allow Landing of Salmon in the Pacific Whiting Fishery; and

5. Status of Analysis of Long Term Fixed Gear Sablefish Management Alternatives.

D. Administrative and Other Matters

1. Report of the Budget Committee;

2. Status of Legislation;

3. Report to Congress on Impacts of Seals and Sea Lions on West Coast Marine Ecosystems;

4. Appointments;

5. Revisions to Council Operation Procedures;

6. Report of the Coast Guard Pacific Regional Fishery Training Team; and

7. Adopt April 1996 Agenda.

E. Habitat Issues

1. Report of the Habitat Steering Group;

2. Public Comments; and

3. Council.

F. Pacific Halibut Management

1. Status of Implementation of Council Recommendations for 1996 Fisheries;

2. Results of International Pacific Halibut Commission Annual Meeting; and

3. Incidental Catch in the Troll Salmon Fishery.

Other Meetings

The Salmon Technical Team will meet on March 11–15, as necessary, to address salmon management issues related to Council agenda items.

The Salmon Advisory Subpanel will convene on March 11 at 9:00 a.m., and March 12–15 at 8:00 a.m., to address salmon management items on the Council agenda.

The Habitat Steering Group will convene on March 11 at 10:00 a.m., to consider activities affecting the habitat of fish stocks managed by the Council.

The Scientific and Statistical Committee will convene on March 11 at 11:00 a.m., and March 12 at 8:00 a.m., to address scientific issues related to Council agenda items.

The Budget Committee will convene on March 11 at 2:00 p.m., to review the fiscal year 1996 budget situation.

The Puget Sound Stock Review Committee will convene on March 14 at 3:00 p.m., to continue their review of chinook and coho salmon stocks under the Council's overfishing definition.

The Enforcement Consultants meet on March 12 and March 14 at 7:00 p.m., to address enforcement issues related to Council agenda items.

Detailed agendas for the above advisory meetings will be available after March 1, 1996.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: February 21, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–4335 Filed 2–26–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022096B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for a scientific research permit (P504G) and modifications to two scientific research permits (P770#66 and P770#68).

SUMMARY: Notice is hereby given that the U.S. Army Corps of Engineers at Walla Walla, WA (Corps) has applied in due form for a permit and the Coastal Zone and Estuarine Studies Division, NMFS in Seattle, WA (CZESD) has applied in due form for modifications to permits to take endangered and threatened species for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on any of these applications must be received on or before March 28, 1996.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: The Corps requests a permit and CZESD requests modifications to permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

The Corps (P504G) requests a 5-year permit to directly take juvenile, threatened, Snake River spring/summer and fall chinook salmon (*Oncorhynchus tshawytscha*) and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) and to incidentally take adult, threatened, Snake River spring/summer and fall chinook salmon associated with a study designed to monitor the operation of the new juvenile fish bypass system at Ice Harbor Dam on the Snake River in Washington. Run-of-the-river juvenile fish, a proportion of which will be ESA-listed fish, are proposed to be sampled from the bypass system, anesthetized, handled, allowed to recover from the anesthetic, and released. The primary purpose of sampling will be to ascertain fish condition and thereby certify that the bypass system is functioning correctly. Some adult fish, including listed adult salmon, are expected to fall back through the juvenile bypass system and are proposed to be incidentally captured and handled to return them to the river.

CZESD (P770#66) requests modification 3 to permit 900 to allow their annual take of listed juvenile fish authorized for Study 1, Survival Estimates for the Passage of Juvenile Salmonids through Dams and Reservoirs, to be supplemented with juvenile, listed, Snake River spring/summer chinook salmon captured indirectly by the National Biological Service (NBS), in association with a fall chinook salmon study, under the authority of permit 817. Permit 900 authorizes CZESD to directly take juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon and incidentally take juvenile, threatened, Snake River fall chinook salmon and juvenile, endangered, Snake River sockeye salmon for Study 1. In addition, CZESD would like to add the free-flowing Snake River, upstream of Lower Granite Reservoir, as a primary release location for the listed juvenile fish authorized to be captured and handled for Study 1. CZESD also requests a take of listed species associated with an additional project under Study 1 designed to evaluate the new surface collector at Lower Granite Dam on the Snake River in Washington. Modification 3 would be valid for the duration of Study 1 of the permit. Study 1 of permit 900 expires on December 31, 1998.

CZESD (P770#68) requests modification 2 to permit 946 to adjust for changes in the anticipated 1996 take associated with Study 2, Estuarine Recovery of Passive Integrated Transponder-tagged Juvenile Salmonids from the Lower Granite Dam Transportation Study. Permit 946 authorizes CZESD to take juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon and juvenile, endangered, Snake River sockeye salmon for Study 2. For the modification, CZESD requests an increase in the take of juvenile, endangered, Snake River sockeye salmon. Modification 2 would be valid for the duration of Study 2 of the permit. Study 2 of permit 946 expires on December 31, 1999.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on any of these applications would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these application summaries are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: February 20, 1996.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–4336 Filed 2–26–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Guidance on the Application of Best Management Practices to Mechanical Silvicultural Site Preparation Activities for the Establishment of Pine Plantations in the Southeast

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) issued a Memorandum to the Field dated November 28, 1995, on the application of best management practices to mechanical silvicultural site preparation activities for the establishment of pine plantations in the Southeast. The purpose of the guidance is to clarify those circumstances where mechanical silvicultural site preparation activities conducted in accordance with best management practices will not require a Clean Water Act Section 404 permit. Discussions with representatives of the forest industry, environmental organizations and State agencies provided key input during guidance development. The clarification of this site preparation issue relies in large part on State expertise in the development and implementation of best management practices associated with Forestry activities in wetlands. The guidance also discusses EPA and Corps support of follow-up efforts by the States and private interests to promote effective best management practices and protect wetland resources in Southeastern States.

FOR FURTHER INFORMATION CONTACT: Details are available from EPA and Corps field staff listed at the end of the memorandum, or Mr. John Goodin (EPA) at (202) 260–9910 or Mr. Victor Cole (Corps) at (202) 761–0201.

SUPPLEMENTARY INFORMATION: The following is the subject guidance

previously provided to the EPA and Corps field offices.

Daniel R. Burns,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Memorandum to the Field—Corps and EPA Regulatory Program Chiefs

Subject: Application of Best Management Practices to Mechanical Silvicultural Site Preparation Activities for the Establishment of Pine Plantations in the Southeast.

Date: November 28, 1995.

This memorandum [1] clarifies the applicability of forested wetlands best management practices to mechanical silvicultural site preparation activities for the establishment of pine plantations in the Southeast. Mechanical silvicultural site preparation activities [2] conducted in accordance with the best management practices discussed below, which are designed to minimize impacts to the aquatic ecosystem, will not require a Clean Water Act Section 404 permit. These best management practices further recognize that certain wetlands should not be subject to unpermitted mechanical silvicultural site preparation activities because of the adverse nature of potential impacts associated with these activities on these sites.

This memorandum recognizes State expertise that is reflected in the development and implementation of regionally specific best management practices (BMPs) associated with forestry activities in wetlands. Such BMPs encourage sound silvicultural operations while providing protection of certain wetlands functions and values. The U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) believe that it is appropriate to apply the Clean Water Act Section 404 program in a manner that builds from, and is consistent with, this State experience. The Agencies will support and assist State efforts to build upon these BMPs at the State level, to ensure that mechanical silvicultural site preparation is conducted in a manner that best reflects the specific wetlands resource protection and management goals of each State.

Introduction

Forested wetlands exhibit a wide variety of water regimes, soils, and vegetation types that in turn provide a myriad of functions and values. The States in the Southeast contain forested wetlands systems that in many cases are also subject to ongoing timber operations. In developing silvicultural BMPs, States have identified those specific forestry practices that will protect water quality. This guidance was developed to respond to questions regarding the applicability of Section 404 to mechanical silvicultural site preparation activities. EPA and the Corps relied extensively on existing State knowledge to protect aquatic ecosystems with BMPs, including the types of wetlands, types of activities, and BMPs described below.

This memorandum reflects information gathered from the southeastern United States, where mechanical silvicultural site preparation activities are associated with the establishment of pine plantations in wetlands.[3] As such, this memorandum, and particularly the descriptions of wetlands, activities, and BMPs, necessarily focus on this area of the country. However, the guidance presented is generally applicable when addressing mechanical silvicultural site preparation activities in wetlands elsewhere in the country.

Circumstances Where Mechanical Silvicultural Site Preparation Activities Requires a Permit

The States, in coordination with the forestry community and the public, have recognized that mechanical silvicultural site preparation activities may have measurable and significant impacts on aquatic ecosystems when conducted in wetlands that are permanently flooded, intermittently exposed, and semi-permanently flooded, and in certain additional wetland communities that exhibit aquatic functions and values that are more susceptible to impacts from these activities. For the wetland types identified in this section, it is most effective to evaluate proposals for site preparation and potential associated environmental effects on a case-by-case basis as part of the individual permit process. Therefore, mechanical silvicultural site preparation activities in the areas listed below require a permit.[4]

A permit will be required in the following areas unless they have been so altered through past practices (including the installation and continuous maintenance of water management structures) as to no longer exhibit the distinguishing characteristics described below (see "Circumstances Where Mechanical Silvicultural Site Preparation Activities Do Not Require a Permit" below). Of course, discharges incidental to activities in any wetlands that convert waters of the United States to non-waters always require authorization under Clean Water Act Section 404.

(1) Permanently flooded, intermittently exposed, and semi-permanently flooded wetlands. The hydrology of permanently flooded wetland systems is characterized by water that covers the land surface throughout the year in all years. The hydrology of intermittently exposed wetlands is characterized by surface water that is present throughout the year except in years of extreme drought. The hydrology of semi-permanently flooded wetlands is characterized by surface water that persists throughout the growing season in most years and, when it is absent, the water table is usually at or very near the land surface.[5] Examples typical of these wetlands include Cypress-Gum Swamps, Muck and Peat Swamps, and Cypress Strands/Domes.

(2) Riverine Bottomland Hardwood wetlands: seasonally flooded (or wetter) bottomland hardwood wetlands within the first or second bottoms of the floodplains of river systems. Site-specific characteristics of hydrology, soils, vegetation, and the presence of alluvial features elaborated in paragraphs a, b, and c below will be determinative of the boundary of riverine bottomland hardwood wetlands. National Wetlands Inventory maps can provide a useful reference for the general location of these wetlands on the landscape.

(a) the hydrologic characteristics included in this definition refer to seasonally flooded or wetter river floodplain sites where overbank flooding has resulted in alluvial features such as well-defined floodplains, bottoms/terraces, natural levees, and

[1] This guidance is written to provide interpretation and clarification of existing EPA and Corps regulations and does not change any substantive requirements of these regulations. This memorandum is further intended to provide clarification regarding the exercise of discretion under current agency regulations.

[2] Mechanical silvicultural site preparation activities include shearing, raking, ripping, chopping, windrowing, piling, and other similar physical methods used to cut, break apart, or move logging debris following harvest for the establishment of pine plantations.

[3] Information was considered from the following States in the Southeast: Virginia, North Carolina, South Carolina, Georgia, Florida, Tennessee, Alabama, Mississippi, Louisiana, and Arkansas.

[4] The community descriptions draw extensively from: Schafale, M.P., and A.S. Weakley. 1990. Classification of the Natural Communities of North Carolina. North Carolina Natural Heritage Program, Raleigh, NC. 325pp.

[5] Cowardin, L.M., et al. 1979. Classification of wetlands and deepwater habitats of the United States. U.S. Fish and Wildlife Service, Washington, DC. 131pp.

backswamps. For the purposes of this guidance definition, "seasonally flooded" bottomland hardwood wetlands are characterized by surface water that is present for extended periods, especially early in the growing season [6] (usually greater than 14 consecutive days), but is absent by the end of the season in most years. When surface water is absent, the water table is often near the land surface. Field indicators of the presence of surface water include water-stained leaves, drift lines, and water marks on trees.

(b) the vegetative characteristics included in this definition refer to forested wetlands where hardwoods dominate the canopy. For the purposes of this guidance definition, riverine bottomland hardwoods do not include sites in which greater than 25% of the canopy is pine.

(c) The soil characteristics included in this definition refer to listed hydric soils that are poorly drained or very poorly drained. For the purposes of this guidance definition, riverine bottomland hardwoods do not include sites with hydric soils that are somewhat poorly drained or that, at a particular site, do not demonstrate chroma, concretions, and other field characteristics verifying it as a hydric soil.

(3) White Cedar Swamps: wetlands, greater than one acre in headwaters and greater than five acres elsewhere, underlain by peat of greater than one meter, and vegetated by natural white cedar representing more than 50% of the basal area, where the total basal area for all tree species is 60 square feet or greater.

(4) Carolina Bay wetlands: oriented, elliptical depressions with a sand rim, either (a) underlain by clay-based soils and vegetated by cypress; or, (b) underlain by peat of greater than one-half meter and typically vegetated with an overstory of Red, Sweet, and Loblolly Bays.

(5) Non-riverine Forest Wetlands: wetlands in this group are rare, high quality wet forests, with mature vegetation, located on the Southeastern coastal plain, whose hydrology is dominated by high water tables. Two forest community types fall into this group: [7]

(a) Non-riverine Wet Hardwood Forests—poorly drained mineral soil interstream flats (comprising 10 or more contiguous acres), typically on the margins of large peatland areas, seasonally flooded or saturated by high water tables, with vegetation dominated (greater than 50% of basal area per acre) by swamp chestnut oak, cherrybark oak, or laurel oak alone or in combination.

(b) Non-riverine Swamp Forests—very poorly drained flats (comprising 5 or more contiguous acres), with organic soils or mineral soils with high organic content, seasonally to frequently flooded or saturated by high water tables, with vegetation dominated by bald cypress, pond cypress, swamp tupelo, water tupelo, or Atlantic white cedar alone or in combination.

The term "high quality" used in this characterization refers to generally undisturbed forest stands, whose character is not significantly affected by human activities (e.g., forest management). Non-riverine Forest wetlands dominated by red maple, sweetgum, or loblolly pine alone or in combination are not considered to be of high quality, and therefore do not require a permit.

(6) Low Pocosin wetlands: central, deepest parts of domed peatlands on poorly drained interstream flats, underlain by peat soils greater than one meter, typically vegetated by a dense layer of short shrubs.

(7) Wet Marl Forests: hardwood forest wetlands underlain with poorly drained marl-derived, high pH soils.

(8) Tidal Freshwater Marshes: wetlands regularly or irregularly flooded by freshwater with dense herbaceous vegetation, on the margins of estuaries or drowned rivers or creeks.

(9) Maritime Grasslands, Shrub Swamps, and Swamp Forests: barrier island wetlands in dune swales and flats, underlain by wet mucky or sandy soils, vegetated by wetland herbs, shrubs, and trees.

Circumstances Where Mechanical Silvicultural Site Preparation Activities Do Not Require a Permit

Mechanical silvicultural site preparation activities in wetlands that are seasonally flooded, intermittently flooded, temporarily flooded, or saturated, or in existing pine plantations and other silvicultural sites (except as listed above), minimize impacts to the aquatic ecosystem and do not require a permit if conducted according to the BMPs listed below. Of course, silvicultural practices conducted in uplands never require a Clean Water Act Section 404 permit.

The hydrology of seasonally flooded wetlands is characterized by surface water that is present for extended periods, especially early in the growing season, but is absent by the end of the season in most years (when surface water is absent, the water table is often near the surface). The hydrology of intermittently flooded wetland systems is characterized by substrate that is usually exposed, but where surface water is present for variable periods without detectable seasonable periodicity. The hydrology of temporarily flooded wetlands is characterized by surface water that is present for brief periods during the growing season, but also by a water table that usually lies well below the soil surface for most of the season. The hydrology of saturated wetlands is characterized by substrate that is saturated to the surface for extended periods during the growing season, but also by surface water that is seldom present. [8] Examples typical of these wetlands include Pine Flatwoods, Pond Pine Woodlands, and Wet Flats (e.g., certain pine/hardwood forests).

Best Management Practices

Every State in the Southeast has developed BMPs for forestry to protect water quality and all but two have also developed specific BMPs for forested wetlands. These BMPs have been developed because silvicultural practices have the potential to result in impacts to the aquatic ecosystem. Mechanical silvicultural site preparation activities include shearing, raking, ripping, chopping, windrowing, piling, and other similar physical methods used to cut, break apart, or move logging debris following harvest. Impacts such as soil compaction, turbidity, erosion, and hydrologic modifications can result if not effectively controlled by BMPs. States have developed BMPs that address not only types of wetlands and types of activities, but also detail specific measures to protect water quality through establishing special management zones, practices for stream crossings, and practices for forest road construction.

In developing forested wetlands BMPs, States in the Southeast have recognized that certain silvicultural site preparation techniques are more effective when conducted in areas that have drier water regimes. The BMPs stated below represent a composite of State expertise to protect water quality from silvicultural impacts. These BMPs also address the location, as well as the nature, of activities. The Corps and EPA believe that these forested wetlands BMPs are effective in protecting water quality and therefore are adopting them to protect these functions and values considered under Section 404.

The following forested wetlands BMPs are designed to minimize the impacts associated with mechanical silvicultural site preparation activities in circumstances where these activities do not require a permit (authorization from the Corps is necessary for discharges associated with silvicultural site preparation in wetlands described above as requiring a permit [9]). The BMPs include, at a minimum, the following:

(1) position shear blades or rakes at or near the soil surface and windrow, pile, and otherwise move logs and logging debris by methods that minimize dragging or pushing through the soil to minimize soil disturbance associated with shearing, raking, and moving trees, stumps, brush, and other unwanted vegetation;

(2) conduct activities in such a manner as to avoid excessive soil compaction and maintain soil tilth;

(3) arrange windrows in such a manner as to limit erosion, overland flow, and runoff;

(4) prevent disposal or storage of logs or logging debris in streamside management zones—defined areas adjacent to streams, lakes, and other waterbodies—to protect water quality;

(5) maintain the natural contour of the site and ensure that activities do not immediately or gradually convert the wetland to a non-wetland; and

(6) conduct activities with appropriate water management mechanisms to minimize off-site water quality impacts.

Implementation

EPA and the Corps will continue to work closely with State forestry agencies to promote the implementation of consistent and effective BMPs that facilitate sound silvicultural practices. In those States where no BMPs specific to mechanical silvicultural site preparation activities in forested wetlands are currently in place, EPA and the Corps will coordinate with those States to develop BMPs. In the interim, mechanical silvicultural site preparation activities conducted in accordance with this guidance will not require a Section 404 permit.

In order to ensure consistency in the application of this guidance over time, changes to the vegetation of forested wetlands associated with human activities conducted after the issuance of this guidance will not alter its applicability. For example, this guidance is not intended to establish the requirement for a permit for mechanical silvicultural site preparation where tree harvesting results in the establishment of site characteristics for which a permit would otherwise be required (e.g., where the selective cutting of naturally occurring pine in a Riverine Bottomland Hardwood wetland site with originally greater than 25% pine in the canopy results in a site "where hardwoods dominate the canopy"). In a similar manner, while harvesting of timber consistent with the requirements of Section 404(f) is exempt from regulation and natural changes (e.g., wildfire, succession) may change site characteristics, human manipulation of the vegetative characteristics of a site does not alter its status for the purposes of this guidance (e.g., removal of all the Atlantic White Cedar in an Atlantic White Cedar Swamp does not eliminate the need for a permit for mechanical silvicultural site preparation if the area would have required a permit before the removal of the trees).

Finally, the Agencies will encourage efforts at the State level to identify additional wetlands which may be of special concern and could be incorporated into State BMPs and cooperative programs, initiatives, and partnerships to protect these wetlands. To facilitate this effort, stakeholders are encouraged to develop a process after the issuance of this guidance to identify and protect unique and rare wetland sites on lands of the participating stakeholders. EPA and the Corps will monitor the application of this guidance, progress with conserving special wetland sites through cooperative programs and initiatives, and consider any new information, such as advances in silvicultural practices, improvements to State BMPs, or data relevant to potential impacts to wetlands, to determine whether the list of wetlands subject to the permit requirement should be modified or other revisions to this guidance are appropriate.

Further Information

The Corps and EPA will work closely with the States, forestry community, and public to answer any questions that may arise with regard to this guidance. For further information on this memorandum, please contact Mr. John Goodin of EPA's Wetlands Division at (202) 260–9910 or Mr. Sam Collinson of the Corps of Engineer's Regulatory Branch at (202) 761–0199. The public may also contact:

EPA Region IV: Tom Welborn (404) 347–3871 ext. 6507
EPA Region VI: Bill Cox (214) 665–6680
EPA Region III: Barbara D'Angelo (215) 597–9301
Corps Wilmington District: Wayne Wright (910) 251–4630
Corps Charleston District: Bob Riggs (803) 727–4330
Corps Savannah District: Nick Ogden (912) 652–5768
Corps Jacksonville District: John Hall (904) 232–1666
Corps Norfolk District: Woody Poore (804) 441–7068
Corps Mobile District: Ron Krizman (334) 690–2658
Corps Little Rock District: Louie Cockman (501) 324–5296
Corps Memphis District: Larry Watson (901) 544–3471
Corps Nashville District: Randy Castleman (615) 736–5181
Corps New Orleans District: Ron Ventola (504) 862–2255
Corps Vicksburg District: Beth Guynes (601) 631–5276

Robert H. Wayland, III,
Director, Office of Wetlands, Oceans, and Watersheds, Environmental Protection Agency.
Michael L. Davis,
Chief, Regulatory Branch, U.S. Army Corps of Engineers

[FR Doc. 96–4345 Filed 2–26–96; 8:45 am]
BILLING CODE 3710–92–M

[6] Consistent with the 1987 Corps of Engineers Wetlands Delineation Manual, growing season starting and ending dates are determined by the 28 degrees F or lower temperature threshold.

[7] These forest types are a subset of those described in Schafale and Weakley, 1990.

[8] Cowardin et al., 1979.

[9] Contact the nearest Corps District listed at the end of this document for further information.

DEPARTMENT OF EDUCATION

[CFDA No.: 84.162A]

Emergency Immigrant Education Program

Notice inviting applications for new awards for fiscal year (FY) 1996.

Purpose of Program: This program provides grants to State educational agencies (SEAs) to assist local educational agencies (LEAs) that experience large increases in their student population due to immigration. These grants are to be used to provide high-quality instruction to immigrant children and youth and to help those children and youth make the transition into American society and meet the same challenging State performance standards expected of all children and youth.

Eligible Applicants: State educational agencies.

Deadline for Transmittal of Applications: May 15, 1996.

Deadline for Intergovernmental Review: July 15, 1996.

Applications Available: February 28, 1996.

Available Funds: $37.5 million.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 16 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76, 77, 79, 80, 81, 82, and 85.

Programmatic Information: An SEA is eligible for a grant if it meets the eligibility requirements specified in sections 7304 and 7305 of the Elementary and Secondary Education Act of 1965 (the Act), as amended by the Improving America's School's Act of 1994 (Pub. L. 103–382, enacted October 20, 1994). 20 U.S.C. 7544 and 7545. In order to receive an award under this program, an SEA must provide a count, taken during April 1996, of the number of immigrant children and youth enrolled in public and nonpublic schools in eligible LEAs in accordance with the requirements specified in section 7304 of the Act. Id. An eligible LEA is one in which the number of immigrant children and youth enrolled in the public and nonpublic elementary and secondary schools within the district is at least either 500 or 3 percent of the total number of students enrolled in those public and nonpublic schools. 20 U.S.C. 7544(b)(2). Under section 7501(7) of the Act, the term "immigrant children and youth" means individuals who are aged 3 through 21, were not born in any State, and have not been attending one or more schools in any one or more States for more than 3 full academic years. 20 U.S.C. 7601(7).

For Applications or Information Contact: Ms. Harpreet K. Sandhu, U.S. Department of Education, 600 Independence Avenue, S.W., Room 5086, Switzer Building, Washington, D.C. 20202–6510. Telephone: (202) 205–9808. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including a copy of the application notice for this grant program, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web at http://www.ed.gov/money.html. However, the official application notice for this grant program is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 7541–7549.

Dated: February 22, 1996.

Delia Pompa,

Director, Office of Bilingual Education and Minority Language Affairs.

[FR Doc. 96–4410 Filed 2–26–96; 8:45 am]

BILLING CODE 4000–01–P

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Amendment to notice of a partially closed meeting.

SUMMARY: This amends the notice of a partially closed meeting of the National Assessment Governing Board published in Vol. 61, No. 29, Page 5389.

TIME: March 1, 1996, 7:30–8:30 a.m., Nominations Committee, (closed); March 2, 1996, 11:30 a.m.–12:00 noon, Full Board, (closed).

LOCATION: Ritz-Carlton Hotel—Pentagon City, 1250 South Hayes Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street NW., Washington, DC 20002–4233.

SUPPLEMENTARY INFORMATION: On March 1, the Nominations Committee will meet in closed session from 7:30–8:30 a.m. This meeting must be closed because the committee will be considering qualifications of nominees for appointment to Board membership.

On March 2, the National Assessment Governing Board will meet in partially closed session from 11:30 a.m. to 12:00 noon to hear the report of the Nominations Committee. This portion of the meeting must be closed to permit the Board to review and discuss personal qualifications and experiences of nominees recommended to serve in respective categories of Board membership.

In both instances, discussion of such information will touch upon matters that would disclose information of a personal nature where disclosures would constitute a clearly unwarranted invasion of personal privacy, and as such, is protected by exemption (6) of Section 552b(c) of Title 5 U.S.C.

A summary of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of Section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street NW., Washington, DC, from 8:30 a.m. to 5:00 p.m.

Dated: February 22, 1996.

Roy Truby,

Executive Director.

[FR Doc. 96–4393 Filed 2–26–96; 8:45 am]

BILLING CODE 4000–01–M

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming partially closed meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: March 20, 1996, beginning at 8:30 a.m. and ending at 5 p.m.; and March 21, 1996, beginning at 8 a.m. and ending at approximately 2 p.m., but closed to the public from 8 a.m. to 9:30 a.m.

ADDRESSES: Washington Hilton and Towers, the Thoroughbred Room, 1919 Connecticut Avenue NW., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue SW., Suite 601, Washington, DC 20202–7582 (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, conducting a study of institutional lending in the Stafford Student Loan Program, and assisting with activities related to reauthorization of the Higher Education Act of 1965. As a result of the passage of the Higher Education Amendments of 1992, the Congress directed the Advisory Committee to assist with a series of special assessments and conduct an in-depth study of student loan simplification. The Advisory Committee fulfills its charge by conducting objective, nonpartisan, and independent analyses of important student aid issues. As a result of passage of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Congress assigned the Advisory Committee the major task of evaluating the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP). The Committee will report to the Secretary and Congress on not less than an annual basis on the operation of both programs and submit a final report by January 1, 1997.

The proposed agenda includes (a) a discussion session on reauthorization; (b) an update on the delivery system; (c). an update on the progress of the loan programs; (d) an Advisory Committee regulatory update; and (e) a planning session on the Committee's agenda for the remainder of fiscal year 1996 and other Committee business (e.g., election of officers, budget report, etc.). Space is limited and you are encouraged to register early if you plan to attend. To register, please fax your name, title, affiliation, complete address (including Internet and E-Mail—if available), telephone number, and fax number to the Advisory Committee staff office at (202) 401–3467. If you are unable to fax, please mail your registration information or contact the Advisory Committee staff office at (202) 708–7439. Also, you may register through INTERNET at *ADV—COMSFA@ED.gov or Tracy—Deanna—Jones@ED.gov*. The registration deadline is Friday, March 15, 1996.

The Advisory Committee will meet in Washington, DC on March 20, 1996, from 8:30 a.m. to 5 p.m., and on March 21 from 8 a.m. to 2 p.m. The meeting will be closed to the public on March 21, from 8 a.m. to 9:30 a.m. to discuss personnel matters. The ensuing discussions will relate to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552(b)(c) of Title 5 U.S.C.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552(b) will be available to the public within fourteen days after the meeting.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue SW., Suite 601, Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: February 21, 1996.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 96–4398 Filed 2–26–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–136–001]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 21, 1996.

Take notice that on February 15, 1996, Algonquin Gas Transmission Company (Algonquin), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet, with a proposed effective date of March 1, 1996.

Fourth Revised Sheet No. 688

Algonquin states that the purpose of this filing is to correct a pagination error which occurred in its filing of February 1, 1996 in Docket No. RP96–136–000.

Algonquin states that copies of this filing were mailed to all firm customers of Algonquin and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4328 Filed 2–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–110–000]

Carnegie Interstate Pipeline Company; Notice of Technical Conference

February 21, 1996.

Pursuant to the Commission's letter order issued on January 31, 1996, in the above-captioned proceeding, a technical conference will be convened to review Carnegie Interstate Pipeline Company's (Carnegie) release of its unassigned Texas Eastern Transmission Corporation (Texas Eastern) capacity. The conference will be limited to the data filed in this proceeding, including Carnegie's posting of stranded capacity on Texas Eastern's electronic bulletin board. The conference will be held on Tuesday March 5, 1996, at 10:00 a.m., in a Hearing Room to be designated on the second floor at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested persons and Staff are permitted to attend. For additional information, please contact Bob Sheldon at (202) 208–2273.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4326 Filed 2–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–110–001]

Carnegie Interstate Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

February 21, 1996.

Take notice that on February 15, 1996, Carnegie Interstate Pipeline Company (CIPCO) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet, to become effective on February 1, 1996:

Sixth Revised Sheet No. 7

CIPCO states that this is a revised quarterly Transportation Cost Rate (TCR) filing, submitted in compliance with the Commission's January 31, 1996 letter order in this proceeding. CIPCO revised its TCR to reflect new projections of revenue associated with release of its capacity on Texas Eastern Transmission Corporation for the 3-month period February 1, 1996 to April 30, 1996. The filing proposes a TCR of $0.8283, compared to the TCR of $1.2286 proposed in CIPCO's previous filing in this proceeding.

CIPCO states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4327 Filed 2–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–408–006]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

February 21, 1996.

Take notice that on February 15, 1996, Columbia Gas Transmission Corporation (Columbia) filed to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of May 1, 1996:

Substitute Twelfth Revised Sheet No. 25
Substitute Twelfth Revised Sheet No. 26
Substitute Twelfth Revised Sheet No. 27
Sub Thirteenth Revised Sheet No. 28

Columbia states that the purpose of this filing is to comply with Ordering Paragraph B of the Commission's January 31, 1996 order (74 FERC ¶61,067) in Docket No. RP95–408–004 and RP95–408–005 which directed Columbia to recalculate and refile its Stranded Facilities Charge (SFC) effective May 1, 1996, by eliminating the component for income taxes (approximately $2.1 million). Columbia states that consistent with the discussion in the January 31, 1996 order it reserves the right to move the May 1, 1996 level tariff sheets into effect as of that date or at any time thereafter.

Columbia states that copies of its filing have been mailed to all parties listed on the Commission's service list for this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4325 Filed 2–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–47–000]

NorAm Gas Transmission Company; Notice of Refund Report

February 21, 1996.

Take notice that on February 1, 1996, NorAm Gas Transmission Company (NorAm) tendered for filing a Report of Gas Research Institute (GRI) Tier 1 Refunds. NorAm states that the refund report is filed in accordance with the Commission's directive contained in Opinion No. 402 [73 FERC ¶61,073 (1995)].

NorAm further states that the refunds, totalling $64,120.00, were made from December 5 to 20, 1995. The report reflects the amounts allocated to each firm transportation customer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 28, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4322 Filed 2–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–143–000]

Williams Natural Gas Company; Notice of GRI Reservation Surcharges

February 21, 1996.

Take notice that on February 14, 1996, Williams Natural Gas Company (WNG), tendered for filing a schedule of refunds to be made to customers due to incorrectly collected GRI reservation surcharges.

WNG states that as a result of inquiries by certain customers and the Commission's May 3, 1995 Order Granting Clarification, WNG has determined that it incorrectly calculated the GRI reservation surcharge on capacity released by the original customer holding such capacity (releasing shipper) at less than maximum rate for the period January 1, 1994 through September 30, 1995. WNG states that the instant filing contains a schedule of refunds to be made to customers due to incorrectly collected GRI reservation surcharges, to be refunded upon Commission approval.

WNG states that a copy of its filing was served on all customers who are entitled to refunds, interested state commissions, and GRI.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 28, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4329 Filed 2–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11408–000]

Niagara Mohawk Power Corporation, New York; Notice of Availability of Final Environmental Assessment

February 21, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the existing Salmon River Hydroelectric Project located on the Salmon River in Oswego County, near the Village of Altmar, New York, and has prepared a final Environmental Assessment (EA) for the project.

Copies of the final EA are available for review in the Public Reference Branch,

Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

For further information, please contact Robert Bell, Project Manager, at (202) 219–2806.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4324 Filed 2–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Projects Nos. 2582–002 and 2583–004]

Rochester Gas and Electric Corporation, New York; Notice of Availability of Final Multiple Project Environmental Assessment

February 21, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the applications for major new licenses for the Station 2 and Station 5 Projects, both located on the Genesee River, in Livingston and Monroe Counties, New York, and has prepared a Final Multiple Project Environmental Assessment (FMPEA) for the projects. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the existing projects and has concluded that approval of the projects, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FMPEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 1st Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4323 Filed 2–26–96; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of May 8 Through May 12, 1995

During the week of May 8 through May 12, 1995, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Requests for Exception

Lovelace Gas Service, Inc., 5/11/95 LEE–0131

Lovelace Gas Service, Inc. (Lovelace) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering Lovelace's request, the DOE found that the firm was not suffering a gross inequity or serious hardship. On October 4, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. A Statement of Objections to the Proposed Decision and Order was filed by William Lovelace, President of the company. After analyzing the arguments in the Statement of Objections, the DOE determined that Mr. Lovelace had not offered any additional evidence that the firm was experiencing a serious hardship or gross inequity. Therefore, the DOE issued a final Decision and Order denying Lovelace's Application for Exception.

Personal Security Hearing

Albuquerque Operations Office, 5/12/95 VSO–0020

An OHA Hearing Officer issued an opinion concerning the access authorization of an individual whose security clearance was suspended because he used illegal drugs. The individual, who represented himself, indicated at the hearing that he had been advised not to say anything at the hearing, and therefore did not present any witnesses, cross-examine the DOE's witnesses or offer any evidence on his own behalf. The Hearing Officer found that under the applicable regulations the purpose of a hearing is to allow the individual to provide support for his access eligibility. If he does not wish to offer such support, the regulations indicate that the Manager of the relevant Operations Office is to make a determination as to the access authorization issue. Accordingly, the Hearing Officer determined that the case file should be closed and the matter resolved by the Manager on the basis of the existing record.

Oak Ridge Operations Office, 5/8/95, VSO–0014

An Office of Hearings and Appeals Officer issued an opinion concerning the continued eligibility of an individual for access authorization under 10 CFR Part 710, entitled, "Criteria and Procedures for Determining Eligibility for Access Authorization to Classified Matter or Special Nuclear Material." After considering the record in view of the standards set forth in Part 710, the Hearing Officer found that the individual: (i) Had been diagnosed by a board-certified psychiatrist as having a mental disorder which could cause a significant defect in the individual's judgment or reliability; (ii) was a user of alcohol habitually to excess and had been diagnosed by a board-certified psychiatrist as "alcohol dependent"; and (iii) had engaged in criminal behavior which cast aspersion on the individual's reliability. In rejecting the individual's claim that he had been rehabilitated from his alcohol problem, the Hearing Officer found that the individual had not abstained from using alcohol for a sufficient period of time. With respect to the individual's mental disorder, the Hearings Officer found that there was no evidence in the record that the individual's condition was in remission or controlled by medication to the extent that recurrence of the condition was small. As for the individual's criminal conduct, the Hearing Officer found that the individual's alcohol problem and mental disorder were inextricably interwined with the incident which resulted in criminal charges being brought against the individual. Next, the Hearing Officer found that the circumstances surrounding the individual's criminal behavior raised questions about his reliability in a security context. Finally, the Hearing Officer concluded that there were no mitigating factors present in the case which could overcome the security concerns raised by the Department of Energy's Oak Ridge Operations Office. Accordingly, the Hearing Officer found that the individual's access authorization should not be restored.

Refund Applications

Morgan Products, Inc., 5/10/95, RF272–92251

The DOE issued a Decision and Order concerning the Application for Refund of a claimant in the Subpart V crude oil overcharge refund proceeding. The DOE determined that the applicant resold the refined petroleum products that formed the basis of its application and thus passed on the costs of any crude oil overcharges to its customers. Therefore, the DOE concluded that the claimant was not injured by any of the overcharges associated with the gallons that it purchased. Accordingly, the DOE denied the Application for Refund.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications,

which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Canadian Pacific Limited	RF272–90435	05/12/95
Southeastern Trailways, Inc	RF272–92940	
Corey Brothers, Inc	RC272–288	05/11/95
Dunham's Bay Boat Company	RF272–97318	05/11/95
Gulf Oil Corporation/Smith-Cale Co., Inc	RF300–16050	05/11/95
Morning Treat Coffee Company	RC272–289	05/11/95
Richard Vardeman, Inc	RC272–287	05/11/95
Ring Around Products, Inc	RF272–94081	05/10/95
Texaco Inc./Indresco, Inc	RF321–20560	05/11/95
The Bovaird Supply Co.	RF272–92824	05/10/95
Stebbins-Anderson Co., Inc	RF272–98116	

Dismissals

The following submissions were dismissed:

Name	Case No.
Anderson's Texaco Service	RF321–20680
Austin Texaco #2	RF321–12048
B&J Service	RF321–17755
Big Pine Trucking Co., Inc	RF272–97341
Greg T. Causey	RF321–15055
Idaho Operations	VSO–0026
Ken's Arco	RF304–15382
Mr. Mac's Texaco	RF321–11079
Oak Ridge Operations	VSO–0024
Tex Mart Texaco	RF321–19685
Thomas R. Caldwell	RF321–12952
Tony's Texaco	RF321–20656

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 14, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 96–4405 Filed 2–26–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of May 15 Through May 19, 1995

During the week of May 15 through May 19, 1995, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

International Federation of Professional and Technical Engineers, 5/18/95, VFA–0034

IFPTE filed an Appeal from a denial by the Idaho Operations Office of a Request for Information which it had submitted under the Freedom of Information Act. The Idaho Operations Office has refused to release the short list of best qualified candidates for the position of Deputy Assistant Manager for Program Execution. In considering the Appeal, the DOE found that the list was properly withheld under Exemptions 5 and 6.

U.A. Plumbers and Pipefitters, Local 36, 5/19/95, VFA–0035

U.A. Plumbers and Pipefitters, Local 36 (the Union) filed an appeal from a denial by the Department of Energy's (DOE) Idaho Operations Office (the Operations Office) of a Request for Information which the Union had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found the Operations Office's finding that DOE owned documents that were not in the DOE's possession are not subject to the FOIA to be erroneous. The DOE's finding was based upon the Operations Office's failure to apply DOE FOIA Regulation 10 CFR 1004.3(e)(1). The DOE also found that some of the documents requested by the Union were not subject to the FOIA because those documents were neither in DOE's possession nor owned by the DOE. Accordingly, the Appeal was remanded to the Operations Office.

Personnel Security Hearing

Albuquerque Operations Office, 5/19/95, VSO–0016

Under the provisions set forth in 10 CFR Part 710, the Department of Energy, Albuquerque Operations Office (DOE/AL) suspended the access authorization ("Q" level security clearance) of an individual based upon disqualifying criteria set forth in 10 CFR 710.8(j), viz., that the individual "has been, or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist as alcohol dependent or as suffering from alcohol abuse." Following a hearing convened at the request of the individual, the Hearing Officer found that (i) the individual was properly diagnosed by a DOE consultant-psychiatrist as alcohol dependent, based upon substantial derogatory information contained in the record which was uncontroverted by the individual, and (ii) the individual has failed to present adequate evidence of rehabilitation, reformation or other mitigating factors. Accordingly, the Hearing Officer concluded that the individual's access authorization should be restored.

Implementation of Special Refund Procedures

Bell Fuels, Et Al, 5/19/95, LEF–0061, ET AL.

The DOE issued a Decision and Order announcing procedures to distribute $866,352.24, plus accrued interest, remitted to the DOE pursuant to Consent Orders issued to 18 resellers and retailers of refined petroleum products. In the absence of sufficient information to implement standard procedures for direct restitution to injured customers of the consenting firms, the DOE will accept refund claims from any injured customers who come forward and will devise refund procedures based on the information these applicants provide. If no such customers come forward, the funds obtained from these firms, plus accrued interest, will be made available to state governments for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986. The deadline for filing Applications for Refund is September 29, 1995.

Gulf Oil Corporation, 5/19/1995, KFX–0037

The Department of Energy issued a Decision and Order covering the disbursal of $104,050,661 in crude oil overcharge monies made available pursuant to a settlement agreement with Gulf Oil Corporation. The DOE divided the funds pursuant to the Modified Statement of Restitutionary Policy. Accordingly, the DOE disbursed 20 percent of the funds plus interest ($37,309,761) for direct restitution to end users of refined petroleum products. The DOE further determined that the States had already received a partial payment from the Gulf crude oil funds and were entitled to an additional principal amount of $4,827,700, interest of $3,827,715, plus a reimbursement of $51,114, for a payment made by the Federal government to Sage Creek Refining Company. The total disbursement to the States was, therefore, $8,706,529. The amount disbursed to the Federal Government was equal to the States' share, less the Sage Creek adjustment, or $8,604,301.

MAPCO International, Inc., 5/19/95, VEF–0004

The DOE issued a Decision and Order announcing procedures for disbursement of $7,280,202, plus accrued interest, in crude oil overcharges obtained by the DOE pursuant to a June 23, 1994 Settlement Agreement with MAPCO, Inc. and MAPCO International, Inc. The OHA has determined that the funds obtained from MAPCO, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases.

Refund Applications

Sears Logistics Services, Inc., 5/19/95, RF272–92021

The DOE issued a Decision and Order concerning an Application for Refund in the Subpart V crude oil overcharge refund proceeding filed by Sears Logistics Services, Inc. The DOE determined that Sears Logistics Services, Inc., was not entitled to a refund since its parent, Sears Roebuck and Co., had filed a Retailers Escrow Settlement Claim Form and Waiver, in which it requested a Stripper Well refund from the Retailers escrow, thereby waiving its right and the right of its subsidiaries, to a Subpart V crude oil refund. Accordingly, the Application for Refund was denied.

Texaco Inc./Elm Garage, Inc., 5/16/95, RF321–20935, RF321–21053, RF321–21066, RF321–21067

The DOE issued a Decision and Order in the Texaco Inc. special refund proceeding concerning four applicants who had applied on behalf of a service station, Elm Garage, Inc. (Elm Garage) was operated during the price control period as a 50/50 partnership by two bothers, Adam, who passed away in 1988, and Joseph Polek. Applications were received from Joseph Polek; Martha Polek, Adam's widow; Richard Polek, Adam's son; and the Adam R. Polek Trust (The Trust). In its Decision, the DOE construed Adam's 1969 will in which he devised his stock in Elm Garage to Richard, devised "tangible personal property" to Martha, and named the Trust, with Martha as beneficiary, as the residuary devisee. After execution of that will, Adam suffered an incapacitating stroke, and Elm Garage was dissolved. The DOE determined that because the corporation was dissolved after Adam bad become incompetent, the devise of the Elm Garage stock had not been adeemed, i.e., revoked, and thus found Richard still entitled to Adam's portion of the refund. The DOE next determined the volumes purchased by Elm Garage based on check register receipts and motor gasoline prices from Platt's Oil Price Handbook and Oilmanac. Further, the DOE reduced, on a year-by-year basis, the per gallon volumetric refund amount of Elm Garage by the percentage of non-Texaco motor gasoline that its supplier purchased during the consent order period. Thus, the DOE granted Joseph Polek's and Richard Polek's applications, denied the Trust's application, and dismissed Martha's application.

Town of Bristol, 5/19/95, RR272–190

The DOE issued a Decision and Order granting a Motion for Reconsideration filed by the Town of Bristol (Bristol) in the Subpart V crude oil refund proceeding. Bristol's original Application for Refund was dismissed on February 8, 1995, on the grounds that the town had failed to respond to DOE's requests for additional information. In its Motion for Reconsideration, Bristol stated that it had sent the DOE a letter the previous August in response to its requests. Accordingly, Bristol's Motion for Reconsideration was granted.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supplemental Refund Distribution	RB272–2	05/15/95
Gulf Oil Corporation/Bourque's Gulf Service et al	RF300–14615	05/19/95
Gulf Oil Corporation/Buccellato and Chase et al, Bartco Petroleum Corp	RF300–13333 RF300–17593	05/15/95
McKelvey Trucking Co	RC272–291	05/15/95
Parker K. Bailey & Sons, Inc	RC272–290	05/19/95
Texaco Inc./Davis Texaco et al	RF321–10307	05/16/95
Texaco Inc./Myers Texaco	RF321–20374	05/16/95
Texaco Inc./Rick's Texaco	RF321–20494	05/16/95

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Dismissals

The following submissions were dismissed:

Name	Case No.
Blende Texaco	RF321–20302
Buckley & Company	RF321–20321
City of Vineland Electric	RF321–20236
Continental Baking Co	RF321–19854
Conway Dyno Alignment Service	RF321–20306
Courville's Garage	RF321–20773
Express Texaco	RF321–20219
Fruehauf Trailer Corp	RF321–20350
Kanab Texaco	RF321–6331
Murray's Texaco Service Station	RF321–19287
Partanna's Texaco	RF321–20239
Queen's Texaco on Providence	RF321–20387
Taylor's Texaco Service	RF321–20261
Walter Luther Texaco	RF321–11342

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 14, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 96–4404 Filed 2–26–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of June 19 Through June 23, 1995

During the week of June 19 through June 23, 1995, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

A. Victorian, 6/22/95, VFA–0043

Dr. A. Victorian filed an Appeal from a determination issued by the Oakland Operations Office (Oakland) of the Department of Energy in response to a request under the Freedom of Information Act (FOIA). Dr. Victorian sought documents concerning "Project Woodpecker" at Lawrence Livermore National Laboratory. The Oakland determination denied Dr. Victorian's request on the grounds that the DOE had no responsive documents. In considering this Appeal, the DOE found that Oakland followed procedures that were reasonably calculated to uncover responsive documents. Accordingly, the DOE denied Dr. Victorian's Appeal.

Ferenc M. Szasz, 6/22/95, LFA–0254

Ferenc M. Szasz filed an Appeal from a denial by the National Archives and Records Administration of a request for information that he filed under the Freedom of Information Act (FOIA). Professor Szasz sought specified reports contained in Manhattan Project files. In considering the information that was withheld as classified material under Exemptions 1 and 3 of the FOIA, the DOE determined that all of the previously withheld material must continue to be withheld. Accordingly, the Appeal was denied.

Petition for Special Redress

State of Louisiana, 6/20/95, VEG–0001

The DOE issued a Decision and Order granting a Petition for Special Redress filed by the State of Louisiana. Louisiana sought approval to use Stripper Well funds for a project which the DOE's Assistant Secretary for Energy Efficiency and Renewable Energy held to be inconsistent with the terms of the Stripper Well Settlement Agreement. The DOE approved the State's proposal to use $11,650,915 to establish a Louisiana Petroleum Information Center (PIC). The PIC will be a central archive for Louisiana geological data, including stratigraphic data collected by the major oil companies and the oil and gas archives of the Louisiana Department of Natural Resources. The DOE found that the PIC would bring energy-related restitutionary benefits to the citizens of Louisiana and could be approved as an energy research program under the terms of the Stripper Well Settlement Agreement. Accordingly, Louisiana's Petition for Special Redress was approved.

Refund Applications

Gulf Oil Corp./FASCO, Inc., 6/22/95, T3RF300–8238

The DOE issued a Decision and Order concerning a refund application filed by FASGO, Inc. in the Gulf Oil Corporation refund proceeding. FASGO calculated the volume of its refined product purchased by referring to its own company records. The DOE found that the records were reasonable, and used them to calculate a refund of $60,014, including interest, for the firm. The DOE further noted that FASGO, a bankrupt firm, was no longer in existence. The record in the case included an Order from the United States Bankruptcy Court for the Eastern District of Pennsylvania stipulating that upon payment of administrative expenses and of a certain claim by the Commonwealth of Pennsylvania, two former owners of FASGO would be entitled to all liquidated assets of the firm. These former owners submitted evidence showing that the payments had been made. Accordingly, the DOE directed that these two individuals should receive the FASGO refund.

Gulf Oil Corporation/the Circle K Corporation, Fairmont Foods, Inc., 6/22/95, RF300–19969, RF300–19994

The DOE issued a Decision and Order concerning Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by The Circle K Corporation and Fairmont Foods, Inc. The Circle K Corporation requested that the OHA grant it a refund based on separate presumptions of injury for each of three subsidiaries which purchased Gulf products. The OHA found that while the three subsidiaries were operated as separate entities during the refund period, they are no longer operationally distinct. Accordingly, the OHA determined that they do not qualify for consideration under separate presumptions of injury. The OHA also found that The Circle K Corporation could not receive a full volumetric refund for purchases made by a subsidiary for end-use, in addition to benefitting from the small claims presumption of injury for its two subsidiaries that were retailers of Gulf products. Instead, the OHA ordered that the applicant be granted a full volumetric refund for end-use purchases, and refunds under the mid-range presumption of injury for purchases made by its retailer subsidiaries. Accordingly, the Circle K Corporation was granted a total refund of $15,046. In addition, the OHA denied a competing Application for Refund filed by Fairmont Foods, Inc.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Gulf Oil Corporation/Bracknell Oil Co., Inc	RF300–19716	06/22/95
Quality Gulf	RF300–19987	
Valley View Gulf	RF300–19991	
Gulf Oil Corporation/Denison Oil Co., Inc	RF300–20066	06/22/95
H.R. Higgins Excavating et al	RF272–97036	06/23/95
Old Colony Transportation et al	RF272–90436	06/23/95
Roane County et al	RF272–97600	06/23/95
Sequim School District et al	RF272–97701	06/23/95
Texaco Inc./Look Oil Co	RF321–20305	06/23/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Acme Resin Corporation	RF272–58053
Brattlebono Memorial Hospital	RF272–99147
Butler Landmark Inc	RG272–194
Dallas County Schools	RF272–55467
Digital Equipment Corporation	RF272–53469
DSM Copolymer	RF272–58418
Farmers Elevator & Cooperative Association	RG272–279
International Flavors & Fragrance	RF272–14036
Jamaica Bay Oil Co	RF321–20562
MacArthur Petroleum & Solvent Co	RF321–20576
McLaurin's Texaco	RF321–19757
Nash Equity Exchange	RG272–25
National Standard Company	RF272–17314
Pollard Delivery Service	RF272–89521
Windsor Village Texaco	RF321–20166
Wyatt's Service	RF315–10163

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 14, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 96–4403 Filed 2–26–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders; Week of July 24 Through July 28, 1995

During the week of July 24 through July 28, 1995 the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Blumberg, Seng, Ikeda & Albers, 7/25/95, VFA–0052

Blumberg, Seng, Ikeda & Albers filed an Appeal from a partial denial by the DOE's Office of the Inspector General of a Request for Information that it submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the FOIA's Exemptions 6 and 7(C) had been properly invoked to withhold the names and other personal identifiers of subjects, sources, witnesses and investigators in connection with the Inspector General's investigation of the death of a particular individual at the Naval Petroleum Reserves in Elk Hills, California. Accordingly, the Appeal was denied.

Petition for Special Redress

State of Louisiana, 7/28/95, VEG–0002

The DOE issued a Decision and Order denying a Petition for Special Redress filed by the State of Louisiana. Louisiana sought approval to use Stripper Well funds to match a DOE grant to establish a Natural Gas Pre-Utilization Center at Southern University. Louisiana wished to use the Stripper Well funds to study the

relationship between the geological formation of natural gas fields and the levels of radioactivity in the water brought to the surface as part of the oil and gas extraction process. If successful, the study would provide natural gas producers with data that would allow them to assess probable levels of radioactivity at a site before drilling, thus reducing the volume of radioactive materials brought to the surface. DOE's Assistant Secretary for Energy Efficiency and Renewable Energy had determined that this proposal was inconsistent with the terms of the Stripper Well Settlement Agreement in that its main focus was environmental. Louisiana argued in its Petition that the study was authorized by the Chevron consent order, which allows the use of oil overcharge funds for enery research. The OHA agreed with the initial assessment of Louisiana's proposal and concluded that the project could not qualify as an energy research program under the terms of the Chevron consent order because it was not remedial in nature. Accordingly, Louisiana's Petition for Special Redress was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Central Valley Coop Consumers Oil Co	RF272–92208 RF272–92230	07/25/95
Crude Oil Supplemental Refund Distribution	RB272–14	07/25/95
Crude Oil Supplemental Refund Distribution	RB272–20	07/25/95
Crude Oil Supplemental Refund Distribution	RB272–24	07/28/95
Gibraltar School District et al	RF272–84697	07/28/95
Nome City School District et al	RF272–95900	07/28/95
Reserve School District et al	RF272–95426	07/25/95
Texaco Inc./Second Avenue Texaco	RF321–20643	07/25/95
Texaco Inc./Short Stop, Inc	RF321–6657	07/28/95
Texaco Inc./Squaw Transit Co	RF321–8846	07/28/95
Texaco Inc./Webb Texaco Station et al	RF321–1486	07/28/95
Texaco Inc./Whittaker Metals, Inc	RF321–9170	07/28/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Herbert Easterly	VFA–0054
Hopson's Texaco Service Station	RF321–20386
McMinn Texaco	RF321–4191
Rocky Flats Field Office	VSO–0033
San Diego Transit Corporation	RF272–97153

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 14, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 96–4402 Filed 2–26–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of May 22 Through May 26, 1995

During the week of May 22 through May 26, 1995, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

A. Victorian, 5/22/95, VFA–0036

Dr. A. Victorian (Appellant) filed an Appeal from a final determination by the Acting Director of the Office of Intergovernmental and External Affairs of the Albuquerque Operations Office of the Department of Energy (DOE/AL). DOE/AL withheld certain documents identified as responsive to Appellant's request on the grounds that they contained sensitive and personal information. Although the person named in the documents was deceased, DOE/AL found that the surviving relatives of the named individual had a privacy interest in the information and withheld the documents under Exemption 6. In considering the Appeal, the DOE found that while a privacy interest in the information existed, DOE/AL did not balance this interest against the public interest in disclosing the information. Accordingly, the Appeal was remanded to DOE/AL so that it could balance the privacy interest of surviving relatives against the public interest in disclosure in a manner consistent with this Decision.

Personnel Security Hearings

Albuquerque Operations Office, 5/22/95, VSO–0018

An OHA Hearing Officer issued an Opinion recommending against restoring the access authorization of a DOE contractor employee. The employee's "Q" clearance had been suspended by the Operations Office Manager after a DOE-sponsored psychiatrist found that the employee was a user of alcohol habitually to excess and suffered from "substance abuse, alcohol," a mental condition which causes or may cause a significant defect in judgment or reliability. The

evidence in the record indicated that the employee had a lengthy history of arrests and convictions for alcohol-related traffic offenses, including two within the last 18 months. At the hearing, the employee admitted that he had been an alcohol abuser, but introduced evidence of his progress towards rehabilitation during the six month period immediately prior to the hearing. The Hearing Officer concluded that the employee had not as yet abstained from alcohol long enough to demonstrate that he was rehabilitated from his drinking problem, and that as a result, the employee's history of alcohol abuse still raised serious security concerns. For these reasons, the Hearing Officer concluded that the employee had failed to show that restoring the employee's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.

Albuquerque Operations Office, 5/25/95, VSO–0019

A DOE Hearing Officer issued an Opinion concerning the eligibility of an individual for continued "Q" access authorization. Tests conducted as part of a routine annual physical examination indicated that the individual had used cocaine. The individual claimed that he had not used cocaine. He argued that this use of certain over-the-counter medications prior to the drug test should have resulted in positive results for drugs other than cocaine, and that the lack of such results proved that the tested specimen was not his. After reviewing the chain-of-custody documentation for the specimen and considering expert testimony on the effects of over-the-counter medications on drug tests, the Hearing Officer found that the tested specimen was the individual's and the individual must have used cocaine. The Hearing Officer, therefore, found that the individual's denials of cocaine use were falsifications and that the individual had violated a drug certification which he had signed. The Hearing Officer concluded that the individual's access authorization should not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supple. Refund Distribution et al	RB272–4	05/23/95
Crude Oil Supplemental Refund Distribution et al	RB272–3	05/23/95
Gloucester Trucking	RF272–97259	05/23/95
Kessler Institute for Rehab et al	RF272–92130	05/23/95
Squaw Transit Co	RF272–74580	05/23/95
Squaw Transit Co	RD272–74580	
Texaco Inc./Al's Texaco	RF321–13059	05/22/95
Texaco Inc./Associated Transport, Inc	RF321–13106	05/23/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Albany Independent School District	RF272–97390
Andy's Texaco	RF321–20772
Bill Clendening Texaco	RF321–20749
Energy Cooperative, Inc	RF340–120
Gall Silica Mining Co., Inc	RF272–97436
Harvey Texaco	RF321–20766
Leaseway Transportation Corp	RF272–97308
Liberty County Board of Commissioners	RF272–97432
Oklahoma State University	RF272–98486
Richard M. Ross	VFA–0042
Roaring Spring, PA	RF272–86781
Texaco Gas Station	RF321–20762
The Gates Rubber Company	RF272–88647
The Gates Rubber Company	RF272–93720
Unico, Inc	RF321–6384
Valley Line Company	RF272–98124
Victoria Independent School District	RF272–97440

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 14, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 96–4407 Filed 2–26–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of August 21 through August 25, 1995

During the week of August 21 through August 25, 1995 the decisions and orders summarized below were issued with respect to applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also

contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Murray, Jacobs & Abel, 8/22/94, VFA–0061

The DOE's Office of Inspector General (OIG) requested reconsideration of a July 1995 Decision and Order issued to Murray, Jacobs & Abel (MJ&A), Case No. VFA–0050. That Decision remanded a Freedom of Information Act (FOIA) request to the OIG for a new determination pursuant to Exemption 7(A) of the FOIA, and consistent with *Albuquerque Journal*, 22 DOE ¶ 80,148 (1992). The OIG argued that under federal court decisions the government met its burden if it demonstrated that release of the types of documents at issue could reasonably be expected to interfere with enforcement proceedings generally and that the government need not make a particularized showing of harm with respect to the enforcement proceeding at issue. Upon reconsideration, the DOE agreed and overturned the *Albuquerque* decision to the extent that it required such a particularized showing.

Refund Applications

GS Roofing Products Company, Inc., 8/23/95, RF272–93215

The DOE issued a Decision and Order granting an Application for Refund filed by GS Roofing Products Company, Inc. in the Subpart V crude oil refund proceeding. The DOE determined that in addition to GS's asphalt products, slate oil was a covered product eligible for a refund because it was made from napthenic crude oil and came from a refinery. The refund granted to GS in this Decision was $378,610.

Standard Oil Co. (Indiana)/Nebraska, 8/23/95, RM251–295

The DOE issued a Decision and Order granting a Motion for Modification of a previously-approved refund plan filed by the State of Nebraska in the Standard Oil Co. (Indiana) second stage refund proceeding. Nebraska requested permission to reallocate $50,000 in previously disbursed Amoco II monies to the business sector of the Dollar and Energy Saving Loan Program. The program is a revolving loan program that provides low interest loans to Nebraska citizens for energy efficiency improvements to homes, businesses, farms, local government structures, and rural nursing homes. In accordance with a prior Decision that approved the use of second stage funds for the program, the DOE granted Nebraska's Motion.

Texaco Inc./Gasolinera Melendez, Inc., 8/23/95, RR321–180

The DOE issued a Decision and Order concerning a Motion for Reconsideration regarding an Application for Refund filed by Gasolinera Melendez, Inc. (GM) filed in the Texaco Inc. special refund proceeding. GM's Application for Refund had been dismissed in a prior Decision because its Application had been submitted to the DOE several months after the February 28, 1994 final deadline for the Texaco proceeding. In the prior Decision, the DOE rejected GM's arguments that the lack of notice given to applicants in Puerto Rico about the existence of the Texaco refund proceeding constituted a compelling reason to process its application. In its Motion for Reconsideration, GM argued again that Puerto Rican retailers had little knowledge concerning the Texaco proceeding while retailers in the 50 States had much more notice about the proceeding and that this disparity was fundamentally unfair and constituted an equitable consideration favoring the processing of its application. The DOE held that retailers in Puerto Rico had the opportunity to learn about the existence of the Texaco proceeding since proper Notices were published in the **Federal Register** regarding the establishment of the Texaco proceeding and that many retailers in the United States also did not receive actual notice. The DOE found that any disparity in notice provided to Puerto Rican retailers was not a sufficient equitable consideration sufficient to warrant processing GM's application since the DOE, in consideration of this disparity, accepted applications from Puerto Rico retailers received in the month of March 1994. The DOE also rejected GM's claim that processing its claim after the final deadline would cause no harm to the refund process. Because DOE found that GM had presented no equitable consideration meriting the processing of its Application for Refund, GM's Motion for Reconsideration was dismissed.

Texaco Inc./Pea Ridge Iron Ore Co., Inc., 8/23/95, RF321–8850

The DOE issued a Decision and Order concerning an Application for Refund filed in the Texaco Inc. special refund proceeding. Pea Ridge Iron Ore Co., Inc. (Pea Ridge) applied for a refund based upon direct Texaco purchases made by another corporation, Meramec Mining Co. In support of its application, Pea Ridge argued that it was entitled to Meramec's refund by virtue of the fact that Meramec was wholly owned subsidiary of St. Joe Mineral Corporation (St. Joe) which dissolved Meramec and transferred all of its assets and facilities to another wholly owned corporation it created, Pea Ridge. The DOE held that Pea Ridge was created by St. Joe to continue the business operations of the prior dissolved corporation, Meramec, and that since St. Joe owned all of the outstanding stock of both Meramec and Pea Ridge, the entire transaction was simply a change in corporate form rather than a true ownership change. Consequently, the DOE held that, given the above transaction, Meramec's right to a refund was transferred to Pea Ridge. The DOE approved a refund for Pea Ridge totalling $24,875, representing $16,669 in principal plus $8,206 in interest.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Maple Canyon Arco et al	RF304–13663	08/23/95
Bethel Utilities Corporation	RF272–2638	08/23/95
Enron Corp./Kay & Herring Gas Company	RF340–132	08/23/95
Texaco Inc./Arroyo Service Station	RF321–21069	08/23/95
Texaco Inc./Dravo Corp. et al	RF321–18353	08/23/95
Texaco Inc./Red Carpet Car Wash	RF321–7893	08/23/95
Tom Inman Trucking, Inc.	RK272–239	08/23/95
Boss-Linco Lines, Inc.	RK272–240	
Uniroyal Technology Corp.	RF272–97573	08/23/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Clarke County, Virginia	RF272–86668
Mort Hall Aviation	RF304–15150

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 14, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 96–4408 Filed 2–26–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of August 14 through August 18, 1995

During the week of August 14 through August 18, 1995 the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Greg Long, 8/15/95, VFA–0060

Greg Long filed an Appeal from a determination issued to him by the Office of Public Affairs of the DOE's Albuquerque Operations Office in response to a Request for Information submitted under the Freedom of Information Act (FOIA). In that determination, the Albuquerque Operations Office had withheld under the Exemption 5 "deliberative process privilege" a draft of a never-finalized or issued report investigating a mysterious "hum" reported in and around Taos, New Mexico. In considering the Appeal, the DOE found that the Albuquerque Operations Office had not determined whether the document contained deliberative material. In addition, the DOE had not determined whether the document contained segregable non-exempt material or whether the document qualified for withholding under the standard articulated in the October 1993 Memorandum of Attorney General Janet Reno concerning the FOIA. Accordingly, the Appeal was granted in part, denied in part, and remanded to the Albuquerque Operations Office for a new determination in accordance with the guidance set forth in the Decision and Order.

Personnel Security Hearing

Rocky Flats Field Office, 8/14/95, VSO–0027

An Office of Hearings and Appeals Hearing Officer issued an opinion concerning the eligibility of an individual for access authorization under 10 CFR Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." After considering the record in view of the standards set forth in Part 710, the Hearing Officer found that the individual adequately demonstrated rehabilitation from a history of alcohol abuse. Accordingly, the Hearing Officer found that the individual's access authorization should be granted.

Refund Applications

Enron Corp./Ozona Butane Company, Inc., Bob's L.P. Gas, Inc., B.F. Goodrich Chemical Group, 8/16/95, RF340–58, RF340–110, RF340–144

The DOE issued a Decision and Order concerning refund applications that Ozona Butane Company, Inc. (Ozona), Bob's LP Gas, Inc. (Bob's), and B.F. Goodrich Chemical Group (GCG) had submitted in the Enron Corporation (Enron) special refund proceeding. The DOE found that Ozona and Bob's were retailers of Enron products who qualified for refunds under the small claim presumption of injury. However, both firms purchased Enron product indirectly through Gartman Butane Company, Inc. (Gartman). The DOE collected information from Gartman in order to determine the portion of Gartman purchases by Ozona and Bob's that were Enron products. The DOE found that GCG used Enron propane as a feedstock to produce vinyl, and therefore that GCG was entitled to a refund for its purchases from Enron under the presumption of injury for end-users of Enron products. The total refund granted to Ozona, Bob's and GCG, including interest, is $10,914.

General Electric Company, 8/16/95, RF272–25357, RD272–25357

The DOE issued a Decision and Order granting an Application for Refund filed by General Electric Company (GE), a large diversified industrial corporation, in the Subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. Noting that the applicant did business in many markets, the States contended that a claim of 100% absorption of overcharges by a conglomerate such as GE is not reasonable. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. In addition, the DOE found that GE's purchases of ethane, chlorobenzene, acetic anhydride, polypropylene, isopropanol, isoproply alcohol, methyl, cellosolve, cresylic acid, phenol, acetone, cumene, styrene, EPON 828/829, tetra-bromo bisphenol, and butadiene were not eligible for a crude oil refund. Finally, the DOE considered the validity of a waiver of the right to a crude oil refund filed in the Stripper Well Surface Transporters (ST) proceeding on behalf of RCA Corporation, which had been acquired by GE in a merger completed on June 9, 1986. The DOE found that where a dismissed ST application had not been filed by an authorized representative, the waiver had not been validly executed, and, therefore, the claimant had not waived its right to a Subpart V refund. The refund granted to the applicant in this Decision was $2,536,874.

Texaco Inc./ J.E. Meintzer & Sons, Inc., 8/15/95, RF321–4048

The DOE issued a Decision and Order in the Texaco Inc. special refund proceeding concerning J.E. Meintzer &

Sons, Inc. (J.E. Meintzer & Sons), a direct purchaser of Texaco products. The DOE had previously determined that the purchase volumes of refund claims filed by affiliated firms should be combined in order to determine one allocable share for the applicants. In the instant case, a substantial amount of common ownership interest existed previously between J.E. Meintzer & Sons and two other companies which have been granted refunds in the Texaco proceeding. Nonetheless, the DOE determined that because the degree of this common ownership has been dramatically decreased, none of the involved companies are currently affiliated to a degree that would result in windfall benefits to a single corporate entity or shareholder. Thus, the DOE found that J.E. Meintzer & Sons' refund should not be reduced by the refunds granted the other two firms.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Brookvale Arco et al	RF304–14096	08/16/95
Bloomer Coop Feeds et al	RF272–86665	08/16/95
Crude Oil Supplemental Refund Distribution	RB272–8	08/15/95
Crude Oil Supplemental Refund Distribution	RB272–43	08/15/95
Crude Oil Supplemental Refund Distribution	RB272–42	08/15/95
Crude Oil Supplemental Refund Distribution	RB272–39	08/15/95
Crude Oil Supplemental Refund Distribution	RB272–37	08/15/95
Deback Cartage Company	RF272–97087	08/15/95
Dryer and Geodecke, Inc	RA272–71	08/16/95
Elmer Bowerman et al	RK272–424	08/15/95
Federal Reserve Bank of New York et al	RF272–90224	08/16/95
J.L. Anderson Co., Inc. et al	RF272–77264	08/16/95
Leboeouf Brothers Towing Company, Inc	RF272–69366	08/16/95
Leboeouf Brothers Towing Company, Inc	RD272–69366	
Monroe County Commission et al	RF272–97541	08/16/95
Ranson Farmers Coop Union et al	RF272–97161	08/16/95
Texaco Inc./Kelly's Food Store et al	RF321–19433	08/16/95
Texaco Inc./Ray's Texaco	RF321–20416	08/15/95
Cunningham's Texaco	RF321–20691	
Texaco Inc./Villa Street Service Station	RF321–20724	08/16/95
International Harvester	RF321–20755	
Webster School District et al	RF272–95425	08/16/95

Dismissals

The following submissions were dismissed:

Name	Case No.
City of Villa Park, CA	RF272–86154
Robert Hawthorne, Inc	RF272–86818
Silsbee Butane Company	RF304–15155
Thomas Fredrich	RF304–15146

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 14, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 96–4409 Filed 2–26–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5430–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Tribal Assumption of the Clean Water Act, Section 404 Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) renewal has been forwarded to the Office of Management and Budget (OMB) for review and approval: Tribal Assumption of the Clean Water Act, Section 404 Permit Program, OMB Control Number 2040–0140, expiring 02/29/96. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 28, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1542.03.

SUPPLEMENTARY INFORMATION:

Title: Tribal Assumption of the Clean Water Act, Section 404 Permit Program, OMB Control Number 2040–0140, EPA ICR No. 1542.03), expiring 02/29/96. This is a request for extension of a currently approved collection.

Abstract: Federally recognized Indian Tribes are eligible to request assumption of the Clean Water Act (CWA) Section 404 permit program. Tribes must demonstrate that they meet the requirements in Section 518 of CWA as well as the Section 404 program specific requirements of 40 CFR part 233.

To assume the Section 404 permit program, Tribes must have a wetlands permit program similar to the Federal permit program. The Tribe must submit sufficient information for EPA to determine that the Tribe's program:

—Has an equivalent scope of jurisdiction as the Federal program,
—Regulates at least the same activities as the Federal program,
—Provides for sufficient public participation,
—Ensures compliance with the Section 404(b)(1) Guidelines, which provide environmental criteria for permit decisions, and
—Has adequate enforcement authority.

EPA eliminated unnecessary duplication when revised regulations were published in December 1994. Prior to this regulatory revision, Tribes first had to qualify for "treatment as a State." Only after the Tribe completed the "treatment as a State" determination, could the Tribe apply to assume the Section 404 permit program. Under the revised regulations, this is all done at the same time with only one submission needed from the Tribe, instead of the previous two separate submissions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 10/12/95 (60 FR 53184); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 520 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Responents/Affected Entities: Indian Tribes.

Estimated Number of Respondents: One per year.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 520 hours.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1542.03 and OMB Control No. 2040–0140 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street SW., Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

Dated: February 20, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–4390 Filed 2–26–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5430–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Water Quality Standards Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) renewal has been forwarded to the Office of Management and Budget (OMB) for review and approval: Water Quality Standards Regulation (OMB Control Number 2040–0049; expiring February 29, 1996). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 28, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 988.06.

SUPPLEMENTARY INFORMATION:

Title: Water Quality Standards Regulation (OMB Control No. 2040–0049; EPA ICR No. 0988.05, expiring on 2/29/96. This is a request for extension of a currently approved collection.

Abstract: Water quality standards are provisions of Federal, State, or Tribal law which consist of designated uses for the waters of the United States, water quality criteria for the waters based on such uses, and an antidegradation policy. Such standards serve two primary purposes. First, they define water quality goals for water bodies. Second, they serve as a regulatory basis for establishing water quality-based treatment controls and strategies beyond technology-based treatment required by Sections 301 and 306 of the Clean Water Act (CWA).

The Water Quality Standards Regulation (the Regulation) describes requirements and procedures for the

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States and Indian Tribes to develop, review, and revise their water quality standards regulations and for EPA to review and approve the water quality standards. Additionally, the Regulation outlines procedures whereby Indian Tribes can qualify to receive EPA authorization to administer the water quality standards program contained in Section 303 of the CWA. Finally, the Regulation contains a dispute mechanism to aid in resolving disputes which may arise between States and Indian Tribes over differing water quality standards on common bodies of water.

This information collection covers State/Tribal submissions of water quality standards to EPA for review and approval, and Tribal applications submitted to EPA for authorization to administer the water quality standards program. Additionally, this information collection covers the submission of information by States and Indian Tribes to EPA for use in resolving disputes that arise on common bodies of water.

The information collection schedule is required pursuant to the mandates of CWA Sections 303(c) and 518. Indian Tribes (that are authorized to administer the water quality standards program) and States are required to hold hearings at least once every three years for the purposes of reviewing and, if appropriate, revising their water quality standards. Tribal applications for authorization to administer the water quality standards program are a one-time collection of information. Requests for dispute resolution are also a one-time collection of information per dispute.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 10/25/95 (60 FR 54682); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2,500 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States, Territories, and Indian Tribes.

Estimated Number of Respondents: 77.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 193,980 hours.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 988.06 and OMB Control No. 2040–0049 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street NW, Washington, DC 20503.

Dated: February 20, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–4389 Filed 2–26–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5430–8; OMB No. 2060–0106 EPA No. 0649.06]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D)), this notice announces that the Information Collection Request (ICR) for 40 CFR Part 60 Subpart EE—. Surface Coating of Metal Furniture described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 28, 1996.

FOR FURTHER INFORMATION OR A COPY CALL:

Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0649.06.

SUPPLEMENTARY INFORMATION:

Title: 40 CFR Part 60 Subpart EE—Surface Coating of Metal Furniture (OMB Control No. 2060–0106; EPA ICR No. 0649.06.). This is a request for revision of a currently approved collection. The standards require initial notification reports with respect to construction, modification, reconstruction, startups, shutdowns, and malfunctions. The standards also require reports on initial performance tests.

Abstract: The control of emissions of VOCs from the metal furniture surface coating industry requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. Emissions of VOCs from the metal furniture surface coating industry are the result of the application and curing or drying of organic coatings on the surface of each metal furniture part or product. These standards rely on the reduction of VOC emissions through either a capture system and incinerator or a capture system and solvent recovery system.

In order to ensure compliance with these standards, adequate recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on November 24, 1995 and no comments were received.

Burden Statement: Each year of this request the EPA will receive 1600 responses. These responses include notification of start-up and performance test results for a total 186 responses, quarterly exceedance reports for a total of 472 responses, and semi-annual non-exceedance reports for a total of 942 responses. The reporting and recordkeeping burden can be separated into two parts. Initial start-up, performance testing, and notification

requires 80 hours. Each year an estimated 36 facilities will face this burden. Continued monitoring, reporting, and recordkeeping requires 179 hours annually. Each year an estimated 589 facilities will face this burden. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Initial Start-Up

Respondents/Affected Entities: 1.

Estimated Number of Respondents: 36.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 80 hours/facility.

Estimated Total Annualized Cost Burden: $2,436/facility.

Continued Monitoring, Reporting, and Recordkeeping

Respondents/Affected Entities: 1.

Estimated Number of Respondents: 589.

Frequency of Response: 2.

Estimated Total Annual Hour Burden: 179 hours/facility.

Estimated Total Annualized Cost Burden: $5,451/facility.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0649.06 and OMB Control No. 2060–0106 in any correspondence to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: February 20, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–4391 Filed 2–26–96; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30403; FRL–5350–9]

Ciba-Geigy Corporation; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by March 28, 1996.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30403] and the file symbol to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30403]. No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Product Manager (PM 21), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703) 305–6226; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 100-TOR. Applicant: Ciba Crop Protection, Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419-8300. Product Name: Mefenoxam Technical. Fungicide. Active Ingredient: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid ethyl ester at 97.0%. Proposed Classification/Use: For formulation into end-use fungicide products. Type Registration: Conditional. (PM 21)

2. File Symbol: 100-INE. Applicant: Ciba Crop Protection. Product Name: Mefenoxam WSP. Fungicide. Active Ingredient: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 45.0%. Proposed Classification/Use: For the control of certain diseases in various crops caused by the Oomycete class of fungi. Type Registration: Conditional. (PM 21)

3. File Symbol: 100-ING. Applicant: Ciba Crop Protection. Product Name: Mefenoxam MZ. Fungicide. Active Ingredients: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 4.0% and a coordination product of zinc ion and manganese ethylene bisdithiocarbamate at 64.0% in which the ingredients are manganese (12.8%) and zinc (1.6%). Proposed Classification/Use: For the control of certain diseases of cucumbers, melons, summer squash, grapes, onions,

potatoes, sugar beets, and tomatoes. Type Registration: Conditional. (PM 21)

4. File Symbol: 100-INN. Applicant: Ciba Crop Protection. Product Name: Mefenoxam/Bravo. Fungicide. Active Ingredients: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 4.5% and Chlorothalon-il:Tetrachloroisophthalonitrile at 72.0%. Proposed Classification/Use: For the control of certain diseases in carrots, broccoli, cabbage, cauliflower, cucurbit vegetables, onions, potatoes, and tomatoes. Type Registration: Conditional. (PM 21)

5. File Symbol: 100-INR. Applicant: Ciba Crop Protection, Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419-8300. Product Name: Mefenoxam EC. Fungicide. Active Ingredient: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino)- propionic acid methyl ester at 48.0%. Proposed Classification/Use: For the control of certain diseases in various crops caused by the Oomycete class of fungi. Type Registration: Conditional. (PM 21)

6. File Symbol: 100-INU. Applicant: Ciba Crop Protection, Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419-8300. Product Name: Mefenoxam/Copper. Fungicide. Active Ingredients: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]- propionic acid methyl ester at 5.0% and Copper Hydroxide at 60.0%. Proposed Classification/Use: For the control of certain diseases in various fruits and vegetables. Type Registration: Conditional. (PM 21)

7. File Symbol: 100-TOA. Applicant: Ciba Crop Protection. Product Name: Mefenoxam MC. Fungicide. Active Ingredient: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 22.0%. Proposed Classification/Use: For the control of certain diseases in conifers, nonbearing citrus, nonbearing deciduous fruits and nuts, ornamentals, and turf. Type Registration: Conditional. (PM 21)

8. File Symbol: 100-TOE. Applicant: Ciba Crop Protection. Product Name: Mefenoxam PC Granular. Fungicide. Active Ingredients: Pentachloronitrobenzene (PCNB) at 10.0% and Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 0.5%, and Product Name: Twin Pak Mefenoxam PC Liquid. Fungicide. Active Ingredients: Mefenoxam EC; Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 48.0%. PCNB 2-E Liquid Emulsifiable Concentrate; Pentachloronitrobenzene (PCNB) at 24.0%. Proposed Classification/Use: For control of damping-off, seed and seedling rot diseases of cotton. Type Registration: Conditional. (PM 21)

9. File Symbol: 100-TOI. Applicant: Ciba Crop Protection. Product Name: Mefenoxam GR. Fungicide. Active Ingredient: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 2.50%. Proposed Classification/Use: For control of Phytophthora and Pythium diseases of avocados, citrus, cotton, cranberries, ginseng, leafy vegetables, nonbearing deciduous fruits and nuts, peanuts, raspberries, soybeans, spinach, sugar beets, and tomatoes. Type Registration: Conditional. (PM 21)

10. File Symbol: 100-TOG. Applicant: Ciba Crop Protection. Product Name: Mefenoxam E. Fungicide. Active Ingredient: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 48.0%. Proposed Classification/Use: For the control of certain diseases in conifers, nonbearing citrus, nonbearing deciduous fruits and nuts, ornamentals, and turf. Type Registration: Conditional. (PM 21)

11. File Symbol: 100-TOL. Applicant: Ciba Crop Protection. Product Name: Mefenoxam WP. Fungicide. Active Ingredient. Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 45.0%. Proposed Classification/Use: For the control of certain diseases in conifers, nonbearing citrus, nonbearing deciduous fruits and nuts, ornamentals, and turf. Type Registration: Conditional. (PM 21)

12. File Symbol: 100-TOO. Applicant: Ciba Crop Protection, Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419-8300. Product Name: Mefenoxam LS. Fungicide. Active Ingredient: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]- propionic acid methyl ester at 33.3%. Proposed Classification/Use: A seed treatment chemical for the control of Pythium and Phytophthora causing damping-off, seed rot, and systemic downy mildew diseases of certain crops. Type Registration: Conditional. (PM 21)

13. File Symbol: 100-TOT. Applicant: Ciba Crop Protection. Product Name: Mefenoxam 45W. Fungicide. Active Ingredient: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 45.0%. Proposed Classification/Use: A seed treatment chemical for the control of Pythium and Phytophthora causing damping-off, seed rot, and systemic downy mildew diseases of certain crops. Type Registration: Conditional. (PM 21)

14. File Symbol: 100-TOU. Applicant: Ciba Crop Protection. Product Name: Mefenoxam G. Fungicide. Active Ingredient: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 1.0%. Proposed Classification/Use: For the control of certain diseases in ornamentals, turf, nonbearing citrus, conifers, and nonbearing deciduous fruit and nut tree in nurseries. Type Registration: Conditional. (PM 21)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP-30403] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703-305-5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 16, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96-4253 Filed 2-26-96; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

February 20, 1996.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96-511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Dorothy Conway, Federal Communications Commission, (202) 418-0217.

Federal Communications Commission

OMB Control No.: 3060-0289.

Expiration Date: 2/28/99.

Title: Performance Tests - Section 76.601.

Estimated Annual Burden: 285,084 hours annual burden; average 19.4 hours per respondent; 14,673 respondents.

Description: Section 76.601 requires that every cable system operator maintain a current listing of the cable television channels which that system delivers to its subscribers. Section 76.601(c) and (d) require cable systems with over 1,000 subscribers to conduct semi-annual proof of performance tests and triennial proof of performance tests for color testing. This collection is being revised to request approval for the third party disclosure in section 76.601(d) requiring local franchise authorities to notify the cable operators who will be allowed third days to come in compliance with any perceived signal quality problems which need to be corrected.

OMB Control No.: 3060-0028.

Expiration Date: 2/28/99.

Title: Application for Authorization in the Auxiliary Broadcast Service.

Form: FCC Form 313.

Estimated Annual Burden: 7,749 total annual hours; average 5.166 hours per respondent; 1,500 respondents.

Description: FCC Form 313 is used by permitees or licensees of AM, FM and TV Broadcast Stations and eligible networks when applying for remote pickup, aural microwave, television microwave, and other auxiliary broadcast stations. Data is used by FCC staff to determine if proposal meets statutory requirements and to ensure that interference will not occur.

OMB Control No.: 3060-0645.

Expiration Date: 2/28/99.

Title: Antenna Registration - Part 17.

Estimated Annual Burden: 40,965 total annual hours; average 1 hour per respondent; 40,965 respondents.

Description: This recordkeeping requirement requires that those licensees who experience problems with the lighting of their antenna structure lighting to keep a record of the malfunction with the station records. This information is used by FCC personnel to ensure that antenna structure lighting systems are properly maintained.

OMB Control No.: 3060-0686.

Expiration Date: 2/28/99.

Title: Streamlining the International Section 214 Authorization Process and Tariff Requirements.

Estimated Annual Burden: 3,448 total annual hours; average 8 hours per respondent; 431 respondents.

Description: This collection contained in an NPRM proposes to Streamline the International Section 214 authorization process and tariff requirements. The proposed rules would greatly reduce the regulatory burden on the applicants, authorized carriers and the Commission. The NPRM proposes to reduce the need for carriers to file multiple applications by enabling a non-dominant carrier to obtain a global 214 authorization, which is not limited to specific carrier facilities, and by eliminating several regulatory requirements that require carriers to file multiple Section 214 applications. The global Section 214 authorization would allow carriers to provide international services on a facilities-basis to virtually all points in the world, using any licensed facility. This authorization would be subject to an exclusion list that the Commission would publish identifying countries or facilities for which there are restrictions. In regard to regulatory requirements being removed, Section 63.01 would be amended to make it applicable only to applicants for domestic Section 214 authority. A new rule is proposed that will detail the application requirements for International Section 214 authority, and include the provisions for filing a global Section 214 application. In addition, the proposed rule will allow resellers to provide international resale services via an authorized common carrier, except those affiliated with the reseller, without obtaining additional authority. Also private line resale carriers would be able to resell interconnected private lines for switched services to all designated "equivalent" countries, without obtaining additional authority to serve each equivalent country. Section 63.15 is proposed to be amended to enable carriers to add circuits on private satellite or cable systems, without obtaining prior authority. The NPRM also proposes to simplify the section 214 and cable landing license application process by reducing the detailed information now required in Sections 63.01 and 1.767. The NPRM also proposes to encourage filing of international Section 214 applications electronically and on computer disk and to require that any information contained in the application in a foreign language be accompanied with certified English translation.

The NPRM further reduces filing requirements by allowing dominant carriers to automatically convey transmission capacity in submarine cables to other carriers without obtaining prior Section 214 authority. Also, the NPRM propose to further streamline tariff requirements for non-dominant international resale and facilities-based carriers by permitting them to file their international tariff rates on one day's notice instead of the current 14 day's notice.

OMB Control No.: 3060-0688.

Expiration Date: 2/28/99.

Title: Abbreviated Cost of Service Filing for Cable Network Upgrades.

Form: FCC Form 1235.

Estimated Annual Burden: 47,250 total annual hours; average 20 hours per

cable operator respondents and 10 hours per local franchising authority respondents; 2,100 cable operator and 525 local franchising authority respondents.

Description: Section 76.922(h) enables cable operators in some circumstances to increase rates when undertaking significant network upgrades. This form allows cable operators to justify rate increase related to capital expenditures used to improve services to regulated cable subscribers. Operators wishing to establish a network upgrade rate increase should file the form 1235 following the end of the month in which upgraded cable services become available and are providing benefits to the customers. In addition this form can be filed for pre-approval any time prior to the upgraded services becoming available to the subscribers using projected upgrade costs. If the preapproval option is exercised the operator must file the form again following the end of the month in which upgraded cable services become available and are providing benefits to the customers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–4291 Filed 2–26–96; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License number: 3100
Name: Scott Ming Shin Ho d/b/a OK Forwarding Company
Address: 3819 Snead Ct., Sugarland, TX 77479
Date revoked: January 16, 1996
Reason: Surrendered license voluntarily

License number: 2865
Name: Aces, Ltd.
Address: 237 Albany Street, Boston, MA 02118
Date revoked: February 10, 1996
Reason: Failed to maintain a valid surety bond

License number: 3470
Name: World Port Shipping, Inc.
Address: 19146 South Van Ness Ave., Torrance, CA 90504
Date revoked: February 10, 1996
Reason: Failed to maintain a valid surety bond

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 96–4297 Filed 2–26–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Gregory J. Paetow, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 12, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Gregory J. Paetow, Palos Heights, Illinois; to acquire an additional .98 percent, for a total of 14.72 percent, of the voting shares of Palos Bancshares, Inc., Palos Heights, Illinois, and thereby indirectly acquire Palos Bank and Trust, Palos Heights, Illinois.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Sang Hoon Kim, Los Angeles, California; to acquire an additional .37 percent, for a total of 10.32 percent, of the voting shares of California Center Bank, Los Angeles, California.

Board of Governors of the Federal Reserve System, February 21, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-4334 Filed 2-26-96; 8:45 am]

BILLING CODE 6210-01-F

Capital Corp of the West; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 96-3226) published on pages 5774 and 5775 of the issue for Wednesday, February 14, 1996.

Under the Federal Reserve Bank of San Francisco heading, the entry for Capital Corp of the West, is revised to read as follows:

1. Capital Corp of the West, Merced, California; to engage *de novo* in furnishing general economic information and advice, general economic statistical forecasting services and industry studies, pursuant to § 225.25 (b)(4)(iv) of the Board's Regulation Y; and in providing advice, including rendering fairness opinions and providing valuation services, in connection with mergers, acquisitions, divestitures, joint ventures, leveraged buyouts, recapitalizations, capital structurings, and financing transactions (including private and public financing and loan syndications); and conducting financial feasibility studies, pursuant to § 225.25 (b)(4)(vi) of the Board's Regulation Y. The geographic scope for these activities will be limited to Arizona, California, Oregon and Nevada.

Comments on this application must be received by February 28, 1996.

Board of Governors of the Federal Reserve System, February 21, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-4333 Filed 2-26-96; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

NAME: Setting a National Occupational Research Agenda: Review of the Draft National Occupational Research Agenda.

TIME AND DATE: 9 a.m.–5 p.m., March 1, 1996.

PLACE: The Watergate Hotel, Chesapeake Room, 2650 Virginia Avenue, NW, Washington, DC 20037.

STATUS: Open to the public, limited only by the space available.

PURPOSE: NIOSH will sponsor a public meeting to review the draft National Occupational Research Agenda (NORA) and to develop recommendations for implementation of the agenda. Invited participants will form review panels and review the draft NORA in sessions open to the public. A limited amount of time will be reserved to provide members of the public attending the meeting the opportunity to comment on the research priorities and recommendations on implementation. The tentative agenda of the meeting begins with a discussion of the development of the list of research priorities included in the draft NORA. Participants will break into smaller groups to review the draft and make recommendations on implementation of the NORA. In the afternoon session, each Work Group will present a summary of their comments. A limited amount of time will be reserved following the Work Group presentations for public comment and discussion. Three to five minute presentations on the draft NORA may be made during the public session. The exact time limit of the presentations will depend upon the number of people wishing to present. The draft NORA will be available for distribution on February 23, 1996. NIOSH encourages the public to provide comments on research priorities through March 6, 1996. The final NORA will be released on April 29, 1996. To attend this meeting, receive a copy of the draft NORA, or receive additional information on NORA, please contact Mr. Chris Olenec as indicated below. On-site registration will be available; however, to assist in planning for the meeting, advance registration is requested.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mr. Chris Olenec, NIOSH, CDC, 200 Independence Avenue, Room 317B, Washington, DC 20201, telephone 202/205–2640, FAX 202/260–1898. When possible, please FAX requests for copies of the draft research agenda.

WRITTEN COMMENTS TO: Ms. Diane Manning, NIOSH, CDC, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Dated: February 20, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–4337 Filed 2–26–96; 8:45 am]

BILLING CODE 4163–19–M

Food and Drug Administration

Advisory Committee Meeting; Postponement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is postponing the meeting of the Food Advisory Committee scheduled for February 28 and 29, 1996. The meeting was announced by a notice in the **Federal Register** of February 8, 1996 (61 FR 4783). The Food Advisory Committee will meet in the near future and announce its notice of meeting in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFS–5), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4727.

Dated: February 21, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–4348 Filed 2–26–96; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee Meetings; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing amendments to the notice of meetings of the Antiviral Drugs Advisory Committee, the Endocrinologic and Metabolic Drugs Advisory Committee, and the joint meeting of the Endocrinologic and Metabolic Drugs Advisory Committee and the Antiviral Drugs Advisory Committee. These meetings were announced in the **Federal Register** of January 31, 1996 (61 FR 3427). The amendments reflect a change in the location of the Antiviral Drugs Advisory Committee meeting on the third day. The 3-day meeting will now be held at the same location. In addition, the location has been changed for the other meetings. There are no other changes. The amendments will be announced at the beginning of the open portion of the meetings.

FOR FURTHER INFORMATION CONTACT: For the Antiviral Drugs Advisory Committee Meeting: Ermona McGoodwin, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

For both the Endocrinologic and Metabolic Drugs Advisory Committee Meeting and the Joint Meeting of the Endocrinologic and Metabolic Drugs Advisory Committee and the Antiviral Drugs Advisory Committee: Kathleen R. Reedy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 31, 1996 (61 FR 3427), FDA announced: (1) A meeting of the Antiviral Drugs Advisory Committee would be held on February 28 and 29, and March 1, 1996; (2) a meeting of the Endocrinologic and Metabolic Drugs Advisory Committee would be held on February 29, 1996; and (3) a joint meeting of the Endocrinologic and Metabolic Drugs Advisory Committee and the Antiviral Drugs Advisory Committee would be held on March 1, 1996. On page 3428, beginning in the second column, the "*Date, time, and place*" portion of the Antiviral Drugs Advisory Committee is amended to read as follows:

Date, time, and place. February 28 and 29, and March 1, 1996, 8:30 a.m., Holiday Inn—Gaithersburg, Grand Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

On page 3429, in the first column, the "*Date, time, and place*" portion of the Endocrinologic and Metabolic Drugs Advisory Committee is amended to read as follows:

Date, time, and place. February 29, 1996, 8 a.m., Holiday Inn—Silver Spring, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

On the same page, in the second column, the "*Date, time, and place*" portion of the joint meeting of the Endocrinologic and Metabolic Drugs Advisory Committee and the Antiviral Drugs Advisory Committee is amended to read as follows:

Date, time, and place. March 1, 1996, 8 a.m., Holiday Inn—Silver Spring, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Dated: February 22, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–4575 Filed 2–23–96; 4:12 pm]

BILLING CODE 4160–01–F

Health Care Financing Administration

[ORD–084–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: December 1995

AGENCY: Health Care Financing Administration (HCFA).

ACTION: Notice.

SUMMARY: This notice identifies proposals submitted during the month of December 1995 under the authority of section 1115 of the Social Security Act and those that were approved, disapproved, pending, or withdrawn during this time period. (This notice can be accessed on the Internet at HTTP://WWW.SSA.GOV/HCFA/HCFAHP2.HTML.)

FOR FURTHER INFORMATION CONTACT: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Mail Stop C3–11–07, 7500 Security Boulevard, Baltimore, MD 21244–1850. (410) 786–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

As part of our established procedures, we normally publish a monthly notice in the **Federal Register** with a listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process. In the month of December we received no new proposals and no changes to pending proposals.

II. New, Pending, Approved, and Withdrawn Proposals for the Month of December 1995

During the month of December 1995 we received no new Comprehensive Health Reform Programs or Other Section 1115 Demonstration Proposals. We did not approve or disapprove any proposals during December 1995 nor were any proposals withdrawn during that month. Pending proposals for the month of November, 1995 published in the **Federal Register** on January 23, 1996, 61 FR 1769, remain unchanged for the month of December.

III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal in the notice published on January 23, 1996. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments.)

Dated: February 20, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 96–4358 Filed 2–26–96; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

"Screening for Alcohol Problems in the Elderly" Study

Proposed Data Collection

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institutes of Health (NIH) is publishing this notice to solicit public comment on the data collection proposed for the study on "Screening for Alcohol in the Elderly". To request copies of the data collection plans and instruments, call Dr. Gayle Boyd, (301) 443–8766 (not a toll-free number).

Comments are invited on: (a) whether the proposed collection is necessary, including whether the information has a practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency estimate of burden of the proposed collection; (d) ways to minimize the collection burden of the respondents. Written comments are requested within 60 days of the publication of this notice. Send comments to Dr. Gayle Boyd, Prevention Research Branch, Division of Clinical and Prevention Research (DCPR), NIAAA, NIH, Building 6000, Room 505, 6000 Executive Boulevard, Bethesda, Maryland 20892–7003.

Proposed Project

The Prevention Research Branch (PRB), intends to conduct the study for "Screening for Alcohol Problems in the Elderly." The PRB is authorized by Section 452 of Part G of Title IV of the Public Health Service Act (42 USC 288) as amended by the NIH Revitalization Act of 1993 (Pub. Law 103–43).

The information proposed for collection will be used by the NIAAA to develop an alcohol problem screening instrument suitable for use with the population age 65 and over and that can be administered in health care settings. The prevalence of alcohol problems among older persons is not well established. The instruments used for assessment are often not sensitive to alcohol abuse and dependence in this population, and many alcohol-related problems go undetected.

The annual burden estimates are as follows:

Type and No. of respondents	Responses per respondent	Total responses	Hours	Total hours
Patients, 500	1	500	.3340	167
Physicians, 136	1	136	.0835	11.4
Total Number of Respondents, 636 (318 per year)				
Total Number of Responses, 636 (318 per year)				
Total Hours, 178.4 (89.2 per year)				

Dated: February 15, 1996.

Martin K. Trusty,

Executive Officer, NIAAA.

[FR Doc. 96–4368 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

Proposed Data Collection Available for Public Comment

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) will publish periodic summaries of proposed projects. To request more information on the proposed project, call Ruth A. Kleinerman, M.P.H., Epidemiologist, at (301) 496–6600.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Ruth A. Kleinerman, M.P.H., National Cancer Institute, EPN 408, 6130 Executive Boulevard, Rockville, MD 20892–7364. Written comments should be received by April 29, 1996.

Proposed Project: Leukemia Among Chernobyl Cleanup Workers—renewal—A cohort study will be conducted to quantify the risk of radiation-induced leukemia and other cancer among 10,000 workers from Latvia and Lithuania who were sent to Chernobyl to cleanup after the reactor accident in 1986. The workers will be asked to respond to a mail questionnaire which collects information about specific duties during the cleanup, incident cancers and risk factors for those cancers to evaluate cancer risk associated with occupational exposure to low-level ionizing radiation, taking into account potentially confounding factors. The information will be used by the National Cancer Institute to determine cancer specific radiation risk estimates. Burden estimates are as follows:

	No. of respondents	No. of responses per respondent	Avg. burden/response
Cleanup Workers	3,300	1	.33 hours.

Dated: February 16, 1996.

Philip D. Amoruso,

NCI Executive Officer.

[FR Doc. 96–4362 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing specialist at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7057; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Azo Dye Derivatives Exhibiting Anti-HIV Activity, Pharmaceutical Compositions Containing the Same and Methods for Using the Same

Haugwitz, R.D., Zalkow, L., Deutsch, H., Gruszecka-Kowalik, E., Asibal, C., Qazi, S. (NCI)

Filed 7 Jun 95

Serial No. 08/479,540 (FWC of 08/167,296)

Licensing Contact: Cindy K. Fuchs, 301/496–7735 ext 232

A method of obtaining substantially pure azo stilbenes offers an important new tool for combating HIV infection. A number of dyes have been shown to have anti-HIV activity; however, it has previously not been possible to purify the anti-HIV components of these compounds. This pure preparation of azo stilbenes have a broad range of antiviral activity, including anti-HIV activity. (portfolio: Infectious Diseases—Therapeutics, antivirals, AIDS)

Amido Substituted Stilbenes and Related Compounds With In Vitro Anti-HIV Activity

Haugwitz, R.D., Zalkow, L., Gruszecka-Kowalik, E., Burgess, E. (NCI)

Filed 17 Feb 95

Serial No. 08/390,057

Licensing Contact: Gloria H. Richmond, 301/496–7056 ext 268

Aroylaniline derivatives which exhibit antiviral activity, methods for synthesizing these compounds, pharmaceutical formulations containing these compounds, and methods for treating viral infection are described in this invention. The aroylaniline derivatives are capable of preventing the replication of virus in a cell, such as human T-cell, without staining the tissue. These compounds may effectively treat viral infections of mammals, particularly human. A main target for these compounds can be treatment against infections caused by retroviruses such as HIV. (portfolio: Infectious Diseases—Therapeutics, antivirals, AIDS)

A Method for Isolating Dendritic Cells

Cohen, P.A., Czerniecki, B.J., Carter, C., Fowler, D.H., Kim, H. (NCI)

Filed 27 Jan 95

Serial No. 08/379,227

Licensing Contact: Stephen Finley, 301/496–7735 ext 215

Antigen presenting cells (APCs) are cells that are involved in the presentation of antigens to the immune system. APCs can stimulate the immune system—T lymphocytes—to fight infections, including HIV and some forms of cancer. A wide variety of cells have the capability to act as APCs, including monocytes, macrophages, B cells, and dendritic cells; however, extensive research has indicated that the most potent antigen presenting cell is the dendritic cells. Previous methods for isolating dendritic cells have relied on either the isolation of bone marrow precursor cells from blood followed by

stimulation to form dendritic cells, or the collection of precommitted cells from peripheral blood. Both of these methods have drawbacks: the necessity to treat the patient with cytokines to increase the number of precursor cells in the blood or techniques that lead to physical trauma of the dendritic cells. This invention embodies a method to isolate dendritic cells from blood in which leukapheresis is employed as a preliminary step to enrich for precursor cells in a patient without the requirement for cytokine treatment followed by countercurrent centrifugal elutriation. The purity of the cells isolated is much greater than any other known method. (portfolio: Central Nervous System—Research Tools and Reagents)

AAMP–1

Beckner, M.E., Liotta, L.A. (NCI)
Filed 25 Jun 93
Serial No. 08/083,945 (CIP of 07/827,043)
Licensing Contact: Susan Rucker, 301/496–7056 ext 245

AAMP–1, a novel protein that has human cell adhesion properties has been characterized. Peptides derived from that protein have been shown to exhibit herparin-binding and cell-adhesive properties. The heparin-binding properties of the peptides may be useful for the treatment of conditions in which the presence or absence of heparin and/or heparin-sulfate needs to be regulated. These conditions could include heparinization to prevent blood clotting and possibly inflammatory, immune, or neoplastic disorders, and wound-healing in human patients. The cell-adhesion properties of the peptides may be useful for mediating cell-cell and cell-substrate adhesion. These properties might be particularly useful for producing materials for use in prosthetic devices-cell adhesion to a prosthetic device could potentially be controlled by regulating the presence or absence of heparin in the bodily system of the patient receiving a prosthetic device made with the peptides. The peptides retain their properties following crystallization, and the crystallized peptides are heat-stable and not inactivated by solvents. The small size and enhanced stability and processability of the crystalline peptides versus the native AAMP–1 protein suggest that the peptides will be more useful therapeutic agents and better raw materials for device fabrication than the native protein. (portfolio: Cancer—Diagnostics, in vitro, other; Cancer—Therapeutics, biological response modifiers)

Vaccine Against Hepatitis A Virus

Purcell, R.H., Ticehurst, J.R., Cohen, J.L., Emerson, S.U., Feinstone, S.M., Daemer, R.J., Gust, I.D. (NCI)
Filed 16 Jan 92
Serial No. 07/822,639 (Reissue of Serial No. 07/217,824; U.S. Patent No. 4,894,228 issued 16 Jan 90)
Licensing Contact: Gloria H. Richmond, 301/496–7056 ext 268

An attenuated hepatitis A virus (HAV) offers an important new tool for the development of a protective vaccine. Previously, immune serum globulin (ISG) is the only effective vaccine for preventing HAV infection; however, ISG elicits only low levels of neutralizing antibodies and, thus, requires repeated doses. This attenuated HAV, which is a mutant of the wild-type strain, elicits serum-neutralizing antibody production in chimpanzees and is suitable for vaccine development. (portfolio: Infectious Diseases—Vaccines, viral, non-AIDS)

Dated: February 20, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–4363 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting

Notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors Cancer Centers Program Working Group, March 12, 1996 at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland.

This meeting will be open to the public on March 12, from 8:30 a.m. to 10:00 a.m. for overview and discussion of the Institute's Cancer Centers Extramural Program.

The meeting will be closed to the public on March 12, from 10:00 a.m. to adjournment for discussion of confidential issues relating to the review, discussion and evaluation of individual programs and projects conducted by the Cancer Centers Extramural Program. These discussions will reveal confidential trade secrets or commercial property such as patentable material, and personal information including consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Information pertaining to the meeting may be obtained from Dr. Paulette Gray, Executive Secretary, National Cancer Institute Board of Scientific Advisors, National Cancer Institute, 6130 Executive Blvd., EPN., Rm. 600, Bethesda, MD 20892, (301–496–4218). Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Dr. Paulette Gray in advance of the meeting.

Dated: February 21, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4361 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications.
Committee Name: Subcommittee A—Cancer Centers Subcommittee.
Date: March 28–29, 1996.
Time: 7:30 a.m.
Place: The Holiday Inn, Chevy Chase, Chevy Chase, MD.
Contact Person: David E. Maslow, Ph.D., 6130 Executive Blvd., Room 643A, Bethesda, MD 20892, Telephone: 301–496–2330.

Committee Name: Subcommittee C—Preclinical and Basic Studies.
Date: April 1–3, 1996.
Time: 7:30 a.m.
Place: The Holiday Inn, Georgetown, 2101 Wisconsin Ave., N.W., Washington, D.C. 20007.
Contact Person: Virginia Wray, Ph.D., 6130 Executive Blvd., Room 635D, Bethesda, MD 20892, Telephone: 301–496–9236.

Committee Name: Subcommittee E—Prevention and Control Subcommittee.
Date of Meeting: April 17, 1996.
Time: 8 a.m. to adjournment.
Place of Meeting: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Dr. Sally A. Mulhern, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 643, 6130 Executive Boulevard MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7413.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: February 21, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4360 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Initial Review Group (IRG) meeting:

Name of IRG: Clinical Trials Review Committee.
Date: February 25–27, 1996.
Time: 7:00 p.m.
Place: Hyatt Regency, Bethesda, Maryland.
Contact Person: Dr. David M. Monsees, 6701 Rockledge Drive, Rm. 7178, Bethesda, Maryland 20892, (301) 435–0270.
Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the partial shutdown of the Federal Government and urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: February 21, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4364 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Mucosal and Synovial Gene Transfer.
Date: March 20–21, 1996.
Time: 9:00 a.m.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, N.W., Washington, DC 20007, (202) 338–4600.
Contact Person: Dr. Madelon C. Halula, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C16, Bethesda, MD 20892, (301) 496–2550.
Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: February 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4371 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institutes on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institutes of Deafness and Other Communication Disorders Special Emphasis Panel.
Date: March 14, 1996.
Time: 11:00 a.m.–2:00 p.m.
Place: Room 400C, 6120 Executive Blvd., Rockville, MD 20852 (telephone conference call).
Contact Person: Mary Nekola, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301–496–8683.
Purpose/Agenda: To review and evaluate one program project application. The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: February 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4369 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.
Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: March 13, 1996.
Time: 3 p.m.
Place: Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3367.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: April 15—April 16, 1996.
Time: 7 p.m.
Place: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: William H. Radcliffe, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4367 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting

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of the National Institute of Mental Health Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: Clinical Centers and Special Projects Review Committee.

Date: March 12–March 13, 1996.

Time: 8:30 a.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4366 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 12, 1996.

Time: 2 p.m.

Place: Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, telephone: 301, 443–3936.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4365 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Drug Abuse (NIDA), on March 5, 1996, at the Division of Intramural Research, Hopkins Bayview Research Campus, Building C, 3rd Floor, 4940 Eastern Avenue, Baltimore, Maryland 21224.

The meeting will be open to the public on March 5 from 8:30 a.m. to 9:25 a.m. for announcements and reports of administrative, legislative, and program developments in the drug abuse field. Attendance will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 5 from 9:25 a.m. to adjournment for the review, discussion, and evaluation of intramural research programs and projects and productivity and performance of individual staff scientists, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and a roster of committee members may be obtained from Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443–2755).

Substantive program information may be obtained from Mr. Brian Butters, Division of Intramural Research, NIDA, Hopkins Bayview Research Campus, Building C, 3rd Floor, 4940 Eastern Avenue, Baltimore, Maryland 21224 (410/550–1538).

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Butters in advance of the meeting.

This notice is being published less than 15 days prior to the above meeting due to the partial shutdown of the Federal Government and the urgent need to meet timing limitations imposed by the review cycle.

Dated: February 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

FR Doc. 96–4359 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants, Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings that are being held to review grant applications:

Study section/contact person	March 1996 meetings	Time	Location
Immunological Sciences Initial Review Group:			
Allergy & Immunology, Dr. Calbert Laing, 301–435–1221.	Mar. 18–19	8:30 a.m.	Holiday Inn, Silver Spring, MD
Musculoskeletal and Dental Sciences Initial Review Group:			
General Medicine A–1, Dr. Harold Davidson, 301–435–1776.	Mar. 10–11	8:30 a.m.	Holiday Inn, Chevy Chase, MD
Sensory Sciences Initial Review Group:			
Visual Sciences B, Dr. Leonard Jakubczak, 301–435–1247.	Mar. 19–20	8:30 a.m.	Holiday Inn, Georgetown, DC

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4370 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Notice of Public Hearing on ACIR Preliminary Report, The Role of Federal Mandates in Intergovernmental Relations

SUMMARY: The Advisory Commission on Intergovernmental Relations (ACIR) will hold a public hearing on Friday, March 8, 1996, beginning at 9:00 AM and concluding no later than 4:00 PM in the Jefferson Auditorium, USDA, 14th and Independence Ave., SW, Washington, DC 20250. The purpose of the hearing is to take testimony on the Commission's preliminary report, The Role of Federal Mandates in Intergovernmental Relations.

FOR FURTHER INFORMATION CONTACT: Advisory Commission on Intergovernmental Relations, 800 K Street, NW, Suite 450, South Tower, Washington, DC 20575, Phone: (202) 653–5540/FAX: 653–5429. Internet: ir002529@interramp.com.

SUPPLEMENTARY INFORMATION: As required by Section 302(c)(2), the Advisory Commission on Intergovernmental Relations (ACIR) will hold a public hearing to take testimony on the Commission's preliminary report, The Role of Federal Mandates in Intergovernmental Relations. Copies of the report can be obtained by calling ACIR at (202) 653–5640, faxing a request to (202) 653–5429, or accessing the ACIR Internet home page (www.access.gpo.gov/acir *or* www.access.gpo.gov:80/acir).

The public hearing will be held on March 8, 1996, in the Jefferson Auditorium, US Department of Agriculture (USDA), South Building, 14th and Independence Ave., SW Washington, DC 20250. Persons desiring access to the Jefferson Auditorium should use the Wing 4 entrance to the USDA complex located in the center of the South Building on Independence Ave., SW. Wheelchair access is available at the Wing 1 entrance to the USDA complex on Independence Ave., SW. There is a self-operated lift for wheelchairs next to the steps at the corner of 12th and Independence Ave., SW. For further directions to the USDA complex, please call (202) 653–5912.

The hearing will be conducted beginning at 9:00 AM and concluding no later than 4:00 PM. If all persons desiring to testify cannot be heard during those hours, an additional hearing will be scheduled at a later date. Oral testimony will be limited to 5 minutes per person. Written testimony in lieu of an oral statement and/or to supplement an oral statement will be accepted at the hearing. Individuals who wish to be scheduled in advance to testify should send a written request by mail or fax to: MacArthur C. Jones, ACIR, 800 K Street, NW, Suite 450, South Tower, Washington, DC 20575. The fax number is: (202) 653–5429. In the testimony request, please provide your name, address, telephone and fax or internet number, if available. Also, it would be helpful, if you included information such as the organization being represented and/or the primary topic in the ACIR report upon which you wish to testify. Individuals with special needs (e.g. sign language interpreters for the hearing impaired) are requested to indicate such in their written request to testify. People submitting advance written requests to testify will be scheduled for testimony in order of request receipt.

Dated: February 22, 1996.

William E. Davis,

Executive Director.

[FR Doc. 96–4426 Filed 2–26–96; 8:45 am]

BILLING CODE 5500–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Rare Species of Soldier Meadows for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the threatened desert dace, *Eremichthys acros*, and the category 1 candidate Soldier Meadows cinquefoil, *Potentilla basaltica*. These species are endemic to Soldier Meadows, Humboldt County, Nevada. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before April 29, 1996, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the State Supervisor, Nevada State Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C–125, Reno, Nevada, 89502–5093 (Phone: 702–784–5227). Written comments and materials regarding the plan should be sent to Mr. Carlos H. Mendoza, State Supervisor, at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Selena Werdon at the above address, or telephone 702–784–5227.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for reclassification or delisting, and estimate time and cost for implementing the recovery measures needed

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Desert dace are endemic to Soldier Meadows, located in western Humboldt County, Nevada. The species occupies 10 thermal spring systems and approximately 5 kilometers (3.1 miles) of spring outflow stream habitat. No recent population estimate is available, but the species is considered to be relatively abundant in some spring systems. Threats to the species when listed included habitat modifications due to agricultural diversions, potential geothermal and/or mineral development; and introductions of nonnative fishes; and parasites.

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Potential threats include trampling and overgrazing by livestock and wild horses and burros, and increasing recreational use of the species' habitat. Recovery efforts will focus on restoring historical habitat in one spring outflow, monitoring population stability and health, and eliminating threats from ongoing habitat modification and sympatric nonnative species. Habitat for desert dace is currently public land administered by the Bureau of Land Management and private land under a conservation easement.

Soldier Meadows cinquefoil are also endemic to Soldier Meadows, although one additional population occurs in Ash Valley, Lassen County, California. In Soldier Meadows, the species occupies alkali meadow, seep, and marsh habitats bordering thermal springs, outflow streams, and depressions. Soldier Meadows contains 10 subpopulations of the cinquefoil. An estimated 84,650 individual plants are distributed on approximately 28 hectares (69 acres). Threats to the species include habitat modifications due to agricultural diversions, trampling and overgrazing by livestock and wild horses and burros, and recreational use; and competing nonnative plants. Conservation efforts will focus on eliminating threats from ongoing habitat modification and invading nonnative plants, and monitoring population stability and health. Habitat for Soldier Meadows cinquefoil in Soldier Meadows is currently public land administered by the Bureau of Land Management and private land under a conservation easement.

Public Comments Solicited

The Service solicits written comments on the *Recovery Plan for the Rare Species of Soldier Meadows*. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1553(f).

Dated: February 9, 1996.

Thomas Dwyer,

Acting Regional Director.

[FR Doc. 96–4375 Filed 2–26–96; 8:45 am]

BILLING CODE 4310–55–M

North American Wetlands Conservation Council; Meeting Announcement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet on March 13 to review proposals for funding submitted pursuant to the North American Wetlands Conservation Act. Upon completion of the Council's review, proposals will be submitted to the Migratory Bird Conservation Commission with recommendations for funding. The meeting is open to the public.

DATES: March 13, 1996, 9:00 A.M.

ADDRESSES: The meeting will be held in the Washington, D.C., metropolitan area at a location yet to be determined. The North American Wetlands Conservation Council Coordinator is located at Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Suite 110, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Byron Kenneth Williams, Coordinator, North American Wetlands Conservation Council, (703) 358–1784.

SUPPLEMENTARY INFORMATION: In accordance with the North American Wetlands Conservation Act (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the North American Wetlands Conservation Council is a Federal-State-private body which meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to and final approval by the Migratory Bird Conservation Commission. The Council requires that proposals from State, Federal, and private sponsors contain a minimum of 50 percent non-Federal matching funds.

Dated: February 15, 1996.

John G. Rogers,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 96–4356 Filed 2–26–96; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

Institute of Gas Technology; Radon Use in Natural Gas to Detect Water-Front Movement in Gas Reservoirs; Research

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with the Institute of Gas Technology (IGT) to conduct research into the use of radon in natural gas to detect water-front movement in gas reservoirs. Any others wishing to pursue the possibility of a CRADA for similar activities should contact the U.S. Geological Survey no later than 30 days from the publication of this notice.

ADDRESSES: Information on the proposed CRADA is available to the public upon request at the following location: U.S. Geological Survey, Water Resources Division, MS 430, 12201 Sunrise Valley Drive, Reston, VA 22092.

FOR FURTHER INFORMATION CONTACT: Thomas F. Kraemer, U.S. Geological Survey, Water Resources Division at the address given above; telephone 703–648–5868; FAX 703–648–5484; email tkraemer@usgs.gov.

R. Hirsch,

Chief Hydrologist.

[FR Doc. 96–4332 Filed 2–26–96; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[WO–320–1330–01–24 1A]

OMB Approval Number 1004–0103; Notice of Proposed Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request approval for the collection of information from applicants who apply for purchase of mineral materials from public lands under the 43 CFR 3600 regulations. Respondents supply information as to their identity and address and the location and amount of material desired for purchase. The information enables the authorized officer to identify and communicate with the applicant and to evaluate the effect of the proposal on the environment and land uses and to determine whether or not a mineral material contract may be granted.

DATES: Comments on the proposed information collection must be received by April 29, 1996 to be assured of consideration.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, D.C. 20240.

Comments may be sent via Internet to: WO140@attmail.com. Please include "ATTN: Patrick Boyd" and your name and return address in your Internet message. Comments may be hand-delivered to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW, Washington, DC. Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Durga N. Rimal, (202) 452–0350.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.8(d), the BLM is required to provide 60-day notice in the **Federal Register** concerning a proposed collection of information to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Materials Act of 1947, as amended (30 U.S.C. 601, 602), provides for the disposal of mineral materials such as sand, gravel, and petrified wood from the public lands by sale or free use. Such disposals are made at the discretion of the Secretary of the Interior, consistent with the 43 CFR 3600 regulations. These regulations were last revised in 1983. The methods and information required from the public are still the same.

The information that the regulations require an applicant/permittee to submit will be used by the BLM to determine if the sale of materials is in the public interest, to mitigate environmental impacts of mineral materials development, to get fair market value for the materials sold, and to prevent trespass removal of the materials.

An applicant requesting purchase of mineral materials must submit a written request to the authorized officer. Information requirements are not specified in the regulations but the authorized officer is required to make all sales agreements on contract forms approved by the Director of the BLM. Two forms are used. Form 3600–4 is used when the total sale value is less than $2,000 and full payment is due upon execution of the contract. Form 3600–5 is used for sales of $2,000 or greater and provides for installment payments. Both forms require that the applicants provide their name, address, and authorized signature, and location and amount of material to be purchased. In addition to being necessary for a binding contractual agreement, the information is used by the authorized officer to identify and communicate with the applicant. Without binding contractual agreements, the Government would not be able to require appropriate reclamation of disturbed sites, protect natural resources, and ensure regular payment for mineral materials sold.

The public reporting burden for this entire collection, including the form, is estimated to average one-half hour per response. The respondents are sand, gravel, stone and other mineral materials operators. The number of responses per respondent is one to two per year.

The majority of respondents consist of permittees with small sales contracts, for sales amounting to less than $2,000. Depending on the site and amount of material the authorized officer may require the applicant to provide an outline of a mining and reclamation plan at the time of application, prior to processing of the application (43 CFR 3602.1). However, a majority of sales occur from community pits for which the BLM has already developed a mining and reclamation plan, and there is no burden to the applicant. Estimated average preparation time for completing Form 3600–4 and Form 3600–5 and preparing supporting documents, is about 30 minutes. Actual time varies from 15 minutes (most common) to several days for larger projects. The number of new responses is estimated to be 2,500 per year. The estimated total annual burden on new respondents is collectively 1,250 hours. For sales contracts whose terms exceed one year, the respondents are required to submit annual production reports during the duration of the contract (43 CFR 3610.1–3). The average reporting burden for such respondents is about 30 minutes. The estimated number of respondents with contracts requiring annual production reports is 470 with annual burden collectively estimated to be 235 hours. The regulations allow an applicant to perform sampling and testing of deposits, by obtaining a letter of use authorization from the authorized officer, prior to the issuance of a sales contract or permit (CFR 3602.2). A majority of mineral materials sales are made from known deposits where the applicants perform sampling and testing of deposits, by obtaining a letter of use authorization from the authorized officer, prior to the issuance of a sales contract or permit (CFF 3602.2). A majority of mineral materials sales are made from known deposits where the applicants do not ask for permits for sampling and testing. In an average year only about 100 such authorizations are issued and the permittees are required to submit their findings to the authorized officer. The collective annual burden on respondents is estimated to be 75 hours. The total burden for all respondents would collectively total 1,560 hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: February 22, 1996.

Annetta Cheek,

Chief, Regulatory Management.

[FR Doc. 96–4415 Filed 2–26–96; 8:45 am]

BILLING CODE 4310–84–P

[NM–070–06–1050–00]

Notice of Intent To Prepare a Plan Amendment/Environmental Assessment [EA] to the Farmington Resource Management Plan Farmington District, New Mexico, Involving Designating Cultural Areas of Critical Environmental Concern

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a Plan Amendment/EA and invitation for public involvement.

SUMMARY: The Bureau of Land Management (BLM), Farmington District Office is initiating preparation of a Plan Amendment/EA for designation of Cultural Areas of Critical Environmental Concern within the northwest corner of New Mexico. The public is invited to participate in this planning effort with the identification of additional sites, issues and planning criteria.

The planning document will be prepared by an interdisciplinary team of specialists within the Farmington District Office. The Proposed Plan Amendment/EA will be made available to all those on the mailing list.

DATES: Written comments relating to the identification of issues and planning criteria will be accepted through the close of business March 15, 1996.

ADDRESSES: Comments and requests to be included on the mailing list should be sent to: Mike Pool, District Manager; Bureau of Land Management, Farmington District Office: 1235 La Plata Highway, Farmington, New Mexico 87401.

FOR FURTHER INFORMATION CONTACT:

Peggy Gaudy at the address above, or call 505–599–6300.

SUPPLEMENTARY INFORMATION: The proposed Cultural Areas of Critical Environmental Concern to be addressed in the Plan Amendment/EA include archaeological and historic sites of Anasazi, Navajo, and Euro-American culture. Currently identified sites include Chacoan outliers, segments of Chacoan roads, an Anasazi Pueblo I community, Navajo pueblitos, Navajo and Anasazi petroglyphs and pictographs, a Native American traditional use area, historic homesteads, and a historic school.

The issues anticipated to be addressed by this Plan Amendment/EA include safety, resource protection, and management.

The proposed planning criteria include:

1. All proposed actions and alternatives considered must comply with current laws and Federal Regulations.

2. The resource allocations of proposed actions will be made in accordance with the principles of "multiple use" as defined in the Federal Land Policy and Management Act of 1976 (FLPMA), Sec. 103(c).

3. The Proposed Plan Amendment/EA will consider the uniqueness of the non-renewable cultural resources located within the Farmington District and management needs to ensure long term protection and preservation of identified resources.

4. This planning process will provide for public involvement including early notice and frequent opportunity for citizens and interested groups and others to participate in and comment on the preparation of the Proposed Plan Amendment/EA and related guidance.

Dated: February 12, 1996.

Mike Pool,

District Manager.

[FR Doc. 96–4372 Filed 2–26–96; 8:45 am]

BILLING CODE 4310–FB–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of the proposed information collection requirement and related explanatory material may be obtained by contacting Dennis C. Jones at 303–231–3046. Comments should be submitted to OMB within 30 days of publication of this notice and should be made directly to the Office of Information and Regulatory Affairs, Attention: Desk Officer for Department of the Interior, telephone (202) 395–7340.

Title: Net Profit Share Payments for Outer Continental Shelf Oil and Gas Leases, 30 CFR 220.

OMB Approval Number: 1010–0073

Abstract: Companies involved in the exploration and development of Outer Continental Shelf oil and gas leases under the Net Profit Share Lease (NPSL) system make net profit share payments rather than royalty payments. To encourage exploration and development of a lease, the NPSL system provides for a sharing, by the lessee and the Government, of the risk involved. The lessee is permitted to deduct allowable costs to determine net profit, and profit share payments are not due until the lease becomes profitable. Lessees are required to maintain an NPSL capital account and to provide annual reports listing costs incurred, credits received, and the balance in the account. Beginning the first month in which production revenues are credit to the capital account, lessees are required to prepare monthly reports showing volume and disposition of oil and gas production, production revenue, all costs and credits to the account, the balance in the account, and the net profit share payment due the Government.

Bureau Form Numbers: None.

Frequency: Annually or monthly.

Description of Respondents: Oil and gas companies.

Annual Responses: 222.

Annual Burden Hours: 3,576.

Bureau Clearance Officer: Arthur Quintana, (703) 787–1101.

Dated: January 16, 1996.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 96–4355 Filed 2–26–96; 8:45 am]

BILLING CODE 4310–MR–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 17, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by March 13, 1996.

Carol D. Shull,

Keeper of the National Register.

Colorado

Baca County

Stonington First Methodist-Episcopal Church, 48854 Co. Rd. X, Stonington, 96000272

Pueblo County

Temple Emanuel, 1425 N. Grand Ave., Pueblo, 96000273

Rio Grande County

Central School Auditorium and Gymnasium, 612 First Ave., Monte Vista, 96000274

Indiana

Dearborn County

Aurora City Hall, 216 Third St. and 233-237 Main St., Aurora, 96000288

St. John's Lutheran Church and School, 7291 lN 62, Dillsboro vicinity, 96000289

Floyd County

Sweet Gum Stable, 627 W. Main St., New Albany, 96000292

Gibson County

Welborn-Ross House, 542 S. Hart St., Princeton, 96000287

Lake County

Ross, John, Farm, Address Restricted, Leroy vicinity, 96000283

Monroe County

Johnson's Creamery, 400 W. Seventh St., Bloomington, 96000284

Parke County

Wright, Gov. Joseph Albert, House, Billie Creek Village, US 36 E, Rockville vicinity, 96000286

Putnam County

Delta Kappa Epsilon Fraternity House, 620 Anderson St., Greencastle, 96000291

Tippecanoe County

Highland Park Neighborhood Historic District, roughly bounded by Kossuth St., S. 9th St., Cherokee Ave. and 4th St., Lafayette, 96000270

Vigo County

Wilson, Woodrow, Junior High School, 301 S. 25th St., Terre Haute, 96000285

Wabash County

North Manchester Public Library, 204 W. Main St., North Manchester, 96000290

Kentucky

Harlan County

Cumberland Central Business District, roughly bounded by Freeman St., Huff Dr., the Poor Fork of the Cumberland R., Cumberland Ave. and W. Main St., Cumberland, 96000282

Jefferson County

Cumberland, The, 201 York St., Louisville, 96000278

Harig, Koop & Company-Columbia Mantel Company, 845 S. Ninth St., Louisville, 96000279

St. George's Roman Catholic Church and Rectory (Boundary Increase), 1809 Standard Ave., Louisville, 96000293

Kenton County

Bavarian Brewing Company, 522 W. 12th St., Covington, 96000281

Massachusetts

Barnstable County

Falmouth Village Green Historic District, roughly, along Locust, Main, N. Main and Hewins Sts. and Palmer Ave., including also Old Town Cemetery, Falmouth, 96000271

Middlesex County

Randall-Hale Homestead, 6 Sudbury Rd., Stow, 96000277

Montana

Ravalli County

Landram, John A., House (Stevensville MPS) 113 College St., Stevensville, 91000749

Nebraska

Antelope County

Maybury—McPherson House, 502 E. Fourth St., Neligh, 96000280

New Mexico

Colfax County

Columbian School (New Deal in New Mexico MPS) 700 N. 2nd St., Raton, 96000261

Kearny School (New Deal in New Mexico MPS) 800 S. 3rd St., Raton, 96000259

Longfellow School (New Deal in New Mexico MPS) 700 E. 4th St., Raton, 96000262

Raton Armory (New Deal in New Mexico MPS) 901 S. 3rd St., Raton, 96000260

Raton Junior—Senior High School (New Deal in New Mexico MPS) 500 S. 3rd St., Raton, 96000263

Guadalupe County

Park Lake Historic District (New Deal in New Mexico MPS) Jct. of Will Rogers Dr. and Lake Dr., Santa Rosa, 96000267

Harding County

Bueyeros School (New Deal in New Mexico MPS) NM 102, 0.25 mi. W of Bueyeros Church, Bueyeros, 96000265

Quay County

Metropolitan Park Bathhouse and Pool Historic District (New Deal in New Mexico MPS) S Frontage Rd. of I–40, 1.5 mi. W of Tucumcari-W interstate exit, Tucumcari, 96000268

Rio Arriba County

Gonzales, Tomas, House, Co. Rd. 155, 2 mi. E of jct. with US 84, Abiquiu vicinity, 96000258

Sandoval County

Roosevelt School (New Deal in New Mexico MPS) Calle Malinche, Bernalillo, 96000266

Union County

Amistad Gymnasium (New Deal in New Mexico MPS) 0.5 mi. E of NM 402, Amistad, 96000264

Clayton Public Schools Historic District (New Deal in New Mexico MPS) Four blocks in SE Clayton centered on 6th and Cedar Sts., Clayton, 96000269

Texas

Harris County

Stevenson, Joseph R. and Mary M., House, 804 Harold St., Houston, 96000275

Lubbock County

South Overton Residential Historic District, Roughly bounded by Broadway, Ave. Q., 19th St. and University Ave., Lubbock, 96000276

Vermont

Franklin County

St. Albans Town Hall, (Historic Government Buildings MPS), VT 36 (Lake Rd.), St. Albans, 96000257

[FR Doc. 96–4305 Filed 2–26–96; 8:45 am]

BILLING CODE 4310–70–P

Notice of Inventory Completion of Native American Human Remains and Associated Funerary Objects in the Possession of the United States Army Corps of Engineers, Tulsa District, Tulsa, OK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003(d), of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Army Corps of Engineers, Tulsa District, Tulsa, OK.

A detailed inventory and assessment of the human remains and associated funerary objects has been made by Tulsa District professional staff in consultation with the Wichita and Affiliated Tribes, the Comanche Tribe of Oklahoma, the Kiowa Tribe of Oklahoma, and the Apache Tribe of Oklahoma.

In June 1988, these human remains were exposed by shoreline erosion at site 34ST2, Waurika Lake and were subsequently removed from the ground by the Stephens County Sheriff's Department. In September 1988, U.S. Army Corps of Engineers personnel removed the partial remains of one individual from the same site. At this time, the Stephens County Sheriff's Department turned over the human remains recovered in June to the Army Corps of Engineers.

The human remains from site 34ST2 consist of a minimum of three individuals. No known individuals were identified. A total of twenty-eight cultural items were found with the human remains, including grinding stones, pottery fragments, stone tools, and animal bone fragments (bison and deer).

Site 34ST2 has been estimated to date to 500–1500 AD based on diagnostic cultural items including pottery fragments, stone tools, and chipped stone debris discovered adjacent to the burials. The continuity and styles of pottery types and stone tools strongly indicate occupation by the same cultural group throughout this period. These pottery and tool types are consistent with styles used by the Wichita and Affiliated Tribes during the early contact period. Oral history evidence presented by representatives of the Wichita and Affiliated Tribes as well as continued post-contact use and occupancy indicates this area to be well within the traditional use and occupancy area of the Wichita and Affiliated Tribes.

Based on the above mentioned information, officials of the U.S. Army Corps of Engineers, Tulsa District have determined, pursuant to 43 CFR 10 (d)(1), the human remains listed above represent the physical remains of at least three individuals of Native American ancestry. Officials of the U.S. Army Corps of Engineers have also determined that, pursuant to 25 U.S.C. 3001(A) and (B), the objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Army Corps of Engineers have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the human remains and associated funerary objects and the Wichita and Affiliated Tribes of Oklahoma.

This notice has been sent to officials of the Wichita and Affiliated Tribes, the Comanche Tribe of Oklahoma, the Kiowa Tribe of Oklahoma, the Apache Tribe of Oklahoma, and the Caddo Tribe of Oklahoma. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Mr. Robert W. Jobson, NAGPRA Coordinator, Planning Division, USACE, Tulsa District, P.O. Box 61, Tulsa, OK 74121–0061, phone (918) 669–7193 before March 28, 1996.

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Repatriation may begin after this date if no additional claimants come forward.

Dated: February 21, 1996

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeology and Ethnography Program.

[FR Doc. 96–4319 Filed 2-26-96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the United States Army Corps of Engineers, Tulsa District, Tulsa, OK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003(d), of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Army Corps of Engineers, Tulsa District, Tulsa, OK.

A detailed inventory and assessment of the human remains and associated funerary objects has been made by Tulsa District professional staff in consultation with representatives of the Caddo Tribe of Oklahoma and the Wichita and Affiliated Tribes.

In May and June, 1977, the Mahaffey Site (34CH1) at Hugo Lake, Choctaw County, OK was excavated under COE contract number DACW56–77–C–0129 due to the immediate threat of shoreline erosion exposing the site. Cultural items from this site were curated at the Museum of the Red River, OK, and the human remains were curated at the University of Arkansas. Iff 1995, the Army Corps of Engineers reunited the human remains and associated funerary objects at the Tulsa Repatriation Facility.

The human remains from Mahaffey Site (34CH1) consist of a minimum of 62 individuals. No known individuals were identified. A total of 1,1787 objects are associated with these individuals, including stone (flakes, tools, implements, and ornaments), ceramic vessels, clay pipes, and animal bone tools.

The Mahaffey Site dates to 500 BC to 1450 AD, based on cultural items found with human remains. The ceramics indicate cultural continuity through this time period, and are consistent later Caddoan ceramics. Consultation evidence presented by representatives of the Caddo Tribe of Oklahoma and the Wichita and Affiliated Tribes indicates this was a Caddoan cemetery area during this period.

Based on the above mentioned information, officials of the U.S. Army Corps of Engineers, Tulsa District have determined, pursuant to 43 CFR 10 (d)(1), the human remains listed above represent the physical remains of at least 62 individuals of Native American ancestry. Officials of the U.S. Army Corps of Engineers have also determined that, pursuant to 25 U.S.C. 3001(A) and (B), the 1,787 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Army Corps of Engineers have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the human remains and associated funerary objects and the Caddo Tribe of Oklahoma.

This notice has been sent to officials of the Caddo Tribe of Oklahoma and the Wichita and Affiliated Tribes of Oklahoma. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Mr. Robert W. Jobson, NAGPRA Coordinator, Planning Division, USACE, Tulsa District, P.O. Box 61, Tulsa, OK 74121–0061, phone (918) 669–7193 before March 28, 1996. Repatriation may begin after this date if no additional claimants come forward.

Dated: February 21, 1996

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeology and Ethnography Program.

[FR Doc. 96–4318 Filed 2-26-96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Cheney Cowles Museum, Eastern Washington State Historical Society, Spokane, WA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of an inventory of Native American human remains and associated funerary objects currently in the possession of the Cheney Cowles Museum, Eastern Washington State Historical Society, Spokane, WA.

A detailed inventory and assessment has been made by members of the Cheney Cowles Museum professional staff in consultation with the Spokane Tribe of Indians.

In 1939–1940 during excavations of sites behind the Grand Coulee Dam, the human remains and associated funerary objects were collected from four sites on the north side of the Spokane River. The human remains from sites 8, 48, and 50 represent three individuals. No known individuals were identified. A total of 1,409 objects are associated with these remains including: stone pipe bowls; iron ax heads; bone (implements, elk teeth); shell (abalone, olivella, dentallia); copper (beads, buttons, pendants); glass beads; copper beads, discs, and ornaments; twined bag and basketry fragments; hide fragments; a stone pestle; and bark matting. A total of 320 objects were excavated from two burials at Site 51 including copper (button, pendant, beads), an iron ax head, and shell (dentallia). The condition of the excavation reports for site 51 has made it impossible to determine whether the human remains were removed, and no human remains from site 51 have been located in the collections. Sites 8, 48, 50, and 51 have been identified to recent pre-contact through the mid-nineteenth century by the cultural items found with the human remains.

The location of these sites, north of the Spokane River and east of the Columbia River, is well within the exclusive traditional occupation area of the Spokane Tribe during the pre-contact era and is now tribal land within the exterior boundaries of the Spokane Reservation. The basketry fragments have identical construction as historic and present-day Spokane basketry techniques. Representatives and elders of the Spokane Tribe have indicated the manner of the interments is consistent with Spokane traditional practice. Representatives and elders of the Spokane Tribe affirms that Spokane burials are known to have existed along this particular portion of the Spokane River.

Based on the above mentioned information, officials of the Cheney Cowles Museum have determined that, pursuant to 43 CFR 10 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the Cheney Cowles Museum have also determined that, pursuant to 25 U.S.C. 3001(3)(A) and (B), the 1,409 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Cheney Cowles Museum have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between the human remains and funerary objects and the Spokane Tribe of Indians.

This notice has been sent to the Spokane Tribe of Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and funerary objects should contact Mr. Glenn Mason, Director, Cheney Cowles Museum, 2316 W. First Avenue, Spokane, WA 99204, telephone (509) 456–4931 ext. 104 before March 28, 1996 Repatriation of the human remains and associated funerary objects may begin after that date if no additional claimants come forward.

Dated: February 21, 1996

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeology and Ethnography Program.

[FR Doc. 96–4320 Filed 2-26-96; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL DEVELOPMENT CORPORATION AGENCY

Agency for International Development

Voluntary Foreign Aid Advisory Committee; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: March 12, 1996 (9:00 a.m. to 5:00 p.m.)

Location: State Department, Loy Henderson Auditorium, 23rd Street Entrance

The purposes of the meeting are: to review the impact of the budget cuts on the USAID/PVO partnership, to discuss the findings and recommendations of the USAID agency-wide study on women and development, and to consult with representatives of multilateral development banks on their policies and procedures for working with the nongovernmental sector.

The meeting is free and open to the public. However, notification by March 8, 1996, through the advisory committee headquarters is required. Persons wishing to attend the meeting must call Lisa J. Douglas (703) 351–0243 or Susan Saragi (703) 351–0244 or FAX (703) 351–0228/0212. Persons attending must include their name, organization, birthdate and social security number for security purposes.

Dated: February 15, 1996

John P. Grant,

Director, Office of Private and Voluntary Cooperation, Bureau for Humonitarian Response.

[FR Doc. 96–4317 Filed 2–26–96; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Discretionary Grant Program Awarded by the Office for Victims of Crime for Fiscal Year 1996

AGENCY: Office for Victims of Crime (OVC).

ACTION: Public announcement of availability of the funds under the Discretionary Grant Program authorized by the Victims of Crime Act (VOCA) of 1984 codified at 42 U.S.C. § 10601, *et seq.*

SUMMARY: OVC is publishing this notice to announce the availability of discretionary funding for a training and technical assistance project to improve services to child and adult victims of sexual assault and abuse.

DATES: The deadline for receipt of applications is March 22, 1996.

ADDRESSES: Mail applications to OVC, 633 Indiana Avenue, N.W., Washington, D.C., 20531. Hand delivered applications must be taken to OVC, 1301 Pennsylvania Avenue, N.W., Suite 200, Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Melanie Smith, Program Specialist, (202) 616–1860.

I. Introduction

The Office for Victims of Crime (OVC) is a component of the Office of Justice Programs within the U.S. Department of Justice. It serves as the chief advocate within the Department for all crime victim issues. In addition to ensuring that the criminal justice system addresses the victim's legitimate rights and interests, OVC's program activities include providing victim assistance and compensation grants to the states; training and technical assistance; and emergency services to victims of federal crimes. *See* 42 U.S.C.A. §§ 10601–10605.

II. Program Description

Promising Strategies and Practices for Evidentiary Medical Examinations, Including the Use of Nurse Examiners and Special Settings (Cooperative Agreement).

Award Amount: $50,000.

Purpose: To encourage the participation of child and adult victims of sexual assault and abuse in the criminal justice process by promoting victim-sensitive practices and settings for the collection of medical evidence.

Background: In many places, adult and child victims of sexual assault and abuse who arrive at hospital emergency rooms often have to contend with a lack of privacy, long waits for doctors who are busy attending to other medical emergencies, a lack of emotional support throughout the forensic examination process, and an impersonal, chaotic environment. These conditions not only compound the trauma experienced by victims, but discourage many victims from coming forward to report the crime or to obtain necessary assistance and medical services. In addition, evidence that is poorly collected and improperly preserved undermines efforts to successfully prosecute and convict sex offenders.

To address these issues, some jurisdictions have developed sexual assault nurse examiner programs, in which nurses who are specially trained to address the medical and emotional needs of victims perform the examinations in a setting especially designed for victims. The intent of these programs is to free doctors to attend to other medical emergencies; to use consistent forensic examination practices to ensure that appropriate steps are followed in collecting, handling, and storing evidence; and, most importantly, to assist child and adult victims in a compassionate and sensitive manner. Various communities have also found that examination rooms designed for victims seem to increase their willingness to participate in the criminal justice process. In addition, they have found that the use of trained nurse examiners can reduce costs and enhance the provision of services. These innovative measures not only reduce trauma to victims; they also result in credible evidence, the basis for successfully prosecuting and convicting sex offenders.

Goals

- To promote the use of sexual assault nurse examiner programs and special settings for evidentiary medical examinations of child and adult victim of sexual assault and abuse.
- To define standards for consistent, compassionate and quality practices in conducting evidentiary medical examinations of child and adult victims of sexual assault and abuse.

Objectives

- To conduct a national scope survey and assessment of promising policies, procedures, and training materials used by sexual assault nurse examiner and other non-emergency room programs serving victims of sexual assault and abuse;
- To identify and assess the components of special medical settings for evidentiary exams, including clinics or examining rooms, to include a focus area on their utility in meeting the unique needs of child victims;
- To identify competent, experienced sexual assault nurse examiners for training and program replication purposes; and
- To produce a complete guidebook on the implementation and operation of sexual assault nurse examiner programs and special settings for evidentiary medical examinations.

Program Strategy: This solicitation invites applicants to develop a guidebook on how to implement and operate nurse examiners programs for child and adult victims of sexual assault and abuse, and how to establish special settings designed for evidentiary examinations. The program will comprise three phases:

1. Assessment

This phase entails the identification and assessment of materials describing or being used by sexual assault nurse examiner programs. As part of the assessment phase, the grantee will convene an advisory committee with national-scope representation from the following fields: a practitioner and administrator of a nurse examiner program; victim assistance/advocacy; child protective services; medicine; mental health; law enforcement; and prosecution; and the judiciary; and other appropriate representatives. The advisory board will assist in developing criteria for assessing promising practices, reviewing and rating collected materials, and creating a dissemination plan for getting the materials to practitioners, medical facilities, national organizations, colleges and universities and other entities that can use the information to improve evidence collection and victim assistance practices and procedures. The activities to be completed during this phase are:

- Establishment of the advisory committee with OVC review and approval;
- Development and submission, for OVC review and approval, of a plan and criteria for surveying and assessing sexual assault nurse examiner programs and the use of victim-sensitive settings for the collection of medical evidence;
- A national-scope survey and review of literature, policies, procedures and practices for sexual assault nurse examiner programs and the use of special settings;
- Identification and description of model programs nationwide; and
- Preparation of an assessment report of findings.

2. Development of Prototype

Upon completion of the first phase, the grantee will, in collaboration with its advisory committee, develop a model program brief for implementing and operating a sexual assault nurse examiner program and for establishing special settings for expert medical examinations. The brief will highlight essential components of nurse examiner programs, as well as optional or adaptable elements from model programs around the nation. Particular attention shall be given to issues such as training and credentialing of nurse examiners, as well as qualifying nurses to testify in court. The brief will also describe examples of special settings used for evidentiary medical examinations of child and adult sexual assault and abuse victims. The activities for this phase are:

- Development and drafting of model program elements;
- Highlighting of model programs identified by the survey; and
- Review and refinement of draft product by project staff and advisory committee for OVC review and approval.

3. Finalization of Products

Upon completion of the second phase, the grantee will produce the guidebook and other project products. The activities for this phase are:

- Development and draft of guidebook incorporating the model program brief, accompanying instructions on implementing and operating a sexual assault nurse examiner program, and discussions of special settings and unique concerns of child victims;
- Review and refinement of draft;
- A dissemination strategy identifying potential and appropriate recipients of the guidebook;
- Identification, in list form with supporting vitae, of training and technical assistance staff;
- Preparation of a final report on the project; and
- Preparation of an OVC Bulletin summarizing the project's findings.

Eligibility Requirements: In addition to the requirements of Sections VI-XI, applicants must demonstrate:

- Expert knowledge of trauma experienced by child and adult victims of sexual assault and abuse;
- Active liaison with national scope nursing and/or victim advocacy associations;
- Capability to conduct a national scope information search;
- Knowledge of issues associated with the criminal justice system's handling of crime victims and, more specifically, service provision to child and adult victims of sexual assault and abuse; and
- Management and financial capability to oversee a project of this size and scope.

Award Period: 12 months.

Contact: Melanie Smith, (202) 616–3575.

VI. Eligibility Requirements

In addition to special eligibility requirement listed within the individual program descriptions above, the following will apply. Applications are invited from public and private non-profit agencies and organizations. Applicants must demonstrate that they have ample expertise and/or prior experience in the design and conduct of projects of a nature similar to that for which they are applying.

Applicants must also demonstrate that they have the management capability, fiscal integrity, and financial responsibility, including, but not limited to, an acceptable accounting system and internal controls, and compliance with grant fiscal requirements. Applicants who fail to demonstrate that they have the capability to manage the program will be ineligible for funding consideration.

VII. Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424 and OJP Form 4000/3 (1/93) Attachment to SF–424), including a program narrative. All applications must include the information outlined in this section of the solicitation (Section VI, Application Requirements) in Part IV, Program Narrative of the application (SF–424). The program narrative of the application must not exceed 35 double-spaced pages in length. Applicants that fail to adhere to this program requirement will be automatically disqualified from competition.

In accordance with Executive Order No. 12549, 28 C.F.R. 67.510, applications must also provide Certifications Regarding Lobbying, Debarment, Suspension, and other Responsibility Matters; and Drug-Free Workplace Requirements (OJP Form 4061/6), which will be supplied with the application package, and must be submitted with the application.

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $100,000. Financial questionnaires must be completed by new non-governmental (except public colleges, universities, and hospitals) applicants. This includes a review of the accounting system and a determination that periodic audits are performed to ensure fiscal integrity. New or supplemental awards may not be made to applicants with delinquent financial or progress reports, delinquent or unresolved audit reports, delinquent federal debts, other unresolved issues of fiscal integrity, or to applicants who have been debarred or suspended from federal financial and non-financial assistance and benefits under federal programs and activities.

Where indicated, cooperative agreements are awarded to states, units of local government, or public or private non-profit organizations at the discretion of OVC. Cooperative agreements are used when substantial involvement is anticipated between OVC and the recipient during performance of the contemplated activity. Interagency agreements between OVC and other governmental units or agencies are negotiated by the entities involved.

The following information must be included in the application (SF–424) Part IV Program Narrative:

A. Organizational Capability

Applicants must demonstrate that they are eligible to compete for a grant on the basis of the eligibility criteria established in Section VI of this solicitation. Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified in each program description listed above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of the initiative for which they are applying. Applicants are invited to append examples of prior work products of a similar nature to their application.

Applicants must demonstrate that their organization has or can establish fiscal controls and accounting procedures that assure that federal funds available under this agreement are disbursed and accounted for properly. Non-profit applicants who have not previously received federal funds will be asked to submit a copy of the Office of Justice Programs Accounting System and Financial Capability Questionnaire (OJP Form 7120/1). Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. The CPA certification (Section H) is required only of those non-profit applicants who have not previously received federal funding.

B. Program Goals and Objectives

A brief statement of the applicant's understanding of the goals and objectives of the program should be included. The application should also include a problem statement and a discussion of the potential contribution of this program to the field.

C. Program Strategy

Applicants should describe the proposed approach for achieving the goals and objectives of each program. A detailed description of how the activities and projects of each program would be accomplished should be included.

D. Program Implementation Plan

Applicants should prepare a plan that outlines the major activities involved in implementing the program, describe how they will allocate available resources to implement the project, and also describe how the program will be managed.

The plan must also include an organizational chart depicting the roles and describing the responsibilities of key organizational and functional components and a list of key personnel responsible for managing and implementing the major stages of the project. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position. This documentation and individual resumes may be submitted as appendices to the application.

E. Time-Task Plan

Applicants must develop a time-task plan for the duration of the project periods, clearly identifying major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the activities and products. Applicants should also indicate the anticipated cost schedule per month for the entire project period.

F. Products

Applicants must describe concisely the interim and final products of each stage of the program.

G. Program Budget

Budgets must be accompanied by a detailed justification for all costs, including the basis for computation of these costs. Applications containing contract(s) must include detailed budgets for each organization's expenses.

H. Assessment

Each grant recipient will be required to submit formal findings from an assessment, within 60 days of the completion of each year's activities and within 90 days of project completion. Each application must provide a plan for assessing the project.

VIII. Procedures for Selection

All applications will be evaluated and rated based on the extent to which they meet the established weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements set forth in Section VII. Applications will be evaluated by a peer review panel according to the OVC Competition and Peer Review Guidance.

Applications submitted in response to the competitive announcements will be evaluated by a peer review panel. The results of the peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings." These ordinarily will be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews, will assist OVC in considering competing applications and in selection of the application for funding. The final award decision will be made by the OVC Director.

Applications for each program description, except where other point values or categories have been specifically identified, will be evaluated and rated by the peer review panels based on the extent to which they meet the following criteria:

A. Utility of the Project (10 points)

This refers to the applicant's response to the stated project purpose, goals, and objectives, and the applicant's explanation of the usefulness of the project to the field.

B. Project Strategy/Design (30 points)

This provides a description of project components and activities; a specific plan for how the grant applicant intends to achieve the purpose, goals and objectives of the funded program. The strategy or design must include clear

descriptions of interim deliverables and final products.

C. Implementation Plan (10 points)

This plan will be judged on the realistic identification of tasks according to increments in the project period, and the assignment of specific staff to tasks on the time-task line.

D. Organizational Capability (30 points)

Points will be awarded based on the applicant's statement of the organization's capability to successfully undertake this federally funded project. This will consist of two parts: (1) a specific description of the applicant's management structure, previous experience with similar or related efforts, and financial capability (15 points); and (2) a project management plan and documentation of the professional staff members' unique qualifications to perform their assigned tasks (15 points).

E. Budget (15 points)

Points will be awarded based on the enumeration and accompanying narrative of grant costs, to be evaluated for clarity, reasonableness, allowability, and cost effectiveness.

F. A Plan To Assess the Project's Accomplishments (5 points)

This assigns points based on the grant applicant's plan for assessing the impact of the project in accomplishing its goal(s).

IX. Submission Requirements

All applicants responding to this solicitation are subjected to the following requirements:

(1) Upon request to OVC, the necessary forms for application will be provided, along with Department of Justice certification information.

(2) Applicants must submit the original signed application (Standard Form 424) and two copies to OVC. Applications should not be bound. Applicants should also include Certifications Regarding Lobbying; Debarment; Suspension and other Responsibility Matters; and Drug-Free Workplace Requirements (Form 4061/6), in order to meet the requirements of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D) and the Disclosure of Lobbying Activities Form (SF LLL) in accordance with 31 U.S.C. § 1352.

(3) All applications must be received by mail or hand delivered to OVC by 5 p.m. Eastern Time by March 22, 1996. Those applications sent by mail should be addressed to: Office for Victims of Crime, U.S. Department of Justice, 633 Indiana Avenue, N.W., Washington D.C. 20531, ATTN: Administrative Officer. Hand-delivered applications must be taken to OVC, 1301 Pennsylvania Avenue N.W., Suite 200, Washington, D.C. 20006, between the hours of 8 a.m. and 5 p.m. except weekends or federal holidays. Applications must be received by 5 p.m. on the established deadline date. Postmarks WILL NOT be accepted.

OVC will notify applicants in writing of the receipt of their application. Applicants also will be notified by letters as to the decision made regarding whether or not their submission will be recommended for funding. Applications will be reviewed as Peer Review Panels can be convened. Every effort will be made to review applications in a timely manner.

X. Civil Rights Compliance

A. All recipients of Crime Victims Fund assistance, including contractors, must provide Certified Assurances that they are in compliance with the non-discrimination requirements of the Victims of Crime Act of 1984, as amended, which states: No person shall on the ground of race, color, religion, national origin, [disability], or sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any undertaking funded in whole or in part with sums made available under this chapter.

42 U.S.C. § 10604.

Recipients also must assure compliance with the following additional statutes and regulations: Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Subtitle A, Title II of the Americans With Disabilities Act of 1990, codified at 42 U.S.C. § 12101, *et seq.*; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681–1683; the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, *et seq.*; and Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, subparts C, D, E, and G.

B. In the event a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

XI. Audit Requirements

An audit is required for agencies receiving federal funds, with some exceptions. The purpose of an audit is to determine whether federal funds are being used properly and effectively. Each funded agency must provide the name of the federal cognizant agency where their audit report is submitted. In most cases, the agency that receives an applicant's audit is the agency that provides the most direct funds to applicant during the current fiscal year. If you do not know the name of the cognizant agency, please check with your budget office. More detailed information on audit requirements are listed in the Office of Justice Programs Guideline Manual, Financial and Administrative Guide for Grants, May 15, 1990.

XII. Catalog of Federal Domestic Assistance Numbers

16.582 Crime victim assistance/ discretionary grants
16.583 Children's Justice Act for Native American Indian Tribes

Aileen Adams,

Director.

[FR Doc. 96–4321 Filed 2–26–96; 8:45 am]

BILLING CODE 4410–18–P

Bureau of Justice Statistics

Notice of Information Collection Under Review

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for the public to comment.

The purpose of this notice is to allow an additional 30 days for public comment from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. If you have additional comments or suggestions, please include them with your written response. If a copy of the proposed collection instrument with instructions is not published in this notice please contact the agency representative listed below if you wish to receive a copy: Ms. Caroline Wolf Harlow, Room 1009, Bureau of Justice Statistics, Indiana Building, 633 Indiana Avenue NW., Washington, DC 20531.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) Title of the Form/Collection: Survey of Inmates in State Correctional Facilities, 1996–1997. Survey of Inmates in Federal Correctional Facilities, 1996–1997.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: NPS–12, 13, 14, 24, 25, 26, 27, and 32. Bureau of Justice Statistics, United States Department of Justice.

(4) Who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. Other: State, Local or Tribal Government. This survey will be used to profile State and Federal prison inmates nationwide; to determine trends in inmate composition, criminal history and alcohol and drug use; and gun use and crime; and to report on the victims of crime. The data will be used by BJS, Congress, the Executive Office of the President, researchers, practitioners, and others in the criminal justice community. No other collection series provides these data.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 19,428 respondents at 1 hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 19,428 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW., Washington, DC 20530.

Dated: February 21, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–4340 Filed 2–26–96; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–016]

NASA Advisory Council; Renewal of the NASA Advisory Council and Related Committees

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of renewal of the NASA Advisory Council and related committees.

SUMMARY: Pursuant to section 14(b)(1) of the Federal Advisory Committee Act, Public Law 92–463, as amended, and after consultation with the Committee Management Secretariat, General Services Administration, the National Aeronautics and Space Administration has determined that the renewal of the NASA Advisory Council and its committees is in the public interest in connection with the performance of duties imposed upon NASA by law.

The following advisory committees are being renewed:

—NASA Advisory Council
—Advisory Committee on the International Space Station
—Aeronautics Advisory Committee
—Earth Systems Science and Applications Advisory Committee
—Life and Microgravity Sciences and Applications Advisory Committee
—Minority Business Resource Advisory Committee
—Space Science Advisory Committee
—Technology and Commercialization Advisory Committee

FOR FURTHER INFORMATION CONTACT: Ms. Anne L. Accola, Code Z, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0682.

SUPPLEMENTARY INFORMATION: The function of the Council is to consult with and advise the NASA Administrator or designee with respect to plans for, work in progress on, and accomplishments of NASA's aeronautics and space programs.

Dated: February 21, 1996.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–4315 Filed 2–26–96; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMUNICATIONS SYSTEM

Telecommunications Service Priority System Oversight Committee; Meeting

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

SUMMARY: A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Thursday, March 21, 1996 from 9:00 a.m. to 4:30 p.m. The meeting will be held at the Federal Emergency Management Agency Headquarters, 500 C Street, SW, Washington, DC. The agenda is as follows:

—Opening/Administrative Remarks
—Review Action Items from September meeting
—TSP Program Office Activities
—FEMA Sponsorship of State and Local TSP Requests
—TSP National Information Infrastructure Issue Working Group
—Cellular Priority Access Service Update
—TSP System Oversight Committee Charter
—TSP and the Defense Information System Network
—Old Business/New Business

Anyone interested in attending or presenting additional information to the Committee, please contact LCDR Angela Abrahamson, Manager, TSP Program Office, (703) 607–4930, or Betty Hoskin, (703) 607–4932 by March 15, 1996.

Dennis Bodson,

Chief, Technology and Standards.

[FR Doc. 96–4344 Filed 2–26–96; 8:45 am]

BILLING CODE 5000–03–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 AND 50–374]

Commonwealth Edison Co.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is

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considering issuance of amendments to Facility Operating License Nos. NPF–11 and NPF–18 issued to Commonwealth Edison Company (ComEd, the licensee) for operation of the LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois.

The proposed amendment would change the setpoints for the automatic primary containment isolation signal upon detection of a high main steamline tunnel differential temperature. Additionally, the proposed amendments would delete the automatic isolation function upon detection of a high main steamline tunnel temperature. Both these temperature generated signals detect possible steam leaks in the main steamline tunnel and initiate the isolation signals cited above, thereby providing automatic closure of the main steamline isolation valves (MSIVs) and the main steamline drain isolation valves. The intent of the proposed actions is to minimize spurious isolation signals which, in turn, would trip the reactor. The licensee proposes to provide for early detection of a main steamline break by relying on an automatic isolation signal which would be generated by a main steamline leak of 100 gallons per minute (gpm) or greater. The current isolation setpoints are based on a steam leakage of 25 gpm in the main steamline tunnel.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

a. There is no effect on accident initiators so there is no change in probability of an accident. The accident analysis associated with a steam line break in the main steam line tunnel assumes an instantaneous circumferential break of a main steam line downstream of the outermost isolation valve. The leak detection isolation on differential temperature based on less than or equal to 10 percent of a calculated critical crack of a main steam line is only a precursor of a break, and thus does not affect the probability of a break.

b. There is no or minimal effect on the consequences of analyzed accidents due to deletion of the automatic isolation on high temperature leak detection in the main steam line tunnel or due to increasing the leak detection differential temperature setpoint and allowable values to detect a 100 gpm steam leak from a crack in a main steam line. The worst case accident corresponding to main steam lines outside of the reactor vessel and primary containment boundary is a main steam line break, which bounds the dose consequences of any size steam leak less than a full break. Also, a 200 gpm steam leak results in a calculated offsite dose within the annual whole body dose limit and the radioiodine release limit per 10 CFR 50 Appendix I, if detected and isolated within several weeks.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The purpose of the main steam line isolation is based on leak detection and automatic isolation for leakage in the main steam line tunnel downstream of the outermost isolation valve. This change maintains this capability with only the leak detection based on high differential temperature in the steam line tunnel. Also, the primary containment isolation logic for main steam line leak detection isolation on high differential temperature remains the same. Thus no new or different accident is created.

(3) Involve a significant reduction in the margin of safety because:

The increased setpoint for differential temperature leak detection for automatic isolation of the main steam lines due to a steam leak outside of the primary containment is based on calculated/analyzed response to a steam leak [that is] small compared to the leak from a critical crack. The leak detection isolation logic remains single failure proof. The previous evaluation of diversity of isolation parameters considered the ambient temperature and differential temperature isolations as one parameter in Table 5.2–8 of the LaSalle [Updated Final Safety Analysis Report] UFSAR. The deletion of leak detection isolation of the main steam lines based on high ambient temperature in the main steam line tunnel is acceptable, because the differential temperature isolation has been analyzed to detect and isolate the main steam lines based on bounding inlet air temperatures. Therefore, the Main Steam Line High flow, vessel low level, and the differential temperature instruments maintain adequate diversity of isolation parameters without main steam line tunnel high temperature.

The differential temperature leak detection for the main steam line tunnel depends on normal ventilation flow to detect leakage. Therefore, the trip function will be declared inoperable upon loss of or shutdown of normal ventilation. The Technical Specifications currently allow the main steam tunnel high temperature and high differential temperature isolation channels to be inoperable for up to 4 or 12 hours during the performance of specified required surveillances. The 12 hours allowed outage time is currently for an 18 month surveillance requirement. The addition of allowance for up to 12 hours allowed outage time to recover normal ventilation following an unplanned loss of normal ventilation is reasonable, since the time is small compared to the time frame over which a pipe crack grows. Also, supplemental monitoring of water collection sumps and area temperature in the main steam line tunnel provides heightened awareness of operators to detect leakage in the main steam line tunnel during the time normal ventilation is not available. The planned shutdown of normal ventilation is currently allowed for up to 4 hours by the Technical Specifications. The unplanned loss of normal ventilation is expected to be less than two times per cycle upon completion [of] design changes to make the isolation logic power supply D.C. instead of A.C. through motor generator sets.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 28, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 18, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Dated at Rockville, Maryland, this 21st day of February 1996

For the Nuclear Regulatory Commission.

M. David Lynch,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–4343 Filed 2–26–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Intention To Request Review of an Expiring Information Collection; SF 2823

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for a clearance of an expiring information collection. SF 2823, Designation of Beneficiary for Federal Employees Group Life Insurance, is used by any Federal employee or retiree covered by the Federal Employees Group Life Insurance Program to instruct how to distribute the proceeds of his or her life insurance when the statutory order of precedence does not meet his or her needs.

We estimate 1,000 SF 2823 forms are completed annually. Each form takes approximately 15 minutes to complete for an annual estimated burden of 250 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-Mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received by no later than April 29, 1996.

ADDRESS: Send or deliver comments to Kenneth H. Glass, Chief, Insurance Operations Division, Retirement and Insurance Service, 1900 E Street NW., Room 3415, Washington, DC 20415–0001.

FOR FURTHER INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Team Leader, Management Services Division, (202) 606–0623.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–4374 Filed 2–26–96; 8:45 am]

BILLING CODE 6325–01–M

PRESIDENTIAL ADVISORY COMMITTEE ON GULF WAR VETERAN'S ILLNESSES

Meeting

AGENCY: Presidential Advisory Committee on Gulf War Veteran's Illnesses.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act, this notice is hereby given to announce an open meeting of the Presidential Advisory Committee on Gulf War Veterans' Illnesses.

DATE: March 26, 1996, 8:30 a.m.–5:00 p.m.

PLACE: Omni Parker House Hotel, 60 School Street, Boston, MA 02108.

SUPPLEMENTARY INFORMATION: The President established the Presidential Advisory Committee on Gulf War Veterans' Illnesses by Executive Order 12961, May 26, 1995. The purpose of this committee is to review and provide recommendations on the full range of government activities associated with Gulf War veterans' illnesses. The committee reports to the President through the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Veterans Affairs. The committee members have expertise relevant to the functions of the committee and are appointed by the President from non-Federal sectors.

Tentative Agenda

Tuesday, March 26, 1996

8:30 a.m. Call to order and opening remarks
8:35 a.m. Followup on clinical syndromes panel meeting
9:15 a.m. Public comment
10:15 a.m. Break
10:30 a.m. Public comment (cont.)
11:30 a.m. Briefing and discussion: Research on environmental health hazards and the Gulf War
12:30 p.m. Lunch
1:30 p.m. Briefings and discussion: Research on environmental health hazards and the Gulf War (cont).
3:30 p.m. Break
3:45 p.m. Briefing and discussion: Outreach
4:40 p.m. Committee and staff discussion: Next steps
5:00 p.m. Meeting adjourned

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Members of the public who wish to make oral statements should contact the Advisory Committee at the address or telephone number listed below at least five business days prior to the meeting. Reasonable provisions will be made to include on the agenda presentations from individuals who have not yet had an opportunity to address the Advisory Committee. Priority will be given to Gulf War veterans and their families. The Advisory Committee Chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. People who wish to file written statements with the Advisory Committee may do so any time.

FOR FURTHER INFORMATION CONTACT: Miles W. Ewing, Presidential Advisory Committee on Gulf War Veterans' Illnesses, 1411 K Street, N.W., suite 1000, Washington, DC 20005, Telephone: (202) 761–0066, Fax: (202) 761–0310.

Dated: February 21, 1996.

C.A. Bock,

Federal Register Liaison Officer, Presidential Advisory Committee on Gulf War Veterans' Illnesses.

[FR Doc. 96–4292 Filed 2–26–96; 8:45 am]

BILLING CODE 3610–76–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 31a–2—SEC File No. 270–174—OMB Control No. 3235–0179
Rule 7d–1—SEC File No. 270–176—OMB Control No. 3235–0311
Form N–14—SEC File No. 270–297—OMB Control No. 3235–0336

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of extension on the following rules and form:

Rule 31a–2 concerns preservation of records by registered investment companies and certain majority-owned subsidiaries thereof. The Commission periodically inspects the operations of all registered investment companies to ensure their compliance with the provisions of the Investment Company Act of 1940 ("the Act") and the rules thereunder. A significant portion of the time used in these inspections is spent reviewing the information contained in the books and records required to be preserved by Rule 31a–2. Each of the 4,902 respondents incur an average estimated 15.4 burden hours annually to comply with this requirement.

Rule 7d–1 specifies conditions under which a Canadian (or other foreign) management investment company may request an order from the Commission permitting it to register under the Act. The rule's information collection requirements seek to ensure that the substantive provisions of the Act may be enforced as a matter of contract right in the United States or Canada by the company's shareholders or the Commission.

The Commission believes that three Canadian investment companies and one other foreign investment company have registered under Rule 7d–1 and are currently active. Apart from information collection requirements imposed on all registered investment companies (which are reflected in the information collection burdens applicable to those requirements), Rule 7d–1 imposes ongoing burdens to maintain in the United States records of the company and related records of its investment adviser and to update, as necessary, a list of affiliated persons of the company, investment adviser, and principal underwriter. The four companies and their associated persons spend approximately 101 hours annually complying with the requirements of the rule. This estimate is a revision of the 75 burden hours currently allocated to Rule 7d–1. The revision reflects the inclusion of an additional respondent and the Commission staff's administrative experience with the rule.

Canadian and other foreign investment companies have not sought to register under the Act pursuant to Rule 7d–1 in the past three years. If a company were to file an application under the rule, the Commission estimates that the rule would impose initial information collection burdens of approximately 90 hours on the company and its associated persons. Since no fund has sought to register under the Act pursuant to Rule 7d–1 in the last three years, the Commission is not including those burdens in its calculation of the annual burden hours.

After registration, a foreign company may file a supplemental application seeking special exemptive relief from provisions of the Act based on the company's particular circumstances. Because such filings are not mandated by Rule 7d–1 and are made at a company's discretion, no burden hours are allocated for such applications.

Form N–14 is the form for registration of securities to be issued by investment companies registered under the Act in business combination transactions specified in Rule 145(a) and exchange offers. There are approximately 95 registrants filing annually on Form N–14. Approximately 58,900 hours are used to meet the requirements of Form N–14. This represents 620 hours per registrant per year.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 16, 1995

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4314 Filed 2–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36864; File No. 600–28]

Notice of Extension of Comment Period; Request by ProTrade for Exemption From Registration as a Clearing Agency

February 21, 1996.

On September 22, 1994, ProTrade filed with the Securities and Exchange Commission ("Commission") a Form CA–1 requesting an exemption from registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934[1] and Rule 17Ab2–1 thereunder.[2] ProTrade has supplemented the information provided in its Form CA–1 with letters to the Commission dated October 27, 1994; April 18, 1995; September 26, 1995; and October 2, 1995.

ProTrade's requested exemption from registration as a clearing agency was published for notice and comment in the **Federal Register** on December 20, 1995.[3] In that notice, the Commission requested public comments on ProTrade's requested exemption by February 16, 1996.

Recently, the Commission's staff has received requests from interested persons for an extension of time within which to comment on the ProTrade notice. These persons claim that the ProTrade request involves complicated and significant material and requires a longer comment period to ensure that interested persons have sufficient time in which to conduct thorough analyses.

Accordingly, in light of the substantial nature of the ProTrade request and in light of the Commission's desire to consider the views of all interested persons on the subject, the Commission believes that an extension of the comment period is appropriate. Therefore, the Commission is extending the comment period for responding to Securities Exchange Act Release No. 36587 [File No. 600–28] from February 16, 1996, until March 8, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4312 Filed 2–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36863; File No. SR–CBOE–96–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Liability of the Exchange and its Directors, Officers, Employees, and Agents, and Requiring Members to Pay the Exchange's Costs of Litigation Under Specified Circumstances

February 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 18, 1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend various Exchange rules pertaining to the liability of the Exchange, to adopt new Rule 6.7A prohibiting a member from instituting certain types of legal proceedings against Exchange officials, and to adopt new Rule 2.24 requiring a member to pay the Exchange's costs of litigation under specified circumstances. The text of the proposed

[1] 15 U.S.C. 78q–1 (1988).

[2] 17 CFR 240.17Ab2–1 (1995).

[3] Securities Exchange Act Release No. 36587 (December 13, 1995), 60 FR 65697 (December 20, 1995).

[4] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

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rule change is available at the Office of the Secretary, the CBOE, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE include statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Exchange Liability

The principal rule concerning Exchange liability is Rule 6.7(a), which currently provides that the Exchange shall not be liable to members, member organizations, or to associated persons for loss, damages, or claims arising out of the use or enjoyment of the facilities afforded by the Exchange, whether the loss, damages, or claims resulted from negligence or other unintentional errors or omissions, or from a cause not within the control of the Exchange. The proposed amendment to Rule 6.7(a) clarifies that, except as otherwise specifically provided in the rules of the Exchange, neither the Exchange nor its directors, officers, committee members, employees, or agents shall be liable to members or their associated persons except where the Exchange's liability is attributable to willful misconduct, gross negligence, bad faith, fraud, or criminal acts.

The proposed amendment to Rule 6.7 also incorporates, without material change, certain provisions which are currently set forth in Rules 23.14 and 24.12 to the effect that the Exchange is not liable for errors, omissions, or delays in collecting or disseminating various kinds of data, and the Exchange does not warrant such data. According to the Exchange, the purpose of moving these limitations of liability and disclaimers of warranty to Rule 6.7 is to place related subjects in a single rule.

In addition, the CBOE proposes to make non-substantive amendments to Rules 7.11, 23.14, and 30.75, and to delete Rule 24.12 in order to eliminate provisions that duplicate what is set forth in Rule 6.7, as well as to clarify and conform the language of all of the rules pertaining to the liability of the Exchange.

The CBOE also proposes certain changes to Interpretation and Policy .03 to Rule 6.7, which currently limits the Exchange's liability with respect to orders routed through the Exchange's Order Routing System ("ORS") once the orders are printed at printers located on the Exchange floor. These changes clarify the description of the printers to which orders may be routed, and limits the liability of the Exchange once an order routed through ORS appears on a public automated routing ("PAR") system terminal screen.

Legal Proceedings Against Exchange Directors, Officers, Employees, or Agents

The proposed amendment adds new Rule 6.7A, which prohibits a member or associated person from instituting a lawsuit or any other legal proceeding against any director, officer, employee, agent, or other official of the Exchange or any subsidiary, for actions taken or omitted to be taken in connection with the official business of the Exchange or any subsidiary. Rule 6.7A, however, does not apply to violations of the federal securities laws where a private right of action exists, to appeals of disciplinary actions, or to other actions by the Exchange as provided for in the rules of the Exchange. According to the Exchange, the purpose of disallowing lawsuits or other legal proceedings against Exchange officials or agents when they are acting on Exchange business is to eliminate the potential exposure to personal liability of such persons, which impairs their ability to perform their duties.

Exchange's Cost of Defending Legal Proceedings

The proposed amendment adds new Rule 2.24, which requires a member or associated person who fails to prevail in a lawsuit or other legal proceeding instituted by that person against the Exchange or other specified persons, and related to the business of the Exchange, to pay all reasonable expenses, including attorneys' fees, incurred by the CBOE in its defense during such proceeding. This provision is applied only in the event that the Exchange's expenses exceed fifty thousand dollars. According to the Exchange, this rule is intended to discourage unfounded, vexatious litigation against the CBOE where the Exchange's costs of defense are significant, without having any undue chilling effect on legitimate claims of members. The proposed rule would apply to all types of legal proceedings that might be instituted by members against the Exchange or any of its directors, officers, committee members, employees, or agents, except that it expressly would not apply to disciplinary actions by the Exchange or to appeals therefrom, to other administrative appeals of Exchange actions, or to any specific instance where the Board has granted a waiver of this provision.

The CBOE believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that, by limiting the liability of the Exchange and its directors, officers, employees, and agents, by precluding certain types of legal actions by members against such persons individually, and by discouraging frivolous lawsuits against the Exchange, it will reduce the costs of the Exchange in responding to claims and lawsuits, thereby permitting the resources of the Exchange to be better utilized for promoting just and equitable principles of trade and for protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the CBOE consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rue change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–02 and should be submitted by March 19, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4352 Filed 2–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36861; File No. SR–DTC–96–05]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change to Modify the Procedures for Inter-depository Deliveries

February 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 26, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–96–05) as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change on a temporary basis through August 31, 1996.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify the procedures for deliveries through the interface between DTC and the Philadelphia Depository Trust Company ("Philadep") as part of the planned conversion on February 22, 1996, of DTC's money settlement system to an entirely same-day funds settlement ("SDFS") system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify the procedures for deliveries through the interface between DTC and Philadep as part of the planned conversion of DTC's money settlement system to an entirely SDFS system. In a 1994 memorandum issued jointly with the National Securities Clearing Corporation ("NSCC"), DTC described the planned conversion of DTC's money settlement system to an entirely SDFS system and outlined the proposed modifications to the interface delivery procedures.[3]

In the next-day funds settlement ("NDFS") system, DTC currently processes deliveries to and from Philadep through its inter-depository interface. This interface has been enhanced to improve efficiency while allowing both depositories to employ separate risk management controls. Until the conversion on February 22, 1996, to SDFS for all securities transaction settlements, the proposed procedures will apply only to securities currently eligible in DTC's SDFS system. Upon the conversion, the procedures will apply to the settlement of all securities transactions between DTC and Philadep.

When processing participants' deliveries to Philadep, DTC will employ an immediate update technique whereby a delivering participant's security position, collateral, and settlement accounts are immediately updated if that delivering participant has sufficient securities and collateral to allow the delivery to be completed. The delivering participant's position is reduced by the quantity of securities it is delivering, its settlement account is credited for the settlement value of the transaction, and its collateral monitor is increased by the settlement credit it has incurred and is reduced by the collateral value of the securities it is delivering (provided the securities being delivered are part of the participant's collateral position). To facilitate processing in the event of a failure to settler incident, DTC plans to establish a maximum net debit cap for interface activity at $400 million upon the scheduled conversion on February 22, 1996.

Once a delivery satisfies risk management controls and completes at DTC (*i.e.*, the participant has sufficient securities to make the delivery and the participant's collateral monitor will not become negative because of the delivery), it is sent to Philadep where it is subject to Philadep's internal risk management controls. In certain instances, Philadep's internal risk management controls may prevent a delivery from completing (*i.e.*, the receiving participant may not have sufficient collateral or the receipt will cause the participant to exceed its net debit cap) and may cause those deliveries to pend in Philadep's system. Deliver orders and payment orders that fail to successfully complete in Philadep's system at the end of each processing day (approximately 3:45 p.m.) will be returned to DTC, and DTC will reverse the deliveries to the original delivering participants. Such reversals will not be subject to Reciever-Authorized Delivery ("RAD") processing[4] or risk management controls.

DTC believes the proposed rule change is consistent with Section 17A of the Act[5] and the rules and regulations thereunder because the proposed rule change will contribute to efficiencies in processing deliveries in the interface between DTC and Philadep. DTC also believes the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the proposed

[1] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries submitted by DTC.

[3] The Depository Trust company and National Securities Clearing Corporation, Memorandum (July 29, 1994).

[4] RAD allows a participant to review and either approve or cancel incoming deliveries before they are processed in DTC's system. For a further discussion of DTC's RAD procedures, refer to Securities Exchange Act Release No. 25886 (July 6, 1988), [File No. SR–DTC–88–07] (notice of filing and immediate effectiveness of a proposed rule change implementing DTC's RAD procedures)

[5] 15 U.S.C. 78q–1 (1988).

rule change modifies the current interface procedures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

All participants were informed of the proposed rule change by a DTC Important Notice,[6] as well as by the 1994 memorandum referred to above.[7] Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[8] requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes that DTC's proposed procedures relating to inter-depository deliveries are consistent with DTC's obligations under Section 17A(b)(3)(F) because the proposed rule change establishes procedures for the processing of inter-depository deliveries between participants of DTC and Philadep.

Under the proposed procedures, DTC will immediately update a participant's account for deliver orders and payment orders sent to a Philadep participant through the interface. In the event that the delivery fails to complete at Philadep by the end of the day, the procedures provide a mechanism by which DTC will reverse the transaction to the original delivering participant without subjecting that reversal to RAD or risk management controls. DTC has represented that the expected volume of deliveries through the interface and the possibility of such reversal procedures being employed are minimal. However, the Commission encourages DTC to examine and consider future enhancements to the interface to provide a mechanism through which DTC participants can receive notification of transactions pending at Philadep.

The Commission realizes that the proposed inter-depository delivery procedures could create the situation where an inter-depository reversal resulting from an uncompleted delivery at Philadep forces a DTC participant to violate its net debit cap at DTC near the end of the day. Therefore, the Commission believes the proposed procedures for inter-depository reversals should be carefully monitored before they become permanent. DTC has agreed to monitor activity through the DTC-Philadep interface and to submit monthly reports to the Commission concerning the number of inter-depository reversals performed pursuant to the proposed procedures that cause participants to violate their net debit caps. For this reason, the Commission is temporarily approving the proposed rule change through August 31, 1996.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval of the proposed procedures will allow DTC participants to utilize the procedures for deliveries through the interface between DTC and Philadep immediately following DTC's conversion to an all SDFS system on February 22, 1996.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR-DTC-96-05 and should be submitted by March 19, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-96-05) be, and hereby is, approved on a temporary basis through August 31, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: February 15, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-4310 Filed 2-26-96; 8:45 a.m.]

BILLING CODE 8010-01-M

[6] DTC Important Notice (January 9, 1996).

[7] *Supra* note 3.

[8] 15 U.S.C. 78q-1(b)(3)(F) (1988).

[Release No. 34-36867; File No. SR-DTC-96-06]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Amending Rules and Cross-Guarantee Agreement to Accommodate Same-Day Funds Settlement

February 21, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 2, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-96-06) as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend DTC's rules and to amend the current Netting Contract and Limited Cross-Guarantee agreement between the National Securities Clearing Corporation ("NSCC") and DTC ("NSCC/DTC Agreement") to accommodate the conversion of DTC's money settlement system entirely to a same-day funds settlement ("SDFS") system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[9] 17 CFR 200.30-3(a)(12) (1995).

[1] 15 U.S.C. § 78s(b)(1) (1988).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On February 22, 1996, DTC plans to combine its next-day funds settlement ("NDFS") system and its SDFS system into a single SDFS system, which will be based on the design of the current SDFS system with some modifications. The conversion was described in three memoranda issued jointly by NSCC and DTC[3] and was discussed in a DTC proposed rule change approved by the Commission on May 16, 1995.[4]

In order to assure an efficient conversion, some of the modifications to the current SDFS system were implemented at various times during 1995. The amendments which are the subject of this proposal to DTC's rules are technical changes and are mainly concerned with the elimination of provisions relating to the NDFS system. Certain amendments to the rules are being made for purposes of clarity and consistency of style.[5]

The conversion also requires DTC to make certain amendments to the current NSCC/DTC Agreement.[6] The current NSCC/DTC Agreement provides that with respect to participants common to both entities ("common members"), DTC and NSCC agree to net daily a common member's final net settlement debit or credit at one entity with the common member's final net settlement credit or debit at the other entity. In most instances, the result will be either one net debit obligation payable to either DTC or NSCC or one net credit receivable from either DTC or NSCC.[7] In the event of a default of a common member, the current NSCC/DTC Agreement also provides that any resources remaining after the failed common member's obligations to the guaranteeing clearing agency have been satisfied will be made available to the other clearing agency. The guarantee is not absolute but rather is limited to the extent of the resources relative to the failed member remaining at the guaranteeing clearing agency. The principal resources will be the failed member's settlement net credit balances and its deposits to the clearing agencies' clearing funds.[8]

The proposed rule change amends the current NSCC/DTC Agreement to include cross-guarantees of NSCC and DTC arising from transactions effected through NSCC's continuous net settlement ("CNS") system. NSCC's CNS system continually nets all trades due to settle the next day against each other and against prior days' unsettled long and short positions in the same securities. NSCC is the contra-party to each CNS transaction. Thus, NSCC participants obligated to deliver securities will deliver the securities to NSCC as free book-entry movements at DTC ("short covers"). NSCC participants obligated to receive securities will receive the securities from NSCC as free book-entry movements at DTC ("long allocation").

Certain cross-guarantees between NSCC and DTC are being established to permit transactions to flow smoothly between DTC's system and the CNS system in a collateralized SDFS environment. DTC will provide a guarantee to NSCC of all long allocations, and NSCC will provide a guarantee to DTC for all short covers. The guarantees provided in the amended NSCC/DTC Agreement, among other things, will ensure that debits created in DTC's system will continue to be collateralized when the securities serving as collateral are delivered into the CNS system as short covers. The guarantees also will reduce risk at NSCC by ensuring that long allocations or the approximate value of long allocations will be made available to NSCC to cover certain exposures.

When securities that are received versus payment in DTC's system are turned into CNS short covers, NSCC will provide a guarantee to DTC equal to the prior day's closing price of the securities.[9] If CNS short covers are satisfied from securities that were not received versus payment in DTC's system, NSCC will provide a guarantee to DTC equal to the prior day's closing market value less an applicable haircut. DTC will take this guarantee into account for collateral monitor purposes.

When long allocations to participants are redelivered in DTC's system, DTC will provide a guarantee to NSCC equal to the prior day's closing price of the long allocations less an applicable haircut. The guarantee will serve as a collateral substitute for long allocations and only will be called on to the extent a participant fails to settle due to insolvency and NSCC's own internal close-out procedures result in a net loss to NSCC. DTC will apply its normal collateralization controls to the value of its guarantee to NSCC to ensure that it has sufficient collateral to cover potential guarantee obligations to NSCC as the result of a participant redelivering CNS long allocations in DTC's system.

DTC believes the proposed rule change is consistent with Section 17A of the Act[10] and the rules and regulations thereunder because the conversion entirely to an SDFS system will promote efficiency and safety in the clearance and settlement of securities transactions. DTC also believes the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the proposal modifies DTC's current SDFS system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The conversion plans were described in detail in the three joint memoranda referred to above and have been discussed extensively with participants and securities industry organizations. The 1994 memorandum described changes in the conversion plans as a result of those discussions. Since the distribution of the 1994 memorandum, written comments from DTC participants or others have not been solicited or received on the amendments to DTC's rules and the amendments to the NSCC/DTC Agreement which are the subject of the proposed rule change.

[2] The Commission has modified the text of the summaries submitted by DTC.

[3] The Depository Trust Company and National Securities Clearing Corporation, Memorandum (July 1, 1992; July 26, 1993; and July 29, 1994).

[4] For additional information regarding DTC's SDFS system, refer to Securities Exchange Act Release No. 35720 (May 16, 1995), 60 FR 27360 [File No. SR-DTC-95-06] (order granting accelerated approval of a proposed rule change modifying the SDFS system).

[5] The specific changes to DTC's rules are attached as Exhibit 2(a) to DTC's proposed rule change and is available in the Commission's Public Reference Room or through DTC.

[6] The cross-guarantees were described in the joint memorandum dated July 29, 1994, *supra* note 3.

[7] If a common member has either a net settlement debit at both DTC and NSCC or a net settlement credit at both DTC and NSCC, the common member will make payments to both DTC and NSCC or receive payments from both DTC and NSCC.

[8] For a complete description of DTC's and NSCC's agreement, refer to Securities Exchange Act Release No. 33548 (January 31, 1994), 59 FR 5638 (File Nos. SR-DTC-93-08 and SR-NSCC-93-07) (order approving proposed rule change).

[9] The guarantee from NSCC to DTC is calculated on a per share basis.

[10] 15 U.S.C. § 78q-1 (1988).

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III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[11] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

The Commission believes that DTC's proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F) to facilitate the prompt and accurate clearance and settlement of securities transactions because the proposed rule change should facilitate DTC's conversion entirely to an SDFS system by eliminating provisions in DTC's rules relating to an NDFS system. The overall conversion to a SDFS system should help reduce systemic risk by, among other things, eliminating overnight credit risk. The SDFS system also should reduce risk by achieving closer conformity with the payment methods used in the derivatives markets, government securities markets, and other markets.

The Commission also believes the proposal is consistent with DTC's obligations to assure the safeguarding of securities and funds in its custody or control and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions because the proposed rule change should further reduce DTC's and NSCC's risk exposure by amending the NSCC/DTC Agreement to include cross-guarantees for transactions effected through NSCC's CNS system. The guarantees, among other things, should ensure that debits created in DTC's system will continue to be collateralized when the securities serving as collateral are delivered into the CNS system as short covers. Additionally, the guarantees also should reduce risk at NSCC by ensuring that long allocations or the approximate value of long allocations will be available to NSCC to cover certain exposures.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for so approving the proposed rule change because the proposed rule change modifies DTC's rules and the NSCC/DTC Agreement in anticipation of DTC's conversion to an SDFS system on February 22, 1996. Accelerated approval of the proposal will allow DTC to effect the conversion and to implement the safeguards provided under the NSCC/DTC Agreement on that date.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–96–06 and should be submitted by March 19, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–96–06) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4350 Filed 2–26–96; 8:45 am]

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[11] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[12] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–36866; File No. SR–NSCC–96–03]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Modify NSCC's Rules and Procedures to Accommodate Same-Day Funds Settlement

February 21, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 16, 1996, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–96–03) as described in Items I and II below, which items have been prepared primarily by NSCC. On January 17, 1996, and January 31, 1996, NSCC filed amendments to the proposed rule change.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify NSCC's rules and procedures and to amend the current Netting Contract and Limited Cross-Guarantee agreement between NSCC and The Depository Trust Company ("DTC") ("NSCC/DTC Agreement") to accommodate the conversion from a next-day funds settlement ("NDFS") system to a same-day funds settlement ("SDFS") system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letters from Julie Buyers, Associate Counsel, NSCC, to Jerry Carpenter, Esq., Associate Director, Division of Market Regulation, Commission (January 17, 1996, and January 31, 1996).

[3] The Commission has modified the text of the summaries submitted by NSCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC Rule 1 ("Definitions") is being amended to add a definition for the term "refusal." The term "refusal" is defined as when a settling bank refuses to settle for one or more of its settling members or fund members.

Currently, NSCC calculates and collects clearing fund deposits from sponsored account members based on their activity at DTC.[4] Upon the implementation of SDFS, DTC will calculate sponsored account members' initial SDFS participants fund deposit. DTC will collect the required amount by including it in the sponsored account members' initial SDFS settlement amount at DTC. DTC will maintain the funds as part of DTC's participants fund. NSCC will not include this amount in determining the required deposit or the minimum cash requirement at NSCC for those sponsored account members. Accordingly, Rule 4 ("Clearing Fund") and Procedure XV ("Clearing Fund Formula and Other Matters") will reflect this revised policy. In addition, Rule 4 is being modified to reflect that interest paid on clearing fund deposits held at DTC will be paid at such rate or rates as DTC pays to its participants. The procedures also are being revised to require that cash deposits to the clearing fund be made by a same-day funds wire transfer.

Rule 9 ("Delivery and Receipt of Securities") and Addendum D ("Statement of Policy, Envelope Settlement Service" ["ESS"]) are being revised to address liquidity and credit risk concerns. The proposed changes restrict the use of ESS to those items which are currently eligible for delivery through ESS. This will preclude the use of ESS for any security that currently settles in same-day funds.

Rule 12 ("Settlement") and Procedure VIII ("Money Settlement Service") are being revised to accommodate the conversion from an NDFS system to an SDFS system. Under the proposed rule change, settling members and fund members must settle through a settling bank by a federal funds wire transfer. The proposed rule change also specifies that a settling member or a fund member is deemed to have failed to settle when NSCC receives a refusal from the participant's settling bank or when a participant's settling bank has failed to pay its net debit obligation. In addition, changes are being made to incorporate into participant's settlement statements, which reflect a participant's net debit and/or credit obligations for each business day, net settlement debits or credits arising through NSCC's cross-guaranty agreement.[5]

NSCC's ability to fine a member currently is found in Rule 26 ("Bills Rendered") which governs NSCC's billing policy. Because NSCC may fine members on a daily basis rather than a monthly basis, the fine procedures will be moved from Rule 26 to new Rule 17 ("Fine Payments") to permit NSCC to impose fines on members, including settling bank only members, at such frequency as determined by NSCC from time to time. In addition, a new Addendum P ("SDFS Failure-to-Settle Fines") sets forth the fine schedule for an SDFS system failure to settle.

NSCC Rules 32, 33, 36 and 37 are being modified to accommodate the addition of settling bank only members.[6] Rule 39 ("Special Representatives/Index Receipt Agent") is being amended to delete the duplicative language in the second paragraph regarding the form of an instruction on which NSCC may rely from a special representative or an index receipt agent. The forms of instructions from a special representative or an index receipt agent are the same forms as those on which NSCC may rely when it receives instructions directly from a participant; therefore, NSCC moved the reference to special representatives and index receipt agents into the same paragraph governing forms of instructions received from participants.

Rule 41 ("Funds Only Settlement Service" ["FOSS"]) is being amended to explicitly state that settlement of money payments arising out of FOSS are to be made in accordance with Rule 12 regarding settlement of money payments.

Rule 52 ("Mutual Fund Services") is being amended to clarify that settlement with respect to mutual fund services is governed by Rule 12 and to delete conflicting language. Currently, fund members have an earlier payment deadline with respect to their mutual fund services payment obligations. Concurrently with the implementation of SDFS, NSCC is establishing a uniform payment deadline for all members, including fund members, so that settling banks will not have to bifurcate their payment obligations.

Rule 54 ("Settling Bank Only Members") is being modified to permit a bank that meets the financial requirements established by NSCC to become a settling bank if it is either a member of the Federal Reserve System or it has direct access to the Federal Reserve System.

Rule 55 ("Settling Banks") is being amended to clarify that in the event of the insolvency of a settling bank which has failed to pay its net-net debit obligation, members that are represented by such insolvent bank will be charged pro rata for amounts owed by the insolvent bank.

NSCC Procedure IX ("Special Services") is being revised to indicate that even though SDFS is being implemented, NSCC will retain the right to effect payments on a direct clearing member's behalf, other than for NSCC money settlement, either through the use of checks or by initiating wire transfer instructions.

Addendum B ("Standards of Financial Responsibility and Operational Capability") is being revised to clarify that the criteria set forth therein with respect to bank applicants do not apply to applicants for settling bank only membership. Settling bank only members are required to meet the operational and financial requirements set forth in Addendum B(I)(A) and other requirements established by NSCC.[7]

NSCC believes that its short term funding resources are adequate and that it is extraordinarily unlikely that it would need to implement any liquidity contingency plan. Nevertheless, the rule change includes a revised Addendum F ("Statement of Policy in Relation to Same Day Funds Settlement") which sets forth a liquidity contingency plan to be employed in the event that funding resources are insufficient. The statement permits NSCC to reverse debits and credits arising from non-guaranteed services to the extent necessary to

[4] Pursuant to its Procedure IX(B), NSCC makes available to participants that do not maintain a direct membership in a qualified securities depository the facilities of a qualified securities depository through the use of a sponsored account. The account is under the jurisdiction of NSCC, and NSCC is solely responsible for all liabilities arising from the use of the account including the payment of fees to the qualified securities depo[illegible]

[5] *Infra* note 8 and accompanying text.

[6] Rule 32 governs the use of facsimile signatures by NSCC participants; Rule 33 provides NSCC's Board of Directors or its delegates the authority to prescribe NSCC procedures; Rule 36 relates to proposed rule changes and notification of proposed rule changes; and Rule 37 provides procedures by which hearings are requested and conducted.

[7] NSCC requires settling bank only members to have a short-term obligation rating of at least A–2 by Standard and Poor's Corporation or P–2 by Moody's Investors Services Incorporated. For a further description of the financial responsibility and operational capability requirements for settling bank only members, refer to Securities Exchange Act Release No. 36714 (January 16, 1996), 61 FR 1807 [File No. SR–NSCC–95–13] (order approving proposed rule change enabling members settling mutual fund transactions in same-day funds to settle through a settling bank)

eliminate the liquidity problem, as determined by NSCC. It also permits NSCC to spread its obligations to make payments over such period of time as is necessary to eliminate the liquidity crisis. If the liquidity problem arises as a result of CNS deliveries, the policy statement permits NSCC to return CNS deliveries to the delivering member until such time as NSCC is able to pay for the deliveries. NSCC will reimburse members whose securities are returned for the financing costs incurred during the intervening period.

NSCC recognizes that its requirement that each member appoint a settling bank may impose an undue burden on fund members or mutual fund services members, which members use only non-guaranteed services. Therefore, Addendum F includes a provision which allows NSCC on a case by case basis to waive the requirement that a member appoint a settling bank to the extent that this requirement creates an undue burden on such a member.

The converion to SDFS also requires NSCC to make certain amendments to the current NSCC/DTC Agreement.[8] The current NSCC/DTC Agreement provides that with respect to participants common to both entities ("common members"), DTC and NSCC agree to net daily a common member's final net settlement debit or credit at one entity with the common member's final net settlement credit or debit at the other entity. In most instances, the result will be either one net debit obligation payable to either DTC or NSCC or one net credit receivable from either DTC or NSCC.[9] In the event of a default of a common member, the current NSCC/DTC Agreement also provides that any resources remaining after the failed common member's obligations to the guaranteeing clearing agency have been satisfied will be made available to the other clearing agency. The guaranty is not absolute but rather is limited to the extent of the resources relative to the failed member remaining at the guaranteeing clearing agency. The principal resources will be the failed member's settlement net credit balances and its deposits to the clearing agencies' clearing funds.

The proposed rule change amends the current NSCC/DTC Agreement to include cross-guaranties of NSCC and DTC arising from transactions effected through NSCC's continuous net settlement ("CNS") system. NSCC's CNS system continually nets all trades due to settle the next day against each other and against prior days' unsettled long and short positions in the same securities. NSCC is the contraparty to each CNS transaction. Thus, NSCC participants obligated to deliver securities deliver the securities to NSCC as free, book-entry movements at DTC ("short covers"). NSCC participants obligated to receive securities will receive the securities from NSCC as free, book-entry movements at DTC ("long allocation").

Certain cross-guarantees between NSCC and DTC are being established to permit transactions to flow smoothly between DTC's system and the CNS system in a collateralized SDFS environment. Under the amended NSCC/DTC Agreement, DTC will provide a guarantee to NSCC of all long allocations, and NSCC will provide a guarantee to DTC for all short covers. These guarantees will ensure, among other things, that debits created in DTC's system continue to be collateralized when the securities serving as collateral are delivered into the CNS system as short covers and will reduce risk at NSCC by ensuring that long allocations or the approximate value of long allocations will be made available to NSCC to cover certain exposures.

When securities received versus payment in DTC's system are turned into CNS short covers, NSCC will provide a guarantee to DTC equal to the prior day's closing price of the securities.[10] If CNS short covers are satisfied from securities that were not received versus payment in DTC's system, NSCC will provide a guarantee to DTC equal to the prior day's closing market value less an applicable haircut. DTC will take this guarantee into account for collateral monitor purposes.

When long allocations to participants are redelivered in DTC's system, DTC will provide a guarantee to NSCC equal to the prior day's closing price of the long allocations less an applicable haircut. The guarantee will serve as a collateral substitute for long allocations and only will be called on to the extent a participant fails to settle due to insolvency and NSCC's own internal close-out procedures result in a net loss to NSCC. DTC will apply its normal collateralization controls to the value of its guarantee to NSCC to ensure that it has sufficient collateral to cover potential guarantee obligations to NSCC as the result of a participant redelivering CNS long allocations in DTC's system.

It is the industry's intention that the conversion SDFS take effect on February 22, 1996; therefore, NSCC is seeking approval of these changes to coincide with this date.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[11] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

The Commission believes that NSCC's proposed rule change is consistent with NSCC's obligations under Section 17A(b)(3)(F) to facilitate the prompt and accurate clearance and settlement of securities transactions because the proposed rule change should facilitate NSCC's conversion to an entirely SDFS system by including provisions in NSCC's rules relating to an SDFS system. The conversion to a SDFS system should help reduce systemic risk by eliminating overnight credit risk. The SDFS system also should reduce risk by achieving closer conformity with the payment methods used in the derivatives markets, government securities markets, and other markets.

[8] For a complete description of DTC's and NSCC's current agreement, refer to Securities Exchange Act Release No. 33548 (January 31, 1994), 59 FR 5638 [File Nos. SR-DTC-93-08 and SR-NSCC-93-07] (order approving proposed rule change).

[9] If a common member has either a net settlement debit at both DTC and NSCC or a net settlement credit at both DTC and NSCC, the common member will make payments to both DTC and NSCC or receive payments from both DTC and NSCC.

[10] The guarantee from NSCC to DTC is calculated on a per share basis.

[11] 15 U.S.C. § 78q-1(b)(3)(F) (1988).

The Commission also believes the proposal is consistent with NSCC's obligations to assure the safeguarding of securities and funds in its custody or control and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions because the proposed rule change should further reduce NSCC's and DTC's risk exposure by amending the NSCC/DTC Agreement to include cross-guaranties for transactions effected through NSCC's CNS system. The guaranties should, among other things, ensure that debits created in DTC's system continue to be collateralized when the securities serving as collateral are delivered into the CNS system as short covers. Additionally, the guarantees also should reduce risk at NSCC by ensuring that long allocations or the appropriate value of long allocations will be available to NSCC to cover certain exposures.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for so approving the proposed rule change because the proposed rule change modifies NSCC's rules and the NSCC/DTC Agreement in anticipation of NSCC's and the securities industry's conversion to SDFS on February 22, 1996. Accelerated approval of the proposal will allow NSCC to effect the conversion and to implement the safeguards provided under the NSCC/DTC Agreement on that date.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number SR-96-03 and should be submitted by March 19, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-96-03) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-4351 Filed 2-26-96; 8:45 am]

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[Release No. 34-36860; File No. SR-OCC-96-02]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Accelerated Approval of a Proposed Rule Change to Modify the Stock Loan/Hedge Program to Accommodate Same-Day Funds Settlement

February 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 16, 1996, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-OCC-96-02) as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify OCC's rules relating to its Stock Loan/Hedge Program ("Hedge Program")[2] to reflect the conversion of the equity securities processing operations of The Depository Trust Company ("DTC") to a same-day funds settlement ("SDFS") system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make technical modifications to OCC's rules governing its Hedge Program to accommodate the conversion by DTC of its equity securities processing operations to an SDFS system. DTC is scheduled to convert to an SDFS system on February 22, 1996.

Stock loans under the Hedge Program are effected by a book-entry transfer on the books of a correspondent depository (*i.e.*, a securities depository at which OCC has an account and which provides services to OCC in connection with the Hedge Program). The Midwest Securities Trust Company ("MSTC") had acted as the only correspondent depository since the Hedge Program was established. However, MSTC has withdrawn from the securities depository business,[4] and OCC has made arrangements for DTC to act as a correspondent depository for the Hedge Program.

Under OCC's rules governing the Hedge Program, after two participating clearing members have agreed to the terms of a stock loan, the lending clearing member transfers the stock that is the subject of the loan by book-entry into OCC's account at a correspondent depository. The lending clearing member's transfer instructions identify the borrowing clearing member and specify the amount of cash to be received as collateral by the lending clearing member. Once the stock is delivered into OCC's account, OCC instructs the correspondent depository to redeliver the stock to the account of the borrowing clearing member against payment of the required collateral. The cash payments also are effected through

[12] 17 CFR 200.30-3(a)(12) (1995).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For a description of OCC's Stock Loan/Hedge Program, refer to Securities Exchange Act Release No. 32638 (July 15, 1993), 58 FR 39264 [File No. SR-OCC-92-34] (order granting permanent approval of the Stock Loan/Hedge Program).

[3] The Commission has modified the text of the summaries submitted by OCC.

[4] Securities Exchange Act Release No. 36684 (January 5, 1996), 61 FR 1195 (January 17, 1996) (File Nos. SR-CHX-95-27, SR-DTC-95-22, SR-MCC-95-04, SR-MSTC-95-10, and SR-NSCC-95-15) (order approving arrangements relating to a decision by the Chicago Stock Exchange, Inc. to withdraw from the clearance and settlement, securities depository, and branch receives business).

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the facilities of the correspondent depository.

It is essential to OCC's operation of the Hedge Program that OCC must never have a position against a lending clearing member without an offsetting position against a borrowing clearing member unless one of the two clearing members defaults in its obligations with respect to a stock loan. In order to assure that OCC never has a position against a lending or a borrowing clearing member without an offsetting position against another clearing member, OCC rule 2201, concerning the initiation of stock loans, currently specifies that a transfer of stock from a lending clearing member to OCC will not constitute a final entry on the books of a correspondent depository until the related transfer from OCC to the borrowing clearing member constitutes a final entry on the books of the correspondent depository. Similarly, OCC rule 2208, concerning the unwinding or settlement of stock loans, currently specifies that a transfer of stock from a borrowing clearing member to OCC will not constitute a final entry on the books of the correspondent depository until the related transfer from OCC to the lending clearing member constitutes a final entry on the books of the correspondent depository. These rules were drafted to operate in conjunction with MSTC's next-day funds settlement ("NDFS") system as set forth in MSTC's rules.

DTC's SDFS system rules are premised on the concept that any securities transfers in DTC's system will become final at the time that the funds relating to the securities transfer are transferred. Accordingly, as a technical matter, DTC's SDFS system rules do not accommodate the concept currently contained in OCC rules 2201 and 2208 that provide one transfer will become final only when another related transfer becomes final. Therefore, the proposed rule change modifies OCC rules 2201(c) and 2208(a). As amended, rule 2201 regarding the initiation of stock loans provides that OCC may initiate an additional transfer to return stock to a lending clearing member if for any reason it appears to OCC that the related transfer from OCC to the borrowing clearing member will not become final on the books of the correspondent depository on the same day as the transfer from the lending clearing member to OCC. Correspondingly, amended rule 2208 regarding settlement of stock loans (*i.e.*, the return of a stock loan) now provides that OCC may initiate an additional transfer to return loaned stock to a borrowing clearing member if for any reason it appears to OCC that the related transfer from OCC to the lending clearing member will not become final on the books of the correspondent depository on the same day as the transfer from the borrowing clearing member to OCC. The two rules as modified are compatible with DTC's SDFS system while still preserving OCC's ability to assure that in the ordinary course at the end of each day it will have an offsetting borrow position for each loan position and an offsetting loan position for each borrow position.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the proposal will conform OCC's rules to DTC's rules thereby improving the linkage and coordination between two clearing agencies.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes that OCC's proposed procedures relating to its Hedge Program are consistent with OCC's obligations under Section 17A(b)(3)(F) for the reasons discussed below.

The Commission believes that the proposed rule change is consistent with OCC's obligations under Section 17A(b)(3)(F) to promote the prompt and accurate clearance and settlement of securities transactions because the proposal modifies OCC's Hedge Program to enable it to operate in a SDFS environment at DTC thus allowing the continued use of book-entry movements of stock loans. The Commission also believes OCC's proposed procedures should help to assure the safeguarding of securities and funds which are in the custody or control of OCC or for which OCC is responsible because OCC's amended rules will provide OCC with the authority to make an additional stock loan transfer if it appears the related transfer will not become final on the books of the correspondent depository on the same day. These rules should help to assure that absent a clearing member default OCC will never have a position against a borrowing or lending clearing member without an offsetting position against another clearing member.

Additionally, the Commission believes the proposed rule change should foster cooperation and coordination between OCC and DTC because the modification of OCC's Hedge Program procedures conform OCC's rules to DTC's rules regarding the finality of securities transactions and facilitates OCC's use of DTC as a Correspondent depository in its Hedge Program.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval of the proposed modifications will allow OCC to continue to utilize DTC as a correspondent depository in its Hedge Program following the conversion to SDFS on February 22, 1996. Therefore, OCC participants will be able to continue to utilize the Hedge Program without any disruption.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–96–02 and should be submitted by March 19, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–96–02) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4311 Filed 2–26–96; 8:45 am]

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[5] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[6] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–36858; File No. SR–PHLX–95–45]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Industry Index Option Hedge Exemption

February 16, 1996.

On September 18, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend PHLX Rule 1001A, "Position Limits," to establish a hedge exemption from industry (narrow-based) index option position and exercise limits.[3]

The proposed rule change was published for comment in the **Federal Register** on October 23, 1995.[4] No comments were received on the proposed rule change. On December 20, 1995, on February 14, 1996, and on February 16, 1996, the PHLX amended its proposal.[5]

The PHLX proposes to exempt from position and exercise limits any position in an industry index option that is hedged by share positions in at least 75% of the number of component stocks of that index or securities convertible into such stock.[6] Under the proposal, no position in an industry index option may exceed two times the narrow-based index option position specified in PHLX Rule 1001A(b)(i)[7] and the value of the index option position may not exceed the value of the underlying hedging portfolio. The value of the underlying hedging portfolio is determined as follows: (1) the total market value of the net stock position, less (2) the value of: (a) the notional value[8] of any offsetting calls and puts in the respective index option class; (b) the notional value of any offsetting positions in stock index futures or options; and (c) any economically equivalent positions.[9]

Under the proposal, exercise limits will continue to correspond to position limits, so that investors may exercise the number of contracts set forth as the position limit, as well as those contracts exempted by the proposal, during five consecutive business days.

The proposed exemption requires that both the options and stock positions be initiated and liquidated in an orderly manner. Specifically, a reduction of the options position must occur at or before the corresponding reduction in the stock portfolio position.

The proposed exemption will be available to firm and proprietary traders, as well as public customers. According to the PHLX, because customers rely, for the most part, on a limited number of proprietary traders to facilitate large-sized orders, failure to include such traders in the exemption could effectively reduce the benefit of the exemption to customers.

The PHLX believes that the hedge exemption provision is necessary to better meet the needs of investors who would use PHLX industry index options for investment and hedging purposes. The PHLX states that many institutional traders and portfolio managers deal in dollar amounts much greater than permissible under current position limit levels and have expressed that Exchange position limits hamper their ability to fully utilize Exchange index options. As a result, the PHLX believes that many index options are ineffective for such traders, who may as a result choose to

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1995).

[3] Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls). Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[4] *See* Securities Exchange Act Release No. 36380 (October 17, 1995), 60 FR 54403.

[5] On December 20, 1995, the PHLX amended its proposal to specify certain requirements and monitoring procedures which the Exchange will use in connection with the hedge exemption. *See* Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Michael Welinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated December 20, 1995 ("Amendment No. 1"). Among other things, Amendment No. 1 indicates that the PHLX will monitor accounts utilizing the hedge exemption on a daily basis; that the hedging portfolio must be previously established and that options must be carried in an account with an Exchange member; that initiating or liquidating positions should not be conducted in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes; and that the PHLX's Market Surveillance Department must be notified of any material change in the portfolio or futures positions which materially affects the unhedged value of the portfolio. Amendment No. 2 modifies the proposal by providing that the industry index hedge exemption will be two times the existing position and exercise limit rather than three times the limit because the hedged option position is held in addition to the contracts currently permitted under the Exchange's rules. In addition, Amendment No. 2 indicates that offsetting positions in stock index futures options must be deducted from the total market value of the net stock position to determine the value of the hedging portfolio. *See* Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated February 14, 1996 ("Amendment No. 2"). On February 16, 1996, the PHLX amended its proposal by adding subparagraph (C) to paragraph (b)(2) of Commentary .01 in order to make clear that economically equivalent positions must be deducted from the market value of the net stock position to determine the value of the underlying portfolio. *See* Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Michael Welinskas, Branch Chief, OMS, Division, Commission, dated February 16, 1996 ("Amendment No. 3").

[6] The PHLX permits the use of convertible securities in its equity option hedge exemption. *See* Securities Exchange Act Release No. 32174 (April 20, 1993), 58 FR 25687 (April 27, 1993) (order approving File No. SR–PHLX–92–22). Similarly, other options exchange permit the use of convertible securities in broad-based index hedge exemptions. *See* Securities Exchange Act Release No. 35738 (May 18, 1995), 60 FR 27573 (May 24, 1995) (File Nos. SR–Amex–95–13, SR–CBOE–95–13, SR–NYSE–95–04, SR–PSE–95–05, and SR–PHLX–95–10) (permanently approving hedge exemption pilot programs).

[7] PHLX Rule 1001A(b)(i) provides the following position limits for industry index options: 6,000 contracts if any single stock accounted, on average, for 30% or more of the index value during the 30-day period preceding the review; 9,000 contracts if any single stock accounted, on average, for 20% or more of the index value or any five stocks together accounted, on average, for more than 50% of the index value, but no single stock in the group accounted on average, for 30% or more of the index value during the 30-day period preceding the review; or 12,000 contracts if none of the above conditions apply. *See* Securities Exchange Act Release No. 36194 (September 6, 1995), 60 FR 47637 (order approving File No. SR–PHLX–95–16) (increasing position limits for industry index options to 6,000, 9,000 or 12,000 contracts).

[8] Notional values are determined by adding the number of contracts and multiplying the total by the multiplier, expressing that number in dollar terms.

[9] *See* Amendment Nos. 2 and 3, *supra* note 5.

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use futures instruments.[10] Thus, the PHLX believes that the proposed hedge exemption should alleviate the situation where investors with substantial hedging needs are discouraged from participation in the options markets by existing position limits.

The PHLX believes that the proposed narrow-based index option hedge exemption should not increase the potential for disruption or manipulation in the markets for the stocks underlying each index. In this regard, the proposal incorporates several surveillance safeguards, which the PHLX will employ to monitor the use of this exemption. Specifically, the Exchange will require that an application for exemption be filed by member firms and their customers who seek hedge exemptions. The Exchange will review the application and approve only those applications that satisfy the hedge exemption requirements. The Exchange's Market Surveillance Department will monitor trading activity in PHLX-traded index options and the stocks underlying those indexes to detect potential frontrunning and manipulation abuses, as well as review such trading to ensure that the closing of positions subject to an exemption is conducted in a fair and orderly manner.[11]

The PHLX also notes that the provision itself contains several built-in safeguards. First, the hedge must consist of a position in at least 75% of the stocks underlying the index. Thus, the "basket" of stocks constituting the hedge resembles the underlying index.[12] Second, the proposal provides a ceiling on the maximum size of the option position by providing that positions established under the proposal may not exceed two times the limits established under PHLX Rule 1001A(b)(i). Third, both the options and stock positions must be initiated and liquidated in an orderly manner, meaning that a reduction of the options position must occur at or before the corresponding reduction in the stock portfolio position. Lastly, the value of the industry index option position cannot exceed the dollar value of the underlying hedging portfolio. The purpose of this requirement is to further ensure that stock transactions are not used to manipulate the market in a manner benefiting the option position. In addition, these safeguards prevent the increased positions from being used in a leveraged manner by ensuring that the options position subject to the increased position limit is properly "covered" by the hedge.

For the above reasons, the PHLX believes that the proposed industry index hedge exemption should increase the depth and liquidity of the markets for narrow-based index options and allow more effective hedging with underlying stock portfolios without increasing the potential for market manipulation or disruption, consistent with the purposes of position and exercise limits.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) thereunder.[13] The Commission concludes that providing for increased position and exercise limits for narrow-based index options in circumstances where those excess positions are fully hedged with offsetting stock positions will provide greater depth and liquidity to the market and will allow investors to hedge their stock portfolios more effectively, without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options market or the underlying stock market.

Specifically, the PHLX proposal contains safeguards that should make it difficult to use the exempted positions to disrupt or manipulate the market. First, requests for the exemption must be approved by the PHLX, which should ensure that the hedges are appropriate for the position being taken and are in compliance with PHLX rules. Second, the stock portfolio must consist of at least 75% of the number of component securities underlying the index, and must correspond in value to the value of the options position hedged, so that the increased positions are less likely to be used in a leveraged manner in any manipulative scheme. As noted above the value of the hedging portfolio is equal to (1) The total market value of the net stock position; less (2) the value of (a) any offsetting calls and puts in the index option; (b) any offsetting positions in related stock index futures or options; and (c) any economically equivalent positions.[14] Third, both the options and the stock positions must be initiated and liquidated in an orderly manner. Moreover, a reduction of the options position must occur at or before the corresponding reduction in the stock portfolio position, thereby helping to ensure that the stock transactions are not used to impact the market so as to benefit the options positions. Fourth, the PHLX's Market Surveillance Department must be notified in writing for approval prior to liquidating or initiating any such position and the PHLX's Market Surveillance Department must also be notified of any material change in the portfolio or futures positions which materially affects the value of the qualified portfolio. Fifth, the maximum hedge exemption position is two times the existing limit. The "two times the limit" is not automatic and the PHLX has the authority to approve a hedge limit for less than that amount.

The Commission notes that the PHLX's surveillance procedures are designed to detect as well as deter manipulation and market disruptions. In particular, the PHLX will monitor the options position of a person utilizing the hedge exemption on a daily basis to ensure that each option contract is hedged by the equivalent dollar amount of component securities.[15] In addition, the PHLX's Market Surveillance Department will monitor trading activity in PHLX-traded index options and their underlying component stocks to detect potential frontrunning and manipulation, and to ensure that the closing of positions subject to the exemption is conducted in a fair and orderly manner. Violation of any of the provisions of the industry index hedge exemption, absent reasonable justification or excuse, will result in the withdrawal of the hedge exemption and subsequent denial of an application for a hedge exemption thereunder.

Finally, the Commission believes that it is reasonable for the PHLX to allow firm and proprietary traders, as well as public customers, to utilize the proposed hedge exemption. The Commission believes that extending the narrow-based index option hedge exemption to firm and proprietary traders may help to increase the depth and liquidity of the market for industry index options and may help to ensure that public customers receive the full benefit of the exemption. Moreover, the PHLX's monitoring procedures, as described above, should be able to detect abuses and ensure that the options position, whether firm, proprietary trader, or customer, is properly hedged.

The Commission finds good cause for approving Amendment Nos. 1, 2, and 3 to the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. Specifically, Amendment No. 1, is designed to protect investors and the public interest by providing additional requirements and surveillance procedures which the Exchange will use in monitoring the narrow-based index option hedge exemption. Amendment No. 2 clarifies the Exchange's proposal by indicating that the hedge exemption allows a market participant to hold up to two times, rather than three times, the current position limit because the hedged position is held in addition to the contracts permitted under PHLX Rule 1001A. In addition, Amendment No. 2 strengthens the PHLX's proposal by providing that options on stock index futures must be deducted when calculating the value of the hedging portfolio. Amendment No. 3 strengthens the PHLX's proposal by making technical revisions that clarify, among other things, that economically equivalent positions must be deducted when calculating the value of the hedging portfolio. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act, to approve Amendment Nos. 1, 2, and 3 to the proposal on an accelerated basis.

Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 19, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–PHLX–95–45), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4313 Filed 2–26–96; 8:45 a.m.]

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[10] Under rules promulgated by the Commodity Futures Trading Commission, futures positions that are deemed to be bona fide hedging transactions (as defined) are exempted from position limit rules. *See* Securities Exchange Act Release No. 25739 (May 24, 1988), 53 FR 20204, (June 2, 1988) (order approving File No. SR–CBOE–87–25).

[11] *See also* Amendment No. 1, *supra* note 5.

[12] To determine the share amount of each component required to hedge an index option position: index value × index multiplier × component's weighing = dollar amount of component. That amount divided by price = number of shares of component. Conversely, to determine how many options can be purchased based on a certain portfolio, divide the dollar amount of the basket by the index value × index multiplier.

[13] 15 U.S.C. 78f(b)(5) (1988 & Supp. V 1993).

[14] *See* Amendment Nos. 2 and 3, *supra* note 5. According to the PHLX, "economically equivalent" positions are instruments whose prices fluctuate in tandem. The PHLX believes, for example, that National Over-the-Counter Index options and Nasdaq 100 Index options are economic equivalents, and that stock and bonds issued by the same company may be economic equivalents. Telephone conversation between Edith Hallahan, Special Counsel, Regulatory Services, PHLX, and Yvonne Fraticelli, Attorney, OMS, on February 14, 1996.

[15] Market participants granted a hedge exemption are also required to keep their application forms for the hedge exemption current and promptly provide the PHLX with any information concerning the dollar value and composition of the stock portfolio, the current hedged and aggregate option positions, and any stock index futures positions, or economically equivalent positions.

[16] 15 U.S.C. 78s(b)(2) (1982).

[17] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–36862; File No. SR–Phlx–95–86]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Index Options Exercise Advices

February 20, 1996

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 28, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Phlx Rule 1042A, Exercise of Option Contracts, and Floor Procedure Advice ("Advice") G–1, Exercise Requirements, by extending the deadline for the receipt or preparation of a memorandum to exercise, as well as the submission of an exercise advice form, from five minutes after the close of trading to 4:30 p.m. In addition, as minor changes to paragraph (ii) will result in the inclusion of the National Over-the-Counter Index option, Phlx Rule 1042A(a)(iii) is being deleted. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx Rule 1042A and Advice G–1 govern the exercise of index options. These provisions state that with respect to index option contracts, clearing members are required to follow the procedures of the Options Clearing Corporation ("OCC") for tendering exercise notices. Phlx member organizations are also required to comply with the following procedures: First, a memorandum to exercise any American style index option must be received or prepared by the Phlx member organization no later than five minutes after the close of trading on the day of exercise. Thus, the current deadline is 4:15 p.m. for narrow-based index options and 4:20 p.m. for broadbased index options. Second, when exercising 25 or more American style index option contracts, other than an option contract on the National Over-the-Counter Index, submission on an exercise advice form to the Exchange is required no later than five minutes after the close of trading on the day of exercise. Third, with respect to options on the National Over-the-Counter Index, the deadline for compliance with the

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

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above provisions is 4:20 p.m. or five minutes after the close of trading.

Purusant to Phlx Rule 1042A(b), however, the above requirements are not applicable with respect to any series of stock index options on the last day of trading prior to the expiration date of such series of options. The above stated requirements are also not applicable to European style index options which, by definition, cannot be exercised prior to expiration. Lastly, the Exchange notes that the procedures for exercising equity option contracts contained in Phlx Rule 1042, are not affected by this rule proposal.

The Phlx proposes to establish a 4:30 p.m. deadline for both a memorandum to exercise and exercise advice forms for all index options. This will extend the cut-off time by 15 minutes for narrow-based index options and by 10 minutes for broad-based index options. According to the Phlx, the purpose of this rule change is to provide additional time for the preparation and transmission of the required exercise information. After the close of trading, index option position holders are not instantly aware of their final positions, including hedges in the underlying security and futures contracts. According to the Phlx, knowing the exact, final position is often crucial to making a determination of whether to exercise.

In addition, the current procedure for these submissions presents logistical problems for compliance within five minutes after the close of trading. For example, the distance between trading stations for certain index options on the Phlx trading floor (*e.g.*, Gold/Silver Index) and the depository for advice submissions is not easy to traverse within five minutes, especially at the close of trading when there is a great deal of movement on the trading floor. If a trade occurs during the final minute of trading, this situation is exacerbated since additional time might be used to ensure that the trade ticket and participation was properly submitted. And, as stated above, reports from futures orders placed to hedge option positions must still be ascertained, usually by going to another location on the floor (*e.g.*, the booth where telephones and clerks are located). The Phlx believes that it is in the interest of order and safety to change this process.

The Phlx believes that the current deadline not only creates time pressure and uncertainty, but may also force index option traders not to participate in large or complex trades, especially near the close, thereby hampering liquidity. The Phlx believes that the extra time is reasonable under these circumstances.

Lastly, to improve clarity, the Exchange proposes to delete paragraph (a)(iii) of Phlx Rule 1042A and incorporate the exercise requirements pertaining to options on the National Over-the-Counter Index in paragraph (a)(ii).

2. Statutory Basis

The Phlx believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and with Section 6(b)(5) in particular,[3] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, by eliminating the hardship to all index option investors and traders that is caused by having insufficient time after the close to make exercise decisions, will serve to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Phlx consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–95–86 and should be submitted by March 19, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4353 Filed 2–26–96; 8:45 am]

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[3] 15 U.S.C. § 78f (b)(5) (1988).

[4] 17 CFR 200.30–3 (a)(12) (1994).

SOCIAL SECURITY ADMINISTRATION

Privacy Act 1974; Computer Matching Programs (Model for SSA/State and Local Governments Match of Prisoner Data, Match #1002)

AGENCY: Social Security Administration.

ACTION: Notice of Computer Matching Programs.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces computer matching programs that SSA plans to conduct.

DATES: SSA will file a report of the subject matching programs with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching programs will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either facsimile to (410) 966–5138 or writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews at the address above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal Government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal Agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: February 14, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Notice of Computer Matching Program, State and Local Government Prisoner Data Systems With SSA

A. Participating Agencies

SSA and State and Local Governments.

B. Purpose of the Matching Program

Section 202(x)(1) of the Social Security Act (the Act) prevents SSA from paying old-age, survivors, and disability insurance benefits to certain prisoners. Section 1611(e)(1)(A) of the Act provides, with some exceptions, that inmates in public institutions are not eligible for payments under the supplemental security income program. The purpose of these matching programs is to assist SSA in enforcing these provisions.

C. Authority for Conducting the Matching Program

Section 202(x)(1), 1611(e)(1)(A), 202(x)(3), and 1631(e)(1)(a) of the Act.

D. Categories of Records and Individuals Covered by the Match

State and local government prison systems will submit names and other identifying information of prisoners from prisoner data systems. The SSA master files of Social Security Number holders and Social Security Number applications contains the SSNs and identifying information for all SSN holders. The SSA master beneficiary record and supplemental security income record contain beneficiary and payment information.

E. Inclusive Dates of the Match

These matching programs shall become effective no sooner than 40 days after a copy of the model agreement, as approved by the SSA Data Integrity Board, is sent to Congress and the Office of Management and Budget (OMB) (or later if OMB objects to some or all of the agreement) or 30 days after publication of this notice in the **Federal Register**, or after both parties to each individual agreement have signed the agreement, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 96–4349 Filed 2–26–96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending February 16, 1996

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1077.
Date filed: February 13, 1996.
Parties: Members of the International Air Transport Association.
Subject: COMP Telex Mail Vote 774, Amend Excess baggage charge from Israel, Intended effective date: March 1, 1996.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–4422 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending February 16, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1075.
Date filed: February 13, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 12, 1996.
Description: Application of Pro Air, Inc., pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing interstate scheduled air transportation of persons, property and mail.

Docket Number: OST–96–1076.
Date filed: February 13, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 12, 1996.
Description: Application of Pro Air, Inc., pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing foreign scheduled air transportation of persons, property and mail.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–4423 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

[Docket No. 96–015; Notice 01]

Publication of Report

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of updated survivability and vehicle miles traveled schedules.

SUMMARY: NHTSA has updated the passenger car and light truck schedules for survivability and vehicle miles traveled (VMT). These schedules are presented in the Final Report Updated

Vehicle Survivability and Travel Mileage Schedules (DOT HS808339, November 1995). These updated schedules will be used to assess the effects of proposed fuel economy and safety standards.

FOR FURTHER INFORMATION AND COPIES OF THE REPORT CONTACT:
Alan Berkowitz, Office of Planning and Consumer Programs, Safety Performance Standards, NHTSA, Washington, DC 20590, extension 202 366–4795.

Issued on: February 21, 1996.

Barry Felrice,
Associate Administrator for Safety Performance Standards.

[FR Doc. 96–4385 Filed 2–26–96; 8:45 am]
BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of National Customs Automation Program Test Regarding Remote Location Filing

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice is to announce that Customs is permitting an extension and expansion of the current Remote Location Filing Prototype One until the implementation of Remote Prototype Two. Remote Prototype Two will be conducted under the National Customs Automation Program (NCAP) prototype in the Automated Commercial Environment (ACE). This notice also invites public comments concerning any aspect of Remote Prototype One, informs interested members of the public of the eligibility requirements for voluntary participation in the testing of the extension of the first prototype, and describes the basis on which Customs will select the additional participants.

EFFECTIVE DATE: The first prototype test which began on June 19, 1995 will be extended until implementation of the NCAP Prototype, which includes Remote Prototype Two, and is scheduled to commence no sooner than January 1, 1997. Comments concerning the methodology of the first remote filing prototype must be received on or before March 28, 1996. To participate in the first prototype test, the necessary information, as outlined in this notice, must be filed with Customs on or before March 28, 1996.

ADDRESSES: Written comments regarding this notice, and information submitted to be considered for voluntary participation in the extension of the first prototype should be addressed to the Remote Filing Team, U.S. Customs Service, 4455 Genesee Street Room 342, Buffalo, New York 14225.

FOR FURTHER INFORMATION CONTACT: For systems or automation issues: Russ Lanouette (202) 927–0322, or Jackie Jegels (202) 927–0201. For operational or policy issues: Linda LeBaron (716) 626–0400 extension 204.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Public Law 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of title VI establishes the National Customs Automation Program (NCAP)—an automated and electronic system for the processing of commercial importations. Section 631 in Subtitle B of the Act creates sections 411 through 414 of the Tariff Act of 1930 (19 U.S.C. 1411–1414), which define and list the existing and planned components of the NCAP (section 411), promulgate program goals (section 412), provide for the implementation and evaluation of the program (section 413), and provide for remote location filing (RLF) (section 414). Section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)), implements the testing of NCAP components. See, T.D. 95–21 (60 FR 14211, March 16, 1995).

On April 6, 1995, Customs published a document in the **Federal Register** (60 FR 17605) announcing Customs plan to conduct the first of at least two prototype tests regarding remote location filing. The document invited public comments concerning any aspect of the test, informed interested members of the public of the eligibility requirements for voluntary participation in the testing and described the basis on which Customs would be selecting participants. The test was to commence no earlier than June 1, 1995, and was planned to be run for approximately six months. The test began on June 19, 1995.

On September 12–13, 1995, the Remote Team held an interim evaluation session for Remote Prototype One. The group discussed the positive and negative aspects of the Remote prototype.

Positive factors identified were: faster release and other processing; facilitation of cargo movement; decrease in need for paper; increased cost savings; promotion of service and account based processing; and established good partnership between Customs and Trade.

Negative factors identified as high priority for resolution were:

1. The test is limited in scenarios, Customs locations, and participants;
2. There are problems or limitations under Customs current Automated Commercial System (ACS) as well as uncertainty about the specifics of future capabilities under Customs Automated Commercial Environment (ACE);
3. There are issues that revolve around lack of coordination with other government agencies and computer interfaces that are incomplete or nonexistent;
4. There is a need for more complete training, cross training, and coordination for Customs, trade, and other government agencies.

After several structured group interview sessions, sub-teams were formed with internal and external participants to coordinate ideas and assign taskings to address or resolve issues #2–4. These sub-teams will remain intact in an effort to move forward with the resolution of the factors identified.

To address the first factor, the Assistant Commissioner, Office of Field Operations has approved the extension and expansion of Remote Prototype One until the implementation of Remote Prototype Two. Remote Prototype Two will be conducted under the ACE/NCAP Prototype umbrella and commence no sooner than January 1, 1997. This extension will allow for the Remote Team to work on improving systems planning, coordinating with other government agencies, and developing better training efforts with the benefit of additional scenarios, and an increased volume of transactions and participants. In addition, the NCAP Prototype will afford the Remote team the opportunity to test Remote under a more developed ACE system and within the developing Trade Compliance process.

Please note that participants for Remote Prototype Two will be selected under separate criteria to be outlined in a separate NCAP Prototype **Federal Register** notice. Therefore, Remote Prototype One participants may or may not qualify for Remote Prototype Two.

I. Description of Proposed Test

The Concept of Remote Location Filing

Remote Location Filing (RLF) will allow a program participant to file electronically an entry of merchandise with Customs from a location within the United States other than at the port of arrival or location of examination. Due to the nature of this prototype test, certain Customs Regulations pertaining to brokers permits, surety bonds, and the entry of merchandise will be suspended.

Implementation of the extension of the first RLF prototype (Prototype One) will begin no sooner than March 29, 1996 and continue until the implementation of Remote Prototype Two. Prototype One will continue to be conducted with minimal system changes requiring Customs and participants to manually intervene in tracking and processing. All procedures and processes will be closely coordinated with all selected participants and affected parties before implementation.

The intent of extending this prototype is to continue to test such operational issues as communication, cargo movement and release, and service to and from remote locations with a greater volume of entry transactions and participants.

Regulatory Provisions Suspended

Certain provisions in Part 111, pertaining to Customs brokers, Part 113, pertaining to Customs bonds, and Part 141, pertaining to the entry of merchandise, of the Customs Regulations (19 CFR Parts 111, 113, and 141) will continue to be suspended during this prototype test to allow remote filings by brokers at locations where they currently do not hold permits; and to allow for the movement of cargo from its port of arrival to a designated examination site.

II. Eligibility Criteria

Note that participation in this testing is not confidential information. Lists of participants will be made available to the public by means of the Customs Electronic Bulletin Board and the Customs Administrative Message System, and upon written request.

In order to qualify for filing from a remote location, a prototype participant must have the capability to provide, on an entry-by-entry basis, the electronic entry of merchandise; the electronic entry summary of required information; the electronic transmission of invoice information (ABI/AII or EDIFACT); and the electronic payment of duties fees, and taxes (ACH). Other requirements and conditions are as follows.

1. Participants must have operational experience with the Customs Electronic Invoice Program (EIP) with ABI/AII or EDIFACT. Please note that this prototype is a test of Remote Location Filing and not of EIP;
2. Participants must be operational on Automated Clearinghouse (ACH) 30 days before implementation;
3. Only entry types 01 (consumption) and 11 (informal) will be accepted;
4. Cargo release must be certified from the entry summary (EI) transaction with the exception of immediate delivery, as explained in #5;
5. Participants will be allowed to file Immediate Delivery releases for direct arrival road and rail freight at the land border (essentially 19 CFR 142.21(a)) with use of paper invoices under Line Release, Border Cargo Selectivity (BCS), or Cargo Selectivity (CS). Submission of all line items at the time of release will be required of northern border filers, if the release is effected using BCS or CS. If an examination is required for a line release transaction, the filer must submit all relevant line item information through BCS or CS. Under BCS and CS, the examination will be performed at the port of arrival with the use of paper invoices. If the filer wishes the examination to be performed at an alternate site, full entry summary information (EI transaction) with electronic invoice must be transmitted;
6. Participants will not be allowed to file a RLF entry against cargo that has been moved in-bond;
7. Participants will be required to use OGA interfaces where they are available; and
8. If an examination is determined to be necessary, the cargo will be examined at the Customs port of arrival, or, at Customs discretion, at a filer's requested designated examination site which would be a Customs port which is at or nearest the final destination. This movement of cargo to a designated examination port will be under the importer's bond.
9. A participant must maintain an average of 1–2 entries per day throughout the testing period.
10. Locations available for prototype participation are those ports currently operational with the Remote test for release and summary processing. It is possible, however, that additional ports may be added.

The following are locations currently operational under the Remote test: (POA indicates port of arrival, ESP indicates summary processing location, and DES indicates designated examination site).

DDDP location	Electronic processing status
0901 Buffalo	ESP.
0903 Rochester	DES, ESP done in 0901.
1001 NY Seaport	POA, DES, ESP.
1303 Baltimore	POA, DES, ESP.
2704 Los Angeles	POA, DES, ESP.
4601 Newark	POA, DES, ESP.
4701 JFK	POA, DES, ESP.
5501 Dallas	DES, ESP done in 2704.

Prototype One Applications

This notice requests importers, or brokers on behalf of importers, to voluntarily apply for participation in Prototype One extension by submitting the following information to the Remote Filing Team, U.S. Customs Service, 4455 Genesee Street, Room 342, Buffalo, New York 14225 on or before the date set forth in the effective date paragraph at the beginning of this notice:

1. Name, address, and filer code of importer and, if applicable, broker.
2. Supplier/Vendor name, address, and manufacturer's number.
3. Types of commodities to be imported (high volume Harmonized Tariff numbers).
4. Other agency requirements.
5. Port(s) of arrival.
6. Designated examination site(s) (location nearest the final destination).
7. Monthly volume anticipated.
8. Requested entry summary processing location(s), if different from port of arrival.
9. Electronic Invoicing Program status and projected start date.
10. Electronic Payment (ACH) status and projected start date.
11. Main contact person and telephone number for participation questions.
12. Any comments on prototype participation.

Basis For Participant Selection

Eligible importers or importers with brokers will be considered for selection as participants in the Prototype One extension. Customs is looking for a variety of circumstances and participants in this first prototype. We stress that those not selected for participation will be invited to comment on the design, conduct, and evaluation of this prototype. Selection will be based on Customs EIP operational experience, volume anticipated, electronic abilities, and available electronic interfaces with other agency's import requirements. Participants selected will be notified in writing and selections will be announced by means of the Customs Electronic Bulletin Board and the Customs Administrative Message System.

III. Test Evaluation Criteria

Once participants are selected, the Remote Filing Team will review all public comments received concerning any aspect of the prototype, enhance

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procedures in light of those comments, and form problem-solving teams.

Upon conclusion of the prototype the final results will be published in the **Federal Register** as required by § 101.9(b), Customs Regulations and reported to Congress.

Dated: February 21, 1996.

Samuel H. Banks,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 96–4425 Filed 2–26–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

Human Radiation Interagency Working Group; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the VA Human Radiation Interagency Working Group will be held on Wednesday, March 13, 1996, in room C–7C, at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. This meeting will convene at 9:00 a.m. and will adjourn at 4:30 p.m.

The purpose of the Working Group's meeting is to receive briefings and hold discussions to consider the feasibility of updating and expanding the epidemiological tables that are used to determine the likelihood that certain diseases could result from prior exposure to ionizing radiation. Additionally, the Working Group will receive briefings and hold discussions to determine whether existing laws governing the compensation of atomic veterans are now administered in ways that best balance allocation of resources between financial compensation to eligible veterans and administrative costs, including the costs and scientific credibility of dose reconstruction.

The meeting is open to the public to the capacity of the room. For those wishing to attend, contact Ms. Kathy Collier, Department of Veterans Affairs (213B), 810 Vermont Avenue, NW, Washington, DC 20420, phone (202) 273–7230, prior to March 4, 1996.

Members of the public may direct questions or submit prepared statements for review by the Working Group in advance of the meeting, in writing only, to Mr. R. J. Vogel, Under Secretary for Benefits (20/213B), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Submitted material must be received at least five business days prior to the meeting. Members of the public may be asked to clarify submitted material prior to consideration by the Working Group.

Dated: February 20, 1996.

By Direction of the Secretary.

R.J. Vogel,

Under Secretary for Benefits.

[FR Doc. 96–4306 Filed 2–26–96; 8:45 am]

BILLING CODE 8300–01–M

Advisory Committee on Prosthetics and Special-Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Prosthetics and Special-Disabilities Programs will be held Wednesday and Thursday, March 27–28, 1996, at Techworld Plaza, 801 I Street, NW., Washington, DC. The meeting will be held in Room 1105. The March 27 session will convene at 8 a.m. and adjourn at 4 p.m. and the March 28 session will convene at 8 a.m. and adjourn at 12 noon. Both days will involve briefings by the National Program Directors of the Special-Disabilities Programs regarding the status of their acitivities over the last six months. Other topics will be: centralized funding, waiting time in the Blind Rehabilitation Program and the impact of the Veterans Health Administration's reorganization on the delivery of services for these special-disabilities programs.

The purpose of the Advisory Committee is to advise the Department on its prosthetics programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Advisory Committee also advises the Department on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities in terms of daily life functions.

The Designated Federal Official for the Committee is Timothy Gerrity, Ph.D., Deputy Director for Medical Research Service. His phone number is (202) 565–4004.

Dated: February 19, 1996.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–4308 Filed 2–26–96; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Research Realignment, Notice of Meeting

As required by Section 10(a)(2) of the Federal Advisory Committee Act, the VA hereby gives notice that a meeting of the Research Realignment Advisory Committee will be held March 7–8, 1996. The meeting will start at 8 a.m. and adjourn at 5 p.m. on both days. The meeting will be held in the Sheraton Washington Hotel, 2660 Woodley Road, at Connecticut Avenue, N.W., Washington, DC, 20008. The purpose of the meeting is to review the present research programs to ensure that VA research meets the present and future healthcare needs.

The agenda for March 7 will address the details for implementing Special Emphasis Areas. The first day's agenda will also cover career development in a realigned research program and policies and procedures for informed consent in VA research.

On March 8 the committee will discuss Technology Transfer in VA, partnerships with industry, non-profit organizations, and other organizations. The Committee will also address activities of the Advisory Committee to Realign VA Residency Programs, and the role of academic affiliations in a realigned VA research program.

The meeting will be open to the public. Due to limited seating capacity, those who plan to attend or who have questions concerning the meeting should contact Efrend Z. Garcia, Chief Career Development, Department of Veterans Affairs at (202) 565–7133.

The meeting is open to the public to the capacity of the room. For those wishing to attend or who would like a copy of the meeting's final agenda, please contact Kathy Pessagno, Veterans Health Administration (117C), phone (202) 565–7296, Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, DC 20420, prior to March 15, 1996.

Dated: February 19, 1996.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–4307 Filed 2–26–96; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 61, No. 39

Tuesday, February 27, 1996

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

TIME AND DATE: 2:00 pm, Wednesday, March 13, 1996.

PLACE: SR–189, Russell Senate Office Building, Washington, DC 20510.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Report on financial status of the Foundation fund
   A. Review of investment policy and current portfolio
1. Report on results of Scholarship Review Panel
   A. Discussion and consideration of scholarship candidates
   B. Selection of Goldwater Scholars

CONTACT PERSON FOR MORE INFORMATION: Gerald J. Smith, Executive Secretary, Telephone: (703) 756–6012.

Gerald J. Smith,

Executive Secretary.

[FR Doc. 96–4543 Filed 2–23–96; 1:41 pm]

BILLING CODE 4738–01–M

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409). 5 U.S.C. 552B:

DATE AND TIME: February 28, 1996, 10:00 a.m.

PLACE: 888 First Street, N.E., Room 2C, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro, 647th Meeting—February 28, 1996, Regular Meeting (10:00 a.m.)

CAH–1.
Docket # P–2541, 007, Cascade Power Company
CAH–2.
Docket # P–2643, 002, Pacificorp Electric Operations
CAH–3.
Docket # P–5772, 004, City of Augusta, Georgia
CAH–4.
Docket # P–6879, 017, Southeastern Hydro-Power, Inc.
CAH–5.
Docket # P–10684, 001, Lansing Board of Water and Light
Other #S P–10684, 008, Lansing Board of Water and Light
CAH–6.
Docket # P–8185, 024, Bluestone Energy Design, Inc.

Consent Agenda—Electric

CAE–1.
Docket # ER96–749, 000, Pennsylvania Power Company
Other #S TX94–9, 000, Borough of Zelienople, Pennsylvania
CAE–2.
Docket # TX94–7, 000, AES Power, Inc.
CAE–3.
Docket # ER91–480, 002, Jersey Central Power & Light Company
CAE–4.
Docket # EC96–2, 000, Public Service Company of Colorado and Southwestern Public Service Company
CAE–5.
Docket # ER95–1286, 000, Public Service Electric and Gas Company
Other#S EL96–6, 000, Public Service Electric and Gas Company
ER95–1287, 000, Public Service Electric and Gas Company
ER95–1288, 000, Public Service Electric and Gas Company
ER95–1289, 000, Public Service Electric and Gas Company
ER95–1290, 000, Public Service Electric and Gas Company
CAE–6.
Docket # ER95–1319, 000, Atlantic City Electric Company
CAE–7.
Omitted
CAE–8.
Docket # EL93–42, 001, Towns and Cities of Clayton, Lewes, Middletown, Delaware, et al. v. Delmarva Power & Light Company
CAE–9.
Docket # ES96–4, 001, EL Paso Electric Company
CAE–10.
Docket # ER96–185, 001, Illinois Power Company
CAE–11.
Omitted
CAE–12.
Docket # EG96–30, 000, Ventway Pty Ltd.
CAE–13.
Docket # EG96–31, 000, AEP Resources Gippsland Power, L.L.C.
CAE–14.
Docket # EG96–32, 000, CEA (Bermuda) Holdings II, Ltd.
CAE–15.
Docket # EG96–33, 000, PMDC Gippsland Ldc
CAE–16.
Docket # EG96–34, 000, AEP Resources International, Limited
CAE–17.
Docket # EG96–35, 000, AEP Resources Project Management Company, Limited.
CAE–18.
Docket # EG96–36, 000, Gippsland Energy, L.L.C.
CAE–19.
Docket # EG96–38, 000, Nrgenerating Holdings (NO. 4) B.V.
CAE–20.
Docket # EG96–40, 000, CMS Generation Yallourn Limited Duration Company
CAE–21.
Docket # EL96–30, 000, Massachusetts Institute of Technology
CAE–22.
Docket # EL95–57, 000, Municipal Electric Utilities Association of New York State v. Power Authority of the State of New York
CAE–23.
Omitted
CAE–24.
Docket # ER95–1614, 002, Vantus Energy Corporation
CAE–25.
Docket # EL95–11, 000, Indeck-Olean Limited Partnership
Other#S EL95–45, 000, Niagara Mohawk Power Corporation
QF90–154, 004, Indeck-Olean Limited Partnership
QF90–154, 005, Indeck-Olean Limited Partnership
CAE–26.
Omitted

Consent Agenda—Gas and Oil

CAG–1.
Docket # RP96–119, 000, Equitrans, L.P.
CAG–2.
Docket # RP96–123, 000, Florida Gas Transmission Company
CAG–3.
Docket # RP96–131, 000, Texas Gas Transmission Company
CAG–4.
Docket # RP96–132, 000, Southern Natural Gas Company
Other #S RP96–65, 000, Southern Natural Gas Company
CAG–5.

Docket # RP96–135, 000, Southern Natural Gas Company
CAG–6.
Docket # RP96–136, 000 Algonquln Gas Transmission Company
Other #S RP96–136, 001, Algonquin Gas Transmission Company
CAG–7.
Docket # TM96–3–16, 000, National Fuel Gas Supply Corporation
CAG–8.
Docket # RP96–124 000, Williams Natural Gas Company
CAG–9.
Docket # RP96–128 000, Natural Gas Pipeline Company of America
Other#S RP95–242, 007, Natural Gas Pipeline Company of America
RP95–326, 006, Natural Gas Pipeline Company of America
CAG–10.
Docket # RP96–129, 000, Trunkline Gas Company
CAG–11.
Docket # RP96–130, 000, Northern Natural Gas Company
CAG–12.
Docket # RP96–137, 000, Northern Natural Gas Company
CAG–13.
Docket # RP96–138, 000, Koch Gateway Pipeline Company
CAG–14.
Docket # TM96–4–32, 000, Colorado Interstate Gas Company
CAG–15. Omitted
CAG–16.
Docket # PR95–5, 000, Cranberry Pipeline Corporation
Other #S PR95–5, 001, Cranberry Pipeline Corporation
CAG–17.
Docket # PR95–7, 000, The Tekas Corporation
Other #S PR95–7, 001, The Tekas Corporation
CAG–18.
Docket # RP92–134, 014, Southern Natural Gas Company
Other #S RP93–15, 010, Southern Natural Gas Company
CAG–19.
Docket # RP96–14, 000, Southern Natural Gas Company
CAG–20.
Docket # RP96–81, 000, Carnegie Interstate Pipeline Company
CAG–21.
Docket # RP91–143, 028, Great Lakes Gas Transmission Limited Partnership
CAG–22. Omitted
CAG–23.
Docket # RP95–433, 000, CNG Transmission Corporation
CAG–24.
Docket # RP95–442, 000, Northwest Pipeline Corporation
CAG–25.
Docket # RP95–456, 001, Mississippi River Transmission Corporation
Other #S RP95–226, 000, Mississippi River Transmission Corporation
RP95–353, 000, Mississippi River Transmission Corporation
RP95–456, 000, Mississippi River Transmission Corporation
RP96–89, 000, Mississippi River Transmission Corporation
CAG–26.
Docket # RP96–51, 001, Panhandle Eastern Pipe Line Company
CAG–27.
Docket # RP96–45, 001, Northern Border Pipeline Company
CAG–28.
Docket # TM96–2–43, 002, Williams Natural Gas Company
CAG–29.
Docket # RP96–62, 001, ANR Pipeline Company
CAG–30.
Docket # RP96–61, 002, Tennessee Gas Pipeline Company
CAG–31.
Docket # RP96–58, 001, Koch Gateway Pipeline Company
CAG–32.
Docket # RP96–63, 002, Iroquois Gas Transmission System
CAG–33.
Docket # RP96–73, 001, Tennessee Gas Pipeline Company
Other#S TM96–2–9, 001, Tennessee Gas Pipeline Company
CAG–34.
Omitted
CAG–35.
Omitted
CAG–36.
Docket # RP91–166 029 Northwest Pipeline Corporation
Other#S RP91–166, 028, Northwest Pipeline Corporation
CAG–37.
Omitted
CAG–38.
Docket # RM95–3, 001, Filing Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs
CAG–39A.
Docket # RM95–4, 001, Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Co.
CAG–39B.
Docket # RM95–4, 000, Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Co.
CAG–40.
Docket # RP95–149, 003, ANR Pipeline Company et al.
CAG–41.
Docket # RM96–9, 000, Editorial Changes to Various Regulations to Conform References to Revised Part 154
CAG–42.
Omitted
CAG–43.
Omitted
CAG–44.
Docket # CP95–113, 001, K N Interstate Gas Transmission Company
CAG–45.
Docket # CP96–22, 000, K N Interstate Gas Transmission Company
CAG–46.
Docket # CP95–37, 000, Columbia Gas Transmission Corporation
CAG–47.
Docket # CP95–595, 000, Texas Eastern Transmission Corporation
Other #S CP95–595, 001, Texas Eastern Transmission Corporation
CAG–48.
Docket # CP96–1, 000, Mississippi River Transmission Corporation
CAG–49.
Docket # CP95–638, 000, Intermountain Municipal Gas Association v. Mountain Fuel Supply Company
CAG–50.
Omitted
CAG–51.
Omitted
CAG–52.
Docket # CP95–46, 000, Eastern States Oil & Gas, Inc.
Other#S CP93–200, 000, CNG Transmission Corporation
CP93–200, 004, CNG Transmission Corporation
CP95–32, 000, CNG Transmission Corporation
CP95–32, 001, CNG Transmission Corporation
CP95–244, 000, Eastern States Oil & Gas, Inc.
CP95–245, 000, CNG Transmission Corporation
CP95–245, 001, CNG Transmission Corporation
CAG–53.
Docket # CP95–658, 000, Questar Gas Management Company
Other#S CP95–650, 000, Questar Pipeline Company
CP95–650, 001, Questar Pipeline Company
CP95–650, 002, Questar Pipeline Company
CAG–54.
Docket # CP93–258, 008, Mojave Pipeline Company
CAG–55.
Docket # RP96–141, 000, CNG Transmission Corporation

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Pipeline Certificate Matters

PC–1.
Docket # RM96–5, 000, Gas Pipeline Facilities and Services on the Outer Continental Shelf, et al. Statement of Policy.
PC–2.
Docket # CP96–9, 000, Shell Gas Pipeline Company
Other#S CP96–159, 000, Shell Gas Pipeline Company Order on Request for Declaratory Order.

Dated: February 21, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4451 Filed 2–22–96; 4:19 pm]

BILLING CODE 6717–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:30 a.m., Friday, March 1, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–4493 Filed 2–23–96; 1:41 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, March 4, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–4574 Filed 2–23–96; 3:50 pm]

BILLING CODE 6210–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, March 5, 1996.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6596A—Highway Accident Report: Highway/Rail Grade Crossing Collision Near Sycamore, South Carolina, May 2, 1995.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: February 23, 1996.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 96–4492 Filed 2–23–96; 11:24 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 26, March 4, 11, and 18, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 26

Monday, February 26

10:00 a.m.
Briefing by Organization of Agreement States (Public Meeting)
(Contact: Kathy Schneider, 301–415–2320)

Tuesday, February 27

10:00 a.m.
Briefing by Staff on Steam Generator Issues (Public Meeting)
(Contact: Jack Strosnider, 301–415–2795)
11:30 a.m.
Affirmation Session (Public Meeting)
a. Sequoyah Fuel Corporation and General Atomics; LBP–95–18 Approving Joint Settlement with Sequoyah Fuels Corp. (Tentative)
(Contact: Andrew Bates, 301–415–1963)
2:00 p.m.
Briefing by National Academy of Sciences on Review of Medical Use Program (Public Meeting)
(Contact: Trish Holahan, 301–415–7847)

Wednesday, February 28

9:30 a.m.
Briefing by NARUC on Utility Deregulation (Public Meeting)
(Contact: Spiros Droggitis, 301–415–2367)

Week of March 4—Tentative

Friday, March 8

1:00 p.m.
Briefing by Low Level Waste Forum (LLWF) (Public Meeting)
(Contact: Jim Kennedy, 301–415–6668)
2:30 p.m.
Briefing on Design Certification Issues (Public Meeting)

Week of March 11—Tentative

There are no meetings scheduled for the Week of March 11.

Week of March 18—Tentative

Tuesday, March 19

10:30 a.m.
Briefing on U.S. Enrichment Corporation Certification (Public Meeting)
(Contact: John Hickey, 301–415–7192)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: February 22, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary

[FR Doc. 96–4491 Filed 2–23–96; 11:24 am]

BILLING CODE 7590–01–M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming quarterly meeting of the Board of Directors.

DATE: A regular open meeting will be held Wednesday, March 13, 1996, at 10:00 a.m.

ADDRESS: The meeting will be held at the Pennsylvania Avenue Development Corporation, Suite 1220 North, 1331 Pennsylvania Avenue, N.W., Washington, D.C.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Dated: February 22, 1996.

Lester M. Hunkele III,

Executive Director.

[FR Doc. 96–4544 Filed 2–23–96; 1:41 pm]

BILLING CODE 7630–01–M

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Corrections

Federal Register
Vol. 61, No. 39
Tuesday, February 27, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11243-001]

Whitewater Engineering Corporation; Notice to File Additional Scientific Studies

Correction

In notice document 96–3958 appearing on page 6824, in the issue of Thursday, February 22, 1996, in the first column, the project number should read as set forth above.

BILLING CODE 1505–01–D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards

Correction

In the correction to rule document 96–1348 appearing on page 6412 in the issue of Tuesday, February 20, 1996 make the following correction:

Correction (1)(a) should have read as follows:

§ 121.201 [Corrected]

(1) On page 3289, in § 121.201, in the table "Size Standards by SIC Industry":

(a) In Division A, under the heading "Size standards in number of employees or millions of Dollars", the entry corresponding to "0211 Beef Cattle Feedlots (Custom)" should read "1.5".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13-96-001]

Drawbridge Operation Regulations; Snohomish River, Everett, WA

Correction

In proposed rule document 96–3696 beginning on page 6588, in the issue of Wednesday, February 21, 1996, make the following correction:

On page 6588, in the second column, under **DATES:**, in the second line, "April 29, 1996." should read "April 22, 1996.".

BILLING CODE 1505–01–D

federal register

Tuesday
February 27, 1996

Part II

Department of Commerce

International Trade Administration

19 CFR Parts 351, 353, and 355
Antidumping Duties; Countervailing Duties; Proposed Rule

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DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 351, 353, and 355

[Docket No. 951122274–5274–01]

RIN 0625–AA45

Antidumping Duties; Countervailing Duties

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of proposed rulemaking and request for Public Comments.

SUMMARY: The Department of Commerce ("the Department") proposes to establish regulations to conform the Department's existing antidumping duty and countervailing duty regulations to the Uruguay Round Agreements Act, which implemented the results of the Uruguay Round multilateral trade negotiations. In addition to conforming changes, the Department has sought to issue regulations that: where appropriate and feasible, translate the principles of the implementing legislation into specific and predictable rules, thereby facilitating the administration of these laws and providing greater predictability for private parties affected by these laws; simplify and streamline the Department's administration of antidumping and countervailing duty proceedings in a manner consistent with the purpose of the statute and the President's regulatory principles; and codify certain administrative practices determined to be appropriate under the new statute and under the President's Regulatory Reform Initiative.

DATES: Written comments will be due on April 29, 1996.

ADDRESSES: Address written comments to Susan G. Esserman, Assistant Secretary for Import Administration, Central Records Unit, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. Attention: Proposed Regulations/Uruguay Round Agreements Act. Each person submitting a comment is requested to include his or her name and address, and give reasons for any recommendation.

FOR FURTHER INFORMATION CONTACT: William D. Hunter (202) 482–1930, or Penelope Naas, (202) 482–3534.

SUPPLEMENTARY INFORMATION:

Background

In March, 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reform Initiative. This initiative is part of the National Performance review, and calls for immediate, comprehensive regulatory reform. The President directed all agencies to undertake an exhaustive review of all their regulations, with an emphasis on eliminating or modifying those that are obsolete or otherwise in need of reform. This proposed rule represents one of the steps in the Import Administration's response to the President's directive.

On January 3, 1995, the Department published an Advance Notice of Proposed Rulemaking and Request for Comments in the **Federal Register** (*Antidumping Duties; Countervailing Duties; Article 1904 of the North American Free Trade Agreement*, 60 FR 80 ("Advance Notice")), as the first step in the process of developing regulations under the Uruguay Round Agreements Act ("URAA").[1] The Department took the step of requesting comments in advance of issuing a proposed rule in order to ensure that, at the earliest possible stage, we could consider and take account the views of the private sector entities that are subject to the antidumping and countervailing duty laws.[2]

In these proposed regulations, the Department has been guided by the following objectives. First, the Department is proposing to revise the regulations to conform to the statutory amendments made by the URAA. Second, consistent with the Administration's commitment in the Statement of Administrative Action accompanying H.R. 5110 (H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994) ("SAA"), the Department has fleshed out through regulation certain statements contained in the SAA. Under section 102(d) of the URAA, the SAA constitutes an authoritative expression concerning the interpretation and application of the provisions of the URAA, including those provisions relating to antidumping and countervailing duties. Finally, the Department has developed proposed regulations mindful of President Clinton's Regulatory Reform Initiative and his directive to identify and either eliminate or modify obsolete and burdensome regulations.

The Department has carefully reviewed its existing regulations, and has taken several steps to enhance their effectiveness and make them more accessible to the business community. We have consolidated the antidumping and countervailing duty regulations (which currently are contained in separate Parts 353 and 355) into a single Part 351. Because, for the most part, antidumping and countervailing duty procedures are identical, the consolidation of those portions of the regulations dealing with procedures will make the regulations easier to use, will make it easier to identify those instances where antidumping and countervailing duty procedures differ, and, by reducing the sheer size of the regulations, will make the regulations less burdensome to the non-expert.

To the extent possible, we have proposed regulations that simplify and streamline the antidumping/countervailing duty process. For example, in the case of administrative reviews, we have added a new provision which allows, under certain circumstances, the Department to cover two review periods in a single review, an approach which should be more efficient for all parties concerned. We have attempted to harmonize, to the extent possible, the rules applicable to both the investigation and review phases of antidumping and countervailing duty proceedings. Because the maintenance of different rules for different phases of antidumping and countervailing duty proceedings merely adds another layer of complexity to an already complex area, we have attempted to eliminate needless differences. For example, in the case of correction of ministerial errors, we generally have made the procedures identical for both investigations and reviews.

In addition, we have developed rules which reduce burdens and facilitate the use of the regulations and administrative procedures. For example, we have consolidated and harmonized the rules governing the submission of information. We have reduced the number of copies that parties must file when they make submissions to the Department. We also have included charts which set forth in a single place the various deadlines in antidumping and countervailing duty investigations and reviews.

Further, where possible, we have proposed regulations that supplement, rather than repeat, the statute. We have included narrative explanations that put a particular regulation in context and explain how the regulation fits in the administrative process. We have also sought to use language that will be readily understood by members of the business community.

Finally, where possible, we have tried to use these regulations as a vehicle for enhancing the predictability of the antidumping and countervailing duty laws. We recognize that there are many areas in which the statute provides the Department with discretion, and we have attempted to provide guidance as to how the Department will exercise that discretion. For example, in the regulation that deals with so-called "price averaging" in antidumping proceedings, we have attempted to flesh out how the Department will apply this new methodology added to the law by the URAA.

In this regard, however, there are limits as to the amount of detail that the Department can provide in these regulations at this time. In some instances, the statute or the SAA already provides extremely detailed rules, thereby obviating the need for additional regulatory guidance. In other instances, the SAA expressly directs the Department to take a case-by-case approach and to eschew hard-and-fast rules. Finally, in many instances, the URAA has created new procedural and methodological issues on which the Department has little, if any, experience. Absent such experience, the Department lacks a basis for promulgating detailed rules.

Streamlining the regulations is only one part of a larger effort of the Department to simplify its practices. For example, we have been revising our standard questionnaires to make them more "user friendly" and efficient. We have made significant changes to our verification procedures in the interest of increased effectiveness. We also will publicly announce the issuance of Policy Bulletins and ensure that they are easily accessible to the public.

Timetable

Certain regulations dealing with the treatment of business proprietary information and administrative protective order procedures were the subject of a separate Notice of Proposed Rulemaking and Request for Public Comment on [Insert date and citation when published] ("APO Rule"). However, the Department intends that, when it publishes final regulations, it will publish a single document that will include the regulations contained in this proposed rule, as well as those regulations contained in the APO Rule.

In addition, the Department intends to publish separately proposed rules regarding countervailing duty methodology. When completed, these rules will be included as subpart E of proposed Part 351.

The issuance of final regulations on this topic is a priority for the Department. After reviewing and analyzing comments on this proposed rule and the APO Rule, the Department intends to issue final regulations as soon as possible.

Comments—In General

The Department wishes to emphasize that the regulations contained in this proposed rule reflect our best judgment at this time regarding the appropriate style and content of antidumping and countervailing duty regulations. We have not foreclosed consideration of any issue raised herein, and we would appreciate greatly public comment and suggestions. In particular, while there are certain matters on which, in our view, the statute and its legislative history give the Department relatively little flexibility, there are other matters where the Department has a much greater degree of discretion in interpreting and applying the statute. With respect to this latter category of matters, the fact that in these proposed regulations the Department has exercised its discretion in a particular manner (or has declined to exercise its discretion at all in the form of regulations) should not be construed as an indication that the Department's position on these matters is immutable. We welcome any and all suggestions.

Therefore, we are very interested in receiving public comment on these proposed regulations. We have found the dialogue that commenced with the Advance Notice to be extremely useful, and we hope and expect that it will continue. We encourage the submission of new comments, as well as the resubmission of old comments if commentators believe that the Department did not fully understand or appreciate a comment the first time around.

Comments—Format and Number of Copies

Each person submitting a comment should include his or her name and address, and give reasons for any recommendation. To facilitate their consideration by the Department, comments regarding these proposed regulations should be submitted in the following format: (1) Number each comment in accordance with the number designated for that issue as indicated in the list of issues set forth below; (2) begin each comment on a separate page; (3) concisely state the issue identified and discussed in the comment; and (4) provide a brief summary of the comment (a maximum of 3 sentences) and label this section "summary of the comment."

To simplify the processing and distribution of comments, the Department encourages the submission of documents in electronic form accompanied by an original and two copies in paper form. We request that documents filed in electronic form be on DOS formatted 3.5" diskettes and prepared in either WordPerfect 5.1 format or a format that the WordPerfect program can convert and import into WordPerfect 5.1. Please submit comments on a separate file on the diskette and labeled by the number designated for that issue based upon the list of issues set forth below.

Comments received on diskette will be made available to the public on the Internet at the following addresses:
FTP://FWUX.FEDWORLD.GOV/PUB/IMPORT or
FTP://FTP.FEDWORLD.GOV/RUB/IMPORT/IMPORT.HTM
In addition, the Department will make comments available to the public on 3.5" diskettes, with specific instructions for accessing compressed data, at cost, and paper copies will be available for reading and photocopying in the Central Records Unit, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. Any questions concerning file formatting, document conversion, access on the Internet, or other file requirements should be addressed to Andrew Lee Beller, Director of Central Records, (202) 482–1248.

Classification of Issues for Comment

Antidumping Issues

11. Comparison Methodology:
a. Viability, third-country sales, intermediate country sales, and tolling;
b. Constructed export price deductions and value-added deductions;

[1] Among other things, the URAA amended the antidumping and countervailing duty provisions of the Tariff Act of 1930 to conform those provisions to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("AD Agreement") and the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), both of which are part of the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement").

[2] On February 22, 1995, the Department published in the **Federal Register** (60 FR 9802) a notice extending until April 3, 1995, the deadline for filing final comments pursuant to the Advance Notice. In addition, on May 11, 1995, the Department published in the **Federal Register** (60 FR 25130) a Notice of Interim Regulations and Request for Comments ("Interim Regulations"). The Interim Regulations dealt with certain new or revised procedures resulting from the URAA that would have an immediate impact on the orderly administration of the antidumping and countervailing duty laws. Although the Department invited immediate comments on the Interim Regulations, it allowed the deadline for comments on the Interim Regulations to coincide with the deadline for comments on this proposed rulemaking.

c. Normal value adjustments;
d. Level of trade matching, level of trade adjustments, and constructed export price offset;
12. Start-up
13. Profit and selling, general and administrative expenses in constructed value;
14. Sales below cost of production and constructed value generally;
15. Currency conversion;
16. Price averaging;
17. Anticircumvention;
18. Affiliated persons (address separately for AD and CVD);
19. AD methodology issues other than those outlined above;

Procedural issues

20. Initiation of petitions;
21. Evidence;
22. Facts available;
23. De Minimis (address separately for AD and CVD);
24. Reviews, other than five-year reviews (if specific to AD or CVD, please specify);
25. Five-year reviews and revocation;
26. Repeal of Section 303;
27. Regional industries;
28. Critical circumstances;
29. Simplification;
30. Business proprietary information and administrative protective orders;
31. Ministerial errors;
32. Procedural issues other than those outlined above;
33. Other issues.

Explanation of the Proposed Rules

General Background

Consolidation of Antidumping and Countervailing Duty Regulations

As discussed above, in response to the President's Regulatory Reform Initiative, to reduce the amount of duplicative material in the regulations, the Department has consolidated the antidumping and countervailing duty regulations into a new Part 351, and is removing Parts 353 and 355.

The structure of Part 351 is as follows. Subpart A (Scope and Definitions) is based on existing subpart A of Parts 353 and 355. Among other things, the regulations contained in subpart A deal with general definitions applicable to antidumping and countervailing duty proceedings, the record for such proceedings, and de minimis standards for countervailable subsidies and dumping margins.

Subpart B (Antidumping and Countervailing Duty Procedures) is based on existing subpart B of Parts 353 and 355. As suggested by the title, subpart B deals with the procedural aspects of antidumping and countervailing duty proceedings. Where the procedures for antidumping and countervailing duty proceedings are different, the regulations in subpart B so specify.

Subpart C (Information and Argument) is based on existing subpart C of Parts 353 and 355. Subpart C establishes rules for antidumping and countervailing proceedings regarding such matters as the submission of information, the treatment of proprietary information, the verification of information, and determinations based on the facts available. As noted, certain portions of Subpart C were contained in the APO Notice.

Subpart D (Calculation of Export Price, Constructed Export Price, Fair Value, and Normal Value) is based on existing subpart D of Part 353. Subpart D essentially deals with methodologies for identifying and measure dumping.

Subpart E is designated "[Reserved]," but, as explained above, eventually will include rules dealing with countervailing duty methodology. Subpart E does not have a counterpart in existing Part 355, although proposed methodological regulations were published in 1989. 54 FR 23366 (1989).

Subpart F (Cheese Subject to In-Quota Rate of Duty) is based on subpart D of existing Part 355, and implements section 702 of the Trade Agreements Act of 1979, as amended by the URAA.

Explanation of Particular Provisions

Part 351. Subpart A—Scope and Definitions

Subpart A of Part 351 sets forth the scope of Part 351, definitions, and other general matters applicable to antidumping and countervailing duty proceedings.

Section 351.101

Section 351.101 deals with the scope of Part 351, countervailing duty investigations involving imports from a country that is not a Subsidies Agreement country, and the application of antidumping and countervailing duties to importations by the United States Government.

Section 351.102

Section 351.102 sets forth the definition of terms that are used in antidumping and countervailing duty proceedings, but that are not defined in the statute or that warrant clarification. A few definitions merit comment.

Affiliated persons (and affiliated parties) is a new term that replaces prior definitions of "related persons" or "related parties" (the latter term continues to be governed by section 771(4)(B)). Because the statute unintentionally uses inconsistent terminology, the regulation makes clear that the terms "affiliated person" and "affiliated parties" have the same meaning. The first sentence of the definition merely refers to the definition of "affiliated persons" in section 771(33) of the Act. The second sentence elaborates on the meaning of "control," a key term in the definition of "affiliated persons" under section 771(33). It reflects the statements in the SAA, at 838, that one person may be in a position to exercise restraint or direction over another person, and thus have "control" over that person, by such means as corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships. The definition of affiliation will also be applied for purposes of "collapsing" firms under section 351.401(f).

Several commentators suggested that the Department should specify precise thresholds for these indicia of control in order to provide a greater degree of predictability in the administration of the antidumping law. The Department appreciates the parties' desire for greater guidance concerning the definition of "control." However, the Department does not believe that it is now in a position to establish such thresholds, but instead must develop thresholds, where appropriate, as it gains experience in applying the concept of control. "Affiliated persons" is a new statutory term embodying new concepts, and the complexity of the relationships potentially covered by this term mitigate against the issuance of detailed regulations at this time. Moreover, some indicia of the ability to exercise restraint or direction over another party's pricing, cost, or production decisions may not lend themselves to the use of simple, black-and-white thresholds. Therefore, the Department intends to apply this new definition on a case-by-case basis, considering all relevant factors, including the indicia included in the regulatory definition. Mere identification of the presence of one or more of these or other indicia of control does not end our task. We will examine these indicia, in light of business and economic reality, to determine whether they are, in fact, evidence of control. Business and economic reality suggest that these relationships must be significant and not easily replaced. In addition, temporary market power, created by variations in supply and demand conditions, would not suffice.

In addition, some commentators suggested that the Department should define "control" as existing only where there is evidence that control previously had been exercised. We have not adopted this suggestion because the statute, by its use of the phrase "in a position to exercise restraint or direction," defines "control" in terms of the *ability* to exercise restraint and direction. The actual exercise of restraint or direction would constitute evidence as to the existence of such *ability*.

Finally, some commentators suggested that the Department establish in the regulations that if one or more of the factors listed in section 771(33) is present, the Department should presume that the parties are affiliated. Other commentators suggested, conversely, that if certain factors are not present, the Department should presume that the parties are not affiliated. With regard to the former suggestion, the statute provides that if any one of the factors in section 771(33) is present, the Department is required to find that persons are affiliated, not merely presume that they are affiliated. With regard to the latter suggestion, the Department is required to consider evidence of any one of the factors. The only factor for which a presumption could be developed is the factor of control. However, as explained above, the Department is not yet in a position to develop such presumptions in these regulations.

Domestic interested party is a new term intended to serve as a convenient, shorthand substitute for the more lengthy phrase used in the statute ("an interested party described in paragraph (C), (D), (E), (F), or (G) of section 771(9) of the Act") and its existing regulatory counterpart (*e.g.*, "an interested party, as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2"). In addition, the definition of "domestic interested party" reflects the creation of a new category of interested party relating to processed agricultural products. Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418, section 1326(c).

The definition of *fair value* is based on existing section 353.42(a). The courts have long recognized that the Secretary possesses additional methodological flexibility in an antidumping investigation, *see, e.g., Southwest Fla. Winter Veg. Growers Ass'n* v. *United States*, 584 F. Supp. 10, 17 (Ct. Int'l Trade 1984), and the definition of fair value is intended to reflect this fact.

With respect to the definition of *ordinary course of trade*, generally, in calculating normal value, the Department must rely on sales and transactions that are in the ordinary course of trade. The first sentence of the definition refers to section 771(15) of the Act. The second sentence draws on the SAA, at 834, to elaborate on this definition, and contains examples of the types of sales or transactions that might be considered as outside the ordinary course of trade.

Some commentators urged the Department to refrain from specifying criteria to be used in determining whether sales or transactions are outside the ordinary course of trade. We agree that it would be inappropriate to include in regulations a detailed list of criteria that the Department might consider, but we also believe that there should be some guidance to the public as to how the Department will analyze "ordinary course of trade" issues. Accordingly, as noted above, we have incorporated the relevant language from the SAA, which provides a general description of the standard to be applied.

One commentator suggested that the Department clarify that the addition in the statute of two specific types of transactions deemed to be outside the ordinary course of trade does not affect the criteria the Department traditionally has used to determine whether other types of transactions are outside the ordinary course of trade. The second sentence of the regulatory definition addresses this concern.

Two commentators suggested that the Department identify examples of the types of sales that would be considered as being outside the ordinary course of trade, including sales at aberrational prices. The second sentence of the regulatory definition responds to these comments, although we emphasize that the second sentence is not an exhaustive list of all of the possible types of sales or transactions that might be considered as being outside the ordinary course of trade.

One commentator requested that the Department clarify that below-cost sales and affiliated transactions are not always outside the ordinary course of trade. Further clarification is not needed, because section 771(15) of the Act is clear that not all sales below cost or affiliated transactions will be deemed automatically to be outside the ordinary course of trade. Instead, only sales or transactions that are *disregarded* under the pertinent statutory and regulatory provisions automatically will be deemed to be outside the ordinary course of trade. Of course, the fact that such sales or transactions are not *automatically* considered to be outside the ordinary course of trade does not mean that they never could be considered to be outside the ordinary course of trade. For example, in the case of a below-cost sale of an "off-spec" product, even if the sale is not disregarded as a below-cost sale under section 773(b) of the Act, it might be disregarded as not in the ordinary course of trade due to the "off-spec" nature of the product.

Rates is used in these regulations as a single shorthand expression for the various terms used in the Act. In addition, the second sentence of the definition clarifies that in an antidumping proceeding involving imports from a nonmarket economy ("NME") country, the Secretary may calculate a single dumping margin applicable to all exporters and producers. Because the government of an NME country may control export activities, the Department currently presumes that a single rate will apply, but allows individual exporters or producers to receive their own separate rates if they can demonstrate independence from the NME government. *See, e.g.*, Silicon Carbide from the People's Republic of China, 59 FR 22585 (1994).

We have decided not to codify the current presumption in favor of a single rate or the so-called "separate rates test," which outlines the type of information that an exporter or producer must present to obtain a separate rate. Because of the changing conditions in those NME countries most frequently subject to antidumping proceedings, this test (and the assumptions underlying the test) must be allowed to adjust to such changes on a case-by-case basis.

The Department received comments proposing changes to the separate rates test, as well as objections to the proposed changes. Because we are codifying neither the single rate presumption nor the separate rates test, we are not addressing these comments at this time. However, we will take the comments into consideration as our policy in this area evolves.

In addition, the Department is considering whether to promulgate special rules regarding the rates that should be applied to exporters that are not also producers, such as trading companies. In this situation, one alternative would be to calculate a separate rate for each exporter/producer combination, so that the rate to be applied to an exporter would depend upon the producer of the particular merchandise in question. However, before proceeding further, the Department would like to receive additional public comment on this issue.

Respondent interested party is a counterpart to, and is intended to serve

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the same function as the term "domestic interested party." A respondent interested party is an interested party described in paragraph (A) or (B) of section 771(9) of the Act.

The term *segment of the proceeding* refers to discrete portions of the proceeding which are separately reviewable under section 516A of the Act. Thus, for example, an investigation and an administrative review are separate segments of a proceeding.

The term *third country* applies in antidumping proceedings, and is intended to be a shorthand expression for the more lengthy statutory phrase "a country other than the exporting country or the United States."

Section 351.103

Section 351.103

Section 351.103 describes the location and function of Import Administration's Central Records Unit, provides that documents must be filed with the Central Records Unit, and indicates that the Central Records Unit is responsible for maintaining the service list for each antidumping and countervailing duty proceeding.

Section 351.104

Section 351.104 defines what constitutes the official and public records of an antidumping or countervailing duty proceeding, and prohibits the removal of a record or any portion thereof unless ordered by the Secretary or required by law.

One change warranting discussion is the treatment of material returned by the Department to the submitter. The existing regulations provide that material which is not timely filed or which is returned to the submitter for some other reason shall not be retained in the official record. However, because parties have a right to seek judicial or binational panel review of a decision to reject a submission, as a matter of practice the Department has found it necessary to retain a copy of the returned materials in order to be able to document for the court or binational panel the reasons for the Department's decision to reject the submission. Therefore, paragraph (a)(2) conforms to current practice. Under paragraph (a)(2), the Department will include in the official record material that has been returned to the submitter for reasons other than untimeliness, but the Department will not use such material in its determinations. In the case of a submission rejected as untimely, it is unnecessary to retain a copy of the submission in the official record, because the timeliness/untimeliness of the submission can be documented by means other than retention of the submission.

Section 351.105

Section 351.105 defines the four categories of information applicable to antidumping and countervailing duty proceedings: public, business proprietary, privileged, and classified. One change from the existing regulations is that paragraph (c)(10) provides that the position of domestic producers or workers regarding a petition may be treated as business proprietary information. The new statute requires that the Department make an affirmative determination of domestic industry support for a petition before initiating an antidumping or countervailing duty investigation. Some domestic producers or workers might be reluctant to communicate their positions regarding a petition for fear that their positions might become public information, thereby potentially subjecting them to commercial retaliation. Accordingly, it is essential that domestic producers and workers have the option of communicating their positions to the Department on a confidential basis.

Section 351.106

Section 351.106 deals with the *de minimis* standard, and implements section 703(b)(4) and section 733(b)(3) of the Act. The Department has long applied a *de minimis* standard under which it treated net countervailable subsidies and weighted-average dumping margins that were less than 0.5 percent *ad valorem* (or the equivalent specific rate) as zero. The URAA incorporated the *de minimis* standards of the AD Agreement and the SCM Agreement into the statute, thereby modifying the prior Department standard in antidumping and countervailing duty investigations.

Consistent with the statute and the SAA, paragraph (b)(1) provides that the *de minimis* standards set forth in section 703(b)(4) and section 733(b)(3) of the Act will apply to the investigatory segment of an antidumping or countervailing duty proceeding. Although not restated in paragraph (b)(1), these statutory standards are 2 percent *ad valorem* (or the equivalent specific rate) for antidumping duty investigations, and normally 1 percent *ad valorem* (or the equivalent specific rate) for countervailing duty investigations. However, the *de minimis* standard in a countervailing duty investigation may be 2 percent if the investigated merchandise is from a developing country, or 3 percent if the investigated merchandise is from a "least developed country" or from a country which has phased out its export subsidies prior to the deadline established in the SCM Agreement.

Paragraph (b)(2) provides a transition rule for investigations that were initiated under pre-URAA law, suspended, and then later resumed due to a cancellation of the suspension agreement. Paragraph (b)(2) provides that in making a final determination in this situation, the Department will apply the *de minimis* standard which it would have used if the investigation never had been suspended (*i.e.*, the old law standard for investigations of 0.5 percent). However, paragraph (b)(2) has no effect on the standard which the Department may apply in determining that a suspension agreement has been violated or that a violation is "inadvertent or inconsequential" within the meaning of section 351.209.

The *de minimis* standards set forth in paragraph (b)(1) will apply only in antidumping or countervailing duty investigations. Paragraph (c)(1) provides that for all other antidumping or countervailing duty determinations, the *de minimis* standard will be 0.5 percent *ad valorem*, the standard set forth in existing sections 353.6 and 355.7. Several commentators suggested that the new *de minimis* standards set forth in paragraph (b)(1) should not be limited to the investigatory segment. The Department has not adopted these suggestions, because, as a matter of domestic law, the statute and the SAA are very clear that the new standards apply only to investigations. Moreover, as a matter of international law, neither the AD Agreement nor the SCM Agreement require that the new standards be applied outside of the investigatory segment.

In this regard, several commentators suggested that the Department should abandon its practice of assessing antidumping duties even when the weighted-average dumping margin was *de minimis*, arguing that (1) this practice is in conflict with the statement in the SAA, at 844, that "*de minimis* margins are regarded as zero margins," and (2) a failure to apply the *de minimis* standard to assessment effectively would negate that standard. The Department agrees that the language of the SAA suggests that the *de minimis* standard should not be applied solely to cash deposits, but to assessment of duties as well. The 0.5 percent *de minimis* standard will apply to the assessment of both antidumping and countervailing duties, but, in the case of antidumping duties, the Department will apply this standard to the "assessment rate" calculated under new section 351.212(b)(1). As discussed in more detail below, the Department will calculate the assessment rate on an importer-by-importer basis. In situations where an exporter sells to one importer at dumped prices and to another importer at non-dumped prices, the application of the *de minimis* standard to these importer-specific assessment rates will prevent the dumped transactions from escaping the assessment of duties. With respect to the assessment of countervailing duties, the Department will continue to refrain from assessing duties where the countervailable subsidy rate (or the all-others or country-wide subsidy rate) is *de minimis*.

Subpart B—Antidumping Duty and Countervailing Duty Procedures

Subpart B deals with antidumping duty and countervailing duty procedures and is based on subpart B of Part 353 and Part 355 of the Department's existing regulations.

Section 351.201

Section 351.201 deals with the self-initiation of investigations by the Department, and is based on existing sections 353.11 and 355.11.

Section 351.202

Section 351.202 deals with the contents of, and filing requirements for, antidumping and countervailing duty petitions, and is based on existing sections 353.12 and 355.12.

Paragraph (b) is based on existing sections 353.12(b) and 355.12(b), and retains the standard that a petition need only contain information that is reasonably available to the petitioner. The following changes in paragraph (b) merit comment.

Paragraph (b)(3) is new and reflects the requirement that, before initiating an investigation, the Department must make an affirmative determination that the domestic industry supports the petition. Paragraph (b)(3) does not prescribe a single method by which a petitioner may seek to establish industry support, because the type of information establishing industry support may vary from industry to industry. However, as provided in the SAA, at 861, the petitioner must provide the volume and value of its own production of the domestic like product, as well as the production of that product by each member of the industry, to the extent that such information is reasonably available to the petitioner. In addition, the petitioner must provide information on the total volume and value of U.S. production of the domestic like product, to the extent that such information is reasonably available to the petitioner.

In paragraph (b)(7)(ii)(C)(*1*), which deals with upstream subsidy allegations, the phrase "Countervailable subsidies, other than an export subsidy" replaces the phrase in existing § 355.12(b)(8)(i), "Domestic subsidies described in section 771(5). * * *" This change reflects the URAA amendment to section 771A of the Act, which, in turn, was due to the URAA's creation of a third category of subsidies, so-called "import substitution subsidies," in section 771(5)(C) of the Act.

In paragraph (b)(10), the phrase "and causation" has been added. Petitioners always have been required to submit information indicating that dumped or subsidized imports cause, or threaten to cause, material injury to a domestic industry. The addition of this phrase is intended simply to document this requirement.

Paragraph (b)(11), which deals with critical circumstances allegations, has been revised from existing § 353.12(b)(12) to reflect the statutory amendments regarding the elements necessary for a finding of critical circumstances.

Paragraph (e) deals with amendments to petitions, and is based on existing §§ 353.12(e) and 355.12(e). In the first sentence, "may" has been substituted for "will" in order to more accurately reflect the discretion that the statute confers on the Department regarding the acceptance of amendments to petitions.

Paragraph (i) is based on existing §§ 353.12(i) and 355.12(j), but has been revised to reference sections 702(b)(4)(B) and 733(b)(3)(B) of the Act, which now deal expressly with the issue of pre-initiation communications between the Department and outside parties. The last sentence of paragraph (i)(1) clarifies that the Department will not consider the filing of a notice of appearance in an antidumping or countervailing duty proceeding to constitute a communication. However, if any communication is appended to a notice of appearance on any subject other than industry support, the Department will consider the entire document to be prematurely filed. In addition, paragraph (i)(2) provides that, in a countervailing duty proceeding, the Department will take the initiative and "invite" the government of the exporting country involved for consultations, instead of taking a more passive approach and merely providing an opportunity for consultations.

Several commentators suggested that the Department should solicit comments regarding the petition, such as comments concerning the accuracy of the information contained in the petition. However, the SAA, at 863–64, states that "the pre-initiation right to comment will be limited solely to the issue of industry support for the petition." Thus, the legislative intent was to prohibit the type of communication contemplated by these commentators, and it would contravene this intent if the Department were to allow parties to submit such information by "requesting" parties to provide it.

Section 351.203

Section 351.203 deals with determinations regarding the sufficiency of a petition, and implements sections 702(c) and 732(c) of the Act. While based on existing §§ 353.13 and 355.13, § 351.203 contains several changes that reflect amendments to the statute.

Paragraph (b)(1) provides that the Department normally will make the determination regarding the sufficiency of a petition within 20 days of the date on which the petition is filed. In this regard, paragraph (b)(1) repeats the language of the statute with respect to the determination concerning the "accuracy and adequacy" of a petition. The Department does not believe that the new statutory standard constitutes a significant departure from past Department practice.

Paragraph (b)(1) reflects the new statutory requirement that the Department examine sources readily available to it in determining the sufficiency of a petition. In the past, it was the Department's practice, in reviewing a petition, to note information that lacked sufficient support or that appeared aberrational, and to ask the petitioner to provide additional information. This practice is consistent with the type of review contemplated by the new statute. Under paragraph (b)(1), the Department will seek information from sources other than the petitioner where: (1) Support for a particular allegation is weak, but better information is unavailable to the petitioner, particularly where the allegation is central to the adequacy of the petition or has a significant impact on the alleged rates, or (2) the information, although supported, appears aberrational and is central to the adequacy of the petition or has a significant impact on the alleged rates. The Department will give the petitioner an opportunity to comment on any such information acquired by the Department.

In this regard, the use of information "readily available" is intended to mean information that does not require extensive research by the Department to

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obtain. An example of such information would be the replacement of a significant factor of production value in a nonmarket economy antidumping petition with non-proprietary information used in a recently completed investigation or review.

With respect to injury and causation, given the bifurcated responsibilities of the Department and the Commission under the Act, the Department will continue to work in cooperation with Commission staff in evaluating a petition.

Paragraph (b)(2) deals with situations in which the Department extends the period for determining the sufficiency of a petition in order to poll or otherwise determine industry support for a petition. Under paragraph (b)(2), the Department will extend the period only by the amount of time required to gather and analyze information relevant to the question of industry support, and in no case will the Department exceed the maximum period of 40 days authorized by the statute.

Paragraph (c)(2) is new and incorporates the requirements of the SAA, at 867, regarding the distribution of a public version of a petition once the Department has made a determination to initiate an investigation. Normally, the Department will provide a public version of the petition to all known exporters. However, in accordance with the SAA, at 867, where the number of exporters is very large, the Department may provide a copy of the petition to a trade association, with instructions to provide copies to all exporters. Alternatively, the Department may consider this obligation to have been satisfied by the delivery of a public version of the petition to the government of the exporting country under § 351.202(f). In the latter case, the Department will notify the government in question that its obligation has been met through such delivery. In addition, to conserve resources, the Department is looking into the feasibility of making the petition available on computer diskette.

Paragraph (e) is new and deals with the new statutory requirements regarding determinations of industry support for a petition. Paragraph (e)(1) deals with the measurement of domestic production, an important issue in light of the fact that expressions of support or opposition for a petition are weighted according to production. Consistent with the SAA, at 862, paragraph (e)(1) provides that the Department may measure production on the basis of volume or value. In addition, in order to provide a degree of predictability, paragraph (e)(1) also provides that the Department normally will measure production over a twelve-month period. Because in certain cases some period other than twelve months may be more appropriate, the Secretary retains the discretion to prescribe the precise period on a case-by-case basis. However, normally the Secretary will use the most recent twelve-month period for which data are available.

The second sentence of paragraph (e)(1) provides that where the Department is satisfied that actual production data for the relevant period is not available, production levels may be established on the basis of alternative data that the Department determines to be indicative of production levels. For example, for some industries or firms, shipment data may correspond directly with production data, and, thus, be a reliable alternative. However, because of the vast array of industries that appear before it, the Department has not attempted to specify data that would be an acceptable surrogate in all cases for production data.

Paragraph (e)(2) provides that the expression of a position regarding a petition may be treated as business proprietary information under § 351.105(c)(10), discussed above. Several commentators expressed concern that, if parties were required to state publicly their position regarding a petition, they could face commercial retaliation. Therefore, business proprietary treatment may be necessary in order to encourage domestic producers and workers to present their candid views regarding a petition.

Paragraph (e)(3) sets forth rules regarding the weight accorded to the positions of workers and management regarding a petition. Consistent with the SAA, at 862, an opinion expressed by workers will be considered to be of equal weight to an opinion expressed by management. Thus, for example, if a union expressed support for a petition, the Department would consider that support to be equal to the production of all of the firms that employ workers belonging to the union. On the other hand, if management and workers at a particular firm expressed opposite views with respect to a petition, the production of that firm would be treated as representing neither support for, nor opposition to, the petition.

Paragraph (e)(4) reflects sections 702(c)(4)(B) and 734(c)(4)(B) of the Act and the SAA, at 858–859, which allow the Department to disregard, in certain situations, opposition to a petition by certain domestic producers. Paragraph (e)(4)(i) clarifies that a "related" domestic producer includes a domestic producer related to a foreign *exporter*, as well as a domestic producer related to a foreign *producer*. In this regard, the Department believes that the statutory requirement that the Department "shall" ignore the opposition of related domestic producers "unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected" puts the burden of demonstrating such an effect on those producers. Paragraph (e)(4)(ii) clarifies that the Department *may* disregard the views of domestic producers who are also importers of the subject merchandise and domestic producers who are related to such importers within the meaning of section 771(4)(B)(ii) of the Act. In evaluating whether to disregard such producers, the Department may consider the import levels and percentage of ownership common to other members of the domestic industry.

Paragraph (e)(5) deals with the question of industry support where the petition alleges the existence of a regional industry under section 771(4)(C) of the Act. The SAA, at 863, states that industry support shall be assessed "on the basis of production in the alleged region." Consistent with this statement, paragraph (e)(5) provides that, for purposes of assessing industry support, the applicable region will be the region specified in the petition.

Paragraph (e)(6) deals with situations in which the Department may have to poll the industry in order to determine whether the industry supports a petition. Paragraph (e)(6) clarifies that in conducting such a poll, the Department will include in the poll unions, groups of workers, and trade and business associations.

Paragraph (f) interprets sections 702(c)(1)(C) and 732(c)(1)(C) of the Act, which provide for expeditious investigations involving subject merchandise that previously was covered by an order that was revoked or a suspended investigation that was terminated. Paragraph (f) clarifies that these provisions of the Act apply if the revocation or termination occurred under a pre-URAA version of the statute.

Section 351.204

Section 351.204 deals with issues relating to the transactions and persons to be examined in an investigation, voluntary respondents and exclusions. Paragraph (b) deals with the period of time covered by an investigation ("POI"). In a departure from existing § 353.42(b), paragraph (b)(1) provides that the POI in an antidumping investigation normally will be the four most recently completed fiscal quarters (or, in a case involving a nonmarket economy, the two most recently completed fiscal quarters) as of the month preceding the month in which a petition is filed or in which the Department self-initiated an investigation. The use of fiscal quarters is intended to ease reporting requirements and permit more efficient verification of submitted information. However, paragraph (b)(1) would permit the Department to use an additional or alternative period in appropriate circumstances. Paragraph (b)(2) codifies existing practice regarding the POI in countervailing duty investigations.

Paragraph (c) deals with the selection of the exporters and producers to be examined. In light of section 777A(c) of the Act, paragraph (c) does not retain the 60 and 85 percent thresholds of existing § 353.42(b). Additionally, paragraph (c) permits the Department to decline to examine a particular exporter or producer where all parties agree. Such exporter or producer will be subject to the all-others rate, where such a rate is calculated.

Paragraph (d) deals with the treatment of voluntary respondents under section 782(a) of the Act. Through its reference to section 777A(e)(2)(A) of the Act, paragraph (d)(1) provides that the Department will not consider voluntary respondents in investigations conducted on an aggregate basis under section 777A(e)(2)(B) of the Act. As discussed below, however, in so-called "aggregate cases," the Department will consider requests for exclusion under paragraph (e)(3) by individual exporters or producers. Paragraph (d)(2) provides that if the Department accepts a voluntary response, the voluntary respondent will be subject to the same requirements as those firms initially selected by the Department for individual examination, including, where applicable, the use of the facts available. The purpose of this provision is to ensure that the Department is not burdened with frivolous voluntary responses from parties that wish to see the preliminary all-others rate before deciding whether to withdraw their request to be investigated. Finally, paragraph (d)(3) provides for the exclusion of voluntary respondents from the calculation of the all-others rate. The purpose of this provision is to prevent manipulation and to maintain the integrity of the all-others rate.

Paragraph (e) deals with exclusions and constitutes a significant change from prior practice, as reflected in §§ 353.14 and 355.14. With the exception of countervailing duty investigations conducted on an aggregate basis, paragraph (e)(1) eliminates the various certification requirements of the prior regulations and, instead, provides that any exporter or producer that is individually examined and that receives an individual weighted-average dumping margin or countervailable subsidy rate of zero or *de minimis* will be excluded from an order.

In this regard, the Department is considering whether there should be separate exclusion rules for firms, such as trading companies, that sell, but do not produce, subject merchandise. For example, one alternative would be to limit the exclusion of a non-producing exporter to subject merchandise produced by those producers that supplied the exporter during the period of investigation. However, before issuing final rules, the Department is interested in receiving additional public comments regarding this issue.

Paragraph (e)(2) clarifies that, while no exporter will be excluded from an investigation as a result of a preliminary determination, those found to have zero or *de minimis* rates will not be subject to provisional measures.

Paragraph (e)(3) explains that, where a countervailing duty investigation is conducted on an aggregate basis under section 777A(e)(2)(B) of the Act, individual responses will be accepted for purposes of establishing exclusion. However, consistent with section 782(a)(2) of the Act, the number of such responses must not be so large that individual examination of such exporters or producers would be unduly burdensome and inhibit the timely completion of the investigation. Responses submitted in support of a request for exclusion must include a certification that the party received zero or *de minimis* net countervailable subsidies and a calculation demonstrating the basis for that conclusion. Additionally, because the countervailable subsidy rate for a reseller normally is based on the producer's rate, an exporter that is not the producer of subject merchandise must provide a certification from the suppliers or producers of the merchandise that the exporter sold during the period of investigation, stating that those persons also received zero or *de minimis* net countervailable subsidies. Finally, an exporter or producer seeking exclusion also must submit a certification from the government that the government did not provide the firm with net countervailable subsidies above *de minimis*. An exporter or producer requesting exclusion may be required to provide more detailed information regarding the nature and amount of any countervailable subsidies received. If the Department determines that an exporter or producer seeking exclusion has received net countervailable subsidies above *de minimis*, that firm will not be excluded from a countervailing duty order and will be subject to the country-wide subsidy rate.

Section 351.205

Section 351.205 deals with preliminary antidumping and countervailing duty determinations, and is based on existing sections 353.15 and 355.15.

Section 351.206

Section 351.206 deals with critical circumstances findings, and is little changed from existing §§ 353.16 and 355.15. However, the reader should note that the statutory prerequisites for a finding of critical circumstances have changed. *See* sections 705(a)(2) and 735(a)(3) of the Act.

Section 351.207

Section 351.207 deals with the termination of investigations, something that typically occurs through a withdrawal of the petition. Section 351.207 is based on existing §§ 353.17 and 355.17, and the principal changes are: (1) the last sentence of paragraph (b)(1) contains a cross-reference to the statutory and regulatory provisions that deal with the treatment in a subsequent investigation of records compiled in an investigation in which the petition is withdrawn; and (2) paragraph (c) references the Department's authority, pursuant to section 782(h)(1) of the Act, to terminate an investigation due to lack of interest. As the SAA, at 864, makes clear, the Department's authority to carry out a no-interest termination is unaffected by those provisions of the statute prohibiting the post-initiation reconsideration of industry support for a petition.

Section 351.208

Section 351.208 deals with suspension agreements and suspended investigations, and is based on existing §§ 353.18 and 355.18. The most significant changes reflected in § 351.208 relate to the new statutory provisions regarding suspension agreements in regional industry cases (paragraphs (f)(1)(ii), (f)(2)(ii), and (f)(3)). In this regard, paragraphs (f)(1)(ii) and (f)(2)(ii) address situations in which the Commission finds a regional industry in its final determination, but not in its preliminary determination. If the Commission finds a regional industry in its preliminary determination, the Secretary still could accept a regional industry suspension

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agreement under section 704(l) and section 734(m) of the Act, but the procedures and deadlines in paragraphs (f)(1)(i) and (f)(2)(i) would apply. In addition, it should be noted that paragraph (f)(2) lists some, but not all, of the procedural steps required by the Act with respect to the suspension of an investigation.

In addition, the deadlines for initialling and signing suspension agreements have been advanced. Under current practice, consideration of a suspension agreement and briefing and drafting of comments in preparation for a final determination occur simultaneously, thereby creating an enormous burden on parties and on the Department. The proposed rule allows parties to propose a suspension agreement within 15 days of a preliminary antidumping determination, or within 5 days of a preliminary countervailing duty determination. In an antidumping investigation, parties may also request an extension of the final determination. An extension will not affect the time allotted for consideration of a suspension agreement, only the time allotted for preparation of the final determination. In a countervailing duty investigation, the period for consideration of a suspension agreement would be expedited because no extension of the final determination is possible, unless the investigation is aligned with a companion antidumping investigation or an upstream investigation is initiated. While the suspension agreement is under consideration, the briefing and hearing schedule would be postponed. The proposed timeline will reduce burdens on all parties by eliminating the need to file case briefs, rebuttal briefs, and to participate in a hearing, if a suspension agreement is accepted.

Section 351.209

Section 351.209 deals with the violation of suspension agreements. Although § 351.209 is largely identical to existing §§ 353.19 and 355.19, there are a few changes worth noting. First, in several places, the term "a signatory" has been substituted for "exporters." This change from the plural to the singular is intended to clarify that the actions of a single signatory can constitute a violation of a suspension agreement.

Second, paragraph (b)(2) provides that if, as a result of a violation, the Department resumes a suspended investigation that had not been completed under sections 704(g) or 734(g) of the Act, the Department may update previously submitted information, where appropriate, for purposes of making a final determination. For example, if a considerable amount of time has passed since the POI of the original investigation or if there have been significant changes in market circumstances, it might be inappropriate to make a final determination on the basis of dated information. This issue has arisen in prior cases, and paragraph (b)(2) is intended to clarify the Department's authority to seek updated information in these types of situations.

Section 351.210

Section 351.210 deals with final determinations in investigations, and is little changed from existing §§ 353.20 and 355.20. One change worth noting is that because the URAA eliminated the preference for a country-wide rate in countervailing duty investigations, § 351.210 lacks a provision comparable to existing § 355.20(d).

Section 351.211

Section 351.211 deals with the issuance of antidumping duty and countervailing duty orders, and is based on existing §§ 353.21 and 355.21. The most significant new provision is paragraph (c), which implements sections 706(c) and 736(d) of the Act regarding the coverage of orders issued in investigations where the Commission has identified a regional industry. Paragraph (c) establishes procedures by which an exporter or producer that did not supply the region during the POI may be excepted from the assessment of duties.

Section 351.212

Section 351.212 is new, and deals with matters related to the assessment of antidumping and countervailing duties. Although portions of § 351.212 are based on provisions of the Department's current regulations, other portions are entirely new.

Paragraph (b) deals with the assessment of duties as the result of a review. Paragraph (b)(1) establishes rules regarding the assessment of antidumping duties. By way of background, when the Department assumed responsibility for the administration of the antidumping law in 1980, it inherited from its predecessor, the U.S. Customs Service, the practice of issuing assessment instructions in the form of so-called "master lists." Typically, a master list would list each entry (or each shipment). Over time, the Department encountered numerous problems in creating master lists. For example, because dumping margins are calculated on the basis of sales, the creation of a master list requires the ability to link each U.S. sale to a corresponding customs entry. Frequently, this is an impractical task for both the Department and exporters and importers. For example, if sales are made after importation, the U.S. affiliate (or consignee) of the foreign exporter usually will not maintain records that link each sale to an unaffiliated customer to a corresponding customs entry. Similarly, when the Department examines sales by a foreign producer to intermediaries outside the United States, such as foreign trading companies, the producer normally does not have the information that would allow the Department to identify the specific customs entries that correspond to specific sales to the intermediaries.

This inability to link sales to entries also has prevented the Department from conducting reviews on the basis of merchandise entered during a particular review period. Where this type of problem exists, the Department has been forced to define review periods on the basis of shipments or sales during the period.

One method of dealing with this problem would be to require respondents to maintain records in such a way that sales can be linked to entries. However, such a requirement would impose a burden on respondents that would be disproportionate to the minor gains in the precision of duty assessments, and simply would render an already complex process even more complex. Therefore, commercial reality and the need to streamline the administration of the antidumping law have caused the Department to rely on the use of duty assessment rates instead of entry-by-entry master lists. In the interests of clarity and predictability, we believe that this practice should be codified in the regulations.

With respect to the use of duty assessment rates, the Department believes that, except in unusual situations, we should assess duties on subject merchandise entered during each review period. Therefore, paragraph (b)(1) provides that the Department normally will calculate a duty assessment rate based on sales reviewed, and will apply those rates to entries made during the review period. In all cases, this will result in the assessment of duties on merchandise entered during the review period. To the extent possible, these assessment rates will be specific to each importer, because the amount of duties assessed should correspond to the degree of dumping reflected in the price paid by each importer. Where possible, we will base assessment rates on the entered value of the sales examined in the review. If entered values are not available, it may be necessary to use unit rates.

For example, assume that a U.S. importer (affiliated with the foreign exporter) sells after importation two different products, A and B, both of which are subject to an antidumping order. The Department reviews sales totalling 100 tons of product A and 200 tons of product B. The entered value of the merchandise during the review period was $40 per ton for product A and $30 per ton for product B. The absolute dumping margin found for all of the sales was $100. In this example, the assessment rate would be 10 percent [($100/($40x100 + $30x200) = 10 percent]. Put differently, it is the rate of dumping reflected in these sales relative to the entered value of the merchandise. We would collect antidumping duties on merchandise entered during the review period by applying this 10 percent rate to the entered value of each of those entries.

The Department believes that, except in unusual situations, it should not abandon the objective of assessing duties on the basis of entries, even when it is not possible to precisely link sales to entries. In most antidumping proceedings, it is necessary to assess duties on the basis of entries in order to maintain continuity with periods of no review and to avoid the over- or undercollection of duties. Moreover, because we typically cannot link sales to entries, we currently have no means of collecting precisely an amount of duties equal to the total absolute dumping margin calculated for the sale reviewed. This would require exact knowledge, for each importer, as to the total quantity or value of unliquidated entries during the review period, information that often is difficult or impossible to obtain.

The Department intends to continue to use master lists in situations where there are few shipments, and to assess duties on the basis of merchandise sold or shipped if warranted by the pattern of imports and sales. We also will evaluate the effect of reconciliation entries, which are authorized by the Customs Modernization Act, on the duty assessment process, and we may collect duties on the basis of merchandise sold or shipped if a reconciliation entry is used.

Paragraph (b)(2) deals with the assessment of countervailing duties, and is consistent with current practice.

Paragraph (c) deals with the automatic assessment of duties in situations where an administrative review of an order under § 351.213 is not requested, and is based on existing §§ 353.22(e) and 355.22(g). Paragraph (c)(3) is new, and provides that automatic assessment will not occur, even though an administrative review is not requested, if the merchandise in question is subject to a new shipper review under § 351.214 or an expedited antidumping review under § 351.215.

Paragraph (d) deals with the provisional measures deposit cap, and is based on existing §§ 353.23 and 355.23. The language of paragraph (d) has been revised to reflect the new concept of assessment rates in paragraph (b). Finally, paragraph (e) deals with interest on over- and underpayments of estimated duties, and is little changed from existing §§ 353.24 and 355.24.

Section 351.213

Section 351.213 deals with administrative reviews under section 751(a)(1) of the Act. Section 351.213 is based largely on existing §§ 353.22 and 355.22, but certain changes are worth noting.

Paragraph (c) establishes a new procedure by which the Secretary, upon request, may defer the initiation of an administrative review for one year. The purpose of this provision is to simplify the review process and reduce the burden on all concerned by allowing the Department, in effect, to cover two review periods in a single review. However, the Secretary will not defer an administrative review if one of the parties identified in the regulation objects to deferral.

Paragraph (d) deals with the rescission (previously referred to as "termination") of administrative reviews, and clarifies that the Department may rescind a review that the Secretary self-initiated or in which there are no entries, exports, or sales to be reviewed.

Paragraph (e)(2) codifies existing practice regarding the period of review for countervailing duty administrative reviews, and is similar, but not identical, to the period covered by investigations under § 351.204(b)(2).

Paragraph (f) deals with the treatment of voluntary respondents in administrative reviews, and provides that voluntary respondents will be treated in the same manner as in an investigation.

Paragraph (g) cross-references new § 351.221, a new provision which consolidates in one place the procedures to be applied in the different types of reviews provided for by the Act.

Paragraph (h) sets forth deadlines for issuing preliminary and final results of administrative reviews, and also provides for extensions to those deadlines.

Paragraph (j) establishes procedures for the analysis of the absorption of antidumping duties under section 751(a)(4) of the Act. The Department will make a determination regarding duty absorption in administrative reviews initiated in the second and fourth years after the issuance of an antidumping order. In addition, if an order remains in existence following a sunset review under section 751(c) of the Act, the Department will make a duty absorption determination in the second and fourth years following the Department's determination in the sunset review. However, the Department will make a determination regarding duty absorption only if a request for such a determination is made within 30 days of the initiation of the administrative review. For transition orders, reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year.

Paragraph (k) deals with administrative reviews of countervailing duty orders that are conducted on an aggregate basis. Paragraph (k)(1) establishes a procedure under which an individual exporter or producer may seek a zero rate. This procedure is modeled on § 351.204(e)(3), discussed above, which deals with requests for exclusion in countervailing duty investigations conducted on an aggregate basis. As with requests for exclusion, the Secretary will consider requests for zero rates to the extent practicable. Paragraph (k)(2) provides that, where an administrative review of a countervailing duty order is conducted on an aggregate basis, the country-wide rate calculated in such a review, if any, will supersede, for cash-deposit purposes, rates calculated in a prior segment of the proceeding, with the exception of zero rates determined under paragraph (k)(1).

Section 351.214

Section 351.214 sets forth the procedures for conducting new shipper reviews, a new procedure contained in section 751(a)(2) of the Act. This section also establishes a procedure for conducting an expedited review of exporters that are not individually examined in countervailing duty investigations. Certain features of § 351.214 merit discussion.

Paragraph (b) sets forth the procedures for requesting a new shipper review. Under paragraphs (b)(1), (b)(2), and (b)(3), the requester must provide certifications demonstrating that the

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party is a *bona fide* new shipper. The purpose of these certifications is to ensure that new shipper status is not achieved through mere restructuring of corporate organizations or channels of distribution. In accordance with the SAA, at 875, this provision also makes clear that parties will not be granted new shipper status merely because they were not individually examined during the investigation.

Paragraph (b)(4) requires the requesting party to document the entry date of the shipment which establishes the basis for the new shipper review, as well as the date of the first sale to an unaffiliated customer in the United States. If the requesting party cannot provide such information it may, in the alternative, provide documentation establishing the date on which the merchandise was shipped. The date of first entry (or the date of shipment) will be used to establish the timeliness of the request for a new shipper review under § 351.214(c).

In the case of a countervailing duty order, paragraph (b)(5) requires the requesting party to certify that it has informed the government of the exporting country that the government will be required to provide a full questionnaire response. This requirement is intended to put parties on notice that, in a review of a countervailing duty order, the party will have to have the cooperation of the government. By requiring at the outset a certification that the government has been put on notice of the review, the Department hopes to minimize situations in which it will be forced to rely upon the facts available.

Paragraph (c) clarifies that a request for a new shipper review must be submitted no later than one year after the date of the first shipment to the United States. By setting this deadline, the Department clarifies that the statute is intended to provide a new shipper an opportunity to obtain its own rate on an expedited basis, and not to permit shippers to request expedited reviews long after the first shipment has taken place.

Paragraph (d) deals with the time for initiating new shipper reviews, and provides an illustrative example. Paragraph (f) permits the Secretary to rescind a new shipper review upon the request of the new shipper made within 60 days of the initiation of the review. In addition, the Secretary may rescind a new shipper review if the Secretary concludes that: (i) There were no entries, exports, or sales (as appropriate) during the standard period of review for a new shipper review, and (ii) an expansion of the standard period to include entries, exports, or sales would prevent the timely completion of the new shipper review. This might occur, for example, in an antidumping proceeding where a new shipper exports merchandise to an affiliated U.S. importer, but the importer does not resell the merchandise to an unaffiliated U.S. purchaser within the standard period of review. Although the Secretary would have the discretion to expand the period of review to cover a subsequent resale, if the merchandise has not been resold within a reasonable period of time following the end of the standard review period, the Secretary could rescind the new shipper review. The new shipper still would have the option of requesting a new shipper review if and when the merchandise was resold.

Paragraph (g) deals with the period of review. New shipper reviews in antidumping proceedings normally will cover a period of six months or one year, depending on whether the review was initiated following the anniversary month or the semiannual anniversary month. In a countervailing duty proceeding, the period of review will be the same as in an administrative review. However, because of the novelty of the new shipper review procedure, the period of review may change as the Department gains experience in this area. It is the Department's intent to apply paragraph (g) in a flexible manner so that the Department may expand the standard period of review to cover the first exportation of a new shipper, provided that any such expansion of the period of review does not prevent the completion of the review within the statutory time limits.

Because new shipper reviews may be requested at any time, but are initiated only at six-month intervals, the Department may find that the Customs Service has liquidated the relevant entries based upon instructions issued under the automatic assessment provisions of § 351.212(c). Although the Department may be forced to review entries that already have been liquidated, this should not be interpreted as a change in the Department's general policy of refusing to conduct administrative reviews of liquidated entries.

Paragraph (h) cross-references section 351.221, which, as discussed above, contains procedural rules for the various types of reviews conducted by the Department. Here, we should note that under § 351.221(b)(6), the results of review will form the basis for the assessment of duties on unliquidated entries. Some commentators have argued that the Department should exclude a new shipper from an order if the Department determines in a new shipper review a zero or *de minimis* rate. The Department has not adopted this suggestion for the following reasons. Section 751(a)(2) implements obligations arising under both the AD Agreement and the SCM Agreement, but during the Uruguay Round negotiations, the subject of new shippers was negotiated primarily in connection with the AD Agreement. The negotiating history of the AD Agreement indicates that while a proposal was made regarding the exclusion from an order of new shippers found to be selling at non-dumped prices, this proposal was not included in the final AD Agreement. Thus, the purpose of the new shipper review procedure merely was to provide an expedited review of imports already considered to be subject to an order. We note that we invite comment on our proposal to change the rules governing revocation, § 351.222, and that these rules apply to new shippers.

Finally, paragraph (j) addresses situations in which a new shipper may be subject to more than one review or more than one request for review. For example, a new shipper might request a new shipper review notwithstanding the fact that the new shipper is already subject to an administrative review under § 351.213. To minimize the potential for confusion and to conserve administrative resources, paragraph (j) permits the Department to terminate a review, in whole or in part, including a new shipper review. Paragraph (j) also would permit the Department to conduct an administrative review under § 351.213 of less than the normal one year review period. Paragraph (j) also permits the Department to conduct a new shipper review concurrently with an administrative review under section 351.213, if the new shipper is willing to waive the time limits for a new shipper review set forth in paragraph (i). If a new shipper waives the time limits, all other provisions of § 351.214, including the bonding provision of paragraph (e), will continue to apply for the duration of the new shipper review.

To implement Article 19.3 of the SCM Agreement, paragraph (k) expands the new shipper review procedure to cover exporters that were not individually examined in a countervailing duty investigation where the Secretary limited the investigation under section 777A(e)(2)(A) of the Act. There are a few important differences between this procedure and the procedure for a regular new shipper review. First, to allow the Department to manage its limited resources efficiently, a noninvestigated exporter desiring an expedited review must file a request within 30 days of the publication of a countervailing duty order. This is a reasonable time limit, because a noninvestigated exporter will be aware of its status long before an order is published. Second, because the noninvestigated exporter does not qualify as a new shipper, the Secretary will not permit a bond to be substituted for a cash deposit of estimated duties.

Section 351.215

Section 351.215 deals with expedited antidumping reviews under section 736(c) of the Act. But for stylistic and formatting changes, section 351.215 is unchanged from existing § 353.22(g).

Section 351.216

Section 351.216 deals with changed circumstances reviews under section 751(b) of the Act. Again, except for stylistic and formatting changes, this provision is unchanged from existing §§ 353.22(f) and 355.22(h).

Section 351.217

Section 351.217 deals with reviews under section 751(g) of the Act. Section 751(g) establishes a mechanism for reviewing a countervailing duty order to take account of the outcome of a subsidies-related WTO dispute.

Section 351.218

Section 351.218 deals with sunset reviews under section 751(c) of the Act. In accordance with section 751(c), paragraph (c) provides that the Department will publish a notice of initiation no later than 30 days before the fifth anniversary date of an order or suspended investigation. As described in the SAA, at 882, the Department may initiate a sunset review at an earlier date, at the request of a domestic interested party. The purpose of this provision is to enable the Commission to conduct a cumulative injury analysis. However, if the Department determines that the party requesting an early sunset review is related to a foreign exporter or producer or is an importer (or is related to an importer) within the meaning of section 771(4)(B) of the Act and § 351.203(e)(4), the Department may decline such a request.

With respect to sunset reviews, the Department would like to remind parties that section 751(c)(3)(A) of the Act requires the Department to make a final sunset determination within 90 days of the notice of initiation if no domestic interested party responds to the notice of initiation. Therefore, once the Department publishes a notice of initiation of a sunset review, parties will receive no further notice of the review unless and until they provide such information.

Section 351.219

Section 351.219 deals with section 753 of the Act. In general, section 753 of the Act provides a mechanism for providing an injury test in the case of countervailing duty orders that (i) pertain to a Subsidies Agreement country, and (ii) were issued under section 303 of the Act without an injury test. Under section 753, upon request, the Commission will conduct an investigation to determine if a U.S. industry is likely to be materially injured if a countervailing duty order is revoked. If the Commission's determination is negative, or if no request for an investigation is received, the Department will revoke the order.

Section 351.219 differs from § 355.40, which the Department issued as an interim-final rule on May 11, 1995 (60 FR 25130, 25139). The principal change is that we have eliminated provisions that merely repeated the language of section 753. However, consistent with the SAA, at 942–943, paragraph (b) continues to provide that the Secretary will notify domestic interested parties as soon as possible after the opportunity for requesting a section 753 investigation arises.

Section 351.220

Section 351.220 deals with reviews conducted at the request of the President under section 762 of the Act. But for stylistic and formatting changes, § 351.220 is unchanged from existing § 355.22(i).

Section 351.221

Section 351.221 consolidates in one section the procedural actions that the Department will take with respect to the various types of reviews provided for under the Act. Paragraph (b) is in the nature of a generic provision, and is based on existing §§ 353.22(c) and 355.22(c). Paragraph (c) contains special rules for particular types of reviews.

Section 351.222

Section 351.222 deals with the revocation of orders and termination of suspended investigations.

Paragraph (b), which deals with revocation or termination based on the absence of dumping, is substantively unchanged from existing § 353.25(a). Paragraph (c) retains the current requirements (found in § 355.25(a)) for revocation or termination based on the absence of countervailable subsidies. As provided in § 351.213(e) and § 351.204(d), the Department generally will not consider voluntary respondents in an administrative review of a countervailing duty order that is conducted on an aggregate basis under section 777A(e)(2)(B) of the Act. However, the requirements for a company-specific revocation set forth in paragraph (c)(3) may be satisfied in a proceeding conducted on an aggregate basis by the submission of certifications that the company received zero or *de minimis* countervailable subsidies. See § 351.222(e)(2)(iii). As in the case of exclusions, the Department is considering whether there should be separate revocation rules for firms, such as trading companies, that sell, but do not produce, subject merchandise. One alternative would be to limit the revocation of a non-producing exporter to subject merchandise produced by those producers that supplied the exporter prior to revocation. However, before issuing final rules, the Department is interested in receiving additional public comments regarding this issue.

Under the current regulations a company must have been the subject of three (or, in a countervailing duty proceeding, five) consecutive administrative reviews in order to qualify for a company-specific revocation. One consequence of this policy is that it forces companies to request administrative reviews that they might not otherwise request, thereby needlessly adding to the Department's workload.

In an attempt to reduce the administrative burden on parties and Department personnel, while at the same time maintaining our current policy that there must be a consistent pattern of no dumping or subsidization before we will consider revocation, paragraph (d) eliminates the requirement that the Department actually conduct a review in each of the three (or five) years before revocation. Instead, the Department will require that reviews of the first and last years of the three- or five-year period demonstrate an absence of dumping or subsidization. In other words, the Department would be able to revoke an order (or terminate a suspended investigation), despite the fact that an administrative review may not have been conducted for one or more of the intervening years, as long as the cash deposit rate in the end review years was zero. The Department reasons that if a review of the first year establishes an absence of dumping or countervailable subsidies, the lack of a request for reviews of subsequent years by domestic interested parties is sufficient to establish the continued absence of dumping or countervailable subsidies

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during those years. However, to ensure that the lack of requests for reviews is not simply due to the absence of imports in commercial quantities, the Department will require a certification from a company seeking revocation (or each signatory in the case of a suspended investigation) that it sold subject merchandise to the United States in commercial quantities in each of the three (or five) years, including any unreviewed intervening years. The Department will establish whether sales were made in commercial quantities based upon examination of the normal sizes of sales by the producer/exporter and other producers of subject merchandise. In deciding commercial quantities, the Department will consider natural disasters and other unusual occurrences which might affect the potential for production or exportation.

Paragraph (e) retains the procedures currently found in §§ 353.25(b) and 355.25(b) regarding requests for revocation and termination based on the results of administrative reviews. One change is that in a countervailing duty proceeding, paragraph (e)(2)(iii) requires that, along with the certification that the person has received no net countervailable subsidy for five consecutive years, the person must submit a calculation demonstrating the basis for the conclusion that the person received no net countervailable subsidy in the fifth year. This calculation should be based on methodologies used by the Department in the most recently completed segment of a proceeding. The Department will review this calculation, and will notify the person if the Department identifies a methodological or other error, the correction of which may reveal a net countervailable subsidy that is above de minimis for that year. In addition, to conform to the changes in paragraph (d) regarding unreviewed intervening years, the requester must provide certifications regarding sales to the United States in commercial quantities.

Paragraph (g) deals with revocations and terminations based on changed circumstances reviews, and is almost identical to prior sections 353.25(d) and 355.25(d). The one substantive change is that, in light of the new sunset review procedure under section 751(c) of the Act, we have eliminated the prior "sunset revocation" procedure based on the absence of requests for administrative reviews.

Paragraphs (h) through (i) deal with revocations and terminations based on other review procedures, such as changed circumstances reviews by the Commission and sunset reviews by the Department and the Commission.

Paragraph (m) is a transition rule designed to account for the fact that the URAA altered the substantive rules for determining when merchandise is fairly traded under the Act. Essentially, for purposes of satisfying the three- and five-year requirements for revocation or termination, paragraph (m) gives a company or foreign government credit for the absence of dumping or countervailable subsidies during years to which the pre-URAA version of the Act applies. For example, in the case of a particular company, if, under the transition rules of section 291(a)(2) of the URAA, there were two administrative reviews showing two years of no sales at less than foreign market value (under the pre-URAA version of the Act) and one year of no sales at less than normal value (under the Act as amended by the URAA), the company would be deemed to have satisfied the three-year requirement for revocation.

Section 351.223

Section 351.223 deals with the procedures for requesting and initiating a downstream product monitoring program under section 780 of the Act. There are no substantive changes from existing § 353.27.

Section 351.224

Section 351.224 deals with the disclosure of calculations and procedures for the correction of ministerial errors. Section 351.224 is based on existing §§ 353.20(e), 355.20(h), 353.28, and 355.28, and on proposed regulations concerning the correction of significant ministerial errors in preliminary determinations in antidumping and countervailing duty investigations (see Notice of Proposed Rulemaking and Request for Public Comments, 57 FR 1131 (January 10, 1992) (Proposed Regulations)). However, section 351.224 contains numerous changes intended to streamline the disclosure and ministerial error correction process.

The principal goal of these changes is to provide for the issuance of a correction notice normally within 30 days after the date of public announcement of the preliminary or final determination or final results of review. The date of public announcement is the date on which the signed determination or results of review is first made available to interested parties. This goal is consistent with the proposal from a number of commentators that the Department should respond to ministerial error allegations prior to the date when a summons must be filed with the Court of International Trade or when a notice of intent to commence panel review must be filed with the NAFTA Secretariat. This 30-day framework is intended to avert needless litigation by allowing parties sufficient time to review the correction notice before the litigation deadline arrives.

Paragraph (b), which deals with disclosure, has been revised from the existing and proposed regulations to eliminate the requirement that a party to the proceeding request disclosure. Instead, paragraph (b) provides for automatic disclosure normally within five days after the date of public announcement of the preliminary or final determination or final results of review. In this context, disclosure refers both to the release of disclosure documents and to the holding of a disclosure meeting. In this regard, because paragraph (c)(1) provides that comments concerning ministerial errors must be filed within five days after the earlier of the date of the release of the disclosure documents or the date of the disclosure meeting, parties are advised to schedule disclosure meetings as early as possible. One commentator proposed that there be at least five days between the release of disclosure materials and the disclosure meeting. Due to the time constraints of the 30-day framework, however, the Department normally will not be able to extend the disclosure and comment process.

Paragraph (b) also provides for disclosure normally within 10 days after the date of public announcement of the preliminary results of review. Although, as discussed below, the Department will not amend a preliminary results of review to correct a ministerial error, the Department believes that prompt disclosure will assist parties in the preparation of any case brief and in determining whether to request a hearing. In either an investigation or a review, parties that do not want to receive disclosure materials or to have a disclosure meeting should inform the Department promptly.

A number of commentators proposed that as part of disclosure, the Department provide the computer program on diskette. The Department intends to accommodate this proposal, where practicable, upon request from a party. The Department may charge a nominal fee for providing a copy of the computer program on diskette.

We also should note that paragraph (b) provides for disclosure only if the Secretary has performed calculations. For example, in certain types of reviews, such as a sunset review or an Article 4/Article 7 review, the Department may not calculate dumping margins or countervailable subsidy rates, but instead might only make a judgment as to whether an order should remain in effect. In such instances, the final results of review would contain a full statement of the Department's legal and factual conclusions, and there would be nothing further to "disclose."

Paragraph (c)(2) establishes the time limits for filing comments concerning ministerial errors. Specifically, a party to the proceeding must file comments not later than five days after the earlier of (i) the date of release of disclosure documents to that party, or (ii) the date of the disclosure meeting with that party. With respect to a preliminary determination in an investigation, a party may submit only comments concerning a significant ministerial error as defined in paragraph (g). With respect to a final determination in an investigation or a final results of review, a party may submit comments concerning any ministerial error as defined in paragraph (f). One commentator proposed that the Department establish regulations for the correction of ministerial errors made in a preliminary results of review. The Department does not believe that such regulations would be appropriate. Unlike a preliminary determination in an investigation, which may result in the suspension of liquidation and the imposition of provisional measures, a preliminary results of review has no immediate legal consequence. As a result, a more judicious use of Department resources is to correct any ministerial errors made in a preliminary results of review in the final results. See Proposed Regulations at 1132.

Paragraph (c)(3) establishes the time limits for filing replies to comments. Specifically, replies to comments must be filed not later than five days after the date on which such comments are made. One commentator suggested eliminating replies to comments because alleged ministerial errors should be indisputable. While it is often the case that a ministerial error is obvious, there are instances where the "ministerial" nature of an error or the impact of an error is in dispute. In these instances, parties' replies aid the Department in analyzing the allegation. There is an exception for replies to comments in connection with a significant ministerial error in a preliminary determination. Because of greater time constraints due, in part, to the fact that Department personnel conduct verification soon after the announcement of a preliminary determination, the Department will not consider replies to comments in a preliminary determination. Any reply that a party wishes to make should be included in that party's case brief so that the Department may address the reply in its final determination.

Paragraph (c)(4) deals with the extension of the time limit for filing comments concerning a ministerial error in a final determination or a final results of review. A party may file a written request showing good cause for extension within three days after the date of the public announcement of a final determination or a final results of review. The Department will not grant an extension of the time limit for filing comments on a significant ministerial error in a preliminary determination. Although the Department normally has 30 days in which to announce the issuance of a correction notice, the time frame for analyzing significant ministerial errors allegations in a preliminary determination is, as explained above, more constrained. As noted previously, a party has the opportunity to raise a ministerial error allegation in its case brief for consideration in the final determination or final results of review.

Some commentators suggested that domestic interested parties be allowed more time to file comments on ministerial errors because these parties have more material to review than respondents. The Department does not believe that it is appropriate to distinguish between domestic interested parties and respondents in this fashion. However, the fact that a domestic interested party intends to file ministerial error comments on a large number of respondents may provide good cause for an extension of the time to file comments. The Department will make such extension decisions on a case-by-case basis, taking into consideration the intended 30-day framework for addressing ministerial error allegations.

Paragraph (d) deals with the contents of comments and replies. In order for the Department to complete its analysis of alleged ministerial errors within the 30-day framework, comments must reference specific evidence in the official record to explain the alleged ministerial error and must present the appropriate correction. In addition, comments concerning an alleged significant ministerial error in a preliminary determination must demonstrate how the alleged ministerial error is significant by illustrating the effect of the error on the weighted-average dumping margin or countervailable subsidy rate. One commentator proposed that parties be allowed to submit factual information past the appropriate time limits if the information is needed to show or deny the existence of ministerial errors. The Department has not adopted this proposal. Based on the definition of ministerial error as set forth in paragraph (f), whether something qualifies as a ministerial error should be discernable from evidence already on the official record. Paragraph (d) also requires that replies to any comments be limited to issues raised in such comments.

Paragraph (e) deals with the analysis of any comments received and the announcement of the issuance of a correction notice (normally not later than 30 days after the date of public announcement of the Department's preliminary or final determination or final results of review). As discussed above, the 30-day framework is intended to avoid needless litigation by providing for resolution of ministerial error allegations before the litigation deadline expires.

Paragraph (f) defines *ministerial error* and is largely unchanged from existing §§ 353.28(d) and 355.28(d).

Paragraph (g) defines *significant ministerial error* and essentially is unchanged from proposed §§ 353.15(g)(4) and 355.15(h)(4). *See* Proposed Regulations at 1133–34. A number of commentators proposed setting a flat rate as a benchmark for "significant." These proposed rates were lower than the standard for "significant" originally set out in the Proposed Regulations and incorporated herein. The Department believes that it would not be appropriate to lower the significant ministerial error standard. In establishing this standard, which, as a matter of administrative practice, the Department has applied successfully for several years, the Department had to balance the competing interests of accurate preliminary determinations and the need to complete the investigation in a timely manner. The Department has determined that the current standard allows it to correct the most serious errors promptly, while also permitting it to complete verification and issue a timely final determination. Moreover, the Department encourages parties, in their case briefs, to comment on all ministerial errors, including those not meeting the "significant" standard; all such errors will be addressed in the final determination.

Section 351.225

Section 351.225 deals with scope rulings, including rulings involving circumvention. With a few exceptions, section 351.225 is substantively unchanged from existing §§ 353.29 and 355.29, but paragraphs (b) through (f) do

contain some clarifications regarding procedures. Among other things, these clarifications are intended to make clear that the Department may, if appropriate, make a scope ruling based solely upon the application and prior determinations. Only if the Department determines that further inquiry is warranted will it formally initiate a scope inquiry. One other change worth noting is that paragraph (f)(5) establishes a 300-day deadline for scope rulings to which the Department will adhere to the extent practicable.

Paragraphs (g) and (h) incorporate by reference sections 781(a) and (b) of the Act. Several commentators argued that the standard for determining whether the process of assembly or completion under these sections of the Act was minor or insignificant had not changed from prior law. However, as observed by other commentators, the Senate Report states that, "section 230 [of the URAA] amends section 781(a) and (b) to shift the focus of the circumvention inquiry away from a test of the difference in value between the subject merchandise and the imported parts or components toward the nature of the process performed in the United States or third country." S. Rep. 103–412, 103d Cong, 2d Sess., at 81.

Paragraphs (g) and (h) require the Department, in determining the value of parts or components purchased from affiliated parties, to apply the major input rule of section 773(f)(3) of the Act. Several commentators argued that such a provision is necessary to avoid the use of distorted values between affiliated parties. The Department agrees that such a provision is consistent with the Department's policy of avoiding the use of distortive prices paid to affiliated parties in its calculations.

Several commentators also argued that the Department should establish numeric guidelines for determining whether the value of imported parts or components constitutes a "significant portion of the total value of the merchandise" within the meaning of sections 781(a)(1)(D) and (b)(1)(D) of the Act. We have not adopted this suggestion, because the SAA recognizes that no single standard would be appropriate for every product examined by the Department. The SAA, at 894, states, "[t]hese provisions do not establish rigid numerical standards for determining the significance of the assembly (or completion) activities in the United States or for determining the significance of the value of the imported parts or components."

One commentator argued that the term "class or kind" as used in section 781(a) and (b) of the Act should be construed to encompass more than merely the category of merchandise covered by an order. Specifically, this commentator argued that, for purposes of circumvention inquiries, the term "class or kind" should always include components or parts. The Department agrees with other commentators, however, who argued that the term "class or kind" in the circumvention context is not broader than the merchandise covered by an order for other purposes of the statute.

Paragraph (k) adds advertisement or display to the criteria that the Department uses to determine whether a product is within the scope of an antidumping duty or countervailing duty order. Although this criterion was not previously specified in the regulations, the courts have recognized that it is a factor that should be considered. See *Kyowa Gas Chem. Indus.* v. *United States*, 582 F. Supp. 887, 889 (CIT 1984). One commentator urged the Department to add "substitutability" to the criteria. However, the Department believes that such a criterion would add significant uncertainty to the Department's orders, because it implies that an order could be expanded to include many products not contemplated in the petition (for example "substitutability" could be cited to expand an order covering honey to include sugar, corn syrup and molasses).

Paragraph (l) sets forth the procedures for suspension of liquidation. One party argued that the Department should order the suspension of liquidation as soon as a circumvention inquiry is initiated and impose cash deposits retroactively if the final circumvention determination is affirmative. While the Department recognizes that parties may have a "free ride" by circumventing until caught, the proposal would punish unfairly parties who unknowingly circumvent an order. The statute does not require a finding of intent in order to make an affirmative circumvention determination. Moreover, the Department agrees with commentators who argued that this proposal would create tremendous business uncertainty and impose a heavy burden on the Department and on Customs.

Paragraph (l)(4) provides that, when a final scope ruling is made within 90 days of the initiation of a review, products covered by that decision will be included in the calculation of any dumping margin or countervailing duty rate in that review, where practicable. If the ruling is made after that date, entries of the product will be subject to the final results of review, but, because collection of information is not practicable after this date, the Department will rely on non-adverse facts available.

New paragraph (m) provides that if different orders relate to the same product, the Department may, under appropriate circumstances, conduct a single scope inquiry covering all such orders. Thus, for example, if there is an antidumping duty order on widgets from Germany, and a countervailing duty order on widgets from France, the Department may conduct a single inquiry under paragraph (i) (minor alterations), (l) (later developed products) or (k) (other scope determinations). Any final ruling resulting from the inquiry would apply to both orders. In this way the Department will avoid both the burden of redundant inquiries and the danger of inconsistent determinations.

Finally, paragraph (n) deals with the service requirements for scope inquiries. Paragraph (n) defines the term "scope service list" as used throughout section 351.225 to include all parties who have participated in any segment of the proceeding. This broad service list is necessary because scope rulings are not often limited to the specific parties raising the issue, but rather affect all domestic and respondent interested parties.

Two commentators argued that the Department should look to Customs rulings in determining the country of origin of merchandise. The Department agrees that a Customs ruling may provide useful guidance; however, as recognized by the CIT, the Department is not required to follow Customs rulings in making its own scope rulings. *Diversified Products* v. *United States*, 572 F. Supp. 883, 887–88 (1983).

Other Issues

One commentator suggested that the Department publish in the **Federal Register** its "remand determinations"; *i.e.*, the determinations the Department makes in response to a remand order from a court or a NAFTA binational panel. We have not adopted this suggestion at this time, because it is expensive to publish documents in the **Federal Register** and because the Department's current practice is to make remand determinations available to the public on request (with business proprietary information deleted, of course). However, to the extent that parties experience difficulties in obtaining copies of remand determinations, the Department will consider this suggestion as well as other alternatives, such as making these and other documents available on the Internet.

Some commentators have expressed the view that industrial users of products under antidumping or countervailing duty orders should have an opportunity to demonstrate that certain products are not available domestically, that continued inclusion of such products within an order does not serve the purpose of the law, and that, if the petitioners fail to show that the material is available domestically, the order should be revoked or narrowed with respect to those certain products. We are not proposing changes to the rules in this area because the existing practices have been adequate to address valid concerns. The clarification of investigations in their early stages to avoid later supply problems, and the narrowing of existing orders through changed circumstances proceedings has resulted in exclusion of a number of products not made in the United States, in direct response to supply concerns expressed by industrial users. Suggestions as to the use of existing authority for this purpose would be appropriate.

Subpart C—Information and Argument

Subpart C deals with collection of information and presentation of arguments to the Department, and is based on subpart C of Parts 353 and 355 of the Department's existing regulations. In addition to the regulatory changes noted in this section, the Department is also in the process of introducing other procedural reforms to streamline and simplify antidumping and countervailing duty proceedings. Where these reforms require regulatory change or are appropriately contained in regulations, they are included here. Other non-regulatory simplification measures will be introduced in Policy Bulletins and through Department procedures. Non-regulatory changes include (1) providing greater consistency in the handling of draft and newly-filed petitions by having, to the extent practicable, the same Department personnel initiate and conduct the investigation that reviewed the original petition; and (2) making available on the Internet all Department determinations under the URAA, as well as the URAA itself, the Statement of Administrative Action, and these regulations. The process of simplification is ongoing and one in which the Department continues to invite suggestions.

Section 351.301

Section 351.301 sets forth the time limits for submission of factual information in investigations and reviews.

Paragraph (b) is based on existing §§ 353.31(a)(1) and 355.31(a)(1), and sets forth the time limits in general for submission of factual information. Several commentators suggested that the Department adopt regulations establishing a final deadline of seven days prior to verification for the submission of information, whether solicited or unsolicited. Another commentator suggested a deadline of 14 days prior to verification. The Department believes that the seven-day deadline appropriately balances the needs of the Department to prepare for verification with the goal of easing the burdens on parties appearing before the Department. Therefore, paragraph (b)(1) provides that, with respect to investigations, submission of factual information is due no later than seven days before the date on which verification of any person is scheduled to commence. The timing of submission of factual information under existing §§ 353.31(a)(1)(i) and 355.31(a)(1)(i) also is tied to verification. However, there has been some confusion over the deadline as parties variously interpreted "verification" to mean a company-specific verification or verification for any company (or, in a CVD proceeding, verification of the government). In furtherance of the goal of simplifying the Department's procedures, these regulations clarify that the deadline for submission of factual information is identical for all parties, *i.e.*, seven days before the date on which verification of any person is scheduled to commence. (In contrast, the deadline for submission of factual information after verification, for reasons discussed below, is company- or government-specific.)

With respect to administrative reviews, paragraph (b)(2) provides that submission of factual information is due no later than 140 days after the last day of the anniversary month. With respect to changed circumstances, sunset, and section 762 (quantitative restriction agreements) reviews, paragraph (b)(3) provides that submission of factual information is due no later than 140 days after the publication of notice of initiation of the review. With respect to new shipper reviews, new paragraph (b)(4) provides that submission of factual information is due no later than 100 days after the publication of notice of initiation of the review. With respect to the remaining types of reviews, paragraph (b)(5) provides for submission of factual information by a date specified by the Department.

One commentator proposed that, once the deadline for submissions prior to verification has passed, the Department should not allow for submission of any corrections at verification. The Department has not adopted this proposal. The Department's current practice allows respondents to submit information at the beginning of verification to correct errors found during the course of preparing for verification. This policy balances the requirement that respondents present accurate and timely responses, with the goal of accurate determinations. Cf. *Murata Mfg. Co.* v. *United States*, 820 F. Supp. 603, 607 (CIT 1993) with *NSK Ltd.* v. *United States*, 798 F. Supp. 721 (CIT 1992), *aff'd*, 996 F.2d 1236 (Fed. Cir. 1993). The regulations make clear that the Department will continue this practice, as well as the practice of allowing respondents to submit information after verification where the Department has requested such information. Specifically, paragraphs (b)(1)–(4) provide that where verification is scheduled for a person, factual information requested by verifying officials will be due no later than seven days after the date on which the verification of that person is completed. This practice promotes accuracy and completeness in the calculation of margins (rates), both of which are underlying objectives of the new facts available methodology. Furthermore, the SAA, at 868, notes that the Department is not precluded from requesting information, in addition to that set forth in the verification outline, during a verification.

New paragraph (c) sets for the time limits for certain submissions, including information to rebut, clarify, or correct factual information submitted by another party, information in questionnaire responses, and publicly available information to obtain values for factors in nonmarket economy cases.

Paragraph (c)(1) is based on existing §§ 353.31(a)(2) and 355.31(a)(2), and provides the time limits for when an interested party may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party. The existing regulations allow only domestic interested parties to rebut, clarify, or correct factual information submitted by respondent interested parties. The regulation was drafted this way to allow domestic interested parties time to comment on respondents' information, particularly where such information may have been submitted on or after the applicable deadline. Upon further consideration, the Department has determined that the goal of accurate determinations is enhanced by allowing any interested party time to comment on submissions of factual information. As a result, paragraph (c)(1) provides that

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any interested party may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party at any time prior to the applicable deadline for submission of factual information. If factual information is submitted (with the Department's permission) after the applicable deadline, interested parties have 10 days to comment on such information. This 10-day period, however, does not allow interested parties to continue to comment indefinitely on an alternating 10-day cycle. Rather, if the applicable deadline for submission of factual information has passed, interested parties would have one opportunity to comment on each such submission.

Paragraph (c)(2) deals with questionnaire responses and other submissions on request, and is based on existing §§ 353.31(b) and 355.31(b). Paragraph (c)(2)(i) provides that the Department may request any person to submit factual information at any time during a proceeding. Paragraph (c)(2)(ii) is new, and incorporates the requirements of the SAA, at 869, that the Department give notice of certain requirements to each interested party from whom the Department requests information.

Paragraph (c)(2)(iii) is new, and incorporates the requirements of the SAA, at 866, that interested parties shall have at least 30 days from the date of receipt to respond to the full initial questionnaire. The time limit for response to individual sections of the questionnaire, if the Secretary requests a separate response to such sections, may be less than the 30 days allotted for response to the full questionnaire. In particular, the Department anticipates that the response to Section A of a questionnaire, which seeks general information about a company, will be due before the expiration of the 30-day period. The Department's ability to timely identify appropriate respondents, in particular, would be hampered were the Department to delay the deadline for submission of this information. Consistent with the SAA, at 866, paragraph (c)(2)(iii) also provides that the "date of receipt" will be seven days from the date on which the initial questionnaire was transmitted.

Paragraph (c)(2)(iv) is new, and provides a 14-day deadline for notification by an interested party, under section 782(c)(1) of the Act, of difficulties in submitting a questionnaire response. Section 782(c)(1) of the Act provides that, if promptly asked to do so by an interested party, the Department may modify its requests for information to avoid imposing an unreasonable burden on that party. The statute also provides that the Department will take into account difficulties experienced by interested parties, particularly small companies, in supplying information, and will provide any assistance that is practicable. One commentator suggested that petitioners be allowed to comment formally on requests by respondents that the Department modify information requests. Parties do have the right generally to submit comments on any relevant issue, and, as such, the Department does not believe that a special regulation addressing this issue is necessary. Another commentator proposed defining "small companies" to whom the Department would provide assistance using an objective criterion, such as a company's annual sales volume (*e.g.*, small companies are those that earn less than $1 million in annual gross revenue). The Department does not believe that it is in a position to define "small companies" at this juncture. The Department will make a determination of what is a small company on a case-by-case basis.

Paragraph (c)(2)(v) is new, and, consistent with the SAA, at 866, indicates that a respondent interested party may request that the Department conduct a questionnaire presentation, during which Department officials will explain the requirements of the questionnaire.

Paragraph (c)(3) is new and extends the time limits for submission of publicly available information to obtain values for factors in nonmarket economy cases. Because publicly available valuation data is not verified, the Department is able to accept such data after verification. The extended time limits, therefore, permit parties to submit publicly available information even after a preliminary determination or a preliminary results of review, but still allow parties ample opportunity to comment on such information in their case briefs.

Paragraph (d) sets the time limits for certain allegations, including allegations concerning market viability, allegations of sales at prices below the cost of production, countervailable subsidy allegations, and upstream subsidy allegations.

Paragraph (d)(2) is new, and sets the time limits in investigations and reviews for allegations of sales at prices below the cost of production (COP) under section 773(b) of the Act.

The Department received a number of comments regarding the "reasonable grounds" threshold for initiation of COP investigations. Some commentators argued for consideration of sales below cost allegations on a country-wide basis. Other commentators suggested that the Department's regulations provide that where sales below cost allegations are not submitted until after respondents have provided questionnaire data, the allegations must be based on information specific to the exporter or producer.

The Department agrees with the latter commentators that where company-specific information has been placed on the record, any subsequent sales below cost allegation must take into consideration such information. The SAA, at 833, states that the standard for initiation of a sales below cost investigation is the same as the standard for initiating an antidumping investigation. The Department interprets this to mean that a sales below cost allegation, like an allegation of dumping, must be supported by information reasonably available to petitioner, including information already on the record.

The Department also, however, agrees with the former commentators that the SAA does provide for consideration of a sales below cost allegation on a country-wide basis. The Department's practice under the existing regulations only allows for company-specific allegations based on company-specific data. (In some instances, petitioners have used their own data where certain company-specific information was unavailable.) In practice, this meant that petitioners did not file sales below costs allegations until after companies filed their Section B responses covering home market sales data. As a result, in many instances the Department was unable to request and receive companies' cost data in time to analyze it before the preliminary determination. Pursuant to the SAA, at 833–34, however, the Department now has the authority to consider sales below cost allegations on a country-wide basis. In most instances, considering a country-wide allegation at the outset of an investigation will allow the Department to include its below-cost analysis in the preliminary determination, and, hence, consistent with the SAA, at 833–34, will provide parties with a greater opportunity to comment on the Department's analysis.

Therefore, with respect to country-wide allegations, paragraph (d)(2)(i)(A) allows the petitioner to file such an allegation in an investigation up until 20 days after the date on which the initial questionnaire was transmitted. Consistent with the SAA, at 833, this time frame will permit the Department to initiate below cost inquiries, where appropriate, at the outset of the case. In addition, the 20-day deadline—one day before Section A responses normally are due—provides petitioners with the maximum time available to make a country-wide allegation before company-specific data is filed by respondent interested parties.

With respect to company-specific allegations, paragraph (d)(2)(i)(B) provides for filing such allegations in an investigation up to 20 days after a respondent interested party files a response to the relevant section of the questionnaire; *i.e.*, the Section B response containing home market sales data. The time limit, under paragraph (d)(2)(ii), for filing company-specific sales below cost allegations in administrative reviews, new shipper reviews, and changed circumstances reviews is identical. Paragraph (d)(2)(iii) provides the time limit for filing company-specific sales below cost allegations in expedited antidumping reviews.

A number of commentators also argued that the changes under section 773(b) of the Act in no way relaxed the "reasonable grounds" initiation standard for COP investigations, but, instead, were intended simply to permit the Department to initiate such investigations at the outset of a case. One commentator maintained that standards for below-cost investigations continue to be more stringent than those of an antidumping investigation. The Department believes that the statutory changes do not change the "reasonable grounds" requirement for initiation of a COP investigation. The Department will continue its practice of assessing the sufficiency of a petitioner's below-cost allegations on a case-by-case basis, and it will reject those allegations that are clearly frivolous or that are otherwise not supported by information reasonably available to petitioners.

The Department received one other comment of note concerning its initiation standard for COP investigations. The commentator suggested that as part of its initiation threshold, the Department take into account "aberrational sales" by accepting only those below-cost allegations that provide a "reasonable ground" for the existence of more than 20 percent below cost sales (*i.e.*, the substantial quantities threshold under section 773(b)(2)(C)(i) of the Act). Several other commentators urged the Department to reject this suggestion, stating that there was no statutory basis for such a practice. The proposal for a substantial quantities initiation threshold could apply only in those instances where respondents already have submitted questionnaire data. Therefore, the proposal undoubtedly conflicts with the Department's authority to consider country-wide cost allegations at the outset of an investigation. Moreover, even in the case of company-specific allegations filed subsequent to respondents' submission of questionnaire data, the proposal lacks merit, because the substantial quantities threshold under section 773(b)(2)(C)(i) of the Act does not relate to the existence of "reasonable grounds" to initiate a COP investigation.

Paragraph (d)(3)(i) is based on existing section 355.31(c), and sets forth the time limits for a countervailable subsidy allegation in investigations and reviews. These time limits are unchanged from the existing regulations. Paragraph (d)(3)(ii) is based on existing § 355.20(b), and sets forth the time limits for an upstream subsidy allegation in an investigation. The 10-day time limit for an allegation made prior to a preliminary determination is new. The 15-day time limit for an allegation before a final determination is consistent with existing regulations.

One commentator suggested that the Department's regulations clarify that the determination of whether "new" evidence has been submitted by the petitioner regarding a subsidy will be based on a consideration of the public evidence already included in the record of the proceeding. The public record would automatically include all public verification reports from prior segments of the proceeding. Furthermore, the commentator argued that upon receipt of new evidence of a subsidy, the burden of proof should shift to the foreign government, because it is in possession of the information necessary to establish that the program is not countervailable. Finally, the commentator suggested that the Department change its deadline for receiving new subsidy allegations from 120 days after publication of the notice of initiation of an administrative review to three weeks before verification.

While the Department may place public reports from prior segments of the proceeding on the record in an ongoing proceeding, it is not be required to do so. Parties are free to do so themselves as long as the information is submitted in a timely fashion. As for shifting the burden of proof, the Department's practice currently is to reinvestigate subsidy programs previously determined to be noncountervailable only where new information or evidence of changed circumstances is present. Similarly, the Department will not reexamine the countervailability of a program previously determined to be countervailable absent new information or evidence of changed circumstances. In both of these instances, the burden is on the domestic or respondent interested parties to provide new information or evidence of changed circumstances that would warrant a reconsideration of the subsidy program in question. With respect to extending the time for filing new subsidy allegations, the Department believes that a deadline of three weeks before verification does not provide sufficient time for the Department to send out and receive a response to a questionnaire concerning the alleged subsidy.

Paragraph (d)(4) is new, and sets forth the time limit for a targeted dumping allegation in an antidumping investigation. One commentator suggested that petitioners be given at least 90 days from the date of receipt of a respondent's sales listings in which to comment on possible targeted dumping. The Department appreciates the fact that at the outset of an antidumping investigation, petitioners normally will not have access to the type of data that goes into a targeted dumping analysis, and that they will need time in which to analyze questionnaire responses once they are received. However, the Department believes that in most instances, a deadline of 30 days before the scheduled date of the preliminary determination will provide petitioners with sufficient time to analyze the applicable data and submit an allegation, if appropriate. If the timing of responses does not permit adequate time for analysis, the Department may extend the time as appropriate.

Section 351.302

Section 351.302 is new, and clarifies the Department's authority to grant extensions of time limits and to reject untimely or unsolicited submissions. Although portions of § 351.302 are based on provisions of the Department's current regulations, other portions are entirely new.

Paragraph (b) provides that the Department may extend a regulatory deadline based upon its own determination that there is good cause to do so or where an interested party shows good cause for such an extension. Parties should not draw the inference that simply because a particular deadline does not explicitly address the Department's authority to extend such deadline that the Department may not do so. Unless expressly precluded by statute, the Secretary may extend any deadline for good cause. The deadlines that include the phrase "unless the Secretary alters this time limit" generally are tied to transmittal of, or response to, the initial questionnaire.

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and, as such, are more likely to be extended than other deadlines tied to, for example, the date of publication of the preliminary determination (see, *e.g.*, § 351.301(d)(1) versus § 351.301(c)(3)).

Paragraph (c) sets forth the procedures for requesting an extension of a time limit, and is based on existing §§ 353.31(b)(3), 355.31(b)(3), 353.31(c)(3), and 355.31(c)(3). One commentator suggested that extensions for submission of questionnaire responses should be granted only in "extraordinary circumstances," and that extensions should be limited to a period of 10 days. The Department agrees that it is important to collect information as early as possible in an investigation or review to provide parties an adequate opportunity to comment on the data and to provide the Department with adequate time to conduct its analysis. However, decisions regarding the possibility of extensions will be based on the ability of the party to respond within the original deadline and the parties' and the Department's ability to accommodate the requested extension. Thus, the Department believes that it is appropriate to determine whether to grant an extension, and for how long, based upon the facts in the particular proceeding. Another commentator suggested that the regulations provide for issuance of only one supplemental questionnaire. The Department has no intention of requesting the same information time after time. However, a limitation on the number of supplementals could interfere with the Department's ability to obtain clarifications or further information necessary to reach an informed decision.

Paragraph (d) provides that the Department will not consider untimely submissions for which it has not granted an extension under paragraph (b), and that it will return such materials to the submitter. In addition, consistent with section 782(c) of the Act, to the extent practicable rejected submissions will be accompanied by a written explanation of the reasons for not accepting the material.

One commentator proposed that parties be allowed to file objections to the Department's rejection of information, and that these objections be included in the record for judicial review. As long as a party's objection itself does not include a restatement of the rejected information, parties are permitted under the regulations to file timely comments on the Department's decision to reject information; *e.g.*, as part of its case brief. Therefore, no specific provision is necessary to meet the commentator's objective.

Section 351.303

Section 351.303 is new, and contains the procedural rules regarding filing, format, service, translation, and certification of documents. The Department has attempted to simplify these requirements, and, in all instances, has reduced the number of copies required for filing. Section 351.303 applies to all persons submitting documents to the Department. Although portions of § 351.303 are based on existing §§ 353.31, 355.31, 353.38(e), and 355.38(e), other portions are entirely new.

Paragraph (c) is new, and indicates the number of copies required for filing documents with the Department. Paragraph (c)(1) provides that, in general, six copies of any submission must be filed with the Department. Paragraph (c)(2) describes the application of the one-day lag rule under which filing requirements are altered slightly to allow for corrections in the bracketing of business proprietary information. The existing one-day lag rule filing requirements have been modified to simplify and streamline the filing process. Specifically, paragraph (c)(2)(i) indicates that only one copy of the business proprietary version of a document must be filed with the Department within the applicable time limit. (The service requirements of paragraph (f) also apply.) Paragraph (c)(2)(ii) provides that on the next business day, six copies of the complete, final business proprietary version (*not* just the corrected pages) must be filed with the Department. With respect to the final business proprietary version, the service requirements of paragraph (f) may be satisfied by serving other persons with just the corrected pages. The final business proprietary version must be identical to the business proprietary version filed on the previous business day, except for any bracketing corrections. Paragraph (c)(2)(iii) provides for the filing of three copies of the public version simultaneously with the filing of the final business proprietary version. Paragraph (c)(2)(iv) describes the filing requirements for information in double brackets (information which the submitter does not agree to have disclosed under APO). Finally, paragraph (c)(3) clarifies that all information on computer media must be releasable under APO.

Paragraph (d) contains the formatting requirements for documents filed with the Department. Paragraph (d)(2)(iv) is new, and requires that documents indicate the Department office conducting the proceeding.

Paragraph (e) requires that documents submitted in a foreign language be accompanied by an English translation. This requires that all non-English language documents be accompanied by an English translation of pertinent portions. When parties are unable to comply with this requirement, the Department will work with them on an acceptable alternative.

Paragraph (f)(1) provides for service of copies on other persons. Paragraph (f)(2) provides that each document filed with the Department must be accompanied by a certificate of service. Paragraph (f)(3)(i) provides for service of briefs. Paragraph (f)(3)(ii) is new, and clarifies the requirements for service of requests for review.

Paragraph (g) clarifies that each submission containing factual information must be accompanied by the appropriate certification regarding the accuracy of the information.

Section 351.304 [Reserved—APO]

Section 351.305 [Reserved—APO]

Section 351.306 [Reserved—APO]

Section 351.307

Section 351.307 deals with verification of information, and is based on existing §§ 353.36 and 355.36.

Paragraph (b)(1) is based on existing §§ 353.36(a)(1) and 355.36(a)(1), and indicates when the Department will verify factual information. One commentator suggested defining "good cause for verification," the standard applicable in determining whether to verify in an administrative, new shipper, or changed circumstances review, by including in the regulations a non-exhaustive list of particular circumstances under which the Department normally would find that good cause for verification exists; *e.g.*, changes in a respondent's accounting methodology, organization structure, or ownership, or significant changes in the product-mix offered. While, the Department agrees that these circumstances may, in some cases, provide good cause for verification, it is more appropriate to determine good cause on a case-by-case basis, weighing the specific facts before the Department in any given review.

Paragraph (b)(1)(v) deals with requests for verification in an administrative review, and is based on existing §§ 353.36(a)(1)(v)(A) and 355.36(a)(1)(iv)(A). The deadline for domestic interested parties to request verification has been shortened from 120 days to 100 days after publication of the notice of initiation of review. This change is intended to give the Department a longer time to prepare for verification, thereby resulting in more efficient verifications.

Paragraph (b)(2) is new, and provides that the Department may verify in any other segment of the proceeding not provided for in paragraph (b)(1), if the Department determines that it is appropriate to do so.

Paragraph (b)(3) is based on existing §§ 353.36(a)(2) and 355.36(a)(2), and provides that the Department may select and verify a sample of exporters or producers where it is impractical to verify relevant factual information for each person due to the large number of exporters or producers included in an investigation or administrative review.

Paragraph (b)(4) is new, and, consistent with the SAA, at 868, describes when the Department may conduct verification.

Paragraph (c) is based on existing §§ 353.36(b) and 355.36(b), and, consistent with the SAA, at 868, indicates that the Department will issue a verification report.

Paragraph (d) is based on existing §§ 353.36(c) and 355.36(c), and, consistent with the SAA, at 868, describes certain procedures for verification. Paragraph (d) (2), carried over from existing § 353.36 (c), provides that the Department may request access to the records of persons not affiliated with respondent exporters, producers, or importers. This provision clarifies that the Department may use the records of the unaffiliated party if needed to establish the accuracy of data provided by the respondent. The last sentence of paragraph (d) also is new, and, consistent with current practice, clarifies that as part of verification in a countervailing duty proceeding, the Department may request access to records of the government of the affected country.

One commentator proposed that to ensure that parties have an adequate opportunity to prepare for verification, the regulations should include provisions requiring that the Department provide by a particular date notice of its intent to verify, as well as detailed information regarding the location of the verification and the exhibits the Department will require. These proposals are consistent with paragraph (d), and, to the extent practicable, the Department intends to implement them in practice.

Another commentator suggested a number of "improvements" to the verification process. These included allowing the presence of a neutral third party at verification, copying all documentation relied upon in verification, allowing all parties (not just respondents) to review draft verification reports, including in the record both the draft verification report and the final report, conducting verification in Washington with books and records forwarded by courier or electronically, and permitting domestic counsel and consultants to participate at verifications. We agree with the commentator that there are a number of ways to improve the verification process. For example, we are modifying our questionnaire in order to collect documentation that would link the reported sales information to the respondent's general ledger. We also intend to require that, prior to verification, respondents submit any computer programs used to identify the sales subject to investigation or review. By collecting this information prior to the commencement of verification, the Department will be able to use the time available at the verification site more efficiently. While we disagree with the suggestion that a neutral third party or domestic counsel participate at verification, we invite other suggestions on how to improve the verification process.

Finally, another commentator proposed that petitioners be given a formal opportunity to comment on verification outlines. We agree that petitioners should be given opportunity to comment. Because this is part of the Department's standard practice, the Department believes that it is not necessary to include a provision in the regulations.

Section 351.308

Section 351.308 is new, and deals with determinations on the basis of the facts available.

Paragraph (b) provides that the Department will make determinations on the basis of the facts available in accordance with section 776(a) of the Act. Under the statute, the Department will use the facts otherwise available if necessary information is not available on the record, or if an interested party or any other person withholds requested information, fails to provide such information by the deadlines for submission of the information or in the form and manner requested, significantly impedes a proceeding, or provides such information but the information cannot be verified.

Evident from a comparison between the pre-URAA statute and the new statute is the fact that the circumstances triggering use of facts available are virtually identical to those triggering use of best information available ("BIA"). Significantly, however, although the circumstances giving rise to use of BIA and facts available are basically indistinguishable, the presumptive adverse inference associated with use of BIA is not automatically associated with use of facts available. Specifically, section 776(b) of the Act provides that only if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information" may the Department use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Therefore, the determination of what to use as facts available will be affected by whether or not the Department may make an adverse inference under the statute.

A number of commentators proposed that the regulations set forth the Department's current two-tiered methodology for selecting BIA. However, given the differences between the Department's past practice regarding BIA and the new statutory provisions on facts available, the Department does not believe this proposal would be appropriate.

In cases where the Department determines that an interested party has not failed to cooperate, the Department will apply simply the "facts available"; *i.e.*, the Department will make its determination "based on all evidence of record." SAA at 869. However, as paragraph (e) provides (by cross-reference to section 782(e) of the Act), the Department will consider information that is submitted by an interested party and is necessary to the determination, but that does not meet all the applicable requirements established by the Department, only if: (1) The information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties.

One commentator suggested that information contained in the petition should not be used as facts available. The statute, however, does not limit the specific sources from which the Department can obtain facts available.

In cases where the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act provides that the Department may make an adverse inference about the missing

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information, and, hence, apply "adverse facts available." A number of commentators proposed that "a good faith effort" to provide information responsive to the Department's request for information be sufficient to meet the requirement of "acting to the best of [a company's] ability." The determination of whether a company has acted to the best of its ability will be decided on a fact- and case-specific basis, and the Department will consider whether a failure to respond was deliberate or simply due to practical difficulties that made the company unable to respond within the specified deadline. However, it is clear that affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.

Several commentators additionally suggested that where information is not maintained by the respondent in the ordinary course of trade, failure to produce such information should not presumptively be a violation of the "best of its ability" standard. However, not all information that needs to be produced during the course of a proceeding is kept in the ordinary course of business (*e.g.*, worksheets), and failure to provide such information may be deemed to violate the "best of ability" standard. The determination as to whether a company has acted to the best of its ability to comply with an information request can only be made based on the record evidence in a particular proceeding.

Consistent with section 776(b) of the Act and the SAA, at 870, paragraph (c) provides that an adverse inference may include reliance on secondary information or any other information placed on the record. Paragraph (c)(1) indicates that secondary information includes information derived from the petition, a final determination in an antidumping or countervailing duty investigation, or any previous review.

Paragraph (d) explains that where the Department relies on secondary information, to the extent practicable the Department will corroborate that information from independent sources, such as published price lists, official import statistics and customs data, and information obtained from interested parties during the instant investigation or review. Consistent with the SAA, at 870, the third sentence of paragraph (d) indicates that "corroborate" in this context means that the Department will look to such sources reasonably at the Department's disposal to examine whether the secondary information has probative value. Paragraph (d) also indicates that in accordance with the SAA, at 870, where corroboration is not practicable, the Department still may apply an adverse inference.

One commentator argued that secondary information taken from a petition need not be corroborated, because the Department used this information as the basis for its initiation. Section 776(c) of the Act, however, specifically provides that, to the extent practicable, the Department will corroborate secondary information, which includes the petition, from independent sources that are reasonably at the disposal of the Department. As a result, the Department has not adopted this proposal.

Section 351.309

Section 351.309 deals with written argument, and is based on existing §§ 353.38 and 355.38.

Paragraph (b)(1) provides that the Department will consider in making its final determination or final results of review written arguments in case or rebuttal briefs filed within the applicable time limits.

Paragraph (b)(2) provides that the Department may request written argument on any issue from any person at any time during a proceeding. For example, the Department may choose to request post-hearing briefs on a particular topic.

Paragraph (c)(1) sets out the time limits for filing case briefs in investigations and reviews. Paragraph (c)(2) indicates that, as part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages.

Paragraph (d)(1) sets out the time limits for filing rebuttal briefs. The time limit for filing rebuttal briefs—within five days after the case briefs are filed—is now the same in both investigations and reviews. Paragraph (d)(2) indicates that, as part of the rebuttal brief, parties are encouraged to provide a summary of arguments not to exceed five pages.

Section 351.310

Section 351.310 is new, and deals with matters related to hearings. Although portions of section 351.310 are based on existing §§ 353.38(b), 355.38(b), 353.38(f) and 355.38(f), other portions are entirely new. These provisions have been modified from prior regulations with an eye to easing the burdens and costs imposed on parties appearing before the Department.

Paragraph (b) is new, and provides that the Department may conduct a pre-hearing conference to facilitate the conduct of the hearing. In most instances, the pre-hearing conference will be held by telephone. Examples of issues to be discussed include the necessity of conducting a hearing, time limits for direct and rebuttal presentations, identification of significant issues, and page limits for case and rebuttal briefs.

Paragraph (c) is based on existing §§ 353.38(b) and 355.338(b), and sets forth the time limit for requesting a hearing. The existing time limits for requesting a hearing in both investigations and reviews have been extended. The extended time limit—30 days after the date of publication of the preliminary determination or preliminary results of review—will allow parties more time to consider the necessity of requesting a hearing.

Paragraph (d) is based on existing §§ 353.38(f) and 355.38(f), and indicates that upon request, the Department will hold a public hearing normally two days after rebuttal briefs are filed. Under section 774(b) and section 751(e) of the Act, the Department is required to hold a hearing upon the request of an interested party in an investigation and in any review under section 751 of the Act. In other segments of a proceeding, such as scope inquiries, the decision to hold a hearing is discretionary. Consistent with section 774(b) of the Act and existing §§ 353.38(f)(3) and 355.38(f)(3), paragraph (d)(2) provides that such hearings are not subject to the Administrative Procedure Act.

Paragraph (e) is new, and provides that the Department may consolidate hearings in two or more cases. Cases where the Department is most likely to consolidate hearings are those where common issues exist concerning the same product from different countries or where common issues exist concerning different products from the same country.

Paragraph (f) is new, and indicates that the Department may conduct closed hearing sessions where parties wish to discuss business proprietary information. The Department's existing regulations do not expressly provide for representatives to discuss business proprietary information during administrative hearings, although, in limited instances, the Department has allowed discussion of business proprietary information during a hearing. One commentator suggested that the Department should consider procedures similar to those used by the ITC regarding *in camera* sessions for purposes of discussing business proprietary information that cannot be adequately summarized for discussion at a public hearing. The commentator argued that the inability to conduct a closed hearing may prejudice parties, who may not be able to give a full presentation of their arguments.

We agree that the Department should be able to conduct closed hearing sessions where appropriate. Paragraph (f), therefore, allows an interested party to request a closed hearing session. However, the Department believes that in the interest of transparency, closed hearing sessions should not consume the entirety of a hearing. Therefore, the Department intends to limit the duration of such sessions, and to limit them to the discrete issues identified by the requesting party. Before a closed hearing session begins, the hearing room will be cleared of all persons not subject to APO. Consistent with paragraph (g), the section of the transcript from a closed hearing session will be treated like other documents containing business proprietary information.

Section 351.311

Section 351.311 deals with countervailable subsidy practices discovered during an investigation or review, and is based on existing § 355.39. Apart from minor clarifications, the only change is the addition of subsidy programs in violation of Article 8 of the SCM Agreement, which the Department is notified of by the United States Trade Representative.

Section 351.312

Section 351.312 is new, and, consistent with section 777(h) of the Act, provides consumer organizations and industrial users the opportunity to submit information and argument on matters relevant to a particular determination of dumping, subsidization, or injury. Although such parties are not "parties to the proceeding" as defined in the statute, the Department recognizes, as pointed out by one commentator, "that industrial users' comments are a potential authoritative source for available factual information supporting Department determinations." The importance of input from industrial users and consumer organizations is recognized in both the AD Agreement, at Article 6.12, and the SCM Agreement, at Article 12.10. The SAA, at 871, while emphasizing that section 777(h) of the Act does not confer "interested party" status on such users and organizations, explains that this provision explicitly requires the Department to furnish such users and organizations with an opportunity to provide relevant information.

Paragraph (b) indicates that industrial users and representative consumer organizations may submit to the Department relevant factual information and relevant written argument in the form of case and rebuttal briefs. Paragraph (b) also makes clear that all such submissions must be filed in accordance with the procedural rules in § 351.303.

One commentator noted that the opportunity under the Act for such users and organizations to submit relevant information would not be meaningful if the Department did not respond to such information. With respect to this comment, the Department will include in the record of a proceeding information submitted by industrial users and consumer organizations, and the Department may rely on such information as appropriate. Furthermore, the Department intends to address relevant comments made by industrial users and consumer organizations in making its determinations in the same manner that it considers and responds to "interested party" comments.

Paragraph (c) clarifies that industrial users and consumer organizations may submit business proprietary information, but neither they nor their representatives will be granted access under APO to business proprietary information submitted by other persons.

Part 351, Subpart D—Calculation of Export Price, Constructed Export Price, Fair Value and Normal Value

Subpart D deals with the calculation of export price, constructed export price ("CEP"), fair value and normal value, and corresponds to subpart D of Part 353 of the Department's existing regulations.

Section 351.401

Section 351.401 deals with general principles common to the identification and calculation of export price, constructed export price and normal value. In this regard, although the URAA changed the names of purchase price and exporter's sales price to export price and constructed export price, respectively, to conform to the terminology of the AD Agreement, the SAA is clear that "no change is intended in the circumstances under which export price (formerly "purchase price") versus constructed export price (formerly "exporter's sales price") are used." SAA at 822–23. Several commentators have argued that the Department should abandon its prior practice (often called "indirect purchase price") under which the Department considered certain sales to be "purchase price" sales, even though there was some involvement by a U.S. affiliate. Other commentators have pointed to the language of the SAA as support for their conclusion that this aspect of the distinction between export price and constructed export price remains under the URAA.

The Department agrees with these latter commentators that Congress and the Administration did not intend a change to the circumstances under which the Department would use export price or constructed export price, including the "indirect purchase price" situations. It has been the Department's longstanding and well-recognized practice that a transaction will be considered an export price sale, despite the involvement of an affiliate in the United States where: (1) The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the physical inventory of the related selling agent; (2) this was the customary commercial channel for sales of this merchandise between the parties involved; and (3) the related selling agent in the United States acted only as a processor of documentation and a communication link with the unrelated buyer. Because no change from current practice is required, the regulations do not address this issue.

Paragraph (b) codifies the Department's longstanding practice of requiring parties claiming an adjustment to provide sufficient support for that claim. This regulation is not intended to change the Department's practice as recognized by the courts. *See e.g., Timken* v. *United States*, 673 F. Supp. 495, 513 (CIT 1987). Because the relevant information is normally under the sole control of the respondent interested party, this practice is usually applied to adjustments that would benefit such a party. This regulation is not intended to impose any additional burden on domestic interested parties that do not have access to the relevant information. Paragraph (b) also codifies the Department's longstanding prohibition against double-counting adjustments.

Under paragraph (c), the Department will continue its practice of adjusting reported gross prices for discounts, rebates and certain post-sale adjustments to price that affect the net price. Where such discounts, rebates and price adjustments are granted on a transaction-specific basis, they should be reported on that basis. However, as with selling expenses, the Department will continue its current practice of allowing non-distortive allocations where transaction-specific reporting is not feasible. SAA at 823–24. Where verification is conducted, the Department will review the

respondent's records to ensure that discounts, rebates and post-sale price adjustments are reported on as specific a basis as those records permit.

Paragraph (d) provides that the Department will not adjust costs used as the basis for adjustments to factor in delayed or early payment of expenses. Certain parties have argued that, when a party incurs an expense but does not pay for it immediately, the Department should reduce the amount of the adjustment to account for the savings that accrue due to the delayed payment. However, the courts have upheld the Department's position that the statute does not require that level of precision in quantifying adjustments. *See, Federal Mogul* v. *United States*, 839 F. Supp. 881, 886 (CIT 1993).

Paragraph (e) deals with the adjustment for movement expenses described in section 772(c)(2)(A) of the Act for export price and constructed export price calculations, and section 773(a)(6)(B)(ii) of the Act for normal value calculations. Consistent with the SAA, at 823 and 827, paragraph (e) clarifies that the deduction for movement expenses includes a deduction for all warehousing expenses incurred after the merchandise leaves the producer's factory, or, in the case of a reseller, the point from which the reseller shipped the merchandise. This paragraph also clarifies that the phrase "original place of shipment" in the Act refers to the place of shipment from the party making the sale which is the subject of the Department's examination. This is intended to clarify that, where the sale to the United States which is being examined is made by a reseller, movement expenses from the producer to the reseller are not deducted. This is appropriate because such expenses are part of the seller's cost of acquisition.

Paragraph (f) describes the situations in which the Department will treat multiple affiliated producers as a single entity. Under prior practice, the Department, in certain situations, would treat related producers that were separate legal entities as a single entity; *i.e.*, the Department would "collapse" the producers into a single firm. Where firms were so collapsed, the Department would issue a single questionnaire to, and calculate a single weighted-average dumping margin for, the collapsed entity. Paragraph (f) codifies the Department's approach regarding such producers, based on the new statutory term "affiliated persons." In order to be treated as a single entity, the producers must be affiliated and have production facilities that are sufficiently similar that shifting production would not require substantial retooling. Although such decisions are almost always made on the basis of the subject merchandise and foreign like product, or on a more narrow basis, in rare situations the Department may conclude that a product that is not subject merchandise or a foreign like product is sufficiently similar to subject merchandise that the producers of those products may be candidates for collapsing. This paragraph does not address the Department's ability to "collapse" resellers, without production facilities, and their affiliated producers, although the considerations identified in paragraphs (f) (1), (2) and (3) would be among those considered in reaching such a decision. Similarly, this paragraph does not address the issue of whether a producer or exporter in a nonmarket economy country is entitled to an individual antidumping rate. That determination is addressed by the definition of "rates" in section 351.102.

Section 351.401(g) provides that, in accordance with the Department's past practice, respondents may allocate expenses if transaction-specific reporting is not feasible. Where verification is conducted, the Department will verify that expenses are reported on as specific a basis as permitted by the company's records and that the allocation does not distort the comparison. This is in accordance with the SAA, at 828, which states that the Department may continue its practice of permitting allocations, "provided that the allocation method does not cause inaccuracies or distortions."

Some commentators argued for a regulation providing that certain direct selling expenses never could be reported on an allocated basis, but instead always must be reported on a transaction-specific basis. Other commentators argued for a regulation permitting the reporting of adjustments on an allocated or average basis. Yet another commentator argued for a regulation that would permit customer-specific allocations, even if based on in-scope and out-of-scope merchandise, if the Department determines that such an allocation is reasonable and has a minimal potential for creating a distorting effect.

Consistent with the SAA, at 823–824, paragraph (g) provides that, in order to qualify as a direct selling expense, an expense "normally" must be reported on a transaction-specific basis. However, as noted above, the Department may consider allocated expenses as direct selling expenses when transaction-specific reporting is not feasible. In determining what is feasible, the Secretary may balance the difficulties of reporting transaction-specific expenses against the potential inaccuracies of reporting allocated expenses.

New paragraph (h) deals with the Department's treatment of subprocessors or "tollers." Several commentators expressed support for the Department's recent decision that tolling operations (*i.e.*, subcontractors) should not be treated as manufacturers or producers of the subject merchandise. The Department concurs with those commentators who urged that, because this policy has not been widely publicized, that it be enunciated in the regulations. Under paragraph (h), where a party owning the components of subject merchandise has a subcontractor manufacture or assemble that merchandise for a fee, the Department will consider the owner to be the manufacturer, because that party has ultimate control over how the merchandise is produced and the manner in which it is ultimately sold. The Department will not consider the subcontractor to be the manufacturer or producer, regardless of the proportion of production attributable to the subcontracted operation or the location of the subcontractor or owner of the goods. For example, where Firm A sends raw materials to a subcontractor for finishing before Firm A sells the finished goods to the United States, the Department will base export price or constructed export price on the price charged by Firm A (or its U.S. affiliate) for the finished goods. Similarly, the Department will base normal value on Firm A's sales of the finished goods in its home market (subject to the viability determination described in section 351.404).

Paragraph (i) establishes how the Department will identify the date of sale for sales of the subject merchandise and foreign like product. Under this provision, the Department will normally rely on the date of invoice. This is a change from prior practice under which the Department based the date of sale on the date on which the "essential terms of sale" (normally price and quantity) were established. *See*, Certain Forged Steel Crankshafts from the Federal Republic of Germany, 52 FR 28170, 28172 (1987). Several commentators argued that this methodology delayed proceedings, increased the cost to the respondents, complicated verification, and was unpredictable. In response to these concerns, paragraph (i) provides that the Department normally will use the date of invoice as the date of sale. However, the Department recognizes that this date may not be appropriate in some circumstances, such as those involving certain long-term contracts or sales in which there is an exceptionally long time between the date of invoice and the date of shipment. Paragraph (i) provides the Department with sufficient flexibility to handle such situations.

Some commentators suggested that the Department use as the date of sale whatever date a respondent uses in its internal records. However, this approach would create a high degree of unpredictability and inconsistency among respondents, and it might be subject to manipulation. The date of invoice is easily verifiable, and, in the Department's experience, is clearly recorded in most respondents' records. With respect to the concerns of one commentator that use of a respondent's invoice date could make the date of sale subject to manipulation, the Department intends to verify that the records upon which the date of invoice are based were kept in the ordinary course of business. Additionally, particularly during administrative reviews, the Department will carefully scrutinize any change in record keeping that could change the date of invoice.

Section 351.402

Section 351.402 deals with certain adjustments that the Department will make in calculating export price and constructed export price under section 772 of the Act.

Paragraph (b) clarifies the expenses that the Department will deduct from the price to the unaffiliated purchaser (*i.e.*, the "starting price") in calculating constructed export price under section 772(d) of the Act. Consistent with the SAA at 823, the Department will make deductions under section 772(d) for those expenses enumerated in the Act which are due to economic activities in the United States. Thus, commissions, direct selling expenses, assumptions of expenses on behalf of the buyer, and indirect selling expenses attributable to the sale to the unaffiliated purchaser in the United States will be deducted in calculating the constructed export price. This deduction will be made irrespective of when the expenses are incurred, or where payment is made. The cost of advertising in the United States, for example, may be deducted under section 772(d) even if the advertising is paid for outside of the United States. However, the foreign seller's expenses associated with selling to the affiliated reseller in the United States would not be deducted under section 772(d), rather, they would be dealt with as circumstance of sale adjustments under section 773(a)(6)(C)(iii) of the Act.

The manner in which the Department intends to implement the special rule for merchandise with value added after importation contained in section 772(e) of the Act is explained in some detail in paragraph (c). Under that section, where a substantial amount of value is added by a process of further manufacture or assembly in the United States, the Department may use surrogates for the constructed export price, rather than perform the extensive calculation required to deduct the actual value added in the United States. Paragraph (c)(1) clarifies that deduction for value added in the United States and the special rule may apply where the actual importer or purchaser, for example a subcontractor, is not affiliated with the exporter, but is acting on behalf of the affiliated party in the United States.

Paragraph (c)(2) explains how the Department will make an estimation of whether the value added in the United States "exceeds substantially" the value of the subject merchandise. The SAA explains that, "[w]hile Commerce is not required to calculate precisely the value added after importation into the United States, 'exceed substantially' means that the value added in the United States is estimated to be substantially more than half of the price of the merchandise as sold in the United States." SAA at 826. For purposes of this estimation, the Department will normally calculate the value added by subtracting the average net price at which subject merchandise is sold to affiliated importers who undertake further manufacturing, from the average net price at which the merchandise with value added is eventually sold to unaffiliated customers in the United States. Other than reduction for discounts, rebates and other post-sale price adjustments, no adjustments will be made to these prices. Where this average difference (*i.e.*, value added in the United States) is at least 60 percent of the average price to unaffiliated customers, the special rule normally will be applied to all merchandise with value added in the United States. Usually, the Department will calculate these averages across the subject merchandise sold with value added. However, where there are significant disparities in price between subject merchandise or the value added products, the Department retains the discretion to base the averages on smaller groupings of products.

Paragraph (c)(3) explains that, for merchandise to which the Department has determined the special rule applies, it will normally assign a margin equal to the weighted-average margin calculated based upon the prices of identical or other subject merchandise sold to unaffiliated parties. This is equivalent to using the price of sales to unaffiliated parties, along with all other terms and conditions of those sales, and calculating the margins based on those surrogate prices, terms and conditions. Because such margins will have been calculated for those sales to unaffiliated parties, the Department will not need to repeat the calculation for the sales to which the special rule applies. The Department believes this approach is appropriate, because a price cannot be dissociated from the terms and conditions that gave rise to that price. For example, a price for one product cannot simply be substituted as an appropriate price for a different product. If the Department were simply to adopt a price for a different product and then analyze the sale, there would be a question as to whether the price should be adjusted to account for the difference in merchandise to avoid distortion. Adjustments for other differences between the surrogate sales and the special rule sales also might be necessary. Making such adjustments would unduly complicate the analysis under this provision, which is intended to simplify the process.

Paragraph (d) elaborates on the procedure the Department will follow in deducting profit to arrive at a constructed export price under sections 772(d)(3) and 772(f). Various commentators have urged that the regulations provide further guidance regarding the profit deduction. Paragraph (d)(1) specifies, in accordance with section 772(f) of the Act, that both the expenses used to allocate the profit to the U.S. sales, and the profit to be allocated normally will be based upon all sales of the subject merchandise in the United States and the foreign like product in the foreign market. This clarifies explicitly, as suggested by some commentators, that losses in one market would offset profits in another. This is clearly contemplated by the term "total actual profit" in section 772(f) of the Act, and is reinforced by the reference in the SAA, at 825, to situations in which there is no profit. Some commentators suggested that the regulations clarify whether a profit ratio or per-unit profit will be used. This change to the rule is unnecessary, but in accordance with section 772(f)(2) of the statute, the Department will apply a profit ratio, *e.g.* profit divided by selling expenses.

In calculating profit, this paragraph specifies that the Department will not disregard home market sales below cost. Although some commentators suggested that below-cost sales should be disregarded when determining total

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actual profit, there is no provision in the statute for disregarding sales below cost in this context, and doing so would conflict with the statutory requirement to use "actual profit."

Paragraph (d)(2) specifies that the Department will not be limited to audited financial statements, but may use any appropriate financial report, including internal reports, the accuracy of which can be verified, if verification is conducted. This provision reflects the suggestion of commentators that the Department make clear its discretion to use financial reports prepared in the normal course of business that are as specific as possible to the merchandise under investigation or review.

Finally, paragraph (d)(3) recognizes the obligations of the Department not to require the reporting of costs solely to make the profit deduction, and, where practicable, to use costs that are submitted voluntarily for purposes of calculating profit. However, to ensure that voluntary submissions of cost data can be used for this purpose, the Secretary will specify deadlines after which such voluntary submissions will no longer be accepted. The Department has not adopted a rule, proposed by one commentator, that the Department not be allowed to initiate an investigation of sales below cost based on an allegation derived from cost information submitted voluntarily for this purpose. If the information submitted voluntarily supports a sufficient allegation that home market sales have been made below cost, then the Department is required to initiate a cost investigation.

Various commentators suggested that the regulations specify the costs that will be subtracted from revenues to determine total actual profit. Although the Department has not elaborated on the guidance provided in section 773(b)(3) of the Act with respect to cost of production and section 773(e) of the Act with respect to constructed value, the Department will develop an appropriate treatment of particular expenses through practice, as it has done with cost of production and constructed value.

A number of commentators contended that the Department should cap the amount of profit deducted at the amount of profit actually earned on each U.S. sale. Other commentators argued for an adjustment to normal value to offset any distortion caused by the profit allocation method required by the statute. These commentators claimed that failure to make such an adjustment to normal value would lead to double-counting of profit.

Article 2.4 of the Agreement provides for the deduction of profit and selling expenses associated with economic activities in the export market in order to construct an export price. The statute implements the Agreement by requiring that the profit calculation for constructing an export price be computed based on the combined profits of the exporter on sales to both the U.S. and home markets. The SAA, at page 825, prohibits a cap based on the transfer price by stating that "the transfer price between exporters or producers and the affiliated importer is irrelevant in determining the amount of profit to be deducted" in constructing an export price. Further, the statute does not provide for an adjustment to normal value in the manner suggested.

Some commentators also suggested that the regulations state that profit will be deducted in calculating CEP only when the importer is affiliated with the exporter. They argue that this is necessary to ensure that the profit of an unaffiliated consignment importer will not be deducted twice. While the Department fully agrees with this comment, the regulations do not include such a provision, because the statute clearly limits the profit deduction to profits allocated to expenses incurred by the producer, exporter, or affiliated seller.

One commentator suggested that the regulations explain whether profits in the home market or a third country market will be used when there are few sales in the home market, *i.e.*, that market is not "viable" under section 351.404, discussed below. The statute does not clearly address this question, and as this is a new provision with which the Department has no experience, the Department will address this question after gaining experience in its administration.

Paragraph (e) explains how the Department will treat payments between affiliated parties for purposes of section 772(d) of the Act. This provision explains that the Department will normally base the deduction of expenses on the cost to the affiliate, rather than on any payment to the affiliate. However, where the Department is satisfied that the exporter does not have access to that information, the Department may use the payment to the affiliated party if that payment represents an arm's-length price for the service provided by the affiliated party. The Department will determine whether the price is arm's length by a comparison of the price at issue with prices for similar services paid to unaffiliated providers, or with prices charged by the affiliate to unaffiliated parties. Thus, under this provision, where an affiliated importer sells the subject merchandise on commission, the Department will normally use the selling expenses of the affiliated importer, but may use the amount of the commission, if the conditions identified above exist.

Paragraph (f) provides that the Department will deduct from the export price (or the constructed export price) any antidumping or countervailing duties paid on behalf of the importer, or reimbursed to the importer, by the producer or exporter and sets out an exception and the procedures to be applied in that situation. Other than the changes in language required by the URAA, the provision with respect to antidumping duties is unchanged from § 353.26 of the existing regulations. The requirement that such countervailing duties be deducted from the export price (or constructed export price) is new.

Under section 772(c)(1)(C) of the Act, the Department increases the price used to calculate export price (or constructed export price) by the amount of any countervailing duty imposed to offset an export subsidy. The countervailing duty paid by the importer has the effect of increasing the price to the importer by the amount of that duty. If the producer or exporter pays or reimburses the duty, the price has not been increased and a deduction in the amount of the duty paid or reimbursed by the producer or exporter, to offset the addition made under section 772(c)(1)(C), is appropriate to arrive at the correct export price (or constructed export price). As with antidumping duties, the statute authorizes no adjustment to export price (or constructed export price) for countervailing duties imposed to offset other types of subsidies. And just as with antidumping duties, payment of those countervailing duties by the exporter or producer on behalf of the importer represents an effective reduction in the price to the unaffiliated purchaser. Thus, in both instances it is appropriate to take the deduction described in paragraph (f).

Section 351.403

With respect to the calculation of normal value, § 351.403 sets forth, without substantive change, the regulations regarding sales and offers for sale and the regulations regarding use of sales to or through an affiliated party. However, as discussed above with respect to section 351.102, differences between the old term "related party" and the new term "affiliated party" may have an impact in this area. The provisions corresponding to § 351.403 are currently contained in §§ 353.43(a) and 353.45 of the existing regulations.

Because other provisions of 353.43 have been added to the statute, they are not restated in these proposed regulations.

Several commentators suggested that the Department adopt a regulation allowing respondents not to report "downstream" sales (*i.e.* sales by affiliated parties of merchandise purchased from the respondent) if the quantity of sales to affiliated parties is below a certain threshold percentage of sales to unaffiliated parties. Others suggested, in contrast, that the Department require that downstream sales always be reported. Because factors other than value, such as comparability of sales, affect this decision, neither proposal is reflected in the regulations. However, the Department will continue to consider this important issue, which has implications both for the accuracy of its calculation and the reasonableness of its information requirements. The Department encourages the submission of comments on this matter.

Similarly, several commentators recommended methodologies for determining when a price to an affiliated party should be considered comparable to the price at which merchandise is sold to unaffiliated parties; *i.e.* when a price is at "arm's length." Because of the complexity of this issue, and because the Department's practice in this area is still evolving, the Department has not addressed this issue in these proposed regulations. However, the Department will continue to consider this issue for the final regulations.

Section 351.404

Section 351.404 sets forth in combined form the requirements of sections 773(a)(1)(B) and (a)(1)(C) of the Act regarding whether sales in the exporting country or in a third country may be used as a basis for normal value. This provision modifies §§ 353.48 and 353.49 of the Department's existing regulations.

The antidumping statute has long required the Department in calculating foreign market value (now normal value) to avoid the use of markets in which there are few sales (*i.e.*, markets that are not "viable"). Paragraph (b)(1) sets forth the general condition under which the Secretary will find a market to be viable, that is, when satisfied that the sales in the exporting or third country market are of sufficient quantity to form the basis for normal value.

Paragraph (b)(2) defines the sufficient quantity standard as satisfied when the aggregate quantity (or value) of foreign like product sold in or to the foreign country is five percent or more of the aggregate quantity (or value) of subject merchandise sold to the United States. Under the prior statute and regulations, viability was established by comparing the quantity of sales in the exporting country to the quantity of sales to all export markets except the United States. In accordance with the URAA, the comparison in paragraph (b)(2) is between sales in the foreign market and sales to the United States.

The URAA also changed the comparison that the Department will make in deciding if the sales in the foreign market are in sufficient quantities. Under prior practice, the comparison was normally made between sales of "such or similar" merchandise. Under the URAA, the comparison will be between sales of the foreign like product in the foreign market and sales of subject merchandise to the United States. Some commentators have argued that the Department should measure viability on the basis of categories of merchandise smaller than the foreign like product. However, as other commentators pointed out, the statute is explicit that the Department determine market viability for each respondent on the basis of the aggregate quantity (or value) of the foreign like product. Moreover, the SAA, at 821–22, states that, "[t]he viability of a market will be assessed based on sales of all merchandise subject to an antidumping proceeding, not on a product-by-product or model-by-model basis." Commentators noted that the Department's calculations would become extremely complex if, for a given respondent, the normal value for some U.S. sales were to be based in the home market, while the normal value for other U.S. sales were to be based in a third country. Finally, because basing this test on sales of the foreign like product will require less disaggregated data, it will allow the Department to make the viability determination earlier in the proceeding.

Paragraph (b)(2) reflects the preference contained in the statute for measuring viability on the basis of quantity. Several commentators argued that the Department should retain the flexibility to measure viability on the basis of value. While the Department may use value, the statute provides that value may be used only where quantity is not appropriate. The SAA makes clear, however, that quantity is to be defined broadly, and may be measured on the basis of number of items, weight or such other bases that the Department considers appropriate.

Some commentators have argued that the Department must retain the flexibility to use a test other than five percent. While five percent has long proven to be a satisfactory measure of viability, in unusual situations the Secretary may apply a number less than or greater than five percent. This is consistent with the SAA, at 821, which indicates that such situations will be "unusual," and which reflects the fact that the Department has successfully applied the five percent threshold in the past. It also reflects the need for an early decision with respect to the market in which normal value will be established, because respondents must provide data relative to sales in that market.

Paragraph (c)(1) stipulates that if the Department finds a viable exporting-country market, it will calculate normal value on the basis of prices in that exporting country. If the Department finds that the exporting-country market is not viable, but that a third-country market is viable, it may calculate normal value on the basis of prices to the third country. The use of the word "may" in the third country provision reflects the language of section 773(a)(4) of the Act, which provides that the normal value may be the constructed value of the subject merchandise even if a third country market is viable. Paragraph (c)(1) is not intended to address circumstances in which prices must be disregarded because they are below the cost of production, as discussed in connection with section 351.406, below.

Paragraph (c)(2) provides that if the Department finds a viable market, it may decline to calculate normal value on the basis of prices in or to that market in certain circumstances. For both the exporting country and a third country, if parties establish to the Secretary's satisfaction that the particular market situation would not permit a proper comparison, the Department may decline to use sales in the relevant market as the basis for normal value. The SAA, at 822, cites as possible examples of such situations a single sale in the foreign market which meets the five percent threshold, extensive government control over pricing that does not permit competitive forces to affect prices, and differing patterns of demand in the United States and the foreign market. Also, if parties establish to the Secretary's satisfaction that prices to a third country are not representative, the Department may decline to use sales to that country.

As explained above in connection with paragraph (b), normally a finding that the foreign market sales constitute five percent or more of sales to the United States will be considered determinative with respect to the issue of viability. The Department will review another factor only if a party

convincingly demonstrates that that factor mitigates against reliance on the five percent standard. This is in accordance with the Department's experience, the language of the SAA, at 821, and the need for early viability determinations. The SAA explains that "sales in the home market 'normally' will be considered of sufficient quantity to render the home market viable if they are five percent or more of sales to the United States. The Administration intends that Commerce will normally use the five percent threshold except where some unusual situation renders its application inappropriate." Therefore, unless a party presents convincing evidence that some aspect of the market in question is so unusual as to make that market an inappropriate basis for comparison and the five percent test inappropriate, the Department will rely on the results of the five percent test in determining whether the foreign market is an appropriate basis for normal value. Placing primary reliance on the five percent test is also consistent with the need to make the viability determination early in a proceeding so that respondents can provide the necessary sales information and the Department can meet its statutory deadlines.

In furtherance of the need to make viability determinations early in an investigation or review, paragraph (d) references the deadline for filing any allegation (along with all supporting factual information) regarding market viability, including an allegation that one of the exceptions in paragraph (c)(2) applies. That deadline (40 days after a questionnaire is issued) is contained in § 351.301(d)(1). The deadline, while short, is approximately two weeks after the general information response to the questionnaire is normally due. If the Department extends the deadline for responding to that section of the questionnaire, it also will extend the time for making an allegation regarding market viability. Among the allegations covered by §§ 351.301(d) and 351.404(d) are arguments that some number other than five percent should be used to determine viability, or that viability should be determined based on the value, rather than quantity, of sales.

Paragraph (e) outlines factors for consideration when several third country markets are viable. These criteria are slightly modified from those found in § 353.49(b) of the Department's prior regulations. In the past, the Department has most often found that the largest third country market is the best basis for comparison with the United States. However, in a few situations, the Department has discovered that other factors mitigate against selection of the largest market. For example, where sales to a particular third country market are of merchandise that is very similar to that sold to the United States, the use of that third country market may be more appropriate, even if it is not the largest market.

Several commentators argued that the Department should retain the criteria found in the existing regulations for selecting a third country. In this regard, we note that the criterion that sales to the selected third country market be of sufficient quantity is now encompassed in the five percent test, which now applies to third country markets as well as the home market. The criterion that the selected market be like the United States in terms of organization and development is now reflected in the requirement of paragraph (c)(2) that there not be a market situation which prevents a proper comparison. In addition, paragraph (e) provides that the Department may consider other criteria for selection of a third country market that are relevant to a particular case. As in the past, while the Department will consider all relevant criteria, not all of the criteria of this section need be present in the selected market, and none is dispositive.

Paragraph (f), based on § 353.48(b) of the existing regulations, indicates that the Department normally will choose to calculate normal value based on sales to a viable third country market rather than on constructed value. The change in terminology (i.e., the deletion of "prefer") is intended to reaffirm that the Department retains the discretion to select constructed value over a third country price-to-price comparison in appropriate circumstances. However, once the Department chooses a comparison market, it will not reexamine the issue of viability. Thus, if the Department finds that it must disregard sales in the selected foreign market of a product that is most similar to the subject merchandise (e.g., because the sales are below cost), the Department will apply constructed value rather than seek sales in another market or use sales of less similar merchandise. This policy is discussed in more detail below in connection with § 351.406 ("comparison of merchandise").

Section 351.405

Section 351.405 deals with the calculation of normal value based on constructed value, and modifies § 353.50 of the Department's existing regulations.

Under section 773(e)(2)(A) of the Act, as a general rule the Department will base amounts for profit and selling, general and administrative expenses ("SG&A") on the actual amounts incurred and realized by the specific exporter or producer in connection with the production and sale of a foreign like product in the ordinary course of trade. For ease of discussion, this general rule will be referred to as the "preferred methodology." If data regarding a specific company's actual profit and SG&A are not available, section 773(e)(2)(B) of the Act provides three alternative methods for calculating these amounts (the "alternative methods"). As stated in the SAA, at 840, the statute does not establish a hierarchy or preference among the three alternative methods.

Paragraph (b) clarifies an issue regarding the market that will form the basis for the calculation of profit and SG&A under the preferred methodology and under the alternative methods. Specifically, paragraph (b)(1) provides that in applying the preferred methodology, sales in the country in which the merchandise is produced or a third country, as appropriate, will form the basis for the calculation of profit and SG&A. In contrast, paragraph (b)(2) provides that in applying the alternative methods, only sales in the country in which the merchandise is produced will form the basis for the calculation of profit and SG&A (or in the case of the third alternative method, the basis of the so-called profit cap).

The issue arises because of the use in the statute of identical language that the Department interprets differently in different situations. Specifically, the statute states that with respect to both the preferred methodology and the alternative methods, profit and SG&A shall be based on sales "for consumption in the foreign country." The SAA, at 840, provides that in the context of the three alternative methods, profit and SG&A shall be based on "home market" sales; *i.e.*, sales in the country in which the merchandise is produced. Article 2.2.2 of the AD Agreement similarly indicates that with respect to the three alternative methods, the appropriate market is the "domestic market of the country of origin." Both the SAA and the AD Agreement are silent, however, on the market in which to calculate profit and SG&A with respect to the preferred methodology. Therefore, the Department intends to maintain its current practice of using home market or third country sales as the basis for profit and SG&A, as appropriate. Specifically, when an exporter's third country market forms

the basis for normal value and the Department resorts to constructed value due to below-cost third country sales or model matching considerations, the Department will use third country sales as the basis for profit and SG&A. Use of third country sales in these situations is the most accurate and practical approach for both the Department and the respondent.

In practice, the Department can derive an actual amount of profit by subtracting the cost (derived from COP data) from the home market sales price (derived from the home market sales data) to arrive at a net profit for each transaction examined. The Department will use the net profit figures to derive a per unit amount for profit. The Department will derive an "actual" amount of G&A by dividing the G&A from a company's financial statements by the cost of goods sold to arrive at a G&A ratio. The Department then will apply this ratio to total cost of manufacture on a per unit basis. The actual amounts for per unit selling expenses can be derived from the home market sales list. This leaves the question of whether the "actual amounts" for profit and SG&A should be based on a model-specific or aggregate-figure basis.

One commentator argued that the Department should not calculate SG&A expenses exclusive of those sales that the Department disregards as being below cost, because these expenses rarely relate directly to individual sales. Another commentator, however, argued that SG&A and profit should be obtained from the same, or comparable, pool of sales.

The Department's practice has been to use aggregate figures. Notably, section 773(e)(1)(B) of the pre-URAA statute provided for calculation of an amount for profit and SG&A "equal to that usually reflected in sales of merchandise of the *same general class or kind* as the merchandise under consideration" (emphasis added). In comparison, section 772(e)(2)(A) of the amended Act provides for use of the actual amounts incurred and realized for profit and SG&A "in connection with the production and sale of a foreign like product." The use of "a" arguably could be interpreted to mean a particular model. The SAA, on the other hand, refers to actual amounts incurred, "in selling the particular merchandise in question (foreign like product)." SAA, at 839. This language supports a view that the use of "a" was not intended to overturn our prior practice of relying on aggregate figures for profit and SG&A. Moreover, if "a" were to be interpreted literally, the Department would have the discretion to pick and choose the sale of the foreign like product from which profit and SG&A would be taken. This clearly would undermine the predictability of the statute. Given these distinctions, the amended Act arguably provides for a narrower basis for the calculation of profit and SG&A than did the prior statute. Therefore, the Department intends to calculate profit and SG&A based on an average of the profits of foreign like products sold in the ordinary course of trade.

Both the pre-URAA statute and the amended Act provide that only sales "in the ordinary course of trade" be used as the basis for profit and SG&A. Under section 771(15) of the amended Act, however, the definition of ordinary course of trade has been expanded to require that the Department consider sales disregarded under the cost test to be *outside* the ordinary course of trade. A number of commentators argued that the profit and SG&A calculations should exclude all below-cost sales. The Department believes that automatic exclusion of below-cost sales would be contrary to the new statute. Specifically, in calculating profit and SG&A under the preferred and second alternative methods, the statute allows for exclusion of sales outside the ordinary course of trade. The statutory definition of ordinary course of trade, in turn, provides that only those below-cost sales that are "disregarded under section 773(b)(1)" of the Act are automatically considered to be outside the ordinary course of trade. In other words, the fact that sales are below cost does not automatically trigger exclusion; rather, the sales must have been disregarded under the cost test before they will be excluded from the calculation of profit and SG&A.

A number of commentators argued that the regulations should provide representative examples of sales that would be disregarded as not being in the ordinary course of trade, such as sales with abnormally high profits. One commentator suggested that the regulations define "abnormally high profits." Another commentator, in contrast, argued that no sale should be disregarded because of abnormally high profits unless an affirmative showing is made on a sale-by-sale basis that the price was not set by normal market forces. The SAA, at 839–840, and 834, indicates that the Department could consider sales with abnormally high profits to be outside the ordinary course of trade, along with sales of off-quality merchandise, sales to affiliated parties not at arm's-length prices, sales of merchandise produced according to unusual product specifications, merchandise sold at aberrational prices and merchandise sold pursuant to unusual terms of sale. The Department does not believe that it is appropriate to include these examples in the regulations. As implied by the statute and the SAA, the Department has the discretion to consider sales and transactions, other than those specifically cited, to be outside the ordinary course of trade. The Department believes that it is more appropriate to make these ordinary course of trade determinations on a case-by-case basis.

A number of commentators proposed that the regulations should adopt a *de minimis* profit level of two percent, and that where the profit amount calculated by the Department using one methodology is *de minimis*, the Department should rely on an alternative methodology. The Department has not adopted this proposal. The new statute specifically eliminates the prior statutory minimum for profit, and, instead, requires the use of the "actual" amounts incurred and realized by a specific exporter or producer. Nowhere does the new statute authorize the Department to establish a new *de minimis* rule requiring the Department to reject an alternative for calculating profit if that alternative results in a low amount for profit.

As discussed above, section 773(e)(2)(B) of the Act provides for three alternative methods if data regarding a specific company's actual profit and SG&A are not available. One commentator suggested that the regulations should clarify the point at which the number of sales in the ordinary course of trade would be so small that the Department would disregard actual data in favor of an alternative method to calculate profit and SG&A. Another commentator argued that the regulations should provide that when actual data is not available for the calculation of profit, the Department must base its profit calculation on the company's financial records. Still another commentator argued that the regulations should clarify that only in exceptional circumstances will the Department resort to other producers' profits when calculating a respondent's profit. Finally, a number of commentators argued that the third alternative ("any other reasonable" method) should be the company-wide profitability for the respondent in question for the most recent fiscal year, and that the Department should use this alternative only where profit cannot be determined under either of the other two

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alternatives. As discussed above, the SAA, at 840, makes clear that the statute does not establish a hierarchy or preference among the three alternative methods, and that selection of an alternative must be made on a case-by-case basis. No one approach would be appropriate necessarily for use in all cases. As stated in the SAA, at 841, "the Administration does not believe that it is appropriate at this time to establish particular methods and benchmarks for applying [the third] alternative [method]." As the Department still has not had enough experience in this area to develop a practice, the Department believes that it is inappropriate to adopt these suggestions.

Under alternative methods one and three, profit and SG&A would be based on sales of products in the "same general category of products as the subject merchandise." The SAA, at 840, indicates that this would be consistent with the existing practice of relying on a producer's sales of products in the same "general class or kind." In addition, the SAA, at 840, indicates that the term "general category of merchandise" encompasses a category of merchandise broader than the term "foreign like product." As a result, the Department intends to establish appropriate general categories on a case-by-case basis.

The SAA, at 841, provides that the Department should not require companies to submit all data necessary to apply each alternative. For example, the SAA states that the Department will not require a company which has provided profit information on its own sales of the particular foreign like product also to submit profit information on its sales of the same general category of products solely to enable the Department to use the latter information to calculate profit for a different company. One commentator suggested that the regulations reaffirm the commitment in the SAA that the Department will not make burdensome information requests about profits in the context of calculating constructed value. The commentator proposed, in particular, that the Department should pledge to use audited and readily-available profit data. However, a number of commentators expressed concern that respondents not be allowed to unilaterally determine what profit information to submit, and suggested that respondents be required to submit additional key information, including profit and loss operating statements, charts of accounts, and information demonstrating the company's cost of capital. One commentator argued that the regulations should require full cost reporting by all companies under investigation (or review) so that alternative two would be a viable option. Given the directive to refrain from requiring excessive additional reporting of data, the Department believes that it would be premature to adopt these proposals. As a practical matter, over time the Department will gain experience as to the appropriate type and quantity of data to request.

Section 351.406

Section 351.406 is new, and deals with the analysis of whether to disregard certain sales as below the cost of production under section 773(b) of the Act.

The Cost Test: Section 773(b)(1) of the Act provides that the Department may exclude below-cost sales from the determination of normal value if such sales occurred within an extended period of time in substantial quantities, and were not at prices which permit recovery of all costs within a reasonable period of time.

Paragraph (b) clarifies that the phrase "extended period of time" normally will coincide with the period over which sales under consideration for use in the calculation of normal value were made; *i.e.*, the period of investigation or review. Most comments on this issue were in accord with this approach. One commentator, however, stated that while there was a certain practical appeal to this approach, it would be more prudent for the Department to interpret the phrase "extended period of time" on a case-by-case basis. The SAA, at 831–32, states that for purposes of computing the quantity of below-cost sales, the Department will examine sales during the entire period of investigation or review. Thus, the SAA suggests that "an extended period" of time is intended to coincide with the investigative or administrative review period, as appropriate.

Two commentators raised the issue of whether below-cost sales must be made continuously throughout the period in order for the Department to consider such sales to have been made "within an extended period of time." These commentators posed a scenario wherein a substantial quantity of below-cost sales were made during a single month of a twelve-month review period, and questioned whether, in such an instance, the Department would have a sufficient basis for disregarding those sales. Other commentators argued that, consistent with the SAA, the Department no longer was required to find that below-cost sales occurred in a minimum number of months before excluding such sales from its analysis. According to these commentators, the Department must disregard substantial quantities of below-cost sales even if made in only one month of the period of investigation or review.

The SAA, at 831–32, states that because below-cost sales need only occur "within" an extended period of time, the Department no longer must find that such sales occurred in a minimum number of months during the period. Thus, where the below-cost sales found during one month of the period meet the other requirements of the cost test (*i.e.*, substantial quantities and cost recovery), the Department would exclude such sales from its analysis.

Although not further addressed in these regulations, section 773(b)(1)(A) of the Act also requires that the Department determine whether below-cost sales have been made in substantial quantities. Under section 773(b)(2)(C)(i) of the Act, the Department will consider below-cost sales to have been made in "substantial quantities" if they account for 20 percent or more of the volume of sales under consideration for normal value. Under section 773(b)(2)(C)(ii) of the Act, the Department also may find below-cost sales to be in substantial quantities if the weighted average per unit price of the sales under consideration is less than the weighted average per unit COP of those sales.

In most cases, the Department intends to apply the 20 percent test in identifying those instances in which respondents sold substantial quantities of the merchandise at below-cost prices. In cases involving highly perishable agricultural products, however, the Department intends to apply the other substantial quantities benchmark (the weighted average price-to-cost test), which closely corresponds to the Department's previous substantial quantities benchmark for below-cost sales in cases involving highly perishable agricultural products. The Department's prior practice reflected the nature of perishable agricultural products, which often must be sold at below-cost prices in large quantities as the products begin to grow old and spoil.

Comments on the issue of substantial quantities were split. Some commentators argued that both substantial quantities tests should be applied in all cases. Other commentators maintained that under normal circumstances, the Department should apply only the 20 percent benchmark. These commentators contend that the language of the SAA limits the use of the weighted average

benchmark strictly to cases involving highly perishable agricultural products.

The SAA, at 832, states that the new weighted average price-to-cost benchmark, like the old 50 percent rule, is intended to account for the unique situation that exists with regard to below-cost sales of highly perishable agricultural products. As a result, the Department intends to apply this benchmark normally only in cases involving highly perishable agricultural products. However, because there may be other circumstances in which it would be appropriate to apply the weighted average price-to-cost benchmark, the Department has not established a bright line rule that would limit the use of this benchmark to cases involving highly perishable agricultural products.

Finally, in determining whether to exclude below-cost sales from the calculation of normal value, section 773(b)(1)(B) of the Act requires that the Department determine whether such sales, "were not at prices which permit recovery of all costs within a reasonable period of time." New section 773(b)(2)(D) of the Act clarifies that prices shall be considered to provide for recovery of costs within a reasonable period of time if such prices which are below cost at the time of sale are above the weighted average per unit cost of production for the period of investigation or review. Under the statute, therefore, the Department's cost recovery test must consist of an analysis involving individual prices for specific below-cost sales transactions. This is consistent with the position taken by a number of commentators.

Regarding cost recovery, several commentators also made suggestions concerning the issue of adjustments to cost for "periodic temporary disruptions to production" and the treatment of "unforeseen disruptions in production." The SAA, at 832, provides that before testing for cost recovery, the Department may adjust COP to take account of variations in per unit costs caused by "temporary disruptions to production that occur on a less frequent than annual basis." The SAA cites major maintenance that occurs every three years as an example of such a temporary disruption, and notes that the respondent must demonstrate that the disruptions have "recurred at regular and predictable intervals." The SAA also provides special treatment for unforeseen disruptions to production that are beyond the respondent's control. Here, the SAA cites as an example the destruction of respondent's production facilities by fire, and states that the Department will continue to adjust for such disruptions by relying on costs computed at a time prior to the unforeseen event.

One commentator submitted draft regulations outlining the above concepts from the SAA with regard to periodic disruptions in production and their effect on cost recovery. In response to this submission, another commentator argued that the proposed draft language was too restrictive of respondents' ability to demonstrate that below-cost sales should not be disregarded.

The Department believes that determinations involving periodic temporary disruptions to respondents' production costs are fact-specific in nature, and that while regulatory examples of such disruptions might give some guidance, they also might be interpreted as limiting the types of circumstances for which the Department will consider an adjustment. Moreover, in computing cost of production, the Department typically allows respondents to amortize or otherwise adjust for costs associated with major maintenance or other periodic activities that disrupt production. Thus, regulations providing specific examples of temporary disruptions might be interpreted as limiting these types of adjustments solely to the cost recovery analysis. The Department, therefore, has not included in its regulations specific provisions concerning adjustments to costs for periodic temporary disruptions in production. Nor do the regulations include any discussion of how the Department intends to treat costs associated with unforeseen disruptions in production. To do so in the context of cost recovery would conflict with explicit guidance given in the SAA, at 832, which states that the issue of unforeseen disruptions in production is "not a matter of cost recovery."

Initiation of Below-Cost Sales Investigation: The Department received several comments on the standard for determining whether an allegation of sales below cost provides reasonable grounds to initiate an investigation of sales below cost. These comments are discussed above in connection with section 351.301(d)(2).

Below-Cost Sales Disregarded and Ordinary Course of Trade: Section 773(b)(1) of the Act provides that where below-cost sales have been disregarded, the Department will base normal value on the remaining sales of the foreign like product made in the ordinary course of trade. However, if there are no remaining sales made in the ordinary course of trade, the Department will base normal value on constructed value. The Department's past practice was to disregard all sales of a product if below-cost sales exceeded 90 percent of the total sales quantity of the product. Under section 773(b)(1) of the Act, however, the Department is required to use any existing above-cost sales to compute normal value if such sales were made in the ordinary course of trade. Additionally, the SAA, at 833, states that only where there are no above-cost sales in the ordinary course of trade will the Department resort to constructed value as the basis for normal value.

Under section 771(15) of the Act, the term "ordinary course of trade" encompasses those below-cost sales that meet the criteria of section 773(b)(1) of the Act. Thus, in most instances, the Department will disregard such sales and compute normal value using only the remaining above-cost sales. The SAA, however, describes two circumstances under which this general rule may not apply.

The first circumstance involves sales of obsolete or year-end merchandise. The SAA, at 833, notes that sales of such merchandise are often made at below-cost prices. Despite this fact, the SAA explains that it is appropriate to use these below-cost sales as the basis for normal value where the merchandise exported to the United States is similarly obsolete or end-of-model year. The second circumstance, while not explicitly stated in the SAA, involves above-cost sales made outside the ordinary course of trade. The SAA, at 834, provides examples of sales that the Department might consider as being outside the ordinary course of trade. These include sales made at aberrational prices or with unusual terms of sale. Although such sales may pass the COP test under section 773(b)(1) of the Act, the Department normally would exclude them from the calculation of normal value. The Department has incorporated examples of sales that may be considered outside the ordinary course of trade as defined in § 351.102 of the regulations.

The Department received proposals from several commentators concerned about the determination of below-cost sales as outside the ordinary course of trade. Two of these commentators expressed the opinion that below-cost sales are a fundamental business reality, and, as such, companies set prices to obtain a reasonable return in the aggregate for their product line. The two commentators suggested that to account for this phenomenon in its antidumping analysis, the Department should adopt a two-tier test for substantial quantities. Under the first tier, the Department would look to see if below-cost sales in the comparison market were, in

aggregate, greater than twenty percent of all such sales. If so, the Department would determine that the overall pattern of sales in the comparison market were not in the ordinary course of trade, and then would apply the twenty percent substantial quantities benchmark to comparison market sales on a model-specific basis.

This suggestion drew sharp criticism from a number of other commentators, who maintained, among other things, that the exclusion test for sales below cost is to be applied on a model-specific basis. The Department agrees with these commentators that the proposed two-tier test would not be consistent with the SAA, at 832, which states that "the cost test will generally be performed on no wider than a model-specific basis." Many of the commentators opposing the two-tier test recommended that the Department state in its regulations its intent to continue use of a model-specific cost test. The Department believes that such a regulation is not necessary, because the Department has used a model-specific cost test as part of its practice for a number of years, and has no intention of changing its practice on this issue.

The Department also received many comments relating to the use of remaining above-cost sales as the basis for normal value. Some commentators recommended that the Department's regulations reflect the language of the statute and the SAA by providing for the use of constructed value only where there were no comparison market sales made in the ordinary course of trade. Other commentators, however, urged the Department to avoid setting arbitrary and inflexible standards for determining when above-cost sales must be used to establish normal value. These commentators claimed that where there are only a few aberrational, high-priced sales above-cost, such sales may be totally unrepresentative as a basis for normal value. To avoid this problem, one of the commentators suggested that the Department use statistical concepts to identify when the price of a particular transaction is so far from the average price as to be deemed not in the ordinary course of trade.

In rebuttal, certain commentators argued that the Department should not exclude from consideration for normal value small numbers of above-cost sales simply because such sales were made at high prices. According to these commentators, any above-cost sales made in the ordinary course of trade should be used to compute normal value. The commentators further argued that the Department should reject the "simple statistical" tests proposed by other commentators, because this approach is contrary to the usual practice of examining a wide host of factors to determine whether sales are in the ordinary course of trade.

Section 773(b)(1) of the Act indicates that the Department is to disregard sales made outside the ordinary course of trade when computing normal value. In addition, section 773(b)(1) of the Act provides for the use of constructed value only where there are no above-cost sales remaining in the ordinary course of trade. However, in cases where the few remaining above-cost sales are made at aberrationally high prices, the SAA provides that these sales may be excluded from consideration for normal value if they are determined to be outside the ordinary course of trade. This determination typically will depend on specific facts regarding the product, the industry, the terms of sale, and any number of other considerations, including, perhaps, statistical analyses of prices. Thus, to base the ordinary course of trade analysis solely on statistical concepts would be inappropriate, at least at this time. Moreover, without the experience that comes from actual cases, it would be foolhardy to define specific criteria for deciding which above-cost sales are "aberrational" and which are in the ordinary course of trade.

Finally, one commentator suggested that before conducting its cost analysis, the Department should exclude sales made outside the ordinary course of trade (other than below cost sales). This commentator argued that including such sales in the below-cost test effectively double-counts the sales not made in the ordinary course of trade. Commentators opposing this suggestion stated that it is not in accordance with the new statute. The Department agrees that this suggestion is not supported by the statute. Section 773(b)(1) of the Act instructs the Department to determine whether sales of the foreign like product have been made at less than the cost of production. Nowhere does the statute suggest that the Department should perform its cost analysis only on sales in the ordinary course of trade.

Comparison of Merchandise: Two commentators suggested that the regulations provide the Department with the alternative of using the next most similar category of products for comparison purposes, rather than automatically resorting to the use of constructed value ("CV") when there are no above-cost sales for a particular model. In opposing this recommendation, one commentator argued that, in accordance with the statute, product matching occurs without regard to the exclusion of below-cost sales.

Under section 773(a) of the Act, the Department is authorized only to compare the merchandise under investigation to the foreign like product. The suggestion of one commentator that where the most similar merchandise can not be used for comparison because there are insufficient sales above the cost of production, the Department may use less similar merchandise as comparison models is incompatible with the statutory scheme. Section 771(16) directs the Department to base its comparisons on the first of three categories in which there is merchandise that may be satisfactorily compared with the subject merchandise (*see* section 771(16) of the Act, with respect to which the only change brought about by the URAA was the substitution of the term "foreign like product" for the term "such or similar merchandise"): Most favored is "merchandise which is identical in physical characteristics" and "produced in the same country by the same person" as the merchandise under investigation. If there were no sales of merchandise with identical physical characteristics, the Department must select merchandise that meets the conditions set forth in section 771(16)(B) of the Act; *i.e.*, like the merchandise under investigation and approximately equal in commercial value. If no merchandise qualifies under section 771(16)(B), the Department must select merchandise that meets the conditions set forth in section 771(16)(C) of the Act; *i.e.*, of the same general class or kind, similar in use, and reasonably comparable with the merchandise under investigation. The Department would subvert this statutory scheme if it did not use the first category in which there were sales; for example, by making a comparison with "similar" merchandise even though the respondent had sales of identical merchandise. Moreover, adopting the proposed methodology effectively would add an additional criterion to 771(16); namely, that merchandise in the category selected must be sold above cost in sufficient quantity. As the CIT has explained in upholding the Department's policy under prior law, "[o]nce the model matches are established and the COP test is completed, Commerce is not required to reexamine all of the undifferentiated model data in order to make new matches and price comparisons on the basis of whatever subset of lower-ranked such or similar merchandise survives the COP test." *Zenith* v. *United States*, 872 F. Supp. 992, 1000 (CIT 1994). *See also* Policy Bulletin 92/4, "The Use of Constructed Value in COP Cases," for a detailed discussion of this issue.

One commentator recommended that for purposes of computing COP and CV, the Department should rely on the product categories that a respondent uses in its normal course of business. Several commentators opposed this recommendation, stating that costs are to be computed based on the same product categories established by the Department for model matching. The Department's practice is to calculate costs consistent with the model matching criteria it develops outset of an investigation or review, after having received the views of the parties. The product categories developed in such fashion generally account for significant differences in actual costs affecting price. The Department intends to continue this practice because it prevents any manipulation of the cost analysis through changes in internal product classifications.

Section 351.407

Section 351.407 contains special rules for the allocation of costs and the calculation of CV and COP in situations involving startup operations.

Allocation of Costs: Paragraph (b) provides that the Department will consider various factors associated with the production and sale of the subject merchandise and the foreign like product in order to ensure that the method used to allocate production costs reasonably reflects and accurately captures all of the producer's actual costs. Paragraph (b) specifically mentions two factors, production quantities and relative sales values, that the Department may take into account in judging whether common production costs (including costs incurred as part of a joint manufacturing process) have been allocated among products on an appropriate basis. As has been its practice in the past, however, the Department may weigh other significant qualitative and quantitative factors concerning the production of the merchandise in question to ensure that a producer has reported a representative measure of the materials, labor, overhead, and other costs associated with the subject merchandise and the foreign like product.

Startup Costs: Startup costs are addressed in paragraph (c). Under section 773(f)(1)(C)(ii) of the Act, the Department may make an adjustment for costs relating to startup operations only if the following two conditions are satisfied:

(1) A producer is using new production facilities or producing a new product that requires substantial additional investment, and

(2) production levels are limited by technical factors associated with the initial startup phase of commercial production.

For good reason, these conditions are somewhat generalized, because they must allow for any number of startup operation scenarios. The Department recognizes the fact-specific nature of the startup adjustment, and realizes that much of the guidance for implementing the adjustment will come from future case work. Nevertheless, the Department believes that the regulations offer an opportunity to furnish parties with additional clarification of those circumstances that qualify as startup operations and those that do not. To achieve this goal, while at the same time keeping the definition of startup clearly within the bounds intended by Congress, the Department has incorporated into the regulations concepts from the SAA, at 836–838, that help to define startup operations and explain the startup adjustment.

Definition of startup: Paragraph (c)(1) includes definitions for "new production facilities" and "new products," as well as guidance on whether improvements to products or facilities and expansion of capacity qualify as startup operations. The Department received a number of comments concerning the definition of startup. For the most part, the commentators fell into two camps—those who believed that startup should be "narrowly defined" in the regulations, and those who rejected this approach. In either case, the commentators did not provide substantive definitions that differed in any significant way from those adopted by the Department. Rather, their thoughts on whether or not to craft the regulations "narrowly" related to issues of implementation and burden of proof, both of which are discussed separately below.

In addition to the comments described above, the Department received comments on two other issues regarding the startup definition. With respect to the first issue, one commentator argued that the term "new product" does not refer to "improved" products or to new-model-year versions of products, and recommended that the Department's regulations reflect this premise. According to the commentator, "new products" must have completely new designs or require the use of new facilities or "substantial additional investment" to existing facilities. Another commentator wrote to reject this position, stating that, while the SAA clearly intends to exclude from startup any incrementally improved products, it does not prohibit new-model-year versions from qualifying as "new products" where they satisfy the definition of a startup. The Department agrees with the latter commentator. There is no basis in the statute or SAA to specifically exclude new-model-year products or "improved" products where their production otherwise meets the startup criteria.

With respect to the second issue, two commentators recommended that the Department include an additional condition to the startup analysis. These commentators maintained that no startup adjustment should be allowed where, based on a comparison of prices and costs in the startup period, the Department finds that the respondent has adjusted its prices upward to reflect the higher startup costs. The Department has rejected this proposal, because neither the statute nor the legislative history provides for this approach.

Demonstrating entitlement to a startup adjustment: Although the statute does not provide any specific guidance regarding the burden of establishing entitlement to a startup adjustment, the SAA, at 838, makes clear that the burden is on the party seeking the adjustment:

> Specifically, companies must demonstrate that, for the period under investigation or review, production levels were limited by technical factors associated with the initial phase of commercial production and not by factors unrelated to startup, such as marketing difficulties or chronic production problems. In addition, to receive a startup adjustment, companies will be required to explain their production situation and identify those technical difficulties associated with startup that resulted in the underutilization of facilities.

Importantly, however, the SAA notes that the burden imposed for startup adjustments is consistent with the Department's approach to adjustments in general. Thus, in demonstrating to the Department that a startup adjustment is warranted, respondents will be held to the same legal and factual standards that apply to all other adjustments in an antidumping analysis.

The Department received a number of comments regarding this "burden of proof" issue. Although virtually all of the commentators recognized that the burden of establishing entitlement to an adjustment fell on the party making the claim (in all likelihood the respondent), there was significant disagreement as to

the evidentiary standard that the Department should apply in considering whether to grant a startup cost adjustment. Those commentators seeking to limit the availability of the startup adjustment claimed that in considering whether to grant an adjustment, the Department's regulations must hold respondents to a rigid evidentiary standard. They reasoned that because the startup provision constitutes an exception to the cost of production/constructed value section of the statute, the Department should grant an adjustment only in limited circumstances. This would ensure that, in the words of the SAA, at 835, the startup adjustment did not provide respondents with a "license to dump."

The Department believes that, contrary to the commentators claims, this statement from the SAA is not intended to place a higher-than-normal burden on parties. Instead, the statement merely advocates strict enforcement of the startup provision, and advises the Department to grant adjustments only in those circumstances where they are warranted.

The Department also received recommendations from two commentators that wished to reduce the burden of proof below that applicable to other adjustments. The first commentator suggested that the Department's regulations provide that once a respondent has made a *prima facie* case of entitlement to a startup adjustment, the Department would make the adjustment unless there was clear and convincing evidence that factors other than startup affected sales volumes. In addition, the commentator recommended that the regulations impose an early deadline, following the request for a startup adjustment by respondent, by which the Department must: (1) Decide precisely what additional information a respondent must supply to support a claimed startup adjustment, and (2) decide whether an adjustment is appropriate. The second commentator took a somewhat less radical (but still far-reaching) approach in recommending that the Department interpret the burden on respondents as a "burden of production" rather than a "burden of proof." This commentator explained that the term "burden of production" meant that a respondent has the responsibility for cooperating in the proceeding and producing whatever evidence is available to support its claim. By contrast, according to the commentator, the "burden of proof" meant that the respondent had the ultimate burden of persuasion in convincing the Department of its entitlement to a startup adjustment.

The Department has not adopted these recommendations. Again, according to the SAA, the burden of proof undoubtedly rests with the party seeking a startup adjustment. Therefore, it is incumbent upon that party to (1) prove that the startup conditions of section 773(f)(1)(C)(ii) of the Act existed during the period of investigation or review, and (2) as with any antidumping adjustment, document that fact to the Department's satisfaction.

Duration of the startup period: Under section 773(f)(1)(C)(ii) of the Act, the startup phase ends at the time commercial production levels have been achieved. Commercial production levels themselves, however, represent a somewhat nebulous benchmark. Therefore, in gauging the end of the startup period, the statute instructs the Department to consider factors unrelated to startup operations that also may affect a respondent's production volumes. These factors include market demand, product seasonality, and business cycles. Section 773(f)(1)(C)(iii) of the Act further provides that the benchmark commercial production levels are to be characteristic of the merchandise, producer, or industry concerned.

It is clear from the statute that measurement of commercial production volumes (and, thus, determination of the end of the startup period) is dependent on a range of factors specific to the product or industry under consideration. This concept is also expressed in the SAA, at 837, which states:

> The Administration recognizes that the nature and timing of startup operations will vary from industry to industry and from product to product, and that any determination of the appropriate startup period involves a fact-intensive inquiry * * *. For this reason, the Administration intends that Commerce determine the duration of the startup period on a case-by-case basis.

However, while the duration of the startup period is to be evaluated based on the facts of each case, the SAA does provide guidance regarding the type of evidence that the Department will examine and the factors it should consider in making its determination. The SAA, at 836–37, instructs the Department to first examine the actual production experience for the merchandise in question in determining when a company reaches commercial production levels. In addition, the SAA states that the Department should consider other information, including "historical data reflecting the same producer's or other producer's experiences in producing the same or similar products." The SAA makes clear, however, that the Department should ascribe little weight to a producer's projections of future production volumes or costs. Lastly, the SAA notes that the Department must consider those factors described in the statute that are unrelated to startup operations but that may affect production volumes. Again, these include product demand, seasonality, and business cycles. These factors are reflected in paragraphs (c)(2) and (c)(3). Furthermore, consistent with the SAA, paragraph (c)(4)(i) provides that the Department will determine the duration of the startup period on a case-by-case basis.

The Department received relatively few recommendations regarding the duration of the startup period. This perhaps reflected the commentators appreciation of the fact-intensive nature of the startup period determination. Most commentators that did provide recommendations generally urged the Department to incorporate the statutory language into the regulations. Certain commentators suggested that the regulations reflect the SAA stipulation that attainment of peak production levels will not be the standard for identifying the end of the startup period. This is consistent with paragraph (c)(2)(i).

One commentator argued that the startup period should be "narrowly conscribed," but did not offer any direct suggestions as to what this meant or how it should be achieved. The Department believes, however, that the statute does not provide for a narrow interpretation of the startup period. Rather, the intent of the statute is to determine the duration of the startup period based on the specific facts of each case.

Method of adjusting for startup costs: Section 773(f)(1)(C)(iii) of the Act sets forth the basic methodology for making startup adjustments. According to this section, where the essential conditions of startup have been satisfied, the Department will adjust for startup operations by "substituting the unit production costs incurred with respect to the merchandise at the end of the startup period for the unit production costs incurred during the startup period." Section 773(f)(1)(C)(iii) further provides that in situations where the startup period extends beyond the period of investigation or review, the Department will base any startup adjustment on "the most recent cost of production data that it reasonably can obtain, analyze, and verify without

delaying the completion of the investigation or review."

Given the variety of products and diverse industries investigated by the Department, the statutory instructions under section 773(f)(1)(C)(iii) of the Act provide a reasonably comprehensive framework for implementing the startup adjustment methodology. The Department believes that any attempt to further define the adjustment methodology runs the risk of limiting the Department's ability to consider the facts of each case in adjusting for startup costs.

Likewise, in those instances where the startup operations extend beyond the period of investigation or review, the regulations do not impose time limits on the acceptance of relevant cost of production data beyond those already set forth in the statute. Instead, the Department will evaluate its ability to obtain, analyze, and verify such data on a case-by-case basis. Moreover, the regulations do not limit the type of data that may be used to adjust production costs for extended startup periods. For example, where the startup operations involve a new manufacturing facility, the appropriate adjustment methodology may require deriving surrogate costs based on identical merchandise manufactured at a previously existing facility.

Costs included in the startup adjustment: As explained in the SAA, at 837, in adjusting production costs for startup operations, the Department "will consider unit production costs to be items such as depreciation of equipment and plant, labor costs, insurance, rent and lease expenses, materials costs, and overhead." The SAA further notes that "sales expenses, such as advertising costs, or other non-production costs, will not be considered startup costs because they are not directly tied to the manufacturing of the product." The Department believes that these examples from the SAA provide helpful guidelines in determining which types of costs qualify as production costs for which a startup adjustment may be allowed. Therefore, they are reflected in paragraph (c)(4)(iii).

Despite the clear language of the SAA, some commentators have suggested that adjustments for startup operations should take into account only variable production costs, excluding altogether any fixed production costs that may have been incurred during the startup phase. This proposal is inconsistent with the SAA, which does not limit qualified startup costs to variable costs only. Indeed, several of the eligible cost categories identified in the SAA—depreciation, insurance, rent and lease expenses, and (in some instances) overhead—are typically regarded by the Department as fixed costs. Moreover, the fact that production levels are limited during the startup period means that, in most instances, the per unit fixed costs will be affected to a greater extent by startup operations than will the per unit variable costs during the same period. Thus, the Department has rejected the proposal that the startup adjustment be limited to variable production costs only.

Amortization of startup costs: In general, the adjustment for startup operations calls for the replacement of high, per-unit production costs incurred during startup operations with lower costs from a period subsequent to the startup phase. Under this methodology, however, a portion of the actual startup costs remains unaccounted for as a result of the startup adjustment. Although the statute is silent on how to treat this difference between actual costs and surrogate costs calculated for startup, the SAA, at 837, states that such deferred costs are to be amortized over a reasonable period of time. The SAA further provides that the amortization period should begin subsequent to the startup phase and extend over the life of the startup product or machinery. Paragraph (c)(4)(ii) reflects the language in the SAA by providing that where startup operations relate to a new product, the Department, in most cases, will look to documentation regarding the estimated life of that product to determine the appropriate amortization period for excess startup costs. Where startup operations relate to a new production facility, the Department normally will determine the proper amortization period based on reasonable estimates of the useful lives of new production equipment.

Several commentators suggested that the amortization period for deferred costs must be "relatively short and immediate" in all cases. In addition, one of the commentators maintained that the amortization period must commence at the beginning of the startup phase, while another commentator claimed that the period for amortization could not extend beyond the period of investigation or review. The Department disagrees with the suggestion that the startup cost amortization period must be short and immediate in all cases, because there is no support for this suggestion in either the statute or the SAA. Instead, the length of the amortization period depends on the specific facts of each case and may vary greatly depending on a number of factors, including a respondent's past production experience and commercial practices within the industry under investigation or review.

The Department also has not adopted a proposal that (1) the startup amortization period must commence at the beginning of the startup phase, and (2) the amortization period may not exceed the period of investigation or review. Regarding the first point, the SAA states that the amortization period is to begin subsequent to the startup phase. With respect to the second point, the SAA states that the amortization period for deferred startup costs should reflect the life of the product or machinery, as appropriate. The SAA gives no indication that the amortization period must not extend beyond the period of investigation or review. In fact, it is entirely conceivable that the life cycle of a particular product or piece of machinery (and, thus, the amortization period for deferred startup costs) could span several segments of a single proceeding.

Recognition of previously incurred startup costs: Two commentators suggested that the Department adopt regulations to discourage selective use of the startup adjustment, as well as to provide for more equitable treatment of startup costs in general. To achieve these objectives, the commentators recommended that the Department disallow startup claims where a respondent does not also amortize startup costs for other products covered by an order. As one of the commentators explained in relating startup costs to other types of non-recurring costs:

> [T]he treatment of any non-recurring costs should provide for an equitable approach that adds non-recurring costs to later sales as well as deducting them from current sales. Thus, if certain types of non-recurring costs incurred during the investigation period are to be reduced and not fully attributed to that period, then similar non-recurring costs from before the period should be allocated in a similar manner and added to the costs during the period.

Under the commentator's proposed accounting methodology, the Department presumably would require a respondent seeking an adjustment for startup operations to recognize an amortized portion of similar startup costs previously incurred on all other products and facilities that had undergone startup prior to the period of investigation or review. Thus, as a condition for receiving a startup adjustment for one product, a respondent would have to show that it had accounted in a like manner for the startup costs incurred with respect to all other products sold during the period.

The Department does not find the above accounting requirement to be an

appropriate condition of startup. There is no such requirement in either the statute or the SAA. Moreover, the Department believes that requiring a respondent to account for all past startup costs as a precondition to receiving an adjustment for startup costs incurred during the period of investigation or review would discourage respondents from seeking a startup adjustment in those circumstances where an adjustment is appropriate. Under such a requirement, the burden placed on respondents would be too great, requiring them in many instances to look to detailed accounting records of old product lines and facilities that, for practical business reasons, may long since have been discarded.

Nonrecurring Costs: New section 773(f)(1)(B) of the Act states that the Department will adjust COP and CV for those nonrecurring costs that benefit current or future production periods. The SAA, at 835, notes that the provisions of section 773(f)(1)(B) of the Act are consistent with the Department's past practice, which associated expenditures with production of the merchandise during the period or periods benefitted by those expenditures.

Two commentators suggested that the Department establish regulations clarifying that nonrecurring costs treated as non-operating or extraordinary expenses by a company should be included in the cost of production only if those costs benefit current or future production. The commentators suggested that the Department's regulations state that to the extent such costs do benefit current or future production, they should be included in COP and CV by allocating the costs over the production they benefit. The commentators added that, in some instances, this may entail the amortization of the costs over periods longer than the period of investigation or review. Another commentator stated that while it did not object to the proposal for regulations clarifying the treatment of nonrecurring costs, the Department also should require respondents to provide information and data for nonrecurring costs incurred before the period of investigation or review. This commentator noted that the Department could then include in COP and CV the previously incurred costs if such costs benefitted production during the period of investigation or review. Finally, another commentator urged the Department to reject the proposed regulations for treatment of nonrecurring costs. The commentator stated that the Department should continue to examine nonrecurring costs on a case-by-case basis.

As the Department has learned in past cases, it is not always easy to determine whether (and to what extent) a particular expenditure benefits current or future production periods. In virtually all instances, the Department must analyze the expenditure in light of any number of specific factors in the case. For example, the SAA, at 835, cites pre-production research and development (R&D) costs as an example of nonrecurring costs that could benefit current or future periods. However, there is no guarantee that such costs, if incurred to develop a new product or production process, would hold any future benefit to a company. To the contrary, after many months of costly research, a manufacturer could find its new product technologically useless due to the efforts of its competitors. In that case, the amounts incurred for R&D would not benefit the producer in terms of future product sales. Under these circumstances, the R&D expenditures must be recognized as an expense in the year incurred rather than amortized to some future periods.

Because of the fact-specific nature of determinations involving nonrecurring costs, the Department has not drafted any regulations to implement section 773(f)(1)(B) of the Act. Examples of nonrecurring costs in the regulations would not prove helpful to parties, because there are many unique categories of expenditures to consider in a variety of industries. Moreover, depending on the circumstances, a particular expenditure in one case could provide the producer a future benefit, whereas the identical expenditure made by another producer in a different case may provide no benefit at all. Thus, including specific examples of nonrecurring costs in the regulations might create confusion for parties.

The Department believes that a respondent's accounting treatment of a particular expenditure is one factor to consider in determining how that expenditure should be treated for purposes of computing COP and CV. It is by no means dispositive, however. With regard to the suggestion that the Department account for nonrecurring costs incurred in prior periods, the Department believes that it is unnecessary for the Department to make this a regulatory requirement. Instead, the Department will examine on a case-by-case basis whether to account for such previously-incurred costs where they benefit production during the period of investigation or review.

Major Input Rule: Section 773(f)(3) of the Act (which replaces old section 773(e)(3)) contains the "major input rule." Under this rule, the Department may examine transactions between affiliated producers and suppliers for purchases of major inputs. Section 773(f)(3) of the Act (formerly section 773(e)(3)) provides that where the Department has reasonable grounds to believe or suspect that an affiliated supplier has made below-cost sales of a major production input, the Department may base the value of the input on the affiliated supplier's production costs. This provision applies both to cost of production and constructed value.

A number of commentators suggested that the Department clarify through regulation the following standards for initiating an input dumping investigation: (1) That no supplier cost information may be requested by the Department without "reasonable grounds" to suspect input dumping; (2) that no carryover of "reasonable grounds" exists between segments of a proceeding (*i.e.*, findings of below-cost inputs in one segment does not provide grounds for automatic initiation in the next); (3) the time limits within which the Department must make a determination as to which affiliated party inputs are "major"; and (4) that no supplier cost information may be requested if the supplier's transfer prices are demonstrated to be at arm's length. Other commentators suggested that the Department define a "major input" as any material, labor, or overhead input that represents five percent or more of the total cost of materials for the merchandise. In addition, these commentators urged the Department to consider on a case-by-case basis the use of transfer prices or costs in valuing major inputs. The commentators stressed that this determination must be made separately for each input rather than in the aggregate for all affiliated party inputs.

The determination of whether an affiliated party input constitutes a "major input" in a particular case depends on the input and the product under investigation. It would be inappropriate for the Department to attempt to establish an all-encompassing threshold for defining the term "major input," because such a definition likely would prove to be too broad in some circumstances and too narrow in others. However, the Department does agree that it should attempt to identify, as early as possible in a proceeding, a standard for identifying major inputs that is appropriate to the product and industry in question. In addition, as the Department gains more experience in determining whether parties are "affiliated" under the new law, the Department will establish through practice the evidentiary threshold for requesting transfer prices and cost data from affiliated suppliers that furnish major inputs (see section 351.102 and the accompanying explanation for further discussion regarding affiliated persons).

Calculation of Costs: One commentator stated that it is unclear from the SAA when costs are "rapidly changing" such that it would be appropriate to use shorter time periods to calculate costs. The commentator suggested that the Department's regulations provide illustrative examples that would allow interested parties to determine when costs are "rapidly changing." According to the commentator, the Department's regulations also should describe the shorter periods that would be used to compute costs in such situations.

Another commentator recommended that the Department clarify in its regulations the circumstances in which it will calculate costs based on amounts incurred by both the exporter and producer. The commentator urged the Department to refrain from attempting to correct "upstream dumping," and instead limit its analysis of both the exporter's and the producer's costs to those situations in which the relationship between the two throws into question the legitimacy of their transactions.

The Department believes that determinations involving both of these issues are fact-specific in nature, and that while regulatory examples might give some guidance, they also might be construed as imposing limits on the circumstances in which the Department will address these issues. As a result, the Department has not included any provisions in the regulations specifically addressing these issues. The Department intends to develop its practice with respect to these issues over time.

With respect to the use of a respondent's normal records in computing COP and CV, two commentators suggested that the regulations incorporate the concepts outlined in the SAA, at 834–35, including the stipulation that the Department will use the records of the exporter or producer of the merchandise, provided that such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting or producing country and reasonably reflect the costs associated with the production and sale of the merchandise. The commentators also recommended additional regulations describing the type of evidence the Department will consider in determining whether respondent's costs are "reasonably reflected," and stating that the Department will re-allocate costs that would inappropriately reduce COP and CV. In response to these suggestions, one commentator argued that the SAA does not provide the Department with the authority to adjust a respondent's books and records in order to compute a "more accurate" per-unit cost. Rather, the Department is to use company records as the basis for reporting costs, so long as those records are kept in accordance with GAAP and reasonably reflect costs incurred.

Section 773(f) of the Act explicitly provides for the use of a company's books and record in the calculation of costs, provided that such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. As a result, the Department has not retained this directive in the regulations. The determination of whether a respondent's costs are "reasonably reflected" will be based on a case- and fact-specific analysis. Where a respondent's records do not reasonably reflect the costs associated with the production and sale of the merchandise, the Department may adjust the figures in a respondent's books and records in order to compute a more accurate per-unit cost.

With respect to the Department's COP questionnaire, one commentator suggested that the questionnaire be revised to elicit sufficient information that traces the cost of production from the per unit cost of the subject merchandise back to a company's audited financial statements. The Department must balance its ability to conduct COP investigations with reporting burdens placed on respondents, and the Department this year revised its questionnaire with this balance in mind. Notably, the questionnaire does require respondents to provide reconciliation of unit costs. If, however, the information requirements of the Department's standard antidumping questionnaire should prove inadequate in a particular case, the Department will modify its information requirements.

Section 351.408

The current statutory provision addressing the calculation of normal value in antidumping proceedings involving nonmarket economies ("NMEs") was enacted as part of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, section 1316(a)). The Department never issued regulations implementing the 1988 amendment. Instead, the Department developed its NME methodology through administrative practice. Now, with the benefit of seven years' experience in administering the NME provision, the Department believes it is appropriate to codify the rules the Department intends to apply. Certain of these rules, contained in § 351.408, restate the practice the Department has developed over the past seven years, while other rules constitute changes that the Department believes to be improvements over current practice.

We have decided not to codify the existing MOI (market oriented industry) test at this time. Some commentators have argued that it does not make sense to use an NME producer's prices or costs in an environment in which institutions important to the functioning of markets such as private ownership and private capital markets do not exist. In their view, an NME producer's prices or costs can only have economic meaning where these very fundamental types of institutions are in place. Other commentators see the current MOI test as overlooking the important role that an open trading system, with relatively few quantitative restraints, can play in ensuring that domestic prices and costs are market-determined, and in reducing the effects of remaining instances of state presence or control. In light of these concerns, we are seeking comments on whether the current MOI test succeeds in identifying situations where it would be appropriate to use domestic prices or cost in an NME as the basis for normal value and, if not, what form the test should take.

Surrogate Selection: Section 773(c)(1) of the Act contains the usual methodology for calculating normal value in proceedings involving NMEs, the so-called "factors of production" methodology. Section 773(c)(2) provides an alternative to the preferred methodology, allowing the Department in narrowly drawn circumstances to use the export prices of certain market economies as normal value. In either case, the Department is required to select a "surrogate" market economy country or countries to use in its calculations.

Section 773(c)(4) of the Act describes the criteria for surrogate selection where the factors of production methodology is used: surrogates should be market economies at a level of economic development comparable to that of the NME and significant producers of comparable merchandise. Where the export price alternative to the factors of production methodology is being used,

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prices are to be taken from market economy countries at levels of economic development comparable to that of the NME. This alternative, as to which further comment is appropriate, has not been used in any antidumping proceeding since the 1988 amendment was enacted, but if it is used in future cases, the economic comparability criterion, discussed in more detail below, would be applied in the same way it is applied when the factors of production methodology is used.

In selecting surrogate countries for investigations and reviews that were conducted under the 1988 amendment and that involved the valuation of NME producers' factors of production, the Department has accorded differing weights to the economic comparability and significant producer criteria. Typically, the Department has placed greater emphasis on the former. However, the regulations do not codify this weighing scheme, because, depending on the specific facts of a case, this scheme can result in a poor surrogate selection. For example, where the production process for the merchandise being investigated relies heavily on non-traded inputs (*i.e.*, inputs that must be acquired locally, such as electricity), it is reasonable to expect that significant production of that merchandise will occur only in countries where the input is relatively inexpensive. However, these countries may not be economically comparable to the NME. For example, the Department has not observed any correlation between electricity prices and levels of economic development. The Department believes that in adopting the significant producer criterion, Congress intended for the Department to select a surrogate country (or countries) where input prices and availability allow significant production to occur. Therefore, where production of the subject merchandise relies heavily on an input that is more readily available, or available at lower cost, in certain countries, it is appropriate to place greater weight on the "significant producer" criterion.

On the other hand, where the most important inputs are easily traded and can be obtained from multiple sources in the surrogate country, the significant producer criterion may be less important. This is because in these situations there is no direct correspondence between significant levels of production and input price or availability. Instead, wage rates and other considerations such as investment restrictions or access to important markets will be more important determinants of where production will occur. With the exception of wage rates, which are discussed further below, these other considerations will not usually have as direct an impact on the input prices that would be used to value the NME producers' factors of production.

For these reasons, the Department does not believe it is appropriate to create an a priori weighing scheme to be applied to the criteria for selecting surrogates. Instead, in each proceeding the Department will identify those countries that are economically comparable to the NME and those countries that are significant producers of comparable merchandise. If there is a country that meets both criteria, that country will be selected as the surrogate. If there is more than one country that meets both criteria, the Department will evaluate the specific facts developed in the course of the proceeding to determine whether to select the more economically comparable country or the country whose producers employ production technologies similar to those of the NME producers. If no country meets both the economic comparability and the significant producer criteria, the Department will examine the facts of the case and comments submitted by the parties to determine which criterion should receive the greatest weight.

Economic Comparability: Regarding the economic comparability criterion, the Department's practice of relying most heavily on comparability of per capita GDP to select economically comparable countries is codified in paragraph (b). Certain other indicia of economic comparability have been considered in the past, such as growth rates and the distribution of labor between the manufacturing, agricultural and service sectors. However, primary weight has been placed on per capita GDP.

Factor Valuation: Once a surrogate country (or countries) has been selected, the next step is to assign values to the actual factors or inputs used by the NME producer. In choosing these values, the Department has developed practices that emphasize "accuracy, fairness, and predictability." Oscillating Fans and Ceiling Fans from the People's Republic of China, 56 FR 55271, 55275 (October 25, 1991), cited with approval in *Lasko Metal Products, Inc.* v. *United States*, 43 F.3d 1442 (Fed. Cir. 1994). The Department continues to believe that these goals should guide the factor valuation process, and, consequently, is proposing rules to further this.

Two important practices have arisen to promote the accuracy, fairness and predictability of the factor valuation process. First, the Department has developed a preference for using publicly available, published information ("PAPI") to derive factor prices. See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-weld Pipe Fittings from the People's Republic of China, 57 FR 21058, 21062 (May 18, 1992) (Butt-Weld Pipe Fittings). This practice, along with the practice of attempting to use data derived from a single surrogate country, clearly enhances the transparency and predictability of our determinations. However, based on experience, the Department has concluded that a preference for PAPI also can result in decreased accuracy. This is particularly true where surrogate country trade statistics are used and the import/export categories used to derive unit values are broad.

In order to strike a better balance between the goals of accuracy and transparency, paragraph (c)(1) drops the preference for published information, limiting the preference to publicly available information. The public availability standard is aimed at promoting transparency, while the deletion of the published information standard enables the Department to achieve greater accuracy when information on the specific factor can be derived outside of published sources. Paragraph (c)(1) is not meant to preclude the Department from using published information. Instead, it is intended to reflect the Department's preference for input specific data over the aggregated data that frequently appear in published statistics.

The Department continues to take the position that it is not required to use "perfectly conforming information" for factor valuations. Ceiling Fans from the People's Republic of China: Notice of Court Decision; Exclusion from the Application of the Antidumping Duty Order, in Part; and Amended Final determination and Order, 59 F.R. 9956 (March 2, 1994). However, the Department is exploring means of enhancing the accuracy of the data used to value the NME producers' raw materials. To that end, the Department intends to use the flexibility accorded to the agency by section 773(c) and reflected in court decisions to date regarding our administration of the 1988 amendment.

The second important practice that has developed involves situations where an NME producer uses inputs which are: (1) Imported from a market economy producer, and (2) paid for in a market economy currency. In these instances, the Department has used the price actually paid by the NME producer in lieu of a price in the surrogate country. This practice has been upheld by the Federal Circuit in *Lasko*. Paragraph(c)(1) clarifies the Department's authority to continue this practice.

The regulation also clarifies two aspects of this practice. First, in situations where a portion of the NME producer's input is sourced from a market economy source (and paid for in a market economy currency) and the remainder is sourced from producers within the NME, paragraph (c)(1) makes clear that the price paid to the market economy supplier should normally be used to value the input, not the price derived from a surrogate. This reflects the Department's position that accuracy is enhanced when the NME producer's actual costs can be used. However, where the amount purchased from a market economy supplier is insignificant, that price may be disregarded.

Second, in using prices of inputs imported from market economy suppliers, the Department in the past has stated that the imported input must be paid for in a convertible currency. The Department believes that this is an overly rigorous requirement. The extent to which currencies may be converted varies even among market economy currencies. Yet, the Department uses the exchange rates for less-than-fully convertible currencies in our dumping proceedings involving those countries. Paragraph (c)(1) recognizes that full convertibility of the currency used to pay for the imported input is not necessary so long as the market economy producer is paid in a market economy currency.

Valuation in Single Country: Paragraph (c)(2) codifies the Department's general preference for valuing all factors, except labor (as discussed below), in a single surrogate country. As noted above, to enhance the predictability of proceedings involving nonmarket economies, the Department has followed the practice of attempting to value the NME producers' factors of production in a single country, even though sections 773(c)(1) and (c)(4) clearly permit values to be developed from more than one country.

Where the Department is able to develop industry-specific data on manufacturing overhead, general expenses, and profit, it is particularly appropriate to remain within a single country for those values. Normally, it is inappropriate to combine the manufacturing overhead rate from producers in one surrogate with the general expenses of producers in another surrogate, and the profit of producers in yet another surrogate. Therefore, particularly for manufacturing overhead, general expenses and profit, the Department prefers to use a single surrogate.

With regard to other inputs, however, the preference for using a single country addresses, at least in part, a different concern. It is meant to prevent parties from "margin shopping"; i.e., to prevent parties from arguing that the Department combine input prices from different surrogates to achieve the highest or lowest valuations of those inputs. While it is important to discourage margin shopping, the Department also has encountered situations in which the accuracy of available information regarding prices for particular factors in the surrogate country is highly questionable. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China, 59 FR 55625, 55630 (November 8, 1994). Clearly, in these situations it is appropriate to reject the questionable values and use data from a second country. Alternatively, where the factor is traded internationally, the goals of accuracy and fairness may be better served by using the prices observed in international markets to represent the price at which producers in the surrogate country could obtain the input.

Labor: Paragraph (c)(3) proposes a new methodology with respect to the valuation of labor. Practitioners and academicians commenting on the application of the antidumping law to NMEs (and, in particular, the use of economically comparable countries as surrogates) have tended to equate comparable per capita GDPs with comparable wages. The Department has examined this proposition based on recent data of the type the Department uses in its proceedings, and has concluded that while per capita GDP and wages are positively correlated, there is great variation in the wage rates of the market economy countries that the Department typically treats as being economically comparable. As a practical matter, this means that the result of an NME case can vary widely depending on which of the economically comparable countries is selected as the surrogate.

Because of the variability of wage rates in countries with similar per capita GDPs, paragraph (c)(3) directs the Department to use what is essentially an average of the wage rates in market economy countries viewed as being economically comparable to the NME. The statute permits this approach because section 773(c)(4) refers to using prices or costs in "one or more market economy countries." Moreover, use of this average wage rate will contribute to both the fairness and the predictability of NME proceedings. By avoiding the variability in results depending on which economically comparable country happens to be selected as the surrogate, the results are much fairer to all parties. To enhance predictability, the average wage to be applied in any NME proceeding will be calculated by the Department each year, based on the most recently available data, and will be available to any interested party. This method of computing the wage rate should reduce the workload on the Department and the parties, because it eliminates the need to develop specific wage rate information for each case.

Specifically, the Department will calculate the wage rate to be applied by using an ordinary least squares regression relating the wage rates and per capita GDP of approximately 45 market economy countries. The data used and the results of the regression will be available from the Department upon request.

Manufacturing Overhead, General Expenses, and Profit: Paragraph (c)(4) deals with the valuation of manufacturing overhead, general expenses, and profit. These elements tend to be significant components of the constructed normal value of NME exports, and, hence, it is particularly important to have accurate values for them. However, the Department's experience in this regard has been less than satisfactory. Frequently, under prior law, the Department could not find surrogate values for these elements, thus forcing the Department to rely upon the statutory minima of 10 and 8 percent for general expenses and profit, respectively. The amendments to section 773(e)(2)(A) have eliminated this as an option. Moreover, even in cases in which PAPI was available, it was virtually always highly aggregated and frequently it was not clear what types of expenses were included in the amounts.

Given the importance of manufacturing overhead, general expenses and profit in the calculation of normal value, the Department believes it is important to seek information that is as accurate as possible. To this end, paragraph (c)(4) expresses a preference for using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country for valuing manufacturing overhead, general expenses and profit. Because the Department expects that these elements will vary widely across industries, we

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will attempt to obtain data that is as specific as possible to the subject merchandise.

In past cases, the Department has relied on U.S. embassies in surrogate countries to obtain data on manufacturing overhead, general expenses, and profit (as well as values for other inputs) with disappointing results (see *Butt-Weld Pipe Fittings*, supra). The Department intends to redouble its efforts to work with embassies in gathering this data, while at the same time seeking alternative means of developing this information. However, even if the Department is able to develop industry-specific information, it would be overly optimistic to believe that the Department will have detailed information on the exact expenses that have gone into the values for manufacturing overhead and general expenses. As far as overhead is concerned, this can raise problems of double counting. For example, if we do not know whether water or electricity is included in the surrogate producers' overhead, we will not know whether to value those factors separately, in addition to the overhead. The Department continues to believe that these situations must be approached on a case-by-case basis using facts available, in accordance with section 773(c)(1).

Assignment of Antidumping Margins: The Department has addressed the rates to be applied in NME cases in connection with the definition of "rates" contained in § 351.102.

Section 351.409

Section 351.409 sets forth the guidelines for making adjustments to normal value for differences in quantities, and is based on section 353.55 of the existing regulations. The statutory authorization for quantity adjustments is found in section 773(a)(6)(C)(i) of the Act. The proposed rule is substantially the same as the existing rule, with three exceptions discussed below.

Paragraph (b) is changed from existing section 353.55(b). The existing paragraph provides that the Department will deduct a quantity discount from the selling price of merchandise used in the antidumping calculation, regardless of whether the quantity discount was actually applied, only in two circumstances. To qualify for the adjustment, a respondent either had to have granted discounts of a similar magnitude on 20 percent of the foreign market sales, or the respondent had to demonstrate that savings were specifically attributable to production of different quantities. One commentator suggested that the Department should have more flexibility to grant the adjustment, because there may be other ways to demonstrate that different price levels exist for different quantities. The Department agrees that this may be so, and, accordingly, paragraph (b) provides that an adjustment for differences in quantities "normally" will be made only if the "20 percent" or "production savings" rules, noted above, are satisfied.

The same commentator also suggested that the absence of a published price list should not be controlling with respect to the allowance of an adjustment. While the Department does not necessarily agree that the absence of a price list is controlling under existing § 353.55, paragraph (d) clarifies that the existence or absence of a price list is not controlling. In addition, the Department has clarified that where a price list does exist, the Department, in determining whether or not to grant an adjustment, will give weight to the price list only to the extent that the producer or exporter in question has adhered to the price list.

Paragraph (e) is new, and deals with the relationship between adjustments for differences in quantities and adjustments for differences in levels of trade. Under the new statute and these proposed rules, the Department may grant claims for level of trade adjustments more frequently than it did in the past. In many instances, however, there is likely to be a correlation between the level of trade at which a sale occurs and the volume sold. Therefore, there is a real possibility that in adjusting for differences in level of trade, the Department also will be adjusting, in whole or in part, for differences in quantities. In order to conform to the prohibition in § 351.401(b) against the double-counting of adjustments, paragraph (e) provides that where the Department makes a level of trade adjustment, the Department will not make an adjustment for differences in quantities unless the effect on price comparability of quantity differences can be isolated from the effect of the level of trade difference.

Section 351.410

Section 351.410 clarifies aspects of the Department's practice with respect to adjustments for differences in circumstances of sale under section 773(a)(6)(C)(iii) of the Act and the SAA, at 828. In general, the Department's practice with respect to adjustments for direct selling expenses and assumptions of expenses remains unchanged from prior practice. However, paragraph (a) confirms that the expenses for which the Department will make a circumstance of sale adjustment include, in constructed export price situations, direct expenses and "assumptions" incurred in the foreign market on sales of the subject merchandise, that are not deducted under section 772(d) of the Act. The reference to a deduction for other selling expenses relates to the commission offset contained in paragraph (e), discussed below.

One commentator suggested that section 351.410 be drafted in such a way as to essentially function as a catch-all provision to achieve "fairness." While section 773(a) of the Act and Article 2.4 of the Antidumping Agreement both require that a fair comparison be made, both provisions specify in detail the methods by which this requirement is satisfied. Therefore, the Department has not adopted this suggestion.

Paragraph (b) defines "direct selling expenses." The provision broadly defines such expenses in the same way that they are defined in the statute for purposes of the deduction from constructed export price under section 772(d)(1)(B) of the Act. In addition, paragraph (b) provides a non-exhaustive list of expenses that frequently qualify as direct selling expenses. In this regard, this list includes commissions, a type of expense which often was treated as a direct selling expense under prior Department practice. In section 772(d)(1) of the Act, commissions are listed separately from direct selling expenses. This might suggest that, for purposes of adjustments to normal value, commissions should not be treated as direct selling expenses. However, the SAA, at 828, indicates that Congress intended that, with the exception of the so-called "ESP offset," the Department's practice regarding circumstance of sale adjustments would remain unchanged. Accordingly, for purposes of adjustments to normal value, the Department has included commissions in the list of commonly encountered direct selling expenses.

Some commentators suggested that the Department should recognize expenses as direct in the home or third country market when they are reported in accordance with business records normally kept by the firm based on the GAAP of the appropriate country. The Department has not adopted this suggestion. As noted above, a direct selling expense must result from, and bear a direct relationship to, the particular sale in question. The fact that, for example, salespersons' salaries are reported to the Department in a manner consistent with foreign GAAP and the particular firm's normal business records does not transform what is unquestionably a fixed expense into an expense that "results from" a sale.

Other commentators suggested that direct selling expenses should be defined as expenses incurred after a sale. The Department has not adopted this suggestion. "After" and "results from" do not necessarily mean the same thing. While direct selling expenses typically are "post-sale" expenses, the Department has chosen to adhere to the language of the statute and the SAA.

Assumed expenses, which are treated like direct expenses, are defined in paragraph (c). Although such expenses were not previously identified as a separate category of expenses, it has long been the Department's policy to treat such expenses in the same manner as direct expenses.

Paragraph (d) is largely unchanged from prior regulations, and provides that the normal basis for circumstance of sale adjustments will be the amount of the expense. However, if appropriate, the Department may rely on differences in value to make the adjustment.

Paragraph (e), based on existing § 353.56(b)(1), continues the special rule to be applied when commissions are deducted in one market, but there are no commissions in the other market. Under the special rule, other selling expenses may be deducted from the price in the market without commissions up to the amount of the commission.

The Department also received several suggestions relating to the treatment of particular types of adjustments, such as discounts and rebates and adjustments for differences in credit terms. Discounts and rebates are dealt with in § 351.401(c). Without commenting on the merits of the particular suggestions with regard to selling expenses, the Department has declined to promulgate regulations on these particular topics, because they go beyond the level of methodological detail that the Department is attempting to achieve in these regulations.

Section 351.411

Section 351.411 establishes the provisions for making adjustments for differences in physical characteristics. As under current practice, the Department is not authorized to make adjustments for physical characteristics when products are considered to be identical.

Section 351.412

Section 351.412 deals with levels of trade, adjustments for differences in levels of trade, and the CEP offset. Paragraph (b) establishes how the Department will identify levels of trade in calculating export price, CEP, and normal value. Paragraph (b)(1) clarifies that, for export price and normal value, the level of trade will be based on the price of the sale before any adjustment is made. For constructed export price, the level of trade will be based on the price after adjustments are made under § 772(d) of the Act, but prior to any other adjustment. The purpose of this provision is to establish the level of trade of the constructed export price sale at the level at which the sale would have been made, had it been an export price sale.

With respect to the identification of levels of trade, some commentators argued that, consistent with past practice, the Department should base level of trade on the starting price for both export price ("EP") and CEP sales. In support of this argument, these commentators cite the portion of the SAA (discussed above) that states that the introduction of the new terms "EP" and "CEP" was not intended to change prior Department practice. In addition, these commentators argued that the deduction of U.S. expenses and profit does not change the level of trade of the CEP.

The Department believes (as did other commentators) that this position is not supported by the SAA, and that it is neither reasonable nor logical. If the starting price is used for all U.S. sales, the Department's ability to make meaningful comparisons at the same level of trade (or appropriate adjustments for differences in levels of trade) would be severely undermined in cases involving CEP sales. As noted by other commentators, using the starting price to determine the level of trade of both types of U.S. sales would result in a finding of different levels of trade for an EP sale and a CEP sale adjusted to a price that reflected the same selling functions. Accordingly, the regulations specify that the level of trade analyzed for EP sales is that of the starting price, and for CEP sales it is the constructed level of trade of the price after the deduction of U.S. selling expenses and profit.

Section 351.412(c)(1) explains the general rule that the Department will make an adjustment for differences in levels of trade when it (i) calculates normal value based on sales at a level of trade different from that of the export price or constructed export price, and (ii) determines that the difference in level of trade has an effect on price comparability. We are interested in comments on how these rules can provide further guidance on this adjustment. We also will take account in the final rules the knowledge we expect to gain in administrative proceedings under the new law.

Certain commentators argued that there should be a regulatory presumption that the level of trade of the EP or CEP sale is the least remote level. Under these circumstances, they argue, a level of trade adjustment could never increase normal value. Therefore, the Department would only be required to analyze respondents' claims for level of trade adjustments. In the absence of a claim for an adjustment, the level of trade of the U.S. sale and normal value would be considered the same.

We disagree that the EP or CEP necessarily will be the least remote level of trade. Therefore, the regulations specify that the Department will in all instances analyze the level of trade of the sales in the United States and the comparison market, and, where appropriate, will increase or decrease normal value to effect a fair comparison.

Paragraph (c)(2) sets forth the rules for determining whether there are different levels of trade. This determination will be based primarily on the selling functions performed at each of the allegedly different levels. As set forth in the SAA, at 830, overlap between functions is not necessarily determinative of whether two levels of trade are distinct. Paragraph (c)(2) makes clear that sales at two allegedly different levels will be considered to have been made at the same level where the selling functions at the two levels are substantially the same.

Several commentators argued that the existence of a level of trade must be established by criteria independent of seller functions. This argument holds that only after establishing the existence of discrete levels of trade should the Department consider differences in selling functions and the pattern of price differences. Furthermore, they contend, levels of trade are properly identified by the classification of the seller's customers in the chain of distribution. Specifically, to be considered at different levels of trade, two sellers must sell to different customer categories in a chain of distribution (e.g., producer, distributor, retailer, consumer). For example, a producer and distributor both selling to end users would be classified at the same level of trade.

Other commentators, on the other hand, stated that there is no mention of an additional test or criterion in either the Act or the SAA. These commentators also note that both the Act and the SAA stress activities of the seller and do not mention activities of the customer as a factor in the level of

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trade analysis. Furthermore, according to these commentators, it is quite common, even usual, for firms operating at different levels of trade to sell to the same customer categories and sometimes to the same customers. For example, producers sell to large retailers as well as to distributors that in turn sell to smaller retailers. However, the fact that they both sell to retailers does not justify classifying producers and distributors as being at the same level of trade. Each sells a different mix of product and service.

The Department agrees that an additional test or criterion for level of trade is not required by the AD Agreement or the statute, nor is one justified. Although the language of section 773(a)(7)(A) of the Act might be interpreted to mean that the recognition of a level of trade is dependent on factors in addition to seller functions, the Department interprets the reference to level of trade as referring to a respondent's claimed or alleged level of trade. The only test identified in the statute for the legitimacy of the claimed levels of trade is the activity of the seller. The suggestion that customer classifications define levels of trade does not comport with that test and, furthermore, the Department believes that the effect of adopting such a criterion would be to curtail severely the possibility of adjusting for significant differences in seller functions, either with a level of trade adjustment or the CEP offset. Nevertheless, the Department does recognize that prices within a single level of trade, defined by seller function, can be affected by the class of customer, and the Department will make every effort to compare sales at the same level of trade and to the same class of customer.

Paragraph (c)(2) defines level of trade solely on the basis of seller functions. However, small differences in the functions of the seller will not alter the level of trade. The latter point is important, because certain commentators argued that the difference in just one selling function should be sufficient to justify a difference in level of trade. While it is conceivable that the Department may find in a particular case that some single function is so significant as to change the level of trade, this would be relatively rare. Furthermore, the adoption of the suggested standard would result in the submission, and possibly the grant, of unreasonable claims for level of trade adjustments.

Paragraph (c)(3) reflects the requirements of the statute for identifying effects on price comparability. One commentator recommended requiring that at least 90 percent of the sales of the foreign like product reflect differences in price at different levels of trade to qualify for an adjustment. The regulations do not include a specific test for a pattern of consistent price differences, because, at this time, the Department has no experience in applying this standard.

Under paragraph (c)(4), the amount of any adjustment will be measured by calculating the average percentage difference between weighted-average prices at the two different levels, and applying this percentage to the price to be adjusted. To avoid double-counting adjustments, the regulation stipulates that price differences will be measured after making price adjustments required under other provisions, such as adjustments for movement and selling expenses under section 773(a)(6) of the Act. One commentator recommended limiting the adjustment to the difference between the lowest price at the more advanced level of trade and the highest price at the less advanced level of trade. The Department does not agree that this would be appropriate, because it would reflect price extremes rather than usual prices. Another commentator recommended that the regulations specifically exclude from the measurement of a level of trade adjustment related party prices that fail the arm's-length test and all sales deemed outside the ordinary course of trade. The Department has not included such regulations, because we have little experience in this area and will need time to develop the appropriate methodology. To attempt to further circumscribe this adjustment by regulation could have unintended consequences that would be difficult to correct in an actual case.

Paragraph (d) elaborates on the constructed export price offset contained in section 773(a)(7)(B) by providing a definition of the indirect expenses that make up this offset.

One commentator suggested that the regulations specify that in CEP calculations there is a presumption that there will be a level of trade adjustment or the offset. The Department has not included such a regulation. It would not be appropriate to assume that the CEP is at a different level of trade than the prices used as the basis of normal value or that any such differences in level of trade affect price comparability.

Section 351.413

Section 351.413, describing the authority to disregard insignificant adjustments, is unchanged from section 353.59(a) of the Department's prior regulations.

Section 351.414

Section 351.414 implements section 777A(d) of the Act, and deals with the three methods authorized by the statute for determining whether sales at less than fair value exist. Paragraph (b) is a definitional section which coins shorthand expressions for the three methods in order to render the remainder of § 353.414 less cumbersome.

Methodological Preferences: The methodological preferences set forth in the SAA are codified in paragraph (c). Consistent with the SAA, at 842–43, paragraph (c)(1) provides that the preferred method in an antidumping investigation will be the average-to-average method, and that the preferred method in an antidumping review will be the average-to-transaction method.

In the case of reviews, there were numerous comments regarding the use of the average-to-average method. The Department has not adopted the suggestion of one commentator that the regulations provide that the average-to-average method is the preferred method in a review. Although section 777A(d)(2) of the Act does not expressly state that the average-to-transaction method is the preferred method in a review, the SAA expressly states that it is the "preferred methodology."

Conversely, the Department has not adopted the suggestion of several commentators that the regulations preclude use of the average-to-average method in a review. Although the average-to-transaction method is clearly the preferred method in a review, neither the statute nor the SAA affect the Department's preexisting authority under section 777A(a) of the Act to use the average-to-average method in reviews under the appropriate circumstances. In this regard, several commentators urged that the Department adopt a regulation expressly acknowledging that the average-to-average method may be used in reviews. The regulations do not include such a provision, because the Department believes that the statute and these regulations are sufficiently clear regarding the propriety of using the average-to-average method in reviews.

Several commentators argued that the average-to-average method should be used whenever normal value is based on constructed value. As with any comparisons, the preferences of the statute and these regulations apply. In investigations, the preferred method, including comparisons with constructed value, is average to average. In reviews, it is average to transaction.

We also have not adopted a suggestion that the regulations provide that in cases involving highly perishable agricultural products, the preferred approach will be to use the average-to-average method, with averages being calculated over the market cycle. In the past, the Department has used the average-to-average method in cases involving perishable agricultural products, and believes that the administrative and judicial precedents arising out of these cases would continue to be valid under the new statute and these regulations. See e.g., *Floral Trade Council of Davis, Cal.* v. *United States*, 606 F. Supp. 695, 703 (CIT 1991). However, at this time, the Department does not believe it has sufficient experience with these types of cases to warrant the creation of a regulatory preference in favor of the average-to-average method in all cases of this type. Likewise, the Department does not consider it appropriate to create a regulatory preference for averaging over the market cycle. At this point, the Department believes it is more appropriate to decide these issues on a case-by-case basis.

Paragraph (c)(1) also makes clear that the transaction-to-transaction method will only be used in unusual circumstances, as urged by several commentators. In addition, one commentator stated that a regulation should provide details regarding the Department's application of this method. The Department does not believe it appropriate at this time to go beyond what is already included in the SAA; namely, that this method "would be appropriate in situations where there are very few sales and the merchandise sold in each market is identical or very similar or is custom-made." SAA, at 842.

Application of the Average-to-Average Method: Paragraph (d) deals with the application of the average-to-average method. Paragraph (d)(1) provides that the Secretary will identify those sales to the United States that are comparable to each other and include such sales in an "averaging group." The Secretary then will compare the weighted average of the export prices or constructed export prices of the sales included within a particular averaging group to the weighted average of the normal values of such sales.

Paragraph (d)(2) deals with the identification of the averaging group. In this regard, several commentators suggested that the regulations provide for the use of various percentage benchmarks or rules of thumb in identifying averaging groups. Paragraph (d)(2) does not adopt these suggestions.

The SAA, at 842, provides the following guidance on this subject:

> To ensure that these averages are meaningful, Commerce will calculate averages for comparable sales of subject merchandise to the U.S. and sales of foreign like products. In determining the comparability of sales for purposes of inclusion in a particular average, Commerce will consider factors it deems appropriate, such as the physical characteristics of the merchandise, the region of the country in which the merchandise is sold, the time period, and the class of customer involved. For example, in the case of 13" and 21" televisions, average normal values would be calculated for each size of television, not a single average for sales of both sizes of televisions.

Although the SAA describes the factors that the Department will consider in identifying an averaging group, it does not prescribe exactly how these factors should be applied.

On the other hand, the Department appreciates the need for guidance concerning the application of what is, for practical purposes, a new method of determining sales at less than fair value. Thus, paragraph (d)(2) provides that in identifying an averaging group, the Secretary will rely primarily on comparability in physical characteristics of the merchandise and the level of trade at which the sales to the United States occur. These two factors are the easiest to identify, are the most likely to have an effect on sales comparability, and the Department has used them in the past for purposes of identifying comparison transactions. The Secretary also will consider, but give less weight to, the region of the United States in which the merchandise is sold, the class of customer involved, and such other factors as the Secretary considers relevant. While it is not possible to reduce the identification of averaging groups to a precise formula with respect to these two factors, the Department's general approach will be to look for clear dividing lines among the sales, and to ignore minor differences between sales.

With respect to the factor of physical characteristics, the views of the commentators were widely divergent. Some commentators appeared to suggest that all merchandise falling within a "such or similar group," as that term has been used in Department practice, should be regarded as comparable and, thus, included in the same averaging group. Other commentators essentially suggested that averaging groups be identified on a model-specific basis or on the basis of control numbers ("CONNUMS"), a term used in the Department's computer programs to identify the specific merchandise sold in each market. Still others have suggested that the Department determine comparability by applying its "20 percent difmer" guideline, a guideline used in the past for determining whether the foreign like product is such or similar to the U.S. product.

Paragraph (d)(2) limits the averaging group to "subject merchandise identical or virtually identical in all physical characteristics." Thus, the Department has adopted the model specific or control number approach recommended by some commentators for selecting the physical characteristics appropriate for inclusion within the same averaging group. This is necessary and appropriate given the instruction of section 777A(d)(1) that we compare, "the weighted average of the normal values to the weighted average of the export prices (and constructed export prices) of comparable merchandise."

The SAA identifies time as a factor affecting the comparability of sales. Paragraph (d)(3) deals with this factor by prescribing the time period over which weighted averages will be calculated. Paragraph (d)(3) provides that the Secretary "normally" will calculate weighted averages for the entire period of investigation or review, but that shorter periods may be used where the normal values, export prices, or constructed export prices for sales included within an averaging group differ significantly over the course of the period of investigation or review. Where values or prices are significantly different over time, it is fair to assume that time has affected sales comparability.

On this issue, too, the comments reflected widely divergent views. Some commentators argued that averaging always be done over the entire period of investigation or review. Others suggested that the averaging period not exceed one month. Still others suggested a "normal" rule of one year or six months, with shorter periods in cases involving industries where prices change more quickly. The approach of paragraph (d)(3) is along the lines of the latter suggestion.

Application of the Average-to-Transaction Method: Paragraph (e) deals with the application of the average-to-transaction method. Consistent with the SAA, at 843, paragraph (e)(1) provides that where normal value is based on price, the Department will limit its averaging of such prices to sales incurred during the "contemporaneous month." Paragraph (e)(2), in turn, defines "contemporaneous month." In

response to a suggestion made by several commentators, paragraph (e)(2) essentially codifies the Department's longstanding "90/60" day rule.

Targeted Dumping: Paragraph (f) deals with the so-called "targeted dumping" provision in section 777A(d)(1)(B) of the Act. Notwithstanding the general preference for the use of the average-to-average method in an antidumping investigation, the average-to-transaction method may be used where targeted dumping exists. Paragraph (f)(1) sets forth the standard to be applied in identifying targeted dumping, and, with one exception, tracks the language of the statute. The exception is that the Department has incorporated the suggestion made by several commentators, including both domestic and respondent interests, that the Department employ standard statistical techniques, in identifying targeted dumping.

Some commentators advocated that the regulations clarify the statutory provision in various ways, such as through the use of "bright line" standards for identifying targeted dumping. Other commentators opposed the adoption of bright line standards. In general, the Department has not attempted to elaborate on the language of section 777A(d)(1)(B), given its lack of experience with this provision. More specifically, the Department has eschewed the adoption of bright line standards for the time being. First, the SAA, at 843, states that the Department "will proceed on a case-by-case basis, because small differences may be significant for one industry or one type of product, but not for another." A bright line test would be inconsistent with this case-by-case approach. Second, the commentators differed widely with respect to where the "bright line" should be drawn, and, given our lack of experience with this provision, the Department has no basis for selecting a bright line on its own. While it may be possible in the future to establish bright line rules-of-thumb as rebuttable presumptions, at this point it would be premature to do so.

Some commentators suggested a regulation stating that the targeted dumping provision will be narrowly construed, while other commentators argued for a liberal construction. Because the statute and its legislative history do not support either construction, the Department has not adopted either of these suggestions.

In addition to the comments described above, the Department received numerous comments that, while falling short of bright line standards, nonetheless went in the direction of establishing per se rules. These comments included:

- If the prices of the preponderance of sales alleged to be part of the targeted dumping are within the range of prices of the non-target sales, then targeted dumping is not taking place.
- Price variations due to seasonal demand should not be deemed to constitute targeted dumping.
- Any trend within the subset of alleged targeted dumped sales must be substantially uniform among the subset of sales.
- Mere differences in price over time will rarely, if ever, be sufficient to constitute targeted dumping.
- Targeted dumping automatically exists whenever there are significant individual sales made at prices substantially below a firm's prevailing price.

Most of these comments raise factors that the Department legitimately should consider in conducting an analysis of targeted dumping in an actual antidumping investigation. In particular, the Department recognizes that the statute requires that there be a "pattern" of sales at significantly different prices. We do not believe that targeted dumping exists where the price differences are simply random or spurious price fluctuations. In our view, targeting means that, within the industry under consideration, the price differences suggest a meaningful pattern. However, for the same reason that the Department is unwilling to adopt bright line standards at this time, the Department is unwilling to adopt *per se* rules or even rebuttable presumptions. Several commentators advocated a regulation which would state that targeted dumping does not exist if the same pattern of sales exists in both the U.S. and the comparison market. We have not adopted this suggestion for these proposed rules. We are interested, however, in receiving comments from parties on the factors to be considered in deciding whether the average-to-average methodology takes account of patterns of significantly different export prices.

One commentator stated that the regulations should state that a targeted dumping analysis will be done on a respondent- and model-specific basis. With respect to a respondent-specific analysis, we think it is self-evident that a targeted dumping analysis would be respondent-specific. Thus, we see no need for a regulation on this point. With respect to a model-specific analysis, while we would expect that a targeted dumping analysis normally would consider whether sales of particular models constitute targeted dumping, we are reluctant at this time to go beyond the language of the statute, because other modes of analysis also might be appropriate.

Paragraph (f)(2) deals with the sales to which the average-to-transaction method is applied when targeted dumping is found, a question which neither the statute nor the SAA expressly addresses. Paragraph (f)(2) provides that "normally" the average-to-transaction method will be limited to those sales determined to constitute targeted dumping. The average-to-average method would be applied to the remaining sales.

At least one commentator suggested that if targeted dumping is found with respect to a particular firm, the average-to-transaction method should be used with respect to all of that firm's sales. The Department has not adopted this suggestion, because in many instances such an approach would be unreasonable and unduly punitive. For example, if targeted dumping accounted for only 1 percent of a firm's total sales, there would not appear to be any basis for applying the average-to-transaction method to those sales accounting for the remaining 99 percent.

At the other extreme, some commentators suggested that the average-to-transaction method always should be limited to those sales that constitute targeted dumping. The Department has not adopted this suggestion either, because there may be situations in which targeted dumping by a firm is so pervasive that the average-to-transaction method becomes the best benchmark for gauging the fairness of that firm's pricing practices.

Paragraph (f)(3) deals with allegations of targeted dumping. Many commentators suggested that the Department should only analyze targeted dumping if the petitioner satisfies a minimum evidentiary threshold. The Department agrees that those interested parties familiar with the market for the subject merchandise are in the best position to direct the Department's attention toward possible targeted dumping. Thus, it will examine whether targeted dumping is occurring only after receipt of a sufficient allegation that such targeting is taking place, and that the average-to-average or, when appropriate, transaction-to-transaction methods cannot adequately deal with the alleged targeting. The requirement of an allegation should not pose a significant burden on a domestic interested party, because the allegation can be based on information that is readily available in the record of the proceeding.

Paragraph (g) deals with requests for information. The first sentence of paragraph (g) provides that the Secretary will request information relevant to the identification of averaging groups and to the analysis of targeted dumping. The Department does not agree with the implication in the commentators' statements that it should not collect detailed, transaction-specific information in the absence of an allegation. First, the SAA, at 843, specifically provides that the Department will collect such transaction-specific information. Second, the information is necessary to permit the interested parties to reach reasonable judgements regarding the possibility that there is targeted dumping. In this regard, the Department is concerned that the prohibition against the release under APO of business proprietary customer names in investigations not serve as a bar to possible allegations. The Department will make every effort to ensure that public summaries provide the parties with adequate information.

The second sentence of paragraph (g) provides that if a response to a request for information relevant to the identification of averaging groups and targeted dumping is such as to warrant the application of the facts otherwise available, the Secretary may apply the average-to-transaction method to all of the particular respondent's sales. This approach was suggested by one commentator, although a different commentator argued that there was no need for a special "facts available" rule for price averaging. While it may be true that, as a legal matter, the general "facts available" provisions of the statute and these regulations are sufficiently broad to authorize the use of the average-to-transaction method in the types of situation under discussion, the Department believes that it would be useful to clarify in advance the possible consequences of failing to provide adequate and timely responses to requests for transaction-specific information.

One commentator suggested that if the Department employs the targeted dumping exception, it should present its explanation for using the exception in its preliminary determination so that all parties have an opportunity to comment on the issue. The Department agrees with the basic proposition that all parties should have ample opportunity to comment on all issues in an antidumping proceeding. However, the Department does not consider it advisable to promulgate a regulation which would prohibit the application of the targeted dumping exception in a final determination if that exception had not been applied in the preliminary determination. Among other things, it would render petitioners' right to comment on the issue meaningless in cases where the Department did not invoke the exception in a preliminary determination. In general, the Department anticipates that issues relating to price averaging and targeted dumping will be among the first to be raised by the parties to an antidumping investigation, and that parties will have ample opportunity to submit comments.

Section 351.415

Section 351.415 implements section 777A of the Act, which provides for the selection of the exchange rate used to convert foreign currencies to U.S. dollars. The Department's past practice, as specified in § 353.60 of the prior regulations, was to convert normal value at the exchange rate used by the U.S. Customs Service to convert foreign currencies for duty assessment purposes.

Paragraph (a) requires the Department to convert foreign currencies at the exchange rate in effect on the date of the U.S. sale, subject to certain exceptions. First, as reflected in paragraph (b), if the U.S. sale is tied directly to a forward exchange contract, the Department will convert normal value at the forward rate. In accordance with the SAA, at 842, group sales of currency on forward markets will be allowed, provided that the exchange transaction can be linked to the export sale. Second, as reflected in paragraph (c), fluctuations in the daily exchange rates are to be ignored and, third, as reflected in paragraph (d), respondents in an investigation must be granted at least 60 days to adjust prices after a sustained movement in the exchange rate.

The statute does not provide guidance on how to recognize a sustained movement or fluctuation. The SAA, at 841, provides that the Department is to adopt regulations to implement section 777A. We have not expanded on the statute in these proposed regulations because the provisions concerning daily rates, fluctuations and sustained movements are new, and we have had little practical experience. We believe, therefore, that it is preferable to implement the new requirements through an exchange rate model announced in a policy bulletin, which will afford us the ability to adjust practice based on experience.

We plan to use the model for one year and then evaluate its performance based on public comment. We then will alter the model as necessary, and expand the regulations to provide more extensive guidance.

The Department has designed the model with three goals in mind:

1. To implement the requirements of the statute in as simple a manner as possible;
2. To ensure that all exporters, whether or not under order, can estimate the daily exchange rate that the Department will employ in an antidumping analysis at the time they set their U.S. prices; and
3. To capture the model in simple computer code to reduce the administrative burden on the Department and parties wishing to monitor exchange rates.

As required by the statute, the model has been designed to convert a file of actual daily exchange rates to a file of "official" daily exchange rates, which will be used to convert normal value to U.S. dollars. In this process, the Department will classify each actual daily exchange rate as normal or "fluctuating." An extended pattern of fluctuating rates will define a "sustained movement." Based on these classifications, the model will assign the appropriate exchange rate for each day. This model is not suitable for use with hyper-inflating currencies. In these cases, we intend to use the daily rate absent compelling evidence that a fluctuation or sustained movement in the currency's value has occurred.

We will prepare the file of official daily exchange rates by processing the daily rate for all 32 currencies collected and certified by the New York Federal Reserve Bank. We intend to create files of official rates on a monthly basis and to post these files on the Internet to facilitate wide access to the rates. We also will continue our practice of providing rates on diskette for a small fee. In addition, we will make the model's computer code widely available to any party wishing to create the file of official rates.

Subpart F—Subsidy Determinations Regarding Cheese Subject to an In-Quota Rate of Duty

Subpart F of Part 351 deals with subsidy determinations regarding cheese subject to an in-quota rate of duty pursuant to section 702(a) of the Trade Agreements Act of 1979. Once known as the "quota cheese provision," the URAA amended section 702(a) and related provisions to conform to the WTO Agreement on Agriculture. In particular, the URAA eliminated the requirement that the President impose quantitative restrictions on cheese where price-undercutting conditions exist, because such restrictions would be inconsistent with Article 4.2 of the Agreement on Agriculture. However, the United States retains the right to impose

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fees on within-quota quantities where the price-undercutting conditions of section 702 exist. See SAA, page 729.

Because the URAA did not significantly change the Department's role under section 702, Subpart F is largely identical to existing Part 355, Subpart D. The principal changes are the elimination of material that merely repeats the statute and the substitution of the term "cheese subject to an in-quota rate of duty" for the term "quota cheese."

Classification

E.O. 12866

This proposed rule has been determined to be significant under E.O. 12866.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if promulgated as final, would not have a significant economic impact on a substantial number of small entities. The Department does not believe that there will be any substantive effect on the outcome of antidumping and countervailing duty proceedings as a result of the streamlining and simplification of their administration. With respect to the substantive amendments implementing the Uruguay Round Agreements Act, the Department believes that these regulations benefit both petitioners and respondents without favoring either, and, therefore, would not have a significant economic effects. As such, an initial regulatory flexibility analysis was not prepared.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. This proposed rule does not contain any new reporting or recording requirements subject to the Paperwork Reduction Act. The collections of information contained in this rule are currently approved by the Office of Management and Budget under OMB Control Numbers 0625–0105, 0625–0148, and 0625–0200. The public reporting burdens for these collections of information are estimated to average 40 hours for the antidumping and countervailing duty petition requirements, and 15 hours for the initiation of downstream product monitoring. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, D.C. 20503.

E.O. 12612

This proposed rule does not contain federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects

19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Investigations, Reporting and recordkeeping requirments.

19 CFR Part 353

Administrative practice and procedure, Antidumping, Business and industry, Confidential business information, Investigations, Reporting and recordkeeping requirements.

19 CFR Part 355

Administrative practice and procedure, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of Information, Investigations, Reporting and recordkeeping requirements.

Dated: February 15, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

For the reasons stated, it is proposed to amend 19 CFR chapter III as follows:

PARTS 353 AND 355 [REMOVED]

1. Parts 353 and 355 are removed.

2. A new Part 351 is added to read as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

Subpart A—Scope and Definitions

Sec.

351.101 Scope.
351.102 Definitions.
351.103 Central Records Unit.
351.104 Record of proceedings.
351.105 Public, business proprietary, privileged, and classified information.
351.106 De minimis net countervailable subsidies and weighted-average dumping margins disregarded.

Subpart B—Antidumping and Countervailing Duty Procedures

351.201 Self-initiation.
351.202 Petition requirements.
351.203 Determination of sufficiency of petition.
351.204 Transactions and persons examined; voluntary respondents; exclusions.
351.205 Preliminary determination.
351.206 Critical circumstances.
351.207 Termination of investigation.
351.208 Suspension of investigation.
351.209 Violation of suspension agreement.
351.210 Final determination.
351.211 Antidumping order and countervailing duty order.
351.212 Assessment of antidumping and countervailing duties; provisional measures deposit cap; interest on certain overpayments and underpayments.
351.213 Administrative review of orders and suspension agreements under section 751(a)(1) of the Act.
351.214 New shipper reviews under section 751(a)(2)(B) of the Act.
351.215 Expedited antidumping review and security in lieu of estimated duty under section 736(c) of the Act.
351.216 Changed circumstances review under section 751(b) of the Act.
351.217 Reviews to implement results of subsidies enforcement proceeding under section 751(g) of the Act.
351.218 Sunset reviews under section 751(c) of the Act.
351.219 Reviews of countervailing duty orders in connection with an investigation under section 753 of the Act.
351.220 Countervailing duty review at the direction of the President under section 762 of the Act.
351.221 Review procedures.
351.222 Revocation of orders; termination of suspended investigations.
351.223 Procedures for initiation of downstream product monitoring.
351.224 Disclosure of calculations and procedures for the correction of ministerial errors.
351.225 Scope ruling.

Subpart C—Information and Argument

351.301 Time limits for submission of factual information.
351.302 Extension of time limits; return of untimely filed or unsolicited material.
351.303 Filing, format, translation, service, and certification of documents.
351.304 Establishing business proprietary treatment of information [Reserved].
351.305 Access to business proprietary information [Reserved].
351.306 Use of business proprietary information [Reserved].
351.307 Verification of information.
351.308 Determinations on the basis of the facts available.
351.309 Written argument.
351.310 Hearings.
351.311 Countervailable subsidy practice discovered during investigation or review.
351.312 Industrial users and consumer organizations.

Subpart D—Calculation of Export Price, Constructed Export Price, Fair Value, and Normal Value

351.401 In general.
351.402 Calculation of export price and constructed export price; reimbursement of antidumping and countervailing duties.
351.403 Sales used in calculating normal value; transactions between affiliated parties.
351.404 Selection of the market to be used as the basis for normal value.
351.405 Calculation of normal value based on constructed value.
351.406 Calculation of normal value if sales are made at less than cost of production.
351.407 Calculation of constructed value and cost of production.
351.408 Calculation of normal value of merchandise from nonmarket economy countries.
351.409 Differences in quantities.
351.410 Differences in circumstances of sale.
351.411 Differences in physical characteristics.
351.412 Levels of trade; adjustment for difference in level of trade; constructed export price offset.
351.413 Disregarding insignificant adjustments.
351.414 Comparison of normal value with export price (constructed export price).
351.415 Conversion of currency.

Subpart E—[Reserved]

Subpart F—Subsidy Determinations Regarding Cheese Subject to an In-Quota Rate of Duty

351.601 Annual list and quarterly update of subsidies.
351.602 Determination upon request.
351.603 Complaint of price-undercutting by subsidized imports.
351.604 Access to information.
Annex I—Deadlines for Parties in Countervailing Investigations
Annex II—Deadlines for Parties in Countervailing Administrative Reviews
Annex III—Deadlines for Parties in Antidumping Investigations
Annex IV—Deadlines for Parties in Antidumping Administrative Reviews
Annex V—Comparison of Prior and Proposed Regulations
Annex VI—Countervailing Investigations Timeline
Annex VII—Antidumping Investigations Timeline

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note, 1303 note, 1671 et seq., and 3538.

PART 351—COUNTERVAILING AND ANTIDUMPING DUTIES

Subpart A—Scope and Definitions

§ 351.101 Scope.

(a) *In general.* This part contains procedures and rules applicable to antidumping and countervailing duty proceedings under Title VII of the Act (19 U.S.C. 1671 *et seq.*), and also determinations regarding cheese subject to an in-quota rate of duty under section 702 of the Trade Agreements Act of 1979 (19 U.S.C. 1202 note). This part reflects statutory amendments made by titles I, II, and IV of the Uruguay Round Agreements Act, Public Law 103–465, which, in turn, implement into United States law the provisions of the following agreements annexed to the Agreement Establishing the World Trade Organization: Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994; Agreement on Subsidies and Countervailing Measures; and Agreement on Agriculture.

(b) *Countervailing duty investigations involving imports not entitled to a material injury determination.* Under section 701(c) of the Act, certain provisions of the Act do not apply to countervailing duty proceedings involving imports from a country that is not a Subsidies Agreement country and is not entitled to a material injury determination by the Commission. Accordingly, certain provisions of this Part referring to the Commission may not apply to such proceedings.

(c) *Application to governmental importations.* To the extent authorized by section 771(20) of the Act, merchandise imported by, or for the use of, a department or agency of the United States Government is subject to the imposition of countervailing duties or antidumping duties under this part.

§ 351.102 Definitions.

(a) *Introduction.* The Act contains many technical terms applicable to antidumping and countervailing duty proceedings. This section:

(1) Defines terms that appear in the Act but are not defined in the Act;

(2) Defines terms that appear in this Part but do not appear in the Act; and

(3) Elaborates on the meaning of certain terms that are defined in the Act.

In the case of terms that are not defined in this section or other sections of this Part, readers should refer to the relevant provisions of the Act.

(b) *Definitions.*

Act. "Act" means the Tariff Act of 1930, as amended.

Administrative review. "Administrative review" means a review under section 751(a)(1) of the Act.

Affiliated persons; affiliated parties. "Affiliated persons" and "affiliated parties" have the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Secretary will consider the following factors, among others:

(1) Corporate or family groupings;

(2) Franchise or joint venture agreements;

(3) Debt financing; and

(4) Close supplier relationships.

Aggregate basis. "Aggregate basis" means the calculation of a country-wide subsidy rate based solely on information provided by the foreign government.

Anniversary month. "Anniversary month" means the calendar month in which the anniversary of the date of publication of an order or suspension of investigation occurs.

APO. "APO" means an administrative protective order described in section 777(c)(1) of the Act.

Applicant. "Applicant" means a representative of an interested party that has applied for access to business proprietary information under an APO.

Article 4/Article 7 Review. "Article 4/Article 7 review" means a review under section 751(g)(2) of the Act.

Article 8 violation review. "Article 8 violation review" means a review under section 751(g)(1) of the Act.

Authorized applicant. "Authorized applicant" means an applicant that the Secretary has authorized to receive business proprietary information under an APO under section 777(c)(1) of the Act.

Changed circumstances review. "Changed circumstances review" means a review under section 751(b) of the Act.

Customs Service. "Customs Service" means the United States Customs Service of the United States Department of the Treasury.

Department. "Department" means the United States Department of Commerce.

Domestic interested party. "Domestic interested party" means an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) of the Act.

Expedited antidumping review. "Expedited antidumping review" means a review under section 736(c) of the Act.

Factual information. "Factual information" means:

(1) Initial and supplemental questionnaire responses;

(2) Data or statements of fact in support of allegations;

(3) Other data or statements of facts; and

(4) Documentary evidence.

Fair value. "Fair value" is a term used during an antidumping investigation, and is an estimate of normal value.

Importer. "Importer" means the person by whom, or for whose account, subject merchandise is imported.

Investigation. Under the Act and this Part, there is a distinction between an antidumping or countervailing duty investigation and a proceeding. An "investigation" is that segment of a proceeding that begins on the date of publication of notice of initiation of investigation and ends on the date of publication of the earliest of:

(1) Notice of termination of investigation,

(2) Notice of rescission of investigation,

(3) Notice of a negative determination that has the effect of terminating the proceeding, or

(4) An order.

New shipper review. "New shipper review" means a review under section 751(a)(2) of the Act.

Order. An "order" is an order issued by the Secretary under section 303, section 706, or section 736 of the Act or a finding under the Antidumping Act, 1921.

Ordinary course of trade. "Ordinary course of trade" has the same meaning as in section 771(15) of the Act. The Secretary may consider sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are extraordinary for the market in question (such as sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications), merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price.

Party to the proceeding. "Party to the proceeding" means any interested party that actively participates, through written submissions of factual information or written argument, in a segment of a proceeding. Participation in a prior segment of a proceeding will not confer on any interested party "party to the proceeding" status in a subsequent segment.

Person. "Person" includes any interested party as well as any other individual, enterprise, or entity, as appropriate.

Proceeding. A "proceeding" begins on the date of the filing of a petition under section 702(b) or section 732(b) of the Act or the publication of a notice of initiation in a self-initiated investigation under section 702(a) or section 732(a) of the Act, and ends on the date of publication of the earliest notice of:

(1) Dismissal of petition,

(2) Rescission of initiation,

(3) Termination of investigation,

(4) A negative determination that has the effect of terminating the proceeding,

(5) Revocation of an order, or

(6) Termination of a suspended investigation.

Rates. "Rates" means the individual weighted-average dumping margins, the individual countervailable subsidy rates, the country-wide subsidy rate, or the all-others rate, as applicable. In an antidumping proceeding involving imports from a nonmarket economy country, "rates" may consist of a single dumping margin applicable to all exporters and producers.

Respondent interested party. "Respondent interested party" means an interested party described in subparagraph (A) or (B) of section 771(9) of the Act.

Sale; likely sale. A "sale" includes a contract to sell and a lease that is equivalent to a sale. A "likely sale" means a person's irrevocable offer to sell.

Secretary. "Secretary" means the Secretary of Commerce or a designee. The Secretary has delegated to the Assistant Secretary for Import Administration the authority to make determinations under Title VII of the Act and this Part.

Section 753 review. "Section 753 review" means a review under section 753 of the Act.

Section 762 review. "Section 762 review" means a review under section 762 of the Act.

Segment of proceeding.

(1) *In general.* An antidumping or countervailing duty proceeding consists of one or more segments. "Segment of a proceeding" or "segment of the proceeding" refers to a portion of the proceeding that is reviewable under section 516A of the Act.

(2) *Examples.* An antidumping or countervailing duty investigation or a review of an order or suspended investigation each would constitute a segment of a proceeding.

Sunset review. "Sunset review" means a review under section 751(c) of the Act.

Third country. For purposes of subpart D, "third country" means a country other than the exporting country and the United States. Under section 773(a) of the Act and subpart D, in certain circumstances the Secretary may determine normal value on the basis of sales to a third country.

URAA. "URAA" means the Uruguay Round Agreements Act.

§ 351.103 Central Records Unit.

(a) *In general.* Import Administration's Central Records Unit is located at Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. The office hours of the Central Records Unit are between 8:30 a.m. and 5:00 p.m. on business days. Among other things, the Central Records Unit is responsible for maintaining an official and public record for each antidumping and countervailing duty proceeding (see § 351.104), the Subsidies Library (see section 775(2) and section 777(a)(1) of the Act), and the service list for each proceeding (see paragraph (c) of this section).

(b) *Filing of documents with the Department.* While persons are free to provide Department officials with courtesy copies of documents, no document will be considered as having been received by the Secretary unless it is submitted to the Central Records Unit and is stamped by the Central Records Unit with the date and time of receipt.

(c) *Service list.* The Central Records Unit will maintain and make available a service list for each segment of a proceeding. Each interested party that asks to be included on the service list for a segment of a proceeding must designate a person to receive service of documents filed in that segment. The service list for an application for a scope ruling is described in § 351.225(n).

§ 351.104 Record of proceedings.

(a) *Official record.* (1) *In general.* The Secretary will maintain in the Central Records Unit an official record of each antidumping and countervailing duty proceeding. The Secretary will include in the official record all factual information, written argument, or other material developed by, presented to, or obtained by the Secretary during the course of a proceeding that pertains to the proceeding. The official record will include government memoranda pertaining to the proceeding, memoranda of ex parte meetings, determinations, notices published in the **Federal Register**, and transcripts of hearings. The official record will contain material that is public, business proprietary, privileged, and classified. For purposes of section 516A(b)(2) of the Act, the record is the official record of each segment of the proceeding.

(2) *Material returned.*

(i) The Secretary, in making any determination under this part, will not use factual information, written argument, or other material that the Secretary returns to the submitter.

(ii) The official record will include a copy of a returned document, solely for purposes of establishing and documenting the basis for returning the document to the submitter, if the document was returned because:

(A) the document, although otherwise timely, contains untimely filed new factual information (see § 351.301(b));

(B) the submitter made a nonconforming request for business proprietary treatment of factual information (see § 351.304);

(C) the Secretary denied a request for business proprietary treatment of factual information (see § 351.304);

(D) the submitter is unwilling to permit the disclosure of business proprietary information under APO (see § 351.304).

(iii) In no case will the official record include any document that the Secretary returns to the submitter as untimely filed, or any unsolicited questionnaire response unless the response is a voluntary response accepted under § 351.204(d) (see § 351.302(d)).

(b) *Public record.* The Secretary will maintain in the Central Records Unit a public record of each proceeding. The record will consist of all material contained in the official record (see paragraph (a) of this section) that the Secretary decides is public information under § 351.105(b), government memoranda or portions of memoranda that the Secretary decides may be disclosed to the general public, and public versions of all determinations, notices, and transcripts. The public record will be available to the public for inspection and copying in the Central Records Unit (see § 351.103). The Secretary will charge an appropriate fee for providing copies of documents.

(c) *Protection of records.* Unless ordered by the Secretary or required by law, no record or portion of a record will be removed from the Department.

§ 351.105. Public, business proprietary, privileged, and classified information.

(a) *Introduction.* There are four categories of information in an antidumping or countervailing duty proceeding: public, business proprietary, privileged, and classified. In general, public information is information that may be made available to the public, whereas business proprietary information may be disclosed (if at all) only to authorized applicants under an APO. Privileged and classified information may not be disclosed at all, even under an APO. This section describes the four categories of information.

(b) *Public information.* The Secretary normally will consider the following to be public information:

(1) Factual information of a type that has been published or otherwise made available to the public by the person submitting it;

(2) Factual information that is not designated as business proprietary by the person submitting it;

(3) Factual information which, although designated as business proprietary by the person submitting it, is in a form which cannot be associated with or otherwise used to identify activities of a particular person or which the Secretary determines is not properly designated as business proprietary;

(4) Publicly available laws, regulations, decrees, orders, and other official documents of a country, including English translations; and

(5) Written argument relating to the proceeding that is not designated as business proprietary.

(c) *Business proprietary information.* The Secretary normally will consider the following factual information to be business proprietary information, if so designated by the submitter:

(1) Business or trade secrets concerning the nature of a product or production process;

(2) Production costs (but not the identity of the production components unless a particular component is a trade secret);

(3) Distribution costs (but not channels of distribution);

(4) Terms of sale (but not terms of sale offered to the public);

(5) Prices of individual sales, likely sales, or other offers (but not components of prices, such as transportation, if based on published schedules, dates of sale, product descriptions (other than business or trade secrets described in paragraph (c)(1) of this section), or order numbers);

(6) Names of particular customers, distributors, or suppliers (but not destination of sale or designation of type of customer, distributor, or supplier, unless the destination or designation would reveal the name);

(7) In an antidumping proceeding, the exact amount of the dumping margin on individual sales;

(8) In a countervailing duty proceeding, the exact amount of the benefit applied for or received by a person from each of the programs under investigation or review (but not descriptions of the operations of the programs, or the amount if included in official public statements or documents or publications, or the ad valorem countervailable subsidy rate calculated for each person under a program);

(9) The names of particular persons from whom business proprietary information was obtained;

(10) The position of a domestic producer or workers regarding a petition; and

(11) Any other specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter.

(d) *Privileged information.* The Secretary will consider information privileged if, based on principles of law concerning privileged information, the Secretary decides that the information should not be released to the public or to parties to the proceeding. Privileged information is exempt from disclosure to the public or to representatives of interested parties.

(e) *Classified information.* Classified information is information that is classified under Executive Order No. 12356 of April 2, 1982 (47 FR 14874 and 15557, 3 CFR 1982 Comp. p. 166), or successor executive order, if applicable. Classified information is exempt from disclosure to the public or to representatives of interested parties.

§ 351.106 De minimis net countervailable subsidies and weighted-average dumping margins disregarded.

(a) *Introduction.* Prior to the enactment of the URAA, the Department had a well-established and judicially sanctioned practice of disregarding net countervailable subsidies or weighted-average dumping margins that were de minimis. The URAA codified in the Act the particular de minimis standards to be used in antidumping and countervailing duty investigations. This section discussed the application of the de minimis standards in antidumping or countervailing duty proceedings.

(b) *Investigations.* (1) *In general.* In making a preliminary or final antidumping or countervailing duty determination in an investigation (see sections 703(b), 733(b), 705(a), and 735(a) of the Act), the Secretary will apply the de minimis standard set forth in section 703(b)(4) or section 733(b)(3) of the Act (whichever is applicable).

(2) *Transition rule.* (i) If:

(A) The Secretary resumes an investigation that has been suspended (see section 704(i)(1)(B) or section 734(i)(1)(B) of the Act); and

(B) the investigation was initiated before January 1, 1995, then

(ii) The Secretary will apply the de minimis standard in effect at the time that the investigation was initiated.

(c) *Reviews and other determinations.* (1) *In general.* In making any determination other than a preliminary or final antidumping or countervailing duty determination in an investigation (see paragraph (b) of this section), the

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Secretary will treat as de minimis any weighted-average dumping margin or countervailable subsidy rate that is less than 0.5% ad valorem, or the equivalent specific rate.

(2) *Assessment of antidumping duties.* The Secretary will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the relevant period of review made by any person for which the Secretary calculates an assessment rate under § 351.212(b)(1) that is less than 0.5 percent ad valorem, or the equivalent specific rate.

Subpart B—Antidumping and Countervailing Duty Procedures

§ 351.201 Self-initiation.

(a) *Introduction.* Antidumping and countervailing duty investigations may be initiated as the result of a petition filed by a domestic interested party or at the Secretary's own initiative. This section contains rules regarding the actions the Secretary will take when the Secretary self-initiates an investigation.

(b) *In general.* When the Secretary self-initiates an investigation under section 702(a) or section 732(a) of the Act, the Secretary will publish in the **Federal Register** notice of "Initiation of Antidumping (Countervailing Duty) Investigation." In addition, the Secretary will notify the Commission at the time of initiation of the investigation, and will make available to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determination.

(c) *Persistent dumping monitoring.* To the extent practicable, the Secretary will expedite any antidumping investigation initiated as the result of a monitoring program established under section 732(a)(2) of the Act.

§ 351.202 Petition requirements.

(a) *Introduction.* The Secretary normally initiates antidumping and countervailing duty investigations based on petitions filed by a domestic interested party. This section contains rules concerning the contents of a petition, filing requirements, notification of foreign governments, pre-initiation communications with the Secretary, and assistance to small businesses in preparing petitions.

(b) *Contents of petition.* A petition requesting the imposition of antidumping or countervailing duties must contain the following, to the extent reasonably available to the petitioner:

(1) The name and address of the petitioner and any person the petitioner represents;

(2) The identity of the industry on behalf of which the petitioner is filing, including the names and addresses of all other known persons in the industry;

(3) Information relating to the degree of industry support for the petition, including:

(i) the total volume and value of U.S. production of the domestic like product, and

(ii) the volume and value of the domestic like product produced by the petitioner and each domestic producer identified;

(4) A statement indicating whether the petitioner has filed for relief from imports of the subject merchandise under section 337 of the Act (19 U.S.C. 1337, 1671a), sections 201 or 301 of the Trade Act of 1974 (19 U.S.C. 2251 or 2411), or section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862);

(5) A detailed description of the subject merchandise that defines the requested scope of the investigation, including the technical characteristics and uses of the merchandise and its current U.S. tariff classification number;

(6) The name of the country in which the subject merchandise is manufactured or produced and, if the merchandise is imported from a country other than the country of manufacture or production, the name of any intermediate country from which the merchandise is imported;

(7)(i) In the case of an antidumping proceeding:

(A) The names and addresses of each person the petitioner believes sells the subject merchandise at less than fair value and the proportion of total exports to the United States that each person accounted for during the most recent 12-month period (if numerous, provide information at least for persons that, based on publicly available information, individually accounted for two percent or more of the exports);

(B) All factual information (particularly documentary evidence) relevant to the calculation of the export price and the constructed export price of the subject merchandise and the normal value of the foreign like product (if unable to furnish information on foreign sales or costs, provide information on production costs in the United States, adjusted to reflect production costs in the country of production of the subject merchandise);

(C) If the merchandise is from a country that the Secretary has found to be a nonmarket economy country, factual information relevant to the calculation of normal value, using a method described in § 351.408; or

(ii) In the case of a countervailing duty proceeding:

(A) The names and addresses of each person the petitioner believes benefits from a countervailable subsidy and exports the subject merchandise to the United States and the proportion of total exports to the United States that each person accounted for during the most recent 12-month period (if numerous, provide information at least for persons that, based on publicly available information, individually accounted for two percent or more of the exports);

(B) The alleged countervailable subsidy and factual information (particularly documentary evidence) relevant to the alleged countervailable subsidy, including any law, regulation, or decree under which it is provided, the manner in which it is paid, and the value of the subsidy to exporters or producers of the subject merchandise;

(C) If the petitioner alleges an upstream subsidy under section 771A of the Act, factual information regarding:

(*1*) Countervailable subsidies, other than an export subsidy, that an authority of the affected country provides to the upstream supplier;

(*2*) The competitive benefit the countervailable subsidies bestow on the subject merchandise; and

(*3*) The significant effect the countervailable subsidies have on the cost of producing the subject merchandise;

(8) The volume and value of the subject merchandise imported during the most recent two-year period and any other recent period that the petitioner believes to be more representative or, if the subject merchandise was not imported during the two-year period, information as to the likelihood of its sale for importation;

(9) The name and address of each person the petitioner believes imports or, if there were no importations, is likely to import the subject merchandise;

(10) Factual information regarding material injury, threat of material injury, or material retardation, and causation;

(11) If the petitioner alleges "critical circumstances" under section 703(e)(1) or section 733(e)(1) of the Act and § 351.206, factual information regarding:

(i) Whether imports of the subject merchandise are likely to undermine seriously the remedial effect of any order issued under section 706(a) or section 736(a) of the Act;

(ii) Massive imports of the subject merchandise in a relatively short period; and

(iii) (A) In an antidumping proceeding, either

(*1*) A history of dumping; or

(*2*) The importer's knowledge that the exporter was selling the subject merchandise at less than its fair value, and that there would be material injury by reason of such sales; or

(B) In a countervailing duty proceeding, whether the countervailable subsidy is inconsistent with the Subsidies Agreement; and

(12) Any other factual information on which the petitioner relies.

(c) *Simultaneous filing and certification.* The petitioner must file a copy of the petition with the Commission and the Secretary on the same day and so certify in submitting the petition to the Secretary. Factual information in the petition must be certified, as provided in § 351.303(g).

(d) *Business proprietary status of information.* The Secretary will treat as business proprietary any factual information for which the petitioner requests business proprietary treatment and which meets the requirements of § 351.304.

(e) *Amendment of petition.* The Secretary may allow timely amendment of the petition. The petitioner must file an amendment with the Commission and the Secretary on the same day and so certify in submitting the amendment to the Secretary. If the amendment consists of new allegations, the timeliness of the new allegations will be governed by § 351.301.

(f) *Notification of representative of the exporting country.* Upon receipt of a petition, the Secretary will deliver a public version of the petition (see § 351.304(c)) to a representative in Washington, DC, of the government of any exporting country named in the petition.

(g) *Petition based upon derogation of an international undertaking on official export credits.* In the case of a petition described in section 702(b)(3) of the Act, the petitioner must file a copy of the petition with the Secretary of the Treasury, as well as with the Secretary and the Commission, and must so certify in submitting the petition to the Secretary.

(h) *Assistance to small businesses; additional information.*

(1) The Secretary will provide technical assistance to eligible small businesses, as defined in section 339 of the Act, to enable them to prepare and file petitions. The Secretary may deny assistance if the Secretary concludes that the petition, if filed, could not satisfy the requirements of section 702(c)(1)(A) or section 732(c)(1)(A) of the Act (whichever is applicable) (see § 351.203).

(2) For additional information concerning petitions, contact the Deputy Assistant Secretary for Investigations, Import Administration, International Trade Administration, Room 3099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; (202) 482–5497.

(i) *Pre-initiation communications.* (1) *In general.* During the period before the Secretary's decision whether to initiate an investigation, communications with the Department will be governed by section 702(b)(4)(B) or section 732(b)(3)(B) of the Act (whichever is applicable). The Secretary will not consider the filing of a notice of appearance to constitute a communication.

(2) *Consultations with foreign governments in countervailing duty proceedings.* In a countervailing duty proceeding, the Secretary will invite the government of any exporting country named in the petition for consultations with respect to the petition.

(The information collection requirements in paragraph (a) of this section have been approved by the Office of Management and Budget under control number 0625–0105.)

§ 351.203 Determination of sufficiency of petition.

(a) *Introduction.* When a petition is filed under § 351.202, the Secretary must determine that the petition satisfies the relevant statutory requirements before initiating an antidumping or countervailing duty investigation. This section sets forth rules regarding a determination as to the sufficiency of a petition (including the determination that a petition is supported by the domestic industry), the deadline for making the determination, and the actions to be taken once the Secretary has made the determination.

(b) *Determination of sufficiency.* (1) *In general.* Normally, not later than 20 days after a petition is filed, the Secretary, on the basis of sources readily available to the Secretary, will examine the accuracy and adequacy of the evidence provided in the petition and determine whether to initiate an investigation under section 702(c)(1)(A) or section 732(c)(1)(A) of the Act (whichever is applicable).

(2) *Extension where polling required.* If the Secretary is required to poll or otherwise determine support for the petition under section 702(c)(4)(D) or section 732(c)(4)(D) of the Act, the Secretary may, in exceptional circumstances, extend the 20-day period by the amount of time necessary to collect and analyze the required information. In no case will the period between the filing of a petition and the determination whether to initiate an investigation exceed 40 days.

(c) *Notice of initiation and distribution of petition.* (1) *Notice of initiation.* If the initiation determination of the Secretary under section 702(c)(1)(A) or section 732(c)(1)(A) of the Act is affirmative, the Secretary will initiate an investigation and publish in the **Federal Register** notice of "Initiation of Antidumping (Countervailing Duty) Investigation." The Secretary will notify the Commission at the time of initiation of the investigation and will make available to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

(2) *Distribution of petition.* As soon as practicable after initiation of an investigation, the Secretary will provide a public version of the petition to all known exporters (including producers who sell for export to the United States) of the subject merchandise. If the Secretary determines that there is a particularly large number of exporters involved, instead of providing the public version to all known exporters, the Secretary may provide the public version to a trade association of the exporters or, alternatively, may consider the requirement of the preceding sentence to have been satisfied by the delivery of a public version of the petition to the government of the exporting country under § 351.202(f).

(d) *Insufficiency of petition.* If an initiation determination of the Secretary under section 702(c)(1)(A) or section 732(c)(1)(A) of the Act is negative, the Secretary will dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and publish in the **Federal Register** notice of "Dismissal of Antidumping (Countervailing Duty) Petition."

(e) *Determination of industry support.* In determining industry support for a petition under section 702(c)(4) or section 732(c)(4) of the Act, the following rules will apply:

(1) *Measuring production.* The Secretary normally will measure production over a twelve-month period specified by the Secretary, and may measure production based on either value or volume. Where a party to the proceeding establishes that production data for the relevant period, as specified by the Secretary, is unavailable, production levels may be established by

reference to alternative data that the Secretary determines to be indicative of production levels.

(2) *Positions treated as business proprietary information.* Upon request, the Secretary may treat the position of a domestic producer or workers regarding the petition and any production information supplied by the producer or workers as business proprietary information under § 351.105(b)(10).

(3) *Positions expressed by workers.* The Secretary will consider the positions of workers and management regarding the petition to be of equal weight. The Secretary will assign a single weight to the positions of both workers and management according to the production of the domestic like product of the firm in which the workers and management are employed. If the management of a firm expresses a position in direct opposition to the position of the workers in that firm, the Secretary will treat the production of that firm as representing neither support for, nor opposition to, the petition.

(4) *Certain positions disregarded.* (i) The Secretary will disregard the position of a domestic producer that opposes the petition if such producer is related to a foreign producer or to a foreign exporter under section 771(4)(B)(ii) of the Act, unless such domestic producer demonstrates to the Secretary's satisfaction that its interests as a domestic producer would be adversely affected by the imposition of an antidumping order or a countervailing duty order, as the case may be; and

(ii) The Secretary may disregard the position of a domestic producer that is an importer of the subject merchandise, or that is related to such an importer, under section 771(4)(B)(ii) of the Act.

(5) *Special rule for regional industries.* Under section 702(c)(4)(C) or section 732(c)(4)(C) of the Act, the applicable region will be the region specified in the petition.

(6) *Polling the industry.* In conducting a poll of the industry under section 702(c)(4)(D)(i) or section 732(c)(4)(D)(i) of the Act, the Secretary will include unions, groups of workers, and trade or business associations described in paragraphs (9)(D) and (9)(E) of section 771 of the Act.

(f) *Time limits where petition involves same merchandise as that covered by an order that has been revoked.* Under section 702(c)(1)(C) or section 732(c)(1)(C) of the Act, and in expediting an investigation involving subject merchandise for which a prior order was revoked or a suspended investigation was terminated, the Secretary will consider "section 751(d)" as including a predecessor provision.

§ 351.204 Transactions and persons examined; voluntary respondents; exclusions.

(a) *Introduction.* Because the Act does not specify the precise period of time that the Secretary should examine in an antidumping or countervailing duty investigation, this section sets forth rules regarding the period of investigation ("POI"). In addition, this section includes rules regarding the selection of persons to be examined, the treatment of voluntary respondents that are not selected for individual examination, and the exclusion of persons that the Secretary ultimately finds are not dumping or are not receiving countervailable subsidies.

(b) *Period of investigation.* (1) *Antidumping investigation.* In an antidumping investigation, the Secretary normally will examine merchandise sold during the four most recently completed fiscal quarters (or, in an investigation involving merchandise imported from a nonmarket economy country, the two most recently completed fiscal quarters) as of the month preceding the month in which the petition was filed or in which the Secretary self-initiated an investigation. However, the Secretary may examine merchandise sold during any additional or alternate period that the Secretary concludes is appropriate.

(2) *Countervailing duty investigation.* In a countervailing duty investigation, the Secretary normally will rely on information pertaining to the most recently completed fiscal year for the government and exporters or producers in question. If the government and the exporters or producers have different fiscal years, the Secretary normally will rely on information pertaining to the most recently completed calendar year. If the investigation is conducted on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary normally will rely on information pertaining to the most recently completed fiscal year for the government in question. However, the Secretary may rely on information for any additional or alternate period that the Secretary concludes is appropriate.

(c) *Exporters and producers examined.* (1) *In general.* In an investigation, the Secretary will attempt to determine an individual weighted-average dumping margin or individual countervailable subsidy rate for each known exporter or producer of the subject merchandise. However, the Secretary may decline to examine a particular exporter or producer if that exporter or producer and the petitioner agree.

(2) *Limited investigation.* Notwithstanding paragraph (c)(1) of this section, the Secretary may limit the investigation by using a method described in subsection (a), (c), or (e) of section 777A of the Act.

(d) *Voluntary respondents.* (1) *In general.* If the Secretary limits the number of exporters or producers to be individually examined under section 777A(c)(2) or section 777A(e)(2)(A) of the Act, the Secretary will examine voluntary respondents (exporters or producers, other than those selected for individual examination) in accordance with section 782(a) of the Act.

(2) *Acceptance of voluntary respondents.* After receiving a voluntary response filed in accordance with section 782(a) of the Act, the Secretary will determine, as soon as practicable, whether to examine the voluntary respondent individually. A voluntary respondent accepted for individual examination will be subject to the same requirements as an exporter or producer initially selected by the Secretary for individual examination, including, where applicable, the use of the facts available under section 776 of the Act and § 351.308.

(3) *Exclusion of voluntary respondents' rates from all-others rate.* In calculating an all-others rate under section 705(c)(5) or section 735(c)(5) of the Act, the Secretary will exclude weighted-average dumping margins or countervailable subsidy rates calculated for voluntary respondents.

(e) *Exclusions.* (1) *In general.* The Secretary will exclude from an affirmative final determination under section 705(a) or section 735(a) of the Act or an order under section 706(a) or section 736(a) of the Act, any exporter or producer for which the Secretary determines an individual weighted-average dumping margin or individual net countervailable subsidy rate of zero or de minimis.

(2) *Preliminary determinations.* In an affirmative preliminary determination under section 703(b) or section 733(b) of the Act, an exporter or producer for which the Secretary preliminarily determines an individual weighted-average dumping margin or individual net countervailable subsidy of zero or de minimis will not be excluded from the preliminary determination or the investigation. However, the exporter or producer will not be subject to provisional measures under section 703(d) or section 733(d) of the Act.

(3) *Countervailing duty investigations conducted on an aggregate basis and requests for exclusion from countervailing duty order.* Where the Secretary conducts a countervailing duty investigation on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary will consider and investigate requests for exclusion to the extent practicable. An exporter or producer that desires exclusion from an order must submit:

(i) A certification by the exporter or producer that it received zero or de minimis net countervailable subsidies during the period of investigation;

(ii) If the exporter or producer received a countervailable subsidy, calculations demonstrating that the amount of net countervailable subsidies received was de minimis during the period of investigation;

(iii) If the exporter is not the producer of the subject merchandise, certifications from the suppliers and producers of the subject merchandise that those persons received zero or de minimis net countervailable subsidies during the period of the investigation; and

(iv) A certification from the government of the affected country that the government did not provide the exporter or producer with more than de minimis net countervailable subsidies during the period of investigation.

§ 351.205 Preliminary determination.

(a) *Introduction.* A preliminary determination in an antidumping or countervailing duty investigation constitutes the first point at which the Secretary may provide a remedy if the Secretary preliminarily finds that dumping or countervailable subsidization has occurred. The remedy (sometimes referred to as "provisional measures") usually takes the form of a bonding requirement to ensure payment if antidumping or countervailing duties ultimately are imposed. Whether the Secretary's preliminary determination is affirmative or negative, the investigation continues. This section contains rules regarding deadlines for preliminary determinations, postponement of preliminary determinations, notices of preliminary determinations, and the effects of affirmative preliminary determinations.

(b) *Deadline for preliminary determination.* The deadline for a preliminary determination under section 703(b) or section 733(b) of the Act will be:

(1) Normally not later than 140 days in an antidumping investigation (65 days in a countervailing duty investigation) after the date on which the Secretary initiated the investigation (see section 703(b)(1) or section 733(b)(1)(A) of the Act);

(2) Not later than 190 days in an antidumping investigation (130 days in a countervailing duty investigation) after the date on which the Secretary initiated the investigation if the Secretary postpones the preliminary determination at petitioner's request or because the Secretary determines that the investigation is extraordinarily complicated (see section 703(c)(1) or section 733(c)(1) of the Act);

(3) In a countervailing duty investigation, not later than 250 days after the date on which the proceeding began if the Secretary postpones the preliminary determination due to an upstream subsidy allegation (up to 310 days if the Secretary also postponed the preliminary determination at the request of the petitioner or because the Secretary determined that the investigation is extraordinarily complicated) (see section 703(c)(1) and section 703(g)(1) of the Act);

(4) Within 90 days after initiation in an antidumping investigation, and on an expedited basis in a countervailing duty investigation, where verification has been waived (see section 703(b)(3) or section 733(b)(2) of the Act);

(5) In a countervailing duty investigation, on an expedited basis and within 65 days after the date on which the Secretary initiated the investigation if the sole subsidy alleged in the petition was the derogation of an international undertaking on official export credits (see section 702(b)(3) and section 703(b)(2) of the Act);

(6) In a countervailing duty investigation, not later than 60 days after the date on which the Secretary initiated the investigation if the only subsidy under investigation is a subsidy with respect to which the Secretary received notice from the United States Trade Representative of a violation of Article 8 of the Subsidies Agreement (see section 703(b)(5) of the Act); and

(7) In an antidumping investigation, within the deadlines set forth in section 733(b)(1)(B) of the Act if the investigation involves short life cycle merchandise (see section 733(b)(1)(B) and section 739 of the Act).

(c) *Contents of preliminary determination and publication of notice.* A preliminary determination will include a preliminary finding on critical circumstances, if appropriate, under section 703(e)(1) or section 733(e)(1) of the Act (whichever is applicable). The Secretary will publish in the **Federal Register** notice of "Affirmative (Negative) Preliminary Antidumping (Countervailing Duty) Determination," including the rates, if any, and an invitation for argument consistent with § 351.309.

(d) *Effect of affirmative preliminary determination.* If the preliminary determination is affirmative, the Secretary will take the actions described in section 703(d) or section 733(d) of the Act (whichever is applicable). In making information available to the Commission under section 703(d)(3) or section 733(d)(3) of the Act, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the preliminary determination and which the Commission may consider relevant to its injury determination.

(e) *Postponement at the request of the petitioner.* A petitioner must submit a request for postponement of the preliminary determination (see section 703(c)(1)(A) or section 733(c)(1)(A) of the Act) 25 days or more before the scheduled date of the preliminary determination, and must state the reasons for the request. The Secretary will grant the request, unless the Secretary finds compelling reasons to deny the request.

(f) *Notice of postponement.* (1) If the Secretary decides to postpone the preliminary determination at the request of the petitioner or because the investigation is extraordinarily complicated, the Secretary will notify all parties to the proceeding not later than 20 days before the scheduled date of the preliminary determination, and will publish in the **Federal Register** notice of "Postponement of Preliminary Antidumping (Countervailing Duty) Determination," stating the reasons for the postponement (see section 703(c)(2) or section 733(c)(2) of the Act).

(2) If the Secretary decides to postpone the preliminary determination due to an allegation of upstream subsidies, the Secretary will notify all parties to the proceeding not later than the scheduled date of the preliminary determination and will publish in the **Federal Register** notice of "Postponement of Preliminary Countervailing Duty Determination," stating the reasons for the postponement.

§ 351.206 Critical circumstances.

(a) *Introduction.* Generally, antidumping or countervailing duties are imposed on entries of merchandise made on or after the date on which the Secretary first imposes provisional measures (most often the date on which notice of an affirmative preliminary determination is published in the **Federal Register**). However, if the Secretary finds that "critical circumstances" exist, duties may be

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imposed retroactively on merchandise entered up to 90 days before the imposition of provisional measures. This section contains procedural and substantive rules regarding allegations and findings of critical circumstances.

(b) *In general.* If a petitioner submits to the Secretary a written allegation of critical circumstances, with reasonably available factual information supporting the allegation, 21 days or more before the scheduled date of the Secretary's final determination, or on the Secretary's own initiative in a self-initiated investigation, the Secretary will make a finding whether critical circumstances exist, as defined in section 705(a)(2) or section 735(a)(3) of the Act (whichever is applicable).

(c) *Preliminary finding.* (1) If the petitioner submits an allegation of critical circumstances 30 days or more before the scheduled date of the Secretary's final determination, the Secretary, based on the available information, will make a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist, as defined in section 703(e)(1) or section 733(e)(1) of the Act (whichever is applicable).

(2) The Secretary will issue the preliminary finding:

(i) Not later than the preliminary determination, if the allegation is submitted 20 days or more before the scheduled date of the preliminary determination; or

(ii) Within 30 days after the petitioner submits the allegation, if the allegation is submitted later than 20 days before the scheduled date of the preliminary determination. The Secretary will notify the Commission and publish in the **Federal Register** notice of the preliminary finding.

(d) *Suspension of liquidation.* If the Secretary makes an affirmative preliminary finding of critical circumstances, the provisions of section 703(e)(2) or section 733(e)(2) of the Act (whichever is applicable) regarding the retroactive suspension of liquidation will apply.

(e) *Final finding.* For any allegation of critical circumstances submitted 21 days or more before the scheduled date of the Secretary's final determination, the Secretary will make a final finding on critical circumstances, and will take appropriate action under section 705(c)(4) or section 735(c)(4) of the Act (whichever is applicable).

(f) *Findings in self-initiated investigations.* In a self-initiated investigation, the Secretary will make preliminary and final findings on critical circumstances without regard to the time limits in paragraphs (c) and (e) of this section.

(g) *Information regarding critical circumstances.* The Secretary may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise if, at any time after the initiation of an investigation, the Secretary makes the findings described in section 702(e) or section 732(e) of the Act (whichever is applicable) regarding the possible existence of critical circumstances.

(h) *Massive imports.* (1) In determining whether imports of the subject merchandise have been massive under section 705(a)(2)(B) or section 735(a)(3)(B) of the Act, the Secretary normally will examine:

(i) The volume and value of the imports;

(ii) Seasonal trends; and

(iii) The share of domestic consumption accounted for by the imports.

(2) In general, unless the imports during the "relatively short period" (see paragraph (i) of this section) have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.

(i) *Relatively short period.* Under section 705(a)(2)(B) or section 735(a)(3)(B) of the Act, the Secretary normally will consider a "relatively short period" as the period beginning on the date the proceeding begins and ending at least three months later. However, if the Secretary finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a period of not less than three months from that earlier time.

§ 351.207 Termination of investigation.

(a) *Introduction.* "Termination" is a term of art that refers to the end of an antidumping or countervailing duty proceeding in which an order has not yet been issued. The Act establishes a variety of mechanisms by which an investigation may be terminated, most of which are dealt with in this section. For rules regarding the termination of a suspended investigation following a review under section 751 of the Act, see § 351.222.

(b) *Withdrawal of petition; self-initiated investigations.* (1) *In general.* The Secretary may terminate an investigation under section 704(a)(1)(A) or section 734(a)(1)(A) (withdrawal of petition) or under section 704(k) or section 734(k) (self-initiated investigation) of the Act, provided that the Secretary concludes that termination is in the public interest. If the Secretary terminates an investigation, the Secretary will publish in the **Federal Register** notice of "Termination of Antidumping (Countervailing Duty) Investigation," together with, when appropriate, a copy of any correspondence with the petitioner forming the basis of the withdrawal and the termination. (For the treatment in a subsequent investigation of records compiled in an investigation in which the petition was withdrawn, see section 704(a)(1)(B) or section 734(a)(1)(B) of the Act.)

(2) *Withdrawal of petition based on acceptance of quantitative restriction agreements.* In addition to the requirements of paragraph (b)(1) of this section, if a termination is based on the acceptance of an understanding or other kind of agreement to limit the volume of imports into the United States of the subject merchandise, the Secretary will apply the provisions of section 704(a)(2) or section 734(a)(2) of the Act (whichever is applicable) regarding public interest and consultations with consuming industries and producers and workers.

(c) *Lack of interest.* The Secretary may terminate an investigation based upon lack of interest (see section 782(h)(1) of the Act). Where the Secretary terminates an investigation under this paragraph, the Secretary will publish the notice described in paragraph (b)(1) of this section.

(d) *Negative determination.* An investigation terminates automatically upon publication in the **Federal Register** of the Secretary's negative final determination or the Commission's negative preliminary or final determination.

(e) *End of suspension of liquidation.* When an investigation terminates, if the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the date of publication of the notice of termination referred to in paragraph (b) of this section or on the date of publication of a negative determination referred to in paragraph (d) of this section, and will instruct the Customs Service to release any cash deposit or bond.

§ 351.208 Suspension of investigation.

(a) *Introduction.* In addition to the imposition of duties, the Act also permits the Secretary to suspend an antidumping or countervailing duty investigation by accepting a suspension agreement (referred to in the WTO Agreements as an "undertaking"). Briefly, in a suspension agreement, the exporters and producers or the foreign government agree to modify their behavior so as to eliminate dumping or subsidization or the injury caused thereby. If the Secretary accepts a suspension agreement, the Secretary will "suspend" the investigation and thereafter will monitor compliance with the agreement. This section contains rules for entering into suspension agreements and procedures for suspending an investigation.

(b) *In general.* The Secretary may suspend an investigation under section 704 or section 734 of the Act and this section.

(c) *Definition of "substantially all."* Under section 704 and section 734 of the Act, exporters that account for "substantially all" of the merchandise means exporters and producers that have accounted for not less than 85 percent by value or volume of the subject merchandise during the period for which the Secretary is measuring dumping or countervailable subsidization in the investigation or such other period that the Secretary considers representative.

(d) *Monitoring.* In monitoring a suspension agreement under section 704(c), section 734(c), or section 734(l) of the Act (agreements to eliminate injurious effects or to restrict the volume of imports), the Secretary will not be obliged to ascertain on a continuing basis the prices in the United States of the subject merchandise or of domestic like products.

(e) *Exports not to increase during interim period.* The Secretary will not accept a suspension agreement under section 704(b)(2) or section 734(b)(1) of the Act (elimination of dumping or countervailable subsidization or the cessation of exports) unless the agreement ensures that the quantity of the subject merchandise exported during the interim period set forth in the agreement does not exceed the quantity of the merchandise exported during a period of comparable duration that the Secretary considers representative.

(f) *Procedure for suspension of investigation.*

(1) *Submission of proposed suspension agreement.* (i) *In general.* As appropriate, the exporters and producers or, in an investigation involving a nonmarket economy country, the government, must submit to the Secretary a proposed suspension agreement within:

(A) In an antidumping investigation, 15 days after the date of issuance of the preliminary determination, or

(B) In a countervailing duty investigation, 5 days after the date of issuance of the preliminary determination. Where a proposed suspension agreement is submitted in an antidumping investigation, an exporter or producer or, in an antidumping investigation involving a nonmarket economy country, the government, may request postponement of the final determination under section 735(a)(2) of the Act (see § 351.210(e)). Where the final determination in a countervailing duty investigation is postponed under section 703(g)(2) or section 705(a)(1) of the Act (see § 351.210(b)(3) and § 351.210(i)), the time limits in paragraphs (f)(1)(i), (f)(2)(i), (f)(3), and (g)(1) of this section applicable to countervailing duty investigations will be extended to coincide with the time limits in such paragraphs applicable to antidumping investigations.

(ii) *Special rule for regional industry determination.* If the Commission makes a regional industry determination in its final affirmative determination under section 705(b) or section 735(b) of the Act but not in its preliminary affirmative determination under section 703(a) or section 733(a) of the Act, the exporters and producers or, in an investigation involving a nonmarket economy country, the government, must submit to the Secretary any proposed suspension agreement within 15 days of the publication in the **Federal Register** of the antidumping or countervailing duty order.

(2) *Notification and consultation.* In fulfilling the requirements of section 704 or section 734 of the Act (whichever is applicable), the Secretary will take the following actions:

(i) *In general.* The Secretary will notify all parties to the proceeding of the proposed suspension of an investigation and provide to the petitioner a copy of the suspension agreement preliminarily accepted by the Secretary (the agreement must contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of section 704 or section 734 of the Act) within:

(A) In an antidumping investigation, 30 days after the date of issuance of the preliminary determination, or

(B) In a countervailing duty investigation, 15 days after the date of issuance of the preliminary determination; or

(ii) *Special rule for regional industry determination.* If the Commission makes a regional industry determination in its final affirmative determination under section 705(b) or section 735(b) of the Act but not in its preliminary affirmative determination under section 703(a) or section 733(a) of the Act, the Secretary, within 15 days of the submission of a proposed suspension agreement under paragraph (f)(1)(ii) of this section, will notify all parties to the proceeding of the proposed suspension agreement and provide to the petitioner a copy of the agreement preliminarily accepted by the Secretary (such agreement must contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of section 704 or section 734 of the Act); and

(iii) *Consultation.* The Secretary will consult with the petitioner concerning the proposed suspension of the investigation.

(3) *Opportunity for comment.* The Secretary will provide all interested parties and United States government agencies an opportunity to submit written argument and factual information concerning the proposed suspension of the investigation within:

(i) In an antidumping investigation, 50 days after the date of issuance of the preliminary determination,

(ii) In a countervailing duty investigation, 35 days after the date of issuance of the preliminary determination, or

(iii) In a regional industry case described in paragraph (f)(1)(ii) of this section, 35 days after the date of issuance of an order.

(g) *Acceptance of suspension agreement.*

(1) The Secretary may accept an agreement to suspend an investigation within:

(i) In an antidumping investigation, 60 days after the date of issuance of the preliminary determination,

(ii) In a countervailing duty investigation, 45 days after the date of issuance of the preliminary determination, or

(iii) In a regional industry case described in paragraph (f)(1)(ii) of this section, 45 days after the date of issuance of an order.

(2) If the Secretary accepts an agreement to suspend an investigation, the Secretary will take the actions described in section 704(f), section 704(m)(3), section 734(f), or section 734(l)(3) of the Act (whichever is applicable), and will publish in the **Federal Register** notice of "Suspension of Antidumping (Countervailing Duty) Investigation," including the text of the agreement. If the Secretary has not

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already published notice of an affirmative preliminary determination, the Secretary will include that notice. In accepting an agreement, the Secretary may rely on factual or legal conclusions the Secretary reached in or after the affirmative preliminary determination.

(h) *Continuation of investigation.* (1) A request to the Secretary under section 704(g) or section 734(g) of the Act for the continuation of the investigation must be made in writing. In addition, the request must be simultaneously filed with the Commission, and the requester must so certify in submitting the request to the Secretary.

(2) If the Secretary and the Commission make affirmative final determinations in an investigation that has been continued, the suspension agreement will remain in effect in accordance with the factual and legal conclusions in the Secretary's final determination. If either the Secretary or the Commission makes a negative final determination, the agreement will have no force or effect.

(i) *Merchandise imported in excess of allowed quantity.* (1) The Secretary may instruct the Customs Service not to accept entries, or withdrawals from warehouse, for consumption of subject merchandise in excess of any quantity allowed by a suspension agreement under section 704 or section 734 of the Act, including any quantity allowed during the interim period (see paragraph (e) of this section).

(2) Imports in excess of the quantity allowed by a suspension agreement, including any quantity allowed during the interim period (see paragraph (e) of this section), may be exported or destroyed under Customs Service supervision, except that if the agreement is under section 704(c)(3) or section 734(l) of the Act (restrictions on the volume of imports), the excess merchandise, with the approval of the Secretary, may be held for future opening under the agreement by placing it in a foreign trade zone or by entering it for warehouse.

§ 351.209 Violation of suspension agreement.

(a) *Introduction.* A suspension agreement remains in effect until the underlying investigation is terminated (see §§ 351.207 and 351.222). However, if the Secretary finds that a suspension agreement has been violated or no longer meets the requirements of the Act, the Secretary may either cancel or revise the agreement. This section contains rules regarding cancellation and revisions of suspension agreements.

(b) *Immediate determination.* If the Secretary determines that a signatory has violated a suspension agreement, the Secretary, without providing interested parties an opportunity to comment, will:

(1) Order the suspension of liquidation in accordance with section 704(i)(1)(A) or section 734(i)(1)(A) of the Act (whichever is applicable) of all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (i) 90 days before the date of publication of the notice of cancellation of the agreement or (ii) the date of first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which was in violation of the agreement;

(2) If the investigation was not completed under section 704(g) or section 734(g) of the Act, resume the investigation as if the Secretary had made an affirmative preliminary determination on the date of publication of the notice of cancellation, update previously submitted information where the Secretary deems it appropriate to do so, and impose provisional measures by instructing the Customs Service to require for each entry of the subject merchandise suspended under paragraph (b)(1) of this section a cash deposit or bond at the rates determined in the affirmative preliminary determination;

(3) If the investigation was completed under section 704(g) or section 734(g) of the Act, issue an antidumping order or countervailing duty order (whichever is applicable), and, for all entries subject to suspension of liquidation under paragraph (b)(1) of this section, instruct the Customs Service to require for each entry of the merchandise suspended under this paragraph a cash deposit at the rates determined in the affirmative final determination;

(4) Notify all persons who are or were parties to the proceeding, the Commission, and, if the Secretary determines that the violation was intentional, the Commissioner of Customs; and

(5) Publish in the **Federal Register** notice of "Antidumping (Countervailing Duty) Order (Resumption of Antidumping (Countervailing Duty) Investigation); Cancellation of Suspension Agreement."

(c) *Determination after notice and comment.* (1) If the Secretary has reason to believe that a signatory has violated a suspension agreement, or that an agreement no longer meets the requirements of section 704(d)(1) or section 734(d) of the Act, but the Secretary does not have sufficient information to determine that a signatory has violated the agreement (see paragraph (b) of this section), the Secretary will publish in the **Federal Register** notice of "Invitation for Comment on Antidumping (Countervailing Duty) Suspension Agreement."

(2) After publication of the notice inviting comment and after consideration of comments received the Secretary will:

(i) Determine whether any signatory has violated the suspension agreement; or

(ii) Determine whether the suspension agreement no longer meets the requirements of section 704(d)(1) or section 734(d) of the Act.

(3) If the Secretary determines that a signatory has violated the suspension agreement, the Secretary will take appropriate action as described in paragraphs (b)(1) through (b)(5) of this section.

(4) If the Secretary determines that a suspension agreement no longer meets the requirements of section 704(d)(1) or section 734(d) of the Act, the Secretary will:

(i) Take appropriate action as described in paragraphs (b)(1) through (b)(5) of this section; except that, under paragraph (b)(1)(ii) of this section, the Secretary will order the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of 90 days before the date of publication of the notice of suspension of liquidation or the date of first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which does not meet the requirements of section 704(d)(1) of the Act;

(ii) Continue the suspension of investigation by accepting a revised suspension agreement under section 704(b) or section 734(b) of the Act (whether or not the Secretary accepted the original agreement under such section) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) or section 734(d) of the Act, and publish in the **Federal Register** notice of "Revision of Agreement Suspending Antidumping (Countervailing Duty) Investigation"; or

(iii) Continue the suspension of investigation by accepting a revised suspension agreement under section 704(c), section 734(c), or section 734(l) of the Act (whether or not the Secretary accepted the original agreement under such section) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) or section 734(d) of the Act, and publish in the **Federal Register**

notice of "Revision of Agreement Suspending Antidumping (Countervailing Duty) Investigation." If the Secretary continues to suspend an investigation based on a revised agreement accepted under section 704(c), section 734(c), or section 734(l) of the Act, the Secretary will order suspension of liquidation to begin. The suspension will not end until the Commission completes any requested review of the revised agreement under section 704(h) or section 734(h) of the Act. If the Commission receives no request for review within 20 days after the date of publication of the notice of the revision, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication, and will instruct the Customs Service to release any cash deposit or bond. If the Commission undertakes a review under section 704(h) or section 734(h) of the Act, the provisions of sections 704(h)(2) and (3) and sections 734(h)(2) and (3) of the Act will apply.

(5) If the Secretary decides neither to consider the suspension agreement violated nor to revise the agreement, the Secretary will publish in the **Federal Register** notice of the Secretary's decision under paragraph (c)(2) of this section, including a statement of the factual and legal conclusions on which the decision is based.

(d) *Additional signatories.* If the Secretary decides that a suspension agreement no longer will completely eliminate the injurious effect of exports to the United States of subject merchandise under section 704(c)(1) or section 734(c)(1) of the Act, or that the signatory exporters no longer account for substantially all of the subject merchandise, the Secretary may revise the agreement to include additional signatory exporters.

(e) *Definition of "violation."* Under this section, "violation" means noncompliance with the terms of a suspension agreement caused by an act or omission of a signatory, except, at the discretion of the Secretary, an act or omission which is inadvertent or inconsequential.

§ 351.210 Final determination.

(a) *Introduction.* A "final determination" in an antidumping or countervailing duty investigation constitutes a final decision by the Secretary as to whether dumping or countervailable subsidization is occurring. If the final determination is negative, the proceeding, including the injury investigation conducted by the Commission, terminates. If the final determination is affirmative, in most instances the Commission issues a final injury determination. In addition, if the preliminary determination was negative but the final determination is affirmative, the Secretary will impose provisional measures. This section contains rules regarding deadlines for, and postponement of, final determinations, contents of final determinations, and the effects of final determinations.

(b) *Deadline for final determination.* The deadline for a final determination under section 705(a)(1) or section 735(a)(1) of the Act will be:

(1) Normally, not later than 75 days after the date of the Secretary's preliminary determination (see section 705(a)(1) or section 735(a)(1) of the Act);

(2) In an antidumping investigation, not later than 135 days after the date of publication of the preliminary determination if the Secretary postpones the final determination at the request of:

(i) The petitioner, if the preliminary determination was negative (see section 735(a)(2)(B) of the Act); or

(ii) Exporters or producers who account for a significant proportion of exports of the subject merchandise, if the preliminary determination was affirmative (see section 735(a)(2)(A) of the Act);

(3) In a countervailing duty investigation, not later than 165 days after the preliminary determination, if, after the preliminary determination, the Secretary decides to investigate an upstream subsidy allegation and concludes that additional time is needed to investigate the allegation (see section 703(g)(2) of the Act); or

(4) In a countervailing duty investigation, the same date as the date of the final antidumping determination, if:

(i) In a situation where the Secretary simultaneously initiated antidumping and countervailing duty investigations on the subject merchandise (from the same or other countries), the petitioner requests that the final countervailing duty determination be postponed to the date of the final antidumping determination; and

(ii) If the final countervailing duty determination is not due on a later date because of postponement due to an allegation of upstream subsidies under section 703(g) of the Act (see section 705(a)(1) of the Act).

(c) *Contents of final determination and publication of notice.* The final determination will include, if appropriate, a final finding on critical circumstances under section 705(a)(2) or section 735(a)(3) of the Act (whichever is applicable). The Secretary will publish in the **Federal Register** notice of "Affirmative (Negative) Final Antidumping (Countervailing Duty) Determination," including the rates, if any.

(d) *Effect of affirmative final determination.* If the final determination is affirmative, the Secretary will take the actions described in section 705(c)(1) or section 735(c)(1) of the Act (whichever is applicable). In addition, in the case of a countervailing duty investigation involving subject merchandise from a country that is not a Subsidies Agreement country, the Secretary will instruct the Customs Service to require a cash deposit, as provided in section 706(a)(3) of the Act, for each entry of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the order under section 706(a) of the Act.

(e) *Request for postponement of final antidumping determination.* A request to postpone a final antidumping determination under section 735(a)(2) of the Act (see paragraph (b)(2) of this section) must be submitted in writing within the scheduled date of the final determination. The Secretary may grant the request, unless the Secretary finds compelling reasons to deny the request.

(f) *Deferral of decision concerning upstream subsidization to review.* Notwithstanding paragraph (b)(3) of this section, if the petitioner so requests in writing and the preliminary countervailing duty determination was affirmative, the Secretary, instead of postponing the final determination, may defer a decision concerning upstream subsidization until the conclusion of the first administrative review of a countervailing duty order, if any (see section 703(g)(2)(B)(i) of the Act).

(g) *Notification of postponement.* If the Secretary postpones a final determination under paragraph (b)(2), (b)(3), or (b)(4) of this section, the Secretary will notify promptly all parties to the proceeding of the postponement, and will publish in the **Federal Register** notice of "Postponement of Final Antidumping (Countervailing Duty) Determination," stating the reasons for the postponement.

(h) *Termination of suspension of liquidation in a countervailing duty investigation.* If the Secretary postpones a final countervailing duty determination, the Secretary will end any suspension of liquidation ordered in the preliminary determination not later than 120 days after the date of publication of the preliminary determination, and will not resume it unless and until the Secretary publishes a countervailing duty order.

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(i) *Postponement of final countervailing duty determination for simultaneous investigations.* A request by the petitioner to postpone a final countervailing duty determination to the date of the final antidumping determination must be submitted in writing within five days of the date of publication of the preliminary countervailing duty determination (see section 705(a)(1) and paragraph (b)(4) of this section).

(j) *Commission access to information.* If the final determination is affirmative, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the final determination and that the Commission may consider relevant to its injury determination (see section 705(c)(1)(A) or section 735(c)(1)(A) of the Act).

(k) *Effect of negative final determination.* An investigation terminates upon publication in the **Federal Register** of the Secretary's or the Commission's negative final determination, and the Secretary will take the relevant actions described in section 705(c)(2) or section 735(c)(2) of the Act (whichever is applicable).

§ 351.211 Antidumping order and countervailing duty order.

(a) *Introduction.* The Secretary issues an order when both the Secretary and the Commission (except in the case of merchandise from a non-Subsidies Agreement country) have made final affirmative determinations. The issuance of an order ends the investigative phase of a proceeding. Generally, upon the issuance of an order, importers no longer may post bonds as security for antidumping or countervailing duties, but instead must make a cash deposit of estimated duties. An order remains in effect until it is revoked. This section contains rules regarding the issuance of orders in general, as well as special rules for orders where the Commission has found a regional industry to exist.

(b) *In general.* Not later than seven days after receipt of notice of an affirmative final injury determination by the Commission under section 705(b) or section 735(b) of the Act, or, in a countervailing duty proceeding involving subject merchandise from a country not entitled to an injury test (see § 351.101(b)), simultaneously with publication of an affirmative final countervailing duty determination by the Secretary, the Secretary will publish in the **Federal Register** an "Antidumping Order" or "Countervailing Duty Order" that:

(1) Instructs the Customs Service to assess antidumping duties or countervailing duties (whichever is applicable) on the subject merchandise, in accordance with the Secretary's instructions at the completion of each review requested under § 351.213(b) (administrative review), § 351.214(b) (new shipper review), or § 351.215(b) (expedited antidumping review), or if a review is not requested, in accordance with the Secretary's assessment instructions under § 351.212(c);

(2) Instructs the Customs Service to require a cash deposit of estimated antidumping or countervailing duties at the rates included in the Secretary's final determination; and

(3) Orders the suspension of liquidation ended for all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's final determination, and instructs the Customs Service to release the cash deposit or bond on those entries, if in its final determination, the Commission found a threat of material injury or material retardation of the establishment of an industry, unless the Commission in its final determination also found that, absent the suspension of liquidation ordered under section 703(d)(2) or section 733(d)(2) of the Act, it would have found material injury (see section 706(b) or section 736(b) of the Act).

(c) *Special rule for regional industries.* (1) *In general.* If the Commission, in its affirmative final injury determination, finds a regional industry under section 771(4)(C) of the Act, the Secretary will, to the maximum extent possible, modify the contents of an order in a manner consistent with section 706(c) or section 736(d) of the Act (whichever is applicable).

(2) *Request for exception from the assessment of duties.* An exporter or producer seeking an exception from the assessment of antidumping or countervailing duties (see section 706(c) or section 736(d) of the Act) must submit a certification that it did not export subject merchandise for sale in the region concerned during the period of investigation, and that it will not do so in the future so long as the antidumping or countervailing duty order is in effect. In addition, each such exporter or producer must submit a certification from each of its U.S. importers of the subject merchandise that no subject merchandise of that exporter or producer was entered into the United States outside such region and then sold into the region during or after the period of investigation. These certificates must be submitted to the Secretary no later than fifteen days after the issuance of the Commission's affirmative final determination.

§ 351.212 Assessment of antidumping and countervailing duties; provisional measures deposit cap; interest on certain overpayments and underpayments.

(a) *Introduction.* Unlike the systems of some other countries, the United States uses a "retrospective" assessment system under which final liability for antidumping and countervailing duties is determined after merchandise is imported. Generally, the amount of duties to be assessed is determined in a review of the order covering a discrete period of time. If a review is not requested, duties are assessed at the rate established in the completed review covering the most recent prior period or, if no review has been completed, the cash deposit rate applicable at the time merchandise was entered. This section contains rules regarding the assessment of duties, the provisional measures deposit cap, and interest on over- or undercollections of estimated duties.

(b) *Assessment of antidumping and countervailing duties as the result of a review.*

(1) *Antidumping duties.* If the Secretary has conducted a review of an antidumping order under § 351.213 (administrative review), § 351.214 (new shipper review), or § 351.215 (expedited antidumping review), the Secretary normally will calculate an assessment rate for each importer of subject merchandise covered by the review. The Secretary normally will calculate the assessment rate by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal customs duty purposes. The Secretary then will instruct the Customs Service to assess antidumping duties by applying the assessment rate to the entered value of the merchandise.

(2) *Countervailing duties.* If the Secretary has conducted a review of a countervailing duty order under § 351.213 (administrative review) or § 351.214 (new shipper review), the Secretary normally will instruct the Customs Service to assess countervailing duties by applying the rates included in the final results of the review to the entered value of the merchandise.

(c) *Automatic assessment of antidumping and countervailing duties if no review is requested.*

(1) If the Secretary does not receive a timely request for an administrative review of an order (see paragraph (b)(1), (b)(2), or (b)(3) of § 351.213), the Secretary, without additional notice, will instruct the Customs Service to (i) assess antidumping duties or countervailing duties, as the case may be, on the subject merchandise described in § 351.213(e) at rates equal to the rates determined in the most recently completed segment of the proceeding, and (ii) to continue to collect the cash deposits previously ordered.

(2) If the Secretary receives a timely request for an administrative review of an order (see paragraph (b)(1), (b)(2), or (b)(3) of § 351.213), the Secretary will instruct the Customs Service to assess antidumping duties or countervailing duties, and to continue to collect cash deposits, on the merchandise not covered by the request in accordance with paragraph (c)(1) of this section.

(3) The automatic assessment provisions of paragraphs (c)(1) and (c)(2) of this section will not apply to subject merchandise that is the subject of a new shipper review (see § 351.214) or an expedited antidumping review (see § 351.215).

(d) *Provisional measures deposit cap.* This paragraph applies to subject merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's notice of an affirmative final injury determination or, in a countervailing duty proceeding that involves merchandise from a country that is not entitled to an injury test, the date of the Secretary's notice of an affirmative final countervailing duty determination. If the amount of duties that would be assessed by applying the rates included in the Secretary's affirmative preliminary or affirmative final antidumping or countervailing duty determination ("provisional duties") is different from the amount of duties that would be assessed by applying the assessment rate under paragraphs (b)(1) and (b)(2) of this section ("final duties"), the Secretary will instruct the Customs Service to disregard the difference to the extent that the provisional duties are less than the final duties, and to assess antidumping or countervailing duties at the assessment rate if the provisional duties exceed the final duties.

(e) *Interest on certain overpayments and underpayments.* Under section 778 of the Act, the Secretary will instruct the Customs Service to calculate interest for each entry on or after the publication of the order from the date that a cash deposit is required to be deposited for the entry through the date of liquidation of the entry.

§ 351.213 Administrative review of orders and suspension agreements under section 751(a)(1) of the Act.

(a) *Introduction.* As noted in § 351.212(a), the United States has a "retrospective" assessment system under which final liability for antidumping and countervailing duties is determined after merchandise is imported. Although duty liability may be determined in the context of other types of reviews, the most frequently used procedure for determining final duty liability is the administrative review procedure under section 751(a)(1) of the Act. This section contains rules regarding requests for administrative reviews and the conduct of such reviews.

(b) *Request for administrative review.* (1) Each year during the anniversary month of the publication of an antidumping or countervailing duty order, a domestic interested party or an interested party described in section 771(9)(B) of the Act (foreign government) may request in writing that the Secretary conduct an administrative review under section 751(a)(1) of the Act of specified individual exporters or producers covered by an order (except for a countervailing duty order in which the investigation or prior administrative review was conducted on an aggregate basis), if the requesting person states why the person desires the Secretary to review those particular exporters or producers.

(2) During the same month, an exporter or producer covered by an order (except for a countervailing duty order in which the investigation or prior administrative review was conducted on an aggregate basis) may request in writing that the Secretary conduct an administrative review of only that person.

(3) During the same month, an importer of the merchandise may request in writing that the Secretary conduct an administrative review of only an exporter or producer (except for a countervailing duty order in which the investigation or prior administrative review was conducted on an aggregate basis) of the subject merchandise imported by that importer.

(4) Each year during the anniversary month of the publication of a suspension of investigation, an interested party may request in writing that the Secretary conduct an administrative review of all producers or exporters covered by an agreement on which the suspension of investigation was based.

(c) *Deferral of administrative review.* (1) *In general.* The Secretary may defer the initiation of an administrative review, in whole or in part, for one year if:

(i) The request for administrative review is accompanied by a request that the Secretary defer the review, in whole or in part; and

(ii) The exporter or producer for which deferral is requested, importers of subject merchandise of that exporter or producer, domestic interested parties, or, in a countervailing duty proceeding, the foreign government do not object to the deferral.

(2) *Timeliness of objection to deferral.* An objection to a deferral of the initiation of administrative review under paragraph (c)(1)(ii) of this section must be submitted within 15 days after the end of the anniversary month in which the administrative review is requested.

(3) *Procedures and deadlines.* If the Secretary defers the initiation of an administrative review, the Secretary will publish notice of the deferral in the **Federal Register**. The Secretary will initiate the administrative review in the month immediately following the next anniversary month, and the deadline for issuing preliminary results of review (see paragraph (h)(1) of this section) will run from the last day of the next anniversary month.

(d) *Rescission of administrative review.* (1) *Withdrawal of request for review.* The Secretary may rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request not later than 90 days after the date of publication of notice of initiation of the requested review.

(2) *Self-initiated review.* The Secretary may rescind an administrative review that was self-initiated by the Secretary.

(3) *No shipments.* The Secretary may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be.

(4) *Notice of rescission.* If the Secretary rescinds an administrative review (in whole or in part), the Secretary will publish in the **Federal Register** notice of "Rescission of Antidumping (Countervailing Duty) Administrative Review" or, if appropriate, "Partial Rescission of Antidumping (Countervailing Duty) Administrative Review."

(e) *Period of review.* (1) *Antidumping proceedings.* (i) Except as provided in paragraph (e)(1)(ii) of this section, an administrative review under this section normally will cover, as appropriate, entries, exports, or sales of the subject

merchandise during the 12 months immediately preceding the most recent anniversary month.

(ii) For requests received during the first anniversary month after publication of an order or suspension of investigation, an administrative review under this section will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part or suspension of investigation to the end of the month immediately preceding the first anniversary month.

(2) *Countervailing duty proceedings.* (i) Except as provided in paragraph (e)(2)(ii) of this section, an administrative review under this section normally will cover entries or exports of the subject merchandise during the most recently completed calendar year. If the review is conducted on an aggregate basis, the Secretary normally will cover entries or exports of the subject merchandise during the most recently completed fiscal year for the government in question.

(ii) For requests received during the first anniversary month after publication of an order or suspension of investigation, an administrative review under this section will cover entries or exports, as appropriate, during the period from the date of suspension of liquidation under this part or suspension of investigation to the end of the most recently completed calendar or fiscal year as described in paragraph (e)(2)(i) of this section.

(f) *Voluntary respondents.* In an administrative review, the Secretary will examine voluntary respondents in accordance with section 782(a) of the Act and § 351.204(d).

(g) *Procedures.* The Secretary will conduct an administrative review under this section in accordance with § 351.221.

(h) *Time limits.* (1) *In general.* The Secretary will issue preliminary results of review (see § 351.221(b)(4)) within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of review (see § 351.221(b)(5)) within 120 days after the date on which notice of the preliminary results was published in the **Federal Register**.

(2) *Exception.* If the Secretary determines that it is not practicable to complete the review within the time specified in paragraph (h)(1) of this section, the Secretary may extend the 245-day period to 365 days and may extend the 120-day period to 180 days. If the Secretary does not extend the time for issuing preliminary results, the Secretary may extend the time for issuing final results from 120 days to 300 days.

(i) *Possible cancellation or revision of suspension agreement.* If during an administrative review the Secretary determines or has reason to believe that a signatory has violated a suspension agreement or that the agreement no longer meets the requirements of section 704 or section 734 of the Act (whichever is applicable), the Secretary will take appropriate action under section 704(i) or section 734(i) of the Act and § 351.209. The Secretary may suspend the time limit in paragraph (h) of this section while taking action under § 351.209.

(j) *Absorption of antidumping duties.* (1) During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping order under § 351.211, or a determination under § 351.218(d) (sunset review), the Secretary, if requested within 30 days of the initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer which is affiliated with such exporter or producer. The Secretary will notify the Commission of its findings regarding such duty absorption.

(2) For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998.

(k) *Administrative reviews of countervailing duty orders conducted on an aggregate basis.*

(1) *Request for zero rate.* Where the Secretary conducts an administrative review of a countervailing duty on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary will consider and review requests for individual assessment and cash deposit rates of zero to the extent practicable. An exporter or producer that desires a zero rate must submit:

(i) A certification by the exporter or producer that it received zero or de minimis net countervailable subsidies during the period of review;

(ii) If the exporter or producer received a countervailable subsidy, calculations demonstrating that the amount of net countervailable subsidies received was de minimis during the period of review;

(iii) If the exporter is not the producer of the subject merchandise, certifications from the suppliers and producers of the subject merchandise that those persons received zero or de minimis net countervailable subsidies during the period of the review; and

(iv) A certification from the government of the affected country that the government did not provide the exporter or producer with more than de minimis net countervailable subsidies during the period of review.

(2) *Application of country-wide subsidy rate.* With the exception of assessment and cash deposit rates of zero determined under paragraph (k)(1) of this section, if, in the final results of an administrative review under this section of a countervailing duty order, the Secretary calculates a single country-wide subsidy rate under section 777A(e)(2)(B) of the Act, that rate will supersede, for cash deposit purposes, all rates previously determined in the countervailing duty proceeding in question.

§ 351.214 New shipper reviews under section 751(a)(2)(B) of the Act.

(a) *Introduction.* The URAA established a new procedure by which so-called "new shippers" can obtain their own individual dumping margin or countervailable subsidy rate on an expedited basis. In general, a new shipper is an exporter or producer that did not export, and is not affiliated with an exporter or producer that did export, to the United States during the period of investigation. This section contains rules regarding requests for new shipper reviews and procedures for conducting such reviews. In addition, this section contains rules regarding requests for expedited reviews by noninvestigated exporters in certain countervailing duty proceedings and procedures for conducting such reviews.

(b) *Request for new shipper review.* A request for a new shipper review under section 751(a)(2)(B) of the Act must contain the following:

(1) If the person requesting the review is both the exporter and producer of the merchandise, a certification that the person requesting the review did not export subject merchandise to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation;

(2) If the person requesting the review is the exporter, but not the producer, of the subject merchandise:

(i) The certification described in paragraph (b)(1) of this section; and

(ii) A certification from the person that produced or supplied the subject merchandise to the person requesting the review that that producer or supplier did not export the subject merchandise to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation;

(3)(i) A certification that, since the investigation was initiated, such exporter or producer has not been affiliated with any exporter or producer who exported the subject merchandise to the United States (or in the case of a regional industry, who exported the subject merchandise for sale in the region concerned) during the period of investigation, including those not individually examined during the investigation;

(ii) In an antidumping proceeding involving imports from a nonmarket economy country, a certification that the export activities of such exporter or producer are not controlled by the central government;

(4) Documentation establishing:

(i) The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot establish the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States;

(ii) The volume of that and subsequent shipments; and

(iii) The date of the first sale to an unaffiliated customer in the United States; and

(5) In the case of a review of a countervailing duty order, a certification that the exporter or producer has informed the government of the exporting country that the government will be required to provide a full response to the Department's questionnaire.

(c) *Deadline for requesting review.* An exporter or producer may request a new shipper review within one year of the date referred to in paragraph (b)(4)(i) of this section.

(d) *Time for new shipper review.* (1) *In general.* The Secretary will initiate a new shipper review under this section in the calendar month immediately following the anniversary month or the semiannual anniversary month if the request for the review is made during the 6-month period ending with the end of the anniversary month or the semiannual anniversary month (whichever is applicable).

(2) *Semiannual anniversary month.* The semiannual anniversary month is the calendar month which is 6 months after the anniversary month.

(3) *Example.* An order is published in January. The anniversary month would be January, and the semiannual anniversary month would be July. If the Secretary received a request for a new shipper review at any time during the period February–July, the Secretary would initiate a new shipper review in August. If the Secretary received a request for a new shipper review at any time during the period August-January, the Secretary would initiate a new shipper review in February.

(e) *Suspension of liquidation; posting bond or security.* When the Secretary initiates a new shipper review under this section, the Secretary will direct the Customs Service to suspend liquidation of any unliquidated entries of the subject merchandise from the relevant exporter or producer, and to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise.

(f) *Rescission of new shipper review.*

(1) *Withdrawal of request for review.* The Secretary may rescind a new shipper review under this section, in whole or in part, if a party that requested a review withdraws its request not later than 60 days after the date of publication of notice of initiation of the requested review.

(2) *No shipments.* The Secretary may rescind a new shipper review, in whole or in part, if the Secretary concludes that:

(i) There have been no entries, exports, or sales, as appropriate, during the normal period of review referred to in paragraph (g) of this section; and

(ii) An expansion of the normal period of review to include entries, exports, or sales would be likely to prevent the completion of the review within the time limits set forth in paragraph (i) of this section.

(3) *Notice of Rescission.* If the Secretary rescinds a new shipper review (in whole or in part), the Secretary will publish in the **Federal Register** notice of "Rescission of Antidumping (Countervailing Duty) New Shipper Review" or, if appropriate, "Partial Rescission of Antidumping (Countervailing Duty) New Shipper Review."

(g) *Period of review.* (1) *Antidumping proceeding.* In an antidumping proceeding, a new shipper review under this section normally will cover, as appropriate, entries, exports, or sales during the following time periods:

(i) If the new shipper review was initiated in the month immediately following the anniversary month, the twelve-month period immediately preceding the anniversary month; or

(ii) If the new shipper review was initiated in the month immediately following the semiannual anniversary month, the period of review will be the six-month period immediately preceding the semiannual anniversary month.

(2) *Countervailing duty proceeding.* In a countervailing duty proceeding, the period of review for a new shipper review under this section will be the same period as that specified in § 351.213(e)(2) for an administrative review.

(h) *Procedures.* The Secretary will conduct a new shipper review under this section in accordance with § 351.221.

(i) *Time limits.* (1) *In general.* Unless the time limit is waived under paragraph (j)(3) of this section, the Secretary will issue preliminary results of review (see § 351.221(b)(4)) within 180 days after the date on which the new shipper review was initiated, and final results of review (see § 351.221(b)(5)) within 90 days after the date on which the preliminary results were issued.

(2) *Exception.* If the Secretary concludes that a new shipper review is extraordinarily complicated, the Secretary may extend the 180-day period to 300 days, and may extend the 90-day period to 150 days.

(j) *Multiple reviews.* Notwithstanding any other provision of this subpart, if a review (or a request for a review) under § 351.213 (administrative review), § 351.214 (new shipper review), § 351.215 (expedited antidumping review), or § 351.216 (changed circumstances review) covers merchandise of an exporter or producer subject to a review (or to a request for a review) under this section, the Secretary may, after consulting with the exporter or producer:

(1) Rescind, in whole or in part, a review in progress under this subpart;

(2) Decline to initiate, in whole or in part, a review under this subpart; or

(3) Where the requesting party agrees in writing to waive the time limits of paragraph (i) of this section, conduct concurrent reviews, in which case all other provisions of this section will continue to apply with respect to the exporter or producer.

(k) *Expedited reviews in countervailing duty proceedings for noninvestigated exporters.* (1) *Request for review.* If, in a countervailing duty investigation, the Secretary limited the number of exporters or producers to be individually examined under section 777A(e)(2)(A) of the Act, an exporter that was not selected for individual examination by the Secretary or that

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was not accepted as a voluntary respondent (see § 351.204(d)) may request a review under this section. A request must be accompanied by a certification that:

(i) The requester exported the subject merchandise to the United States during the period of investigation; and

(ii) The requester is not affiliated with an exporter or producer that was individually examined in the investigation.

(2) *Deadline for requesting review.* An exporter must submit a request for a review under paragraph (k)(1) of this section within 30 days of the date of publication in the **Federal Register** of the countervailing duty order.

(3) *Conduct of review.* The Secretary will initiate and conduct a review in accordance with the provisions of this section applicable to new shipper reviews, except that the Secretary will not permit the posting of a bond or security in lieu of a cash deposit under paragraph (e) of this section.

§ 351.215 Expedited antidumping review and security in lieu of estimated duty under section 736(c) of the Act.

(a) *Introduction.* Exporters and producers individually examined in an investigation normally cannot obtain a review of entries until an administrative review is requested. In addition, when an antidumping order is published, importers normally must begin to make a cash deposit of estimated antidumping duties upon the entry of subject merchandise. Section 736(c), however, establishes a special procedure under which exporters or producers may request an expedited review, and bonds, rather than cash deposits, may continue to be posted for a limited period of time if several criteria are satisfied. This section contains rules regarding requests for expedited antidumping reviews and the procedures applicable to such reviews.

(b) *In general.* If the Secretary determines that the criteria of section 736(c)(1) of the Act are satisfied, the Secretary:

(1) May permit, for not more than 90 days after the date of publication of an antidumping order, the posting of a bond or other security instead of the deposit of estimated antidumping duties required under section 736(a)(3) of the Act; and

(2) Will initiate an expedited antidumping review. Before making such a determination, the Secretary will make business proprietary information available, and will provide interested parties with an opportunity to file written comments, in accordance with section 736(c)(4) of the Act.

(c) *Procedures.* The Secretary will conduct an expedited antidumping review under this section in accordance with § 351.221.

§ 351.216 Changed circumstances review under section 751(b) of the Act.

(a) *Introduction.* Section 751(b) of the Act provides for what is known as a "changed circumstances" review. This section contains rules regarding requests for changed circumstances reviews and procedures for conducting such reviews.

(b) *Requests for changed circumstances review.* At any time, an interested party may request a changed circumstances review, under section 751(b) of the Act, of an order or a suspended investigation.

(c) *Limitation on changed circumstances review.* Unless the Secretary finds that good cause exists, the Secretary will not review a final determination in an investigation (see section 705(a) or section 735(a) of the Act) or a suspended investigation (see section 704 or section 734 of the Act) less than 24 months after the date of publication of notice of the final determination or the suspension of the investigation.

(d) *Procedures.* If the Secretary decides that changed circumstances sufficient to warrant a review exist, the Secretary will conduct a changed circumstances review in accordance with § 351.221.

(e) *Time limits.* The Secretary will issue final results of review (see § 351.221(b)(5)) within 270 days after the date on which the changed circumstances review is initiated.

§ 351.217 Reviews to implement results of subsidies enforcement proceeding under section 751(g) of the Act.

(a) *Introduction.* Section 751(g) provides a mechanism for incorporating into an ongoing countervailing duty proceeding the results of certain subsidy-related disputes under the WTO Subsidies Agreement. Where the United States, in the WTO, has successfully challenged the "nonactionable" (e.g., noncountervailable) status of a foreign subsidy, or where the United States has successfully challenged a prohibited or actionable subsidy, the Secretary may conduct a review to determine the effect, if any, of the successful outcome on an existing countervailing duty order or suspended investigation. This section contains rules regarding the initiation and conduct of reviews under section 751(g).

(b) *Violations of Article 8 of the Subsidies Agreement.* If:

(1) The Secretary receives notice from the Trade Representative of a violation of Article 8 of the Subsidies Agreement;

(2) The Secretary has reason to believe that merchandise subject to an existing countervailing duty order or suspended investigation is benefiting from the subsidy or subsidy program found to have been in violation of Article 8; and

(3) No administrative review is in progress, the Secretary will initiate an Article 8 violation review of the order or suspended investigation to determine whether the subject merchandise benefits from the subsidy or subsidy program found to have been in violation of Article 8 of the Subsidies Agreement.

(c) *Withdrawal of subsidy or imposition of countermeasures.* If the Trade Representative notifies the Secretary that, under Article 4 or Article 7 of the Subsidies Agreement:

(1)(i)(A) The United States has imposed countermeasures; and

(B) Such countermeasures are based on the effects in the United States of imports of merchandise that is the subject of a countervailing duty order; or

(ii) A WTO member country has withdrawn a countervailable subsidy provided with respect to merchandise subject to a countervailing duty order, then

(2) the Secretary will initiate an Article 4/Article 7 review of the order to determine if the amount of estimated duty to be deposited should be adjusted or the order should be revoked.

(d) *Procedures.* The Secretary will conduct an Article 8 violation review or an Article 4/Article 7 review under this section in accordance with § 351.221.

(e) *Expedited reviews.* The Secretary will conduct reviews under this section on an expedited basis.

§ 351.218 Sunset reviews under section 751(c) of the Act.

(a) *Introduction.* The URAA added a new procedure, commonly referred to as "sunset reviews," in section 751(c) of the Act. In general, no later than once every five years, the Secretary must determine whether dumping or countervailable subsidies would be likely to continue or resume if an order were revoked or a suspended investigation were terminated. The Commission must conduct a similar review to determine whether injury would be likely to continue or resume in the absence of an order or suspended investigation. If the determinations under section 751(c) of both the Secretary and the Commission are affirmative, the order (or suspended investigation) remains in place. If either determination is negative, the order will be revoked (or the suspended investigation will be terminated). This section contains rules regarding the procedures for sunset reviews.

(b) *In general.* The Secretary will conduct a sunset review, under section 751(c) of the Act, of each antidumping and countervailing duty order and suspended investigation, and, under section 752(b) or section 752(c) (whichever is applicable), will determine whether revocation of an antidumping or countervailing duty order or termination of a suspended investigation would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy.

(c) *Notice of initiation of review; early initiation.* No later than 30 days before the fifth anniversary date of an order or suspension of an investigation (see section 751(c)(1) of the Act), the Secretary will publish a notice of initiation of a sunset review (see section 751(c)(2) of the Act). The Secretary may publish a notice of initiation at an earlier date if a domestic interested party demonstrates to the Secretary's satisfaction that an early initiation would promote administrative efficiency. However, if the Secretary determines that the domestic interested party that requested early initiation is a related party or an importer under section 771(4)(B) of the Act and § 351.203(e)(4), the Secretary may decline the request for early initiation.

(d) *Conduct of review.* Upon receipt of responses to the notice of initiation that the Secretary deems adequate to conduct a sunset review, the Secretary will conduct a sunset review in accordance with § 351.221.

(e) *Time limits.* (1) *In general.* Unless the review has been completed under section 751(c)(3) of the Act (no or inadequate response) or, under section 751(c)(4)(B) of the Act, all respondent interested parties waived their participation in the Secretary's sunset review, the Secretary will issue final results of review within 240 days after the date on which the review was initiated. If the Secretary concludes that the sunset review is extraordinarily complicated (see section 751(c)(5)(C) of the Act), the Secretary may extend the period for issuing final results by not more than 90 days.

(2) *Transition orders.* The time limits described in paragraph (e)(1) of this section will not apply to a sunset review of a transition order (see section 751(c)(6) of the Act).

§ 351.219 Reviews of countervailing duty orders in connection with an investigation under section 753 of the Act.

(a) *Introduction.* Section 753 of the Act is a transition provision for countervailing duty orders that were issued under section 303 of the Act without an injury determination by the Commission. Under the Subsidies Agreement, one country may not impose countervailing duties on imports from another WTO Member without first making a determination that such imports have caused injury to a domestic industry. Section 753 provides a mechanism for providing an injury test with respect to those "no injury" orders under section 303 that apply to merchandise from WTO Members. This section contains rules regarding (i) requests for section 753 investigations by a domestic interested party; and (ii) the procedures that the Department will follow in reviewing a countervailing duty order and providing the Commission with advice regarding the amount and nature of a countervailable subsidy.

(b) *Notification of domestic interested parties.* The Secretary will notify directly domestic interested parties as soon as possible after the opportunity arises for requesting an investigation by the Commission under section 753 of the Act.

(c) *Initiation and conduct of section 753 review.* Where the Secretary deems it necessary in order to provide to the Commission information on the amount or nature of a countervailable subsidy (see section 753(b)(2) of the Act), the Secretary may initiate a section 753 review of the countervailing duty order in question. The Secretary will conduct a section 753 review in accordance with § 351.221.

§ 351.220 Countervailing duty review at the direction of the President under section 762 of the Act.

At the direction of the President or a designee, the Secretary will conduct a review under section 762(a)(1) of the Act to determine if a countervailable subsidy is being provided with respect to merchandise subject to an understanding or other kind of quantitative restriction agreement accepted under section 704(a)(2) or section 704(c)(3) of the Act. The Secretary will conduct a review under this section in accordance with § 351.221. If the Secretary's final results of review under this section and the Commission's final results of review under section 762(a)(2) of the Act are both affirmative, the Secretary will issue a countervailing duty order and order suspension of liquidation in accordance with section 762(b) of the Act.

§ 351.221 Review procedures.

(a) *Introduction.* The procedures for reviews are similar to those followed in investigations. This section details the procedures applicable to reviews in general, as well as procedures that are unique to certain types of reviews.

(b) *In general.* After receipt of a timely request for a review, or on the Secretary's own initiative when appropriate, the Secretary will:

(1) Promptly publish in the **Federal Register** notice of initiation of the review;

(2) Before or after publication of notice of initiation of the review, send to appropriate interested parties or other persons (or, if appropriate, a sample of interested parties or other persons) questionnaires requesting factual information for the review;

(3) Conduct, if appropriate, a verification under § 351.307;

(4) Issue preliminary results of review, based on the available information, and publish in the **Federal Register** notice of the preliminary results of review that include:

(i) The rates determined, if the review involved the determination of rates; and

(ii) An invitation for argument consistent with § 351.309;

(5) Issue final results of review and publish in the **Federal Register** notice of the final results of review that include the rates determined, if the review involved the determination of rates;

(6) If the type of review in question involves a determination as to the amount of duties to be assessed, promptly after publication of the notice of final results instruct the Customs Service to assess antidumping duties or countervailing duties (whichever is applicable) on the subject merchandise covered by the review, except as otherwise provided in § 351.106(c) with respect to de minimis duties; and

(7) If the review involves a revision to the cash deposit rates for estimated antidumping duties or countervailing duties, instruct the Customs Service to collect cash deposits at the revised rates on future entries.

(c) *Special rules.* (1) *Administrative reviews and new shipper reviews.* In an administrative review under section 751(a)(1) of the Act and § 351.213 and a new shipper review under section 751(a)(2)(B) of the Act and § 351.214 the Secretary:

(i) Will publish the notice of initiation of the review no later than the last day of the month following the anniversary month or the semiannual anniversary month (as the case may be); and

(ii) Normally will send questionnaires no later than 30 days after the date of publication of the notice of initiation.

(2) *Expedited antidumping review.* In an expedited antidumping review under section 736(c) of the Act and § 351.215, the Secretary:

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(i) Will include in the notice of initiation of the review an invitation for argument consistent with § 351.309, and a statement that the Secretary is permitting the posting of a bond or other security instead of a cash deposit of estimated antidumping duties;

(ii) Will instruct the Customs Service to accept, instead of the cash deposit of estimated antidumping duties under section 736(a)(3) of the Act, a bond for each entry of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation of the investigation and through the date not later than 90 days after the date of publication of the order; and

(iii) Will not issue preliminary results of review.

(3) *Changed circumstances review.* In a changed circumstances review under section 751(b) of the Act and § 351.216, the Secretary:

(i) Will include in the preliminary results of review and the final results of review a description of any action the Secretary proposed based on the preliminary or final results; and

(ii) May combine the notice of initiation of the review and the preliminary results of review in a single notice if the Secretary concludes that expedited action is warranted.

(4) *Article 8 Violation review and Article 4/Article 7 review.* In an Article 8 Violation review or an Article 4/Article 7 review under section 751(g) of the Act and § 351.217, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with § 351.309 and will notify all parties to the proceeding at the time the Secretary initiates the review;

(ii) Will not issue preliminary results of review; and

(iii) In the final results of review will indicate the amount, if any, by which the estimated duty to be deposited should be adjusted, and, in an Article 4/Article 7 review, any action, including revocation, that the Secretary will take based on the final results.

(5) *Sunset review.* In a sunset review under section 751(c) of the Act and § 351.218:

(i) The notice of initiation of the review will contain a request for the information described in section 751(c)(2) of the Act; and

(ii) The Secretary, without issuing preliminary results of review, may issue final results of review under paragraphs (3) or (4) of subsection 751(c) of the Act if the conditions of those paragraphs are satisfied.

(6) *Section 753 review.* In a section 753 review under section 753 of the Act and § 351.219, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with § 351.309, and will notify all parties to the proceeding at the time the Secretary initiates the review; and

(ii) May decline to issue preliminary results of review.

(7) *Countervailing duty review at the direction of the President.* In a countervailing duty review at the direction of the President under section 762 of the Act and § 351.220, the Secretary:

(i) Will include in the notice of initiation of the review a description of the merchandise, the period under review, and a summary of the available information which, if accurate, would support the imposition of countervailing duties;

(ii) Notify the Commission of the initiation of the review and the preliminary results of review;

(iii) Include in the preliminary results of review the countervailable subsidy, if any, during the period of review and a description of official changes in the subsidy programs made by the government of the affected country that affect the estimated countervailable subsidy; and

(iv) Include in the final results of review the counter vailable subsidy, if any, during the period of review and a description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the estimated countervailable subsidy.

§ 351.222 Revocation of orders; termination of suspended investigations.

(a) *Introduction.* "Revocation" is a term of art that refers to the end of an antidumping or countervailing proceeding in which an order has been issued. "Termination" is the companion term for the end of a proceeding in which the investigation was suspended due to the acceptance of a suspension agreement. Generally, a revocation or termination may occur only after the Department or the Commission have conducted one or more reviews under section 751 of the Act. This section contains rules regarding requirements for a revocation or termination; and procedures that the Department will follow in determining whether to revoke an order or terminate a suspended investigation.

(b) *Revocation or termination based on absence of dumping.* (1) The Secretary may revoke an antidumping order or terminate a suspended antidumping investigation if the Secretary concludes that:

(i) All exporters and producers covered at the time of revocation by the order or the suspension agreement have sold the subject merchandise at not less than normal value for a period of at least three consecutive years; and

(ii) It is not likely that those persons will in the future sell the subject merchandise at less than normal value.

(2) The Secretary may revoke an antidumping order in part if the Secretary concludes that:

(i) One or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years;

(ii) It is not likely that those persons will in the future sell the subject merchandise at less than normal value; and

(iii) For any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than normal value, the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value.

(c) *Revocation or termination based on absence of countervailable subsidy.* (1) The Secretary may revoke a countervailing duty order or terminate a suspended countervailing duty investigation if the Secretary concludes that:

(i) The government of the affected country has eliminated all countervailable subsidies on the subject merchandise by abolishing for the subject merchandise, for a period of at least three consecutive years, all programs that the Secretary has found countervailable;

(ii) It is not likely that the government of the affected country will in the future reinstate for the subject merchandise those programs or substitute other countervailable programs; and

(iii) Exporters and producers of the subject merchandise are not continuing to receive any net countervailable subsidy from an abolished program referred to in paragraph (c)(1)(i) of this section.

(2) The Secretary may revoke a countervailing duty order or terminate a suspended countervailing duty investigation if the Secretary concludes that:

(i) All exporters and producers covered at the time of revocation by the order or the suspension agreement have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years; and

(ii) It is not likely that those persons will in the future apply for or receive any net countervailable subsidy on the subject merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs.

(3) The Secretary may revoke a countervailing duty order in part if the Secretary concludes that:

(i) One or more exporters or producers covered by the order have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years;

(ii) It is not likely that those persons will in the future apply for or receive any net countervailable subsidy on the subject merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs; and

(iii) Except for exporters or producers that the Secretary previously has determined have not received any net countervailable subsidy on the subject merchandise, the exporters or producers agree in writing to their immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, has received any net countervailable subsidy on the subject merchandise.

(d) *Treatment of unreviewed intervening years.* (1) *In general.* The Secretary will not revoke an order or terminate a suspended investigation under paragraphs (b) or (c) of this section unless the Secretary has conducted a review under this subpart of the first and third (or fifth) years of the three- and five-year consecutive time periods referred to in those paragraphs. The Secretary need not have conducted a review of an intervening year (see paragraph (d)(2) of this section). However, except in the case of a revocation or termination under paragraph (c)(1) of this section (government abolition of countervailable subsidy programs), before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation or termination will apply.

(2) *Intervening year.* "Intervening year" means:

(i) The second year if revocation or termination is conditioned on three consecutive years of no sales at less than normal value or countervailable subsidies; or

(ii) The second, third, or fourth year if revocation or termination is conditioned on five consecutive years of no countervailable subsidies.

(e) *Request for revocation or termination.* (1) *Antidumping proceeding.* During the third and subsequent annual anniversary months of the publication of an antidumping order or suspension of an antidumping investigation, an exporter or producer may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (b) of this section with regard to that person if the person submits with the request:

(i) The person's certification that the person sold the subject merchandise at not less than normal value during the period of review described in § 351.213(e)(1), and that in the future the person will not sell the merchandise at less than normal value;

(ii) The person's certification that, during each of the three consecutive years referred to in paragraph (b) of this section, the person sold the subject merchandise to the United States in commercial quantities; and

(iii) If applicable, the agreement regarding reinstatement in the order or suspended investigation described in paragraph (b)(2)(iii) of this section.

(2) *Countervailing duty proceeding.* (i) During the third and subsequent annual anniversary months of the publication of a countervailing duty order or suspension of a countervailing duty investigation, the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (c)(1) of this section if the government submits with the request its certification that it has satisfied, during the period of review described in § 351.213(e)(2), the requirements of paragraph (c)(1)(i) of this section regarding the abolition of countervailable subsidy programs, and that it will not reinstate for the subject merchandise those programs or substitute other countervailable subsidy programs;

(ii) During the fifth and subsequent annual anniversary months of the publication of a countervailing duty order or suspended countervailing duty investigation, the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (c)(2) of this section if the government submits with the request:

(A) Certifications for all exporters and producers covered by the order or suspension agreement that they have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years (see paragraph (c)(2)(i) of this section);

(B) Those exporters' and producers' certifications that they will not apply for or receive any net countervailable subsidy on the subject merchandise from any program the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs (see paragraph (c)(2)(ii) of this section); and

(C) A certification from each exporter or producer that, during each of the five consecutive years referred to in paragraph (c)(2) of this section, that person sold the subject merchandise to the United States in commercial quantities; or

(iii) During the fifth and subsequent annual anniversary months of the publication of a countervailing duty order, an exporter or producer may request in writing that the Secretary revoke the order with regard to that person if the person submits with the request:

(A) A certification that the person has not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years (see paragraph (c)(3)(i) of this section), including calculations demonstrating the basis for the conclusion that the person received zero or de minimis net countervailable subsidies during the review period of the administrative review in connection with which the person has submitted the request for revocation;

(B) A certification that the person will not apply for or receive any net countervailable subsidy on the subject merchandise from any program the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs (see paragraph (c)(3)(ii) of this section);

(C) The person's certification that, during each of the five consecutive years referred to in paragraph (c)(3) of this section, the person sold the subject merchandise to the United States in commercial quantities; and

(D) The agreement described in paragraph (c)(3)(iii) of this section (reinstatement in order).

(f) *Procedures.* (1) Upon receipt of a timely request for revocation or terminate a suspended investigation under paragraph (c)(2) of this section if the government submits with the request:

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termination under paragraph (e) of this section, the Secretary will consider the request as including a request for an administrative review and will initiate and conduct a review under § 351.213.

(2) In addition to the requirements of § 351.221 regarding the conduct of an administrative review, the Secretary will:

(i) Publish with the notice of initiation under § 351.221(b)(1), notice of "Request for Revocation of Order (in part)" or "Request for Termination of Suspended Investigation" (whichever is applicable);

(ii) Conduct a verification under § 351.307;

(iii) Include in the preliminary results of review under § 351.221(b)(4) the Secretary's decision whether there is a reasonable basis to believe that the requirements for revocation or termination are met;

(iv) If the Secretary decides that there is a reasonable basis to believe that the requirements for revocation or termination are met, publish with the notice of preliminary results of review under § 351.221(b)(4) notice of "Intent to Revoke Order (in Part)" or "Intent to Terminate Suspended Investigation" (whichever is applicable);

(v) Include in the final results of review under § 351.221(b)(5) the Secretary's final decision whether the requirements for revocation or termination are met; and

(vi) If the Secretary determines that the requirements for revocation or termination are met, publish with the notice of final results of review under § 351.221(b)(5) notice of "Revocation of Order (in Part)" or "Termination of Suspended Investigation" (whichever is applicable).

(3) If the Secretary revokes an order in whole or in part, the Secretary will order the suspension of liquidation terminated for the merchandise covered by the revocation on the first day after the period under review, and will instruct the Customs Service to release any cash deposit or bond.

(g) *Revocation or termination based on changed circumstances.* (1) The Secretary may revoke an order, in whole or in part, or terminate a suspended investigation if the Secretary concludes that:

(i) Producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) or suspended investigation pertains have expressed a lack of interest in the order, in whole or in part, or suspended investigation (see section 782(h) of the Act); or

(ii) Other changed circumstances sufficient to warrant revocation or termination exist.

(2) If at any time the Secretary concludes from the available information that changed circumstances sufficient to warrant revocation or termination may exist, the Secretary will conduct a changed circumstances review under § 351.216.

(3) In addition to the requirements of § 351.221, the Secretary will:

(i) Publish with the notice of initiation (see § 353.221(b)(1), notice of "Consideration of Revocation of Order (in Part)" or "Consideration of Termination of Suspended Investigation" (whichever is applicable);

(ii) If the Secretary's conclusion regarding the possible existence of changed circumstances (see paragraph (g)(2) of this section), is not based on a request, the Secretary, not later than the date of publication of the notice of "Consideration of Revocation of Order (in Part)" or "Consideration of Termination of Suspended Investigation" (whichever is applicable) (see paragraph (g)(3)(i) of this section), will serve written notice of the consideration of revocation or termination on each interested party listed on the Department's service list and on any other person that the Secretary has reason to believe is a domestic interested party;

(iii) Conduct a verification, if appropriate, under § 351.307;

(iv) Include in the preliminary results of review, under § 351.221(b)(4), the Secretary's decision whether there is a reasonable basis to believe that changed circumstances warrant revocation or termination;

(v) If the Secretary's preliminary decision is that changed circumstances warrant revocation or termination, publish with the notice of preliminary results of review, under § 351.221(b)(4), notice of "Intent to Revoke Order (in Part)" or "Intent to Terminate Suspended Investigation" (whichever is applicable);

(vi) Include in the final results of review, under § 351.221(b)(5), the Secretary's final decision whether changed circumstances warrant revocation or termination; and

(vii) If the Secretary determines that changed circumstances warrant revocation or termination, publish with the notice of final results of review, under § 351.221(b)(5), notice of "Revocation of Order (in Part)" or "Termination of Suspended Investigation" (whichever is applicable).

(4) If the Secretary revokes an order, in whole or in part, under paragraph (g) of this section, the Secretary will order the suspension of liquidation ended for the merchandise covered by the revocation on the effective date of the notice of revocation, and will instruct the Customs Service to release any cash deposit or bond.

(h) *Revocation or termination based on injury reconsideration.* If the Commission determines in a changed circumstances review under section 751(b)(2) of the Act that the revocation of an order or termination of a suspended investigation is not likely to lead to continuation or recurrence of material injury, the Secretary will revoke, in whole or in part, the order or terminate the suspended investigation, and will publish in the **Federal Register** notice of "Revocation of Order (in Part)" or "Termination of Suspended Investigation" (whichever is applicable).

(i) *Revocation or termination based on sunset review. (1) In general.* In the case of a sunset review under § 351.218, the Secretary will revoke an order or terminate a suspended investigation, unless:

(i) The Secretary makes a determination that revocation or termination would be likely to lead to continuation or recurrence of a countervailable subsidy or dumping (see section 752(b) and section 752(c) of the Act); and

(ii) The Commission makes a determination that revocation or termination would be likely to lead to continuation or recurrence of material injury (see section 752(a) of the Act).

(2) *Exception for transition orders.* Before January 1, 2000, the Secretary will not revoke a transition order (see section 751(c)(6) of the Act) as the result of a sunset review under § 351.218.

(j) *Revocation of countervailing duty order based on Commission negative determination under section 753 of the Act.* Upon being notified by the Commission that:

(1) The Commission has determined that an industry in the United States is not likely to be materially injured if the countervailing duty order in question is revoked (see section 753(a)(1) of the Act); or

(2) A domestic interested party did not make a timely request for an investigation under section 753(a) of the Act (see section 753(a)(3) of the Act), the Secretary will revoke the countervailing duty order in question, and will order the refund, with interest, of any estimated countervailing duties collected during the period liquidation was suspended under section 753(a)(4) of the Act.

(k) *Revocation based on Article 4/ Article 7 review. (1) In general.* The Secretary may revoke a countervailing duty order, in whole or in part, following an Article 4/Article 7 review under § 351.217(c), due to the imposition of countermeasures by the United States or the withdrawal of a countervailable subsidy by a WTO member country (see section 751(g)(2) of the Act).

(2) *Additional Requirements.* In addition to the requirements of § 351.221, if the Secretary determines to revoke an order as the result of an Article 4/Article 7 review, the Secretary will:

(i) Conduct a verification, if appropriate, under § 351.307;

(ii) Include in the final results of review, under § 351.221(b)(5), the Secretary's final decision whether the order should be revoked;

(iii) If the Secretary's final decision is that the order should be revoked:

(A) Determine the effective date of the revocation;

(B) Publish with the notice of final results of review, under § 351.221(b)(5), a notice of "Revocation of Order (in Part)," that will include the effective date of the revocation; and

(C) Order any suspension of liquidation ended for merchandise covered by the revocation that was entered on or after the effective date of the revocation, and instruct the Customs Service to release any cash deposit or bond.

(l) *Revocation under section 129.* The Secretary may revoke an order under section 129 of the URAA (implementation of WTO dispute settlement).

(m) *Transition rule.* In the case of time periods that, under section 291(a)(2) of the URAA, are subject to review under the provisions of the Act prior to its amendment by the URAA, and for purposes of determining whether the three- or five-year requirements of paragraphs (b) and (c) of this section are satisfied, the following rules will apply:

(1) *Antidumping proceedings.* The Secretary will consider sales at not less than foreign market value to be equivalent to sales at not less than normal value.

(2) *Countervailing duty proceedings.* The Secretary will consider the absence of a subsidy, as defined in section 771(5) of the Act prior to its amendment by the URAA, to be equivalent to the absence of a countervailable subsidy, as defined in section 771(5) of the Act, as amended by the URAA.

(n) *Cross-reference.* For the treatment in a subsequent investigation of business proprietary information submitted to the Secretary in connection with a changed circumstances review under § 351.216 or a sunset review under § 351.218 that results in the revocation of an order (or termination of a suspended investigation) see section 777(b)(3) of the Act.

§ 351.223 Procedures for initiation of downstream product monitoring.

(a) *Introduction.* Section 780 of the Act establishes a mechanism for monitoring imports of "downstream products." In general, section 780 is aimed at situations where, following the issuance of an antidumping or countervailing duty order on a product that is used as a component in another product, exports to the United States of that other (or "downstream") product increase. Although the Department is responsible for determining whether trade in the downstream product should be monitored, the Commission is responsible for conducting the actual monitoring. The Commission must report the results of its monitoring to the Department, and the Department must consider the reports in determining whether to self-initiate an antidumping or countervailing duty investigation on the downstream product. This section contains rules regarding applications for the initiation of downstream product monitoring and decisions regarding such applications.

(b) *Contents of application.* An application to designate a downstream product for monitoring under section 780 of the Act must contain the following information, to the extent reasonably available to the applicant:

(1) The name and address of the person requesting the monitoring and a description of the article it produces which is the basis for filing its application;

(2) A detailed description of the downstream product in question;

(3) A detailed description of the component product that is incorporated into the downstream product, including the value of the component part in relation to the value of the downstream product, and the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product;

(4) The name of the country of production of both the downstream and component products and the name of any intermediate country from which the merchandise is imported;

(5) The name and address of all known producers of component parts and downstream products in the relevant countries and a detailed description of any relationship between such producers;

(6) Whether the component part is already subject to monitoring to aid in the enforcement of a bilateral arrangement within the meaning of section 804 of the Trade and Tariff Act of 1984;

(7) A list of all antidumping or countervailing duty investigations that have been suspended, or antidumping or countervailing duty orders that have been issued, on merchandise that is related to the component part and that is manufactured in the same foreign country in which the component part is manufactured;

(8) A list of all antidumping or countervailing duty investigations that have been suspended, or antidumping or countervailing duty orders that have been issued, on merchandise that is manufactured or exported by the manufacturer or exporter of the component part and that is similar in description and use to the component part; and

(9) The reasons for suspecting that the imposition of antidumping or countervailing duties has resulted in a diversion of exports of the component part into increased production and exportation to the United States of the downstream product.

(c) *Determination of sufficiency of application.* Within 14 days after an application is filed under paragraph (b) of this section, the Secretary will rule on the sufficiency of the application by making the determinations described in section 780(a)(2) of the Act.

(d) *Notice of Determination.* The Secretary will publish in the **Federal Register** notice of each affirmative or negative "monitoring" determination made under section 780(a)(2) of the Act, and if the determination under section 780(a)(2)(A) of the Act and a determination made under any clause of section 780(a)(2)(B) of the Act are affirmative, will transmit to the Commission a copy of the determination and the application. The Secretary will make available to the Commission, and to its employees directly involved in the monitoring, the information upon which the Secretary based the initiation.

§ 351.224 Disclosure of calculations and procedures for the correction of ministerial errors.

(a) *Introduction.* In the interests of transparency, the Department has long had a practice of providing parties with the details of its antidumping and countervailing duty calculations. This practice has come to be referred to as a "disclosure." This section contains rules relating to requests for disclosure and procedures for correcting ministerial errors.

(b) *Disclosure.* The Secretary will disclose to a party to the proceeding

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calculations performed, if any, in connection with a preliminary determination under section 703(b) or section 733(b) of the Act, a final determination under section 705(a) or section 735(a) of the Act, and a final results of a review under section 736(c), section 751, or section 753 of the Act, normally within five days after the date of any public announcement or, if there is no public announcement of, within five days after the date of publication of, the preliminary determination, final determination, or final results of review (whichever is applicable). The Secretary will disclose to a party to the proceeding calculation performed, if any, in connection with a preliminary results of review under section 751 or section 753 of the Act, normally not later than ten days after the date of the public announcement of, or, if there is no public announcement, within five days after the date of publication of, the preliminary results of review.

(c) *Comments regarding ministerial errors.* (1) *In general.* A party to the proceeding to whom the Secretary has disclosed calculations performed in connection with a preliminary determination may submit comments concerning a significant ministerial error in such calculations. A party to the proceeding to whom the Secretary has disclosed calculations performed in connection with a final determination or the final results of a review may submit comments concerning any ministerial error in such calculations. The Secretary will not consider comments concerning ministerial errors made in the preliminary results of a review.

(2) *Time limits for submitting comments.* A party to the proceeding must file comments concerning ministerial errors within five days after the earlier of (i) the date on which the Secretary released disclosure documents to that party, or (ii) the date on which the Secretary held a disclosure meeting with that party.

(3) *Replies to comments.* Replies to comments submitted under paragraph (c)(1) of this section must be filed within five days after the date on which the comments were filed with the Secretary. The Secretary will not consider replies to comments submitted in connection with a preliminary determination.

(4) *Extensions.* A party to the proceeding may request an extension of the time limit for filing comments concerning a ministerial error in a final determination or final results of review under section 351.302(c) within three days after the date of any public announcement, or, if there is no public announcement, within five days after the date of publication of the final determination or final results of review, as applicable. The Secretary will not extend the time limit for filing comments concerning a significant ministerial error in a preliminary determination.

(d) *Contents of comments and replies.* Comments filed under paragraph (c)(1) of this section must explain the alleged ministerial error by reference to applicable evidence in the official record, and must present what, in the party's view, is the appropriate correction. In addition, comments concerning a preliminary determination must demonstrate how the alleged ministerial error is significant (see paragraph (g) of this section, by illustrating the effect on individual weighted-average dumping margin or countervailable subsidy rate, the all-others rate, or the country-wide subsidy rate (whichever is applicable). Replies to any comments must be limited to issues raised in such comments.

(e) *Corrections.* The Secretary will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination, or correct any ministerial error by amending the final determination or the final results of review (whichever is applicable). Where practicable, the Secretary will announce publicly the issuance of a correction notice, and normally will do so within 30 days after the date of public announcement, or, if there is no public announcement, within 30 days after the date of publication, of the preliminary determination, final determination, or final results of review (whichever is applicable). In addition, the Secretary will publish notice of such corrections in the **Federal Register**. A correction notice will not alter the anniversary month of an order or suspended investigation for purposes of requesting an administrative review (see § 351.213) or a new shipper review (see § 351.214) or initiating a sunset review (see § 351.218).

(f) *Definition of "ministerial error."* Under this section, ministerial error means an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.

(g) *Definition of "significant ministerial error."* Under this section, significant ministerial error means a ministerial error (see paragraph (f) of this section), the correction of which, either singly or in combination with other errors:

(1) Would result in a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin or the countervailable subsidy rate (whichever is applicable) calculated in the original (erroneous) preliminary determination; or

(2) Would result in a difference between a weighted-average dumping margin or countervailable subsidy rate (whichever is applicable) of zero (or de minimis) and a weighted-average dumping margin or countervailable subsidy rate of greater than de minimis, or vice versa.

§ 351.225 Scope ruling.

(a) *Introduction.* Issues arise as to whether a particular product is included within the scope of an antidumping or countervailing duty order or a suspended investigation. Such issues can arise because the descriptions of subject merchandise contained in the Department's determinations must be written in general terms. At other times, a domestic interested party may allege that changes to an imported product or the place where the imported product is assembled constitutes circumvention under section 781 of the Act. When such issues arise, the Department issues "scope rulings" that clarify the scope of an order or suspended investigation with respect to particular products. This section contains rules regarding scope rulings, requests for scope rulings, procedures for scope inquiries, and standards used in determining whether a product is within the scope of an order or suspended investigation.

(b) *Self-initiation.* If the Secretary determines from available information that an inquiry is warranted to determine whether a product is included within the scope of an antidumping or countervailing duty order or a suspended investigation, the Secretary will initiate an inquiry, and will notify all parties on the Department's scope service list of its initiation of a scope inquiry.

(c) *By application.* Any interested party may apply for a ruling as to whether a particular product is within the scope of an order or a suspended investigation. The application must be served upon all parties on the scope service list described in paragraph (n) of this section, and must contain the following, to the extent reasonably available to the interested party:

(1) A detailed description of the product, including its technical characteristics and uses, and its current U.S. Tariff Classification number;

(2) A statement of the interested party's position as to whether the product is within the scope of an order or a suspended investigation, including:

(i) A summary of the reasons for this conclusion,

(ii) Citations to any applicable statutory authority, and

(iii) Any factual information supporting this position, including excerpts from portions of the Secretary's or the Commission's investigation, and relevant prior scope rulings.

(d) *Ruling based upon the application.* If the Secretary can determine, based solely upon the application and the descriptions of the merchandise referred to in paragraph (k)(1) of this section, whether a product is included within the scope of an order or a suspended investigation, the Secretary will issue a final ruling as to whether the product is included within the order or suspended investigation. The Secretary will notify all interested parties on the Department's scope service list (see paragraph (n) of this section) of the final ruling.

(e) *Ruling where further inquiry is warranted.* If the Secretary finds that the issue of whether a product is included within the scope of an order or a suspended investigation cannot be determined based solely upon the application and the descriptions of the merchandise referred to in paragraph (k)(1) of this section, the Secretary will notify by mail all parties on the Department's scope service list of the initiation of a scope inquiry.

(f) *Notice and procedure.* (1) Notice of the initiation of a scope inquiry issued under paragraph (b) or (e) of this section will include:

(i) A description of the product that is the subject of the scope inquiry; and

(ii) An explanation of the reasons for the Secretary's decision to initiate a scope inquiry;

(iii) A schedule for submission of comments that normally will allow interested parties 20 days in which to provide comments on, and supporting factual information relating to, the inquiry, and 10 days in which to provide any rebuttal to such comments.

(2) The Secretary may issue questionnaires and verify submissions received, where appropriate.

(3) Whenever the Secretary finds that a scope inquiry presents an issue of significant difficulty, the Secretary will issue a preliminary scope ruling, based upon the available information at the time, as to whether there is a reasonable basis to believe or suspect that the product subject to a scope inquiry is included within the order or suspended investigation. The Secretary will notify all parties on the Department's scope service list (see paragraph (n) of this section) of the preliminary scope ruling, and will invite comment. Unless otherwise specified, interested parties will have within twenty days from the date of receipt of the notification in which to submit comments, and ten days thereafter in which to submit rebuttal comments.

(4) The Secretary will issue a final ruling as to whether the product which is the subject of the scope inquiry is included within the order or suspended investigation, including an explanation of the factual and legal conclusions on which the final ruling is based. The Secretary will notify all parties on the Department's scope service list (see paragraph (n) of this section) of the final scope ruling.

(5) The Secretary will issue a final ruling under paragraph (k) of this section (other scope rulings) normally within 120 days of the initiation of the inquiry under this section. The Secretary will issue a final ruling under paragraph (g), (h), (i), or (j) of this section (circumvention rulings under section 781 of the Act) normally within 300 days from the date of the initiation of the scope inquiry.

(6) When an administrative review under § 351.213, a new shipper review under § 351.214, or an expedited antidumping review under § 351.215 is in progress at the time the Secretary provides notice of the initiation of a scope inquiry (see paragraph (e)(1) of this section), the Secretary may conduct the scope inquiry in conjunction with that review.

(7)(i) The Secretary will notify the Commission in writing of the proposed inclusion of products in an order prior to issuing a final ruling under paragraph (f)(4) of this section based on a determination under:

(A) Section 781(a) of the Act with respect to merchandise completed or assembled in the United States (other than minor completion or assembly);

(B) Section 781(b) of the Act with respect to merchandise completed or assembled in other foreign countries; or

(C) Section 781(d) of the Act with respect to later-developed products which incorporate a significant technological advance or significant alteration of an earlier product.

(ii) If the Secretary notifies the Commission under paragraph (f)(7)(i) of this section, upon the written request of the Commission, the Secretary will consult with the Commission regarding the proposed inclusion, and any such consultation will be completed within 15 days after the date of such request. If, after consultation, the Commission believes that a significant injury issue is presented by the proposed inclusion of a product within an order, the Commission may provide written advice to the Secretary as to whether the inclusion would be inconsistent with the affirmative injury determination of the Commission on which the order is based.

(g) *Products completed or assembled in the United States.* Under section 781(a) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order imported parts or components referred to in section 781(a)(1)(B) of the Act that are used in the completion or assembly of the merchandise in the United States at any time such order is in effect. In making this determination, the Secretary will not consider any single factor of section 781(a)(2) of the Act to be controlling. In determining the value of parts or components purchased from an affiliated person under section 781(a)(1)(D) of the Act, or of processing performed by an affiliated person under section 781(a)(2)(E) of the Act, the Secretary may determine the value of the part or component on the basis of the cost of producing the part of component under section 773(f)(3) of the Act.

(h) *Products completed or assembled in other foreign countries.* Under section 781(b) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order, at any time such order is in effect, imported merchandise completed or assembled in a foreign country other than the country to which the order applies. In making this determination, the Secretary will not consider any single factor of section 781(b)(2) of the Act to be controlling. In determining the value of parts or components purchased from an affiliated person under section 781(b)(1)(D) of the Act, or of processing performed by an affiliated person under section 781(b)(2)(E) of the Act, the Secretary will apply the major input rule under section 773(f)(3) of the Act.

(i) *Minor alterations of merchandise.* Under section 781(c) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order articles altered in form or appearance in minor respects.

(j) *Later-developed merchandise.* In determining whether later-developed merchandise is within the scope of an antidumping or countervailing duty order, the Secretary will apply section 781(d) of the Act.

(k) *Other scope determinations.* With respect to those scope determinations that are not covered under paragraphs (g) through (j) of this section, in considering whether a particular product is included within the scope of

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an order or a suspended investigation, the Secretary will take into account the following:

(1) The descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission.

(2) When the above criteria are not dispositive, the Secretary will further consider:

(i) The physical characteristics of the product;

(ii) The expectations of the ultimate purchasers;

(iii) The ultimate use of the product;

(iv) The channels of trade in which the product is sold; and

(v) The manner in which the product is advertised and displayed.

(l) *Suspension of liquidation.* (1) When the Secretary conducts a scope inquiry under paragraph (b) or (e) of this section, and the product in question is already subject to suspension of liquidation, that suspension of liquidation will be continued, pending a preliminary or a final scope ruling, at the cash deposit rate that would apply if the product were ruled to be included within the scope of the order.

(2) If the Secretary issues a preliminary scope ruling under paragraph (f)(3) of this section to the effect that the product in question is included within the scope of the order, any suspension of liquidation described in paragraph (l)(1) of this section will continue. If liquidation has not been suspended, the Secretary will instruct the Customs Service to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of the preliminary scope ruling. If the Secretary issues a preliminary scope ruling to the effect that the product in question is not included within the scope of the order, the Secretary will order any suspension of liquidation on the product ended, and will instruct the Customs Service to refund any cash deposits or release any bonds relating to that product.

(3) If the Secretary issues a final scope ruling, under either paragraph (d) or (f)(4) of this section, to the effect that the product in question is included within the scope of the order, any suspension of liquidation under paragraph (l)(1) or (l)(2) of this section will continue. Where there has been no suspension of liquidation, the Secretary will instruct the Customs Service to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of the final scope ruling. If the Secretary's final scope ruling is to the effect that the product in question is not included within the scope of the order, the Secretary will order any suspension of liquidation on the subject product ended and will instruct the Customs Service to refund any cash deposits or release any bonds relating to this product.

(4) If, within 90 days of the initiation of a review of an order or a suspended investigation under this subpart, the Secretary issues a final ruling that a product is included within the scope of the order or suspended investigation that is the subject of the review, the Secretary, where practicable, will include sales of that product for purposes of the review and will seek information regarding such sales. If the Secretary issues a final ruling after 90 days of the initiation of the review, the Secretary may consider sales of the product for purposes of the review on the basis of non-adverse facts available. However, notwithstanding the pendency of a scope inquiry, if the Secretary considers it appropriate, the Secretary may request information concerning the product that is the subject of the scope inquiry for purposes of a review under this subpart.

(m) *Orders covering identical products.* Except for a scope inquiry and a scope ruling that involves section 781(a) or section 781(b) of the Act (assembly of parts or components in the United States or in a third country), if more than one order or suspended investigation cover the same subject merchandise, and if the Secretary considers it appropriate, the Secretary may conduct a single inquiry and issue a single scope ruling that applies to all such orders or suspended investigations.

(n) *Service of applications; scope service list.* The requirements of § 351.303(f) apply to this section, except that an application for a scope ruling must be served on all parties on the Department's scope service list. For purposes of this section, the "scope service list" will include all parties that have participated in any segment of the proceeding. If an application for a scope ruling in one proceeding results in a single inquiry that will apply to another proceeding (see paragraph (m) of this section), the Secretary will notify parties on the scope service list of the other proceeding of the application for a scope ruling.

(o) *Publication of list of scope rulings.* On a quarterly basis, the Secretary will publish in the **Federal Register** a list of scope rulings issued within the last three months. This list will include the case name, reference number, and a brief description of the ruling.

Subpart C—Information and Argument

§ 351.301 Time limits for submission of factual information.

(a) *Introduction.* The Department obtains most of its factual information in antidumping and countervailing duty proceedings from submissions made by interested parties during the course of the proceeding. This section sets forth the time limits for submitting such factual information, including information in questionnaire responses, publicly available information to value factors in nonmarket economy cases, allegations concerning market viability, allegations of sales at prices below the cost of production, countervailable subsidy allegations, and upstream subsidy allegations. Section 351.302 sets forth the procedures for requesting an extension of such time limits. Section 351.303 contains the procedural rules regarding filing, format, translation, service, and certification of documents.

(b) *Time limits in general.* Except as provided in paragraphs (c) and (d) of this section and § 351.302, a submission of factual information is due no later than:

(1) For a final determination in a countervailing duty investigation or an antidumping investigation, seven days before the date on which the verification of any person is scheduled to commence, except that factual information requested by the verifying officials from a person will be due no later than seven days after the date on which the verification of that person is completed;

(2) For the final results of an administrative review, 140 days after the last day of the anniversary month, except that factual information requested by the verifying officials from a person will be due no later than seven days after the date on which the verification of that person is completed;

(3) For the final results of a changed circumstances review, sunset review, or section 762 review, 140 days after the date of publication of notice of initiation of the review, except that factual information requested by the verifying officials from a person will be due no later than seven days after the date on which the verification of that person is completed;

(4) For the final results of a new shipper review, 100 days after the date of publication of notice of initiation of the review, except that factual information requested by the verifying officials from a person will be due no later than seven days after the date on which the verification of that person is completed; and

(5) For the final results of an expedited antidumping review, Article 8 violation review, Article 4/Article 7 review, or section 753 review, a date specified by the Secretary.

(c) *Time limits for certain submissions.* (1) *Rebuttal, clarification, or correction of factual information.* Any interested party may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party at any time prior to the deadline provided in this section for submission of such factual information or, if later, 10 days after the date such factual information is served on the interested party or, if appropriate, made available under APO to the authorized applicant.

(2) *Questionnaire responses and other submissions on request.* (i) Notwithstanding paragraph (b) of this section, the Secretary may request any person to submit factual information at any time during a proceeding.

(ii) In the Secretary's written request to an interested party for a response to a questionnaire or for other factual information, the Secretary will specify: the time limit for the response; the information to be provided; the form and manner in which the interested party must submit the information; and that failure to submit requested information in the requested form and manner by the date specified may result in use of the facts available under section 776 of the Act and § 351.308.

(iii) Interested parties will have at least 30 days from the date of receipt to respond to the full initial questionnaire. The time limit for response to individual sections of the questionnaire, if the Secretary requests a separate response to such sections, may be less than the 30 days allotted for response to the full questionnaire. The date of receipt will be seven days from the date on which the initial questionnaire was transmitted.

(iv) A notification by an interested party, under section 782(c)(1) of the Act, of difficulties in submitting information in response to a questionnaire issued by the Secretary is due within 14 days after the date of receipt of the initial questionnaire.

(v) A respondent interested party may request in writing that the Secretary conduct a questionnaire presentation. The Secretary may conduct a questionnaire presentation if the Secretary notifies the government of the affected country and that government does not object.

(3) *Submission of publicly available information to value factors under § 351.408(c).* Notwithstanding paragraph (b) of this section, interested parties may submit publicly available information to value factors under § 351.408(c) within:

(i) For a final determination in an antidumping investigation, 40 days after the date of publication of the preliminary determination;

(ii) For the final results of an administrative review, new shipper review, or changed circumstances review, 20 days after the date of publication of the preliminary results of review; and

(iii) For the final results of an expedited antidumping review, a date specified by the Secretary.

(d) *Time limits for certain allegations.* (1) *Market viability and the basis for determining a price-based normal value.* In an antidumping investigation or administrative review, allegations regarding market viability, including the exceptions in § 351.404(c)(2), are due, with all supporting factual information, within 40 days after the date on which the initial questionnaire was transmitted, unless the Secretary alters this time limit.

(2) *Sales at prices below the cost of production.* An allegation of sales at prices below the cost of production made by the petitioner or other domestic interested party is due within:

(i) In an antidumping investigation,

(A) On a country-wide basis, 20 days after the date on which the initial questionnaire was transmitted to any person, unless the Secretary alters this time limit; or

(B) On a company-specific basis, 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limit;

(ii) In an administrative review, new shipper review, or changed circumstances review, on a company-specific basis, 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limit; or

(iii) In an expedited antidumping review, on a company-specific basis, 10 days after the date of publication of the notice of initiation of the review.

(3) *Countervailable subsidy; upstream subsidy.* (i) *In general.* A countervailable subsidy allegation made by the petitioner or other domestic interested party is due no later than:

(A) In a countervailing duty investigation, 40 days before the scheduled date of the preliminary determination; or

(B) In an administrative review, new shipper review, or changed circumstances review, 20 days after all responses to the initial questionnaire are filed with the Department, unless the Secretary alters this time limit.

(ii) *Exception for upstream subsidy allegation in an investigation.* In a countervailing duty investigation, an allegation of upstream subsidies made by the petitioner or other domestic interested party is due no later than:

(A) 10 days before the scheduled date of the preliminary determination; or

(B) 15 days before the scheduled date of the final determination.

(4) *Targeted dumping.* In an antidumping investigation, an allegation of targeted dumping made by the petitioner or other domestic interested party under § 351.414(f)(3) is due no later than 30 days before the scheduled date of the preliminary determination.

§ 351.302 Extension of time limits; return of untimely filed or unsolicited material.

(a) *Introduction.* This section sets forth the procedures for requesting an extension of a time limit. In addition, this section explains that certain untimely filed or unsolicited material will be returned to the submitter together with an explanation of the reasons for the return of such material.

(b) *Extension of time limits.* Unless expressly precluded by statute, the Secretary may, for good cause, extend any time limit established by this Part.

(c) *Requests for extension of specific time limit.* Before the applicable time limit specified under § 351.301 expires, a party may request an extension pursuant to paragraph (b) of this section. The request must be in writing and state the reasons for the request. An extension must be approved in writing.

(d) *Return of untimely filed or unsolicited material.* (1) Unless the Secretary extends a time limit under paragraph (b) of this section, the Secretary will not consider or retain in the official record of the proceeding:

(i) Untimely filed factual information, written argument, or other material that the Secretary returns to the submitter, except as provided under § 351.104(a)(2); or

(ii) Unsolicited questionnaire responses, except as provided under § 351.204(d)(2).

(2) The Secretary will return such information, argument, or other

material, or unsolicited questionnaire response with, to the extent practicable, written notice stating the reasons for return.

§ 351.303 Filing, format, translation, service, and certification of documents.

(a) *Introduction.* This section contains the procedural rules regarding filing, format, service, translation, and certification of documents and applies to all persons submitting documents to the Department for consideration in an antidumping or countervailing duty proceeding.

(b) *Where to file; time of filing.* Persons must address and submit all documents to the Department with the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, between the hours of 8:30 a.m. and 5:00 p.m. on business days (see § 351.103(b)). If the applicable time limit expires on a non-business day, the Secretary will accept documents that are filed on the next business day.

(c) *Number of copies; filing of business proprietary and public versions under the one-day lag rule; information in double brackets.* (1) *In general.* Except as provided in paragraphs (c)(2) and (c)(3) of this section, a person must file six copies of each submission with the Department.

(2) *Application of the one-day lag rule.* (i) *Filing the business proprietary version.* A person must file one copy of the business proprietary version of any document with the Department within the applicable time limit. Business proprietary version means the version of a document containing information for which a person claims business proprietary treatment under § 351.304.

(ii) *Filing the final business proprietary version; bracketing corrections.* By the close of business one business day after the date the business proprietary version is filed under paragraph (c)(2)(i) of this section, a person must file six copies of the final business proprietary version of the document with the Department. The final business proprietary version must be identical to the business proprietary version filed on the previous day except for any bracketing corrections. Although a person must file six copies of the complete final business proprietary version with the Department, the person may serve other persons with only those pages containing bracketing corrections.

(iii) *Filing the public version.* Simultaneously with the filing of the final business proprietary version under paragraph (c)(2)(ii) of this section, a person also must file three copies of the public version of such document (see § 351.304(c)) with the Department.

(iv) *Information in double brackets.* If a person serves authorized applicants with a business proprietary version of a document that excludes information in double brackets pursuant to § 351.304(b)(2), the person simultaneously must file with the Department one copy of those pages in which information in double brackets has been excluded.

(3) *Computer media and printouts.* The Secretary may require submission of factual information on computer media unless the Secretary modifies such requirements under section 782(c) of the Act (see § 351.301(c)(2)(iv)). The computer medium must be accompanied by the number of copies of any computer printout specified by the Secretary. All information on computer media must be releasable under APO (see § 351.305).

(d) *Format of copies.* (1) *In general.* Unless the Secretary alters the requirements of this section, documents filed with the Department must conform to the specification and marking requirements under paragraph (d)(2) of this section or the Secretary may refuse to accept such documents for the official record of the proceeding.

(2) *Specifications and markings.* A person must submit documents on letter-size paper, single-sided and double-spaced, and must securely bind each copy as a single document with any letter of transmittal as the first page of the document. A submitter must mark the first page of each document in the upper right-hand corner with the following information in the following format:

(i) On the first line, except for a petition, indicate the Department case number;

(ii) On the second line, indicate the total number of pages in the document including cover pages, appendices, and any unnumbered pages;

(iii) On the third line, indicate whether the document is for an investigation, scope inquiry, downstream product monitoring application, or review and, if the latter, indicate the inclusive dates of the review, the type of review, and the section number of the Act corresponding to the type of review;

(iv) On the fourth line, indicate the Department office conducting the proceeding;

(v) On the fifth and subsequent lines, indicate whether any portion of the document contains business proprietary information and, if so, list the applicable page numbers and state either "Document May be Released Under APO" or "Document May Not be Released Under APO." The top of each page containing the business proprietary information must state "Business Proprietary Treatment Requested" and the warning "Bracketing of Business Proprietary Information is Not Final for One Business Day After Date of Filing" (see § 351.303(c)(2) and § 351.304(c)); and

(vi) For public versions of business proprietary documents required under § 351.304(c), complete the marking as required in paragraphs (d)(2)(i)–(v) of this section for the business proprietary document, but conspicuously mark the first page "Public Version."

(e) *Translation to English.* A document submitted in a foreign language must be accompanied by an English translation, unless the Secretary waives this requirement for an individual document.

(f) *Service of copies on other persons.* (1) *In general.* Except as provided in § 351.202(c) (filing of petition), § 351.207(f)(1) (submission of proposed suspension agreement), and paragraph (f)(3) of this section, a person filing a document with the Department simultaneously must serve a copy of the document on all other persons on the service list by personal service or first class mail.

(2) *Certificate of service.* Each document filed with the Department must include a certificate of service listing each person served (including agents), the type of document served, and the date and method of service on each person. The Secretary may refuse to accept any document that is not accompanied by a certificate of service.

(3) *Service requirements for certain documents.* (i) *Briefs.* In addition to the certificate of service requirements contained in paragraph (f)(2) of this section, a person filing a case or rebuttal brief with the Department simultaneously must serve a copy of that brief on all persons on the service list and on any U.S. Government agency that has submitted a case or rebuttal brief in the segment of the proceeding. If, under § 351.103(c), a person has designated an agent to receive service that is located in the United States, service on that person must be either by personal service on the same day the brief is filed or by overnight mail or courier on the next day. If the person has designated an agent to receive service that is located outside the United States, service on that person must be by first class airmail.

(ii) *Request for review.* In addition to the certificate of service requirements under paragraph (f)(2) of this section, an interested party that files with the Department a request for an expedited antidumping review, an administrative review, a new shipper review, or a changed circumstances review, must serve a copy of the request by personal service or first class mail on each exporter or producer specified in the request and on the petitioner by the end of the anniversary month or within ten days of filing the request for review, whichever is later. If the interested party that files the request is unable to locate a particular exporter or producer, or the petitioner, the Secretary may accept the request for review if the Secretary is satisfied that the party made a reasonable attempt to serve a copy of the request on such person.

(g) *Certifications.* A person must file with each submission containing factual information the certification in paragraph (1) below and, in addition, if the person has legal counsel or another representative, the certification in paragraph (2) below:

(1) For the person's official responsible for presentation of the factual information:

> I, (name and title), currently employed by (person), certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate.

(2) For the person's legal counsel or other representative:

> I, (name), of (law or other firm), counsel or representative to (person), certify that (1) I have read the attached submission, and (2) based on the information made available to me by (person), I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

§ 351.304 Establishing business proprietary treatment of information. [Reserved].

§ 351.305 Access to business proprietary information. [Reserved].

§ 351.306 Use of business proprietary information. [Reserved].

§ 351.307 Verification of information.

(a) *Introduction.* Prior to making a final determination in an investigation or issuing final results of review, the Secretary may verify relevant factual information. This section clarifies when verification will occur, the contents of a verification report, and the procedures for verification.

(b) *In general.* (1) Subject to paragraph (b)(4) of this section, the Secretary will verify factual information upon which the Secretary relies in:

(i) A final determination in a continuation of a previously suspended countervailing duty investigation (section 704(g) of the Act), countervailing duty investigation, continuation of a previously suspended antidumping investigation (section 705(a) of the Act), or antidumping investigation;

(ii) The final results of an expedited antidumping review;

(iii) A revocation under section 751(d) of the Act;

(iv) The final results of an administrative review, new shipper review, or changed circumstances review, if the Secretary decides that good cause for verification exists; and

(v) The final results of an administrative review if:

(A) A domestic interested party, not later than 100 days after the date of publication of the notice of initiation of review, submits a written request for verification; and

(B) The Secretary conducted no verification under this paragraph during either of the two immediately preceding administrative reviews.

(2) The Secretary may verify factual information upon which the Secretary relies in a proceeding or a segment of a proceeding not specifically provided for in paragraph (b)(1) of this section.

(3) If the Secretary decides that, because of the large number of exporters or producers included in an investigation or administrative review, it is impractical to verify relevant factual information for each person, the Secretary may select and verify a sample.

(4) The Secretary may conduct verification of a person if that person agrees to verification and the Secretary notifies the government of the affected country and that government does not object. If the person or the government objects to verification, the Secretary will not conduct verification and may disregard any or all information submitted by the person in favor of use of the facts available under section 776 of the Act and § 351.308.

(c) *Verification report.* The Secretary will report the methods, procedures, and results of a verification under this section prior to making a final determination in an investigation or issuing final results in a review.

(d) *Procedures for verification.* The Secretary will notify the government of the affected country that employees of the Department will visit with the persons listed below in order to verify the accuracy and completeness of submitted factual information. The notification will, where practicable, identify any member of the verification team who is not an officer of the U.S. Government. As part of the verification, employees of the Department will request access to all files, records, and personnel which the Secretary considers relevant to factual information submitted of:

(1) Producers, exporters, or importers;

(2) Persons affiliated with the persons listed in paragraph (d)(1) of this section, where applicable;

(3) Unaffiliated purchasers, or

(4) The government of the affected country as part of verification in a countervailing duty proceeding.

§ 351.308 Determinations on the basis of the facts available.

(a) *Introduction.* The Secretary may make determinations on the basis of the facts available whenever necessary information is not available on the record, an interested party or any other person withholds or fails to provide information requested in a timely manner and in the form required or significantly impedes a proceeding, or the Secretary is unable to verify submitted information. If the Secretary finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Secretary may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. This section lists some of the sources of information upon which the Secretary may base an adverse inference and explains the actions the Secretary will take with respect to corroboration of information.

(b) *In general.* The Secretary may make a determination under the Act and this Part based on the facts otherwise available in accordance with section 776(a) of the Act.

(c) *Adverse Inferences.* For purposes of section 776(b) of the Act, an adverse inference may include reliance on:

(1) Secondary information, such as information derived from:

(i) The petition;

(ii) A final determination in a countervailing duty investigation or an antidumping investigation;

(iii) Any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or

(2) Any other information placed on the record.

(d) *Corroboration of secondary information.* Under section 776(c) of the Act, when the Secretary relies on secondary information, the Secretary will, to the extent practicable, corroborate that information from independent sources that are reasonably at the Secretary's disposal. Independent sources may include, but are not limited to, published price lists, official import statistics and customs data, and

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information obtained from interested parties during the instant investigation or review. Corroborate means that the Secretary will examine whether the secondary information to be used has probative value. The fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate.

(e) *Use of certain information.* In reaching a determination under the Act and this Part, the Secretary will not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the Secretary if the conditions listed under section 782(e) of the Act are met.

§ 351.309 Written argument.

(a) *Introduction.* Written argument may be submitted during the course of an antidumping or countervailing duty proceeding. This section sets forth the time limits for submission of case and rebuttal briefs and provides guidance on what should be contained in these documents.

(b) *Written argument.* (1) *In general.* In making the final determination in a countervailing duty investigation or antidumping investigation or the final results of an administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review, the Secretary will consider written arguments in case or rebuttal briefs filed within the time limits in this section.

(2) *Written argument on request.* Notwithstanding paragraph (b)(1) of this section, the Secretary may request written argument on any issue from any person or U.S. Government agency at any time during a proceeding.

(c) *Case brief.* (1) Any interested party or U.S. Government agency may submit a "case brief" within:

(i) For a final determination in a countervailing duty investigation or antidumping investigation, 50 days after the date of publication of the preliminary determination, unless the Secretary alters this time limit;

(ii) For the final results of an administrative review, new shipper review, changed circumstances review, or section 762 review, 30 days after the date of publication of the preliminary results of review, unless the Secretary alters the time limit; or

(iii) For the final results of an expedited antidumping review, sunset review, Article 8 violation review, Article 4/Article 7 review, or section 753 review, a date specified by the Secretary.

(2) The case brief must present all arguments that continue in the submitter's view to be relevant to the Secretary's final determination or final results, including any arguments presented before the date of publication of the preliminary determination or preliminary results. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages.

(d) *Rebuttal brief.* (1) Any interested party or U.S. Government agency may submit a "rebuttal brief" within five days after the time limit for filing the case brief, unless the Secretary alters this time limit.

(2) The rebuttal brief may respond only to arguments raised in case briefs and should identify the arguments to which it is responding. As part of the rebuttal brief, parties are encouraged to provide a summary of the arguments not to exceed five pages.

§ 351.310 Hearings.

(a) *Introduction.* This section sets forth the procedures for requesting a hearing, indicates that the Secretary may consolidate hearings, and explains when the Secretary may hold closed hearing sessions.

(b) *Pre-hearing conference.* The Secretary may conduct a telephone pre-hearing conference with representatives of interested parties to facilitate the conduct of the hearing.

(c) *Request for hearing.* Any interested party may request that the Secretary hold a public hearing on arguments to be raised in case or rebuttal briefs within 30 days after the date of publication of the preliminary determination or preliminary results of review, unless the Secretary alters this time limit, or in a proceeding where the Secretary will not issue a preliminary determination, not later than a date specified by the Secretary. To the extent practicable, a party requesting a hearing must identify arguments to be raised at the hearing. At the hearing, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief.

(d) *Hearings in general.* (1) If an interested party submits a request under paragraph (c) of this section, the Secretary will hold a public hearing on the date stated in the notice of the Secretary's preliminary determination or preliminary results of administrative review (or otherwise specified by the Secretary in an expedited antidumping review), unless the Secretary alters the date. Ordinarily, the hearing will be held two days after the scheduled date for submission of rebuttal briefs.

(2) The hearing is not subject to 5 U.S.C. 551–559, and 702 (Administrative Procedure Act). Witness testimony, if any, will not be under oath or subject to cross-examination by another interested party or witness. During the hearing, the chair may question any person or witness and may request persons to present additional written argument.

(e) *Consolidated hearings.* At the Secretary's discretion, the Secretary may consolidate hearings in two or more cases.

(f) *Closed hearing sessions.* An interested party may request a closed session of the hearing no later than the date the case briefs are due in order to address limited issues during the course of the hearing. The requesting party must identify the subjects to be discussed, specify the amount of time requested, and justify the need for a closed session with respect to each subject. If the Secretary approves the request for a closed session, only authorized applicants and other persons authorized by the regulations may be present for the closed session (see § 351.305).

(g) *Transcript of hearing.* The Secretary will place a verbatim transcript of the hearing in the public and official records of the proceeding and will announce at the hearing how interested parties may obtain copies of the transcript.

§ 351.311 Countervailable subsidy practice discovered during investigation or review.

(a) *Introduction.* During the course of a countervailing duty investigation or review, Department officials may discover or receive notice of a practice that appears to provide a countervailable subsidy. This section explains when the Secretary will examine such a practice.

(b) *Inclusion in proceeding.* If during a countervailing duty investigation or a countervailing duty administrative review the Secretary discovers a practice that appears to provide a countervailable subsidy with respect to the subject merchandise and the practice was not alleged or examined in the proceeding, or if, pursuant to section 775 of the Act, the Secretary receives notice from the United States Trade Representative that a subsidy or subsidy program is in violation of Article 8 of the Subsidies Agreement, the Secretary will examine the practice, subsidy, or subsidy program if the Secretary concludes that sufficient time remains before the scheduled date for the final determination or final results of review.

(c) *Deferral of examination.* If the Secretary concludes that insufficient time remains before the scheduled date for the final determination or final results of review to examine the practice, subsidy, or subsidy program described in paragraph (b) of this section, the Secretary will:

(1) During an investigation, allow the petitioner to withdraw the petition without prejudice and resubmit it with an allegation with regard to the newly discovered practice, subsidy, or subsidy program; or

(2) During an investigation or review, defer consideration of the newly discovered practice, subsidy, or subsidy program until a subsequent administrative review, if any.

(d) *Notice.* The Secretary will notify the parties to the proceeding of any practice the Secretary discovers, or any subsidy or subsidy program with respect to which the Secretary receives notice from the United States Trade Representative, and whether or not it will be included in the then ongoing proceeding.

§ 351.312 Industrial users and consumer organizations.

(a) *Introduction.* The URAA provides for opportunity for comment by consumer organizations and industrial users on matters relevant to a particular determination of dumping, subsidization, or injury. This section indicates under what circumstances such persons may submit relevant information and argument.

(b) *Opportunity to submit relevant information and argument.* In an antidumping or countervailing duty proceeding under title VII of the Act and this Part, an industrial user of the subject merchandise or a representative consumer organization, as described in section 777(h) of the Act, may submit relevant factual information and written argument to the Department under § 351.301(b) and paragraphs (c) and (d) of § 351.309 concerning dumping or a countervailable subsidy. All such submissions must be filed in accordance with § 351.303.

(c) *Business proprietary information.* Persons described in paragraph (b) of this section may request business proprietary treatment of information under § 351.304, but will not be granted access under § 351.305 to business proprietary information submitted by other persons.

Subpart D—Calculation of Export Price, Constructed Export Price, Fair Value, and Normal Value

§ 351.401 In general.

(a) *Introduction.* In general terms, an antidumping analysis involves a comparison of export price or constructed export price in the United States with normal value in the foreign market. This section establishes certain general rules that apply to the calculation of export price, constructed export price and normal value. (See section 772, section 773, and section 773A of the Act).

(b) *Adjustments in general.* In making adjustments to export price, constructed export price, or normal value, the Secretary will adhere to the following principles:

(1) Any interested party that claims an adjustment must establish the claim to the satisfaction of the Secretary.

(2) The Secretary will not double-count adjustments.

(c) *Discounts, rebates, and other price adjustments.* In calculating export price, constructed export price, and normal value (where normal value is based on price), the Secretary will rely upon a price net of any discounts, rebates, or post-sale adjustments to price that are reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable).

(d) *Delayed payment or pre-payment of expenses.* Where cost is the basis for determining the amount of an adjustment to export price, constructed export price, or normal value, the Secretary will not factor in any delayed payment or pre-payment of expenses by the exporter or producer.

(e) *Adjustments for movement expenses.* In making adjustments for movement expenses to export price or constructed export price under section 772(c)(2)(A) of the Act, or to normal value under section 773(a)(6)(B)(ii) of the Act:

(1) The Secretary may adjust for warehousing expenses; and

(2) The "original place of shipment" means the original place from which the seller shipped the goods.

(f) *Treatment of affiliated producers in antidumping proceedings.* In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:

(1) The level of common ownership;

(2) Whether managerial employees or board members of one of the affiliated producers sit on the board of directors of the other affiliated person; and

(3) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

(g) *Allocation of expenses.* The Secretary may consider allocated expenses when transaction-specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions.

(h) *Treatment of subcontractors ("tolling" operations).* The Secretary will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership, and does not control the relevant sale of the subject merchandise or foreign like product.

(i) *Date of sale.* In identifying the date of a sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business.

§ 351.402 Calculation of export price and constructed export price; reimbursement of antidumping and countervailing duties.

(a) *Introduction.* In order to establish export price, constructed export price, and normal value, the Secretary must make certain adjustments to the price to the unaffiliated purchaser (often called the "starting price") in both the United States and foreign markets. This regulation clarifies how the Secretary will make certain of the adjustments to the starting price in the United States that are required by section 772 of the Act.

(b) *Additional adjustments to constructed export price.* The Secretary will make adjustments to constructed export price under section 772(d) of the Act for expenses associated with commercial activities in the United States, no matter where incurred.

(c) *Special rule for merchandise with value added after importation.* (1) *Merchandise imported by affiliated persons.* In applying section 772(e) of the Act, merchandise imported by and value added by a person affiliated with the exporter or producer includes

merchandise imported and value added for the account of such an affiliated person.

(2) *Estimation of value added.* The Secretary normally will determine that the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise if the Secretary estimates the value added to be at least 60 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States. The Secretary normally will estimate the value added based on the difference between the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the price paid for the subject merchandise by the affiliated person. The Secretary normally will base this determination on averages of the prices and the value added to the subject merchandise.

(3) *Determining dumping margins.* For purposes of determining dumping margins under paragraphs (1) and (2) of section 772(e) of the Act, the Secretary may use the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons.

(d) *Special rule for determining profit.* This paragraph sets forth rules for calculating profit in establishing constructed export price under section 772(f) of the Act.

(1) *Basis for total expenses and total actual profit.* In calculating total expenses and total actual profit, the Secretary normally will use the aggregate of expenses and profit for all subject merchandise sold in the United States and all foreign like products sold in the exporting country, including sales that have been disregarded as being below the cost of production. (See section 773(b) of the Act).

(2) *Use of financial reports.* For purposes of determining profit under section 772(d)(3) of the Act, the Secretary may rely on any appropriate financial reports, including public, audited financial statements, or equivalent financial reports, and internal financial reports prepared in the ordinary course of business.

(3) *Voluntary reporting of costs of production.* The Secretary will not require the reporting of costs of production solely for purposes of determining the amount of profit to be deducted from the constructed export price. The Secretary will base the calculation of profit on costs of production if such costs are reported voluntarily by the date established by the Secretary, and provided that it is practicable to do so and the costs of production are verifiable.

(e) *Treatment of payments between affiliated persons.* Where a person affiliated with the exporter or producer incurs any of the expenses deducted from constructed export price under section 772(d) of the Act and is reimbursed for such expenses by the exporter, producer or other affiliate, the Secretary normally will make an adjustment based on the actual cost to the affiliated person. If the Secretary is satisfied that information regarding the actual cost to the affiliated person is unavailable to the exporter or producer, the Secretary may determine the amount of the adjustment on any other reasonable basis, including the amount of the reimbursement to the affiliated person if the Secretary is satisfied that such amount reflects the amount usually paid in the market under consideration.

(f) *Reimbursement of antidumping duties and countervailing duties.* (1) *In general.* (i) In calculating the export price (or the constructed export price), the Secretary will deduct the amount of any antidumping duty or countervailing duty which the exporter or producer:

(A) Paid directly on behalf of the importer; or

(B) Reimbursed to the importer.

(ii) The Secretary will not deduct the amount of any antidumping duty or countervailing duty paid or reimbursed if the exporter or producer granted to the importer before initiation of the antidumping investigation in question a warranty of nonapplicability of antidumping duties or countervailing duties with respect to subject merchandise which was:

(A) Sold before the date of publication of the Secretary's order applicable to the merchandise in question; and

(B) Exported before the date of publication of the Secretary's final antidumping determination. Ordinarily, the Secretary will deduct the amount reimbursed only once in the calculation of the export price (or constructed export price).

(2) *Certificate.* The importer must file prior to liquidation a certificate in the following form with the appropriate District Director of Customs:

> I hereby certify that I (have) (have not) entered into any agreement or understanding for the payment or for the refunding to me, by the manufacturer, producer, seller, or exporter, of all or any part of the antidumping duties or countervailing duties assessed upon the following importations of (commodity) from (country): (List entry numbers) which have been purchased on or after (date of publication of antidumping notice suspending liquidation in the **Federal Register**) or purchased before (same date) but exported on or after (date of final determination of sales at less than fair value).

(3) *Presumption.* The Secretary may presume from an importer's failure to file the certificate required in paragraph (f)(2) of this section that the exporter or producer paid or reimbursed the antidumping duties or countervailing duties.

§ 351.403. Sales used in calculating normal value; transactions between affiliated parties.

(a) *Introduction.* This section clarifies when the Secretary may use offers for sale in determining normal value. Additionally, this section clarifies the authority of the Secretary to use sales to or through an affiliated party as a basis for normal value. (See section 773(a)(1)(B) and section 773(a)(5) of the Act.)

(b) *Sales and offers for sale.* In calculating normal value, the Secretary normally will consider offers for sale only in the absence of sales and only if the Secretary concludes that acceptance of the offer can be reasonably expected.

(c) *Sales to an affiliated party.* If an exporter or producer sold the foreign like product to an affiliated party, the Secretary may calculate normal value based on that sale only if satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller.

(d) *Sales through an affiliated party.* If an exporter or producer sold the foreign like product through an affiliated party, the Secretary may calculate normal value based on the sale by such affiliated party. (See section 773(a)(5) of the Act.)

§ 351.404 Selection of the market to be used as the basis for normal value.

(a) *Introduction.* Although in most circumstances sales of the foreign like product in the home market are the most appropriate basis for determining normal value, section 773 of the Act also permits use of sales to a third country or constructed value as the basis for normal value. This section clarifies the rules for determining the basis for normal value.

(b) *Determination of viable market.* (1) *In general.* The Secretary will consider the exporting country or a third country as constituting a viable market if the Secretary is satisfied that sales of the foreign like product in that country are of sufficient quantity to form the basis of normal value.

(2) *Sufficient quantity.* "Sufficient quantity" normally means that the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold by an exporter or producer in a country is 5 percent or more of the aggregate quantity (or value) of its sales of the subject merchandise to the United States.

(c) *Calculation of price-based normal value in viable market.* (1) *In general.* Subject to paragraph (c)(2) of this section:

(i) If the exporting country constitutes a viable market, the Secretary will calculate normal value on the basis of price in the exporting country (see section 773(a)(1)(B)(i) of the Act); or

(ii) If the exporting country does not constitute a viable market, but a third country does constitute a viable market, the Secretary may calculate normal value on the basis of price to a third country (see section 773(a)(1)(B)(ii) of the Act).

(2) *Exception.* The Secretary may decline to calculate normal value in a particular market under paragraph (c)(1) of this section if it is established to the satisfaction of the Secretary that:

(i) In the case of the exporting country or a third country, a particular market situation exists that does not permit a proper comparison with the export price or constructed export price (see section 773(a)(1)(B)(ii)(III) or section 773(a)(1)(C)(iii) of the Act; or

(ii) In the case of a third country, the price is not representative (see section 773(a)(1)(B)(ii)(I) of the Act).

(d) *Allegations concerning market viability and the basis for determining a price-based normal value.* In an antidumping investigation or review, allegations regarding market viability or the exceptions in paragraph (c)(2) of this section, must be filed, with all supporting factual information, in accordance with § 351.301(d)(1).

(e) *Selection of third country.* For purposes of calculating normal value based on prices in a third country, where prices in more than one third country satisfy the criteria of section 773(a)(1)(B)(ii) of the Act and this section, the Secretary generally will select the third country based on the following criteria:

(1) The foreign like product exported to a particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other third countries;

(2) The volume of sales to a particular third country is larger than the volume of sales to other third countries;

(3) Such other factors as the Secretary considers appropriate.

(f) *Third country sales and constructed value.* The Secretary normally will calculate normal value based on sales to a third country rather than on constructed value if adequate information is available and verifiable (see section 773(a)(4) of the Act).

§ 351.405 Calculation of normal value based on constructed value.

(a) *Introduction.* In certain circumstances, the Secretary may determine normal value by constructing a value based on the cost of manufacture, selling general and administrative expenses, and profit. The Secretary may use constructed value as the basis for normal value where: Neither the home market nor a third country market is viable; sales below the cost of production are disregarded; sales outside the ordinary course of trade, or sales the prices of which are otherwise unrepresentative, are disregarded; sales used to establish a fictitious market are disregarded; no contemporaneous sales of comparable merchandise are available; or in other circumstances where the Secretary determines that home market or third country prices are inappropriate. (See section 773(e) and section 773(f) of the Act). This section clarifies the meaning of certain terms relating to constructed value.

(b) *Profit and selling, general, and administrative expenses.* In determining the amount to be added to constructed value for profit and for selling, general, and administrative expenses, the following rules will apply:

(1) Under section 773(e)(2)(A) of the Act, "foreign country" means the country in which the merchandise is produced or a third country selected by the Secretary under § 351.404(e), as appropriate.

(2) Under section 773(e)(2)(B) of the Act, "foreign country" means the country in which the merchandise is produced.

§ 351.406 Calculation of normal value if sales are made at less than cost of production.

(a) *Introduction.* In determining normal value, the Secretary may disregard sales of the foreign-like product made at prices that are less than the cost of production of that product. However, among other criteria, such sales will be disregarded only if they are made within an extended period of time. (See section 773(b) of the Act.) This section clarifies the meaning of the term "extended period of time" as used in the Act.

(b) *Extended period of time.* The "extended period of time" under section 773(b)(1)(A) of the Act normally will coincide with the period in which the sales under consideration for the determination of normal value were made.

§ 351.407 Calculation of constructed value and cost of production.

(a) *Introduction.* This section sets forth certain rules that are common to the calculation of constructed value and the cost of production. (See section 773(f) of the Act).

(b) *Allocation of costs.* In determining the appropriate method for allocating costs among products, the Secretary may take into account production quantities, relative sales values, and other quantitative and qualitative factors associated with the manufacture and sale of the subject merchandise and the foreign like product.

(c) *Startup costs.* (1) In identifying startup operations under section 773(f)(1)(C)(ii) of the Act:

(i) "New production facilities" includes the substantially complete retooling of an existing plant. Substantially complete retooling involves the replacement of nearly all production machinery or the equivalent rebuilding of existing machinery.

(ii) A "new product" is one requiring substantial additional investment, including products which, though sold under an existing nameplate, involve the complete revamping or redesign of the product. Routine model year changes will not be considered a new product.

(iii) Mere improvements to existing products or ongoing improvements to existing facilities will not be considered startup operations.

(iv) An expansion of the capacity of an existing production line will not qualify as a startup operation unless the expansion constitutes such a major undertaking that it requires the construction of a new facility and results in a depression of production levels due to technical factors associated with the initial phase of commercial production of the expanded facilities.

(2) In identifying the end of the startup period under clauses (ii) and (iii) of section 773(f)(1)(C) of the Act:

(i) The attainment of peak production levels will not be the standard for identifying the end of the startup period, because the startup period may end well before a company achieves optimum capacity utilization.

(ii) The startup period will not be extended to cover improvements and cost reductions that may occur over the entire life cycle of a product.

(3) In determining when a producer reaches commercial production levels under section 773(f)(1)(C)(ii) of the Act:

(i) The Secretary will consider the actual production experience of the merchandise in question, measuring production on the basis of units processed.

(ii) To the extent necessary, the Secretary will examine factors in addition to those specified in section 773(f)(1)(C)(ii) of the Act, including historical data reflecting the same producer's or other producers' experiences in producing the same or similar products. A producer's projections of future volume or cost will be accorded little weight.

(4) In making an adjustment for startup operations under section 773(f)(1)(C)(iii) of the Act:

(i) The Secretary will determine the duration of the startup period on a case-by-case basis.

(ii) The difference between actual costs and the costs of production calculated for startup costs will be amortized over a reasonable period of time subsequent to the startup period over the life of the product or machinery, as appropriate.

(iii) The Secretary will consider unit production costs to be items such as depreciation of equipment and plant, labor costs, insurance, rent and lease expenses, material costs, and overhead. The Secretary will not consider sales expenses, such as advertising costs, or other non-production costs, as startup costs.

§ 351.408 Calculation of normal value of merchandise from nonmarket economy countries.

(a) *Introduction.* In identifying dumping from a nonmarket economy country, the Secretary normally will calculate normal value by valuing the nonmarket economy producers' factors of production in a market economy country. (See section 773(c) of the Act.) This section clarifies when and how this special methodology for nonmarket economies will be applied.

(b) *Economic Comparability.* In determining whether a country is at a level of economic development comparable to the nonmarket economy under section 773(c)(2)(B) or section 773(c)(4)(A) of the Act, the Secretary will place primary emphasis on per capita GDP as the measure of economic comparability.

(c) *Valuation of Factors of Production.* For purposes of valuing the factors of production, general expenses, profit, and the cost of containers, coverings, and other expenses (referred to collectively as "factors") under section 773(c)(1) of the Act the following rules will apply:

(1) *Information used to value factors.* The Secretary normally will use publicly available information to value factors. However, where a factor is purchased from a market economy producer and paid for in a market economy currency, the Secretary normally will use the price paid to the market economy supplier. In those instances where a portion of the factor is purchased from a market economy source and the remainder from a nonmarket economy producer, the Secretary normally will value the factor using the price paid to the market economy supplier.

(2) *Valuation in a single country.* Except for labor, as provided in paragraph (d)(3) of this section, the Secretary normally will value all factors in a single surrogate country.

(3) *Labor.* For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries found to be economically comparable to the nonmarket economy country under section 773(c)(4)(A) of the Act. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

(4) *Manufacturing overhead, general expenses, and profit.* For manufacturing overhead, general expenses, and profit, the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.

§ 351.409 Differences in quantities.

(a) *Introduction.* Because the quantity of merchandise sold may affect the price, in comparing export price or constructed export price with normal value, the Secretary normally will use sales of comparable quantities of merchandise. Where this is not practicable, the Secretary will make a reasonable allowance for any difference in quantities to the extent the Secretary is satisfied that the amount of any price differential (or lack thereof) is wholly or partly due to that difference in quantities. (See section 773(a)(6)(C)(i) of the Act.) In making the allowance, the Secretary will consider, among other things, the practice of the industry in the relevant country of granting quantity discounts in the ordinary course of trade.

(b) *Sales with quantity discounts in calculating normal value.* The Secretary normally will calculate normal value based on sales with quantity discounts only if:

(1) During the period examined, or during a more representative period, the exporter or producer granted quantity discounts of at least the same magnitude on 20 percent or more of sales of the foreign like product for the relevant country; or

(2) The exporter or producer demonstrates to the Secretary's satisfaction that the discounts reflect savings specifically attributable to the production of the different quantities.

(c) *Sales with quantity discounts in calculating weighted-average normal value.* If the exporter or producer does not satisfy the conditions of paragraph (b) of this section, the Secretary will calculate normal value based on weighted-average prices that include sales at a discount.

(d) *Price lists.* In determining whether a discount has been granted, the existence or lack thereof of a published price list reflecting such a discount will not be controlling. Ordinarily, the Secretary will give weight to a price list only if, in the line of trade and market under consideration, the exporter or producer demonstrates that it has adhered to its price list.

(e) *Relationship to level of trade adjustment.* If adjustments are claimed for both differences in quantities and differences in level of trade, the Secretary will not make an adjustment for differences in quantities unless the Secretary is satisfied that the effect on price comparability of differences in quantities has been identified and established separately from the effect on price comparability of differences in the levels of trade.

§ 351.410 Differences in circumstances of sale.

(a) *Introduction.* In calculating normal value the Secretary may make adjustments to account for certain differences in the circumstances of sales in the United States and foreign markets. (See section 773(a)(6)(C)(iii) of the Act). This section clarifies certain terms used in the statute regarding circumstances of sale adjustments and describes the adjustment when commissions are paid only in one market.

(b) *Direct selling expenses.* Under this section, "direct selling expenses" are expenses, such as commissions, credit expenses, guarantees, and warranties, that result from, and bear a direct relationship to, the particular sale in question.

(c) *Assumed expenses.* Assumed expenses are selling expenses that are assumed by the seller on behalf of the buyer, such as advertising expenses.

(d) *Reasonable allowance.* In deciding what is a reasonable allowance for any difference in circumstances of sale, the Secretary normally will consider the cost of such difference to the exporter or producer but, if appropriate, may also consider the effect of such difference on the market value of the merchandise.

(e) *Commissions paid in one market.* The Secretary normally will make a reasonable allowance for other selling expenses if the Secretary makes a reasonable allowance for commissions in one of the markets under consideration, and no commission is paid in the other market under consideration. The Secretary will limit the amount of such allowance to the amount of the other selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

§ 351.411 Differences in physical characteristics.

(a) *Introduction.* In comparing United States sales with foreign market sales, the Secretary may determine that the merchandise sold in the United States does not have the same physical characteristics as the merchandise sold in the foreign market, and that the difference has an effect on prices. In calculating normal value, the Secretary will make a reasonable allowance for such differences. (See section 773(a)(6)(C)(ii) of the Act).

(b) *Reasonable allowance.* In deciding what is a reasonable allowance for differences in physical characteristics, the Secretary will consider only differences in variable costs associated with the physical differences. Where appropriate, the Secretary may also consider differences in the market value. The Secretary will not consider differences in cost of production when compared merchandise has identical physical characteristics.

§ 351.412 Levels of trade; adjustment for differences in level of trade; constructed export price offset.

(a) *Introduction.* In comparing United States sales with foreign market sales the Secretary may determine that sales in the two markets were not made at the same level of trade, and that the difference has an effect on the comparability of the prices. The Secretary is authorized to adjust normal value to account for such a difference. (See section 773(a)(7) of the Act).

(b) *Identifying levels of trade and differences in levels of trade.* In identifying the sales to be used in calculating normal value (see section 773(a)(1)(B) of the Act), and in making an adjustment for differences in level of trade or a constructed export price offset (see section 773(a)(7) of the Act), the Secretary will identify the level of trade as follows:

(1) In the case of export price and normal value, the Secretary will identify the level of trade based on the starting price;

(2) In the case of constructed export price, the Secretary will identify the level of trade based on the price after the deduction of expenses and profit under section 772(d) of the Act;

(c) *Adjustment for difference in level of trade.* (1) *In general.* The Secretary will adjust normal value for a difference in level of trade if:

(i) The Secretary calculates normal value on the basis of a sale that the Secretary determines is made at a different level of trade from the export price or the constructed export price (whichever is applicable); and

(ii) The Secretary determines that the difference in level of trade has an effect on price comparability.

(2) *Identifying different levels of trade.* The Secretary will determine that sales are made at different levels of trade if such sales involve the performance of different selling functions and activities. In making this determination, the Secretary will consider all selling functions and activities performed by the seller. The fact that there is some overlap in selling functions and activities will not preclude a determination that sales are made at different levels of trade. Where the selling functions and activities are substantially the same, however, sales normally will be considered to have been made at the same level of trade.

(3) *Effect on price comparability.* The Secretary will determine that a difference in level of trade has an effect on price comparability only if it is established to the satisfaction of the Secretary that, with respect to the sales used to calculate normal value, there is a pattern of consistent price differences between sales made at different levels of trade.

(4) *Amount of adjustment.* The Secretary normally will calculate the amount of a level of trade adjustment by:

(i) Calculating an average of the prices of the sales used to calculate normal value at each level of trade in the exporting country or the third country (whichever is applicable), after making any other adjustments required by section 773(a)(6) of the Act and this subpart;

(ii) Calculating the average of the percentage differences between such average prices; and

(iii) Applying the average percentage difference to the prices of sales made at the level of trade that is different from the level of trade of the export price or the constructed export price (whichever is applicable).

(d) *Constructed export price offset.* In making the constructed export price offset under section 773(a)(7)(B) of the Act, "indirect selling expenses" means expenses, other than direct selling expenses or assumed selling expenses (see § 351.410), that the seller would incur regardless of whether particular sales were made, but that reasonably may be attributed, in whole or in part, to such sales.

§ 351.413 Disregarding insignificant adjustments.

Ordinarily, under section 777A(a)(2) of the Act, an "insignificant adjustment" is any individual adjustment having an ad valorem effect of less than 0.33 percent, or any group of adjustments having an ad valorem effect of less than 1.0 percent, of the export price, constructed export price, or normal value, as the case may be. Groups of adjustments are adjustments for differences in circumstances of sale under § 351.410, adjustments for differences in the physical characteristics of the merchandise under § 351.411, and adjustments for differences in the levels of trade under § 351.412.

§ 351.414 Comparison of normal value with export price (constructed export price).

(a) *Introduction.* The Secretary normally will average prices used as the basis for normal value and, in an investigation, prices used as the basis for export price or constructed export price as well. This section explains when and how the Secretary will average prices in making comparisons of export price or constructed export price with normal value. (See section 777A(d) of the Act).

(b) *Description of methods of comparison.* (1) *Average-to-average method.* The "average-to-average" method involves a comparison of the weighted average of the normal values with the weighted average of the export prices (and constructed export prices) for comparable merchandise.

(2) *Transaction-to-transaction method.* The "transaction-to-transaction" method involves a comparison of the normal values of individual transactions with the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(3) *Average-to-transaction method.* The "average-to-transaction" method involves a comparison of the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(c) *Preferences.* (1) In an investigation, the Secretary normally will use the average-to-average method. The Secretary will use the transaction-to-

transaction method only in unusual situations, such as when there are very few sales of subject merchandise and the merchandise sold in each market is identical or very similar or is custom-made.

(2) In a review, the Secretary normally will use the average-to-transaction method.

(d) Application of the average-to-average method. (1) *In general.* In applying the average-to-average method, the Secretary will identify those sales of the subject merchandise to the United States that are comparable, and will include such sales in an "averaging group." The Secretary will calculate a weighted average of the export prices and the constructed export prices of the sales included in the averaging group, and will compare this weighted average to the weighted average of the normal values of such sales.

(2) *Identification of the averaging group.* An averaging group will consist of subject merchandise that is identical or virtually identical in all physical characteristics and that is sold to the United States at the same level of trade. In identifying sales to be included in an averaging group, the Secretary also will take into account, where appropriate, the region of the United States in which the merchandise is sold, and such other factors as the Secretary considers relevant.

(3) *Time period over which weighted average is calculated.* When applying the average-to-average method, the Secretary normally will calculate weighted averages for the entire period of investigation or review, as the case may be. However, when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation or review, the Secretary may calculate weighted averages for such shorter period as the Secretary deems appropriate.

(e) *Application of the average-to-transaction method.* (1) *In general.* In applying the average-to-transaction method in a review, when normal value is based on the weighted average of sales of the foreign like product, the Secretary will limit the averaging of such prices to sales incurred during the contemporaneous month.

(2) *Contemporaneous month.* Normally, the Secretary will select as the contemporaneous month the first of the following which applies:

(i) The month during which the particular U.S. sale under consideration is made;

(ii) If there are no sales of the foreign like product during this month, the most recent of the three months prior to the month of the U.S. sale in which there was a sale of the foreign like product.

(iii) If there are no sales of the foreign like product during any of these months, the earlier of the two months following the month of the U.S. sale in which there was a sale of the foreign like product.

(f) *Targeted dumping.* (1) *In general.* Notwithstanding paragraph (c)(1) of this section, the Secretary may apply the average-to-transaction method, as described in paragraph (e) of this section, in an antidumping investigation if:

(i) There is targeted dumping in the form of a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time; and

(ii) The Secretary explains why such differences cannot be taken into account using the average-to-average method or the transaction-to-transaction method.

In applying paragraph (f)(1)(i) of this section, the Secretary will use, among other things, standard statistical techniques in determining whether there is a pattern of prices that differ significantly.

(2) *Limitation of average-to-transaction method to targeted dumping.* Where the criteria for identifying targeted dumping under paragraph (f)(1) of this section are satisfied, the Secretary normally will limit the application of the average-to-transaction method to those sales that constitute targeted dumping under paragraph (f)(1)(i) of this section.

(3) *Allegations concerning targeted dumping.* The Secretary will not consider targeted dumping absent an allegation, normally filed within the time indicated in § 351.301(d)(4). Allegations must include all supporting factual information, and an explanation as to why the average-to-average or transaction-to-transaction method could not take into account any alleged price differences.

(g) *Requests for information.* In an investigation, the Secretary will request information relevant to the identification of averaging groups under paragraph (d)(2) of this section and to the analysis of possible targeted dumping under paragraph (f) of this section. If a response to a request for such information is such as to warrant the application of the facts otherwise available, within the meaning of section 776 of the Act and § 351.308, the Secretary may apply the average-to-transaction method to all the sales of the producer or exporter concerned.

§ 351.415 Conversion of currency.

(a) *In general.* In an antidumping proceeding, the Secretary will convert foreign currencies into United States dollars using the rate of exchange on the date of sale of the subject merchandise.

(b) *Exception.* If the Secretary establishes that a currency transaction on forward markets is directly linked to an export sale under consideration, the Secretary will use the exchange rate specified with respect to such foreign currency in the forward sale agreement to convert the foreign currency.

(c) *Exchange rate fluctuations.* The Secretary will ignore fluctuations in exchange rates.

(d) *Sustained movement in foreign currency value.* In an antidumping investigation, if there is a sustained movement increasing the value of the foreign currency relative to the United States dollar, the Secretary will allow exporters 60 days to adjust their prices to reflect such sustained movement.

Subpart E—[Reserved]

Subpart F—Subsidy Determinations Regarding Cheese Subject to an In-Quota Rate of Duty

§ 351.601 Annual list and quarterly update of subsidies.

The Secretary will make the determinations called for by section 702(a) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 1202 note) based on the available information, and will publish the annual list and quarterly updates described in such section in the **Federal Register**.

§ 351.602 Determination upon request.

(a) *Request for determination.* (1) Any person, including the Secretary of Agriculture, who has reason to believe there have been changes in or additions to the latest annual list published under § 351.601 may request in writing that the Secretary determine under section 702(a)(3) of the Trade Agreements Act of 1979 whether there are any changes or additions. The person must file the request with the Central Records Unit (see § 351.103). The request must allege either a change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update provided by a foreign government, and must contain the following, to the extent reasonably available to the requesting person:

(i) The name and address of the person;

(ii) The article of cheese subject to an in-quota rate of duty allegedly benefitting from the changed or additional subsidy;

(iii) The country of origin of the article of cheese subject to an in-quota rate of duty; and

(iv) The alleged subsidy or changed subsidy and relevant factual information (particularly documentary evidence) regarding the alleged changed or additional subsidy including the authority under which it is provided, the manner in which it is paid, and the value of the subsidy to producers or exporters of the article.

(2) The requirements of § 351.303 (c) and (d) apply to this section.

(b) *Determination.* Not later than 30 days after receiving an acceptable request, the Secretary will:

(1) In consultation with the Secretary of Agriculture, determine based on the available information whether there has been any change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update is being provided by a foreign government;

(2) Notify the Secretary of Agriculture and the person making the request of the determination; and

(3) Promptly publish in the **Federal Register** notice of any changes or additions.

§ 351.603 Complaint of price-undercutting by subsidized imports.

Upon receipt of a complaint filed with the Secretary of Agriculture under section 702(b) of the Trade Agreements Act concerning price-undercutting by subsidized imports, the Secretary will promptly determine, under section 702(a)(3) of the Trade Agreements Act of 1979, whether or not the alleged subsidies are included in or should be added to the latest annual list or quarterly update.

§ 351.604 Access to information.

Subpart C of this part applies to factual information submitted in connection with this subpart.

Annex I.—Deadlines for Parties in Countervailing Investigations

Deadlines for Parties in Countervailing Investigations

Day	Event	Proposed regulation
0 days	Date of Initiation[1]	
31 days[2]	Extension request for responses to questionnaires	351.301(c)(2)(iv).
37 days	Application for an Administrative Protective Order	351.305(b)(3).
40 days	Request for postponement by petitioner	351.205(e).
45 days	Allegation of critical circumstances	351.206(c)(2)(i).
47 days	Questionnaire Response Due	351.301(c)(2)(iii).
No deadline in an investigation	Exclusion requests	351.204(e)(3).
55 days	Allegation of upstream subsidies	351.301(d)(3)(ii)(B).
65 days (Can be extended)	Preliminary Determination	351.205(b)(1).
70 days	Submission of proposed suspension agreement	351.208(f)(1).
75 days[3]	Submission of information	351.301(b)(1).
75 days	Ministerial error comments	351.224(c)(2).
77 days	Request to align a CVD case with a concurrent AD case	351.210(i).
80 days	Replies to ministerial error comments	351.224(c)(3).
102 days	Request for a hearing	351.310(c).
115 days (Can be changed)	Closed hearing sessions	351.310(f).
115 days (Can be changed)	Submission of briefs	351.309(c)(1)(i).
119 days	Critical circumstances allegation	351.206(e).
120 days	Submission of rebuttal briefs	351.309(d).
125 days	Allegation of upstream subsidies	351.301(d)(3)(ii)(B).
140 days (Can be extended)	Final Determination	351.210.
170 days	Ministerial error comments	351.224(c)(2).
175 days	Replies to ministerial error comments	351.224(c)(3).
175 days	Request for exception from the assessment of duties	351.211(d).
192 days	Termination of suspension of liquidation	351.210(h).
212 days	Order issued	351.211.

[1] All of the following references to days are keyed to the date of initiation.
[2] This assumes that the Department will send out the questionnaire within 15 days of the initiation.
[3] Assuming about 17 days between the preliminary determination and verification

Annex II.—Deadlines for Parties in Countervailing Administrative Reviews

Deadlines for Parties in Countervailing Administrative Reviews

Day	Event	Proposed Regulation
0 days[1]	Last Day of the Anniversary Month	351.213(b).
30 days	Publication of Initiation	None
37 days	Application for an Administrative Protective Order	351.305(b)(3).
66 days	Extension request for responses to questionnaires	351.301(c)(2)(iv).
82 days	Questionnaire response	351.301(c)(2)(iii).
120 days	Withdrawal of Request for Review	351.213(d)(1).
170 days	Submission of information	351.301(b)(2).
245 days (Can be extended)	Preliminary Results	351.213(h)(1)
255 days	Ministerial error comments	351.224(c)(2).
260 days	Replies to ministerial error comments	351.224(c)(3).
282 days	Request for a hearing	351.310(c)
282 days (Can be changed)	Closed hearing sessions	351.310(f).
282 days (Can be changed)	Submission of briefs	351.309(c)(1)(ii).

Day	Event	Proposed Regulation
287 days	Submission of rebuttal briefs	351.309(d).
365 days (Can be extended)	Final Results	351.213(h)(1).
375 days	Ministerial error comments	351.224(c)(2).
380 days	Replies to ministerial error comments	351.224(c)(3).

[1] This assumes that the Department will send out the questionnaire within 45 days of the last day of the anniversary month.

Annex III.—Deadlines for Parties in Antidumping Investigations

Deadlines for Parties in Antidumping Investigations

Day	Event	Proposed regulation
Day 0	Date of Initiation[1]	
37 days	Application for an Administrative Protective Order	351.305(b)(3).
50 days[2]	Extension request for responses to questionnaires	351.301(c)(2)(iv).
50 days	Section A response	None.
54 days	Country-wide cost allegation	351.301(d)(2)(i)(A).
65 days	Section B and C responses	351.301(c)(2)(iii).
65 days	Section D and E response	See 351.301(c)(2)(ii).
77 days	Viability arguments	351.301(d)(1).
85 days	Company-specific cost allegations	351.301(d)(2)(i)(B).
115 days	Request for Postponement by Petitioner	351.205(e).
120 days	Allegation of critical circumstances	351.206(c)(2)(i).
140 days (Can be extended)	Preliminary Determination	351.205(b)(1).
150 days	Ministerial error comments	351.224(c)(2).
155 days	Replies to ministerial error comments	351.224(c)(3).
155 days	Submission of proposed suspension agreement	351.208(f)(1).
161 days[3]	Submission of information	351.301(b)(1).
177 days	Request for a hearing	351.310(c).
187 days	Submission of publicly available information to value factors (NME's).	351.301(c)(3).
194 days	Critical circumstance allegation	351.206(e).
197 days (Can be changed)	Closed hearing sessions	351.310(f).
197 days (Can be changed)	Submission of briefs	351.309(c)(i).
202 days	Submission of rebuttal briefs	351.309(9).
215 days	Request for postponement of the final determination	351.210(e).
215 days (Can be extended)	Final Determination	351.210.
225 days	Ministerial error comments	351.224(c)(2).
230 days	Replies to ministerial error comments	351.224(c)(3).
230 days	Request for exception from assessment of duties	351.211(d)(2).
267 days	Order issued	351.211(b).
282 days	Suspension agreement for regional industry	351.208(f)(1)(ii).

[1] All of the following references to days are keyed to the date of initiation.
[2] This assumes that the Department will send out the questionnaire within 5 days of the ITC vote.
[3] Assuming about 28 days between the preliminary determination and verification.

Annex IV.—Deadlines for Parties in Antidumping Administrative Reviews

Deadlines for Parties in Antidumping Administrative Reviews

Day	Event	Proposed Regulation
0 days[1]	Last Day of the Anniversary Month	Sec. 351.213(b).
30 days	Publication of Initiation	None.
37 days	Application for an Administrative Protective Order	351.305 (b)(3).
60 days	Request to Examine Absorption of Duties (AD)	351.213(j).
66 days	Extension request for responses to questionnaires	351.301(c)(2)(iv).
66 days	Section A response	None .
77 days	Country-wide cost allegation	351.301(d)(2)(i)(A).
82 days	Sections B and C response	351.301(c)(2)(iii).
82 days	Sections D and E response	None.
92 days	Viability arguments	351.301(d)(1).
102 days	Company-specific cost allegations	351.301(d)(2)(i)(B).
120 days	Withdrawal of Request for Review	351.213(d)(1).
170 days	Submission of information	351.301(b)(2).
245 days (Can be extended)	Preliminary Results	351.213(h)(1).
255 days	Ministerial error comments	351.224(c)(2).
260 days	Replies to ministerial error comments	351.224(c)(3).
272 days	Submission of publicly available information to value factors (NME's).	351.301(c)(3)(ii).
282 days	Request for a hearing	351.310(c).
282 days (Can be changed)	Closed hearing sessions	351.310(f).
282 days (Can be changed)	Submission of briefs	351.309(c)(1)(ii).
287 days	Submission of rebuttal briefs	351.309(d).

Day	Event	Proposed Regulation
365 days (Can be extended)	Final results	351.213(h)(1).
375 days	Ministerial error comments	351.224(c)(2).
380 days	Replies to ministerial error comments	351.224(c)(3).

[1] This assumes that the Department will send out the questionnaire within 45 days of the last day of the anniversary month.

Annex V.—Comparison of Prior and Proposed Regulations

COMPARISON OF PRIOR AND PROPOSED REGULATIONS

Prior	Proposed	Description
	PART 353—ANTIDUMPING DUTIES	
	Subpart A—Scope and Definitions	
353.1	351.101	Scope of regulations.
353.2	351.102	Definitions.
353.3	351.104	Record of proceedings.
353.4	351.105	Public, proprietary, privileged and classified.
353.5	Removed	Trade and Tariff Act of 1984 amendments.
353.6	351.106	*De minimis* weighted-average dumping margin.
	Subpart B—Antidumping Duty Procedures	
353.11	351.201	Self-initiation.
353.12	351.202	Petition requirements.
353.13	351.203	Determination of sufficiency of petition.
353.14	351.204(e)	Exclusion from antidumping duty order.
353.15	351.205	Preliminary determination.
353.16	351.206	Critical circumstances.
353.17	351.207	Termination of investigation.
353.18	351.208	Suspension of investigation.
353.19	351.209	Violation of suspension agreement.
353.20	351.210	Final determination.
353.21	351.211	Antidumping duty order.
353.21(c)	351.204(e)	Exclusion from antidumping duty order.
353.22(a)–(d)	351.213, 351.221	Administrative reviews under 751(a) of the Act.
353.22(e)	351.212(c)	Automatic assessment of duties.
353.22(f)	351.216, 351.221(c)(3)	Changed circumstances reviews.
353.22(g)	351.215, 351.221(c)(2)	Expedited antidumping review.
353.23	351.212(d)	Provisional measures deposit cap.
353.24	351.212(e)	Interest on overpayments and underpayments.
353.25	351.222	Revocation of orders; termination of suspended investigations.
353.26	351.402(f)	Reimbursement of duties.
353.27	351.223	Downstream product monitoring.
353.28	351.224	Correction of ministerial errors.
353.29	351.225	Scope rulings.
	Subpart C—Information and Argument	
353.31(a)–(c)	351.301	Time limits for submission of factual information.
353.31(a)(3)	351.302(d), 351.104(a)(2)	Return of untimely material.
353.31(b)(3)	351.302(c)	Request for extension of time.
353.31(d)–(i)	351.303	Filing, format, translation, service and certification.
353.32	351.304	Request for proprietary treatment of information.
353.33	351.104, 351.304(a)(2)	Information exempt from disclosure.
353.34	351.305, 351.306	Disclosure of information under protective order.
353.35	Removed	*Ex parte* meeting.
353.36	351.307	Verification.
353.37	351.308	Determinations on the basis of the facts available.
353.38(a)–(e)	351.309	Written argument.
353.38(f)	351.310	Hearings.
	Subpart D—Calculation of Export Price, Constructed Export Price, Fair Value and Normal Value	
353.41	351.402	Calculation of export price.
353.42(a)	351.102	Fair value (definition).
353.42(b)	351.104(c)	Transactions and persons examined.
353.43	351.403(b)	Sales used in calculating normal value.
353.44	Removed	Sales at varying prices.
353.45	351.403	Transactions between affiliated parties.
353.46	351.404	Selection of home market as the basis for normal value.
353.47	Removed	Intermediate countries.
353.48	351.404	Basis for normal value if home market sales are inadequate.
353.49	351.404	Sales to a third country.
353.50	351.405, 351.407	Calculation of normal value based on constructed value.
353.51	351.406, 351.407	Sales at less than the cost of production.
353.52	351.408	Nonmarket economy countries.
353.53	Removed	Multinational corporations.

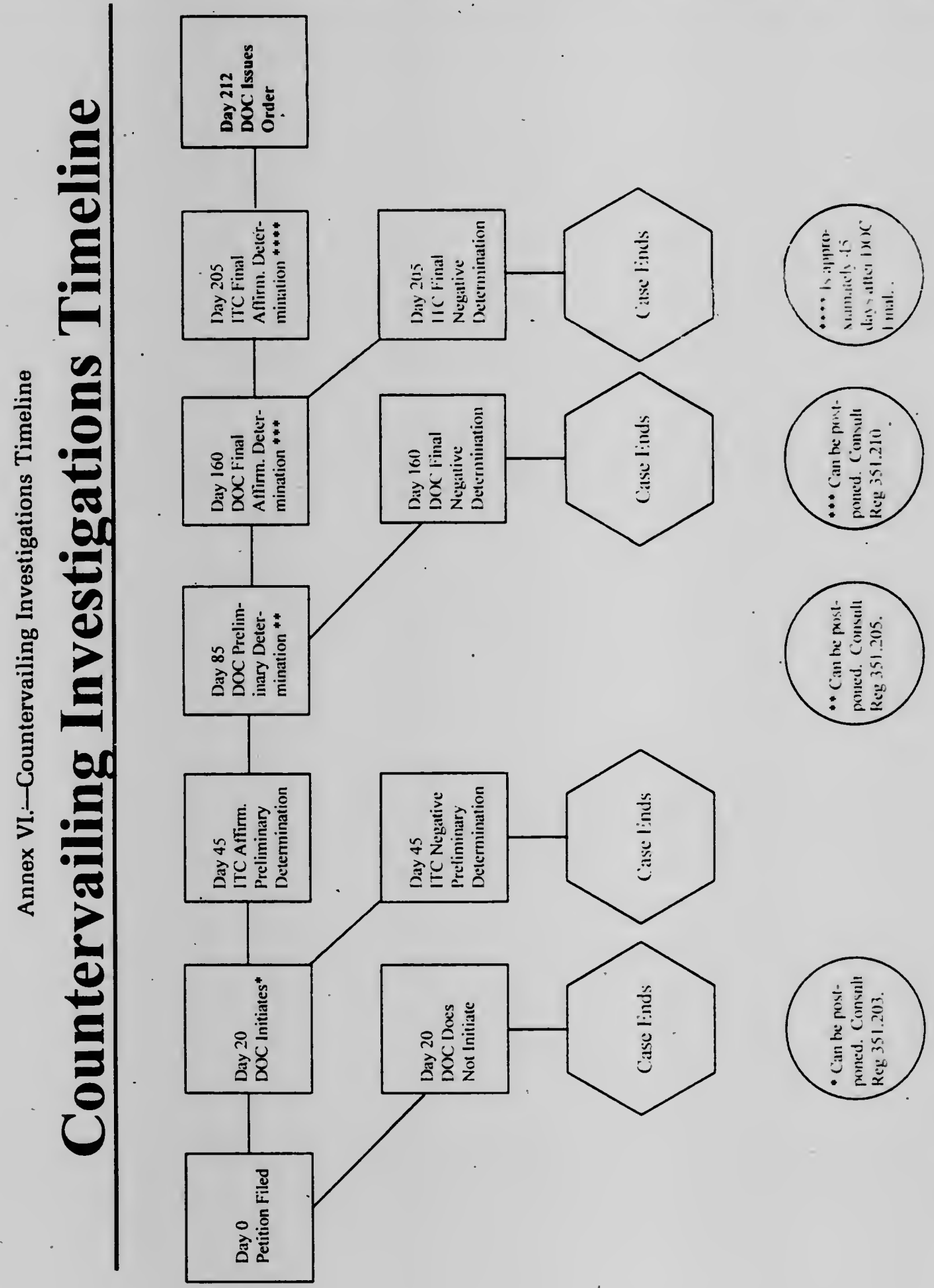
COMPARISON OF PRIOR AND PROPOSED REGULATIONS—Continued

Prior	Proposed	Description
353.54	351.401(b)	Claims for adjustments.
353.55	351.409	Differences in quantities.
353.56	351.410	Differences in circumstances of sale.
353.57	351.411	Differences in physical characteristics.
353.58	351.412	Levels of trade.
353.59(a)	351.413	Insignificant adjustments.
353.59(b)	351.414	Use of averaging.
353.60	351.415	Conversion of currency.
	PART 355—COUNTERVAILING DUTIES	
	Subpart A—Scope and Definitions	
355.1	351.001	Scope of regulations.
355.2	351.002	Definitions.
355.3	351.004	Record of proceeding.
355.4	351.005	Public, proprietary, privileged and classified.
355.5	351.003(a)	Subsidy library.
355.6	Removed	Trade and Tariff Act of 1984 amendments.
355.7	351.006	*De minimis* net subsidies.
	Subpart B—Countervailing Duty Procedures	
355.11	351.101	Self-initiation.
355.12	351.102	Petition requirements.
355.13	351.103	Determination of sufficiency of petition.
355.14	351.104(e)	Exclusion from countervailing duty order.
355.15	351.105	Preliminary determination.
355.16	351.106	Critical circumstances.
355.17	351.107	Termination of investigation.
355.18	351.108	Suspension of investigation.
355.19	351.109	Violation of agreement.
355.20	351.110	Final determination.
355.21	351.111	Countervailing duty order.
355.21(c)	351.104(e)	Exclusion from countervailing duty order.
355.22(a)–(c)	351.113, 351.121	Administrative reviews under 751(a) of the Act.
355.22(d)	Removed	Calculation of individual rates.
355.22(e)	351.113(h)	Possible cancellation or revision of suspension agreements.
355.22(f)	Removed	Review of individual producer or exporter.
355.22(g)	351.112(c)	Automatic assessment of duties.
355.22(h)	351.116, 351.121(c)(3)	Changed circumstances review.
355.22(i)	351.120, 351.221(c)(7)	Review at the direction of the President.
355.23	351.112(d)	Provisional measures deposit cap.
355.24	351.112(e)	Interest on overpayments and underpayments.
355.25	351.112	Revocation of orders; termination of suspended investigations.
355.27	351.123	Downstream product monitoring.
355.28	351.124	Correction of ministerial errors.
355.29	351.125	Scope determinations.
	Subpart C—Information and Argument	
355.31(a)–(c)	351.301	Time limits for submission of factual information.
355.31(a)(3)	351.302(d), 351.104(a)(2)	Return of untimely material.
355.31(b)(3)	351.302(c)	Request for extension of time.
355.31(d)–(i)	351.303	Filing, format, translation, service and certification.
355.32	351.304	Request for proprietary treatment of information.
355.33	351.104, 351.304(a)(2)	Information exempt from disclosure.
355.34	351.305, 351.306	Disclosure of information under protective order.
355.35	Removed	*Ex parte* meeting.
355.36	351.307	Verification.
355.37	351.308	Determinations on the basis of the facts available.
355.38(a)–(e)	351.309	Written argument.
355.38(f)	351.310	Hearings.
355.39	351.311	Subsidy practice discovered during investigation or review.
	Subpart D—Quota Cheese Subsidy Determinations	
355.41	Removed	Definition of subsidy.
355.42	351.601	Annual list and quarterly update.
355.43	351.602	Determination upon request.
355.44	351.603	Complaint of price-undercutting.
355.45	351.604	Access to information.

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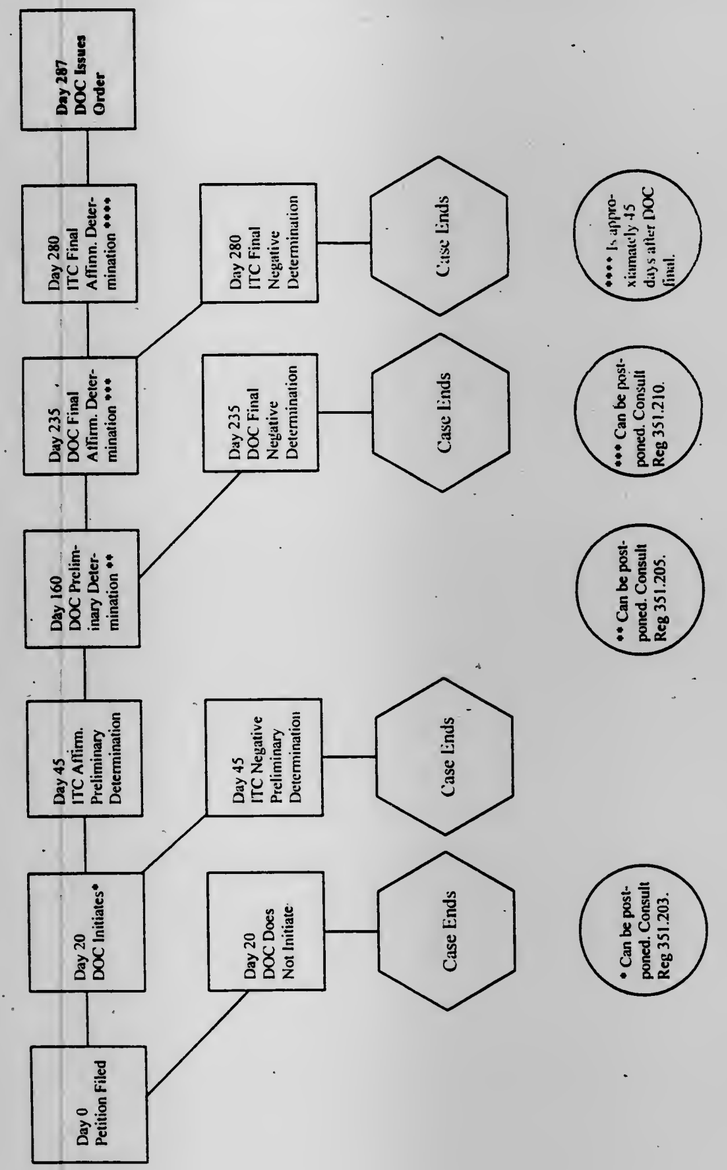
Annex VI.—Countervailing Investigations Timeline

Countervailing Investigations Timeline



Annex VII.—Antidumping Investigations Timeline

Antidumping Investigations Timeline



[FR Doc. 96–4024 Filed 2–26–96; 8:45 am]
BILLING CODE 3510–25–C

federal register

Tuesday
February 27, 1996

Part III

Department of Housing and Urban Development

Office of the Secretary

Notice of Regulatory Waiver Requests Granted; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–3864–N–05]

Notice of Regulatory Waiver Requests Granted

AGENCY: Office of the Secretary, HUD.

ACTION: Public Notice of the Granting of Regulatory Waivers. Request: July 1, 1995 through September 30, 1995.

SUMMARY: Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), the Department (HUD) is required to make public all approval actions taken on waivers of regulations. This notice is the nineteenth such notice being published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this notice is to comply with the requirements of section 106 of the Reform Act.

FOR FURTHER INFORMATION CONTACT: For general information about this Notice, contact Camille E. Acevedo, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone 202–708–3055; TDD: (202) 708–3259. (These are not toll-free numbers.) For information concerning a particular waiver action, about which public notice is provided in this document, contact the person whose name and address is set out, for the particular item, in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by the Department. Section 106 of the Act (Section 7(q)(3)) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q)(3), provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to *issue* the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that the Department has approved, by publishing a Notice in the **Federal Register**. These Notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purposes of today's document.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives Issued by HUD (56 FR 16337, April 22, 1991). This is the nineteenth Notice of its kind to be published under Section 106. It updates HUD's waiver-grant activity from July 1, 1995 through September 30, 1995. In approximately three months, the Department will publish a similar Notice, providing information about waiver-grant activity for the period from October 1, 1995 through December 31, 1995.

For ease of reference, waiver requests granted by departmental officials authorized to grant waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver action. For example, a waiver-grant action involving exercise of authority under 24 CFR 24.200 (involving the waiver of a provision in Part 24) would come early in the sequence, while waivers in the Section 8 and Section 202 programs (24 CFR Chapter VIII) would be among the last matters listed. Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in Title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 811.105(b) and § 811.107(a) would appear sequentially in the listing under § 811.105(b).) Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should the Department receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occur between October 1, 1995 through December 31, 1995.

Accordingly, information about approved waiver requests pertaining to regulations of the Department is provided in the Appendix that follows this Notice.

Dated: February 20, 1996.

Henry G. Cisneros,

Secretary.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development July 1, 1995 through September 30, 1995

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing is:

Mr. James B. Mitchell, Director, Financial Services Division, U.S. Department of Housing and Urban Development, 470 L'Enfant Plaza East, Suite 3119, Washington, DC 20024, Phone: (202) 755–7450 x125

1. Regulation: 24 CFR Part 811 (1977) Sections 811.106(d) and 811.107(d).

Project/Activity: The Rocky Mount, North Carolina Housing Authority refunding of bonds which financed a Section 8 assisted project, Tessie Street Elderly Apartments, No. NC19–0004–001.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 26, 1995

Reasons Waived: The Part 811 regulations cited above prohibited refundings and restricted use of excess reserve balances to project purposes only. This refunding proposal was approved by HUD on September 6, 1995. Refunding bonds have been priced to an average yield of 6.28%. The 1979 Bond reserves will be used to help pay transactions costs. The tax-exempt refunding bond issue of $805,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 8% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

2. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Greater Kentucky Housing Assistance Corporation refunding of bonds which financed a Section 8 assisted project, Tug Fork Woods Apartments, FHA No. 083–35239.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: July 26, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on June 8, 1995. Refunding bonds have been priced to an average yield of 6.29%. The tax-exempt refunding bond issue of $2,535,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.5% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 9.45% to 6.7%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

3. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Ohio Capital Corporation for Housing refunding of bonds which financed four Section 8 assisted projects: Little Bark Manor, FHA No. 042–35344; Little Bark View, FHA No. 042–35345; Port Clinton, FHA No. 043–35238; and the McArthur Park Apartments, FHA No. 043–35238.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing—Federal Housing Commissioner.

Dated Granted: July 27, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on July 20, 1995. Refunding bonds have been priced to an average yield of 6.20%. The tax-exempt refunding bond issue of $6,045,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.23% at the call date with tax-exempt bonds yielding substantially less. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.52% to 6.5%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

4. Regulation: 24 CFR Sections 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Gloucester County, New Jersey Housing Authority refunding of bonds which financed a Section 8 assisted project, New Sharon Woods Apartments, FHA No. 035–35086.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing—Federal Housing Commissioner.

Dated Granted: July 31, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on April 10, 1995. Refunding bonds have been priced to an average yield of 6.70%. The tax-exempt refunding bond issue of $2,720,892 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.8% to 7.3%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, providing $160,000 for project repairs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

5. Regulation: 24 CFR Part 811, Sections 811.106(b) and 811.107(d) of 1977 Regulations.

Project/Activity: City of Phoenix, Arizona refunding of bonds which financed two uninsured Section 8 assisted projects: Sunnyslope Manor and Fillmore Gardens.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing—FHA Commissioner.

Dated Granted: August 8, 1995.

Reasons Waived: The Part 811 regulations cited above prohibited refundings and required that excess reserve balances be used for project purposes. The issuer has requested HUD permission to release excess reserve balances from the 1978 and 1979 Trust Indentures for use in its housing assistance programs for low- and moderate-income families. Issuance of refunding bonds under Section 103 of the Tax Code will not reduce project debt service nor generate Section 8 savings. The City of Phoenix will execute a HUD Use Agreement to maintain low-income project occupancy for 5 years after expiration of Section 8 subsidies.

6. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Beaumont, Texas Housing Authority refunding of bonds which financed a Section 8 assisted project, Park Shadows Apartments, FHA No. 114–35308.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing—Federal Housing Commissioner.

Dated Granted: August 22, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on June 16, 1995. Refunding bonds have been priced to an average yield of 6.33%. The tax-exempt refunding bond issue of $4,130,000 at current low-interest rates will save Section 8 subsidy and provide $337,439 for project repairs. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.2% to 7.06%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

7. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Ohio Capital Corporation for Housing refunding of bonds

which financed a Section 8 assisted project, Stowe-Kent Gardens II Apartments, FHA No. 042–35381.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing—Federal Housing Commissioner.

Dated Granted: August 30, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 4, 1995. Refunding bonds have been priced to an average yield of 6.41%. The tax-exempt refunding bond issue of $3,285,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 11.82% to 6.9%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

8. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The North Wilkesboro, North Carolina Housing Authority refunding of bonds which financed a Section 8 assisted project, Wilkes Towers Apartments, FHA No. 053–35264.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 30, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on July 18, 1995. Refunding bonds have been priced to an average yield of 6.26%. The tax-exempt refunding bond issue of $2,170,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.4% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.69% to 6.25%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

9. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Ohio Capital Corporation for Housing refunding of bonds which financed a Section 8 assisted project, Lutheran Housing Services #1 Elderly Apartments, FHA No. 042–35250.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 30, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 8, 1995. Refunding bonds have been priced to an average yield of 6.38%. The tax-exempt refunding bond issue of $3,815,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.45% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.72% to 6.85%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

10. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Mercedes, Texas Housing Authority refunding of bonds which financed a Section 8 assisted project, Mercedes Palms Apartments, FHA No. 115–35217.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 7, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 3, 1995. Refunding bonds have been priced to an average yield of 6.57%. The tax-exempt refunding bond issue of $1,310,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.3% to 6.9%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

11. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Newport, Rhode Island Housing Authority refunding of bonds which financed a Section 8 assisted project, Broadway-West Broadway Apartments, FHA No. 016–35071.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 11, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 24, 1995. Refunding bonds have been priced to an average yield of 6.8%. The tax-exempt refunding bond issue of $7,125,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12% to 7.05%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

12. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Ohio Capital Corporation for Housing refunding of bonds which financed a Section 8 assisted project, Horizon Apartments, FHA No. 043–35257.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 12, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on June 16, 1995. Refunding bonds have been priced to an average yield of 6.84%. The tax-exempt refunding bond issue of $5,400,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.2% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.5% to 6.75%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

13. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Elizabeth City Housing Development Corporation refunding of bonds which financed a Section 8 assisted project, Walnut West Apartments, FHA No. 053–35346.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 21, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on September 5, 1995. Refunding bonds have been priced to an average yield of 6.05%. The tax-exempt refunding bond issue of $1,075,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5% at the call dete in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12% to 7%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

14. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Winchester, Kentucky Housing Authority refunding of bonds which financed a Section 8 assisted project, Beverly P White Apartments, FHA No. 083–35304.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 21, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on June 29, 1995. Refunding bonds have been priced to an average yield of 6.55%. The tax-exempt refunding bond issue of $3,135,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.3% to 7.0%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

15. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Pike County, Kentucky Housing Authority refunding of bonds which financed a Section 8 assisted project, the Northfield Apartments, FHA No. 083–35377.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 26, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on September 18, 1995. Refunding bonds have been priced to an average yield of 6.35%. The tax-exempt refunding bond issue of $1,480,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12% to 6.85%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

16. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Shelby, North Carolina Housing Development Corporation refunding of bonds which financed a Section 8 assisted project, Hickory Creek Apartments, FHA No. 053–35415.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 26, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also

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agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 3, 1995. Refunding bonds have been priced to an average yield of 6.1%. The tax-exempt refunding bond issue of $1,165,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12.3% to 6.67%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

17. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Atlanta, Georgia Housing Authority refunding of bonds which financed a Section 8 assisted project, the Bedford Tower Apartments, FHA No. 061–35319.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 26, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on September 18, 1995. Refunding bonds have been priced to an average yield of 6.29%. The tax-exempt refunding bond issue of $4,435,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.3% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 9.66% to 4.65%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

18. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Ogden, Utah Housing Authority refunding of bonds which financed a Section 8 assisted project, St. Benedict's Manor, FHA No. 105–35063.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 27, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on September 18, 1995. Refunding bonds have been priced to an average yield of 6.61%. The tax-exempt refunding bond issue of $3,380,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.25% at the call date in 1996 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 11.38% to 7.1%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

19. Regulation: 24 CFR Part 811 Sections 811.108(a)(2), 811.114(b), and 811.114(d).

Project/Activity: Southeast Texas HDC redemption of bonds which financed a Section 8 assisted project in 1979, the Stonegate Retirement Village Apartments, FHA No. 114–35252.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 27, 1995.

Reasons Waived: The Part 811 regulations cited above restrict uses of bond reserves and require HUD approval and reduction of Section 8 rents for prepayment of Section 11(b) bonds. The bonds will be redeemed by sale of the FHA mortgage note. Proceeds of the note sale will also finance project repairs of $333,750 as approved by HUD. No reduction in project debt service or contract rents will occur. The Treasury also gains long-term tax revenue benefits through prepayment of outstanding tax-exempt bonds. The refunding serves the important public purposes of improving Treasury tax revenues, (helping reduce the budget deficit), and assuring that the project is maintained in sound physical condition.

20. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), and 811.115(b).

Project/Activity: Atlanta Housing Authority refunding of bonds which financed four Section 8 assisted projects: Oakland City, FHA No. 061–35285; Capitol Towers, FHA No. 061–35282; Grant Park, FHA No. 061–35264; and Bedford Pines Apartments, FHA No. 061–35282.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 28, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. The refunding proposals were approved by HUD on September 13, 18, 21, and 22, 1995, in four project letters. Refunding bonds have been priced to average yields of 6.21%, 6.81%, and 6.87%. The tax-exempt refunding bond issues at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons at the call dates with tax-exempt bonds yielding substantially less. The refundings will also substantially reduce FHA mortgage interest rates at expiration of the HAP contracts, thus reducing FHA mortgage insurance risk. The refundings serve the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

21. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Martin County, Kentucky Housing Development Corporation for Housing refunding of bonds which financed a Section 8 assisted project, Dempsey Towers Apartments, FHA No. 083–35278.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 28, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on

September 22, 1995. Refunding bonds have been priced to an average yield of 6.274%. The tax-exempt refunding bond issue of $5,730,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of between 9.625 and 10.10% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.32% to 5.80%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

22. Regulation: 24 CFR Sections 811.114(d), 811.115(b), 811.117.

Project/Activity: The Harbor Court Development, Inc. of Haines City, Florida refunding of bonds which financed a Section 8 assisted project, Harbor Court Apartments, FHA No. 067–35260.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 28, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions under Section 103 of the Tax Code. This refunding proposal was approved by HUD on March 24, 1995. Refunding bonds have been priced to an average yield of 6.64%. The tax-exempt refunding bond issue of $1,375,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

23. Regulation: 24 CFR Sections 811.114(d), 811.115(b), 811.117.

Project/Activity: The San Francisco RA refunding of bonds which financed a Section 8 assisted project, Northridge Cooperative Homes, FHA No. 121–35721.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 28, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions under Section 103 of the Tax Code. This refunding proposal was approved by HUD on September 18, 1994. Refunding bonds have been priced to an average yield of 6.81%. The tax-exempt refunding bond issue of $20,110,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

24. Regulation: 24 CFR Sections 811.114(d), 811.115(b), 811.117.

Project/Activity: County of Santa Clara, California refunding of bonds which financed a Section 8 assisted uninsured project, Villa Vasona Apartments, FHA No. 121–35786.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 28, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions under Section 103 of the Tax Code. This refunding proposal was approved by HUD on September 11, 1995. Refunding bonds have been priced to an average yield of 6.375%. The tax-exempt refunding bond issue of $4,205,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons ranging between 9.50 and 10.00% at the call date in 1996 with taxable to tax-exempt bonds at a substantially lower interest rate. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

Note to Reader: The person to be contacted for additional information about these waiver-grant items in this listing is:

Debbie Ann Wills, Field Management Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 451 7th Street, SW., Washington, DC 20410–7000. Telephone: (202) 708–2565.

25. Regulation: 24 CFR 92.219(b)(1).

Project/Activity: The State of Maryland requested a waiver of the match requirements cited at 24 CFR 92.219(b)(1).

Nature of Requirement: The regulations at 24 CFR 92.219 (b)(1) cite specific requirements for how match is determined in the HOME program.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 28, 1995.

Reasons Waived: It was determined that the proposed matching contribution, the State's Rental Allowance Program, was substantially equivalent to HOME match requirements and good cause was found to grant the waiver.

26. Regulation: 24 CFR 92.251(a) & 24 CFR 92.206(a)(2)(i).

Project/Activity: The State of Oklahoma requested a waiver, on behalf of Okfuskee County, to permit rehabilitation which utilizes HOME funds, to not bring a unit into compliance with HQS.

Nature of Requirement: 24 CFR 92.251(a) provides that housing assisted with HOME funds meet, at a minimum, HUD housing quality standards (HQS), and provides other minimum standards for substantial rehabilitation and new construction. 24 CFR 92.206(a)(2)(i) of the HOME regulations requires that properties rehabilitated with HOME Program funds minimally meet the housing quality standards at Section 882.109 of Title 24.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 18, 1995.

Reasons Waived: The waiver was granted because the State and the County had outlined their extensive efforts to complete the rehabilitation of a specific unit. The owner of the unit would not grant either entity access to the property to complete the rehabilitation. Therefore, it was determined that there was good cause to grant the waiver.

27. Regulation: 24 CFR 92.252(a)(2)(i).

Project/Activity: Mercer County a HOME recipient, on behalf of Lawrence Township New Jersey, requested a waiver of the HOME program regulations at 24 CFR 92.252(a)(2)(i) to permit Section 811 project rents, which exceed the low HOME rents, to prevail for a project partially assisted with HOME funds.

Nature of Requirement: The regulations at 24 CFR 92.252 (a)(2)(i) state, "to obtain the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or participating jurisdiction multiplies the annual adjusted income of the tenant family by 30 percent and divides by 12, and if applicable, subtracts a monthly allowance for any utilities and services to be paid by the tenant."

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 18, 1995.

Reasons Waived: The application of Section 92.252(a)(2)(i) of the HOME regulations for the Section 811 project would create an undue hardship for the Township because a handicapped housing project would not be developed in the jurisdiction, and thus adversely affect the purposes of the Housing and Community Development Act.

28. Regulation: 24 CFR 92.254(a)(3).

Project/Activity: The Kentucky Housing Authority requested a waiver of 24 CFR

92.254(a)(3) of the HOME regulations to increase the rental period from three to five years.

Nature of Requirement: 24 CFR 92.254(a)(3) which requires a home to be purchased within 36 months if a lease-purchase agreement is used in conjunction with a homebuyer program.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: September 6, 1995.

Reasons Waived: HUD determined that increasing the rental period in this case from three to five years will provide tenants the necessary time to succeed in the required life skills program and become responsible and reliable homeowners.

29. Regulation: 24 CFR 92.258.

Project/Activity: The State of North Dakota requested a waiver of 24 CFR 92.258 of the HOME regulations to waive the 30 year affordability period for low-income homebuyers receiving HOME assistance.

Nature of Requirement: 24 CFR 92.258 provides a limitation on the use of HOME funds with FHA mortgage insurance for a period of time equal to the term of the HUD insured mortgage.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 28, 1995.

Reasons Waived: The application of Section 92.258 of the HOME regulations to the State's program would create an undue hardship for North Dakota and its potential homeowners, and adversely affect the purposes of the Act.

30. Regulation: 24 CFR 92.258.

Project/Activity: Suffolk County, New York requested a waiver of 24 CFR 92.258 of the HOME regulations to waive the 30 year affordability period for low-income homebuyers receiving HOME assistance.

Nature of Requirement: 24 CFR 92.258 provides a limitation on the use of HOME funds with FHA mortgage insurance for a period of time equal to the term of the HUD insured mortgage.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: September 6, 1995.

Reasons Waived: The application of Section 92.258 of the HOME regulations to the county program would create an undue hardship for Suffolk County and its potential homeowners, and adversely affect the purposes of the Act.

31. Regulation: 24 CFR 291.400.

Project/Activity: The Anoka County Community Action Program requested a waiver of the 24 month residency for a tenant in a single family property leased under the single family property disposition homeless program.

Nature of Requirement: The regulations at 24 CFR 291.400 prohibit a non-profit organization or a community participating in the Single Family Property Disposition Leasing Program from extending a lease to the same tenant for a period beyond 24 months.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 16, 1995.

Reasons Waived: The waiver will allow a formerly homeless family more time to find permanent housing.

32. Regulation: 24 CFR 291.400.

Project/Activity: The Anoka County Community Action Program requested a waiver of the 24 month residency for three tenants in single family properties leased under the single family property disposition homeless program.

Nature of Requirement: The regulations at 24 CFR 291.400 prohibit a non-profit organization or a community participating in the Single Family Property Disposition Leasing Program from extending a lease to the same tenant for a period beyond 24 months.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: September 6, 1995.

Reasons Waived: The waiver will allow three formerly homeless families more time to find permanent housing.

33. Regulation: 24 CFR 511.76(h).

Project/Activity: The City Salisbury, North Carolina requested a waiver of program closeout requirements of the Rental Rehabilitation program.

Nature of Requirement: The regulations at 24 CFR 511.76(h) cite when proceeds received from Rental Rehabilitation loans become program income.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: July 3, 1995.

Reasons Waived: The North Carolina Housing Finance Agency (NCHFA), the Rental Rehabilitation grantee, had not yet met the requirements for program closeout. However, the City of Salisbury, as a subrecipient of the State, had closed out all of its RRP grants and was receiving program income from them. The waiver allowed the City to use its program income to provide affordable rental housing to low income residents.

34. Regulation: 24 CFR 570.200(h) & 570.200 (a)(5).

Project/Activity: The City of San Angelo, Texas requested a waiver of 24 CFR 570.200(h) & 570.200(a)(5) regarding reimbursement of pre-agreement costs for the renovation of a building to be used as a one-stop public health facility.

Nature of Requirement: Under the regulations a locality is precluded from obligating CDBG funds before grant award.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: July 28, 1995.

Reasons Waived: HUD determined that failure to grant the waiver would cause hardship and adversely affect the purposes of the Act. The waiver of the limitations on pre-agreement costs at 24 CFR 570.200(h) & 570.200(a)(5) will permit the renovation of the building which will be used for a public health facility.

35. Regulation: 24 CFR 570.200(h) & 570.200(a)(5), 24 CFR 570.207(b)(4).

Project/Activity: The City of Albany Georgia requested a waiver of 24 CFR 570.200(h) & 570.200(a)(5) to facilitate the obligation of disaster recovery funds by permitting the City to reimburse real property owners for expenses incurred on or after the disaster date. The City of Albany Georgia also requested a waiver of 24 CFR 570.207(b)(4) to permit it to carry out a household assistance program for victims of the disaster.

Nature of Requirement: Under the regulations a locality is precluded from obligating CDBG funds before grant award. Also at 24 CFR 570.207(b)(4) prohibit income payments to households or individuals.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: July 31, 1995.

Reasons Waived: HUD determined that failure to grant the waiver would cause hardship and adversely affect the purposes of the Act. The waiver of the limitations on pre-agreement costs at 24 CFR 570.200(h) & 570.200(a)(5) will permit the City to implement a plan to reimburse property owners for expenses incurred prior to the effective date of its CDBG emergency supplemental grant. The second waiver will allow a household assistance program for those suffering personal property damage caused by the Tropical Storm Alberto.

36. Regulation: 24 CFR 570.200(h) & 570.200(a)(5).

Project/Activity: The City of Davenport, Iowa requested a waiver of 24 CFR 570.200(h) & 570.200(a)(5) regarding reimbursement of pre-agreement costs to permit the City to complete an acquisition activity.

Nature of Requirement: Under the regulations a locality is precluded from obligating CDBG funds before grant award.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 18, 1995.

Reasons Waived: HUD determined that failure to grant the waiver would cause hardship and adversely affect the purposes of the Act. The waiver of the limitations on pre-agreement costs at 24 CFR 570.200(h) & 570.200(a)(5) will permit the city to fund the acquisition, by a non-profit organization, of a youth center to serve local youth and function as a community policing outpost, with FY 1996, FY 1997 and FY 1998 CDBG funds.

37. Regulation: 24 CFR 570.200(h) & 570.200(a)(5).

Project/Activity: Sacramento, California requested a waiver of 24 CFR 570.200(h) & 570.200(a)(5) regarding reimbursement of pre-agreement costs to permit the City to carry out street improvements in a low and moderate income area in one year in instead of in two phases.

Nature of Requirement: Under the regulations a locality is precluded from obligating CDBG funds before grant award.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: September 6, 1995.

Reasons Waived: HUD determined that failure to grant the waiver would cause hardship and adversely affect the purposes of the Act. The waiver of the limitations on pre-agreement costs at 24 CFR 570.200(h) & 570.200(a)(5) will permit the reimbursement of local funds, for street improvements to a low and moderate income area, with FY 1996 and FY 1997 CDBG funds.

38. Regulation: 24 CFR 570.200(h) & 570.200(a)(5).

Project/Activity: Clark County, Nevada requested a waiver of 24 CFR 570.200(h) & 570.200(a)(5) regarding reimbursement of pre-agreement costs for the development of a public facility to provide recreational facilities for at-risk youth.

Nature of Requirement: Under the regulations a locality is precluded from obligating CDBG funds before grant award.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: September 18, 1995.

Reasons Waived: HUD determined that failure to grant the waiver would cause hardship and adversely affect the purposes of the Act. The waiver of the limitations on pre-agreement costs at 24 CFR 570.200 (h) & 570.200(a)(5) will permit the City to develop a facility that will provide recreational programs to neighborhood youth. In addition, the Police Department has a neighborhood office there as do various county social service agencies.

39. Regulation: 24 CFR 576.21.

Project/Activity: The State of Michigan requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

Nature of Requirement: The State requested a waiver of the expenditure limitation of ESG funds on essential services.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: July 10, 1995.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 cap percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources". The State demonstrated that other eligible activities will be carried out with other funds.

40. Regulation: 24 CFR 576.21.

Project/Activity: Monmouth County, New Jersey requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

Nature of Requirement: The County requested a waiver of the expenditure limitation of ESG funds on essential services.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: July 10, 1995.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 cap percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources." The County provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

41. Regulation: 24 CFR 576.21.

Project/Activity: The municipality of Caguas, Puerto Rico requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

Nature of Requirement: The municipality requested a waiver of the ESG expenditure limitation on essential services.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: July 10, 1995.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 cap percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources". The municipality provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

42. Regulation: 24 CFR 576.21.

Project/Activity: The State of Massachusetts requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

Nature of Requirement: The State requested a waiver of the ESG expenditure limitation on essential services.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: July 21, 1995.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 cap percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources". The State provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

43. Regulation: 24 CFR 576.21.

Project/Activity: Mt. Vernon City, New York requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

Nature of Requirement: The City requested a waiver of the ESG expenditure limitation on essential services.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 28, 1995.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources". The City provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

44. Regulation: 24 CFR 576.21.

Project/Activity: The City of Ft. Wayne, Indiana requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

Nature of Requirement: The City requested a waiver of the ESG expenditure limitation on essential services.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: September 6, 1995.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 cap percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources". The City provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

45. Regulation: 24 CFR 578.335(e).

Project/Activity: The State of California on behalf of the California Department of Housing and Community Development requested a waiver of 24 CFR 578.335(e) of the conflict of interest regulations to allow two board members on a homeless advisory board to perform work for a permanent housing project.

Nature of Requirement: 24 CFR 578.335(e) provides the regulations on conflict of interest for program participants.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 14, 1995.

Reasons Waived: A determination was made that undue hardship would result from applying the requirement and would adversely affect the purposes of the permanent housing for the handicapped homeless program.

46. Regulation: 24 CFR 582.803(a)(i).

Project/Activity: The Fort Collins Housing Authority requested a waiver to accept as residents, three persons who were assisted under the Section 8 Certificate program, into a 12 unit SRO projects..

Nature of Requirement: The regulations at 24 CFR 882.803(a)(i) state that housing is not eligible for SRO assistance if it is, or has been within 12 months before the owner submits a proposal to the public housing agency, (PHA), subsidized under any Federal Housing program.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: September 6, 1995.

Reasons Waived: It was determined that the financially feasibility of the project was based on twelve units receiving rental assistance. The Assistant Secretary determined that granting the waiver was the most effective way of developing the project.

47. Regulation: 24 CFR 882.408(b).

Project/Activity: The Housing Authority of the City of San Francisco requested a waiver which would allow the Housing Authority to utilize a gross rent for one of its Shelter Plus Care projects that would exceed the applicable Fair Market Rent (FMR) by 12 percent.

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Nature of Requirement: The SRO regulations at 24 CFR 882.408(b) state that, a public housing agency may approve initial gross rents which exceed the applicable FMR by up to 10 percent for all units of a given size in specified areas. The Department is waiving the provisions of 24 CFR 882.408(b) which only allow pre-agreement exception rents to be approved on an area-wide basis and which only allow the exception rent to exceed the moderate rehabilitation FMR by 10 percent.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: July 28, 1995.

Reasons Waived: It was determined that the City had taken all reasonable actions to reduce the gross rents to within the applicable FMR. So in order for project development to proceed the gross rent was increased beyond the FMR by 12 percent.

48. Regulation: 24 CFR 882.808(a)(3)(4) &(b)(2).

Project/Activity: The Housing Authority of Portland Oregon requested a waiver which would allow the owners of four SRO structures to maintain separate waiting lists rather than receive tenant referrals from the Housing Authority's waiting list for SRO projects.

Nature of Requirement: The SRO regulations at 24 CFR 882.808(a)(3)(4) &(b)(2) state that, a public housing agency waiting list must be used for tenant referrals to SRO projects.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: July 20, 1995.

Reasons Waived: The March 15, 1993, Interim Rule for the SRO program stated that the PHA waiting list requirement was being eliminated. Due to a technical error this new policy was not implemented. Since the Department plans on publishing a technical amendment which includes this policy, the waiver was granted.

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing is:

Mary Ann Russ, Deputy Assistant Secretary for Public and Assisted Housing Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–1380

49. Regulation: 24 CFR 990.108(e).

Project/Activity: Cuyahoga Metropolitan Housing Authority. A request was made to prevent a loss of operating subsidy when converting efficiency units to one bedroom units.

Nature of Requirement: When unit months are lost through combining small units into larger units they must be removed from the calculation of unit months available in the PFS subsidy calculation.

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: October 4, 1995.

Reason Waived: Because of problems the HA has experienced filling vacant efficiency units for the elderly the HA converted them to one bedroom units which it could rent. In order to support the HAs efforts to reduce vacancies, approval was granted for the HA to include the number of unit months which would be lost through this conversion in future PFS calculations.

50. Regulation: 24 CFR 990.109(b)(3)(iv).

Project/Activity: Breckenridge, MN, Housing and Redevelopment Authority. A request was made to use the HAs actual occupancy rate of 94% and recalculate its operating subsidy eligibility.

Nature of Requirement: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan to use a projected occupancy percentage of 97%.

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: September 22, 1995.

Reason Waived: The HA was allowed to use its actual occupancy percentage to prevent undue hardships while it continues its efforts to reduce vacancies.

51. Regulation: 24 CFR 990.109(b)(3)(iv).

Project/Activity: Chicago Housing Authority. A request was made to use 80% for the HA's projected occupancy percentage when calculating its PFS operating subsidy eligibility.

Nature of Requirement: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan (COP) to use a projected occupancy percentage of 97%.

Granted By: Michael B. Janis, General Deputy Assistant Secretary.

Date Granted: September 26, 1995.

Reason Waived: As acknowledged in the five-year Memorandum of Agreement (MOA) between HUD and the HA the key to achieving any of the vacancy reduction performance targets is the approval of the waiver. In order to be supportive of the MOA the HA was authorized to use 80% as the projected occupancy percentage.

[FR Doc. 96–4316 Filed 2–26–96; 8:45 am]

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federal register

Tuesday
February 27, 1996

Part IV

Environmental Protection Agency

40 CFR Part 125

Modification of Secondary Treatment Requirements for Discharges Into Marine Waters; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 125

[FRL–5428–6]

RIN 2040–AC72

Modification of Secondary Treatment Requirements for Discharges Into Marine Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing an amendment to the regulations contained at 40 CFR Part 125, Subpart G, which implement section 301(h) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. 1311(h). Section 301(h) provides for modifications of secondary treatment requirements for discharges into marine waters by publicly owned treatment works (POTWs) that demonstrate their compliance with the 301(h) criteria. As required by statutory amendments, a provision was added to the 301(h) regulations in 1994 that requires 301(h) POTWs to show they are removing a minimum of 30 percent of the biological oxygen demanding material (BOD) from their influent. Under the rule, compliance with the 30-percent removal requirement of BOD was generally to be achieved on a monthly-average basis. The rule did, however, allow some applicants, subject to an eligibility provision, to request that they be allowed to average their BOD removal percentages over a longer than monthly period. The eligibility provision excluded facilities that had demonstrated an ability to achieve 30-percent BOD removal on a monthly-average basis over the calendar year prior to August 9, 1994. Today's proposal would amend 40 CFR 125.60(c)(1) to provide increased flexibility by removing the eligibility provision, thereby allowing any 301(h) POTWs to apply for a longer than monthly BOD averaging period. The remaining provisions of the 301(h) regulations remain in full force and effect, and are not the subject of this proposed rule.

DATES: Comments on this proposed amendment must be submitted by March 28, 1996.

ADDRESSES: Comments on this proposed amendment should be addressed to: Virginia Fox-Norse, Oceans and Coastal Protection Division (4504F), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; (202) 260–8448. The official record for this rulemaking is available for viewing at EPA's Water Docket; Room L–102, 401 M Street, SW, Washington, DC 20460. For access to the Docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m., Monday through Friday, excluding legal holidays, for an appointment. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Virginia Fox-Norse, Office of Wetlands, Oceans and Watersheds, Oceans and Coastal Protection Division (4504F), U.S. Environmental Protection Agency, 401 M St., SW, Washington, D.C. 20460; (202) 260–8448.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Background
  A. Water Quality Act Amendments of 1987
  B. Final Rulemaking of 1994
  C. Legal Challenge to Regulations
II. Today's Proposal
III. Discussion of Alternatives
IV. Supporting Documentation

I. Background

A. Water Quality Act Amendments of 1987

On February 4, 1987, Congress passed the Water Quality Act of 1987 (WQA) (Pub. L. 100–4), which amended CWA section 301(h) in several important respects. Among other things, the WQA added a new section 301(h)(9), the provision relevant to this rulemaking. Section 301(h)(9) requires that "* * * at the time the 301(h) modification becomes effective, the applicant will be discharging effluent which has received at least primary or equivalent treatment * * *." Section 301(h)(9) also defined primary or equivalent treatment as "treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biochemical oxygen demanding material (BOD) and of the suspended solids (SS) in the treatment works influent, and disinfection, where appropriate."

B. Final Rulemaking of 1994

EPA published the final regulations implementing the WQA amendments to section 301(h) on August 9, 1994 (59 FR 40642). That rulemaking added provisions in 40 CFR 125.60 regarding, among other things, the statutory requirement for a minimum of primary or equivalent treatment. Under the proposed regulations (January 24, 1991, 56 FR 2814) applicants would have had to demonstrate compliance with the 30 percent BOD removal requirement using a monthly averaging period for calculating compliance. However, a number of commenters indicated that the 30 percent removal rate for BOD may be difficult to achieve on a monthly average basis in certain cases. In response, in the August 1994 final rule, EPA added § 125.60(c) to provide flexibility to POTWs, in certain specified circumstances, to use up to a yearly averaging period to calculate compliance with the 30-percent removal requirements for BOD. The flexibility is only for the averaging period used to calculate compliance. The rule still requires all applicants to meet the statutory 30-percent removal requirement for BOD. As discussed in the preamble to the final regulations (59 FR 40648–40649), EPA believed that the monthly averaging period would still be appropriate for most applicants.

Under the second sentence of § 125.60(c)(1), facilities that had demonstrated an ability to achieve 30 percent removal of BOD on a monthly average basis over the calendar year prior to August 9, 1994, (the date the rule was published) were excluded from eligibility to apply for this longer than monthly averaging period. Specifically, this sentence (the "eligibility provision") states:

> If, however, the applicant has demonstrated an ability to achieve 30 percent removal of BOD on a monthly average basis over the calendar year prior to August 9, 1994, the applicant shall not be eligible for an averaging basis other than monthly.

This provision was based on the assumption that facilities that had consistently achieved 30 percent removal of BOD on a monthly average basis would continue to be capable of achieving the 30 percent performance standard on a monthly basis.

C. Legal Challenge to Regulations

In December 1994, four Alaskan municipalities filed a petition for review in the U.S. Court of Appeals for the Ninth Circuit challenging, in particular, the above-described limitation on eligibility for applying for a longer than monthly averaging period to calculate compliance with the 30-percent removal requirement for BOD. [*Anchorage Water & Wastewater Utility, et al,* v. *U.S. EPA,* No. 94–70913 (9th Cir.)] Petitioners claim that all POTWs should be eligible at least to *apply* for alternative averaging periods for removal of BOD. Because the issues raised by these parties concern the eligibility provision—which EPA added at the time of the final rule in response to public comments on the proposal—they are arising now for the first time.

The petitioners believe the eligibility provision is unwarranted and inappropriate because there may be cases in which a POTW may have met the 30-percent removal requirement for the preceding year, but may not be able to meet it on a monthly basis in the future for reasons beyond their control.

II. Today's Proposal

EPA has considered the issues raised by the Alaskan municipalities. In response, EPA agrees that the absolute bar represented by the eligibility provision is unnecessary and could be too inflexible. Therefore, EPA today proposes to delete the eligibility provision (i.e., the second sentence of 125.60(c)(1)). This proposal would not change the showing that POTWs must make to have the longer than monthly averaging period approved, and EPA continues to expect that situations where the longer averaging period is shown to be justified will be the exception rather than the rule.

The Agency emphasizes that removing the eligibility provision would not automatically provide any POTW with a longer averaging period for determining compliance with the 30-percent removal requirement for BOD. Instead, it simply allows all POTWs to *request* a longer averaging period. Under the regulations, POTWs who make such a request will continue to be required to demonstrate to the satisfaction of the Regional Administrator that a longer period is warranted in order to be granted relief from the requirement to meet BOD removal on a monthly basis. In determining whether to grant a POTW's request for longer than monthly averaging under § 125.60(c)(2)(iii), the Regional Administrator will still consider the POTW's historical removal data as a relevant factor. EPA also notes that if it grants a longer averaging period, the required frequency of monitoring for BOD will remain the same as if the period for calculating compliance for BOD removal was the monthly average basis.

As noted above, all POTWs remain subject to the statutorily required 30 percent BOD removal condition, and all POTWs that want a longer than monthly averaging period will need to make a showing to the Regional Administrator that a longer period is warranted, and actual monitoring frequencies for BOD will not change. These safeguards, coupled with the continued requirement that the discharge must meet all the other 301(h) environmental criteria, lead EPA to believe that the level of environmental protection would not be changed by this proposal in any material way, and the flexibility provided is appropriate.

III. Discussion of Alternatives

The Agency considered other alternatives for providing relief from the strict bar on requesting a longer averaging period represented by the eligibility provision, such as: (1) deleting the eligibility provision of § 125.60(c)(1) and restricting the factors in the Regional Administrator's determination to grant or deny the longer averaging period; (2) retaining the eligibility provision, but adding a provision that allows an applicant that achieved 30-percent removal of BOD on a monthly average basis over the year preceding August 9, 1994, to satisfy the Regional Administrator that the data did not reflect representative conditions; and (3) retaining a modified eligibility provision that would be based on the BOD removal rates achieved over longer than one year preceding August 9, 1994, *e.g.*, 2 years, to account for a range of conditions.

EPA rejected these alternatives because simply eliminating the eligibility provision in § 125.60(c)(1) best provided the necessary flexibility while still providing adequate environmental safeguards. EPA believes that removing the eligibility provision while still making past monitoring performance a relevant factor in determining a longer than monthly averaging period, will not result in any decrease in environmental protection. Deleting this provision will form the basis for a settlement of the legal challenge brought by the Alaskan municipalities. EPA also proposes to delete a parallel clause in § 125.60(c)(2), as a conforming change.

Nevertheless, the Agency requests comments on all aspects of today's proposal, including whether any of these alternatives or other alternatives not discussed here, including not changing the eligibility provision, would be a more appropriate course of action on this issue. EPA will consider adopting any of the above alternatives or others that are advocated in any public comments.

IV. Supporting Documentation

Analyses under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

Because today's action simply proposes to remove provisions of an existing rule from the CFR that limit the ability of affected POTWs to request flexibility in calculating compliance with removal requirements for BOD, this action has no regulatory impact and is not a "significant" regulatory action within the meaning of E.O. 12866, and is therefore not subject to OMB review.

This action also does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. For the same reasons, pursuant to the Regulatory Flexibility Act, I certify that this action would not have a significant economic impact on a substantial number of small entities. Finally, deletion of these provisions from the CFR does not affect requirements under the Paperwork Reduction Act.

List of Subjects in 40 CFR Part 125

Environmental protection, Marine point source discharges, Reporting and recordkeeping, Waste treatment and disposal, Water pollution control.

Dated: February 15, 1996.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 125, subpart G as follows:

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 125 continues to read as follows:

Authority: Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 *et seq.*, unless otherwise noted.

Subpart G—Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

2. Section 125.60 is proposed to be amended by removing paragraph (c)(1); by redesignating paragraphs (c)(2) as (c)(1) and (c)(3) as (c)(2); and by revising the introductory text of newly designated paragraph (c)(1) to read as follows:

§ 125.60 Primary or equivalent treatment requirements.

* * * * *

(c)(1) An applicant may request that the demonstration of compliance with the requirement under paragraph (b) of this section to provide 30 percent removal of BOD be allowed on an averaging basis different from monthly (e.g., quarterly), subject to the demonstrations provided in paragraphs (c)(1)(i), (ii) and (iii) of this section. The Administrator may approve such

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requests if the applicant demonstrates to the Administrator's satisfaction that:

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[FR Doc. 96–4387 Filed 2–26–96; 8:45 am]
BILLING CODE 6560–50–P

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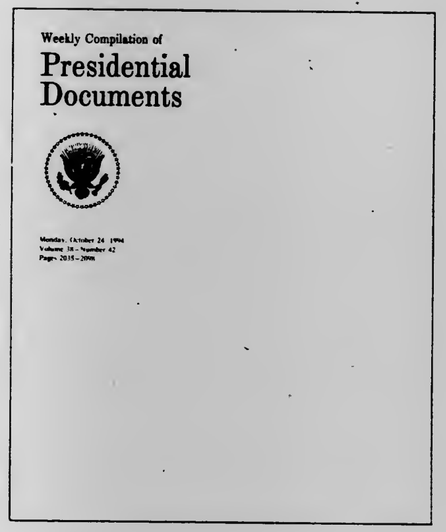
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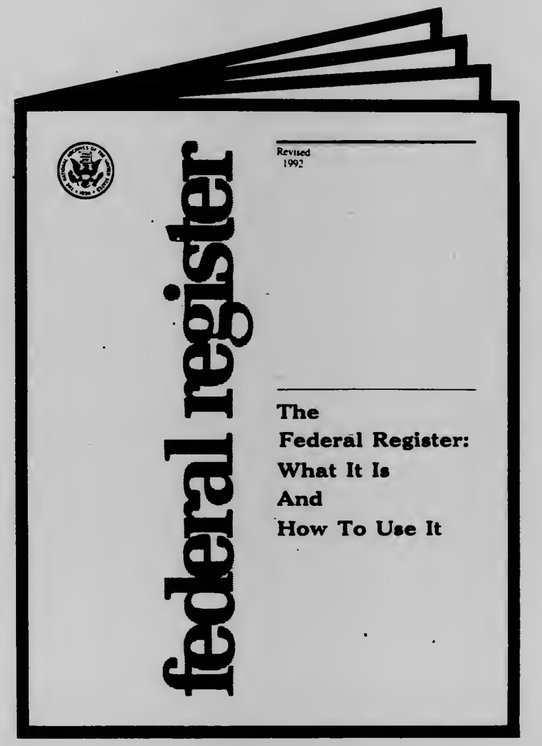
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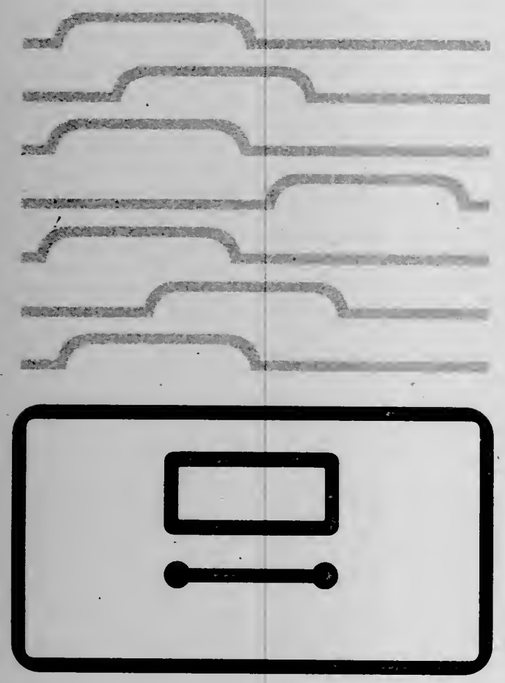
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For information on briefing in Washington, DC, see announcement on the inside cover of this issue.

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Rules and Regulations

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV95-959-2FIR]

South Texas Onions; Increased Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an amended interim final rule that increased the level of authorized expenses and established an assessment rate that generated funds to pay those expenses under Marketing Order No. 959 for the 1995–96 fiscal period. Authorization of this budget enables the South Texas Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1995, through July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210–682–2833.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1995–96 fiscal period, which began August 1, 1995, and ends July 31, 1996. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 89 producers of South Texas onions under this marketing order, and approximately 35 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural Service firms are defined as those whose receipts are less than $5,000,000. The majority of South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the South Texas Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs of goods and services in their local areas and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of $239,250 for personnel, office, and compliance expenses were recommended in a mail vote. The assessment rate and funding for the research and promotion projects were to be recommended at a later Committee meeting. The Committee administrative expenses of $239,250 were published in the **Federal Register** as an interim final rule August 17, 1995 (60 FR 42774). That interim final rule added § 959.236, authorizing expenses for the Committee, and provided that interested persons could file comments through September 18, 1995. No comments were filed.

The Committee subsequently met on November 14, 1995, and unanimously recommended an increase of $1,000 for insurance in the recently approved 1995–96 budget. The Committee also unanimously recommended $246,000 for promotion and $99,000 for onion breeding research. Budget items for

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1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Manager's salary, $19,094 ($15,172), office salaries, $24,000 ($22,000), payroll taxes, $4,000 ($3,100), insurance, $8,000 ($6,250), rent and utilities, $6,500 ($5,000), supplies, $2,000 ($1,500), postage, $1,500 ($1,000), telephone and telegraph, $4,000 ($2,500), furniture and fixtures, $2,000 ($1,000), equipment rental and maintenance, $3,500 ($2,500), contingencies, $6,706 ($3,978), manager travel, $5,000 ($3,000), Canadian onion promotion, $5,000 ($4,450), $226,000 for promotion ($200,000), onion breeding research, $99,000 ($88,028), and $3,750 for deferred compensation (manager's retirement), and $5,000 for miscellaneous promotion expenses, which were not line item expenses last year. All other items are budgeted at last year's amounts.

The initial 1995–96 budget, published on August 17, 1995, did not establish an assessment rate. Therefore, by a vote of 11 to 1, the Committee also recommended an assessment rate of $0.10 per 50-pound container or equivalent of onions, $0.06 more than last year's assessment rate. The no vote came from a grower who thought increasing the assessment rate from $0.04 to $0.10 cents was too great an increase. This rate, when applied to anticipated shipments of approximately 6,000,000 50-pound containers or equivalents, will yield $600,000 in assessment income, which will be adequate to cover budgeted expenses. Funds in the reserve as of December 31, 1995, were $408,314, which is within the maximum permitted by the order of two fiscal periods' expenses.

An amended interim final rule was published in the **Federal Register** on December 12, 1995 (60 FR 63610). That interim final rule amended § 959.236 to increase the level of authorized expenses to $585,250 and establish an assessment rate of $0.10 per 50-pound container or equivalent of onions for the Committee. That rule provided that interested persons could file comments through January 11, 1996. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal period began on August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period. In addition, handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting and published in the **Federal Register** as an amended interim final rule.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

PART 959—ONIONS GROWN IN SOUTH TEXAS

Accordingly, the interim final rule amending 7 CFR part 959 which was published at (60 FR 63610) on December 12, 1995, is adopted as a final rule without change.

Dated: February 22, 1996.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–4502 Filed 2–27–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 979

[Docket No. FV96–979–1IFR]

Melons Grown in South Texas; Change in Cantaloup Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the container requirements for cantaloups grown in South Texas under Marketing Order No. 979. This rule increases the depth of cantaloup cartons from 10 3/8 to 11 3/8 inches. The South Texas Melon Committee (committee), the agency that locally administers the marketing order for melons grown in South Texas, unanimously recommended this change. This change will allow handlers to use deeper cartons in shipping larger cantaloups. The use of deeper cartons is expected to result in less damage during packing and shipment and foster buyer confidence. This change should be in effect as soon as possible, to give handlers adequate time to order cartons, and manufacturers an opportunity to make them, for the 1996 shipping season. This rule also corrects telephone area codes, and removes out-of-date handler assessment information.

DATES: Effective on February 28, 1996. Comments which are received by March 29, 1996, will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, FAX 202–720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Marketing Order Administration Branch, F&V, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: 210–682–2833; FAX: 210–682–5942; or Mark Kreaggor, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: 202–720–2431; FAX: 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 27 handlers of South Texas melons who are subject to regulation under the marketing order and 30 producers in the production area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of South Texas melons may be classified as small entities.

At a public meeting on December 12, 1995, the committee unanimously recommended, under the authority of § 979.52 of the order, increasing the depth of cantaloup cartons. Currently, § 979.304(b)(1) specifies that the depth of cantaloup cartons may be not more than 10 3/8 nor less than 9 3/4 inches. A tolerance of 1/4 inch is permitted. The committee recommended an one inch increase in depth to 11 3/8 inches.

In recent years, buyers have requested increased supplies of larger cantaloups. Handlers have experienced difficulty in packing larger cantaloups without bruising because the current container depth does not allow sufficient room for the larger fruit and ice packed with the cantaloups to keep them cool. Also, without adequate carton space, proper stacking on pallets is more difficult and compression damage often occurs to the cantaloups when loading and shipping. Increasing the depth of cantaloup cartons by one inch to 11 3/8 inches will allow for proper stacking and delivery of cantaloups without bruising and other damage. This change is expected to foster buyer satisfaction and confidence. Handlers will not be prevented from using their current supply of smaller cartons if they desire.

Section 979.304(c)(4) designates inspection stations in Alamo and Laredo, for handlers who do not have permanent packing facilities recognized by the committee. The telephone area codes specified for Alamo and Laredo are not correct. This rule amends § 979.304(c)(4) to correct those area codes from (502) and (512), respectively, to (210).

Section 979.304(c)(5) specifies that handlers shall pay assessments on all assessable melons according to the provisions of § 979.42, at the rate of 3/4 cent per carton. The 3/4 cent per carton rate of assessment has not been in effect for a number of years. The current rate of assessment is 7 cents per carton. Also, because the assessment rate is established by the Department annually in a separate rulemaking document and handlers are informed of the rate by the committee through handler notices, the rate of assessment does not need to be referenced in these provisions. Therefore, the words "at the rate of 3/4 cent per carton" in § 979.304(c)(5) are removed.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the committee's recommendation and other relevant information presented, it is found that this interim final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes carton requirements currently in effect; (2) the committee recommended this rule at a public meeting; (3) this change should be in effect as soon as possible, to give handlers adequate time to order cartons, and manufacturers an opportunity to make them; and (4) this rule provides a 30-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 979.304 is amended by revising the first sentence in paragraph (b)(1), and paragraphs (c)(4), and (c)(5) to read as follows:

§ 979.304 Handling regulation.

* * * * *

(b) *Container requirements.* (1) Except as provided in paragraphs (b)(4), (d) or (e) and (f) of this section, all cantaloups shall be packed in fiberboard cartons with inside dimensions of not more than 17 1/4 nor less than 16 3/4 inches in length, not more than 13 nor less than 12 3/4 inches in width, and not more than 11 3/8 nor less than 9 3/4 inches in depth. * * *

* * * * *

(c) * * *

(4) Designated inspection stations will be located at the Texas Federal Inspection Service office, 1301 W. Expressway, Alamo (Phone (210) 787–4091 or 6881) and the Matt Dietz Packing Co., 4700 N. Santa Maria, Laredo (Phone (210) 723–9178 or 9170), to be available for handlers who do not have permanent packing facilities recognized by the committee.

(5) Handlers shall pay assessments on all assessable melons according to the provisions of § 979.42.

* * * * *

Dated: February 22, 1996.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–4501 Filed 2–27–96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23 and 91

[Docket No. 27806, Amendment No. 91–248]

RIN 2120–AE59

Airworthiness Standards; Systems and Equipment Rules Based on European Joint Aviation Requirements

AGENCIES: Federal Aviation Administration, DOT.

ACTION: Final rule, correction.

SUMMARY: This document contains a correction to the final rule published on February 9, 1996 (61 FR 5151). This action removes the numbers "91–247", inadvertently used in the heading of the document and replaces it with the numbers "91–248".

EFFECTIVE DATE: March 11, 1996.

FOR FURTHER INFORMATION CONTACT: Earsa Tankesley, Aerospace Engineer, Standards Office (ACE–100), Small Airplane Directorate, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 426–6932.

In the final rule on page 5151 in the issue of Friday, February 9, 1996, delete the numbers "91–247", from the heading and add the numbers "121–248" to the heading.

Issued in Washington, DC on February 21, 1996.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 96–4559 Filed 2–27–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 953

[Docket No. FR–2880–F–08]

RIN 2577–AB31

Community Development Block Grants for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule; Extension of effective period of interim rule.

SUMMARY: This rule extends the effective period for the interim rule for the Community Development Block Grants for Indian Tribes and Alaskan Native Villages Program (24 CFR part 953) to such time that a final rule is issued and becomes effective.

EFFECTIVE DATE: This final rule, which extends the effective period of the interim rule, is effective March 29, 1996.

The effective period for 24 CFR part 953 is extended from April 1, 1996, until the final rule adopting the regulations of part 953 is published and becomes effective.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, room B–133, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 755–0032; TDD: (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 provides for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, because prior public procedure is unnecessary.

This final rule is technical, in that it merely extends the effective period for existing regulations, and it effects no substantive change to those regulations. The public has had an opportunity to comment on the substance of the regulations, as the interim rule for this program was published subject to a 150-day public comment period, and the interim rule was preceded by an earlier interim rule which provided for a 225-day public comment period and an even earlier proposed rule which provided a 60-day public comment period.

II. Background

Section 105 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235), as amended by the National Affordable Housing Act, amended Title I of the Housing and Community Development Act of 1974, by transferring the authority for making grants to Indian Tribes from the section 107 discretionary fund to the allocation and distribution of funds provisions of Section 106 of the 1974 Act. Under section 106, as so amended, one percent of the title I appropriation, excluding the amounts appropriated for use under section 107, is allocated for grants to Indian Tribes. The allocated amount is to be distributed to Indian Tribes/Villages on a competitive basis in accordance with selection criteria "contained in a regulation promulgated by the Secretary after notice and public comment."

The Department issued the proposed rule on June 21, 1991, at 56 FR 28666, to comply with the requirement for publication for comment. The Department issued an interim rule on April 7, 1992, at 57 FR 11832, to give the public an additional opportunity to comment on the interim rule after it has been in effect for one round of competition. A second interim rule was issued on July 27, 1994, at 59 FR 38326, to address the comments received on the April 7, 1992 interim rule and to allow the public to see how the interim rule worked in conjunction with the 1995 NOFA.

Section 953.1 of the July 27, 1994 interim rule contains a "sunset" provision that provides that the interim rule will expire on April 1, 1996.

The final rule for part 953 is in its last stages of development and publication is anticipated in the near future. However, in order to prevent a period in which the Department will be without effective regulations, HUD is extending the effective period of the interim rule until the final rule is published and becomes effective.

III. Other Matters

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of Rules Docket Clerk, 451 Seventh Street, SW, room 10276, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that the rule does not have a significant economic impact on a substantial number of small entities. The rule merely extends the effective period for the interim rule.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have the potential to promote family formation, maintenance, and general well-being and, therefore, is not subject to review under the Order.

Executive Order 12611, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, *Federalism*, has determined that the rule does not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government and, therefore, is not subject to review under the Order.

List of Subjects in 24 CFR Part 953

Alaska, Community development block grants, Grant programs—housing and community development, Reporting and recordkeeping requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.223.

In accordance with the reasons set forth in the preamble, 24 CFR part 953 is amended as follows:

PART 953–COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

1. The authority citation for 24 CFR part 953 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301 et seq.

2. Section 953.1 is amended to designate the first paragraph as "(a)" and to designate the second paragraph as "(b)" and to revise newly designated paragraph (b) to read as follows:

§ 953.1 Applicability and scope.

(a) * * *

(b) The regulations of this part will remain in effect until the date the final rule adopting the regulations of this part with or without changes is published and becomes effective.

Dated: February 22, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public ond Indian Housing.

[FR Doc. 96–4438 Filed 2–27–96; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–229–FOR #66]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Ohio regulatory program (hereinafter referred to as the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio proposed revisions to rules and directives pertaining to premining water quality samples for previously mined permit sites. The amendment is intended to make the Ohio program as effective as the corresponding Federal regulations.

EFFECTIVE DATE: February 28, 1996.

FOR FURTHER INFORMATION CONTACT: George Rieger, Program Manager, OSM, Appalachian Regional Coordinating Center, 10 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2849.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Submission of the Proposed Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated July 3, 1995 (Administrative Record No. OH–2143), Ohio submitted a proposed amendment to its program pursuant to SMCRA at its own initiative. Ohio proposed to revise one rule at Ohio Administrative Code (OAC) section 1501:13–4–15 concerning the number and frequency of premining water samples required for previously mined permit areas. Ohio also proposed to revise two of its Policy/Procedures Directives (PPD)—PPD Permitting 92–3 and PPD Regulatory 93–4, to reflect the rule change.

OSM announced receipt of the proposed amendment in the July 25, 1995, **Federal Register** (60 FR 37972), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on August 24, 1995.

During its review of the amendment, OSM identified concerns relating to pollution abatement areas. OSM notified Ohio of these concerns by letter dated September 8, 1995 (Administrative Record No. OH–2156).

By letter dated September 27, 1995 (Administrative Record No. OH–2157), Ohio responded to OSM's concerns by submitting revisions to its proposed program amendment. Ohio proposed two additional revisions to PPD Regulatory 93–4. The first revision deletes the earlier proposed provision which would have allowed the inclusion of "contiguous undisturbed areas" within pollution abatement areas. The second revision requires that the operator make an additional written notification pertaining to the demonstration of untreated pre-existing discharges.

Based on the revisions to the proposed program amendment submitted by Ohio, OSM reopened the public comment period in the October 25, 1995, **Federal Register** (60 FR 54619) and provided an opportunity for a public hearing on the adequacy of the amendment. The public comment period closed on November 9, 1995.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

15 OAC 1501:13–4–15(D)(2)—Authorization to Conduct Coal Mining on Previously Mined Areas. Ohio is proposing to amend its regulations pertaining to water quality to require that a permit applicant submit data from a minimum of 12 samples taken at regular intervals at each sampling location and collected over a period of at least 12 months or longer, as determined by the regulatory authority. The Federal regulations at 30 CFR 780.21(b) establish baseline hydrologic

information requirements. The regulatory authority may require additional information as warranted. The Director finds that the proposed revision at 15 OAC 1501.13–4–15(d)(2) is not inconsistent with the Federal regulations at 30 CFR 780.21(b).

Policy/Procedure Directive (PPD) 93–4. Ohio is proposing to revise the bond release provisions of PPD 93–4 to clarify that as part of the demonstration that the untreated pre-existing discharges from the pollution abatement area have not exceeded the modified effluent limitations for the required 12 months, the operator must notify the Division's district office in writing at the beginning of the 12-month period prior to the Phase II bond release. The name of Ohio's Remining Program's contact person is changed to Bob Baker. The Federal regulations at 30 CFR 800.40(c) authorize the regulatory authority to release all or part of a bond if the regulatory authority is satisfied that certain conditions have been met. The Director finds that the proposed revisions to PPD 93–4 are no less effective than the Federal regulations at 30 CFR 800.40(c).

Policy/Procedure Directive (PPD) 92–3. Ohio is proposing to revise the sampling procedures for pre-existing discharge sites. The permit applicant is required to submit a minimum of 12 samples for each pre-existing discharge site to be collected over a period of at least 12 months and the samples must be collected over a period of 12 months or longer. Sites are to be sampled no more frequently than once a month. There is no statutory provision for a variance of the sampling requirements.

The Federal regulations at 30 CFR 780.21(b) establish baseline hydrologic information requirements. The regulatory authority may require additional information as warranted. The Director finds that the proposed revisions to PPD 92–3 are not inconsistent with the Federal regulations at 30 CFR 780.21(b).

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments on July 25, 1995, and October 25, 1995, and provided an opportunity for public hearings on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearings were held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Ohio program. The U.S. Department of Labor, Mine Safety and Health Administration, concurred without comment.

Environmental Protection Agency (EPA)

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. OH–2144). It did not respond to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Ohio on July 3, 1995, and as revised on September 27, 1995.

The Federal regulations at 30 CFR part 935, codifying decisions concerning the Ohio program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 16, 1996.

Allen D. Klein,

Assistant Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended by adding paragraph (aaaa) to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(aaaa) The amendments to the following rules and directives, as submitted to OSM on July 3, 1995, and revised on September 27, 1995, are approved effective February 28, 1996:

15 OAC 1501:13–4–15(D)(2)—Authorization to Conduct Coal Mining on Previously Mined Areas

Policy/Procedure Directive 93–4—Remining Enforcement Procedure

Policy/Procedure Directive 92–3—Remining Process

[FR Doc. 96–4429 Filed 2–27–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD02–96–077]

RIN 2115–AA97

Safety Zone; Lower Mississippi River, Mile 528.0 to Mile 532.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Lower Mississippi River between mile 528.0 and mile 532.0. This regulation is needed to restrict vessel traffic in the regulated area to prevent a collision with sunken barges, surveying and salvage equipment and to provide a safe work area for survey and salvage personnel. The regulation restricts navigation in the regulated area and may have a significant effect on commercial traffic.

DATES: This regulation becomes effective at 10:02 p.m. on February 3, 1996, and terminates at 8 a.m. on August 31, 1996.

FOR FURTHER INFORMATION CONTACT: Lt. Byron Black, Chief, Port Operations, Captain of the Port, 200 Jefferson Avenue, Suite 1301, Memphis, TN 38103, (901) 544–3941.

SUPPLEMENTARY INFORMATION:

Background and Purpose

At approximately 10 p.m. on February 3, 1996, the M/V SCAUP collided with the Greenville, MS bridge sinking rock barges at approximate mile 531.3 on the Lower Mississippi River. The sunken barges' exact location remains unknown and survey operations at Lower Mississippi River mile 531.3 will commence shortly. The navigable channel will be blocked during survey and salvage operations. A safety zone has been established on the Lower Mississippi River from mile 528.0 to mile 532.0 in order to facilitate safe vessel passage. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary. Specifically, immediate action is necessary to facilitate the survey for the sunken barges' exact location. Harm to the public or environment may result if vessel traffic is not controlled during the operations. As a result, the Coast Guard deems it to be in the public's best interest to issue a regulation immediately.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T02–077 is added to read as follows:

§ 165.T02–077 Safety Zone; Lower Mississippi River.

(a) *Location.* The following area is a Safety Zone: Lower Mississippi River mile 528.0 to mile 532.0.

(b) *Effective dates.* This section is effective at 10:02 p.m. on February 3, 1996, and terminates at 8 a.m. on August 31, 1996.

(c) *Regulations.* In accordance with the general regulations in § 165.23, entry into this zone is prohibited except as authorized by the Captain of the Port. The Captain of the Port, Memphis, Tennessee, will notify the maritime community of conditions affecting the area covered by this safety zone by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: February 3, 1996.

P.L. Mountcastle,

Lieutenant Commander, USCG, Acting Captain of the Port.

[FR Doc. 96–4535 Filed 2–27–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD02–96–076]

RIN 2115–AA97

Safety Zone; Lower Mississippi River, Mile 538.0 to Mile 542.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Lower Mississippi River between mile 538.0 and mile 542.0. This regulation is needed to restrict vessel traffic in the regulated area to prevent a collision with a sunken deck barge, surveying and salvage equipment and to provide a safe work area for survey and salvage personnel. The regulation restricts navigation in the regulated area and may have a significant affect on commercial traffic.

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DATES: This regulation becomes effective at 4 a.m. on February 2, 1996, and terminates at 8 a.m. on August 31, 1996.

FOR FURTHER INFORMATION CONTACT: Lt. Byron Black, Chief, Port Operations, Captain of the Port, 200 Jefferson Avenue, Suite 1301, Memphis, TN 38103, (901) 544–3941.

SUPPLEMENTARY INFORMATION:

Background and Purpose

At approximately midnight on February 2, 1996, a deck barge sank at approximate mile 540.0 on the Lower Mississippi River. The deck barge's exact location remains unknown and survey operations at Lower Mississippi River mile 540.0 are underway. The navigable channel will be blocked during survey and salvage operations. A safety zone has been established on the Lower Mississippi River from mile 538.0 to mile 540.0 in order to facilitate safe vessel passage. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary. Specifically, immediate action is necessary to facilitate the survey for the sunken deck barge's exact location. Harm to the public or environment may result if vessel traffic is not controlled during the operations. As a result, the Coast Guard deems it to be in the public's best interest to issue a regulation immediately.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T02–076 is added to read as follows:

§ 165.T02–076 Safety Zone; Lower Mississippi River.

(a) *Location.* The following area is a Safety Zone: Lower Mississippi River mile 538.0 to mile 542.0.

(b) *Effective dates.* This section is effective at 4 a.m. on February 3, 1996, and terminates at 8 a.m. on August 31, 1996.

(c) *Regulations.* In accordance with the general regulations in § 165.23, entry into this zone is prohibited except as authorized by the Captain of the Port. The Captain of the Port, Memphis, Tennessee, will notify the maritime community of conditions affecting the area covered by this safety zone by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: February 3, 1996.

P.L. Mountcastle,

Lieutenant Commander, USCG, Acting Captain of the Port.

[FR Doc. 96–4536 Filed 2–27–96; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AH90

Loan Guaranty: Limitation on Discount Points Financed in Connection with Interest Rate Reduction Refinancing Loans

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This document amends VA's loan guaranty regulations concerning points allowed to be included in VA-guaranteed Interest Rate Reduction Refinancing Loans by limiting to two the amount of points that may be included in the loan. This action is necessary to help ensure that veterans are not overcharged with excessive points and to protect the interest of the Government against overinflated loans.

DATES: This rule is effective February 28, 1996. Comments must be received on or before April 29, 1996.

ADDRESSES: Mail written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or hand deliver written comments to: Office of Regulations Management, Room 1176, 801 Eye Street, NW., Washington, DC 20001. Comments should indicate that they are submitted in response to "RIN 2900–AH90." All written comments received will be available for public inspection in the Office of Regulations Management, Room 1176, 801 Eye Street, NW., Washington, DC 20001 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: Under authority of 38 U.S.C. Chapter 37, VA guarantees loans made by lenders to eligible veterans to purchase, construct, improve, or refinance their homes (the term veteran as used in this document includes any individual defined as a veteran under 38 U.S.C. 101 and 3701 for the purpose of housing loans). This document amends VA's loan guaranty regulations concerning points allowed to be included in VA-guaranteed Interest Rate Reduction Refinancing Loans (IRRRLs) by limiting to two the amount of points that may be included in the loan.

The provisions of 38 U.S.C. 3703(c)(3) and 3710(e)(1)(C) allow for IRRRLs to include "reasonable" points as may be authorized by the Secretary by regulation. One point equals one percent of the amount of the loan. Lenders allow a borrower to pay points and thereby reduce the interest rate.

The regulations in effect prior to the effective date of this document allowed IRRRLs to include any amount of points negotiated between the veteran and the lender. This was based on the assumption that market forces would act to assure that veterans were not charged excessive points. While this generally has been true, recently a few lenders have not been constrained by market rates and have been able to convince veterans to agree to IRRRLs with excessive points. There have been cases in which IRRRLs include 5 or more points with the lender representing the loan as having "at market" terms even though a true "at market" interest rate for such a loan generally would have called for no more than two points (because of excessive points there have even been some IRRRLs where the monthly payment increased even though the interest rate decreased).

In addition to overcharging the veteran, excessive points often cause other negative impacts. IRRRLs sometime result in loans in excess of the value of the property. Accordingly, any additional increase in the amount by which the loan balance exceeds the market value of the property would further increase VA's loss in the event of default and payment of a claim under the guaranty. Also, an excessive increase in the loan amount may cause a veteran to be unable to sell the home for an amount sufficient to pay off the loan balance.

We believe that limiting to two the amount of points that may be included in an IRRRL is appropriate. We believe that this will reasonably protect the veteran and the Government against overinflated IRRRLs and at the same time avoid unduly hampering veterans' ability to obtain IRRRLs at favorable terms. The inclusion of two points in refinanced loans has gained general market acceptance as the typical number of points included in loans obtained "at market." In our view, limiting to two the amount of points that may be included in an IRRRL would not have much of an effect on IRRRLs other than to protect against the few lenders who are overcharging veterans and increasing VA's risk with above-market combinations of rates and points.

This change in the regulations only concerns the amount of points that may be included in an IRRRL. A veteran could pay in excess of two points if the excess points were paid in cash.

We considered amending the regulations to include a formula designed to restrict the amount of the loan in comparison with the value of the property and to ensure that veterans would not get overcharged. However, we believe such a formula would be too complex and difficult to enforce. Instead, we believe that we can best help to ensure that excessive points are not included in IRRRLs by limiting to two points the amount of points that may be included in the loan.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, we have found good cause to dispense with notice and comment on this interim final rule and to dispense with a 30-day delay of its effective date. These findings are based on the critical need to help ensure that veterans are not overcharged with excessive points and to protect the interests of the Government against overinflated loans. Comments are being solicited for 60 days after publication of this document. VA may modify this rule in response to comments, if appropriate.

Regulatory Flexibility Act

Because no notice of proposed rulemaking was required in connection with the adoption of this interim final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Housing, Individuals with disabilities, Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: February 13, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36, §§ 36.4201 through 36.4287 continues to read as follows:

Authority: Sections 36.4201 through 36.4287 issued under 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, unless otherwise noted.

2. Section 36.4223 is amended by revising paragraph (a)(3) to read as follows:

§ 36.4223 Interest rate reduction refinancing loan.

(a) * * *

(3) The amount of the refinancing loan may not exceed an amount equal to the sum of the balance of the loan being refinanced and such closing costs as authorized in § 36.4232 or § 36.4254, as appropriate, and a discount not to exceed 2 percent of the loan amount;

(Authority: 38 U.S.C. 3703, 3712)

* * * * *

3. The authority citation for part 36, §§ 36.4300 through 36.4375 continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 101, 501, 3701–3704, 3710, 3712–3714, 3720, 3279, 3732, unless otherwise noted.

4. Section 36.4306a is amended by revising paragraph (a)(3)(i) to read as follows:

§ 36.4306a Interest rate reduction refinancing loan.

(a) * * *

(3) * * *

(i) An amount equal to the balance of the loan being refinanced and such closing costs as authorized by § 36.4312(d) and a discount not to exceed 2 percent of the loan amount; or

* * * * *

(Authority: 38 U.S.C. 3703, 3710)

[FR Doc. 96–4498 Filed 2–27–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE013–5915a; FRL–5424–9]

Approval and Promulgation of Air Quality Implementation Plans; Delaware—Emission Statement Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision

submitted by the State of Delaware. This revision consists of an emission statement program for stationary sources that emit volatile organic compounds (VOCs) and/or nitrogen oxides (NO_X) at or above specified actual emission threshold levels within the state of Delaware (Kent, New Castle, and Sussex Counties). The intended effect of this action is to approve a regulation for annual reporting of actual emissions by sources that emit VOC and/or NO_X within the state in accordance with the 1990 Clean Air Act (CAA). This action is being taken under section 110 of the CAA.

DATES: This action is effective April 29, 1996, unless notice is received on or before March 29, 1996, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments must be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA office listed above; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto (215) 597–3164, at the EPA Region III address.

SUPPLEMENTARY INFORMATION: On January 11, 1993, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a SIP revision to EPA on Emission Statements. This revision would amend Delaware's Regulations Governing the Control of Air Pollution: section 2 of Regulation 1 (Definitions and Administrative Principles), and section 1 of Regulation 17 (Source Monitoring, Recordkeeping and Reporting), and also add a new section 7 of Regulation 17.

I. Background

The air quality planning and SIP requirements for ozone nonattainment and transport areas are set out in subparts I and II of part D of title I of the CAA, as amended by the Clean Air Act Amendments of 1990. EPA published a "General Preamble" describing EPA's preliminary views on how it intends to review SIPs and SIP revisions submitted under Title I of the CAA, including those state submittals for ozone transport areas within the states (see 57 FR 13498 (April 16, 1992) ("SIP: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990"), 57 FR 18070 (April 28, 1992) ("Appendices to the General Preamble"), and 57 FR 55620 (November 25, 1992) ("SIP: NO_X Supplement to the General Preamble")).

EPA also issued a draft guidance document describing the requirements for the emission statement programs discussed in this action, entitled "Guidance on the Implementation of an Emission Statement Program" (July, 1992). EPA is also conducting a rulemaking process to modify Title 40, Part 51 of the CFR to reflect the requirements of the emission statement program.

Section 182 of the CAA sets out a graduated control program for ozone nonattainment areas. Section 182(a) sets out requirements applicable in marginal ozone nonattainment areas, which are also applicable by sections 182 (b), (c), (d), and (e) to all other ozone nonattainment areas. Among the requirements in section 182(a) is a program for stationary sources to prepare and submit to the state each year emission statements certifying their actual emissions of VOCs and NO_X. This section of the CAA provides that the states are to submit a revision to their SIPs by November 15, 1992 establishing this emission statement program.

If a source emits either VOC or NO_X at or above the designated minimum reporting level, the other pollutant should be included in the emission statement, even if it is emitted at levels below the specified cutoffs.

States may waive, with EPA approval, the requirement for an emission statement for classes or categories of sources with less than 25 tons per year of actual plant-wide NO_X or VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories and emissions are calculated using emissions factors established by EPA (such as those found in EPA publication AP–42) or other methods acceptable to EPA.

At minimum, the emission statement data should include:

—Certification of data accuracy;
—Source identification information;
—Operating schedule;
—Emissions information (to include annual and typical ozone season day emissions);
—Control equipment information; and
—Process data.

EPA developed emission statements data elements to be consistent with other source and state reporting requirements. This consistency is essential to assist states with quality assurance for emission estimates and to facilitate consolidation of all EPA reporting requirements.

II. EPA's Evaluation of Delaware's Submittal

A. Procedural Background

In accordance with the requirements of 40 CFR 51.102, the State of Delaware held a public hearing on September 29, 1993 in Dover, Delaware to solicit public comments on the implementation plan for the state. The plan was submitted to EPA by the Governor's designee on January 11, 1993.

B. Components of Delaware's Emission Statement Program

There are several key and specific components of an acceptable emission statement program. Specifically, Delaware must submit a revision to its SIP consisting of an emission statement program that meets the minimum requirements for reporting by the sources and the state. For the emission statement program to be approvable, Delaware's SIP revision must include, at a minimum, definitions and provisions for applicability, compliance, and specific source reporting requirements and reporting forms.

Regulation 1 (Definitions and Administrative Principles), section 2; and Regulation 17 (Source Monitoring, Recordkeeping and Reporting), section 1, has been revised by amending and adding the definitions of the following terms: actual emissions, annual fuel process rate, certifying individual, control efficiency, control equipment identification code, emission factor, emission statement, estimated emission method code, estimated emission units, measured emission method code, measured emission units, peak ozone season, percentage annual throughput, periodic ozone SIP inventory, point, potential to emit, process rate, segment, source classification code, and volatile organic compounds.

Regulation 17, section 7 (Emission Statement) requires a person who owns and operates any installation, source, or premises located in areas designated by the CAA as an ozone nonattainment area to report the levels of emissions from all stationary sources of VOCs and NO_X. The state may, with EPA approval, waive the emission statement requirements for classes or categories of stationary sources with facility-wide actual emissions of less than 25 tons/year of VOC or NO_X if the class or category is included in the base year and periodic ozone inventories, and the actual emissions are calculated using EPA approved emission factors or other methods acceptable to EPA. Regulation 17, section 7, also requires emission statements for all stationary sources located in ozone attainment areas that emit or have the potential to emit 50 tons/year of VOC and/or NO_X. This section also requires that a certifying official for each facility provide Delaware with a statement reporting emissions by April 30 of each year beginning with April 30, 1993 for the emissions discharged during the previous calendar year. This section also delineates specific requirements for the content of these annual emission statements.

C. Enforceability

The State of Delaware has provisions in its SIP which ensure that the emission statement requirements of section 182(a)(3)(B) and sections 184(b)(2) and 182(f) of the CAA, as required by section 2 of Delaware Regulation Number 1 (Definitions and Administrative Principles) and sections 1 and 7 of Regulation 17 (Source Monitoring, Recordkeeping and Reporting), are adequately enforced.

EPA has determined that the submittal made by the State of Delaware satisfies the relevant requirements of the CAA and EPA's guidance document, "Guidance on the Implementation of an Emission Statement Program" (July 1992). EPA's detailed review of Delaware's Emission Statement Program is contained in a Technical Support Document (TSD) which is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

III. Final Action

EPA is approving a revision to the Delaware SIP to include an Emission Statement Program consisting of revisions to section 2, Regulation 1; and section 1, and a new section 7 of Regulation 17. This revision was submitted to EPA by the State of Delaware on January 11, 1993.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will become effective April 29, 1996 unless, by March 29, 1996, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on April 29, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision of any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

This action has been classified as Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Delaware's Emission Statement Program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Volatile organic compounds, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements.

Dated: February 2, 1996.

W.T. Wisniewski,

Acting Regional Administrator, Region III

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart I—Delaware

2. Section 52.420 is amended by adding paragraph (c)(52) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(52) Revisions to the Delaware State Implementation Plan submitted by the Secretary, Delaware Department of Natural Resources and Environmental Control, on January 11, 1993.

(i) Incorporation by reference.

(A) Letter dated January 11, 1993 from the Secretary, Delaware Department of Natural Resources and Environmental Control, submitting a revision to the Delaware State Implementation Plan.

(B) Amended section 2, Regulation 1 (Definitions and Administrative Principles). Amended section 1, and added new section 7 of Regulation 17 (Source Monitoring, Recordkeeping and Reporting). The amendments to Regulations 1 and 17, and the addition of section 7 of Regulation 17, were effective on January 11, 1993. This revision consists of an emission statement program for stationary sources which emit volatile organic compounds (VOC) and/or nitrogen oxides (NO_X) at or above specified actual emission threshold levels. This program is applicable state-wide.

(ii) Additional material.

(A) Remainder of January 11, 1993 state submittal pertaining to Delaware Emission Statement Program.

* * * * *

[FR Doc. 96–4445 Filed 2–27–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MD6–1–5626; FRL–5328–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Continuous Emission Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision establishes and requires continuous emission monitoring requirements for certain sources of air pollution. The regulation applies to operators of fossil fuel-fired steam generating equipment with a rated heat input capacity of 250 million BTU per hour or greater. The intended effect of this action is to approve an amended regulation submitted by the State of Maryland Department of the Environment as a SIP revision rendering its monitoring requirements as federally enforceable. This action is being taken in accordance with section 110 of the Clean Air Act.

DATES: This action is effective April 29, 1996 unless notice is received on or before March 29, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Marcia Spink, Associate Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460; and State of Maryland Department of the Environment, Air Management Association, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 597–7547.

SUPPLEMENTARY INFORMATION: On September 23, 1991, the State of Maryland submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of the following regulatory modifications: (1) Definition amendments to Code of Maryland Administrative Regulations (COMAR) 26.11.01.01, (2) the addition of regulation COMAR 26.11.01.10 which contains continuous emissions monitoring (CEM) requirements for opacity and (3) amendments to COMAR 26.11.08.07 which would delete redundant language in requirements for CEMs for municipal solid waste incinerators.

Summary of SIP Revision

The revision includes the addition of definitions regarding the continuous emission monitoring regulations, the continuous emission monitoring program requirements for opacity.

The new regulations, found at COMAR 26.11.01.10, require continuous emission monitoring for large fuel burning sources. These new monitoring requirements will mandate the installation of continuous emission monitoring for opacity that will provide Maryland direct access to data for enforcement purposes. Opacity is an indicator of combustion efficiency and an indirect measure of particulate emissions. Data collected from the opacity monitoring will be used by Maryland as an indicator of whether proper operation and maintenance procedures are being used.

Specifically, the revision adds a new regulation which provides that fossil fuel-fired steam generating units with a rated heat input of 250 million Btu per hour or greater shall install and operate a CEM to measure and record opacity. The new regulation also clearly stipulates monitoring and installation requirements, certification schedules, and recordkeeping and reporting requirements.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on April 29, 1996, unless, by March 29, 1996, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on April 29, 1996.

Final Action

EPA is approving the amended regulations, COMAR 26.11.01.01 Definitions and COMAR 26.11.01.10 Continuous Emissions Monitoring Requirements submitted by the State of Maryland Department of the Environment as a revision to the Maryland SIP. The regulation requires that the operators of fossil fuel-fired steam generating units, continuously monitor opacity and report the findings on a specified, regular basis to the Maryland Department of the Environment.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Through submission of this state implementation plan revision, the State has elected to adopt the program provided for under Section 110. SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the SIP processing guidelines of the July 10, 1995 memorandum from the Assistant Administrator for Air and Radiation.

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan revision, the State has elected to adopt the program provided for under section 110 and subchapter I, part D of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirement; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to the State of Maryland—Continuous Emission Monitoring Regulations, must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 24, 1995.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(106) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(106) Revisions to the Maryland Regulations submitted on September 18, 1991 by the Maryland Department of the Environment.

(i) Incorporation by reference.

(A) Letter of September 18, 1991 from the Maryland Department of the Environment transmitting the continuous emission monitoring revision.

(B) Definition amendments to Code of Maryland Administrative Regulations (COMAR) 26.11.01.01, excluding paragraph E–1, and new regulations COMAR 26.11.01.10 Continuous Emission Monitoring Requirements, concerning continuous opacity monitoring, effective July 22, 1991.

(ii) Additional materials.

(A) Remainder of September 23, 1991 State submittal.

* * * * *

[FR Doc. 96–4444 Filed 2–27–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 110

[FRL–5430–6]

Oil Discharge Program; Editorial Revision of Rules

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is removing text from the Code of Federal Regulations (CFR), specifically 40 CFR part 110, which is unnecessary because it simply repeats language already set out in section 311 of the Federal Water Pollution Control Act (the Clean Water Act or the Act). EPA is also making other editorial revisions in 40 CFR part 110. Neither the removal of text nor the editorial revisions effect any substantive changes to the revised rules.

EFFECTIVE DATE: February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Hugo Paul Fleischman, Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, mail code 5203G, phone (703) 603–8769; or the RCRA/Superfund Hotline, phone (800) 424–9346 or (703) 603–9232 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 4, 1995, The President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer, and by June 1, 1995, to identify those rules that are obsolete or unduly burdensome. EPA has

conducted that review and, on June 29, 1995, published a final rule eliminating legally obsolete rules. *See* 60 FR 33912. Now EPA is taking another step in the ongoing review of its rules. EPA has reviewed 40 CFR part 110, and is removing text which unnecessarily repeats section 311 of the Act. EPA is also revising regulatory text: to make it more concise, to conform more closely to statutory language, or to eliminate text which is legally obsolete. All of these changes are editorial. None effect any changes to the substance of the revised rules. EPA is also redesignating affected sections as necessary.

II. Provisions Which Largely Track the Clean Water Act

EPA is removing the following provisions, or parts thereof, which either track the language of the Act precisely, or closely paraphrase it. These changes either make the regulatory text more concise or remove legally obsolete language.

40 CFR 110.1 Definitions

EPA is revising the introductory text to § 110.1 to provide that words not defined therein have the same meaning as in section 311(a) of the Act. Therefore, EPA is removing the following definitions in § 110.1 which track language in section 311 of the Act. The definitions are: "contiguous zone;" "Deepwater port;" "discharge;" "oil;" "offshore facility;" "onshore facility;" "person;" "public vessel;" and, "vessel." "Deepwater port" is a term no longer appearing in part 110, therefore the definition is no longer necessary. *See* 60 FR 33912. "Oil," as defined in relation to section 18 of the Deepwater Port Act of 1974, is also being removed. Section 18 was repealed by section 2003(a) of the Oil Pollution Act of 1990, Public Law 202–380, August 18, 1990. Therefore, that part of the definition is legally obsolete.

40 CFR 110.2 Applicability

EPA is removing the second and third sentences of the paragraph comprising this section. The second sentence of the paragraph describes the scope of discharge prohibited by section 311(b)(3) of the Act, and closely tracks the language of that section. Removal of this sentence will have no effect on the scope of prohibited discharges. The rule and section 311(b)(3) of the Act will continue to prohibit illegal discharges. EPA is also removing the third sentence of the paragraph because it merely references a removed section, i.e., § 110.11. That section was removed from the CFR on June 29, 1995 (60 FR 33912) because it was legally obsolete.

40 CFR 110.9 [sic] Discharge Prohibited

EPA is removing this section because it merely paraphrases the statutory language of section 311(b)(3) of the Act. This section should have been designated § 110.6, but due to error was designated as § 110.9.

III. Editorial Changes

EPA is revising the text in the sections described below in order to make them more concise, and to consolidate similar text now in multiple sections into one section where possible. In one case, EPA is revising regulatory text to conform more closely to statutory language. The revisions to or redesignation of affected sections is explained below.

40 CFR 110.3 Discharge Into Navigable Waters of Such Quantities as May Be Harmful

Revised §110.3 consolidates regulations from old §§ 110.3, 110.4, and 110.5. The section heading is being revised to read "Discharge of oil in such quantities as 'may be harmful' pursuant to section 311(b)(4) of the Act," in order to reflect the consolidation of the regulations under that section. The new name of the section describes its enlarged scope. Revised § 110.3 now includes discharges of oil: into navigable waters formerly included within the scope of old § 110.3, into the contiguous zone formerly included within the scope of old § 110.4, and beyond the contiguous zone formerly included within the scope of old § 110.5. EPA is removing old §§ 110.4 and 110.5 because the text of revised § 110.3 now includes all discharges of oil, whether in navigable waters, the contiguous zone, or beyond the contiguous zone. EPA is also revising the text of § 110.3 to make clear that discharges affecting the environment, as provided in section 311(b)(4) of the Act, are included within the scope of prohibited discharges.

40 CFR 110.4 Discharge Into Contiguous Zone of Such Quantities as May be Harmful

EPA is removing this section because its provisions have been incorporated into revised § 110.3.

40 CFR 110.5 Discharge Beyond Contiguous Zone of Such Quantities as May be Harmful

EPA is removing this section because its provisions have been incorporated into revised § 110.3. In its place, EPA is revising and renaming § 110.5. The renamed section describes those discharges which have been determined not to be harmful, combining the text from old §§ 110.7 and 110.9.

40 CFR 110.7 Exception for Vessel Engines

EPA is removing this section because the exception is now included within revised § 110.5.

40 CFR 110.8 Dispersants

This section is being redesignated as § 110.4.

40 CFR 110.9 Demonstration Projects

EPA is removing this section because discharges permitted in connection with research, demonstration projects, or studies relating to the prevention, control, or abatement of oil pollution are now included in revised § 110.5.

40 CFR 110.10 Notice

EPA is redesignating this section as § 110.6. EPA is also removing the reference to § 110.6 in the first sentence of the section, and substituting § 311 (b)(3) of the Act in its place. This change is necessary because former §110.6, "Discharges prohibited," is being removed. The revision is strictly editorial and does not change the scope of prohibited discharges.

IV. Differentiation Between Classes of Oils

Pursuant to Public Law 104–55 (109 Stat. 546), enacted November 20, 1995, most Federal agencies (including EPA) must, in the issuance or enforcement of any regulation or the establishment of any interpretation or guideline relating to the transportation, storage, discharge, release, emission, or disposal of a fat, oil, or grease, differentiate between and establish separate classes for animal fats and oils and greases, fish and marine mammal oils, and oils of vegetable origin (as opposed to petroleum and other oils and greases). EPA has considered whether differentiation between and establishment of separate classes of oils is appropriate for this rule, and concluded that it is not. This conclusion is based on the fact that the instant revisions are merely editorial and do not change any substantive aspects of the oil discharge program, thereby vitiating any need for differentiation.

V. Good Cause Exemption From Notice and Comment Rulemaking Procedures

The Administrative Procedure Act generally requires agencies to provide prior notice and opportunity for public comment before issuing a final rule. 5 U.S.C. 553(b). Rules are exempt from this requirement if the issuing agency finds for good cause that notice and comment are unnecessary. 5 U.S.C. 553(b)(3)(B).

EPA has determined that providing prior notice and opportunity for comment on the removal and revision of these Regulatory provisions from the CFR is unnecessary. The removals and revisions contained in this final rule are merely editorial and do not affect any substantive aspects of the oil discharge program.

For the same reasons, EPA believes there is good cause for making the removal and revision of these regulatory provisions from the CFR effective immediately. *See* 5 U.S.C. 553(d).

VI. Analyses Under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act and the Paperwork Reduction Act

Because the revision or removal of these rules from the CFR is merely editorial and thus has no regulatory impact, this action is not a "significant" regulatory action within the meaning of E.O. 12866, and does not impose any Federal mandate on State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. For the same reasons, pursuant to the Regulatory Flexibility Act, I certify that this action would not have a significant economic impact on a substantial number of small entities. Finally, because these revisions and removals are merely editorial, they do not affect requirements under the Paperwork Reduction Act.

List of Subjects in 40 CFR Part 110

Environmental protection, Deepwater ports, Oil pollution.

Dated: February 15, 1996.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 1321(b)(3) and (b)(4) and 1361(a); E.O. 11735, 38 FR 21243, 3 CFR Parts 1971–1975 Comp., p. 793.

2. In section 110.1 the introductory text is revised and the definitions of "contiguous zone," "Deepwater port," "discharge," "offshore facility," "oil," "onshore facility," "person," "public vessel," and "vessel" are removed; to read as follows:

§ 110.1 Definitions.

Terms not defined in this section have the same meaning given by the Section 311 of the Act. As used in this part, the following terms shall have the meaning indicated below:

* * * * *

3. Section 110.2 is revised to read as follows:

§ 110.2 Applicability.

The regulations of this part apply to the discharge of oil prohibited by section 311(b)(3) of the Act.

4. Section 110.3 is revised to read as follows:

§ 110.3 Discharge of oil in such quantities as "may be harmful" pursuant to section 311(b)(4) of the Act.

For purposes of section 311(b)(4) of the Act, discharges of oil in such quantities that the Administrator has determined may be harmful to the public health or welfare or the environment of the United States include discharges of oil that:

(a) Violate applicable water quality standards; or

(b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

§ 110.4 [Removed and Reserved]

5. Section 110.4 is removed and reserved.

6. Section 110.5 is revised to read as follows:

§ 110.5 Discharges of oil not determined "as may be harmful" pursuant to Section 311(b)(3) of the Act.

Notwithstanding any other provisions of this part, the Administrator has not determined the following discharges of oil "as may be harmful" for purposes of section 311(b) of the Act:

(a) Discharges of oil from a properly functioning vessel engine (including an engine on a public vessel) and any discharges of such oil accumulated in the bilges of a vessel discharged in compliance with MARPOL 73/78, Annex I, as provided in 33 CFR part 151, subpart A;

(b) Other discharges of oil permitted under MARPOL 73/78, Annex I, as provided in 33 CFR part 151, subpart A; and

(c) Any discharge of oil explicitly permitted by the Administrator in connection with research, demonstration projects, or studies relating to the prevention, control, or abatement of oil pollution.

§ 110.9 [Removed]

7. Section 110.9 "Discharge prohibited", appearing between § 110.5 and 110.7, is removed.

§ 110.7 [Removed]

8. Section 110.7 is removed.

§ 110.8 [Redesignated as § 110.4]

9. Section 110.8 is redesignated as § 110.4.

§ 110.9 [Removed]

10. Section 110.9 is removed.

§ 110.10 [Redesignated as § 110.6]

11. Section 110.10 is redesignated as § 110.6, and the newly designated § 110.6 is further amended by revising the first sentence to read as follows:

§ 110.6 Notice.

Any person in charge of a vessel or of an onshore or offshore facility shall, as soon as he or she has knowledge of any discharge of oil from such vessel or facility in violation of section 311(b)(3) of the Act, immediately notify the National Response Center (NRC) (800–424–8802; in the Washington, DC metropolitan area, 202–462–2675). * * *

[FR Doc. 96–4386 Filed 2–27–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 712 and 716

[OPPTS–82048; FRL–4996–9]

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Interagency Testing Committee (ITC) in its 37th Report to EPA revised the Toxic Substances Control Act (TSCA) Section 4(e) Priority List by recommending for testing 28 chemical substances. The ITC recommendations must be given priority consideration by EPA in promulgating test rules. EPA is adding these chemical substances to two model information-gathering rules: the TSCA Section 8(a) Preliminary Assessment Information Rule (PAIR) and the TSCA Section 8(d) Health and Safety Data Reporting Rule. These model rules will require manufacturers and importers of the substances identified herein to report certain production, use, and exposure-related information, and manufacturers, importers, and processors of the listed substances to report unpublished health and safety data to EPA. This rule also makes certain modifications to a final

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rule published in the **Federal Register** of February 9, 1994; the TSCA section 8(d) Health and Safety Data Reporting rule.

EFFECTIVE DATE: March 29, 1996.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. E-543, Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This rule adds 28 chemical substances to the PAIR and the section 8(d) Health and Safety Data Reporting Rule. Manufacturers, importers, and processors of these chemicals will be required to report unpublished health and safety data, and manufacturers and importers will be required to report end use, exposure, and production volume data to EPA.

This document also modifies TSCA section 8(d) of a final rule published in the **Federal Register** of February 9, 1994 (59 FR 5956), to require submission of ecological effects data for o-sec-butylphenol (CAS No. 89-72-5).

I. Background

Section 4(e) of TSCA established the ITC and authorized it to recommend to EPA chemical substances and mixtures (chemicals) to be given priority consideration in proposing test rules under section 4. For some of these chemicals, the ITC may designate that EPA must respond to its recommendations within 12 months. In this time, EPA must either initiate a rulemaking to test the chemical or publish in the **Federal Register** its reasons for not doing so.

On November 22, 1995, EPA announced the receipt of the 37th Report of the ITC, and it was then published in the **Federal Register** of February 2, 1996 (61 FR 4188). The 37th Report revises the Committee's priority list of chemicals by recommending the addition of 28 chemical substances for testing to the section 4(e) priority list.

This rule adds 28 substances to the section 8(a) Preliminary Assessment Information Reporting Rule PAIR and the section 8(d) Health and Safety Data Reporting Rule. These two rules are model information gathering rules which assist the ITC in making testing recommendations and aid EPA in responding to the ITC recommendations.

EPA issued the PAIR under section 8(a) of TSCA (15 U.S.C. 2607(a)), and it is codified at 40 CFR part 712. This model section 8(a) rule establishes standard reporting requirements for manufacturers and importers of the chemicals listed in the rule at 40 CFR 712.30. These manufacturers and importers are required to submit a one-time report on general volume, end use, and exposure-related information using the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710-35). EPA uses this model section 8(a) rule to gather current information on chemicals of concern quickly.

EPA issued the model Health and Safety Data Reporting Rule under section 8(d) of TSCA (15 U.S.C. 2607(d)), and it is codified at 40 CFR part 716. The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemicals to submit to EPA copies and lists of unpublished health and safety studies on the listed chemicals that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9.

These model rules provide for the automatic addition of ITC priority list chemicals. Whenever EPA announces the receipt of an ITC report, EPA may, at the same time without further notice and comment, amend the two model information-gathering rules by adding the recommended chemicals. The amendment adding these chemicals to the PAIR and the Health and Safety Data Reporting Rule becomes effective 30 days after publication in the **Federal Register**.

II. Chemicals To Be Added

In its 37th Report to EPA, the ITC recommended adding 28 alkylphenols and alkylphenol ethoxylates to the section 8(a) PAIR and the section 8(d) Health and Safety Data Reporting Rule. While 28 chemical substances are identified in the regulatory text, 34 CAS numbers are listed. Two chemical substances, branched 4-nonyphenol (mixed isomers) and (1,1,3,3-tetramethylbutyl)phenol (mixed isomers) are characterized with multiple CAS numbers.

For a complete listing of the substances being added to the section 8(d) model rule and the PAIR, see the regulatory text of this document.

In response to the data needs of EPA and the Department of Interior, TSCA section 8(d) reporting requirements for o-sec-buytlphenol (CAS No. 89-72-5) are being amended to require submission of ecological effects data (59 FR 5956, February 9, 1994).

III. Reporting Requirements

A. Preliminary Assessment Information Rule

All persons who manufactured or imported the chemical substances named in this rule during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710-35) for each manufacturing or importing site at which they manufactured or imported a named substance. A separate form must be completed for each substance and submitted to the Agency no later than May 28, 1996. Persons who have previously and voluntarily submitted a Manufacturer's Report to the ITC or EPA may be able to submit a copy of the original Report to EPA or to notify EPA by letter of their desire to have this voluntary submission accepted in lieu of a current data submission. See § 712.30(a)(3).

Details of the reporting requirements, the basis for exemptions, and a facsimile of the reporting form, are provided in 40 CFR part 712. Copies of the form are available from the TSCA Environmental Assistance Division at the address listed under **FOR FURTHER INFORMATION CONTACT.**

B. Health and Safety Data Reporting Rule

Listed below are the general reporting requirements of the section 8(d) model rule.

1. Persons who, in the 10 years preceding the date a substance is listed, either have proposed to manufacture, import, or process, or have manufactured, imported, or processed, the listed substance must submit to EPA; A copy of each health and safety study which is in their possession at the time the substance is listed.

2. Persons who, at the time the substance is listed, propose to manufacture, import, or process; or are manufacturing, importing, or processing the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time the substance is listed.

b. A list of health and safety studies known to them but not in their possession at the time the substance is listed.

c. A list of health and safety studies that are ongoing at the time the substance is listed and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the date the substance is listed and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

3. Persons who, after the time the substance is listed, propose to manufacture, import, or process the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the listed substance.

b. A list of health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the time they propose to manufacture, import, or process the listed substance, and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of the completion date.

The bulk of reporting is required at the time the substance is listed. Persons described in categories 1 and 2 do all or most of their health and safety data reporting at the start of the reporting period. The remaining reporting requirements, specifically categories 2(d), 2(e), and 3, continue prospectively.

Detailed guidance for reporting unpublished health and safety data is provided in the **Federal Register** of September 15, 1986 (51 FR 32720). Also found there are explanations of the reporting exemptions.

C. Submission of PAIR Reports and Section 8(d) Studies

PAIR reports and section 8(d) health and safety studies must be sent to: TSCA Document Processing Center (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: (insert either PAIR or 8(d) Reporting).

D. Removal of Chemical Substances from the Rules

Any person who believes that section 8(a) or 8(d) reporting required by this rule is unwarranted, should promptly submit to EPA in detail the reasons for that belief. EPA, in its discretion, may remove the substance from this rule for good cause (40 CFR 712.30 and 716.105). When withdrawing a substance from the rule, EPA will issue a rule amendment for publication in the **Federal Register.**

IV. Economic Analysis

A. Preliminary Assessment Information Rule

The economic analysis for the addition of the 28 chemicals to the TSCA Section 4(e) Priority List will be based largely on the methods and data sources developed for the analyses of the original Section 8(a) Preliminary Assessment Information Rule (PAIR). These analyses are:

1. Economic Impact and Small Business Definition Analysis for TSCA Section 8(a) Preliminary Assessment Information Rule. Office of Regulatory Analysis, OTS, U.S. EPA. February 1980.

2. Economic Analysis of the Final Section 8(a) Preliminary Assessment Information Rule. R.A. Horner, Regulatory Impacts Branch, OTS, U.S. EPA. November 12, 1981.

The Chemical Update System (CUS) was searched to determine the manufacturers and importers of the 28 chemicals. This search identified 17 firms manufacturing or importing the 28 chemicals at a total of 14 sites.

Reporting Costs (dollars)

(a) 26 reports estimated at $1,483.73 per report=$38,576.98
(b) 17 sites at $465.99 per site=$7,921.83
Total Cost=$46,498.81
Mean cost per site=$46,499/14 sites=$3,321.36
Mean cost per firm=$46,499/17 firms=$2,735.24

Reporting Burden (hours)

(a) Rule familiarization: 7 hrs/site×14 sites=98
(b) Reporting: 22 hrs/report×26 reports=572
Total burden hours=707
Average burden per site=707 hours/14 sites=50.5
Average burden per firm=707 hours/17 firms=41.6

EPA Costs (dollars)

It is estimated that the annual cost to the Federal Government will be 1.36 FTEs (or 2,828.8 hours annually). At an estimated $69,370 per FTE, the total of 1.36 FTEs will cost EPA $94,343.

B. Health and Safety Data Reporting Rule

EPA estimates the total reporting costs for establishing section 8(d) reporting requirements for the 11 chemicals will be $84,954. The methodology used in this economic analysis was derived from the approach used in the analysis of the original 8(d) reporting: Impact Analysis for the Health and Safety Data Reporting Rule (Office of Toxic Substances, U.S. EPA, September 1982). Although EPA has used the best available data to make its economic projections, much of the information is based upon the 1986 TSCA Inventory Update and secondary information from industry sources.

The estimated reporting costs are broken down as follows:

Initial corporate review	$8,382
Site identification	12,573
File searches at site	28,329
Photocopying existing studies	3,208
Title listing	1,277
Managerial review for CBI	18,549
Reporting on newly-initiated studies	491
Submissions after initial reporting period	11,653
Additional costs	492
Total	84,954

Reporting Burden (hours)

(a) Initial review: 108 hrs
(b) Reporting: 953 hrs
Total reporting burden hours=1,061 hrs

V. Rulemaking Record

The following documents constitute the record for this rule (docket control number OPPTS-82048). All of these documents are available to the public in the TSCA Nonconfidential Information Center (NCIC), formerly the TSCA Public Docket Office, from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The NCIC is located at EPA Headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

1. This final rule.
2. The economic analysis for this rule.
3. The Thirty-seventh Report of the ITC.

VI. Regulatory Assessment Requirements

A. Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this rule is not "significant" because the Office of Management and Budget (OMB) has waived review of these types of actions, and is therefore not subject to OMB review.

B. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2070-0054 for PAIR reporting and 2070-0004 for TSCA section 8(d) reporting.

Information concerning the collection of

this information, its use, and estimated costs may be found in Units I. and IV. of this preamble.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency must consider whether a regulatory action will have an adverse economic impact on small entities. Section 605(b) requires the Agency to either certify that the regulatory action will not have a significant economic impact on a substantial number of small entities, or prepare a regulatory flexibility analysis. EPA has determined that this regulatory action does not impose any adverse economic impacts on small entities.

D. Unfunded Mandates Reform Act and Executive Order 12875

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), EPA has determined that this regulatory action does not contain any "unfunded mandates," as described by the Act, for State, local, or tribal governments or the private sector. In addition, EPA has determined that this action does not result in the expenditure of $100 million or more by any State, local or tribal governments, or by anyone in the private sector. The costs associated with this action are described in the Executive Order 12966 section above.

E. Executive Order 19898

Due to the nature of this action which is confined to information-gathering activities, it was not necessary for the Agency to consider environmental justice related issues pursuant to Executive Order 19898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Parts 712 and 716

Environmental protection, Chemicals, Hazardous substances, Health and safety data, Reporting and recordkeeping requirements.

Dated: February 22, 1996.

Frank D. Kover,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR Chapter I is amended as follows:

PART 712—[AMENDED]

1. In part 712:

a. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Section 712.30(e) is amended in the table by alphabetically adding the new category "Alkylphenols and Alkylphenol Ethoxylates," to read as follows:

§ 712.30 Chemicals lists and reporting periods.

* * * * *

(e) * * *

CAS No.	Substance	Effective date	Reporting date
Alkylphenols and Alkylphenol Ethoxylates:			
80–46–6	4-tert-Pentylphenol	3/29/96	5/29/96
88–18–6	2-tert-Butylphenol	3/29/96	5/29/96
94–06–4	4-(1-Methylbutyl)phenol	3/29/96	5/29/96
98–54–4	4-tert-Butylphenol	3/29/96	5/29/96
99–71–8	4-sec-Butylphenol	3/29/96	5/29/96
104–40–5	4-Nonylphenol	3/29/96	5/29/96
104–43–8	4-Dodecylphenol	3/29/96	5/29/96
949–13–3	2-Octylphenol	3/29/96	5/29/96
1300–16–9	Nonylphenol (mixed isomers)	3/29/96	5/29/96
1322–69–6	(1,1,3,3-Tetramethylbutyl)phenol (mixed isomers)	3/29/96	5/29/96
1331–57–3	Dodecylphenol (mixed isomers)	3/29/96	5/29/96
1638–22–8	4-n-Butylphenol	3/29/96	5/29/96
1806–26–4	4-Octylphenol	3/29/96	5/29/96
2315–66–4	Decaethylene glycol 4-isooctylphenyl ether	3/29/96	5/29/96
2497–58–7	Hexaethylene glycol 4-isooctylphenyl ether	3/29/96	5/29/96
3180–09–4	2-Butylphenol	3/29/96	5/29/96
3884–95–5	2-(1,1,3,3-Tetramethylbutyl)phenol	3/29/96	5/29/96
9002–93–1	Polyethylene glycol 4-(tert-octyl)phenyl ether	3/29/96	5/29/96
9036–19–5	Polyethylene glycol mono(octyl)phenyl ether	3/29/96	5/29/96
11066–49–2	Isononylphenol (mixed isomers)	3/29/96	5/29/96
14938–35–3	4-Pentylphenol	3/29/96	5/29/96
17404–66–9	4-(1-Methyloctyl)phenol	3/29/96	5/29/96
25154–52–3	Nonylphenol (mixed isomers)	3/29/96	5/29/96
27178–34–3	tert-Butylphenol (mixed isomers)	3/29/96	5/29/96
27193–28–8	(1,1,3,3-Tetramethylbutyl)phenol (mixed isomers)	3/29/96	5/29/96
27193–86–8	Dodecylphenol (mixed isomers)	3/29/96	5/29/96
27985–70–2	(1-Methylheptyl)phenol (mixed isomers)	3/29/96	5/29/96
29932–96–5	(1,1,3,3-Tetramethylbutyl)phenol (mixed isomers)	3/29/96	5/29/96
30105–54–5	(1,1,3,3-Tetramethylbutyl)phenol (mixed isomers)	3/29/96	5/29/96
31195–95–6	Isobutylphenol (mixed isomers)	3/29/96	5/29/96
54932–78–4	4-(2,2,3,3-Tetramethylbutyl)phenol	3/29/96	5/29/96
2744–41–6	(1,1,3,3-Tetramethylbutyl)phenol (mixed isomers)	3/29/96	5/29/96
68987–90–6	Poly(oxy-1,2-ethanediyl), α-(octylphenyl)-ω-hydroxy-, branched	3/29/96	5/29/96
84852–15–3	Branched 4-nonylphenol (mixed isomers)	3/29/96	5/29/96

PART 716—[AMENDED]

2. In part 716:

1a. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

b. Section 716.120(d) is amended in the table by alphabetically adding the new category "Alkylphenols and Alkylphenol Ethoxyates" and revising the entry for o-sec-butylphenol under the category "OSHA Chemicals in Need of Dermal Absorption Testing" to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * *

(d) * * *

Category	CAS No. (exemption for category)	Special exemptions	Effective date	Sunset date
Alkylphenols and Alkylphenol Ethoxyates:				
tert-Butylphenol (mixed isomers)	27178–34–3	§ 716.20(b)(4) applies	3/29/96	3/29/06
2-Butylphenol	3180–09–4	§ 716.20(b)(4) applies	3/29/96	3/29/06
2-tert-Butylphenol	88–18–6	§ 716.20(b)(4) applies	3/29/96	3/29/06
4-n-Butylphenol	1638–22–8	§ 716.20(b)(4) applies	3/29/96	3/29/06
4-sec-Butylphenol	99–71–8	§ 716.20(b)(4) applies	3/29/96	3/29/06
4-tert-Butylphenol	98–54–4	§ 716.20(b)(4) applies	3/29/96	3/29/06
Decaethylene glycol 4-isoctylphenyl ether	2315–66–4	§ 716.20(b)(4) applies	3/29/96	3/29/06
4-Dodecylphenol	104–43–8	§ 716.20(b)(4) applies	3/29/96	3/29/06
Dodecylphenol (mixed isomers)	1331–57–3	§ 716.20(b)(4) applies	3/29/96	3/29/06
Dedecylphenol (mixed isomers)	27193–86–8	§ 716.20(b)(4) applies	3/29/96	3/29/06
Hexaethylene glycol 4-isoctylphenyl ether	2497–58–7	§ 716.20(b)(4) applies	3/29/96	3/29/06
Isobutylphenol (mixed isomers)	31195–95–6	§ 716.20(b)(4) applies	3/29/96	3/29/06
Isononylphenol (mixed isomers)	11066–49–2	§ 716.20(b)(4) applies	3/29/96	3/29/06
4-(1-Methylbutyl)phenol	94–06–4	§ 716.20(b)(4) applies	3/29/96	3/29/06
(1-Methylheptyl)phenol (mixed isomers)	27985–70–2	§ 716.20(b)(4) applies	3/29/96	3/29/06
4-(1-Methyloctyl)phenol	17404–66–9	§ 716.20(b)(4) applies	3/29/96	3/29/06
Nonylphenol (mixed isomers)	1300–16–9	§ 716.20(b)(4) applies	3/29/96	3/29/06
	25154–52–3	§ 716.20(b)(4) applies	3/29/96	3/29/06
4-Nonylphenol	104–40–5	§ 716.20(b)(4) applies	3/29/96	3/29/06
Branched 4-nonylphenol (mixed isomers)	84852–15–3	§ 716.20(b)(4) applies	3/29/96	3/29/06
2-Octylphenol	949–13–3	§ 716.20(b)(4) applies	3/29/96	3/29/06
4-Octylphenol	1806–26–4	§ 716.20(b)(4) applies	3/29/96	3/29/06
4-Pentylphenol	14938–35–3	§ 716.20(b)(4) applies	3/29/96	3/29/06
4-tert-Pentylphenol	80–46–6	§ 716.20(b)(4) applies	3/29/96	3/29/06
Polyethylene glycol mono(octyl)phenyl ether	9036–19–5	§ 716.20(b)(4) applies	3/29/96	3/29/06
Polyethylene glycol 4-(tert-octyl)phenyl ether	9002–93–1	§ 716.20(b)(4) applies	3/29/96	3/29/06
Poly(oxy-1,2-ethanediyl), α-(octylphenyl)-α-hydroxy-, branched.	48987–90–6	§ 716.20(b)(4) applies	3/29/96	3/29/06
2-(1,1,3,3-Tetramethylbutyl)phenol	3884–95–5	§ 716.20(b)(4) applies	3/29/96	3/29/06
(1,1,3,3-Tetramethylbutyl)phenol (mixed isomers)	1322–69–6	§ 716.20(b)(4) applies	3/29/96	3/29/06
	27193–28–8	§ 716.20(b)(4) applies	3/29/96	3/29/06
	29932–96–5	§ 716.20(b)(4) applies	3/29/96	3/29/06
	30105–54–5	§ 716.20(b)(4) applies	3/29/96	3/29/06
	62744–41–6	§ 716.20(b)(4) applies	3/29/96	3/29/06
4-(2,2,3,3-Tetramethylbutyl)phenol	54932–78–4	§ 716.20(b)(4) applies	3/29/96	3/29/06
OSHA Chemicals in Need of Dermal Absorption Testing:				
o-sec-butylphenol	89–72–5		3/11/94	3/11/04

[FR Doc. 96–4519 Filed 2–27–96; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 90, 98, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 170, 174, and 175

[CGD 82–004 and CGD 86–074]

RIN 2115–AA77

Offshore Supply Vessels

AGENCY: Coast Guard, DOT.

ACTION: Interim rule, with request for comments; reopening of comment period.

SUMMARY: On November 16, 1995, the Coast Guard published an Interim Rule (IR) [60 FR 57630], a complete set of regulations applicable to new offshore supply vessels (OSVs), including liftboats, and provided an opportunity for public comment. Because of a request from the Offshore Marine Service Association (OMSA), who represents more than 280 OSV-related companies, the Coast Guard is

reopening the comment period for about 45 days.

DATES: Comments must arrive on or before March 31, 1996.

ADDRESSES: Mail comments to the Executive Secretary, Marine Safety Council (G–LRA, 3406) [CGD 82–004 or CGD 86–074], U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001, or deliver them to Room 3406 at that address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Phone, (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: James M. Magill, Commandant (G–MOS–2), Room 1208c, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–1181.

SUPPLEMENTARY INFORMATION:

Request for Comments

The IR, published on November 16, 1995, invited and encouraged interested persons to participate in the rulemaking by submitting written comments, including views, data, and arguments, by February 14, 1996. OMSA has asked for more time to prepare comments, citing the need for its members to review the IR in light of the fact that a number of new technical and logistic advances and innovations have been implemented since the publication of the Notice of Proposed Rulemaking (NPRM) on May 9, 1989. Because of this, and the fact that the comment period spanned the holidays of Christmas and New Year, the Coast Guard is reopening the comment period for about 45 days, until March 31, 1996. Interested persons may participate in this rulemaking by submitting written data, views, or arguments on the IR. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD 82–004 and CGD 86–074] and the specific section or paragraph of the IR or related documents to which the comments apply, and give a reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Any person wishing acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received by the end of the comment period before it acts further on the rulemaking, and the Final Rule may vary from the IR in light of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Dated: February 20, 1996.

Joseph J. Angelo,

Director for Standards, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 96–4537 Filed 2–27–96; 8:45 am]

BILLING CODE 4910–14–M

Surface Transportation Board

49 CFR Parts 1039, 1134, 1135 and 1145

[STB Ex Parte No. 531]

Removal of Obsolete Recyclables Regulations

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (the Board) is removing obsolete recyclable commodities regulations from the Code of Federal Regulations.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), abolished the Interstate Commerce Commission (the Commission) and established within the Department of Transportation the Surface Transportation Board. Section 204 of the Act provides that "[t]he Board shall promptly rescind all regulations established by the [Commission] that are based on provisions of law repealed and not substantively reenacted by this Act." 49 U.S.C. 10710, the statutory basis for the part 1134 discrimination against recyclables regulations,[1] and 49 U.S.C. 10731, the statutory basis for the part 1145 rail rates on recyclables regulations,[2] have been repealed. We are therefore removing the now obsolete parts 1134 and 1145 regulations, as well as a reference to part 1145 in § 1039.11 and another obsolete regulation pertaining to recyclable rates, § 1135.1(h). These changes are not necessarily the final revisions to the regulations in light of the elimination of § 10710 and § 10731.[3]

Because this action merely reflects, and is required by, the enactment of the Act and will not have an adverse effect on the interests of any person, this action will be deemed to be effective as of January 1, 1996.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

49 CFR Parts 1134 and 1145

Administrative practice and procedure, Freight, Railroads.

49 CFR Part 1135

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

Decided: February 15, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is amended as set forth below:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 is revised to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 721 and 10502.

§ 1039.11 [Amended]

2. Section 1039.11(a) is amended by removing the following language from the paragraph immediately following the table in paragraph (a): "(Note: Certain recyclable commodities may be partially exempted pursuant to the provisions of 49 CFR 1145.9)".

PART 1134—[REMOVED]

3. Part 1134 is removed.

PART 1135—RAILROAD COST RECOVERY PROCEDURES

4. The authority citation for part 1135 is revised to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 721 and 10708.

§ 1135.1 [Amended]

5. Section 1135.1 is amended by removing paragraph (h).

PART 1145—[REMOVED]

6. Part 1145 is removed.

[FR Doc. 96–4529 Filed 2–27–96; 8:45 am]

BILLING CODE 4915–00–P

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49 CFR Parts 1039, 1138, 1140

[STB Ex Parte No. 532]

Removal of Obsolete Regulations for Reasonably Expected Costs and Joint Rates Subject to Surcharge or Cancellation

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (the Board) is removing obsolete reasonably expected costs and joint rate surcharge and cancellation regulations from the Code of Federal Regulations.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), abolished the Interstate Commerce Commission (the Commission) and established within the Department of Transportation the Surface Transportation Board. Section 204 of the Act provides that "[t]he Board shall promptly rescind all regulations established by the [Commission] that are based on provisions of law repealed and not substantively reenacted by this Act." 49 U.S.C. 10705a, the statutory basis for the part 1138 regulations on requesting variable cost and revenue determinations from carriers canceling a joint rate[1] and the part 1140 regulations for reasonably expected costs,[2] has been repealed. This section allowed carriers to apply a surcharge increasing or reducing a joint rate [§ 10705a(a)],[3] to apply a surcharge on their light density lines [§ 10705a(b)], or to cancel a joint rate [§ 10705a(c)], without the concurrence of other participating carriers.[4] We are therefore removing the now obsolete parts 1138 and 1140 regulations, as well as another obsolete regulation pertaining to § 10705a found at 49 CFR 1039.18. These changes are not necessarily the final revisions in the regulations resulting from the elimination of 49 U.S.C. 10705a.[5] Parties may submit suggested additional changes to the Code of Federal Regulations in light of the elimination of § 10705a.

Because this action merely reflects, and is required by, the enactment of the Act and will not have an adverse effect on the interests of any person, this action will be deemed to be effective as of January 1, 1996.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

49 CFR Part 1138

Administrative practice and procedure, Freight, Railroads.

49 CFR Part 1140

Abandonments and discontinuances, Environmental protection, National resources, National trail system, Public use conditions, Railroads, Recreation and recreation areas, Reporting and recordkeeping requirements, Uniform System of Accounts.

Decided: February 15, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is amended as set forth below:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 is revised to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 721 and 10502.

§ 1039.18 [Amended]

2. Section 1039.18 is removed.

PART 1138—[REMOVED]

3. Part 1138 is removed.

PART 1140—[REMOVED]

4. Part 1140 is removed.

[FR Doc. 96–4513 Filed 2–27–96; 8:45 am]

BILLING CODE 4915–00–P

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49 CFR Part 1153

[STB Ex Parte No. 534]

Removal of Obsolete Passenger Train or Ferry Discontinuance Regulations

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (the Board) is removing obsolete regulations concerning passenger train and ferry discontinuances from the Code of Federal Regulations.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), abolished the Interstate Commerce Commission (the Commission) and established within the Department of Transportation the Surface Transportation Board. Section 204 of the Act provides that "[t]he Board shall promptly rescind all regulations established by the [Commission] that are based on provisions of law repealed and not substantively reenacted by this Act." 49 U.S.C. 10908 and 10909, the statutory bases for the part 1153 passenger train

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[1] These regulations were originally issued in *Public Law 93–236—Freight Rates for Recyclables*, 346 I.C.C. 408 (1974), and revised in *Revised Rules of Practice*, 358 I.C.C. 169 (1977). The regulations were redesignated as a result of final rules in Ex Parte No. 55 (Sub-No. 55), *Revision and Redesignation of the Rules of Practice*, 47 FR 49534 (November 1, 1982).

[2] Final rules were adopted and revised in *Cost Ratios for Recyclables-Compliance Procedures*, 6 I.C.C.2d 103 (1989) and 8 I.C.C.2d 182 (1991).

[3] We will consider separately the disposition of 49 CFR 1039.14(b)(5). Parties may inform the Board whether other regulations are affected by the removal of 49 U.S.C. 10710 and 10731.

[1] Regulations were promulgated in *Proc. For Rail Variable Cost And Revenue Determination*, 3 I.C.C.2d 703 (1987).

[2] Regulations were originally promulgated in *Reasonably Expected Costs*, 365 I.C.C. 819 (1981), in the proceeding docketed as Ex Parte No. 402. Subsequent revisions to the reasonably expected cost regulations were made in the Ex Parte No. 402 decisions at 1 I.C.C.2d 252 (1984), 1 I.C.C.2d 293 (1984), and 5 I.C.C.2d 819 (1988).

[3] Carriers could also apply negative surcharges under 49 U.S.C. 10705a(a). In *Negative Surcharges Tariff-Exemption*, Docket No. 39777 (ICC served Aug. 16, 1985), we granted an exemption to allow carriers to file rate allowances ("negative surcharges") without obtaining concurrences from other carriers participating in the joint rate. The exemption was codified at 49 CFR 1039.18. The authority to apply the negative surcharge expired on September 30, 1984. We are also removing section 1039.18 in this notice.

[4] There was also another provision concerning joint rate cancellations—former section 10705(e) of title 49. We will consider this section in another proceeding.

[5] At this time, we are not removing related matters found in regulations concerning user fees (§ 1002) and tariffs (§ 1312) because we plan to separately address those parts shortly.

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or ferry discontinuance regulations, have been repealed. We are therefore removing the now obsolete part 1153 regulations.[1] These changes are not necessarily the final changes in the regulations resulting from the elimination of 49 U.S.C. 10908 and 10909.[2]

Because this action merely reflects, and is required by, the enactment of the Act and will not have an adverse effect on the interests of any person, this action will be deemed to be effective as of January 1, 1996.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1153

Administrative practice and procedure, Railroads.

Decided: February 15, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is amended by removing part 1153.

[FR Doc. 96–4515 Filed 2–27–96; 8:45 am]

BILLING CODE 4915–00–P

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49 CFR Part 1175

[STB Ex Parte No. 535]

Removal of Obsolete Securities Regulations

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (the Board) is removing obsolete regulations concerning securities from the Code of Federal Regulations.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), abolished the Interstate Commerce Commission (the Commission) and established within the Department of Transportation the Surface Transportation Board. Section 204 of the Act provides that "[t]he Board shall promptly rescind all regulations established by the [Commission] that are based on provisions of law repealed and not substantively reenacted by this Act." 49 U.S.C. 11301, the statutory basis for the part 1175 exempt issuance of securities and assumption of obligations regulations, has been repealed. We are therefore removing the now obsolete part 1175 regulations.[1] These changes are not necessarily the final modifications in the regulations resulting from the elimination of 49 U.S.C. 11301.[2]

Because this action merely reflects, and is required by, the enactment of the Act and will not have an adverse effect on the interests of any person, this action will be deemed to be effective as of January 1, 1996.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1175

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Securities.

Decided: February 20, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is amended by removing part 1175.

[FR Doc. 96–4528 Filed 2–27–96; 8:45 am]

BILLING CODE 4915–00–P

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49 CFR Part 1314

[STB Ex Parte No. 530]

Removal of Obsolete Rail Tariff Regulations

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (the Board) is removing obsolete rail tariff regulations from the Code of Federal Regulations.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), abolished the Interstate Commerce Commission (the Commission) and established within the Department of Transportation the Surface Transportation Board. Section 204 of the Act provides that "[t]he Board shall promptly rescind all regulations established by the [Commission] that are based on provisions of law repealed and not substantively reenacted by this Act." 49 U.S.C. 10761 and 10762, the statutory bases for the part 1314 rail tariff regulations,[1] have been repealed. Carriers no longer have to file or maintain tariffs. We are therefore removing the now obsolete part 1314 regulations.[2] Tariff regulations at part 1312, which cover other modes of transportation for which tariff filing requirements were not completely eliminated, will be separately addressed and revised.[3]

Because this action merely reflects, and is required by, the enactment of the

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[1] These regulations were last modified in *Discontinuance or Change of Train or Ferry Service*, 366 I.C.C. 877 (1983).

[2] At this time, we are not removing related matters found in the regulations concerning user fees (§ 1002) and environmental regulations (§ 1105.8), because we plan to separately address those parts shortly. Parties may submit other suggested changes to the Code of Federal Regulations in light of the elimination of § 10908 and § 10909.

[1] These regulations were issued in *Exemption—Railroad Regulation Under 49 U.S.C. 11301*, 1 I.C.C.2d 915 (1985).

[2] At this time, we are not removing related matters found in the regulations concerning user fees (§ 1002), the environment (§ 1105.6(c)(2)(ii)), certificates to construct, acquire or operate railroad lines (§ 1150.10(d)), and interlocking officers (§ 1185.2), because we plan to separately address those parts shortly. Parties may submit other suggested changes to the Code of Federal Regulation in light of the elimination of § 11301.

[1] These regulations were promulgated in *Electronic Filing of Tariffs*, 5 I.C.C.2d 279 (1989), rules stayed, 5 I.C.C.2d 1052 (1989), stay lifted as to rail carrier tariffs, 6 I.C.C.2d 153 (1989). We subsequently amended our regulations to reflect the status quo for publishing electronic and printed tariffs, and we terminated the proceeding. *Electronic Filing of Tariffs 49 CFR Parts 1312 and 1314*, Ex Parte No. 444 (ICC served Mar. 10, 1995).

[2] While the Act removes the requirement that a tariff be filed or maintained, rail carriers must establish and maintain rates and service terms for transportation that are provided under common carriage. Moreover, under 49 U.S.C. 11101(b), rail carriers must disclose those rates to any person upon request. For agricultural products, the rail carrier shall also "publish, make available, and retain for public inspection its common carrier rates, schedules of rates, and other service terms. * * *" 49 U.S.C. 11101(d). The Board will separately issue new regulations implementing these requirements. Under 49 U.S.C. 11101(e), a rail carrier is required to provide transportation and service according to the rates and service terms it has published or otherwise made available.

[3] Parties may inform the Board whether other regulations are affected by the elimination of § 10761 and § 10762.

Act and will not have an adverse effect on the interests of any person, this action will be deemed to be effective as of January 1, 1996.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1314

Railroads, Tariffs.

Decided: February 15, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is amended by removing part 1314.

[FR Doc. 96–4514 Filed 2–27–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 960220037–6037–01; I.D. 112895B]

RIN 0648–XX45

Taking and Importing of Marine Mammals; Consolidation of Regulations; Removal of Expired General Permit Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues this technical amendment to remove outdated regulations governing the issuance of general permits. This technical amendment is intended to provide uniform, updated, and streamlined regulations. This action is consistent with the President's Regulatory Reform Initiative.

EFFECTIVE DATE: This rule is effective February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Wanda L. Cain, Fishery Biologist; telephone: 301–713–2055, or fax: 301–713–0376.

SUPPLEMENTARY INFORMATION: On August 30, 1995 (60 FR 45086), NMFS published a final rule implementing the new management regime for the taking of marine mammals incidental to commercial fishing operations established by section 118 of the Marine Mammal Protection Act (MMPA). The provisions of 50 CFR part 229, rather than 50 CFR § 216.24, govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States, other than vessels used in the eastern tropical Pacific Ocean yellowfin tuna purse seine fishery. Because the only general permit for U.S. vessels operating in the yellowfin tuna purse seine fishery in the eastern tropical Pacific Ocean is that issued to the American Tunaboat Association (ATA), NMFS is removing other general permit requirements from 50 CFR § 216.24. In addition, a correction is made to the Harmonized Tariff Schedule Item Numbers found at § 216.24(e)(2)(i)(A). A definition for the Regional Director, Southwest Region, NMFS, is added to § 216.3. In the reporting requirements for ATA certificate holders, NMFS is removing the obsolete requirement that masters of certificated vessels allow observers to make coded radio reports to NMFS. Finally, minor editorial corrections are made.

Classification

This final rule is exempt from review under E.O. 12866. Because this rule only makes technical amendments, the Assistant Administrator for Fisheries, NOAA, under section 553(b)(B) and (d) of the Administrative Procedure Act, for good cause finds that it is unnecessary to provide prior notice and opportunity for public comment on this rule or to delay for 30 days its effective date. Because this rule is being issued without prior notice and opportunity for public comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, and none has been prepared.

This action is categorically excluded from the requirement to prepare an environmental assessment by section 6.02b.3(b)(ii)(aa) of NOAA Administrative Order 216–6 as revised.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: February 21, 1996.

Gary C. Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

§ 216.3 [Amended]

2. In § 216.3, a definition for "Regional Director" is added in alphabetical order to read as follows:

* * * * *

Regional Director means the Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802, or his/her designee.

* * * * *

3. In § 216.24, paragraphs (b), (d)(l), (d)(2)(i)(A)(*1*) through (d)(2)(i)(A)(*2*), (d)(2)(iii)(B), and (e)(7) are removed and reserved, and paragraphs (c), (d)(2)(ii)(C), (d)(2)(iii)(A), the second sentence of paragraph (d)(2)(v)(B), (e)(2)(i)(A), and (e)(5)(v)(B) are revised to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(c) *Certificates of inclusion*—(1) *Vessel certificates of inclusion.* The owner or managing owner of a vessel that participates in commercial fishing operations under the ATA permit must hold a valid vessel certificate of inclusion. Such certificates are not transferable and must be renewed annually. If a vessel certificate holder surrenders his/her certificate to the Regional Director, the certificate shall not be returned nor shall a new certificate be issued before the end of the calendar year. This provision does not apply when a change of vessel ownership occurs.

(2) *Operator's certificate of inclusion.* The person in charge of and actually controlling fishing operations (hereinafter referred to as the operator) on a vessel engaged in commercial fishing operations under the ATA permit, must hold a valid operator's certificate of inclusion. Such certificates are not transferable, and must be renewed annually. In order to receive a certification of inclusion, the operator must have satisfactorily completed all required training.

(3) A vessel certificate issued pursuant to paragraph (c)(1) of this

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section must be on board the vessel while it is engaged in fishing operations and the operator's certificate issued pursuant to paragraph (c)(2) of this section must be in the possession of the operator to whom it was issued. Certificates must be shown upon request to an enforcement agent or other National Marine Fisheries Service (NMFS) designated agent. Vessels and operators at sea on a fishing trip on the expiration date of their certificate of inclusion, to whom or to which a certificate of inclusion for the next year has been issued, may take marine mammals under the terms of the new certificate. A vessel owner or operator is obligated to obtain or place the new certificate on board, as appropriate, when the vessel next returns to port.

(4) *Applications.* Owners or managing owners of purse seine vessels should make application for vessel certificates of inclusion to the Regional Director. Applications for vessel certificates of inclusion must contain:

(i) The name of the vessel that is to appear on the certificate(s) of inclusion;

(ii) The category of the general permit under which the applicant wishes to be included;

(iii) The species of fish sought and general area of operations;

(iv) The identity of state and local commercial fishing licenses, if applicable, under which vessel operations are conducted, and dates of expiration;

(v) The name of the operator and date of training, if applicable; and

(vi) The name and signature of the applicant, whether owner or managing owner, address, and if applicable, the organization acting on behalf of the vessel.

(5) *Fees.* (i) Applications for certificates of inclusion under paragraph (c)(1) of this section must include a fee of $200.00 for each vessel named in the application, unless the applicant's income is below Federal poverty guidelines and the applicant shows in the application that his/her income is below such guidelines, in which case a fee of $20.00 must be included.

(ii) The Assistant Administrator may change the amount of the fee required at any time a different fee is determined to be reasonable, and notification of such change shall be published in the **Federal Register**.

(6) The Regional Director shall determine the adequacy and completeness of applications, and upon said determination that such applications are adequate and complete, shall approve such applications and issue the certificate(s).

(7) Failure to comply with provisions of the ATA permit, certificates of inclusion, or these regulations may lead to suspension, revocation, modification, or denial of a certificate of inclusion. It may also subject the certificate holder, vessel, vessel owner, operator, or master to the penalties provided under the MMPA. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(8) By using an operator or vessel certificate of inclusion under the ATA permit, the certificate holder authorizes the release to NMFS of all data collected by observers aboard purse seine vessels during fishing trips under the Inter-American Tropical Tuna Commission observer program or any other international observer program in which the United States may participate. The certificate holder must furnish the international observer program all release forms required to provide the observer data to NMFS. Data obtained under such releases will be used for the same purposes as data collected directly by observers placed by the NMFS and will be subject to the same standards of confidentiality.

(d) * * *

(2) * * *

(ii) * * *

(C) The vessel certificate holder shall notify the Regional Director of any change of vessel operator within at least 48 hours prior to departing on the next scheduled trip.

(iii) * * *

(A) The vessel certificate holder of each certificated vessel, who has been notified via certified letter from NMFS that his/her vessel is required to carry an observer, shall notify the Regional Director at least 5 days in advance of the vessel's departure on a fishing voyage to allow for observer placement. After a fishing voyage is initiated, the vessel is obligated to carry an observer until the vessel returns to port and one of the following conditions is met:

* * * * *

(v) * * *

(B)* * * The vessel certificate holder shall notify the Regional Director of any net modification at least 5 days prior to departure of the vessel in order to determine whether a reinspection or trial set is required.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(A) Tuna, frozen whole or in the round:

0303.42.00.20.0 Tuna, yellowfin, whole frozen.

0303.42.00.40.6 Tuna, yellowfin, eviscerated head-on, frozen.

0303.42.00.60.1 Tuna, yellowfin, eviscerated head-off, frozen.

0303.49.00.40.9 Tuna, non-specific, frozen.

* * * * *

(5) * * *

(v) * * *

(B) The nation's regulatory program is comparable to the regulatory program of the United States as described in paragraphs (a), (c), (d)(2), and (f) of this section and the nation has incorporated into its regulatory program such additional prohibitions as the United States may apply to its own vessels within 180 days after the prohibition applies to U.S. vessels;

* * * * *

[FR Doc. 96–4434 Filed 2–27–96; 8:45 am]
BILLING CODE 3510–22–F–M

Proposed Rules

Federal Register
Vol. 61, No. 40
Wednesday, February 28, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

RIN 3150–AF44

Reporting Requirements for Unauthorized Use of Licensed Radioactive Material: Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On January 31, 1996, (61 FR 3334), the NRC published for public comment a proposed rule to add a new requirement for licensees to notify the NRC Operations Center within 24 hours of discovering an intentional or allegedly intentional diversion of licensed radioactive material from its intended or authorized use. The proposed rule would also require licensees to notify the NRC when they are unable, within 48 hours of discovery of the event, to rule out that the use was intentional. The proposed rule would require reporting of events that cause, or have the potential to cause, an exposure of individuals whether or not the exposure exceeds the regulatory limits. The comment period for the proposed rule was to have expired on March 1, 1996. The American College of Nuclear Physicians/Society of Nuclear Medicine (ACNP/SNM) has requested a 60-day extension of the comment period. In addition, a second comment letter from an individual was received requesting that the NRC extend the comment period. The second letter pointed out the one-week after publication time lag involved with obtaining the **Federal Register** and the additional time lag involved with mailing a comment letter to the NRC. In view of the importance of the proposed rule and the desire to provide an adequate opportunity for public comment while developing a final rule as soon as practicable, the NRC has decided to extend the comment period for an additional 30 days. The comment period now ends on March 31, 1996.

DATES: The comment period has been extended and now expires March 31, 1996. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send written comments or suggestions to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Service Branch. Copies of comments received may be examined on the NRC Rulemaking Bulletin Board at FedWorld and the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary L. Thomas, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone (301) 415–6230, e-mail MLT1@NRC.GOV.

Dated at Rockville, Maryland, this 21st day of February 1996.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 96–4485 Filed 2–27–96; 8:45 am]
BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–94–220–IF]

RIN 1904–AA61; RIN 1904–AA70

Energy Conservation Standards Program for Consumer Products: Test Procedures for Fluorescent and Incandescent Lamps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice reopening comment period.

SUMMARY: On September 28, 1994, the Department of Energy (Department or DOE) published an interim final rule and a proposed rule regarding energy conservation test procedures for fluorescent and incandescent lamps. Based on the public responses, the Department is considering certain revisions of the interim final rule and proposed rule and seeks public comment on options it is considering. The options involve the following topics: determining the wattage of a fluorescent lamp for purposes deciding whether the energy conservation standards and test procedures apply to it; the confidence limit, "derating factor" and statistical test used in the test procedure sampling plan; definition of colored lamps; determining the rated voltage or rated voltage range of an incandescent lamp for purposes of deciding whether the energy conservation standards and test procedures apply to it; defining rated voltage for testing incandescent lamps; and defining the bulb shapes for elliptical reflector (ER) and bulged reflector (BR) incandescent lamps.

DATES: Written comments in response to this notice must be received by the Department by April 15, 1996. The Department requests 10 copies of the written comments and, if possible, a computer disk. (The Department uses WordPerfect.)

There will be a public meeting to gather input on these issues in Washington, D.C., on March 5, 1996. The meeting will begin at 9:30 a.m. and will be held at the U.S. Department of Energy, Forrestal Building, Room 2E–069, 1000 Independence Avenue, S.W., Washington, D.C.

ADDRESSES: Written comments are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Ms. Sandy Beall, "Energy Conservation Standards Program for Fluorescent and Incandescent Lamps, Docket No. EE–RM–94–220–IF," EE–431, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121. Telephone: (202) 586–7574; Telefax: (202) 586–4617.

Copies of the transcript of the July 19, 1995 lamp workshop and of the public comments on the interim final rule may be read at the Department of Energy Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–6020, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:
Terrence L. Logee, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585–0121, (202) 586–1689
Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585–0103, (202) 586–2928

SUPPLEMENTARY INFORMATION:

1. Authority

Part B of Title III of the Energy Policy and Conservation Act, Pub. L. 94–163, as amended (EPCA) or the Act, created the Energy Conservation Program for Consumer Products other than Automobiles (Program). The products currently subject to this Program include certain fluorescent and incandescent lamps and medium based compact fluorescent lamps. EPCA sets minimum energy conservation standards for general service fluorescent and incandescent reflector lamps and requires the Department to develop test procedures.

2. Background

On September 28, 1994, the Department published an interim final rule establishing test procedures for general service fluorescent and incandescent lamps and for medium based compact fluorescent lamps, 59 FR 49468, and a Notice of Proposed Rule for definitions of rough and vibration service incandescent reflector lamps and colored fluorescent and incandescent lamps, 59 FR 49478. In addition DOE held a hearing on the proposed rule on November 15, 1994 and a workshop on these issues on July 19, 1995. The Department received many comments on the interim final rule and on the proposed rule including comments from manufacturers, a national trade association, a professional society, a utility, and a Federal agency. The comments included requests that the Department: (1) modify its test procedure sampling plan to change the confidence limit, "derating factor," and statistical test used to determine compliance of certain lamps with the energy conservation standards; (2) permit testing and compliance for incandescent lamps at a lamp's design voltage, and expand the voltage range from the statutory requirement of 115 through 130 volts to 100 through 150 volts; (3) define the exemption for the bulged reflector (BR) and elliptical reflector (ER) incandescent reflector lamp by reference to the American National Standards Institute (ANSI) C79.1–1994; (4) determine that a new product coming on the market, a fluorescent lamp rated at 25 watts, which is below the 28 watt threshold for coverage under EPCA, is actually a 40 watt fluorescent that is covered by the statutory standards and test procedures; and (5) revise its proposed definition of colored fluorescent and incandescent lamps.

In response to the foregoing suggestions, the Department is considering various options to alter the Interim Final and Proposed Rules. Because the issues raised by these options were not expressly considered in either the preamble to the Interim Final or Proposed Rules, the Department is now seeking comment from interested parties on these options. In particular, the Department seeks any new factual information and data that will assist it in addressing these issues.

3. Discussion

a. *Revision of the Sampling Plan.* DOE's Energy Conservation Program for Consumer Products has been developed and refined since its inception in 1978. Compliance with energy efficiency standards has been assured in part by having each manufacturer certify that its covered products comply with the applicable energy efficiency standard. The certification must be based on tests of the product in accordance with test procedures prescribed by DOE.

In promulgating test procedures applicable to certification, one of the major goals has been to provide a statistically valid approach so that there is a high probability that products which have been tested and certified as being in compliance with the applicable efficiency standards actually comply with those standards. Each DOE test procedure incorporates a sampling plan, and that sampling plan is designed to give reasonable assurance that the true mean performance of the product being manufactured and sold meets or exceeds the DOE energy efficiency standard.

DOE recognizes that units of a product may vary in energy efficiency for a number of valid reasons, including differences in component parts, production and testing. The risk to the public of purchasing a non-complying product, the risk to manufacturers of selling such a product, and the burdens of performing representative testing, are reduced through the application of a statistically meaningful sampling plan and basing the certification decision on the mean energy performance of the sample units.

There are several critical elements of a sampling plan. One is the selection of units for testing. Units must be representative of the product, and be selected randomly from a batch. Sample size is also a critical element of a sampling plan. The results yielded by energy efficiency testing of a product, consisting of tests conducted on a sample of units, will be increasingly more reliable as the size of the test sample increases. This, however, increases the testing burden on the manufacturers. Also, as the variability in performance increases among individual tested units of a product, the reliability of the test results decreases. As a result, DOE's test procedures require sampling plans based on a confidence limit approach. This approach is designed to minimize the manufacturers' testing burden while ensuring accurate determination of compliance within a specified level of confidence.

The interim final rule prescribing test procedures for lamps requires a minimum sample size of 20 units for each model, which must be randomly selected during seven out of 12 months of production. The rule further provides in essence that the lamp efficacy for a given model of lamp shall be the average efficacy for the tested lamps of that model, and "shall be no greater than the lower of (i) the mean of the sample or (ii) the lower 99 percent confidence limit of the true mean divided by 0.99." DOE views the latter calculation as being a one-sided confidence interval using the t-statistic, with the 0.99 divisor constituting a "derating" factor. The confidence limit would be calculated using generally accepted methods found in statistics textbooks, based on the sample mean and sample standard deviation.

DOE included the derating factor to take into account variability in the efficiency of products due to many factors, including manufacturing variability, variations in the material (e.g., phosphors), and testing errors, including reference lamp calibration errors. Furthermore, this format (confidence limit divided by a derating factor) is similar to the format required for other appliance products for which DOE has authority to require testing.

The National Electrical Manufacturers Association (NEMA) has proposed loosening the confidence interval to 95 percent, and changing the derating factor to 0.97, which increases its derating effect. It justifies this proposal on the basis of typical production variations and measurement uncertainties, including calibration issues. NEMA submitted estimates of the magnitude of these variations and their effect on compliance determinations. They estimated an uncertainty of 2 percent due to the reference lamps used in the measurement process, with additional variability among different laboratories.

NEMA has also proposed substituting the z-statistic procedure for the t-statistic procedure. The z-statistic procedure is similar to the t-statistic procedure, except that, for each model of a product, it uses the standard deviation, σ, that applies to the entire population of manufactured units for that model. That standard deviation is assumed to be known from previous measurements. The t-statistic procedure, by contrast, uses the standard deviation, s, of the sample units tested. The z-test also replaces the factor t with another factor z, both of which are found in standard tables.

The effect of going to a 95 percent confidence limit will be to make it slightly easier to demonstrate compliance, while also slightly increasing the chance that a noncompliant product will be judged to be in compliance. In other words, when testing demonstrates compliance at the 95 percent confidence level, there would be a one in twenty chance that a non-tested unit of the product may not meet the standards instead of a one in one hundred chance under the procedure promulgated by the interim final rule.

The effect of using the z procedure instead of the t procedure will be to produce lower confidence limit values which are more favorable to the manufacturers, because the value of the z factor from the tables is less than the value of the t factor, unless the number of sample units, n, is very large. However, the z procedure is more representative than the t procedure because the standard deviation in the z method is determined from a larger population than the standard deviation in the t method. Use of the z procedure requires an accurate measurement of the population standard deviation for each model. Accurate measurement would appear to require, for example, prior tests of a large number of units of that model selected at random, conduct of the prior testing in accredited laboratories, and prior testing conducted under conditions and using test procedures that are comparable to current conditions and procedures.

The Department is considering the option of permitting a manufacturer to use the "z" statistic as an alternative to the "t" statistic, for tests of any product for which the following criteria are met: (1) the standard deviation used in the test procedure was derived from a minimum sample of 60 or more randomly selected lamps of the same basic model; (2) the statistical data was measured by accredited laboratories; (3) the prior testing was conducted under conditions and using test procedures comparable to current conditions and procedures. When these criteria are not met, a manufacturer would be required to use the "t-statistic." The Department specifically seeks input on whether lamp manufacturers can derive standard deviations for their products from historic test experience. The Department is seeking comment on this approach or other possible uses of the "z" statistic. The Department is also considering, and seeks comments on, modification of the derating factor and confidence interval, as suggested by NEMA.

b. *Definition of Rated Voltage, Determination of Test Voltage and Determination of Voltage Range.* When the Department considered test procedures for incandescent lamps in the interim final rule, it noted that neither the definition of incandescent lamp in Section 321(30)(C) of the Act, 42 U.S.C. 6291(30)(C), nor Illumination Engineering Society LM–20, "Approved Method for Photometric Testing of Reflector-Type Lamps" defined the test voltage. Therefore, in the interim final rule, the Department requires testing of all incandescent lamps at 120 volts to be consistent with the statutory requirements for labeling. 10 CFR Part 430, Subpart B, Appendix R, Section 4.2.1.

In its comments, NEMA requested that the Department allow testing of incandescent lamps at their design voltage. Otherwise, NEMA claimed that certain 125 and 130 volt lamps would be banned from the market by failing to meet the standards if tested at 120 volts. The industry and NEMA also claim that 125 and 130 volt lamps serve two market niches: regions in the country where power line voltage is greater than the nominal 120 volts and applications requiring long life lamps. Manufacturers claim that they would be forced to sell lamps with decidedly shorter lives than the 125 and 130 volt lamps currently in the marketplace if DOE requires compliance with the standards at 120 volts.

In response to queries by NIST, Philips proposed that the Department consider requiring testing of incandescent lamps at the rated voltage marked on the lamp. Furthermore, when a lamp is marked with a voltage range, Philips proposed that the rated voltage should be taken as the mean of the voltage range. This wording is based on text taken from the International Electrochemical Commission Standard 432–1.

The Department believes that requiring compliance for incandescent lamps at 120 volts will reduce lamp life for some consumers and may also remove most 125 and 130 volt lamps from the marketplace. However, none of the manufacturers define what is meant by design voltage. Therefore, since the statute uses rated voltage, the Department is considering adopting the definition of rated voltage from the Institute of Electrical and Electronics Engineers Standard Dictionary of Terms which defines rated voltage as "the voltage to which operating and performance characteristics are referred." Furthermore, the Department is considering a requirement to test incandescent lamps at the rated voltage, as marked on the lamp, or at the mean of rated voltage range, as marked on the lamp. This approach would provide for testing incandescent lamps at a known reference voltage for certification to the energy efficiency standards while agreeing with the Federal Trade Commission (FTC) requirements for labeling. The Department is also considering the option of requiring that lamps not marked with a voltage will be tested at 120 volts.

With respect to the issue of "rated voltage range" the definition of "incandescent reflector lamp" in the Act, refers to a "rated voltage or rated voltage range at least partially within 115 to 130 volts." Section 321(30)(C)(ii), 42 U.S.C. 6291(30)(C)(ii). NEMA recommended expansion of the voltage range in the statute to 100 to 150 volts, asserting that the statutory limit could unintentionally allow evasion of the standards requirements for certain products. Under the language in the statute, for example, a product could be rated at 131 volts, thereby removing it from the standard. Yet this product would perform acceptably in a 130 volt environment and could be sold for such applications.

The interim final rule incorporates the statutory definition of incandescent lamp including the voltage range. The Department will continue to use this definition. The Department notes that only one manufacturer currently markets lamps with design voltages greater than 130 volts. However, in response to queries by NIST, several manufacturers agreed that the nominal tolerance for incandescent lamp voltage is ±10 percent. The Department believes that the statutory range of 115 to 130 volts may also be subject to this tolerance. Therefore, the Department is considering the option of treating lamps with voltages greater than 103.5 volts

and less than 143.0 volts as being "at least partially within a rated voltage range of 115 to 130 volts," and subject to the energy efficiency standards.

The Department is seeking comments on the acceptability and workability of these options for rated voltage, test voltage and rated voltage range. Alternative proposals are welcome but the Department requests that these proposals be supported by references to existing or draft industry standards or that the proposals be supported by data.

c. *ER and BR Reflector Lamp Definitions.* The Act contains exemptions for several types of incandescent reflector lamps including those for ER (elliptical reflector) and BR (bulged reflector) bulb shapes. Section 321(30)(C)(ii), 42 U.S.C. 6291(30)(C)(ii). However, these lamps are not defined in the statute or the interim final rule and DOE is concerned that the exemption may be abused without a clear definition of what constitutes an ER or BR bulb.

One commenter provided copies of ANSI Standard C79.1–1994 which contain descriptions of the ER and BR bulb shapes. Another commented that if the ANSI definition was different than what some manufacturers have been using, there would be tooling costs to conform the lamp envelope to the new shape definition and DOE should provide time for manufacturers to implement the new ANSI requirements. In its comments to the workshop, NEMA claimed that there was a consensus to define ER and BR lamps by reference to ANSI Standard C79.1–1994.

An Osram-Sylvania Inc. (OSI) comment claims that: (1) the BR lamp is not marketed for recessed applications; (2) BR lamps are more efficient than rough/vibration service R lamps; (3) the BR lamp is less costly for the residential market than the halogen PAR lamp; (4) OSI has introduced a 65 watt BR lamp which meets the efficiency standards; and (5) the ANSI C79.1–1994 bulb shape standard is a result of the mandatory ANSI 5-year revision cycle and it is fundamental to all lamp/fixture interchangeability. The Department notes, however, that the previous ANSI revision to the bulb shape standard was published in 1984.

During the workshop, the American Council for an Energy Efficient Economy (ACEEE) commented that this exemption was placed in the statute to protect one small manufacturer and that the drafters of the Energy Policy Act of 1992 (EPACT) believed that these products were not sold in large quantities and were expected to disappear from the market. Furthermore, ACEEE comments suggested that the exemption was meant to apply to lamps that are rated with lower wattage than their reflector (R) or parabolic aluminized reflector (PAR) counterparts. In its written comments, ACEEE requested that DOE define ER and BR lamps in a way that would limit exemptions for these lamps as originally intended in EPACT.

The Department believes the definitions of ER and BR bulb shapes in ANSI Standard C79.1–1994 (Figure 1 on page 7) are new definitions of the ER and BR bulb shapes because earlier versions of ANSI Standard C79.1 did not include definitions for either ER or BR bulb shapes in their current form. ANSI C79.1–1984 discusses the bulged (B) and elliptical (E) shape designations as basic bulb shapes of general service incandescent lamps. The "RE" elliptical reflector shape in the 1994 ANSI C79.1 standard could be described as cutting off the top half of the basic "E" bulb shape in the 1984 document since the elliptical portion of the "E" bulb forms that part of the "RE" bulb below the major axis or lens of the reflector bulb. However, the bulged reflector bulb would represent a greatly diminished "B" shaped bulb with a reflector bulb connected to the top of this small "B" shaped bulb. For these reasons, the Department believes the 1994 ANSI document represents a major modification of elliptical and bulged bulbs from the 1984 document.

ER and BR reflector bulb shapes typically have a long neck, a characteristic which is not addressed in ANSI C79.1. This is presumably to extend the lens closer to the end of recessed ceiling fixtures in the ER bulb. Therefore, the Department believes the ANSI C79.1–1994 definitions of the ER and BR bulb shapes are subject to interpretation, and questions whether these definitions agree with the commonly understood bulb shapes being manufactured and which were contemplated by exclusion of ER and BR bulbs from EPCA coverage.

Although the Department believes the ANSI Standard C79.1–1994 does not fully prescribe the ER and BR bulb shapes, the Department is considering adopting ANSI Standard C79.1–1994 as part of the definition of an ER or BR bulb shape, subject to additional criteria, to capture the characteristics of ER and BR bulbs in the marketplace at the time the exemptions were established. One criterion being considered is a longer neck than an R or PAR lamp with either a specified dimension or a dimension stated as a comparison, such as 25 percent longer than similar wattage R or PAR lamps. An additional criterion under consideration for the BR lamp is to require that the bulged shape must be reflectively coated and large enough to redirect light emitted by the filament to the side and rear of the lamp toward the lens. The Department is also considering a requirement for a reduced wattage filament for both ER and BR lamps. The Department is seeking comment on whether to specify a certain wattage reduction or to state this reduction as a percentage comparison to standard R or PAR lamps.

The Department invites comments on the definitions for ER and BR lamps it is considering. The Department also requests copies of catalog listings and other data to help it determine the extent of reduced wattage ER and BR lamps offered in the market.

d. *Determination of Rated Wattage for a Fluorescent Lamp.* EPCA sets standards for fluorescent lamps 48 inches long with rated wattages of 28 watts or more, 96 inches long with rated wattages of 52 watts or more, and 2 foot U-tube lamps with rated wattages of 28 watts or more. Sections 321(30)(A) and 325(i)(1), 42 U.S.C. 6291(30)(A) and 6295(i)(1). The standard levels have the effect of prohibiting the sale, after October 31, 1995, of certain lamps previously on the market, including 4-foot, 40 watt cool white fluorescent lamps.

The 4-foot, 40 watt cool white fluorescent lamp consumes 40 watts of power when used with a conventional high power factor ballast. High power factor ballasts are used in over 85 percent of the fluorescent fixtures using four foot lamps. Such high power factor ballasts are typically used in commercial applications. If a 40-watt cool white lamp is used with the type of low power factor ballast generally used in residential applications, the lamp will consume about 25 watts, which is below the 28 watt threshold that defines the lower limit of coverage in the standards.

Neither the statute nor DOE's existing regulations specify the type of ballast to be used in determining the rated wattage of lamps. In the absence of a specification, some have argued that 4-foot lamps could have their rated wattage determined using a low power factor ballast and if, using this testing method, the rated wattage was less than 28 watts, the lamp would be exempt from the standard.

DOE believes that it is unreasonable to apply this statute so as to permit the continued manufacture and sale of lamps that when used with the most common types of ballasts (i.e., high power factor) would consume 28 or more watts, but fail to meet the

standards prescribed by the statute. In an attempt to address this concern, DOE sent a letter on August 30, 1995, to lamp manufacturers indicating that it would consider any lamp that was electrically the same as the 40-watt cool white lamp to be subject to the same statutory standards. However, manufacturers have since begun to introduce, or indicated that they plan to introduce, slight variations on the 40-watt cool white lamp that would be rated at 25 watts based on use of low power factor ballasts. Despite these modifications, the lamps being marketed or developed would still perform like 40-watt cool white lamps when used in high power factor ballasts.

The Department believes that Congress intended the rated wattage of fluorescent lamps, for purposes of defining the universe of lamps covered by the standards, to be determined by using a high power factor ballast. The wattages included in the table that now appears in section 325(i) of the Energy Policy and Conservation Act appear to assume the use of high power factor ballasts. 42 U.S.C. 6295(i). In addition, when Congress had previously set efficiency standards for ballasts, those standards were only applied to high power factor ballasts.

The Department is now considering a requirement that the rated wattage of a fluorescent lamp, for purposes of determining coverage by the standards, is the measured wattage when the lamp is used with a high power factor ballast. The Department is soliciting public comment on the possibility of requiring the use of high power factor ballasts in determining the rated wattage of fluorescent lamps. Before making a final determination on this matter, the Department also intends to consider other possible means to achieve comparable objectives.

For example, the Department is considering the approach used in the Canadian lamp regulations issued in the November 29, 1995 Canada Gazette, Part II, Volume 129, No. 24, pg 3073. Under this possible approach, the Department would add an additional phrase to the definition for general service fluorescent lamp specifying that, "General service fluorescent lamp means any fluorescent lamp that is a physical and electrical equivalent of a lamp described in paragraph (a), (b), (c), or (d)." However, the Department believes that this approach may suffer the same weakness as DOE's attempt to elaborate on the definition of basic model discussed in the DOE letter of August 30, 1995.

The Department also will consider determining whether a particular lamp is covered by the standards by requiring that its measured wattage be compared to the measured wattage of a similar covered lamp using the same ballast. The wattage of the covered lamp divided by the wattage of the lamp in question would be multiplied by the wattage marked on the covered lamp to determine the rated wattage of the lamp in question. However, this approach may not work for new products.

The Department is concerned, however, that if it requires rated wattage to be determined using a high power factor ballast, manufacturers might be inhibited from producing certain products designed and marketed for use exclusively with low power factor ballasts. Even though there are now available a number of lamps that can be safely used in low power factor ballasts, and which would be unaffected by this proposal, the Department does not want to restrict unnecessarily the choices that might be available to users of low power factor ballasts in the future. For this reason, the Department is soliciting public comment and proposals on how it might use its discretionary regulatory authority or its authority to grant certain waivers or exemptions to address this possible problem. Specifically, DOE is interested in identifying specific technical features or performance or other characteristics of lamps that would provide reasonable assurance that such lamps would be used exclusively in low power factor ballasts.

At least one manufacturer has indicated that it believes that a substantially reduced lamp life (e.g., 6,000 hours compared to the industry norm of 20,000 hours) should restrict the usage of such lamps to low power factor ballasts in the residential sector. But DOE is concerned that lamps with useful lives of 6,000 hours may still be widely used with high power factor ballasts. DOE is also concerned that accurately determining average lamp life can be difficult and time consuming and questions the utility to consumers of a requirement that may discourage manufacturers from increasing product life.

The Department recognizes that one of the motivations for introducing modified 40 watt lamps is industry concern that residential and other users of low power factor ballasts might use 34 watt lamps in their fixtures, which would increase the risk of overheating and fires. While consumers have a range of safe alternatives to the 34 watt lamp, and 34 watt lamps are being labeled to warn consumers against their use with low power factor ballasts, DOE believes that these industry concerns may be valid. DOE solicits public comment on these concerns and how DOE might best use its regulatory authorities to ensure consumers are adequately protected.

Finally, in order to better assess these issues, the Department is seeking more information on the size and characteristics of the market for lamps used in low power factor ballasts.

e. *Definition of Colored Fluorescent and Incandescent Lamp.* In the Notice of Proposed Rulemaking, the Department defined colored fluorescent and colored incandescent lamps because Sections 321(30)(B)(iii), 321(30)(C)(ii), 42 U.S.C. 6291(30)(B)(iii) and 42 U.S.C. 6291(30)(C)(ii) of the Act contain exemptions for these lamps without defining them. The Department is seeking definitions of colored lamps which can be determined by measurement of certain characteristics. Therefore, the Department proposed to define colored incandescent and fluorescent lamps by using suitable minimum values of the Color Rendering Index (CRI) or correlated color temperatures (CCT). (59 FR 49478).

Several manufacturers suggested that the upper limit for CRI for colored fluorescent lamps be increased to 40. Phillips Lighting states that a CRI of 40 will prevent the exclusion of gold fluorescent lamps which are used in printing applications. OSI also recommends that the acceptable CRI for amber and red incandescent lamps be raised but DOE believes that this is not necessary with the proposed revisions to the colored incandescent lamp definition because these lamps have a low CCT.

In its comments to the July 19, 1995 lamp workshop, Durotest suggests that CCT limits for colored fluorescent lamps be less than 2,500° K or greater than 6,600° K or with a CRI less than 40. For incandescent lamps, Durotest suggests that the CCT parameters should be less than 2,500° K or greater than 4,600° K or CRI less than 50. NEMA also suggests using the same CCT and CRI parameters as Durotest. It asks DOE to clarify in the preamble that a lamp is considered colored if its CCT falls outside the range above or if its CRI falls below the values above.

The Department appreciates the industry suggestions for revised limits on CCT and CRI. DOE's original proposal would have defined certain green lamps as white lamps based on their CRI. This problem is caused by the difficulty of choosing a reference lamp of equal CCT to the lamp in question and because CRI was originally intended to characterize non-colored lamps.

As a result of industry suggestions and comments, one option the Department is considering is to revise

its proposed definition of a colored lamp by using a maximum value of CRI or a suitable band of CCT. Therefore, the Department is considering a definition of colored fluorescent lamp as a lamp with a CRI value less than 40 or a color correlated temperature not above 2,500° K for red and yellow colors or not below 6,600° K for blue and green colors. The Department is also considering a definition of colored incandescent lamp as a lamp with CRI values below 50 or a lamp color correlated temperature either not above 2,500° K for red and yellow colors or not below 4,600° K for blue and green colors. The Department believes that the measurements required to determine if a lamp is colored by the above definitions are minimal. The CRI is a required measurement for fluorescent lamps and manufacturers would only have to make a CRI measurement for lightly tinted incandescent lamps. The color temperature is derived from spectroradiometric measurements and this data already exists for most lamps.

However, at the July 19, 1995 lamp workshop, NEMA proposed an alternative definition of colored lamps which depends on the excitation purity of a colored source. Excitation purity is defined as the ratio of two collinear distances (NC/ND) on the Commission Internationale de L'eclairage (CIE) chromaticity diagram. NC is the distance between the point representing the sample lamp and a specified reference point. ND is the distance between the point locating the dominant wavelength of the sample lamp and the specified reference point. NEMA suggests that a value of excitation purity greater than 50 percent would be a reasonable lower limiting value defining a colored lamp. NEMA claims that a single definition will suffice for all colors. Plotting one number on the x,y chromaticity diagram which shows the 50 percent excitation purity area marked on it will quickly determine whether a lamp is colored. Furthermore, NEMA requested that the Department not finalize the colored lamp definition until they complete their specification of chromaticity coordinate boundaries.

NEMA notes that the excitation purity method proposed will not discriminate between clear and colored lamps with CCT's from slightly above 2,856°K and lower. This is an inherent drawback of the chromaticity diagram and redefining the excitation purity limit will not correct it. NEMA suggests that the Department define a colored region around the black body locus on the chromaticity diagram as white. The area within the 50 percent excitation purity area is called pastel and lamps in this area must be marked for a specific application to be called colored. Although the excitation purity method fits DOE's criteria for a measurable colored lamp definition, the Department is not inclined to adopt this method because it is complicated to describe due to the use of three zones on the chromaticity diagram.

As a second option, the Department is considering a colored lamp definition using x, y chromaticity coordinates which lie outside of the area bounded by the following points: (0.285,0.332); (0.453,0.440); (0.500,0.440); (0.500,0.382); (0.440,0.382); (0.285,0.264). These boundaries are taken from CIE Publication No. 2.2, Colors of Light Signals.

The Department believes that defining a colored lamp by using the chromaticity coordinates above will satisfy manufacturers' concerns that lamps of low color temperature but near the black body locus should be considered white. Likewise, this method satisfies a DOE concern that valid orange and red colored lamps on or near the black body locus would not be considered colored.

Since an incandescent lamp creates light by heating a filament "white hot," some lightly tinted incandescent lamps lie very near the black body curve on the x-y chromaticity diagram. The Department believes that the x-y chromaticity definition of colored lamps will apply to nearly all colored lamps with a few significant exceptions. Very lightly tinted incandescent lamps, such as jeweler's blue and plant grow lamps, may not meet the colored lamp definitions as they are currently proposed. NEMA recommends an exemption for colored incandescent plant lamps because there is a filter in these lamps which affects the yellow and green parts of the spectrum. NEMA also suggests that DOE require manufacturers provide a generic description of a plant lamp's features and require that these lamps be marketed and designated for plant lighting applications. In addition to the above, GE Lighting proposes to add that colored lamps are not suitable for general lighting applications. Therefore, the Department is considering an additional criteria in the definition of colored incandescent lamps that would require application specific incandescent colored lamps to be designated as such on the lamp and in marketing materials.

Additionally, Durotest has urged the Department to provide an explicit exemption for neodymium lamps because they claim that the color is doped directly into the glass bulb. Therefore, the Department is considering specifying that incandescent lamps with lens filters containing 5 percent or more neodymium are colored lamps. The neodymium filter adjusts the light spectrum for reptile lighting applications.

4. Public Meeting Procedure

At the public meeting, DOE will seek discussion of the points discussed in this notice. Should any party wish to raise any other matter addressed in the Interim Final or Proposed Rules, they should so notify DOE by February 29, 1996.

The meeting will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by antitrust law. After the meeting and period for written statements, the Department will consider the views presented in formulating a Final Rule regarding fluorescent and incandescent lamp test procedures.

Issued in Washington, DC, February 22, 1996.

Brian T. Castelli,

Chief of Staff, Energy Efficiency and Renewable Energy.

[FR Doc. 96–4512 Filed 2–27–96; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 261

[Docket No.R–0917]

Rules Regarding Availability of Information

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is proposing technical amendments to its Rules Regarding Availability of Information (Information Rules). The Board's review of the Information Rules has been conducted in accordance with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994. The proposed amendments clarify certain provisions of the Rules and simplify the processing of requests for access to information in certain circumstances. More specifically, the Board's proposed changes would conform the language of

the Rules to changes in the law with which the Board is in compliance; expand delegations of authority to simplify and expedite the Board's responses to requests for access to information submitted by law enforcement authorities; expand the delegated authority of the General Counsel by including authority to determine requests for permission to use any confidential information of the Board in litigation and pre-litigation investigations; clarify provisions of Subpart B relating to requests for information under the Freedom of Information Act (FOIA), and clarify or simplify various other provisions of the Rules as set forth in **SUPPLEMENTARY INFORMATION.**

DATES: Comments should be received by March 29, 1996.

ADDRESSES: Comments should refer to Docket No. R–0917, and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments may also be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard between Constitution Avenue and C Street at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m weekdays, except as provided in the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Karen A. Appelbaum, Staff Attorney (202) 452–3389 or Stephen L. Siciliano, Special Assistant to the General Counsel for Administrative Law (202) 452–3920, Legal Division, Board of Governors of the Federal Reserve System, Washington, D. C. 20551. For users of Telecommunication Device for the Deaf (TDD) *only*, please contact Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION: The Board is proposing changes in its Information Rules, 12 CFR part 261. In compliance with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, these changes are designed to streamline and improve the efficiency of the Information Rules. The revisions clarify portions of the Information Rules, enhance the delegated authority of the Director of the Division of Banking Supervision and Regulation, the Director of the Division of Consumer and Community Affairs, and the Federal Reserve Banks in order to simplify the disclosure of confidential information for law enforcement and related purposes, enhance the authority of the General Counsel to act on requests for permission to use any confidential information of the Board in litigation, conform the Rules to changes in the law with which the Board is already in compliance, clarify or simplify provisions regarding the processing of Freedom of Information Act requests, and generally facilitate the Board's efforts to cooperate with law enforcement investigations. These changes would not alter the Secretary's authority under the Freedom of Information Act where litigants choose to invoke that authority.

The Board proposes to amend § 261.1(a) by the addition of statutory references and other language to clarify that these Rules authorize the disclosure or production of information in all situations covered by these Rules in which such disclosure or production is necessary or appropriate in carrying out any of the Board's statutory responsibilities in accordance with the procedures and standards set forth in these Rules. The Board has determined that disclosures of information pursuant to these Rules is authorized by law.

Section 261.13 presently authorizes the General Counsel to approve or deny requests for permission to obtain and use confidential supervisory information of the Board in litigation. The Board proposes to amend § 261.13 by expanding its scope to cover all confidential information of the Board, including but not limited to confidential supervisory information. When § 261.13 was adopted in its present form, the Board had virtually no experience with litigation-related demands for confidential information that is not supervisory, but such demands have increased in recent years. In addition, the list of factors to be considered by the General Counsel is expanded. The expanded list incorporates the factors relied upon by the court in *In Re: Subpoena*, 967 F.2d 630 (D.C. Cir. 1992), with regard to requests for confidential supervisory information. It continues to be the Board's intention that persons seeking confidential information of the Board for use in litigation be required to exhaust administrative remedies under § 261.13 before seeking judicial process. *See United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

The Board also proposes to expand the delegated authority of Federal Reserve Banks and of certain Board officers and their designees in order to simplify and expedite the transfer of information to law enforcement authorities in accordance with law.

Finally, as noted below, the Board proposes to amend the Information Rules to take account of section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), sections 913 and 931 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and section 2547 of Title XXV of the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 (Bank Fraud Act).[1]

Section 913 of FIRREA and section 2547 of the Bank Fraud Act (codified at 12 U.S.C. 1818(u)) require the Board to "publish and make available to the public" final cease and desist, removal, prohibition, and civil money penalty enforcement orders, including any modifications or terminations thereof, supervisory written agreements, and certain other enforceable written actions. Such matters come under the definition of "confidential supervisory information", the disclosure of which is restricted under language currently in the Board's Information Rules. *See* 12 CFR 261.2(b) and 12 CFR 261.11.

Section 931 of FIRREA (codified at 12 U.S.C. 1817(a)) requires that any insured depository institution that uses an independent auditor (or that used one in the two years prior to the enactment of FIRREA) transmit to such auditor a copy of its most recent examination report, as well as any supervisory memorandum of understanding with the depository institution, any written agreement between the institution and a Federal or State banking agency, and any report of an enforcement action against the institution or any institution-affiliated party. This provision applies only to insured depository institutions, that is, to banks and savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act. 12 U.S.C. 1813(c)(2) and 1817(a)(8).

With respect to fiscal years beginning after December 31, 1992, Section 112 of FDICIA (codified at 12 U.S.C. 1831m) requires that the financial statements of each insured depository institution be audited annually by an independent public accountant. Pursuant to this section, the insured depository institution must transmit to the independent public accountant retained to perform the institution's audit the most recent examination report of the institution and any supervisory memorandum of understanding or written agreement between the

[1] The Board's Rules have been implemented in a manner consistent with these and other changes described below.

institution and its Federal or state regulators, if such memorandum of understanding or agreement is in effect during the period covered by the audit. The institution must also provide its outside auditor with a report of supervisory actions initiated and civil money penalties assessed by the Board during the period covered by the audit.

To conform to these provisions, the Board proposes to amend the definition of "confidential supervisory information" in 12 CFR 261.2(b) to exclude those matters that must be made available to the public under 12 U.S.C. 1818(u), as amended. The proposal would also amend § 261.11 specifically to require insured depository institutions to disclose confidential supervisory information to their independent auditors in accordance with 12 U.S.C. 1817(a)(8) and 12 U.S.C. 1831m (i.e., by providing copies),[2] but to continue to prohibit the auditor from disclosing such information to any third party, or otherwise disclosing in whole or in part any portions of reports of examination and inspection, without prior written approval of the Board or its General Counsel acting pursuant to delegated authority. Bank holding companies, which are not insured depository institutions under 12 U.S.C. 1813(c)(2), would be authorized but not required to provide copies of reports of examination and inspection to their independent auditors in similar circumstances, and subject to the same limitations, as banks. The Board intends that all reports of examination and inspection be subject to this provision, not merely those that address only the financial soundness of the institution. The Board intends further that institutions regulated by the Board but not subject to 12 U.S.C. 1817(a)(8) be able to share examination and inspection reports of all kinds with their auditors as appropriate. This would include, for example, trust company, consumer compliance, and automated data processing reports.

Additional specific amendments are:

1. An amendment to § 261.1(a) to clarify the authority under which the Information Rules are issued. The **Federal Register** document that announced the present Information Rules erroneously omitted a reference to 12 U.S.C. 1844, although this reference was included under "Authority" at the end of the index that was published with the Rules. 53 FR 20815, June 7, 1988. This omission is corrected, and additional statutory references are added to clarify that the Information Rules address the management and disclosure of information pursuant to the Board's supervisory, regulatory, and other statutory responsibilities, in addition to its responsibilities under the Freedom of Information Act;

2. An addition to § 261.2 to define the term *exempt information*. This new definition is pertinent to a proposed amendment to section 261.13, described below, that expands the scope of the General Counsel's delegated authority regarding litigation requests and subpoenas. Under this amendment, the General Counsel's delegated authority to act on all litigation-related requests and subpoenas would extend to all confidential information of the Board (i.e., exempt information) rather than only to confidential information that is supervisory in nature;

3. Additions to § 261.3(c) clarifying that the Secretary of the Board is the Board's agent for service of all process, and that the Board will not accept process on behalf of employees in connection with purely private matters except as provided by applicable law;

4. An amendment to § 261.3(d) to clarify that authority delegated to the General Counsel and other officers of the Board may be subdelegated;

5. An amendment to § 261.6(a)(1) to include the public section of Community Reinvestment Act examination reports among the types of records made available to the public upon request;

6. A revision to § 261.9(a)(1) clarifying that a request made under the Freedom of Information Act may not be combined with any other request to the Board except a request under section 261a.3(a) and 261.13;

7. An amendment to § 261.9(a)(1)(ii) clarifying that if a request is made in connection with on-going litigation, the requester may include a statement indicating whether or not he or she will seek discretionary release of exempt information if the request is denied. If so, the requester shall also address the factors set forth in § 261.13(b), and the Freedom of Information Office will promptly forward any denial or partially denial to the General Counsel for processing under § 261.13.

8. A revision to § 261.9(b)(1) clarifying that the time period for a Freedom of Information response begins when the request is received in the Board's Freedom of Information Office;

9. A revision to § 261.10(a) removing the language that permits the Secretary of the Board to adjust Freedom of Information Act (FOIA) fee schedules;[3]

10. Amendments to § 261.10(g) raising to $100 the cost threshold at which the Secretary must notify a Freedom of Information Act requester of the estimated fee for filling his or her request; and to § 261.10(h)(2), to clarify that this section applies to requests for reduction of fees as well as to requests for waiver of fees;

11. Amendments to § 261.11(b) to permit the Federal Reserve Banks to make exempt information available to outside counsel retained or employed by a Federal Reserve Bank in appropriate circumstances and to clarify that a Federal Reserve Bank may make available to a bank holding company any confidential supervisory information of the Board relating to a subsidiary of the bank holding company.

12. Amendments to § 261.11(c) to clarify that authority may be exercised either upon request or at the initiative of the delegee; to substitute the Office of Thrift Supervision for the Federal Home Loan Bank Board as an agency that may receive confidential supervisory information of the Board from the Director of the Division of Banking Supervision and Regulation or a Federal Reserve Bank; and to add the National Credit Union Administration to the list of agencies that may receive information. Further amendments to this section would delegate authority to the Director to provide such information to the Securities and Exchange Commission pursuant to section 17(c)(3) of the Securities Exchange Act of 1934, 15 U.S.C. 78q(c)(3) (reports regarding transfer agents, clearing agencies, and municipal securities dealers),[4] and section 321 of the Trust Indenture Act of 1939, 15 U.S.C. 77uuu(b) (trustees and prospective trustees); to the Department of the Treasury, the Securities and Exchange Commission and other appropriate authorities pursuant to section 15C(d)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 780–5(d)(2) (government securities broker and dealer activities of State member banks); to the Department of the Treasury pursuant to section 128 of the Bank Secrecy Act, 12 U.S.C. 1951 *et seq.* and 31 U.S.C., Chapter 53; to the Department of Labor, pursuant to section 3004(b) of the Employee Retirement Income Securities Act, 29 U.S.C. 1204;[5] to any Federal Home Loan Bank pursuant to section 22 of the Federal Home Loan Act, 12 U.S.C. 1442, as amended by FIRREA (member financial information);[6] and to any other Federal agency or instrumentality in circumstances in which the General Counsel has determined that disclosure is required by statute. Many of the above authorities concern disclosures that the Board is either required or strongly encouraged to make by statute but that, with few exceptions, have not heretofore been explicitly addressed in the Board's Information Rules. As a practical matter, such omissions have effectively vested disclosure authority in the General Counsel;

13. Amending § 261.11(c) to specify the authority of the Director of the Division of Consumer and Community Affairs to provide exempt information to appropriate federal and state financial institution supervisory agencies;

14. Additions to § 261.12: (1) Authorizing any Federal Reserve Bank, the Director of the Division of Banking Supervision and Regulation and the Director of the Division of Consumer and Community Affairs to refer possible violations of criminal laws and suspicious activities to the Department of Justice and other appropriate Federal law enforcement authorities, and incident to any such referral, to provide the appropriate authority with confidential information of the Board related to any such matter;[7] (2) authorizing Board and Federal Reserve Bank staff to provide supervisory information to General Accounting Office staff consistent with applicable law; (3) delegating to the Director of the Division of Consumer and Community Affairs, authority to refer to consumer law violations to appropriate law enforcement authorities; (4) authorizing Board and Federal Reserve Bank staff to make confidential supervisory information available to the Internal Revenue Service consistent with written policies of the Board regarding confirmation of charge-offs declared for tax purposes.

15. An amendment to § 261.12(a) to clarify that the General Counsel may act either upon request or upon his or her own initiative;

16. An amendment to § 261.12(c)(4) requiring that a person who requests information must identify the source of his or her legal authority to make the request and to receive the requested information.

17. Amendments to § 261.13, which governs the disclosure of information to persons not covered by §§ 261.11 and 261.12, to specify that the section applies to the disclosure of all confidential information of the Board (i.e., to "exempt information"), not merely to confidential supervisory information. The amendments also expand the factors considered by the Board in deciding a request made under this section, including consideration of the factors set forth in *In Re: Subpoena*, 967 F.2d 630 (D.C. Cir. 1992), where applicable. The amendments state in greater detail the standards applicable to determinations by the General Counsel by adding standards regarding the cost of producing documents and/or testimony;

18. An additional amendment to § 261.13 to state that requests will generally be handled in the order in which they are received. Requesters who desire an expedited response to a request for information must explain why the request should be expedited and address the possible unfairness to other requesters whose pending requests may be delayed;

19. An amendment to § 261.13 stating that following receipt of a request for exempt information, the Board will generally notify the supervised financial institution that is the subject of the requested information.

20. A clarification that the requirement of notice to submitters of confidential information provided for in § 261.17(a), applies only in the case of requests made pursuant to the FOIA;[8]

21. A revision of § 261.17(b)(3) to clarify that a submitter may submit written objections to the disclosure of information by the Board within ten days of oral notice from the Secretary or his or her designee, or if no oral notice is given, within ten days of written notice from the Secretary or his or her designee;

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendments will not have a significant economic impact on a substantial number of small entities. These amendments simplify some of the procedures regarding release of information and require disclosure of information in certain instances in accordance with law. The requirements to disclose should not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act Analysis

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information in this proposed regulation should be sent to the Office of Management and Budget, Paperwork Reduction Act Project (7100–0281), Washington, DC 20503, with copies of such comments to be sent to Mary McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found in 261.9, 261.10 and 261.13. The respondents may include small for-profit institutions. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to this information collection request unless it displays a currently valid OMB control number. The OMB control number is 7100–0281.

It is estimated that there will be 5,000 annual respondents for requests made under 12 CFR 261.9, including approximately 100 that include requests made under 12 CFR 261.10 to waive fees. The burden per response for these requests ranges from 15 to 60 minutes, with an average of 30 minutes. The estimated total annual burden is 2,500

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[2] The text of the present Information Rules permits disclosure of such information to auditors only on bank premises.

[3] The FOIA now provides that the schedules may be changed only by rule; and the Federal Reserve Act forbids the Board to delegate any of its rulemaking authority. 12 U.S.C. 248(k).

[4] This conforms to a provision in the Delegation Rules, 12 CFR 265.7(f)(8).

[5] The Director has already been delegated authority to notify the Department of violations of ERISA in the Delegation Rules, 12 CFR 265.7(e)(3), but repetition of that delegation in the Information Rules is appropriate in the interest of clarity.

[6] Disclosure of information to Federal Home Loan Banks under this provision is presently the subject of a written agreement among those Banks, the Federal Housing Finance Board, and the member agencies of the Federal Financial Institutions Examination Council.

[7] The power of Reserve Banks to refer violations of criminal law is a well established policy of the Board that has not heretofore been memorialized in the Information Rules. Accordingly, it has been necessary in some cases for Reserve Banks to seek approval by the Board's General Counsel, pursuant to delegated authority, to provide information to a United States Attorney in addition to what is provided on the referral form. The Board believes that simplification of this process under the proposed amendment would be beneficial. The Director of the Board's Division of Banking Supervision and Regulation also is delegated authority to make referrals concerning violations of criminal laws. Federal Reserve Banks will be required under a Board policy to consult with Board staff with regard to such referrals.

[8] This clarification makes it clear that § 261.17 is intended only to address matters of the kind covered by Executive Order 12600, June 23, 1987. This clarification does not preclude the Board or its staff from giving notice to submitters in other situations such as, for example, where documents obtained pursuant to a confidentiality commitment are subpoenaed. The Board exercises its discretion in such cases consistent with applicable law. The Board does not disclose its receipt of federal grand jury subpoenas, however, except in accordance with law following consultation with appropriate law enforcement authorities.

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hours. Based on an hourly cost of $20, the annual cost to the public is estimated to be $50,000. Generally, requests made under 12 CFR 261.9 and 12 CFR 261.10 are not exempt from disclosure under the Freedom of Information Act.

It is estimated that there will be 30 annual respondents for requests made under 12 CFR 261.13 and a total of 60 hours of annual burden. The estimated average annual burden per respondent for requests made under 12 CFR 261.13 is 2 hours. Based on an hourly cost of $75, the annual cost to the public is estimated to be $4500. The requests made under 12 CFR 261.13 may be exempt from disclosure under the Freedom of Information Act pursuant to exemption (b)(4), 5 U.S.C. 552(b)(4).

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 12 CFR Part 261

Confidential business information, Federal Reserve System, Freedom of information.

PART 261—RULES REGARDING AVAILABILITY OF INFORMATION

1. The authority citation for Part 261 is revised to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 248(i) and (k), 321 *et seq.*, 611 et seq., 1442, 1817(a)(2)(A), 1817(a)(8), 1818(u) and (v), 1821(o), 1821(t), 1830, 1844, 1951 *et seq.*, 2601, 2801 *et seq.*, 2901 *et seq.*, 3101 et seq, 3401 *et seq.*; 15 U.S.C. 77uuu(b), 78q(c)(3); 29 U.S.C. 1204; 31 U.S.C. 5301 *et seq.*; 42 U.S.C. 3601; 44 U.S.C. 3510.

2. In § 261.1, paragraph (a) is revised to read as follows:

§ 261.1 Authority, purpose, and scope.

(a) *Authority.* (1) This part is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Freedom of Information Act, 5 U.S.C. 552; Sections 9, 11, and 25A of the Federal Reserve Act, 12 U.S.C. 248(i) and (k), 321 *et seq.*, (including section 326), 611 *et seq.*; Section 22 of the Federal Home Loan Bank Act, 1442; the Federal Deposit Insurance Act, 1817(a)(2)(A), 1817(a)(8), 1818(u) and (v), 1821(o); section 5 of the Bank Holding Company Act, 1844; the Bank Secrecy Act, 1951 *et seq.* and Chapter 53 of Title 31; the Home Mortgage Disclosure Act, 2801 *et seq.*; the Community Reinvestment Act, 2901 et seq.; the International Banking Act, 3101 *et seq.*; the Right to Financial Privacy Act, 3401 *et seq.*; the Securities and Exchange Act, 15 U.S.C. 77uuu(b), 78q(c)(3); the Employee Retirement Income Security Act, 29 U.S.C. 1204; the Money Laundering Suppression Act, 31 U.S.C. 5301, the Fair Housing Act, 42 U.S.C. 3601; the Paperwork Reduction Act, 44 U.S.C. 3510; and any other applicable law that establishes a basis for the exercise of governmental authority by the Board.

(2) Accordingly, this part authorizes the Board or its delegees to disclose confidential information of the Board, in accordance with the procedures set forth in this part, whenever it is necessary or appropriate to do so in the exercise of any of the Board's statutory authority. The Board has determined that such disclosures are authorized by law. In addition, the Board has determined that it is authorized by law to disclose information to a law enforcement or other federal or state government agency that has the authority to request and receive the information or in response to a valid order of a court of competent jurisdiction or of a duly constituted administrative tribunal.

* * * * *

3. Section 261.2 is amended as follows:

a. Paragraphs (b) through (g) are redesignated as paragraphs (c) through (h), respectively;

b. A new paragraph (b) is added;

c. Newly designated paragraph (c) is revised.

The addition and revision read as follows:

§ 261.2 Definitions.

* * * * *

(b) *Exempt information* means information that is exempt from disclosure under § 261.8.

(c)(1) *Confidential supervisory information* means exempt information consisting of reports of examination, inspection and visitation, confidential operating and condition reports, and any information derived from, related to, or contained in them, information gathered by the Board in the course of any investigation, cease-and-desist orders, civil money penalty enforcement orders, suspension, removal or prohibition orders, or other orders or actions under the Financial Institutions Supervisory Act of 1966, as amended, the Bank Holding Company Act of 1956, as amended, the Federal Reserve Act of 1913, as amended, the International Banking Act of 1978, as amended, and the International Lending Supervision Act of 1983, as amended, except:

(i) Such final orders, amendments, or modifications of final orders, or other actions or documents that are specifically required to be published or made available to the public pursuant to section 913 of the Financial Institutions Reform, Recovery, and Enforcement Act, and section 2547 of the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act, codified at 12 U.S.C. 1818(u), or other applicable law, including the record of litigated proceedings; and

(ii) The public section of Community Reinvestment Act examination reports, 12 U.S.C. 2906(b).

(2) *Confidential supervisory information* may consist of documents prepared by, on behalf of, or for the use of the Board, a Federal Reserve Bank, a Federal or State financial institutions supervisory agency, or a bank or bank holding company or other regulated financial institution.

* * * * *

4. Section 261.3 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 261.3 Custodian of records; certification; service; alternative authority.

* * * * *

(b) *Certification of record; Secretary of the Board.* The Secretary, or his or her designee, may certify the authenticity of any record of the Board, or of any copy of such record, for any purpose, and for or before any duly constituted Federal or State court, tribunal, or agency.

(c) *Service of subpoenas or other process.* Subpoenas or other judicial or administrative process, demanding access to any records of the Board or making any claim against the Board, shall be addressed to and served upon the Secretary of the Board at the Board's offices in Washington, D.C. 20551. Neither the Board nor the Secretary are agents for service of process on behalf of any employee in respect of purely private legal disputes, except as specifically provided by law.

(d) *Alternative authority.* Any action or determination required or permitted by this part to be done by the General Counsel or by the Director of any Division may be done by any employee who has been duly designated for this purpose by the General Counsel or by the appropriate Director.

5. Section 261.6 is amended by redesignating paragraphs (a)(4) and (a)(5) as paragraphs (a)(5) and (a)(6), respectively; and by adding a new paragraph (a)(4) to read as follows:

§ 261.6 Records available to public upon request.

(a) * * *

(4) The public section of Community Reinvestment Act examination reports;

* * * * *

6. Section 261.9 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(ii), and (b)(1) to read as follows:

§ 261.9 Procedures for making requests for identifiable records; processing of requests; review of denial of request; time extensions.

(a) * * * (1) *Contents of request.* A request for identifiable records shall reasonably describe the records to which access is sought in a way that enables the Board's staff to identify and produce the records with reasonable effort and without unduly burdening or disrupting any of the Board's operations. The request shall be submitted in writing to the Secretary of the Board, and the envelope clearly marked "Freedom of Information Act Request." A request may not be combined with any other request to the Board except for a request under § 261a.3(a) of this chapter (Rules Regarding Access to And Review of Personal Information in Systems of Records) and a request made under § 261.13(b) as described in paragraph (a)(1)(ii) of this section. The request shall contain the following information:

* * * * *

(ii) If the request is being made in connection with on-going litigation, a statement indicating whether or not the requester will seek discretionary release of exempt information from the General Counsel in the event the request to the Secretary under this section is denied. A requester who intends to make such a request to the General Counsel may also address the factors set forth in § 261.13(b); and in the event of a denial by the Secretary, the Freedom of Information Office will promptly forward the request and denial directly to the Board's General Counsel for consideration under § 261.13;

* * * * *

(b) *Procedures for responding to requests*—(1) *Time limits.* In response to any request that satisfies paragraph (a) of this section, the Board shall, if necessary, cause an appropriate search to be conducted of records of the Board in existence on the date of receipt of the request, and shall determine within ten working days of receipt of the request whether to comply with the request, unless the running of such time is suspended for payment of fees pursuant to § 261.10(g)(3), or such period is extended, pursuant to paragraph (e) of this section or § 261.7. The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Board by another agency or by a Federal Reserve Bank, is the date the Board's Freedom of Information Office actually receives the request.

* * * * *

7. Section 261.10 is amended by revising paragraphs (a), (g)(2), and (h)(2) introductory text, and by adding a new paragraph (h)(5) to read as follows:

§ 261.10 Fee schedules; waiver of fees.

(a) *Fee schedules.* Records of the Board available for public inspection and copying are subject to a written schedule of fees for search, review and duplication. (*See* Appendix A to this section for schedule of fees.) The fees set forth in the schedule of fees reflect the full allowable direct costs of search, duplication, and review.

* * * * *

(g) * * *

(2) *Advance notification of fees.* If the Secretary estimates that charges are likely to exceed $100, the Secretary shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Upon receipt of such notice, the requester may confer with the Secretary as to the possibility of reformulating the request in order to lower the costs.

* * * * *

(h) * * *

(2) * * * The Secretary shall normally deny a request for a waiver or reduction of fees that does not include:

* * * * *

(5) *Effect of requests for waivers.* The Secretary shall make a determination on the request for a waiver or reduction of fees and shall notify the requestor accordingly. A denial may be appealed to the Board in accordance with § 261.9(d)(1). If a waiver is requested and the requester has not indicated in writing that he or she will pay the applicable fees if the waiver request is denied, the request for information shall be deemed not to have been received until a determination has been made on the request for a waiver or reduction.

* * * * *

8. Section 261.11 is amended by revising the section heading, paragraphs (a), (b), (c), (e), and (g) to read as follows:

§ 261.11 Exempt information made available to supervised financial institutions and financial institution supervisory agencies.

(a) *Disclosure of exempt information to supervised financial institutions.* Exempt information, including confidential supervisory information, concerning a supervised bank or bank holding company (including subsidiaries), a U.S. branch or agency of a foreign bank, or any other institution examined by the Federal Reserve System (supervised financial institution) may be made available by the Board or the appropriate Federal Reserve Bank to the supervised financial institution.

(b) *Disclosure of confidential supervisory information by supervised financial institutions and by Federal Reserve Banks—(1) Parent bank holding company, directors, officers, and employees.* Any supervised financial institution lawfully in possession of confidential supervisory information of the Board pursuant to this section may disclose such information, or portions thereof, to its directors, officers, and employees, and to its parent bank holding company and its directors, officers, and employees. The appropriate Federal Reserve Bank may also make such information available to a parent bank holding company when such information relates to any subsidiary of the parent bank holding company.

(2) *Legal counsel.* (i) Any supervised financial institution lawfully in possession of confidential supervisory information of the Board pursuant to this section, which information relates to the affairs of the supervised financial institution, may disclose such information, or portions thereof, to any legal counsel employed or retained by the supervised financial institution to represent it, subject to the condition that the legal counsel shall review the confidential supervisory information only on the premises of the supervised financial institution, and shall not make or retain any copies of such information.

(ii) A Federal Reserve Bank may make exempt information available to outside counsel retained by the Federal Reserve Bank when needed by the outside counsel in connection with its representation of the Federal Reserve Bank.

(3) *Independent auditors.* (i) Each insured depository institution that engages the services of an independent auditor to audit such institution shall transmit to the auditor to the extent permitted or required by applicable statutes:

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(A) A copy of the most recent report of examination received by the insured depository institution (including but not limited to all formal bank examination reports such as trust company, consumer compliance, and automated data processing reports) and a copy of the most recent report of condition made by the institution pursuant to any provision of law; and

(B) A copy of any supervisory memorandum of understanding with the insured depository institution and any written agreement between a Federal or State banking agency and the insured depository institution which are in effect during the period covered by the audit; and

(C) A report of any action initiated or taken by the Board or the Federal Deposit Insurance Corporation during such period under subsection (a),(b), (c), (e), (g), (i), (s) or (t) of section 8 of the Federal Deposit Insurance Act; any action taken by any appropriate State bank supervisor under State law which is similar to any such action; and any other civil money penalty assessed under any other provision of law with respect to the insured depository institution or any institution-affiliated party.

(ii) For purposes of this section, *insured depository institution* means any bank or savings association the deposits of which are insured by the Federal Deposit Insurance Corporation pursuant to Chapter 16 of Title 12, United States Code. Any financial institution supervised by the Board that is not an insured depository institution, including a bank holding company, may make copies of documents identified in this paragraph (b) available to its independent auditor in the same circumstances, and subject to the same conditions and limitations, as an insured depository institution.

(iii) Any insured depository institution or other financial institution supervised by the Board also may make such information available to independent auditors, whose engagements do not include audits within the scope of 12 U.S.C. 1817(a)(8), in the manner specified in paragraph (b)(2) of this section, where access to such information is needed for the performance of functions within the scope of the engagement.

(4) *Limitation.* Any legal counsel or independent auditor given access to confidential supervisory information pursuant to paragraphs (b)(2) and (b)(3) of this section shall not disclose the confidential supervisory information for any purpose without the prior written approval of the Board's General Counsel, except as necessary to provide advice to the supervised financial institution, its parent bank holding company, or the officers, directors, and employees of the supervised financial institution or parent bank holding company.

(c) *Disclosure to certain agencies, including Federal financial institution supervisory agencies*—(1) *Disclosure to certain agencies by the Director of the Division of Banking Supervision and Regulation.* Upon request or on his or her initiative, the Director of the Division of Banking Supervision and Regulation or an officer of the appropriate Federal Reserve Bank may make available exempt information (including confidential supervisory information), and other appropriate information relating to a bank, bank holding company (including subsidiaries), U.S. branch or agency of a foreign bank, or other supervised financial institution, to the following agencies and their regional offices and representatives:

(i) The Comptroller of the Currency;

(ii) The Federal Deposit Insurance Corporation;

(iii) The Office of Thrift Supervision;

(iv) The National Credit Union Administration;

(v) The Securities and Exchange Commission pursuant to 15 U.S.C. 77uuu(b) and 15 U.S.C. 78q(c)(3);

(vi) The Department of the Treasury pursuant to the Bank Secrecy Act, 12 U.S.C. 1951 *et seq.* and subchapter II of Chapter 53 of Title 31, U.S. Code;

(vii) The Department of the Treasury, the Securities and Exchange Commission and other appropriate authorities pursuant to 15 U.S.C. 78o-5(d)(2); and

(viii) The Department of Labor pursuant to section 3004(b) of the Employee Retirement Income Security Act (29 U.S.C. 1204); or

(ix) Any other Federal agency or instrumentality in circumstances in which the Board's General Counsel has determined that disclosure is required by statute.

(2) *Disclosure to a Federal Home Loan Bank.* In accordance with 12 U.S.C. 1442, the Director of the Division of Banking Supervision and Regulation may make confidential supervisory information available to any Federal Home Loan Bank.

(3) *Disclosure of information acquired under Board regulations G, T, U, and X.* The Director of the Division of Banking Supervision and Regulation may disclose to appropriate financial institution supervisory agencies information acquired under Board Regulations G, T, U, and X (12 CFR parts 207, 220, 221, 224).

(4) *Disclosure to certain agencies by the Director of Consumer and Community Affairs.* Upon request or upon his or her own initiative, the Director of the Board's Division of Consumer and Community Affairs may provide exempt information (including confidential supervisory information) and other appropriate information to federal and state financial institution supervisory agencies in connection with: A possible violation, or a consumer complaint alleging a violation of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), Fair Lending Act (42 U.S.C. 3601 *et seq.*), Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*), Truth in Lending Act (15 U.S.C. 1601 *et seq.*), Truth in Savings Act (12 U.S.C. 4301 *et seq.*), Electronic Fund Transfers Act (15 U.S.C. 1693 *et seq.*), Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), Fair Debt Collections Practices Act (15 U.S.C. 1692 *et seq.*), Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*), or any regulations promulgated under any of those statutes.

* * * * *

(e) *Discretionary disclosures.* The Board may determine, from time to time, to authorize other disclosures of legally obtained confidential information as necessary.

* * * * *

(g) *Other disclosure prohibited.* All confidential supervisory information or other information made available under this section shall remain the property of the Board. No supervised financial institution, financial institution supervisory agency, person, or any other party to whom confidential supervisory information is made available under any provision of Subchapter C, or any officer, director, employee or agent thereof, may disclose such information without the prior written permission of the Board's General Counsel except in published statistical material that does not disclose, either directly or when used in conjunction with publicly available information, the affairs of any individual, corporation, or other entity. No person obtaining access to confidential supervisory information pursuant to this section may make a personal copy of any such information; and no person may remove confidential supervisory information from the premises of the institution or agency in possession of such information except as permitted by specific language in this part or by the Board.

* * * * *

9. Section 261.12 is amended as follows:

a. The section heading, paragraphs (a), (c)(4), and (g) are revised; and

b. New paragraphs (h) and (i) are added.

The revisions and additions read as follows:

§ 261.12 Exempt information made available to law enforcement agencies and other nonfinancial institution supervisory agencies.

(a) *Disclosure.* Upon written request to the General Counsel pursuant to paragraph (c) of this section, or on the initiative of the Board or the General Counsel, the Board may make available to appropriate law enforcement and to other government agencies for use where necessary in the performance of official duties, reports of examination and inspection, confidential supervisory information, other exempt information of the Board concerning banks, bank holding companies and their subsidiaries, U.S. branches and agencies of foreign banks, other examined institutions, and other information in accordance with applicable law.

* * * * *

(c) * * *

(4) The head of the law enforcement agency shall address a letter request to the Board's General Counsel, specifying whether the requested disclosure is permitted or restricted in any way by applicable law or regulation. The requester must identify the source of his or her legal authority to make the request and to receive the requested information;

* * * * *

(g)(1) *Referrals of violations of criminal law.* Notwithstanding any other provision of this section, Federal Reserve Banks, the Director of the Board's Division of Banking Supervision and Regulation, and the Director of the Board's Division of Consumer and Community Affairs may refer possible violations of criminal law and suspicious activities to the Department of Justice and other appropriate Federal law enforcement authorities and incident to any such referral, may provide to the appropriate law enforcement authority exempt information, including confidential supervisory information related to such matter in addition to the information initially provided on the applicable referral form.

(2) *Referrals of consumer law violations.* Upon request or upon his or her own initiative, the Director of the Board's Division of Consumer and Community Affairs may provide exempt information, including confidential supervisory information, or other appropriate information to appropriate law enforcement authorities in connection with: A possible violation, or a consumer complaint alleging a violation of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), Fair Housing Act (42 U.S.C. 3601 *et seq.*), Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*), Truth in Lending Act (15 U.S.C. 1601 *et seq.*), Truth in Savings Act, (12 U.S.C. 4301 *et seq.*), Electronic Fund Transfers Act (15 U.S.C. 1693 *et seq.*), Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), Fair Debt Collections Practices Act (15 U.S.C. 1692 *et seq.*), Real Estate Settlement Procedures Act (12 U.S.C. 2601), or any regulations promulgated under any of those statutes.

(h) *Disclosure to General Accounting Office and Internal Revenue Service.* Notwithstanding any other provision of this section, the Director, Division of Banking Supervision and Regulation and any Federal Reserve Bank may disclose information to the U.S. General Accounting Office of the kind and subject to the conditions specified in 31 U.S.C. 714, and the Director, a Federal Reserve Bank, or any Federal Reserve examiner may disclose confidential supervisory information to the Internal Revenue Service in accordance with the Board's Supervisory Letter, SR 92–39 (October 30, 1992) and any subsequent authorized revisions of SR 92–39 (For availability of copies, see § 261.5(f).)

(i) *Other disclosure prohibited.* All reports and information made available under any provision of subpart C of this part shall remain the property of the Board. Any person in possession of such information shall not use or disclose such information for any purpose except as authorized under this part.

10. Section 261.13 is revised to read as follows:

§ 261.13 Other disclosure of exempt information.

(a) *Board policy.* (1) It is the Board's policy regarding confidential supervisory information that such information is confidential and will not normally be disclosed to the public. Requests for disclosure of confidential supervisory information under this section will not be approved unless the person requesting disclosure meets the criteria set forth in this section. In addition, it is the policy of the Board to reserve to itself or its General Counsel the authority to authorize production of exempt information, including confidential supervisory information, for use in any civil or administrative litigation. Requests for discretionary release of exempt information for use in litigation made pursuant to § 261.9(a)(1)(ii) will be forwarded to the General Counsel for consideration.

(2) The Board generally will process requests in the order in which they are received. A requester seeking an expedited response must explain why the request should be expedited and, in so doing, must address the possible unfairness to other requesters whose pending requests may be delayed.

(b) *Requests for disclosure—(1) Requests from litigants for information or testimony.* Any person (except agencies referred to in §§ 261.11 and 261.12) seeking access to exempt information (including confidential supervisory information) or seeking to obtain the testimony of present or former Board or Reserve Bank employees on matters involving exempt information of the Board, whether by deposition or otherwise, for use in litigation before a court, board, commission, agency, or other tribunal, may file a written request with the General Counsel of the Board. The request shall describe:

(i) The particular information, kinds of information, and where possible, the particular documents to which access is sought;

(ii) The judicial or administrative action for which the exempt information is sought, including the caption and docket number of the case and the name, address, and telephone number of counsel to each party in the case;

(iii) A description of any prior judicial decisions or pending motions that may bear upon the asserted relevance of the requested information;

(iv) The relationship of the exempt information to the issues or matters raised by the judicial or administrative action;

(v) The requesting person's need for the information;

(vi) Whether the requested disclosure is permitted or restricted in any way by applicable law or regulation and the requester's source of authority to make the request and receive the requested information;

(vii) The reason why the requesting person cannot obtain suitable and needed information from any other source (and in the case of a request for trial testimony, the reason why a deposition will not suffice);

(viii) A commitment to obtain an enforceable protective order including, if applicable, a judicial sealing order, acceptable to the Board from the appropriate tribunal preserving the confidentiality of any information that is provided;

(ix) A statement of all reasonably foreseeable requests or demands for

Board information the party will make during the course of the litigation;

(x) A statement identifying all previous requests or demands for such information or similar information made by the requester to the Board or any other Federal or state agency, and the disposition of each such request; and

(xi) A statement addressing any issue that may bear upon the question of waiver of privilege by the Board.

(2) *All other requests.* Any other person (including any financial institutions supervised and regulated by the Board, but excluding agencies referred to in §§ 261.11 and 261.12, seeking access to exempt information for any other purpose may file a written request with the General Counsel of the Board. The request shall describe the purpose for which such disclosure is sought.

(3) *Notice to supervised financial institution.* Following receipt of a request for exempt information, the Board generally will notify the supervised financial institution that is the subject of the requested information, unless the Board, in its discretion, determines that to do so would unjustly advantage or would prejudice any of the parties in the matter at issue.

(c) *Action on request*—(1) *Determination of approval.* The General Counsel of the Board may approve a request made under this section provided that he or she determines that:

(i) The person making the request has shown a substantial need for exempt information that outweighs the need to maintain confidentiality;

(ii) Disclosure is consistent with the supervisory and regulatory responsibilities and policies of the Board;

(iii) Approval would not be otherwise inappropriate or contrary to the public interest;

(iv) The requester has made a commitment to pay the costs of production by the Board and/or any Federal Reserve Bank(s) which is deemed satisfactory in the circumstances.

(2) *Factors taken into consideration by the General Counsel.* In determining whether to approve a request for confidential supervisory information under paragraph (c)(1) of this section, the General Counsel shall consider without limitation:

(i) The relevance of the evidence sought to be protected;

(ii) The availability of other evidence;

(iii) The "seriousness" of the litigation and the issues involved;

(iv) The role of the Board in the litigation; and

(v) The possibility that Board employees may be reluctant to be candid for fear that their supervisory opinions and communications may be made available to persons outside of the Board or to persons not involved in the bank supervision and regulation process.

(3) *Conditions or limitations.* The General Counsel of the Board may, in approving a request, impose such conditions or limitations on use of any information disclosed as the General Counsel deems necessary to protect the confidentiality of the Board's information.

(4) *Request for opinion or expert testimony.* The General Counsel will not normally authorize opinion or expert testimony by persons based on information of the Board acquired in the scope and performance of their official duties with the Board or any Federal Reserve Bank, except on behalf of the United States or a party represented by the Department of Justice.

(d) *Exhaustion of administrative remedies for discovery purposes in civil, criminal, or administrative action.* Action by the General Counsel of the Board on a request under this section shall be required to exhaust administrative remedies for discovery purposes in any administrative, civil or criminal proceeding. A request made pursuant to § 261.9 does not exhaust administrative remedies for discovery purposes. Therefore, it is not necessary to file a request pursuant to § 261.9 to exhaust administrative remedies under this section.

(e) *Other disclosure prohibited.* All exempt information made available under this section shall remain the property of the Board. Any person in possession of such information under this section or any provision of subpart C of this part, including any banking organization supervised and regulated by the Board, shall not use or disclose such information for any purpose other than that authorized in writing by the General Counsel of the Board.

11. Section 261.17 is amended by revising paragraphs (a)(1) introductory text, (b) introductory text, and (b)(3) to read as follows:

§ 261.17 Confidential commercial or financial information.

(a) * * * (1) The Secretary shall notify a submitter of any request made pursuant to the Freedom of Information Act under § 261.9 and 5 U.S.C. 552, for access to all or a portion of information provided to the Board by the submitter, if:

* * * * *

(b) * * * The notice given to the submitter upon a request for confidential information pursuant to paragraph (a) of this section shall:

* * * * *

(3) Give the submitter a reasonable opportunity, not to exceed ten working days from the date of oral notice or, if no oral notice is given, ten working days from the date of written notice, to submit written objections to disclosure of the information; and

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 21, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–4341 Filed 2–27–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–161–AD]

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes, Excluding Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and B4 series airplanes. This proposal would require measurements of the thickness of the inner skin of the longitudinal lap joint from the inside of the fuselage at certain stringers. The proposed AD would also require inspections to detect stress corrosion cracking in the subject area, and repair, if necessary. This proposal is prompted by reports of corrosion cracking found in the skin at the longitudinal lap joint at certain stringers of the fuselage, which was caused by the increased stress level in the subject area when it was reworked beyond certain limits. The actions specified by the proposed AD are intended to prevent such stress corrosion cracking which, if not detected and corrected in a timely manner, could result in rapid depressurization of the airplane.

DATES: Comments must be received by April 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–161–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–161–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–161–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B2 and B4 series airplanes. The DGAC advises that, during regularly scheduled maintenance of two in-service airplanes, significant skin cracking was found in the longitudinal lap joint at stringer 57 between frames 67 and 68 of the fuselage. One of the airplanes had accumulated 23,893 total flight hours and 22,936 total flight cycles. The other airplane had accumulated 28,957 total flight hours and 23,574 total flight cycles.

Investigation revealed that the subject area on these airplanes, including the longitudinal lap joint at stringer 52, had been reworked to remove corrosion. However, the rework removed far more material than that allowed by the Structural Repair Manual (SRM). Such reduction in the thickness of the material increases the stress level in the skin. This condition, in conjuction with a corrosive environment, renders the subject area susceptible to stress corrosion cracking. Stress corrosion cracking in the longitudinal lap joints of the fuselage, if not detected and corrected in a timely manner, could result in rapid depressurization of the airplane.

Airbus has issued All Operator Telex (AOT) AOT 53–05, Revision 1, dated August 16, 1993. The AOT describes procedures for measurements of the thickness of the inner skin of the longitudinal lap joint from the inside of the fuselage at stringer 57 between frames 65 and 72, and at stringer 52 (left- and right-hand) between frames 58 and 65. The measurement involves using an ultrasonic thickness measurement method. The AOT also describes procedures for high frequency eddy current (HFEC) inspections to detect cracking in the subject area. The DGAC classified this AOT as mandatory and issued French airworthiness directive 93–150–147(B), dated September 1, 1993, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require measurements of the thickness of the inner skin of the longitudinal lap joint from the inside of the fuselage at certain stringers using the ultrasonic thickness measurement method. The proposed AD would also require HFEC inspections to detect cracking in the subject area. The actions would be required to be accomplished in accordance with the AOT described previously. If any crack is found or if the thickness of the inner skin is less than or equal to certain limits, it would be required to be repaired in accordance with a method approved by the FAA.

The FAA estimates that 17 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 32 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $32,640, or $1,920 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket.

A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g) 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 95–NM–161–AD.

Applicability: Model A300 B2 and B4 series airplanes, excluding Model A300–600 series airplanes; manufacturer serial numbers 003 through 156 inclusive; on which Airbus Modification 2611 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent stress corrosion cracking in the longitudinal lap joints of the fuselage, which could result in rapid depressurization of the airplane, accomplish the following:

Note 2: Any of the inspections and measurements required by this AD that were performed before the effective date of this AD in accordance with Airbus All Operator Telex (AOT) 53–05 (original issue), dated August 16, 1995, are considered acceptable for compliance with the applicable requirements of this AD.

(a) Within 60 days after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD in accordance with Airbus All Operator Telex (AOT) 53–05, Revision 1, dated August 16, 1993.

(1) Measure the thickness of the inner skin of the longitudinal lap joint from the inside of the fuselage at stringer 57 between frames 65 and 72 using the ultrasonic thickness measurement method, in accordance with the AOT. If the thickness is less than or equal to the limits specified in the AOT, prior to further flight, repair the longitudinal lap joint in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Perform a high frequency eddy current (HFEC) inspection to detect cracking of the longitudinal lap joint at stringer 57 between frames 65 and 72, in accordance with the AOT. If any cracking is detected, prior to further flight, repair the longitudinal lap joint in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(b) Within 6 months after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD in accordance with Airbus AOT 53–05, Revision 1, dated August 16, 1993.

(1) Measure the thickness of the inner skin of the longitudinal lap joint from the inside of the fuselage at stringer 52 (left- and right-hand) between frames 58 and 65 using the ultrasonic thickness measurement method, in accordance with the AOT. If the thickness is less than or equal to the limits specified in the AOT, prior to further flight, repair the longitudinal lap joint in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(2) Perform a HFEC inspection to detect cracking of the longitudinal lap joint at stringer 52 (left- and right-hand) between frames 58 and 65, in accordance with the AOT. If any cracking is detected, prior to further flight, repair the longitudinal lap joint in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 22, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–4509 Filed 2–27–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–113–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Pennsylvania regulatory program (hereinafter the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Pennsylvania rules pertaining to: Surface and underground mining—definitions, incidental coal extraction, permit approval, permit renewal, coal exploration, and bonding; surfacing mining—ground and surface water permit application information, operation and reclamation plans, and environmental protection performance standards; anthracite coal mining—permit applications, environmental protection performance standards, bank removal and reclamation standards, refuse removal standards, coal preparation facilities, and underground mines; underground mining of coal and coal preparation plants—erosion and sedimentation control standards, information requirements, performance standards, impoundments, subsidence control, and coal preparation; and coal refuse disposal—permit applications and performance standards. The amendment is intended to revise the Pennsylvania program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., E.S.T. March 29, 1996. If requested, a public hearing on the proposed amendment will be held on March 25, 1996. Requests to speak at the hearing must be received by 4 p.m., E.S.T. on March 14, 1996.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, at the address listed below.

Copies of the Pennsylvania program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, PA 17101, Telephone: (717) 782–4036.

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone: (301) 689–4136.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

On July 31, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 31, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 938.11, 938.12, 938.15, and 938.16.

II. Description of the Proposed Amendment

By letter dated January 23, 1996, (Administrative Record No. PA–838.00) Pennsylvania submitted a proposed amendment to its program pursuant to SMCRA in response to the required program amendments at 30 CFR 938.16(g) through (ii) with the exception of (h). The provisions of the regulations that Pennsylvania purposes to amend are found at sections 86–90 of its Coal Mining Regulations. They were published in the Pennsylvania Bulletin on December 16, 1995 (vol. 25, no. 50). Due to the voluminous nature of the proposed changes, they will be summarized to the extent possible.

Chapter 86—Surface and Underground Mining: General

At section 86.1—Definitions, Pennsylvania proposes to add the following definitions:

"Cumulative Measurement Period"—for purposes of section 86.5 (relating to the extraction of coal incidental to noncoal surface mining), the period of time over which both cumulative production and cumulative revenue are measured.

"Cumulative Production"—for purposes of section 86.5, the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period.

"Cumulative Revenue"—for purposes of section 86.5, the total revenue derived from the sale of coal or other minerals and the fair market of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

"MSHA"—the Mine Safety and Health Administration, United States Department of Labor.

"Mining Area"—for purposes of section 86.5, an individual excavation site or pit from which coal, other minerals, and overburden are removed.

"Other Minerals"—for purposes of section 86.5, a commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

"Surface Mining Activities"—added to the existing definition of this term is the inclusion of the construction of a road or similar disturbance for any purpose related to a surface mining activity, including that of moving or walking a dragline or other equipment or for the assembly or disassembly or staging of equipment.

At section 86.5—Extraction of Coal Incidental to Noncoal Surface Mining, Pennsylvania proposes to require that a person who intends to extract coal incidental to the extraction of other minerals must do so under the provisions of a noncoal surface mining permit and subject to the regulations specified in this section. Certain exemptions apply. The operator shall select and consistently use one of two identified methods for determining the beginning of the cumulative measurement period. A request for exemption must be filed by the operator prior to the extraction. If extraction has begun, the operator must file a request by February 14, 1996. Public notice requirements must be met by both the operator and the Department of Environmental Protection (PADEP). A request for exemption must include certain information including, but not limited to, name and address of applicant; list of minerals to be extracted; estimates of annual production, revenues, and fair market values of coal; maps of the mining area; evidence of publication of public notice; and other pertinent information. The PADEP will approve the request for exemption if certain, specified criteria are satisfied. A person whose request has been approved must conduct operations in accordance with the approved request, file an annual report, maintain certain information, and comply with notification provisions. Stockpiling of coal will be considered if certain provisions are met.

At section 86.37—Criteria for Permit Approval or Denial, Pennsylvania proposes at subsection (b) to prohibit an incremental phase approval of a permit if PADEP has already issued an incremental phase approval for the area to another permittee, except for an area used for access or haul roads.

At section 86.55—Permit Renewals: General Requirements, Pennsylvania proposes at subsection (c) to require that if a permittee provides a written notice to PADEP under subsection (i), the notice shall be filed at least 180 days before the expiration date of the permit. At subsection (g)(6), a permit will not be renewed if the permittee has failed to provide evidence of having liability insurance. At subsection (i), the permittee may provide written notice in lieu of submitting a complete application for renewal and providing public notice if certain conditions are met pertaining to coal extraction, preparation, refuse disposal, and treatment facilities. At subsection (j), if a permittee has provided written notice as specified in subsection (i) and determines prior to the permit expiration date that coal extraction, preparation, or disposal will occur or treatment facilities will be required after the expiration date, a renewal application shall be submitted.

At section 86.133—General Requirements for Coal Exploration, Pennsylvania proposes at subsection (g) to add the requirement that a person who conducts coal exploration by means of boreholes or coreholes meet the requirements of sections 89.54 and 89.83.

At section 86.134—Coal Exploration Performance and Design Standards, Pennsylvania proposes at subsection (8) to require that each exploration hole, borehole, well, or other underground opening meet the requirements of sections 87.93, 89.54, and 89.83.

At section 86.156—Form of the Bond, Pennsylvania proposes at subsection (b) to require banks and other institutions to certify that they will notify the State of any action filed alleging the insolvency or bankruptcy of the permittee. The word "supervision" is replaced by "suspension."

At section 86.175—Schedule for Release of Bonds, Pennsylvania proposes at subsection (b)(3) for underground mines and coal preparation plants to permit release of an additional amount of bond on the

permit area or designated phase upon completion and approval of PADEP of Stage 2 reclamation but retaining an amount sufficient to cover the cost of reestablishing vegetation and reconstructing drainage structures.

At section 86.182—Procedures, Pennsylvania proposes at subsection (e) to use funds collected from bond forfeiture to complete the reclamation plan, or remaining portion thereof. At subsection (f), if the forfeited amount is insufficient, the operator is liable for remaining costs. If the forfeited amount is more than necessary, the excess funds shall be used for certain purposes specified in the statutes.

At section 86.193—Assessment of Civil Penalty—Pennsylvania proposes to delete subsection (h) which provided for the assessment of a penalty against corporate officers, directors, or agents as an alternative to, or in combination with, other penalty actions.

Chapter 87—Surface Mining of Coal

At section 87.1—Definitions, Pennsylvania proposes to revise the definition of "Surface Mining Activities" to include the construction of a road or similar disturbance for any purpose related to a surface mining activity, including that of moving or walking a dragline or other equipment, or for the assembly or disassembly or staging of equipment.

At section 87.45—Groundwater Information, Pennsylvania proposes at subsection (a)(4) to specify minimum water quality descriptions.

At section 87.46—Surface Water Information, Pennsylvania proposes at subsection (b)(3) to require that water quality data show conductance corrected to 25 degrees C. and total aluminum in milligrams per liter.

At section 87.54—Maps, Cross Sections, and Related Information, and section 87.65—Maps and Plans, Pennsylvania proposes at subsections (b) that to prepare and certify maps and cross sections, a qualified, professional geologist also be registered.

At section 87.69—Protection of Hydrologic Balance, Pennsylvania proposes at sections (b) (4) and (5) to require that each permit application contain a plan which identifies monitoring locations and sampling frequency, and logically relate to the determination of probable hydrologic consequences (PHC). The determination must address certain, specified parameters.

At section 87.73—Dams, Ponds, Embankments, and Impoundments—Pennsylvania is proposing at subsection (c)(1) that a detailed design plan for a structure be prepared with assistance, as necessary from experts in related fields when impoundments meet or exceed prescribed size classifications. For impoundments not meeting the size classification, the plan shall be prepared by a qualified registered professional engineer or qualified registered land surveyor. An impounding structure constructed of coal refuse or used to impound coal refuse may not be retained permanently unless it develops into a fill meeting certain construction requirements.

At section 87.92—Signs and Markers, Pennsylvania proposes at subsection (g) to require that ground and surface water monitoring locations and sampling points used to obtain background information be clearly marked and identified. Marking requirements may be waived for aesthetic reasons.

At section 87.93—Casing and Sealing of Drilled Holes, Pennsylvania proposes at subsection (d) to reference the Oil and Gas Act.

At section 87.102—Hydrologic Balance: Effluent Standards, Pennsylvania is proposing at subsection (a) to change certain groups of effluent criteria.

At section 87.108—Hydrologic Balance: Sedimentation Ponds, Pennsylvania is proposing at subsection (c) to require the sedimentation ponds be maintained until the disturbed area has been stabilized and revegetated. The ponds may not be removed sooner than two years after the last augmented seeding, unless PADEP finds that the disturbed area has been sufficiently revegetated and stabilized.

At section 87.112—Impoundments—Design, Construction, and Maintenance, Pennsylvania proposes at subsection (b) to require a minimum static safety factor of 1.3. At subsection (b)(1), impoundments exceeding certain classification sizes shall be designed with assistance, as necessary, from experts in related fields. Impoundments not meeting the classification size shall be designed and certified by a qualified registered professional engineer or qualified registered professional land surveyor. Each impoundment must be certified. At subsection (d), impoundments that require a permit or meet the classification size are subject to periodic inspections by a qualified registered professional engineer. Impoundments not requiring a permit or not meeting the classification size are subject to the same periodic inspections but the inspection may be made by a qualified registered professional land surveyor. Both the engineer and land surveyor must be experienced in the construction of impoundments. At subsection (f), PADEP may consider Mine Safety and Health Administration's (MSHA) review for impoundments. However, PADEP will review impoundments in certain cases.

At section 87.116—Hydrologic Balance: Groundwater Monitoring, Pennsylvania proposes at subsection (b) to specify minimum monitoring standards and parameters and require that results be reported every three months for each location. At subsection (d), PADEP may require that the operator conduct monitoring and reporting more frequently and to monitor additional parameters.

At section 87.117—Hydrologic Balance: Surface Water Monitoring, Pennsylvania proposes to require that surface water be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to specify minimum monitoring standards and parameters. Results are to be reported every three months for each location. At subsection (b), PADEP may require that the operator conduct monitoring and reporting more frequently and to monitor additional parameters.

At section 87.125—Use of Explosives, Pennsylvania proposes at subsection (a) to clarify the notification procedures for operators pertaining to preblasting surveys.

At section 87.127—Use of Explosives: Surface Blasting Requirements, Pennsylvania proposes at subsection (e)(2) to require that PADEP specify lower maximum allowable airblast levels than prescribed to prevent damage. At subsection (h), maximum peak particle velocity standards are specified. At subsection (i)(2), exceptions to the maximum peak particle velocity limitations are specified pertaining to waivers for structures located on the permit area. At subsection (j), the detonation formula is changed to W=(D/Ds) squared, where Ds equals the scaled distance factor. At subsection (k), the seismograph record within 30 days becomes part of the blast record and shall be analyzed by an independent qualified party. At subsection (p), a blast level chart is provided to determine the maximum allowable ground vibration. The operator is required to provide a seismograph record for each blast. The vibration frequency must be displayed and analyzed over a specified frequency range. The permittee is required to obtain PADEP approval of the analytical method used before application.

At section 87.129—Use of Explosives: Records of Blasting Operations, Pennsylvania proposes at subsection (4) to add public buildings and other

structures to the list of structures for which direction and distance must be measured.

At section 87.131—Disposal of Excess Spoil, Pennsylvania proposes at subsection (n) to require that the inspecting engineer's report certify that the fill has been maintained in accordance with the approved design, in accordance with the approved plan, and in accordance with all applicable performance standards. The report shall also contain any appearances of instability, structural weakness and other hazardous conditions.

At section 87.136—Disposal of Noncoal Waste, Pennsylvania proposes to require that noncoal waste disposal be conducted in accordance with the Solid Waste Management Act and related regulations.

At section 87.138—Protection of Fish, Wildlife and Related Environmental Values, Pennsylvania proposes at subsection (c) to prohibit surface mining activity which would result in the unlawful taking of a golden or bald eagle, its nest, or eggs. Upon notification that a nest is within the permit area, PADEP is required to consult with appropriate agencies to determine whether and under what conditions the operator may proceed.

Chapter 88—Anthracite Coal

At section 88.24—Geology, Pennsylvania proposes at subsection (b)(4) to require that chemical analyses identify coal and overburden that may contain acid-forming or toxic-forming materials to determine their content and include total sulfur. A waiver may be granted if PADEP makes a written determination that other equivalent information is available.

At section 88.25—Groundwater, Pennsylvania proposes at subsection (a)(4) to specify minimum water quality descriptions.

At section 88.26—Surface Water Information, Pennsylvania proposes at subsection (b)(2) to specify that water quality data show specific conductance corrected to 25 degrees C. and total aluminum in milligrams per liter.

At section 88.31—Maps and Plans and section 88.44—Operation Maps and Operation Plans, Pennsylvania proposes at subsection (b) that the qualified professional geologist be registered.

At section 88.49—Protection of Hydrologic Balance, Pennsylvania proposes at subsection (b)(2) to require that the ground and surface water quality and quantity data plan be done in accordance with prescribed regulations and identify monitoring locations, and sampling frequency and logically relate to the determination of PHC. At subsection (b)(3), the determination must address certain, specified parameters.

At section 88.82—Signs and Markers, Pennsylvania proposes at subsection (c) to require that ground and surface water monitoring locations and sampling points used to obtain background information be clearly marked and identified. Marking requirements may be waived for aesthetic reasons.

At section 88.83—Sealing of Drilled Holes: General Requirements, Pennsylvania proposes at subsection (d) to reference the Oil and Gas Act.

At section 88.92—Hydrologic Balance: Effluent Standards, Pennsylvania proposes at subsection (a) to change certain groups of effluent criteria.

At section 88.102—Hydrologic Balance: Dams, Ponds, Embankments, and Impoundments, Pennsylvania proposes at subsection (b) to require a minimum static safety factor of 1.3.

At section 88.105—Hydrologic Balance: Groundwater Monitoring, Pennsylvania proposes at subsection (b) to specify minimum monitoring standards and parameters and require that results be reported every three months for each location. At subsection (c), PADEP may require that the operator conduct additional hydrologic tests. At subsection (d), PADEP may require that the operator conduct monitoring and reporting more frequently and to monitor additional parameters.

At section 88.106—Hydrologic Balance: Surface Water Monitoring, Pennsylvania proposes at subsection (a) to require that surface water be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to specify minimum monitoring standards and parameters. Results are to be reported every three months. At subsection (b), PADEP may require the operator to conduct monitoring and reporting more frequently and to monitor additional parameters.

At section 88.182—Signs and Markers, Pennsylvania proposes at subsection (b) to require that ground and surface water monitoring locations and sampling points used to obtain background information be clearly marked and identified. Marking requirements may be waived for aesthetic reasons.

At section 88.187—Hydrologic Balance: Effluent Standards, Pennsylvania proposes at subsection (a) to change certain groups of effluent criteria.

At section 88.197—Hydrologic Balance: Ponds, Embankments and Impoundments, Pennsylvania proposes at subsection (b) to require a minimum static safety factor of 1.3.

At section 88.201—Hydrologic Balance: Groundwater Monitoring, Pennsylvania proposes at subsection (b) to require minimum monitoring standards and parameters and require that results be reported every three months for each location. At subsection (c), PADEP may require that the operator conduct additional hydrologic tests. At subsection (d), PADEP may require that the operator conduct monitoring and reporting more frequently than every three months and to monitor additional parameters.

At section 88.202—Hydrologic Balance: Surface Water Monitoring, Pennsylvania proposes to require that surface water be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to specify minimum monitoring standards and parameters. Results are to be reported every three months for each location. At subsection (b), PADEP may require that the operator conduct monitoring and reporting more frequently and to monitor additional parameters.

At section 88.282—Signs and Markers, Pennsylvania proposes at section (c) to require that ground and surface water monitoring locations and sampling points used to obtain background information be clearly marked and identified. Marking requirements may be waived for aesthetic reasons.

At section 88.283—Sealing of Drilled Holes: General Requirements, Pennsylvania proposes at section (d) to reference the Oil and Gas Act.

At section 88.284—Sealing of Drilled Holes and Exploratory Openings, Pennsylvania proposes to require that drilled holes and boreholes to be used to return coal refuse to abandoned underground workings and wells to be used to monitor groundwater conditions be temporarily sealed before used and protected during use.

At section 88.292—Hydrologic Balance: Effluent Standards, Pennsylvania proposes at subsection (a) to change certain groups of effluent criteria.

At section 88.302—Hydrologic Balance: Dams, Ponds Embankments and Impoundments, Pennsylvania proposes at subsection (b) to require a minimum static safety factor of 1.3.

At section 88.305—Hydrologic Balance: Groundwater Monitoring, Pennsylvania proposes at subsection (b)

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to specify minimum monitoring standards and parameters and require that results be reported every three months for each location. At subsection (c), PADEP may require that the operator conduct additional hydrologic tests. At subsection (d), PADEP may require that the operator conduct monitoring and reporting more frequently and to monitor additional parameters.

At section 88.306—Hydrologic Balance: Surface Water Monitoring, Pennsylvania proposes at subsection (a) to require that surface water be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to specify minimum monitoring standards and parameters. Results are to be reported every three months. At subsection (b), PADEP may require the operator to conduct monitoring and reporting more frequently and to monitor additional parameters.

At section 88.321—Disposal of Noncoal Wastes, Pennsylvania proposes to require that noncoal waste disposal be conducted in accordance with the Solid Waste Management Act and related regulations. Certain waste materials with low ignition points may not be deposited on or near a coal refuse disposal pile.

At section 88.381—General Requirements, Pennsylvania proposes to require at subsection (c)(7) that monitoring plans be presented in accordance with certain, specified regulations.

At section 88.491—Minimum Requirements for Information on Environmental Resources, Pennsylvania proposes at subsection (c)(1)(iv) to specify minimum water quality description. At subsection (d)(2)(ii), water quality data must show specific conductance corrected to 25 degrees C., total aluminum in milligrams per liter, and other information PADEP determines to be relevant. At subsection (j), the referenced qualified professional geologist must be registered and maps and plans must be prepared with assistance, as necessary, from experts in related fields.

At section 88.492—Minimum Requirements for Reclamation and Operation Plan, Pennsylvania proposes at subsection (d)(2)(iii) to require that the plan identify monitoring locations and sampling frequency, and logically relate to the determination of PHC. At subsection d(3), the determination shall address the parameters measured in accordance with section 88.491.

Chapter 89—Underground Mining of Coal and Coal Preparation Facilities

At section 89.24—Sedimentation Ponds, Pennsylvania proposes at subsection (c) to require that sedimentation ponds be maintained until the disturbed areas has been stabilized and revegetated. The ponds may not be removed sooner than two years after the last augmented seeding, unless PADEP finds that the disturbed area has been sufficiently revegetated and stabilized.

At section 89.34—Hydrology, Pennsylvania proposes at subsection (a)(1) to specify minimum water quality descriptions, and to specify the standards for the groundwater monitoring plan. At (a)(2), specific conductance standards are required and the standards for the surface water monitoring plan are specified.

At section 89.51—Signs and Markers, Pennsylvania proposes at subsection (h) to require that ground and surface water monitoring locations and sampling points used to obtain background information be clearly marked and identified. Marking requirements may be waived for aesthetic reasons.

At section 89.52—Water Quality Standards, Pennsylvania proposes a subsection (c) to change certain groups of effluent criteria.

At section 89.63—Disposal of Noncoal Wastes, Pennsylvania proposes to require that noncoal waste disposal be conducted in accordance with the Solid Waste Management Act and related regulations.

At section 89.101—General Requirements, Pennsylvania proposes at subsection (a) to require that impoundments exceeding certain classification sizes be designed with assistance, if necessary, from experts in related fields. At subsection (b), impoundments which do not meet certain classification sizes are subjected to periodic inspections and certified by specified registered professionals. At subsection (d), PADEP may consider MSHA's review for impoundments. However, PADEP will review impoundments in certain cases.

At section 89.112—Impoundments, Pennsylvania proposes to require a minimum static safety factor of 1.3. Impoundments must be certified that certain conditions have been met.

At section 89.141—Application Requirements, Pennsylvania proposes at subsection (d) to reference the Oil and Gas Act.

At section 89.142—Maps, Pennsylvania proposes at subsection (a) to require that major electric lines be identified by name or numerical reference.

At section 89.143—Performance Standards, Pennsylvania proposes at subsection (b) to specify that a pillar lying partially within the support area shall be considered part of the support area and be consistent with the other support pillars in size and pattern.

At section 89.144—Public Notice, Pennsylvania proposes at subsection (a) to require that the operator comply with certain, specified notification procedures.

At section 89.172—Informational Requirements, Pennsylvania proposes at subsection (b) to specify that PADEP will not issue a permit unless it finds, in writing, that the activity will be conducted in compliance with specified performance standards.

Chapter 90—Coal Refuse Disposal

At section 90.13—Groundwater Information, Pennsylvania proposes at subsection (1) to specify minimum water quality descriptions.

At section 90.14—Surface Water Information, Pennsylvania proposes at subsection (b)(3) to specify that water quality data show specific conductance corrected to 25 degrees C. and total aluminum in milligrams per liter.

At section 90.35—Protection of the Hydrologic Balance, Pennsylvania proposes at subsection (b)(3) to require that the ground and surface water quality plan iderifiy monitoring locations and sampling frequencies and logically relate to the determination of the PHC.

At section 90.39—Ponds, Impoundments, Banks, Dams, Embankments, Piles and Fills, Pennsylvania proposes at subsection (e) to require that each plan provide for the removal of impoundments constructed of or used to impound coal refuse as part of site reclamation.

At section 90.46—Maps, Pennsylvania proposes at subsection (3) to require that the qualified geologist be registered.

At section 90.92—Signs and Markers, Pennsylvania proposes at subsection (g) to require that ground and surface water monitoring locations and sampling points used to obtain background information be clearly marked and identified. Marking requirements may be waived for aesthetic reasons.

At section 90.102—Hydrologi Balance: Water Qualify Standards, Pennsylvania propose at subsection (a) to change certain groups of effluent criteria.

At section 90.108—Hydologic Balance: Sedimentation Ponds, Pennsylvania proposes at subsection (c) to require that sedimentation ponds not be removed until the disturbed area has been stabilized and revegetated and not removed sooner than two years after the last augmented seeding, unless PADEP finds that the disturbed area has been sufficiently revegetated and stabilized.

At section 90.111—Impoundments, Pennsylvania proposes at subsection (7) to require that impoundments which are constructed of or used to impound coal refuse be developed into fills meeting specified construction requirements.

At section 90.112—Dams, Embankments and Impoundments, Pennsylvania proposes at subsection (b) to require a status safety factor of 1.3 and impoundments must be certified according to certain standards. At subsection (f), PADEP may consider MSHA's review for impoundments. However, PADEO will review impoundments in certain cases.

At section 90.113—Coal Processing Waste Dams and Embankments, Pennsylvania proposes at subsection (i) to specify that impoundments constructed of coal processing wastes or used to impound wastes not be retained permanently as part of the postmining land use unless certain conditions are met.

At section 90.115—Groundwater Monitoring, Pennsylvania proposes at subsection (b) to specify minimum monitoring standards and parameters and require that results be reported every three months for every location. At subsection (d), PADEP may require that the operator conduct monitoring and reporting more frequently and to monitor additional parameters.

At section 90.116—Surface Water Monitoring, Pennsylvania proposes at subsection (a) to require that surface water be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to specify minimum monitoring standards parameters. Results are to be reported every three months for each location. At subsection (b), PADEP may require that the operator conduct monitoring and reporting more frequently and to monitor additional parameters.

At section 90.120—Permanent Postdisposal Renovation, Pennsylvania proposes to require that impoundments constructed of coal refuse or used to impound coal refuse be developed into fills meeting certain construction requirements.

At section 90.130—Coal Refuse Dams, Pennsylvania proposes to delete the requirement that the specified structures may not be retained permanently as part of the approved postmining land use.

At section 90.133—Disposal of Noncoal Wastes, Pennsylvania proposes to require that noncoal waste disposal be conducted in accordance with the Solid Waste Management Act and related regulations.

Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If an amendment is deemed adequate, it will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., E.S.T. on March 14, 1996. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5

U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 16, 1996.

Allen D. Klein,

Assistant Director, Appalachian Regional Coordinating Center.

[FR Doc. 96–4430 Filed 2–27–96; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 233

Screening of Mail Reasonably Suspected of Containing Nonmailable Firearms

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service hereby requests comments on its proposed regulation outlining the treatment of mail which is reasonably suspected of being dangerous to persons or property. The rule also contains language which allows for the screening of mail reasonably suspected of containing nonmailable firearms.

EFFECTIVE DATE: Comments must be received on or before March 29, 1996.

ADDRESSES: Written comments should be directed to Chief Counsel, Enforcement, Law Department, U.S. Postal Service, Room 6319, 475 L'Enfant Plaza SW, Washington, DC 20260–1148. Copies of all written comments will be available at this address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: George C. Davis (202) 268–3076.

SUPPLEMENTARY INFORMATION: This document creates a new 233.11 of title 39, Code of Federal Regulations, to include the requirements for the treatment of mail which is reasonably suspected of being dangerous to persons or property. This rule is currently contained in the Administrative Support Manual (ASM) as part 274, but this publication will make it more widely available to the public.

Sections 233.11(a) and (a)(4) contain new language which allows for the screening of mail reasonably suspected of containing nonmailable firearms. Formerly, part 274 of the ASM allowed the examination of mail only to identify explosives or other materials that would pose a danger to life or property. This (proposed) rule would expand the existing rule to permit screening for nonmailable firearms under the same restrictions respecting mail privacy and delay.

The Postal Service has been advised by the Honorable Pedro Rosello, Governor of Puerto Rico, that illegal firearms entering Puerto Rico by various means, including the mails, pose a serious threat to the safety of citizens of Puerto Rico. This information has been confirmed in meetings with the Attorney General of Puerto Rico, local and federal law enforcement officials, and officials of the U.S. Department of Justice.

Practical and legal constraints limit our ability to ensure that the mails are free of nonmailable firearms. These constraints were summarized in the **Federal Register** at the time the rule permitting limited screening of mail reasonably suspected of containing dangerous matter was initially proposed and remain applicable today. See 55 FR 29637 (July 20, 1990).

Taking these constraints into account, this (proposed rule) would authorize the least intrusive, least dilatory response to credible situations where firearms already declared "nonmailable" by statute or regulation are reasonably suspected of being in the mails. Nonmailable firearms are defined in Section C024.1.0 of the Domestic Mail Manual. They consist, primarily, of pistols, revolvers, and other concealable firearms. Unloaded rifles and shotguns are mailable, although the provisions of the Gun Control Act of 1968, 18 U.S.C. 921, et seq. and regulations of the Bureau of Alcohol, Tobacco and Firearms apply to the shipment of such weapons by mail or otherwise.

The proposed rule would attempt to balance the need to protect personal safety, enforce existing laws, and regulations against the mailing of nonmailable firearms, and protect personal privacy in the use of the mails. As envisioned by the proposed rule, when the chief postal inspector determines that a credible threat exists that certain mail might contain nonmailable firearms, the inspector may authorize the use of technology that is capable of identifying mail containing such firearms in order to obtain probable cause for the issuance of a Federal warrant to search and seize such mail. The rule would not permit any screening method that would involve opening of sealed mail or the reading of the contents of correspondence in sealed mail, without the consent of the sender or addressee or under authority of a Federal warrant. Moreover, the only screening which may be authorized must be limited to the least quantity of mail necessary to respond to the threat, and the screening must be performed without avoidable delay of the mail. Any mail not of sufficient weight, for example, to contain a nonmailable firearm will not be screened. In addition, international transit mail will not be screened unless the postal treaties are appropriately amended. Sworn reports of all screening methods conducted by, or under supervision of, the Postal Service would be reported to senior postal managers.

In view of the matters discussed above, although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rule making by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed new section 233.11 of title 39, Code of Federal Regulations.

List of Subjects in 39 CFR Part 233

Law enforcement, Postal Service.

Accordingly, title 39 CFR, part 233, is proposed to be amended as follows:

PART 233—INSPECTION SERVICE/ INSPECTOR GENERAL AUTHORITY

1. The authority citation for part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 981, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Inspector General Act of 1978, as amended (Pub. L. No. 95–452, as amended), 5 U.S.C. App. 3.

2. Part 233 is amended by adding § 233.11 as follows:

§ 233.11 Mail reasonably suspected of being dangerous to persons or property.

(a) *Screening of mail.* When the Chief Postal Inspector determines that there is a credible threat that certain mail may contain bombs, explosives, or other material that would endanger lives or property, including firearms which are not mailable under section C024 of the Domestic Mail Manual, the Chief Postal Inspector may, without a search warrant or the sender's or addressee's consent, authorize the screening of such mail by any means capable of identifying explosives, nonmailable firearms, or other dangerous contents in the mails. The screening must be within the limits of this section and without opening mail that is sealed against inspection or revealing the contents of correspondence within mail that is sealed against inspection. The screening is conducted according to these requirements.

(1) Screening of mail authorized by paragraph (a) of this section must be limited to the least quantity of mail necessary to respond to the threat.

(2) Such screening must be done in a manner that does not avoidably delay the screened mail.

(3) The Chief Postal Inspector may authorize screening of mail by postal employees and by persons not employed by the Postal Service under such instruction that require compliance with this part and protect the security of the mail. No information obtained from such screening may be disclosed unless authorized by this part.

(4) Mail of insufficient weight to pose a hazard to air or surface transportation or to contain firearms which are not mailable under section C024 of the Domestic Mail Manual and international transit mail must be excluded from such screening.

(5) After screening conducted under paragraph (a) of this section, mail that is reasonably suspected of posing an immediate and substantial danger to life or limb, or an immediate and substantial danger to property, may be treated by postal employees as provided in paragraph (b) of this section.

(6) After screening, mail sealed against inspection that presents doubt about whether its contents are hazardous, that cannot be resolved without opening, must be reported to the Postal Inspection Service. Such mail must be disposed of under instructions promptly furnished by the Inspection Service.

(b) *Threatening pieces of mail.* Mail, sealed or unsealed, reasonably suspected of posing an immediate danger to life or limb or an immediate and substantial danger to property may, without a search warrant, be detained, opened, removed from postal custody, and processed or treated, but only to the extent necessary to determine and eliminate the danger and only if a complete written and sworn statement of the detention, opening, removal, or treatment, and the circumstances that prompted it, signed by the person purporting to act under this section, is promptly forwarded to the Chief Postal Inspector.

(c) *Reports.* Any person purporting to act under this section who does not report his or her action to the Chief Postal Inspector under the requirements of this section, or whose action is determined after investigation not to have been authorized, is subject to disciplinary action or criminal prosecution or both.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–4552 Filed 2–26–96; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE013–5915b; FRL–5425–1]

Approval and Promulgation of Air Quality Implementation Plans; State of Delaware; Emission Statement Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision consists of an emission statement program for stationary sources that emit volatile organic compounds (VOCs) and/or nitrogen oxides (NO_x) at or above specified actual emission threshold levels within the state of Delaware (Kent, New Castle, and Sussex Counties). In the Final Rules section of this **Federal Register**, EPA is approving the Delaware's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 29, 1996.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA office listed above; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 597–3164, at the EPA Region III address.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title (Delaware Emission Statement Program) which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 2, 1996.

W. T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 96–4446 Filed 2–27–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[FRL–5328–6]

Revision to the Maryland State Implementation Plan—Continuous Emission Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision establishes and requires continuous emission monitoring requirements for certain sources of air pollution. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule described in item (Conclusion) in the Technical Support document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 29, 1996.

ADDRESSES: Written comments on this action should be addressed to Marcia Spink, Associate Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency,

Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and State of Maryland Department of the Environment, Air Management Association, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Linda Miller (215) 597–7547.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 24, 1995.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 96–4443 Filed 2–27–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 764

[OPPTS–62089A; FRL–5349–4]

RIN 2070–AC17

Re-opening of Rulemaking Record on Proposed Ban of Acrylamide and N-methylolacrylamide Grouts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Re-opening of rulemaking record and request for comment.

SUMMARY: This Notice re-opens the rulemaking record for 30 days on the proposed rule banning acrylamide and NMA grouts. The rulemaking record is being re-opened in order to obtain data bearing on the durability of NMA grouts relative to acrylamide grouts.

DATES: Submitted data must be received on or before March 29, 1996.

ADDRESSES: Comments and data should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Rm. E–G99, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The envelope should be marked attention: "Grout Durability Data."

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA proposed a rule in the **Federal Register** of October 2, 1991 (FR 56 49863), that would have ultimately banned all manufacture, importation, distribution and use of acrylamide and N-methylolacrylamide (NMA) grouts. The public comment period closed in March of 1992, and a Public Hearing was held on March 2, 1992. The Agency is now considering dropping NMA from the regulation.

Both acrylamide and NMA grouts are used mainly to prevent the infiltration of ground and surface water into sewer systems, in order to maintain the functional capacity of sewer water treatment works. The grouts are injected into joints, cracks and fissures in sewer lines and manholes. Following application, these grouts solidify into a stiff impervious gel. Sewer line sealing entails sealing main and lateral sewer line pipes and joints remotely using closed-circuit video cameras, an inflatable packer, and a grout delivery system. Manhole sealing is accomplished manually by a worker using a hand-held device to inject grouts into holes that have been drilled into the sides of manholes. Grouts have two additional minor uses: structural water control and geotechnical applications.

Acrylamide grouts generally consist of a 19:1 mixture of acrylamide and a cross-linking agent. The grout is prepared by adding water and small amounts of other chemicals, including catalysts, activators or accelerators, and inhibitors. In gel form, the grout contains less than 0.05 percent free acrylamide. These grouts were first introduced into U.S. commerce about 40 years ago, and quickly became popular because of their low cost and superior performance. Acrylamide grouts are first mixed into a solution formed by combining the grout with triethanolamine, an activator, and water. A separate solution of ammonium persulfate, an initiator, and water is also required. When the grout solution and the initiator solution are mixed together, they react to form a stiff polymerized gel.

NMA grouts were explicitly developed as a substitute for the more hazardous acrylamide grouts, and have been in use for about 9 years. Commercial NMA is a chemical mixture consisting of about 90 percent N-methylolacrylamide monomer and small amounts of acrylamide, formaldehyde, and methylene bisacrylamide. NMA grouts are mixed in the same way as acrylamide grouts, except that sodium persulfate is used as the initiator rather than ammonium persulfate. They are applied in the same manner as acrylamide grouts, using the same equipment for generally the same applications.

Although the rule proposed in 1991 would have ultimately banned both acrylamide grouts and NMA grouts, the Agency is now leaning heavily toward dropping NMA from the rule because of: (1) NMA's lower toxicity relative to acrylamide; (2) a lowered estimate of the size of the population at risk; (3) NMA's efficacy as a substitute for acrylamide grouts; and (4) NMA's low cost relative to other potential substitutes. Based upon these four factors, EPA is re-considering its earlier conclusion that NMA grouts present an unreasonable risk. Of the four factors, the only one about which there may be some doubt is the third--the efficacy of NMA as a substitute for acrylamide. The only question in this regard, moreover, has to do with the relative durability of NMA--i.e., will joints, cracks, and other fissures sealed with NMA grouts remain sealed as long as those sealed with acrylamide grouts, all else being equal.

Although the information presently available to the Agency suggests that the two grouts are equally durable, some have questioned whether this is the case. Specifically, the National Association of Sewer Service Companies (NASSCO) submitted two letters, dated August 15 and 17, 1995, that they asserted call into question the relative durability of NMA grouts. Both submissions are being made a part of the rulemaking record, and are available for inspection in the public docket. At a subsequent meeting held with NASSCO on October 3, 1995, however, they agreed that the submitted data do not indicate that NMA grouts are less durable than acrylamide grouts. Although the NASSCO representatives then agreed to submit such data, none has been received to date. A summary of that meeting has also been placed into the public docket. In view of the foregoing, and in order to obtain the best information available on this specific issue, the Agency is re-opening the rulemaking record for 30 days, and requesting any empirical and reliable data anyone may have regarding the durability of NMA grouts relative to acrylamide grouts. Useful information, for this purpose, would include controlled experimental data that explicitly compare the potential longevity of NMA grouts to acrylamide grouts under verifiable and replicable conditions. Other data will be considered to the extent that they are reliable and permit direct comparison of the durability of acrylamide to NMA grouts. In contrast, anecdotal information regarding experiences with these grouts following application in sewers or manholes will generally not be useful. Such extraneous factors as the competence of the grouters, the quality of their equipment and grouting material, the conditions of the pipes being grouted, the nature of the surrounding soil, and the frequency and rigor of follow-up inspections shape these real world outcomes more than the particular grout used. In addition, such data cannot address the relative durability of the two grouts, since only one is generally applied in any given operation.

Submitted information will be most useful if provided with sufficient documentation to ensure credibility. Such documentation would include:

1. Copies of the original research.
2. Quality assurance plans prepared for the research.
3. Peer reviews conducted on the research.
4. The statistical significance of the findings.
5. Copies, or at least citations, of any research replicated by the submitted research.
6. Statements regarding agreement or conflict with other research.
7. Discussion of the practical significance of the findings.

In addition, the Agency is interested in promotional material that sellers of acrylamide and NMA grouts (both importers and grouters) make available to purchasers in which the grouting properties of the chemicals are discussed, and annual sales volume data, in comparable units, for both acrylamide and NMA grouts since NMA was introduced onto the market. Sales information would be particularly helpful if broken down by use (i.e., sewer lines, manholes, etc.).

EPA is re-opening the record to solicit information concerning the relative durability and efficacy of acrylamide and NMA because the Agency has received recent assertions that credible information relating to this subject exists, but has never been provided to the Agency. EPA has not received any suggestions that other new information exists that may materially affect some issue relevant to this rulemaking other than the relative durability of acrylamide and NMA. If any person has material information, which was not previously submitted, relating to any other issue relevant to the determination of whether acrylamide and/or NMA grouts present an unreasonable risk to health or the environment, that information may be submitted during the comment period. For example, any neurotoxicity information with regard to acrylamide and NMA. Such submissions should be accompanied by a brief cover letter explaining why the submitter considers the information relevant to this rulemaking and why the information was not submitted during the initial comment period. If significant new information on other issues is presented during the comment period, that information may be considered by the Agency in its preparation of a final rule. If any person believes it necessary to respond to any new information submitted during this comment period, a response to the new information may be submitted within 2 weeks of the close of the comment period.

Anyone responding to this request for information may assert a claim of confidentiality for the information submitted. Any claim of confidentiality must accompany the information when it is submitted to EPA. Information claimed as confidential must be clearly marked with the statement "Confidential," "Trade Secret," or other appropriate designation. EPA will disclose information subject to a claim of confidentiality only to the extent permitted by TSCA section 14 and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

List of Subjects

Environmental protection, Acrylamide and N-methylolacrylamide, Reporting and recordkeeping.

Dated: February 13, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–4028 Filed 2–27–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 96–6; DA 96–225]

Flexible Service Offerings in the Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: In this *Order*, we extend the period which comments and reply comments must be filed in the CMRS Flex proceeding (WT Docket No. 96–6). We grant NARUC's motion for extension of time because the deadline of February 26, 1996 for filing initial comments falls two days before the conclusion of its previously scheduled winter meeting. With respect to the date for filing reply comments, we find that the deadline does not give NARUC's members sufficient time to review initial comments and formulate a response. The intended effect of this *Order* is to extend the comment date to March 1, 1996 and extend the reply comment date to March 25, 1996.

DATES: Comments are due on before March 4, 1996, reply comments are due on or before March 25, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mika Savir, Wireless Telecommunications Bureau, Commercial Wireless Division, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Order* in WT Docket No. 96–6, adopted February 22, 1996, and released February 22, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., Suite 140, Washington DC 20037 (202) 857–3800.

Synopsis of Order

1. The Commission released the *Notice*, Amendment to the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, *Notice of Proposed Rulemaking*, WT Docket No. 96–6, FCC 96–17, 61 FR 6189 (February 16, 1996) (*Notice*), on January 25, 1996. The National Association of Regulatory Utility Commissioners ("NARUC") has

filed a motion to extend the dates that initial and reply comments are due in the above-referenced docket. Specifically, NARUC requests that the date that initial comments are due be extended from February 26, 1996 to March 1, 1996 and the date reply comments are due be extended from March 18, 1996 to March 26, 1996.

2. NARUC states that the present deadline of February 26, 1996 for filing initial comments falls two days before the conclusion of its previously scheduled winter meeting. With respect to the date for filing reply comments, NARUC states that the deadline does not give its members sufficient time to review initial comments and formulate a response. Therefore, the Commission is issuing this *Order* to extend the period which comments and reply comments must be filed in the CMRS Flex proceeding (WT Docket No. 96–6).

3. The deadlines for the filing of all comments and reply comments in this proceeding are revised. The Commission recognizes that NARUC is attempting to overcome concrete timing problems beyond its own control and that granting an extension permits NARUC to develop a consensus position and ensures that each of its members has a chance to actively participate in these proceedings. Accordingly, initial comments will be due on March 4, 1996 and reply comments will be due on March 25, 1996.

4. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before March 4, 1996, and reply comments on or before March 25, 1996. To file formally in this proceeding, parties must file an original and four copies of all comments, reply comments, and supporting comments. For each Commissioner to receive a personal copy of the comments, parties must file an original and nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Room 222, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street NW., Room 239, Washington, DC 20554.

Ex Parte Rules—Non-Restricted Proceeding

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. 47 CFR §§ 1.1202, 1.1203, 1.1206.

Ordering Clauses

It is ordered that, pursuant to Sections 1, 4, 201–205, 215, 218, 220, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201–205, 215, 218, 220, and 303(r), the motion for extension of time filed by NARUC is granted to the extent described herein and otherwise denied.

It is further ordered, that comments in WT Docket No. 96–6 will be due March 4, 1996 and reply comments will be due March 25, 1996.

Federal Communications Commission.

David Furth,

Acting Chief, Commercial Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 96–4633 Filed 2–27–96; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF AGRICULTURE

Office of Operations

48 CFR Parts 401 through 453

RIN 0599–AA00

Agriculture Acquisition Regulation; Review and Revision

AGENCY: Office of Operations, Department of Agriculture.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Agriculture Acquisition Regulation (AGAR) is the Department of Agriculture's agency acquisition regulation, issued to implement or supplement the Federal Acquisition Regulation (FAR). The Department of Agriculture has started to revise the AGAR to eliminate obsolete and unnecessary material and to incorporate regulatory changes required by recent statutes, Executive Orders, Office of Federal Procurement Policy Letters, and changes to the FAR. The Department of Agriculture is seeking public comment to assist its effort to streamline and to revise the AGAR.

DATES: Comments must be submitted on or before April 29, 1996. However, the revision is an ongoing process and comments received after the due date will be considered.

ADDRESSES: Submit written comments to: U.S. Department of Agriculture, Office of Operations, Procurement Policy Division, Room 1546–S, Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT:

Joseph J. Daragan, Office of Operations, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–5729.

SUPPLEMENTARY INFORMATION: The AGAR implements the FAR, where further implementation is needed, and supplements the FAR when coverage is needed for subject matter not covered by the FAR. The AGAR was first published in the **Federal Register** in March, 1984 (49 FR 12111, March 28, 1984). Since then, three changes to the AGAR have been published in the **Federal Register**. The last published change to the AGAR was Agriculture Acquisition Circular Number 3, which was published in March, 1990 (55 FR 7334, March 1, 1990). The bulk of material in the AGAR dates to its initial publication, or to Agriculture Acquisition Circular Number 2, an amendment to the AGAR published in February, 1988 (53 FR 6062, February 29, 1988). The AGAR thus contains a number of obsolete references which must be updated or stricken from the AGAR. A thorough revision of the AGAR is necessary to reflect the regulatory changes in the FAR which implement the Federal Acquisition Streamlining Act of 1994. The AGAR must also incorporate other changes necessitated by Executive Orders and recent Office of Federal Procurement Policy Letters. Furthermore, the AGAR is being revised as part of the National Performance Review (NPR) program to eliminate unnecessary regulations and improve those that remain in force.

As an initial step in the NPR regulatory review initiative, the Department of Agriculture identified parts of the AGAR which required updating or streamlining. The Department's review indicated that almost all parts required revision. Accordingly, the Department plans to revise all parts of the AGAR and to republish the entire regulation in the **Federal Register**. To develop the revised regulation, the Department is seeking comments and suggestions from the public concerning what changes should be made to the AGAR. Both general comments concerning the AGAR and comments concerning specific sections of the AGAR (48 CFR parts 401 through 453) are invited.

List of Subjects in 48 CFR Parts 401 through 453

Government contracts, Government procurement.

Ira L. Hobbs,

Director of Operations.

[FR Doc. 96–4499 Filed 2–27–96; 8:45 am]

BILLING CODE 3410–98–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species; Notice of Reclassification of 96 Candidate Taxa

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of candidate taxa reclassification.

SUMMARY: In this document, the U.S. Fish and Wildlife Service (Service) provides explanation for changes in the status of 96 taxa of plants and animals that are under review for possible addition to the List of Endangered and Threatened Wildlife and Plants (List) under the Endangered Species Act (Act) of 1973, as amended.

ADDRESSES: Comments and questions concerning this notice should be sent to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Mail Stop ARLSQ–452, Washington, D.C., 20240.

FOR FURTHER INFORMATION CONTACT:

E. LaVerne Smith, Chief, Division of Endangered Species, at telephone number (703/358–2171).

SUPPLEMENTARY INFORMATION:

Background

In December 1992, the Service reached a settlement agreement (agreement) with the plaintiffs in the Fund For Animals *et al.* v. Lujan *et al.* case (D.D.C. Civ. No. 92–800) that provides for the Service to review the listing status of species regarded as Category 1 candidates as of September 1, 1992. For any species covered by the agreement and removed from candidate (Category 1) status because listing is no longer considered to be warranted, the Service must publish a notice in the **Federal Register** that provides explanation for the reclassification. This notice is published to comply with the above requirement.

It is important to note that candidate assessment is an ongoing function and changes in status should be expected. Species that are removed from the candidate list may very well be restored to candidate status if additional information supporting such a change becomes available to the Service. Requests for such information were issued by the Service in the 1993 Plant Notice of Review (58 FR 51144; September 30, 1993) and the 1994 Animal Notice of Review (59 FR 58982; November 15, 1994). A combined plant and animal notice of review, requesting updated information on candidate species, is being published elsewhere in today's **Federal Register**.

Findings

Candidate species are those species for which the Service has on file sufficient information to support issuance of a proposed rule to list under the Act. The Service recently completed a review of all candidate species to assure that this definition is uniformly applicable. The results of this review indicate that 88 plant taxa and 8 animal taxa included in the settlement exhibits should be removed from candidate status. There are four primary explanations for these reclassifications: (1) The taxon is believed or known to be extinct; (2) the taxon is not a listable entity or is the subject of taxonomic review; (3) the taxon is more widespread than previously thought or not subject to identified threats; and (4) Service files contain insufficient information on status and threats to justify issuing a proposed rule. This notice provides specific explanations for each of the 96 reclassifications.

The Ciervo aegialian scarab beetle (*Aegialia concinna*) is a flightless, fossorial beetle that was first described in 1977: long-term information on species trends is not available. General threats from urban, suburban, and agricultural development were identified when this species was first designated as a candidate. Additional populations have been discovered in Fresno, San Joaquin, and Costa Counties. These discoveries include new habitat types and suggest that the species is not likely to become threatened or endangered in the foreseeable future. The species is removed from candidate status because of the recent discoveries and limited information on habitat requirements, life history, and status needed to prepare a proposed listing.

Allium aaseae (Aase's onion) is a small, perennial plant that is endemic to southwestern Idaho. The species occurs on relatively barren, xeric habitats with gentle to steep slopes and is usually associated with sparsely vegetated bitterbrush (*Purshia tridentata*) or bitterbrush/sagebrush (*Artemisia tridentata*) communities. Recent survey information indicates there are at least 66 extant populations of Aase's onion (containing approximately 400,000 individuals), with 49 of these populations having more than 1,000 individuals. Because threats from suspected hybridization with other species have been shown to be unfounded and because of the size and distribution of extant populations, *A. aaseae* is removed from candidate status.

Allium dictuon (Blue Mountain onion) is known only from the vicinity of Weller Butte in the Blue Mountains of Columbia County, Washington. Five occurrences of this plant are historically and currently known within a range of about 4 square miles. Population estimates for this species range between 1,000 and 3,000 plants. The species is removed from candidate status because it is believed to be stable and the threats associated with recreational use are uncertain. Cattle grazing does occur in the vicinity of Weller Butte, but the impact of this activity on *Allium dictuon* is uncertain and data currently available to the Service do not indicate that listing is warranted.

Allium hickmanii (Hickman's onion) occurs in Monterey and San Luis Obispo Counties (California) and is associated with closed-cone coniferous forests, chaparral, coastal prairie, coastal scrub, and valley and foothill grasslands. Additional populations of Hickman's onion have been found in the last five years, indicating the species is more widespread than previously known. Also, information in Service files is currently insufficient to support issuance of a proposed listing, so this species is removed from candidate status.

Artemisia campestris wormskioldii (northern wormwood) was historically known from the banks of the Columbia River near the mouth of the John Day River in Wasco County, Oregon, westward to the vicinity of the Hood River. Today it is known from two widely disjunct sites along the Columbia River in Washington. Possible trampling associated with recreational activity is the only identified threat to this species. The most recent status information indicated a declining trend, but those data are from 1989. It is removed from candidate status primarily because the Service lacks sufficient information on current status to issue a proposed listing.

Aster jessicae (Jessica's aster) is endemic to mesic grasslands or steppe vegetation of the Palouse region in southeast Washington and northern Idaho. The species is currently known

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from three population centers, two in Idaho and one in Washington. Review of file information indicates that the threats from grazing, non-native plants, and land use practices are not sufficiently severe to support a proposed listing. Also, additional information on the status of this species is needed. It is removed from candidate status primarily because the Service lacks current information on biological vulnerability and threats needed for preparation of a proposed listing.

Aster puniceus ssp. *elliotti* var. *scabricaulis* (*Synphyotrichum puniceum* var. *scabricaule;* rough-stemmed aster) inhabits wetland areas in east-central Texas. Recent survey work has discovered three additional populations and extended the range to a new (Cherokee) county. A recent taxonomic study has placed this taxon in the genus *Synphyotrichum* and the validity of the taxon is being reviewed. In addition, the species' status appears to be stable, in part due to development and implementation of management plans for roadside populations by the Texas Department of Transportation.

Astragalus agnicidus (Humboldt milk-vetch) is limited to a single occurrence on an 8-acre privately-owned ranch in southern Humboldt County, California. The population is afforded protection by an agreement between the landowner and the California Nature Conservancy to reduce threats by delaying logging and excluding cattle.

Astragalus australis var. *olympicus* (Cotton's milk-vetch) is found at elevations above 5,000 feet on talus slopes in arctic-alpine habitats that are characterized by a variety of associated, low-growing cushion plants. Most of the known populations are found on federal lands managed by the National Park Service or the U.S. Forest Service. The only known threat to this species is overgrazing or trampling by non-native mountain goats (*Oreamus americanus*). The species is currently believed to be stable.

Astragalus beatleyae (Beatley's astragalus) is known only from the vicinity of Pahute Mesa, Nye County, Nevada, where it occurs on lands managed by the Department of Energy and the Department of Defense. The Department of Energy recently completed extensive studies of the distribution and life history of the species which indicate that listing is not warranted. The species is no longer regarded as a candidate because the identified threats have been resolved.

Astragalus columbianus (Columbia milk-vetch) is a short-lived perennial that occurs in sagebrush/bunchgrass shrub-steppe habitat along the Columbia River in Kittitas, Yakima, and Benton counties in Washington. Though once presumed extirpated in Washington, 29 populations have been documented in the past 15 years, four of these in 1994. Approximately 55,000 plants are known to exist and viable seeds are being produced. The recent discovery of additional populations and apparent stability justify removal from candidate status.

Astragalus mulfordiae (Mulford's milk-vetch) is endemic to the western Snake River plain in Idaho and Oregon. Removal from candidate status is justified by identification of 36 extant populations and a lack of information on threats to the species. The estimated population size is approximately 15,000 individuals in Oregon and between 3,000 and 4,000 individuals in Idaho. Because of poor documentation of threats and the existence of stable populations, the species is removed from candidate status.

Bloomeria humilis (dwarf goldenstar) is known from two populations that occur on private lands in northwestern San Luis Obispo County, California. Current land uses, which have not been shown to be detrimental, include light cattle grazing and periodic shrub removal. No imminent threats are known at this time and no population losses have been documented.

Calochortus clavatus var. *avius* (Pleasant Valley mariposa lily) was historically known from only 13 locations containing approximately 450 plants. Two of the historical occurrences were possibly extirpated. Recent surveys conducted by the Eldorado National Forest discovered additional occurrences within the original range. The variety is now known from 125 locations with an estimate of 45,000 plants. The variety is removed from candidate status.

Calochortus greenei (Greene's mariposa) generally grows in pinyon-juniper woodland or upper montane coniferous forests. It is known from southern Jackson and Klamath counties, Oregon and Siskiyou and Modoc counties, California. Estimated abundance was 1,610 individuals in Oregon and 6,840 individuals in California, but these data are from 1988 surveys. The threats posed by habitat destruction, harvest, and grazing are not severe and the species is not particularly narrow in its choice of substrate. Given the broad habitat tolerance, lack of severe threats, and lack of current status information on which to base a proposed listing, this species is removed from candidate status.

Calochortus nitidus (broad-fruit mariposa lily) is a perennial herb with large, showy flowers that is endemic to mid-elevation grassland habitats of the Palouse region in north-central Idaho. The taxon was previously known from southeast Washington but is now considered to be extirpated from the State. *C. nitidus* is currently known from more than 100 populations that range in size from a few individuals to several thousand plants. The species is believed to be stable and faces only weak threats from grazing, nonindigenous plants, logging, and agriculture. A conservation agreement was signed in 1991 to conserve *C. nitidus* on a parcel of land transferred from the Bureau of Land Management to private ownership and numerous other populations occur on BLM lands.

Calochortus westonii (Shirley Meadows mariposa lily) is a perennial found in meadows and in the understory of broadleaf upland forests and lower montane coniferous forests of the southern Sierra on lands administered by Sequoia National Forest. The U.S. Forest Service Species Management Guide allows for selective timber harvest at infrequent intervals in *C. westonii* habitat. This action helps maintain suitable habitat for the species and combined with recent population discoveries justifies removal of this species from candidate status.

Cardamine pattersonii (Saddle Mountain bittercress) is endemic to four mountaintops in the Coast Ranges of Clatsop and Yamhill counties, Oregon. The species grows on moss mats over bare rocks or on grassy balds, and in the gravel of small creeks. Total habitat for this species covers about 100 to 150 acres and there are roughly 3,000 individuals known. The only known threats are from recreational use of a trail and possible construction of a radio repeater on nearby private land. Neither of these threats are severe and inclusion as a candidate is therefore not warranted.

Castilleja salsuginosa (Monte Neva paintbrush) is known only from a 15-acre area of private land in White Pine County, Nevada. However, information in Service files cast considerable doubt on the distinctiveness of this taxon. Botanist Mark Egger (in litt.) has concluded that material identified as *C. salsuginosa* is probably at best a variety of the widespread species *C. nana* and other botanists question even the varietal distinctiveness of the Monte Neva paintbrush. *C. salsuginosa* is removed from candidate status while its taxonomic status is under review.

Caulanthus amplexicaulis var. *barbarae* (Santa Barbara jewelflower) is a serpentinite endemic, known from five occurrences in Santa Barbara County, California. It inhabits bluffs, dry disturbed slopes, openings in chaparral, under ghost pines, and Sargent cypress forest. The species is believed to be stable and the only potential threats are from grazing and road grazing. Since serpentinite supports limited forage, threats from grazing are unlikely. The species is removed from candidate status.

Chamaesyce remyi var. *hanaleiensis* (no common name) was endemic to the island of Kauai. The plant has not been observed or collected in this Century and is believed to be extinct. It is therefore removed from candidate status.

The greenest tiger beetle (*Cicindela tranquebarica viridissima*) was recently rediscovered and returned to candidate status (see 60 FR 34226, June 30, 1995). However, experts for the family Cicindelidae acknowledge that the taxonomy of *C. tranquebarica* is in need of serious revision. Recent studies indicate that *C. t. viridissima* is in fact synonymous with *C. t. vibex*, so candidate status for *C. t. viridissima* is no longer appropriate.

Claytonja lanceolata var. *peirsonii* (Peirson's spring beauty) occurs on scree slopes in subalpine forests. The variety is known from five populations in the eastern San Gabriel Mountains of Los Angeles County, California. In 1980, the number of individuals was estimated at about 3,300 but a major fire severely depressed the population later that year. By 1987 the estimated number of individuals had risen to about 1,400. Its current status is unknown. In the most recent taxonomic treatment of the genus, this variety was not recognized as distinct from the parent species *C. lanceolata*, so the variety is removed from candidate status. This treatment has been challenged by the California Native Plant Society so the Service will follow the resolution of the taxonomic issues.

The San Joaquin dune beetle (*Coelus gracilis*) is a flightless, fossorial beetle restricted to dunes of fine-grained sand. It was described from the Antioch dunes (Contra Costa County, California) in 1939 but has not been found there recently despite searches. Current information on the status of the species is lacking and the known threats from habitat alteration caused by nonindigenous tumbleweeds (*Salsola kali*) or off-road vehicle use are believed to be slight. The species is removed from candidate status primarily because the Service lacks current status information needed for preparation of a proposed listing.

Collomia rawsoniana (Rawson's flaming trumpet) was first described in 1888 from specimens collected in the higher valleys of the Sierra Nevada. The species is found within riparian zones of the upper watershed of the San Joaquin River and the Fresno River at elevations between 3,500 and 6,300 feet. The species is removed from candidate status because it is believed to be stable. Threats associated with logging have been alleviated by restricting logging in habitat areas as part of an interagency agreement between the Service and the U.S. Forest Service.

Cordylanthus nidularius (Mt. Diablo bird's-beak) is found in a single population on Mt. Diablo in Contra Costa County, California on serpentine soils of Mt. Diablo State Park. The species is believed to be stable and protected from threats by Park guidance.

Cordylanthus rigidus ssp. *littoralis* (seaside bird's-beak) is an annual member of the snapdragon family that flowers in mid-summer. Habitat occurs in limited areas of loose sandy soils of stabilized dunes in openings in maritime chaparral, oak woodland, and closed cone pine forest communities. Seventeen extant populations have been identified and threats to these populations are believed to be few. Recent discoveries on Fort Ord property indicate that this species is more widespread than previously known. Protections afforded for six of the 17 extant occurrences, including the Fort Ord population, justify removal from candidate status.

Coryphantha recurvata (Santa Cruz cactus) occurs at elevations of 4,000–6,000 feet in grassland and oak woodland in the rolling hills of the Atascosa Mountains in south-central Arizona and Sonora, Mexico. Survey work conducted in 1994 identified previously unknown sites, suggesting the species is more widespread than previously thought. The species is removed from candidate status primarily because of recently discovered populations. Preparation of a proposed listing would only be possible with additional status information that contradicts the known data.

Cupressus stephensonii (Cuyamaca cypress) is a small tree or shrub that grows in clay soils in closed conifer forest, chaparral, and along riparian drainages. It is known from two small populations in San Diego County, California. This species has received considerable taxonomic revision and was recently deemed synonymous with *C. arizonica*. Based on these changes, *C. stephensonii* does not meet the Act's definition of species and is therefore removed from candidate status.

Cymopterus deserticola (desert cymopterus) is a perennial herb that grows on loose sandy soils in the western Mojave Desert at about 45 feet in elevation. The species is restricted to about 10 occurrences over a 30 mile range. The plant occurs within the area being addressed by the West Mojave Coordinated Management Plan, which will function as a multi-species habitat conservation plan and this action will alleviate many of the threats to the species.

Delphinium pavonaceum (peacock larkspur) is endemic to the central portion of the Willamette Valley, Oregon and to Benton, Clackamus, Marion, and Polk counties. There are 53 reported occurrences, but only 31 of these have been confirmed since 1985. A status report prepared in 1980 does not provide site specific threats, population size, or population trends. Candidate status is not justified based on the lack of specific information on threats and population status.

Delphinium variegatum ssp. *thornei* (Thorne's royal larkspur) is a perennial herb restricted to southern San Clemente Island. Roughly 13,000 individuals are known from 13 populations. The recent removal of goats from the island has removed the only known threat to this species.

Delphinium viridescens (Wenatchee larkspur) is found in moist meadows at mid-elevation of the Wenatchee Mountains of Washington. Roughly 5,000 stems of the species are known from 20 populations in Chelan and Kittitas counties. Conservation efforts by the U.S. Forest Service and the Washington Department of Natural Resources have reduced threats to the species and warrant its removal from candidate status.

Dudleya cymosa ssp. *costafolia* (Pierpoint Springs dudleya) is known only from its type locality. The only known threats are associated with use or construction of summer homes. Significant threats are lacking and it is removed from candidate status.

Dudleya viscida (sticky dudleya) is a perennial succulent that occurs on steep rocky cliffs and outcrops in chaparral and coastal sage scrub. The species is estimated to number between 100,000 and 250,000 individuals and appears to be stable. It is more abundant than previously thought and is being removed from candidate status for that reason.

The spring pygmy sunfish (*Elassoma alabamae, formerly known as Elassoma* sp.) was discovered in 1938 in a spring in Lauderdale County, Alabama near the Tennessee River. The species was thought extinct until 1973 when it was

found in part of Beaverdam Creek in Limestone County. The species has been successfully introduced into other waters and its distribution has increased outside the range of introduction. Tennessee Valley Authority biologists recently discovered additional populations, including one on Wheeler National Wildlife Refuge. The known populations, each exceeding 1,000 individuals, are increasing. This species is removed from candidate status.

Eriogonum brandegei (Brandegee wild-buckwheat) is a long-lived perennial plant found in sagebrush stands or in pinyon-juniper woodlands between 5,700 and 7,500 feet in elevation. Prior to the late 1980s the total known population was 700 individuals. However, inventories conducted in 1989, 1992, and 1993 resulted in population estimates between 100,000 and several million individuals. The species is removed from candidate status.

Eriogonum breedlovei var. *breedlovei* (Piute buckwheat) is restricted to dolomite and limestone substrates within the Piute Mountains in the southern Sierra Mountains of California. Previously identified threats associated with gold mining were overstated and the species is being removed from candidate status due to lack of known threats to the species.

Eriogonum chrysops (golden buckwheat) is a perennial herb limited to the Dry Creek drainage in central Malheur County, Oregon. Roughly 9,500 individuals were known from five sites in 1988 but current status information is lacking. Former threats from herbicide use, grazing, off-road vehicles, and nonindigenous plants are now regarded as inconsequential, justifying removal from candidate status.

Eriogonum ericifolium var. *thornei* (Thorne's buckwheat) is restricted to two populations in the New York Mountains of San Bernardino County, California. When elevated to candidate status, threats from mining and grazing were identified but it is uncertain whether these activities still threaten the species' existence due to the transfer of management of the areas occupied by this plant to the National Park Service.

Eriophyllum lanatum var. *hallii* (Fort Tejon woolly-sunflower) is currently known from three populations in eastern Santa Barbara and western Kern counties, California. The two Santa Barbara populations were estimated to contain 800 and 12 individuals respectively and the Kern County population has an estimated 500 individuals. Development on private lands appears unlikely and hypothesized threats from erosion and road grading on Forest Service lands are questionable. Similarly, potential threats by cattle grazing and insects do not appear to be problematic. In addition, current status information needed to support a proposed listing is not available, so this species is being removed from candidate status.

Erythrina eggersii (Piñon Espinoso Cock's spur) is a spiny tree known only from Puerto Rico and the U.S. Virgin Islands. On the island of St. John it is known from four sites within the National Park; threats to the St. John population are not known. In Puerto Rico it is known primarily from the northern limestone hills, but its distribution and abundance within this habitat type is poorly known. Given secure status on St. John and the lack of status information that would be needed for preparation of a proposed listing in Puerto Rico, it is removed from candidate status.

The Florida mastiff bat (*Eumops glaucinus floridanus*) is known from Florida, Cuba, Jamaica, Central America, and South America. The studies upon which the original candidate classification was based were seriously flawed in that they used a technique with low likelihood of detecting mastiff bats. While native habitat appears to be declining, the species also appears to have adapted to human presence by using Spanish tile roofs. The current or historic number of mastiff bats in Florida is unknown. This species is being removed from candidate status because current status information is not available to prepare a proposed listing. recent surveys indicate that mastiff bats in south Florida may be more abundant than previously known, and adaptation to human presence suggests that the species is unlikely to become threatened or endangered in the foreseeable future.

Franklinia alatamaha (Franklin tree) was last seen in the wild in McIntosh County, Georgia in 1803. The type locality has been searched repeatedly over the past 200 years, but no specimens have been observed. While probably extinct in the wild, the species is extant through cultivation and widely distributed as an ornamental. It is removed from candidate status because the species is not threatened or endangered.

Gilia maculata (little San Bernardino Mountains gilia) is restricted to sandy wash terraces at the base of the Little San Bernardino Mountains in San Bernardino County, California. Recent surveys have increased the number of known locations for this species, reduced the intensity of threats to the species, and its status is believed to be stable. Therefore, it is removed from candidate status.

Hackelia cronquistii (Cronquist's stickseed) is found on sandy moist sagebrush slopes in eastern Oregon and Idaho. The species is being removed from candidate status due to stable populations in Oregon and large amounts of potential habitat that are believed to be suitable for this species.

Hackelia venusta (showy stickseed) grows in openings within the Ponderosa pine and Douglas fir forests of open, steep slopes on dry, loose, granitic well-drained soils. The species appears to be restricted to a single population in Tumwater Canyon, Chelan County, Washington. Two other potential populations have been identified near the Alpine Lakes Wilderness, also in Chelan County, but the taxonomic status of these populations is uncertain. Tumwater Canyon was designated a Botanical Area by the Wenatchee National Forest and the State of Washington has developed management guidelines to protect the species. The species is being removed from candidate status due to poorly documented threats, management actions to supplement the wild population with outplantings of disease-free plantings, and an uncertain taxonomic status.

Haplopappus (=*Pyrrocoma*) *insecticruris* (bugleg goldenweed) is endemic to Camas, Elmore, and Blaine counties, Idaho. It occurs in two habitat types: the densely vegetated habitat of the Cama prairie found in mesic areas with deep soils, and less vegetated, somewhat xeric habitats of the *Artemisia arbuscula* or shrub/grassland type. The species' known distribution has increased from four populations in 1983 to more than 83 populations in 1985 surveys. It appears to occupy disturbed and undisturbed habitats. The Idaho Native Plant Society recently recommended removing this species from candidate status and the Service concurs.

Haplopappus radiatus (Snake River goldenweed) is endemic to the dry, rolling hills, ridge, and canyon slopes of the Snake River in eastern Oregon and western Idaho. The habitat is generally a grazing-modified sagebrush/grassland community. Estimated abundance in Idaho is approximately 35,000 individuals from 22 known populations. Total abundance of the 37 known Oregon populations may exceed 100,000 individuals. This species is too widely distributed and abundant to be considered a candidate species.

Hastingsia bracteosa (large-flowered rush-lily) is a lilaceous plant growing from bulbs and is found in serpentine bogs at lower elevations in Jackson and Josephine counties, Oregon, and Siskiyou and Del Norte counties, California. The species is historically known from 43 locations in Oregon but the most recent status information on the species is from 1980. It is being removed from candidate status due to weak or unclear data on threats and due to the lack of current status information.

Hemizonia arida (Red Rock tarplant) is associated with clay soils in desert scrub. Its distribution is limited to a few square miles in the Mojave desert, Kern County, California. Threats posed by off-road vehicles have been relieved via transfer of the land to the California Department of Parks and Recreation and the species is therefore removed from candidate status.

Hesperolinon didmyocarpum (Lake County dwarf-flax) is known from six populations on a combined area of less than five acres. The current range is comparable to its known historical range and only one population is subject to threatened habitat degradation. The species is believed to be stable and is removed from candidate status due to a lack of documented threats.

Hibiscadelphus crucibracteatus (hau kuahiwi) was historically found on the island of Lanai but is now believed to be extinct. The last known specimen, discovered in 1981, died in 1985. The species is removed from candidate status.

Ivesia aperta var. *canina* (Dog Valley ivesia) is known only from Dog Valley, Sierra County, California on lands managed by the Toiyabe National Forest. The population size was estimated at 2,700 individuals in 1989, but has increased by about 33 percent since then. Potential threats from grazing, recreation, and dam construction have not materialized and the species' status is improving. The species is removed from candidate status.

Juncus leiospermus var. *ahartii* (Ahart's rush) is known from Butte, Calaveras, and Placer counties, California. Since the late 1980s, several additional populations of this plant have been discovered. Only the Oroville population in Butte County is known to face threats associated with habitat degradation. Because of insufficient information on status, distribution, and threats, the species is removed from candidate status.

Lavatera assurgentiflora ssp. *assurgentiflora* and *L. a. glabra* were combined in a 1993 taxonomic treatment to form *Lavatera assurgentiflora* (island tree mallow). The species is widespread and cultivated as an ornamental or windbreak on the mainland and it also occurs on the Santa Cruz islands, Santa Catalina Island, and San Clemente Island. Given the widespread distribution and taxonomic uncertainty, the two subspecies are removed from candidate status.

Layia leucopappa (Comanche layia) is known only from a small area of the Tejon Ranch and surrounding area in Kern County, California. Five of the six known populations occur on the privately owned ranch. Although the plant has a very limited distribution, only one population faces potential threats from grazing. The species is removed from candidate status.

The Hawaiian stream goby 'o'opu alamo'o (*Lentipes concolor*) occurs in freshwater streams throughout the main Hawaiian Islands. The species has an amphidromous life-history pattern that allows for transfer of genetic material among the various island populations. Although populations on the island of Oahu have declined, recent studies indicate that the species is not sufficiently threatened with extinction to be considered a candidate species.

Lilium maritimum (coast lily) grows in closed-cone coniferous forest, coastal prairie, and coastal scrub habitats of Mendocino and Sonoma counties, California. Populations from Marin, San Mateo, and San Francisco counties may have been extirpated. Today, many populations are found in roadside ditches at elevations from 30 to 1,100 feet. Although the species faces threats associated with horticultural collecting, the Service lacks current status information needed to justify candidate status.

Limnanthes floccosa ssp. *pumila* (dwarf wooly meadow-foam) is endemic to two basalt formations in Jackson County, Oregon. The plant occurs at the edges of deep vernal pools and during most years the populations number in the thousands of individuals. While this species has a limited distribution, it faces only limited threats and is generally abundant. It is removed from candidate status.

Lomatium erythrocarpum (red-fruited desert-parsley) is a perennial herb that is restricted to western Baker County, Oregon, along the Elkhorn Ridge of the Blue Mountains. It occurs on loose gravel or talus on east- or south-facing slopes at elevations between 7,500 and 8,500 feet. Although the species has a limited distribution and is rare, it faces only minor threats associated with trampling by ungulates or humans. The species is removed from candidate status.

Lomatium greenmanii (Greenman's desert-parsley) is endemic to the summit region of Mount Howard in the Wallowa Mountains of northeast Oregon. The total population of 20,000 individuals occupies roughly 20 acres of subalpine and alpine meadows. This rare endemic has a stable population that appears to be fully using its available habitat. It is removed from candidate status.

Lotus argophyllus ssp. *adsurgens* (San Clemente Island silver hosackia) is restricted to 10 populations at the southern tip of San Clemente Island, California. Former threats posed by grazing and rooting pigs have been alleviated by removal of feral goats and pigs from the island. Therefore, candidate status is no longer justified.

Luina serpentina (colonial luina) is a stout branching plant that forms colonies or large mats which hug the ground. The species is known only from two sites and grows on steep, rocky, open serpentine slopes. There are no known threats and the last survey was conducted in 1980, so status information necessary to support listing is not available.

Lunania buchii (no common name) was originally described from specimens collected by the U.S. Forest Service from Luquillo and Maricao, Puerto Rico. This species had previously been reported from Haiti. Studies by H.O. Sleumer, conducted in 1980, placed *L. buchii* in synonymy with *L. eckmanii*, a species common to Hispaniola. More recent studies of the Puerto Rican specimens suggest that they are not fully consistent with *L. eckmanii*, further clouding the taxonomic status of the species. The species is withdrawn from candidate status.

Lupinus aridus ssp. *ashlandensis* (Mount Ashland lupine) is a perennial lupine that grows in granitic outcrops only on the summit of Mount Ashland in Jackson County, Oregon. The population was estimated at roughly 350,000 individuals in 1991 and faces no verified threats. It is believed to be stable and is therefore removed from candidate status.

Malacothamnus abbottii (Abbott's bush-mallow) is known from private lands in southern Monterey County, California. It was originally described from a single location in 1896 and was thought extinct until its rediscovery in 1990. At least five populations have been located and the species appears to persist in areas with surface disturbance. The species is more abundant than originally believed and although it is globally rare, threats are unknown. Current information on the distribution, abundance, and life history is insufficient to support candidate status.

Oenothera psammophila (St. Anthony evening primrose) is part of the early successional community dominated by *Elymus flavescens* and *Psoralea lanceolata*. In 1983, approximately 50,000 individuals were known from 298 colonies. By 1994 this number had grown to roughly 85,000 individuals in 685 colonies. Recent studies indicate that threats from trampling and off-road vehicles are less than previously believed. In light of reduced levels of threat and improving status, this species is removed from candidate status.

Oenothera wolfii (Wolf's evening primrose) is known from six sites in Mendocino, Humboldt, and Del Norte counties, California and seven sites in Curry County, Oregon. The species faces limited threats from slope stabilization, road widening, and bridge replacement. Also, review of file information indicates insufficient status information to support issuance of a proposed listing for this species. The species is removed from candidate status.

Ophioglossum concinnum (pololei) was thought to be endemic to the Hawaiian Islands but taxonomic revisions have placed it within *o. polyphyllum*, a species found in Asia, South America, and Africa. This revision greatly increases the range and abundance of the species and it is removed from candidate status.

Orobanche parishii ssp. *brachyloba* (short-lobed broom-rape) occurs on the Pacific coast from San Luis Obispo south to Baja California and on the Channel Islands. It is associated with sandy soils in coastal bluff scrub, coastal dunes, and coastal scrub. Several new populations have recently been discovered on San Nicolas Island and San Miguel Island, supporting removal from candidate status.

Penstemon discolor (Catalina beardtongue) is known to occur in the Santa Catalina, Dragoon, Atascosa, Winchester, and Galiuro mountains of southeastern Arizona. Since 1991, several additional populations have been discovered. These discoveries lessen the significance of threats posed to the Santa Catalina population and supports removal from candidate status because a listing proposal is no longer warranted.

Pentachaeta exilis ssp. *aeolica* (slender pentachaeta) is a small, ephemeral plant associated with dry grasslands. Based on status information from 1977, the species is restricted to three populations in Monterey and San Benito counties, California. The only potential threat is grazing by cattle. The extent of this threat is not presently sufficient to warrant a proposed listing. Given the lack of recent status information to support issuance of proposed listing, and a lack of clearly identified threats, maintaining this species in candidate status is not warranted.

Phlox idahonis (Clearwater phlox) is endemic to moist meadows and streambanks in the Clearwater Mountains of north-central Idaho. The species occurs in relatively flat grassland/shrub habitats, ranging from 2,800 to 3,275 feet in elevation and is the only phlox occurring in mountain meadows of northern Idaho. This species is known from four metapopulations (eight occurrences), all within four miles of the town of Headquarters, Idaho. Although the timing and intensity of grazing may adversely affect the species, the threat from grazing is not sufficient to warrant a proposed listing for this plant. It is therefore being removed from candidate status.

Pleuropogon oregonus (Oregon semaphore grass) grows in moist meadows and marshlands at about 2,500 to 4,000 feet in elevation with numerous aquatic and semiaquatic associates. The species is known from two widely separated regions of Oregon. There are eight known populations, four in Lake County and four in Union County. Because the species faces only minor threats from grazing and stream channelization and is believed to be stable, removal from candidate status is justified.

Polemonium pectinatum (Washington polemonium) is found primarily along the outer margins of riparian areas near the transition with xeric vegetation in Lincoln, Whitman, and Adams counties, Washington and is believed extirpated from Spokane County. Currently there are 35 extant populations with an estimated total of 15,000 to 20,000 individuals. Minor threats have been reduced by a conservation agreement aimed at reducing the populations of noxious weeds and removal from candidate status is justified.

Polyctenium williamsiae (Williams' combleaf) is presently known from five occurrences in Washoe and Nye counties, Nevada. The species occurs on sandy clay margins and bottoms of ephemeral pools in sagebrush scrub. At its spring 1995 meeting, the Northern Nevada Native Plant Society Rare Plant Committee recommended removing this species from Category 1 candidate status but retaining it in Category 2 status. A listing proposal is no longer warranted for this species in light of the potential for locating additional populations and Federal agency efforts to conserve this plant, so it is removed from candidate status.

Potentilla basaltica (Soldier Meadows cinquefoil) occupies alkali meadows, seeps, and occasionally, marshes bordering thermal springs, outflow streams, and depressions in Soldier Meadows, Humboldt County, Nevada. The total population in 1990 was estimated to be 85,000 individuals in 10 sub-populations. More recently, a small, disjunct population was discovered on private lands in Lassen County, California. The Bureau of Land Management has adopted conservation practices to protect *P. basaltica* and the threatened desert dace (*Eremichthys acros*), thereby reducing the threats from grazing, wetland alteration, and recreational use and justifying removal from candidate status.

The Pecos springsnail (*Pyrgulopsis* [=*Fontelicella*] *pecosensis*) is endemic to southeastern New Mexico, occurring on mud and pebble substrates near the margins of springs. Threats to the water quality of the spring have been alleviated by purchase of the water rights and this species' status is believed to be improving. Potential threats from oil and gas development do not appear relevant since reserves that would affect the springs have not been identified.

The dusky gopher frog (*Rana areolata sevosa*) is part of a group of frogs that is subject to considerable taxonomic debate. One treatment considers gopher frogs as conspecific with crawfish frogs under *R. areolata*. An alternate treatment splits the gopher frogs from crawfish frogs, assigning the gopher frogs to *R. capito*. Neither designation is universally accepted. The distribution of the various subspecies of gopher frogs is also problematic. This taxon is removed from candidate status, pending resolution of the taxonomic and distribution questions raised above.

Ranunculus reconditus (obscure buttercup) is a perennial forb that historically grew in Wasco County, Oregon and across the Columbia River in Klickitat County, Washington. The Oregon sites were believed extirpated until 1988, when two populations were discovered. The estimated population sizes from 1988 surveys were 7,400 plants in Washington and 250–400 plants in Oregon. Minor threats from grazing and nonindigenous plants, coupled with the need for updated status information, justify removal of this species from candidate status.

Rorippa subumbellata (Tahoe yellow cress) occurs on sandy substrates, along lake margins, near stream mouths, and in back-beach depressions. Occurrence and availability of suitable habitat for *R. subumbellata* are correlated with lake water surface elevation. A dam constructed on the Truckee River outflow in 1871 allows lake surface elevation to fluctuate between 6,223 feet and 6,229.1 feet. Surveys of the entire lake shore conducted in 1993 counted approximately 6,500 individuals at 35 locations. The persistence of these populations over the last 15 years and recent colonization of new sites as water levels recede indicate that *R. subumbellata* should not be considered a candidate species.

Rubus nigerrimus (northwest raspberry) occurs primarily along the banks and channels of small streams that are tributary to the Snake River. The species is found at elevations ranging from 700 to 2,200 feet. It is known from 18 locations scattered among approximately 80 square miles in Whitman and Garfield counties, Washington. Most populations are small, consisting of 15 to 30 individuals and seedling establishment appears to be low. Removal of this species from candidate status is based primarily on a lack of current status information needed to support issuance of a proposed listing.

Scrophularia macrantha (Mimbres figwort) is a narrowly endemic herbaceous perennial found in the Mimbres Mountains and the Cooks Range in Grant and Luna counties, New Mexico. It is generally restricted to north-facing igneous cliffs and steep talus slopes from 6,500 to 8,200 feet in elevation. Status surveys conducted in 1982 and 1994 indicate the species is stable and previously identified threats from grazing and recreational use were over-emphasized since these activities did not occur in the species' habitat. It is hereby removed from candidate status.

Senecio huachucanus (Huachuca groundsel) is a herbaceous perennial that grows on steep, mesic, high elevation mountain slopes. The species is known from the Santa Rita and Huachuca Mountains in Arizona and the Sierra Azul, Sonora, Mexico. Aside from one population in the Santa Rita Mountains, populations tend to be isolated and small (less than a few hundred plants). The Santa Rita population probably contains thousands of plants on many acres in remote, wilderness lands. Since 1991, populations at two sites in the Huachuca Mountains, one site in the Sierra Azula, and the large population in the Santa Rita Mountains have been discovered, indicating the species is more widespread than previously believed and should be removed from candidate status.

Sidalcea covillei (Owens Valley checkermallow) grows in alkaline and subalkaline meadows in the Owens River drainage in California. It is restricted to 31 sites in Inyo County and occurs on habitat protected in part by conservation efforts in the eastern Mohave Desert. The primary threat to the species was believed to be hydrologic alteration and grazing, but these threats no longer exist. The species is removed from candidate status.

Sidalcea stipularis (Scadden Flat checkerbloom) is known from only two occurrences: one on private land and the second on a utility right-of-way. No threats to the species have been identified. *S. stipularis* is believed to be stable and does not warrant status as a candidate species.

Sphaeromeria compacta (Charleston tansy) is known only from the Spring Mountains, Clark County, Nevada, where it occurs at timberline and above. It occurs on talus slopes, in frost-heave broken rubble, and on gravelly slopes in limestone-derived soils. The species is known from three separate populations but individual numbers are unknown. The primary threat is trampling by hikers. In the face of limited status data and minor threats, the species is removed from candidate status.

Streptanthus albidus ssp. *peramoenus* (most beautiful jewelflower) is the subject of an ongoing taxonomic revision. New subspecies of *S. albidus* may be named and some new populations of *S. albidus* ssp. *peramoenus* may be identified. As a result, the range and current status are unknown, supporting removal from candidate status pending the results of the taxonomic revisions.

Streptanthus brachiatus ssp. *brachiatus* (Socrates Mine jewelflower), *Streptanthus brachiatus* ssp. *hoffmanii* (Freed's jewelflower), and *Streptanthus morrisonii* ssp. *hirtiflorus* are very rare and vulnerable subspecies that are the subjects of ongoing status reviews. The Bureau of Land Management (BLM) protects known locations from disturbance and the potential for habitat loss from geothermal development in the Geysers Geothermal Steamfield has been reduced by BLM protection and reduced rates of geothermal exploitation. Information in Service files is currently insufficient to support issuance of proposed listings, so these subspecies are removed from candidate status.

Streptanthus morrisonii ssp. *elatus* (Three Peaks jewelflower) is known only from a few serpentine barrens in Lake County, California. Habitat for this species has been seriously impacted by mining and road-building, but recent actions by BLM will protect habitat for this species. Information in Service files is currently insufficient to support issuance of proposed listings, so this subspecies is removed from candidate status.

Synthyris ranunculina (Charleston kittentails) is found in permanently damp areas, moist meadows, along creek corridors, snow banks, on moss-covered rock, and moist cliff crevices. All known sites are on the eastern flank of the Spring Mountains Range at elevations ranging from 8,600 to 11,800 feet. The species is known only from lands within the Toiyabe National Forest's Spring Mountains Recreation Area and the Service and U.S. Forest Service are developing an ecosystem-level conservation agreement to provide for long-term conservation of this species. Minor historic threats (from trampling by horses and hikers and spring manipulation) support removal from candidate status.

Trifolium polyodon (Pacific Grove clover) was included as part of the common *Trifolium variegatum* in a recent taxonomic revision. This species is removed from candidate status because it is no longer a listable entity under the Act.

Author

This notice was compiled from materials supplied by the Service's staff biologists located throughout the country in regional and field offices. The materials were compiled by Dr. Richard E. Sayers, Jr., Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, NW., Mailstop ARLSQ–452, Washington, DC 20240 (phone 703/358–2105; facsimile 703/358–1735).

Authority: The authority for this notice is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: February 16, 1996.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 96–4413 Filed 2–27–96; 8:45 am]

BILLING CODE 4310–55–P

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Notices

Federal Register
Vol. 61, No. 40
Wednesday, February 28, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV95–997]

Notice for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection in support of the AMS/Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Persons Not Subject to the Peanut Marketing Agreement based on re-estimates.

DATES: Comments on this notice must be received by April 29, 1996.

ADDITIONAL INFORMATION OR COMMENTS: Contact Richard Lower, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C., 20090–6456, (202) 720–2020 or Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION:

Title: Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Person's Not Subject to the Peanut Marketing Agreement.

OMB Number: 0581–0163.

Expiration Date of Approval: March 31, 1996.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: After aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. Under authority of the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), Peanut Marketing Agreement No. 146 and the Peanut Administrative Committee (Committee) were established by the Secretary in 1965. The Agreement was signed by a majority of domestic peanut handlers (signatory handlers).

Public Law 101–220, enacted December 12, 1989, amended section 608b of the Act to require that all handlers who have not signed the Agreement (non-signatory handlers) be subject to quality, handling, and inspection requirements to the same extent and manner as are required under the Agreement. Regulations to implement Pub. L. 101–220 were issued and made effective on December 4, 1990 (55 FR 49983). It is estimated that 5 percent of the domestic peanut crop is marketed by non-signatory handlers and the remainder of the crop is handled by signatory handlers.

The objective of the Agreement and the non-signatory handling regulations (7 CFR part 997) is to ensure that only wholesome peanuts enter edible market channels. Under both regulations, farmers stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to non-edible uses. Both regulations also provide that shelled peanuts meeting minimum outgoing quality requirements must be chemically analyzed for aflatoxin contamination.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .33 hours per response.

Respondents: Peanut handlers and service industries.

Estimated Number of Respondents: 45.

Estimated Number of Responses per Respondent: 26.

Estimated Total Annual Burden on Respondents: 377.55 hours.

Copies of this information collection can be obtained from Richard Lower, Marketing Specialist, at (202) 720–2020.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of USDA's oversight of the program; (2) the accuracy of the collection burden estimate and the validity of the methodology and assumptions used in estimating the burden on respondents; (3) ways to enhance the quality, utility and clarity of the information to be requested; and (4) ways to minimize the burden, including the use of automated and electronic technologies.

Comments should reference OMB No. 0581–0163 and be sent to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C., 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 22, 1996.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–4503 Filed 2–27–96; 8:45 am]

BILLING CODE 3410–02–P

[Docket No. FV95–948]

Notice for Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Irish Potatoes Grown in Colorado, Marketing Order 948.

DATES: Comments on this notice must be received by April 29, 1996 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, U. S. Department of Agriculture, 1220 SW Third Avenue, Room 369, Portland, OR 97204, Tel: (503) 326–2724, Fax (503) 326–7440.

SUPPLEMENTARY INFORMATION:

Title: Irish Potatoes Grown in Colorado, Marketing Order 948.

OMB Number: 0581–0111.

Expiration Date of Approval: April 30, 1996.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the Colorado marketing order program, which has been operating since 1941.

Under the Colorado potato marketing order, potatoes sent to processing are exempt from inspection and grade requirements but must be shipped under a special purpose shipment exemption. To ensure high quality fresh market shipments, producers must notify the Colorado Potato Committee (committee) of such special purpose shipments. Further, any business which operates as a potato canner, freezer, processor, or pre-peeler must register with the committee. These forms enable the committee, and thus, the Secretary to better monitor exempt shipments and ensure compliance with provisions of the marketing order and the AMAA.

Potato producers and handlers who are nominated by their peers to serve as representatives on the committee must file nomination forms with the Secretary.

Formal rulemaking amendments to the order must be approved in referenda conducted by the Secretary. Also, the Secretary may conduct a continuance referendum to determine industry support for continuation of the order. Such referenda ballots are included in this request.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Division regional and headquarter's staff, and authorized employees of the committee. AMS is the primary user of the information and authorized committee employees are the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.1494 hours per response.

Respondents: Potato producers and for-profit businesses handling fresh and processed potatoes produced in Colorado.

Estimated Number of Respondents: 526.

Estimated Number of Responses per Respondent: 7.074.

Estimated Total Annual Burden on Respondents: 556 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the functioning of the Colorado marketing order program and USDA's oversight of that program; (2) the accuracy of the collection burden estimate and the validity of methodology and assumptions used in estimating the burden on respondents; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden, including use of automated or electronic technologies.

Comments should reference OMB No. 0581–0111 and the Colorado Marketing Order No. 948, and be sent to USDA in care of Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, U. S. Department of Agriculture, 1220 SW Third Avenue, Room 369, Portland, OR 97204. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: February 22, 1996.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–4504 Filed 2–27–96; 8:45 am]

BILLING CODE 3410–02–P

[Docket No. TB–96–15]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for a currently approved information collection in support of the Tobacco Statistics Act of 1929, the Agricultural Marketing Act of 1946, and Regulations Governing the Tobacco Stocks and Standards.

DATES: Comments on this notice must be received by April 29, 1996.

ADDITIONAL INFORMATION: Contact Henry R. Martin, Chief, Market Information and Program Analysis Branch, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 505 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 205–0489.

SUPPLEMENTARY INFORMATION:

Title: Tobacco Stocks Report and the Quarterly Report of Manufacture and Sales of Snuff, Smoking, and Chewing Tobacco.

OMB Number: 0581–0004.

Expiration Date of Approval: September 30, 1996.

Type of Request: Extension of a currently approved information collection.

Abstract: The Tobacco Statistics Act of 1929 (7 U.S.C. 501–508) provides for the collection and publication of statistics of tobacco by the Department of Agriculture with regard to quantity of leaf tobacco in all forms in the United States and Puerto Rico, owned by or in the possession of dealers, manufacturers, growers' cooperative associations, and others with the exception of the original growers of the tobacco.

The statistics shall show the quantity of tobacco in such detail as to types, as the Secretary of Agriculture shall deem to be practical and necessary and shall be summarized as of January 1, April 1, July 1, and October 1 of each year and are due within 15 days of the summarized dates.

The information furnished under the provisions of this Act shall be used only for statistical purposes for which it is supplied. No publication shall be made by the Secretary of Agriculture whereby the data furnished by any particular establishment can be identified, nor shall anyone other than the sworn employees of the Department of Agriculture be allowed to examine the individual reports.

The regulations governing the Tobacco Stocks and Standards Act (7

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CFR Part 30) issued under the Tobacco Statistics Act specifically address the reporting requirements. Tobacco in leaf form or stems is reported by types of tobacco and whether stemmed or unstemmed. Tobacco in sheet form shall be segregated as to whether for cigar wrapper, cigar binder, for cigarettes, or for other products.

Tobacco stocks reporting is mandatory. The basic purpose of the information collection is to ascertain the total supply of unmanufactured tobacco available to domestic manufacturers and to calculate the amount consumed in manufactured tobacco products. This data is also used for the calculation of production quotas for individual types of tobacco and for price support calculations.

The Quarterly Report of Manufacture and Sales of Snuff, Smoking, and Chewing Tobacco is voluntary. Prior to 1965, information on the manufacture and sale of snuff, smoking, and chewing tobacco products was available from Treasury Department publications on the collection of taxes. With repeal of the Federal tax in 1965, the industry requested that the collection of basic data be continued to maintain the statistical series and all the major manufacturers agreed to furnish information. Federal taxes were reimposed in 1985 for snuff and chewing tobacco and the Treasury Department began reporting data on these products, but not in the detail desired by the industry. Data from this report is also used in the calculations to determine the production quotas of types of tobacco used in these products.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) directs and authorizes the Secretary of Agriculture to collect, tabulate, and disseminate statistics on marketing agricultural products including market supplies, storage stocks, quantity, quality and condition of such products in various positions in the marketing channel, utilization of sub-products, shipments, and unloads.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.92 hours per response.

Respondents: Primarily tobacco dealers, manufacturers, and growers—cooperative associations including small businesses or organizations.

Estimated Number of Respondents: 101.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 372 hours.

Copies of this information collection can be obtained from Henry R. Martin, Chief, Market Information and Program Analysis Branch, at (202) 205–0489.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriated automated, electronic, mechanical, or other forms of information technology. Comments may be sent to Henry R. Martin, Chief, Market Information and Program Analysis Branch, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 505 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456 and will be available for public inspection in Room 505 Annex Building, USDA, AMS, Tobacco Division, Market Information and Program Analysis Branch, 300 12th Street, S.W., Washington, D.C. 20250. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 22, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–4505 Filed 2–27–96; 8:45 am]

BILLING CODE 3410–02–P

[CN–95–004]

Recommendations of Advisory Committee on Universal Cotton Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) held a meeting of the Universal Cotton Standards Advisory Committee in Memphis, Tennessee on June 15 and 16, 1995. This notice announces that the Advisory Committee recommended that the Universal Cotton Standards be expanded to include the current USDA High Volume Instrument (HVI) Calibration Cottons, laboratory atmospheric conditions and sample conditioning practices and procedures.

DATES: Comments must be received by March 29, 1996.

ADDRESSES: Comments and inquiries should be addressed to Ross Griffith, Cotton Division, AMS, USDA, Room 2641–S., P.O. Box 96456, Washington, D.C. 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Rm. 2641–S., 14th & Independence Avenue, SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ross Griffith, (202) 720–3193.

SUPPLEMENTARY INFORMATION: The Universal Cotton Standards Advisory Committee meets triennially to consider any necessary changes to the Universal Cotton Standards and to review freshly prepared sets of Universal Cotton Standards for conformity with the existing standards.

At this meeting, the committee recommended expanding the Universal Cotton Standards to include the current USDA High Volume Instrument (HVI) Calibration Cottons (Long-Strong and Short-Weak); laboratory atmospheric conditions of 70 degrees Fahrenheit , plus or minus one degree, and 65 percent Relative Humidity, plus or minus two percent; and sample conditioning practices and procedures as follows: "Samples of cotton must be directly exposed to approved laboratory atmospheric conditions until their moisture content reaches equilibrium with that of the atmosphere. This equilibrium moisture content usually ranges from 6.75 percent to 8.25 percent. Conditioning of samples in sacks, wrappers, or other coverings is not permissible".

High Volume Instrument (HVI) Classing of cotton has been available on an optional basis since 1980. Since 1991, HVI classification has been provided on all cotton classed by USDA along with the classer color grade and leaf grade which conform to the Universal Grade Standards. HVI systems provide the most scientific and reliable sources of cotton quality information available. The advisory committee includes representatives of all segments of the U.S. cotton industry and the 21 overseas cotton associations that are signatories to the Universal Cotton Standards Agreement. Adoption of this recommendation should result in the establishment of a universal language for the marketing of U.S. cotton under the HVI Classification System.

Authority: United States Cotton Standards Act (7 U.S.C. 51 *et seq.*)

Dated: February 22, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–4506 Filed 2–27–96; 8:45 am]

BILLING CODE 3410–02–P

Forest Service

Olympic Cross Cascade Pipeline Project, Mt. Baker-Snoqualmie National Forest, Snohomish, King, Kittitas, Grant, Adams, and Franklin Counties, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, as lead federal agency will prepare an environmental impact statement on a proposal by Olympic Pipe Line Company (OPL) to construct a new 230-mile underground/aboveground pipeline to deliver motor gasoline, diesel fuel, and aviation jet fuel from north of OPL's Woodinville Station, Washington to a new distribution facility near the City of Kittitas, Washington and an existing facility in Pasco, Washington. This environmental impact statement will be a combined NEPA/SEPA document. The lead state agency will be the Energy Facility Site Evaluation Council. If approved, construction would commence in 1997 and be completed in about one year.

DATES: Comments concerning the scope of the analysis should be received in writing by April 8, 1996.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to: Dennis E. Bschor, Forest Supervisor, Mt. Baker-Snoqualmie National Forest, 21905—64th Avenue West, Mountlake Terrace, WA 98043–2278.

FOR FURTHER INFORMATION CONTACT: Steve Johnson, Project Manager, North Bend Ranger District, 42404 SE North Bend Way, North Bend, WA 98045; phone (206) 888–1421.

SUPPLEMENTARY INFORMATION: The Olympic Pipe Line Company (OPL), located in Renton, Washington, proposes to construct a new 230-mile-long, 14-inch-diameter pipeline from north of OPL's Woodinville Station near the King/Snohomish County line, in western Washington, to a new distribution facility near the City of Kittitas and to the existing terminal facility in Pasco, in southeastern Washington. It would start as a 14-inch pipeline in Snohomish County north of the King/Snohomish County line, travel eastward and then southeast to North Bend, run east along/near the Interstate 90 highway corridor, and cross over Snoqualmie Pass. The pipeline would then continue eastward along/near I–90 to the City of Kittitas where it will change to a 12-inch pipeline, continue past Ellensburg and the Yakima Training Center, cross under the Columbia River downstream of Wanapum Dam, run toward the Columbia National Wildlife Refuge, and then travel south to Pasco where it would connect with existing facilities. The pipeline would be placed underground and above-ground, depending upon design requirements, and six pump stations would be placed along the pipeline route. The pipeline would transport motor gasoline, diesel fuel, and aviation jet fuel.

If approved, construction would commence in 1997 and be completed in about one year. Construction of the pipeline would require a 2- to 3-foot-wide and 36- to 60-inch-deep (or deeper) trench. Construction typically occurs in about a 60-foot-wide area and the permanent right-of-way would typically be about 30 feet wide. The pipeline, which would be transported in 40- to 80-foot lengths, would be made of high-grade steel coated with a polyolefin-type material to prevent corrosion. The welds of the pipeline would be X-ray tested, and the entire line would be hydrostatically tested to 125% of the maximum pressure allowed during operation of the pipeline.

Scoping meetings to receive public comments on the project, and the associated open houses and land use hearings, will occur as follows: March 12, 1996 (Ellensburg High School, Ellensburg, WA); March 13, 1996 (Jackson High School, Mill Creek, WA); March 14, 1996 (Snoqualmie Middle School, Snoqualmie, WA); March 26, 1996 (Royal High School, Royal City, WA); March 27, 1996 (Columbia Basin Community College, Pasco, WA); and March 28, 1996 (Othello High School, Othello, WA). Each meeting date will begin with an open house at 5 p.m., followed by a land use hearing and a scoping meeting. Potential issues of concern for the environmental impact statement include the risk of a spill; impacts to health and safety, soil erosion, stream and river crossings, water quality, fish and wildlife, wetlands, agriculture, forest land, and transportation and utilities; and compatibility with existing land uses.

Three alternatives are considered for this project, including: constructing an east-west pipeline route as proposed above; building a new north-south pipeline from Renton, WA, to Portland, OR, and continuing barging on the Columbia River to Pasco; or continuing with the current no action alternative. Optional subcomponents to the proposed action include: (1) Shortening the pipeline so that it terminates in Moses Lake and rebuilding the Moses Lake-to-Spokane pipeline; (2) using the same initial route but turning south near Ellensburg and going through the Yakima Valley to Pasco; (3) routing a 300-mile pipeline through one of two alternative routes across Stevens Pass and terminating it in Pasco: (4) routing the pipeline through one of two other routes through Snoqualmie Pass and terminating in Pasco; and (5) routing the pipeline through Stampede Pass and terminating in Pasco. The no action alternative (existing practices) includes the following subcomponents: (1) Piping to Portland and then barging from there to Pasco on the Columbia River; (2) shipping by barge or tanker from Puget Sound, south along the Washington coast to Portland, and then transferring to river barges for shipment to Pasco on the Columbia River; and (3) transporting by tanker truck across the Cascade Mountains to Pasco. The only permit required for the project is an Energy Facility Site Evaluation Council Site Certification.

The Forest Service will be the lead federal agency. Cooperating agencies include the Bureau of Land Management (Joseph Buesing, Spokane District Manager), Bureau of Reclamation (John W. Keys, III, Regional Director), and Department of the Army (Lieut. General C.G. Marsh, Installation Commander, Headquarters, I CORPS and Fort Lewis). This environmental impact statement will be a combined NEPA/SEPA document. The lead state agency under the Washington State Environmental Policy Act will be the Energy Facility Site Evaluation Council (Allen J. Fiksdal, EFSEC Project Manager).

Interested parties are invited to provide suggestions and comments about the proposed project in writing to the address provided above, or at the public hearings that will be held throughout the state. At this time, it is estimated the draft environmental impact statement will be issued during the summer of 1996. The final environmental impact statement will be issued early in 1997.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of the project of several

court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review process so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

Dated: February 15, 1996.

Gene R. Cyrus,

Acting Forest Supervisor.

[FR Doc. 96–4511 Filed 2–27–96; 8:45 am]

BILLING CODE 3410–11–M

Small Business Timber Sale Set-Aside Program; Notice and Comment Opportunity on Recomputation of Shares

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Forest Service gives notice that it has revised its internal administrative direction in Forest Service Handbook 2409.18 regarding recomputation of shares under the Small Business Timber Sale Set-Aside Program to provide a procedure for timber industry review and comment prior to a final decision on recomputed shares. This prior notice and comment opportunity is intended to respond to industry's concerns about losing the privilege of administrative appeal of recomputation decisions when agency appeal regulations at 36 CFR parts 215, 217, and 251 were revised in response to statutory direction in 1992. The new procedures have been issued as Interim Directive Number 2409.18–96–1.

EFFECTIVE DATE: The Interim Directive was effective February 9, 1996.

ADDRESSES: Single copies of the Interim Directive may be obtained by calling or writing local Forest Service offices as listed in 36 CFR 200.4, by telephoning the person listed under **FOR FURTHER INFORMATION CONTACT** or by writing Director, Timber Management, (3NW Aud. Bldg.), USDA Forest Service, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Rod Sallee, Timber Management Staff, (202) 205–1766.

SUPPLEMENTARY INFORMATION:

Background

The Forest Service Small Business Timber Sale Set-Aside Program was adopted July 26, 1990 (55 FR 30485). The agency administers the program in cooperation with the Small Business Administration (SBA) under the authorities of The Small Business Act, The National Forest Management Act of 1976, and SBA's regulations at Part 121 of Title 13 of the Code of Federal Regulations (13 CFR part 121). The program is designed to ensure that small business timber purchasers have the opportunity to purchase a fair proportion of National Forest System timber offered for sale.

Direction to guide administration of the Set-Aside Program is issued in Forest Service Manual (FSM) Chapter 2430 and Chapter 90 of Forest Service Timber Sale Preparation Handbook (FSH 2409.18). The Program requires the Forest Service to recalculate the shares of timber sales to be set-aside for small business, based on the actual history of harvest and/or purchase by small business every 5 years. Shares also must be recomputed, if there is a change in manufacturing capability, if purchaser size class changes, or if certain purchasers discontinue operations.

Prior to 1992, there was opportunity for administrative appeal of decisions associated with recomputation of new shares. In 1992, the agency adopted new administrative appeal procedures at 36 CFR part 215 in response to new statutory direction. Under the rules adopted at 36 CFR part 215, the Forest Service appeal process no longer covers decisions related to the recomputation of shares under the Small Business Set-Aside Program, because these decisions are not subject to National Environmental Policy Act regulations or procedures. These decisions also are not conditions of special use authorizations appealable under 36 CFR part 251, subpart C.

The small business share decision is based on technical information from the harvest and/or sales history of defined market areas and other information. Rather than providing a separate appeal procedure that allows challenge of decisions, the agency believes the decisionmaking process will be improved by allowing purchasers the opportunity to review and comment on proposed changes in shares and by allowing the decisionmaker to consider these comments in making the final decision. Accordingly, at Section 91.19 of FSH 2409.18, the agency has established procedures for giving notice to the affected timber purchasers in the area, for obtaining and considering comment, and for documenting the comments received and the agency's response as part of the final decision. The Interim Directive establishing these procedures as issued to Forest Service employees is set out at the end of this notice.

Dated: February 15, 1996.

Gray F. Reynolds,

Deputy Chief for National Forest System.

!!ID 2409.18–96–1

Expiration Date: 8/9/97

Forest Service Handbook

Washington, D.C.

FSH 2409.18—Timber Sale Preparation Handbook

Interim Directive: 2409.18–96–1.
Effective Date: February 9, 1996.
Expiration Date: August 9, 1997.
Chapter: 90—Programs With Small Business Administration.
Posting Notice: Last ID was 2409.18–95–2 to chapter 40.

This interim directive (ID) establishes new procedures at section 91.19 for giving timber purchasers notice and opportunity to comment on proposed share recomputations for the timber sale set-aside program. With adoption of the administrative appeal rules at 36 CFR part 215, share recomputation decisions were no longer appealable. These procedures in section 91.19 reinstate an opportunity for purchaser involvement in the recomputation decision.

Sterling J. Wilcox,

Acting Deputy Chief.

91.19—Establishing New Small Business Shares. Request review of all scheduled, periodic market share recomputations as well as any recomputation arising from a determination of structural change from the Small Business Administration (SBA) Regional Representative. If there are any disagreements between the SBA representative and the Forest Supervisor, refer the matter to the Regional Forester for resolution before giving notice of the proposed share recomputation to timber purchasers.

Following the review by the Small Business Administration, the responsible line officer shall take the following actions:

1. Give direct notice of the proposed new share to all timber purchasers on bidders' lists within the affected area, and invite their comment.

a. Advise the timber purchasers of the information used in recomputing shares and invite comment on the information used by the agency or on information that purchasers believe should have been considered. Also advise timber purchasers of the location where they can inspect the information used.

b. All comments postmarked within 30 calendar days following the date of mailing must be considered in arriving at the final share decision.

2. Following the 30-day review and comment period, consider the comments, make adjustments as may be appropriate, and prepare a letter or other document setting forth the final decision.

3. Give notice of the final decision to all purchasers on the bidders' lists within the affected area. Be sure to include a statement that the decision is not subject to administrative appeal. Make any new share effective at the beginning of the first 6-month analysis period following the decision to implement it.

4. In the notice of the final decision or an attachment to it, summarize the comments received, identify the number of persons who or entities that provided comments, and provide the deciding official's response to them.

[FR Doc. 96–4495 Filed 2–27–96; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

(Docket 12–96)

Foreign-Trade Zone 116—Beaumont, Texas; Application for Subzone Status, Clark Refining and Marketing, Inc. (Oil Refinery Complex), Jefferson County, Texas

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign Trade Zone of Southeast Texas, Inc., grantee of FTZ 116, requesting special-purpose subzone status for the oil refinery complex of Clark Refining and Marketing, Inc., located in Jefferson County, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 16, 1996.

The refinery complex (5,079 acres, 855 employees) consists of 4 sites and related pipelines in Jefferson County, Texas: *Site 1* (3,975 acres)—main refinery complex (215,000 BPD) located at 1801 S. Gulfway Drive, 3 miles southwest of Port Arthur; *Site 2* (775 acres)—Lucas/Beaumont Terminal storage facility (1.7 mil. barrels) located at 9405 West Port Arthur Road, 15 miles northwest of the refinery; *Site 3* (243 acres)—Fannett LPG storage terminal (3 mil. barrels) located at 16151 Craigen, near Fannett, some 25 miles west of the refinery; and *Site 4* (86 acres)—Port Arthur Products storage facility (1.8 mil. barrels) located at 1825 H.O. Mills Road, 4 miles northwest of the refinery. The refinery, storage facilities and pipelines operate as an integral part of the refinery complex.

The refinery complex is used to produce fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, distillates, diesel, and residual fuels. Petrochemical feedstocks include methane, ethane, propane, butane, butylene, propylene. Refinery by-products include sulfur and petroleum coke. About 65 percent of the crude oil (95 percent of inputs), and some feedstocks and motor fuel blendstocks used in producing fuel products are sourced abroad.

Zone procedures would exempt the operations involved from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate (nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery by-products (duty-free). The duty on crude oil ranges from duty-free to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 29, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 14, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, #1 Allen Center, Suite 1160, 500 Dallas, Houston, Texas 77002.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: February 22, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–4546 Filed 2–27–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–838]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Clad Steel Plate From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch or Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–3773 or (202) 482–0922, respectively.

The Applicable Statute:

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

Preliminary Determination:

As explained in the memoranda from the Assistant Secretary for Import Administration dated November 22, 1995, and January 11, 1996, the Department of Commerce (the Department) has exercised its discretion to toll all deadlines for the duration of the partial shutdowns of the Federal Government from November 15 through November 21, 1995, and December 16, 1995, through January 6, 1996. Thus, all deadlines in this investigation have been extended by 28 days, i.e., one day for each day (or partial day) the Department was closed. As such, the deadline for this preliminary determination was to be no later than April 4, 1996. However, because the sole respondent in the investigation

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failed to answer our questionnaire, we have expedited the determination.

We preliminarily determine that clad steel plate from Japan is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on October 19, 1995, (60 FR 54666, October 25, 1995), the following events have occurred:

On November 13, 1995, the U.S. International Trade Commission (ITC) notified the Department of its affirmative preliminary determination.

On December 7, 1995, the Department issued the antidumping questionnaire to The Japan Steel Works Ltd. (JSW), the only known Japanese producer and exporter to the United States of Clad Steel Plate. JSW informed the Department on January 19, 1996, that it would not be responding to the antidumping questionnaire.

Scope of the Investigation

The scope of this investigation is all clad [1] steel plate of a width of 600 millimeters ("mm") or more and a composite thickness of 4.5mm or more. Clad steel plate is a rectangular finished steel mill product consisting of a layer of cladding material (usually stainless steel or nickel) which is metallurgically bonded to a base or backing of ferrous metal (usually carbon or low alloy steel) where the latter predominates by weight.

Stainless clad steel plate is manufactured to American Society for Testing and Materials ("ASTM") specifications A263 (400 series stainless types) and A264 (300 series stainless types). Nickel and nickel-base alloy clad steel plate is manufactured to ASTM specification A265. These specifications are illustrative but not necessarily all-inclusive. Clad steel plate within the scope of this investigation is classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") 7210.90.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is September 1, 1994, through August 31, 1995.

Facts Available

Pursuant to section 776 of the Act, the Department will use the facts otherwise available if necessary information is not available on the record, or if an interested party or any other person withholds requested information, fails to provide such information by the deadlines for submission of the information or in the form and manner requested, significantly impedes a proceeding, or provides such information but the information cannot be verified.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

Section 776(c) explains that where the Department relies on secondary information, the Department will, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA), accompanying the URAA, clarifies that the petition is secondary information. *See* SAA, published in H. Doc. 103–316, 103d Cong., 2d Sess. at 807, 870. The SAA also clarifies that corroborate means to determine that the information used has probative value. However, where corroboration is not practicable, the Department may use the uncorroborated information.

The Department finds that, because JSW has not answered our questionnaire, it has failed to cooperate to the best of its ability to comply with our request for information. Accordingly, the application of section 776(b) is warranted. In this case, the petition is the only information on the record which could form the basis for a dumping calculation. Therefore, the Department has based the margins for JSW on information in the petition.

In accordance with section 776(c) of the Act, the Department attempted to corroborate the petition information by comparing the petition information on export price to U.S. Customs data and Japanese export statistics. Both of these sources record prices based on the HTSUS subheading 7210.90.10.00, and tend to corroborate the prices contained in the petition. (See memorandum dated February 16, 1996.)

Because Lukens Steel Company (the petitioner) based the normal value calculation on constructed value in the petition, we were able to examine the supporting documentation regarding the valuation of variable costs for labor, electricity, natural gas, and other factors (principally backing steel and insert metal costs) in Japan and because that supporting information was from independent, public sources, we found that those costs have probative value.

Accordingly, we have preliminarily relied upon the information contained in the petition, and have assigned to JSW a margin of 118.53 percent.

All-Others Rate

Under section 735(c)(5) of the Act, the "all-others rate" will normally be a weighted average of the weighted-average dumping margins established for all exporters and producers, but will exclude any zero or *de minimis* margins, or any margins based entirely on the facts available. However, this provision also states that if there are no margins other than those that are zero, *de minimis*, or based on the facts available, the Department may use other reasonable methods to calculate the all-others rate, including a weighted-average of such margins. In this case, as discussed above, the margin assigned to JSW is 118.53 percent based on the facts available, and there is no alternative method upon which to base the all others rate. Therefore, the Department determines the all-others rate to be 118.53 percent as well.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of Clad Plate Steel from Japan, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The dumping margins are as follows:

Exporter/manufacturer	Margin percentage
The Japan Steel Company	118.53
All others	118.53

The all others rate applies to all entries of subject merchandise except for entries from exporters that are identified above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than March 1, 1996, and rebuttal briefs, no later than March 8, 1996. A list of authorities used and a summary of arguments made in the briefs should accompany these briefs. The summary must be limited to five pages total, including footnotes. In accordance with 19 CFR 353.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held at 10 a.m. Tuesday March 12, 1996, at the U.S. Department of Commerce, Room 3606, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by May 1, 1996.

This determination is published pursuant to section 733(f) of the Act.

Dated: February 22, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–4548 Filed 2–27–96; 8:45 am]

BILLING CODE 3510–DS–P

[1] Cladding is the association of layers of metals of different colors or natures by molecular interpenetration of the surfaces in contact. This limited diffusion is characteristic of clad products and differentiates them from products metalized in other manners (e.g., by normal electroplating). The various cladding processes include pouring molten cladding metal onto the basic metal followed by rolling; simple hot-rolling of the cladding metal to ensure efficient welding to the basic metal; any other method of deposition or superimposing of the cladding metal followed by any mechanical or thermal process to ensure welding (e.g., electro-cladding), in which the cladding metal (nickel, chromium, etc.) is applied to the basic metal by electroplating, molecular interpenetration of the surfaces in contact then being obtained by heat treatment at the appropriate temperature with subsequent cold-rolling. See Harmonized Commodity Description and Coding System Explanatory Notes, Chapter 72, General Note (IV) (C) (2) (e).

[A–122–823]

Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review, and revocation in part of antidumping duty order.

SUMMARY: On August 19, 1993, the Department of Commerce (the Department) published an antidumping duty order on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. On November 30, 1995, the Department simultaneously initiated a changed circumstances antidumping administrative review and issued the preliminary results of this review expressing an intent to revoke the order in part. We are now revoking this order in part, with regard to certain cut-to-length carbon steel plate free of Cobalt-60 and other radioactive nuclides (Cobalt-60 free carbon steel plate), based on the fact that domestic parties have expressed no interest in the importation or sale of Cobalt-60 free cut-to-length carbon steel plate produced in Canada.

EFFECTIVE DATE: February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 1995, Sidbec-Dosco Inc. (Sidbec-Dosco) and Canberra Industries, Inc., (Canberra) requested that the Department conduct a changed circumstances administrative review to determine whether to partially revoke the order with regard to Cobalt-60 free cut-to-length carbon steel plate. The order with regard to imports of other cut-to-length carbon steel plate was not affected by this request. In addition, on November 13, 1995, the petitioners informed the Department in writing that they did not object to the changed circumstances review and had no interest in the importation or sale of Cobalt-60 free cut-to-length carbon steel plate produced in Canada.

We preliminarily determined that petitioner's affirmative statement of no interest constitutes good cause for conducting a changed circumstances review. Consequently, on November 30, 1995, the Department published a notice of initiation and preliminary result of changed circumstances antidumping duty administrative review to determine whether to revoke this order in part (60 FR 61537). We gave interested parties an opportunity to comment on the preliminary results of this changed circumstances review. We received no comments.

Scope of Review

The merchandise covered by this changed circumstance review includes cut-to-length carbon steel plate meeting the following criteria: (1) 100% dry steel plates, virgin steel, no scrap content (free of Cobalt-60 and other radioactive nuclides); (2) .290 inches maximum thickness, plus 0.0, minus .030 inches; (3) 48.00 inch wide, plus .05, minus 0.0 inches; (4) 10 foot lengths, plus 0.5, minus 0.0 inches; (5) flatness, plus/minus 0.5 inch over 10 feet; (6) AISI 1006; (7) tension leveled; (8) pickled and oiled; and (9) carbon content, .03 to .08 (max). This merchandise is currently classified under subheading HTS 7208.43.0000. The HTS numbers are provided for convenience and Customs purposes. The written description of the scope of these reviews remains dispositive.

This changed circumstance administrative review covers all manufacturers/exporters of Cobalt 60 free cut-to-length carbon steel plate from Canada.

Final Results of Review; Partial Revocation of Antdumping Duty Order

The affirmative statement of no interest by petitioners in this case constitutes changed circumstances sufficient to warrant partial revocation of this order. Therefore, the Department is partially revoking this order on certain cut-to-length carbon steel plate from Canada with regard to Cobalt 60 free cut-to-length carbon steel plate, from Canada in accordance with sections 751 (b) and (d) and 782(h) of the Tariff Act of 1930, as amended (the

Act) and 19 CFR 353.25(d)(1). This partial revocation applies to all entries of the subject merchandise entered or withdrawn from warehouse, for consumption on or after August 1, 1995, the beginning date of the third administrative review period (August 1, 1995–July 31,1996) if initiated.

The Department will instruct the U.S. Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of Cobalt 60 free cut-to-length carbon steel plate from Canada entered, or withdrawn from warehouse, for consumption on or after August 1, 1995. The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of Cobalt 60 free cut-to-length carbon steel plate from Canada entered, or withdrawn from warehouse, for consumption on or after August 1, 1995, in accordance with Section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protection orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751 (b) and (d) and 782(h) of the Act and sections 353.22(f) and 353.25(d) of the Department's regulations.

Dated: February 21, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–4547 Filed 2–27–96; 8:45 am]

BILLING CODE 3510–DS–P

INTERNATIONAL TRADE ADMINISTRATION

[A–475–818]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Pasta From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 28, 1996.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Michelle Frederick, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5288 or (202) 482–0186, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (URAA).

Scope of Investigation

The scope of this investigation consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this investigation are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise under investigation is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Case History

On December 14, 1995, the Department of Commerce (the Department) made its affirmative preliminary determination of sales at less than fair value (*Preliminary Determination*) in the above-referenced investigation (61 FR 1344, January 19, 1996). We disclosed our calculations for the preliminary determination on January 18 and 22, 1996, to the respondents and petitioners, respectively, pursuant to their requests. We disclosed our calculations to Pastificio Guido Ferrara (Ferrara), an interested party in the investigation on January 25, 1996. After publication of the preliminary determination, the petitioners, Ferrara, and two of the respondents De Matteis Agroalimentare S.p.A. (De Matteis), and La Molisana Industrie Alimentari S.p.A. (La Molisana) alleged that the Department made ministerial errors in calculating the preliminary margins. We have determined that ministerial errors were made with regards to the following respondents.

Arrighi

We agree that a ministerial error was made with regard to the calculation of the weighted-average percent margin. We also agree that a ministerial error was made with regard to the interest expense used for constructed value. (For specific details of this and the other allegations and our analysis of them, see Memorandum from the Team to Barbara R. Stafford dated February 9, 1996.)

Delverde

We agree with the petitioners that we made ministerial errors with respect to the cost of manufacture and the difference in merchandise adjustment for certain U.S. products. With regard to the calculation of U.S. packing expenses, we also agree with the petitioners' allegation that a ministerial error was made.

De Matteis

We agree with De Matteis' allegation that we inadvertently excluded a number of U.S. sales and double-counted its yield for purchased semolina.

Pagani

We agree with the petitioners' allegations that we inadvertently discarded certain sales although not for the reason alleged by the petitioners. We also agree that we miscoded one variable, excluded one variable from the price strings in our calculations, treated some of Pagani's expenses as if they were denominated in Italian lira, and used an incorrect programming statement which inadvertently caused some U.S. sales not to match to a normal value.

Amendment of Preliminary Determination

The Department has stated that it will amend a preliminary determination only to correct for significant ministerial errors (*i.e.*, corrections that result in a difference of five absolute percentage points and that are at least 25 percent greater or less than the preliminary margin, and corrections resulting in a margin of zero or de minimis). *See, Notice of Amendment to Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Bicycles From the People's Republic of China*, 60 FR 64016 (December 13, 1995).

Given the facts of this investigation, as noted above, we are amending Arrighi's and Pagani's preliminary dumping margins to correct for the ministerial errors, since the correction of these ministerial errors results in a difference between a dumping margin of zero (or *de minimis*) and a margin of greater than *de minimis*. The corrected dumping margins for Arrighi and Pagani are 6.14 and 6.42 percent, respectively. As a result, the "All Others" rate is now 11.94 percent.

We are not amending the preliminary margins of De Matteis and Delverde because the corrections of the ministerial errors do not result in a difference of five absolute percentage points from the preliminary margin rates, nor do they result in a difference between a *de minimis* margin and a margin of greater than *de minimis*.

In its allegation, La Molisana stated that the alleged errors were not significant, as defined above, therefore, no further analysis was warranted. However, we are correcting the company's deposit rate. In the preliminary determination, we stated that the deposit rate was 14.03 percent. While the dumping margin that we calculated was correct, we incorrectly calculated the deposit rate. The correct rate is 14.75 percent.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of pasta from Italy that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this amended preliminary determination notice in the **Federal Register**. As discussed in the *Preliminary Determination*, we are subtracting for deposit purposes, the rate attributable to the export subsidies found in the concurrent countervailing duty investigation (0.62 percent for Arrighi) from the antidumping margin percentages for Arrighi. The "All Others" deposit rate is based on subtracting the rate attributable to the export subsidies found in the countervailing duty investigation for those companies that are respondents in the antidumping investigation and are found to have dumping margins. In keeping with Article 17.4 of the WTO Agreement on Subsidies and Countervailing Measures, the Department will terminate the suspension of liquidation in the companion countervailing duty investigation of *Certain Pasta From Italy*, effective February 14, 1996, which is 120 days after the date of publication of the preliminary determination. Accordingly, on February 14, 1996, the antidumping deposit rate will revert to the full amount calculated in this amended preliminary determination. These suspension of liquidation instructions will remain in effect until further notice.

Manufacturer/producer/exporter	Original margin	Revised margin	Deposit rate
Arrighi	.06	6.14	5.52
Pagani	.14	6.42	6.42
All Others	15.85	11.94	11.78

ITC Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission of our amended preliminary determination.

This amended preliminary determination is published in accordance with section 733(f) of the Act.

Dated: February 21, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–4549 Filed 2–27–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Extension of Time Limits of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for preliminary and final results in the administrative review of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from the People's Republic of China (PRC), covering the period June 1, 1994, through May 31, 1995, since it is not practicable to complete the reviews within the time limits mandated by the Tariff Act of 1930, as amended, 19 U.S.C. 1675(a) (the Act).

EFFECTIVE DATE: February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Kris Campbell or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce has received requests to conduct an administrative review of the antidumping duty order on TRBs from the PRC. On August 16, 1995, the Department initiated this administrative review covering the period June 1, 1994, through May 31, 1995. The Department adjusted the time limits by 28 days due to the government shutdowns, which lasted from November 14, 1995, to November 20, 1995, and from December 15, 1995, to January 6, 1996. *See* Memorandum to the file from Susan G. Esserman, Assistant Secretary for Import Administration, January 11, 1996.

It is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with that section, the Department is extending the time limits for the preliminary results to July 27, 1996, and for the final results to January 23, 1997.

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 353.34(b). These extensions are in accordance with section 751(a)(3)(A) of the Act.

Dated: February 22, 1996.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 96–4545 Filed 2–27–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–301–003, C–301–601]

Extension of Time Limit for Countervailing Duty Administrative Reviews of the Suspension Agreements on Roses and Other Fresh Cut Flowers and Miniature Carnations From Colombia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limits for countervailing duty administrative reviews of suspension agreements.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for preliminary and final results of countervailing duty administrative reviews of the suspension agreements on Roses and Other Fresh Cut Flowers and Miniature Carnations from Colombia pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreement Act (hereinafter, "the Act").

EFFECTIVE DATE: February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Jean Kemp or Rick Johnson, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington D.C. 20230, Telephone (202) 482–3793.

POSTPONEMENT: Under the Act, the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the review within the statutory time limit of 365 days.

Product	Country	Review period	Initiation date	Prelim due date	Final due date
Roses & Other Cut Flowers (C–301–003)	Colombia	1/1/94 12/31/94	4/14/95	2/28/95	8/26/95
Miniature Carnations (C–301–601)	Colombia	1/1/94 12/31/94	4/14/95	2/28/95	8/26/95

In accordance with section 751(a)(3)(A) of the Act, the Department is extending, as noted above, the preliminary results of these reviews from a 245-day period to no later than a 365-day period, and the final results of these reviews from a 120-day period to no later than a 180-day period.

Dated: February 22, 1996.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 96–4553 Filed 2–27–96; 8:45 am]

BILLING CODE 3510–DS–P

Determination Not To Revoke Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its determination not to revoke the countervailing duty order listed below.

EFFECTIVE DATE: February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Cameron Cardozo, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1995, the Department published in the **Federal Register** (60 FR 51456) its intent to revoke the countervailing duty order listed below. Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party (as defined in section 355.25(i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to revocation and no interested party requests an administrative review by the last day of the 5th anniversary month.

Within the specified time frame, we received an objection from a domestic interested party to our intent to revoke the countervailing duty order. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke this order.

This determination is in accordance with 19 CFR 3545.25(d)(4).

COUNTERVAILING DUTY ORDER

Argentina: Leather (C–357–803)	10/02/90 55 FR 40212

Dated: February 12, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–4550 Filed 2–27–96; 8:45 am]

BILLING CODE 3510–DS–P

Determination Not To Revoke Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination Not To Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its determination not to revoke the countervailing duty order listed below.

EFFECTIVE DATE: February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Cameron Cardozo, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1995, the Department published in the **Federal Register** (60 FR 45398) its intent to revoke the countervailing duty order listed below. Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party (as defined in § 355.25 (i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to revocation and no interested party requests an administrative review by the last day of the 5th anniversary month.

Within the specified time frame, we received an objection from a domestic interested party to our intent to revoke the countervailing duty order. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke this order.

This determination is in accordance with 19 CFR 355.25(d)(4).

Countervailing duty order	
Canada: Steel Rail (C–122–805)	09/22/89, 54 FR 39032.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

Dated: February 22, 1996.

[FR Doc. 96–4554 Filed 2–27–96; 8:45 am]

BILLING CODE 3510–DS–P

Intent to Revoke Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Intent to Revoke Countervailing Duty Orders.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the countervailing duty orders listed below. Domestic interested parties who object to revocation of any of these orders must submit their comments in writing not later than the last day of March 1996.

EFFECTIVE DATE: February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Cameron Cardozo, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by the Department's regulations (at 19 C.F.R. 355.25(d)(4)), we are notifying the public of our intent to revoke the countervailing duty orders listed below, for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months.

In accordance with section 355.25(d)(4)(iii) of the Department's regulations, if no domestic interested party (as defined in sections 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to revoke these orders, and no interested party (as defined in section 355.2(i) of the regulations) requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, we shall conclude that the countervailing duty orders are no longer of interest to interested parties and proceed with the revocations. However, if an interested party does request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or a domestic interested party does object to the Department's intent to revoke pursuant to this notice, the Department will not revoke the order.

Countervailing duty orders	
Brazil: Brass Sheet and Strip* (C–351–604)	01/08/87, 52 FR 698
Chile: Standard Carnations (C–337–601)	03/19/87, 52 FR 8635
France: Brass Sheet and Strip (C–427–603)	03/06/87, 52 FR 6996
Iran: Raw Pistachios (C–507–501)	03/11/86, 51 FR 8344
Israel: Oil Country Tubular Goods (C–508–601)	03/06/87, 52 FR 6999
Korea: Stainless Steel Cookware* (C–580–602)	01/20/87, 52 FR 2140
Spain: Stainless Steel Wire Rod* (C–469–004)	01/03/83, 48 FR 52
Taiwan: Stainless Steel Cookware* (C–583–604)	01/20/87, 52 FR 2141
Turkey: Welded Carbon Steel Pipes and Tubes (C–489–502)	03/07/86, 51 FR 7984
Turkey: Welded Carbon Steel Line Pipe (C–489–502)	03/07/86, 51 FR 7984

*The anniversary month for the cases with an asterisk was January. However, due to the partial shutdown of the Federal Government from December 16, 1995 through January 6, 1996, the Department was unable to publish a notice of intent to revoke these orders by January 1, 1996, pursuant to the Department's regulations. As a result, we have included these orders in this notice, which is the first notice of "intent to revoke countervailing duty orders" to be published since the Department resumed operations. We are giving all interested parties until March 31, 1996 to object to our intent to revoke these orders. In addition, the Department published a notice of "Opportunity to Request Administrative Review" of these orders on January 26, 1996. We did not receive a timely request for review of any of the orders. Therefore, if we do not receive a timely objection to our intent to revoke the orders, the orders will be revoked.

Opportunity to Object

Not later than the last day of March 1996, domestic interested parties may object to the Department's intent to revoke these countervailing duty orders. Any submission objecting to the revocation must contain the name and case number of the order and a statement that explains how the objecting party qualifies as a domestic interested party under sections 355.2(i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

A separate objection must be filed for each order. In instances where two or more countervailing duty orders share the same case number (*e.g.*, C–489–502 covers carbon steel pipes and tubes and carbon steel line pipe from Turkey), an objection must be submitted for each separate order, as listed above.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: February 22, 1996.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 96–4551 Filed 2–27–96; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

Government Owned Inventions

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government Owned Inventions Available for Licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Marcia Salkeld, National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

NIST Docket No. 93–061

Title: Method and Apparatus for Monitoring Resin Crystallization and Shrinkage During Polymer Molding.

Description: This device is an optical fiber sensor which can be inserted into the mold cavity of an injection molding machine. The sensor can "view" a polymer resin during the mold filling and resin cooling phases of the process cycle. By detecting light reflections from the polymer and back surface of the mold, it is possible to monitor crystallization and shrinkage of the resin.

NIST Docket No. 94–004

Title: Electromagnetic Acoustic Transducer and Methods of Determining Physical Properties of Cylindrical Bodies Using an Electromagnetic Acoustic Transducer.

Description: An encircling electromagnetic-acoustic transducer provides a means of exciting and detecting specified types of ultrasonic resonant vibrations in cylindrical metallic objects. This device is useful for a variety of sensing applications where material properties or external parameters must be determined.

NIST Docket No. 94–024

Title: Construction of Large Structures By Robotic Crane Placement of Modular Bridge Sections.

Description: This system for efficient, safe, cost-effective construction of highway bridges, traffic overpasses and bypasses, and causeways over water or wetlands provides continuous site assembly of repetitive modular elements. The payload (one or more modular bridge sections), attached to the crane's cables, becomes a component of a stable lifting and positioning system. Installed modular elements become a staging platform for constructing subsequent modular elements.

NIST Docket No. 94–037CIP

Title: Arsenic Atom Source.

Description: This invention provides a source of arsenic atoms, representative of Group V and VI elements, usable in molecular beam epitaxy (MBE) as a growth source in the manufacture of semiconductors.

NIST Docket No. 95–009CIP

Title: Reference Substrates having Conducting Features Replicated in Single Crystal Films Formed on Insulating Material for Overlay- and Linewidth-Instrument Calibration and Method for Electrical Certification of Critical Dimensions.

Description: This NIST invention provides an improved test structure for measuring width, spacing, or similar geometrical characteristics of conductive lines formed on substrates in semiconductor fabrication. The method enables the calibration of instruments used for such measurements.

Dated: February 22, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–4540 Filed 2–27–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Proposal to Collect Socio-economic Information on West Coast Whiting Processor/Harvester Workers

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 29, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: James Seger, Pacific Fisheries Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, Oregon, 97210 (Telephone: 503–326–6352); or Stephen P. Freese, F/NWO1 Trade and Industry Services Division, NMFS, BinC15700, 7600 Sand Point Way NE, Seattle, WA 98115, (206) 526–6113).

SUPPLEMENTARY INFORMATION:

I. Abstract

Data on the socio-economic characteristics of workers in the West Coast Pacific whiting harvesting and processing industry will be collected via a survey. The data will be used to supplement and validate other types of data which will be collected in focus groups convened as part of a social impact analysis of the likely effects of the next onshore-offshore allocation decision to be made by the Pacific Fishery Management Council and Secretary of Commerce. The data collection effort will involve two efforts: (1) Identification of the population to be sampled: Selected whiting processors and harvesters will be asked to provide information on the number of workers they employ by job category. (2) Collection of information from members of the population: The questions to be asked of workers in the whiting industry will cover the following topics: household income, number of dependents, dependence on whiting income and alternative sources of income, seasonality and length of employment in fisheries, age, marital status, level of education, location of permanent residence, length of time and participation in the community of permanent residence, and minority status.

II. Method of Collection

The survey will be administered either through a visit to processing/harvesting operations or through a mail survey. A representative sample will be selected from the firms in the industry. However, because the industry is small but diverse it is estimated that about half of all firms will be contacted.

III. Data

OMB Number: None
Form Number: None
Type of Review: Regular Submission
Affected Public: Whiting processor and harvesting firms and workers
Estimated Number of Respondents: 35 Processing and Harvesting Firms and 1100 Workers
Estimated Time Per Response: Processing Firms—primary and secondary (30 minutes); Harvesting Firms (5 minutes); Workers (10 minutes)
Estimated Total Annual Burden Hours: Processing Firms (15) = 7.5 hours; Non-processor Harvesting Firms (20) = 1.5 hours; Workers 1100 workers*10 min = 183.3 hours; Total Burden Hours = 192
Estimated Total Annual Cost: $0.0 Respondents will not need to buy equipment or materials to respond to this survey

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 21, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–4555 Filed 2–27–96; 8:45 am]

BILLING CODE 3510–22–P

Proposal to Collect Economic and Social Information From West Coast Limited Entry Fixed Gear Permit and Vessel Owners

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 29, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to James L. Seger, Pacific Fishery Management Council, 2130 SW 5th, Suite 224, Portland, Oregon 97201 (telephone: 503–326–6352) or Stephen P. Freese, National Marine Fisheries Service, Trade and Industry Services Division, Northwest Region, 7600 Sand Point Way NE, Seattle, WA, 98115, (206) 526–6113.

I. Abstract

Data will be collected from vessel and permit owners on economic and social characteristics of firms harvesting in the West Coast limited entry fixed gear sablefish fishery. The fishery is currently managed as a derby fishery which has become intolerably short. The data to be collected is intended to assist the Council and Secretary of Commerce in evaluating the effects of alternatives to derby fishery management. These alternatives have substantial allocative implications. There is broad industry support for certain provisions in the alternatives, e.g. a requirement that the owner of the permit or vessel be on board the vessel during fishing operations. However, the information necessary to determine the degree to which such provisions would change or maintain the current practices is not available. The questions to be asked of vessel and permit owners in the fixed gear sablefish sector will cover the following topics: legal organization of ownership (e.g. individual, partnership, corporation, etc.), participation of the vessel owner in fishing operations, status of family members as participants in the fishing operation, number of employees, number of years of participation in the fishery, vessel's home port, number of dependents, dependence on fishing income, level of household income. Questions on other social characteristics (age, sex, marital status, education level) may also be asked.

II. Method of Collection

The survey will be administered through the mail. Following the initial mailing a reminder post card will be sent. Nonrespondents will be sent a second mailing of the questionnaire.

III. Data

OMB Number: None
Form Number: None
Type of Review: Regular Submission
Affected Public: Owners of West Coast Longline and Fishpot Groundfish Limited Entry Permits and Vessels
Estimated Number of Respondents: 240
Estimated Time Per Response: 5 minutes
Estimated Total Annual Burden Hours: 20 hours
Estimated Total Annual Cost: $0.0 Respondents will not need to purchase equipment or materials to respond to this survey

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 21, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–4556 Filed 2–27–96; 8:45 am]

BILLING CODE 3510–22–P

Proposal to Collect Cost and Earnings Information on Participants in the Pacific Whiting Industry

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 29, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer,

Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen P. Freese, F/NWO1–Trade and Industry Services Division, Bin C15700, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, WA 98115, (206) 526–6113.

SUPPLEMENTARY INFORMATION:

I. Abstract

Data on the costs and earnings of the four major groups of participants in the Pacific whiting industry will be collected. The following groups will be surveyed: (1) shorebased processors of whiting; (2) at-sea processors of whiting; (3) catcherboats that harvest Pacific whiting; and (4) processors of whiting wastes. Companies associated with these groups will be surveyed for production, cost, and revenue information. In general, questions will be asked concerning amount of time spent processing or harvesting whiting; amounts of whiting harvested, processed, or converted to waste; the harvesting or processing of species other than whiting; ex-vessel and wholesale revenues; product recovery rates; and fixed, variable, and capital costs. The data will be used for the Regulatory Impact Review (E.O. 12866) and the Regulatory Flexibility Act of the Pacific Whiting onshore-offshore allocation decisions to be made by the Pacific Fishery Management Council and the Secretary of Commerce. As required by law, data will be kept on a confidential basis.

II. Method of Collection

Because of the voluntary nature of the survey, the small number of companies in each user group, and the unique characteristics of each processor, it will be necessary to survey all processors and harvesters to develop appropriate estimates and to allow the necessary aggregation of data to protect confidentiality. Most likely, all of the data collection will be done by NMFS economists unless funding is located for contracting the catcher vessel survey. Questionnaires will be mailed to each member of each survey group and in many instances will be followed up by interviews where questions and responses can be clarified.

III. Data

OMB Number: None
Form Number: None
Type of Review: Regular Submission
Affected Public: Pacific whiting harvesters and processors and Pacific whiting waste processors
Estimated Number of Respondents: Total=79: 12 Shorebased processors, 17 at-sea processors, 40 catcher vessels, and 10 whiting waste processors
Estimated Time Per Response: 1 hour
Estimated Total Annual Burden Hours: 79
Estimated Total Annual Cost: $0.0 Respondents will not need to buy equipment or materials to respond to this survey

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 21, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–4557 Filed 2–27–96; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 021296C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit no. 982 (P254D).

SUMMARY: Notice is hereby given that the Pacific Whale Foundation (Paul H. Forestall, Ph.D., Principal Investigator), 101 N. Kihei Road, Kihei, Maui, HI 96753–8833, has been issued a permit to take (harass) humpback whales (*Megaptera novaeangliae*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Coordinator, Pacific Area Office, Southwest Region, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/955–8831).

SUPPLEMENTARY INFORMATION: On November 15, 1995, notice was published in the **Federal Register** (60 FR 57402) that the above-named applicant had submitted a request for a scientific research permit to take (harass) humpback whales (*Megaptera novaeangliae*) over a 5-year period, during observational and photo-identification studies in waters in the Hawaiian Islands area. The requested permit has been issued, under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 15, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–4433 Filed 2–27–96; 8:45 am]

BILLING CODE 3510–22–F

Patent and Trademark Office

[Docket No. 950531144–5304–02]

RIN 0651–XX02

Examination Guidelines for Computer-Related Inventions

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The Patent and Trademark Office ("Office") is publishing the final version of the guidelines to be used in examination of computer-related inventions.

EFFECTIVE DATE: March 29, 1996.

FOR FURTHER INFORMATION CONTACT: Karen A. Buchanan by telephone at (703) 305–8607, by facsimile at (703) 305–9373, by electronic mail at buchanan@uspto.gov, or by mail marked to her attention addressed to Office of the Solicitor, P.O. Box 15667, Arlington, VA 22215.

SUPPLEMENTARY INFORMATION:

A. Discussion of Public Comments

The Office received forty-six comments in response to the "Request for Public Comment on the Proposed Examination Guidelines for Computer-Implemented Inventions" published on June 2, 1995 (60 FR 28778) and the supporting legal analysis issued on October 3, 1995. The Office has carefully considered all of the comments, and a number of changes have been made in response.

These changes include: (1) Merging the guidelines and the legal analysis in support of the guidelines into a single document, (2) changing the subject title of the document from "computer-implemented" inventions to "computer-related" inventions, (3) clarifying the legal requirements for statutory subject matter, (4) segmenting the guidelines into separate statutory requirements for patentability, and (5) ensuring that the guidelines treated computer-related inventions in the same manner as inventions in other technologies to avoid creation of an artificial distinction between hardware-implemented and software-implemented inventions.

Several suggestions have not been adopted. These include: (1) Determining that claims for data structures per se and computer programs per se are statutory subject matter, (2) determining that claims for non-functional descriptive material embodied on computer-readable media are statutory subject matter, and (3) treating claims that infer functional descriptive material is embodied on computer-readable medium as claims limited to computer-readable medium embodying the functional descriptive material. The first two suggestions are addressed in detail in Section IV.B.1(a)–(c) and the last suggestion is addressed in detail in Section IV.B.2(d).

Several commentors encouraged the Office to improve its ability to conduct effective prior art searches. Such encouragement is consistent with the current Office plan to use automated search tools to effectively conduct such prior art searches.

B. Examination Guidelines for Computer-Related Inventions

I. Introduction

These "Examination Guidelines for Computer-Related Inventions" [1] ("Guidelines") are to assist Office personnel in the examination of applications drawn to computer-related inventions.[2] The Guidelines are based on the Office's current understanding of the law and are believed to be fully consistent with binding precedent of the Supreme Court, the Federal Circuit and the Federal Circuit's predecessor courts.

These Guidelines do not constitute substantive rulemaking and hence do not have the force and effect of law. These Guidelines have been designed to assist Office personnel in analyzing claimed subject matter for compliance with substantive law. Rejections will be based upon the substantive law and it is these rejections which are appealable. Consequently, any failure by Office personnel to follow the Guidelines is neither appealable nor petitionable.

The Guidelines alter the procedures Office personnel will follow when examining applications drawn to computer-related inventions and are equally applicable to claimed inventions implemented in either hardware or software. The Guidelines also clarify the Office's position on certain patentability standards related to this field of technology. Office personnel are to rely on these Guidelines in the event of any inconsistent treatment of issues between these Guidelines and any earlier provided guidance from the Office.

The Freeman-Walter-Abele [3] test may additionally be relied upon in analyzing claims directed solely to a process for solving a mathematical algorithm.

Office personnel have had difficulty in properly treating claims directed to methods of doing business. Claims should not be categorized as methods of doing business. Instead, such claims should be treated like any other process claims, pursuant to these Guidelines when relevant.[4]

The appendix includes a flow chart of the process Office personnel will follow in conducting examinations for computer-related inventions.

II. Determine What Applicant Has Invented and Is Seeking To Patent

It is essential that patent applicants obtain a prompt yet complete examination of their applications. Under the principles of compact prosecution, each claim should be reviewed for compliance with every statutory requirement for patentability in the initial review of the application, even if one or more claims are found to be deficient with respect to some statutory requirement. Thus, Office personnel should state all reasons and bases for rejecting claims in the first Office action. Deficiencies should be explained clearly, particularly when they serve as a basis for a rejection. Whenever practicable, Office personnel should indicate how rejections may be overcome and how problems may be resolved. A failure to follow this approach can lead to unnecessary delays in the prosecution of the application.

Prior to focusing on specific statutory requirements, Office personnel must begin examination by determining what, precisely, the applicant has invented and is seeking to patent,[5] and how the claims relate to and define that invention. Consequently, Office personnel will no longer begin examination by determining if a claim recites a "mathematical algorithm." Rather, they will review the complete specification, including the detailed description of the invention, any specific embodiments that have been disclosed, the claims and any specific utilities that have been asserted for the invention.

A. Identify and Understand Any Practical Application Asserted for the Invention

The subject matter sought to be patented must be a "useful" process, machine, manufacture or composition of matter, i.e., it must have a practical application. The purpose of this requirement is to limit patent protection to inventions that possess a certain level of "real world" value, as opposed to subject matter that represents nothing more than an idea or concept, or is simply a starting point for future investigation or research.[6] Accordingly, a complete disclosure should contain some indication of the practical application for the claimed invention, i.e., why the applicant believes the claimed invention is useful.

The utility of an invention must be within the "technological" arts.[7] A computer-related invention is within the technological arts. A practical application of a computer-related invention is statutory subject matter. This requirement can be discerned from the variously phrased prohibitions against the patenting of abstract ideas, laws of nature or natural phenomena. An invention that has a practical application in the technological arts satisfies the utility requirement.[8]

[*] Footnotes to appear at end of docket.

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The applicant is in the best position to explain why an invention is believed useful. Office personnel should therefore focus their efforts on pointing out statements made in the specification that identify all practical applications for the invention. Office personnel should rely on such statements throughout the examination when assessing the invention for compliance with all statutory criteria. An applicant may assert more than one practical application, but only one is necessary to satisfy the utility requirement. Office personnel should review the entire disclosure to determine the features necessary to accomplish at least one asserted practical application.

B. Review the Detailed Disclosure and Specific Embodiments of the Invention To Determine What the Applicant Has Invented

The written description will provide the clearest explanation of the applicant's invention, by exemplifying the invention, explaining how it relates to the prior art and explaining the relative significance of various features of the invention. Accordingly, Office personnel should begin their evaluation of a computer-related invention as follows:

—Determine what the programmed computer does when it performs the processes dictated by the software (i.e., the functionality of the programmed computer);[9]
—Determine how the computer is to be configured to provide that functionality (i.e., what elements constitute the programmed computer and how those elements are configured and interrelated to provide the specified functionality); and
—If applicable, determine the relationship of the programmed computer to other subject matter outside the computer that constitutes the invention (e.g., machines, devices, materials, or process steps other than those that are part of or performed by the programmed computer).[10]

Patent applicants can assist the Office by preparing applications that clearly set forth these aspects of a computer-related invention.

C. Review the Claims

The claims define the property rights provided by a patent, and thus require careful scrutiny. The goal of claim analysis is to identify the boundaries of the protection sought by the applicant and to understand how the claims relate to and define what the applicant has indicated is the invention. Office personnel must thoroughly analyze the language of a claim before determining if the claim complies with each statutory requirement for patentability.

Office personnel should begin claim analysis by identifying and evaluating each claim limitation. For processes, the claim limitations will define steps or acts to be performed. For products,[11] the claim limitations will define discrete physical structures. The discrete physical structures may be comprised of hardware or a combination of hardware and software.

Office personnel are to correlate each claim limitation to all portions of the disclosure that describe the claim limitation. This is to be done in all cases, i.e., whether or not the claimed invention is defined using means or step plus function language. The correlation step will ensure that Office personnel correctly interpret each claim limitation.

The subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.[12]

Office personnel must rely on the applicant's disclosure to properly determine the meaning of terms used in the claims.[13] An applicant is entitled to be his or her own lexicographer, and in many instances will provide an explicit definition for certain terms used in the claims. Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. Office personnel should determine if the original disclosure provides a definition consistent with any assertions made by applicant.[14] If an applicant does not define a term in the specification, that term will be given its "common meaning."[15]

If the applicant asserts that a term has a meaning that conflicts with the term's art-accepted meaning, Office personnel should encourage the applicant to amend the claim to better reflect what applicant intends to claim as the invention. If the application becomes a patent, it becomes prior art against subsequent applications. Therefore, it is important for later search purposes to have the patentee employ commonly accepted terminology, particularly for searching text-searchable databases.

Office personnel must always remember to use the perspective of one of ordinary skill in the art. Claims and disclosures are not to be evaluated in a vacuum. If elements of an invention are well known in the art, the applicant does not have to provide a disclosure that describes those elements. In such a case the elements will be construed as encompassing any and every art-recognized hardware or combination of hardware and software technique for implementing the defined requisite functionalities.

Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure.[16] Where means plus function language is used to define the characteristics of a machine or manufacture invention, claim limitations must be interpreted to read on only the structures or materials disclosed in the specification and "equivalents thereof."[17] Disclosure may be express, implicit or inherent. Thus, at the outset, Office personnel must attempt to correlate claimed means to elements set forth in the written description. The written description inlcudes the specification and the drawings. Office personnel are to give the claimed means plus function limitations their broadest reasonable interpretation consistent with all corresponding structures or materials described in the specification and their equivalents. Further guidance in interpreting the scope of equivalents is provided in the "Examination Guidelines For Claims Reciting A Means or Step Plus Function Limitation In Accordance With 35 U.S.C. 112, 6th, 6th Paragraph" ("Means Plus Function Guidelines").[18]

While it is appropriate to use the specification to determine what applicant intends a term to mean, a positive limitation from the specification cannot be read into a claim that does not impose that limitation. A broad interpretation of a claim by Office personnel will reduce the possibility that the claim, when issued, will be interpreted more broadly than is justified or intended. An applicant can always amend a claim during prosecution to better reflect the intended scope of the claim.

Finally, when evaluating the scope of a claim, every limitation in the claim must be considered.[19] Office personnel may not dissect a claimed invention into discrete elements and then evaluate the elements in isolation. Instead, the claim as a whole must be considered.

III. Conduct a Thorough Search of the Prior Art

Prior to classifying the claimed invention under § 101, Office personnel are expected to conduct a thorough search of the prior art. Generaly, a thorough search invovles reviewing both U.S. and foreign patents and nonpatent literature. In may cases, the result of such a search will contribute to Office personnel's understanding of the invention. Both claimed and unclaimed aspects of the invention described in the specification should be searched if there is a reasonable expectation that the unclaimed aspects may be later claimed. A search must take into account any structure or material described in the specification and its equivalents which correspond to the claimed means plus function limitation, in accordance with 35 U.S.C. § 112, sixth paragraph and the Means Plus Function Guidelines.[20]

IV. Determine Whether the Claimed Invention Complies With 35 U.S.C. 101

A. Consider the Breadth of 35 U.S.C. § 101 Under Controling Law

As the Supreme Court has held, Congress chose the expansive language of § 101 so as to include "anything under the sun that is made by man."[21] Accordingly, § 101 of title 35, United States Code, provides:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.[22]

As cast, § 101 defines four categories of inventions that Congress deemed to be the appropriate subject matter of a patent; namely, processes, machines, manufactures and compositions of matter. The latter three categories define "things" while the first category defines "actions" (i.e., inventions that consist of a series of steps or acts to be performed).[23]

Federal courts have held that § 101 does have certain limits. First, the phrase "anything under the sun that is made by man" is limited by the text of § 101, meaning that one may only patent something that is a machine, manufacture, composition of matter or a process.[24] Second, § 101 requires that the subject matter sought to be patented be a "useful" invention. Accordingly, a complete definition of the scope of § 101, reflecting Congressional intent, is that any new and useful process, machine, manufacture or composition of matter under the sun that is made by man is the proper subject matter of a patent. Subject matter not within one of the four statutory invention categories or which is not "useful" in a patent sense is, accordingly, not eligible to be patented.

The subject matter courts have found to be outside the four statutory categories of invention is limited to abstract ideas, laws of nature and natural phenomena. While this is easily stated, determining whether an applicant is seeking to patent an abstract idea, a law of nature or a natural phenomenon has proven to be challenging. These three exclusions recognize that subject matter that is not a practical application or use of an idea, a law of nature or a natural phenomenon is not patentable.[25]

Courts have expressed a concern over "preemption" of ideas, laws of nature or natural phenomena.[26] The concern over preemption serves to bolster and justify the prohibition against the patenting of such subject matter. In fact, such concerns are only relevant to claiming a scientific truth or principle. Thus, a claim to an "abstract idea" is non-statutory because it does not represent a practical application of the idea, not because it would preempt the idea.

B. Classify the Claimed Invention os to Its Proper Statutory Category

To properly determine whether a claimed invention complies with the statutory invention requirements of § 101, Office personnel should classify each claim into one or more statutory or non-statutory categories. If the claim falls into a non-statutory category, that should not preclude complete examination of the application for satisfaction of all other conditions of patentability. This classification is only an initial finding at this point in the examination process that will be again assessed after the examination for compliance with §§ 112, 102 and 103 is completed and before issuance of any Office action on the merits.

If the invention as set forth in the written description is statutory, but the claims define subject matter that is not, the deficiency can be corrected by an appropriate amendment of the claims. In such a case, Office personnel should reject the claims drawn to non-statutory subject matter under § 101, but identify the features of the invention that would render the claimed subject matter statutory if recited in the claim.

1. Non-Statutory Subject Matter

Claims to computer-related inventions that are clearly non-statutory fall into the same general categories as non-statutory claims in other parts, namely natural phenomena such as magnetism, and abstract ideas or laws of nature which constitute "descriptive material." Descriptive material can be characterized as either "functional descriptive material" or "non-functional descriptive material." In this context, "functional descriptive material" consists of data structures[27] and computer programs which impart functionality when encoded on a computer-readable medium. "Non-functional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

Both types of "descriptive material" are non-statutory when claimed as descriptive material per se. When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases.[28] When non-functional descriptive material is recorded on some computer-readable medium, it is not structurally and functionally interrelated to the medium but is merely carried by the medium. Merely claiming non-functional descriptive material stored in a computer-readable medium does not make it statutory. Such a result would exalt form over substance.[29] Thus, non-statutory music does not become statutory by merely recording it on a compact disk. Protection for this type of work is provided under the copyright law.

Claims to processes that do nothing more than solve mathematical problems or manipulate abstract ideas or concepts are more complex to analyze and are addressed below. See sections IV.B.2(d) and IV.B.2(e).

(a) *Functional Descriptive Material: "Data Structures" Representing Descriptive Material Per Se or Computer Programs Representing Computer Listings Per Se.* Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are neither physical "things" nor statutory processes.[30] Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the medium which permit the data structure's functionality to be realized, and is thus statutory.

Similarly, computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical "things," nor are they statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed aspects of

the invention which permit the computer program's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a computer program defines structural and functional interrelationships between the computer program and the medium which permit the computer program's functionality to be realized, and is thus statutory. Accordingly, it is important to distinguish claims that define descriptive material per se from claims that define statutory inventions.

Computer programs are often recited as part of a claim. Office personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim. The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program. Only when the claimed invention taken as a whole is directed to a mere program listing, i.e., to only its description or expression, is it descriptive material per se and hence non-statutory.

Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process and Office personnel should treat a claim for a computer program, without the computer-readable medium needed to realize the computer program's functionality, as non-statutory functional descriptive material. When a computer program is claimed in a process where the computer is executing the computer program's instructions, Office personnel should treat the claim as a process claim. See Sections IV.B.2(b)–(e). When a computer program is recited in conjunction with a physical structure, such as a computer memory, Office personnel should treat the claim as a product claim. See Section IV.B.2(a).

(b) *Non-Functional Descriptive Material.* Descriptive material that cannot exhibit any functional interrelationship with the way in which computing processes are performed does not constitute a statutory process, machine, manufacture or composition of matter and should be rejected under § 101. Thus, Office personnel should consider the claimed invention as a whole to determine whether the necessary functional interrelationship is provided.

Where certain types of descriptive material, such as music, literature, art, photographs and mere arrangements or compilations of facts or data,[31] are merely stored so as to be read or outputted by a computer without creating any functional interrelationship, either as part of the stored data or as part of the computing processes performed by the computer, then such descriptive material alone does not impart functionality either to the data as so structured, or to the computer. Such "descriptive material" is not a process, machine, manufacture or composition of matter.

The policy that precludes the patenting of non-functional descriptive material would be easily frustrated if the same descriptive material could be patented when claimed as an article of manufacture.[32] For example, music is commonly sold to consumers in the format of a compact disc. In such cases, the known compact disc acts as nothing more than a carrier for non-functional descriptive material. The purely non-functional descriptive material cannot alone provide the practical application for the manufacture.

Office personnel should be prudent in applying the foregoing guidance. Non-functional descriptive material may be claimed in combination with other functional descriptive material on a computer-readable medium to provide the necessary functional and structural interrelationship to satisfy the requirements of § 101. The presence of the claimed non-functional descriptive material is not necessarily determinative of non-statutory subject matter. For example, a computer that recognizes a particular grouping of musical notes read from memory and upon recognizing that particular sequence, causes another defined series of notes to be played, defines a functional interrelationship among that data and the computing processes performed when utilizing that data, and as such is statutory because it implements a statutory process.

(c) *Natural Phenomena Such as Electricity and Magnetism.*—Claims that recite nothing but the physical characteristics of a form of energy, such as a frequency, voltage, or the strength of a magnetic field, define energy or magnetism, per se, and as such are non-statutory natural phenomena.[33] However, a claim directed to a practical application of a natural phenomenon such as energy or magnetism is statutory.[34]

2. Statutory Subject Matter

(a) *Statutory Product Claims*[35].—If a claim defines a useful machine or manufacture by identifying the physical structure of the machine or manufacture in terms of its hardware or hardware and software combination, it defines a statutory product.[36]

A machine or manufacture claim may be one or two types: (1) A claim that encompasses any and every machine for performing the underlying process or any and every manufacture that can cause a computer to perform the underlying process, or (2) a claim that defines a specific machine or manufacture. When a claim is of the first type, Office personnel are to evaluate the underlying process the computer will perform in order to determine the patentability of the product.

(i) Claims That Encompass Any Machine or Manufacture Embodiment of a Process. Office personnel must treat each claim as a whole. The mere fact that a hardware element is recited in a claim does not necessarily limit the claim to a specific machine or manufacture.[37] If a product claim encompasses any and every computer implementation of a process, when read in light of the specification, it should be examined on the basis of the underlying process. Such a claim can be recognized as it will:

—Define the physical characteristics of a computer or computer component exclusively as functions or steps to be performed on or by a computer, and
—Encompass any and every product in the stated class (e.g., computer, computer-readable memory) configured in any manner to perform that process.

Office personnel are reminded that finding a product claim to encompass any and every product embodiment of a process invention simply means that the Office will presume that the product claim encompasses any and every hardware or hardware platform and associated software implementation that performs the specified set of claimed functions. Because this is interpretative and nothing more, it does not provide any information as to the patentability of the applicant's underlying process or the product claim.

When Office personnel have reviewed the claim as a whole and found that it is not limited to a specific machine or manufacture, they shall identify how each claim limitation has been treated and set forth their reasons in support of their conclusion that the claim encompasses any and every machine or manufacture embodiment of a process. This will shift the burden to applicant to demonstrate why the claimed invention should be limited to a specific machine or manufacture.

If a claim is found to encompass any and every product embodiment of the underlying process, and if the underlying process is statutory, the product claim should be classified as a statutory product. By the same token, if the underlying process invention is found to be non-statutory, Office personnel should classify the "product" claim as a "non-statutory product." If the product claim is classified as being a non-statutory product on the basis of the underlying process, Office personnel should emphasize that they have considered all claim limitations and are basing their finding on the analysis of the underlying process.

(ii) Product Claims—Claims Directed to Specific Machines and Manufactures. If a product claim does not encompass any and every computer-implementation of a process, then it must be treated as a specific machine or manufacture. Claims that define a computer-related invention as a specific machine or specific article of manufacture must define the physical structure of the machine or manufacture in terms of its hardware or hardware and "specific software."[38] The applicant may define the physical structure of a programmed computer or its hardware or software components in any manner that can be clearly understood by a person skilled in the relevant art. Generally a claim drawn to a particular programmed computer should identify the elements of the computer and indicate how those elements are configured in either hardware or a combination of hardware and specific software.

To adequately define a specific computer memory, the claim must identify a general or specific memory and the specific software which provides the functionality stored in the memory.

A claim limited to a specific machine or manufacture, which has a practical application in the technological arts, is statutory. In most cases, a claim to a specific machine or manufacture will have a practical application in the technological arts.

(iii) Hypothetical Machine Claims Which Illustrate Claims of the Types Described in Sections IV.B.2(a) (i) and (ii). Two applicants present a claim to the following process:

A process for determining and displaying the structure of a chemical compound comprising:

(a) Solving the wavefunction parameters for the compound to determine the structure of a compound; and

(b) Displaying the structure of the compound determined in step (a).

Each applicant also presents a claim to the following apparatus:

A computer system for determining the three dimensional structure of a chemical compound comprising:

(a) Means for determining the three dimensional structure of a compound; and

(b) Means for creating and displaying an image representing a three-dimensional perspective of the compound.

In addition, each applicant provides the noted disclosures to support the claims:

Applicant A	Applicant B
Disclosure: The disclosure describes specific software, i.e., specific program code segments, that are to be employed to configure a general purpose microprocessor to create specific logic circuits. These circuits are indicated to be the "means" corresponding to the claimed means limitations.	The disclosure states that it would be a matter of routine skill to select an appropriate conventional computer system and implement the claimed process on that computer system. The disclosure does not have specific disclosure that corresponds to the two "means" limitations recited in the claim (i.e., no specific software or logic circuit). The disclosure does have an explanation of how to solve the wavefunction equations of a chemical compound, and indicates that the solutions of those wavefunction equations can be employed to determine the physical structure of the corresponding compound.
Result: Claim defines specific computer, patentability stands independently from process claim.	Claim encompasses any computer embodiment of process claim; patentability stands or falls with process claim.
Explanation: Disclosure identifies the specific machine capable of performing the indicated functions.	Disclosure does not provide any information to distinguish the "implementation" of the process on a computer from the factors that will govern the patentability determination of the process per se. As such, the patentability of this apparatus claim will stand or fall with that of the process claim.

(b) *Statutory Process Claims.* A claim that requires one or more acts to be performed defines a process. However, not all processes are statutory under § 101. To be statutory, a claimed computer-related process must either: (1) Result in a physical transformation outside the computer for which a practical application in the technological arts is either disclosed in the specification or would have been known to a skilled artisan (discussed in (i) below,[39]) or (2) be limited by the language in the claim to be practical application within the technological arts (discussed in (ii) below).[40] The claimed practical application must be a further limitation upon the claimed subject matter if the process is confined to the internal operations of the computer. If a physical transformation occurs outside the computer, it is not necessary to claim the practical application. A disclosure that permits a skilled artisan to practice the claimed invention, i.e., to put it to a practical use, is sufficient. On the other hand, it is necessary to claim the practical application if there is no physical transformation or if the process merely manipulates concepts or converts one set of numbers into another.

A claimed process is clearly statutory if it results in a physical transformation outside the computer, i.e., falls into one or both of the following specific categories ("safe harbors").

(i) Safe Harbors

— *Independent Physical Acts (Post-Computer Process Activity)*

A process is statutory if it requires physical acts to be performed outside the computer independent of and following the steps to be performed by a programmed computer, where those acts involve the manipulative of tangible physical objects and result in the object having a different physical attribute or structure.[41] Thus, if a process claim includes one or more post-computer process steps that result in a physical transformation outside the computer (beyond merely conveying the direct result of the computer operation, see Section IV.B.2(d)(iii) below), the claim is clearly statutory.

Examples of this type of statutory process include the following:

—A method of curing rubber in a mold which relies upon updating process

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parameters, using a computer processor to determine a time period for curing the rubber, using the computer processor to determine when the time period has been reached in the curing process and then opening the mold at that stage.

—A method of controlling a mechanical robot which relies upon storing data in a computer that represents various types of mechanical movements of the robot, using a computer processor to calculate positioning of the robot in relation to given tasks to be performed by the robot, and controlling the robot's movement and position based on the calculated position.

—*Manipulation of Data Representing Physical Objects or Activities (Pre-Computer Process Activity)*

Another statutory process is one that requires the measurements of physical objects or activities to be transformed outside of the computer into computer data,[42] where the data comprises signals corresponding to physical objects or activities external to the computer system, and where the process causes a physical transformation of the signals which are intangible representations of the physical objects or activities.[43]

Examples of this type of claimed statutory process include the following:

—A method of using a computer processor to analyze electrical signals and data representative of human cardiac activity by converting the signals to time segments, applying the time segments in reverse order to a high pass filter means, using the computer processor to determine the amplitude of the high pass filter's output, and using the computer processor to compare the value to a predetermined value. In this example the data is an intangible representation of physical activity, i.e., human cardiac activity. The transformation occurs when heart activity is measured and an electrical signal is produced. This process has real world value in predicting vulnerability to ventricular tachycardia immediately after a heart attack.

—A method of using a computer processor to receive data representing Computerized Axial Tomography ("CAT") scan images of a patient, performing a calculation to determine the difference between a local value at a data point and an average value of the data in a region surrounding the point, and displaying the difference as a gray scale for each point in the image, and displaying the resulting image. In this example the data is an intangible representation of a physical object, i.e., portions of the anatomy of a patient. The transformation occurs when the condition of the human body is measured with X-rays and the X-rays are converted into electrical digital signals that represent the condition of the human body. The real world value of the invention lies in creating a new CAT scan image of body tissue without the presence of bones.

—A method of using a computer processor to conduct seismic exploration, by imparting spherical seismic energy waves into the earth from a seismic source, generating a plurality of reflected signals in response to the seismic energy waves at a set of receiver positions in an array, and summing the reflection signals to produce a signal simulating the reflection response of the earth to the seismic energy. In this example, the electrical signals processed by the computer represent reflected seismic energy. The transformation occurs by converting the spherical seismic energy waves into electrical signals which provide a geophysical representation of formations below the earth's surface. Geophysical exploration of formations below the surface of the earth has real world value.

If a claim does not clearly fall into one or both of the safe harbors, the claim may still be statutory if it is limited by the language in the claim to a practical application in the technological arts.

(ii) Computer-Related Processes Limited to a Practical Application in the Technological Arts. There is always some form of physical transformation within a computer because a computer acts on signals and transforms them during its operation and changes the state of its components during the execution of a process. Even though such a physical transformation occurs within a computer, such activity is not determinative of whether the process is statutory because such transformation alone does not distinguish a statutory computer process from a non-statutory computer process. What is determinative is not how the computer performs the process, but what the computer does to achieve a practical application.[44]

A process that merely manipulates an abstract idea or performs a purely mathematical algorithm is non-statutory despite the fact that it might inherently have some usefulness.[45] For such subject matter to be statutory, the claimed process must be limited to a practical application of the abstract idea or mathematical algorithm in the technological arts.[46] For example, a computer process that simply calculates a mathematical algorithm that models noise is non-statutory. However, a claimed process for digitally filtering noise employing the mathematical algorithm is statutory.

Examples of this type of claimed statutory process include the following:

—A computerized method of optimally controlling transfer, storage and retrieval of data between cache and hard disk storage devices such that the most frequently used data is readily available.

—A method of controlling parallel processors to accomplish multi-tasking of several computing tasks to maximize computing efficiency.[47]

—A method of making a word processor by storing an executable word processing application program in a general purpose digital computer's memory, and executing the stored program to impart word processing functionality to the general purpose digital computer by changing the state of the computer's arithmetic logic unit when program instructions of the word processing program are executed.

—A digital filtering process for removing noise from a digital signal comprising the steps of calculating a mathematical algorithm to produce a correction signal and subtracting the correction signal from the digital signal to remove the noise.

(c) Non-Statutory Process Claims. If the "acts" of a claimed process manipulate only numbers, abstract concepts or ideas, or signals representing any of the foregoing, the acts are not being applied to appropriate subject matter. Thus, a process consisting solely of mathematical operations, i.e., converting one set of numbers into another set of numbers, does not manipulate appropriate subject matter and thus cannot constitute a statutory process.

In practical terms, claims define non-statutory processes if they:

—Consist solely of mathematical operations without some claimed practical application (i.e., executing a "mathematical algorithm"); or

—Simply manipulate abstract ideas, e.g., a bid[48] or a bubble hierarchy,[49] without some claimed practical application.

A claimed process that consists solely of mathematical operations is non-statutory whether or not it is performed on a computer. Courts have recognized a distinction between types of mathematical algorithms, namely, some define a "law of nature" in mathematical terms and others merely describe an "abstract idea."[50]

Certain mathematical algorithms have been held to be non-statutory because they represent a mathematical definition of a law of nature or a natural phenomenon. For example, a mathematical algorithm representing the formula $E=mc^2$ is a "law of nature"—it defines a "fundamental scientific truth" (i.e., the relationship between energy and mass). To comprehend how the law of nature relates to any object, one invariably has to perform certain steps (e.g., multiplying a number representing the mass of an object by the square of a number representing the speed of light). In such a case, a claimed process which consists solely of the steps that one must follow to solve the mathematical representation of $E=mc^2$ is indistinguishable from the law of nature and would "preempt" the law of nature. A patent cannot be granted on such a process.

Other mathematical algorithms have been held to be non-statutory because they merely describe an abstract idea. An "abstract idea" may simply be any sequence of mathematical operations that are combined to solve a mathematical problem. The concern addressed by holding such subject matter non-statutory is that the mathematical operations merely describe an idea and do not define a process that represents a practical application of the idea.

Accordingly, when a claim reciting a mathematical algorithm is found to define non-statutory subject matter the basis of the § 101 rejection must be that, when taken as a whole, the claim recites a law of nature, a natural phenomenon, or an abstract idea.

(d) Certain Claim Language Related to Mathematical Operation Steps of a Process. (i) Intended Use or Field of Use Statements. Claim language that simply specifies an intended use or field of use for the invention generally will not limit the scope of a claim, particularly when only presented in the claim preamble. Thus, Office personnel should be careful to properly interpret such language.[51] When such language is treated as non-limiting, Office personnel should expressly identify in the Office action the claim language that constitutes the intended use or field of use statements and provide the basis for their findings. This will shift the burden to applicant to demonstrate why the language is to be treated as a claim limitation.

(ii) Necessary Antecedent Step to Performance of a Mathematical Operation or Independent Limitation on a Claimed Process. In some situations, certain acts of "collecting" or "selecting" data for use in a process consisting of one or more mathematical operations will not further limit a claim beyond the specified mathematical operation step(s). Such acts merely determine values for the variables used in the mathematical formulae used in making the calculations.[52] In other words, the acts are dictated by nothing other than the performance of a mathematical operation.[53]

If a claim requires acts to be performed to create data that will then be used in a process representing a practical application of one or more mathematical operations, those acts must be treated as further limiting the claim beyond the mathematical operation(s) per se. Such acts are data gathering steps not dictated by the algorithm but by other limitations which require certain antecedent steps and as such constitute an independent limitation on the claim.

Examples of acts that independently limit a claimed process involving mathematical operations include:

—A method of conducting seismic exploration which requires generating and manipulating signals from seismic energy waves before "summing" the values represented by the signals;[54] and

—A method of displaying X-ray attenuation data as a signed gray scale signal in a "field" using a particular algorithm, where the antecedent steps require generating the data using a particular machine (e.g., a computer tomography scanner).[55]

Examples of steps that do not independently limit one or more mathematical operation steps include:

—"Perturbing" the values of a set of process inputs, where the subject matter "perturbed" was a number and the act of "perturbing" consists of substituting the numerical values of variables;[56] and

—Selecting a set of arbitrary measurement point values.[57]

Such steps do not impose independent limitations on the scope of the claim beyond those required by the mathematical operation limitation.

(iii) Post-Mathematical Operation Step Using Solution or Merely Conveying Result of Operation. In some instances, certain kinds of post-solution "acts" will not further limit a process claim beyond the performance of the preceding mathematical operation step even if the acts are recited in the body of a claim. If, however, the claimed acts represent some "significant use" of the solution, those acts will invariably impose an independent limitation on the claim. A "significant use" is any activity which is more than merely outputting the direct result of the mathematical operation. Office personnel are reminded to rely on the applicant's characterization of the significance of the acts being assessed to resolve questions related to their relationship to the mathematical operations recited in the claim and the invention as a whole.[58] Thus, if a claim requires that the direct result of a mathematical operation be evaluated and transformed into something else, Office personnel cannot treat the subsequent steps as being indistinguishable from the performance of the mathematical operation and thus not further limiting on the claim. For example, acts that require the conversion of a series of numbers representing values of a wavefunction equation for a chemical compound into values representing an image that conveys information about the three-dimensional structure of the compound and the displaying of the three-dimensional structure cannot be treated as being part of the mathematical operations.

Office personnel should be especially careful when reviewing claim language that requires the performance of "post-solution" steps to ensure that claim limitations are not ignored.

Examples of steps found not to independently limit a process involving one or more mathematical operation steps include:

—Step of "updating alarm limits" found to constitute changing the number value of a variable to represent the result of the calculation;[59]

—Final step of magnetically recording the result of a calculation;[60]

—Final step of "equating" the process outputs to the values of the last set of process inputs found to constitute storing the result of calculations;[61]

—Final step of displaying result of a calculation "as a shade of gray rather than as simply a number" found to not constitute distinct step where the data were numerical values that did not represent anything;[62]

—Step of "transmitting electrical signals representing" the result of calculations.[63]

(e) Manipulation of Abstract Ideas Without a Claimed Practical Application. A process that consists solely of the manipulation of an abstract idea without any limitation to a practical application is non-statutory.[64] Office personnel have the burden to establish a prima facie case that the claimed invention taken as a whole is directed to the manipulation of abstract ideas without a practical application.

In order to determine whether the claim is limited to a practical application of an abstract idea, Office personnel must analyze the claim as a whole, in light of the specification, to understand what subject matter is being manipulated and how it is being manipulated. During this procedure, Office personnel must evaluate any statements of intended use or field of use, any data gathering step and any post-manipulation activity. See section IV.B.2(d) above for how to treat various types of claim language. Only when the claim is devoid of any limitation to a practical application in the technological arts should it be rejected under § 101. Further, when such a rejection is made, Office personnel must expressly state how the language of the claims has been interpreted to support the rejection.

V. Evaluate Application for Compliance With 35 U.S.C. 112

Office personnel should begin their evaluation of an application's compliance with § 112 by considering the requirements of § 112, second paragraph. The second paragraph contains two separate and distance requiremtns: (1) That the claim(s) set forth the subject matter applicants regard as the invention, and (2) that the claim(s) particularly point out and distinctly claim the invention. An application will be deficient under § 112, second paragraph when (1) evidence including admissions, other than in the application as filed, shows applicant has stated that he or she regards the invention to be different from what is claimed, or when (2) the scope of the claims is unclear.

After evaluation of the application for compliance with § 112, second paragraph, Office personnel should then evaluate the application for compliance with the requirements of § 112, first paragraph. The first paragraph contains three separate and distinct requirements: (1) Adequate written description, (2) enablement, and (3) best mode. An application will be deficient under § 112, first paragraph when the written description is not adequate to identify what the applicant has invented, or when the disclosure does not enable one skilled in the art to make and use the invention as claimed without undue experimentation. Deficiencies related to disclosure of the best mode for carrying out the claimed invention are not usually encountered during examination of an application because evidence to support such a deficiency is seldom in the record.

If deficiencies are discovered with respect to § 112, Office personnel must be careful to apply the appropriate paragraph of § 112.

A. Determine Whether the Claimed Invention Complies With 35 U.S.C. 112, Second Paragraph Requirements

1. Claims Setting Forth the Subject Matter Applicant Regards as Invention

Applicant's specification must conclude with claim(s) that set forth the subject matter which the applicant regards as the invention. The invention set forth in the claims is presumed to be that which applicant regards as the invention, unless applicant considers the invention to be something different from what has been claimed as shown by evidence, including admissions, outside the application as filed. An applicant may change what he or she regards as the invention during the prosecution of the application.

2. Claims Particularly Pointing Out and Distinctly Claiming the Invention

Office personnel shall determine whether the claims set out and circumscribe the invention with a reasonable degree of precision and particularity. In this regard, the definiteness of the language must be analyzed, not in a vacuum, but always in light of the teachings of the disclosure as it would be interpreted by one of ordinary skill in the art. Applicant's claims, interpreted in light of the disclosure, must reasonably apprise a person of ordinary skill in the art of the intervention. However, the applicant need not explicitly recite in the claims every feature of the invention. For example, if an applicant indicates that the invention is a particular computer, the claims do not have to recite every element or feature of the computer. In fact, it is preferable for claims to be drafted in a form that emphasizes what the applicant has invented (i.e., what is new rather than old).

A means plus function limitation is distinctly claimed if the description makes it clear that the means corresponds to well-defined structure of a computer or computer component implemented in either hardware or software and its associated hardware platform. Such means may be defined as:

—A programmed computer with particular functionality implemented in hardware or hardware and software;

—A logic circuit or other component of a programmed computer that performs a series of specifically identified operations dictated by a computer program; or

—A computer memory encoded with executable instructions representing a computer program that can cause a computer to function in a particular fashion.

The scope of a "means" limitation is defined as the corresponding structure or material (e.g., a specific logic circuit) set forth in the written description and equivalents.[65] Thus, a claim using means plus function limitations without corresponding disclosure of specific structures or materials that are not well-know fails to particularly point out and distinctly claim the invention. For example, if the applicant discloses only the functions to be performed and provides no express, implied or inherent disclosure of hardware or a combination of hardware and software that performs the functions, the application has not disclosed any "structure" which corresponds to the claimed means. Office personnel should reject such claims under § 112, second paragraph. The rejection shifts the burden to the applicant to describe at least one specific structure or material that corresponds to the claimed means in question, and to identify the precise location or locations in the specification where a description of least one embodiment of that claimed means can be found. In contrast, if the corresponding structure is disclosed to be a memory or logic circuit that has been configured in some manner to perform that function (e.g., using a defined computer program), the application has disclosed "structure" which corresponds to the claimed means.

When a claim or part of a claim is defined in computer program code, whether in source or object code format, a person of skill in art must be able to ascertain the metes and bounds of the claimed invention. In certain circumstances, as where a self-documenting programming code is employed, use of programming language in a claim would be permissible because such program source code presents "sufficiently high-level language and descriptive identifiers" to make it universally understood to others in the art without the programmer having to insert any comments.[66] Applicants should be encouraged to functionally define the steps the computer will perform rather than simply reciting source or object code instructions.

B. Determine Whether the Claimed Invention Complies with 35 U.S.C. 112, First Paragraph Requirements

1. Adequate Written Description

The satisfaction of the enablement requirement does not satisfy the written description requirement.[67] For the written description requirement, an applicant's specification must reasonably convey to those skilled in the art that the applicant was in possession of the claimed invention as of the date of invention. The claimed invention subject matter need not be described literally, i.e., using the same terms, in order for the disclosure to satisfy the description requirement.

2. Enabling Disclosure

An applicant's specification must enable a person skilled in the art to make and use the claimed invention without undue experimentation. The fact that experimentation is complex, however, will not make it undue if a person of skill in the art typically engages in such complex experimentation. For a computer-related invention, the disclosure must enable a skilled artisan to configure the computer to possess the requisite functionality, and, where applicable, interrelate the computer with other elements to yield the claimed invention, without the exercise of undue experimentation. The specification should disclose how to configure a computer to possess the requisite functionality or how to integrate the programmed computer with other elements of the invention, unless a skilled artisan would know how to do so without such disclosure.[68]

For many computer-related inventions, it is not unusual for the claimed invention to involve more than one field of technology. For such inventions, the disclosure must satisfy the enablement standard for each aspect of the invention.[69] As such, the disclosure must teach a person skilled in each art how to make and use the relevant aspect of the invention without undue experimentation. For example, to enable a claim to a programmed computer that determines and displays the three-dimensional structure of a chemical compound, the disclosure must

—enable a person skilled in the art of molecular modeling to understand and practice the underlying molecular modeling processes; and

—enable a person skilled in the art of computer programming to create a program that directs a computer to create and display the image representing the three-dimensional structure of the compound.

In other words, the disclosure corresponding to each aspect of the invention must be enabling to a person skilled in each respective art.

In many instances, an applicant will describe a programmed computer by outlining the significant elements of the programmed computer using a functional block diagram. Office personnel should review the specification to ensure that along with the functional block diagram the disclosure provides information that adequately describes each "element" in hardware or hardware and its associated software and how such elements are interrelated.[70]

VI. Determine Whether the Claimed Invention Complies With 35 U.S.C. 102 and 103

As is the case for inventions in any field of technology, assessment of a claimed computer-related invention for compliance with sections 102 and 103 begins with a comparison of the claimed subject matter to what is known in the prior art. If no differences are found between the claimed invention and the prior art, the claimed invention lacks novelty and is to be rejected by Office personnel under section 102. Once distinctions are identified between the claimed invention and the prior art, those distinctions must be assessed and resolved in light of the knowledge possessed by a person of ordinary skill in the art. Against this backdrop, one must determine whether the invention would have been obvious at the time the invention was made. If not, the claimed invention satisfies section 103. Factors and considerations dictated by law governing section 103 apply without modification to computer-related inventions.

If the difference between the prior art and the claimed invention is limited to descriptive material stored on or employed by a machine, Office personnel must determine whether the descriptive material is functional descriptive material or non-functional descriptive material, as described supra in Section IV. Functional descriptive material is a limitation in the claim and must be considered and addressed in assessing patentability under section 103. Thus, a rejection of the claim as a whole under section 103 is inappropriate unless the functional descriptive material would have been suggested by the prior art. Non-functional descriptive material cannot render non-obvious an invention that would have otherwise been obvious.[17]

Common situations involving non-functional descriptive material are:

—A computer-readable storage medium that differs from the prior art solely with respect to non-functional descriptive material, such as music or a literary work, encoded on the medium,

—A computer that differs from the prior art solely with respect to non-functional descriptive material that cannot alter how the machine functions (i.e., the descriptive material does not reconfigure the computer), or

—A process that differs from the prior art only with respect to non-functional descriptive material that cannot alter how the process steps are to be performed to achieve the utility of the invention.

Thus, if the prior art suggests storing a song on a disk, merely choosing a particular song to store on the disk would be presumed to be well within the level of ordinary skill in the art at the time the invention was made. The difference between the prior art and the claimed invention is simply a rearrangement of non-functional descriptive material.

VII. Clearly Communicate Findings, Conclusions and Their Bases

Once Office personnel have concluded the above analyses of the claimed invention under all the statutory provisions, including sections 101, 112, 102 and 103, they should review all the proposed rejections and their bases to confirm their correctness. Only then should any rejection be imposed in an Office action. The Office action should clearly communicate the findings, conclusions and reasons which support them.

Notes

[1] These Guidelines are final and replace the "Proposed Examination Guidelines for Computer-Implemented Inventions," 60 FR 28,778 (June 2, 1995) and the supporting legal analysis issued on October 3, 1995.

[2] "Computer-related inventions" include inventions implemented in a computer and inventions employing computer-readable media.

[3] *In re Abele*, 684 F.2d 902, 905–07, 214 USPQ 682, 685–87 (CCPA 1982); *In re Walter*, 618 F.2d 758, 767, 205 USPQ 397, 406–07 (CCPA 1980); *In re Freeman*, 573 F.2d 1237, 1245, 197 USPQ 464, 471 (CCPA 1978).

[4] See, e.g., *In re Toma*, 575 F.2d 872, 877–78, 197 USPQ 852, 857 (CCPA 1978); *In re Musgrave*, 431 F.2d 882, 893, 167 USPQ 280, 289–90 (CCPA 1970). See also *In re Schrader*, 22 F.3d 290, 297–98, 30 USPQ2d 1455, 1461–62 (Fed. Cir. 1994) (Newman, J., dissenting); *Paine, Webber, Jackson & Curtis, Inc. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 564 F. Supp. 1358, 1368–69, 218 USPQ 212, 220 (D. Del. 1983).

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[5] As the courts have repeatedly reminded the Office: "The goal is to answer the question 'What did applicants invent?'" *Abele*, 684 F.2d at 907, 214 USPQ at 687. Accord, e.g., *Arrhythmia Research Tech. v. Corazonix Corp.*, 958 F.2d 1053, 1059, 22 USPQ2d 1033, 1038 (Fed. Cir. 1992).

[6] *Brenner v. Manson*, 383 U.S. 519, 528–36, 148 USPQ 689, 693–96 (1966); *In re Ziegler*, 992 F.2d 1197, 1200–03, 26 USPQ2d 1600, 1603–06 (Fed. Cir. 1993).

[7] See, e.g., *Musgrave*, 431 F.2d at 893, 167 USPQ at 289–90, cited with approval in *Schrader*, 22 F.3d at 297, 30 USPQ2d at 1461 (Newman, J., dissenting). The definition of "technology" is the "application of science and engineering to the development of machines and procedures in order to enhance or improve human conditions, or at least to improve human efficiency in some respect." Computer Dictionary 384 (Microsoft Press, 2d ed. 1994).

[8] E.g., *In re Alappat*, 33 F.3d 1526, 1543, 31 USPQ2d 1545, 1556–57 (Fed. Cir. 1994) (in banc) (quoting *Diamond v. Diehr*, 450 U.S. 175, 192, 209 USPQ 1, 10 (1981)). See also id. at 1569, 31 USPQ2d at 1578–79 (Newman, J., concurring) ("unpatentability of the principle does not defeat patentability of its practical applications") (citing *O'Reilly v. Morse*, 56 U.S. (15 How.) 62, 114–19 (1854)); *Arrhythmia*, 958 F.2d at 1056, 22 USPQ2d at 1036; *Musgrave*, 431 F.2d at 893, 167 USPQ at 289–90 ("All that is necessary, in our view, to make a sequence of operational steps a statutory 'process' within 35 U.S.C. 101 is that it be in the technological arts so as to be in consonance with the Constitutional purpose to promote the progress of 'useful arts.' Const. Art. 1, sec. 8.").

[9] *Arrhythmia*, 958 F.2d at 1057, 22 USPQ2d at 1036: It is of course true that a modern digital computer manipulates data, usually in binary form, by performing mathematical operations, such as addition, subtraction, multiplication, division, or bit shifting, on the data. But this is only how the computer does what it does. Of importance is the significance of the data and their manipulation in the real world, i.e., what the computer is doing.

[10] Many computer-related inventions do not consist solely of a computer. Thus, Office personnel should identify those claimed elements of the computer-related invention that are not part of the programmed computer, and determine how those elements relate to the programmed computer. Office personnel should look for specific information that explains the role of the programmed computer in the overall process or machine and how the programmed computer is to be integrated with the other elements of the apparatus or used in the process.

[11] Products may be either machines, manufacturers or compositions of matter. Product claims are claims that are directed to either machines, manufacturers or compositions of matter.

[12] Examples of language that may raise a question as to the limiting effect of the language in a claim:

(a) statements of intended use or field of use,

(b) "adapted to" or "adapted for" clauses,

(c) "wherein" clauses, or

(d) "whereby" clauses.

This list of examples is not intended to be exhaustive.

[13] *Markman v. Westview Instruments*, 52 F.3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir.) (in banc), cert. granted, 116 S. Ct. 40 (1995).

[14] See, e.g., *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994) (inventor may define specific terms used to describe invention, but must do so "with reasonable clarity, deliberateness, and precision" and, if done, must "'set out his uncommon definition in some manner within the patent disclosure' so as to give one of ordinary skill in the art notice of the change" in meaning) (quoting *Intellicall, Inc. v. Phonometrics, Inc.*, 952 F.2d 1384, 1387–88, 21 USPQ2d 1383, 1386 (Fed. Cir. 1992)).

[15] *Id.* at 1480, 31 USPQ2d at 1674.

[16] See, e.g., *In re Zletz*, 893 F.2d 319, 321–22, 13 USPQ2D 1320, 1322 (Fed. Cir. 1989) ("During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow. * * * The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed. * * * An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claims scope be removed, as much as possible, during the administrative process.").

[17] Two in banc decisions of the Federal Circuit have made clear that the Office is to interpret means plus function language according to 35 U.S.C. § 112, sixth paragraph. In the first, *In re Donaldson*, 16 F.3d 1189, 1193, 29 USPQ2d 1845, 1848 (Fed. Cir. 1994), the court held:

The plain and unambiguous meaning of paragraph six is that one construing means-plus-function language in a claim must look to the specification and interpret that language in light of the corresponding structure, material, or acts described therein, and equivalents thereof, to the extent that the specification provides such disclosure. Paragraph six does not state or even suggest that the PTO is exempt from this mandate, and there is no legislative history indicating that Congress intended that the PTO should be. Thus, this court must accept the plain and precise language of paragraph six.

Consistent with *Donaldson*, in the second decision, *Alappat*, 33 F.3d at 1540, 31 USPQ2d at 1554, the Federal Circuit held:

Given Alappat's disclosure, it was error for the Board majority to interpret each of the means clauses in claim 15 so broadly as to "read on any and every means for performing the function" recited, as it said it was doing, and then to conclude that claim 15 is nothing more than a process claim wherein each means clause represents a step in that process. Contrary to suggestions by the Commissioner, this court's precedents do not support the Board's view that the particular apparatus claims at issue in this case may be viewed as nothing more than process claims.

[18] 1162 O.G. (May 17, 1994).

[19] See, e.g. *Diamond v. Diehr*, 450 U.S. at 188–89, 209 USPQ at 9 ("In determining the eligibility of respondents' claimed process for patent protection under § 101, their claims must be considered as a whole. It is inappropriate to dissect the claims into old and new elements and then to ignore the presence of the old elements in the analysis. This is particularly true in a process claim because a new combination of steps in a process may be patentable even though all the constituents of the combination were well known and in common use before the combination was made.").

[20] See supra note 18 and accompanying text.

[21] *Diamond v. Chakrabarty*, 447 U.S. 303, 308–09, 206 USPQ 193, 197 (1980):

In choosing such expansive terms as "manufacture" and "composition of matter," modified by the comprehensive "any," Congress plainly contemplated that the patent laws would be given wide scope. The relevant legislative history also supports a broad construction. The Patent Act of 1793, authored by Thomas Jefferson, defined statutory subject matter as "any new and useful art, machine, manufacture, or composition of matter, or any new or useful improvement [thereof]." Act of Feb. 21, 1793, § 1, 1 Stat. 319. The Act embodied Jefferson's philosophy that "ingenuity should receive a liberal encouragement." 5 Writings of Thomas Jefferson 75–76 (Washington ed. 1871). See *Graham v. John Deere Co.*, 383 U.S. 1, 7–10 (1966). Subsequent patent statutes in 1836, 1870, and 1874 employed this same broad language. In 1952, when the patent laws were recodified, Congress replaced the word "art" with "process," but otherwise left Jefferson's language intact. The Committee Reports accompanying the 1952 Act inform us that Congress intended statutory subject matter to "include anything under the sun that is made by man." S. Rep. No. 1979, 82d Cong., 2d Sess. 5 (1952); H.R. Rep. No. 1923, 82d Cong., 2d Sess. 6 (1952).

This perspective has been embraced by the Federal Circuit:

The plain and unambiguous of § 101 is that any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may be patented if it meets the requirements for patentability set forth in Title 35, such as those found in §§ 102, 103, and 112. The use of the expansive term "any" in § 101 represents Congress' intent not to place any restrictions on the subject matter for which a patent may be obtained beyond those specifically recited in § 101 and the other parts of Title 35. * * * Thus, it is improper to read into § 101 limitations as to the subject matter that may be patented where the legislative history does not indicate that Congress clearly intended limitations. (*Alappat*, 33 F.3d at 1542, 31 USPQ2D at 1556.)

[22] 35 U.S.C. 101 (1994).

[23] 35 U.S.C. § 100(b) ("The term 'process' means process, art, or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.").

[24] E.g., *Alappat*, 33 F.3d at 1542, 31 USPQ2d at 1556; *In re Warmerdam*, 33 F.3d 1354, 1358, 31 USPQ2d 1754, 1757 (Fed. Cir. 1994).

[25] See, e.g., *Rubber-Tip Pencil Co. v. Howard*, 87 U.S. 498, 507 (1874) ("idea of itself is not patentable, but a new device by which it may be made practically useful is"); *Mackay Radio & Telegraph Co.* v. *Radio Corp. of America*, 306 U.S. 86, 94 (1939) ("While a scientific truth, or the mathematical expression of it, is not patentable invention, a novel and useful structure created with the aid of knowledge of scientific truth may be."); Warmerdam, 33 F.3d at 1360, 31 USPQ2d at 1759 ("steps of 'locating' a medical axis, and 'creating' a bubble hierarchy * * * describe nothing more than a manipulation of basic mathematical constructs, the paradigmatic 'abstract idea' ").

[26] The concern over preemption was expressed as early as 1852. See *Le Roy* v. *Tatham*, 55 U.S. 156, 175 (1852) ("A principle, in the abstract, is a fundamental truth; an original cause; a motive; these cannot be patented, as no one can claim in either of them an exclusive right.")' *Funk Brothers Seed Co.* v. *Kalo Inoculant Co.*, 333 U.S. 127, 132, 76 USPQ 280, 282 (1948) (combination of six species of bacteria held to be non-statutory subject matter).

[27] The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).

[28] Compare *In re Lowry*, 32 F.3d 1579, 1583–84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure that increases computer efficiency held statutory) and *Wormerdam*, 33 F.3d at 1360–61, 31 USPQ2d at 1759 (claim to computer having specific memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held non-statutory).

[29] *In re Sarkar*, 588 F.2d 1330, 1333, 200 USPQ 132, 137 (CCPA 1978):

[E]ach invention must be evaluated as claimed; yet semantogenic considerations preclude a determination based solely on words appearing in the claims. In the final analysis under § 101, the claimed invention, as a whole, must be evaluated for what it is.

Quoted with approval in *Abele*, 684 F.2d at 907, 214 USPQ at 687. See also *In re Johnson*, 589 F.2d 1070, 1077, 200 USPQ 199, 206 (CCPA 1978) ("form of the claim is often an exercise in drafting").

[30] See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held non-statutory).

[31] Computer Dictionary 210 (Microsoft Press, 2d ed. 1994):

Data consists of facts, which become information when they are seen in context and convey meaning to people. Computers process data without any understanding of what that data represents.

[32] See supra note 29.

O'Reilly v. Morse, 56 U.S. (15 How.) at 112–14.

[34] *Id.* at 114–19.

[35] Products may be either machines, manufactures or compositions of matter.

A machine is:

a concrete thing, consisting of parts or of certain devices and combinations of devices.

Burr v. Duryee, 68 U.S. (1 Wall.) 531, 570 (1863).

A manufacture is:

the production of articles for use from raw or prepared materials by giving to these materials new forms, qualities, properties or combinations, whether by hand-labor or by machinery.

Diamond v. Chakrabarty, 447 U.S. at 308, 206 USPQ at 196–97 (quoting *American Fruit Growers, Inc. v. Brogdex Co.*, 283 U.S. 1, 11 (1931).

A composition of matter is:

a composition[] of two or more substances [or] * * * a[] composite article[], whether * * * [it] be the result of chemical union, or of mechanical mixture, whether * * *]it] be [a] gas[], fluid[], powder[], or solid[].

Diamond v. Chakrabarty, 447 U.S. at 308, 206 USPQ at 197 (quoting *Shell Development Co. v. Watson*, 149 F. Supp. 279, 280, 113 USPQ 265, 266 (D.D.C. 1957), aff'd per curiam, 252 F.2d 861, 116 USPQ 428 (D.C. Cir. 1958).

[36] See, e.g., *Lowry*, 32 F.3d at 1583, 32 USPQ2d at 1034–35; USPQ2d at 1760.

[37] Cf. *In re Iwahashi*, 888 F.2d 1370, 1374–75, 12 USPQ2d 1908, 1911–12 (Fed. Cir. 1989), cited with approval in *Alappat*, 33 F.3d at 1544, n.24, 31 USPQ2d at 1558 n.24.

[38] "Specific software" is defined as a set of instructions implemented in a specific program code segment. See Computer Dictionary 78 (Microsoft Press, 2d ed. 1994) for definition of "code segment."

[39] See *Diamond v. Diehr*, 450 U.S. at 183–84, 209 USPQ at 6 (quoting *Cochrane v. Deener*, 94 U.S. 780, 787–88 (1877) ("A [statutory] process is a mode of treatment of certain materials to produce a given result. It is an act, or a series of acts, performed upon the subject-matter to be transformed and reduced to a different state or thing. * * * The process requires that certain things should be done with certain substances, and in a certain order; but the tools to be used in doing this may be of secondary consequence.").

[40] See *Alappat*, 33 F.3d at 1543, 31 USPQ2d at 1556–57 (quoting *Diamond v. Diehr*, 450 U.S. at 192, 209 USPQ at 10). See also *id.* at 1569, 31 USPQ2d at 1578–79 (Newman, J., concurring) ("unpatentability of the principle does not defeat patentability of its practical applicants") (citing *O'Reilly v. Morse*, 56 U.S. (15 How.) at 114–19).

[41] *Diamond v. Diehr*, 450 U.S. at 187, 209 USPQ at 8.

[42] See *In re Gelnovatch*, 595 F.2d 32, 41 n.7, 201 USPQ 136, 145 n.7 (CCPA 1979) (data-gathering step did not measure physical phenomenon).

[43] *Schrader*, 22 F.3d at 294, 30 USPQ2d at 1459 citing with approval *Arrhythmia*, 958 F.2d at 1058–59, 22 USPQ2d at 1037–38; *Abele*, 684 F.2d at 909, 214 USPQ at 688; *In re Toner*, 681 F.2d 787, 790, 214 USPQ, 678, 681 (CCPA 1982).

[44] See supra note 9.

[45] In *Sarkar*, 588 F.2d at 1335, 200 USPQ at 139, the court explained why this approach must be followed:

No mathematical equation can be used, as a practical matter, without establishing and substituting values for the variables expressed therein. Substitution of values dictated by the formula has thus been viewed as a form of mathematical step. If the steps of gathering and substituting values were alone sufficient, every mathematical equation, formula, or algorithm having any practical use would be per se subject to patenting as a "process" under § 101. Consideration of whether the substitution of specific values is enough to convert the disembodied ideas present in the formula into an embodiment of those ideas, or into an application of the formula, is foreclosed by the current state of the law.

[46] See supra note 40.

[47] See, e.g., *In re Bernhart*, 417 F.2d 1395, 1400, 163 USPQ 611, 616 (CCPA 1969).

[48] *Schrader*, 22 F.3d at 293–94, 30 USPQ2d at 1458–59.

[49] *Warmerdam*, 33 F.3d at 1360, 31 USPQ2d at 1759.

[50] See, e.g., *In re Meyer*, 688 F.2d 789, 794–95, 215 USPQ 193, 197 (CCPA 1982) ("Scientific principles, such as the relationship between mass and energy, and laws of nature, such as the acceleration of gravity, namely, a=32 ft./sec.^{2}, can be represented in mathematical format. However, some mathematical algorithms and formulae do not represent scientific principles or laws of nature; they represent ideas or mental processes and are simply logical vehicles or communicating possible solutions to complex problems. The presence of a mathematical algorithm or formula in a claim is merely an indication that a scientific principle, law of nature, idea or mental process may be the subject matter claimed and, thus, justify a rejection of that claim under 35 USC § 101; but the presence of a mathematical algorithm or formula is only a signpost for further analysis."). Cf. *Alappat*, 33 F.3d at 1543 n.19, 31 USPQ2d at 1556 n.19 in which the Federal Circuit recognized the confusion:

The Supreme Court has not been clear * * * as to whether such subject matter is excluded from the scope of § 101 because it represents laws of nature, natural phenomena, or abstract ideas. See *Diehr*, 450 U.S. at 186 (viewed mathematical algorithm as a law of nature); *Benson*, 409 U.S. at 71–72 (treated mathematical algorithm as an "idea"). The Supreme Court also has not been clear as to exactly what kind of mathematical subject matter may not be patented. The Supreme Court has used, among others, the terms "mathematical algorithm," "mathematical formula," and "mathematical equation" to describe types of mathematical subject matter not entitled to patent protection standing alone. The Supreme Court has not set forth, however, any consistent or clear explanation of what it intended such terms or how these terms are related, if at all.

[51] *Walter*, 618 F.2d at 769, 205 USPQ at 409 (Because none of the claimed steps were explicitly or implicitly limited to their application in seismic prospecting activities, the court held that "[a]lthough the claim preambles relate the claimed invention to the art of seismic prospecting, the claims themselves are not drawn to methods of or apparatus for seismic prospecting; they are drawn to improved mathematical methods for interpreting the results of seismic

prospecting."). Cf. *Alappat*, 33 F.3d at 1544, 31 USPQ2d at 1558.

[52] *Walter*, 618 F.2d at 769–70, 205 USPQ at 409.

[53] See supra note 45.

[54] *Taner*, 681 F.2d at 788, 214 USPQ at 679.

[55] *Abele*, 684 F.2d at 908, 214 USPQ at 687 ("The specification indicates that such attenuation data is available only when an X-ray beam is produced by a CAT scanner, passed through an object, and detected upon its exist. Only after these steps have been completed is the algorithm performed, and the resultant modified data displayed in the required format.").

[56] *Gelnovatch*, 595 F.2d at 41 n.7, 201 USPQ at 145 n.7 ("Appellants' claimed step of perturbing the values of a set of process inputs (step 3), in addition to being a mathematical operation, appears to be a data-gathering step of the type we have held insufficient to change a nonstatutory method of calculation into a statutory process. * * * In this instance, the perturbed process inputs are not even measured values of physical phenomena, but are instead derived by numerically changing the values in the previous set of process inputs.").

[57] *Sarkar*, 588 F.2d at 1331, 200 USPQ at 135.

[58] See *Sarkar*, 588 F.2d at 1332 n.6, 200 USPQ at 136 n.6 ("post-solution" construction that was being modeled by the mathematical process not considered in deciding § 101 question because applicant indicated that such construction was not a material element of the invention).

[59] *Parker v. Flook*, 437 U.S. 584, 585, 198 USPQ 193, 195 (1978).

[60] *Walter*, 618 F.2d at 770, 205 USPQ at 409 ("If § 101 could be satisfied by the mere recordation of the results of a nonstatutory process on some record medium, even the most unskilled patent draftsman could provide for such a step.").

[61] *Gelnovatch*, 595 F.2d at 41 n.7, 201 USPQ at 145 n.7.

[62] *Abele*, 684 F.2d at 909, 214 USPQ at 688 ("This claim presents no more than the calculation of a number and display of the result, albeit in a particular format. The specification provides no greater meaning to 'data in a field' than a matrix of numbers regarding of by what method generated. Thus, the algorithm is neither explicitly nor implicitly applied to any certain process. Moreover, that the result is displayed as a shade of gray rather than as simply a number provides no greater or better information, considering the broad range of applications encompassed by the claim.").

[63] *In re De Castelete*, 562 F.2d at 1236, 1244, 195 USPQ 439, 446 (CCPA 1977) ("That the computer is instructed to transmit electrical signals, representing the results of its calculations, does not constitute the type of 'post solution activity' found in *Flook*, [437 U.S. 584, 198 USPQ 193 (1978)], and does not transform the claim into one for a process merely using an algorithm. The final transmitting step constitutes nothing more than reading out the result of the calculations.").

[64] E.g., *Warmerdam*, 33 F.3d at 1360, 31 USPQ2d at 1759. See also *Schrader*, 22 F.3d at 295, 30 USPQ2d at 1459.

[65] See supra note 18 and accompanying text.

[66] Computer Dictionary 353 (Microsoft Press, 2d ed. 1994) (definition of "self-documenting code").

[67] See *In re Barker*, 559 F.2d 588, 591, 194 USPQ 470, 472 (CCPA 1977), cert. denied, *Barker* v. *Parker*, 434 U.S. 1064 (1978) (a specification may be sufficient to enable one skilled in the art to make and use the invention, but still fail to comply with the written description requirement). See also *In re DiLeone*, 436 F.2d 1404, 1405, 168 USPQ 592, 593 (CCPA 1971).

[68] See, e.g., *Northern Telecom* v. *Datapoint Corp.*, 908 F.2d 931, 941–43, 15 USPQ 2d 1321, 1328–30 (Fed. Cir.), cert. denied, *Datapoint Corp.* v. *Northern Telecom*, 498 U.S. 920 (1990) (judgment of invalidity reversed for clear error where expert testimony on both sides showed that a programmer of reasonable skill could write a satisfactory program with ordinary effort based on the disclosure); *DeGeorge* v. *Bernier*, 768 F.2d 1318, 1324, 226 USPQ 758, 762–63 (Fed. Cir. 1985) (superseded by statute with respect to issues not relevant here) (invention was adequately disclosed for purposes of enablement even though all of the circuitry of a word processor was not disclosed, since the undisclosed circuitry was deemed inconsequential because it did not pertain to the claimed circuit); *In re Phillips*, 608 F.2d 879, 882–83, 203 USPQ 971, (CCPA 1979) (computerized method of generating printed architectural specifications dependent on use of glossary of predefined standard phrases and error-checking feature enabled by overall disclosure generally defining errors); *In re Donohue*, 550 F.2d 1269, 1271, 193 USPQ 136, 137 (CCPA 1977) ("Employment of block diagrams and descriptions of their functions is not fatal under 35 U.S.C. § 112, first paragraph, providing the represented structure is conventional and can be determined without undue experimentation.") *In re Knowlton*, 481 F.2d 1357, 1366–68, 178 USPQ 486, 493–94 (CCPA 1973) (examiner's contention that a software invention needed a detailed description of all the circuitry in the complete hardware system reversed).

[69] See *In re Naquin*, 398 F.2d 863, 866, 158 USPQ 317, 319 (CCPA 1968) ("When an invention, in its different aspects, involves distinct arts, that specification is adequate which enables the adepts of each art, those who have the best chance of being enabled, to carry out the aspect proper to their specialty.") Ex parte *Zechnall*, 194 USPQ 461, 461 (Bd. App. 1973) ("appellants' disclosure must be held sufficient if it would enable a person skilled in the electronic computer art, in cooperation with a person skilled in the fuel injection art, to make and use appellants' invention").

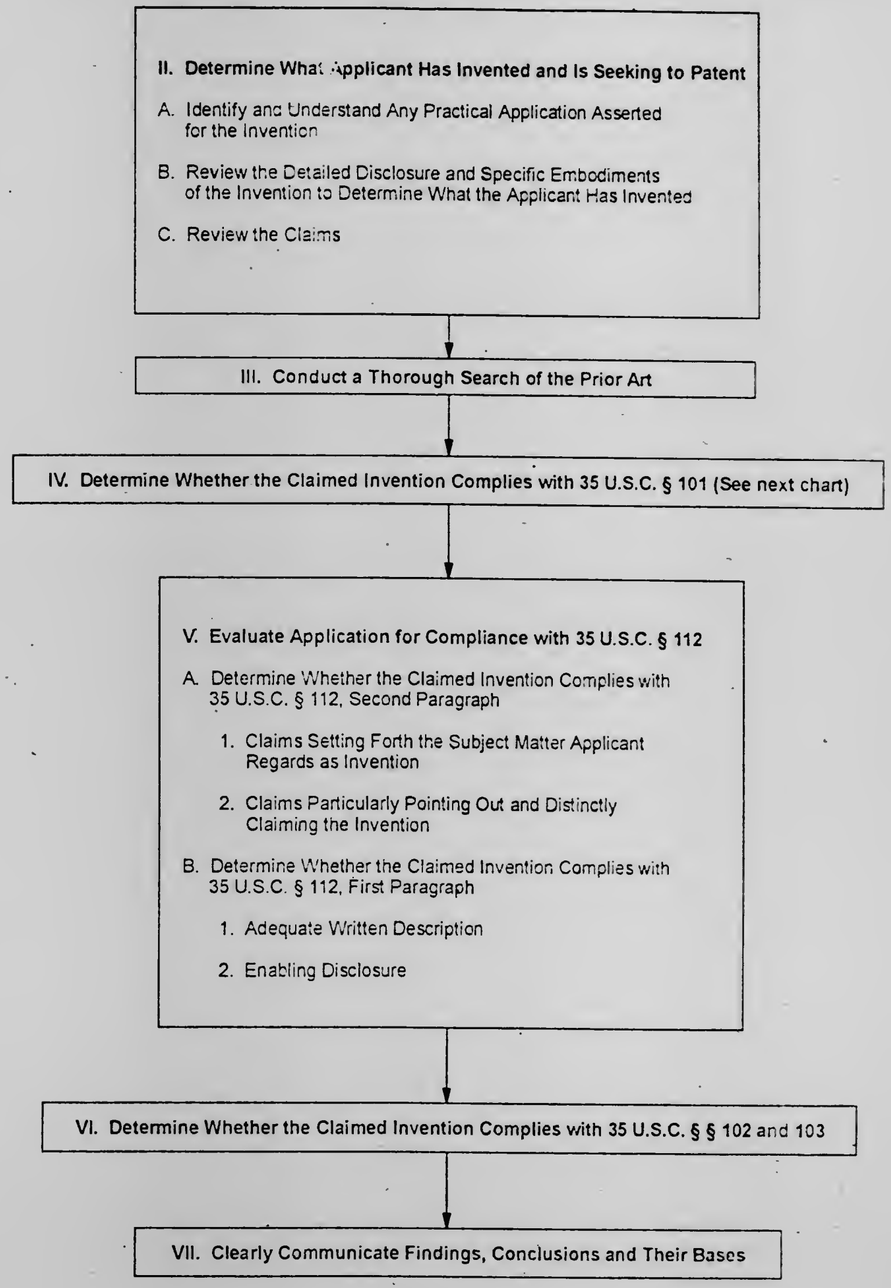
[70] See *In re Scarbrough*, 500 F.2d 560, 565, 182 USPQ 298, 301–02 (CCPA 1974) ("It is not enough that a person skilled in the art, by carrying on investigations along the line indicated in the instant application, and by a great amount of work eventually might find out how to make and use the instant invention. The statute requires the application itself to inform, not to direct others to find out for themselves (citation omitted)."); *Knowlton*, 481 F.2d at 1367, 178 USPQ at 493 (disclosure must constitute more than a "sketchy explanation of flow diagrams or a bare group of program listings together with a reference to a proprietary computer on which they might be run"). See also *In re Gunn*, 537 F.2d 1123, 1127–28, 190 USPQ 402 (CCPA 1976); *In re Brandstadter*, 484 F.2d 1395, 1406–07, 17 USPQ 286, 294 (CCPA 1973); and *In re Ghiron*, 442 F.2d 985, 991, 169 USPQ 723, 727–28 (CCPA 1971).

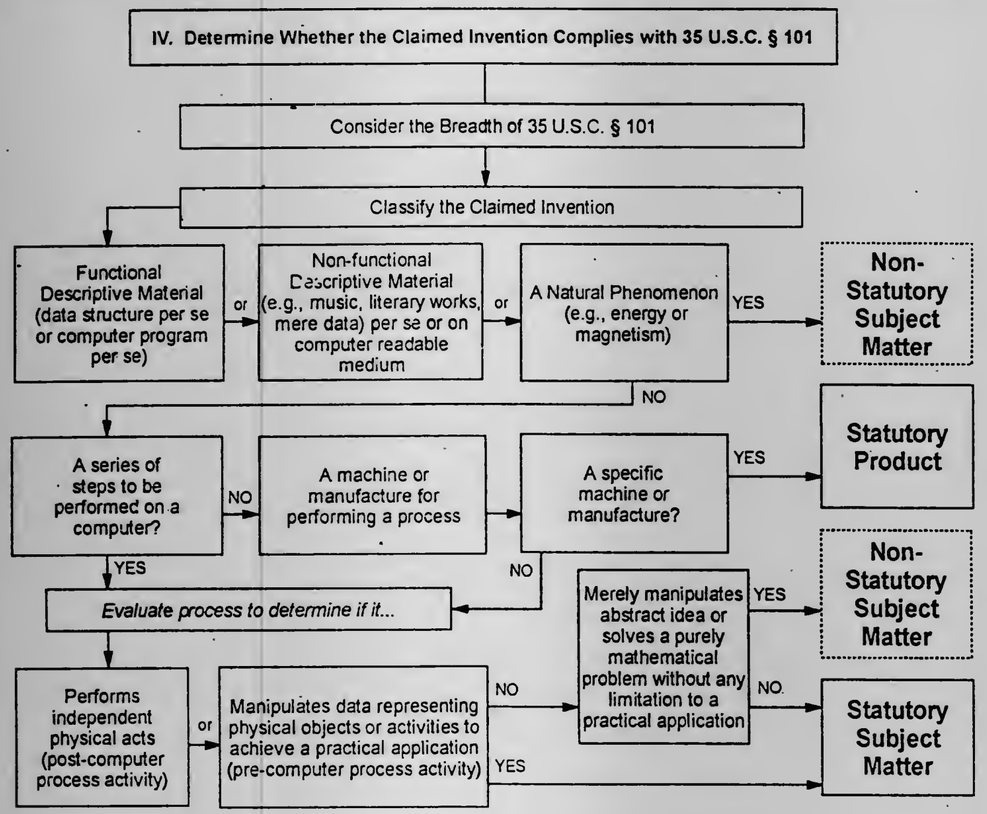
[71] Cf. *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

Appendix to Examination Guidelines for Computer-Related Inventions

BILLING CODE 3510-16-M

Computer-Related Inventions





Dated: February 16, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 96–4140 Filed 2–27–96; 8:45 am]

BILLING CODE 3510–16–C

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

February 22, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs denying the right to participate in the Special Access Progam.

EFFECTIVE DATE: February 26, 1996.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Committee for the Implementation of Textile Agreements (CITA) has determined that Gator of Florida is in violation of the requirements set forth for participation in the Special Access Program.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, effective on February 26, 1996, to deny Gator of Florida the right to participate in the Special Access Program for a period of six months, from February 26, 1996 through August 25, 1996.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 22, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has determined that Gator of Florida is in violation of the requirements for participation in the Special Access Program.

Effective on February 26, 1996, you are directed to prohibit Gator of Florida from further participation in the Special Access Program for a period of six months, from February 26, 1996 through August 25, 1996. For the period February 26, 1996 through August 25, 1996, goods accompanied by Form ITA–370P which are presented to U.S. Customs for entry under the Special Access Program will not be accepted. In addition, for the period February 26, 1996 through August 25, 1996, you are directed not to sign ITA–370P forms for export of U.S.-formed and cut fabric for Gator of Florida.

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–4558 Filed 2–27–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Notice of Availability (NOA) for the Proposed Wyoming Valley Levee Raising Project in the Vicinity of Wilkes-Barre, Luzerne County, Pennsylvania

AGENCY: U.S. Army Crops of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) and Section 404 of the Clean Water Act, the U.S. Army Corps of Engineers, Baltimore District, is conducting the final public review of the Final Supplemental Environmental Impact Statement (FSEIS) as part of the public coordination effort regarding the proposed Wyoming Valley Levee Raising Project, Luzerne County, Pennsylvania. The purpose of the levee raising project is to modify the five existing flood protection projects to provide protection against reoccurrence of a flood equal to that caused by Tropical Storm Agnes in June 1972. The proposed project consists of raising the levees and floodwalls 3 to 5 feet, appurtenant features, and structural and non-structural mitigation measures for increased flood impacts. The project was authorized under Section 401(a) of the 1986 Water Resources Development Act. Luzerne County is the non-Federal sponsor for this project.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Final Supplemental Environmental Impact Statement (FSEIS) can be addressed to Mr. Richard Starr, Project Manager, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB–PL–RP, P.O. Box 1715, Baltimore, Maryland 21203–1715, telephone (410) 962–4633. E–mail address: richard.r.starr@ccmail.nab.usace.army.mil

SUPPLEMENTARY INFORMATION:

1. The Baltimore District, U.S. Army Corps of Engineers, has prepared a Final Phase II General Design Memorandum (GDM) which has evaluated an increased level of protection for the existing flood protection systems along the Susquehanna River is the Wyoming Valley of Luzerne County in the vicinity of Wilkes-Barre, Pennsylvania. Additionally, the study evaluated increased flooding due to the proposed project and alternative solutions for this problem in areas upstream and downstream in Lackawanna, Luzerne, Columbia, Montour, Northumberland, and Snyder Counties. A Final Supplemental Environmental Impact Statement (FSEIS) has been prepared. This FSEIS documents all study activities, including changes in the project actions, existing conditions and project effects since the FEIS was prepared for the Phase I GDM in 1981.

2. The decision to implement the project actions was based on an evaluation of the probable impact of the proposed activities on the public interest. That decision reflects the national concern for both protection and utilization of important resources. The benefit which may reasonably be expected to accrue from the proposal was balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal, including the cumulative effects, thereof, were considered; among these factors are conservation; economics; aesthetics; general environmental concerns; wetlands; cultural values; fish and wildlife values; threatened and endangered species; flood hazards; flood plain values; hazardous, toxic and radioactive waste; terrestrial resources; land use; recreation; water supply and conservation; water quality; energy needs; safety; food and fiber production; and the general needs and welfare of the people.

3. Final evaluation of the levee raising project indicates that the overall quality of the study area will be maintained with exception to some social impacts caused by the increased flooding; environmental impacts to a 0.38 acre river fringe emergent wetland; and cultural impacts to one archeological site and two architectural structures. Mitigation plans have been developed for all of these impacts. Only minor impacts to aquatic resources are expected to occur as a result of limited fill activities in waters of the United States.

4. An evaluation of the proposed actions on waters of the United States was performed pursuant to the guidelines promulgated by the

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Administrator, U.S. Environmental Protection Agency, under the authority of Section 401 and Section 404 of the Clean Water Act. The Section 404(b)1 evaluations and other preliminary analyses indicate that the proposed project will result in no significant adverse impacts to the aquatic ecosystem, recreation, aesthetics, flood protection or economic values of the waterways. The U.S. Army Corps of Engineers, Baltimore District, has received a Section 401 water quality certification, dated 20 March 1995, from the Commonwealth of Pennsylvania for the levee raising project.

5. A Public Notice (PN) and Notice of Availability (NOA) were published in the **Federal Register** on November 1, 1994, which began a 45 day draft public review period. The NOA and draft document were sent to more than 500 congressional interests, state interests, federal, state and local agencies, public media, educational institutions, special interest groups, businesses, and individual interests. The Corps of Engineers received approximately 80 comments. Each comment was addressed in the Phase II GDM and FSEIS, in addition to individual response letters explaining how each comment was to be addressed in the final document. Based on the comments, it was determined that a public hearing was not needed. After the final public review period, a Record of Decision (ROD) will be signed and published in the **Federal Register**.

6. The FSEIS has been submitted for final review. Any person who has an interest in the project may request for a copy of the final Phase II GDM and FSEIS. Any requests must be submitted within 30 days of the date of this notice to: District Engineer, ATTN: CENAB–PL–RP, U.S. Army Corps of Engineers, Baltimore District, P.O. Box 1715, Baltimore, Maryland 21203–1715.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–4461 Filed 2–27–96; 8:45 am]

BILLING CODE 3710–41–M

Department of the Navy

Record of Decision for the Establishment of the United States Navy Mine Warfare Center of Excellence in the Corpus Christi Bay Area, Texas

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality regulations implementing NEPA procedures (40 CFR Parts 1500–1508), the Department of the Navy announces its decision to establish the Mine Warfare Center of Excellence (MWCE) in the Corpus Christi Bay area by collocating its Mine Warfare (MIW) and Mine Counter Measures (MCM) assets in proximity to each other at Naval Station (NAVSTA) Ingleside and Naval Air Station (NAS) Corpus Christi, Texas. The proposed action includes new construction at these installations and off-base, use of or modification to existing facilities at the installations, and the establishment of offshore training and operating areas.

Congress directed the Navy to establish the MWCE at NAVSTA Ingleside in the FY94 Defense Appropriations Act. A Notice of Intent (NOI) was published in the **Federal Register** on November 19, 1993, indicating the Department of the Navy would prepare an Environmental Impact Statement (EIS) for the establishment of the United States Navy Mine Warfare Center of Excellence in the Corpus Christi Bay Area, Texas. Two public scoping meetings were held to determine the scope of significant issues to be examined in the EIS. The first meeting was held on December 7, 1993 in Flour Bluff, Texas, and the second meeting was held on December 8, 1993 in Corpus Christi, Texas. A Draft EIS (DEIS) was filed with the U.S. Environmental Protection Agency (EPA) and distributed to agencies and officials of federal, state, and local governments, citizen's groups and associations, media, public libraries, and interested parties for review and comments. The Notice of Filing and Notice of Public Availability appeared in the **Federal Register** on May 5, 1995. The period of public review and comment on the DEIS was from May 5, 1995 through June 19, 1995. Two public hearings were held during this period: the first on June 6, 1995 in Flour Bluff, Texas, and the second on June 7, 1995 in Ingleside, Texas. Comments on the DEIS were received in three forms: (1) Letters, (2) written comments received at the public hearings, and (3) oral statements made at the hearings. Comments included concerns about habitat impacts, terrestrial vegetation impacts, seagrass impacts, mitigation, water quality, landuse, wildlife impacts, and surfing impacts. Those comments and Navy responses were incorporated into the Final Environmental Impact Statement (FEIS), which was filed with the EPA on December 15, 1995 and distributed for public review.

Two letters of comments were received during public review of the FEIS. The Office of the Governor had no substantive comment and the EPA reiterated its "lack of objection" rating given on the DEIS.

The EIS evaluated the reasonable facility alternatives to implementing the proposed action in the Corpus Christi Bay area and the environmental impacts of the construction, modification, and operation of the proposed facilities and establishment of offshore training and operating areas. In addition to the various facility alternatives discussed in the EIS, a "No Action" alternative was evaluated. In the "No Action" alternative, an MWCE would not be established leaving assets and facilities spread out at several locations. This alternative was eliminated because it would continue to degrade the Navy's ability to properly perform its expeditionary warfare mission in support of possible contingencies world-wide. This alternative also would not comply with Congressional direction.

New facility construction includes a Magnetic Silencing Facility (MSF), required to measure the magnetic signature of MIW ships, to be located at a site north of Jewell Fulton Canal near NAVSTA Ingleside. The MSF consists of two components: An electromagnetic roll (EMR) "crib" and a "check" range. The EMR "crib" requires 27 feet of water depth, navigable access to the pier, and a turning basin. The facility will consist of two parallel timber piers approximately 50 feet apart and 320 feet long that are 14 feet wide, an instrument building, and a generator building. The "check" range will consist of a Closed Loop Degaussing (CLDG) component built over the "crib" with minimum modification to the proposed pier configuration to accommodate all classes of MIW ships. Dredging of the MSF site will remove approximately 450,000 cubic yards (CY) of dredged material. The 50-year maintenance requirement could require dredging of approximately 720,000 CY. Dredge material will be disposed of at Navy's existing upland disposal site near the La Quinta Channel area. Dredging of the MSF will cause the loss of approximately 3.5 acres of seagrass. The Navy has prepared a mitigation plan to compensate for the loss of the seagrass area which has been approved in concept by the U.S. Army Corps of Engineers (USAEC).

The Aviation Mine Counter Measures (AMCM) Sled Facility, required to train helicopter pilots in the launching and recovery of magnetic influenced AMCM sleds, will be located on North Padre Island adjacent to the Padre Island National Seashore. The facility will include a landing pad, launch ramp, a staging area capable of holding and maintaining the sleds, tiedown capability, maintenance/personnel support structure, security systems, and on-site wash rack. Mobile fueling capability will be provided for sled operations; however, no permanent fueling facilities will be constructed. Construction of the AMCM facility at North Padre Island will result in a removal of approximately 1.77 acres of ephemeral fresh to brackish wetland swales. The Navy will replace the wetlands at a ratio established through the permitting process.

A small craft pier will be constructed near the east end of the existing wharf at NAVSTA Ingleside where dredging is not required. The pier will be 600-foot by 30-foot, reinforced concrete construction and will include utilities. The function of the pier is to accommodate utility boats used in support of the mine warfare exercises and other assignments. A 32-foot wide concrete launching ramp extending from the existing wharf deck located adjacent to the east of the small craft pier will also be constructed.

Administrative Facilities required for the MWCE will be located in existing facilities at NAS Corpus Christi and NAVSTA Ingleside. Support for two MH–53E Sea Dragon helicopter squadrons will be accommodated by modifying existing hangars and support facilities at NAS Corpus Christi. New bachelor enlisted housing (approximately 119,130 square feet) will be constructed in a vacant site within the Community Facilities Area of NAS Corpus Christi to house approximately 722 enlisted personnel.

Mobile Mine Assembly Group (MOMAG) Unit Fifteen will use existing Hangar 3 (Building 760) at NAS Kingsville for administrative and operations space. Explosive Ordnance Disposal (EOD) Mobile Unit Six will reside in existing facilities located in the Housing Area to the southeast of the hospital at NAS Corpus Christi. An additional 200-foot by 50-foot "drive-through" building will be required to complete the storage needs for EOD equipment. An on-shore explosive pit will also be constructed in the southwest section of NAS Corpus Christi near the existing skeet/trap range for EOD training purposes.

Training and operating areas will be established in the Gulf of Mexico off North Padre Island, collocated with the AMCM Sled Facility, and within Mineral Management Service (MMS) Lease Blocks 732, 733, 734, 793, 799, and 816. This will include a permanent drill minefield and an Ordnance Detonation Area, required for the detonation of practice mines using a maximum of 10 pounds C–4 explosive (equivalent to 8 pounds of TNT). This area (a one nautical mile by one nautical mile area) is in the southeast corner of MMS Lease Block 816. Surface restrictions in these areas will be established to allow for both daily MIW training and quarterly integrated training.

In selecting the preferred facility and operating site locations, various alternatives were considered with respect to environmental impacts, as well as other factors including cost. The evaluation criteria included a location's ability to meet a best balance of project need, physical, biological, and socioeconomic impacts. A brief summary of the alternatives considered and their rational for the selection follows:

Six alternative sites in the coastal bend area of Texas were considered for the location of each of the two components ("crib" and "check" range) of the MSF. Because one of the operational requirements of the MSF is for the "check" range to be visible from the EMR "crib" instrumentation, a two step evaluation was used to select the site(s) for the two components. The initial step consisted of the evaluation of the six EMR component sites followed by the evaluation of the "check" range component sites which were operationally acceptable (visible) to the EMR. One EMR site was initially eliminated because it was outside of the acceptable operation distance for MCM-type ships and a second was eliminated because it did not provide access to the Gulf. The chosen EMR alternative (Jewell Fulton Canal) was selected because it represented the least potential adverse impacts to the environment. Once the Jewell Fulton Canal site was selected for the location of the EMR component, the CLDG component was determined to the most acceptable "check" range alternative because it required no additional dredging and limited adverse impacts to bay waters.

The only site considered for the small craft pier was NAVSTA Ingleside because it already provides existing Navy homeport and support facilities unavailable at any other locations in the Corpus Christi Bay area.

Five alternatives initially were considered for the AMCM facility; of these, three were determined to be operationally unacceptable and one had the potential for major environmental impacts. The launch-from-a-ramp facility located on the beach was judged to be the most feasible alternative. The beach launch alternative considered three sites, of these the North Padre Island site was determined to be the most operationally acceptable and would cause the least potential impact to the environment and public.

For the MOMAG facility, three sites other than the chosen NAS Kingsville site were considered: NAVSTA Ingleside, NAS Corpus Christi, and government facilities in San Antonio, Texas. NAS Kingsville had available administrative and operations space which could meet space requirements without new construction and also had existing support facilities.

Only NAS Corpus Christi had available space to meet EOD administrative and on-shore explosive pit requirements in acceptable landuse areas.

Three alternative sites were considered for the Very Shallow Water/ Littoral Training Area: San Jose Island, Mustang Island, and North Padre Island. San Jose Island and Mustang Island were eliminated because these two sites contain enough impediments (navigation fairways, oil and gas pipelines, offshore platforms, and/or areas of heavy beach usage by the public) to make the areas operationally unacceptable. Thus, the North Padre Island site was selected as the location for the Very Shallow Water/ Littoral Training Area.

All five of the areas considered for the Medium Water Depth Training and Operating Areas met the evaluations criteria (within reasonable operational distances and in areas of minimal or non-existent finfish habitat). The three chosen sites (MMS Lease Blocks 793, 799, and 816) were selected because they are adjacent to each other, making operations more convenient, and are currently unleased. The only areas considered for the Deep Water Training and Operating Areas were MMS Lease Blocks 732, 733, and 734. They were the only unleased deep water blocks within acceptable distances which met the criteria of having minimal or non-existent finfish habitat.

All practicable means to avoid or minimize environmental impacts of these facilities and operating areas have been adopted. Activities have been located in existing buildings as much as practicable, with some buildings requiring rehabilitation/remodeling. New facilities have been sited after extensive alternatives analysis, and the chosen sites result in the least environmental impact of the reasonable alternatives.

Impacts to water quality, air quality, benthic organisms, marine and natural resources will briefly occur during dredging and dredged material disposal activities and the various facility

construction activities. However, these short-term impacts are not considered significant within the context of the over-all project area and with implementation of specific construction measures described herein and in the EIS. Generally, construction of the various proposed facilities will incorporate erosion control measures consistent with the requirements of the National Pollution Discharge Elimination System (NPDES) General Permit for Construction Activity. Where necessary, a Notice of Intent (NOI) will be submitted to the EPA for any proposed facility which exceeds five acres of construction area. This process will include the preparation and implementation of a Storm Water Pollution Prevention Plan. All open portions of sites will be landscaped and revegetated following construction. During construction, noise-producing activities will be generally conducted during normal operating hours to limit disturbance and annoyance. During dredging and disposal of dredged material, the best available equipment and techniques will be used to minimize the quantity and area of distribution of suspended sediments. Dredging plans will be formulated to meet the requirements of the Federal Water Pollution Control Act (Clean Water Act) and necessary permits.

In accordance with Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act, all required permits from the USACE to perform work in navigable waters of the United States and for the placement of fill material in waters of the United States will be obtained prior to construction and operation of the proposed facilities. In addition to the submission of permit applications to allow work in jurisdictional waters, a permit application will be submitted to the USACE to establish surface restricted areas to allow for offshore training and operating in accordance with 33 CFR 334, Danger Zone and Restricted Area Regulations.

In accordance with the Coastal Barrier Resources Act of 1982, the U.S. Fish and Wildlife Service has determined that the construction of the proposed AMCM sled facility on North Padre Island qualifies for an exception under Section 6(a)(4) of that Act; that is, military activities essential to national security. In addition to the Coastal Barrier Resources Act, the proposed beach site is covered under the Texas Open Beaches Act. The policy of the State of Texas is that the public shall have free and unrestricted access to state-owned beaches. Section 61.022 of the Act provides an exemption for lawful structures authorized by the Constitution or laws of the state or the United States. The Navy will coordinate with the local county government, the Texas General Land Office, and the Office of the Attorney General consistent with the Texas Open Beaches Act when acquiring beach front property and before construction of the ramp facility.

In compliance with the National Historic Preservation Act, potential impacts to cultural resources have been evaluated at the proposed sites. No sites listed on the National Register of Historic Places, outside of NAS Corpus Christi and NAS Kingsville, exist in the proposed area of operations. Any alterations of historic properties at either NAS Corpus Christi or NAS Kingsville, above or beyond normal maintenance, for proposed facilities will be consistent with existing cultural resources management plans and Section 106 of the National Historic Preservation Act. Underwater anomalies were identified at the proposed Jewell Fulton Canal EMR "crib" site and a single anomaly, which would be avoided during construction, near the proposed AMCM sled ramp. In the event that construction would disturb the anomalies, additional investigations to establish signature identity and determine potential National Register eligibility would be performed. The State Historic Preservation Office concurs with this procedure.

To ensure compliance with the Endangered Species Act and Marine Mammal Protection Act during training and operations, a Memorandum of Agreement between the National Marine Fisheries Service and the Department of the Navy is being finalized to implement a mitigation plan that would incorporate visual and electronic surveillance before, during, and after each planned detonation activity.

Impacts associated with the relocation of 9,697 personnel (both military and dependents) have been addressed and coordinated with state and local governments and agencies. A Navy housing study has projected that there will be a shortfall of affordable one- and two-bedroom family housing units. This projected deficit in one- and two-bedroom units will be particularly acute among junior enlisted personnel. The Secretary of the Navy has solicited proposals from qualified private developers interested in forming a limited partnership to develop, maintain, and manage a family housing project in which a maximum of 400 units of affordable housing will be made available to Navy families on a preferential basis.

Approximately 2,926 school age children are expected to move into the area. The Corpus Christi School District is expected to have the largest influx of approximately 1,201 school age children; however, this increase represents less than three percent of its present enrollment and only half of its available additional capacity. The Flour Bluff School District, which is projected to experience an increase of approximately 677 school aged children, is expected to experience the greatest impact because of its small size, proximity, and current crowded conditions. However, planning for 24 new buildings to provide additional capacity is now underway. This is expected to resolve overcrowding concerns for the next five years.

Pursuant to Executive Order 12898, Environmental Justice, potential environmental and economic impacts on minority and low income populations and communities were assessed. No disproportionate concentrations of minority or low income populations were identified in the area of impacts of the various facilities and operations. Additionally, the Navy has ensured that opportunities for community involvement (including minority and low income individuals and populations) in the NEPA process have been provided.

There are adequate utility capacities in the region to support the establishment of the MWCE. Potable water use in the region would increase about four percent through the turn of the century as a result of the establishment of the MWCE. Additional discharges to area wastewater treatment plants from proposed MWCE facilities is not expected to exceed facility capacities. Community support, such as police and fire protection, must be increased to accommodate the new residents; however, this is not expected to impose a significant burden on the communities.

Questions regarding the Environmental Impact Statement prepared for this action may be directed to: Commanding Officer, Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, South Carolina 29419–9100 (Attention: Mr. Will Sloger, Code 064WS), telephone (803) 820–5797.

Dated: February 21, 1996.

Duncan Holaday,

Deputy Assistant Secretary of the Navy (Installations and Facilities)

Dated: February 21, 1996.

M.D. Schetzsle,

LT JAGC, USNR, Alternate Federal Register Certifying Officer.

[FR Doc. 96–4479 Filed 2–27–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald.

DATES: Saturday, March 9, 1996: 8:30 a.m.–12:00 p.m.

ADDRESS: The Joint Information Center, 6025 Dixie Highway, Route 4, Fairfield, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens Task Force office (513) 648–6478.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda

Saturday, March 9, 1996.

8:30 a.m.—Call to Order, Chair's Remarks
8:40 a.m.—Status of Community Reuse Organization
8:50 a.m.—Proposed Revisions to Task Force Charter
9:05 a.m.—Committee Chairs' Reports
9:20 a.m.—Natural Resource Damage Issues
10:00 a.m.—Status of Legacy Waste Removal
10:30 a.m.—Break
10:45 a.m.—Overview of 10-year Cleanup Schedule
11:15 a.m.—Groundwater Cleanup Issues
11:45 a.m.—Opportunity for Public Input
12:00 p.m.—Adjourn

A final agenda will be available at the meeting, Saturday, March 9, 1996.

Public Participation

The meeting is open to the public. Written statements may be filed with the Task Force chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Task Force chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting, due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC on February 22, 1996.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–4517 Filed 2–27–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Department of Energy/Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Tuesday, March 12, 1996: 6:30 pm–9:30 pm; 7:00 pm to 8:00 pm (public comment session).

ADDRESSES: Bureau of Indian Affairs/ Northern Pueblos Agency Conference Room, San Juan Pueblo, PO 4259, Fairview Station, Espanola, New Mexico 87532.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Roybal, Los Alamos National Laboratory Citizens' Advisory Board Support, Northern New Mexico Community College, 1002 Onate Street, Espanola, NM 87352, (800)753–8970, or (505)753–8970.

SUPPLEMENTARY INFORMATION

Purpose of the Board

The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Tuesday, March 12, 1996

6:30 pm—Call to Order and Welcome
7:00 pm—Input from the Public
8:00 pm—DOE/LANL Environmental Restoration Briefing
8:30 pm—Sub-Committee Reports
9:30 pm—Adjourn

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Lisa Roybal, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Herman Le-Doux, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on February 22, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–4518 Filed 2–27–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Idaho National Engineering Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering Laboratory (INEL).

DATES: Tuesday, March 19, 1996 from 8 a.m. until 6 p.m. Mountain Standard Time (MST) and Wednesday, March 20, 1996 from 8 a.m. until 5 p.m. MST. There will be a public comment availability session Tuesday, March 19, 1996 from 5 to 6 p.m. MST.

ADDRESSES: Main Meeting: Shilo Inn Convention Center, 780 Lindsay Boulevard, Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: Idaho National Engineering Laboratory Information 1–800–708–2680 or Marsha Hardy, Jason Associates Corporation Staff Support 1–208–522–1662.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Meeting Purpose

EM SSAB, INEL will be discussing issues associated with the Remedial Investigation and Feasibility Study process specifically as it applies to INEL's Waste Area Group-3 (Idaho Chemical Processing Plant) and potentially making recommendations regarding that process. The Board will continue its study of the INEL FY 1998 Budget Development process and will initiate its study of INEL's Integration Strategy.

Tentative Agenda

Tuesday, March 19, 1996

7:30 a.m. Sign-in and Registration
8:00 a.m. Miscellaneous Business:
Old Business—Reports
- Jerry Bowman—Deputy Designated Federal Official
- Joy Myers—Chair Report

Standing Committee Reports
- Member Selection Committee—Dean Mahoney (chair)

Member Reports
9:45 a.m. Waste Area Group (WAG) 3—Idaho Chemical Processing Plant Remedial Investigation and Feasibility Study
12:00 a.m. Lunch
1:00 p.m. Waste Area Group 3—(continued)
3:00 p.m. Break
3:15 p.m. Waste Area Group 3—(continued)
5:00 p.m. Public Comment Availability (Will continue with WAG 3 Discussion if no public comment)
6:00 p.m. Adjourn

Wednesday, March 20, 1996

7:30 a.m. Sign-In and Registration
8:00 a.m. Miscellaneous Business
8:30 a.m. Welcome: Alan Berkholtz, DOE–ID
8:45 a.m. Environmental Management Budget Prioritization and Development
10:00 a.m. Break
10:15 a.m. Environmental Management Budget Prioritization and Development (continued)
12:00 p.m. Lunch
1:00 p.m. Environmental Management Integration Strategy
3:00 p.m. Break
3:15 p.m. Waste Area Group 3—Idaho Chemical Processing Plant Remedial Investigation and Feasibility Study (wrap-up)
Backup Informational Opportunity: Waste Area Group 1—Test Area North Comprehensive Remedial Investigation/Feasibility Study and Pump and Treat Tests
4:30 p.m. Meeting Evaluation
5:00 p.m. Adjourn

This agenda is subject to change as the Board meeting nears. For a most current copy of the agenda, contact Woody Russell, DOE-Idaho, (208) 526–0561, or Marsha Hardy, Jason Associates, (208) 522–1662. The final agenda will be available at the meeting.

Public Comment Availability

The two-day meeting is open to the public, with a Public Comment Availability session scheduled for Tuesday, March 19, 1996 from 5:00 p.m. to 6:00 p.m. MST. The Board will be available during this time period to hear verbal public comments or to review any written public comments. If there are no members of the public wishing to comment or no written comments to review, the board will continue with it's current discussion. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Idaho National Engineering Laboratory Information line or Marsha Hardy, Jason Associates, at the addresses or telephone numbers listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays.

Issued at Washington, DC on February 21, 1996.

Rachel M. Samuel,
Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–4516 Filed 2–27–96; 8:45 am]
BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[FERC–519]

Proposed Information Collection and Request for Comments

February 22, 1996.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted by no later than April 29, 1996.

ADDRESSES: Copies of the proposed collection of information can be obtained and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873 and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: *Abstract:* The information collected under the requirements of FERC–519 (OMB No. 1902–0082) "Disposition of Facilities, Mergers, and Acquisitions of Securities" is used by the Commission to implement the statutory provisions of Sections 203 and 318 of part II of the Federal Power Act. Section 203 provides that the Commission's approval is required for transactions in which a public utility disposes of jurisdictional facilities, merges such facilities with jurisdictional facilities owned by another person, or acquires the securities of another public utility. Under the statute, the Commission must find that a proposed transaction will be consistent with the public interest before it may approve such transaction. Section 318 exempts certain persons from the requirements of Section 203 that would otherwise concurrently apply under the Public Utility Holding Act of 1935. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 33.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of Respondents Annually (1)	Number of Responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)
30	1	80 hours	2,400 hours.

Estimated cost burden to respondents: 2,400 hours/2,087 hours per year x $102,000 per year=$117,298.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are cost incurred by an organization in support of its mission. these costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Lois D. Shell,
Secretary.

[FR Doc. 96–4488 Filed 2–27–96; 8:45 am]
BILLING CODE 6717–01–M

[FERC–520]

Proposed Information Collection and Request for Comments

February 22, 1996.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted by no later than April 29, 1996.

ADDRESSES: Copies of the proposed collection of information can be obtained and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may also be reached by telephone at (202) 208–1415, by fax at (202) 273–0873 or by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–520 "Application for Authority to Hold Interlocking Directorate Positions" (OMB number 1902–0083) is used by the Commission to implement the statutory provisions of Section 305(b) of the Federal Power Act. Section 305(b) makes the holding of certain defined interlocking corporate positions unlawful unless the Commission has authorized the interlocks to be held, and requires the applicant to show in a form and manner as prescribed by the Commission, that neither public nor private interests will be adversely affected by the holding of the position. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 45.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of Respondents Annually (1)	Number of Responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
25	1	51.8 hours	1,296 hours.

Estimated cost burden to respondents: 1,296 hours/2,087 hours per year×$102,000 per year=$63,340.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information such as administrative costs, and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology e.g. permitting electronic submission of responses.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4487 Filed 2–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–144–000]

CNG Transmission Corporation; Notice of Working Group Report

February 22, 1996.

Take notice that on February 16, 1996, CNG Transmission Corporation (CNG), pursuant to Article I, Section 2, Paragraph H.1 of the June 28, 1995, Stipulation and Agreement filed by CNG submits for filing the E–SCRIPT User Fee Working Group Report.

CNG states that the purpose of the Working Group was to determine whether a consensus could be reached regarding CNG's method for recovering costs associated with the operation of its E–SCRIPT computer system. CNG states that the Working Group failed to reach a consensus.

In accordance with the referenced provision of the June 28, 1995, Stipulation and Agreement, the parties submit the issue of whether CNG should be required to establish an E–SCRIPT user fee to recover some or all E–SCRIPT usage costs to the Commission for decision without further hearing before an Administrative Law Judge or the need for an initial decision.

CNG states that the report details the matters discussed by the Working Group, and identifies concerns expressed by the participants.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 29, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Persons who are parties to Docket No. RP94–96–000, *et al.*, are deemed parties here and need not petition to intervene here in this docket. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Interested parties are invited to file Initial Comments and Reply Comments on the Working Group Report. Initial Comments must be filed by March 8, 1996; and Reply Comments are due on March 29, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4455 Filed 2–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–227–005]

Transwestern Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

February 22, 1996.

Take notice that on February 16, 1996 Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

Effective October 17, 1995: 4th Revised Sheet No. 83

Transwestern states that on November 30, 1995, in Docket No. RP94–227–000, Transwestern filed 3rd Revised Sheet No. 83 and 2nd Revised Sheet No. 84 in response to the Commission's October 17, 1995, Order on Rehearing and Technical Conference. On February 1, 1996 the Commission issued a Letter Order accepting those two tariff sheets effective October 17, 1995, subject to certain revisions being made to the tariff sheets within 15 days from the date of the order.

In these revisions the Commission ordered Transwestern to file:

(1) Paper and electronic copies of the two above-noted tariff sheets to comply with 154.4(b)(1) and 154.102(e)(5) of the regulations;

(2) A narrative explanation of how Section 24 of its tariff conforms to 154.403(c)(7), or, in the alternative, revised tariff sheets to conform to these regulations;

(3) Updated interest rate citations on Sheet No. 83 to cite 154.501(d) of the new regulations.

In order to comply with the above-noted items Transwestern states it is:

(1) Filing paper and electronic copies of the previously approved 2nd Revised Sheet No. 84 that comply with the Commission's Letter Order;

(2) Filing 4th Revised Sheet No. 83 with a modified Section 24.1(c) that indicates that carrying costs are calculated in accordance with 154.403(c)(7) of the Commission's regulations and are consistent with the methodology and reporting requirements set forth in 154.501 of the Commission's regulations;

(3) Updating the interest rate citations on 4th Revised Sheet No. 83 to cite 154.501(d) of the Commission's regulations.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4453 Filed 2–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–136–000 and RP93–109–000]

Williams Natural Gas Company; Notice of Informal Settlement Conference

February 22, 1996.

Take notice that an informal settlement conference will be convened in the above-captioned proceedings at 1:00 p.m. on March 4, 1996, and continuing at 1:00 p.m. on March 5, 1996, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Arnold H. Meltz at (202) 208–2161 or Donald A. Heydt at (202) 208–0740.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4454 Filed 2–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER91–195–023, et al.]

Western Systems Power Pool, et al.; Electric Rate and Corporate Regulation Filings

February 21, 1996.

Take notice that the following filings have been made with the Commission:

1. Western Systems Power Pool

[Docket No. ER91–195–023]

Take notice that on January 30, 1996, the Western Systems Power Tool (WSPP) filed certain information as required by Ordering Paragraph (D) of the Commission's June 27, 1991, Order (55 FERC ¶ 61, 495) and Ordering Paragraph (C) of the Commission's June 1, 1992, Order on Rehearing Denying Request Not To Submit Information, and Granting In Part And Denying Request Not To Submit Information, and Granting In Part And Denying In Part Privileged Treatment. Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order. Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

2. Torco Energy Marketing, Inc. Cenerprise, Inc. Engelhard Power Southeastern Energy Resources, Inc. Jpower, Inc. Eastex Power Marketing, Inc.

[Docket No. ER92–429–007]

[Docket No. ER94–1402–005]

[Docket No. ER94–1690–007]

[Docket No. ER95–385–004]

[Docket No. ER95–1021–002]

[Docket No. ER96–118–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On February 12, 1996, Torco Energy Marketing, Inc. filed certain information as required by the Commission's May 18, 1992 order in ER92–429–000.

On February 9, 1996, Cenerprise, Inc. filed certain information as required by the Commission's December 7, 1994 order in ER94–1402–000.

On February 1, 1996, Engelhard Power filed certain information as required by the Commission's December 29, 1994 order in ER92–1690–000.

On February 2, 1996, Southeastern Energy Resources, Inc. filed certain information as required by the Commission's February 24, 1995 order in ER95–385–000.

On February 9, 1996, Jpower, Inc. filed certain information as required by the Commission's August 25, 1995 order in ER95–1421–000.

On February 2, 1996, Eastex Power Marketing, Inc. filed certain information as required by the Commission's November 28, 1995 order in ER96–118–000.

3. New England Power Company

[Docket No. ER96–237–002]

Take notice that on January 29, 1996, New England Power Company (NEP) filed a Statement of Amendment to the service agreement under its FERC Electric Tariff, Original Volume No. 8, in compliance with the Commission's December 29, 1995 order in this docket.

Comment date: March 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. PECO Energy Company

[Docket No. ER96–640–000]

Take notice that on January 31, 1996, PECO Energy Company (PECO), in connection with a request by Commission staff, completed the filing of its Electric Tariff Volume No. 4 (the Tariff), filed on December 20, 1995.

Copies of the filing have been sent to the Pennsylvania Public Utility Commission and those persons listed on the official service list compiled by the Secretary in this proceeding.

PECO requests that the Tariff be made effective as of the effective date requested PECO's original filing.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Appalachian Power Company

[Docket No. ER96–650–000]

Take notice that on February 13, 1996, Appalachian Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. The Dayton Power & Light Company

[Docket No. ER96–709–000]

Take notice that on January 31, 1996, The Dayton Power and Light Company (Dayton), tendered for filing an amendment to Docket No. ER96–709–000. Dayton requests the agreement be effective as originally requested on December 29, 1995 and waiver of the Commission's notice requirements.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of Colorado

[Docket No. ER96–713–000]

Take notice that on January 31, 1996, Public Service Company of Colorado (Public Service), tendered for filing a second amendment to support its wholesale and transmission rate case wherein it has proposed changes in its FERC Electric Rate Schedule Nos. 44, 45, 46, 47, 48, 52, 53, 54, 59, and 82, which were made in a filing submitted on December 29, 1995, and amended on January 11, 1996.

Public Service is primarily making this amendment to change the demand rates for the customers at issue to reflect rate design based on sixty minute billing parameters. Thirty minute billing parameters were inadvertently used to calculate the demand rates in the original filing.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of Colorado Cheyenne Light, Fuel and Power Company

[Docket No. ER96–939–000]

Take notice that on February 6, 1996, Public Service Company of Colorado (Public Service) and Cheyenne Light, Fuel and Power Company (Cheyenne) filed revised versions of their Point-to-Point Transmission Service Tariffs and their Network Integration Transmission Service Tariffs, which had previously been filed in this docket on February 26, 1996. Public Service and Cheyenne state that the purpose of this filing is, in light of recent Commission decisions, to more closely conform the terms and conditions of their Tariffs to the terms and conditions in the Commission's *pro forma* tariffs as set out in its Notice of Proposed Rulemaking and Supplemental Notice of Proposed Rulemaking in Docket No. RM95–8–000.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company New Mexico

[Docket No. ER96–1003–000]

Take notice that on February 2, 1996, Public Service Company of New Mexico (PMM) filed as an amendment to the San Juan Project Operating Agreement (Operating Agreement) (Operating Agreement) an Interim Invoicing Agreement with respect to invoicing for coal deliveries from San Juan Coal Company among PNM. Tucson Electric Power Company (TEP) and the other owners of interests in the San Juan Generating Station. This interim agreement effectively modifies Modification 8 to the Operating Agreement through an interim period from January 1, 1996 through December 31, 1996.

PNM requests waiver of the Commission's notice requirements in order to allow the Interim Invoicing Agreement to be effective as of January 1, 1996.

Copies of this filing have been served upon the New Mexico Public Utility Commission, TEP and each of the owners of an interest in the San Juan Generating Station.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Central Vermont Public Service Corporation

[Docket No. ER96–1055–000]

Take notice that on February 12, 1996, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement and Koch Power Services Inc. under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power and energy at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on February 16, 1996.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Maine Public Service Company)

[Docket No. ER96–1056–000]

Take notice that on February 12, 1996, Maine Public Service Company submitted an agreement under its Umbrella Power Sales Tariff.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Company

[Docket No. ER96–1057–000]

Take notice that on February 13, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing revisions to its FERC Electric Tariff, Volume 1, Service Agreement No. 17.

Wisconsin Electric requests an effective date of January 15, 1996, in order to implement the Agreement's modifications, which do not result in revenue increase.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Interstate Power Company

[Docket No. ER96–1058–000]

Take notice that on February 13, 1996, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and MidCon Power Services Corporation (MidCon). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to MidCon.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Orange and Rockland Utilities, Inc.

[Docket No. ER96–1059–000]

Take notice that on February 12, 1996, Orange and Rockland Utilities, Inc., acting on behalf of itself and its wholly owned subsidiaries, Rockland Electric Company and Pike County Light & Power Company, (collectively referred to as the Company) filed a Network Integration Service Transmission Tariff and a Point-to-Point (Firm and Non-Firm) Transmission Service Tariff. The Company states that the Tariffs are consistent with the *pro forma* tariffs set forth in the Notice of Proposed Rulemaking, in Docket No. RM95–8–000. The Company submitted workpapers in support of the Tariffs.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company West Penn Power Company (Allegheny Power)

[Docket No. ER96–1060–000]

Take notice that on February 12, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company. The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 8 to add CNG Power Service Corporation to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service to this Customer on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of January 22, 1996.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Sierra Pacific Power Company

[Docket No. ER96–1063–000]

Take notice that on February 14, 1996, Sierra Pacific Power Company (Sierra), tendered for filing, pursuant to 205 of the Federal Power Act and 18 CFR Part 35, Revision No. 1 to Electric Service Agreement between Sierra and Truckee Donner Public Utility District (the District).

Revision No. 1 extends the District's monthly, bill-paying deadline, revises the billing mechanics in certain respects, and adds the specification of certain meeting points. Sierra proposes an effective date of April 22, 1996.

Sierra asserts that the filing has been served on the District and on the regulatory commissions of Nevada and California.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Portland General Electric Company

[Docket No. ER96–1066–000]

Take notice that on February 15, 1996, Portland General Electric Company (PGE), tendered for filing a Scheduling Services Agreement (Scheduling Agreement) with AIG Trading Corporation (AIG) simultaneously requesting the Commission rule the services provided in the Agreement as non-jurisdictional.

Copies of this filing were served upon AIG Trading Corporation and the Oregon Public Utility Commission.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Union Electric Company

[Docket No. ER96–1068–000]

Take notice that on February 15, 1996, Union Electric Company (UE), tendered for filing an Interchange Agreement dated January 18, 1996, between UE and the City of Sikeston, Missouri. UE asserts that the purpose of the Agreement is to set out specific rates, terms, and conditions for the types of power and energy to be exchanged.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. South Carolina Electric & Gas Company

[Docket No. ER96–1069–000]

Take notice that on February 15, 1996, South Carolina Electric & Gas Company tendered for filing proposed Contract for Purchases and Sales of Power and Energy between South Carolina Electric & Gas Company and Sonat Power Marketing, Inc.

Under the proposed contract, the parties will purchase and sell electric energy and power between themselves. South Carolina Electric and Gas Company also requested waiver of notice in order that the contract be effective on January 26, 1996.

Copies of this filing were served upon Sonat Power Marketing, Inc.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Public Service Electric and Gas Company

[Docket No. ER96–1070–000]

Take notice that on February 15, 1996, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Cinergy Services, Inc. (Cinergy). Pursuant to the agreement, PSE&G will sell peaking capacity and associated energy for a four-month (4-month) period commencing on May 1, 1996, the energy being scheduled daily by Cinergy.

Copies of the filing have been served upon Cinergy, the New Jersey Board of Public Utilities and the Indiana Utility Regulatory Commission.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Kentucky Utilities Company

[Docket No. ER96–1071–000]

Take notice that on February 15, 1996, Kentucky Utilities Company (KU), tendered for filing information on transactions that occurred during January 16, 1996 through January 31, 1996, pursuant to the Power Services Tariff accepted by the Commission in Docket No. ER95–854–000.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Northeast Utilities Service Company

[Docket No. ER96–1072–000]

Take notice that on February 15, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement and a Certificate of Concurrence with the Taunton Municipal Lighting Plant (Taunton) under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to Taunton.

NUSCO requests that the Service Agreement become effective on March 1, 1996.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Robert O. Viets

[Docket No. ID–2400–001]

Take notice that on February 6, 1996, Robert O. Viets (Applicant) tendered for filing a supplemental application under Section 305(b) of the Federal Power Act to hold the following positions:

Director, Chairman of the Board and Chief Executive Officer, Central Illinois Light Company

Director, Chairman of the Board and Chief Executive Officer, QST Enterprises Inc.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4489 Filed 2–27–96; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 2390–003, 2395–003, 2421–003, 2473–002, 2475–006 and 2640–010]

Flambeau River, WI; Notice of Intent to Hold Public and Agency Meetings to Discuss Staff's Draft Environmental Statement (DEIS) for Existing Projects on the Flambeau River

February 22, 1996.

On November 30, 1995, The Commission's Staff mailed the Flambeau River Basin Hydroelectric Projects, Wisconsin, DEIS to the Environmental Protection Agency, resource and land management agencies, interested organizations and individuals. The availability of the DEIS was public noticed in the **Federal Register** on December 8, 1995. The document evaluates the continued operation of the Big Falls Water Power Project No. 2390; the Pixley Project No. 2395; the Lower Hydro Project No. 2421;

the Crowley Project No. 2473; the Thornapple Project No. 2475; and the Upper Hydro Project No. 2640. The projects are located on the Flambeau River in Rusk, Price and Ashland Counties, Wisconsin.

The action of relicensing these projects involves tradeoffs between energy production and enhancement of environmental quality. The staff formulated alternatives, and evaluated impacts to respond to concerns raised during the scoping process. In developing recommendations in the DEIS, the staff gave equal consideration to developmental and nondevelopmental values in accordance with the Federal Power Act.

The issues addressed in the DEIS are potential impacts to and effects on: (1) Geologic and soils resources; (2) water quality and quantity; (3) fisheries resources; (4) terrestrial resources; (5) recreational resources; (6) aesthetic values; (7) cultural resources; (8) air quality; (9) cumulative effects of the proposed projects.

Alternatives to the applicants' proposals considered in detail are (1) modification to proposed project operation or facilities to further protect, enhance or mitigate adverse impacts to environmental resources and values and (2) no action.

A public meeting will be conducted by staff in Park Falls, Wisconsin on Tuesday, March 12, 1996, from 7:00 p.m. to 10:00 p.m. in the auditorium of the Public Library, 410 Division Street, Park Falls, Wisconsin, to hear the public's comments on the DEIS.

The meeting will be recorded by a stenographer and will become part of the formal record of the Commission's proceeding on the Flambeau River projects under consideration. Individuals presenting statements at the meeting will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

In accordance with Section 10(j) of the Federal Power Act (FPA), the Commission's staff will also meet with staff from the Wisconsin Department of Natural Resources and the U.S. Fish and Wildlife Service on Tuesday, March 12 and Wednesday, March 13 at the offices of the Wisconsin Department of Natural Resources, 875 South Forth Avenue, Park Falls, Wisconsin, to discuss inconsistencies of some recommendations with the comprehensive planning and public interest standards of Sections 4(e) and 10(a) of the FPA or the substantial evidence requirement of Section 313(b) of the FPA.

All those that are formally recognized by the Commission as intervenors in the Flambeau Projects' proceedings are asked to refrain from engaging the staff in discussions of the merits of the projects outside of any announced meetings.

For further information, please contact Ms. Julie Bernt at (202) 219–2814.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4452 Filed 2–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–500–001 , et al.]

Southern Natural Gas Company, et al.; Natural Gas Certificate Filings

February 21, 1996.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

[Docket No. CP95–500–001]

Take notice that on February 14, 1996, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed an amendment to its original application in Docket No. CP95–500–000, requesting that the Commission amend its Order Issuing Certificate issued October 16, 1995, (October 16 Order), 73 FERC ¶ 61,085. Southern states that the amendment complies with the October 16 Order and modifies the proposal authorized therein, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that in the October 16 Order, the Commission authorized Southern's proposed expansion of its Toca Compressor Station and related facilities, subject to Southern's filing 10-year firm transportation service agreements for the capacity of the proposed project within 120 days. Southern states that it has now entered into a 10-year firm Transportation Service Agreement dated February 7, 1996 with Shell Offshore Inc. (Shell) for 100 percent of the 140 Mmcf/d proposed firm Transportation Service (Shell Service Agreement). In connection with the filing of the Shell Service Agreement, Southern proposes to make minor changes to the Receipt and Delivery Point modifications approved in the October 16 Order as necessary to provide service to Shell thereunder.

It is stated that the compression facilities at Toca, the modifications to provide for delivery at the Tennessee-Toca interconnection and the expansion of the delivery point at the Transco-Frost interconnection approved in the October 16 Order are still required for service under the Shell Service Agreement. Southern contends that the remaining Receipt and Delivery Point modifications approved in the October 16 Order will not be necessary. Furthermore, Southern states that the 140 Mmcfd capacity of the expansion is not altered by the minor changes proposed herein.

Southern proposes to delete the following Receipt and Delivery Point modifications approved in the October 16 Order, but which are not required to provide service to Shell: (1) Columbia - Shadyside meter station modifications; (2) LRC - Erath meter station modifications; (3) Acadian - Sugar Bowl No. 6 meter station modifications; (4) Main Pass Block 306 receiving station piping; and (5) Main Pass Block 293 receiving station piping. In addition, in order to provide service to Shell under the Shell Service Agreement, Southern requests authorization to substitute the following Receipt and Delivery Point modifications for the ones proposed to be deleted above: (1) construct, install and operate interconnection piping to provide for delivery at its existing Transco-Frost interconnection; and (2) to construct and install receipt meters to be located on Shell's platform at Main Pass Block 289 and near Southern's existing facilities at Venice, Louisiana. It is stated that the cost of the proposed Receipt and Delivery Point modifications is estimated to be $1.4 million. The revised estimated cost for the construction and installation of the Toca compression facilities, the Tennessee-Toca modifications, the expansion of the Transco-Frost interconnection and the proposed Receipt and Delivery Point modifications is $14.3 million.

Southern contends that, consistent with the application, there would be no rate impact on current shippers resulting from the construction of the proposed facilities over the 10 years because the revenues generated would offset the incremental costs attributable thereto on a present value basis. Based on the current estimate of the cost of service of the facilities, Southern states that the Reservation charge for this production area transportation for the 10 year period is $1.48 per Mcf per month. It is stated that the October 16 Order approved rolled-in rate treatment for the expansion facilities, but Southern's general Part 284 transportation rates would begin to reflect the cost of the facilities only after the 10-year term of the firm transportation contract expires.

Southern states that its request for minor modifications of the Receipt and Delivery Points to be utilized does not alter the underlying basis of the finding in the October 16 Order, and was, in fact, contemplated in Southern's application. Further, it is stated that the estimated cost of the proposed modifications is less than the estimated costs of Southern's original proposal. Accordingly, southern submits that the proposed Toca expansion project utilizing the revised Receipt and Delivery Points described herein is in the public interest and that the amendment should be granted. In order to accommodate Shell's development plans, Southern contends that it needs to be in a position to commence the firm transportation service contemplated herein by January 1, 1997, or as soon thereafter as possible. Therefore, Southern requests that its amendment be handled expeditiously by issuing an order amending the October 16 Order by May 1, 1996, in order to enable Southern to have an opportunity to meet an in-service date of January 1, 1997, or as soon thereafter as possible.

Comment date: March 13, 1996, in accordance with Standard Paragraph F at the end of this notice.

2. Texas Eastern Transmission Corporation

[Docket No. CP96–187–000]

Take notice that on February 13, 1996, Texas Eastern Transmission Corporation (Texas Eastern), P.O.Box 1642, Houston, Texas 77251–1642 filed with the Commission in Docket No. CP96–187–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of Commission's Regulations for permission and approval to abandon by sale to Elliot Oil & Gas Company (Elliot) the Sally Laterals comprising (3) 3-inch laterals located in DeWitt and Goliad Counties, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern and Elliot entered into a Facilities Sale Agreement dated November 28, 1995, which provides for the sale of the Sally Laterals to Elliot. Texas Eastern states that there are no volumes of natural gas currently being transported by Texas Eastern on these lines and that the lines have been idle and out of service since 1974.

Comment date: March 13, 1996, in accordance with Standard Paragraph F at the end of this notice.

3. GPM Gas Corporation

[Docket No. CP96–188–000]

Take notice that on February 13, 1996, GPM Gas Corporation (GPM), 1300 Post Oak Boulevard, Suite 800, Houston, Texas 77056, filed, in Docket No. CP96–188–000, a petition for declaratory order requesting that the Commission find that certain facilities to be acquired from ANR Pipe Line Company (ANR) are gathering facilities exempt from the Commission's Regulations pursuant to Section 1(b) of the Natural Gas Act (NGA) all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

On February 12, 1996, ANR filed in Docket No. CP96–185–000, a related application seeking approval for the abandonment of the facilities to be acquired by GPM.

GPM and ANR have entered into a Purchase and Sale Agreement (Agreement) dated January 12, 1996, wherein GPM has agreed to acquire a total of 1,550 miles of gas gathering pipelines and 14 compressor stations with a total of about 44,000 horsepower that now handle approximately 200 Mmcf per day of gas from 1,142 meter stations. Also included with these facilities to be acquired is a 15.1 mile pipeline segment which is currently functionalized as transmission by ANR. The affected gas gathering systems are comprised of five discrete areas in northwest Oklahoma: (i) Laverne; (ii) Lovedale; (iii) Woodward; (iv) Korfman; and (v) Weatherford. GPM, in turn, will assume all operations of these facilities and provide gathering services through them.

GPM proposes to purchase the above facilities by transferring like-kind properties to ANR, the value of which will equal the purchase price set forth in the above referenced Agreement. GPM has requested of ANR by letter that ANR request of the Commission, confidential treatment of this pricing information which is contained in the Agreement and in Exhibit Y to ANR's abandonment application.

Comment date: March 12, 1996, in accordance with Standard Paragraph F at the end of this notice.

4. NorAm Gas Transmission Company

[Docket No. CP96–196–000]

Take notice that on February 16, 1996, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–196–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate certain facilities in Arkansas under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to operate an existing delivery tap on NGT's Line OM–1 in Franklin County, Arkansas to deliver gas to Arkla, a distribution division of NorAm Energy Corp. (Arkla). NGT states that it plans to utilize the existing tap to deliver gas to a customer other than the right-of-way grantor for whom the tap was originally installed in 1995. NGT estimates the additional volumes to be delivered to this delivery tap are approximately 85 MMBtu annually and 1 MMBtu on a peak day. NGT states there are no construction activities or cost associated with the proposed operation of this existing tap. NGT also states that it has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

Comment date: April 8, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is

required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4490 Filed 2–27–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5431–6]

Agency Information Collection Activities Under OMB Review; Renewal Request for EPAICR Number 1188

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) this notice announces that the Office of Prevention, Pesticides and Toxic Substances (OPPTS) is seeking the renewal of an existing Information Collection Request (ICR) from the Office of Management and Budget (OMB). As such, OPPTS has forwarded the ICR entitled TSCA Section 5(a)(2) Significant New Use Rules for Existing Chemicals (OMB Control No. 2070–0038, EPA, ICR No. 1188), which is abstracted below, to OMB. The ICR describes the nature of the information collection and its expected cost and burden; and, where appropriate, it includes the actual data collection instrument. On September 29, 1995, OPPTS published a notice in the **Federal Register** (60 FR 50568), requesting comment on this ICR. OPPTS did not receive any comments.

DATES: Comments must be submitted on or before March 29, 1996..

FOR FURTHER INFORMATION OR A COPY CALL:

Sandy Farmer at EPA, 202–260–2740, and refer to EPA ICR No. 1188.

SUPPLEMENTARY INFORMATION:

Title: TSCA Section 5(a)(2) Significant New Use Rules for Existing Chemicals (OMB Control No. 2070–0038, EPA ICR No. 1188). This is a request for extension of a currently approved information collection which expires on April 30, 1996.

Abstract: Section 5 of the Toxic Substances Control Act (TSCA) and regulations at 40 CFR part 721 provide EPA with a regulatory mechanism to monitor and, if necessary, control significant new uses of chemical substances. Section 5 authorizes EPA to determine by rule (a significant new use rule or SNUR), after considering all relevant factors, that a use of a chemical substance represents a significant new use. If EPA determines that a use of a chemical substance is a significant new use, section 5 requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

EPA uses the information obtained through this collection to evaluate the health and environmental effects of the significant new use. EPA may take regulatory actions under TSCA section 5, 6 or 7 control the activities for which it has received a SNUR notice. These actions include orders to limit or prohibit the manufacture, importation, processing, distribution in commerce, use or disposal of chemical substances. If EPA does not take action, section 5 also requires EPA to publish a **Federal Register** notice explaining the reasons for not asking action.

Responses to the collection of information are mandatory (see 40 CFR part 721). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 118 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information, search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are displayed in 40 CFR Part 9.

Respondents/Affected Entities: Those that manufacture, process, import, or distribute in commerce chemical substances or mixtures.

Estimated No. Of Respondents: 2.

Estimated Total Annual Burden on Respondents: 237 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses. Please refer to EPA ICR No. 1188 and OMB Control No. 2070–0038 in an correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: February 21, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–4522 Filed 2–27–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5431–5]

Agency Information Collection Activities Under OMB Review; Standards of Performance for new Stationary Sources Metallic Mineral Processing Plants

No. OMB 2060–0016
No. EPA 0982.05

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D), this notice announces that the Information Collection Request (ICR) for Standards of Performance for New Stationary Sources—Metallic Mineral Processing Plants (Subpart LL) described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 29, 1996.

FOR FURTHER INFORMATION CONTACT:

Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0982.05 and OMB No. 2060–0016.

SUPPLEMENTARY INFORMATION:

Title: Standards of Performance for Metallic Mineral Processing Plants (Subpart LL) OMB Control No. 2060–0016; EPA ICR No. 982.05). This is a request for revision of a currently approved collection.

Abstract: The Administrator has judged that PM emissions from metallic mineral processing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of metallic mineral processing plants must notify EPA of construction, modification, startups, shut downs, date and results of initial performance test. Owners/operators with facilities using any wet scrubbing device shall install, calibrate, and maintain continuous monitoring devices to measure pressure drop and flow rate. Weekly records of the pressure drop and flow rate are to be maintained, and semi-annual reports are to be submitted when the pressure drop and flow rate differ 30% from the most recent performance test.

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 29, 1995 and no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2068 hours per year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entitles: 20.5.

Estimated Number of Respondents: 20.5.

Frequency of Response: 2.

Estimated Number of Responses: 41.

Estimated Total Annual Hour Burden: 2185 hours.

Estimated Total Annualized Cost Burden: $66,549.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0982.05 and OMB Control No. 2060–0016 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: February 21, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–4523 Filed 2–27–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5451–4]

Agency Information Collection Activities Under OMB Review; New Collection; Design for the Environment Screen Printer Survey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Office of Prevention, Pesticides and Toxic Substances (OPPTS) is seeking approval for a new Information Collection Request (ICR) from the Office of Management and Budget (OMB). As such, OPPTS has forwarded the following ICR to OMB: Design for the Environment (DfE); Screen Printing Survey (OMB Control No. 2070-(to be assigned); EPA ICR No. 1769.02). The ICR describes the nature of the information collection and its expected cost and burden; and, where appropriate, it includes the actual data collection instrument. On September 29, 1995, OPPTS published a notice in the **Federal Register** (60 FR 50568), requesting comment on this proposed collection and the draft ICR. OPPTS did not receive any comments.

DATES: Comments must be submitted on or before March 28, 1996.

FOR FURTHER INFORMATION CONTACT:

Sandy Farmer at EPA, 202–260–2740, and refer to EPA ICR No. 1769.02.

SUPPLEMENTARY INFORMATION:

Title: Design for the Environment (DfE) Screen Printing Survey (OMB Control No. 2070-(to be assigned); EPA ICR No. 1769). This is a new collection.

Abstract: EPA's DfE program is a voluntary, non-regulatory approach to encourage industry to adopt technologies and use materials that result in lower levels of pollution, lessened reliance on toxic materials, higher energy efficiency and lower environmental health risks. Through DfE, EPA creates partnerships with industry, professional organizations, state and local governments, other federal agencies and the public to develop and disseminate technical information.

This collection will focus on facilities that print graphic arts materials, such as fine art prints, billboard advertisements, posters, and electronic equipment. EPA, the Screen Printing and Graphic Imaging Association international (SGIA, the principal association of the screen printing industry), and the University of Tennessee Center for Clean Products and Clean Technologies have developed technical information for screen printing facilities on the use of screen reclamation processes and other workplace practices that may lower health risks to workers and prevent pollution. The purpose of the collection is to evaluate the impact of such DfE technical information on screen printing industry practices, use of materials, and waste generation. The collection will involve two telephone surveys of owners or operators of screen printing establishments: an initial survey of a sample of 350 screen printing establishments, and a follow-up

survey to be administered about two years later. This notice addresses burden estimates only for the initial survey. Responses to the collection of information are voluntary. EPA and the EPA contractor administering the survey will observe strict confidentiality precautions, based on the Privacy Act of 1974, which are outlined in detail in the ICR.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.25 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Respondents/Affected Entities: Companies engaged in screen printing or other graphics-imaging activities.

Estimated No. Of Respondents: 350.

Estimated Total Annual Burden on Respondents: 438 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses. Please refer to EPA ICR No. 1769 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: February 22, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–4525 Filed 2–27–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5431–7]

Clean Air Act Advisory Committee; Notice of Meeting

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990 to provide independent advice and counsel to EPA on policy issues associated with the implementation of the Clean Air Act of 1990. The Advisory Committee shall be consulted on economic, environmental, technical, scientific, and enforcement policy issues.

OPEN MEETING NOTICE: Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meting on Friday, March 22, 1996 from 8:30 a.m.–4:30 p.m. at the Radisson Plaza Hotel at Mark Center, 5000 Seminary Road, Alexandria, Virginia. Seating will be available on a first come, first served basis. The Ozone, PM and Regional Haze Subcommittee will conduct a meeting on Thursday, March 21, 1996 from 8:00 a.m.–5:00 p.m. The Permits/NSR/Toxics Integration Subcommittee, the Economic Incentives and Regulatory Innovations Subcommittee and the Linking Transportation and Air Quality Concerns Subcommittee will conduct meetings on Thursday evening, March 21, 1996 from 7:00 p.m.–9:30 p.m. Subcommittee meeting time may change at the discretion of the co-chairs.

INSPECTION OF COMMITTEE DOCUMENTS: The committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with the CAAAC meeting minutes will be available by contacting Committee DFO Karen Smith at (202) 260–6379.

FOR FURTHER INFORMATION CONTACT: For information concerning this meeting of the CAAAC please contact Karen Smith, Office of Air and Radiation, US EPA (202) 260–6379, FAX (202) 260–5155, or by mail at US EPA, Office of Air and Radiation (Mail Code 6101), Washington, D.C. 20460. For more information concerning the Ozone, PM and Regional Haze portion of this meeting contact Denise Gerth of the Office of Air Quality Planning and Standards at (919) 541–5550. If you would like to receive an agenda for this meeting, please leave your fax number on Ms. Smith's voice mail and it will be forwarded to you.

Dated: February 23, 1996.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 96–4527 Filed 2–27–96; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30000/59A; FRL–4979–8]

Propoxur; Decision Not to Initiate a Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces EPA's decision not to initiate a Special Review for the insecticide propoxur (Baygon, Sendran; 2-isopropoxy-phenyl-N-methylcarbamate). Propoxur was being considered for Special Review because of potential carcinogenic risks to applicators and home residents from the registered uses. After evaluating new exposure and carcinogenicity data, and in light of voluntary cancellation and label amendment actions which eliminated those uses posing the greatest concern, EPA believes that the estimated risks do not warrant initiation of a Special Review.

FOR FURTHER INFORMATION CONTACT: By mail: Monica F. Spann, Special Review Branch, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Special Review Branch, 3rd Floor, Crystal Station #1, 2800 Crystal Drive, Arlington, VA, Telephone: 703–308–8032, e-mail: spann.monica@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 13, 1995 (60 FR 3210), EPA announced its proposed decision (and solicitation for public comment) not to initiate a Special Review of propoxur based on carcinogenic risks posed to applicators and home residents. The Agency has received one comment from the sole registrant, Bayer Corporation, and decided to maintain the decision not to initiate a Special Review. This notice provides the Agency's final decision, its response to comment, and the rationale for its final decision. For more detailed information, see 60 FR 3210.

I. Introduction

Propoxur (2-isopropoxy-phenyl-N-methylcarbamate) is a carbamate insecticide for the control of insects and other arthropods inside and outside of buildings and on pets. The holders of the two U.S. technical registrations of propoxur, Baygon and Sendran, are Bayer Corporation, Agriculture Division, and Bayer Corporation, Animal Health Division, respectively. Bayer Corporation was formerly known as Miles Incorporated. Bayer Corporation is a subsidiary of Bayer, AG, Germany.

On March 22, 1988, pursuant to 40 CFR 154.21(a), EPA issued a private ("Grassley-Allen") notification to propoxur registrants that the Agency was considering a Special Review of propoxur. EPA was concerned with propoxur's potential cancer risk to applicators when applying indoors and outdoors, to occupants of treated buildings, and to those treating pets with propoxur. EPA's concern was based on a 1984 carcinogenicity study which reported increases in the incidences of malignant and benign tumors in the urinary bladders of both male and female rats, an increase in incidence of uterine tumors in female rats, and the early onset and increased incidence of hyperplasia of the urinary bladder in the male and female rats. EPA classified propoxur as a Group B2 (probable human) carcinogen. EPA noted that additional data submitted to the Agency would be used to refine estimates of risk, and that the registrant's responses to this notification would be considered in determining whether to initiate a Special Review.

II. Risk Assessment

Since the issuance of the Grassley-Allen notification, the estimated risk from exposure to propoxur was reduced due to a recalculated (and lower) cancer potency factor (Q_1*) and reductions in estimated exposure. While the Agency continues to classify propoxur as a B2 (probable human) carcinogen, the estimated Q_1* was reduced as a result of additional data submitted in 1988. Estimated exposure was reduced due to new exposure studies submitted in response to the 1987 DCI and better information on compound behavior and use practices. Also, some uses for which the Agency had the greatest concern were voluntarily cancelled. A detailed discussion of the risk assessment for propoxur can be seen in the proposed decision not to initiate a Special Review published on January 13, 1995 (60 FR 3210).

III. Comments

In the January 13, 1995 proposal not to initiate a Special Review on propoxur, the Agency provided a 60-day comment period, which ended on March 14, 1995. EPA received one comment from Bayer Corporation, the sole registrant, who agreed with the Agency's position.

Comment: The registrant concurs with the Agency's evaluation of the estimation of cancer risks. In their comment, Bayer also addressed the Agency's characterization of a proposed food additive regulation (FAR) for food handling establishments. Bayer believes that the Agency misinterpreted their data by assuming that crack and crevice applications result in residues on food and food contact surfaces. Bayer stated that the residue data the Agency cited were for a combination of spot treatment and crack and crevice application, and therefore, does not represent residues that may occur from only crack and crevice applications. Furthermore, the registrant claims that there is no risk from crack and crevice applications.

Response: The petition for a FAR for the spot treatment of propoxur in food handling areas of food establishments included data demonstrating residues of 0.07 parts per million (ppm) on food and/or food contact surfaces, but the crack and crevice treatment was made in addition to the spot treatment. The data do not permit separation of the different applications so that it is apparent which treatment(s) resulted in the residues. EPA believes that in order for the registrant to substantiate a claim that the crack and crevice treatment does not result in residues on food and/or food contact surfaces, additional data would need to be submitted to demonstrate this claim. It should be noted that because propoxur induces cancer within the meaning of the Delaney clause of section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(5)), the proposed FAR cannot be established and it may not be established with the submission of additional data. The Agency mentioned the evaluation of the proposed FAR and related cancellation of food handling uses in the proposed decision for informational purposes. Any tolerance and related cancellation actions will be proposed in a subsequent document or addressed in the reregistration process.

IV. EPA's Decision Regarding Propoxur

The Agency maintains its position that the carcinogenic risks posed by currently registered uses of propoxur do not warrant initiation of a Special Review.

V. Executive Order 12898

In accordance with the Executive Order on Environmental Justice, EPA has reviewed this proposed decision and found it does not result in any adverse environmental effects (including human health, social and economic effects) on minority and low-income communities.

Dated: February 1, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–4252 Filed 2–27–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34087; FRL 4994–8]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on May 28, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 42 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before May 28,

1996 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000299–00044	Martin's Cube Powder	Rotenone	Terrestrial crop uses
000432–00558	SBP-1382 Liquid Insecticide 0.5% Formula I	Resmethrin	Thermal application outdoors
000432–00634	Respond w/SBP-1382 Liquid Insecticide Spray 0.5% Formula III	Resmethrin	Thermal application outdoors
000432–00638	SBP-1382 Oil Base Insecticide 0.20% Formula III	Resmethrin	Thermal application outdoors
000572–00315	Rockland Rotenone-Pyrethrum Insecticide	Pyrethrins	Fruit & vegetable uses
000655–00741	Prentox Methoxychlor 50W	Methoxychlor	Agricultural crops, elevator tunnels, parks, beaches, public areas, field & forage crops, mushroom houses, cranberries, grain storage bins, gallery floors, headhouse, standing water, acreage, pet bedding
000655–00742	Prentox 2 Lb. Methoxychlor spray	Methocychlor	Forage crops, grain storage bins, mosquito control, aircraft spraying
000655–00745	Prentox Methoxychlor 25% spray	Methoxychlor	Forage crops, grain storage bins, aircraft spraying
000769–00651	SMCP Methoxychlor 2E Emulsifiable Concentrate	Methoxychlor	Grain storage bins
000769–00855	Pratt 1% Rotenone Dust	Rotenone	Terrestrial crop uses
000769–00857	Science Red Arrow Insect Spray	Piperonyl butoxide	Terrestrial crop uses
000769–00871	Pratt 50W Methoxychlor for Forest & Shade Trees	Methoxychlor	Mosquito control
000769–00903	Science Garden Insect Spray	Methoxychlor	Cranberries
000769–00904	Science 1% Rotenone	Rotenone	Terrestrial crop uses
000769–00914	Science 50% Methoxychlor Wettable Powder	Methoxychlor	Cranberries
000769–00947	Pratt EC 2 Methoxychlor Insect Spray	Methoxychlor	Area control of adult mosquitoes, screen paint
000769–00955	Pratt Methoxy-Diazinon 20–10 EC	Methoxychlor	Cranberries
000869–00186	Green Light Rotenone	Rotenone	Vegetables & fruit uses
002217–00628	Methoxychlor 75 Dust	Methoxychlor	Recreational areas, urban Base & rural areas, agricultural premise use for barns (including dairy barns), milk rooms, pens, sheds, stalls, poultry houses, stables, feed rooms & mature piles, kennels, dog sleeping quarters, cat sleeping quarters, food processing plants (edible & inedible), food processing storage areas (including cereal processing mills, cereal storage areas & flour mills), mausoleums, mushroom house & equipment treatment, transportation vehicles, empty peanut warehouses
002217–00676	Casoron 50W Dichlobenil Herbicide	Dichlobenil	Citrus, nuts other than filberts, figs, mango, alfalfa, avocado, forestry uses, aquatic food uses (lakes/ponds/reservoirs), drainage systems, sewage systems
002217–00679	1 Acme Norosac 10G Dichlobenil Herbicide	Dichlobenil	Citrus, nuts other that filberts, figs, mango, alfalfa, avocado, forestry uses, aquatic food uses (lakes/ponds/reservoirs), drainage systems, sewage systems
003125–00449	DYLOX 80 SP Nursery Insecticide	Trichlorfon	Turf (sod farm) use
003772–00032	Garden Rotenone Dust	Rotenone	All food uses
005440–00113	Cardinal Food Plant 5–1 Insecticide	Piperonyl butoxide; Pyrethrins	Mushroom production & processing
005440–00115	Cardinal 25–5 Insecticide	Piperonyl butoxide; Pyrethrins	Mushroom production & processing
006458–00001	Cube Powder	Rotenone	Terrestrial crop uses
006458–00005	Cube Extract	Rotenone	Terrestrial crop uses
007501–00054	Terraclor Super X 20–5 Dust w/Graphite	Pentachloronitrobenzene	Sugar beet use

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
008590–00487	Agway 25% Methoxychlor Spray	Methoxychlor	Cranberries, mosquito control (outdoors only), yards, patios, picnic areas
011540–00001	ULD BP-300 Insecticide	*N*-Octyl bicyclophep tene dicarboximide; Piperonyl butoxide; Pyrethrins	Greenhouses & horticultural nurseries
011540–00009	ULD BP-100 Insecticide	*N*-Octyl bicycloheptene dicarboximide; Piperonyl butoxide; Pyrethrins	Greenhouses & horticultural nurseries
011540–00013	ULD BP-50 Insecticide	Piperonyl butoxide; Pyrethrins	Greenhouses & horticultural nurseries
011715–00158	Magic Guard with Rotenone & Pyrethrins	Pyrethrins	Terrestrial crop uses
011715–00164	Fire Ant Insecticide with Rotenone	Rotenone	Terrestrial crop uses
019713–00027	Drexel Methoxychlor Technical	Methoxychlor	Agricultural premises, farm buildings, grain storage bins, mushroom houses, elevator tunnels, gallery floors, headhouse, peanut warehouses, freight cars, grain trucks, ships' holds, mosquito breeding areas, alfalfa, cowpeas, forage crops
019713–00032	Drexel Methoxychlor 50 WP	Methoxychlor	Grasses & legumes, farm buildings, grain storage bins, cranberries, field & forage crops, farm bldgs, grain storage bins
019713–00034	Drexel Methoxychlor 2EC	Methoxychlor	Forage crops, agricultural premises, farm buildings, grain storage bins, alfalfa, cowpeas, forage grasses, cranberries, mosquito control
019713–00118	Drexel Methoxychlor 4L	Methoxychlor	Farm buildings, mushroom houses, grain storage bins, elevator tunnels, gallery floor, headhouse, peanut warehouses, freight cars, grain trucks, ships' hold, mosquito breeding areas, forage & field crops, peanuts, soybeans, contact & space spray for flies
028293–00014	Unicorn Flea & Tick Powder for Dogs & Cats #3	Methoxychlor	Pet bedding use
028293–00102	Unicorn Flea & Tick Powder I	Methoxychlor	Pet bedding use
034704–00738	Casoron G-4 Herbicide	Dichlobenil	Nectarines, peaches, plums, prunes
067760–00002	Cheminova Malathion-Methoxychlor Spray	Methoxychlor	Mosquito control uses

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000299	C.J. Martin Co., 606 West Main St., Nacogdoches, TX 75961.
000432	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
000572	Rockland Corp., P.O. Box 809, West Caldwell, NJ 07006.
000655	Prentiss Incorporated, C.B. 2000 21 Vernon St., Floral Park, NY 11001.
000769	SureCo, Inc., 10012 N. Dale Mabry, Suite 221, Tampa, FL 33618.
000869	Green Light Co., P.O. Box 17985, San Antonio, TX 78217.
002217	PBI/Gordon Corp., 1217 W. 12th St., P.O. Box 4090, Kansas City, MO 64101.
003125	Bayer Corp., P.O. Box 4913, 8400 Hawthorn Rd., Kansas City, MO 64120.
003772	Earl May Seed & Nursery Co., 208 N. Elm Street, Shenandoah, IA 51603.
005440	Cardinal Chemical Co., 1233 E. Beamer St., Suite G, Woodland, CA 95776.
006458	Foreign Domestic Chemical Corp., 95 Chestnut Ridge Road, Montvale, NJ 07645.
007501	Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266.
008590	Agway Inc., Agriculture Group, P.O. Box 4741, Syracuse, NY 13221.
011540	Micro-Gen Equipment Corp., 10700 Sentinel Dr., San Antonio, TX 78217.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

Company No.	Company Name and Address
011715	Speer Products, P.O. Box 18993, Memphis, TN 38181.
019713	Drexel Chemical Co., 1700 Channel Ave., P.O. Box 13327. Memphis, TN 38113.
028293	Unicorn Laboratories, 13535 Feather Sound Drive, Suite 400, Clearwater, FL 34622.
034704	Platte Chemical Co., 419 18th Street, P.O. Box 667, Greeley, CO 80632.
067760	Cheminova, Inc., Oak Hill Park, 1700 Route 23, Suite 210, Wayne, NJ 07470.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: February 1, 1996.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 96–4027 Filed 2–27–96; 8:45 am]

BILLING CODE 6560–50–F

[PF641; FRL–4992–8]

Aspergillus Flavus Isolate AF36; Notice of Filing of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION. Notice.

SUMMARY: EPA has received from the Interregional Research Project No. 4 (IR–4) a petition (PP 5E4575) to establish an exemption from the requirement of a temporary tolerance for the microbial pesticide *Aspergillus flavus* AF36, non-aflatoxin producing strain, in or on all raw agricultural commodities. EPA considers the petition to be of regional and national significance.

DATES: Comments must be submitted March 29, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field operations Division (7506C), office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Fnday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF641]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in of this document.

FOR FURTHER INFORMATION CONTACT: By mail: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 5th Floor, CS #1, 2805 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8097; e-mail: hollis.linda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from the IR-4, New Jersey Agncultural Experiment Station, P.O. Box 231, New Brunswick, NJ 08903–0231, a notice of filing under section 408 of the Federal Food Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petition (PP) 5E4575 to amend 40 CFR part 180 to establish an exemption from the requirement of a temporary tolerance for the microbial pesticide *Aspergillus flavus* isolate AF36 in or on all raw agricultural commodities.

This petition (PP 5E4575) is associated with an application for an Experimental Use Permit (69224–EUP–R). The application was filed on behalf of the Agricultural Research Service, U. S. Department of Agriculture, 1100 Robert E. Lee Boulevard, P. O. Box 19687, New Orleans, LA. 70179–0687. The use of the atoxigenic strain of *Aspergillus flavus AF36* in the proposed manner is intended to prevent aflatoxin contamination of cottonseed by competitively excluding aflatoxin producing strains from infecting treated crop. The microbial pesticide is to be applied at 10 pounds per acre to 1,120 acres of commercial cotton fields in Yuma County, Arizona, over a 3 year period. There will be one application per crop. Details of the EUP program are available in the **Federal Register** notice of 69224-EUP-R.

A record has been established for this rulemaking under docket number [PF641] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Pestcides and pests, Reporting and recordkeeping requirements.

Dated /February 16, 1996.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–4520 Filed 2–27–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180996; FRL 5350–3]

Carbofuran; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Texas Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide flowable Carbofuran (Furadan 4F Insecticide/Nematicide) (EPA Reg. No. 279–2876) to treat up to 1.8 million acres of cotton to control cotton aphids. The Applicant proposes the use of a chemical which has been the subject of a Special Review within EPA's Office of Pesticide Programs, and the proposed use could pose a risk similar to the risk assessed by EPA under the Special Review of granular carbofuran. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 14, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180996," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–180996]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8327; e-mail: deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of carbofuran on cotton to control aphids. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant asserts that the state of Texas is likely to experience a non-routine infestation of aphids during the 1996 cotton growing season, which would result in significant economic losses without the use of flowable carbofuran. The applicant also details a use program designed to minimize risks to pesticide handlers and applicators, non-target organisms (both Federally listed endangered species, and non-listed species), and to reduce the possibility of drift and runoff. This use of carbofuran was granted in 1995 to Texas, Mississippi, Oklahoma, and California, and included measures to minimize risk to farm workers and non-target organisms, and requirements for additional monitoring for effects on wildlife.

The applicant proposes to make one application of flowable carbofuran on young cotton (defined as six true leaves to bloom) at the rate of 0.125 lb. active ingredient [(a.i.)](4 fluid oz.) in a minimum of 2 gallons of finished spray per acre by air, or 10 gallons of finished spray per acre by ground application; and to make no more than two applications on older cotton (bloom to finish) at the rate of 0.25 lb. a.i. (8 fluid oz.) in a minimum of 2 gallons of finished spray per acre by air, or 10 gallons of finished spray per acre by ground application. The total maximum proposed use during the 1996 growing season (March 1, 1996 until September 30, 1996) in Texas would be 0.625 lb. a.i. (20 fluid oz.) per acre. The applicant proposes that the maximum acreage which could be treated under the requested exemption would be 1.8 million acres. If all acres were treated at the maximum proposed rates, then 1,125,000 lbs. a.i. (281,250 gallons Furadan 4F Insecticide/Nematicide) would be used.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a chemical (i.e., an active ingredient) which has been the subject of a Special Review within EPA's Office of Pesticide Programs, and the proposed use could pose a risk similar the risk assessed by EPA under the previous Special Review. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–180996] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Texas Department of Agriculture.

List of Subjects

Environmental protection, pesticides and pests, emergency exemptions.

Dated: February 14, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–4397 Filed 2–27–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180991; FRL 5348–5]

Chlorfenypr; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Texas Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide chlorfenpyr to treat up to 1.8 million acres of cotton to control the beet armyworm (BAW). The Applicant proposes the use of a new (unregistered) chemical. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 14, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180991," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–180991]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8347; e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of chlorfenpyr on cotton to control beet armyworm. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, three primary factors have brought about this situation. These are: (1) the resistance to registered alternative pesticides causing control failures when these products are applied on cotton to control BAW; (2) the weather conditions consisting of mild winters and unusually dry hot weather were conducive to a BAW outbreak, and (3) BAW infesting cotton in unusually large numbers. The yield losses due to infestations of beet armyworms in cotton on a field by field basis have ranged from 0 percent with light populations to 100 percent, due to the crop being completely devoured or the grower abandoning the field. Combining estimates from the Texas Agricultural Extension Entomologists from the various areas of infestation, at least 40 percent yield losses may occur on approximately 35 percent of the cotton acreage in the requested sites. These yield losses will result in significant economic losses for the cotton producers.

Under the proposed exemptions, Pirate 3SC may be applied no more than 2 applications during the growing season, not to exceed the rate of 0.4 lbs a.i. (17.06 fluid ozs.) per acre using ground or aerial equipment.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide), [40 CFR 166.24 (a)(1). Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–180991] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132, of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Texas Department of Agriculture.

List of Subjects

Environmental protection, pesticides and pests, emergency exemptions.

Dated: February 9, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–4030 Filed 2–27–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180992; FRL 5348–6]

Chlorfenpyr; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the South Carolina Department of Fertilizer and Pesticide Control (hereafter referred to as the "Applicant") to use the pesticide chlorfenpyr to treat up to 150,000 acres of cotton to control the beet armyworm (BAW). The Applicant proposes the use of a new (unregistered) chemical. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 14, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180992," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–180992]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8347; e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of chlorfenpyr on cotton to control beet armyworm. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, this request is based on the history of beet armyworm infestations throughout South Carolina in past years and the economic losses suffered as a result of those outbreaks. Typically, those outbreaks have occurred in late planted cotton (late May and June planting dates). Research has shown that cotton planted after May 15 will generally suffer a significant yield reduction compared with earlier planted cotton.

Under the proposed exemptions, Pirate 3SC may be applied at the rate of 0.4 lbs a.i. (17.06 fluid ozs.) per acre using ground or aerial equipment. Product may be applied no more than 2 applications during the growing season (not to exceed 0.4 lbs a.i. per acre).

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide), [40 CFR 166.24 (a)(1). Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–180992] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8 a.m to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov
Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.
The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.
The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the South Carolina Department of Fertilizer and Pesticide Control.

List of Subjects

Environmental protection, pesticides and pests, emergency exemptions.

Dated: February 2, 1996.

Stephen L. Johnson,
Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–4026 Filed 2–27–96; 8:45 am]
BILLING CODE 6560–50–F

[PP 3G4263/T685; FRL 5348–4]

Fipronil; Renewal of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: EPA has renewed a temporary tolerance for combined residues of the insecticide fipronil or its metabolites in or on the raw agricultural commodity field corn grain at 0.02 parts per million (ppm).
DATES: This temporary tolerance expires March 28, 1997.
FOR FURTHER INFORMATION CONTACT: By mail: Richard Keigwin, Product Manager (PM) 10, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 210, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6788; e-mail: keigwin.richard@epamail.epa.gov.
SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of May 17, 1995 (60 FR 26434), stating that a temporary tolerance had been established for combined residues of the insecticide fipronil (5-amino-3-cyano-1-(2,6-dichloro-4-trifluoromethylphenyl)-4-trifluoromethylsulphinyl pyrazole) or its metabolites MB 46136 (5-amino-3-cyano-1-(2,6-dichloro-4-trifluoromethylphenyl)-4-trifluoromethylsulphonyl pyrazole) or MB 45950 (5-amino-3-cyano-1-(2,6-dichloro-4-trifluoromethylphenyl)-4-trifluoromethylthiopyrazole) in or on the raw agricultural commodity field corn grain at 0.02 parts per million (ppm). This tolerance is renewed in response to a request dated November 15, 1995, to extend Pesticide Petition (PP) 3G4263, submitted by Rhone Poulenc AG Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709–2014.
The company has requested a 1-year renewal of a temporary tolerance for residues of the insecticide to permit the continued marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 264-EUP-95, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).
The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:
1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.
2. Rhone Poulenc AG Company must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.
This tolerance expires March 28, 1997. Residues not in excess of this amount remaining in or on the above raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.
The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12866.
Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 2, 1996.

Stephen L. Johnson,
Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–4025 Filed 2–27–96; 8:45 am]
BILLING CODE 6560–50–F

[PF644; FRL–5347–8]

Exemption From the Requirement of Temporary Tolerances for Trichodex (or ABG-8007)

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice of Receipt of Petition.

SUMMARY: EPA has received a petition (PP 6G4622) for an exemption from the requirement of temporary tolerances in or on all raw agricultural commodities which have been treated with Trichodex (or ABG-8007). This petition is associated with a request for an Experimental Use Permit (11678–EUP–R) for the subject pesticide, and is considered to be of regional and/or national significance.
DATES: Written comments should be submitted to EPA by March 29, 1996.
ADDRESSES: By mail, comments should be forwarded to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.
Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection at the address and hours given above.
Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF644]. No CBI should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Library. Additional information on electronic submissions can be found below in this document.
FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. Office location and telephone number: 5th Floor, CS #1, 2805 Jefferson Davis Hwy., Arlington, VA, (703)–308–8097; e-mail: bacchus.shanaz@epamail.epa.gov.
SUPPLEMENTARY INFORMATION:
PP 6G4622. This notice announces that EPA has received from Makhteshim Chemical Works Ltd., c/o Makhteshim-Agan of North America Inc., 551 Fifth Avenue, Suite 1100, New York, NY 10176, a notice of filing under section 408 of the Federal Food Drug and Cosmetic Act (21 (U.S.C. 346a) for pesticide petition (PP) 6G4622 to amend 40 CFR part 180 to establish an exemption from the requirement of a temporary tolerance for the microbial pesticide Trichodex in or on all raw agricultural commodities. This microbial pesticide is also referred to as ABG-8007. It contains dried fermentation solids and solubles resulting from fermentation of Trichoderma harzianum isolate T-39, containing T-39 fungus propagules as either conidia or mycelia. The petition is associated with an application for an Experimental Use Permit (11678–EUP–R) for a 2–year non-crop destruct program.
A record has been established for this notice of receipt under docket number [PF644] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.
Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.
The official record for this notice of receipt, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record mintained at the address in "ADDRESSES" at the beginning of this document.

List of subjects

Environmental protection, Temporary tolerances, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 12, 1996.

Janet L. Andersen,
Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–4521 Filed 2–27–96; 8:45 am]
BILLING CODE 6560–50–F

[FRL–5431–4]

PCBs: Cancer Dose-Response Assessment and Application to Environmental Mixtures

AGENCY: Environmental Protection Agency.
ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a report titled, PCBs' Cancer Dose-Response Assessment and Assessment and Application to Environmental Mixtures, External Review Draft, (EPA/600/P–96/001A). The National Center for Environmental Assessment (NCEA) of the Office of Research and Development developed this report, which is an external draft for review purposes only and does not constitute U.S. Environmental Protection Agency (EPA) policy. The report will not have official status or receive clearance as an EPA document until after peer review has taken place. The document is being made available at this time because of public interest in PCBs.
ADDRESSES: The document will be available on the Internet at http://www.epa.gov/docs/ORD or for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; telephone 703–487–4650; facsimile 703–321–8547. The NTIS order number is PB96–140603; the price is $19.50 for paper and $9.00 for microfiche. Copies will be available for inspection at the EPA libraries. The EPA Headquarters Library is located at 401 M Street, S.W., Washington, DC; the library is open Monday through Friday between 10 a.m. and 2 p.m., except for Federal holidays. Unfortunately, due to budget restrictions, printed copies of the document are not available from the National Center for Environmental Assessment.
FOR FURTHER INFORMATION CONTACT: Dr. Jim Cogliano, National Center for Environmental Assessment/Washington Office (8602), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington DC 20460. Telephone: 202–260–3830; facsimile: 202–260–3803; E-mail: cogliano.jim@epamail.epa.gov.
SUPPLEMENTARY INFORMATION: The draft report updates the cancer dose-response assessment for PCBs and shows how information on toxicity, disposition, and environmental processes can be considered together to evaluate health risks from PCB mixtures in the environment. Guidance is given on applying the assessment to environment mixtures, different exposure routes, partial lifetime exposure, and mixtures containing dioxin-like compounds. In

the Spring, the Agency will convene an external peer-review panel for a workshop that will be announced in the **Federal Register**. After the peer review workshop, EPA will incorporate the panel's comments and issue a final report. The expected date for the final report is September 1, 1996. At the same time, a summary of the final report will be loaded onto the Agency's on-line database, the Integrated Risk Information System (IRIS).

Dated: February 16, 1996.

Joseph K. Alexander,

Deputy Assistant Administrator for Research and Development.

[FR Doc. 96–4524 Filed 2–27–96; 8:45 am]

BILLING CODE 6560–60–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in section 560.602 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200972.

Title: Port of Houston/Transportacion Maritima, S.A. de C.V./Hapag-Lloyd Joint Terminal Services Contract.

Parties: Port of Houston ("Port"), Transportacion Maritima, S.A. de C.V. ("TMM"), Hapag-Lloyd (America), Inc. ("HL").

Filing Agent: Martha T. Williams, Esquire, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The proposed Agreement permits TMM and HL to perform freight handling services at the port's Fentress Bracewell Barbours Cut Terminal. The term of the Agreement expires November 30, 1996.

By Order of the Federal Maritime Commission.

Dated: February 23, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–4562 Filed 2–27–96; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–011528.

Title: Japan/United States Eastbound Freight Conference.

Parties: American President Lines, Ltd., Hapag-Lloyd AG, Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., A.P. Moller-Maersk Line, Nedlloyd Lijnen B.V., Neptune Orient Lines Limited, Nippon Yusen Kaisha, Orient Overseas Container Line (U.S.A.), Inc., Sea-Land Service, Inc., and Wilhelmsen Lines A/S.

Synopsis: The proposed Agreement combines the services of three existing Conferences into one ((1) F.M.C. Agreement No. 202–000150, Trans-Pacific Freight Conference of Japan; (2) F.M.C. Agreement No. 202–003103, Japan-Atlantic and Gulf Freight Conference; and (3) F.M.C. Agreement No. 202–008190, Japan-Puerto Rico and Virgin Islands Freight Conference) in the trade from ports in Japan to U.S. Pacific, Atlantic and Gulf Coast ports and points (including Hawaii and Alaska) and ports in Puerto Rico and the U.S. Virgin Islands, and inland and coastal points via such ports.

Agreement No.: 232–011529.

Title: Thompson Shipping Co. Ltd./Kirk Freight Line, Ltd. Space Charter and Sailing Agreement.

Parties: Thompson Shipping Co. Ltd. ("TSC"), Kirk Freight Line, Ltd. ("KFL").

Synopsis: The proposed Agreement permits KFL to charter space on TSC's vessels and to rationalize sailings in the trade between Miami, Florida and the Grand Cayman Islands.

By Order of the Federal Maritime Commission.

Dated: February 23, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–4563 Filed 2–27–96; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Trans World Shipments, Inc., 8257 NW 56th Street, Miami, FL 33166. Officers: Paulo C. Pacheco, President, Nathan P. Wannemacher, Vice President.

All Transport Inc., 6510 N.W. 84th Avenue, Miami, FL 33166. Officer: Maria Lynet Lopez, President.

Dated: February 23, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–4478 Filed 2–27–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First Citizens Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company and their subsidiaries. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 22, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Citizens Bancorp, Cleveland, Tennessee; to acquire 100 percent of the voting shares of The Home Bank of Tennessee, Maryville, Tennessee (in organization).

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Aspen Bancshares, Inc., Aspen, Colorado; to acquire 100 percent of the voting shares of Val Cor Bancorporation, Inc., Cortez, Colorado, and thereby indirectly acquire Valley National Bank of Cortez, Cortez, Colorado.

2. CB Holding Company, Edmond, Oklahoma; to become a bank holding company by acquiring up to 80 percent of the voting shares of P.N.B. Financial Corporation, Kingfisher, Oklahoma, parent of Peoples National Bank of Kingfisher, Kingfisher, Oklahoma, and First Bank of Hennessey, Hennessey, Oklahoma, and at least 66.9 percent of the voting shares of City Bank, Weatherford, Oklahoma.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Bastrop Bancshares, Inc., Bastrop, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Bastrop Holdings, Inc., Wilmington, Delaware, and thereby indirectly acquire First National Bank of Bastrop, Bastrop, Texas.

In connection with this application, Bastrop Holdings, Inc., Wilmington, Delaware, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Bastrop, Bastrop, Texas.

2. The Caddo Financial Corporation, Caddo Mills, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The State National Bank of Caddo Mills, Caddo Mills, Texas.

3. First National Monahans Bancshares, Inc., Monahans, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Monahans Delaware Financial Corporation, Dover, Delaware, and thereby indirectly acquire First National Bank of Monahans, Monahans, Texas.

In connection with this application, Monahans Delaware Financial Corporation, Dover, Delaware; also has applied to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Monahans, Monahans, Texas.

4. Star Bancshares, Inc., Austin, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Star Bancshares of Nevada, Inc., Carson City, Nevada, and thereby indirectly acquire First State Bank, Austin, Texas.

In connection with this application, Star Bancshares of Nevada, Inc., Carson City, Nevada; also has applied to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Austin, Texas.

Board of Governors of the Federal Reserve System, February 22, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–4447 Filed 2–27–96; 8:45 am]

BILLING CODE 6210–01–F

George Mason Bankshares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company and their subsidiaries. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 22, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. George Mason Bankshares, Inc., Fairfax, Virginia; and Mason Holding Corporation, Fairfax, Virginia; to acquire 100 percent of the voting shares of The Palmer National Bancorp, Inc., Washington, D.C., and thereby indirectly acquire The Palmer National Bank, Washington, D.C.

In connection with this application, Applicants also have applied to acquire Palmer National Mortgage, Inc., Rockville, Maryland, and thereby indirectly acquire in making, acquiring, or servicing loans or other extensions of credit for the company's account or for the account of others, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

In addition, Mason Holding Corporation, Fairfax, Virginia, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of The Palmer National Bancorp, Inc., Washington, D.C., and thereby indirectly acquire The Palmer National Bank, Washington, D.C.

Board of Governors of the Federal Reserve System, February 22, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–4448 Filed 2–27–96; 8:45 am]

BILLING CODE 6210–01–F

Woodforest Bancshares, Inc.; Notice to Engage in Nonbanking Activities

Woodforest Bancshares, Inc., Houston, Texas (Notificant), has given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to acquire Mutual Money Investments, Inc. (d/b/a Tri-Star Financial), Houston, Texas (Company), and thereby engage in providing securities brokerage services pursuant to § 225.25(b)(15) of Regulation Y (12 CFR 225.25(b)(15)) and data processing services pursuant to § 225.25(b)(7) of Regulation Y (12 CFR 225.25(b)(7)). Notificant also proposes to act through Company as a riskless principal in the purchase and sale of all types of securities on the order of investors. This activity has previously been determined by Board Order to be closely related to banking. Notificant proposes to engage in the proposed activities nationwide.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." 12 U.S.C. 1843(c)(8).

Notificant maintains that the Board previously has determined that the proposed activities are "so closely related to banking or managing or controlling banks as to be proper incident thereto." The Board previously has approved, by order, the proposed riskless principal activities, and Notificant has stated that it will conduct these activities using the same methods and subject to the prudential limitations established by the Board in its previous orders. *See J.P. Morgan & Co. Incorporated*, 76 Fed. Res. Bull. 26 (1990); *Bankers Trust New York Corporation*, 75 Fed. Res. Bull. 829 (1989).

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the notice, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than March 13, 1996. Any request for a hearing on this proposal must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. The notice may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Dallas.

Board of Governors of the Federal Reserve System, February 22, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–4449 Filed 2–27–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Paperwork Reduction Act Approvals

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: Notice of Approvals received from the Office of Management and Budget ("OMB") under the Paperwork Reduction Act ("PRA"), 44 U.S.C. §§ 3501–3520, certain "collections of information" contained in regulations issued or enforced by the FTC.

FOR FURTHER INFORMATION CONTACT: Elaine W. Crockett, Attorney, Office of the General Counsel, Federal Trade Commission, Washington, D.C. 20580 (202) 326–2453.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission is publishing a list of its current control numbers, approved by OMB, for collections of information contained in its regulations and in four Federal Reserve Board Regulations that the Commission enforces. This Notice fulfills the requirements for the "display" of these numbers under section 3512 of the PRA.

Many of these collections of information were submitted to OMB in August 1995 in response to the 1995 amendments to the PRA, which expanded the definition of "collection of information" to include "disclosures to third parties or the public." At that time, the FTC submitted twenty-four rules and the Commission's administrative activities, all of which are reflected below. For some rules, the FTC modified current OMB clearance by revising the existing estimates of "burden" to include provisions requiring disclosures to consumers or other third parties. For other rules, the FTC sought approval for disclosure requirements that did not have a current OMB clearance. For ease of reference, this list also includes several control numbers that the Commission has already "displayed" in the preamble that accompanied the final rule.

The Commission's own rules are all published in 16 CFR. The Commission also enforces four Federal Reserve Board Regulations: Regulations B, E, M, and Z, which implement respectively, the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.*; the Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*; the Consumer Leasing Act, 15 U.S.C. 1667 *et seq.*; and the Truth-in-Lending Act, 15 U.S.C. 1601 *et seq.* These regulations are published by the Federal Reserve Board in Title 12 of the Code of Federal Regulations. The FTC is responsible for publishing only the control numbers pertaining to those provisions in the regulations that affect non-bank creditors and lessors.

Short title	12 CFR	OMB Control No.
Regulation B (Equal Credit Opportunity)	Part 202	3084–0087
Regulation E (Electronic Fund Transfer)	Part 205	3084–0085
Regulation M (Consumer Leasing)	Part 213	3084–0086
Regulation Z (Truth-In-Lending)	Part 226	3084–0088

Short title	16 CFR	OMB Control No.
Wool Act Regulations	Part 300	3084–0100
Fur Act Regulations	Part 301	3084–0099
Textile Act Regulations	Part 303	3084–0101
Appliance Labeling Rule	Part 305	3084–0069
Fuel Rating Rule	Part 306	3084–0068
Smokeless Tobacco Rule	Part 307	3084–0082
900 Number Rule	Part 308	3084–0102
Alternative Fuel Rule	Part 309	3084–0094
Telemarketing Rule	Part 310	3084–0097
Games of Chance Rule	Part 419	3084–0067
Care Labeling Rule	Part 423	3084–0103
Negative Option Plans Rule	Part 425	3084–0104
Amplifier Rule	Part 432	3084–0105
Mail Order Rule	Part 435	3084–0106
Franchise Rule	Part 436	3084–0107
Funeral Rule	Part 453	3084–0025
Used Car Rule	Part 455	3084–0108
R-Value Rule (Home Insulation)	Part 460	3084–0109
Fair Packaging and Labeling Act Regulations	Part 500	3084–0110
Conumer Product Warranty Rule	Part 701	3084–0111
Pre-Sale Availability Rule	Part 702	3084–0112
Informal Dispute Settlement Rule	Part 703	3084–0113
Rules under the Hart-Scott-Rodino Act	Part 801–803	3084–0005
FTC Administrative and Procurement Activities	Part Parts 1, II, and IV, Part III, Subpart I, Part 901, FTC Form 14.	3084–0047

By direction of the Commission.

[FR Doc. 96–4561 Filed 2–27–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0280]

Fredrick Jay Shainfeld; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Dr. Fredrick Shainfeld from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Shainfeld was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product; and relating to the regulation of a drug product under the act. Dr. Shainfeld has notified FDA that he acquiesces to debarment and, therefore, has waived his opportunity for a hearing concerning this action.

EFFECTIVE DATE: March 10, 1995.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tamar S. Nordenberg, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

Dr. Fredrick Shainfeld, a former senior vice president of Technical and Regulatory Affairs and New Product Development at Halsey Drug Co. (Halsey), was sentenced on January 6, 1995, pursuant to a guilty plea, for obstruction of an agency proceeding, a Federal felony under 18 U.S.C. 1505. The basis for this conviction was as follows:

Dr. Shainfeld, in his capacity as senior vice president for Technical and Regulatory Affairs and New Product Development, supervised Halsey's regulatory filings to FDA. During a 1989 FDA establishment inspection of Halsey, Dr. Shainfeld and other members of Halsey's upper management provided FDA inspectors with a falsified raw material inventory card for Fenoprofen Calcium.

Dr. Shainfeld knew that the raw material card falsely stated that Halsey had received 50 kilograms of Fenoprofen Calcium on September 11, 1987, when in fact Halsey had received half that amount, and Dr. Shainfeld knew that the purpose of the falsification was to conceal from FDA that Halsey did not have enough raw material to manufacture its pilot batches in the sizes represented in abbreviated new drug applications (ANDA's) for the generic drug product Fenoprofen Calcium.

Dr. Shainfeld is subject to debarment based on a finding, under section 306(a)(2) of the act (21 U.S.C. 335a(a)(2)), that he was convicted of a felony under Federal law for conduct relating to the development, approval, and regulation of a drug product.

The purpose of the falsification of the raw material inventory cards for Fenoprofen Calcium was to conceal from FDA the fact that Halsey did not have enough raw material to manufacture its pilot batches in the sizes represented in the product's ANDA's. The falsification relates to the development or approval of a drug product because FDA makes its decisions whether to approve a product based on the information in the ANDA's. If the pilot batches were not manufactured in the sizes represented in the ANDA's, FDA made its approval decisions based on erroneous information.

The falsification of the raw material inventory cards relates to the regulation of drug products because FDA's regulatory decisions about Halsey drug

products may have been affected by the conduct.

In a letter received by FDA on March 10, 1995, Dr. Shainfeld notified FDA of his acquiescence to debarment, as provided for in section 306(c)(2)(B) of the act. A person subject to debarment is entitled to an opportunity for an agency hearing on disputed issues of material fact under section 306(i) of the act, but by acquiescing to debarment, Dr. Shainfeld waived his opportunity for a hearing and any contentions concerning his debarment.

II. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to him (21 CFR 5.20), finds that Dr. Fredrick Shainfeld has been convicted of a felony under Federal law for conduct: (1) Relating to the development or approval, including the process for development or approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings and based on his notification of acquiescence, Dr. Fredrick Shainfeld is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective March 10, 1995, the date of notification of acquiescence (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(dd)). Any person with an approved or pending drug product application who knowingly uses the services of Dr. Shainfeld, in any capacity, during his period of debarment, will be subject to civil money penalties. If Dr. Shainfeld, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Dr. Shainfeld during his period of debarment.

Any application by Dr. Shainfeld for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 95N–0280 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 8, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–4473 Filed 2–27–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Medicare and Medicaid Disclosure of Ownership and Control Interest Statement; *Form No.:* HCFA–1513; *Use:* The information provided on this form is used by State agencies and HCFA regional offices to determine whether providers meet the eligibility requirements for Titles 18 and 19 (Medicare and Medicaid) and for grants under Titles 5 and 20. Review of ownership and control is particularly necessary to prohibit ownership and control for individuals excluded under Federal Fraud statutes; *Frequency:* On Occasion; *Affected Public:* Business or other for profit, not-for-profit; *Number of Respondents:* 60,000; *Total Annual Hours:* 30,000.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Evaluation of the Program of All-Inclusive Care for the Elderly (PACE) Demonstration; *Form No.:* HCFA-R–165; *Use:* This survey will collect data on functional status, service utility, and out-of-pocket costs, and satisfaction for a sample of applicants to the PACE program. This information will be to analyze the decision to participate in PACE and the impact of the program; *Frequency:* Semi-annually; *Affected Public:* Individuals and households; *Number of Respondents:* 1,833; *Total Annual Hours:* 3,745.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.ssa.gov/hcfa/hcfahp2.html , or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: John Burke, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 16, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–4534 Filed 2–27–96; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects

1. National Health Service Corps (NHSC) Professional Training and Information Questions (PTIQs)—The mission of the National Health Service Corps (NHSC) is to provide health professionals to those communities and populations located in federally designated health professional shortage areas (HPSAs) of greatest need. Through the NHSC Scholarship Program, health professions students receive scholarship support in return for a commitment to serve in a HPSA for a specified period of time. The NHSC will utilize the Professional Training and Information Questionnaire (PTIQ) to collect information from NHSC scholarship recipients on individual interests, family concerns, and assignment preferences which will be used in matching scholars to HPSAs with the greatest need for providers.

Burden estimates are as follows:

Type of respondent	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Physicians	200	1	0.50	100
Nurse Practitioners, Physician Assistants, and Certified Nurse Midwives	50	1	0.50	25

Estimated Total Annual Burden: 125 hours.

2. Annual Administrative Report for Titles I and II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990—Extension and Revision—The Uniform Reporting System provides for reports by grantees under Titles I and II of the Ryan White CARE Act of aggregate information about disbursal of funds, number of clients served and services provided, demographic information about clients served, and costs of provided services.

Title I grantees include local governments that meet legislative criteria for disproportionate impact of AIDS. Title II grantees include the 50 States, the District of Columbia, and a small number of territories. Grantees obtain the information for the AAR from individual service providers. Automated reporting alternatives are available to grantees and to providers at the grantee's option. This information is used to determine whether the purposes of the Act and the grants made pursuant to it are being fulfilled. The information is also used locally for planning and priority setting. Respondents include state and local governments, individuals, non-profit institutions, businesses and other for-profit organizations, and small businesses and entities. HRSA proposes to make some changes in the data elements, to improve their value and/or reduce the burden of data collection and reporting. To allow adequate lead time, the changes would be effective for data collection by service providers beginning in January, 1998. In addition to minor technical changes, the proposed changes include:

- In all reports, deleting elements concerning total expenditures and expenditures by accounting categories, because of the difficulty these elements posed for respondents;
- In all reports, adding several age breakouts for adult clients (currently a single figure is reported for all adults), to increase the local and national usefulness of the data;
- Eliminating the Modified AAR, which was used by fewer than 2% of providers, so that lead or fiscal agents for fee-for-service arrangements would instead submit a Standard AAR covering all of their subcontractors;
- In the Standard AAR, deleting elements concerning staffing levels and whether staff were added with CARE funds (useful in initial reports, these elements would be deleted now to reduce reporting burden);
- In the Standard AAR, adding elements for the number of clients receiving office-based health services, case management services, and home health care services (currently only the number of service encounters in these areas is reported), because of the importance of knowing how many people are receiving these services;
- Also in the Standard AAR, refining the list of "Other Health and Social Support Services" to add several services that have been cited frequently as important omissions (e.g., alternative therapy, medications, referrals and translation) and to delete or consolidate some existing categories (e.g., foster care/adoption and the two current categories for hospice care); and
- In the AIDS Drug Assistance Program AAR, adding some recently emerging drugs to the list of those to be reported on and deleting other drugs no longer widely used.

HRSA invites comment on another possible change, which has been suggested by numerous respondents: deleting the elements in the Standard AAR that deal with clients' primary HIV exposure categories.

The annual burden estimates are as follows:

Type of respondent	No. of respondents	Annual responses per respondent	Hours/response	Total burden hours
State Grantees	52	1	63	3,276
Local Grantees	49	1	25	1,225
Providers	2,500	1	23	57,500

Estimated total annual burden: 62,001 hours.

3. Health Professions Student Loan (HPSL) Program and Nursing Student Loan (NSL) Program Administrative Requirements (Regulations and Policy) (0915–0047)—Extension, No Change—The regulations for the Health Professions Student Loan (HPSL) Program and Nursing Student Loan (NSL) Program contain a number of reporting and recordkeeping

requirements for schools and loan applicants. The requirements are essential for assuring that borrowers are aware of their rights and responsibilities, that schools know the history and status of each loan account, that schools pursue aggressive collection efforts to reduce default rates, and that they maintain adequate records for audit and assessment purposes. Schools are free to use information technology to manage the information required by the regulations. The estimated burden is as follows:

Recordkeeping Requirements:

Reg./section requirement	Number of record-keepers	Hours per year	Total burden hours
HPSL Program:			
57.206(b)(2) Documentation of Cost of Attendance	290	1.17	339
57.208(a) Promissory Note	290	1.25	363
57.210(b)(1)(i) Documentation of Entrance Interview	290	1.25	363
57.210(b)(1)(ii) Documentation of Exit Interview	313	.33	103
57.215 (a) & (d) Program Records	313	10	3,130
57.215(b) Student Records	313	10	3,130
57.215(c) Repayment Records	313	18.75	5,869
HPSL subtotal	313	42.48	13,297
NSL Program:			
57.306(b)(2)(ii) Documentation of Cost of Attendance	435	.3	131
57.308(a) Promissory Note	435	.5	218
57.310(b)(1)(i) Documentation of Entrance Interview	435	.5	218
57.310(b)(1)(ii) Documentation of Exit Interview	909	.17	155
57.315 (a)(1) & (a)(4) Program Records	909	5.0	4,545
57.315(a)(2) Student Records	909	1.0	909
57.315(a)(3) Repayment Records	909	2.5	2,273
NSL subtotal	909	10.56	8,449

Reporting Requirements:

Req./Sect. Requirement	No. of Respondents	Responses Per Respondent	Total Annual Responses	House Per Response	Total Hour Burden
HPSL Program:					
57.205(a)(2) Excess Case	[Burden included under 0915–0044 and 0915–0046]				
57.206(a)(3) Student Financial Aid Transcrip	5,000	1	5,000	0.25	1,250
57.208(c) Loan Information Disclosure	290	72.41	21,000	.083	1,743
57.210(a)(3) Deferment Eligibility	[Burden included under 0915–0044]				
57.210(b)(1)(i) Entrance Interview	290	72.41	21,000	.167	3,507
57.210(b)(1)(ii) Exit Interview	313	15.97	5,000	.483	2,415
57.210(b)(1)(iii) Notification of Repayment	313	35.14	11,000	.167	1,837
57.210(b)(1)(iv) Notification During Deferment	313	28.75	9,000	.083	747
57.210(b)(1)(vi) Notification of Delinquent Accounts	313	15.97	5,000	.167	835
57.210(b)(1)(x) Credit Bureau Notification	313	12.78	4,000	.6	2,400
57.210(b)(4)(i) Write-off of Uncollectible Loans	26	1.8	48	.5	24
57.211(a) Disability Cancellation	16	1	16	.75	12
57.215(a) Reports	[Burden included under 0915–0044]				
57.215(a)(2) Admin. Hearings	0	0	0	0	0
57.216a(d) Admin. Hearings	0	0	0	0	0
HPSL Subtotal	5,313	15.26	81,064	.182	14,770
NSL Program:					
57.305(a)(2) Excess Cash	[Burden included under 0915–0044 and 0915–0046]				
57.306(a)(2) Student Financial Aid Transcript	3,000	1	3,000	.25	750
57.310(b)(1)(i) Entrance Interview	435	27.59	12,000	.167	2,004
57.310(b)(1)(ii) Exit Interview	909	4.4	4,000	.483	1,932
57.310(b)(1)(iii) Notification of Repayment	909	7.37	6,700	.167	1,119
57.310(b)(1)(iv) Notification During Deferment	909	.77	700	.083	58
57.310(b)(1)(vi) Notification of Delinquent Accounts	909	5.5	5,000	.167	835
57.310(b)(1)(x) Credit Bureau Notification	909	9.9	9,000	.6	5,400
57.310(b)(4)(i) Write-off of Uncollectible Loans	45	2.13	96	.5	48
57.311(a) Disability Cancellation	14	1	14	.75	11
57.312(a)(3) Evidence of Educational Loans	[Inactive provision]				
57.315(a)(1) Reports	[Burden included under 0915–0044]				
57.315(a)(1)(ii) Admin. Hearings	0	0	0	0	0
57.316a(d) Admin. Hearings	0	0	0	0	0
NSL Subtotal	3,909	10.36	40,510	.30	12,157

Estimated total annual burden: 48,673 hours.

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 28, 1996.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 96–4475 Filed 2–27–96; 8:45 am]

BILLING CODE 4160–15–M

Special Projects of National Significance; Integrated Service Delivery Models

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Availability of Funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1996 Grants for Special Projects of National Significance (SPNS) funded under the authority of Section 2618(a) of the Public Health Service Act, as established by the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101–381, dated August 18, 1990. This announcement solicits applications addressing integrated service delivery for persons with HIV disease. Under this announcement, applicants must respond to one of the two categories delineated in the section entitled, "Description of Categories". Applicants *can* apply for project periods of up to 5 years. The SPNS program, in collaboration with the SPNS funded HIV Evaluation Technical Assistance Center grantee, will provide technical assistance and support for project's program evaluation studies.

This program announcement is subject to the appropriation of funds. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for an even distribution of funds throughout the fiscal year. At this time, given a continuing resolution and the absence of FY 1996 appropriations for the Ryan White CARE Act programs, the amount of available funding for these specific grant programs cannot be estimated.

The SPNS program is designed to demonstrate and evaluate innovative and potentially replicable HIV service delivery models. The authorizing legislation specifies three SPNS program objectives: (1) To assess the effectiveness of particular models of care; (2) to support innovative program design; and (3) to promote replication of effective models.

DATES:

Notification

In order to allow HRSA to plan for the Objective Review Process, applicants are encouraged to contact the grants office in writing to notify HRSA of their intent to apply. This notification serves to inform HRSA of the anticipated number of applications and the category (and sub-category, if applicable) in which applications are being submitted. If notification is offered, it should be received within 30 days after publication of the Notice of Availability of Funds in the **Federal Register**. The address is: Grants Management Branch; Bureau of Health Resources Development; Health Resources and Services Administration; Room 7–15; Rockville, MD 20857.

Application

Applications for these announced grants must be received in the Grants Management Branch by the close of business May 28, 1996, to be considered for competition. Applications will meet the deadline if they are either: (1) received on or before the deadline date; or (2) postmarked on or before the deadline date, and received in time for submission to the objective review panel. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted as proof of timely mailing. Applications received after the deadline will be returned to the applicant.

ADDRESSES: Grant applications, guidance materials, and additional information regarding business, administrative, and fiscal issues related to the awarding of grants under this Notice may be requested from Mr. Neal Meyerson, Grants Management Branch, Bureau of Health Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–15, Rockville, MD, 20857. The telephone number is (301) 443–2280 and the FAX number is (301) 594–6096. Applicants for grants will use Form PHS 5161–1, approved under OMB Control No. 0937–0189. Completed applications should be sent to the Grants Management Branch.

FOR FURTHER INFORMATION CONTACT: Additional technical information may be obtained from the SPNS Branch, Office of Science and Epidemiology, Bureau of Health Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, Room 7A–07, Rockville, MD 20857. The telephone number is (301) 443–9976 and the FAX number is (301) 594–2511.

HEALTHY PEOPLE 2000 OBJECTIVES: The Department of Health and Human Services (DHHS) urges applicants to address specific objectives of Healthy People 2000 in their work plans. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 200402–9325 (Telephone 202–783–3238).

SUPPLEMENTARY INFORMATION:

Background and Objectives

The SPNS program endeavors to advance knowledge and skills in HIV services delivery, stimulate the design of innovative models of care, and support the development of effective delivery systems for these services. SPNS accomplishes its purpose through funding and technical support of innovative HIV service delivery models. For purposes of this announcement, models seeking SPNS support must address one of the two categories described below.

In establishing the current special project categories, consideration was given to priority service areas identified in the SPNS concept paper, *Future Directions: Increasing Knowledge about Health and Support Service Delivery to People with HIV Disease*. This document was developed through interviews with and written comments from, key HRSA staff and experts inside and outside the U.S. Public Health Service, following a review of relevant HIV-related service delivery, research, evaluation, policy and planning documents. Consideration was also given to recommendations expressed during the *1995 White House Conference on HIV and AIDS*. Participants in the White House Conference and others recommended that collaborative efforts be made by the Departments of Health and Human Services and Housing and Urban Development to integrate funding streams for projects that address the needs of clients with multiple diagnoses.

The SPNS program supports innovative projects for which implementation, utilization, costs, and outcomes can be evaluated rigorously.

Proposals will be expected to adequately define and justify the need, innovative nature, and evaluation methodology of the proposed model of services. These funds should be used to create and/or evaluate models of care that would likely not exist nor be evaluated without SPNS support, or that would extend the care model to previously underserved or unserved populations defined either geographically or demographically.

SPNS funds cannot be used for expenses related to the provision of medical care; supportive services; or any other expenses currently reimbursed, subsidized or eligible for reimbursement through third party payers, grants awarded under Titles I-IV of the Ryan White CARE Act, or other grant and foundation sources.

Description of Categories

The Special Project Categories for FY 1996 will support the development and evaluation of models of care that address the formal linkage and integration of HIV ambulatory medical care (including primary medical care, mental health, substance abuse treatment and/or other critical HIV services).

Applications will be accepted that propose to demonstrate and evaluate:

Category A—Models of Integrated Service Delivery for Persons with HIV Disease

The formal linkage and integration of mental health, substance abuse treatment, rehabilitation and/or other critical HIV services with HIV ambulatory medical care (such as primary medical care and/or home/health care) in new or existing projects. Projects may provide comprehensive services to people with HIV disease in locations or facilities or clinics that serve only people with HIV disease or those that also care for people who do not have HIV disease. Where applicable, project evaluations should compare client and provider outcomes and satisfaction with care for HIV infected clients receiving care in HIV specific provider sites as compared to HIV infected clients receiving care in non-HIV specific settings.

Applicants for this category must address one of the following sub-categories:

(1) Coordinated delivery of HIV health and support services to specified transient, homeless, migrant, immigrant or mobile populations to ensure the delivery of a comprehensive continuum of care throughout the course of HIV infection and disease;

(2) Delivery of comprehensive health and support services to Native Americans (such as American Indians, Alaskan Natives or Native Hawaiians) through a network of providers experienced in caring for Native American communities; or

(3) Development of an integrated system of HIV ambulatory medical care services for an unserved or underserved population group that is experiencing a significant barrier(s) to care (e.g., ethnic and language minorities, visually or hearing impaired communities, the severely and persistently mentally ill, rural communities, or others) that improves access to and retention in the health care delivery system.

Category B—The Multiple Diagnoses Initiative

This initiative, a collaborative effort between the Departments of Health and Human Services (HHS) and Housing and Urban Development (HUD), is designed to develop and evaluate programs for the integration of medical, substance abuse, mental health services and other support services with housing assistance for homeless persons with HIV/AIDS and a serious mental illness and/or alcohol or substance abuse problems. The collaboration targets "on the street" homeless persons who currently do not have a place to live. This would include an innovative strategy for developing an integrated system of outreach, needs assessment, comprehensive health and other support services and various types of transitional and permanent housing which has the potential for replication. Related assistance is being announced under the Special Projects of National Significance component of HUD's Housing Opportunities for Persons with AIDS (HOPWA) program. For further information about HUD assistance, please contact Fred Karnas, Office of HIV/AIDS Housing, Community Planning and Development, 451 Seventh Street, SW, Room 7154, Washington, DC, 20410–7000. The telephone number is 202–708–1934 and the FAX number is 202–708–1744.

Review Criteria

Applications submitted to the SPNS program under this announcement will be reviewed and rated by an objective review panel. Criteria for the technical review of applications will include the following factors:

Factor 1: Justification of Need (15 points) Adequacy of demonstrated knowledge of the local HIV service delivery system and the adequacy of the justification of need within the community and target population for the proposed integration model. The extent to which the applicant's justification of need goes beyond documenting the existence of an available population in need of HIV services and describes what is innovative about the proposed model, how this model will be of benefit to the population in need, and its potential to advance knowledge in the HIV service delivery field. The adequacy of the discussion about whether or not this or similar models have been evaluated in published literature or reports. The extent to which the applicant identifies past/existing/future systemic or programmatic issues that have contributed to a fragmented service delivery system and how this model will develop a more integrated system of care.

Factor 2: Description of Proposed HIV Service Integration Model (25 points) The extent of the feasibility and clarity of the description, appropriateness, innovative quality, and potential for evaluation, replication and dissemination of the proposed model. The amount of emphasis given to the definitive integration of services to ensure the delivery of a comprehensive spectrum of care to persons with HIV disease. The extent to which the identification of providers and services integrated by the model is described. The adequacy of the discussion of the rationale for the selection of providers and services integrated by the proposed model.

Factor 3: Description of Program Plan (20 points) Comprehensiveness of the program plan as described in clearly stated goals, time-limited and measurable objectives for each goal, activities directly related to each objective, and a time line that shows the schedule of activities and production of materials that corresponds to milestones stated in the objectives and program evaluation. The extent to which the applicant demonstrates access to the proposed target population. The feasibility of the description of a process for maintaining client confidentiality throughout the project period.

Factor 4: Description of Evaluation Plan (20 points) Thoroughness, feasibility and appropriateness of the project's evaluation design from a methodological and statistical perspective. The extent to which the design of the evaluation allows a generalized conclusion regarding the outcomes of the integration model and its suitability for replication. The adequacy of the plan to assess HIV-related health outcomes among the population serviced and followed, and the anticipated outcome impact from a systems level perspective.

Factor 5: Description of Dissemination (10 points) The extent to which the applicant demonstrates past involvement with disseminating information about HIV service delivery by describing dissemination activities to date (e.g., presenting and publishing findings through reports and papers, training, or technical assistance). The adequacy and feasibility of the preliminary dissemination plan.

Factor 6: Description of Organizational Capacity (10 points) Competency of the applicant organization in terms of fiscal, program management, and evaluation, as evidenced by (a) the consistency between the proposed level of effort and the budget justification; (b) skill level and time commitment required in the personnel specifications for program and evaluation staff; (c) the adequacy of resources proposed to conduct a quality evaluation of the project and dissemination of the project's findings; (d) the qualifications and experience of the proposed evaluation staff; and (e) appropriate confidential handling of clients' medical, social service, and epidemiological data. Extent of documentation demonstrating current and proposed coordination, formal collaboration, and specific linkages with related medical, health and support service activities within the project's catchment area.

Other Grant Information

Allowable Costs

The basis for determining allocable and allowable costs to be charged to PHS grants is set forth in 45 CFR part 74, subpart Q and 45 CFR part 92 for State, local or tribal governments. The four separate sets of cost principles prescribed for public and private non-profit recipients are OMB Circular A–87 for State, local or tribal governments; OMB Circular A–21 for institutions of higher education; 45 CFR part 74, appendix E for hospitals; and OMB Circular A–122 for nonprofit organizations.

Reporting and Other Requirements

A successful applicant under this notice will submit semi-annual activity summary reports in accordance with provisions of the general regulations which apply under 45 CFR part 74, subpart 74.51, "Monitoring and Reporting Program Performance," with the exception of State and local governments to which 45 CFR part 92, Subpart C reporting requirements apply. Also, grantees must be prepared to collaborate with other grantees on the design and implementation of project evaluations which may include multi-site evaluation studies.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements which have been approved by the Office of Management and Budget under No. 0937–0195. Under these requirements, any community-based, non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to keep State and local health officials apprised of proposed health services grant applications submitted from within their jurisdictions.

Community-based, non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the administrator of the State and local AIDS programs in the area(s) to be impacted by the proposal: (a) A copy of the face page of the application (SF424); and, (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served; (2) a summary of the services to be provided; and, (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to this program.

Certification Regarding Environmental Tobacco Smoke

The Public Health Service strongly encourages all grant and contract recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Executive Order 12372

The Special Projects of National Significance Grant Program has been determined to be a program subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up a review system and will provide a State Single Point of Contact (SPOC) in the State for the review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected state. The due date for State process recommendations is 60 days after the appropriate deadline dates. The Health Resources and Services Administration does not guarantee that it will accommodate or explain its responses to State process recommendations received after the due date. (See "Intergovernmental Review of Federal Programs," Executive Order 12372, and 45 CFR part 100, for a description of the review process and requirements.)

OMB Catalog of Federal Domestic Assistance

Number for the Special Projects of National Significance is 93.928.

Dated: February 14, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–4477 Filed 2–27–96; 8:45 am]

BILLING CODE 4160–15–P

Special Projects of National Significance; Evaluation Technical Assistance Center

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Availability of Funds

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1996 Grants for Special Projects of National Significance (SPNS) funded under the authority of Section 2618 (a) of the Public Health Service Act, as established by the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101–381, dated August 18, 1990. This announcement solicits applications to design and develop an HIV Evaluation Technical Assistance Center. This Evaluation Technical Assistance Center will provide technical assistance to SPNS grantees in designing and implementing evaluation studies and dissemination activities for individual projects and develop and coordinate the implementation of any multi-site evaluations. Evaluation activities will

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include a description and evaluation of the various demonstration projects involved in an effort to determine which models might be replicated and integrated into HIV/AIDS health care delivery systems nationally and an analysis of changes in client outcomes. Applicants *must* apply for a 5 year project period. The SPNS program, in collaboration with the HIV Evaluation Technical Assistance Center grantee, will provide technical assistance and support for the program evaluation studies for three groups of SPNS grantees. These grantee groups are: (1) Models of Integrated Service Delivery for Persons with HIV Disease, (2) HIV Multiple Diagnoses Initiative (a collaborative effort between the Departments of Health and Human Services and Housing and Urban Development) and (3) Health Care Services Demonstration Models for HIV Infected Youth.

This program announcement is subject to the appropriation of funds. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for an even distribution of funds throughout the fiscal year. At this time, given a continuing resolution and the absence of FY 1996 appropriations for the Ryan White CARE Act programs, the amount of available funding for these specific grant programs cannot be estimated.

The authorizing legislation specifies three SPNS program objectives: (1) to assess the effectiveness of particular models of care; (2) to support innovative program design; and (3) to promote replication of effective models. The SPNS program endeavors to advance knowledge and skills in HIV services delivery by stimulating the design of innovative models of care. SPNS accomplishes its purpose through funding the technical support and evaluation of innovative and potentially replicable HIV service delivery models.

DATES:

Notification

In order to allow HRSA to plan for the Objective Review Process, applicants are encouraged to contact the grants office in writing to notify HRSA of their intent to apply. This notification serves to inform HRSA of the anticipated number of applications which are being submitted. If notification is offered, it should be received within 30 days after publication of the Notice of Availability of Funds in the **Federal Register**. The address is: Grants Management Branch; Bureau of Health Resources Development; Health Resources and Services Administration; Room 7–15; Rockville, MD 20857.

Application

Applications for this announced grant must be received in the Grants Management Branch by the close of business April 29, 1996 to be considered for competition. Applications will meet the deadline if they are either (1) received on or before the deadline date or (2) postmarked on or before the deadline date, and received in time for submission to the objective review panel. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted as proof of timely mailing. Applications received after the deadline will be returned to the applicant.

ADDRESSES: Grant applications, guidance materials, and additional information regarding business, administrative, and fiscal issues related to the awarding of grants under this Notice may be requested from Mr. Neal Meyerson, Grants Management Branch, Bureau of Health Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–15, Rockville, MD, 20857. The telephone number is (301) 443–2280 and the FAX number is (301) 594–6096. Applicants for grants will use Form PHS 5161–1, approved under OMB Control No. 0937–0189. Completed applications should be sent to the Grants Management Branch.

FOR FURTHER INFORMATION CONTACT: Additional technical information may be obtained from the SPNS Branch, Office of Science and Epidemiology, Bureau of Health Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, Room 7A–07, Rockville, MD 20857. The telephone number is (301) 443–9976 and the FAX number is (301) 594–2511. Questions concerning the Health Care Services Demonstration Models for HIV Infected Youth should be directed to Evelyn M. Rodriguez, M.D., M.P.H., Office of the Director, Bureau of Health Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–13, Rockville, MD 20857. The telephone number is (301) 443–9530 and the FAX number is (301) 443–9645.

HEALTHY PEOPLE 2000 OBJECTIVES: The Department of Health and Human Services (DHHS) urges applicants to address specific objectives of Healthy People 2000 in their work plans. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 200402–9325 (Telephone 202–783–3238).

SUPPLEMENTARY INFORMATION:

Description of Grant

This grant will support the establishment of an Evaluation Technical Assistance Center to provide evaluation and dissemination technical assistance. Applicants should propose a plan to provide technical assistance to design and implement outcome evaluation studies and dissemination activities for SPNS grantees funded under the Models of Integrated Service Delivery for Persons with HIV Disease Demonstration Projects, the HIV Multiple Diagnoses Initiative and the Health Care Services Demonstration Models for HIV Infected Youth. In addition, the HIV Evaluation Technical Assistance Center will be responsible for developing and coordinating the implementation of any multi-site evaluations within groups of similar projects.

Evaluation and technical assistance will include providing overall evaluation coordination, including data management and analysis, training in common procedures, and distribution of necessary materials to all projects. Specifically, the Evaluation Technical Assistance Center will work with the grantees in the planning phase to: (1) Provide advice regarding the evaluation personnel needs at the project level; (2) develop criteria for compatible computer equipment; (3) recommend cross-cutting outcome measures; (4) develop model data collection formats that can be used by grantees at their discretion and (5) provide assistance in the development, preparation and dissemination of evaluation results and findings. It is anticipated that many of these tasks will be coordinated through a series of grantee meetings to commence early in the first project year.

Description of SPNS Projects

The Models of Integrated Service Delivery Demonstration Projects will be a group of approximately eight to ten grants. These projects will focus on defining and evaluating innovative models of care that address the formal linkage and integration of mental health, substance abuse treatment, rehabilitation and/or other critical services with HIV ambulatory medical care (such es primary medical care and/or home health care). In developing integrated models, projects will address the following sub-categories: (1) Coordinated delivery of HIV health and support services to specified transient, homeless, migrant, immigrant or mobile populations to ensure the delivery of a comprehensive continuum of care throughout the course of HIV infection and disease; (2) Delivery of comprehensive health and support services to Native Americans (American Indian, Alaskan Natives and Native Hawaiians) through a linked network of providers experienced in caring for Native American communities; and, (3) Development of a formally linked system of HIV ambulatory care services for an underserved population group experiencing significant barriers to care, (e.g., ethnic and language minorities, visually or hearing impaired communities, the severely and persistently mentally ill, rural communities or *others*) that improves access to and retention in the health care delivery system.

The HIV Multiple Diagnoses Initiative. This initiative, a collaborative effort between the Departments of Health and Human Services (HHS) and Housing and Urban Development (HUD), is designed to develop and evaluate programs for the integration of medical, substance abuse, mental health services and other support services with housing assistance for homeless persons with HIV/AIDS and a serious mental illness and/or alcohol or substance abuse problems. The collaboration targets "on the street" homeless persons who currently do not have a place to live. Applicants should propose an innovative strategy for developing an integrated system of outreach, needs assessment, comprehensive health and other support services and various types of transitional and permanent housing which has the potential for replication. Related assistance is being announced under the Special Projects of National Significance component of HUD's Housing Opportunities for Persons with AIDS (HOPWA) program. The Evaluation Technical Assistance Center will be responsible for evaluating the medical, substance abuse, mental health and other support services components of these jointly funded projects.

Projects funded under the Health Care Services Demonstration Models for HIV Infected Youth will develop, expand, implement, and provide health and related support services for youth with HIV infection. Three to four grantees will be funded to incorporate innovative health, nursing, and ancillary care services (such as mental health and substance abuse treatment) to improve participation by youth in HIV counseling and testing, diagnosis, prophylaxis, and treatment of manifestations and complications of HIV infection and AIDS, including: (1) Antiretroviral therapy to children and youth, and (2) prophylactic therapy for opportunistic infections for children and youth, including tuberculosis. Models will also determine the spectrum of HIV disease among treated and untreated children/adolescents (upon entry to care), the progression of HIV disease among children/adolescents, physical growth and development, adherence to antiretroviral treatment and PCP prophylaxis.

Review Criteria

Applications submitted to the SPNS program under this announcement will be reviewed and rated by an objective review panel. Criteria for the technical review of applications will include the following factors:

Evaluation Technical Assistance Center

Factor 1: Professional Qualifications of Personnel (15 points) Qualifications, i.e., professional degree(s), work experience, publication(s), training provider, etc., of the project director, existing staff, proposed staff and/or consultants in (a) the design and direction of national and multi-site health services models evaluation and/or research, (b) the dissemination of progress reports and final results of completed studies, (c) the provision of technical assistance on both qualitative and quantitative evaluation techniques, and in (d) the development of various types of dissemination products, i.e., professional journal articles, media work, manuals, training programs, etc.

Factor 2: Organizational Capacity (20 points) Proficiency of applicant's administrative, fiscal and professional management in the use of grant funds and personnel resources as evidenced in (a) the appropriateness of the proposed budget for the entire project period, (b) proposed staffing patterns during various phases, e.g., planning, start up, implementation, analysis and reporting of the project's operations, (c) proposed apportionment of existing facilities and information management resources, and (d) the justification(s) for additional space and equipment if requested.

Factor 3: Implementation Plan (25 points) Comprehensiveness of applicant's plan for implementing national and multi-site evaluation studies as evidenced by (a) the relevancy of the goals and objectives for measuring progress and achievement of completion of the evaluation studies, (b) the feasibility of the projected time line, (c) capability of meeting the needs of the Federal government through production of timely reports and providing assistance in managing the meetings of the three groups of grantees, and (d) meeting the needs of the grantees through the provision of ongoing technical assistance, designing efficient measurement tools, and the initiation and receipt of continuous support in their data collection process.

Factor 4: Management Information Systems (MIS) and Procedures (20 points) Capacity of the applicant's MIS hardware and software to manage the scope of the proposed project; the professional expertise of the MIS staff in programming, maintaining data set(s), implementing the applicant organization's quality control policies and in providing technical assistance to the grantees; the adequacy of the applicant's plan for providing technical assistance to grantees and coordinating grantee project evaluations; and the feasibility of the policies and procedures utilized to ensure reliable and confidential management of the data set(s).

Factor 5: Dissemination Activities (20 points) Thoroughness of means for addressing and assessing the knowledge and skills needed within the field of HIV/AIDS health services delivery; creativity and timeliness of approaches for the dissemination of "lessons learned" and "best practices"; the release of various types of dissemination products that describe unique and cross-cutting operational issues, i.e., small studies using interim data, qualitative reports on implementation barriers experienced by the grantees, "special reports", etc.; and capability to assist grantees in preparation of reports, releases to local media, training curricula, manual development and consultant services for replication of grantee service delivery models.

Other Grant Information

Allowable Costs

The basis for determining allocable and allowable costs to be charged to PHS grants is set forth in 45 CFR part 74, subpart Q and 45 CFR part 92 for State, local or tribal governments. The four separate sets of cost principles prescribed for public and private non-profit recipients are OMB Circular A–87 for State, local or tribal governments;

OMB Circular A–21 for institutions of higher education; 45 CFR part 74, appendix E for hospitals; and OMB Circular A–122 for nonprofit organizations.

Reporting and Other Requirements

A successful applicant under this notice will submit semi-annual activity summary reports in accordance with provisions of the general regulations which apply under 45 CFR part 74, subpart 74.51, "Monitoring and Reporting Program Performance," with the exception of State and local governments to which 45 CFR part 92, Subpart C reporting requirements apply. Also, grantees must be prepared to collaborate with other grantees on the design and implementation of project evaluations which may include multi-site evaluation studies.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements which have been approved by the Office of Management and Budget under No. 0937–0195. Under these requirements, any community-based, non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to keep State and local health officials apprised of proposed health services grant applications submitted from within their jurisdictions.

Community-based, non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the administrator of the State and local AIDS programs in the area(s) to be impacted by the proposal: (a) a copy of the face page of the application (SF424); and, (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) a description of the population to be served; (2) a summary of the services to be provided; and, (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to this program.

Certification Regarding Environmental Tobacco Smoke

The Public Health Service strongly encourages all grant and contract recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Executive Order 12372

The Special Projects of National Significance Grant Program has been determined to be a program subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs.

The application packages to be made available under this notice will contain a listing of States which have chosen to set up a review system and will provide a Single Point of Contact (SPOC) in the State for the review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected state. The due date for State process recommendations is 60 days after the appropriate deadline dates. The Health Resources and Services Administration does not guarantee that it will accommodate or explain its responses to State process recommendations received after the due date. (See "Intergovernmental Review of Federal Programs," Executive Order 12372, and 45 CFR part 100, for a description of the review process and requirements.)

OMB Catalog of Federal Domestic Assistance

Number for the Special Projects of National Significance is 93.928.

Dated: February 14, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–4476 Filed 2–27–96; 8:45 am]

BILLING CODE 4160–15–P

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month March 1996:

Name: Council on Graduate Medical Education.

Date and Time: March 12, 1996, 8 a.m.–5 p.m.

Place: Governor's House Hotel, 17th Street at Rhode Island, Avenue, N.W., Washington, D.C. 20036.

This meeting is open to the Public.

Agenda: The agenda will include a panel to discuss International Medical Graduates, data and trends, and entry and participation in the U.S. physician workforce. There will be reports and updates on the work Groups: Minorities in Medicine; Geographic Distribution/Medical Education Consortia; Physician Competencies in a Managed Care World; and IMG entry and Participation in the physician workforce.

Anyone requiring information regarding the subject should contact F. Lawrence Clare, M.D., M.P.H., Acting Executive Secretary, telephone (301) 443–6326, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Health Resources and Service Administration, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda Items are subject to change as priorities dictate.

Dated: February 23, 1996.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 96–4474 Filed 2–27–96; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR–2491–N–04]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: April 29, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 415–7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Oliver Walker, Telephone number (202) 708–1694 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Actions to Reduce Losses in FHA Programs FR–2491.

OMB Control Number: 2502–0392.

Description of the need for the information and the proposed use: A uniform form for HUD and HUD approved lenders to use which puts forth the value, terms and conditions of a property for mortgage insurance purposes.

Agency form numbers: Not Applicable.

Members of affected public: Business or other for profit.

An estimation of the total numbers of hours needed to prepare the information collection is 8,000 number of respondents is 200 frequency response is yearly and the hour of response is 1.

Status of the proposed information collection: Extension of a currently approved collection.

Dated: February 15, 1996.

Nicolas P. Retsinas,

A/S Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–4440 Filed 2–27–96; 8:45 am]

BILLING CODE 4210–27–M

Office of Administration

[Docket No. FR–3929–N–02]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 29, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 20, 1996.

David S. Cristy,

Acting Director, Informotion Resources Management Policy ond Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program (FR–3929).

Office: Community Planning and Development.

OMB Approval Number: 2506–0131.

Description of the Need for the Information and Its Proposed Use: The information requested will assist the Department in selecting applicants which meet program requirements and demonstrate the greatest need for Section 8 Moderate Rehabilitation SRO program funds. The purpose of this program is to provide Rental Assistance for homeless individuals in rehabilitated SRO housing.

Form Number: HUD–52515–B.

Respondents: State, Local, or Tribal Government and Not-For-Profit Institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	150		1		25.5		3,825

Total Estimated Burden Hours: 3,825.
Status: Reinstatement without change.
Contact: Marian V. Jones, HUD, (202) 708–1234, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 20, 1996.

[FR Doc. 96–4439 Filed 2–27–96; 8:45 am]
BILLING CODE 4210–01–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3798–N–03]

Announcement of Funding Awards: Community Development Block Grant Program for Indian Tribes and Alaska Native Villages, Fiscal Year 1995

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1995 for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages. The purpose of this Notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to provide assistance to the Indian Tribes and Alaska Native Villages.

FOR FURTHER INFORMATION CONTACT: Dom Nessi, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room B–133, 451 Seventh Street SW, Washington, DC 20410. Telephone (202) 755–0068 (this is not a toll-free number). Hearing- or speech- impaired persons, may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The CDBG Program is authorized under Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); 24 CFR Part 953.

This Notice announces FY 1995 funding of $46,000,000 to be used to assist in the development of viable Indian and Alaskan native communities, including decent housing, a suitable living environment, and economic opportunities. The FY 1995 awards announced in this Notice were selected for funding consistent with the provisions in the Notices of Funding Availability (NOFAs) published in the **Federal Register** on February 24, 1995 (60 FR 10452).

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: February 22, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

Appendix A.—Community Development Block Grant; Program for Indian Tribes and Alaskan Native Villages, Recipients of Funding Decisions, Fiscal Year 1995

Funding recipient (name and address)	Amount approved
Eastern/Woodlands ONAP	
Bois Forte Reservation, P.O. Box 16, Nett Lake, Minnesota 55772	$300,000
Eastern Band of Cherokee Indians, P.O. Box 455, Cherokee, North Carolina 28719	300,000
Forest County Potawatomi Community, P.O. Box 340, Crandon, Wisconsin 54520	300,000
Ho Chunk Nation, P.O. Box 54, Black River Falls, Wisconsin 54615	300,000
Lac Vieux Desert Band of Lake Superior Chippewa Indians, P.O. Box 249–Choate Road, Watersmeet, Michigan 49969	300,000
Leech Lake Tribal Council, P.O. Box 100, Cass Lake, Minnesota 56633	300,000
Passamaquoddy Joint Tribal Council, 36 North Street, Calais, Maine 04619	300,000
Poarch Band of Creek Indians, HCR–69 Box 85–B, Atmore, Alabama 36502	300,000
Red Cliff Band of Lake Superior Chippewa Indians, P.O. Box 529, Bayfield, Wisconsin 54814	300,000
Sokaogon Chippewa Community Mole Lake Band, Route 1, Box 625, Crandon, Wisconsin 54520	300,000
White Earth Reservation Tribal Council, P.O. Box 418, White Earth, Minnesota 56591	300,000
Southern Plains ONAP	
Cherokee Tribe, P.O. Box 948, Tahlequah, OK 74465	750,000
Seneca-Cayuga Tribe, P.O. Box 1284, Miami, OK 74355	161,288
Osage Tribe, 627 Grandview, Pawhuska, OK 74056	100,000
Alabama-Quassarte Tribe, P.O. Box 537, Henryetta, OK 74437	343,900
Choctaw Tribe, Drawer 1210, Durant, OK 74702–1210	750,000
Sac & Fox of Oklahoma, Rt 2, Box 246, Stroud, OK 74079	750,000
Iowa Tribe of Kansas & Nebraska, Rt 1, Box 58–A, White Cloud, KS 66094	375,000
Peoria Tribe, P.O. Box 1527, Miami, OK 74355	700,000
Chitimacha, P.O. Box 661, Charenton, LA 70523–6691	662,900
Osage Tribe, 627 Grandview, Pawhuska, OK 74056	150,000
Kaw Tribe, P.O. Box 50, Kaw City, OK 74641	670,520
Comanche Tribe, P.O. Box 908, Lawton, OK 73502	600,120
Apache Tribe, P.O. Box 1220, Anakarko, OK 73005	500,000
Osage Tribe, 627 Grandview, Pawhuska, OK 74056	248,700
Absentee-Shawnee Tribe, 2025 S. Gordon Cooper, Shawnee, OK 74801	110,000
Prairie Band Potawatomi Tribe, 14880 "K" Road, Mayetta, KS 66509	685,072
Pawnee Tribe, P.O. Box 470, Pawnee, OK 74058	750,000
Ponca Tribe, Box 2, White Eagle, Ponca City, OK 74601	12,400
Northern Plains ONAP	
Blackfeet Tribe, P.O. Box 850, Browning, MT 59417	382,000
Fort Berthold Tribes, HC Box 2, New Town, ND 58763	798,601
Northern Arapaho Tribe, P.O. Box 396, Ft. Washakie, WY 82514	800,000
Southern Ute Tribe, P.O. Box 737, Ignacio, CO 81137	564,000
Standing Rock Sioux Tribe, P.O. Box D, Fort Yates, ND 58538	400,000
Turtle Mountain Band of Chippewa, P.O. Box 900, Belcourt, ND 58316	400,000
Utah Paiute Tribe, 600 North, 100 East, Cedar City, UT 84720	800,000
Chippewa Cree Tribe, P.O. Box 544, Box Elder, MT 59521	400,000
Ute Indian Tribe, P.O. Box 190, Ft. Duchesne, UT 84026	200,000
Northern Cheyenne Tribe, P.O. Box 128, Lame Deer, MT 59043	800,000
Fort Belknap Indian Community, R.R. 1, Box 66, Harlem, MT 59526	800,000
Southwest ONAP	
Navajo Nation, P.O. Box 9000, Window Rock, AZ 86515	4,516,703
Colusa Rancheria, P.O. Box 8, Colusa, CA 95932	117,102
Ysleta Del Sur, P.O. Box 17579, El Paso, TX 79917	386,280
Coyote Valley Rancheria, P.O. Box 39, Redwood Valley, CA 95470	450,000
Cocopah Indian Reservation, Bin G, Somerton, AZ 85350	450,000

Funding recipient (name and address)	Amount approved
Redwood Valley Rancheria, P.O. Box 499, Redwood Valley, CA 95470	450,000
Chemehuevi Indian Reservation, P.O. Box 1976, Chemehuevi Valley, CA 92363	450,000
Hualapai Indian Reservation, P.O. Box 179, Peach Springs, AZ 86434	435,500
Grindstone Rancheria, P.O. Box 63, Elk Creek, CA 95939	450,000
Washoe Tribe of NV and CA, 919 Highway 395 South, Gardnerville, NV 89410	450,000
Yavapai Apache Tribe, P.O. Box 1188, Camp Verde, AZ 86322	432,500
Tule River Reservation, P.O. Box 589, Porterville, CA 93258	444,339
White Mountain Apache Tribe, P.O. Box 700, Whiteriver, AZ 85941	2,000,000
Mesa Grande Indian Reservation, P.O. Box 270, Santa Ysabel, CA 92070	450,000
Mescalero Indian Reservation, P.O. Box 176, Mescalero, NM 88340	585,000
Ely Colony, 16 Shoshone Circle, Ely, NV 89301	386,750
Tohono O'Odham Nation, P.O. Box 837, Sells, AZ 85634	516,200
Duck Valley Indian Reservation, P.O. Box 219, Owyhee, NV 89832	289,125
Redding Rancheria, 2000 Rancheria Road, Redding, CA 96001	367,429
Sherwood Valley Rancheria, 190 Sherwood Hill Drive, Willits, CA 95490	440,910
Trinidad Rancheria, P.O. Box 630, Trinidad, CA 95570	447,000
Santa Ana Pueblo, 02 Dove Road, Bernalillo, NM 87004	425,000
Picuris Pueblo, P.O. Box 127, Penasco, NM 87553	450,000
La Jolla Indian Reservation, Star Route Box 158, Valley Center, CA 92082	450,000
Pala Indian Reservation, P.O. Box 43, Pala, CA 92059	431,022
Yomba Indian Reservation, HC 61, Box 6275, Austin, NV 89310	170,670
Scotts Valley Band of Pomo Indians, 149 North Main St., Ste. 200, Lakeport, CA 95453	301,484
Fallon Indian Reservation, 8955 Mission Road, Fallon, NV 89406	450,000
Pueblo of Jemez, P.O. Box 78, Jemez Pueblo, NM 87024	550,000
Cabazon Band of Mission Indians, 84–245 Indio Springs Dr., Indio, CA 92201	450,000
Gila River Indian Community, P.O. Box 97, Sacaton, AZ 85247	365,470
Northwest Coast ONAP	
Makah Indian Tribe, P.O. Box 115, Neah Bay, WA 98357	320,000
Spokane Indian Tribe, P.O. Box 7334, Wellpinit, WA 99207	320,000
Conf. Tribes of Warm Springs, P.O. Box C, Warm Springs, OR 97761	320,000
Suquamish Indian Tribe, P.O. Box 498, Suquamish, WA 98392	240,000
Nooksack Indian Tribe, P.O. Box 157, Deming, WA 98244	320,000
Klamath Indian Tribe, P.O. Box 426, Choloquin, OR 97624	168,664
Coeur d'Alene Tribe, P.O. Box 388, Plummer, ID 83851	320,000
Upper Skagit Indian Tribe, 2284 Community Plaza Way, Sedro Woolley, WA 98284, Squaxin Island Tribe, S.E. 70, Squaxin Land, Shelton, WA 98584	320,000
Anchorage ONAP	
Pitka's Point Traditional Council, P.O. Box 127, St. Mary's, AK 99658	205,658
Native Village of Shageluk, General Delivery, Shageluk, AK 99665	300,000
Native Village of Savoonga, P.O. Box 120, Savoonga, AK 99769	350,287
Tatitlek IRA Council, P.O. Box 171, Tatitlek, AK 99677	333,760
Mt. Sanford Tribal Consortium, P.O. Box 357, Gakona, AK 99586	499,041
Native Village of Koyuk, P.O. Box 30, Koyuk, AK 99753	310,573
Native Village of Kwigillingok, P.O. Box 49, Kwigillingok, AK 99622	500,000
Kokhanok Village Council, P.O. Box 1007, Kokhanok, AK 99606	136,700
Native Village of Atmautluak, General Delivery, Atmautluak, AK 99559	500,000
Native Village of Mekoryuk, Box 66, Mekoryuk, AK 99630	274,500
Native Village of Kwinhagak (Quinhagak), General Delivery, Quinhagak, AK 99655	328,525

[FR Doc. 96–44351 Filed 2–27–96; 8:45 am]
BILLING CODE 4210–33–P

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–4004–N–02]

Notice of Funding Availability for the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year 1996; and the Section 108 Loan Guarantee Program for Small Communities in New York State; Amendment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1996; Amendment.

SUMMARY: This notice amends the NOFA for the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program and the Section 108 Loan Guarantee Program for Small Communities in New York State, published in the **Federal Register** on December 28, 1995 (60 FR 67260). This notice provides an additional contact for New York State and to clarify certain other items as described below.

DATES: This notice does not effect the deadline dates described in the December 28, 1995 NOFA for the HUD-Administered Small Cities CDBG Program and the Section 108 Loan Guarantee Program for Small Communities in New York State (60 FR 67260).

FOR FURTHER INFORMATION CONTACT: Joseph A. D'Agosta, Director, Office of Community Planning and Development, Department of Housing and Urban Development, 26 Federal Plaza, New York, NY 10278–0068; telephone (212) 264–0771. (This is not a toll-free number.) Hearing- or speech-impaired persons may call (212) 264–0927 (TDD).

SUPPLEMENTARY INFORMATION: The NOFA for the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year (FY) 1996, and the Section 108 Loan Guarantee Program for Small Communities in New York State was published in the **Federal Register** on December 28, 1995 (60 FR 67260). Today's notice amends sections I.C.2. (Previous Grantees) and I.E.2.c. (Performance Assessment Reports) of the December 28, 1995 NOFA to clarify that the submission date of annual Performance Assessment Reports (PARs) is no later than October 31 for all grant agreements executed before April 1 of the same calendar year, and that the first report should cover the period from the execution of the grant until September 30. Reports on grants made after March 31 of a calendar year will be due October 31 of the following calendar year, and the report should cover the period of time from the execution of the grant until September 30 of the calendar year following grant execution. After the submission of the initial report, PARs will be submitted annually on October 31 until completion of the activities funded under the grant.

Today's notice also amends section I.D.5.b. (Grant Limits and Funding Requirements) of the December 28, 1995 NOFA to clarify that multi-year requests may be for single purpose grants as well

as comprehensive grants. This notice specifies limits for single purpose and comprehensive grants.

With regard to section I.E.3.c.(1)(a)(iii) (Direct Homeownership Assistance) of the December 28, 1995 NOFA, the authority under the CDBG program to carry out direct homeownership assistance activities has expired. The FY 1996 HUD appropriations bill would have amended the CDBG program to make homeownership activities a permanent eligible CDBG activity. The FY 1996 HUD appropriations bill was not approved by the President, and as of this date such activities are not authorized. If there is a HUD appropriation bill enacted with this provision prior to HUD's announcement of grant awards, then any fundable applications containing such activities would be approvable. However, potential applicants are advised that should direct homeownership activities not be authorized by the time HUD makes the grant awards, HUD would not be able to make a grant obligation for such activities. Applicants should take these matters into consideration when preparing an application that contains direct homeownership activities. It is noted that some direct homeownership activities are eligible under other provisions of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301–5320).

Today's notice corrects section II.C.2. (Streamlined Application Requirements for Certain Applicants) to be consistent with 24 CFR 570.425(c) to provide that a previous year's applicant, whose application was not funded, may notify HUD in writing within the application period that it wishes its previous application to be reconsidered in the current competition. The NOFA published on December 28, 1995 erroneously stated that all previous year's unfunded applications would be automatically reconsidered. This provision was in effect for the Fiscal Year 1995 competition only.

Today's notice amends section III (Technical Assistance) to clarify that both of HUD's New York offices, located in Buffalo and New York City, will be available to provide technical assistance to prospective applicants.

Today's notice also provides the correct phone number for HUD's Buffalo office, which is (716) 551–5742.

Accordingly, FR Doc. 95–31383, the NOFA for the HUD-Administered Small Cities Community Development block Grant (CDBG) Program—Fiscal Year 1996, and the Section 108 Loan Guarantee Program for Small Communities in New York State, published in the **Federal Register** on December 28, 1995 (60 FR 67260), is amended as follows:

1. On page 67263, in column 1, section I.C.2., under the heading "Previous grantees," is amended to read as follows:

I. Purpose and Substantive Description

* * * * *

C. Eligibility

* * * * *

2. Previous grantees. Eligible applicants, which previously have been awarded Small Cities Program CDBG grants, are also subject to an evaluation of capacity and performance. Numerical thresholds for drawdown of funds have been established to assist HUD in evaluating a grantee's progress in implementing its program activities. (These standards apply to all CDBG Program grants received by the community.) An additional threshold relates to the submission of annual Performance Assessment Reports (PARs) which were due October 31, 1995, for all grant agreements executed before April 1, 1995. (See 24 CFR § 570.507(a)(2)(ii)(A).) Failure to submit a PAR is not a curable technical deficiency. Applicants generally will be determined to have performed adequately in the area(s) where the thresholds are met. Where a threshold has not been met, HUD will evaluate the documentation of any mitigating factors, particularly with respect to actions taken by the applicant to accelerate the implementation of its program activities.

* * * * *

2. On page 67264, in column 1, section I.D.5.b., under the heading "Grant Limits and Funding Requirements" is amended to read as follows:

I. Purpose and Substantive Description

* * * * *

D. Types of Grants

* * * * *

5. Multi-year Plans

* * * * *

b. *Grant Limits and Funding Requirements. Single Purpose Multi-year requests*: The maximum annual grant for a Single Purpose grant is $600,000, except that counties may apply for up to $900,000 in Single Purpose funds. The maximum amount for Single Purpose grant applications made jointly by units of general local government will be $900,000. The maximum funding for implementing an entire multi-year plan is $1,200,000 for a two year multi-year plan ($1,800,000 for counties and joint applications by units of general local government), and $1,800,000 for a three year multi-year plan ($2,700,000 for counties and joint applications by units of general local government).

Comprehensive Multi-year requests. The maximum funding for implementing an entire multi-year plan is $3,100,000 for a two year multi-year plan, and $5,000,000 for a three year multi-year plan. However, in no event will HUD award more than $1,200,000 in grant funds for the first year's increment of either a 2-year or 3-year multi-year request.

Grant funds requested must be sufficient, either by themselves or in combination with funds from other sources, (including any Section 108 Loan Guarantee resources requested in conjunction with a Small Cities application under this NOFA) to complete the project within a reasonable amount of time. If other sources of funds are to be used with respect to a project, the source of those funds should be identified and the level of commitment indicated.

* * * * *

3. On page 67265, in column 1, section I.E.2.c., under the heading "Performance Assessment Reports" is amended to read as follows:

I. Purpose and Substantive Description

* * * * *

E. Selection Criteria/Ranking Factors and Final Selection

* * * * *

2. Performance Evaluation

* * * * *

c. *Performance Assessment Reports.* Under 24 CFR 570.507, Small Cities CDBG grantees are required to submit Performance Assessment Reports (PARs) no later than October 31 for all grants executed before April 1 of the same calendar year. The first report should cover the period from the execution of the grant until September 30. Reports on grants made after March 31 of a calendar year will be due October 31 of the following calendar year, and the reports will cover the period of time from the execution of the grant until September 30 of the calendar year following grant execution. After the submission of the initial report, PARs will be submitted annually on October 31 until completion of the activities funded under the grant. For an application for FY 1996 funds to be considered for funding, the applicant must be current in its submission of Performance Assessment Reports. Failure to submit a PAR is not a curable technical deficiency under Section V of this NOFA.

* * * * *

4. On page 67268, in column 2, section I.E.3.c.(1)(a)(iii), under the heading "Direct Homeownership Assistance," after the fifth paragraph, a new paragraph is added, to read as follows:

I. Purpose and Substantive Description

* * * * *

E. Selection Criteria/Ranking Factors and Final Selection

* * * * *

3. Four Factor Rating

* * * * *

c. Program Impact—General.

* * * * *

(1) *Program Impact—Single Purpose Grants.*

* * * * *

(a) *Program Impact—Single Purpose—Housing.*

* * * * *

(iii) *Direct Homeownership Assistance.*

* * * * *

The authority under the CDBG program to carry out direct homeownership assistance activities has expired. The FY 1996 HUD appropriations bill would have amended the CDBG program to make homeownership activities a permanent eligible CDBG activity. The FY 1996 HUD appropriations bill was not approved by the President, and as of this date such activities are not authorized. If there is a HUD appropriation bill enacted with this provision prior to HUD's announcement of grant awards, then any fundable applications containing such activities would be approvable. However, potential applicants are advised that should direct homeownership activities not be authorized by the time HUD makes the grant awards, HUD would not be able to make a grant obligation for such activities. Applicants should take these matters into consideration when preparing an application that contains direct homeownership activities. It is noted that some direct homeownership activities are eligible under other provisions of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301–5320).

* * * * *

5. On page 67278, in column 1, section II.A., under the heading "Obtaining Applications" is amended to read as follows:

II. Application and Funding Award Process

A. Obtaining Applications

All nonentitled communities in New York State may obtain application kits through HUD's New York or Buffalo Offices. The addresses for HUD's Buffalo and New York offices are:

Department of Housing and Urban Development, Office of Community Planning and Development, Attention: Small Cities Coordinator, 26 Federal Plaza, New York, NY 10278–0068, Telephone (212) 264–6500

Department of Housing and Urban Development, Community Planning and Development Division, Attention: Small Cities Coordinator, 465 Main Street, Lafayette Court, Buffalo, NY 14203, Telephone (716) 551–5742

* * * * *

6. On page 67278, in column 1, section II.B., under the heading "Submitting Applications," the third sentence of the first paragraph is amended to read as follows:

II. Application and Funding Award Process

* * * * *

B. Submitting Applications

* * * Final applications may be mailed, and if they are received after the deadline, must be postmarked no later than midnight, March 13, 1996. * * *

* * * * *

7. On page 67278, in column 2, section II.C.2., under the heading "Streamlined Application Requirements for Certain Applicants" is amended to read as follows:

II. Application and Funding Award Process

* * * * *

C. The Application

* * * * *

2. Streamlined Application Requirements for Certain Applicants

An eligible applicant that submitted an application under the Fiscal Year 1995 NOFA, but whose application was not selected for funding, may notify HUD in writing by the application deadline date, March 13, 1996, that it wishes its FY 1995 application to be reactivated for consideration under this NOFA. Applications that are reactivated may be updated, amended, or supplemented by the applicant, provided that such amendment or supplementation is received no later than the due date for applications under this NOFA. If there is no significant change in the application involving new activities or alteration of proposed activities that will significantly change the scope, location, or objectives of the proposed activities or beneficiaries, there will be no further citizen participation requirement to keep the application active for a succeeding round or competition.

Applicants with activities approved for funding under the Fiscal Year 1995 NOFA are eligible for additional funding for those activities under this NOFA. Applicants seeking additional funding for activities selected for funding under the Fiscal Year 1995 NOFA may notify the Department in writing by March 13, 1996 that they wish to seek additional funding for those activities. Such applicants may incorporate by reference the application materials in the applicant's Fiscal Year 1995 application, and may provide material to update or supplement the prior application.

All applicants are free to submit an entirely new application in place of a previous application should they so desire.

* * * * *

8. On pages 67278, column 3, to page 67279, column 1, section III., under the heading "Technical Assistance" is amended to read as follows:

III. Technical Assistance

Prior to the application deadline, the Buffalo and New York Offices will provide technical assistance on request to individual applicants, including explaining and responding to questions regarding program regulations, and defining terms in the application package. In addition, HUD plans to conduct informational meetings around the State to discuss the Small Cities Program, and will conduct application workshops in conjunction with these meetings. Please contact the Buffalo or New York Office for further information regarding these meetings. Application kits will be available at these meetings, as well as from the HUD offices previously identified in Section II of this NOFA, and will also be available at the informational meetings. In order to ensure that the application deadline is met, it is strongly suggested that applicants begin preparing their applications immediately and not wait for the informational meetings.

In order to be considered for funding, complete applications (an original and two photocopies of the entire application) must be physically received by the appropriate HUD office on March 13, 1996, by 4 p.m. or, if mailed, postmarked no later than midnight, March 13, 1996. Applications must be

delivered or mailed to the appropriate HUD office at the address indicated in Section II.

Dated: February 22, 1996.

Mark C. Gordon,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 96–4500 Filed 2–27–96; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; F–14841–A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Brevig Mission Native Corporation for 868.63 acres. The lands involved are in the vicinity of Brevig Mission, Alaska.

Kateel River Meridian

Tract A of U.S. Survey No. 4494

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 29, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of 962 Adjudication.

[FR Doc. 96–4510 Filed 2–27–96; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

February 22, 1996.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration, and the OMB Desk Officer for the Bureau of Labor Statistics, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Application to Employ Special Industrial Homeworkers; Application to Employ Student-Learners; Application to Employ Workers with Disabilities; Supplemental Data Sheet for Application to Employ Workers with Disabilities.

OMB Number: 1215–0005.

Agency Number: WH–2; WH–205; WH–266–MIS; WH–226A–MIS.

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit, Not-for-profit institutions; Farms; State, Local or Tribal Government.

Form	Number of respondents	Estimated time per response	Subtotal
WH–2	50	30 minutes	25
WH–205	600	30 minutes	300
WH–226–MIS	5,000	45 minutes	3,750
WH–226A–MIS	7,200	45 minutes	5,400

Total Burden Hours: 9,475.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $2,000.

Description: This information is necessary to determine whether respondents will be authorized to pay subminimum wages to individuals with disabilities and learners and employ homeworkers in the restricted industries under the provisions of sections 11(d), 14 (a), and (c) of the Fair Labor Standards Act.

Agency: Employment Standards Administration.

Title: Miner's Claim for Benefits Under the Black Lung Benefits Act; Employment History; Miner Reimbursement Form.

OMB Number: 1215–0052.

Agency Number: CM–911; CM–911a; CM–915.

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit.

Form	Number of respondents	Estimated time per response	Subtotal
CM–911	4,800	45 minutes	3,600
CM–911a	5,900	40 minutes	3,933
CM–915	9,500	10 minutes	1,583

Total Burden Hours: 9,116.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $3,500.

Description: The CM–911 is the standard application form filed by the miner for benefits under the Black Lung Benefits Act. The information is used by the program to determine the miner's eligibility for benefits. The CM–911a lists the miner's work history and is used to establish whether the miner currently or formerly worked in a coal mine. The CM–915 is used by the miner to provide information necessary for reimbursement of medical expenses incurred by the miner.

Agency: Employment Standards Administration.

Title: Pre-Hearing Statement.

OMB Number: 1215–0085

Agency Number: LS–18.

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit.

Number of Respondents: 6,800.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 1,088.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $2,500.

Description: This form is used to refer cases to the Office of the Administrative Law Judge for formal hearing under the Longshore and Harbor Workers' Compensation Act.

Agency: Employment Standards Administration.

Title: Overpayment Recovery Questionnaire.

OMB Number: 1215–0144.

Agency Number: OWCP–20.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 4,500.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 4,500.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $1,000.

Description: Information collected on this form is used to evaluate the financial profile of Office of Workers' Compensation Program beneficiaries who have been overpaid benefits, and their ability to repay. OWCP beneficiaries are typically retired coal miners disabled by black lung disease, and Federal employees disabled due to work-related injury, or their survivors.

Agency: Employment Standards Administration.

Title: Claim for Continuance of Compensation.

OMB Number: 1215–0154.

Agency Number: CA–12.

Frequency: Annually.

Affected Public: Individuals or households.

Number of Respondents: 6,537.

Estimated Time Per Respondent: 5 minutes.

Total Burden Hours: 545.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $2,000.

Description: This collection is used to obtain information on marital status of beneficiaries in death cases, in order to determine continued entitlement to benefits under the provisions of the Federal Employees' Compensation Act.

Agency: Bureau of Labor Statistics.

Title: Business Birth Pilot Study.

Agency Number: BLS790BBPS.

Frequency: Monthly.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 12,000.

Estimated Time Per Respondent: 5 minutes per new response; 2 minutes per on-going response.

Total Burden Hours: 2,320.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Description: The Bureau of Labor Statistics (BLS) is initiating a major redesign of the Current Employment Statistics (CES) monthly payroll survey. An on-going sample of business births is maintained under this request. This information is used to develop birth sampling methods, procedures to estimate birth employment, and to track activities of new business overtime. This will directly benefit the CES survey in its total employment estimates.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–4471 Filed 2–27–96; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–31,511 and NAFTA–00616]

Montana Power Company; Colstrip, Montana; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated December 6, 1995, the petitioners requested administrative reconsideration of the subject determinations regarding the negative determinations regarding Eligibility to Apply for Worker Adjustment Assistance and for NAFTA-Transitional Adjustment Assistance, issued on October 31, 1995. The notices were published in the **Federal Register** on November 24, 1995 (60 FR 58103–58104).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produce electrical power.

The Department's denial for TAA for workers of the subject firm was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. There were no declines in sales or production at Montana Power during the time period relevant to the investigation. Additionally, U.S. imports of electricity declined absolutely and relative to domestic supply during the same time period.

The Department's denial for NAFTA–TAA for workers of the subject firm was based on the fact that there was no decline in sales or production during the relevant period. There was no shift in production from the workers' firm to Mexico or Canada. U.S. imports of electricity declined absolutely and relative to domestic supply during the same time period.

Another finding in both the TAA and NAFTA–TAA investigations, is that the U.S. Department of Energy estimates that a negligible amount, approximately one percent, of all electricity supplied domestically is imported.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed in Washington, DC, this 13th day of February, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4465 Filed 2–27–96; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of February 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,727; Owens-Illinois, Owens-Brockway Glass Container Div., Zanesville, OH

TA–W–31,545; Circle Jewelry Products, Inc., New York, NY

TA–W–31,734; American Insulated Wire Corp., Pawtucket, RI

TA–W–31,651; Brookside Group, Inc., McCordsville, IN

TA–W–31,587; Master Package Corp., Owen, WI

TA–W–31,702; Onan Corp—Power Generation Group—Americas, Fridley, MN

TA–W–31,664; A E Clevite, Wauseon, OH

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–31,709; AT&T Pheonix Works, Phoenix, AZ

TA–W–31,766; Rockwell Int'l Corp., Semiconductor System Div., El Paso, TX

TA–W–31,721; ERC Barton Wood, Shawnee, OK

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,782; Synergy Service, Inc., dba Synergy Maintenance Service, El Paso, TX

TA–W–31,746; Smith's Home Furnishings, Bellingham, WA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–31,642; Teledyne Wah Chang, Teledyne, Inc., Albany, OR

The investigations revealed that criterion (2) and (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–31,715; Avison Lumber Co., Molalla, OR

TA–W–31,716; Avison Wood Specialities, Inc., Molalla, OR

The investigation revealed that criterion (1) and criterion (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Workers Adjustment Assistance

The following certifications have been issued; the date following the company name and location for each determination references the impact date for all workers for such determination.

TA–W–31,742 & A; Quantum Corp., High Capacity Storage Group, Shrewsbury, MA: December 4, 1994 & Milpitas, CA: February 1, 1995

TA–W–31,752; D & D Manufacturers, Inc., Watertown, TN: September 22, 1994

TA–W–31,807; The Apparel Group, Louisville, KY: January 5, 1995

TA–W–31,860; USAR Corbon Co., Inc., Columbia, TN: January 15, 1995

TA–W–31,912; Bausch & Lomb, Personal Products Div., Tucker, GA: January 19, 1995

TA–W–31,846; Maybelle Manufacturing Co., Inc., Gulfport, MS: January 8, 1995

TA–W–31,680; Indian Creek Apparel, Okalona, MS: November 16, 1994

TA–W–31,719; Cleburne Manufacturing Corp., Heflin, AL: November 20, 1994

TA–W–31,850; Crown Cork & Seal Co., Inc., Aerosol & Sanitary Can Mfg Plant, Philadelphia, PA: January 4, 1995

TA–W–31,726; Missoula White Pine Sash Co., Missoula, MT: November 30, 1994

TA–W–31,744; Rome Manufacturing Co., Rome, GA: November 20, 1994

TA–W–31,769; James River Corp., Packaging Div., Portland, OR: December 20, 1994

TA–W–31,706; Covington Needlework, Mt. Olive, MS: November 20, 1994

TA–W–31,753; Turner & Seymour Manufacturing Co., Bonners Ferry, ID: December 7, 1994

TA–W–31,713; Ellingson Lumber Co., Baker City, OR: November 29, 1994

TA–W–31,733 & A, B, C; Boise Cascade Corp., Emmett, ID & Coscade, ID, Council, ID & Horseshoe, ID: December 7, 1994

TA–W–31,613; American White Cross, Inc., Dayville, CT: October 26, 1994

TA–W–31,830; Rhone-Poulenc, Inc., Newark, NJ: December 1, 1994

TA–W–31,741; Motion Control Industries, Inc., Div. of Carlisle Corp., Ridgeway, PA: December 4, 1994

TA–W–31,740; Paxar Corp., Hillsville, VA: November 2, 1994

TA–W–31,747; Thomson Consumer Electronics, Inc., Bloomington, IN: November 24, 1994

TA–W–31,710; P & K Dress Corp., Little Falls, NY: November 29, 1994

TA–W–31,825; McCulloch Corp., Lake Havaso Operation, Lake Havaso City, AZ: January 4, 1995

TA–W–31,625; Ms. Interpret, Carlstadt, NJ: October 26, 1994

TA–W–31,640, Knapp Shoe, Lewiston, ME: November 3, 1994

TA–W–31,836 & A,B,C; Energy Fuels Nuclear, Inc., White Mesa Mill, Blanding, UT, Denver, Dove Creek & G Jct, Co, Fredonia, AZ, Gillette, WY: January 12, 1995

TA–W–31,639; J & H Mfg Co., Inc., New York, NY: November 8, 1994

TA–W–31,829; Movie Star of Sumrall, Sumrall, MS: December 19, 1994

Also, pursuant to Title V of the North American Free Trade Agreement Imnplementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determination regarding eligibility to apply for NAFTA–TAA issued during the month of February, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00751; Milliken & Co., Barnwell, SC

NAFTA–TAA–00689; Brookside Group, Inc., McCordsville, IN

NAFTA–TAA–00734; Amistad Beef Co L.D., Eagle Pass, TX

NAFTA–TAA–00731; Rockwell International, Semiconductor Systems Div., El Paso, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–00768; National Supermarkets, Inc., St. Louis, MO

The investigation revealed that the workers of the subject firm do not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–00723; Turner & Seymour Manufacturing Co., Bonners Ferry, ID: December 6, 1994

NAFTA–TAA–00710; Rome Manufacturing Co., Rome, GA: December 5, 1994

NAFTA–TAA–00766; James River Corp., Packaging Div., Portland, OR: December 20, 1994

NAFTA–TAA–00709; Ellingson Lumber Co., Baker City, OR: December 4, 1994

NAFTA–TAA–00798; Proform Products USA, Inc., Everson, WA: January 9, 1995

NAFTA–TAA–00714; Allied Signal Aerospace, Aerospace Equipment Systems, Eatontown, NJ: September 26, 1994

NAFTA–TAA–00767 & A, B, C; Energy Fuels Nuclear, Inc., White Mesa Mill, Blanding, UT, Denver, Dove Creek & G Jct, CO., Fredonia, AZ, Gillette, WY: January 12, 1995

NAFTA–TAA–00738; Thomas Industries, Inc., (aka Capri Lighting), Accent Div., Los Angeles CA: December 15, 1994

NAFTA–TAA–00760; General Mills, Inc., Westview Coupon Processing Facility, Golden Valley, MN: January 8, 1995

NAFTA–TAA–00747; Shaneco Manufacturing, Inc., El Paso, TX: December 28, 1994

I hereby certify that the aforementioned determinations were issued during the month of February 1996. Copies of these determinations are available for inspection in Room C–4318, U.S. Deparetment of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 16, 1996.

Russell Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4466 Filed 2–27–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,393]

Notice of Negative Determination Regarding Application for Reconsideration

In the matter of Bethlehem Steel Corporation, including the following divisions: Bethlehem Structural Products Corporation Bethforge, Inc., Bethlehem Roll Corp., PB & NE Subsidiary Railroad Co., Bethlehem, Pennsylvania.

By an application dated December 4, 1995, the United Steelworkers of America, Local 2599, with Congressional support requested administrative reconsideration of the subject petition for trade adjustment assistance, TAA. The denial notice was issued on November 3, 1995, and published in the **Federal Register** on November 24, 1995 (60 FR 58103).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers were engaged in employment related to the production of structural steel products.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. A Corporate decision was made to transfer the production of structural steel products to another company facility in the United States. Further, the findings show that sales and production of structural steel products at the subject firm increased in January through June 1995 compared to the same time period of 1994. The Department conducted a survey of major customers of the subject firm which revealed that none of the respondents reported imports of structural steel during the time period relevant to the investigation.

Other findings show that the subject firm reported no imports of structural steel products in the relevant time periods.

Conclusion

After review of the application and investigative findings, I conclude that there has been nor error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 12th day of February, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4463 Filed 2–27–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,268]

Maxus Energy Corporation, a/k/a Maxus Corporate, a/k/a Maxus International, Dallas, Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 8, 1995, applicable to workers of Maxus Energy Corporation located in Dallas, Texas. The notice was published in the **Federal Register** on August 24, 1995 (60 FR 44079). The certification was amended October 24, 1995 to include workers of the subject firm whose wages were being reported to the Maxus Corporate unemployment insurance (UI) tax account. The notice was published in the **Federal Register** on November 7, 1995 (60 FR 56172).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. New information provided by Maxus Energy Company shows that some of the workers of the subject firm had their UI taxes paid to Maxus International. Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Maxus who were affected by increased imports of crude oil and natural gas.

The amended notice applicable to TA–W–31,268 is hereby issued as follows:

"All workers of Maxus Energy Corporation, a/k/a Maxus Corporate, a/k/a Maxus International, Dallas, Texas who became totally or partially separated from employment on or after June 30, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 13th day of February 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4462 Filed 2–27–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,519]

National Fiber Technology (Formerly National Hair Technology), Lawrence, Massachusetts; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at National Fiber Technology, Lawrence, Massachusetts. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–31,519; National Fiber Technology, Lawrence, Massachusetts (February 13, 1996)

Signed at Washington, D.C. this 16th day of February, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4467 Filed 2–27–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,630B]

Vanity Fair Mills, Incorporated, Knitting Plant, Jackson, AL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 18, 1996, applicable to all workers of Vanity Fair Mills, Incorporated located in Jackson, Alabama. The notice will soon be published in the Federal Register.

At the request of the company and the State Agency, the Department reviewed the certification for workers of the subject firm. Findings show that the

certification incorrectly reported that the Jackson, Alabama location of Vanity Fair closed December 15, 1995, at which time workers were permanently laid off. The certification should have reported that some worker separations were scheduled to take place at that time.

Company officials report that there are two Vanity Fair production facilities in Jackson. The Department is amending the certification to limit the coverage to workers at the knitting plant. No worker separations have occurred at the other Vanity Fair production facility in Jackson, Alabama.

"All workers of Vanity Fair Mills, Incorporated, Knitting Plant, Jackson, Alabama who become totally or partially separated from employment on or after November 1, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 14th day of February 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4468 Filed 2–27–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00563]

Thompson Steel Pipe Company, Thompson Tanks Division, Princeton, Kentucky; Notice of Revised Determination on Reconsideration

On September 22, 1995, The Department issued a negative determination to workers of Thompson Steel Pipe Company, Thompson Tanks Division, located in Princeton, Kentucky, to apply for NAFTA–Transitional Adjustment Assistence (NAFTA–TAA). The notice was published in the **Federal Register** on October 5, 1995 (FR 60 52213).

By letter of January 16, 1996, the petitioners requested administrative reconsideration of the Department's findings.

Investigation findings revealed that production and employment declined during the time period of the investigation.

Further findings on reconsideration show that the subject firm entered an agreement to begin importing propane tanks from Mexico.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with propane tanks contributed importantly to the declines in sales or production and to the total or partial separation of workers from Thompson Steel Pipe Company, Thompson Tanks Division, Princeton, Kentucky. In accordance with the provisions of the Act, I make the following certification:

"All workers of Thompson Steel Pipe Company, Thompson Tanks Division, Princeton, Kentucky, who became totally or partially separated from employment on or after August 9, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, DC this 12th day of February 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4464 Filed 2–27–96; 8:45am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8943]

Crow Butte Resources Inc.; Final Finding of No Significant Impact Notice of Opportunity for Hearing

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to amend NRC Source Material License SUA–1534 to allow the licensee, Crow Butte Resources, Inc. to increase the maximum processing flow rate at its in-situ leach uranium mining facility in Dawes County, Nebraska, from 3500 gallons per minute to 5000 gallons per minute. An Environmental Assessment was performed by the NRC staff in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Park, Uranium Recovery Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone 301/415–6699.

SUPPLEMENTARY INFORMATION:

Background

During April 1991, Crow Butte Resources, Inc. (Crow Butte) commenced uranium recovery operations at its Crow Butte in-situ leach (ISL) uranium mining facility in Dawes County, Nebraska. These activities are authorized by NRC Source Material License SUA–1534. The NRC prepared an Environmental Assessment (EA) based on its review of Crow Butte's license application and environmental report (ER); a Final Finding of No Significant Impact (FONSI) concerning the issuance of SUA–1534 was issued on December 27, 1989 (54 FR 53200). A supplemental EA was prepared based on the NRC's review of Crow Butte's amendment request to increase its maximum processing flow rate from 2500 gallons per minute (gpm) to the currently approved level of 3500 gpm. The NRC issued a Final FONSI (58 FR 13561; March 12, 1993) concerning this licensing action.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is an amendment to SUA–1534 to allow Crow Butte to increase the processing plant's maximum flow rate at its ISL facility from 3500 gpm to 5000 gpm. The NRC staff's review was conducted in accordance with the requirements of 10 CFR 40.32 and 10 CFR 40.45.

Need for the Proposed Action

Crow Butte requested NRC approval of this flow rate increase to allow it to expand uranium production within its permitted area of operation to the northwest and southeast of the current production wellfields. In accordance with 10 CFR 51.60, Crow Butte prepared and submitted a supplemental ER in support of its amendment request.

Environmental Impacts of the Proposed Action

An increase in processing flow rate will require the construction of four to six ion exchange columns, which will be housed in the existing warehouse area of the ISL facility or in an adjacent building extension. Lands disturbed by new wellfield construction will be reclaimed and returned to pre-mining use as part of Crow Butte's reclamation activities, previously reviewed by the NRC and documented in its original EA, issued December 12, 1989.

The increased processing flow rate will also result in a significant increase in the volume of liquid and solid effluents (i.e., wastes) over current levels. Crow Butte currently has available to it three NRC-approved waste disposal options for liquid effluents: (1) Solar evaporation ponds, (2) land application, or (3) deep well disposal. Under a maximum flow rate of 5000 gpm, Crow Butte's estimated rates of disposal and concentrations of effluents to be disposed by these options fall within the ranges previously found acceptable by the NRC. Crow Butte is required by license condition in SUA–1534 to dispose of solid waste

byproduct material generated at its ISL facility at an NRC-approved byproduct disposal facility.

Offsite environmental impacts are related to: (1) Effects on the regional groundwater system, and (2) the potential for increased radiological doses to the general public. Because the issues associated with impacts on the regional groundwater system concern consumptive water use, the NRC has referred further assessment of these impacts to the State of Nebraska. The NRC anticipates that these issues would be addressed by the State at such time as Crow Butte applies for a modification to its Underground Injection Control permit with the State, for a corresponding increase in processing flow rate.

Although the estimated radon release associated with a processing flow rate of 5000 gpm is slightly higher than previously approved, the NRC staff concluded that the modeling satisfactorily shows that the potential impacts to offsite individuals remain well below the 100 mrem/yr (1 mSv/yr) public dose limit of 10 CFR 20.1301. The largest dose estimate was 20.3 mrem/yr (0.203 mSv/yr) for the receptor located approximately 1.0 kilometer from the processing plant vent location.

Conclusion

The NRC staff concludes that approval of Crow Butte's amendment request to increase the processing flow rate at its ISL facility from 3500 gpm to 5000 gpm will not cause significant environmental impacts.

Alternatives to the Proposed Action

Since the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the proposed action would be to deny the requested action. Since the environmental impacts of the proposed action and this no-action alternative are similar, there is no need to further evaluate alternatives to the proposed action.

Agencies and Persons Consulted

The NRC staff consulted with the State of Nebraska, Department of Environmental Quality (NDEQ), in the development of the Environmental Assessment. A facsimile copy of the final Environmental Assessment was transmitted to Mr. Frank Mills of the NDEQ on January 3, 1996. In a telephone conversation on January 11, 1996, Mr. Mills indicated that the NDEQ had no comments on the Environmental Assessment.

Finding of No Significant Impact

The NRC staff has prepared an Environmental Assessment for the proposed amendment of NRC Source Material License SUA–1534. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The Environmental Assessment and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street NW., Washington, DC 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR Part 2" (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Crow Butte Resources Inc., 216 Sixteenth Street Mall, Suite 810, Denver, CO 80202;

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing that is requested and granted will be held in accordance with the Commission's Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 21st day of February 1996.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Acting Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–4483 Filed 2–27–96; 8:45 am]

BILLING CODE 7590–01–P

Biweekly Notice, Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 5, 1996, through February 15, 1996. The last biweekly notice was published on February 14, 1996 (61 FR 5809).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 29, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public

Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to *(Project Director)*: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: December 20, 1995.

Description of amendments request: The proposed amendment would change the instrumentation setpoint for the reactor trip and main steam isolation signal (MSIS) actuation on low steam generator pressure from greater than or equal to 919 psia with an allowable value of greater than or equal to 911 psia to greater than or equal to 895 psia with an allowable value of greater than or equal to 890 psia.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve any change to the method of operation of any plant equipment that is used to mitigate the consequences of an accident. The proposed change only affects the instrument setpoint for steam generator low pressure reactor trip and MSIS actuation. The proposed setpoint meets the requirement of ensuring a reactor trip and MSIS actuation prior to steam generator pressure reaching the analytical limits even under worst-case accident conditions. Thus, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed amendment does not alter any of the assumptions or bounding conditions currently in the UFSAR [updated final safety analysis report] and meets the requirement of ensuring a reactor trip and MSIS actuation prior to steam generator pressure reaching the analytical setpoint under worst-case accident conditions. As a result, the proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any change to the method of operation of any plant equipment that is used to mitigate the consequences of an accident. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed change. The intent of the proposed change is to increase the margin between normal operating parameters and trip setpoints. This minimizes the possibility of unnecessary challenges to safety systems improving the safety of operation. The method of protecting the facility for an excess steam demand event remains unchanged and therefore, the amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change is the implementation of a setpoint value which was derived using methodologies endorsed by Revision 2 of NRC Regulatory Guide 1.105, "Instrument Setpoints." The new setpoint ensures that sufficient margin exists below the full load operating value for steam pressure so as not to interfere with normal plant operation, but still high enough to provide the required protection (reactor trip and main steam line isolation) in the event of an excessive steam demand event. The new setpoint ensures that safety margins are maintained within the results of existing calculations. The margin of safety between the analyzed trip value and the point at which safety analysis results become unacceptable remain unchanged since the analytical setpoints are not affected by the amendment. The new setpoint resulted from the reduced instrument uncertainty and will ensure that the reactor trip and MSIS actuation on low steam generator pressure will occur before the analyzed value and hence, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Project Director: William H. Bateman.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: January 5, 1996.

Description of amendments request: The proposed amendment would revise paragraph 2.C.(1) of the operating licenses and Section 1.26 of the TS for each of the three PVNGS Units to increase the authorized 100 percent reactor core power (rated thermal power) from 3800 megawatts thermal (Mwt) to 3876 Mwt, an increase of 2 percent. The proposed amendment would also revise TS 4.1.1.4, TS 3.1.3.4, and TS 3.2.6 (Figure 3.2–1) to lower the allowable reactor coolant system cold leg temperature limits for each of the three PVNGS Units, and revise TS 3.4.2.1 and TS 3.4.2.2 to lower the pressurizer safety valve setpoints for Units 1 and 3 to support the increased power operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not change the method of operation or modify the plant configuration other than minor changes in equipment setpoints. Thus no increase in the probability of an accident is created by this amendment. System and programmatic reviews have been performed on the nuclear steam supply system controls, reactor coolant system mechanical, steam generator mechanical, balance of plant systems, and fire protection, equipment qualification, and probabilistic risk assessment programs. The conclusion of these reviews was that operation in accordance with the changes proposed in this amendment was acceptable and posed no significant risk to the health and safety of the public. The analyses supporting this amendment demonstrate that the consequences of events using the changes specified in the amendment are within the criteria which are the current licensing basis for the PVNGS Units. Therefore the amendment, as proposed, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not modify the configuration of the units except for minor equipment setpoints. No equipment changes and no new methods of plant operation are being proposed, therefore, no new failure modes are introduced by the proposed amendment. The setpoint changes proposed have been evaluated and shown to be acceptable in providing their design function. The increased rated thermal power and associated changes have been incorporated into the safety analysis performed in support of this amendment request and the results have been shown to be similar to those previously obtained. No possibility of a new or different kind of accident from any accident previously evaluated will be created as a result of the proposed amendment.

3. The proposed change does not involve a significant reduction in a margin of safety.

The changes proposed were evaluated in the safety analysis performed to justify the amendment request. Although the consequences of some events increased slightly, the results continue to meet the criteria which form the PVNGS licensing basis. The programmatic and system reviews provide further assurance of the capability of the units to continue to operate safely with the changes proposed in this amendment. Therefore the amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Project Director: William H. Bateman.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: January 29, 1996.

Description of amendment request: The proposed change would revise the technical specifications (TS) table 4.1–3, item 4 to change the frequency of main steam safety valve (MSSV) testing to that specified in NUREG–1431, the improved "Standard Technical Specifications, Westinghouse Plants" (one third of the MSSVs each refueling outage). In addition, the licensee proposed adding the MSSV test acceptance requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Neither the valves' nor the system's configuration or functions are being altered. The valves' setpoints and their "as-left" range, +/– 1%, will not be changed. The changes are to the testing frequency and the "as found" tolerance of the MSSV setpoint.

The proposed changes in testing frequency and the higher tolerance are in the less conservative direction, but are not significant for several reasons. First, the new standards are based on the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code. The new standards have been accepted by the nuclear industry and the NRC, and are referenced in the improved Standard Technical Specifications. Based on a discussion with the H. B. Robinson Steam Electric Plant (HBRSEP), Unit No. 2 MSSV manufacturer (i.e., Crosby), HBRSEP, Unit No. 2 has not experienced more problems with the Crosby MSSVs than the nuclear industry in general, thus, the new level of safety will be equivalent to that of the nuclear industry. Second, if a MSSV does fail the surveillance test, the proposed TS will require additional MSSVs to be tested. This requirement provides assurance that testing will reveal possible generic problems. The impact of the tolerance on the Chapter 15 accidents was analyzed and found to be within acceptable limits.

Since no Updated Final Safety Analysis Report (UFSAR) Chapter 15 accident analysis is significantly impacted by the proposed changes, there would be no increase in the consequences of an accident previously evaluated. The testing in accordance with the ASME Boiler and Pressure Vessel Code will provide an adequate level of assurance that the MSSVs will be able to perform their intended function; therefore the probability of a previously evaluated accident is not increased.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new systems or equipment are involved with the proposed changes; and the plant's configuration and operational procedures are unaffected. Since the proposed changes do not impact the plant's operation, it can not create a new or different kind of accident.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The change in testing frequency is in a less conservative direction, but it is based on the ASME Code and the improved Standard Technical Specifications. Since HBRSEP, Unit No. 2 has not experienced a greater number of failures associated with these MSSVs than the nuclear industry in general, the decrease in the MSSV testing frequency will not significantly impact the margin of safety. Also, analyses have been performed that demonstrate that the impact of the setpoint tolerance change on the UFSAR Chapter 15 accident analysis results is not significant. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: David B. Matthews.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: January 31, 1996.

Description of amendment request: The proposed change would revise the Technical Specifications section 4.4 to allow the use of 10 CFR Part 50, Appendix J, Option B, Performance-Based Containment Leakage Rate Testing. A new TS section 6.12 is proposed to describe the containment leakage rate testing program, committing to meet 10 CFR 50.54(o) and 10 CFR Part 50, Appendix J, Option B for type A tests; and to meet 10 CFR part 50, Appendix J, Option A, for types B and C tests. The bases would be changed to reflect the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant hazards consideration for the following reasons.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The HBRSEP [H. B. Robinson Steam Electric Plant], Unit No. 2 Type A testing history provides substantial justification for the proposed test schedule change to one test in a 10 year period. Three Structural Integrity Tests (SITs) and seven Integrated Leak Rate Tests (ILRTs) have been performed with acceptable results. Previous testing has affirmed the acceptable reliability of the containment structure to minimize leakage as designed, and provides assurance that its performance to continuously function as designed is not challenged due to this test schedule extension to once in 10 years.

Therefore, this proposed change to the TS that revises the Type A testing frequency does not involve an increase in the probability of an accident previously evaluated.

This proposed change to revise the test schedule frequency does not impact nor alter the design of any system, structure or component. The limit on allowable leakage is not increased. Type A testing provides periodic verification of the leak tight integrity of the containment and the systems and components that penetrate the containment structure.

NUREG–1493, "Performance-Based Containment Leak-Test Program," provides the technical basis for the NRC's rulemaking to revise containment leakage testing requirements for nuclear power reactors in 10 CFR 50, Appendix J. Section 10.1.2 of NUREG–1493, "Summary of Technical Findings, Leakage-Testing Intervals," states the following.

1. Reducing the frequency of Type A tests (ILRTs) from the current three per 10 years to one per 20 years was found to lead to an imperceptible increase in risk. The estimated increase in risk is very small because ILRTs identify only a few potential containment leakage paths that cannot be identified by Type B and C testing, and the leaks found by Type A tests have been only marginally above existing requirements.

2. Given the insensitivity of risk to containment leakage rate and the small fraction of leakage paths detected solely by Type A testing, increasing the interval between ILRTs is possible with minimal impact on public risk.

Therefore, based on the previous Type A test results, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change only incorporates the performance based testing approach authorized in 10 CFR 50, Appendix J, Option B, and is justified based on previous plant-specific Type A test results. Plant structures, systems, and components will not be operated in a different manner as a result of this proposed change and no physical modifications to equipment are involved. The interval extensions allowed by Option B of 10 CFR 50, Appendix J, do not have the potential for creating the possibility of new or different type of accidents from those previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change does not change the allowable leak rate from the containment, it only allows an extension of the interval between the performance of Type A leak rate testing. NUREG–1493, which provides the technical basis for the NRC's rulemaking to revise containment leakage testing requirements for nuclear power reactors in 10 CFR 50, Appendix J. Section 10.1.2 of NUREG–1493, "Summary of Technical Findings, Leakage-Testing Intervals," states the following.

"1. Reducing the frequency of Type A tests (ILRTs) from the current three per 10 years to one per 20 years was found to lead to an imperceptible increase in risk. The estimated increase in risk is very small because ILRTs identify only a few potential containment leakage paths that cannot be identified by Type B and C testing, and the leaks found by Type A tests have been only marginally above existing requirements.

2. Given the insensitivity of risk to containment leakage rate and the small fraction of leakage paths detected solely by Type A testing, increasing the interval between ILRTs is possible with minimal impact on public risk."

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: David B. Matthews.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: January 29, 1996.

Description of amendment request: The proposed change would revise the technical specifications (TS) to: (1) add TS 4.6.1.5 to provide criteria for 24-hour full-load testing of the emergency diesel generators (EDGs) to be performed during each refueling outage; (2) revise TS 4.6.1.2 to allow testing of the EDG protective bypasses listed in TS 3.7.1.d to be done independent of the safety injection or loss of offsite power testing; and (3) revise TS 4.6.1.3 to include the EDG protective bypass inspection and a requirement to inspect the EDGs at least once every refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration for the following reasons.

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability of an accident previously evaluated. The proposed changes require additional testing of the EDGs and will change the requirement for when the protective bypasses are tested. The function of the EDGs remains unchanged. Since the additional testing involves the EDGs, which are required to mitigate an accident and are not involved in the initiation of an accident, the proposed changes will not increase the probability of an accident.

The proposed changes do not involve a significant increase in the consequences of an accident previously evaluated. The proposed changes require additional testing to verify the reliability of the EDGs and to show the EDGs can withstand maximum accident loading conditions. The proposed changes will also require the testing of the EDG protective bypasses to be accomplished during EDG outages and not during the SI/LOOP testing during a refueling outage. The ability of the EDGs to perform their accident mitigation function remains unchanged. Therefore, the proposed changes will not increase the consequences of an accident.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new kind of accident from any previously evaluated. The proposed changes are an enhancement to the EDG testing requirements. The most significant change will require additional testing of the EDGs to demonstrate adequate reliability and to determine if the EDGs can withstand maximum accident loading conditions. The remaining changes will augment the TS to allow on-line EDG inspections and testing. Since the function of the EDGs remains unchanged and they are not the initiator of an accident, the proposed changes will not create the possibility of a new kind of accident from any previously evaluated.

The proposed changes do not create the possibility of a different kind of accident from any accident previously evaluated. The proposed changes require additional testing of the EDGs (i.e., the 24 hour full-load test) and revise the requirement for testing the EDG protective bypasses during the SI/LOOP testing. The additional testing of the EDGs will demonstrate sufficient reliability and determine if the EDGs can withstand maximum accident loading conditions. The EDG protective bypasses will be statically tested during an EDG outage thus preventing possible damage to equipment from a transient if the protective bypass fails. The function of the EDGs remains unchanged by these proposed changes. Since the EDGs are required to mitigate an accident and are not the initiators of an accident, the proposed changes will not create a different kind of accident from any kind of accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes do not reduce the margin of safety as defined in the TS. The proposed changes are being submitted as an enhancement to the testing requirements outlined in the TS. The changes include additional testing, revising the requirement to test the engine protective bypasses during the SI/LOOP testing and clarification of the periodicity of inspecting the EDGs. The additional testing demonstrates increased reliability and determines that the EDGs can cope with maximum accident loading. The remaining proposed changes provide clarification as to when the EDG inspections and testing are required. The ability of the EDGs to perform their function will not be reduced. Therefore, the margin of safety will not be reduced by the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: David B. Matthews.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: December 6, 1995.

Description of amendment request: The proposed amendment would change the technical specifications of these plants to incorporate 10 CFR Part 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors", Option B.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

ComEd proposes to revise Byron Nuclear Power Station, Units 1 and 2 (Byron), and Braidwood Nuclear Power Station, Units 1 and 2 (Braidwood) Technical Specification (TS) Section 3/4.6.1, "Primary Containment," and the associated Bases to reflect recent changes to Appendix J to 10 CFR 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." The proposed revisions include:

1. Adding TS Definitions 1.15.a for the maximum allowable primary containment leakage rate (L_a) and 1.20.a for the maximum calculated primary containment pressure (P_a). The redundant definitions throughout TS Section 3/4.6.1 are deleted,

2. Adding numerous statements throughout TS Section 3/4.6.1 that leak rate testing is performed in accordance with Regulatory Guide (RG) 1.163, Revision 0, "Performance-Based Containment Leak-Test Program," and its referenced documents,

3. Deleting TS requirements that are taken verbatim from 10 CFR 50, Appendix J. The specific requirements will be placed in the containment leakage rate test program in accordance with RG 1.163, and its referenced documents, and

4. Clarifying Technical Specification Surveillance Requirement (TSSR) 4.6.1.1.a for consistency with NUREG–1431, Revision 1, "Standard Technical Specifications for Westinghouse Plants."

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

10 CFR 50, Appendix J, has been amended to include provisions regarding performance-based leakage testing requirements (Option B). Option B allows plants with satisfactory Integrated Leak Rate Testing (ILRT) performance history to reduce the Type A testing frequency from three tests in ten years to one test in ten years. For Type B and Type C tests, Option B allows plants to reduce testing frequency based on the leak rate test history of each component. In addition, Option B establishes controls to ensure continued satisfactory performance of the affected penetrations during the extended testing interval. To be consistent with the requirements of Option B to 10 CFR 50, Appendix J, ComEd proposes to include appropriate changes to the TSs that incorporate the necessary revisions.

Some of the proposed changes represent minor curtailments to current TS requirements, but are based on the requirements specified by Option B to 10 CFR 50, Appendix J. Any such changes are consistent with the current plant safety analyses and have been determined to represent sufficient requirements for the assurance of the reliability of equipment assumed to operate in the safety analyses, or provide continued assurance that specified parameters associated with containment integrity remain within their acceptance limits. The other proposed changes maintain consistency with those requirements specified by Option B to 10 CFR 50, Appendix J and are consistent with the current plant safety analyses. Implementation of these changes will provide continued assurance that specified parameters associated with containment integrity will remain within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.

The associated systems affecting the leak rate integrity are not assumed in any safety analyses to initiate any accident sequence; therefore, the probability of occurrence of any accident previously evaluated is not increased. In addition, the proposed changes to the limiting conditions for operation and surveillance requirements for such systems are consistent with the current 10 CFR 50, Appendix J, requirements. The proposed changes maintain an equivalent level of reliability and availability for all affected systems.

Maintaining allowable leakage within the analyzed limit assumed for the accident analyses does not adversely affect either the onsite or offsite dose consequences. Furthermore, containment leakage is not an accident initiator. As such, there is no adverse impact on the probability of accident initiators. Thus, there is no significant increase in the probability or occurrence of any previously analyzed accident, or increase the consequences of any previously analyzed accident.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Option B of 10 CFR 50, Appendix J, specifies, in part, that a Type A test may be conducted at a periodic interval based on the performance of the overall containment system. Type A tests measure both the containment system overall integrated leakage rate at the containment pressure boundary and system alignments assumed during a large break loss-of-coolant accident (LOCA), and demonstrate the capability of the primary containment to withstand an internal pressure load. The acceptable leakage rates are specified in the TSs. For Type B and C tests, intervals are proposed for establishment based on the performance history of each component. Acceptance criteria for each component are based upon demonstration that the leakage rates at design basis pressure conditions for applicable penetrations are within the limits specified in the TSs.

The proposed changes reflect the requirements specified in the amended 10 CFR 50, Appendix J, and are consistent with the current plant safety analyses. Some minor curtailments of current TS requirements are

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based on generic guidance or similarly approved provisions for other plants. These changes do not involve revisions to the design of the plant. Some of the changes may involve revision in the testing of components at the plant; however, these are in accordance with the current plant safety analyses and provide for appropriate testing or surveillance that is consistent with Option B to 10 CFR 50, Appendix J. The proposed changes will not introduce new failure mechanisms beyond those already considered in the current plant safety analyses.

No new modes of operation are introduced by the proposed changes. Surveillance requirements are changed to reflect corresponding changes associated with Option B to 10 CFR 50, Appendix J. The proposed changes maintain at least the present level of operability of any such system that affects plant containment integrity. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. The associated systems that affect plant leak rate integrity related to the proposed amendment are not assumed to initiate any accident sequence. In addition, the proposed surveillance requirements for any such affected systems are consistent with the current requirements specified within the TSs and are consistent with the requirements of Option B to 10 CFR 50, Appendix J. The proposed surveillance requirements maintain an equivalent level of reliability and availability of all affected systems and, therefore, do not affect the consequences of any previously evaluated accident. As such, the probability of systems associated with leak rate test integrity failing to perform their intended function is unaffected by the proposed limiting conditions for operation and surveillance requirements.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The provisions specified in Option B to 10 CFR 50 Appendix J, allows changes to Type A, B, and C test intervals based upon the performance of past leak rate tests. The effect of extending containment leak rate test intervals is a corresponding increase in the likelihood of containment leakage. The degree to which intervals can be extended has a direct impact on the potential effect on existing plant safety margins and the public health and safety that can occur due to an increased likelihood of containment leakage.

Changing Type A, B, and C test intervals from those currently provided in the TS to those provided for in 10 CFR 50, Appendix J, Option B, slightly increases the risk associated with Type A, B, and C specific accident sequences. Historical data suggest that increasing the Type C test interval can slightly increase the associated risk; however, this is compensated by the corresponding risk reduction benefits associated with reduction in component cycling, stress, and wear associated with increased test intervals. In addition, when considering the total integrated risk, which includes all analyzed accident sequences, the additional risk associated with increasing test intervals is negligible.

The proposed changes are consistent with those provisions specified in Option B of 10 CFR 50, Appendix J, and are consistent with current plant safety analyses. In addition, these proposed changes do not involve revisions to the design of the plant. As such, the proposed individual changes will maintain the same level of reliability of the equipment associated with containment integrity, assumed to operate in the plant safety analysis, or provide continued assurance that specified parameters affecting plant leak rate integrity, will remain within their acceptance limits. Therefore, the proposed changes provide continued assurance of the leakage integrity of the containment without adversely affecting the public health and safety and, as such, will not significantly reduce existing plant safety margins.

The proposed changes are based on United States Nuclear Regulatory Commission (USNRC) accepted provisions and maintain necessary levels of system or component reliability affecting plant containment integrity. The performance-based approach to leakage rate testing concludes that the impact on public health and safety due to revised testing intervals is negligible. The proposed changes will not reduce the availability of systems associated with containment integrity when they are required to mitigate accident conditions; therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment requests: December 4, 19, 19, 20, 20, and 20, 1995.

Description of amendment request: Each proposed amendment would change the surveillance requirement frequency from the current once per 18-month interval to once per 24-month which is the proposed length of a Haddam Neck refueling cycle. The changes pertain to the following equipment:

December 4, 1995, Reactivity control systems flow paths, rod position indication system, and Rod drop time.

December 19, 1995, Containment Air Recirculation System.

December 19, 1995, Main steam line (MSL) Code Safety Valves self actuation, auxiliary feedwater system, service water system, snubber testing, feedwater isolation valve actuation, and primary auxiliary building cleanup system.

December 20, 1995, reactor coolant system (RCS) interlock, containment sump, High Pressure Safety Injection Pump and Low Pressure Safety Injection autostart and alignment, containment spray, and PH control.

December 20, 1995, Trip actuating devices and channel trips, reactor trip system, reactor trip system instrumentation, and accident monitoring instrumentation.

December 20, 1995, RCS flow indicators, Loop stop valve interlock, Pressurizer code safety valves, Emergency power supply for the pressurizer heaters, Containment main sump and volume control tank (VCT) level monitoring system, RCS pressure boundary valves, Low temperature overpressure protection (LTOP) system, and RCS vent path.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to surveillance requirements of the Haddam Neck Plant Technical Specifications extend the frequency for checking the operability of the affected components/equipment. The proposal would extend the frequency from at least once per 18 months to at least once each refueling interval (i.e., nominal 24-months).

Changing the frequency of surveillance requirements from at least once per 18 months to at least once each refueling interval does not change the basis for the frequency. The frequency was chosen because of the need to perform this verification under the conditions that apply during a plant outage, and to avoid the potential of an unplanned transient if the surveillance were conducted with the plant at power.

The proposed changes do not alter the intent or method by which the surveillance are conducted, do not involve any physical changes to the plant, do not alter the way any structure, system, or component functions, and do not modify the manner in which the plant is operated. As such, the proposed changes in the frequency of surveillance requirements will not degrade the ability of the equipment/components to perform its safety function.

Additional assurance of the operability of the components/equipment is provided by additional surveillance requirements (e.g., monthly or quarterly surveillance).

Equipment performance over the last four operating cycles was evaluated to determine the impact of extending the frequency of surveillance requirements. This evaluation included a review of surveillance results, preventive maintenance records, and the frequency and type of corrective maintenance. It concluded that there is no indication that the proposed extension could cause deterioration in the condition or performance of any of the subject components.

In addition to the substantive changes, there are format changes which are merely editorial and because format changes produce no physical change they do not influence the probability or consequences of accidents.

Since the proposed changes only affect the surveillance frequency for safety systems that are used to mitigate accidents, the changes cannot affect the probability of any previously analyzed accident. While the proposed changes can lengthen the intervals between surveillance, the increases in intervals has been evaluated and it is concluded that there is no significant impact on the reliability or availability of the safety system and consequently, there is no impact on the consequences on any analyzed accident.

2. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to surveillance requirements of the Haddam Neck Plant Technical Specifications extend the frequency for verifying the operability of the affected components/equipment. The proposal would extend the frequency from at least once per 18 months to at least once each refueling interval (nominal 24 months).

Changing the frequency of surveillance requirements from at least once per 18 months to at least once each refueling interval does not change the basis for the frequency. The frequency was chosen because of the need to perform this verification under the conditions that apply during a plant outage, and to avoid the potential of an unplanned transient if the surveillance were conducted with the plant at power.

In addition to the substantive changes, there are format changes which are merely editorial and because format changes produce no physical change they do not influence the probability of new or different types of accidents.

The proposed changes do not alter the intent or method by which the surveillance are conducted, do not involve any physical changes to the plant, do not alter the way any structure, system, or component functions, and do not modify the manner in which the plant is operated. As such, the proposed changes cannot create the possibility of a new or different kind of accident from any previously evaluated.

3. The changes do not involve a significant reduction in a margin of safety.

The proposed changes to surveillance requirements of the Haddam Neck Plant Technical Specifications extend the frequency for verifying the operability of the components/equipment. The proposal would extend the frequency from at least once per 18-months to at least once each refueling interval (24-months).

In addition to the substantive changes, there are format changes which are merely editorial and because format changes produce no physical change they do not influence the margin of safety.

The proposed changes to surveillance frequency are still consistent with the basis for the frequency, and the intent or method of performing the surveillance is unchanged. Further, the current inservice testing requirements and the previous history of reliability of the system provides assurance that the changes will not affect the reliability of the auxiliary feedwater system. Thus, it is concluded that there is no impact on the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County and Northeast Nuclear Energy Company, et al., Docket Nos. 50–245, 50–336, and 50–423, Millstone Nuclear Power Station, Units 1, 2, and 3, New London County, Connecticut

Date of amendment request: June 6, 1995 (published August 2, 1995, 60 FR 39434), as supplemented November 22, 1995.

Description of amendment request: The proposed amendments will modify the size of the Plant Operations Review Committee (PORC) which will collectively have the experience and expertise in various areas of plant operation, and will clarify the composition of the Site Operations Review Committee (SORC).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

. . . These proposed changes do not involve an SHC because the changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The plant operations review committee (PORC) is an oversight group and helps to ensure that the units are operated in a safe manner. To accomplish this the PORCs provide their recommendations on the safety related activities to the Vice President—Haddam Neck Plant for Haddam Neck and to the respective Nuclear Unit Directors for Millstone. Each Millstone Unit has its own PORC. It is proposed that the members of the Millstone PORCs be selected by the respective Nuclear Unit Director based on their knowledge and expertise in specific key plant functions. The Millstone Station has one site operations review committee (SORC). The SORC is also an oversight group whose charter is to advise the Senior Vice President—Millstone Station on all matters related to nuclear safety at the Millstone site. The Haddam Neck Plant, being a single unit site, has one PORC, which advises the Vice President—Haddam Neck Plant. The members of the Haddam Neck Plant PORC will be selected by the Vice President—Haddam Neck Plant based on their knowledge and expertise in specific key

plant functions. The PORC and SORC add to the defense-in-depth concept provided by the design, operation, maintenance, and quality oversight by promoting excellence through the conduct of their affairs and by maintaining a diligent watch over their responsibilities.

These administrative changes will revise the composition section of the technical specifications for the PORC members. Millstone Unit individuals will be appointed by the Nuclear Unit Directors if the individual meets one or more of the following areas of expertise: Plant Operations, Engineering, Reactor Engineering, Maintenance, Instrumentation and Controls, Health Physics, Chemistry, Work Planning and Control, and Quality Services. The Haddam Neck Plant, due to its broader scope of review also include an individual experienced in Security and specific expertise in Electrical Maintenance and Mechanical Maintenance. The individuals who will serve on PORC shall continue to meet the criteria of ANSI N18.1–1971 along with the qualification requirements contained in the technical specifications. This approach is consistent with the standard technical specifications and NUREG 0800, Section 13.4. For SORC at the Millstone Station, the method of identifying who shall serve as Vice Chairperson has been modified for clarity. Finally, the individual who shall represent Quality and Assessment Services shall be modified to allow a qualified member of Quality and Assessment Services to serve on SORC.

The remaining portions of the technical specifications related to PORC and SORC are not being revised.

These modifications broaden the unit committee participation and reflect current organizational positions and will not increase the probability of occurrence or the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed administrative enhancements to the composition of the PORC and Millstone Station SORC will not affect the way in which the units are physically operated. These administrative changes to PORC and SORC continue to meet the guidelines of ANSI N18.7–1976. The modifications to PORC and SORC continue to allow these groups to provide a thorough review of activities at the units.

The proposed modification does not impact any initiating events, and therefore, cannot create the possibility of any new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

These proposed administrative changes will not impact the margin of safety provided by PORC and SORC. The PORC and SORC will continue to be staffed by qualified individuals experienced in the operation of the plants. These administrative changes will modify how the composition of the PORC and SORC members are presented in the technical specifications, but will not adversely impact their ability to review and comment on operations at the units.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street Middletown, Connecticut 06457, for the Haddam Neck Plant, and the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, for Millstone 1, 2, and 3.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan

Date of amendment request: November 22, 1995 (NRC–95–0124).

Description of amendment request: The proposed amendment would modify the allowed out-of-service time for one onsite alternating current (ac) electrical power division from 72 hours to 7 days. The proposed amendment would also eliminate accelerated testing and special reports as a result of diesel generator surveillance failures in accordance with Generic Letter 94–01, "Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators," dated May 31, 1994.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident. Changing the out-of-service time, surveillance frequency and reporting requirements for emergency diesel generators (EDGs) will not affect the initiation of an accident, since EDGs are not associated with any accident initiation mechanism. The proposed changes will not impact the plant design or method of EDG operation. The increased out-of-service time has been evaluated to have only a small impact on plant risk. Performing the EDG inspections during plant operations will decrease plant risk during plant outages. Deleting the accelerated testing provisions will not affect the consequences of an accident since the implementation of a maintenance and monitoring program for EDGs consistent with the provisions of the maintenance rule will assure EDG performance as discussed in Generic Letter 94–01. Deleting reporting requirements has no impact on consequences of an accident since reporting has no accident effect. Based on the amount of electrical system redundancy, the small increase in plant risk during operations and the decrease in plant risk during outages, this change will not result in a significant increase in the probability or consequences of an accident.

2. The proposed changes do not create the possibility of a new or different accident from any previously evaluated. The proposed changes do not modify the plant design or method of diesel operation. Therefore, no new accident initiator is introduced, nor is a new type of failure created. For these reasons, no new or different type of accident is created by these changes.

3. The proposed changes do not involve a significant reduction in a margin of safety. Since implementation of a maintenance program for the EDGs consistent with the Maintenance Rule will ensure that high EDG performance standards are maintained, the accelerated testing schedule is not needed to maintain the margin of safety. Deleting reporting requirements has no impact on safety or margin of safety. Increasing the allowed out-of-service time for one division of onsite AC power will slightly increase EDG unavailability during plant operation. However, this change does not impact the redundancy of offsite power supplies, the allowed out-of-service time if both divisions are inoperable, or the ability to cope with a station blackout event. This request also does not change the Action statement for AC electrical power systems required when the plant is shutdown. The increase in core damage frequency was assessed to be small by an evaluation using the plant PSA [probabilistic safety assessment] for the operating condition. Enabling the diesel generator inspections to be performed on-line will improve safety while shutdown by reducing EDG out-of-service time during outages. For these reasons, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: John N. Hannon.

Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan

Date of amendment request: December 21, 1995 (NRC–95–0133).

Description of amendment request: The proposed amendment would implement Option B of the recently revised 10 CFR Part 50 Appendix J in a manner consistent with Regulatory Guide 1.163, "Performance-Based Containment Leak Test Program," and industry guidance contained in NEI 94–01, Revision 0, "Industry Guideline for Implementing Performance-Based Option of 10 CFR 50, Appendix J," with the exception of previously approved exemptions which the licensee wishes to remain in effect. The previously approved exemptions are for reduced pressure for testing MSIVs [main steam isolation valves] and testing of LPCI [low pressure coolant injection] isolation valves in accordance with Technical Specification (TS) 4.4.3.2.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change implements the new Option B of 10 CFR Part 50 Appendix J on performance-based containment leakage testing. The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any parameters or conditions that contribute to the initiation of any accidents previously evaluated. Thus, the proposed change cannot increase the probability of any accident previously evaluated.

The proposed change potentially affects the leak-tight integrity of the containment structure designed to mitigate the consequences of a loss-of-coolant accident (LOCA). The function of the containment is to maintain functional integrity during and following the peak transient pressures and temperatures which result from any loss-of-coolant accident (LOCA). The containment is designed to limit fission product leakage following the design basis LOCA. Because the proposed change does not alter the plant design, only the frequency of measuring Type A, B, and C leakage, the proposed change does not directly result in an increase in containment leakage. However, decreasing the test frequency can increase the probability that an increase in containment leakage could go undetected for an extended period of time. Test intervals will be established based on the performance history of components being tested. The risk resulting from the proposed changes is characterized as follows, based primarily on the results contained in NUREG–1493 ["Performance-Based Containment Leakage Test Program"], the principal Technical Support Document used by the NRC as the basis for the Appendix J final rule (Reference 9 [of application]) and the NRC's Final Regulatory Impact Analysis as contained in SECY–95–181 (Final Regulatory Impact Analysis, Performance-Based Containment Leakage-Test Program (Attachment 2 to NRC Rulemaking Issue Affirmation, SECY–95–181 dated July 17, 1995, Final Amendment to 10 CFR 50, Appendix J, "Containment Leakage Testing," to Adopt Performance-Oriented and Risk-Based Approaches)] (Reference 10 [of application]):

Type A Testing

NUREG–1493 found that the effect of containment leakage on overall accident risk is minimal since risk is dominated by accident sequences that result in failure or bypass of the containment.

Industry wide, ILRTs [integrated leak rate tests] have only found a small fraction of the leaks that exceed current acceptance criteria. Only three percent of all leaks are detectable only by ILRTs, and therefore, by extending the Type A testing intervals, only three percent of all leaks have a potential for remaining undetected for longer periods of time. In addition, when leakage has been detected by ILRTs, the leakage rate has been only marginally above existing requirements. The Fermi Type A testing confirms the industry-wide experience that a majority of the leakage experienced during Type A testing is through components tested by Type B and C tests.

NUREG–1493 found that these observations, together with the insensitivity of reactor accident risk to the containment leakage rate, show that increasing the Type A leakage test intervals would have a minimal impact on public risk.

Type B and C Testing

NUREG–1493 found that while Type B and C tests can identify the vast majority (greater than 95 percent) of all potential leakage paths, performance-based alternatives to current local leakage-testing requirements are feasible without significant risk impacts. The risk model used in NUREG–1493 suggests that the number of components tested would be reduced by about 60 percent with less than a three-fold increase in the incremental risk due to containment leakage. Since, under existing requirements, leakage contributes less than 0.1 percent of overall accident risk, the overall impact is very small. In addition, the NRC's Final Regulatory Impact Analysis concluded that while the extended testing intervals for Type B and C tests led to minor increases in potential offsite dose consequences, the beneficial expected decrease in onsite (LLRT [local leak rate testing] & ILRT worker) dose exceeds (by at least an order of magnitude) the potential off-site dose consequences.

The editorial change to the bases has no impact on the probability or consequence of an accident since it is strictly a correction to achieve consistency between the bases and the specifications.

Based on the above, DECO [the licensee] has concluded that the proposed change will not result in a significant increase in the probability or consequences of any accident previously evaluated.

2. The request does not create the possibility of occurrence of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that could contribute to initiation of any accidents. This change involves the reduction of Type A, B, and C test frequency. Except for the method of defining the test frequency, the methods for performing the actual tests are not changed. No new accident modes are created by extending the testing intervals. No safety-related equipment or safety functions are altered as a result of this change. Extending the test frequency has no influence on, nor does it contribute to, the possibility of a new or different kind of accident or malfunction from those previously analyzed.

The editorial change to the bases has no effect on any kind of accident since it is strictly a correction to achieve consistency between the bases and the specifications.

Based on the above, DECO has concluded that the proposed change will not create the possibility [of] a new or different kind of accident previously evaluated.

3. The request does not involve a significant reduction in a margin to safety.

The proposed change only affects the frequency of Type A, B, and C testing. Except for the method of defining the test frequency, the methods for performing the actual tests are not changed. However, the proposed change can increase the probability that an increase in leakage could go undetected for an extended period of time. NUREG–1493 has determined that, under several different accident scenarios, the increased risk of radioactivity release from containment is negligible with the implementation of these proposed changes.

The margin of safety that has the potential of being impacted by the proposed change involves the offsite dose consequences of postulated accidents which are directly related to containment leakage rate. The containment isolation system is designed to limit leakage to L_a, which is defined by the Fermi 2 Technical Specifications to be 0.5 percent by weight of the containment air per 24 hours at 56.5 psig (P_a). The limitation on containment leakage rate is designed to ensure that total leakage volume will not exceed the value assumed in the accident analyses at the peak accident pressure (P_a). The margin to safety for the offsite dose consequences of postulated accidents directly related to the containment leakage rate is maintained by meeting the 1.0 L_a acceptance criteria. The L_a value is not being modified by this proposed Technical Specification change.

Except for the method of defining the test frequency, no change in the method of testing is being proposed. The Type B and C tests will continue to be done at full pressure (P_a) or greater with the exception of the Main Steam Isolation Valves, which have an approved exemption. Other programs are in

place to ensure that proper maintenance and repairs are performed during the service life of the primary containment and systems and components penetrating the primary containment.

The editorial change to the bases has no effect on the margin of safety since it is strictly an editorial change to achieve consistency between the bases and the specifications.

As a result, DECO has concluded that the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: John N. Hannon.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket No. 50–498, South Texas Project, Unit 1, Matagorda County, Texas

Date of amendment request: January 22, 1996.

Description of amendment request: The proposed amendment would modify the steam generator tube plugging criteria in Technical Specification 3/4.4.5, Steam Generators, and the allowable leakage in Technical Specification 3/4.4.6.2, Operational Leakage, and the associated Bases. The amendment would allow the implementation of alternate steam generator tube plugging criteria for the tube support plate (TSP)/tube intersections for Unit 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Structural Considerations

Industry testing of model boiler and operating plant tube specimens for free span tubing at room temperature conditions show typical burst pressures in excess of 5000 psi for indications of outer diameter stress corrosion cracking with voltage measurements at or below the structural limit of 4.0 volts. One model boiler specimen with a voltage amplitude of 19 volts also exhibited a burst pressure greater than 5000 psi. Burst testing performed on one intersection pulled from STP Unit 1 in 1993 with a 0.51 volt indication yielded a measured burst pressure of 8900 psi at room temperature. Burst testing performed on another intersection pulled from STP Unit 1 in 1995 with a 0.48 volt indication yielded a measured burst pressure of 9950 psi at room temperature.

The projected end-of-cycle (EOC) voltage compares favorably with the 4.7 volt structural limit considering the EPRI [Electric Power Research Institute] voltage growth rate for indications at STP. Using the methodology of the NRC Generic Letter 95–05, the structural limit is reduced by allowances for uncertainty and growth to develop a beginning-of-cycle (BOC) repair limit which should preclude EOC indications from growing in excess of the structural limit. The non-destructive examination (NDE) uncertainty to be applied per EPRI is approximately 20 percent. The EPRI recommended growth allowance of 30 percent/EFPY [effective full power year] is also to be applied. This growth value is conservative for STP Unit 1 based on previous inspection history. By adding NDE uncertainty allowances and a crack growth allowance to the repair limit, the structural limit can be validated. Therefore, the maximum allowable BOC repair limit (RL) based on the structural limit of 4.7 volts can be represented as:

RL + (0.20 x RL) + (0.45* x RL) = 4.7 volts,
which yields RL of 2.85 volts.

* The 30% growth rate for 1 EFPY was scaled up to the cycle length used at South Texas.

This repair limit (2.85 volts) reasonably could be applied for APC [alternate plugging criteria] implementation to repair bobbin indications greater than the 1.0 volt criterion specified by NRC Generic Letter 95–05 and is independent of RPC [rotating pancake coil-probe] confirmation of the indications. STP has chosen to use a steam generator tube upper repair limit of 2.85 volts to assess tube integrity for those bobbin indications which are above 1.0 volt but do not have confirming RPC calls. This 2.85 volt upper limit for non-confirmed RPC calls is consistent with the NRC Generic Letter 95–05. Since the upper bound for repair of non-confirmed RPC is limited to a value far less than the structural limit associated with a full alternate criteria, the establishment of the repair limits are determined to be reasonable and conservative with respect to the industry pulled tube data base used.

Leakage Considerations

As part of the implementation of APC, the distribution of EOC cracking indications at the TSP intersections has been used to calculate the primary-to-secondary leakage which is bounded by the maximum leakage required to remain within applicable dose limits. This limit was calculated using the Technical Specification RCS [reactor coolant system] Iodine-131 transient spiking values consistent with NUREG–0800. Application of the APC criteria requires the projection of postulated MSLB [main steam line break] leakage based on the projected EOC voltage distribution for the beginning of cycle. Projected EOC voltage distribution is developed using the most recent EOC eddy current results and a voltage measurement uncertainty. Draft NUREG–1477 requires that all indications to which APC is applied must be included in the leakage projection.

The projected MSLB leakage rate calculation methodology prescribed in EPRI TR–100407 will be used to calculate the EOC leakage. A Monte Carlo approach will be used to determine the EOC leakage, accounting for all of the ECT [eddy current testing] uncertainties, voltage growth, and an assumed probability of detection (POD) of 0.6 for a 1.0 volt repair limit. The fitted logarithmic function probability of leakage correlation will be used to establish the STP MSLB leak rate used for comparison with a bounding allowable leak rate in the faulted loop which would result in radiological consequences which are within applicable dose limits. Due to the relatively low voltage levels of indications at STP and low voltage growth rates, it is expected that the actual calculated leakage values will be far less than this limit.

Therefore, implementation of APC does not adversely affect steam generator tube integrity and implementation will be shown to result in acceptable dose consequences. The proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Implementation of the proposed steam generator tube alternate plugging criteria for ODSCC [outer diameter stress corrosion cracking] at the TSP intersections does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism which could result in an accident outside of the region of the TSP elevations since no ODSCC has been identified outside the thickness of the TSPs. It is therefore expected that for all plant conditions, neither a single or multiple tube rupture event would occur in a steam generator where APC has been applied.

Specifically, STP will implement, for Unit 1, a maximum leakage rate of 150 gpd [gallons per day] per steam generator (SG) to help preclude the potential for excessive leakage during all plant conditions. The current technical specification limits on primary-to-secondary leakage at operating conditions are 1 gpm [gallon per minute] for all steam generators or 500 gpd for any one SG. The RG [Regulatory Guide] 1.121 criterion for establishing operational leakage rate limits governing plant shutdown is based upon leak-before-break (LBB) considerations to detect a free span crack before potential tube rupture as a result of faulted plant conditions. The 150 gpd limit is intended to provide for leakage detection and plant shutdown in the event of an unexpected crack propagation resulting in excessive leakage. RG 1.121 acceptance criteria for establishing operating leakage limits are based on LBB considerations such that plant shutdown is initiated if the permissible crack is exceeded.

The predicted EOC leakage for STP is based on the calculated growth rate and does not take credit for the TSP proximity during normal operation. Thus, the 150 gpd limit provides for plant shutdown prior to reaching critical crack lengths. Additionally, this leak-before-break evaluation assumes that the entire crevice area is uncovered during the secondary side blowdown of a MSLB. Typically, it is expected for the vast majority of intersections that only partial uncovery will occur. Thus, the proximity of the TSP will enhance the burst capacity of the tube.

Steam generator tube integrity is continually maintained through inservice inspection and primary-to-secondary leakage monitoring. Any tubes falling outside the APC repair limits are removed from service. Therefore, the possibility of a new or different kind of accident from any accident previously developed is not created.

3. Does the change involve a significant reduction in a margin of safety?

The use of the voltage based bobbin probe for dispositioning ODSCC degraded tubes within TSP intersections by APC is demonstrated to maintain steam generator tube integrity in accordance with the requirements of RG 1.121. RG 1.121 describes a method acceptable to the NRC staff for meeting GDCs [General Design Criterion] 14, 15, 31, and 32 by reducing the probability or the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking are removed from service. Upon implementation of the criteria, even under the worst case conditions, the occurrence of ODSCC at the TSP elevation is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions. The EOC distribution of crack indications at the TSP elevations will be confirmed to result in acceptable primary-to-secondary leakage during all plant conditions and that radiological consequences are not adversely impacted.

In addressing the combined effects of loss of coolant accident (LOCA) and safe shutdown earthquake (SSE) on the steam generator component (as required by GDC 2), it has been determined that tube collapse may occur in the steam generators at some plants. This is the case at STP as the TSP may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate due to the combined effects of the LOCA rarefaction wave and SSE loadings. The resulting secondary-to-primary pressure differential on the deformed tubes may cause some of the tube to collapse.

There are two concerns associated with steam generator tube collapse. First, the collapse of steam generator tubing reduces the RCS flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase peak clad temperature (PCT). Second, there is a potential that through wall cracks in tubes could sufficiently enlarge during tube deformation or collapse, causing sufficient in-leakage of secondary water back to the core which dilutes the poisoning effect of boron injection from the emergency cooling system. Again, an increase in core PCT may result.

Consequently, since the LBB methodology is applicable to the STP reactor coolant loop piping, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design of the plant. The analysis identified tubes located adjacent to wedge regions that are subject to potential collapse during combined LOCA and SSE. These tubes will be excluded from application of APC. Thus, existing tube integrity requirements apply to these tubes and the margin of safety is not reduced.

Implementation practices using the bobbin probe voltage based tube plugging criteria bounds RG 1.83 considerations by:

(1) Using enhanced eddy current inspection guidelines consistent with those used by EPRI in developing the correlations. This provides consistency in voltage normalization,

(2) Performing a 100 percent bobbin coil inspection for all hot leg tube support plate intersections and all cold leg intersections down to the lowest cold leg tube support plate with outer diameter stress corrosion cracking (ODSCC) indications. The determination of the tube support plate intersections having ODSCC indications shall be based on the performance of at least a 20% random sampling of tubes inspected over their full length, and

(3) Incorporating RPC inspection for all tubes with larger indications left in service. This further establishes the principal degradation morphology as ODSCC.

Implementation of APC at TSP intersections will decrease the number of tubes which must be repaired. Since the installation of tube plugs (to remove ODSCC degraded tubes from service) reduces the RCS flow margin, APC implementation will help preserve the margin of flow that would otherwise be reduced.

For each cycle the projected EOC primary-to-secondary leak rate allowed is bounded by a leak rate which limits the radiological consequences of a EOC MSLB to within applicable dose limits. Therefore, this change does not involve a significant reduction in the margin to safety.

It is therefore concluded that the proposed license amendment request does not result in a significant reduction in the margin of safety as defined in the plant Final Safety Analysis Report or Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, DC 20036–5869.

NRC Project Director: William D. Beckner.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket No. 50–498, South Texas Project, Unit 1, Matagorda County, Texas

Date of amendment request: January 22, 1996.

Description of amendment request: The proposed amendment would modify the steam generator tube plugging criteria in Technical Specification 3/4.4.5, Steam Generators, and the associated Bases, to allow the implementation of alternate steam generator tube plugging criteria for the tube-to-tubesheet joints (known in the industry as F*) for Unit 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Steam Generator section of Technical Specifications do not affect any accident initiators or precursors and do not alter the design assumptions for the systems or components used to mitigate the consequences of an accident. The requirements approved by the NRC will not be reduced by this request. Since F* utilizes the "as rolled" tube configuration that exists as part of the original steam generator design, all of the design and operating characteristics of the steam generator and connected systems are preserved. The F* joint has been analyzed and tested for design, operating and faulted condition loadings in accordance with Regulatory Guide 1.121 safety factors. At worst case, a tube leak would occur with the result being a primary to secondary leak.

Should a tube leak occur, the impact is bounded by the ruptured tube evaluation submitted by STP for the Unit 1 operating license. No new or unreviewed accident conditions are created by the use of F* criteria. The potential for a tube rupture is not increased from the original submittal, thus there is no impact on accidents evaluated as the design basis. Therefore use of the F* criteria will not increase the probability of occurrence of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the proposed F* alternate plugging criteria will not introduce significant or adverse changes to the plant design basis. The failure of a tube which remained unplugged in accordance with the F* criteria would result in a tube leak, which is a previously analyzed condition. Since this leak would occur below the secondary face of the tubesheet, its leak rate would be limited by the tube-to-tubesheet interface. Qualification testing and previous experience indicates that normal and faulted leakage would be well below the technical specification limits creating no threat associated with tube rupture type leakages. This conclusion is consistent with previous F* programs approved and used at other operating plants.

However, in the unlikely event the failed tube severed completely at a point below the F* region, the remaining F* joint would retain engagement in the tubesheet due to its length of expanded contact within the tubesheet bore, preventing any interaction with neighboring tubes. If the tube severs at a point above the F* region, then it is covered by the tube rupture event as a part of the UFSAR [Updated Final Safety Analysis Report]. Thus, the possibility of a new or different type of accident from any accident previously evaluated is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

Based on previous responses (above), the protective boundaries of the steam generator are preserved. A tube with degradation can be kept in service through F* criteria which provided an un-degraded expanded interface with the tubesheet and which satisfies all of the necessary structural and leakage requirements in accordance with Regulatory Guide 1.121 and the Technical Specifications. Since the joint is constrained within the tubesheet bore there is no additional risk associated with tube rupture. Since the UFSAR analyzed accident scenarios remain bounding, the use of an F* criteria does not reduce the margin of safety.

Thus, these changes do not involve a significant reduction in the margin of safety. Therefore, based on the above evaluation, STP has concluded that these changes do not involve any significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, DC 20036–5869

NRC Project Director: William D. Beckner.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: January 12, 1996 (AEP:NRC:1233).

Description of amendment requests: The proposed amendments would modify technical specification section 4.4.11 to eliminate the surveillance requirement (SR) demonstrating operability of the emergency power supply for the pressurizer power-operated relief valves (PORVs) and block valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Per 10 CFR 50.92, a proposed change does not involve significant hazards consideration if the change does not:

1. involve a significant increase in the probability or consequence of an accident previously evaluated,
2. create the possibility of a new or different kind of accident from any accident previously evaluated, or
3. involve a significant reduction in a margin of safety.

Criterion 1

The proposed change is consistent with NUREG–1431 [Standard Technical Specifications Westinghouse Plants]. Due to the high reliability and continued testing of the Class 1E power supply, we conclude that the elimination of the SR will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

The proposed change does not involve the addition of any new plant operation or procedures, and the elimination of the SR is consistent with NUREG–1431. For these reasons, we believe that the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

The proposed change is consistent with NUREG–1431, and it does not affect the acceptance criteria of any of the other PORV and block valve tests currently performed. For these reasons, we believe that the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and the applicable Bases of the Standard Technical Specifications Westinghouse Plants. The Bases for the applicable surveillance, 3.4.11.4, states "This Surveillance is not required for plants with permanent 1E power supplies to the valves." Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: John N. Hannon.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London, Connecticut

Date of amendment request: January 22, 1996.

Description of amendment request: The proposed change relocates the containment isolation valve (CIV) list, Table 3.6–2, from the Technical Specifications to the Technical Requirements Manual (TRM). This change affects Technical Specifications Sections 1.8.1a, 4.6.1.1a, 3.6.3.1, 4.6.3.1.1 and 4.6.3.1.2, and the Basis Section 3/4.6.3. A note at the bottom of Table 3.6–2 regarding the CIVs that are subject to administrative control is retained in the Technical Specifications by relocating it to Sections 1.8.1a and 4.6.1.1a. This change is being performed in accordance with Generic Letter 91–08, which provides guidance for removal of component lists from the Technical Specifications.

Additionally, a change to provide relief in the surveillance requirement in Section 4.6.1.1a is included. The change allows valves, blind flanges, and deactivated automatic valves located inside the containment and are locked, sealed, or otherwise secured in the closed position to be verified closed during each cold shutdown but not more often than once per 92 days. The current requirements check the valve position once per 31 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

Pursuant to 10CFR50.92, Northeast Nuclear Energy Company (NNECO) has reviewed the proposed changes. NNECO concludes that these changes do not involve a significant hazards consideration (SHC) since the proposed changes satisfy the criteria in 10CFR50.92(c). That is, the proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to remove the Containment Isolation Valve (CIV) list from the Technical Specifications will not result in any hardware or operating changes. The proposed change is based upon NRC Generic Letter (GL) 91–08 and merely removes the CIV table and all references to the table from the technical specifications without affecting the operability requirements of any of the listed valves. The technical specifications will continue to require the CIVs to be operable. Limiting Condition for Operation and surveillance requirements for the valves will also remain in the technical specifications. The CIV table will be relocated to the Millstone Unit No. 2 Technical Requirements Manual (TRM) which is controlled in accordance with 10CFR50.59.

This change is administrative in nature and does not involve an increase in the probability or consequence of an accident previously evaluated. Furthermore, the proposed change does not alter the design, function, or operation of the valves involved, and therefore does not affect the probability or consequences of any previously evaluated accident.

The change to Section 4.6.1.1a that reduces the surveillance requirement for valves, blind flanges, and deactivated automatic valves located inside the containment provides consistency with NUREG–1432, "Standard Technical Specifications for Combustion Engineering Plants" as well as the Technical Specifications of Millstone Unit No. 3, Haddam Neck Plant, and Seabrook. The probability or consequences of any previously evaluated accidents are not affected.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The change to relocate the CIV list from the technical specifications to the TRM will not impose any different operational or surveillance requirements, nor will the change remove any such requirements. Adequate control of information will be maintained. Furthermore, as stated above, the proposed change does not alter the design, function, or operation of the valves involved, and therefore no new accident scenarios are created.

The change to Section 4.6.1.1a that reduces the surveillance requirement for valves, blind flanges, and deactivated automatic valves located inside the containment does not alter the design, function, or operation of the valves involved, and therefore no new accident scenarios are created.

3. Involve a significant reduction in a margin of safety.

The proposed changes will not reduce the margin of safety since it has no impact on any safety analysis assumption. The proposed changes do not decrease the scope of equipment currently required to be operable or subject to surveillance testing, nor does the proposed change affect any instrument setpoints or equipment safety functions.

The relocation of the valve list is consistent with the guidance provided in GL 91–08. The change to the surveillance interval is consistent with NUREG–1432, "Standard Technical Specifications for Combustion Engineering Plants" as well as the Technical Specifications of Millstone Unit No. 3, Haddam Neck Plant, and Seabrook. The intent of the technical specification will be met since the change will not alter function or operability requirements for any CIV.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: January 17, 1996.

Description of amendment request: The amendment request would delete a license requirement to submit responses to and to implement requirements of Generic Letter 83–28, because the requirement has been completed. Generic Letter 83–28 pertains to the Salem anticipated transient without scram (ATWS) event.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

. . . The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

NNECO's proposal to delete License Condition 2.C(4) is an administrative change. The NRC Staff has accepted Millstone Unit No. 3's responses regarding the actions required by GL 83–28, thus, the license condition has been met and is no longer necessary. The proposed change does not affect the configuration, operation, or performance of any system, structure, or component. Additionally, the limiting conditions for operation, limiting safety system settings, and safety limits specified in the Millstone Unit No. 3 Technical Specifications are unchanged. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The NRC Staff has accepted Millstone Unit No. 3's responses regarding the actions required by GL 83–28, thus, the license condition has been met and is no longer necessary. The proposed change to delete License Condition 2.C(4) does not affect the configuration, operation, or performance of any system, structure, or component. Additionally, the limiting conditions for operation, limiting safety system settings, and safety limits specified in the Millstone Unit No. 3 Technical Specifications are unchanged. Therefore, this proposed change cannot create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

The NRC Staff has accepted Millstone Unit No. 3's responses regarding the actions required by GL 83–28, thus, the license condition has been met and is no longer necessary. The proposed change to delete License Condition 2.C(4) does not affect the configuration, operation, or performance of any system, structure, or component. Additionally, the limiting conditions for operation, limiting safety system settings, and safety limits specified in the Millstone Unit No. 3 Technical Specifications are unchanged. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: December 22, 1995.

Description of amendment request: The proposed changes will revise Limerick Generating Station, Units 1 and 2, Technical Specification 3.6.1.8 "Drywell and Suppression Chamber Purge System," increasing the Drywell and Suppression Chamber Purge System operating time limit from 90 hours each 365 days to 180 hours each 365 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specification [TS] changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

These TS changes do not increase the probability of occurrence of an accident previously evaluated in the SAR [Safety Analysis Report]. This activity involves changing the allowable operating limit for the Drywell and Suppression Chamber Purge System from 90 hours each 365 days to 180 hours each 365 days. This change increases the probability that this system will be in service should a LOCA [loss of coolant accident] occur, but does not increase the probability that a LOCA will occur.

Increasing the operating limit for the Drywell and Suppression Chamber Purge System from 90 hours to 180 hours each 365 days does not increase the consequences of a LOCA as previously evaluated in the SAR. These proposed TS changes increase the probability of a LOCA occurring during the time the Drywell and Suppression Chamber Purge System is in operation, and therefore, increase the probability of the failure of the operating SGTS [Standby Gas Treatment System] filter bank. However, the risk to containment integrity was previously evaluated and found to be acceptable (UFSAR [Updated Final Safety Analysis Report] Section 9.4.5.1.2.2 and WASH—1400 "Reactor Safety Study").

Increasing the duration that the vent/purge line isolation valves may be open does not increase the probability that these valves will not perform as designed (i.e., close upon receipt of an isolation signal) in response to a LOCA. However, the changes will increase the likelihood that the vent and purge valves will be called on to close. As discussed in UFSAR Section 6.2.4.2, the containment purge valves have undergone extensive testing and analyses to demonstrate the operability of these valves following a LOCA.

In addition to the existing Safety Analysis Report (SAR) evaluations, a Level 2 PSA [Probabilistic Safety Assessment] Analysis (containment failure) was performed to determine the additional risk associated with changing the operating limit from 90 to 180 hours each 365 days. The PSA evaluation conservatively assumed a 200 hour vent/purge duration per a 365 day period. The figure of merit evaluated is the large early release frequency (LERF) which represents the likelihood of containment failure following core damage that could significantly affect the public (e.g., release of a large amount of radioactive material early enough in the accident that evacuation of the public has not occurred). The 200 hour vent/purge duration increased the LERF approximately 3% from the base value of 2.57E–8 for all PSA initiators. This analysis concluded that the increase in risk of containment failure is well within the bounds of the EPRI [Electrical Power Research Institute] PSA Applications Guideline for permanent changes. The same relative increase applies to the large Design Basis Accident LOCA LERF.

These changes do not directly or indirectly degrade the performance of any other safety systems (assumed to function in the accident analysis) below their design basis. The potential for other equipment failures in the reactor enclosure due to duct-work impact, impingement, and the resulting environmental conditions was evaluated. It was concluded that the environmental qualifications for the LGS equipment are sufficient to ensure operability under the predicted environmental conditions, and there is no impact or impingement-related damage to essential equipment. Although the probability of occurrence of a malfunction of equipment important to safety is increased, the existing SAR analysis and Level 2 PSA Analysis demonstrate the increased risk and radiological consequences are not significant.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

This activity does not change the function of the Drywell and Suppression Chamber Purge System, the containment isolation system, or SGTS as previously evaluated in the SAR. Changing the duration of operation of the vent and purge system does not create an accident initiator not considered in the SAR. Therefore, the possibility of an accident of a different type is not created.

This activity does not create a failure mode not considered in the SAR. All possible equipment failures that could occur as a result of a LOCA during high volume purging have previously been identified and evaluated in the SAR. Therefore, this activity does not create the possibility of a different type of malfunction of equipment important to safety.

Therefore, the proposed TS changes will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The Bases of Technical Specification 3.6.1.8 states that the intent of the 90 hour per 365 day operating limit for the Drywell and Suppression Chamber Purge System is to protect the integrity of the SGTS filters. As discussed above, the requirements specified in ODCM paragraph 3.3.6 assure the availability of the backup SGTS filter train during operation of the vent and purge system. Furthermore, as discussed above, revising the operating limit from 90 hours to 180 hours each 365 days does not involve a significant increase in risk. The margin of safety as defined in the Bases of Technical Specification 3.6.1.8 is maintained.

Therefore, the implementation of the proposed TS changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: February 6, 1996.

Description of amendment request: The amendments would change the Technical Specifications to lower the 125 Volt Battery Charger surveillance amperage from at least 200 amps to at least 170 amps.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment will permit replacement of aging battery chargers while ensuring these replacement battery chargers will restore the battery from the design minimum charge to its fully charged state while supplying normal steady-state loads. This meets the design basis for the 125V DC system and is consistent with Salem Unit 1 and 2 commitment to IEEE 308–1971 in UFSAR Section 3A.

The 125V DC battery chargers are not addressed as a contributor to any accident analyzed in the UFSAR, therefore, changes to the battery charger output current will not increase the probability of an accident occurring.

The limiting analyzed accident considered in this proposed TS amendment is the Loss of Offsite Power coincident with a Loss of Coolant Accident. This is currently the limiting design duty cycle for the batteries. The 125V batteries are sized to maintain all emergency loads for a period of 2 hours without battery chargers. This is demonstrated by performing the surveillance specified in TS 4.8.2.3.2.f, which is not being changed. Since the chargers are not required to be available during this 2 hour period, and since the proposed charging rate will supply the necessary loads following restoration of AC power, the proposed amendment will have no effect on the consequences of this accident.

The current limiter is calculated to extend the recharging time from 20 hours to 30 hours, but this is not considered significant since two, sequential battery discharge events are not considered plausible.

PSE&G calculation substantiates the capability of the chargers to restore the battery from the design minimum charge to its fully charged state while supplying normal steady-state loads following a Station Blackout (SBO) Event which exceeds the current design duty cycle.

In addition, a review of 125V DC Battery System load profiles indicated that the battery chargers are capable of supplying expected loads when restoring the battery from a design minimum charge state to a fully charged state irrespective of the status of the plant.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendment does not result in any design or physical configuration changes to the 125V DC system. This change supports the installation of the replacement chargers and ensures the chargers are surveilled within the bounds of limiting input amperage. No changes are being made to the function, design basis, or operation of the 125V DC system by this proposed change. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The proposed amendment to TS 4.8.2.3.2.e ensures that the replacement battery chargers have sufficient capacity to restore each 125V battery from the design minimum charge to its fully charged state while supplying normal steady-state loads. A margin of safety is maintained on both the AC input and DC output of the chargers since the specified current is above that required to support the 125V DC system and will result in AC current below the ampacity rating of the battery charger input cables.

Testing to a charger output current of at least 170 amps will maintain a margin of safety to the current required during actual worst case normal loading on the 125V DC buses.

Therefore, the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Project Director: John F. Stolz.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: February 9, 1996.

Description of amendment request: The proposed amendment would allow an installed overhead door assembly, to be used in lieu of the equipment hatch closure, to isolate the hatch opening to the containment building during fuel movement and core alterations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. Containment closure is used with respect to the mitigation of fuel handling accidents, and as such, any change to these requirements will not affect the probability of an accident. The proposed changes will also not result in a significant increase in the consequences of an accident previously analyzed since the technical specification requirements remain bounded by the fuel handling accident assumption of no containment closure.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. The proposed changes will not impose any new or different requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. Containment closure is not assumed in the accident analyses for Ginna Station. Also, the proposed change remains acceptable with respect to SRP [NUREG–800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, July 1981"] 15.7.4 and GDC [General Design Criterion] 19 requirements. Therefore, no question of safety is involved, and the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Project Director: Ledyard B. Marsh.

Rochester Gas and Electric Corporation, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: February 9, 1996.

Description of amendment request: The proposed amendment would incorporate the methodology for determining the Low Temperature Overpressure Protection (LTOP) limits into the Administrative Controls Section 5.6.6 of the Ginna Technical Specifications (TS). The proposed amendment will allow the licensee to perform future LTOP evaluations, using NRC-approved methodology, without requiring changes to the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes only require that future LTOP limits be developed using NRC approved methodology as specified within the Administrative Controls section and do not involve any technical changes. As such, these changes are administrative in nature and do not impact initiators or analyzed events or assumed mitigation of accident or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. The proposed changes will not impose any new or different requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes will not reduce a margin of plant safety because

the changes do not impact any safety analysis assumptions other than requiring future evaluations of LTOP limits to be performed in accordance with NRC approved methodology. These changes are administrative in nature. As such, no question of safety is involved, and the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Project Director: Ledyard B. Marsh.

Rochester Gas and Electric Corporation, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: February 9, 1996.

Description of amendment request: The proposed amendment would revise the Technical Specifications setpoints for steam generator (SG) water level-high feedwater isolation function. It would take advantage of a greater allowable operating band for SG water level afforded by replacement SGs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed setpoint change does not degrade the performance of any plant equipment. Therefore, the probability of an accident is not increased. Since the revised trip setpoint and allowable value remain bounded by the accident analysis value of 100% steam generator narrow range level, the consequences of any accident are not adversely affected.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not involve a physical alteration to the plant (i.e., no new or different types of equipment will be installed) or changes in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The revised setpoint and allowable value remain bounded by the accident analysis assumptions. The existing values are based on design considerations and not accident analysis parameters. The replacement steam generators are not restricted by the same design considerations with respect to the ESFAS [engineered safety features actuation system] Steam Generator Water Level—High function. Therefore, this change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Project Director: Ledyard B. Marsh.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: February 9, 1996.

Description of amendment request: The proposed amendment would change Technical Specification 5.3.1 to allow the use of Zirlo fuel cladding material.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The methodologies used in the accident analysis remain unchanged. The proposed changes do not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident. Use of ZIRLO fuel cladding does not adversely affect fuel performance or impact nuclear design methodology. Therefore accident analyses are not impacted.

The operating limits will not be changed and the analysis methods to demonstratn operation within the limits will remain in accordance with NRC approved methodologies. Other than the changes to the fuel assemblies, there are no physical changes to the plant associated with this technical specification change. A safety analysis will continue to be performed for each cycle to demonstrate compliance with all fuel safety design bases.

VANTAGE 5 fuel assemblies with ZIRLO clad fuel rods meet the same fuel assembly and fuel rod design bases as other VANTAGE 5 fuel assemblies. In addition, the 10 CFR 50.46 criteria are applied to the ZIRLO clad rods. The use of these fuel assemblies will not result in a change to the reload design and safety analysis limits. Since the original design criteria are met, the ZIRLO clad fuel rods will not be an initiator for any new accident. The clad material is similar in chemical composition and has similar physical and mechanical properties as Zircaloy-4. Thus, the cladding integrity is maintained and the structural integrity of the fuel assembly is not affected. ZIRLO cladding improves corrosion performance and dimensional stability. No concerns have been identified with respect to the use of an assembly containing a combination of Zircaloy-4 and ZIRLO clad fuel rods. Since the dose predictions in the safety analyses are not sensitive to fuel rod cladding material, the radiological consequences of accidents previously evaluated in the safety analysis remain valid.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

VANTAGE 5 fuel assemblies with ZIRLO clad fuel rods satisfy the same design bases as those used for other VANTAGE 5 fuel assemblies. All design and performance criteria continue to be met and no new failure mechanisms have been identified. The ZIRLO cladding material offers improved corrosion resistance and structural integrity.

The proposed changes do not affect the design or operation of any system or component in the plant. The safety functions of the related structures, systems or components are not changed in any manner, nor is the reliability of any structure, system or component reduced. The changes do not affect the manner by which the facility is operated and do not change any facility design feature, structure or system. No new or different type of equipment will be installed. Since there is no change to the facility or operating procedures, and the safety functions and reliability of structures, systems or components are not affected, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Use of ZIRLO cladding material does not change the VANTAGE 5 reload design and safety limits. The use of these fuel assemblies will take into consideration the normal core operating conditions allowed in the Technical Specifications. For each cycle reload core, the fuel assemblies will be evaluated using NRC-approved reload design methods, including consideration of the core physics analysis peaking factors and core average linear heat rate effects.

The use of Zircaloy-4, ZIRLO or stainless steel filler rods in fuel assemblies will not involve a significant reduction in the margin of safety because analyses using NRC-approved methodologies will be performed for each configuration to demonstrate continued operation within the limits that assure acceptable plant response to accidents and transients. These analyses will be performed using NRC-approved methods that have been approved for application to the fuel configuration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW., Washington, D.C. 20037.

NRC Project Director: William H. Bateman.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: January 30, 1996.

Description of amendment request: The proposed amendments would modify the Technical Specifications to increase the minimum allowable reactor coolant system total flow rate from 284,000 gpm (for Unit 1) and 275,300 gpm (for Unit 2) to 295,000 gpm for both units. Through the 1980's and into the 1990's the North Anna Unit 1 and 2 steam generators experienced increasing levels of steam generator tube plugging. There was a corresponding decrease in the reactor coolant flow rate. As a result, the Commission issued several amendments in the 1989 to 1992 time frame to reduce the minimum reactor coolant flow rate. Subsequently, the licensee replaced the steam generators in both units, with steam generators having an increased number of tubes compared to the replaced steam generators. With the increased number of tubes and less flow resistance, a greater reactor coolant flow rate is attainable. When the amendments were issued decreasing the minimum required reactor coolant flow rate, the transmittal letters stated the revision was temporary and would be increased when the steam generators were replaced.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report would not increase. The proposed Technical Specifications change only increases the minimum allowable RCS total flow rate in the applicable Limiting Condition of Operation. No other changes are being made to allowable operating conditions defined by Technical Specifications, procedures, or to any plant design feature by the implementation of this change. There is no impact on the actual plant performance. Changes in the assumed initial conditions for the accident have no bearing on the probability of occurrence of the assumed accident or malfunction. The RCS flow rate is an assumption in applicable safety analyses. Existing analyses of record have assumed RCS flow rates which are bounding with respect to expected actual plant behavior. Therefore, the implementation of the proposed Technical Specifications change does not affect the probability nor increase the consequences of an accident previously evaluated.

2. The possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report would not be created. The proposed change to North Anna Units 1 and 2 Technical Specifications Table 3.2–1 does not involve any alterations to the physical plant which would introduce any new or unique operational modes or accident precursors. Only the allowable value for measured Reactor Coolant System Total Flow Rate will be changed.

3. The margin of safety as defined in the basis for any technical specifications is not reduced. The proposed Technical Specifications change only increases the minimum allowable RCS total flow rate in the applicable Limiting Condition of Operation. The RCS flow rate is an assumption in applicable safety analyses. Existing analyses of record have assumed RCS flow rates which are bounding with respect to expected actual plant behavior. Therefore, the margin of safety is not reduced by the proposed increase in the allowable RCS Total Flow Rate.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: David B. Matthews.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: January 31, 1996.

Description of amendment request: The amendments would revise the Technical Specifications to reduce the minimum volume of fuel that must be maintained in the diesel generator day tanks from 750 to 450 gallons. The amendments would also revise the surveillance requirements for the diesel generators to permit some surveillances to be performed while the reactor units are at power where the licensee considers it safe to do so without compromising the availability of the diesel generators to perform their intended function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve an increase in the probability of occurrence of an accident previously evaluated.

The proposed changes do not result in any physical modifications to any plant systems or components nor change the operation of any plant equipment. The EDG [emergency diesel generator] fuel oil supply system will continue to provide adequate fuel supply to the EDGs in a manner consistent with applicable accident analyses. Performing surveillance tests or portions of surveillance tests at power that do not jeopardize stable plant operations does not increase the probability of occurrence of previously analyzed accidents.

Therefore, there is no increase in the probability of occurrence of any accident.

2. Increase the consequences of an accident previously evaluated.

The proposed changes do not result in any physical modifications to any plant systems or components nor change the operation of any plant equipment. The EDG fuel oil system remains capable of supplying the EDGs with sufficient quantities of fuel oil to provide power for long term loss of offsite power. The EDG surveillances will continue to be performed in a manner that will ensure that the EDGs will be capable of performing their intended safety functions. The proposed changes to the electrical distribution system surveillances will continue to ensure that the electrical distribution system remains

operable to power the required safety systems.

Therefore, these proposed changes will not result in an increase in the consequences of any evaluated accidents.

3. Create the possibility for an accident of a different type than was previously evaluated.

The proposed changes do not result in any physical modifications to any plant systems or components nor change the operation of any plant equipment. Only those surveillance tests or portions of surveillance tests that do not jeopardize stable plant operation will be performed at power. Overlap testing to fully test the electrical distribution system protection functions does not introduce any unique accident precursors. The EDG fuel oil system remains capable of supplying the EDGs with sufficient quantities of fuel oil to provide power for long term loss of offsite power. The EDG surveillances will continue to be performed in a manner that will ensure that the EDGs will be capable of performing their intended safety functions.

Therefore, there are no new precursors generated that would result in the possibility of a different type of an accident than was previously evaluated in the SAR [Safety Analysis Report].

4. Decrease the margin of safety as described in the bases section of Technical Specifications.

The EDG fuel oil system will continue to provide adequate fuel supply in a manner consistent with applicable accident analyses. The EDG surveillances will continue to be performed in a manner that will ensure that the EDGs are capable of performing their intended safety functions. The proposed changes to the electrical distribution system surveillances will continue to ensure that the electrical distribution system remains operable to power the required safety systems.

Therefore, the margin of safety as described in the Technical Specifications is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: David B. Matthews

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: July 21, 1995, August 8, 1995, and December 15, 1995.

Brief description of amendment request: The proposed amendment would modify the requirements for testing an emergency diesel generator (EDG) when the other is inoperable. The amendment would correct an editorial error in the Duane Arnold Energy Center Operating License and would correct an erroneous reference in the Technical Specification.

Date of publication of individual notice in **Federal Register:** February 2, 1996 (61 FR 3953).

Expiration date of individual notice: March 4, 1996.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Pacific Gas and Electric Company, Docket No. 50–275, Diablo Canyon Nuclear Power Plant, Unit No. 1, San Luis Obispo County, California

Date of amendment request: January 18, 1995.

Description of amendment request: The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, to allow operation of Unit 1 in Mode 3 (Hot Standby) during replacement of nonvital auxiliary transformer 1–1. Specifically, TS 3/4.8.1.1, "Electrical Power Systems—A.C. Sources—Operating," Action Statement (a), would be revised to permit a one-time extension of the allowed outage time (AOT) from 72 hours to 120 hours.

Date of individual notice in **Federal Register:** February 1, 1996 (61 FR 3737).

Expiration of individual notice: March 4, 1996.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: February 5, 1996, as supplemented by letter dated February 14, 1996.

Brief description of amendment request: The amendment changes Technical Specifications 4.6.2.3.b, "Suppression Pool Cooling", and TS 4.6.2.2.b, "Suppression Pool Spray", to include flow through the RHR heat exchanger bypass line (in addition to the RHR heat exchanger) in the Suppression Pool Cooling and Suppression Pool Spray flow path used during RHR pump testing.

Date of publication of individual notice in **Federal Register:** February 9, 1996 (61 FR 5040).

Expiration date of individual notice: March 11, 1996.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: January 16, 1996.

Brief description of amendment request: The proposed amendment would change the Technical Specification surveillance frequency for the drywell bypass leakage rate test from 18 months to 120 months (10 years) with a more frequent testing requirement if performance degrades. Additionally, specific leakage limits would be deleted for the air lock seal and barrel tests. Also, surveillance frequencies for the air lock interlock test and seal pneumatic system leak test would be changed from 18 months to 24 months. Finally, the surveillance frequencies for the air lock barrel test would be changed from "each COLD SHUTDOWN if not performed within the previous 6 months" to "at least once per 24 months" and from 18 months to 24 months. The licensee requested that this amendment be approved for use during the current refueling outage which began on January 27, 1996.

Date of publication of individual notice in **Federal Register:** February 2, 1996 (61 FR 3951).

Expiration date of individual notice: March 4, 1996.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of application for amendments: December 7, 1995.

Brief description of amendments: The amendments add the convolution analytical technique for the analysis of the pre-trip main steam line break event to the list of approved core operating limits analytical methods listed in Technical Specification 6.9.1.9, "Core Operating Limits Report." The convolution analytical technique was previously reviewed and approved by the NRC staff and the supporting safety evaluation was provided to Baltimore Gas and Electric Company by letter dated May 11, 1995.

Date of issuance: February 5, 1996.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 210 and 188.

Facility Operating License No. DPR–53 and DPR–69: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 3, 1996 (61 FR 177)

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated February 5, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: November 2, 1994, as supplemented by letters dated November 16 and December 14, 1995.

Brief description of amendments: The amendments delete the content of the Appendix B, "Environmental Protection Plan" (Non-radiological) Technical Specifications and modify License Condition 2.C.(2) so as to delete that portion which refers to the Environmental Protection Plan.

Date of issuance: February 5, 1996.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1–164—Unit 2–146.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications and License Conditions.

Date of initial notice in **Federal Register:** March 1, 1995 (60 FR 11131).

The November 16 and December 14, 1995, letters provided clarifying information that did not change the scope of the November 2, 1994, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 5, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: January 13, 1995, as supplemented by letter dated August 30, 1995.

Brief description of amendments: The amendments revise the Technical Specifications to increase the surveillance test intervals and allowed outage times for the Reactor Trip System and Engineered Safety Features Actuation System. The NRC staff has reviewed the proposed changes and finds that, with one exception as noted in the enclosed Safety Evaluation, the amendments conform to WCAP–10271, "Evaluation of Surveillance Frequencies and Out of Service Times for the Reactor Protection Instrumentation Systems," with its revisions and supplements, provides appropriate limiting conditions for operation and action statements, and is, therefore acceptable.

Date of issuance: February 16, 1996.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1–165—Unit 2–147.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 15, 1995 (60 FR 14019).

The August 30, 1995, letter provided clarifying information that did not change the scope of the January 13, 1995, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 16, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: July 10, 1995.

Brief description of amendments: These amendments modify the Technical Specifications to minimize the potential for boron dilution of the reactor coolant system (RCS) during startup of an isolated RCS loop. The changes permit RCS loop isolation only during Modes 5 and 6 and require the RCS loop isolation valves be open with power removed from their valve operators during Modes 1, 2, 3, and 4. The changes also require isolation of primary grade water from the RCS during Modes 4, 5, and 6, except during planned boron dilution or makeup activities.

Date of issuance: February 12, 1996.

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment Nos.: 195 and 78.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 16, 1995 (60 FR 42602).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 12, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: July 20, 1995, as supplemented December 4, 1995.

Brief description of amendments: These amendments revise Technical Specification 3/4.8.1.1, "A.C. Sources-Operating," to incorporate guidance provided in NRC Generic Letter (GL) 84–15, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability," and GL 93–05, "Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation," which includes (1) revised requirements for testing the operable emergency diesel generators (EDGs) for various combinations of inoperable offsite circuits and EDGs and (2) revised surveillance requirements for the EDGs. The revised surveillance requirements include specifying generator voltage, frequency limits, and diesel starting time. The amendments also make several editorial changes to TS 3/4.8.1.1 to make TS 3/4 8.1.1 consistent with the guidance provided in the NRC's Improved Standard Technical Specifications (NUREG–1431).

Date of issuance: February 12, 1996.

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment Nos.: 196 and 79.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 16, 1995 (60 FR 42603).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 12, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: November 22, 1995.

Brief description of amendments: The amendments consist of changes relating to removal of the TS Bases from the TS index.

Date of issuance: February 13, 1996.

Effective date: February 13, 1996.

Amendment Nos.: 182 and 176.

Facility Operating Licenses Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 20, 1995 (60 FR 65678).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 13, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: May 31, 1995, as supplemented November 28, 1995, and December 21, 1995. The supplementary submittals did not affect the staff's proposed finding of no significant hazards consideration.

Brief description of amendment: This amendment increases the surveillance interval on various instruments from 18 to 24 months.

Date of issuance: February 13, 1996.

Effective date: February 13, 1996.

Amendment No.: 152.

Facility Operating License No. DPR–72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 5, 1995 (60 FR 35070).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 13, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: October 16, 1995, as supplemented by letter dated December 22, 1995.

Brief description of amendments: The amendments add a footnote to Technical Specification 4.6.1.2.d stating the Type B and C tests scheduled for Unit 1's refueling outage, cycle 6 (1R6) will be conducted in accordance with Option B of 10 CFR Part 50, Appendix J (hereafter referred to as Option B) using the guidance of Regulatory Guide 1.163, September 1995. This change only applies to Unit 1's refueling outage 1R6 because implementation of Option B for Type A, B, and C testing for both units is being incorporated into the Improved TS that are scheduled to become effective after refueling outage 1R6.

Date of issuance: February 2, 1996.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1–93—Unit 2–71.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 6, 1995 (60 FR 62490).

The December 22, 1995, letter provided clarifying information that did not change the scope of the October 16, 1995, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 2, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: June 9, 1995, as supplemented November 9, 1995.

Brief description of amendment: The amendment relocates Surveillance Requirement 4.6.6.1.d.3 to TS 3.6.6.2 and revises the Action Statement of Section 3.6.6.1 to decouple it from Section 3.6.6.2. In addition, Definition 1.12, "Secondary Containment Boundary" is deleted and included in the Bases Section 3/4.6.6, Secondary Containment. Bases Section 3/4.6.6.2, Secondary Containment is expanded using the guidance of the improved standard technical specifications (STS) for Westinghouse plants (NUREG–1431).

Date of issuance: February 5, 1996.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 126.

Facility Operating License No. NPF–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 2, 1995 (60 FR 39445).

The November 9, 1995, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 5, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community—Technical College, 574 New London Turnpike, Norwich, CT 06360.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota.

Date of application for amendments: July 17, 1995, as supplemented October 16, 1995, and November 28, 1995.

Brief description of amendments: The amendments revise the Prairie Island Radiological Effluent Technical Specifications and other sections relating to radiological controls to conform to NUREG–1431, "Standard Technical Specifications, Westinghouse Plants," Revision 1; and Generic Letter 89–01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or to the Process Control Program."

Date of issuance: January 24, 1996.

Effective date: January 24, 1996, with full implementation within 120 days.

Amendment Nos.: Unit 1–122; Unit 2–115.

Facility Operating License Nos. DPR–42 and DPR–60. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 11, 1995 (60 FR 52933).

By letters of October 16, 1995, and November 28, 1995, NSP forwarded a copy of its revised ODCM to the NRC for use as a reference and provided additional clarifying information. This information did not change the licensee's amendment request, the scope of the original **Federal Register** notice or the staff's initial proposed no significant hazards considerations determination. Therefore, renoticing was not warranted. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 24, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: July 28, 1995.

Brief description of amendments: The amendment eliminates the Technical Specifications requirements to perform 10 CFR Part 50, Appendix J, Type C hydrostatic tests on certain valves that are assured a water seal following a Design Basis Accident.

Date of issuance: February 8, 1996.

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment Nos.: 110 and 73.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 27, 1995 (60 FR 49941).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 8, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania.

Date of application for amendment: June 19, 1995, as supplemented December 21, 1995.

Brief description of amendment: The amendment revises Technical Specification Section 2.2, "Safety Limits," to change the minimum critical Power ratio safety Limit due to use of General Electric 13 fuel product line.

Date of issuance: February 8, 1996.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No. 111.

Facility Operating License No. NPF–39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 11, 1995 (60 FR 52934).

The December 21, 1995, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination nor the **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 8, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: July 28, 1995.

Brief description of amendments: The amendments delete the operability and surveillance requirements involving secondary containment differential pressure instrumentation.

Date of issuance: As of date of issuance, to be implmented within 30 days.

Effective date: February 14, 1996.

Amendment Nos.: 112 and 74.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 27, 1995 (60 FR 49942).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 14, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: July 28, 1995.

Brief description of amendments: These amendmends revise Technical Specifications Table 4.3.1.1–1, "Reactor Protection System Instrumentation Surveillance Requirements," to reflect changes the surveillance test frequency requirements for various Reactor Protection System instrumentation.

Date of issuance: February 14, 1996.

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment Nos.: 113 and 75.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 27, 1995 (60 FR 49944).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 14, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: January 20, 1995, as supplemented by letter dated December 18, 1995.

Brief Description of amendment: The Technical Specification (TS) revision represents changes to TS Section 3/4.11.2.6, "Explosive Gas Mixture," TS Table 3.3.7.11–1, "Radioactive Gaseous Effluent Monitoring Instrumentation," and TS Table 4.3.7.11–1, "Radioactive Gaseous Effluent Monitoring Instrumentation Surveillance Requirements." The revision removes these TS from the Technical Specifications and relocates the Bases to the Hope Creek Updated Final Safety Analysis Report and the Surveillance Requirements to the applicable surveillance procedures. The Limiting Conditions for Operation are eliminated.

Date of issuance: February 6, 1996.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 91.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 2, 1995 (60 FR 39452)

The December 18, 1995 supplement did not effect the proposed no significant hazards determination, contained in the January 20, 1995 application or the **Federal Register** notice (60 FR 39452).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 6, 1996

No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: October 7, 1995 as supplemented by letter dated October 27, 1995.

Brief description of amendment: This amendment changes Technical Specification (TS) 4.8.1.1.2, "A.C. Sources—Operating," by replacing the reference to an upper voltage and frequency band for the 10-second, Emergency Diesel Generator (EDG), starting time test with a minimum required voltage and frequency that must be attained within 10 seconds. The change to TS 4.8.1.1.2 also includes several related changes to TS 4.8.1.1.2 as follows: (1) the requirement for an EDG to achieve 514 rpm, within 10 seconds following a start signal during testing is eliminated, (2) the term "standby" replaces the term "ambient" in describing the EDG test restart condition, and (3) the term "must" is replaced with the term "may" in describing the use of manufacturers recommendations for EDG loading.

Date of issuance: February 6, 1996.

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment No.: 92.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 27, 1995 (60 FR 58405)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 6, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: May 26, 1995, as supplemented May 5, 1995, and January 26, 1996.

Brief description of amendment: The proposed change was to allow the storage of fuel with an enrichment not to exceed a nominal 5.0 weight percent (w/o) Uranium-235 (U–235) in the new (fresh) and spent fuel storage racks and change the license to reflect changes related to the nuclear fuel cycle.

Date of issuance: February 6, 1996.

Effective date: February 6, 1996.

Amendment No.: 60.

Facility Operating License No. DPR–18: Amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register**: September 26, 1995 (60 FR 49636)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 6, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: May 26, 1995, as supplemented by letters dated July 17, August 14, August 31, September 18, October 6, October 18, November 1, November 16, two letters of November 20, November 21, November 22, two letters of November 27, November 30, December 8, and December 28, 1995; and November 27, 1995; and May 23, 1994, as supplemented by letters dated June 15, 1994, July 11, July 15, November 1, and November 16, 1995; and September 15, 1992, as supplemented April 20, 1993, April 26, 1995, and July 27, 1995.

Brief description of amendment: (1) a full conversion from the licensee's current Technical Specifications (TSs) to a set of TSs based on NUREG–1431, "Standard Technical Specifications, Westinghouse Plants," Revision 0, dated September 1992 (including approved travellers used in the issuance of Revision 1, dated April 1995), in response to the licensee's application dated May 26, 1995, as supplemented by letters dated July 17, August 14, August 31, September 18, October 6, October 18, November 1, November 16, two letters of November 20, November 21, November 22, two letters of November 27, November 30, December 8, and December 28, 1995. (2) a revision to the TSs to implement the amended regulation 10 CFR Part 50, Appendix J, Option B (new rule), to provide a performance based option for leakage-rate testing of containment, in response to the licensee's application dated November 27, 1995. (3) a revision to the TSs regarding allowable primary coolant levels of specific activity, in response to the licensee's application dated May 23, 1994, as supplemented by letters dated June 15, 1994, July 11, July 15, November 1, and November 16, 1995. (4) a revision to the TSs adding new requirements that enhance the reliability of power-operated relief valves and block valves (PORV/BV) along with TS changes that provide additional low-temperature overpressure protection, in response to the licensee's application dated September 15, 1992, as supplemented April 20, 1993, and April 26, 1995. By letter dated July 27, 1995, the licensee withdrew this amendment request; however, the licensee rescinded this withdrawal request by letter dated December 28, 1995. Therefore, the proposed changes to the PORV/BV, as requested in the licensee's letter dated May 26, 1995, as supplemented December 28, 1995, are incorporated into this amendment.

Date of issuance: February 13, 1996.

Effective date: February 13, 1996.

Amendment No.: 61.

Facility Operating License No. DPR–18: Amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register**: December 8, 1995 (60 FR 63071); September 26, 1995 (60 FR 49636); August 30, 1995 (60 FR 45184); July 6, 1994 (59 FR 34669).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 13, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: December 30, 1993, as supplemented by letters dated June 3, 1994, August 25, 1994, January 3, 1995, and January 19, 1995.

Brief description of amendments: The amendments replace, in their entirety, the current technical specifications (TS) with a set of TS based on NUREG–1432, "Standard Technical Specifications—Combustion Engineering Reactors," September 1992.

Date of issuance: February 9, 1996.

Effective date: February 9, 1996, to be implemented by August 9, 1996.

Amendment Nos.: Unit 1—Amendment No. 127; Unit 2—Amendment No. 116.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 28, 1994 (59 FR 49434) The January 3, 1995, and January 19, 1995, supplemental letters provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 9, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: December 8, 1995 (TS 95–24).

Brief description of amendments: The amendments implement the change to 10 CFR Part 50, Appendix J to incorporate Option B, a voluntary performance-based option, for determining the frequency for performing Type A, B, and C Containment Leak Rate Testing.

Date of issuance: February 5, 1996.

Effective date: February 5, 1996.

Amendment Nos.: 217 and 207.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register**: January 3, 1996 (61 FR 182).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 5, 1996.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: December 8, 1995 (TS 95–20).

Brief description of amendments: The amendments decrease the frequency for conducting air or smoke tests of the containment spray system headers and Residual Heat Removal System headers from every 5 years to every 10 years to verify each spray nozzle is unobstructed.

Date of issuance: February 7, 1996.

Effective date: February 7, 1996.

Amendment Nos.: 218 and 208.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register**: January 3, 1996 (61 FR 182).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 7, 1996.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: November 22, 1993 supplemented May 5 and December 20, 1995.

Brief description of amendment: The amendment revised the Technical Specifications to reflect the replacement of analog temperature instrumentation associated with leak detection with digital equipment.

Date of issuance: January 29, 1996.

Effective date: January 29, 1996, and implemented not later than 120 days following startup from the fifth refueling outage.

Amendment No.: 79.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 12, 1994 (59 FR 24752).

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated January 29, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: November 2, 1995, supplemented January 26, 1996.

Brief description of amendment: The amendment only revised the containment personnel air lock Technical Specifications and added a license condition to allow the air locks to be open in Modes 4 and 5 during core alterations except for movement of recently irradiated fuel. All other provisions of the request are being deferred for further review.

Date of issuance: February 2, 1996.

Effective date: To be implemented not later than 90 days after issuance.

Amendment No. 80.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications and added a license condition.

Date of initial notice in **Federal Register:** December 6, 1995 (60 FR 62497) The supplemental letter provided clarification of administrative controls that will be in place, did not change the initial no significant hazards consideration determination, and was within the scope of the notice issued December 6, 1995.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 2, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: December 30, 1995, as supplemented by letters dated July 28, (TXX–95187), September 14, (TXX–95235), and November 29, 1995 (TXX–95299), and January 2, 1996 (TXX–96–003).

Brief description of amendments: These changes authorized usage of the high density fuel storage racks, to increase the spent fuel storage capacity, and to adopt the wording, content, and format of the Improved Standard Technical Specifications.

Date of issuance: February 9, 1996.

Effective date: February 9, 1996.

Amendment Nos.: Unit 1—Amendment No. 46; Unit 2—Amendment No. 32.

Facility Operating License Nos. NPF–87 and NPF–89. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1995 (60 FR 6313).

The additional information contained in the supplemental letters dated July 28, (TXX–95187), September 14, (TXX–95235), and November 29, 1995 (TXX–95299), and January 2, 1996 (TXX–96–003), was clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in an Environmental Assessment dated February 9, 1996, and a Safety Evaluation dated February 9, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: September 19, 1995.

Brief description of amendments: The amendments increase the surveillance test interval for the turbine reheat stop and intercept valves from at least once per 31 days to at least once per 18 months, extend the visual and surface disassembly inspection interval of the turbine reheat stop and intercept valves to 60 months and revise the inspection criteria for the throttle, governor, reheat stop, and reheat intercept valve disassembly inspections.

Date of issuance: February 8, 1996.

Effective date: February 8, 1996.

Amendment Nos.: 195 and 176.

Facility Operating License Nos. NPF–4 and NPF–7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 25, 1995 (60 FR 54725).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 8, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: November 20, 1995, as supplemented January 23, 1996.

Brief description of amendments: The amendments revise the North Anna Units 1 and 2 Technical Specifications to permit the use of 10 CFR Part 50, Appendix J, Option B, Performance-Based Containment Leakage Rate Testing.

Date of issuance: February 9, 1996.

Effective date: February 9, 1996.

Amendment Nos.: 196 and 177.

Facility Operating License Nos. NPF–4 and NPF–7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 20, 1995 (60 FR 65685). The January 23, 1996 supplement provided clarifying information that was within the scope of the December 20, 1995 notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 9, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of no Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By March 29, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the

effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (*Project Director*): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Duke Power Company, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: February 6, 1996.

Brief description of amendments: The amendments revised Technical Specification Section 3.16, "Containment Hydrogen Control Systems." The change adds a footnote to TS 3.16.3.b. to allow a one-time outage duration extension in regard to the Containment Hydrogen Control System flow path. This extension is necessary to install and test plant modifications, which will allow the Containment Hydrogen Control System to perform as designed, without the potential for inoperability due to water accumulation in the flow path.

Date of Issuance: February 7, 1996.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1–214–Unit 2–214–Unit 3–211.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 7, 1996.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street NW., Washington, DC 20036.

NRC Project Director: Herbert N. Berkow.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: February 10, 1996.

Brief description of amendment: The amendment revises Technical Specifications (TS) Surveillance Requirements 4.7.6.c.2, 4.7.6.d, 4.9.11.b.2 and 4.9.11.c regarding the testing methodology utilized by Virgil C. Summer Nuclear Station, which determines the operability of the charcoal filters in the engineering safety features air handling units.

Date of issuance: February 10, 1996.

Effective date: February 10, 1996.

Amendment No.: 131.

Facility Operating License No. NPF–12: Amendment revises the TS.

The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration, are contained in a Safety Evaluation dated February 10, 1996.

Public comments requested as to proposed no significant hazards consideration: No.

No significant hazards consideration comments received: None.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180.

Dated at Rockville, Maryland, this 21st day of February 1996.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–4342 Filed 2–27–96; 8:45 am]

BILLING CODE 7590–01–P

Availability of Draft Branch Technical Position on the Use of Expert Elicitation in the High-Level Waste Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of the "Draft Branch Technical Position (BTP) on the Use of Expert Elicitation in the High-Level Waste (HLW) Program."

DATES: The comment period expires May 14, 1996.

ADDRESSES: Send comments to Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555–0001. ATTENTION: Docketing and Services Branch. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland 20852–2738, between 7:45 a.m. and 4:15 p.m., on Federal workdays.

A copy of the draft BTP is available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street (Lower Level), NW., Washington, DC 20555–0001. Copies of the draft BTP may also be obtained by contacting Karen S. Vandervort, Mail Stop T–7F3, U.S. Nuclear Regulatory Commission. Telephone: (301) 415–7252.

FOR FURTHER INFORMATION CONTACT: Michael P. Lee, Performance Assessment and High-Level Waste Integration Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, 11545 Rockville Pike, MD 20852–2738. Telephone: (301) 415–6677.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) is conducting a program of site characterization to gather enough information, about the Yucca Mountain (Nevada) site, to be able to evaluate the waste isolation capabilities of a potential geologic repository. Should the site be found suitable, DOE will apply to the NRC for permission to construct and then operate a proposed geologic repository for the disposal of spent nuclear fuel and other high-level radioactive waste at Yucca Mountain. As with other licensing decisions, NRC's decision to grant or deny a license for a proposed repository will be based on a combination of fact and judgment, as set forth by DOE in any potential license application. The subjective judgments of individual experts and, in some cases, groups of experts, will be used by DOE to interpret data obtained during site characterization and to address the many technical issues and inherent uncertainties associated with predicting the performance of a geologic repository system for thousands of years. NRC has traditionally accepted, for review, expert judgment to evaluate and interpret the factual bases of license applications. Judgment has been used to complement and supplement other sources of scientific and technical information, such as data collection, analyses, and experimentation.

The NRC staff has developed specific technical positions that: (1) Provide general guidelines on those circumstances that may warrant the use of a formal process for obtaining the judgments of more than one expert (*i.e.*, expert elicitation); and (2) describe acceptable procedures for conducting expert elicitation when formally elicited judgments are used to support a demonstration of compliance with NRC's geologic disposal regulation, currently set forth in 10 CFR Part 60.

Current NRC policy is to encourage the use of probabilistic risk assessment (PRA) state-of-the-art technology and methods as a complement to the deterministic approach in nuclear regulatory activities (60 FR 42622). Although routinely used in deterministic analyses that do not involve PRA (or performance assessments, in the case of waste management systems) expert judgment can, and frequently does, provide information essential to the conduct of probabilistic assessments. Consistent with the Commission's policy, the NRC staff has developed this BTP to identify acceptable procedures for the use and formal elicitation of such judgments in the area of HLW.

Although there are several examples of the use of expert elicitation in a nuclear regulatory context, no formal Agency guidance on this subject exists. Thus, in developing this BTP, the Division of Waste Management staff has drawn upon the prior experience of other NRC program offices with the use of expert judgment and has relied on various Agency resource documents to help formulate its position statements. Consequently, the reader will find that this BTP is largely consistent with these other resource documents in substance.

Subsequent to the finalization of this BTP, the staff may elect to develop guidance on the use of expert judgment in other areas of nuclear industry regulation.

Dated at Rockville, Maryland, this 20th day of February 1996.

For the Nuclear Regulatory Commission.

John H. Austin, Chief,

Performance Assessment and High-Level Waste Integration Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–4484 Filed 2–27–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 36871; File No. SR–CSE–96–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange Relating to Exchange Rule 11.10, National Securities Trading System Fees

February 22, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 21, 1996 The Cincinnati Stock Exchange ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby amends Rule 11.10 regarding fees imposed by the Exchange. The text of the proposed rule change is as follows (new text is italicized; deleted text is bracketed):

Rule 11.10 National Securities Trading System Fees

A. Agency Transactions

As is the case [Except] for Preferenced transactions, members acting as an agent will be charged [$0.0025 per share ($0.25/100 shares)] *the per share incremental rates as noted below* for public agency transactions. [except that there will be no transaction fee charge for public agency limit orders executed from the CSE limit order book.]

Avg. daily share* volume	Charge Per share
1 to 250,000	$0.0020
250,001 to 500,000	0.0015
500,001 to 1,000,000	0.0013
1,000,001 to 1,500,000	0.0009
1,500,001 and higher	0.0007

*Odd-lot shares excluded.

B. through M. No Change

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1 Purpose

The Exchange has determined to amend the fee charged agency limit and market orders executed through the facilities of the Exchange's limit order and automated execution book such that the fee imposed upon agency market and limit orders executed through that facility will be the same as the fee charged members that preference agency orders.

2. Statutory Basis

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[2] in general and furthers the objectives of Section 6(b)(4)[3] particular in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78f(b).

[3] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[4] and subparagraph (e) of Rule 19b–4 thereunder.[5]

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Cincinnati Stock Exchange. All submissions should refer to File No. SR–CSE–96–03 and should be submitted by March 20, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4494 Filed 2–27–95; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4.

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–36868; File No. SR–PCC–96–01]

Self-Regulatory Organizations; Pacific Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Amending Certain Provisions of the Pacific Clearing Corporation Rules and Participant Agreement

February 21, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (Act),[1] notice is hereby given that on February 14, 1996, the Pacific Clearing Corporation ("PCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–PCC–96–01) as described in Items I and II below, which Items have been prepared primarily by PCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCC proposes certain amendments to its rules and Participants Agreement to accommodate the securities industry's conversion to same-day funds[2] settlement ("SDFS") scheduled for February 22, 1996. The proposal also seeks to make technical clarifications to certain of its rules unrelated to the conversion to SDFS.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCC has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.[3]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The term "same-day funds" refers to payment in funds that are immediately available and generally are transferred by electronic means.

[3] The Commission has modified the text of the summaries submitted by PCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On February 22, 1996, the securities industry is scheduled to convert money settlement of securities transactions (*i.e.*, corporate and municipal securities) and principal and interest payments from next-day funds[4] settlement ("NDFS") to SDFS. In the SDFS environment, the daily trade settlement amounts must be paid in same-day funds rather than next-day funds as is currently the standard. The conversion will affect payments for settlements among clearing corporations (*e.g.*, PCC), depositories, and financial intermediaries and between financial intermediaries and their institutional clients. The conversion will not affect payments to and from retail investors.

The amendments to PCC Rules 2.2(d) and 3.4(e) are designed to ensure that PCC can effect daily money settlement with specialist firms and the National Securities Clearing Corporation ("NSCC") in a timely manner. Specifically, Rule 2.2, governing the financial responsibility and operational capability of PCC members, is being amended to provide that PCC may collect additional deposits from members to assure adequate financial responsibility or operational capability. Rule 3.4, governing settlement of member accounts, is being amended to require that members provide funds to PCC for settlement in a manner and form acceptable to PCC. Rule 7.4 is also being amended to require, at PCC's discretion, that a portion of the funds shall be held in a form directly accessible by PCC. The proposal makes similar changes to PCC's participants agreement.[5] The changes will allow PCC to modify its cash management system to minimize wire transfers between PCC and firm bank accounts.

The amendments to PCC Rule 2.1(b), governing membership, and to Rules 7.4 and 7.5(c)(i), governing the clearing fund, are clarifications of language and do not change the substance of these rules.[6] The changes are not related to the conversion to SDFS.

PCC believes the proposed rule change is consistent with Section

[4] The term "next-day funds" refers to payment by means of certified checks passing between the clearing corporation and its members.

[5] The amendments to the Participants agreement are to paragraphs 3.1(c)(ii) and (iii) regarding cashiering services, 3.1(e)(i) and (ii) regarding back office services, and 4.6 regarding obligations of participants.

[6] The specific changes being made to these rules are attached to PCC's proposed rule change as Exhibit A, which is available in the Commission's Public Reference Room or through PCC.

17A(b)(3) because it is designed to promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PCC does not believe the proposed rule changes will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments were received from members.

III. Date on Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[7] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes PCC's proposed rule change is consistent with PCC's obligations under Section 17A(b)(3)(F) because the proposed rule change should facilitate PCC's conversion entirely to an SDFS system by including provisions in PCC's rules to enable PCC to settle with its participants and NSCC in same day funds. The amended rules and Participants Agreement should provide PCC with prompt receipt of or access to members' funds, which will be necessary to settle in a timely manner in an SDFS environment. The overall conversion to an SDFS system should help reduce systemic risk by, among other things, eliminating overnight credit risk. The SDFS system also should reduce risk by achieving closer conformity with the payment methods used in the derivatives markets, government securities markets, and other markets.

PCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for so approving the proposed rule change because the proposed rule change modifies PCC's rules in anticipation of PCC's and the securities industry's conversion to an SDFS system on February 22, 1996. Accelerated approval of the proposal will allow PCC to effect the conversion and to implement the safeguards provided under the rules and amended Participants Agreement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 522, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of PCC. All submissions should refer to SR–PCC–96–01 and should be submitted by March 20, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File Nos. SR–PCC–96–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4450 Filed 2–27–96; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[8] 17 CFR 200.30–3(a)(12) (1995).

DEPARTMENT OF STATE

[Public Notice No. 2341]

U.S. State Department Overseas Security Advisory Council; Notice of Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Friday, March 15, 1996, at the DoubleTree Guest Suites, Fort Lauderdale, Florida. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c) (1) and (4), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–1003, phone: 202–663–0869.

Dated: February 16, 1996.

William D. Clarke,

Acting Director of the Diplomatic Security Service.

[FR Doc. 96–4530 Filed 2–27–96; 8:45 am]

BILLING CODE 4710–24–M

[Public Notice 2347]

Secretary of State's Advisory Committee on Private International Law; General Meeting on Developments in Private International Law

There will be a general meeting of the Secretary of State's Advisory Committee on Private International Law (ACPIL) on Friday, March 15, 1996 from 9:30 a.m. to 4:30 p.m. at the Department of State in Washington, D.C.

The meeting agenda will include a review of developments in international organizations specializing in this field of work, including the International Institute for Unification of Private Law (UNIDROIT), the Hague Conference on Private International Law, the United Nations Commission on International Trade Law (UNCITRAL), Inter-American Specialized Conferences on Private International Law (CIDIP) sponsored by the Organization of American States (OAS), and other international organizations, as appropriate.

The principal topics for discussion will include a review of two multilateral treaties (conventions) adopted in 1995—the UNIDROIT convention on return of stolen and illegally exported cultural property, completed at Rome in June, 1995, and the United Nations convention on independent financial guarantees (including European law-based direct bank guarantees and American law-based standby letters of credit, as well as commercial letters of credit), approved by the UN General Assembly on December 11, 1995. Both Conventions have been opened for signature and ratification.

Other topics will cover developments in international family law, focussing on recent efforts to provide for more effective international enforcement of

support obligations, as well as issues expected to arise in connection with the final Hague Conference negotiations on a convention on protection of children (jurisdiction and recognition of custody decrees) and other matters concerning children. Finally, with a view to enhancing private law unification in the Americas, the process and resources committed by the OAS to the OAS-sponsored Specialized Conferences on Private International Law will be discussed, and recommendations sought for practical ways in which that process can be improved. Alternatives to the OAS process may also be considered.

Persons interested but unable to attend the meeting are welcome in writing to request documents and to submit comments or proposals to the office indicated below. Additional topics may be considered depending on time available. In order to facilitate planning for the meeting, members of the public are requested to propose in writing to the office below any topics on which they may wish to comment.

Members of the general public may attend up to the capacity of the meeting room and participate subject to the direction of the Chair. The meeting will be held in Conference Room 1107 at the Department of State; entry should be only via the Diplomatic entrance at 22d and "C" Streets, N.W. As access to the building is controlled, in order to expedite entry, the office indicated below should be notified by mail or fax not later than Monday, March 11 of the name, address, firm or affiliation if any, social security number and date of birth of persons wishing to attend.

Additional meeting—following the general Advisory Committee meeting, a meeting of the Committee's study Group on cross-border insolvency will meet on Saturday, March 16, from 10 a.m.–3 p.m. That meeting will take place at the International Law Institute, 1615 New Hampshire Avenue, N.W. Persons wishing to attend should notify the office below in advance.

For information on the Department's program in this field or for copies of documents on particular topics, please contact by mail the Office of the Assistant Legal Adviser for Private International Law (L/PIL), attention Harold S. Burman, at 2430 "E" Street, N.W., Suite 355 South Building, Washington, D.C. 20037–2800, or notify Ms. Gonzales by fax at (202) 776–8482.

Dated: February 21, 1996.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law, U.S. Department of State.

[FR Doc. 96–4470 Filed 2–27–96; 8:45 am]

BILLING CODE 4710–08–M

[Public Notice No. 2348]

State Department Advisory Committee Study Group Meeting on UNCITRAL Project on Cross-Border Insolvency

The Study Group on Cross-Border Insolvency of the Secretary of State's of State's Advisory Committee on Private International Law (ACPIL) will hold its next meeting on Saturday, March 16 from 10 A.M. to 3 P.M. to review international efforts to harmonize rules on cross-border insolvency cases involving commercial entities.

The meeting will review the recent Report by the United Nations Commission on International Trade Law (UNCITRAL) Working Group on Insolvency Law, which met in November 1995 to consider possible standards for procedural aspects of cross-border insolvency. No decision has been made as to the form any proposed rules should take, i.e. whether to prepare UN guidelines, consensual rules, a model or uniform law, or a multilateral treaty. The Advisory Committee Study Group meeting will facilitate preparation of possible United States positions for the next meeting of the UNCITRAL intergovernmental Working Group in April, 1996, and consider other United States initiatives as well.

UNCITRAL decided at its Plenary session in May, 1995 to work primarily on procedural, rather than substantive, rules. Based on the Report referenced above, this is likely to cover judicial cooperation, jurisdiction, access to proceedings for foreign trustees and other interests, the relationship between primary, ancillary and secondary proceedings, and related matters. Other procedure concerns may be taken up at this stage in the U.N. process, depending on the interests of participating countries. Future issues, such as substantive law involving priorities of claims and distribution could be considered, if at all, at a later stage.

The relationship of the UNCITRAL project generally to U.S. interests, and its impact on facilitation of international trade will be considered. Current projects by other organizations will be referred to where relevant, including the American Law Institute's project on harmonization of bankruptcy law between the NAFTA states, the International Bar Association's Concordat, the recent European Union proposed treaty on cross-border insolvency, as well as work by INSOL, the American Bankruptcy Institute, and others.

Background documents include the Report of the UNCITRAL Working Group, Dec. 1, 1995, UN Doc. A/CN.9/419; and a Report by INSOL (International Association of Insolvency Practitioners) on the Joint Project of UNCITRAL and INSOL, March 1, 1995. Copies of these documents, as well as the IBA and European Union documents referred to, are available from the Legal Adviser's Office at the address indicated below.

The meeting will be held at the International Law Institute, 1615 New Hampshire Avenue, N.W., Washington, DC 20009 and is open to the public up to the capacity of the meeting room and subject to the rulings of the Chair. Since space is limited, persons wishing to attend should advise Ms. Gonzales of the Office of Legal Adviser (L/PIL), Suite 355 South Building, 2430 "E" Street, N.W., Washington, DC 20037–2800, fax (202) 776–8482. Persons who cannot attend the meeting are welcome to submit comments to the Legal Adviser's Office. For further information on this project or on UNCITRAL, please contact Harold S. Burman at the above address or at (202) 776–8420. For information on meeting arrangements, please contact Stuart Kerr of the International Law Institute at (202) 483–3036.

Dated: February 21, 1996.

Harold S. Burman,

Executive Director, Secretory of State's Advisory Committee on Private International Law.

[FR Doc. 96–4469 Filed 2–27–96; 8:45 am]

BILLING CODE 4710–08–M

TENNESSEE VALLEY AUTHORITY

Integrated Resource Plan

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of Record of Decision.

SUMMARY: This notice is provided in accordance with TVA's procedures implementing the National Environmental Policy Act. TVA has decided to adopt the preferred alternative identified in its final programmatic environmental impact statement (EIS), "Energy Vision 2020, Integrated Resource Plan." The Final EIS was made available to the public on December 21, 1995. The TVA Board of Directors decided to adopt the preferred alternative at its February 21, 1996, public meeting. Under the preferred alternative, TVA has identified a portfolio of energy resource options that it can deploy to meet future energy demands on the TVA power system over the next 25 years. In addition, a short term action plan identifies actions that TVA plans to take over the next three years.

FOR FURTHER INFORMATION CONTACT: Lynn Maxwell, Manager, System Integration, Tennessee Valley Authority, 1101 Market Street, MR 3K, Chattanooga, Tennessee 37402, (423) 751–2539.

SUPPLEMENTAL INFORMATION: TVA is a corporate agency of the United States Government. It operates the Nation's largest public power system. This power system provides power to an 80,000 square mile area, in parts of Tennessee, Alabama, Georgia, Mississippi, Kentucky, North Carolina, and Virginia. Through independent power distributors, TVA serves more than 7.5 million people. TVA also directly serves more than 60 large industrial and Federal installations. The power produced by TVA constitutes approximately 4 to 5 percent of all of the electricity generated in the Nation.

Under the 1992 National Energy Policy Act, TVA has been directed to employ a least-cost energy planning process for the addition of new energy resources to its power system. This Act also requires TVA to provide distributors of TVA power an opportunity to participate in the planning process. In response to this directive, TVA began an integrated resource planning (IRP) process in February 1994. Although TVA prepares project-specific environmental reviews for proposed energy resource decisions, TVA committed to employing a public IRP process and decided to use the EIS process to obtain public input on the IRP itself. Energy Vision 2020 is the result of this commitment and process.

An IRP is simply a plan which broadly identifies the actions which a utility anticipates taking to meet demands for electric service and to achieve its long-term goals and objectives. TVA announced at the outset that its long-term objective was to maintain and enhance its competitiveness. "Competitiveness" for purposes of Energy Vision 2020 was viewed as not only maintaining low electric rates and reliable service, but also fostering sustainable economic development and protecting environmental quality.

Future Demands on the TVA System

In order to determine future power needs on a utility system, both the utility's existing energy resources and forecasted future demands must be considered. TVA's existing energy resources have a total generating capacity of 25,600 megawatts. (This does not include TVA's Browns Ferry Nuclear Unit 3 and Watts Bar Nuclear Unit 1. These units were only recently restarted and started, respectively (November 1995). Browns Ferry Unit 3 is already returned to commercial operation and Watts Bar Unit 1 is expected to begin commercial operation in Spring 1996. The combined capacity of these two units is 2,235 megawatts.) Under its medium load forecast, TVA expects to need an additional 6,250 megawatts of energy resources by Year 2005 and 16,500 megawatts by Year 2020. Peak loads on the system in Year 2020 are expected to be about 40,300 megawatts.

TVA uses state-of-the-art energy forecasting models to predict future demands on its system. Because of the substantial uncertainty in predicting future demands, TVA develops three load forecasts: a high, medium, and low. The high forecast has a 90 percent probability of not being exceeded. The medium forecast has a 50 percent probability of not being exceeded. The low forecast has a 10 percent probability of not being exceeded. The Year 2020 peak loads under the high and low forecasts are 56,400 megawatts and 24,400 megawatts, respectively. If future demands approach the high forecast, TVA would need up to 36,000 megawatts of additional energy resources to meet that demand. If demands are closer to the low forecast, TVA would need no additional resources.

Alternatives Considered

The energy resource alternatives formulated for Energy Vision 2020 were the result of an extensive public and analytical process. Several different mechanisms were used to obtain public input at the scoping stage, including surveys of local opinion leaders, extensive interaction with members of a stakeholders group for over a year, 12 public meetings, and a nine-month period in which to submit written comments. After release of the draft IRP and EIS, TVA provided more than 80 days for public review and comment. During this period, TVA held nine public meetings throughout the TVA region on the IRP and EIS.

The primary analytical method used for Energy Vision 2020 was the multi-attribute tradeoff method. This approach allowed TVA to quantitatively integrate the identified environmental impacts of proposed energy resource strategies and to formulate alternative strategies to mitigate adverse environmental impacts while retaining other beneficial characteristics of specific strategies.

Energy resource strategies are created from different combinations of energy resource options. Energy resource options are either supply-side options (e.g., new generating resources such as coal-fired or nuclear units, gas-fired combustion turbines, repowering of existing units, integrated gasification, or wind turbines), or customer service options (e.g., demand-side management actions, including energy efficiency improvements and energy conservation, or beneficial electrification). In TVA's Energy Vision 2020 process, these options were first screened for acceptable performance using multiple criteria, including environmental criteria. These criteria were developed from public input and TVA's objectives.

TVA developed 2,000 energy resource strategies from more than 100 supply-side and 60 customer service options. These strategies were then analyzed through the use of computer models to identify combinations of resource options that best met the evaluation criteria and that effectively dealt with various uncertainties (such as increased stringency of environmental regulations, changes in natural gas prices, or changes in forecasted demands).

The multi-attribute tradeoff method allowed potential environmental impacts of each strategy to be compared to all other evaluation criteria (such as debt, electric rates, and economic development) and to all other strategies on an objective basis. This process identified where real tradeoffs existed. One of the most important tradeoffs occurred between better environmental performance and electric rates because achieving better environmental performance typically produces higher costs and higher electric rates. However, the integrated resource planning process used by TVA allowed it to reformulate strategies repeatedly to produce strategies that performed better across all criteria, including environmental criteria. Potential tradeoffs among criteria were reduced or eliminated. This was done by replacing resource options with undesirable or less desirable effects with options which produced more desirable effects. Eventually, this integration process produced seven final alternative strategies that performed well across all of the criteria, including environmental criteria.

As a result of the multi-attribute integration process, the final seven strategies consisted of similar, although not identical, energy resource options and they tended to produce similar environmental impacts. All of the strategies performed reasonably well from an environmental impact

standpoint and all performed better environmentally than the "no action" alternative. (TVA defined "no action" as the actions that it would likely have taken to meet future demands in the absence of the proposed IRP. Those actions include adding more combustion turbines and coal fired units to the system.)

For almost every air and water quality impact category, the seven final strategies showed improvement. Although coal usage on the TVA system is projected to increase under all of the final alternative strategies, sulfur dioxide emissions are projected to decrease in Year 2020 from 1996 levels by 47 to 51 percent depending on the strategy. System nitrogen oxide emissions are projected to decline in Year 2000 from 1996 levels by 10 to 20 percent, then increase, but still remain 3 to 13 percent below 1996 levels. This indicates that TVA's contribution to ozone, visibility, and acid rain related impacts should be reduced regardless of the final strategy employed. In contrast, greenhouse gas emissions from the TVA system are projected to increase under all strategies by 25 to 38 percent. This increase is still less than that projected for the no-action alternative (it results in a 52 percent increase) and on a per unit of electric energy basis produced 10 to 15 percent less than that produced by the existing system. This means that the efficiency of the TVA system is improved under the final seven alternatives.

Water quality impacts vary little across the final alternatives. EIS analyses indicated that improving the efficiency of TVA's existing hydroelectric units would be environmentally beneficial compared to impacts associated with building new hydroelectric units or other supply-side resources. The only noticeable difference among the final alternatives is that those strategies which employ more repowering options produce less water quality impacts. A similar reduction in potential air quality impacts also occurs when more repowering options are used.

Most potential land-related impacts are site-specific and would result from implementation of specific resource options. These kinds of impacts will be examined in subsequent site specific reviews. Energy Vision 2020 did look at more generic land-related impacts that are associated with the potential "footprint" of resource options. The larger the footprint (the size of the site needed for an option) the more likely there will be adverse land-related environmental impacts. Energy Vision 2020 concluded that due to the availability of appropriate sites in the TVA region, potential land impacts do not pose a constraint. It also concluded that wind turbines posed the greatest risk of adverse land impacts because of their footprint (2,000 megawatts of wind turbines would require up to 50,000 acres).

Preferred Alternative

Rather than select a discrete energy resource strategy from among the final seven strategies as its "preferred" alternative, TVA identified a "portfolio" of energy resource options as its preferred strategy. All of the energy resource options included in the final seven strategies have been included in this portfolio. In addition, the portfolio includes several other resource options that respond particularly well to certain uncertainties. It also includes other options and actions that the TVA Board directed be included to respond to public comments on the draft IRP and EIS that TVA needed to include more renewable energy resources and demand side management programs.

One of the important conclusions that TVA reached in Energy Vision 2020 was that future events (uncertainties) will likely require changes in any discrete energy strategy. The utility industry is entering an era of significant changes as it moves from a regulated to a less regulated environment. This substantially heightens the already large uncertainties associated with long-range utility planning. Consequently, flexibility in resource option selection and implementation is highly valued. Flexibility heightens a utility's ability to respond to events as they unfold.

The portfolio alternative provides more flexibility than any discrete strategy. Much like a portfolio of stocks is chosen to manage risk and accomplish specific objectives, TVA's preferred portfolio alternative better enables TVA to meet customer needs at an acceptable level of risk and still meet the objectives of balancing costs, rates, environmental impacts, debt, and economic development.

Portfolio options include: combustion turbines, the purchase of options for both base load and peaking power, improvements to the existing hydro system, purchases from independent power producers, combined cycle repowering of coal-fired plants, use of landfill and coalbed methane and refuse derived fuel, converting TVA's Bellefonte Nuclear Plant to an integrated combined cycle gasification plant with a chemical coproduct, one additional coal unit at TVA's Shawnee fossil plant, demand-side management programs, beneficial electrification programs, compressed air energy storage, wind turbines, a coal refinery, a biomass energy facility, and cascaded humidified advanced turbines. As events unfold, TVA can decide which of the portfolio options to deploy. Prior to deploying a specific resource option, TVA would conduct an appropriate site- or project-specific environmental review that tiers off of Energy Vision 2020.

The impacts that result from TVA's portfolio alternative depend on the energy resource options eventually deployed. Although these impacts cannot be definitively assessed at this programmatic level, the impacts identified for the final seven strategies are likely to bound those of the portfolio. It is unlikely that implementation of portfolio options will achieve better or worse environmental performance than those identified for the final seven alternative strategies.

The TVA Board decided to adopt the portfolio alternative as TVA's long-range energy resource strategy for the reasons given above. The portfolio provides the TVA Board and future Boards with a flexible energy plan that will help guide the strategic actions necessary for TVA to serve its energy customers efficiently, and to compete and succeed in the electric utility marketplace in the future. Because the Energy Vision 2020 process integrated economic development and environmental goals with other financial goals, TVA's portfolio of energy resources will allow it to use innovative approaches to meet future demands at competitive prices while providing opportunities for economic growth and a quality environment rich in natural resources.

Because the multi-attribute tradeoff integrated process produced final strategies with very similar environmental impacts, there is not an alternative which is clearly environmentally preferable. However, TVA's preferred alternative, the Energy Vision 2020 portfolio, contains all of the resource options that perform best under the environmental criteria and from this perspective, the portfolio can be viewed as environmentally preferable.

Mitigation and Monitoring Measures

As TVA deploys specific energy resource options, it will appropriately mitigate site-specific environmental impacts. However, the most important mitigative measure associated with Energy Vision 2020 is the multi-attribute tradeoff method used to develop and evaluate energy resource strategies. This method allowed TVA to reformulate strategies in order to reduce potential environmental impacts.

Dated: February 22, 1996.

William J. Museler,

Senior Vice President, Transmission/Power Supply Group.

[FR Doc. 96–4497 Filed 2–27–96; 8:45 am]

BILLING CODE 8120–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Essex County, New York

AGENCY: Federal Highway Administration (FHWA), New York State Department of Transportation (NYSDOT).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the town of Jay, Essex County, New York.

FOR FURTHER INFORMATION CONTACT: Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431–4127, or Richard A. Maitano, Regional Director, New York State Department of Transportation, Region 1, 84 Holland Avenue, Albany, New York 12208, Telephone: (518) 474–6178.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the NYSDOT, will be preparing an Environmental Impact Statement (EIS) on a proposal to replace the County Route (CR) 22 bridge over the east branch of the Ausable River. The proposed improvement will involve the replacement of the existing bridge, and reconstruction of the route for a length sufficient to accommodate the new bridge location.

The bridge replacement would improve Glen Road (CR 22) as a transportation link over the east branch of the Ausable River.

Alternatives under consideration include: (1) No action; (2) rehabilitation of the existing structure; and (3) replacement with a new structure. Variations to horizontal and vertical alignment will also be studied with the various build alternatives.

Based on studies done to date, issues that need to be analyzed in depth include the visual resources, historic and cultural resources, land use, adjacent right-of-way, recreational rivers, and floodplains. The project's effect on features such as the National Register eligible Jay Covered Bridge, the east branch of the Ausable River, and the Adirondack Park will be addressed.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, State and local agencies, public officials, various organizations and citizens who have previously expressed interest in this proposal. No formal scoping meeting is planned at this time. A public information meeting will be held after additional study. After the Draft EIS is prepared, it will be made available for agency and public review and comment. This will be followed by a public hearing for which a public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or NYSDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on: February 20, 1996.

Harold J. Brown,

Division Administrator, Federal Highway Administration, Albany, New York.

[FR Doc. 96–4538 Filed 2–27–96; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

February 8, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1076.

Form Number: IRS Form 8807.

Type of Review: Revision.

Title: Certain Manufacturers and Retailers Excise Taxes.

Description: Form 8807 is used to compute the excise tax on fishing equipment, bows and arrows, trucks and trailer chassis and bodies and tractors and the luxury tax on passenger vehicles. (IRC sections 4051, 4161, and 4001).

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 46,746.

Estimated Burden Hours Per Respondent/Respondent:

	8807 Part I	8807 Part II	Worksheet I
Recordkeeping	3 hr., 21 min.	4 hr., 18 min.	1 hr., 26 min.
Learning about the law or the form	12 min.	0 min.	0 min.
Preparing and sending the form to the IRS	16 min.	4 min.	1 min.

Frequency of Response: Quarterly.

Estimated Total Reporting/Recording Burden: 148,618.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–4532 Filed 2–27–96; 8:45 am]

BILLING CODE 4830–01–P

Submission to OMB for Review; Comment Request

February 6, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980.

Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1479.
Regulation ID Number: IA–41–93 NPRM and Temporary.
Type of Review: Extension.
Title: Automatic Extension of Time for Filing Individual Income Tax Returns.
Description: An application for an automatic 4-month extension of time to file an individual income tax return no longer requires a signature and full remittance of the amount properly estimated as tax that is unpaid as of the due date of the return.
Respondents: Individuals or households.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–4531 Filed 2–27–96; 8:45 am]

BILLING CODE 4830–01–P

Customs Service

Proposed Collection; Comment Request, Permit to Transfer Containers to a Container Station

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Permit to Transfer Containers to a Container Station. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before April 29, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Norman Waits, Room 6216, 1301 Constitution Avenue N.W., Washington, D.C. 20229, Tel. (202) 927–1551.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Permit to Transfer Containers to a Container Station.
OMB Number: 1515–0138.
Form Number: N/A.
Abstract: This information collection is needed in order for a container station operator to receive a permit to transfer a container or containers to a container station, he/she must furnish a list of names, addresses, etc., of the persons employed by him/her upon demand by Customs officials.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change).
Affected Public: Business or other for-profit institutions.
Estimated Number of Respondents: 1,200.
Estimated Time Per Respondent: 20 minutes.
Estimated Total Annual Burden Hours: 400.
Estimated Annualized Cost to the Public: $7,192.

Dated: February 16, 1996.

V. Carol Barr,

Leader, Printing and Records Services Group.

[FR Doc. 96–4301 Filed 2–27–96; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request, Bonded Warehouses: Alterations, Suspensions, Relocations, and Discontinuance

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Bonded Warehouses: Alterations, Suspensions, Relocations, and Discontinuance. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before April 29, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Norman Waits, Room 6216, 1301 Constitution Avenue N.W., Washington, D.C. 20229, Tel. (202) 927–1551.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this

document Customs is soliciting comments concerning the following information collection:

Title: Bonded Warehouses: Alterations, Suspensions, Relocations, and Discontinuance.
OMB Number: 1515–0134.
Form Number: N/A.
Abstract: This information collection is in the form of a written application, required by Customs from a proprietor of a bonded warehouse in order to alter, relocate, suspend or discontinue a bonded warehouse. This is to the benefit of the proprietor and to protect the revenues of the United States.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change).
Affected Public: Business or other for-profit institutions.
Estimated Number of Respondents: 165.
Estimated Time Per Respondent: 70 minutes.
Estimated Total Annual Burden Hours: 193.
Estimated Annualized Cost to the Public: $3,860.

Dated: February 16, 1996.

V. Carol Barr,

Leader, Printing and Records Services Group.

[FR Doc. 96–4300 Filed 2–27–96; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request, Establishment of a Bonded Warehouse

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Establishment of a Bonded Warehouse. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before April 29, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Norman Waits, Room 6216, 1301 Constitution Avenue NW., Washington, DC 20229, Tel. (202) 927–1551.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is establishing a bonded warehouse.

Title: Establishment of a Bonded Warehouse.
OMB Number: 1515–0121.
Form Number: N/A.
Abstract: This information collection is in the form of an application required by Customs from owners or lessees desiring to establish a bonded warehouse. The information provided is used by Customs to insure that the legal, regulatory and administrative requirements are met by the respondents. The application is accompanied by other supporting documents which any commercial operation would have in the course of business.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change).
Affected Public: Business or other for-profit institutions.
Estimated Number of Respondents: 45.
Estimated Time Per Respondent: 3 hours.
Estimated Total Annual Burden Hours: 135.
Estimated Annualized Cost to the Public: $2,025.

Dated: February 16, 1996.

V. Carol Barr,

Leader, Printing and Records Services Group.

[FR Doc. 96–4299 Filed 2–27–96; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection: Comment Request; Cargo Declaration and Cargo Declaration (Outward with Commercial Forms)

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Cargo Declaration and Cargo Declaration (Outward With Commercial Forms). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before April 29, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Norman Waits, Room 6216, 1301 Constitution Avenue N.W., Washington, D.C. 20229, Tel. (202) 927–1551.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting

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comments concerning the following information collection:

Title: Cargo Declaration.

OMB Number: 1515–0078.

Form Number: CF 1302 and 1302A.

Abstract: This information collection is used by Customs for the control of cargo and pre-selectivity targeting of cargo for enforcement purposes. Customs Forms 1302 and 1302A are used by the master of a vessel to list all inward cargo onboard and for the clearance of all cargo onboard with commerical forms.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 140,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 11,662.

Estimated Annualized Cost to the Public: $1,000*

Dated: February [illegible], 1996.

V. Carol Barr

Leader, Printing and Records Services Group.

[FR Doc. 96–4298 Filed 2–27–96; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Marking Serially Numbered Substantial Holders or Containers

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Marking Serially Numbered Substantial Holders or Containers. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before April 29, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Norman Waits, Room 6216, 1301 Constitution Avenue N.W., Washington, D.C. 20229, Tel. (202) 927–1551.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Marking Serially Numbered Substantial Holders or Containers.

OMB Number: 1515–0116.

Form Number: N/A.

Abstract: The marking is used to provide for duty-free entry of holders or containers which were manufactured in the United States and exported and returned without having been advanced in value or improved in condition by any process or manufacture. The regulation also provides for duty-free entry of holders or containers of foreign manufacture if duty has been paid before.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 540.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 90.

Estimated Annualized Cost to the Public: $1,080.

Dated: February 16, 1996.

V. Carol Barr,

Leader, Printing and Records Services Group.

[FR Doc. 96–4296 Filed 2–27–96; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Report of Division

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Report of Diversion. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before April 29, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Norman Waits, Room 6216, 1301 Constitution Avenue N.W., Washington, D.C. 20229, Tel. (202) 927–1551.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Report of Diversion.

OMB Number: 1515–0071.

Form Number: CF 26.

Abstract: Customs Form 26 is used by vessel owners, masters or agents when requesting a diversion of a vessel or to petition for relief from penalties incurred as a result of unlawful diversion or both.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 2,800.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 233.

Estimated Total Annualized Cost to the Public: $3,000.

Dated: February 16, 1996.

V. Carol Barr,

Leader, Printing and Records Services Group.

[FR Doc. 96–4295 Filed 2–27–96; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request Importer Record Number "Freeze" Program

AGENCY: U.S. Custom Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Importer Record Number "Freeze" Program. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before April 29, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Norman Waits, Room 6216, 1301 Constitution Avenue N.W., Washington, D.C. 20229, Tel. (202) 927–1551.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Importer Record Number "Freeze" Program.

OMB Number: 1515–0199.

Form Number: N/A.

Abstract: This information collection is used by Customs to insure participating importers of record that they will receive any Customs transaction notifications by "freezing" certain importer identification information. This collection requires importers to designate those individuals authorized to effect name/address changes for purposes of receiving transaction notifications.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 33.

Estimated Annualized Cost to the Public: $660.

Dated: February 16, 1996.

V. Carol Barr,

Leader, Printing and Records Services Group.

[FR Doc. 96–4294 Filed 2–27–96; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request Cargo Container and Road Vehicle Certification for Transport Under Customs Seal

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Cargo Container and Road Vehicle Certification For Transport Under Customs Seal. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before April 29, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Norman Waits, Room 6216, 1301 Constitution Avenue N.W., Washington, D.C. 20229, Tel. (202) 927–1551.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Cargo Container and Road Vehicle Certification for Transport Under Customs Seal.

OMB Number: 1515–0145.

Form Number: N/A.

Abstract: This information collection is used in a voluntary program to receive internationally-recognized Customs certification that intermodel container/road vehicles meet construction requirements of international Customs conventions. Such certification facilitates International trade by reducing intermediate international controls.

*Specifically, if applicable, compare the cost of presenting the necessary information on the forms themselves, versus submitting the information electronically. Capital costs for implementing electronic capabilities and the continuing costs of electronically transmitting the information should be commented upon.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 880.

Estimated Time Per Respondent: 3.5 hours.

Estimated Total Annual Burden Hours: 3080.

Estimated Annualized Cost to the Public: $37,500.

Dated: February 16, 1996.

V. Carol Barr,

Leader, Printing and Records Services Group.

[FR Doc. 96-4293 Filed 2-27-96; 8:45 am]

BILLING CODE 4820-02-P

Proposed Collection; Comment Request; Use of Air Waybill as In-bond Document

AGENCY: Customs Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Use of Air Waybill as In-Bond Document. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before April 29, 1996, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave. NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Norman Waits, Room 6216, 1301 Constitution Avenue NW., Washington, DC 20229, Tel. (202) 927-1551.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Use of Air Waybill as In-Bond Document.

OMB Number: 1515-0186.

Form Number: CF 7512.

Abstract: This information collection is used by Customs to identify the delivering carrier, whether or not it is the initial bonded carrier, to surrender the in-bond document and serve notice of its arrival. The use of this document facilitates the movement of cargo and the delivery of in-bond freight.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 31,200.

Estimated Time Per Respondent: 2 minutes.

Estimated Total Annual Burden Hours: 1030.

Estimated Annualized Cost to the Public: $10,300.

Dated: February 16, 1996.

V. Carol Barr,

Leader, Printing and Records Services Group.

[FR Doc. 96-4290 Filed 2-27-96; 8:45 am]

BILLING CODE 4820-02-P

UNITED STATES INFORMATION AGENCY

Proposed Collection; Comment Request

AGENCY: United States Information Agency.

ACTION: Proposed collection; Comment request.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), federal agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency will make such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency (USIA) under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256. USIA is requesting approval for a revision and three-year extension of an information collection entitled "Exchange Visitor Program Application" (IAP-37), and "Update of Information on Exchange Visitor Program Sponsor" (IAP-87), under OMB control number 3116-0210 which expires March 31, 1995. To allow for the comment period, USIA will request a 90-day extension for this information collection. Estimated burden hours per response is 60 minutes for the IAP-37 and 20 minutes for the IAP-87. Respondents will be required to respond only one time.

DATES: Comments are due on or before April 29, 1996.

COPIES: Copies of the Request for Clearance (OMB 83-I), supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547, telephone (202) 619-4408; and OMB review: Mr. Jefferson Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 1002, NEOB, Washington, D.C. 20503, Telephone (202) 395-3176.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116-0210) is estimated to average 60 minutes per response for the IAP-37 and 20 minutes for the IAP-87, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. As part of its continuing effort to reduce the paperwork burden, USIA invites the general public and other Federal agencies to comment on the proposed information collection as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility; (b) the accuracy of the Agency's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information to the United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503.

Titles: "Exchange Visitor Program Application" and "Update of Information on Exchange Visitor Program Sponsor'.'

Form Numbers: IAP-37, IAP-87.

Abstract: Under the requirements of Public Law 87-256 and the Mutual Educational and Cultural Exchange Act of 1961, USIA has been delegated the authority to designate the Exchange Visitor Program for U.S. Government agencies, public and private educational and cultural exchange. The purpose of the exchange visitor program is intended to promote interchanges of persons engaged in Education, Arts, Sciences and to promote mutual understanding between the people of the U.S. and other countries. The USIA IAP-37 form is used when organizations wishing to sponsor exchange visitors from abroad must apply to USIA for a designation that will permit them to function as sponsors. The USIA IAP-87 form is used by the Exchange Visitor Sponsors to change the name of their institution and/or organization, the names of the personnel involved, address, or telephone numbers. The forms is also used to order supply of other forms, code books, or cancel the program.

Proposed Frequency of Responses:

No. of Respondents—1,550

Recordkeeping Hours—1.20

Total Annual Burden—1,000

Dated: February 22, 1995.

Rose Royal,

Federal Register Liaison.

[FR Doc. 96-4460 Filed 2-27-96; 8:45 am]

BILLING CODE 8230-01-M

Proposed Collection; Comment Request

AGENCY: United States Information Agency.

ACTION: Proposed collection; Comment request.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), federal agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency will make such a submission. USIA is requesting approval for a three-year extension of an information collection entitled "USIA Travel Survey" IAP-128, under OMB control number 3116-0211 which expires May 31, 1996. Estimated burden hours per response is 10 minutes. Respondents will be required to respond only one time.

DATES: Comments are due on or before April 29, 1996.

COPIES: Copies of the Request for Clearance (OMB 83-I), supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/ADD, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619-4408; and OMB review: Mr. Jefferson Hill, Office of Information And Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 1002, NEOB, Washington, DC 20503, Telephone (202) 395-3176.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116-0211) is estimated to average ten minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. As part of its continuing effort to reduce the paperwork burden, USIA invites the general public and other Federal agencies to comment on the proposed information collection as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility; (b) the accuracy of the Agency's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information to the United States Information Agency, M/ADD, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, DC 20503.

Title: "USIA Travel Survey".

Form Numbers: IAP-128.

Abstract: To assess the reliability and performance of the Travel Management Center (TMC) contracted by the General Services Administration (GSA). Respondents are the travelers who use the services of TMC. The travelers include U.S. Government employees, non-profit grantee institutions, individual grant recipients and private citizens.

Proposed Frequency of Responses:

No. of Respondents—1680

Recordkeeping Hours—80

Total Annual Burden—361

Dated: February 21, 1996.

Rose Royal,

Federal Register Liaison.

[FR Doc. 96-4459 Filed 2-27-96; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Proposed Information Collection Activity; Public Comment Request: Application for Education Loan, VA Form 22-8725

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for

comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before April 29, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0236.

Title and Form Number: Application for Education Loan, VA Form 22–8725.

Type of Review: Extension of a currently approved collection.

Need and Uses: This form requests information needed to determine eligibility for an education loan. A complete report of the applicant's financial resources and education-related expenses is required to compute the amount of an education loan.

Current Actions: To apply for a VA education loan under 38 U.S.C. Chapter 35, a claimant must provide information relating to his or her financial resources and education-related expenses.

This information is collected on VA Form 22–8725, Application for Education Loan. If the claimant is otherwise eligible, the Department of Veterans Affairs (VA) can grant an education loan if the education-related expenses exceed financial resources (38 U.S.C. 3698).

VA uses the information from the current collection to determine whether an eligible claimant's education-related expenses will exceed his or her financial resources during a specified enrollment period.

Affected Public: Individuals or households.

Estimated Annual Burden: 33 hours.

Estimated Average Burden Per Respondent: 40 minutes per application.

Frequency of Response: Annually.

Estimated Number of Respondents: 50.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 565–8266 or FAX (202) 565–8267.

Dated: February 8, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–4457 Filed 2–27–96; 8:45 am]

BILLING CODE 8320–01–P

Residency Realignment Review Committee, Notice of Meeting

As required by the Federal Advisory Committee Act, Public Law 92–463, the VA hereby gives notice that the Residency Realignment Review Committee has scheduled a meeting on March 4th and 5th, 1996. The meeting on the 4th will start at 10 a.m. and end at 5 p.m. and the meeting on the 5th will start at 8:30 a.m. and end at 12 noon. The meeting will be held in Room 830 at VA Central Office, 810 Vermont Avenue, NW, Washington, DC. The purpose of the committee is to review the present scope and structure of Veterans Health Administration's Residency Program to ensure that the program is effective in future health care setting.

The morning of the first day will be to discuss distribution of VA Residency Positions and patient socio-demographics and service needs. The afternoon will be divided into working groups and will rejoin for working group summaries. The meeting on the second day will be an overview of the first day's discussions and planning work assignments and the agenda for the next meeting. The next meeting will be to finalize a report to the VA Under Secretary for Health with recommendations for restructuring VA residency programs. Future meetings will be announced as their dates are set. VA has determined that the work of this Committee is in the public interest.

The meeting will be open to the public. Due to limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Sylvia Best, Department of Veterans Affairs at (202) 565–7954 or 7955.

The Designated Federal Official for the Committee is Jan Lamoreaux, Office of Policy, Planning and Performance (phone number: (202) 565–7961).

Dated: February 21, 1996.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–4458 Filed 2–27–96; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 61, No. 40

Wednesday, February 28, 1996

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

INTER-AMERICAN FOUNDATION

TIME AND DATE: March 18, 1996, 11:30 a.m.–3:00 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Open except for the portion specified as closed session as provided in 22 CFR Part 1004.4(b).

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the November 15, 1995, Meeting of the Board of Directors
2. Next steps in selecting a President for the Foundation (closed session)
3. President's Report
   a. Plans for decreasing operational expenses for Fiscal Year 1997
   b. Strategy for the institutional transition towards accessing funds from other appropriate organizations
   c. Program update, report on the status of current pipeline of grants
   d. Congressional strategy for securing funds necessary for transition period
   e. Fiscal Year 1997 Budget

CONTACT PERSON FOR MORE INFORMATION: Adolfo A. Franco, Secretary to the Board of Directors, (703) 841–3894.

Dated: February 23, 1996.

Adolfo A. Franco,

Sunshine Act Officer.

[FR Doc. 96–4610 Filed 2–26–96; 10:21 am]

BILLING CODE 7025–01–M

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federal register

Wednesday
February 28, 1996

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 950 and 990

Low-Income Public and Indian Housing—Vacancy Rule; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 950 and 990

[Docket No. FR-3647-F-01]

RIN 2577-AB44

Low-Income Public and Indian Housing—Vacancy Rule

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes new conditions under which a Public Housing Agency (PHA), an Indian Housing Authority (IHA), or Resident Management Corporation may include vacant units in its computation of eligibility under the Performance Funding System (PFS). (The term housing authority (HA) is used throughout this final rule when referring to both PHAs and IHAs.) The final rule gives greater recognition to units that are vacant for reasons beyond the HA's control, makes changes in the current treatment of vacant units that are part of a modernization program, and, under certain circumstances, has HAs exclude long-term vacant units from their inventory of units available for occupancy.

DATES: April 1, 1996. Applicability date: Operating subsidy eligibility will first be determined under the new provisions of this rule by PHAs and IHAs having fiscal years beginning July 1, 1996.

FOR FURTHER INFORMATION CONTACT: MaryAnn Russ, General Deputy Assistant Secretary, Public and Assisted Housing Operations, Room 4210, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1380 [this telephone number is not toll-free]. For hearing- and speech-impaired persons, this number may be accessed via TDD by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in §§ 950.725, 950.760, 990.109, and 990.117 of this rule have been approved by the Office of Management and Budget, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned OMB control number 2577-0066. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Background

On July 19, 1995, the Department published a proposed rule (60 FR 37294) that would establish new conditions under which an HA may use a Projected Occupancy Percentage of less than 97 percent in computing its Dwelling Rental Income under the Performance Funding System (PFS). The proposed rule incorporated the recommendations of a regulatory negotiation advisory committee composed of persons who represent the interests affected by the current vacancy rule.

Discussion of Public Comments

The Department received eight public comments in response to the proposed rule, including comments from five PHAs, two national HA associations, and one IHA. One of the PHA commenters was a member of the advisory committee.

The Department received very favorable comments for using a negotiated rulemaking process to develop the proposed rule. This was the first use of negotiated rulemaking by the Department and consideration is being and will be given to using this model for other rulemaking efforts in the future. The IHA commenter expressed regrets that there was no IHA representative on the advisory committee. The Department notes that the National American Indian Housing Council was invited to join the committee, but declined membership.

The IHA commenter recommended that the definition of "Units vacant due to circumstances and actions beyond the IHA's control" (§ 950.102) be expanded to include cultural, social, or religious circumstances. The commenter notes that "[i]n many Indian communities * * * unexpected death, suicide, or violent act" in a unit may "affect the re-occupancy of [that] unit." The Department appreciates the comment, but does not believe that this type of circumstance seriously affects the ability of a significant number of IHAs to maintain an overall acceptable occupancy level. The Department has found that IHAs generally have high levels of occupancy and, thus, would not be adversely affected by the provisions of the vacancy rule. If such a circumstance did arise that caused the IHA to project an occupancy percentage of less than 97 percent and to have more than 5 vacant units, a waiver request could be made and considered on the merits of the case.

One commenter requested that reduced Comprehensive Grant Program (CGP) funds be added to the list of acceptable "beyond control" circumstances. This rule does address the situation of a reduction in CGP funding which occurs as a result of a rescission of appropriated funds, although not as a "beyond control" circumstance. If such an action results in an HA not being able to complete all the vacant unit rehabilitation in its approved Annual Statement, the HA may seek a waiver to permit full PFS eligibility for those units approved but not funded. While the advisory committee discussed the need to mitigate the consequences of a rescission, the only procedural process mentioned to obtain relief was through a waiver. The specific waiver provision in the proposed rule is omitted in the final rule, because waiver authority already exists (see 24 CFR 990.101). Since the objective of the commenter is being met, the Department does not feel it necessary to overturn the decision of the committee.

One commenter noted that insufficient funding for otherwise approvable applications for Comprehensive Improvement Assistance Program (CIAP) funds was an acceptable "beyond control" circumstance and asked why insufficient CGP funding could not also be an acceptable reason. This rule does provide that the failure of an HA to fund an otherwise approvable Resident Management Corporation (RMC) request for CGP funds from its HA would be treated as an acceptable "beyond control" circumstance that the RMC could use to justify using a projected occupancy percentage of less than 97 percent. The advisory committee agreed on this relief because both the HA application to the Department for CIAP funds and a RMC request for CGP funds from its HA could be denied because of insufficient funds. The CGP, however, is not a competition program and the concept of insufficient funds as described above does not apply. Funds are provided to eligible HAs on a formula basis, and the HA knows what its resources are at the time it develops its Annual Statement.

Two commenters addressed that portion of the proposed rule dealing with vacant units undergoing modernization. One commenter stated that the requirement that an HA place its vacant units under construction within two Federal Fiscal Years (FFY) after the FFY in which the funds are approved was very stringent. Another commenter believed that the 2-year requirement should be extended if HUD approves extensions to the modernization implementation schedule. The committee had addressed this issue and reached a consensus that the 2-year provision would not be extended.

It should be noted that the 2-year time period does not include the FFY in which the funds were received. Depending on when the HA received its modernization funding, it could actually have up to 3 years to place the vacant units under a construction contract. Also, if an HA initially fails to place its vacant units under a construction contract within the 2-year period, the HA would still be able to regain special treatment at the time it did place the units under a construction contract, although not retroactively.

The Department was part of the consensus on this issue and continues to support the committee decision.

The Department received three comments regarding the process for requesting a waiver. One commenter stated that if there were a rescission of appropriated funds for the CGP, the HA should not have to bear the burden of requesting a waiver. The Department appreciates the comment, but because the impact of a rescission will vary widely, the Department needs to know on a case-by-case basis what that impact will be in order to provide relief; that information can only come from the HA. The same commenter asked that procedures for requesting a waiver be provided to HAs before the rule becomes final, and another commenter requested that the rule include the conditions under which a waiver will be approved. The proposed rule provided general guidance in § 990.121 (the PHA would have had to document that it has made best efforts to correct the underlying problems and that it could not correct the problems in a cost-effective manner), but the specific documentation that the HA will have to submit cannot be determined in advance because a waiver by its nature involves a special circumstance. The final rule has omitted the separate waiver language from this part, because of the waiver authority already provided in § 999.101; repetition of this authority is contrary to the Department's ongoing efforts to streamline its regulations.

One commenter requested that the Department provide a 2-year extension to any HA, instead of 1 year, if a rescission of appropriated funds for the CGP occurs that prevents the HA from completing the modernization of all of the vacant units that were in the HA's approved Annual Statement. The committee did recognize that relief should be given to an HA that had to change its approved Annual Statement in order to reflect a rescission of funds. Because the relief provided should relate back to the severity of the rescission and that severity is not known in advance, it was difficult to develop an appropriate measure of relief. The Department was part of the consensus to provide this relief and believes that, until there has been some experience with this type of unusual situation, the 1-year extension is appropriate.

The Department received one comment on the transition provisions of the proposed rule. The commenter believed that the rule would eliminate Comprehensive Occupancy Plans (COPs), even for those HAs that are still under a HUD-approved COP. This is not the case. An HA with a HUD-approved COP at the time the final rule becomes effective may continue to determine its PFS eligibility using the provisions of § 990.118, as that section exists before this final rule becomes effective. The Department will not approve new COPs, however, after the effective date of this rule, and after the time period of the COP has expired, the HA will determine its projected occupancy percentage using the provisions of this rule.

One commenter proposed that a lower standard of occupancy—of between 93 percent to 95 percent, rather than 97 percent—would be more reasonable for HAs. The appropriateness of the 97 percent occupancy standard was discussed at length by the committee, and the members concluded that, given current budget constraints, it was not feasible to redefine the standard. The provisions of the proposed rule developed by the committee, therefore, were based on an assumption that the 97 percent standard would remain in place; this final rule also continues the 97 percent standard.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(o) of the HUD regulations, the policies and procedures contained in this rule relate only to operating costs that do not affect a physical structure or property and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule sets out eligibility criteria for low-income public and Indian housing operating subsidies that may impact those HAs with large numbers of long-term vacant units. However, HUD's data incident to establishing the Vacancy Reduction Program indicates that high-vacancy PHAs are relatively few in number (and high-vacancy IHAs virtually nonexistent), and that a preponderance of the program's vacancies are in a very limited number of the larger PHAs. Most HAs will be unaffected by this rule.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The rule refines the criteria under which operating subsidies are paid on HUD-assisted housing owned and operated by HAs, but will not interfere with State or local government functions.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs results from promulgation of this rule, as those policies and programs relate to family concerns. The rule merely involves the amount of funding that an HA should receive under a refinement of an existing procedure.

The Catalog of Federal Domestic Assistance Program numbers for this rule are 14.145, 14.146, and 14.147.

List of Subjects

24 CFR Part 950

Aged, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 990

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, parts 950 and 990 of title 24 of the Code of Federal Regulations are amended as follows.

PART 950—INDIAN HOUSING PROGRAMS

1. The authority citation for part 950 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa–1437ee and 3535(d).

2. Section 950.102 is amended by adding in alphabetical order definitions for "Long-term vacancy", "Units vacant due to circumstances and actions beyond the IHA's control", and "Vacant unit undergoing modernization", and by revising the definition for "Unit months available", to read as follows:

§ 950.102 Definitions

* * * * *

Long-term Vacancy. This term means the same as it is used in the definition of "Unit Months Available" in this section.

* * * * *

Unit Months Available. Project Units multiplied by the number of months the Project Units are available for occupancy during a given IHA fiscal year. For purposes of this subpart, a unit is considered available for occupancy from the date established as the End of the Initial Operating Period for the Project until the time the unit is approved by HUD for deprogramming and is vacated or is approved for nondwelling use. In the case of an IHA development involving the acquisition of scattered site housing, see also § 950.705(b). A unit will be considered a long-term vacancy and will not be considered available for occupancy in any given IHA Requested Budget Year if the IHA determines that:

(1) The unit has been vacant for more than 12 months at the time the IHA determines its Actual Occupancy Percentage;

(2) The unit is not either: (i) a vacant unit undergoing modernization; or (ii) a unit vacant for circumstances and actions beyond the IHA's control, as these terms are defined in this section; and

(3) The IHA determines that it will have a vacancy percentage of more than 3 percent and will have more than five vacant units, for its Requested Budget Year, even after adjusting for vacant units undergoing modernization and units that are vacant for circumstances and actions beyond the IHA's control, as defined in this section. (Reference in this subpart to "more than five units" or "fewer than five units" shall refer to a circumstance in which 5 units equals or exceeds 3 percent of the number of units to which the 3 percent threshold is applicable.)

Units Vacant Due to Circumstances and Actions Beyond the IHA's Control. Dwelling units that are vacant due to circumstances and actions that prohibit the IHA from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating or modernizing vacant units and are beyond the IHA's control. For purposes of this definition, circumstances and actions beyond the IHA's control are limited to:

(1) *Litigation.* The effect of court litigation such as a court order or settlement agreement that is legally enforceable. An example would be units that are being held vacant as part of a court-ordered or HUD-approved desegregation plan.

(2) *Laws.* Federal, Tribal, or State laws of general applicability, or their implementing regulations. Units vacant only because they do not meet minimum standards pertaining to construction or habitability under Federal, State, or local laws or regulations will not be considered vacant due to circumstances and actions beyond the IHA's control.

(3) *Changing market conditions.* For example, small IHAs that are located in areas experiencing population loss or economic dislocations may face a lack of demand in the foreseeable future, even after the IHA has taken aggressive marketing and outreach measures.

(4) *Natural disasters.*

(5) *Insufficient funding* for otherwise approvable applications made for Comprehensive Improvement Assistance Program (CIAP) funds.

(6) *Resident Management Corporation funding.* The failure of an IHA to fund an otherwise approvable RMC request for Federal modernization funding;

(7) *Casualty Losses.* Delays in repairing damage to vacant units due to the time needed for settlement of insurance claims.

* * * * *

Vacant Unit Undergoing Modernization. Except as provided in § 950.775(a), a vacant unit in a project not considered to be obsolete (as determined using the indicia in § 970.6 of this chapter), when the project is undergoing modernization that includes work that is necessary to reoccupy the vacant unit, and in which one of the following conditions is met:

(1) The unit is under construction (i.e., the construction contract has been awarded or force account work has started); or

(2) The treatment of the vacant unit is included in a HUD-approved modernization budget (e.g., the Annual Statement for the Comprehensive Grant Program (CGP) (Form HUD–52837 or its successor), or the Comprehensive Improvement Assistance Program (CIAP) Budget (Form HUD–52825 or its successor)), but the time period for placing the vacant unit under construction has not yet expired. The IHA must place the vacant unit under construction within two Federal Fiscal Years (FFYs) after the FFY in which the modernization funds are approved.

* * * * *

§ 950.705 [Amended]

3. Section 950.705(b) is amended by removing the first sentence.

4. Section 950.720 is amended by revising paragraph (b), to read as follows:

§ 950.720 Other costs.

* * * * *

(b) (1) *Costs attributable to units approved for deprogramming and vacant* may be eligible for inclusion, but must be limited to the minimum services and protection necessary to protect and preserve the units until the units are deprogrammed. Costs attributable to units temporarily unavailable for occupancy because the units are utilized for IHA-related activities are not eligible for inclusion. In determining the PFS operating subsidy, these units shall not be included in the calculation of Unit Months Available. Units approved for deprogramming shall be listed by the IHA, and supporting documentation regarding direct costs attributable to such units shall be included as a part of the Performance Funding System calculation in which the IHA requests operating subsidy for these units. If the IHA requires assistance in this matter, the IHA should contact the HUD Field Office.

(2) Units approved for nondwelling use to promote economic self-sufficiency services and anti-drug activities are eligible for operating subsidy under the conditions provided in this paragraph (b)(2), and the costs attributable to these units are to be included in the operating budget. If a unit satisfies the conditions stated below, it will be eligible for subsidy at the rate of the AEL for the number of months the unit is devoted to such use. Approval will be given for a period of no more than 3 years. HUD may renew the approval to allow payments after that period only if the IHA can demonstrate that no other sources for paying the non-utility operating costs of the unit are available. The conditions the unit must satisfy are:

(i) The unit must be used for either economic self-sufficiency activities directly related to maximizing the number of employed residents or for anti-drug programs directly related to ridding the development of illegal drugs and drug-related crime. The activities must be directed toward and for the benefit of residents of the development.

(ii) The IHA must demonstrate that space for the service or program is not available elsewhere in the locality and that the space used is safe and suitable for its intended use or that the resources are committed to make the space safe and suitable.

(iii) The IHA must demonstrate satisfactorily that other funding is not available to pay for the non-utility operating costs. All rental income generated as a result of the activity must be reported as income in the operating subsidy calculation.

(iv) Operating subsidy may be approved for only one site (involving one or more contiguous units) per public housing development for economic self-sufficiency services or anti-drug programs, and the number of units involved should be the minimum necessary to support the service or program. Operating subsidy for any additional sites per development can only be approved by HUD Headquarters.

(v) The IHA must submit a certification with its Performance Funding System Calculation that the units are being used for the purpose for which they were approved and that any rental income generated as a result of the activity is reported as income in the operating subsidy calculation. The IHA must maintain specific documentation of the units covered. Such documentation should include a listing of the units, the street addresses, and project/management control numbers.

(3) Long-term vacant units that are not included in the calculation of Unit Months Available are eligible for operating subsidy in the Requested Budget Year at the rate of 20 percent of the AEL. Allowable utility costs for long term vacant units will continue to be funded in accordance with § 950.715.

* * * * *

5. In § 950.725, paragraph (b)(3) is revised and the OMB approval number is added at the end of the section, to read as follows:

§ 950.725 Projected operating income level.

(b) * * *

(3) Projected Occupancy Percentage. The IHA shall determine its projected percentage of occupancy for all Project Units (Projected Occupancy Percentage), as follows:

(i) *General.* Using actual occupancy data collected before the start of the budget year as a beginning point, the IHA will develop estimates for its Requested Budget Year (RBY) of: how many units the IHA will have available for occupancy; how many of the available units will be occupied and how many will be vacant, and what the average occupancy percentage will be for the RBY. The conditions under which the RBY occupancy percentage will be used as the projected occupancy percentage for purposes of determining operating subsidy eligibility are described below.

(ii) *High Occupancy IHA—No Adjustments Necessary.* If the IHA's RBY Occupancy Percentage, calculated in accordance with § 950.760, is equal to or greater than 97%, the IHA's Projected Occupancy Percentage is 97%. If the IHA's RBY Occupancy Percentage is less than 97%, but the IHA demonstrates that it will have an average of five or fewer vacant units in the requested budget year, the IHA will use its RBY Occupancy Percentage as its projected occupancy percentage.

(iii) *Adjustments in Determining Occupancy.* If the IHA's RBY Occupancy Percentage is less than 97% and the IHA has more than 5 vacant units, the IHA will adjust its estimate of vacant units to exclude vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the IHA's control. After making this adjustment, the IHA will recalculate its estimated vacancy percentage for the RBY.

(A) *High Occupancy IHA after adjustment.* If the recalculated vacancy percentage is 3% or less (or the IHA would have five or fewer vacant units), the IHA will use its RBY Occupancy Percentage as its projected occupancy percentage.

(B) *Low Occupancy IHA—adjustment for long-term vacancies.* If the recalculated vacancy percentage is greater than 3% (or more than 5 vacant units), the IHA will then further adjust its RBY Occupancy Percentage by excluding from its calculation of Unit Months Available (UMAs), all units that have been vacant for longer than 12 months that are not vacant units undergoing modernization or are not units vacant due to circumstances and actions beyond the IHA's control.

(iv) *Low Occupancy IHA after all adjustments.* An IHA that has determined its RBY Occupancy Percentage in accordance with paragraph (b)(iii)(B) of this section will be eligible for operating subsidy as follows:

(A) Long-term vacancies removed from the calculation of UMAs will be eligible to receive a reduced operating subsidy calculated at 20% of the IHA's AEL.

(B) If the recalculated RBY Occupancy Percentage is 97% or higher, the IHA will use 97%.

(C) If the recalculated RBY Occupancy Percentage is less than 97%, but the vacancy rate after adjusting for vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the IHA's control is 3% or less (or the IHA has five or fewer vacant units), the IHA may use its recalculated RBY Occupancy Percentage as its projected occupancy percentage.

(D) If the recalculated RBY Occupancy Percentage is less than 97% and the vacancy percentage is greater than 3% (or the IHA has more than five vacant units) after adjusting for vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the IHA's control, the IHA will use 97% as its projected occupancy percentage, but will be allowed to adjust the 97% by the number of vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the IHA's control. For a small IHA using five vacant units as its occupancy objective for the RBY, the IHA will determine what percentage five units represents as a portion of its units available for occupancy and subtract that percentage from 100%. The result will be used as the IHA's projected occupancy percentage, but the IHA will be allowed to adjust the projected occupancy percentage by vacant units undergoing modernization and units that are vacant for circumstances and actions beyond the IHA's control.

* * * * *

(Approved by the Office of Management and Budget under control number 2577–0066.)

6. Section 950.760 is revised to read as follows:

§ 950.760 Determining Actual and Requested Budget Year Occupancy Percentages.

(a) *Actual Occupancy Percentage.* When submitting Performance Funding System Calculations for Requested Budget Years beginning on or after July 1, 1996, the IHA shall determine an

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Actual Occupancy Percentage for all Project Units included in the Unit Months Available. The IHA shall have the option of basing this option on either:

(1) The number of units occupied on the last day of the month that ends 6 months before the beginning of the Requested Budget Year; or

(2) The average occupancy during the month ending 6 months before the beginning of the Requested Budget Year. If the IHA elects to use an average occupancy under this paragraph (a)(2), the IHA shall maintain a record of its computation of its Actual Occupancy Percentage.

(b) *Requested Budget Year Occupancy Percentage.* The IHA will develop a Requested Budget Year Occupancy Percentage by taking the Actual Occupancy Percentage and adjusting it to reflect changes up or down in occupancy during the Requested Budget Year due to HUD-approved activities such as units undergoing modernization, new development, demolition, or disposition. If after the submission and approval of the Performance Funding System Calculations for the Requested Budget Year, there are changes up or down in occupancy because of modernization, new development, demolition or disposition that are not reflected in the Requested Budget Year Occupancy Percentage, the IHA may submit a revision to reflect the actual change in occupancy due to these activities.

(c) *Documentation Required to be Maintained.* The IHA must maintain, and upon HUD's request, make available to HUD specific documentation of the occupancy status of all units, including long-term vacancies, vacant units undergoing modernization, and units vacant due to circumstances and actions beyond the IHA's control. This documentation shall include a listing of the units, street addresses, and project/management control numbers.

(Approved by the Office of Management and Budget under control number 2577–0066.)

§ 950.770 [Removed and Reserved]

7. Section 950.770, Comprehensive Occupancy Plan (COP) Requirements, is removed and reserved.

8. A new § 950.775 is added, to read as follows:

§ 950.775 . Transition Provisions.

(a) *Treatment of units already under an approved modernization budget* Vacant units to be rehabilitated under modernization budgets approved in FFY 1995 or prior are subject to the modernization implementation schedule, without extension, previously approved by HUD. It is the intent of HUD not to penalize IHAs that have longer construction schedules in an approved modernization budget.

(b) *Treatment of Existing COPs.* (1) An IHA operating under a Comprehensive Occupancy Plan (COP) approved by HUD under § 950.770, as that section existed immediately before April 1, 1996, may, until the expiration of its COP, continue to determine its PFS eligibility under the provisions of part 950 as that part existed immediately before April 1, 1996. If the IHA does not elect to continue to determine its PFS eligibility using its COP, the IHA's PFS eligibility will be calculated in accordance with this part.

(2) HUD will not approve any extensions of COPs.

9. A new § 950.777 is added, to read as follows:

§ 950.777 Effect of rescission.

If there is a rescission of appropriated funds that reduces the level of Comprehensive Grant Program funding in an approved Annual Statement under the CGP, to the extent that the IHA can document that it is not possible to complete all the vacant unit rehabilitation in the IHA's approved Annual Statement, the IHA may seek and HUD may grant a waiver for 1 fiscal year to permit full PFS eligibility for those units approved but not funded.

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

10. The authority citation for part 990 continues to read as follows:

Authority: 42 U.S.C. 1437g and 3535(d).

11. Section 990.102 is amended by adding in alphabetical order definitions for "Long-term vacancy", "Units vacant due to circumstances and actions beyond the PHA's control", and "Vacant unit undergoing modernization"; by revising the definition for "Unit months available"; and by removing the definition for "Vacant, On-Schedule Modernization Units", to read as follows:

§ 990.102 Definitions

* * * * *

Long-term vacancy. This term means the same as it is used in the definition of "Unit Months Available" in this section.

* * * * *

Unit months available. Project Units multiplied by the number of months the Project Units are available for occupancy during a given PHA fiscal year. For purposes of this part, a unit is considered available for occupancy from the date established as the End of the Initial Operating Period for the Project until the time the unit is approved by HUD for deprogramming and is vacated or is approved for nondwelling use. In the case of a PHA development involving the acquisition of scattered site housing, see also § 990.104(b). A unit will be considered a long-term vacancy and will not be considered available for occupancy in any given PHA Requested Budget Year if the PHA determines that:

(1) The unit has been vacant for more than 12 months at the time the PHA determines its Actual Occupancy Percentage;

(2) The unit is not either: (i) A vacant unit undergoing modernization; or (ii) A unit vacant for circumstances and actions beyond the PHA's control, as these terms are defined in this section; and

(3) The PHA determines that it will have a vacancy percentage of more than 3 percent and will have more than five vacant units, for its Requested Budget Year, even after adjusting for vacant units undergoing modernization and units that are vacant for circumstances and actions beyond the PHA's control, as defined in this section. (Reference in this part to "more than five units" or "fewer than five units" shall refer to a circumstance in which five units equals or exceeds 3 percent of the number of units to which the 3 percent threshold is applicable.)

Units vacant due to circumstances and actions beyond the PHA's control. Dwelling units that are vacant due to circumstances and actions that prohibit the PHA from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating or modernizing vacant units and are beyond the PHA's control. For purposes of this definition, circumstances and actions beyond the PHA's control are limited to:

(1) *Litigation.* The effect of court litigation such as a court order or settlement agreement that is legally enforceable. An example would be units that are being held vacant as part of a court-ordered or HUD-approved desegregation plan.

(2) *Laws.* Federal or State laws of general applicability, or their implementing regulations. Units vacant only because they do not meet minimum standards pertaining to construction or habitability under Federal, State, or local laws or regulations will not be considered vacant due to circumstances and actions beyond the PHA's control.

(3) *Changing market conditions.* For example, small PHAs that are located in areas experiencing population loss or economic dislocations may face a lack of demand in the foreseeable future, even after the PHA has taken aggressive marketing and outreach measures.

(4) *Natural disasters.*

(5) *Insufficient funding* for otherwise approvable applications made for Comprehensive Improvement Assistance Program (CIAP) funds.

(6) *RMC Funding.* The failure of a PHA to fund an otherwise approvable RMC request for Federal modernization funding;

(7) *Casualty Losses.* Delays in repairing damage to vacant units due to the time needed for settlement of insurance claims.

* * * * *

Vacant unit undergoing modernization. Except as provided in § 990.119(a), a vacant unit in a project not considered to be obsolete (as determined using the indicia in § 970.6 of this chapter), when the project is undergoing modernization that includes work that is necessary to reoccupy the vacant unit, and in which one of the following conditions is met:

(1) The unit is under construction (i.e., the construction contract has been awarded or force account work has started); or

(2) The treatment of the vacant unit is included in a HUD-approved modernization budget (e.g., the Annual Statement for the Comprehensive Grant Program (CGP) (Form HUD–52837 or its successor), or the Comprehensive Improvement Assistance Program (CIAP) Budget (Form HUD–52825 or its successor)), but the time period for placing the vacant unit under construction has not yet expired. The PHA must place the vacant unit under construction within two Federal Fiscal Years (FFYs) after the FFY in which the modernization funds are approved.

§ 990.104 [Amended]

12. Section 990.104(b) is amended by removing the first sentence.

13. Section 990.108 is amended by revising paragraph (b), to read as follows:

§ 990.108 Other costs.

* * * * *

(b)(1) Costs attributable to units approved for deprogramming and vacant may be eligible for inclusion, but must be limited to the minimum services and protection necessary to protect and preserve the units until the units are deprogrammed. Costs attributable to units temporarily unavailable for occupancy because the units are utilized for PHA-related activities are not eligible for inclusion. In determining the PFS operating subsidy, these units shall not be included in the calculation of Unit Months Available. Units approved for deprogramming shall be listed by the PHA, and supporting documentation regarding direct costs attributable to such units shall be included as a part of the Performance Funding System calculation in which the PHA requests operating subsidy for these units. If the PHA requires assistance in this matter, the PHA should contact the HUD Field Office.

(2) Units approved for nondwelling use to promote economic self-sufficiency services and anti-drug activities are eligible for operating subsidy under the conditions provided in this paragraph (b)(2), and the costs attributable to these units are to be included in the operating budget. If a unit satisfies the conditions stated below, it will be eligible for subsidy at the rate of the AEL for the number of months the unit is devoted to such use. Approval will be given for a period of no more than 3 years. HUD may renew the approval to allow payments after that period only if the PHA can demonstrate that no other sources for paying the non-utility operating costs of the unit are available. The conditions the unit must satisfy are:

(i) The unit must be used for either economic self-sufficiency activities directly related to maximizing the number of employed residents or for anti-drug programs directly related to ridding the development of illegal drugs and drug-related crime. The activities must be directed toward and for the benefit of residents of the development.

(ii) The PHA must demonstrate that space for the service or program is not available elsewhere in the locality and that the space used is safe and suitable for its intended use or that the resources are committed to make the space safe and suitable.

(iii) The PHA must demonstrate satisfactorily that other funding is not available to pay for the non-utility operating costs. All rental income generated as a result of the activity must be reported as income in the operating subsidy calculation.

(iv) Operating subsidy may be approved for only one site (involving one or more contiguous units) per public housing development for economic self-sufficiency services or anti-drug programs, and the number of units involved should be the minimum necessary to support the service or program. Operating subsidy for any additional sites per development can only be approved by HUD Headquarters.

(v) The PHA must submit a certification with its Performance Funding System Calculation that the units are being used for the purpose for which they were approved and that any rental income generated as a result of the activity is reported as income in the operating subsidy calculation. The PHA must maintain specific documentation of the units covered. Such documentation should include a listing of the units, the street addresses, and project/management control numbers.

(3) Long-term vacant units that are not included in the calculation of Unit Months Available are eligible for operating subsidy in the Requested Budget Year at the rate of 20 percent of the AEL. Allowable utility costs for long term vacant units will continue to be funded in accordance with § 990.107.

* * * * *

14. In § 990.109, paragraph (b)(3) and the parenthetical statement containing the OMB approval number at the end of the section are revised to read as follows:

§ 990.109 Projected operating income level.

(b) * * *

(3) *Projected Occupancy Percentage.* The PHA shall determine its projected percentage of occupancy for all Project Units (Projected Occupancy Percentage), as follows:

(i) *General.* Using actual occupancy data collected before the start of the budget year as a beginning point, the PHA will develop estimates for its Requested Budget Year (RBY) of: how many units the PHA will have available for occupancy; how many of the available units will be occupied and how many will be vacant, and what the average occupancy percentage will be for the RBY. The conditions under which the RBY occupancy percentage will be used as the projected occupancy percentage for purposes of determining operating subsidy eligibility are described below.

(ii) *High Occupancy PHA—No Adjustments Necessary.* If the PHA's RBY Occupancy Percentage, calculated in accordance with § 990.117, is equal to or greater than 97%, the PHA's Projected Occupancy Percentage is 97%. If the PHA's RBY Occupancy Percentage is less than 97%, but the PHA demonstrates that it will have an average of five or fewer vacant units in the requested budget year, the PHA will use its RBY Occupancy Percentage as its projected occupancy percentage.

(iii) *Adjustments in Determining Occupancy.* If the PHA's RBY Occupancy Percentage is less than 97% and the PHA has more than 5 vacant units, the PHA will adjust its estimate of vacant units to exclude vacant units

undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control. After making this adjustment, the PHA will recalculate its estimated vacancy percentage for the RBY.

(A) *High Occupancy PHA after adjustment.* If the recalculated vacancy percentage is 3% or less (or the PHA would have five or fewer vacant units), the PHA will use its RBY Occupancy Percentage as its projected occupancy percentage.

(B) *Low Occupancy PHA—adjustment for long-term vacancies.* If the recalculated vacancy percentage is greater than 3% (or more than 5 vacant units), the PHA will then further adjust its RBY Occupancy Percentage by excluding from its calculation of Unit Months Available (UMAs), all units that have been vacant for longer than 12 months that are not vacant units undergoing modernization or are not units vacant due to circumstances and actions beyond the PHA's control.

(iv) *Low Occupancy PHA after all adjustments.* A PHA that has determined its RBY Occupancy Percentage in accordance with paragraph (b)(iii)(B) of this section will be eligible for operating subsidy as follows:

(A) Long-term vacancies removed from the calculation of UMAs will be eligible to receive a reduced operating subsidy calculated at 20% of the PHA's AEL.

(B) If the recalculated RBY Occupancy Percentage is 97% or higher, the PHA will use 97%.

(C) If the recalculated RBY Occupancy Percentage is less than 97%, but the vacancy rate after adjusting for vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control is 3% or less (or the PHA has five or fewer vacant units), the PHA may use its recalculated RBY Occupancy Percentage as its projected occupancy percentage.

(D) If the recalculated RBY Occupancy Percentage is less than 97% and the vacancy percentage is greater than 3% (or the PHA has more than five vacant units) after adjusting for vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control, the PHA will use 97% as its projected occupancy percentage, but will be allowed to adjust the 97% by the number of vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control. For a small PHA using five vacant units as its occupancy objective for the RBY, the PHA will determine what percentage five units represents as a portion of its units available for occupancy and subtract that percentage from 100%. The result will be used as the PHA's projected occupancy percentage, but the PHA will be allowed to adjust the projected occupancy percentage by vacant units undergoing modernization and units that are vacant for circumstances and actions beyond the PHA's control.

* * * * *

(Approved by the Office of Management and Budget under control number 2577–0066. Paragraphs (e) and (f) have been approved by the Office of Management and Budget under control number 2577–007.)

15. Section 990.117 is revised to read as follows:

§ 990.117 Determining Actual and Requested Budget Year Occupancy Percentages.

(a) *Actual Occupancy Percentage.* When submitting Performance Funding System Calculations for Requested Budget Years beginning on or after July 1, 1996, the PHA shall determine an Actual Occupancy Percentage for all Project Units included in the Unit Months Available. The PHA shall have the option of basing this option on either:

(1) The number of units occupied on the last day of the month that ends 6 months before the beginning of the Requested Budget Year; or

(2) The average occupancy during the month ending 6 months before the beginning of the Requested Budget Year. If the PHA elects to use an average occupancy under this paragraph (a)(2), the PHA shall maintain a record of its computation of its Actual Occupancy Percentage.

(b) *Requested Budget Year Occupancy Percentage.* The PHA will develop a Requested Budget Year Occupancy Percentage by taking the Actual Occupancy Percentage and adjusting it to reflect changes up or down in occupancy during the Requested Budget Year due to HUD-approved activities such as units undergoing modernization, new development, demolition, or disposition. If after the submission and approval of the Performance Funding System Calculations for the Requested Budget Year, there are changes up or down in occupancy because of modernization, new development, demolition or disposition that are not reflected in the Requested Budget Year Occupancy Percentage, the PHA may submit a revision to reflect the actual change in occupancy due to these activities.

(c) *Documentation Required to be Maintained.* The PHA must maintain, and upon HUD's request, make available to HUD specific documentation of the occupancy status of all units, including long-term vacancies, vacant units undergoing modernization, and units vacant due to circumstances and actions beyond the PHA's control. This documentation shall include a listing of the units, street addresses, and project/management control numbers.

(Approved by the Office of Management and Budget under control number 2577–0066.)

§ 990.118 [Removed and Reserved]

16. Section 990.118, Comprehensive Occupancy Plan Requirements, is removed and reserved.

17. Section 990.119 is revised, to read as follows:

§ 990.119 Transition Provisions.

(a) *Treatment of units already under an approved modernization budget.* Vacant units to be rehabilitated under modernization budgets approved in FY 1995 or prior are subject to the modernization implementation schedule, without extension, previously approved by HUD. It is the intent of HUD not to penalize PHAs that have longer construction schedules in an approved modernization budget.

(b) *Treatment of Existing COPs.* (1) A PHA that is operating under a Comprehensive Occupancy Plan (COP) approved by HUD under § 990.118, as that section existed immediately before April 1, 1996, may, until the expiration of its COP, continue to determine its PFS eligibility under the provisions of part 990 as that part existed immediately before April 1, 1996. If the PHA does not elect to continue to determine its PFS eligibility using its COP, the PHA's PFS eligibility will be calculated in accordance with this part.

(2) HUD will not approve any extensions of COPs.

18. A new § 990.121 is added, to read as follows:

§ 990.121 Effect of rescission.

If there is a rescission of appropriated funds that reduces the level of Comprehensive Grant Program funding in an approved Annual Statement under the CGP, to the extent that the PHA can document that it is not possible to complete all the vacant unit rehabilitation in the PHA's approved Annual Statement, the PHA may seek and HUD may grant a waiver for 1 fiscal year to permit full PFS eligibility for those units approved but not funded.

Dated: February 14, 1996.

Kevin E. Marchman,

Deputy Assistant Secretary for Distressed and Troubled Housing Recovery.

[FR Doc. 96–4169 Filed 2–27–96; 8:45 am]

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federal register

Wednesday
February 28, 1996

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Species, Plant and Animal Taxa; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Plant and Animal Taxa That Are Candidates for Listing as Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: In this notice the Fish and Wildlife Service (Service) presents an updated list of plant and animal taxa native to the United States that are regarded as candidates for possible addition to the List of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended (Act). Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, allowing resource managers to alleviate threats and thereby possibly remove the need to list species as endangered or threatened. Even if a candidate species is subsequently listed, the early notice provided here could result in fewer restrictions on activities by prompting candidate conservation measures to alleviate threats to the species.

Through the publication of this notice, the Service requests additional status information that may be available for the identified candidate species and information indicating that species not presently regarded as candidates should be included in future updates of this list. This information will be considered in preparing listing documents and future revisions or supplements to the notice of review. It will also help the Service monitor changes in the status of candidate species and in candidate conservation activities.

DATES: Comments are requested until the publication of an update of this notice, anticipated in February, 1997.

ADDRESSES: Interested persons or organizations should submit comments regarding particular taxa to the Regional Director of the Region identified as having the lead responsibility for that taxon. Comments of a more general nature may be submitted to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Mail Stop 452 ARLSQ, Washington, D.C. 20240 (703–358–2171). Written comments and materials received in response to this notice will be available for public inspection by appointment in the Regional Offices listed below.

Information relating to particular taxa in this notice may be obtained from the Service's Endangered Species Coordinator in the lead Regional Office identified for each taxon and listed below:

Region 1. California, Commonwealth of the Northern Mariana Islands, Hawaii, Idaho, Nevada, Oregon, Pacific Territories of the United States, and Washington.

Regional Director (TE), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503–231–6131).

Region 2. Arizona, New Mexico, Oklahoma, and Texas.

Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505–766–3972).

Region 3. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Regional Director (TE), U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111 (612–725–3276).

Region 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands.

Regional Director (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345 (404–679–7096).

Region 5. Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Regional Director (TE), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589. (413–253–8300)

Region 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303–236–7398).

Region 7. Alaska.

Regional Director (TE), U.S. Fish and Wildlife Service, 1011 East Tudor Street, Anchorage, Alaska 99503 (907–786–3520).

FOR FURTHER INFORMATION CONTACT: Endangered Species Coordinator(s) in the appropriate Regional Office(s) at the above phone numbers or Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703–358–2171).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act (Act) of 1973, as amended, (16 U.S.C. 1531 *et seq.*) requires the Service to identify species of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial information. As part of the program to accomplish this, the Service has maintained a list of species regarded as candidates for listing. The Service maintains this list for a variety of reasons, including—to provide advance knowledge of potential listings that could affect decisions of environmental planners and developers; to solicit input from interested parties to identify those candidate species that may not require protection under the Act or additional species that may require the Act's protections; and to solicit information needed to prioritize the order in which species will be proposed for listing. At present, there are 182 taxa included in Table 1 of this notice that are considered by the Service as candidates for possible addition to the List of Endangered and Threatened Plants, as well as 238 U.S. taxa for which proposed rules to list have been issued. The Service encourages their consideration in environmental planning, such as in environmental impact analysis under the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500–1508). Information regarding the range, status, and habitat needs of these species is available from the Service's Headquarters and Regional Offices (see "ADDRESSES" above).

Previous Notices of Review

The Act directed the Secretary of the Smithsonian Institution to prepare a report on endangered and threatened plant species, which was published as House Document No. 94–51. The Service published a notice on July 1, 1975 (40 FR 27823), in which it announced that more than 3,000 native plant taxa (plants with formal scientific names) named in the Smithsonian's report and other taxa added by the 1975 notice would be reviewed for possible inclusion in the List of Endangered and Threatened Plants. The 1975 notice was superseded on December 15, 1980 (45 FR 82479), by a new comprehensive notice of review for native plants that took into account the earlier Smithsonian report and other accumulated information. On November 28, 1983 (48 FR 53640), a supplemental plant notice of review noted changes in the status of various taxa. The Service published complete updates of the plant

notice on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). All previous plant notices of review are superseded by this notice.

Previous animal notices of review included many of the animal taxa in the accompanying Table 1. The Service published earlier comprehensive reviews for vertebrate animals in the **Federal Register** on December 30, 1982 (47 FR 58454) and on September 18, 1985 (50 FR 37958). An initial comprehensive review for invertebrate animals was published on May 22, 1984 (49 FR 21664). The Service published a combined animal notice of review on January 6, 1989 (54 FR 554) and with minor corrections on August 10, 1989 (54 FR 32833). The Service again published comprehensive notices on November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982). This revised notice supersedes all previous animal notices of review.

Relation to Prior Notices of Review

Two classes of species are included in Table 1 of this notice—(1) proposed species are those species for which a proposed rule to list as endangered or threatened has been published in the **Federal Register** (exclusive of species for which the proposed rule has been withdrawn or finalized), and, (2) candidate species are those species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list but issuance of the proposed rule is precluded. In previous notices of review, species described by item (2) were known as Category 1 candidates. They are now referred to simply as candidate species. The Service emphasizes that these candidate taxa are not being proposed for listing by this notice, but development and publication of proposed rules for such candidate taxa is anticipated. The Service will determine the relative listing priority of these candidate species in accordance with listing priority guidelines published in the September 12, 1983 edition of the **Federal Register** (48 FR 43098-43105). The Service encourages other Federal agencies to give consideration to these taxa in environmental planning.

Previous notices of review provided cross references for taxa that experienced changes in their scientific names by indicating these as synonyms. As needed, the practice is continued in this notice.

In former notices of review, the Service identified Category 2 candidates as taxa for which information in the possession of the Service indicated that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threat were not currently available to support proposed rules. The quality of information varied greatly among the former Category 2 species, but they all shared one trait—sufficient information to justify issuance of a proposed rule was lacking. The designation of Category 2 species as candidates resulted in confusion about the conservation status of these taxa. To reduce that confusion, and to clarify that the Service does not regard these species as candidates for listing, the Service is discontinuing the designation of Category 2 species as candidates in this notice. The Service remains concerned about these species, but further biological research and field study are needed to resolve the conservation status of these taxa. Many species of concern will be found not to warrant listing, either because they are not threatened or endangered or because they do not qualify as species under the definition in the Act. Others may be found to be in greater danger of extinction than some present candidate taxa. The Service is working with the States and other private and public interests to assess their need for protection under the Act. Such species are the pool from which future candidates for listing will be drawn.

In previous plant notices of review, single asterisks were used to indicate taxa in categories 1 and 2 that were believed to be possibly gone from the wild, and double asterisks to indicate any such taxa that were also known to be extant in cultivation. Such species do not meet the definition established for candidates. Since the practice does not apply to candidate species, it is discontinued in this notice.

Taxa that once were considered for listing as threatened or endangered but are no longer under such consideration were historically included in Category 3. Such taxa were further divided into three subcategories to indicate the reason(s) for their removal from consideration. The subcategories associated with the former Category 3 status were described as follows:

3A—Taxa for which the Service has persuasive evidence of extinction. If rediscovered, such taxa might acquire high priority for listing. At this time, however, the best available information indicates that the taxa in this subcategory, or the habitats from which they were known, have been lost.

3B—Names that, on the basis of current taxonomic understanding (usually as represented in published revisions and monographs), do not represent distinct taxa meeting the Act's definition of "species." Such supposed taxa could be reevaluated in the future on the basis of new information.

3C—Taxa that have proven to be more abundant or widespread than previously believed as well as taxa that are not subject to any identifiable threat. If further research or changes in habitat indicate a significant decline in any of these taxa, they may be reevaluated for possible inclusion as candidates. The designation of Category 3 is discontinued, but the Service will retain all Category 3 information in case future reviews are conducted on these taxa. Future notices of review will only mention such taxa if they were included in the previous notice of review as candidate species.

Taxa that were placed in Category 3 are not candidates for listing. The Service is aware of some misinterpretations that have been made of Category 3 subcategories in the past. In particular, Category 3A has been interpreted as either a comprehensive compilation of extinct species or as a list of species that became extinct while undergoing status review. Neither interpretation is correct. In fact, status review of the overwhelming majority of species identified in Category 3A revealed that extinction occurred well before passage of the Endangered Species Act of 1973. A common misinterpretation of Category 3C is that a status review indicates those species have special sensitivity or vulnerability to extinction. Although this might be true of some of them, it is not necessarily true of all or even a majority of them.

Current Notice

The Service gathers data on plants and animals native to the United States that appear to merit consideration for addition to the List of Endangered and Threatened Wildlife and Plants. This notice identifies those species (including, by definition, biological subspecies and certain distinct population segments of vertebrate animals) that are presently regarded by the Service as candidates for addition to the List of Endangered and Threatened Wildlife and Plants. In issuing this compilation, the Service relies on information from status surveys conducted for candidate assessment and on information from State Heritage Programs, other State and Federal Agencies (such as the Forest Service and the Bureau of Land Management), knowledgeable scientists, public and private natural resource interests, and

comments received in response to previous notices of review.

Tables 1 and 2 are arranged alphabetically by names of genera, species, and relevant subspecies under the major group headings (class or order as it provides a practical grouping) for animals first, then plants. Useful synonyms and subgeneric scientific names appear in parentheses (the synonyms preceded by an equal sign) and are displaced to the right in some instances to avoid affecting the alphabetical order. Some taxa that have not yet been formally described in the scientific literature have been included. Such taxa are identified by a generic or specific name (in italics) followed by "sp." or "ssp." (not italicized, or alphabetized).

Standardized common names are incorporated in these notices as they become available. The flux in common names, the inclusion of vernacular and composite subspecific names, and the fact that a majority of invertebrates still lack a standardized name combine to make common names relatively useless for organizing the tables. This notice also presents a group name (in parentheses) for many species, notably mollusks and insects, whose standardized common name given alone would have little recognition value to most readers.

Table 1 lists all species proposed for listing and species regarded by the Service as candidates for listing under the Act. Table 2 lists those species that were classified either as proposed for listing or Category 1 candidates in the 1993 plant notice of review or the 1994 animal notice of review, but are no longer classified as candidates or proposed species. Many of the species in Table 2 do not meet the information standards prescribed for candidate species. Some require additional research or status reviews before their conservation status under the Act can be resolved. As such information becomes available, the Service will evaluate whether these species warrant protection under the Act.

Taxa in Table 1 of this notice are assigned to several status categories, noted in the "Category" column at the left side of the table.

Codes for the category status column of taxa in Table 1 are explained below:

PE—Taxa proposed to be listed as endangered.

PT—Taxa proposed to be listed as threatened.

Y—Synonyms of taxa that are listed elsewhere in Table 1.

C—Taxa for which the Service has on file sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species. Proposed rules have not yet been issued because this action is precluded at present by other listing activity. Development and publication of proposed rules for these taxa are anticipated. The Service encourages State and other Federal agencies as well as other affected parties to give consideration to these taxa in environmental planning.

The column labeled "Priority" indicates the listing priority number for candidate species. This number is assigned on the basis of immediacy and magnitude of threats as well as taxonomic status. A complete description of the Service's listing priority system was published in a September 21, 1983 **Federal Register** notice (48 FR 43098).

Column 3 identifies the Regional office (numeric code) to which comments or questions should be directed (see ADDRESSES section). Comments received in response to the 1993 plant notice of review and 1994 animal notice of review were provided for review to the Region having lead responsibility for each candidate taxon mentioned in the comment. The Service will likewise consider all information provided in response to this notice of review in deciding whether or not to propose species for listing and when to undertake necessary listing actions. Comments received will become part of the administrative record for the species mentioned.

Following the scientific name of each taxon (fourth column) is the family designation (fifth column) and any common name (sixth column). The seventh column provides the known historical ranges for all included taxa, indicated by postal code abbreviations for States and U.S. possessions (many taxa may no longer occur in all of the areas shown). In the section on birds, the abbreviation "N" indicates the nesting range of the species, and the abbreviation "V" indicates additional areas in which the species spends other parts of its life cycle.

Taxa in Table 2 of this notice were included either as proposed species or as Category 1 candidates in the 1993 plant notice of review or the 1994 animal notice of review but have since been removed from such status for a variety of reasons. Many of the species listed in the last notices of review as proposed have now been added to the lists of Endangered or Threatened Wildlife and Plants. The first column indicates the present status of the species, using the following codes:

E—Taxa that have been listed as endangered.

T—Taxa that have been listed as threatened.

R—Taxa for which currently available information does not support issuance of a proposed listing.

Y—Synonyms of taxa listed elsewhere in Table 2.

The second column provides a coded explanation of why the species is no longer regarded as a candidate species. Descriptions of the codes are as follows:

A—Taxa that have proven to be more abundant or widespread than previously believed or those that are not subject to any identifiable threat.

F—Taxa removed from candidate status because the range is no longer a U.S. Territory.

I—Taxa for which the Service has insufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list.

L—Taxa added to the lists of endangered or threatened wildlife and plants.

M—Taxa mistakenly included as Category 1 in the last plant or animal notice of review.

N—Taxa that on the basis of current taxonomic understanding may not meet the Act's definition of "species".

X—Taxa that are believed to be extinct.

The columns describing lead agency and region, scientific name, family, common name, and historic range include information as previously described for Table 1.

Summary

Over the past year, the Service completed an exhaustive review of the candidate species to ensure that they truly warranted issuance of a proposed listing and to reevaluate the relative listing priority of each species. The Service undertook this effort to ensure that it was focusing conservation efforts on those species at greatest risk. As of the date of this publication, there are 159 plants and 34 animals proposed for endangered status; 37 plants and 8 animals proposed for threatened status; and 84 plant and 98 animal candidates awaiting preparation of proposed rules (see Table 1). Including synonyms, there are 303 taxa that were classified as either proposed for listing or Category 1 candidates in the 1993 plant notice of review or 1994 animal notice of review that are no longer classified in those categories (see Table 2).

Request for Information

The Service hereby requests that any further information on the taxa named in this notice be submitted as soon as possible or whenever it becomes available. Especially sought is information:

(1) indicating that a taxon should be removed from this list;

(2) indicating that a taxon not included in the notice should be added to the list of candidate species;

(3) recommending an area as critical habitat for a candidate taxon, or indicating that a proposal of critical habitat would not be prudent for a taxon;

(4) documenting threats to any of the included taxa;

(5) describing the immediacy or magnitude of threats facing candidate taxa;

(6) pointing out taxonomic or nomenclatural changes for any of the taxa;

(7) suggesting appropriate common names; or

(8) noting any mistakes, such as errors in the indicated historical distributions.

The Service will consider all information received in response to this notice. Substantive changes will be announced by periodic supplemental or revised notices in the **Federal Register**.

Author

This notice was compiled from evaluations by the staff biologists in the Service's Regional Offices and Field Stations. It was compiled and edited by Drs. George Drewry and Richard Sayers, Jr., of the Service's Headquarters Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority

This notice is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: February 16, 1996.

John G. Rogers,

Acting Director, U.S. Fish and Wildlife Service.

Table 1—Proposed and Candidate Animals and Plants

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Priority					
			MAMMALS.			
C	3	R2	*Conepatus leuconotus texensis*	Mustelidae	Skunk, Gulf Coast hog-nosed	U.S.A. (TX), Mexico.
C	3	R1	*Dipodomys merriami parvus*	Heteromyidae	Kangaroo rat, San Bernadino Merriam's.	U.S.A. (CA).
C	3	R1	*Emballonura semicaudata*	Emballonuridae	Bat, sheath-tailed (Agiguan, American Samoa populations).	U.S.A. (AS, CM (Agiguan)).
C	3	R1	*Neotoma fuscipes riparia*	Muridae	Woodrat, San Joaquin Valley	U.S.A. (CA).
PE		R1	*Ovis canadensis cremnobates*	Bovidae	Bighorn sheep, Peninsular Ranges population.	U.S.A. (CA), Mexico.
PE		R2	*Panthera onca*	Felidae	Jaguar, U.S. population	U.S.A. (AZ, CA, LA, NM, TX).
C	3	R4	*Peromyscus polionotus peninsularis*	Muridae	Mouse, St. Andrews beach	U.S.A. (FL).
C	3	R1	*Pteropus mariannus mariannus*	Pteropodidae	Flying fox, Mariana (Agiguan, Tinian, Saipan pops.).	U.S.A. (MP).
C	6	R1	*Sorex ornatus relictus*	Soricidae	Shrew, Buena Vista Lake ornate	U.S.A. (CA).
C	3	R1	*Spermophilus brunneus brunneus*	Sciuridae	Squirrel, Northern Idaho ground	U.S.A. (ID).
C	3	R1	*Sylvilagus bachmani riparius*	Leporidae	Rabbit, Riparian brush	U.S.A. (CA).
C	12	R4	*Ursus americanus floridanus*	Ursidae	Bear, Florida black	U.S.A. (FL, GA).
C	8	R6	*Vulpes velox*	Canidae	Fox, Swift (U.S. population)	U.S.A. (CO, IA, KS, MN, MT, ND, NE, NM, OK, SD, TX, WY).
			BIRDS.			
C	2	R6	*Charadrius montanus*	Charadriidae	Plover, mountain	N=CO, KS, MT, ND, NE, NM, OK, SD, TX, UT, WY; V=AZ, CA, NV, Mexico.
Y		R1	*Chasiempis sandwichensis gayi*	*** see ***	Chasiempis sandwichensis ibidus	
C	3	R1	*Chasiempis sandwichensis ibidus*	Musicapidae	Elepaio, Oahu	U.S.A. (HI).
C	6	R1	*Gallicolumba stairi*	Columbidae	Dove, Friendly ground	U.S.A. (AS).
PE		R2	*Glaucidium brasilianum cactorum*	Strigidae	Pygmy-owl, cactus ferruginous (AZ population).	U.S.A. (AZ, TX), Mexico.
PT		R2	*Glaucidium brasilianum cactorum*	Strigidae	Pygmy-owl, cactus ferruginous (TX population).	U.S.A. (AZ, TX), Mexico.
C	5	R1	*Oreomystis bairdi*	Fringillidae	Creeper, Kauai	U.S.A. (HI).
PT		R7	*Polysticta stelleri*	Anatidae	Eider, Steller's (AK breeding pop.)	U.S.A. (AK), Russia.
C	6	R1	*Porzana tubuensis*	Rallidae	Crake, spotless	U.S.A. (AS).
C	6	R1	*Ptilinopus perousii perousii*	Columbidae	Dove, many-colored fruit	U.S.A. (AS).
C	6	R1	*Zosterops conspicillatus rotensis*	Zosteropidae	White-eye, Rota bridled	U.S.A. (MP).
			REPTILES.			
PE		R1	*Anniella pulchra nigra*	Anniellidae	Lizard, black legless	U.S.A. (CA).
C	3	R5	*Clemmys muhlenbergii*	Emydidae	Turtle, Bog (northern pop.)	U.S.A. (CT, DE, MA, MD, NY, NJ, PA, RI).
C	5	R2	*Graptemys caglei*	Emydidae	Turtle, Cagle's map	U.S.A. (TX).

Table 1—Proposed and Candidate Animals and Plants—Continued

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Priority					
PE ..	.....	R1 ..	*Masticophis lateralis euryxanthus*	Colubridae	Whipsnake, (=striped racer) Alameda.	U.S.A. (CA).
PT ...	.....	R3 ..	*Nerodia erythrogaster neglecta*	Colubridae	Snake, northern copperbelly water ..	U.S.A. (IL, IN, KY, MI, OH).
PT ...	.....	R3 ..	*Nerodia sipedon insularum*	Colubridae	Snake, Lake Erie water	U.S.A. (OH), Canada.
PT ...	.....	R1 ..	*Phrynosoma mcallii*	Iguanidae	Lizard, flat-tailed horned	U.S.A. (AZ, CA), Mexico.
			AMPHIBIANS.			
C	8	R1 ..	*Ambystoma californiense (=A. tigrinum c.).*	Ambystomatidae ...	Salamander, California tiger	U.S.A. (CA).
PE ..	.....	R2 ..	*Ambystoma tigrinum stebbinsi*	Ambystomatidae ...	Sonoran tiger salamander	U.S.A. (AZ), Mexico.
C	3	R6 ..	*Bufo boreas boreas*	Bufonidae	Toad, boreal (Southern Rocky Mountain population).	U.S.A. (CO, NM, WY).
PT ...	.....	R4 ..	*Eleutherodactylus cooki*	Leptodactylidae	Guajon or rock frog	U.S.A. (PR).
PE ..	.....	R2 ..	*Eurycea sosorum*	Plethodontidae	Salamander, Barton Springs	U.S.A. (TX).
PE ..	.....	R1 ..	*Rana aurora draytoni*	Ranidae	Frog , California red-legged	U.S.A. (CA), Mexico.
C	2	R2 ..	*Rana chiricahuensis*	Ranidae	Frog, Chiricahua leopard	U.S.A. (AZ, NM), Mexico.
C	6	R1 ..	*Rana pretiosa*	Ranidae	Spotted frog (Great Basin pop.)	U.S.A. (ID, NV)
C	3	R6 ..	*Rana pretiosa*	Ranidae	Frog, spotted (Wasatch Front pop. UT).	U.S.A. (UT).
C	6	R1 ..	*Rana pretiosa*	Ranidae	Spotted frog (West Coast pop.)	U.S.A. (CA, OR, WA)
C	6	R6 ..	*Rana pretiosa*	Ranidae	Frog, spotted (West Desert pop. UT)	U.S.A. (UT).
C	2	R2 ..	*Rana subaquavocalis*	Ranidae	Frog, Ramsey Canyon leopard	U.S.A. (AZ).
			FISHES.			
C	2	R2 ..	*Cyprinodon pecosensis*	Cyprinodontidae	Pupfish, Pecos	U.S.A. (NM, TX).
C	2	R2 ..	*Dionda diaboli*	Cyprinidae	Minnow, Devils River	U.S.A. (TX), Mexico.
C	5	R6 ..	*Etheostoma cragini*	Percidae	Darter, Arkansas	U.S.A. (AR, CO, KS, MO, OK).
C	3	R1 ..	*Gila bicolor* ssp.	Cyprindidae	High Rock Springs tui chub	U.S.A. (CA).
C	3	R1 ..	*Gila bicolor vaccaceps*	Cyprinidae	Tui chub, Cowhead Lake	U.S.A. (CA).
PE ..	.....	R6 ..	*Iotichthys phlegethontis*	Cyprinidae	Chub, least	U.S.A. (UT).
C	2	R6 ..	*Macrhybopsis (=Hybopsis) gelida*	Cyprinidae	Chub, sturgeon	U.S.A. (AR, IA, IL, KY, KS, LA, MO, MS, MT, NE, ND, SD, TN, WY).
C	2	R6 ..	*Macrhybopsis (=Hybopsis) meeki*	Cyprinidae	Chub, sicklefin	U.S.A. (AR, IA, IL, KS, KY, LA, MO, MS, NE, ND, SD, TN).
PE ..	.....	R2 ..	*Notropis girardi*	Cyprinidae	Shiner, Arkansas River (native pop. only).	U.S.A. (AR, KS, NM, OK, TX).
C	2	R6 ..	*Notropis topeka (=tristis)*	Cyprinidae	Shiner, Topeka	U.S.A. (IA, KS, MN, MO, NE, SD).
C	3	R1 ..	*Oncorhynchus (=Salmo) mykiss* ssp.	Salmonidae	Trout, McCloud R. redband	U.S.A. (CA).
PT ...	.....	R1 ..	*Pogonichthys macrolepidotus*	Cyprinidae	Splittail, Sacramento	U.S.A. (CA).
PT ...	.....	R5 ..	*Salmo salar*	Salmonidae	Atlantic salmon (distinct pop. in 7 Maine rivers).	U.S.A., Canada, Greenland, western Europe
C	9	R1 ..	*Salvelinus confluentus*	Salmonidae	Trout, bull	U.S.A. (CA, ID, MT, NV, OR, WA).
C	9	R6 ..	*Thymallus arcticus*	Salmonidae	Grayling, Arctic (Upper Missouri R. fluvial pop.).	U.S.A. (MT, WY).
Y	.....	R6 ..	*Thymallus arcticus montanus*	*** see ***	Thymallus arcticus	
			CLAMS.			
PE ..	.....	R4 ..	*Alasmidonta atropurpurea* (Rafinesque, 1831).	Unionidae	Elktoe, Cumberland	U.S.A. (KY, TN).
PE ..	.....	R4 ..	*Amblema neislerii* (I.Lea, 1858)	Unionidae	Mussel, fat three-ridge	U.S.A. (FL, GA).
PE ..	.....	R4 ..	*Elliptio chipolaensis*	Unionidae	Slabshell, Chipola	U.S.A. (AL, FL).
PE ..	.....	R4 ..	*Elliptoideus sloatianus* (I. Lea, 1840)	Unionidae	Bankclimber, purple	U.S.A. (AL, GA, FL).
PE ..	.....	R4 ..	*Epioblasma brevidens* (I. Lea, 1831)	Unionidae	Combshell, Cumberlandian	U.S.A. (AL, KY, TN, VA).
PE ..	.....	R4 ..	*Epioblasma capsaeformis* (I. Lea, 1834).	Unionidae	Mussel, oyster	U.S.A. (AL, KY, TN, VA).
PE ..	.....	R4 ..	*Lampsilis subangulata* (I.Lea, 1840)	Unionidae	Pocketbook, shiny-rayed	U.S.A. (AL, FL, GA).
PE ..	.....	R4 ..	*Medionidus penicillatus*	Unionidae	Gulf moccasinshell	U.S.A. (AL, FL, GA).
PE ..	.....	R4 ..	*Medionidus simpsonianus*	Unionidae	Ochlockonee moccasinshell	U.S.A. (FL, GA).
PE ..	.....	R4 ..	*Pleurobema pyriforme* (I.Lea, 1857)	Unionidae	Pigtoe, oval	U.S.A. (AL, FL, GA).

Table 1—Proposed and Candidate Animals and Plants—Continued

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Priority					
PE ..	.....	R4 ..	*Quadrula cylindrica strigillata* (B.H.Wright, 1898).	Unionidae	Rabbitsfoot, rough	U.S.A. (KY, TN, VA).
PE ..	.....	R4 ..	*Villosa perpurpurea* (I. Lea,1861)	Unionidae	Bean, Purple	U.S.A. (TN, VA).
			SNAILS.			
C	7	R3 ..	*Antrobia culveri* (Hubricht, 1971)	Hydrobiidae	Cavesnail, Tumbling Creek	U.S.A. (MO).
C	11 ...	R2 ..	*Assiminea pecos* Taylor, 1987	Assimineidae	Snail, Pecos assiminea	U.S.A. (NM, TX), Mexico.
C	5	R4 ..	*Elimia crenatella* (I. Lea, 1860)	Pleuroceridae	Elimia (snail), lacy	U.S.A. (AL).
C	7	R1 ..	*Erinna newcombi*	Lymnaeidae	Snail, Newcomb's	U.S.A. (HI).
C	2	R1 ..	*Eua zebrina*	Partulidae	Snail, Tutuila tree	U.S.A. (AS).
C	5	R4 ..	*Leptoxis ampla* (Anthony, 1855)	Pleuroceridae	Rocksnail, round	U.S.A. (AL).
C	5	R4 ..	*Leptoxis plicata* (Conrad, 1834)	Pleuroceridae	Rocksnail, plicate	U.S.A. (AL).
C	5	R4 ..	*Leptoxis taeniata* (Conrad, 1834)	Pleuroceridae	Rocksnail, painted	U.S.A. (AL).
C	5	R4 ..	*Lepyrium showalteri* (I. Lea, 1861) ...	Hydrobiidae	Pebblesnail, flat	U.S.A. (AL).
C	5	R4 ..	*Lioplax cyclostomaformis* (I. Lea, 1841).	Viviparidae	Lioplax (snail), cylindrical	U.S.A. (AL, GA, LA).
C	9	R6 ..	*Oreohelix peripherica* wasatchensis .	Oreohelicidae	Mountainsnail, Ogden Rocky	U.S.A. (UT).
C	2	R1 ..	*Ostodes strigatus*	Potaridae	Snail, (no common name)	U.S.A. (AS).
C	2	R1 ..	*Partula gibba*	Partulidae	Snail, Humped tree	U.S.A. (GU).
C	2	R1 ..	*Partula langfordi*	Partulidae	Snail, Langford's tree	U.S.A. (GU).
C	2	R1 ..	*Partula radiolata*	Partulidae	Snail, Guam tree	U.S.A. (GU).
C	8	R2 ..	*Pyrgulopsis (="Fontelicella") chupadae (=chupaderae)* Taylor, 1987.	Hydrobiidae	Springsnail, Chupadera	U.S.A. (NM).
C	11 ...	R2 ..	*Pyrgulopsis (="Fontelicella") gilae* Taylor, 1987.	Hydrobiidae	Springsnail, Gila	U.S.A. (NM).
C	2	R2 ..	*Pyrgulopsis morrisoni* Hershler, 1988.	Hydrobiidae	Springsnail, Page	U.S.A. (AZ).
C	11 ...	R2 ..	*Pyrgulopsis (="Fontelicella") roswellensis* Taylor, 1987.	Hydrobiidae	Springsnail, Roswell	U.S.A. (NM).
C	11 ...	R2 ..	*Pyrgulopsis (="Fontelicella") thermalis* Taylor, 1987.	Hydrobiidae	Hotspring snail, New Mexico	U.S.A. (NM).
C	5	R2 ..	*Pyrgulopsis thompsoni* Hershler, 1988.	Hydrobiidae	Springsnail, Huachuca	U.S.A. (AZ), Mexico.
C	2	R1 ..	*Samoana fragilis*	Partulidae	Snail, fragile tree	U.S.A. (GU).
PE ..	.....	R2 ..	*Sonorella eremita* (Pilsbry & Ferris, 1915).	Helminthoglyptida .	Talussnail, San Xavier	U.S.A. (AZ).
C	5	R2 ..	*Sonorella macrophallus* Fairbanks & Reeder, 1980.	Helminthoglyptida .	Talussnail, Wet Canyon	U.S.A. (AZ).
C	2	R6 ..	*Stagnicola bonnevillensis* (Call, 1884).	Lymnaeidae	Pondsnail, fat-whorled	U.S.A. (UT).
C	5	R2 ..	*Tryonia adamantina* Taylor, 1987	Hydrobiidae	Springsnail, Diamond Y	U.S.A. (TX).
C	11 ...	R2 ..	*Tryonia kosteri* Taylor, 1987	Hydrobiidae	Tryonia (springsnail), Koster's	U.S.A. (NM).
C	5	R2 ..	*Tryonia stocktonensis* Taylor, 1987 .	Hydrobiidae	Tryonia (springsnail), Gonzales Spring.	U.S.A. (TX).
			INSECTS.			
C	2	R1 ..	*Megalagrion leptodemus*	Coenagrionidae	Damselfly, leptodemas megalagrion	U.S.A. (HI).
C	2	R1 ..	*Megalagrion nesiotes*	Coenagrionidae	Damselfly, nesiotes megalagrion	U.S.A. (HI).
C	2	R1 ..	*Megalagrion nigrohamatum nigrolineatum.*	Coenagrionidae	Damselfly, blackline megalagrion	U.S.A. (HI).
Y	.....	R1 ..	*Megalagrion nigrolineatum*	*** see ***	Megalagrion nigrohamatum nigrolineatum.	
C	2	R1 ..	*Megalagrion oceanicum*	Coenagrionidae	Damselfly, oceanic megalagrion	U.S.A. (HI).
C	2	R1 ..	*Megalagrion pacificum*	Coenagrionidae	Damselfly, Pacific megalagrion	U.S.A. (HI).
C	8	R1 ..	*Megalagrion xanthomelas*	Coenagrionidae	Damselfly, orangeblack megalagrion	U.S.A. (HI).
PE ..	.....	R1 ..	*Trimerotropis infantilis*	Acrididae	Grasshopper, Zayante band-winged	U.S.A. (CA).
C	3	R6 ..	*Cicindela limbata albissima*	Cicindelidae	Beetle, Coral Pink Sand Dunes tiger	U.S.A. (UT).
PE ..	.....	R2 ..	*Heterelmis comalensis*	Elmidae	Beetle, Comal Springs riffle	U.S.A. (TX).
PE ..	.....	R1 ..	*Pleocoma conjugens conjugens*	Scarabaeidae	Beetle, Santa Cruz rain	U.S.A. (CA).
PE ..	.....	R1 ..	*Polyphylla barbata*	Scarabaeidae	Beetle, Mount Hermon June	U.S.A. (CA).
C	2	R5 ..	*Pseudanophthalmus holsingeri*	Carabidae	Beetle, Holsinger's cave	U.S.A. (VA).
PE ..	.....	R2 ..	*Stygoparnus comalensis*	Dryopidae	Comal Springs dryopid beetle	U.S.A. (TX).
C	8	R6 ..	*Zaitzevia thermae*	Elmidae	Beetle, warm spring zaitzevian riffle	U.S.A. (MT).
C	2	R1 ..	*Drosophila aglaia*	Drosophilidae	Pomace fly (no common name)	U.S.A. (HI)
C	2	R1 ..	*Drosophila alsophila*	Drosophilidae	Pomace fly (no common name)	U.S.A. (HI)
C	2	R1 ..	*Drosophila attigua*	Drosophilidae	Pomace fly (no common name)	U.S.A. (HI)
C	2	R1 ..	*Drosophila digressa*	Drosophilidae	Pomace fly (no common name)	U.S.A. (HI)
C	2	R1 ..	*Drosophila hemipeza*	Drosophilidae	Pomace fly (no common name)	U.S.A. (HI)

Table 1—Proposed and Candidate Animals and Plants—Continued

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Priority					
C	2	R1 ..	*Drosophila heteroneura*	Drosophilidae	Pomace fly (no common name)	U.S.A. (HI)
C	2	R1 ..	*Drosophila montgomeryi*	Drosophilidae	Pomace fly (no common name)	U.S.A. (HI)
C	2	R1 ..	*Drosophila mulli*	Drosophilidae	Pomace fly (no common name)	U.S.A. (HI)
C	2	R1 ..	*Drosophila musaphila*	Drosophilidae	Pomace fly (no common name)	U.S.A. (HI)
C	2	R1 ..	*Drosophila neoclavisetae*	Drosophilidae	Pomace fly (no common name)	U.S.A. (HI)
C	2	R1 ..	*Drosophila obatai*	Drosophilidae	Pomace fly (no common name)	U.S.A. (HI)
C	2	R1 ..	*Drosophila psilotarsalis*	Drosophilidae	Pomace fly (no common name)	U.S.A. (HI)
C	2	R1 ..	*Drosophila substenoptera*	Drosophilidae	Pomace fly (no common name)	U.S.A. (HI)
C	2	R1 ..	*Drosophila tarphytrichia*	Drosophilidae	Pomace fly (no common name)	U.S.A. (HI)
C	2	R1 ..	*Drosophila toxochaeta*	Drosophilidae	Pomace fly (no common name)	U.S.A. (HI)
C	5	R1 ..	*Phaeogramma* sp.	Tephritidae	Fly, Po'olanui gall	U.S.A. (HI).
PE ..	.....	R1 ..	*Euphydryas editha quino (=E. e. wrighti).*	Nymphalidae	Butterfly, Quino checkerspot	U.S.A. (CA), Mexico.
C	2	R1 ..	*Euploea eleutho*	Danaidae	Butterfly, Marianas euploea	U.S.A. (MP).
C	3	R1 ..	*Icaricia icarioides fenderi*	Lycaenidae	Butterfly, Fender's blue	U.S.A. (OR).
C	2	R1 ..	*Manduca blackburni*	Sphingidae	Moth, Blackburn's sphinx	U.S.A. (HI).
PE ..	.....	R1 ..	*Pyrgus ruralis lagunae*	Hesperiidae	Skipper, Laguna Mountains	U.S.A. (CA).
PE ..	.....	R1 ..	*Speyeria callippe callippe*	Nymphalidae	Butterfly, Callippe silverspot	U.S.A. (CA).
PE ..	.....	R1 ..	*Speyeria zerene behrensii*	Nymphalidae	Butterfly, Behren's silverspot	U.S.A. (CA).
			ARACHNIDS.			
C	1	R1 ..	*Adelocosa anops*	Lycosidae	Spider, Kauai cave wolf or pe'e pe'e maka 'ole.	U.S.A. (HI).
C	2	R2 ..	*Cicurina wartoni*	Dictynidae	Spider, Warton's cave	U.S.A. (TX).
			CRUSTACEANS.			
PE ..	.....	R1 ..	*Branchinecta sandiegoensis*	Branchinectidae	Fairy shrimp, San Diego	U.S.A. (CA).
C	2	R3 ..	*Gammarus acherondytes*	Gammaridae	Amphipod, Illinois cave	U.S.A. (IL).
C	1	R1 ..	*Spelaeorchestia koloana*	Talitridae	Amphipod, Kauai cave	U.S.A. (HI).
PE ..	.....	R2 ..	*Stygobromus (=Stygonectes) pecki* .	Crangonyctidae	Peck's cave amphipod	U.S.A. (TX).
			FLOWERING PLANTS.			
Y	.....	R5 ..	*Abama americanum*	*** see ***	Narthecium americanum	
Y	.....	R5 ..	*Abama montana*	*** see ***	Narthecium americanum	
C	8	R1 ..	*Abronia alpina*	Nyctaginaceae	Ramshaw sand-verbena	U.S.A. (CA).
PE ..	.....	R1 ..	*Acanthomintha ilicifolia*	Lamiaceae	San Diego thornmint	U.S.A. (CA), Mexico (Baja California).
PE ..	.....	R1 ..	*Achyranthes mutica*	Amaranthaceae	None	U.S.A. (HI)
Y	.....	R1 ..	*Achyranthes nelsonii*	*** see ***	Achyranthes mutica	
Y	.....	R1 ..	*Allium fimbriatum var. munzii*	*** see ***	Allium munzii	
C	8	R2 ..	*Allium goodddingii*	Liliaceae	Goodding's onion	U.S.A. (AZ, NM).
PE ..	.....	R1 ..	*Allium munzii*	Liliaceae	Munz's onion	U.S.A. (CA).
Y	.....	R1 ..	*Allium sanbornii var. tuolumnense* ...	*** see ***	Allium tuolumnense	
PT ...	.....	R1 ..	*Allium tuolumnense*	Liliaceae	Rawhide Hill onion	U.S.A. (CA).
PE ..	.....	R1 ..	*Alopecurus aequalis var. sonomensis.*	Poaceae	Sonoma alopecurus	U.S.A. (CA).
PE ..	.....	R1 ..	*Alsinidendron lychnoides*	Caryophyllaceae ...	Kuawawaenohu	U.S.A. (HI).
PE ..	.....	R1 ..	*Alsinodendron viscosum*	Caryophyllaceae ...	None	U.S.A. (HI)
PE ..	.....	R1 ..	*Amaranthus brownii*	Amaranthaceae	None	U.S.A. (HI).
PE ..	.....	R1 ..	*Arabis hoffmannii*	Brassicaceae	Hoffmann's Rock-cress	U.S.A. (CA).
PT ...	.....	R1 ..	*Arabis johnstonii*	Brassicaceae	Johnston's rock-cress	U.S.A. (CA).
C	2	R6 ..	*Arabis pusilla*	Brassicaceae	Small rock-cress	U.S.A. (WY).
Y	.....	R1 ..	*Arctostaphylos andersonii var. pallida.*	*** see ***	Arctostaphylos pallida	
PE ..	.....	R1 ..	*Arctostaphylos confertiflora*	Ericaceae	Santa Rosa Island manzanita	U.S.A. (CA).
PE ..	.....	R1 ..	*Arctostaphylos glandulosa* ssp. *crassifolia.*	Ericaceae	Del Mar manzanita	U.S.A. (CA).
PT ...	.....	R1 ..	*Arctostaphylos imbricata*	Ericaceae	San Bruno Mountain manzanita	U.S.A. (CA).
Y	.....	R1 ..	*Arctostaphylos imbricata ssp. imbricata.*	*** see ***	Arctostaphylos imbricata	
C	8	R1 ..	*Arctostaphylos myrtifolia*	Ericaceae	Lone manzanita	U.S.A. (CA).
PT ...	.....	R1 ..	*Arctostaphylos pallida*	Ericaceae	Pallid manzanita	U.S.A. (CA).
Y	.....	R1 ..	*Arctostaphylos uva-ursi ssp. myrtifolia.*	*** see ***	Arctostaphylos myrtifolia	
PT ...	.....	R1 ..	*Arenaria ursina*	Caryophyllaceae ...	Bear Valley sandwort	U.S.A. (CA).
C	2	R1 ..	*Astelia waialealae*	Liliaceae	Pa'iniu	U.S.A. (HI)
PE ..	.....	R1 ..	*Astragalus brauntonii*	Fabaceae	Braunton's milk-vetch	U.S.A. (CA).
PE ..	.....	R1 ..	*Astragalus clarianus*	Fabaceae	Clara Hunt's milk-vetch	U.S.A. (CA).
C	2	R6 ..	*Astragalus desereticus*	Fabaceae	Deseret milk-vetch	U.S.A. (UT).
C	8	R6 ..	*Astragalus equisolensis*	Fabaceae	Horseshoe milk-vetch	U.S.A. (UT).

Table 1—Proposed and Candidate Animals and Plants—Continued

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Priority					
C	3	R6 ..	*Astragalus eremiticus var. ampullariodes.*	Fabaceae	Shem milk-vetch	U.S.A. (UT).
C	2	R6 ..	*Astragalus holmgreniorum*	Fabaceae	Holmgren milk-vetch	U.S.A. (AZ, UT).
PE ..	.....	R1 ..	*Astragalus jaegerianus*	Fabaceae	Lane Mountain (=Coolgardie) milk-vetch.	U.S.A. (CA).
PE ..	.....	R1 ..	*Astragalus lentiginosus* var. *coachellae.*	Fabaceae	Coachella Valley milk-vetch	U.S.A. (CA).
PT ...	.....	R1 ..	*Astragalus lentiginosus* var. *micans* .	Fabaceae	Shining (=shiny) milk-vetch	U.S.A. (CA).
PE ..	.....	R1 ..	*Astragalus lentiginosus* var. *piscinensis.*	Fabaceae	Fish Slough milk-vetch	U.S.A. (CA).
PT ...	.....	R1 ..	*Astragalus lentiginosus* var. *sesquimetralis.*	Fabaceae	Sodaville milk-vetch	U.S.A. (CA, NV).
PE ..	.....	R1 ..	*Astragalus magdalenae* var. *peirsonii.*	Fabaceae	Peirson's milk-vetch	U.S.A. (CA).
C	3	R1 ..	*Astragalus oophorus var. clokeyanus.*	Fabaceae	None	U.S.A. (NV).
PE ..	.....	R1 ..	*Astragalus tener var. titi*	Fabaceae	Coastal dunes milk-vetch	U.S.A. (CA).
C	11 ...	R6 ..	*Astragalus tortipes*	Fabaceae	Sleeping Ute milk-vetch	U.S.A. (CO).
PE ..	.....	R1 ..	*Astragalus tricarinatus*	Fabaceae	Triple-ribbed milk-vetch	U.S.A. (CA).
PE ..	.....	R1 ..	*Atriplex coronata* var. *notatior*	Chenopodiaceae ...	San Jacinto Valley crownscale (=saltbush).	U.S.A. (CA).
PE ..	.....	R1 ..	*Baccharis vanessae*	Asteraceae	Encinitis baccharis (=Coyote bush), .	U.S.A. (CA).
PE ..	.....	R1 ..	*Berberis nevinii*	Berberidaceae	Nevin's barbe:ry	U.S.A. (CA).
PE ..	.....	R1 ..	*Berberis pinnata ssp. insularis*	Berberidaceae	Island barberry	U.S.A. (CA).
C	6	R1 ..	*Bidens micrantha* ssp. *ctenophylla* ...	Asteraceae	Ko'oko'olau	U.S.A. (HI).
PT ...	.....	R1 ..	*Brodiaea filifolia*	Liliaceae	Thread-leaved brodiaea	U.S.A. (CA).
PE ..	.....	R1 ..	*Brodiaea pallida*	Liliaceae	Chinese Camp brodiaea	U.S.A. (CA).
C	8	R1 ..	*Calochortus umpquaensis*	Liliaceae	Umpqua Mariposa lily	U.S.A. (OR).
PE ..	.....	R1 ..	*Calyptridium pulchellum*	Portulacaceae	Mariposa pussy-paws	U.S.A. (CA).
PE ..	.....	R1 ..	*Calystegia stebbinsii*	Convolvulaceae	Stebbins' morning-glory	U.S.A. (CA).
PE ..	.....	R1 ..	*Carex albida*	Cyperaceae	White sedge	U.S.A. (CA).
PT ...	.....	R1 ..	*Carpenteria californica*	Saxifragaceae	Carpenteria	U.S.A. (CA).
C	5	R6 ..	*Castilleja aquariensis*	Scrophulariaceae ..	Aquarius Indian paintbrush	U.S.A. (UT).
PT ...	.....	R1 ..	*Castilleja campestris* ssp. *succulenta*	Scrophulariaceae ..	Fleshy owl's-clover	U.S.A. (CA).
C	11 ...	R1 ..	*Castilleja christii*	Scrophulariaceae ..	Christ's paintbrush	U.S.A. (ID).
PT ...	.....	R1 ..	*Castilleja cinerea*	Scrophulariaceae ..	Ash-gray Indian paintbrush	U.S.A. (CA).
C	2	R2 ..	*Castilleja elongata*	Scrophulariaceae ..	Tall paintbrush	U.S.A. (TX).
PT ...	.....	R1 ..	*Castilleja levisecta*	Scrophulariaceae ..	Golden paintbrush	U.S.A. (OR, WA), Canada (BC).
PE ..	.....	R1 ..	*Castilleja mollis*	Scrophulariaceae ..	Soft-leaved paintbrush	U.S.A. (CA).
C	2	R4 ..	*Catesbaea melanocarpa*	Rubiaceae	None	U.S.A. (PR), Antigua, Guadalupe.
Y	.....	R4 ..	*Catesbia melanocarpa*	*** see ***	Catesbaea melanocarpa	
PT ...	.....	R1 ..	*Ceanothus ophiochilus*	Rhamnaceae	Vail Lake ceanothus	U.S.A. (CA).
PE ..	.....	R1 ..	*Ceanothus roderickii*	Rhamnaceae	Pine Hill ceanothus	U.S.A. (CA).
PE ..	.....	R1 ..	*Cenchrus agrimonioides*	Poaceae	Kamanomano (=Sandbur, agrimony)	U.S.A. (HI)
Y	.....	R1 ..	*Cenchrus agrimonioides var. agrimonioides.*	*** see ***	Cenchrus agrimonioides	
Y	.....	R1 ..	*Cenchrus agrimonioides var. laysanensis.*	*** see ***	Cenchrus agrimonioides	
Y	.....	R1 ..	*Cenchrus pendunculatus*	*** see ***	Cenchrus agrimonioides	
PE ..	.....	R1 ..	*Cercocarpus traskiae*	Rosaceae	Catalina Island mountain-mahogany	U.S.A. (CA).
PE ..	.....	R1 ..	*Chamaesyce herbstii*	Euphorbiaceae	'Akoko	
PT ...	.....	R1 ..	*Chamaesyce hooveri*	Euphorbiaceae	Hoover's spurge	U.S.A. (CA).
PE ..	.....	R1 ..	*Chamaesyce rockii*	Euphorbiaceae	'Akoko	
C	6	R1 ..	*Chlorogalum purpureum var. purpureum.*	Liliaceae	Purple amole	U.S.A. (CA).
C	3	R1 ..	*Chlorogalum purpureum var. reductum.*	Liliaceae	Cammatta Canyon amole	U.S.A. (CA).
PE ..	.....	R1 ..	*Chorizanthe orcuttiana*	Polygonaceae	Orcutt's spineflower	U.S.A. (CA).
C	5	R2 ..	*Cimicifuga arizonica*	Ranunculaceae	Arizona bugbane	U.S.A. (AZ).
PE ..	.....	R1 ..	*Cirsium hydrophilum var. hydrophilum.*	Asteraceae	Suisun thistle	U.S.A. (CA).
C	2	R1 ..	*Cirsium loncholepis*	Asteraceae	La Graciosa thistle	U.S.A. (CA).
C	2	R1 ..	*Cirsium rhothophilum*	Asteraceae	Surf thistle	U.S.A. (CA).
PE ..	.....	R1 ..	*Clarkia imbricata*	Onagraceae	Vine Hill clarkia	U.S.A. (CA).
C	11 ...	R1 ..	*Clarkia lingulata*	Onagraceae	Merced clarkia	U.S.A. (CA).
PT ...	.....	R1 ..	*Clarkia springvillensis*	Onagraceae	Springville clarkia	U.S.A. (CA).
C	3	R2 ..	*Clematis hirsutissima var. arizonica* .	Ranunculaceae	Arizona leather flower	U.S.A. (AZ).

Table 1—Proposed and Candidate Animals and Plants—Continued

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Priority					
PE ..	.....	R1 ..	*Clermontia drepanomorpha*	Campanulaceae	'Oha wai	U.S.A. (HI).
PT ...	.....	R4 ..	*Coccoloba rugosa*	Polygonaceae	None	U.S.A. (PR).
PE ..	.....	R4 ..	*Cordia bellonis*	Boraginaceae	None	U.S.A. (PR).
PE ..	.....	R1 ..	*Cordylanthus mollis* ssp. *mollis*	Scrophulariaceae ..	Soft bird's-beak	U.S.A. (CA).
PT ...	.....	R1 ..	*Corethrogyne filaginifolia* var. *linifolia*	Asteraceae	Del Mar sand aster	U.S.A. (CA).
PE ..	.....	R1 ..	*Cyanea acuminata*	Campanulaceae	Haha	
Y	.....	R1 ..	*Cyanea bryanii*	*** see ***	Cyanea platyphylla	
C	2	R1 ..	*Cyanea copelandii* ssp. *haleakalaensis.*	Campanulaceae	Haha	U.S.A. (HI)
PE ..	.....	R1 ..	*Cyanea dunbarii*	Campanulaceae	Haha	U.S.A. (HI.)
Y	.....	R1 ..	*Cyanea fernaldii*	*** see ***	Cyanea platyphylla	
C	2	R1 ..	*Cyanea glabra*	Campanulaceae	Haha	U.S.A. (HI)
PE ..	.....	R1 ..	*Cyanea grimesiana ssp. grimesiana*	Campanulaceae	Haha	U.S.A. (HI).
Y	.....	R1 ..	*Cyanea grimesiana var. lydgatei*	*** see ***	Cyanea grimesiana ssp. grimesiana	
Y	.....	R1 ..	*Cyanea grimesiana var. mauiensis* ..	*** see ***	Cyanea grimesiana ssp. grimesiana	
Y	.....	R1 ..	*Cyanea grimesiana var. munroi*	*** see ***	Cyanea grimesiana ssp. grimesiana	
C	2	R1 ..	*Cyanea hamatiflora* ssp. *hamatiflora*	Campanulaceae	Haha	U.S.A. (HI)
PE ..	.....	R1 ..	*Cyanea (=Rollandia) humboldtiana* ..	Campanulaceae	Haha	U.S.A. (HI)
PE ..	.....	R1 ..	*Cyanea koolauensis*	Campanulaceae	Haha	U.S.A. (HI)
PE ..	.....	R1 ..	*Cyanea longiflora*	Campanulaceae	Haha	U.S.A. (HI)
PE ..	.....	R1 ..	*Cyanea platyphylla*	Campanulaceae	Haha	U.S.A. (HI).
PE ..	.....	R1 ..	*Cyanea recta*	Campanulaceae	Haha	U.S.A. (HI)
PE ..	.....	R1 ..	*Cyanea remyi*	Campanulaceae	Haha	U.S.A. (HI)
Y	.....	R1 ..	*Cyanea rollandioides*	*** see ***	Cyanea platyphylla	
PE ..	.....	R1 ..	*Cyanea (=Rollandia) st-johnii*	Campanulaceae	Haha	U.S.A. (HI).
PE ..	.....	R1 ..	*Cyperus trachysanthos*	Cyperaceae	Pu'uka'a	U.S.A. (HI).
PE ..	.....	R1 ..	*Cyrtandra cyaneoides*	Gesneriaceae	Mapele	U.S.A. (HI).
PE ..	.....	R1 ..	*Cyrtandra dentata*	Gesneriaceae	Ha'iwale	
Y	.....	R1 ..	*Cyrtandra frederickii*	*** see ***	Cyrtandra dentata	
PE ..	.....	R1 ..	*Cyrtandra subumbellata*	Gesneriaceae	Ha'iwale	U.S.A. (HI).
PE ..	.....	R1 ..	*Cyrtandra viridiflora*	Gesneriaceae	Ha'iwale	U.S.A. (HI).
C	2	R2 ..	*Dalea tentaculoides*	Fabaceae	Gentry's indigobush	U.S.A. (AZ).
Y	.....	R1 ..	*Delissea niihauensis*	*** see ***	Delissea undulata	
PE ..	.....	R1 ..	*Delissea rivularis*	Campanulaceae	Oha	U.S.A. (HI)
PE ..	.....	R1 ..	*Delissea subcordata*	Campanulaceae	'Oha	
Y	.....	R1 ..	*Delissea subcordata var. obtusifolia*	*** see ***	Delissea subcordata	
PE ..	.....	R1 ..	*Delissea undulata*	Campanulaceae	None	U.S.A. (HI).
C	2	R1 ..	*Delphinium bakeri*	Ranunculaceae	Baker's larkspur	U.S.A. (CA).
C	2	R1 ..	*Delphinium luteum*	Ranunculaceae	Yellow larkspur	U.S.A. (CA).
PE ..	.....	R1 ..	*Downingia concolor* var. *brevior*	Campanulaceae	Cuyamaca Lake downingia	U.S.A. (CA).
C	6	R1 ..	*Dubautia plantaginea ssp. humilis* ...	Asteraceae	Na'ena'e	U.S.A. (HI).
PT ...	.....	R1 ..	*Dudleya abramsii* ssp. *parva*	Crassulaceae	Conejo dudleya	U.S.A. (CA).
PE ..	.....	R1 ..	*Dudleya blochmaniae* ssp. *brevifolia*	Crassulaceae	Short-leaved dudleya	U.S.A. (CA).
PE ..	.....	R1 ..	*Dudleya blochmaniae ssp. insularis* .	Crassulaceae	Santa Rosa Island dudleya	U.S.A. (CA).
Y	.....	R1 ..	*Dudleya brevifolia*	*** see ***	Dudleya blochmaniae ssp. brevifolia	
PT ...	.....	R1 ..	*Dudleya cymosa* ssp. *marcescens* ...	Crassulaceae	Marcescent dudleya	U.S.A. (CA).
PT ...	.....	R1 ..	*Dudleya cymosa* ssp. *ovatifolia*	Crassulaceae	Santa Monica Mountains dudleya	U.S.A. (CA).
C	11 ...	R1 ..	*Dudleya densiflora*	Crassulaceae	San Gabriel Mountains dudleya	U.S.A. (CA).
PE ..	.....	R1 ..	*Dudleya nesiotica*	Crassulaceae	Santa Cruz Island dudleya	U.S.A. (CA).
Y	.....	R1 ..	*Dudleya parva*	*** see ***	Dudleya abramsii ssp. parva	
PE ..	.....	R1 ..	*Dudleya* sp. nov. /ined. ≥East Point≥	Crassulaceae	Munchkin dudleya	U.S.A. (CA)
PE ..	.....	R1 ..	*Dudleya stolonifera*	Crassulaceae	Laguna Beach liveforever	U.S.A. (CA).
PT ...	.....	R1 ..	*Dudleya verityi*	Crassulaceae	Verity's dudleya	U.S.A. (CA).
C	6	R2 ..	*Echinomastus erectocentrus* var. *acunensis.*	Cactaceae	Acuna cactus	U.S.A. (AZ), Mexico.
PE ..	.....	R1 ..	*Eragrostis fosbergii*	Poaceae	Fosberg's love grass	U.S.A. (HI).
C	11 ...	R1 ..	*Erigeron basalticus*	Asteraceae	Basalt daisy	U.S.A. (WA).
C	3	R1 ..	*Erigeron decumbens* var. *decumbens.*	Asteraceae	None	U.S.A. (OR).
C	11 ...	R2 ..	*Erigeron lemmonii*	Asteraceae	Lemmon fleabane	U.S.A. (AZ).
C	2	R1 ..	*Eriodictyon capitatum*	Hydrophyllaceae ...	Lompoc yerba santa	U.S.A. (CA).
C	3	R1 ..	*Eriogonum apricum var. apricum*	Polygonaceae	Ione buckwheat	U.S.A. (CA).
C	3	R1 ..	*Eriogonum apricum var. prostratum* .	Polygonaceae	Irish Hill buckwheat	U.S.A. (CA).
C	5	R1 ..	*Eriogonum argophyllum*	Polygonaceae	Buckwheat (no common name)	U.S.A. (NV).
C	11 ...	R1 ..	*Eriogonum kelloggii*	Polygonaceae	Red Mountain buckwheat	U.S.A. (CA).
PT ...	.....	R1 ..	*Eriogonum kennedyi var. austromontanum.*	Polygonaceae	Southern mountain wild buckwheat,	U.S.A. (CA).
PE ..	.....	R1 ..	*Euphorbia haeleeleana*	Euphorbiaceae	'Akoko	
C	8	R2 ..	*Festuca ligulata*	Poaceae	Guadalupe fescue	U.S.A. (TX), Mexico.

Table 1—Proposed and Candidate Animals and Plants—Continued

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Priority					
PE ..	.....	R1 ..	*Fremontodendron decumbens*	Sterculiaceae	Pine Hill flannelbush	U.S.A. (CA).
Y	.....	R1 ..	*Fremontodendron decumbens*	*** see ***	Fremontodendron californicum decumbens.	
PE ..	.....	R1 ..	*Fremontodendron mexicanum*	Sterculiaceae	Mexican flannelbush	U.S.A. (CA), Mexico.
C	2	R1 ..	*Fritillaria gentneri*	Liliaceae	Gentner's (=Mission-bells, Gentner) fritillaria.	U.S.A. (OR).
PT ...	.....	R1 ..	*Fritillaria striata*	Liliaceae	Greenhorn adobe-lily	U.S.A. (CA).
PE ..	.....	R1 ..	*Galium buxifolium*	Rubiaceae	Island bedstraw	U.S.A. (CA).
PE ..	.....	R1 ..	*Galium californicum* ssp. *sierrae*	Rubiaceae	El Dorado bedstraw	U.S.A. (CA).
PE ..	.....	R1 ..	*Gardenia mannii*	Rubiaceae	Nanu	U.S.A. (HI)
C	3	R6 ..	*Gaura neomexicana ssp. coloradensis.*	Onagraceae	Colorado butterfly plant	U.S.A. (CO, NE, WY).
C	5	R6 ..	*Gilia caespitosa*	Polemoniaceae	Rabbit Valley gilia	U.S.A. (UT).
PE ..	.....	R1 ..	*Gilia tenuiflora ssp. hoffmannii*	Polemoniaceae	Hoffmann's gilia	U.S.A. (CA).
Y	.....	R1 ..	*Habenaria holochila*	*** see ***	Platanthera holochila	
C	3	R1 ..	*Hedyotis schlechtendahliana var. remyi.*	Rubiaceae	None	U.S.A. (HI).
C	5	R5 ..	*Helenium virginicum*	Asteraceae	None	U.S.A. (VA).
PE ..	.....	R1 ..	*Helianthemum greenei*	Cistaceae	Island rush-rose	U.S.A. (CA).
PT ...	.....	R4 ..	*Helianthus eggertii*	Asteraceae	Eggert's sunflower	U.S.A. (AL, KY, TN).
C	2	R2 ..	*Helianthus paradoxus*	Asteraceae	Puzzle sunflower	U.S.A. (NM, TX).
PE ..	.....	R1 ..	*Hemizonia conjugens*	Asteraceae	Otay tarweed	U.S.A. (CA).
C	3	R1 ..	*Hemizonia increscens ssp. villosa* ...	Asteraceae	Gaviota tarweed	U.S.A. (CA).
PE ..	.....	R1 ..	*Heuchera maxima*	Saxifragaceae	Island alumroot	U.S.A. (CA).
PE ..	.....	R1 ..	*Hibiscadelphus giffardianus*	Malvaceae	Hau kuahiwi	U.S.A. (HI).
PE ..	.....	R1 ..	*Hibiscadelphus hualalaiensis*	Malvaceae	Hau kuahiwi	U.S.A. (HI).
PE ..	.....	R1 ..	*Hibiscadelphus woodii*	Malvaceae	Hau kuahiwi	U.S.A. (HI)
C	5	R2 ..	*Hibiscus dasycalyx*	Malvaceae	Neches River rose-mallow	U.S.A. (TX).
PE ..	.....	R1 ..	*Hibiscus waimeae ssp. hannerae* ...	Malvaceae	Koki'o ke'oke'o	U.S.A. (HI).
C	2	R1 ..	*Holocarpha macradenia*	Asteraceae	Santa Cruz tarweed	U.S.A. (CA).
Y	.....	R1 ..	*Isodendrion forbesii*	*** see ***	Isodendrion laurifolium	
PE ..	.....	R1 ..	*Isodendrion laurifolium*	Violaceae	Aupaka	U.S.A. (HI).
PT ...	.....	R1 ..	*Isodendrion longifolium*	Violaceae	Aupaka	U.S.A. (HI.)
Y	.....	R1 ..	*Isodendrion lydgatei*	*** see ***	Isodendrion longifolium	
Y	.....	R1 ..	*Isodendrion maculatum*	*** see ***	Isodendrion longifolium	
Y	.....	R1 ..	*Isodendrion subsessilifolium*	*** see ***	Isodendrion laurifolium	
Y	.....	R1 ..	*Isodendrion waianaeense*	*** see ***	Isodendrion laurifolium	
PE ..	.....	R4 ..	*Juglans jamaicensis*	Juglandaceae	Nogal or West Indian walnut	U.S.A. (PR), Cuba, Hispaniola.
C	1	R1 ..	*Kanaloa kahoolawensis*	Fabaceae	None	U.S.A. (HI)
PE ..	.....	R1 ..	*Kokia kauaiensis*	Malvaceae	Koki'o	U.S.A. (HI).
PE ..	.....	R1 ..	*Labordia cyrtandrae*	Loganiaceae	Kamakahala	U.S.A. (HI).
Y	.....	R1 ..	*Labordia cyrtandrae var. nahikuana* .	*** see ***	Labordia cyrtandrae	
Y	.....	R1 ..	*Labordia triflora*	*** see ***	Labordia triiflora	
PE ..	.....	R1 ..	*Labordia tinifolia* var. *wahiawaensis* .	Loganiaceae	Kamakahala	U.S.A., (HI)
C	2	R1 ..	*Labordia trifolia*	Loganiaceae	Kamakahala	
PT ...	.....	R1 ..	*Lasthenia conjugens*	Asteraceae	Contra Costa goldfields	U.S.A. (CA).
C	5	R1 ..	*Lathyrus biflorus*	Fabaceae	Two-flowered lathyrus	U.S.A. (CA).
PE ..	.....	R1 ..	*Lepidium arbuscula*	Brassicaceae	'Anaunau	U.S.A. (HI).
PE ..	.....	R4 ..	*Lesquerella perforata*	Brassicaceae	Spring Creek bladderpod	U.S.A. (TN).
C	5	R4 ..	*Lesquerella stonensis*	Brassicaceae	Stones River bladderpod	U.S.A. (TN).
C	2	R2 ..	*Lesquerella thamnophila*	Brassicaceae	Zapata bladderpod	U.S.A. (TX).
PE ..	.....	R1 ..	*Lessingia germanorum* var. *germanorum.*	Asteraceae	San Francisco lessingia	U.S.A. (CA).
Y	.....	R2 ..	*Lilaeopsis recurva*	*** see ***	Lilaeopsis schaffneriana ssp. recurva.	
PE ..	.....	R2 ..	*Lilaeopsis schaffneriana ssp. recurva.*	Apiaceae	Huachuca water-umbel	U.S.A. (AZ), Mexico.
PE ..	.....	R1 ..	*Lilium pardalinum ssp. pitkinense*	Liliaceae	Pitkin Marsh lily	U.S.A. (CA).
Y	.....	R1 ..	*Lilium pitkinense*	*** see ***	Lilium pardalinum ssp. pitkinense	
PT ...	.....	R1 ..	*Limnanthes gracilis* ssp. *parishii*	Limnanthaceae	Parish's meadowfoam	U.S.A. (CA).
PE ..	.....	R1 ..	*Lithophragma maximum*	Saxifragaceae	San Clemente Island woodland-star	U.S.A. (CA).
PE ..	.....	R1 ..	*Lobelia gaudichaudii* ssp. *koolauensis.*	Campanulaceae	None	
Y	.....	R1 ..	*Lobelia hillebrandii var. monostachya.*	*** see ***	Lobelia monostachya	
PE ..	.....	R1 ..	*Lobelia monostachya*	Campanulaceae	None	U.S.A. (HI)
C	5	R1 ..	*Lomatium cookii*	Apiaceae	Cook's lomatium	U.S.A. (OR).
PE ..	.....	R1 ..	*Lupinus citrinus* var. *deflexus*	Fabaceae	Mariposa lupine	U.S.A. (CA).

Table 1—Proposed and Candidate Animals and Plants—Continued

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Priority					
Y		R1	*Lupinus deflexus*	*** see ***	Lupinus citrinus var. deflexus	
C	2	R1	*Lupinus nipomensis*	Fabaceae	Nipomo Mesa lupine	U.S.A. (CA).
PE		R1	*Lysimachia maxima* (=tenrnifolia)	Primulaceae	None	U.S.A. (HI).
Y		R1	*Lysimachia ternifolia*	*** see ***	Lysimachia maxima	
Y		R1	*Mahonia nevinii*	*** see ***	Berberis nevinii	
Y		R1	*Mahonia pinnata ssp. insularis*	*** see ***	Berberis pinnata ssp. insularis	
PE		R1	*Malacothamnus fasciculatus var. nesioticus.*	Malvaceae	Santa Cruz Island bush-mallow	U.S.A. (CA).
PE		R1	*Malacothrix indecora*	Asteraceae	Santa Cruz Island malocothrix	U.S.A. (CA).
PE		R1	*Malacothrix squalida*	Asteraceae	Island malacothrix	U.S.A. (CA).
C	2	R1	*Melicope munroi*	Rutaceae	None	U.S.A. (HI).
PE		R1	*Melicope saint-johnii*	Rutaceae	Alani	U.S.A. (HI)
PE		R1	*Melicope zahlbruckneri*	Rutaceae	Alani	U.S.A. (HI).
PE		R1	*Mimulus shevockii*	Scrophulariaceae	Kelso Creek monkey-flower	U.S.A. (CA).
Y		R1	*Mimulus sp. nov. /ined. (Kem Co.)*	*** see ***	Mimulus shevockii	
PE		R1	*Monardella linoides ssp. viminea*	Lamiaceae	Willowy monardella	U.S.A. (CA).
PE		R1	*Myrsine juddii*	Myrsinaceae	Kolea	U.S.A. (HI).
PE		R1	*Myrsine linearifolia*	Myrsinaceae	None	U.S.A. (HI).
C	8	R5	*Narthecium americanum*	Liliaceae	None	U.S.A. (DE, NJ, NC, SC).
Y		R5	*Narthecium ossifragum var. americanum.*	*** see ***	Narthecium americanum	
PT		R1	*Navarretia fossalis*	Polemoniaceae	Spreading navarretia	U.S.A. (CA), Mexico (Baja California).
PE		R1	*Navarretia leucocephala* ssp. *pauciflora.*	Polemoniaceae	Few-flowered navarretia	U.S.A. (CA).
PE		R1	*Navarretia leucocephala* ssp. *plieantha.*	Polemoniaceae	Many-flowered navarretia	U.S.A. (CA).
Y		R1	*Navarretia pauciflora*	*** see ***	Navarretia leucocephala ssp. pauciflora.	
Y		R1	*Navarretia plieantha*	*** see ***	Navarretia leucocephala ssp. plieantha.	
PT		R1	*Navarretia setiloba*	Polemoniaceae	Piute Mountains navarretia	U.S.A. (CA).
Y		R2	*Neolloydia erectocentra var. acunensis.*	*** see ***	Echinomastus erectocentrus var. acunensis.	
PT		R1	*Neostapfia colusana*	Poaceae	Colusa grass	U.S.A. (CA).
Y		R1	*Neraudia cookii*	*** see ***	Neraudia ovata	
PE		R1	*Neraudia ovata*	Urticaceae	None	U.S.A. (HI).
C	1	R1	*Nesogenes rotensis*	Verbenaceae	None	U.S.A. (HI)
PT		R1	*Nolina interrata*	Liliaceae	Dehesa bear-grass	U.S.A. (CA), Mexico.
C	6	R1	*Opuntia whipplei var. multigeniculata*	Cactaceae	None	U.S.A. (NV).
Y		R1	*Orcuttia californica var. inequalis*	*** see ***	Orcuttia inequalis	
Y		R1	*Orcuttia californica var. viscida*	*** see ***	Orcuttia viscida	
Y		R1	*Orcuttia greenei*	*** see ***	Tuctoria greenei	
PE		R1	*Orcuttia inequalis*	Poaceae	San Joaquin,orcutt grass	U.S.A. (CA).
PE		R1	*Orcuttia pilosa*	Poaceae	Hairy (=pilose) orcutt grass	U.S.A. (CA).
PT		R1	*Orcuttia tenuis*	Poaceae	Slender orcutt grass	U.S.A. (CA).
PE		R1	*Orcuttia viscida*	Poaceae	Sacramento orcutt grass	U.S.A. (CA).
Y		R1	*Orthocarpus campestris var. succulentus.*	*** see ***	Castilleja campestris ssp. suculenta	
Y		R1	*Orthocarpus succulentus*	*** see ***	Castilleja campestris ssp. succulentus.	
C	1	R1	*Osmoxylon mariannense*	Araliaceae	None	U.S.A. (HI)
PE		R1	*Panicum niihauense*	Poaceae	Lau 'ehu	U.S.A. (HI)
C	11	R2	*Paronychia congesta*	Caryophyllaceae	Bushy whitlow-wort	U.S.A. (TX).
PE		R1	*Parvisedum leiocarpum*	Crassulaceae	Lake County stonecrop	U.S.A. (CA).
C	2	R2	*Pediocactus paradinei*	Cactaceae	Kaibab pincushion cactus	U.S.A. (AZ).
C	6	R2	*Pediocactus peeblesianus var. fickeiseniae.*	Cactaceae	Fickeisen pincushion cactus	U.S.A. (AZ).
PE		R6	*Pediocactus winkleri*	Cactaceae	Winkler cactus	U.S.A. (UT).
Y		R1	*Pelea munroi*	*** see ***	Melicope munroi	
Y		R1	*Pelea saint-johnii*	*** see ***	Melicope saint-johnii	
Y		R1	*Pelea zahlbruckneri*	*** see ***	Melicope zahlbruckneri	
Y		R6	*Penstemon albifluvis*	*** see ***	Penstemon scariosus var. albifluvis .	
C	5	R6	*Penstemon debilis*	Scrophulariaceae	Parachute Beardtongue	U.S.A. (CO).
C	8	R6	*Penstemon grahamii*	Scrophulariaceae	Graham beardtongue	U.S.A. (CO, UT).
C	5	R6	*Penstemon scariosus var. albifluvis*	Scrophulariaceae	White River beardtongue	U.S.A. (CO, UT).
PE		R1	*Pentachaeta lyonii*	Asteraceae	Lyon's pentachaeta	U.S.A. (CA).
Y		R1	*Phacelia divaricata var. insularis*	*** see ***	Phacelia insularis var. insularis	

Table 1—Proposed and Candidate Animals and Plants—Continued

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Priority					
PE		R1	*Phacelia insularis var. insularis*	Hydrophyllaceae	Island phacelia	U.S.A. (CA).
C	11	R6	*Phacelia submutica*	Hydrophyllaceae	DeBeque phacelia	U.S.A. (CO).
C	2	R1	*Phlox hirsuta*	Polemoniaceae	Yreka phlox	U.S.A. (CA).
Y		R1	*Phyllostegia brevidens var. longipes*	*** see ***	Phyllostegia warshaueri	
PE		R1	*Phyllostegia hirsuta*	Lamiaceae	None	U.S.A. (HI)
PE		R1	*Phyllostegia kaalaensis*	Lamiaceae	None	U.S.A. (HI)
PE		R1	*Phyllostegia knudsenii*	Lamiaceae	None	U.S.A. (HI)
Y		R1	*Phyllostegia macrophylla var. velutina.*	*** see ***	Phyllostegia velutina	
Y		R1	*Phyllostegia mollis var. lydgatei*	*** see ***	Phyllostegia parviflora	
PE		R1	*Phyllostegia parviflora*	Lamiaceae	None	U.S.A. (HI.)
Y		R1	*Phyllostegia parviflora var. canescens.*	*** see ***	Phyllostegia parviflora	
Y		R1	*Phyllostegia parviflora var. glabriuscula.*	*** see ***	Phyllostegia parviflora	
PE		R1	*Phyllostegia racemosa*	Lamiaceae	Kiponapona	U.S.A. (HI).
PE		R1	*Phyllostegia velutina*	Lamiaceae	None	U.S.A. (HI).
PE		R1	*Phyllostegia warshaueri*	Lamiaceae	None	U.S.A. (HI).
PE		R1	*Phyllostegia wawrana*	Lamiaceae	None	U.S.A., (HI)
PE		R1	*Piperia yadonii*	Orchidaceae	Yadon's piperia	U.S.A. (CA).
C	2	R1	*Plagiobothrys hirtus*	Boraginaceae	Popcornflower (no common name)	U.S.A. (OR).
Y		R1	*Plagiobothrys hirtus var. hirtus*	*** see ***	Plagiobothrys hirtus	
PE		R1	*Plagiobothrys strictus*	Boraginaceae	Calistoga allocarya	U.S.A. (CA).
PE		R1	*Platanthera holochila*	Orchidaceae	None	U.S.A. (HI).
PE		R1	*Pleomele hawaiiensis*	Liliaceae	Hala pepe	U.S.A. (HI).
PE		R1	*Poa atropurpurea*	Poaceae	San Bernadino bluegrass	U.S.A. (CA).
PE		R1	*Poa napensis*	Poaceae	Napa bluegrass	U.S.A. (CA).
PE		R1	*Potentilla hickmanii*	Rosaceae	Hickman's potentilla	U.S.A. (CA).
Y		R1	*Potentilla hickmanii var. uliginosa /ined.*	*** see ***	Potentilla hickmanii	
Y		R1	*Potentilla uliginosa*	*** see ***	Potentilla hickmanii	
PE		R1	*Pritchardia aylmer-robinsonii*	Arecaceae	Wahane (=Hawane or lo'ulu)	U.S.A. (HI).
PE		R1	*Pritchardia kaalae*	Arecaceae	Loulu	U.S.A. (HI)
Y		R1	*Pritchardia kaalae var. minima*	*** see ***	Pritchardia kaalae	
PE		R1	*Pritchardia napaliensis*	Arecaceae	None	U.S.A. (HI).
PE		R1	*Pritchardia remota*	Arecaceae	Lo'ulu	U.S.A. (HI).
PE		R1	*Pritchardia schattaueri*	Arecaceae	Loulu	U.S.A. (HI).
PE		R1	*Pritchardia viscosa*	Arecaceae	Loulu	U.S.A. (HI).
PE		R1	*Pseudobahia bahiifolia*	Asteraceae	Hartweg's golden sunburst,	U.S.A. (CA).
PE		R1	*Pseudobahia peirsonii*	Asteraceae	San Joaquin adobe sunburst	U.S.A. (CA).
PE		R2	*Puccinellia parishii*	Poaceae	Parish's alkali grass	U.S.A. (AZ, CA, NM).
Y		R1	*Cyanea (=Rollandia) humboldtiana*	*** see ***	Cyanea humboldtiana	
Y		R1	*Cyanea (=Rollandia) st-johnii*	*** see ***	Cyanea st-johnii	
C	2	R2	*Rumex orthoneurus*	Polygonaceae	Blumer's dock	U.S.A. (AZ).
PE		R1	*Sanicula purpurea*	Apiaceae	None	U.S.A. (HI.)
PE		R1	*Schiedea helleri*	Caryophyllaceae	None	U.S.A., (HI)
PE		R1	*Schiedea hookeri*	Caryophyllaceae	None	U.S.A. (HI).
PE		R1	*Schiedea kauaiensis*	Caryophyllaceae	None	U.S.A. (HI).
PE		R1	*Schiedea kealiae*	Caryophyllaceae	Ma'oli'oli	U.S.A. (HI)
PE		R1	*Schiedea membranacea*	Caryophyllaceae	None	U.S.A. (HI).
PE		R1	*Schiedea nuttallii*	Caryophyllaceae	None	U.S.A. (HI).
PE		R1	*Schiedea sarmentosa*	Caryophyllaceae	None	U.S.A. (HI).
PE		R1	*Schiedea stellarioides*	Caryophyllaceae	Laulihilihi (=Ma'oli'oli)	U.S.A. (HI)
PE		R1	*Schiedea verticillata*	Caryophyllaceae	None	U.S.A. (HI).
C	2	R6	*Sclerocactus (=Echinocactus, =Pediocactus) brevispinus (=glaucus).*	Cactaceae	Pariette cactus	U.S.A. (UT)
C	11	R1	*Sedum eastwoodiae*	Crassulaceae	Red Mountain stonecrop	U.S.A. (CA).
Y		R1	*Sedum laxum ssp. eastwoodiae*	*** see ***	Sedum eastwoodiae	
PT		R1	*Senecio layneae*	Asteraceae	Layne's butterweed	U.S.A. (CA).
PE		R1	*Sibara filifolia*	Brassicaceae	Santa Cruz Island rockcress	U.S.A. (CA).
PE		R1	*Sicyos alba*	Cucurbitaceae	'Anunu	U.S.A. (HI).
C	9	R1	*Sidalcea hickmanii ssp. parishii*	Malvaceae	Parish's sidalcea	U.S.A. (CA).
C	2	R1	*Sidalcea keckii*	Malvaceae	Keck's sidalcea	U.S.A. (CA).
C	3	R1	*Sidalcea oregana var. calva*	Malvaceae	None	U.S.A. (WA).
PE		R1	*Sidalcea oregana ssp. valida*	Malvaceae	Kenwood Marsh checkermallow	U.S.A. (CA).
C	12	R1	*Silene campanulata ssp. campanulata.*	Caryophyllaceae	Red Mountain campion	U.S.A. (CA).
PE		R2	*Spiranthes delitescens*	Orchidaceae	Canelo Hills ladies'-tresses	U.S.A. (AZ).

Table 1—Proposed and Candidate Animals and Plants—Continued

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Priority					
C	2	R1	*Tabernaemontana rotensis*	Apocynaceae	None	U.S.A. (CM)
PE		R1	*Taraxacum californicum*	Asteraceae	California dandelion	U.S.A. (CA).
C	3	R1	*Thelypodium howellii var. spectabilis*	Brassicaceae	None	U.S.A. (OR).
C	3	R1	*Thlaspi californicum*	Brassicaceae	Kneeland Prairie penny-cress	U.S.A. (CA).
Y		R1	*Thlaspi montanum var. californicum*	*** see ***	Thlaspi californicum	
PE		R1	*Thysanocarpus conchuliferus*	Brassicaceae	Santa Cruz Island lacepod (=fringepod).	U.S.A. (CA).
PE		R1	*Trematolobelia singularis*	Campanulaceae	None	U.S.A. (HI).
PT		R1	*Trichostema austromontanum ssp. compactum.*	Lamiaceae	Hidden Lake bluecurls	U.S.A. (CA).
PE		R1	*Trifolium amoenum*	Fabaceae	Clover, showy Indian	U.S.A. (CA).
PE		R1	*Trifolium trichocalyx*	Fabaceae	Monterey (=Del Monte) clover	U.S.A. (CA).
PE		R1	*Tuctoria greenei*	Poaceae	Greene's orcutt grass	U.S.A. (CA).
PT		R1	*Verbena californica*	Verbenaceae	Red Hills vervain	U.S.A. (CA).
PT		R1	*Verbesina dissita*	Asteraceae	Big-leaved crownbeard	U.S.A. (CA), Mexico.
PE		R1	*Viola kauaiensis var. wahiawaensis*	Violaceae	Nani wai'ale'ale	U.S.A. (HI).
PE		R1	*Viola oahuensis*	Violaceae	None	U.S.A. (HI).
C	4	R6	*Yermo xanthocephalus*	Asteraceae	Desert yellowhead	U.S.A. (WY).
PE		R1	*Zanthoxylum dipetalum var. tomentosum.*	Rutaceae	A'e	U.S.A. (HI).
C	11	R2	*Zanthoxylum parvum*	Rutaceae	Shinner's tickle-tongue	U.S.A. (TX).
			CONIFERS AND CYCADS.			
PT		R1	*Cupressus goveniana ssp. goveniana.*	Cupressaceae	Gowen cypress	U.S.A. (CA).

Table 2—Former Candidates and Proposed Species Now Removed From Candidate Status

Status		Lead Region	Scientific name	Family	Common name	Historic range
Code	Expl.					
			MAMMALS.			
R	A	R4	*Eumops glaucinus floridanus*	Molossidae	Florida mastiff-bat	U.S.A. (FL).
			BIRDS.			
R	F	R8	*Artamus leucorhynchus pelewensis*	Artamidae	Wood-swallow, Palau white-breasted.	PW, FM (Caroline Islands).
R	F	R8	*Asio flammeus ponapensis*	Strigidae	Owl, Ponape short-eared	FM (Caroline Islands).
R	F	R8	*Rukia ruki*	Zosteropidae	White-eye, Truk greater	FM (Caroline Islands).
			AMPHIBIANS.			
E	L	R1	*Bufo microscaphus californicus*	Bufonidae	Toad, Arroyo southwestern	U.S.A. (CA), Mexico.
R	A	R1	*Bufo nelsoni*	Bufonidae	Amargosa toad	U.S.A. (NV).
R	A	R4	*Eleutherodactylus eneidae*	Leptodactylidae	Mottled coqui (Eneida's coqui)	U.S.A. (PR).
R	A	R4	*Eleutherodactylus karlschmidti*	Leptodactylidae	Web-footed coqui	U.S.A. (PR).
R	N	R4	*Rana areolata sevosa*	Ranidae	Dusky crawfish (=gopher) frog	U.S.A. (AL, FL, LA, MS).
			FISHES.			
R	A	R4	*Elassoma alabamae*	Centrarchidae	Spring pygmy sunfish	U.S.A. (AL).
E	L	R4	*Etheostoma etowahae*	Percidae	Darter, Etowah	U.S.A. (GA)
R	A	R1	*Lentipes concolor*	Gobiidae	O'opu alamo'o (goby)	U.S.A. (HI).
R	A	R6	*Lepidomeda mollispinis mollispinis*	Cyprinidae	Spinedace, Virgin	U.S.A. (AZ, NV, UT).
			CLAMS.			
E	L	R4	*Alasmidonta raveneliana*	Unionidae	Elktoe, Appalachian	U.S.A. (NC, TN)
			SNAILS.			
R	A	R2	*Pyrgulopsis (="Fontelicella") pecosensis* (Taylor, 1987).	Hydrobiidae	Pecos springsnail	U.S.A. (NM).
E	L	R1	*Helminthoglypta walkeriana*	Helminthoglyptida	Snail, Morro shoulderband (=Banded dune).	U.S.A. (CA)
			INSECTS.			
R	A	R1	*Aegialia concinna*	Scarabaeidae	Ciervo aegialian scarab (beetle)	U.S.A. (CA).
R	I	R1	*Coelus gracilis*	Tenebrionidae	San Joaquin dune beetle	U.S.A. (CA).
R	M	R1	*Icaricia icarioides* ssp.	Lycaenidae	Point Reyes blue (butterfly)	U.S.A. (CA).
E	L	R4	*Neonympha mitchellii francisci*	Nymphalidae	Butterfly, Saint Francis' satyr	U.S.A. (NC)
E	L	R3	*Somatochlora hineana*	Corduliidae	Dragonfly, Hine's (=Ohio) emerald	U.S.A. (IL, IN, OH, WI)

Table 2—Former Candidates and Proposed Species Now Removed From Candidate Status—Continued

Status		Lead Region	Scientific name	Family	Common name	Historic range
Code	Expl.					
			ARACHNIDS.			
E	L	R4	*Microhexura montivaga*	Dipluridae	Spider, spruce-fir moss	U.S.A. (NC, TN)
			CRUSTACEANS.			
R	A	R1	*Artemia monica*	Artemiidae	Mono Lake brine shrimp	U.S.A. (CA).
			FLOWERING PLANTS.			
R	A	R1	*Allium aaseae*	Liliaceae	Onion, Aase's	U.S.A. (ID).
R	A	R1	*Allium dictuon*	Liliaceae	Blue Mountain onion	U.S.A. (WA).
R	A	R1	*Allium hickmanii*	Liliaceae	Onion, Hickman's	U.S.A. (CA).
E	L	R2	*Ambrosia cheiranthifolia*	Asteraceae	South Texas ambrosia	U.S.A. (TX)
R	N	R1	*Amsinckia carinata*	Boraginaceae	None	U.S.A. (OR).
E	L	R4	*Arabis perstellata*	Brassicaceae	Rock-cress	U.S.A. (AL, KY, TN)
Y		R4	*Arabis perstellata var. ampla*	*** see ***	Arabis perstellata	
Y		R4	*Arabis perstellata var. perstellata*	*** see ***	Arabis perstellata	
R	A	R1	*Arabis rigidissima var. demota*	Brassicaceae	Rock-cress, Galena Creek (=Carson Range).	U.S.A. (NV).
T	L	R1	*Arctostaphylos morroensis*	Ericaceae	Manzanita, Morro	U.S.A. (CA)
R	I	R1	*Arctostaphylos rudis*	Ericaceae	Sand mesa (=shagbark) manzanita	U.S.A. (CA).
R	I	R1	*Artemisia campestris var. wormskioldii.*	Asteraceae	None	U.S.A. (OR, WA).
R	I	R1	*Aster jessicae*	Asteraceae	Aster, Jessica's	U.S.A. (ID, WA).
R	N	R2	*Aster puniceus var. scabricaulis*	Asteraceae	Aster, rough-stemmed	U.S.A. (TX).
Y		R2	*Aster scabricaulis*	*** see ***	Aster puniceus var. scabricaulis	
R	A	R1	*Astragalus agnicidus*	Fabaceae	Milk-vetch, Humboldt	U.S.A. (CA).
E	L	R1	*Astragalus albens*	Fabaceae	Cushenbury milk-vetch	U.S.A. (CA)
R	A	R1	*Astragalus australis var. olympicus*	Fabaceae	None	U.S.A. (WA).
R	A	R1	*Astragalus beatleyae*	Fabaceae	Milk-vetch, Beatley	U.S.A. (NV).
R	A	R1	*Astragalus columbianus*	Fabaceae	Columbia milk-vetch	U.S.A. (WA).
R	A	R1	*Astragalus mulfordiae*	Fabaceae	Mulford's milk-vetch	U.S.A. (ID, OR).
R	A	R1	*Astragalus nevinii*	Fabaceae	Milk-vetch, San Clemente Island	U.S.A. (CA).
E	L	R2	*Astrophytum (=Echinocactus) asterias.*	Cactaceae	Star cactus	U.S.A. (TX), Mexico
E	L	R4	*Auerodendron pauciflorum*	Rhamnaceae	None	U.S.A. (PR)
E	L	R2	*Ayenia limitaris*	Sterculiaceae	Texas ayenia	U.S.A. (TX), Mexico
R	A	R1	*Bloomeria humilis*	Liliaceae	Goldenstar, dwarf	U.S.A. (CA).
E	L	R1	*Bonamia menziesii*	Convolvulaceae	None	U.S.A. (HI)
Y		R1	*Brighamia citrina*	*** see ***	Brighamia insignis	
E	L	R1	*Brighamia insignis*	Campanulaceae	'Olulu	U.S.A. (HI)
R	A	R1	*Calochortus clavatus var. avius*	Liliaceae	Mariposa lily, Pleasant Valley	U.S.A. (CA).
R	A	R1	*Calochortus greenei*	Liliaceae	Greene's mariposa lily	U.S.A. (CA, OR).
R	I	R1	*Calochortus howellii*	Liliaceae	Howell's Mariposa lily	U.S.A (OR).
R	A	R1	*Calochortus nitidus*	Liliaceae	None	U.S.A. (ID, WA).
T	L	R1	*Calochortus tiburonensis*	Liliaceae	Tiburon mariposa lily	U.S.A. (CA)
R	A	R1	*Calochortus westonii*	Liliaceae	Mariposa lily, Shirley Meadows	U.S.A. (CA).
E	L	R4	*Calyptranthes thomasiana*	Myrtaceae	None	U.S.A. (PR, VI) British VI
R	A	R1	*Cardamine pattersonii*	Brassicaceae	Saddle Mountain bittercress	U.S.A. (OR).
E	L	R1	*Castilleja affinis ssp. neglecta*	Scrophulariaceae	Tiburon paintbrush	U.S.A. (CA).
Y		R1	*Castilleja neglecta*	*** see ***	Castilleja affinis ssp. neglecta	
R	N	R1	*Castilleja salsuginosa*	Scrophulariaceae	Paintbrush, Monte Neva	U.S.A. (NV).
R	A	R1	*Caulanthus amplexicaulis var. barbarae.*	Brassicaceae	Jewelflower, Santa Barbara	U.S.A. (CA).
E	L	R1	*Ceanothus ferrisae*	Rhamnaceae	Coyote ceanothus (=Coyote Valley California-lilac).	U.S.A. (CA)
E	L	R1	*Chamaesyce (=Euphorbia) deppeana.*	Euphorbiaceae	'Akoko	U.S.A. (HI)
R	X	R1	*Chamaesyce remyi var. hanaleiensis.*	Euphorbiaceae	None	U.S.A. (HI).
E	L	R1	*Chorizanthe pungens var. hartwegiana.*	Polygonaceae	Ben Lomond spineflower	U.S.A. (CA)
T	L	R1	*Chorizanthe pungens var. pungens*	Polygonaceae	Monterey spineflower	U.S.A. (CA)
E	L	R1	*Chorizanthe robusta* (incl. vars. *robusta & hartwegii*).	Polygonaceae	Robust (incl. Scotts Valley) spineflower.	U.S.A. (CA)
E	L	R1	*Cirsium fontinale var. fontinale*	Asteraceae	Fountain thistle	U.S.A. (CA)
E	L	R1	*Cirsium fontinale var. obispoense*	Asteraceae	Thistle, Chorro Creek bog	U.S.A. (CA)
Y		R1	*Clarkia calientensis*	*** see ***	Clarkia temblorensis ssp. calientensis.	
E	L	R1	*Clarkia franciscana*	Onagraceae	Presidio clarkia	U.S.A. (CA)
E	L	R1	*Clarkia speciosa ssp. immaculata*	Onagraceae	Pismo clarkia	U.S.A. (CA)

Table 2—Former Candidates and Proposed Species Now Removed From Candidate Status—Continued

Status		Lead Region	Scientific name	Family	Common name	Historic range
Code	Expl.					
R	I	R1	*Clarkia temblorensis ssp. calientensis.*	Onagraceae	Clarkia, Caliente	U.S.A. (CA).
R	N	R1	*Claytonia lanceolata var. peirsonii*	Portulacaceae	Spring beauty, Peirson's	U.S.A. (CA).
E	L	R1	*Clermontia lindseyana*	Campanulaceae	'Oha wai	U.S.A. (HI)
E	L	R1	*Clermontia peleana*	Campanulaceae	'Oha wai	U.S.A. (HI)
E	L	R1	*Clermontia pyrularia*	Campanulaceae	'Oha wai	U.S.A. (HI)
R	A	R1	*Collomia rawsoniana*	Polemoniaceae	Trumpet, Rawson's flaming	U.S.A. (CA).
E	L	R1	*Colubrina oppositifolia*	Rhamnaceae	Kauila	U.S.A. (HI)
Y		R1	*Cordylanthus brunneus var. capillaris.*	*** see ***	Cordylanthus tenuis ssp. capillaris	
Y		R1	*Cordylanthus littoralis*	*** see ***	Cordylanthus rigidus ssp. littoralis	
R	A	R1	*Cordylanthus nidularius*	Scrophulariaceae	Bird's-beak, Mt. Diablo	U.S.A. (CA).
R	A	R1	*Cordylanthus rigidus ssp. littoralis*	Scrophulariaceae	Bird's-beak, seaside	U.S.A. (CA).
E	L	R1	*Cordylanthus tenuis ssp. capillaris*	Scrophulariaceae	Pennell's bird's-beak	U.S.A. (CA)
R	A	R2	*Coryphantha recurvata*	Cactaceae	Cactus, beehive, Santa Cruz	U.S.A. (AZ), Mexico.
E	L	R2	*Coryphantha scheeri var. robustispina.*	Cactaceae	Pima pineapple cactus	U.S.A. (AZ), Mexico (Sonora)
R	I	R1	*Cryptantha traskiae*	Boraginaceae	Trask's cryptantha	U.S.A. (CA).
E	L	R1	*Cyanea asarifolia*	Campanulaceae	Haha	U.S.A. (HI)
Y		R1	*Cyanea carlsonii*	*** see ***	Cyanea hamatiflora ssp. carlsonii	
E	L	R1	*Cyanea copelandii ssp. copelandii*	Campanulaceae	Haha	U.S.A. (HI)
Y		R1	*Cyanea grimesiana var. hirsutilolia*	*** see ***	Cyanea grimesiana ssp. obatae	
E	L	R1	*Cyanea grimesiana ssp. obatae*	Campanulaceae	Haha	U.S.A. (HI)
E	L	R1	*Cyanea hamatiflora ssp. carlsonii*	Campanulaceae	Haha	U.S.A. (HI)
Y		R1	*Cyanea lindseyana*	*** see ***	Clermontia lindseyana	
E	L	R1	*Cyanea shipmannii*	Campanulaceae	Haha	U.S.A. (HI)
E	L	R1	*Cyanea stictophylla*	Campanulaceae	Haha	U.S.A. (HI)
E	L	R1	*Cyanea truncata*	Campanulaceae	Haha	U.S.A. (HI)
R	A	R1	*Cymopterus deserticola*	Apiaceae	Desert cymopterus	U.S.A. (CA).
E	L	R1	*Cyrtandra crenata*	Gesneriaceae	Ha'iwale	U.S.A. (HI)
E	L	R1	*Cyrtandra giffardii*	Gesneriaceae	Ha'iwale	U.S.A. (HI)
T	L	R1	*Cyrtandra limahuliensis*	Gesneriaceae	Ha'iwale	U.S.A. (HI)
E	L	R1	*Cyrtandra polyantha*	Gesneriaceae	Ha'iwale	U.S.A. (HI)
E	L	R1	*Cyrtandra tintinnabula*	Gesneriaceae	Ha'iwale	U.S.A. (HI)
E	L	R1	*Delissea rhytidosperma*	Campanulaceae	None	U.S.A. (HI)
R	I	R1	*Delphinium pavonaceum*	Ranunculaceae	Peacock larkspur	U.S.A. (OR).
R	A	R1	*Delphinium variegatum ssp. thornei*	Ranunculaceae	Larkspur, Thorne's royal	U.S.A. (CA).
R	A	R1	*Delphinium viridescens*	Ranunculaceae	Larkspur, Wenatchee	U.S.A. (WA).
R	I	R1	*Dithyrea maritima*	Brassicaceae	Beach spectacle-pod	U.S.A. (CA), Mexico.
R	I	R1	*Draba trichocarpa*	Brassicaceae	Whitlow-grass, Stanley	U.S.A. (ID).
Y		R1	*Drypetes phyllanthoides*	*** see ***	Flueggea neowawraea	
R	A	R1	*Dudleya cymosa ssp. costifolia*	Crassulaceae	Liveforever, Pierpoint Springs (Tulare Co.).	U.S.A. (CA).
E	L	R1	*Dudleya setchellii*	Crassulaceae	Santa Clara Valley dudleya	U.S.A. (CA)
R	A	R1	*Dudleya viscida*	Grassulaceae	Liveforever, sticky-leaved	U.S.A. (CA).
Y		R2	*Echinocactus asterias*	*** see ***	Astrophytum asterias	
E	L	R1	*Eremalche kernensis (=E. parryi ssp. k.).*	Malvaceae	Kern mallow	U.S.A. (CA)
Y		R1	*Eremalche parryi ssp. kernensis*	*** see ***	Eremalche kernensis	
T	L	R1	*Erigeron parishii*	Asteraceae	Parish's daisy	U.S.A. (CA)
E	L	R1	*Eriodictyon attissimum*	Hydrophyllaceae	Indian Knob mountain balm	U.S.A. (CA)
R	A	R6	*Eriogonum brandegei*	Polygonaceae	Wild-buckwheat, Brandegee	U.S.A. (CO).
R	A	R1	*Eriogonum breedlovei var. breedlovei.*	Polygonaceae	Buckwheat, Piute	U.S.A. (CA).
R	A	R1	*Eriogonum chrysops*	Polygonaceae	Buckwheat, golden	U.S.A. (OR).
R	A	R1	*Eriogonum ericifolium var. thornei*	Polygonaceae	Buckwheat, Thorne's	U.S.A. (CA).
E	L	R1	*Eriogonum ovalifolium var. vineum*	Polygonaceae	Cushenbury buckwheat	U.S.A. (CA)
R	I	R1	*Eriophyllum lanatum var. hallii*	Asteraceae	Ft. Tejon wooly-sunflower	U.S.A. (CA).
E	L	R1	*Eriophyllum latilobum*	Asteraceae	San Mateo woolly sunflower	U.S.A. (CA)
R	I	R1	*Eryngium aristulatum var. hooveri*	Apiaceae	Button-celery, Hoover's	U.S.A. (CA).
E	L	R1	*Erysimum teretifolium*	Brassicaceae	Ben Lomond wallflower	U.S.A. (CA)
R	I	R4	*Erythrina eggersii*	Fabaceae	Pinon espinoso or cockspur	U.S.A. (PR, VI).
E	L	R4	*Eugenia haematocarpa*	Myrtaceae	Uvillo	U.S.A. (PR)
E	L	R1	*Eugenia koolauensis*	Myrtaceae	Nioi	U.S.A. (HI)
Y		R1	*Eugenia molokaiana*	*** see ***	Eugenia koolauensis	
Y		R1	*Euphorbia deppeana*	*** see ***	Chamaesyce deppeana	
E	L	R1	*Exocarpos luteolus*	Santalaceae	Heau	U.S.A. (HI)
E	L	R1	*Flueggea neowawraea*	Euphorbiaceae	Mehamehame	U.S.A. (HI)
R	X	R4	*Franklinia alatamaha*	Theaceae	Franklin tree	U.S.A. (GA).
T	L	R4	*Gesneria pauciflora*	Gesneriaceae	None	U.S.A. (PR)

Table 2—Former Candidates and Proposed Species Now Removed From Candidate Status—Continued

Status		Lead Region	Scientific name	Family	Common name	Historic range
Code	Expl.					
R	A	R1	*Gilia maculata*	Polemoniaceae	Gilia, Little San Bernardino Mountains.	U.S.A. (CA).
Y		R1	*Gouania bishopii*	*** see ***	Gouania vitifolia	
Y		R1	*Gouania hawaiiensis*	*** see ***	Gouania vitifolia	
E	L	R1	*Gouania vitifolia*	Rhamnaceae	None	U.S.A. (HI)
R	A	R1	*Hackelia cronquistii*	Boraginaceae	Stickseed, Cronquist's	U.S.A. (OR).
R	N	R1	*Hackelia venusta*	Boraginaceae	Stickseed, showy	U.S.A. (WA).
R	A	R1	*Haplopappus insecticruris*	Asteraceae	None	U.S.A. (ID).
R	A	R1	*Haplopappus radiatus*	Asteraceae	Goldenweed,	U.S.A. (ID, OR).
R	I	R1	*Hastingsia bracteosa*	Liliaceae	None	U.S.A. (OR).
E	L	R1	*Hedyotis cookiana*	Rubiaceae	'Awiwi	U.S.A. (HI)
R	A	R1	*Hemizonia arida*	Asteraceae	Tarweed, Red Rock	U.S.A. (CA).
R	A	R1	*Hemizonia parryi ssp. congdonii*	Asteraceae	Pappose spikeweed	U.S.A. (CA).
T	L	R1	*Hesperolinon congestum*	Linaceae	Marin dwarf-flax	U.S.A. (CA)
R	A	R1	*Hesperolinon didymocarpum*	Linaceae	Dwarf-flax, Lake County	U.S.A. (CA).
E	L	R1	*Hesperomannia arborescens*	Asteraceae	None	U.S.A. (HI)
R	X	R1	*Hibiscadelphus crucibracteatus*	Malvaceae	None	U.S.A. (HI).
E	L	R1	*Hibiscus brackenridgei*	Malvaceae	Ma'o hau hele	U.S.A. (HI)
E	L	R1	*Hibiscus clayi*	Malvaceae	Clay's hibiscus	U.S.A. (HI)
Y		R1	*Hibiscus newhousei*	*** see ***	Hibiscus clayi	
T	L	R6	*Howellia aquatilis*	Campanulaceae	Water howellia	U.S.A. (CA, ID, MT, OR, WA)
E	L	R2	*Ipomopsis sancti-spiritus*	Polemoniaceae	Holy Ghost ipomopsis	U.S.A. (NM)
E	L	R1	*Ischaemum byrone*	Poaceae	Hilo ischaemum	U.S.A. (HI)
Y		R1	*Isodendrion hawaiiense*	*** see ***	Isodendrion pyrifolium	
Y		R1	*Isodendrion hillebrandii*	*** see ***	Isodendrion pyrifolium	
Y		R1	*Isodendrion lanaiense*	*** see ***	Isodendrion pyrifolium	
Y		R1	*Isodendrion molokaiense*	*** see ***	Isodendrion pyrifolium	
E	L	R1	*Isodendrion pyrifolium*	Violaceae	Wahine noho kula	U.S.A. (HI)
Y		R1	*Isodendrion remyi*	*** see ***	Isodendrion pyrifolium	
R	A	R1	*Ivesia aperta var. canina*	Rosaceae	Ivesia, Dog Valley	U.S.A. (CA).
E	L	R4	*Jacquemontia reclinata*	Convolvulaceae	Beach jacquemontia	U.S.A. (FL)
R	I	R1	*Juncus leiospermus var. ahartii*	Juncaceae	Rush, Ahart's	U.S.A. (CA).
R	N	R1	*Lavatera assurgentiflora*	Malvaceae	Island tree mallow (=Malva rosa)	U.S.A. (CA).
Y		R1	*Lavatera assurgentiflora ssp. assurgentiflora.*	*** see ***	Lavatera assurgentiflora	
Y		R1	*Lavatera assurgentiflora ssp. glabra*	*** see ***	Lavatera assurgentiflora	
R	A	R1	*Layia leucopappa*	Asteraceae	Layia, Comanche	U.S.A. (CA).
E	L	R1	*Lesquerella kingii ssp. bernardina*	Brassicaceae	San Bernardino Mountains bladderpod.	U.S.A. (CA)
E	L	R6	*Lesquerella tumulosa*	Brassicaceae	Kodachrome bladderpod	U.S.A. (UT)
R	I	R1	*Lilium maritimum*	Liliaceae	Lily, coast	U.S.A. (CA).
E	L	R1	*Lilium occidentale*	Liliaceae	Western lily	U.S.A. (OR, CA)
R	A	R1	*Limnanthes floccosa ssp. pumila*	Limnanthaceae	Meadowfoam, dwarf	U.S.A. (OR).
Y		R1	*Lipochaeta deltoidea*	*** see ***	Lipochaeta fauriei	
Y		R1	*Lipochaeta exigua*	*** see ***	Lipochaeta micrantha	
E	L	R1	*Lipochaeta fauriei*	Asteraceae	Nehe	U.S.A. (HI)
E	L	R1	*Lipochaeta micrantha*	Asteraceae	Nehe	U.S.A. (HI)
E	L	R1	*Lipochaeta waimeaensis*	Asteraceae	Nehe	U.S.A. (HI)
E	L	R1	*Lobelia oahuensis*	Campanulaceae	None	U.S.A. (HI)
R	A	R1	*Lomatium erythrocarpum*	Apiaceae	Desert-parsley, red-fruited	U.S.A. (OR).
R	A	R1	*Lomatium greenmanii*	Apiaceae	Desert-parsley, Greenman's	U.S.A. (OR).
R	A	R1	*Lomatium shevockii*	Apiaceae	Owens Peak lomatium	U.S.A. (CA).
R	A	R1	*Lotus argophyllus var. adsurgens*	Fabaceae	San Clemente Island silver hosackia.	U.S.A. (CA).
R	I	R1	*Luina serpentina*	Asteraceae	None	U.S.A. (OR).
R	N	R4	*Lunania buchii*	Flacourtiaceae	None	U.S.A. (PR), Hispanola.
R	A	R1	*Lupinus aridus ssp. ashlandensis*	Fabaceae	Lupine, Ashland	U.S.A. (OR).
E	L	R1	*Lysimachia filifolia*	Primulaceae	None	U.S.A. (HI)
R	A	R1	*Malacothamnus abbottii*	Malvaceae	Bush-mallow, Abbott's	U.S.A. (CA).
E	L	R1	*Mariscus fauriei*	Cyperaceae	None	U.S.A. (HI)
E	L	R1	*Mariscus pennatiformis*	Cyperaceae	None	U.S.A. (HI)
E	L	R1	*Melicope adscendens*	Rutaceae	Alani	U.S.A. (HI)
E	L	R1	*Melicope balloui*	Rutaceae	Alani	U.S.A. (HI)
E	L	R1	*Melicope haupuensis*	Rutaceae	Alani	U.S.A. (HI)
E	L	R1	*Melicope knudsenii*	Rutaceae	Alani	U.S.A. (HI)
E	L	R1	*Melicope (=Pelea) lydgatei*	Rutaceae	Alani	U.S.A. (HI)
E	L	R1	*Melicope ovalis*	Rutaceae	Alani	U.S.A. (HI)
E	L	R1	*Melicope pallida*	Rutaceae	Alani	U.S.A. (HI)
E	L	R1	*Melicope quadrangularis*	Rutaceae	Alani	U.S.A. (HI)

Table 2—Former Candidates and Proposed Species Now Removed From Candidate Status—Continued

Status		Lead Region	Scientific name	Family	Common name	Historic range
Code	Expl.					
R	A	R1	*Mimulus mohavensis*	Scrophulariaceae	Monkey-flower, Mojave	U.S.A. (CA).
E	L	R4	*Mitracarpus maxwelliae*	Rubiaceae	None	U.S.A. (PR)
E	L	R1	*Munroidendron racemosum*	Araliaceae	None	U.S.A. (HI)
E	L	R4	*Myrcia paganii*	Myrtaceae	None	U.S.A. (PR)
Y		R1	*Neowawraea phyllanthoides*	*** see ***	Flueggea neowawraea	
Y		R2	*Nephropetalum pringlei*	*** see ***	Ayenia limitaris	
Y		R1	*Neraudia kahoolawensis*	*** see ***	Neraudia sericea	
E	L	R1	*Neraudia sericea*	Urticaceae	None	U.S.A. (HI)
E	L	R1	*Nothocestrum breviflorum*	Solanaceae	'Aiea	U.S.A. (HI)
E	L	R1	*Nothocestrum peltatum*	Solanaceae	'Aiea	U.S.A. (HI)
E	L	R1	*Ochrosia kilaueaensis*	Apocynaceae	Holei	U.S.A. (HI)
R	A	R1	*Oenothera psammophila*	Onagraceae	Evening-primrose,	U.S.A. (ID).
R	A	R1	*Oenothera wolfii*	Onagraceae	Evening-primrose, Wolf's	U.S.A. (CA, OR).
R	A	R1	*Orobanche parishii ssp. brachyloba*	Orobanchaceae	Broomrape, short-lobed	U.S.A. (CA).
E	L	R1	*Oxytheca parishii* var. *goodmaniana*	Polygonaceae	Cushenbury oxytheca	U.S.A. (CA)
Y		R1	*Pelea balloui*	*** see ***	Melicope balloui	
Y		R1	*Pelea descendens*	*** see ***	Melicope lydgatei	
Y		R1	*Pelea haupuensis*	*** see ***	Melicope haupuensis	
Y		R1	*Pelea knudsenii*	*** see ***	Melicope knudsenii	
Y		R1	*Pelea leveillei*	*** see ***	Melicope pallida	
Y		R1	*Pelea lydgatei*	*** see ***	Melicope lydgatei	
Y		R1	*Pelea multiflora*	*** see ***	Melicope knudsenii	
Y		R1	*Pelea ovalis*	*** see ***	Melicope ovalis	
Y		R1	*Pelea pallida*	*** see ***	Melicope pallida	
Y		R1	*Pelea quadrangularis*	*** see ***	Melicope quadrangularis	
Y		R1	*Pelea tomentosa*	*** see ***	Melicope knudsenii	
R	A	R2	*Penstemon discolor*	Scrophulariaceae	Beardtongue, Catalina	U.S.A. (AZ).
E	L	R1	*Pentachaeta bellidiflora*	Asteraceae	White-rayed pentachaeta	U.S.A. (CA)
R	A	R1	*Pentachaeta exilis ssp. aeolica*	Asteraceae	Pentachaeta, slender	U.S.A. (CA).
R	I	R1	*Petrophytum cinerascens*	Rosaceae	Rockmat, chelan	U.S.A. (WA).
Y		R1	*Peucedanum kauaiense*	*** see ***	Peucedanum sandwicense	
T	L	R1	*Peucedanum sandwicense*	Apiaceae	Makou	U.S.A. (HI)
R	A	R1	*Phlox idahonis*	Polemoniaceae	Phlox, Clearwater	U.S.A. (ID).
E	L	R1	*Phyllostegia waimeae*	Lamiaceae	None	U.S.A. (HI)
E	L	R1	*Plantago hawaiensis*	Plantaginaceae	Laukahi kuahiwi	U.S.A. (HI)
E	L	R1	*Plantago princeps*	Plantaginaceae	Laukahi kuahiwi	U.S.A. (HI)
Y		R1	*Plantago princeps var. acaulis*	*** see ***	Plantago princeps	
Y		R1	*Plantago princeps var. denticulata*	*** see ***	Plantago princeps	
Y		R1	*Plantago princeps var. elata*	*** see ***	Plantago princeps	
Y		R1	*Plantago princeps var. laxifolia*	*** see ***	Plantago princeps	
Y		R1	*Plantago princeps var. queleniana*	*** see ***	Plantago princeps	
E	L	R4	*Pleodendron macranthum*	Canellaceae	Chupacallos (=Chupagallo)	U.S.A. (PR)
R	A	R1	*Pleuropogon oregonus*	Poaceae	Semaphore grass, Oregon	U.S.A. (OR).
E	L	R1	*Poa mannii*	Poaceae	Mann's bluegrass	U.S.A. (HI)
R	A	R1	*Polemonium pectinatum*	Polemoniaceae	None	U.S.A. (WA).
R	A	R1	*Polyctenium williamsiae*	Brassicaceae	Combleaf	U.S.A. (NV).
E	L	R1	*Portulaca sclerocarpa*	Portulacaceae	Po'e	U.S.A. (HI)
R	A	R1	*Potentilla basaltica*	Rosaceae	Cinquefoil, Soldier Meadows	U.S.A. (NV).
E	L	R1	*Pritchardia affinis*	Arecaceae	Loulu	U.S.A. (HI)
E	L	R1	*Pteralyxia kauaiensis*	Apocynaceae	Kaulu	U.S.A. (HI)
R	A	R1	*Puccinellia howellii*	Poaceae	Alkali grass, Howell's	U.S.A. (CA).
R	I	R1	*Ranunculus reconditus*	Ranunculaceae	None	U.S.A. (OR, WA).
E	L	R1	*Rollandia crispa*	Campanulaceae	None	U.S.A. (HI)
R	A	R1	*Rorippa subumbellata*	Brassicaceae	Yellow-cress, Tahoe	U.S.A. (CA, NV).
R	I	R1	*Rubus nigerrimus*	Rosaceae	None	U.S.A. (WA).
E	L	R1	*Schiedea spergulina* var. *leiopoda*	Caryophyllaceae	None	U.S.A. (HI)
T	L	R1	*Schiedea spergulina* var. *spergulina*	Caryophyllaceae	None	U.S.A. (HI)
Y		R1	*Schizostege lidgatei*	*** see ***	Pteris lidgatei	
R	A	R2	*Scrophularia macrantha*	Scrophulariaceae	Figwort,	U.S.A. (NM).
R	A	R1	*Senecio ertterae*	Asteraceae	Ragwort, Ertter's	U.S.A. (OR).
R	A	R2	*Senecio huachucanus*	Asteraceae	Groundsel, Huachuca	U.S.A. (AZ), Mexico.
Y		R1	*Sesbania arborea*	*** see ***	Sesbania tomentosa	
Y		R1	*Sesbania hawaiiensis*	*** see ***	Sesbania tomentosa	
Y		R1	*Sesbania hobdyi*	*** see ***	Sesbania tomentosa	
Y		R1	*Sesbania molokaiensis*	*** see ***	Sesbania tomentosa	
E	L	R1	*Sesbania tomentosa*	Fabaceae	'Ohai	U.S.A. (HI)
Y		R1	*Sesbania tomentosa var. molokaiensis.*	*** see ***	Sesbania tomentosa	
R	A	R1	*Sidalcea covillei*	Malvaceae	Checkermallow, Owens Valley	U.S.A. (CA).
R	A	R1	*Sidalcea stipularis*	Malvaceae	Checkerbloom, Scadden Flat	U.S.A. (CA).

Table 2—Former Candidates and Proposed Species Now Removed From Candidate Status—Continued

Status		Lead Region	Scientific name	Family	Common name	Historic range
Code	Expl.					
T	L	R1	*Silene hawaiiensis*	Caryophyllaceae	None	U.S.A. (HI)
Y		R1	*Solanum haleakalaense*	*** see ***	Solanum incompletum	
Y		R1	*Solanum hillebrandii*	*** see ***	Solanum sandwicense	
E	L	R1	*Solanum incompletum*	Solanaceae	Popolo ku mai	U.S.A. (HI)
Y		R1	*Solanum kauaiense*	*** see ***	Solanum sandwicense	
E	L	R1	*Solanum sandwicense*	Solanaceae	'Aiakeakua, popolo	U.S.A. (HI)
E	L	R1	*Spermolepis hawaiiensis*	Apiaceae	None	U.S.A. (HI)
R	I	R1	*Sphaeromeria compacta*	Asteraceae	Tansy,	U.S.A. (NV).
E	L	R1	*Streptanthus albidus ssp. albidus*	Brassicaceae	Metcalf Canyon jewelflower	U.S.A. (CA)
R	N	R1	*Streptanthus albidus ssp. peramoenus.*	Brassicaceae	Jewelflower, most beautiful (=uncommon).	U.S.A. (CA).
R	I	R1	*Streptanthus brachiatus ssp. brachiatus.*	Brassicaceae	Streptanthus, Contact Mine	U.S.A. (CA).
R	I	R1	*Streptanthus brachiatus ssp. hoffmanii.*	Brassicaceae	Jewelflower, Freed's	U.S.A. (CA).
R	I	R1	*Streptanthus morrisonii ssp. elatus*	Brassicaceae	Jewelflower, Three Peaks	U.S.A. (CA).
R	I	R1	*Streptanthus morrisonii ssp. hirtiflorus.*	Brassicaceae	Jewelflower, Dorr's Cabin	U.S.A. (CA).
E	L	R1	*Streptanthus niger*	Brassicaceae	Tiburon jewelflower	U.S.A. (CA)
E	L	R1	*Suaeda californica*	Chenopodiaceae	Seablite, California	U.S.A. (CA)
R	A	R1	*Synthyris ranunculina*	Scrophulariaceae	Kittentails,	U.S.A. (NV).
R	N	R1	*Trifolium polyodon*	Fabaceae	Clover, Pacific Grove	U.S.A. (CA).
R	I	R1	*Trifolium thompsonii*	Fabaceae	Clover, Thompson's	U.S.A. (WA).
Y		R1	*Urostachys nutans*	*** see ***	Lycopodium nutans	
			CONIFERS AND CYCADS.			
R	N	R1	*Cupressus stephensonii*	Cupressaceae	Cypress, Cuyamaca	U.S.A. (CA).
			FERNS AND ALLIES.			
E	L	R1	*Adenophorus periens*	Grammitidaceae	Pendant kihi fern	U.S.A. (HI)
E	L	R1	*Asplenium fragile* var. *insulare*	Aspleniaceae	None	U.S.A. (HI)
E	L	R1	*Ctenitis squamigera*	Aspleniaceae	Pauoa	U.S.A. (HI)
E	L	R1	*Diellia erecta*	Aspleniaceae	Asplenium-leaved diellia	U.S.A. (HI)
E	L	R1	*Diellia pallida*	Aspleniaceae	None	U.S.A. (HI)
E	L	R1	*Diellia unisora*	Aspleniaceae	None	U.S.A. (HI)
E	L	R1	*Diplazium molokaiense*	Aspleniaceae	None	U.S.A. (HI)
E	L	R1	*Lycopodium nutans*	Lycopodiaceae	Wawae'iole	U.S.A. (HI)
R	N	R1	*Ophioglossum concinnum*	Ophioglossaceae	Adder's-tongue,	U.S.A. (HI).
E	L	R1	*Pteris lidgatei*	Adiantaceae	None	U.S.A. (HI)
			LICHENS.			
E	L	R4	*Gymnoderma lineare*	Cladoniaceae	Lichen, rock gnome	U.S.A. (NC, TN)

[FR Doc. 96–4412 Filed 2–27–96; 8:45 am]
BILLING CODE 4310–55–F

VOL
61

ISS
40

FE
28

1996

UMI

federal register

Wednesday
February 28, 1996

Part IV

Office of Management and Budget

Office of Federal Procurement Policy

48 CFR Part 9903
Revisions to the Cost Accounting Standards Board Disclosure Statement Form; Final Rule

VOL 61 ISS 40 FE 28 996 UMI

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards Board; Revisions to the Cost Accounting Standards Board Disclosure Statement Form (CASB DS–1)

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Final rule.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), is revising its Disclosure Statement Form (CASB DS–1). Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires that the Board, when promulgating any new or revised Cost Accounting Standard, publish a final rule. This final rule incorporates an updated and revised CASB Disclosure Statement developed by the Board.

EFFECTIVE DATE: February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Rein Abel, Director of Research, Cost Accounting Standards Board (telephone: 202–395–3254).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The CASB's rules, regulations and Standards are codified at 48 CFR Chapter 99. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires that the Board, prior to the establishment of any new or revised CAS, complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard.
2. Promulgate an Advance Notice of Proposed Rulemaking (ANPRM).
3. Promulgate a Notice of Proposed Rulemaking (NPRM).
4. Promulgate a final rule.

This promulgation completes the four step process.

B. Background

Prior Promulgations

The original Disclosure Statement Form (CASB DS–1) was developed and promulgated in the early 1970s. No revisions to the document were made until the Board was reestablished in 1990. In 1992, some minor revisions were made. 57 FR 14148, 14159 (April 17, 1992). Subsequently, a project was initiated to revise and update the Disclosure Statement (CASB DS–1).

On April 2, 1993, a Staff Discussion Paper incorporating a revised Disclosure Statement was distributed to certain interested parties who generally possessed actual field experience in submitting and auditing these Statements. On the basis of the comments received in response to this Staff Discussion Paper, an Advance Notice of Proposed Rulemaking (ANPRM) was developed and published in the **Federal Register** on April 4, 1994 (59 FR 15695).

The majority of the comments received in response to the ANPRM were generally supportive of the proposed approach, but at the same time, numerous revisions were suggested that were intended to improve and streamline the document. Many of these suggested revisions were incorporated in the Notice of Proposed Rulemaking (NPRM) that was published in the **Federal Register** on November 29, 1994 (59 FR 60948).

Public Comments

Nine sets of public comments were received in response to the NPRM from government contractors, industry associations and Federal agencies.

Most commenters acknowledged that the NPRM version of the DS–1 was a significant improvement as compared with the earlier versions of the Disclosure Statement. Nevertheless, numerous additional revisions were suggested by commenters in order to further simplify and streamline the DS–1. Of particular concern to several commenters was the amount and type of information needed to respond adequately to questions in Part VII of the Statement.

In general, the Board has tried to be responsive to the suggestions made by commenters. In particular, a careful reevaluation of Part VII has been undertaken. In reevaluating this Part, the instructions have been clarified to make clear that only relevant cost accounting practices and applicable identifying data need be disclosed. Therefore, numeric data representing accounting estimates is not required to be submitted. Also, in most sections of Part VII, the substantive questions have been limited to items that cover only 80-percent of the relevant cost groupings.

The commenters overall concerns and suggestions are addressed in greater detail under Section E., Public Comments.

The Board and the CASB staff express their appreciation for the constructive suggestions and criticisms provided by the commenters with regard to the content of the revised Disclosure Statement. Many of the commenters' suggested improvements have been incorporated into the final rule being promulgated today.

Benefits

After consideration of the public comments received, the Board believes that the revised Disclosure Statement, as set forth in this final rule, will improve the cost accounting practices followed by contractors when estimating, accumulating and reporting costs deemed allocable to Federal contracts. Adequate disclosure of cost accounting practices is essential in order to ensure consistency in cost measurement as costs are first estimated and then accumulated and reported. A Disclosure Statement that has not been updated for some two decades clearly cannot adequately reflect currently prevailing cost accounting practices and cost elements. Therefore, in order to ensure that the policies and Standards promulgated by the Board are implemented in an economical and effective manner, a revised and updated Disclosure Statement becomes essential. In addition, the Board has previously expressed the view that an updated Disclosure Statement should facilitate interaction between contractors and Government representatives when dealing with contract costing matters.

The introduction of the revised statement should not impose any new burden on contractors as it merely replaces an existing form which requires periodic updating of disclosed practices.

To further reduce the possibility of increased costs, the extended dates for submission of the new Disclosure Statement are designed to provide an opportunity to delay submission until such time as contractors would most likely have to file an updated disclosure form regardless of whether a new Disclosure Statement is introduced or not.

Summary of Amendments

The primary purpose of this revision of the Disclosure Statement is to bring it up to date and to improve it in light of two decades of field experience that the government procurement community has had with this document. The basic characteristics of the Disclosure Statement have not been changed. However, a multitude of specific changes are incorporated in the revised Statement. It would be impractical to list here all the specific changes. However, most of these changes can be summarized as follows:

1. The current Disclosure Statement specifies that Parts I through VII be prepared at the segment or business unit level, while Part VIII should be prepared at the corporate or group headquarters level. This revised Statement provides that although Parts V, VI and VII still have to be submitted by segments, they may be completed either at the segment or headquarters level depending on where the applicable practices or procedures are established or where the cost is actually incurred.
2. In general, various legal references have been updated.
3. As the original Disclosure Statement was in essence prepared before any Cost Accounting Standards were issued, the revised format includes references to subsequently issued Standards where appropriate. In this context, some cost accounting practices described in the original Disclosure Statement may not be in compliance with the relevant provisions of a Cost Accounting Standard. The purpose of the Disclosure Statement is not to elicit noncompliant answers, and therefore, any references to potentially non-compliant practices have been eliminated.
4. Requests for certain statistical data have been eliminated as this information is no longer used.
5. Certain new topical areas have been added to the Disclosure Statement. These cover items that have become important from a cost measurement perspective over the last two decades. The topical areas include cost-of-money, post-retirement health benefits and employee stock ownership plans. Most of these new topical areas are incorporated in a significantly revised Part VII.

C. Paperwork Reduction Act

The information collection aspects of this rule have been approved by the Office of Management and Budget, and assigned Control Number 0348–0051.

D. Executive Order 12866 and the Regulatory Flexibility Act

The economic impact of this final rule on contractors and subcontractors is expected to be minor. As a result, the Board has determined that this final rule does not result in the promulgation of a "major rule" under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this final rule does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

E. Public Comments

This final rule is based upon the NPRM published in the **Federal Register** on November 29, 1994 (59 FR 60948), wherein public comments were invited. Nine sets of comments were received from government contractors, industry associations and Federal agencies. The more significant comments received, and the Board's actions taken in response thereto, are summarized below. Many other comments that were more of an editorial nature have been incorporated in the document where appropriate.

Comment: Two commenters suggested that compliant as well as non-compliant cost accounting practices should be described in the Disclosure Statement.

Response: The Board agrees that the actual cost accounting practices being followed must be described. However, where the Disclosure Statement provides a list of alternative practices, only compliant alternatives will be listed. If the contractor's practice is not one of the listed alternatives, the actual practice must be described on a continuation sheet. This will not be tantamount to conceding that the practice is non-compliant since such a determination can only be made after appropriate analysis and review.

Comment: Several commenters indicated that although the NPRM has been significantly improved and streamlined, the draft still contains too many questions of a detailed nature that may, in the future, increase rather than decrease the opportunities for disputes.

Response: The Board has, once more, consulted with the respondents to the NPRM and all the concerns have been subjected to additional review. As a result, some changes have been made to the version incorporated in the NPRM that should contribute to further streamlining and clarification of the final document. This comment applies in particular to Part VII of the Disclosure Statement.

Comment: At least two commenters indicated that, in their opinion the revised document still contains too many pages.

Response: In the final format there is no substantial difference in the length of the original and the final Disclosure Statement.

Comment: One commenter stressed that whenever possible, existing CAS wording or definitions should be used.

Response: The Board agrees with this suggestion and, wherever appropriate, the Disclosure Statement has accordingly been changed.

Comment: Several contractors indicated that throughout the document the term "CAS-covered contracts" rather than "Federal contracts" should be used.

Response: The Disclosure Statement deals with the cost accounting practices of an entity such as a segment or home office and it is presumed that cost accounting practices are applied consistently to all the applicable final cost objectives. Although the dollar amount of CAS-covered contracts received is crucial in determining whether a Disclosure Statement has to be filed, once the requirement to file has been met, the disclosure will cover all of the entity's policies and practices as they affect cost measurement and allocation to all contracts. Therefore, a broader term, such as "Federal contracts", seems preferable to a narrower term such as "CAS-covered contracts".

Comment: Two commenters suggested a shorter implementation period than the one proposed in the NPRM.

Response: While the Board encourages early adoption of the new form, it does not believe that it can adequately envision all the circumstances that might arise necessitating a delay in the introduction of the new form. It believes that any deadline imposed for the introduction of the new form should make ample provision for any unexpected difficulties that may arise at the implementation stage. Therefore, the final filing date for existing contractors has not been changed, although the Board hopes that an earlier adoption is possible in most cases.

Comment: Several commenters expressed some criticism of the procedure outlined in *General Instructions* that allows parts of contractors' accounting manuals to be incorporated by reference in the Disclosure Statement.

Response: The wording in the Instructions has been changed to make it clear that the procedure in question is an optional one—particularly from the perspective of the contractor.

Comment: Several commenters suggested that the language be clarified to indicate the appropriate circumstances in which home offices may be able to complete Parts V, VI, or VII to be filed by segments reporting to the home office.

Response: The language in the *General Instructions* has been clarified. In particular, it has been made clear that where the home office establishes the applicable cost accounting policies and

procedures, it may also complete the relevant Parts of the Disclosure Statement to be submitted by its subordinate segments.

Comment: Several commenters offered suggestions for clarifying the layout and terminology used on the *Cover Sheet.*

Response: Certain changes have been made to the *Cover Sheet,* in particular to item 0.2, Reporting Unit Classification, in order to introduce standard CAS terminology and definitions whenever appropriate.

Comment: Several commenters pointed out that in Part I, General Information, the wording of several items could be improved in order to ensure that the questions are more clearly focused and take into account current practices.

Response: Some changes have been made to Part I to reflect the suggestions made by several commenters. In particular, the question dealing with unallowable costs has been reformatted so as to reflect the basic structure of CAS 9904.405, Accounting for Unallowable Costs.

Comment: A number of comments were received concerning the formulation of questions in Part II, Direct Costs, dealing with direct material, direct labor and other direct costs. Some commenters suggested that the questions included in this part might be more appropriate elsewhere, such as in Part III, Direct vs. Indirect Costs, of the Disclosure Statement.

Response: The basic characteristic of Part II, as a section dealing with direct material, direct labor and other direct costs has been retained. The purpose here is to obtain information on how certain elements of cost are treated once it has been determined that they represent direct costs for government contract costing purposes. Therefore, items such as the question dealing with employee travel expenses that are directly charged to contracts have been retained.

On the other hand, as suggested by several commenters, the question dealing with interorganizational transfers has been eliminated primarily because it requested information about the cost accounting practices of the transferor and not of the transferee who is preparing the Disclosure Statement. It cannot be assumed that such information is always readily available to the transferee. The transferee's practices in this area are covered in Part IV, Indirect Costs.

Comment: A few commenters suggested that Part III should be drastically recast—including a suggestion that instead of long lists of functions, elements of cost and transactions, the equivalent information should be described on a continuation sheet.

Response: The existing format has been retained as it seems to be the most effective way to obtain the relevant information on whether an item of cost is being treated as a direct cost, as an indirect cost or as a sometimes direct/sometimes indirect cost. The lists of functions, elements of cost and transactions have been somewhat modified on the basis of comments received.

Comment: In Part IV, several commenters pointed out that the subtitles used to describe various methods of allocating General and Administrative (G&A) expense did not properly reflect the requirements of CAS 9904.410, Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives.

Response: The subtitles in question have been modified to conform more closely to the requirements of CAS 9904.410.

Comment: A number of commenters were concerned about the amount of detail required in Part IV dealing with modified allocations from indirect cost pools using a modified allocation base or a rate that is either more or less than the normal "full rate". Some commenters indicated that too much detail was requested regarding those modified allocations whereas others expressed the view that more information should be made available.

Response: Certain parts of Part IV, in particular the question dealing with the application of overhead and G&A rates to specified transactions or costs, have been restated in an attempt to present a more effective and balanced data gathering instrument. It should, once more, be remembered that the aim has been to provide a vehicle for a contractor to disclose its CAS compliant cost accounting practices. Therefore, the Disclosure Statement should not be regarded as a substitute for an audit check list. It is for this reason that non-compliant practices have been expressly excluded from the Disclosure Statement.

Comment: Several commenters suggested changes in the format in which questions regarding Independent Research and Development (IR&D) and Bid and Proposal (B&P) costs were presented in Part IV.

Response: The two questions that previously dealt separately with IR&D and B&P respectively have been combined to provide a more compact approach to the topic. In particular, the new approach, unlike the one in the NPRM, does not presuppose that every contractor who incurs B&P expense also has incurred IR&D expense—a supposition that does not necessarily hold for civilian agencies.

Comment: One commenter suggested that the headings in the question in Part VI, Other Costs and Credits, dealing with charging and crediting vacation, holiday and sick pay be rearranged.

Response: The column headings have been changed to reflect the fact that salaried exempt and non-exempt employees (as defined by the Fair Labor Standards Act) are generally treated differently in this area.

Comment: Regarding Part VII, Deferred Compensation and Insurance Costs, most commenters representing contractors expressed the view that too much detailed and possibly superfluous and ambiguous information was required with respect to the various pension, post-retirement health, deferred compensation and insurance plans. One commenter had actually tested the proposed NPRM requirements by using actual plan data in completing selected parts of the various sections in Part VII. The estimated time to complete these various sections were clearly significant and possibly burdensome when extrapolated to cover the whole of Part VII. Even though the data submitted was not verified on an overall basis, it did provide valuable insight into the relative amount of time required to complete the various individual questions. The data also distinguished between time required on a "recurring" basis to keep the Disclosure Statement current, as contrasted with the initial effort of "non-recurring" time required to prepare the original submission. The general comments regarding time required to complete Part VII were frequently supplemented by specific suggestions regarding individual sections or questions.

Response: The Board is grateful to those commenters who spent significant amounts of time to prepare constructive comments on this part of the Disclosure Statement. In particular, the Board would like to express its gratitude to the commenter who actually completed sections of Part VII and made the relevant data available to the Board.

As a result of the input received from commenters, Part VII has been substantially redesigned in order to make it more "user friendly". When dealing with pension plans, post-retirement health benefits, employee group insurance, deferred compensation, and worker's compensation and property insurance, the amount of detailed information related to various aspects of cost measurement has been substantially reduced. The detailed data is required only for those plans or policies that account for 80-percent of the relevant category of costs—provided data on at least three plans is disclosed. Only a limited amount of general plan information is sought for all the other plans. By excluding the less significant plans from the more detailed disclosure requirements, it is anticipated that the paperwork burden will be significantly eased.

Some commenters also inferred that in certain instances actual numeric data was requested that would have to be updated annually. It has been made clear in the final document that when dealing with such items as actuarial assumptions, only the basis used to determine numeric values need be disclosed and not the actual values themselves. This clarification should ensure that no regular annual updates of the Disclosure Statement are prepared and submitted merely to reflect changes in the relevant numeric values.

Other, more specific changes to the various sections of Part VII are summarized below:

Pension Plans. The number of General Plan Information questions has been reduced from nine in the NPRM to six in the final document.

In the NPRM, the information requested for Defined Contribution Plans applied to all plans of this type. In the final version, if there are more than three plans, this information has to be supplied only for plans that account for 80-percent of the defined contribution plan costs.

Defined Benefit Plans. The number of questions asked in this area has not been changed. However, the topics covered and the manner of presentation have been somewhat changed. In particular, it has been made clear that regarding actuarial assumptions, no disclosure of actual numeric values is required. Only the basis for determining these numeric values need be described.

Post-Retirement Benefits (PRBs). This section has been rearranged to conform with the pattern established for pension plans in the previous section. In the NPRM, the questions posed were applicable to all PRB plans. In the final rule, questions dealing with general plan information have been separated from questions dealing with more specific aspects of PRB cost determination. The latter group consists of five questions and they have to be completed only for those plans that, in the aggregate, account for at least 80-percent of the total PRB costs. However, if there are three plans or less, then data on all the plans must be disclosed.

Employee Group Insurance Programs. Responses to this section of Part VII of the NPRM indicated that it was the most time consuming section to complete. Therefore, some significant changes have been made to the amount of information to be disclosed. First, if there are more than three policies or self-insurance plans, the applicable information should be provided only for those policies and self-insurance plans that, in the aggregate, account for at least 80-percent of the costs of the program for each category of insured risk. Second, the information previously requested under three separate questions has been recast as a single question in a tabular form. Third, a number of specific questions dealing with treatment of dividends, earned refunds, and employee contributions have been dropped as these items are largely covered by the provision of CAS 9904.416, Accounting for Insurance Costs. It is anticipated that the time needed to complete this section of Part VII will be significantly reduced as a result of the changes listed above.

Deferred Compensation Plans. This section has been recast to conform to the format used in the sections dealing with pension plans and PRBs. Therefore, the first five questions dealing with general plan information are applicable to all the plans. Two other questions, of a more substantive nature, should be completed for all the plans if there are no more than three plans. If there are more than three plans, the information should be provided for those plans that in the aggregate account for at least 80-percent of these deferred compensation costs.

Employee Stock Ownership Plans (ESOPs). Questions in this section have been reformulated, and, as a result, the total number of these general plan information questions has been increased by two as compared with the NPRM. These questions must be completed for all ESOPs.

Worker's Compensation Liability and Property Insurance. This section has been rearranged to conform to the format used in dealing with employee group insurance plans. In addition, the term "line of insurance" has been introduced in an attempt to clarify the nature of the aggregation of costs for which the relevant cost data has to be disclosed. In this context, for the purpose of guidance, "line of insurance" has the meaning attributed to it in Generally Accepted Auditing Standards (GAAS) literature (see *AICPA Audit and Accounting Guide, Audits of Property and Liability Insurance Companies*) and includes groupings such as fire and similar perils, general liability, marine perils, automobile liability and property damage, worker's compensation, theft, etc. If there are more than three policies or self-insurance plans, the applicable information should be provided only for those policies and plans that in the aggregate account for at least 80-percent of the applicable costs for a line of insurance. Also, two separate questions have been combined into a single question in a tabular form.

Comment: Several comments relating to Part VIII, Corporate or Group Expenses, dealt with the requirement in the NPRM to "list all active segments and groups that are material in size reporting to the home . . . office". Suggestions received included deletion of the words "all", "active", and "that are material in size" in the above quote from the first question in this part. At least one commenter suggested that if the term "material" is used, criteria for materiality should be developed.

Response: The suggestions regarding deletions have been accepted by the Board. The restated sentence reads: "list segments and other intermediate level home offices reporting to this home office."

The Board believes that this is an area where the individuals implementing the Standards and other regulations necessarily must exercise their own judgment in carrying out their tasks. The objective of this provision in the Disclosure Statement is to obtain a listing of segments and other entities to which home office expenses may be allocated. This allocation is part of the cost determination process for government contract costing purposes. Furthermore, this cost determination process, which includes all the relevant pronouncements of the Board, is subject to the materiality provisions of 9903.305. Specific reiteration of the materiality provision in each instance is not needed. Therefore, the requirement in the present instance is to list all the segments or other entities reporting to the home office that may have other than immaterial impact on the cost allocation process from the home office to its subordinate entities.

Comment: Several suggestions were received to improve and streamline the main section of Part VIII that deals with the pooling and allocation of home office expenses.

Response: Several of the suggestions received have been adopted. An addition has been made to the list of allocation base codes used and one question in the NPRM has been eliminated and its substance combined with another question.

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List of Subjects in 48 CFR Part 9903

Cost accounting standards, Government procurement.

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 9903 continues to read as follows:

Authority: Public Law 100–679, 102 Stat. 4056, 41 U.S.C. 422.

PART 9903—CONTRACT COVERAGE

Subpart 9903.2—CAS Program Requirements

2. Section 9903.202 is amended by deleting the illustrated CASB DS–1 and inserting a revised CASB DS–1.

BILLING CODE 3110–01–P

FORM APPROVED OMB NUMBER
0348-0051

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FORM CASB DS-1 (REV 2/96)

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	GENERAL INSTRUCTIONS

1. This Disclosure Statement has been designed to meet the requirements of Public Law 100-679, and persons completing it are to describe the contractor and its contract cost accounting practices. For complete regulations, instructions and timing requirements concerning submission of the Disclosure Statement, refer to Section 9903.202 of Chapter 99 Of Title 48 CFR (48 CFR 9903.202).

2. Part I of the Statement provides general information concerning each reporting unit (e.g., segment, Corporate or other intermediate level home office, or a business unit). Parts II through VII pertain to the types of costs generally incurred by the segment or business unit directly performing Federal contracts or similar cost objectives. Part VIII pertains to the types of costs that are generally incurred by a Home office and are allocated to one or more segments performing Federal contracts. For a definition of the term "home office", see 48 CFR 9904.403.

3. Each segment or business unit required to disclose its cost accounting practices should complete the Cover Sheet, the Certification, and Parts I through VII.

4. Each home office required to disclose its cost accounting practices for measuring, assigning and allocating its costs to segments performing Federal contracts or similar cost objectives shall complete the Cover Sheet, the Certification, Part I and Part VIII of the Disclosure Statement. Where a home office either establishes practices or procedures for the types of costs covered by Parts V, VI and VII,or incurs and then allocates these types of cost to its segments, the home office may complete Parts V, VI and VII to be included in the Disclosure Statement submitted by its segments. While a home office may have more than one segment submitting Disclosure Statements, only one Statement needs to be submitted to cover the home office operations.

5. The Statement must be signed by an authorized signatory of the reporting unit.

6. The Disclosure Statement should be answered by marking the appropriate line or inserting the applicable letter code which describes the segment's (reporting unit's) cost accounting practices.

7. A number of questions in this Statement may need narrative answers requiring more space than is provided. In such instances, the reporting unit should use the attached continuation sheet provided. The continuation sheet may be reproduced locally as needed. The number of the question involved should be indicated and the same coding required to answer the questions in the Statement should be used in presenting the answer on the continuation sheet. Continuation sheets should be inserted at the end of the pertinent Part of the Statement. On each continuation sheet, the reporting unit should enter the next sequential page number for that Part and, on the last continuation sheet used, the words "End of Part" should be inserted after the last entry.

8. Where the cost accounting practice being disclosed is clearly set forth in the contractor's existing written accounting policies and procedures, such documents may be cited on a continuation sheet and incorporated by reference at the option of the contractor. In such cases, the contractor should provide the date of issuance and effective date for each accounting policy and/or procedures document cited. Alternatively, copies of the relevant parts of such documents may be attached as appendices to the pertinent Disclosure Statement Part. Such continuation sheets and appendices should be labeled and cross-referenced with the applicable Disclosure Statement number and follow the page number specified in paragraph 7. Any supplementary comments needed to adequately describe the cost accounting practice being disclosed should also be provided.

9. Disclosure Statements must be amended when cost accounting practices are changed to comply with a new CAS or when practices are changed with or without knowledge of the Government (Also see 48 CFR 9903.202-3).

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	GENERAL INSTRUCTIONS

10. Amendments shall be submitted to the same offices to which submission would have been made were an original Disclosure Statement filed.

11. Each amendment, or set of amendments should be accompanied by an amended cover sheet (indicating revision number and effective date of the change) and a signed certification. For all resubmissions, on each page, insert "Revision Number ___" and "Effective Date ____" in the Item Description block; and, insert a revision mark (e.g., "R") in the right hand margin of any line that is revised. Completely resubmitted Disclosure Statements must be accompanied by similar notations identifying the items which have been changed.

12. Use of this Disclosure Statement, amended February 1996, shall be phased in as follows:

A. New Contractors. This form shall be used by new contractors when they are initially required to disclose their cost accounting practices pursuant to 9903.202-1.

B. Existing Contractors. If a contractor has disclosed its cost accounting practices on a prior edition of the Disclosure Statement (CASB DS-1), such disclosure shall remain in effect until the contractor amends or revises a significant portion of the Disclosure Statement in accordance with CAS 9903.202-3. Minor amendments to an existing DS-1 may continue to be made using the prior form. However, when a substantive change is made, a complete Disclosure Statement must be filed using this form. In any event, all contractors and subcontractors must submit a new Disclosure Statement (this version of the CASB DS-1) not later than the beginning of the contractor's next full fiscal year after December 31, 1998.

ATTACHMENT - Blank Continuation Sheet

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COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	CONTINUATION SHEET
	NAME OF REPORTING UNIT

Item No.	Item description

FORM CASB DS-1 (REV 2/96)

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	COVER SHEET AND CERTIFICATION

0.1 Company or Reporting Unit.

Name

Street Address

City, State, & Zip Code

Division or Subsidiary of (if applicable)

0.2 Reporting Unit: (Mark one.)

A. ____ Business Unit comprising an entire business organization which is not divided into segments.
B.1. ____ Corporate Home Office
2. ____ Intermediate Level Home Office
3. ____ Segment or business unit reporting directly to a home office.

0.3 Official to Contact Concerning this Statement.

Name and Title

Phone number (including area code and extension)

0.4 Statement Type and Effective Date:

A. (Mark type of submission. If a revision, enter number)
(a)____ Original Statement
(b)____ Revised Statement; Revision No.____

B. Effective Date of this Statement/Revision:_____

0.5 Statement Submitted To (Provide office name, location and telephone number, include area code and extension):

(a) Cognizant Federal Agency: _____
(b) Cognizant Federal Auditor:_____

CERTIFICATION

I certify that to the best of my knowledge and belief this Statement, as amended in the case of a revision, is the complete and accurate disclosure as of the above date by the above-named organization of its cost accounting practices, as required by the Disclosure Regulation (48 CFR 9903.202) of the Cost Accounting Standards Board under P.L. 100-679.

_____
(Name)

_____
(Title)

THE PENALTY FOR MAKING A FALSE STATEMENT IN THIS DISCLOSURE IS PRESCRIBED IN 18 U.S.C. § 1001

FORM CASB DS-1 (REV 2/96) C - 1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART I - GENERAL INFORMATION NAME OF REPORTING UNIT

Item No.	Item description
	Part I Instructions Sales data for this part should cover the most recently completed fiscal year of the reporting unit. "Government CAS Covered Sales" includes sales under both prime contracts and subcontracts. "Annual CAS Covered Sales" includes intracorporate transactions.
1.1.0	Type of Business Entity of Which the Reporting Unit is a Part. (Mark one.) A. ____ Corporation B. ____ Partnership C. ____ Proprietorship D. ____ Not-for-profit organization E. ____ Joint Venture F. ____ Federally Funded Research and Development Center (FFRDC) Y. ____ Other (Specify) _____
1.2.0	Predominant Type of Government Sales. (Mark one.) 1/ A. ____ Manufacturing B. ____ Research and Development C. ____ Construction D. ____ Services Y. ____ Other (Specify)_____
1.3.0	Annual CAS Covered Government Sales as Percentage of Total Sales (Government and Commercial). (Mark one. An estimate is permitted for this section.) 1/ A. ____ Less than 10% B. ____ 10%-50% C. ____ 51%-80% D. ____ 81% - 95% E. ____ Over 95%
1.4.0	Description of Your Cost Accounting System for Government Contracts and Subcontracts. (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) 1/ A. ____ Standard costs - Job order B. ____ Standard costs - Process C. ____ Actual costs - Job order D. ____ Actual costs - Process Y. ____ Other(s) 2/
	1/ Do not complete when Part I is filed in conjunction with Part VIII. 2/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART I - GENERAL INFORMATION NAME OF REPORTING UNIT

Item No.	Item description
1.5.0	Identification of Differences Between Contract Cost Accounting and Financial Accounting Records. List on a continuation sheet, the types of costs charged to Federal contracts that are supported by memorandum records and identify the method used to reconcile with the entity's financial accounting records.
1.6.0	Unallowable Costs. Costs that are not reimbursable as allowable costs under the terms and conditions of Federal awards are identified as follows: (Mark all that apply and if more than one is marked, describe on a continuation sheet the major cost groupings, organizations, or other criteria for using each marked technique.)
1.6.1	Incurred costs. A. ____ Specifically identified and recorded separately in the formal financial accounting records. B. ____ Identified in separately maintained accounting records or workpapers. C. ____ Identifiable through use of less formal accounting techniques that permit audit verification. D. ____ Determinable by other means. 1/
1.6.2	Estimated costs. A. _____ By designation and description (in backup data, workpapers, etc) which have specifically been identified and recognized in making estimates. B. _____ By description of any other estimating technique employed to provide appropriate recognition of any unallowable amounts pertinent to the estimates. C. _____ Other. 1/
1.7.0	Fiscal Year: _____ (Specify twelve month period used for financial accounting and reporting purposes, e.g., 1/1 to 12/31.)
1.7.1	Cost Accounting Period: _____ (Specify period. If the cost accounting period used for the accumulation and reporting of costs under Federal contracts is other than the fiscal year identified in Item 1.7.0, explain circumstances on a continuation sheet.)
	1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART II - DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description
	Part II Instructions This part covers the three major categories of direct costs, i.e., Direct Material, Direct Labor, and Other Direct Costs. It is not the intent here to spell out or define the three elements of direct costs. Rather, each contractor should disclose practices based on its own definitions of what costs are, or will be, charged directly to Federal contracts or similar cost objectives as Direct Material, Direct Labor, or Other Direct Costs. For example, a contractor may charge or classify purchased labor of a direct nature as "Direct Material" for purposes of pricing proposals, requests for progress payments, claims for cost reimbursement, etc.; some other contractor may classify the same cost as "Direct Labor," and still another as "Other Direct Costs." In these circumstances, it is expected that each contractor will disclose practices consistent with its own classifications of Direct Material, Direct Labor, and Other Direct Costs.
2.1.0	Description of Direct Material. Direct material as used here is not limited to those items of material actually incorporated into the end product; they also include material, consumable supplies, and other costs when charged to Federal contracts or similar cost objectives as Direct Material. (Describe on a continuation sheet the principal classes or types of material and services which are charged as direct material; group the material and service costs by those which are incorporated in an end product and those which are not.)
2.2.0	Method of Charging Direct Material.
2.2.1	Direct Charge Not Through an Inventory Account at: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) A. ____ Standard costs (Describe the type of standards used.) 1/ B. ____ Actual Costs Y. ____ Other(s) 1/ Z. ____ Not applicable
2.2.2	Charged Direct from a Contractor-owned Inventory Account at: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) A. ____ Standard costs 1/ B. ____ Average Costs 1/ C. ____ First in, first out D. ____ Last in, first out Y. ____ Other(s) 1/ Z. ____ Not applicable
	1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART II - DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description
2.3.0	Timing of Charging Direct Material. (Mark the appropriate line(s) to indicate the point in time at which direct material are charged to Federal contracts or similar cost objectives, and if more than one line is marked, explain on a continuation sheet.) A. ____ When orders are placed B. ____ When both the material and invoice are received C. ____ When material is issued or released to a process, batch, or similar intermediate cost objective D. ____ When material is issued or released to a final cost objective E. ____ When invoices are paid Y. ____ Other(s) 1/ Z. ____ Not applicable
2.4.0	Variances from Standard Costs for Direct Material. (Do not complete this item unless you use a standard cost method, i.e., you have marked Line A of Item 2.2.1, or 2.2.2. Mark the appropriate line(s) in Items 2.4.1, 2.4.2, and 2.4.4, and if more than one line is marked, explain on a continuation sheet.)
2.4.1	Type of Variance. A. ____ Price B. ____ Usage C. ____ Combined (A and B) Y. ____ Other(s) 1/
2.4.2	Level of Production Unit used to Accumulate Variance. Indicate which level of production unit is used as a basis for accumulating material variances. A. ____ Plant-wide Basis B. ____ By Department C. ____ By Product or Product Line Y. ____ Other(s) 1/
2.4.3	Method of Disposing of Variance. Describe on a continuation sheet the basis for, and the frequency of, the disposition of the variance.
2.4.4	Revisions. Standard costs for direct materials are revised: A. ____ Semiannually B. ____ Annually C. ____ Revised as needed, but at least once annually Y. ____ Other(s) 1/
	1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART II - DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description
2.5.0	Method of Charging Direct Labor: (Mark the appropriate line(s) for each Direct Labor Category to show how such labor is charged to Federal contracts or similar cost objectives, and if more than one line is marked, explain on a continuation sheet. Also describe on a continuation sheet the principal classes of labor rates that are, or will be applied to Manufacturing Labor, Engineering Labor, and Other Direct Labor, in order to develop direct labor costs.

	Direct Labor Category		
	Manufacturing	Engineering	Other Direct
A. Individual/actual rates	____	____	____
B. Average rates – uncompensated overtime hours included in computation 1/	____	____	____
C. Average rates – uncompensated overtime hours excluded from computation	____	____	____
D. Standard costs/rates 1/	____	____	____
Y. Other(s) 1/	____	____	____
Z. Labor category is not applicable	____	____	____

2.6.0	Variances from Standard Costs for Direct Labor. (Do not complete this item unless you use a standard costs/rate method, i.e., you have marked Line D of Item 2.5.0 for any direct labor category. Mark the appropriate line(s) in each column of Items 2.6.1, 2.6.2, and 2.6.4. If more than one is marked, explain on a continuation sheet.)
2.6.1	Type of Variance.

	Direct Labor Category		
	Manufacturing	Engineering	Other Direct
A. Rate	____	____	____
B. Efficiency	____	____	____
C. Combined (A and B)	____	____	____
Y. Other(s) 1/	____	____	____
Z. Labor category is not applicable	____	____	____

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART II - DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description
2.6.2	Level of Production Unit used to Accumulate Variance. Indicate which level of production unit is used as a basis for accumulating the labor variances.

	Direct Labor Category		
	Manufacturing	Engineering	Other Direct
A. Plant-wide basis	____	____	____
B. By department	____	____	____
C. By product or product line	____	____	____
Y. Other(s) 1/	____	____	____
Z. Labor category is not applicable	____	____	____

2.6.3	Method of Disposing of Variance. Describe on a continuation sheet the basis for, and the frequency of, the disposition of the variance.
2.6.4	Revisions. Standard costs for direct labor are revised: A. ____ Semiannually B. ____ Annually C. ____ Revised as needed, but at least once annually Y. ____ Other(s) 1/
2.7.0	Description of Other Direct Costs. Other significant items of cost directly identified with Federal contracts or other final cost objectives. Describe on a continuation sheet the principal classes of other costs that are always charged directly, that is, identified specifically with final cost objectives, e.g., fringe benefits, travel costs, services, subcontracts, etc.
2.7.1	When Employee Travel Expenses for lodging and subsistence are charged direct to Federal contracts or similar cost objectives the charge is based on: A. ____ Actual Costs B. ____ Per Diem Rates C. ____ Lodging at actual costs and subsistence at per diem Y. ____ Other Method 1/ Z. ____ Not Applicable
2.8.0	Credits to Contract Costs. When Federal contracts or similar cost objectives are credited for the following circumstances, are the rates of direct labor, direct materials, other direct costs and applicable indirect costs always the same as those for the original charges? (Mark one line for each circumstance, and for each "No" answer, explain on a continuation sheet how the credit differs from the original charge.)

Circumstance	A. Yes	B. No	Z. Not Applicable
(a) Transfers to other jobs/contracts	____	____	____
(b) Unused or excess materials remaining upon completion of contract	____	____	____

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART III - DIRECT VS. INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description
3.1.0	Criteria for Determining How Costs are Charged to Federal Contracts Or Similar Cost Objectives. Describe on a continuation sheet your criteria for determining when costs incurred for the same purpose, in like circumstances, are treated either as direct costs only or as indirect costs only with respect to final cost objectives.
3.2.0	Treatment of Costs of Specified Functions, Elements of Cost, or Transactions. (For each of the functions, elements of cost or transactions listed in Items 3.2.1, 3.2.2, and 3.2.3, enter one of the Codes A through F, or Y, to indicate how the item is treated. Enter Code Z in those lines that are not applicable to you. Also, specify the name(s) of the indirect pool(s) (as listed in 4.1.0, 4.2.0 and 4.3.0) for each function, element of cost, or transaction coded E or F. If Code E, Sometimes direct/Sometimes indirect, is used, explain on a continuation sheet the circumstances under which both direct and indirect allocations are made.)

Treatment Code

A. Direct material
B. Direct labor
C. Direct material and labor
D. Other direct costs
E. Sometimes direct/Sometimes indirect
F. Indirect only
Y. Other(s) 1/
Z. Not applicable

3.2.1 Functions, Elements of Cost, or Transactions Related to Direct Material

		Treatment Code	Name of Pool(s)
(a)	Cash Discounts on Purchases	___	_____
(b)	Freight in	___	_____
(c)	Income from Sale of Scrap	___	_____
(d)	Income from Sale of Salvage	___	_____
(e)	Incoming Material Inspection (receiving)	___	_____
(f)	Inventory adjustment	___	_____
(g)	Purchasing	___	_____
(h)	Trade Discounts, Refunds, Rebates, and Allowances on Purchases	___	_____

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART III - DIRECT VS. INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description
3.2.2	Functions, Elements of Cost, or Transactions Related to Direct Labor

		Treatment Code	Name of Pool(s)
(a)	Incentive Compensation	___	_____
(b)	Holiday Differential (Priemium Pay)	___	_____
(c)	Vacation Pay	___	_____
(d)	Overtime Premium Pay	___	_____
(e)	Shift Premium Pay	___	_____
(f)	Pension Costs	___	_____
(g)	Post Retirement Benefits Other Than Pensions	___	_____
(h)	Health Insurance	___	_____
(i)	Life Insurance	___	_____
(j)	Other Deferred Compensation 1/	___	_____
(k)	Training	___	_____
(l)	Sick Leave	___	_____

1/ Describe on a Continuation Sheet.

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COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART III - DIRECT VS. INDIRECT COSTS
	NAME OF REPORTING UNIT

Item No.	Item description			
3.2.3	Functions, Elements of Cost, or Transactions - Miscellaneous		Treatment Code	Name of Pool(s)
	(a)	Design Engineering (in-house)	___	_____
	(b)	Drafting (in-house)	___	_____
	(c)	Computer Operations (in-house)	___	_____
	(d)	Contract Administration	___	_____
	(e)	Subcontract Administration Costs	___	_____
	(f)	Freight Out (finished product)	___	_____
	(g)	Line (or production) Inspection	___	_____
	(h)	Packaging and Preservation	___	_____
	(i)	Preproduction Costs and Start-up Costs	___	_____
	(j)	Departmental Supervision	___	_____
	(k)	Professional Services (consultant fees)	___	_____
	(l)	Purchased Labor of Direct Nature (on premises)	___	_____
	(m)	Purchased Labor of Direct Nature (off premises)	___	_____
	(n)	Rearrangement Costs	___	_____
	(o)	Rework Costs	___	_____
	(p)	Royalties	___	_____
	(q)	Scrap Work	___	_____
	(r)	Special Test Equipment	___	_____
	(s)	Special Tooling	___	_____
	(t)	Warranty Costs	___	_____
	(u)	Rental Costs	___	_____
	(v)	Travel and Subsistence	___	_____
	(w)	Employee Severance Pay	___	_____
	(x)	Security Guards	___	_____

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART IV - INDIRECT COSTS
	NAME OF REPORTING UNIT

Item No.	Item description
	Part IV Instructions For the purpose of this part, indirect costs have been divided into three categories: (i) manufacturing, engineering, and comparable indirect costs, (ii) general and administrative (G&A) expenses, and (iii) service center and expense pool costs, as defined in Item 4.3.0. The term "overhead," as used in this part, refers only to the first category of indirect costs. The following Allocation Base Codes are provided for use in connection with Items 4.1.0, 4.2.0 and 4.3.0. A. Sales B. Cost of sales C. Total Cost input (direct material, direct labor, other direct costs and applicable overhead) D. Value-added cost input (total cost input less direct material and subcontract costs) E. Total cost incurred (total cost input plus G&A expenses) F. Prime cost (direct material, direct labor and other direct cost) G. Processing or conversion cost (direct labor and applicable overhead) H. Direct labor dollars I. Direct labor hours J. Machine hours K. Usage L. Unit of production M. Direct material cost N. Total payroll dollars (direct and indirect employees) O. Headcount or number of employees (direct and indirect employees) P. Square feet Y. Other(s), or more than one basis (Describe on a continuation sheet.) Z. Pool not applicable
4.1.0	Overhead Pools. List all the overhead pools, i.e., pools of indirect costs, other than general and administrative (G&A) expenses, that are allocated to final cost objectives without any intermediate allocations. A segment or business unit may have only a single pool encompassing all of its overhead costs or alternatively it may have several pools such as manufacturing overhead, engineering overhead, material handling overhead, etc. For each pool listed indicate the base used for allocating such pooled expenses to Federal contracts or similar cost objectives. Also, for each of the pools indicate (a) the major functions, activities, and elements of cost included, and (b) the make up of the allocation base. Use a continuation sheet if additional space is required. Allocation Base Code 1. _____ ____ (a) Major functions, activities, and elements of cost included: _____ _____ (b) Description/Make up of the allocation base: _____ _____

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART IV - INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description
4.1.0	Continued. Allocation Base Code 2. _____ ____ (a) Major functions, activities, and elements of cost included: _____ _____ (b) Description/Make up of the allocation base: _____ _____
4.2.0	General and Administrative (G&A) Expense Pool(s). Select among the three categories of pools below that describe(s) the manner in which G&A expenses are allocated. For each category of pool(s) selected indicate the base(s) used for allocating such pooled expenses to Federal contracts or similar cost objectives. Also, for each category of pool(s) selected, indicate (a) the major functions, activities, and elements of cost included, and (b) the make up of the allocation base(s). For example, if direct labor dollars are used, are fringe benefits included? If a total cost input base is used, is the imputed cost of capital included? Use a continuation sheet if additional space is required. Single Pool Containing G&A Expenses Only — Allocation Base Code: ____ _____ (a) Major functions, activities, and elements of cost included: _____ _____ (b) Description/Make up of the allocation base: _____ _____

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART IV - INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description
4.2.0	Continued. Single Pool Containing Both G&A and Non-G&A Expenses — Allocation Base Code: ____ _____ (a) Major functions, activities, and elements of cost included: _____ _____ (b) Description/Make up of the allocation base: _____ _____ Special Allocations — Allocation Base Code 1. _____ ____ (a) Major functions, activities, and elements of cost included: _____ _____ _____ (b) Description/Make up of the allocation base: _____ _____ 2. _____ ____ (a) Major functions, activities, and elements of cost included: _____ _____ (b) Description/Make up of the allocation base: _____ _____

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART IV - INDIRECT COSTS
	NAME OF REPORTING UNIT

Item No.	Item description
4.3.0	Service Center and Expense Pool Allocation Bases.

Service centers are departments or other functional units which perform specific technical and/or administrative services primarily for the benefit of other units within a reporting unit. Expense pools are pools of indirect costs that are allocated primarily to other units within a reporting unit. Examples of service centers are data processing centers, reproduction services and communications services. Examples of expense pools are use and occupancy pools and fringe benefit pools.

Category Code

Generally, costs incurred by such centers or pools are, or can be, charged or allocated (i) partially to specific final cost objectives as direct costs and partially to other indirect cost pools (such as a manufacturing overhead pool) for subsequent reallocation to several final cost objectives, referred to herein as Category "A", and (ii) only to several other indirect cost pools (such as a manufacturing overhead pool, engineering overhead pool and G&A expense pool) for subsequent reallocation to several final cost objectives, referred to herein as Category "B".

Rate Code

Some service centers or expense pools may use predetermined billing or costing rates to charge or allocate the costs (Rate Code A) while others may charge or allocate on an actual basis (Rate Code B).

List all the service centers and expense pools and enter in column (1) Code A or B to indicate the category of pool. Enter in Column (2) one of the Allocation Base Codes A through P, or Y, listed on Page ___, to indicate the base used for charging or allocating service center or expense pool costs. Enter in Column (3) Rate Code A or B to describe the costing method used. Also, for each of the centers and pools indicate (a) the major functions, activities, and elements of cost included, and (b) the make up of the allocation base. Use a continuation sheet if additional space is required.

	Service Center or Expense Pool	Category Code (1)	Allocation Base Code (2)	Rate Code (3)
1.	_____	___	___	___
	(a) Major functions, activities, and elements of cost included: _____ _____			
	(b) Description/Make up of the allocation base: _____ _____			
2.	_____	___	___	___
	(a) Major functions, activities, and elements of cost included: _____ _____			
	(b) Description/Make up of the allocation base: _____ _____			

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART IV - INDIRECT COSTS
	NAME OF REPORTING UNIT

Item No.	Item description
4.4.0	Treatment of Variances from Actual Cost (Underabsorption or Overabsorption). Where predetermined billing or costing rates are used to charge costs of service centers and expense pools to Federal contracts or other indirect cost pools (Rate Code A in Column (3) of Item 4.3.0), variances from actual costs are: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.)

A. ____ Prorated to users on the basis of charges made, at least once annually
B. ____ All charged or credited to indirect cost pool(s) at least once annually
Y. ____ Other(s) 1/
Z. ____ Service center is not applicable to reporting unit

4.5.0 Application of Overhead and G&A Rates to Specified Transactions or Costs.

This item is directed to ascertaining your practice in special situations where, in lieu of establishing a separate indirect cost pool, allocation is made from an established overhead or G&A pool at a rate other than the normal full rate for that pool. In the case of such a special allocation, the terms "less than full rate" or "more than full rate" should be used to describe the practice. The terms do not apply to situations where, as in some cases of off-site activities, etc., a separate indirect cost pool and base are used and the rate for such activities is lower than the "in-house" rate.

For each of the transactions or costs listed below, enter one of the following codes to indicate your indirect cost allocation practice with respect to that transaction or cost. If Code A, full rate, is entered, identify on a continuation sheet the pool(s) reported under items 4.1.0, 4.2.0, and 4.3.0, which are applicable. If Codes B or C, less than or more than the full rate, is entered, describe on a continuation sheet the major types of expenses that are covered by such a rate.

Rate Code

A. Full rate
B. Special allocation at less than full rate
C. Special allocation at more than full rate
D. No overhead or G&A is applied
Z. Transaction or cost is not applicable to reporting unit

Transaction or Cost to Which Indirect Costs May be Allocated		Rate Code
(a)	Subcontract costs	___
(b)	Purchased Labor	___
(c)	Government-furnished materials	___
(d)	Self-constructed depreciable assets	___
(e)	Labor on installation of assets	___
(f)	Off-site work	___
(g)	Interorganizational transfers out	___
(h)	Interorganizational transfers in (Also indicate on a continuation sheet the basis used by you as transferee to charge the cost or price of interogranizational transfers to Federal contracts or similar cost objectives. If the charge is based on cost, indicate whether the transferor's G&A expenses are included.)	___
(i)	Other transactions or costs (Enter Code B or C on this line if there are other transactions or costs to which either less than full rate or more than full rate is applied. List such transactions or costs on a continuation sheet, and for each describe the major types of expenses covered by such a rate. If there are no other such transactions or costs, enter code Z.)	___

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART IV - INDIRECT COSTS
	NAME OF REPORTING UNIT

Item No.	Item description
4.6.0	Independent Research and Development (IR&D) and Bid and Proposal (B&P) Costs. Definitions of and requirements for the allocation of IR&D and B&P costs are contained in 48 CFR 9904.420. The full rate of all allocable manufacturing, engineering, and/or other overhead is applied to IR&D and B&P costs as if IR&D and B&P projects were under contract, and the "burdened" IR&D and B&P costs are: (Mark appropriate line(s).) A. ____ Allocated to Federal contracts or similar cost objectives by means of a composite pool with G&A expenses. B. ____ Allocated to Federal contracts or similar cost objectives by means of a separate pool. C. ____ Transferred to the corporate or home office level for reallocation to the benefiting segments. Y. ____ Other . 1/ Z. ____ Not applicable
4.7.0	Cost of Capital Committed to Facilities. In accordance with instructions for Form CASB-CMF, undistributed facilities capital items are allocated to overhead and G&A expense pools: (Mark one.) A. ____ On a basis identical to that used to absorb the actual depreciation or amortization from these facilities; land is assigned in the same manner as the facilities to which it relates. B. ____ On a basis not identical to that used to absorb the actual depreciation or amortization from these facilities. (Describe on a continuation sheet the difference for each step of the allocation process.) C. ____ By the "alternative allocation process" described in instructions for Form CASB-CMF. Z. ____ Not applicable.

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART V - DEPRECIATION AND CAPITALIZATION PRACTICES
	NAME OF REPORTING UNIT

Item No.	Item description
	Part V Instructions Where a home office either establishes practices or procedures for the types of costs covered in this Part or incurs and then allocates these costs to its segments, the home office may complete this Part to be included in the submission by the segment as indicated on page (i) 4., General Instructions.
5.1.0	Depreciating Tangible Assets for Government Contract Costing. (For each of the asset categories listed on Page ___, enter a code from A through H in Column (1) describing the method of depreciation (Code F for assets that are expensed); a code from A through C in Column (2) describing the basis for determining useful life; a code from A through C in Column (3) describing how depreciation methods or use charges are applied to property units; and a Code A, B or C in Column (4) indicating whether or not residual value is deducted from the total cost of depreciable assets. Enter Code Y in each column of an asset category where another or more than one method applies. Enter Code Z in Column (1) only, if an asset category is not applicable.) Column (1)—Depreciation Method Code A. Straight Line B. Declining balance C. Sum-of-the years digits D. Machine hours E. Unit of production F. Expensed at acquisition G. Use charge H. Method of depreciation used under the applicable Internal Revenue Procedures Y. Other or more than one method 1/ Z. Asset category is not applicable Column (2)—Useful Life Code A. Replacement experience adjusted by expected changes in periods of usefulness B. Term of Lease C. Estimated on the basis of Asset Guidelines under Internal Revenue Procedures Y. Other, or more than one method 1/ Column (3)—Property Units Code A. Individual units are accounted for separately B. Applied to groups of assets with similar service lives C. Applied to groups of assets with varying service lives Y. Other or more than one method 1/ Column (4)—Residual Value Code A. Residual value is estimated and deducted B. Residual value is covered by the depreciation method (e.g., declining balance) C. Residual value is estimated but not deducted in accordance with the provisions of 48 CFR 9904.409 1/ Y. Other or more than one method 1/

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART V - DEPRECIATION AND CAPITALIZATION PRACTICES
	NAME OF REPORTING UNIT

Item No.	Item description

5.1.0 Continued.

Asset Category	Depreciation Method Code (1)	Useful Life Code (2)	Property Units Code (3)	Residual Value Code (4)
(a) Land improvements	___	___	___	___
(b) Building	___	___	___	___
(c) Building improvements	___	___	___	___
(d) Leasehold improvements	___	___	___	___
(e) Machinery and equipment	___	___	___	___
(f) Furniture and fixtures	___	___	___	___
(g) Automobiles and trucks	___	___	___	___
(h) Data processing equipment	___	___	___	___
(i) Programming/reprogramming costs	___	___	___	___
(j) Patterns and dies	___	___	___	___
(k) Tools	___	___	___	___
(l) Other depreciable asset categories (Enter Code Y on this line if other asset categories are used and enumerate on a continuation sheet each such asset category and the applicable codes. Otherwise enter Code Z.)	___	___	___	___

5.2.0 Depreciation Practices for Costing, Financial Accounting, and Income Tax. Are depreciation practices the same for costing Federal contracts as for financial accounting and income tax? (Mark either (A) or (B) on each line under Financial Accounting and Income Tax. Not-for-profit organizations need not complete this item.)

Financial Accounting	A. Yes	B. No
(a) Methods	___	___
(b) Useful lives	___	___
(c) Property units	___	___
(d) Residual values	___	___
Income Tax	**A. Yes**	**B. No**
(e) Methods	___	___
(f) Useful lives	___	___
(g) Property units	___	___
(h) Residual values	___	___

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART V - DEPRECIATION AND CAPITALIZATION PRACTICES
	NAME OF REPORTING UNIT

Item No.	Item description

5.3.0 Fully Depreciated Assets. Is a usage charge for fully depreciated assets charged to Federal contracts? (Mark one.)

A. ___ Yes 1/
B. ___ No
Z. ___ Not applicable

5.4.0 Treatment of Gains and Losses on Disposition of Depreciable Property. Gains and losses are: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.)

A. ___ Credited or charged currently to the same overhead or G&A pools to which the depreciation of the assets was charged

B. ___ Taken into consideration in the depreciation cost basis of the new items, where trade-in is involved

C. ___ Not accounted for separately, but reflected in the depreciation reserve account

Y. ___ Other(s) 1/

Z. ___ Not applicable

5.5.0 Capitalization or Expensing of Specified Costs. (Mark one line on each item to indicate your practices regarding capitalization or expensing of specified costs incurred in connection with capital assets. If the same specified cost is sometimes expensed and sometimes capitalized, mark both lines and describe on a continuation sheet the circumstances when each method is used.)

Cost	A. Expensed	B. Capitalized
(a) Freight-in	___	___
(b) Sales taxes	___	___
(c) Excise taxes	___	___
(d) Architect-engineer fees	___	___
(e) Overhauls (extraordinary repairs)	___	___

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART V - DEPRECIATION AND CAPITALIZATION PRACTICES
	NAME OF REPORTING UNIT

Item No.	Item description
5.6.0	Criteria for Capitalization. Enter (a) the minimum dollar amount of acquisition cost or expenditures for addition, alteration and improvement of depreciable assets capitalized, and (b) the minimum number of expected life years of capitalized assets. If more than one dollar amount or number applies, show the information for the majority of your depreciable assets, and enumerate on a continuation sheet the dollar amounts and/or number of years for each category or subcategory of assets involved which differ from those for the majority of assets. (a) Minimum dollar amount capitalized _____ (b) Minimum service life years _____
5.7.0	Group or Mass Purchase. Are group or mass purchases (original complement) of low cost equipment, which individually are less than the capitalization amount indicated above, capitalized? (Mark one. If Yes is marked, provide the minimum aggregate dollar amount capitalized.) A. ___ Yes _____Minimum aggregate dollar amount capitalized B. ___ No

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VI - OTHER COSTS AND CREDITS
	NAME OF REPORTING UNIT

Item No.	Item description	Hourly (1)	Salaried Non-exempt 1/ (2)	Salaried Exempt 1/ (3)
	Part VI Instructions Where a home office either establishes practices or procedures for the types of costs covered in this Part or incurs and then allocates these costs to its segments, the home office may complete this Part to be included in the submission by the segment as indicated on page (ii) 4., General Instructions.			
6.1.0	Method of Charging and Crediting Vacation, Holiday, and Sick Pay. (Mark the appropriate line(s) in each column of Items 6.1.1, 6.1.2, 6.1.3 and 6.1.4 to indicate the method used to charge, or credit any unused or unpaid vacation, holiday, or sick pay. If more than one method is marked, explain on a continuation sheet.)			
6.1.1	Charges for Vacation Pay			
	A. When Accrued (earned)	___	___	___
	B. When Taken	___	___	___
	Y. Other(s) 2/	___	___	___
6.1.2	Charges for Holiday Pay			
	A. When Accrued (earned)	___	___	___
	B. When Taken	___	___	___
	Y. Other(s) 2/	___	___	___
6.1.3	Charges for Sick Pay			
	A. When Accrued (earned)	___	___	___
	B. When Taken	___	___	___
	Y. Other(s) 2/	___	___	___
6.1.4	Credits for Unused or Unpaid Vacation, Holiday, or Sick Pay			
	A. Credited to Accounts Originally charged at Least Once Annually	___	___	___
	B. Credited to Indirect Cost Pools at Least Once Annually	___	___	___
	C. Carried Over to Future Cost Accounting Periods 2/	___	___	___
	Y. Other(s) 2/	___	___	___
	Z. Not Applicable	___	___	___
	1/ For the definition of Non-exempt and Exempt salaries, see the Fair Labor Standards Act, 29 U.S.C. 206.			
	2/ Describe on a Continuation Sheet.			

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VI - OTHER COSTS AND CREDITS NAME OF REPORTING UNIT

Item No.	Item description
6.2.0	Supplemental Unemployment (Extended Layoff) Benefit Plans. Costs of such plans are charged to Federal contracts: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) A. ___ When actual payments are made directly to employees B. ___ When accrued (book accrual or funds set aside but no trust fund involved) C. ___ When contributions are made to a nonforfeitable trust fund D. ___ Not charged Y. ___ Other(s) 1/ Z. ___ Not applicable
6.3.0	Severance Pay and Early Retirement. Costs of normal turnover severance pay and early retirement incentive plans, as defined in FAR 31.2 or other pertinent procurement regulations, which are charged directly or indirectly to Federal contracts, are based on: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) A. ___ Actual payments made B. ___ Accrued amounts on the basis of past experience C. ___ Not charged Y. ___ Other(s) 1/ Z. ___ Not applicable
6.4.0	Incidental Receipts. (Mark the appropriate line(s) to indicate the method used to account for incidental or miscellaneous receipts, such as revenues from renting real and personal property or selling services, when related costs have been allocated to Federal contracts. If more than one is marked, explain on a continuation sheet.) A. ___ The entire amount of the receipt is credited to the same indirect cost pools to which related costs have been charged B. ___ Where the amount of the receipt includes an allowance for profit, the cost-related part of the receipt is credited to the same indirect cost pools to which related costs have been charged; the profits are credited to Other (Miscellaneous) Income C. ___ The entire amount of the receipt is credited directly to Other (Miscellaneous) Income Y. ___ Other(s) 1/ Z. ___ Not applicable
	1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VI - OTHER COSTS AND CREDITS NAME OF REPORTING UNIT

Item No.	Item description
6.5.0	Proceeds from Employee Welfare Activities. Employee welfare activities include all of those activities set forth in FAR 31.2 . (Mark the appropriate line(s) to indicate the practice followed in accounting for the proceeds from such activities. If more than one is marked, explain on a continuation sheet.) A. ___ Proceeds are turned over to an employee-welfare organization or fund; such proceeds are reduced by all applicable costs such as depreciation, heat, light and power B. ___ Same as above, except the proceeds are not reduced by all applicable costs C. ___ Proceeds are credited at least once annually to the appropriate cost pools to which costs have been charged D. ___ Proceeds are credited to Other (Miscellaneous) Income Y. ___ Other(s) 1/ Z. ___ Not applicable
	1/ Describe on a Continuation Sheet.

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COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST
	NAME OF REPORTING UNIT

Item No.	Item description
	Part VII Instructions This part covers the measurement and assignment of costs for employee pensions, post retirement benefits other than pensions (including post retirement health benefits), certain other types of deferred compensation, and insurance. Some organizations may incur all of these costs at the corporate or home office level, while others may incur them at subordinate organizational levels. Still others may incur a portion of these costs at the corporate level and the balance at subordinate organizational levels. Where the segment (reporting unit) does not directly incur such costs, the segment should, on a continuation sheet, identify the organizational entity that incurs and records such costs, and should require that entity to complete the applicable portions of this Part VII. Each such entity is to fully disclose the methods and techniques used to measure, assign, and allocate such costs to the segment(s) performing Federal contracts or similar cost objectives. Necessary explanations required to achieve that objective should be provided by the entity on a continuation sheet. Where a home office either establishes practices or procedures for the types of costs covered in this Part VII or incurs and then allocates those costs to its segments, the home office may complete this Part to be included in the submission by the segment as indicated on page (i) 4., General Instructions.
7.1.0	Pension Plans with Costs Charged to Federal Contracts. Identify the types and number of pension plans whose costs are charged to Federal contracts or similar cost objectives: (Mark applicable line(s) and enter number of plans.) Type of Pension Plan — Number of Plans A. Defined-Contribution Plan (Other than ESOPs (see 7.5.0)) 1. Non-Qualified ___ 2. Qualified ___ B. Defined-Benefit Plan 1. Non-Qualified a. Costs are measured and assigned on accrual basis ___ b. Costs are measured and assigned on cash (pay-as-you-go) basis ___ 2. Qualified a. Trusteed (Subject to ERISA's minimum funding requirements) ___ b. Fully-insured plan (Exempt from ERISA's minimum funding requirements) treated as a defined-contribution plan ___ c. Collectively bargained plan treated as a defined-contribution plan ___ Y. ___ Other 1/ ___ Z. ___ Not Applicable (Proceed to Item 7.2.0) 1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST
	NAME OF REPORTING UNIT

Item No.	Item description
7.1.1	General Plan Information. On a continuation sheet for each plan identified in item 7.1.0, provide the following information: A. The plan name B. The Employer Identification Number (EIN) of the plan sponsor as reported on IRS Form 5500, if any C. The plan number as reported on IRS Form 5500, if any D. Is there a funding agency established for the plan? E. Indicate where costs are accumulated: (1) Home Office (2) Segment F. If the plan provides supplemental benefits to any other plan, identify the other plan(s).
7.1.2	Defined-Contribution Plan(s) and Certain Defined-Benefit Plans treated as Defined-Contribution Plans. Where numerous plans are listed under 7.1.0.A., 7.1.0.B.2.b., or 7.1.0.B.2.c., for those plans which represent the largest dollar amounts of costs charged to Federal contracts, or similar cost objectives, describe on a continuation sheet the basis for the contribution (including treatment of dividends, credits, and forfeitures) required for each fiscal year. (If there are not more than three plans, provide information for all the plans. If there are more than three plans, information should be provided for those plans that in the aggregate account for at least 80 percent of those defined-contribution plan costs allocable to this segment or business unit.) Z. ____ Not applicable. (Proceed to Item 7.1.3)
7.1.3	Defined-Benefit Plan(s). Where numerous plans are listed under 7.1.0.B. (excluding certain defined-benefit plans treated as defined-contribution plans reported under 7.1.0.B.2.b. and 7.1.0.B.2.c.), for those plans which represent the largest dollar amounts of costs charged to Federal contracts, provide the information requested below on a continuation sheet. (If there are not more than three plans, provide information for all the plans. If there are more than three plans, information should be provided for those plans that in the aggregate account for at least 80 percent of those defined-benefit plan costs allocable to this segment or business unit.): A. Actuarial Cost Method. Identify the actuarial cost method used, including the cost method(s) used to value ancillary benefits, for each plan. Include the method used to determine the actuarial value of assets. Also, if applicable, include whether normal cost is developed as a level dollar amount or as a level percent of salary. For plans listed under 7.1.0.B.1.b., enter "pay-as-you-go". B. Actuarial Assumptions. Describe the events or conditions for which significant actuarial assumptions are made for each plan. Do not include the current numeric values of the assumptions, but provide a description of the basis used for determining these numeric values. Also, describe the criteria used to evaluate the validity of an actuarial assumption. For plans listed under 7.1.0.B.1.b., enter "not applicable". C. Market Value of Funding Agency Assets. Indicate if all assets of the funding agency are valued on the basis of a readily determinable market price. If yes, indicate the basis for the market value. If no, describe how the market values are determined for those assets that do not have a readily determinable market price. For plans listed under 7.1.0.B.1.b., enter "not applicable". D. Basis for Cost Computation. Indicate whether the cost for the segment is determined as: 1. An allocated portion of the total pension plan cost. 2. A separately computed pension cost for one or more segments. If so, identify these segments. Z. ____ Not applicable, proceed to Item 7.2.0.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST
	NAME OF REPORTING UNIT

Item No.	Item description
7.2.0	Post-retirement Benefits (PRBs) Other than Pensions (including post-retirement health care benefits) Charged to Federal Contracts. Identify the accounting method used to determine the costs and the number of PRB plans whose costs are charged to Federal contracts or similar cost objectives. Where retiree benefits are provided as an integral part of an employee group insurance plan that covers active employees, report that plan under 7.3.0. (Mark applicable line(s) and enter number of plans.) Method Used to Determine Costs — Number of Plans A. Accrual Accounting ____ B. Cash (pay-as-you-go) Accounting ____ C. Purchased Insurance from unrelated Insurer ____ D. Purchased Insurance from Captive Insurer ____ E. Self-Insurance (including insurance obtained through Captive Insurer) ____ F. Terminal Funding ____ Y. Other 1/ ____ Z. ____ Not Applicable (Proceed to Item 7.3.0)
7.2.1	General PRB Plan Information. On a continuation sheet for each plan identified in item 7.2.0, provide the following information grouped by method used to determine costs: A. The plan name B. The Employer Identification Number (EIN) of the plan sponsor as reported on IRS Form 5500, if any C. The plan number as reported on IRS Form 5500, if any D. Is there a funding agency or funded reserve established for the plan? E. Indicate where costs are accumulated: (1) Home Office (2) Segment F. Are benefits provided pursuant to a written plan or an established practice? If established practice, briefly describe. G. If this PRB plan is listed under 7.2.0.C., 7.2.0.D., or 7.2.0.E., indicate whether the plan is operated as an employee group insurance program. If this PRB plan is listed under 7.2.0.Y., indicate whether the plan is operated as a group insurance program. If the plan is operated as an employee group insurance program, report this plan under 7.3.0. and 7.3.1., as appropriate. If no, report the plan under 7.2.2.

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST
	NAME OF REPORTING UNIT

Item No.	Item description
7.2.2	PRB Plan(s). Where numerous plans are listed under 7.2.0, for those plans which represent the largest dollar amounts of costs charged to Federal contracts, or other similar cost objectives, provide the information below on a continuation sheet. (If there are not more than three plans, provide information for all the plans. If there are more than three plans, information should be provided for those plans that in the aggregate account for at least 80 percent of those PRB costs allocable to this segment or business unit.) A. Actuarial Cost Method. Identify the actuarial cost method used for each plan or each benefit, as appropriate. Include the method used to determine the actuarial value of assets. Identify the amortization methods and periods used, if any. For plans listed under 7.2.0.B., enter "cash accounting". For plans listed under 7.2.0.F., enter "terminal funding" and identify the amortization methods and periods used, if any. B. Actuarial Assumptions. Describe the events or conditions for which significant actuarial assumptions are made for each plan. Do not include the current numeric values of the assumptions, but provide a description of the basis used for determining these numeric values. Also, describe the criteria used to evaluate the validity of an actuarial assumption. For plans under 7.2.0.B. or 7.2.0.F., enter "not applicable". C. Funding. Provide the following information on the funding practice for the costs of the plan: (For plans under 7.2.0.B. or 7.2.0.F., enter "not applicable".) 1. Describe the criteria for or practice of funding the measured and assigned cost; e.g., full funding of the accrual, funding is made pursuant to VEBA or 401(h) rules. 2. Briefly describe the funding arrangement. 3. Are all assets valued on the basis of a readily determinable market price? If yes, indicate the basis used for the market value. If no, describe how the market value is determined for those assets that are not valued on the basis of a readily determinable market price. D. Basis for Cost Computation. Indicate whether the cost for the segment is determined as: 1. An allocated portion of the total PRB plan cost 2. A separately computed PRB cost for one or more segments. If so, identify those segments. E. Forfeitability. Does each participant have a non-forfeitable contractual right to their benefit or account balance? If no, explain. Z. ____ Not applicable, proceed to item 7.3.0.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST
	NAME OF REPORTING UNIT

Item No.	Item description
7.3.0	Employee Group Insurance Charged to Federal Contracts or Similar Cost Objectives. Does your organization provide group insurance coverage to its employees? (Includes coverage for life, hospital, surgical, medical, disability, accident, and similar plans for both active and retired employees, even if the coverage was previously described in 7.2.0.) A. ____ Yes (Complete Item 7.3.1) B. ____ No (Proceed to Item 7.4.0)
7.3.1	Employee Group Insurance Programs. For each program that covers a category of insured risk (e.g., life, hospital, surgical, medical, disability, accident, and similar programs for both active and retired employees), provide the information below on a continuation sheet, using the codes described below: (If there are not more than three policies or self-insurance plans that comprise the program, provide information for all the policies and self-insurance plans. If there are more that three policies or self-insurance plans, information should be provided for those policies and self-insurance plans that in the aggregate account for at least 80 percent of the costs allocable to this segment or business unit for the program that covers each category of insured risk identified.) Description of Employee Group Insurance Program: _____

Policy or Self-Insurance Plan	Cost Accumulation (1)	Cost Basis (2)	Includes Retirees (3)	Purchased Insurance Rating Basis (4)	Self-Insurance: Projected Average Loss (5)	Self-Insurance: Insurance Administrative Expenses (6)

Column (1) – Cost Accumulation

Enter Code A, B, or Y, as appropriate.

A. Costs are accumulated at the Home Office.
B. Costs are accumulated at Segment
Y. Other 1/

Column (2) – Cost Basis

Enter code A, B, C, or Y, as appropriate.

A. Purchased Insurance from unrelated third party
B. Self-insurance
C. Purchased Insurance from a captive insurer
Y. Other 1/

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST
	NAME OF REPORTING UNIT

Item No.	Item description
7.3.1	Continued. Column (3) – Includes Retirees Enter code A, B, C, or Y, as appropriate. A. No, does not include benefits for retirees. B. Yes, PRB benefits for retirees that are a part of a policy or coverage for both active employees and retirees are reported here instead of 7.2.0. C. Yes, PRB benefits for retirees are a part of a PRB plan previously reported under 7.2.0. Y. Other 1/ Column (4) – Purchased Insurance Rating Basis For each plan listed enter code A, B, C, Y, or Z, as appropriate. A. Retrospective Rating (also called experience rating plan or retention plan). B. Manually Rated , C. Community Rated Y. Other, or more than one type 1/ Z. Not applicable Column (5) – Projected Average Loss For each self-insured group plan, or the self-insured portion of purchased insurance, enter code A, B, C, Y, or Z, as appropriate. A. Self-insurance costs represent the projected average loss for the period estimated on the basis of the cost of comparable purchased insurance. B. Self-insurance costs are based on the contractor's experience, relevant industry experience, and anticipated conditions in accordance with accepted actuarial principles. C. Actual payments are considered to represent the projected average loss for the period. Y. Other, or more than one method 1/ Z. Not applicable Column (6) – Insurance Administration Expenses For each self-insured group plan, or the self-insured portion of purchased insurance, enter code A, B, C, D, Y, or Z, as appropriate, to indicate how administrative costs are treated. A. Separately identified and accumulated in indirect cost pool(s). B. Separately identified, accumulated, and allocated to cost objectives either at the segment and/or home office level (Describe allocation method on a Continuation Sheet). C. Not separately identified, but included in indirect cost pool(s). (Describe pool(s) on a Continuation Sheet) D. Incurred by an insurance carrier or third party (Describe accumulation and allocation process on a Continuation Sheet). Y. Other 1/ Z. Not applicable 1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST
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Item No.	Item description
7.4.0	Deferred Compensation, as defined in CAS 9904.415. Does your organization award deferred compensation, other than ESOPs, which is charged to Federal contracts or similar cost objectives? (Mark one.) A. ____ Yes (Complete Item 7.4.1.) B. ____ No (Proceed to Item 7.5.0.)
7.4.1	General Plan Information. On a continuation sheet for all deferred compensation plans, as defined by CAS 9904.415, provide the following information: A. The plan name B. The Employer Identification Number (EIN) of the plan sponsor as reported on IRS Form 5500, if any C. The plan number as reported on IRS Form 5500, if any D. Indicate where costs are accumulated: (1) Home office (2) Segment E. Are benefits provided pursuant to a written plan or an established practice? If established practice, briefly describe .
7.4.2	Deferred Compensation Plans. Where numerous plans are listed under 7.4.1, for those plans which represent the largest dollar amounts of costs charged to Federal contracts, or other similar cost objectives, provide the information below on a continuation sheet. (If there are not more than three plans, provide information for all the plans. If there are more than three plans, information should be provided for those plans that in the aggregate account for at least 80% of these deferred compensation costs allocable to this segment or business unit): A. Description of Plan. 1. Stock Options 2. Stock Appreciation Rights 3. Cash Incentive 4. Other (explain) B. Method of Charging Costs to Federal Contracts or Similar Cost Objectives. 1. Costs charged when accrued and the accrual is fully funded 2. Costs charged when accrued and the accrual is partially funded or not funded 3. Costs charged when paid to employee (pay-as-you-go) 4. Other (explain)

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST
	NAME OF REPORTING UNIT

Item No.	Item description
7.5.0	Employee Stock Ownership Plans (ESOPs). Does your organization make contributions to fund ESOPs that are charged directly or indirectly to Federal contracts or similar cost objectives? (Mark one) A. ____ Yes (Proceed to Item 7.5.1) B. ____ No (Proceed to Item 7.6.0)
7.5.1	General Plan Information. On a continuation sheet, for all ESOPs provide the following information: A. The plan name B. The Employer Identification Number (EIN) of the plan sponsor as reported on IRS Form 5500, if any C. The plan number as reported on IRS Form 5500, if any D. Indicate where costs are accumulated: (1) Home office (2) Segment E. Are benefits provided pursuant to a written plan or an established practice? If established practice, briefly describe. F. Indicate whether the ESOP plan is a defined-contribution plan subject to CAS 9904.412. (Answer Yes or No). G. Indicate whether the ESOP is leveraged or nonleveraged. H. Valuation of Stock or Non-Cash Assets. Are the plan assets valued on the basis of a readily determinable market price? If yes, indicate the basis for the market value. If no, indicate how the market value is determined for those assets that do not have a readily determinable market price. I. Forfeitures and Dividends. Describe the accounting treatment for forfeitures and dividends, on both allocated and unallocated shares, in the measurement of ESOP costs charged directly or indirectly to Federal contracts or similar cost objectives for each plan identified. J. Administrative Costs. Describe how the costs of administration of each plan listed are identified, grouped, and accumulated.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST
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Item No.	Item description
7.6.0	Worker's Compensation, Liability, and Property Insurance. Does your organization have insurance coverage regarding worker's compensation, liability and property insurance? A. ____ Yes (Complete Item 7.6.1.) B. ____ No (Proceed to Part VIII)
7.6.1	Worker's Compensation, Liability and Property Insurance Coverage. For each line of insurance that covers a category of insured risk (e.g., worker's compensation, fire and similar perils, automobile liability and property damage, general liability), provide the information below on a continuation sheet using the codes described below: (If there are not more than three policies or self-insurance plans that are applicable to the line of insurance, provide information for all the policies and self-insurance plans. If there are more than three policies or insurance plans, information should be provided for those policies and self-insurance plans that in the aggregate account for at least 80 percent of the costs allocable to this segment or business unit for each line of insurance identified.) Description of Line of Insurance Coverage: _____

Policy or Self-Insurance Plan	Cost Accumulation (1)	Cost Basis (2)	Crediting of Dividends and Earned Refunds (3)	Self-Insurance: Projected Average Loss (4)	Self-Insurance: Insurance Administrative Expenses (5)

Column (1) – Cost Accumulation

Enter code A, B, or Y, as appropriate.

A. Costs are accumulated at the Home Office.
B. Costs are accumulated at Segment
Y. Other 1/

Column (2) – Cost Basis

Enter code A, B, C, or Y, as appropriate.

A. Purchased Insurance from unrelated third party
B. Self-insurance
C. Purchased Insurance from a captive insurer
Y. Other 1/

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST
	NAME OF REPORTING UNIT

Item No.	Item description
7.6.1	Continued. Column (3) – Crediting of Dividends and Earned Refunds For each line of coverage listed, enter code A, B, C, D, E, Y, or Z, as appropriate. A. Credited directly or indirectly to Federal contracts or similar cost objectives in the year earned B. Credited directly or indirectly to Federal contracts or similar cost objectives in the year received, not necessarily in the year earned C. Accrued each year, as applicable, to currently reflect the net annual cost of the insurance D. Not credited or refunded to the contractor but retained by the carriers as reserves in accordance with 48 CFR 9904.416-50(a)(1)(iv) E. Manually Rated - not applicable Y. Other, or more than one 1/ Z. Not applicable Column (4) – Projected Average Loss* For each self-insured group plan, or the self-insured portion of purchased insurance, enter code A, B, C, Y, or Z, as appropriate. A. Costs that represent the projected average loss for the period estimated on the basis of the cost of comparable purchased insurance. B. Costs that are based on the contractor's experience, relevant industry experience, and anticipated conditions in accordance with generally accepted actuarial principles and practices. C. The actual amount of losses are considered to represent the projected average loss for the period. Y. Other, or more than one method. 1/ Z. Not applicable Column (5) – Insurance Administration Expenses For each self-insured group plan, or the self-insured portion of purchased insurance, enter code A, B, C, D, Y, or Z, as appropriate, to indicate how administrative costs are treated. A. Separately identified and accumulated in indirect cost pool(s). B. Separately identified, accumulated, and allocated to cost objectives either at the segment and/or home office level (Describe allocation method on a Continuation Sheet). C. Not separately identified, but included in indirect cost pool(s). (Describe pool(s) on a Continuation Sheet). D. Incurred by an insurance carrier or third party. (Describe accumulation and allocation process on a Continuation Sheet). Y. Other 1/ Z. Not applicable 1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VIII - HOME OFFICE EXPENSES NAME OF REPORTING UNIT

Item No.	Item description
	Part VIII Instructions FOR HOME OFFICE, AS APPLICABLE (Includes home office type operations of subsidiaries, joint ventures, partnerships, etc.). 1/ This part should be completed only by the office of a corporation or other business entity where such an office is responsible for administering two or more segments, where it allocates its costs to such segments and where at least one of the segments is required to file Parts I through VII of the Disclosure Statement. Data for this part should cover the reporting unit's (corporate or other intermediate level home office's) most recently completed fiscal year. For a corporate (home) office, such data should cover the entire corporation. For a intermediate level home office, they should cover the subordinate organizations administered by that group office.
8.1.0	Organizational Structure. On a continuation sheet, provide the following information: 1. In column (1) list segments and other intermediate level home offices reporting to this home office, 2. In column (2) insert "yes" or "no" to indicate if reporting units have recorded any CAS-covered Government Sales, and 3. In column (3) provide the percentage of annual CAS-covered Government Sales as a Percentage of Total Sales (Government and Commercial), if applicable, as follows: A. Less than 10% B. 10%-50% C. 51%-80% D. 81%-95% E. Over 95% Segment or Other Intermediary Home Office (1) — CAS Covered Government Sales (2) — Government Sales as a Percentage of Total Sales (3)
8.2.0	Other Applicable Disclosure Statement Parts. (Refer to page (i) 4., General Instructions, and Parts V, VI and VII of the Disclosure Statement. Indicate below the parts that the reporting unit has completed concurrently with Parts I and VIII.) A. ____ Part V - Depreciation and Capitalization Practices B. ____ Part VI - Other Costs and Credits C. ____ Part VII - Deferred Compensation and Insurance Costs Z. ____ Not Applicable 1/ For definition of home office see 48 CFR 9904.403.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VIII - HOME OFFICE EXPENSES NAME OF REPORTING UNIT

Item No.	Item description
8.3.0	Expenses or Pools of Expenses and Methods of Allocation. For classification purposes, three methods of allocation, defined as follows, are to be used: (i) Directly Allocated–those expenses that are charged to specific corporate segments or other intermediate level home offices based on a specific identification of costs incurred, as described in 9904.403; (ii) Homogeneous Expense Pools–those individual or groups of expenses which are allocated using a base which reflects beneficial or causal relationships, as described in 9904.403; and (iii) Residual Expense–the remaining expenses which are allocated to all segments by means of a base representative of the total activity of such segments. Allocation Base Codes A. Sales B. Cost of Sales C. Total Cost Input (Direct Material, Direct Labor, Other Direct Costs, and Applicable Overhead) D. Total Cost Incurred (Total Cost Input Plus G&A Expenses) E. Prime Cost (Direct Material, Direct Labor, and Other Direct Costs F. Three factor formula (CAS 9904.403-50(c)) G. Processing or Conversion Cost (Direct Labor and Applicable Overhead) H. Direct Labor Dollars I. Direct Labor Hours J. Machine Hours K. Usage L. Unit of Production M. Direct Material Cost N. Total Payroll Dollars (Direct and Indirect Employees) O. Headcount or Number of employees (Direct and Indirect Employees) P. Square Feet Q. Value Added Y. Other, or More than One Basis 1/ (On a continuation sheet, under each of the headings 8.3.1, 8.3.2, and 8.3.3 enter the type of expenses or the name of the expense pool(s). For each of the types of expense or expense pools listed, also indicate as item (a) the major functions, activities, and elements of cost included. In addition, for items listed under 8.3.2 and 8.3.3 enter one of the Allocation Base Codes A through Q, or Y, to indicate the basis of allocation and describe as item (b) the make up of the base(s). For example, if direct labor dollars are used, are ovetime premiums, fringe benefits, etc. included? For items listed under 8.3.2 and 8.3.3, if a pool is not allocated to all reporting units listed under 8.1.0, then list those reporting units either receiving or not receiving an allocation. Also identify special allocations of residual expenses and/or fixed mangement charges (see 9904.403-40(c)(3)). 1/ Describe on a Continuation Sheet.

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COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VIII - HOME OFFICE EXPENSES NAME OF REPORTING UNIT

Item No.	Item description
	Type of Expenses or Name of Pool of Expenses
8.3.1	Directly Allocated 1. _____ (a) Major functions, activities, and elements of cost include: _____ _____ 2. _____ (a) Major functions, activities, and elements of cost include: _____ _____
8.3.2	Homogeneous Expense Pools — Allocation Base Code 1. _____ ____ (a) Major functions, activities, and elements of cost include: _____ _____ (b) Description/Make up of the allocation base: _____ _____ 2. _____ ____ (a) Major functions, activities, and elements of cost include: _____ _____ (b) Description/Make up of the allocation base: _____ _____

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VIII - HOME OFFICE EXPENSES NAME OF REPORTING UNIT

Item No.	Item description
8.3.3	Residual Expenses — Allocation Base Code _____ ____ (a) Major functions, activities, and elements of cost include: _____ _____ (b) Description/Make up of the allocation base: _____ _____
8.4.0	Transfer of Expenses. If there are normally transfers of expenses from reporting units to this home office, identify on a continuation sheet the classification of the expense and the name of the reoorting unit incurring the expense.

[FR Doc. 96–4472 Filed 2–27–96; 8:45 am]
BILLING CODE 3110–01–C

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federal register

Wednesday
February 28, 1996

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Funding Availability: Housing Opportunities for Persons with AIDS; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–4012–N–01]

Notice of Funding Availability for Housing Opportunities for Persons With AIDS

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: This Notice announces the availability of up to $17,100,000 in funds to be allocated by competition for housing assistance and supportive services under the Housing Opportunities for Persons with AIDS (HOPWA) program. The funds available under this NOFA will be used to fund projects for low-income persons with HIV/AIDS and their families under three categories of assistance: (1) Grants for special projects of national significance which, due to their innovative nature or their potential for replication, are likely to serve as effective models in addressing the needs of eligible persons; (2) grants for special projects of national significance—HIV Multiple-Diagnoses Initiative; and (3) grants for projects which are part of long-term comprehensive strategies for providing housing and related services for eligible persons in areas that are not eligible for HOPWA formula allocations.

One new feature of this notice is an initiative to assist homeless persons who are living with HIV/AIDS who have chronic alcohol and/or other drug abuse problems and/or serious mental illness. The initiative responds to recommendations expressed during the 1995 White House Conference on HIV and AIDS, to recommendations to HUD by residents and providers of HIV/AIDS housing, and to recommendations and a survey of priority unmet needs of homeless providers and advocates cited in *Priority: Home! The Federal Plan to Break the Cycle of Homelessness*, issued by the Interagency Council on the Homeless in March, 1994. The HIV Multiple-Diagnoses Initiative is a collaborative effort between HUD and the Department of Health and Human Services to establish, evaluate and disseminate information on model programs to provide the integration of health care and other supportive services with housing assistance for eligible persons. The initiative targets assistance to homeless persons who often have complex needs and for whom service systems are often least developed.

HOPWA assistance announced in this notice is being offered in conjunction with related assistance being announced under the Special Projects of National Significance component of the Ryan White CARE Act under Department of Health and Human Services notices published elsewhere in today's **Federal Register**. One HHS notice provides for grants for Special Projects of National Significance, including grants for the development and evaluation of programs for the integration of medical, substance abuse, and mental health services in residential facilities or home health care agencies. The other HHS notice establishes an Evaluation Technical Assistance Center which will undertake national and multi-site evaluations of the Special Projects of National Significance, including grants for Housing for Homeless Persons with HIV/AIDS and Substance Abuse and/or Mental Illness. In addition, the Center will provide for assessment and technical support for projects selected under this initiative for HUD projects that request program development support.

This NOFA contains information concerning eligible applicants, the funding available, the application package, its processing, and selection of applications.

DATES: Applications for HOPWA assistance are due in HUD Headquarters by midnight Eastern Time on May 21, 1996. Conditionally selected applicants will be notified by HUD of their selection and may be required to submit additional information within two months of the date of their notification from HUD.

FOR A COPY OF APPLICATION PACKAGES CONTACT: A HUD Field Office listed in the appendix A to this NOFA for the application package and supplemental information, which may include a video presentation. Applications for CPD programs are also available by calling the Community Connections information center at 1–800–998–9999 or by internet at gopher://amcom.aspensys.com:75/11/funding.

ADDRESSES: Completed applications must be submitted to the Office of Community Planning and Development, Processing Control Branch, Room 7255, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. HUD will treat as ineligible for consideration applications that are received after the deadline. A copy must also be sent to the HUD Field Office serving the area in which the applicant's project is located. A list of field offices appears at the end of this NOFA. The Department will not accept any application which is submitted to HUD via facsimile (FAX) transmission.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for the area in which the proposed project is located. Telephone numbers are included in the list of Field Offices set forth in the appendix to this NOFA.

ELIGIBLE APPLICANTS AND SCHEDULE OF COMPETITIONS IN 1996

Category	Special Projects of National Significance.	Special Projects of National Significance—HIV Multiple-Diagnoses Initiative.	Projects which are part of Long-term Comprehensive Strategies for providing housing and related services.
Eligible Applicants	States, Local Governments, Nonprofit Organizations.	States, Local Governments, Nonprofit Organizations.	States and Local Governments in areas that are not eligible for Formula allocations.
Approximate funding	$17.1 million (approximately $7 million reserved for SPNS–HIV MDI)		
Maximum Award Per Applicant	$1,000,000 for program activities, and 100,000 for administrative costs, and, if applicable, 100,000 for program development support of SPNS–HIV MDI projects.		
Where to obtain application packages	Contact the area HUD CPD Office listed in Appendix A, for the application package and supplemental information, which may include a video presentation, or call the Community Connections information center at 1–800–998–9999.		
Applications due to HUD Headquarters in Washington, DC	May 21, 1996 Midnight Eastern Time.		
Applications to be sent to	Original to HUD Headquarters (Room 7255) and one copy to the area HUD Office (CPD office).		

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement. The information collection requirements for the HOPWA program have been approved under the Paperwork Reduction Act by the Office of Management and Budget (OMB), and have been assigned OMB control number 2506–0133 (exp. 2/28/97).

I. Purpose and Substantive Description

(a) Purpose. The funds available under this NOFA will be used to fund projects for low-income persons with HIV/AIDS and their families under three categories of assistance: (1) Grants for special projects of national significance which, due to their innovative nature or their potential for replication, are likely to serve as effective models in addressing the needs of eligible persons; (2) grants for special projects of national significance—HIV Multiple-Diagnoses Initiative; and (3) grants for projects which are part of long-term comprehensive strategies for providing housing and related services for eligible persons in areas that are not eligible for HOPWA formula allocations.

(b) Authority. The assistance made available under this NOFA is authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901), and is anticipated to be appropriated by the HUD Appropriations Act of 1996. The annual FY 1996 appropriation for HUD has not yet been enacted. However, HUD is publishing this notice in order to give potential applicants adequate time to prepare applications. The estimate of the amount of funds available for this program is based on the level of funding available for FY 1995. HUD is not bound by the estimate set forth in this notice. The regulations for HOPWA are found at 24 CFR part 574.

(c) Eligibility. (1) States, units of general local government, and nonprofit organizations may apply for grants for special projects of national significance, including grants under the HIV Multiple-Diagnoses Initiative. (2) All states and units of general local government may apply for grants for projects under the Long-term category of grants, except for: (A) any state that was eligible to receive a formula award in fiscal year 1996; and (B) any unit of general local government that was located in a metropolitan area or state that was eligible to receive a formula award in fiscal year 1996, see appendix B. Nonprofit organizations are not eligible to apply for the Long-term category of grants.

(d) Allocation amounts. Up to $17,100,000 is being made available by this NOFA. The Department expects that approximately $7 million will be used under an initiative to address the needs of multiply-diagnosed homeless persons who are living with HIV/AIDS and have chronic alcohol and/or other drug abuse problems and/or serious mental illness. Since some of the appropriated funds are to be derived from the recapture of prior year obligations, the actual amount available may be less.

The maximum amount that an applicant may receive is $1,000,000 for program activities, and applicants may receive up to an additional $100,000 for administrative costs (potentially $30,000 for grantee administrative costs and $70,000 for project sponsors' administrative costs).

The notice also makes available up to an additional $100,000 for program development support under the HIV Multiple-Diagnoses Initiative for applicants that agree to participate in a HUD and HHS process and outcome evaluation and dissemination component. An applicant that requests additional funds for program development support will use such funds to participate in the HHS Evaluation Technical Assistance Center efforts to evaluate project performance and disseminate information on project outcomes. Collaborative efforts will be undertaken to develop effective interventions for the targeted population, to share information and to undertake cross-site evaluations of related HUD and HHS projects.

Creation of model projects and dissemination of information under the HIV Multiple-Diagnoses Initiative will help improve the systems of care and continuum-of-care initiatives for the targeted population in other localities and nationally. The HUD model projects will use program development funds in connection with the HHS Center, for example to develop and implement project evaluation plans, to participate in jointly-sponsored HUD and HHS evaluation meetings, to acquire technical assistance in operating programs and evaluating performance and to disseminate information on their projects. The Departments expect that six semiannual evaluation meetings will be held with initiative participants over a three year period.

The program development support activities are eligible HOPWA activities under 24 CFR 574.300 (b)(2) as "Resource identification to establish, coordinate and develop housing assistance resources for eligible persons (including conducting preliminary research and making expenditures necessary to determine the feasibility of specific housing-related initiatives)."

HUD reserves the right to fund less than the full amount requested in any application and to modify requests accordingly. If a request is modified by HUD, the conditionally selected applicant will be required to modify its project plans and application to conform to the terms of HUD approval before execution of a grant agreement.

Funds received under this competition are to be expended within three years following the date of the signing of a grant agreement. Any unobligated funds from previous competitions or additional funds that may become available as a result of deobligations or recaptures from previous awards may also be used to fund applications submitted in response to this NOFA.

(e) Program goal. Applicants for HOPWA assistance under this NOFA should emphasize the connection between housing assistance and appropriate supportive services in designing their programs. As stated by the National Commission on AIDS in *Housing and the HIV/AIDS Epidemic* (issued in June 1992) there is "frequently desperate need for safe shelter that provides not only protection and comfort, but also a base in which and from which to receive services, care and support."

(f) HIV Multiple-Diagnoses Initiative. This notice implements an initiative for multiply-diagnosed homeless persons who are living with HIV/AIDS and have chronic alcohol and/or other drug abuse problems and/or serious mental illness. Participants in the 1995 White House Conference on HIV and AIDS and others recommended that collaborative efforts be made by the Department of Housing and Urban Development and the Department of Health and Human Services to integrate funding streams for projects that address the needs of multiply-diagnosed clients. Participants noted that many communities lack resources within existing programs to assist these clients who are often among the hardest-to-serve population of persons living with HIV/AIDS. The survey in *Priority: Home!* found that among the top five priority areas consistently identified were mental health treatment services and substance abuse treatment services. The report recommended that communities be encouraged to "Effectively target mental health and housing resources to the most needy, such as homeless persons with mental illnesses or dual diagnoses" as part of developing more integrated systems of housing and services. The report also recommended that states and communities give some priority in existing and new funding to homeless

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persons with AIDS, including providing health care and other supportive services.

This HUD–HHS initiative addresses the need for model programs for multiply-diagnosed clients under the Special Projects of National Significance components of the HOPWA program administered by HUD and the Ryan White CARE Act programs administered by HHS. This notice lists elements that both Departments seek in model projects that assist this targeted population. Supplemental information to the application package will contain information that further describes examples of model efforts, and may include a video presentation. Among those elements are:

- Outreach to homeless persons who are living with HIV/AIDS and have chronic alcohol and/or other drug abuse problems and/or serious mental illness;
- Client needs assessment and monitoring;
- Transitional supportive housing;
- Permanent supportive housing; and
- Health care and other supportive services that address the needs of eligible homeless persons with chronic alcohol and/or other drug abuse problems and/or serious mental illness;
- Safe haven residences or other housing assistance for homeless persons with serious mental illness that have minimal initial demands on residents and do not require participation in services. It is hoped and anticipated that residents, in time, will participate in mental health programs and/or substance abuse programs and move to or accept transitional or other supportive housing;
- Program evaluation; and
- Other innovative features.

The elements may be funded under this initiative or funded in part under this initiative in connection with efforts supported from other federal, state, local or private sources, including health-care and other supportive services funded under the Ryan White CARE Act. Given the limited amount of housing assistance funds available under this program, HUD encourages applicants to fund supportive services activities from non-HOPWA sources.

Under this initiative, the targeting of assistance to homeless persons means that assistance is provided to persons who are sleeping in emergency shelters (including hotels or motels used as shelter for homeless families), other facilities for homeless persons, or places not meant for human habitation, such as cars, parks, sidewalks, or abandoned buildings. This includes persons who ordinarily live in such places but are in a hospital or other institution on a short-term basis (short-term is considered to be 30 consecutive days or less). In targeting assistance, HUD expects that only an incidental percentage of clients who are not homeless, as described above, but are at risk of homelessness will be assisted under this initiative.

Safe havens are designed to provide persons with serious mental illness who have been living on the streets with a secure, non-threatening, non-institutional, supportive environment. A safe haven proposal should: (1) Propose to serve hard-to-serve homeless persons; (2) provide 24-hour residence; (3) provide private or semi-private accommodations; (4) provide, optionally, for the common use of accessible kitchen facilities, dining rooms, and bathrooms; and (5) limit overnight occupancy to no more than 25 persons in any one structure. HUD will consider appropriate modifications in applying the competition rating criteria to safe haven proposals to ensure that the special characteristics of safe havens are not considered less competitive than alternative supportive housing proposals.

Model projects that serve multiply-diagnosed homeless persons are also included in a notice of availability of funds that was issued by the Health Resources and Services Administration, Department of Health and Human Services, for the award of cooperative agreements as Special Projects of National Significance under the Ryan White CARE Act. Given the limited amount of housing funds available, applicants who propose to use federal funds for supportive services only and are not requesting funds for housing assistance are encouraged to apply under the HHS notice, if the request is consistent with the assistance available under that notice.

HUD reserves the right to select lower rated applications if necessary to ensure that a minimum number of applications that propose model HIV multiple-diagnoses projects are among conditionally selected applications. The Department estimates that approximately $7 million will be used to address the needs of this targeted population. This expected amount will help ensure that a sufficient number of applications, estimated to be seven to ten projects, are selected under the initiative in order to provide for the operation and evaluation of a variety of model programs as well as provide additional resources to the targeted difficult-to-serve population. HUD also reserves the right to ensure that a project that is applying for and eligible for selection under this and other HUD and HHS competitions is not awarded funds that duplicate activities. HUD reserves the right to reduce this estimate for the HIV Multiple-Diagnoses Initiative and reallocate funds to the other categories of assistance if an insufficient number of approvable applications are received for this initiative.

II. Application Selection Process

(a) Review. Applications will be reviewed to ensure that they meet the following:

(1) *Applicant eligibility.* The applicant and project sponsor(s), if any, are eligible to apply for the specific program;

(2) *Eligible population to be served.* The persons proposed to be served are eligible persons;

(3) *Eligible activities.* The proposed activities are eligible for assistance under the program; and

(4) *Other requirements.* The applicant is currently in compliance with the federal requirements contained in 24 CFR part 574, subpart G, "Other Federal Requirements."

(b) Competition. Applications under the three categories of grant will be rated in a national competition. To rate applications, the Department may establish a panel including persons not currently employed by HUD to obtain outside points of view, including views from other federal agencies.

(c) Rating of Applications.

(1) Procedure. Applications will be rated based on the criteria listed below. The criteria listed in paragraph (2) (A), (B), (C), and (D) are common for all applications. Paragraphs (3), (4) and (5) are specific for the category of assistance under which the application is being submitted. Ratings will be made with a maximum of 100 points awarded. After rating, these applications will be placed in the rank order of their final score for selection.

(2) Common Rating Criteria. Applications under the three categories of grant will be rated on the following four common criteria for up to 65 points:

(A) *Applicant and Project Sponsor capacity (20 points).* HUD will award up to 20 points based on the ability of the applicant and, if applicable, any project sponsor(s) to develop and operate the proposed program, in relation to which entity is carrying out an activity. With regard to both the applicant and the project sponsor(s), HUD will consider: (a) past experience in serving persons with HIV/AIDS and their families; (b) past experience in programs similar to those proposed in the application; and (c) experience in monitoring and evaluating program performance and disseminating information on project outcomes.

As applicable, the rating under this criterion will also consider prior performance with any HUD-administered programs, timeliness in implementing HUD-administered programs, including any serious, outstanding audit or monitoring findings that directly affect the proposed project.

(B) *Need for the project in the area to be served (15 points).* HUD will award up to 15 points based on the extent to which the need for the project in the area to be served is demonstrated with 10 of these points to be determined by the relative numbers of AIDS cases and per capita AIDS incidence, as reported to and confirmed by the Director of the Centers for Disease Control and Prevention and in the case of applicants under the HIV Multiple-Diagnoses Initiative, HUD will also consider evidence presented on the unmet needs of the targeted population of persons who are homeless and living with HIV/AIDS who experience serious mental illness and/or have chronic alcohol and/or other drug abuse problems.

HUD will award 5 of these points under this criterion to the highest rated application for each category in each state or, for projects that substantially propose multiple-state or national service areas, one nationally.

(C) *Appropriateness of program activities: housing, supportive services and other assistance (20 points).* HUD will award up to 20 points based on the extent to which a plan for undertaking and managing the proposed activities:

(a) describes and responds to the need for housing and related supportive services of eligible persons in the community; or, in relation to technical assistance activities proposed in the application, describes and responds to the technical assistance needs of programs which provide housing and related supportive services for eligible persons;

(b) describes how activities carried out with HOPWA funds and other resources will provide a continuum of housing and services to meet the changing needs of eligible persons, such as the linkage of housing assistance with health-care and other supportive services in area continuum of care efforts, offers a personalized response to those needs which maximizes opportunities for independent living, and in the case of a family, accommodates the needs of families; in the case of a safe haven proposal, describes how activities carried out with HOPWA funds and other resources will provide for the stabilization of clients, the availability of basic services in the safe haven, and linkage to other assistance;

(c) provides for monitoring and the evaluation of the assistance provided to participants; and

(d) in relation to technical assistance activities proposed in the application, provides technical assistance related to the development and operation of programs and the capacity of organizations to undertake and manage assistance for eligible persons; and

(D) *Extent of leveraged public and private resources for the project (10 points).* HUD will award up to 10 points based on the extent to which resources from other public or private sources have been committed to support the project at the time of application. In establishing leveraging, HUD will not consider other HOPWA-funded activities, entitlement benefits inuring to eligible persons, or conditioned commitments that depend on future fund-raising or actions.

(3) Additional Criterion for Special Projects of National Significance (35 points). Applications for special projects of national significance will be rated on:

(A) *Innovative nature of the proposal and its potential for replication.* HUD will award up to 25 points based on the extent to which the project involves a new program for, or alternative method of, meeting the needs of eligible persons, when compared to other applications and projects funded in the past. The Department will consider the extent to which the project design, management plan, proposed effects, local planning and coordination of housing programs, the likelihood that activities will benefit the targeted population of eligible persons and proposed activities are exemplary and appropriate as a model for replication in similar localities or nationally, when compared to other applications and projects funded in the past, and the likelihood of the continuation of the state and local efforts; and

(B) *Evaluation and dissemination.* HUD will award up to 10 points based on the applicant's evaluation and dissemination plan or, alternatively, 10 points to an applicant that agrees to fully participate in the joint HUD and HHS evaluation component. If the applicant submits its own evaluation and dissemination plan, up to 10 points will be awarded based on the extent to which the applicant describes an evaluation and dissemination plan that:

(a) Demonstrates thoroughness, feasibility and appropriateness of the evaluation design from a methodological and statistical perspective;

(b) Allows for a generalizable conclusion regarding the success or lessons learned from the model, including comparison to other similar program models;

(c) Includes an assessment of the assistance provided to clients and its implications for systems of care in other localities or nationally; and

(d) Provides a preliminary dissemination plan that evidences how the planned presentation of project outcomes is likely to be undertaken in an effective manner.

As an alternative to submitting its own evaluation and dissemination plan, an applicant may receive 10 points if that applicant agrees to fully participate in the joint HUD and HHS evaluation component and requests the program development funds designated for this purpose. The Department recognizes that participation in the HUD and HHS evaluation component will fulfill the items of paragraph (B) of this criterion.

(5) Additional Criterion for Projects which are part of long-term comprehensive strategies for providing housing and related services for eligible persons in areas not qualifying for formula allocations (35 points). Applications for projects for this

(4) Additional Criterion for Special Projects of National Significance—HIV Multiple-Diagnoses Initiative (35 points). Applications for Special Projects of National Significance under the HIV Multiple-Diagnoses Initiative will be rated on:

(A) *Innovative nature of the proposal and its potential for replication.* HUD will award up to 25 points based on the

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category of assistance will be rated on the extent of local planning and coordination of housing programs. HUD will award up to 35 points based on the extent to which the applicant demonstrates:

(A) The proposed project is part of a community strategy involving local, metropolitan or state-wide planning and coordination of housing programs designed to meet the changing needs of low-income persons with HIV/AIDS and their families, including programs providing housing assistance and related services that are operated by federal, state, local, private and other entities serving eligible persons;

(B) The likelihood of the continuation of the state and local efforts; and

(C) Provides for an evaluation and dissemination of information on the success of the proposed activities in assisting eligible persons and/or in establishing or operating systems of care for eligible persons.

(d) Selection. Whether an application is conditionally selected will depend on its overall ranking compared to other applications within each of the three categories of assistance. The Department will select applications to the extent that funds are available. HUD reserves the right to select lower rated applications (but not an application that is rated below 50 points) if necessary to achieve geographic diversity (i.e. resulting in funding activities within a variety of states) and to ensure that a minimum number of applications under each category of assistance are among conditionally selected applications.

In the event of a tie between applications, the application with the highest total points for the criterion need will be selected, and if still tied, the highest total points for the criterion appropriateness of housing and services. In the event of a procedural error that, when corrected, would result in selection of an otherwise eligible application during the funding round under this NOFA, HUD may select that application when sufficient funds become available.

III. Application Submission Requirements

The application submission requirements are contained in the application package. This package includes all required forms and certifications, and may be obtained from a HUD Field Office listed in the appendix A to this NOFA.

IV. Clarifications and Technical Assistance

(a) Clarification of Application Information. In accordance with the provisions of 24 CFR part 4, subpart B, HUD may contact an applicant to seek clarification of an item in the application, or to request additional or missing information, but the clarification or the request for additional or missing information shall not relate to items that would improve the substantive quality of the application pertinent to the funding decision.

(b) Technical Assistance. Prior to the application deadline, HUD field office staff will be available to provide advice, general technical assistance and guidance to potential applicants on application requirements and program policies. Following conditional selection, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of a grant agreement by HUD. However, between the application deadline and the announcement of conditional selections, HUD will accept no information that would improve the substantive quality of the application pertinent to the funding decision.

V. Grant Award Process

HUD will notify conditionally selected applicants in writing. Such applicants will subsequently be notified of any modification made by HUD, the additional project information necessary for grant award and the date of the two month deadline for submission of such information. If an applicant is unable to meet any conditions for grant award within the specified time period, HUD reserves the right not to award funds and to use the funds available in the next competition for the applicable program.

VI. Other Matters

Environmental Impact. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), at the time of the development of the FY 1995 NOFA for this program. Because no substantive programmatic changes have been made, that Finding (for FR–3853) remains applicable to this NOFA and is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this Notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the Notice is not subject to review under the Order. The Notice announces the availability of funds and invites applications from eligible applicants for the HOPWA program.

Impact on the Family. The General Counsel, as the Designated Official for Executive Order 12606, *The Family*, has determined that this Notice, to the extent the funds provided under it are directed to families, has the potential for a beneficial impact on family formation, maintenance and general well-being. The statutory authority for the program requires that the funds be targeted to individuals with acquired immunodeficiency syndrome or related diseases and their families. Any funding provided to projects can be expected to enable those families with a participating member who has HIV infection to live in decent, safe, and sanitary housing in connection with the supportive services necessary to live independently in mainstream American society. Since the impact on families is a beneficial one, no further review is necessary.

Accountability in the Provision of HUD Assistance. HUD's regulation implementing section 102 of the Department of Housing and Urban Development Reform Act of 1989, found at 24 CFR part 12, contains a number of provisions designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. Additional information on the implementation of section 102 was published on January 16, 1992 at 57 FR 1942. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

HUD will ensure documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will publish notice of awards made in response to this NOFA in the **Federal Register**.

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Prohibition on Advance Release of Funding Information. HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, found at 24 CFR part 4, applies to the funding competition announced today. The requirements of that rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TDD) is available at 1–800–877–8339 (Federal Information Relay Service). The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Field Office Counsel, or Headquarters Counsel for the program to which the question pertains.

Prohibition Against Lobbying Activities. The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. A standard disclosure form, SF–LLL, "Disclosure Form to Report Lobbying," must be used to disclose lobbying with other than federally appropriated funds at the time of application.

Drug-Free Workplace Certification. In accordance with 24 CFR 24.630, an applicant must submit its Certification for a Drug-Free Workplace (Form HUD–50070).

Submissions. An application that is mailed before May 21, 1996 but received within ten (10) days after that date will be deemed to have been received by that date if postmarked by the United States Postal Service by no later than May 18, 1996. An overnight delivery item received after May 21, 1996 will be deemed to have been received by that date upon submission of documentary evidence that it was placed in transit with the overnight delivery service by no later than May 20, 1996.

Dated: February 22, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

Appendix A. List of HUD Field Offices (1–5–96)

Telephone numbers for Telecommunications Devices for the Deaf (TDD machines) are listed for CPD Directors in HUD Field Offices; all HUD numbers, including those noted *, may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY or (1–800–877–8339) or (202) 708–9300.

Alabama—William H. Dirl, Beacon Ridge Tower, 600 Beacon Pkwy. West, Suite 300, Birmingham, AL 35209–3144; (205) 290–7645; TDD (205) 290–7624.

Alaska—Colleen Bickford, 949 E. 36th Avenue, Suite 401, Anchorage, AK 99508–4399; (907) 271–3669; TDD (907) 271–4328.

Arizona—Martin H. Mitchell, 400 N. 5th St., Suite 1600, Arizona Center, Phoenix AZ 85004; (602) 379–4754; TDD (602) 379–4461.

Arkansas—Billy M. Parsley, TCBY Tower, 425 West Capitol Ave., Suite 900, Little Rock, AR 72201–3488; (501) 324–6375; TDD (501) 324–5931.

California—(Southern) Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015–3801; (213) 251–7235; TDD (213) 251–7038.

(Northern) Steve Sachs, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 436–6544; TDD (415) 556–8357.

Colorado—Guadalupe M. Herrera, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Connecticut—Mary Ellen Morgan, 330 Main St., Hartford, CT 06106–1860; (860) 240–4665; TDD (860) 240–4522.

Delaware—Joyce Gaskins, Wanamaker Bldg., 100 Penn Square East, Philadelphia, PA 19107; (215) 656–0624; TDD (215) 597–5564.

District of Columbia (and MD and VA suburbs)—James H. McDaniel, 820 First St., NE., Washington, DC 20002; (202) 275–0994; TDD (202) 275–0772.

Florida—(Northern) James N. Nichol, 301 West Bay St., Suite 2200, Jacksonville, FL 32202–5121; (904) 232–3587; TDD (904) 232–1241.

(Miami-So. Dade) Richard P. Garrabrant, Gables Tower 1, 1320 South Dixie Hwy., Coral Gables, FL 33146–2911; (305) 662–4570; TDD (305) 662–4511.

Georgia—John Perry, Russell Fed. Bldg., Room 688, 75 Spring St., SW, Atlanta, GA 30303–3388; (404) 331–5139; TDD (404) 730–2654.

Hawaii (and Pacific)—Patty A. Nicholas, 7 Waterfront Plaza, Suite 500, 500 Ala Moana Blvd., Honolulu, HI 96813–4918; (808) 522–8180x264; TDD (808) 522–8193.

Idaho—John G. Bonham, 400 S.W. Sixth Ave., Suite 700, Portland, OR 97204–1632 (503) 326–7012; TDD * via 1–800–877–8339.

Illinois—James Barnes, 77 W. Jackson Blvd., Chicago, IL 60604–3507; (312) 353–1696; TDD (312) 353–7143.

Indiana—Robert F. Poffenberger, 151 N. Delaware St., Indianapolis, IN 46204–2526; (317) 226–5169; TDD * via 1–800–877–8339.

Iowa—Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955; (402) 492–3144; TDD (402) 492–3183.

Kansas—William Rotert, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 551–5484; TDD (913) 551–6972.

Kentucky—Ben Cook, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201–1044; (502) 582–6141; TDD (502) 582–5139.

Louisiana—Gregory J. Hamilton, 501 Magazine St., New Orleans, LA 70130; (504) 589–7212; TDD (504) 589–7237.

Maine—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518.

Maryland—Harold Young, 10 South Howard Street, 5th Floor, Baltimore, MD 21202–0000; (410) 962–2520x3116; TDD (410) 962–0106.

Massachusetts—Robert Paquin, Acting Director, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5342; TDD (617) 565–5453.

Michigan—Richard Paul, Patrick McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226–2592; (313) 226–4343; TDD * via 1–800–877–8339

Minnesota—Shawn Huckleby, 220 2nd St. South, Minneapolis, MN 55401–2195; (612) 370–3019; TDD (612) 370–3186.

Mississippi—Jeanie E. Smith, Dr. A. H. McCoy Fed. Bldg., 100 W. Capitol St., Room 910, Jackson, MS 39269–1096; (601) 965–4765; TDD (601) 965–4171.

Missouri—(Eastern) James Geraghty, Acting Director, 1222 Spruce St., St. Louis, MO 63103–2836; (314) 539–6524; TDD (314) 539–6331.

(Western) William Rotert, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 551–5484; TDD (913) 551–6972.

Montana—Guadalupe Herrera, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Nebraska—Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955; (402) 492–3144; TDD (402) 492–3183.

Nevada—(Las Vegas, Clark Cnty) Martin H. Mitchell, 400 N. 5th St., Suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4754; TDD (602) 379–4461.

(Remainder of State) Steve Sachs, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 436–6544; TDD (415) 556–8357.

New Hampshire—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518.

New Jersey—Frank Sagarese, 1 Newark Center, Newark, NJ 07102; (201) 622–7900x3300; TDD (201) 645–3298.

New Mexico—Katie Worsham, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483; TDD (817) 885–5447.

New York—(Upstate) Michael F. Merrill, Lafayette Ct., 465 Main St., Buffalo, NY 14203–1780; (716) 551–5768; TDD * via 1–800–877–8339.

(Downstate) Joseph D'Agosta, 26 Federal Plaza, New York, NY 10278–0068; (212) 264–0771; TDD (212) 264–0927.

North Carolina—Charles T. Ferebee, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407; (910) 547–4005; TDD (910) 547–4055.

North Dakota—Guadalupe Herrera, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Ohio—John E. Riordan, 200 North High St., Columbus, OH 43215–2499; (614) 469–6743; TDD (614) 469–6694.

Oklahoma—David Long, 500 West Main Place, Suite 400, Oklahoma City, OK 73102; (405) 553–7571; TDD * via 1–800–877–8339.

Oregon—John G. Bonham, 400 S.W. Sixth Ave., Suite 700, Portland, OR 97204–1632 (503) 326–7012; TDD * via 1–800–877–8339.

Pennsylvania—(Western) Bruce Crawford, 339 Sixth Ave., Pittsburgh, PA 15222–2515; (412) 644–5493; TDD (412) 644–5747.

(Eastern) Joyce Gaskins, Wanamaker Bldg., 100 Penn Square East, Philadelphia, PA 19107; (215) 656–0624; TDD (215) 597–3564

Puerto Rico (and Caribbean)—Carmen R. Cabrera, 159 Carlos Chardon Ave., San Juan, PR 00918–1804; (809) 766–5576; TDD (809) 766–5909.

Rhode Island—Robert Paquin, Acting Director, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5342; TDD (617) 565–5453.

South Carolina—Louis E. Bradley, Fed. Bldg., 1835 Assembly St., Columbia, SC 29201; (803) 765–5564; TDD (803) 253–3071.

South Dakota—Guadalupe Herrera, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Tennessee—Virginia Peck, 710 Locust St., Knoxville, TN 37902–2526; (423) 545–4391; TDD (423) 545–4559.

Texas—(Northern) Katie Worsham, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483; TDD (817) 885–5447.

(Southern) John T. Maldonado, Washington Sq., 800 Dolorosa. San Antonio, TX 78207–4563; (210) 229–6820; TDD (210) 229–6885.

Utah—Guadalupe Herrera, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Vermont—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518.

Virginia—Joseph Aversano, 3600 W. Broad St., P.O. Box 90331, Richmond, VA 23230–0331; (804) 278–4503; TDD (804) 278–4501.

Washington—John Peters, Federal Office Bldg., 909 First Ave., Suite 200, Seattle, WA 98104–1000; (206) 220–5150; TDD (206) 220–5185.

West Virginia—Bruce Crawford, 339 Sixth Ave., Pittsburgh, PA 15222–2515; (412) 644–5493; TDD (412) 644–5747.

Wisconsin—Lana J. Vacha, Henry Reuss Fed. Plaza, 310 W. Wisconsin Ave., Ste. 1380, Milwaukee, WI 53203–2289; (414) 297–3113; TDD * via 1–800–877–8339.

Wyoming—Guadalupe Herrera, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Appendix B. Areas Eligible to Receive HOPWA 1996 Formula Allocations and Not Eligible for Long-term Projects

The following are the areas that are eligible to receive HOPWA formula allocations in FY 1996. State or local governments located in or serving eligible persons in these areas are *only eligible to apply for grants for Special Projects of National Significance* under the HOPWA 1996 competition. The Long-term category of assistance, grants for projects that are part of long-term comprehensive strategies for providing housing and related services, is reserved by statute for areas that are not eligible to receive HOPWA formula awards, i.e. any area outside of the list below.

1. All areas in the states of:

Alabama
Arkansas
California
Connecticut
District of Columbia
Florida
Georgia
Hawaii
Illinois
Indiana
Kentucky
Louisiana
Massachusetts
Michigan
Mississippi
New Jersey
New York
North Carolina
Ohio
Oklahoma
Pennsylvania
Puerto Rico
South Carolina
Tennessee
Texas
Virginia
Washington State
Wisconsin.

2. Areas in the following metropolitan areas in the states of Arizona, Colorado, Kansas, Maryland, Minnesota, Missouri, Nevada, New Hampshire, Oregon and West Virginia:

1120 Boston MA–NH PMSA (part)—Rockingham County, NH (part): Seabrook town, NH, South Hampton town, NH

0720 Baltimore, MD PMSA—Anne Arundel County, MD, Baltimore County, MD, Carroll County, MD, Harford County, MD, Howard County, MD, Queen Anne's County, MD, Baltimore City, MD

8840 Washington, DC–MD–VA–WV PMSA (part)—Calvert County, MD, Charles County, MD, Frederick County, MD, Montgomery County, MD, Berkeley County, WV, Jefferson County, WV

5120 Minneapolis-St. Paul, MN–WI MSA (part)—Anoka County, MN, Carver County, MN, Chisago County, MN, Dakota County, MN, Hennepin County, MN, Isanti County, MN, Ramsey County, MN, Scott County, MN, Sherburne County, MN, Washington County, MN, Wright County, MN

3760 Kansas City, MO–KS MSA (part)—Cass County, MO, Clay County, MO, Clinton County, MO, Jackson County, MO, Lafayette County, MO, Platte County, MO, Ray County, MO, Johnson County, KS, Leavenworth County, KS, Miami County, KS, Wyandotte County, KS

7040 St. Louis, MO–IL MSA (part)—Crawford County, MO (part): Sullivan City, MO, Franklin County, MO, Jefferson County, MO, Lincoln County, MO, St. Charles County, MO, St. Louis County, MO, Warren County, MO, St. Louis City, MO

2080 Denver, CO PMSA—Adams County, CO, Arapahoe County, CO, Denver County, CO, Douglas County, CO, Jefferson County, CO

6200 Phoenix-Mesa, AZ MSA—Maricopa County, AZ, Pinal County, AZ

4120 Las Vegas, NV–AZ MSA—Clark County, NV, Nye County, NV, Mohave County, AZ

6440 Portland-Vancouver, OR–WA PMSA (part)—Clackamas County, OR, Columbia County, OR, Multnomah County, OR, Washington County, OR, Yamhill County, OR

[FR Doc. 96–4456 Filed 2–27–96; 8:45 am]
BILLING CODE 4210–29–P

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federal register

Wednesday
February 28, 1996

Part VI

Department of Housing and Urban Development

24 CFR Parts 111 and 115

Regulatory Reinvention; Certification and Funding of State and Local Fair Housing Enforcement Agencies; Interim Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Parts 111 and 115

[Docket No. FR–3322–F–01]

RIN 2529–AA60

Regulatory Reinvention; Certification and Funding of State and Local Fair Housing Enforcement Agencies

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule represents another step in HUD's continuing efforts to reinvent and streamline its regulations. The Fair Housing Act provides that the Secretary of HUD shall refer complaints alleging a discriminatory housing practice to State or local enforcement agencies certified by the Secretary. Currently, HUD's regulations at 24 CFR part 115 set forth the criteria the Secretary will utilize to certify such agencies. HUD's regulations at 24 CFR part 111 establish the requirements for the Fair Housing Assistance Program (FHAP), through which HUD provides assistance to certified fair housing enforcement agencies. This interim rule consolidates parts 111 and 115, thus providing all necessary requirements in a single part and eliminating unnecessary or repetitive regulatory provisions.

DATES: Effective date: March 29, 1996.

Comments due date: April 29, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding the interim rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Marcella Brown, Director, Fair Housing Assistance Program Division, Office of Fair Housing and Equal Opportunity, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0455. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–0113 or 1–800–877–8339 (Federal Information Relay Service TDD). (Except for the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

The Fair Housing Act (42 U.S.C. 3600–3620) (the Act) provides that whenever a complaint alleges a discriminatory housing practice, arising in the jurisdiction of a State or local agency which has been certified by the Secretary under section 810(f) of the Act, HUD shall refer the complaint to that State or local agency. HUD has implemented section 810(f) at 24 CFR part 115, which establishes the criteria the Secretary will utilize to certify State and local fair housing enforcement agencies.

Section 817 of the Act provides that the Secretary may reimburse State and local fair housing enforcement agencies which assist the Secretary in enforcing the Act. HUD has implemented section 817 at 24 CFR part 111, which sets forth the requirements for the Fair Housing Assistance Program (FHAP). Through the FHAP, HUD provides assistance to certified State and local fair housing enforcement agencies. This assistance is designed to provide support for complaint processing, training, technical assistance, data and information systems, and other fair housing projects.

Pursuant to President Clinton's memorandum of March 4, 1995, *Regulatory Reinvention*, HUD conducted a comprehensive, page-by-page review of its regulations. This interim rule marks another step in HUD's continuing efforts to streamline, update and generally improve its regulations. Specifically, the rule consolidates parts 111 and 115, thus providing all necessary requirements for certification and FHAP participation in part 115. This interim rule also eliminates burdensome or redundant regulatory provisions currently located in parts 111 and 115. The Department welcomes comments on how this interim rule may be made more understandable and less burdensome.

II. Justification for Interim Rulemaking

It is HUD's policy to publish rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking found at 24 CFR part 10. However, part 10 provides that prior public comment will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that in this case prior public comment is contrary to the public interest, since immediate implementation of this interim rule will benefit the public. Specifically, this interim rule will assist FHAP participants by providing all necessary requirements in a single part and eliminating burdensome and redundant provisions. Further, the streamlining amendments made by this interim rule will allow HUD to administer the FHAP in a more efficient manner, thus strengthening its ability to enforce the Fair Housing Act.

III. Other Matters

A. Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing Section 214 of the Housing and Community Development Act of 1980. That Finding remains applicable to this rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official, under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this interim rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This interim rule merely consolidates in a single part the requirements for "substantially equivalent" certification and participation in the FHAP. It effects no changes in the current relationships between the Federal government, the States and their political subdivisions in connection with HUD programs.

C. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this interim rule will not have a potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. This interim rule only affects State and local fair housing enforcement agencies which seek certification under section 810(f) of the Act and participation in the FHAP. No significant change in existing HUD policies or programs will result from promulgation of this interim rule, as those policies and programs relate to family concerns.

D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this interim rule, and in so doing certifies that this interim rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

24 CFR Part 111

Fair housing, Grant programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 115

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Intergovernmental relations, Mortgages, Reporting and recordkeeping requirements.

Accordingly, under the authority at 42 U.S.C. 3535(d) 24 CFR parts 111 and 115 are amended as follows:

PART 111—[REMOVED]

1. Part 111 is removed.

2. Part 115 is revised to read as follows:

PART 115—CERTIFICATION AND FUNDING OF STATE AND LOCAL FAIR HOUSING ENFORCEMENT AGENCIES

Subpart A—General

Sec.

115.100 Definitions.
115.101 Program administration.
115.102 Public notices.

Subpart B—Certification of Substantially Equivalent Agencies

115.200 Purpose.
115.201 Basis of determination.
115.202 Criteria for Adequacy of Law.
115.203 Performance standards.
115.204 Consequences of Certification.
115.205 Technical assistance.
115.206 Request for certification.
115.207 Procedure for interim certification.
115.208 Suspension of interim certification.
115.209 Denial of interim certification.
115.210 Procedure for certification.
115.211 Suspension of certification.
115.212 Withdrawal of certification.

Subpart C—Fair Housing Assistance Program (FHAP)

115.300 Purpose.
115.301 Agency eligibility criteria.
115.302 Capacity Building Funds.
115.303 Eligible activities for Capacity Building Funds.
115.304 Agencies eligible for contributions funds.
115.305 Special Enforcement Effort (SEE) funds.
115.306 Training funds.
115.307 Additional requirements for participation in the FHAP.
115.308 Standards for FHAP program review.
115.309 Reporting and recordkeeping requirements.
115.310 Subcontracting under the FHAP.
115.311 Corrective and remedial action.

Authority: 42 U.S.C. 3600–3620 and 3535(d).

Subpart A—General

§ 115.100 Definitions.

(a) The terms "Fair Housing Act" and "HUD", as used in this part, are defined in 24 CFR 5.100.

(b) The terms "Aggrieved person", "Complainant", "Conciliation", "Conciliation agreement", "Discriminatory housing practice", "Dwelling", "Handicap", "Person", "Respondent", "Secretary", and "State", as used in this part, are set forth in section 802 of the Fair Housing Act.

(c) *Other definitions.* The following definitions also apply to this part:

Act means the Fair Housing Act, as defined in 24 CFR 5.100.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Certified Agency is an agency to which the Assistant Secretary for Fair Housing and Equal Opportunity has granted interim certification or certification, in accordance with the requirements of this part.

Cooperative Agreement is the assistance instrument HUD will use to provide funds. The Cooperative Agreement will contain attachments and appendices establishing requirements relating to the operation or performance of the agency.

Cooperative Agreement Officer (CAO) is the administrator of the funds awarded pursuant to this part and is the Director of a Fair Housing Enforcement Center in the Office of Fair Housing and Equal Opportunity.

Director of FHEO means a Director of a Fair Housing Enforcement Center.

Dual-Filed Complaint means a housing discrimination complaint which has been filed with both the Fair Housing Enforcement Center and the certified agency.

FHEO means the Office of Fair Housing and Equal Opportunity.

FHAP means the Fair Housing Assistance Program.

§ 115.101 Program administration.

(a) *Authority and Responsibility.* The Secretary has delegated the authority and responsibility for administering this part to the Assistant Secretary.

(b) *Delegation of Authority.* The Assistant Secretary delegates the authority and responsibility for administering this part to each Director of a Fair Housing Enforcement Center. However, with respect to the duties and responsibilities for administering subpart B of this part, the Assistant Secretary retains the right to make final decisions concerning the granting and maintenance of substantial equivalency certification and interim certification.

§ 115.102 Public notices.

(a) Periodically, the Assistant Secretary will publish the following public notices in the **Federal Register**:

(1) A list of all agencies which have interim certification or certification; and

(2) A list of agencies to which a notice of denial of interim certification has been issued or for which withdrawal of certification is being proposed.

(b) The Assistant Secretary will publish in the **Federal Register** a notice soliciting public comment before granting certification to a State or local agency. The notice will invite the public to comment on the relevant State and local laws, as well as on the performance of the agency in enforcing its law. All comments will be considered before a final decision on certification is made.

Subpart B—Certification of Substantially Equivalent Agencies

§ 115.200 Purpose.

This subpart implements section 810(f) of the Fair Housing Act. The purpose of this subpart is to set forth:

(a) The basis for agency interim certification and certification;

(b) The procedure by which a determination to certify is made by the Assistant Secretary;

(c) The basis and procedures for denial of interim certification;

(d) The basis and procedures for withdrawal of certification;

(e) The consequences of certification;

(f) The basis and procedures for suspension of interim certification or certification; and

(g) The funding criteria for interim certified and certified agencies.

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§ 115.201 Basis of determination.

A determination to certify an agency as substantially equivalent involves a two-phase procedure. The determination requires examination and an affirmative conclusion by the Assistant Secretary on two separate inquiries:

(a) Whether the law, administered by the agency, on its face, satisfies the criteria set forth in section 810(f)(3)(A) of the Act; and

(b) Whether the current practices and past performance of the agency demonstrate that, in operation, the law in fact provides rights and remedies which are substantially equivalent to those provided in the Act.

§ 115.202 Criteria for Adequacy of Law.

(a) In order for a determination to be made that a State or local fair housing agency administers a law which, on its face, provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the law or ordinance must:

(1) Provide for an administrative enforcement body to receive and process complaints and provide that:

(i) Complaints must be in writing;

(ii) Upon the filing of a complaint the agency shall serve notice upon the complainant acknowledging the filing and advising the complainant of the time limits and choice of forums provided under the law;

(iii) Upon the filing of a complaint the agency shall promptly serve notice on the respondent or person charged with the commission of a discriminatory housing practice advising of his or her procedural rights and obligations under the law or ordinance together with a copy of the complaint;

(iv) A respondent may file an answer to a complaint.

(2) Delegate to the administrative enforcement body comprehensive authority, including subpoena power, to investigate the allegations of complaints, and power to conciliate complaints, and require that:

(i) The agency commence proceedings with respect to the complaint before the end of the 30th day after receipt of the complaint;

(ii) The agency investigate the allegations of the complaint and complete the investigation within the time-frame established by section 810(a)(1)(B)(iv) of the Act or comply with the notification requirements of section 810(a)(1)(C) of the Act.

(iii) The agency make final administrative disposition of a complaint within one year of the date of receipt of a complaint, unless it is impracticable to do so. If the agency is unable to do so it shall notify the parties, in writing, of the reasons for not doing so;

(iv) Any conciliation agreement arising out of conciliation efforts by the agency shall be an agreement between the respondent, the complainant, and the agency and shall require the approval of the agency;

(v) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the agency determines that disclosure is not required to further the purposes of the law or ordinance.

(3) Not place any excessive burdens on the complainant that might discourage the filing of complaints, such as:

(i) A provision that a complaint must be filed within any period of time less than 180 days after an alleged discriminatory housing practice has occurred or terminated;

(ii) Anti-testing provisions;

(iii) Provisions that could subject a complainant to costs, criminal penalties or fees in connection with filing of complaints.

(4) Not contain exemptions that substantially reduce the coverage of housing accommodations as compared to section 803 of the Act.

(5) Provide the same protections as those afforded by sections 804, 805, 806, and 818 of the Act, consistent with HUD's implementing regulations found at 24 CFR part 100.—

(i) As used in section 804(f)(3)(C) of the Act, the term "covered multifamily dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

(ii) The law or ordinance administered by the State or local fair housing agency may provide that compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1–1986") suffices to satisfy the requirements of section 804(f)(3)(C)(iii) of the Act.

(b) In addition to the factors described in paragraph (a) of this section, the provisions of the State or local law must afford administrative and judicial protection and enforcement of the rights embodied in the law.

(1) The agency must have authority to:

(i) Grant or seek prompt judicial action for appropriate temporary or preliminary relief pending final disposition of a complaint if such action is necessary to carry out the purposes of the law or ordinance;

(ii) Issue and seek enforceable subpoenas;

(iii) Grant actual damages in an administrative proceeding or provide adjudication in court at agency expense to allow the award of actual damages to an aggrieved person;

(iv) Grant injunctive or other equitable relief, or be specifically authorized to seek such relief in a court of competent jurisdiction;

(v) Provide an administrative proceeding in which a civil penalty may be assessed or provide an adjudication in court at agency expense, allowing the assessment of punitive damages against the respondent.

(2) Agency actions must be subject to judicial review upon application by any party aggrieved by a final agency order.

(3) Judicial review of a final agency order must be in a court with authority to grant to the petitioner, or to any other party, such temporary relief, restraining order, or other order as the court determines is just and proper; affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and enforce the order to the extent that the order is affirmed or modified.

(c) The requirement that the state or local law prohibit discrimination on the basis of familial status does not require that the state or local law limit the applicability of any reasonable local, state or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(d) The state or local law may assure that no prohibition based on discrimination because of familial status applies to housing for older persons substantially as described in 24 CFR part 100, subpart E.

(e) A determination of the adequacy of a state or local fair housing law "on its face" is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, this determination is not limited to an analysis of the literal text of the law but must take into account all relevant matters of state or local law. Regulations, directives, rules of procedure, judicial decisions, or interpretations of the fair housing law by competent authorities will be considered in making this determination.

(f) A law will be found inadequate "on its face" if it permits any of the agency's decision-making authority to be contracted out or delegated to a non-governmental authority. For the purposes of this paragraph, "decision-making authority" shall include:

(1) Acceptance of the complaint;

(2) Approval of the conciliation agreement;

(3) Dismissal of a complaint;

(4) Any action specified in §§ 115.202(a)(2)(iii) or 115.202(b)(1); and

(5) Any decision-making regarding whether the matter will or will not be pursued.

(g) The state or local law must provide for civil enforcement of the law or ordinance by an aggrieved person by the commencement of an action in an appropriate court at least one year after the occurrence or termination of an alleged discriminatory housing practice. The court must be empowered to:

(1) Award the plaintiff actual and punitive damages;

(2) Grant as relief, as it deems appropriate, any temporary or permanent injunction, temporary restraining order or other order;

(3) Allow reasonable attorney's fees and costs.

§ 115.203 Performance standards.

A state or local fair housing enforcement agency must meet all of the performance standards listed below in order to obtain or maintain certification.

(a) Engage in timely, comprehensive and thorough fair housing complaint investigation, conciliation and enforcement activities. The performance assessment will consider the following to determine the effectiveness of an agency's fair housing complaint processing, consistent with such guidance as may be issued by HUD:

(1) The agency's case processing procedures;

(2) The thoroughness of the agency's case processing;

(3) A review of cause and no cause determinations for quality of investigations and consistency with appropriate standards;

(4) A review of conciliation agreements and other settlements; and

(5) A review of the agency's administrative closures; and

(6) A review of the agency's enforcement procedures.

(b)(1) Commence proceedings with respect to a complaint:

(i) Before the end of the 30th day after receipt;

(ii) Carry forward such proceedings with reasonable promptness;

(iii) Make final administrative disposition within one year; and

(iv) Within 100 days of receipt of the complaint complete the identified proceedings.

(2) To meet this standard, the performance assessment will consider the timeliness of the agency's actions with respect to its complaint processing, including, but not limited to:

(i) Whether the agency began its processing of fair housing complaints within 30 days of receipt;

(ii) Whether the agency completes the investigative activities with respect to a complaint within 100 days from the date of receipt or, if it is impracticable to do so, notifies the parties in writing of the reason(s) for the delay;

(iii) Whether the agency administratively disposes of a complaint within one year from the date of receipt or, if it is impracticable to do so, notifies the parties in writing of the reasons for the delay; and

(iv) Whether the agency completed the investigation of the complaint and prepared a complete final investigative report.

(3) The performance assessment will also consider documented conciliation attempts and activities and a review of the bases for administrative disposition of complaints.

(c) Conduct compliance reviews of settlements, conciliation agreements and orders issued by or entered into to resolve discriminatory housing practices. The performance assessment will include, but not be limited to:

(1) An assessment of the agency's procedures for conducting compliance reviews;

(2) Terms and conditions of agreements and orders issued;

(3) application of its authority to seek actual damages, as appropriate; and

(4) Application of its authority to seek and assess civil penalties or punitive damages.

(d) Consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of such practices. The performance assessment will include, but not be limited to:

(1) An assessment of the types of relief sought and obtained by the agency with consideration of the inclusion of affirmative provisions designed to protect the public interest;

(2) The adequacy of the disposition of the complaint;

(3) The relief sought and awarded;

(4) The number of complaints closed with relief and the number closed without relief; and

(5) Whether all the issues and bases were investigated adequately and appropriately disposed of.

(e) Consistently and affirmatively seek the elimination of all prohibited practices under its fair housing law. An assessment under this standard will include, but not be limited to:

(1) A discussion and confirmation of the law or ordinance administered by the agency;

(2) The identification of any amendments, court decisions or other rulings or documentation that may affect the agency's ability to carry out provisions of its fair housing law or ordinance;

(3) Identification of the education and outreach efforts of the agency; and

(4) Identification and discussion of any special requirements of the fair housing law or ordinance.

§ 115.204 Consequences of Certification.

(a) Whenever a complaint received by the Assistant Secretary alleges violations of a state or local fair housing law or ordinance administered by an agency that has been certified as substantially equivalent, the complaint will be referred to the agency, and no further action shall be taken by the Assistant Secretary with respect to such complaint except as provided for by the Act, this part, 24 CFR part 103, subpart C, and any written agreements executed by the Agency and the Assistant Secretary.

(b) If HUD determines that a complaint has not been processed in a timely manner in accordance with the performance standards set forth in § 115.203, HUD may reactivate the complaint, conduct its own investigation and conciliation efforts, and make a determination consistent with 24 CFR part 103.

(c) Notwithstanding paragraph (a) of this section, whenever the Assistant Secretary has reason to believe that a complaint demonstrates a basis for the commencement of proceedings against any respondent under section 814(a) of the Act or for proceedings by any governmental licensing or supervisory authorities, the Assistant Secretary shall transmit the information upon which such belief is based to the Attorney General, Federal financial regulatory agencies, other Federal agencies, or other appropriate governmental licensing or supervisory authorities.

§ 115.205 Technical assistance.

(a) The Assistant Secretary, through the FHEO Field Office, may provide technical assistance to the agencies. The agency may request such technical assistance or the FHEO Field Office may determine the necessity for technical assistance and require the agency's cooperation and participation.

(b) The Assistant Secretary, through FHEO Headquarters or Field staff, will require that the agency participate in training conferences and seminars that will enhance the agency's ability to process complaints alleging discriminatory housing practices.

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§ 115.206 Request for certification.

(a) A request for certification under this subpart B shall be filed with the Assistant Secretary by the State or local official having principal responsibility for administration of the State or local fair housing law. The request shall be supported by the following materials and information:

(1) The text of the jurisdiction's fair housing law, the law creating and empowering the agency, any regulations and directives issued under the law, and any formal opinions of the State Attorney General or the chief legal officer of the jurisdiction that pertain to the jurisdiction's fair housing law.

(2) Organizational information of the agency responsible for administering and enforcing the law.

(3) Funding and personnel made available to the agency for administration and enforcement of the fair housing law during the current operating year, and not less than the preceding three operating years (or such lesser number during which the law was in effect).

(4) If available, data demonstrating that the agency's current practices and past performance comply with the performance standards described in § 115.203.

(5) Any additional information which the submitting official may wish to be considered.

(b) The request and supporting materials shall be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. A copy of the request and supporting materials will be kept available for public examination and copying at:

(1) The office of the Assistant Secretary; and

(2) The HUD Field Office in whose jurisdiction the State or local jurisdiction seeking recognition is located; and

(3) The office of the State or local agency charged with administration and enforcement of the State or local law.

§ 115.207 Procedure for interim certification.

(a) Upon receipt of a request for certification filed under § 115.206 of this part, the Assistant Secretary may request further information necessary for a determination to be made under this section. The Assistant Secretary may consider the relative priority given to fair housing administration, as compared to the agency's other duties and responsibilities, as well as the compatibility or potential conflict of fair housing objectives with these other duties and responsibilities.

(b) *Interim certification.* If the Assistant Secretary determines, after application of the criteria set forth in § 115.202 that the State or local law or ordinance, on its face, provides substantive rights, procedures, remedies, and judicial review procedures for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the Assistant Secretary may offer to enter into an Agreement for the Interim Referral of Complaints and Other Utilization of Services (Interim Agreement). The interim agreement will outline the procedures and authorities upon which the interim certification is based.

(c) Such interim agreement, after it is signed by all appropriate signatories, will result in the agency receiving interim certification.

(d)(1) Interim agreements shall be for a term of no more than three years. The Assistant Secretary, through the FHEO Field Office, will conduct one or more on-site assessments to determine whether the agency administers its fair housing law or ordinance in a manner that is substantially equivalent to the Act.

(2) *Performance Improvement Plan.* If the agency is not administering its law or ordinance in a manner that is substantially equivalent, the Assistant Secretary, may, but need not, offer a Performance Improvement Plan (PIP) to the agency. The PIP will outline the agency's deficiencies, identify necessary corrective actions, and include a timetable for completion.

(3) If the agency receives a PIP, funding under the FHAP may be suspended for the duration of the PIP. Once the agency has implemented corrective actions to eliminate the deficiencies, and such corrective actions are accepted by the Assistant Secretary, funding may be reinstated.

§ 115.208 Suspension of interim certification.

(a)(1) The Assistant Secretary will suspend the agency's interim certification if the Assistant Secretary has reason to believe that the State or locality may have limited the effectiveness of the agency's implementation of the fair housing law or ordinance by:

(i) Amending the fair housing law or ordinance;

(ii) Adopting rules or procedures concerning the fair housing law or ordinance; or

(iii) Issuing judicial or other authoritative interpretations of the fair housing law or ordinance.

(2) If the Assistant Secretary suspends interim certification under paragraph (a)(1) of this section, such suspension will remain in effect until the Assistant Secretary conducts a review of the changes in language and/or interpretation and determines whether the law or ordinance remains substantially equivalent to the Act on its face or in its operations.

(i) If the Assistant Secretary determines that, notwithstanding the actions taken by the State or locality as described in paragraph (a)(1) of this section, the law or ordinance remains substantially equivalent on its face and in operation to the Act, the Assistant Secretary will rescind the suspension and reinstate the agency's interim certification and/or recommend the agency for certification. HUD will provide reimbursement for cases processed during the period of the suspension.

(ii) If the Assistant Secretary determines that the actions taken by the State or locality do limit the agency's effectiveness interim certification will be denied pursuant to § 115.209.

(b)(1) The Assistant Secretary will suspend the interim certification of an agency charged with the administration of a fair housing law or ordinance if the Assistant Secretary has reason to believe that the agency's performance does not comply with the criteria set forth by this part. Such suspension shall not exceed 180 days.

(2) If the agency is suspended pursuant to paragraph (b) of this section, the FHEO Field Office will not provide payment for complaints processed within that period of time unless and until the Assistant Secretary determines that the agency is fully in compliance with § 115.203. The FHEO Field Office will provide technical assistance to the agency during this period of time.—

(i) During the period of a suspension the Assistant Secretary shall not refer complaints to the agency.

(ii) Suspension under this section also renders the agency ineligible to receive Fair Housing Assistance Program Funds under subpart C of this part, pending correction of the deficiencies by the agency.

(3) Before the end of the suspension, a final performance assessment will be provided to the Assistant Secretary upon which a determination will be made as to the adequacy of the agency's performance.

§ 115.209 Denial of interim certification.

(a) If the Assistant Secretary determines, after application of the criteria set forth in this Part that the State and local law or ordinance, on its face or in its operation, does not provide substantive rights, procedures, remedies, and availability of judicial review for alleged discriminatory housing practices which are substantially equivalent to those provided in the Fair Housing Act, the Assistant Secretary shall inform the State or local official in writing of the reasons for that determination.

(b) The agency, within 20 days from the date of the receipt of this notice, may submit, in writing, any opposition to the planned denial of Interim Certification to the Assistant Secretary. The Assistant Secretary will evaluate all pertinent written comments, information, and documentation. If, after reviewing all materials submitted by the agency, the Assistant Secretary is still of the opinion that interim certification should be denied, the Assistant Secretary will inform the agency in writing of that determination.

(c) If the agency does not, within 20 days of receipt of the Assistant Secretary's notice of denial of interim certification, make a request of the Assistant Secretary under paragraph (b) of this section to submit additional data, views, or comments, no further action shall be required of the Assistant Secretary and denial of interim certification shall occur.

§ 115.210 Procedure for certification.

(a)(1) *Certification.* If the Assistant Secretary determines, after application of the criteria set forth in §§ 115.202, 115.203 and this section, that the State or local law or ordinance, both "on its face" and "in operation," provides substantive rights, procedures, remedies, and judicial review procedures for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the Assistant Secretary may enter into a Memorandum of Understanding (MOU) with the agency. The MOU is a written agreement providing for the referral of complaints to the agency and for communication procedures between the agency and HUD that are adequate to permit the Assistant Secretary to monitor the agency's continuing substantial equivalency certification. A MOU, after it is signed by all appropriate signatories, may authorize an agency to be a certified agency for a period of not more than five years.

(2) *Performance Improvement Plan.* If the agency is not administering its law or ordinance in a manner that is substantially equivalent, the Assistant Secretary, may, but need not, offer a Performance Improvement Plan (PIP) to the agency. The PIP will outline the agency's deficiencies, identify necessary corrective actions, and include a timetable for completion.

(3) If the agency receives a PIP, funding under the FHAP may be suspended for the duration of the PIP. Once the agency has implemented corrective actions to eliminate the deficiencies, and such corrective actions are accepted by the Assistant Secretary, funding may be reinstated.

(b) The Assistant Secretary shall annually assess the performance of an agency to determine whether it continues to qualify for certification under this part. If the Assistant Secretary affirmatively concludes that the agency's law and performance have complied with the requirements of this part in each of the five years, the Assistant Secretary may offer the agency an updated Memorandum of Understanding.

(c) An agency shall receive interim certification prior to receiving certification.

§ 115.211 Suspension of certification.

(a)(1) The Assistant Secretary will suspend the agency's certification if the Assistant Secretary has reason to believe that the State or locality may have limited the effectiveness of the agency's implementation of the fair housing law or ordinance by:

(i) Amending the fair housing law or ordinance;

(ii) Adopting rules or procedures concerning the fair housing law or ordinance; or

(iii) Issuing judicial or other authoritative interpretations of the fair housing law or ordinance.

(2) If the Assistant Secretary suspends certification under paragraph (a)(1) of this section, such suspension will remain in effect until the Assistant Secretary conducts a review of the changes in language and/or interpretation and determines whether the law or ordinance remains substantially equivalent on its face and in its operation to the Act.—

(i) If the Assistant Secretary determines that the law or ordinance remains substantially equivalent on its face and in operation to the Act, the Assistant Secretary will rescind the suspension and reinstate the agency's interim certification and/or recommend the agency for certification. HUD will provide reimbursement for cases processed during the period of the suspension.

(ii) If the Assistant Secretary determines that the actions taken by the State or locality do limit the agency's effectiveness, certification will be withdrawn pursuant to § 115.212.

(b)(1) The Assistant Secretary will suspend the certification of an agency charged with the administration of a fair housing law or ordinance, if the Assistant Secretary has reason to believe that the agency's performance does not comply with the criteria set forth by this part. Such suspension shall not exceed 180 days.

(2) If the agency is suspended pursuant to paragraph (b) of this section, the FHEO Field Office will not provide payment for complaints processed within that period of time unless and until the Assistant Secretary determines that the agency is fully in compliance with 115.202 of this part. The FHEO Field Office will provide technical assistance to the agency during this period of time.—

(i) During the period of a suspension the Assistant Secretary shall not refer complaints to the agency.

(ii) Suspension under this section also renders the agency ineligible to receive Fair Housing Assistance Program Funds under subpart C of this part, pending correction of the deficiencies by the agency.

(3) Before the end of the suspension, a final performance assessment will be provided to the Assistant Secretary upon which a determination will be made as to the adequacy of the agency's performance.

§ 115.212 Withdrawal of certification.

(a) If the Assistant Secretary finds, as a result of a review undertaken in accordance with this part, that the agency's fair housing law or ordinance no longer meets the requirements of this part, the Assistant Secretary shall propose to withdraw the certification previously granted.

(b) The Assistant Secretary will propose withdrawal of certification under paragraph (a) of this section unless further review and information or documentation establishes that the current law and/or the agency's administration of the law meets the criteria set out in this part.

(c) If the Assistant Secretary determines, after application of the criteria set forth in this Part, that the state or local law or ordinance, in operation, does not provide substantive rights, procedures, remedies, and availability of judicial review for alleged discriminatory housing practices which are substantially equivalent to those provided in the Fair Housing Act, the Assistant Secretary shall inform the

State or local official in writing of the reasons for that determination.

Subpart C—Fair Housing Assistance Program (FHAP)

§ 115.300 Purpose.

The purpose of the Fair Housing Assistance Program (FHAP) is to provide assistance to State and local fair housing enforcement agencies. The intent of this funding program is to build a coordinated intergovernmental enforcement effort to further fair housing and to encourage the agencies to assume a greater share of the responsibility for the administration and enforcement of their fair housing laws and ordinances. This financial assistance is designed to provide support for:

(a) The processing of dual-filed complaints;

(b) Training under the Fair Housing Act and the agencies' fair housing law;

(c) The provision of technical assistance;

(d) The creation and maintenance of data and information systems; and

(e) The development and enhancement of other fair housing enforcement projects.

§ 115.301 Agency eligibility criteria.

Any agency with certification or interim certification under subpart A of this part, and which has entered into a MOU or interim agreement, is eligible to participate in the FHAP.

§ 115.302 Capacity Building Funds.

(a) Capacity Building Funds (CBF) are funds that HUD may provide to an agency with interim certification during the agency's first three years of participation in the FHAP. Agencies receiving CBF are not eligible to receive contributions funds under § 115.304.

(b) Capacity Building Funds will be provided in a fixed annual amount to be utilized for the eligible activities established pursuant to § 115.303. However, in the second and third year of the agency's participation in the FHAP, HUD has the option to permit the agency to receive Capacity Building funding on a per case basis, rather than in a single annual amount.

(c) In order to receive capacity building funds, agencies will be required to submit a statement of work which identifies:

(1) The objectives and activities to be carried out with the CBFs received;

(2) A plan for training all of the agency's employees involved in the administration of the agency's fair housing law or ordinance;

(3) A statement of the agency's intention to participate in HUD-sponsored training in accordance with the training requirements set out in the cooperative agreement;

(4) A description of the agency's complaint processing data and information system or, alternatively, whether the agency plans to use capacity building funds to purchase and install a data system; and

(5) A description of any other fair housing activities that the agency will undertake with its capacity building funds.—

(i) All such activities must address matters affecting fair housing enforcement which are cognizable under the Fair Housing Act. Any activities which do not address the implementation of the agency's fair housing law or ordinance, and which are therefore not cognizable under the Fair Housing Act, will be disapproved.

(ii) Reserved.

§ 115.303 Eligible activities For Capacity Building Funds.

The primary purposes of capacity building funding is to provide for complaint activities and to support activities that produce increased awareness of fair housing rights and remedies. All such activities must support the agency's administration of its fair housing law or ordinance and address matters affecting fair housing which are cognizable under the Fair Housing Act. HUD will periodically publish a list of eligible activities in the **Federal Register**.

§ 115.304 Agencies Eligible for Contributions Funds.

(a) An agency that has received Capacity Building Funds for three consecutive years is eligible for contributions funding. Contributions funding consists of three categories:

(1) Complaint Processing (CP) Funds;

(2) Administrative Costs (AC) Funds; and

(3) Special Enforcement Efforts (SEE) Funds (§ 115.305 sets forth the requirements for SEE funding).

(b) *Complaint Processing Funds.* (1) Agencies receiving CP funds will receive such support based solely on the number of complaints processed by the agency and accepted for payment by the Director of FHEO during a consecutive, specifically identified, 12-month period. Normally this period will be the previous year's funding cycle.

(2) Funding for agencies in their fourth year of participation in the FHAP will be based on the number of complaints acceptably processed by the agency during the agency's third year of participation in the FHAP.

(c) *Administrative Cost (AC) Funds.* Agencies which acceptably process 100 or more cases will receive no less than 10 percent of the agency's annual FHAP payment amount for the preceding year, in addition to case processing funds, contingent on fiscal year appropriations. Agencies that acceptably process fewer than 100 cases will receive a flat rate contingent on fiscal year appropriations.

(1) Agencies will be required to provide HUD with a statement of how they intend to use the AC funds. HUD may require that some or all AC funding be directed to activities designed to create, modify, or improve local, regional, or national information systems concerning fair housing matters (including the purchase of state of the art computer systems and getting on line or internet access, etc.).

(2) [Reserved.]

§ 115.305 Special Enforcement Effort (SEE) funds.

(a) SEE funds are funds that HUD will provide to an agency to enhance enforcement activities of the agency's fair housing law or ordinance. SEE funds will be a maximum of 20% of the agency's total FHAP cooperative agreement for the previous contract year, based on approval of eligible activity or activities, and based on the appropriation of funds. All agencies receiving contributions funds are eligible to receive SEE funds if they meet three of the six criteria set out below:

(1) The agency has taken action to enforce a subpoena or make use of its prompt judicial action authority within the past year;

(2) The agency has held at least one administrative hearing or has had at least one case on a court's docket for civil proceedings during the past year;

(3) At least ten percent of the agency's fair housing caseload resulted in written conciliation agreements providing monetary relief for the complainant as well as remedial action, monitoring, reporting and public interest relief provisions;

(4) The agency has had in the most recent three years, or is currently handling, at least one major fair housing systemic investigation requiring an exceptional amount of expenditure of funds;

(5) The agency's administration of its fair housing law or ordinance received meritorious mention for its complaint processing or other fair housing activities that were innovative; or

(6) The agency must have fully investigated 10 fair housing complaints during the previous funding year.

(b) Notwithstanding the eligibility criteria set forth in paragraph (a) of this section, an agency will be ineligible for SEE funds if 20% or more of an agency's fair housing complaints result in administrative closures.

(c) SEE funding amounts are subject to the FHAP appropriation by Congress and will be described in writing in the cooperative agreements annually. HUD will periodically publish a list of activities eligible for SEE funding in the **Federal Register**.

§ 115.306 Training funds.

(a) All agencies are eligible to receive training funds. Training funds are fixed amounts based on the number of agency employees to be trained and shall be allocated based on the FHAP appropriation. Training funds may be used only for HUD-approved or HUD-sponsored training. Agency initiated training or other formalized training may be included in this category. However, such training must first be approved by the Cooperative Agreement Officer (CAO) and the Government Technical Representative (GTR). Specifics on the amount of training funds that an agency will receive and, if applicable, amounts that may be deducted, will be set out in the cooperative agreement each year.

(b) All staff of the agency responsible for the administration of the fair housing law or ordinance must participate in mandatory FHAP training sponsored by HUD at the national and field office levels. If the agency does not participate in the mandatory national and field office HUD-sponsored training, training funds will be deducted from their overall training amount.

§ 115.307 Additional requirements for participation in the FHAP.

(a) Agencies which participate in the FHAP must:

(1) Conform to reporting and record maintenance requirements determined by the Assistant Secretary;

(2) Agree to on-site technical assistance and guidance and implementation of corrective actions set out by the Department in response to deficiencies found during the technical assistance or performance assessment evaluations of the agency's operations;

(3) Agree to implement and adhere to policies and procedures (as their laws and ordinances will allow) provided to the agencies by the Assistant Secretary, including but not limited to guidance on investigative techniques, case file preparation and organization, implementation of data elements for complaint tracking, etc.;

(4) Spend at least twenty (20) percent of its total annual budget on fair housing activities; and

(5) Not unilaterally reduce the level of financial resources currently committed to fair housing complaint processing (budget and staff reductions or other actions outside the control of the agency will not, alone, result in a negative determination for the agency's participation in the FHAP).

(b) The agency's refusal to provide information, assist in implementation, or carry out the requirements of paragraph (a) of this section may result in the denial or interruption of its receipt of FHAP funds.

§ 115.308 Standards for FHAP program review.

HUD will conduct reviews of the agency's cooperative agreement implementation. This review will also identify:

(a) How the agency used the FHAP funds received;

(b) Whether its draw-down of funds was timely;

(c) Whether the agency has been audited and received copies of the audit reports in accordance with applicable rules and regulations for State and local governmental entities; and

(d) If the agency complied with all certifications and assurances required by HUD in the cooperative agreement.

§ 115.309 Reporting and recordkeeping requirements.

(a) The agency shall establish and maintain records demonstrating:

(1) Its financial administration of the FHAP funds; and

(2) Its performance under the FHAP.

(b) In accordance with the cooperative agreement in effect between the agency and HUD, the agency will provide to HUD the agency reports maintained pursuant to paragraph (a) of this section. The agency will provide reports to HUD in accordance with the cooperative agreement in effect between the agency and HUD for frequency and content, regarding complaint processing, training, data and information systems, enforcement and other activities explaining how FHAP funds were expended and used.

(c) The agency will permit reasonable public access to its records, consistent with the jurisdiction's requirements for release of information. Documents relevant to the agency's participation in FHAP must be made available at the agency's office during normal working hours (except that documents with respect to ongoing fair housing complaint investigations are exempt from public review consistent with Federal and/or State law).

(d) The Secretary, the Inspector General of HUD, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to all pertinent books, accounts, reports, files, and other payments for surveys, audits, examinations, excerpts, and transcripts as they relate to the agency's participation in FHAP.

(e) All files will be kept in such fashion as to permit audits under applicable procurement regulations and guidelines and the Single Audit requirements for State and local agencies.

(f) The FHAP financial records and files will be kept at least three years on-site after any cooperative agreement has terminated.

§ 115.310 Subcontracting under the FHAP.

If an agency subcontracts to a public or private agency any activity for which the subcontractor will receive FHAP funds, the agency must ensure and certify in writing that the subcontractor is:

(a) Using services and facilities that are accessible in accordance with the Americans with Disability Act (ADA) (29 U.S.C. 706) and Section 504 of the 1973 Rehabilitation Act (29 U.S.C. 792);

(b) Complying with the standards of Section 3 of the Housing and Urban Development Act (12 U.S.C. 1701u); and

(c) Furthering fair housing.

§ 115.311 Corrective and remedial action.

(a) If HUD makes a preliminary determination that an agency has not complied with § 115.309, the agency will be given written notice of this determination and an opportunity to show, through demonstrable facts and data, that it has done so within a time prescribed by HUD.

(b) If an agency fails to demonstrate to HUD's satisfaction that it has met program review standards, HUD will request the agency to submit and comply with proposals for action to correct, mitigate, or prevent performance deficiencies, including, but not limited to:

(1) Preparing and/or following a schedule of actions for carrying out the affected fair housing activities;

(2) Establishing and/or following a management plan that assigns responsibilities for carrying out the actions required;

(3) Canceling or revising activities likely to be affected by a performance deficiency before expending FHAP funds for the activities; and

(4) Redistributing or suspending disbursement of FHAP funds that have not yet been disbursed.

(c) HUD may condition the use of FHAP award amounts with respect to an agency's succeeding fiscal year's allocation on the satisfactory

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completion by the agency of appropriate corrective actions. When the use of funds is so conditioned, HUD will specify the deficiency(ies), the required corrective action(s), and the time allowed for taking these actions. Failure of the agency to complete the actions as specified will result in a reduction or withdrawal of the FHAP allocation in an amount not to exceed the amount conditionally granted.

Dated: January 31, 1996.

Elizabeth K. Julian,

Acting Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 96–4437 Filed 2–27–96; 8:45 am]

BILLING CODE 4210–28–P

federal register

Wednesday
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Part VII

The President

Proclamation 6866—American Red Cross Month, 1996

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Presidential Documents

Title 3—

The President

Proclamation 6866 of February 26, 1996

American Red Cross Month, 1996

By the President of the United States of America

A Proclamation

Since its founding in 1881 by Clara Barton, the American Red Cross has brought hope and healing to citizens and communities across the country. Today, some 1.4 million trained volunteers work to fulfill the Red Cross' mission by providing relief to disaster victims; by ensuring that our Nation has an adequate and safe blood supply; by training millions of Americans in essential lifesaving and safety techniques; and by assisting members of our Armed Forces, their families, and our distinguished veterans.

This past year, the American Red Cross has carried on its extraordinary legacy across the country and around the world. When a bomb destroyed the Alfred P. Murrah Federal Building in Oklahoma City on April 19, the Red Cross was there within minutes to assist those whose loved ones were killed in the tragic blast. After a series of record-breaking storms and hurricanes ruined houses and displaced people, the Red Cross served more than a million meals and helped victims to begin rebuilding their lives. And today, as OPERATION JOINT ENDEAVOR works to secure the peace in Bosnia, the Red Cross is facilitating emergency communications between our troops and their families at home.

The Red Cross has earned our Nation's deepest respect and appreciation for its important lifesaving and life-rebuilding work and for its countless daily efforts to promote health and safety. This month and throughout the year, let us take time to recognize this vital organization and do all we can to further its goals of preventing, preparing for, and responding to emergencies.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 1996, as American Red Cross Month. I urge all the people of the United States to support Red Cross chapters nationwide by volunteering and participating in Red Cross blood drives.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of February, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 96–4708
Filed 2–27–96; 8:45 am]
Billing code 3195–01–P

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  - South Dakota; published 1-29-96

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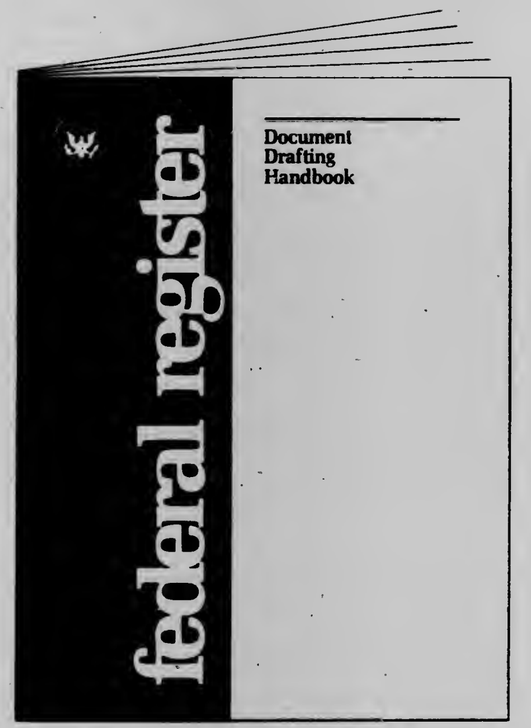
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2–29–96
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VOL
61

ISS
41

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996

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2-29-96
Vol. 61 No. 41
Pages 7687-7978

federal register

Thursday
February 29, 1996

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For information on briefing in Washington, DC, see announcement on the inside cover of this issue.

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[Two Sessions]

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RESERVATIONS: 202–523–4538

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

Removal of U.S. Grade Standards

AGENCY: Grain Inspection, Packers and Stockyards Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule will remove the voluntary U.S. grade standards for Beans, Whole Dry Peas, Split Peas, and Lentils from the Code of Federal Regulations (CFR). These are an accumulation of regulations which have been developed for more than 75 years to facilitate the marketing of agricultural commodities by providing a uniform language which may be used to describe the quality of various agricultural commodities as valued in the marketplace. The voluntary standards and all subsequent revisions or new standards will be made available in a separate publication. This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

In carrying out this responsibility, the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA), will ensure that proposed, new or revised voluntary standards will appear in the "Notices" section of the **Federal Register** and that the public will have an opportunity to comment.

EFFECTIVE DATE: February 29, 1996. Comments must be received by April 29, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Written comments may mailed or faxed to George Wollam, Regulatory Liaison, USDA, GIPSA, Room 0623–S, P.O. Box 96454, Washington, DC 20090–6454; FAX (202) 720–4628. Comments may also be sent by electronic mail or Internet to: gwollam@fgis.usda.gov.

All comments received will be available for public inspection during regular business hours in Room 0623–South Building, 1400 Independence Avenue, S.W., Washington, D.C. (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam (202) 720–0292.

SUPPLEMENTARY INFORMATION: This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Executive Order 12866

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Effect on Small Entities

This action was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C 601 *et seq.*). The Administrator of (GIPSA) has determined that this action will not have a significant economic impact on a substantial number of small entities. Although this action will remove provisions from the CFR, small entities should see no changes as the standards will be administered under the direction of the Administrator to ensure public input to their formulation and convenient availability to those who want copies of the standards.

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act, the information collection requirements contained in the provisions to be amended have been previously approved by the Office of Management and Budget under control number 0580–0013.

Background

The Grain Inspection, Packers and Stockyards Administration is delegated by the Secretary of Agriculture, under the Agricultural Marketing Act of 1946 (AMA), to provide programs for Federal grading/certification services and to develop and establish efficient marketing methods and practices for designated agricultural commodities. For many years these agricultural programs have facilitated the marketing of agricultural commodities by developing official U.S. grade standards which provide uniform language that may be used to describe the characteristics of more than 19 commodities as valued by the market place. The AMA standards are widely used in private contracts, government procurement, marketing communication and, for some commodities, consumer information. The standards through the years have been promulgated as regulations and codified in the CFR.

Rapid changes in consumer preferences, together with associated changes in commodity characteristics, processing technology, and marketing practices have out paced the revision or issuance of regulations. As a result, industry and the marketplace could be burdened with outdated trading language. The President's regulatory review initiative has provided the impetus to develop new approaches to develop new approaches to meet more effectively the needs of U.S. industry, government agencies, and consumers and still reduce the regulatory burden.

To meet this initiative, regulations that are currently in the CFR which could be administered under the authority of GIPSA are being removed from the CFR. With respect to the official grade standards except those used to implement government price support. Therefore, the grade standards for Rice (7 CFR §§ 868.201–316) will continue to appear in the CFR, although the text will also be available from GIPSA, along with other grade standards.

This rule eliminates selected regulations which encompass approximately 22 pages of the CFR covering: Standards for Beans, Whole Dry Peas, Split Peas, and Lentils.

The following is an outline of those standards being removed from the CFR.

CFR section	Title of standards being removed from the CFR
868.101–142	Subpart B—United States Standards for Beans.
868.401–410	Subpart F—United States Standards for Whole Dry Peas.
868.501–510	Subpart G—United States Standards for Split Peas.
868.601–611	Subpart H—United States Standards for Lentils.

To ensure that these standards will be developed, issued, and revised in accordance with procedures that continue to ensure a fair and open process, all new and proposed revisions to standards being removed from the CFR's will be published in the **Federal Register** as "Notice" with adequate time for public comment. A final version of the standard will also be published in the **Federal Register**.

In developing or revising existing grade standards, the Administrator must first determine that a new or revised standard is needed to facilitate trade in a particular commodity. Second, because use of the standards is voluntary, there must be demonstrated interest and support from the affected industry or other interested parties. And third, the standards must be practical to use.

The initial requests for development or revision of a standard may come from the industry, trade or consumer groups, State departments of agriculture, the U.S. Department of Agriculture, or others. Once a request has been received, GIPSA will coordinate procedures to gather information needed to move forward with the new or revised standard. After this process is completed, a notice of proposed standards change will be published in the **Federal Register** to solicit comment from any interested parties (normally 30 to 60 days). After evaluating the comments received from interested parties, GIPSA will determine whether to proceed, develop a new proposal, or terminate the process. The public will be informed through a press release and notice in the **Federal Register**.

In addition to publication in the **Federal Register**, GIPSA will distribute copies of each standard on request as a pamphlet or other means under the direction of the Administrator of GIPSA.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The standards are voluntary; (2) no changes are being made to the standards by this docket, and (3) this is in-line with the President's regulatory review initiative.

List of Subjects in 7 CFR Part 868

Administrative practice and procedures, Agricultural commodities, Beans, Whole Dry Peas, Split Peas, and Lentils.

For the reasons set forth in the preamble, 7 CFR Part 868 is amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for Part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 et seq.).

Subpart B (§§ 868.101–868.142)—[Removed and Reserved]

2. In part 868, Subpart B (§§ 868.101 through 868.142) is removed and reserved.

Subpart F (§§ 868.401–868.410)—[Removed]

3. In part 868, Subpart F (§§ 868.401 through 868.410) is removed.

Subpart G (§§ 868.501–868.510)—[Removed]

4. In part 868, Subpart G (§§ 868.501 through 868.510) is removed.

Subpart H (§§ 868.601–868.611)—[Removed]

5. In part 868, Subpart H (§§ 868.601 through 868.611) is removed.

David R. Shipman,

Acting Administrator.

[FR Doc. 96–4587 Filed 2–28–96; 8:45 am]

BILLING CODE 3410–EN–P

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV95–979–1FIR]

Melons Grown in South Texas; Increased Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an amended interim final rule that increased the level of authorized expenses and established an assessment rate to generate funds to pay those expenses under Marketing Order No. 979 for the 1995–96 fiscal period. Authorization of this budget enables the South Texas Melon Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: October 1, 1995, through September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210–682–2833.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas melons are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons handled during the 1995–96 fiscal period, which began October 1, 1995, and ends September 30, 1996. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 producers of South Texas melons under this marketing order, and approximately 27 handlers. Since the amended interim final was issued, information regarding a decrease in the number of producers from approximately 40 to 30 and an increase in the number of handlers from approximately 19 to 27 was received. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of South Texas melon producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the South Texas Melon Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of South Texas melons. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas melons. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of $234,044 for personnel, office, and compliance expenses were recommended in a mail vote. The assessment rate and funding for research and promotion projects were to be recommended at a later Committee meeting. The Committee administrative expenses of $234,044 were published in the **Federal Register** as an interim final rule October 23, 1995 (60 FR 54294). That interim final rule added § 979.218, authorizing expenses for the Committee, and provided that interested persons could file comments through November 22, 1995. No comments were filed.

The Committee subsequently met on December 12, 1995, and unanimously recommended an increase of $1,000 for administrative expenses, plus $160,115 in research expenses, for a total budget of $395,159. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Manager's salary, $19,094 ($15,172), office salaries, $24,000 ($22,000), payroll taxes, $4,000 ($3,100), insurance, $8,000 ($6,250), rent and utilities, $6,500 ($6,000), supplies, $2,000 ($1,500), postage, $1,500 ($1,000), telephone and telegraph, $4,000 ($2,500), furniture and fixtures, $2,000 ($1,000), equipment rental and maintenance, $3,500 ($2,500), contingencies, $8,000 ($5,278), Committee expenses, $2,000 ($700), manager's travel, $5,000 ($3,000), variety evaluation, $10,875 ($9,186), and $3,750 for deferred compensation (manager's retirement), which was not a line item expense last year. Items which have decreased compared to the amount budgeted for 1994–95 (in parentheses) are: field travel, $4,000 ($5,000), and field salary, $5,500 ($8,000). All other items are budgeted at last year's amounts, including $86,716 for a disease management program, $18,700 for an insect management program, $32,674 for breeding and variety development, and $11,150 for control of melon diseases.

The initial 1995–96 budget, published on October 23, 1995, did not establish an assessment rate. Therefore, the Committee also unanimously recommended an assessment rate of $0.07 per carton, the same as last year. This rate, when applied to anticipated shipments of approximately 4,500,000 cartons, will yield $315,000 in assessment income, which, along with $80,159 from the reserve, will be adequate to cover budgeted expenses. Funds in the reserve as of December 31, 1995, were $398,821, which is within the maximum permitted by the order of two fiscal periods' expenses.

An amended interim final rule was published in the **Federal Register** on January 4, 1996 (61 FR 248). That interim final rule amended § 979.218 to increase the level of authorized expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through February 5, 1996. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal period began on October 1, 1995. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable melons handled during the fiscal period. In addition, handlers are aware of this rule which was recommended by the Committee at a public meeting and published in the **Federal Register** as an amended interim final rule.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

Accordingly, the amended interim final rule revising § 979.218 which was published at 61 FR 248 on January 4, 1996, is adopted as a final rule without change.

Dated: February 23, 1996.

Martha R. Ramsom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–4704 Filed 2–28–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Parts 1805 and 1806

RIN 1505–AA72

Community Development Financial Institutions Program; Bank Enterprise Award Program; Correction

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Correction to interim rule.

SUMMARY: This document contains corrections to the interim regulations that were published Tuesday, January 23, 1996 (61 FR 1899). The regulations relate to the Community Development Financial Institutions Program and the Bank Enterprise Award Program.

EFFECTIVE DATE: January 23, 1996.

FOR FURTHER INFORMATION CONTACT: Kirsten S. Moy, Director, Community Development Financial Institutions Fund at (202) 343–0620. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The interim regulations that are the subject of these corrections revised the interim regulations for the Community Development Financial Institutions Program and the Bank Enterprise Program that were published in the **Federal Register** on October 19, 1995 (60 FR 54110). As published, the amendatory instructions contained errors which may prove to be misleading and are in need of clarification.

Accordingly, the publication on January 23, 1996 of the interim regulations, which were the subject of FR Doc. 96–745, is corrected as follows:

1. On page 1701, in the first column, amendatory instruction number 4, in the first line, the citation "1806.600" is corrected to read "1805.600".

§ 1806.202 [Corrected]

2. On page 1702, in the second column, amendatory instruction number 5, in the third line, the citation "(d)(2)" is corrected to read "(b)(2)", and in the fourth line the citation "(d)(3)" is corrected to read "(b)(3)".

3. On page 1702, in the third column, amendatory instruction number 7 is correctly designated as amendatory instruction number 6.

Dated: February 23, 1996.

Kirsten S. Moy,

Director, Community Development Financial Institutions Fund.

[FR Doc. 96–4666 Filed 2–28–96; 8:45 am]

BILLING CODE 4810–70–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–54; Amendment 39–9512; AD 96–04–01]

Airworthiness Directives; AlliedSignal Inc. TFE731 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to AlliedSignal Inc. (formerly Garrett Engine Division) TFE731 series turbofan engines, that currently requires eddy current inspection of certain fan rotor disks for cracks, and replacement, if necessary, with serviceable parts. This amendment requires reinspection of 33 additional fan rotor disks, beyond the quantity of reinspections required by AD 93–25–16. This amendment is prompted by discrepancies in several magnetic tape records discovered as a result of recent improvements in the inspection tape review process. The actions specified by this AD are intended to prevent an uncontained failure of the fan rotor disk due to fatigue cracking in the dovetail slots, which can result in inflight engine shutdowns, severe secondary damage, and fan rotor assembly separation from the engine.

DATES: Effective March 15, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 15, 1996.

Comments for inclusion in the Rules Docket must be received on or before April 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–54, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–03/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5246; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On December 21, 1993, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 93–25–16, Amendment 39–8780 (59 FR 4, January 3, 1994), applicable to AlliedSignal Inc. (formerly Garrett Engine Division) TFE731–2, –3, and –3R series turbofan engines. That AD requires eddy current inspection of certain fan rotor disks for cracks, and replacement, if necessary, of these fan rotor disks. That action was prompted by reports of an uncontained failure of a fan rotor disk on an Allied Signal Inc. Model TFE731–3 turbofan engine. The FAA investigation determined that a fatigue crack originated in the aft acute corner of the dovetail slot. The fan rotor disk had accumulated a total of 5,291 cycles in service (CIS) at the time of the failure, and had been eddy current inspected in 1990 when the disk had accumulated 4,055 CIS. The fan rotor disk displayed evidence of broaching grooves produced during the manufacture of the blade dovetail slots. These machining grooves may have contributed to the fan rotor disk failure. From a metallurgical analysis, the FAA determined that the failed fan rotor disk had dovetail cracks which were not detected at the time of the eddy current inspection. A review of the eddy current inspection process used to inspect this fan rotor disk and all fan rotor disks inspected prior to May 1991 determined that the inspection process was not acceptable. Those fan rotor disk cracks, if not corrected, could result in an uncontained failure of the fan rotor disk due to fatigue cracking in the dovetail slots, which can result in inflight engine shutdowns, severe secondary damage, and fan rotor assembly separation from the engine.

After 1991, the eddy current inspection process required magnetic tape records (henceforth referred to as tapes) of the eddy current inspection

results for the fan rotor disk dovetail slots. These tapes can be reviewed at any time following the initial inspection without inconveniencing the operator. Since the issuance of that AD, through recent improvements in the inspection tape review process, and continued review of the tapes; the FAA has identified several tape records as having discrepancies. A discrepancy does not always indicate that a crack exists. This superseding AD requires a re-inspection of 33 additional fan rotor disks, beyond the quantity of reinspections required by AD 93–25–16, to ensure that cracked fan rotor disks are removed from service. To date, eddy current inspections have detected fatigue cracks in the dovetail slots in approximately 176 (or 4%) TFE731–2, –2A, –3, and –3R fan rotor disks, and those fan rotor disks have been removed from service.

The FAA has reviewed and approved the technical contents of AlliedSignal Alert Service Bulletin (ASB) No. TFE731–A72–3578, dated May 31, 1995, that describes procedures for an improved, more definitive eddy current inspection for fan rotor disk dovetail slot cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes AD 93–25–16 to require reinspection of 33 additional fan rotor disks, beyond the quantity of reinspections required by AD 93–25–16, to ensure that cracked fan rotor disks are removed from service. This action is required to be accomplished in accordance with the ASB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95– ANE–54." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8780, (59 FR 4, January 3, 1994), and by adding a new airworthiness directive, Amendment 39–9512, to read as follows:

96–04–01 AlliedSignal Inc.: Amendment 39–9512. Docket 95- ANE–54. Supersedes AD 93–25–16, Amendment 39–8780.

Applicability: AlliedSignal Inc. (formerly Garrett Engine Division) TFE731–2, –2A, –3, –3R series turbofan engines with fan rotor disks, part numbers (P/N's) 3072162–1 through –4, 3073436–1 through –4, 3073539–2, and 3074529–2, installed on, but not limited to: Avions Marcel Dassault Falcon 10, 50, 100 series; Learjet 31, 35, 36 series; Lockheed-Georgia 1329–23, –25 series; Israel Aircraft Industries 1124 series; Raytheon British Aerospace HS125 series; and Sabreliner NA–265–65 aircraft.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained failure of the fan rotor disk due to fatigue cracking in the dovetail slots, which can result in inflight engine shutdowns, severe secondary damage, and fan rotor assembly separation from the engine, accomplish the following:

(a) No further action is required for fan rotor disks previously eddy current inspected in accordance with the requirements of AD 92–26–09 and AD 93–25–16.

(b) Remove prior to further flight fan rotor disk, P/N 3073539–2 or 3072162–2, with Serial Number (S/N) 8–18040–6300, in accordance with Allied-Signal Inc. Alert Service Bulletin (ASB) No. TFE731–A72–3504, dated November 25, 1992, or AlliedSignal Inc. ASB No. TFE731–A72–

3504, Revision 1, dated July 2, 1993, and replace with a serviceable fan rotor disk.

(c) Incorporate new eddy current inspection procedures in accordance with ASB No. TFE731–A72–3578, dated May 31, 1995, within 30 days after the effective date of this AD. Fan rotor disks requiring eddy current inspection, prior to the incorporation of the new eddy current procedure previously mentioned, may be inspected in accordance with AlliedSignal Inc. ASB No TFE731–A72–3504 dated November 25, 1992, or TFE731–A72–3504, Revision 1, dated July 2, 1993.

(d) Eddy current inspect fan rotor disks, P/N 3072162–1 through –4, 3073436–1 through –4, 3073539–2, and 3074529–2, in accordance with the Accomplishment Instructions of AlliedSignal Inc. ASB No. TFE731–A72–3578, dated May 31, 1995, and if necessary, replace with a serviceable disk, as follows:

(1) For fan rotor disks listed by S/N in Table 2 of Allied-Signal Inc. ASB No. TFE731–A72–3504, dated November 25, 1992, or AlliedSignal Inc. ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, inspect, and if necessary, replace with a serviceable fan rotor disk within 50 cycles in service (CIS) after April 9, 1993 (effective date of AD 92–26–09).

(2) For the 10 added fan rotor disks listed by S/N in Table 3 of AlliedSignal Inc. ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, with 5,000 or more CIS since new on January 18, 1994 (effective date of AD 93–25–16), inspect, and if necessary, replace with a serviceable fan rotor disk, within the next 50 CIS after January 18, 1994 (effective date of AD 93–25–16).

(3) For fan rotor disks listed by S/N in Table 3 of AlliedSignal Inc. ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, other than the 10 added fan rotor disks, with 5,000 or more CIS since new on April 9, 1993, (effective date of AD 92–26–09), inspect, and if necessary, replace with a serviceable fan rotor disk, within the next 50 CIS after April 9, 1993 (effective date of AD 92–26–09).

(4) For the 10 added fan rotor disks listed by S/N in Table 3 of AlliedSignal Inc. ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, with less than 5,000 CIS since new on January 18, 1994, (effective date of AD 93–25–16), inspect, and if necessary, replace with a serviceable fan rotor disk within the next 100 CIS after January 18, 1994, (effective date of AD 93–25–16) or prior to accumulating 5,050 CIS since new, whichever occurs first.

(5) For fan rotor disks listed by S/N in Table 3 of AlliedSignal Inc. ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, other than the 10 added fan rotor disks, with less than 5,000 CIS since new on April 9, 1993 (effective date of AD 92–26–09), inspect, and if necessary, replace with a serviceable fan rotor disk, within the next 100 CIS after April 9, 1993 (effective date of AD 92–26–09), or prior to accumulating 5,050 CIS since new, whichever occurs first.

(6) For fan rotor disks listed by S/N in Table 4 of AlliedSignal Inc. ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, inspect, and if necessary, replace with a serviceable fan rotor disk, within the next 100 CIS after January 18, 1994, (effective date of AD 93–25–16).

(7) For fan rotor disks listed by S/N in Table 1 of AHiedSignal Inc. ASB No. TFE731–A72–3578, dated May 31, 1995, inspect, and if necessary, replace with a serviceable disk, within 50 CIS after the effective date of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The actions required by this AD shall be done in accordance with the following service documents:

Document No.	Pages	Revision	Date
AlliedSignal Inc. ASB No. TFE731–A72–3578 ..... Total pages: 12.	1–12	Original	May 31, 1995.
Allied-Signal Inc. ASB No. TFE731–A72–3504 ..... Total pages: 24.	1–24	Original	November 25, 1992.
Allied-Signal Inc. ASB No. TFE731–A72–3504 ..... Total pages: 28.	1–28	Revision 1	July 2, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–03/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 15, 1996.

Issued in Burlington, Massachusetts, on February 2, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–4243 Filed 2–28–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–ANE–56; Amendment 39–9513; AD 96–04–02]

Airworthiness Directives; AlliedSignal Inc., ALF502L Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to AlliedSignal Inc. (formerly Textron Lycoming) ALF502L series turbofan engines, that establishes reduced retirement life limits for stage 1 and stage 3–7 compressors disks, and stage 2 turbine disks, and provides a drawdown schedule for disks already beyond the reduced retirement life limits. This amendment is prompted by new life analyses of these components. The actions specified by this AD are intended to prevent disk failure, which could result in an inflight engine shutdown and extensive engine damage.

DATES: Effective April 29, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 29, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Engines, 111 South 34th Street, Phoenix, AZ 85072; telephone (602) 365–2493, fax (602) 365–2210. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7148, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to AlliedSignal Inc. (formerly Textron Lycoming) ALF502L series turbofan engines was publiished in the **Federal Register** on February 28, 1995 (60 FR 10811). That action proposed to establish reduced retirement life limits for stage 1 and stage 3–7 compressors disks, and stage 2 turbine disks, and provide a drawdown schedule for disks already beyond the reduced retirement life limits. These actions must be performed in accordance with AlliedSignal Engines Service Bulletin (SB) No. ALF 502 72–0004, Revision 12, dated November 30, 1994, that describes reduced retirement lives for affected components; and AlliedSignal Engines SB No. ALF502L 72–281, dated November 30, 1994, that describes a drawdown schedule for disks already beyond the reduced retirement life limits.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 184 engines of the affected design in the worldwide fleet. The FAA estimates that 50 engines installed on aircraft of U.S. registry will be affected by this AD, and that the prorated reduced service life cost based on the cost of a new disk is approximately $16,400 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $820,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–04–02 AlliedSignal Inc.: Amendment 39–9513. Docket 94- ANE–56.

Applicability: AlliedSignal Inc. (formerly Textron Lycoming) ALF502L, L–2, L–2A, L–2C, and L–3 turbofan engines installed on but not limited to Canadair Challenger CL600 series aircraft.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent disk failure, which could result in an inflight engine shutdown and extensive engine damage, accomplish the following:

(a) Remove from service stage 1 and stage 3–7 compressor disks, and stage 2 turbine disks, in accordance with the drawdown schedule and procedures described in AlliedSignal Engines Service Bulletin (SB) No. ALF502L 72- 281, dated November 30, 1994.

(b) This AD establishes new, reduced retirement life limits for stage 1 and stage 3–7 compressor disks, and stage 2 turbine disks, in accordance with AlliedSignal Engines SB No. ALF 502 72–0004, Revision 12, dated November 30, 1994.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following AlliedSignal Engines SB's:

Document No.	Pages	Revision	Date
ALF502L 72–281 ..... Total pages: 4.	1–4	Original	November 30, 1994.
ALF 502 72–0004 ..... Total pages: 23.	1–23	12	November 30, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Engines, 111 South 34th Street, Phoenix, AZ 85072; telephone (602) 365–2493, fax (602) 365–2210. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 29, 1996.

Issued in Burlington, Massachusetts, on February 2, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–4242 Filed 2–28–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 96–NM–02–AD; Amendment 39–9526; AD 96–03–02 R1]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment clarifies information in an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires inspections to detect cracking and corrosion of the aft trunnion of the outer cylinder of the main landing gear (MLG) and various follow-on actions. That amendment also provides for termination of the inspections by repairing the outer cylinder and installing new aft trunnion bushings. The actions specified in that AD are intended to prevent the collapse of the MLG due to fracture of the aft trunnion outer cylinder. This amendment clarifies an inspection requirement of that AD. This amendment is prompted by communications received from affected operators that certain of the current requirements of the AD are unclear.

DATES: Effective February 16, 1996.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of February 16, 1996 (61 FR 3552, February 1, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2783; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: On January 22, 1996, the FAA issued AD 96–03–02, amendment 39–9497 (61 FR 3552, February 1, 1996), which is applicable to certain Boeing Model 767 series airplanes. That AD requires various inspections to detect cracking and corrosion of the aft trunnion and various follow-on actions. That AD also provides operators with the option of terminating the requirement for the repetitive inspections by repairing the outer cylinder, and replacing the aft trunnion and crossbolt bushings with new bushings. That action was prompted by a report of the collapse of the right main landing gear (MLG) due to fracture of the aft trunnion outer cylinder. The actions required by that AD are intended to prevent the collapse of the MLG due to stress corrosion cracking of the aft trunnion of the outer cylinder.

Since the issuance of that AD, the FAA has received communications from some affected operators questioning the inspection requirements of paragraph (a) of the AD. That paragraph states that operators are to perform the inspections described in "Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995." The operators question whether "Part 3" is a typographical error that should have read "paragraph III."

The FAA finds that clarification is necessary. Paragraph III of Boeing Alert Service Bulletin 767–32A0151 is entitled "Accomplishment Instructions." Within paragraph III are five separate parts, entitled "Parts 1, 2, 3, 4, and 5," each of which describes various inspection procedures and follow-on actions.

The FAA's intent in AD 96–03–02 was to require that operators perform all of the inspections (and follow-on actions) described in Parts 1, 2, 3, 4, and 5, of paragraph III, "Accomplishment Instructions," of the referenced service bulletin. The **SUPPLEMENTARY INFORMATION** section of the preamble to that AD correctly described all of the inspections contained in Parts 1, 2, 3, 4, and 5, of paragraph III of the service bulletin, as those inspections that would be required by the AD. However, the wording of paragraph (a) of AD 96–03–02 inadvertently was published as, "Perform the inspections described in Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0151 * * *" With this wording, operators may incorrectly interpret paragraph (a) as requiring the accomplishment of only the inspections that are described in Part 3 of paragraph III of the service bulletin. Such misinterpretation could result in operators failing to perform the required inspections that are described in Parts 1, 2, 4, and 5, of paragraph III.

Since it is obvious that, currently, the requirements of AD 96–03–02 are not clearly worded, the FAA has determined that the wording of paragraph (a) of the AD must be revised to clarify the required actions. This action revises paragraph (a) to state that operators must perform all of the inspections described in paragraph III, "Accomplishment Instructions," of the Boeing alert service bulletin.

Action is taken herein to clarify these requirements of AD 96–03–02 and to correctly add the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The final rule is being reprinted in its entirety for the convenience of affected operators. The effective date remains February 16, 1996.

Since this action only clarifies a current requirement, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9497 (61 FR 3552, February 1, 1996), and by adding a new airworthiness directive (AD), amendment 39–9526, to read as follows:

96–03–02 R1 Boeing: Amendment 39–9526. Docket 96–NM–02–AD. Revises AD 96–03–02, Amendment 39–9497.

Applicability: Model 767 series airplanes having line numbers 001 through 609, on which the terminating action described in paragraph (e) of this AD has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the collapse of the main landing gear (MLG) due to stress corrosion cracking of the aft trunnion of the outer cylinder, accomplish the following:

(a) Perform the inspections described in paragraph III, Accomplishment Instructions, of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, to detect cracking and corrosion of the aft trunnion of the outer cylinder of the MLG at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable. These inspections are to be accomplished in accordance with Figure 1 of that alert service bulletin. Repeat these inspections thereafter at the intervals specified in that alert service bulletin. To determine the category in which an airplane falls, the age of the outer cylinder of the MLG is to be calculated as of the effective date of this AD. For airplanes on which the age of the right MLG differs from the age of the left MLG, an operator may place the airplane into a category that is the higher (numerically) of the two categories to ease its administrative burden, and to simplify the recordkeeping requirements imposed by this AD. Once the category into which an airplane falls is determined, operators must obtain approval from the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, to move that airplane into another category.

Note 2: The broken (dash) lines used in Figure 1 of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, denote "go to" actions for findings of discrepancies detected during any of the inspections required by this AD.

Note 3: Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, refers to Boeing Alert Service Bulletin 767–32A0148, dated December 21, 1995, for procedures to repair the outer cylinder and replace the bushings in the outer cylinder of the MLG with new bushings.

(1) For airplanes identified as Category 3 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995: Perform the initial inspections within 30 days after the effective date of this AD.

(2) For airplanes identified as Category 2 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995: Perform the initial inspections within 90 days after the effective date of this AD.

(3) For airplanes identified as Category 1 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995: Perform the initial inspections prior to the accumulation of 2½ years since the MLG outer cylinder was new or overhauled, or within 150 days after the effective date of this AD, whichever occurs later.

(b) If no cracking or corrosion is detected, accomplish the follow-on actions described in the Boeing Alert Service Bulletin 767–32A0151, November 30, 1995, at the time specified in the alert service bulletin. These follow-on actions are to be accomplished in accordance with that alert service bulletin.

(c) If any cracking is detected, prior to further flight, replace the outer cylinder with a new or serviceable outer cylinder in accordance with Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995.

(d) If any corrosion is detected, accomplish the follow-on actions at the time specified in the "Corrosion Flowchart," in Figure 1 of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995. The follow-on actions are to be accomplished in accordance with that alert service bulletin.

(e) Repair of the outer cylinder and replacement of the bushings in the aft trunnion and crossbolt of the MLG with new bushings in accordance with Boeing Alert Service Bulletin 767–32A0148, dated December 21, 1995, constitute terminating action for the inspection requirements of this AD, and for the requirements of AD 95–19–10, amendment 39–9372, and AD 95–20–51, amendment 39–9398. Boeing Alert Service Bulletin 767–32A0148, dated December 21, 1995, refers to Component Maintenance Manual (CMM) 32–11–40. Operators should note that, although the CMM specifies plugging the aft trunnion lubrication fitting with a rivet, this AD does not require plugging the lube fitting to terminate the requirement of this AD, AD 95–19–10, or AD 95–20–51.

(f) Accomplishment of the requirements of this AD is considered acceptable for compliance with AD 95–19–10, amendment 39–9372, and AD 95–20–51, amendment 39–9398.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The actions shall be done in accordance with Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, and Boeing Alert Service Bulletin 767–32A0148, dated December 21, 1995. This incorporation by reference was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of February 16, 1996 (61 FR 3552, February 1, 1996). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment is effective on February 16, 1996.

Issued in Renton, Washington, on February 22, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–4507 Filed 2–28–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 67

[Docket No. 27890]

RIN 2120–AF42

Medical Standards and Certification

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; disposition of comments.

SUMMARY: On September 9, 1994, the Federal Aviation Administration (FAA) issued an emergency final rule amending the general medical standard for first-, second-, and third-class airman medical certificates. The FAA, in the same document, sought public comment on the final rule. This document disposes of the comments received in response to that rule.

ADDRESSES: Comments submitted in response to this rulemaking may be examined at the Federal Aviation Administration, Office of the Chief Counsel, Rules Docket, room 915–G, 800 Independence Avenue SW., Washington, DC, weekdays (except Federal holidays) between 830 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Tina Lombard, Aeromedical Standards Branch, (AAM–210), Office of Aviation Medicine, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9655.

SUPPLEMENTARY INFORMATION:

Background

The general medical standard for the three classes of airman medical certificates is detailed in part 67 of Title 14 of the Code of Federal Regulations (14 CFR part 67). A first-class medical certificate is required to exercise the privileges of an airline transport pilot certificate, while second- and third-class medical certificates are required to exercise the privileges of commercial and private pilot certificates, respectively. An applicant who is found to meet the appropriate medical standards is entitled to a medical certificate without restrictions other than the limit of its duration as prescribed in 14 CFR part 67.

An applicant may be ineligible for certification under §§ 67.13(f)(2), 67.15(f)(2), or 67.17(f)(2) if that person has an organic, functional, or structural disease, defect, or limitation that the Federal Air Surgeon finds: (1) makes the applicant unable to safely perform the duties or exercise the privileges of the airman certificate the applicant holds or for which the applicant is applying, or (2) may reasonably be expected within 2 years of Federal Air Surgeon's finding to make the applicant unable to safely perform those duties or exercise those privileges.

Paragraph (f)(2) of §§ 67.13, 67.15, and 67.17 provides the historical basis for denying medical certification in cases where the Federal Air Surgeon has determined that an applicant's medication or other treatment (including prescription, over-the-counter, and nontraditional medication or other treatment remedies) interferes with the applicant's ability to safely perform the duties, or exercise the privileges, of the airman certificate for which the airman is applying or holds.

Notwithstanding the FAA's long-standing medical certification policy and practice regarding medication and other treatment, the U.S. Court of Appeals for the Seventh Circuit determined that paragraph (f)(2) did not provide a basis for denial of medical certification based on medication alone. *Bullwinkel v. Federal Aviation Administration*, 23 F.3d 167, (7th Cir., *reh'g. denied*). The Seventh Circuit's decision that medication alone was not covered by paragraph (f)(2) raised serious safety concerns within the FAA. As a result of those concerns, the FAA on September 9, 1994, promulgated an emergency final rule that was immediately effective to clarify and codify the FAA's policy regarding an individual who holds, or is applying for, an airman medical certificate in a case where medication or other treatment was found to interfere, or may reasonably be expected to interfere, with that individual's ability to safely perform airman duties (57 FR 46706).

The September 9, 1994, emergency final rule amended paragraph (f) of §§ 67.13, 67.15, and 67.17 by adding to each a new paragraph (3), which sets out the standard for certification where medication or other treatment is involved. Each paragraph (f)(3) made ineligible for unrestricted medical certification any applicant whose medication or other treatment is found by the Federal Air Surgeon to make, or may reasonably be expected to make with 2 years after the finding, that applicant unable to safely perform the duties or exercise the privileges of his or her airman certificate. The final rule did not change the FAA's current and long-standing application of the medical certification standards. Rather, its sole purpose was to expressly codify the agency's practice in light of the *Bullwinkel* decision.

Also, for continuity with the current administration of other medical certification procedures, reference to this emergency final rule was added by revising § 67.25, Delegation of authority, and § 67.27, Denial of medical certificate.

The FAA invited public comment on the final rule and established a 60-day comment period, which closed on November 8, 1994.

Discussion of Comments

The FAA received six comments in response to the emergency final rule; four comments opposed and two comments supported the rule. The commenters included five individuals and one association, the Aerospace Medical Association (ASMA).

One commenter states that the FAA was wrong to amend the rules because of a single case. The commenter suggests that a better standard would be to list those drugs in the regulations that would be considered automatically disqualifying or potentially disqualifying.

One commenter characterizes the rule as a major change and objects to it being issued as a final rule without prior public comment. He suggests that the FAA rescind the final rule and schedule the subject for a notice of proposed rulemaking.

One commenter states that his third-class medical certificate was revoked because he was taking a medication to control symptoms of bipolar disorder. He contends that the matter of disqualification should be based solely on the underlying medical condition. He further contends that medication can control symptoms for approximately 80 percent of people with the disorder. The commenter concludes that patients taking certain medications for bipolar disorder are "effectively cured" of the underlying condition and should be eligible for medical certification.

One commenter states that there was no cause for issuing an emergency rule and that the FAA's policy was shown in court to be contrary to law. He contends that the FAA's choice of rulemaking procedure was improper. Further, he objects that the September 9, 1994, final rule does not specify the names of all disqualifying medication or treatment which the rule encompasses. He states that the rule enables the FAA to make judgments which may be arbitrary or unreasonable. The commenter suggests that this rulemaking action should have been contained in an overall revision of parts 61 and 67.

The ASMA states that it strongly supports the final rule. Further, the ASMA concurs with the dissenting opinion in the *Bullwinkel* case in that the general medical standard of the airman medical standards should be viewed as including all elements of medicine, i.e., medication and other treatments.

One commenter agrees with the FAA's action but expresses concern about the change in the rules without benefit of prior public comment.

FAA Response

The FAA's rationale for issuing this emergency final rule is fully set out in the preamble to the rule published at 59 FR 46706 on September 9, 1994.

As stated in the preamble to the final rule, the FAA determined an emergency existed that required immediate action; that determination is unchanged by the comments. A delay could have had an adverse effect on aviation safety. Neither a notice of proposed rulemaking nor incorporation of the amendment into a possible part 67 revision, as proposed by commenters, was determined to be in the public interest.

As to the commenters' call for a "list" of disqualifying medications, the Federal Air Surgeon has determined that an exhaustive "listing" of specific medications or specific treatments to determine an airman's eligibility is not possible. All the positive and negative effects of any medication or treatment are rarely appreciated when first introduced. In some cases, substantial amounts of time may pass before a particular drug or treatment can be judged with confidence, particularly with its application to individuals in the aviation environment. Because of the continuous changes in the field of medicine and pharmacology, the FAA has determined that publishing a static list of disqualifying medication is not appropriate or practical.

In case where an individual has been determined to have a disqualifying condition and/or use a disqualifying medication or other treatment and requests special issuance of a medical certificate, the Federal Air Surgeon considers not only all relevant scientific data on the particular condition and/or medication or other treatment but also the individual's particular situation and the role that he/she will perform in aviation. The case-by-case review can and does result in instances where the particular condition and/or medication or other treatment precludes the affected individual from receiving even an individually tailored special issuance medical certificate. Conversely, with the availability of new data and experience, some similarly affected individuals may, by adjustments in their medication dosage or other treatment, or restrictions in their privileges, for example, receive special issuance of medical certificates.

Because this careful analysis of each special issuance case is frequently not fully appreciated, the perception exists that many conditions and/or medications or other treatment are always disqualifying. In fact, with the availability of new data and experience, the Federal Air Surgeon has found it safe to issue special medical certificates to the majority of those individuals who historically were always denied. But, as there are literally hundreds of diagnoses, medications, and other treatments, as well as thousands of combinations that frequently change over time, the FAA cannot, as a practical matter, produce a "list" of medications and/or treatments that would be considered disqualifying or, conversely, acceptable for airman medical certification.

While at any point in time there may be treatment and medications that preclude the special issuance of a medical certificate, the FAA will continue to seek public comment, when appropriate, as it has done recently concerning insulin-using diabetics (see 59 FR 67426, September 29, 1994), to assist the Federal Air Surgeon in formulating policy on the special issuance of medical certificates.

Finally, the *Bullwinkel* decision highlighted a deficit in FAA procedures that the emergency final rule has now corrected; the agency does not view the decision as finding the policy and practice of the FAA to be "contrary to law" as characterized by one commenter. The rule change clarifies and resolves any previous ambiguity in FAA's medical standards regarding medication and/or other treatment.

Conclusion

Accordingly, after careful consideration of all the comments submitted, the FAA has determined that no further rulemaking action is warranted.

Issued in Washington, DC, on February 23, 1996.

Jon L. Jordan,

Federal Air Surgeon.

[FR Doc. 96–4686 Filed 2–28–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AWP–34]

Amendment of Class E Airspace; Winnemucca, NV; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects errors in the geographic coordinates of a final rule that was published in the **Federal Register** on January 10, 1996, Airspace Docket No. 95–AWP–34, The Final Rule amended Class E airspace at Winnemucca, NV.

EFFECTIVE DATE: 0901 UTC February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 96–377, Airspace Docket No. 95–AWP–34, published on January 10, 1996 (61 FR 693), revised the description of the Class E airspace area at Winnemucca, NV. An error was discovered in the geographic coordinates for the Winnemucca, NV, Class E airspace area. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the Class E airspace area at Winnemucca, NV, as published in the **Federal Register** on January 10, 1996 (61 FR 693), (**Federal Register** Document 96–377), are corrected as follows:

§ 71.1 [Corrected]

On page 694, in the second and third columns, the airspace description for Winnemucca, NV, is corrected to read as follows:

* * * * * *

AWP NV E5 Winnemucca, NV [Corrected]

Winnemucca Municipal Airport, NV.
(lat. 40°53'47" N, long. 117°48'21" W)
Winnemucca NDB
(lat. 40°57'48" N, long. 117°50'29" W)
Battle Mountain VORTAC
(lat. 40°34'09" N, long. 116°55'20" W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Winnemucca Municipal Airport and within 7.8 miles northwest and 4.3 miles east of the Winnemucca NDB 342° and 162° bearings, extended from the 4.3 miles south to 8.7 miles north of the NDB. That airspace extending upward from 1,200 feet above the surface within 4.3 miles northeast and 9.6 miles southwest of the Winnemucca NDB 342° and 162° bearings, extending from the southeast edge of V–113 to 9.6 miles southeast of the NDB and within 4.3 miles each side of the 162° bearing from the Winnemucca NDB, extending from 9.6 miles southeast of the NDB to the north edge of V–32 and within 4.3 miles each side of the Battle Mountain VORTAC 296° radial extending from 10.4 miles to 43.4 miles northwest of the Battle Mountain VORTAC and that airspace bounded by a line beginning at lat. 40°33'00" N, long. 117°52'00" W; to lat. 40°37'01" N, long. 117°47'32" W; to lat. 40°33'58" N, long. 117°46'15" W, thence to the point of beginning and that airspace bounded by a line beginning at lat. 41°05'00" N, long. 118°12'30" W; to lat. 41°09'36" N, long. 118°08'50" W; to lat. 41°03'00" N, long. 118°06'00" W, thence to the point of beginning and that airspace bounded by a line beginning at lat. 40°45'38" N, long. 117°39'23" W; to lat. 40°36'30" N, long. 117°15'15" W; to lat. 40°35'00" N, long. 117°34'30" W, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on February 14, 1996.

Leonard A. Mobley,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–4560 Filed 2–28–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28475; Amdt. No. 1712]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

The amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on February 23, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103. 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§ 97.23, § 97.25, § 97.27, § 97.29, § 97.31, § 97.33, § 97.35—[Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective April 25, 1996*

Searcy, AR, Searcy Municipal, GPS RWY 19, Amdt 1
Mesa, AZ, Falcon Fld, GPS RWY 4R, Orig
Colorado Springs, CO, City of Colorado Springs Muni, GPS RWY 17L, Orig
Colorado Springs, CO, City of Colorado Springs Muni, GPS RWY 35L, Orig
Colorado Springs, CO, City of Colorado Springs Muni, GPS RWY 35R, Orig
Rifle, CO, Garfield County Regional, GPS RWY 8, Orig
Kokomo, IN, Kokomo Muni, VOR or GPS RWY 32, Amdt 19
Kokomo, IN, Kokomo Muni, VOR/DME or GPS RWY 23, Amdt 19
Kokomo, IN, Kokomo Muni, ILS RWY 23, Amdt 8
Kokomo, IN, Kokomo Muni, VOR/DME RNAV or GPS RWY 5, Amdt 5
De Quincy, LA, De Quincy Industrial Airpark, GPS RWY 15, Orig
De Quincy, LA, De Quincy Industrial Airpark, GPS RWY 33, Orig
Eunice, LA, Eunice, GPS RWY 34, Orig
Opelousas, LA, St Landry Parish-Ahart Field, GPS RWY 35, Orig
Winnfield, LA, David G. Joyce, GPS RWY 26, Orig
Big Rapids, MI, Roben-Hood, VOR/DME or GPS–A, Amdt 7
Winona, MN, Winona Muni-Max Conrad Field, GPS RWY 29, Orig
Lovelock, NV, Derby Field, GPS RWY 1, Orig
Alamogordo, NM, Alamogorado-White Sands Regional, GPS RWY 3, Orig
Clovis, NM, Clovis Muni, GPS RWY 30, Orig
Tucumcari, NM, Tucumcari Muni, GPS RWY 3, Orig
Zuni Pueblo, NM, Black Rock, GPS RWY 7, Orig
Portland, OR, Portland Intl, LOC/DME RWY 10L, Orig
Dayton, TN, Mark Anton, GPS RWY 21, Orig
Burnet, TX, Burnet Muni Kate Craddock Field, GPS RWY 1, Orig
Clarksville, VA, Marks Muni, VOR/DME–A, Orig
Fond Du Lac, WI, Fond Du Lac County, GPS RWY 36, Orig

** * * Effective Upon Publication*

Hagerstown, MD, Washington County Regional, ILS RWY 27, Amdt 7
Santa Fe, NM, Santa Fe County Muni, VOR/DME–A, Amdt 1
Santa Fe, NM, Santa Fe County Muni, VOR OR GPS RWY 33, Amdt 9
Santa Fe, NM, Santa Fe County Muni, NDB RWY 2, Amdt 4
Santa Fe, NM, Santa Fe County Muni, ILS RWY 2, Amdt 5

Note: The FAA published procedures in Docket No. 28461; Amdt. No. 1710 to Part 97 of the Federal Aviation Regulations (VOL. 61 FR No. 33 Page 6108; dated Feb. 16, 1996) under Section 97.31 which are hereby amended as follows:

Charlotte, NC, Charlotte/Douglas Intl, RADAR–1, Amdt 19A, CANCELLED; Effective 25 APR 96.
Gastonia, NC, Gastonia Muni, RADAR–1 Amdt 4A, CANCELLED; Effective 28 MAR 96.

[FR Doc. 96–4687 Filed 2–28–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28480; Amdt. No. 1714]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with

Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedure (SIAPs) will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on February 23, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective APR 25, 1996*

Stuttgart, AR, Stuttgart Muni, NDB or GPS RWY 18, Amdt 9 Cancelled
Stuttgart, AR, Stuttgart Muni, NDB RWY 18, Amdt 9
Boone, IA, Boone Muni, NDB or GPS RWY 14, Amdt 9 Cancelled
Boone, IA, Boone Muni, NDB RWY 14, Amdt 9
Clinton, IA, Clinton Muni, VOR/DME or GPS RWY 21, Amdt 8 Cancelled
Clinton, IA, Clinton Muni, VOR/DME RWY 21, Amdt 8
Clinton, IA, Clinton Muni, NDB or GPS RWY 14, Amdt 3 Cancelled
Clinton, IA, Clinton Muni, NDB or GPS RWY 14, Amdt 3
De Quincy, LA, De Quincy Industrial Airpark, VOR/DME or GPS RWY 33, Orig Cancelled
De Quincy, LA, De Quincy Industrial Airpark, VOR/DME RWY 33, Orig
De Quincy, LA, De Quincy Industrial Airpark, NDB or GPS RWY 15, Amdt 1 Cancelled
De Quincy, LA, De Quincy Industrial Airpark, NDB RWY 15, Amdt 1
Opelousas, LA, St Landry Parish-Ahart Field, VOR/DME or GPS RWY 35, Orig-A Cancelled
Opelousas, LA, St Landry Parish-Ahart Field, VOR/DME RWY 35, Orig-A
Kaiser/Lake Ozark, MO, Lee C. Fine Memorial, NDB or GPS RWY 21, Amdt 6 Cancelled
Kaiser/Lake Ozark; MO, Lee C. Fine Memorial, NDB RWY 21, Amdt 6
Albemarle, NC, Stanly County, NDB or GPS RWY 22, Orig.
Alamogordo, NM, Alamogordo-While Sands Regional, VOR or GPS RWY 3, Orig Cancelled
Alamogordo, NM, Alamogordo-While Sands Regional, VOR RWY 3, Orig
Las Vegas, NM, Las Vegas Muni, VOR or GPS RWY 2, Amdt 10A Cancelled
Las Vegas, NM, Las Vegas Muni, VOR RWY 2, Amdt. 10A
Las Vegas, NM, Las Vegas Muni, VOR or GPS RWY 20, Amdt 5A Cancelled
Las Vegas, NM, Las Vegas Muni, VOR RWY 20, Amdt 5A
Taos, NM, Taos Muni, NDB or GPS RWY 4, Orig-A Cancelled
Taos, NM, Taos Muni, NDB RWY 4, Orig-A
Zuni Pueblos, NM, Black Rock, VOR/DME or GPS RWY 7, Amdt 1 Cancelled
Zuni Pueblo, NM, Black Rock, VOR/DME RWY 7, Amdt 1
Burnet, TX, Burnet Muni Kate Craddock Field, NDB or GPS RWY 1, Amdt 3 Cancelled
Burnet, TX, Burnet Muni Kate Craddock Field, NDB RWY 1, Amdt 3
Dumas, TX, Moore County, VOR/DME RNAV or GPS RWY 19, Amdt 3 Cancelled
Dumas, TX, Moore County, VOR/DME RNAV RWY 19, Amdt 3
Houston, TX, Houston Intercontinental, NDB or GPS RWY 26, Amdt 1A Cancelled
Houston, TX, Houston Intercontinental, NDB RWY 26, Amdt 1A

[FR Doc. 96–4689 Filed 2–28–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28476; Amdt. No. 1713]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue. SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
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FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on February 23, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to reads as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
02/09/96	TN	Memphis	Memphis Intl	FDC 6/0926	ILS RWY 36L AMDT 11. . .
02/09/96	TX	Fort Worth	Fort Worth Meacham Intl	FDC 6/0929	ILS RWY 16L, AMDT 5. . .
02/10/96	WV	Lewisburg	Greenbrier Valley	FDC 6/0955	ILS RWY 4 AMDT 7A. . .
02/12/96	TX	Fort Worth	Fort Worth Meacham Intl	FDC 6/0973	NDB OR GPS RWY 16L, AMDT 3. . .
02/12/96	TX	Fort Worth	Fort Worth Meacham Intl	FDC 6/0974	NDB OR GPS RWY 34R, AMDT 5. . .
02/13/96	MN	Brainerd	Brainerd-Crow Wing County Regional.	FDC 6/0999	ILS RWY 23 AMDT 4. . .
02/13/96	MN	Brainerd	Brainerd-Crow Wing County Regional.	FDC 6/1000	VOR/DME RWY 12 AMDT 8. . .
02/14/96	MN	Cambridge	Cambridge Muni	FDC 6/1009	NDB OR GPS RWY 34 AMDT 6. . .

FDC date	State	City	Airport	FDC No.	SIAP
02/14/96	NE	Falls City	Brenner Field	FDC 6/1017	NDB OR GPS–A, AMDT 3. . .
02/14/96	TX	Fort Worth	Fort Worth Meacham Intl	FDC 6/1023	LOC BC RWY 34R, AMDT 7. . .
02/15/96	CA	Lakeport	Lampson Field	FDC 6/1036	NDB OR GPS–A ORIG–A. . .
02/20/96	CA	Victorville	Southern California Intl	FDC 6/1111	ILS RWY 17 ORIG. . .

FR Doc. 96–4688 Filed 2–28–96; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 83G–0062]

Direct Food Substances Affirmed as Generally Recognized as Safe; Lactase Enzyme Preparation From Candida Pseudotropicalis

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to affirm that lactase enzyme preparation derived from *Candida pseudotropicalis* for use in milk and milk-derived products to hydrolyze lactose is generally recognized as safe (GRAS). This action is in response to a petition submitted by Pfizer, Inc.

DATES: Effective February 29, 1996. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications listed in new § 184.1387, effective February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Nega Beru, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3097.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the procedures described in § 170.35 (21 CFR 170.35), Pfizer, Inc., 235 East 42d St., New York, NY 10017, submitted a petition (GRASP 2G0282) proposing that lactase enzyme preparation from *C. pseudotropicalis* be affirmed as GRAS for use as a direct human food ingredient. (Lactase, the enzyme, is to be distinguished from lactase enzyme preparation, which contains lactase as the principal active component but also contains other components derived from the production organism and fermentation media. This document will refer to the former as "lactase" and to the latter as "lactase enzyme preparation.") Lactase enzyme preparation is used to hydrolyze lactose in milk and milk products.

FDA published a notice of filing of this petition in the **Federal Register** of March 29, 1983 (48 FR 13098), and gave interested persons an opportunity to submit comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. FDA received no comments in response to that notice.

II. Standards for GRAS Affirmation

Under § 170.30 (21 CFR 170.30), general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of substances added to food. The basis of such views may be either: (1) Scientific procedures, or (2) in the case of a substance used in food prior to January 1, 1958, experience based on common use in food (§ 170.30(a)). General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive and ordinarily is to be based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)). General recognition of safety through experience based on common use in food prior to January 1, 1958, may be determined without the quantity or quality of scientific procedures required for approval of a food additive, and ordinarily is to be based upon generally available data and information concerning the pre-1958 history of use of the food ingredient (§ 170.30(c)).

The petition states that *C. pseudotropicalis* was isolated from dairy products prior to 1958 (Refs. 1 and 2). Therefore, the petition argues, lactase produced by the organism has been part of the human diet for many years and may be presumed to have been in common use in food prior to January 1, 1958. The petition also states that Pfizer, Inc., first began commercial production of lactase enzyme preparation derived from *C. pseudotropicalis* in 1982 for use in certain dairy products.

The agency recognizes that *C. pseudotropicalis* was isolated from dairy products prior to 1958. However, lactase enzyme preparation derived from *C. pseudotropicalis* does not itself have a history of common use as an ingredient in food before 1958. Therefore, the enzyme preparation does not qualify for GRAS status based on a history of common use in food (§ 170.30(c)). Accordingly, FDA has evaluated the enzyme preparation on the basis of scientific procedures under § 170.30(b).

In evaluating this petition, the agency reviewed information concerning: (1) The identity and function of the enzyme, (2) the production and purification of the lactase enzyme preparation, and (3) the safety of the production organism and the finished lactase enzyme preparation.

III. Identity and Technical Effect

Lactase is the accepted name for the enzyme β-D-galactoside galactohydrolase (EC 3.2.1.23), which catalyzes the hydrolysis of the disaccharide lactose to its component monosaccharides, glucose and galactose. Lactase enzyme preparations may be produced by fermentation utilizing any of a large number of microorganisms. A typical example is the enzyme produced by the yeast *Kluyveromyces lactis* (Ref. 3).

The lactase preparation that is the subject of this petition is a soluble enzyme preparation derived from the yeast *C. pseudotropicalis* and is composed of the enzyme lactase as the principal active ingredient, other components derived from the production organism and the fermentation media, residual amounts of processing aids, and substances added as stabilizers or diluents. The petitioned enzyme preparation meets the general and additional requirements for enzyme preparations found in the Food Chemicals Codex, 3d ed. (1981), which are incorporated by reference in § 184.1387 (Ref. 4).

Lactase enzyme preparation is intended for use in hydrolyzing lactose to reduce the lactose content of food products. The petitioner provided published information to demonstrate that lactase enzyme preparation from *C. pseudotropicalis* hydrolyzes lactose in milk and milk products.

IV. Production and Purification of Lactase Enzyme Preparation

The lactase enzyme preparation that is the subject of this petition is produced by controlled aerobic fermentation using a pure culture of the food-derived yeast *C. pseudotropicalis*, aseptically grown in a medium containing suitable food-grade carbohydrates, proteins, mineral salts, and processing aids. The isolated cells are mixed with a warm buffer solution consisting of potassium phosphate (mono- and dibasic) and manganous sulfate and allowed to autolyze for up to 24 hours. The resulting material is clarified to remove cell debris and other insoluble solids, and the lactase-containing yeast extract is concentrated by processes appropriate for food use, including ultrafiltration. Glycerol and/or sorbitol may be added as stabilizers, and suitable preservatives may be incorporated during processing. The stabilized lactase preparation is adjusted to a standard potency using a combination of water mixed with glycerol or sorbitol.

V. Safety Information

In its petition, Pfizer, Inc., provided published information to document that the organism *C. pseudotropicalis* was isolated from dairy products as early as 1952 (Refs. 1 and 2). Pfizer, Inc., argues that since the organism is a copious producer of lactase (Ref. 5), both the organism and the lactase it produces have been ingested by man for many years. In addition, Pfizer, Inc., points out that *C. pseudotropicalis* resembles *K. fragilis* (a yeast, also known as *Saccharomyces fragilis*, that is approved as a direct food additive ((§ 172.896) (21 CFR 172.896))) in all respects except that *C. pseudotropicalis* is unable to reproduce sexually (Refs. 1 and 6). *K. fragilis*, like *C. pseudotropicalis*, has been isolated from dairy products (Refs. 1 and 7); in fact, the organisms are often found together in dairy foods (Ref. 5).

Pfizer, Inc., presented published reports to establish the similarity between *C. pseudotropicalis* and *K. fragilis*. For example, in an electrophoretic comparison of enzymes, a method used to clarify the taxonomical and physiological relationships among strains, the enzymatic patterns of *C. pseudotropicalis* and its perfect state, *K. fragilis*, were shown to coincide (Ref. 8). Further, a study using a deoxyribonucleic acid (DNA) reassociation technique showed that, within the accuracy permitted by the technique, *C. pseudotropicalis* and *K. fragilis* have identical DNA sequences (Ref. 9).

The close similarity between the source microorganism (*C. pseudotropicalis*) and *K. fragilis*, which FDA has determined is safe for use as a direct food additive (§ 172.896), supports the safety of the enzyme preparation (Refs. 10 and 11). Further, the information submitted by the petitioner establishes that lactase produced by both yeasts has been ingested by humans for many years with no reported adverse effects (Ref. 12).

To further document the safety of *C. pseudotropicalis*, Pfizer, Inc., presented a published study which compared the pathogenic potential of several industrial yeasts with that of established pathogens. The study found that neither *C. pseudotropicalis* nor *K. fragilis* produced signs of tissue invasion or disease. The authors of the study categorized both organisms in a group of nonpathogenic organisms (Ref. 13). Finally, Pfizer, Inc., submitted unpublished corroborative studies conducted in mice to confirm the nonpathogenicity of *C. pseudotropicalis*.

After conducting a review of the literature and evaluating these studies, the agency concludes that *C. pseudotropicalis* is neither pathogenic nor toxicogenic (Refs. 14 and 15). Furthermore, the agency has determined that the autolysis and filtration steps used in producing and purifying the lactase enzyme preparation effectively remove viable cells of the production organism (Ref. 15).

Pfizer, Inc., also presented corroborative unpublished toxicity studies to establish the safety of lactase enzyme preparation derived from *C. pseudotropicalis*. These were: (1) An acute oral toxicity study in rats, (2) mutagenic and cytogenetic assays, and (3) 90-day oral toxicity studies in rats and dogs. The agency has evaluated the studies and concludes that the studies showed no evidence of toxicity or genotoxicity (Ref. 16).

Finally, Pfizer, Inc., presented information regarding use levels of the enzyme preparation in milk and milk products. Based on this information, the agency concludes that the use of lactase enzyme preparation from *C. pseudotropicalis* would not add to the total consumption of lactase from all sources because the petitioned enzyme preparation will be substituted for other lactase enzyme preparations currently in use (Ref. 17).

VI. Conclusions

The agency has evaluated the information in the petition, along with other available information, and concludes that lactase enzyme preparation derived from *C. pseudotropicalis* is GRAS. This conclusion is based on published information, corroborated by unpublished data and information.

Therefore, the agency is affirming that lactase enzyme preparation derived from *C. pseudotropicalis* is GRAS with no limits on its conditions of use other than current good manufacturing practice, in accordance with 21 CFR 184.1(b)(1). This GRAS affirmation is based on evaluation of the use of the enzyme preparation to reduce the lactose content of milk and milk-derived food products.

The agency further finds that because the principal active ingredient of the enzyme preparation is safe and because expected impurities in the enzyme preparation do not provide any basis for a safety concern, the general requirements and additional requirements for enzyme preparations given in the Food Chemicals Codex, 3d ed. (1981), pp. 107–110, are adequate as minimum criteria for food-grade lactase enzyme preparations derived from *C. pseudotropicalis*.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(7) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Impacts

FDA has examined the impact of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is significant if it meets any one of a number of conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or raising novel legal or policy issues. The Regulatory Flexibility Act requires analyzing options for regulatory relief for small businesses.

FDA finds that this final rule is not a significant regulatory action as defined by Executive Order 12866. The final rule does not raise novel legal or policy

issues. The compliance cost to firms currently in the industry is zero because the rule prohibits no current activity. Potential benefits include the wider use of the enzyme preparation because of reduced uncertainty concerning its regulatory status, and any resources saved by eliminating the need to prepare further petitions to affirm the GRAS status of this use of the enzyme preparation.

Finally, in compliance with the Regulatory Flexibility Act, FDA certifies that the final rule will not have a significant impact on a substantial number of small businesses. The compliance cost to small businesses currently in the industry is zero because no current activity is prohibited under the rule.

IX. Effective Date

As this rule recognizes an exemption from the food additive definition in the Federal Food, Drug, and Cosmetic Act, and from the approval requirements applicable to food additives, no delay in effective date is required by the Administrative Procedure Act (5 U.S.C 553(d)). The rule will therefore be effective immediately (5 U.S.C. 553(d)(1)).

X. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Lodder, J., *The Yeasts: A Taxonomic Study*, 2d ed., pp. 345–348, 1025–1027, North Holland Publishing Co., Amsterdam, 1970.
2. Rose, A. H., and J. S. Harrison, *The Yeasts, V 1, Biology of Yeasts*, p. 139, Academic Press, New York, 1969.
3. 21 CFR 184.1388.
4. "Monograph on Enzyme Preparations," in *Food Chemicals Codex*, 3d ed., National Academy Press, Washington, DC, pp. 107–110, 1981.
5. Schmidt, J. L., and J. Lenoir, "Contribution to the Study of Yeast Flora in Camembert Cheese. Its Development During Ripening," *Lait* 58 (577):355–370, 1978.
6. Kreger van Rij, N. J. W., "*The Yeasts: A Taxonomic Study*," pp. 233–234, North Holland Pub. Co., Amsterdam, 1970.
7. Lutwick, L. I., H. J. Phaff, and D. A. Stevens, "*Kluyveromyces fragilis* as an Opportunistic Fungal Pathogen in Man," *Sabouraudia* 18:69–73, 1980.
8. Yamazaki, M., and K. Komagata, "Asporogenous Yeasts and Their Supposed Ascosporogenous States: An Electrophoretic Comparison of Enzymes," *Journal of General and Applied Microbiology*, 28:119–138, 1982.
9. Letter from H. J. Phaff, University of California, Davis, to W. C. Wernau, Pfizer, Inc., February 13, 1980.
10. Memorandum from T. J. McKay, FDA, to M. Custer, FDA, November 8, 1982.
11. Memorandum from C. B. Johnson, FDA, to N. Beru, FDA, February 2, 1994.
12. Memorandum from C. B. Johnson, FDA, to the Direct Additives Branch, FDA, December 6, 1988.
13. Holzschu, D. L. et al., "Evaluation of industrial yeast for pathogenicity," *Sabouraudia* 17:71–78, 1979.
14. Memorandum from P. Mislivec, FDA, to M. Custer, FDA, October 22, 1982.
15. Memorandum from J. M. Madden, FDA, to M. Peiperl, FDA, November 5, 1993.
16. Memorandum from A. N. Milbert, FDA, to V. Prunier, FDA, August 13, 1984.
17. Memorandum from J. Modderman, FDA, to V. Prunier, FDA, November 7, 1984.

List of Subjects in 21 CFR Part 184

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. New § 184.1387 is added to subpart B to read as follows:

§ 184.1387 Lactase enzyme preparation from Candida pseudotropicalis.

(a) This enzyme preparation is derived from the nonpathogenic, nontoxicogenic yeast *C. pseudotropicalis*. It contains the enzyme lactase (β-D-galactoside galactohydrolase, EC 3.2.1.23), which converts lactose to glucose and galactose. It is prepared from yeast that has been grown by a pure culture fermentation process.

(b) The ingredient meets the general requirements and additional requirements for enzyme preparations in the Food Chemicals Codex, 3d ed. (1981), pp. 107–110, which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitations other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme, as defined in § 170.3(o)(9) of this chapter, to convert lactose to glucose and galactose.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. Current good manufacturing practice is limited to use of this ingredient to reduce the lactose content in milk and milk-derived food products where food standards do not preclude such use.

Dated: February 15, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–4629 Filed 2–28–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 81

[AG Order No. 2009–96]

RIN 1105–AA38

Designation of Agencies To Receive and Investigate Reports Required Under the Victims of Child Abuse Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule carries out the Attorney General's responsibilities under the child abuse reporting provisions of the Victims of Child Abuse Act of 1990 ("VCAA"). The VCAA requires persons engaged in certain specified professions and activities on federal lands or facilities to report incidents of child abuse to the appropriate federal, state, or local agency designated by the Attorney General. In order to facilitate effective reporting, the VCAA requires the Attorney General to "designate an agency" to receive and investigate such reports of child abuse. This rule sets forth the Attorney General's designations and certain other matters covered by the VCAA's reporting requirements.

EFFECTIVE DATE: This rule is effective April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Terry R. Lord, Acting Chief, Child Exploitation and Obscenity Section, Criminal Division, Washington, D.C. 20530, (202) 514–5780.

SUPPLEMENTARY INFORMATION:

I. Background

The child abuse reporting provisions of the Victims of Child Abuse Act (VCAA) were enacted as section 226 of the Crime Control Act of 1990, Pub. L. No. 101–647, 104 Stat. 4806, *codified at* 42 U.S.C. 13001–13041, 3796aa–3796aa–8, and 18 U.S.C. 403, 2257, and 3509. As set forth at 42 U.S.C. 13031, the VCAA requires persons engaged in certain professional capacities or activities on federal lands or on federally operated facilities (as well as certain facilities covered by federal contracts) ("covered professional") to report incidents of child abuse to an agency designated by the Attorney General to receive and investigate such reports. On January 3, 1994, the Department of Justice published a proposed rule promulgating the Attorney General's designation of the agencies to receive and investigate these reports of child abuse (59 FR 37). Having received and considered comments submitted in response to the proposed rule, the Attorney General is now promulgating a final rule on this subject.

Under the provisions of 42 U.S.C. 13031(d), the Attorney General may designate non-federal agencies to receive and investigate the child abuse reports, provided that the designation is formalized by a written agreement. Under the rule, reports of child abuse made pursuant to 42 U.S.C. 13031 are to be submitted to the federal, state, tribal or local law enforcement or child protective services agency that currently has jurisdiction to investigate reports of child abuse or protect child abuse victims in the federal land area or facility in question. Where no agency currently qualifies for designation under the rule, the rule designates the Federal Bureau of Investigation ("FBI") to receive and investigate the reports of child abuse until another agency qualifies for such designation. If the child abuse reported by the covered professional pursuant to 42 U.S.C. 13031 occurred outside the federal area or facility in question, the designated agency receiving the report must forward the matter to the appropriate authority with jurisdiction over the potential offense. For example, a covered reporting professional may, while working on federal land or in a federally operated facility, learn of facts that give reason to suspect that a child has suffered abuse *outside* the federal area in question. In such a circumstance, the covered professional would report the abuse in the same manner as if the abuse occurred within the federal area in question. The rule contemplates that the designated agency receiving the report will immediately forward the matter to the appropriate authority with jurisdiction outside the federal area in question.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866. This rule does not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612. This rule meets the applicable standards provided in sections 2(a) and 2(b) of Executive Order 12778. Notice of the proposed rule was published in the Federal Register on January 3, 1994, and comments were solicited (59 FR 37). A discussion of comments received pursuant to that notice follows.

II. Summary of Comments and Department's Responses

Comments on the proposed rule were received from a number of affected federal and state agencies. Set forth below is a summary of those comments and the Department's response to them.

Comments from the New Jersey Division of Youth and Family Services:

1. A distinction should be made between child abuse offenses committed against children by caregivers and child assault offenses committed by other adults.

Response: Such a distinction is not contemplated or authorized by the underlying statutory requirement, 42 U.S.C. 13031. The statutory reporting requirement is not qualified by any distinction concerning the status of persons committing the abuse in question.

2. The list of "covered professionals" mandated to report child abuse or neglect should be expanded to include additional employees on federal land.

Response: This list cannot be expanded because to do so would exceed the scope permitted by the enabling statute. *See* 42 U.S.C. 13031(b). The statute specifically designates the mandated reporters by their profession or activity.

3. The proposed rule does not address the reporting of child abuse occurring *off* federal land or facilities, but which becomes known to mandated reporters employed at those locations.

Response: The rule has been clarified to mandate that covered professionals report any incident of suspected child abuse as defined in the statute, regardless of where the abuse occurred. If the incident of suspected child abuse occurred outside the federal area or facility in question, the designated agency receiving the report must forward the matter to the appropriate authority with jurisdiction.

Comments from Family Advocacy Program, The Office of the Assistant Secretary of Defense:

1. Federal "covered professionals" must be required to report incidents of abuse or neglect regardless of where the alleged abuse occurred.

Response: As indicated in response to comment 3 from the New Jersey Division of Youth and Family Services, the rule has been clarified as requested.

2. Amend Section 81.2 of the proposed rule so that the federal agencies or administrators on federal lands or federally operated or contracted facilities have "primary responsibility" for entering into a Memorandum of Understanding or other form of formal written agreement for the reporting of suspected cases of child abuse.

Response: The rule contemplates that the United States will take the lead in initiating the written agreements where needed.

3. Include a requirement that the FBI "closely coordinate" efforts with the local law enforcement or child protective services because the federal authorities do not have the authority to remove a child from the home to prevent further abuse.

Response: It is contemplated that the FBI will closely coordinate with local law enforcement and child protective services since federal authorities usually have no jurisdiction to remove a child from the home to prevent further abuse.

Comments from the Diplomatic Security Service, the United States Department of State:

1. Indicate that reports of child abuse arising at the United States diplomatic and consular posts abroad should be made to the appropriate Special Agent or Regional Security Officer of the Department of State's Diplomatic Security Service.

Response: The requested amendment is not necessary because, under the current language of the proposed rule, the Diplomatic Security Service would constitute the "designated agency" to receive and investigate reports of child abuse under the circumstances described. Section 81.2 stipulates that "[r]eports of child abuse required by 42

U.S.C. 13031 shall be made to the local law enforcement agency or local child protective services agency that has jurisdiction to investigate reports of child abuse or to protect child abuse victims in the land area or facility in question." The Diplomatic Security Service would therefore be the "designated agency" in the circumstances described in this comment, inasmuch as Section 81.5 defines local law enforcement agency to include "the Federal * * * law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse* * *"

Comments from the Office of Enforcement and Security Management, United States Department of Interior:

1. Eliminate from the last sentence of section 81.2 the following: "* * * or a Federal agency with jurisdiction for the area or facility in question," and omit the requirement for a formal written agreement with local law enforcement entities.

Response: The provisions of the enabling statute, 42 U.S.C. 13031, preclude adoption of the suggested amendment. We understand that the underlying concern behind the Department of Interior request is apprehension that an administratively crippling number of agreements would be needed in Bureau of Land Management ("BLM") areas. However, the Department does not interpret the term "federal lands" as used in 42 U.S.C. 13031 to include those lands held by the United States merely as a proprietor as distinguished form those lands over which the United States is empowered to exercise legislative jurisdiction. *See generally Adams* v. *United States*, 319 U.S. 312 (1943); *James* v. *Dravo Contracting Co.*, 302 U.S. 134, 139 (1937). It is our understanding that most land managed by BLM falls within the former category. Congress could not reasonably have intended to include such lands within the term "federal lands" as used in the Victims of Child Abuse statute. Therefore, the mandates of the rule and enabling legislation do not apply to such merely proprietary lands managed by BLM.

List of Subjects in 28 CFR Part 81

Child abuse, Federal buildings and facilities.

For the reasons set forth in the preamble, and by virtue of the authority vested in me as Attorney General, including 28 U.S.C. 509 and 510, 5 U.S.C. 301, and 42 U.S.C. 13031, and Public Law 101–647 (104 Stat. 4806), part 81 of chapter I of title 28 of the Code of Federal Regulations is added as follows:

PART 81—CHILD ABUSE REPORTING DESIGNATIONS AND PROCEDURES

Sec.

81.1 Purpose.
81.2 Submission of reports; designation of agencies to receive reports of child abuse.
81.3 Designation of Federal Bureau of Investigation.
81.4 Referral of reports where designated agency is not a law enforcement agency.
81.5 Definitions.

Authority: 28 U.S.C. 509, 510; 42 U.S.C. 13031.

§ 81.1 Purpose.

The regulations in this part designate the agencies that are authorized to receive and investigate reports of child abuse under the provisions of section 226 of the Victims of Child Abuse Act of 1990, Public Law 101–647, 104 Stat. 4806, codified at 42 U.S.C. 13031.

§ 81.2 Submission of reports; designation of agencies to receive reports of child abuse.

Reports of child abuse required by 42 U.S.C. 13031 shall be made to the local law enforcement agency or local child protective services agency that has jurisdiction to investigate reports of child abuse or to protect child abuse victims in the land area or facility in question. Such agencies are hereby respectively designated as the agencies to receive and investigate such reports, pursuant to 42 U.S.C. 13031(d), with respect to federal lands and federally operated or contracted facilities within their respective jurisdictions, provided that such agencies, if non-federal, enter into formal written agreements to do so with the Attorney General, her delegate, or a federal agency with jurisdiction for the area or facility in question. If the child abuse reported by the covered professional pursuant to 42 U.S.C. 13031 occurred outside the federal area or facility in question, the designated local law enforcement agency or local child protective services agency receiving the report shall immediately forward the matter to the appropriate authority with jurisdiction outside the federal area in question.

§ 81.3 Designation of Federal Bureau of Investigation.

For federal lands, federally operated facilities, or federally contracted facilities where no agency qualifies for designation under § 81.2, the Federal Bureau of Investigation is hereby designated as the agency to receive and investigate reports of child abuse made pursuant to 42 U.S.C. 13031 until such time as another agency qualifies as a designated agency under § 81.2.

§ 81.4 Referral of reports where the designated agency is not a law enforcement agency.

Where a report of child abuse received by a designated agency that is not a law enforcement agency involves allegations of sexual abuse, serious physical injury, or life-threatening neglect of a child, that agency shall immediately report such occurrence to a law enforcement agency with authority to take emergency action to protect the child.

§ 81.5 Definitions.

Local child protective services agency means that agency of the federal government, of a state, of a tribe or of a local government that has the primary responsibility for child protection within a particular portion of the federal lands, a particular federally operated facility, or a particular federally contracted facility in which children are cared for or reside.

Local law enforcement agency means that federal, state, tribal or local law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse occurring within a particular portion of the federal lands, a particular federally operated facility, or a particular federally contracted facility in which children are cared for or reside.

Dated. February 18, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–4651 Filed 2–28–96; 8:45 am]

BILLING CODE 4410–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 71–10–7281a; FRL–5422–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the Mojave Desert Air Quality Management District (MDAQMD) and the Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control VOC emissions from asphalt roofing operation, semiconductor manufacturing operations, and glycol dehydrators. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on April 29, 1996 unless adverse or critical comments are received by April 1, 1996. If the effective date is delayed, a timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003

FOR FURTHER INFORMATION CONTACT: Patricia A. Bowlin, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1188.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: MDAQMD Rule 471, Asphalt Roofing Operations; VCAPCD Rule 74.28, Asphalt Roofing Operations; VCAPCD Rule 74.21, Semiconductor Manufacturing; VCAPCD Rule 71.5, Glycol Dehydrators; and VCAPCD Rule 71, Crude Oil and Reactive Organic Compound Liquids. The California Air Resources Board submitted these rules to EPA on December 22, 1994; November 18, 1993; July 13, 1994; and February 24, 1995 (Rules 71 and 71.5) respectively.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Southeast Desert Modified AQMA Area [1] and the Ventura County Area. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[2] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Southeast Desert Modified AQMA Area is classified as Severe-17, and the Ventura County Area is classified as Severe-15 [3]; therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on December 22, 1994; November 18, 1993; July 13, 1994; and Februarv 24, 1995, including the rules being acted on in this notice. This notice addresses EPA's direct-final action for MDAQMD Rule 471, Asphalt Roofing Operations; VCAPCD Rule 74.28, Asphalt Roofing Operations; VCAPCD Rule 74.21, Semiconductor Manufacturing; VCAPCD Rule 71.5, Glycol Dehydrators; and VCAPCD Rule 71, Crude Oil and Reactive Organic Compound Liquids. The MDAQMD adopted Rule 471 on December 21, 1994. The VCAPCD adopted Rule 74.28 on May 10, 1994; Rule 74.21 on April 6, 1993; and Rules 71.5 and 71 on December 13, 1994. These submitted rules were found to be complete on January 3, 1995; September 12, 1994; December 23, 1993; and March 10, 1995 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V [4] and are being finalized for approval into the SIP.

The submitted rules control VOC emissions from the operation of roofing kettles, the manufacture of semiconductors, and the use of glycol dehydrators. VOCs contribute to the production of ground level ozone and smog. The rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 2. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

[1] Portions of MDAQMD lie within the Southeast Desert Modified AQMA Area.

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[3] Southeast Desert Modified AQMA Area and Ventura County Area retained their designations of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(e) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). There is no CTG applicable to any of the rules being considered in this notice. For source categories that do not have an applicable CTG (such as asphalt roofing operations, semiconductor manufacturing, or glycol dehydrators), state and local agencies may determine what controls are required by reviewing the operation of facilities subject to the regulation and evaluating regulations for similar sources in other areas. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 2. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

MDAQMD's revised Rule 471, Asphalt Roofing Operations, includes the following significant changes from the current SIP version:

- Added definitions for eight (8) rule-specific terms.
- Deleted requirement that vapors emitted from roofing kettles be incinerated, filtered, or processed.
- Added requirement that roofing kettles be equipped with close fitting lids.
- Added temperature limits for material in kettles.
- Added procedures for roofing kettle draining operations.
- Added requirement for kettle vents.
- Specified method to determine compliance with the temperature limits.

VCAPCD Rule 74.28, Asphalt Roofing Operations, is a new rule that requires the following:

- Close fitting lids for roofing kettles.
- Temperature limits for material in kettles.
- Procedures for roofing kettle draining operations.

VCAPCD Rule 74.21, Semiconductor Manufacturing, is a new rule that requires the following:

- Freeboard ratio for solvent cleaning station reservoirs and sinks.
- The use of low VOC solvents outside solvent cleaning stations.
- Solvent cleaning methods.
- Two-year recordkeeping.

VCAPCD Rule 71.5, Glycol Dehydrators, is a new rule that requires the following:

- The use of VOC control system on glycol regenerator vents.
- Two-year recordkeeping.
- Glycol dehydrator vent and vapor disposal system testing methods.

VCAPCD Rule 71, Crude Oil and Reactive Organic Compound Liquids, was revised to include new definitions needed to enforce Rule 71.5.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, MDAQMD Rule 471, Asphalt Roofing Operations; VCAPCD Rule 74.28, Asphalt Roofing Operations; VCAPCD Rule 74.21, Semiconductor Manufacturing; VCAPCD Rule 71.5, Glycol Dehydrators; and VCAPCD Rule 71, Crude Oil and Reactive Organic Compound Liquids, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 29, 1996, unless, by April 1, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 29, 1996.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over a population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 30, 1996.

Felicia Marcus,

Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220(c) is amended by adding paragraphs (194)(i)(A)(*4*), (198)(i)(J), (210)(i)(C)(*2*), and (215)(i)(B)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(194) * * *

(i) * * *

(A) * * *

(*4*) Rule 74.21, adopted on April 6, 1993.

* * * * *

(198) * * *

(i) * * *

(J) Ventura County Air Pollution Control District.

(*1*) Rule 74.28, adopted on May 10, 1994.

* * * * *

(210) * * *

(i) * * *

(C) * * *

(*2*) Rule 471, adopted on December 21, 1994.

* * * * *

(215) * * *

(i) * * *

(B) * * *

(*2*) Rule 71 and Rule 71.5, adopted on December 13, 1994.

* * * * *

[FR Doc. 96–4570 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Part 52

[OK–11–1–6604a; FRL–5430–3]

Approval of Discontinuation of Tail Pipe Lead and Fuel Inlet Test for Vehicle Antitampering Program for Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Oklahoma for the purpose of discontinuing the State's tail pipe lead and fuel inlet test in its vehicle antitampering program. The SIP revision also includes minor administrative changes related to the Oklahoma antitampering program. The SIP revision was submitted by the State in response to the dramatic diminished availability of leaded fuel which has resulted in a lack of a need for these tests, not only in Oklahoma but also nationwide. The rationale for the approval is set forth in this document; additional information is available at the address indicated in the **ADDRESSES** section.

DATES: This final rule will become effective on April 29, 1996 unless adverse or critical comments are received by April 1, 1996. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief (6PD–L), Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Multimedia Planning & Permitting Division (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Oklahoma Department of Environmental Quality, Air Quality Program, 4545 North Lincoln Blvd., Suite 250, Oklahoma City, Oklahoma 73105–3483.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Davis, Air Planning Section (6PD–L), Multimedia Planning & Permitting Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 665–7584.

SUPPLEMENTARY INFORMATION:

I. Background

The SIP revision, discussed in more detail in the Technical Support Document, dated May 24, 1995, is briefly outlined below.

On May 16, 1994, the State of Oklahoma submitted to the U.S. Environmental Protection Agency (EPA) rules for Oklahoma SIP revisions allowing for the exclusions of the Plumbtesmo Lead Detection Test (LDT) and Fuel Inlet Restrictor (FIR) from the State Department of Public Safety's motor vehicle antitampering inspection procedures for Oklahoma City and Tulsa. In addition to the State regulations, Oklahoma submitted a summary and justification documenting the basis for this SIP revision.

In the mid-1980s, EPA established test procedures and emission reduction credits for inspecting and requiring replacement of the catalytic converter when a tailpipe lead test revealed lead deposits in the tail pipe, or when the fuel inlet restrictor was found to be widened to permit refueling with a leaded nozzle. Since the mid-1980s, the availability of leaded fuel and the lead content in the fuel has diminished dramatically. In addition, leaded gasoline has been banned by the Clean Air Act Amendments of 1990 as of December 31, 1995, (§ 211(n)).

II. Analysis

A. Procedural Background

The following criteria used to review the submitted SIP revision confirm that the State has demonstrated that the LDT and FIR check is no longer needed in Oklahoma: (1) proof that leaded gasoline is no longer generally available in the Emission Control Areas (ECA) of Tulsa and Oklahoma City, (2) verification that the local fleet has undergone more than one full inspection cycle with virtually no failures and, (3) completion of a State survey coordinated with EPA to determine that the fleet has failed the lead detection test less than 1 percent of the time. This Oklahoma SIP revision meets the criteria necessary for EPA to approve the SIP revision request.

The State's SIP indicates that at the time of the State's Air Quality Council hearing, leaded fuel comprised less than 5 percent of the total fuel sales in Oklahoma, and where it was available it

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was more expensive, thus removing an incentive to misfuel. The State also cited a survey conducted in Tulsa in which only 26 of 269 service stations sold leaded gasoline. In addition, the SIP cites figures from the U.S. Department of Energy that show that leaded gasoline comprised about 1 percent of total sales.

The vehicle antitampering program in Oklahoma City has been in place since 1978 to help control carbon monoxide and ozone pollution, and the program in Tulsa has been in place since 1986 to help control ozone pollution. The data submitted by the State showed that the numbers of vehicles failing LDT and FIR are below limits that make the benefit of the tests worthwhile. In 1992, the failure rate for the FIR was less than .06 percent while the failure rate for the LDT was less than .02 percent. In addition, to confirm these statistics the State conducted a survey of over 1,000 vehicles in Tulsa and Oklahoma County and found that no vehicles subject to the antitampering inspection failed the Plumbtesmo LDT.

Also, EPA's Office of Mobile Sources recently issued a guidance memorandum dated September 16, 1994, entitled, "Discontinuation of Tail Pipe Lead and Fuel Inlet Tests," which essentially allows the discontinuation of these tests without a State-submitted demonstration that these tests are no longer necessary. One condition of discontinuation stated in this policy to retain full credit is that the State has performed the tests for at least one test cycle and has required catalyst replacement upon failure. Oklahoma City and Tulsa meet these criteria as well as those discussed above. The EPA has reviewed the Oklahoma SIP revision submitted to the EPA, using the criteria stated above. The Oklahoma regulations represent an acceptable approach to the State's vehicle antitampering program.

III. Final Action

In this action, the EPA is approving the SIP revision submitted by the State of Oklahoma for removing the Plumbtesmo LDT and FIR test from its vehicle antitampering program.

Copies of the State's SIP revision and the Technical Support Document (TSD), detailing EPA's review of the SIP revision, are available at the address listed in the **ADDRESSES** section above. For a more detailed analysis of the SIP revision, the reader is referred to the TSD.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Thus, today's direct final action will be effective April 29, 1996 unless, by April 1, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 29, 1996.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations that are less than 50,000.

The SIP revision approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the EPA certifies that this proposed rule would not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State actions. The Act forbids the EPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–266 (S. Ct. 1976); 42 U.S.C. section 7410(a)(2).

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of Oklahoma was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 12, 1996.

A. Stanley Meiburg,

Acting Regional Administrator (6A).

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart LL—Oklahoma

2. Section 52.1920 is amended by adding paragraph (c)(46) to read as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

(46) A revision to the Oklahoma SIP to include revisions to Oklahoma Department of Public Safety regulation Title 595, Chapter 20, Subchapter 3—Emission and Mechanical Inspection of Vehicles, Subchapter 7—Inspection Stickers and Monthly Tab Inserts for Windshield and Trailer/Motorcycle, Subchapter 9—Class AE Inspection Station, Vehicle Emission Anti-tampering Inspection and Subchapter 11—Annual Motor Vehicle Inspection and Emission Anti-Tampering Inspection Records and Reports, adopted by the State on April 6, 1994, effective May 26, 1994 and submitted by the Governor on May 16, 1994.

(i) Incorporation by reference.

(A) Revisions to Oklahoma Department of Public Safety regulation Title 595, Chapter 20: 3–1(2); 3–3; 3–5; 3–6; 3–12; 3–25; 3–26; 3–27; 3–41(o); 3–42; 3–46(a) and (b); 3–61(a),(b),(e) and (f); 3–63(b) and (g); 7–1(c) and (f); 7–2(a); 7–3; 7–4(a); 7–5(a); 7–6(a); 7–7(a); 9–1(a); 9–3(l) and (m); 9–7; 9–10(a),(b) and (c); 9–11(a); 9–12(a); 9–13(a); 9–14(a) and (b); 9–15(a); 11–1; 11–2(a); 11–3(a); 11–4 effective May 26, 1994.

(ii) Additional material.

(A) State SIP revision entitled, "Oklahoma Vehicle Anti-Tampering Program SIP Revision," which includes a completeness determination, SIP narrative, hearing records and other documentation relevant to the development of this SIP.

[FR Doc. 96–4567 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MO–29–1–7151a; FRL–5425–2]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document takes final action to approve the State Implementation Plans (SIP) submitted by the state of Missouri for the purpose of fulfilling the requirements set forth in EPA's Transportation Conformity rule. The SIPs were submitted by the state to satisfy the Federal requirements in 40 CFR 51.396.

DATES: This action is effective April 29, 1996 unless by April 1, 1996 adverse or critical comments are received.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen at (913) 551–7877.

SUPPLEMENTARY INFORMATION:

I. Background

Section 176(c)(4) of the Clean Air Act, as amended (CAA), requires the EPA to promulgate criteria and procedures for demonstrating and ensuring conformity of Federal actions to an applicable implementation plan developed pursuant to section 110 and part D of the CAA. Conformity to an implementation plan is defined by the CAA as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards, and achieving expeditious attainment of such standards. On November 23, 1993, the EPA promulgated the final rule (hereafter referred to as the Transportation Conformity rule), which established the process by which the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and metropolitan planning organizations (MPO) determine conformity of highway and transit projects.

The Transportation Conformity rule also establishes the criteria for EPA approval of SIPs. See 40 CFR § 51.396. These criteria provide that the state provisions must be at least as stringent as the requirements specified in EPA's Transportation Conformity rule, and that they can be more stringent only if they apply equally to nonfederally funded transportation projects as well as those using Federal funds (section 51.396(a)).

The St. Louis area was designated nonattainment for ozone and carbon monoxide (CO) in 1978. On November 6, 1991, EPA promulgated a rule which classified the St. Louis area as a moderate ozone nonattainment area, and as an unclassified nonattainment area for CO. Kansas City was redesignated to attainment for ozone, and a maintenance plan was approved, in a June 23, 1992, **Federal Register** notice. Section 51.396 of the Transportation Conformity rule requires that states with areas subject to the rule submit an SIP revision containing the criteria and procedures for FHWA, FTA, MPOs, and other state or local agencies to assess the conformity of transportation plans, Transportation Improvement Programs (TIP), and projects to the applicable SIP, within 12 months after November 23, 1993. As the rule applies to all ozone and CO nonattainment and maintenance areas, SIP revisions for the St. Louis and Kansas City areas, addressing the requirements of the Transportation Conformity rule, became due on November 24, 1994.

II. Review of State Submittal

On February 14, 1995, the state of Missouri submitted Transportation Conformity SIP revisions for Kansas City and St. Louis. The submission included an SIP revision for Kansas City along with Missouri rule 10 CSR 10–2.390 (10–2.390), and an SIP revision, including Missouri rule 10 CSR 10–5.480 (10–5.480), which applies to St. Louis. Section 51.396 requires that, for the SIP revision to be approvable by EPA, certain sections of the Transportation Conformity rule be incorporated verbatim.

The state of Missouri chose to use the model Transportation Conformity rule developed by the State and Territorial Air Pollution Program Administrators (STAPPA)/Association of Local Air Pollution Control Officials (ALAPCO). The STAPPA/ALAPCO model rule added clarifying changes consistent with the intent of the Federal rule. For instance, 10–5.480(10)(B) and 10–2.390(10)(B) include examples of the types of planning assumptions which must be considered in making conformity determinations. The examples are added to the language in section 51.412 of the Federal rule, but do not change the section's intent. The

STAPPA/ALAPCO rule also contains "more stringent" and "lateral" options which change the substance of the Federal rule. Provisions in the STAPPA/ALAPCO rule which are more stringent than the Federal rule are identified as "Optional More Stringent Version," "Optional More Stringent Additional Provision," or "Optional More Stringent and Potentially Discriminatory Versions." Options which address subjects not covered by the Federal Conformity rule, or which expand the coverage of the Federal rule's requirements, are identified as "Lateral Expansion Option" in the STAPPA/ALAPCO rule. Missouri did not adopt any of these options from the model rule. Therefore, except as noted below, EPA finds that the Missouri submissions meet the criteria set forth in section 51.396 of the Transportation Conformity rule.

On February 8, 1995, EPA published an interim final rule entitled, "Transportation Conformity Rule Amendments: Transition to the Control Strategy Period." This interim final rule, which modified the language in sections 51.448 and 93.128 of the Federal rule, was effective immediately and applied until August 8, 1995. A proposed rule for these language modifications was also published February 8, 1995, and a final rule was published on August 7, 1995. Missouri rules 10 CSR 10–5.480(22) and 10–2.390(20) reflect the Federal rule requirements before the publication of the interim final rule. Specifically, the Missouri rule provides that conformity will lapse 12 months from the date of an EPA finding of specific SIP deficiencies. Therefore, EPA is approving the state's Transportation Conformity SIP revisions *with the exception of the aforementioned portions of the Missouri rules.* Section 93.128 of the Federal Transportation Conformity rule, as amended on August 7, 1995, will remain in effect until the state of Missouri submits an SIP revision which incorporates the changes in the Federal rule. Section 93.128, as amended, states that a conformity lapse resulting from a finding of certain SIP deficiencies is delayed until CAA section 179(b) highway sanctions for these deficiencies are applied.

On August 29, 1995, EPA published an interim final rulemaking amending the November 24, 1993, final Transportation Conformity rule to remove the statutory reference relating to exempting certain areas from certain NO_x provisions of the Transportation Conformity rule. Specifically, the interim final rule removed the reference to NO_x waivers under § 182(f) to ensure that the waivers had to be approved as part of the implementation plan revision process discussed in § 182(b) of the CAA, in order to exempt areas from the requirement to make conformity determinations for NO_x. Missouri rules 10 CSR 10–2.390 and 10 CSR 10–5.480 specifically reference waivers approved under § 182(f) as the statutory authority which would relieve areas from the NO_x conformity requirements. In a letter dated December 7, 1995, from David Shorr, Director, Missouri Department of Natural Resources to Dennis Grams, Regional Administrator, EPA, the state of Missouri confirms its understanding that, should EPA approve an NO_x waiver under § 182(f), this waiver does not relieve the state from the NO_x conformity requirements in the Transportation Conformity rule. The letter further states that Missouri intends to implement its rule in a manner consistent with EPA's interim final rule, so that the conformity requirements will continue to apply until any NO_x waiver request has undergone a public hearing, has been submitted to EPA, and has been subsequently approved as an SIP revision.

On November 14, 1995, the EPA promulgated a final rule which amended certain provisions of the Federal Transportation Conformity rule. These changes include allowing any transportation control measure from an approved SIP to proceed during a conformity lapse; aligning the date of conformity lapses with the date of application of the CAA highway sanctions for any failure to submit or submission of an incomplete control strategy SIP; extension of the grace period before which areas must determine conformity to a submitted control strategy SIP; establishment of a grace period before which transportation plan and program conformity must be determined in newly designated nonattainment areas; and a correction of the nitrogen oxides provisions of the Transportation Conformity rule so they are consistent with the CAA and previous commitments made by EPA. As the state adopted and submitted its Transportation Conformity rules prior to the publication of the November 14, 1995, rule amendments, and a Transportation Conformity SIP revision consistent with these amendments must be submitted to EPA by 12 months from November 14, 1995, EPA believes it is reasonable to approve the state's submittal. EPA expects Missouri to amend its conformity rules consistent with the November 1995 rule amendments and submit the amendments to EPA for approval by November 1996.

The Missouri SIP revisions, including 10–2.390 and 10–5.480, were adopted by the Missouri Air Conservation Commission, after proper notice and public hearing, on January 12, 1995, and became effective on May 28, 1995. These rules apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment, or has a maintenance plan as required by sections 51.394 and 93.102 of the Transportation Conformity rule.

Because the Missouri rules meet the substantive requirements of EPA's Transportation Conformity rule, EPA has determined that these submissions meet the requirements for an approvable Transportation Conformity SIP.

III. Specific Language Changes

The Missouri Transportation Conformity rules include changes which clarify the text of the Federal rule, as explained below. Other changes reflect guidance issued by EPA in the Preamble of the final Transportation Conformity rule.

A. The preamble to the November 1993 Transportation Conformity rule states that there must be consistency between the SIP and the conformity analysis regarding modeling parameters such as temperature, season, etc. This regulatory requirement is incorrectly stated only in sections 51.452(b)(5) and 93.130(b)(5), which apply to serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995. In an October 14, 1994, EPA memorandum, it is indicated that it was EPA's intent for this requirement to apply to all areas. This memorandum also cited an incorrect reference in sections 51.452(c)(1) and 93.130(c)(1) to paragraph (a) of the same section. The reference should have been to paragraph (b). The corrections are made in 10–2.390(24)(A)6., 10–2.390(24)(C)1., 10–5.480(26)(A)6., and 10–5.480(26)(C)1. of the Missouri rules.

B. Sections 51.458 and 93.133 require the Transportation Conformity SIP revisions to provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments. The Missouri rules modify this language to make it appropriate for the state rules in 10–2.390(26)(C) and 10–5.480(29)(C).

C. In part IV(L)(1) of the Preamble to the final Transportation Conformity rule, EPA stated that Transportation Conformity SIPs should specify what action by an affected recipient of funds designated under Title 23 U.S.C. or the Federal Transit Act, constitutes adoption or approval of a nonfederal transportation project for inclusion in a regional emissions analysis. "Adoption and approval" are defined in 10–2.390(5)(C)4.C. and 10–5.480(5)(C)3.D.

D. Part IV(F)(1) of the Preamble to the final Transportation Conformity rule discusses the "timely implementation" of transportation control measures as being a criteria for a conformity determination. Specifically, EPA uses the term "maximum priority." 10–2.390(13)(C) and 10–5.480(13)(C) add language which clarifies the term "maximum priority."

IV. Consultation

Section 51.402 (93.105) requires the state to include procedures for interagency consultation and resolution of conflicts in the Transportation Conformity SIPs. The SIPs are to provide "well-defined consultation procedures whereby representatives of the MPOs, state and local air quality planning agencies, state and local transportation agencies * * * must consult with each other and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the TIP, and associated conformity determinations." Both 10–2.390(5) and 10–5.480(5) establish consultation procedures which meet EPA's consultation criteria.

Both St. Louis and Kansas City are bistate areas. 10–2.390(5) and 10–5.480(5) establish the consultation, conflict resolution and public participation procedures for conformity determinations, SIPs, transportation plans, and TIPs, and clearly state the agencies that will be involved in the consultation process in Kansas and Missouri for the Kansas City area, and in Illinois and Missouri for the St. Louis area. The roles and responsibilities of each agency are outlined in detail.

The consultation process established in 10–2.390(5) and 10–5.480(5) incorporate the basic principle behind sections 51.402 and 93.105 in the Federal Transportation Conformity rule. Missouri has established a mechanism by which every agency with any responsibility for any key transportation or air quality decision must consult with every other agency with an interest in that decision. Each interested party is provided with all the necessary information needed for meaningful input and, prior to taking any action, the views of the party are considered and responded to in a substantive manner. The reader is referred to the Technical Support Document for information on specific processes within the interagency consultation procedures, including conflict resolution procedures and the public participation process. EPA has determined that sections 10–2.390(5) and 10–5.480(5) meet the requirements of 52.402 and 93.105 of the Federal Transportation Conformity rule.

EPA Action: The effect of this action is that EPA grants full approval of Missouri's February 14, 1995, submittals. These SIP revisions meet the requirements set forth in 40 CFR § 51.396. As explained above, Missouri will be required to revise its rules consistent with revisions promulgated by EPA subsequent to Missouri's adoption of its rules.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. §§ 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this state implementation plan, the state has elected to adopt the program provided for under section 110 of the CAA. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this final action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to state or local governments in the aggregate or to the private sector. EPA has determined that these rules result in no additional costs to tribal government.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 1996. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and record keeping requirements, Volatile organic compounds.

Dated: February 6, 1996.

Dennis Grams,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(92) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(92) On February 14, 1995, the Missouri Department of Natural Resources submitted two new rules which pertain to transportation conformity in Kansas City and St. Louis.

(i) Incorporation by reference.

(A) New rule 10 CSR 10–2.390 (except section (20) Criteria and Procedures: Interim Period Reductions in Ozone Areas (TIP)) and 10 CSR 10–5.480 (except section (22) Criteria and Procedures: Interim Period Reductions in Ozone Areas (TIP)), both entitled Conformity to State Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 U.S.C. or the Federal Transit Act, effective May 28, 1995.

(ii) Additional material.

(A) Missouri's Air Pollution Control Plan, St. Louis Metropolitan Area Ozone and Carbon Monoxide Transportation Conformity, January 12, 1995.

(B) Missouri's Air Pollution Control Plan, Kansas City Metropolitan Area Ozone Transportation Conformity, January 12, 1995.

(C) Policy agreement, entered into between the Missouri Department of Natural Resources, the Mid-America Regional Council, and the Highway and Transportation Commission of the state of Missouri, dated August 31, 1993.

(D) Letter from the state of Missouri to EPA, dated December 7, 1995, in which the state commits to implementing its state rule consistent with the Federal Transportation Conformity rule, as amended on August 29, 1995, with regards to the granting of an NO_x waiver and the NO_x conformity requirements.

[FR Doc. 96–4565 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[OAQPS 6542; FRL–5426–8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this revision to the Missouri State Implementation Plan (SIP) is to revise the Missouri Part D new source review (NSR) rules, update and add numerous definitions, revise the maximum allowable increase for particulate matter under the requirements for prevention of significant deterioration (PSD) of air quality, address emission statements under Title I of the Clean Air Act Amendments (CAAA), and generally enhance the SIP.

The objective of this final rule is to approve into the Missouri SIP rules adopted by the state which meet the requirements of the Clean Air Act (CAA) as amended in 1990 with regard to NSR in areas that have not attained the national ambient air quality standard. This implementation plan revision was submitted by the state pursuant to Federal requirements for an approvable NSR SIP for Missouri.

EFFECTIVE DATE: This rule will be effective on April 1, 1996.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA Air, RCRA, and Toxics Division, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the EPA Air and Radiation docket and Information Center, 401 M Street, S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Josh Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION:

I. Background

On April 3, 1995, at 60 FR 16824 the EPA proposed to approve the SIP revision by the state of Missouri that revises the Missouri Part D NSR rules, updates and adds numerous definitions, revises the maximum allowable increase for particulate matter under the requirements for PSD of air quality, addresses emission statements under Title I of the CAAA, and generally enhances the SIP.

The **Federal Register** proposal provided that the final rule was contingent upon Missouri modifying the language in its definition of the term "construction" to prohibit major sources from commencing construction before a permit had been issued. The proposal also required the construction permit rule be modified to prohibit the taking of offset credits for emission reductions required under either Federal law or a Federally enforceable permit.

The EPA is currently developing a proposed rule to assist the implementation of the changes under the amended Act in the NSR provisions in Parts C and D of Title I of the Act. EPA will refer to the proposed rule as the most authoritative guidance available regarding the approvability of submittals. Upon promulgation of the final regulations, EPA will review the NSR SIPs of all states to determine whether additional SIP revisions are necessary.

II. Construction Permits Required—10 CSR 10–6.060

A. General Nonattainment NSR Nonattainment Permit Requirements

In the April 3, 1995, proposal to approve the SIP revision by the state of Missouri that revises the Missouri Part D NSR rules, 11 CAA requirements were addressed in detail. These requirements consist of the following and are discussed at 60 FR 16825–6: (1) Offset ratios, (2) geographical location of offsets, (3) timing of offsets, (4) actual emissions reductions, (5) NO_x requirements, (6) creditable reductions, (7) prohibition on old growth allowances, (8) analysis of alternatives, (9) reasonable further progress, (10) reasonably available control technology/best available control technology/lowest achievable emission rate clearinghouse information, and (11) stationary source definition. Each of these requirements has been thoroughly addressed in the proposal and the reader is referred to that document for further discussion. Missouri has satisfied each of these Federal requirements.

B. Missouri Construction Permit Program Corrections

1. Particulate Matter

After the December 1993 rule adoption by the Missouri Air Conservation Commission (MACC), the Class I variance table found at 10 CSR 10–6.060(12)(H)2 did not reflect the revised PM_{10} numerical maximum allowable increases as set forth at 40 FR § 51.166(p)(4). In the April 3, 1995, proposal, EPA identified this omission as a correction to be made prior to EPA's final action to approve the rule. With the March 30, 1995, MACC rule adoption, the table at 10 CSR 10–6.060(12)(H)2 now includes PM_{10} as a pollutant with numerical values at least as stringent as those found at 40 CFR § 51.166(p)(4). Missouri's rule now satisfies the PM_{10} requirement.

2. Waiver Policy

Before the March 30, 1995, MACC rule adoption, the Missouri Construction Permits Required rule, 10 CSR 10–6.060, in conjunction with the definition of "construction" at 10 CSR 10–6.020(2)(C)22, could be interpreted as allowing major sources to commence construction without a permit in contravention of CAA and EPA regulations. That definition of "construction" allowed for synthetic minor sources, those that are major in reality but which seek Federally enforceable limitations to limit their potential to emit, to submit a waiver request to the Missouri Department of Natural Resources (MDNR) allowing the source to commence limited and specified construction activities. In the April 3, 1995, proposal, EPA stated that the waiver provision must be omitted before the rule could be approved. The recently adopted definition of "construction" at 10 CSR 10–6.020(2)(C)22 deletes the reference to authorization to construct if the applicant submits a signed waiver. This current definition of "construction" is approvable into the SIP.

3. Offset Credits

At the time the proposed rulemaking (60 FR 16824, April 3, 1995) was published in the **Federal Register**, the Missouri construction rule, 10 CSR 10–6.060, lacked a prohibition on taking offset credits for emission reductions which are required by Federal law or a Federally enforceable permit. The proposal identified this omission as a change to be made before EPA could approve the rule. The language at 10 CSR 10–6.060(12)(C)4 has been modified by Missouri to include that prohibition. As regards offset credits, the Missouri rule now satisfies this requirement and is approvable into the SIP.

C. Commenced Construction

Under the applicablity provisions of 10 CSR 10–6.060(1)(C), no owner or operator shall commence construction or modification of any installation subject to the construction permits rule, unless it meets certain threshold requirements set forth in the rule and it first obtains a permit. The Missouri rules define "commenced" at 10 CSR 10–6.020(C)15 as "an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a binding agreement or contractual obligation to undertake and complete within a reasonable time, a continuous program of construction or modification." When these two provisions are read together, the rules appear to prohibit a source from entering into a contractual relationship pertaining to construction before obtaining a permit. Since the Missouri provisions are at least as stringent as Federal law at 40 CFR § 51.166(i)(1), they are approvable into the SIP.

III. Update to Definitions Found in 10 CSR 10–6.020

There are many definitions which are being revised within or added to the SIP. Many of these definitions pertain to the Title V and asbestos programs. These definitions are being approved into the SIP because they provide overall consistency in the use of terms in the air program. Because many of these terms do pertain to Title V, it is important to recognize that EPA approval into the SIP of these definitions does not constitute approval with respect to the Title V submission. This approval of the definitions is only for purposes of the SIP in the context of the requirements of section 110 of the Act, and other provisions of the Act referenced in section 110. The reader is referred to the technical support document for clarification on changes to definitions and additions to the list of definitions.

IV. Confidential Information—10 CSR 10–6.210

The information set forth in the April 3, 1995, proposed rule (60 FR 16827) describes this rule and explains EPA's rationale for approval of the rule.

V. Emission Statement Rule—10 CSR 10–6.110

The information set forth in the April 3, 1995, proposed rule (60 FR 16827) describes this rule and explains EPA's rationale for approval of the rule.

EPA Action

In this document, EPA takes final action on the rulemaking to provide clarification on offset requirements; provide for the treatment of economic development zones; and require that the relative benefits of alternative sites, production processes, and control steps must be considered prior to approval of a new source permit. In addition, the rulemaking addresses corrections to Missouri's definition rule; confidential information rule; and the rule pertaining to the submission of emission data, fees, and process information.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the

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aggregate. The Missouri revisions have no impact on tribal governments.

Through submission of this plan revision, the state has elected to adopt the program provided for under section 110 of the CAA. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this final action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to state or local governments in the aggregate or to the private sector.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 6, 1995.

Dennis Grams,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart AA—[Missouri]

2. Section 52.1320 is amended by adding paragraph (c)(86) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(86) A revision to the Missouri SIP to revise the Missouri part D NSR rules, update and add numerous definitions, revise the maximum allowable increase for particulate matter under the requirements for PSD of air quality, address emission statements under Title I of the CAA, and generally enhance the SIP.

(i) Incorporation by reference.

(A) Revision to rules 10 CSR 10–6.020, Definitions and Common Reference Tables, effective August 30, 1995; 10 CSR 10–6.060, Construction Permits Required, effective August 30, 1995; 10 CSR 10–6.110, Submission of Emission Data, Emission Fees, and Process Information, effective May 9, 1994; and 10 CSR 10–6.210, Confidential Information, effective May 9, 1994.

(ii) Additional material. None.

* * * * *

[FR Doc. 96–4566 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 63

[AD–FRL–5431–2]

RIN 2060–AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On April 10, 1995, the EPA amended certain portions of the "National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks." This rule is commonly known as the Hazardous Organic NESHAP or the HON. In that action, the EPA revised the rule to provide a deferral of HON requirements for source owners or operators who wish to make an area source certification and to establish minimum documentation requirements. This action revises the date for submittal of those area source certifications and clarifies the wording of the documentation requirements. This action is being taken because the EPA has learned that sufficient time was not provided to prepare the certifications and that some confusion exists regarding the required documentation.

This action also extends the April 22, 1996 deadline for submittal of implementation plans for emission points not included in an emissions average to December 31, 1996. The deadline for submitting these plans is being extended because the EPA anticipates making further revisions to the rule in the near future that could affect the contents of the implementation plan. In light of this, the EPA thinks it is appropriate to delay this report until there is greater certainty regarding the compliance requirements.

DATES: The direct final rule will be effective April 19, 1996, unless significant, adverse comments are received by April 1, 1996. If significant, adverse comments are timely received on any portion of the direct final rule, that portion of the direct final rule will be withdrawn.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–90–20, Room M–1500, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Janet S. Meyer, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5254.

SUPPLEMENTARY INFORMATION: If significant adverse comments are timely received on any portion of this direct final rule, that portion of the direct final rule will be withdrawn and all such comments will be addressed in a subsequent final rule based on the proposed rule contained in the Proposed Rules Section of this **Federal Register** that is identical to this direct final rule. If no significant adverse comments are timely received on this direct final rule, then the direct final rule will become effective April 19, 1996, and no further action is contemplated on the parallel proposal published today.

I. Background and Summary of Changes to Rule

On April 22, 1994 (59 FR 19402), and June 6, 1994 (59 FR 29196), the EPA promulgated in the **Federal Register** National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI), and for several other processes subject to the equipment leaks portion of the rule. These regulations were promulgated as subparts F, G, H, and I in 40 CFR Part 63, and are commonly referred to as the hazardous organic NESHAP, or the HON. Since the April 22, 1994 notice, there have been several amendments to clarify various aspects of the rule. Readers should see the following **Federal Register** notices for more information: September 20, 1994 (59 FR 48175); October 24, 1994 (59 FR 53359); October 28, 1994 (59 FR 54131); January 27, 1995 (60 FR 5321); April 10, 1995 (60 FR 18020); April 10, 1995 (60 FR 18026); and December 12, 1995 (60 FR 63624).

A. Area Source Certification

On April 10, 1995, new paragraphs were added to § 63.100(b) and § 63.103(f) of subpart F and § 63.190(b) of subpart I to provide procedures to certify and document that a source is operating below the thresholds for a major source. Those provisions specified that the certifications were to be submitted no later than May 10, 1995. This date was 30 days after the date of publication of the notice and consistent with the proposed requirement. Since the amendment was issued, the EPA has learned that there are a number of potential area source facilities whose owners learned of this amendment for the first time after May 10, 1995. The EPA believes that, in view of these circumstances, it is appropriate to provide additional time for submittal of the certifications. Therefore, this document revises the date for submittal of those certifications until May 14, 1996.

The EPA has also learned that there are questions regarding the requirements for documentation that actual emissions are below the major source threshold. To address this confusion, the first sentence in § 63.100(b)(4)(i)(B) is being revised to clarify that emissions are to be estimated for maximum expected operating conditions for the facility. This revision is necessary to make the rule consistent with the EPA's intent to allow sources with actual annual emissions less than major source thresholds the additional time necessary to obtain federally enforceable limits (59 FR 53393 and 60 FR 18021). The same revision is also being made to § 63.190(b)(7)(i)(B) of subpart I.

B. Date for Submission of Implementation Plan

The EPA is extending the April 22, 1996 deadline for submittal of implementation plans for emission points not included in an emissions average to December 31, 1996. The deadline for submitting these plans is being extended because there are uncertainties regarding the applicability of the rule to certain sources and there are uncertainties regarding the requirements of certain provisions. These uncertainties are caused by the existence of pending litigation on the final rule, the need to review and respond to several recent changes to the final rule, and the possibility of further changes being made to the final rule in the near future.

Since the April 22, 1994 notice, there have been several amendments to clarify various aspects of the rule. The most recent of these notices was published on December 12, 1995. On April 10, 1995 (60 FR 18071), the EPA proposed to remove three compounds from the list of chemical production processes regulated by the rule. The EPA anticipates issuing a final notice to complete that rulemaking in the near future. Additionally, the EPA anticipates that it is likely to propose at least one more set of additional changes to the rule in the near future. Since these changes may affect compliance planning for some sources, it is appropriate to delay this report until there is greater certainty regarding the compliance requirements.

II. Administrative

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1414.02) may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

Today's changes to the NESHAP should have no impact on the information collection burden estimates made previously. The change to the area source certification merely revises the date for submission of the certification and clarifies the documentation requirements. The change to the implementation plan requirements merely extends the date for submission of plans from existing sources. These changes do not impose new requirements. Consequently, the ICR has not been revised.

B. Executive Order 12866 Review

Under Executive Order (E.O.) 12866, the EPA must determine whether the proposed regulatory action is "not significant" and therefore, subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The HON rule promulgated on April 22, 1994 was considered "significant" under Executive Order 12866 and a regulatory impact analysis (RIA) was prepared. The amendments issued today clarify the rule and do not add any additional control requirements. Therefore, this regulatory action is considered not significant.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated

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costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 21, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63, subparts F, G, and I, of the Code of Federal Regulations are amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

2. Section 63.100 is amended by revising paragraph (b)(4) introductory text and the first sentence in paragraph (b)(4)(i)(B) to read as follows:

§ 63.100 Applicability and designation of source.

* * * * *

(b) * * *

(4) The owner or operator of a chemical manufacturing processing unit is exempt from all requirements of subparts F, G, and H of this part until not later than April 22, 1997 if the owner or operator certifies, in a notification to the appropriate EPA Regional Office, not later than May 14, 1996, that the plant site at which the chemical manufacturing processing unit is located emits, and will continue to emit, during any 12-month period, less than 10 tons per year of any individual hazardous air pollutants (HAP), and less than 25 tons per year of any combination of HAP.

(i) * * *

(B) The owner or operator shall calculate the amount of annual HAP emissions released from each emission point at the plant site, using acceptable measurement or estimating techniques for maximum expected operating conditions at the plant site. * * *

* * * * *

Subpart G—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater

3. Section 63.151 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 63.151 Initial notification and implementation plan.

* * * * *

(c) * * *

(1) * * *

(ii) Each owner or operator of an existing source subject to this subpart who elects to comply with § 63.112 of this subpart by complying with the provisions of §§ 63.113 to 63.148 of this subpart, rather than emissions averaging, for any emission points, and who has not submitted an operating permit application accompanied by the information specified in § 63.152(e) by December 31,1996, shall develop an Implementation Plan. For an existing source, the Implementation Plan for those emission points that are not to be included in an emissions average shall be submitted to the Administrator no later than December 31, 1996.

* * * * *

Subpart I—National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks

4. Section 63.190 is amended by revising paragraph (b)(7) introductory text and the first sentence in paragraph (b)(7)(i)(B) to read as follows:

§ 63.190 Applicability and designation of source.

* * * * *

(b) * * *

(7) The owner or operator of a plant site at which a process specified in paragraphs (b)(1) through (b)(6) of this section is located is exempt from all requirements of this subpart I until not later than April 22, 1997 if the owner or operator certifies, in a notification to the appropriate EPA Regional Office, not later than May 14, 1996, that the plant site at which the process is located emits, and will continue to emit, during any 12-month period, less than 10 tons per year of any individual hazardous air pollutants (HAP), and less than 25 tons per year of any combination of HAP.

(i) * * *

(B) The owner or operator shall calculate the amount of annual HAP emissions released from each emission point at the plant site, using acceptable measurement or estimating techniques for maximum expected operating conditions at the plant site. * * *

* * * * *

[FR Doc. 96–4441 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 63

[AD–FRL–5432–3]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule amendments.

SUMMARY: This action amends the "National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)" (the "Gasoline Distribution NESHAP"). These final amendments extend the initial compliance date for the equipment leak provisions applicable to existing sources to no later than December 15, 1997, and amend the date by which an existing facility must provide an initial notification to December 16, 1996 or 1 year after a facility becomes subject to the Gasoline Distribution NESHAP, whichever is later.

DATES: Effective Date. February 29, 1996.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (Act), judicial review of NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of these final amendments. Under section 307(b)(2) of the Act, the requirements that are the subject of this document may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: *Docket.* Docket No. A–92–38, Categories VI Reconsideration and VII Amendments, containing

information considered by the EPA in developing the final amendments, is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, except Federal holidays, at the EPA's Air and Radiation Docket and Information Center, room M1500, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying. This docket also contains information considered by the EPA in proposing and promulgating the Gasoline Distribution NESHAP.

An electronic version of these final amendments and the proposal are available for download from the EPA Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for data transfer of up to 14,400 bits per second. The TTN is also available on the Internet (access: TELNET ttnbbs.rtpnc.epa.gov). If more information on the operation of the TTN is needed, contact the systems operator at (919) 541–5384.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Shedd at telephone number (919) 541–5397 or at fax number (919) 541–3470, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background and Final Amendments
  A. Background
  B. Summary of Amendments
II. Comments on the Proposed Amendments
  A. Public Participation
  B. Comments Received on the Proposed Amendments
  C. Summary of Comments and EPA Responses
  1. Opportunity for Comment
  2. Extension of Deadline for Initial Notification
  3. Extension of Initial Compliance Date for Leak Detection and Repair (LDAR)
  4. Potential to Emit (PTE)
  5. Risk
III. Administrative Requirements
  A. Paperwork Reduction Act
  B. Executive Order 12866
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Act
  E. Regulatory Review

I. Background and Final Rule Amendments

A. Background

On December 14, 1994 (59 FR 64303), the EPA promulgated the "National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)" (the "Gasoline Distribution NESHAP"). The Gasoline Distribution NESHAP regulates all hazardous air pollutants (HAP) emitted from new and existing bulk gasoline terminals and pipeline breakout stations that are major sources of HAP emissions or are located at sites that are major sources of HAP emissions. Among the promulgated requirements for existing sources under this rule are the requirements that sources institute an equipment leak prevention program and provide an initial notification of regulatory status no later than December 14, 1995 (40 CFR §§ 63.424(e) and 63.428(a)).

On November 7, 1995.(60 FR 56133), the EPA proposed amendments to the Gasoline Distribution NESHAP. The EPA proposed to amend the initial compliance date for the equipment leak provisions applicable to existing sources from no later than December 14, 1995 to no later than December 15, 1997, and to amend the date by which an existing facility must provide an initial notification to December 16, 1996 or 1 year after a facility becomes subject to the Gasoline Distribution NESHAP, whichever is later. Those modifications were proposed because the compliance date for these provisions was approaching and the EPA believes that, under current circumstances, additional time will allow sources a better opportunity to establish major or area source status without forgoing quantifiable emissions reductions.

On December 8, 1995 (60 FR 62991), the EPA issued a partial 3-month stay of the December 14, 1995 compliance date for equipment leak prevention provisions and providing an initial notification of regulatory status and use of a screening equation in the Gasoline Distribution NESHAP. The December 14, 1995 compliance date for leak detection and repair provisions and initial notifications was stayed for existing facilities until March 7, 1996. The EPA issued the stay pursuant to Clean Air Act section 807(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), which provides the Administrator authority to stay the effectiveness of a rule during reconsideration.

B. Summary of Amendments

After considering all of the comments, both for and against the proposed amendments, the EPA is promulgating these rule amendments as they were proposed. The EPA consideration and response to all the comments are contained in the next section of this document. In summary, the final amendments consist of two new compliance dates in the promulgated rule: the initial compliance date for the equipment leak provisions (§ 63.424(e)) applicable to existing sources is no later than December 15, 1997, and the date by which an existing facility must provide an initial notification (§ 63.428(a)) is December 16, 1996 or 1 year after a facility becomes subject to the Gasoline Distribution NESHAP, whichever is later. This action also clarifies that all initial notifications are to be submitted by the same time (December 16, 1996) as intended at proposal and noted in the stay. The EPA is promulgating this related clarifying amendment that extends the notification for area source facilities using an emission screening equation (§ 63.428 (i)(1) and (j)(1)) to that same date. The EPA continues to believe that, under current circumstances, this additional time is needed to allow sources a better opportunity to establish major or area source status without forgoing quantifiable emissions reductions.

II. Comments on the Proposed Amendments

A. Public Participation

These amendments were proposed in the **Federal Register** on November 7, 1995 (60 FR 56133). Public comments were solicited at the time of proposal. Electronic versions of the preamble and proposed regulatory amendments were made available to interested parties immediately after signature (on November 2, 1995) via the TTN bulletin board (see **ADDRESSES** section of this preamble for more TTN information).

The preamble to the proposed amendments provided the public the opportunity to request a public hearing. However, a public hearing was not requested. The public comment period for the proposed amendments was from November 7, 1995 until December 7, 1995 and the document was available to the public on the TTN even earlier, as of November 2, 1995. In all, 13 comment letters were received. The comments have been carefully considered in arriving at the final amendments being promulgated in this document.

B. Comments Received on the Proposed Amendments

Comments on the proposed amendments were received from 13 commenters, consisting of oil

companies (10), trade organizations (2), and one environmental organization. Most of the commenters were in general agreement with the proposed amendments. Due to the small number of comments received, and the fact that technical issues were not involved, no background information document (BID) was prepared to present more detailed comments and responses.

However, the original comment letters have been placed in the docket, which is referred to in the **ADDRESSES** section of this preamble. For summary purposes, all of the comments have been grouped by the topic areas they address, and are discussed in the next section.

C. Summary of Comments and EPA Responses

As mentioned in the previous section, all but one of the commenters expressed general agreement with the proposed amendments to the Gasoline Distribution (Stage I) NESHAP. A summary of the major comments and the EPA's responses is presented below.

(1) Opportunity for Comment

One commenter considered the comment period for the proposal to be inadequate to allow most citizens to comment on the proposal, since it frequently requires a week or more for the **Federal Register** to arrive at public libraries, and another week or more for placement on library shelves. This leaves less than 2 weeks to research, write, edit, and mail comments. This commenter also felt that most citizens were unlikely to have learned of the opportunity to request a public hearing before the deadline for requesting such a hearing expired. However, the commenter did not request extension of the time to comment.

The EPA placed the proposal preamble and amendments on the TTN on November 2, 1995, 1 day after it was signed by the Administrator. The TTN is an electronic (computer) bulletin board, free to users, and is available on the Internet for use by the public. The usual comment period (30 days beginning with publication of the proposal in the **Federal Register**) and opportunity for requesting a hearing were provided at the time of proposal. No person contacted the EPA to request more time to comment. The time period was consistent with the requirements of section 307 of the Act. The EPA did not provide a longer comment period due to the relative narrowness and simplicity of the proposal and the proximity of the compliance dates. For these reasons, the EPA believes that a reasonable amount of time was afforded the public for commenting on the proposal.

(2) Extension of Deadline for Initial Notification

Twelve of the commenters expressed support for the proposed amendment to the initial notification date for existing sources. Most said that the change was essential to provide many bulk terminals and pipeline breakout stations a reasonable opportunity to calculate their potential to emit and to determine the applicability of the NESHAP. Four commenters supported the non-binding clause of the initial notification, feeling that such a clause will encourage would-be major sources to consider pollution prevention opportunities or additional controls prior to the December 15, 1997 compliance date. Commenters also pointed out that the amended notification date would not have any adverse impact on the environment. Potential negative consequences of not finalizing the amendment cited by commenters included the erroneous classification of many facilities as major sources due to the short time available to establish area source status, and the avoidance of these terminals by outside tank truck firms not wishing to incur the vapor tightness testing obligations associated with affected terminals.

The EPA is promulgating the amendment to the initial notification deadline for existing sources as it was proposed: 1 year after an affected source becomes subject to the NESHAP or by December 16, 1996, whichever is later. In addition, the clause specifying that declarations of major source status submitted by this deadline will be considered non-binding for 1 year has been retained in the final amendments. This means that facilities that include in their notification a brief description and schedule for their planned actions for achieving area source status by December 15, 1997 can make a change to their status until this latter deadline. The EPA believes that although the information in the notifications may change, it provides necessary information for tank truck companies in planning their vapor tightness testing schedules and for Federal, State, and local air pollution control agencies in planning for rule implementation and compliance activities.

(3) Extension of Initial Compliance Date for Leak Detection and Repair (LDAR)

Twelve of the commenters also supported the proposed amendment to the initial compliance date, which affects only periodic visual inspection programs for leaks from gasoline equipment components. These commenters said that the change was essential to provide many terminals and pipeline breakout stations a reasonable chance to demonstrate that they are not major sources subject to the NESHAP, and to allow time for the resolution of the potential to emit issue (see next comment topic). One commenter stated that this amendment would provide State and local agencies additional time to develop EPA-approved federally enforceable State operating permit (FESOP) programs and to complete permit processing. Another company said that EPA approvals of its 33 FESOP and 15 Title V permit actions have been very slow and the company would not be able to obtain these permits by the promulgated first compliance date of December 14, 1995. The company felt that this date extension would give them a reasonable opportunity to obtain approval of artificial limits on potential to emit from most, if not all, of the appropriate State agencies. Commenters believed that having a common compliance date for all aspects of the regulation would allow more time for facility owners and operators to consider pollution prevention opportunities or additional controls. A number of commenters pointed out that equipment leak emissions represent a minor portion of a facility's total HAP emission inventory, and most facilities already have some type of routine visual inspection program. Therefore, the proposed change would have no long-term adverse impact on human health or the environment.

One commenter, however, expressed concern that the EPA, by delaying the initial compliance date, would put citizens at risk on the basis of the already high levels of benzene and other gasoline components in the air around terminals.

The EPA has considered all of these comments, including the comment opposing the compliance date extension. The EPA continues to believe that deferral of the compliance date for the equipment leak provisions for existing sources until December 15, 1997 is the most appropriate way to allow sources a better opportunity to establish major or area source status without forgoing quantifiable emissions reductions. The EPA also agrees with commenters that equipment leak emissions are relatively small under normal operations, and so delaying compliance with the visual inspection requirement for major source facilities will not produce any significant increase in risk to exposed populations. (See the more complete discussion of risk under section (5) Risk below.)

(4) Potential to Emit (PTE)

Several commenters took issue with the EPA's policy that only federally enforceable control standards or operating limitations would be considered in determining the potential to emit of facilities and, consequently, whether they would be a major source and subject to the NESHAP. Four commenters cited a decision by the U.S. Court of Appeals for the District of Columbia Circuit ruling that the EPA's stand on the issue is unlawful, which the commenters interpreted to indicate that the policy has been vacated and is no longer in effect. One commenter stated that the EPA's insistence on maintaining its policy on this matter creates confusion on the part of facilities potentially subject to this rule. Three other commenters said that requiring federally enforceable emission controls in determinations of potential to emit inflates emission estimates, which could cause area sources to be classified as major sources required to undertake unnecessary controls and programs. Two commenters concluded that the EPA should allow permitting authorities to take into account State and local controls that the permitting authority deems effective in limiting facilities' potential to emit.

The EPA's proposal to amend the Gasoline Distribution NESHAP focused narrowly on the issue of modifying compliance dates for two provisions, the equipment leak inspection requirements and the notification of major source status, rather than the distinct issues of whether the emission screening equation and the emissions inventory methods of calculating potential to emit should be revised to reflect limitations on emissions that are not federally enforceable, and whether Federal enforceability should be a necessary criterion for determination of potential to emit under section 112 in general. Thus, comments regarding these latter two issues are outside the scope of the topics raised by the proposal. However, the EPA believes it is useful in response to these comments to summarize the impact of the court decision referenced by commenters, as well as related EPA guidance recognizing State-enforced PTE limits under section 112 during a transition period.

The EPA interpreted the impact of the referenced court decision in a January 22, 1996 guidance memorandum, which is contained in the docket and is also available on the TTN (see **ADDRESSES** section). The memorandum stated that, in *National Mining Association* v. *EPA*, 59 F.3d 1351 (D.C. Cir. 1995), the court addressed regulations under subpart A of 40 CFR part 63, the "General Provisions" of hazardous air pollutant programs under section 112. The court found that the EPA had not adequately explained why only federally enforceable measures should be considered as limits on a source's potential to emit. Accordingly, the court remanded the section 112 General Provisions regulation to the EPA for further proceedings. The EPA must either provide a better explanation as to why Federal enforceability promotes the effectiveness of State controls, or remove the exclusive Federal enforceability requirement. The court did not vacate the section 112 regulations; that is, the court did not declare the regulations null and void. The regulations remain in effect pending completion of new rulemaking.

The EPA plans to hold discussions with stakeholders and propose rulemaking amendments by spring 1996, and to issue final rules by spring 1997, that would address the court decisions impacting regulations promulgated pursuant to section 112 as well as other air act provisions. The EPA currently plans to address the following options, after discussions with stakeholders:

(a) An approach that would recognize "effective" State-enforceable limits as an alternative to federally enforceable limits on a source's potential to emit. Under this option, a source whose maximum capacity to emit without pollution controls or operational limitations exceeds relevant major source thresholds may take a State or local limit on its potential to emit. In such circumstances, the source must be able to demonstrate that the State-enforceable limits are (1) enforceable as a practical matter, and (2) being regularly complied with by the facility.

(b) An approach under which the EPA would continue to require Federal enforceability of limits on a source's potential to emit. Under this approach, in response to specific issues raised by the court in *National Mining*, the EPA would present further explanation regarding why the Federal enforceability requirement promotes effective controls. Under this approach, the EPA would propose simplifying changes to the administrative provisions of the current Federal enforceability regulations.

Any method for limiting potential to emit made available as a result of the EPA's response to the *NMA* remand will be available to sources in the Gasoline Distribution (Stage I) source category. The EPA expects to respond to the remand in *NMA* with adequate time to allow such sources to seek any new methods developed.

The EPA today reiterates that independent from the decision in *National Mining*, current EPA policy already recognizes State-enforceable PTE limits under section 112 in many circumstances under a transition policy intended to provide for orderly implementation of these new programs under the Clean Air Act Amendments of 1990. This policy is set forth in a memorandum, "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act" (January 25, 1995), and has been amended in one significant way by the January 22, 1996 guidance memorandum as noted below. (Both memoranda are contained in the docket and are also available on the TTN, see **ADDRESSES** section.)

Under the terms of the EPA's transition policy, the transition period is to end in January 1997. In addition, completion of the EPA's rulemaking in response to the recent court decisions, which the EPA anticipates will occur by early 1997, may render the transition policy unnecessary after that time. However, in conjunction with the rulemaking, the EPA will consider whether it is appropriate to extend the transition period beyond January 1997.

In recognition of the absence in some States of suitable federally enforceable mechanisms to limit PTE applicable to sources that might otherwise be subject to section 112 or Title V, the EPA's policy provides for the consideration of State-enforceable limits as a gap-filling measure during a transition period that extends until January 1997. Under this policy, for the 2-year transition period, restrictions contained in State permits issued to sources that actually emit more than 50 percent, but less than 100 percent, of a relevant major source threshold are treated by the EPA as acceptable limits on potential to emit, provided: (a) the permit and the restriction in particular are enforceable as a practical matter, and (b) the source owner submits a written certification to the EPA accepting EPA and citizen enforcement. In light of *National Mining*, the EPA believes that the certification requirement is no longer appropriate as part of this policy. Accordingly, under the January 1996 guidance, the EPA amended the January 1995 transition policy by deleting the certification requirement.

In addition, under the transition policy, sources with consistently low levels of actual emissions relative to major source thresholds can avoid major source requirements even absent any permit or other enforceable limit on PTE. Specifically, the policy provides

that sources which maintain their emissions at levels that do not exceed 50 percent of any applicable major source threshold are not treated as major sources and do not need a permit to limit PTE, so long as they maintain adequate records to demonstrate that the 50 percent level is not exceeded.

The EPA's action in this rule to extend the compliance dates for the two provisions will give more opportunities for sources to obtain potential to emit limits consistent with the EPA's guidance and hence avoid being subject to regulation as major sources.

One commenter disagreed with the EPA's interpretation that if a facility does not demonstrate area source status by the first substantive compliance date, then the facility, regardless of actual emissions or any subsequent State operating permit limitation, would be permanently classified as a major source.

The EPA's interpretation was explained in an EPA guidance memorandum from John S. Seitz, "Potential to Emit for MACT Standards—Guidance on Timing Issues" (May 16, 1995), which is contained in the docket (item no. VI–B–6) and is also available on the TTN (see **ADDRESSES** section). The EPA notes that the commenter viewed finalizing the proposed amendments to the compliance dates as a "critical need * * * [to] avoid unintended inclusion of area sources." For the facilities in this source category, the EPA and many commenters believe that delaying the first compliance date will provide the relief being sought by the above commenters.

A number of commenters noted that the emission screening equation in the final rule cannot be used by bulk terminals because essentially all terminals handle non-gasoline products, such as diesel fuel or home heating oil, which makes them ineligible to use the equation. The commenters urged the EPA to reexamine the issue of which facilities are eligible to use the equation, pointing out that the HAP emitted from these products are "de minimis" and should not compel facilities to use the more cumbersome and costly emissions inventory mechanism for determining potential to emit.

As discussed in the proposal preamble, the EPA is considering data and information submitted by the API (and available in the docket) in order to evaluate a possible expansion of the screening equation to include non-gasoline products that emit HAP, and will make a final decision about changes to the equation under a separate action. The EPA is still reviewing this information and is not prepared to discuss any specific changes to the equation at this time. Depending on the results of its review of the pertinent data, the EPA may propose changes to the equation and request comment in a forthcoming and separate action in the **Federal Register**.

(5) Risk

One commenter opposed the proposal to delay the initial compliance date for the NESHAP on the grounds that the health risk to populations exposed to ambient HAP concentrations near terminals would be increased. The commenter expressed a belief that the language and legislative history of the Clean Air Act reflects a Congressional intent to limit public exposures to carcinogens to a level that will not produce a lifetime risk of cancer at a rate greater than one in a million. According to the commenter, a 50-year lifetime constant exposure to a gasoline vapor concentration of 0.639 part per billion (ppb) would correspond to the Act's one-in-a-million lifetime risk standard. The commenter cited a 1993 air quality study at the Paw Creek terminals in North Carolina that indicated a maximum benzene concentration of 2.2 ppb, which they claimed corresponds to a lifetime cancer risk of at least 131 per million. The commenter concluded that emission levels corresponding to such risks ought to be reduced as quickly as possible.

The EPA has not performed a risk analysis to allow the EPA to verify the risk estimation results cited by the commenter, nor did the commenter include a copy of the study with their comments. However, in accordance with sections 112 (d)(6) and (f)(2) of the Act, the Gasoline Distribution NESHAP will be reviewed within 8 years after the date of promulgation (i.e., by December 14, 2002). This review may include an assessment of residual health risk, in addition to many other aspects of the regulation. As discussed above, the proposal and this final action only extend the compliance time for instituting programs to perform visual inspections and subsequent repair of equipment components in gasoline service at terminals and pipeline breakout stations. Most facilities are already carrying out similar informal programs and, furthermore, data show that the HAP emissions from this equipment in normal operation are very low. The compliance date of December 15, 1997 promulgated in the final rule for the remaining emission sources at bulk terminals will not be affected by this action. Due to these factors, the EPA believes that this action will not substantially change the emissions near major source gasoline distribution facilities. For these reasons, the EPA is finalizing the extension of the compliance date for LDAR until December 15, 1997 as proposed on November 7, 1995.

III. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 2060–0325) may be obtained from Ms. Sandy Farmer, Information Policy Branch, Environmental Protection Agency, 401 M Street., S.W. (mail code 2136), Washington, DC 20460, or by calling (202) 260–2740.

Today's amendments to the Gasoline Distribution NESHAP have no impact on the information collection burden estimates made previously. No additional certifications or filings were promulgated. Therefore, the ICR has not been revised.

B Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The criteria set forth in section 1 of the Order for determining whether a regulation is a significant rule are as follows:

(1) Is likely to have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government communities;

(2) Is likely to create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Is likely to materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Is likely to raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Gasoline Distribution NESHAP promulgated on December 14, 1994, was treated as a "significant regulatory action" within the meaning of the Executive Order. An estimate of the cost and benefits of the NESHAP was prepared at proposal as part of the background information document (BID) and was updated in the BID for the final rule to reflect comments and changes to the final rule. The amendments issued today have no impact on the estimates in the BID. The EPA's earlier estimates of costs and emission reductions were based on the Gasoline Distribution NESHAP affecting only major sources and did not quantify the emission reductions associated with the visual equipment leak detection program; in any event, these emission reductions are small relative to the total reduction for the source category.

Pursuant to the terms of Executive Order 12866, it has been determined that this action is a "non-significant regulatory action" within the meaning of the Executive Order. As such, this action was not submitted to OMB for review.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires the EPA to consider potential impacts of regulations on small business entities. The Act specifically requires the preparation of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. When the EPA promulgated the Gasoline Distribution NESHAP, it analyzed the potential impacts on small businesses, discussed the results of this analysis in the **Federal Register**, and concluded that the promulgated regulation would not result in financial impacts that significantly or differentially stress affected small companies. Since today's action imposes no additional impacts, a Regulatory Flexibility Analysis has not been prepared.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

E. Regulatory Review

In accordance with sections 112(d)(6) and 112(f)(2) of the Act, this regulation will be reviewed 8 years from the date of promulgation. This review may include an assessment of such factors as evaluation of the residual health risk, any overlap with other programs, the existence of alternative methods of control, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Petroleum bulk stations and terminals, Reporting and recordkeeping requirements.

Dated: February 23, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Section 63.424 is amended by revising paragraph (e) to read as follows:

§ 63.424 Standards: Equipment leaks.

* * * * *

(e) Initial compliance with the requirements in paragraphs (a) through (d) of this section shall be achieved by existing sources as expeditiously as practicable, but no later than December 15, 1997. For new sources, initial compliance shall be achieved upon startup.

* * * * *

3. Section 63.428 is amended by revising paragraph (a), the first sentence of paragraph (f)(1), paragraph (i)(1), and paragraph (j)(1) to read as follows:

§ 63.428 Reporting and recordkeeping.

(a) The initial notifications required for existing affected sources under § 63.9(b)(2) shall be submitted by 1 year after an affected source becomes subject to the provisions of this subpart or by December 16, 1996, whichever is later. Affected sources that are major sources on December 16, 1996 and plan to be area sources by December 15, 1997 shall include in this notification a brief, non-binding description of and schedule for the action(s) that are planned to achieve area source status.

* * * * *

(f) * * *

(1) In the case of an existing source or a new source that has an initial startup date before the effective date, the report shall be submitted with the notification of compliance status required under § 63.9(h), unless an extension of compliance is granted under § 63.6(i).

* * *

* * * * *

(i) * * *

(1) Document and report to the Administrator not later than December 16, 1996 for existing facilities, within 30 days for existing facilities subject to § 63.420(c) after December 16, 1996, or at startup for new facilities the methods, procedures, and assumptions supporting the calculations for determining criteria in § 63.420(c);

* * * * *

(j) * * *

(1) Document and report to the Administrator not later than December 16, 1996 for existing facilities, within 30 days for existing facilities subject to § 63.420(d) after December 16, 1996, or at startup for new facilities the use of the emission screening equations in § 63.420(a)(1) or (b)(1) and the calculated value of E_T or E_P;

* * * * *

4. Table 1 to subpart R is amended by revising the entry "63.9(b)(2)" to read as follows:

* * * * *

TABLE 1 TO SUBPART R.—GENERAL PROVISIONS APPLICABILITY TO SUBPART R

Reference	Applies to subpart R	Comment
63.9(b)(2)	No	Subpart R allows additional time for existing sources to submit initial notification. Sec. 63.428(a) specifies submittal by 1 year after being subject to the rule or December 16, 1996, whichever is later.

[FR Doc. 96–4706 Filed 2–28–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 82

[FRL–5428–6]

RIN 2060–AF36

Protection of Stratospheric Ozone: Direct-Final Rulemaking Temporarily Extend the Existing Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Through this action EPA is amending the Clean Air Act section 608 refrigerant recycling regulations to extend the effectiveness of the refrigerant purity requirements of § 82.154 (g) and (h), which are currently scheduled to expire on March 18, 1996, until December 31, 1996, or until EPA completes rulemaking to adopt revised refrigerant purity requirements based on industry guidelines, whichever comes first. EPA is extending the requirements in response to requests from the air-conditioning and refrigeration industry to avoid widespread contamination of the stock of chlorofluorocarbon (CFC) and hydrochlorofluorocarbon (HCFC) refrigerants that could result from the lapse of the purity standard. Such contamination would cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases.

EPA anticipates, before the close of the comment period for this direct final, publishing a proposal to adopt a more flexible approach to ensuring the purity of refrigerants and soliciting public comment on this approach. EPA requests that readers of this notice review that proposal, and consider providing comments.

This temporary extension will not result in any additional burden on the regulated community. Moreover, the retention of the reclamation requirement will protect the environment, public health, and consumers by ensuring that contaminated refrigerants are not vented or charged into equipment.

EFFECTIVE DATE: The direct final rule will become effective on April 15, 1996 unless significant adverse comments are received by April 1, 1996. If significant adverse comments are timely received on this direct final rule, EPA will withdraw the direct final rule and timely notice to that effect will be published in the **Federal Register**. All comments will then be addressed in a subsequent final rule based on the proposed rule contained in the Proposed Rules section of this **Federal Register** that is identical to this direct final rule. If no significant adverse comments are timely received on this direct final rule then the direct final rule will become effective 45 days from today's **Federal Register** notice and no further action is contemplated on the parallel proposal.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. A–92–01, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 in room M–1500. Dockets may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials. Those wishing to notify EPA of their intent to submit adverse comments on this action should contact Cindy Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street SW., Washington, DC 20460, (Docket # A–92–01 VIII.G.) (202) 233–9729.

FOR FURTHER INFORMATION CONTACT: Cindy Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Overview
II. Background
III. Today's Action
IV. Effective Date
V. Summary of Supporting Analysis

I. Overview

Paragraphs 82.154(g) and (h) of 40 CFR part 82, subpart F set requirements for sale of used refrigerant, mandating that it meet certain purity standards. These requirements will expire on March 18, 1996. EPA is currently in the process of promulgating new, more flexible, requirements based on industry guidelines, but will be unable to complete the rulemaking prior to the expiration of the existing standards. A lapse in the standards could result in widespread contamination of the stock of CFC and HCFC refrigerants. Such contamination would cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases. Release of CFC and HCFC refrigerants has been found to deplete stratospheric ozone, resulting in increased human and environmental exposure to ultraviolet radiation. Increased exposure to ultraviolet radiation in turn can lead to serious health and environmental effects.

EPA is acting on requests from the air-conditioning and refrigeration industry to extend the effectiveness of the current refrigerant purity requirements, only until EPA can complete rulemaking to adopt more flexible requirements that will still ensure refrigerant purity.

II. Background

On May 14, 1993, EPA published final regulations establishing a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment (58 FR 28660). These regulations include evacuation requirements for appliances being serviced or disposed of, standards and testing requirements for used refrigerant sold to a new owner, certification requirements for refrigerant reclaimers, and standards and testing requirements for refrigerant recycling and recovery equipment.

When EPA promulgated the final rule, the Agency noted that further rulemaking would be required to address issues that had been raised during the comment period for the proposed rule (57 FR 58644). One of these issues was whether a standard for used refrigerant could be developed that would protect air-conditioning and refrigeration equipment, but would allow technicians to clean refrigerant themselves, rather than sending the refrigerant to an off-site reclaimer.

The final rule published on May 14, 1993, requires that refrigerant sold to a new owner be reclaimed to the ARI Standard 700 of purity by a certified reclaimer (§ 82.154(g) and (h) referencing standard in § 82.164 and the definition of reclaim found in § 82.152). As discussed in the final rule, this requirement protects the purity of used refrigerant to prevent damage to air-conditioning and refrigeration equipment from the use of contaminated refrigerant. Equipment damage from contaminated refrigerant would result in costs to equipment owners, in releases of refrigerant from damaged equipment through increased leakage, servicing and replacement, and in reduction in consumer confidence in the quality of used refrigerant. This reduction in consumer confidence could lead to the premature retirement or retrofit of CFC or HCFC equipment since consumers would no longer believe that a sufficient stock of trustworthy refrigerants was available.

Although the reclamation requirements contained in 82.154(g) and (h) would clearly protect equipment, EPA believed that a more flexible but as effective requirement should be developed, particularly for refrigerant transferred between owners whose equipment was similar and was serviced by the same contractor. However, the only existing standard at the time EPA promulgated the rule was ARI Standard 700, and the only agreed upon means of enforcing it was by limiting sale of used refrigerant to only certified reclaimers. Certified reclaimers, unlike contractors or technicians, are required to have the equipment available that can verify that the refrigerant meets the purity standards, thus ensuring its purity prior to selling the refrigerants.

In order to encourage industry to explore the possibility of developing more flexible but still effective standards and technologies for purifying refrigerant, as well as more flexible means for ensuring compliance with purity standards, EPA adopted a commenter's suggestion and established an expiration date, or "sunset," for the reclamation requirement. EPA accordingly made the reclamation requirements at § 82.154 (g) and (h) effective until May 15, 1995, two years after publication of the final rule. EPA believed that this two-year period would be sufficient for industry to develop new guidelines for reuse of refrigerant and for EPA to complete a rulemaking to adopt them if EPA determined that they would continue to reduce emissions to the lowest achievable level and maximize the recapture and recycling of refrigerants (58 FR 28679).

In December, 1994, a committee representing a wide range of interests within the air-conditioning and refrigeration industry published *Industry Recycling Guide (IRG–2): Handling and Reuse of Refrigerants in the United States*. This document establishes requirements and recommendations for the reuse of refrigerant in a number of different situations, including refrigerant transfers on the open market and between equipment owned by different people but serviced by the same contractor. Because EPA believes that these requirements would protect air-conditioning and refrigeration equipment while permitting technicians, contractors, and equipment owners more flexibility than the current requirements, EPA began pursuing a rulemaking to adopt the IRG–2 requirements. However, because the original sunset date was approaching, EPA also pursued a rulemaking to extend the effectiveness of § 82.154(g) and (h) (60 FR 14608). That rulemaking extended the effectiveness of the provisions until March 18, 1996. EPA believed that this extension would provide sufficient opportunity to develop and publish a proposed rule, take public comment, and develop and publish a final rule.

EPA drafted a proposed rulemaking concerning the adoption of a more flexible approach for ensuring refrigerant purity. However, several events beyond the agency's control have delayed the EPA's ability to release this proposal. While EPA expects to publish the proposal in the **Federal Register** prior to the end of the comment period for this direct final rulemaking, EPA will not have an opportunity to consider comments and promulgate a final action concerning the IRG–2 requirements prior to the expiration of these provisions on March 18, 1996.

Representatives of the air-conditioning and refrigeration industry expressed concern that any lapse in refrigerant purity requirements could result in a number of problems, including sloppy handling of refrigerant and dumping of contaminated refrigerant on the market. These problems would result in significant damage to equipment, release of refrigerant, and aggravated refrigerant shortages.

Currently, the reclamation requirement encourages careful handling of refrigerant, because refrigerant that is irretrievably contaminated (for instance through mixture with other refrigerants) will not be accepted by any reclaimer, rendering it worthless. If this check is removed, sloppy handling may become widespread. This would not only lead to damage to equipment, but to the permanent loss of part of the stock of pure refrigerant through refrigerant mixture. Even in the best case in which the mixed refrigerant was properly disposed of, the limited supply of refrigerant would thereby be further reduced, necessitating more retrofit or replacement of existing equipment. Unfortunately, it is likely that the mixed refrigerant would often be used in air-conditioning and refrigeration equipment or vented rather than disposed of properly.

The possibility of widespread dumping of refrigerant on the market has been raised by reports that contractors and "recyclers" are stockpiling used refrigerant. In some cases, dumping dirty refrigerant on the market might be attractive simply because it enables the seller of refrigerant to avoid the costs of reclamation; for others, it might be attractive because the refrigerant is unreclaimable and therefore worthless if analyzed or sent to a reclaimer. In either situation, such dumping would lead to widespread equipment damage and potential releases of refrigerant. In addition, since domestic CFC production ceased December 31, 1995, protecting the purity of the existing stock of CFC refrigerants is essential.

III. Today's Action

In response to these concerns, EPA is extending the effectiveness of the current reclamation requirements until the Agency can adopt replacement requirements. It was never EPA's intent to leave air-conditioning and refrigeration equipment and refrigerant supplies unprotected by a purity standard, but only to replace the existing standard with a more flexible standard when that was developed. As discussed above, EPA is currently undertaking rulemaking to adopt a more flexible standard.

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IV. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this action to amend the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this rulemaking is estimated to result in the expenditure by State, local, and tribal governments or private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. As discussed in this preamble, this rule merely extends the current reclamation requirements during consideration of a more flexible approach that may result in reducing the burden of part 82 Subpart F of the Stratospheric Protection regulations on regulated entities, including State, local, and tribal governments or private sector entities.

C. Paperwork Reduction Act

There are no additional information collection requirements associated with this rulemaking. EPA has determined that the Paperwork Reduction Act does not apply. The initial § 608 final rulemaking did address all recordkeeping associated with the refrigerant purity provisions. An Information Collection Request (ICR) document was prepared by EPA and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. This ICR is contained in the public docket A–92–01.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that since this amendment merely extends a current requirement designed to protect purity of refrigerants temporarily, there will be no adverse effects for the regulated community, including small entities. An examination of the impacts of these provisions was discussed in the initial final rule promulgated under § 608 (58 FR 28660). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis was developed. That impact analysis accompanied the final rule and is contained in Docket A–92–01.

I certify that this amendment to the refrigerant recycling rule will not have any additional negative economic impacts on any small entities.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Hydrochlorofluorocarbons, Interstate commerce, Reporting and reclamation, recordkeeping requirements, refrigerant purity, recycling, Stratospheric ozone layer.

Dated: February 14, 1996.

Carol M. Browner,

Administrator.

Part 82, chapter I, title 40, of the Code of Federal Regulations, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.154 is amended by revising paragraphs (g) and (h) to read as follows:

§ 82.154 Prohibitions.

* * * * *

(g) Effective until December 31, 1996, no person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed as defined at § 82.152;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance.

(h) Effective until December 31, 1996, no person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed by a person who has been certified as a reclaimer pursuant to § 82.164;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance.

* * * * *

[FR Doc. 96–4038 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 4F4344/R2207; FRL–5350–7]

RIN 2070–AB78

Sethoxydim; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a pesticide tolerance for the combined residues of the herbicide sethoxydim; 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one) and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodities (RACs) corn, field, grain at 0.5 parts per million (ppm); corn, fodder at 2.5 ppm; and corn forage at 2.0 ppm. These tolerances replace current entries for field corn, grain; corn, fodder; and corn, forage. BASF Corporation requested these tolerances in a petition submitted to EPA pursuant to Federal Food, Drug, and Cosmetic Act (FFDCA).

EFFECTIVE DATE: February 29, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [PP 4F4344/R2207], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to EPA Headquarters Accounting Office Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.gov. Copies of objections and hearing request must submitted as an ACSII file avoiding the use of special characters and any firm of encryption. Copies of objections and hearing requests will also be accepted on disks in Word Perfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [4F4344/R2207]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail, Robert J. Taylor, Product Manager (PM 25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6027; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On August 17, 1995 (60 FR 42884), EPA issued a notice in the **Federal Register** announcing that BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709-3528, had submitted a pesticide petition (PP 4F4344) to EPA proposing to amend 40 CFR part 180 pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establishing regulations to permit the combined residues of the herbicide sethoxydim; 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one) and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodities (RACs) corn, grain at 0.5 part per million (ppm); corn, fodder at 2.5 ppm; corn, forage at 2.0 ppm, and corn, silage at 2.0 ppm.

No comments were received in response to this notice of filing.

The petitioner subsequently amended the petition by submitting a revised section F deleting the proposed tolerance for corn silage. Because this is a deletion of a previously proposed tolerance, no longer in Table 2 of the Residue Chemistry Guidelines, there is no potential risk to humans. Therefore an additional period of public comment is not necessary.

The scientific data submitted in the petitions and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include:

1. Several acute toxicology studies place technical sethoxydim in acute toxicity category IV for primary eye and dermal irritation and acute toxicity category III for acute oral, dermal, and inhalation. The dermal sensitization - guinea pig study was waived because no sensitization was seen in guinea pigs dosed with the end-use product Poast (18% a.i.).

2. A 21-day dermal study with rabbits fed dosages of 0, 40, 200, and 1,000 mg/kg/day with a NOEL (no-observed adverse effect level) of greater than 1,000 mg/kg/day (limit dose).

3. A 1-year feeding study with dogs fed dosages (based on consumption) of 0, 8.86/9.41, 17.5/19.9, and 110/129 mg/kg/day (males/females) with a NOEL (no-observed effect level) of 8.86/9.41 mg/kg/day (males/ females) based on equivocal anemia in males and females at 17.5/19.9 mg/kg/day, respectively.

4. A 2-year chronic feeding/carcinogenicity study with mice fed dosages of 0, 6, 18, 54, and 162 mg/kg/day with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 162 mg/kg/day (highest dose tested (HDT)) and a systemic NOEL of 18 mg/kg/day. A maximum tolerated dose (MTD) was not achieved for females in this study. A determination of the need for an additional study will be made once the replacement chronic feeding/carcinogenicity study in rats is evaluated.

5. A 2-year chronic feeding/carcinogenic study with rats fed dosages of 0, 2, 6, and 18 mg/kg/day (HDT) with no carcinogenic effects observed under the conditions of the study at dosage levels up to and including 18 mg/kg/day (HDT) and a systemic NOEL greater than or equal to 18 mg/kg/day (HDT). This study was reviewed under current guidelines and was found to be unacceptable because the doses used were insufficient to induce a toxic response and a maximum tolerated dose (MTD) was not achieved. This study must be repeated.

6. A chronic feeding/carcinogenic study with rats was submitted to supplement the above study. Rats in this study were fed dosages of 0, 18.2/23.0, and 55.9/71.8 mg/kg/day (males/females) with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 55.9/71.8 mg/kg/day (HDT) (males/females) and a systemic NOEL greater than or equal to 55.9/71.8 mg/kg/day (males/females). The doses used were insufficient to induce a toxic response and failed to achieve an MTD or define a Lowest Effect Level (LEL). Slight decreases in body weights in the final

quarter of the study, although not biologically significant, can support a free standing NOEL of 55.9/71.8 mg/kg/day (males/females). A new study is necessary to replace both this study and the one discussed above.

7. A developmental toxicity study in rats fed dosages of 0, 50, 180, 650, and 1,000 11mg/kg/day with a maternal NOEL of 180 mg/kg/day and a maternal LEL of 650 mg/kg/day (irregular gait, decreased activity, excessive salivation, and anogenital staining); and a developmental NOEL of 180 mg/kg/day and a developmental LEL of 650 mg/kg/day (21-22% decrease in fetal weights, filamentous tail and lack of tail due to the absence of sacral and/or caudal vertebrae, and delayed ossification in the hyoids, vertebral centrum and/or transverse processes, sternebrae and/or metatarsals, and pubes).

8. A developmental toxicity study in rabbits fed doses of 0, 80, 160, 320, and 400 mg/kg/day with a maternal NOEL of 320 mg/kg/day and a maternal lowest observable effect level (LOEL) of 400 mg/kg/day (37% reduction in body weight gain without significant differences in group mean body weights, and decreased food consumption during dosing); and a developmental NOEL greater than 400 mg/kg/day (HDT).

9. A 2-generation reproduction study with rats fed dosage levels of 0, 150, 600, and 3,000 ppm (approximately 0, 7.5, 30, and 150 mg/kg/day) with no reproductive effects observed at 3,000 ppm (approximately 150 mg/kg/day) (HDT). However, the Agency considers this study usable for regulatory purposes and has established a free-standing NOEL of 3,000 ppm (approximately 150 mg/kg/ day).

10. Mutagenicity studies included: Ames Assays which were negative for *Salmonella typhimurium* strains TA98, TA100, TA1535, and TA 1537, with and without metabolic activity; sethoxydim did not cause structural chromosomal aberrations at doses up to 5,000 mg/kg in Chinese hamster bone marrow cells *in vivo*; a Host Mediated Assay (mouse) with *S. typhimurium* was negative at 2.5 grams/kg/day of chemical, and recombinant assays and forward mutations in *Bacillus subtilis*, *Escherichia coli*, and *S. typhimurium* were all negative at concentrations of greater than or equal to 100%; an *in vitro* Unscheduled DNA Synthesis Assay in Primary Rat Hepatocytes had a negative response for DNA repair (UDS) in primary rat hepatocyte cultures exposed up to insoluble (>101 ug/ml) and cytotoxic (507 ug/ml) doses.

11. In a rat metabolism study, excretion was extremely rapid and tissue accumulation was negligible, assuming DMSO vehicle does not affect excretion or storage of NP-55 (78% excreted into urine and 20.1% in feces).

The reference dose (RFD) based on a NOEL of 8.86 mg/kg bwt/day in the 1-year feeding study in dogs, and an uncertainty factor of 100 was calculated to be 0.09 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) for existing tolerances for the overall U. S. population is 0.032767 mg/kg bwt/day or 35% of the RfD. The current action will increase the TMRC by 0.000134 mg/kg bwt/day. These tolerances and previously established tolerances utilize a total of 37 percent of the RfD for the overall U.S. population. For U.S. subgroup populations, nonnursing infants and children aged 1 to 6, the current action and previously established tolerances utilize, respectively, a total of 63.5% and 74% of the ADI, assuming that residue levels are at the established tolerances and that 100% of the crop is treated. [These studies are also referenced in an EPA proposed rule on sethoxydim published elsewhere in this issue of the **Federal Register**.]

Desirable data lacking based on review of data under current guidelines include a repeat of the chronic feeding/carcinogenicity study in rats. Once the rat study is evaluated, a repeat of the mouse carcinogenicity study may be needed. Because the current studies, although unacceptable by current guidelines, provide useful information and these tolerances utilize less than 1% of the RfD, the Agency believes there is little risk from establishment of these tolerances. Any additional tolerance proposals will be considered on a case-by-case basis.

The pesticide is useful for the purposes for which these tolerances are sought and capable of achieving the intended physical or technical effect. The nature of the residue is adequately understood, and adequate analytical methods (gas chromatography using sulfur-specific flame photometric detection) are available for enforcement purposes. Previously approved versions of the analytical method are listed in the *Pesticide Analytical Manual, Volume II* (PAM II), as Method I. The analytical methods for corn grain, fodder, and forage are revisions of the above method. Because of the long lead time from establishing these tolerances until publication, the enforcement methodology for corn grain, fodder, and forage are being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number; Rm 1130 A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6027.

There are currently no actions pending against the registration of this chemical. Any expectation of residues occurring in eggs, milk, meat, fat or meat by-products of cattle, goats, hogs, horses, and sheep or poultry will be covered by existing tolerances.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, EPA is establishing the tolerances as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 4F4344/R2207] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 pm., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the docket control number [PP 4F4344/R2207], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is a paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review. Pursuant to the requirements of the Regulatory Flexibility Act (Pub L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additive, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 20, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.412(a), by revising the entries for corn, field, grain; corn fodder; and corn forage to read as follows.

§ 180.412 2-[1-Ethoxyimino)butyl]-5-(2-ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
corn, field, grain	0.5
corn fodder	2.5
corn forage	2.0
* * * * *	
* * * * *	

[FR Doc. 96–4396 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 5F4493/R2205; FRL–5351–5]

RIN 2070–AB78

Pesticide Tolerance for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide glyphosate [*N*-(phosphonomethyl)glycine] in or on the raw agricultural commodity (RAC) cotton gin byproducts at 100 parts per million (ppm). Monsanto Company requested this tolerance in a petition submitted to EPA pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

EFFECTIVE DATE: These regulations become effective February 29, 1996.

ADDRESSES: Written objection and hearing requests, identified by the docket number, [PP 5F4493/R2205], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing request filed with the Hearing Clerk should be identified by the docket number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: oppdocket@epamail.epa.gov.

Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 5F4493/R2205]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online

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at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail, Robert J. Taylor, Product Manager, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)–305–6027; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of August 17, 1995 (60 FR 42884), which announced that Monsanto Company, 700 14th Street, NW., Suite #1100, Washington, DC 20005 had submitted a petition (5F4493) proposing to amend 40 CFR part 180 pursuant to section 408 (d) of the Federal Food, Drug, and Cosmetic Act (FFDCA) 21 U.S.C. 346 (a), by establishing a regulation to permit residues of the herbicide glyphosate [*N*-(phosphonomethyl)glycine] resulting from the application of the isopropylamine salt and/or the monoammonium salt of glyphosate in or on the raw agricultural commodity (RAC) cotton gin byproducts at 100 parts per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to this notice of filing.

The data submitted in the petitions and other relevant material have been evaluated. The glyphosate toxicological data listed below were considered in support of these tolerances.

1. Several acute toxicology studies placing technical-grade glyphosate in Toxicity Category III and Toxicity Category IV.

2. A 1–year feeding study with dogs fed dosage levels of 0, 20, 100, and 500 milligrams/kilogram/day (mg/kg/day) with a no-observable-effect level (NOEL) of 500 mg/kg/day.

3. A 2–year carcinogenicity study in mice fed dosage levels of 0, 150, 750, and 4,500 mg/kg/day with no carcinogenic effect at the highest dose tested (HDT) of 4,500 mg/kg/day.

4. A chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 3, 10, and 31 mg/kg/day (males) and 0, 3, 11, or 34 mg/kg/day (females) with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 31 mg/kg/day (HDT) (males) and 34 mg/kg/day (HDT) (females) and a systemic NOEL of 31 mg/kg/day (HDT)(males) and 34 mg/kg/day (HDT) (females). Because a maximum tolerated dose (MTD) was not reached, this study was classified as supplemental for carcinogenicity.

5. A chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 89, 362, and 940 mg/kg/day (males) and 0, 113, 457, and 1,183 mg/kg/day (females) with no carcinogenic effects noted under the conditions of the study at dose levels up to and including 940/1,183 mg/kg/day (males/females) (HDT) and a systemic NOEL of 362 mg/kg/day (males) based on an increased incidence of cataracts and lens abnormalities, decreased urinary pH, increased liver weight and increased liver weight/brain ratio (relative liver weight) at 940 mg/kg/day (males) (HDT) and 457 mg/kg/day (females) based on decreased body weight gain 1,183 mg/kg/day (females) (HDT).

6. A developmental toxicity study in rats given doses of 0, 300, 1,000, and 3,500 mg/kg/day with a developmental NOEL of 1,000 mg/kg/day based on an increase in number of litters and fetuses with unossified sternebrae, and decrease in fetal body weight at 3,500 mg/kg/day, and a maternal NOEL of 1,000 mg/kg/day based on decrease in body weight gain, diarrhea, soft stools, breathing rattles, inactivity, red matter in the region of nose, mouth, forelimbs, or dorsal head, and deaths at 3,500 mg/kg/day (HDT).

7. A developmental toxicity study in rabbits given doses of 0, 75, 175, and 350 mg/kg/day with a developmental NOEL of 350 mg/kg/day (HDT); a maternal NOEL of 175 mg/kg/day based on increased incidence of soft stool, diarrhea, nasal discharge, and deaths at 350 mg/kg/day (HDT).

8. A multigeneration reproduction study with rats fed dosage levels of 0, 3, 10, and 30 mg/kg/day with a developmental NOEL of 10 mg/kg/day based on increased incidence of focal tubular dilation of the kidney (both unilateral and bilateral combined) of male F3b pups.

9. A two generation reproduction study with rats fed dosage levels of 0, 100, 500, and 1,500 mg/kg/day with a developmental NOEL of 500 mg/kg/day based on decreased pup body weight and body weight gain on lactation days 14 and 21 at 1,500 mg/kg/day (HDT), a systemic NOEL of 500 mg/kg/day based on soft stools in Fo and F1 males and females at 1,500 mg/kg/day (HDT) and a reproductive NOEL of 1,500 mg/kg/day (HDT).

10. Mutagenicity data included chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with and without S9 activation); DNA repair in rat hepatocyte; *in vivo* bone marrow cytogenic test in rats; rec-assay with *B. subtilis*; reverse mutation test with *S. typhimurium*; Ames test with *S. typhimurium*; and dominant-lethal mutagenicity test in mice (all negative).

The reference dose (RfD) based on a developmental study with rabbits (NOEL of 175 mg/kg/bwt/day) and using a hundred-fold safety factor is calculated to be 2.0 mg/kg/bwt/day. The theoretical maximum residue contribution (TMRC) for published tolerances and food and feed additive regulations is 0.02059 mg/kg/bwt/day or 1.0 percent of the RfD for the overall U.S. population. The current action on cotton gin byproducts will not increase the TMRC or percent of the RfD. Established tolerances utilize a total of 1.0 percent of the RfD for the overall U.S. population.

For U.S. subgroup populations, nonnursing infants and children 1 to 6 years of age, the current action and previously established tolerances and the food additive regulation utilize, respectively, a total of 2.4 and 2.3 percent of the RfD, assuming that residue levels are at the established tolerance levels and that 100 percent of the crop is treated.

There are no desirable data lacking for this pesticide. There are currently no actions pending against the continued registration of this pesticide. No detectable residues of *N*-nitrosoglyphosate, a contaminant of glyphosate, are expected to be present in the commodities for which tolerances are established. The carcinogenic potential of glyphosate was first considered by a panel, then called the Toxicology Branch AD Hoc Committee, in 1985. The Committee, in a consensus review dated March 4, 1985, classified glyphosate as a Group C carcinogen based on an increased incidence of renal tumors in male mice. The Committee also concluded that dose levels tested in the 26–month rat study were not adequate for assessment of glyphosate's carcinogenic potential in this species. These findings, along with additional information, including a reexamination of the kidney slides from the long-term mouse study, were referred to the FIFRA Scientific Advisory Panel (SAP). In its report dated February 24, 1986, SAP classified glyphosate as a Group D Carcinogen (inadequate animal evidence of carcinogenic potential). SAP concluded that, after adjusting for the greater survival in the high-dose mice compared to concurrent controls, that no statistically significant pairwise differences existed, although the trend was significant.

The SAP determined that the carcinogenic potential of glyphosate could not be determined from existing data and proposed that the rat and/or mouse studies be repeated in order to classify these equivocal findings. On reexamination of all information, the Agency classified glyphosate as a Group D Carcinogen and requested that the rat study be repeated and that a decision on the need for a repeat mouse study would be made upon completion of review of the rat study.

Upon receipt and review of the second rat chronic feeding/carcinogenicity study, all toxicological findings for glyphosate were referred to the Health Effects Division Carcinogenicity Peer Review Committee on June 26, 1991, for discussion and evaluation of the weight-of-evidence on glyphosate with particular emphasis on its carcinogenic potential. The Peer Review Committee classified glyphosate as a Group E (evidence of noncarcinogenicity for humans), based upon lack of convincing carcinogenicity evidence in adequate studies in two animal species. This classification is based on the follo ving findings: (1) None of the types of tumors observed in the studies (pancreatic islet cell adenomas in male rat, thyroid c-cell adenomas and/or carcinomas in male and female rats, hepatocellular adenomas and carcinomas in male rats, and renal tubular neoplasms in male mice) were determined to be compound related; (2) glyphosate was tested up to the limit dose on the rat and up to levels higher than the limit dose in mice; and (3) there is no evidence of genotoxicity for glyphosate. Accordingly, EPA concludes that glyphosate has not been "found to induce cancer when ingested by man or animal." 21 U.S.C. 348(c)(3).

The nature of the residue in plants is adequately understood, adequate methodology (HPLC) with flurometric detection is available for enforcement purposes, and the methodology has been published in the Pesticide Analytical Manual (PAM), Vol. II. Any secondary residues occurring in the kidney and liver of cattle, goats, horses, hogs, and sheep and liver and kidney of poultry will be covered by existing tolerances. The pesticide is considered useful for the purpose for which the regulation is sought and is capable of achieving the intended physical or technical effect.

Based on the information cited above, the Agency has determined that the establishment of this tolerance by amending 40 CFR part 180 will protect the public health. Therefore, EPA is establishing this tolerance as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. 40 CFR 178.20. A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which the hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibly that available evidence identified by the requestor would, if established, resolve one or more issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

A record has been established for this rulemaking under docket number [PP 5F4493/R2205] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4.30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Va.

Written objections and hearing requests, identified by the docket number [5F4493/R2205] may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm 3708, 401 M St. SW., Washington, DC 20460. A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or (4) raising novel legal orpolicy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to ORB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: February 20, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, chapter I, part 180 of title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. a and 371.

2. In § 180.364, by amending the table in paragraph (d) by alphabetically adding the raw agricultural commodity "cotton gin byproducts" to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

* * * * *

(d) * * *

Commodity	Parts per million
• • • •	•
Cotton gin byproducts	100.0
• • • •	•

[FR Doc. 96–4395 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 4F4405/R2206; FRL–5350–8]

RIN 2070–AB78

Nicosulfuron; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the herbicide nicosulfuron [3-pyridinecarboxamide, 2-((((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)aminosulfonyl)-N,N-dimethyl] in or on the raw agricultural commodities (RACs) corn, sweet (kernals plus cobs with husks removed) at 0.1 part per million (ppm); corn, sweet, forage at 0.1 ppm and corn, sweet, fodder (stover) at 0.1 ppm. E.I. du Pont de Nemours and Company, Inc., requested these tolerances in a petition submitted to EPA pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective February 29, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number [PP4405/R2206], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing request filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: oppdocket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP4F4405/R2206]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail, Robert J. Taylor, Product Manager (PM-25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6027; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 8, 1995 (60 FR 7540), EPA issued a notice announcing that Du Pont, Agricultural Products, Barley Mill, P.O. Box 80038, Wilmington, DE 19880-0038, had submitted a pesticide petition (PP4F4405) proposing to amend 40 CFR part 180 by establishing a regulation under section 408(d) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a(d) to permit residues of the herbicide nicosulfuron (3-pyridinecarboxamide, 2-((((4,6-dimethoxypyrimidin-2-y1) aminocarbonyl)aminosulfonyl)-N,N-dimethyl), in or on corn, sweet (kernals plus cobs with husks removed) at 0.1 part per million (ppm) and corn, sweet, forage at 0.1 ppm. There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The petitioner subsequently amended the petition by submitting a revised Section F proposing to establish tolerances for nicosulfuron in or on the RACs corn, sweet (Kernels plus cobs with Husks Removed) at 0.1 ppm; corn; sweet, forage at 0.1 ppm, and corn, sweet, fodder (stover) at 0.1 ppm. In the **Federal Register** of September 13, 1995 (60 FR 47578), EPA issued an amended filing notice proposing these tolerances. The Agency received one comment opposing these tolerances. The commenter's opposition to the tolerance was based upon toxicological concerns including the concept of "NOEL" (No observed effect level); the use of animal testing to represent human reaction to potentially toxic substances (pesticides); the indications of a link between pesticide exposure and Parkinson's Disease (PD).

The Agency has reviewed the comment and decided to proceed with these tolerances. The Agency, made the decision that a wide variety of toxicological studies would serve as the basis for determining if a pesticide could be registered and used without unreasonable risk. It is true that animal models do not and cannot predict every possible human reaction to pesticides, but the general consensus is that they offer the best information as to what a pesticide might do to humans. Usually, the Agency requires and reviews long-term studies in rodents and non-rodents to determine a dose which causes no apparent adverse effects. The NOEL is divided by an uncertainty factor - often at least 100 - to arrive at doses or exposures that should not cause harmful effects on humans. In the Agency's regulation of pesticides, the Agency does not approve uses which will cause unreasonable adverse effects to humans or the environment.

The Agency understands that the testing of one pesticide at a time does not predict all the possible adverse interactions with other pesticides - or for that matter other drugs or environmental pollutants. The Agency is exploring ways of testing for the

interactions of pesticides having similar toxicity endpoint, but progress in that area is slow.

With reference to the indications of a link between pesticide exposure and Parkinson's Disease, the Agency is aware that many researchers are investigating the potential reaction of pesticide exposures to chronic neurological diseases including Parkinson's Disease, and additional research is needed to study this important area. Available studies in humans or animals have not yet established any relationship between pesticide exposures and Parkinson's Disease.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of this tolerance.

1. Several acute toxicology studies placing the technical-grade herbicide in Toxicity Category III.

2. A 1-year feeding study with dogs fed dosages of 0, 6.25, 125, and 500 mg/kg/day resulted in a systemic NOEL of 125 mg/kg/day in males based upon a decrease in body weight gains and a concomitant increase in relative liver and kidney weights in males. The NOEL for females was 500 mg/kg/day, the highest dose tested (HDT).

3. A 2-year chronic toxicity/carcinogenicity study with rats fed dosages of 0, 1.9/2.6, 58.1/77.1, 289/382, and 786/1,098 mg/kg/day (males/females demonstrated that no carcinogenic effects were observed under the conditions of the study at dose levels up to and including 786/1,098 (males/females) mg/kg/day (HDT) and a systemic NOEL equal to or greater than 786 mg/kg/day (males) and 1,098 mg/kg/day (females), (HDT).

4. An 18-month carcinogenicity study with mice fed dosages of 0, 3.3/4.4, 32.7/44.8, 327/438, and 993/1,312 mg/kg/day (males/females) demonstrated that no carcinogenic effects were observed under the conditions of the study up to and including 993/1,312 (males/females) mg/kg/day (HDT) and a systemic NOEL of 993/1,312 (males/females) mg/kg/day (HDT).

5. A developmental toxicity study in rats fed dosages of 0, 200, 1,000, 2,500, and 6,000 mg/kg/day had a developmental and maternal NOEL equal to or greater than 6,000 mg/kg/day, (HDT).

6. A developmental toxicity study in rabbits fed dosages of 0, 100, 500, 1,000, and 2,000 mg/kg/day had a maternal NOEL of 100 mg/kg/day based upon maternal toxicity occurring at 500 mg/kg/day. Maternal toxicity was demonstrated by an increase in clinical signs, gross pathological observations, abortions, postimplantation loss and decrease in body weight gain during the dosing period. The developmental NOEL was 500 mg/kg/day based upon developmental toxicity evidenced at 1,000 mg/kg/day in the form of reduced mean fetal body weights and the apparent increase in postimplantation loss at 500 mg/kg/day and above.

7. A multi-generation reproduction study in the rat administered dosages of 0, 12.5, 287, and 1,269 mg/kg/day had a systemic NOEL of 287 mg/kg/day based upon F1 (first mating) females with a lower body weight gain during the final week of gestation and a similar pattern in the F0 females during the same period of gestation at 1,269 mg/kg/day (HDT). The reproductive NOEL was 287 mg/kg/day based on a minimal reduction of litter size at birth and in pup weights at postpartum days 14 through 21 in the F2a high-dose group at 1,269 mg/kg/day (HDT).

8. A mutagenic test with *Salmonella typhimurium* did not show mutagenicity in four test strains (TA97A, TA98, TA100, and TA1535) with or without metabolic activation; *in vitro* chromosomal aberration test in cultured human lymphocytes indicated negative response at the concentrations of 40 to 470 ug/mL; an unscheduled DNA damage assay at the concentrations of 0.04 to 470 ug/mL was negative; *in vitro* gene mutation assay in Chinese hamster ovary cells was nonmutagenic at the concentrations of 4 to 465 ug/mL with or without metabolic activation; and a micronucleus assay in mouse bone marrow had negative responses at the dose levels of 500 to 5,000 mg/kg.

The reference dose (RFD), based on a 1 year dog feeding study (NOEL of 125 mg/kg bwt/day) and using a hundred fold safety factor, is calculated to be 1.25 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) for the existing tolerances is 0.000034 mg/kg/day and utilizes 0.003% of the RFD. The current action will increase the TMRC by 0.000024 mg/kg/day. These tolerances and previously established tolerances will utilize a total of 0.005% of the RFD for the overall U.S. population. For U.S. subgroup populations nonnursing infants and children 1 to 6, the current action and previously established tolerances utilize 0.011% of the RFD, assuming that residue levels are at the established tolerances and 100% of the crop is treated.

No desirable data are lacking. The pesticide is useful for the purpose for which the tolerance is sought. Adequate analytical methodology (liquid chromatography with ultraviolet detection) is available for enforcement purposes. The method is not yet published in the Pesticide Analytical Manual (PAM), but can be obtained as follows: by mail: Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Office location and telephone number: Crystal Mall #2, Rm 1130A, 1921 Jefferson Davis Hwy., Arlington, VA, (703–305-5937).

There are currently no actions pending against the registration of this chemical. No secondary residues are expected to occur in poultry, meat, meat byproducts, or eggs based on the proposed use on sweet corn, since sweet corn is not fed to poultry. No secondary residues are expected to occur in milk and the meat, and meat byproducts of cattle, goats, hogs, horses and sheep.

Based on the information cited above, the Agency has determined that the establishment of the tolerances by amending 40 CFR part 180 will protect the public health; therefore, the tolerances are established as set forth below. Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above, 40 CFR 178.20. A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed in 40 CFR 180.33 (i). If a hearing is requested, the objections must include a statement of factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 4F4405/R2206] (including objections and hearing requests submitted

electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the docket control number [PP 4F4405/R2206] may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-docket@epamail.epa.gov A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligation of recipients thereof: or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 21 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 20, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In section 180.454 by amending the table therein by adding and alphabetically inserting new entries for corn, sweet (kernals plus cobs with husks removed); corn, sweet, fodder (stover); and corn, sweet, forage; to read as follows:

§ 180.454 Nicosulfuron, [3-pyridinecarboxamide, 2-((((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)aminosulfonyl)-N,N-dimethyl]; tolerances for residues.

* * * * *

Commodity	Parts per million
. . . . .	. .
corn, sweet (kernals plus cobs with husks removed)	0.1
corn sweet, fodder (stover)	0.1
corn, sweet, forage	0.1

[FR Doc. 96-4399 Filed 2-28-96; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 180 and 186

[PP 3F4169 and FAP 3H5655/R2200; FRL-4996-2]

RIN 2070-AC78

Imidacloprid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing permanent tolerances for residues of the insecticide (1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) (also known as imidacloprid) and it metabolites in or on cottonseed and cotton gin byproducts, revoking the existing feed additive tolerance for imidacloprid on cotton meal, and establishing a maximum residue limit for imidacloprid on cottonseed meal. Bayer Corporation (formerly Miles, Inc.) submitted petitions pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) requesting these regulations to establish certain maximum permissible levels for residues of the insecticide.

EFFECTIVE DATE: This regulation is effective on February 15, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 3F4169 and FAP 3H5655/R2200, may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington , DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to:opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [PP 3F4169 and FAP 3H5655/R2200. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386; email: edwards.dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 6, 1995, (60 FR 62366), EPA issued a proposed rule pursuant to petitions from Bayer Corporation (formerly Miles, Inc.) to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e). EPA proposed permanent tolerances for residues of the insecticide (1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine (also known as imidacloprid) and its metabolites in or on cottonseed and cotton gin byproduct, to revoke the existing feed additive tolerance for imidacloprid on cotton meal, and to establish a maximum residue limit for imidacloprid on cottonseed.

There were no comments or request for referral to an advisory committee received in response to the proposed rule.

This pesticide is considered useful for the purposes for which the tolerances are sought. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 3F4169 and FAP 3H5655/R2200] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 3F4169 and FAP 3H5655/R2200], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 15, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR parts 180 and 186 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.472, by amending the table in paragraph (a) by adding and alphabetically inserting the following new entries and by removing and reserving paragraph (b), to read as follows:

§ 180.472 1-[(6-Chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * * * *	
Cotton, gin byproducts	4.0
Cottonseed	6.0
* * * * * * *	

(b) [Reserved]

* * * * *

PART 186—PESTICIDES IN ANIMAL FEED

2. In part 186:

a. By revising the heading of part 186 to read as set forth above.

b. The authority citation for part 186 is revised to read as follows:

Authority: 21 U.S.C. 342, 348, and 701.

c. In § 186.900, by revising paragraph (b), to read as follows:

§ 186.900 1-[(6-Chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolinimine; tolerances for residues.

* * * * *

(b)(1) A maximum residue level regulation is established for residues of the insecticide 1-[(6-choro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine in or on the following feed resulting from application of the insecticide to cotton:

Feed	Parts per million
Cottonseed meal	8.0

(2) The regulation in paragraph (b)(1) of this section reflects the maximum level of residues in cottonseed meal consistent with use of 1-[(6-chloro-3-pyridinyl) methyl]-*N*-nitro-2-imidazolidinimine on cotton in conformity with § 180.472 of this chapter and with the use of good manufacturing practices.

* * * * *

[FR Doc. 96–4392 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 271

[FRL–5423–2]

Washington; Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Washington has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Washington's application and has made a decision, subject to public review and comment, that Washington's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Washington's hazardous waste program revisions. Washington's application for program revision is available for public review and comment.

DATES: Final authorization for the State of Washington shall be effective April 29, 1996, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on the State of Washington's program revision application must be received by the close of business April 1, 1996.

ADDRESSES: Copies of the State of Washington's program revision application are available during normal business hours at the following addresses for inspection and copying: U.S. Environmental Protection Agency, Region 10, Library, 1200 Sixth Avenue, Seattle WA 98101, contact: (206) 553–1259; Washington Department of Ecology, 300 Desmond Drive, Lacey WA 98503, contact: Patricia Hervieux, (360) 407–6756; Washington Department of Ecology, Eastern Region, N. 4601 Monroe, Suite 100, Spokane WA 99205, contact: Jim Malm, (509) 456–2725. Written comments should be sent to Patricia Springer, U. S. Environmental Protection Agency, Region 10, HW–105, 1200 Sixth Avenue, Seattle WA 98101, Phone (206) 553–2858.

FOR FURTHER INFORMATION CONTACT: Patricia Springer, U. S. Environmental Protection Agency, Region 10, HW–105, 1200 Sixth Avenue, Seattle WA 98101, Phone (206) 553–2858.

SUPPLEMENTARY INFORMATION:

Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, state program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 124, 260–266, 268, 270 and 279.

State of Washington

The State of Washington initially received final authorization on January 31, 1986. Washington also received authorization for revisions to its program on November 23, 1987 (52 FR 35556, 9/22/87), October 16, 1990 (55 FR 33695, 8/17/90), and November 4, 1994 (59 FR 55322, 11/4/94). On November 9, 1995, Washington submitted a program revision application for additional program approvals. Today, Washington is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Washington's application, and has made an immediate final decision that the State's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Washington's hazardous waste program. The public may submit written comments on EPA's immediate final decision up until (insert date at least 30 calendar days after date of publication in **Federal Register**). Copies of the State of Washington's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of the State of Washington's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

The State of Washington has requested authorization for the following federal rules:

Non-HSWA Rules:

- Hazardous Waste Storage and Treatment Tank Systems, 51 FR 25422, 7/14/86 (CL 28);
- Listing of Commercial Chemical Products and Appendix VIII Constituents—Correction, 51 FR 28296, 8/6/86 (CL 29);
- Revised Manual SW–846, 52 FR 8072, 3/16/87 (CL 35);
- Hazardous Waste Tank Systems—Correction, 51 FR 29430, 8/15/86 (CL 28);
- Closure/Post-Closure Care for Interim Status Surface Impoundments, 52 FR 8704, 3/19/87 (CL 36);
- Definition of Solid Waste—Technical Correction, 52 FR 21306, 6/5/87 (CL 37);
- HW Constituents for Ground Water Monitoring (Phase I), 52 FR 25942, 7/9/87 (CL 40);
- Listing of Hazardous Waste—Container/Inner Liner Correction, 52 FR 26012, 7/10/87 (CL 41);
- Liability Requirements for HW Facilities—Corporate Guarantee, 52 FR 44314, 11/18/87 (CL 43);
- Miscellaneous Units, 52 FR 46946, 12/10/87 (CL 45);
- Technical Correction—Listing of Hazardous Waste, 53 FR 13382, 4/22/88 (CL 46);
- Treatability Studies Sample Exemption, 53 FR 27290, 7/19/88 (CL 49);
- Storage and Treatment Tank Systems, 53 FR 34079, 9/2/88 (CL 52);
- Listing of Primary Metal Smelter Wastes—Spent Pot Liner, 53 FR 35412, 9/13/88 (CL 53);
- Permit Modifications for HW Management Facilities, 53 FR 37912, 9/28/88 and 53 FR 41649, 10/24/88 (CL 54);
- Statistical Methods for Evaluating Ground Water Monitoring Data, 53 FR 39720, 10/11/88 (CL 55);
- Hazardous Waste Miscellaneous Units, 54 FR 615, 1/9/89 (CL 59);
- Incinerator Permits, 54 FR 4286, 1/30/89 (CL 60);
- Changes to Interim Status Facilities & Modifications to HW Management Permits; Procedures for Post-Closure Permitting, 54 FR 9596, 3/7/89 (CL 61).

HSWA Rules:

- Dioxin Waste Listings, 50 FR 1978, 1/14/85 (CL 14);
- Paint Filter Test, 50 FR 18370, 4/30/85 (CL 16);
- Research and Development Permits, 50 FR 28702, 7/15/85 (CL 17Q);
- Used Oil and HW Burned as Fuels, 50 FR 49164, 11/29/85 and 52 FR 11819, 4/13/87 (CL 19);
- Small Quantity Generator Requirements, 51 FR 10146, 3/24/86 (CL 23);
- Codification Rule, Technical Correction, 51 FR 19176, 5/28/86 (CL 25);
- Listing of EBDC, 51 FR 37725, 10/24/86 (CL 33);
- Toxicity Characteristic Revisions, 55 FR 11798, 3/29/90 and 55 FR 26986, 6/29/90 (CL 74).

The CL numbers reference regulation-specific checklists in the application which identify the specific federal regulation citation and the state regulation analog.

Some portions of Washington's revised program are broader in scope than the federal program, and thus are not federally enforceable. This action does not authorize the identified broader in scope provisions. Some portions of Washington's revised program are more stringent than the federal program. This action makes these more stringent provisions a part of the federally authorized RCRA program. Both the broader in scope and more stringent provisions are identified in the Checklists and discussed in the Attorney General's Statement accompanying the application.

Indian Lands

Washington is not seeking authorization to operate on Indian lands.

Decision

I conclude that the State of Washington's program revision application meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Washington is granted final authorization to operate its hazardous waste program as revised. Washington now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. The State of Washington also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA, 42 U.S.C. 6927, and to take enforcement actions under Sections 3008, 3013 and 7003 of RCRA, 42 U.S.C. 6928, 6934, and 6973.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of the State of Washington's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority

This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 8, 1996.

Chuck Clarke,

Regional Administrator.

[FR Doc. 96–3718 Filed 2–28–96; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 95–155; DA 96–69]

Toll Free Service Access Codes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Report and Order resolves certain issues essential to the industry opening the 888 toll free service access code ("SAC") on March 1, 1996. The Report and Order adopted by the Common Carrier Bureau of the FCC, identifies which numbers in the 888 Service Access Code ("SAC") will become generally available for reservation on February 10, 1996 and establishes limits on how many 888 and 800 numbers each Responsible Organization ("RespOrg") may reserve so as to not overload the system and interrupt the reservation process. For tariffing purposes, the Report and Order concludes that toll free service using the 888 SAC is functionally equivalent to toll free service that uses the 800 SAC. The introduction of the 888 SAC for toll free calling is determined to be an expansion of the universe of toll free numbers brought on by an increase in the demand for toll free services and is considered to be similar to an increase in network capacity. Local exchange carriers ("LECs") are, therefore, not allowed to treat the costs and investments associated with the introduction of the 888 SAC exogenously under price caps.

EFFECTIVE DATE: January 25, 1996.

FOR FURTHER INFORMATION CONTACT: Irene Flannery, (202) 418–2373; Mary DeLuca (202) 418–2344; Bradley S. Wimmer (202) 418–2351 Network Services Division, Common Bureau.

SUPPLEMENTARY INFORMATION: This document summarizes the Bureau's Report and Order In the Matter of Toll Free Service Access Codes (CC Docket 95–155, adopted January 24, 1996, and released January 25, 1996, DA 96–69). The file is available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M Street, N.W., Washington, D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, phone (202) 857–3800.

Paperwork Reduction Act

The Report and Order contains no requests for data and, therefore, does not require review by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Analysis of Proceeding

Background

In October 1995, the Commission initiated a rulemaking proceeding to ensure that in the future, toll free numbers are allocated on a fair, equitable and orderly basis. Generally, the Notice sought comment on proposals to: (1) promote the efficient use of toll free numbers; (2) foster the fair and equitable reservation and distribution of toll free numbers; (3) smooth the transition period preceding introduction of a new toll free code; (4) guard against warehousing of toll free numbers; and (5) determine how toll free vanity numbers should be treated. (CC Docket No. 95–155, FCC 95–419, 60 FR 53157, October 12, 1995) That Notice was issued in response to industry reports that the existing pool of toll free numbers were being consumed at a rate that would exhaust the supply of toll free numbers in the 800 Service Access Code ("SAC") before the 888 SAC would be deployed. On January 24, 1996, the Commission released an Order (CC Docket No. 95–155, adopted January 23, 1996, FCC 96–18) that delegated to the Chief of the Common Carrier Bureau ("Bureau") the authority to resolve the issues essential to the industry opening the 888 toll free service access code ("SAC") on schedule. Toll free service using the 888 SAC is currently scheduled to begin on March 1, 1996.

Summary

1. The Report and Order resolves those issues essential to opening the 888 SAC for toll free calling according to schedule. Specifically, the Report and Order defers the issue of what permanent protection, if any, those subscribers with a commercial interest in preventing their 800 number from being replicated in the 888 code will be afforded to the Commission; concludes that RespOrgs should determine which toll free subscribers using the 800 SAC will have their 800 numbers protected from replication in the 888 code during the initial reservation of 888 numbers; sets the date for which initial reservation of 888 numbers will begin; sets limitations on the number of numbers that RespOrgs will be allowed to reserve for both 800 and 888 numbers; and concludes that the costs incurred by LECs regulated under price caps to upgrade the 800 database will not be treated as exogenous.

2. In this Order, the Bureau agrees with the SMS/800 Number Administration Committee ("SNAC") that RespOrgs should poll their 800 subscribers to determine which numbers subscribers may want replicated in 888. We expect that RespOrgs will continue this polling process until February 1, 1996. We direct Database Management Services, Inc. ("DSMI") to set aside those 888 numbers identified by the RespOrgs by placing these "vanity numbers" in "unavailable" status until we resolve whether these numbers should be afforded any special right or protection on a permanent basis. We also conclude that the entire "888–555" NXX should be designated as "unavailable" until the Commission resolves those issues that will permit competitive toll free directory assistance services.

3. The Bureau concludes that first come, first served remains the most equitable, easily administered, and least expensive means of allocating toll free numbers. The Order sets February 10, 1996 as the date for which reservation of 888 toll free numbers will begin. The 888 numbers will be rationed based on a version of the 800 number conservation plan initiated to delay the complete exhaust of toll free numbers in the 800 SAC until after the 888 SAC is in use for toll free calling. The Bureau implements a conservation plan in order to avoid a system overload that would temporarily interrupt the reservation process. According to the Bureau's conservation plan, up to 120,000 888 numbers per week may be reserved. The Bureau does not, however, at this time discontinue the conservation of 800 numbers but, instead, increases the size of the allocation from 29,000 numbers a week to 73,000 numbers a week for a three week period and then returns to the 29,000 numbers a week allocation plan.

4. For tariffing purposes, the Bureau concludes that toll free service using the 888 SAC is functionally equivalent to toll free service that uses the 800 code. Moreover, the Bureau concludes that the addition of 888 numbers to the universe of toll free numbers is comparable to an increase in network capacity and, therefore, will not allow the costs attributable to the implementation of 888 to be treated as exogenous by carriers regulated under price caps.

Ordering Clauses

Accordingly, IT IS ORDERED that, pursuant to authority contained in Sections 1, 4, 5, and 201–205 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 155, and 201–205, Section 0.201(d) of the Commission's rules, 47 C.F.R. § 0.201(d), this Report and Order is hereby ADOPTED.

IT IS FURTHER ORDERED that, pursuant to 5 U.S.C. § 554(d) and 47 C.F.R. § 1.103(a), this Report and Order shall take effect upon adoption.

List of Subjects in 47 CFR Part 61

Communication common carriers.

Federal Communications Commission.

John S. Morabito,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 96–4632 Filed 2–28–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 95–85; RM–8518]

Radio Broadcasting Services; Copeland, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Friday, January 26, 1996 (61 FR 02453).

EFFECTIVE DATE: February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Barbara Chappelle, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need of Correction

As published, the final regulation document contains an error in the window period and closing date.

Correction of Publication

Accordingly, the publication on January 26, 1996 of the final regulations, which were subject of FR Doc. 96–1420 is Corrected as follows:

On page 02453, in the second column, In the **DATES** section, the window period closing date for filing applications should be April 4, 1996 in lieu of March 19, 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–4631 Filed 2–28–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 95–43; RM–8580]

Radio Broadcasting Services; Grand Junction, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Friday, January 26, 1996 (61 FR 02453).

EFFECTIVE DATE: February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Barbara Chappelle, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need of Correction

As published, the final regulation document contains an error in the window period and closing date.

Correction of Publication

Accordingly, the publication on January 26, 1996 of the final regulations, which were subject of FR Doc. 96–1422 is corrected as follows:

On page 02453, in the third column, in the **DATES** section, the window period closing date for filing applications should be April 4, 1996 in lieu of March 19, 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–4630 Filed 2–28–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 204, 209, 213, 215, 216, 217, 223, 225, 228, 232, 235, 236, 242, 246, 252, 253, and Appendix G to Chapter 2

[Defense Acquisition Circular (DAC) 91–10]

Defense Federal Acquisition Regulation Supplement; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rules.

SUMMARY: Defense Acquisition Circular (DAC) 91–10 amends the Defense Federal Acquisition Regulation Supplement (DFARS) to revise, finalize, or add language on undefinitized contract actions; warranties; institutions of higher education; should cost reviews; construction and architect-engineer contracts; sensitive conventional arms, ammunition, and explosives; international trade agreements; foreign offset agreements; tank and automotive forging items; progress payment rates; research and development contracting; contract administration; and foreign military sales.

EFFECTIVE DATE: February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Mrs. Susan Buckmaster, OUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon. Washington, DC 20301–3062. Telephone (703) 602–0131. Telefax (703) 602–0350.

SUPPLEMENTARY INFORMATION:

A. Background

This Defense Acquisition Circular (DAC) 91–10 includes 17 rules and miscellaneous editorial amendments. Three of the rules in the DAC (Items VII, X, and XVII) were published previously in the **Federal Register** (61 FR 130, January 3, 1996; 61 FR 3600, February 1, 1996; and February 26, 1996; respectively) and thus are not included as part of this rulemaking notice. These three rules are being published in the DAC to conform the loose-leaf edition of DFARS to the previously published revisions.

B. Regulatory Flexibility Act

DAC 91–10, Items IV, XII, XIII, XIV, XV, and XVI

The Regulatory Flexibility Act does not apply because these rules are not significant revisions within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* However, comments from small entities will be considered in accordance with Section 610 of the Act. Please cite the applicable DFARS case number in correspondence.

DAC 91–10, Items I, III, V, VIII, IX, and XI

DoD certifies that these rules will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act because:

Item I—The rule primarily (1) pertains to internal Government considerations regarding use of warranties; and (2) consolidates and standardizes existing regulatory requirements pertaining to undefinitized contract actions.

Item III—Contracts awarded to small entities normally are not subject to program or overhead should-cost reviews.

Item V—The rule merely provides a standard method of implementing security requirements which already exist under DoD 5100.76–M.

Item VIII—The rule retains the policy of acquiring tank and automotive forging items from domestic sources to the maximum extent practicable. The new exception only applies to forging items purchased as tank and automotive spare parts, when the end use of the spare parts is unknown.

Item IX—The rule merely clarifies the scope of offset administrative costs that

contractors may recover under foreign military sales contracts. Also, most companies involved in offset arrangements are not small businesses.

Item XI—The reduction in the customary progress payment rate only applies to large businesses. While the rule also precludes the use of flexible progress payments for contracts resulting from solicitations issued on or after November 30, 1993, this change is not expected to have a significant economic impact on a substantial number of small entities, because the customary progress payment rates for small and small disadvantaged businesses generally are more favorable than a flexible progress payment rate with its associated terms and conditions.

DAC 91–10, Items II and VI

The Regulatory Flexibility Act applies. A final regulatory analysis has been performed and is available by writing the Defense Acquisition Regulations Council, OUSD(A&T)DP(DAR), 3062 Defense Pentagon, Washington, DC 20301–3062

C. Paperwork Reduction Act

DAC 91–10, Items I, II, III, IV, VI, VIII, IX, XI, XII, XIII, XIV, XV, and XVI

The Paperwork Reduction Act does not apply because these rules do not impose any information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

DAC 91–10, Item V

The Paperwork Reduction Act applies. OMB has approved the information collection requirement under OMB Control Number 0704–0385.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Defense Acquisition Circular (DAC) 91–10 amends the Defense Federal Acquisition Regulation Supplement (DFARS) 1991 edition. The amendments are summarized as follows:

Item I—Contract Award (DFARS Case 95–D702)

This final rule (1) amends DFARS Parts 216 and 217 to implement Section 1505 of Pub. L. 103–355 and to clarify guidance on undefinitized contract actions (UCAs); (2) amends the guidance on warranties at 246.770 to implement Section 2402 of Pub. L. 103–355; and (3) adds a new clause on definitization of UCAs at 252.217–7027. The new clause is similar to, and will be used instead of, the clause as FAR 52.216–25, Contract Definitization, which was designed for use in letter contracts only.

Item II—Institutions of Higher Education (DFARS Case 94–D310)

The interim rule published as Item IX of DAC91–9 is revised and finalized. The rule implements Section 558 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103–337). Section 558 provides that no funds available to DoD may be provided by grant or contract to any institution of higher education that has a policy of denying, or which effectively prevents the Secretary of Defense from obtaining for military recruiting purposes, entry to campuses, access to students on campuses, or access to directory information pertaining to students. The final rule differs from the interim rule in that it makes clarifying revisions at 209.470–1 and 252.209–7005, and adds language at 209.470–1(c) to state that, when specific subordinate elements of an institution of higher education, rather than the institution as a whole, have a prohibited policy or practice, the prohibition on use of DoD funds applies only to those subordinate elements.

Item III—Overhead Should Cost Reviews (DFARS Case 92–D010

This final rule revises DFARS 215.810 to specify when DoD activities should consider performing an overhead should cost review of a contractor business unit. This DFARS rule supplements the FAR rule published as Item VIII of Federal Acquisition Circular 90–37 on January 26, 1996. Both the FAR and the DFARS rules become effective on March 26, 1996.

Item IV—Cost-Plus-Fixed-Fee Contracts for Military Construction (DFARS Case 95–D024)

This final rule adds new sections at DFARS 216.306 and 232.703–70 and revises 236.271 to expand guidance on statutory restrictions pertaining to the use of cost-plus-fixed-fee contracts for military construction.

Item V—Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (DFARS Case 95–D001)

This final rule adds a new subpart at DFARS 223.72 and a new contract clause at 252.223–7007 to provide guidance on physical security requirements for contracts involving sensitive conventional arms, ammunition, and explosives. Section 204.202 is amended to specify additional requirements for distribution of contracts containing the clause at 252.223–7007.

Item VI—Applicability of Trade Agreements (DFARS Case 95–D022)

This final rule amends DFARS 225.402 to provide that the value of an acquisition for purposes of determining the applicability of both the North American Free Trade Agreement Act and the Trade Agreements Act is the total value of all end products subject to the acts.

Item VII—Uruguay Round (1996 Agreement) (DFARS Case 95–D306)

This final rule was issued by Departmental Letter 95–019, effective January 1, 1996. The rule amends DFARS 225.402 and the clause at 252.225–7007 to implement the DoD-unique requirements of the renegotiated General Agreement on Tariffs and Trade (GATT) Government Procurement Agreement (1996 Code) (Uruguay Round), which became effective January 1, 1996. This agreement is implemented in statute by the Uruguay Round Agreement Act, Pub. L. 103–465, which amends the Trade Agreements Act of 1979.

Item VIII—Tank and Automotive Forging Items (DFARS Case 95–D003)

This final rule amends DFARS Subpart 225.71 to add an exception to the foreign source restrictions on the acquisition of forgings. The rule excludes forging purchases as tank and automotive spare parts from foreign source restrictions, except when it is known that the parts are for use in tanks only.

Item IX—Offset Implementation Costs (DFARS Case 95–D019)

This final rule amends DFARS 225.7303–2 to clarify that, under a foreign military sales contract, a contractor may recover costs incurred to implement its offset agreement with a foreign government or international organization, if the foreign military sale Letter of Offer and Acceptance is financed wholly with customer cash or repayable foreign military finance credits.

Item X—Alternatives to Miller Act Bonds (DFARS Case 95–D305)

This interim rule was issued by Departmental Letter 96–001, effective February 1, 1996. The rule revises the interim rule which was published as Item XXIII of DAC 91–9 to provide alternative payment protections for construction contracts between $25,000 and $100,000, pending implementation of Section 4104(b)(2) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) in the FAR. This interim rule amends the guidance at DFARS 228.171 to require the contracting officer to specify two or more alternative payment protections when using the clause at 252.228–7007, and to give particular consideration to use of an irrevocable letter of credit as one of the specified alternatives. This rule also amends the clause at 252.228–7007 to exclude payment bonds from the payment protections under which the contracting officer may access funds.

Item XI—Reduction in Progress Payment Rates (DFARS Case 93–D305)

The interim rule published as Item XXVII of DAC 91–6 is revised and finalized. The rule implements Section 8155 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103–139). Section 8155 requires DoD to reduce the customary progress payment rate for large business concerns from 85 percent to 75 percent for contracts resulting from solicitations issued on or after November 11, 1993. The final rule differs from the interim rule in that it makes an editorial change in the table at 232.502–1–71, and amends the clause at 252.232–7004 to state that the 75 percent customary progress payment rate for large business concerns also applies to progress payments made under undefinitized contract actions.

Item XII—Streamlined Research and Development (R&D) Update (DFARS Case 95–D036)

This final rule amends DFARS Subpart 235.70 to update administrative information pertaining to the streamlined R&D contracting test program, and to revise the list of clauses in the streamlined R&D contracting format to conform to FAR and DFARS revisions which occurred since initiation of the test program.

Item XIII—Performance Evaluations for Construction and Architect-Engineer Contracts (DFARS Case 95–D034)

This final rule amends DFARS 236.201 and 236.604 to prescribe use of DD Forms 2626 and 2631 in lieu of Standard Forms 1420 and 1421, respectively. The forms are used to document contractor performance under construction and architect-engineer contracts. Copies of DD Forms 2626 and 2631 are added to Subpart 253.3.

Item XIV—Magnitude of Construction Projects (DFARS Case 95–D031)

This final rule adds a new section at DFARS 236.204 to provide additional price ranges for identifying the magnitude of construction projects in advance notices and solicitations.

Item XV—Flexible Contract Administration Services (DFARS Case 95–D030)

This final rule amends DFARS 242.203 to expand the conditions under which the Defense Contract Management Command may perform contract administration services on a military installation.

Item XVI—Military Assistance Program Address (MAPAD) Codes (DFARS Case 95–D032)

This final rule amends DFARS 253./213–70 to clarify instructions for inclusion of foreign military sale shipment information in Block 14 of DD Form 1155.

Item XVII—Allowability of Costs (DFARS Case 95–D309)

This interim rule was issued by Departmental Letter 96–002, effective February 26, 1996. The rule adds language at DFARS 231.205–6 to implememt Section 8122 of the Fiscal Year 1996 Defense Appropriations Act (Pub. L. 104–61). Section 8122 prohibits DoD from using fiscal year 1996 funds to reimburse a contractor for costs paid by the contractor to an employee for a bonus or other payment in excess of the normal salary paid to the employee, when such payment is part of restructuring costs associated with a business combination.

Item XVIII—Small Disadvantaged Business Utilization Program (Information Item)

On October 23, 1995, the Under Secretary of Defense for Acquisition and Technology suspended those sections of the DFARS which prescribe set-aside of acquisitions for small disadvantaged businesses. This suspension takes account of the Supreme Court's decision in *Adarand Constructors, Inc. v. Pena*, 63 U.S.L.W. 4523 (U.S. June 12, 1995), while an interagency Government-wide review of affirmative action programs is conducted. The suspended DFARS sections are 219.501(S–70), 219.502–2–70, 219.502–4, 219.504(b)(i), 219.506, 219.508(e), 219.508–70, and 252.219–7002. Although these sections, and references thereto, still appear in the DFARS text, use of these sections is suspended until further notice.

Item XIX—Editorial Revisions

(a) DFARS 202.101 and Appendix G are amended to update activity names and addresses.

(b) DFARS Part 213 is amended to update statutory references and to conform to revisions to FAR Part 13 published in Federal Acquisition Circular 90–29.

(c) DFARS 228.106–4, 228.106–4–70, 228.106–6, and 252.228–7006 are deleted. The guidance in these sections has been superseded by the guidance in FAR 28.106–4(b), 28.106–6(d), and 52.228–12, published in Federal Acquisition Circular 90–32.

(d) DFARS Part 253 is amended to update DD Forms 375, 375c, 428, 1659, 2222, 2222–2, and 2604. (This amendment is being made only in the loose-leaf edition of the DFARS.)

Interim Rules Adopted as Final With Changes

PARTS 209 AND 252—[AMENDED]

The interim rule published at 60 FR 13073 on March 10, 1995, and amended at 60 FR 61593 and 61600 on November 30, 1995, is adopted as final with a revision at section 209.470–1 and amendments at section 252.209–7005.

PARTS 232 AND 252—[AMENDED]

The interim rule published at 58 FR 62045 on November 24, 1993, and corrected at 58 FR 64363 on December 6, 1993, is adopted as final with amendments at section 252.232–7004.

List of Subjects in 48 CFR Parts 202, 204, 209, 213, 215, 216, 217, 223, 225, 228, 232, 235, 236, 242, 246, 252, 253, and Appendix G to Chapter 2

Government procurement.

Amendments to 48 CFR Chapter 2 (Defense Federal Acquisition Regulation Supplement)

48 CFR Chapter 2 (the Defense Federal Acquisition Regulation Supplement) is amended as set forth below.

1. The authority for 48 CFR Parts 202, 204, 209, 213, 215, 216, 217, 223, 225, 228, 232, 235, 236, 242, 246, 252, 253, and Appendix G to Chapter 2 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

2. Section 202.101 is amended in the definition entitled "Contracting activity" under the heading "NAVY," by removing the two entries "Ships Parts Control Center" and "Navy Aviation Supply Office", by adding the entry "Naval Inventory Control Point" after the entry "Naval Facilities Engineering Command"; and by revising the entry "U.S. Marine Corps Research, Development, and Acquisition Command" to read "Marine Corps Systems Command".

PART 204—ADMINISTRATIVE MATTERS

3. Section 204.202 is amended by removing in paragraph (1)(iii) the word "and"; by removing in paragraph (1)(iv) the period and adding "; and"; and by adding a new paragraph (1)(v) to read as follows:

204.202 Agency distribution requirements.

(1) * * *

(v) One copy, or an extract of the pertinent information, to the cognizant Defense Investigative Service office listed in DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives, when the clause at 252.223–7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives, is included in the contract.

* * * * *

PART 209—CONTRACTOR QUALIFICATIONS

4. Section 209.470–1 is revised to read as follows:

209.470–1 Policy.

(a) Section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) provides that no funds available to DoD may be provided by grant or contract to any institution of higher education that has a policy of denying or that effectively prevents the Secretary of Defense from obtaining for military recruiting purposes—

(1) Entry to campuses or access to students on campuses; or

(2) Access to directory information pertaining to students.

(b) Institutions of higher education that are determined under 32 CFR part 216 to have the policy or practice in paragraph (a) of this subsection shall be listed as ineligible on the List of Parties Excluded from Federal Procurement Programs published by the General Services Administration (see FAR 9.404).

(c) In cases where a determination is made under 32 CFR part 216 that specific subordinate elements of an institution of higher education, rather than the institution as a whole, have the policy or practice in paragraph (a) of this subsection, 32 CFR part 216 provides that the prohibition on use of DoD funds applies only to those subordinate elements.

5. Part 213 heading is revised to read as follows:

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

213.000 [Amended]

6. Section 213.000 is amended by revising the words "small purchase" to read "simplified acquisition" and by revising the threshold "$100,000" to read "$200,000".

7. Section 213.101 is amended by revising the introductory text; by adding a comma in paragraph (1) between the word "operations" and the word "or"; and by revising paragraph (2). The revisions read as follows:

213.101 Definitions.

Contingency operation is defined in 10 U.S.C. 101(a)(13) as a military operation that—

* * * * *

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10, chapter 15 of Title 10, or any other provision of law during a war or during a national emergency declared by the President or Congress.

213.204 [Amended]

8. Section 213.204 is amended by revising in paragraph (b) the phrase "above the dollar threshold at FAR 13.000" to read "not using simplified acquisition procedures."

213.402 [Amended]

9. Section 213.402 is redesignated as 213.401.

213.403 [Amended]

10. Section 213.403 is redesignated as 213.402.

213.404 [Amended]

11. Section 213.404 is redesignated as 213.403. Newly designated Section 213.403 is amended by adding a period at the end of paragraph (c)(i)(B); and by revising in paragraph (c)(ii) the words "small purchases" to read "simplified acquisitions."

213.502–2 [Amended]

12. Section 213.502–2 is redesignated as Section 213.505–1. Newly designated Section 213.505–1 is amended by revising the heading to read "Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation."; by removing in the introductory text the hyphen between the words "Services" and "Schedule"; by adding a hyphen between the words "Schedule" and "Continuation", by revising in paragraph (b)(i) the words "small purchase" to read "simplified acquisition"; and by revising the sentence in paragraph (b)(i)(F)(*3*) to read "A purchase order for acquisitions using simplified acquisition procedures."

13. Section 213.505–3 is amended by revising paragraph (b)(1) introductory text to read as follows:

213.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.

(b)(1) The micro-purchase limitation applies to all purchasers except that purchases up to the simplified acquisition threshold may be made for—

* * * * *

14. Section 213.507 is amended by revising the heading; and by revising paragraph (a)(i) to read as follows:

213.507 Provisions and clauses.

(a) * * *

(i) Unilateral purchase orders—

(A) FAR 52.252–2, Clauses Incorporated by Reference (required only if other clauses are incorporated by reference);

(B) FAR 52.203–3, Gratuities;

(C) FAR 52.211–16, Variation in Quantity;

(D) FAR 52.222–3, Convict Labor (unless the order will be subject to the Walsh-Healey Public Contracts Act (see FAR subpart 22.6));

(E) FAR 52.222–26, Equal Opportunity (unless exempt under FAR 22.807);

(F) FAR 52.225–3, Buy American Act-Supplies;

(G) FAR 52.232,–1, Payments;

(H) FAR 52.232–25, Prompt Payment;

(I) FAR 52.232–28, Electronic Funds Transfer Payment Methods;

(J) FAR 52.233–1, Disputes;

(K) FAR 52.246–1, Contractor Inspection Requirements (except when an alternate level of quality assurance is necessary (see FAR 46.203 and 46.204)); and

(L) FAR 52.246–16, Responsibility for Supplies.

* * * * *

PART 215—CONTRACTING BY NEGOTIATION

15. Section 215.810 is revised to read as follows:

215.810 Should-cost review.

16. Section 215.810–2 is added to read as follows:

215.810–2 Program should-cost review.

(b) DoD contracting activities should consider performing a program should-cost review before award of a definitive major systems contract exceeding $100 million.

17. Section 215.810–3 is added to read as follows:

215.810–3 Overhead should-cost review.

(a) Contact the DCMC/DLA Overhead Center, Fort Belvoir, VA 22060–6221, at (703) 767–3387, for questions on overhead should-cost analysis.

(b)(i) The Defense Contract Management Command/Defense Logistics Agency (DCMC/DLA), or the military department responsible for performing contract administration functions (e.g., Navy SUPSHIP), should consider, based on risk assessment, performing an overhead should-cost review of a contractor business unit (as defined in FAR 31.001) when all of the following conditions exist:

(A) Projected annual sales to DoD exceed $1 billion.

(B) Projected DoD versus total business exceeds 30 percent;

(C) Level of sole-source DoD contracts is high;

(D) Significant volume of proposal activity is anticipated;

(E) Production or development of a major weapon system or program is anticipated; and

(F) Contractor cost control/reduction initiatives appear inadequate.

(ii) The head of the contracting activity may request an overhead should-cost review for a business unit which does not meet the criteria in paragraph (b)(i) of this subsection.

(iii) Overhead should-cost reviews are labor intensive. These reviews generally involve participation by the contracting, contract administration, and contract audit elements. The extent of availability of military department, contract administration, and contract audit resources to support DCMC/DLA-led teams should be considered when determining whether a review will be conducted. Overhead should-cost reviews generally shall not be conducted at a contractor business segment more frequently than every three years.

PART 216—TYPES OF CONTRACTS

18. Section 216.306 is added to read as follows:

216.306 Cost-plus-fixed-fee contracts.

(c) *Limitations.*

(i) Annual military construction appropriations acts restrict the use of cost-plus-fixed-fee contracts that—

(A) Are funded by a military construction appropriations act:

(B) Are estimated to exceed $25,000; and

(C) Will be performed within the United States, except Alaska.

(ii) The Secretaries of the military departments are authorized to approve contracts described in paragraph (c)(i) of this section that are for environmental work only, provided the environmental work is not classified as construction, as defined by 10 U.S.C 2801.

(iii) The Secretary of Defense or designee must specifically approve contracts described in paragraph (c)(i) of this section that are not environmental work only.

19. Section 216.603–4 is revised to read as follows:

216.603–4 Contract clauses.

(b)(2) See 217.7406(a) for additional guidance regarding use of the clause at FAR 52.216–24, Limitation of Government Liability.

(3) Use the clause at 252.217–7027, Contract Definitization, in accordance with its prescription at 217.7406(b), instead of the clause at FAR 52.216–25, Contract Definitization.

20. Section 216.703 is amended by revising paragraph (c) to read as follows:

216.703 Basic ordering agreements

(c) *Limitations.* The period during which orders may be placed against a basis ordering agreement may not exceed three years. The contracting officer, with the approval of the chief of the contracting office, may grant extensions for up to two years. No single extension shall exceed one year. See subpart 217.74 for additional limitations on the use of undefinitized orders under basic ordering agreements.

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

21. Section 217.202 is amended by adding paragraph (3) to read as follows:

217.202 Use of options.

* * * * *

(3) See subpart 217.74 for limitations on the use of undefinitized options.

22. Section 217.7402 is amended by revising in the introductory text the term "UCA's" to read "UCAs" and by revising paragraph (b) to read as follows:

217.7402 Exceptions.

* * * * *

(a) * * *

(b) Purchases at or below the simplified acquisition threshold;

* * * * *

217.7404–3 [Amended]

23. Section 217.7404–3 is amended by revising in the introductory text of paragraph (a) the word "earliest" to read "earlier."

24. Section 217.7406 is revised to read as follows:

217.7406 Contract clauses.

(a) Use the clause at FAR 52.216–24, Limitation of Government Liability, in all UCAs, solicitations associated with UCAs, basic ordering agreements, indefinite delivery contracts, and any other type of contract providing for the use of UCAs.

(b) Use the clause at 252.217–7027, Contract Definitization, in all UCAs, solicitations associated with UCAs, basic ordering agreements, indefinite delivery contracts, and any other type of contract providing for the use of UCAs. Insert the applicable information in paragraphs (a), (b), and (d) of the clause. If, at the time of entering into the UCA, the contracting officer knows that the definitive contract action will meet the criteria of FAR 15.804–1 for not requiring submission of cost or pricing data, the words "and cost or pricing data" may be deleted from paragraph (a) of the clause.

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

25. A new Subpart 223.72 is added to read as follows:

Subpart 223.72—Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives

Sec.

223.7200 Definition.
223.7201 Policy.
223.7202 Preaward responsibilities.
223.7203 Contract clause.

Subpart 223.72—Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives

223.7200 Definition.

"Arms, ammunition, and explosives (AA&E)," as used in this subpart, means those items within the scope (chapter 1, paragraph B) of DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

223.7201 Policy.

(a) The requirements of DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives, shall be applied to contracts when—

(1) AA&E will be provided to the contractor or subcontractor as Government-furnished property; or

(2) The principal development, production, manufacture, or purchase of AA&E is for DoD use.

(b) The requirements of DoD 5100.76–M need not be applied to contracts when—

(1) The AA&E to be acquired under the contract is a commercial item within the meaning of FAR 2.101; or

(2) The contract will be performed in a Government-owned contractor-operated ammunition production facility. However, if subcontracts issued under such a contract will meet the criteria of paragraph (a) of this section, the requirements of DoD 5100.76–M shall apply.

223.7202 Preaward responsibilities.

When an acquisition involves AA&E, technical or requirements personnel shall specify in the purchase request—

(a) That AA&E is involved; and

(b) Which physical security requirements of DoD 5100.76–M apply.

223.7203 Contract clause.

Under the clause at 252.223–7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives, in all solicitations and contracts to which DoD 5100.76–M applies, in accordance with the policy at 223.7201. Complete paragraph (b) of the clause based on information provided by cognizant technical or requirements personnel.

PART 225—FOREIGN ACQUISITION

26. Section 225.402 is amended by revising paragraph (a) to read as follows:

225.402 Policy.

(a) To estimate the value of the acquisition, use the total estimated value of end products subject to trade agreement acts (see 225.403–70).

(1) See 225.105 for evaluation of eligible products and U.S. made end products.

* * * * *

27. Section 225.7102 is amended by revising the introductory text to read as follows:

225.7102 Policy.

DoD requirements for the following, including acquisitions for items containing the following, shall be acquired from domestic sources (as described in the clause at 252.225–7025) to the maximum extent practicable—

* * * * *

28. Section 225.7103 is amended by revising paragraph (e)(1); redesignating paragraph (e)(2) as (e)(3); and adding paragraph (e)(2) to read as follows:

225.7103 Exceptions.

* * * * *

(e) * * *

(1) Used for commercial vehicles or noncombat support military vehicles;

(2) Purchased as tank and automotive spare parts (except when it is known that the spare parts are for use in tanks only); or

* * * * *

29. Section 225.7303–2 is amended by revising paragraph (a)(3) to read as follows:

225.7303–2 Cost of doing business with a foreign government or an international organization.

(a) * * *

(3) Offset implementation costs.

(i) A U.S. defense contractor may recover costs incurred to implement its offset agreement with a foreign government or international organization if the foreign military sale Letter of Offer and Acceptance is financed wholly with customer cash or repayable foreign military finance credits.

(ii) The U.S. Government assumes no obligation to satisfy or administer the offset requirement or to bear any of the associated costs.

* * * * *

PART 228—BONDS AND INSURANCE

228.106–4, 228.106–4–70, and 228.106–6 [Removed]

30. Sections 228.106–4, 228.106–4–70, and 228.106–6 are removed.

PART 232—CONTRACT FINANCING

31. Section 232.703–70 is added to read as follows:

232.703–70 Military construction appropriations act restriction.

Annual military construction appropriations acts restrict the use of funds appropriated by the acts for payments under cost-plus-fixed-fee contracts (see 216.306(c)).

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

32. Section 235.7003 is amended by adding a new paragraph (c)(6) to read as follows:

235.7003 Reporting requirements.

* * * * *

(c) * * *

(6) Number of actions removed from the test due to inability to comply with RDSS/C procedures, with a brief description of the reasons(s) for the inability to comply.

* * * * *

33. Section 235.7004–3(d) is amended by revising "Alternate III" to read "Alternate II."

34. Section 235.7006, *Exhibit—Research and Development Streamlined Contracting Format*, Part I—The Schedule, Section H, Special Contract Requirements, is amended by revising the designation "(H.4)*" to read "(H.4)" and by revising the address in (H.4) and by adding (H.6)* to read as follows:

235.7006— The research and development streamlined contracting format.

Exhibit—Research and Development Streamlined Contracting format

Part I—The Schedule

Section H * * *

(H.4) * * * Defense Technical Information Center, Attn: Registration Section (DTIC–BCS), 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060–6218,(703) 767–8273, or 1–800–CAL–DITC (225–3842), menu selection 2.

* * * * *

*(H.6) (Insert nonstandard clause approved in accordance with 235.7006(c), if applicable.)

* * * * *

35. Section 235.7006, *Exhibit—Research and Development Streamlined Contracting Format*, Part II—Contract Clauses, and Part IV, Representations and Instructions, are revised to read as follows:

PART II—CONTRACT CLAUSES

Section I, Contract Clauses

(I.1)	52.252–2	Clauses Incorporated by Reference.
(I.2)	52.202–1	Definitions.
(I.3)	Reserved.	
(I.4)	52.203–3	Gratuities.
(I.5)	52.203–5	Covenant Against Contingent Fees.
(I.6)	52.203–7	Anti-Kickback Procedures.
(I.7)	52.203–10	Price or Fee Adjustment for Illegal or Improper Activity. (Except educational institutions.)
(I.8)	52.209–6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
(I.9)	Reserved.	
(I.10)	Reserved.	

(I.11)	Reserved.	
(I.12)	52.215–26	Integrity of Unit Prices.
(I.13)	52.215–33	Order of Precedence.
(I.14)	52.216–7	Allowable Cost and Payment. (Modified in accordance with 16.307 as applicable.)
(I.15)	Reserved.	
(I.16)	Reserved.	
(I.17)	Reserved.	
(I.18)	Reserved.	
(I.19)	52.222–3	Convict Labor.
(I.20)	52.222–26	Equal Opportunity.
(I.21)	52.222–35	Affirmative Action for Special Disabled and Vietnam Era Veterans.
(I.22)	52.222–36	Affirmative Action for Handicapped Workers.
(I.23)	52.222–37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
(I.24)	52.223–6	Drug-Free Workplace.
(I.25)	52.225–11	Restrictions on Certain Foreign Purchases.
(I.26)	52.227–1	Authorization and Consent—Alternate I.
(I.27)	52.227–2	Notice and Assistance Regarding Patent and Copyright Infringement.
(I.28)	52.228–7	Insurance—Liability to Third Persons.
(I.29)	52.232–9	Limitation on Withholding of Payments.
(I.30)	52.232–23	Assignment of Claims.
(I.31)	52.232–25	Prompt Payment.
(I.32)	52.232–28	Electronic Funds Transfer Payment Methods.
(I.33)	52.233–1	Disputes.
(I.34)	52.233–3	Protest After Award—Alternate I.
(I.35)	52.242–1	Notice of Intent to Disallow Costs.
(I.36)	52.242–13	Bankruptcy.
(I.37)	52.244–2	Subcontracts (Cost-Reimbursement and Letter Contracts) Alternate I.
(I.38)	52.244–5	Competition in Subcontracting.
(I.39)	52.247–1	Commercial Bill of Lading Notations.
(I.40)	52.249–14	Excusable Delays.
(I.41)	52.253–1	Computer-Generated Forms.
*(I.42)	52.203–9	Requirement for Certificate of Procurement Integrity-Modification.
*(I.43)	52.203–12	Limitation on Payments to Influence Certain Federal Transactions.
*(I.44)	52.204–2	Security Requirements.
*(I.45)	52.204–2	Security Requirements-Alternate I. (For educational institutions.)
*(I.46)	52.215–22	Price Reduction for Defective Cost or Pricing Data.
*(I.47)	52.215–23	Price Reduction for Defective Cost or Pricing Data Modications.
*(I.48)	52.215–24	Subcontractor Cost or Pricing Data.
*(I.49)	52.215–25	Subcontractor Cost or Pricing Data-Modifications.
*(I.50)	52.215–27	Termination of Defined Benefit Pension Plans. (Except educational institutions.)
*(I.51)	52.215–31	Waiver of Facilities Capital Cost of Money. (Except educational institutions.)
*(I.52)	52.215–39	Reversion or Adjustment of Plans for Postretirement Benefits Other than Pension (PRB).
*(I.53)	52.216–8	Fixed Fee.
*(I.54)	52.216–10	Incentive Fee.
*(I.55)	52.216–11	Cost Contract—No Fee.
*(I.56)	52.216–11	Cost Contract—No Fee-Alternate I.
*(I.57)	52.216–12	Cost-Sharing Contract—No Fee.
*(I.58)	52.216–12	Cost-Sharing Contract—No Fee-Alternate I.
*(I.59)	52.216–15	Predetermined Indirect Cost Rates.
*(I.59A)	252.216–7002	Alternate. (For educational institutions only.)
*(I.60)	52.219–6	Notice of Total Small Business Set-Aside.
*(I.61)	52.219–6	Notice of Total Small Business Set-Aside—Alternate I.
(I.63)	Reserved.	
*(I.64)	52.219–14	Limitations on Subcontracting.
*(I.65)	52.219–16	Liquidated Damages—Small Business Subcontracting Plan.
(I.66)	Reserved.	
*(I.67)	52.222–1	Notice to the Government of Labor Disputes.
*(I.68)	52.222–2	Payment for Overtime Premiums.
*(I.69)	52.222–28	Equal Opportunity Preaward Clearance of Subcontracts.
*(I.70)	52.223–2	Clean Air and Water.
*(I.71)	52.223–3	Hazardous Material Identification and Material Safety Data.
*(I.72)	52.223–7	Notice of Radioactive Materials (21 Days).
*(I.73)	52.226–1	Utilization of Indian Organizations and Indiane-Owned Economic Enterprises.
*(I.74)	52.227–10	Filing of Patent Applications—Classified Subject Matter.
*(I.75)	52.227–11	Patent Rights—Retention by the Contractor (Short Form).
*(I.76)	52.227–12	Patent Rights—Retention by the Contractor (Long Form).
*(I.77)	52.227–13	Patent Rights—Acquisition by the Government.
*(I.78)	52.228–7	Insurance—Liability to Third Persons—Alternate I.
*(I.79)	52.228–7	Insurance—Liability to Third Persons—Alternate II.
*(I.80)	52.229–8	Taxes—Foreign Cost-Reimbursement Contracts.
*(I.81)	52.229–10	State of New Mexico Gross Receipts and Compensating Tax.
*(I.82)	52.230–2	Cost Accounting Standards. (Except if exempted.)
*(I.83)	52.230–3	Disclosure and Consistency of Cost Accounting Practices. (Except if exempted.)
*(I.84)	52.230–5	Administration of Cost Accounting Standards. (Except educational institutions.)
*(I.85)	52.232–17	Interest.
*(I.86)	52.232–20	Limitation of Cost.

*(I.87)	52.232–22	Limitation of Funds.
*(I.88)	52.232–23	Assignment of Claims—Alternate I.
*(I.89)	52.233–1	Disputes—Alternate I.
*(I.90)	52.237–2	Protection of Government Buildings, Equipment and Vegetation.
*(I.91)	52.242–10	F.O.B. Origin-Government Bills of Lading or Prepaid Postage.
*(I.92)	52.242–11	F.O.B. Origin-Government Bills of Lading or Indicia Mail.
*(I.93)	52.242–12	Report of Shipment (REPSHIP).
*(I.94)	52.243–2	Changes—Cost-Reimbursement-Alternate V.
*(I.95)	52.243–6	Change Order Accounting.
*(I.96)	52.243–7	Notification of Changes (30 Calendar Days).
*(I.97)	52.245–5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).
*(I.98)	52.245–5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts-Alternate I. (For educational institutions and nonprofit organizations.)
*(I.99)	52.245–19	Government Property Furnished "As Is".
*(I.100)	52.246–23	Limitation of Liability.
*(I.101)	52.246–24	Limitation of Liability-High Value Items.
*(I.102)	52.246–24	Limitation of Liability-High Value Items-Alternate I.
*(I.103)	52.246–25	Limitation of Liability-Services.
*(I.104)	52.247–63	Preference for U.S.-Flag Air Carriers.
*(I.105)	52.247–66	Returnable Cylinder.
*(I.106)	52.249–5	Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).
*(I.107)	52.249–6	Termination (Cost-Reimbursement).
*(I.108)	52.251–1	Government Supply Sources.
*(I.109)	252.201–7000	Contracting Officer's Representative.
*(I.110)	252.203–7001	Special Prohibition on Employment.
*(I.111)	Reserved.	
*(I.112)	Reserved.	
*(I.113)	52.204–7003	Control of Government Personnel Work Product.
*(I.114)	252.209–7000	Acquisition from Subcontractors Subject to On-Site Inspection under the Intermediate-Range Nuclear Forces (INF) Treaty.
*(I.115)	252.225–7012	Preference for Certain Domestic Commodities.
*(I.116)	252.225–7031	Secondary Arab Boycott of Israel.
*(I.117)	Reserved.	
*(I.118)	Reserved.	
*(I.119)	Reserved.	
*(I.120)	252.227–7030	Technical Data-Withholding of Payment.
*(I.121)	252.227–7037	Validation of Restrictive Markings on Technical Data.
*(I.122)	252.231–7000	Supplemental Cost Principles.
*(I.123)	252.232–7006	Reduction or Suspension of Contract Payments Upon Finding of Fraud.
*(I.124)	252.242–7000	Postaward Conference.
*(I.125)	Reserved.	
*(I.126)	252.247–7023	Transportation of Supplies by Sea.
*(I.127)	252.203–7000	Statutory Prohibition on Compensation to Former Department of Defense Employees.
*(I.128)	252.203–7002	Display of DoD Hotline Poster.
*(I.129)	252.204–7000	Disclosure of Information.
*(I.130)	252.204–7002	Payment for Subline Items Not Separately Priced.
*(I.131)	252.205–7000	Provision of Information to Cooperative Agreement Holders.
*(I.132)	252.215–7000	Pricing Adjustments.
*(I.133)	252.215–7002	Cost Estimating System Requirements.
*(I.134)	252.219–7001	Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns.
*(I.135)	252.219–7002	Notice of Small Disadvantaged Business Set-Aside.
*(I.136)	252.219–7003	Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).
*(I.137)	252.219–7004	Small Business and Small Disadvantaged Business Subcontracting Plan (Test Program).
*(I.138)	252.219–7005	Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities and Minority Institutions. (. . . To be negotiated _____ %.)
*(I.139)	252.219–7005	Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities and Minority Institutions-Alternate I. (. . . To be negotiated _____ %.)
*(I.140)	252.219–7006	Notice of Evaluation Preference for Small Disadvantaged Business Concerns.
*(I.141)	252.223–7001	Hazard Warning Labels.
*(I.142)	252.223–7002	Safety Precautions for Ammunitions and Explosives.
*(I.143)	252.223–7003	Change in Place of Performance-Ammunition and Explosives.
*(I.144)	252.223–7004	Drug-Free Work Force.
*(I.145)	252.225–7014	Preference for Domestic Specialty Metals.
*(I.146)	252.225–7016	Restriction on Acquisition of Antifriction Bearings.
*(I.147)	252.225–7025	Foregin Source Restrictions.
*(I.148)	252.225–7026	Reporting of Contract Outside the United States.
*(I.149)	252.225–7032	Waiver of United Kingdom Levies.
*(I.150)	252.226–7000	Notice of Historically Black College or University and Minority Institution Set-Aside.
*(I.151)	252.227–7026	Deferred Delivery of Technical Data or Computer Software.
*(I.152)	252.227–7027	Deferred Ordering of Technical Data or Computer Software.
(I.153)	Reserved.	
*(I.154)	252.227–7034	Patent—Subcontracts.

*(I.155)	252.227–7036	Certification of Technical Data Conformity.
*(I.156)	252.227–7039	Patents—Reporting of Subject Inventions.
(I.157)	Reserved.	
*(I.158)	252.232–7000	Advance Payment Pool. (For educational institutions and nonprofit organizations.)
*(I.159)	252.233–7000	Certification of Claims and Requests for Adjustment or Relief.
*(I.160)	252.235–7002	Animal Welfare.
*(I.161)	252.242–7002	Submission of Commercial Freight Bills for Audit.
*(I.162)	252.242–7003	Application for U.S. Government Shipping Documentation/Instructions.
*(I.163)	252.242–7004	Material Management and Accounting System.
*(I.164)	252.245–7001	Reports of Government Property.
*(I.165)	252.247–7024	Notification of Transportation of Supplies by Sea.
*(I.166)	252.249–7001	Notification of Substantial Impact on Employment.
*(I.167)	252.251–7000	Ordering From Government Supply Sources.
*(I.168)	252.223–7006	Prohibition on Disposal of Toxic and Hazardous Materials.
*(I.169)	252.249–7002	Notification of Program Termination or Reduction.
(I.170)	52.204–4	Printing/Copying Double-Sided on Recycled Paper.
*(I.171)	52.208–8	Helium Requirement Forecast and Required Sources for Helium.
(I.172)	52.215–2	Audit and Records—Negotiation.
*(I.173)	52.215–2	Audit and Records—Negotiation, Alternate II.
(I.174)	52.215–40	Notification of Ownership Changes.
*(I.175)	52.215–42	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.
*(I.176)	52.215–42	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, Alternate II.
*(I.177)	52.215–42	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, Alternate III.
(I.178)	52.219–8	Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.
*(I.179)	52.219–9	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.
*(I.180)	52.242–3	Penalties for Unallowable Costs.
(I.181)	52.242–4	Certification of Indirect Costs.
(I.182)	52.244–6	Subcontracts for Commercial Items and Commercial Components.
*(I.183)	52.247–67	Submission of Commercial Transportation Bills to the General Services Administration for Audit.
(I.184)	52.223–14	Toxic Chemical Release Reporting.
(I.185)	252.235–7010	Acknowledgement of Support and Disclaimer.
(I.186)	252.235–7011	Final Scientific or Technical Report.
*(I.187)	252.227–7013	Rights in Technical Data—Noncommercial Items.
*(I.188)	252.227–7013	Rights in Technical Data—Noncommercial Items, Alternate I.
*(I.189)	252.227–7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.
*(I.190)	252.227–7014	Rights in Nocommercial Computer Software and Noncommercial Computer Software Documentation, Alternate I.
*(I.191)	252.227–7015	Technical Data—Commercial Items.
*(I.192)	252.227–7016	Rights in Bid or Proposal Information.
*(I.193)	252.227–7018	Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research Program.
*(I.194)	252.227–7018	Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research Program, Alternate I.
*(I.195)	252.227–7019	Validation of Asserted Restrictions—Computer Software.
*(I.196)	252.227–7025	Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.
*(I.197)	252.209–7005	Military Recruiting on Campus (For educational institutions only.)

* * * * * * *

PART IV—REPRESENTATIONS AND INSTRUCTIONS

Section K. Representations, Certifications and Other Statements of Offerors or Quoters

The following solicitation provisions require representations, certifications or the submission of other information by offerors. They are mandatory, and are included by reference. Full text copies of these provisions are available from the Contracting Officer and must be completed and certified before contract award.

(K.1)	52.203–4	Contingent Fee Representation and Agreement.
(K.2)	52.203–8	Requirement for Certificate of Procurement Integrity-Alternate I.
(K.3)	52.203–11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.
(K.4)	52.204–3	Taxpayer Identification.
(K.5)	52.209–5	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.
(K.6)	52.215–6	Type of Business Organization.
(K.7)	52.215–11	Authorized Negotiators.
(K.8)	52.215–20	Place of Performance.
(K.9)	52.215–30	Facilities Capital Cost of Money (Except educational institutions.)
(K.10)	Reserved..	
(K.11)	Reserved..	
(K.12)	Reserved..	
(K.13)	52.222–21	Certification of Nonsegregated Facilities.
(K.14)	52.222–22	Previous Contracts and Compliance Reports.
(K.15)	52.222–25	Affirmative Action Compliance.

(K.16)	52.223–1	Clean Air and Water Certification.
(K.17)	52.223–5	Certification Regarding a Drug-Free Workplace.
(K.18)	52.227–6	Royalty Information.
(K.19)	52.230–1	Cost Accounting Standards Notices and Certification.
(K.20)	Reserved..	
(K.21)	252.209–7002	Disclosure of Ownership or Control by a Foreign Government.
(K.22)	252.219–7000	Small Disadvantaged Business Concern Representation (DOD Contracts).
(K.23)	Reserved..	
(K.24)	Reserved..	
(K.25)	252.226–7001	Hostirically Black College or University and Minority Institution Certification.
(K.26)	Reserved..	
(K.27)	252.247–7022	Representation of Extent of Transportation by Sea.
(K.28)	52.204–5	Women-Owned Business.
(K.29)	252.209–7	Organizational Conflicts of Interest Certificate—Marketing Consultants.
(K.30)	252.219–1	Small Business Program Representation.
(K.31)	252.223–13	Certification of Toxic Chemical Release Reporting.
(K.32)	252.209–7001	Disclosure of Ownership or Control by the Government of a Terrorist Country.
(K.33)	252.209–7003	Disclosure of Commercial Transactions with the Government of a Terrorist Country.
(K.34)	252.209–7004	Reporting of Commercial Transactions with the Government of a Terrorist Country.
(K.35)	252.227–7017	Identification and Assertion of Use, Release, or Disclosure Restrictions.
(K.36)	252.227–7028	Technical Data or Computer Software Previously Delivered to the Government.
	Section L. Instructions, Conditions, and Notices to Offerors or Quoters	
(L.1)	52.252–1	Solicitation Provisions Incorporated by Reference.
(L.2)	Reserved..	
(L.3)	52.210–2	Availability of Specifications and Standards Listed in the DoD Index of Specifications and Standards (DODISS) and Descriptions Listed in DoD 5010.12–L (Deviation).
(L.4)	52.215–5	Solicitation Definitions.
(L.5)	52.215–7	Unnecessarily Elaborate Proposals or Quotations.
(L.6)	52.215–8	Amendments to Solicitations.
(L.7)	52.215–9	Submission of Offers.
(L.8)	52.215–10	Late Submissions, Modifications, and Withdrawals of Proposals.
(L.9)	52.215–12	Restriction on Disclosure and Use of Data.
(L.10)	52.215–13	Preparation of Offers.
(L.11)	52.215–14	Explanation to Prospective Offerors.
(L.12)	52.215–15	Failure to Submit Offer.
(L.13)	52.215–16	Contract Award.
(L.14)	Reserved..	
(L.15)	52.216–1	Type of Contract (See 235.7006(d)(B.1)).
(L.16)	52.222–24	Preaward On-Site Equal Opportunity Compliance Review.
(L.17)	52.228–6	Insurance-Immunity from Tort Liability.
(L.18)	52.233–2	Service of Protest (See 235.7006(d)(A.1)(xvii)).
(L.19)	52.237–1	Site Visit.
(L.20)	52.252–5	Authorized Deviations in Provisions.
(L.21)	252.204–7001	Commercial and Government Entity (CAGE) Code Reporting.
(L.22)	Reserved..	
(L.23)	52.215–16	Contract Award—Alternate II.
*(L.24)	52.215–41	Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data.
*(L.25)	52.215–41	Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data, Alternate I.
*(L.26)	52.215–41	Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data, Alternate II.
*(L.27)	52.215–41	Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data, Alternate III.
*(L.28)	52.215–41	Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data, Alternate IV.

(L.29 through L.100) Reserved.

(L.101) Government-Furnished Property.

No material, labor, or facilities will be furnished by the Government unless provided for in the solicitation.

(L.102) Proposal Preparation and Submission Instructions.

(i) *Page limitation, format.*

(A) A proposal shall be prepared in separate volumes with the page limit and number of copies specified below. The table of contents and tabs are exempt from the page limits. No cross-referencing between volumes for essential information is permitted except where specifically set forth herein. The following volumes of material will be submitted:

Title	Copies	Maximum page limits
Cost	As specified in solicitation summary.	*50
Technical	As specified in solicitation summary.	100

*The 50-page cost proposal is a goal not a limit. The Contractor may use additional pages if necessary to comply with public law.

(B) Any technical proposal pages submitted which exceed the page limitations set forth above will not be read or evaluated. Proposal pages failing to meet paragraph D format will not be read or evaluated.

(C) No program cost data or cross-reference to the cost proposal will be included in any other volume.

(D) Format of the above proposal volumes shall be as follows:

(1) Proposals will be prepared on 8½x11 inch paper except for foldouts used for charts, tables, or diagrams, which may not exceed 11x17 inches. Foldouts will not be used for text. Pages will have a one inch margin.

(2) A page is defined as one face of a sheet of paper containing information. Two pages may be printed on one sheet.

(3) Type size will be no smaller than 10 point character height (vertical size) and no more than an average 12 characters per inch. Use of type-setting techniques to reduce type size below 10 points or to increase characters beyond 12 per inch is not permitted. Such techniques are construed as a deliberate attempt to circumvent the intent of page limitations set forth above.

(4) Proposal must lie flat when open, elaborate binding is not desirable.

(5) No models, mockups or video tapes will be accepted.

(6) Technical proposals will be prepared in the same sequence as the statement of work.

(ii) *Content.*

All proposals must be complete and respond directly to the requirements of the solicitation. The factors and subfactors listed in Section M of the solicitation shall be addressed. Cost and supporting data shall be included only in the cost volume. All other information shall be included in the technical volume.

* * * * *

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36. Section 236.201 is amended by revising paragraph (a) to read as follows:

236.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.* Use DD Form 2626, Performance Evaluation (Construction), instead of SF 1420.

* * * * *

37. Section 236.204 is added to read as follows:

236.204 Disclosure of the magnitude of construction projects.

Additional price ranges are—

(i) Between $10,000,000 and $25,000,000;

(ii) Between $25,000,000 and $100,000,000;

(iii) Between $100,000,000 and $250,000,000;

(iv) Between $250,000,000 and $500,000,000; and

(v) Over $500,000,000.

38. Section 236.271 is revised to read as follows:

236.271 Cost-plus-fixed-fee contracts.

Annual military construction appropriations acts restrict the use of cost-plus-fixed-fee contracts (see 216.306(c)).

39. Section 236.604 is amended by adding paragraph (a) introductory text to read as follows:

236.604 Performance evaluation.

(a) *Preparation of performance reports.* Use DD Form 2631, Performance Evaluation (Architect-Engineer), instead of SF 1421.

(2) * * *

* * * * *

PART 242—CONTRACT ADMINISTRATION

40. Section 242.203 is amended by removing at the end of paragraph (a)(i)(P) the word "and"; by removing at the end of paragraph (a)(i)(Q) the period and adding a semicolon and the word "and"; by revising paragraph (a)(ii); by removing paragraph (a)(iii); and by redesignating paragraphs (a)(iv) and (a)(v) as (a)(iii) and (a)(iv) respectively. The revision reads as follows:

242.203 Retention of contract administration.

(a)(i) * * *

(ii) Contract administration functions for base, post, camp, and station contracts on a military installation are normally the responsibility of the installation or tenant commander. However, the Defense Contract Management Command (DCMC) shall, upon request of the military department, and subject to prior agreement, perform contract administration services on a military installation.

* * * * *

PART 246—QUALITY ASSURANCE

41. Section 246.770–2 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) respectively; by adding a new paragraph (b); and by revising the newly designated paragraph (c) to read as follows:

246.770–2 Policy.

(a) * * *

(b) Contracting officers and program managers shall consider the following when developing and negotiating weapon system warranty provisions:

(1) Warranties may not be appropriate in all situations, and a waiver should be sought if a warranty would not be cost-effective or would otherwise be inconsistent with the national defense. In drafting warranty provisions, the drafters must ensure they understand the planned operational, maintenance, and supply concepts of the weapon system to be fielded, and must structure a warranty that matches those concepts. A warranty plan should be prepared in consonance with development of the warranty provision early in the weapon system's life cycle. The plan should contain program warranty strategy, terms of the warranty, administration and enforcement requirements, and should be coordinated with the user and support activities.

(2) A cost/benefit analysis must be accomplished in support of each warranty (see 246.770–7). The cost/benefit analysis compares all costs associated with the warranty to the expected benefits. An estimate shall be made of the likelihood of defects and the estimated cost of correcting such defects. Also, if substantive changes are required to the planned operational, maintenance, or supply concepts, any increased costs should be weighed against the expected benefits in deciding whether a warranty is cost-effective.

(3) The Warranty Guidebook prepared by the Defense Systems Management College, Fort Belvoir, VA 22060–5426, is a valuable reference that can assist in the development, negotiation, and administration of an effective weapon system warranty.

(c) Contracting officers may require warranties that provide greater coverage and remedies than specified in paragraph (a) of this subsection.

* * * * *

42. Section 246.770–8 is amended by revising the introductory text of paragraph (a); by removing paragraph (b)(2); by redesignating paragraph (b)(3) as paragraph (b)(2), and by revising the introductory text of paragraphs (c) and (c)(2). The revised text reads as follows:

246.770–8 Waiver and notification procedures.

(a) The Secretary of Defense has delegated waiver authority within the limits specified in 10 U.S.C. 2403. The waiving authority for the defense agencies is the Under Secretary of Defense (Acquisition and Technology). Submit defense agency waiver requests to the Director, Defense Procurement, for processing. The waiving authority for the military departments is the Secretary of the department with authority to redelegate no lower than an Assistant Secretary. The waiving authority may waive one or more of the weapon system warranties required by 246.770–2 if—

* * * * *

(c) Departments and agencies shall issue procedures for processing waivers and notifications to Congress.

(1) * * *

(2) Notifications shall include—

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

43. Section 252.209–7005 is amended by revising the clause date to read "(FEB 1996)"; and by revising paragraph (b) to read as follows:

252.209–7005 Military recruiting on campus.

* * * * *

(b) *General.* An institution of higher education that has been determined, using procedures established by the Secretary of Defense at 32 CFR part 216: (1) to have a policy of denying, or (2) to effectively prevent the Secretary of Defense from obtaining for military recruiting purposes, entry to such institution's campuses, access to students on those campuses, or access to directory information pertaining to its students, is ineligible for contract award and payments under existing contracts. In addition, the Government shall terminate this contract for the Contractor's material failure to comply with the terms and conditions of award.

* * * * *

44. Section 252.217–7027 is revised to read as follows:

252.217–7027 Contract Definitization.

As prescribed in 217.7406(b), use the following clause:

CONTRACT DEFINITIZATION (FEB 1996)

(a) A _____*(insert specific type of contract action)* is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the underfinitized contract action, (2) all clauses required by law on the date of execution of the definitive contract action, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a _____*(insert type of proposal; e.g., fixed-price or cost-and-fee)* proposal and cost or pricing data supporting its proposal.

(b) The schedule for definitizing this contract is as follows (*insert target date for definitization of the contract action and dates for submission of proposed, beginning of negotiations, and, if appropriate, submission of the make-or-buy and subcontracting plans and cost or pricing data).*

_____

_____

_____

(c) If agreement on a definitive contract action to supersede this undefinitized contract action is not reached by the target date in paragraph (b) of this clause, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with subpart 15.8 and part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

(i) All clauses required by the FAR on the date of execution of this underfinitized contract action for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with paragraph (c)(1) of this clause, all clauses, terms, and conditions included in this undefinitized contract action shall continue in effect, except those that by their nature apply only to an undefinitized contract action.

(d) The definitive contract resulting from this undefinitized contract action will include a negotiated _____ *(insert "cost/price ceiling" or "firm-fixed price")* in no event to exceed _____ *(insert the not-to-exceed amount).*

(End of clause)

45. Section 252.223–7007 is added to read as follows:

252.223–7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives.

As prescribed in 223.7203, use the following clause:

Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (Feb. 1996)

(a) Definition.

"Arms, ammunition, and explosives (AA&E)," as used in this clause, means those items within the scope (chapter 1, paragraph B) of DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

(b) The requirements of DoD 5100.76–M apply to the following items of AA&E being developed, produced, manufactured, or purchased for the Government, or provided to the Contractor as Government-furnished property under this contract:

Nomenclature	National stock number	Sensitivity category

(c) The Contractor shall comply with the requirements of DoD 5100.76–M, as specified in the statement of work. The edition of DoD 5100.76–M in effect on the date of issuance of the solicitation for this contract shall apply.

(d) The Contractor shall allow representatives of the Defense Investigative Service (DIS), and representatives of other appropriate offices of the Government, access at all reasonable times into its facilities and those of its subcontractors, for the purpose of performing surveys, inspections, and investigations necessary to review compliance with the physical security standards applicable to this contract.

(e) The Contractor shall notify the cognizant DIS field office of any subcontract involving AA&E within 10 days after award of the subcontract.

(f) The Contractor shall ensure that the requirements of this clause are included in all subcontracts, at every tier—

(1) For the development, production, manufacture, or purchase of AA&E; or

(2) When AA&E will be provided to the subcontractor as Government-furnished property.

(g) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, state, and local laws, ordinances, codes, and regulations (including requirements for obtaining licenses and permits) in connection with the performance of this contract.

(End of clause)

252.228–7006 [Removed and Reserved]

46. Section 252.228–7006 is removed and reserved.

252.232–7004 [Amended]

47. Section 252.232–7004 is amended by revising the clause date to read "(FEB 1996)" and by revising in paragraph (a), in the parenthetical phrase, the word "excepting" to read "including" and the phrase "Undefinitized Actions" to read "Undefinitized Contract Actions."

PART 253—FORMS

48. Section 253.213–70 is amended by revising paragraph (e)(14) to read as follows:

253.213–70— Instructions for completion of DD Form 1155

* * * * *

(e) * * *

14 *SHIP TO*—

If a single ship-to point applies to the entire order, enter the name and address of that point in this block and a DODAAD code in the code block. For FMS shipments, enter the MAPAD code in the code block and an instruction for the contractor to contact the transportation office of the administering activity to obtain a name and shipping address. Enter multiple ship-to points in the schedule and mark this block, "See Schedule."

* * * * *

49. At the end of Part 253 "253.303–2626, Performance Evaluation (construction)" and "253.303–2631, Performance Evaluation (Architect-Engineer)" are added to the DFARS Form List.

Appendix G to Chapter 2 [Amended]

50–51. Appendix G to Chapter 2, Part 3, Navy Activity Address Numbers, is amended by revising activity address numbers N00019, N00023, N00024, N00030, N00039, N00104, N00383, and by adding activity address number N00391 to read as follows:

Appendix G—Activity Address Numbers

* * * * * *

PART 3—NAVY ACTIVITY ADDRESS NUMBERS

* * * * * *

N00019—Naval Air Systems Command
EF*, GU*—1421 Jefferson Davis Highway
EF0–9—Arlington, VA 22243–5120

* * * * * *

N00023—Naval Supply Systems Command
4J*, L5*—1931 Jefferson Davis Highway
4J0–9—Arlington, VA 22241–5360

N00024—Naval Sea Systems Command
EH*, U0*—2531 Jefferson Davis Highway
EH0–9—Arlington, VA 22242–5160

* * * * * *

N00030—Strategic Systems Programs
EK*—1931 Jefferson Davis Highway
EK0–9—Arlington, VA 22241–5362

* * * * * *

N00039—Space and Naval Warfare Systems Command
NS*—2451 Crystal Drive
NS0–9—Arlington, VA 22245–5200

* * * * * *

N00104—Naval Inventory Control Point
EP—5450 Carlisle Pike
EQ—Box 2020, Mechanicsburg, PA 17055–0788

* * * * * *

N00383—Naval Inventory Control Point
GB—700 Robbins Avenue
GC—Philadelphia, PA 19111–5098

* * * * * *

N00391—Naval Inventory Control Point
EP, EQ,—700 Robbins Avenue
GB, GC—Philadelphia, PA 19111–5098

* * * * * *

52. Appendix G to Chapter 2, Part 4, Marine Corps Activity Address Numbers, is amended by revising activity number M67854 to read as follows:

PART 4—MARINE CORPS ACTIVITY ADDRESS NUMBERS

* * * * * *

M67854—Marine Corps Systems Command
(MAJ00027)—2033 Barnett Ave, Suite 315
MU6–9—Quantico, VA 22134–5010

* * * * * *

53. Appendix G, Chapter 2, Part 10, Miscellaneous Defense Activities Activity Address Numbers, is amended by revising activity number MDA946 to read as follows:

PART 10—MISCELLANEOUS DEFENSE ACTIVITIES ACTIVITY ADDRESS NUMBERS

* * * * * *

MDA946—Real Estate and Facilities Directorate, Washington headquarters Services, 1155 Defense Pentagon, room 3C345, Washington, DC 20301–1155

* * * * * *

[FR Doc. 96–4480 Filed 2–28–96; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 951221305–6038–02; I.D. 020296B]

Reef Fish Fishery of the Gulf of Mexico; Revised 1996 Red Snapper Season

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule.

SUMMARY: NMFS issues this emergency interim rule to suspend implementation of the red snapper individual transferable quota (ITQ) system for the Gulf of Mexico, previously scheduled to begin April 1, 1996, to make the entire 1996 commercial quota for red snapper available to the fishery which opened February 1, 1996, and to extend for the emergency period the red snapper trip limit and permit endorsement system. The intended effect is to respond to an emergency situation involving the commercial red snapper fishery by preventing adverse social and economic impacts on fishery participants while allowing a controlled harvest of fish for the 1996 season.

EFFECTIVE DATES: The amendments to §§ 641.7 paragraphs (nn) through (pp) and 641.31 through 641.33 are effective February 23, 1996, through May 29, 1996.

The removal of §§ 641.34 and 641.7 paragraph (qq) is effective February 23, 1996.

The April 1, 1996, effective date for the amendments to part 641 listed in amendatory instruction 2 are delayed indefinitely.

ADDRESSES: Copies of documents supporting this action, including an environmental assessment, may be obtained from Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 641 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Delayed Opening of the 1996 Commercial Red Snapper Fishery

Under the provisions of an emergency interim rule (61 FR 17, January 2, 1996), requested by the Council and issued by NMFS, (1) the opening of the 1996 red snapper commercial fishery was delayed from January 1 until February 1, 1996; (2) an interim commercial quota of 1.00 million lb (0.45 million kg) was established for the period February 1 through March 31, 1996; and (3) the red snapper trip limit and vessel permit endorsement system was continued

through March 31, 1996. These measures were intended to allow a controlled commercial fishery for red snapper during the Lenten season, when demand for fish is high, prior to implementation of the ITQ system on April 1, 1996. (The ITQ system was contained in Amendment 8 to the FMP and was published as a final rule on November 29, 1995 (60 FR 61200). Some paragraphs in that final rule pertaining to the ITQ system were recodified in the final rule to implement Amendment 11 (60 FR 64350, December 15, 1995). Accordingly, this emergency interim rule contains references to both of those final rules.)

In its request for these emergency management measures, the Council expressed its intent that should the ITQ system be disapproved by NMFS or its implementation be delayed by Congressional action (e.g., proposed Congressional moratoriums on ITQ systems), then the commercial fishery should remain open until the full annual commercial quota is taken under the red snapper trip limit and endorsement system that was in effect during 1995.

Delay in the Implementation of the ITQ System

Because of the furlough of NMFS personnel in late December 1995 and early January 1996 and budget limitations under the continuing resolution that provides operating funds for the Department of Commerce, NMFS is unable to implement the red snapper ITQ system by April 1, 1996. As a result of the furlough, NMFS was unable to process fishermen's requests for appeals of NMFS' initial determinations regarding historical captain status and red snapper landings records. Final determinations through the appeals process are essential to establish finally who will be initial shareholders in the ITQ system and the amounts of their initial shares. In addition, NMFS concluded that it would be unreasonable to expect red snapper fishermen to pursue their appeals before the Council Appeals Board during February 1996 when the commercial red snapper fishery is open and fishermen are busy with harvesting operations. Under the provisions of Amendment 8 and its implementing rule, the appeals process must be completed before NMFS can issue red snapper ITQ shares and coupons.

Period of Suspension

NMFS issues this emergency interim rule, effective initially for 90 days after its date of publication, as authorized by section 305(c) of the Magnuson Act. Should NMFS and the Council agree, this emergency interim rule may be extended for an additional period of 90 days. If the commercial quota for red snapper, currently 3.06 million pounds (1.39 million kg), has not been taken during the initial 90 days, such agreement and extension are expected. Since the entire commercial quota for 1996 is likely to have been taken under this emergency interim rule, or extension thereof, the earliest date that the ITQ system could begin operation is January 1, 1997 (beginning of a new fishing year), unless the 1996 commercial quota is increased through a separate regulatory action and the appeals process is completed.

Red Snapper Trip Limit and Endorsement System

This rule extends for the emergency period the management regime for red snapper that was in effect for the 1995 fishing year and was previously extended by the January 2 emergency rule. Specifically, landings of red snapper are limited to 2,000 lb (907 kg) per trip or day for vessels with red snapper endorsements on their reef fish permits; other reef fish permitted vessels are limited to 200 lb (91 kg) per trip or day. These measures are intended to spread out harvest over a longer period of time and avoid the negative social and economic impacts and potentially dangerous fishing conditions that would result from a derby fishery of very short duration. Monitoring of landings under an uncontrolled derby fishery would be difficult, increasing the likelihood that the quota would be exceeded. This might result in adverse effects on the recovery of the overfished red snapper resource. Red snapper permit endorsements that were in effect on December 31, 1995, have been reissued by NMFS for the 1996 fishing year.

Compliance with NMFS Guidelines for Emergency Rules

This emergency interim rule meets NMFS' policy guidelines for the use of emergency rules, published on January 6, 1992 (57 FR 375). The situation (1) results from recent, unforeseen events or recently discovered circumstances; (2) presents a serious management problem; and (3) realizes immediate benefits from the emergency interim rule that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process.

Recent, Unforeseen Events or Recently Discovered Circumstances

The furlough of NMFS personnel and curtailed agency operating funds under temporary funding bills ("continuing resolutions"), and the effects on NMFS' ability to carry out the provisions of Amendment 8 and its implementing rule, were unforeseen. As a result of the furlough, the Southeast Regional Office was unable to process the requests for appeals of its initial determinations regarding historical captain status and landings records in a timely manner. The appeals process must be completed before NMFS can issue red snapper ITQ shares and coupons.

Serious Management Problems in the Fishery

NMFS believes that this emergency interim rule is necessary to address serious management problems with the fishery, which if unaddressed, could cause significant adverse social and economic impacts on fishery participants.

If the combined emergency actions of the immediate availability of the entire 1996 red snapper commercial quota and the suspension of the ITQ system are not taken, then the commercial fishery would have to be closed for an indefinite period after the interim 1.00–million lb (0.45–million kg) quota is harvested. Since this closure would extend significantly beyond April 1, 1996, it would have severe negative economic effects, particularly for commercial fishermen who had planned to participate in the fishery under the ITQ program commencing April 1.

Making the entire 1996 red snapper commercial quota immediately available for harvest under the trip limit and endorsement system has the effect of returning the red snapper management regime for this year to the regime that was in place from 1993 through 1995 under provisions of the FMP. This regime released the entire annual commercial quota at the start of the fishing season, which was timed to ensure that the fishery was open during Lent. The fishery remained open, under the vessel permit endorsement and trip limit program, until the quota was caught (usually sometime in April of each year). This management approach, while still presenting fishery problems intended to be addressed through the ITQ system, was based on the Council's and NMFS' determination that it offered greater social and economic benefits than provided by a split season or by a less restrictive harvest rate. The expected benefits of this emergency rule are the same as those intended from the previous management regime; they are described as follows.

Traditionally, consumer demand for fresh red snapper is significantly higher during the Lenten season (February through March) than the rest of the year. The result is that the prices to fishermen for their catch are higher at this time than later in the year. Consequently, gross revenues to fishermen from taking the remaining commercial quota now are significantly higher (although difficult to quantify) than if these fish were caught later this year. As such, fishermen would suffer substantial economic loss if they were unable to continue fishing during this early spring period.

A continuous commercial red snapper season in the Gulf in recent years has avoided or minimized market disruptions in the supply of fresh, high quality, fish. In the past, these market disruptions in the supply of fresh fish have been shown to have negative effects on fishermen's incomes. For example, without a steady supply of fresh fish, dealers turn to cheaper, frozen imports to satisfy the consumer demand; the result can include temporarily depressed prices and short-term losses of market share for fresh fish until the dealers exhaust their inventories of frozen product. Also, an unstable domestic supply of red snapper usually results in wider fluctuations in ex-vessel prices for the same quality of product.

Another benefit of a continuous season is minimizing the time and economic costs to fishermen associated with their changing fisheries. For example, if the red snapper fishery is opened, closed, and then reopened, it would require additional effort and costs for vessel owners to change fishing gear, related supplies, and crew each time they entered or left the snapper fishery. Also, since the red snapper fishery is considered more lucrative than most of the alternative fisheries, fishermen would make every effort to reenter this fishery when it opens, even after Lent. During a disrupted red snapper season, there are added difficulties of finding and keeping experienced, reliable crew. In summary, these additional costs/efforts required to fish for red snapper during a disrupted season can be particularly burdensome for a given vessel owner.

Finally, a discontinuous red snapper commercial fishery with a reopening during late spring/early summer would require fishermen to forego their normal deeper water fisheries during that time (e.g., tilefish, snowy grouper, and tuna). In order to make a livelihood, most fishermen participate in several fisheries during the course of the year, and accordingly follow long established seasonal patterns of changing fisheries. The red snapper fishery is more readily prosecuted in late winter/early spring because the fish are located in near-shore, shallower water areas, where they are more concentrated than later in the year. There are also distinct safety benefits of being able to fish near shore during the bad weather that is common in winter and early spring. Other fisheries, particularly the deep water grouper fishery, are more readily prosecuted during late spring/early summer when weather conditions are more consistent and relatively better. A split commercial red snapper season during 1996 would disrupt these traditional fishing patterns without any compensatory benefits.

Without the red snapper endorsement system, which includes vessel trip limits, permitted vessels would have no restrictions on landing levels. This would result in a derby fishery of very short duration. Monitoring of landings under these conditions would be difficult, increasing the likelihood that the quota would be exceeded. NMFS is concerned that this would adversely impact stock recovery. In addition, fishermen would suffer significant economic losses due to lower ex-vessel prices, as occurred in fishing years before the endorsement and trip limit provisions were implemented. To avoid these problems, this emergency interim rule continues the trip limits, which will constrain vessel landings to the commercial quota, provide for better prices to fishermen, and increase the short-term economic yield in the fishery.

Immediate Benefits

The immediate benefits of the emergency interim rule greatly outweigh the value of prior notice and opportunity for public comment which would occur under normal rulemaking.

Effect of this Emergency Interim Rule on Existing Regulations

The emergency interim rule published on January 2, 1996 (61 FR 17) is superseded by this emergency interim rule.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The AA finds that failure to implement the actions in this emergency interim rule would result in negative social and economic impacts described above and lead to fishing under potentially dangerous conditions. In addition, the uncontrolled harvest that would occur without these actions could contribute to overfishing of red snapper. The foregoing constitutes good cause to waive the requirement to provide prior notice and the opportunity for public comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be contrary to the public interest. Similarly, the need to implement these measures in a timely manner to address the economic emergency and public safety considerations constitutes good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness.

This emergency interim rule has been determined to be significant for purposes of E.O. 12866, and has been reviewed and cleared by the Office of Management and Budget.

This emergency interim rule is exempt from the procedures of the Regulatory Flexibility Act because this rule is not required to be issued with prior notice and opportunity for public comment.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 21, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 641 is amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§§ 641.1, 641.4, 641.5, 641.7, 641.10, 641.24 [Amended]

2. The April 1, 1996, effective date of the following amendments is delayed indefinitely:

a. In § 641.1, the revision of paragraph (b), published November 29, 1995 (60 FR 61206).

b. In § 641.4, the revision to the third sentence of paragraph (i), published November 29, 1995 (60 FR 61207); and the revision to the first sentence of paragraph (a)(4) and the addition of paragraph (o), published December 15, 1995 (60 FR 64354).

c. In § 641.5, redesignation of paragraph (d)(3) as paragraph (d)(4), revision of paragraph (d)(2), and addition of paragraph (d)(3), published November 29, 1995 (60 FR 61207).

d. In § 641.7, revisions of paragraphs (g), (r), and (bb), published November 29, 1995 (60 FR 61207) and the superseding revisions published December 15, 1995 (60 FR 64354); and addition of paragraphs (ff) through (kk), published November 29, 1995 (60 FR 61207). [Note: The first revision to 641.7(bb) published on November 29, 1995 became effective January 1, 1996, and remains in effect.]

e. In § 641.10, addition of introductory text and paragraphs (a) and (b), published November 29, 1995 (60 FR 61207)

f. In § 641.24, redesignation of paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4), respectively, revision of the reference in newly redesignated paragraph (a)(4), and addition of paragraph (a)(2), published on November 29, 1995 (60 FR 61209).

3. In § 641.7, paragraph (qq) is removed and paragraphs (nn) through (pp) are revised to read as follows. Paragraphs (nn) through (pp) are effective through May 29, 1996.

§ 641.7 Prohibitions.

* * * * *

(nn) Exceed the vessel trip or landing limits for red snapper, as specified in § 641.31(a) and (b).

(oo) Transfer a red snapper at sea, as specified in § 641.31(c).

(pp) Purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a red snapper possessed or landed in excess of a trip or landing limit, as specified in § 641.31(d).

§ 641.34 [Removed]

4. Section 641.34 is removed.

4a. Sections 641.31 through 641.33 are revised to read as follows. Sections 641.31 through 641.33 are effective through May 29, 1996.

§ 641.31 Red snapper trip limits.

(a) Except as provided in paragraph (b) of this section, a vessel that has on board a valid commercial reef fish permit may not possess on any trip or land in any day red snapper in excess of 200 lb (91 kg), whole or eviscerated.

(b) A vessel that has on board a valid commercial reef fish permit and a valid red snapper endorsement may not possess on any trip or land in any day red snapper in excess of 2,000 lb (907 kg), whole or eviscerated.

(c) A red snapper may not be transferred at sea from one vessel to another.

(d) No person may purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a red snapper possessed or landed in excess of the trip or landing limits specified in paragraphs (a) and (b) of this section.

§ 641.32 Red snapper endorsement.

(a) As a prerequisite for exemption from the trip limit for red snapper specified in § 641.31(a), a vessel for which a commercial reef fish permit has been issued under § 641.4 must have a red snapper endorsement on such permit and such permit and endorsement must be aboard the vessel.

(b) A red snapper endorsement is invalid upon sale of the vessel; however, an owner of a vessel with a commercial reef fish permit may transfer the red snapper endorsement to another vessel with a commercial reef fish permit owned by the same entity by returning the existing endorsement with an application for an endorsement for the replacement vessel.

(c) The provisions of paragraph (b) of this section notwithstanding, special provisions apply in the event of the disability or death of the owner of a vessel with a red snapper endorsement or the disability or death of an operator whose presence aboard the vessel is a condition for the validity of a red snapper endorsement.

(1) In the event that a vessel with a red snapper endorsement has a change of ownership that is directly related to the disability or death of the owner, the Regional Director may issue a red snapper endorsement, temporarily or permanently, with the commercial reef fish permit that is issued for the vessel under the new owner. Such new owner will be the person specified by the owner or his/her legal guardian, in the case of a disabled owner, or by the will or executor/administrator of the estate, in the case of a deceased owner. (Change of ownership of a vessel with a commercial reef fish permit upon disability or death of an owner is considered a purchase of a permitted vessel and § 641.4(m)(3) applies regarding a commercial reef fish permit for the vessel under the new owner.)

(2) In the event of the disability or death of an operator whose presence aboard a vessel is a condition for the validity of a red snapper endorsement, the Regional Director may revise and reissue an endorsement, temporarily or permanently, to the permitted vessel. Such revised endorsement will contain the name of a substitute operator specified by the operator or his/her legal guardian, in the case of a disabled operator, or by the will or executor/administrator of the estate, in the case of a deceased operator. As was the case with the replaced endorsement, the presence of the substitute operator aboard and in charge of the vessel is a condition for the validity of the revised endorsement. Such revised endorsement will be reissued only with the concurrence of the vessel owner.

§ 641.33 Condition of a permit.

As a condition of a commercial reef fish permit issued under § 641.4, without regard to where red snapper are harvested or possessed, a vessel with such permit—

(a) May not exceed the appropriate vessel trip or landing limit for red snapper, as specified in § 641.31(a) and (b); and

(b) May not transfer a red snapper at sea, as specified in § 641.31(c).

[FR Doc. 96–4432 Filed 2–23–96; 11:41 am]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 960129019–6019–01; I.D. 022396C]

Groundfish of the Bering Sea and Aleutian Islands Area; Offshore Component Pollock in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal allowance of the pollock total allowable catch (TAC) apportioned to vessels harvesting pollock for processing by the offshore component in the BS.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 26, 1996, until 12 noon, A.l.t., April 15, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the first seasonal allowance of pollock for vessels catching pollock for processing by the offshore component in the BS was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) as 295,864 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined in accordance with § 675.20(a)(8), that the first seasonal allowance of pollock TAC for vessels catching pollock for processing by the offshore component in the BS soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 273,864 mt with consideration that 22,000 mt will be taken as incidental catch in directed fishing for other species in the BS. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the BS. This closure is effective 12 noon, February 26, 1996, until 12 noon, A.l.t., April 15, 1996. Under § 675.20(a)(2)(ii), the second seasonal allowance will become available 12 noon, A.l.t., August 15 through the end of the fishing year.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 23, 1996.

Donald J. Leedy,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–4593 Filed 2–26–96; 11:25 am]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 960129019–6019–01; I.D. 022396D]

Groundfish of the Bering Sea and Aleutian Islands Area; Species in the Rock Sole/Flathead Sole/"Other Flatfish" Fishery Category by Vessels Using Trawl Gear

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal bycatch allowance of Pacific halibut apportioned to the trawl rock sole/flathead sole/"other flatfish" fishery category in the BSAI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 26, 1996, until 12 noon, A.l.t., April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The first seasonal bycatch allowance of Pacific halibut for the BSAI trawl rock sole/flathead sole/"other flatfish" fishery category, which is defined at § 675.21(b)(1)(iii)(B)(2), was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) as 453 metric tons.

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iii), that the first seasonal bycatch allowance of Pacific halibut apportioned to the trawl rock sole/flathead sole/"other flatfish" fishery in the BSAI has been caught. Therefore, NMFS is prohibiting directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 23, 1996.

Donald J. Leedy,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–4592 Filed 2–26–96; 11:25 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 41
Thursday, February 29, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN–96–001]

Revision of User Fees for 1996 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to reduce user fees for cotton producers for 1996 crop cotton classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987 and remove obsolete regulations. The 1995 user fee for the classification service was $1.60 per bale. This proposal would reduce the fee for the 1996 crop to $1.50 per bale. The proposed reduction in fees is due to increased efficiency in classing operations and is sufficient to recover the costs of providing classification services, including costs for administration, supervision, and development and maintenance of standards.

DATES: Comments must be received by April 1, 1996.

ADDRESSES: Comments and inquiries should be addressed to Lee Cliburn, Cotton Division, AMS, USDA, room 2641–S, P.O. Box 96456, Washington, DC 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Rm. 2641–South Building, 14th & Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, 202–720–2145.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for purposes of Executive Order 12866, and has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Administrator, Agricultural Marketing Service (AMS), has considered the economic impact of this proposal on small entities pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are about 40,000 cotton growers who voluntarily submit their cotton for the classification service. The majority of the growers are small businesses under the criteria established by the Small Business Administration. The Administrator of AMS has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the RFA because: (1) The fee reduction reflects a decrease in the cost-per-unit currently borne by those entities utilizing the services; (2) the cost reduction will not affect competition in the marketplace; and (3) the use of classification services is voluntary.

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

It is anticipated that the proposed changes, if adopted, would be made effective July 1, 1996, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.60 per bale during the 1995 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, cost of equipment and supplies, and other overhead costs, including costs for administration, supervision, development, and maintenance of cotton standards.

This proposed rule establishes the user fee charged to producers for HVI classification at $1.50 per bale during the 1996 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 1995. Therefore, the 1996 producer's user fee for classification service is based on the 1995 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 1995 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.01 per bale. A 1.4 percent, or three cents per bale increase due to the implicit price deflator of the gross domestic product added to the $2.01 would result in a 1996 base fee of $2.04 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, this has been replaced by the gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 1996 crop is estimated at 19,024,000. The 1996 base fee was decreased 15 percent based on the estimated number of bales to be classed (one percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 31 cents per bale reduction and was subtracted from the 1996 base fee of $2.04 per bale, resulting in a fee of $1.73 per bale.

Assuming a fee of $1.73 per bale, the projected operating reserve would be 36.9 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.73 must be reduced by 23 cents per bale, to $1.50 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This would establish the 1996 season fee at $1.50 per bale.

Accordingly, § 28.909, paragraph (b) would be revised to reflect the reduction in the HVI classification fees.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a five cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909 (c).

Growers or their designated agents would continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 (a) would remain at five cents per bale, and it would be applicable even if the same method was requested. Since the Cotton Division will no longer accept returned diskettes to eliminate the possibility of computer virus infection, the cost of computer tapes or diskettes not returned will no longer be billed separately to the requestor. The fee in § 28.910 (b) for an owner receiving classification data from the central database would remain at five cents per bale, but a minimum charge of $5.00 for services provided per monthly billing period would be assessed. The provisions of § 28.910 concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton would remain the same.

The fee for review classification in § 28.911 would be reduced from $1.60 per bale to $1.50 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

List of Subjects in 7 CFR Part 28

Administrative practice and procedures, Cotton, Cotton samples, Grades, Market news, Reporting and record keeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is proposed to be amended as follows:

PART 28—[AMENDED]

1. The authority citation for Part 28 would be revised to read as follows:

Authority: 7 U.S.C. 471–476.

2. In section 28.909, paragraph (b) would be revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.50 per bale.

* * * * *

3. Section 28.910 would be amended by revising the concluding text of paragraph (a) and adding a sentence at the end of paragraph (b) to read as follows:

§ 28.910 Classification of samples and issuance of classification data.

(a) * * *

If the issuance of data to growers or to their agents is made by more than one method, the fee for each bale issued by each additional method shall be five cents. If provided as additional method of data transfer, the minimum fee for each tape or diskette issued shall be $10.00.

(b) * * * The minimum charge assessed for services obtained from the central database shall be $5.00 per monthly billing period.

* * * * *

4. In Section 28.911, the last sentence of paragraph (a) would be revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.50 per bale.

* * * * *

Dated: February 23, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–4702 Filed 2–28–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ANM–5]

Proposed Establishment of Class E Airspace; Camp Guernsey, Wyoming

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish the Camp Guernsey, Wyoming, Class E airspace. If established, the airspace would accommodate a new instrument approach procedure at Camp Guernsey Airport, Camp Guernsey, Wyoming. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before April 10, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM–530, Federal Aviation Administration, Docket No. 96–ANM–5, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–532.2, Federal Aviation Administration, Docket No. 96–ANM–5, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestiuns presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–ANM–5." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public

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contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Camp Guernsey, Wyoming, to accommodate a new instrument approach procedure at Camp Guernsey Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY E5 Camp Guernsey, WY [New]

Camp Guernsey Airport, WY
(lat. 42°15'42" N, long. 104°43'42" W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Camp Guernsey Airport, and within 6.4 miles each side of the 141° bearing from the Camp Guernsey Airport, extending from the 6.7-mile radius to 17.8 miles southeast of the Camp Guernsey Airport.

* * * * *

Issued in Seattle, Washington, on February 14, 1996.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–4690 Filed 2–28–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1904 and 1952

[Docket No. R–02]

Occupational Injury and Illness Recording and Reporting Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule: addendum.

SUMMARY: OSHA is publishing the executive summary of the Preliminary Economic Analysis for its proposed rule covering the recording and reporting of workplace deaths, injuries and illnesses, which appeared in the **Federal Register** on February 2, 1996 (61 FR 4030).

DATES: OSHA invites the public to submit written comments on the results of the Preliminary Economic Analysis on or before May 2, 1996.

ADDRESSES: Written comments are to be submitted in writing in quadruplicate to: Docket Officer, Docket No. R–02, Occupational Safety and Health Administration, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 219–7894. To obtain copies of the full Preliminary Economic Analysis, contact the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Cyr at (202) 219–8148.

SUPPLEMENTARY INFORMATION: OSHA published a proposed rule covering the recording and reporting of workplace deaths, injuries and illnesses on February 2, 1996. This addendum is intended to provide the public with information from the Preliminary Economic Analysis associated with the proposed rulemaking by publishing the executive summary. The OSHA Office of Regulatory Analysis prepared the Preliminary Economic Analysis of the rule and the analysis has been entered into the OSHA Docket (Docket R–02, Exhibit 13).

Signed in Washington, D.C., this 22nd day of February, 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

Preliminary Economic Analysis for the Proposed Regulation for Recording and Reporting of Occupational Injuries and Illnesses (29 CFR Part 1904) Executive Summary

The Occupational Safety and Health Administration (OSHA) is proposing to revise its regulation on Recording and Reporting Occupational Injuries and Illnesses, which is codified at 29 CFR 1904. The proposed regulation will make a number of changes to OSHA's existing recordkeeping rule that are designed both to simplify recordkeeping and increase the accuracy and usefulness of the data recorded.

The proposed changes include changes in: OSHA Form 200, the Log and Summary of Occupational Injuries and Illnesses (to be renumbered Form 300), which contains one-line descriptions of all recordable occupational injuries and illnesses occurring at the establishment; OSHA Form 101, the Supplementary Record (to be renumbered Form 301 and designated the Incident Record), which provides additional detail about each case recorded on the Log; and associated

supplemental instructions. The revisions are designed to yield better data on occupational injuries and illnesses, to simplify employers' recordkeeping systems, to increase the utility of injury and illness records at the establishment/site level, to take greater advantage of modern technology, and to increase employee involvement and awareness. In addition, these revisions would modify the scope of the recordkeeping regulation to exclude many smaller establishments and to extend the coverage of the regulation to establishments in several industries not previously covered. Several other industries would be newly exempted. The net effect of these changes in scope is to target the regulation more effectively so that more occupational injuries and illnesses will be recorded accurately but fewer establishments will be covered by the regulation overall.

Industry Profile

An estimated 756,238 establishments employing 11 or more workers in various Standard Industrial Classification (SIC) codes that have historically high rates of injuries and illnesses currently must maintain OSHA records at all times. These establishments have an estimated 47,541,258 employees and record an estimated 4,789,085 occupational cases per year. The proposed regulation would cover fewer establishments than the current regulation (620,879 vs. 756,238), but would capture a larger number of the occupational injuries and illnesses occurring every year (approximately 5.1 million vs. 4.8 million).

Costs and Economic Impact

When compared with the existing rule, the proposed rule will reduce the overall recordkeeping burden on the business community. The net cost savings associated with the proposed revisions to the existing recordkeeping regulation are estimated to be $4.7 million per year. Economic impacts will be minimal, even for the minority of firms that incur some cost increases.

The following table from Chapter III of the Preliminary Economic Analysis provides an overview of the costs associated with the current rule, the proposed rule, and the resulting cost savings.

TOTAL AND NET COSTS OF ALL REVISIONS TO THE RECORDKEEPING RULE

Cost Element	Estimated Number of Establishments Affected	Estimated Number of Cases Affected	Time Required for Activity (Minutes)	Total Cost of Revised Regulation (Dollars)	Total Costs Associated with Existing Rule (Dollars)	Net Costs of Proposed Regulation (Dollars)
Learning Basics of Recordkeeping System—Establishments Not Formerly Covered*	162,361		25	186,764	0	186,764
Learning Basics of Record Keeping System—Turnover	124,176		25	1,003,246	1,466,363	(463,117)
Learning About Revised Recordkeeping System (Establishments That Will Continue to Be Covered)*	458,518		15	316,461	0	316,461
Set Up and Post Log	620,879		8	1,605,194	1,955,146	(349,951)
Certify Log (certification must be by plant manager rather than recordkeeper)	620,879		5	2,264,816	488,786	1,776,030
Provide Additional Information on Establishments	620,879		5	1,003,246	0	1,003,246
Maintain Log (time requirements reduced from 15 to 10 minutes per case to reflect simplified case entry)**		5,088,947	10	16,445,935	23,215,308	(6,769,373)
Maintain Individual Reports of Injury (Form 301 requires 3 minutes less than Form 101 which it replaces)		508,895	17	2,795,809	3,095,374	(299,565)
Option for Electronic Storage of Logs		449,055	−2	(290,242)	0	(290,242)
Option to Keep Log Offsit		101,779	−5	(164,459)	0	(164,459)
Provide Data to OSHA Inspectors		40,000	2	27,854	25,854	2,000
Allow Employee Access to Form 301		444,222	1	165,770	0	165,770
Maintain Separate Records for "Other Workers" at Construction Sites		52,074	10	168,287	0	168,287
Total				25,528,682	30,246,832	(4,718,149)

*This one time cost has been annualized over ten years at a discount rate of 7 percent.
**In addition, there would be non-quantifiable costs savings as a result of using a new column that would be provided on Form 300.
Sources: County Business Patterns (1992), BLS Annual Survey (1991), OSHA Office of Regulatory Analysis.

Benefits

The proposed changes to the recordkeeping requirements are associated with a number of potential benefits, including:

- More effective preventive efforts by employers, which could eliminate a minimum of 25,445 to 50,889 illnesses and injuries per year, based on current experience;
- Better identification by OSHA of types or patterns of injuries and illnesses and prevention efforts;
- Greater employer and employee awareness of the causes of occupational injuries, illnesses, and fatalities;
- Better data to assist in developing regulatory priorities;
- Better data for setting priorities among establishments for inspection purposes; and
- Increased ability of compliance officers to focus on significant hazards during inspections.

Economic Impact, Regulatory Flexibility, Environmental Impact, and International Trade Analysis

The average establishment affected by the proposed changes to the recordkeeping requirements is estimated to experience a net reduction in

recordkeeping costs annually. Thus, OSHA believes that the proposed regulation will not impose adverse economic impacts on firms in the regulated community. The proposed exemption from the regulation of all non-construction establishments with fewer than 20 employees will mean that most small entities will experience even larger cost savings. OSHA, therefore, does not expect the proposed regulation to have significant environmental or international effects. OSHA welcomes comments, and supporting data where available, on all aspects of the Preliminary Economic Analysis.

[FR Doc. 96–4431 Filed 2–28–96; 8:45 am]
BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO–29–1–7151b; FRL–5425–3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri for the purpose of fulfilling the Federal requirements of 40 CFR 51.396. In the final rules section of the **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 1, 1996.

ADDRESSES: Comments may be mailed to Lisa V. Haugen, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen at (913) 551–7877.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: February 6, 1996.

Dennis Grams,

Regional Administrator.

[FR Doc. 96–4564 Filed 2–28–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[CA 71–10–7281b; FRL–5423–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from asphalt roofing operations, semiconductor manufacturing operations, and glycol dehydrators.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 1, 1996.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003

California Air Resources Board, Stationary Source Divison, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

FOR FURTHER INFORMATION CONTACT: Patricia A. Bowlin, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1188.

SUPPLEMENTARY INFORMATION: This document concerns Mojave Desert Air Quality Management District Rule 471, Asphalt Roofing Operations; Ventura County Air Pollution Control District (VDAPCD) Rule 74.28, Asphalt Roofing Operations; VCAPCD Rule 74.21, Semiconductor Manufacturing; VCAPCD Rule 71.5, Glycol Dehydrators; and VCAPCD Rule 71, Crude Oil and Reactive Organic Compound Liquids. The California Air Resources Board submitted these rules to EPA on December 22, 1994; November 18, 1993; July 13, 1994; February 24, 1995; and February 24, 1995 respectively. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 30, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–4569 Filed 2–28–96; 8:45 am]
BILLING CODE 6560–50–W

40 CFR Part 52

[OK–11–1–6604b; FRL–5430–4]

Approval of Discontinuation of Tail Pipe Lead and Fuel Inlet Test for Vehicle Antitampering Program for Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Oklahoma for the purpose of discontinuing the State's tail pipe lead and fuel inlet test in its vehicle antitampering program. The SIP revision also includes minor administrative changes related to Oklahoma antitampering program. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 1, 1996.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Multimedia Planning & Permitting Division (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Oklahoma Department of Environmental Quality, Air Quality Program, 4545 North Lincoln Blvd., Suite 250, Oklahoma City, Oklahoma 73105–3483.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Davis, Planning Section (6PD–L), Multimedia Planning & Permitting Division, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7584.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is located in the final rules section of this **Federal Register**.

Dated: January 12, 1996.

A. Stanley Meiburg,

Acting Regional Administrator (6A).

[FR Doc. 96–4568 Filed 2–28–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 63

[AD-FRL–5431–1]

RIN 2060–AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to revise certain portions of the "National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks," which was issued as a final rule on April 22, 1994 and June 6, 1994. This rule is commonly known as the Hazardous Organic NESHAP or the HON. This action proposes to revise the date for submittal of those area source certifications and clarifies the wording of the documentation requirements. This action also proposes to extend the April 22, 1996 deadline for submittal of implementation plans for emission points not included in an emissions average to December 31, 1996. Because the revisions merely change the dates for submittal of the area source certifications and implementation plans, the EPA does not anticipate receiving adverse comments. Consequently the revisions are also being issued as a direct final rule in the final rules section of this **Federal Register**. If no significant adverse comments are timely received, no further action will be taken with respect to this proposal and the direct final rule will become final on the date provided in that action.

DATES: *Comments.* Comments must be received on or before April 1, 1996, unless a hearing is requested by March 11, 1996. If a hearing is requested, written comments must be received by April 15, 1996.

Public hearing. Anyone requesting a public hearing must contact the EPA no later than March 11, 1996. If a hearing is held, it will take place on March 15, 1996 beginning at 10:00 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–90–20 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Public hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Mrs. Kim Teal, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541–5580.

Docket. Docket No. A–90–19, containing the supporting information for the original NESHAP and this action, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, first floor, 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. Janet S. Meyer, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5254.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule and the direct final rule in the final rules section of this **Federal Register** will automatically go into effect on the date specified in that rule. If significant adverse comments are timely received, the direct final rule will be withdrawn and all public comment received will be addressed in a subsequent final rule. Because the EPA will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule provisions, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

Administrative

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1414.02) may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

Today's changes to the NESHAP should have no impact on the information collection burden estimates made previously. The change to the area source certification merely revises the date for submission of the certification and clarifies the documentation requirements. The change to the implementation plan requirements merely extends the date for submission of plans from existing sources. These changes do not impose new requirements. Consequently, the ICR has not been revised.

B. Executive Order 12866 Review

Under Executive Order (E.O.) 12866, the EPA must determine whether the proposed regulatory action is "significant" and therefore, subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribel governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The HON rule promulgated on April 22, 1994 was considered "significant" under Executive Order 12866 and a regulatory impact analysis (RIA) was prepared. Today's proposed revisions provide more time to submit area source certifications and implementation plans. These proposed revisions do not add any additional control requirements. Therefore, this regulatory action is considered not significant.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 21, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–4442 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 82

[FRL–5427–7]

[RIN 2060–AF36]

Protection of Stratospheric Ozone: Proposal to Temporarily Extend the Existing Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Through this action EPA is proposing to amend the Clean Air Act section 608 refrigerant recycling regulations to extend the effectiveness of the refrigerant purity requirements of § 82.154(g) and (h), which are currently scheduled to expire on March 18, 1996, until December 31, 1996, or until EPA completes rulemaking to adopt revised refrigerant purity requirements based on industry guidelines, whichever comes first. EPA is proposing to extend the requirements in response to requests from the air-conditioning and refrigeration industry to avoid widespread contamination of the stock of chlorofluorocarbon (CFC) and hydrochlorofluorocarbon (HCFC) refrigerants that could result from the lapse of the purity standard. Such contamination would cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases. Because the revisions merely extend the currently requirements for a limited time, EPA does not anticipate receiving adverse comments. Consequently revisions are also being issued as a direct final rule in the final rules section of today's **Federal Register**. The reader should review that document and the accompanying regulatory text. If no significant adverse comments are timely received, no further action will be taken with respect to this proposal and the direct final rule will become final on the date provided in that action.

DATES: Comments must be received by April 1, 1996. A public hearing, if requested, will be held in Washington, DC. If such a hearing is requested, it will be held on March 18, at 9:00 am, and the comment period would then be extended to April 17, 1996. Anyone who wishes to request a hearing should call Cindy Newberg at 202/233–9729 by March 7, 1996. Interested persons may contact the Stratospheric Protection Hotline at 1–800–296–1996 to learn if a hearing will be held and to obtain the date and location of any hearing. Any hearing will be strictly limited to the subject matter of this proposal.

ADDRESSES: Written comments on this proposed action should be addressed to Public Docket No. A–92–01 VIII.G, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500.

The public hearing will be held at the EPA Auditorium, 401 M Street, SW., Washington, DC.

All supporting materials are contained in Docket A–92–01. Dockets may be inspected from 8 a.m. until 4 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Cindy Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460, (202) 233–9729. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

I. Supplementary Information

If no significant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule and the direct final rule in the final rules section of today's **Federal Register** will be final and become effective in accordance with the information discussed in that action. If significant adverse comments are timely received the direct final rule will be withdrawn and all public comments will be addressed in a subsequent final rule. The Agency will not institute a second comment period on this proposed rule; therefore, any parties interested in commenting should do so during this comment period.

For more detailed information and the rationale, the reader should review the information provided in the direct final rule in the final rules section of today's **Federal Register**.

II. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this action to propose amending the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this rulemaking is estimated to result in the expenditure by State, local, and tribal governments or private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. As discussed in this preamble, this rule merely extends the current reclamation requirements during consideration of a more flexible approach that may result in reducing the burden of part 82 Subpart F of the Stratospheric Protection regulations on regulated entities, including State, local, and tribal governments or private sector entities.

C. Paperwork Reduction Act

There is no additional information collection requirements associated with this rulemaking EPA has determined that the Paperwork Reduction Act does not apply. The initial § 608 final rulemaking did address all recordkeeping associated with the refrigerant purity provisions. An Information Collection Request (ICR) document was prepared by EPA and approved by the Office of Management and Budget(OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This ICR is contained in the public docket A–92–01.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have an economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that since this amendment merely extends a current requirement designed to protect purity of refrigerants temporarily, there will be no adverse effects for the regulated community, including small entities. An examination of the impacts of these provisions was discussed in the initial final rule promulgated under § 608(58 FR 28660). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis was developed. That impact analysis accompanied the final rule and is contained in Docket A–92–01.

I certify that this proposed amendment to the refrigerant recycling rule will not have any additional negative economic impacts on any small entities.

Dated: February 14, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–4037 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[PP 9F3804/P646; FRL–5351–8]

RIN 2070–AB18

Sethoxydim; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to increase the established pesticide tolerance for the combined residues of the herbicide sethoxydim; 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one) and its metabolite containing the 2-cyclohexene-1-one (calculated as the herbicide) in or on the raw agricultural commodities (RACs): apricots, cherries (sweet and sour), nectarines, and peaches at 0.2 part per million (ppm). These regulations to establish the maximum permissible levels for residues of the pesticide in or on the above commodities were requested in petitions submitted by BASF Corporation.

DATES: Comments, identified by the docket control number (PP 9F3804/P646], must appear on or before April 1, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Word Perfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 9F3804/P646]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail, Robert J. Taylor, Product Manager (PM-25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm 241, CM #2, 1921 Jefferson-Davis Hwy., Arlington, VA, (703) 305-6027; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the **Federal Register** of January 9, 1990 (54 FR 779), which announced that BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709–3528, had submitted pesticide petition (PP) 9F3804 and a food additive petition (FAP) 8H 5559 to EPA. Pesticide Petition 9F3804 requests that the Administrator, pursuant to section 408 (d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346 a(d), amend 40 CFR part 180 by establishing a tolerance for the combined residues of the herbicide sethoxydim; 2-[1-ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one) and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the crop grouping stone fruits at 0.2 part per million (ppm). Food additive petition 8H5559 requests that the Administrator, pursuant to section 408 of FFDCA (21 U.S.C. 348), amend 40 CFR part 186 by establishing a food additive regulation for the combined residues of the herbicide sethoxydim; 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one) and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the processed food dried prunes at 0.4 ppm.

There were no comments or requests for referral to an advisory committee received in response to these notices.

The petitioner subsequently amended these notices by submitting a revised section F withdrawing the proposed food additive tolerance on dried prunes at 0.4 ppm (8H5559) and proposing that tolerances for residues of the herbicide be established for the raw agricultural commodities (RACs) apricots at 0.2 ppm, cherries (sweet and sour) at 0.2 ppm, nectarines at 0.2 ppm, and peaches at 0.2 ppm. Because the 0.2 ppm tolerances on apricots, cherries (sweet and sour), nectarines at 0.2 ppm and peaches have not been proposed previously and because it has been longer than five (5) years since the original proposal, the tolerances of 0.2 ppm on apricots, cherries (sweet and sour, nectarines, and peaches are being proposed for 30 days to allow for public comment.

The information submitted in the petitions and other relevant material have been evaluated. The pesticide is useful for the purpose for which the tolerances are sought. The toxicological data and other information considered in support of PP 9F3804 in the final rule referring to PP 4F4344, appear elsewhere in today's issue of the **Federal Register**.

The reference dose (RfD) based on a NOEL of 8.86 mg/kg/day in the 1-year feeding study in dogs and an uncertainty factor of 100 was calculated to be 0.09 mg/kg bwt/ day. The theoretical maximum residue contribution (TMRC) for existing tolerances for the overall U.S. population is 0.032904 mg/kg bwt/day or 37% of the RfD. The current action will increase the TMRC by 0.000061 mg/kg bwt/day. These tolerances and previously established tolerances utilize 37.67% of the RfD for the overall U.S. population. For U.S. subgroup populations, nonnursing infants and children aged 1 to 6, the current action and previously established tolerances utilize, respectively, a total of 64 and 74.319% of the RfD, assuming that residue levels are at the established tolerances and that 100% of the crop is treated.

Based on the information and the data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that these tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal as it relates to the section 408 tolerance be referred to an Advisory Committee in accordance with section 408 (e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the docket control number [PP 9F3804/P646]. All written comments filed in response to these petitions will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [PP 9F3804/P646] (including comments and data submitted electronically as described below). A public version of this record including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB). Under section 3 (f), the order defines "significant" as those actions likely to lead to a rule: (1) Having an annual effect of the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establisiing exemptions from tolerance requirements, or establishing or raising food additive regulations do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 20, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is proposed to be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.412(a), by amending the table therein by adding and alphabetically inserting the new entries for apricots, cherries (sweet and sour), nectarines, and peaches to read as follows:

§ 180.412 2-[1-(Ethoxyimino)butyl]-5-[2-(ethiothio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Apricots	0.2
* * * * *	
Cherries (sweet and sour)	0.2
* * * * *	
Nectarines	0.2
Peaches	0.2
* * * * *	

[FR Doc. 96–4400 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 220 and 227

[FRL–5432–2]

RIN 2040–AC81

Testing Requirements for Ocean Dumping

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today is issuing a proposed rule that would clarify certain provisions of the Agency's ocean dumping regulations relating to requirements for bioassay testing. The purpose of today's proposal is to clarify regulatory language that was interpreted by the U.S. Court of Appeals for the Third Circuit in a different manner than EPA intended. Today's proposal would confirm the validity of existing testing practices, and would not change them.

DATES: Written comments on this proposed rule will be accepted until April 1, 1996. All comments must be postmarked or delivered by hand to the address below by this date.

ADDRESSES: Send written comments on this proposed rule to the Ocean Dumping Proposed Rule Comment Clerk, Water Docket, MC–4101, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Commenters should submit any references cited in their comments. Commenters are requested to submit an original and three copies of their written comments and any enclosures. Commenters who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. No facsimile or electronic mail transmissions (faxes or e-mail) will be accepted.

A copy of the supporting documents for this proposed rule are available for review at EPA's Water Docket, Room L–102, 401 M Street, SW, Washington, DC 20460. For access to the docket materials, call 202/260–3027 between 9:00 a.m. and 3:30 p.m., for an appointment.

FOR FURTHER INFORMATION, CONTACT: John Lishman, Chief, Marine Pollution

Control Branch, Oceans and Coastal Protection Division (4504F), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, telephone 202/260–8448.

SUPPLEMENTARY INFORMATION:

A. Statutory and Regulatory Background, and Summary of Previous Litigation

The Ocean Dumping Regulations, which govern the evaluation and permitting of material to be ocean dumped, were promulgated by EPA on January 11, 1977, under Title I of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. (hereinafter "the Act" or "the MPRSA"). These regulations are contained in 40 CFR Parts 220–229.

The MPRSA prohibits the transportation of material from the United States for the purpose of ocean dumping without a permit, and prohibits U.S. instrumentalities and U.S. registered or flagged vessels from transporting materials from any location for the purpose of ocean dumping without a permit. The Act also prohibits the unpermitted dumping of material transported from a location outside the United States into the Territorial Sea or the Contiguous Zone, if the dumping affects the Territorial Sea or U.S. territory.

Under Section 102(a) of the Act (33 U.S.C. 1412(a)), EPA has responsibility for issuing permits for the ocean dumping of all materials other than dredged material. Under Section 103(a) of the Act (33 U.S.C. 1413(a)), the Secretary of the Army has responsibility for issuing permits for the ocean dumping of dredged material. This permitting authority has been delegated to the Corps of Engineers ("the Corps"). The Corps applies EPA ocean dumping regulations in making its permit decisions. EPA's role pertaining to the Corps' issuance of dredged material disposal permits is one of review and concurrence. Although the Corps is the permitting authority for dredged material, Section 103 of the Act establishes a substantial role for EPA with regard to the evaluation of the impacts of the ocean disposal of dredged material.

On June 1, 1993, Clean Ocean Action, an organization concerned with issues affecting water quality, as well as other groups ("the plaintiffs"), filed a complaint and a request for injunctive relief in the United States District Court, District of New Jersey, against the Corps, EPA, and the Port Authority of New York and New Jersey ("the Port Authority"), challenging an ocean dumping permit issued to the Port Authority by the Corps. *Clean Ocean Action* v. *York*, Civil No. 93–2402 (DRD) (D.N.J.). The permit authorized the Port Authority to perform maintenance dredging from two Port Authority facilities in Newark Bay, and to dispose of the dredged material in the Atlantic Ocean at the New York Bight Dredged Material Disposal Site (also known as the Mud Dump Site).

In a decision dated June 7, 1993, the District Court denied the plaintiffs' request for a preliminary injunction to halt the disposal of the dredged material at the Mud Dump Site. After additional briefing and other proceedings, the District Court issued a formal opinion on June 28, 1994, again denying the requested injunctive relief. In its opinion, the District Court also concluded that the bioassay tests performed on the dredged material met the requirements of the ocean dumping regulations. 861 F. Supp. 1203 (D.N.J. 1994).

On June 12, 1995, the United States Court of Appeals for the Third Circuit affirmed the District Court's denial of a preliminary injunction. *Clean Ocean Action* v. *York*, 57 F.3d 328 (3d Cir. 1995). The Third Circuit also stated, however, that the District Court had erred in its conclusion that the bioassays performed on the dredged material in issue met the requirements of the ocean dumping regulations.

As a result of the opinion of the Third Circuit, a degree of uncertainty now exists regarding certain of the ocean dumping regulatory testing requirements. Today's proposed rulemaking would clarify those regulatory requirements in a manner that is consistent with existing testing practices.

In particular, the Third Circuit examined the language of 40 CFR 227.6(c). That section currently provides that the potential for significant undesirable effects due to the presence of constituents listed at 40 CFR 227.6(a) "shall be determined by application of results of bioassays on liquid, suspended particulate, and solid phases of wastes according to procedures acceptable to EPA, and for dredged material, acceptable to EPA and the Corps of Engineers." EPA and the Corps had argued, and the District Court had found, that § 227.6(c) reserves discretion in the agencies not to require bioaccumulation bioassay tests in the suspended phase if acceptable procedures for such tests are not available and approved for use. The Third Circuit, however, concluded that § 227.6(c) requires suspended phase bioaccumulation bioassays even where neither EPA nor the Corps of Engineers has identified acceptable procedures. The Court read that section as reserving discretion in the agencies to determine *how*, but not *whether*, to conduct the tests. 57 F.3d at 332.

As described more fully in Part B of today's preamble, today's proposal would amend §§ 220.2, 227.6, and 227.27 to more clearly reserve discretion regarding when bioassays are to be conducted. This would be done by clarifying that bioassays are not required if there are no Agency-approved procedures, as will be explained in more detail below. (EPA has previously amended §§ 227.6(c)(2) and 227.27(b) of the ocean dumping regulations to clarify specifically that bioaccumulation tests are not required in the suspended phase. See 59 FR 26566 (May 20, 1994) (Interim Final Rule); 59 FR 52650 (October 18, 1994) (Final Rule)).

The Third Circuit opinion also addressed § 227.27(d). That section provides that "appropriate sensitive benthic organisms," which are to be used in solid phase testing under § 227.6(c)(2), means "at least one species each representing filter-feeding, deposit-feeding, and burrowing species chosen from among the most sensitive species accepted by EPA as being reliable test organisms to determine the anticipated impact on the site * * *" There are some marine species that exhibit more than one of the filter-feeding, deposit-feeding, and burrowing characteristics. Current Agency guidance specifies that when bioaccumulation and toxicity testing is performed on the solid phase, two species may be used for each of these two sets of tests, so long as the two species together exhibit all of the three species characteristics. The Third Circuit opinion, however, could be construed to indicate that three different test species should be required for solid phase bioassay tests. See 57 F.3d at 332, 333 n.2. (In the case before the Third Circuit, only one benthic organism was tested for bioaccumulation of dioxin in the solid phase before the District Court required additional testing. 861 F. Supp. at 1210.)

EPA is proposing to amend the definition of the "appropriate sensitive benthic organisms" used in benthic bioassay tests to mean at least two species that together exhibit filter-feeding, deposit-feeding, and burrowing characteristics. Consistent with current Agency guidance, the proposed language would clarify that the use of two such species is sufficient. In addition, today's proposal would amend the definition of "appropriate sensitive marine organisms," which are to be used in suspended phase tests under § 227.6(c)(3), to mean at least two species that together are representative of the following types of organisms: phytoplankton or zooplankton, crustacean or mollusk, and fish. The proposed language would clarify, consistent with current agency guidance, that the use of two such species is sufficient.

The purpose of today's proposal is to clarify the regulatory language that was interpreted by the Third Circuit in a different manner than EPA intended. The Agency is *not* changing the evaluative procedures that are currently used and set out in program guidance and thus is not changing the level of environmental protection of the ocean dumping program. EPA is allowing for a thirty day period for comment on this proposal. The Agency believes a thirty day comment period is adequate because the proposal would clarify the regulations in a manner consistent with existing practices. The Agency also is working on more comprehensive amendments to the ocean dumping regulations in order to further update them and improve their clarity. The Agency anticipates issuance of a proposal later this year.

B. Discussion

(1) Bioassay provisions

The mere presence of contaminants or pollutants in material proposed for disposal does not in itself reveal the potential for adverse effects on marine life, or whether pollutants are even present in forms that are bioavailable (Reference 1 and 2). Because of this, exposure of organisms to material proposed for dumping in laboratory tests or other biological effects-based assessments are conducted to determine the potential for adverse biological effects resulting from contaminants that may be present in the material (Reference 3). The determination of both when and how to perform such evaluations often involves complicated scientific and technical judgment. The Agency, as described below, has provided technical guidance to identify acceptable procedures for evaluating the potential biological effects of material proposed for dumping.

In 1977, EPA and the Corps provided national technical guidance on procedures for performing biological evaluations of dredged material in the manual entitled "Ecological Evaluation of Proposed Discharge of Dredged Material into Ocean Waters" ("the Green Book")(Reference 4). EPA provided national technical guidance for other material in the manual entitled "Bioassay Procedures for the Ocean Disposal Permit Program("the Blue Book") in 1977 (Reference 5); the Green Book was revised in 1991 (Reference 6). The guidance describes scientifically and technically appropriate testing and evaluations to assess the potential biological effects of material proposed for ocean dumping. Because such guidance has been issued, today's proposal would update the regulations to delete provisions in § 227.6(e) referring to such guidance as being under development and providing interim criteria, as well as similar language from § 227.27(b) and (d).

As previously discussed, the existing regulations provide that bioassays shall be run "in accordance with" approved Agency procedures. This language was intended to reserve Agency technical discretion on when and how to perform such bioassays. However, the Third Circuit opinion has cast some doubt on this issue. To better clarify that the Agency has reserved its discretion in establishing procedures for when and how to perform bioassays, today's proposal would add a new definition of "bioassay" in proposed § 220.2(j) to make clear that references in the regulations to "bioassays" means only those that have been approved for use by EPA, or in the case of dredged material, approved by EPA and the Corps. The intent is to make clear that in the absence of approved procedures, bioassays are not required by the regulations. As a conforming matter, today's proposal would also delete language in existing §§ 227.6(c), (c)(2), c(3), and 227.27(a)(2) and (b) referring to bioassay procedures approved by the Agency. The language that is proposed to be deleted becomes redundant or unnecessary in light of the proposed definition of "bioassay."

The proposed definition of bioassay further makes clear that the Agency has reserved its discretion on the evaluative procedures to be used by employing the term "effects-based evaluations." This would be done to avoid any implication that the regulations intend to mandate only the exposure of organisms to materials or contaminants in laboratory tests. While such tests provide one way to evaluate the toxicity and bioaccumulation potential of contaminants from a material proposed for ocean disposal, they are not the only way to make such assessments. Improvements in the sciences of toxicology and risk assessment allow conclusions to be made about the potential environmental impacts of ocean disposal of a material without actually running such laboratory tests in all cases. As a result, an adequate evaluation of material proposed for ocean dumping does not always require the performance of specific laboratory biological tests for each material or contaminant evaluated. In general, as will be explained below, the following biological effects-based approaches can be used or combined to evaluate material proposed for ocean disposal: (1) Laboratory tests of organisms exposed to the material or results of such tests run on similar material; (2) toxicological and/or risk assessment models; or (3) screening evaluations that use highly protective estimates of exposure and effects assumptions.

As stated above, exposure of organisms to materials or contaminants in laboratory experiments provide one way to measure the potential effects of dumping the material. Results of such tests on similar material may also be adequate for determining the potential effects depending on a number of factors, including, but not limited to, the following: (1) Whether the methods used are consistent with currently approved test procedures; (2) whether organisms tested include those identified in 40 CFR 227.27 (c) and (d), as appropriate; and (3) whether the characteristics of the material tested are sufficiently similar to the material to be dumped so that one can reasonably predict the potential for environmental effects from dumping of the latter material by extrapolating from the results of testing on the former material.

The bioavailability of many contaminants in the environment also can be predicted through the use of toxicological and/or risk assessment models. For example, the equilibrium partitioning model is one approach that can be used to predict the bioavailable fraction of a contaminant in an aquatic sediment (Reference 2). A variation of this model, called the Theoretical Bioaccumulation Potential (TBP) model, has been used to screen dredged material for further bioaccumulation testing (Reference 6). A review of the use of the TBP model in dredged material evaluations indicates that it is highly protective because of the use of conservative assumptions in the model (Reference 7). In the future, incorporation of additional laboratory bioassay and field-generated information into the TBP model will improve its accuracy and reliability. In the meantime, however, its conservatism ensures that using it is an environmentally protective approach (Reference 7).

Finally, conservative assumptions also can be used to predict the "upper bound" of potential environmental

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impacts. For example, evaluations can be based on the assumption that 100 percent of a contaminant in a material proposed for ocean disposal will be bioavailable. This approach can be used for screening chemicals that might require further evaluation to determine compliance with water quality criteria by assuming all of the contaminants in the material are dissolved into the water column during dumping. (Reference 6.) The use of TBP, as discussed above, integrates the use of toxicological models with conservative assumptions in determining the bioavailability of contaminants in the material that settles to the bottom after dumping.

The reference to "effects-based evaluations" in proposed § 220.2(j) is intended to make clear that, as provided for in approved Agency procedures, the approaches described above can be used to evaluate the potential environmental effects of material proposed for ocean dumping, either as a screening device in lieu of actual laboratory testing, or in combination with the results of such tests. At the same time, the language is intended to provide flexibility for the future in order to assure that as science and technology improve and other effects-based evaluations are approved for use, they may be used as well.

In addition, the current ocean dumping regulations provide that bioassays are to be conducted "in accordance with" procedures approved by EPA and the Corps. In certain cases, there are no approved laboratory testing protocols available, or as described above, other evaluative tools provide effects-based information comparable to that which might be obtained from running a laboratory bioassay. The Third Circuit opinion, however, could be read as suggesting that even though Agency-approved bioassay test procedures are not specified, the regulation still requires laboratory bioassays to be run. Although the proposed definition of bioassay described above is intended to resolve this point, in order to further remove any possible ambiguity, today's proposal would make a change in regulatory language in § 227.6(c). The proposed change would replace a reference to performing bioassays "in accordance with" approved Agency procedures, to performing bioassays "when bioassay procedures have been approved."

Finally today's proposal would also amend §§ 227.6(c)(2) and (3), 227.27(b), and 227.27(c), which currently provide that bioassays "shall be conducted" using approved organisms and procedures. To avoid any possible ambiguity that this might mandate only the use of laboratory tests on organisms exposed to the material proposed for dumping, today's proposal would make changes in those sections to clarify that "*if*" such laboratory testing is conducted it shall use approved organisms and procedures.

In summary, today's proposal is intended to confirm that the Agency has reserved discretion on how to evaluate material proposed for dumping. This has been done, as described above, in three principal ways: (1) by adding a definition of "bioassay" that makes clear that this term means an effects-based evaluation which is to be conducted only if approved procedures exist for such evaluations; (2) by revising language to be clear that the Agency has reserved discretion to identify what, when, and how evaluation processes will be used; and (3) by clarifying that laboratory tests are not required in all cases. These changes make clear that the Agency has reserved its discretion in this complex technical area.

Approved Agency evaluation procedures can be found in the Blue Book, the Green Book, and Regional implementation manuals, or parties seeking to use other procedures may seek their approval from EPA, or in the case of dredged material, from EPA and the Corps. EPA does not intend to require evaluations that have not been approved, or that are not useful in a regulatory context. The determination as to the types of evaluations necessary to assess potential biological effects of material proposed for ocean dumping involves highly complex technical issues, and is impacted by evolving changes in the science and methods underlying such assessments. Today's action by the Agency is intended to preserve EPA's discretion in this complex technical area to ensure that the appropriate and up-to-date evaluations as approved by the Agency are conducted.

(2) Number and types of organisms to be tested

The current ocean dumping regulations define "appropriate sensitive marine organisms" and "appropriate sensitive benthic marine organisms" for use in laboratory tests. The type of organisms used can impact on the sensitivity of the tests in determining toxicity, and the existing regulations provide that the organisms to be used represent three categories of organisms. For the liquid and suspended phases the organisms to be used are defined in § 227.27(c) "as at least one species each representative of phytoplankton or zooplankton, crustacean or mollusk, and fish species chosen from among the most sensitive species documented in the scientific literature or accepted by EPA as being reliable test organisms* * *" For the solid phase, these are defined in § 227.27(d) as "at least one species each representing filter-feeding, deposit-feeding, and burrowing species chosen from among the most sensitive species accepted by EPA as being reliable test organisms* * *"

As discussed above, EPA has described a range of characteristics that the test species need to represent. The Agency believes this approach is protective of the marine environment because different marine organisms are known to exhibit different sensitivities to environmental contaminants (Reference 8). The Agency's approved testing allows the use of two different species that together cover the three species characteristics in 40 CFR 227.27(c) and (d). For example, the marine worm, *Nephtys incisa*, is both a deposit-feeder and burrower (Reference 9), and the amphipod crustacean, *Ampelisca abdita*, is both a filter-feeder and deposit-feeder (Reference 10).

The Third Circuit opinion, however, could be construed to indicate that 40 CFR 227.27(d) requires the use of three different test species for the solid phase. See, 57 F. 3d 328, 333 n. 2. EPA is proposing today to remove any ambiguity about the number and type of organisms specified by §§ 227.27(c) and (d). This would be done by removing the words "one species each," and clarifying that what is meant is at least two species that together are representative of the three categories of organisms. The change makes clear that the use of two species representing the three characteristics specified in the regulations, is acceptable.

C. References

1. "Effects-based testing and sediment quality criteria for dredged material", T.D. Wright, R.M. Engler, and J.A. Miller, in *Water Quality Standards for the Twenty-First Century*, EPA–823–R–92–009, December 1992, pp. 207–218.

2. "Technical basis for deriving sediment quality criteria for nonionic organic contaminants for the protection of benthic organisms by using equilibrium partitioning," U.S. Environmental Protection Agency, EPA–822–R–93–011, Washington, DC, September 1993.

3. "The use of bioassays as part of a comprehensive approach to marine pollution assessment," *Mar. Pollut. Bull.* 14:81–84. 1983.

4. "Ecological evaluation of proposed discharge of dredged material into ocean waters," U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, Second Printing, April 1978.

5. "Bioassay procedures for the ocean disposal permit program," U.S. Environmental Protection Agency, Office of Research and Development, March 1978.

6. "Evaluation of dredged material proposed for ocean disposal—testing manual," U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, April 1991.

7. "TBP revisited: a ten year perspective on a screening test for dredged sediment bioaccumulation potential," V.A. McFarland and P.W. Ferguson, in *Dredging '94 Proceedings of the Second International Conference on Dredging and Dredged Material Placement*, E.C. McNair, Ed., American Society of Civil Engineers, 1994.

8. "Problems associated with selecting the most sensitive species for toxicity testing," J. Cairns, Jr. and B.R. Niederlechner, " *Hydrobiologia* 153: 87–94 (1987).

9. "Guidance manual: bedded sediment bioaccumulation tests," U.S. Environmental Protection Agency, Office of Research and Development, ERL–N Contribution No. N111, September 1989.

10. "Methods for assessing the toxicity of sediment-associated contaminants with estuarine and marine amphipods," U.S. Environmental Protection Agency, EPA/600/R–94/025, June 1994.

Compliance With Other Laws and Executive Orders

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., EPA must prepare a Regulatory Flexibility Analysis for regulations having a significant impact on a substantial number of small entities. The RFA recognizes three kinds of small entities, and defines them as follows:

(1) Small governmental jurisdictions: any government of a district with a population of less than 50,000.

(2) Small business: any business which is independently owned and operated and not dominant in its field, as defined by the Small Business Administration regulations under the Small Business Act.

(3) Small organization: any not for profit enterprise that is independently owned and operated and not dominant in its field.

As discussed below in the discussion of Executive Order 12866, today's proposed rule does not impose economic burdens. Accordingly, EPA has determined that today's proposed rule would not have a significant impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis therefore is unnecessary.

B. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 et seq., is intended to minimize the reporting and record keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record keeping requirements affecting ten or more non-Federal respondents be approved by the Office of Management and Budget. Since today's proposed rule would not establish or modify any information or record keeping requirements, it is not subject to the requirements of the Paperwork Reduction Act.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant," and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations, of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

D. The Unfunded Mandates Reform Act, and Executive Order 12875

Under the Unfunded Mandates Reform Act (UMRA) of 1995, signed into law on March 22, 1995, EPA must prepare a written statement to accompany any rule where the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any year. The UMRA defines a "private sector mandate" for regulatory purposes as one that, among other things, "would impose an enforceable duty upon the private sector." EPA has determined that today's proposed regulation does not impose any enforceable duties upon the private sector. Therefore, this proposed rulemaking is not a "private sector mandate," and is not subject to the requirements of the UMRA.

Further, EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed rulemaking should have minimal impact on the regulatory burden imposed on permittees, because the proposed rulemaking merely clarifies ocean dumping testing requirements. Thus, EPA has determined that an unfunded mandates statement is unnecessary.

Executive Order 12875 requires that, to the extent feasible and permitted by law, no Federal agency shall promulgate any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless funds necessary to pay the direct costs incurred by the State, local, or tribal government in complying with the mandate are provided by the Federal government. EPA has determined that the requirements of Executive Order 12875 do not apply to today's proposed rulemaking, since no mandate is created by this action.

List of Subjects

40 CFR Part 220

Environmental protection, Engineer Corps, Water pollution control.

40 CFR Part 227

Environmental impact statements, Water pollution control.

Date: February 23, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in this preamble, Parts 220 and 227 of Title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 220—[AMENDED]

1. The authority citation for Part 220 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 220.2 is amended by adding paragraph (j) to read as follows:

§ 220.2 Definitions.

* * * * *

(j) *Bioassay* means such effects-based evaluations as may be approved by EPA.

or in the case of dredged material, by EPA and the Corps of Engineers, for use in evaluating whether material has the potential to cause acute, chronic, or other sublethal effects following dumping.

PART 227—[AMENDED]

3. The authority citation for 40 CFR Part 227 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

4. Section 227.6 is amended:

a. In paragraph (a) introductory text by removing the words "(f), (g), and (h)", and adding, in their place, the words "(e), (f), and (g)".

b. In paragraph (c) introductory text, by removing from the first sentence the words "according to procedures acceptable to EPA, and for dredged material acceptable to", and adding, in their place, the words "when bioassay procedures have been approved by EPA, or for dredged material, approved by";

c. By removing the second and third sentences of paragraph (c)(2) and of paragraph (c)(3) and by adding a new sentence in their place in each paragraph, to read as follows:

§ 227.6 Constituents prohibited as other than trace contaminants.

* * * * *

(c) * * *

(2) * * * If these bioassays involve laboratory testing of organisms, they shall be conducted with appropriate sensitive marine organisms as defined in § 227.27(c), and the procedures used will require exposure of organisms for a sufficient period of time and under appropriate conditions to provide reasonable assurance, based on consideration of the statistical significance of effects at the 95 percent confidence level, that, when the materials are dumped, no significant undesirable effects will occur due to chronic toxicity of the constituents listed in paragraph (a) of this section; and

(3) * * * If these bioassays involve laboratory testing of organisms, they shall be conducted with appropriate sensitive benthic marine organisms, and the procedures used will require exposure of organisms for a sufficient period of time to provide reasonable assurance, based on considerations of statistical significance of effects at the 95 percent confidence level, that, when the materials are dumped, no significant undesirable effects will occur due either to chronic toxicity or to bioaccumulation of the constituents listed in paragraph (a) of this section; and

* * * * *

e. By removing paragraph (e) and redesignating paragraphs (f) through (h) as paragraph (e) through (g).

5. Section 227.27 is amended:

a. In paragraph (a)(2), by removing the words "in a bioassay carried out in accordance with approved EPA procedures";

b. In the first sentence of paragraph (b), by removing the words "using appropriate sensitive marine organisms in the case of the suspended particulate phase, or appropriate sensitive benthic marine organisms in the case of the solid phase;";

c. In paragraph (b), by removing footnote 1 and by revising the last sentence to read as set forth below.

d. By revising paragraphs (c) and (d) to read as follows:

§ 227.27 Limiting Permissable Concentration (LPC).

* * * * *

(b) * * * If these bioassays involve laboratory testing of organisms, they shall be conducted with appropriate sensitive marine organisms in the case of the suspended particulate phase, or appropriate sensitive benthic marine organisms in the case of the solid phase.

(c) Appropriate sensitive marine organisms means at least two species that together are representative of the following types of organisms: phytoplankton or zooplankton, crustacean or mollusk, and fish. These organisms shall be chosen from among the most sensitive species documented in the scientific literature or accepted by EPA as being reliable test organisms to determine the anticipated impact of the wastes on the ecosystem at the disposal site. If the bioassays involve laboratory testing of these organisms, they shall be run for a minimum of 96 hours under temperature, salinity, and dissolved oxygen conditions representing the extremes of environmental stress at the disposal site, except that phytoplankton or zooplankton may be run for shorter periods of time as appropriate for the organisms tested at the discretion of EPA, or EPA and the Corps of Engineers, as the case may be.

(d) Appropriate sensitive benthic marine organisms means at least two species that together exhibit filter-feeding, deposit-feeding, and burrowing characteristics. These organisms shall be chosen from among the most sensitive species accepted by EPA as being reliable test organisms to determine the anticipated impact on the site.

[FR Doc. 96–4705 Filed 2–27–96; 11:06 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD62

Endangered and Threatened Wildlife and Plants; Extension of Comment Period for Proposed Establishment of a Nonessential Experimental Population of California Condors in Northern Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) provides notice that the public comment period is extended for the proposal to designate a nonessential experimental population of California condors (*Gymnogyps californianus*) in northern Arizona and southern Utah. This population is proposed to be designated as a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act (Act) of 1973, as amended. The extension of the comment period will allow all interested parties to submit written comments on the proposal.

DATES: The current comment period scheduled to close February 29, 1996 is now extended through April 1, 1996.

ADDRESSES: Written comments should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Humphrey, at the above address, 602/640–2720.

SUPPLEMENTARY INFORMATION:

Background

The Service, in cooperation with the Arizona Game and Fish Department, and the U.S. Bureau of Land Management, proposes to reintroduce California condors (*Gymnogyps californianus*) into northern Arizona. This reintroduction will achieve a primary recovery goal for this endangered species, establishment of a second non-captive population, spatially disjunct from the non-captive population in southern California. Section 10(j) of the Endangered Species Act of 1973 (Act) enables the Service to designate certain populations of

federally listed species that are released into the wild as "experimental." This designation can increase the Service's flexibility to manage a reintroduced population. Section 10(j) allows an experimental population to be treated as a threatened species regardless of its designation elsewhere in its range and under section 4(d) of the Act. The Service has greater discretion in developing management programs for threatened species than it has for endangered species. Nonessential experimental populations located outside National Wildlife Refuges or National Park Service lands are treated, for the purpose of section 7 of the Act, as if they are proposed for listing. The area proposed for nonessential experimental designation occurs in northern Arizona, southern Utah and southeastern Nevada.

A proposed rule to designate a nonessential experimental population of California condors was published in the **Federal Register** (61 FR 35) on January 2, 1996.

Pursuant to 50 CFR 424.16(c)(2), the Service may extend or reopen a comment period upon finding that there is good cause to do so. Full participation of the affected public in the experimental population designation process, allowing the Service to consider the best scientific and commercial data available in making a final determination on the proposed action, is deemed as sufficient cause.

The current comment period on this proposal, which was extended by a document published on February 6, 1996 (61 FR 4394), closes on February 29, 1996. With the publication of this document, the Service further extends the public comment period. Written comments may now be submitted until April 1, 1996, to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Jeffrey A. Humphrey (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

Nancy Kaufman,

Regional Director, Region 2, Fish and Wildlife Service.

[FR Doc. 96–4674 Filed 2–28–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 681

[I.D. 022296D]

RIN 0648–AI32

Western Pacific Crustacean Fisheries; Amendment 9

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NMFS issues this notice that the Western Pacific Fishery Management Council (Council) has submitted Amendment 9 to the Fishery Management Plan for the Crustaceans Fisheries of the Western Pacific Region for review by the Secretary of Commerce (Secretary), and is requesting comments from the public. Amendment 9 would change the current harvest strategy to adapt to lower recruitment in the lobster fishery of the Northwestern Hawaiian Islands.

DATES: Written comments on the amendment must be received on or before April 26, 1996.

ADDRESSES: All comments should be sent to, Hilda Diaz-Soltero, Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213. Copies of the amendment are available upon request from the Council, 1164 Bishop Street, Suite 1405, Honolulu, Hawaii 96813. Telephone 808–522–8220.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, (310) 980–4034, Alvin Katekaru, (808) 973–2985, or Robert Harman, (808) 522–8220.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) 16 U.S.C. 1801 *et seq.* requires that a Regional Fishery Management Council submit any amendment to a fishery management plan it has prepared to NMFS for review, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon receiving an amendment, immediately publish a notice that the amendment is available for public review and comment. The NMFS will consider all public comments received during the comment period in determining whether to approve the amendment for implementation.

Amendment 9 would:

(1) Establish an annual harvest guideline based on a constant harvest rate, which would replace the current system of harvesting all legal-sized lobsters above a certain population level;

(2) eliminate size limits and the prohibition on retaining egg-bearing lobsters because lobsters returned to the sea are believed to suffer a high mortality;

(3) implement framework procedures to modify management measures triggered by biological, social, or economic problems in the fishery; and

(4) authorize the Director, Southwest Region, to close the fishery by direct notice to fishermen.

An environmental assessment and regulatory impact review are incorporated in Amendment 9. These documents are available for review (see **ADDRESSES**).

The receipt date for Amendment 9 was February 21, 1996. Proposed regulations to implement Amendment 9 are scheduled to be published within 15 days of the receipt date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 23, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–4608 Filed 2–26–96; 3:40 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 41
Thursday, February 29, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 23, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Department Clearance Officer, USDA, OIRM, Ag Box 7630, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

Farm Service Agency

Title: Upland Cotton Domestic User/Exporter Agreement and Payment Program—Addendum.

Summary: This proposed rule amends the regulation to set the payment rate for exporters under the domestic user/exporter marketing certificate program on the date the Commodity Credit Corporation (CCC) determines is the date on which the cotton is shipped. To participate in the program, exporters are required to report to CCC on a weekly basis all export sales, and any cancellation or amendments to sales contracts.

Need and Use of the Information: The information collections are necessary to establish eligibility for payments of domestic users and exporters of U.S. upland cotton and to accurately determine the level of payments authorized under this program.

Description of Respondents: Business or other for-profit.

Number of Respondents: 300.

Frequency of Responses: Recordkeeping; Reporting: On occasion, Weekly.

Total Burden Hours: 4,675.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 96–4701 Filed 2–28–96; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

Advisory Committee on Agricultural Concentration

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of intent to establish a Federal Advisory Committee; correction.

SUMMARY: In notice document 96–3589 beginning on page 6232 in the issue of Friday, February 16, 1996, make the following correction:

On page 6232, first line, third column, the words "eight representatives" should read "nine representatives * * *" and on the eleventh line the words "two individuals with expertise in" should read "one individual with expertise in * * *".

EFFECTIVE DATE: February 16, 1996.

FOR FURTHER INFORMATION CONTACT: Barbara Claffey, Assistant Deputy Administrator, Agricultural Marketing Service, Room 3064–S, 14th and Independence Avenue SW., Washington, D.C. 20250–1400, (202) 720–4276.

Dated: February 22, 1996.

Dan Glickman,

Secretary.

[FR Doc. 96–4586 Filed 2–28–96; 8:45 am]

BILLING CODE 3410–01–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Arlington, Virginia on Tuesday and Wednesday, March 12–13, 1996 at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, March 12, 1996

9:00 am–Noon—Briefing on Rulemaking (Closed Session)
1:30 pm–3:00 pm—Planning and Budget Committee and Vision Statement Work Group
3:45 pm–5:00 pm—Technical Programs Committee

Wednesday, March 13, 1996

9:00 am–Noon—Ad Hoc Committee on Bylaws and Statutory Review
1:30 pm–3:30 pm—Board Meeting.

ADDRESSES: The meetings will be held at: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 14 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items:

- Approval of the Minutes of the July 12 and September 13 Board Meetings.
- Executive Director's Report.
- Ad Hoc Committee on Bylaws and Statutory Review Report.
- Planning and Budget Committee and Vision Statement Work Group Reports.
- Fiscal Year 1996 Spending Plan.
- Fiscal Year 1997 Budget Request.
- Staff Feedback on Vision Statement.
- Report from Strategic Planning Group.
- Fiscal Years 1993–1995 Research Projects Status Reports.
- Fiscal Year 1996 Statements of Work.
- Research Being Conducted by Others.
- Election of Officers.

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

James J. Raggio,

General Counsel.

[FR Doc. 96–4581 Filed 2–28–96; 8:45 am]

BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m. on Monday, March 18, 1996, at the Human Resources Development Institute, 600 College Road, East, Princeton, New Jersey 08540. The purpose of the meeting is to consider and decide on project activity for the current program period.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Irene Hill-Smith, 609–468–5546, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 22, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–4671 Filed 2–28–96; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:30 p.m. on March 19, 1996, at the Shiloh Inn, 206 SW Temple, Salt Lake City, Utah 84101. The purpose of the meeting is to conduct orientation for new members, brief the Committee on Commission and regional activities, and update the Committee on the status of the current report.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Michael N. Martinez, 801–261–8169, or John F. Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 20, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–4660 Filed 2–28–96; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

1997 Economic Census Covering Professional, Management, and Support Services; Health and Social Assistance; Educational Services; Arts, Entertainment, and Recreation; and Other Services Sectors

ACTION: Proposed Agency Information Collection Activity; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 29, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jack Moody, Bureau of the Census, Room 2665, Building 3, Washington, DC 20233 on (301) 457–2689.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector and provider of timely, relevant, and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The economic census, conducted under authority of Title 13 U.S.C., is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business and the general public. The 1997 Economic Census will cover virtually every sector of the U.S. economy including approximately 594,000 professional, management, and support services establishments; 469,000 health and social assistance establishments; 22,000 educational services establishments; 79,000 arts, entertainment, and recreation establishments; and 373,000 other services establishments.

II. Method of Collection

Establishments in these sectors of the economic census will be selected for mailout from a frame given by the Census Bureau's Standard Statistical Establishment List. To be eligible for selection, an establishment will be required to satisfy the following conditions: (i) It must be classified in the professional, management, and support services; health and social assistance; educational services; arts, entertainment, and recreation; or other services sectors; (ii) it must be an active operating establishment of a multi-establishment firm, or it must be a single-establishment firm with payroll; and (iii) it must be located in one of the 50 states or the District of Columbia. Mail selection procedures will distinguish the following groups of establishments:

A. Establishments of Multi-Establishment Firms

Selection procedures will assign all active operating establishments of multi-establishment firms to the mail component of the potential respondent universe. We estimate that the census mail canvass for 1997 will include approximately 136,000 professional, management, and support services multi-establishment firms; 114,000 health and social assistance multi-establishment firms; 3,000 educational services multi-establishment firms, 9,000 arts, entertainment, and recreation multi-establishment firms; and 75,000 other services multi-establishment firms.

B. Single-Establishment Firms With Payroll

As an initial step in the selection process, we will conduct a study of the potential respondent universe for

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professional, management, and support services; health and social assistance; educational services; arts, entertainment, and recreation; and other services sectors. The study of potential respondents will produce a set of industry-specific payroll cutoffs that we will use to distinguish large versus small single-establishment firms within each industry or kind of business. This payroll size distinction will affect selection as follows:

1. Large Single-Establishment Firms

Selection procedures will assign large single-establishment firms having annualized payroll (from Federal administrative records) that equals or exceeds the cutoff for their industry to the mail component of the potential respondent universe. We estimate that the census mail canvass for 1997 will include approximately 176,000 professional, management, and support services firms; 154,000 health and social assistance firms; 5,000 educational services firms; 41,000 arts, entertainment, and recreation firms; and 129,000 other services firms in this category.

2. Small Single-Establishment Firms

Selection procedures will assign a sample of small single-establishment firms having annualized payroll below the cutoff for their industry to the mail component of the potential respondent universe. Sampling strata and corresponding probabilities of selection will be determined by a study of the potential respondent universe conducted shortly before mail selection operations begin. We estimate that the census mail canvass for 1997 will include approximately 49,000 professional, management, and support services firms; 31,000 health and social assistance firms; 2,000 educational services firms; 4,000 arts, entertainment, and recreation firms; and 27,000 other services firms in this category.

All remaining single-establishment firms with payroll will be represented in the census by data from Federal administrative records. Generally, we will not include these small employers in the census mail canvass. However, administrative records sometimes have fundamental deficiencies that make them unsuitable for use in producing detailed industry statistics by geographic area. When we find such a deficiency, we will mail the firm a census short form to collect basic information needed to resolve the problem. We estimate that the census mail canvass for 1997 will include approximately 233,000 professional, management, and support services firms; 169,000 health and social assistance firms; 12,000 educational services firms; 25,000 arts, entertainment, and recreation firms; and 142,000 other services firms in this category.

III. Data

This information collected from businesses in these sectors of the economic census will produce basic statistics by kind of business for number of establishments, sales, payroll, and employment. It also will yield a variety of subject statistics, including sales by receipts or revenue line, sales by class of customer, and other industry-specific measures. Primary strategies for reducing burden in Census Bureau economic data collections are to increase electronic reporting through broader use of computerized self-administered census questionnaires, electronic data interchange, and other electronic data collection methods.

OMB Number: Not Available.

Form Number: The forms used to collect information from businesses in these sectors of the economic census are tailored to specific business practices and are too numerous to list separately in this notice. You can obtain information on the proposed content of the forms by calling Jack Moody on (301) 457–2689.

Type of Review: Regular review.

Affected Public: Businesses or other for profit institutions, non-profit institutions, small businesses or organizations, and state or local governments.

Estimated Number of Respondents:

Professional, Management, and Support Services (Standard Form)—361,000
Professional, Management, and Support Services (Short Form)—233,000
Health and Social Assistance (Standard Form)—299,000
Health and Social Assistance (Short Form)—169,000
Educational Services (Standard Form)—10,000
Educational Services (Short Form)—12,000
Arts, Entertainment, and Recreation (Standard Form)—54,000
Arts, Entertainment, and Recreation (Short Form)—25,000
Other Services (Standard Form)—231,000
Other Services (Short Form)—142,000
Estimated total number of respondents for these five sectors: 1,536,000

Estimated Time Per Response:

Professional, Management, and Support Services (Standard Form)—1.1 hours
Professional, Management, and Support Services (Short Form)—0.2 hours
Health and Social Assistance (Standard Form)—1.0 hours
Health and Social Assistance (Short Form)—0.2 hours
Educational Services (Standard Form)—0.8 hours
Educational Services (Short Form)—0.2 hours
Arts, Entertainment, and Recreation (Standard Form)—1.1 hours
Arts, Entertainment, and Recreation (Short Form)—0.2 hours
Other Services (Standard Form)—0.9 hours
Other Services (Short Form)—0.2 hours

Estimated Total Annual Burden Hours:

Professional, Management, and Support Services (Standard Form)—397,100
Professional, Management, and Support Services (Short Form)—46,600
Health and Social Assistance (Standard Form)—299,000
Health and Social Assistance (Short Form)—33,800
Educational Services (Standard Form)—8,000
Educational Services (Short Form)—2,400
Arts, Entertainment, and Recreation (Standard Form)—59,400
Arts, Entertainment, and Recreation (Short Form)—5,000
Other Services (Standard Form)—202,900
Other Services (Short Form)—28,400
Estimated total burden hours for these five sectors: 1,087,600

Estimated Total Cost: The cost to the government for this work is included in the total cost of the 1997 Economic Census, estimated to be $218 million.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 26, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–4700 Filed 2–28–96; 8:45 am]

BILLING CODE 3510–07–P

National Oceanic and Atmospheric Administration

[I.D. 022196A]

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council), its Administrative Committee, the Scientific and Statistical Committee (SSC) and the Advisory Panel (AP) will hold meetings.

DATES: The meetings will be held on March 25–28, 1996.

ADDRESSES: All meetings will be held at the Marriott's Frenchman's Reef Beach Resort, St. Thomas, U.S. Virgin Islands.

Council Address: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council; telephone: (809) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 88th regular public meeting to discuss the Third Amendment to the Reef Fish Fishery Management Plan (FMP) and the First Amendment to the Coral FMP, among other topics.

The Council will convene on March 27, 1996, from 9:00 a.m. until 5:00 p.m., and on March 28, from 9:00 a.m. until approximately 12:00 noon.

The Administrative Committee will meet on March 26, from 2:00 p.m. until 5:00 p.m., to discuss administrative matters regarding Council operations.

The SSC and AP will meet on March 25, 1996, from 10:00 a.m. until 5:00 p.m., to discuss the management alternatives for amendments to the Coral and Reef Fish FMPs.

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues. There will be simultaneous translation (Spanish-English) at the AP meeting only.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Mr. Miguel A. Rolón, Executive Director, (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 22, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–4598 Filed 2–28–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022196B]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting.

DATES: The meeting will be held on March 20, 1996, from 1:00 p.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn-Fort Brown, 1900 East Elizabeth Street, Brownsville, TX; telephone: 210–546–2201.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Biologist; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Law Enforcement Advisory Panel will review preliminary versions of two draft amendments to fishery management plans (FMP). Draft Amendment 9 to the Shrimp FMP addresses shrimp trawl bycatch and possible requirements for bycatch reduction devices. Draft Amendment 14 to the Reef Fish FMP addresses a possible permanent license limitation system for fish trap users and options for a ban on fish traps in Federal waters off of southwest Florida. This amendment also contains options to revise the reef fish framework procedure for setting total allowable catch, and to change the transferability provisions for reef fish vessel permits when transferring between vessel owners and operators who are the income qualifiers for the permit.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by March 13, 1996.

Dated: February 22, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–4599 Filed 2–28–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022296C]

Pacific Fishery Management Council; Public Meetings and Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of reports; notice of public meetings and hearings.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 1996 ocean salmon fisheries. This notice announces the availability of Council documents and the dates and locations of Council meetings and public hearings. These actions comprise the complete schedule of events followed by the Council for determining the annual proposed and final modifications to ocean salmon management measures.

DATES: Written comments on the season options must be received by April 3, 1996. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of public meetings and hearings.

ADDRESSES: Written comments should be sent to Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201; telephone: (503) 326–6352.

FOR FURTHER INFORMATION CONTACT: John Coon, Salmon Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION:

March 1, 1996: Council reports that summarize the 1995 salmon season and project the expected salmon stock abundance for 1996 are available to the public from the Council office.

March 11–15, 1996: Council and advisory entities meet at the Red Lion Hotel Columbia River, 1401 North Hayden Island Drive, Portland, OR, to

adopt 1996 regulatory options for public review.

March 25, 1996: Report with proposed management options and public hearing schedule is mailed to the public. (The report includes options, rationale, and summary of biological and economic impacts.)

April 1–2, 1996: Public hearings are held to receive comments on the proposed ocean salmon fishery regulatory options adopted by the Council. All public hearings begin at 7 p.m. on the dates and at the locations specified below.

April 1, 1996: Westport High School Commons, 2850 S. Montesano Street, Westport, WA.

April 1, 1996: Pony Village Motor Inn, Ballroom, Virginia Avenue, North Bend, OR.

April 2, 1996: Red Lion Inn, Chinook Room, 400 Industry, Astoria, OR.

April 2, 1996: Red Lion Inn, Evergreen Room, 1929 Fourth Street, Eureka, CA.

April 8–12, 1996: Council and its advisory entities meet at the Holiday Inn San Francisco International Airport North, South San Francisco, CA, to adopt final 1996 regulatory measures.

April 18, 1996: Newsletter describing adopted ocean salmon fishing management measures is mailed to the public.

April 12–23, 1996: Salmon Technical Team completes "Preseason Report III Analysis of Council Adopted Regulatory Measures for 1996 Ocean Salmon Fisheries."

May 1, 1996: Federal regulations implemented and preseason report III available for distribution to the public.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: February 23, 1996.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–4597 Filed 2–28–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022096A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of a request to extend permit 962 (P509B), and issuance of modification 2 to permit 878.

SUMMARY: Notice is hereby given that Carlos Diez and Robert van Dam from the University of Central Florida (P509B) have applied in due form to extend Permit 962. Notice is also given that modification 2 has been issued to permit 878, held by Florida Department of Environmental Protection (P553). Both permits authorize the take of listed sea turtles for the purpose of scientific research, subject to certain conditions set forth therein.

DATES: Written comments or requests for a public hearing on the request to extend Permit 962 must be received on or before April 1, 1996.

ADDRESSES: The applications, permits, and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401);

or

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

Written comments, or requests for a public hearing on the request to extend Permit 962 should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: The holders of Permit 962 request an extension from 1 year to 5 years, under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227). No other change to the current authorization is requested. The current permit authorizes the hand capture of 200 listed hawksbill sea turtles (*Eretmochelys imbricota*) and 20 listed green sea turtles (*Chelonia mydas*), to be examined, photographed, measured, and tagged. The research location is Mona and Monito Islands, PR (18°05′ N., 67°54′ W.). Some of the turtles may be lavaged, have blood or scute samples taken, or have time-depth recorders attached. A four-year extension would authorize this take annually until May 31, 2000. The goal of the research is to provide information on the ecology and population dynamics of the hawksbill that will make it possible to improve the effectiveness of management efforts, addressing the following recovery plan priorities: (1) The identification of important marine habitats, (2) the determination of adult and juvenile distribution and abundance, (3) the determination of sex ratios in the juvenile population, (4) the evaluation of the extent of ingestion of persistent marine debris, (5) the determination of growth rates and age at sexual maturity, and (6) the quantification of threats to adults and juveniles on foraging grounds. In justification for the extension of this permit, recovery plans and other publications indicate that studies such as abundance, distribution, growth rates, and sex ratios should be conducted for at least 10 years.

Permit 878 authorizes research on loggerhead, green, Kemp's ridley, hawksbill, and leatherback sea turtles in Florida waters. Some turtles are authorized for blood samples, laparoscopic examinations, lavage, and tumor collection. The purpose of the research is to investigate life histories, habitat requirements, migratory behaviors, and threats to the species. On February 20, 1996, Modification 2 was issued to Permit 878, increasing the number of listed sea turtles authorized to receive telemeters from 15 to 30. Issuance of this modification, as required by the ESA, was based on a finding that such modification: (1) Was applied for in good faith, (2) will not operate to the disadvantage of the listed species that are the subject of this modification, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Those individuals requesting a hearing on the request to extend Permit 962 should set out the specific reasons why a hearing on this particular request would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these permit summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: February 22, 1996

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–4600 Filed 2–28–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022296B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for modifications to three scientific research permits (P45K, P45L, and P45S).

SUMMARY: Notice is hereby given that the National Biological Service, U.S. Department of the Interior at Cook, WA (NBS) has applied in due form for modifications to permits to take endangered and threatened species for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on any of these applications must be received on or before April 1, 1996.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: NBS requests modifications to permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

NBS (P45K) requests modification 5 to permit 817 for an increase in their annual take of ESA-listed species in association with three additional scientific research activities under Study 1, originally entitled "Identification of the spawning, rearing, and migratory requirements of fall chinook salmon in the Columbia River Basin." Permit 817 authorizes a direct take of juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) and an indirect take of juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) for Study 1. NBS proposes to evaluate the extent, seasonality, and size selectivity of predation on subyearling fall chinook salmon; estimate food availability and growth of subyearling fall chinook salmon in nearshore rearing habitats for eventual use in a bioenergetics model; and relate juvenile fall chinook salmon survival to physiological development. A greater number of listed juvenile fish are proposed to be captured, handled, and released annually with a corresponding increase in indirect mortalities. Modification 5 would be valid for the duration of the permit. Permit 817 expires on December 31, 1996.

NBS (P45L) requests modification 1 to permit 905 for a change in the dates and locations of an ongoing scientific research activity and an increase in their annual take of ESA-listed species in association with two additional scientific research activities. Permit 905 authorizes a direct take of juvenile, threatened, Snake River fall chinook salmon and an indirect take of juvenile, threatened, Snake River spring/summer chinook salmon associated with a scientific study intended to assess the survival of wild and hatchery juvenile fall chinook salmon from rearing areas in the free-flowing Snake River through lower Snake River dams. NBS proposes to expand their annual collection season and extend their sampling locations to acquire the juvenile listed fish currently authorized to be taken for electrophoretic analysis. NBS also proposes to capture, handle, and release a greater number of listed juvenile fish annually to obtain non-lethal tissue samples from run-at-large juvenile spring chinook salmon and fall chinook salmon yearlings for genetic analysis and to relate juvenile fall chinook salmon survival to physiological development. Modification 1 would be valid for the duration of the permit. Permit 905 expires on December 31, 1996.

NBS (P45S) requests modification 1 to permit 956 for changes in scientific equipment application and sampling techniques and an increase in their annual take of ESA-listed species in association with two additional scientific research activities. Permit 956 authorizes a take of juvenile, threatened, artificially-propagated, Snake River spring/summer chinook salmon associated with a study designed to provide managers with data on the distribution, abundance, movement, and habitat preferences of the anadromous fish that migrate through Lower Granite Reservoir. NBS has been acquiring the data using radio transmitter tags applied by gastric insertion. NBS proposes to collect listed juvenile fish using a purse seine, apply the radio transmitter tags by surgical implantation, and transport the listed juvenile fish from the point of capture to an upstream release site. NBS also proposes to capture, handle, and release a greater number of listed juvenile fish annually to evaluate the operation of a surface collector prototype in the forebay of Lower Granite Dam and to use a mid-water trawl for species verification of hydroacoustic surveys. Modification 1 would be valid for the duration of the permit. Permit 956 expires on September 30, 1999.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on any of these applications would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these application summaries are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: February 23, 1996.

Ann D. Terbush,

Chief, Permits and Documentotion Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–4601 Filed 2–28–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Air Force

AFIT Subcommittee of the Air University Board of Visitors; Notice of Meeting

The Air Force Institute of Technology Subcommittee of the Air University Board of Visitors will hold an open meeting on 3–5 March 1996, with the first business session beginning at 0900 in the Commandant's Conference Room, Building 125, Wright-Patterson Air Force Base, Ohio (5 seats available).

The purpose of the meeting is to give the board an opportunity to review Air Force Institute of Technology's educational programs and to present to the Commandant a report of their findings and recommendations concerning these programs.

Less than 15 days public notice for this Subcommittee is due to scheduling conflicts of high level members and the difficulty to reschedule.

For further information on this meeting, contact Ms. Beverly Houtz in the Directorate of Plans and Operations, Air Force Institute of Technology, (513) 255–5760.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–4661 Filed 2–28–96; 8:45 am]

BILLING CODE 3910–01–M

Air University Board of Visitors; Notice of Meeting

The Air University Board of Visitors will hold an opening meeting on 14–17 April 1996, with the first business session beginning at 0800 in the Air University Conference Room at

Headquarters Air University, Maxwell Air Force Base, Alabama (5 seats available).

The purpose of the meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Dr. Dorothy Reed, BOV Coordinator, Air University, Maxwell Air Force Base, Alabama 36112–6335, telephone (334) 953–5159.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–4662 Filed 2–28–96; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Availability of Non-Exclusive, Exclusive or Partially Exclusive Licenses (Recombinant DNA Molecules for Producing Terminal Transferase-like Polypeptides)

AGENCY: U.S. Army, Intellectual Property Law Division, Virginia.

ACTION: Notice.

SUMMARY: The Uniformed Services University of the Health Sciences Announces the general availability of exclusive, partially exclusive or non-exclusive licenses under the following patent application and any continuations, divisions or continuations in part of the same—

U.S. Patent No. 5,037,756

Subject: Recombinant DNA Molecules for Producing Terminal Transferase-like Polypeptides

Inventors: Frederick J. Bollum, et al.

Issued: 5 August 1991

Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Mr. Earl T. Reichert, Acting Chief, Intellectual Property Law Division, ATTN: JALS–IP, 901 North Stuart Street, Suite 700, Arlington, VA 22203–1837. Phone: (703) 696–8113.

SUPPLEMENTARY INFORMATION: Written objections must be filed within three (3) months from the date of this notice in the **Federal Register.**

Gregory B. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–4657 Filed 2–28–96; 8:45 am]

BILLING CODE 3710–08–M

Department of Army, Corps of Engineers

Intent to prepare a Draft Environmental Impact Statement (DEIS) for the proposed Ocean City, Maryland, and Vicinity Water Resources Feasibility Study at Ocean City, in Worcester County, Maryland

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Baltimore District, U.S. Army Corps of Engineers is initiating the Ocean City, Maryland, and Vicinity Water Resources Feasibility Study to investigate potential solutions to several water resources problems in Ocean City, Maryland. The study area includes Ocean City and Assateague Island, adjacent coastal bays and nearshore waters of the Atlantic, and Maryland mainland areas within the coastal watershed boundary. The Feasibility Study will address four different water-related problems in the Maryland coastal bay area as separate report components, including (1) the restoration of the northern end of Assateague Island; (2) long-term sand placement opportunities along Ocean City and Assateague Island shorelines; (3) restoration of terrestrial and aquatic habitat; and (4) navigation improvements to the harbor, inlet, and Thorofare channel. Cost-sharing partners in the study include the Maryland Department of Natural Resources, the Town of Ocean City, Worcester County, and the National Park Service (Assateague Island National Seashore). The scheduled completion date for the draft Ocean City, Maryland, and Vicinity Water Resources Feasibility Report and DEIS is June 1997.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be addressed to Ms. Stacey Marek, Project Manager, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB–PL–PC, P.O. 1715, Baltimore, Maryland 21203–1715, telephone (410) 962–4977. E-mail address: ocwr@ccmail.nab.usace.army.mil

SUPPLEMENTARY INFORMATION:

1. The study was authorized by a resolution of the Committee of Environmental and Public Works of the U.S. Senate, adopted 15 May 1991.

2. The Ocean City inlet was formed in 1933 during a severe storm. In 1934 the Army Corps of Engineers constructed jetties to protect the newly formed waterway in an effort to provide for navigation between the coastal bays and the ocean. The inlet has functioned as a thoroughfare for boating traffic for the past 60 years; however, the jetties disrupt the normal movement of sediment along the coast from Ocean City to Assateague Island. Lacking this sediment supply, approximately 6 miles of the northern Assateague shoreline have been eroding at an accelerated rate and the island is vulnerable to breaching, or forming one of more new inlets. The first two of the four study components listed below address this problem.

3. Restoration of the North End of Assateague Island—This study component will address the short-term restoration of Assateague Island by investigating methods for a one-time placement of sediment on the north end of the island. The sediment placement will mitigate the historic impacts of the jetty-induced sediment deficit. Due to a potentially imminent breach of the island, this component of the study will be completed as a separate draft report prior to completion of the other three components.

4. Long-Term Sand Placement Opportunities—A second component of the study will address the long-term placement of sand to restore a normal sediment budget to the north end of Assateague Island. After analysis and evaluation, a method will be selected to provide a sand supply adequate to maintain the integrity of the northern portion of Assateague Island. This portion of the study will also review current Corps' shoreline protection activities at Ocean City to determine whether there is a more cost-effective method of re-nourishing the beach.

5. Restoration of Terrestrial and Aquatic Habitat in the Coastal Bays—This study component will identify the best methods for creating and restoring wetlands and islands throughout the coastal bay area for fish and wildlife habitat. It is expected that between 80 and 200 acres of habitat will be created or restored.

6. Navigation Improvements to the Harbor, Inlet, and Thorofare Channel—This study component will determine the best methods for improving navigation through the harbor, inlet, and Thorofare Channel. Existing shoals cause damage to both commercial and recreational vessels and extend travel time for vessels navigating the channels. It is expected that the study will investigate deepening and widening the Corps of Engineers' channel through the inlet and harbor, and creating and maintaining a Federal channel through the existing Thorofare Channel.

7. The Baltimore District is preparing a DEIS that will describe the overall public interest and the impacts of the proposed project on environmental resources in the area. The DEIS will also apply guidelines issued by the Environmental Protection Agency, under authority of Section 404 of the Clean Water Act of 1977 (P.L. 95–217). Potential effects of the project on water quality and on recreational, aesthetic, cultural, economic, social, fish and wildlife, and other resources will also be investigated.

8. The public involvement program will include workshops, meetings, and other coordination with interested private individuals and organizations, as well as with concerned Federal, state, and local agencies. Coordination letters and a newsletter have been sent to appropriate agencies, organizations, and individuals on an extensive mailing list. Additional public information will be provided through print media, mailings, and radio and television announcements.

9. In addition to the Corps, the Maryland Department of Natural Resources, the National Park Service, the Town of Ocean City, and Worcester County, current participants in the DEIS process include the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Maryland Department of the Environment, Maryland Geological Survey, the Worcester Environmental Trust, and the Assateague Coastal Trust. The Baltimore District invites potentially affected Federal, state, and local agencies, and other organizations and entities to participate in this study.

10. The DEIS is tentatively scheduled to be available for public review in June of 1997.

James F. Johnson,

Chief, Plonning Division.

[FR Doc. 96–4672 Filed 2–28–96; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 1, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 23, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Revision.
Title: Confirmation Report for the Patricia Roberts Harris Fellowship Program Report.
Frequency: Annually.
Affected Public: Not-for-profit institutions.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 100.
Burden Hours: 1,100.
Abstract: Institutions of higher education that have received Patricia Roberts Harris grants are required to demonstrate their compliance with statutory requirements for distribution of fellowships. Information collected will be used by institutions of higher education to document the eligibility characteristics of students who are scheduled to receive fellowships under the program and the amount of each student stipend.

Office of Postsecondary Education

Type of Review: Revision.
Title: Application for Ability-to-Benefit Testing Approval.
Frequency: Annually.
Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 150,180.
Burden Hours: 75,090.
Abstract: The Secretary of Education will publish a list of approved tests which can be used by postsecondary educational institutions to establish the ability-to-benefit for a student who does not have a high school diploma or its equivalent.

[FR Doc. 96–4611 Filed 2–28–96; 8:45 am]

BILLING CODE 4000–01–M

Submission of Data by State Educational Agencies

AGENCY: Department of Education.

ACTION: Notice of dates for submission of State revenue and expenditure reports for fiscal year 1995 and of revisions to those reports.

SUMMARY: The Secretary of Education announces a date for the submission by State educational agencies (SEAs) of preliminary expenditure and revenue data and average daily attendance statistics for fiscal year (FY) 1995 and establishes a deadline for any revisions to that information. The Secretary sets these dates to ensure that data are available to serve as the basis for timely distribution of Federal funds. The U.S. Bureau of the Census is the data collection agent for the Department's National Center for Education Statistics (NCES). The data will be published by NCES and will be used by the Secretary in the calculation of allocations for FY 1997 appropriated funds.

DATE: The suggested date for submission of preliminary data is March 15, 1996.

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The mandatory deadline for submission of final data, including revisions to preliminary data, is September 3, 1996.

ADDRESSES: SEAs are urged to mail or hand deliver ED Form 2447 (The National Public Education Financial Survey—Fiscal Year 1995) by the first date specified in this notice. SEAs must mail or hand deliver final data and any revisions to preliminary data on or before the mandatory deadline date to—Bureau of the Census, Attn: Governments Division, Washington, DC 20233–0001.

An SEA may hand deliver any revisions to—Bureau of the Census, Governments Division, Room 508, 8905 Presidential Parkway, Washington Plaza II, Upper Marlboro, Maryland, 20772, by 4 p.m. (Washington, DC time) on or before the mandatory deadline date.

If an SEA's submission is received by the Bureau of the Census after the mandatory deadline date, in order for the submission to be accepted, the SEA must show one of the following as proof that the submission was mailed on or before the mandatory deadline date:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence R. MacDonald, Chief, Governments Division, at the Maryland address specified above or by telephone: (301) 457–1563. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Under the authority of section 404(a) of the National Education Statistics Act of 1994 (20 U.S.C. 9003(a)), which authorizes NCES to gather data on the financing of education, NCES collects data annually from SEAs through ED Form 2447. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines the average State per pupil expenditure (SPPE) for elementary and secondary education.

In addition to using SPPE data as useful information on the financing of elementary and secondary education, the Secretary uses these data directly in calculating allocations for certain formula grant programs, including Title I of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Title I), Impact Aid, and Indian Education. Other programs such as The Education for Homeless Children and Youth Program under Title VII of the Stewart B. McKinney Homeless Assistance Act, the Dwight D. Eisenhower Professional Development Program, and the Safe and Drug-Free Schools and Communities Program make use of SPPE data indirectly because their formulas are based, in whole or in part, on State Title I allocations.

In February 1996, the Bureau of the Census, acting as the data collection agent for NCES, will mail to SEAs ED Form 2447 with instructions and will request that SEAs submit initial data to the Bureau of the Census by March 15, 1996. If an SEA does not submit initial FY 1995 data on ED Form 2447 on or about March 15, 1996, it should inform Census, in writing, of the delay and the date by which it will submit FY 1995 data. Submissions by SEAs to the Bureau of the Census are checked for accuracy and returned to each SEA for verification. NCES recognizes that data submitted prior to September 3, 1996, may be preliminary. In any case, all data, including any revisions to preliminary submissions, must be submitted to the Bureau of the Census by an SEA not later than September 3, 1996.

To ensure timely distribution of Federal education funds based on the best, most accurate data available, NCES establishes, for allocation purposes, September 3, 1996 as the final date by which ED Form 2447 must be submitted. However, if an SEA submits revised data after the final deadline that results in a lower SPPE figure, its allocations may be adjusted downward or the Department may request the SEA to return funds. SEAs should be aware that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs.

Authority: 20 U.S.C. 9003(a).

Dated: February 23, 1996.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 96–4609 Filed 2–28–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Wednesday, March 13, 1996: 6:00 pm–9:00 pm.

ADDRESS: Jacobs Engineering Group, Inc. Building, Einstein Conference Room, 125 Broadway, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Sandy Perkins, Site-Specific Advisory Board Coordinator, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–1590.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

March Meeting Topics

The Board will meet to develop their independent recommendation regarding the rankings for the Environmental Management Risk Based Prioritization system for the Oak Ridge Reservation.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting.

Individuals who wish to make oral statements pertaining to agenda items should contact Sandy Perkins at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Sandy Perkins, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–1590.

Issued at Washington, DC on February 23, 1996.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–4697 Filed 2–28–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770), notice is hereby given of the following meeting: State Energy Advisory Board.

Date and Time: April 11–12, 1996 from 9:00 am to 5:00 pm.

Place: The Madison Hotel, 15th and M Streets, Washington, DC, 20005.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Technical and Financial Assistance (EE–50), Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101–440).

Tentative Agenda: Briefings on, and discussions of:

- The FY1997 Federal budget request for Energy Efficiency and Renewable Energy programs.
- Issues related to restructuring initiatives within the electric utility industry.
- Review and approval of any committee activity.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on February 26, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–4698 Filed 2–28–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. ER96–670–000 and EL96–33–000]

Allegheny Generating Company; Notice of Initiation of Proceeding and Refund Effective Date

February 23, 1996.

Take notice that on February 20, 1996, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL96–33–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL96–33–000 will be 60 days after publication of this notice in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4641 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–41–001]

Colorado Interstate Gas Company; Notice of Petition to Amend

February 23, 1996.

Take notice that on February 22, 1996, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP96–41–001 a petition to amend its application filed in Docket No. CP96–41–000 to delete a residue line extending from a third party's processing plant (Warren Plant) to CIG's main line in Beaver County, Oklahoma from those facilities CIG wishes to transfer to its affiliate, CIG Field Services (Field Services), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

CIG states that the subject of this amendment is an 18-inch, 858 foot facility found in the area of the Mocane Compressor Station in Beaver County, Oklahoma, leading from the Warren plant to CIG's main transmission line. It is indicated that gas is delivered to the Warren plant from both CIG and a third party for processing. It is stated that subsequent to processing, the gas can enter CIG's system through the residue line or can flow on facilities of a third party without ever reaching CIG's facilities. CIG avers that, after implementation of the CIG-Field Services spin down proposal, by retaining the residue line, the potential for rate stacking for service would be eliminated in transactions where gas is delivered to the plant by a party other than Field Services and then delivered from the Warren Plant for transportation on CIG's system.

CIG estimates a book value of the residue line to be retained at $7,915, as of December 31, 1994. No other changes are proposed in CIG's original application.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before March 4, 1996, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commissions's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing

therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4636 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–734–000]

Energy Marketing Services, Inc.; Notice of Issuance of Order

February 23, 1996.

On December 22, 1995, Energy Marketing Services, Inc. (EMSI) submitted for filing a rate schedule under which EMSI will engage in wholesale electric power and energy transactions as a marketer. EMSI also requested waiver of various Commission regulations. In particular, EMSI requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by EMSI.

On February 13, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by EMSI should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, EMSI is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EMSI's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 14, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4635 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER96–586–000, ER95–112–001, and ER95–1001–000 and Docket No. ER95–1615–000]

Entergy Services, Inc., and Entergy Power Marketing Corp.; Notice of Issuance of Order

February 23, 1996.

On August 30, 1995, Entergy Power Marketing Corp. (Entergy Marketing) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, Entergy Marketing requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Entergy Marketing. On February 14, 1996, the Commission issued an Order Accepting for Filing and Suspending Proposed Transmission Tariffs (as Modified), Establishing Hearing Procedures, Accepting for Filing (Without Suspending or Hearing) Compliance Filing, Conditionally Accepting for Filing Marketing-Based Rates, and Granting Waivers and Authorizations (Order), in the above-docketed proceeding.

The Commission's February 14, 1996 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (L), (M), and (O):

(L) Without 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Entergy Marketing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(M) Absent a request to be heard within the period set forth in Ordering Paragraph (L) above, Entergy Marketing is hereby authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(O) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Entergy Marketing's issuances of securities or assumptions of liabilities

* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 15, 1996.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street NE., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4639 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–123–001]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 23, 1996.

Take notice that on February 21, 1996, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective April 1, 1996:

Substitute Third Revised Sheet No. 2
Substitute First Revised Sheet No. 134
Substitute Second Revised Sheet No. 135
Substitute Third Revised Sheet No. 452
Substitute Second Revised Sheet No. 467
Second Revised Sheet No. 494
Second Revised Sheet No. 503
Substitute Second Revised Sheet No. 530

FGT states on January 26, 1996, it filed in Docket No. RP96–123–000 (January 26 Filing) certain changes to its Tariff generally intended to modify or clarify certain provisions in conformance with previous tariff changes filed and accepted by the Federal Energy Regulatory Commission. Several parties filed protests to FGT's January 26 Filing.[1] FGT is filing concurrently herewith an answer (Answer) to respond to certain issues and questions raised in the protests and to clarify certain misunderstandings. The instant filing is submitted to amend the January 26 Filing in conjunction with that Answer and includes the changes described therein.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission,

[1] Florida Cities, Florida Municipal Natural Gas Association, Indicated Shippers, and Peoples Gas System, Inc.

888 First Street NE, Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4603 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1096–000]

Pacific Power Marketing, Inc.; Notice of Issuance of Order

February 23, 1996.

On May 25, 1995, Pacific Power Marketing, Inc. (Pacific Marketing) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, Pacific Marketing requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Pacific Marketing. On February 14, 1996, the Commission issued an Order Modifying Earlier Order, Conditionally Accepting For Filing Market-Based Rates, And Granting And Denying Requests for Waivers and Authorizations (Order), in the above-docketed proceeding.

The Commission's February 14, 1996 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (G), (H), and (J):

(G) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Pacific Marketing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214 (1995).

(H) Absent a request to be heard within the period set forth in Ordering Paragraph (G) above, Pacific Marketing is hereby authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issues or assumption is for some lawful object within the corporate purposes of the applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(J) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Pacific Marketing's issuances of securities or assumptions of liabilities.

* * *

Notices is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 15, 1996.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4634 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–342–000]

Seagull Power Services, Inc.; Notice of Issuance of Order

February 23, 1996.

On November 13, 1995, as amended January 5, 1996, Seagull Power Services, Inc. (Seagull) submitted for filing a rate schedule under which Seagull will engage in wholesale electric power and energy transactions as a marketer. Seagull also requested waiver of various Commission regulations. In particular, Seagull requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Seagull.

On February 15, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Seagull should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Seagull is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Seagull's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 18, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4637 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–48–000]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

February 23, 1996.

Take notice that on February 12, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Commission a refund report in accordance with Section 4 of Transco's Rate Schedule LSS and Section 3 of Transco's Rate Schedule GSS.

Transco states that on January 29, 1996, it refunded $12,456,000.00, inclusive of interest, to its LSS and GSS customers. The refund was due Transco's customers from a CNG Transmission Corporation refund in Docket Nos. RP94–96 and RP94–213 (consolidated) for the period July 1, 1994 through October 31, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 1, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4604 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–6–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 23, 1996.

Take notice that on February 16, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Twenty-fifth Revised Sixth Revised Sheet No. 28, to be effective on February 1, 1996.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28 the costs to which are included in the rates and charges payable under Transco's Rate Schedule S–2. This tracking filing is being made pursuant to Section 26 of the General Terms and Conditions of Transco's Volume No. 1 Tariff.

Included in Appendix B attached to the filing is an explanation of the rate changes and details regarding the computation of the revised Rate Schedule S–2 rates.

Transco states that copies of the filing are being mailed to each of its S–2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing area on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4606 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–146–000]

West Texas Gas, Inc.; Notice of Proposed Changes in FERC Gas Tariff

February 23, 1996.

Take notice that on February 20, 1996, West Texas Gas, Inc. (WTG), tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. WTG submitted the following tariff sheets with a proposed effective date of February 20, 1996:

First Revised Sheet No. 22
First Revised Sheet No. 24
First Revised Sheet No. 25
First Revised Sheet No. 27
First Revised Sheet No. 28
First Revised Sheet Nos. 30 through 32
Original Sheet Nos. 32A through 32PP

WTG submitted the tariff sheets to comply with Order No. 582, issued September 28, 1995 in Docket No. RM95–3–000. Order No. 582 directed WTG to incorporate into its tariff the Commission's Regulations pertaining to Purchased Gas Adjustments, 18 CFR Section 154.111, and Sections 154.301 through 154.310, which were removed from the Commission's Regulations pursuant to Order No. 582.

WTG requests any waivers necessary to permit the tariff sheets to be effective February 20, 1996.

WTG states that copies of the filing were served upon WTG's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4605 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER96–459–000 and ER96–458–000]

Western Resources, Inc., and Westar Electric Marketing, Inc.; Notice of Issuance of Order

February 23, 1996.

On November 29, 1995, Westar Electric Marketing, Inc. (Westar) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, Westar requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Westar. On February 14, 1996, the Commission issued an Order Modifying Earlier Order, Conditionally Accepting for Filing Market-Based Rates, and Granting Waivers and Authorizations (Order), in the above-docketed proceeding.

The Commission's February 14, 1996 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Westar should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, Westar is hereby authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Westar's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 15, 1996.

Copies of the full text of the Order area available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

FR Doc. 96–4638 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–145–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 23, 1996.

Take notice that on February 16, 1996, Williams Natural Gas Company (WNG) tendered for filing, pursuant to Article 9.7(d) of the General Terms and Conditions of its FERC Gas Tariff, its report of net revenue received from cash-outs. WNG proposes to make the refund upon Commission approval of its calculation method as set out in this report.

WNG states that pursuant to the cash-out mechanism in Article 9.7(a)(iv) of WNG's FERC, Shippers were given the option of resolving their imbalances by the end of the calendar month following the month in which the imbalance occurred by cashing-out such imbalances at 100% of the spot market price applicable to WNG as published in the first issue of Inside FERC's Gas Market Report for the month in which the imbalance occurred. Net monthly imbalances which were not resolved by the end of the second month following the month in which the imbalance occurred and which exceeded the tolerance specified in Article 9.7(b) were cashed-out at a premium or discount from the spot price according to the schedules set forth in Article 9.7(c). Consistent with its filing made January 20, 1995 in Docket No. RP95–132, WNG is filing its report of net revenue (sales less purchase cost) received from cash-outs.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4602 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER94–475–006, ER95–1510–001, and EL96–29–000; Docket No. ER94–108–006]

Wisconsin Power & Light Company, Heartland Energy Services, Inc.; Notice of Initiation of Proceeding and Refund Effective Date

February 23, 1996

Take notice that on February 16, 1996, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL96–29–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL96–29–000 will be 60 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 96–4640 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG96–43–000, et al.]

Xuwen Jieda Electricity Generating Co. Ltd. et al.; Electric Rate and Corporate Regulation Filings

February 22, 1996.

Take notice that the following filings have been made with the Commission:

1. Xuwen Jieda Electricity Generating Co. Ltd.

[Docket No. EG96–43–000]

On February 8, 1996, Xuwen Jieda Electricity Generating Co. Ltd. ("Applicant"), whose business address is Haian Development Zone, Xuwen County, Guangdong Province, People's Republic of China, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant intends, directly or indirectly, to own or operate all or part of eligible facilities, including without limitation a 12.45 MW electric generating facility located at Haian in the People's Republic of China.

Comment date: March 14, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Huidong Dongda Electric Generating Company Ltd.

[Docket No. EG96–44–000]

On February 8, 1996, Huidong Dongda Electric Generating Company Limited ("Applicant"), whose business address is Town of Ping Shan, Huidong County, Guangdong Province, People's Republic of China, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant intends, directly or indirectly, to own or operate all or part of eligible facilities, including without limitation a 24.9 MW electric generating facility located in Huidong County in the People's Republic of China.

Comment date: March 14, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Gulf Power Company

[Docket No. EL96–27–000]

Take notice that on February 9, 1996, Gulf Power Company tendered for filing an amendment to its December 29, 1995, filing in the above-referenced docket.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Nevada Power Company

[Docket No. ER96–133–000]

Take notice that on January 25, 1996, Nevada Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Orange and Rockland Utilities, Inc.

[Docket No. ER96–820–000]

Take notice that on February 8, 1996, Orange and Rockland Utilities, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. American Electric Service Corporation

[Docket No. ER96–956–000]

Take notice that on February 9, 1996, American Electric Service Company tendered for filing a Certificate of

Concurrence in the above-referenced docket.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Eastex Power Marketing, Inc.

[Docket No. ER96–1045–000]

Take notice that on February 7, 1996, Eastex Power Marketing, Inc. (EPMI) tendered for filing an amendment to its electric service tariff, FERC Electric Rate Schedule No. 1. The amendment authorizes sales to be made to any affiliate having a FERC rate schedule permitting sales for resale by such affiliate at rates established by agreement between the purchaser and the affiliate. EPMI requests an effective date of March 1, 1996 for the rate schedule.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Public Service Corporation

[Docket No. ER96–1061–000]

Take notice that on February 12, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Citizens Lehman Power Sales. The Agreement provides for transmission service under the Comparable Transmission Service Tariff, FERC Original Volume No. 7.

WPSC asks that the agreement become effective retroactively to the date of execution by WPSC.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Company Services, Inc.

[Docket No. ER96–1062–000]

Take notice that on February 13, 1996, Southern Company Services, Inc. (SCE), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as "Southern Companies") filed three (3) service agreements between SCE, as agent of the Southern Companies, and (i) Southwestern Public Service Company, (ii) the City of Tallahassee, and (iii) Duke Power Company for non-firm transmission service under the Point-to-Point Transmission Service Tariff of Southern Companies.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Houston Lighting & Power Company

[Docket No. ER96–1064–000]

Take notice that on February 14, 1996, Houston Lighting & Power Company (HL&P) tendered for filing an executed transmission service agreement (TSA) with Destec Power Services, Inc. (Destec) for Economy Energy and Emergency Power Transmission Service under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of February 13, 1996.

Copies of the filing were served on Destec and the Public Utility Commission of Texas.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Baltimore Gas and Electric Co.

[Docket No. ER96–1065–000]

Take notice that on February 14, 1996, Baltimore Gas and Electric Company (BGE), tendered for filing as an initial rate schedule comprised of an Energy Sales Tariff and related schedules and exhibits for the sale of energy by BGE (Tariff). The Tariff provides for the sale by BGE of energy from its system (system energy) to customers on an hourly, daily, weekly, monthly, or yearly basis (transaction). Each transaction is fully interruptible. BGE states that the timing of the transactions cannot be accurately estimated but that BGE will provide the system energy to customers at a negotiated rate upon which the parties will agree prior to each transaction when it is economical for each party to do so. Customers will pay a Reservation Charge to BGE for each transaction in an amount equal to the megawatthours of system energy reserved by BGE during a transaction multiplied by a Reservation Charge Rate negotiated prior to each transaction. The Reservation Charge Rate will be subject to a cost justified ceiling. Customers will pay a charge for each transaction in an amount equal to the megawatthours delivered by BGE during and transaction multiplied by an Energy Charge Rate. The Energy Charge Rate will be BGE's estimated incremental cost to supply the transaction, to be charged for each hour of the transaction in which BGE supplies energy.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Central Illinois Light Company

[Docket No. ER96–1075–000]

Take notice that on February 16, 1996, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Amendment to its Point-to-Point Open Access Tariff to expand the definition of eligible customers.

CILCO requested an effective date of March 15, 1996.

Copies of the filing were served on the Illinois Commerce Commission.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Indianapolis Power & Light Company

[Docket No. ER96–1076–000]

Take notice that on February 16, 1996, Indianapolis Power & Light Company (IPL), tendered for filing three initial rate schedules consisting of enabling agreements between IPL and LG&E Power Marketing, Inc., IPL and Louis Dreyfus Electric Power, Inc., and IPL and Catex Vitol Electric, L.L.C., respectively, pursuant to which they will engage in general purpose energy and negotiated capacity sales and purchase transactions. IPL requests waiver of the 60-day notice requirement to allow service to commence March 1, 1996 under the respective agreements.

Copies of this filing were sent to the Indiana Utility Regulatory Commission and LG&E Power Marketing, Inc., Louis Dreyfus Electric Power, Inc., and Catex Vitol Electric, L.L.C.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Louisville Gas and Electric Company

[Docket No. ER96–1077–000]

Take notice that on February 16, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Electric Clearinghouse, Inc. under Rate GSS.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER96–1078–000]

Take notice that on February 16, 1996, Entergy Services, Inc. (Entergy Services), acting as agent for Gulf States Utilities Company (GSU), submitted for filing a Letter Agreement between GSU and Sam Rayburn G&T Electric Coop., Inc. (SRG&T). The Letter Agreement establishes a new delivery point between GSU and SRG&T. In order to tap establish the new delivery point it will be necessary to relocate certain facilities. To the extent necessary, Entergy Services requests a waiver of the notice requirements of the Federal Power Act and the Commission's regulations to permit the Letter Agreement to become effective March 1, 1996.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Entergy Services, Inc.

[Docket No. ER96–1079–000]

Take notice that on February 16, 1996, Entergy Services, Inc. (Entergy Services), acting as agent for Arkansas Power & Light Company (AP&L), submitted for filing the Fourth Amendment to the Power Coordination, Interchange and Transmission Agreement between AP&L and the City of Osceola, Arkansas (City) which provides for an increase in the maximum capacity provided at existing points of delivery. Entergy Services request an effective date of May 1, 1996.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Sonat Power Marketing, Inc.

[Docket No. ER96–1081–000]

Take notice that on February 16, 1996, Sonat Power Marketing, Inc. (SPM), tendered for filing with the Federal Energy Regulatory Commission a request for Commission approval of SPM's acceptance as a member of the Western Systems Power Pool (WSPP). SPM was notified by letter dated February 16, 1996, that its application to join the WSPP had been approved by the WSPP Executive Committee. SPM requests that the Commission waive its prior notice requirement to allow its WSPP membership to become effective February 16, 1996.

A copy of the filing was served on the WSPP.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. UtiliCorp United Inc.

[Docket No. ER96–1082–000]

Take notice that on February 16, 1996, UtiliCorp United Inc. tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with *Wisconsin Electric Power Company*. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to *Wisconsin Electric Power Company* pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Wisconsin Electric Power Company*.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. UtiliCorp United Inc.

[Docket No. ER96–1083–000]

Take notice that on February 16, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *Wisconsin Electric Power Company*. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *Wisconsin Electric Power Company* pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Wisconsin Electric Power Company*.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Texas Utilities Electric Company

[Docket No. ER96–1084–000]

Take notice that on February 16, 1996, Texas Utilities Electric Company (TU Electric), tendered for filing five executed transmission service agreements (TSA's) with Central & South West Services, Inc., Louis Dreyfus Electric Power Inc., Citizens Lehman Power Sales and Valero Power Services Company for certain Economy Energy Transmission Service under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA's that will permit them to become effective on or before the service commencement date under each of the five TSA's. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on Central & South West Services, Inc., Louis Dreyfus Electric Power, Inc., Citizens Lehman Power Sales and Valero Power Services Company, as well as the Public Utility Commission of Texas.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. South Carolina Electric & Gas Company

[Docket No. ER96–1085–000]

Take notice that on February 16, 1996, South Carolina Electric & Gas Company (SCE&G), tendered for filing a proposed (1) Negotiated Market Sales Tariff, (2) open access network transmission tariff, and (3) open access flexible point to point transmission service tariff. SCE&G states that the network and point to point tariffs strictly conform to the pro forma tariffs included an appendices in the Commission's Notice of Proposed Rulemaking in Docket No. RM95–8–000. SCE&G requests waiver of the Commission's notice requirements and that all three tariffs be placed into effect on the same date as soon as possible, preferably within 30 days or less, but in no event later than 60 days after the date of tender.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. SCANA Energy Marketing, Inc.

[Docket No. ER96–1086–000]

Take notice that on February 16, 1996, SCANA Energy Marketing, Inc. (SCANA Energy), tendered for filing a petition for blanket authorization to act as a power marketer and for certain waivers of the Commission's regulations. SCANA Energy asks that these authorization and waivers be made effective on the date that the comparable transmission tariffs of its affiliate, South Carolina Electric & Gas Company, are accepted.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Wisconsin Public Service Corporation, WPS Energy Services, Inc., WPS Power Development, Inc.

[Docket No. ER96–1088–000]

Take notice that on February 16, 1996, Wisconsin Public Service Corporation (WPSC), WPS Energy Services, Inc. And WPS Power Development, Inc. (collectively, the WPSC Companies) each of Green Bay, Wisconsin, submitted requests for authorization to sell capacity and energy at market-based rates. In support of the requests, WPSC also submitted as a substitute for its currently effective open-access transmission tariffs new *pro forma* versions of the network and point-to-point transmission tariffs. The WPSC Companies request an April 17, 1996 effective date.

The WPSC Companies state that this filing has been posted in accordance with the Commission's regulations and that copies of the filing have been served upon the Wisconsin Public

Service Commission, the Michigan Public Service commission, and all persons listed on the official service lists in Docket No. ER95–1528–000.

Comment date: March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4643 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–183–000, et al.]

NorAm Gas Transmission Company, et al.; Natural Gas Certificate Filings

February 22, 1996.

Take notice that the following filings have been made with the Commission:

1. NorAm Gas Transmission Company

[Docket No. CP96–183–000]

Take notice that on February 12, 1996, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–183–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate certain facilities in Arkansas under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to operate an existing delivery tap on Line OM–1 to deliver gas to Arkla (Arkla), a distribution division of NorAm Energy Corp., who will deliver gas to a customer other than the right-of-way grantor for whom the tap was originally installed. The tap is located in Section 12, Township 15N, Range 31W, Washington County, Arkansas and will consist of a 2-inch delivery tap and first-cut regulator. NGT estimates the additional volumes to be delivered to this meter station will be approximately 85 MMBtu annually and 1 MMBtu peak day. NGT states there will be no new construction or costs associated with this application. NGT will transport gas to Arkla and provide service under its tariffs, that the volumes delivered are within Arkla's certificated entitlement and that NGT's tariff does not prohibit the addition of new delivery points. NGT also states that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to its other customers.

Comment date: April 8, 1996, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP96–189–000]

Take notice that on February 15, 1996, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314–1599, filed in Docket No. CP96–189–000 an application pursuant to Section 7(c) and 7(b) of the Natural Gas Act requesting authority to construct and operate certain replacement natural gas facilities and permission to abandon the facilities being replaced, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to replace approximately 7.3 miles of 12-inch pipeline and appurtenances designated as Columbia's Line VM–108, located in Prince George and Sussex Counties, Virginia with approximately 7.3 miles of 20-inch pipeline and appurtenances. Columbia states that it had originally anticipated replacing only 6.3 miles of the 12-inch pipeline as part of its overall age and condition activities on its pipeline system. Columbia asserts that Virginia Natural Gas Company (VNG) requested a reassignment of design day deliveries of up to 28,525 Dth/d from its Newport News No. 1 Gate Station to its Norfolk Gate Station due to increased growth in market requirements in the Norfolk, Virginia area. Columbia further states that it determined that it could accommodate the shift in deliveries by increasing the pipe size of the 6.3-mile replacement from 12-inch to 20-inch and extending the replacement from 6.3 miles to 7.3 miles.

Columbia indicates that the cost of the anticipated 6.3 mile, 12-inch replacement was estimated to be $4,928,889 while the estimated cost to replace the 6.3 miles with 20-inch pipe is $6,436.250 and the cost of the additional 1.0 mile replacement of 12-inch pipe with 20-inch pipe is $1,016,785 for a total cost estimated to be $7,453,035. Columbia states that VNG has agreed to reimburse Columbia for 50% of the replacement cost for the construction of the 6.3-mile 20-inch pipeline section and 100% for the additional mile of pipe required to accommodate VNG's shift.

Comment date: March 14, 1996, in accordance with Standard Paragraph F at the end of this notice.

3. ANR Storage Company

[Docket No. CP96–190–000]

Take notice that on February 15, 1996, ANR Storage Company (ANR Storage), 500 Renaissance Center, Detroit, Michigan 48243, filed an application with the Commission in Docket No. CP96–190–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a storage service provided to Northern Indiana Public Service Company (NIPSCO), which was authorized in Docket No. CP78–432,[1] all as more fully set forth in the application which is open to the public for inspection.

ANR Storage proposes to abandon the storage service it provides to NIPSCO under ANR Storage's FERC Rate Schedule X–5. By letter dated June 30, 1994, NIPSCO informed ANR Storage of its intent to terminate the storage agreement as of March 31, 1996. ANR Storage requests approval to abandon Rate Schedule X–5 effective April 1, 1996. ANR Storage states that it would not abandon any facilities in this proposal.

Comment date: March 14, 1996, in accordance with Standard Paragraph F at the end of this notice.

4. Texas Eastern Transmission Corporation

[Docket No. CP96–194–000]

Take notice that on February 15, 1996, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, filed a petition for declaratory order in Docket No. CP96–194–000 requesting that the Commission confirm that deliveries of natural gas to Interstate Energy Company (IEC) from a proposed delivery point do not constitute a bypass of service, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

[1] 8 FERC ¶ 61,059 (1979).

It is stated that IEC has requested that Texas Eastern install one 12-inch valve and 12-inch check valve each and electronic gas measurement equipment (EGM) on Texas Eastern's 30-inch Line No. 19 and 24-inch Line No. 12 in Bucks County, Pennsylvania so that Texas Eastern may initiate interruptible service of up to 250,000 dt equivalent of natural gas per day to IEC under its Rate Schedule IT–1. It is also indicated that IEC would install or cause to be installed dual 12-inch meter runs, related equipment and approximately 50 feet of 12-inch pipe which would extend from IEC's 18-inch line to Texas Eastern's Line Nos. 19 and 12 at the site of the proposed taps.

It is also indicated that IEC has requested that Texas Eastern construct and install the facilities proposed herein so that IEC can receive natural gas from Texas Eastern so that IEC may ultimately deliver natural gas to Pennsylvania Power and Light Co.'s (PP&L) Martins Creek Steam Electric Station (Martins Creek) located in the Lower Mount Bethel Township, Northampton County, Pennsylvania. Texas Eastern mentions that IEC is a wholly-owned subsidiary of PP&L. It is also stated that PP&L intends to modify its oil-fired Martins Creek Units 3 and 4 to co-fire these units with natural gas. Texas Eastern states that IEC currently holds authority from the Pennsylvania Public Utility Commission (PaPUC) to operate a pipeline for the transportation of crude oil and petroleum products to PP&L at Martins Creek, and has received authorization from the PaPUC to convert 35 miles of its oil pipeline to dual natural gas and petroleum operations.

It has also been indicated that Martins Creek is not currently, nor has it ever been, served by UGI Utilities, Inc., (UGI), the local distribution company authorized by the PaPUC to serve customers in Lower Mount Bethel Township. Texas Eastern submits that the proposed delivery point does not constitute a bypass of UGI and requests that the Commission confirm that initiating this service will not trigger a contract reduction option for UGI.

On the same date, Texas Eastern also filed in Docket No. CP96–193–000 for authorization under its Subpart F blanket certificate to construct and operate the facilities to implement the proposed delivery point.

Comment date: March 14, 1996, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4644 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RM96–7–000]

Regulation of Negotiated Transportation Services of Natural Gas Pipelines; Order Granting Clarification

Issued February 23, 1996.

United Distribution Companies (UDC) and Associated Gas Distributors (AGD) request clarification of the scope of the comments solicited in the Commission's January 31, 1996 Policy Statement and Request for Comments (Policy Statement).[1] Among other things, the Policy Statement announced that the Commission is willing to accept, on a shipper-by-shipper basis, filings to charge negotiated rates if shippers retain the ability to choose a cost-of-service based tariff rate. In the Policy Statement, the Commission also established this separate proceeding and requested that interested parties file comments within 60 days on the appropriateness of negotiated terms and conditions of service.

UDC and AGD assert that the stated purpose of the proceeding established in Docket No. RM96–7–000 was to consider "the ramifications of negotiated terms of service."[2] UDC and AGD contend that this language limits public comment to questions solely relating to negotiated terms and conditions of service, excluding any comments that may also raise rate issues. UDC and AGD also cite language in the Policy Statement that permits parties to comment on "any other issue that should be considered before permitting pipelines to negotiate terms of service with individual shippers."[3] They assert that the concerns raised by the Commission with respect to the implementation of negotiated rates, and even aspects of the Statement of Policy on Market-Based Rates and changes to the Commission's Policy on Incentive Rates, "could qualify as issues that should be considered before permitting pipelines to negotiate terms of service with individual shippers."[4] Thus, UDC and AGD request that the Commission clarify the scope of Docket No. RM96–7–000 such that public comments are solicited on rate issues as well as on issues concerning terms and conditions of service.

UDC and AGD state they recognize the January 31 Policy Statement as setting forth the Commission's final decision to permit negotiated rates and that the Commission is not soliciting further comment on its statutory

[1] 74 FERC ¶ 61,076 (1996), 61 FR 4633 (February 7, 1996).

[2] Policy Statement, slip op. at 61.

[3] Policy Statement, slip op. at 62.

[4] Request for Clarification at 3–4.

authority to permit individual pipelines to file proposals for negotiated rates. They acknowledge that any questions regarding the legality of the Commission's action in determining to permit pipelines to file proposals for negotiated rates, therefore, would be subject to the time deadlines applicable to appeal final Commission action.

The Commission recognizes that issues concerning negotiated terms and conditions of service may in fact be related to various rate issues. The Commission will not reconsider in Docket No. RM96–7–000 the policies it announced in Docket No. RM96–6–000 for market-based and incentive rates, or the permission it gave for market-based and incentive rates. However, the Commission will accept comments that discuss issues relevant to the Commission's consideration of whether to permit negotiated services, including relevant rate issues.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4607 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5431–9]

Public Meetings of the Storm Water Phase II Advisory Subcommittee and Urban Wet Weather Flows Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) is convening two separate public meetings: (1) The Storm Water Phase II Advisory Subcommittee meeting on March 14–15, 1996 and (2) the Urban Wet Weather Flows (UWWF) Advisory Committee meeting on March 18–19, 1996. These meetings are open to the public without need for advance registration. The Storm Water Phase II Advisory Subcommittee will discuss issues concerning the draft approach developed by the Options Workgroup. The UWWF Advisory Committee will discuss issues related to water quality standards; the watershed approach; and storm water improvement.

DATES: The Storm Water Phase II meeting will be held on March 14–15, 1996. The March 14 meeting will begin promptly at 9 a.m. EST and end at approximately 5:30 p.m. On March 15, the meeting will begin at 8:30 a.m. and end at approximately 4 p.m. The UWWF Advisory Committee meeting will be held on March 18–19, 1996. On March 18, the meeting will begin at approximately 10 a.m. EST and run until approximately 6:30 p.m. On March 19, the meeting will run from approximately 8 a.m. until 3:30 p.m.

ADDRESS: Both meetings will be held at the Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC. The Holiday Inn Georgetown's telephone number is (202) 338–4600. A block of rooms are reserved from Wednesday, March 13 through Friday, March 15 (Phase II) and from Sunday, March 17 through Tuesday, March 19 (UWWF). The rooms are listed under "EPA storm water and urban wet weather meeting."

FOR FURTHER INFORMATION: For the Phase II Subcommittee meeting, contact George Utting, Acting Storm Water Phase II Matrix Manager, Office of Wastewater Management, at (202) 260–9530.

For the UWWF Advisory Committee meeting, contact William Hall, Urban Wet Weather Matrix Manager, Office of Wastewater Management, at (202) 260–1458, or Internet: hall.william@epamail.epa.gov.

Dated: February 22, 1996.

Alfred W. Lindsey,

Deputy Director, Office of Wastewater Management, Designated Federal Official.

[FR Doc. 96–4696 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5431–8]

Reformulated and Conventional Gasoline Reports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of deadline for submission of reports.

SUMMARY: EPA is announcing that it will allow refiners, importers and oxygenate blenders until March 31, 1996 to submit certain reformulated and conventional gasoline reports required for calendar year 1995. These reports under 40 CFR 80.75 and 80.105 would otherwise be due on or before February 29, 1996. Because of unforeseen circumstances beyond its control, EPA has been delayed in developing and distributing the materials and guidance necessary for preparing certain reports for the 1995 reporting year. EPA will allow the submission by March 31, 1996 in order to give parties adequate time to prepare and submit complete and accurate reports.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Lidiak, U.S. EPA, Office of Air & Radiation, 401 M Street, S.W., (6406–J), Washington DC 20460. Telephone: 202–233–9026.

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 1993, EPA promulgated regulations implementing the reformulated and conventional gasoline program required by section 211(k) of the Clean Air Act. This program establishes standards for the quality of gasoline produced or imported beginning in 1995, and includes requirements that refiners, importers and oxygenate blenders (gasoline producers) must submit periodic reports to EPA in order to demonstrate compliance with these standards.

Under 40 CFR 80.75, producers of reformulated gasoline are required to submit certain reports quarterly while other reports must be submitted on an annual basis. The reformulated gasoline reports that must be submitted on an annual basis [1] include the following:

Reid vapor pressure (RVP) averaging report, § 80.75(b)(1); [2] sulfur, T–90 and olefin averaging report, § 80.75(b)(2); VOC emissions performance averaging report, § 80.75(c); [3] benzene averaging report, § 80.75(d); toxics emissions performance averaging report, § 80.75(e); oxygen averaging report, § 80.75(f); NO_x emissions performance averaging report, § 80.75(g); credit transfer report, § 80.75(h); covered area report, § 80.75(l); and per-gallon compliance report, § 80.75(l).

Under 40 CFR 80.105, all producers of non-reformulated, or conventional, gasoline are required to submit annual reports. Both §§ 80.75 and § 80.105 require that reports must be submitted on forms, and following procedures, specified by the EPA Administrator.

[1] The averaging reports for RVP, oxygen and benzene, and toxics, VOC and NOx emissions performance are required only for producers who elected to meet these standards on average, as opposed to a per-gallon basis. The credit transfer report is required only for a producers who were the transferor or transferee of oxygen or benzene credits. The covered area report is required only for producers who met one or more standard on average. The per-gallon compliance report is required only for producers who met one or more standard on a per-gallon basis.

[2] The RVP annual averaging report must be submitted with the third quarter report, which is due on or before November 30 each year. As a result, the forms and instructions for this report were prepared by EPA prior to November 30, 1995, and the RVP annual averaging report is unaffected by this Notice.

[3] The VOC emissions performance annual average report, which must be filed with the third quarter report due on or before November 30, is not affected by this Notice.

EPA previously has provided forms and procedures regarding the quarterly reporting on reformulated gasoline and on the annual reports submitted with the third quarterly report, and producers have submitted these reports during 1995. Nevertheless, the report for the fourth quarter of 1995, which is due to be filed on or before February 29, 1996, also may be filed by March 31, 1996, along with the annual averaging reports for 1995. EPA had anticipated processing the annual averaging reports for 1995 along with the fourth quarter 1995 reports, and believes confusion may be avoided if all these reports have the same filing deadline.

The annual reports for both reformulated and conventional gasoline which are due to be filed on or before February 29, 1996, and the reports for the fourth quarter of 1995 due on this same date, are the subject of this Notice.

II. Additional Time to Submit Annual Reports for 1995

Since October 1, 1995, EPA has been operating under a series of continuing funding resolutions. On two separate occasions these continuing resolutions have lapsed, resulting in shutdowns of operations at EPA. These shutdowns have totaled 17 working days. Further, in January, 1996, EPA's Washington, D.C. area offices were closed for four days due too severe inclement weather conditions. During the shutdowns EPA was not able to work on developing the forms and procedures for submitting reformulated and conventional gasoline annual reports. EPA also was unable to work on these tasks during the four days of closure due to the inclement weather because this work is performed in EPA Headquarters in Washington, D.C.

These shutdowns have resulted in delays in finalizing and distributing the reporting forms and instructions beyond EPA's intended distribution date, and, in consequence, gasoline producers may not have sufficient time to prepare and submit their reports by February 29, 1996. This is particularly true because regulated parties have not previously prepared or submitted these kinds of annual reports. In addition, EPA believes that the delay in the distribution of the reporting package may create concern in the regulated community regarding potential enforcement actions, including civil penalties, for those gasoline producers submitting reports that may contain errors as a result of the late distribution of the EPA reporting package or reporting after the February 29, 1996, deadline.

In recognition of the importance to industry and the public that gasoline producers submit complete and accurate reformulated and conventional gasoline annual reports, and the value to EPA of obtaining this information in a consistent format, EPA is allowing all refiners, importers and oxygenate blenders an additional month, until March 31, 1996, to submit their 1995 reformulated and conventional gasoline annual reports. However, annual reports for 1995 that are filed after March 31, 1996, will be subject to EPA enforcement action, where appropriate. In addition, the regulated parties will be allowed to submit the reports for the fourth quarter of 1995, otherwise due on February 29, 1996, no later than March 31, 1996.

This allowance of additional time for reporting applies only to the reformulated and conventional gasoline reports otherwise due on February 29, 1996, covering calendar year 1995. Nothing in this notice shall be construed to apply to any other reformulated or conventional gasoline reporting obligations, or to any reformulated or conventional gasoline reports due for future reporting years.

For the reasons stated above, EPA is issuing this notice without prior notice and an opportunity to comment. In addition, if this action were to be construed as rulemaking subject to either section 307 of the Clean Air Act or section 553 of the Administrative Procedures Act, for the reasons stated above, EPA has determined that notice and an opportunity for public comment are impracticable and unnecessary. Providing for public comment might further delay reporting, and, because there is no substantive change in the reporting obligation, other than allowing an additional month, the public will continue to receive the same information, though slightly delayed. Also, public comment would not further inform EPA's decision because the events giving rise to the need to provide extra time for reporting have already occurred. In addition, additional notice and comment procedures in this situation would be contrary to the public interest in timely and accurate reporting of data under section 211(k) of the Clean Air Act and 40 CFR 80.75 and 80.105.

Dated: February 23, 1996.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 96–4695 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Compass Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 25, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Compass Bancshares, Inc., Birmingham, Alabama; Compass Banks of Texas, Inc., Birmingham, Alabama; and Compass Bancorporation of Texas, Inc., Wilmington, Delaware; to merge with Peoples Bancshares, Inc., Belton, Texas, and thereby indirectly acquire The Peoples National Bank, Belton, Texas.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Bank of Taiwan, Taipei, Taiwan; to acquire, indirectly through First Commercial Bank, Taipei, Taiwan, at least 12.84 percent of the voting shares of FCB Taiwan California Bank, Alhambra, California (in organization).

Board of Governors of the Federal Reserve System, February 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–4588 Filed 2–28–96; 8:45 am]

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First Union Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 15, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Union Corporation, Charlotte, North Carolina; to acquire the 12 percent equity interest in Florida Infomanagement Services, Orlando,Florida, and thereby engage in data processing and transmission services, pursuant to § 225.25(b)(7) of the Board's Regulation Y, and in management consulting services, pursuant to § 225.25(b)(11) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Pilot Bancshares, Inc., Tampa, Florida; to acquire National Aircraft Finance Company, Lakeland, Florida, and thereby engage in aircraft financing activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout the state of Florida.

Board of Governors of the Federal Reserve System, February 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–4589 Filed 2–28–96; 8:45 am]

BILLING CODE 6210–01–F

Marty W. Hansen, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 15, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Marty W. Hansen and Patricia K. Hansen, both of Pawnee, Oklahoma; to acquire an additional 7.6 percent, for a total of 25.2 percent, and James W. Martin, Pawnee, Oklahoma, acting in concert, to acquire a total of 25.1 percent, for a total of 50.3 percent, of the voting shares of Pawnee Holding Company, Inc., Pawnee, Oklahoma, and thereby indirectly acquire Pawnee National Bank, Pawnee, Oklahoma.

Board of Governors of the Federal Reserve System, February 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–4590 Filed 2–28–96; 8:45 am]

BILLING CODE 6210–01–F

Wachovia Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 15, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Wachovia Corporation, Winston-Salem, North Carolina, and Wachovia Capital Markets, Inc., Atlanta, Georgia; to engage *de novo* through its subsidiary, Wachovia Capital Partners, Inc., Atlanta, Georgia, in providing tax planning and preparation services, pursuant to § 225.25(b)(21) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Greater Metro Bank Holding Company, Aurora, Colorado; to engage *de novo* through its subsidiary, Greater Metro Insurance and Consulting Services, Inc., Aurora, Colorado, in the activity of providing management consulting services to depository institutions, pursuant to § 225.25(b)(11) of the Board's Regulation Y.

2. Labette County Bankshares, Inc., Altamont, Kansas; to engage *de novo* through its subsidiary, Kansas Credit, Inc., Altamont, Kansas, in establishing a consumer finance company, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. South Plains Financial, Inc., Lubbock, Texas, and South Plains Delaware Financial Corporation, Dover, Delaware; to engage *de novo* through their subsidiary, South Plains Financial Services, Inc., Lubbock, Texas, in providing to others, data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means pursuant to written agreements describing and limiting the services to the processing or furnishing of financial, banking, or economic data within the scope allowed by applicable statutes and regulations, including, processing and transmitting banking, financial, and economic related data for others through; timesharing; electronic funds transfer; home banking; authentication; provision of packaged financial systems to depository or other institutions to perform traditional banking functions such as data capture and sorting, balancing and statement printing; and back office services such as statement rendering, proof operations, research, filming, NSF's, data input and return items; selling excess capacity on data processing and transmission facilities; providing by-products of permissible data processing and data transmission services for the internal operations of South Plains Financial, Inc., and its subsidiaries, pursuant to § 225.25(b)(7) of the Board's Regulation Y, and in performing appraisals of real estate and tangible and intangible personal property, including securities, pursuant to § 225.25(b)(13) of the Board's Regulation Y. The activities will be conducted thoughout the state of Texas.

Board of Governors of the Federal Reserve System, February 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–4591 Filed 2–28–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 932–3011]

Amoco Oil Company; Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would bar the Chicago-based corporation from making any performance or environmental benefit claim for any of its gasoline without first having scientific evidence to back it up. The consent agreement settles allegations stemming from Amoco's "Crystal Clear Amoco Ultimate" advertising campaign.

DATES: Comments must be received on or before April 29, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston, Federal Trade Commission, S–4002, 6th and Pennsylvania Avenue, NW, Washington, DC 20580. (202) 326–3153. Michael Dershowitz, Federal Trade Commission, S–4002, 6th and Pennsylvania Avenue, NW, Washington, DC 20580. (202) 326–3158.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Amoco Oil Company, a corporation; File No. 932–3011.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Amoco Oil Company, a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Amoco Oil Company, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Amoco Oil Company is a Maryland corporation, with its offices and principal place of business located at 200 East Randolph Drive, Chicago, Illinois 60601.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record in the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the

Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

It is ordered that respondent Amoco Oil Company, a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, offering for sale, sale or distribution of Amoco Silver 89 octane gasoline, Amoco Ultimate 92 or 93 octane gasoline, or any other gasoline in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desisit from making any representation in any manner, directly or by implication, that:

(A) Amoco Ultimate gasoline is superior to all other brands of premium gasoline with respect to engine performance or environmental benefits because it is refined more than all other such brands;

(B) The clear color of Amoco Ultimate gasoline demonstrates the superior engine performance or environmental benefits Amoco Ultimate provides compared to other brands of gasolines that are not clear in color;

(C) A single tankful of Amoco Silver or Ultimate gasoline will make dirty or clogged fuel injectors clean;

(D) Amoco Silver or Ultimate gasoline provides superior fuel injector cleaning compared to other brands of gasoline;

(E) Automobiles driven more than 15,000 miles with regular gasoline generally suffer from lost engine power or acceleration which will be restored by the higher octane of Amoco Silver gasoline; or

(F) Concerns the relative or absolute attributes of any gasoline with respect to environmental benefits or with respect to engine performance, power, acceleration, or engine cleaning ability,

unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. For purposes of this Order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based upon the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

For purposes of this Part, any representation, directly or by implication, that any gasoline will clean or clean up fuel injectors to a level that engine performance is not adversely affected will be deemed to be substantiated if respondent possesses and relies upon competent and reliable testing demonstrating that the flow rate of each fuel injector was returned to at least 95 percent of its original value.

Provided that, nothing in this Order shall prohibit respondent from truthfully representing the numerical octane rating of any gasoline.

II.

It is further ordered that respondent Amoco Oil Company, shall within thirty (30) days after service distribute a copy of this Order to all operating divisions, subsidiaries, officers, managerial employees, and all of its employees or agents engaged in the preparation and placement of advertisements or promotional sales materials covered by this Order and shall obtain from each such employee a signed statement acknowledging receipt of the order.

III.

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondent Amoco Oil Company or its successors or assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that were relied upon to substantiate any representation covered by this Order; and

B. All tests, reports, studies or surveys, in respondent's possession or control that contradict any representation covered by this Order.

IV.

It is further ordered that respondent Amoco Oil Company shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporation that may affect compliance obligations under this Order such as a dissolution, assignment or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries or any other change in the corporation.

V.

It is further ordered that this Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

VI.

It is further ordered that respondent Amoco Oil Company shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Amoco Oil Company ("Amoco").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertising claims regarding the performance attributes of Amoco Silver midgrade and Amoco Ultimate premium gasolines. The Commission's proposed complaint alleges that Amoco's advertising has made unsubstantiated claims that Amoco Ultimate provides superior performance and environmental benefits compared to all other premium brands, because it is refined more than such brands, and that Ultimate's clear color demonstrates its superiority. The complaint also challenges as unsubstantiated the claim that automobiles driven more than 15,000 miles generally suffer from lost engine power and acceleration, which Amoco Silver's higher octane will restore. Finally, the complaint challenges as unsubstantiated the claims that Silver and Ultimate will clean dirty fuel injectors in one tankful, and are superior to other brands in cleaning fuel injectors.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from making any of the unsubstantiated representations alleged in the complaint, or any other representation concerning the attributes of any Amoco gasoline with respect to environmental benefits or engine performance, power, acceleration or engine cleaning ability, unless it has competent and reliable scientific evidence that substantiates the representation, at the time it is made.

Part I of the proposed order also states that any claim by respondent that a gasoline will clean or clean up fuel injectors to a level that engine performance is not adversely affected will be deemed to be substantiated by competent and reliable testing showing that the flow rate of each injector was restored to at least 95% of its original value. Part I of the proposed order also allows truthful representations regarding the numerical octane rating of any gasoline.

Part II of the order requires Amoco to distribute copies of the order to its operating divisions and to various officers, agents and employees of Amoco.

Part III of the order requires Amoco to maintain copies of all materials relied upon in making any representation covered by the order.

Part IV of the order requires Amoco to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part V of the order is a "sunset" provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

Part VI of the order requires Amoco to file with the Commission one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–4692 Filed 2–28–96; 8:45 am]

BILLING CODE 6750–01–M

[File No. 942–3202]

Nordic Track, Inc.; Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would bar the Chaska, Minnesota-based corporation from misrepresenting weight-loss study results and would require it to have competent and reliable evidence to back up weight loss, weight maintenance, and related claims for any exercise equipment it sells. The Commission had alleged that Nordic Track made false and unsubstantiated weight loss and weight maintenance claims in advertising its cross-country ski exercise machine.

DATES: Comemnts must be received on or before April 29, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Kerry O'Brien, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356–5270.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6) (ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of NordicTrack, Inc., a corporation. File No: 942–3202.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of NordicTrack, Inc., a corporation, and it now appearing that NordicTrack, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between NordicTrack, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent NordicTrack, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 104 Peavey Road, in the City of Chaska, State of Minnesota.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:
a. Any further procedural steps;
b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (a) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

I.

It is ordered that respondent NordicTrack, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any exercise equipment in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication:

A. The percentage of its customers who have successfully lost weight;

B. The percentage of its customers who have successfully maintained weight loss;

C. The number of pounds lost by its customers;

D. The percentage of weight loss maintained by its customers;

E. The rate or speed at which its customers have experienced weight loss;

F. The length of time its customers must use such product to achieve weight loss;

G. The comparative efficacy of any other weight loss method or methods; or

H. The benefits, efficacy, or performance of such product in promoting weight loss or weight loss maintenance;

unless, at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation. For the purposes of this Order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II.

It is further ordered that respondent NordicTrack, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any exercise equipment in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implications, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or survey relating to weight loss, weight loss maintenance or comparisons with the efficacy of other weight loss methods.

III.

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV.

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

V.

It is further ordered that respondent shall, within ten (10) days from the date of service of this Order upon it, distribute a copy of this Order to each of its officers, agents, representatives, independent contractors, and employees involved in the preparation and placement of advertisements or promotional materials, or who is in communication with customers or prospective customers, or who has any responsibilities with respect to the subject matter of this Order; and for a period of five (5) years, from the date of issuance of this Order, distribute a copy of this Order to all of respondent's future such officers, agents, representatives, independent contractors, and employees.

VI.

It is further ordered that this Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

VII.

It is further ordered that respondent shall, within sixty (60) days from the date of service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent NordicTrack, Inc., ("NordicTrack") a Minnesota corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

NordicTrack manufacturers and distributes various exercise equipment to consumers, including its cross-country ski exercisers. The Commission's complaint charges that respondent's advertising contained false or unsubstantiated representations relating to the weight loss and weight maintenance experience of NordicTrack owners. Specifically, the complaint alleges that the respondent did not possess adequate substantiation for claims that: (1) seventy or eighty percent of those who purchased a NordicTrack cross-country ski exerciser to lose weight lost an average of seventeen pounds; (2) eighty percent of those who purchased a NordicTrack cross-country ski exerciser to lose weight and lost weight using it maintained all of their weight loss for at least a year; (3) eighty percent of those who purchased a NordicTrack cross-country ski exerciser to lose weight maintained all of their weight loss at least a year; and (4) consumers who use NordicTrack cross-country ski exercisers for twenty minutes a day, three times per week, lose an average of eighteen pounds in twelve weeks. In addition, the compliant alleges that the respondent falsely represented that it had competent and reliable research or studies which prove these claims.

The complaint alleges that respondent based its success rate claims on studies which suffered from various methodological flaws. For example, the results of the studies reflect the experiences of only a highly selected population of purchasers who were able to integrate the NordicTrack cross-country ski exerciser into their regular, weekly, exercise regime. One such study involved putting thirty-eight participants through a rigorous twelve-week exercise program. Respondent based weight-loss claims on the average weight loss experienced by the twenty participants (53 percent) able to complete the program. The studies also failed to take into account changes in the dietary habits of purchasers. Furthermore, the studies were based on self-reported body weights, unadjusted for bias, which may yield inaccurate results.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order would prohibit the company from making any claim for any exercise equipment regarding: (1) the percentage of its customers who have successfully lost weight; (2) the percentage of its customers who have successfully maintained weight loss; (3) the number of pounds lost by its customers; (4) the percentage of weight loss maintained by its customers; (5) the rate or speed at which its customers have experienced weight loss; (6) the length of time its customers must use such product to achieve weight loss; (7) the comparative efficacy of any other weight loss method or methods; or (8) the benefits, efficacy, or performance of such product in promoting weight loss or weight loss maintenance, unless at the time of making them, they possess and rely upon competent and reliable evidence.

Part II of the proposed order prohibits the company from misrepresenting in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study or survey relating to weight loss, weight loss maintenance or comparisons with the efficacy of other weight loss methods.

The proposed order also requires the respondent to maintain materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to all employees or representatives involved in the preparation and placement of the company's advertisements, as well as to all company executives and marketing and sales managers; to notify the Commission of any changes in corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–4693 Filed 2–28–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[ORD–065–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: January 1996

AGENCY: Health Care Financing Administration (HCFA).

ACTION: Notice.

SUMMARY: This notice identifies proposals submitted during the month of January 1996 under the authority of section 1115 of the Social Security Act and those that were approved, disapproved, pending, or withdrawn during this time period. (This notice can be accessed on the Internet at HTTP://WWW.SSA.GOV/HCFA/HCFAHP2.HTML:)

FOR FURTHER INFORMATION CONTACT: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Mail Stop C3–11–07, 7500 Security Boulevard, Baltimore, MD 21244–1850. (410) 786–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

As part of our established procedures, we normally publish a monthly notice in the **Federal Register** with a listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process. In the month of December we received no new proposals and no changes to pending proposals.

II. New, Pending, Approved, and Withdrawn Proposals for the Month of January 1996

During the month of January 1996 we received no new Comprehensive Health Reform Programs or Other Section 1115 Demonstration Proposals. We did not approve or disapprove any proposals during January 1996 nor were any proposals withdrawn during that month. Pending proposals for the month of November, 1995 published in the **Federal Register** on January 23, 1996, 61 FR 1769, remain unchanged for the month of January.

III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal in the notice published on January 23, 1996. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments.)

Dated: February 21, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 96–4573 Filed 2–28–96; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

National Institute of Dental Research; Notice of Closed Meeting of the National Advisory Dental Research Council

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Advisory Dental Research Council.

Date: March 5, 1996.

Time: 1:00 p.m. to Adjournment.

Place: National Institutes of Health, 45 Center Drive, Natcher 4AS–10, Bethesda, Maryland 20892, (teleconference).

Contact Person: Dr. Dushanka V. Kleinman, Executive Secretary, National Advisory Dental Research Council, Building 31, Room 2C39, Bethesda, MD 20892, (301) 496–9469.

Purpose/Agenda: For the review, discussion and evaluation of individual grant application.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the partial shutdown of the Federal Government and the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.121, Dental Research Institute; National Institutes of Health, HHS)

Dated: February 26, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4728 Filed 2–27–96; 10:29 am]

BILLING CODE 4140–01–M

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: March 2, 1996.

Time: 8:00 a.m.

Place: American Inn of Bethesda, Bethesda, Maryland.

Contact Person: Dr. Nicholas Mazarella, Scientific Review Administrator, 6701 Rockledge Drive, Room 5128, Bethesda, Maryland 20892, (301) 435–1018.

Name of SEP: Biological and Physiological Sciences.

Date: March 7, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 5112, Telephone Conference.

Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435–1169.

Name of SEP: Biological and Physiological Sciences.

Date: March 14, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 5146, Telephone Conference.

Contact Person: Dr. Ramesh Nayak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5146, Bethesda, Maryland 20892, (301) 435–1026.

This notice is being published less than 15 days prior to the above meetings due to the partial shutdown of the Federal Government and the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 26, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4727 Filed 2–27–96; 10:29 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3769–N–04]

Announcement of Funding Awards; Traditional Indian Housing Development Program; Fiscal Year 1995

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1995 for the Traditional Indian Housing Development Program. The purpose of this Notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to provide assistance to the Indian Housing Development Program.

FOR FURTHER INFORMATION CONTACT: Bruce Knott, Director, Housing and Community Development Division, Office of Native American Programs, Department of Housing and Urban Development, Room B–133, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone (202) 755–0068 (this is not a toll-free number). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

The Indian Housing Development program is authorized by sections 5 and 6, U. S. Housing Act of 1937 (42 U. S. C. 1437c, 1437d), as amended; U. S. Department of Housing and Urban Development and Independent Agencies Appropriations Act for Fiscal Year 1995; Section 23 U. S. Housing Act of 1937, as added by section 554, Cranston-Gonzalez National Affordable Housing Act; section 7(d), Department of Housing and Urban Development Act (42 U. S. C. 3535(d).

This Notice announces FY 1995 funding of $225,596,316 to be used to assist in job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns. The FY 1995 awards announced in this Notice were selected for funding consistent with the provisions in the Notice of Funding Availability published in the **Federal Register** on January 20, 1995 (60 FR 4330).

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is hereby publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: February 26, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

Appendix A

FISCAL YEAR 1995—PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS

Funding recipient (name and address)	Amount approved	Number of projected units
Absentee Shawnee Tribe, P.O. Box 425, Shawnee OK, 74801	$11,690,265	150
Akwesasne Indian Housing Authority, Route 37 P.O. Box 540, Hogansburg, NY, 13655–	4,254,494	40
Aleutian HA, 401 East Fireweed Lane, #101, Anchorage, AK, 99501–	2,138,384	12
All Mission Indian Housing Authority, 1523 E. Valley Pkwy., Escondido CA, 92027–	4,903,078	42
AVCP HA, Post Office Box 767, Bethel, AK, 99559–	217,632	40
Bad River Housing Authority, P.O. Box 57, Odanah, WI, 54861–	881,826	10
Bay Mills Housing Authority, Route 1, Box 3345, Brimley, MI, 49715–	2,958,875	40
Bering Straits Reg HA, Post Office Box 995, Nome, AK, 99762	3,561,797	40
Blackfeet, P.O. Box 790, Browning, MT, 59417	74,920	1
Bristol Bay HA, Post Office Box 50, Dillingham, AK, 99576–	6,562,490	40
Cascade Inter-Tribal, 2286 Community Plaza, Sedro Woolley, WA, 98284–	2,159,900	20
Choctaw Housing Authority, P.O. Box 6088 Choctaw Branch, Philadelphia, MS, 39350–	2,801,840	40
Choctaw Nation, P.O. Box G, Hugo, OK, 74743	11,540,960	150
Coeur d'Alene, P.O. Box 267 1005 8th Street, Plummer, ID, 83851–	3,659,671	34
Comanche Tribe IHA, P.O. Box 1671, Lawton, OK, 73502–	5,578,204	80
Cook Inlet HA, 670 West Fireweed Lane, Anchorage, AK, 99503–	4,262,208	40
Delaware Tribe IHA, P. O. Box 334, Chelsea, OK, 74016	3,053,660	40
Duck Valley Housing Authority, P.O. Box 129, Owyhee, NV, 89832–	1,642,871	15
Fond du Lac Reservation Housing Authority, 932 Trettel Lane, Cloquet, MN, 55720–	3,352,500	30
Forrest County Potowatomi Housing Authority, P.O. Box 346, Crandon, WI, 54520–	1,359,702	20
Hoopa Valley Indian Housing Authority, P.O. Box 1285, Hoopa, CA, 95546–	4,846,769	32
Kodiak Island HA, 2815 Woody Way, Kodiak, AK, 99615–	2,300,000	14
Lower Elwha, 127 E. First—Suite 3E, Port Angeles, WA, 98362–	2,472,330	20
Makah, P.O. Box 88, Neah Bay, WA, 98357–0088	2,252,060	20
Mesa Grande IHA, 4040 30th St, Suite 204, San Diego, CA, 92104	2,346,114	16
Mescalero Apache Housing Authority, P.O. Box 176, Mescalero, NM, 88340–	3,410,626	32
Mille Lacs Reservation Housing Authority, HCR 67, Box 194, Onamia, MN, 56359–	4,484,500	40
Modoc-Lassen Indian Housing Authority, Drawer 2028, Susanville, CA, 96130–	2,180,019	20
Navajo Housing Authority, P.O. Box 387, Window Rock, AZ, 86515–	32,238,095	278
Northern Arapaho, P.O. Box 396, Ft. Wahsake, WY 82514	4,093,612	40
Northern Cheyenne, P.O. Box 327, Lame Deer, MT, 59043	2,208,015	20
Northern Pueblos Housing Authority, P.O. Box 3502, Pojoaque, NM, 87501–	4,573,150	40

FISCAL YEAR 1995—PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

Funding recipient (name and address)	Amount approved	Number of projected units
Northwest Inupiat HA, P.O. Box 331, Kotzebue, AK, 99752–	5,743,069	37
Oglala Sioux, P.O. Box C, Pine Ridge, SD, 57770	3,951,111	40
Oneida Housing Authority, P.O. Box 68, Oneida, WI, 54155–	3,272,202	40
Poarch Creek Indian Housing Authority, HCR 69A, Box 85B, Atmore, AL, 36502–	1,669,083	30
Port Gamble Sklallam, P.O. Box 155, Kingston, WA, 98346–0155	1,716,644	16
Qualla Housing Authority, P.O. Box 1749, Acquoni Road, Cherokee, NC, 28719–1749	2,369,083	40
Red Lake Reservation Housing Authority, P.O. Box 219 Highway 1 East, Red Lake, MN, 56671–	4,563,808	40
Reno-Sparks Indian Housing Authority, 15–A Reservation Rd., Reno, NV, 89502–	3,509,778	32
Rosebud, P.O. Box 69, Rosebud, SD, 57570	2,097,330	20
Salish-Kootenai, P.O. Box 38, Pablo, MT, 59855	4,160,270	40
Sault Ste. Marie Tribal Housing Authority, 2218 Shunk Road, Sault Ste. Marie, MI, 49783–	364,739	3
Seminole Nation, P.O. Box 1493, Wewoka, OK, 74884	533,955	8
Siletz Indian, P.O. Box 549, Siletz, OR, 97380–	2,100,826	20
So Puget Sd Inter-Tribal, S.E. 11 Squaxin Drive, Shelton, WA, 98584–	1,988,587	20
Standing Rock, P.O. Box 484, Fort Yates, ND 58538	4,351,633	40
Tagiugmiuulu Nunamiullu HA, Post Office Box 409, Barrow, AK, 99723	6,745,186	40
Tlingit-Haida Reg. HA, P.O. Box 32237, Juneau, AK, 99803–2237	7,019,274	40
Tutalip, 3107 Reuben Shelton Dr., Marysville, WA, 98271–	2,487,951	20
Turtle Mountain, P.O. Box 620, Belcourt, ND, 58316	75,169	1
Umatilla Reservation, P.O. Box 1658, Pendleton, OR, 97801–0510	4,377,850	40
Utah Paiute HA, 664 North, 100 East, Cedar City, UT, 84720	1,886,060	20
White Mountain Apache Housing Authority, P.O. Box 1270, Whiteriver, AZ, 85941–	8,450,785	80
Wichita IHA, P.O. Box 729, Anandarko, OK, 73005	5,884,160	80
Ysleta del Sur Pueblo Housing Authority, P.O. Box 17579 Ysleta Station, El Paso, TX, 79917	2,217,196	25
Totals	225,596,316	2,228

[FR Doc. 96–4694 Filed 2–28–96; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–799227

Applicant: Riverbanks Zoological Park, Columbia, SC.

The applicant requests an amendment to US 799227, to include the import of preserved kidneys from captive-held and captive-born specimens of black-footed cat (*Felis nigripes*) that have died in captivity in European and African zoos for the purpose of scientific research to enhance the survival of the species.

PRT–809007

Applicant: Mark Schriver, Orwigsburg, PA.

The applicant requests a permit to export 3 male and 2 female peregrine falcons (*Falco peregrinus*) to Rashid Bin Khalifa Al Maktoum for the purposes of enhancement of the survival of the species through captive propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–805014

Applicant: Hofstra University, c/o Victoria Spain, Hempstead, NY.

Type of Permit: Import for public Display.

Name and Number of Animals: Polar Bear (*Ursus maritimus*), 2.

Summary of Activity to be Authorized: The applicant has requested a permit to import for the purposes of public display in association with a university education program a skin and a pair of pants from two polar bears which were legally harvested by Native hunters in Canada.

Source of Marine Mammals for Research/Public Display: Canada.

Period of Activity: Up to five years from issuance of a permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420(c), Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 23, 1996.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–4594 Filed 2–28–96; 8:45 am]
BILLING CODE 4310–55–P

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On November 30, 1995, a notice was published in the **Federal Register**, Vol. 60, No. 230, Page 61571, that an application had been filed with the Fish and Wildlife Service by Denver Zoological Gardens for a permit (PRT–807412) to import milk and blood samples collected from polar bears (*Ursus maritimus*) and freezer-banked as surplus to the needs of Canadian researchers.

Notice is hereby given that on February 8, 1996, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 420(c), Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: February 23, 1996.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–4595 Filed 2–28–96; 8:45 am]
BILLING CODE 4310–55–P

Geological Survey

Request for Public Comments on Proposed Information Collections To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposals for the two collections of information described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 208 National Center, 12201 Sunrise Valley Drive., Reston, Virginia, 22092, telephone (703) 648–7313.

Collection No. 1

Title: Earthquake Report.
OMB approval number: 1028–0048.
Abstract: Respondents supply information on the effects of the shaking from an earthquake—on themselves personally, buildings and their effects, other man-made structures, and ground effects such as faulting or landslides. This information will be used in the study of the hazards from earthquakes and used to compile and publish the annual USGS publication "United States Earthquakes".
Bureau form number: 9–3013.
Frequency: After each earthquake.
Description of respondents: State and local employees; and, the general public.
Estimated completion time: 0.1 hours.
Annual responses: 1,500.
Annual burden hours: 150 hours.

Collection No. 2

Title: Tsunami Questionnaire.
OMB approval number: 1028–0049.
Abstract: Respondents supply information on the effects of earthquake-related tsunamis on themselves personally, buildings and their effects, other man-made structures, and coastal areas. This information will be used in the study of the hazards from earthquakes and tsunamis.
Bureau form number: 9–3014.
Frequency: After each tsunami.
Description of respondents: State and local employees; and the general public.
Estimated completion time: 0.1 hours.
Annual responses: 200.
Annual burden hours: 20 hours.
Bureau clearance officer: John Cordyack, 703–648–7313.

Dated: February 13, 1996.

David P. Russ,

Acting Associate Chief, Geologist for Program Operations.

[FR Doc. 96–4647 Filed 2–28–96; 8:45 am]
BILLING CODE 4310–31–M

Federal Geographic Data Committee (FGDC); Public Meeting of the FGDC Facilities Working Group

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice is to invite public participation in a meeting of the FGDC Facilities Working Group. The major topic for this meeting is the development of a Facility/Installation ID standard.

TIME AND PLACE: 11 March 1996, from 1:00 p.m. until 4:00 p.m. The meeting will be held at Headquarters U.S. Army Corps of Engineers, in Room 7233 of the Pulaski Building, 20 Massachusetts Avenue NW., Washington, DC. The Pulaski building is located just a few blocks west of Union Station.

FOR FURTHER INFORMATION CONTACT: Jennifer Fox, FGDC Secretariat, U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092; telephone (703) 648–5514; facimile (703) 648–5755; Internet "gdc@usgs.gov".

SUPPLEMENTARY INFORMATION: The FGDC is a committee of Federal Agencies engaged in geospatial activities. The FGDC Facilities Working Group specifically focuses on geospatial data issues related to facilities and facility management. A facility is an entity with location, deliberately established as a site for designated activities. A facility database might describe a factory, a military base, a college, a hospital, a power plant, a fishery, a national park, an office building, a space command center, or a prison. The database for a complex facility may describe multiple functions or missions, multiple buildings, or even a county, town, or city. The objectives of the Working Group are to: promote standards of accuracy and currentness in facilities data that are financed in whole or in part by Federal funds; exchange information on technological improvements for collecting facilities data; encourage the Federal and non-Federal communities to identify and adopt standards and specifications for facilities data; and promote the sharing of facilities data among Federal and non-Federal organizations.

Dated: February 21, 1996.

Richard E. Witmer,

Acting Chief, National Mapping Division

[FR Doc. 96–4646 Filed 2–28–96; 8:45 am]
BILLING CODE 4310–31–M

Bureau of Land Management

[AZ-040-7122-00-5514; AZA 28789]

Extension of the Public Comment Period for the Draft Environmental Impact Statement (DEIS) for the Morenci Land Exchange, Greenlee County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of the public comment period for the Draft Environmental Impact Statement for the Morenci Land Exchange.

SUMMARY: Due to the recent shutdown of the Federal Government, the Bureau of Land Management has elected to extend the public comment period on the DEIS for the Morenci Land Exchange. Comments will be accepted until March 12, 1996.

ADDRESS: Send written comments to the Bureau of Land Management, Safford District Office, Attention: Scott Evans, Project Manager, 711 14th Avenue, Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Scott Evans, Project Manager, Mike McQueen, NEPA Compliance Officer, at BLM, Safford District Office, Telephone (520) 428-4040.

Dated: February 21, 1996.

Frank L. Rowley,

Acting District Manager.

[FR Doc. 96-4646 Filed 2-28-96; 8:45 am]

BILLING CODE 4310-32-M

[CO-050-1430-01; COC-57167 et al]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classifications; Colorado

AGENCY: Bureau of Land Management

ACTION: Notice of realty action.

SUMMARY: The following public lands in Eastern Colorado have been examined and found suitable for classification for lease or conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.)

COC57167—Boulder County proposes to use these lands for educational, scientific and cultural preservation purposes in the Indian Mountain area:

Sixth Principal Meridian, T.3N., R.70W., Sec. 8 NE¼SE¼. Containing 40 acres in Boulder County.

COC57166—Boulder County proposes to use these lands for recreational purposes by adding to the Hall Ranch Open Space:

Sixth Principal Meridian

T.3N., R.71W.,
Sec. 11, SE¼SW¼, SE¼SE¼;
Sec. 13, Lots 1, 2, 3;
Sec. 14, Lots 1, 2, 6 through 9;
Sec. 22, SE¼SW¼, S½SE¼,
Sec. 23, Lots 1, 2.

Containing 640.78 acres in Boulder County.

COC54367—Colorado Division of Wildlife proposes to use these lands for recreational and wildlife management purposes by adding to the Watson Lake Unit:

Sixth Principal Meridian,

T.8N., R.69W.,
Sec. 19, Lot 4.
Containing 44.78 acres in Larimer County.

COC54054—Colorado Division of Parks and Outdoor Recreation proposes to use these lands for inclusion in the North Sterling State Park:

Sixth Principal Meridian.

T.9N., R.53W.,
Sec. 3, Lots 1 through 4, Sec. 3, SW¼NE¼, SE¼NW¼, E½SE¼;
Sec. 4, E½SE¼.
Sec. 9, W½NW¼, SE¼NW¼, NE¼SW¼, NW¼SE¼;
Sec. 10, S½SW¼.

Containing 681.18 acres in Logan County.

COC38658—Colorado Division of Wildlife proposes to use these lands for inclusion in the Tamarack State Wildlife area for recreation and wildlife management purposes:

Sixth Principal Meridian,

T.10 N., R.48W.,
Sec. 22, N½SE¼, NE¼SW¼.
Containing 120 acres in Logan County.

COC54366—Colorado Division of Wildlife proposes to use these lands for inclusion in the Cherokee Park Wildlife area for recreational and wildlife management purposes:

Sixth Principal Meridian

T.10N., R.71W.,
Sec. 30, NE¼NW¼,
T.11N., R.71W.;
Sec. 30, Lots 1, 2, 3;
Sec. 30, NE¼NW¼.
Containing 201.55 acres in Larimer County.

COC57771—Fremont School District RE-3 proposes to use these lands for establishing a baseball/recreational athletic field:

New Mexico Principal Meridian

T.48N., R.12E.,
Sec. 30, Lot 13 (within);
Sec. 31, Lot 6 (within).
Containing 15 acres in Fremont County. Classification of this parcel is for "lease only".

COC53355—Clear Creek Land Conservancy proposes to use these lands for recreational purposes:

Sixth Principal Meridian

T.3S., R.72W.,
Sec. 26, NE¼SW¼NW¼, E½NW¼SW¼NW¼, NE¼SW¼SW¼NW¼;
Sec. 26, N½SE¼SW¼NW¼, SE¼SE¼SW¼NW¼, S½NW¼SW¼;
Sec. 26, W½NW¼NW¼SW¼, S½SW¼NE¼SW¼, SE¼SW¼, SW¼SE¼;
Sec. 27, N½SW¼NE¼, N½NW¼SE¼NE¼, S½S½SE¼NE¼, N½SE¼; S½SE¼.

Containing 330 acres in Gilpin County.

COC58926—City of Central proposes to use these lands for municipal purposes:

Sixth Principal Meridian

T.3S., R.73W.,
Sec. 11, NW¼NE¼, NE¼NW¼, N½SE¼NW¼.

Containing 16 acres in Gilpin County.

COC57819—Jefferson County proposes to use these lands for recreational purposes:

Sixth Principal Meridian

T.4S., R.72W.,
Sec. 1, Lots 1, 4 (within).

Containing approximately 40 acres in Jefferson County.

COC58144—Jefferson County proposes to use these lands for incorporation into Pine Valley Ranch Park:

Sixth Principal Meridian

T.7S., R.71W.,
Sec. 29, S½SW¼.

Containing 80 acres in Jefferson County.

The lands are not needed for Federal purposes. Lease or conveyance for recreational use is consistent with current BLM land use planning and would be in the public interest.

Upon publication of this notice in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act.

DATES: Interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands before April 8, 1996. Reference the applicable serial number in all correspondence. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the Federal Register.

ADDRESSES: District Manager, Canon City District Office, or Area Manager, Royal Gorge Resource Area, 3170 East Main, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Lindell Greer, Realty Specialist at (719) 269-8532.

SUPPLEMENTARY INFORMATION: Classification comments—interested parties may submit comments involving the suitability of the land for the purposes stated. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application comments—interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the proposals.

Donnie R. Sparks,

District Manager.

[FR Doc. 96-4675 Filed 2-28-96; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-040-06-1230-00]

Fourmile Canyon Campground Use Fee and Supplementary Rules

AGENCY: Bureau of Land Management, Safford District, Arizona.

ACTION: Establishment of use fees and supplementary rules at Fourmile Canyon Campground.

SUMMARY: Use fees at Fourmile Canyon Campground are established at $4.00 per campsite. Supplementary rules for use of the campground are also established.

EFFECTIVE DATE: April 8, 1996.

FOR FURTHER INFORMATION CONTACT: Steve Knox, Outdoor Recreation Planner, Gila Resource Area, Bureau of Land Management, 711 14th Avenue, Safford, Arizona 85546, (520) 428-4040.

SUPPLEMENTARY INFORMATION: Fourmile Canyon Campground is a ten-unit campground located about 50 miles west of Safford in southeastern Arizona. Under the authority of 36 CFR 71.9, a use fee of $4.00 per campsite will be charged for both overnight camping and day use activities (like picnicking) at Fourmile Canyon Campground. Checkout time for overnight users is 2:00 p.m. Fees must be paid at the self-service pay station located in the campground. People who hold Golden Age or Golden Access Passports are entitled to a 50 percent reduction of the fee.

In addition to the use fee, the following supplementary rules are also established for use of the campground:

1. Fees must be paid within ½ hour of arrival to the campground.
2. Camping is permitted at developed (numbered) sites only, except as noted below for the "overflow area" of the campground.
3. A maximum of two vehicles are permitted to park at each developed campsite.
4. Vehicles and camping gear may not be left unattended in the campground for longer than 24 hours.
5. Quiet hours are established from 10:00 p.m. to 6:00 a.m. No loud music, operation of generators, or other disturbing activities are permitted in the campground during these hours.
6. Campfires are permitted in developed fire grills only, except as noted below for the "overflow area" of the campground.
7. No firewood may be cut or broken from standing live or dead vegetation.
8. Maximum length of stay in the campground is 14 consecutive days.
9. Pets must be kept on a leash in the campground.
10. Firearms, bows and arrows, other weapons, or air rifles and pistols may not be discharged in the campground.
11. Game may not be cleaned in the campground. These rules are established under the authority contained in 43 CFR 8365.1-6.

The $4.00 per campsite use fee is also required for the "overflow area" of the campground. If all of the developed sites are occupied, camping is permitted in the "overflow area." A maximum of two camps, and two vehicles per camp are permitted in the "overflow area." A campsite is also permitted at each camp in the "overflow area."

Violations of these rules are punishable by a fine not to exceed $1,000, and/or imprisonment not to exceed 12 months (43 CFR 8360.0-7).

Dated: February 21, 1996.

Frank Rowley,

Acting District Manager.

[FR Doc. 96-4650 Filed 2-28-96; 8:45 am]

BILLING CODE 4310-32-M

Bureau of Reclamation

Proposed Long-Term Water Service Contract Renewal; Frenchman-Cambridge and Bostwick Divisions; Pick-Sloan Missouri Basin Program; Nebraska and Kansas

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) will prepare a draft environmental impact statement (EIS) on the proposed renewal of long-term water service contracts for the following irrigation districts in the Republican River basin (Basin) in Nebraska and Kansas: Frenchman-Cambridge, Frenchman Valley, Bostwick Irrigation District in Nebraska, and Kansas Bostwick No.2. Existing water service contracts begin to expire in December of 1996.

The purpose of this action is to provide for the continued beneficial use of Federally developed water within the Basin. Reclamation is proposing to renew long-term water service contracts for the four irrigation districts in accordance with current law and policy while examining all reasonable alternatives to balance contemporary surface water needs within the Basin.

Reclamation has scheduled a series of public information/scoping meetings in connection with the development of the draft EIS. These meetings have been scheduled to inform the public of the status of contract renewal, to allow for public comment on the preliminary management scenarios being evaluated in the draft Resource Management Assessment (RMA) process, to inform the public of significant issues identified to date, to identify additional significant issues that should be analyzed in the draft EIS, and to identify issues related to Indian trust assets. A draft EIS is expected to be completed and available for review and comment early in 1997.

DATES: The schedule for the scoping meetings is:

March 18, 7:00 p.m., Belleville, KS, Armory Building
March 19, 2:00 p.m., Manhattan, KS, Pottorf Hall in Cico Park
March 20, 2:00 p.m., Lincoln, NE, Quality Inn at the Airport
March 21, 7:00 p.m., Superior, NE, Superior High School
March 27, 7:00 p.m., McCook, NE, Fairgrounds Community Building
March 28, 7:00 p.m., Alma, NE, Alma Public School

FOR FURTHER INFORMATION CONTACT: Ms. Jill Manring, Natural Resource Specialist, Bureau of Reclamation, Nebraska-Kansas Area Office, Post Office Box 1607, Grand Island, Nebraska 68802-1607; Telephone: (308) 389-4557.

SUPPLEMENTARY INFORMATION: Reclamation constructed Bonny, Lovewell, and Enders reservoirs and Hugh Butler, Harry Strunk, and

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Swanson lakes in the Basin in the 1940's and 1950's pursuant to the Pick-Sloan Missouri Basin Program of the Flood Control Act of 1944. During this same period, the Corps of Engineers constructed Harlan County Lake and Milford Reservoir on the Republican River pursuant to the same authority. Only Milford Reservoir near the confluence of the Republican and Kansas rivers has no storage allocated to irrigation.

Prior to initiating construction on the individual projects, Reclamation negotiated and entered into long-term water service contracts with the irrigation districts. The initial long-term water service contracts were issued for 40-year terms, became effective upon completion of the respective projects, and began to expire in December of 1996.

The location of the reservoirs and irrigation districts within a common watershed and similar expiration dates for the water service contracts provided Reclamation an opportunity to evaluate the direct, indirect, and cumulative effects of long-term water service contract renewal from a watershed perspective. Reclamation initiated its watershed analysis by preparing the RMA to identify water-related resources within the Basin, document their historic and existing conditions, identify resource trends and/or predict future conditions, propose goals and objectives for resource management, and provide a framework for development of the range of alternatives necessary for the comprehensive EIS. Much of the information gathered for, and incorporated into, the RMA will be used to prepare the draft EIS.

Prior to beginning the RMA, Reclamation held seven public information meetings in Nebraska and Kansas in March of 1995 to disseminate information about the environmental compliance and contract renewal processes and to identify existing sources of information, data gaps, and issues. Information obtained at these meetings helped identify concerns about resource management in the Basin, Indian trust assets, and data gaps which must be addressed during the NEPA compliance process.

An extensive range of management scenarios will be formulated for the RMA that are unconstrained by existing law or regulation. The initial range of management scenarios includes over 40 options and varies from no change from current management to optimizing deliveries of water for irrigation at the expense of other beneficial uses to optimizing reservoir management for fisheries and recreation at the expense of irrigation to restoring the natural hydrograph to the degree possible under constraint of reduced base flows. All of the preliminary management scenarios will be evaluated in the RMA process through hydrologic modeling and other techniques to identify those scenarios which are considered feasible. It should be recognized that some of the management scenarios ultimately identified in the RMA may include actions beyond Reclamation's authority to implement. The RMA process will conclude with the identification of resource management goals and objectives and a broad range of feasible management scenarios. Further screening and evaluation during the environmental compliance process will produce an ultimate range of reasonable alternatives that will be considered and evaluated in detail in the EIS. Both the RMA and EIS will assess potential impacts to Indian trust assets.

A special edition of the *Republican River Roundup*, a public information newsletter, is available from Ms. Judy O'Sullivan at the above address. The special edition of the newsletter includes an abstract of the draft RMA, information concerning management scenarios under consideration, and sample graphs and tables found in the RMA. The draft RMA is expected to be completed and available for review and comment at the scoping meetings or from Ms. O'Sullivan in late March. A draft EIS is expected to be completed and available for review and comment early in 1997.

Anyone interested in additional information concerning the environmental compliance or water service contract renewal processes, having suggestions regarding significant environmental issues, or having input about concerns or issues related to Indian trust assets should contact Ms. Manring at the above address.

Dated: February 23, 1996.

Neil Stessman,

Regionol Director.

[FR Doc. 96–4670 Filed 2–28–96; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Corporation for Open Systems International

Notice is hereby given that, on June 21, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Corporation for Open Systems International ("COS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission reflecting changes in certain existing COS Executive Interest Groups ("EIGS") and the termination of an EIG. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. There are changes in three EIGS. First, the changes in the organizations participating in SONET Interoperability Forum ("The Forum"), an existing COS EIG, are as follows: Motorola, Inc., currently a COS member, became a member of The Forum, effective March 31, 1995; SunSoft, a division of Sun Microsystems, Mountain View, CA, became an Associate of The forum, effective May 17, 1995; Retix, an Associate of the Forum, transferred its membership to its subsidiary, Telegenics, Santa Monica, CA, effective April 19, 1995. Second, AT&T, a current COS member, became a member of Digital Video Home Terminal DVHT EIG, effective April 16, 1995. Third, the X.500 Integration Pilot Project, which was a COS EIG, was completed and terminated effective March 31, 1995.

No other changes have been made in either the membership or planned activity of COS. Membership in COS remains open, and COS intends to file additional written notifications disclosing all changes in membership.

On May 14, 1986, COS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 11, 1986 (51 FR 21260).

The last notification was filed with the Department on March 31, 1995. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 28, 1995 (60 FR 33431).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–4655 Filed 2–28–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Industry Underwater Welding Research and Development Program

Notice is hereby given that, on July 11, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Global Industries, Ltd. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Exxon Production Research Company, Houston, TX has become a party to the group research project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Global Industries, Ltd. intends to file additional written notifications disclosing all changes in membership.

On January 25, 1993, Global Industries, Ltd. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 9, 1993 (58 FR 13091).

The last notification was filed with the Department on October 26, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 28, 1993 (58 FR 68663).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–4656 Filed 2–28–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mid Atlantic Regional Consortium for Advanced Vehicles (MARCAV)

Notice is hereby given that, on July 24, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* "the Act"), the Participants in the Mid Atlantic Regional Consortium for Advanced Vehicles ("MARCAV") have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) the identities of the parties to MARCAV; and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the current parties participating in MARCAV are: Concurrent Technologies Corporation, Johnstown, PA; Ergenics, Inc., Ringwood, NJ; Keystone Consortium, Allentown, PA; Sigma Labs, Inc., Tucson, AZ; Synkinetics, Inc., Bedford, MA; and United Defense LP, Santa Clara, CA.

The nature and objectives of this venture include the pursuit of research and development of electronic hybrid vehicles to address military missions, functions and requirements. It will also provide direct commercial applications for an increasingly significant technology area with great market potential both in the United States and abroad. This effort will assist defense-dependent companies to diversify their work and encourage economic development in an advanced technology area. It will improve air quality through reduction of conventional vehicle pollution and increase the options of transportation planners. The areas of technology research and development will include: (1) composite vehicle manufacturing; (2) advanced drive train components; (3) energy management systems; (4) advanced energy storage; (5) advanced motor controllers; (6) efficient battery charging; and (7) crash-test simulation and verification. The purpose of the MARCAV venture does not include the production of a product, process or service as referred to in 15 U.S.C. § 4301(a)(6)(D).

Information regarding participation in this venture may be obtained from Marion Walthall, Concurrent Technologies Corporation, 1450 Scalp Avenue, Johnstown, PA 15904.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–4653 Filed 2–28–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project 94–07

Notice is hereby given that, on January 29, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Petroleum Environmental Research Forum ("PERF") Project No. 94–07, titled "E&P Cooperative Program: Soils/Sediments/Sludges", has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Amoco Exploration & Production Technology Group, Tulsa, OK; Chevron Research and Technology Co., Richmond, CA; Phillips Petroleum Company, Bartlesville, OK; and Texaco Inc., Bellaire, TX. The general area of planned activity is to develop, apply and transfer technology and information which will assist in cost-effective management of soils, sediments and sludges in Exploration and Production Operations.

Participation in this venture will remain open to any and all interested parties until the date upon which work on the program has been completed and a final written report summarizing each of the projects has been provided to the participants. This is anticipated to occur approximately twenty-four (24) months after the Project commences. The participants intend to file additional written notifications disclosing all changes in its memberships.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–4654 Filed 2–28–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Rapid Object Application Development Consortium

Notice is hereby given that, on July 14, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Rapid Object Application Development Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the Consortium. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Andersen Consulting LLP, Chicago, IL; Raytheon Company, Lexington, MA; CoGenTex Inc., Ithaca, NY; and Expersoft Corporation, San Diego, CA.

The purpose of the Consortium is to design, develop, and demonstrate architecture, tools and applications in the area of distributed object-oriented software systems, pursuant to a Cooperative Agreement with the Advanced Research Project Agency

Technology Reinvestment Project administered by Rome Laboratory.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–4659 Filed 2–28–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Seamless High Off-Chip Connectivity Consortium

Notice is hereby given that, on December 19, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Seamless High Off-Chip Connectivity Consortium ("SHOCCC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Cray Research, Inc., Eagan, MN; The Dow Chemical Company, Midland, MI; and Integrated Device Technology, San Jose, CA. The general areas of planned activity for SHOCCC are research and development with the intent of developing and assessing the cost and performance of materials and process technologies for the parallel manufacture of digital electronic systems having multiple active integrated circuit devices interconnected by high-performance passive structures.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–4652 Filed 2–28–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Trico Steel Company, L.L.C.: Construction and Operation of a Flat Rolled Steel Minimill

Notice is hereby given that, on July 18, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the parties to a cooperative production venture relating to the construction and operation of a flat rolled steel minimill have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: LTV-Trico, Inc., Cleveland, OH (controlled by the LTV Corporation, Cleveland, OH); SMI-Trico, Inc., Wilmington, DE (controlled by Sumitomo Metal Industries, Ltd., Tokyo, JAPAN); and British Steel Trico Holdings, Inc., Wilmington, DE (controlled by British Steel plc., London, ENGLAND). The nature and objectives of the venture are to design, finance, construct and operate in Decatur, Alabama a flat rolled steel minimill with the capacity to produce approximately 2.2 million tons annually of hot-rolled steel coils. The joint venture products will be sold to a separate entity owned by the LTV Corporation and will be sold by that entity to steel service centers and tubular converters, as well as to the automotive, construction and general manufacturing industries. The joint venture will utilize state of the art technology to produce hot-rolled, light gauge products that will compete against hot-rolled steel sheet and strip, tin and plate products and certain cold-rolled sheet products. Major components of the plant will include electric furnaces, thin slab casters and a hot-strip rolling mill.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 96–4658 Filed 2–28–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Job Training Partnership Act (JTPA), Title IV-D, Demonstration Program: Nontraditional Employment for Women (NEW) for Fiscal Year 1995 (Now Being Completed in Fiscal Year 1996)

AGENCY: Women's Bureau, U.S. Department of Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications (SGA 96–01).

SUMMARY: All information required to submit a proposal is contained in this announcement. All applicants for grant funds should read this notice in its entirety. The Women's Bureau (Washington, D.C.), U.S. Department of Labor (USDOL), announces a grant competition for demonstration program authorized under the Nontraditional Employment for Women (NEW) Act funded through Job Training Partnership Act (JTPA), Title IV–D funds administered by the Employment and Training Administration. The NEW Act amends the Job Training Partnership Act (JTPA) and is incorporated into the subsequent Job Training Reform Amendments of 1992. With the Solicitation for Grant Applications (SGA) 96–01, the Women's Bureau expects to award grants to six States, the maximum allowed by the NEW legislation.

This notice describes the background, the application process, statement of work, evaluation criteria, and reporting requirements for Solicitation for Grant Applications (SGA 96–01). WB anticipates that up to a total amount of $1.5 million will be available for the support of all grants using demonstration funding.

DATES: One (1) ink-signed original, complete grant application (plus five (5) copies of the Technical Proposal and three (3) copies of the Cost Proposal shall be submitted to the U.S. Department of Labor, Office of Procurement Services, Room N–5416, 200 Constitution Avenue, N.W., Washington, D.C. 20210, not later than 4:45 p.m., Eastern Daylight Saving Time, April 26, 1996, or be postmarked by the U.S. Postal Service on or before that date. Hand delivered applications must be received by the Office of Procurement Services by that time.

ADDRESSES: Applications shall be mailed to the U.S. Department of Labor, Office of Procurement Services, Attention: Lisa Harvey, Reference SGA 96–01, Room N–5416, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, Office of Procurement Services, Telephone (202) 219–6445 [not a toll-free number]

SUPPLEMENTARY INFORMATION: This announcement consists of five parts: Part I describes the background and purpose of the demonstration program and identifies demonstration policy and topics. Part II describes the application process and provides detailed guidelines for use in applying for demonstration grants. Part III includes the Statement of Work for the demonstration projects. Part IV identifies and defines the evaluation criteria to be used in reviewing and evaluating applications. Part V describes the deliverables and reporting requirements.

Part I. Background

A. The Women's Bureau

The WB will provide the policy leadership in this project. Improving women's employment opportunities and other employment related equity and social issues has been the driving force of the Women's Bureau since its inception in 1920. Within the Department of Labor, the Director serves as the policy advisor on women's issues to the Secretary and other DOL agencies charged with improving the economic and worklife of American workers.

The Women's Bureau identifies nontraditional occupations as good jobs, characterized by employment growth, employee benefits relative to the local economic conditions. Such jobs include health and pension benefits, above average earnings that can provide self-sufficiency for women and their families. Statistically, nontraditional occupations (NTOs) is one in which less than 25 percent of the persons employed in an occupational group are women. Further, NTOs include a broad array of skilled technical and computer-based occupations in manufacturing, transportation, public utilities and communications industries, as well as the apprenticeable skilled trades in the building and construction industry.

B. NEW Policy

WB has a history of promoting the recruitment, retention and promotion of women in nontraditional jobs. The Bureau encourages women to CONSIDER the wide array of occupations nontraditional to women as a way of becoming self-sufficient. These occupations include skilled, blue-collar trades, technical jobs in the business service, health care, telecommunications, and public utilities among other good jobs where women are underrepresented. These are industries projected to have above average growth into the 21st Century and to pay a living wage with benefits.

The NEW Act exemplary demonstration program funding must develop and/or supplement, not supplant funding already in place to train, place, or support the movement of women in nontraditional employment. Grant funds must not be used as "replacement" funds for activities that are currently funded through other Federal programs, such as other JTPA titles, the Carl D. Perkins Vocational and Applied Technology Education Act, etc. Therefore, NEW Act grant funds can be used in addition to, but not instead of, other Federal funds to expand or enhance programs.

The NEW Act provisions encourage efforts by the Federal, State, and local levels of government aimed at providing a wider range of opportunities for women under the JTPA; to provide incentives to establish programs that will train, place, and retain women in nontraditional fields; and to facilitate coordination between the JTPA and the Carl D. Perkins Vocational and Applied Technology Education Act to maximize the effectiveness of resources available for training and placing women in nontraditional employment.

The NEW Act demonstration program grant awards are funded under JTPA Title IV–D. The funding is set at $1.5 million, annually, to make up to six (6) awards for fiscal years 1992, 1993, 1994, and 1995 (with the current Solicitation for Grant Applications).

C. NEW Authorities

The grants were first authorized under the Nontraditional Employment for Women (NEW) Act, Public Law 102–235, signed December 1991, effective July 1992. The NEW Act amends the Job Training Partnership Act (JTPA) and is incorporated into the subsequent Job Training Reform Amendments of 1992. Further, under an intra-agency agreement, the Employment and Training Administration (ETA) and the Women's Bureau (WB) jointly administer the NEW Act, with the Women's Bureau having responsibility for the implementation of the demonstration program grants to States' provisions.

D. Purpose of the NEW Demonstration Grants

In the fourth and final year of competitive NEW Act grants, the Department expects States to use NEW Act funds to continue and expand its activities to make JTPA more responsive to women in a broad array of occupations nontraditional to women by focusing on the JTPA system and its training and placement programs under Title II–A. Along with seeking geographic and race-ethnic diversity in program participants over the four years of the NEW demonstration program, the NEW legislation requires that the USDOL also consider how programs reflect in making the NEW demonstration proposed program grant awards:

(1) the level of coordination between the JTPA and other resources available for training women in nontraditional employment, i.e., Carl D. Perkins Vocational and Applied Technology Education Act, Intermodal Surface Transportation Efficiency Act (ISTEA), Department of Housing and Urban Development, etc., and other Federal, State and local job training resources;

(2) the extent of private sector involvement in the development and implementation of training programs under the JTPA;

(3) the extent to which the initiatives proposed by a State supplement or build upon existing efforts in a State to train and place women in nontraditional employment;

(4) the extent to which a State is prepared to disseminate information on its demonstration training programs, and

(5) the extent to which a State is prepared to produce materials that allow for replication of such State's demonstration training program.

Part II. Application Process

A. Eligible Applicants

The State is the eligible applicant for a NEW demonstration grant award. The Governor of each State, as is the case with JTPA Titles II and III, is the recipient of awards under the NEW Act. Governors in turn designate an agency at the State level to administer JTPA for the State; that agency can apply for the NEW grants on behalf of the Governor and the State. The criteria for what States can do with the funds to implement the NEW demonstration grants, i.e., subgrants is as prescribed in the NEW Act and follows.

States receiving grants under this demonstration program may use such funds to:

- award grants to service providers in the State to design and implement programs that train and otherwise prepare women for nontraditional employment. States choosing to award funds directly to service providers may only award grants to community-based organizations, educational institutions, or other service providers that have demonstrated success in occupational skills training; and
- award grants to (1) service delivery areas (SDAs) that plan and demonstrate the ability to train, place and retain women in nontraditional employment or to (2) service delivery areas on the basis of exceptional past performance in training, placing and retaining women in nontraditional employment. The State must also ensure, when awarding grants to service delivery areas on the basis of prior exceptional performance, that such prior success is not attributable or related to the activities of a service provider receiving funds directly from the State, as described in the previous paragraph. For example, the State may not award funds to SDA 5 on the basis of its program having an

85 percent placement rate if the program was actually conducted by a community-based organization, and the placement rate is a result of exceptional job development on the CBO's part, and the CBO has received funds under this grant.

States and their subgrantees/subcontractors have the option of retaining up to 10 percent of NEW grant funds to pay for administrative costs associated with the demonstration (including travel), assist and/or facilitate coordination to statewide approaches, or provide technical assistance to service providers. The 10 percent limitation on administrative costs is prescribed in the NEW Act itself and cannot be changed by the Department. Administrative costs are defined in the Final Rule for the JTPA, 20 CFR Part 626, et al., see 627.440(d)(5) Administration. (As published in the **Federal Register** on Tuesday, December 29, 1992, Vol. 57, No. 250, Page 62041). Note the provision in Section K, below, which states if the total administrative costs exceed 10% of the grant proposal, the proposal will be considered non-responsive.

B. Contents

To be considered *responsive* to the Solicitation for Grant Applications (SGA), the application must consist of the following separate sections. *ANY PROPOSALS THAT DO NOT CONFORM TO THESE STANDARDS MAY BE DEEMED NON-RESPONSIVE TO THIS SGA AND WILL NOT BE EVALUATED.*

To be considered responsive to the Solicitation for Grant Applications (SGA), each application must consist of and follow the order of the sections listed in Part III of this solicitation. The applicant must also include information which the applicant believes will address the selection criteria identified in Part IV. Technical proposals shall not exceed 25 single sided, double spaced, 10 to 12 pitch typed pages (not including attachments). Any proposals that do not conform to these standards shall be deemed nonresponsive to this SGA and will not be evaluated.

To facilitate proposal evaluation, the applicant shall submit *separate* sections entitled "Technical Proposal" and "Business Proposal" (one original and five copies of the Technical Proposal and one original and two copies of the Business Proposal). These sections *must* be physically separate (i.e., the Business Proposal must start on a new page).

1. Technical Proposal

Each proposal shall include (a) a two (2) page abstract which summarizes the proposal and makes clear how the proposed project will improve JTPA-sponsored programs to be more responsive to women in nontraditional training and placement, including responses to items 1–5 under Part III, Section B; and (b) a full description of the State's proposed project for an exemplary demonstration project to train and place women in nontraditional occupations; how it fits with the State's JTPA Title II–A training and placement; and how the project will provide for capacity building to make the State's JTPA system more responsive to women in nontraditional activities after the proposed NEW Project funding is complete. No cost data or reference to price shall be included in the technical proposal.

2. Cost Proposal

The cost (business) proposal must be separate from the technical proposal. The transmittal letter, all letters of support, and public policy certificates shall be attached to the business proposal, which shall consist of the following:

a. *Standard Form 424*: Application for Federal Assistance, signed by an official from the applicant organization who is authorized to enter the organization into a grant agreement with the Department of Labor.

b. *Budget Information*: Budget Information must consist of the following: "Budget Information," Sections A–F of Standard Budget Form 424A. (Use the forms and instructions provided, with the following qualifications)

(1) In Section A, Budget Summary, enter in column (e), the amount of Federal funds applied for; enter in column (f) the total value of any match/in-kind contributions. Provide totals in column (g) and row 5.

(2) In Section B, Budget Categories, enter detailed separate cost breakdowns for both the amount of Federal funds requested in the grant application (entered in column 1) and the total amount of in-kind services and/or matching funds that shall be made available (column 2). Column (3) line i, enter the grantee and subgrantee direct administrative cost. Subgrantee/subcontractor and grantee indirect administrative costs must be entered in Column (3) line j. Line (k), Column 3 represents the total Federal dollars to support administrative charges to the grant project. This total cannot exceed 10% of total Federal dollars requested. Any grant proposal which exceeds the 10% maximum (or which does not report administrative costs in Column 3) will be considered *non-responsive* and will not be evaluated. Although administrative costs charged to the Department are limited, there is no limitation for administrative charges supported with matching funds. Matching resources can be used to support the complete range of activities allowed under this legislation. (See JTPA Final Rule, 20 CFR Part 626 et al., at 627.440(d)(5) as referenced on Page 7 of Part I for allowable administrative costs). The grantee must ensure that all administrative costs, grantee and subgrantee, are clearly indicated on the budget back-up (See paragraph C of this Section.)

The object class category entitled "j. Indirect Charges" shall not be used when it is proper and appropriate to direct charge costs relating to the program. The indirect charges object class category is properly used to display costs based on (a) an approved, negotiated indirect cost rate with either the Department of Labor (DOL) or another cognizant Federal Government audit agency; or (b) a proposed rate based on a cost allocation plan that might be used as a 90-day billing rate for the grant award until the grantee can negotiate an acceptable and allowable rate with the Office of Cost Determination of DOL.

It is not required that project functions or activities within the proposed project be listed in separate columns of Section B, unless the functions or activities are disparate.

Note that the total requested in Column 5 will always be the sum of Columns 1 and 2 only, as Column 3 represents the administrative portion of Column 1 funds.

(3) In Section C, Non-Federal Resources, enter the amounts of proposed matching funds and/or in-kind contributions from each source, Federal and non-Federal. Specify the sources. Provisions governing the allowability and valuation of in-kind contributions are contained in 29 CFR Part 97 for State and local governments, all others see 29 CFR Part 95.

(4) In Section D, Forecasted Cash Needs, provide a non-cumulative breakout of projected expenditures for each quarter for both the Federal funds (line 13) and the Match/In Kind funds (line 14), along with Totals (line 15).

c. *Budget Back-up Information*: As an attachment to the Standard Budget Forms, the applicant must provide at a minimum, and on separate sheet(s), program/administrative costs which include the following information (applicants are encouraged to use the attached budget back-up format that provides for display of all the required information):

(1) A breakout of all personnel costs by position title, salary rates and percent of time of each position to be devoted to the proposed project;

(2) An explanation and breakout of extraordinary fringe benefit rates and associated charges (i.e., rates exceeding 35% of salaries and wages);

(3) An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, sub-agreements and any other costs. The applicant shall include costs of any required travel described in the attached Special Provisions. Mileage charges shall not exceed *30* cents per mile.

(4) Description/specification of and justification for equipment purchases, if any. Any non-expendable personal property having a unit acquisition cost of $500 or more, and a useful life of two or more years must be specifically identified (State and local governments see 29 CFR Part 97, all others see 29 CFR Part 95).

(5) Identification of all sources of matching funds and explanation of the derivation of the value of matching/in-kind services. For instance, in-kind contributions may result from the required program coordination with JTPA and other resources or, in the delivery of services, where existing programs are being utilized to complement and supplement the demonstration program.

Applicants are advised that information and dollar amounts provided in the budget back-up must be consistent with and therefore, easily cross-walked to Section B, Object Class Category, of the Standard Budget Forms. They should also be consistent with the budget narrative contained in the application.

d. *Budget Narrative*:

(1) A narrative explanation of the budget which describes all proposed costs and indicates how they are related to the operation of the project.

(2) This shall include, at a minimum, an identification of staff associated with the program and a description of their duties relative to the program. The description shall justify the percentages of staff time being charged to the grant.

(3) Travel, equipment, supplies, contractual (including subgrants), and other charges in the budget shall be explained and justified with respect to the project approach.

(4) Provide this information separately for the amount of requested Federal funding and the amount of proposed match/in-kind contribution.

e. *Indirect Cost Information*: If indirect charges are claimed in the proposed budget, the applicant must provide on a separate sheet, the following information:

(1) Name and address of cognizant Federal audit agency;

(2) Name, address and phone number (including area code) of the Government auditor;

(3) Documentation from the cognizant agency indicating:

(a) Indirect cost rate and the base against which the rate should be applied;

(b) Effective period (dates) for the rate;

(c) Date last rate was computed and negotiated;

(4) If no government audit agency computed and authorized the rate claimed, provide brief explanation of computation, who computed and the date; if the applicant is awarded a grant, the proposed indirect rate must be submitted to a Federal audit agency within 90 days of award for approval.

C. Funding Levels

The Department expects to make six awards to States, the maximum allowed under the NEW Act. Proposal (*i.e.*, grant application) funding requests should average $250,000.

D. Length of Grant and Grant Awards

The initial performance period for the grants awarded under this SGA shall be for eighteen (18) months of program performance, with the option to extend for up to three months as a no cost extension to complete final reports. Each applicant shall reflect in their application the intention to begin operation no later than June 1996.

E. Submission

One (1) ink-signed original, complete grant application (plus five (5) copies of the Technical Proposal and two (2) copies of the Business Proposal) shall be submitted to the U.S. Department of Labor, Office of Procurement Services, Room N–5416, 200 Constitution Avenue, N.W., Washington, D.C. 20210, not later than 4:45 pm EDT, April 26, 1996. Hand delivered applications must be received by the Office of Procurement Services by that time.

Any application received at the Office of Procurement Services after 4:45 pm EDT will not be considered unless it is received before award is made and:

1. It was sent by registered or certified mail not later than April 21, 1996;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the above address; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 pm at the place of mailing April 24, 1996.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants shall request that the postal clerk place a legible hand cancellation bull's-eye postmark on both the receipt and the wrapper or envelope.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants shall request that the postal clerk place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Office of Procurement Services on the application wrapper or other documentary evidence of receipt maintained by that office.

Applications sent by telegram or facsimile (FAX) will *not* be accepted.

Part III. Statement of Work—Key Features

A. Introduction—Progrom Focus

State applicants are encouraged to submit proposals to provide technical assistance and program development to cause and sustain systemic change in their JTPA system: (1) to build the capacity of JTPA systems to promote and provide training and placement nontraditional for women in JTPA and; (2) to develop new initiatives or supplement existing exemplary training and placement programs that are responsive to the needs of JTPA-eligible women in nontraditional occupations (NTOs) training and placement. Special consideration will be given to programs modeled on the contextual or integrated

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learning concept incorporated in JTPA Title II–A training and placement. Skill training activities should have the support of JTPA Title II–A training funds in addition to NEW Act demonstration program grant funding.

Moreover, the USDOL is seeking States with proposals that build on and/or support demonstrated experience in the following areas:

—provide evidence of demonstrated experience and commitment to the goals and objectives of the NEW Act since its implementation in 1992;
—provide evidence of the use of technical assistance to build the capacity of their JTPA system to institutionalize exemplary nontraditional training and placement to JTPA-eligible women in whatever employment and training process emerges, i.e., One-Stop Career Centers, Workforce Development Centers, etc.;
—provide evidence of implementing systemic change in JTPA service delivery to increase the participation of women in nontraditional occupations (NTOs) training and placement;
—provide evidence of cooperation and coordination of programs/services to support JTPA-eligible women in nontraditional occupational training and placement;

In addition, in awarding NEW grants, the Department of Labor will give priority consideration to States with JTPA systems that have both (1) established goals of 15 percent or more for training and placing women in a broader range of JTPA training and placement of women in nontraditional occupations (NTOs) and (2) where there is an increase of JTPA-eligible women in NTOs since the implementation of NEW in July 1992 that has measured more than 25 percent over the July 1992–July 1995 (or most recent) period. The activities of JTPA systems that reflect such leadership goals and results can provide guidance to the JTPA system nationwide, as well as the employment and training community, more generally.

In addition to the following specifications, please read Part I Background, Section D "Purpose of NEW Demonstration Grants" for a full consideration of the USDOL's program expectations for making NEW grant awards.

B. Program Design—Key Features

To be fully responsive to this SGA, proposal submission should address the following issues in the introduction and summary of the proposal for this SGA:

1. A concise and direct statement, including statistical outcomes, of the goals and objectives for the State's JTPA system and its commitment to training and placing JTPA-eligible women in nontraditional occupations (NTOs) from its Governor's Coordination and Special Services Program (GCSSP). *Priority consideration will be given to State proposals with statewide statistical goals of 15 percent or more and a 25 percent increase over the July 1992–1995.*

2. A statistical table of women in JTPA nontraditional training and placement, 1992–1993—numbers and as a percent of total training and placement and as a percent of women's training and placement. *Priority consideration will be given to State proposals that also cross tabulate the training and placement data by occupation, industry, and wages data.*

3. A concise and direct statement on how the proposed activities will broaden the range of training and placement of women in the JTPA system.

4. A concise and direct statement on how proposed activities will empower the JTPA system to institutionalize strategies to support women in nontraditional training and placement.

5. The State proposal's program design focuses on which of the following:

* * * A new initiative building on other State NEW- specific activities;
* * * An expansion or supplement to ongoing State NEW-specific activities;
* * * Largely client focus on training and placement;
* * * Largely provides for JTPA capacity building;

Each of the design features below should be clearly identified by using the feature identifier as a "side head" above the description (i.e., see *State* Involvement., below) in its proposal submission for a NEW Demonstration Program:

1. *State's Involvement.* The Bureau expects the State to be an active participant in the development of the proposed program activities and in the implementation of the demonstration program once a grant has been awarded. Therefore, applicants should describe the activities conducted by the State, whether through the State JTPA liaison, the State JTPA agency, or both, for proposal development and program implementation and how the proposal is expected to impact—not only to enhance and/or expand its nontraditional training and employment opportunities for JTPA-eligible women under an existing JTPA program, but to provide technical assistance to provide capacity building to cause systemic change in the State JTPA service delivery to women in nontraditional training and placement.

2. *Private Sector Involvement.* The extent of private sector involvement in the development and implementation of training programs under the JTPA could include, but are not limited to, the following activities: joint ventures in skill training and the development of effective and efficient administrative and management skills; industry instructors for classroom and/or integrated or contextual learning programs to increase the training and placement of JTPA-eligible women in nontraditional careers. Also see *Linkages and Coordination* immediately below.

3. *Linkages and Coordination.* The NEW Act calls for coordination between JTPA and other resources available (Federal and/or State) for training women in nontraditional employment, both in the Governor's Coordination and Special Services Plan (GCSSP) developed for Title II–A and for the demonstration grants. Therefore, any linkages and collaborative efforts that exist between JTPA and other programs, such as registered apprenticeship programs or the Carl D. Perkins Vocational and Applied Technology Education Act (Perkins), Intermodal Surface Transportation Efficiency Act (ISTEA), Department of Housing and Urban Development, etc., and other Federal, State and local job training resources: (a) between JTPA and other entities, such as Federal and/or State contractors or State agencies responsible for work that is nontraditional for women (such as highway construction), or (b) other linkages established specifically for purposes of this demonstration must be clearly identified and defined, including those articulated in the GCSSP for Title II–A. In addition, the Department expects that the private sector, in their roles as members of Private Industry Councils (PICs), employers or members of Apprenticeship Committees will be called upon to play a strategic role in the design and/or delivery of training, certainly in the placement of JTPA-eligible women in nontraditional occupations. JTPA entities should consider and describe how they have or may work with the government mega-projects (large project of two or more years, costing at least $2,000,000, directly funded or assisted by government funds) in their area to develop jobs for NEW trainees.

4. *Existing Efforts and/or New Initiatives.* The extent to which the initiatives proposed by State proposals supplement or build upon existing efforts in a State to train and place women in nontraditional employment. Program activities funded under this grant may consist of new initiatives or further development of existing programs, or a combination. Proposals shall describe any new initiatives to be implemented through this grant; the demonstrated effectiveness and efficiency of existing programs in achieving the goals of the NEW Act and the enhancements to be undertaken under this grant; and, in cases where the programmatic approach calls for a combination of new and existing programs, a description of how the new activities and existing programs will complement each other and enhance and promote an increase of women in nontraditional occupations in the JTPA System.

5. *Use of Funds.* The Technical Proposal of CBO applicants shall describe both known and anticipated expenditures that may arise in the conduct of the proposed grant activities related to NEW—List activities on which grant funds will be expended, not the specific amount. The Department is also interested in hearing about any leverage activities anticipated with NEW funds, particularly when developing NEW linkages and coordination of services. More specifically, list any leverage of funds activities taken or anticipated with this grant—any partnerships, linkages or coordination of activities, combining of streams of funding, etc. Finally, list activities on which grant funds will be expended by subgrantees (if applicable).

6. *Replication.* The extent to which a State is prepared to produce materials that allow for replication of its demonstration grant program, including capacity building and training and placement activities. As previously mentioned, it is the Department's intent that activities funded under the NEW Act lead to systemic changes that institutionalize nontraditional training within JTPA and a specified geographic area. Proposals shall indicate the strategies to be used to encourage and promote the continuation of activities once the NEW demonstration grant support has ended.

7. *Dissemination.* The extent to which the State's proposal includes activities to disseminate information on its demonstration training programs. The Department believes that one way of encouraging and promoting institutionalization of nontraditional training within a grantee's area is to plan for replication of successful programs and to disseminate information about both the demonstration and existing model programs. For that reason, proposals shall include a discussion on the extent to which the State is prepared to accomplish dissemination of information and the extent to which they are prepared to produce materials for replication of the demonstration training programs.

8. *Evaluation Approach.* The Final Report on the NEW Project shall describe expected impacts on participants as a result of the training programs. These impacts shall be measurable and attainable and may include awareness/orientation sessions to increase women's knowledge of opportunities in nontraditional occupations, attainment of training competencies, placement in registered apprenticeship training, completion of training, wage at placement, occupation at placement, and retention in employment. The discussion shall also include information on whether the proposed grant amount is sufficient to accomplish measurable goals; if, in linking with other programs, additional financial resources are expected, the proposal shall identify the source(s) of funds and their intended use.

Part IV. Evaluation Criteria and Selection

Applicants are advised that selection for grant award is to be made after careful evaluation of technical applications by a panel. Each panelist will evaluate applications against the various criteria on the basis of 100 points. The scores will then serve as the primary basis to select applications for potential award. Clarification may be requested of grant applicants if the situation so warrants.

1. Technical Criteria Points

	Points
a. State Commitment and Involvement	25
b. Quality of Overall Program; Use of Funds; Supplement and/or Expand	20
c. Private Sector Involvement with NEW; Linkages and Coordination	20
d. Replication and Dissemination	20
e. Evaluation Approach	15

2. Cost Criteria

Proposals will be scored, based on their costs in relation to other proposals submitted in response to this SGA. Specifically, the lowest priced proposal will receive 150 points, based on the following formula:

(lowest priced proposal/proposal cost) × 150

All other proposals will receive points using the above formula. For example, if the lowest priced proposal had a total Federal budget of $5,000, it would receive a cost score of 150. If another proposal had a total Federal budget of $10,000, it would receive a score of 75 (i.e., $5,000/$10,000) × 150).

3. Total Score

Technical quality of proposals will be weighted three (3) times the estimated price in ranking proposals, for purposes of selections for award.

To elaborate, using the above example, if the proposal requesting $5,000 of Federal funding received a technical score of 87, the Total Score would be 411 points (i.e., (87 × 3) + 150 = 411); if the proposal requesting $10,000 of Federal funding received a technical score of 120, the Total Score would be 435 (i.e., (120 × 3) + 75 = 435).

4. Criteria for Award

Proposals received will be evaluated by a review panel based on the criteria immediately following. The panel's recommendations will be advisory, and final awards will be made based on the best interests of the Government, taking into account such factors as technical quality, geographic balance, and other factors.

The Department wishes to make it clear that it is not simply the best-written proposals that will be chosen, but rather those which demonstrate the greatest State commitment to the goals of the NEW Act and which best incorporate the principal features of this demonstration.

5. Allowable Cost

Payment up to the amount specified in the grant shall be made only for allowable, allocable, and reasonable costs actually incurred in conducting the work under the grant. The determination of allowable costs shall be made in accordance with the following applicable Federal Cost principles:

State and Local Governments—OMB Circular A–87
Educational Institutions—OMB Circular A–21
Non-Profit Organizations—OMB Circular A–122
Profit Making Commercial Firms—FAR 48 CFR Part 31.

Profit will *not* be considered an allowable cost in any case.

6. Administrotive Provisions

The grant awarded under this SGA shall be subject to the following administrative standards and provisions:

29 CFR Part 95—Uniform Administrative Requirements Governing Department of Labor Grants and Agreements (does not apply to grants with State and local Governments and Indian Tribes);
Section 165 of the Job Training Partnership Act Reports, Recordkeeping and Investigations (applicable to grants funded with JTPA funds);
29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;
29 CFR Part 96—Audits of Federally Funded Grants, Contacts and Agreements.

7. Grant Assurances and Certifications

The applicant must include the attached assurances and certifications.

Part V. Deliverables

1. No later than four (4) weeks after award, the grantee shall meet with the Women's Bureau to discuss program activities, timelines, and evaluation design for comment and final approval. The Women's Bureau will provide input orally and in writing, if necessary, within ten (10) working days after the meeting.

2. No later than eight (8) weeks after award, the grantee shall provide the Women's Bureau with a detailed Program Execution and Implementation Plan, including any subgrantee arrangements, for comment and final approval. The Women's Bureau shall provide written comments, if necessary, within ten (10) working days.

3. No later than twelve (12) weeks after award, the grantee shall begin the program of nontraditional training for women.

4. Quarter progress reports should include:

a. A description of overall progress on work performed during the reporting period, including (1) number and profiles (including selected photos) of participants in prevocational and skilled training or placed, including JTPA Title II–A female participants; awareness activities; JTPA staff capacity building activities; during the period; (2) systemic workplace and policy changes—actual or in process; (3) public presentations; (4) media articles or appearances; (5) publications disseminated and (6) publications developed.

b. An indication of any current problems which may impede performance and the proposed corrective action.

c. A discussion of work to be performed during the next reporting period. Include any job development or technical assistance with mega-projects and other employers to provide employment for women in nontraditional occupations.

Between scheduled reporting dates the grantee shall also immediately inform the Grant Officer's Technical Representative of significant developments affecting the grantee's ability to accomplish the work.

5. No later than forty-eight (48) weeks after award, the grantee shall submit a Replication and Dissemination Plan that describes the grantee's plans for disseminating information about the demonstration program and for future replication of the demonstration in other geographic areas. The Women's Bureau shall provide written comments, if necessary, within twenty (20) working days. The Bureau's comments shall be incorporated into the plan.

6. No later than fifty-two (52) weeks after award, the grantee shall submit, in one (1) camera ready copy and one (1) diskette (IBM compatible; WordPerfect 5.1), an integrated draft report of the process and results of the training program completed during the year. The report shall include, at a minimum, context, impact and the relationship between this program and ongoing programs in the labor market delivery area, preliminary data on planned versus actual accomplishments, characteristics of participants, participant outcomes, wage and occupation at placement, and the follow-up activities planned for the program. The Women's Bureau will provide written comments on the draft report within twenty (20) working days if substantive problems are identified. The grantee's response to these comments shall be incorporated into the final report.

7. No later than sixty-four (64) weeks after award, the grantee shall submit one (1) camera ready copy and one (1) diskette (IBM compatible, WordPerfect 5.1) of the final report. The report shall cover findings, final performance data, evaluation results (where applicable), and plans for follow-up of participants. The Final Report should be designed, developed and written along professionally accepted standards. Copies of training curricula shall be included, as well as the final plan for replication and dissemination of information. An Executive Summary of the findings and recommendations, if any, shall either be included in the report or accompany the report.

Signed at Washington, D.C. on February 23, 1996.

Dated: February 23, 1996.

Lawrence J. Kuss,

Grant Officer.

Appendix A

Assurances and Certifications Signature Page

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the *ASSURANCES AND CERTIFICATIONS* contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set for below:

A. Assurances—Non-Construction programs
B. Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Transaction
C. Certifications Regarding Lobbying: Debarment, Suspension, Drug-Free Workplace
D. Certification of Release of Information
E. Nondiscrimination and Equal Opportunity Requirement of JTPA

Applicant Name: _____
Date: _____

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

_____
Signature of Authorized Certifying Official

_____
Applicant Organization

_____
Title

_____
Date Submitted

Please Note: This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.

BILLING CODE 4510–23–P

APPENDIX B

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
b. Applicant	$ 00	DATE _____
c. State	$ 00	b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
d. Local	$ 00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
e. Other	$ .00	
f. Program Income	$ 00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
g. TOTAL	$ 00	☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

APPENDIX C

BUDGET INFORMATION - Non Construction Programs

Catalog of Federal Domestic Assistance	Estimated Unobligated Funds		New or Revised Budget										
	Federal	Non-Federal	Federal	Non-Federal	Total								
CFDA NUMBER	$	$	$	$	$								
1.													
2.													

COST CATEGORY	Federal Funding		Non-Federal Contribution										
DIRECT COST	Current Federal Budget	Revisions and/or Extensions	Revised Federal Budget	Current Awardee Budget	Revisions and/or Extensions	Revised Awardee Budget							
(A) PERSONNEL	$												
(B) FRINGE BENEFITS													
(C) TRAVEL & PER DIEM													
(D) EQUIPMENT													
(E) SUPPLIES													
(F) CONTRACTUAL													
(G) OTHER													
TOTAL DIRECT COST	$												
INDIRECT COST													
TOTAL ESTIMATED COST	$												

AUTHORIZED FOR LOCAL REPRODUCTION SF424-A

[FR Doc. 96-4580 Filed 2-28-96; 8:45 am]

BILLING CODE 4510-23-C

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: March 11, 1996, 10:00 am–12:00 noon, U.S. Department of Labor, Room S–1011, 200 Constitution Ave., NW., Washington, D.C. 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 219–4752.

Signed at Washington, D.C. this 23rd day of February 1996.

Joaquin Otero,

Deputy Under Secretary, International Affairs.

[FR Doc. 96–4613 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

[TA–W–31, 394; TA–W–31, 394A]

Bike Athletic Company; Knoxville, Tennessee and Cherryville, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 25, 1995, applicable to all workers of Bike Athletic Company located in Knoxville, Tennessee. The notice was published in the **Federal Register** on October 5, 1995 (60 FR 52213).

Based on new information received from petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that layoffs have occurred at the subject firm's Cherryville, North Carolina plant. The workers are engaged in the production of athletic apparel.

Accordingly, the Department is amending the certification to cover the workers of Bike Athletic located in Cherryville.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports.

The amended notice applicable to TA–W–31, 394 is hereby issued as follows:

"All workers of Bike Athletic Company, Knoxville, Tennessee (TA–W–31, 394A) who became totally or partially separated from employment on or after August 23, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 20th day of February 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4627 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,839]

Champion Products, Inc. Scottsboro, Alabama; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 5, 1996 in response to a worker petition which was filed January 11, 1996 on behalf of workers at Champion Products, Scottsboro, Alabama (TA–W–31,839).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–30,172A). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 16th day of February 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4623 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,172; TA–W–30,172A]

Champion Products, Inc.; Slocomb, Alabama and Scottsboro, Alabama; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 29, 1994, applicable to all workers of Champion Products, Inc. located in Slocomb, Alabama. The notice was published in the **Federal Register** on October 4, 1994 (59 FR 50625).

Based on new information received from petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that the subject firm's Scottsboro, Alabama plant was scheduled to begin closing on January 26, 1996. All workers are involved in the production of fleece sweatsuits and will be terminated from employment. Accordingly, the Department is amending the certification to cover the workers of Champion Products located in Scottsboro.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,172 is hereby issued as follows:

"All workers of Champion Products, Inc., Slocomb, Alabama (TA–W–30,172), and Scottsboro, Alabama (TA–W–30, 172A) engaged in employment related to the production of fleece sweatsuits, who became totally or partially separated from employment on or after July 22, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 16th day of February 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4625 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners of any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than March 11, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than March 11, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 20th day of February, 1996.

Russell Kile,

Acting Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON FEB. 20, 1996

TA–W–	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,920	Doranco, Inc. (Co)	Attleboro Falls, MA	01/31/96	Brackets, Nameplates.
31,921	Pope and Talbot, Inc. (UPIU)	Eau Claire, WI	01/31/96	Infants Diapers.
31,922	JPS Elastomerics, Corp. (Co.)	Stuart, VA	01/17/96	Cut Rubber Thread.
31,923	Sanfatex, Inc. (Co.)	Red Springs, NC	01/26/96	Shirts.
31,924	Marine Transport Lines (NMU)	Weehawken, NJ	02/05/96	Ocean-Going Transportation.
31,925	Grow Group, Inc. (Co.)	New York, NY	02/06/96	Office Workers (Paints, Household Prod).
31,926	McAllen Separation Co. (Co.)	Mt. Gilead, NC	01/29/96	Separate Threads from Collars.
31,927	Selment, Inc. (Wkrs)	Albany, OR	01/19/96	Golf Club Heads.
31,928	Hobet Mining, Inc. (UMWA)	Madison, WV	02/02/96	Coal Mining.
31,929	Hollander Home Fashions (Wkrs)	Rogers, AR	01/26/96	Polyester, Feather Bed and Pillows.
31,930	Quality Stitching, Inc. (Wkrs)	Saluda, SC	02/01/96	Boxer Shorts.
31,931	Jonbil, Inc. (Co.)	Henderson, NC	01/25/96	Jeans.
31,932	Hines Oregon Millwork Ent (Co.)	Hines, OR	01/15/96	Millwork.
31,933	Victory Corrugated Cont. (Workers)	Roselle, NJ	01/28/96	Corrugated boxes.
31,934	Norwich Manufacturing (Wkrs)	Norwich, NY	02/01/96	Plastic vacuum parts.
31,935	Parsons Texties (Comp)	Casa Grande, AZ	02/12/96	Outer sportswear.

[FR Doc. 96–4615 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,914]

E & J Apparel, W. Jordon, Utah; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 7, 1996 in response to a worker petition which was filed January 16, 1996 on behalf of workers at E & J Apparel, W. Jordon, Utah (TA–W–31,914).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–31,138A). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 15th day of February 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4621 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,138; TA–W–31,138A]

Layton Sportswear, Layton, Utah and E & J Apparel Manufacturing, W. Jordan, Utah; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 15, 1995, applicable to all workers of Layton Sportswear located in Layton, Utah. The notice was published in the **Federal Register** on September 1, 1995 (60 FR 45746).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at E & J Apparel, W. Jordan, Utah. E & J Apparel is the same company as Layton Sportswear. The workers are engaged in the production of men's and boys' sportswear and girls' dresses.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of apparel. The Department is amending the certification to cover the workers of E & J Apparel.

The amended notice applicable to TA–W–31,138 is hereby issued as follows:

All workers of Layton Sportswear, Layton, Utah (TA–W–31,138), and E & J Apparel, W. Jordan, Utah (TA–W–31,138A) who became totally or partially separated from employment on or after June 2, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 15th day of February 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4620 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,120N]

Mobile Exploration and Producing U.S., Incorporated (MEPUS) Houston Division a/k/a Mobil Administration Service Company Inc. (MASCI) a/k/a Mobil Natural Gas, Inc. (MNGI) Headquartered in Houston, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Operating at Other Sites in the Following States: TA–W–30, 120O California; TA–W–30,120P Louisiana; TA–W–30,120Q New Mexico; TA–W–30,120R Oklahoma; and TA–W–31,120S Texas.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on September 30, 1994, applicable to all workers of Mobil Exploration and Producing U.S., Incorporated (MEPUS), Houston Division, headquartered in Houston, Texas and operating at various locations in the United States. The notice was published in the **Federal Register** on October 21, 1994 (59 FR 53211). The certification was amended on September 20, 1995 to include other corporate affiliates. The notice was published in the **Federal Register** on November 7, 1995 (60 FR 56173).

At the request of the company, the Department reviewed the subject certification. New information received from the company shows that worker separations will occur at Mobil Natural Gas Inc., which is a corporate affiliate of MEPUS. The workers are engaged in employment related to the marketing of crude oil and natural gas.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of crude oil and natural gas. Accordingly, the Department is amending the certification to include the workers of Mobil Natural Gas Inc.

The amended notice applicable to TA–W–30,120 is hereby issued as follows:

"All workers of Mobil Exploration and Producing U.S., Incorporated (MEPUS), Houston Division, a/k/a Mobil Administrative Service Company, Inc. (MASCI), a/k/a Mobil Natural Gas, Inc. (MNGI), headquartered in Houston, Texas (TA–W–30,120N); and operating at other sites in California (TA–W–30,120N), and operating at other sites in California (TA–W–30,1200), Louisiana (TA–W–30,120P), New Mexico (TA–31,120Q), Oklahoma (TA–W–30,120R), and Texas (TA–W–31,120S) engaged in activities related to exploration and production of crude oil and natural gas who became totally or partially separated from employment on or after April 30, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 15th day of February 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4624 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than March 11, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than March 11, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 12th day of February, 1996.

Russell Kile,

Acting Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON FEB. 12, 1996

TA–W–	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,888	Porter House Ltd. (Co.)	New York, NY	01/29/96	Ladies' Wear.
31,889	Kids Today, LTD (Co.)	New York City, NY	01/25/96	Children's Shirts and T-Shirts.
31,890	Christian Bros. Logging (Co. Wkr)	Cascade, ID	01/19/96	Timber.
31,891	Medical Textiles, Inc. (Co.)	South Boston, VA	01/30/96	Orthopedic Elastic.
31,892	Augat, Inc. (Co.)	Mashpee, MA	02/02/96	Electronic Related Products.
31,893	Pent House Sale Corp. (Wkrs)	Franklin, MA	01/24/96	Ladies Belts, Accessories.
31,894	Inland Container Corp. (UPIU)	Macon, GA	01/26/96	Corrugated Boxes.
31,895	Mallinckrodt Medical (Wkrs)	St. Louis, MO	12/03/95	Medical Supplies.
31,896	Rivera Shirt Factory (Wkrs)	Pontotoc, MS	01/19/96	Men's and Boys' Shirts.
31,897	Kenwood U.S.A. (Wkrs)	Mt. Olive, NJ	12/21/95	Warehouse/Sales Office.

PETITIONS INSTITUTED ON FEB. 12, 1996—Continued

TA–W–	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,898	Tandy Electronics Design (Wkrs)	Ft. Worth, TX	01/22/96	Design of Consumer Electronics.
31,899	Marion Plywood Corp. (Wkrs)	Shawano, WI	01/25/96	Interior/Exterior Door and Window Parts.
31,900	BHP Petroleum Inc. (Co.)	Houston, TX	01/24/96	Oil and Gas.
31,901	Anchor Glass Container (GMP)	Cliffwood, NJ	01/05/96	Glass Bottles and Jars.
31,902	Globe Business Furniture (IUE)	Franklin, KY	01/10/96	Office Furniture.
31,903	West Point Stevens, Inc. (Wkrs)	Biddeford, ME	01/18/96	Blankets.
31,904	Americana Knitting Mills (Wkrs)	Opa Locka, FL	01/18/96	Fabrics.
31,905	Bass Manufacturing (Co.)	Camden, TN	01/12/96	Ladies' Tops.
31,906	H.H. Cutler Co. (Wkrs)	Oxford, MS	01/18/96	Infants and Childrens' Playwear.
31,907	National Metal Products (SEIU)	Bensonville, IL	01/18/96	Auto Parts for Ford.
31,908	Quality Stitch (Co.)	Sparta, GA	01/24/96	Jeans.
31,909	Whispering Pines Sports. (Wkrs)	Pageland, SC	01/19/96	Men's and Ladies' Polo Type Gulf Shirts.
31,910	Augat Wiring Systems (Comp)	Montgomery, AL	01/17/96	Automotive Wiring Assemblies.
31,911	Bausch & Lomb (Wkrs)	Oakland, MD	01/26/96	Sunglass Lenses.
31,912	Bausch & Lomb (Wkrs)	Tucker, GA	01/19/96	Electric Toothbrushes.
31,913	Florsheim Shoe Company (Wkrs)	Cape Girardeau, MO	01/22/96	Men's Shoes.
31,914	E & J Apparel (Wkrs)	West Jordan, UT	01/16/96	Men's and Boys' Sportswear, Girl's Dresses.
31,915	Imperial Bondware (Wkrs)	LaFayette, GA	01/11/96	Plastic Drinking Cups and Lids.
31,916	Imperial Wallcovering (UPIU)	Hammond, IN	01/19/96	Wallpaper.
31,917	Stitches (Wkrs)	El Paso, TX	01/11/96	Garments.
31,918	Takata Inc. (Wkrs)	Del Rio, TX	01/24/96	Safety Restraints for Auto Industry.
31,919	Toymax Inc. (Comp)	Westburn, NY	01/26/96	Toys.

[FR Doc. 96–4617 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,315; TA–W–31,315A]

Wirekraft Industries, Inc. Burcliff Division; Ft. Smith, Arkansas and Franklin, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 28, 1995, applicable to all workers of Wirekraft Industries, Burcliff Division, located in Ft. Smith Arkansas. The notice was published in the **Federal Register** on September 26, 1995 (60 FR 49635).

Based on new information received from petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of electrical wiring harnesses for ranges and refrigerators, as well as controls for small electrical appliances. The company reports that layoffs will occur at the subject firm's Franklin, North Carolina location, when plant closure begins in March 1996. Accordingly, the Department is amending the certification to cover the workers of the subject firm located in Franklin.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports.

The amended notice applicable to TA–W–31,315 is hereby issued as follows:

"All workers of Wirekraft Industries, Inc., Burcliff Division, Ft. Smith, Arkansas (TA–W–31,315) and Franklin, North Carolina (TA–W–31,315A) who became totally or partially separated from employment on or after July 25, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 20th day of February 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4626 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00697]

Boise Cascade, Timber & Wood Products Division La Grande, OR; Determinations Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance; Correction

This notice corrects the notice on petition NAFTA–00697 which was published in the **Federal Register** on February 9, 1996 (61 FR 5036) is FR Document 96–2892.

The Department inadvertently cited the location of the subject firm as Yakima, Washington.

The notice of termination of investigation for petition NAFTA–00697 appearing on page 5036 should read: "Boise Cascade, Timber & Wood Products Division, La Grande, Oregon."

Signed in Washington, D.C., this 15th day of February 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4618 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00728]

Karl J. Marx Company, Inc., New York, New York; Negative Determination Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for NAFTA–TAA.

The investigation was initiated on December 13, 1995 in response to a petition filed on behalf of workers at the Karl J. Marx Company, Inc. located in New York, New York. The workers were engaged in the activities solely related to buying and selling fully manufactured clothing goods. The Karl J. Marx Company, Inc. is a buying service that serves both small stores and major chain stores in assisting them in finding the best prices [of clothing and houseware goods] in the market.

The investigation revealed that the workers of the subject firm do not produce an article within the meaning of Section 250(a) of the Trade Act, as amended. The Department of Labor has consistently determined that the performance of services does not constitute production of an article, as required by the Trade Act of 1974, and this determination has been upheld in the United States Court of Appeals.

Therefore, workers at the Karl J. Marx Company, Inc. located in New York, New York may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and the reduction must directly relate to the product impacted by imports. The workers of the subject firm were not in direct support to any company affiliated production facility; therefore, these conditions have not been met for workers at the subject firm.

Conclusion

After careful review, I determine that all workers at Karl J. Marx Company, Inc. located in New York, New York are denied eligibility to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

An investigation was instituted on January 22, 1996 for trade adjustment assistance (TA–W–31,789) under Section 223 of the Trade Act (19 U.S.C. 2273). A final determination should be made within 60 days of the institution date.

Signed at Washington, DC., this 25th day of January 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4619 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–3–M

[NAFTA–00707]

S.E.A. Enterprises, Inc., Kent, Washington; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on November 20, 1995 in response to a petition filed by a company official on behalf of workers at S.E.A. Enterprises, Inc. located in Kent, Washington. The subject firm is engaged in the coupon redemption service. Workers sort coupons that have been redeemed to grocery stores and send them back to the manufacturer.

In a letter dated February 16, 1996 to the Department of Labor investigator, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 16th day of February 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–4616 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations

1. Rehabilitation Plan and Award (OWCP–16)
2. Rehabilitation Action Report (OWCP–44)
3. Report of Changes That May Affect Your Black Lung Benefits (CM–929)
4. Report of Construction Contractor's Wage Rates (WD–10)
5. 20 CFR Part 825—The Family and Medical Leave Act of 1993
6. Notice of Recurrance of Disability and Claim for Continuation of Pay/ Compensation (CA–2a)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection of: (1) Rehabilitation Plan and Award; (2) Rehabilitation Action Report; (3) Report of Changes that May Affect Your Black Lung Benefits; (4) Report of Construction Contractor's Wage Rates; (5) 20 CFR Part 825—The Family and Medical Leave Act of 1993; (6) Notice of Recurrance of Disability and Claim for Continuance of Pay/Compensation.

Copies of the proposed information collection requests can be obtained by contacting the employee listed below in the addressee section of this notice.

DATES: Written comments must be submitted on or before May 6, 1996. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology

e.g., permitting electronic submissions of responses.

ADDRESSEE: Ms. Patricia A. Forkel, U.S. Department of labor, 200 Constitution Ave., N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 219–7601 (this is not a toll-free number), fax 202–219–6592.

SUPPLEMENTARY INFORMATION:

Rehabilitation Plan and Award

I. Background: The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act (LSHWCA) and the Federal Employees Compensation Act (FECA). Both of these Acts provide for rehabilitation services to eligible injured workers. This form (OWCP–16) is used to document the plan for rehabilitation services submitted to OWCP by the injured worker and the rehabilitation counselor, and is used by OWCP to award payment from funds provided for rehabilitation. The form summarizes the nature and costs of the rehabilitation program for a prompt decision on funding by OWCP. The signatures of the parties on the form document their collective approval of the plan.

II. Current Actions: The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to provide and fund rehabilitation for injured workers.

Rehabilitation Action Report

I. Background: The Office of Workers' Compensation administers the Federal Employees' Compensation Act. This Act provides rehabilitation services to eligible injured workers. The cost of these services are paid from the Employees' Compensation Fund. The Rehabilitation Action Report is submitted to OWCP by the rehabilitation counselor and gives prompt notification of key events requiring action in the vocational rehabilitation process.

II. Current Actions: The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to provide and fund rehabilitation for injured workers.

Report of Changes That May Affect Your Black Lung Benefits

I. Background: The Office of Workers' Compensation Programs Division of Coal Mine Workers' Compensation, provides for the payments of benefits to coal miners who are totally disabled due to pneumonconiosis and to certain survivors of miners who die due to pneumoconiosis. Once a miner or survivor is found eligible for benefits, the primary beneficiary is requested to report certain changes that may affect benefits. Responses to the form (CM–929) are reviewed to verify information in the claim file and to identify changes such as income, marital and dependency status.

II. Current Actions: The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to verify and update on a regular basis factors that affect a beneficiary's entitlement to benefits.

Report of Construction Contractor's Wage Rates

I. Background: The Wage and Hour Division administers the Davis-Bacon Act. The Act provides, in part, that ". . . every contract in excess of $2,000 . . . which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village or other civil subdivision of the State in which the work is performed . . ."

II. Current Actions: The Department of Labor seeks the extension of this information collection in order to carry out its responsibility under the Davis-Bacon and Related Acts to determine locally prevailing wage rates.

20 CFR Part 825—The Family and Medical Leave Act of 1993

I. Background: The Family and Medical Leave Act of 1993 (FMLA) requires private sector employers of 50 or more employees, and public agencies, to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for certain family and medical reasons. The Act imposes certain recordkeeping and reporting requirements in order for the Department of Labor to determine employer compliance with FMLA.

II. Current Actions: The Department of Labor seeks the extension of approval to collect this information in order to ensure that both employers and employees are aware of, and can exercise their rights and meet their respective obligations under FMLA, and to carry out its statutory responsibility to investigate and ensure employer compliance.

Notice of Recurrance of Disability and Claim for Continuation of Pay/ Compensation

I. Background: The Office of Workers' Compensation Programs administers the Federal Employee's Compensation Act. This statute provides for continuation of pay or compensation for work related injury or disease resulting from Federal employment. This form requests information from claimants with previously accepted injuries who claim a recurrence of disability, and from their supervisors. The form requests information relating to the specific circumstances leading up to the recurrance and employment and earnings information.

II. Current Actions: The Department of Labor seeks the extension of approval to collect this information in order to determine if benefits are payable for a recurrence of an injury.

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Rehabilitation Plan and Award.
OMB Number: 1215–0067.
Agency Number: OWCP–16.
Affected Public: Business or other for-profit; Individuals or households.
Total Respondents: 7,000.
Frequency: On occasion.
Total Responses: 7,000.
Average Time per Response: 30 minutes.
Estimated Total Burden Hours: 3,500.
Estimated Total Burden Cost: $0.

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Rehabilitation Action Award.
OMB Number: 1215–0182.
Agency Number: OWCP–44.
Affected Public: Businesses or other for-profit; Individuals or households.
Total Respondents: 7,000.
Frequency: On occasion.
Total Responses: 7,000.
Average Time per Response: 30 minutes.
Estimated Total Burden Hours: 3,500.
Estimated Total Burden Cost: 0.

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Report of Changes That May Affect Your Black Lung Benefits.
OMB Number: 1215–0084.
Agency Number: CM–929.
Affected Public: Individuals or households.
Total Respondents: 35,000.
Frequency: Biennially.
Total Responses: 35,000.
Average Time per Response: 5 to 8 minutes.
Estimated Total Burden Hours: 3,092.

Estimated Total Burden Cost: 0.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Report of Construction Contractor's Wage Rates.

OMB Number: 1215–0046.

Agency Number: WD–10.

Affected Public: Businesses or other for-profit.

Total Respondents: 37,500.

Frequency: On occasion.

Total Responses: 75,000.

Average Time per Response: 20 minutes.

Estimated Total Burden Hours: 25,000.

Estimated Total Burden Cost: 0.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: 29 CFR Part 285—The Family and Medical Leave Act of 1993.

OMB Number: 1215–0181.

Agency Number: WH–380 and WH–381.

Recordkeeping: 3 years.

Affected Public: Individuals or households, Businesses or other For-Profit, Not-for-profit institutions, Farms, State, local or Tribal Government.

Total Respondents: 3.9 million.

Frequency: Recordkeeping; Reporting On occasion.

Total Responses: 9.1425 million.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 645,625.

Estimated Total Burden Cost: $0.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Notice of Recurrance of Disability and Claim for Continuation of Pay/Compensation.

OMB Number: 1215–0167.

Agency Number: CA–2a.

Affected Public: Individuals or households.

Total Respondents: 550.

Frequency: Once per recurrance of injury.

Total Responses: 550.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 275.

Estimated Total Burden Cost: $176.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 23, 1996.

Cecily A. Rayburn,

Chief, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 96–4614 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment. The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR Part 36, Licenses and Radiation Safety Requirements for Irradiators.

3. The form number if applicable: Not applicable .

4. How often the collection is required: There is a one-time submittal of information to receive a license. Once a specific license has been issued, there is a 5-year resubmittal of the information for renewal of the license. In addition, recordkeeping must be performed on an on-going basis, and reports of accidents and other abnormal events must be reported on an as-necessary basis.

5. Who will be required or asked to report: All irradiators licensed by NRC or an Agreement State

6. An estimate of the number of responses: 15 reports per year.

7. The estimated number of annual respondents: 60 NRC licensees and 120 Agreement State licensees

8. An estimate of the total number of hours needed annually to complete the requirement or request: 84,030 hours (1500 hours for reporting requirements and 82,530 hours for recordkeeping requirements)

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: 10 CFR Part 36 contains mandatory requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials for a variety of purposes in research, industry, and other fields. The subparts cover specific requirements for obtaining a license or license exemption; design and performance criteria for irradiators; and radiation safety requirements for operating irradiators, including requirements for operator training, written operating and emergency procedures, personnel monitoring, radiation surveys, inspection, and maintenance. 10 CFR Part 36 also contains the recordkeeping and reporting requirements that are necessary to ensure that the irradiator is being safely operated so that it poses no danger to the health and safety of the general public and the irradiator employees.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Comments and questions should be directed to the OMB reviewer by April 1, 1996: Troy Hillier, Office of Information and Regulatory Affairs (3150–0158), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 21st day of February 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–4681 Filed 2–28–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–440]

The Cleveland Electric Illuminating Company, Et Al.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58, issued to The Cleveland Electric Illuminating Company, et al. (the licensee), for operation of the Perry Nuclear Power Plant, Unit 1, located in Lake County, Ohio.

The proposed amendment would revise the Technical Specifications (TS) to allow one main steam line's leakage rate to be as high as 35 standard cubic feet per hour (scfh) as long as the total leakage rate through all four main steam lines does not exceed 100 scfh until the end of Operating Cycle 6.

The need for a change to the main steam line leakage rate limits became apparent on February 11, 1996, during surveillance testing of the main steam lines. The "C" main steam line was found to exceed the TS limit of 25 scfh by 3.1 scfh. However, the total of all four main steam lines was less than 100 scfh. Repair of the responsible valve to reduce the leakage below 25 scfh would provide no significant benefit to safety, while involving an estimated 2 person-REM of radiation exposure and an estimated 2200 person-hours of work. Plant startup from the current refueling outage is scheduled for March 27, 1996. Therefore, the license amendment is needed prior to that date to avoid delaying plant startup. The request was submitted in a timely fashion since discovery that the "C" main steam line exceeded the leakage rate limits, and the circumstances could not have been avoided.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed TS change requests a relaxation of the leakage rate requirements for one main steam line while preserving the overall leakage rate limit for the main steam line penetrations. The proposed leakage rate limit is well below any steam line leakage rate that is used as an accident assumption, and the proposed change would not increase the probability that a steam line rupture would occur. Therefore, the probability of an accident previously evaluated has not changed. In addition, the proposed overall leakage rate limit is the leakage rate limit used in the accident analysis, and that limit is not being changed by this proposal. Therefore, the proposed change does not increase the consequences of an accident previously evaluated.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change increases the allowable leakage rate for one main steam line, without changing the combined leakage rate for the four main steam lines. This request does not change the method for operation of the plant. Thus the requested change cannot create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change will not involve a significant reduction in the margin of safety. The proposed change does not revise the overall leakage rate permitted in the present Specifications for leakage through the main steam lines. An increase in the leakage rate of any one main steam line is not considered in any accident analysis. It is the combined main steam line penetration leakage rate that is assumed in the accident analysis. Thus, since this assumed leakage rate is not being revised, the proposed change does not involve a significant reduction in the margin of safety.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 1, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the

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request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Gail H. Marcus: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay E. Silberg, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 17, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Perry Public Library, 3753 Main Street, Perry, Ohio.

Dated at Rockville, Maryland, this 23rd day of February 1996.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Project Directorate III–3, Division of Reactor Projects–III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–4684 Filed 2–28–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–309]

Maine Yankee Atomic Power Company, Maine Yankee Atomic Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–36, issued to Maine Yankee Atomic Power Company (the licensee), for operation of Maine Yankee Atomic Power Station, located in Lincoln County, Maine.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would allow the use of fuel having an initial composition of natural or slightly enriched uranium dioxide as fuel material, consistent with the limitation of NUREG–1432, "Standard Technical Specifications for Combustion Engineering Plants." Currently, Maine Yankee Technical Specification (TS) 1.3.A, Reactor Core, specifies "The maximum as-fabricated radially-averaged enrichment of any axial enrichment zone within a fuel assembly shall be 3.95 weight percent U–235." The proposed action is in accordance with the licensee's application for amendment dated August 30, 1995, as supplemented by letter dated January 15, 1996.

The Need for the Proposed Action

The proposed amendment is needed so that the licensee may use fuel having a higher enrichment than currently allowed by its license. Higher enrichment fuel would allow extended fuel irradiation and thus achieve longer fuel cycles in the future.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The proposed revision would allow the use of fuel having an initial composition of natural or slightly enriched uranium dioxide as fuel material, consistent with the limitation of NUREG–1432, "Standard Technical Specifications for Combustion Engineering Plants." In effect, the fuel would be limited to a maximum uranium–235 enrichment of 4.5 weight percent, as specified in TS 4.3.1.1 and 4.3.1.2, relating to the spent fuel pool limits for storing new and spent fuel. The safety considerations associated with the use of such fuel have been evaluated by the NRC staff. The staff has concluded that such a change would not adversely affect plant safety. The proposed change has no adverse effect on the probability of any accident. No change is being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation (an enveloping case for the Maine Yankee Atomic Power Station, because fuel burnup remains unchanged) were published and discussed in the staff assessment titled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988, and published in the **Federal Register** on August 11, 1988 (53 FR 30355), as corrected on August 24, 1988 (53 FR 32322), in connection with Shearon Harris Nuclear Power Plant Unit 1: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Summary Table S–4 of 10 CFR 51.52(c). Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts of reactor operation with higher enrichment, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. The proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Maine Yankee Atomic Power Station.

Agencies and Persons Consulted

In accordance with its stated policy, on October 26, 1995, the staff consulted with the Maine State official, Mr. Patrick J. Dostie of the Department of Human Services, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated August 30, 1995, and January 15, 1996, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

Dated at Rockville, Maryland, this 21st day of February 1996.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Deputy Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–4682 Filed 2–28–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–336]

Northeast Nuclear Energy Company; Correction

The February 14, 1996, **Federal Register** contained a "Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing," for the Millstone Nuclear Power Station, Unit No. 2. This notice corrects the notice published in the **Federal Register** on February 14, 1996, (61 FR 5816). The "Date of amendment request: January 26, 1996" is corrected to January 16, 1996.

Dated at Rockville, Maryland, this 22nd day of February 1996.

For the Nuclear Regulatory Commission.

Guy S. Vissing,

Senior Project Manager, Northeast Utilities Project Directorate, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–4685 Filed 2–28–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–029]

Yankee Atomic Electric Company (License No. DPR–3); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with respect to a Petition, dated January 17, 1996, by Citizens Awareness Network and New England Coalition on Nuclear Pollution (Petitioners). The Petitioners requested that the Nuclear Regulatory Commission (NRC) take action with regard to operation by Yankee Atomic Energy Company (YAEC or Licensee) of its Nuclear Power Station at Rowe, Massachusetts (Yankee Rowe).

Petitioners requested that the NRC comply with *Citizens Awareness Network Inc.* v. *United States Nuclear Regulatory Commission and Yankee Atomic Electric Company*, 59 F.3d 284 (1st Cir. 1995) (*CAN* v. *NRC*). Specifically, Petitioners requested that the Commission immediately order:

(1) YAEC not to undertake, and the NRC staff not to approve, further major

dismantling activities or other decommissioning activities, unless such activities are necessary to assure the protection of occupational and public health and safety; (2) YAEC to cease any such activities; and (3) NRC Region I to reinspect Yankee Rowe to determine whether there has been compliance with the Commission's Order of October 12, 1995 (CLI–95–14), and to issue a report within ten days of the requested order to Region I.

The Petitioners' request for emergency action to cease decommissioning activities was mooted in part by the Licensee's completion of activities evaluated by the NRC staff in a letter of November 2, 1995 to the licensee. Even if these activities have not been completed, they would have been permissible under the Commission's pre-1993 interpretation of its decommissioning regulations. By letter dated February 2, 1996, Petitioners' request that shipments of low-level radioactive be prohibited was denied, and Petitioners' request for reinspection of the Yankee Rowe facility to determine compliance with CLI–94–14 and to issue an inspection report was granted. The Director has determined to be moot the request that four other activities be prohibited. Additionally, he has granted the request for inspection of Yankee Rowe to determine compliance with CLI–95–14 and to issue an inspection report. The reasons for these decisions are explained in the "Director's Decision Pursuant to 10 CFR 2.206" (DD–96–01), the complete text of which follows this notice and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Greenfield Community College Library, 1 College Drive, Greenfield, Massachusetts, 01301.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes a review of the Decision in that time.

Dated at Rockville, Maryland, this 22nd day of February 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

Appendix A to This Document: Director's Decision Under 10 CFR 2.206; Yankee Atomic Electric Company

I. Introduction

An "EMERGENCY MOTION FOR COMPLIANCE WITH CIRCUIT COURT OPINION" (Petition), dated January 17, 1996, was submitted by Citizens Awareness Network and New England Coalition on Nuclear Pollution (Petitioners). Petitioners requested that the United States Nuclear Regulatory Commission (NRC or Commission) take action with respect to activities conducted by Yankee Atomic Electric Company (YAEC or Licensee) at the Yankee Nuclear Power Station in Rowe, Massachusetts (Yankee Rowe or the facility).

By an Order of the Commission dated January 23, 1996, the Emergency Motion was referred to the NRC staff for treatment as a petition pursuant to 10 CFR 2.206 of the Commission's regulations. The Commission ordered the staff to respond to the emergency aspects of the Petition in 10 days and to issue a decision on the Petition as a whole within 30 days.

Petitioners request that the NRC comply with *Citizens Awareness Network Inc.* v. *United States Nuclear Regulatory Commission and Yankee Atomic Electric Company*, 59 F.3d 284 (1st Cir. 1995) (*CAN* v. *NRC*). Specifically, Petitioners request that the Commission immediately order:

(A) YAEC not to undertake, and the NRC staff not to approve, further major dismantling activities or other decommissioning activities, unless such activities are necessary to assure the protection of occupational and public health and safety;

(B) YAEC to cease any such activities; and

(C) NRC Region I to reinspect the Yankee Nuclear Power Station in Rowe, Massachusetts (Yankee Rowe) to determine whether there has been compliance with the Commission's Order of October 12, 1995 (CLI–95–14), and to issue a report within ten days of the requested order to Region I.

As the bases for their requests, Petitioners state that:

(1) *CAN* v. *NRC* requires the cessation, and prohibits commencement, of decommissioning activities at Yankee Rowe, pending final approval of the licensee's decommissioning plan after opportunity for a hearing. CLI–95–14 forbids YAEC from conducting any further major dismantling or decommissioning activities until final approval of its decommissioning plan after completion of the hearing process;

(2) *CAN* v. *NRC* obliges the Commission and the staff to provide an opportunity to interested persons for a hearing to approve a decommissioning plan;

(3) *CAN* v. *NRC* requires the Commission to reinstate its pre-1993 interpretation of its decommissioning regulations, *General Requirements for Decommissioning Nuclear Facilities*, 53 FR 24,018, 24,025–26 (June 27, 1988), limiting the scope of permissible activities prior to approval of a decommissioning plan to decontamination, minor component disassembly, and shipment and storage of spent fuel, if permitted by the operating license and/or 10 CFR § 50.59. Under *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI–90–08, 32 NRC 201, 207, n.3 (1990), this means that the licensee may not take any action that would materially affect the methods or options available for decommissioning, or that would substantially increase the costs of decommissioning, prior to approval of a decommissioning plan. Under CLI–91–2, 33 NRC at 73, n.5, and CLI–92–2, 35 NRC at 61, n.7, other decommissioning activities, in addition to major ones, are prohibited, including offsite shipments of low-level radioactive waste produced by decommissioning activities, until after approval of a decommissioning plan;

(4) Decommissioning activities permitted by NRC Inspection Manual, Chapter 2561, § 06.06, "Modifications or Changes to the Facility", before approval of a decommissioning plan are limited to maintenance, removal of relatively small radioactive components or non-radioactive components, and characterization of the plant or site;

(5) YAEC is conducting decommissioning activities, with the approval of the NRC technical staff, in flagrant violation of *CAN* v. *NRC* and of CLI–95–14, thus threatening to render the decommissioning process nugatory and to deprive Petitioners of their hearing rights under Section 189a of the Atomic Energy Act;

(6) By letter dated October 19, 1995, YAEC described nine decommissioning activities in progress, and by letter dated October 24, 1995, interpreted permissible "major" dismantling as removal of non-radioactive material required to support safe storage of spent fuel and of those portions of the facilities which remain, or to support future dismantlement;

(7) By letter dated November 2, 1995, the NRC staff approved the activities described by the Licensee in its letter of October 19, 1995;

(8) Five of the nine activities approved by the NRC staff's letter of November 2, 1995, are major dismantling or other decommissioning activities, in the nature of Component Removal Project activities, prohibited, until after approval of a decommissioning plan, by *CAN* v. *NRC* and CLI–95–14. Petitioners object to: (a) Completing removal of the remainder of the Upper Neutron Shield Tank; (b) removal of Component Cooling Water System pipes and components and Spent Fuel Cooling System pipes and components; (c) Fuel Chute isolation; (d) Spent Fuel Pool electrical conduit installation; and (e) radioactive waste shipments. Petitioners do not object to Waste Tank removal, Ion Exchange Pit clean-up, removal of Emergency Diesel Generators, or the Brookhaven National Laboratory Cable Sampling Project.

(9) Petitioners advocate the SAFSTOR decommissioning alternative because it allows levels of radioactivity and waste volumes to decrease, thus reducing occupational and public radiation exposures, and lowering decommissioning costs;

(10) NRC Inspection Report No. 50–29/95–05 (December 16, 1995) concludes that the issue whether activities observed were in compliance with CLI–95–14 is unresolved, but approves YAEC's proposed activities, contrary to the requirements of NRC Inspection Manual, Chapter 2561, § 06.06, "Modifications or Changes to the Facility" (March 20, 1992); and

(11) YAEC's criterion for permissible decommissioning activities, that any activity involving less than 1 percent of the on-site radioactive inventory is not "major" and may take place before approval of a decommissioning plan, violates *CAN* v. *NRC* because it would allow completion of decommissioning before any decommissioning plan could be approved in hearing, and constitutes unlawful segmentation under the National Environmental Policy Act.

By letter dated January 29, 1996, Yankee Atomic Electric Company responded to the Petition. YAEC supplemented its response by letters dated February 15, 1996, February 21, 1996, and February 22, 1996, and by an E-mail message to the NRC staff on January 31, 1996.

By letter dated February 2, 1996, the NRC staff denied in part and granted in part Petitioners' requests for emergency action. The Petition was also found moot in part. Petitioners' requests that the NRC take emergency action to order (A) YAEC not to undertake and the NRC staff not to approve further major dismantling activities or other decommissioning activities, unless necessary to assure the protection of occupational and public health and safety and (B) YAEC to cease any such activities were found moot in part and denied in part. Petitioners' request for emergency action to require NRC Region I to reinspect Yankee Rowe to determine whether YAEC has complied with the Commission's Order of October 12, 1995 (CLI–95–14), and to issue a report within ten days after the Commission orders such an inspection, was granted.

Petitioners then requested the Commission to reverse the NRC staff's February 2, 1996, decision on the emergency aspects of the Petition. See "Citizens Awareness Network's and New England Coalition on Nuclear Pollution's Motion for Exercise of Plenary Commission Authority to Reverse NRC Staff 2.206 Decision, and Renewed Emergency Request for Compliance with Circuit Court Opinion." By Order dated February 15, 1996, the Commission declined to grant the emergency relief requested, as there was no showing that the Licensee would take any action before the issuance of a Director's Decision on February 22, 1996. The Commission directed the NRC staff to address the arguments advanced by Petitioners in their February 9 motion in this Decision, with the exception of the new issues raised on page 13 of the Motion, which are to be addressed in a supplementary 10 CFR § 2.206 decision.

For the reasons discussed below, Petitioners' requests that the NRC prohibit YAEC from undertaking or continuing five of the nine activities evaluated by the NRC staff's letter of November 2, 1995, are moot in part and denied in part. Of the nine activities, all with the exception of radioactive waste shipments were completed before submission of the January 17, 1996, Petition. Accordingly, Petitioners' request for relief with respect to: (1) Completing removal of the remainder of the Upper Neutron Shield Tank; (2) removal of the Component Cooling Water System pipes and components and Spent Fuel Cooling System pipes and components; (3) Fuel Chute isolation; and (4) Spent Fuel Pool electrical conduit installation is moot. Petitioners' request for relief with respect to radioactive waste shipments is denied. As explained below, all five contested activities were permissible, before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations, and thus are in compliance with CAN v. NRC and CLI–95–14. Petitioners' request that the NRC inspect Yankee Rowe to determine compliance with CLI–95–14, and issue an inspection report, was granted.

II. Background

On February 27, 1992, YAEC announced its intention to cease operations permanently at Yankee Rowe. On August 5, 1992, the NRC issued a license amendment to limit the license to a Possession-Only-License. 57 FR 37558, 37579 (Aug. 19, 1992).

In late 1992, YAEC proposed to initiate a Component Removal Project (CRP). On December 20, 1993, YAEC submitted a decommissioning plan based on a phased approach, starting with DECON, then SAFSTOR, and then finally dismantlement. Notice of Receipt of Decommissioning Plan and Request for Comments was published in the **Federal Register**. (59 FR 14689 on March 29, 1994).

On January 14, 1993, and on June 30, 1993, the Commission issued two Staff Requirements Memoranda which, in pertinent part, interpreted the Commission's regulations to permit many decommissioning activities prior to approval of a decommissioning plan, as long as the activities do not violate the terms of the existing license or 10 CFR § 50.59 with certain additional restrictions. See "Staff Requirements—Briefing by OGC on Regulatory Issues and Options for Decommissioning Proceedings (SECY–92–382), 10:00 A.M., Tuesday, November 24, 1992, Commissioner's Conference Room, One White Flint North, Rockville, Maryland (Open to Public Attendance)" (January 14, 1993) and "SECY–92–382–Decommissioning—Lessons Learned" (June 30, 1993).

On several occasions between late 1992 and early 1994, CAN asked the NRC to offer an opportunity for an administrative hearing regarding decommissioning activities conducted by YAEC at Yankee Rowe. The Commission denied each such request. CAN sought judicial review and challenged the denials and the January 14, 1993, interpretation of the Commission's decommissioning regulations.

On July 20, 1995, the United States Court of Appeals held that the Commission had: (1) Failed to provide an opportunity for hearing to CAN, as required by Section 189 of the Atomic Energy Act, in connection with the Commission's decision to permit the CRP decommissioning activities; (2) changed its pre-1993 interpretation of its decommissioning regulations without notice to the public and in violation of the Administrative Procedure Act; and (3) impermissibly allowed the licensee to conduct CRP decommissioning activities prior to compliance with the National Environmental Policy Act requirement to conduct an environmental analysis or environmental impact statement. *Citizens Awareness Network* v. *NRC and Yankee Atomic Electric Company*, 59 F. 3d 284, 291–2, 292–3, and 294–5 (1st Cir. 1995). The court remanded the matter to the Commission for proceedings consistent with the court's opinion.

In response, the Commission issued a **Federal Register** notice advising: (1) That the Commission did not intend to seek further review of CAN v. NRC; (2) that the Commission understood that decision to require a return to the interpretation of NRC decommissioning regulations that was in effect prior to January 14, 1993; and (3) that the Commission was requesting public comments on whether the Commission should order YAEC to cease ongoing decommissioning activities pending any required hearings and any other matters connected with that issue. See 60 FR 46,317 (September 6, 1995).

After consideration of comments filed in response to that notice, the Commission implemented *CAN* v. *NRC* by issuing Yankee Atomic Electric Company (Yankee Nuclear Power Station), CLI–95–14, 42 NRC 130 (1995). In CLI–95–14, the Commission reinstated its pre-1993 interpretation of its decommissioning policy, required the issuance of a notice of opportunity for an adjudicatory hearing on the Yankee Rowe decommissioning plan, held that YAEC may not conduct further "major" decommissioning activities at Yankee Rowe until approval of a decommissioning plan after completion of any required hearing, and directed YAEC to inform the Commission within 14 days of the steps it is taking to come into compliance with the reinstated interpretation of the Commission's decommissioning regulations. Yankee Atomic Electric Company, CLI–95–14, 42 NRC 130 (1995).

Pursuant to CLI–95–14, a proceeding is now underway to offer an opportunity for hearing on the Licensee's decommissioning plan for Yankee Rowe. Petitioners have sought intervention and a hearing.

As of July 20, 1995, when the court issued *CAN* v. *NRC*, YAEC had completed its Component Removal Project. In response to CLI–95–14, by letters dated October 19 and 24, 1995, YAEC identified nine ongoing activities which YAEC believed were permissible under *CAN* v. *NRC* and CLI–95–14.

In its letter of November 2, 1995, the NRC staff evaluated those nine activities and found them permissible under the Commission's pre-1993 interpretation of its decommissioning regulations, and thus under *CAN* v. *NRC* and CLI–95–14. The staff

also identified certain activities, although not proposed by the Licensee, which may not be conducted before reapproval of a decommissioning plan. Those activities include dismantlement of systems such as the main reactor coolant system, the lower neutron shield tank, vessels that have significant radiological contamination, pipes, pumps and other such components and the vapor container (containment). The staff also identified segmentation or removal of the reactor vessel from its support structure as a major dismantlement not to be conducted until after the decommissioning plan is reapproved.

III. Discussion

A. The nine activities were permissible, prior to approval of a decommissioning plan, under the Commission's pre-1993 interpretation of its decommissioning regulations, and thus are permissible under *CAN* v. *NRC* and CLI–95–14.

Petitioners contend that five of the nine activities evaluated by the NRC staff's letter of November 2, 1995, are major dismantling or other decommissioning activities prohibited until after approval of a decommissioning plan, by *CAN* v. *NRC* and CLI–95–14. Specifically, Petitioners object to: (1) Completing removal of the remainder of the Upper Neutron Shield Tank; (2) removal of Component Cooling Water System pipes and components and Spent Fuel Cooling System pipes and components; (3) Fuel Chute isolation; (4) Spent Fuel Pool electrical conduit installation; and (5) radioactive waste shipments. Petitioners do not object to Waste Tank removal, Ion Exchange Pit clean-up, removal of Emergency Diesel Generators, or the Brookhaven National Laboratory Cable Sampling Project. Petitioners acknowledge that completion of Waste Tank removal and Ion Exchange Pit clean-up are required for safety reasons. Petitioners also acknowledge that the removal of the Emergency Diesel Generators is permissible because they are not radioactive, and that the Brookhaven National Laboratory Cable Sampling Project is a research project unrelated to decommissioning. Of the nine activities, all with the exception of radioactive waste shipments were completed before submission of the January 17, 1996, Petition.

Under the Commission's pre-1993 interpretation of its decommissioning regulations, a licensee "may proceed with some activities such as decontamination, minor component disassembly, and shipment and storage of spent fuel if the activities are permitted by the operating license and/or § 50.59", prior to final approval of a licensee's decommissioning plan, [1], as long as the activity does not involve major structural or other major changes and does not materially and demonstrably affect the methods or options available for decommissioning or substantially increase the costs of decommissioning. Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI–90–8, 32 NRC 201, 207, n.3 (1990); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI–91–2, 33 NRC 61, 73. n.5 (1991); and Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI–92–2, 35 NRC 47, 61. n. 7 (1992).

Under the pre-1993 interpretation of the Commission's decommissioning regulations, examples of activities which were considered permissible and which were conducted at various facilities under a Possession-Only license before approval of a decommissioning plan included:

Shoreham [2]

- Core borings in biological shield wall
- Core borings of the reactor pressure vessel
- Regenerative heat exchanger removal and disassembly
- Various sections of reactor water clean-up system piping cut out and removed to determine effectiveness of chemical decontamination processes being used
- Removal of approximately half of reactor pressure vessel insulation and preparation for disposal
- Removal of fuel support castings and peripheral pieces removed and shipment offsite for disposal at Barnwell, South Carolina
- Reactor water clean-up system recirculation bolding pump removed and shipped to James A. FitzPatrick Nuclear Power Plant
- Control rod drive pump shipped to Brunswick Nuclear Station
- One full set of control rod blade guides sold to Carolina Power and Light Company
- Control rod drives removed, cleaned, and stored in boxes for salvage
- Process initiated for segmenting and removing reactor pressure vessel cavity shield blocks
- Process initiated for removal of instrument racks, tubing, conduits, walkways, and pipe insulation presenting interferences for decommissioning activities and/or removal of salvageable equipment

Fort St. Vrain [3]

- Control rod drive and orifice assemblies and control rods removed from core during defueling and shipped offsite for processing or disposal as low-level waste
- All helium circulators removed and shipped offsite for disposal
- Core region constraint devices (internals) removed and approximately one-half shipped offsite for disposal
- About 50 core metal-clad reflector blocks (top layer of core) removed and stored in fuel storage wells
- Removal of remaining hexagonal graphite reflector elements, defueling elements, and metal-clad reflector blocks begun
- Pre-stressed concrete reactor vessel (PCRV) top cross-head tendons and some circumferential tendons detensioned
- Some detensioned tendons removed from PCRV
- Work initiated to cut and remove PCRV liner cooling system piping presenting interferences to detensioning of PCRV tendons, and
- Asbestos insulation completely removed from piping under PCRV

Activities such as normal maintenance and repairs, removal of small radioactive components for storage or shipment, and removal of components similar to that for maintenance and repair also were permitted prior to approval of a decommissioning plan under the Commission's pre-1993 interpretation of the Commission's decommissioning regulations. See NRC Inspection Manual, Chapter 2561, Section 06.06. (Issue Date: 03/20/92).[4]

Of course, licensees are also permitted to complete or to conduct activities required for compliance with safety requirements before approval of a decommissioning plan. In addition, special consideration must be given to activities required to comply with other federal and state safety requirements. See Memorandum of Understanding Between the Nuclear Regulatory Commission and the Occupational Safety and Health Administration, "Worker Protection at NRC-licensed Facilities" (October 21, 1988), 53 FR 43950 (October 31, 1988). See also NRC Inspection Manual, Chapter 1007, "Interfacing Activities Between Regional Offices of NRC and OSHA". Petitioners concede that completion of activities already underway is permissible if completion is required for immediate safety purposes.

The staff's November 2, 1995 letter evaluated the nine activities identified in YAEC's letter of October 19, 1995, based on the Commission's pre-1993 interpretation of its decommissioning regulations,[5] and determined that the nine activities were permissible before approval of a decommissioning plan.

Upon review of the Petition and its supplement of February 9, 1996, the staff took a fresh look at the nine activities and again found them to be permissible before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations, and thus under *CAN* v. *NRC* and CLI–95–14:

[1] Statement of Consideration, "General Requirements for Decommissioning Nuclear Facilities", 53 FR 24018, 24025–26 (June 27, 1988).

[2] See letter dated December 11, 1991 from John D. Leonard, Jr., Long Island Lighting Company, to U.S. Nuclear Regulatory Commission, Docket No. 50–322.

[3] See letter dated September 4, 1992 from Donald M. Warembourg, Public Service Company of Colorado, to the U.S. Nuclear Regulatory Commission, Docket No. 50–267.

[4] "Examples of modifications and activities, that are allowed during the post-operational phase [the interval between permanent shutdown and the NRC's approval of the licensee's decommissioning plan] are (1) those that could be performed under normal maintenance and repair activities, (2) removal of certain, relatively small radioactive components, such as control rod drive mechanism, control rods, and core internals for disassembly, and storage or shipment, (3) removal of non-radioactive components and structures not required for safety in the post-operational phase, (5) shipment of reactor fuel offsite, and (6) activities related to site and equipment radiation and contamination characterization."

[5] Petitioners claim that YAEC's "1 percent" criterion for determining what constitutes major structural or other major change (and thus what activities are permissible before approval of a decommissioning plan) would allow completion of decommissioning before any decommissioning plan could be approved in hearing. The staff does not accept or approve, and has not used this criterion to determine whether any YAEC activities, including the nine activities, are permissible before approval of a decommissioning plan.

(1) Completion of Removal of the Remaining Portions of the Upper Neutron Shield Tank

As stated in the NRC staff's letter of November 2, 1995, completion of this activity was necessary to avoid a significant lead hazard to plant personnel due to lead dust or powder deposits on surfaces of the structure (particularly if the plant were to go into an extended SAFSTOR configuration, as desired by Petitioners). That contamination, if disturbed during licensee maintenance activities or NRC inspections would pose a significant health hazard to Licensee and NRC personnel.

Petitioners object that this safety rationale is unsupported by factual information regarding actual lead levels in the tank and whether the lead levels violated OSHA standards.

Dismantlement of the Upper Neutron Shield Tank required cutting sections of the tank that had lead shielding. Cutting was completed before November 2, 1995 and lead cleanup was completed by November 8, 1995. Lead dust was created by dismantlement of the tank, already underway and completed before issuance of the November 2, 1995 staff letter. Surface lead residue measurements in those areas ranged between 13,000 micrograms/ft ^{2} and 390,000 micrograms/ft ^{2}.

The Licensee's operating procedures require the Licensee to implement industrial hygiene control methods as specified by the Occupational Safety and Health Administration in areas where there is potential for employee exposure to lead. Procedure No. AP–0713, "Lead Control Program", Revision 1 Major, Section C ("Discussion"), p. 3. The target for removable lead contamination is 200 micrograms/ft ^{2}. Id., "Discussion", Section C., "Decontamination", p. 4.

Lead dust resulting from dismantlement of the Upper Neutron Shield Tank was at a concentration such that surface lead contamination exceeded the target for removable lead contamination.[6] Licensee personnel were and are required to enter the area in order to conduct surveillances to monitor radioactive contamination and for compliance with fire protection requirements.

In view of the above, this activity was permissible for safety reasons, and, therefore, would have been allowed in a comparable situation before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations.

(2) Waste Tank Removal (Activity Decay and Dilution Tank)

Petitioners concede that completion of this activity was required for safety reasons.

(3) Removal of Component Cooling Water System Pipes and Components and Spent Fuel Cooling System Pipes and Components

Contrary to Petitioners' assertions, the staff's February 2, 1996, letter did not "abandon" the November 2, 1995, rationale for finding this activity permissible. The staff's February 2 letter repeated the November 2 rationale and provided a more detailed explanation for the staff's conclusion that this activity is permissible under the pre-1993 interpretation of the Commission's decommissioning regulations.

The Licensee had installed a self-contained spent fuel pool cooling system, isolated from the fluid components and installed conduit to allow future electrical isolation from other systems, in order to enhance safety and integrity of the spent fuel pool for prolonged storage of fuel. As a result, the Component Cooling Water System pipes and components and Spent Fuel Cooling System pipes and components were rendered redundant and were no longer useful.

Removal of the no-longer useful pipes and components was not decommissioning, but maintenance that would have been allowed, before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations.[7] Petitioners erroneously contend that removal of this equipment is not maintenance. Removal of replaced equipment (as opposed to removal of dismantled equipment not intended to be replaced) is a normal maintenance activity.

In view of the above, this activity was permissible, before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations.

(4) Ion Exchange Pit Clean-up

Petitioners concede that completion of this activity was required for safety reasons.

(5) Fuel Chute Isolation

The Licensee made a commitment to NRC to complete a Fuel Chute isolation project, needed to enhance spent fuel pool integrity and long-term reliability, in response to NRC Bulletin 94–01, "Potential Fuel Pool Draindown Caused by Inadequate Maintenance Practices at Dresden Unit 1" (April 14, 1994). NRC Bulletin 94–01 explicitly identified potential siphon or drainage paths and freezing failures as hazards that could lead to drainage of the spent fuel pool.[8] NRC Bulletin 94–01 required licensees to identify which of the suggested actions that the licensees would take to prevent such hazards, or to identify an alternative course of action, if the licensees needed to take such measures to bring themselves into compliance as described in NRC Bulletin 94–01.

YAEC's Fuel Chute isolation project eliminated a potential freezing threat and siphon path that could lead to drainage of the spent fuel pool. The NRC staff determined actions taken to prevent potential siphon paths and freezing hazards connected with the Fuel Chute to be adequate. NRC Inspection Report No. 50–029/94–80 (December 9, 1994).

Petitioners erroneously maintain that isolation of the upper Fuel Chute is not necessary to prevent a risk of sipboning or freezing, because the upper Fuel Chute lies above the fuel pool and cannot serve as a siphon for liquid in the pool. The fuel chute pipe originally ran from the lower lock valve at the outside wall at the bottom of the spent fuel pit (SFP) on a diagonal path to the outer shell of the vapor container (VC), through the shell and into the VC. During former plant operations a blank flange was inserted in the pipe, outside the VC shell, in order to maintain VC leak tight integrity.

As part of the NRC Bulletin 94–01 project, one 8-foot length of this 12 inch diameter fuel chute pipe was removed from the top of the lower lock valve and a blank flange placed over the lower lock valve so that the valve could be encased in concrete. This, in effect, made the valve part of the SFP wall. The removal of this section of pipe also eliminated a potential leak path through the pipe out of the SFP wall.

Isolation of the Fuel Chute, accomplished by removing the lowest flanged pipe section and sealing the lower portion of the Fuel Chute with concrete, eliminated a freezing and siphon hazard. Sealing the Fuel Chute with concrete prevents accumulation of water in the Fuel Chute. Accumulated water could freeze during severe winter weather and possibly damage the lower lock valve outside the spent fuel pool wall, thus opening a leak path near the bottom of the spent fuel pool.

Petitioners incorrectly maintain that the Licensee did not need to remove the upper Fuel Chute in order to comply with NRC Bulletin 94–01. The licensee did not remove the upper fuel chute. The licensee has fastened a blank flange at the wall of the VC by wedging open a flanged joint. This was a maintenance activity. This blank flange is normally in place and was removed, in the past, when fuel transfer operations took place. These transfers are now prohibited by the POL. The Fuel Chute isolation project was necessary to prevent potential siphon

[6] The use of respiratory protection by workers would not have satisfied the Licensee's operating procedures. Until a determination is made that any employee working with lead will not be exposed to lead at the action level, respiratory protection is required. Procedure No. AP–0713, "Procedure", Section C ("Lead Work Practices"), p. 11. The action level is employee exposure, without regard to use of respirators, to an airborne concentration of lead of 30 micrograms per cubic meter of air calculated as an 8-hour time-weighted average, and the permissible exposure limit is 50 micrograms per cubic meter of air over an 8-hour time weighted average, and 30 micrograms per cubic meter of air over a 10-hour time weighted average. Id., "Definitions", p. 1. Between October 5, 1995 and October 11, 1995, airborne lead concentrations in the areas affected ranged between 3 micrograms/m ^{3} and 2500 micrograms/m ^{2}. Between October 12, 1995 and October 26, 1995, airborne lead concentrations ranged between 1 microgram/m ^{3} and 250 micrograms/m ^{3}.

[7] Petitioners assert that the staff provided no factual support for its conclusion that leaving the Component Cooling Water System and Spent Fuel Cooling System pipes and components in place would pose a safety hazard. Upon further review, the staff has determined that removal was not necessary to prevent a safety hazard.

[8] Requested action number 2 was: "Ensure that systems for essential area heating and ventilation are adequate and appropriate maintenance so that potential freezing failures that could cause loss of SFP water inventory are precluded." Requested action number 3 was: "Ensure that piping or hoses in or attached to the SFP cannot serve as siphon or drainage paths in the event of piping or hose degradation or failure or the mispositioning of system valves."

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and freezing risks, was one of the actions determined to be an adequate response to NRC Bulletin 94–01, and brought the Licensee into compliance with NRC requirements.

In any event, this activity is not decommissioning, but maintenance and a safety upgrade that would have been allowed under the pre-1993 interpretation of the Commission's decommissioning regulations.

In view of the above, this activity was permissible, before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations.

(6) Removal of Emergency Diesel Generators

Petitioners acknowledge that removal of the emergency diesel generators is a permissible activity prior to final approval of a decommissioning plan.

(7) Spent Fuel Pool Electrical Conduit Installation

This activity involved underground installation of a power cable and its protective covering and did not involve the removal of radioactive material. The modification also enhanced the integrity and long-term safe storage of spent fuel in the Spent Fuel Pool, by isolating Spent Fuel Pool power supplies from potential problems that could be caused by power circuits in other systems or heavy load impacts at the plant. The activity was part of the Licensee's overall project to enhance the safety of the Spent Fuel Pool by establishing independent systems dedicated to Spent Fuel Pool reliability.

The conduit installation was also consistent with NRC Bulletin 94–01, specifically the first requested action, which involves ensuring the integrity of structures and systems, necessarily including electrical systems, required for containing, cooling, cleaning, level monitoring and makeup of water in the Spent Fuel Pool. The conduit installation project enhanced integrity of the spent fuel pool by ensuring operability and adequacy of structures and systems required for spent fuel pool integrity, specifically the electrical system.

Petitioners object that the November 2, 1995 letter implies that this activity is a decommissioning activity because it will provide a separate power supply for future decommissioning activities. Petitioners contend that there is no present threat to the integrity of the spent fuel pool, and that as long as the Licensee performs no major dismantlement activities, there is no immediate need for conduit installation.

While it is true that conduit installation will isolate the spent fuel power supply from potential problems associated with future decommissioning of other systems, conduit installation also serves the larger purpose of isolating spent fuel pool power supplies from potential problems that could be caused by power circuits in other systems at the plant, wholly apart from the conduct of any decommissioning activities. This activity represents a safety enhancement.

In view of the above, this activity was permissible, before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations.

(8) Brookhaven National Laboratory Cable Sampling Project

Petitioners acknowledge that this activity is a research project unrelated to decommissioning.

(9) Radioactive Materials Shipments

Under the pre-1993 interpretation of the Commission's decommissioning regulations and 10 CFR § 50.59, the NRC has permitted shipment of radioactive waste and contaminated components prior to approval of a decommissioning plan, as long as it does not materially and demonstrably affect the methods or options available for decommissioning or substantially increase the cost of decommissioning, and because such shipments do not constitute a "major" activity.

NRC staff practice prior to 1993 permitted activities such as shipment of waste or contaminated components at a permanently defueled facility pursuing decommissioning. Prior to approval of a decommissioning plan, the licensee may dismantle and dispose of nonradioactive components and structures not required for safety in the shutdown condition. After issuance of a possession-only license, the licensee also may dismantle and dispose of radioactive components not required for safety in the shutdown condition, provided that such activity does not involve major structural or other major changes and does not foreclose alternative decommissioning methods or materially affect the cost of decommissioning. Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI–91–08, 33 NRC 461, 471 (1991), approving staff recommendations in SECY–91–129, "Status and Developments at the Shoreham Nuclear Power Station" (May 13, 1991). See also NRC Inspection Manual, Chapter 2561, §§ 06.06 and 06.07 (March 20, 1992); Fort St. Vrain Nuclear Generating Station Amendment No. 82 to Facility Operating License No. DPR–34 (Possession-Only License, May 21, 1991); and Rancho Seco Nuclear Generating Station Amendment No. 117 to Facility Operating License No. DPR–54 (Possession-Only License, March 17, 1992).

Petitioners contend that the February 2, 1996, letter of the NRC staff applied the post-1993 interpretation of the Commission's decommissioning regulations to determine that shipment of low-level radioactive waste is permissible,[9] based on the staff's citation to SECY 92–382 and the associated June 30, 1993 SRM. The particular language Petitioners point to is:

> Shipment of contaminated reactor internals needed for operation could proceed after issuance of a possession-only license because such components are not "major": i.e., they are not needed to maintain safety in the defueled condition. See SECY 92–382, "Decommissioning—Lessons Learned" (November 10, 1992) and Staff Requirements Memorandum, "SECY–92–382—Decommissioning—Lessons Learned" (June 30, 1993).

The staff's February 2, 1996, letter derived this language from a discussion at pages 22–24 of SECY–92–382, "Decommissioning—Lessons Learned".

The Commission had in fact permitted shipment of low-level waste prior to approval of a decommissioning plan under its pre-1993 interpretation of its decommissioning regulations, as explained above. SECY 92–382 accurately stated that the Commission had in fact permitted shipment of not only low-level radioactive waste and some components, but also some reactor internals, before approval of a decommissioning plan.[10] The particular reference to "major" components in SECY 92–382 was in the context of permissible shipment of waste; that language did not define "major" for the purpose of determining what components may be dismantled or removed prior to approval of a decommissioning plan. No component can be shipped unless it is first removed or dismantled, and authority to ship a component already removed or dismantled does not *ipso facto* constitute authority to remove or dismantle the component in the first place. Likewise, the citation in the NRC staff's February 2, 1996, letter to Petitioners was not intended to define "major" for the purpose of determining what components could be dismantled or removed prior to approval of a decommissioning plan, but referred to what could be shipped. The staff's reference to SECY 92–382 was made in the context of permissible shipments only, not permissible component dismantling or removal. Regrettably, the staff's February 2, 1995, reference to SECY 92–382 may have been insufficiently detailed to make the purpose of the reference clear.

In the case at hand, the Licensee's proposal was to ship low-level radioactive waste.[11]

[9] Petitioners incorrectly contend that the staff's conclusion, that the methods or options available for decommissioning will not be materially or demonstrably affected because the Licensee's activities involve approximately 2.3 curies of residual activity, constitutes application of the Licensee's one percent criterion. The Licensee had proposed in its letter of October 24, 1995, that decommissioning activities involving less than one percent of the total curies of non-fuel components not including greater than Class C components, are not "major" decommissioning activities and thus are permissible under the pre-1993 interpretation of the Commission's decommissioning regulations. As previously stated, the NRC staff does not accept or approve, and did not use, this criterion in its February 2, 1996 (or its November 2, 1995) letter to determine whether activities proposed by the Licensee, including shipping, are "major" activities for purposes of permissible decommissioning before approval of a decommissioning plan. See, e.g., note 5, supra. The staff in fact stated that since the Licensee's activities involve only 2.3 curies out of a total 4448 curies residual activity which must be decommissioned, shipment of low-level radioactive waste will not demonstrably affect the methods or options available for decommissioning.

[10] See Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI–91–8, 33 NRC 461, 471 (1991). See also SECY–91–129, "Status and Developments at the Shoreham Nuclear Power Station (SNPS)", p. 3 (May 13, 1991) (contaminated fuel support castings and peripheral pieces).

[11] Petitioners contend that there is no basis to determine the accuracy of the Licensee's estimate that it will make 54 shipments of low-level radioactive waste between October 1995 and July 1996. Petitioners, however, fail to set forth any facts or rationale which raise a question as to the reasonableness of the Licensee's estimate of the number of shipments.

The NRC staff's conclusion that the Licensee's proposal to ship radioactive waste[12] is permissible under the pre-1993 interpretation of the Commission's decommissioning regulations was based on the understanding that the proposal was to ship low-level radioactive waste, and was not intended to be and was not a determination that the removal or dismantling of major components was permissible under the pre-1993 interpretation of the Commission's decommissioning regulations,[13] under *CAN v. NRC*, or under CLI–94–11.

The Commission's decisions in Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI–92–1, 33 NRC 61, 73, n. 5 (1991) and Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI–92–2, 35 NRC 47, 61, n. 7 (1992) do not, as Petitioners contend, prohibit shipment of low-level radioactive waste. No issue concerning such shipments was addressed in those decisions. The language cited by Petitioners paraphrases the general guideline, that "major dismantling and other activities that constitute decommissioning under the NRC's regulations must await NRC approval of a decommissioning plan", and is derived from the 1988 Statement of Consideration, "General Requirements for Decommissioning Nuclear Facilities", *supra*. As explained above, it was agency practice before 1993 to permit shipment of low-level radioactive waste and contaminated components before approval of a decommissioning plan.

Rather than store low-level radioactive waste on-site for extended periods, it has long been agency policy that such waste should be shipped to disposal sites if the ability to dispose of waste at a licensed disposal site exists. Shipping of waste at the earliest practicable time minimizes the need for eventual waste reprocessing due to possibly changing burial ground requirements and reduces occupational and non-occupational exposures and potential accident consequences. NRC Generic Letter 81–38, "Storage of Low-Level Radioactive Wastes at Power Reactor Sites" (November 10, 1981).

Petitioners contend that YAEC may not ship low-level radioactive waste because the Yankee Rowe Possession-Only-License does not permit it.[14] Although Petitioners are correct that no language in the Yankee Rowe POL explicitly states that shipment of low-level radioactive waste is authorized, the Yankee Rowe POL does authorize that activity. Section 1.H. of the POL, issued August 5, 1992, authorizes Yankee Rowe to receive, possess and use byproduct, source and special nuclear materials in accordance with the Commission's regulations in 10 CFR Parts 30, 40 and 70. Authority to ship low-level radioactive waste is conferred upon all byproduct material, source material and special nuclear material licensees by NRC regulations at 10 CFR Parts 30, 40 and 70. Byproduct materials licensees, source materials licensees, and special nuclear materials licensees, including Yankee Rowe, are authorized to transfer such material, as long as the recipient is authorized, see 10 CFR §§ 30.41, 40.51, and 70.42, and as long as preparation for shipment and transport is in accordance with the requirements of 10 CFR Part 71. See 10 CFR §§ 30.34(c), 40.41(c), 70.41(a). In particular, Section 2.C. of the Yankee Rowe POL states that the POL is deemed to contain and is subject to 10 CFR §§ 30.34 and 40.41. Accordingly, the POL authorizes the transport of low-level radioactive waste from Yankee Rowe.

Petitioners state that the "cardinal consideration" which determines whether a decommissioning activity is "major" should be the radiation dose it yields, not the radioactivity of the component involved[15], and thus the NRC staff's February 2, 1996, letter erroneously relied upon the number of curies shipped rather than the radioactive doses involved in shipping low-level waste to determine whether the activity is permissible.[16]

The criteria for determining whether shipments of low-level radioactive waste will demonstrably affect the methods or options available for decommissioning have not been well-defined. During review of the Petition and its supplement, the NRC staff has continued to examine the question of whether the Licensee's shipments of low-level radioactive waste will demonstrably affect the methods or options available for decommissioning. In this case, the staff has now also compared the radiation dose involved in the packaging and shipping of the low-level radioactive waste with the radiation dose estimated for decommissioning of the Licensee's facility. This is because, under Petitioners' theory regarding the choice of the decommissioning option, as we understand it, it seems that adoption of a different decommissioning option would most likely be required to reduce dose. The Licensee estimates that the radiation dose involved in the packaging and shipment of low-level radioactive waste between November 1, 1995 and July 1996 to be 17 person-rem.[17] The estimated total radiation exposure for decommissioning the facility is 755 person-rem.[18] The estimated dose from packaging and shipping is approximately 2% of the total dose from decommissioning. As can be seen, most of the dose will be incurred in activities other than shipment of low-level radioactive waste. As the Commission has previously held in this case, even potential dose reductions on the order of 900 person-rem, unless there is some extraordinary aspect to the case not apparent, cannot have ALARA significance such that one decommissioning option

[12] Petitioners state that neither YAEC nor the NRC staff provided any information about the radioactivity levels in the 54 shipments that YAEC estimates it shipped and will ship between October 1995 and July 1996, and that the Licensee's January 29, 1996, estimate of 2.3 curies involved in activities already completed does not provide information about radioactivity levels of the 54 shipments that YAEC estimates it will have shipped before the end of July 1996. The Licensee has now provided that information and estimates the total radioactivity involved in the packaging and shipment of low-level radioactive waste between November 1, 1995 and July 1996, to be 1817 curies. See letter dated February 21, 1996, from K. J. Heider, YAEC, to Morton B. Fairtile, NRC. The four contested activities, other than shipping, amounted to only approximately 8.2001 curies of residual radioactivity.

[13] Petitioners assert that the NRC staff's February 2, 1966, letter states that the shipment of low-level radioactive waste is permitted under the pre-1993 criteria because the radioactivity of the shipments amounts to 2.3 curies or less out of the remaining 4448 curies of residual radioactivity to be decommissioned in the form of Class C or less waste. What the staff said was that because the Licensee's activities involve approximately 2.3 curies of the remaining 4448 curies of residual radioactivity to be decommissioned in the form of Class C or less waste, shipment of low-level radioactive waste produced by the activities evaluated in the staff's November 2, 1995 letter will not materially or demonstrably affect the methods or options available for decommissioning the Yankee Rowe site.

[14] Petitioners claim that the Commission's decommissioning regulations prohibit low-level radioactive waste shipments that are not authorized by YAEC's license, citing the 1988 Statement of Consideration. See "General Requirements for Decommissioning Nuclear Facilities", 53 FR 24025–26 (June 27, 1988). The Statement of Consideration makes no mention of shipment of low-level radioactive waste. The language cited gives examples of activities which licensees may conduct before approval of a decommissioning plan, but does not state or imply that the list is inclusive: "Although the Commission must approve the decommissioning alternative and major structural changes to radioactive components of the facility or other major changes, the licensee may proceed with some activities such as decontamination, minor component disassembly, and shipment and storage of spent fuel if these activities are permitted by the operating license and/or § 50.59". (Emphasis added)

[15] The Commission has not articulated as a criterion, for determining what constitutes a "major" decommissioning activity, the radiation dose yielded by the activity, and Petitioners cite no authority for this argument. Nor has the Commission articulated the radioactivity involved as a criterion for determining what constitutes "major" decommissioning activity.

[16] The staff mistakenly understood the Licensee's letter of January 29, 1996 to mean that the activities evaluated by the staff's November 2, 1995 letter involved 2.3 curies. The radioactivity involved in the four contested activities, other than shipping of low-level radioactive waste, amounted to approximately 8.2001 curies of residual radioactivity. (Removal of the Upper Neutron Shield Tank involved less than 5 curies, and removal of the Component Cooling Water System pipes and components and Spent Fuel Cooling System pipes and components involved 1.2001 curies. See letter dated October 19, 1995, from Russell A. Mellor, YAEC, to Morton B. Fairtile, NRC. Fuel Chute Isolation involved 2 curies, and spent fuel pool electrical conduit installation involved no curies. See letter dated February 21, 1996, from K. J. Heider, YAEC, to Morton B. Fairtile, NRC.) In addition, the Licensee estimated that since completion of the activities described in the NRC letter, activities have been authorized by the Licensees' Manager of Operations which remove components containing a total of 2.3 curies of radioactive material. See letter dated January 29, 1996, from Andrew C. Kadak, YAEC, to William T. Russell, NRC.

[17] See letter dated February 21, 1996, from K. J. Heider, YAEC, to Morton B. Fairtile, NRC.

[18] Order Approving the Decommissioning Plan and Authorizing Decommissioning of Facility (Yankee Nuclear Power Station), "Environmental Assessment by the U.S. Nuclear Regulatory Commission Related to the Request to Authorize Facility Decommissioning", p. 22.

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would be preferable to another.[19] Accordingly, the staff concludes that the Licensee's shipment of low-level radioactive waste will not demonstrably affect the methods and options available for decommissioning.

In view of the above, the shipments of low-level radioactive waste between October 1995 and July 1996, before approval of a decommissioning plan, is permissible under the pre-1993 interpretation of the Commission's decommissioning regulations.

B. The five contested activities will neither individually nor collectively substantially increase the costs of decommissioning.

YAEC estimates the cost of shipment and disposal of all low-level radioactive waste between the October 1995 issuance of CLI–95–14 and the scheduled date of completion of the hearing in mid-July 1996, to be $6.5 million, or approximately 1.75 percent of the estimated $368.8 million total decommissioning cost. It would be speculative to conclude that the decommissioning method proposed by Petitioners, SAFSTOR, would be less expensive. There is no evidence that the Licensee's shipments will increase decommissioning costs or that continued storage of the waste will decrease the ultimate costs. Thus, the staff concludes that YAEC's shipment of low-level radioactive waste will not substantially increase the costs of decommissioning.

Petitioners erroneously contend that the cost of shipments of low-level radioactive waste could be reduced by postponing the packaging and shipment of low-level waste, presumably because some waste may decay to levels such that the volume of waste which will require shipment would decrease. Delay will not significantly reduce the volume of waste shipped because the waste is not segregated by the radioactive isotope involved, and some of the radioactive isotopes involved have very long half-lives, i.e., nickel-63 has a half-life of 100 years. Cobalt-60, which has a half-life of 5.27 years, was the isotope selected by the Petitioners to postulate a reduction in waste volume. Moreover, delay could possibly increase decommissioning costs because shipping and burial costs may increase.

The Licensee estimates costs for the five activities contested by Petitioners to be $6.5 million for shipments of low-level waste between October 1995 and July 1996 and $2.4 million for the four other contested activities,[20] for a total of $8.9 million, or 2.1% of the $368.8 million estimated total decommissioning costs. There is no evidence that these activities will give rise to consequences that will increase the total cost of decommissioning. Accordingly, the five contested activities will not substantially increase decommissioning costs, either individually or collectively.

C. Petitioners' Request for an Inspection and Inspection Report Was Granted.

Petitioners' request for reinspection of Yankee Rowe to determine compliance with CLI–95–14 and for issuance of an inspection report was granted. NRC Region I inspected the Yankee Rowe facility for a second time on December 5–18, 1995, to determine compliance with CLI–95–14. NRC Inspection Report No. 50–029/95–07 was issued January 31, 1996. The Inspection Report concludes that the Licensee's activities were conducted in accord with the specifications of the staff's November 2, 1995 letter. The first inspection was conducted in October 1995, before the provision of technical guidance or criteria to assist the Region in determining compliance with CLI–95–14. Subsequently, the NRC staff issued its letter of November 2, 1995, evaluating the nine activities, all of which are permitted by *CAN* v. *NRC* and CLI–95–14, as explained above.

Petitioners claim that the January 31, 1996 Inspection Report merely repeats the staff's erroneous interpretation of the Commission's decommissioning standards, and thus constitutes no relief. The inspection report explicitly states that the nine activities evaluated by the staff's November 2, 1995 letter were inspected and that the Licensee limited the scope of its work to those activities. Petitioners' disagreement with the staff's conclusion that the nine activities are in compliance with *CAN* v. *NRC* and CLI–95–14 does not constitute denial of Petitioners' request for an inspection and an inspection report to determine compliance with *CAN* v. *NRC* and CLI–95–14.

IV. Conclusion

For the reasons given above, Petitioner's request that shipments of low-level radioactive waste be prohibited is denied, and Petitioners' request that four other activities be prohibited is moot.[21] Additionally, Petitioners' request for an inspection of Yankee Rowe to determine compliance with CLI–95–14 and an inspection report was granted.

As provided by 10 CFR § 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. The Decision will become the final action of the Commission 25 days after issuance, unless the Commission on its own motion institutes review of the Decision within that time.

Dated at Rockville, Maryland this 22nd of February, 1996.

For the Nuclear Regulatory Commission.

William. T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–4683 Filed 2–28–96; 8:45 am]

BILLING CODE 7590–01–P

[19] Yankee Atomic Electric Company, CLI–96–01 (January 16, 1996).

[20] The Licensee spent $610,000 on the four activities in the fourth quarter of 1995, which is approximately 25 percent of the estimated total cost for these four activities. See Letter dated February 15, 1996, from Russell A. Mellor to Morton B. Fairtile.

[21] Petitioners claim that the NRC erroneously found on February 2, 1996, that the request for emergency relief was moot in part. Petitioners assert that the Licensee continues to unlawfully ship low-level radioactive waste and that on January 29, 1996, the Licensee stated that it is considering whether to conduct seven activities, in addition to the nine evaluated by the staff's November 2, 1995, letter. The February 2, 1996, letter of the staff and this Decision explicitly denied Petitioner's request to prohibit shipment of low-level radioactive waste, and made no finding that this request is moot. The February 2, 1996, letter and this Decision explicitly state that Petitioners' request for emergency relief regarding the remaining four contested activities was moot because those activities had been completed before the submission of the Petition. Nonetheless, both the February 2, 1996 letter and this Decision found that those four activities were permissible, prior to approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations. Neither the staff's February 2, 1996, letter, nor this decision address the seven activities which the Licensee states it is now considering. The staff will address those activities in a supplemental Director's Decision, as required by the Commission's order of February 15, 1996.

POSTAL RATE COMMISSION

[Docket No. A96–11; Order No. 1103]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued February 23, 1996.

Before Commissioners: Edward J. Gleiman, Chairman; W.H. "Trey" LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.

In the Matter of: Oquossoc, Maine 04964 (William Cummings, Petitioner).

DOCKET NUMBER: A96–11
NAME OF AFFECTED POST OFFICE: Oquossoc, Maine 04964
NAME(S) OF PETITIONER(S): William Cummings
TYPE OF DETERMINATION: Consolidation
DATE OF FILING OF APPEAL PAPERS: February 20, 1996
CATEGORIES OF ISSUES APPARENTLY RAISED:

1. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by March 6, 1996.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

February 20, 1996
Filing of Appeal letter
February 23, 1996
Commission Notice and Order of Filing of Appeal
March 15, 1996
Last day of filing of petitions to intervene [*see* 39 C.F.R. § 3001.111(b)]
March 26, 1996
Petitioner's Participant Statement or Initial Brief [*see* 39 C.F.R. § 3001.115(a) and (b)]
April 15, 1996
Postal Service's Answering Brief [*see* 39 C.F.R. § 3001.115(c)]
April 30, 1996
Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 C.F.R. § 3001.115(d)]
May 7, 1996
Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 C.F.R. § 3001.116]
June 19, 1996
Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. § 404(b)(5)]

[FR Doc. 96–4596 Filed 2–28–96; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collection, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection: Aged Monitoring Questionnaire: OMB 3220–0178.

As outlined in 20 CFR 219.3(b), once a claimant establishes entitlement to an annuity under the Railroad Retirement Act (RRA), the RRB may ask that annuitant to produce evidence needed to decide whether he or she may continue to receive an annuity or whether the annuity should be reduced or stopped.

The RRB utilizes Form G–19c, Aged Monitoring Questionnaire, to monitor select aged annuitants. Use of the form assists RRB efforts to discover unreported deaths and also to determine if an aged annuitant is able to manage their own affairs. One response is requested from each respondent. Completion is voluntary. Minor editorial and reformatting changes to Form G–19c have been proposed.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form No(s)	Annual re-sponses	Time (min)	Burden (hrs)
G–19c	10,000	6	1,000

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–4648 Filed 2–28–96; 8:45 am]

BILLING CODE 7905–01–M

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection: Employee Non-Covered Service Pension Questionnaire; OMB 3220–0154.

Section 215(a)(7) of the Social Security Act provides for a reduction in social security benefits based on employment not covered under the Social Security Act or the Railroad Retirement Act (RRA). This provision applies a different social security benefit formula to most workers who are first eligible after 1985 to both a pension based on whole or in part on noncovered employment and a social security retirement or disability benefit. There is a guarantee provision that limits the reduction in the social security benefit to one-half of the portion of the pension based on noncovered employment after 1956. Section 8011 of P.L. 100–647 changed the effective date of the onset from the first month of eligibility to the first month of concurrent entitlement to the noncovered service benefit and the RRA benefit.

Section 3(a)(1) of the RRA provides that the Tier I benefit of an employee annuity will be equal to the amount (before any reduction for age or deduction for work) the employee would receive if he or she would have been entitled to a like benefit under the Social Security Act. The reduction for a noncovered service pension also applies to a Tier I portion of employees under the RRA where the annuity or noncovered service pension begins after 1985. Since the amount of a Tier I benefit of a spouse is one-half of the employee's Tier I, the spouse annuity is also affected by the employee's noncovered service pension reduction of his or her Tier I benefit.

The RRB utilizes Form G–209, Employee Noncovered Service Pension Questionnaire, to obtain needed information from railroad retirement employee applicants or annuitants about the receipt of a pension based on employment not covered under the

Railroad Retirement Act or the Social Security Act. It is used as both a supplement to the employee annuity application, and as an independent questionnaire to be completed when an individual who is already receiving an employee annuity becomes entitled to a pension.

One response is requested of each respondent. Completion is required to obtain or retain benefits.

The RRB proposes a minor editorial change to Form G–209.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form No(s).	Annual response	Time (min)	Burden (hrs)
G–209 (partial questionnaire)	100	1	2
G–209 (full questionnaire)	400	8	53
Total	500	.....	55

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–4677 Filed 2–28–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21771; 812–9874]

Qualified Unit Investment Liquid Trust Series Equity Opportunity Trust, et al.; Notice of Application

February 22, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Qualified Unit Investment Liquid Trust Series Equity Opportunity Trust (the "Trust"), Oppenheimer Quest for Value Funds (the "Value Funds"), OppenheimerFunds, Inc. ("OppenheimerFunds"), OpCap Advisors ("OpCap"), OCC Distributors (the "Sponsor"), and Oppenheimer Fund Distributors, Inc. ("OFDI").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act to grant an exemption from sections 14(a) and 19(b) of the Act and rule 19b–1 thereunder and under section 17(d) and rule 17d–1 to permit certain affiliated transactions.

SUMMARY OF APPLICATION: Applicants request an order (a) permitting the Trust to invest in shares of the Value Funds and U.S. Treasury zero coupon obligations; (b) exempting the Sponsor from having to take for its own account or place with others $100,000 worth of units in the Trust; (c) permitting the Trust to distribute capital gains resulting from redemptions of the Value Fund shares within a reasonable time after receipt; and (d) permitting certain affiliated transactions involving the Trust.

Applicants request that relief also be extended to any other open-end investment company (including any series thereof), other than money market or no-load funds, that may be advised by OppenheimerFunds or OpCap or be distributed by OFDE, or be advised and/or distributed by any entity controlling, controlled by, or under common control with OppenheimerFunds, OpCap, or OFDI (collectively with the Value Funds, the "Funds").

FILING DATES: The application was filed on December 6, 1995, and amended on February 12, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 18, 1996, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants: Oppenheimer Quest for Value Funds, the Trust, OppenheimerFunds, and OFDI, Two World Trade Center, New York, New York 10048–0203; the Sponsor, Two World Financial Center, 225 Liberty Street, New York, New York 10080–6116; and OpCap, One World Financial Center, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Value Funds are open-end management investment companies registered under the Act. The Value Funds have adopted a multiple class plan and shares of the Value Funds are offered with front-end sales loads and, in certain instances, with contingent deferred sales charges. Each of the Value Funds has adopted a rule 12b–1 plan.

2. Each Value Fund has entered into an investment advisory or management agreement with OppenheimerFunds or one of its affiliates and, in some cases, a sub-advisory agreement with OpCap. OppenheimerFunds, formerly Oppenheimer Management Corporation, is owned by Oppenheimer Acquisition Corp, a holding company controlled by Massachusetts Mutual Life Insurance Company. OpCap is a majority-owned subsidiary of Oppenheimer Capital. OFDI acts as the distributor for the Value Funds. OFDI is a wholly-owned subsidiary of OppenheimerFunds. The Sponsor acts as sponsor for the Trust and is a majority owned subsidiary of Oppenheimer Capital.

3. The Trust will offer units in series ("Trust Series"). Each Trust Series will contain shares of one Fund and U.S. Government zero coupon obligations. The Trust's objective is to provide protection of capital while providing for capital appreciation through investments in zero coupon obligations and shares of the Funds. Each Trust Series will be organized pursuant to a reference trust agreement that will incorporate a trust indenture and agreement relating to the entire Trust (collectively, the "Trust Agreement") and that will name a qualified bank as trustee ("Trustee").

4. Each Trust Series will be sponsored by the Sponsor, which will perform the functions typical of unit investment trust sponsors. The Sponsor expects to deposit in the Trust substantially more than $100,000 aggregate value of zero coupon obligations and shares of the Funds.

5. Trust units will be offered for sale to the public through the final prospectus by the Sponsor. Trust series are intended to be offered to the public initially at prices based on the net asset value of the shares of the Funds selected for deposit in that Trust Series, plus the offering side value of the zero coupon obligations contained therein, plus a sales charge. The Trust will redeem units at prices based on the then currently aggregate bid side evaluation of the zero-coupon obligations and the then current net asset value of the Fund shares.

6. The Trust will be structured so that each Trust Series will contain a sufficient amount of zero coupon obligations to assure that, at the specified maturity date for such Trust Series, the purchaser of a unit would receive back the approximate total amount of the original investment in the Trust, including the sales charge. Such investor would receive more than the original investment to the extent that the underlying Fund made any distributions during the life of the Trust and/or had any value at the maturity of the Trust Series.

7. The Sponsor intends to maintain a secondary market for Trust units, but is not obligated to do so. The existence of such a secondary market will reduce the number of units tendered to the Trustee for redemption and thus alleviate the necessity of selling portfolio securities to raise the cash necessary to meet such redemptions.

8. The Trust has taken certain steps to reduce the impact of the termination of a Trust Series on the Fund deposited therein. First, the Trust will, with respect to all unitholders still holding units at scheduled termination and to the extent desired by such unitholders, transfer the registration of their proportionate number of shares of the Funds from the Trust to a registration in the investor's name in lieu of redeeming such shares. Second, the Funds will offer all such unitholders the option of investing the proceeds from the zero coupon obligations in shares of the Funds at net asset value (*i.e.*, without the imposition of the normal sales load). The Funds also will offer unitholders the option of investing all distributions from the Trust during the life of the Trust Series in shares of the Funds at net asset value. Thus, it is anticipated that many of the unitholders will become and remain direct shareholders of the Funds and that many will elect to invest their proceeds of the Trust Series in an account of the Fund.

Applicants' Legal Analysis

1. Applicants seek relief under section 6(c) of the Act from sections 14(a) and 19(b) of the Act and rule 19b–1 thereunder and pursuant to section 17(d) of the Act and rule 17d–1 thereunder.

2. Section 14(a) of the Act requires that investment companies have $100,000 of net worth prior to making a public offering. The Trust will have an initial net worth in excess of $100,000 invested in zero coupon obligations and shares of the Funds. Applicants recognize, however, that because of the Sponsor's intention to sell all the units of the Trust, the Sponsor may be deemed to be reducing the Trust's net worth below the requirements of section 14(a). Applicants will comply in all respects with the requirements of rule 14a–3, which provides an exemption from section 14(a), except that the Trust would not restrict its portfolio to "eligible trust securities."

3. Section 19(b) of the Act and rule 19b–1 thereunder provide that, except under limited circumstances, no registered investment company may distribute long-term capital gains more than once every twelve months. Applicants request an exemption from section 19(b) and rule 19b–1 to the extent necessary to permit capital gains earned in connection with the redemption of shares of the Funds to be distributed to unitholders along with the Trust's regular distributions. Applicants believe that the requested exemption is consistent with the purposes of section 19(b) and rule 19b–1 because the dangers of manipulation of capital gains and confusion between capital gains and regular income distributions does not exist in the Trust. Applicants state that the Sponsor has no incentive to redeem or permit the redemption of units in order to generate capital gains. Moreover, because principal distributions are clearly indicated in accompanying reports to unitholders as a return of principal, applicants believe that the danger of confusion is not present in the operations of the Trust.

4. Section 6(c) of the Act provides, in relevant part, that the SEC may by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interests, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets that standards of section 6(c).

5. Section 17(d) of the Act and rule 17d–1 thereunder make it unlawful for any affiliated person of, or principal underwriter for, a registered investment company, or any affiliated person of either of them, acting as a principal, to engage in a joint transaction with the investment company unless the joint transaction has been approved by the SEC. Applicants' proposed arrangements may be a joint transaction under these provisions. Applicants believe that the proposed arrangements are consistent with the provisions, policies, and purposes of the Act, and that participation by each registered investment company is not on a basis less advantageous than that of other participants.

6. Applicants do not request relief under section 12(d)(1) of the Act.[1] Section 12(d)(1)(E) provides that section 12(d)(1) shall not apply to securities purchased by a registered unit investment trust if the securities are the only "investment securities" held by the trust. Applicants believe that the U.S. Treasury zero coupon obligations are not "investment securities" for purposes of section 12(d)(1)(E)[2] and that the shares of the Funds are the only "investment securities" which the Trust will hold. Accordingly, they do not believe relief from section 12(d)(1) is necessary.

Applicants' Conditions

Applicants agree to the following as conditions to the granting of the requested order:

1. The Trustee will not redeem Fund shares except to the extent necessary to meet redemptions of units by unitholders, or to pay Trust expenses should distributions received on fund shares and rebated rule 12b–1 fees prove insufficient to cover such expenses.

2. Any rule 12b–1 fees received by the Sponsor in connection with the distribution of Fund shares to the Trust will be immediately rebated by the Sponsor to the Trustee.

3. All Trust Series will be structured so that their maturity dates will be at least thirty days apart from one another.

4. The Trust and the Sponsor will comply in all respects with the requirements of rule 14a–3, except that the Trust will not restrict its portfolio investments to "eligible trust securities."

5. Shares of a Fund which are held by a Series of the Trust will be voted by the Trustee of the Trust, and the Trustee will vote all shares of a Fund held in a Trust Series in the same proportion as all other shares of that Fund not held by the Trust are voted.

6. Any shares of the Funds deposited in any Trust Series or any shares

[1] Section 12(d)(1) limits purchases by registered investment companies of securities issued by other investment companies.

[2] Equity Securities Trust (pub. avail. Jan. 19, 1994).

acquired by unitholders through reinvestment of dividends or distributions or through reinvestment at termination will be made without imposition of any otherwise applicable sales load and at net asset value.

7. The prospectus of each Trust Series and any sales literature or advertising that mentions the existence of a reinvestment option will disclose that shareholders who elect to invest in Fund shares will incur a rule 12b–1 fee.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4579 Filed 2–28–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21773; 812–9882]

Van Kampen American Capital, Inc. et al.; Notice of Application

February 23, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Van Kampen American Capital Equity Trust, Van Kampen American Capital Pennsylvania Tax Free Income Fund, Van Kampen American Capital Tax Free Trust, Van Kampen American Capital Tax Free Money Fund, Van Kampen American Capital Trust, Van Kampen American Capital U.S. Government Trust, Van Kampen American Capital Comstock Fund, Van Kampen American Capital Corporate Bond Fund. Van Kampen American Capital Emerging Growth Fund, Van Kampen American Capital Enterprise Fund, Van Kampen American Capital Equity Income Fund, Van Kampen American Capital Global Managed Assets Fund, Van Kampen American Capital Government Securities Fund, Van Kampen American Capital Government Target Fund, Van Kampen American Capital Growth and Income Fund, Van Kampen American Capital Harbor Fund, Van Kampen American Capital High Income Corporate Bond Fund, Van Kampen American Capital Life Investment Trust, Van Kampen American Capital Limited Maturity Government Fund, Van Kampen American Capital Pace Fund, Van Kampen American Capital Real Estate Securities Fund, Van Kampen American Capital Reserve Fund, Van Kampen American Capital Small Capitalization Fund, Van Kampen American Capital Tax-Exempt Fund, Van Kampen American Capital Texas Tax Free Income Fund, Van Kampen American Capital U.S. Government Trust for Income, and Van Kampen American Capital World Portfolio Series Trust (collectively, the "Open-End Funds"); Van Kampen American Capital Municipal Income Trust, Van Kampen American Capital California Municipal Trust, Van Kampen American Capital Intermediate Term High Income Trust, Van Kampen American Capital Limited Term High Income Trust, Van Kampen American Capital Prime Rate Income Trust, Van Kampen American Capital Investment Grade Municipal Trust, Van Kampen American Capital Municipal Trust, Van Kampen American Capital California Quality Municipal Trust, Van Kampen American Capital Florida Quality Municipal Trust, Van Kampen American Capital New York Quality Municipal Trust, Van Kampen American Capital Ohio Quality Municipal Trust, Van Kampen American Capital Pennsylvania Quality Municipal Trust, Van Kampen American Capital Trust for Investment Grade Municipals, Van Kampen American Capital Trust for Insured Municipals, Van Kampen American Capital Trust for Investment Grade California Municipals, Van Kampen American Capital Trust for Investment Grade Florida Municipals, Van Kampen American Capital Trust for Investment Grade New Jersey Municipals, Van Kampen American Capital Trust for Investment Grade New York Municipals, Van Kampen American Capital Trust for Investment Grade Pennsylvania Municipals, Van Kampen American Capital Municipal Opportunity Trust, Van Kampen American Capital Advantage Municipal Income Trust, Van Kampen American Capital Advantage Pennsylvania Municipal Income Trust, Van Kampen American Capital Strategic Sector Municipal Trust, Van Kampen American Capital Value Municipal Income Trust, Van Kampen American Capital California Value Municipal Income Trust, Van Kampen American Capital Massachusetts Value Municipal Income Trust, Van Kampen American Capital New Jersey Value Municipal Income Trust, Van Kampen American Capital New York Value Municipal Income Trust, Van Kampen American Capital Ohio Value Municipal Income Trust, Van Kampen American Capital Pennsylvania Value Municipal Income Trust, Van Kampen American Capital Municipal Opportunity Trust II, Van Kampen American Capital Florida Municipal Opportunity Trust, Van Kampen American Capital Advantage Municipal Income Trust II, and Van Kampen American Capital Select Sector Municipal Trust (collectively, the "Closed-End Funds," together the Open-End and Closed-End Funds are the "Funds"); and Van Kampen American Capital Investment Advisory Corp. and Van Kampen American Capital Asset Management, Inc. (collectively, the last two entities are the "Advisers").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g), and 23(a) and rule 2a–7 thereunder, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1), and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would permit the Funds to enter into deferred compensation arrangements with their independent trustees. The requested order would supersede a prior order (the "Merritt Order").[1]

FILING DATES: The application was filed on December 8, 1995, and amended on January 19, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 19, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

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[1] *Van Kampen Merritt Trust*, Investment Company Act Release Nos. 20473 (Aug. 11, 1994) (notice) and 20530 (Sept. 6, 1994) (order).

Applicants' Representations

1. Each of the Open-End Funds is a Delaware business trust registered under the Act as an open-end management investment company, except for one which is a Pennsylvania trust. Several of the Open-End Funds are organized as series companies. The Closed-End Funds are either Massachusetts or Pennsylvania trusts and are closed-end management investment companies registered under the Act. The Advisers, wholly-owned subsidiaries of Van Kampen American Capital, Inc., serve as each Fund's investment adviser and are registered under the Investment Advisers Act of 1940.

2. Each Fund has a board of trustees, a majority of the members of which are not "interested persons" of such Fund within the meaning of section 2(a)(19) of the Act. Each of the trustees who is not an "interested person" receives annual fees which collectively are, and are expected to continue to be, insignificant in comparison to the total net assets of the Funds. Applicants request an order to permit the trustees who are not interested persons and who receive trustee fees from one or more of the Funds (the "Eligible Trustees") to elect to defer receipt of all or a portion of their fees pursuant to a deferred compensation plan (the "Plan"). Under the Plan, the Eligible Trustees could defer payment of trustees' fees (the "Deferred Compensation") in order to defer payment of income taxes or for other reasons. Applicants request that relief be extended to any existing or subsequently registered investment company advised by an Adviser or a registered investment adviser under common control or controlled by an Adviser. (Such future funds are also referred to as the "Funds".)

3. Certain of the Funds already have deferred compensation plans in effect for their Eligible Trustees pursuant to an existing SEC order[2] (the "Comstock Order") while others are relying on the Merritt Order. Funds with existing deferred compensation plans established under the Comstock Order will retain the cash for trustees who elect to defer their compensation and the deferred amounts will earn a return based upon the return of the underlying Fund or the return on such Fund's investment of cash reserves in money market instruments. The proposed Plan, however, is broader and provides for the return on deferred amounts to be based upon the return of the underlying Fund or the return of other Funds in the fund complex and allows Funds to hedge the deferred obligation by purchasing shares of other Funds. Applicants would like all the Funds to be able to rely on the same order and to be subject to the same terms and conditions. The requested order would supersede the Merritt Order but have no effect on the Comstock Order. Each participant in the plans established under the Comstock Order will be given a one-time election to have his or her existing deferred account balance roll over into new accounts established under the requested order.

4. Under the Plan, the deferred fees payable by a Fund to a participating Eligible Trustee will be credited to a book reserve account established by the Fund (a "Deferred Fee Account"), as of the first business day following the date such fees would have been paid to the Eligible Trustee. The deferred fees will accrue income from and after the date of credit in an amount equal to the amount that would have been earned had such fees (and all income earned thereon) been invested and reinvested in shares of the Funds designated by the respective board of trustees as eligible investments under the Plan (the "Investment Funds"). In the case of trustees of the Open-End Funds, Investment Funds will be Open-End Funds, and in the case of trustees of the Closed-End Funds, Investment Funds will be Closed-End Funds.

5. The Funds' respective obligations to make payments of amounts accrued under the Plan will be general unsecured obligations, payable solely from their respective general assets and property. The Plan provides that the Funds will be under no obligation to purchase, hold or dispose of any investments under the Plan, but, if one or more of the Funds choose to purchase investments to cover their obligations under the Plan, then any and all such investments will continue to be a part of the respective general assets and property of such Funds.

6. Any participating money market series of a Fund that values its assets in accordance with a method prescribed by rule 2a–7 will buy and hold the Underlying Securities that determine the performance of the Deferred Fee Accounts in order to achieve an exact match between such series' liability to pay deferred fees and the assets that offset such liability. In addition, as a matter of prudent risk management, to the extent an Eligible Trustee selects Investment Funds other than the Fund that pays that trustee's fees, it is intended that the Fund responsible for the Trustee's fees will purchase and hold shares in an amount equal to the designated investment in such Investment Funds (the "Underlying Securities"). Thus, in cases where a Fund purchases Underlying Securities, the amount of Underlying Securities is expected to match the liability created by credits to the Fund's Deferred Fee Accounts.

7. Payments under the Plan will be made in generally equal annual installments over a five year period beginning on the first day of the year following the year in which the Eligible Trustee's termination of service occurred. In the event of death prior to any distribution, such trustee's Deferred Fee Account will become payable in cash to the trustee's designated beneficiary in equal installments over a five year period. In the event of death after the commencement of the distribution, the balance of such account will be distributed to the designated beneficiary over the remaining portion of the five-year period. The Plan will not obligate any participating Fund to retain a trustee in such a capacity, nor will it obligate any Fund to pay any (or any particular level of) trustees' fees to any director.

Applicants' Legal Analysis

1. Applicants request an order which would exempt the Funds: (a) Under section 6(c) of the Act from sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g), 23(a) and rule 2a–7 thereunder, to the extent necessary to permit the Funds to adopt and implement the Plan; (b) under sections 6(c) and 17(b) of the Act from section 17(a)(1) to permit the Funds to sell securities for which they are the issuer to participating Funds in connection with the Plan; and (c) under section 17(d) of the Act and rule 17d–1 thereunder to permit the Funds to effect certain joint transactions incident to the Plan.

2. Sections 18(a) and 18(f)(1) generally prohibit registered closed-end and open-end investment companies, respectively, from issuing senior securities. Section 18(c) of the Act generally provides that registered closed-end investment companies may not have outstanding more than one class of senior security representing indebtedness. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Plan possesses none of the characteristics of senior securities that led Congress to enact section 18. The Plan would not induce speculative investments, affect control of any Fund,

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[2] *American Capital Comstock Fund, Inc.*, Investment Company Act Release Nos. 18098 (Apr. 15, 1991) (notice) and 18144 (May 14, 1991) (order).

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confuse investors, or convey a false impression as to the safety of their investments. All liabilities created under the Plan would be offset by equal amounts of assets that would not otherwise exist if the fees were paid on a current basis.

3. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. The Plan would set forth all such restrictions, which would be included primarily to benefit the Eligible Trustees and would not adversely affect the interests of the shareholders of the Open-End Funds.

4. Section 22(g) and 23(a) prohibit registered open-end and closed-end investment companies, respectively, from issuing any of their securities for services or for property other than cash or securities. This provision prevents the dilution of equity and voting power that may result when securities are issued for consideration that is not readily valued. Applicants believe that the Plan would merely provide for deferral of payment of such fees and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

5. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. Each of the Funds named in the application adopted an investment policy regarding the purchase of shares of other investment companies, which policy could prohibit or restrict such Funds from purchasing shares of other investment companies. The relief requested from section 13(a)(3) would extend only to the named applicants. Applicants believe that relief from section 13(a)(3) is appropriate to enable the affected Funds to invest in Underlying Securities without a shareholder vote. Each Fund will disclose the existence of the Plan in its registration statement. The value of the Underlying Securities will be *de minimis* in relation to the total net assets of the respective Fund, and will at all times equal the value of the Fund's obligations to pay deferred fees (plus any increase in value thereof.)

6. Rule 2a–7 imposes certain restrictions on the investments of "money market funds," as defined under the rule that would prohibit a Fund that is a money market Fund from investing in the shares of any other Fund. Applicants believe that the requested exemption would permit the Fund to achieve an exact matching of Underlying Securities with the deemed investments of the Deferred Fee Accounts, thereby ensuring that the deferred fees would not affect net asset value.

7. Section 6(c) provides, in relevant part, that the SEC may by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the relief requested satisfies this standard.

8. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company from selling any security to such registered investment company.[3] Applicants assert that section 17(a)(1) was designed to prevent, among other things, sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interest in such enterprises. Applicants believe that the sale of securities issued by the Funds pursuant to the Plan does not implicate the concerns of Congress in enacting this section, but merely would facilitate the matching of each Fund's liability for deferred trustees' fees.

9. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policies of the registered investment company, and the general purposes of the Act. Applicants believe that the proposed transaction satisfies the criteria of section 17(b). The finding that the terms of the transaction are consistent with the policies of the registered investment company is predicated on the assumption that relief is granted from section 13(a)(3). Applicants also request relief from section 17(a)(1) under section 6(c) to the extent necessary to implement the Deferred Compensation under the Plan on an ongoing basis.[4]

10. Section 17(d) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant in contravention of such rules and regulations as the SEC may prescribe. Rule 17d–1 permits an affiliated person to engage in a joint transaction if the SEC issues an order approving the arrangements. Eligible Trustees will not receive a benefit, directly or indirectly, that would otherwise inure to a Fund or its shareholders. Eligible Trustees will receive tax deferral but the Plan otherwise will maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the deferred fees were paid on a current basis. When all payments have been made to a Eligible Trustee, the Eligible Trustee will be no better off, relative to the Funds, than if he or she had received trustees fees on a current basis and invested them in Underlying Securities.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Any money market Fund that values its assets in accordance with a method prescribed by rule 2a–7 will buy and hold any Underlying Securities that determine performance of the Deferred Fee Accounts to achieve an exact match between such Funds' liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchases shares issued by an affiliated Fund, the Fund will vote such shares in the same proportion as the shares of all other shareholders of such affiliated Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4665 Filed 2–28–96; 8:45 am]

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[3] Section 2(a)(3)(C) of the Act defines the term "affiliated person" of another person to include any person directly or indirectly controlling, controlled by, or under common control with such other person. Thus, the Funds may be subject to the prohibitions of section 17(a)(1).

[4] Section 17(b) may permit only a single transaction, rather than a series of on-going transactions, to be exempted from section 17(a). *See Keystone Custodian Funds, Inc.*, 21 S.E.C. 295 (1945).

[Release No. 34–36880; File No. SR–CBOE–95–70]

Self-Regulatory Organizations, Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Incorporated Relating to Procedures for the Enforcement of Rule 8.51 and Rule 6.43 in the OEX Trading Crowd

February 23, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On January 5, 1996, the CBOE filed Amendment No. 1 to its proposal.[1] The Exchange filed Amendment No. 2 to the proposal on February 16, 1996.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to set forth in a new regulatory circular its policy regarding the manner of bidding and offering for size in the OEX trading crowd pursuant to Rule 6.43 ("Manner of Bidding and Offering"). In addition, the Exchange is setting forth its policy regarding the procedures for enforcement in the OEX crowd of firm quotes pursuant to Exchange Rule 8.51 ("Trading Crowd Firm Disseminated Market Quotes"). Finally, the circular will notify the membership that they may be fined, or otherwise disciplined, for violations of the policies pursuant to authority under Rule 6.20 ("Admission to and Conduct on the Trading Floor"). The text of the regulatory circular and the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to set forth in a regulatory circular the Exchange's policy and interpretation with respect to the manner of bidding and offering for size in the OEX crowd pursuant to Rule 6.43, and regarding the administration and enforcement in the OEX trading crowd of firm quotes pursuant to Rules 8.51 and 6.20.

Rule 6.43 specifies that bids and offers by market-makers and floor brokers, to be effective, must be made at the post by public outcry. Rule 6.43 is silent regarding whether the bid or offer should specify the number of contracts for which the market-maker or floor broker is bidding or offering. The Exchange believes that it is appropriate and contributes to the operation of a fair and orderly market if a size is specified along with the bid and offer. It has become crowd convention at the OEX post among the market-makers to make bids and offers for twenty contracts unless a different size is specified. Failure to bid or offer for less than twenty contracts without specifying the size would be punishable by a fine, or other disciplinary action, pursuant to Rule 6.20 as described below.

Rule 8.51 requires the trading crowd collectively to be responsible for filling non-broker dealer customer orders, in series as determined by the Exchange's Market Performance Committee, at the displayed bid or offer for up to ten contracts. In OEX, the firm quote rule has been applied to all series. The rule provides that, with respect to the execution of non-broker dealer customer orders, at all times other than during rotation, the trading crowd is required to sell (buy) at least ten (10) contracts at the offer (bid) which is displayed when a buy (sell) order reaches the trading station where the particular option class is trading.

However, Rule 8.51 does not address specifically who in the trading crowd must fill the customer order or how this rule will be enforced against the members of the trading crowd. The Exchange has decided that one method to ensure compliance with Rule 8.51 at the OEX post is to make it clear that members are obligated to remove obsolete quotes. Thus, in order to ensure the operation of a fair and orderly market, the regulatory circular requires a member to remove a bid or offer that is no longer effective. Failure to do so will require that member to satisfy the firm disseminated quote commitment. Alternatively, a Floor Official may fine the offender,[3] or take other disciplinary action.

The regulatory circular also specifies that a member should not cause a bid or offer for OEX options for less than ten contracts to be displayed. However, pursuant to Interpretation .03 to Rule 8.51, public customer orders for less than ten contracts that are represented by a floor broker, unless immediately executed, would have to be displayed.[4] If a market-maker were to cause a quote for just one or two contracts to be displayed, the other market-makers in the crowd would then be forced to honor this individual's quote for up to ten contracts even if every other market-maker in the crowd were bidding and offering a much different market. These quotes for sizes of less than ten contracts tend to be disruptive to the operation of the OEX crowd and interfere with the fair and orderly conduct of business in the crowd.

To enforce the above policies of Rule 6.43 and Rule 8.51, the Exchange is relying upon its authority to fine, or otherwise discipline, members pursuant to Rule 6.20.[5] Paragraph (b) of Rule 6.20 gives Floor Officials authority to fine members and persons associated with members for conduct (i) inconsistent with the maintenance of a fair and orderly market; (ii) apt to impair public confidence in the operations of the Exchange; (iii) inconsistent with the ordinary and efficient conduct of business; or (iv) detrimental to the safety or welfare of any other person. Interpretation .04 to Rule 6.20 makes it clear that violations of Rules 6.43 and

[1] In Amendment No. 1, the CBOE proposes a fine schedule for violations of the policies set forth in the regulatory circular discussed herein. *See Letter from Timothy Thompson, Senior Attorney, CBOE, to James T. McHale, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated January 3, 1996 ("Amendment No. 1").*

[2] In Amendment No. 2, the CBOE clarifies that pursuant to Interpretation .03 to Rule 8.51, public customer orders for less than ten contracts that are represented by a floor broker, unless immediately executed, would have to be displayed. *See* Letter from Michael L. Meyer, Esq., Schiff, Hardin & Waite, to James T. McHale, Attorney, OMS, Division, Commission, dated February 16, 1996 ("Amendment No. 2").

[3] *See infra*, note 5.

[4] *See* Amendment No. 2, *supra* note 2.

[5] For each violation of the policies set forth in the regulatory circular, in each calendar quarter, the Exchange will fine members or associated persons $100 for the first violation, $200 for the second violation, and $300 for the third and subsequent violations. *See* Amendment No. 1, *supra* note 1.

8.51 are activities that may violate the provisions of Rule 6.20(b).[6] Trading Floor Liaison staff will assist the OEX Floor Procedure Committee members in identifying offenders of this policy. Members of the Floor Procedure Committee[7] or other Floor Officials will issue the fines.[8] Members could also be charged with other appropriate rules violations and would be subject to further disciplinary action from the Exchange's Business Conduct Committee.

CBOE believes that its procedures for enforcement of Rule 8.51 and Rule 6.43 in the OEX trading crowd, as contained in a published regulatory circular, are consistent with Section 6 of the Act, in general, and further the objectives of Section 6(b)(5) of the Act in particular, in that they are designed to perfect the mechanisms of a free and open market and to protect investors and the public interest by holding market-makers responsible for honoring the displayed quote and for ensuring that accurate markets are displayed to the public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[6] In addition to fines, members who violate the policies set forth in the regulatory circular are potentially subject to other forms of discipline. First, pursuant to interpretation .05 to Rule 6.20, two floor officials may nullify a transaction or adjust its terms if they determine the transaction to have been in violation of Rule 8.51. Second, depending upon the egregiousness of the conduct and the disciplinary history of the individual(s) involved, the Exchange could bring a formal disciplinary action under Chapter 17 of the Exchange's rules. Finally, as with any conduct that concerns an individual's performance standards as a member of a trading crowd, the Market Performance Committee, pursuant to Rules 8.3(a) and 8.60, may take remedial action including suspending or terminating a market-maker's appointment in a class of options. *See* Letter from Timothy Thompson, Senior Attorney, CBOE to James T. McHale, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated December 21, 1995.

[7] Interpretation .08 to Rule 6.20 permits members of the OEX Floor Procedure Committee, as one of the two successor committees of the index Floor Procedure Committee, to perform the functions of a Floor Official in the OEX trading crowd.

[8] Members would be entitled to appeal the fine under Chapter XIX of the Exchange's rules.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy with respect to the meaning, administration, or enforcement of an existing rule, it has become effective pursuant to Section 19(b)(3)(A) of the act and Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–95–70 and should be submitted by March 21, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4577 Filed 2–28–96; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

[Release No. 34–36869; File No. SR–CHX–96–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Correction of Possible Ambiguities in the Exchange's GTX Rules

February 22, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 5, 1995, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Article XX, Rule 37(a) of the CHX's Rules and Interpretation and Policy .02 thereto, relating to the primary market protection of limit orders designated as good until canceled, executable in the afternoon session ("GTX orders").[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] The Exchange is open for business for two trading sessions during each business day. The CHX's regular auction market trading session is conducted on the floor of the Exchange from 8:30 a.m. to 3 p.m. (3:15 p.m. for trading in Chicago Basket), Central time, Monday through Friday. The second, or afternoon, session is conducted through the Portfolio Trading System from 3:30 p.m. to 5 p.m., Central time, Monday through Friday. The floor of the Exchange is closed during the afternoon session. *See* CHX Article IX, Rule 10.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In Securities Exchange Act Release No. 29297 (June 13, 1991), 56 FR 28191 (June 19, 1991) (File No. SR–MSE–91–11), the Commission approved on a pilot basis rules relating to the CHX's program to provide primary market protection to limit orders designated as GTX orders.[2] Those rules included Article XX, Rule 37(a) and Interpretation and Policy .02 thereto. In Securities Exchange Act Release No. 33991 (May 2, 1994), 59 FR 23904 (May 9, 1994) (File No. SR–CHX–93–23), the Commission permanently approved the CHX's program. The purpose of the proposed rule change is to correct possible ambiguities in the current text of Rule 37(a) and Interpretation and Policy .02 without making any substantive alterations to the program.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[3] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule of the Exchange and therefore has become effective pursuant to Section 19((b)(3)(A) of the Act[4] and subparagraph (e)(1) of Rule 19b–4 thereunder.[5] At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments, concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–96–06 and should be submitted by March 21, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4664 Filed 2–28–96; 8:45 am]

BILLING CODE 8010–01–M

[2] The CHX's program requires that Exchange specialists provide primary market protection for GTX orders in securities listed on either the New York Stock Exchange or American Stock Exchange and traded during these exchanges' after-hours closing-price trading sessions. Specifically, the responsible CHX specialist is required to fill GTVVX orders at such closing price, based on the volume that prints in the primary market during its closing-price session. GTX orders may be entered only during the Exchange's regular trading session.

[3] 15 U.S.C. 78f(b)(5).

[4] 15 U.S.C. 78s(b)(3)(4).

[5] 17 CFR 240.19b–4(e)(1).

[Release No. 34–36876; File Nos. SR–Philadep–95–08]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing of Amendments and Order Granting Accelerated Partial Permanent Approval and Accelerated Partial Temporary Approval of a Proposed Rule Change to Convert the Settlement System for Securities Transactions to a Same-Day Funds Settlement System

February 22, 1996.

On November 3, 1995, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File Nos. SR–Philadep–95–08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On December 19, 1995, Philadep filed an amendment to the proposed rule change.[2] Notice of the proposal as amended was published in the **Federal Register** on January 9, 1996.[3] On January 8, 1996, Philadep filed an amendment to the proposed rule change to modify its charge-back policy relating to principal and income payments from a same-day reversal policy to a next-day reversal policy.[4] On January 24, 1996, Philadep filed an amendment to the proposed rule change to clarify which participants fund formulas were additive and which were not additive and to make a technical correction to Rule 4, Section 8.[5] On February 5, 1996, Philadep filed an amendment to the proposed rule change to remove certain previously proposed amendments made to Rule 4, Sections 1 and 2, regarding the maintenance and investment of the participants fund and to remove previously proposed allocation procedures between the Philadep participants fund and the Stock Clearing Corporation of Philadelphia ("SCCP") participants fund.[6] On February 16, 1996, Philadep filed an amendment to the proposed rule change to clarify its inter-

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letter from J. Keith Kessel, Compliance Officer, Philadep, to Peter R. Geraghty, Esq., Division of Market Regulation ("Division"), Commission (December 14, 1995).

[3] Securities Exchange Act Release No. 36681 (January 4, 1996), 61 FR 745.

[4] Letter from William W. Uchimoto, General Counsel, Philadep, to Peter R. Geraghty, Esq., Division, Commission (January 11, 1996).

[5] Letter from William W. Uchimoto, Philadep, to Jerry Carpenter, Esq., Assistant Director, Division, Commission (January 24, 1996).

[6] Letter from J. Keith Kessel, Compliance Officer, Philadep, to Peter R. Geraghty, Esq., Division, Commission (February 5, 1996).

depository delivery procedures.[7] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated temporary approval through August 31, 1996, of the portion of the proposed rule change relating to Philadep's participants fund formulas and interdepository deliver procedures and is granting accelerated permanent approval of the remainder of the proposed rule change.

I. Description of the Proposal

1. Introduction

The purpose of the proposed rule change is to amend Philadep's rules and procedures to convert Philadep's money settlement system from a next-day funds settlement ("NDFS") system to a same-day funds settlement ("SDFS") system. Under the proposed rule change, Philadep intends to provide SDFS depository services for all eligible securities.

In accordance with the SDFS service, Philadep will accept deposits of securities certificates for safekeeping and will provide the full range of SDFS depository services which include, but are not limited to, processing deposits, book-entry deliver and receive orders, withdrawals, pledges, trade confirmations, affirmations, transfers, and dividend and interest payments. Philadep's rules and procedures have been amended to provide for, among other things, the pledging of securities, failure to settle procedures, transaction processing, risk management controls, and money settlement in an expanded SDFS environment.

Pursuant to a joint agency agreement between SCCP and Philadep, SCCP, among other things, effects daily money settlements on behalf of Philadep participants for securities received into and delivered out of participants' accounts at Philadep. On behalf of Philadep, SCCP also processes continuous net settlement ("CNS") movements from one participant to another, processes all SCCP and Philadep dividend and reorganization settlements, and prepares and renders bills and collects fees from Philadep participants for depository services.

Philadep evaluated the impact of converting to an SDFS system with respect to the operational requirements, liquidity requirements, and overall risk on a joint SCCP/Philadep basis.[8] Philadep estimates that at the time of implementing the proposed modifications, SCCP and Philadep will have combined liquidity resources of over $73 million, consisting of $1.1 million in the Philadep participants fund, $7.3 million in the SCCP participants fund, $4.7 million in unrestricted capital, and $60 million in lines of credit.[9] Philadep will routinely monitor these amounts and assess the need to increase them based on SCCP and Philadep activity levels.

2. Risk Management Controls

Philadep's risk management controls are intended to protect Philadep participants against the inability of a participant to pay for its settlement obligations. Philadep's two primary risk management controls for securities processing are the collateral monitor and the net debit cap. Philadep's collateral monitor and net debit cap analysis were structured to incorporate the netting of SCCP and Philadep settlements. Certain transactions also are not subject to these risk management controls.[10]

A. Collateralization

Philadep will operate its SDFS system on a fully collateralized basis. Philadep has designed its collateral monitor to assure that a participant will have sufficient collateral in its account in the event that the participant becomes insolvent and/or fails to pay its end-of-day settlement obligation and Philadep must pledge the collateral to draw on its lines of credit.

Philadep recognizes several sources of collateral. The primary sources of collateral are: (1) participants' required and voluntary deposits to the participants fund; (2) proprietary or firm positions that the participant designates as collateral; (3) securities received versus payment for which the participant has not yet paid (includes CNS deliveries); and (4) securities added to a participant's account but not received versus payment (*e.g.*, deposits, free deliveries, free pledge releases, and reclassification of non-collateral securities) that the participant designates as collateral.

Securities designated as collateral by participants are valued based on the security's closing price on the prior business day less an applicable haircut. Philadep employs haircuts to protect itself and its participants against price fluctuations in collateral in the event that Philadep must liquidate the collateral of an insolvent participant. Moreover, because Philadep may have to borrow against a participant's collateral to finance overnight a participant's failure, Philadep's haircut structure takes into consideration the haircuts imposed by its lending institutions. Ordinarily, banks will not assign the full market value to securities used to collateralize loans. Banks will generally consider the relative price volatility of the collateral and impose a haircut accordingly. Philadep's haircut levels configured by security type are as follows: (1) 10% for equities; (2) 5% for corporate and municipal debt, and (3) 2%, 5%, or up to 100% for money market instruments (depending on their term and investment grade rating). Philadep reserves the right to reprice and modify haircuts intraday if it determines changes to be in the best interest of Philadep and its participants.

Philadep will monitor the collateral in each of the participant's accounts through the use of its collateral monitor. At the start of each business day, Philadep credits each participant's collateral monitor with its participants fund deposit. Philadep updates the collateral monitor throughout the day for each transaction that adds or removes collateral to or from the participant's collateral monitor. At all times, the collateral monitor in a participant's account must be equal to or exceed the participant's 'net settlement obligation. Therefore, the market value of all the collateral less any applicable haircuts in a participant's account must be equal to or exceed the participant's net settlement obligation.

Throughout the day, Philadep will continually verify each participant's collateral value to assure that the deliverer's and receiver's collateral monitor will not become negative as a result of Philadep processing a transaction. If a transaction will cause either the deliverer or the receiver to be undercollateralized, Philadep will prevent the transaction from completing until the participant with the deficient collateral monitor has infused sufficient collateral into its account for the transaction to complete. Transactions that continue to recycle at the end of the processing day will be dropped from the system and must be subsequently reentered by the participant that initially entered the transaction.

B. Net Debit Caps

In addition to collateralization, Philadep's net debit cap procedures will prevent the completion of transactions if completion will cause a participant's individual net debit to exceed its net debit cap. Net debit caps limit the net settlement debits that a participant may incur at any point during the processing day and at the end of the day. Net debit caps are designed to help assure that Philadep will have sufficient liquidity to complete settlement if a participant fails to settle. If a transaction will cause a participant's net settlement debit to exceed its net debit cap, Philadep's SDFS system will not allow the transaction to complete. The transaction will recycle until there is sufficient credit in the account. Most credits result from securities deliveries versus payment; securities pledges for value; principal, dividend, or interest allocations; or settlement progress payments ("SPPs") wired from a participant to Philadep's account at its designated settling bank. Transactions that continue to recycle at the close of the processing day will be dropped from the system and must be subsequently reentered by the participant who initially entered the transaction.

Each participant's individual net debit cap is determine by a participant's combined net debit history at Philadep and SCCP. Philadep will periodically adjust a participant's net debit cap in relation to the participant's ongoing activity. Philadep will calculate net debit caps using participants' daily net settlement activities and may adjust these figures monthly. A participant's net debit cap will be specifically determined by: (1) an average of the participant's three highest end-of-day net settlement debits over a rolling three-month period to establish a base figure [11] and (2) the participant's base figure multiplied by a factor to determine the participant's individual net debit cap.[12] Individual participants' net debit caps are limited by Philadep's established maximum net debit cap of $40 million. Philadep's maximum net debit cap was set, as explained below, using Philadep's total available liquidity.

Philadep established a minimum net debit cap based on 50% of the combined SCCP and Philadep participants funds. The minimum net debit cap, which is currently estimated to be $3.5 million, will be recalculated and adjusted semi-annually. Despite a participant's base figure, Philadep reserves the right to make adjustments to a participant's net debit cap. Philadep may effect such change for a length of time deemed necessary and appropriate by Philadep's management.

3. Failure to Settle Procedures

A. Rule 4(A)

New Rule 4(A) will clarify that Philadep is authorized to pledge, repledge, hypothecate, transfer, create a security interest, and/or assign ("pledge") to lenders as collateral in the event a participant fails to settle any or all property received by Philadep for Philadep from its participants.[13] This property includes (i) deposits in the participants fund; (ii) the securities or repurchase agreements in which the participants fund is invested overnight; (iii) certain qualifying securities which secure the open account indebtedness of the participant; (iv) securities which have been pledged to Philadep as a voluntary deposit to the participants fund; and (v) any or all securities designated as collateral (collectively, "allowable assets").

If Philadep pledges these allowable assets, Philadep will make the appropriate account entries reflecting the creation and transfer of the respective security interest from the participant to Philadep and from Philadep to the lender. Likewise, if a participant designates additional securities as pledged collateral, Philadep will record the security interest for such pledged collateral on its books which reflects the decrease in the account of the pledging participant and the increase in Philadep's account. Philadep will receive these journal entries upon the release and return of any pledged assets, which will reflect a decrease in the account of any pledgee and an increase in the account of the pledgor as appropriate.

B. Settlement Failure

At the end of the processing day, Philadep will provide each participant with a net settlement amount, which will be the aggregate of the end-of-the-day net debits and credits in the participant's SCCP and/or Philadep accounts. Money settlements will occur daily with immediately available funds in the form of fed wire transfers into and out of Philadep's account at its designated settling bank.

In the event a participant or its representative settling bank fails to settle, Philadep will utilize its liquidity resources to finance such participant's unsettled net debit. Philadep will prioritize the order in which it will use the resources. Philadep first will use cash from the participants fund and other immediately available internal sources prior to drawing upon its external lines of credit to secure an extension of credit in connection with the defaulting participant. Philadep shall secure the participant's assets as collateral pursuant to proposed Rule 4(A).

If the participant settles by 10 a.m., Eastern Standard Time, the morning after the default occurs, Philadep will use the settlement payment received to repay the principal and finance charges of the lending bank. Philadep then will return the pledged collateral to the participant. For example, if the defaulting participant is solvent and pays its net debit balance and interest charge in same-day funds on the day after the default, Philadep generally will reverse the procedures followed on the day of the default. Philadep will repay lenders and restore pledged securities.

However, if the defaulting participant remains in default the next business day, Philadep may take the following steps in successive order: (i) apply the defaulting participant's fund deposit to satisfy the participant's obligation; (ii) apply collateral of the defaulting participant which is the subject of incomplete transactions; (iii) apply any collateral of the defaulting participant including collateral which is not subject to incomplete transactions; (iv) if the participant's collateral is exhausted, apply pro rata net credit reductions to all participants that delivered securities to the defaulting participant on the day of the default with such reductions being limited to the amount of the net credit balance of each participant resulting from transactions with the defaulting participant; (v) in the alternative to such net credit reductions, resell to the delivering participants securities that were sold to the defaulting participant on the day of the default; and (vi) make pro rata net credit reductions to all participants with net credit balances including those participants that did not make deliveries to the defaulting participant on that day.

[7] Letter from Keith Kessel, Compliance Officer, Philadep, to Peter R. Geraghty, Esq., Division, Commission (February 16, 1996).

[8] SCCP and Philadep are wholly-owned subsidiaries of the Philadelphia Stock Exchange, Inc. SCCP and Philadep have a substantial overlap of participants and strategic business objectives.

[9] As of the date of this order, SCCP and Philadep have secured $20 million in uncommitted lines of credit and $40 million in committed lines of credit.

[10] Under Philadep's proposed rule change, CNS and reclamation activity will be exempt from risk management controls. SCCP and Philadep will continue to process these activities; however, when a participant exceeds its set debit cap as a result of its CNS activity, Philadep may request settlement prepayments to reduce the participant's daily debit. If Philadep does not receive such prepayments, Philadep may reverse unsettled book-entry receives previously accepted to produce a positive collateral position and reduce the net debit to an amount under the net debit cap.

[11] For purpose of calculating a participant's net debit settlement, Philadep includes net CNS settlements.

[12] Factors are based on a sliding scale, ranging from 1 to 2, where lower base figures are multiplied by larger factors and higher base figures are multiplied by smaller factors.

[13] The text of proposed New Rule 4(A) is attached as Exhibit B(2) to File No. SR-Philadep-95-08. The file is available for review in the Commission's Public Reference Room and at the principal office of Philadep.

4. Paying Agent Charge-Back Procedures

With respect to principal, dividend, interest, and corporate reorganization payment obligations ("P&I payments"), Philadep will pay participants in same-day funds upon receipt of payment in same-day funds from paying agents for such P&I payments. In order to induce the delivery of P&I payments in same-day funds to Philadep from paying agents that would not otherwise receive such payments from issuers in same-day funds on payable date, Philadep may agree to provide rebates to such paying agents. Philadep will act as the conduit passing along such rebate costs to those participants benefitting from receiving P&I payments in same-day funds.

Under Philadep's SDFS proposal, Philadep will be authorized to charge-back participants that were previously credited with P&I payments if the payment was made in error by the paying agent, the issuer failed to provide the paying agent with sufficient funds to cover the payments, the issuer filed for bankruptcy on or prior to the payable date, or other paying agent default. In order for Philadep to charge-back participants, the paying agent must furnish Philadep a written request within ten business days of the payable date. Philadep also may charge-back participants for any errors made by Philadep including errors as a result of erroneous announcements or payment calculations credited to participants in anticipation of receiving payments from paying agents which Philadep has not received.

Under Philadep's charge-back procedures, Philadep will notify participants of charge-backs initiated by a paying agent one business day prior to the date Philadep includes the charge-back in the participant's daily settlement. Although Philadep usually verifies the facts stated in the notice from the paying agent, Philadep does not have any obligation to do so. If the paying agent notifies Philadep more than ten business days after payment date, Philadep is not required to charge-back the participant's account but will cooperate with the paying agent and the participants to resolve the matter. For Philadep initiated charge-backs, Philadep will give participants one business day notice of the charge-back before Philadep includes the charge-back in the participant's daily settlement. For either charge-back, Philadep reserves the right to impute and recover interest from the respective participants.

5. Inter-depository Delivery Procedures

When processing participants' deliveries to The Depository Trust Company ("DTC"), Philadep will employ an immediate update technique whereby a delivering participant's security position, collateral, and settlement accounts are immediately updated if the delivering participant has sufficient securities and collateral to complete the delivery. The delivering participant's position is reduced by the quantity of securities it is delivering, its settlement account is credited for the settlement value of the transaction, and its collateral monitor is increased by the settlement credit it will receive and reduced by the collateral value of the securities it is delivering (provided the securities being delivered are part of the participant's collateral position).

Once a delivery satisfies Philadep's risk management controls and completes at Philadep (*e.g.*, the participant has sufficient securities to make the delivery and the participant's collateral monitor will not become negative because of the delivery), the delivery is sent to DTC where it is subject to DTC's internal risk management controls. In certain instances, DTC's internal risk management controls may prevent a delivery from completing (*i.e.*, the receiving participant may not have sufficient collateral or the receipt will violate the participant's net debit cap) and may cause those deliveries to recycle in DTC's system. Deliver orders and payment orders that fail to successfully complete in DTC's system at the end of each processing day will be returned to Philadep, and Philadep will reverse the deliveries to the original delivering participants. Such reversals will not be subject to Receiver-Authorized Delivery ("RAD") processing [14] or risk management controls.

6. Participants Fund

Rule 4, governing the participants fund, and the procedures regarding the participants fund formulas are being amended to respond to Philadep's increased liquidity needs. Rule 4 and the procedures are being amended to provide for an all cash participants fund. The all cash requirement applies to both the required deposit and any additional or voluntary deposits that participants may make. Participants that choose to make voluntary deposits, in most situations, will be able to increase their level of activity at Philadep. Participants will receive interest rebates from Philadep for deposits in excess of $50,000.

Philadep also has modified the size of the participants fund by amending the participants fund formulas. Rule 4 as amended requires all Philadep participants to maintain a minimum cash deposit of $10,000 in the Philadep participants fund. Philadep will calculate participants' required cash deposit pursuant to the following formulas:

(a) Inactive Accounts: [15] $10,000.00
(b) Specialized Services:
(Maximum $50,000 required with $100 or greater in average monthly billings for either Deposit or Transfer activity)
—Deposit Activity—$25,000.00 plus
—Transfer Activity—$25,000.00
(c) Participants not doing Specialized Service activity with service fees of $100 or greater in average monthly billings. The greater of either:
(1) $25,000, or;
(2) 1% of the average of the three highest net debits over the past three months (rounded to the next $5,000 increment).

Philadep will recalculate each participant's deposit requirement at the end of each month based on a participant's activity over the previous three months. Philadep will notify its participants of any required deposit increases and the amount of such additional deposit within ten business days of the end of the month. Participants whose deposit requirements have decreased will be notified at least quarterly although they may inquire and withdraw excess deposits monthly. Participants may leave excess cash deposits in the participants fund.

II. Discussion

Section 17A(b)(3)(F) of the Act [16] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that Philadep's proposed rule change is consistent with Philadep's obligations under Section 17A(b)(3)(F) to promote the prompt and accurate clearance and settlement of securities transactions because the proposal converts Philadep's money settlement system from an NDFS system to an SDFS system. Philadep's conversion to an SDFS system should help reduce risk by, among other things, eliminating overnight participant credit risk. The SDFS system also should reduce risk by achieving closer conformity with the payment methods used in the derivatives markets, government securities markets, and other markets.

The Commission also believes the proposal is consistent with Philadep's obligations to assure the safeguarding of securities and funds in its custody or control because Philadep's SDFS proposal provides certain protections for Philadep and its participants from financial loss associated with member defaults and insolvencies. The rule change contains several risk management controls that are intended to protect Philadep and its participants by limiting Philadep's exposure from one or more participants' inability to fulfill its or their settlement obligations to an account within Philadep's liquidity resources. Those protections include an all cash SDFS participants fund,[17] individual net debit caps, a fixed maximum net debit cap of $40 million, and the application of the collateral monitor. In addition, Philadep has increased its liquidity resources by retaining additional committed and uncommitted lines of credit totaling $60 million.

However, the Commission continues to have concerns about the adequacy of Philadep's participants fund formulas in providing a sufficient source of cash liquidity and the formulas' conformity with the standards set forth by the Division.[18] The Commission believes clearing agencies must establish an appropriate level of clearing fund contributions based, among other things, on its assessment of the risks to which it is subject.

Althouth Philadep submitted its assessment of the risks presented by its conversion to an SDFS system and the risks posed by its participants and their type of depository activities, the Commission desires a more thorough analysis. Furthermore, the Commission believes Philadep's recent depository arrangement with the West Canada Depository Trust Company presents additional risks that were not present when Philadep conducted its original risk assessment. Under the proposed rule change, Philadep's participants fund formulas do not take into consideration a participants' level of depository activity. Rather, the formulas are fixed based on the type of depository services used by the participant. The Commission has concerns about whether the size of the participants fund will be sufficient because the formulas are not based on participants' levels of depository activities. For these reasons, the Commission is temporarily approving the portion of the proposed rule change relating to the participants fund formulas through August 31, 1996.

During the period of temporary approval, the Commission will monitor and analyze the adequacy of the participants fund formulas in an SDFS environment. In this regard, the Commission requests that Philadep submit prior to filing for permanent approval of the participants fund formulas a detailed report including (1) a description of the different types of participants at Philadep, the types of depository activities the participants conduct, and the number of each type of participant, and (2) a detailed discussion of the types of risks these participants and their activities pose and the measure Philadep will take to mitigate the risks.

In addition, the Commission is concerned about Philadep's proposed inter-depository delivery procedures. Under Philadep's proposed inter-depository delivery procedures, Philadep will immediately update a participant's account for delivery orders and payment orders sent to DTC participants through the interface. In the event a delivery fails to complete at DTC by the end of the day, the procedures provide a mechanism by which Philadep will reverse the transaction to the delivering Philadep participant without subjecting the reversal to risk management controls. Philadep has represented that the expected volume of deliveries through the interface and the possibility of such reversal procedures being employed are minimal. However, the Commission is concerned that Philadep's proposed inter-depository delivery procedures could create the situation where an inter-depository reversal resulting from an uncompleted delivery to a DTC participant forces Philadep participant to violate its net debit cap near the end of the day. Therefore, the Commission is temporarily approving the portion of the proposed rule change relating to the inter-depository delivery procedures through August 31, 1996, so that the Commission and Philadep can monitor the interface activity before the procedures become permanent.

During the period of temporary approval, Philadep has agreed to submit monthly reports to the Commission concerning the number of inter-depository reversals performed pursuant to the proposed procedures that caused participants to violate their net debit caps. The Commission encourages Philadep to examine and consider future enhancements to the interface to provide a mechanism through which Philadep participants can receive real-time notification of transactions pending at DTC.

Philadep has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of amendments. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of amendments because the proposed rule change modifies Philadep's rules in anticipation of Philadep's conversion to an SDFS system on February 22, 1996. Accelerated approval of the proposal will allow Philadep to effect the conversion and to implement the procedures provided under the proposed rule change on that date.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to the file number SR-

[14] RAD allows a participant to review and either approve or cancel incoming deliveries before they are processed in Philadep's system.

[15] Philadep's procedures define inective account to mean an account that has less than $100 of average monthly billings.

[16] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[17] Pursuant to Philadep Rule 4, Philadep is restricted from investing the cash in the participants fund in any investment other than U.S. Government obligations or any other investments which provide safety and liquidity of the principal invested. The Commission has interpreted this rule to mean that Philadep is prohibited from investing the Philadep participants fund directly or through SCCP in the specialists financing program operated by SCCP. Letter from Jerry W. Carpenter, Assistant Director, Division, Commission, to William W. Uchimoto, General Counsel, Philadep (February 15, 1996).

[18] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (order approving standards for clearing agency registration).

Philadep–95–08 and should be submitted by March 21, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File Nos. SR–Philadep–95–08) be, and hereby is, temporarily approved through August 31, 1996, for those sections of the proposed rule change relating to Philadep's participants fund formulas and inter-depository delivery procedures and permanently approved for the remainder of the proposed rule change.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4576 Filed 2–28–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36875; File Nos. SR–SCCP–95–06]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of Amendments and Order Granting Accelerated Partial Permanent Approval and Accelerated Partial Temporary Approval of a Proposed Rule Change to Convert the Settlement System for Securities Transactions to a Same-Day Funds Settlement System

February 22, 1996.

On November 3, 1995, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File Nos. SR–SCCP–95–06) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On December 19, 1995, SCCP filed an amendment to the proposed rule change.[2] Notice of the proposal as amended was published in the **Federal Register** on January 9, 1996.[3] On January 24, 1996, SCCP filed an amendment to the proposed rule change to clarify which participants fund formulas were additive and which were not additive, to remove the maximum contribution in the formula for full service continuous net settlement ("CNS") activity, and to make a technical correction to Rule 4, Section 8.[4] On February 5, 1996, SCCP filed an amendment to the proposed rule change to remove certain proposed amendments made to Rule 4, Sections 1 and 2, regarding the maintenance and investment of the participants fund and to remove allocation procedures between the SCCP participants fund and the Philadelphia Depository Trust Company ("Philadep") participants fund.[5] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated temporary approval through August 31, 1996, of the portion of the proposed rule change relating to SCCP's participants fund formulas and is granting accelerated permanent approval of the remainder of the proposed rule change.

I. Description of the Proposal

The purpose of the proposed rule change is to amend SCCP's rules and procedures to convert SCCP's money settlement system from a next-day funds settlement ("NDFS") system to a same-day funds settlement ("SDFS") system. SCCP intends to support Philadep in providing participants full SDFS clearing and depository services for all eligible securities.[6]

SCCP evaluated the impact of converting to an SDFS system with respect to the operational requirements, liquidity requirements, and overall risk on a joint SCCP/Philadep basis.[7] Pursuant to a joint agency agreement between SCCP and Philadep, SCCP, among other things, effects daily money settlements on behalf of Philadep and its participants for securities received into and delivered out of participants accounts. SCCP on behalf of Philadep also processes continuous net settlement ("CNS") movements from one participant to another, processes all SCCP and Philadep dividend and reorganization settlements, and prepares and renders bills for Philadep and collects fees from Philadep participants for depository services.

SCCP is amending several of its rules and procedures to accomplish the conversion to SDFS. SCCP Rule 1, which defines terms used throughout SCCP's rules, is being amended to add certain definitions related to the conversion to an SDFS system.[8]

SCCP Rule 10, which governs money settlements, is being amended to provide that all payments must be in same-day funds. Rule 27, regarding SCCP acting as agent for Philadep, currently provides that SCCP will act to effect daily money settlements on behalf of those organizations or entities which are participants of both SCCP and Philadep. SCCP Rule 27 is being amended to further clarify that SCCP will serve as the agent for money settlements for all participants transacting business with either SCCP or Philadep.

Rule 4, governing SCCP's participants fund, and the procedures regarding the participants fund formulas are being amended to respond to SCCP's increased liquidity needs. Together, Rule 4 and the procedures are being amended to provide for an all cash participants fund. The all cash requirement applies to both the required deposit and any additional or voluntary deposits that participants may make. Participants that choose to make voluntary deposits in most situations will be able to increase their level of activity at SCCP and will receive interest rebates from SCCP for deposits in excess of $50,000.

SCCP also has modified the size of the fund by amending the participants fund formulas. Together, Rule 4 and the procedures now require all SCCP participants to maintain a minimum cash deposit of $10,000 in the SCCP participants fund. Under its procedures, SCCP will calculate participants' required cash deposits pursuant to the following formulas:

(a) Inactive Account—The contribution of an Inactive Participant is set at a uniform rate of $10,000. Inactive is defined as twenty or fewer trades on average per month.

(b) Full Service ("CNS") Account—The contribution of a CNS Participant is based upon the larger of: (1) The participant's monthly average of trading activity during the preceding quarter, $1,000 for every twenty-five trading units of one hundred shares; or (2) the participant's aggregate dollar amount of all long trades at their execution price for each quarter divided by the number of days in such quarter multiplied by two percent. The required contributions are rounded upward to $5,000 increments, and the average is a rolling average.

(c) Regional Interface Operations ("Rio") Account—The contribution of a RIO Participant is based on the participant's monthly average of trading activity during the preceding quarter, $1,000 for every twenty-five trading units of one hundred shares (with a $10,000 minimum and a $75,000 maximum contribution). The required contributions are rounded upward to $5,000 increments. RIO is defined as a participant account whereby the participant elects to settle with a clearing corporation other than SCCP.

(d) Layoff Account—The contribution of a Layoff Participant is set at a uniform rate of $25,000. A Layoff Participant is defined as a participant account whereby the participant elects to settle with a clearing corporation other than SCCP for trades not executed on the Philadelphia Stock Exchange.

(e) Specialist Margin Account—The contributions of a Specialist Margin Participant is set at a uniform rate of $35,000.

(f) Non-Specialist Margin Account—The contribution of a Non-Specialist Margin Participant is set at a uniform rate of $35,000.

SCCP will recalculate each participant's fund deposit requirement at the end of each month based on the previous three months prior to the most recent month. SCCP will notify its participants of any required deposit increases and the amount of such additional deposit within ten business days of the end of the month. Participants whose deposit requirements have decreased will be notified at least quarterly although they may inquire and withdraw excess deposits monthly. Participants may leave excess cash deposits in the participants fund.

SCCP estimates that at the time of implementing the proposed modifications, SCCP and Philadep will have combined liquidity resources of over $73 million consisting of $7.3 million in the SCCP participants fund, $1.1 million in the Philadep participants fund, $4.7 million in unrestricted capital, and $60 million in lines of credit.[9] SCCP will routinely monitor these amounts and assess the need to increase liquidity resources over time based on SCCP and Philadep activity levels.

II. Discussion

Section 17A(b)(3)(F) of the Act[10] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that SCCP's proposed rule change is consistent with SCCP's obligations under Section 17A(b)(3)(F) to promote the prompt and accurate clearance and settlement of securities transactions because the proposal converts SCCP's money settlement system from a NDFS system to a SDFS system. The conversion to a SDFS system should help reduce risk by, among other things, eliminating overnight participant credit risk. The SDFS system also should reduce risk by achieving closer conformity with the payment methods used in the derivatives markets, government securities markets, and other markets.

The Commission believes the proposal is consistent with SCCP's obligations to assure the safeguarding of securities and funds in its custody or control because the proposed rule change converts SCCP's participants fund to an all cash fund which should increase the liquidity of the fund. In addition, SCCP has increased its liquidity resources by retaining additional committed and uncommitted lines of credit totaling $60 million.

However, the Commission continues to be concerned about (1) The adequacy of SCCP's participants fund formulas in providing a sufficient source of cash liquidity and (2) the formulas' conformity with the standards set forth by the Division.[11] The Commission believes that clearing agencies operating SDFS systems must have a sufficient liquidity from combination of cash and lines of credit to ensure that settlement occurs at the end of the business day even if a participant fails to settle with the clearing agency or if the clearing agency experiences a systems problem. The Commission further believes that a clearing agency must have on hand an amount of accessible cash which will enable the clearing agency to fund settlement for most participant failures or systems problems without having to immediately draw on its lines of credit (*i.e.*, a clearing agency's lines of credit should be its secondary source of liquidity and not its primary source). The Commission is concerned with the level of cash provided by SCCP's formulas and whether that level of cash liquidity is sufficient given the increased demand for liquidity under an SDFS environment and SCCP's use of the participants fund to finance specialists purchases.[12]

The Commission believes that clearing agencies must establish an appropriate level of clearing fund contributions based on, among other things, its assessment of the risks to which it is subject.[13] Although SCCP submitted to the Commission its assessment of the risks presented by its conversion to an SDFS system and the risks posed by its participants and their clearing activities, the Commission desires a more thorough analysis. For example, the Commission believes SCCP's recent clearing arrangement with the West Canada Clearing Corporation ("WCCC") presents additional risks that were not present when SCCP conducted its original risk assessment. Historically, WCCC's activity at the Midwest Clearing Corporation ("MCC") was mostly net sell transactions which meant WCCC often had an obligation to deliver a large volume of securities to MCC. Under the proposed rule change, SCCP's participants fund formulas do not take into consideration a participant's short positions and the risks the short positions pose to SCCP. Therefore, the Commission is temporarily approving through August 31, 1996, the portion of the proposed rule change relating to the participants fund formulas.

During the period of temporary approval, the Commission will monitor and analyze the adequacy of the participants fund formulas in an SDFS environment. In this regard, the Commission requests that SCCP submit prior to filing for permanent approval of the participants fund formulas a detailed report including (1) a description of the different types of participants at SCCP, the types of clearing activities the participants conduct, and the number of each type of participant, and (2) a detailed discussion of the types of risks these participants and their activities pose and the measures SCCP will take to mitigate the risks. Furthermore, the Commission requests that SCCP submit a complete risk assessment analysis that calculates the cumulative risks associated with SDFS, specialist financing, increased short position activity, and increased clearing activity of over-the-counter securities.

SCCP has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of amendments. The Commission finds good cause for approving the proposed

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[1] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letter from J. Keith Kessel, Compliance Officer, SCCP, to Peter R. Geraghty, Esq., Division of Market Regulation ("Division"), Commission (December 14, 1995).

[3] Securities Exchange Act Release No. 36671 (January 3, 1996), 61 FR 677.

[4] Letter from William W. Uchimoto, SCCP, to Jerry Carpenter, Esq., Assistant Director, Division, Commission (January 24, 1996).

[5] Letter from J. Keith Kessel, Compliance Officer, SCCP, to Peter R. Geraghty, Esq., Division, Commission (February 5, 1996).

[6] For a description of Philadep's SDFS system, refer to Securities Exchange Act Release No. 36681 (January 4, 1996), 61 FR 7451 (File No. SR–Philadep–95–08) (notice of filing of a proposed rule change).

[7] SCCP and Philadep are wholly-owned subsidiaries of the Philadelphia Stock Exchange, Inc. SCCP and Philadep have a substantial overlap of participants and strategic business objectives.

[8] The specific terms being defined in SCCP's rules are attached as Exhibit B to File No. SR–SCCP–95–06. The file is available for review in the Commission's Public Reference Room and at the principal office of SCCP.

[9] As of the date of this order, SCCP and Philadep have secured $20 million in uncommitted lines of credit and $40 million in committed lines of credit.

[10] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[11] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (order approving standards for clearing agency registration).

[12] For a complete description of SCCP's specialist financing program, refer to Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45187 (order approving full registration of DTC, SCCP, MSTC, OCC, MCC, PSDTC, PCC, NSCC, and Philadep).

[13] *Supra* note 11.

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rule change prior to the thirtieth day after the date of publication of notice of filing of amendments because the proposed rule change modifies SCCP's rules in anticipation of SCCP's conversion to an SDFS system on February 22, 1996. Accelerated approval of the proposal will allow SCCP to effect the conversion and to implement the procedures provided under the proposed rule change on that date.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to the file number SR–SCCP–95–06 and should be submitted by March 21, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File Nos. SR–SCCP–95–06) be, and hereby is, temporarily approved through August 31, 1996, for those sections of the proposal relating to the participants fund formulas and permanently approved for the remainder of the proposed rule change.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4578 Filed 2–28–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Surety Bond Guarantee Program Fees

AGENCY: Small Business Administration (SBA).

ACTION: Notice.

SUMMARY: This Notice establishes the fees payable by Principals and Sureties participating in SBA's Surety Bond Guarantee Program (13 CFR Part 115).

FOR FURTHER INFORMATION CONTACT: Barbara Brannan, Office of Surety Guarantees, (202) 205–6540.

SUPPLEMENTARY INFORMATION: In a final rule published on January 31, 1996, SBA indicated that it was completing an analysis of the performance of the Surety Bond Guarantee Program and was evaluating whether changes in the Principal's guarantee fee and the Surety's guarantee fee were warranted. See 61 FR 3266, 3269 (January 31, 1996). SBA has completed that review and is setting the Principal's and the Surety's fees in this **Federal Register** Notice. Capitalized terms used in this Notice have the meanings assigned to such terms in 13 CFR § 115.10.

Beginning March 1, 1996 and ending on April 30, 1996, the following guarantee fees will be in effect:

(1) The guarantee fee payable by Principals under 13 CFR §§ 115.32(b) and 115.66 will be $6.00 per thousand dollars of the Contract amount.

(2) The guarantee fee payable by Prior Approval Sureties under 13 CFR § 115.32(c) and by PSB Sureties under 13 CFR § 115.66 will be 20% of the bond Premium.

Beginning May 1, 1996, the following guarantee fees will become effective:

(1) The guarantee fee payable by Principals under 13 CFR §§ 115.32(b) and 115.66 will be $7.45 per thousand dollars of the Contract amount.

(2) The guarantee fee payable by Prior Approval Sureties under 13 CFR § 115.32(c) and by PSB Sureties under 13 CFR § 115.66 will be 23% of the bond Premium.

The guarantee fees scheduled to take effect on May 1, 1996 are higher than the guarantee fees currently in place in the Surety Bond Guarantee Program, but are lower than the fees SBA had proposed for the Program in the proposed rule published on November 27, 1995. See 60 FR 58263 (November 27, 1995). SBA's proposal to increase the Principal's fee to $8.00 per thousand dollars of the Contract amount and the Surety's fee to 25% of the bond Premium was not well-received by the participants in the Program. Most of the comments submitted to SBA predicted serious adverse consequences for Principals and for the Program if the fees were increased as proposed.

After a careful review of these comments and of Program performance and trends, it has been determined that some increase in the fees is, nevertheless, necessary to increase the reserves in the Program's revolving fund to cover potential unfunded liabilities should the Program be terminated. While improvements in Program operations have resulted in decreased claims payments and increased claims recoveries over the past several years, current reserves in the revolving fund are not sufficient to satisfy all such unfunded Program liabilities. The increased fees established in this Notice have been calculated as the minimum necessary to bridge this gap over a period of years. The increases are not scheduled to go into effect until May 1, 1996 in order to allow sufficient time for Program participants to make any necessary adjustments to their accounting systems.

SBA will continue to evaluate the performance of the Surety Bond Guarantee Program to determine whether the fee increases adopted today remain necessary, and to monitor their effect on both Principals and the Program generally. If the Program continues to perform as well as it has in the recent past, SBA would expect, eventually, to be able to reduce Program fees.

Any future changes in the fee amounts will be published by SBA in the form of a Notice in the **Federal Register.**

Information on other requirements concerning the fees may be found at 13 CFR §§ 115.32 and 115.66.

Dated: February 23, 1996.

Philip Lader,

Administrator.

[FR Doc. 96–4612 Filed 2–28–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for the Metrorail Extension to Largo Town Center, Prince Georges County, Maryland

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the Maryland Mass Transit Administration (MTA), in cooperation with Prince George's County and the Washington Metropolitan Area Transit Authority (WMATA), intend to prepare an Environmental Impact Statement (EIS) for a Metrorail Extension from the Addison Road Metrorail Station to Largo Town Center in Prince George's County, Maryland. The EIS, which will be performed concurrently with Preliminary Engineering (PE), is being prepared in conformance with the National Environmental Policy Act (NEPA), the Maryland Environmental Policy Act (MEPA), and relevant local regulations and ordinances of Prince George's County. Other key supporting agencies include the Metropolitan Washington Council of Governments (MWCOG), and the Maryland-National Capital Park and Planning Commission (M-NCPPC).

The EIS will evaluate transportation improvements in the corridor between the Addison Road Metrorail Station and Largo Town Center in Prince George's County. Transportation alternatives proposed for consideration in the project area include: (1) The No-Build option, under which the existing and programmed bus, rail, and roadway improvements in the study area would be assumed to be implemented; (2) a Transportation Systems Management (TSM) alternative which consists of increased coverage of the bus service network; and (3) the Metrorail Extension from the Addison Road Metrorail Station to Largo Town Center, a three mile (4.8 kilometer), two station addition to the region's rail transit system. Options to mitigate adverse impacts and to support local land use will be considered.

Scoping Process—The Scoping Meeting will be held on: Wednesday, March 27, 1996, 6:00–9:00 p.m., Thomas G. Pullen Arts Magnet School, 700 Brightseat Road, Landover, Maryland.

A sign language interpreter will be available for the hearing impaired. A TDD number is also available: (410) 539–3497. The building is accessible to persons with disabilities.

The purpose of the Public Scoping Meeting is to provide interested individuals with an introduction to and an overview of the EIS and PE processes, and to offer the opportunity for comments on the significant issues and impacts to be addressed in the EIS. Comments may be submitted orally or in writing at the Scoping Meeting or mailed to Mr. Harvey Flechner, Project Manager, Maryland Mass Transit Administration, William Donald Schaefer Tower, 6 Saint Paul Street, Baltimore, Maryland 21202–1614 during the Scoping comment period which ends Monday, April 15, 1996. The MTA will address comments received during the Scoping period during the preparation of the Draft Environmental Impact Statement (DEIS).

The Scoping Meeting will begin with an "open house" where attendees will be able to view graphics and discuss the project with project representatives. A presentation on the project will be given at 7:30 p.m., followed by additional opportunity for questions and answers. Scoping materials will be available at the meeting or in advance of the meeting by contacting Mr. Harvey Flechner at (410) 767–3786 or the Deputy Project Manager, Mr. Andy Smith at (410) 767–3597.

FOR FURTHER INFORMATION CONTACT: Mr. Alfred Lebeau, Transportation Program Specialist, Federal Transit Administration, Region III, (215) 656–6900.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and the MTA invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the EIS and identifying any significant social, economic, or environmental issues related to the alternatives. Scoping comments may be made at the Public Scoping Meeting or in writing; See "Scoping Process" section above for locations and times. During Scoping, comments should focus on identifying specific social, economic or environmental impacts to be evaluated and suggesting alternatives which are more cost effective or have less environmental impacts while achieving similar transit objectives.

II. Background

In 1990, the Maryland Department of Transportation (MDOT), in cooperation with Prince George's County, the Maryland-National Capital Park and Planning Commission (M–NCPPC), the City of Bowie, the Washington Metropolitan Area Transit Authority (WMATA), and the Metropolitan Washington Council of Governments (MWCOG) began work on the Addison Road to Bowie Corridor Alternatives Analysis/Preliminary Environmental Impact Study (AA/PEIS), which followed the Federal Transit Administration's (FTA) technical guidelines for an Alternatives Analysis/Draft Environmental Impact Statement (AA/DEIS). Planning work was performed to provide preliminary cost and impact information for evaluating a set of alternatives designed to address the transportation needs in the corridor. The alternatives included bus, light rail, and Metrorail extending from the present terminus of the Washington Metrorail Blue Line at Addison Road to Largo and Bowie. Major aspects of this study involved: (a) Screening a variety of alignment options; (b) identifying a list of alternatives for further evaluation; (c) detailing an analysis of the transportation, environmental and financial effects of the alternatives; and (d) documenting the results.

An extensive public involvement program, including public meetings, newsletters, and a score of meetings with interested groups was central to the development, refinement, and evaluation of the alternatives. Federal and State resource agencies were also consulted during the study. In addition, the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service participated in a field visit to review wetlands and related environmental issues. As a result of this coordination, the alignment of several alternatives was shifted to avoid and/or minimize potential impacts.

The 1993 Addison Road to Bowie Corridor AA/PEIS planning process led to the selection of the Metrorail Extension to Largo Town Center as the preferred alternative in meeting the transportation needs of the corridor, in conformance with the Major Investment Study (MIS) requirements. The Metrorail Extension to Largo Town Center was also approved as part of the National Capital Region's Transportation Improvement Program (TIP), for an Environmental Impact Statement (EIS), and Preliminary Engineering (PE), as well as included in the Region's Constrained Long Range Plan (CLRP) for construction, and in the Maryland Department of Transportation's Statewide Transportation Improvement Program (STIP).

In 1991, the U.S. Congress passed the Intermodal Surface Transportation Efficiency Act (ISTEA) which authorized $5 million for the preparation of the federal Environmental Impact Statement (EIS) and Preliminary Engineering for the Metrorail Extension to Largo. The FTA has granted the MTA approval to incur costs for EIS and PE work without prejudice to possible future federal funds up to $5 million. Based on the decision to include the Metrorail Extension to Largo in the regional CLRP, the MTA is proceeding to the EIS and Preliminary Engineering phase of the project. Preparation of the federal EIS will include circulation of a Draft EIS (DEIS) for review and public comment.

III. Description of Study Area and Project Need

The study area and corridor are wholly within Prince George's County, beginning at the existing Addison Road Metrorail Station. The study area is also bounded by Sheriff Road on the north,

[14] 17 CFR 200.30–3(a)(12) (1995).

Central Avenue (MD 214) on the south, and Landover Road on the east. Rail transit service to and from Washington DC to the study corridor is available on the Metrorail Blue Line, provided by the Washington Metropolitan Area Transit Authority (WMATA). Existing traffic is primarily carried by Central Avenue (MD 214) and I–95/I–495 (the Capital Beltway) with high traffic volumes and poor level-of-service at many of the signalized intersections along Central Avenue and along major portions of the Capital Beltway.

The proposed Metrorail Extension will provide rail transit service to the rapidly developing areas in the Largo - Town Center. The proposed extension will also support economic development while contributing to higher transit use to and from Washington, DC employment centers. This increased transit ridership will improve cross-county public transportation and help achieve regional clean air goals.

IV. Alternatives

Transportation alternatives proposed for consideration in the project area include: (1) The No-Build option, under which the existing and programmed bus, rail, and roadway improvements in the study area would be assumed to be implemented; (2) a Transportation Systems Management (TSM) alternative which consists of increased coverage of the bus service network; and (3) the Metrorail Extension from the Addison Road Metrorail Station to Largo Town Center, a three mile (4.8 kilometer), two station addition to the region's rail transit system. Options to mitigate adverse impacts and to support local land use will be considered.

V. Probable Effects

The FTA and MTA plan to evaluate in the EIS significant social, economic and environmental impacts of the alternatives under consideration. Among the primary issues are the expected increase in transit ridership, the expected increase in mobility for the corridor's transit dependent, the support of the region's air quality goals, the capital outlays needed to construct the project, the cost of operating and maintaining the facilities created by the project, and the financial impacts on the funding agencies. The environmental and social impacts proposed for analysis include: Land use and economic activity, displacements and relocations, neighborhoods, visual conditions, traffic, air quality, noise and vibration, ecosystems, water resources, hazardous waste disposal/neutralization, parklands, soils/geology/topography, historic, cultural and archaeological resources, and energy impacts. These impacts will be evaluated both for the construction period and for the long-term operation of each alternative.

VI. FTA Procedures

In accordance with federal transportation planning regulations (23 CFR Part 450), the draft EIS will be prepared to include an evaluation of the social, economic and environmental impacts of the alternatives. The DEIS will be performed concurrently with Preliminary Engineering. On the basis of the public and agency comments received on the DEIS, the MTA Administrator in concert with the Secretary of the Maryland Department of Transportation (MDOT) and in consultation with Prince George's County, MWCOG, WMATA, M–NCPPC, and other affected agencies, will select a preferred alternative. Then MTA, as lead agency, will continue with further Preliminary Engineering and preparation of the Final EIS. Opportunity for additional public comment will be provided throughout all phases of project development.

Issued on: February 23, 1996.

Sheldon A. Kinbar,

Regional Administrator.

[FR Doc. 96–4691 Filed 2–28–96; 8:45 am]

BILLING CODE 4910–57–P

National Highway Traffic Safety Administration

Fatal Accident Reporting System Users Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces a public meeting at which NHTSA will conduct a Fatal Accident Reporting System (FARS) Users meeting. The users are those members of the highway safety community that analyze data from the Fatal Accident Reporting System.

DATES AND TIME: The meeting is scheduled to begin at 9:30 a.m., on Thursday, March 7, 1996 and conclude at 3:00 p.m., on Thursday, March 7, 1996.

ADDRESSES: The meeting will be held in Rooms 6244–48 of the U.S. Department of Transportation Building, which is located at 400 7th Street SW., Washington, DC.

SUPPLEMENTARY INFORMATION: NHTSA intends to review the currently collected data elements in FARS and identify new and additional elements that would help support the highway safety community. The attendees will be able to provide information and recommendations to NHTSA on data elements that could be collected in FARS and would support their analytic efforts for the highway safety community.

The meeting is open to the public, but attendance may be limited due to space availability. Participation by the public will be determined by the meeting coordinator.

FOR FURTHER INFORMATION CONTACT: Charles J. Venturi, Fatal Accident Reporting System Branch, Chief, National Center for Statistics and Analysis, 400 7th Street SW., Washington, DC 20590, Telephone (202) 366–4709. Internet—Cventuri@NHTSA.DOT.GOV

Issued: February 23, 1996.

William A. Boehly,

Associate Administrator for Research and Development.

[FR Doc. 96–4667 Filed 2–28–96; 8:45 am]

BILLING CODE 4910–59–M

Surface Transportation Board [1]

[Docket No. AB–6 (Sub-No. 370X)]

Burlington Northern Railroad Company—Abandonment Exemption—Between Mesa and Basin City, Franklin County, WA

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by Burlington Northern Railroad Company of its 11.20-mile line located between milepost 0.00, near Mesa, and milepost 11.20, near Basin, in Franklin County, WA. The exemption is subject to environmental, endangered species, and standard employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 30, 1996. Formal expressions of intent to file an offer [2] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by March 11, 1996, petitions to stay must be filed by March 15, 1996, and petitions to reopen must be filed by March 25, 1996.

ADDRESSES: Send pleadings referring to Docket No. AB–6 (Sub-No. 370X) to: (1) Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative, Sarah J. Whitley, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5312. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721].

Decided: February 20, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams.

Secretary.

[FR Doc. 96–4668 Filed 2–28–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this notice applies the law in effect prior to the Act, and citations are to former sections of the statute, unless otherwise indicated.

[2] *See Exempt. of Roil Abandonment—Offers of Finon. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF THE TREASURY

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice.

SUMMARY: In order to comply with the requirements of the Paperwork Reduction Act of 1995 concerning proposed extensions of information collection requirements, the Financial Crimes Enforcement Network ("FinCEN") is soliciting comments on the information collected on foreign bank and financial accounts under the Bank Secrecy Act regulations.

DATES: Submit written comments by April 29, 1996.

ADDRESSES: Direct all written comments to the Financial Crimes Enforcement Network, Office of Regulatory Policy and Enforcement, Attn.: FBAR Comments, Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182–2536.

FOR FURTHER INFORMATION CONTACT: Charles D. Klingman, Office of Financial Institutions Policy, at (703) 905–3920; or Joseph M. Myers, Attorney-Advisor, Office of the Legal Counsel, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

1. The Bank Secrecy Act, Titles I and II of Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR Part 103.

The Bank Secrecy Act specifically directs the Secretary to "require a resident or citizen of the United States or a person in, and doing business in, the United States, to keep records, file reports, or keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency." 31 U.S.C. 5314. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN; the requirement of 31 U.S.C. 5314 has been accomplished through regulations promulgated at 31 CFR 103.24 and through the instructions to the *Report of Foreign Bank and Financial Accounts*, Treasury Form TD F 90–22.1.

2. The mission of FinCEN includes the provision of government-wide, multi-source intelligence and analytical network in support of the detection, investigation, and prosecution of domestic and international money laundering and other financial crimes by federal, state, local and foreign law enforcement agencies. Accordingly, information collected on form TD F 90–22.1 is made available, in accordance with strict safeguards, to appropriate criminal and civil law enforcement personnel in the official performance of their duties. The information contained is of use in investigations involving international money laundering, tax evasion, restrictions on prohibited financial transactions with designated countries, and other financial crimes.

3. In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information on form TD F 90–22.1 is presented to assist those persons wishing to comment on the information collection. (The number of respondents has significantly varied each year; the estimates below are based on an average.)

Description of Respondents: All United States persons owning or having authority over a foreign bank or financial account with value greater than $10,000 at any time during a single year.

Frequency: No more frequently than annually.

Estimated Number of Respondents: 150,000.

Estimate of Burden: Reporting average of 10 minutes per response; recordkeeping average of 5 minutes per response.

Estimate of Total Annual Burden on Respondents: Reporting burden estimate = 25,000 hours; recordkeeping burden estimate = 12,500 hours. Estimated combined total of 37,500 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $750,000.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Request: Reinstatement.

OMB Number: 1506–0002.

Form Number: TD F 90–22.1

4. FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected, and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) Any additional costs associated with

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reporting; and (2) any additional costs associated with recordkeeping.

Respondents to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Dated: February 25, 1996.

William F. Baity,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 96–4645 Filed 2–28–96; 8:45 am]

BILLING CODE 4820–03–M

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of determination of necessity for renewal of the Art Advisory Panel.

SUMMARY: It is in the public interest to continue the existence of the Art Advisory Panel.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS, 901 D Street, SW., Room 224, Box 68, Washington, DC 20024, Telephone No. (202) 401–4128, (not a toll free number).

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (1982), the Commissioner of Internal Revenue announces the renewal of the following advisory committee:

Title. The Art Advisory Panel of the Commissioner of Internal Revenue.

Purpose. The Panel assists the Internal Revenue Service by reviewing and evaluating the acceptability of property appraisals submitted by taxpayers in support of the fair market value claimed on works of art involved in Federal Income, Estate or Gift taxes in accordance with sections 170, 2031, and 2512 of the Internal Revenue Code of 1986.

In order for the Panel to perform this function, Panel records and discussions must include tax return information. Therefore, the Panel meetings will be closed to the public since all portions of the meetings will concern matters that are exempted from disclosure under the provisions of section 552b(c)(3), (4), (6) and (7) of Title 5 of the U.S. Code. This determination, which is in accordance with section 10(d) of the Federal Advisory Committee Act, is necessary to protect the confidentiality of the tax returns and return information as required by section 6103 of the Internal Revenue Code.

Statement of Public Interest. It is in the public interest to continue the existence of the Art Advisory Panel. The Secretary of Treasury, with the concurrence of the General Services Administration, has also approved renewal of the Panel. The membership of the Panel is balanced between museum directors and curators, art dealers and auction representatives to afford differing points of view in determining fair market value.

Authority for this Panel will expire two years from the date the Charter is approved by the Assistant Secretary for Management/Chief Financial Officer and filed with the appropriate congressional committees unless, prior to the expiration of its Charter, the Panel is renewed.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–4699 Filed 2–28–96; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register

Vol. 61, No. 41

Thursday, February 29, 1996

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Board's meeting described below. The Board will also conduct a public hearing pursuant to 42 U.S.C. 2286b to evaluate the readiness of the Department of Energy (DOE) to safely start up and operate the Defense Waste Processing Facility (DWPF) for radioactive sludge operations only.

TIME AND DATE: 5:00 p.m., March 11, 1996.

PLACE: The Conference Center (Municipal Auditorium), 214 Park Avenue, S.W., Aiken, South Carolina. The entrance to the facility is located at 215 The Alley.

STATUS: Open.

MATTERS TO BE CONSIDERED: Safety issues related to commencement of radioactive sludge operations at DWPF.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, N.W., Suite 700, Washington, D.C. 20004, (800) 788–4016. This is a toll free number.

SUPPLEMENTARY INFORMATION: The meeting agenda is as follows:

5:00–5:10 p.m. Introductory comments by Mr. John T. Conway, Chairman.
5:10–5:30 p.m. Discussion by Dr. Mario Fiori, Manager of DOE Savannah River Operations Office—affirm DOE–SR position on state of readiness of DWPF for sludge-only operations.
5:30–5:50 p.m. Discussion by Mr. Frank McCoy, DOE–SR Assistant Manager for Environment, Safety, Health and Quality Assurance, on the Savannah River Site Integrated Standards-Based Safety Management Program and its application at DWPF.
5:50–6:10 p.m. Discussion by Mr. Austin Scott, Vice President of HLW Operations, WSRC—ability of WSRC to safely startup and operate DWPF for sludge-only operations.
6:10–6:30 p.m. Discussion by Mr. Peter Graeff, WSRC ORR Chairman—WSRC ORR evaluation, conclusions, and perspectives.
6:30–6:50 p.m. Discussion by Mr. Joe King, DOE ORR Chairman—DOE ORR evaluation, conclusions, and perspectives.
6:50–7:10 p.m. Discussion by Mr. Dave Lowe, Board Technical Staff, providing introduction and history of Board involvement and review at DWPF.
7:10–7:30 p.m. Discussion by Mr. Joe Sanders of Board Technical Staff efforts on DWPF and explanation of Safety Authorization Basis review methodology used.
7:30–8:30 p.m. Board Technical Staff panel presentation of significant topical areas and response to Board member questions.
8:30 p.m.—Close Scheduled presentations by interested public.

Requests to speak at the hearing may be submitted in writing or by telephone. We ask that commentators describe the nature and scope of the oral presentation. Those who contact the Board prior to close of business on March 8, 1996, will be scheduled for time slots, beginning at approximately 8:30 p.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the entrance to the Conference Center, at the start of the 5:00 p.m. hearing.

Anyone who wishes to comment, provide technical information or data may do so in writing, either in lieu of, or in addition to making an oral presentation. The Board members may question presenters to the extent deemed appropriate. The Board will hold the record open until March 25, 1996, for the receipt of additional materials.

A transcript of this proceeding will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and at the Gregg-Graniteville Library, 171 University Parkway, University of South Carolina, Aiken, SC 29801.

The Board reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone or adjourn the meeting, to extend the time for receipt of additional materials, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: February 27, 1996.

John T. Conway,

Chairman.

[FR Doc. 96–4825 Filed 2–27–96; 1:02 pm]

BILLING CODE 3670–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, March 5, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, March 7, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1996–4: James F. Schoener on behalf of Lyndon H. LaRouche, Jr.
Regulations: *MCFL* Effective Date
Legislative Recommendations 1996
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 96–4873 Filed 2–27–96; 3:42 pm]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

Announcing an Open Meeting of the Board

TIME AND DATE: 10:00 a.m. Thursday, March 7, 1996.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

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- FHLBank of Atlanta Proposal to Certify the North Carolina Housing Finance Agency as a Nonmember Mortgagee.
- First Round 1996 AHP Awards for the FHLBank of Pittsburgh and Indianapolis.
- 1996 AHP Priority for the FHLBank of Topeka.
- FHLBank of Pittsburgh AHP First Time Homebuyer Set-Aside Program.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 96–4874 Filed 2–27–96; 3:43 pm]

BILLING CODE 6725–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Forwarded to the Federal Register on Friday, February 23, 1996.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m., Friday, March 1, 1996.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Board administrative matter.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: February 27, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–4792 Filed 2–27–96; 10:54 am]

BILLING CODE 6210–01–P

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following open meeting during the week of March 4, 1996.

An open meeting will be held on Tuesday, March 5, 1996, at 10:00 a.m., in Room 1C30.

The subject matter of the open meeting scheduled for Tuesday, March 5, 1996, at 10:00 a.m., will be:

The Commission will consider releasing the staff report of the Task Force on Disclosure Simplification. This report will contain a number of recommendations designed to simplify, streamline, and modernize the rules and forms addressing corporation finance. The Task Force, composed of Commission staff members, was assisted by Philip K. Howard. The Commission also will consider a recommendation to publish a release proposing for comment the elimination of a number of rules and forms, as well as other rule amendments, to begin the implementation of Task Force recommendations. For further information, contact Brian J. Lane, at (202) 942–2800.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: February 27, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–4879 Filed 2–27–96; 3:57 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register

Vol. 61, No. 41

Thursday, February 29, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95-ANM-16]

Amendment of Class E Airspace; Ogden, UT

Correction

In rule document 96–850 beginning on page 1706 in the issue of Tuesday, January 23, 1996, make the following corrections:

§ 71.1 [Corrected]

1. On page 1707, in the 1st column, in § 71.1:

a. In the 14th line, "142-464" should read "142-465".

b. In the 29th line, "8.500" should read "8,500".

In the correction published in the issue of Friday, February 23, 1996, on page 7051, in the second column, correction 2 is corrected to read as follows:

2. Lines 32 and 33 should read "101, southeast along V-101 to V-288, west along V-288 to V-484,".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 28420 Special Federal Aviation Regulation (SFAR) No. 74]

RIN 2120-AGO2

Airspace and Flight Operations Requirements for the 1996 Summer Olympic Games, Atlanta, GA

Correction

In rule document 96–2988 beginning on page 5492 in the issue of Monday, February 12, 1996 make the following corrections:

(1) On page 5493, in the second column, in the paragraph under **Exceptions**, in the third line "tariff" should read "traffic".

(2) On page 5498, in the third column, under "12. U.S. Highway 64; Tennessee" in the fifth line "84°28′37″ W." should read "84°27′37″ W.".

BILLING CODE 1505–01–D

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Part II

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Supplemental Rule Regarding a Recycling Standard Under Section 608 (Proposed) of the Clean Air Act; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5428–1]

RIN 2060–AF36

Protection of Stratospheric Ozone: Supplemental Rule Regarding a Recycling Standard Under Section 608 (Proposed) of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Through this action EPA is proposing to amend the Refrigerant Recycling Regulations promulgated under section 608 of the Clean Air Act Amendments of 1990. This proposal is being undertaken to provide more flexibility where refrigerants are transferred between appliances with different ownership; to adopt a third-party certification program for reclaimers and laboratories; to propose amendments to the recordkeeping aspects of the technician certification program; and to clarify aspects of the sales restriction. In addition, EPA is proposing changes for the testing of recovery/recycling equipment; and proposes to adopt changes to ARI Standard 740, an industry standard previously adopted by EPA. Also, this action clarifies the distinction between major and minor repairs. In most instances, this action proposes to provide greater flexibility to technicians servicing equipment and it streamlines several existing provisions without compromising the goals of protecting public health and the environment or compliance with the requirements of the Clean Air Act Amendments.

DATES: Comments on this proposal must be received by April 1, 1996 at the address below. A public hearing, *if requested*, will be held in Washington, DC. If such a hearing is requested, it will be held on March 18, 1996 at 9 am, and the comment period would then be extended to April 17, 1996. Anyone who wishes to request a hearing should call Cindy Newberg at 202/233–9729 by March 7, 1996. Interested persons may contact the Stratospheric Protection Hotline at 1–800–296–1996 to learn if a hearing will be held and to obtain the date and location of any hearing. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

ADDRESSES: Comments on this proposal must be submitted to the Air Docket Office, Public Docket No. A–92–01 VIII.I, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500. Additional comments and materials supporting this rulemaking are contained in Public Docket No. A–92–01. Dockets may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials. The public hearing will be held at the EPA Auditorium, 401 M Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cindy Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460, (202) 233–9729. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Refrigerant Recycling Regulations

II. Proposed Revisions to the Refrigerant Recycling Regulations
- A. Contractor reclamation
- B. Laboratory certification
  - 1. Requirements For Laboratory Certification Programs
  - 2. Requirements for laboratories
- C. Revocation and Suspension
- D. Adoption of third party approval of reclaimers
- E. Technician Certification and the Sales Restriction
  - 1. Recordkeeping
  - 2. Technicians certified to work on motor vehicle air conditioners
  - 3. Transfers between wholly-owned subsidiaries
- F. Motor Vehicle Air Conditioner-like appliances
- G. Changes to the ARI 740 Test Procedure for Refrigerant Recycling and Recovery Equipment
  - 1. Measurement of Vapor Recovery Rates
  - 2. High-Temperature Testing
  - 3. Use of Representative Recovery Cylinders
  - 4. Limiting Emissions from Condenser Clearing, Oil Draining, Purging, and External Hoses
  - 5. Requirements for Equipment Advertised as "Recycling Equipment"
  - 6. Durability Testing
- H. Major and Minor Repairs
  - 1. Comments received since the final rule
  - 2. Proposed definitions

I. Change in the Definition of Small Appliance
- 1. Background
- 2. Additional Comments
- 3. Today's proposal

III. Summary of Supporting Analysis
- A. Executive Order 12866
- B. Regulatory Flexibility Act
- C. Paperwork Reduction Act
- D. Regulatory Flexibility Act

I. Refrigerant Recycling Regulations

Final regulations promulgated by the U.S. Environmental Protection Agency (EPA) under section 608 of the Clean Air Act Amendments of 1990 (the Act), published on May 14, 1993 (58 FR 28660), establish a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment. Together with the prohibition on venting during the maintenance, service, repair, and disposal of class I and class II substances (see the listing notice January 22, 1991; 56 FR 2420) that took effect on July 1, 1992, these regulations are intended to substantially reduce the emissions of ozone-depleting refrigerants. These regulations were subsequently revised in the final regulations published on August 19, 1994 (59 FR 42950), November 9, 1994 (59 FR 55912), March 17, 1995 (60 FR 14607) and August 8, 1995 (60 FR 40419).

The current regulations require that persons servicing air-conditioning and refrigeration equipment observe certain service practices to reduce emissions, establish equipment and reclamation certification requirements, and comply with a technician certification requirement. The regulations also require that ozone-depleting compounds contained in appliances be removed prior to disposal of the appliances, and that all air-conditioning and refrigeration equipment, except for small appliances, be provided with a servicing aperture that will facilitate recovery of refrigerant. In addition, the regulations restrict the sale of refrigerant and establish a leak repair requirement for appliances that normally hold a refrigerant charge of more than fifty pounds. Also, the current regulations require that refrigerant recovered from an appliance but not returned to that appliance or another appliance with the same ownership, must be reclaimed by an EPA certified reclaimer. This last provision is scheduled to sunset in March 1996. Today EPA is issuing a direct final rulemaking and a corresponding proposal to extend the effectiveness of these requirements until December 31, 1996 or until EPA completes this rulemaking, whichever occurs first. EPA suggests that the reader review those notices as well.

II. Proposed Revisions to the Refrigerant Recycling Regulations

A. Contractor Reclamation

In this action EPA is proposing to revise the requirements to have refrigerant reclaimed by a certified reclaimer where the level of purity can be ensured through the testing of representative samples. EPA currently prohibits the sale or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant, unless the refrigerant has been reclaimed by a person who has been certified as a reclaimer pursuant to § 82.164. Thus, where refrigerant is moved between appliances with different owners, the refrigerant must be reclaimed by a certified reclaimer. The only exceptions to this current prohibition, such as where refrigerant is transferred between motor vehicle air conditioners (MVACs) that have different ownership, is indicated in § 82.154(g) and (h).

The definition of reclaim promulgated on August 19, 1994 (59 FR 42956), is as follows:

> [To] reclaim refrigerant means to reprocess refrigerant to at least the purity specified in appendix A to 40 CFR part 82, subpart F (based on ARI Standard 700–1993, Specifications for Fluorocarbon and Other Refrigerants) and to verify this purity using the analytical methodology prescribed in appendix A. In general, reclamation involves the use of processes or procedures available only at a reprocessing or manufacturing facility.

EPA promulgated this reclamation requirement to address concerns with the quality of refrigerants, the potential for inadvertent mixing of refrigerants, and the potential costs to the owners of appliances damaged by the use of used refrigerants that do not meet any purity standard. A purity standard helps protect consumers who lack the technical knowledge to evaluate the risks of using refrigerant obtained from an outside source that may be excessively contaminated. EPA stated that "limited off-site recycling that is supported by a standard of purity and a testing method for recycled refrigerant may be the most cost-effective means of carrying out Section 608 while protecting air-conditioning and refrigeration equipment" (May 14, 1993,(58 FR 28679)). To protect consumers, EPA permitted off-site recycling only when the ownership of the refrigerant did not change. In instances where ownership of the refrigerant did change, EPA required reprocessing by a certified reclaimer and chemical analysis to ensure conformance with ARI Standard 700. However, the Agency noted that it would conduct a further rulemaking to address whether a standard for used refrigerant could be developed that would protect air-conditioning and refrigeration equipment, but would permit technicians to clean refrigerant themselves by recycling, rather than sending the refrigerant to a reclaimer.

Since the implementation of these regulations, EPA believes that there is consensus concerning the need to continue to depend on ARI Standard 700 as the appropriate standard for purity of used refrigerants. Therefore, EPA considered extending the current reclamation requirement indefinitely. EPA strongly believes this requirement has provided an effective means for ensuring refrigerant purity and, therefore, protecting consumers. However, the industry standard that is the basis for today's proposal maintains the important aspects of the current requirement while providing greater flexibility. Where an alternative to sending the entire refrigerant charge to a certified reclaimer is advocated, a protocol for analyzing the refrigerant has been maintained. Since chemical analysis is the crux of the reclamation program EPA believes it is possible to provide this flexibility while maintaining an effective program. As stated above, the Agency's goal has been to develop a more flexible procedure that would ensure compliance with the standard without disrupting the marketplace.

While EPA has required that refrigerant transferred between different owners be reclaimed, EPA has encouraged the development of a procedure for ensuring the purity of used refrigerants. This procedure is referred to as "off-site recycling." Since May 1993, EPA has monitored the industry's development of new standards. EPA has participated and observed several industry forums and has met with various stakeholders. As development of a potential standard for off-site recycling progressed, it became apparent that such a standard could not be developed by industry and adopted by EPA prior to the expiration of the promulgated reclamation requirement on May 14, 1995. Therefore, EPA extended the reclamation requirement until March 17, 1996 (60 FR 14607) and more recently published an action to further extend the effectiveness of these requirements. These actions ensured that a purity standard remained in effect during consideration of the newly developed industry standard discussed below. If EPA adopts the standard proposed today, EPA will simultaneously sunset the current reclamation requirement.

"Handling and Reuse of Refrigerants in the United States," commonly known as Industry Recycling Guide (IRG–2), was published in December 1994. IRG–2 was developed and endorsed by the following organizations:
- —Air-Conditioning and Refrigeration Institute (ARI);
- —Air Conditioning Contractors of America (ACCA);
- —Association of Home Appliance Manufacturers (AHAM);
- —Food Marketing Institute (FMI);
- —Mechanical Service Contractors of America (MSCA);
- —Mechanical Contractors Association of America (MCAA);
- —National Association of Plumbing-Heating-Cooling Contractors (NAPHCC);
- —Refrigeration Service Engineers Society (RSES);
- —Sheet Metal and Air-Conditioning Contractors National—Association, Inc. (SMACNA);
- —Spauschus Association, Inc.; and

developed in cooperation with the General Services Administration of the U.S. Government.

This group represents refrigerant reclaimers, manufacturers of air-conditioning and refrigeration equipment, manufacturers of recovery and recycling equipment, compressor manufacturers, contractors, engineers, food stores, building owners and managers, and the federal government.

IRG–2 provides guidelines for determining how to handle refrigerant that has been recovered from an air-conditioning or refrigeration appliance. IRG–2 describes four potential options:

(1) Putting the refrigerant back into the system without recycling it;

(2) Recycling the refrigerant and putting it back into the system from which it was removed or back into a system with the same owner;

(3) Recycling the refrigerant, testing to verify conformance with ARI Standard 700 prior to reuse in a different owner's equipment, provided that the refrigerant remains in the contractor's custody and control at all times from recovery through recycling to reuse; and

(4) Sending the refrigerant to a certified reclaimer.

The current regulations allows options 1, 2, and 4. Through this action, EPA is proposing also to permit option 3.

While not part of today's proposal, EPA notes that a technician should consider many factors when servicing an appliance and deciding how to handle the refrigerant that has been recovered. Technicians should consider

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why the system is being serviced. Compressor failures, particularly motor burnouts, will affect the service person's decision concerning how to clean the refrigerant. The service history and age of the appliance can be important. Appliances that have not been cleaned or evacuated properly from a previous service problem may have higher levels of contamination in the refrigerant and in the oil. If the service history is unavailable the technician may, at a minimum, wish to recycle the refrigerant. If the appliance had a previous burnout, the technician should be concerned with the purity of the refrigerant. Technicians should consider the equipment manufacturer's policies and recommendations concerning the use of recycled refrigerant. Finally, the technician should consider the cleaning capacity of the recycling equipment.

If the refrigerant needs to be recycled it should be cleaned to acceptable contaminant levels. Equipment certified to meet ARI Standard 740, "Performance of Refrigerant Recovery/Recycling Equipment," should be able to clean refrigerants, although it should be noted ARI Standard 740–1993 does not specify minimum contaminant levels and equipment designed for recycling cannot separate mixed refrigerants. Technicians may need to consider the cleaning capabilities of their recycling equipment over time to ensure that its cleaning performance has not significantly diminished. In addition, filter systems in recycling equipment need to be changed or cleaned regularly to ensure maximum performance.

These factors are part of the complex decisionmaking system the technicians use when determining the appropriate actions for safe refrigerant management. If EPA adopts today's proposed contractor reclamation standard, in many cases the technicians may still choose to recover and have the refrigerant reclaimed by a certified reclaimer.

EPA would like to clarify that what has formerly been referred to as an "off-site recycling standard" is essentially reclamation by the technician or contractor, instead of reclamation by the certified reclaimer. EPA and industry have distinguished between recycling and reclamation. To recycle refrigerant means to extract refrigerant from an appliance and to clean the refrigerant for reuse without meeting the requirements for reclamation. Recycled refrigerant is cleaned using oil separation and one or more passes through recycling devices. Recycling procedures are usually performed at the job site. As discussed above, reclamation means that the refrigerant has been cleaned and chemically analyzed for conformity with the ARI Standard 700–1993 purity levels. EPA believes the pertinent part of the definition of reclamation is conformance with the ARI Standard 700–1993 purity levels. Hence, refrigerant that has been cycled through recycling equipment and tested to ensure that ARI Standard 700–1993 has been achieved is actually reclaimed refrigerant. Therefore, henceforth in this notice, EPA will refer to this procedure as contractor reclamation, or contractor reclaiming rather than off-site recycling. Accordingly, EPA is proposing to revise the definition of reclamation to eliminate references to the physical location where reclamation can occur.

EPA is proposing that when the refrigerant remains in the custody of a single technician or contractor and a representative sample of that refrigerant has been chemically analyzed to determine conformance with the ARI Standard 700–1993, the refrigerant will be considered reclaimed and may be charged into a new owner's appliance. A representative sample may be defined as a sample taken from each container of refrigerant to be chemically analyzed and tested to ARI Standard 700–1993 prior to packaging for resale or reuse. Such samples will be at least 500 ml and shipped in stainless steel test cylinders that include ¼" valve assembly and pressure relief rupture disc. Cylinders should be rated by the Department of Transportation. EPA believes that as long as representative samples of the refrigerant are chemically analyzed by certified laboratories to meet the contaminant levels in ARI Standard 700–1993, and as long as refrigerant remains in the contractor's custody and control, the quality and purity of the reclaimed refrigerant can be ensured.

EPA believes it is essential that the contractor-reclaimed refrigerant remain in the custody and control of the contractor prior to resale. EPA believes that the contractors and technicians understand the importance of maintaining refrigerant purity, particularly in light of the phaseout of ozone-depleting substances. EPA's technician certification program, other relevant educational venues, and work experience, provides contractors and technicians with a level expertise in their chosen endeavor. Their training has made the contractors and technicians aware of the need to avoid releases and refrigerant contamination as well as the dangers that could result from such actions. These factors lead EPA to believe that contractors and technicians can protect the integrity of refrigerant in their charge. There is no practical method for tracking and verifying the purity of refrigerant charges where the custody and control of the refrigerant charges have not been maintained. EPA believes it is necessary to ensure that such mechanisms exist because of the need to ultimately ensure the protection of the equipment that will be charged with the refrigerant. Through this action, EPA is proposing that the contractor or technician maintain records consisting of the date and location of where the refrigerant was recovered, the date(s) and location(s) of where the refrigerant is stored, the date(s) and location(s) of where representative samples are drawn, and the date(s) and location(s) of where the refrigerant is sold after a certified laboratory has verified the quality of the refrigerant. EPA believes this recordkeeping is necessary to ensure that only suitable refrigerant is charged into equipment with different ownership.

Under this proposal, each representative sample of the refrigerant must be chemically analyzed for conformity with ARI Standard 700–1993 by a laboratory that participates in an EPA-approved laboratory certification program. The requirements for laboratory certification are discussed in a later section of today's notice. If the laboratory report shows that the representative sample meets ARI Standard 700–1993 purity levels, then the refrigerant would be considered reclaimed and can be charged into a different owner's appliance.

EPA believes that this contractor reclamation option creates flexibility for the contractors and technicians while continuing to protect the owners or operators of the affected appliances and to meet the statutory requirements of the Clean Air Act Amendments. EPA believes that permitting contractor reclamation of refrigerants will provide savings to the contractors that may be passed on to the appliance owners. Shipping refrigerants to certified reclaimers often may constitute a large capital outlay for the contractor, whereas shipping only representative samples to laboratories may limit the expenses for the contractors. EPA also believes that this flexibility will not compromise compliance with the requirements of the Clean Air Act Amendments. Section 608(a) of the Clean Air Act Amendments requires that regulations include requirements that (A) reduce the use and emission of such substances to the lowest achievable level, and (B) maximize the recapture and recycling of such substances. EPA believes that as long as the chain of custody and control of the refrigerant is not compromised, as discussed in IRG–2, and the purity of the refrigerant is chemically analyzed to ensure conformance with ARI Standard 700–1993, the purity of the refrigerant can be assured. In addition, this added flexibility will not increase emissions or lessen the recapture of ozone-depleting refrigerants. Technicians already recover these refrigerants and, where ownership of the refrigerant will change, the technicians already transfer the refrigerants to certified reclaimers. In accordance with the proposed contractor reclamation option, technicians would still recover the refrigerant. The only significant change is the ability to submit a representative sample for testing rather than shipping the entire refrigerant charge. Since the same required practices for handling refrigerants apply in both cases there is no additional risk of release of refrigerant stemming from this proposed change in the regulations.

EPA believes this approach provides economic benefits for the contractors and the appliance owners while maintaining the integrity of the refrigerant supply.

EPA believes that refrigerant will continue to be reclaimed properly even where someone other than a certified reclaimer is responsible for the refrigerant. EPA requests comment regarding contractor reclamation.

EPA also requests comments on the definition of a representative sample. EPA believes a more detailed definition is not necessary. A sample for chemical analysis is only as good as the method used to extract that sample. If samples that are not truly representational of the refrigerant charge are used for analysis, the results could be inaccurate. However, EPA understands that there are trade organizations, such as ARI, that can provide guidance on the correct procedures for sampling refrigerant. EPA also understands that laboratories can provide information to technicians concerning these methods for sampling and may not accept samples that have not been correctly extracted. Therefore, EPA does not believe it is necessary for the Agency to include such information in a definition.

EPA is also interested in how much savings the adoption of contractor reclamation may represent for contractors and technicians. EPA believes that shipping samples rather than the entire refrigerant charge should lessen costs. There may be other economic benefits derived from the adoption of contractor reclamation as well. EPA is interested in both anecdotal and analytical information concerning the reduction of costs.

B. Laboratory Certification

The proposed adoption of contractor reclamation is directly linked to a means of ensuring that laboratories analyzing representative samples of the refrigerant charges are qualified to perform such services. Therefore, EPA believes it is appropriate to ensure that a means of oversight for the laboratories exists. Through this action, EPA will propose the adoption of a third-party certification program for laboratories. EPA is aware of a voluntary program developed by ARI to certify laboratories. Key elements of the program include qualifying tests, ongoing testing, and site visits. EPA believes that many of these elements are consistent with the elements that EPA is proposing for any person seeking to become a third-party laboratory certifier.

EPA considered other alternatives to third-party certification, including a direct certification program. However, the agency believes a third-party program would be more appropriate because industry organizations have the expertise and resources to establish and maintain an effective program. Moreover, EPA has learned from experience with other certification programs administered under subpart F that third-party certification can be highly effective, particularly where the third-party has already operated similar voluntary programs that can be used to help fine-tune the administration of a required certification program.

A third-party certification program would require EPA approval of the certifying programs and the development of standards for both the certifying programs and standards for the laboratories. This approach is similar to the several other certification programs successfully administered under the section 608 program.

1. Requirements for Laboratory Certification Programs

EPA believes that a laboratory certification program should develop a set of minimum performance requirements for initial and continuing certification. EPA has reviewed a draft program to be established by ARI. Many of the key elements included in this notice of proposed rulemaking (NPRM) are analogous to ARI's draft requirements.

EPA believes a signed agreement between the laboratory and the laboratory certification program will be necessary to ensure an understanding of the responsibilities of both the laboratory and the certifying program. Such an agreement should include information concerning a laboratory's ability to test representative samples of refrigerant to the purity levels acceptable under the ARI Standard 700–1993 standard and a willingness to comply with the standards established by the EPA-approved laboratory certification program.

To become certified, EPA believes that a laboratory applying for certification should test and verify the composition of at least three refrigerants submitted by the EPA-approved laboratory program. Only laboratories that accurately determine, within an acceptable range, each contaminant in any of the qualifying samples should be certified. EPA believes the following list of values constitute acceptable ranges for reporting contaminants:

Purity: +/− 0.10%;
Water: +/− the greater of 3ppm or 10% of the actual value;
High Boiling Residue: +/− the greater of 0.01% (absolute) or 20% of the actual value; and
Non-condensibles: +/− the greater of 0.2% (absolute) or 10% of the actual value.

These values were developed by ARI and reviewed by EPA staff. EPA has determined that these values should ensure that a laboratory is able to provide accurate results within an acceptable range.

The laboratory certification program should perform a site visit prior to certifying the laboratory to ensure that the laboratory is capable of performing correct refrigerant analysis and performed its own analysis of the samples submitted for verification. Site visits should include a visual inspection of the laboratory's equipment and ascertain whether each item necessary for routine refrigerant analysis is present and is functional. In addition, the site visit should include a procedural review of the laboratory's methods and procedures for refrigerant analysis. EPA anticipates that a schedule of continued site visits will be necessary to ensure the continued qualifications of the laboratory. EPA believes these visits should occur on at least a semiannual basis.

To provide contractors and technicians with information concerning the status of the laboratory, EPA believes it is necessary for the laboratory certification program to provide the laboratory with evidence that the laboratory is certified. EPA is proposing to require that this evidence be displayed conspicuously; therefore, EPA anticipates that a seal or logo will be necessary. In addition, EPA believes

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that the seal or logo should contain standardized language. EPA is proposing that the seal or logo include the following statement: "_____ has been certified as a laboratory to analyze refrigerant, as required by 40 CFR part 82, subpart F." This evidence demonstrates to those unfamiliar with the status of every laboratory, that a particular facility is properly certified. The requirement to display evidence is consistent with the requirements for other third-party certification programs promulgated under subpart F. This notification could be particularly important if a technician or contractor is aware of which laboratory certification programs are approved by EPA, but does not have a list of every laboratory that has been certified. EPA anticipates that there will be a limited number of laboratory certification programs; however, the potential list of laboratories certified to test and verify refrigerant samples could be extensive.

Laboratories that are unable to substantiate their ability to comply with the criteria established through this rulemaking, or with any relevant additional criteria established by the EPA-approved laboratory certifier, should be disqualified from the review process. The laboratory should be permitted to reapply at a later date. A certified laboratory no longer able to meet the continuing criteria should be decertified. EPA believes that laboratories that misrepresent their status, do not comply with the payment of any reasonable fees to the certifying program, and laboratories that do not submit required data, are examples of laboratories that should be disqualified. If a laboratory is decertified, the laboratory certification program should inform EPA within 30 days.

Laboratory certification programs that cannot or do not decertify laboratories that do not comply with the standards set forth in this proposal could have their EPA approval revoked. If such a case arises, laboratories certified by that laboratory certification program would be required to be certified by another approved program within 6 months.

EPA proposes to approve laboratory certification programs that demonstrate to EPA their ability to establish and maintain a program that includes the elements discussed in this proposal and that provide the necessary level of continued oversight for the certified laboratories. At a minimum, those seeking EPA-approval for a laboratory certification program would need to submit information to EPA demonstrating the program's ability to meet the criteria established by this proposal. Furthermore, EPA anticipates that there may be a need for a site visit by EPA to the potential laboratory certification program to ensure the ability of the potential program to perform verification of representative samples. If the laboratory certification program uses an independent laboratory to analyze samples, information concerning that laboratory and/or inspection of that laboratory may be necessary.

2. Requirements for Laboratories

Through this action, EPA is proposing a process for third-party certification of laboratories that would analyze samples of refrigerant submitted by contractors in accordance with the proposed scheme for contractor reclamation. Those seeking to become laboratory certification programs would submit information demonstrating their ability to meet the requirements specified in this proposal.

EPA requests comments on the proposed certification of laboratories. EPA particularly is interested in comments concerning the criteria for the laboratories that would be certified under this proposed scheme. EPA has not set forth a protocol for handling representative samples in this NPRM. EPA is interested in whether it is necessary to require a protocol, and if so, what such a protocol should encompass. In addition, EPA requests comments on the requirement that laboratory certification programs receive and maintain EPA approval. EPA is also interested in comments concerning decertification and revocation.

C. Revocation and Suspension

Failure to abide by any of the provisions of Subpart F may result in the revocation or suspension of the approval of the laboratory certification program. In addition, EPA is proposing that these same procedures be applicable to other third-party certification programs promulgated under Subpart F. Those certification programs include: technician certification, equipment certification, recovery and recycling equipment certification and reclaimer certification as discussed later in this notice. In such cases, EPA will notify the certification program in writing. Today's action specifies the proposed procedures for suspension and revocation as well as providing information concerning the ability of an approved certification program to challenge a decision of revocation or suspension. In such cases the program may request a hearing within 30 days; however, the program must submit in writing the program's objections and supporting data. If, after review of the request the Agency agrees that the program raises a substantial and factual issue the Agency would provide a hearing and assign a Presiding Officer. The Agency may direct that all arguments and presentation of evidence be concluded within a specified time of no less than 30 days from the date that the first written offer of a hearing was made and may direct that the decision of the Presiding Officer will be final. EPA is proposing that the decision of the Presiding Officer will be final without further proceedings, unless there is an appeal or motion for review by the Administrator within 20 days of the decision. On appeal, EPA is proposing to provide the Administrator with all the powers that he or she would have in making the initial decision, including the discretion to require or permit briefs, oral arguments, the taking of additional evidence, or the remanding to the Presiding Officer for additional proceedings. EPA requests comments on these proposed procedures.

D. Adoption of Third Party Approval of Reclaimers

In order to ensure the quality of reclaimed refrigerant on the market, EPA requires the certification of reclaimers. Currently, reclaimers certify to EPA that they return refrigerant to at least the ARI Standard 700–1993, verify the purity using the methods set forth in ARI Standard 700–1993, and dispose of wastes from the reclamation process in accordance with applicable laws and regulations. During initial rulemaking under section 608, EPA considered an option whereby EPA would approve third parties that would certify reclaimers, and could administer site inspections and/or sampling of refrigerant. EPA stated that a third-party certification would be more reliable than self-certification. Inspections and sampling would provide independent evidence that the ARI Standard 700–1993 was being achieved at the reclamation facility. At the time the rule was drafted, one party demonstrated interest in seeking approval to be a third-party certifier. EPA indicated in the preamble discussion (58 FR 28699) that at a future date, it may consider replacing the self-certification program with third-party certification.

Through this notice, EPA is proposing to take such action. EPA believes that ARI and perhaps other industry entities will be interested in applying to become an EPA laboratory certification program. These organizations could provide site inspections and test refrigerant samples. EPA understands that to ensure compliance with a voluntary program currently administered by ARI, ARI audits refrigerant to verify the ability of the ARI-certified reclaimers to comply with the program's criteria. EPA believes this type of oversight provides a stronger mechanism for ensuring the purity of refrigerants than the self-certification program currently administered by EPA.

EPA believes that since its inception, ARI's voluntary program has been highly successful. The program ensures the quality of the refrigerant, thus protecting the appliances and the consumer. Therefore, EPA believes it is appropriate to replace its self-certification program with a third-party certification that includes certain aspects of the ARI program.

EPA believes reclamation certification programs should perform oversight and refrigerant analysis to ensure conformance. In addition, programs would be required to process and maintain reports concerning the amount of reclaimed refrigerant that each certified reclaimer processes. The reclamation certification program would be required to verify the information reported by the reclaimers. Verification could be part of the inspection and testing process. Aggregate annual reporting to EPA would be required.

At a minimum the reclamation certification program would be required to ensure that at least four samples of reclaimed refrigerant from each certified reclaimer's facilities are tested by a laboratory and verified by the program each year. The particular samples to be tested are to be selected from an inventory of refrigerant that has been reclaimed by the reclaimer. If the reclaimer processes many types of refrigerants, each refrigerant listed by the reclaimer should be tested at least once a year. These tests must be performed on a random basis. Certified reclaimers should be required to display a logo, seal, or other like notification, indicating which EPA-approved reclamation certification program has certified the reclaimer. This notification ensures that the refrigerant purchaser is suitably informed about the certified reclaimer's affiliations. EPA believes that the seal or logo should contain standardized language. EPA is proposing that the seal or logo include the following statement: "_____ has been certified as a refrigerant reclaimer, as required by 40 CFR part 82, subpart F." This seal or logo should be displayed in a manner that permits a technician or contractor to know that the reclaimer is certified by an EPA-approved program. This information could be particularly important if a person knows the names of all EPA-approved reclamation certification programs but does not know the names of all the certified reclaimers. EPA anticipates that there will be a limited number of approved reclamation certification programs; however, the potential list of certified reclaimers is far more extensive.

Reclaimers that are unable to substantiate their ability to comply with the criteria established through this rulemaking, or with other relevant state, local or federal requirements, should not be certified. In addition, a certified reclaimer no longer able to meet the continuing criteria should be decertified. For example, reclaimers that submit incomplete or inaccurate reports, refuse to permit site inspections, or fail to perform sufficient refrigerant analysis should be decertified. The reclaimer should be permitted to reapply at a later date. The reclaimer certification program would be required to inform EPA that a reclaimer has been decertified within 30 days.

Reclamation certification programs that cannot or do not decertify reclaimers that do not comply with the standards set forth in this proposal, or do not comply with other provisions, could have their EPA approval revoked. If such a case arises, reclaimers certified by the certifying program would be required to be certified by another approved program within six months. Such a requirement is necessary to ensure that the reclaimer continues to be certified by an EPA-approved program, not a program that has had its approval revoked. Moreover, such a requirement is necessary because if EPA has taken action to revoke approval, such action may be based on improper certification procedures used by the program. As discussed above, EPA is proposing specific procedures for suspension and revocation, as well as providing information concerning the ability of a reclaimer certification program to challenge a decision of revocation or suspension. These procedures would be the same for all third-party certification programs established under Subpart F.

EPA is concerned with transferring one aspect of its current reclaimer certification program to third parties. Certified reclaimers currently certify to EPA compliance with requirements for waste disposal. EPA is not convinced that approved reclamation certification programs would be capable of ensuring full compliance with federal, state, or local requirements outside of those promulgated under section 608, such as hazardous waste disposal. However, it is necessary that any potentially certified reclaimer either indicate to EPA or to an approved reclamation certification program that such compliance is occurring. Therefore, EPA is proposing that the reclaimers certify that they dispose of wastes from the reclamation process in accordance with applicable laws and regulations. However, if the certification program suspects that these laws and regulations are not being met, such information would be forwarded to EPA for further investigation.

EPA believes that at a minimum, one organization that already has a voluntary reclamation certification program may apply. EPA believes that other organizations will also consider applying to become an approved reclamation certification program. EPA believes that third-party certification will better meet EPA's goals. Moreover, the success of the third-party recycle/recovery equipment certification, and the third-party technician certification, demonstrates the effectiveness of this approach. Therefore, EPA is proposing to modify the reclamation requirements to state that reclaimers must instead be certified by an EPA-approved reclaimer certification program. EPA plans to approve certifiers based on the criteria discussed above as soon as the criteria is promulgated. Those reclaimers already certified by EPA will need to be certified by an EPA-approved reclaimer certification program.

Those interested in becoming approved reclamation certification programs would be required to submit information to EPA indicating the ability to conform with all regulatory requirements for certifying and monitoring reclaimers. EPA would review this information and if appropriate, issue a letter of approval.

EPA realizes that provisions must be made for the changeover. Therefore, EPA proposes to continue to permit the reclamation of refrigerant by EPA-approved reclaimers until six months from the date EPA approves of at least one reclamation certification program. During the six months after EPA has approved at least one reclamation certification program, reclaimers not certified by EPA but instead certified by the EPA-approved program would also be permitted to reclaim refrigerant. Those certified by EPA will be required to become certified by an EPA-approved program prior to the end of that six-month period. After that date, reclaimers previously certified by EPA that have not been recertified by an approved third-party, will no longer be considered certified.

EPA requests comment on the adoption of a third-party certification program for reclaimers. EPA is particularly interested in the increased

benefits that may derive from this regulatory scheme rather than the current self-certification program run directly by the Agency. EPA also requests comments on the proposed procedure for converting to third-party certification, including provisions to include reclaimers that are currently certified by a program submitting an application. EPA also requests that any program that intends to apply to become a third-party certifier submit a draft application. EPA believes that reviewing draft applications during the comment period will permit EPA to include information on the timeframe for approving applications in the final rule.

E. Technician Certification and the Sales Restriction

1. Recordkeeping

EPA is concerned with the maintenance of records for certified technicians by approved programs that no longer provide test administration. Currently there are more than 90 EPA-approved technician certification programs that provide testing in accordance with § 82.161 and Appendix D. These programs administer and grade tests, maintain records, issue certification credentials, and submit reports to EPA twice each calendar year. EPA believes that technician certification has been very effective. Within 24 months, more than 600,000 technicians were certified. However, it has come to the Agency's attention that since the bulk of existing technicians have become certified, and the certification market now focuses on those first entering this field, some EPA-approved certification programs may choose to discontinue providing this service. To date, three programs, two of which did not actually ever administer tests, have withdrawn.

EPA is concerned with the maintenance of records for technicians who were tested by a program that no longer exists or no longer provides technician certification. EPA believes that the likelihood of this occurring will increase in the future. EPA is concerned that if a technician's certification credentials are lost and the program no longer exists, it may not be possible for the technician to receive duplicate credentials, thus denying the technician the ability to purchase class I or class II refrigerants.

Currently, programs that have been approved to administer the test must maintain records for three years (58 FR 28734). However, EPA does not believe an enforcement mechanism exists that would effectively ensure that this occurs if the program declares bankruptcy. Furthermore, even if the program does continue to maintain the records, access to the records may be difficult if the program itself is no longer in business. Therefore, EPA is considering several potential options.

EPA could require programs to forward their records to EPA. EPA would therefore be responsible for maintaining those records. However, EPA is concerned that the Agency does not have adequate resources for maintaining these records effectively. A second option would be to have the programs send the records to EPA and have EPA choose a suitable existing certification program to maintain the records and forward the records to that program. EPA is uncertain as to adequate criteria that would be used for choosing the appropriate program. With more than 90 existing programs, all approved based on the same criteria, EPA would not be in a position to select a single program without acting in an arbitrary manner. A third option would be to have the program that intends to cease operation determine which active program, willing to accept the records, to submit its records to, and to notify EPA of its decision. In this scenario, all pertinent information, including the records relating to the technicians and the testing information would be forwarded to another program. The program pulling out would notify EPA of its decision, and the recipient of the records would notify EPA upon receipt of the records.

EPA believes the third option represents the most equitable approach. EPA believes that having an existing company maintain records is most appropriate. Therefore, EPA is proposing to promulgate this option.

EPA requests comments on requiring programs that no longer offer technician certification to locate a suitable program for continuation of the maintenance of the relevant records. EPA also requests comment on the two alternative methods for ensuring that recordkeeping is adequately provided.

In addition, EPA is also concerned with whether certification records should be maintained beyond the current three-year requirement. EPA believes that if a technician loses his/her identification card after the three years has passed, it should be possible for a replacement card to be issued. However, without a requirement that records are maintained indefinitely, it is unclear that the approved certification organizations will retain sufficient information to issue new credentials. Therefore, through this action, EPA requests comments on whether or not there are more appropriate timeframes.

2. Technicians Certified to Work on Motor Vehicle Air Conditioners

EPA is concerned about an inconsistency that exists in the sales restriction. Currently, technicians who are certified by either an EPA-approved section 608 or section 609 program, in accordance with § 82.40 and § 82.161, may purchase ozone-depleting refrigerants.[1] At the time the sales restriction was drafted and promulgated in May 1993 (58 *FR* 28714, May 14, 1995), EPA was aware that potential substitutes for CFC–12 for use in motor vehicle air conditioners (MVACs) could include an HCFC or a blend with an HCFC component. Therefore, EPA did not restrict the types of refrigerants that could be purchased by those with section 609 certification.

At the same time, EPA was also drafting and later promulgated regulations regarding acceptable and unacceptable alternatives to class I substances. Those regulations, promulgated under section 612, identify acceptable alternatives in various sectors, including refrigeration. These regulations, known as the Significant New Alternatives Policy (SNAP) Program were not yet promulgated when the sales restriction was promulgated. Therefore, EPA did not know to what extent the refrigeration sector would be subdivided. Subsequently, the SNAP refrigerant sector has been subdivided to indicate which refrigerants are acceptable for various types of appliances. Therefore, since SNAP now clearly delineates which refrigerants are acceptable for use in MVACs, EPA believes it is appropriate for the sales restriction under § 608 to employ a similar provision.

Furthermore, EPA is concerned with reports that those certified to work on MVACs are purchasing refrigerants that are not acceptable for use in MVACs. In all likelihood, this refrigerant is either being improperly installed in MVACs or those technicians may be servicing other appliances in violation of the regulations promulgated under Section 608. The sales restriction is intended to decrease emissions of ozone-depleting substances. If refrigerant not suitable for use in MVACs is improperly installed it may be vented. A technician certified to service MVACs with recovery equipment for use with suitable refrigerants may vent the unsuitable refrigerant rather than risk contaminating the recovery equipment. A person who is not certified to service

[1] 1. The sale of small cans of CFC–12 is further restricted to those certified by an EPA-approved § 609 program.

appliances other than MVACs and purchases refrigerant with the intent of servicing non-MVACs or non-MVAC-like appliances, may not be familiar with the required service practices established by EPA under § 82.156 and intended to ensure the lowest achievable emissions level. Improper service by that technician could lead to the release of the class I or class II refrigerant as well as damage to the appliance.

Therefore, through this action, EPA is proposing to modify the sales restriction. The proposed changes would restrict the sale of refrigerants to those certified in accordance with § 82.34, by a program approved under § 82.40, to purchasing CFC–12 in small cans and refrigerants listed as acceptable for use in MVACs in accordance with all regulations promulgated under Section 612. EPA requests comment on the appropriateness of modifying the sales restriction to limit the types of refrigerant that can be purchased by those certified to service and maintain MVACs under § 609.

3. Transfers Between Wholly-Owned Subsidiaries

EPA has received comments from several organizations where one wholly-owned subsidiary of a holding company would like to transfer refrigerant to another wholly-owned subsidiary of the same holding company. The requirement to reclaim refrigerant before the refrigerant changes ownership applies to these transfers. Therefore, without first reclaiming the refrigerant, these transfers are not permitted. EPA is aware of one company that wanted to make such transfers and had the capability to reclaim refrigerant. This company decided to become certified rather than have a third party involved.

As discussed in other sections of this proposal, EPA's reclamation provisions are designed to protect the refrigerant consumer and the appliances into which used refrigerant is charged. In the example described above, EPA believes the relationship between these two subsidiaries should provide a sufficient means to ensure that transfers between the subsidiaries would be akin to transfers within one company. Therefore, EPA is proposing to provide an exception to the sales for the transfers of refrigerant between two wholly-owned subsidiaries of the same company.

EPA also received comment requesting that EPA permit the transfer of unreclaimed refrigerant between subsidiaries that are not wholly-owned. Since these types of subsidiaries would involve other investors that may have less of a commitment to each of the subsidiaries involved in the transactions, EPA does not believe transfers between these types of subsidiaries are akin to those within one organization. Therefore, EPA is limiting today's proposal to wholly-owned subsidiaries. EPA requests comment on this proposal.

F. Motor Vehicle Air Conditioner-Like Appliances

Through this action, EPA would like to modify the definition of Motor Vehicle Air Conditioner (MVAC)-like appliances. § 82.152 states that:

> MVAC-like appliance means mechanical vapor compression, open-drive compressor appliances used to cool the driver's or passenger's compartment of an non-road motor vehicle. This includes the air-conditioning equipment found on agricultural or construction vehicles. This definition is not intended to cover appliances using HCFC–22 refrigerant. (58 *FR* 28713)

Since the promulgation of this definition in May 1993, EPA has received requests to clarify whether various types of appliances are in fact MVAC-like appliances. These appliances include air conditioners on small private planes, boats and trolleys. In these examples EPA has agreed that the appliances are MVAC-like. EPA believes that if the appliance is similar to an MVAC in all substantive manners, it should be treated as an MVAC. However, EPA has become concerned that the definition of MVAC-like should include an upper limit on the amount of refrigerant contained in the appliance. Without an upper limit, the current definition could be construed to include appliances that are not similar to an MVAC in all substantive manners. For example, a chiller located on a marine vessel could be mistakenly considered MVAC-like. Therefore, an upper limit would prevent any possible confusion. To ensure consistency between what is an MVAC and what is MVAC-like, the refrigerant limit for MVAC-like appliances should be similar to the largest amount of refrigerant contained in most MVACs. EPA believes that bus air conditioners using CFC–12 may represent the type of MVAC with the largest average charge size. Moreover, EPA believes that all MVACs contain less than 20 pounds of refrigerant. EPA does not believe that the adoption of a 20-pound limit for MVACs would exclude any appliance that reasonably should be considered MVAC-like.

EPA believes that a limit will provide clarity to those unsure about whether a particular appliance qualifies as MVAC-like, specifically where the charge is larger than that of the average automobile air conditioner, yet smaller than that of the average bus air conditioner. Therefore, EPA is proposing to add a 20-pound ceiling to the definition of MVAC-like appliances.

EPA requests comment on amending the definition of MVAC-like appliances and whether a ceiling of 20 pounds represents an appropriate cutoff.

G. Changes to the ARI 740 Test Procedure for Refrigerant Recycling and Recovery Equipment

The final rule published on May 14, 1993 requires that refrigerant recycling and recovery equipment manufactured after November 15, 1993, be tested by an EPA-approved laboratory. The laboratory must verify that the equipment is capable of achieving applicable required evacuation levels and that the equipment releases no more than 3% (previously 5%) of the quantity of refrigerant being recycled through purging of noncondensables. In addition, the laboratory must measure the vapor and liquid recovery rates of the equipment. To perform all of these measurements, the laboratory must use the test procedure set forth in ARI 740–93, an industry test protocol for recycling and recovery equipment that was included in the final rule as appendix B.

During the comment period on the proposed rule, some commenters raised concerns regarding the ARI 740 test protocol. After investigating these concerns, EPA concluded that some were unwarranted, but that others required further investigation and, in some cases, action as discussed in that rule (58 FR 28687). Among the issues requiring more investigation were concerns that (1) the current method for measuring the vapor recovery rate of equipment yields a maximum, rather than an average, recovery rate; (2) the test only tests equipment at one temperature, 75° F, although the performance of recycling and recovery equipment varies significantly depending upon ambient temperature, (3) the test does not include measurement of the quantity of refrigerant that remains in the equipment (e.g., condenser) at the conclusion of the recovery procedure, potentially allowing contamination of subsequent recovery or recycling jobs or release of refrigerant during condenser clearing, and (4) the test does not test equipment for durability, raising the possibility of widespread equipment failure after only a few months of use (58 FR 28682, 28687–88).

Testing experience and international developments have raised other issues

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since the rule was promulgated. Underwriters Laboratories (UL), one of the equipment testing organizations approved by EPA, has pointed out the need to adopt standards for external hose permeability and to ensure that recovery and recycling equipment is tested with recovery cylinders no larger than those with which the equipment is used in the field. The standard for recycling and recovery equipment being developed by the International Standards Organization (ISO) addresses refrigerant emissions from oil draining in addition to emissions from air purging and equipment (condenser) clearing, limiting the total that can be released during these procedures to 3% of the total refrigerant processed. Finally, the Industry Recycling Guideline 2 (IRG–2) established a recommended "clean-up" standard for recycled refrigerant that is used in the same owner's equipment (Maximum Contaminant Levels of Recycled Refrigerants in Same Owner's Equipment).

EPA has worked closely with the two EPA-approved equipment testing organizations, the Air-Conditioning and Refrigeration Institute (ARI) and Underwriter's Laboratories (UL), to resolve these concerns. EPA has also worked with members of the International Standards Organization (ISO) Committee for Recycling and Recovery Equipment to ensure that the issues are addressed in international standards. With the exception of durability testing, all of the issues are being addressed by voluntary changes to both the ISO draft standard and the ARI 740 standard. EPA participated in the drafting of the revised ARI 740 Standard, and EPA is planning to adopt the latest version of it; ARI Standard 740–1995. In addition, EPA is planning to require that equipment that is advertised as recycling equipment be able to meet the IRG–2 "clean-up" standard. EPA is not planning to require additional durability testing for recycling and recovery equipment.

1. Measurement of Vapor Recovery Rates

Before the final rule was published on May 14, 1993, ARI had already indicated that it was willing to adopt a more representative measure of vapor recovery rates (58 FR 28667). (EPA could not adopt this methodology in the May 14, 1993, rule because it had not been proposed.) As discussed in the final rule, the current standard requires measuring the maximum vapor recovery rate, but two pieces of equipment with identical maximum recovery rates can have very different average recovery rates. This is because equipment characteristics that are not important to vapor recovery rates at the beginning of recovery, such as compressor clearance, become increasingly important as recovery progresses. Although EPA has not established minimum vapor or liquid recovery rates, the Agency believes that the best possible information on these rates should be available to technicians to ensure that they purchase recycling and recovery equipment adequate to their needs. Technicians with adequate recovery equipment are less likely than technicians with slow equipment to interrupt the recovery procedure before it is complete. As noted in the final rule, measurement of the vapor recovery rate would require timing the recovery procedure that is already included in the standard. EPA is proposing to adopt the most recent version of ARI 740, 740–1995, which includes a measure of the average recovery rate. The new test measures the change in mass and time elapsed as the pressure of the test chamber is lowered from the saturation pressure of the refrigerant at 24° C (75° F) (or from atmospheric pressure, if the refrigerant boils at a temperature above 75°) to the lower of atmospheric pressure or 10% of the initial pressure. (As discussed below, the test is repeated with R–22 at 40° C (104° F).) This provision is similar to a provision in the draft ISO standard, which measures the change in mass and time elapsed as the pressure of the test chamber is lowered from the saturation pressure of the refrigerant to 15% of that pressure.

For R–12, 10% of the saturation pressure at 75° F is 9.2 psia, or 11 inches of mercury vacuum, which is slightly lower than the final recovery vacuum required for recovery equipment used with R–12 appliances containing less than 200 pounds of refrigerant (10 inches of vacuum), but is higher than the final recovery vacuum required for recovery equipment used with larger R–12 appliances (15 inches of vacuum). For R–22, 10% of the saturation pressure is 14.7 psia, which means that atmospheric pressure (14.7 psia) would be the final pressure. Atmospheric pressure is also the final recovery vacuum required for recovery equipment used with R–22 appliances containing less than 200 pounds of refrigerant, but again, is higher than the final recovery vacuum required for larger R–22 appliances (10 inches of vacuum). Finally, for R–11, 10% of the saturation pressure is 1.47 psia (27 inches of vacuum), which again is slightly higher than the final recovery vacuum required for recovery equipment used with R–11 appliances (29 inches of vacuum).

EPA requests comment on adopting this method of measuring the average recovery rate of recycling and recovery appliances. EPA specifically requests comment on whether the final pressure of 10% of the saturation pressure is close enough to the required vacuum to ensure that the test is representative of recovery rates in the field. EPA also requests comment on whether the current measure of maximum vapor recovery rates yields any useful information that the new test would not, and on whether it should therefore be retained.

2. High-Temperature Testing

One of the most important additions to the ARI 740 standard is a requirement that the vapor recovery rate and final recovery vacuum of recovery and recycling equipment be measured at 40° C (104° F), in addition to 24° C (75° F), for recovery and recycling equipment intended for use with high-pressure refrigerants. As noted in the final rule published on May 14, 1994, recovery and recycling equipment in the field is likely to have to function at temperatures considerably higher than 75° F (58 FR 28683). For instance, recovery often takes place on rooftops in the summer, where temperatures frequently exceed 100° F. The performance of recovery and recycling equipment is likely to be affected by such high temperatures (58 FR 28688). This is because high temperatures raise the saturation pressure of the refrigerant in the recovery tank, raising the compression ratio against which the compressor in the recovery device must work to evacuate the appliance. This can both slow recovery and prevent the equipment from achieving vacuums that it can achieve at 75° F. In some cases, equipment can actually stop running at high temperatures, because pressures rise too high or because the motor overheats or draws too much current in its attempt to recover the refrigerant, tripping safety switches. Underwriters Laboratories reported that over 50 percent of refrigerant recovery and recycling units initially failed to operate continuously during high temperature testing that is required as part of UL's safety testing (letter from Glenn Woo and Larry Kettwich to Debbie Ottinger)[2].

EPA believes that the high-temperature tests included in the revised ARI 740 standard would provide useful information on equipment's ability and quickness to draw vacuums at high temperatures. At the same time, these tests are likely to reveal many of the problems that might occur in equipment operated at high temperatures in the field (as has UL's safety test at 104° F), such as thermal or electrical overloading of motors. The test requires that the mixing chamber, a container with a minimum volume of three cubic feet, be filled with refrigerant vapor (but no liquid) at the refrigerant's saturation pressure at 104° F. As in the 75° test, this vapor is then recovered until the final recovery vacuum is reached. Also as in the 75° test, the vapor recovery rate is measured while the pressure in the mixing chamber is reduced to 10% of the initial pressure. Because repeating the test with all of the refrigerants for which the equipment is rated would considerably raise the costs of certification, the high-temperature test is performed with one refrigerant, R–22. (If the recycling or recovery equipment is not rated for R–22, then equipment is tested with the refrigerant with the lowest boiling point, and therefore highest saturation pressure, for which it is rated.)

R–22 is used because it has the second highest saturation pressure of the common high-pressure refrigerants and because it has a high discharge temperature, putting more stress on both the compressor and motor of recovery equipment than other high pressure refrigerants. Thus, if a recovery device passes high-temperature testing with R–22, it is likely to be able to perform at high temperatures with all high-pressure refrigerants. This expectation is supported by experience; according to UL personnel, most recycling and recovery equipment (except that intended for use exclusively with motor vehicle air conditioners) that failed high-temperature testing failed during tests involving R–22. In addition, R–22 is the most common high-pressure refrigerant used outside of the motor vehicle air conditioner sector.

Because the 104° vapor recovery rate measurement begins at a higher pressure than the 75° vapor recovery rate measurement, it also ends at a higher pressure, atmospheric pressure. (Ten percent of the initial saturation pressure is actually 22.3 psia, which is higher than atmospheric pressure, 14.7 psia, but the test requires recovery at least to atmospheric pressure.) Atmospheric pressure is the level to which appliances containing less than 200 pounds of R–22 must be evacuated; however, it is higher than 10 inches of vacuum, which is the level to which appliances containing more than 200 pounds of R–22 must be evacuated. EPA requests comment on whether the final pressure of 10% of the saturation pressure is close enough to the required vacuums to ensure that the test is representative of high-temperature recovery rates in the field.

The test procedure mimics what is often the most stressful portion of the recovery process at high temperatures, the recovery of vapor that remains in recycling and recovery equipment after all liquid has been recovered. Many recovery devices recover liquid from appliances, evaporating it to separate it from contaminants and then recondensing it to store it in the recovery tank. As long as liquid is available to evaporate, the evaporator can be used to absorb heat from the condenser. However, when no liquid remains in the appliance (or the mixing chamber that represents it in the ARI 740–1995 test procedure), the evaporator can no longer absorb any heat. Thus, the condenser, along with the compressor, begins to heat up. At the same time, the vapor pressure inside the appliance (or mixing chamber) begins to fall as vapor is pumped out. This has two consequences. First, it raises the compression ratio between the inlet and discharge sides of the compressor, raising the discharge temperature of the refrigerant. Second, it decreases the flow of refrigerant over the motor that hermetic compressors rely upon to cool the motor. By the time a ten-inch vacuum is reached, this flow is less than five percent of the flow that the motor started out with. Both of these effects accelerate the heating of the motor and compressor.

EPA believes that, in general, the high-temperature vapor recovery procedure in the revised standard is more likely to identify inadequate recycling and recovery equipment than the vapor recovery procedure in the current standard. However, the current standard duplicates one type of stress on recovery equipment that the revised standard does not. This stress is that experienced by recovery equipment that is capable of recovering only vapor when liquid is present in the appliance.

When liquid is present in the appliance or test chamber, the mass flow through the recovery or recycling equipment is at its maximum. This yields a high estimate of the vapor recovery rate; however, it also imposes a high power demand on the recovery equipment's compressor as the compressor attempts to move the refrigerant, and it burdens the recovery equipment's condenser with a relatively large amount of heat to reject (because this heat is related not only to the temperature but also to the mass of the refrigerant flowing through the condenser).

A laboratory that participated in the development of ARI 740–1995 expressed concern that equipment that had failed (through tripping of safety switches) the vapor recovery test of ARI 740–1993 might pass the vapor recovery test in ARI 740–1995. To investigate this concern, the laboratory tested the equipment first using the vapor recovery test in ARI 740–1993, and then the high-temperature vapor recovery test in ARI 740–1995. The laboratory found that equipment that cut out after 18 minutes of operation under ARI 740–1993 cut out after less than 10 minutes of operation under ARI 740–1995. (It should be noted that ARI 740–1993 does not expressly require lengthy, continuous vapor recovery at the saturation pressure of the refrigerant.) In view of this result and the fact that most recovery equipment is capable of recovering liquid, EPA believes that ARI 740–1995 will detect faulty equipment.

EPA requests comment on the usefulness of high-temperature testing, and on the choice of R–22 as a representative refrigerant.

3. Use of Representative Recovery Cylinders

To further ensure that equipment testing is representative of likely performance in the field, ARI 740–1995 specifies that recovery cylinders used in testing must be the same size as those sold with the equipment, and must be at the saturation pressure of the refrigerant when testing begins. Use of oversize or evacuated cylinders can yield artificially high recovery rates and artificially deep recovery vacuums, because the recovery compressor does not have to work as hard to move refrigerant into oversize or evacuated cylinders as it does to move refrigerant into normal size cylinders at the saturation pressure of the refrigerant. Both of these requirements codify procedures that are being followed voluntarily at both of the EPA-approved equipment testing laboratories.

4. Limiting Emissions from Condenser Clearing, Oil Draining, Purging, and External Hoses

ARI 740–1995 addresses three potential sources of refrigerant emissions that ARI 740–1993 did not address: condenser clearing, oil draining, and emissions from external hoses. As noted in the May 14, 1994 final rule, substantial quantities of refrigerant may remain in the condensers of recycling and recovery equipment after refrigerant has been transferred to a recovery tank or back

[2] The equipment was redesigned to operate at elevated temperatures before it was UL listed.

into an appliance. Unless this refrigerant is properly removed, it will either contaminate subsequent batches of refrigerant, a serious concern when switching refrigerants (e.g., from R–12 to R–22), or be released to the atmosphere. There are a number of methods to remove this refrigerant properly; however, some of these methods are more complicated and time-consuming than others. One of the most important factors in the speed and effectiveness of the refrigerant clearing process is the design of the recovery or recycling equipment itself.

To help ensure that the design of recovery equipment minimizes the amount of residual refrigerant that either escapes to the atmosphere or contaminates subsequent batches, ARI 740–1995 includes measurements both of the mass of refrigerant that is released during clearing and of the mass of refrigerant that remains in the equipment after clearing is complete. The mass of refrigerant released during clearing is added to the masses released during non-condensables purging and oil draining (see below); this total cannot exceed three percent of the total mass of refrigerant processed through the equipment. The mass of refrigerant that remains in the equipment is not limited, but is reported in the equipment ratings so that prospective buyers can use the information in their purchasing decisions.

In these measurements and limits, ARI 740–1995 is similar to the draft ISO standard for recycling and recovery equipment. The one significant difference is that the draft ISO standard, in addition to weighing the residual refrigerant that remains trapped in the equipment, measures cross-contamination directly by processing a batch of a different refrigerant through the equipment after clearing is complete. This batch is then analyzed to determine the concentration of the first refrigerant using gas chromatography. The drafters of the ARI 740–1995 standard decided not to include this cross-contamination test because they believed that it would yield little additional information, while adding considerable expense to the test procedure. (Gas chromatography is one of the more costly components of certification testing.) Based on information gathered to date, EPA concurs; however, the Agency requests comment on whether the mass of residual refrigerant is likely to be a good predictor of cross-contamination or whether a more extensive test of cross-contamination is required.

To help ensure that the clearing procedure is not excessively complicated or time-consuming, ARI 740–1995 also requires that the manufacturer provide a method and instructions that accomplish connections and clearing within 15 minutes. Any special equipment required for clearing, other than a vacuum pump or manifold gauge, must be provided by the manufacturer along with the recovery or recycling equipment, and the clearing procedure cannot rely upon a storage cylinder below the saturated pressure of the refrigerant. In setting up these constraints, ARI recognized that procedures that require exotic equipment or excessive time are less likely to be followed than procedures that are simple and fast.

Another source of potential emissions is oil draining. Refrigerant oils are designed to mix well with refrigerants so that they flow easily within the refrigeration system. A drawback to this characteristic is that significant quantities of refrigerant can remain entrained in oil that is withdrawn from appliances. Because several system contaminants tend to concentrate in the oil, many recycling and recovery machines include an oil separator that must be periodically emptied. To ensure that oil draining does not result in excessive refrigerant emissions, the ARI 740–1995 procedure measures the mass of refrigerant that is released from oil after its removal from the recovery or recycling equipment. As noted above, the sum of the masses of this refrigerant, the refrigerant emitted during condenser clearing, and the refrigerant emitted during noncondensables purging cannot exceed three percent of the mass of refrigerant processed by the equipment.

The third source of emissions addressed by ARI 740–1995 is external hose assemblies. Although ARI 740–1993 includes a permeability limit for internal hoses (of 5.8 g/cm²/yr), it does not include such a limit for external hoses. ARI 740–1995 establishes a limit of 3.9 g/cm²/yr at 48.8° C (120° F) for all hose assemblies, to be tested under the conditions of UL 1963. (Hoses that are already UL recognized as having passed UL 1963 need not be retested).

EPA believes that these emissions limits will ensure that recycling and recovery equipment achieves the lowest achievable level of emissions. EPA requests comment on adopting these emissions limits from the ARI 740–1995 standard.

5. Requirements for Equipment Advertised as "Recycling Equipment"

Because EPA is proposing to require that representative samples of used refrigerants be chemically analyzed to verify their purity before they are used in another owner's equipment, EPA does not believe that it is necessary to require that refrigerant be processed or recycled in any particular way. The analysis itself guarantees that refrigerant meets the required purity standard. For this reason, EPA is not requiring that contractors use recycling as opposed to recovery equipment to handle refrigerants. (Recovery equipment is designed simply to recover the refrigerant without cleaning it; recycling equipment is designed to clean the refrigerant to some extent.) However, EPA believes that technicians and contractors should have some assurance that equipment that is marketed as "recycling equipment" is capable of cleaning up used refrigerant to some minimum level. This assurance would be especially useful to contractors who use recycling equipment to purify refrigerant for use in the same owner's equipment because these contractors may not use any other means to assure refrigerant purity.

Although ARI 740–1995 includes a test of the ability of recycling equipment to clean up a standard sample of dirty refrigerant and requires that the final contaminant levels of the recycled refrigerant be presented for each make and model, it does not establish any maximum allowable levels for these contaminants. However, IRG–2 contains recommended maximum contaminant levels for refrigerant that is returned to its original equipment or to equipment with the same owner. IRG–2 further states:

> Recycling equipment that is certified to ARI Standard 740, "Performance of Refrigerant Recovery/Recycling Equipment," and capable of consistently cleaning refrigerant to the contaminant levels in this Table should be used. The refrigerant sample used in ARI Standard 740 is representative of a highly contaminated system, so recycling equipment that can clean the refrigerant in this test to the contaminant levels in the Table has acceptable cleaning capabilities.

Thus, the "clean-up" test in the ARI 740 Standard and the maximum contaminant levels in IRG–2 can be combined to establish a test and standard for recycling equipment. EPA is proposing that equipment that is marketed as "recycling" equipment would have to be able to clean up the ARI 740 sample of dirty refrigerant to the maximum contaminant levels listed in IRG–2 when tested under the conditions of ARI 740. Below is a reprint of the Maximum Contaminant Levels of Recycled Refrigerants included in the IRG–2 standard. EPA is proposing to make the change effective 90 days after publication of the final rule to give manufacturers the opportunity to change their advertising and marketing materials, if necessary. EPA requests comment on this proposal and the proposed effective date.

MAXIMUM CONTAMINANT LEVELS OF RECYCLED REFRIGERANTS IN SAME OWNER'S EQUIPMENT

Contaminants	Low pressure systems	R–12 systems	All other systems
Acid Content (by wt.)	1.0 PPM	1.0 PPM	1.0 PPM
Moisture (by wt.)	20 PPM	10 PPM	20 PPM
Non Condensable Gas (by vol.)	N/A	2.0%	2.0%
High Boiling Residues (by vol.)	1.0%	0.02%	0.02%
Chlorides by Silver Nitrate Test	No turbidity	No turbidity	No turbidity
Particulates	Visually clean	Visually clean	Visually clean.
Other Refrigerants	2.0%	2.0%	2.0%

6. Durability Testing

One suggested addition to ARI 740–1993 that was not included in ARI 740–1993 is mandatory, long-term durability testing of recovery and recycling equipment. Equipment durability is of concern because if equipment repeatedly fails prematurely, technicians may eventually elect not to spend the money to repair or replace it, resulting in refrigerant emissions. As noted in the final rule published on May 14, 1994, recovery and recycling equipment may be constructed using components very similar to those in air-conditioning and refrigeration equipment, but recovery and recycling equipment is regularly subject to more stressful conditions than most air-conditioning and refrigeration equipment. For instance, recovery and recycling equipment will often operate at higher than ideal temperatures as it pulls vacuums on appliances.

To investigate the need for mandatory third-party equipment durability testing, EPA has met with the commenters who supported such testing and with ARI and manufacturers of recovery and recycling equipment. EPA has also used its information collection authority under section 114 of the Act to survey manufacturers of recovery and recycling equipment regarding causes and rates of recovery equipment failure. Finally, EPA has considered the extent to which the goals of mandatory durability testing may already be met by manufacturers' in-house durability testing, market forces, and the revisions to the ARI 740 Standard discussed above.

Based on this investigation, EPA does not believe that mandatory, third-party durability testing is necessary to ensure adequate equipment performance. First, equipment durability has a much less direct relationship to refrigerant emissions than do refrigerant recovery levels or rates. In fact, unless recovery equipment is so short-lived that technicians repeatedly wear it out and grow tired of repairing it or replacing it, durability has no effect on refrigerant emissions. Detailed statistics obtained from manufacturers indicate that recovery equipment does not wear out this quickly; failure rates generally fall below five percent per year.

Second, to the extent that durability has been a problem, the market itself appears to have acted to address it. According to manufacturers, models that experienced relatively high failure rates have either been taken off the market or have had their designs corrected to address the problem. An article from the *Air Conditioning, Heating, and Refrigeration News* supports this view [3]. Contractors noted either that their recovery units were holding up well, or that they had changed their purchasing criteria to emphasize durability over price. The contractors who had changed their criteria observed that job interruptions caused by recovery equipment breakdowns had cost them business. Similarly, recovery equipment manufacturers stated that excessive repairs under warranty were expensive to bear, giving them a clear incentive to increase equipment longevity and reliability.

Third, manufacturers observed that recovery technology in general, including features to enhance equipment durability, has advanced markedly since refrigerant recovery was first required in 1992. Many problems emerged during the first year of manufacture and use of recovery equipment, which involved adapting existing refrigeration technology to new demands. These problems have been detected and addressed.

Fourth, EPA believes that any new equipment that is likely to fail under stress is likely to be identified by the enhanced ARI 740 Standard, which, as discussed above, includes new, more strenuous testing at high temperatures. Testing laboratories have indicated that equipment that passed the old test "marginally" have not passed the new one.

Finally, ARI and manufacturers have noted that durability testing, because it is necessarily lengthy, would add considerable cost to the equipment certification procedure. One test that was submitted by a commenter who supported durability testing would require the continuous operation of the equipment for 30 hours. This would double or triple the cost of equipment certification. At the same time, the information gathered from such a test may not be applicable to the field, since recovery equipment is seldom required to function continuously for 30 hours. Given the improvements in recovery equipment that have resulted from the market and the enhanced ARI 740 standard, EPA does not believe that any further environmental benefits gained from durability testing would justify its costs. Therefore, today's action does not propose mandatory durability testing of recycling and recovery equipment.

H. Major and Minor Repairs

Effective July 13, 1993, technicians were required to evacuate air-conditioning and refrigeration equipment to established vacuum levels. However, EPA granted an exception to the evacuation requirements for non-major repairs that are not followed by an evacuation of the appliance to the environment, and for appliances with leaks that make the required evacuation levels impossible to attain. EPA intended non-major repairs to include procedures that involve uncovering only a small opening in the appliance, that take place in only a few minutes, and that are not followed by an evacuation of the appliance to the environment (high-level evacuation). EPA believed that such repairs would

[3] "Hot Customers Don't Sweat Over Extra Recovery Costs," B. Checket-Hanks, *Air-Conditioning, Heating, and Refrigeration News*, August 21, 1995.

result in the release of very little refrigerant to the environment.

However, EPA did not explicitly define "non-major" repairs; instead, EPA defined "major" repairs as maintenance, service, or repair that involves removal of the compressor, condenser, evaporator, or auxiliary heat exchanger coil. These procedures are relatively time-consuming and/or leave large openings in the system through which refrigerant can escape (and air and moisture can enter). After such procedures, evacuation of the system to the environment is customarily performed, expelling any residual refrigerant into the atmosphere.

1. Comments Received Since the Final Rule

Since the final rule was published, EPA has received several comments that request that EPA expand and clarify the current definition of "major" and explicitly define "non-major" repairs.

Commenters believed that the current definition of major repairs was too narrow, excluding some types of repair that result in considerable refrigerant release. They recommended that the definition be modified to reflect the following: major repairs or service procedures that (1) involve the removal of the compressor, condenser, evaporator or auxiliary heat exchanger, or (2) require the appliance to be open to the atmosphere for an extended period of time, or (3) require the uncovering of large openings that cannot be isolated or capped. The commenters also recommended that before major repairs were undertaken, appliances should be required to be evacuated to 25 mm Hg absolute (per EPA standards).

Several commenters maintained that non-major repairs should be explicitly defined as repairs or service procedures that involve uncovering only a small opening in the appliance and take place in only a few minutes, or that involve openings that may be capped or isolated using isolation valves, thereby limiting the quantity of refrigerant lost to the atmosphere. Additionally, commenters recommended that technicians be required to meet the following standards for minor repairs: 1) technicians must be able to hold the unit at 0 PSIG; (2) the unit may not be open for more than 15 minutes.

One commenter submitted the following list, which classifies several common service procedures or repairs as either major or minor.

Maintenance/service task	Minor	Major
1. Shaft Seal Replace (OCV)		XXX
2. Oil Change (oil temp @ 135 deg.)	XXX	
3. Oil Filter Change	XXX	
4. Vent Line Solenoid Valve Repair	XXX	
5. Vent Line Solenoid Replace		XXX
6. Oil Pump and/or Motor		XXX
7. Oil Pressure Regulator	XXX	
8. 3rd Stage Vane Bellows Repair/Replace		
9. 1st Stage Vane Oper. Repair/Replace	XXX	
10. Oil Eductor	XXX	
11. Motor Cooling Orifice	XXX	
12. Thrust Bearing (ball bearing) Replace		XXX
13. Thrust Bearing Cover Gasket Replace	XXX	
14. Pressure Control/Transducer/Gage Replace	XXX	
15. Suction Elbow Gasket Replace		XXX
16. Terminal Board Gasket Replace		XXX
17. Terminal Stud "O" Ring Replace		XXX
18. Purifier Purge Drier Core Replace	XXX	
19. Old Style Purge Service and Repair (all)	XXX	
20. Economizer Gasket Replace (upper)	XXX	
21. Economizer Gasket Replace (lower)		XXX
22. Hot Gas Bypass/Free Cool. Val. Stem Repair	XXX	
23. Hot Gas Bypass/Free Cool. Val. Gasket Replace		XXX
24. Oil Cooler replace with Isolation Valves	XXX	
25. Oil Cooler replace without Isolation Valves		XXX
26. Oil Heater (direct immersion) Replace	XXX	
27. Orifice Check/Clean "Upper" 15 Minutes Max.	XXX	
28. Orifice Work Upper/Lower Over 15 Minutes		XXX
29. Rupture Disk Replace	XXX	
30. Purge Solenoid Valve Replace	XXX	
31. Discharge Spool Gasket Replace		XXX
32. Oil Sump Gasket Replace		XXX
33. Sight Glass Replace (Evap. glass or any solder type)		XXX
34. Sight Glass Replace (oil system, non-solder)	XXX	
35. Valves, Service, Liquid	XXX	
36. Valves, Service, Vapor	XXX	
37. Flare Fitting Repair	XXX	
38. Solder or Braze Joint Repair, Vapor Section	XXX	
39. Solder or Braze Joint Repair, Liquid Section		XXX
40. Oil Cooler Repair/Replace		XXX
41. Float Chamber Gasket Replace or Float Repair		XXX
42. Motor Temp. Sensor Place O'Ring Replace	XXX	
43. Rupture Guard Installation	XXX	

2. Proposed Definitions

EPA agrees with the commenters that major repairs of low-pressure chillers have been defined too narrowly and should be expanded. EPA is therefore proposing to revise the definitions of major repairs and to define non-major repairs as follows:

(a) Non-Major Repairs of Low-Pressure Chillers. To be classified as non-major repairs or service procedures, the procedure or repair must (1) involve uncovering only a small opening (less than 2 inches in diameter) in the appliance, or involve openings that may be capped or isolated using isolation valves, (2) require the appliance to be open for no more than 15 minutes, and (3) permit the technician to hold the appliance at 0 psig.

(b) Major Repairs for Low-Pressure Chillers. Major repairs for low-pressure chillers: (1) involve removal of the compressor, condenser, evaporator or auxiliary heat exchanger, (2) require the appliance to be open to the atmosphere for more than 15 minutes, or (3) involve a large opening.

EPA requests comments on these definitions. EPA is particularly interested in whether these definitions are specific enough, whether other types of repairs should be considered and whether this definition is consistent with industry practices and/or terminology.

I. Change in the Definition of Small Appliance

1. Background

On May 14, 1993, EPA published final regulations expanding its proposed definition of "small appliance." EPA had previously proposed a definition for small appliances that included air-conditioning or refrigeration equipment containing less than one pound of charge during normal operation.

EPA received a number of comments that the one-pound limit used in the proposed definition was too restrictive. Commenters also stated that room air conditioners, packaged terminal air conditioners, and packaged terminal heat pumps are sufficiently similar to household refrigerators and freezers to justify inclusion in the definition of "small appliances."

EPA agreed with these comments and expanded the definition of small appliances to the following:

Small appliance means any of the following products that are fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of refrigerant: Refrigerators and freezers designed for home use, room air conditioners (including window air conditioners and packaged terminal air conditioners), packaged terminal heat pumps, dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

2. Additional Comments

Since the promulgation of the final rule, EPA has received additional comments requesting further expansion of the definition of small appliances to include units that meet the criteria for small appliances described in the beginning of the definition, but that are not specifically listed at the end of the definition. EPA could accomplish this by making the list of appliances in the definition illustrative rather than restrictive, by removing the list of appliances from the definition (leaving only the criteria), or by explicitly adding refrigerators and freezers built for medical research, industrial research and processes, and as components in other equipment, to the definition.

These comments stated that these refrigerators and freezers used for medical research, industrial research and processes and as components in other equipment (such as purge units in chillers) are extremely similar to the products designed for home use but are excluded from language of the current definition of small appliances. Commenters stated that these units meet the spirit of the definition of small appliances in that they are hermetically sealed in the factory with five (5) pounds of refrigerant or less, rarely require entry into the system and rarely develop refrigerant leaks. Thus, the definition should be expanded to treat them the same way in the rule as household refrigerators and freezers.

3. Today's Proposal

EPA agrees with the commenters that refrigerators and freezers that are built for medical research, industrial research, or processes, or that used as components in other equipment, and that are hermetically sealed at the factory and contain less than five (5) pounds of charge, should be added to the definition of small appliances. EPA is therefore proposing to revise the final definition of "small appliances" to:

Small appliance means any product that is fully manufactured, charged and hermetically sealed in a factory with five (5) pounds or less of refrigerant, including, but not limited to, refrigerators and freezers designed for home use, as components in other equipment, medical research, or industrial research, room air conditioners (including window air conditioners and packaged terminal heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

Note that the list of appliances in this revised definition is illustrative rather then restrictive. EPA requests comments on this proposed definition of small appliances. EPA is particularly interested in whether it would be helpful to list additional examples of appliances that would be considered "small appliances" under the criteria of the definition.

III. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this proposed action to amendment to the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of

regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this NPRM is estimated to result in the expenditure by State, local, and tribal governments or private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. As discussed in this preamble, many aspects of this NPRM proposes to provide increased flexibility that may have the net effect of reducing the burden of part 82 subpart F of the Stratospheric Protection regulations on regulated entities, including State, local, and tribal governments or private sector entities.

C. Paperwork Reduction Act

The information collection requirements in this rule will be submitted to by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and will be assigned a control number. OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Since there are additional informational collection requirements required by this proposed amendment, EPA has determined that the Paperwork Reduction Act does apply to this proposed rulemaking and a revised Information Collection Request document is being prepared.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Director, Regulatory Information Division; EPA; 401 M Street SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that any impact that this amendment will have on the regulated community will either serve to provide relief from otherwise more burdensome requirements, or will not have a negative economic impact on a substantial number of small entities. An examination of the impacts on small entities was discussed in the initial final rule promulgated under § 608 (58 FR 28660). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis was developed. That impact analysis accompanied the final rule and is contained in Docket A–92–01.

I certify that this amendment to the refrigerant recycling rule will not have any additional negative economic impacts on any small entities.

List of Subjects in 40 CFR Part 82

Environmental protection, Air pollution control, Contractors, Laboratories, Major repairs, Minor repairs, Reclaimers, Reclamation, Recycling, Reporting and recordkeeping requirements, Technician.

Dated: February 14, 1996.

Carol M. Browner,

Administrator.

Part 82, chapter I, title 40, of the Code of Federal Regulations, part 82, is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.152 is amended by removing the definition for "Major repair:," by revising the definition for "MVAC-like appliance," "reclaim," and "small appliance:" and by adding new definitions in alphabetical order to read as follows:

§ 82.152 Definitions.

* * * * *

Contractor-reclaimed refrigerant means refrigerant that has remained in custody of a single technician or contractor and a representative sample of that refrigerant as defined in this section has been chemically analyzed by a certified laboratory to determine that it has been reprocessed to at least the purity specified in the ARI Standard 700–1993, Specifications for Fluorocarbon Refrigerants (appendix A to 40 CFR part 82, subpart F). Refrigerant reprocessed in this manner will be considered reclaimed refrigerant consistent with the definition of reclaim contained in this section.

* * * * *

Major repairs of low-pressure chillers means repair involving removal of the compressor, condenser, evaporator or auxiliary heat exchanger, or any repair that requires the appliance to open to the atmosphere for more than 15 minutes or that requires large openings to be uncovered.

* * * * *

MVAC-like appliance means mechanical vapor compression, open-drive compressor appliances with a normal charge of 20 pounds or less of refrigerant used to cool the driver's or passenger's compartment of a non-road motor vehicle. This includes the air-conditioning equipment found on agricultural or construction vehicles. This definition is not intended to cover appliances using HCFC–22 refrigerant.

* * * * *

Non-major repair of low pressure chillers means any service procedures or repairs that: (1) involve uncovering only a small opening (less than 2 inches in diameter) in the appliance for no more than 15 minutes, or (2) involve openings that may be capped or isolated using isolation valves, and (3) permit the technician to hold the appliance at 0 psig.

* * * * *

Reclaim refrigerant means to reprocess refrigerant to at least the purity specified in the ARI Standard 700–1995, Specifications for Fluorocarbon Refrigerants (appendix A to 40 CFR part 82, subpart F), and to verify this purity using the analytical methodology prescribed in the ARI Standard 700–1995. Contractor-reclaimed refrigerant as defined in this section is included in this definition.

* * * * *

Representative sample means for the purposes of 40 CFR Part 82, subpart F, a sample taken from each container of refrigerant to be chemically analyzed and tested to ARI Standard 700–1995 prior to packaging for resale or reuse. Such samples will be at least 500 ml and shipped in stainless steel test cylinders that include ¼" valve assembly and pressure relief rupture disc. Cylinders shall be rated by the Department of Transportation.

* * * * *

Small appliance means any product that is fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of refrigerant, including, but not limited to, refrigerators and freezers designed for home use or for medical or industrial research, room air conditioners (including window air conditioners and packaged terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

* * * * *

3. Section 82.154 is amended by revising paragraphs (g), (h), and (m) to read as follows:

§ 82.154 Prohibitions.

* * * * *

(g) No person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed as defined in § 82.152;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance and recycled in accordance with 40 CFR Part 82, Subpart B;

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance; or

(4) The class I or class II substance is being transferred between two wholly-owned subsidiaries of the same holding company.

(h) No person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed by a person who has been certified as a reclaimer pursuant to § 82.165 or the substance has undergone contractor reclamation;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance and recycled in accordance with 40 CFR 82 part Subpart B;

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance; or

(4) The class I or class II substance is being transferred between two wholly-owned subsidiaries of the same holding company.

* * * * *

(m) No person may sell or distribute, or offer for sale or distribution, any class I or class II substance for use as a refrigerant to any person unless:

(1) The buyer has been certified as a Type I, Type II, Type III, or Universal technician pursuant to § 82.161;

(2) The buyer has completed a voluntary certification program requesting approval under § 82.161(g) by December 9, 1994. This paragraph expires on May 15, 1995.

(3) The buyer has been certified pursuant to 40 CFR part 82, subpart B and the refrigerant is either CFC–12 or an approved substitute consisting wholly or in part of a class I or class II substance for use in motor vehicle air conditioners pursuant to 40 CFR part 82, subpart G;

(4) The refrigerant is sold only for eventual resale to certified technicians or to appliance manufacturers (e.g., sold by a manufacturer to a wholesaler, sold by a technician to a reclaimer);

(5) The refrigerant is sold to an appliance manufacturer;

(6) The refrigerant is contained in an appliance, and after January 9, 1995, the refrigerant is contained in an appliance with a fully assembled refrigerant circuit;

(7) The refrigerant is charged into an appliance by a certified technician or an apprentice during maintenance, service, or repair; or

(8) The refrigerant is charged into an appliance by a technician who successfully completed a voluntary certification program requesting approval under § 82.161(g) by December 9, 1994. This paragraph (m)(8) expires on May 15, 1995.

(9) Rules stayed for reconsideration. Notwithstanding any other provisions of this subpart, the effectiveness of 40 CFR 82.154(m), only as it applies to refrigerant contained in appliances without fully assembled refrigerant circuits, is stayed from April 27, 1995 [until EPA takes final action on its reconsideration of these provisions. EPA will publish any such final action in the **Federal Register**].

* * * * *

4. Section 82.156 is amended by revising paragraph (a)(2)(i)(B) to read as follows:

§ 82.156 Required practices.

(a) * * *

(2) * * *

(i) * * *

(B) Be pressurized to 0 psig before it is opened if it is a low-pressure appliance and cover openings when isolation valves are present or when the openings can be capped during the service. Persons pressurizing low-pressure appliances that use refrigerants with boiling points at or below 85 degrees Fahrenheit at 29.9 inches of mercury (standard atmospheric pressure), (e.g., CFC–11 and HCFC–123), must not use methods such as nitrogen, that require subsequent purging. Persons pressurizing low-pressure appliances that use refrigerants with boiling points above 85 degrees Fahrenheit at 29.9 inches of mercury, e.g., CFC–113, must use heat to raise the internal pressure of the appliance as much as possible, but may use nitrogen to raise the internal pressure of the appliance from the level attainable through use of heat to atmospheric pressure; or

* * * * *

5. Section 82.158(b)(1) is amended by removing the phrase "ARI Standard 740–1993, Performance of Refrigerant Recovery, Recycling and/or Reclaim Equipment (ARI 740–1993) (appendix B)" and adding in its place "appendix B", by revising paragraph (b)(3), by removing paragraph (b)(4), by redesignating paragraphs (b)(5) and (b)(6) as paragraphs (b)(4) and (b)(5), and by adding paragraph (b)(6) to read as follows:

§ 82.158 Standards for recycling and recovery equipment.

* * * * *

(b) * * *

(3) The equipment must meet the "General Equipment Requirements" in Section 4 of appendix B.

* * * * *

(6) Effective [90 days after publication of the final rule], equipment that is advertised or marketed as "recycling equipment" must be capable of cleaning the standard contaminated refrigerant sample of appendix B, Section 5, to the levels in the following table when tested under the conditions of appendix B.

MAXIMUM CONTAMINANT LEVELS OF RECYCLED REFRIGERANTS IN SAME OWNER'S EQUIPMENT

Contaminants	Low pressure systems	R–12 systems	All other systems
Acid Content (by wt.)	1.0 PPM	1.0 PPM	1.0 PPM

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MAXIMUM CONTAMINANT LEVELS OF RECYCLED REFRIGERANTS IN SAME OWNER'S EQUIPMENT—Continued

Contaminants	Low pressure systems	R–12 systems	All other systems
Moisture (by wt.)	20 PPM	10 PPM	20 PPM
Non Condensable Gas (by vol.)	N/A	2.0%	2.0%
High Boiling Residues (by vol.)	1.0%	0.02%	0.02%
Chlorides by Silver Nitrate Test	No turbidity	No turbidity.	No turbidity.
Particulates	Visually clean	Visually clean	Visually clean.
Other Refrigerants	2.0%	2.0%	2.0%

6. Section 82.164 is amended by revising the heading and paragraphs (a), (b), and by removing paragraphs (c), (d), (e), (f) and (g) to read as follows:

§ 82.164 Reclaimer certification programs.

* * * * *

(a) Effective persons reclaiming used refrigerant for sale to a new owner must either:

(1) Be a reclaimer certified by an EPA-approved reclaimer certification program in accordance with this section and the requirements specified in § 82.165;

(2) In cases where the custody and control of the refrigerant charge is maintained, have a representative sample of that refrigerant from each container tested by a laboratory certified by an EPA-approved laboratory certification program in accordance with § 82.167 to ensure that the refrigerant has been reclaimed to at least ARI Standard 700–1995; or

(3) As permitted in paragraphs (a)(1) and (2) of this section.

(1) Reclaimers certified by EPA prior to [30 Days From the Date of Publication of the final rule] may continue to reclaim used refrigerant for sale to a new owner until six months from the date EPA approves at least one reclaimer certification program.

(2) Reclaimers certified by EPA prior to [30 Days From the Date of Publication of the final rule] may not reclaim used refrigeration for sale to a new owner six months after the date EPA approves at least one reclaimer certification program, unless the reclaimer has been certified by an EPA-approved reclaimer certification program, approved in accordance with this section.

(b) Any person seeking approval as a reclaimer certification program may apply for approval by the Administrator. The application must be sent to: Section 608 Recycling Program Manager, Reclaimer Certification, Stratospheric Protection Division, 6205J, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Applications for approval must include written information verifying the ability of the reclaimer certification program to ensure that reclaimers it certifies meet the criteria listed in this section and in § 82.165.

(1) Reclaimer certification programs must demonstrate to EPA the ability to perform oversight and verification to provide reasonable assurance that the certified reclaimers will reclaim used refrigerant for sale to a new owner to at least ARI Standard 700–1995 in accordance with this section.

(2) Reclaimer certification programs must demonstrate to EPA the ability to perform all recordkeeping and reporting requirements listed in § 82.166(g), (h) and (s) and verify that all persons seeking to become and remain certified reclaimers meet the criteria set forth in § 82.165.

(3) Reclaimer certification programs must maintain and effectively distribute a list of names and addresses of all reclaimers certified by the reclaimer certification program.

(4) Reclaimer certification programs must create, distribute, and control the use of a seal, logo, or other like notification, indicating that an approved reclaimer certification program has certified the reclaimer. The seal, logo, or other like notification must contain the following standardized language: "_____ has been certified as a refrigerant reclaimer required by 40 CFR part 82, subpart F." The certified reclaimer must display this notification conspicuously.

(5) Reclaimer certification programs must decertify a program where a pattern of violations occurs. The method of revoking certification of the particular reclaimer must be reasonable (such as including a provision for appeal) and conducted in a timely manner.

(6) Reclaimer certification programs must submit to EPA, in accordance with § 82.166(h), information concerning the quantity of material sent for reclamation, the mass of refrigerant reclaimed, and the mass of waste products.

(7) Reclaimer certification programs must demonstrate that certificates or other information indicating the certification of a reclaimer will not be transferable. In the event of a change in ownership of a certified reclaimer the new owner of the entity shall notify the reclaimer certification program within 30 days of the change of ownership.

(8) Failure to abide by any of the provisions of this subpart may result in the revocation or suspension of the approval of the reclaimer certification program. In such cases, the Administrator or her or his designated representative shall give notice to the organization setting forth the basis for her or his determination and comply with the procedures contained in § 82.169.

6a. Section 82.165 is added to read as follows:

§ 82.165 Reclaimer certification criteria.

(a) Persons seeking to become certified reclaimers must be certified by an EPA-approved reclaimer certification program in accordance with § 82.164. Persons seeking to become certified reclaimers will be required to demonstrate the ability to meet the criteria set forth in paragraphs (b), (c), and (d) of this section.

(b) Certified reclaimers must submit monthly processing reports to the approved certification program. These processing reports must include, but are not limited to, the amount of reclaimed refrigerant each certified reclaimer has processed during the preceding month. The reclaimer certification program will examine the data received by the reclaimers to ensure completeness.

(c) Reclaimers seeking to become certified must submit to the reclaimer certification programs at least three samples of reclaimed refrigerant. The reclamation certification program or a designated laboratory must chemically analyze three samples of refrigerant processed by each of the reclaimer's facilities prior to certifying the reclaimer. Each calendar year the reclaimer certification program must receive and chemically analyze at least four representative samples of refrigerant processed by each of the reclaimer's facilities. These tests must be performed on a random basis.

(d) Reclaimers must submit and update an accurate list of all equipment used to reprocess and analyze used refrigerant to the reclamation certification program. Reclaimer certification programs must maintain a list of equipment used to reprocess and to analyze the used refrigerant by each reclaimer certified by that reclaimer certification program.

(e) Reclaimers certified by a reclaimer certification program that has its certification revoked in accordance with § 82.164(b)(7) must be recertified by another EPA-approved certification program within six months of receiving notification of the revocation.

(f) Reclaimers certified by a reclaimer certification program must release no more than 1.5 percent of the refrigerant during the reclamation process and dispose of wastes from the reclamation process in accordance with all applicable laws and regulations.

7. Section 82.166 is amended by revising paragraph (g) and adding paragraphs (r), (s), and (t) to read as follows:

§ 82.166 Reporting and recordkeeping requirements.

* * * * *

(g) Reclaimer certification programs must maintain records of the quantity of material sent to them for reclamation, the mass of refrigerant reclaimed, and the mass of waste products. Reclaimer certification programs must report this information to the Administrator annually within 30 days of the end of the calendar year.

* * * * *

(r) Laboratory certification programs must maintain records of the quantity of material sent to them for purity testing, the mass of refrigerant tested, mass of waste products and information indicating the amount of the total charge of used refrigerant that the representative sample received and analyzed by the certified laboratories was drawn from. Laboratory certification programs must report this information to the Administrator annually within 30 days of the end of the calendar year.

(s) Reclaimer certification programs must maintain a list of equipment used to reprocess and to analyze the refrigerant used by each reclaimer certified by the reclaimer certification program. Reclaimer certification programs must maintain a list of names and addresses of all reclaimers certified by the reclaimer certification program.

(t) Any contractor or technician reclaiming refrigerant consistent with the definition of contractor reclamation must keep records indicating that the custody and control of the refrigerant has been maintained. Records must include the quantity of refrigerant, the date and location of where the refrigerant was recovered, the date(s) and location(s) of where the refrigerant is stored, the date(s) and location(s) of where representative samples are drawn, and the date(s) and location(s) of where the refrigerant is sold after a certified laboratory has verified the quality of the refrigerant.

8. Section 82.167 is added to subpart F to read as follows:

§ 82.167 Laboratory certification.

(a) Any laboratory certification program may apply for approval by the Administrator to certify laboratories. The application must be sent to: Section 608 Recycling Program Manager, Laboratory Certification, Stratospheric Protection Division, 6205J, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Applications for approval must include written information verifying the ability of the laboratory certification program to ensure that laboratories it certifies meet the criteria listed in paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) of this section and § 82.168.

(b) Laboratory certification programs must demonstrate to EPA the ability to perform oversight and analysis to ensure that the certified laboratories will test representative samples of used refrigerant for sale to a new owner to at least ARI Standard 700–1995 in accordance with this section.

(c) Laboratory certification programs must demonstrate to EPA the ability to perform all recordkeeping and reporting requirements listed in § 82.166(r) and (t) and to verify that all persons seeking to become and remain certified laboratories meet the criteria set forth in § 82.168.

(d) Laboratory certification programs must maintain information concerning a certified laboratory's ability to test refrigerant purity levels acceptable under the ARI 700–1995 standard and a commitment to comply with the standards established by the EPA-approved certifier.

(e) Laboratory certification programs must test verify at least three refrigerants submitted by a potentially certified laboratory prior to the issuance of certification. Only laboratories that accurately determine within an acceptable range each contaminant in any of the qualifying samples will be certified. The following list of values constitutes acceptable ranges for reporting contaminants:

(1) Refrigerant purity: +/−0.01%;

(2) Water: +/-the greater of 3ppm or 10% of the actual value;

(3) High Boiling Residue: +/− the greater of 0.01% (absolute) or 20% of the actual value; and

(4) Non-condensibles: +/− the greater of 0.2% (absolute) or 10% of the actual value.

(f) Laboratory certification programs must perform a site visit prior to certifying the laboratory to ensure that the laboratory has the capability of performing correct refrigerant analysis and that the laboratory did analyze samples submitted for verification. Site visits must include a visual inspection of the laboratory's equipment and ascertain whether each item necessary for routine refrigerant analysis exists and is functional. In addition, the site visit must include a procedural review of the laboratory's methods and procedures for refrigerant analysis.

(g) Laboratory certification programs must develop and perform a schedule of continued site visits to ensure the continued qualifications of the laboratory. These visits will be consistent with the requirements in § 82.168(c). Site visits must occur on at least a quarterly basis.

(h) Laboratory certification programs must require, receive, and consolidate monthly processing reports submitted from the certified laboratories. These processing reports must include, but are not limited to, the amount of used refrigerant tested during the preceding month and the total amount of used refrigerant the tested amount represents. The laboratory certification program will examine the data received by the laboratories for completeness and accuracy.

(i) Laboratory certification programs must submit to EPA in accordance with § 82.166(r) information concerning the quantity of material sent for testing, the mass of refrigerant tested, the mass of waste products, and the total amount of used refrigerant that has had its purity verified in this manner.

(j) Laboratory certification programs must create, distribute, and control the use of a seal, logo, or other like notification, indicating that an approved laboratory certification program has certified the laboratory. EPA anticipates that a seal or logo will be necessary. The seal, logo, or like notification must contain the following statement: "_____ has been certified as a certified laboratory to analyze refrigerant as required by 40 CFR part 82, subpart F." The laboratory certification program must require the display of this notification conspicuously.

(k) Only laboratories that are able to substantiate their ability to comply with the criteria established in this subsection may be certified. A certified laboratory no longer able to meet the continuing criteria must be decertified.

If such a case occurs, EPA must be notified within 30 days.

(l) Failure to abide by any of the provisions of this subpart may result in the revocation or suspension of the approval of the laboratory certification program. In such cases, the Administrator or her or his designated representative shall give notice to the organization setting forth the basis for her or his determination and identifying the procedures contained in § 82.169.

9. Section 82.168 is added to subpart F to reads as follows:

§ 82.168 Laboratory certification criteria.

(a) Persons seeking to have their laboratories certified must be certified by a laboratory certification program approved in accordance with § 82.167. Persons seeking to have their laboratories certified will be required to demonstrate to the laboratory certification program the ability to meet the criteria set forth in this section.

(b) Persons seeking to have their laboratories certified must submit to a laboratory certification program for the purposes of test verification at least three refrigerants prior to the issuance of certification. Only laboratories that accurately determine, within an acceptable range, each contaminant in any of the qualifying samples will be certified. The following lists of values constitute acceptable ranges for reporting contaminants:

(1) Refrigerant purity: +/−0.01%;

(2) Water: +/−the greater of 3ppm or 10% of the actual value;

(3) High Boiling Residue: +/−the greater of 0.01% (absolute) or 20% of the actual value; and

(4) Non-condensibles: +/−the greater of 0.2% (absolute) or 10% of the actual value.

(c) Persons seeking to have their laboratories certified must permit a site visit by a laboratory certification program prior to becoming certified for the purposes of ensuring that the laboratory has the capability of performing correct refrigerant analysis and that the laboratory did analyze samples submitted for verification. Site visits must include a visual inspection of the laboratory's equipment tod ascertain whether each item necessary for compliance exists and is functional for routine refrigerant analysis. In addition, the site visit must include a procedural review of the laboratory's methods and procedures for refrigerant analysis.

(d) Certified laboratories must permit a schedule of continued site visits to ensure the continued qualifications of the laboratory. These visits will be consistent with the requirements in paragraph (c) of this section. Site visits must occur on at least a quarterly basis.

(e) Certified laboratories must submit monthly processing reports to the laboratory certification program. These processing reports must include, but are not limited to, the amount of used refrigerant tested during the preceding month and the total amount of used refrigerant the tested amount represents. The laboratory certification program will examine the data received by the laboratories to ensure completeness and accuracy.

(f) Laboratories certified by a laboratory certification program for which certification has been revoked in accordance with § 82.167(l) must be recertified by another EPA-approved certification program within six months of receiving notification of the revocation.

10. Section 82.169 is added to subpart F to read as follows:

§ 82.169 Suspension and revocation procedures.

(a) Failure to abide by any of the provisions of this subpart may result in the revocation or suspension of the approval to certify technicians, laboratories, reclaimers and/or recycling and recovery equipment. In such cases, the Administrator or her or his designated representative shall give notice to the organization setting forth the basis for her or his determination.

(b) The revoked or suspended certification program that chooses to request a hearing must file that request in writing within 30 days of the date of the Agency's decision at the address listed in § 82.160 and shall set forth the certification program's objections to the Agency's decision and data to support the objections.

(c) If, after review of the request and supporting data, the Administrator or her or his designated representative finds that the request raises a substantial and factual issue, she or he shall provide the certification program with a hearing.

(d) After granting a request for a hearing the Administrator or her or his designated representative shall designate a Presiding Officer for the hearing.

(e) The hearing shall be held as soon as practicable at a time and place determined by the Administrator, the designated representative, or by the Presiding Officer.

(f) The Administrator or her or his designated representative may, at his or her discretion, direct that all argument and presentation of evidence be concluded within a specified period established by the Administrator or her or his designated representative. Said period may be no less than 30 days from the date that the first written offer of a hearing is made to the laboratory certification program. To expedite proceedings, the Administrator or her or his designated representative may direct that the decision of the Presiding Officer (who may, but need not, be the Administrator) shall be the final EPA decision.

(g) Upon appointment pursuant to paragraph (d) of this section, the Presiding Officer will establish a hearing file. The file shall consist of the following:

(1) The determination issued by the Administrator under § 82.165;

(2) The request for a hearing and the supporting data submitted therewith;

(3) All documents relating to the request for certification and all documents submitted therewith; and

(4) Correspondence and other data material to the hearing.

(h) The hearing file will be available for inspection by the applicant at the office of the Presiding Officer.

(i) An applicant may appear in person or may be represented by counsel or by any other duly authorized representative.

(j) The Presiding Officer, upon the request of any party or at his or her discretion, may arrange for a pre-hearing conference at a time and place he/she specifies. Such pre-hearing conference will consider the following:

(1) Simplification of the issues;

(2) Stipulations, admissions of fact, and the introduction of documents;

(3) Limitation of the number of expert witnesses;

(4) Possibility of agreement disposing of any or all of the issues in dispute; and

(5) Such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(k) The results of the conference shall be reduced to writing by the Presiding Officer and made part of the record.

(l) Hearings shall be conducted by the Presiding Officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to the exclusion by the Presiding Officer of irrelevant, immaterial, and repetitious evidence.

(m) Witnesses will not be required to testify under oath. However, the Presiding Officer shall call to the attention of witnesses that their statements may be subject to the provisions of 18 U.S.C. 1001 which imposes penalties for knowingly making false statements or representations or using false documents in any matter within the jurisdiction of any department or agency of the United States.

(n) Any witness may be examined or cross-examined by the Presiding Officer, the parties, or their representatives.

(o) Hearings shall be reported verbatim. Copies of transcripts of proceedings may be purchased by the applicant from the reporter.

(p) All written statements, charts, tabulations, and similar data offered in evidence at the hearings shall, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy, and materiality, be received in evidence and shall constitute a part of the record.

(q) Oral argument may be permitted at the discretion of the Presiding Officer and shall be reported as part of the record unless otherwise ordered by the Presiding Officer.

(r) The Presiding Officer shall make an initial decision which shall include written findings and conclusions and the reasons or basis regarding all the material issues of fact, law, or discretion presented on the record. The findings, conclusions, and written decision shall be provided to the parties and made a part of the record. The initial decision shall become the decision of the Administrator without further proceedings, unless there is an appeal to the Administrator or motion for review by the Administrator within 20 days of the date the initial decision was filed.

(s) On appeal from or review of the initial decision, the Administrator or her or his designated representative shall have all the powers which he or she would have in making the initial decision, including the discretion to require or allow briefs, oral argument, the taking of additional evidence, or the remanding to the Presiding Officer for additional proceedings. The decision by the Administrator or her or his representative designate shall include written findings and conclusions and the reasons or basis therefore on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

11. Appendix B to subpart F is revised to read as follows:

Appendix B to Subpart F—Performance of Refrigerant Recovery, Recycling, and/or Reclaim Equipment

This appendix is based on Air-Conditioning and Refrigeration Institute Standard 740–1995.

Refrigerant Recovery/Recycling Equipment

Section 1. Purpose

1.1 *Purpose.* The purpose of this standard is to establish methods of testing for rating and evaluating the performance of refrigerant recovery, and/or recycling equipment and general equipment requirements (herein referred to as "equipment") for contaminant or purity levels, capacity, speed and purge loss to minimize emission into the atmosphere of designated refrigerants.

Section 2. Scope

2.1 *Scope.* This standard applies to equipment for recovering and/or recycling single refrigerants, azeotropics, zeotropic blends, and their normal contaminants from refrigerant systems. This standard defines the test apparatus, test gas mixtures, sampling procedures and analytical techniques that will be used to determine the performance of refrigerant recovery and/or recycling equipment (hereinafter, "equipment").

2.1.2 Refrigerants used to evaluate equipment shall be pure halogenated hydrocarbons, azeotropes and blends containing halogenated hydrocarbons.

Section 3. Definitions

Definitions. All terms in this Appendix will follow the definitions in § 82.152 unless otherwise defined in this Appendix.

Clearing Refrigerant. Procedures used to remove trapped refrigerant from equipment before switching from one refrigerant to another.

High Temperature Vapor Recovery Rate. For equipment having at least one designated refrigerant (see 11.2) with a boiling point in the range of −50 to +10°C, the rate will be measured for R–22, or the lowest boiling point refrigerant if R–22 is not a designated refrigerant.

Published Ratings. A statement of the assigned values of those performance characteristics, under stated rating conditions, by which a unit may be chosen to fit its application. These values apply to all units of like nominal size and type (identification) produced by the same manufacturer. As used herein, the term "published rating" includes the rating of all performance characteristics shown on the unit or published in specifications, advertising or other literature controlled by the manufacturer, at stated rating conditions.

Push/Pull Method. The push/pull refrigerant recovery method is defined as the process of transferring liquid refrigerant from a refrigeration system to a receiving vessel by lowering the pressure in the vessel and raising the pressure in the system, and by connecting a separate line between the system liquid port and the receiving vessel.

Recycle Flow Rate. The amount of refrigerant processed divided by the time elapsed in the recycling mode. For equipment which uses a separate recycling sequence, the recycle rate does not include the recovery rate (or elapsed time). For equipment which does not use a separate recycling sequence, the recycle rate is a rate based soley on the higher of the liquid or vapor recovery rate, by which the contaminant levels were measured.

Residual Trapped Refrigerant. Refrigerant remaining in equipment after clearing.

"Shall," "Should," "Recommended" or "It is Recommended." "Shall," "should," "recommended" or "it is recommended" shall be interpreted as follows:

Shall. Where "shall" or "shall not" is used for a provision specified, that provision is mandatory if compliance with the standard is claimed.

Should, Recommended or It is Recommended. "Should," "recommended" or "it is recommended" is used to indicate provisions which are not mandatory but which are desirable as good practice.

Standard Contaminated Refrigerant Sample. A mixture of new or reclaimed refrigerant and specified quantities of identified contaminants which constitute the mixture to be processed by the equipment under test. These contaminant levels are expected only from severe service conditions.

Trapped Refrigerant. The amount of refrigerant remaining in the equipment after the recovery or recovery/recycling operation but before clearing.

Vapor Recovery Rate. The average rate that refrigerant is withdrawn from the mixing chamber between two pressures as vapor recovery rate is changing pressure and temperature starting at saturated conditions either 24 °C or at the boiling point 100 kPa (abs), whichever is higher. The final pressure condition is 10% of the initial pressure, but not lower than the equipment final recovery vacuum and not higher than 100 kPa (abs).

Section 4. General Equipment Requirements

4.1 *Equipment Information.* The equipment manufacturer shall provide operating instructions, necessary maintenance procedures and source information for replacement parts and repair.

4.2 *Filter Replacement.* The equipment shall indicate when any filter/drier(s) needs replacement. This requirement can be met by use of a moisture transducer and indicator light, by use of a sight glass/moisture indicator or by some measurement of the amount of refrigerant processed such as a flow meter or hour meter. Written instructions such as "to change the filter every 181 kg, or every 30 days" shall not be acceptable except for equipment in large systems where the liquid recovery rate is greater than 11.3 kg/min where the filter/drier(s) would be changed for every job.

4.3 *Purge of Non-Condensable.* If non-condensables are purged, the equipment shall either automatically purge non-condensables or provide indicating means to guide the purge process.

4.4 *Purge Loss.* The total refrigerant loss due to purging non-condensables, draining oil and clearing refrigerant (see 9.5) shall be less than 3% (by weight) of total processed refrigerant.

4.5 *Permeation Rate.* High pressure hose assemblies 5/8 in. [16 mm] nomimal and smaller shall not exceed a permeation rate of 3.9 g/cm2/yr (internal surface) at a temperature of 48.8 °C. Hose assemblies UL recognized as having passed ANSI/UL 1963 requirements shall be accepted without testing. See 7.1.4.

4.6 *Clearing Trapped Refrigerant.* For equipment rated for more than one refrigerant, the manufacturer shall provide a method and instructions which will accomplish connections and clearing within 15 minutes. Special equipment, other than a vacuum pump or manifold gauge set shall be furnished. The clearing procedure shall not rely upon the storage cylinder below

saturated pressure conditions at ambient temperature.

4.7 *Temperature.* The equipment shall be evaluated at 24 °C with additional limited evaluation at 40 °C. Normal operating conditions range from 10 °C to 40 °C.

4.8 *Exemptions.* Equipment intended for recovery only shall be exempt from 4.2 and 4.3.

Section 5. Contaminated Refrigerants

5.1 *Sample Characteristics.* The standard contaminated refrigerant sample shall have the characteristics specified in Table 1, except as provided in 5.2.

5.2 *Recovery-Only Testing.* Recovery equipment not rated for any specific contaminant shall be tested with new or reclaimed refrigerant.

Section 6. Test Apparatus

6.1 *General Recommendations.* The recommended test apparatus is described in the following paragraphs. If alternate test apparatus are employed, the user shall be able to demonstrate that they produce results equivalent to the specified referee apparatus.

6.2 *Self-Contained Equipment Test Apparatus.* The apparatus, shown in Figure 1, shall consist of:

6.2.1 *Mixing Chamber.* A mixing chamber consisting of a tank with a conical-shaped bottom, a bottom port and piping for delivering refrigerant to the equipment, various ports and valves for adding refrigerant to the chamber and stirring means for mixing.

6.2.2 *Filling Storage Cylinder.* The storage cylinder to be filled by the refrigerant transferred shall be cleaned and at the pressure of the recovered refrigerant at the beginning of the test. It will not be filled over 80%, by volume.

6.2.3 *Vapor Feed.* Vapor refrigerant feed consisting of evaporator, control valves and piping to create a 3.0 °C superheat condition at an evaporating temperature of 21 °C2±K.

6.2.4 *Alternative Vapor Feed.* An alternative method for vapor feed shall be to pass the refrigerant through a boiler and then through an automatic pressure regulating valve set at different saturation pressures, moving from saturated pressure at 24 °C to final pressure of recovery.

6.2.5 *Liquid Feed.* Liquid refrigerant feed consisting of control valves, sampling port and piping.

6.2.6 *Instrumentation.* Instrumentation capable of measuring weight, temperature, pressure and refrigerant loss, as required.

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Table 1. Standard Contaminated Refrigerant Samples

	R11	R12	R13	R22	R113	R114	R123	R134a	R500	R502	R503
Moisture Content: ppm by Weight of Pure Refrigerant	100	80	30	200	100	85	200	200	200	200	30
Particulate Content: ppm by Weight of Pure Refrigerant Characterized by[1]	80	80	NA	80	80	80	80	80	80	80	NA
Acid Content: ppm by Weight of Pure Refrigerant - (mg KOH per kg Refrig.) Characterized by[2]	500	100	NA	500	400	200	500	100	100	100	NA
Mineral Oil Content: % by Weight of Pure Refrigerant	20	5	NA	5	20	20	20	5	5	5	NA
Viscosity (SUS)	300	150		300	300	300	300	150[3]	150	150	
Non-Condensable Gases (Air Content): % by Volume	NA	3	3	3	NA	3	NA	3	3	3	3

[1] Particulate content shall consist of inert materials and shall comply with particulate requirements in Appendix B.

[2] Acid consists of 60% oleic acid and 40% hydrochloric acid on a total number basis.

[3] Synthetic ester-based oil.

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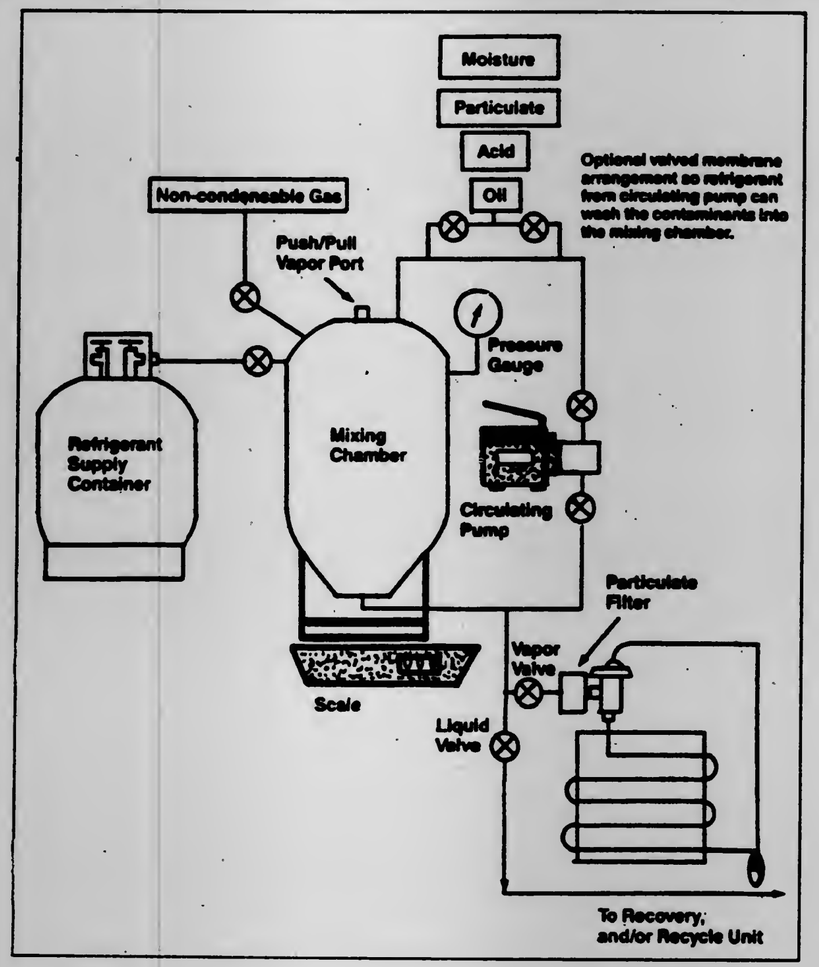


Figure 1. Test Apparatus for Self-Contained Equipment

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6.3 *Size.* The size of the mixing chamber shall be a minimum of .09 m^3. The bottom port and the refrigerant feed shall depend on the size of the equipment. Typically, the mixing valves and piping shall be 9.5 mm. For large equipment to be used on chillers, the minimum inside diameter of ports, valves and pipings shall be the smaller of the manufacturer's recommendation or 37 mm.

6.4 *System Dependent Equipment Test Apparatus.* This test apparatus is to be used for final recovery vacuum rating of all system dependent equipment.

6.4.1 *Test Setup.* The test apparatus shown in Figure 2 consists of a complete refrigeration system. The manufacturer shall identify the refrigerants to be tested. The test apparatus can be modified to facilitate operation or testing of the system dependent equipment if the modifications to the apparatus are specifically described within the manufacturer's literature. (See Figure 2.) A 6.3 mm balance line shall be connected across the test apparatus between the high and low pressure sides, with an isolation valve located at the connection to the compressor high side. A 6.3 mm access port with a valve core shall be located in the balance line for the purpose of measuring final recovery vacuum at the conclusion of the test.

Section 7. Performance Testing

7.1 *General Testing.*

7.1.1 *Temperatures.* Testing shall be conducted at an ambient temperature of 24EC ±1K except high temperature vapor recovery shall be at 40EC ±1K. The evaporator conditions of 6.2.3 shall be maintained as long as liquid refrigerant remains in the mixing chamber.

7.1.2 *Refrigerants.* The equipment shall be tested for all designated refrigerants (see 11.2). All tests in Section 7 shall be completed for each refrigerant before starting tests with the next refrigerant.

7.1.3 *Selected Tests.* Tests shall be as appropriate for the equipment type and ratings parameters selected (see 9.9, 11.1 and 11.2).

7.1.4 *Hose Assemblies.* For the purpose of limiting refrigerant emissions to the atmosphere, hose assemblies shall be tested for permeation according to ANSI/UL Standard 1963, Section 40.10.

7.2 *Equipment Preparation and Operation.* The equipment shall be prepared and operated per the operating instructions.

7.3 *Test Batch.* The test batch consisting of refrigerant sample (see Section 5) of the test refrigerant shall be prepared and thoroughly mixed. Continued mixing or stirring shall be required during the test while liquid refrigerant remains in the mixing chamber. The mixing chamber shall be filled to 80% level by volume.

7.3.1 *Control Test Batch.* Prior to starting the test for the first batch for each refrigerant, a liquid sample will be drawn from the mixing chamber and analyzed per Section 8 to assure that contaminant levels match Table 1 within ±10 ppm for moisture, ±20 ppm for particulate, ±20 ppm for oleic acid and ±0.5% for oil.

7.4 *Recovery Tests (Recovery and Recovery/Recycle Equipment).*

7.4.1 *Determining Recovery Rates.* The liquid and vapor refrigerant recovery rates shall be measured during the first test batch for each refrigerant (see 9.1, 9.2 and 9.4). Equipment preparation and recovery cylinder changeover shall not be included in elapsed time measurements for determining vapor recovery rate and liquid refrigerant recovery rate. Operations such as subcooling the recovery cylinder shall be included. Recovery cylinder shall be the same size as normally furnished by the equipment manufacturer. Oversized tanks shall not be permitted.

7.4.1.1 *Liquid Refrigerant Recovery Rate.* If elected, the recovery rate using the liquid refrigerant feed means (see 6.2.5) shall be determined. After the equipment reaches stabilized conditions of condensing temperature and/or recovery cylinder pressure, the recovery process shall be stopped and an initial weight shall be taken of the mixing chamber (see 9.2). The recovery process shall be continued for a period of time sufficient to achieve the accuracy in 9.4. The recovery process shall be stopped and a final weight shall be taken of the mixing chamber.

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Configuration of standard air conditioning or refrigeration system for use as a test apparatus

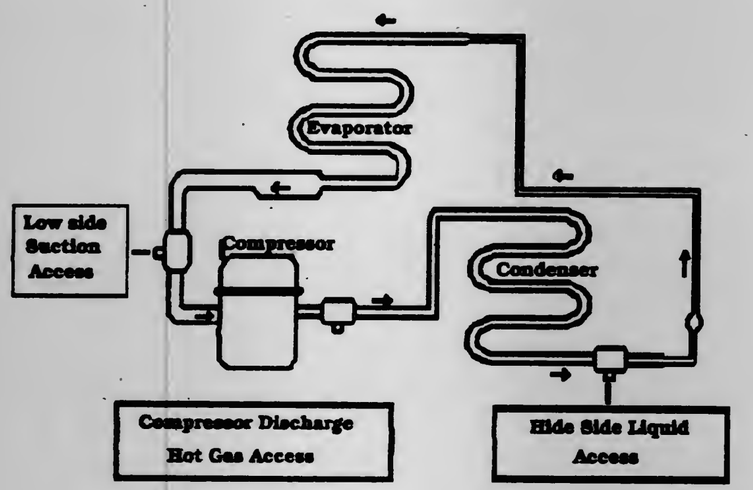


Figure 2. System Dependent Equipment Test Apparatus

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7.4.1.2 *Vapor Refrigerant Recovery Rate.* If elected, the average vapor flow rate shall be measured to accuracy requirements in clause 9.4 under conditions with no liquid refrigerant in the mixing chamber. The liquid recovery feed means shall be used. At initial conditions of saturated vapor at the higher of 24EC or the boiling temperature (100 kPa absolute pressure), the weight of the mixing chamber and the pressure shall be recorded. At final conditions representing pressure in the mixing chamber of 10% of the initial condition, but not less than the final recovery vacuum (see 9.6) nor more than 100 kPa, measure the weight of the mixing chamber and the elapsed time.

7.4.1.3 *High Temperature Vapor Recovery Rate.* Applicable for equipment having at least one designated refrigerant (see 11.2) with a boiling point between −50EC and +10EC. Measure the rate for R–22, or the refrigerant with the lowest boiling point if R–22 is not a designated refrigerant. Repeat the test in 7.4.1.2 at saturated conditions at 40EC and continue to operate equipment to assure it will achieve the final recovery vacuum (see 7.4.3).

7.4.2 *Recovery Operation.* This test is for determining the final recovery vacuum and the ability to remove contaminants as appropriate. If equipment is rated for liquid recovery (see 7.4.1.3), liquid recovery feed means described in 6.2.5 shall be used. If not, vapor recovery means described in 6.2.3 or 6.2.4 shall be used. Continue recovery operation until all liquid is removed from the test apparatus and vapor is removed to the point where equipment shuts down by automatic means or is manually shut off per operating instructions.

7.4.2.1 *Oil Draining.* Capture oil from the equipment at intervals as required in the instructions. Record the weight of the container. Completely remove refrigerant from oil by evacuation or other appropriate means. The weight difference shall be used in 9.5.2.

7.4.3 *Final Recovery Vacuum.* At the end of the first test batch for each refrigerant, the liquid valve and vapor valve of the apparatus shall be closed. After waiting 1 minute, the mixing chamber pressure shall be recorded (see 9.6).

7.4.4 *Residual Refrigerant.* This test will measure the mass of remaining refrigerant in the equipment after clearing and therefore the potential for mixing refrigerants (see 4.6).

7.4.4.1 *Initial Conditions.* At the end of the last test for each batch for each refrigerant, the equipment shall be disconnected from the test apparatus (Figure 1). Recycle per 7.5, if appropriate. Perform refrigerant clearing operations as called for in the instruction manual. Capture and record the weight of any refrigerant which would have been emitted to the atmosphere during the clearing process for use in 9.5. If two loops are used for recycling, trapped refrigerant shall be measured for both.

7.4.4.2 *Residual Trapped Refrigerant.* Evacuate an empty test cylinder to 1.0 kPa absolute. Record the empty weight of the test cylinder. Open all valves to the equipment so as to provide access to all trapped refrigerant. Connect the equipment to the test cylinder and operate valves to recover the residual refrigerant. Record the weight of the test cylinder using a recovery cylinder pressure no less than specified in 6.2.2. Place the test cylinder in liquid nitrogen for a period of 30 minutes or until a vacuum of 1000 microns is reached, whichever occurs first.

7.5 *Recycling Tests (Recovery/Recycle Equipment).*

7.5.1 *Recycling Operation.* As each recovery cylinder is filled in 7.4.2, recycle according to operating instructions. There will not necessarily be a separate recycling sequence. Note non-condensable purge measurement in 9.5.

7.5.1.1 *Recycle Flow Rate.* While recycling the first recovery cylinder for each refrigerant, determine the recycling flow rate by appropriate means (see 9.3) to achieve the accuracy required in 9.4.

7.5.2 *Non-Condensable Sample.* After completing 7.4.3, prepare a second test batch (7.3). Recover per 7.4.2 until the current recovery cylinder is filled to 80% level by volume. Recycle per 7.5.1. Mark this cylinder and set aside for taking the vapor sample. For equipment having both an internal tank of at least 3 kg refrigerant capacity and an external recovery cylinder, two recovery cylinders shall be marked and set aside. The first is the cylinder described above. The second cylinder is the final recovery cylinder after filling it to 80% level by volume and recycling.

7.5.3 *Liquid Sample for Analysis.* Repeat steps 7.3, 7.4.2 and 7.5.1 with further test batches until indication means in 4.2 show the filter/drier(s) need replacing.

7.5.3.1 *Multiple Pass.* For equipment with a separate recycling circuit (multiple pass), set aside the current cylinder and draw the liquid sample (see 7.4) from the previous cylinder.

7.5.3.2 *Single Pass.* For equipment with the single pass recycling circuit, draw the liquid sample (see 7.4) from the current cylinder.

7.6 *Measuring Refrigerant Loss.* Refrigerant loss due to non-condensables shall be determined by appropriate means (see 9.5.1). The loss could occur in 7.4.1, 7.4.2 and 7.5.1.

Section 8. Sampling and Chemical Analysis Methods

8.1 *Chemical Analysis.* Chemical analysis methods shall be specified in appropriate standards such as ARI 700–93 and Appendix-93 to ARI Standard 700. If alternate test methods are employed, the laboratory must be able to demonstrate that they produce results equivalent to the specified referee method.

8.2 *Refrigerant Sampling.*

8.2.1 *Water Content.* The water content in refrigerant shall be measured by the Karl Fischer Analytical Method or by the Karl Fischer Coulometric techniques. Report the moisture level in parts per million by weight.

8.2.2 *Chloride Ions.* Chloride ions shall be measured by turbidity tests. At this time, quantitative results have not been defined. Report chloride content as "pass" or "fail." In the future, when quantitative results are possible, report chloride content as parts per million by weight.

8.2.3 *Acidity.* The acidity test uses the titration principle. Report the acidity in parts per million by weight (mg KOH/kg) of sample.

8.2.4 *High Boiling Residue.* High boiling residues shall use measurement of the volume of residue after evaporating a standard volume of refrigerant. Using weight measurement and converting to volumetric units is acceptable. Report high boiling residues as percent by volume.

8.2.5 *Particulates/Solids.* The particulates/solids measurement employs visual examination. Report results as "pass" or "fail."

8.2.6 *Non-condensables.* The level of contamination by non-condensable gases in the base refrigerant being recycled shall be determined by gas chromatography. Report results as percent by volume.

Section 9. Performance Calculation and Rating

9.1 *Vapor Refrigerant Recovery Rate.* This rate shall be measured by weight change of the mixing chamber divided by elapsed time (see 7.4.1.2). The units shall be kg/min and the accuracy shall be per 9.4.

9.1.1 *High Temperature Vapor Recovery Rate.*

9.2 *Liquid Refrigerant Recovery Rate.* This rate shall be measured by weight change of the mixing chamber divided by elapsed time (see 7.4.1.3). The units shall be kg/min and the accuracy shall be per 9.4.

9.3 *Recycle Flow Rate.* The recycle flow rate shall be as defined in 3.10, expressed in kg/min, and the accuracy shall be per 9.4.

9.3.1 For equipment using multi-pass recycling or a separate sequence, the recycle rate shall be determined by dividing the net weight W of the refrigerant to be recycled by the actual time T required to recycle. Any set-up or operator interruptions shall not be included in the time T.

9.3.2 If no separate recycling sequence is used, the recycle rate shall be the higher of the vapor refrigerant recovery rate or the liquid refrigerant recovery rate. The recycle rate shall match a process which leads to contaminant levels in 9.9. Specifically, a recovery rate determined from bypassing a contaminant removal device cannot be used as a recycle rate when the contaminant levels in 9.9 are determined by passing the refrigerant through the contaminant removal device.

9.4 *Accuracy of Flow Rates.* The accuracy of test measurements in 9.1, 9.2 and 9.3 shall be ±.008 kg/min or flow rates up to .42 kg/min and ±2.0% for flow rates larger than .42 kg/min. Ratings shall be expressed to the nearest .02 kg/min.

9.5 *Refrigerant Loss.* This calculation will be based upon the net loss of refrigerant which would have been eliminated in the non-condensable purge process (see 7.5.1), the oil draining process (see 7.4.2.1) and the refrigerant clearing process (see 7.4.4.1), all divided by the net refrigerant content of the test batches. The refrigerant loss shall not exceed 3% by weight.

9.5.1 *Non-Condensable Purge.* Evacuate an empty container to 2 kPa absolute. Record the empty weight of the container. Place the container in a dry ice bath. Connect the equipment purge connection to the container and operate purge according to operating instructions so as to capture the non-

condensables and lost refrigerant. Weigh the cylinder after the recycling is complete. Equivalent means are permissible.

9.5.2 *Oil Draining.* Refrigerant removed from the oil after draining shall be collected and measured in accordance with 7.4.2.1.

9.5.3 *Clearing Unit.* Refrigerant captured during the clearing process shall be measured in accordance with 7.4.4.1.

9.6 *Final Recovery Vacuum.* The final recovery vacuum shall be the mixing chamber pressure in 7.4.3 expressed in kPa. The accuracy of the measurement shall be within 0.33 kPa.

9.7 *Residual Trapped Refrigerant.* The amount of residual trapped refrigerant shall be the final weight minus the initial weight of the test cylinder in 7.4.4.2, expressed in kg. The accuracy shall be ±0.02 kg and reported to the nearest 0.05 kg.

9.8 *Quantity Recycled.* The amount of refrigerant processed before changing filters (see 7.5.3) shall be expressed in kg to an accuracy of ±1%.

9.9 *Contaminant Levels.* The contaminant levels remaining after testing shall be published as follows:

Moisture content, ppm by weight Chloride ions, pass/fail Acidity, ppm by weight High boiling residue, % (by volume) Particulates-solid, pass/fail (visual examination) Non-condensables, % (by volume)

9.10 *Minimum Data Requirements for Published Ratings.* Published ratings shall include all of the parameters as shown in Tables 2 and 3 for each refrigerant designated by the manufacturer.

Section 10. Tolerances

10.1 *Tolerances.* Performance related parameters shall not be less favorable than the published ratings.

Section 11. Marking and Nameplate Data

11.1 *Marking and Nameplate Data.* The nameplate shall display the manufacturer's name, model designation, type of equipment, designated refrigerants, capacities and electrical characteristics where applicable.

Recommended nameplate voltages for 60 Hertz systems shall include one or more of the utilization voltages shown in Table 1 of ARI Standard 110–90. Recommended nameplate voltages for 50 Hertz systems shall include one or more of the utilization voltages shown in Table 1 of IEC Standard Publication 38, IEC Standard Voltages.

11.2 *Data for Designated Refrigerants.* For each refrigerant designated, the manufacturer shall include all the following that are applicable per Table 2:

a. Liquid Recovery Rate
b. Vapor Recovery Rate
c. High Temperature Vapor Recovery Rate
d. Final Recovery Vacuum
e. Recycle Flow Rate
f. Residual Trapped Refrigerant
g. Quantity Recycled

Section 12. Voluntary Conformance

12.1 *Conformance.* While conformance with this standard is voluntary, conformance shall not be claimed or implied for products or equipment within its *Purpose* (Section 1) and *Scope* (Section 2) unless such claims meet all of the requirements of the standards.

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Table 2. Performance

Parameter/Type of Equipment	Recovery	Recovery/ Recycle	Recycle	System Dependent Equipment
Liquid Refrigerant Recovery Rate	1	1	N/A	N/A
Vapor Refrigerant Recovery Rate	1	1	N/A	N/A
High Temp. Vapor Recovery Rate	1	1	N/A	N/A
Final Recovery Vacuum	x	x	N/A	x
Recycle Flow Rate	N/A	x	x	N/A
Refrigerant Loss	3	x	x	3
Residual Trapped Refrigerant	2	2	2	2
Quantity Recycled	N/A	x	x	N/A

* For recovery equipment, these parameters are optional. If not rated use N/A, "not applicable."

x Mandatory rating.

1 For a recovery or recovery/recycle unit, one must rate either liquid refrigerant recovery rate or vapor refrigerant recovery rate or one can rate for both. If rating only the one, the other shall be indicated by N/A, "not applicable."

2 Mandatory rating for equipment tested for multiple refrigerants.

3 Mandatory rating if multiple refrigerants, oil separation or non-condensable purge are rated.

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Table 3. Contaminants

Contaminant/Type of Equipment	Recovery	Recovery/ Recycle	Recycle	System Dependent Equipment
Moisture Content	*	x	x	N/A
Chloride Ions	*	x	x	N/A
Acidity	*	x	x	N/A
High Boiling Residue	*	x	x	N/A
Particulates	*	x	x	N/A
Non-Condensables	*	x	x	N/A

* For recovery equipment, these parameters are optional. If not rated, use N/A, "not applicable."

x Mandatory rating.

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Attachment 1 to Appendix B References

Listed here are all Standards, handbooks, and other publications essential to the formation and implementation of the standard. All references in this appendix are considered as part of this standard.

- ANSI/ULStandard 1963, Refrigerant Recovery/Recycling Equipment, First Edition, 1989, American National Standards Institute/Underwriters Laboratories, Inc.
- ARI Standard 110–90, Air-Conditioning and Refrigerating Equipment Nameplate Voltages, Air-Conditioning and Refrigeration Institute
- ARI Standard 700–93, Specifications for Fluorocarbon and Other Refrigerants, Air-Conditioning and Refrigeration Institute
- ASHRAE Terminology of Heating, Ventilation, Air Conditioning, Refrigeration, & Refrigeration, American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1991
- IEC Standard Publication 38, IEC Standard Voltages, International Electrotechnical Commission, 1983

Attachment 2 to Appendix B. Particulate Used in Standard Contaminated Refrigerant Sample

B1 *Particulate Specification.*

B1.1 The particulate material (pm) will be a blend of 50% coarse air cleaner dust as received, and 50% retained on a 200-mesh screen. The coarse air cleaner dust is available from: AC Spark Plug Division, General Motors Corporation, Flint, Michigan.

B1.2 *Preparation of Particulate Materials.* To prepare the blend of contaminant, first wet screen a quantity of coarse air cleaner dust on a 200-mesh screen (particle retention 74 pm).

This is done by placing a portion of the dust on a 200-mesh screen and running water through the screen while stirring the dust with the fingers. The fine contaminant particles passing through the screen are discarded. The +200-mesh particles collected on the screen are removed and dried for one hour at 110EC. The blend of standard contaminant is prepared by mixing 50% by weight of coarse air cleaner dust as received (after drying for one hour at 110EC) with 50% by weight of the +200-mesh screened dust.

B1.3 *Particle Size Analysis.* The coarse air cleaner dust as received and the blend used as the standard contaminant have the following approximate particle size analysis:

WT. % IN VARIOUS SIZE RANGES, PM

Size range	As received	Blend
0–5	12	6
5–10	12	6
10–20	14	7
20–40	23	11
40–80	30	32
80–200	9	38

12. Appendix D to Subpart F is amended by revising section g to read as follows:

Appendix D to Subpart F—Standards for Becoming a Certifying Program for Technician

* * * * *

g. Recordkeeping and Reporting Requirements

Certifying programs must maintain records for at least three years which include, but are not limited to, the names and addresses of all individuals taking the tests, the scores of all certification tests administered, and the dates and locations of all testing administered.

EPA must receive an activity report from all approved certifying programs by every January 30 and June 30, the first to be submitted following the first full six-month period for which the program has been approved by EPA. This report will include the pass/fail rate and testing schedules. This will allow the Agency to determine the relative progress and success of these programs. If the certifying program believes a test bank question needs to be modified, information about that question should also be included.

Approved certifying programs will receive a letter of approval from EPA. Each testing center must display a copy of that letter.

Approved technician certification programs that intend to stop providing the certification test must forward all records required by this Appendix, § 82.161 and § 82.166 to a program currently approved by EPA in accordance with this Appendix and with § 82.161.

Approved Technician Certification Programs that receive records of certified technicians from a program that no longer offers the certification test must inform EPA in writing at the address listed in § 82.160 within 30 of receiving these records.

* * * * *

[FR Doc. 96–4041 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–P

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federal register

Thursday
February 29, 1996

Part III

Department of Transportation

Coast Guard

33 CFR Parts 150 and 154
Response Plans for Marine Transportation-Related Facilities; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 150 and 154

[CGD 91-036]

RIN 2115-AD82

Response Plans for Marine Transportation-Related Facilities

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting with some changes, as final, the interim final rule which establishes regulations requiring response plans for marine transportation-related (MTR) facilities including deepwater ports, certain Coast Guard regulated onshore facilities, marinas, tank trucks, and railroad tank cars. This final rule also adopts with some changes, as final, the interim final rule which establishes additional response plan requirements for facilities located in Prince William Sound, Alaska, permitted under the Trans-Alaska Pipeline Authorization Act (TAPAA). These regulations are mandated by the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990 (OPA 90). The purpose of requiring facility response plans is to enhance private sector planning and response capabilities to minimize the environmental impact of spilled oil.

EFFECTIVE DATE: May 29, 1996.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 91-036), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593-0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: LCDR Walter (Bud) Hunt, Response Division (G-MEP), (202) 267-0441. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LT Cliff Thomas, Project Manager, Standards Evaluation Branch (G-MES-2), and Jacqueline Sullivan, Project Counsel, Office of Chief Counsel (G-LRA).

Regulatory History

On March 11, 1992 the Coast Guard published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (57 FR 8708) entitled "Facility Response Plans." The ANPRM discussed the background, statutory requirements of section 311(j) of the FWPCA, and possible regulatory approaches. In addition, the ANPRM posed questions for public comment. The Coast Guard received 116 comments.

On June 19, 1992, the Coast Guard published a notice of proposed rulemaking (NPRM) on the related rulemaking project Vessel Response Plans (VRP) (57 FR 27514). The Coast Guard also gathered public input on the proposed VRP rule through the Oil Spill Response Plan Negotiated Rulemaking Committee. Twenty-six organizations and the Coast Guard were members of the Committee. To maintain consistency between the two regulations, this rule uses certain concepts developed in the VRP NPRM and negotiated rulemaking committee.

The Coast Guard released Navigation and Vessel Inspection Circular (NVIC) No. 7-92 on September 15, 1992. NVIC No. 7-92 provided immediate guidance to the marine industry for preparing facility response plans to meet the February 1993 deadline established by the Oil Pollution Act of 1990 (OPA 90).

On February 5, 1993, the Coast Guard published an Interim Final Rule (IFR) entitled "Response Plans for Marine Transportation-Related Facilities" in the **Federal Register** (58 FR 7330). The Coast Guard received 55 comments on the IFR. These comments were considered in developing this final rule.

Background and Purpose

In response to several recent major oil spills, Congress passed the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380). OPA 90 amended section 311(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(j)). It established requirements, and an implementation schedule, for facility response plans and periodic inspections of discharge-removal equipment.

As amended by OPA 90, section 311(j)(5) directs the President to issue regulations implementing the new FWPCA requirements for facility response plans. The President delegated this authority, in part, to the Secretary of Transportation (DOT) by Executive Order 12777 (3 CFR, 1991 Comp.; 56 FR 54757). The Secretary of Transportation, in 49 CFR 1.46(m) (57 FR 8581; March 11, 1992), further delegated, to the Commandant of the Coast Guard, the authority to regulate marine transportation-related (MTR) onshore facilities, and deepwater ports subject to the Deepwater Ports Act of 1974, as amended (33 U.S.C. 1501, *et seq.*). This rule addresses only MTR facilities that handle, store, or transport oil. Oil spill response plan regulations for vessels are the subject of a separate rulemaking project (CGD 91-034).

Section 311(a)(1) of the FWPCA defines oil as including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with waste other than dredge spoils (33 U.S.C. 1321(a)(1)). While the most common oils are the various petroleum oils (e.g., crude oil, gasoline, diesel, etc.), non-petroleum oils such as animal fats (e.g., tallow, lard, etc.), vegetable oils (e.g., corn oil, sunflower seed oil, palm oil, etc.), and other non-petroleum oils, such as turpentine, are included within the ambit of this regulation when handled, stored or transported by an MTR facility.

A major objective of the OPA 90 amendments to the FWPCA was to create a national planning and response system. OPA 90 requires the President to develop nationwide criteria for determining those facilities which could reasonably be expected to cause substantial harm to the environment. The OPA 90 Conference Report (Report 101-653) states that the criteria should result in a broad requirement for facility owners or operators to prepare and submit response plans. Those facilities identified by the President are required to submit response plans.

Section 311(j)(5) of the FWPCA requires the preparation and submission of response plans from all onshore facilities that could reasonably be expected to cause either "substantial" or "significant and substantial" harm to the environment by discharging oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone of the United States. Response plans must also be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and applicable Area Contingency Plans (ACPs).

Section 311(j)(5) also requires that, in a facility response plan, an owner or operator identify and ensure by contract or other means approved by the President the availability of private personnel and equipment sufficient to remove, to the maximum extent practicable, a worst case discharge and to mitigate or prevent substantial threat of such a discharge.

Section 311(j)(5)(F) of the FWPCA allows the Coast Guard to authorize an MTR facility requiring plan approval to operate for up to 2 years after a plan is submitted for approval. This provides an interim period in which the facility may continue to operate while the plan approval process is completed.

Section 5005 of OPA 90 establishes requirements for response plans for MTR facilities located in Prince William Sound, Alaska, which are permitted under the Trans-Alaska Pipeline Authorization Act (TAPAA) (43 U.S.C. 1651, *et seq.*). This section requires a higher level of preparedness for facilities in Prince William Sound in order to provide an even greater margin of safety.

Although OPA 90 requires response plans for oil or hazardous substance spills, section 4202(b)(4) establishes an implementation schedule only for oil spill response plans. Response plans for hazardous substance spills will be the subject of a separate rulemaking.

Discussion of Comments and Changes

The Coast Guard received 55 comments on the IFR. The following discussion summarizes the comments and explains substantive changes made to the regulation in response to the comments. Comments are categorized by the specific section of the IFR to which they apply. In addition to these changes, editorial changes have been made to clarify the rule or standardize terminology. The following sections have changes which are purely editorial: §§ 154.1010, 154.1017, 154.1030, 154.1047, 154.1050, 154.1070, 154.1075, 154.1125, and appendix C, sections 1, 3, 4, 5, 7, and 8. The following sections were not changed: §§ 154.1028, 154.1029, 154.1041, 154.1057, 154.1115, 154.1130, 154.1135, 154.1140 and appendix C, sections 6 and 9 and Tables 1-5. For the convenience of the public, the Coast Guard has reprinted subparts F and G of part 154 in their entirety, including both changed and unchanged sections. Two new subparts H and I have also been added to part 154.

General Comments

One comment argued that the regulations do not consider economic reasonableness, overstep the intent of Congress in their scope and essentially place the entire burden for cleanup on owners and operators of facilities. The Coast Guard disagrees. The primary intent of the response planning portions of OPA 90 was to require that facility owners or operators identify and ensure, by contract or other approved means, the availability of private personnel and equipment to remove a worst case discharge. The Coast Guard has considered the economic costs of this final rule and they are summarized in this preamble in the section entitled "Assessment."

Regulatory consistency. The Coast Guard received 16 comments urging regulatory consistency in the development of these regulations. All of these comments stated that there should be consistency with the other regulations issued under OPA 90. One of these comments also recommended the establishment of an interagency working group to identify which sections of rules should be consistent and work toward achieving that consistency. Another of these comments also urged that response plan requirements should be amended to resemble EPA's requirements more closely but that the Coast guard's requirements should have a much closer focus on emergency response. The Coast Guard, EPA, and other Federal agencies met repeatedly throughout the development of each agency's rules. This coordination has produced significant similarities between agencies issuing response plan rules. For example, the Coast Guard and EPA have adopted the same requirements with respect to planning volumes, amounts of response equipment, and the use of dispersants, and other similar new or unconventional spill mitigation techniques including mechanical dispersal.

Public Participation. Six comments addressed concerns of public participation in the process of this rulemaking. Four comments argued that the Coast Guard should have issued an NPRM instead of an IFR to facilitate public comment. The IFR was issued to meet OPA 90's deadline for implementing these oil pollution rules. Public comment to the IFR has been considered in the development of this final rule.

One comment argued that the IFR did not meet the requirements of OPA 90 for public input regarding the adequacy of the plans because it does not provide for notification of plan receipt by the Coast Guard; supplying copies of the plans to interested people; making copies of the plans available in a central location for public review; or allowing the public to appeal Coast Guard decisions on deficiencies or classification.

The Coast Guard concludes that there is no requirement contained in OPA 90 for the public to determine the adequacy of individual response plans from onshore or offshore facilities. Along with Federal, state, and local government representatives who are responsible for coordinating environmental issues and emergency response operations, the Coast Guard has encouraged Area Committees to include environmental groups, representatives from academia, and concerned citizens. The Coast Guard concludes that this is an appropriate method for private citizens to provide advice, guidance, and expertise to the Area Committee and will result in a coordinated community response to an oil discharge.

This same comment requested a public hearing and the establishment of a negotiated rulemaking committee for this regulation. The Coast Guard established an Oil Spill Response Plan Negotiated Rulemaking Committee (56 FR 58202, November 18, 1991). The Coast Guard used information in the final report provided by the Committee in the drafting of the VRP Rule (CGD 91-036) and this rule. The Coast Guard finds it unnecessary to conduct a separate negotiated rulemaking for the Facility Response Plan (FRP) rule.

Clarification. Two comments requested general clarification of the IFR. One comment stated that the regulations must be clarified in many respects to avoid differences of interpretation. The other comment was concerned with words in the regulations having different meanings from their accepted meanings. The Coast Guard recognizes these concerns and has strived for clarity in this final rule. For example, in this final rule, the Coast Guard has added definitions of the terms "complex", "tier", and "fish and wildlife and sensitive environment". It has also issued guidance to response plan reviewers to assure uniform understanding and enforcement of response plan requirements.

Agency jurisdiction. Two comments addressed the issue of jurisdictional conflicts between agencies. One comment asserted that there is an overlap in Coast Guard and Research and Special Programs Administration (RSPA) authority over pipelines. This comment argued that pipelines used only for transporting fuel between tanks and vessels were previously subject only to Coast Guard jurisdiction. However, this comment argues, new RSPA regulations now apply to all pipelines. This comment contended that such regulation conflicts with the delegation of authority in E.O. 12777 giving RSPA authority over non-MTR pipelines only.

Executive Order 12777 delegated to the Secretary of Transportation responsibility for the issuance of regulations requiring the owner or operator of a transportation-related onshore facility and deepwater ports to prepare and submit response plans. The Secretary delegated to the Commandant of the Coast Guard the responsibility for

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the issuance of regulations requiring the owner or operator of a marine transportation-related onshore facility and deepwater ports to prepare and submit response plans. The Secretary delegated to the Administrator of RSPA the same authority for non-marine transportation-related pipelines. The Coast Guard finds that there is no conflict over jurisdiction.

Section 150.129 Response Plans

The Coast Guard received one comment on this section. The comment requested that the Coast Guard clarify the submission requirements for deepwater ports. Under the IFR, the Coast Guard determined that deepwater ports are significant and substantial harm facilities under § 154.1015 and, therefore, are required to submit a response plan for review and approval. The Coast Guard finds that the submission requirements are clear and, therefore, has made no changes to the final rule on the classification of deepwater ports.

Section 154.106 Incorporation by Reference

The Coast Guard received one comment on this section. The comment stressed that the Coast Guard should review the standard test methods developed by the American Society of Testing Materials (ASTM) that are incorporated by reference in this section as the standards are revised. The Coast Guard intends to review any revisions to these standards and will conduct appropriate rulemaking to revise this section if warranted by changes to these standards.

Section 154.1010 Purpose

The Coast Guard received several comments requesting clarification of this section. In response to these comments, the Coast Guard has revised this section to clarify the purpose of response plans.

Section 154.1015 Applicability

The Coast Guard received eight comments on this section of the IFR. Three comments argued that the classification of facilities should not be determined solely by the amount of oil that a facility is capable of transferring. The comments stated that other factors such as a facility's spill history, proximity to fish and wildlife and sensitive environments, presence of containment structures, and potential worst case discharge should be considered in the classification of facilities.

The IFR reflects the Coast Guard determination that all MTR facilities that transfer oil to or from a vessel with a capacity of 250 barrels or more could reasonably be expected to cause at least substantial harm to the environment, and that large fixed facilities and deepwater ports could reasonably be expected to cause significant and substantial harm to the environment in the case of an oil discharge. If a facility owner or operator believes that his or her facility should be reclassified from significant and substantial harm to substantial harm or excluded from the substantial harm category based on factors other than the facility's capacity for transferring oil, then under § 154.1075 the facility owner or operator is permitted to appeal the classification to the COTP and then to the District Commander, and then to the Commandant. There have been no changes in these provisions in the final rule.

Although the Coast Guard has not changed the final rule to reflect the consideration of factors other than the facility's type and its capacity for transferring oil in the classification of the facility, the Coast Guard has modified the threshold for the initial classification of significant and substantial harm facilities in the final rule, thereby decreasing the number of facilities which will be classified as significant and substantial harm facilities. The Coast Guard has identified several fixed MTR facilities which are segments of non-MTR facilities that have a total storage capacity of less than 42,000 gallons. The Environmental Protection Agency (EPA) has determined that such non-transportation related facilities with a storage capacity of less than 42,000 gallons associated with a MTR facility are not considered as substantial harm facilities. However, these MTR facilities are capable of transferring oil to or from a vessel with a capacity of 250 barrels or more. The Coast Guard has determined that these facilities could reasonably be expected to cause substantial harm to the environment. These facilities must still submit response plans; however, they are no longer classified as "significant and substantial harm" facilities. Paragraph (c)(1) of § 154.1015 has been amended to incorporate this change.

One comment suggested that facilities that transfer only oily water mixtures should be classified as substantial harm facilities. The Coast Guard disagrees. Although a facility may transfer only oil that is mixed with water, the facility may transfer enough oil to reasonably be expected to cause significant and substantial harm to the environment if a discharge were to occur.

Another comment stated that the Coast Guard should clarify that mobile facilities are the only facilities that are not classified as significant and substantial harm facilities. Under the IFR, mobile facilities are the only facilities which initially are classified only as substantial harm facilities; however, under § 154.1016, the COTP may determine that other facilities may reasonably be expected to cause substantial harm to the environment and may upgrade mobile MTR facilities to significant and substantial harm facilities. Additionally, the amended paragraph (c)(1) of § 154.1015 of the final rule, which modifies the threshold for significant and substantial harm facilities, has increased the number of facilities that will initially be classified only as substantial harm facilities.

One comment suggested that the Coast Guard provide guidance on how to determine whether a facility is part of a complex. A facility is part of a complex if the entire facility is regulated by more than one Federal agency under section 311(j) of the FWPCA. Most MTR facilities are part of a larger facility that has segments which are regulated by agencies such as EPA, RSPA or the Minerals Management Service (MMS). If a facility owner or operator is unable to determine whether his or her facility is part of a complex, he or she may request guidance from the COTP.

Two comments contended that the regulation should not apply to non-petroleum oils. One comment specifically stated that the regulation should not apply to facilities which handle animal and vegetable oils because these oils are not toxic to the environment. The Coast Guard disagrees. The response planning requirements of this regulation were developed to ensure that facility owners or operators are prepared to respond to an oil spill originating from their facility, regardless of the type of oil spilled. The Coast Guard recognizes that certain non-petroleum oils, including certain animal fats and vegetable oils, are non-toxic in the marine environment; however, lethal acute aquatic toxicity is not the sole factor considered in determining harm to the environment. A discharge of animal fats or vegetable oils may cause chronic effects for waterfowl and aquatic organisms. Proper response planning for a discharge of non-petroleum oils will have a significant effect in limiting harm to the environment. Therefore, facility owners or operators handling non-petroleum oils at their facility are required to prepare response plans under this regulation.

The Coast Guard has determined, based upon comments, that animal fats and vegetable oils, and other non-petroleum oils will be addressed separately from petroleum oils, and from one another, in the final rule. The final rule removes the response planning requirements for animal fats and vegetable oils, and other non-petroleum oils from § 154.1049 in the IFR and establishes two new subparts H and I, containing requirements for these oils. Subpart H contains requirements for animal fats and vegetable oils, while subpart I contains requirements for other non-petroleum oils. Although new subparts have been established for animal fats and vegetable oils, and other non-petroleum oils, the response planning requirements for these oils are not changed in the final rule.

One comment stated that a facility that is capable of transferring oil to or from a vessel with a capacity of 250 barrels or more, but that does not transfer to a vessel of this size should not be required to submit a response plan. Although the Coast Guard has not lowered the threshold for substantial harm facilities in the final rule, the revised final rule permits the COTP to downgrade a facility. The COTP is in the position to evaluate the individual situation of each facility under his or her jurisdiction with respect to operational history and other factors which would affect the facility's classification. The COTP may downgrade a facility's classification, acting either on his own or upon request of the facility's owner or operator, if he finds that such action is warranted.

Section 154.1016 Facility Classification by COTP

The Coast Guard received four comments on this section. One comment stated that the COTP should not be permitted to upgrade a facility based on the facility's proximity to areas of economic importance and environmental sensitivity. The comment contended that OPA 90 does not permit such an action. Another comment stated that a facility's spill history does not indicate that the facility is at greater risk for future spills and, therefore, spill history should not be considered in determining a facility's classification. The Coast Guard disagrees. OPA 90 permits the Coast Guard to require response plans for facilities that could reasonably be expected to cause substantial harm and significant and substantial harm to the environment. OPA 90 does not define these terms; therefore, the Coast Guard must determine the criteria used to distinguish these facilities. The Coast Guard has adopted EPA's term "fish and wildlife and sensitive environments" to refer to areas of environmental sensitivity. The Coast Guard has concluded that a facility's proximity to fish and wildlife and sensitive environments and its spill history are relevant factors in determining whether a facility could reasonably be expected to cause substantial harm or significant and substantial harm to the environment in the case of an oil discharge.

Two comments stated that a facility owner or operator should be permitted to appeal the COTP's decision to upgrade a facility. Under § 154.1075 of the IFR, a facility owner or operator is permitted to request the COTP to review the initial facility classification. The owner or operator may submit relevant data to the COTP to support his or her argument. If the owner or operator is dissatisfied with the COTP's decision, the owner or operator may appeal the decision to the District Commander. The decision of the District Commander may be appealed to the Commandant. This appeals provision is unchanged in the final rule.

Under the IFR, the COTP was permitted only to upgrade a facility's initial classification. Under the final rule, the COTP is permitted to upgrade or downgrade the facility's classification. Upon written request from the facility owner or operator to review the facility's classification, the COTP may downgrade a facility from significant and substantial harm to substantial harm or from substantial harm to a status in which it is exempt from the regulation. This provides the COTP with greater latitude to appropriately regulate his or her port area. This change has prompted the renaming of this section to "Facility Classification by COTP" in the final rule.

Section 154.1017 Response Plan Submission Requirement

The Coast Guard received many comments on this section of the IFR. Four comments requested the Coast Guard to clarify whether the FRP regulations apply to inactive facilities. Under § 154.100(a), the applicability section for part 154, facilities in caretaker status are exempt from the requirements of this part, with the exception of certain safety requirements set out in § 154.735.

Two comments stated that facility complexes should not be required to submit response plans to more than one Federal agency for approval. The comments further stated that all facilities that transfer oil over water should be regulated exclusively by the Coast Guard. The Coast Guard recognizes that submitting plans to several agencies for approval may have been burdensome for those facilities whose options necessitated submission of response plans to more than one Federal agency. The initial delegation under Executive Order 12777 to issue regulations and review and approve response plan to multiple Federal agencies reflected agency expertise in the regulated industries and the traditional jurisdiction of Federal agencies under section 311 of the FWPCA. This delegation provided each agency with the opportunity to review response plans and to ensure that the plans reflected industry practices and were in compliance with statutory requirements.

Today, virtually every facility required to submit response plans has already done so in compliance with the rules promulgated by the appropriate agency. It has become apparent that some response plans unnecessarily duplicate information contained in other plans. Federal agencies are interested in streamlining the response plan preparation and submission procedures to reduce significantly the burden when plan revision and resubmission is required. The Coast Guard believes that the "One Plan" or Integrated Contingency Planning concept has merit and discussions are ongoing between industry, the appropriate Federal agencies, and members of the National Response Team (NRT). The NRT is developing guidance for preparation of integrated response plans that will satisfy the regulatory requirements of various Federal agencies while avoiding unnecessary and confusing duplication of standard response procedures and organizational details. With the completion of guidance on Integrated Contingency Planning, the Coast Guard will accept plans developed in accordance with that guidance. The NRT is also examining the feasibility of vesting response plan review in the On Scene Coordinator. The NRT is discussing minimizing the number of Federal agencies involved in reviewing a response plan for those facilities that, due to their diverse nature, may have to prepare and submit a response plan to more than one Federal agency. The Coast Guard is committed to working with the NRT on these issues and working to minimize the regulatory burden on facilities that have marine transportation-related mode and non-transportation-related components.

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Section 154.1020 Definitions

The Coast Guard received many comments on the definitions of the terms used in the IFR. Some comments suggested clarification of certain terms while others suggested the addition of terms. The following discussion addresses only those definitions or issues on which the Coast Guard received comment or made significant revisions.

Adverse weather. The Coast Guard received one comment on "adverse weather" which suggested that wind, tides, and the number of daylight hours be included as three additional environmental factors that contribute to adverse weather conditions for a spill response. The Coast Guard did not intend the listed conditions to be exclusive. To address this comment's concern, the Coast Guard is adding language to the definition of "adverse weather" to indicate that other relevant factors including wind, tides, etc., should also be taken into account when identifying response systems and equipment.

Availability (of response resources). The Coast Guard received one comment which requested that this term be defined. The comment stated that the definition should indicate that response organizations often have contracts with many facilities and, as a result, there may be instances where the contractor's obligations to one facility may limit its ability to arrive at the scene of an oil spill at another facility within the specified times. The Coast Guard recognizes that actual availability of response resources may be limited by unforeseeable events such as multiple, simultaneous oil spills. The Coast Guard stresses that the requirements are not performance standards. They are intended to be used to develop a plan for responding to a discharge of oil to the maximum extent practicable in the existing conditions. The Coast Guard recognizes that actual conditions may not permit the arrival of resources within the prescribed timelines. The Coast Guard concludes that there is no need to provide a definition.

Complex. The Coast Guard received one comment suggesting that it clarify the meaning of "complex" and that the Coast Guard definition be consistent with the definition in EPA regulations. A "complex" is composed of facilities regulated by two or more Federal agencies, and that are used, or intended to be used, to transfer oil to or from a vessel. A "complex" may include marine transportation-related portions and other non-marine transportation-related portions. The Coast Guard has included a definition that is consistent with the FWPCA and applicable EPA regulations.

Consistency with EPA regulations. Two comments stated that the definitions in the Coast Guard regulation should be consistent with those in the EPA regulation. Wherever relevant, the Coast Guard has consulted other agencies and their regulations to ensure that the Coast Guard's OPA 90 regulations do not conflict with those of other agencies. Occasionally, the Coast Guard's definitions diverge from similar definitions of other agencies. In those cases, the Coast Guard has examined the other agency regulations and decided upon a different approach for legal, policy, or technical reasons.

Environmentally Sensitive Area. The Coast Guard received one comment suggesting that it add a definition of the term "environmentally sensitive area" to be consistent with EPA regulations, the NCP, and OPA 90. The EPA has adopted the term "fish and wildlife and sensitive environment." For consistency, the Coast Guard is adopting EPA's term and its definition. However, the Coast Guard is adding economically important areas to the EPA definition. OPA 90 requires that response plans be consistent with the applicable Area Contingency Plan (ACP). The ACPs are prepared by Area Committees composed of qualified personnel from Federal, State and local agencies. The Coast Guard has provided guidance to the Area Committees on the preparation of ACPs. Coastal ACPs have been prepared and are available for preparation of facility response plans. The Area Committees identify, and prioritize for protection, specific locations that fall under the category "fish and wildlife and sensitive environments." The ACPs will be revised annually and will identify areas of economic importance. The completed fish and wildlife and sensitive environments plans will likely be geographic-specific annexes to the ACPs. The National Oceanic and Atmospheric Administration (NOAA) published a notice in the **Federal Register** on March 29, 1994 entitled "Guidance for Facility and Vessel Response Plans Fish and Wildlife and Sensitive Environments." (59 FR 14714) NOAA's notice provides detailed guidance which facility and vessel owners may use to supplement the information contained in the applicable Coast Guard regulations. However, the ACP will still be used to make the final determination regarding fish and wildlife and sensitive environments.

Full-scale. The Coast Guard received five comments suggesting the addition of the term "full scale" in order to clarify certain requirements for spill drills. The comments proposed that the term mean maximum participation by all levels of a facility's response organization to test major portions of the plan with a high degree of realism and extensive involvement. The Coast Guard extensively revised § 154.1055 of subpart F to reflect concerns expressed by comments, as well as to bring the section into alignment with the vessel response plan final rule and the applicable EPA regulations. Section 154.1055 is now entitled "Exercises" and requires the owner or operator of a facility to conduct exercises that will test the entire response plan every 3 years. The requirements allow the owner or operator to exercise different elements of the plan (e.g. qualified individual notification, spill management team, equipment deployment) at different times. However, the exercises must still test every element of the plan every 3 years and, in addition, an unannounced exercise must also be conducted every 3 years. The revised § 154.1055 also allows owners or operators to fulfill the exercise requirements by complying with the National Preparedness for Response Exercise Program (PREP). In view of these changes, a definition of "full scale" is not necessary.

Functional. The Coast Guard received five comments suggesting that the term "functional" be added to the definitions section in the final rule to clarify certain requirements for spill drills. The comments proposed that the term be defined as the limited exercising of specific functions, such as a command and control, internal coordination, external coordination, and tests of the functional planning and response capabilities of personnel and systems. In response to these, and other comments, the Coast Guard has extensively revised § 154.1055 which was entitled "Drills" in the IFR and is now entitled "Exercises." The Coast Guard concludes that the Exercises section now adequately addresses the meaning of the term functional. The functional areas are laid out in § 154.1035(b)(3)(iii) of subpart F. Response plans must contain an organizational structure incorporating the listed functional areas. Section 154.1035(b)(3)(iv) requires response plans to also contain job descriptions for the spill management team members in each functional area identified in the organizational structure described in § 154.1035(b)(3)(iii).

Group IV oil. The Coast Guard received several comments indicating that the definition for Group IV oil included Group V oil. The Coast Guard has revised the definition of Group IV oil which is found in the definition of "persistent oils" to mean oil having a specific gravity equal to or greater than .95 and less than or equal to 1.0.

Higher volume port areas. The Coast Guard received one comment which proposed to add Cook Inlet, Alaska to the list of higher volume port areas. The Coast Guard classified higher volume port areas based upon a study of the relative volumes of oil handled, stored or transported. The U.S. Army Corps of Engineers reports on "Waterborne Commerce of the United States" provided the statistics for 34 port areas. The decision to classify some ports as higher volume was based upon the Coast Guard's analysis of the data from the reports. The data revealed a distinct break point. Cook Inlet, Alaska falls below the break point and, as such, does not meet the criteria for designation as a higher volume port area.

Marine transportation-related facility. The Coast Guard received three comments on the definition of MTR facility. One comment requested that the Coast Guard clarify the definition by citing specific types of facilities to which it refers. The Coast Guard gave examples of MTR facilities in the preamble to the IFR (e.g., fixed onshore MTR facilities include marinas; and mobile MTR facilities include tank trucks and railroad tank cars). Two other comments requested clarification of Coast Guard and RSPA jurisdiction over pipelines at MTR facilities. As stated in the preamble to the IFR, the definition of transportation-related and non-transportation-related facilities appeared in a 1971 Memorandum of Understanding (MOU) between the Environmental Protection Agency and the Department of Transportation. The MOU appears in the appendix to 40 CFR part 112. The Coast Guard definition of MTR is drawn directly from the MOU. The division point between the transportation-related portion of a pipeline, and the non-transportation-related portion of a pipeline is the first design discontinuance (valve) inside the secondary containment surrounding the tanks in the non-transportation-related portion of the facility. The Coast Guard finds that MTR is clearly defined in accordance with the appropriate legal authority. In a particular situation, if the location of the division between the MTR portion and the non-MTR portion is unclear, then the appropriate Federal officials, including the Coast Guard COTP, should be consulted. As set forth in the definition, these officials may agree to a specific location for the separation.

Maximum extent practicable. One comment asserted that the definition of "maximum extent practicable" is too rigid and does not allow for the flexibility that Congress intended. According to the comment, location, size, configuration, and other similar factors, should be considered in developing response plans. The Coast Guard has used a number of factors in determining the need to prepare and submit a response plan. The planning process also considers other factors as provided in §§ 154.1035 and 154.1045.

Maximum most probable discharge. The Coast Guard received four comments on the definition of maximum most probable discharge suggesting that the Coast Guard revise the maximum most probable discharge volume of 1,200 barrels or 10 percent of the volume of the worst case discharge to be consistent with the EPA maximum most probable discharge volume of 36,000 gallons. As stated in the preamble to the IFR, the Coast Guard based its maximum most probable discharge definition upon historical spill data which indicated that 99 percent of oil spills from coastal zone facilities were approximately 1,200 barrels or less. The Coast Guard concludes that the existing definition is appropriate because it protects the environment while not overly burdening small volume facilities.

Nearshore area. The Coast Guard received two comments on the definition of nearshore area. One comment stated that the definition should exclude areas which also meet the definition of rivers and canals. Another comment requested clarification of the relationship between nearshore areas and other terms such as "close-to-shore" in Appendix C and "close to shore response activities in shallow water" in § 154.1045(e). The definition of "Nearshore area" does not presently include areas which meet the definition of rivers and canals because "Rivers and canals" is a subset of the definition of "Inland areas" not "Nearshore areas." The precise meaning of "close-to-shore" is specified at the point where the term is used. Close-to-shore refers to waters six feet or less in depth.

Notification drill. The Coast Guard received five comments that suggested the addition of the term "notification drill" to the definition section of the final rule. The comments suggested defining the term to mean a test of the facility's system of notifying or activating, according to the facility's response plan, appropriate agencies, the facility spill management team, the oil spill removal organization, and the next higher level of the facility owner's or operator's organization. A notification drill tests the facility's ability to start activation of its plan. To be successful, a notification drill need not result in calls to the top of the facility's response organization. The Coast Guard has extensively revised § 154.1055 which was previously entitled "Drills" and is now entitled "Exercises." The revised section includes a "Qualified Individual notification exercise" and specifies that compliance with the National Preparedness for Response Exercise Program (PREP) fulfills all exercise requirements. The Coast Guard concludes that these changes adequately address the points raised by the comments.

Oil. The Coast Guard received seven comments on this definition. One comment requested that the Coast Guard narrow the definition of oil to exclude substances which contain small percentages of oil such as ship bilge and ballast water. One comment indicated that the definition of oil in the regulations should be consistent with the definition in OPA 90, which excludes hazardous substances subject to CERCLA. Four comments stated that oil should be limited only to petroleum oils which are liquid under the range of ambient conditions which exist at a facility and which are not considered CERCLA substances. OPA 90 did not amend the definition of oil in section 311 of the FWPCA. The Coast Guard's definition of "oil" is the same definition used by the FWPCA. The statutory definition refers to oil in any form. That includes oily bilge and ballast water because they have been shown to be sources of oil pollution and discharges may result in substantial harm to the environment. The Coast Guard has determined that it is appropriate for response plans to include provisions covering oils which may not be liquid in all conditions. Such oils may sink to the bottom or remain suspended in the water column. In either case, they may cause substantial harm to the environment if not cleaned up as soon as possible. The Coast Guard concludes that the current definition of oil meets both the letter and the spirit of the FWPCA and therefore is not changing the definition of oil.

Another comment stated that the response plan regulations should not apply to edible oils. The comment contended that if edible oils were excluded from the regulations, the owner or operator of a facility handling edible oils still would be required to report and cleanup a spill under the Clean Water Act (CWA). The Coast Guard definition of "oil" is the same definition that is used by the FWPCA. That definition includes edible oils. The

Coast Guard has created new subparts in the final rule to distinguish non-petroleum oils, including edible oils such as animal fats and vegetable oils, from petroleum oils. The scientific data currently available to the Coast Guard strongly indicate that these oils may have an adverse impact upon the environment that is similar to the impact of petroleum oils. As a result, the Coast Guard is not exempting non-petroleum oils from response planning in the final rule. The Coast Guard will continue to assess its position as further data become available on the subject.

Oil spill removal organization. The Coast Guard received two comments on the definition of oil spill removal organization which suggested that the definition be revised to be more specific. The Coast Guard crafted the definition if oil spill removal organization to be flexible enough to apply to varying types of organizations which may be called upon to respond to a discharge of oil while complying with OPA 90 requirements. A more specific definition, while useful to some in the industry, might exclude organizations which are able to provide useful and needed response capabilities. The Coast Guard is not changing the definition of oil spill removal organization and suggests that any questions regarding the suitability of a particular organization be directed to the COTP for the area in which the facility is located.

Other non-petroleum oil. The Coast Guard has added a definition of "other non-petroleum oil." Other non-petroleum oil means a non-petroleum oil of any kind that is not generally an animal fat or vegetable oil.

Persistent oil. The Coast Guard received two comments on the definition of persistent oil. Both comments indicated that the definition proposed in the IFR does not account for oils that have a specific gravity greater than 1.0 that do not sink in salt water. The comments suggest that the definition be revised to include all products which could reasonably be expected to sink in the environment in which they are likely to be discharged. The definition of persistent oils is subdivided based upon specific gravity into Groups II, III, IV and V. The Coast Guard finds that further subdivision is unnecessary because the definition currently includes all oils with a specific gravity of greater than 1.0, regardless of whether or not they sink in salt water. Furthermore, the Coast Guard concludes that, in combination with other factors, even those oils referred to in the comments are very likely to sink in salt water.

Private shore-based personnel. The Coast Guard received one comment suggesting the addition of this term to the regulation. The comment indicated that certain Occupational Safety and Health Administration (OSHA) standards are not enforced. The Coast Guard is not tasked with enforcement of OSHA standards except in very specific instances. In the context of pollution control regulations such as OPA 90, the Coast Guard is not responsible for enforcing OSHA standards. Therefore, it is unnecessary for the Coast Guard to add this term to the final rule.

Rivers and canals. The Coast Guard received 8 comments on this definition. All eight comments questioned the use of the 12 foot project depth as a criterion for determining whether a waterway is a river or canal. One comment suggested that a project depth of 18 feet be applied as the standard. Four comments suggested that the COTP should be given the discretion to determine which waterways will be determined to be rivers or canals. The 4 comments also stated that the terms rivers and canals should be applied only to certain areas with definite geographical demarcations. Two comments requested clarification on whether the 12-foot project depth criterion applies only to artificially created waterways. Additionally, these 2 comments indicated that the definition of rivers and canals excludes certain rivers. The definition of rivers and canals applies to all waterways with a project depth of 12 feet or less including both naturally and artificially occurring ones. The Coast Guard finds that the 12-foot depth is appropriate to define the inland areas where shallow draft vessels may call at MTR facilities and has not changed it in the final rule. The COTP has the authority to redefine specific operating environments within his or her jurisdiction. This provisions is continued in the final rule.

Specific gravity. Several comments encouraged the Coast Guard to define specific gravity in the final rule. The Coast Guard agrees and has used the definition of specific gravity found in ASTM Standard D 1298 entitled "Standard Practice for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Projects by Hydrometer Method."

Spill management team. The Coast Guard received 5 comments on this definition. Four comments stated that the definition of spill management team should reflect the allowance for tiered spill management teams. Another comment indicated that the FRP regulation should be consistent with the VRP regulation which permits the spill management team function to be fulfilled by an organization outside the planning area of the spill. A "tiered" spill management team is not prohibited by the regulations as they appeared in the IFR and remain in the final rule. The definition is identical in both the VRP and FRP final rules to ensure consistency in spill management team requirements.

The Coast Guard received 5 comments suggesting that it define the term "corporate spill management team." One comment suggested that this term be defined to mean a national team of operational and functional experts and consultants responsible for moving quickly to a spill site to replace or support a facility response team in managing a response. The Coast Guard also received 5 comments requesting that it add the term "facility spill management team" to the regulation. The comments suggested that the term be defined to mean a team responsible for initiating and managing a response to a spill to its conclusion or until a team member from a higher tier in the overall response organization is activated and on-scene to support the facility team or manage the response until its conclusion.

The Coast Guard concludes that the existing definition of "spill management team" already incorporates the elements that the comments suggest. The Coast Guard therefore finds that it is both unnecessary and undesirable to complicate the regulation by subdividing the definition of spill management team. Section 154.1035(b) contains detailed requirements regarding plan content including the spill management team. The spill management team may include all persons relevant to an effective spill response except Federal, State and local authorities. It may include local, as well as regional or national corporate officials, operational, as well as functional experts, and representatives of OSROs. The local or on-site spill response team members can, and should, be prepared to integrate other persons, such as regional and national corporate officials, into their spill response team structure.

Table top. The Coast Guard received 5 comments requesting that it add the term "table top" to the final rule to clarify certain spill drill requirements. The comments suggested that the term be defined as a verbal walk-through to discuss action to be taken during simulated emergency situations, designed to elicit constructive discussion by the participants without time constraints. A table top drill does not involve the movement of equipment or people. The Coast Guard has extensively revised § 154.1055 which was previously entitled "Drills" and is now entitled "Exercises." The revised section specifies that compliance with the National Preparedness for Response Exercise Program (PREP) fulfills all exercise requirements. The Coast Guard concludes that the changes adequately address the points raised by the comments.

Tier. The Coast Guard received one comment which stated that the use of "tier" in the IFR was unclear, and suggested that the Coast Guard define the term in the final rule. The Coast Guard agrees and has defined "tier" in the final rule.

The requirements for response to a worst case discharge to the maximum extent practicable are based on the tiering of response resources. The concept of "tier" has two primary components: The amount of equipment and personnel required for a response to a worst case discharge, and the amount of time in which these response resources are required to be on-scene from the time of discovery of an oil discharge. Tiering allows for the arrival of response resources at various stages of the response effort. Tiering the mobilization of response resources recognizes the need for a rapid initial response to an oil spill, yet allows for the identification of response resources from outside the area of the facility to meet the response resource planning requirements.

Sections 154.1045(e) and 154.1047(a)(1) of subpart F of the final rule require a facility owner or operator to identify, by contract or other approved means, equipment and personnel to respond to the facility's worst case discharge for Group I–IV oils and Group V oils, respectively. Appendix C and especially Tables 2, 3, and 4 provide specific guidance on calculating the amount of response equipment required by these sections. Table 4 provides mobilization factors used to calculate the amount of response resources required for on-water recovery for each tier. Table 5 establishes caps to the amount of response resources for which a facility owner or operator must contract in advance. Caps have been established for response resources required for Tiers 1, 2, and 3. The caps recognize the current limits on technology and private removal capabilities. The caps are for planning purposes only; in no way do the caps limit the amount of resources which a facility owner or operator may be required to mobilize during an actual spill response.

Section 154.1045(f) of subpart F establishes three time tiers for the on-scene arrival of response resources for the different operating environments for Group I–IV oils.

Section 154.1025 Operating Restrictions and Interim Operating Authorization

The Coast Guard received 10 comments on this section of the regulation. One comment requested that the Coast Guard clarify the requirement for facilities to submit response plans meeting the requirements of § 154.1030 for review and approval to the Coast Guard COTP and the requirement to operate in full compliance with the approved plans.

Section 154.1017 requires all facilities which could reasonably be expected to cause at least substantial harm to the environment to prepare and submit response plans to the Coast Guard. Only facilities which could reasonably be expected to cause significant and substantial harm to the environment are required to submit response plans for review and approval by the Coast Guard. Section 154.1025(b) requires all facilities that are required to prepare response plans to operate in compliance with their plans.

The Coast Guard has added to the final rule a provision that requires facility owners or operators making initial response plan submissions after May 29, 1996, to comply with the requirements of the final rule. The Coast Guard is not requiring facility owners or operators who submitted response plans under the IFR or NVIC to revise their response plans to conform with the requirements of the final rule until the plan's 5-year resubmission date. However, a facility owner or operator who has prepared a response plan under the NVIC or the IFR may comply with any of the provisions of this final rule by revising the appropriate section of the previously submitted plan in accordance with the revision and amendment procedures in § 154.1065. An owner or operator who elects to comply with all of the requirements of the final rule must resubmit the entire plan for review and approval, if appropriate, in accordance with § 154.1060.

One comment suggested that § 154.1025(d) be revised to give the Coast Guard authority to prohibit a facility from operating if the COTP determines that a previously approved plan has not been properly revised or updated. The Coast Guard finds that § 154.1065 provides the COTP with adequate authority to enforce the requirements for response plan amendments and revisions. Under § 154.1065(c), the COTP may require a facility owner or operator to revise a response plan at any time if the COTP determines that the plan does not meet the requirements of this regulation.

Section 154.1025(d) provides four specific circumstances under which a facility may not handle, store, or transport oil including a COTP determination that owner-certified response resources or a submitted response plan do not meet the requirements of the subpart.

One comment indicated that the Coast Guard should limit its review and approval of response plans to 30 days for those plans submitted by February 18, 1993, the deadline for plan submission under the IFR. Limited resources prevented the Coast Guard from guaranteeing a review of every submitted response plan within 30 days. However, to facilitate the operations of facilities requiring Coast Guard review and approval under § 154.1025(c), the Coast Guard permitted these facilities to continue operations for up to 2 years from the date of plan submission. This procedure is in accordance with § 311(j)(5)(F) of the FWPCA.

The same comment suggested that a facility owner or operator should have no more than 30 days to make corrections to a plan if the plan is not approved by the COTP. Because of the varying degrees of plan deficiencies, the Coast Guard has determined that the COTP must have the flexibility to specify the period in which the facility owner or operator could reasonably be expected to correct the deficiencies.

One comment stated that, to be consistent with EPA and RSPA regulations, the Coast Guard should not formally review the letter from a facility owner or operator certifying the availability of response resources. Conversely, another comment indicated that a facility owner or operator should be required to certify in writing not only that he or she has ensured the availability of the necessary response resources, but also that the response resources are capable of being on-scene within the specified response times. The Coast Guard has determined that, until it is able to complete the review of the submitted response plans, its review and acceptance of the certification letters is its primary means of ensuring that facilities are in compliance with the statutory provisions of OPA 90 requiring the identification of response resources. The Coast Guard requires facility owners or operators to indicate in the certification letter that the response resources identified are in compliance with subpart F, G, or H as appropriate.

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Section 154.1028(a) requires response resources to be capable of being on-scene within specified times.

One comment indicated that response contractors probably would not have all of the spill response equipment in stock that is necessary to meet the August 18, 1993 deadline in the IFR, particularly the equipment used for recovering oil in shallow waters. The comment requested that the Coast Guard exempt this type of equipment from the response plan requirements. The Coast Guard found that at the time of the comment there was no evidence to indicate that facility owners or operators were unable to identify adequate response resources for recovering oil in shallow water.

Another comment suggested that the Coast Guard clarify the language in § 154.1025(c) permitting interim operating requirements prior to Coast Guard approval of a response plan. The Coast Guard has updated and clarified § 154.1025(c). Additionally, the comment indicated that this paragraph should apply also to substantial harm facilities. Section 154.1025(c) applies only to the owners or operators of facilities for which the Coast Guard must review and approve response plans. Under section 311(j) of the FWPCA and 33 CFR 154.1017(b), only significant and substantial harm facilities are required to submit response plans for Coast Guard review and approval.

Section 154.1026 Qualified Individual and Alternate Qualified Individual

The Coast Guard received 9 comments on this section of the IFR. Four of the comments contended that the Coast Guard should permit the qualified individual to be identified in the plan by his or her title, rather than his or her name. Two comments suggested that the Coast Guard establish a mechanism by which the qualified individual can be chosen from a group of individuals among whom the responsibility of the qualified individual rotates. Another comment stated that the facility owner or operator should not be required to provide documentation to the qualified individual in order to activate his or her authority as the qualified individual. The Coast Guard finds that the amount of authority vested in the qualified individual warrants that the response plan identify the specific individual(s) assuming this position. For this reason, the Coast Guard also requires the qualified individual to have documentation which clearly indicates his or her role in the facility's response activities.

Five comments requested clarification on the responder immunity provisions in § 154.1026 (e) and (f). Three of the comments specifically requested that the Coast Guard clarify who is immune from liability under the provisions. Two comments suggested that the Coast Guard address the immunity of the qualified individual in the regulatory text. One comment suggested that the potential liability for the qualified individual is too significant to attract many capable and qualified persons for the position.

As discussed in the preamble to the IFR, section 311(c)(4) of the FWPCA provides that only a responsible party is liable for the removal costs or damages which result from actions taken or omitted in the course of rendering care, assistance, or advice consistent with the National Response Plan or as otherwise directed by the President. A person does not become a responsible party under section 311(c) of the FWPCA by being designated as a qualified individual for response plan purposes. However, a person whose acts or omissions are grossly negligent, or who engages in willful misconduct may, as a result, become liable for the resulting damages. The Coast Guard does not have the authority to grant immunity to the qualified individual and, therefore, cannot establish immunity provisions in the final rule. However, the Coast Guard does recognize that the qualified individual is not responsible for the adequacy of response plans, nor is he or she responsible for contracting response resources beyond the authority delegated from the facility owner or operator. These points are reflected in the regulatory text.

Seven comments addressed the facility owner's or operator's ability to substitute a person from a higher level of management for the designated qualified individual. Four comments requested that the Coast Guard state this option in the regulatory text. Additionally, three comments questioned whether the person from a higher level of management who is assuming the responsibilities of the qualified individual is considered to be the qualified individual during an actual spill response. The Coast Guard does not intend to limit the discretion of the facility owner or operator to select any qualified person to assume the full range of responsibilities of the qualified individual. A facility owner or operator may, at any time, substitute the designated qualified individual or alternate qualified individual with a person from a higher organizational level who meets the requirements of § 154.1026. In order for that person to be recognized as the qualified individual, the facility owner or operator must provide the individual with a document designating them as the qualified individual as required by § 154.1026(c). The Coast Guard has changed the language in § 154.1026 to clarify that the Qualified Individual or an Alternate Qualified Individual must be available on a 24-hour basis and must be able to arrive at the facility within a reasonable time.

One comment requested a more stringent English language requirement for the qualified individual and suggested that the qualified individual be required not only to speak fluent English, but also be required to read, comprehend, and write in English at a level of high school equivalency. Although the regulation states only that the qualified individual must speak fluent English, the Coast Guard concludes that this requirement will restrict the designation of the qualified individuals to persons who can communicate effectively with the On-Scene Coordinator during a response effort.

One comment objected to the requirement that both the qualified individual and the alternate qualified individual be available on a 24-hour basis. The preamble to the IFR stated that the Coast Guard's intent is to ensure that either the qualified individual or the alternate qualified individual be available to respond to an oil spill on a 24-hour basis. In response to this comment, the Coast Guard has reworded § 154.1026(a) to make it clear that either the qualified individual or the alternate, but not both, must be available on a 24-hour basis. This conforms with both the intent stated in the IFR preamble and the related section of the VRP rule.

One comment stressed that the qualified individual should be knowledgeable about not only the financial aspect of an oil spill response, but also the technical issues pertaining to an oil spill response. The Coast Guard agrees that familiarity with response methods is an asset to a Qualified Individual and encourages facility owners or operators to designate such persons as qualified individuals; however the ability to commit response resources is the primary requirement.

Under the regulations, the facility owner or operator is required to identify a qualified individual who is capable of arriving at the facility in a reasonable time. To ensure this, the Coast Guard has amended this section to require the qualified individual to be located in the United States. This issue was previously discussed in the preamble to the IFR.

Section 154.1028 Methods for Ensuring the Availability of Response Resources by Contract or Other Approved Means

The Coast Guard received 11 comments on this section of the IFR. Four comments suggested that § 154.1028(a)(1), the first means of identifying response resources by contract or other approved means, be revised to indicate that an oil spill removal organization is unable to guarantee the availability of identified response resources to respond to a spill at a facility. The regulations require the owner or operator of a facility to "ensure" the availability of response resources because this is the terminology used in the statute. The Coast Guard has emphasized that response plans are planning documents, not performance criteria, and that neither the owner or operator nor the spill removal organization can guarantee the availability of resources at all times. Acts of God, extremes of weather, labor disputes, the prior commitment of resources, and other events may preclude performance as planned. The Coast Guard also expects certain caveats to be placed in a contract indicating that the response resources identified are not guaranteed to perform response activities at a facility. The Coast Guard expects that the contract will provide for prompt notification of impaired ability to perform and that, when appropriate, facility owners and operators will seek alternate response resources. Notification of changes in response resources may be required under § 154.1065(b)(3).

Another comment stated the Coast Guard should require a facility owner or operator who ensures the availability of response resources by certifying his or her active membership in an oil spill removal organization under § 154.1028(a)(3) also to certify that the oil spill removal organization has committed to respond to an oil spill from the facility. The Coast Guard finds that a facility's active membership in a spill removal organization that has identified specified personnel and equipment required by the regulation to arrive at the specified times is adequate assurance that the spill removal organization will respond to an oil spill at the facility.

Four comments questioned whether an oil spill removal organization that has identified specific response resources to respond to an oil spill at one facility can list the same resources to respond to a spill at another facility. The Coast Guard recognizes that there are current limits on the amount of available response resources in the U.S. Facilities would be unable to operate due to their inability to identify available response resources which were not contracted for by other facilities. In addition, prohibiting oil spill removal organizations from contracting response resources for more than one facility is economically prohibitive for oil spill removal organizations.

One comment suggested that the Coast Guard remove the fourth method of ensuring by contract or other approved means in § 154.1028(a)(4). Section 154.1028(a)(4) permits the facility owner or operator to ensure the availability of response resources by providing a document that: (1) Identifies response resources to be provided by an oil spill removal organization in the stipulated response times in specific geographic areas; (2) sets out the parties' acknowledgment that the oil spill removal organization intends to commit the resources in the case of a spill; (3) permits the Coast Guard to verify the availability of the response resources through tests, inspections, and drills; and (4) is referenced in the response plan. The comment indicated that this provision is not necessary. The Coast Guard disagrees. Section 154.1028(a)(4) provides the owner or operator of a facility with an alternate means of identifying and ensuring the availability of response resources. This flexibility may prove to be economically essential for certain facilities.

Four comments stated that an oil spill removal organization should not be required to list the names of the response personnel who are identified to be available to respond to an oil spill. The comments contend that OSROs are responsible for maintaining sufficient numbers of trained personnel to respond to any potential spills to which it has committed to respond. The Coast Guard agrees. An OSRO is not required to list the names of persons who are identified to be available to respond to an oil spill; however, an oil spill removal organization must specify the response personnel available to respond to an oil spill.

One comment indicated that a signed service agreement should be sufficient to meet the requirements of § 154.1028(a)(5). As long as the "signed service agreement" meets the requirements of § 154.1028 it is acceptable to the Coast Guard. Such an agreement, to be valid under § 154.1028(a)(5), would need to identify specified equipment and personnel available within the applicable stipulated response times; and, the OSRO would need to consent to being identified in the plan.

Another comment stated that the Coast Guard should require a facility owner or operator to ensure that identified response resources not only are available to arrive at stipulated times, but also are capable of sustaining a response effort. The comment indicated that the Coast Guard should analyze the adequacy of response resources on a systems basis to ensure that all identified resources are capable of functioning together. The Coast Guard finds that the response resource requirements are sufficient as set forth in this final rule. The requirements are for planning purposes only and are not intended to be performance standards. Where the Coast Guard has determined that it is both appropriate and necessary it has included times for sustained response effort (see Appendix C).

One comment indicated that a facility that operates only on a seasonal basis should not be required to ensure the availability of response resources when it is not operating. Under the provisions of § 154.100(a), a facility which is in caretaker status is exempt from the requirements of this regulation and, therefore, is not required to ensure the availability of response resources when it is in caretaker status.

One comment suggested that the Coast Guard provide a mechanism for contractors to exercise some control over where they are named as response resources. This comment expanded upon its suggestion by stating that the Coast Guard should require some documentation which validates the relationship between the contractor and the owner or operator. Section 154.1028 provides for five methods of ensuring the availability of response resources, including OSROs, by contract or other approved means. At a minimum, the OSRO must provide written consent to being identified in a response plan. Under some conditions, a written contractual agreement must be executed between the OSRO and the owner or operator of the facility. These contracts must be made available for review upon request by the Coast Guard. The Coast Guard contends that this provides adequate documentation that the proper relationship exists between the OSRO and the owner or operator of the facility.

One comment argued that contracts should be required as an outgrowth of comprehensive risk analyses at each potential spill site rather than the result of an intuitive need to have resources available. The Coast Guard disagrees. OPA 90 requires the preparation and submission of a response plan for an onshore facility that, because of its

location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines. The OPA 90 Conference Report (Report 101–653) states that even small onshore facilities could result in substantial harm under some circumstances. Therefore, the requirements to prepare and submit a response plan should be broadly applied. Along with other Federal agencies, the Coast Guard has established criteria to be considered in designating a facility as substantial harm. These factors include, but are not limited to: type and quantity of oils handled in bulk, facility spill history, proximity to public and commercial water supply intakes; proximity to navigable water and proximity to areas of economic importance.

Section 154.1029 Worst Case Discharge

The Coast Guard received a total of 16 comments on this section of the IFR. Ten comments addressed the relationship between the Coast Guard's definition of worst case discharge and the term as it is defined by other Federal agencies. Four comments indicated that the Coast Guard's definition of worst case discharge should be the same as the definition found in EPA's response plan regulations. Five comments indicated the need for consistency among Coast Guard, EPA, and RSPA definitions of worst case discharge, and suggested that the Coast Guard adopt RSPA's definition. The Coast Guard disagrees with these comments. Because the Coast Guard, EPA, and RSPA regulate different portions of an oil complex, the amount of oil in a worst case discharge volume from each of these portions of the complex will vary depending on the nature of the facility's operations. Coast Guard regulations address only the MTR portion of the complex.

Three comments indicated that the Coast Guard should adopt the EPA and RSPA policy of giving credit to the facility for the use of secondary containment and other preventive measures. Seven comments reiterated the point that Coast Guard regulations should encourage the use of preventive measures. The Coast Guard strongly encourages facilities to employ pollution prevention measures including secondary containment. However, the nature of MTR facilities makes secondary containment impractical in most cases and therefore very uncommon. For this reason, the Coast Guard does not require MTR facilities to have secondary containment. The Coast Guard does not give credit for such measures because, while these measures will reduce the risk to the environment from an oil spill, they will not eliminate it altogether. Subparts A and B of 33 CFR part 154 already contain pollution prevention regulations. The Coast Guard considers additional pollution prevention regulations to be outside the scope of this regulation.

The Coast Guard received several comments on the amount of the worst case discharge volume. All comments indicated that the worst case discharge volume, as calculated using the formula in § 154.1029(a)(2), should be reduced. Many of the comments stated that the Coast Guard's definition of worst case discharge should not include a total loss of a facility's oil storage capacity and suggested that it be based on factors such as spill history, the capacity of the largest single pipeline, or the capacity of pipelines to the single largest docking pier. Additionally, four comments indicated that the definition exceeded the congressional intent of this term—the largest foreseeable discharge from a facility. The Coast Guard disagrees. Section 4201(b) of OPA 90 defines a worst case discharge as the largest foreseeable discharge (from a facility) in adverse weather conditions. The Coast Guard has interpreted this to mean the largest probable discharge that could occur from a facility and has determined that the worst case discharge includes the volumes of oil from all pipelines between the dock and the storage tanks. Additionally, the formula for calculating the worst case discharge in § 154.1029(a)(2) accounts for the time to detect a spill from the piping and the time to secure the operation.

One comment contended that the Coast Guard should not deny the validity of a response time calculation without substantial evidence that it cannot be accomplished in the time stated. The Coast Guard disagrees. Section 154.1045 and appendix C of the final rule provide requirements on which to base on-water and on-land response times. A facility owner or operator proposing to use more rapid response times bears the burden of proving the validity of the alternate calculation.

One comment suggested that both human and mechanical systems should be considered for detecting spills during transfer operations. The comment notes that, in the preamble to the IFR for this section, the Coast Guard referred only to "fail-safe features designed into the operation such as leak detection and mechanical methods of isolating segments of the pipeline."

The Coast Guard is concerned that undue reliance on fail-safe features may lead to an underestimation of necessary response resources in the event of a discharge from the facility. The Coast Guard concludes that it is reasonable to base the worst case discharge planning volume on the failure of such fail-safe features since it has been the Coast Guard's experience that these features do not always work as expected.

One comment argued that worst case discharge calculation methods should be maintained separate from the facility response plan to keep the document from becoming too bulky. The Coast Guard agrees. It is not required that the response plan contain the method or numbers used in calculating the worst case discharge. Only the volume of the average most probable, maximum most probable, and worst case discharges need be provided. However, providing the numbers used to arrive at the worst case discharge will facilitate review of the response plan.

Section 154.1030 General Response Plan Contents

The Coast Guard received 10 comments on the requirements for general response plan contents. Two comments expressed approval of the plan format requirements established in the IFR and indicated that other Federal agencies should adopt these requirements. Another comment, however, expressed that the order of the sections required in the plan is inappropriate and should be changed. The Coast Guard has reviewed the response plan formatting requirements and has determined that the current response plan format facilitates easy use of the response plan; therefore, the Coast Guard has made no changes to the formatting requirements in the final rule. Section 154.1030(e), however, does permit a facility owner or operator to submit a response plan that does not follow the format specified in the regulation as long as the plan is supplemented with a detailed cross-reference section identifying the location of the applicable sections required by the regulation.

One comment stated that a facility owner or operator should be permitted to reference previously established procedures in the plan's appendices rather than restating them in the plan. The Coast Guard disagrees. The Coast Guard intends for the response plan to serve as the primary document referenced by facility personnel during a spill response. In the event of an oil discharge, facility personnel should be required to refer to only one comprehensive manual for instruction

on spill response activities and procedures. The regulation, however, does not preclude a facility owner or operator from referencing previously established material in the plan as long as the information required by the regulation is contained in the appropriate section on the response plan.

Many comments addressed the requirements for response plan contents. One comment suggested that response plans be expanded to include measures for prevention, control, containment, and restoration as well as methods for cleanup and disposal. The regulation currently addresses these issues, with the exception of prevention and restoration methods. Section 4202 of OPA 90, the authorizing provision for response plan requirements, grants the Coast Guard authority to issue regulations addressing only spill response activities. It does not address spill prevention or restoration and, therefore, these issues are not addressed by this regulation.

Four comments suggested that the plans address company or site-specific information. Section 154.1035(g) requires facility specific information to be included as an appendix to the plan. A facility owner or operator may also include company specific information as a separate appendix to the plan.

One comment suggested that the Coast Guard reduce the amount of information required in the plan and indicated that the Coast Guard should require only vital emergency response information in the plan to streamline the initial notification process. The regulations establish minimum content requirements for response plans and require information that the Coast Guard has determined to be essential for the plan to be of significant use by facility personnel. The Coast Guard, however, encourages facility owners or operators to develop response plans which incorporate flowcharts and checklists to facilitate the use of the plan in an emergency.

Several comments addressed the requirement for response plans to be consistent with the NCP and the ACPs, particularly as it applies to the identification of sensitive areas under § 154.1035(b)(4). Some comments pointed out the difficulties of developing response plans that are consistent with the ACPs when many of the ACPs are not yet published. In the preamble to the IFR, the Coast Guard recognized that many of the ACPs were not complete when the IFR was published. The Coast Guard indicated that, in these cases, the facility owner or operator would be required to identify the fish and wildlife and sensitive environments described in the applicable local contingency plans. Additionally, Appendix D of part 154 was developed to assist facility owners or operators in identifying fish and wildlife and sensitive environments which could be impacted by a worst case discharge from the facility. Because the coastal ACPs are now complete, in this final rule the Coast Guard has replaced appendix D of part 154 which provided guidance in identifying fish and wildlife and sensitive environments with a new appendix D which covers training. On March 29, 1994, the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce published a notice establishing guidelines for the identification of fish and wildlife and sensitive environments to further assist facility owners or operators in identifying areas requiring additional protection from discharged oil (59 FR 14714). This interim guidance was to be used by a facility owner or operator until the applicable ACPs were completed.

Since the publication of the NOAA guidance, all of the ACPs have been completed. Facility owners or operators must ensure that their response plans are in accordance with the ACP in effect 6 months prior to initial plan submission or the annual plan review required under § 154.1065(a). The facility owner or operator who submits plan is not required to, but may, at the owner or operator's option, conform to an ACP which is less than 6 months old at the time of plan submission.

One comment expressed that the ACPs should be open for public comment because of their impact on the response plans. Any member of the public may attend meetings held on the development of the ACP.

One comment urged the Coast Guard to provide guidance as to how an owner or operator could cover more than one facility in a response plan. Facility response plans must be developed for a specific facility and it is not practical for a plan to cover more than one facility. Portions of a corporate response plan may be appropriate for inclusion in several facility response plans.

Two comments urged that the facility response plan be part of a more comprehensive plan and not necessarily a stand-alone document. The Coast Guard disagrees. The facility response plan must be comprehensive. While it may reference other documents, it must demonstrate adequate response planning and outline facility response to a discharge from the facility.

Section 154.1035 Specific Requirements for Facilities That Could Reasonably be Expected to Cause Significant and Substantial Harm to the Environment

The Coast Guard received 19 comments on the response plan requirements for significant and substantial harm facilities. The following discussion is divided to address the specific sections of the response plan on which comments were received.

General. The Coast Guard received 2 comments addressing § 154.1035(a), the response plan requirements for significant and substantial harm facilities, in general. One comment stated that the regulations require too much detail to be continued in the response plans. Another comment suggested that the response plans be required to address planning and prevention programs for spills that occur most frequently. The Coast Guard disagrees. As explained in the discussions on the requirements of § 154.1030, the regulations require information that the Coast Guard has determined to be essential for a response plan to be of significant use to facility personnel for all reasonably foreseeable discharges. The plans address only spill response activities; they do not address spill prevention. Although the Coast Guard encourages facility owners or operators to establish spill prevention measures, they are beyond the scope of this regulation. The Coast Guard has issued pollution prevention regulations in 33 CFR part 154.

Notification procedures. Six comments addressed § 154.1035(b)(1), requirements for notification procedures in the response plan. One comment suggested that the Coast Guard require the facility owner or operator to report to the initial notification if there was an early arrival of response equipment and whether response equipment was on-site during the transfer. The comment indicated that this would assist the Coast Guard On-Scene Coordinator (OSC) in assessing the need for additional response resources and in determining an appropriate response strategy for the spill.

Under this section, the facility owner or operator is required to develop a notification sheet, which contains the information identified in Figure 1, to be transmitted to Federal, State, or local agencies in the initial and follow-up notifications of an oil discharges. The Coast Guard limited the required information to the minimum necessary. The facility owner or operator is not

required to use the same format as Figure 1, but must develop a notification sheet that includes space for the information contained in Figure 1. The notification sheet may include any additional information that the facility owner or operator determines could be helpful to responding agencies. For this reason, the Coast Guard will not require additional information to be included on the notification sheet. The Coast Guard, however, urges the facility owner or operator to provide agency officials with any information that will assist them in developing appropriate spill response strategies.

Five comments question whether the facility owner or operator is required to notify each individual in the spill management team and oil spill removal organization. This is not required. However, the facility owner or operator must notify someone in the management team and a representative of the oil spill removal organization. The Coast Guard encourage facility owners or operators to coordinate with the spill management team and oil spill removal organization to designate a primary, and an alternate, point-of-contact for notifications in each organization.

Facility spill mitigation procedures. The Coast Guard received two comments on § 154.1035(b)(2), facility spill mitigation procedures which addressed spill prevention measures, secondary containment, and requirements for complexes. These issues have been addressed in discussions on §§ 154.1030, 154.1029, and 154.1017 respectively.

Facility response activities. The Coast Guard received two comments on § 154.1035(b)(3) which suggested that the Coast Guard require an OSRO to provide trained personnel necessary to continue operation not only for the first 7 days of the response, but for the total time needed to complete the spill response or until the OSRO is released from its response obligations by the COTP. The comments indicated that 7 days is too short to complete response activities for a large oil spill. The Coast Guard agrees that 7 days is not long enough to complete a response to a large spill; however, the requirements of this section are for planning purposes only. The facility owner or operator is required only to identify resources for the first 7 days of the spill response; however, he or she is required to ensure that adequate response resources are available until all spill response activities are concluded and the resources are dismissed by the OSC.

One of the comments also suggested that the Coast Guard require the use of the National Interagency Incident Management System (NIIMS) Incident Command System (ICS) to standardize incident command in the United States. Facility owners or operators should refer to the ACPs for guidance on the use of NIIMS ICS.

The Coast Guard has revised § 154.1035(b)(3)(iii) and (iv) of the final rule to be consistent with the language found in comparable sections of the VRP regulation. These revisions do not change the substantive requirements of this section.

Sensitive environments. The Coast Guard received 14 comments addressing § 154.1035(b)(4), requirements to protect sensitive environments.

Two comments stated that the definition of sensitive environments should be the same in both the Coast Guard and EPA response plan regulations. As previously stated in the discussion on § 154.1020, the Coast Guard has added the term "fish and wildlife and sensitive environments" to the definitions in the final rule. This term also has been adopted by EPA. Accordingly, this subsection has been renamed "Fish and Wildlife and Sensitive Environments" in the final rule.

Several comments addressed the identification of fish and wildlife and sensitive environments, particularly the requirement that these areas be consistent with those identified in the ACPs. These comments have been addressed in the preamble discussion on § 154.1030.

Many comments indicated that the requirement in the IFR to identify areas of economic importance results in the identification of certain areas that have no significant environmental sensitivity. As an example, one comment indicated that certain areas such as transportation routes are economically important, but not environmentally sensitive. As this comment illustrates, this requirement is not intended to result in the identification of every area of economic importance. It is, however, intended to protect those areas that are not otherwise identified as environmentally sensitive, such as recreational beaches, parks, and aquaculture sites, industrial water intakes and other areas important to the economic well-being of the surrounding community. These areas of economic importance will be identified by the ACPs.

One comment suggested that the Coast Guard include water intakes within fish and wildlife and sensitive environments. The Coast Guard defers to the ACPs for such identifications.

Two comments indicated that this section of the regulation does not provide enough guidance on determining the adequacy of the planning distances and the response equipment identified for the protection of fish and wildlife and sensitive environments. The comments recognized the utility of spill trajectory models, but indicated that they all are not equally reliable. Under the regulation, facility owners or operators are not limited to using spill trajectory models to determine the location of fish and wildlife and sensitive environments that may be affected by a discharge of oil from their facility.

Section 154.1035(b)(4)(iii)(B)(*1*) of the final rule provides facility owners or operators with a basic formula for calculating the distances that discharged oil will flow from the facility under certain conditions at specified times. The Coast Guard recognizes that this formula may not take into account certain geographic and weather-related conditions that normally exist in some ports which may affect the distances that discharged oil may travel from the facility; therefore, the COTP will determine whether the appropriate factors have been accounted for in the identification of fish and wildlife and sensitive environments. The adequacy of the identified resources also will be assessed by the COTP.

The final rule also provides facility owners or operators with a third means of complying with the requirements of this section. In addition to using the formula in § 154.1035(b)(4)(iii)(B)(*1*) or developing a spill trajectory model, facility owners or operators are permitted to use the formula in appendix C of Attachment C–III of EPA's FRP final rule that is most appropriate for the facility (59 FR 34070; July 1, 1994).

Three comments addressed the planning distances required under the IFR. Two comments suggested that the Coast Guard expand the provision in § 154.1035(b)(4)(iii)(B)(*1*) of the IFR, which requires the identification of response resources for areas that will be impacted in 48 hours in non-tidal waters, to non-persistent oils. Because of the rapid rate at which non-persistent oils evaporate, the Coast Guard is only requiring facility owners or operators to plan to respond to areas reached by non-persistent oil in 24 hours in non-tidal waters at maximum current.

Conversely, one comment stated that the planning distances required by this section are significantly greater than is warranted by the potential impact of the facility's worst case discharge. The Coast Guard disagrees and contends that the effects of tides and currents on discharged oil warrant these planning distances.

Two comments addressed response activities for wildlife protection. One comment suggested that response plans be required to address issues such as wildlife dispersal, collection, cleaning, rehabilitation, and recovery. Another comment suggested that response personnel be required to undergo special training for wildlife response. Although the Coast Guard encourages facility owners or operators to identify resources for wildlife response, it will not require these resources to be identified by contract or other approved means. The applicable ACP identifies these private and public sector resources.

One comment states that the facility owner or operator should be permitted to estimate the amount of shoreline requiring protection and suggested that the estimate be reviewed and approved by the COTP. The regulation requires the owner or operator to identify required quantities of boom for the protection of fish and wildlife and sensitive environments. Facility owners or operators will be expected to identify enough boom to adequately protect each of the fish and wildlife and sensitive environments identified in their plan.

Another comment indicated that 1 day should be reduced from the planning requirement if the response equipment is determined to be capable of arriving in less than half of the maximum required arrival time. The Coast Guard encourages the early arrival of response resources; however, it does not plan to reduce the requirements of this section.

Hazard Evaluation and Spill Scenarios. The Coast Guard received a total of four comments on these two topics. The comments indicated that the final rule should include information on hazard evaluations and spill scenarios. Sections 154.1035(c) and (d) has been reserved for these topics to ensure consistent formatting of Coast Guard and EPA response plan regulations and to prevent plans which contained information required by the EPA regulations from being rejected by the Coast Guard. However, because the Coast Guard does not intend to provide guidance on hazard evaluation or spill scenarios at this time, it has removed these reserved paragraphs from the final rule and has redesignated the remaining paragraphs of this section accordingly. It will continue to accept plans prepared to comply with both EPA and Coast Guard response plan regulations.

Training and Exercises. The Coast Guard received one comment on § 154.1035(c) of the regulation. It is addressed in the preamble discussion on § 154.1055.

Appendices. The Coast Guard received one comment on § 154.1035(e) which contended that the information in the appendices is redundant with information found elsewhere in the plan and suggested that the appendices should not be required. The Coast Guard disagrees. However, it recognizes that some of the information in the appendices may be found in other sections of the plan; telephone numbers need not be listed elsewhere in the response plan if provided in the appendices.

Facility specific information. The Coast Guard received three comments on § 154.1035(e)(1). Two comments suggested that the Coast Guard should not require material safety data sheets for materials which are not handled by the MTR portion of the facility. The Coast Guard agrees and does not require this information for substances that are not handled by the MTR portion of the facility. The third comment addressed firefighting capabilities and is discussed in the appropriate section of § 154.1045.

Equipment lists and records. The Coast Guard received one comment on the § 154.1035(e)(3) requirement to include equipment lists and records in the response plan. The comment stated that the Coast Guard should require the identification of equipment that would be used to respond to the maximum most probable discharge in addition to the equipment used to respond to the average most probable discharge, as currently required by the regulation. The Coast Guard agrees and, under the final rule, requires facility owners or operators to list all the major equipment belonging to the oil spill removal organization for response to a maximum most probable discharge.

Four comments were received addressing the issue of contractor classification and one of these comments also addressed classification as outlined in NVIC 12–92. One comment urged the Coast Guard not to require plans to list specific quantities of equipment when listing a Coast Guard classified oil spill response organization (OSRO) for recovering volumes above the caps. This same comment urged that the Coast Guard and the EPA extend the classification program to include both coastal and inland contractors, arguing that this extension would enhance uniformity and improve response capabilities for large oil spills.

Section 154.1035(g)(3)(iii) of the final rule states that it is not necessary to list response equipment from an OSRO when the OSRO has been classified by the Coast Guard and its capacity has been determined to equal or exceed the response capability needed by the facility. The Coast Guard will accept the listing of an appropriate OSRO for response resources up to and beyond the listed caps. The EPA has determined that it will utilize the OSRO classification system established by the Coast Guard. An OSRO may be classified for certain size discharges and operations in certain specified geographic areas. Both coastal and inland contractors may apply for classification by the Coast Guard.

One comment argued that industry rather than the Coast Guard should certify contractors. The Coast Guard finds that this is impractical. The Coast Guard is concerned that inconsistencies may occur in the classification of OSROs unless it is conducted by one organization. At the present time, the Coast Guard is the appropriate agency to conduct on OSRO classification program. The Coast Guard plans to explore using third parties to inspect or approve OSROs.

Section 154.1040 Specific Requirements for Facilities That Could Reasonably be Expected to Cause Substantial Harm to the Environment

The Coast Guard received 2 comments on this section of the IFR. One comment indicated that the requirement for significant and substantial harm facilities to identify a corporate organizational structure that would be used to manage the oil spill response under § 154.1035(b)(3)(iii) should be applied to substantial harm facilities. Additionally, the comment suggested that the Coast Guard require contacts for wildlife response resources; however, another comment stated that these facilities should be required to use legally binding contracts for the identification of all responses resources. The Coast Guard disagrees. The requirements of this section were developed to lessen the regulatory burden and economic impact on substantial harm facilities. The Coast Guard has determined that the costs of identifying a corporate organizational structure and contracting for response resources outweigh the benefits for substantial harm facilities.

The IFR required the owners or operators of substantial harm facilities to have at least 200 feet of containment boom immediately available to respond to the average most probable discharge. The IFR was unintentionally more stringent for substantial harm facilities than for significant and substantial harm facilities. However, under the final rule, the requirement has been reduced to permit facility owner or operators to identify 200 feet of boom and the means

of deploying it that is capable of arriving at the spill site within 1 hour of the detection of the spill.

Section 155.1041 Specific Response Information to be Maintained on Mobile MTR Facilities

The Coast Guard received one comment on this section of the IFR which addresses contracts or training permits for wildlife response. This issue is addressed in the discussion of fish and wildlife and sensitive environment requirements in § 154.1035.

Section 154.1045 Response Plan Development and Evaluation Criteria for Facilities That Handle, Store, or Transport Group I Through Group IV Petroleum Oils

The Coast Guard received several comments addressing this section which concerns the inclusion of certain information in the response plans for facilities handling, storing, or transporting Group I through Group IV petroleum oils. Two of these comments addressed this section generally. One comment argued that the Coast Guard should require contracts or training and permits, for wildlife response. As indicated in the discussion on fish and wildlife and sensitive environments in § 154.1035, the Coast Guard will not require these resources to be contracted for in the final rule.

Another comment contended that the regulations should provide further guidance on matching response equipment with the grade of petroleum oil spilled, arguing that the groups of petroleum oil do not necessarily correspond to the grades of petroleum oil and that the grade spilled is not necessarily the grade recovered. Response equipment must be certified for the grade of oil handled, stored or transported by any facility for which the equipment is identified as a response resource. The Coast Guard expects that discharged petroleum oil will weather and that the grade of petroleum oil discharged will weather sufficiently to be recovered by response equipment.

Reclassification of bodies of water. Six comments were received specifically addressing the COTP's reclassification of specific bodies of water as being operating environments needing more or less stringent response resource planning in § 154.1045(a)(3). Four comments argued that significant wave height may be such that it is unsafe to conduct recovery operations, making more response equipment moot. These comments suggested that the regulation allow less response equipment if operation would be unsafe in wave conditions exceeding the significant wave height criteria during more than 35 percent of the year. The Coast Guard requires the facility owner or operator to plan to recover the oil in the operating environment in which the facility is located. As stated in § 154.1010, the regulation establishes a planning standard and not a performance standard. Decisions on whether to deploy equipment at the time of a discharge will remain with the COTP in consultation with the responsible party and OSRO.

Two comments argued that significant wave height is only one criterion which should be considered during the reclassification determination. These comments stated that the presence of debris, ice, currents, wind, and darkness should also be determining factors. These comments further argued that the standard for reducing classification should be the presence of prevailing wave conditions not exceeding the significant wave height criteria for the less stringent operating environment during 85 percent of the year while the standard for increasing classification should remain the presence of prevailing wave conditions exceeding the significant wave height criteria for more than 35 percent of the year.

The Coast Guard has retained the percentages from the IFR. The 35 percent threshold provides balance between anticipated area environmental conditions and equipment available to operate in those conditions. Setting a lower threshold would require new areas to stockpile equipment with the capability of operating in unlikely conditions. The rule requires that ice conditions, debris, and other conditions as determined by the COTP must also be considered in the area where the facility operates.

Requirements pertaining to average most probable discharges. The Coast Guard received one comment which responded to the requirements of § 154.1045(c). It argued that the Coast Guard should clarify that facilities are not responsible or obligated to respond to spills from vessels they do not own or operate. While the Coast Guard requires the facility to plan for responding to an average most probable discharge at the facility, it remains the responsibility of the owner or operator of the source of the discharge to initiate effective response at the time of the discharge. The regulation does not require the facility to respond to a discharge from a vessel and the regulation has not been changed to state otherwise.

Under § 154.1045(c) (1) and (2) of the IFR, facility owners or operators are required to identify certain equipment such as containment boom and means of deploying and anchoring the boom, oil recovery devices, and recovered oil storage capacity that are capable of arriving at the facility within specified times to respond to the average most probable discharge. Upon review of the IFR, the Coast Guard determined that the phrase "at the facility" does not indicate that this response equipment must be available at the scene of the oil discharge in the specified times. Accordingly, the Coast Guard has revised these provisions of the final rule to require the identification of response equipment that is capable of arriving at the spill site within the times specified by this section. This change also applies to comparable sections in § 154.1047 of subpart F, § 154.1225 of subpart H, and § 154.1325 of subpart I.

Requirements pertaining to response to maximum most probable discharges. The Coast Guard received three comments in response to the requirements of § 154.1045(d). One comment argued that the planned response time for possible spills in the Great Lakes should not be lower than it is for other bodies of water. The Coast Guard disagrees and has retained the 6-hour requirement for response to a maximum most probable discharge. The Great Lakes are unique, self-contained, bodies of fresh water especially vulnerable to spills. Because of this, it is especially important that the response capability be available to respond rapidly. The maximum most probable discharge response capability provides a base capability that can be deployed rapidly to the scene of a discharge to mitigate its effects.

Several comments argued that the Coast Guard should allow resources located in one or more COTP zones to be moved to another zone as part of a response effort. The Coast Guard expects that response resources may be shifted in response to large pollution incidents. The rule does not prohibit this shifting of resources. It may be necessary for the facility owner or operator to confirm the availability of other response resources or those response resources identified in the response plan above the caps. The Coast Guard reserves the right to invalidate a plan due to the absence of available response resources to respond to a maximum most probable discharge or the worst case discharge. However, under the final rule, the COTP may impose operational restrictions on a case-by-case basis, such as limitations on the number of transfers at the facility, or, where appropriate, may permit the facility to operate with temporarily modified response plan

development and evaluation criteria (e.g., modified response times, alternate response resources, etc.).

The Coast Guard has made minor organizational changes to this section of the final rule to clarify the planning requirements for the maximum most probable discharge. These changes more clearly indicate that resources identified to respond to the maximum most probable discharge include all equipment and personnel identified to respond to the average most probable discharge.

Requirements pertaining to response to a worst case discharge to the maximum extent practicable. The Coast Guard received 3 comments responding to the requirements of § 154.1045(e). One comment argued that owners and operators should be required to plan only for a worst case discharge.

The Coast Guard's authority to regulate is broader than OPA 90. Section 311(j)(1)(C) of the FWPCA authorizes the Coast Guard to require planning for discharges other than the worst case. Based on the recommendations of the Oil Spill Response Plan Negotiated Rulemaking Committee, the Coast Guard determined that the rule also should address operational discharges. The Coast Guard is using its FWPCA authority to require planning for spills other than a worst case discharge.

Response times and tiers. The Coast Guard received 12 comments addressing the response time and tier requirements for worst case discharges (§ 154.1045(f)). Two of these comments dealt with the issue of giving credit for early arrival of response resources. One comment argued in favor of this proposal and suggested that such credit take the form of a reduction of monetary liability for a spill, a reduction in liability for natural resource damage assessments, or a reduction in drill requirements. One comment argued against issuing credit for early arrival. This comment specifically argued that credit should not be given for dispersants if such credit would result in planning to use a lesser amount of mechanical recovery equipment during a spill. The other comment argued that the Coast Guard should encourage early arrival of response equipment but that it should not issue credit for meeting an early or minimum arrival time.

The rule is written to require the arrival of resources in a timely manner to contain and remove discharged oil before it has the opportunity for greater dispersal. The Coast Guard cannot lessen the monetary liability or the liability for damage to natural resources based on the arrival times of response resources. The early arrival of these resources will lessen the likelihood of damage to natural resources.

The use of dispersants is a valid response technique in certain circumstances. A facility that handles, stores, or transports Group II or III petroleum oils can receive up to 25 percent credit against on-water recovery capability in any environment with year-round preapproval for use of dispersants. The response plan must address the arrival of these dispersants within 12 hours. The Coast Guard's position is that the rule strikes a proper balance in planning for the use of dispersants and mechanical recovery.

One comment addressed the tiering of response resources. The comment indicated that this approach is not useful because it does not allow for an initial response with all available resources. The tiering requirements provide a maximum time in which certain response resources are capable of arriving at the scene of a petroleum oil spill; they do not preclude the early arrival of response resources and, therefore, do not preclude an initial spill response with all available resources.

The same comment also indicated that the evaluation of the equipment's recovery capacity should not be based on the equipment's operability in the different operating environments because those conditions may not exist during an actual spill response. The Coast Guard recognizes that the conditions and assumptions on which a response plan is based may not exist during an actual spill response. However, to develop an effective response plan, a facility owner or operator must identify and plan to respond in the conditions which normally exist in the port or at the facility. As § 154.1010 indicates, the regulation establishes a planning standard and not a performance standard. During an actual spill response, a final assessment as to the type of equipment to be deployed for response to a discharge will be made by the COTP in the consultation with the responsible party and OSRO.

Eight comments addressed various issues concerning the amounts of time allotted for responding to an oil spill. Two comments argued that facilities in higher volume port areas and the Great Lakes should plan using 48-hour response times for Tier 3 response resources. Two comments urged the Coast Guard to increase the Tier 1 response time to 12 hours as opposed to 6 hours for higher volume port areas. Four comments argued that the response times should be the same regardless of the location of the spill. These comments further contended that the major reason for requiring shorter times should be for fish and wildlife and sensitive environment purposes, which varies for vessels but seems irrelevant for stationary facilities. Two comments argued that the response times were too low in light of the levels agreed upon at the Negotiated Rulemaking meetings. One of these comments urged the Coast Guard to reconsider these response times because current response times are difficult and expensive to achieve. One comment urged the Coast Guard to review and revise the response times in light of response capability. This comment also urged the Coast Guard to clarify that response times apply to arrival on-scene rather than deployment of response resources and argued that the Coast Guard should only require first tier dispersants to be on-scene within 12 hours, with more dispersants being available as needed.

The Coast Guard contends that the tiering concept is valid and adequately approximates the availability of response resources. The tiering process reflects the arrival of available response resources from nearby and more distant locations. The response times in this rule are different than those applicable to vessels. The response times for vessels are predicated on responding to an incident at the outermost boundaries of the applicable areas, including up to 6 hours on-water transit of response equipment. Since MTR facilities are located on or along the shoreline, it will not be necessary to account for extensive over-water transit times. The response times provided in the final rule are for the planned arrival of response resources at the MTR facility which is the likely site of the initial cleanup activity and does not account for on-water deployment time. Therefore, the transit times in this final rule are less than those provided for vessel response plans.

One comment addressed the definition of tiers and urged the Coast Guard to adopt the EPA terminology and definitions of tiers to avoid confusion and duplication. The EPA and the Coast Guard have used the same approach to the concept of tiering response resources. Tier has been defined under § 154.1020 of the final rule.

Identification of firefighting capability. The Coast Guard received several comments on firefighting capability requirements (§ 154.1045(j)). Because many of the requirements for firefighting capability in this section also are contained in §§ 154.1047 and 154.1049, comments addressing those sections also will be discussed.

Two comments suggested that the coordinator of firefighting activities for a facility should be extremely familiar with the facility and its operations. Additionally, one comment argued that "sufficient firefighting capacity" would be difficult to define and should not be included in the rule. Another comment urged the Coast Guard to develop more specific firefighting requirements.

The many variables involved in the design and construction of MTR facilities, the products handled, and the conditions encountered in an actual fire, preclude the development of a fixed definition or formula for calculating "sufficient firefighting capacity." The IRF and the final rule require a facility owner or operator to provide an in-house expert to work with the local and facility firefighting resources. This in-house expert is responsible for verifying that the firefighting resources are sufficient to respond to a worst case scenario. The Coast Guard believes that this approach is flexible enough to be adapted to the peculiarities of different facilities, and at the same time, provides the best practical assurance that the firefighting resources identified in the plan will be able to handle a fire or explosion resulting in a facility's worst case discharge scenario.

One comment argued that firefighting should be addressed by the facility itself along with its local fire department. As written, the rule requires a facility owner or operator to work with local fire departments through an in-house expert when developing and implementing response planning requirements. The rule requires additional firefighting capability, ensured by contract or other approved means, only when both the facility's firefighting resources and the local firefighting resources are inadequate.

One comment argued that petroleum oil fires are so rare that firefighting contracts should not be required. The Coast Guard disagrees. A facility owner or operator must be prepared to respond to any situation which may cause or arise from a petroleum oil discharge into the marine environment. Section 311(j)(5)(C)(iii) of the FWPCA requires resources to remove, mitigate or prevent a discharge including one caused by fire. The Coast Guard has consistently interpreted this provision to authorize the requirement that response plans ensure the availability of firefighting resources by contract or other approved means.

One comment suggested that the Coast Guard cross-reference other applicable firefighting sections of the regulation (§§ 154.1047 and 154.1049). The Coast Guard has determined that these requirements should be set out in each section for ease of reference.

Consistency with ACP(s). The Coast Guard received one comment on § 154.1045(k). This comment argued that according to the IFR, a response method not mentioned in the ACP would be considered appropriate to protect fish and wildlife and sensitive environments. This comment suggested that the Coast Guard change the language of the IFR to indicate that the response plan must be consistent with the appropriate ACP.

The Coast Guard has revised this section of the final rule to state that any plan submitted 6 months or more after the appropriate ACP is published must be consistent with that ACP. A plan that is consistent with that ACP must at least identify the fish and wildlife and sensitive environments covered by the ACP; however, a facility owner or operator who has identified additional fish and wildlife and sensitive environments also may identify these areas in the plan. The IFR provision was developed so that the facility owner or operator who submitted a response plan prior to the publication of the ACP would not be required to resubmit or amend the plan once the ACP was published or at the time of each annual revision of the ACP. However, since the publication of the IFR, all of the ACPs have been published; therefore, all facility owners or operators making initial plan submissions under the final rule, the required annual update, or resubmitting plans at the plan's 5-year resubmission date will be required to submit plans which are consistent with the appropriate ACP.

Future caps review process. The Coast Guard received seven comments which addressed the provisions of § 154.1045(m) regarding the review of caps in the years 1998 and 2003. One comment argued that the Coast Guard should delete the 1998 cap increases until the need for such increases is assessed. This comment contended that the percentage increase as noted currently in the regulations is arbitrary and instead should be based on valid data.

One important goal of OPA 90 is to increase the overall oil spill response capability in the United States. The Coast Guard believes that setting the 1998 cap now provides a clear upper target for which facility owners or operators and the oil spill response industry must plan. The Coast Guard, however, will conduct an evaluation of the 1998 cap increase to determine if it remains practicable before it becomes effective.

Four comments suggested that if the spill history of a facility between 1993 and 1998 is consistently better than required, then the 25 percent increase in caps should not be required. These comments argued that such an exemption would encourage a quick response to an oil spill. Although the Coast Guard encourages rapid response to an oil spill, it does not believe that exempting certain facilities from the cap increases will expedite a facility's spill response. Additionally, this option does not move toward Congress's goal to increase the overall spill response capacity in the United States.

One comment suggested that planning caps be increased when the plan is due for resubmission rather than in 1998. The Coast Guard has determined that the planning caps will be increased in 1998 provided that the required review confirms the practicability of the increases. A facility owner or operator will not be required to incorporate these caps into their plans until the Coast Guard completes the review.

One comment suggested that the caps be rejected because the Coast Guard offers no rationale for the levels prescribed. This comment further suggested that the Coast Guard reevaluate its approach to caps and instead base it on an analysis of what would be a response to the maximum extent practicable. Alternatively, this comment suggested that the cap increases in Table 5 of the regulations would be acceptable if the amounts were doubled initially.

As discussed in the VRP NPRM (57 FR 27514, June 19, 1992), the caps set out in the IFR were established by the Coast Guard upon recommendation by the Negotiated Rulemaking Committee. The Committee recognized that the current limits on response technologies would require a cap to be placed on the amount of response resources required to be identified for responding to a petroleum oil discharge to the maximum extent practicable. The caps established in the IFR reflect the Coast Guard's assessment of the overall response capability that can be achieved in the United States by 1998 taking into account factors such as anticipated advances in skimming efficiencies and technology, the development of high rate response techniques, and other applicable response technologies.

Identification of equipment above Tier 3 cap. One comment was received addressing this provision. It argued that the capability may not exist to meet this requirement. Through its discussions with representatives of the spill response industry, the Coast Guard has determined that adequate response resources are currently available to enable facility owners or operators to meet this requirement. The final rule requires the identification of response equipment above the Tier 1 and 2 caps, as well as the Tier 3 cap. Since there is no requirement to contract for these resources, this is not a significant change. Response plans submitted prior to the IFR, following the guidance in NVIC 7–92, readily met this requirement.

Section 154.1047 Response Plan Development and Evaluation Criteria for Facilities That Handle, Store, or Transport Group V Petroleum Oils

The Coast Guard received three comments on this section which requires the inclusion of certain information in response plans for facilities involving Group V petroleum oils. One comment addressed this section generally, asking for clarification of the term "the impact of such discharges" in paragraph (c)(4) of this section which requires the identification of equipment necessary to assess the impact of a worst case discharge of Group V petroleum oils to the maximum extent practicable. The physical characteristics of Group V petroleum oils make them likely to sink when spilled. As a result, traditional response techniques such as containing the spread of the oil on the surface of the water are often ineffective against these petroleum oils. The Coast Guard has required equipment to assess the impact of Group V petroleum oil discharges because that impact cannot be ascertained by the usual methods such as visual examination. The impact of discharges of Group V petroleum oil will only be detectable through the use of such methods as sonar or sampling equipment which can, for example, ascertain what petroleum oil has sunk to the bottom or remains suspended in the water column.

Response time for deployment of response equipment. One comment was received which concerned the provisions in § 154.1047(d) regarding the required response time for deployment of equipment. This comment argued that the 24-hour response time would not necessarily be the best for heavy petroleum oils since they are best recovered after hardening. This comment further argued that the Coast Guard should design more appropriate response times for Group V petroleum oils in general and asphalt in particular. The Coast Guard has designed the response times to ensure that an effective response is made while taking into account the different properties of the various petroleum oils, as well as the different natures of the MTR facilities and their operating environments. The Coast Guard recognizes that Group V petroleum oils react differently from other petroleum oils and this is why the Coast Guard separated these oils into a different category. The Coast Guard believes that the 24-hour response time is appropriate given the varied nature of Group V petroleum oils themselves, as well as the varied environments and conditions in which a discharge might occur.

Firefighting capability. The Coast Guard received one comment addressing the requirements for firefighting capability contained within § 154.1047(e). This comment argued that "sufficient firefighting capacity" would be difficult to define and should not be included in the rule. This comment further argued that firefighting should be addressed by the facility itself along with its local fire department. Identical comments were also made to §§ 154.1045 and 154.1049. See § 154.1045 of this preamble for the Coast Guard response.

Section 154.1049 Response Plan Development and Evaluation Criteria for Facilities That Handle, Store, or Transport Non-Petroleum Oil

Firefighting capability. The Coast Guard received one comment addressing the requirements for firefighting capability contained within § 154.1049(e) of the IFR. This comment argued that "sufficient firefighting capacity" would be difficult to define and should not be included in the rule. This comment further argued that firefighting should be addressed by the facility itself along with its local fire department. Identical comments also were made to §§ 154.1045 and 154.1047. See § 154.1045 of this preamble for the Coast Guard response.

Non-Petroleum Oils. The Coast Guard received comments addressing the issue of whether the requirements set forth in the IFR for petroleum oils should apply to animal fats and vegetable oils and other non-petroleum oils. The comments proposed that animal fats and vegetable oils should be more clearly differentiated from petroleum based oils. The comments also suggested allowing unique response procedures for non-petroleum oil spills.

In support of their proposals, the comments provided an industry sponsored study entitled "Environmental Effects of Releases of Animal Fats and Vegetable Oils to Waterways" and an associated study. The study claimed that the presence of these oils in the environment does not cause significant harm. The study reached its conclusion based upon its assertions that animal fats and vegetable oils are not toxic to the environment; are essential components of human and wildlife diets; readily biodegrade; and are not persistent in the environment like petroleum oils. The industry study also found that these oils can coat aquatic biota and foul wildlife, causing matting of fur or feathers which may lead to hypothermia; and that animal fats and vegetable oils in the environment have a high Biological Oxygen Demand which could result in oxygen deprivation where there is a large spill in a confined body of water that has a low flow and a low dilution rate.

The comments acknowledged that the International Maritime Organization (IMO) Subcommittee on Bulk Chemicals recently recognized the potentially harmful effect on birds from contact with floating animal fats and vegetable oils discharged from vessels. The comments also conclude, based upon Coast Guard data, that the likelihood of a non-petroleum oil spill of a magnitude to cause environmental harm is extremely small. Additionally, the comments noted the differences in the average size of the vessels which carry petroleum and non-petroleum oils.

In the preamble to the VRP IFR, the Coast Guard disagreed with comments on the VRP NPRM which claimed that edible oils pose less relative risk to the environment. The environmental effects of discharges of non-petroleum oils are clearly documented and in many respects are similar to the environmental effects of discharges of petroleum oils.

In letters to the docket, the Department of the Interior (DOI), the National Oceanic and Atmospheric Administration (NOAA), and the U.S. Fish and Wildlife Service (FWS) discussed the environmental effects of discharges of animal fats and vegetable oils and other non-petroleum oils. DOI, NOAA and FWS all concluded that these oils pose risks to the marine environment when spilled.

The agencies attributed the detrimental effects of non-petroleum oils to the similarity in physical properties between petroleum and non-petroleum oils. The effects outlined by DOI and NOAA include physical coating of bird feathers and mammal fur leading to hypothermia, a loss of buoyancy, and subsequent morality. All three agencies also confirmed the industry report's conclusion that discharges of non-petroleum oils can result in increased Biological Oxygen Demand in receiving waters, thereby decreasing available oxygen in the

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affected waterbody and often resulting in fishkills. NOAA also stated that coconut and palm oils are very viscous and when spilled in most coastal waters would behave like Crisco (a hydrogenated animal fat) probably persisting for over a decade.

The Fish and Wildlife Service letter specifically responded to the industry sponsored study. The FWS expressed great concern over the veracity of many of the study's conclusions. The FWS characterized the industry study as "misleading, weak and erroneous" and stated that "key facts have been misrepresented, are incomplete or are omitted," and that "[t]he biggest oversight of the (industry study) is the insignificance given to the fouling potential of the edible oils."

The FWS acknowledged that there are differences between petroleum and non-petroleum oils including different toxicity levels. It pointed out that physical fouling is similar for both petroleum and non-petroleum oils, and additionally, that the removal of non-petroleum oils can be more difficult and strenuous for the wildlife because, in many instances, complete removal can only be accomplished with scalding hot water and excessive washing. The FWS also stated that wildlife rehabilitators consider edible oils and fats to be some of the most difficult substances to remove from wildlife because the low viscosity of these oils allows deeper penetration into the plumage of fur, creating a more thoroughly contaminated animal.

The FWS was extremely critical of the industry study for suggesting that ingestion of edible oils is harmless to wildlife. The FWS stated that the study misleads uninformed readers by not clarifying that these oils, if consumed in large quantities, will cause harm to organisms through means other than toxicity. For example, according to the FWS, the ingestion of large quantities of non-petroleum oils can cause lipid pneumonia, diarrhea, and dehydration in birds or other wildlife which try to clean these oils from their feathers or coats by preening. This problem is magnified, also according to the FWS, by the fact that these oils do not have a repugnant smell or iridescent appearance to frighten wildlife away, therefore making it more likely that wildlife will come in contact with them during a spill.

In addition to the agency letters, the Coast Guard has placed in the docket several studies attesting to the harmful effects of non-petroleum oils in the environment. One such study, conducted by the International Maritime Organization (IMO) is titled "Harmful Effects on Birds of Floating Lipophilic Substances Discharged from Ships." This study examined the literature concerning non-petroleum oils spilled into the environment and concluded that a number of lipophilic substances, including vegetable oils, cause lethal harm to birds as a specific group of marine life. The study found that lipophilic substances adhere to the feathers of seabirds due to the lipophilic character of the feathers' wax layer. This causes the grid structure of the plumage to be disrupted thereby destroying its insulating properties.

The IMO study gives numerous examples of lethal contamination of seabirds by lipophilic substances spilled from ships. These examples include the death of thousands of seabirds because of a discharge of palm oil off the Netherlands coast; over 300 dead birds as a result of a 1,000-liter spill of rapeseed oil into the harbor of Vancouver, Canada; diseased gannets found along the Dutch coastline whose plumage was found to be coated with paraffin and consequently was no longer water repellent; and surveys of Dutch beaches in 1990 which found that 25 percent of the dead birds washed ashore were at least partly contaminated with vegetable oils. The IMO study also warns that a serious discharge of lipophilic substances in the open sea would cause more harm to seabirds than a nearshore discharge because the birds in the open sea would be unable to rest on shore to clean their plumage.

For these reasons, the Coast Guard has determined that a worst case discharge of animal fats or vegetable oils or other non-petroleum oils from an MTR facility could reasonably be expected to cause harm to the environment. Therefore, facilities that handle, store, or transport these oils, and meet the requirements of § 154.1015(b), are required to prepare and submit response plans. If the facility meets the criteria in § 154.1015(c) for a facility that could cause significant and substantial harm, the response plan must be approved by the Coast Guard.

Because there is insufficient data to support a finding that a spill of a large quantity of animal fats or vegetable oils or other non-petroleum oils will have less adverse impact on the environment than a spill of other kinds of oil, the Coast Guard does not believe that a facility that handles, stores, or transports these oils should have reduced response requirements from those provided in the IFR. However, the Coast Guard does acknowledge that animal fats and vegetable oils or other non-petroleum oils may behave differently from petroleum or petroleum-based oils and has created new subparts H and I to address response plan requirements for these oils. For further information see the discussions of subparts H and I in this preamble.

The Coast Guard received one comment which requested the suspension of the IFR's implementation until hearings can be held on amending the rule to exclude animal and vegetable fats from these regulations. The Coast Guard disagrees. Animal fats and vegetable oils are considered to be oils under the FWPCA. They are specifically defined as non-petroleum oils in the final rule and may result in serious harm to the environment in the event of a discharge to navigable waters. For additional information on this issue, see response to similar comments in § 154.1015.

Section 154.1050 Training

The Coast Guard received 15 comments on this section. The comments were not in agreement about whether the Coast Guard should include more specific training requirements in the final rule. Three comments stated they wanted more detailed standards to define the frequency of refresher courses and the minimum level of Occupational Safety and Health Administration (OSHA) training required. One comment suggested making training requirements compatible with EPA standards. Five comments were against developing any additional training requirements.

The Coast Guard has not modified the training requirement of this section in the final rule; however, a new appendix D entitled "Training Elements for Oil Spill Response Plans" has been added to subpart 154 to provide guidelines to facility owners or operators for the development of the training portions of their response plans. Additionally, training guidelines for facility response plans, including refresher training, are defined in OSHA standards for emergency response operations in 29 CFR part 1910, appendix D. As indicated in appendix D to part 154, the specifics of the training program should be determined by the facility owner or operator. On the job training and experience may cover parts or all of the training requirements, as appropriate.

Many comments remarked that the responsibility of a facility owner or operator to ensure adequate training of all private response personnel in § 154.1050(d) is inappropriate, costly, and possibly duplicative when an OSRO also is required to demonstrate training. One comment argued that the Coast Guard should require OSROs rather than the owners or operators to be responsible for training employees and maintaining proper records. The Coast Guard disagrees. While the owner or operator of the facility may shift training requirements to an OSRO through contract or agreement, the owner or operator of the facility remains responsible to ensure that adequate trained response resources are available.

One comment suggested specifying that OSHA retains enforcement authority for working conditions not addressed by Coast Guard standards. The Coast Guard agrees, but does not find it necessary to state that enforcement of the OSHA standards remains with that agency.

One comment mentioned that facilities handling only edible oils should be exempt from the training requirements. The Coast Guard believes training standards are necessary for MTR facilities regardless of the specific type of oil handled, stored, or transported. Therefore, the Coast Guard will not change the requirements.

One comment remarked that it was not practical to ensure that volunteers and casual laborers have OSHA training. In § 154.1050 (a), the Coast Guard requires only that a "method of training" be identified to comply with the requirements of 29 CFR 1910.120. Volunteers and casual laborers who are not trained or familiar with hazards associated from contact with oil must be trained to meet OSHA requirements.

Section 154.1055 Exercises

The Coast Guard has extensively revised § 154.1055 which was previously entitled "Drills" and is now entitled "Exercises." The changes make the terminology in the final rule consistent with the National Preparedness for Response Exercise Program (PREP). In response to the need to provide facility owners or operators with additional direction on conducting exercises, the Coast Guard has revised this section to specify that compliance with PREP fulfills all exercise requirements. However, participation in the PREP itself remains voluntary. If an owner or operator does not choose to participate in the PREP, they may develop their own program for compliance with the exercise requirements in this regulation.

The National Preparedness for Response Exercise Program (PREP) was developed through a joint effort of the Federal agencies implementing OPA 90 response plan regulations and other Federal representatives (e.g., natural resource trustees), state agencies, members of the regulated community, and OSROs. Four public workshops were announced in the **Federal Register** and were conducted in Washington, DC, and Tampa, FL. These efforts resulted in the creation of unified requirements that reduce the possibility of owners and operators having to participate in numerous duplicative exercises. Following the PREP guidelines has been determined to be an acceptable means to satisfy the OPA 90 requirements.

Equipment. The Coast Guard received 16 comments on § 154.1055(a)(3), equipment deployment drills. One comment argued that facility owners and operators should not be penalized when response resources are not available due to a real emergency. The Coast Guard recognizes that actual availability of response resources may be limited by unforeseeable events such as multiple simultaneous oil spills.

Three comments requested additional information on equipment deployment. Another wanted specific information on equipment deployment drills for facilities that have no equipment of their own. One comment stated that the Coast Guard should remove mandatory equipment deployment for the entire plan drill. Two comments remarked that it would be better to require one major equipment deployment exercise in each COTP zone every 3 years. Another comment suggested that full scale drills should determine only the response time of contractors and test only strategic personnel, and not require equipment deployment. The Coast Guard's position is that equipment deployment exercises are vital for maintaining readiness and for testing the effectiveness of a facility's response plan. The revised § 154.1055 continues to require semiannual equipment deployment exercises for facility owned or operated equipment and annual equipment deployment exercises for OSRO equipment. These standards are in accord with the requirements of the PREP program.

Frequency. Several comments remarked that the costs of drills were excessive. Many suggested that the frequency of various drills should be decreased. Two comments requested additional details on frequency of drills and credit provisions for separate drill elements. Two comments also suggested that the number of drills required should be decreased over time because they lose effectiveness. As indicated earlier, the Coast Guard has revised the exercises section of the final rule to be in accordance with PREP. It has adjusted the frequency of some exercises. Qualified individual notification exercises are required quarterly instead of monthly and whole plan exercises may now be carried out in parts rather than all at once. The Coast Guard believes exercises continue to be effective over time as equipment and personnel change.

A significant number of comments suggested that credit be given for equipment and personnel drill requirements when other drills provide adequate practice. The different kinds of required exercises test different aspects of a response plan. However, if an exercise includes components which fulfill the requirements for some other type of required exercise (e.g., an equipment deployment exercise that includes a qualified individual notification) then both requirements may be fulfilled by the single exercise.

Two comments suggested that an actual response situation should credit some drills. In this final rule, the Coast Guard has made participation in the PREP program satisfy all exercise requirements. Under PREP, facilities which have an actual response situation may get exercise credit. For more detailed guidance the PREP guidelines should be consulted.

Six comments remarked that participation in one drill by a spill management team (SMT) should meet the requirements for all facilities using that team. The PREP guidelines address this concern in detail; PREP allows multiple facilities using the same SMT to receive credit for a single exercise of that SMT as long as the specified criteria are met.

Seven comments wanted other Federal, state, or local drills to credit Coast Guard drills where appropriate. The Coast Guard has no control over whether other agencies give credit for Coast Guard exercises.

One comment suggested that the Coast Guard coordinate nationally to determine that credit be given only for personnel and equipment which actually participated in drills. The Coast Guard requires that the facility maintain records of exercises; and that these records be made available to the COTP upon request. A facility that lists an OSRO located outside the facility's COTP zone must still satisfy the facility's own COTP that the listed OSRO has fulfilled the applicable exercise requirements. Any facility which does not satisfy the applicable COTP that it has fulfilled its exercise requirements is subject to enforcement action by the COTP under this regulation. The Coast Guard believes that the existing requirements are sufficient to ensure that all personnel and equipment listed in facility response plans are exercised at the appropriate intervals.

Details of plan. The Coast Guard received 6 comments suggesting

wording changes. One general comment was received discussing the need for more detailed guidance. Due to extensive revisions of this section, these changes would not be applicable and, therefore, will not be incorporated into the text.

Unannounced drills. Some comments requested that the Coast Guard decrease the number of unannounced drills required by § 154.1055(b) to one drill every 1, 2, or 5 years. Many argued that unannounced drills were too costly and should either be limited due to economic concerns or not required at all. Some also remarked that such drills were unnecessary due to the need for other drills. Some comments asserted that operations should not be disrupted by unannounced drills. Others wanted facility owners and operators to be compensated for the cost associated with unannounced drills. Two comments suggested that OSROs and SMTs should only be activated if experience and available resources were believed to be inadequate, two others remarked that only the SMT should be activated. One comment suggested focusing on the initial callout only. A few comments asked that the unannounced drills be limited in scope, kept short and only required after 24-hour notification. One comment suggested requiring notification of the Coast Guard during an unannounced drill and having the Coast Guard observe the drill rather than requesting their own drills separately. Finally, one comment questioned whether customers would be expected to participate in unannounced drills and wondered who would be liable for the costs incurred. The Coast Guard finds that unannounced exercises serve an important purpose in maintaining response resource readiness. The final rule states that annually one of the required exercises (spill management team tabletop, equipment deployment, or emergency procedures) must be conducted unannounced. Unannounced means that the personnel participating in the exercise must not be advised in advance of the exact date, time and scenario of the exercise. Additionally, the facility owner or operator may be required by the COTP to conduct an unannounced exercise at the facility. These COTP initiated exercises will be limited to average most probable discharge exercises as outlined in the facility's response plan. Such exercises involve notifications and equipment deployment. Each COTP will limit the number of COTP initiated unannounced exercises to no more than 4 per year. If a facility owner or operator participates in an unannounced exercise initiated by the COTP, the facility will be exempt from participating in a COTP initiated unannounced exercise for at least 3 years.

Records. The Coast Guard received 5 comments on § 154.1055(d), stating that the facility owner or operator should bear the responsibility for keeping and maintaining the records at the facility along with the plan. The comments asserted that it would suffice to have the records signed by an authorized federal representative at the drill site, rather than having the records sent to the Coast Guard. The Coast Guard has changed § 154.1055 to reflect this comment. The section now requires records to be maintained at the facility for 3 years and be made available to the Coast Guard upon request.

Section 154.1060 Submission and Approval Procedures

The Coast Guard received 9 comments addressing the proposed requirement for a maximum validation period of up to 5 years. Three comments did not support having a plan expiration date at all, suggesting that the Coast Guard would not have sufficient time to approve the new plans. Four comments suggested that substantive changes as a result of major NCP or ACP revisions should not require plans to be resubmitted until the 5-year term is complete. Several comments did not want facility owners or operators to be required to resubmit plans when no substantive changes were made. One comment asked for clarification as to whether plans must be resubmitted to the Coast Guard 5 years from the date of COTP approval or every 5 years, regardless of whether there have been revisions.

OPA 90 requires a facility owner or operator to resubmit response plans to the Coast Guard for information or approval, as appropriate. In the IFR, the Coast Guard required that response plans must be resubmitted every 5 years regardless of whether any revisions have been made. In his memorandum of April 21, 1995, President Clinton directed agencies to reduce by one-half the frequency of regularly scheduled reports that the public is required to provide to the Government. An exception to this requirement is provided when the agency head determines that such action would not adequately protect the environment or would impede the effective administration of the agency's program. The Coast Guard has reviewed the need for resubmission of response plans at 5-year intervals, and has concluded that extending this to 10 years would not ensure that plans were still viable and would not meet the goal of OPA 90, to improve the response to spills of oil. Changes in technology and in available response resources over a 5-year period may make a response plan fall below acceptable standards. To effectively administer an oversight program and ensure that the maximum practicable response capability is being utilized, review of response plans at 5-year intervals is considered to be an appropriate balance between program needs and reporting burden. The Secretary of Transportation has approved retaining the requirement to submit response plans at a maximum interval of 5 years.

Although the plans need not be resubmitted until the end of the 5-year term, major revisions to a response plan as set out in § 154.1065(b) must be sent to the COTP within 30 days; and deficiencies in an originally submitted plan or a 5-year resubmission of a plan, must be corrected within the time specified by the COTP. NCP or ACP changes will not require resubmission of the plan until the 5-year term is complete. The requirements for plan resubmission after the 5-year term are set out in § 154.1060 of the final rule. The COTP will notify the facility owner or operator in writing of the status of the plan.

Another two comments requested 60 days rather than 30 days to forward major plan corrections to the COTP in response to COTP noted deficiencies in the originally submitted plan, or a 5-year plan resubmission. Several comments proposed that the COTP determine the time period for sending such plan corrections, but that the period be not less than 30 days. As a result of the comments on the 30-day time limit for sending plan corrections to the COTP in response to COTP noted deficiencies, the Coast Guard has changed this provision and now requires that a facility owner or operator correct noted deficiencies within the time period provided by the COTP. This adjustment allows for greater flexibility in determining an appropriate time period based on the corrections needed.

Two comments expressed concern over the number of copies needed to review the facility response plan, and asserted that only one copy was needed by the COTP. The comment also argued that the COTP need not return the approved plan, but instead, that an approval notice would be sufficient. The Coast Guard has changed § 154.1060 of the final rule to require only one copy of the plan to be submitted to the COTP. Additionally, one copy of the plan must be maintained at the facility in a position where the plan is readily available to persons in charge of conducting transfer operations.

Two comments suggested that a copy of the plan should be forwarded to the state water pollution control agency and the emergency response organization's and be available to the local response organizations upon request. Any state agency which desires a copy of the response plan should request one from the facility owner or operator directly. The Coast Guard cannot involve itself in matters which would be largely governed by state statute. In order to fulfill the requirements for exercises under § 154.1055, OSROs must be familiar with any response plans in which they are listed. The Coast Guard leaves to the owners or operators and their OSROs the specific method by which the OSROs will gain the needed familiarity with the plan.

One comment stated that there should be an appeals process, allowing the facility owner or operator to contest the COTP decision. Both the IFR and the final rule already contain an appeal process located in § 154.1075 and entitled "Appeal process."

Section 154.1065 Plan Review and Revision Procedures

The Coast Guard received 6 comments on the revision of plans. Four comments requested that the facility owner or operator be given at least 6 months to incorporate major revisions into the plan. One comment suggested that the rule needed a better definition of which facilities are required to revise plans. Another comment requested clarification of which revisions to facility plans require notification of the Coast Guard.

Section 154.1065 requires all facilities to review their plans annually and to send any revisions to the COTP for information or approval; or if no revisions are made during the course that year, the facility owner or operator must certify by letter to the COTP that the plan remains valid with no revisions. Revisions which must be submitted to the COTP for approval or inclusion in the plan are listed in § 154.1065(b). Requirements for 5-year plan resubmission have been removed from § 154.1065(b)(7) and now are specified in § 154.1060(e) of the final rule.

The Coast Guard received two comments recommending that plan revisions be sent to the COTP before planned actions occur, to ensure COTP approval. A 30-day period for approving a plan was also suggested. In order to meet the statutory requirements of OPA 90, facilities must operate in full compliance with their submitted response plan. the Coast Guard concludes that a 30-day period is appropriate for COTP action on submitted revisions(s); and as an effective date for submitted revision(s). This final rule provides that when revision(s) to a plan are necessary, the facility owner or operator must submit the proposed revision(s) to the COTP. The COTP will review the proposed revision(s) and will provide any necessary feedback to the facility owner or operator within 30 days. The revisions will become effective not later than 30 days from their submission to the COTP, unless the COTP indicates otherwise.

Another comment argued that requiring annual certification by facility owners and operators was too administratively burdensome to the Coast Guard. Five comments suggested that it should only be necessary to notify the Coast Guard of significant changes to the plan. Two comments requested that facilities be allowed to file a letter at the facility instead of placing it with the plan itself to avoid unnecessary paper buildup. The Coast Guard has reviewed this requirement in light of these comments and the President's directive to reduce reporting requirements and has eliminated the requirement to submit an annual certification that the owner or operator has reviewed the facility response plan. The regulation has been modified to reflect that the owner or operator is still required to annually review the plan and notify the Coast Guard of changes; however, no report is required if changes are not needed.

Section 154.1070 Deficiencies

The Coast Guard received 6 comments addressing this section. One comment stressed that the Coast Guard should allow 30 days, rather than 7, to appeal a deficiency notice from the COTP. Another comment argued that 60 days minimum should be allowed to correct deficiencies. Other comments stated that the revised plan should be submitted within a time period provided by the COTP, after a minimum of 30 days. It has been the Coast Guard's experience that the 7 day appeal limit allows adequate time for a facility owner or operator to make an initial appeal of a COTP issued deficiency and it is not expected that a shorter time frame would be imposed unless a significant hazard exists. However, because these time requirements are relatively new, the Coast Guard will continue to monitor this time frame as well as other time limits contained in the FRP appeal process and may modify the time limits in the future.

One comment urged the Coast Guard to provide more detail on enforcement mechanisms. The Coast Guard has provided guidance directly to the COTPs responsible for enforcing these regulations. This guidance will be updated as the Coast Guard gains more experience in the review and usefulness of response plans.

Section 154.1075 Appeal Process

The Coast Guard received 6 comments concerning the appeal process. Four comments wanted the scope of appealable issues more clearly defined. Another comment stated that the Coast Guard should allow a time period to determine whether a facility is a substantial harm, or significant and substantial harm facility. The comment continued by arguing that notification to a facility owner or operator of reclassification should occur within 60 days. If no response is received within this time frame, then the facility owner or operator can assume that reclassification is accepted. The comment continued by stating that 30 days should be allowed to appeal the COTP's decision to the District Commander. Another comment agreed and stressed that facility owners and operators should be able to appeal the COTP's decision that a plan is not adequate. A facility owner or operator may appeal any initial determination made by a COTP regarding that facility's plan. This includes but is not limited to, classification decisions, reclassification decisions and deficiency decisions. The Coast Guard believes the present procedures give owners or operators sufficient time and opportunity to appeal a decision.

Subpart G—Additional Response Plan Requirements for a Trans-Alaska Pipeline Authorization Act (TAPAA) Facility Operating in Prince William Sound, Alaska

Section 154.1120 Operating Restrictions and Interim Operating Authorization

The Coast Guard received one comment recommending that it establish a 4-day time limit in which a 200,000 barrel spill must be removed. The comment also suggested changing the wording in this section by replacing "provided, through an oil spill removal organization required by § 154.1125" with "ensured, by contract or other approved means." The Coast Guard concludes that the required response times are appropriate and will ensure that adequate response is made in

Prince William Sound. A set 4-day time limit would be too inflexible and would not take into account varying conditions. Section 154.1110 of subpart G requires a TAPAA facility owner or operator to meet all requirements of subpart F in addition to the requirements of subpart G itself. Because subpart F includes requirements for ensuring by contract or other approved means any OSRO, a restatement of the requirement in subpart G is unnecessarily repetitive.

The comment also recommended that the Coast Guard include a statement telling facility owners or operators that plan approval for Prince William Sound facilities is valid only as long as the Prince William Sound Regional Citizens Advisory Council is funded in accordance with OPA 90. The Coast Guard agrees with the comment and has added language to § 154.1120 to that effect.

Section 154.1125 Additional Response Plan Requirements

The Coast Guard received one comment on this section stating that additional communities should be included for training. The communities suggested are Seward, Seldovia, Homer, and Kodiak, Alaska. The comment also argued that a minimum of 2,000 trained personnel should be required to remove a 200,000 barrel discharge. The Coast Guard finds that the existing list of communities is currently sufficient and is not adding the communities suggested in the comment. However, should circumstances change, a COTP may recommend adding ports if the spill training requirements are deemed appropriate. This change would be subject to a notice and comment rulemaking project. There were no specific details included in this comment as to the basis for requiring 2,000 personnel for a spill of 200,000 barrels. The COTP has a great deal of experience in this type of operation, and he or she is the one who makes the determination as to the number of personnel necessary for the cleanup of a spill.

Section 154.1130 Requirements for Prepositioned Response Equipment

The Coast Guard received one comment on this section of the IFR. The comment agreed that an independent inspection or certification entity was a good idea. The comment also stated that the section should be revised to include the standard for response capabilities which is currently 200,000 barrels per day in the Prince William Sound to reflect the true maximum extent practicable. Maximum extent practicable is based upon the planned capability to respond to a worst case discharge in adverse weather. The standards set forth in the IFR, and continued in the final rule, include a daily recovery rate of 30,000 barrels per day on scene within 2 hours, and a daily recovery rate of 40,000 barrels on scene within 18 hours. In addition, § 154.1130 also requires on-water storage capability of 100,000 barrels to be on scene within 2 hours, and on-water storage capability of 300,000 barrels to be on scene within 12 hours. The Coast Guard concludes that the standards set forth are sufficient to protect Prince William Sound and meet OPA 90's requirement of a response to the maximum extent practicable.

Section 154.1140 TAPAA Facility Contracting With a Vessel

The Coast Guard received one comment that the section on TAPAA facility contracting with a vessel was unclear because it referred to subpart G of the VRP IFR, which does not exist. The Coast Guard has corrected the cross reference in this section of the FRP final rule to refer to subpart E of the VRP final rule.

Subpart H—Response Plan Requirements for Facilities That Handle, Store, or Transport Animal Fats and Vegetable Oils

This subpart establishes oil spill response planning requirements for an owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils. It requires such facilities to also meet the applicable requirements set forth in subpart F of this part. This subpart, and subpart I, were created to address concerns that some of the criteria proposed in subpart F of this part were not applicable to animal fats and vegetable oils, and other non-petroleum oils. The specific comments on non-petroleum oils which the Coast Guard received are addressed in this preamble under § 154.1049 which was the non-petroleum oils section of the IFR.

In the preamble to the VRP IFR, the Coast Guard stated that it had been unable to verify that the evaporation and emulsification factors in appendix B of the VRP IFR were applicable to both petroleum oils and non-petroleum oils. As a result of that determination, non-petroleum oils were divided from petroleum oils in both the Vessel and MTR Facility Response Plan regulations.

In response to the comments to the IFR on this issue, the Coast Guard is creating two new subparts and further subdividing non-petroleum oils into three categories. Subpart H covers animal fats and vegetable oils, and subpart I covers other non-petroleum oils.

These new subparts and categories are intended to form the foundation of possible future rulemaking efforts in this area. The Coast Guard welcomes information that may be useful in determining the types and quantities of response equipment necessary to respond to a discharge of these oils, and information on new or innovative response techniques that will be appropriate for these oils. This information would be helpful in deciding whether additional rulemaking is appropriate.

Section 154.1225 requires owners or operators of MTR facilities that handle, store, or transport animal fats and vegetable oils to identify the procedures and equipment necessary to respond to a worst case discharge of these oils to the maximum extent practicable. Animal fats include lard, tallow and other oils of animal origin. Vegetable oils include oils from seeds, nuts, kernels or fruits of plants such as corn oil, safflower oil, jojoba oil, coconut oil or palm oil. Subpart H allows the owner or operator of the facility to propose the amount of equipment needed to respond to a worst case discharge of animal fats or vegetable oils to the maximum extent practicable. It does not include specific requirements for identifying the amount of response resources. The Coast Guard will evaluate the information submitted by the owner or operator of the facility to determine if the resources identified are consistent with the volume of animal fats or vegetable oils that may be spilled as a result of the worst case discharge. This procedure was the same in the IFR.

As with petroleum oils, the owner or operator must ensure the availability of removal equipment through contract or other approved means. At a minimum, the owner or operator of the facility must obtain a letter from an oil spill removal organization stating that it will respond to a worst case discharge from the facility. It is not intended that this letter imply a formal contractual agreement between the parties but that the owner or operator has identified specific response resources and that those resources will respond to a worst case discharge from the facility.

Section 154.1225 also requires the owner or operator of an MTR facility that handles, stores, or transports animal fats and vegetable oils to contract for firefighting resources should the facility not have access to sufficient local firefighting resources. For further discussion of firefighting resources see the preamble discussion of § 154.1045(j).

The Coast Guard has included in subpart H, for animal fats and vegetable oils, § 154.1225(f) on the use of dispersants, and other similar, new, or unconventional spill mitigation techniques including mechanical dispersal. Response plans for facilities located in environments with year-round preapproval for use of chemical dispersants will be allowed to receive credit up to 25 percent of the plan's required worst case planning volume. In all cases, the identified response measures must comply with the NCP and the applicable ACP.

The Coast Guard has included in appendix C a new paragraph 2.8 covering non-petroleum oils including animal fats and vegetable oils.

Subpart I—Response Plan Requirements for Facilities That Handle, Store, or Transport Other Non-petroleum Oils

This subpart establishes oil spill response planning requirements for an owner or operator of a facility that handles, stores, or transports non-petroleum oils other than animal fats and vegetable oils. It requires such facilities to also meet the applicable requirements set forth in subpart F of this part. This subpart was created to address industry concerns with grouping animal fats and vegetable oils together with other non-petroleum oils. This separation of animal fats and vegetable oils from other non-petroleum oils recognizes that while animal fats and vegetable oils have harmful effects, they are not toxic to the marine environment as maybe other non-petroleum oils. The specific comments on non-petroleum oils which the Coast Guard received are addressed in this preamble under § 154.1049 which was the non-petroleum oils section of the IFR.

Section 154.1325 requires owners or operators of MTR facilities that handle, store, or transport other non-petroleum oils to identify the procedures and equipment necessary to respond to a worst case discharge of these oils to the maximum extent practicable. Other non-petroleum oils include those that are not animal fats or vegetable oils such as essential oils, turpentine and tung oil.

Section 154.1325 allows the owner or operator of the facility to propose the amount of equipment needed to respond to a worst case discharge of other non-petroleum oils to the maximum extent practicable. It does not include specific requirements for identifying the amount of response resources. The Coast Guard will evaluate the information submitted by the owner or operator of the facility to determine if the resources identified are consistent with the volume of other non-petroleum oils that may be spilled as a result of the worst case discharge. This procedure was the same in the IFR.

As with petroleum oils, § 154.1325 requires that the owner or operator must ensure the availability of removal equipment through contract or other approved means. At a minimum, the owner or operator of the facility must obtain a letter from an oil spill removal organization stating that it will respond to a worst case discharge from the facility. It is not intended that this letter imply a formal contractual agreement between the parties but that the owner or operator has identified specific response resources and that those resources will respond to a worst case discharge from the facility.

Subpart I also requires the owner or operator of an MTR facility that handles, stores, or transports other non-petroleum oils to contract for firefighting resources should the facility not have access to sufficient local firefighting resources. For further discussion of firefighting resources see the preamble discussion of § 154.1045(j).

Under subpart I, a response plan may propose, for other non-petroleum oils, the use of other spill mitigation techniques provided that the identified response measures comply with the NCP and the applicable ACP.

The Coast Guard has included in appendix C a new paragraph 2.8 covering the evaluation of response plans for non-petroleum oils including other non-petroleum oils.

Appendix C of Part 154. Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans

The Coast Guard received one comment recommending that special allowance be made for harbors since they often have conditions similar to rivers and canals. The comment also recommended that such special allowance not be limited only to waterways having depths of 12 feet or less. The Coast Guard disagrees. The term harbor is a broad term and can be applied to a sheltered part of a body of water deep enough to provide anchorage for ships. In reality, a harbor may range from small embayments to large bodies of water. Under the final rule, a harbor could be considered as either being in a rivers and canals operating environment or an inland operating environment. The 12 feet project depth was selected as part of the rivers and canals operating environment to assist in establishing the ability of response resources to operate in specific water depths. The Coast Guard finds that the depth of 12 feet remains relevant in establishing the rivers and canals environment or the inland operating environment.

1. Purpose

The Coast Guard did not receive comments to this section but has revised appendix C to reference the newly created subparts H and I and indicate the portions of appendix C which are applicable.

2. Equipment Operability and Readiness

2.5 The Coast Guard received 2 comments on this paragraph. Both comments asked whether Table 1 adverse weather conditions can be reduced or increased if the Area Committee determines that the conditions listed in the table are not appropriate. Both comments also recommended that the local COTP be allowed to determine the applicable weather conditions until the ACP is finalized. The comments also requested a mechanism for input by the regulated community to the Area Committee before that committee's determinations are completed.

The COTP may reclassify a specific body of water or location within the COTP zone. Section 154.1045 provides details on COTP reclassification to more or less stringent operating environments. The Coast Guard has issued guidance that strongly encourages Area Committees to solicit advice, guidance, and expertise from all appropriate sources including facility owners or operators, OSROs, environmental groups, members of academia, and concerned citizens.

2.6 The Coast Guard received one comment on this paragraph. The comment noted that currently the Coast Guard, EPA and RSPA each have a different planning speed and recommended that a single standardized speed be adopted. The Coast Guard agrees and the Coast Guard, EPA, and RSPA will use the same planning speeds.

2.7 The Coast Guard received one comment on this paragraph. The comment recommended that each type of boom only be required to have compatible connectors with the same type of boom because, for example, there would be no reason to connect high seas boom to harbor or river boom. This statement in the appendix is there only to remind facility owners or operators to ensure that the equipment on which they are going to rely in the event of an oil spill will be capable of

carrying out the function for which it is intended. If boom of varying types will never be used together, the need for compatible connectors is moot.

2.8 The Coast Guard has added paragraph 2.8 covering the newly created subparts H and I.

3. Determining Response Resources Required for the Average Most Probable Discharge

3.1 The Coast Guard received one comment on this paragraph. The comment expressed concern that under the IFR's current language small facilities would be required to purchase booms and boats rather than contracting for them. It recommended that the language be amended to require only a "means of initiating deployment." The Coast Guard disagrees. Section 154.1045(c) provides for the use of contracted response resources for an average most probable discharge provided that the responders can meet the stated response times.

3.2.1 The Coast Guard received one comment on this paragraph. The comment proposed that the Coast Guard amend the language on required boom length to read: "two times the length of the largest vessel * * * or the amount needed to contain a 50 barrel discharge during a transfer operation." The Coast Guard disagrees. Requiring an amount of boom to contain only a "50 barrel discharge" could result in many variations between facilities. Requiring a minimum of 1,000 feet creates a more uniform standard.

3.2.2 The Coast Guard received one comment on this paragraph. The comment said that the Coast Guard should require a minimum level of sorbent material to support other recovery equipment. The Coast Guard disagrees. While sorbents are effective in certain circumstances, they are not considered major spill response equipment. They are expendable resources and may be used during routine facility operations. It is the responsibility of the owner or operator of the facility to make sure that adequate amounts of sorbent materials are available.

5. Determining Response Resources Required for the Worst Case Discharge to the Maximum Extent Practicable

5.5 The Coast Guard received one comment on this paragraph. This comment recommended that the paragraph be amended by adding language which restricts the definition of shallow water resources to vessels with a fully loaded draft of not more than six feet. The Coast Guard concludes that the response plan must demonstrate that sufficient resourses are available to operate in shallow water. It may be necessary to operate vessels at less than their fully loaded draft. In that event, it may be necessary for the response plan to identify additional resources due to vessels not being able to operate at their fully loaded draft. However, ideally only those vessels which can be utilized in a full range of loading conditions in waters of 6 feet or less depth should be listed for use in close-to-shore response activities (10% of those to be used in the offshore areas and 20% of those to be used in the nearshore inland, Great Lakes, and rivers and canals).

5.6 The Coast Guard received one comment on this paragraph. The comment suggested that a more specific planning standard be adopted for determining the required length of boom in order to avoid wide variations in interpretation. The Coast Guard disagrees. Environmental conditions vary at each recovery site and each fish and wildlife and sensitive environment that must be protected. The Coast Guard contends that there is sufficient guidance, "rules of thumb", and practical experience to be used in determining the quantities of boom necessary to contain oil or provide protective booming for fish and wildlife and sensitive environments. In addition, ACPs address the strategies to protect these areas.

7. Calculating Worst Case Discharge Planning Volumes

7.2.2 The Coast Guard received one comment on this paragraph. The comment addressed the requirement that facilities which handle, store, or transport oils from different petroleum groups assume, for planning purposes, that the oil groups resulting in the largest on-water recovery volume will be stored in the tank or tanks identified as constituting the worst case discharge. The comment recommended that the oil groups resulting in the largest on-water recovery volume should apply only if the largest tank does, in fact, store the largest oil volume. The comment stated that if the product changed in a way that required more planning then the plan could be amended accordingly at that time. The marine transportation-related (MTR) facility pertains to the piping that conveys the oils between the vessel and the non-transportation-related storage tanks. The MTR facility does not generally include the storage tanks and therefore the comment applies to the non-transportation related portion which is regulated by the EPA, not the Coast Guard. The EPA has addressed this comment in their final rule issued on July 1, 1994 (59 FR 34071).

8. Determining the Availability of Alternative Response Methods

8.6 The Coast Guard received one comment on this paragraph. The comment encouraged the Coast Guard to credit a portion of the required on-water recovery capacity for in-situ burning similar to the credit allowed for dispersants. The comment asserted that in-situ burning is most effective early in a spill response and in order to use it as early as possible authority to use in-situ burning must be authorized ahead of time. The Coast Guard will not permit an owner or operator of a facility to use in-situ burning as a planning response strategy in the final rule. The use of in-situ burning is still being studied. As the effectiveness and environmental effects of non-mechanical methods of pollution recovery are studied, they may be included as alternate response strategies. The Coast Guard will evaluate in-situ burning as a permissible response strategy for capability increases in 1998.

9. Additional Equipment Necessary to Sustain Response Operations

9.1 The Coast Guard received 1 comment on this paragraph. The comment expressed concern that the language of the IFR regarding additional equipment and personnel allows for varying interpretations. It recommended adoption of a planning standard using a "systems" approach to clarify the final rule. The Coast Guard agrees and concludes that the section reflects a "systems" approach to spill response. The equipment must be suitable for use with the primary equipment identified in the response plan. Section 2.4 of appendix C and § 154.1045 require that equipment must be capable of operating in the applicable operating environment.

9.2 The Coast Guard received 1 comment on this paragraph. The comment recommended using a 10-hour operating day in determining the level of adequate temporary storage capacity. The comment also asked for guidance from the Coast Guard in determining the time needed for transferring recovered oil to a temporary storage facility. The suggested guidance included pumping capacity, number of oil discharge stations, and any other pertinent factors. The Coast Guard disagrees and determines that the storage capacity should be based on the types and quantities of oil recovery identified in the plan. Pump capacities are variable and discharge stations are dependent on local factors. The owner or operator is best equipped to estimate and certify the availability of these resources.

Appendix C of Part 154. Tables 1–5

Table 1 Response Resource Operating Criteria

The Coast Guard received two comments stating that Tables 1, 2 and 3 are oversimplified because they do not take into account variables such as temperature and flow rate, which the comments claim affect dissipation and emulsification rates. Another comment recommended referencing the factors used to calculate the figures in the tables. That comment asked for clarification because it stated that the 3-day quick mobilization mentioned in the explanatory note is incompatible with the 3, 4, or 6-day sustainability requirements in Table 2. The comment also claimed that the 3-day quick mobilization is inconsistent with the tiering of response equipment which is required to be on-scene within 60 hours.

The Coast Guard disagrees with these comments. Table 1 is based on information for equipment selection in the *1991 World Catalog of Oil Spill Response Products* [Schulze, Robert, ed., 1991]. The American Society of Testing and Material (ASTM) used this resource as the starting point for its oil recovery equipment standard. The values in Table 2 were drawn from the deliberations among the Negotiated Rulemaking Committee. They are based on the general behavior of oil that has been observed during actual discharges. The variances in values reflect the amount of oil most likely to be available for recovery.

The three days referred to by the comment appears in the preamble to the IFR. This reflects a desire for the planned mobilization of response resources within the first 3 days of the response. It should not be confused with the equipment sustainability listed in Table 2.

Table 2 Removal Capacity Planning Table

The Coast Guard received one comment remarking that the values in Table 2 should not total over 100 percent. As was explained in the IFR, the Coast Guard recognizes that the percentages exceed 100 percent in the inland, nearshore, Great Lakes, and offshore areas. This reflects a desire to increase the quantity of response that are planned for mobilization within the first 3 days of a response.

Table 3 Emulsification Factors for Petroleum Oil Groups

The Coast Guard received four comments on Table 3. One comment asserted that the entire amount of oil spilled will not emulsify because emulsification occurs over time, and therefore, the IFR's rapid spill response requirements will not allow the impact to be as extensive as suggested. The comment stated that emulsification factors are only appropriate for open ocean spills from vessels; and that the factors should not apply to the total worst case discharge in river/nearshore areas. The comment also recommended that the regulations not use emulsification factors at all. Another comment pointed out that emulsification is already accounted for in the derating of recovery devices in paragraph 6.2 of appendix C. Two comments stated that Table 3 is overly simple because it does not take into account other variables which affect emulsification such as flow rate and temperature. One comment recommended that the emulsification factor for Group III oil should be changed to 3.0 to better reflect the level of Alaskan crude oil.

Emulsification factors vary considerably within an oil group and are dependent on many factors, such as temperature and weather conditions. The proposed Table 3 values were derived from ITOPF data and reflected the maximum amount of emulsification that could occur over a prolonged period of time in environmental conditions that favor the emulsification process. No other factors were proposed. The Coast Guard does not require that the entire amount of oil be emulsified. Rather the oil to be emulsified depends on the percentage of recovered floating oil taken from Table 2.

The Coast Guard disagrees with the comment that the emulsification is accounted for in the derating of recovery devices. The emulsification factors listed in Table 3 are to account for actual emulsification that occurs to the oils prior to being encountered by the skimming equipment. The derating factor included, among other things, consideration of the actual skimming device to remove oily material from water, the two issues are unrelated.

The emulsification factors in this final rule are the same as those in the VRP IFR. The factors in the VRP IFR were revised from the factors in the VRP NPRM. The factors were revised down because the Coast Guard was convinced that the original factors were too high.

Table 5 Response Capability Caps by Operating Area

The Coast Guard received one comment on Table 5. The comment suggested that the 1998 caps be changed to "To Be Determined" because practical experience may demonstrate that the 1993 values may not need to be increased. The Coast Guard disagrees. The caps provided in Table 5 reflect a 25 percent increase in response resources from 1993 to 1998. Prior to these caps becoming effective, the Coast Guard will initiate a review of the cap increases. This review will determine if the scheduled increases for 1998 remain practicable and will also establish a specific cap for 2003.

Appendix D of Part 154. Interim Guidelines for Determining Economically Important and Environmentally Sensitive Areas for Facility Response Plans

The Coast Guard received 12 comments to Appendix D—Guidelines for Determining Economically Important and Environmentally Sensitive Areas for Facility Response Plans. The Coast Guard reviewed the comments and provided them to the National Oceanic and Atmospheric Administration (NOAA). NOAA used the comments in drafting its **Federal Register** notice entitled "Guidance for Facility and Vessel Response Plans Fish and Wildlife and Sensitive Environments."

The Coast Guard has adopted EPA's terminology in this final rule and therefore the term "Environmentally Sensitive Areas" has been changed to "Fish and Wildlife and Sensitive Environments." The Coast Guard determined that Appendix D on sensitive areas is unnecessary because fish and wildlife and sensitive environments are identified in the Area Contingency Plans (ACPs) and all coastal ACPs are now complete. Since the ACPs identify fish and wildlife and sensitive environments for each area, there is no longer a need for the Coast Guard to provide the guidance that was contained in appendix D to the IFR. Therefore, the Coast Guard has removed appendix D on sensitive areas from the final rule and has replaced it with a new Appendix D entitled "Training Elements for Oil Spill Response Plans."

Appendix D to Part 154—Training Elements for Oil Spill Response Plans

This appendix was added to the final rule to provide guidelines to facility owners and operators for the development of the training portions of their response plans. These guidelines were developed in the same manner as PREP, which is addressed in the preamble discussion on the revisions to § 154.1055.

Assessment

This final rule is a significant regulatory action under section 3(f) of

Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB) under that order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040, February 26, 1979). An Assessment has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES**. Seven public comments addressed the Regulatory Evaluation section of the IFR. The comments are discussed in the appropriate section of this discussion.

1. Facility Response Plan Costs and Benefits

In the aggregate, the requirement for facility response plans will result in substantial costs to the facilities affected. If all the costs for MTR facilities affected by this rule are attributed to the Coast Guard's regulations, the present value cost of this regulation for the first 10 years is estimated at $305.9 million. In the first year, most of this cost is attributable to conducting training and exercise evaluations and arranging for or providing adequate response capability. In subsequent years, the majority of the cost is attributable to conducting exercising and retaining the response capability. The incremental cost of the entire regulation was $63 million for 1992, but declined to $40 million annually in subsequent years. However, since many of these facilities are complexes which are being jointly regulated by the Coast Guard and the EPA and the total costs are already accounted for under EPA's facility response plan regulation (59 FR 34097, July 1, 1994), these costs could be reduced to reflect this fact. Thus, total present value costs for Coast Guard facility response plans will be $90 million and incremental costs will be $18.7 million for the first full year and $11.9 million for subsequent years.

Four comments argued that the costs of this regulation are excessive and have not been thoroughly examined in the IFR. The Coast Guard disagrees with these comments. The Coast Guard has reexamined its cost data and concludes that costs are not excessive. Two comments argued that the $25,000 cost estimate for large facilities is much too low and does not take into consideration expenditures such as equipment purchases, costs of training, costs of exercises, and retainer fees. With regard to exercises, two comments argued that the costs would be prohibitive. The Coast Guard disagrees with these comments. The Regulatory Impact Analysis did take into consideration equipment purchases, costs of training, costs of exercises, and retainer fees. Facility owners or operators are already required to comply with existing pollution regulations which require them to prepare operations manuals and Spill Prevention Control and Countermeasures (SPCC) plans that address some elements of the facility response plan regulations. The Coast Guard assumed in its analysis that facility owners or operators would not be redundant when complying with requirements. The Coast Guard's analysis indicated that the requirements set forth are the most practical and least burdensome which give acceptable levels of planning for spill response.

The benefit analysis indicates an incremental volume of 230,848 discounted barrels of spilled oil (using a 7 percent discount rate) that will be recovered due to compliance with this regulation. The cost effectiveness ratio (costs divided by benefits) is $1,325 per barrel of oil recovered.

A Regulatory Impact Analysis (RIA) is available in the docket for inspection or copying, as indicated under **ADDRESSES**. The RIA prepared for the IFR was reviewed based upon comments received and no changes made in the final rule caused a great enough impact on costs to require redrafting the RIA. It has also been placed in a separate docket (CGD 91–047) established to facilitate review of the programmatic RIA for titles IV and V of OPA 90.

One comment expressed concern that the RIA for the final rule would be different from the RIA on which the IFR was based and that an opportunity for comment would not be permitted before the rule would be finalized. While the costs and benefits in the RIA have changed from the IFR to the final rule, the change is the result of lowering the discount rate from 10 to 7 percent, reflecting a change in OMB guidance between publication of the IFR and publication of the final rule.

2. Additional Response Plans Requirements for Trans-Alaska Pipeline Authorization Act (TAPAA) Facilities Operating in Prince William Sound, Alaska

At present, there is only one Trans-Alaska Pipeline (TAPAA) facility operating in Prince William Sound. This facility is the Valdez Marine Terminal which is operated by Alyeska Pipeline Service Company. This facility transfers approximately 700 million barrels annually to approximately 900 tank vessels.

The increase in unit cost of handling, storing, and transporting crude oil to comply with section 5005 of OPA 90 is relatively small. This can easily be absorbed by the Alyeska Pipeline Service Company.

Overall industry costs for complying with additional response planning requirements were previously discussed in the Draft Regulatory Evaluation for Prince William sound, Alaska referenced in the VRP NPRM published in the **Federal Register** on June 19, 1992 (57 FR 27514). While this specifically addressed requirements for certain vessels in Prince William Sound, Alaska, it also included the costs and benefits incurred by the sole TAPAA facility located in Prince William Sound. The costs of complying with section 5005 of OPA 90 are estimated to be $232 million for the 10-year period, 1993 through 2002. The benefits include the quick recovery of spilled oil from the environment and subsequent reduction in net impact of the spill. The regulations for Prince William Sound are estimated to increase the volume of recovered oil by 25 percent for crude oil.

A copy of the Assessment for Prince William Sound is available in the docket for inspection or copying, as indicated under "ADDRESSES."

Small Entities

The Coast Guard has examined the impact of this rule on small entities. Its analysis indicates that the majority of small businesses subject to this regulation should be able to absorb the estimated compliance costs without experiencing significant adverse economic effects. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

The Coast Guard received one comment to the IFR concerning the impact of the Facility Response Plan regulation on small businesses. The comment argued that smaller operators may not have the resources to comply with regulations as the Coast Guard has envisioned. The Coast Guard disagrees. The regulation may have a significant impact on a very few small facility operators. The impact on small entities of the changes in this final rule are not substantial.

Collection of Information

This rule contains collection-of-information requirements. The Coast Guard previously submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB approved them. The Coast Guard has submitted revised requirements to OMB for renewed approval under the current OMB Control Number 2115–0595. For subpart F, the section numbers are §§ 154.1025, 154.1030, 154.1050, 154.1055, 154.1060, and 154.1065, and the corresponding OMB approval number is OMB Control Number 2115–0595. For subpart G, the section numbers are §§ 154.1120 and 154.1125, and the corresponding OMB approval number is OMB Control Number 2115–0595. Subparts H and I refer to subpart F for all collection-of-information requirements. Accordingly, additional OMB approval is not needed.

The Coast Guard received one comment responding to this portion of the IFR, which contended that the estimated recordkeeping burden of 4.5 hours annually is much too low. The Coast Guard disagrees. The Coast Guard has reexamined its recordkeeping analysis and has concluded that its estimate is accurate.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 (October 26, 1987) and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12612 and the FWPCA emphasize the President's and Congress' intent to preserve state authority to address matters of pollution prevention and response. Executive Order 12612 directs a Federal executive branch agency (which includes the Coast Guard) to encourage states to develop their own policies to achieve program objectives. Consequently, a Federalism Assessment would be necessary only if the facility response plan rule unduly impinged on a state's authority to establish its own regulatory structure, or imposed undue costs on a state.

The FWPCA provides convincing evidence of Congress' intent that, within 3 miles of shore, the protection of the marine environment should be a collaborative Federal and state effort. *Chevron v. Governor, State of Alaska*, 726 F.2d 483 (9th Cir. 1984), *cert. denied*, 471 U.S. 1140 (1985). For example, section 402 of the FWPCA (33 U.S.C. 1342) establishes the National Pollutant Discharge Elimination System, a regulatory program for regulating the discharge of pollutants into U.S. navigable waters. Minimum Federal standards apply to the discharge of certain pollutants, but the States have authority to establish and administer their own permit systems and to set standards stricter than the Federal ones (33 U.S.C. 1342(b) and 1370). Further, in the Declaration of Goals and Policy contained in section 101 of the FWPCA (33 U.S.C. 1251), Congress states that it is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution of land and water resources.

United States courts have long recognized the rights of States to make both U.S.-flag and foreign-flag vessels conform to "reasonable, nondiscriminatory conservation and environmental protection measures * * * imposed by a State." *Ray v. Atlantic Richfield*, 435 U.S. 151, 164 (1973). Also section 311(o)(3) of the FWPCA (33 U.S.C. 1321(o)(3)) contains express nonpreemption language. Therefore, a State standard setting more stringent planning requirements for facilities owners and operators in the regulating State's water is encouraged under the FWPCA and in valid as long as the State requirement does not preclude compliance with the Federal requirements. Similarly, if a State chose to establish performance requirements for response to an oil spill, the Federal facility response plan rules would not preclude that option. The Federal facility response plan rules preempt State rules only to the extent that State rules may make it impossible to comply with Federal requirements. *Florida Lime and Avocado Growers v. Paul*, 373 U.S. 132 (1963).

Environment

The Coast Guard considered the environmental impact of this final rule and prepared an Environmental Assessment (EA) under section 311(j) of the FWPCA (33 U.S.C. 1321(j)), and a separate EA for Prince William Sound under section 5005 of OPA 90. These documents were prepared in accordance with the Council on Environmental Quality regulations (40 CFR parts 1500–1508) and Commandant Instruction M16475.1B implementing the provisions of the National Environmental Policy Act (NEPA).

The EA prepared for section 311(j) requirements was amended when section 5209(b) of the Coast Guard Authorization Act of 1992 (Pub. L. 102–587) declared offshore supply vessels and certain fishing vessels not to be "tank vessels" for purposes of implementing the VRP rule. The Prince William Sound EA was entirely revised when section 352 of the Department of Transportation Appropriations Act effectively made section 5005 of OPA 90 inapplicable to non-TAPS-trade vessels. The original language of section 5005 created special response plan provisions applicable to all tank vessels operating in Prince Williams Sound, including non-TAPS vessels. The Coast Guard received no comments on the EAs.

The Coast Guard has identified and studies the relevant environmental issues and alternatives, and based on its assessment, does not expect this final rule to result in a significant impact on the quality of the human environment. Therefore, Findings of No Significant Impact (FONSIs) have been prepared. The revised and amended EAs and the FONSIs are available in the public docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 150

Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements.

33 CFR 154

Fire prevention, Oil pollution, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the interim rule amending 33 CFR parts 150 and 154 which was published at 58 FR 7330 on February 5, 1993, is adopted as final except for changes to part 154 which are set forth below:

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

1. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321 (j)(1)(C), (j)(5), (j)(6) and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

2. Subpart F of part 154 is revised to read as follows:

Subpart F—Response Plans for Oil Facilities

Sec.

154.1010 Purpose.
154.1015 Applicability.
154.1016 Facility Classification by COTP.
154.1017 Response plan submission requirements.
154.1020 Definitions.
154.1025 Operating restrictions and interim operating authorization.
154.1026 Qualified individual and alternate qualified individual.
154.1028 Methods of ensuring the availability of response resources by contract or other approved means.
154.1029 Worst case discharge.

154.1030 General response plan contents.
154.1035 Specific requirements for facilities that could reasonably be expected to cause significant and substantial harm to the environment.
154.1040 Specific requirements for facilities that could reasonably be expected to cause substantial harm to the environment.
154.1041 Specific response information to be maintained on mobile MTR facilities.
154.1045 Response plan development and evaluation criteria for facilities that handle, store, or transport Group I through Group IV petroleum oils.
154.1047 Response plan development and evaluation criteria for facilities that handle, store, or transport Group V petroleum oils.
154.1050 Training.
154.1055 Exercises.
154.1057 Inspection and maintenance of response resources.
154.1060 Submission and approval procedures.
154.1065 Plan review and revision procedures.
154.1070 Deficiencies.
154.1075 Appeal process.

Subpart F—Response Plans for Oil Facilities

§ 154.1010 Purpose.

This subpart establishes oil spill response plan requirements for all marine transportation-related (MTR) facilities (hereafter also referred to as facilities) that could reasonably be expected to cause substantial harm or significant and substantial harm to the environment by discharing oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone. The development of a response plan prepares the facility owner or operator to respond to an oil spill. These requirements specify criteria to be used during the planning process to determine the appropriate response resources. The specific criteria for response resources and their arrival times are not performance standards. The criteria are based on a set of assumptions that may not exist during an actual oil spill incident.

§ 154.1015 Applicability.

(a) This subpart applies to all MTR facilities that because of their location could reasonably be expected to cause at least substantial harm to the environment by discharging oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone.

(b) The following MTR facilities that handle, store, or transport oil, in bulk, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines and are classified as substantial harm MTR facilities:

(1) Fixed MTR onshore facilities capable of transferring oil to or from a vessel with a capacity of 250 barrels or more and deepwater ports;

(2) Mobile MTR facilities used or intended to be used to transfer oil to or from a vessel with a capacity of 250 barrels or more; and

(3) Those MTR facilities specifically designated as substantial harm facilities by the COTP under § 154.1016.

(c) The following MTR facilities that handle, store, or transport oil in bulk could not only reasonably be expected to cause substantial harm, but also significant and substantial harm, to the environment by discharging oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone and are classified as significant and substantial harm MTR facilities:

(1) Deepwater ports, and fixed MTR onshore facilities capable of transferring oil to or from a vessel with a capacity of 250 barrels or more except for facilities that are part of a non-transportation-related fixed onshore facility with a storage capacity of less than 42,000 gallons; and

(2) Those MTR facilities specifically designated as significant and substantial harm facilities by the COTP under § 154.1016.

(d) An MTR facility owner or operator who believes the facility is improperly classified may request review and reclassification in accordance with § 154.1075.

§ 154.1016 Facility classification by COTP.

(a) The COTP may upgrade the classification of:

(1) An MTR facility not specified in § 154.1015 (b) or (c) to a facility that could reasonably be expected to cause substantial harm to the environment; or

(2) An MTR facility specified in § 154.1015(b) to a facility that could reasonably be expected to cause significant and substantial harm to the environment.

(b) The COTP may downgrade, the classification of:

(1) An MTR facility specified in § 154.1015(c) to a facility that could reasonably be expected to cause substantial harm to the environment; or

(2) An MTR facility specified in § 154.1015(b) to a facility that could not reasonably be expected to cause substantial, or significant and substantial harm to the environment.

(3) The COTP will consider downgrading an MTR facility's classification only upon receiving a written request for a downgrade of classification from the facility's owner or operator.

(c) When changing a facility classification the COTP may, as appropriate, consider all relevant factors including, but not limited to: Type and quantity of oils handled in bulk; facility spill history; age of facility; proximity to public and commercial water supply intakes; proximity to navigable waters based on the definition of navigable waters in 33 CFR 2.05–25; and proximity to fish and wildlife and sensitive environments.

154.1017 Response plan submission requirements.

(a) The owner or operator of an MTR facility identified only in § 154.1015(b), or designated by the COTP as a substantial harm facility, shall prepare and submit to the cognizant COTP a response plan that meets the requirements of §§ 154.1030, 154.1040, 154.1045, or § 154.1047, as appropriate. This applies to:

(1) A mobile MTR facility used or intended to be used to transfer oil to or from a vessel with a capacity of 250 barrels or more; and

(2) A fixed MTR facility specifically designated as a substantial harm facility by the COTP under § 154.1016.

(b) The owner or operator of an MTR facility identified in § 154.1015(c) or designated by the COTP as a significant and substantial harm facility shall prepare and submit for review and approval of the cognizant COTP a response plan that meets the requirements of §§ 154.1030, 154.1035, 154.1045, or 154.1047, as appropriate. This applies to:

(1) A fixed MTR facility capable of transferring oil, in bulk, to or from a vessel with a capacity of 250 barrels or more; and

(2) An MTR facility specifically designated as a significant and substantial harm facility by the COTP under § 154.1016.

(c) In addition to the requirements in paragraphs (a) and (b) of this section, the response plan for a mobile MTR facility must meet the requirements of § 154.1041 subpart F.

§ 154.1020 Definition.

Except as otherwise defined in this section, the definition in 33 CFR 154.105 apply to this subpart and subparts H and I.

Adverse weather means the weather conditions that will be considered when identifying response systems and equipment in a response plan for the applicable operating environment. Factors to consider include, but are not limited to, significant wave height as specified in §§ 154.1045, 154.1047, 154.1225, or 154.1325, as appropriate; ice conditions, temperatures, weather-related visibility, and currents within the COTP zone in which the systems or equipment are intended to function.

Animal fat means a non-petroleum oil, fat, or grease derived from animals, and not specifically identified elsewhere in this part.

Average most probable discharge means a discharge of the lesser of 50 barrels or 1 percent of the volume of the worst case discharge.

Captain of the Port (COTP) Zone means a zone specified in 33 CFR part 3 and, where applicable, the seaward extension of that zone to the outer boundary of the exclusive economic zone (EEZ).

Complex means a facility possessing a combination of marine-transportation related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the Clean Water Act.

Exclusive economic zone (EEZ) means the zone contiguous to the territorial sea of the United States extending to a distance up to 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

Facility that could reasonably be expected to cause significant and substantial harm means any MTR facility (including piping and any structures that are used for the transfer of oil between a vessel and a facility) classified as a "significant and substantial harm" facility under § 154.1015(c) including a facility specifically designated by the COTP under § 154.1016(a).

Facility that could reasonably be expected to cause substantial harm means any MTR facility classified as a "substantial harm" facility under § 154.1015(b) including a facility specifically designated by the COTP under § 154.1016(a).

Fish and Wildlife and Sensitive Environment means areas that may be identified by either their legal designation or by Area Committees in the applicable Area Contingency Plan (ACP) (for planning) or by members of the Federal On-Scene Coordinator's spill response structure (during responses). These areas may include: Wetlands, national and state parks, critical habitats for endangered or threatened species, wilderness and natural resource areas, marine sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, areas of economic importance, recreational areas, national forests, Federal and state lands that are research areas, heritage program areas, land trust areas, and historical and archaeological sites and parks. These areas may also include unique habitats such as: aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats.

Great Lakes means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far as Saint Regis, and adjacent port areas.

Higher volume port area means the following ports:

(1) Boston, MA.
(2) New York, NY.
(3) Delaware Bay and River to Philadelphia, PA.
(4) St. Croix, VI.
(5) Pascagoula, MS.
(6) Mississippi River from Southwest Pass, LA. to Baton Rouge, LA.
(7) Louisiana Offshore Oil Port (LOOP), LA.
(8) Lake Charles, LA.
(9) Sabine-Neches River, TX.
(10) Galveston Bay and Houston Ship Channel, TX.
(11) Corpus Christi, TX.
(12) Los Angeles/Long Beach harbor, CA.
(13) San Francisco Bay, San Pablo Bay, Carquinez Strait, and Suisun Bay to Antioch, CA.
(14) Straits of Juan De Fuca from Port Angeles, WA, to and including Puget Sound, WA.
(15) Prince William Sound, AK.

Inland area means the area shoreward of the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, it means the area shoreward of the lines of demarcation (COLREG lines) defined in §§ 80.740 through 80.850 of this chapter. The inland area does not include the Great Lakes.

Marine transportation-related facility (MTR facility) means any onshore facility or segment of a complex regulated under section 311(j) of the Federal Water Pollution Control Act (FWPCA) by two or more Federal agencies, including piping and any structure used or intended to be used to transfer oil to or from a vessel, subject to regulation under this part and any deepwater port subject to regulation under part 150 of this chapter. For a facility or segment of a complex regulated by two or more Federal agencies under section 311(j) of the FWPCA, the MTR portion of the complex extends from the facility oil transfer system's connection with the vessel to the first valve inside the secondary containment surrounding tanks in the non-transportation-related portion of the facility or, in the absence of secondary containment, to the valve or manifold adjacent to the tanks comprising the non-transportation-related portion of the facility, unless another location has otherwise been agreed to by the COTP and the appropriate Federal official.

Maximum extent practicable means the planned capability to respond to a worst case discharge in adverse weather, as contained in a response plan that meets the criteria in this subpart or in a specific plan approved by the cognizant COTP.

Maximum most probable discharge means a discharge of the lesser of 1,200 barrels or 10 percent of the volume of a worst case discharge.

Nearshore area means the area extending seaward 12 miles from the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, it means the area extending seaward 12 miles from the line of demarcation (COLREG lines) defined in §§ 80.740–80.850 of this chapter.

Non-persistent or Group I oil means a petroleum-based oil that, at the time of shipment, consists of hydrocarbon fractions—

(1) At least 50 percent of which by volume, distill at a temperature of 340 degrees C (645 degrees F); and

(2) At least 95 percent of which by volume, distill at a temperature of 370 degrees C (700 degrees F).

Ocean means the offshore area and nearshore area as defined in this subpart.

Offshore area means the area beyond 12 nautical miles measured from the boundary lines defined in 46 CFR part 7 extending seaward to 50 nautical miles, except in the Gulf of Mexico. In the Gulf of Mexico, it is the area beyond 12 nautical miles of the line of demarcation (COLREG lines) defined in §§ 80.740–80.850 of this chapter extending seaward to 50 nautical miles.

Oil means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with wastes other than dredge spoil.

Oil spill removal organization (OSRO) means an entity that provides response resources.

On-Scene Coordinator (OSC) means the definition in the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300).

Operating area means Rivers and Canals, Inland, Nearshore, Great Lakes, or Offshore geographic location(s) in which a facility is handling, storing, or transporting oil.

Operating environment means Rivers and Canals, Inland, Great Lakes, or Ocean. These terms are used to define the conditions in which response equipment is designed to function.

Operating in compliance with the plan means operating in compliance with the provisions of this subpart including, ensuring the availability of the response resources by contract or other approved means, and conducting the necessary training and drills.

Other non-petroleum oil means a non-petroleum oil of any kind that is not generally an animal fat or vegetable oil.

Persistent oil means a petroleum-based oil that does not meet the distillation criteria for a non-persistent oil. For the purposes of this subpart, persistent oils are further classified based on specific gravity as follows:

(1) Group II—specific gravity of less than .85.

(2) Group III—specific gravity equal to or greater than .85 and less than .95.

(3) Group IV—specific gravity equal to or greater than .95 and less than or equal to 1.0.

(4) Group V—specific gravity greater than 1.0.

Qualified individual and alternate qualified individual means a person located in the United States who meets the requirements of § 154.1026.

Response activities means the containment and removal of oil from the land, water, and shorelines, the temporary storage and disposal of recovered oil, or the taking of other actions as necessary to minimize or mitigate damage to the public health or welfare or the environment.

Response resources means the personnel, equipment, supplies, and other capability necessary to perform the response activities identified in a response plan.

Rivers and canals means a body of water confined within the inland area, including the Intracoastal Waterways and other waterways artificially created for navigation, that has a project depth of 12 feet or less.

Specific gravity means the ratio of the mass of a given volume of liquid at 15°C (60°F) to the mass of an equal volume of pure water at the same temperature.

Spill management team means the personnel identified to staff the organizational structure identified in a response plan to manage response plan implementation.

Substantial threat of a discharge means any incident or condition involving a facility that may create a risk of discharge of oil. Such incidents include, but are not limited to storage tank or piping failures, above ground or underground leaks, fires, explosions, flooding, spills contained within the facility, or other similar occurrences.

Tier means the combination of required response resources and the times within which the resources must arrive on scene.

[Note: Tiers are applied in three categories:
(1) Higher Volume Port Areas,
(2) Great Lakes, and
(3) All other operating environments, including rivers and canals, inland, nearshore, and offshore areas.
Appendix C, Table 4 of this part, provides specific guidance on calculating response resources. Sections 154.1045(f) and 154.1135, set forth the required times within which the response resources must arrive on-scene.]

Vegetable oil means a non-petroleum oil or fat derived from plant seeds, nuts, kernels or fruits, and not specifically identified elsewhere in this part.

Worst case discharge means in the case of an onshore facility and deepwater port, the largest foreseeable discharge in adverse weather conditions meeting the requirements of § 154.1029.

§ 154.1025 Operating restrictions and interim operating authorization.

(a) The owner or operator of an MTR facility who submitted a response plan prior to May 29, 1996, may elect to comply with any of the provisions of this final rule by revising the appropriate section of the previously submitted plan in accordance with § 154.1065. An owner or operator of an MTR facility who elects to comply with all sections of this final rule must resubmit the plan in accordance with § 154.1060 of this part.

(b) No facility subject to this subpart may handle, store, or transport oil unless it is operating in full compliance with a submitted response plan. No facility categorized under § 154.1015(c) as a significant and substantial harm facility may handle, store, or transport oil unless the submitted response plan has been approved by the COTP. The owner or operator of each new facility to which this subpart applies must submit a response plan meeting the requirements listed in § 154.1017 not less than 60 days prior to handling, storing, or transporting oil. Where applicable, the response plan shall be submitted along with the letter of intent required under § 154.110.

(c) Notwithstanding the requirements of paragraph (b) of this section, a facility categorized under § 154.1015(c) as a significant and substantial harm facility may continue to handle, store, or transport oil for 2 years after the date of submission of a response plan, pending approval of that plan. To continue to handle, store, or transport oil without a plan approved by the COTP, the facility owner or operator shall certify in writing to the COTP that the owner or operator has ensured, by contract or other approved means as described in § 154.1028(a), the availability of the necessary private personnel and equipment to respond, to the maximum extend practicable to a worst case discharge or substantial threat of such a discharge from the facility. Provided that the COTP is satisfied with the certification of response resources provided by the owner or operator of the facility, the COTP will provide written authorization for the facility to handle, store, or transport oil while the submitted response plan is being reviewed. Pending approval of the submitted response plan, deficiencies noted by the COTP must be corrected in accordance with § 154.1070.

(d) A facility may not continue to handle, store, or transport oil if—

(1) The COTP determines that the response resources identified in the facility certification statement or reference response plan do not substantially meet the requirements of this subpart;

(2) The contracts or agreements cited in the facility's certification statement or referenced response plans are no longer valid;

(3) The facility is not operating in compliance with the submitted plan;

(4) The response plan has not been resubmitted or approved within the last 5 years; or

(5) The period of the authorization under paragraph (c) of this section has expired.

§ 154.1026 Qualified individual and alternate qualified individual.

(a) The response plan must identify a qualified individual and at least one alternate who meet the requirements of this section. The qualified individual or alternate must be available on a 24-hour basis and be able to arrive at the facility in a reasonable time.

(b) The qualified individual and alternate must:

(1) Be located in the United States;

(2) Speak fluent English;

(3) Be familiar with the implementation of the facility response plan; and

(4) Be trained in the responsibilities of the qualified individual under the response plan.

(c) The owner or operator shall provide each qualified individual and alternate qualified individual identified in the plan with a document designating them as a qualified individual and specifying their full authority to:

(1) Activate and engage in contracting with oil spill removal organization(s);

(2) Act as a liaison with the predesignated Federal On-Scene Coordinator (OSC); and

(3) Obligate funds required to carry out response activities.

(d) The owner or operator of a facility may designate an organization to fulfill the role of the qualified individual and the alternate qualified individual. The organization must then identify a qualified individual and at least one alternate qualified individual who meet the requirements of this section. The facility owner or operator is required to list in the response plan the organization, the person identified as the qualified individual, and the person or person(s) identified as the alternate qualified individual(s).

(e) The qualified individual is not responsible for—

(1) The adequacy of response plans prepared by the owner or operator; or

(2) Contracting or obligating funds for response resources beyond the authority contained in their designation from the owner or operator of the facility.

(f) The liability of a qualified individual is considered to be in accordance with the provisions of 33 USC 1321(c)(4).

§ 154.1028 Methods of ensuring the availability of response resources by contract or other approved means.

(a) When required in this subpart, the availability of response resources must be ensured by the following methods:

(1) A written contractual agreement with an oil spill removal organization. The agreement must identify and ensure the availability of specified personnel and equipment required under this subpart within stipulated response times in the specified geographic areas;

(2) Certification by the facility owner or operator that specified personnel and equipment required under this subpart are owned, operated, or under the direct control of the facility owner or operator, and are available within stipulated response times in the specified geographic areas;

(3) Active membership in a local or regional oil spill removal organization that has identified specified personnel and equipment required under this subpart that are available to respond to a discharge within stipulated response times in the specified geographic areas;

(4) A document which—

(i) Identifies the personnel, equipment, and services capable of being provided by the oil spill removal organization within stipulated response times in the specified geographic areas;

(ii) Sets out the parties' acknowledgment that the oil spill removal organization intends to commit the resources in the event of a response;

(iii) Permits the Coast Guard to verify the availability of the identified response resources through tests, inspections, and drills; and

(iv) Is referenced in the response plan; or

(5) The identification of an oil spill removal organization with specified equipment and personnel available within stipulated response times in specified geographic areas. The organization must provide written consent to being identified in the plan.

(b) The contracts and documents required in paragraph (a) of this section must be retained at the facility and must be produced for review upon request by the COTP.

§ 154.1029 Worst case discharge.

(a) The response plan must use the appropriate criteria in this section to develop the worst case discharge.

(b) For the MTR segment of a facility, not less than—

(1) Where applicable, the loss of the entire capacity of all in-line and break out tank(s) needed for the continuous operation of the pipelines used for the purposes of handling or transporting oil, in bulk, to or from a vessel regardless of the presence of secondary containment; plus

(2) The discharge from all piping carrying oil between the marine transfer manifold and the non-transportation-related portion of the facility. The discharge from each pipe is calculated as follows: The maximum time to discover the release from the pipe in hours, plus the maximum time to shut down flow from the pipe in hours (based on historic discharge data or the best estimate in the absence of historic discharge data for the facility) multiplied by the maximum flow rate expressed in barrels per hour (based on the maximum relief valve setting or maximum system pressure when relief valves are not provided) plus the total line drainage volume expressed in barrels for the pipe between the marine manifold and the non-transportation-related portion of the facility; and

(c) For a mobile facility it means the loss of the entire contents of the container in which the oil is stored or transported.

§ 154.1030 General response plan contents.

(a) The plan must be written in English.

(b) A response plan must be divided into the sections listed in this paragraph and formatted in the order specified herein unless noted otherwise. It must also have some easily found marker identifying each section listed below. The following are the sections and subsections of a facility response plan:

(1) Introduction and plan contents.

(2) Emergency response action plan:

(i) Notification procedures.

(ii) Facility's spill mitigation procedures.

(iii) Facility's response activities.

(iv) Fish and wildlife and sensitive environments.

(v) Disposal plan.

(3) Training and Exercises:

(i) Training procedures.

(ii) Exercise procedures.

(4) Plan review and update procedures.

(5) Appendices.

(i) Facility-specific information.

(ii) List of contacts.

(iii) Equipment lists and records.

(iv) Communications plan.

(v) Site-specific safety and health plan.

(vi) List of acronyms and definitions.

(vii) A geographic-specific appendix for each zone in which a mobile facility operates.

(c) The required contents for each section and subsection of the plan are contained in §§ 154.1035, 154.1040, and 154.1041, as appropriate.

(d) The sections and subsections of response plans submitted to the COTP must contain at a minimum all the information required in §§ 154.1035, 154.1040, and 154.1041, as appropriate. It may contain other appropriate sections, subsections, or information that are required by other Federal, State, and local agencies.

(e) For initial and subsequent submission, a plan that does not follow the format specified in paragraph (b) of this section must be supplemented with a detailed cross-reference section to identify the location of the applicable sections required by this subpart.

(f) The information contained in a response plan must be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and the Area Contingency Plan(s) (ACP) covering the area in which the facility operates. Facility owners or operators shall ensure that their response plans are in accordance with the ACP in effect 6 months prior to initial plan submission or the annual plan review required under § 154.1065(a). Facility owners or operators are not required to, but may at their option, conform to an ACP which is less than 6 months old at the time of plan submission.

§ 154.1035 Specific requirements for facilities that could reasonably be expected to cause significant and substantial harm to the environment.

(a) *Introduction and plan content.* This section of the plan must include facility and plan information as follows:

(1) The facility's name, street address, city, county, state, ZIP code, facility telephone number, and telefacsimile number, if so equipped. Include mailing address if different from street address.

(2) The facility's location described in a manner that could aid both a reviewer and a responder in locating the specific facility covered by the plan, such as, river mile or location from a known landmark that would appear on a map or chart.

(3) The name, address, and procedures for contacting the facility's owner or operator on a 24-hour basis.

(4) A table of contents.

(5) During the period that the submitted plan does not have to conform to the format contained in this subpart, a cross index, if appropriate.

(6) A record of change(s) to record information on plan updates.

(b) *Emergency Response Action Plan.* This section of the plan must be organized in the subsections described in this paragraph:

(1) *Notification procedures.* (i) This subsection must contain a prioritized list identifying the person(s), including name, telephone number, and their role in the plan, to be notified of a discharge or substantial threat of a discharge of oil. The telephone number need not be provided if it is listed separately in the list of contacts required in the plan. This Notification Procedures listing must include—

(A) Facility response personnel, the spill management team, oil spill removal organizations, and the qualified individual(s) and the designated alternate(s); and

(B) Federal, State, or local agencies, as required.

(ii) This subsection must include a form, such as that depicted in Figure 1, which contains information to be provided in the initial and follow-up notifications to Federal, State, and local agencies. The form shall include notification of the National Response Center as required in part 153 of this chapter. Copies of the form also must be placed at the location(s) from which notification may be made. The initial notification form must include space for the information contained in Figure 1. The form must contain a prominent statement that initial notification must not be delayed pending collection of all information.

FIGURE 1.—INFORMATION ON DISCHARGE *

[Involved Parties]

(A) Reporting party	(B) Suspected responsible party
Name	Name
Phones ( ) –	Phones ( ) –
Company	Company
Position	Organization Type:
Address	Private citizen
Address	Private enterprise
	Public utility
	Local government
	State government
	Federal government
City	City
State	State
Zip	Zip

*It is not necessary to wait for all information before calling NRC. National Response Center—1–800–424–8802.

Were materials Discharged (Y/N)?
Calling for Responsible Party (Y/N)

Incident Description

Source and/or Cause of Incident

Date - - Time:
Cause

Incident Address/Location Nearest City
Distance from City
Storage Tank Container Type—Above ground (Y/N) Below ground (Y/N) Unknown

Facility Capacity

Tank Capacity
Latitude Degrees
Longitude Degrees
Mile Post or River Mile

Materials

Discharge Unit of Quantity Measure Discharged Material Quantity in Water

Response Action

Actions Taken to Correct or Mitigate Incident

Impact

Number of Injuries Number of Fatalities
Were there Evacuations (Y/N/U)? Number Evacuated
Was there any Damage (Y/N/U)? Damage in Dollars

Additional Information

Any information about the Incident not recorded elsewhere in the report

Caller Notifications

USCG EPA State Other

(2) Facility's spill mitigation procedures. (i) This subsection must describe the volume(s) and oil groups that would be involved in the—

(A) Average most probable discharge from the MTR facility;

(B) Maximum most probable discharge from the MTR facility;

(C) Worst case discharge from the MTR facility; and

(D) Where applicable, the worst case discharge from the non-transportation-related facility. This must be the same volume provided in the response plan for the non-transportation-related facility.

(ii) This subsection must contain prioritized procedures for facility personnel to mitigate or prevent any discharge or substantial threat of a discharge of oil resulting from operational activities associated with internal or external facility transfers including specific procedures to shut down affected operations. Facility personnel responsible for performing specified procedures to mitigate or prevent any discharge or potential discharge shall be identified by job title. A copy of these procedures shall be maintained at the facility operations center. These procedures must address actions to be taken by facility personnel in the event of a discharge, potential discharge, or emergency involving the following equipment and scenarios:

(A) Failure of manifold, mechanical loading arm, other transfer equipment, or hoses, as appropriate;

(B) Tank overfill;

(C) Tank failure;

(D) Piping rupture;

(E) Piping leak, both under pressure and not under pressure, if applicable;

(F) Explosion or fire; and

(G) Equipment failure (e.g. pumping system failure, relief valve failure, or other general equipment relevant to operational activities associated with internal or external facility transfers.)

(iii) This subsection must contain a listing of equipment and the responsibilities of facility personnel to mitigate an average most probable discharge.

(3) *Facility's response activities.* (i) This subsection must contain a description of the facility personnel's responsibilities to initiate a response and supervise response resources pending the arrival of the qualified individual.

(ii) This subsection must contain a description of the responsibilities and authority of the qualified individual and alternate as required in § 154.1026.

(iii) This subsection must describe the organizational structure that will be used to manage the response actions. This structure must include the following functional areas.

(A) Command and control;

(B) Public information;

(C) Safety;

(D) Liaison with government agencies;

(E) Spill Operations;

(F) Planning;

(G) Logistics support; and

(H) Finance.

(iv) This subsection must identify the oil spill removal organizations and the spill management team to:

(A) Be capable of providing the following response resources:

(*1*) Equipment and supplies to meet the requirements of §§ 154.1045, 154.1047 or subparts H or I of this part, as appropriate; and

(*2*) Trained personnel necessary to continue operation of the equipment and staff of the oil spill removal organization and spill management team for the first 7 days of the response.

(B) This section must include job descriptions for each spill management team member within the organizational structure described in paragraph (b)(3)(iii) of this section. These job descriptions should include the responsibilities and duties of each spill management team member in a response action.

(v) For mobile facilities that operate in more than one COTP zone, the plan must identify the oil spill removal organization and the spill management team in the applicable geographic-specific appendix. The oil spill removal organization(s) and the spill management team discussed in paragraph (b)(3)(iv)(A) of this section must be included for each COTP zone in which the facility will handle, store, or transport oil in bulk.

(4) *Fish and wildlife and sensitive environments.* (i) This section of the plan must identify areas of economic importance and environmental sensitivity, as identified in the ACP, which are potentially impacted by a worst case discharge. ACPs are required under section 311(j)(4) of the FWPCA to identify fish and wildlife and sensitive environments. The applicable ACP shall be used to designate fish and wildlife and sensitive environments in the plan. Changes to the ACP regarding fish and wildlife and sensitive environments shall be included in the annual update of the response plan, when available.

(ii) For a worst case discharge from the facility, this section of the plan must—

(A) List all fish and wildlife and sensitive environments identified in the ACP which are potentially impacted by a discharge of persistent oils, non-persistent oils, or non-petroleum oils.

(B) Describe all the response actions that the facility anticipates taking to protest these fish and wildlife and sensitive environments.

(C) Contain a map or chart showing the location of those fish and wildlife and sensitive environments which are potentially impacted. The map or chart shall also depict each response action that the facility anticipates taking to protect these areas. A legend of

activities must be included on the map page.

(iii) For a worst case discharge, this section must identify appropriate equipment and required personnel, available by contract or other approved means as described in § 154.1028, to protect fish and wildlife and sensitive environments which fall within the distances calculated using the methods outlined in this paragraph as follows:

(A) Identify the appropriate equipment and required personnel to protect all fish and wildlife and sensitive environments in the ACP for the distances, as calculated in paragraph (b)(4)(iii)(B) of this section, that the persistent oils, non-persistent oils, or non-petroleum oils are likely to travel in the noted geographic area(s) and number of days listed in Table 2 of appendix C of this part;

(B) Calculate the distances required by paragraph (b)(4)(iii)(A) of this section by selecting one of the methods described in this paragraph;

(*1*) Distances may be calculated as follows:

(*i*) For persistent oils and non-petroleum oils discharged into non-tidal waters, the distance from the facility reached in 48 hours at maximum current.

(*ii*) For persistent and non-petroleum oils discharged into tidal waters, 15 miles from the facility down current during ebb tide and to the point of maximum tidal influence or 15 miles, whichever is less, during flood tide.

(*iii*) For non-persistent oils discharged into non-tidal waters, the distance from the facility reached in 24 hours at maximum current.

(*iv*) For non-persistent oils discharged into tidal waters, 5 miles from the facility down current during ebb tide and to the point of maximum tidal influence or 5 miles, whichever is less, during flood tide.

(*2*) A spill trajectory or model may be substituted for the distances calculated under paragraph (b)(4)(iii)(B)(*1*) *of this section.* The spill trajectory or model must be acceptable to the COTP.

(*3*) The procedures contained in the Environmental Protection's Agency's regulations on oil pollution prevention for non-transportation-related onshore facilities at 40 CFR part 112, appendix C, Attachment C–III may be substituted for the distances listed in non-tidal and tidal waters; and

(C) Based on historical information or a spill trajectory or model, the COTP may require the additional fish and wildlife and sensitive environments also be protected.

(5) *Disposal Plan.* This subsection must describe any actions to be taken or procedures to be used to ensure that all recovered oil and oil contaminated debris produced as a result of any discharge are disposed according to Federal, state, or local requirements.

(c) *Training and exercises.* This section must be divided into the following two subsections:

(1) *Training procedures.* This subsection must describe the training procedures and programs of the facility owner or operator to meet the requirements in § 154.1050.

(2) *Exercise procedures.* This subsection must describe the exercise program to be carried out by the facility owner or operator to meet the requirements in § 154.1055.

(d) *Plan review and update procedures.* This section must address the procedures to be followed by the facility owner or operator to meet the requirements of § 154.1065 and the procedures to be followed for any post-discharge review of the plan to evaluate and validate its effectiveness.

(e) *Appendices.* This section of the response plan must include the appendices described in this paragraph.

(1) *Facility-specific information.* This appendix must contain a description of the facility's principal characteristics.

(i) There must be a physical description of the facility including a plan of the facility showing the mooring areas, transfer locations, control stations, locations of safety equipment, and the location and capacities of all piping and storage tanks.

(ii) The appendix must identify the sizes, types, and number of vessels that the facility can transfer oil to or from simultaneously.

(iii) The appendix must identify the first valve(s) on facility piping separating the transportation-related portion of the facility from the non-transportation-related portion of the facility, if any. For piping leading to a manifold located on a dock serving tank vessels, this valve is the first valve inside the secondary containment required by 40 CFR part 112.

(iv) The appendix must contain information on the oil(s) and hazardous material handled, stored, or transported at the facility in bulk. A material safety data sheet meeting the requirements of 29 CFR 1910.1200, 33 CFR 154.310(a)(5) or an equivalent will meet this requirement. This information can be maintained separately providing it is readily available and the appendix identifies its location. This information must include—

(A) The generic or chemical name;

(B) A description of the appearance and odor;

(C) The physical and chemical characteristics;

(D) The hazards involved in handling the oil(s) and hazardous materials. This shall include hazards likely to be encountered if the oil(s) and hazardous materials come in contact as a result of a discharge; and

(E) A list of firefighting procedures and extinguishing agents effective with fires involving the oil(s) and hazardous materials.

(v) The appendix may contain any other information which the facility owner or operator determines to be pertinent to an oil spill response.

(2) *List of contacts.* This appendix must include information on 24-hour contact of key individuals and organizations. If more appropriate, this information may be specified in a geographic-specific appendix. The list must include—

(i) The primary and alternate qualified individual(s) for the facility;

(ii) The contact(s) identified under paragraph (b)(3)(iv) of this section for activation of the response resources; and

(iii) Appropriate Federal, State, and local officials.

(3) *Equipment list and records.* This appendix must include the information specified in this paragraph.

(i) The appendix must contain a list of equipment and facility personnel required to respond to an average most probable discharge, as defined in § 154.1020. The appendix must also list the location of the equipment.

(ii) The appendix must contain a detailed listing of all the major equipment identified in the plan as belonging to an oil spill removal organization(s) that is available, by contract or other approved means as described in § 154.1028(a), to respond to a maximum most probable or worst case discharge, as defined in § 154.1020. The detailed listing of all major equipment may be located in a separate document referenced by the plan. Either the appendix or the separate document referenced in the plan must provide the location of the major response equipment.

(iii) It is not necessary to list response equipment from oil spill removal organization(s) when the organization has been classified by the Coast Guard and their capacity has been determined to equal or exceed the response capability needed by the facility. For oil spill removal organization(s) classification by the Coast Guard, the classified must be noted in this section of the plan. When it is necessary for the appendix to contain a listing of response equipment, it shall include all of the following items that are identified in the response plan: Skimmers; booms; dispersant application, in-situ burning, bioremediation equipment and supplies, and other equipment used to apply other chemical agents on the NCP Product Schedule (if applicable); communications, firefighting, and beach cleaning equipment; boats and motors; disposal and storage equipment; and heavy equipment. The list must include for each piece of equipment—

(A) The type, make, model, and year of manufacture listed on the nameplate of the equipment;

(B) For oil recovery devices, the effective daily recovery rate, as determined using section 6 of Appendix C of this part;

(C) For containment boom, the overall boom height (draft and freeboard) and type of end connectors;

(D) The spill scenario in which the equipment will be used for or which it is contracted;

(E) The total daily capacity for storage and disposal of recovered oil;

(F) For communication equipment, the type and amount of equipment intended for use during response activities. Where applicable, the primary and secondary radio frequencies must be specified.

(G) Location of the equipment; and

(H) The date of the last inspection by the oil spill removal organization(s).

(4) *Communications plan.* This appendix must describe the primary and alternate method of communication during discharges, including communications at the facility and at remote locations within the areas covered by the response plan. The appendix may refer to additional communications packages provided by the oil spill removal organization. This may reference another existing plan or document.

(5) *Site-specific safety and health plan.* This appendix must describe the safety and health plan to be implemented for any response location(s). It must provide as much detailed information as is practicable in advance of an actual discharge. This appendix may reference another existing plan requiring under 29 CFR 1910.120.

(6) *List of acronyms and definitions.* This appendix must list all acronyms used in the response plan including any terms or acronyms used by Federal, State, or local governments and any operational terms commonly used at the facility. This appendix must include all definitions that are critical to understanding the response plan.

§ 154.1040 Specific requirements for facilities that could reasonably be expected to cause substantial harm to the environment.

(a) The owner or operator of a facility that, under § 154.1015, could reasonably be expected to cause substantial harm to the environment, shall submit a response plan that meets the requirements of § 154.1035, except as modified by this section.

(b) The facility's response activities section of the response plan need not list the facility or corporate organizational structure that will be used to manage the response, as required by § 154.1035(b)(3)(iii).

(c) The owner or operator of a facility must ensure the availability of response resources required to be identified in § 154.1035(b)(3)(iv) by contract or other approved means described in § 154.1028.

(d) A facility owner or operator must have at least 200 feet of containment boom and the means of deploying and anchoring the boom available at the spill site within 1 hour of the detection of a spill to respond to the average most probable discharge in lieu of the quantity of containment boom specified in § 154.1045(c)(1). Based on site-specific or facility-specific information, the COTP may specify that additional quantities of containment boom are available within one hour. In addition, there must be adequate sorbent material for initial response to an average most probable discharge. If the facility is a fixed facility, the containment boom and sorbent material must be located at the facility. If the facility is a mobile facility, the containment boom and sorbent must be available locally and be at the site of the discharge within 1 hour of its discovery.

§ 154.1041 Specific response information to be maintained on mobile MTR facilities.

(a) Each mobile MTR facility must carry the following information as contained in the response plan when performing transfer operations:

(1) A description of response activities for a discharge which may occur during transfer operations. This may be a narrative description or a list of procedures to be followed in the event of a discharge.

(2) Identity of response resources to respond to a discharge from the mobile MTR facility.

(3) List of the appropriate persons and agencies (including the telephone numbers) to be contacted in regard to a discharge and its handling, including the National Response Center.

(b) The owner or operator of the mobile facility must also retain the information in this paragraph at the principal place of business.

§ 154.1045 Response plan development and evaluation criteria for facilities that handle, store, or transport Group I through Group IV petroleum oils.

(a) The owner or operator of a facility that handles, stores, or transports Group I through Group IV petroleum oils shall use the criteria in this section to evaluate response resources identified in the response plan for the specified operating environment.

(1) The criteria in Table 1 of appendix C of this part are to be used solely for identification of appropriate equipment in a response plan. These criteria reflect conditions used for planning purposes to select mechanical response equipment and are not conditions that would limit response actions or affect normal facility operations.

(2) The response resources must be evaluated considering limitations for the COTP zones in which the facility operates, including but not limited to—

(i) Ice conditions;

(ii) Debris;

(iii) Temperature ranges;

(iv) Weather-related visibility; and

(v) Other appropriate environmental conditions as determined by the COTP.

(3) The COTP may reclassify a specific body of water or location within the COTP zone. Any reclassifications will be identified by the COTP in the applicable ACP. Reclassifications may be to—

(i) A more stringent operating environment if the prevailing wave conditions exceed the significant wave height criteria during more than 35 percent of the year; or

(ii) A less stringent operating environment if the prevailing wave conditions do not exceed the significant wave height criteria for the less stringent operating environment during more than 35 percent of the year.

(b) Response equipment must—

(1) Meet or exceed the operating criteria listed in Table 1 of appendix C of this part;

(2) Function in the applicable operating environment; and

(3) Be appropriate for the petroleum oil carried.

(c) The response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must identify response resources that are available, by contract or other approved means as described in § 154.1028(a)(1)(4), to respond to the facility's average most probable discharge. The response resources must include, at a minimum—

(1) 1,000 feet of containment boom or two times the length of the largest vessel

that regularly conducts petroleum oil transfers to or from the facility, whichever is greater, and the means of deploying and anchoring the boom available at the spill site within 1 hour of the detection of a spill; and

(2) Oil recovery devices and recovered oil storage capacity capable of being at the spill site within 2 hours of the discovery of a petroleum oil discharge from a facility.

(d) The response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must identify response resources that are available, by contract or other approved means as described in § 154.1028(a)(1)(4), to respond to a discharge up to the facility's maximum most probable discharge volume.

(1) The response resources must include sufficient containment boom, oil recovery devices, and storage capacity for any recovery of up to the maximum most probable discharge planning volume, as contained in appendix C.

(2) The response resources must be appropriate for each group of petroleum oil identified in § 154.1020 that is handled, stored, or transported by the facility.

(3) These response resources must be positioned such that they can arrive at the scene of a discharge within the following specified times:

(i) The equipment identified in paragraphs (c)(1) and (c)(2) of this section or in § 154.1040(d) must arrive within the times specified in those paragraphs or that section, as appropriate.

(ii) In higher volume port areas and the Great Lakes, response resources must be capable of arriving on scene within 6 hours of the discovery of an petroleum oil discharge from a facility.

(iii) In all other locations, response resources must be capable of arriving on scene within 12 hours of the discovery of a petroleum oil discharge from a facility.

(4) The COTP may determine that mobilizing response resources to an area beyond the response times indicated in this paragraph invalidates the response plan. In this event, the COTP may impose additional operational restrictions (e.g., limitations on the number of transfers at a facility), or, at the COTP's discretion, the facility may operate with temporarily modified response plan development and evaluation criteria (e.g., modified response times, alternate response resources, etc.).

(e) The response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must identify the response resources that are available, by contract or other approved means as described in § 154.1028(a)(1)(4), to respond to the worst case discharge volume of petroleum oil to the maximum extent practicable.

(1) The location of these response resources must be suitable to meet the response times identified in paragraph (f) of this section for the applicable geographic area(s) of operation and response tier.

(2) The response resources must be appropriate for—

(i) The volume of the facility's worst case discharge;

(ii) Group(s) of petroleum oil as identified in § 154.1020 that are handled, stored, or transported by the facility; and

(iii) The geographic area(s) in which the facility operates.

(3) The response resources must include sufficient boom, oil recovery devices, and storage capacity to recover the worst case discharge planning volumes.

(4) The guidelines in appendix C of this part must be used for calculating the quantity of response resources required to respond at each tier to the worst case discharge to the maximum extent practicable.

(5) When determining response resources necessary to meet the requirements of this section, a portion of those resources must be capable of use in close-to-shore response activities in shallow water. The following percentages of the response equipment identified for the applicable geographic area must be capable of operating in waters of 6 feet or less depth.

(i) Offshore—10 percent.

(ii) Nearshore/inland/Great Lakes/rivers and canals—20 percent.

(6) The COTP may determine that mobilizing response resources to an area beyond the response times indicated in this paragraph invalidates the response plan. In this event, the COTP may impose additional operational restrictions (e.g., limitations on the number of transfers at a facility), or, at the COTP's discretion, the facility may be permitted to operate with temporarily modified response plan development and evaluation criteria (e.g., modified response times, alternate response resources, etc.).

(f) Response equipment identified in a response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must be capable of arriving on scene within the times specified in this paragraph for the applicable response tier in a higher volume port area, Great Lakes, and in other areas. Response times for these tiers from the time of discovery of a discharge are—

	Tier 1 (hrs.)	Tier 2 (hrs.)	Tier 3 (hrs.)
Higher volume port area (except for a TAPAA facility located in Prince William Sound, see § 154.1135)	6	30	54
Great Lakes	12	36	60
All other river and canal, inland, nearshore, and offshore areas ...	12	36	60

(g) For the purposes of arranging for response resources for a facility that handles, stores, or transports Group I through Group IV petroleum oils, by contract or other approved means as described in § 154.1028(a)(1)–(4), response equipment identified for Tier 1 plan credit must be capable of being mobilized and en route to the scene of a discharge within 2 hours of notification. The notification procedures identified in the plan must provide for notification and authorization of mobilization of identified Tier 1 response resources—

(1) Either directly or through the qualified individual; and

(2) Within 30 minutes of a discovery of a discharge or substantial threat of discharge.

(h) Response resources identified for Tier 2 and Tier 3 plan credit must be capable of arriving on scene within the time specified for the applicable tier.

(i) The response plan for a facility that is located in any environment with year-round preapproval for use of dispersants and that handles, stores, or transports Group II or III persistent petroleum oils may request a credit for up to 25 percent of the on-water recovery capability set forth by this part. To receive this credit, the facility owner or operator must identify in the plan and ensure, by contract or other approved means as described in § 154.1028(a)(1)–(4), the availability of specified resources to apply the dispersants and to monitor their effectiveness. The extent of the credit will be based on the volumes of the dispersant available to sustain operations at the manufacturers' recommend dosage rates. Resources identified for plan credit should be capable of being on scene within 12 hours of a discovery of a discharge. Identification of these resources does not imply that they will be authorized for use during a spill response will be governed by the provisions of the NCP and the applicable ACP.

(j) A response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must identify response resources with firefighting capability. The owner or operator of a facility that does not have adequate firefighting resources located at the facility or that can not rely on sufficient local firefighting resources must identify and ensure, by contract or other approved means as described in § 154.1028(a)(1)–(4), the availability of adequate firefighting resources. The response plan must also identify an individual located at the facility to work with the fire department for petroleum oil fires. This individual shall also verify that sufficient well-trained firefighting resources are available within a reasonable time to respond to a worst case discharge. The individual may be the qualified individual as defined in § 154.1020 and identified in the response plan or another appropriate individual located at the facility.

(k) The response plan for a facility that handles, stores, or transports Groups I through IV petroleum oils must identify equipment and required personnel available, by contract or other approved means as described in § 154.1028(a) (1)–(4), to protect fish and wildlife and sensitive environments.

(1) Except as set out in paragraph (k)(2) of this section, the identified response resources must include the quantities of boom sufficient to protect fish and wildlife and sensitive environments as required by § 154.1035(b)(4).

(2) The resources and response methods identified in a facility response plan must be consistent with the required resources and response methods to be used in fish and wildlife and sensitive environments, contained in the appropriate ACP. Facility owners or operators shall ensure that their response plans are in accordance with the ACP in effect 6 months prior to initial plan submission or the annual plan review required under § 154.1065(a). Facility owners or operators are not required to, but may at their option, conform to an ACP which is less than 6 months old at the time of plan submission.

(l) The response plan for a facility that handles, stores, or transports Groups I through IV petroleum oils must identify an oil spill removal organization(s) with response resources that are available, by contract or other approved means as described in § 154.1028(a) (1)–(4), to effect a shoreline cleanup operation commensurate with the quantity of emulsified petroleum oil to be planned for in shoreline cleanup operations.

(1) Except as required in paragraph (l)(2) of this section, the shoreline cleanup response resources required must be determined as described in appendix C of this part.

(2) The resources and response methods identified in a facility response plan must be consistent with the required shoreline cleanup resources and methods contained in the appropriate ACP. Facility owners or operators shall ensure that their response plans are in accordance with the ACP in effect 6 months prior to initial plan submission or the annual plan review required under § 154.1065(a). Facility owners or operators are not required to, but may at their option, conform to an ACP which is less than 6 months old at the time of plan submission.

(m) Appendix C of this part describes the procedures to determine the maximum extent practicable quantity of response resources that must be identified and available, by contract or other approved means as described in § 154.1028(a) (1)–(4), for the maximum most probable discharge volume, and for each worst case discharge response tier.

(1) Included in appendix C of this part is a cap that recognizes the practical and technical limits of response capabilities that an individual facility owner or operator can be expected to contract for in advance.

(2) Table 5 in appendix C of this part lists the caps that apply in February 18, 1993, and February 18, 1998. Depending on the quantity and type of petroleum oil handled by the facility and the facility's geographic area of operations, the resource capability caps in this table may be reached. The owner or operator of a facility whose estimated recovery capacity exceeds the applicable contracting caps in Table 5 shall identify sources of additional equipment equal to twice the cap listed in Tiers 1, 2, and 3 or the amount necessary to reach the calculated planning volume, whichever is lower. The identified resources must be capable of arriving on scene not later than the Tier 1, 2, and 3 response times in this section. No contract is required. While general listings of available response equipment may be used to identify additional sources, a response plan must identify the specific sources, locations, and quantities of equipment that a facility owner or operator has considered in his or her planning. When listing Coast Guard classified oil spill removal organization(s) which have sufficient removal capacity to recover the volume above the response capability cap for the specific facility, as specified in Table 5 in appendix C of this part, it is not necessary to list specific quantities of equipment.

(n) The Coast Guard will initiate a review of cap increases and other requirements contained within this subpart that are scheduled to be phased in over time. Any changes in the requirements of this section will occur through a public notice and comment process.

(1) During this review, the Coast Guard will determine if the scheduled increase for February 1998 remains practicable, and will also establish a specific cap for 2003. The review will include but is not limited to—

(i) Increase in skimming efficiencies and design technology;

(ii) Oil tracking technology;

(iii) High rate response techniques;

(iv) Other applicable response technologies; and

(v) Increases in the availability of private response resources.

(2) All scheduled future requirements will take effect unless the Coast Guard determines that they are not practicable. Scheduled changes will be effective in February 1998 and 2003 unless the review of the additional requirements has not been completed by the Coast Guard. If this occurs, the additional requirements will not be effective until 90 days after publication of a **Federal Register** notice with the results of the review.

§ 154.1047 Response plan development and evaluation criteria for facilities that handle, store, or transport Group V petroleum oils.

(a) An owner or operator of a facility that handles, stores, or transports Group V petroleum oils must provide information in his or her response plan that identifies—

(1) Procedures and strategies for responding to a worst case discharge of Group V petroleum oils to the maximum extent practicable; and

(2) Sources of the equipment and supplies necessary to locate, recover, and mitigate such a discharge.

(b) An owner or operator of a facility that handles, stores, or transports Group V petroleum oil must ensure that any equipment identified in a response plan is capable of operating in the conditions expected in the geographic area(s) in which the facility operates using the criteria in Table 1 of appendix C of this part. When evaluating the operability of equipment, the facility owner or operator must consider limitations that are identified in the ACPs for the COTP

zones in which the facility operates, including—

(1) Ice conditions;

(2) Debris;

(3) Temperature ranges; and

(4) Weather-related visibility.

(c) The owner or operator of a facility that handles, stores, or transports Group V petroleum oil must identify the response resources that are available by contract or other approved means as described in § 154.1028. The equipment identified in a response plan must include—

(1) Sonar, sampling equipment, or other methods for locating the petroleum oil on the bottom or suspended in the water column;

(2) Containment boom, sorbent boom, silt curtains, or other methods for containing the petroleum oil that may remain floating on the surface or to reduce spreading on the bottom;

(3) Dredges, pumps, or other equipment necessary to recover petroleum oil from the bottom and shoreline;

(4) Equipment necessary to assess the impact of such discharges; and

(5) Other appropriate equipment necessary to respond to a discharge involving the type of petroleum oil handled, stored, or transported.

(d) Response resources identified in a response plan for a facility that handles, stores, or transports Group V petroleum oils under paragraph (c) of this section must be capable of being at the spill site within 24 hours of discovery of a discharge.

(e) A response plan for a facility that handles, stores, or transports Group V petroleum oils must identify response resources with firefighting capability. The owner or operator of a facility that does not have adequate firefighting resources located at the facility or that can not rely on sufficient local firefighting resources must identity and ensure, by contract or other approved means as described in § 154.1028, the availability of adequate firefighting resources. The response plan must also identify an individual located at the facility to work with the fire department for petroleum oil fires. This individual shall also verify that sufficient well-trained firefighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual as defined in § 154.1020 and identified in the response plan or another appropriate individual located at the facility.

§ 154.1050 Training.

(a) A response plan submitted to meet the requirements of §§ 154.1035 or 154.1040, as appropriate, must identify the training to be provided to each individual with responsibilities under the plan. A facility owner or operator must identify the method to be used for training any volunteers or casual laborers used during a response to comply with the requirements of 29 CFR 1910.120.

(b) A facility owner or operator shall ensure the maintenance of records sufficient to document training of facility personnel; and shall make them available for inspection upon request by the U.S. Coast Guard. Records for facility personnel must be maintained at the facility for 3 years.

(c) Where applicable, a facility owner or operator shall ensure that an oil spill removal organization identified in a response plan to meet the requirements of this subpart maintains records sufficient to document training for the organization's personnel and shall make them available for inspection upon request by the facility's management personnel, the qualified individual, and U.S. Coast Guard. Records must be maintained for 3 years following completion of training.

(d) The facility owner or operator remains responsible for ensuring that all private response personnel are trained to meet the Occupational Safety and Health Administration (OSHA) standards for emergency response operations in 29 CFR 1910.120.

§ 154.1055 Exercises.

(a) A response plan submitted by an owner or operator of an MTR facility must include an exercise program containing both announced and unannounced exercises. The following are the minimum exercise requirements for facilities covered by this subpart:

(1) Qualified individual notification exercises (quarterly).

(2) Spill management team tabletop exercises (annually). In a 3-year period, at least one of these exercises must include a worst case discharge scenario.

(3) Equipment deployment exercises:

(i) Semiannually for facility owned and operated equipment.

(ii) Annually for oil spill removal organization equipment.

(4) Emergency procedures exercises (optional).

(5) Annually, at least one of the exercises listed in § 154.1055(a)(2) through (4) must be unannounced. Unannounced means the personnel participating in the exercise must not be advised in advance, of the exact date, time and scenario of the exercise.

(6) The facility owner or operator shall design the exercise program so that all components of the response plan are exercised at least once every 3 years. All of the components do not have to be exercised at one time; they may be exercised over the 3-year period through the required exercises or through an Area exercise.

(b) A facility owner or operator shall participate in unannounced exercises, as directed by the COTP. The objectives of the unannounced exercises will be to test notifications and equipment deployment for response to the average most probable discharge. After participating in an unannounced exercise directed by a COTP, the owner or operator will not be required to participate in another COTP initiated unannounced exercise for at least 3 years from the date of the exercise.

(c) A facility owner or operator shall participate in Area exercises as directed by the applicable On-Scene Coordinator. The Area exercises will involve equipment deployment to respond to the spill scenario developed by the Exercise Design Team, of which the facility owner or operator will be a member. After participating in an Area exercise, a facility owner or operator will not be required to participate in another Area exercise for at least 6 years.

(d) The facility owner or operator shall ensure that adequate records of all required exercises are maintained at the facility for 3 years. Records shall be made available to the Coast Guard upon request.

(e) The response plan submitted to meet the requirements of this subpart must specify the planned exercise program. The plan must detail the exercise program, including the types of exercises, frequency, scope, objectives and the scheme for exercising the entire response plan every 3 years.

(f) Compliance with the National Preparedness for Response Exercise Program (PREP) Guidelines will satisfy the facility response plan exercise requirements.

§ 154.1057 Inspection and maintenance of response resources.

(a) A facility owner or operator required to submit a response plan under this part must ensure that—

(1) Containment booms, skimmers, vessels, and other major equipment listed or referenced in the plan are periodically inspected and maintained in good operating condition, in accordance with manufacturer's recommendations, and best commercial practices; and

(2) All inspection and maintenance is documented and that these records are maintained for 3 years.

(b) For equipment which must be inspected and maintained under this section the Coast Guard may—

(1) Verify that the equipment inventories exist as represented;

(2) Verify the existences of records required under this section;

(3) Verify that the records of inspection and maintenance reflect the actual condition of any equipment listed or referenced; and

(4) Inspect and require operational tests of equipment.

(c) This section does not apply to containment booms, skimmers, vessels, and other major equipment listed or referenced in the plan and ensured available from an oil spill removal organization through the written consent required under § 154.1028(a)(5).

§ 154.1060 Submission and approval procedures.

(a) The owner or operator of a facility to which this subpart applies shall submit one copy of a facility response plan meeting the requirements of this subpart to the COTP for initial review and, if appropriate, approval.

(b) The owner or operator of a facility to which this subpart applies shall include a statement certifying that the plan meets the applicable requirements of subparts F, G, H, and I of this part, as appropriate.

(c) For an MTR facility that is located in the inland response zone where the EPA Regional Administrator is the predesignated Federal On-Scene Coordinator, the COTP may consult with the EPA Federal On-Scene Coordinator prior to any final approval.

(d) For an MTR facility identified in § 154.1015(c) of this subpart that is also required to prepare a response plan under 40 CFR part 112, if the COTP determines that the plan meets all applicable requirements and the EPA Regional Administrator raises no objection to the response plan contents, the COTP will notify the facility owner or operator in writing that the plan is approved.

(e) The plan will be valid for a period of up to 5 years. The facility owner or operator must resubmit an updated plan every 5 years as follows:

(1) For facilities identified in only § 154.1015(b) of this subpart, the 5-year period will commence on the date the plan is submitted to the COTP.

(2) For facilities identified in § 154.1015(c) of this subpart, the 5-year period will commence on the date the COTP approves the plan.

(3) All resubmitted response plans shall be accompanied by a cover letter containing a detailed listing of all revisions to the response plan.

(f) For an MTR facility identified in § 154.1015(c)(2) the COTP will notify the facility owner or operator in writing that the plan is approved.

(g) If a COTP determines that a plan does not meet the requirements of this subpart either upon initial submission or upon 5-year resubmission, the COTP will return the plan to the facility owner or operator along with an explanation of the response plan's deficiencies. The owner or operator must correct any deficiencies in accordance with § 154.1070 and return the plan to the COTP within the time specified by the COTP in the letter describing the deficiencies.

(h) The facility owner or operator and the qualified individual and the alternative qualified individual shall each maintain a copy of the most current response plan submitted to the COTP. One copy must be maintained at the facility in a position where the plan is readily available to persons in charge of conducting transfer operations.

§ 154.1065 Plan review and revision procedures.

(a) A facility owner or operator must review his or her response plan(s) annually. This review shall incorporate any revisions to the plan, including listings of fish and wildlife and sensitive environments identified in the ACP in effect 6 months prior to plan review.

(1) For an MTR facility identified in § 154.1015(c) of this subpart as a "significant and substantial harm facility," this review must occur within 1 month of the anniversary date of COTP approval of the plan. For an MTR facility identified in § 154.1015(b) of this subpart, as a "substantial harm facility" this review must occur within 1 month of the anniversary date of submission of the plan to the COTP.

(2) The facility owner or operator shall submit any revision(s) to the response plan to the COTP and all other holders of the response plan for information or approval, as appropriate.

(i) Along with the revisions, the facility owner or operator shall submit a cover letter containing a detailed listing of all revisions to the response plan.

(ii) If no revisions are required, the facility owner or operator shall indicate the completion of the annual review on the record of changes page.

(iii) The COTP will review the revision(s) submitted by the owner or operator and will give written notice to the owner or operator of any COTP objection(s) to the proposed revisions within 30 days of the date the revision(s) were submitted to the COTP. The revisions shall become effective not later than 30 days from their submission to the COTP unless the COTP indicates otherwise in writing as provided in this paragraph. If the COTP indicates that the revision(s) need to be modified before implementation, the owner or operator will modify the revision(s) within the time period set by the COTP.

(3) Any required revisions must be entered in the plan and noted on the record of changes page.

(b) The facility owner or operator shall submit revisions to a previously submitted or approved plan to the COTP and all other holders of the response plan for information or approval within 30 days, whenever there is—

(1) A change in the facility's configuration that significantly affects the information included in the response plan;

(2) A change in the type of oil (petroleum oil group) handled, stored, or transported that affects the required response resources;

(3) A change in the name(s) or capabilities of the oil spill removal organization required by § 154.1045;

(4) A change in the facility's emergency response procedures;

(5) A change in the facility's operating area that includes ports or geographic area(s) not covered by the previously approved plan. A facility may not operate in an area not covered in a plan previously submitted or approved, as appropriate, unless the revised plan is approved or interim operating approval is received under § 154.1025; or

(6) Any other changes that significantly affect the implementation of the plan.

(c) Except as required in paragraph (b) of this section, revisions to personnel and telephone number lists included in the response plan do not require COTP approval. The COTP and all other holders of the response plan shall be advised of these revisions and provided a copy of the revisions as they occur.

(d) The COTP may require a facility owner or operator to revise a response plan at any time as a result of a compliance inspection if the COTP determines that the response plan does not meet the requirements of this subpart or as a result of inadequacies noted in the response plan during an actual pollution incident at the facility.

§ 154.1070 Deficiencies.

(a) The cognizant COTP will notify the facility owner or operator in writing of any deficiencies noted during review of a response plan, drills observed by the Coast Guard, or inspection of equipment or records maintained in connection with this subpart.

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(b) Deficiencies shall be corrected within the time period specified in the written notice provided by the COTP. The facility owner or operator who disagrees with a deficiency issued by the COTP may appeal the deficiency to the cognizant COTP within 7 days or the time specified by the COTP to correct the deficiency, whichever is less. This time commences from the date of receipt of the COTP notice. The owner or operator may request a stay from the COTP decision pending appeal in accordance with § 154.1075.

(c) If the facility owner or operator fails to correct any deficiencies or submit a written appeal, the COTP may invoke the provisions of § 154.1025 prohibiting the facility from storing, handling, or transporting oil.

§ 154.1075 Appeal process.

(a) Any owner or operator of a facility who desires to appeal the classification that a facility could reasonably be expected to cause substantial harm or significant and substantial harm to the environment, shall submit a written request to the cognizant COTP requesting review and reclassification by the COTP. The facility owner or operator shall identify those factors to be considered by the COTP. The factors to be considered by the COTP regarding reclassification of a facility include, but are not limited to, those listed in § 154.1016(b). After considering all relevant material presented by the facility owner or operator and any additional material available to the COTP, the COTP will notify the facility owner or operator of the decision on the reclassification of the facility.

(b) Any facility owner or operator directly affected by an initial determination or action of the COTP may submit a written request to the cognizant COTP requesting review and reconsideration of the COTP's decision or action. The facility owner or operator shall identify those factors to be considered by the COTP in making his or her decision on reconsideration.

(c) Within 10 days of the COTP's decision under paragraph (b) of this section, the facility owner or operator may appeal the decision of the COTP to the District Commander. This appeal shall be made in writing via the cognizant COTP to the District Commander of the district in which the office of the COTP is located.

(d) Within 30 days of the District Commander's decision, the facility owner or operator may formally appeal the decision of the District Commander. This appeal shall be submitted in writing to Commandant (G-MEP) via the District Commander.

(e) When considering an appeal, the COTP, District Commander, or Commandant may stay the effect of the decision or action being appealed pending the determination of the appeal.

3. Subpart G is revised to read as follows:

Subpart G—Additional Response Plan Requirements for a Trans Alaska Pipeline Authorization Act (TAPAA) Facility Operating in Prince William Sound, Alaska

§ 154.1110 Purpose and applicability.
154.1115 Definitions.
154.1120 Operating restrictions and interim operating authorization.
154.1125 Additional response plan requirements.
154.1130 Requirements for prepositioned response equipment.
154.1135 Response plan development and evaluation criteria.
154.1140 TAPAA facility contracting with a vessel.

Subpart G—Additional Response Plan Requirements for a Trans-Alaska Pipeline Authorization Act (TAPAA) Facility Operating in Prince William Sound, Alaska

§ 154.1110 Purpose and applicability.

(a) This subpart establishes oil spill response planning requirements for a facility permitted under the Tans-Alaska Pipeline Authorization Act (TAPAA), in addition to the requirements of subpart F of this part. The requirements of this subpart are intended for use in developing response plans and identifying response resources during the planning process. They are not performance standards.

(b) The information required by this subpart must be included in the Prince William Sound facility-specific appendix to the facility response plan required by subpart F of this part.

§ 154.1115 Definitions.

In addition to the definitions in this section, the definitions in §§ 154.105 and 154.1020 apply to this subpart. As used in this subpart—

Crude oil means any liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation, and includes crude oil from which certain distillate fractions may have been removed, and crude oil to which certain distillate fractions may have been added.

Non-crude oil means any oil other than crude oil.

Prince William Sound means all State and Federal waters within Prince William Sound, Alaska, including the approach to Hinchinbrook Entrance out to and encompassing Seal Rocks.

§ 154.1120 Operating restrictions and interim operating authorization.

(a) The owner or operator of a TAPAA facility may not operate in Prince William Sound, Alaska, unless the requirements of this subpart as well as § 154.1025 have been met. The owner or operator of a TAPAA facility shall certify to the COTP that he or she has provided, through an oil spill removal organization required by § 154.1125, the necessary response resources to remove, to the maximum extend practicable, a worst case discharge or a discharge of 200,000 barrels of oil, whichever is grater, in Prince William Sound.

(b) Coast Guard approval of a TAPAA facility response plan is effective only so long as the appropriate Regional Citizens Advisory Council(s) is funded pursuant to the requirements of section 5002(k) of the Oil Pollution Act of 1990 (Pub. L. 101–380; 104 Stat. 484, 550).

§ 154.1125 Additional response plan requirements.

(a) The owner or operator of a TAPAA facility shall include the following information in the Prince William Sound appendix to the response plan required by subpart F of this part:

(1) *Oil spill removal organization.* Identification of an oil spill removal organization that shall—

(i) Perform response activities;

(ii) Provide oil spill removal and containment training, including training in the operation of prepositioned equipment for personnel, including local residents and fishermen, from the following locations in Prince William Sound:

(A) Valdez;

(B) Tatitlek;

(C) Cordova;

(D) Whittier;

(E) Chenega; and

(F) Fish hatcheries located at Port San Juan, Main Bay, Esther Island, Cannery Creek, and Solomon Gulch.

(iii) Provide a plan for training, in addition to the personnel listed in paragraph (a)(1)(ii) of this section, sufficient numbers of trained personnel to remove, to the maximum extent practicable, a worst case discharge; and

(iv) Address the responsibilities required in § 154.1035(b)(3)(iii).

(2) *Exercises.* Identification of exercise procedures that must—

(i) Provide for two exercises of the oil spill removal organization each year that test the ability of the prepositioned equipment and trained personnel required under this subpart to perform effectively;

(ii) Consist of both announced and unannounced drills; and

(iii) Include design(s) for exercises that test either the entire appendix or individual components(s).

(3) *Testing, inspection, and certification.* Identification of a testing, inspecting, and certification program for the prepositioned response equipment required in § 154.1130 that must provide for—

(i) Annual testing and equipment inspection in accordance with the manufacturer's recommended procedures, to include—

(A) Start-up and running under load all electrical motors, pumps, power packs, air compressors, internal combustion engines, and oil recovery devices; and

(B) Removal for inspection of no less than one-third of required boom from storage annually, such that all boom will have been removed and inspected within a period of 3 years; and

(ii) Records of equipment tests and inspection.

(iii) Use of an independent entity to certify that the equipment is on-site and in good operating condition and that required tests and inspection have been preformed. The independent entity must have appropriate training and expertise to provide this certification.

(4) *Prepositioned response equipment.* Identification and location of the prepositioned response equipment required in § 154.1130 including the make, model, and effective daily recovery rate of each oil recovery resource.

(b) The owner or operator of a TAPAA facility shall submit to the COTP a schedule for the training and drills required by the geographic-specific appendix for Prince William Sound for the following calendar year.

(c) All records required by this section must be available for inspection by the COTP.

§ 154.1130 Requirements for prepositioned response equipment.

The owner or operator of a TAPAA facility shall provide the following prepositioned response equipment, located within Prince William Sound, in addition to that required by §§ 154.1035, 154.1045, or 154.1050:

(a) On-water recovery equipment with a minimum effective daily recovery rate of 30,000 barrels capable of being a scene within 2 hours of notification of a discharge.

(b) On-water storage capacity of 100,000 barrels for recovered oily material capable of being on scene within 2 hours of notification of a discharge.

(c) On-water recovery equipment with a minimum effective daily recovery rate of 40,000 barrels capable of being on scene within 18 hours of notification of discharge.

(d) On-water storage capacity of 300,000 barrels for recovered oily material capable of being on scene within 12 hours of notification of a discharge.

(e) On-water recovery devices and storage equipment located in communities at strategic locations.

(f) Equipment as identified below, for the locations identified in § 154.1125(a)(1)(ii) sufficient for the protection of the environment in these locations:

(1) Boom appropriate for the specific locations.

(2) Sufficient boats to deploy boom and sorbents.

(3) Sorbent materials.

(4) Personnel protective clothing and equipment.

(5) Survival equipment.

(6) First aid supplies.

(7) Buckets, shovels, and various other tools.

(8) Decontamination equipment.

(9) Shoreline cleanup equipment.

(10) Mooring equipment.

(11) Anchored buoys at appropriate locations to facilitate the positioning of defensive boom.

(12) Other appropriate removal equipment for the protection of the environment as identified by the COTP.

§ 154.1135 Response plan development and evaluation criteria.

The following response times must be used in determining the on scene arrival time in Prince William Sound for the response resources required by § 154.1045:

	Tier 1 (hrs.)	Tier 2 (hrs.)	tier 3 (hrs.)
Prince William Sound Area ...	12	24	36

§ 154.1140 TAPAA facility contracting with a vessel.

The owner or operator of a TAPAA facility may contract with a vessel owner or operator to meet some of all of the requirements of subpart G of part 155 of this chapter. The extent to which these requirements are met by the contractual arrangement will be determined by the COTP.

4. Subpart H, consisting of §§ 154.1210 through 154.1228, is added to read as follows:

Subpart H—Response Plans for Animal Fats and Vegetable Oils Facilities

Sec.
154.1210 Purpose and applicability.
154.1220 Response plan submission requirements.
154.1225 Response plan development and evaluation criteria for facilities that handle, store, or transport animal fats and vegetable oils.
154.1228 Methods of ensuring the availability of response resources by contract or other approved means.

Subpart H—Response Plans for Animal Fats and Vegetable Oils Facilities

§ 154.1210 Purpose and applicability.

This subpart establishes oil spill response planning requirements for an owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils. The requirements of this subpart are intended for use in developing response plans and identifying response resources during the planning process. They are not performance standards.

§ 154.1220 Response plan submission requirements.

An owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils shall submit a response plan in accordance with the requirements of this subpart, and with all sections of subpart F of this part, except §§ 154.1045 and 154.1047, which apply to petroleum oils.

§ 154.1225 Response plan development and evaluation criteria for facilities that handle, store, or transport animal fats and vegetable oils.

(a) An owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils must provide information in his or her plan that identifies—

(1) Procedures and strategies for responding to a worst case discharge of animal fats and vegetable oils to the maximum extent practicable; and

(2) Sources of the equipment and supplies necessary to locate, recover, and mitigate such a discharge.

(b) An owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils must ensure that any equipment identified in a response plan is capable of operating in the conditions expected in the geographic area(s) in which the facility operates using the criteria in section 2 and Table 1 of appendix C of this part. When evaluating the operability of equipment, the facility owner or operator must consider limitations that are identified in the ACPs for the COTP zone in which the facility is located, including—

(1) Ice conditions;

(2) Debris;

(3) Temperature ranges; and

(4) Weather-related visibility.

(c) The owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils must identify the response resources that are available by contract or other means as described in § 154.1228(a). The equipment identified in a response plan must include—

(1) Containment boom, sorbent boom, or other methods for containing oil floating on the surface or to protect shorelines from impact;

(2) Oil recovery devices appropriate for the type of animal fats or vegetable oils handled; and

(3) Other appropriate equipment necessary to respond to a discharge involving the type of oil handled.

(d) Response resources identified in a response plan under paragraph (c) of this section must be capable of commencing an effective on-scene response within the times specified in this paragraph for the applicable operating area:

	Tier 1 (hrs.)	Tier 2	Tier 3
Higher volume port area	6	N/A	N/A
Great Lakes	12	N/A	N/A
All other river and canal, inland, near-shore, and off-shore areas ...	12	N/A	N/A

(e) A response plan for a facility that handles, stores, or transports animal fats and vegetable oils must identify response resources with firefighting capability. The owner or operator of a facility that does not have adequate firefighting resources located at the facility or that can not rely on sufficient local firefighting resources must identify and ensure, by contract or other approved means as described in § 154.1228(a), the availability of adequate firefighting resources. The response plan must also identify an individual located at the facility to work with the fire department on animal fats and vegetable oil fires. This individual shall also verify that sufficient well-trained firefighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual as defined in § 154.1020 and identified in the response plan or another appropriate individual located at the facility.

(f) The response plan for a facility that is located in any environment with year-round preapproval for use of dispersants and that handles, stores, or transports animal fats and vegetable oils may request a credit for up to 25 percent of the worst case planning volume set forth by subpart F of this part. To receive this credit, the facility owner or operator must identify in the plan and ensure, by contract or other approved means as described in § 154.1228(a), the availability of specified resources to apply the dispersants and to monitor their effectiveness. The extent of the credit for dispersants will be based on the volumes of the dispersant available to sustain operations at the manufacturers' recommended dosage rates. Other spill mitigation techniques, including mechanical dispersal, may be identified in the response plan provided they are in accordance with the NCP and the applicable ACP. Resources identified for plan credit should be capable of being on scene within 12 hours of a discovery of a discharge. Identification of these resources does not imply that they will be authorized for use. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable ACP.

§ 154.1228 Methods of ensuring the availability of response resources by contract or other approved means.

(a) When required in this subpart, the availability of response resources must be ensured by the following methods:

(1) The identification of an oil spill removal organization with specified equipment and personnel available within stipulated response times in specified geographic areas. The organization must provide written consent to being identified in the plan;

(2) A document which——

(i) Identifies the personnel, equipment, and services capable of being provided by the oil spill removal organization within stipulated response times in the specified geographic areas;

(ii) Sets out the parties' acknowledgment that the oil spill removal organization intends to commit the resources in the event of a response;

(iii) Permits the Coast Guard to verify the availability of the identified response resources through tests, inspections, and drills;

(iv) Is referenced in the response plan;

(3) Active membership in a local or regional oil spill removal organization that has identified specified personnel and equipment required under this subpart that are available to response to a discharge within stipulated response times in the specified geographic areas;

(4) Certification by the facility owner or operator that specified personnel and equipment required under this subpart are owned, operated, or under the direct control of the facility owner or operator, and are available within stipulated response times in the specified geographic areas; or

(5) A written contractual agreement with an oil spill removal organization. The agreement must identify and ensure the availability of specified personnel and equipment required under this subpart within stipulated response times in the specified geographic areas.

(b) The contracts and documents required in paragraph (a) of this section must be retained at the facility and must be produced for review upon request by the COTP.

5. Subpart I, consisting of §§ 154.1310 through 154.1325, is added to read as follows:

Subpart I—Response Plans for Other Non-Petroleum Oil Facilities

Sec.

154.1310 Purpose and applicability.
154.1320 Response plan submission requirements.
154.1325 Response plan development and evaluation criteria for facilities that handle, store, or transport other non-petroleum oils.

Subpart I—Response Plans for Other Non-Petroleum Oil Facilities

§ 154.1310 Purpose and applicability.

This subpart establishes oil spill response planning requirements for an owner or operator of a facility that handles, stores, or transports other non-petroleum oils. The requirements of this subpart are intended for use in developing response plans and identifying response resources during the planning process. They are not performance standards.

§ 154.1320 Response plan submission requirements.

An owner or operator of a facility that handles, stores, or transports other non-petroleum oils shall submit a response plan in accordance with the requirements of this subpart, and with all sections of subpart F of this part, except §§ 154.1045 and 154.1047, which apply to petroleum oils.

§ 154.1325 Response plan development and evaluation criteria for facilities that handle, store, or transport other non-petroleum oils.

(a) An owner or operator of a facility that handles, stores, or transports other non-petroleum oils must provide information in his or her plan that identifies—

(1) Procedures and strategies for responding to a worst case discharge of other non-petroleum oils to the maximum extent practicable; and

(2) Sources of the equipment and supplies necessary to locate, recover, and mitigate such a discharge.

(b) An owner or operator of a facility that handles, stores, or transports other non-petroleum oils must ensure that any equipment identified in a response plan is capable of operating in the conditions expected in the geographic area(s) in which the facility operates using the criteria in Table 1 of appendix C of this part. When evaluating the operability of equipment, the facility owner or operator must consider limitations that are identified in the ACPs for the COTP zone in which the facility is located, including—

(1) Ice conditions;

(2) Debris;

(3) Temperature ranges; and

(4) Weather-related visibility.

(c) The owner or operator of a facility that handles, stores, or transports other non-petroleum oils must identify the response resources that are available by contract or other approved means as described in § 154.1028(a). The equipment identified in a response plan must include—

(1) Containment boom, sorbent boom, or other methods for containing oil floating on the surface or to protect shorelines from impact;

(2) Oil recovery devices appropriate for the type of other non-petroleum oils handled; and

(3) Other appropriate equipment necessary to respond to a discharge involving the type of oil handled.

(d) Response resources identified in a response plan under paragraph (c) of this section must be capable of commencing an effective on-scene response within the times specified in this paragraph for the applicable operating area:

	Tier 1 (hrs.)	Tier 2	Tier 3
Higher volume port area	6	N/A	N/A
Great Lakes	12	N/A	N/A
All other river and canal, inland, near-shore, and offshore areas	12	N/A	N/A

(e) A response plan for a facility that handles, stores, or transports other non-petroleum oils must identify response resources with firefighting capability. The owner or operator of a facility that does not have adequate firefighting resources located at the facility or that cannot rely on sufficient local firefighting resources must identify and ensure, by contract or other approved means as described in § 154.1028(a), the availability of adequate firefighting resources. The response plan must also identify an individual located at the facility to work with the fire department on other non-petroleum oil fires. This individual shall also verify that sufficient well-trained firefighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual as defined in § 154.1020 and identified in the response plan or another appropriate individual located at the facility.

(f) The response plan for a facility that is located in any environment with year-round preapproval for use of dispersants and that handles, stores, or transports other non-petroleum oils may request a credit for up to 25 percent of the worst case planning volume set forth by subpart F of this part. To receive this credit, the facility owner or operator must identify in the plan and ensure, by contract or other approved means as described in § 154.1028(a), the availability of specified resources to apply the dispersants and to monitor their effectiveness. The extent of the credit will be based on the volumes of the dispersant available to sustain operations at the manufacturers' recommended dosage rates. Identification of these resources does not imply that they will be authorized for use. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable ACP.

6. Appendix C is revised to read as follows:

Appendix C—Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans

1. Purpose

1.1 The purpose of this appendix is to describe the procedures for identifying response resources to meet the requirements of subpart F of this part. These guidelines will be used by the facility owner or operator in preparing the response plan and by the Captain of the Port (COTP) when reviewing them. Response resources identified in subparts H and I of this part should be selected using the guidelines in section 2 and Table 1 of this appendix.

2. Equipment Operability and Readiness

2.1 All equipment identified in a response plan must be designed to operate in the conditions expected in the facility's geographic area. These conditions vary widely based on location and season. Therefore, it is difficult to identify a single stockpile of response equipment that will function effectively in each geographic location.

2.2 Facilities handling, storing, or transporting oil in more than one operating environment as indicated in Table 1 of this appendix must identify equipment capable of successfully functioning in each operating environment.

2.3 When identifying equipment for response plan credit, a facility owner or operator must consider the inherent limitations in the operability of equipment components and response systems. The criteria in Table 1 of this appendix should be used for evaluating the operability in a given environment. These criteria reflect the general conditions in certain operating areas.

2.3.1 The Coast Guard may require documentation that the boom identified in a response plan meets the criteria in Table 1. Absent acceptable documentation, the Coast Guard may require that the boom be tested to demonstrate that it meets the criteria in Table 1. Testing must be in accordance with ASTM F 715, ASTM F 989, or other tests approved by the Coast Guard.

2.4 Table 1 of this appendix lists criteria for oil recovery devices and boom. All other equipment necessary to sustain or support response operations in the specified operating environment must be designed to function in the same conditions. For example, boats which deploy or support skimmers or boom must be capable of being safely operated in the significant wave heights listed for the applicable operating environment.

2.5 A facility owner or operator must refer to the applicable local contingency plan or ACP, as appropriate, to determine if ice, debris, and weather-related visibility are significant factors in evaluating the operability of equipment. The local contingency plan or ACP will also identify the average temperature ranges expected in the facility's operating area. All equipment identified in a response plan must be designed to operate within those conditions or ranges.

2.6 The requirements of subparts F, G, H and I of this part establish response resource mobilization and response times. The distance of the facility from the storage location of the response resources must be used to determine whether the resources can arrive on scene within the stated time. A facility owner or operator shall include the time for notification, mobilization, and travel time of response resources identified to meet the maximum most probable discharge and Tier 1 worst case discharge response time requirements. For subparts F and G, tier 2 and 3 response resources must be notified and mobilized as necessary to meet the requirements for arrival on scene in accordance with §§ 154.1045 or 154.1047 of subpart F, or § 154.1135 of subpart G, as appropriate. An on water speed of 5 knots and a land speed of 35 miles per hour is assumed unless the facility owner or operator can demonstrate otherwise.

2.7 For subparts F and G, in identifying equipment, the facility owner or operator shall list the storage location, quantity, and manufacturer's make and model. For oil recovery devices, the effective daily recovery capacity, as determined using section 6 of this appendix must be included. For boom, the overall boom height (draft plus freeboard) should be included. A facility owner or operator is responsible for ensuring that identified boom has compatible connectors.

2.8 For subparts H and I, in identifying equipment, the facility owner or operator shall list the storage location, quantity, and manufacturer's make and model. For boom,

the overall boom height (draft plus freeboard) should be included. A facility owner or operator is responsible for ensuring that identified boom has compatible connectors.

3. Determining Response Resources Required for the Average Most Probable Discharge

3.1 A facility owner or operator shall identify sufficient response resources available, through contract or other approved means as described in § 154.1028(a), to respond to the average most probable discharge. The equipment must be designed to function in the operating environment at the point of expected use.

3.2 The response resources must include:

3.2.1 1,000 feet of containment boom or two times the length of the largest vessel that regularly conducts oil transfers to or from the facility, whichever is greater, and a means deploying it available at the spill site within 1 hour of the discovery of a spill.

3.2.2 Oil recovery devices with an effective daily recovery capacity equal to the amount of oil discharged in an average most probable discharge or greater available at the facility within 2 hours of the detection of an oil discharge.

3.2.3 Oil storage capacity for recovered oily material indicated in section 9.2 of this appendix.

4. Determining Response Resources Required for the Maximum Most Probable Discharge

4.1 A facility owner or operator shall identify sufficient response resources available, by contract or other approved means as described in § 154.1028(a), to respond to discharges up to the maximum most probable discharge volume for that facility. This will require response resources capable of containing and collecting up to 1,200 barrels of oil or 10 percent of the worst case discharge, whichever is less. All equipment identified must be designed to operate in the applicable operating environment specified in Table 1 of this appendix.

4.2 Oil recovery devices identified to meet the applicable maximum most probable discharge volume planning criteria must be located such that they arrive on scene within 6 hours in higher volume port areas (as defined in 154.1020) and the Great Lakes and within 12 hours in all other areas.

4.3 Because rapid control, containment, and removal of oil is critical to reduce spill impact, the effective daily recovery capacity for oil recovery devices must equal 50 percent of the planning volume applicable for the facility as determined in section 4.1 of this appendix. The effective daily recovery capacity for oil recovery devices identified in the plan must be determined using the criteria in section 6 of this appendix.

4.4 In addition to oil recovery capacity, the plan must identify sufficient quantities of containment boom available, by contract or other approved means as described in § 154.1028(a), to arrive within the required response times for oil collection and containment and for protection of fish and wildlife and sensitive environments. While the regulation does not set required quantities of boom for oil collection and containment, the response plan must identify and ensure, by contract or other approved means as described in § 154.1028(a), the availability of the boom identified in the plan for this purpose.

4.5 The plan must indicate the availability of temporary storage capacity to meet the guidelines of section 9.2 of this appendix. If available storage capacity is insufficient to meet this level, then the effective daily recovery capacity must be derated to the limits of the available storage capacity.

4.6 The following is an example of a maximum most probable discharge volume planning calculation for equipment identification in a higher volume port area: The facility's worst case discharge volume is 20,000 barrels. Ten percent of this is 2,000 barrels. Since this is greater than 1,200 barrels, 1,200 barrels is used as the planning volume. The effective daily recovery capacity must be 50 percent of this, or 600 barrels per day. The ability of oil recovery devices to meet this capacity will be calculated using the procedures in section 6 of this appendix. Temporary storage capacity available on scene must equal twice the daily recovery rate as indicated in section 9 of this appendix, or 1,200 barrels per day. This is the information the facility owner or operator will use to identify and ensure the availability of, through contract or other approved means as described in § 154.1028(a), the required response resources. The facility owner will also need to identify how much boom is available for use.

5. Determining Response Resources Required for the Worst Case Discharge to the Maximum Extent Practicable

5.1 A facility owner or operator shall identify and ensure availability of, by contract or other approved means, as described in § 154.1028(a), sufficient response resources to respond to the worst case discharge of oil to the maximum extent practicable. Section 7 of this appendix describes the method to determine the required response resources.

5.2 Oil spill response resources identified in the response plan and available through contract or other approved means, as described in § 154.1028(a), to meet the applicable worst case discharge planning volume must be located such that they can arrive at the scene of a discharge within the times specified for the applicable response tiers listed in § 154.1045.

5.3 The effective daily recovery capacity for oil recovery devices identified in a response plan must be determined using the criteria in section 6 of this appendix. A facility owner or operator shall identify the storage locations of all response resources that must be used to fulfill the requirements for each tier. The owner or operator of a facility whose required daily recovery capacity exceeds the applicable response capability caps in Table 5 of this appendix shall identify sources of additional equipment, their locations, and the arrangements made to obtain this equipment during a response. The owner or operator of a facility whose calculated planning volume exceeds the applicable contracting caps in Table 5 shall identify sources of additional equipment equal to twice the cap listed in Tiers 1, 2, and 3 or the amount necessary to reach the calculated planning volume, whichever is lower. The resources identified above the cap must be capable of arriving on scene not later than the Tiers 1, 2, and 3 response times in § 154.1045. No contract is required. While general listings of available response equipment may be used to identify additional sources, a response plan must identify the specific sources, locations, and quantities of equipment that a facility owner or operator has considered in his or her planning. When listing Coast Guard classified oil spill removal organization(s) which have sufficient removal capacity to recover the volume above the response capability cap for the specific facility, as specified in Table 5 of this appendix, it is not necessary to list specific quantities of equipment.

5.4 A facility owner or operator shall identify the availability of temporary storage capacity to meet the requirements of section 9.2 of this appendix. If available storage capacity is insufficient to meet this requirement, then the effective daily recovery capacity must be derated to the limits of the availabile storage capacity.

5.5 When selecting response resources necessary to meet the response plan requirements, the facility owner or operator must ensure that a portion of those resources are capable of being used in close-to-shore response activities in shallow water. The following percentages of the on-water response equipment identified for the applicable geographic area must be capable of operating in waters of 6 feet or less depth:

(i) Offshore—10 percent

(ii) Nearshore/inland/Great Lakes/rivers and canals—20 percent.

5.6 In addition to oil spill recovery devices, a facility owner or operator shall identify sufficient quantities of boom that are available, by contract or other approved means as described in § 154.1028(a), to arrive on scene within the required response times for oil containment and collection. The specific quantity of boom required for collection and containment will depend on the specific recovery equipment and strategies employed. A facility owner or operator shall also identify sufficient quantities of oil containment boom to protect fish and wildlife and sensitive environments for the number of days and geographic areas specified in Table 2. Sections 154.1035(b)(4)(iii) and 154.1040(a), as appropriate, shall be used to determine the amount of containment boom required, through contract or other approved means as described in § 154.1028(a), to protect fish and wildlife and sensitive environments.

5.7 A facility owner or operator must also identify, through contract or other approved means as described in § 154.1028(a), the availability of an oil spill removal organization capable of responding to a shoreline cleanup operation involving the calculated volume of oil and emulsified oil that might impact the affected shoreline. The volume of oil that must be planned for is calculated through the application of factors contained in Tables 2 and 3. The volume

calculated from these tables is intended to assist the facility owner or operator in identifying a contractor with sufficient resources and expertise. This planning volume is not used explicitly to determine a required amount of equipment and personnel.

6. Determining Effective Daily Recovery Capacity for Oil Recovery Devices

6.1 Oil recovery devices identified by a facility owner or operator must be identified by manufacturer, model, and effective daily recovery capacity. These rates must be used to determine whether there is sufficient capacity to meet the applicable planning critieria for the average most probable discharge, maximum most probable discharge, and worst case discharge to the maximum extent practicable.

6.2 For the purpose of determining the effective daily recovery capacity of oil recovery devices, the formula listed in section 6.2.1 of this appendix will be used. This method considers potential limitations due to available daylight, weather, sea state, and percentage of emulsified oil in the recovered material. The Coast Guard may assign a lower efficiency factor to equipment listed in a response plan if it determines that such a reduction is warranted.

6.2.1 The following formula must be used to calculate the effective daily recovery capacity:

R=T×24 hours×E

R=Effective daily recovery capacity

T=Throughout rate in barrels per hour (nameplate capacity)

E=20 percent Efficiency factor (or lower factor as determined by Coast Guard)

6.2.2 For those devices in which the pump limits the throughput of liquid, throughput rate will be calculated using the pump capecity.

6.2.3 For belt or mop type devices, the throughput rate will be calculated using the speed of the belt or mop through the device, assumed thickness of oil adhering to or collected by the device, and surface area of the belt or mop. For purposes of this calculation, the assumed thickness of oil will be 1/4 inch.

6.2.4 Facility owners or operators including oil recovery devices whose throughput is not measurable using a pump capacity or belt/mop speed may provide information to support an alternative method of calculation. This information must be submitted following the procedures in paragraph 6.3.2 of this appendix.

6.3 As an alternative to 6.2, a facility owner or operator may submit adequate evidence that a different effective daily recovery capacity should be applied for a specific oil recovery device. Adequate evidence is actual verified performance data in spill conditions or tests using ASTM F 631, ASTM F 808, or an equivalent test approved by the Coast Guard.

6.3.1 The following formula must be used to calculate the effective daily recovery capacity under this alternative:

R=D×U

R=Effective daily recovery capacity

D=Average Oil Recovery Rate in barrels per hour (Item 26 in ASTM F 808; Item 13.1.15 in ASTM F 631; or actual performance data)

U=Hours per day that a facility owner or operator can document capability to operate equipment under spill conditions. Ten hours per day must be used unless a facility owner or operator can demonstrate that the recovery operation can be sustained for longer periods.

6.3.2 A facility owner or operator proposing a different effective daily recovery rate for use in a response plan shall provide data for the oil recovery devices listed. The following is an example of these calculations:

A weir skimmer identified in a response plan has a manufacturer's rated throughput at the pump of 267 gallons per minute (gpm).

267 gpm=381 barrels per hour

R=381×24×.2=1829 barrels per day

After testing using ASTM procedures, the skimmer's oil recovery rate is determined to be 220 gpm. The facility owner of operator identifies sufficient response resources available to support operations 12 hours per day.

220 gpm=314 barrels per hour

R=314×12=3768 barrels per day

The facility owner or operator will be able to use the higher rate if sufficient temporary oil storage capacity is available. Determinations of alternative efficiency factors under paragraph 6.2 or alternative effective daily recovery capacities under paragraph 6.3 of this appendix will be made by Commandant, (G–MEP–6), Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. Response contractors or equipment manufacturers may submit required information on behalf of multiple facility owners or operators directly in lieu of including the request with the response plan submission.

7. Calculating the Worst Case Discharge Planning Volumes

7.1 The facility owner or operator shall plan for a response to a facility's worst case discharge. The planning for on-water recovery must take into account a loss of some oil to the environment due to evaporative and natural dissipation, potential increases in volume due to emulsification, and the potential for deposit of some oil on the shoreline.

7.2 The following procedures must be used to calculate the planning volume used by a facility owner or operator for determining required on water recovery capacity:

7.2.1 The following must be determined: The worst case discharge volume of oil in the facility; the appropriate group(s) for the type of oil handled, stored, or transported at the facility (non-persistent (Group I) or persistent (Groups II, III, or IV)); and the facility's specific operating area. Facilities which handle, store, or transport oil from different petroleum oil groups must calculate each group separately. This information is to be used with Table 2 of this appendix to determine the percentages of the total volume to be used for removal capacity planning. This table divides the volume into three categories: Oil lost to the environment; oil deposited on the shoreline; and oil available for on-water recovery.

7.2.2 The on-water oil recovery volume must be adjusted using the appropriate emulsification factor found in Table 3 of this appendix. Facilities which handle, store, or transport oil from different petroleum groups must assume that the oil group resulting in the largest on-water recovery volume will be stored in the tank or tanks identified as constituting the worst case discharge.

7.2.3 The adjusted volume is multiplied by the on-water oil recovery resource mobilization favor found in Table 4 of this appendix from the appropriate operating area and response tier to determine the total on-water oil recovery capacity in barrels per day that must be identified or contracted for to arrive on-scene with the applicable time for each response tier. Three tiers are specified. For higher volume port areas, the contracted tiers of resources must be located such that they can arrive on scene within 6, 30, and 54 hours of the discovery of an oil discharge. For all other river, inland, nearshore, offshore areas, and the Great Lakes, these tiers are 12, 36, and 60 hours.

7.2.4 The resulting on-water recovery capacity in barrels per day for each tier must be used to identify response resources necessary to sustain operations in the applicable operating area. The equipment must be capable of sustaining operations for the time period specified in Table 2 of this appendix. The facility owner or operator must identify and ensure the availability, through contract or other approved means as described in § 154.1028(a), of sufficient oil spill recovery devices to provide the effective daily recovery oil recovery capacity required. If the required capacity exceeds the applicable cap specified in Table 5 of this appendix, then a facility owner or operator shall ensure, by contract or other approved means as described in § 154.1028(a), only for the quantity of resources required to meet the cap, but shall identify sources of additional resources as indicated in § 154.1045(m). The owner or operator of a facility whose planning volume exceeds the cap for 1993 must make arrangements to identify and ensure the availability, through contract or other approved means as described in § 154.1028(a), of the additional capacity in 1998 or 2003, as appropriate. For a facility that handles, stores, or transports multiple groups of oil, the required effective daily recovery capacity for each group is calculated before applying the cap.

7.3 The following procedures must be used to calculate the planning volume for identifying shoreline cleanup capacity:

7.3.1 The following must be determined: The worst case discharge volume of oil for the facility; the appropriate group(s) for the type of oil handled, stored, or transported at the facility (non-persistent (Group I) or persistent (Groups II, III, or IV)); and the operating area(s) in which the facility operates. For a facility storing oil from different groups, each group must be calculated separately. Using this information, Table 2 of this appendix must be used to determine the percentages of the total

planning volume to be used for shoreline cleanup resource planning.

7.3.2 The shoreline cleanup planning volume must be adjusted to reflect an emulsification factor using the same procedure as described in section 7.2.2.

7.3.3 The resulting volume will be used to identify an oil spill removal organization with the appropriate shoreline cleanup capability.

7.3.4 The following is an example of the procedure described above: A facility receives oil from barges via a dock located on a bay and transported by piping to storage tanks. The facility handles Number 6 oil (specific gravity .96) and stores the oil in tanks where it is held prior to being burned in an electric generating plant. The MTR segment of the facility has six 18-inch diameter pipelines running one mile from the dock-side manifold to several storage tanks which are located in the non-transportation-related portion of the facility. Although the facility piping has a normal working pressure of 100 pounds per square inch, the piping has a maximum allowable working pressure (MAWP) of 150 pounds per square inch. At MAWP, the pumping system can move 10,000 barrels (bbls) of Number 6 oil every hour through each pipeline. The facility has a roving watchman who is required to drive the length of the piping every 2 hours when the facility is receiving oil from a barge. The facility operator estimates that it will take approximately 10 minutes to secure pumping operations when a discharge is discovered. Using the definition of worst case discharge provided in § 154.1029(b)(ii), the following calculation is provided:

	bbls.
2 hrs + 0.17 hour × 10,000 bbls per hour	21,700
Piping volume = 37,322 ft³ + 5.6 ft³/bbl	+6,664
Discharge volume per pipe	28,364
Number of pipelines	×6
Worst case discharge from MTR facility	170,184

To calculate the planning volumes for onshore recovery:

Worst case discharge: 170,184 bbls. Group IV oil

Emulsification factor (from Table 3): 1.4

Operating Area impacted: Inland

Planned percent oil onshore recovery (from Table 2): Inland 70%

Planning volumes for onshore recovery: Inland 170,184 × .7 × 1.4 = 166,780 bbls.

Conclusion: The facility owner or operator must contract with a response resource capable of managing a 166,780 barrel shoreline cleanup.

To calculate the planning volumes for on-water recovery:

Worst case discharge: 170,184 bbls. Group IV oil

Emulsification factor (from Table 3): 1.4

Operating Area impacted: Inland

Planned percent oil on-water recovery (from Table 2): Inland 50%

Planning volumes for on-water recovery: Inland 170,184 × .5 × 1.4 = 119,128 bbls.

To determine the required resources for on-water recovery for each tier, use the mobilization factors from Table 4:

	Tier 1	Tier 2	Tier 3
Inland = 119,128 bbls.	× .15	× .25	× .40
Barrels per day (pbd)	17,869	29,782	47,652

Conclusion: Since the requirements for all tiers for inland exceed the caps, the facility owner will only need to contract for 10,000 bpd for Tier 1, 20,000 bpd for Tier 2, and 40,000 bpd for Tier 3. Sources for the bpd on-water recovery resources above the caps for all three Tiers need only be identified in the response plan.

Twenty percent of the capability for Inland, for all tiers, must be capable of operating in water with a depth of 6 feet or less.

The facility owner or operator will also be required to identify or ensure, by contract or other approved means as described in § 154.1028(a), sufficient response resources required under §§ 154.1035(b)(4) and 154.1045(k) to protect fish and wildlife and sensitive environments identified in the response plan for the worst case discharge from the facility.

The COTP has the discretion to accept that a facility can operate only a limited number of the total pipelines at a dock at a time. In those circumstances, the worst case discharge must include the drainage volume from the piping normally not in use in addition to the drainage volume and volume of oil discharged during discovery and shut down of the oil discharge from the operating piping.

8. Determining the Availability of Alternative Response Methods

8.1 Response plans for facilities that handle, store, or transport Groups II or III persistent oils that operate in an area with year-round preapproval for dispersant use may receive credit for up to 25 percent of their required on-water recovery capacity for 1993 if the availability of these resources is ensured by contract or other approved means as described in § 154.1028(a). For response plan credit, these resources must be capable of being on-scene within 12 hours of a discharge.

8.2 To receive credit against any required on-water recover capacity a response plan must identify the locations of dispersant stockpiles, methods of shipping to a staging area, and appropriate aircraft, vessels, or facilities to apply the dispersant and monitor its effectiveness at the scene of an oil discharge.

8.2.1 Sufficient volumes of dispersants must be available to treat the oil at the dosage rate recommended by the dispersant manufacturer. Dispersants identified in a response plan must be on the NCP Product Schedule that is maintained by the Environmental Protection Agency. (Some states have a list of approved dispersants and within state waters only they can be used.)

8.2.2 Dispersant application equipment identified in a response plan for credit must be located where it can be mobilized to shoreside staging areas to meet the time requirements in section 8.1 of this appendix. Sufficient equipment capacity and sources of appropriate dispersants should be identified to sustain dispersant application operations for at least 3 days.

8.2.3 Credit against on-water recovery capacity in preapproved areas will be based on the ability to treat oil at a rate equivalent to this credit. For example, a 2,500 barrel credit against the Tier 1 10,000 barrel on-water cap would require the facility owner or operator to demonstrate the ability to treat 2,500 barrel/day of oil at the manufacturers recommended dosage rate. Assuming a dosage rate of 10:1, the plan would need to show stockpiles and sources of 250 barrels of dispersants at a rate of 250 barrels per day and the ability to apply the dispersant at that daily rate for 3 days in the geographic area in which the facility is located. Similar data would need to be provided for any additional credit against Tier 2 and 3 resources.

8.3 In addition to the equipment and supplies required, a facility owner or operator shall identify a source of support to conduct the monitoring and post-use effectiveness evaluation required by applicable regional plans and ACPs.

8.4 Identification of the response resources for dispersant application does not imply that the use of this technique will be authorized. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable regional plan or ACP. A facility owner or operator who operates a facility in areas with year-round preapproval of dispersant can reduce the required on-water recovery capacity for 1993 up to 25 percent. A facility owner or operator may reduce the required on water recovery cap increase for 1998 and 2003 up to 50 percent by identifying pre-approved alternative response methods.

8.5 In addition to the credit identified above, a facility owner or operator that operates in a year-round area pre-approved for dispersant use may reduce their required on water recovery cap increase for 1998 and 2003 by up to 50 percent by identifying non-mechanical methods.

8.6 The use of in-situ burning as a non-mechanical response method is still being studied. Because limitations and uncertainties remain for the use of this method, it may not be used to reduce required oil recovery capacity in 1993.

9. Additional Equipment Necessary to Sustain Response Operations

9.1 A facility owner or operator is responsible for ensuring that sufficient numbers of trained personnel and boats, aerial spotting aircraft, containment boom, sorbent materials, boom anchoring materials, and other supplies are available to sustain response operations to completion. All such equipment must be suitable for use with the primary equipment identified in the response plan. A facility owner or operator is not required to list these response resources, but shall certify their availability.

9.2 A facility owner or operator shall evaluate the availability of adequate temporary storage capacity to sustain the effective daily recovery capacities from equipment identified in the plan. Because of the inefficiencies of oil spill recovery devices, response plans must identify daily storage capacity equivalent to twice the effective daily recovery rate required on scene. This temporary storage capacity may be reduced if a facility owner or operator can demonstrate by waste stream analysis that the efficiencies of the oil recovery devices, ability to decant waste, or the availability of alternative temporary storage or disposal locations will reduce the overall volume of oily material storage requirement.

9.3 A facility owner or operator shall ensure that his or her planning includes the capability to arrange for disposal of recovered oil products. Specific disposal procedures will be addressed in the applicable ACP.

TABLE 1.—RESPONSE RESOURCE OPERATING CRITERIA OIL RECOVERY DEVICES

Operating environment	Significant wave height[1]	Sea State
Rivers and Canals	≤1 Foot	1
Inland	≤3 feet	2
Great Lakes	≤4 feet	2–3
Ocean	≤6 feet	3–4

BOOM

Boom property	Use			
	Rivers and canals	Inland	Great Lakes	Ocean
Significant Wave Height[1]	≤1	≤3	≤4	≤6
Sea State	1	2	2–3	3–4
Boom height—in. (draft plus freeboard)	6–18	18–42	18–42	≤42
Reserve Buoyancy to Weight Ratio	2:1	2:1	2:1	3:1 to 4:1
Total Tensile Strength—lbs.	4,500	15–20,000	15–20,000	≤20,000
Skirt Fabric Tensile Strength—lbs	200	300	300	500
Skirt Fabric Tear Strength—lbs	100	100	100	125

[1] Oil recovery devices and boom must be at least capable of operating in wave heights up to and including the values listed in Table 1 for each operating environment.

TABLE 2.—REMOVAL CAPACITY PLANNING TABLE

Spill location	Rivers and canals			Nearshore/inland Great Lakes			Offshore		
Sustainability of on-water oil recovery	3 Days			4 Days			6 Days		
Oil group	% Natural dissipation	% Recovered floating oil	% Oil on shore	% Natural dissipation	% Recovered floating oil	% Oil on shore	% Natural dissipation	% Recovered floating oil	% Oil on shore
1 Non-persistent oils	80	10	10	80	20	10	95	5	/
2 Light crudes	40	15	45	50	50	30	75	25	5
3 Medium crudes and fuels	20	15	65	30	50	50	60	40	20
4 Heavy crudes and fuels	5	20	75	10	50	70	50	40	30

TABLE 3.—EMULSIFICATION FACTORS FOR PETROLEUM OIL GROUPS

Non-Persistent Oil:	
Group I	1.0
Persistent Oil:	
Group II	1.8
Group III	2.0
Group IV	1.4

TABLE 4.—ON WATER OIL RECOVERY RESOURCE MOBILIZATION FACTORS

Operating Area	Tier 1	Tier 2	Tier 3
Rivers & Canals	.30	.40	.60
Inland/Nearshore/Great Lakes	.15	.25	.40

TABLE 4.—ON WATER OIL RECOVERY RESOURCE MOBILIZATION FACTORS—Continued

Operating Area	Tier 1	Tier 2	Tier 3
Offshore	.10	.165	.21

Note: These mobilization factors are for total response resources mobilized, not incremental response resources.

TABLE 5.—Response Capability Caps by Operating Area

	Tier 1	Tier 2	Tier 3
February 18, 1993:			
All except rivers and canals, Great Lakes	10K bbls/day	20K bbls/day	40K bbls/day/
Great Lakes	5K bbls/day	10K bbls/day	20K bbls/day.
Rivers and canals	1,500 bbls/day	3,000 bbls/day	6,000 bbls/day.
February 18, 1998:			
All except rivers and canals, Great Lakes	12.5K bbls/day	25K bbls/day	50K bbls/day.

TABLE 5.—Response Capability Caps by Operating Area—Continued

	Tier 1	Tier 2	Tier 3
Great Lakes	6.35K bbls/day	12.3K bbls/day	25K bbls/day.
Rivers and canals	1,875 bbls/day	3,750 bbls/day	7,500 bbls/day.
February 18, 2003:			
All except rivers and canals, Great Lakes	TBD	TBD	TBD.
Great Lakes	TBD	TBD	TBD.
Rivers and canals	TBD	TBD	TBD.

Note: The caps show cumulative overall effective daily recovery capacity, not incremental increases.
TBD = To be determined.

7. Appendix D is revised to read as follows:

Appendix D—Training Elements for Oil Spill Response Plans

1. General

1.1 The portion of the plan dealing with training is one of the key elements of a response plan. This concept is clearly expressed by the fact that Congress, in writing OPA 90, specifically included training as one of the sections required in a vessel or facility response plan. In reviewing submitted response plans, it has been noted that the plans often do not provide sufficient information in the training section of the plan for either the user or the reviewer of the plan. In some cases, plans simply state that the crew and others will be trained in their duties and responsibilities, with no other information being provided. In other plans, information is simply given that required parties will receive the necessary worker safety training (HAZWOPER).

1.2 The training section of the plan need not be a detailed course syllabus, but it must contain sufficient information to allow the user and reviewer (or evaluator) to have an understanding of those areas that are believed to be critical. Plans should identify key skill areas and the training that is required to ensure that the individual identified will be capable of performing the duties prescribed to them. It should also describe how the training will be delivered to the various personnel. Further, this section of the plan must work in harmony with those sections of the plan dealing with exercises, the spill management team, and the qualified individual.

1.3 The material in this appendix D is not all-inclusive and is provided for guidance only.

2. Elements To Be Addressed

2.1 To assist in the preparation of the training section of a facility response plan, some of the key elements that should be addressed are indicated in the following sections. Again, while it is not necessary that the comprehensive training program for the company be included in the response plan, it is necessary for the plan to convey the elements that define the program as appropriate.

2.2 An effective spill response training program should consider and address the following:

2.2.1 Notification requirements and procedures.

2.2.2 Communication system(s) used for the notifications.

2.2.3 Procedures to mitigate or prevent any discharge or a substantial threat of a discharge of oil resulting from failure of manifold, mechanical loading arm, or other transfer equipment or hoses, as appropriate;

2.2.3.1 Tank overfill;

2.2.3.2 Tank rupture;

2.2.3.3 Piping rupture;

2.2.3.4 Piping leak, both under pressure and not under pressure, if applicable;

2.2.3.5 Explosion or fire;

2.2.3.6 Equipment failure (e.g., pumping system failure, relief valve failure, or other general equipment relevant to operational activities associated with internal or external facility transfers).

2.2.4 Procedures for transferring responsibility for direction of response activities from facility personnel to the spill management team.

2.2.5 Familiarity with the operational capabilities of the contracted oil spill removal organizations and the procedures to notify the activate such organizations.

2.2.6 Familiarity with the contracting and ordering procedures to acquire oil spill removal organization resources.

2.2.7 Familiarity with the ACP(s).

2.2.8 Familiarity with the organizational structures that will be used to manage the response actions.

2.2.9 Responsibilities and duties of the spill management team members in accordance with designated job responsibilities.

2.2.10 Responsibilities and authority of the qualified individual as described in the facility response plan and company response organization.

2.2.11 Responsibilities of designated individuals to initiate a response and supervise response resources.

2.2.12 Actions to take, in accordance with designated job responsibilities, in the event of a transfer system leak, tank overflow, or suspected cargo tank or hull leak.

2.2.13 Information on the cargoes handled by the vessel or facility, including familiarity with—

2.2.13.1 Cargo material safety data sheets;

2.2.13.2 Chemical characteristic of the cargo;

2.2.13.3 Special handling procedures for the cargo;

2.2.13.4 Health and safety hazards associated with the cargo; and

2.2.13.5 Spill and firefighting procedures for cargo.

2.2.14 Occupational Safety and Health Administration requirements for worker health and safety (29 CFR 1910.120).

3. Further Considerations

In drafting the training section of the facility response plan, some further considerations are noted below (these points are raised simply as a reminder):

3.1 The training program should focus on training provided to facility personnel.

3.2 An organization is comprised of individuals, and a training program should be structured to recognize this fact by ensuring that training is tailored to the needs of the individuals involved in the program.

3.3 An owner or operator may identify equivalent work experience which fulfills specific training requirements.

3.4 The training program should include participation in periodic announced and unannounced exercises. This participation should approximate the actual roles and responsibilities of individual specified in the plan.

3.5 Training should be conducted periodically to reinforce the required knowledge and to ensure an adequate degree of preparedness by individuals with responsibilities under the facility response plan.

3.6 Training may be delivered via a number of different means; including classroom sessions, group discussions, video tapes, self-study workbooks, resident training courses, on-the-job training, or other means as deemed appropriate to ensure proper instruction.

3.7 New employees should complete the training program prior to being assigned job responsibilities which require participation in emergency response situations.

4. Conclusion

The information in this appendix is only intended to assist response plan preparers in reviewing the content of and in modifying the training section of their response plans. It may be more comprehensive than is needed for some facilities and not comprehensive enough for others. The Coast Guard expects that plan preparers have determined the training needs of their organizations created by the development of the response plans and the actions identified as necessary to increase the preparedness of the company and its personnel to respond to actual or threatened discharges of oil from their facilities.

Dated: February 15, 1996.

A.E. Henn,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 96–4274 Filed 2–28–96; 8:45 am]

BILLING CODE 4910–14–M

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Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Subtitle A, et al.
Elimination of Unnecessary Codifications; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Subtitle A, Subtitle B, and Parts 200, 202a, 222, 233, 241, 260, 266, 267 and 850

[Docket No. FR–3993–F–01]

RIN 2501–AC14

Elimination of Unnecessary Codifications

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule removes from title 24 of the Code of Federal Regulations the Department's codified appendices, parts, subparts, and text which are unnecessary. Following a review of existing HUD regulations in accordance with the President's regulatory reinvention initiative, the Department has determined that the codified appendices, parts, subparts, and text identified in this rule are unnecessary to be retained in the Code of Federal Regulations because the programs will not receive additional funding; no regulatory requirements are included in the codifications and, therefore, the provisions need not be codified or can be provided through other non-rulemaking means; e.g., notices or handbooks; the regulatory text is duplicative and can be found elsewhere; the program has ended; or there are only a few outstanding mortgages or contracts under the program.

This final rule also removes several provisions describing cross-cutting definitions and HUD's waiver authority that were not addressed in the Department's final rule creating part 5, which was published on February 9, 1996. Part 5 was designed to set forth those definitions and program requirements which cut across several of the Department's programs.

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Camille E. Acevedo, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–3055; TDD: (202) 708–3259.

SUPPLEMENTARY INFORMATION:

A. Elimination of Unnecessary Codifications

President Clinton's memorandum of March 4, 1995, titled "Regulatory Reinvention Initiative" directed heads of Federal departments and agencies to review all existing regulations to eliminate those that are outdated and modify others to increase flexibility and reduce burden. As a part of HUD's overall effort to reduce regulatory burden and streamline the content of title 24 of the Code of Federal Regulations, this rule removes those appendices, parts, subparts, and text which are unnecessary. Guidance presently provided in these appendices codified will be available through other non-rulemaking means.

To the extent that regulations are needed to implement new legislation, they will be issued separately from this document. Any determination to issue new regulations will be carefully considered to ensure that it is consistent with the President's regulatory reform efforts and the principles in Executive Order 12866.

Appendices unnecessary because the programs will not receive additional funding: 24 CFR Subtitle A, Appendices A and B. Appendices A and B of Subtitle A, which contain the program guidelines for the HOPE 1 and HOPE 2 programs will be removed.

Note: HOPE 1 (Appendix A) implementation and planning grantees will comply with the HOPE 1 program guidelines published in the **Federal Register** on January 14, 1992, at 57 FR 1527, as modified by any subsequent Federal statutory enactments or executive orders. HOPE 2 (Appendix B) implementation and planning grantees will comply with the HOPE 2 program guidelines published in the **Federal Register** on January 14, 1992, at 57 FR 1562, as modified by any subsequent Federal statutory enactments or executive orders. Grantees for both programs also remain subject to any requirements set forth in the implementation or planning grant agreement, as applicable, including HUD handbooks and notices.

Appendices and subparts unnecessary because no regulatory requirements are included and the provisions need not be codified or can be provided through other non-rulemaking means; e.g., notices or handbooks: 24 CFR Subtitle B, Chapter I, Subchapter A, Appendices II, III and IV; 24 CFR part 200, subparts A, C, and D (except for § 200.93); 24 CFR part 265.

Removal of Appendices. Appendices II, III, and IV of Subtitle B, Chapter I, Subchapter II contain the Fair Housing Accessibility Guidelines, the preamble to the final Fair Housing Accessibility Guidelines, and a document entitled "Questions and Answers about the Fair Housing Accessibility Guidelines. The Fair Housing Accessibility Guidelines are not mandatory, nor do they prescribe specific requirements which must be met and which if not met, would constitute unlawful discrimination under the Fair Housing Act. The purpose of the guidelines is to provide technical guidance on designing dwelling units as required by the Fair Housing Amendments Act. Removal of the Guidelines will make it easier for HUD to update the Guidelines, if necessary and appropriate, to address issues that may arise with respect to new types of designs for dwelling units (the CFR is updated only once a year).

Note: Copies of the Fair Housing Accessibility Guidelines (Appendix II), the preamble to the final Fair Housing Act Accessibility Guidelines (Appendix III), and the document entitled "Questions and Answers about the Fair Housing Accessibility Guidelines" (Appendix IV) are available from the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Room 5230, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0288. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–0113 or 1–800–877–8399 (Federal Information Relay Service TDD). Other than the 800 number, these are not toll-free numbers.

Removal of Subparts A, C and D from Part 200. Subparts A, C, and D of part 200 pertain to origin and establishment, organization and management, and delegations to particular positions, respectively. These provisions need not be codified (except for § 200.93) and will be made available through non-rulemaking means. Section 200.93 (presently contained in subpart D) pertains to the membership and functions of the Multifamily Participation Review Committee and is being retained as a new § 200.227 within subpart H.

Subpart unnecessary because the regulatory text is duplicative and can be found elsewhere by cross-reference: Subpart I of 24 CFR part 200 is being removed except for § 200.300, pertaining to nondiscrimination and fair housing policy, which is being retained with minor editorial revisions to maintain the cross-references to the controlling regulations.

Part unnecessary because the program has ended or was never implemented: 24 CFR parts 202a and 260.

Part 202a, which pertains to Title I Mortgage Insurance, is being removed because the program has expired. Part 260 pertains to Interest Subsidy Grants, for which regulations were promulgated, but the program was never implemented.

Parts for expiring programs, under which there are only a few outstanding mortgages, contracts or grants: 24 CFR part 850.

No new grants have been issued under part 850, the Housing Development Grants Program. This is an expiring program.

Note: The grants associated with part 850 (Housing Development grants) will continue to be administered under the regulations that existed immediately before April 1, 1996.

B. *Cross-Cutting requirements.* Continued consolidation of certain cross-cutting requirements.

On February 9, 1996 (61 FR 5198), the Department published a final rule creating a new 24 CFR part 5. HUD established part 5 to set forth those requirements which are applicable to one or more program regulations. Consolidation of these requirements in part 5 will eliminate redundancy in title 24 and assist in the Department's overall efforts to streamline the content of its regulations.

This rule removes §§ 222.248, 233.248, 266.35, and 267.4 which set forth the Department's waiver authority. Further, this rule also removes the definition of the term "Secretary" in § 241.1. HUD's waiver authority and the definition of "Secretary" are already set forth in 24 CFR part 5.

Justification for Final Rule

In accordance with 24 CFR part 10, it is the practice of the Department to offer interested parties the opportunity to comment on proposed regulations. However, this rule merely removes unnecessary appendices, parts, subparts and text from title 24 of the Code of Federal Regulations. Removal of these codifications does not establish or affect substantive policy. Therefore, the Department has determined that public comment is unnecessary and contrary to the public interest.

Other Matters

Environmental Review

This rulemaking does not have an environmental impact. This rulemaking simply amends existing regulations by removing unnecessary provisions and does not alter the environmental effect of the regulations being amended. Findings of No Significant Impact with respect to the environment were made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of the implementing regulations. Those Findings remain applicable to this rule and are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities because this rule pertains to the administrative matter of removing unnecessary codifications from the Code of Federal Regulations.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions) or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 202a

Mortgage insurance.

24 CFR Part 222

Condominiums, Military personnel, Mortgage insurance.

24 CFR Part 233

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 241

Energy conservation, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 260

Grant programs—housing and community development, Low and moderate income housing.

24 CFR Part 266

Aged, Fair housing, Intergovernmental relations, Mortgage insurance, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 267

Appraisals, Mortgage insurance, Property valuation, Reporting and recordkeeping requirements.

24 CFR Part 850

Grant programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, pursuant to the Secretary's authority under 42 U.S.C. 3535(d), subtitle A, subtitle B, and parts 200, 202a, 222, 233, 241, 260, 266, 267, and 850 of title 24 of the Code of Federal Regulations are amended as follows:

Subtitle A—Office of the Secretary, Department of Housing and Urban Development

Appendices A and B of Subtitle A [Removed]

1. Appendices A and B to subtitle A are removed.

Subtitle B—Regulations Relating to Housing and Urban Development

CHAPTER I—OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Subchapter A—Fair Housing

Appendices II, III, and IV of Subtitle B, Chapter I, Subchapter A [Removed]

2. Subtitle B, chapter I, subchapter A is amended by removing Appendices II, III, and IV.

PART 200—INTRODUCTION

3. Part 200 is amended:

Subparts A and C [Removed and Reserved]

a. By removing and reserving subparts A (§§ 200.1 through 200.4) and C (§§ 200.40 through 200.44);

§ 200.93 [Redesignated as § 200.27]

b. By redesignating § 200.93 as § 200.227;

Subpart D [Removed and Reserved]

c. By removing and reserving subpart D (§§ 200.50 through 200.129);

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§ 200.224 [Amended]

d. By amending § 200.224 by removing the reference to "§ 200.93", and adding in its place "§ 200.227"; and

e. By revising subpart I, to read as follows:

Subpart I—Nondiscrimination and Fair Housing

§ 200.300 Nondiscrimination and fair housing policy.

Federal Housing Administration programs shall be administered in accordance with:

(a) The nondiscrimination and fair housing requirements set forth in 24 CFR part 5; and

(b) The affirmative fair housing marketing requirements in 24 CFR part 200, subpart M and 24 CFR part 108.

PART 202a [REMOVED]

4. Part 202a is removed.

PART 222—SERVICEPERSON'S MORTGAGE INSURANCE

§ 222.248 [Removed]

5. Section 222.248 is removed.

PART 233—EXPERIMENTAL HOUSING MORTGAGE INSURANCE

§ 233.248 [Removed]

6. Section 233.248 and the undesignated heading preceding it are removed.

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

§ 241.1 [Amended]

7. Section 241.1 is amended by removing paragraph (j) and by redesignating paragraphs (k) and (l) and paragraphs (j) and (k), respectively.

PART 260 [REMOVED]

8. Part 260 is removed.

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

§ 266.35 [Removed]

9. Section 266.35 is removed.

PART 267—APPRAISAL AND PROPERTY VALUATION

§ 267.4 [Removed]

10. Section 267.4 is removed.

PART 850—HOUSING DEVELOPMENT GRANTS

11. Section 850.1 is revised to read as follows:

§ 850.1 Applicability and savings clause.

(a) *Applicability.* This part implements the Housing Development Grant Program contained in section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o). The Program authorized the Secretary to make housing development grants to support the new construction or substantial rehabilitation of real property to be used primarily for residential rental purposes. Section 289(b)(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12839) repealed section 17 effective October 1, 1991. Section 289(a) prohibited new grants under the Housing Development Grant Program except for projects for which binding commitments had been entered into prior to October 1, 1991.

(b) *Savings clause.* Any grant made pursuant to a binding commitment entered into before October 1, 1991 will continue to be governed by subparts A through E of this part in effect immediately before April 1, 1996, and by subpart F of this part as currently in effect.

§ 850.3 [Removed]

12. Section 850.3 is removed.

Subparts B, C, D, and E [Removed and Reserved]

13. Subparts B (§§ 850.11 through 850.17), C (§§ 850.31 through 850.39), D (§§ 850.61 through 850.79), and E (§§ 850.101 through 850.107) are removed and reserved.

Dated: February 22, 1996.

Henry G. Cisneros,

Secretary.

[FR Doc. 96–4585 Filed 2–28–96; 8:45 am]

BILLING CODE 4210–32–P

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Part V

Department of Housing and Urban Development

24 CFR Part 266

Regulatory Reinvention; Streamlining of Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 266

[Docket No. FR–3981–F–01]

RIN 2502–AG60

Regulatory Reinvention; Streamlining of Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule streamlines HUD's regulations governing the Housing Finance Agency (HFA) Risk-Sharing program at 24 CFR part 266. Specifically, this rule removes regulatory provisions from part 266 which are best set forth in non-regulatory guidance. Under the HFA Risk-Sharing Program, HFAs are permitted to originate and service mortgage loans that are fully insured by the Federal Housing Administration. Participating HFAs are required to share in the risk associated with monetary losses that may result from loan defaults. HUD's elimination of redundant or unnecessary language from part 266 will increase program flexibility and assist in HUD's continuing efforts to streamline title 24.

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jane Luton, Director, New Products Division, Office of Multifamily Housing Development, Room 6142, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–2556 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TDD by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, HUD conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. As part of this review, HUD reexamined its regulations governing the Housing Finance Agency (HFA) Risk-Sharing Program at 24 CFR part 266. Under the HFA Risk-Sharing Program, HFAs are permitted to originate and service mortgage loans that are fully insured by the Federal Housing Administration. Participating HFAs are required to share in the risk associated with monetary losses that may result from loan defaults.

HUD has determined that the regulations for the HFA Risk-Sharing Program can be improved and streamlined by eliminating unnecessary provisions. After careful consideration, HUD has decided to retain most of part 266, inasmuch as the regulations are incorporated by reference in each approved HFA's Risk-Sharing Agreement. Since the Risk-Sharing Agreement forms the basis for operating the program, it is in HUD's interest, and that of program participants, to retain most sections of part 266. However, this final rule removes those sections of part 266 concerning the application process and the contents of the Risk-Sharing Agreement.

With respect to the section on application requirements, applications are solicited through publication of a notice in the **Federal Register**. Since that notice contains the requirements for submitting an application, including required exhibits, it is unnecessary to repeat such requirements in part 266. Therefore, this final rule revises § 266.105, which concerns the application requirements, to simply state that HUD will identify all necessary requirements for the submission of an application through **Federal Register** notice.

With respect to the section on the contents of the Risk-Sharing Agreement, an agreement for use by State and local HFAs participating in the program has been developed. Therefore, it is no longer necessary to list the items to be included in the Risk-Sharing Agreement. Accordingly, this final rule amends § 266.15 to remove such a list.

II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This final rule merely removes unnecessary provisions which can best be set forth in non-regulatory guidance. This rule does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

III. Other Matters

A. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines 24 CFR part 266 by removing provisions which do not require regulatory codification. The rule will have no adverse or disproportionate economic impact on small businesses.

B. Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by streamlining provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing the HFA Risk-Sharing Program. That finding remains applicable to this rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

D. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on

family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

List of Subjects in 24 CFR Part 266

Aged, Fair housing, Intergovernmental relations, Mortgage insurance, Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 266 is amended as follows:

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

1. The authority citation for 24 CFR part 266 continues to read as follows:

Authority: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

2. Section 266.15 is revised to read as follows:

§ 266.15 Risk-Sharing Agreement.

Execution of a Risk-Sharing Agreement is a prerequisite to participation in this program. The Risk-Sharing Agreement shall be in a form acceptable to the Commissioner.

3. Section 266.105 is revised to read as follows:

§ 266.105 Application requirements.

(a) *Applications for approval as a HUD-approved multifamily mortgagee.* HFAs that are not HUD-approved mortgagees at the time of their application to participate in the program under this part must submit, concurrently, separate applications for approval to participate in the program and for approval to operate as a HUD-approved mortgagee. Application for approval as a HUD-approved mortgagee must be submitted to HUD in accordance with the applicable HUD requirements.

(b) *Applications for participation in program.* Applications from HFAs for approval to participate in the program under this part will be submitted in response to a notice published in the **Federal Register**. The notice will include the required application exhibits and any other information or documentation necessary for approval for participation in the Risk-Sharing Program.

Dated: February 22, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–4542 Filed 2–28–96; 8:45 am]

BILLING CODE 4210–27–P

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Part VI

Department of Commerce

National Telecommunications and Information Administration

Telecommunications and Infrastructure Assistance Program; Notice

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number: 950124024–6045–03; CFDA: 11.552]

RIN 0660–AA04

Telecommunications and Information Infrastructure Assistance Program

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of solicitation of grant applications.

SUMMARY: Subject to the availability of fiscal year 1996 funds, the National Telecommunications and Information Administration (NTIA) issues this Notice describing the conditions under which applications will be accepted under the Telecommunications and Information Infrastructure Assistance Program (TIIAP) and how NTIA will determine which applications it will fund. TIIAP assists eligible organizations by promoting the widespread use of advanced telecommunications and information technologies in the public and non-profit sectors. By providing matching grants for Demonstration, Access, and Planning projects, this program will help develop a nationwide, interactive, multimedia information infrastructure that is accessible to all citizens, in rural as well as urban areas.

DATES: Complete applications for the fiscal year 1996 TIIAP grant program must be mailed or hand-carried to the address indicated below and received by NTIA by 5 P.M. EST, April 4, 1996. Applications received after that time and date will not be accepted. Applications will not be accepted via facsimile machine transmission or e-mail. NTIA anticipates that it will take between 4 and 6 months to process applications and make final funding determinations.

ADDRESSES: Telecommunications and Information Infrastructure Assistance Program, National Telecommunications and Information Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., HCHB, Room 4090, Washington, DC 20230.

FOR FURTHER INFORMATION, CONTACT: Stephen J. Downs, Acting Director of the Telecommunications and Information Infrastructure Assistance Program, Telephone: 202/482–2048. Fax: 202/501–5136. E-mail: tiiap@ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

Program Purposes

NTIA announces the third annual round of a competitive matching grant* program, TIIAP. TIIAP was created to promote the development and widespread availability of advanced telecommunications and information technologies to serve the public interest.

To accomplish this objective, TIIAP will provide matching grants to state and local governments, non-profit health care and public health providers, school districts, libraries, colleges, universities, public safety providers, non-profit community-based organizations, and other non-profit entities, for projects that will improve the quality of, and the public's access to, education and lifelong learning; reduce the cost, improve the quality, and/or increase the accessibility of health care and public health services; promote responsive public services; and foster communication and resource-sharing within communities, both rural and urban.

Authority

The Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act of 1994, P.L. No. 103–317, 108 Stat. 1724, 1747 (1994) and P.L. No. 104–99 "Balanced Budget Downpayment Act, I."

Funding Availability

NTIA issues this Notice subject to the appropriations made available under the continuing resolution (P.L. No. 104–99). NTIA anticipates making grant awards provided that funding for TIIAP is continued beyond March 15, 1996, the expiration date of the current continuing resolution. This continuing resolution includes $21.5 million for TIIAP. Issuance of grants, however, is subject to the future availability of FY 1996 funds. Further notice will be made in the **Federal Register** of the final status of funding for this program at the appropriate time.

Based on past experience, NTIA expects that the level of competition will be extremely strong. In fiscal year 1995, NTIA received more than 1,800 applications, collectively requesting more than $680 million in grant funds. From these 1,800 applications, the Department of Commerce announced 117 TIIAP awards totaling $35.7 million in Federal funds.

*Terms marked with an asterisk (*) are defined at the end of this Notice.

Eligibility Criteria

Eligible Organizations. All state and local governments, all colleges and universities, and all non-profit entities are eligible to apply. However, individuals and for-profit organizations are not eligible.

Matching Funds Requirements. Grant recipients under this program will be required to provide matching funds toward the total project cost. A project will not be considered eligible for funding unless the applicant documents the capacity to supply matching funds. Matching funds may be in the form of cash or in-kind contributions. Grant funds under this program will be released in direct proportion to local matching funds raised and/or documented. NTIA will supply up to 50% of the total project cost, unless extraordinary circumstances warrant a grant of up to 75%. Federal funds (such as grants) generally may not be used as matching monies, except as provided by Federal statute. For information about whether particular Federal funds may be used as matching funds, the applicant should contact the Federal agency that administers the funds in question.

Scope of Proposed Project. Funded projects must fall into the program categories and priorities described in this Notice. Projects must involve the delivery of useful, practical services in real-world environments within the grant award period. In fiscal year 1996, TIIAP will not fund the following kinds of projects:

One-Way Networks. TIIAP will not support the construction or augmentation of one-way networks; all services and networks proposed under the program must be interactive.*

Content Development* Projects. TIIAP will not support projects whose primary focus is to develop or produce information content, rather than to apply information infrastructure* to practical problems. For example, TIIAP will not consider projects whose primary purpose is the creation of databases or other information resources by converting paper-based information. Similarly, TIIAP will not consider projects that create new information resources, such as World Wide Web sites, unless these projects also include specific measures to ensure access to and use of those resources. Examples of such measures include, but are not limited to, placement of public access workstations and provision of training programs.

Hardware or Software Development Projects. While some hardware or software development may be required to integrate existing systems or components, it may not be a major emphasis of any TIIAP project.

Single-Organization Projects. TIIAP will not support projects whose primary emphasis is on the internal communications needs of a single organization. Projects must include appropriate partnerships, with plans for inter-organizational communications among the partners.

Replacement or Upgrade of Existing Facilities. TIIAP will not support any projects whose primary emphasis is the upgrade or replacement of existing facilities.

Policy on Sectarian Activities. Applicants are advised that on December 22, 1995, NTIA issued a notice in the **Federal Register** on its policy with regard to sectarian activities. Under NTIA's prior policy, NTIA funds could not be used for any sectarian purposes. While religious activities cannot be the essential thrust of a grant, an application will not be ineligible where sectarian activities are only incidental or attenuated to the overall project purpose for which funding is requested. Applicants for whom this policy may be relevant should read the policy that was published at 60 FR 66491, Dec. 22, 1995.

Completeness of Application. TIIAP will initially review all proposals to determine whether all required elements are present and clearly identifiable. The required elements are listed and described in the Guidelines for Preparing Applications—Fiscal Year 1996 (Guidelines). Each of the required elements must be present and clearly identified for the proposal to be reviewed. Incomplete applications will be rejected.

Past Performance. Unsatisfactory performance of an applicant under prior Federal financial assistance awards may result in that applicant's proposal not being considered for funding.

Delinquent Federal Debts. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until:

1. The delinquent account is paid in full;
2. A negotiated repayment schedule is established and at least one payment is received; or
3. Other arrangements satisfactory to the Department of Commerce are made.

Program Categories

Introduction. The fiscal year 1996 TIIAP grant program is divided into three categories: Demonstration projects, Access projects, and Planning projects. NTIA will award approximately 65% of the funds in this program to support Demonstration projects, approximately 30% of the funds to support Access projects, and approximately 5% of the funds to support Planning projects, unless the quality and/or number of submissions in any of these categories does not, in NTIA's judgment, merit the proposed allocation of funds. Proposals will be evaluated and selected according to specific criteria (see the "Evaluation Criteria" section in this Notice).

Demonstration Projects. The primary goal of Demonstration projects is to demonstrate new, high-impact, useful applications of information infrastructure which hold significant potential for replication in other communities. The projects must deploy, use, and evaluate innovative applications of information infrastructure to address a particular problem or set of problems in real-world environments. Projects selected in this category will have a high potential to serve as models* for other communities and to demonstrate results within the grant period.

Demonstration projects must focus on the application of information technology to specific needs or problems, rather than on the technology itself. Every application for a Demonstration project must clearly describe how using information infrastructure is expected to result in measurably improved outcomes, such as lowering the cost of health care or improving student performance.

Successful Demonstration applicants must complete their projects within 12–24 months.

Information on Demonstration projects previously funded by TIIAP can be retrieved electronically (see the "Electronic Information" sub-section in this Notice) or by contacting the TIIAP office. Applicants are reminded that evaluation criteria for Demonstration projects change from year to year.

Note: No award in the Demonstration projects category will exceed $750,000.

Access Projects. The primary goal of Access projects is to provide underserved* communities, populations, or geographic areas with greater access to the benefits of the National Information Infrastructure (NII).* Access projects emphasize serving groups of people who have not been adequately served in the past and increasing their access to services and information. Access projects place greater emphasis on reducing disparities than on innovation. Hence, an Access project may build on or emulate a successful model which has gained widespread acceptance in the field.

As is the case with Demonstration projects, the focus of Access projects is on the application of technology to specific needs or problems, rather than on technology itself. Every Access application must clearly describe how using information infrastructure is expected to result in measurably improved outcomes, such as lowering the cost of health care or improving student performance.

Successful Access applicants must complete their projects within 12–18 months.

Examples of Access projects that have received funding in the past are the creation of wide-area networks within school systems or districts and the provision of Internet access to an isolated group or population. Information on current Access projects can be retrieved electronically (see the "Electronic Information" sub-section in this Notice) or by contacting the TIIAP office. Applicants are reminded that evaluation criteria for Access projects change from year to year.

Note: No award in the Access projects category will exceed $250,000.

Planning Projects. The primary goal of Planning projects is to enable organizations, or groups of organizations, to develop strategies for the enhanced application of information infrastructure. Planning projects provide opportunities to bring coalitions together to form firm foundations on which to implement information infrastructure equitably, to examine the opportunities that investment in information infrastructure creates, to aggregate demand for telecommunications services among multiple organizations, and to understand the needs of potential end users. Planning projects are encouraged for rural or underserved populations where an enhanced telecommunications infrastructure could provide greater economic opportunity.

The end result of a Planning project should be a credible plan for deploying and using information infrastructure and sufficient support from the community to implement the plan. Proposals in this category must include clear descriptions of (1) the planning process or methodology to be employed and (2) the expected outcomes of the process.

Successful Planning applicants must complete their projects within 9–12 months.

One example of a Planning project that has received funding in the past is the design, testing, and documentation of a scalable planning model for a city-wide advanced information

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infrastructure. Another example of a funded Planning project is the development of a statewide strategic plan for networking state agencies, educational organizations, industry, health care, and other public service providers so that opportunities for equitably providing services to a state's widely dispersed population can be shared. Information on current Planning projects can be retrieved electronically (see the "Electronic Information" subsection in this Notice) or by contacting the TIIAP office. Applicants are reminded that evaluation criteria for Planning projects change from year to year.

Note: No award in the Planning projects category will exceed $100,000.

Project Funding Priorities

In fiscal year 1996, TIIAP will support projects in four broad application groups*: Community-wide Networking, Health, Lifelong Learning, and Public Services. In all of these groups, TIIAP is committed to supporting projects that will use the NII to promote services to, and/or to encourage greater participation in the NII by, traditionally underserved populations.

Community-wide Networking. These are multi-purpose projects that allow members of a community to share information resources and improve communication. Community-wide networking projects must link services or provide information resources across multiple application groups or sub-groups. Examples include, but would not be limited to, connecting local schools with public libraries, connecting local businesses with job retraining programs, and/or connecting citizens to a variety of social service programs or information resources.

Health. Projects involving the use of telecommunications in the delivery of health and mental health services, public health, home health care, provision of health information to the public, or the education and training of health professionals. Examples of projects could include, but would not be limited to: community health information networks for sharing clinical, financial, and administrative information among hospitals, clinics, public health departments, and other organizations; telemedicine systems that extend medical expertise to underserved areas and/or into the home; and networks or information services aimed at disease prevention, health promotion, and health education.

Lifelong Learning. Projects in this group are divided into three subgroups.

Pre-School and K–12 Education. Projects that bring educational materials or instruction to pre-school and K–12 students or that permit those students to participate in educational activities via telecommunications. Related activities such as professional development of pre-school and K–12 teachers and administrators also fall within this sub-group, as do projects that intend to improve the administration of pre-school and K–12 education.

Higher Education. Projects involving the delivery of college-level courses (including graduate courses); provision of continuing or adult education; or activities such as professional development for community college or university professors or administrators.

Library and Lifelong Learning Services. Projects that bring information, education, and enrichment services on-line through public libraries, museums, cultural centers, literacy organizations, or other non-profit organizations. This sub-group also includes teaching adults basic literacy and job skills.

Public Services. Projects in this group are divided into two subgroups.

Human Services. Projects aimed at improving the delivery of services such as public and subsidized housing, food assistance, child welfare. day care, substance abuse prevention and counseling, job counseling and training, poverty relief, legal assistance, or shelter providing protection from domestic violence. Examples include, but would not be limited to, networks that facilitate coordination and collaboration among public and/or community-based organizations; projects that improve agency responsiveness by providing direct electronic access to information on available services; and projects that employ information technology creatively to promote self-sufficiency among individuals and families.

Public Safety. Projects aimed at increasing the effectiveness of police and fire departments or other entities involved in providing public safety services. Examples may include those that link public safety agencies located in a single geographic area to increase efficiency and share resources, or those that provide information in a timely manner to "first-response officials," such as police officers, emergency medical technicians, and firefighters. Other projects might link agencies with information resources, or provide community outreach services, regarding safety issues and procedures.

TIIAP will also support projects that promote the accessibility and usability of the NII for persons with disabilities. Such projects are expected to fit into one of the four broad application groups described above.

The Guidelines booklet provides more information on selecting a group and/or subgroup for your application.

Evaluation Criteria

Demonstration projects will be evaluated against nine criteria. While each criterion is weighted equally, the following three criteria are qualifying criteria. Demonstration project applicants must fully meet each qualifying criterion. If an application is deemed inadequate on any one of these, it will be not be further evaluated.

1. Problem Definition
2. Technical Approach
3. Ability to Serve as a Model

Projects judged to be qualified will then be fully evaluated on all nine criteria, which include the following additional six criteria.

4. Applicant Qualifications
5. Partnerships and Community Support
6. Support for End Users
7. Evaluation and Dissemination
8. Reducing Disparities in Access to and Use of the NII
9. Budget

Access projects will also be evaluated against nine criteria. While each criterion is weighted equally, the following two criteria are qualifying criteria. Access project applicants must fully meet both qualifying criteria. If an application is deemed inadequate on either of them, it will not be further evaluated.

1. Problem Definition
2. Reducing Disparities in Access to and Use of the NII

Projects judged to be qualified will then be fully evaluated on all nine criteria, which include the following additional seven criteria.

3. Technical Approach
4. Applicant Qualifications
5. Partnerships and Community Support
6. Support for End Users
7. Evaluation and Dissemination
8. Sustainability
9. Budget

Planning projects will be evaluated against seven criteria. While each criterion is weighted equally, the following two criteria are qualifying criteria. Planning project applicants must fully meet both qualifying criteria. If an application is deemed inadequate on either of them, it will not be further evaluated.

1. Problem Definition
2. Partnerships and Community Support

Projects judged to be qualified will then be fully evaluated on all seven criteria, which include the following additional five criteria.

3. Reducing Disparities in Access to and Use of the NII
4. Applicant Qualifications
5. Support for End Users
6. Evaluation and Dissemination
7. Budget

Explanations of Evaluation Criteria

1. Problem Definition. Applicants must clearly link the proposed project to a specific problem or problems in one or more of the application groups or sub-groups described in the "Project Funding Priorities" section in this Notice.

The need(s) or problem(s) to be addressed should be thoroughly documented, including end-user demographics and target audiences to be served. Applicants must explain how the use of advanced telecommunications and information technology will contribute to the solution of the problem(s) and identify the clear and measurable results expected as an outcome of the project. The scope of the project must meet TIIAP eligibility criteria (see the "Eligibility" section in this Notice).

For example, health care providers in rural areas may be required to spend a disproportionate amount of time in travel to visit homebound patients, when the time could be better spent interacting with patients or upgrading their skills. Using an interactive video system to meet with patients and to take continuing medical education courses could reduce the travel time burden, improving the efficiency of health care delivery and making it possible for nurses to develop new skills cost-effectively.

2. Technical Approach. TIIAP defines technical quality as the application of appropriate information technology consistent with the vision of a nationwide, seamless; interactive network of networks, not as innovation for its own sake. Therefore, a project proposed to TIIAP must demonstrate a knowledge of, and a realistic approach to, issues of interoperability* and scalability.* It is essential that the proposal be specific about how the proposed system would work, how the proposed system would operate with other systems, and how the system would be maintained and/or upgraded as needed.

NTIA expects applicants to consider carefully safeguards to protect the privacy of the end users and beneficiaries* of the project. It is essential that the proposal address the privacy and confidentiality of user data if this is relevant. For example, an applicant proposing a project dealing with individually identifiable information (student grades, medical records, etc.) will be required to describe the mechanism(s) to be used for protecting the confidentiality of such information and the privacy of the individuals involved.

3. Applicant Qualifications. Applicants must present evidence of qualifications and experience essential to the successful completion of the project. The applicant should clearly describe the experience of its key project personnel in addressing information- and technology-related issues. The applicant should also describe the qualifications of project partners.

4. Partnerships and Community Support. Proposals must provide evidence of public and/or private sector support and involvement. The extent to which applicants have included diverse sectors of the community in project design and development will be considered an integral part of the proposal. Applicants are also expected to coordinate with other entities in their states. A proposal should present a clear discussion of who the partners will be, what their respective roles in the project will be, what benefits each expects to receive, and what each partner will contribute to the project in the form of financial support, personnel, or other resources. In addition, applicants must provide documentation of the partners' commitment to the project, including letters of commitment from the partners to the applicant describing their roles and contributions.

5. Support for End Users. Projects supported by TIIAP must demonstrate a high degree of attention to the needs, skills, working conditions, and living environments of the targeted end users. Applicants must clearly define the end users, including demographic or other statistical information. Plans for training end users and/or upgrading their skills must be clearly delineated. Applicants should explain clearly how the project will provide end users with easily accessible, useful information, and how end users will benefit from the services offered. Proposals should include evidence of a significant degree of end-user involvement in the design and planning of projects.

6. Evaluation and Dissemination. Every project proposed to TIIAP must present a clearly defined evaluation plan with specific criteria for measuring the effectiveness of the project in reaching its intended audience and in improving outcomes. The applicant must identify specific evaluation instruments to be employed for this purpose. The proposed budget should include sufficient funds to perform a thorough and useful evaluation. In conjunction with the evaluation strategy, TIIAP will review the applicant's plan for disseminating the knowledge gained as a result of implementing the project. Applicants should demonstrate a willingness to share information about their projects with interested parties, to host site visits, and to participate in technology demonstrations.

7. Reducing Disparities in Access to and Use of the NII. The applicant must identify existing disparities, supported by specific quantitative data, and must clearly describe a plan to redress these disparities. The applicant must be sensitive to and take into consideration the local environment of a traditionally underserved population in developing a targeted strategy to overcoming existing barriers. For example, unique sharing arrangements or innovative strategies may be proposed to redress disparities in access. Additionally, the applicant must clearly define the project's beneficiaries; in so doing, the applicant should include demographic and other data as appropriate.

8. Budget. The applicant must fully explain each budget item, including both the Federal and the non-Federal shares of the total project cost, in the manner outlined in the Guidelines. Reviewers will closely examine the degree to which the proposed budget is reasonable in relation to the scope of the project. The budget must be reasonable for the tasks proposed, and the relationship of items in the budget to the project narrative must be clearly drawn.

9. Ability to Serve as a Model. (Applicable only to Demonstration projects.) Demonstration projects must show a strong potential to serve as a model for others to follow. These projects should be innovative, not necessarily in terms of the technology to be used, but in the application of technology in a particular setting, to serve a particular population, or to solve a particular problem. Demonstration applicants must explain the degree to which the projects can be replicated, or can serve as catalysts for activities, in other settings or for other populations. Because of this requirement that a Demonstration project show the potential for applicability in other contexts, reviewers will also examine the economic viability of the proposed model. Demonstration applicants must also explain how the impact of their projects can extend beyond the scope of the original activity funded by TIIAP. For example, the project's innovative application of a particular technology may stimulate the creation of a market for products and services based on that technology. In addition, the program

will examine whether a subsequent evaluation of the project can contribute significantly to our understanding of how the NII can be used to improve the delivery of a wide range of social services and promote economic development.

10. Sustainability. (Applicable only to Access projects.) The applicant must clearly describe a credible plan for sustaining the project beyond the period of Federal funding. Such a plan should include discussion of anticipated ongoing expenses and potential sources or mechanisms for securing needed funds. In evaluating the plan, reviewers will consider the economic circumstances of the community or communities to be served by the proposed project.

Selection Process

NTIA will publish a notice in the **Federal Register** listing all applications received by TIIAP. Listing an application in such a notice merely acknowledges receipt of an application that will compete for funding with other applications. Publication does not preclude subsequent return or disapproval of the application, nor does it ensure that the application will be funded.

Each eligible application will first be reviewed by a panel of outside readers, who have demonstrated expertise in both the programmatic and technological aspects of the application. The review panels will evaluate applications according to the evaluation criteria provided in this Notice and make non-binding recommendations to the program staff. Working with the staff, the TIIAP Director prepares a slate of recommended grant awards for the Selection Official, who is the NTIA Administrator.

In making recommendations, the Director will consider the following selection factors:

1. The evaluations of the outside reviewers;
2. The geographic distribution of the proposed grant awards;
3. The variety of technologies employed by the proposed grant awards;
4. The extent to which the proposed grant awards represent a reasonable distribution of funds across application groups and sub-groups;
5. The promotion of access to and use of the information infrastructure for underserved groups;
6. Avoidance of redundancy and conflicts with the initiatives of other Federal agencies; and
7. The availability of funds.

The NTIA Administrator selects the applications to be negotiated for possible grant award taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes as set forth in the section entitled "Program Purposes." After applications have been selected in this manner, negotiations will take place between TIIAP staff and the applicant. These negotiations are intended to resolve any differences that exist between the applicant's original request and what TIIAP proposes to fund. Not all applicants who are contacted for negotiation will necessarily receive a TIIAP award. Final selections made by the Administrator will be based upon the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes upon the conclusion of negotiations.

Eligible Costs

Eligible Costs. Allowable costs incurred under approved projects shall be determined in accordance with applicable Federal cost principles, i.e., OMB Circular A–21, A–87, A–122, or Appendix E of 45 CFR Part 74. If included in the approved project budget, TIIAP will allow costs for personnel, fringe benefits, computer hardware and software, other end-user equipment, telecommunication services and related equipment, consultants and other contractual services, travel, rental of office equipment, furniture and space, supplies, etc. that are reasonable and directly related to the project. Construction costs are not eligible.

Note that costs that are ineligible for TIIAP support may not be included as part of the applicant's matching fund contribution.

Indirect Costs. The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Award Period

Successful applicants for Demonstration grants will have between 12 and 24 months to complete their projects. Successful applicants for Access grants will have between 12 and 18 months to complete their projects. Successful applicants for Planning grants will have between 9 and 12 months to complete their projects. The completion time will vary depending on the complexity of the project.

Other Information

Electronic Information. Information about NTIA and TIIAP, including this document and the Guidelines, can be retrieved electronically via the Internet through ftp, gopher and the World Wide Web.

To reach the ftp server, ftp to ftp.ntia.doc.gov. Use the login name of 'anonymous' and use your E-mail address as the password. Change to the /pub/grantinfo directory to find TIIAP files.

To reach the gopher server, point your gopher client at gopher.ntia.doc.gov and login as 'gopher'.

To reach the www server, use http://www.ntia.doc.gov/tiiap/tiiap.html to reach the TIIAP Home Page.

TIIAP can also be reached via electronic mail at tiiap@ntia.doc.gov.

Application Forms. Standard Forms 424 (OMB Approval Number 0348–0044), Application for Federal Assistance; 424A (OMB Approval Number 0348–0043), Budget Information—Non-Construction Programs; and 424B (OMB Approval Number 0348–0040), Assurances—Non-Construction Programs, (Rev 4–92), and other Department of Commerce forms shall be used in applying for financial assistance. These forms are included in the Guidelines, which can be obtained by contacting NTIA by telephone, fax, or electronic mail, as described in the 'Address' section above. TIIAP requires one original and five copies of the application. Applicants for whom the submission of five copies presents financial hardship may submit one original and two copies of the application. In addition, all applicants are required to submit a copy of their application to their state Single Point of Contact (SPOC) offices, if they have one. (For information on contacting state SPOC offices, refer to page 39 of the Guidelines.)

Because of the high level of public interest in projects supported by TIIAP, the program anticipates receiving requests for copies of applications. Applicants are hereby notified that the applications they submit are subject to the Freedom of Information Act. Applicants may identify sensitive information and label it "confidential" to assist NTIA in making disclosure determinations.

Type of Funding Instrument. The funding instrument for awards under this program shall be a grant.

Authority and Funding Availability. The National Telecommunications and Information Administration (NTIA), Department of Commerce, serves as the President's principal adviser on telecommunications and information policy. NTIA's functions were codified as part of the Telecommunications Authorization Act of 1992, Pub. L. No. 102–538, 106 Stat. 3533, 47 U.S.C. §§ 901–04 (1993).

Anticipated Funding. NTIA issues this Notice subject to the authority of the continuing resolution (P.L. 104–99). NTIA anticipates making grant awards provided that funding for TIIAP is continued beyond the March 15, 1996, expiration date of the continuing resolution. This continuing resolution includes $21.5 million for TIIAP. Issuance of grants is subject to the availability of FY 1996 funds. Further notice will be made in the **Federal Register** about the final status of funding for this program at the appropriate time.

Federal Policies and Procedures. Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

Pre-Award Activities. If an applicant incurs any project costs prior to the project start date negotiated at the time the award is made, it does so solely at its own risk of not being reimbursed by the government. Applicants are hereby notified that, notwithstanding any oral or written assurance that they may have received, there is no obligation on the part of the Department of Commerce or NTIA to cover pre-award costs.

No Obligation For Future Funding. If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

Name Check Review. All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management, honesty, or financial integrity.

Primary Applicant Certifications. All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. § 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosure—Any applicant that has paid or will pay for lobbying in connection with a covered Federal action, such as the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities" (OMB Control Number 0348–0046), as required under 15 CFR part 28, Appendix B.

Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

False Statements. A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. § 1001.

Intergovernmental Review. Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." It has been determined that this notice is a not a significant rule under Executive Order 12866.

Definitions

Application group or sub-group. The specific sector whose problems or issues a proposed project addresses. The application groups and sub-groups are described in the section on "Project Funding Priorities" in this Notice.

Content development. The creation of information resources, such as databases or World Wide Web sites, for the purpose of dissemination through one or more on-line services.

End user. A person who customarily employs or seeks access to, rather than provides, information infrastructure. An end user may be a consumer of information (e.g., a member of the public employing a touch-screen public access terminal); may be involved in an interactive communication with other end users; or may use information infrastructure to provide services to the public.

Grant. Financial assistance award authorized by law to support autonomous projects or activities of state or local governments, or non-profit groups. This term does not include direct United States government cash assistance to an individual, a subsidy, a loan, a loan guarantee, or insurance.

Information infrastructure. The telecommunication networks, computers, other end-user devices, software, standards, and skills that collectively enable people to connect to each other and to a vast array of services and information resources.

Interactivity. The capacity of a communications system to allow end users to communicate directly with other users, either in real time (as in a video teleconference) or on a store-and-forward basis (as with electronic mail), or to seek and gain access to information on an on-demand basis, as opposed to a broadcast basis.

Interoperability. The condition achieved among information and communication systems when information (i.e., data, voice, image, audio, or video) can be easily and cost-effectively shared across acquisition, transmission, and presentation technologies, equipment, and services.

Model. A project that employs a novel, innovative, and replicable approach. The ultimate impact of a model project should extend far beyond

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the community or communities to be served by the project itself.

National Information Infrastructure (NII). A Federal policy initiative to facilitate and accelerate the development and utilization of the nation's information infrastructure. The Administration envisions the NII as a seamless web of communications networks, computers, databases, and consumer electronics that will put vast amounts of information at users' fingertips. For more information on various aspects of the NII initiative, see The National Information Infrastructure: Agenda for Action, 58 Fed. Reg. 49,025 (September 21, 1993).

Project beneficiary. Individual or organization deriving benefits from a project's outcome(s). A project beneficiary may also, but not necessarily, be a project end user.

Scalability. The ability of a system to accommodate a significant growth in the size of the system (i.e., services provided, end users served) without the need for substantial redesign. A scalable approach that is demonstrated on a small scale can also be applied on a larger scale.

Underserved. End users who are subject to barriers that limit or prevent their access to either social services or information infrastructure. In terms of information infrastructure, these barriers may be geographic, economic, physical, linguistic, or cultural. For example, a rural community may be physically isolated from circuits adequate to allow for data access; inner city neighborhoods may contain large numbers of potential end users for whom ownership of computer hardware is unlikely; individuals with disabilities may have the need for different types of interfaces when manipulating hardware and software.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 96–4642 Filed 2–28–96; 8:45 am]

BILLING CODE 3510–60–P

federal register

Thursday
February 29, 1996

Part VII

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171

Extension of Authority for Open-Head Fiber Drum Packaging for Liquid Hazardous Materials; Final Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. HM–221A; Amdt. No. 171–139]

RIN 2137–AC77

Extension of Authority for Open-Head Fiber Drum Packaging for Liquid Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In accordance with Section 406 of the "Interstate Commerce Commission Sunset Act" (the Act), RSPA is extending the authority to ship certain liquid hazardous materials in open-head fiber drums that do not meet performance-oriented packaging standards for hazardous materials in Packing Group III. This extension expires on the later of September 30, 1997, or the date on which funds are authorized to be appropriated for the hazardous materials transportation program for fiscal years beginning after September 30, 1997.

EFFECTIVE DATE: This final rule is effective on October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001; telephone 202–366–4400.

SUPPLEMENTARY INFORMATION: On January 9, 1996, RSPA published a notice of proposed rulemaking (NPRM) under Docket No. HM–221A, Notice No. 96–1 (61 FR 688), proposing to extend for one additional year, until September 30, 1997, authority for the transportation of certain liquid hazardous materials in non-specification open-head fiber drums that do not meet the performance-oriented packaging standards in the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180.

In the absence of this extension, these open-head fiber drums would not be authorized for shipping these hazardous materials after September 30, 1996. See 49 CFR 171.14(a)(1)(iii). This is because, in a final rule in Docket No. HM–181 (56 FR 66124, Dec. 20, 1991), RSPA eliminated most instances where the HMR had previously authorized the use of non-specification packagings, including packagings for environmentally hazardous substances such as polychlorinated biphenyls. However, to allow for an orderly transition to the performance-oriented packaging standards for non-bulk packagings also adopted in HM–181, RSPA authorized packagings meeting the HM–181 performance standards to be used immediately but provided a five-year phase-out period ending on September 30, 1996, for previously authorized packagings.

In the January 9, 1996 NPRM, RSPA proposed to add a new paragraph (a)(2)(iii) to 49 CFR 171.14 to carry out the mandate in paragraphs (a) and (b) of Section 406 of the Interstate Commerce Commission Sunset Act (Pub. L. 104–88, Dec. 29, 1995). Section 406 reads as follows:

Sec. 406. Fiber Drum Packaging.

(a) In General.—In the administration of chapter 51 of title 49, United States Code, the Secretary of Transportation shall issue a final rule within 60 days after the date of the enactment of this Act authorizing the continued use of fiber drum packaging with a removable head for the transportation of liquid hazardous materials with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991, if—

(1) the packaging is in compliance with regulations of the Secretary under the Hazardous Materials Transportation Act as in effect on September 30, 1991; and

(2) the packaging will not be used for the transportation of hazardous materials that include materials which are poisonous by inhalation or materials in Packing Groups I and II.

(b) Expiration.—The regulation referred to in subsection (a) shall expire on the later of September 30, 1997, or the date on which funds are authorized to be appropriated to carry out chapter 51 of title 49, United States Code (relating to transportation of hazardous materials), for fiscal years beginning after September 30, 1997.

(c) STUDY.—

(1) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Secretary shall contract with the National Academy of Sciences to conduct a study—

(A) to determine whether the requirements of section 5103(b) of title 49, United States Code (relating to regulations for safe transportation), as they pertain to fiber drum packaging with a removable head can be met for the transportation of liquid hazardous materials (with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) with standards (including fiber drum industry standards set forth in a June 8, 1992, exemption application submitted to the Department of Transportation), other than the performance-oriented packaging standards adopted under docket number HM–181 contained in part 178 of title 49, Code of Federal Regulations; and

(B) to determine whether a packaging standard (including such fiber drum industry standards), other than performance-oriented packaging standards, will provide an equal or greater level of safety for the transportation of liquid hazardous materials than would be provided if such performance-oriented packaging standards were in effect.

(2) COMPLETION.—The study shall be completed before March 1, 1997, and shall be transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Transportation and Infrastructure Committee of the House of Representatives.

(d) SECRETARIAL ACTION.—By September 30, 1997, the Secretary shall issue final regulations to determine what standards should apply to fiber drum packaging with a removable head for transportation of liquid hazardous materials (with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) after September 30, 1997. In issuing such regulations, the Secretary shall give full and substantial consideration to the results of the study conducted in subsection (c).

In the NPRM, RSPA proposed an extension of the transition period for continued use of non-specification open-head fiber drums for certain liquid hazardous materials until September 30, 1997. Recognizing that the transition period might have to be extended beyond that date, RSPA stated its intention to revisit that issue in the 1997 rulemaking required by section (d).

RSPA requested comments on the proposed rule, including the possible extension of the transition period to the later of two dates, September 30, 1997, or the date on which funds are authorized to be appropriated to carry out the Federal hazardous materials transportation program for fiscal years beginning after September 30, 1997. RSPA stated that it would "consider alternatives that commenters wish to suggest for handling the uncertain length of this extended transition period * * *" See 61 FR 689.

In response to the NPRM, RSPA received 13 comments. Several industry commenters opposed the extension itself on safety, fairness and uniformity grounds. Those commenters, however, recognized that RSPA has no discretion and must grant the extension. Some commenters requested similar extensions beyond October 1, 1996, for use of other non-specification packagings (e.g., plastic or steel) for transportation of hazardous materials. Consideration of other extensions is beyond the scope of this rulemaking.

Two of the commenters supported the proposed one-year extension of the transition period. Other commenters, including members of Congress, opposed the unqualified one-year extension and stated that RSPA should follow the mandate in section (c) and recognize an alternative to the September 30, 1997 date for termination of the fiber drum use extension.

In light of these comments, RSPA is adopting the proposed rule with modifications. It is deleting the phrase, "Until September 30, 1997," from the beginning of the extension language and adding the following separate sentence to address the duration of the extension: "This authorization expires on the later of September 30, 1997, or the date on which funds are authorized to be appropriated to carry out chapter 51 of title 49, United States Code (related to transportation of hazardous materials), for fiscal years beginning after September 30, 1997." RSPA is adding the following language to provide a point of contact about the authorization date: "Information concerning this funding authorization date may be obtained by contacting the Office of the Associate Administrator."

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979). Because of the minimal economic impact of this final rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism"). The Federal hazardous material transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements related to the number, contents, and placement of those documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation; and

(v) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This rule concerns the packaging authorized for certain hazardous materials and, therefore, preempts State, local, or Indian tribe requirements concerning this subject unless the non-Federal requirements are "substantively the same as" the Federal requirements. RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

Section 5125(b)(2) of 49 U.S.C. provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day, and not later than two years, following the date of issuance of the final rule. RSPA has determined that the effective date of Federal preemption for the continued authorization of these fiber drums will be October 1, 1996.

C. Regulatory Flexibility Act

This final rule extends the authority for shipment of certain liquid hazardous materials in open-head fiber drums that do not meet the performance standards in the HMR. I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

There are no information collection requirements in this final rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the handling of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Imports, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 171 is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.4

2. In § 171.14, a new paragraph (a)(2)(iii) is added to read as follows:

§ 171.14 Transitional provisions for implementing requirements based on the UN Recommendations.

* * * * *

(a) * * *

(2) * * *

(iii) *Non-specification fiber drums.* A non-specification fiber drum with a removable head is authorized for a liquid hazardous material in Packing Group III that is not poisonous by inhalation for which the packaging was authorized under the requirements of Part 172 or Part 173 of this subchapter in effect on September 30, 1991. This authorization expires on the later of September 30, 1997, or the date on which funds are authorized to be appropriated to carry out chapter 51 of title 49, United States Code (related to transportation of hazardous materials), for fiscal years beginning after September 30, 1997. Information concerning this funding authorization date may be obtained by contacting the Office of the Associate Administrator for Hazardous Materials Safety.

* * * * *

Issued in Washington, DC, on February 22, 1996, under authority delegated in 49 CFR Part 1.

D.K. Sharma,

Administrator.

[FR Doc. 96–4628 Filed 2–28–96; 8:45 am]

BILLING CODE 4910–60–M

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Part VIII

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 574

Regulatory Reinvention: Streamlining the Housing Opportunities for Persons With AIDS Program; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 574

[Docket No. FR–4030–F–01]

RIN 2506–AB78

Regulatory Reinvention: Streamlining the Housing Opportunities for Persons With AIDS Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations for the Housing Opportunities for Persons With AIDS (HOPWA) program. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline the HOPWA regulations by eliminating provisions that are duplicative of statutes or are otherwise unnecessary. This final rule will make the regulations more concise.

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Fred Karnas, Jr., Director, Office of HIV/AIDS Housing, Room 7154, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–1934 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TDD) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for the HOPWA Program can be improved and streamlined by eliminating unnecessary provisions.

Several provisions in the regulations repeat statutory language from the AIDS Housing Opportunity Act (42 U.S.C. 12901). It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), since those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, this final rule removes repetitious statutory language and replaces it with a citation to the specific statutory section for easy reference.

Similarly, the environmental review procedures section (§ 574.510) contains language that repeats requirements that are stated in 24 CFR 50.3. Therefore, that section is being revised to remove the repetitive language and substitute a cross-reference to the applicable provision in that existing rule. Removal of this language does not alter the procedures to be followed.

In addition, some provisions in the regulations are not regulatory requirements. For example, several sections in the regulations contain nonbinding guidance or explanations. While this information is very helpful to recipients, HUD will more appropriately provide this information through handbook guidance or other materials rather than maintain it in the CFR.

Lastly, two changes are being made to rectify an oversight when the part was recently revised as part of a larger rulemaking (see 61 FR 5198, February 9, 1996). The waiver provision (§ 574.4) is removed, since Departmental waivers were consolidated at 24 CFR part 5. The section dealing with nondiscrimination (§ 574.603) is being revised to reinsert language limiting the application of the provision to persons who are otherwise eligible for the program, i.e., persons who have AIDS or related diseases and their families.

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely removes unnecessary regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions. It does not change the environmental review procedures or the physical impact of the program or the projects assisted under the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing the HOPWA program. That finding remains applicable to this rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

List of Subjects in 24 CFR Part 574

AIDS, Community facilities, Disabled, Emergency shelter, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

Accordingly, part 574 of title 24 of the Code of Federal Regulations is amended, as follows:

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

1. The authority citation for part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

§ 574.1 [Removed]

2. Section 574.1 is removed.

§ 574.2 [Removed]

3. Section 574.2 is removed.

4. In § 574.3, the definitions for "City", "Low-income individual", "Metropolitan statistical area", "Project sponsor", and "State" are revised to read as follows:

§ 574.3 Definitions.

* * * * *

City has the meaning given it in section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

* * * * *

Low-income individual has the meaning given it in section 853(3) of the AIDS Housing Opportunity Act (42 U.S.C. 12902).

Metropolitan statistical area has the meaning given it in section 853(5) of the AIDS Housing Opportunity Act (42.U.S.C. 12902).

* * * * *

Project sponsor means any nonprofit organization or governmental housing agency that receives funds under a contract with the grantee to carry out eligible activities under this part. The selection of project sponsors is not subject to the procurement requirements of 24 CFR 85.36.

* * * * *

State has the meaning given it in section 853(9) of the AIDS Housing Opportunity Act (42 U.S.C. 12902).

* * * * *

§ 574.4 [Removed]

5. Section 574.4 is removed.

6. Section 574.110 is added, to read as follows:

§ 574.110 Overview of formula allocations.

The formula grants are awarded upon submission and approval of a consolidated plan, pursuant to 24 CFR part 91, that covers the assistance to be provided under this part. Certain states and cities that are the most populous unit of general local government in eligible metropolitan statistical areas will receive formula allocations based on their State or metropolitan population and proportionate number of cases of persons with AIDS. They will receive funds under this part (providing they comply with 24 CFR part 91) for eligible activities that address the housing needs of persons with AIDS or related diseases and their families (see § 574.130(b)).

§ 574.150 [Removed]

7. Section 574.150 is removed.

8. Section 574.200 is amended by adding paragraphs (c) and (d), to read as follows:

§ 574.200 Amounts available for competitive grants.

* * * * *

(c) The competitive grants are awarded based on applications, as described in subpart C of this part, submitted in response to a Notice of Funding Availability published in the **Federal Register**. All States and units of general local government and nonprofit organizations are eligible to apply for competitive grants to fund projects of national significance. Only those States and units of general local government that do not qualify for formula allocations are eligible to apply for competitive grants to fund other projects.

(d) If HUD makes a procedural error in a funding competition that, when corrected, would warrant funding of an otherwise eligible application, HUD will select that application for potential funding when sufficient funds become available.

§ 574.230 [Removed]

9. Section 574.230 is removed.

10. Section 574.240 is revised to read as follows:

§ 574.240 Application requirements.

Applications must comply with the provisions of the Department's Notice of Funding Availability (NOFA) for the fiscal year published in the **Federal Register** in accordance with 24 CFR part 12. The rating criteria, including the point value for each, are described in the NOFA, including criteria determined by the Secretary.

§ 574.250 [Removed]

11. Section 574.250 is removed.

§ 574.310 [Amended]

12. In § 574.310, paragraph (d) is amended by removing from the introductory text the words, "determined in accordance with section 3(a) of the United States Housing Act of 1937 and 24 CFR 813.106. Under these authorities, each resident must pay as rent", and adding in their place the words, "which is".

13. In § 574.320, paragraph (b) is revised to read as follows:

§ 574.320 Additional standards for rental assistance.

* * * * *

(b) With respect to shared housing arrangements, the rent charged for an assisted family or individual shall be in relation to the size of the private space for that assisted family or individual in comparison to other private space in the shared unit, excluding common space. An assisted family or individual may be assigned a pro rata portion based on the ratio derived by dividing the number of bedrooms in their private space by the number of bedrooms in the unit. Participation in shared housing arrangements shall be voluntary.

14. Section 574.510 is revised to read as follows:

§ 574.510 Environmental procedures and standards.

Before any amounts under this program are used to acquire, rehabilitate, convert, lease, repair or construct properties to provide housing, HUD shall perform a review in accord with 24 CFR part 50, which implements the National Environmental Policy Act and the related Federal environmental laws and authorities listed under 24 CFR 50.4. In performing its environmental review, HUD may use previously issued environmental reviews prepared by other local, State, or federal agencies for the proposed property. The grantee will cooperate in providing these documents. HUD must, however, conduct the environmental analysis and prepare the environmental review and be responsible for the required environmental findings. An environmental assurance shall be provided by an applicant for formula allocations or competitive awards in accordance with 24 CFR 50.3(i).

15. Section 574.540 is revised to read as follows:

§ 574.540 Deobligation of funds.

HUD may deobligate all or a portion of the amounts approved for eligible activities if such amounts are not expended in a timely manner, or the proposed activity for which funding was approved is not provided in accordance with the approved application or action plan and the requirements of this regulation. HUD may deobligate any

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amount of grant funds that have not been expended within a three-year period from the date of the signing of the grant agreement. The grant agreement may set forth other circumstances under which funds may be deobligated or sanctions imposed.

16. Section 574.603 is amended by revising the introductory text, to read as follows:

§ 574.603 Nondiscrimination and equal opportunity.

Within the population eligible for this program, the nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5 and the following requirements apply:

* * * * *

Dated: February 21, 1996.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–4678 Filed 2–28–96; 8:45 am]

BILLING CODE 4210–29–P

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Part IX

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 965

Streamlining Public Housing Maintenance and Operation Rules; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 965

[Docket No. FR-3928-F-02]

RIN 2577-AB55

Streamlining Public Housing Maintenance and Operation Rules

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations in 24 CFR part 965 on public housing maintenance and operations to streamline and simplify necessary requirements and to eliminate unnecessary requirements. This final rule takes into consideration comments received on the September 25, 1995 proposed rule.

EFFECTIVE DATE: April 29, 1996.

FOR FURTHER INFORMATION CONTACT: William C. Thorson, Director, Administration and Maintenance Division, Office of Public Housing Management, Room 4214, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone (202) 708-4703; Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1-800-877-TDDY (1-800-877-8339) or (202) 708-9300. (Other than the "800" TDD number, the telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with President Clinton's regulatory reinvention efforts and Executive Order 12866 (Regulatory Planning and Review) issued by President Clinton on September 30, 1993, HUD commenced a comprehensive review of all of its regulations to determine which regulations could be eliminated and streamlined. One such review was with respect to 24 CFR 965, PHA-Owned or Leased Projects-Maintenance and Operation.

HUD published a proposed rule on September 25, 1995 (60 FR 49480) announcing its intention to (1) eliminate one subpart F—Modernization of Oil Fired Heating Plants, (2) simplify and revise subpart C—Energy Audits and Energy Conservation Measures, subpart D—Individual Metering of Utilities for Existing PHA-Owned Projects, and subpart E—Tenant Allowances for Utilities, (3) consolidate two subparts, subpart A—Preemption of State Prevailing Wage Requirements With Respect to Maintenance and Operation and subpart H—Lead- Based Paint Poisoning Prevention, applicable to other housing programs in a new "general" part that will be applicable to all programs, (4) revise subpart I—Fire Safety at a later date to reflect new statutory requirements and (5) make only a minor technical change to subpart B—Required Insurance Coverage.

II. Differences Between This Final Rule and September 25, 1995 Proposed Rule

Intervening events have changed the need for some of these changes. Subpart F was removed by another rulemaking that eliminated obsolete provisions, 61 FR 47263. Subpart A is being amended by a pending rulemaking that focuses primarily on streamlining public and Indian housing modernization regulations. Therefore, this final rule focuses on making the changes to simplify subparts C, D, and E.

Four changes were made at this final rule stage to the revisions proposed in the rule published on September 25, 1995.

1. The Department has revised § 965.407 to require that PHAs with mastermeter systems must reevaluate these systems by making a cost-benefit analysis at least every 5 years. The final rule changes the period from 36 months to 5 years to be consistent with the energy audit and the Comprehensive Grant Program five year plan.

2. The Department has revised § 965.503 to streamline the paragraph by eliminating the unnecessary language in the last sentence which goes beyond the basic requirement.

3. The Department has revised § 965.504(b) to streamline the paragraph by eliminating unnecessary descriptive language beyond the basic requirement.

4. The Department has revised § 965.507(b) to clarify that increases in utility allowances due to rate changes are not subject to the 60-day notice requirement in § 965.502(c).

III. Discussion of Public Comments on Proposed Rule

The Department received public comments from ten organizations (seven public housing agencies (PHAs), one PHA trade organization and two labor organizations) in response to the September 25, 1995 proposed rule. One PHA commended HUD's efforts in simplifying part 965, recommending no revisions. The following discussion summarizes the remaining comments and provides HUD's responses to those comments.

Subpart A—Preemption of State Prevailing Wage Requirements With Respect to Maintenance and Operation of Projects

Comment: While two PHAs concurred with the decision to retain this subpart, two labor organizations strongly objected. Both organizations cited their opposition to the rule when it was originally issued in 1988. They contended that lower rates do not equate to lower project costs and that the capacity of the U.S. Department of Labor to produce timely and accurate wage reports is questionable because of budget cuts. One organization also suggested that the rule creates an unfunded mandate upon the States.

Response: The Department appreciates the positions of the two labor organizations. However, the Department points out that this issue was the subject of considerable debate at the time the proposed and final rules were issued in 1987/1988. It was also, as one of the organizations correctly pointed out, challenged in the courts. The court found in favor of the Department. The Department continues to believe that the rule is in the best interest of the program and declines to eliminate this subpart.

Subpart C—Energy Audits and Energy Conservation Measures

Comment: One PHA and a PHA trade organization suggested that HUD should not require all PHAs, regardless of size or performance, to conduct energy audits and undertake energy conservation measures. The commenter suggested that standard and high performing PHAs and PHAs with fewer than 250 units should be exempt unless there is evidence that intervention by HUD is required on energy conservation issues. Alternatively, it was recommended that if HUD requires all PHAs to conduct the described activities, it should guarantee funding. Another PHA raised similar concerns about funding of audits.

Response: First, it should be noted that HUD pays operating subsidies through the Performance Funding System (PFS) (24 CFR part 990) for HAs that are not able to cover all operating costs, including utilities, through rents charged to residents. Currently, the utility component of the operating subsidy now exceeds $1 billion annually. The appropriation for operating subsidy for Fiscal Years 1994 and 1995 was only sufficient to fund

PHAs at 95 and 96 percent, respectively, of their eligibility level. It is not guaranteed that future appropriations will result in a higher percentage funding. Hence, the Department must ensure that PHAs conduct audits as one means of holding down operating costs, including the cost of utilities, and ensuring that the limited funds available for operations are used as efficiently as possible.

It is erroneous to assume that a designation as a standard or high performer under the Public Housing Management Assessment Program automatically equates to having a good energy management program. HUD's Office of Inspector General (OIG) recently completed an Audit Report entitled "Review of Opportunities To Reduce Utility Costs At Public Housing Authorities." The OIG report was based on visits to approximately 63 PHAs, which manage 41 percent of the 1.3 million public housing units nationally. The OIG indicated that despite past efforts:

> Opportunities for reducing utility costs continue to exist and are cost effective in many instances due to ongoing improvements in technology. Housing authority managers need to be aware of, evaluate, and give maximum consideration to these ongoing and new opportunities when managing their utility costs. Because of improvements in technology, managing utilities is a continuous process that requires an ongoing energy management program.

The purpose of an energy audit is to identify the types and costs of energy use in order to understand how energy is being used and to identify and analyze alternatives that could substantially reduce costs. PHAs that are effectively managing their utility consumption are going through a dynamic process—evaluating current usage, implementing recommendations for energy cost savings, and monitoring the results. A good energy audit process can provide a PHA with many benefits and insights and does not have to be very complex. In fact, some utility companies do energy audits for free.

The Department views a regularly scheduled audit to be an essential tool in reducing operating costs for PHAs and the Federal government. Since the Federal government is paying the cost of operations, including the utility costs, and the technology is constantly evolving, it is reasonable and cost effective to require periodic energy audits by all PHAs, regardless of size or performance. The Department considers five year intervals to be the maximum time between regularly scheduled audits, given the continuous changes that are occurring in the energy industry.

It should be further noted that the requirement to perform an audit is not new. It has been in the existing regulation for more than a decade. The existing regulation required an audit within 36 months from the effective date of the regulation (which was published in 1980) and prior to a PHA's application for Comprehensive Modernization. The proposed rule simply updates the existing requirement for the audit to establish regular intervals when audits must be done.

HUD has eliminated most of the process-oriented requirements (e.g., most of the requirements in the current §§ 965.303 and 965.304) in favor of a results-oriented requirement (e.g., an audit performed in accordance with State requirements). HUD also has eliminated the provision in § 965.302 of the proposed rule involving HUD approval of energy audit standards.

A PHA can, as one commenter recommended, do the energy audit in conjunction with its five-year action plan which is required for the Comprehensive Grant Program. The modernization regulations are being amended to require the incorporation of the energy conservation measures resulting from an audit performed under this subpart.

With regard to the funding of energy audits, the Department believes that a sound energy management program is fundamental to good property management and that energy audits are a cost of doing business that should be included as a part of an agency's operating budget. For that reason, the final rule, in keeping with the existing rule, provides that the audit is to be paid out of operating funds to the extent feasible, and, where operating funds are insufficient, the cost of the audit is an eligible cost for inclusion in a modernization program. The Department disagrees that this existing requirement represents an unfunded mandate.

The Department recommends that PHAs give serious consideration to §§ 965.305(b) and 965.308 of this rule. These sections, and the applicable sections of part 990, provide incentives for PHAs to undertake energy improvements through energy performance contracts using non-HUD financing. Under this arrangement, a PHA may contract with an energy service company to do an audit of its properties and submit a proposal for the installation of energy conservation measures using non-HUD financing. If the proposal is approved by HUD, HUD will freeze the three year rolling base in the utility component of the PFS for the utilities involved. The PHA must use at least 50 percent of the consumption savings to pay debt service on the non-HUD financing, retaining any balance.

The PHA benefits three ways from such an arrangement: (1) It generates additional income from the savings not used for debt service payments; (2) energy improvements are shifted from the PHA's modernization program to non-HUD financing, thus, enabling the PHA to do more work with its limited modernization funds; and (3) the PHA is able to provide a better environment for its residents. As pointed out in the OIG report, "energy efficiency can become a competitive advantage for housing authorities who want to attract residents through increased resident comfort and decreased operating costs." Effective energy use becomes a more critical issue as the public housing community faces drastic changes in the nature of how they are funded and operate. More information regarding energy performance contracting and incentives to reduce utility costs is contained in HUD Notice PIH 95-26, issued April 28, 1995.

Comment: The PHA trade organization suggested that if HUD continues to require energy audits of all PHAs, it should not require that HUD review and pre-approve all energy performance contracts, especially for standard and high-performing PHAs. Instead, the organization suggests that the review of such contracts should be part of the independent public accountant (IPA) process, as the Department proposes for the calculation of resident utility allowances.

Response: Energy performance contracting is relatively new in the public housing community and involves a more sophisticated two-step procurement process that most PHAs have not used and are not familiar with. Further, HUD must agree that the proposed savings will materialize and be sufficient to amortize the debt service in order to commit the Department to freezing the utility component of the PFS for periods of up to 12 years. This represents a significant financial investment on the part of the government. For these reasons, the Department is retaining the pre-approval of energy performance contracts.

Comment: One PHA recommended that HUD should develop criteria to determine which housing authorities are in need of an energy audit. HUD should evaluate a housing authority's energy performance by comparing consumption and cost to a standard. This evaluation would determine which housing

authorities need to conduct an energy audit. The PHA contends that PHAs send in so many reports and information to HUD that the energy performance of a housing authority could be determined by HUD.

Response: As noted above, energy audits are an essential part of an ongoing energy management system. Technology is constantly changing, and it is necessary to have properties reevaluated on a regular basis. The recommendation is to rely on HUD to make a determination after the PHA has been determined to be energy inefficient. The Department does not believe that this is an effective management approach, particularly given dwindling resources for PHAs and HUD.

Further, the Department does receive consumption information for PHAs in conjunction with the PFS. The information reflects gross consumption and is not broken down by individual projects or buildings, both of which can vary significantly. HUD also requests utility information in conjunction with its routine monitoring. Such monitoring is done only on a limited basis. As noted above, the Department does not believe that it is a good management practice for PHAs to wait for HUD to determine energy efficiency. Given the cost to the Department for operations, including utilities, it will retain the audit requirement which has been in effect since 1980.

Subpart D—Individual Metering of Utilities for Existing PHA-Owned Projects

Comment: One PHA indicated that residents should be required to pay for utilities and that the PHA should charge a modest rent based on the number of bedrooms in the unit.

Response: The Department agrees that individual metering is an important component of a complete energy management system for property managers. However, conversions should only be mandatory if they are cost effective, and this subpart is written accordingly. The payment of rent by public housing residents is, by law, based on income and is not addressed by this rule.

Comment: One PHA indicated that it agrees that individual metering is advisable, but that PHAs are capable of implementing these steps independent of HUD regulation. The PHA questions the change in the requirement in the existing rule which advises the PHA to consult with residents, whereas the proposed rule makes such consultation mandatory.

Response: The Department agrees that many PHAs are capable of implementing the provisions contained in the rule. However, it is also true that many PHAs are reluctant to do so to avoid confrontational situations with the residents and the possibility of litigation which has accompanied such conversions in the past. Also, HUD pays the utility costs in these cases and needs to ensure that the conversions are accomplished where it is cost effective to do so. Because of the cost to the Federal government, the Department is retaining this requirement. With regard to consultation, residents are both the PHA's and the Department's ultimate customer. The Department believes the conversion to individual metering, while a good management practice, will nevertheless significantly impact the residents and, therefore, they must be consulted.

Comment: One PHA noted the requirement in § 965.407 for PHAs with mastermeter systems to reevaluate these systems by making a cost-benefit analysis at least every 36 months. The PHA recommends a five-year cycle to be consistent with the energy audit and the Comprehensive Grant Program five year plan.

Response: The Department agrees with this recommendation and has made the revision in the final rule.

Subpart E—Resident Allowances for Utilities

Comment: One PHA noted that a HUD Field Office did a Utility Review and made a finding because it was not surcharging residents for water for a washing machine. The PHA indicates that it felt that it had a right to determine what appliances required surcharges but notes that the regulation does not specifically mention washing machines. The PHA also recommended that we specifically exempt elderly high rises in the South from the requirement to charge residents for the energy to use a PHA-furnished air conditioner. In the instant case, the individual units had heat pumps for each unit which provide heat and air conditioning. The PHA did not think it was possible to establish fair surcharges because some run the air conditioning all the time while others only run the air conditioning occasionally.

Response: The Department agrees that if laundromats are not available, washing machines in units are reasonable, but not without limitation. As has been described above, the amount of operating subsidies is limited. It is, therefore, essential that PHAs undertake measures to conserve energy. One such way is to establish an allowance "which reflects a reasonable consumption of utilities by an energy-conservative household of modest circumstances * * *." If the utility is paid by the PHA and the resident exceeds the allowance, the resident must be surcharged for the excess consumption. The regulation provides PHAs with considerable latitude in the development of allowances, within the basic framework described above. The Department plans to issue a guidebook in the near future to assist PHAs in developing utility allowances.

There is considerable debate as to the extent to which air conditioning should be considered an essential component. As noted earlier, the cost of utilities is in excess of $1 billion annually. Appropriations for the last two years have been, and for the foreseeable future, will be, insufficient to fund PHAs at 100 percent of their eligibility under the PFS. Including air conditioning in utility allowances beyond what is already specifically authorized would seriously and adversely impact the level of funding for other critical services such as maintenance. This will affect all PHAs around the nation, since it will reduce the overall amount of operating subsidy which is fixed. The Department's approach to this difficult issue is to allow the capital costs to be an eligible expense while requiring the resident to pay the costs of the energy associated with its use. The Department is retaining the language in § 965.505(e) as described in the proposed rule.

Comment: Two PHAs indicate that HUD's criteria for establishing utility allowances as required in § 965.505(d)(1) through (9) should be simplified. One PHA indicated that the nine factors that must be taken into account have intimidated many PHAs into commissioning expensive engineering studies in an effort to comply. The PHA suggests that the language be simplified to allow for the use of previous consumption histories. Another PHA suggested that the factors be advisory.

Response: As noted in § 965.505(c), the Department leaves the complexity and elaborateness of the methods for establishing utility allowances to the discretion of the PHA. HUD believes that the choice in methodology is best handled at the local level where the PHA can use a procedure suitable to available data and local experience. As such, the rule does not intend to require only the use of the engineering method to establish allowances. While the Department believes that the engineering method will more closely approximate the objective stated in § 965.505(a), the consumption method is acceptable and may be appropriate for some PHAs. The Department believes that the "factors" cited, which have been in effect for more than a decade, are reasonable and necessary to be "considered" regardless of the methodology used in order to meet the objective in § 965.505(a).

Comment: One PHA indicated that § 965.507 states that utility allowances must be revised if the rate changes more than 10 percent between annual reviews. Utility rates can be volatile, particularly if a housing authority purchases a utility, such as natural gas, directly from the well-head. This could necessitate changing utility allowances several times during a twelve month period. The PHA recommends revision only on an annual basis. This PHA, along with others, indicated that if HUD wants PHAs to be competitive in the housing market, air conditioning must be considered a legitimate cost and should be included in the utility allowances.

Response: To the extent that the market is volatile, any savings/cost should be passed along to the resident. The Department previously discussed the financial impact of including air conditioning in utility allowances. No changes are being made to this section.

Comment: One PHA noted an apparent inconsistency. Specifically, § 965.502(c) requires residents to receive a 60-day notice of any change to the utility allowances. Section 965.507(b), on the other hand, requires that in cases of increases in utility allowances due to rate changes, adjustments shall be effective the first day of the month following the month in which the last rate change taken into account in such revision became effective. The PHA suggested that it appears that increases due to rate changes are not subject to the 60-day notice requirement contained in § 965.502(c).

Response: The PHA is correct that revisions due to rate changes pursuant to § 965.507(b) are not subject to the 60 day notice requirement. The Department has added clarifying language.

Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact remains applicable to this final rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities because the rule reduces and streamlines existing requirements. PHAs will have fewer mandatory requirements. No new additional requirements are being imposed by this rule.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have "federalism implications" because it does not have substantial direct effect on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the rule will not have a significant impact on family formation, maintenance, and well being, and, therefore, is not subject to review under the order. No significant changes in existing HUD policies or programs will result from promulgation of this rule as those policies and programs relate to family concerns.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number assigned to this program is 14.850.

List of Subjects in 24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

Accordingly, 24 CFR part 965 is amended as follows:

PART 965—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

1. The authority citation for part 965 continues to read as follows:

Authority: 42 U.S.C. 1437, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

§ 965.205 [Amended]

2. In subpart B, in § 965.205, paragraph (a) is amended by removing the parenthetical phrase "(in section 305 of the ACC)" from the first sentence that immediately follows the paragraph heading.

3. Subpart C is revised to read as follows:

Subpart C—Energy Audits and Energy Conservation Measures

Sec.
965.301 Purpose and applicability.
965.302 Requirements for energy audits.
965.303 [Reserved].
965.304 Order of funding.
965.305 Funding.
965.306 Energy conservation equipment and practices.
965.307 Compliance schedule.
965.308 Energy performance contracts.

Subpart C—Energy Audits and Energy Conservation Measures

§ 965.301 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart C is to implement HUD policies in support of national energy conservation goals by requiring PHAs to conduct energy audits and undertake certain cost-effective energy conservation measures.

(b) *Applicability.* The provisions of this subpart apply to all PHAs with PHA-owned housing, but they do not apply to Indian Housing Authorities. (For similar provisions applicable to Indian housing, see part 950 of this chapter.) No PHA-leased project or Section 8 Housing Assistance Payments Program project, including a PHA-owned Section 8 project, is covered by this subpart.

§ 965.302 Requirements for energy audits.

All PHAs shall complete an energy audit for each PHA-owned project under management, not less than once every five years. Standards for energy audits shall be equivalent to State standards for energy audits. Energy audits shall analyze all of the energy conservation measures, and the payback period for these measures, that are pertinent to the type of buildings and equipment operated by the PHA.

§ 965.303 [Reserved]

§ 965.304 Order of funding.

Within the funds available to a PHA, energy conservation measures should be accomplished with the shortest pay-back periods funded first. A PHA may make adjustments to this funding order because of insufficient funds to accomplish high-cost energy conservation measures (ECM) or where an ECM with a longer pay-back period can be more efficiently installed in conjunction with other planned modernization. A PHA may not install individual utility meters that measure the energy or fuel used for space heating in dwelling units that need substantial weatherization, when installation of meters would result in economic hardship for residents. In these cases, the ECMs related to weatherization shall be accomplished before the installation of individual utility meters.

§ 965.305 Funding.

(a) The cost of accomplishing cost-effective energy conservation measures, including the cost of performing energy audits, shall be funded from operating funds of the PHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are eligible for inclusion in a modernization program, for funding from any available development funds in the case of projects still in development, or for other available funds that HUD may designate to be used for energy conservation.

(b) If a PHA finances energy conservation measures from sources other than modernization or operating reserves, such as a loan from a utility entity or a guaranteed savings agreement with a private energy service company, HUD may agree to provide adjustments in its calculation of the PHA's operating subsidy eligibility under the PFS for the project and utility involved based on a determination that payments can be funded from the reasonably anticipated energy cost savings (See § 990.107(g) of this chapter).

§ 965.306 Energy conservation equipment and practices.

In purchasing original or, when needed, replacement equipment, PHAs shall acquire only equipment that meets or exceeds the minimum efficiency requirements established by the U.S. Department of Energy. In the operation of their facilities, PHAs shall follow operating practices directed to maximum energy conservation.

§ 965.307 Compliance schedule.

All energy conservation measures determined by energy audits to be cost effective shall be accomplished as funds are available.

§ 965.308 Energy performance contracts.

(a) *Method of procurement.* Energy performance contracting shall be conducted using one of the following methods of procurement:

(1) Competitive proposals (see 24 CFR 85.36(d)(3)). In identifying the evaluation factors and their relative importance, as required by § 85.36(d)(3)(i) of this title, the solicitation shall state that technical factors are significantly more important than price (of the energy audit); or

(2) If the services are available only from a single source, noncompetitive proposals (see 24 CFR 85.36(d)(4)(i)(A)).

(b) *HUD Review.* Solicitations for energy performance contracting shall be submitted to the HUD Field Office for review and approval prior to issuance. Energy performance contracts shall be submitted to the HUD Field Office for review and approval before award.

4. Subpart D is revised to read as follows:

Subpart D—Individual Metering of Utilities for Existing PHA-Owned Projects

Sec.

965.401 Individually metered utilities.
965.402 Benefit/cost analysis.
965.403 Funding.
965.404 Order of conversion.
965.405 Actions affecting residents.
965.406 Benefit/cost analysis for similar projects.
965.407 Reevaluations of mastermeter systems.

Subpart D—Individual Metering of Utilities for Existing PHA-Owned Projects

§ 965.401 Individually metered utilities.

(a) All utility service shall be individually metered to residents, either through provision of retail service to the residents by the utility supplier or through the use of checkmeters, unless:

(1) Individual metering is impractical, such as in the case of a central heating system in an apartment building;

(2) Change from a mastermetering system to individual meters would not be financially justified based upon a benefit/cost analysis; or

(3) Checkmetering is not permissible under State or local law, or under the policies of the particular utility supplier or public service commission.

(b) If checkmetering is not permissible, retail service shall be considered. Where checkmetering is permissible, the type of individual metering offering the most savings to the PHA shall be selected.

§ 965.402 Benefit/cost analysis.

(a) A benefit/cost analysis shall be made to determine whether a change from a mastermetering system to individual meters will be cost effective, except as otherwise provided in § 965.405.

(b) Proposed installation of checkmeters shall be justified on the basis that the cost of debt service (interest and amortization) of the estimated installation costs plus the operating costs of the checkmeters will be more than offset by reduction in future utilities expenditures to the PHA under the mastermeter system.

(c) Proposed conversion to retail service shall be justified on the basis of net savings to the PHA. This determination involves making a comparison between the reduction in utility expense obtained through eliminating the expense to the PHA for PHA-supplied utilities and the resultant allowance for resident-supplied utilities, based on the cost of utility service to the residents after conversion.

§ 965.403 Funding.

The cost to change mastermeter systems to individual metering of resident consumption, including the costs of benefit/cost analysis and complete installation of checkmeters, shall be funded from operating funds of the PHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are eligible for inclusion in a modernization project or for funding from any available development funds.

§ 965.404 Order of conversion.

Conversions to individually metered utility service shall be accomplished in the following order when a PHA has projects of two or more of the designated categories, unless the PHA has a justifiable reason to do otherwise, which shall be documented in its files.

(a) In projects for which retail service is provided by the utility supplier and the PHA is paying all the individual utility bills, no benefit/cost analysis is necessary, and residents shall be billed directly after the PHA adopts revised payment schedules providing appropriate allowances for resident-supplied utilities.

(b) In projects for which checkmeters have been installed but are not being utilized as the basis for determining utility charges to the residents, no benefit/cost analysis is necessary. The checkmeters shall be used as the basis for utility charges, and residents shall be surcharged for excess utility use.

(c) Projects for which meter loops have been installed for utilization of checkmeters shall be analyzed both for the installation of checkmeters and for conversion to retail service.

(d) Low- or medium-rise family units with a mastermeter system should be analyzed for both checkmetering and conversion to retail service, because of their large potential for energy savings.

(e) Low- or medium-rise housing for the elderly should next be analyzed for both checkmetering and conversion to retail service, since the potential for energy saving is less than for family units.

(f) Electric service under mastermeters for high-rise buildings, including projects for the elderly, should be analyzed for both use of retail service and of checkmeters.

§ 965.405 Actions affecting residents.

(a) Before making any conversion to retail service, the PHA shall adopt revised payment schedules, providing appropriate allowances for the resident-supplied utilities resulting from the conversion.

(b) Before implementing any modifications to utility services arrangements with the residents or charges with respect thereto, the PHA shall make the requisite changes in resident dwelling leases in accordance with 24 CFR part 966.

(c) PHAs must work closely with resident organizations, to the extent practicable, in making plans for conversion of utility service to individual metering, explaining the national policy objectives of energy conservation, the changes in charges and rent structure that will result, and the goals of achieving an equitable structure that will be advantageous to residents who conserve energy.

(d) A transition period of at least six months shall be provided in the case of initiation of checkmeters, during which residents will be advised of the charges but during which no surcharge will be made based on the readings. This trial period will afford residents ample notice of the effects the checkmetering system will have on their individual utility charges and also afford a test period for the adequacy of the utility allowances established.

(e) During and after the transition period, PHAs shall advise and assist residents with high utility consumption on methods for reducing their usage. This advice and assistance may include counseling, installation of new energy conserving equipment or appliances, and corrective maintenance.

§ 965.406 Benefit/cost analysis for similar projects.

PHAs with more than one project of similar design and utilities service may prepare a benefit/cost analysis for a representative project. A finding that a change in metering is not cost effective for the representative project is sufficient reason for the PHA not to perform a benefit/cost analysis on the remaining similar projects.

§ 965.407 Reevaluations of mastermeter systems.

Because of changes in the cost of utility services and the periodic changes in utility regulations, PHAs with mastermeter systems are required to reevaluate mastermeter systems without checkmeters by making benefit/cost analyses at least every 5 years. These analyses may be omitted under the conditions specified in § 965.406.

5. Subpart E is revised to read as follows:

Subpart E—Resident Allowances for Utilities

Sec.

965.501 Applicability.
965.502 Establishment of utility allowances by PHAs.
965.503 Categories for establishment of allowances.
965.504 Period for which allowances aare established.
965.505 Standards for allowances for utilities.
965.506 Surcharges for excess consumption of PHA-furnished utilities.
965.507 Review and revision of allowances.
965.508 Individual relief.

Subpart E—Resident Allowances for Utilities

§ 965.501 Applicability.

(a) This subpart E applies to public housing, including the Turnkey III Homeownership Opportunities program. This subpart E also applies to units assisted under sections 10(c) and 23 of the U. S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) as in effect before amendment by the Housing and Community Development Act of 1974 (12 U.S.C. 1706e) and to which 24 CFR part 900 is not applicable. This subpart E does not apply to Indian housing projects (see 24 CFR part 950).

(b) In rental units for which utilities are furnished by the PHA but there are no checkmeters to measure the actual utilities consumption of the individual units, residents shall be subject to charges for consumption by resident-owned major appliances, or for optional functions of PHA-furnished equipment, in accordance with § 965.502(e) and 965.506(b), but no utility allowance will be established.

§ 965.502 Establishment of utility allowances by PHAs.

(a) PHAs shall establish allowances for PHA-furnished utilities for all checkmetered utilities and allowances for resident-purchased utilities for all utilities purchased directly by residents from the utilities suppliers.

(b) The PHA shall maintain a record that documents the basis on which allowances and scheduled surcharges, and revisions thereof, are established and revised. Such record shall be available for inspection by residents.

(c) The PHA shall give notice to all residents of proposed allowances, scheduled surcharges, and revisions thereof. Such notice shall be given, in the manner provided in the lease or homebuyer agreement, not less than 60 days before the proposed effective date of the allowances or scheduled surcharges or revisions; shall describe with reasonable particularity the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances or scheduled surcharges; shall notify residents of the place where the PHA's record maintained in accordance with paragraph (b) of this section is available for inspection; and shall provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances or scheduled surcharges or revisions. Such written comments shall be retained by the PHA and shall be available for inspection by residents.

(d) Schedules of allowances and scheduled surcharges shall not be subject to approval by HUD before becoming effective, but will be reviewed in the course of audits or reviews of PHA operations.

(e) The PHA's determinations of allowances, scheduled surcharges, and revisions thereof shall be final and valid unless found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

§ 965.503 Categories for establishment of allowances.

Separate allowances shall be established for each utility and for each category of dwelling units determined by the PHA to be reasonably comparable as to factors affecting utility usage.

§ 965.504 Period for which allowances are established.

(a) *PHA-furnished utilities.* Allowances will normally be established on a quarterly basis; however, residents may be surcharged on a monthly basis. The allowances

established may provide for seasonal variations.

(b) *Resident-purchased utilities.* Monthly allowances shall be established. The allowances established may provide for seasonal variations.

§ 965.505 Standards for allowances for utilities.

(a) The objective of a PHA in designing methods of establishing utility allowances for each dwelling unit category and unit size shall be to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

(b) Allowances for both PHA-furnished and resident-purchased utilities shall be designed to include such reasonable consumption for major equipment or for utility functions furnished by the PHA for all residents (e.g., heating furnace, hot water heater), for essential equipment whether or not furnished by the PHA (e.g., range and refrigerator), and for minor items of equipment (such as toasters and radios) furnished by residents.

(c) The complexity and elaborateness of the methods chosen by the PHA, in its discretion, to achieve the foregoing objective will depend upon the nature of the housing stock, data available to the PHA and the extent of the administrative resources reasonably available to the PHA to be devoted to the collection of such data, the formulation of methods of calculation, and actual calculation and monitoring of the allowances.

(d) In establishing allowances, the PHA shall take into account relevant factors affecting consumption requirements, including:

(1) The equipment and functions intended to be covered by the allowance for which the utility will be used. For instance, natural gas may be used for cooking, heating domestic water, or space heating, or any combination of the three;

(2) The climatic location of the housing projects;

(3) The size of the dwelling units and the number of occupants per dwelling unit;

(4) Type of construction and design of the housing project;

(5) The energy efficiency of PHA-supplied appliances and equipment;

(6) The utility consumption requirements of appliances and equipment whose reasonable consumption is intended to be covered by the total resident payment;

(7) The physical condition, including insulation and weatherization, of the housing project;

(8) Temperature levels intended to be maintained in the unit during the day and at night, and in cold and warm weather; and

(9) Temperature of domestic hot water.

(e) If a PHA installs air conditioning, it shall provide, to the maximum extent economically feasible, systems that give residents the option of choosing to use air conditioning in their units. The design of systems that offer each resident the option to choose air conditioning shall include retail meters or checkmeters, and residents shall pay for the energy used in its operation. For systems that offer residents the option to choose air conditioning, the PHA shall not include air conditioning in the utility allowances. For systems that offer residents the option to choose air conditioning but cannot be checkmetered, residents are to be surcharged in accordance with § 965.506. If an air conditioning system does not provide for resident option, residents are not to be charged, and these systems should be avoided whenever possible.

§ 965.506 Surcharges for excess consumption of PHA-furnished utilities.

(a) For dwelling units subject to allowances for PHA-furnished utilities where checkmeters have been installed, the PHA shall establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis (e.g., cents per kilowatt hour of electricity) or for stated blocks of excess consumption, and shall be based on the PHA's average utility rate. The basis for calculating such surcharges shall be described in the PHA's schedule of allowances. Changes in the dollar amounts of surcharges based directly on changes in the PHA's average utility rate shall not be subject to the advance notice requirements of this section.

(b) For dwelling units served by PHA-furnished utilities where checkmeters have not been installed, the PHA shall establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to resident-owned major appliances or to optional functions of PHA-furnished equipment. Such surcharge schedules shall state the resident-owned equipment (or functions of PHA-furnished equipment) for which surcharges shall be made and the amounts of such charges, which shall be based on the cost to the PHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

§ 965.507 Review and revision of allowances.

(a) *Annual review.* The PHA shall review at least annually the basis on which utility allowances have been established and, if reasonably required in order to continue adherence to the standards stated in § 965.505, shall establish revised allowances. The review shall include all changes in circumstances (including completion of modernization and/or other energy conservation measures implemented by the PHA) indicating probability of a significant change in reasonable consumption requirements and changes in utility rates.

(b) *Revision as a result of rate changes.* The PHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change (including fuel adjustments) and shall be required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rates on which such allowances were based. Adjustments to resident payments as a result of such changes shall be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective. Such rate changes shall not be subject to the 60 day notice requirement of § 965.502(c).

§ 965.508 Individual relief.

Requests for relief from surcharges for excess consumption of PHA-purchased utilities, or from payment of utility supplier billings in excess of the allowances for resident-purchased utilities, may be granted by the PHA on reasonable grounds, such as special needs of elderly, ill or disabled residents, or special factors affecting utility usage not within the control of the resident, as the PHA shall deem appropriate. The PHA's criteria for granting such relief, and procedures for requesting such relief, shall be adopted at the time the PHA adopts the methods and procedures for determining utility allowances. Notice of the availability of such procedures (including identification of the PHA representative with whom initial contact may be made by residents), and the PHA's criteria for granting such relief, shall be included in each notice to residents given in accordance with § 965.502(c) and in the information given to new residents upon admission.

Dated: February 22, 1996.

MaryAnn Russ,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–4679 Filed 2–28–96; 8:45 am]

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federal register

Thursday
February 29, 1996

Part X

The President

Order of February 27, 1996—Further Designation Under Executive Order No. 12958

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Presidential Documents

Title 3—

The President

Order of February 27, 1996

Further Designation Under Executive Order No. 12958

Pursuant to the provisions of section 1.4 of Executive Order No. 12958 of April 17, 1995, entitled "Classified National Security Information," I hereby designate the following additional officials to classify information originally as "Top Secret":

The Chair, Commission on the Roles and Capabilities of the United States Intelligence Community

The Director, National Counterintelligence Center

The Chair of the Commission on the Roles and Capabilities of the United States Intelligence Community, shall exercise the authority to classify information originally as "Top Secret" during the existence of the Commission and for such time afterwards as may be necessary to complete the Commission's administrative affairs.

The authority of the Director of the National Counterintelligence Center to classify information originally as "Top Secret"is limited to those circumstances in which the original classification of information is necessary in order for the Center to fulfill its mission and functions.

Any delegation of this authority shall be in accordance with section 1.4(c) of Executive Order No. 12958.

This order shall be published in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
February 27, 1996.

[FR Doc. 96–4932
Filed 2–28–96; 12 pm]
Billing code 3195–01–P

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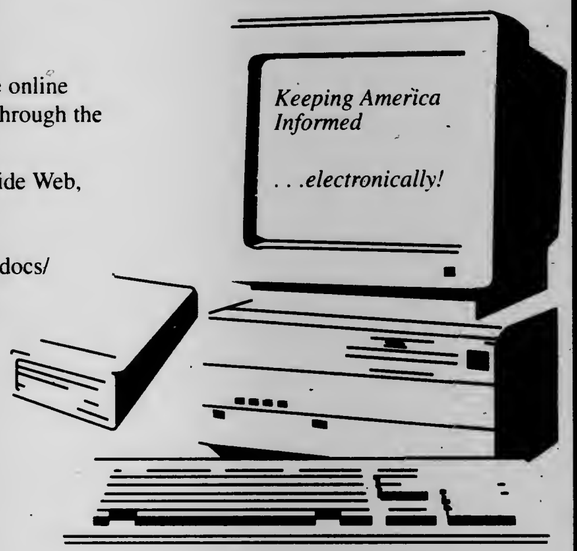
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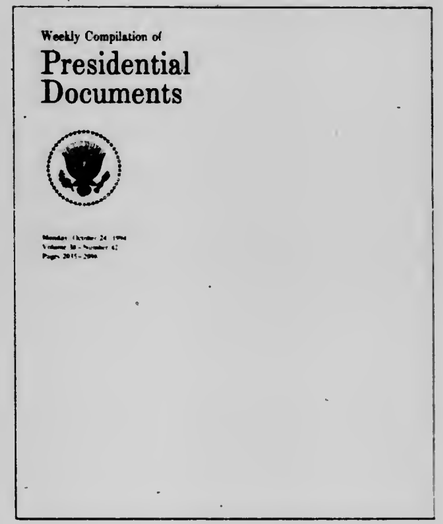
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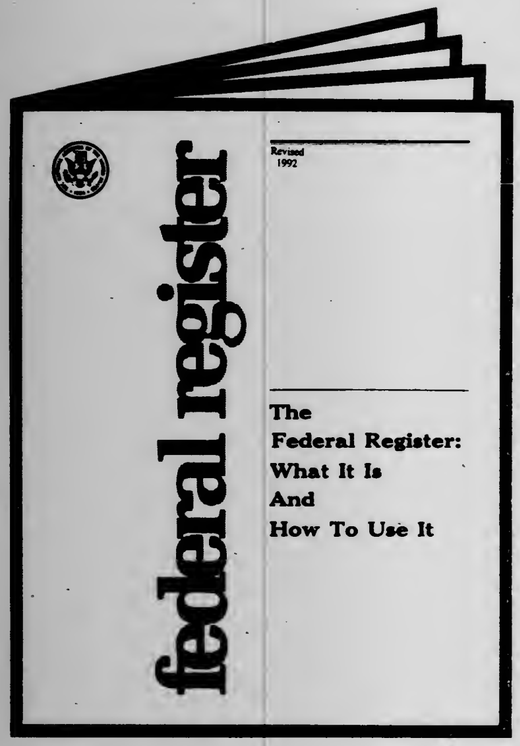
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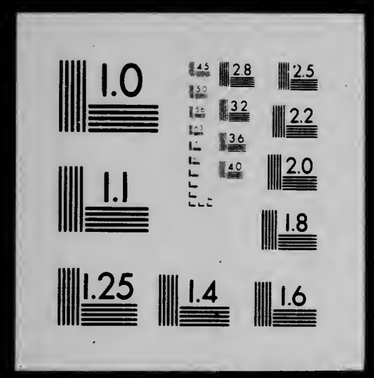
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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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1996
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Rules and Regulations

Federal Register
Vol. 61, No. 42
Friday, March 1, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Chapter III

[Docket No. 950525142–6028–02]

RIN 0610–AA47

Simplification and Streamlining of Regulations of the Economic Development Administration

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Final rule.

SUMMARY: The Economic Development Administration (EDA) has amended all of its regulations so that they are easy to read and use, and accurately reflect program requirements, evaluation criteria and selection process in implementing programs under the Public Works and Economic Development Act of 1965, as amended, (PWEDA or the Act) the Trade Act of 1974, as amended (the Trade Act) and other statutes to be noted herein. This streamlining effort includes the removal of numerous unnecessary, redundant and outdated parts, sections and portions thereof.

EFFECTIVE DATE: This rule is effective on March 1, 1996.

FOR FURTHER INFORMATION CONTACT: Awilda R. Marquez, (202) 482–4687; fax number: (202) 482–5671.

SUPPLEMENTARY INFORMATION:

Background

• Pursuant to a directive from President Clinton to Federal agencies in March of 1995 regarding their responsibilities under his Regulatory Reform Initiative (as part of the National Performance Review), EDA undertook a comprehensive review of its rules to remove those which were obsolete or unnecessary and to modify those in need of reform.

• On September 26, 1995, EDA published an interim-final rule on simplification and streamlining its regulations (60 FR 49670–49703). In this interim-final rule EDA removed over 60% of its then existing rules and streamlined and clarified those which remained. The public was invited to submit comments on the interim-final rule for a period of sixty (60) days ending November 27, 1995.

Comments on the Interim-Final Rule

EDA received comments from more than twenty (20) persons, all of whom are or were EDA officials.

• OMB Control Numbers.

A commenter noted that the OMB control numbers needed to be updated.

We concur and have made the appropriate change to § 300.3.

• Notice of Funding Availability (NOFA).

Commenters noted that the acronym "NOFA" was not explained in the general information section of the interim-final rule and that for various programs, references to general information at § 300.4 should more appropriately be to the NOFA.

We concur and have changed 13 CFR 300.4, 307.13(b), 307.18(b), 308.5(b), and 315.8(a) accordingly.

• Area designation-American Indian lands.

A commenter suggested that the section on American Indian area designation should be modified to clarify what is required when non-contiguous land is considered as one area, noting that a relationship between the land must be demonstrated.

We concur and have made the appropriate change to 13 CFR 301.4(d).

• Area designation-per capita employment decline.

A commenter suggested that the term "out-migration" as used in conjunction with per capita employment decline, as a basis of area designation be changed to "population loss" as a more apt and readily available descriptive term. This commenter also suggested that per capita employment decline be modified so that what is measured is the decline of the working age population.

We do not concur because the regulation as currently written in 13 CFR 301.9 accurately reflects PWEDA.

• Economic Development Districts.

A commenter made suggestions for clarifications and corrections of 13 CFR 302.4(a); 302.13; 302.17 and 302.18.

We concur with all of the above and have made the recommended changes, with the exception of § 302.13 (c), since we do not agree that the use of a pronoun to describe the Economic Development Center (EDC) is unclear.

• Overall Economic Development Program (OEDP).

A commenter recommended that the section describing requirements for District OEDPs be modified to make it clear that both conditions listed must be satisfied.

We concur and have changed 13 CFR 303.2(a) accordingly.

A commenter recommended that the section describing Area OEDP committees be further streamlined and clarified.

We concur and have revised 13 CFR 303.3(a)(1) accordingly.

• Selection Process.

Commenters made suggestions concerning programs which are reviewed, processed and approved in EDA headquarters—National Technical Assistance and Research, to clarify language about Solicitation of Proposals, and to accommodate proposals in excess of two pages with allowances for more in-depth project descriptions in applications, if so requested by EDA.

We concur and have made the suggested changes to 13 CFR 304.1 (a)(1)(i) and (a)(3)(iii).

Commenters recommended that for those programs where Regional Directors have been delegated the authority to approve projects, changes be made indicating that appropriate Regional Office Project Review Committees (PRCs) shall have the opportunity to review all proposals (wherever originally received); PRC meetings will be regularly scheduled, and proponents will be given timely written notice of the results of the PRC meeting at which their proposal was reviewed.

We concur and have made the suggested changes to 13 CFR 304.1 (a)(2)(i), (a)(2)(ii), and (a)(2)(iii).

Commenters recommended that a sentence be added to the section describing general evaluation criteria indicating that each annual FY NOFA could identify special areas of interest for that FY.

We concur and have changed 13 CFR 304.1(b) accordingly.

• Proposal form.

A commenter suggested that the standard OMB proposal form number be noted in the final rule.

We concur and have changed 13 CFR 304.1(a)(1)(i) accordingly.

• Award requirements.

A commenter noted that for programs under Titles I and IX of PWEDA, the award period can be no longer than the end of the fifth fiscal year after the award was made.

We concur and have made the changes to 13 CFR 305.7(a) and 308.7(a) accordingly.

• Public Works and Development Facilities Program.

Public Works Impact Program (PWIP): A commenter suggested that a statement be added to the evaluation criteria at 13 CFR 305.6 indicating that a major purpose is for speedy work.

We do not concur, because to do so would be to repeat what is stated in PWEDA (42 U.S.C. 3131(a)(1)(D)).

Supplementary grant rates: A commenter recommended that the median family income category for computation of supplementary grant rates at 13 CFR 305.8(b)(6) through (b)(8) be replaced by per capita income, because it is virtually impossible to have such low median family income ranges in today's economy.

We do not concur because the statute requires the use of median family incomes. We have, however, updated median family income figures based upon the 1990 U.S. Census.

Grants for construction cost increases: A commenter suggested redrafting and making 13 CFR 305.10 a part of 13 CFR part 316, since change of scope applies to other projects in addition to those involving construction.

We do not concur because this section is intended to apply only to statutorily authorized grants for construction cost increases under section 107 of PWEDA. Any other change of scope matters not specifically addressed in the rule are covered under 13 CFR 316.10.

New Subpart for Other Requirements: A commenter suggested an additional Subpart C for part 305, because the subjects in §§ 305.11–305.15 more appropriately should be included under a new Subpart C-Other Requirements.

We concur and have made the necessary changes to the rule by adding a Subpart C to part 305.

Disbursement of grant funds: A commenter suggested that 13 CFR 305.11 (a)(1), (a)(4) and (a)(6) be deleted on the ground that they are burdensome and go beyond uniform federal requirements. The commenter also suggested that other portions of the disbursement section either be deleted as duplicative of general federal requirements or be moved to 13 CFR part 316 for all programs.

We do not concur because a consensus had been reached prior to publication of the interim-final rule that these conditions were needed in order to provide a structure within which EDA could exercise its judgment concerning grant disbursements.

Amendments and changes: A commenter suggested that this requirement under 13 CFR 305.13 applies to all programs, not just to public works under Title I, and should therefore, be moved to 13 CFR part 316.

We concur and have redesignated this requirement at 13 CFR 316.11.

Contract and subcontract clauses: A commenter suggested that this requirement under 13 CFR 305.15 applies to all programs, not just to public works under Title I, and should therefore, be moved to 13 CFR part 316.

We concur and have moved this requirement to 13 CFR 316.12.

• Local and National Technical Assistance.

Eligible applicants: Commenters suggested that the interim-final rule incorrectly includes other applicants such as private individuals, partnerships, firms and corporations (for-profits) as eligible grantees under the Local and National Technical Assistance programs under 13 CFR part 307.

We concur and have revised the interim-final rule at 13 CFR 307.2(c) and 307.12(c) to delete references to these other applicants. This change is made consistent with our revised interpretation of relevant provisions of PWEDA and the Federal Grant and Cooperative Agreement Act.

Other changes: Commenters suggested other changes for clarity and consistency with other portions of the rule, at 13 CFR 307.13(b), 307.14(e), 307.16 and 307.18(b).

We concur and have made these changes in the final rule. Research topics and structure: Commenters suggested that for the National Technical Assistance Program, the evaluation criterion describing levels of preferences for projects, based upon geographic scope, be modified to remove the levels of preferences.

We concur and have modified 13 CFR 307.20(c) accordingly.

• Title IX—Economic Adjustment Revolving Loan Fund (RLF).

Nonrelocation: A commenter suggested that the interim-final rule be modified to include borrowers under the Title IX Economic Adjustment Revolving Loan (RLF) program.

After discussion within the agency, we decided not to modify the interim-final rule at 13 CFR 316.4, but instead to include applicable nonrelocation requirements as part of RLF Plans and, if need be, as special conditions of the grant.

Subgrants: A commenter suggested that for RLF grants involving subgrants, processing be specifically set forth indicating those aspects to be reviewed and monitored by EDA and those to be handled by EDA's RLF grantees on EDA's behalf.

After discussions within the agency, it was determined that the rule should remain silent in this matter. Processing of subgrants will continue to be handled on a case by case basis to be covered in grant award documents, including special conditions by those Regional Offices handling such projects.

• Estimated useful life determinations.

A commenter suggested that the interim-final rule at 13 CFR part 314 be changed to add a maximum estimated useful life for projects, up to but not exceeding 20 years.

We do not concur because of applicable case law concerning extinguishing the Federal interest in projects.

• Evidence of Title to real property.

A commenter suggested that the interim-final rule be modified at 13 CFR 314.7 so that only recipients without the power of eminent domain be required to submit evidence of title.

We do not concur with this suggestion because the title requirements apply to all grantees, regardless of their legal status.

• Trade Act.

A commenter recommended changes to the definitions of firm, Partial separation, and A significant number of proportion of workers to more accurately reflect EDA's current policies concerning such terms.

We concur and have changed 315.2 accordingly.

Other changes: A commenter recommended changes to four other sections (selection process, certification requirements, processing petitions for certification, and hearings, appeals and final determinations) of the Trade Act portion of the rule, in order to clarify meanings.

We concur and have made changes accordingly to 13 CFR 315.5(b)(2), 315.9(a), 315.10 (b)(4) through (b)(6), and 315.11(a).

• Environment.

A commenter suggested that the Notice requirement under NEPA regulations be moved from EDA's annual FY NOFA to EDA's regulations, since this is a continuing requirement that more appropriately should be codified along with other similar matters found in 13 CFR chapter III.

We concur and have added this to 13 CFR 316.1 (b)(1)(i) and (b)(1)(ii).

A commenter noted an error in the citation to the Resource Conservation and Recovery Act of 1976.

We concur and have changed 13 CFR 316.1(b)(7) accordingly.

• Excess capacity.

Commenters suggested that four of the five definitions—"capacity", "demand", "efficient capacity", and "existing competitive enterprise", be modified slightly to enable applicants to more easily provide information to EDA from which the agency can make necessary excess capacity findings and determinations.

We concur and have modified 13 CFR 316.3(b) accordingly.

• Civil rights.

Several commenters suggested changing the interim-final rule to give applicants for planning grants the option of submitting employment data on the ED–612 or in a narrative format traditionally used by such applicants/grantees containing comparable information to that provided on the ED–612.

We concur and have modified 13 CFR 317.1 accordingly.

A commenter suggested that we consider including developers as "Other Parties" for purposes of submission of civil rights employment data forms.

After discussions within the agency, it was determined that there is no need to modify the interim final rule, and that any special situations involving developers could, if need be, be covered by grant award special conditions.

Savings Clause

The rights, duties, and obligations of all parties pursuant to parts, sections and portions thereof of the Code of Federal Regulations removed by this rule shall continue in effect.

Executive Order 12866

This rule has been determined to be significant for purposes of E.O. 12866.

Regulatory Flexibility Act

Since notice and an opportunity for comment are not required to be given for the rule under 5 U.S.C. 553 or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 601–612) no initial or final Regulatory Flexibility Analysis is required, and none has been prepared.

Paperwork Reduction Act

This rule does not contain new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

E.O. 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects

13 CFR Part 300

Organization and functions (Government agencies), Reporting and recordkeeping requirements.

13 CFR Part 301

Community development.

13 CFR Part 302

Community development, Grant programs—business, Grant programs—housing and community development, Loan programs—business, Loan programs—housing and community development, Technical assistance.

13 CFR Part 303

Community development, Reporting and recordkeeping requirements.

13 CFR Part 304

Community development.

13 CFR Part 305

Community development, Community facilities, Grant programs—housing and community development, Indians.

13 CFR Part 307

Business and industry, Community development, Grant programs—business, Grant programs—housing and community development, Indians, Research, Technical assistance.

13 CFR Part 308

Business and industry, Community development, Community facilities, Grant programs—business, Grant programs—housing and community development, Indians, Manpower training programs, Mortgages, Relocation assistance, Rent subsidies, Reporting and recordkeeping requirements, Research, Technical assistance, Unemployment compensation.

13 CFR Part 312

Community development, Grant programs—housing and community development.

13 CFR Part 314

Community development, Grant programs—housing and community development.

13 CFR Part 315

Administrative practice and procedure, Community development, Grant programs—business, Grant programs—housing and community development, Technical assistance, Trade adjustment assistance.

13 CFR Part 316

Community development, Community facilities, Freedom of information, Grant programs—housing and community development.

13 CFR Part 317

Aged, Civil rights, Equal employment opportunity, Individuals with disabilities, Reporting and recordkeeping requirements, Sex discrimination.

Accordingly, the interim rule revising 13 CFR Chapter III which was published at 60 FR 49670 on September 26, 1995, is adopted as a final rule with the following changes:

PART 300—GENERAL INFORMATION

1. The authority citation for part 300 continues to read as follows:

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

2. Section 300.3 is amended by revising paragraph (b) to read as follows:

§ 300.3 OMB control numbers.

* * * * *

(b) Control Number Table:

13 CFR part or section where identified and described	Current OMB control No.
303	0610–0093
305	0610–0094
	0610–0092
308	0610–0092
312.5	0610–0094
315	0610–0091
316.4	0610–0082

3. Section 300.4 is revised to read as follows:

§ 300.4 Economic Development Administration—Washington, D.C., Regional and Economic Development Representatives.

For addresses and phone numbers of the Economic Development Administration in Washington, D.C., Regional and Field Offices and Economic Development Representatives, refer to EDA's annual Fiscal Year (FY) Notice of Funding Availability (NOFA).

PART 301—DESIGNATION OF AREAS

1. The authority citation for part 301 continues to read as follows:

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

2. Section 301.4 is amended by revising paragraph (d) to read as follows:

§ 301.4 Designation on the basis of American Indian lands.

* * * * *

(d) When the determination of economic distress pertains to land areas that are not contiguous, it must be shown that there is a clear economic connection justifying the inclusion of the noncontiguous land areas that will contribute to a more effective economic development program for the area.

PART 302—ECONOMIC DEVELOPMENT DISTRICTS

1. The authority citation for part 302 continues to read as follows:

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

2. Section 302.4 is amended by revising paragraph (a) introductory text to read as follows:

§ 302.4 District organizations.

(a) The district organization is a prerequisite to the awarding of a planning grant and to the initial designation of EDDs. The District shall be organized in one of the following manners:

* * * * *

3. Section 302.13 is amended by redesignating the introductory text and paragraphs (a) through (d) as paragraph (a) introductory text and paragraphs (a)(1) through (a)(4), revising newly designated paragraph (a)(2), and designating the undesignated paragraph at the end of the section as paragraph (b) to read as follows:

§ 302.13 Termination and suspension of economic development centers.

(a) * * *

(2) The economic development center no longer meets the standards for designation, § 302.10;

* * * * *

4. Section 302.17 is revised to read as follows:

§ 302.17 Grant rate for economic development center projects.

The grant rate for projects under Title I of the Act in EDCs, which are growth centers not located in designated redevelopment areas, shall not exceed 50 percent of the project costs except for the ten percent bonus provided for in § 302.18 and § 305.9 of this chapter.

5. Section 302.18 is revised to read as follows:

§ 302.18 Financial assistant redevelopment centers.

The eligibility of redevelopment centers for EDA financial assistance, including the ten percent bonus as provided for herein, is the same as for any designated redevelopment area within the district. The grant rate for the redevelopment center shall be determined by the rate applicable to the redevelopment area within which it is located.

PART 303—OVERALL ECONOMIC DEVELOPMENT PROGRAM

1. The authority citation for part 303 continues to read as follows:

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

2. Section 303.2 is amended by revising paragraph (a) to read as follows:

§ 303.2 Redevelopment area—District OEDPs.

* * * * *

(a) The area actively participates in and supports the district OEDP planning process; and

* * * * *

3. Section 303.3 is amended by redesignating paragraphs (a) introductory text and (a)(1) as paragraphs (a)(1) and (a)(2) respectively, and by revising the newly designated paragraph (a)(2) to read as follows:

§ 303.3 Redevelopment area OEDP committee.

(a) * * *

(2) Redevelopment area OEDP committees are required only in areas not located in EDDs. EDA recommends OEDP committees in all areas whenever practicable.

* * * * *

PART 304—GENERAL SELECTION PROCESS AND EVALUATION CRITERIA

1. The authority citation for part 304 continues to read as follows:

Authority: Sec. 701, Pub.L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

2. Section 304.1 is amended by revising paragraphs (a)(1)(i), (a)(2)(ii), (a)(2)(iii), (a)(3)(iii), and (b) to read as follows:

§ 304.1 General selection process and evaluation process and evaluation criteria for programs under PWEDA.

* * * * *

(a) * * *

(1) * * *

(i) There will be a brief proposal on the OMB approved form, number 0610–0094, consisting of the face sheet (SF–424) and two additional pages, except for projects under part 307, subparts C and D, of this chapter for which proponents may include more than two pages if necessary to provide adequate information to EDA upon which to make an informed determination whether to invite a more comprehensive proposal and application, including for example, budget, scope of work and capability statements.

* * * * *

(2) * * *

(ii) Such proposals, whether received through contact with the appropriate Economic Development Representative (EDR) or Regional Office of EDA, shall have the opportunity to be formally reviewed by the appropriate Regional Office Project Review Committee (consisting of at least three EDA officials) (PRC). Generally, an EDR will evaluate proposals under paragraph (b) of this section before submitting them to the EDA Regional Office for such review.

(iii) The results of these PRC meetings shall be communicated to the proponents in writing and in a timely manner, advising them that they are: being invited to submit a formal application; having their application returned because of specified deficiencies (resubmissions will be allowed when the deficiencies are cured) or being denied for specific reasons.

* * * * *

(3) * * *

(iii) If the proposal is acceptable under paragraph (b) of this section, EDA may invite proponents to submit applications which must include a more detailed and comprehensive project narrative.

* * * * *

(b) General evaluation criteria for projects to be funded under parts 305, 307 and 308 of this chapter in addition to criteria noted in such parts, are as follows: All proposals/applications will be screened for conformance to statutory and regulatory requirements, the relative severity of the economic problem of the area, the quality of the scope of work proposed to address the problem, the merits of the activity(ies) for which funding is requested, and the ability of the prospective applicant to carry out the proposed activity(ies) successfully. The NOFA may identify special areas of interest for the fiscal year of such NOFA.

PART 305—PUBLIC WORKS AND DEVELOPMENT FACILITIES PROGRAM

1. The authority citation for part 305 continues to read as follows:

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

2. Section 305.7 is amended by revising paragraph (a) to read as follows:

§ 305.7 Award requirements.

(a) Projects are expected to be completed in a timely manner consistent with the nature of the project. Normally, the maximum period for any financial assistance that is provided shall be not more than 5 years from the end of the fiscal year of the award.

* * * * *

3. Section 305.8 is amended in paragraph (b) by revising entries (6) through (8) in the table to read as follows:

§ 305.8 Supplementary grants.

* * * * *

(b) * * *

Projects	Maximum grant rates (percent)
* * * * *	
(6) Projects located in areas designated under Title IV of the Act in which the median family income is $12,100 or below, or the average unemployment rate for the preceding 24 months is 12 percent or higher	80
(7) Projects located in areas designated under Title IV of the Act in which the median family income is $13,900–$12,101, or the average unemployment rate for the preceding 24 months is 10 percent to 11.9 percent	70
(8) Projects located in areas designated under Title IV of the Act in which the median family income is $15,700–$13,901, or the average unemployment rate for the preceding 24 months is 8 percent to 9.9 percent	60
* * * * *	

* * * * *

§ 305.13 [Redesignated as § 316.11]

4. Section 305.13 is redesignated as § 316.11.

§ 305.14 [Redesignated as § 305.13]

5. Section 305.14 is redesignated as § 305.13.

§ 305.15 [Redesignated as § 316.12]

6. Section 305.15 is redesignated as § 316.12.

7. Sections 305.11 through 305.13 are designated as subpart C and a subpart heading is added to read as follows:

Subpart C—Other Requirements

PART 307—LOCAL TECHNICAL ASSISTANCE, UNIVERSITY CENTER TECHNICAL ASSISTANCE, NATIONAL TECHNICAL ASSISTANCE, RESEARCH AND EVALUATION AND PLANNING

1. The authority citation for part 307 continues to read as follows:

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

2. Section 307.2 is amended by revising paragraph (c) to read as follows:

§ 307.2 Applicants.

* * * * *

(c) Technical assistance grant funds may not be awarded to private individuals or for profit organizations.

3. Section 307.12 is amended by revising paragraph (c) to read as follows:

§ 307.12 Applicants.

* * * * *

(c) Technical assistance grant funds may not be awarded to private individuals or for profit organizations.

4. Section 307.13 is amended by revising paragraph (b) to read as follows:

§ 307.13 Selection process.

* * * * *

(b) EDA may during the course of the year, identify specific economic development technical assistance activities it wishes to have conducted. Organizations and individuals interested in being invited to respond to Solicitations of Applications (SOAs) to conduct such studies should submit information on their capabilities and experience. See the annual FY NOFA for the appropriate point of contact and address.

4. Section 307.14 is amended by revising paragraph (e) to read as follows:

§ 307.14 Evaluation criteria.

* * * * *

(e) Demonstrates innovative approaches to stimulating economic development in depressed areas.

5. Section 307.16 is amended by revising the introductory text to read as follows:

§ 307.16 Purpose and scope.

The purposes of research and evaluation projects are as follows:

* * * * *

6. Section 307.18 is amended by revising paragraph (b) to read as follows:

§ 307.18 Selection process.

* * * * *

(b) EDA may during the course of the year, identify specific research or program evaluation projects it wishes to have conducted. Organizations and individuals interested in being invited to respond to SOAs to conduct such studies should submit information on their capabilities and experience. See the annual FY NOFA for the appropriate point of contact and address.

7. Section 307.20 is amended by revising paragraph (c) and removing paragraph (e) to read as follows:

§ 307.20 Research topics and structure.

* * * * *

(c) EDA normally prefers research of broad geographical scope.

* * * * *

PART 308—REQUIREMENTS FOR GRANTS UNDER THE TITLE IX ECONOMIC ADJUSTMENT PROGRAM

1. The authority citation for part 308 continues to read as follows:

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

2. Section 308.5 is amended by revising paragraph (b) to read as follows:

§ 308.5 Selection process.

* * * * *

(b) Applicants for funding of a Revolving Loan Fund (RLF) are generally required to submit a RLF Plan in addition to the adjustment strategy for the area. Guidelines on RLFs are available from the Regional Offices. See the annual FY NOFA for the appropriate point of contact and address.

2. Section 308.7 is amended by revising paragraph (a) to read as follows:

§ 308.7 Award requirements.

(a) Projects are expected to be completed in a timely manner consistent with the nature of the project. Normally, the maximum period for any financial assistance that is provided shall be not more than 5 years from the end of the fiscal year of the award.

* * * * *

PART 315—CERTIFICATION AND ADJUSTMENT ASSISTANCE FOR FIRMS

1. The heading for part 315 is revised to read as set forth above.

2. The authority citation for part 315 continues to read as follows:

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Title II, Chapter 3 of the Trade Act of 1974, as amended, (19 U.S.C. 2341–2355); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

3. Section 315.2 is amended by revising the definitions of *Firm*, *Partial separation*, and *A significant number or proportion of workers* to read as follows:

§ 315.2 Definitions.

* * * * *

Firm means an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy or receiver under court decree and including fishing, agricultural entities and those which explore, drill or otherwise produce oil or natural gas. When a firm owns or controls other firms as described below, for purposes of receiving benefits under this part, the firm and such other firms may be considered a single firm when they produce like or directly competitive articles or are exerting essential economic control over one or more production facilities. Such other firms include:

(1) Predecessor;
(2) Successor;
(3) Affiliate; or
(4) Subsidiary.

* * * * *

Partial separation means either:

(1) A reduction in an employee's work hours to 80 percent or less of the employee's average weekly hours during the year of such reductions as compared to the preceding year; or

(2) A reduction in the employee's weekly wage to 80 percent or less of his/her average weekly wage during the year of such reduction as compared to the preceding year.

* * * * *

A significant number or proportion of workers means 5 percent of the firm's work force or 50 workers, whichever is less. An individual farmer is considered a significant number or proportion of workers.

* * * * *

4. Section 315.5 is amended by revising paragraph (b)(2) to read as follows:

§ 315.5 Selection process.

* * * * *

(b) * * *

(2) Once firms are certified in accordance with the procedures described in §§ 315.9 and 315.10, an adjustment proposal is usually prepared with technical assistance from a party independent of the firm, usually the TAAC, and submitted to EDA;

* * * * * *

5. Section 315.8 is amended by revising paragraph (a) to read as follows:

§ 315.8 Purpose and scope.

(a) Trade Adjustment Assistance Centers (TAACs) are available to assist firms in all fifty states, the District of Columbia and the Commonwealth of Puerto Rico in obtaining adjustment assistance. TAACs provide technical assistance in accordance with this subpart either through their own staffs or by arrangements with outside consultants. Information concerning TAACs serving particular areas can be obtained from EDA. See the annual FY NOFA for the appropriate point of contact and address.

* * * * *

6. Section 315.9 is amended by revising paragraph (a) to read as follows:

§ 315.9 Certification requirements.

* * * * *

(a) A significant number or proportion of workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated.

* * * * *

7. Section 315.10 is amended by revising paragraphs (b)(4) through (b)(6) to read as follows:

§ 315.10 Processing petitions for certification.

* * * * *

(b) * * *

(4) Data on its sales, production and employment for the two most recent years;

(5) Copies of its audited financial statements, or if not available, unaudited financial statements and Federal income tax returns for the two most recent years;

(6) Copies of unemployment insurance reports for the two most recent years.

* * * * *

8. Section 315.11 is amended by revising paragraph (a) to read as follows:

§ 315.11 Hearings, appeals and final determinations.

(a) Any petitioner may appeal to EDA from a denial of certification provided that the appeal is received by EDA in writing by personal delivery or by registered mail within 60 days from the date of notice of denial under § 315.10(g). The appeal shall state the grounds on which the appeal is based, including a concise statement of the supporting facts and law. The decision of EDA on the appeal shall be the final determination within the Department of Commerce. In the absence of an appeal by the petitioner under this paragraph, such final determination shall be determined under § 315.10(g).

* * * * *

PART 316—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

1. The authority citation for part 316 continues to read as follows:

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Title II, Chapter 3 of the Trade Act of 1974, as amended, (42 U.S.C. 2341–2355); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

2. Section 316.1 is amended by revising paragraphs (b)(1) and (b)(7) to read as follows:

§ 316.1 Environment.

* * * * *

(b) * * *

(1) Requirements under the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, as amended, 42 U.S.C. 4321 *et seq.* as implemented under 40 CFR parts 1500 *et seq.* including the following:

(i) The implementing regulations of NEPA require EDA to provide public notice of the availability of project specific environmental documents such as environmental impact statements, environmental assessments, findings of no significant impact, records of decision etc., to the affected public as specified in 40 CFR 1506.6(b); and

(ii) Depending on the project location, environmental information concerning specific projects can be obtained from the Environmental Officer in the appropriate Washington, D.C. or regional office listed in the NOFA;

* * * * *

(7) Resource Conservation and Recovery Act of 1976, Public Law 94–580 as amended, 42 U.S.C. 6901 *et seq.*;

* * * * *

3. Section 316.3 is amended by revising paragraph (b) to read as follows:

§ 316.3 Excess capacity.

* * * * *

(b) *Definitions.* For purposes of this section only:

Capacity means the maximum amount of a product or service that can be supplied to the market area over a sustained period by existing enterprises through the use of present facilities and customary work schedules for the industry.

Demand means the actual quantity of a product or service that users are willing to purchase for use in the market area served by the intended commercial or industrial beneficiary.

Efficient capacity means that part of capacity derived from the use of contemporary structures, machinery and equipment, designs and technologies.

Existing competitive enterprise means an established operation which either produces the same product or delivers the same service to all or a substantial part of the market area.

* * * * *

4. Section 316.13 is added to read as follows:

§ 316.13 Preapproval construction.

Project construction carried out before approval of an application by EDA is carried out at the sole risk of applicant. Such activity could result in rejection of such project application, the disallowance of costs, or other adverse consequences as a result of non-compliance with Federal labor standards, or Federal environmental, historic preservation or related requirements.

PART 317—CIVIL RIGHTS

1. The authority citation for part 317 continues to read as follows:

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

2. Section 317.1 is amended by revising paragraph (c)(2) to read as follows:

§ 317.1 Civil rights.

* * * * *

(c) * * *

(2) Employment data in such form and manner as determined by EDA;

* * * * *

Dated: February 26, 1996.

Phillip A. Singerman,

Assistant Secretary for Economic Development.

[FR Doc. 96–4707 Filed 2–29–96; 8:45 am]

BILLING CODE 3510–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies; Correction

AGENCY: Small Business Administration.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations that were published Wednesday, January 31, 1996, (61 FR 3177). The regulations related to examination fees for SBA examination of small business investment companies.

EFFECTIVE DATE: January 31, 1996.

FOR FURTHER INFORMATION CONTACT: Leonard Fagan, Office of Investment, (202) 205–6510.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections concern policies applicable to examination fees for licensees under the Small Business Investment Company program.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on January 31, 1996 of the final regulations that were the subject of FR Doc. 96–1351, is corrected as follows:

§ 107.692 [Corrected]

On page 3203, in the first column, in § 107.692, in the third column of the rate table in paragraph (a), entitled "Percent of assets", the last entry should be corrected to read "$100,000,000" instead of "$50,000,000".

Dated: February 26, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–4774 Filed 2–29–96; 8:45 am]

BILLING CODE 8025–01–P

13 CFR Part 115

Surety Bond Guarantees; Correction

AGENCY: Small Business Administration.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations that were published Wednesday, January 31, 1996, (61 FR 3266). The regulations related to definitions in provisions for all surety bond guarantees.

EFFECTIVE DATE: March 1, 1996.

FOR FURTHER INFORMATION CONTACT: Barbara Brannan, Office of Surety Guarantees, (202) 205–6540.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections concern definitions applicable to regulations governing the Surety Bond Guarantee program.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on January 31, 1996 of the final regulations that were the subject of FR Doc. 96–1347, is corrected as follows:

§ 115.10 [Corrected]

On page 3271, in the third column, in § 115.10, in the definition "Investment Act", the citation should be corrected to read "15 U.S.C. 661 *et seq.*".

Dated: February 26, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–4771 Filed 2–29–96; 8:45 am]

BILLING CODE 8025–01–P

13 CFR Part 120

Business Loan Programs; Correction

AGENCY: Small Business Administration.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations that were published Wednesday, January 31, 1996, (61 FR 3226). The regulations related to eligible passive companies, interest rates on smaller loans, the Certified Lenders Program, and the Development Company Loan Program.

EFFECTIVE DATE: March 1, 1996.

FOR FURTHER INFORMATION CONTACT: John R. Cox, (202) 205–6490.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections concern policies applicable to SBA's business (non-disaster) loan programs. Section 120.111 relates to all business loans, § 120.215 relates to 7(a) business loans, § 120.440 relates to special purpose loans, and § 120.839 relates to development company loans.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on January 31, 1996 of the final regulations

that were the subject of FR Doc. 96–1432, is corrected as follows:

§ 120.111 [Corrected]

1. On page 3240, in the second column, in § 120.111, paragraph (a)(4), the term "of the Operating Company" is corrected to read "and the Operating Company".

2. On page 3240, in the second and third columns, in § 120.111, paragraph (b), paragraph (b)(2) is removed and paragraphs (b)(3), (b)(4) and (b)(5) are redesignated as paragraphs (b)(2), (b)(3) and (b)(4).

§ 120.215 [Corrected]

3. On page 3243, in the third column, in § 120.215, the term "variable rate" in the second sentence is removed.

§ 120.440 [Corrected]

4. On page 3248, in the second column, in § 120.440, the phrase "attempts to respond within three days of submission to SBA" is corrected to read "will provide expedited loan processing or servicing".

§ 120.839 [Corrected]

5. On page 3260, in the second column, in § 120.839, paragraph (a)(2), in the last line after the semicolon, the word "and" is corrected to read "or".

Dated: February 26, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–4773 Filed 2–29–96; 8:45 am]

BILLING CODE 8025–01–P

13 CFR Part 121

Small Business Size Standards; Correction

AGENCY: Small Business Administration.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations that were published Wednesday, January 31, 1996, (61 FR 3280). The regulations related to size standards by standard industrial classification code and qualifications for a small business set-aside or 8(a) contract to provide manufactured products.

EFFECTIVE DATE: March 1, 1996.

FOR FURTHER INFORMATION CONTACT: John W. Klein, Chief Counsel for Special Programs, Office of General Counsel, (202) 205–6645.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections concern policies relating to size standards by standard industrial classification code in the table under § 121.201, and the standard for qualifying as a small business concern for a small business set-aside or 8(a) contract to provide manufactured products under § 121.406.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on January 31, 1996 of the final regulations that were the subject of FR Doc. 96–1348, is corrected as follows:

§ 121.201 [Corrected]

1. On page 3289, in the third column, under § 121.201, in the last sentence of the text preceding the table, the words "an industry" are corrected to read "a business".

2. On page 3289, in § 121.201, in the table "Size Standards by SIC Industry", in Division A, the heading is corrected to read "Division A—Agriculture, Forestry and Fishing".

3. On page 3291, in § 121.201, in the table "Size Standards by SIC Industry", in Division D, under the heading "SIC code and description", in the entry for 3731, in the 5th line, the phrase "Including Overhauls and Conversion" is corrected to read "Including Overhauls and Conversions".

4. On page 3291, in § 121.201, in the table "Size Standards by SIC Industry", in Division E, the heading is corrected to read "Division E—Transportation, Communications, Electric, Gas, and Sanitary Services".

5. On page 3291, in § 121.201, in the table "Size Standards by SIC Industry", in Division E, the entry "Major Group 41" is corrected to read "Major Group 41—Local and Suburban Transit and Interurban Highway Passenger Transportation".

6. On page 3292, in § 121.201, in the table "Size Standards by SIC Industry", in Division G, the word "Except:" is added above the entry for 5271.

7. On page 3292, in § 121.201, in the table "Size Standards by SIC Industry", in Division H, in the entry for 6021–6082, the description is corrected to read "National and Commercial Banks, Savings Institutions and Credit Unions".

8. On page 3293, in § 121.201, in the table "Size Standards by SIC Industry", in Division I, in the entry for 7218, the second column is corrected to read "$10.5".

§ 121.406 [Corrected]

9. On page 3296, in the second column, in § 121.406, paragraph (b)(4), the phrase "'class' waivers and 'individual' waivers respectively" is corrected to read "'individual' and 'class' waivers respectively".

Dated: February 26, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–4772 Filed 2–29–96; 8:45 am]

BILLING CODE 8025–01–P

13 CFR Part 125

Government Contracting Assistance; Correction

AGENCY: Small Business Administration.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations that were published Wednesday, January 31, 1996, (61 FR 3310). The regulations related to subcontracting assistance, applications for a certificate of competency, and SBA's monitoring of contractor performance.

EFFECTIVE DATE: March 1, 1996.

FOR FURTHER INFORMATION CONTACT: John W. Klein, Chief Counsel for Special Programs, Office of General Counsel, (202) 205–6645.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections concern policies relating to subcontracting assistance in § 125.3(b), applications for a certificate of competency under § 125.5(d)(3), and SBA's monitoring of contractor performance under § 125.5(o).

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on January 31, 1996 of the final regulations that were the subject of FR Doc. 96–1157, is corrected as follows:

§ 125.3 [Corrected]

1. On page 3313, in the first column, in § 125.3, in paragraph (b), the first sentence is corrected by adding after the words "subcontract offeror" the words "on a subcontract for which a small business, small disadvantaged business, and/or women-owned small business received preference" and by adding after the words "apparent successful offeror" the words "and if the successful offeror was a small business, small disadvantaged business, or small women-owned business".

§ 125.5 [Corrected]

2. On page 3314, in the second column, in § 125.5, in paragraph (d)(3), the second sentence is removed.

3. On page 3315, in the third column, in § 125.5, in paragraph (o), the word "may" is corrected to read "will".

Dated: February 26, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–4775 Filed 2–29–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10 and 113

[T.D. 96–20]

RIN 1515–AB51

Treatment of Reusable Shipping Devices Arriving From Canada or Mexico

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to allow certain foreign- or U.S.-manufactured shipping devices arriving from Canada or Mexico to be released, under specified conditions, without entry and payment of duty at the time of arrival and without the devices being serially numbered or marked, if they are always transported on or within either intermodal and similar containers which are themselves vehicles or vehicle appurtenances and accessories. As millions of these devices are used annually in hundreds of millions of transportation moves between the United States and Canada or Mexico, Customs has determined that requiring the importing and exporting communities to individually mark and track these devices places a burden on commerce that may be alleviated.

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Louis Hryniw, Regulatory Audit, (202–927–1100).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Chapter 98, Subchapter III, U.S. Note 3, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), in order to facilitate the prompt clearance at ports of entry of certain substantial containers and holders, the Secretary of the Treasury is authorized to permit the admission of such devices without entry and to permit any duties thereon to be paid cumulatively from time to time either before or after their importation when conditions exist which permit adequate Customs controls to be maintained.

In this connection, Customs received a petition from, and met with representatives of, the American Automobile Manufacturers Association (AAMA) concerning an amendment to § 10.41b, Customs Regulations (19 CFR 10.41b), intended to ease the burden of serially numbering and marking certain containers or holders arriving from Canada or Mexico, as otherwise generally required thereunder.

After reviewing the AAMA proposal, Customs concluded that the requirements to serially number and mark the substantial holders and containers in question could be eased under the circumstances without risking a loss of control or revenue.

Accordingly, by a document published in the **Federal Register** on November 1, 1994 (59 FR 54537), Customs proposed to amend § 10.41b, to allow certain foreign-made shipping devices arriving from Canada or Mexico to be released without entry and payment of applicable duty, and without the devices being serially numbered or marked, following the submission and approval of an application by the importer or his agent in this regard.

Such application had to, among other things, describe the subject shipping devices, identify the ports where they would arrive and depart the U.S., and set forth the program for accounting for and reporting the shipping devices to Customs. If the application were approved, the importer or agent would submit to Customs a periodic report for the shipping devices, which could not be less frequent than annual, using his own accounting and recordkeeping procedures to keep track of the devices. Records supporting the periodic reports of the shipping devices would have to be retained for at least 3 years from the date the reports were filed with Customs. Any duty applicable to the devices would have to be tendered cumulatively at the time specified in the approved application. Such tender could not occur more than 90 days following the end of the related reporting period.

In the event the application were to be denied by Customs at the initial stage, a right of appeal was also provided in the proposal.

Since duty under the proposal would be due on all shipping devices acquired within the period covered by the periodic report which the applicant would undertake to file, even though the devices might not have yet been used in transborder traffic, accounting for specific movements of the devices or for diversions to domestic traffic would be superfluous.

Eight comments, including one from the AAMA, were received in response to the notice of proposed rulemaking, six supporting the proposal, with one posing a number of questions regarding the bond conditions applicable under the proposed program. Another comment advocated that the proposal be expanded to allow substantial holders or outer containers formally designated as "instruments of international traffic" to be temporarily diverted, from time to time, to domestic traffic without an entry being required therefore. Customs finds that this latter comment would have to be the subject of a separate publication, inasmuch as it clearly falls outside the scope of the published notice.

A discussion of the specific issues that were raised with respect to the proposed program itself, together with Customs response thereto, is set forth below.

Discussion of Comments

Comment: The AAMA in its comment wanted the proposed regulation clarified to state explicitly that an approval by one Customs office of an importer's application for tracking and reporting on its shipping devices would constitute an approval binding on all Customs offices nationwide. Also, it was recommended that the proposed regulation be revised to reflect the Customs Reorganization Plan, which eliminated regional and district offices.

Response: An approval by the Customs office with which the subject application is filed would indeed be binding on all Customs offices nationwide. Section 10.41b(b)(4) is changed by adding an express provision to this effect, and by deleting the provision therefrom indicating that approval would be limited to those Customs offices listed in the application. Likewise, § 10.41b(b)(2)(ii) is changed to make clear that only the intended ports where it is anticipated the devices will be arriving and departing the U.S. need be listed in the application. The applicant should of course endeavor to fully anticipate and list in the application all ports to be involved in the program.

Also, § 10.41b(b) is changed to reflect the Customs Reorganization Plan, by

providing that the application would be filed with a port director, instead of with a district director; and by providing that a right of appeal would lie with the Assistant Commissioner, Office of Field Operations, rather than with a regional commissioner, should the application be denied.

Comment: The AAMA also observed that § 113.66 of the Customs Regulations (19 CFR 113.66) cited in proposed § 10.41b(b)(3) regarding the bond requirements for the importer's recordkeeping and reporting program did not itself make corresponding provision for these requirements; accordingly, the AAMA recommended that § 113.66 be appropriately amended to reiterate the basic requirements set forth for the program in proposed § 10.41b(b), to which the underlying bond would relate.

Furthermore, a surety association posed a number of questions about the bond requirements occasioned under the proposed amendment, viewing the proposal as appearing not to provide sufficient information in this matter. In particular, this commenter wanted the intended coverage under the bond clarified, together with the basis both for assessing liquidated damages under the bond, and for setting the limit of the bond.

Additionally, this commenter compared the 3-year record retention requirement of the proposal to 19 U.S.C. 1508(c) which enabled Customs to require the retention of records relating to import transactions for up to 5 years, and asked in this context which time frame would be applicable. This commenter further wanted to know whether the importer's accounting or auditing records, which would be relied upon by Customs to establish compliance with the proposed program, would be available to the surety as well.

Response: Section 113.66 has been revised to replicate the importer's basic recordkeeping and reporting obligations concerning the subject shipping devices, which would be covered by the bond, as already amply evidenced in the proposed amendment of § 10.41b. Customs believes that the proposed rule in this regard adequately framed the subject matter thereof for effective evaluation and comment. To this end, § 113.66 is revised by redesignating paragraph (c) as paragraph (d), and by making corresponding provision for the bond requirements in a new paragraph (c).

In this latter respect, liquidated damages under the bond would be determined in the manner provided in § 10.41b(b)(3) and in newly redesignated § 113.66(d) (formerly § 113.66(c)). Specifically, if the conditions of the bond were violated, the port director could issue a claim for liquidated damages in an amount equal to the domestic value of the container.

Likewise, the setting of the bond limit will follow the existing guidelines previously issued pursuant to §§ 113.12 and 113.13, Customs Regulations (19 CFR 113.12, 113.13); for activity code 3a bonds (applicable to substantial holders or outer containers under § 10.41b), this means that bond liability would be fixed at $10,000 or such larger amount as deemed necessary to accomplish the purpose for which the bond is given.

By the same token, a surety's access to an importer's business records relating to the reports of its shipping devices would be dependent, once again, on Customs existing practices in this general area, and, in particular, on the Freedom of Information Act, as amended (5 U.S.C. 552), and the Trade Secrets Act, as amended (18 U.S.C. 1905).

The record retention period under 19 U.S.C. 1508(c) is tied to the date of entry. The shipping devices in question, however, will not be subject to entry as such, and Customs is satisfied that a record retention requirement of 3 years from the date the importer's reports of the shipping devices are filed with Customs would be sufficient under the circumstances.

Comment: One commenter observed that the rule should be expanded to apply equally to similar shipping devices of U.S. manufacture, inasmuch as they should not be placed in a less favorable competitive position than the foreign articles.

Response: Customs agrees. Section 10.41b(b) is amended accordingly.

Comment: Two commenters asked that the program not be limited to reusable shipping devices arriving only from Canada or Mexico. It was stated that Part I, Article I, of the GATT (General Agreement on Tariffs and Trade) mandated uniform treatment for like products originating from all contracting parties.

Response: Customs has concluded that a rational basis exists for limiting the amendment, at least initially, to reusable shipping containers and holders arriving from Canada or Mexico, inasmuch as these countries are contiguous to the U.S., and it is believed that the amendment as thus circumscribed can be safely implemented without risking a loss of revenue or a loss of effective Customs control with respect to the shipping devices concerned. Customs thus does not perceive this limitation on the rule as violative of the GATT.

However, Customs finds significant merit in the commenter's request, and will proceed to expeditiously review the prospect of further extending the program.

Conclusion

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, Customs has concluded that the proposed amendment with the modifications discussed above should be adopted.

In addition, in order to apprise the Customs inspector that the shipping devices in question have been relieved from having to be serially numbered or marked as otherwise mandated under § 10.41b, the introductory text of § 10.41b(b) is revised to require that a notation appear on the manifest for the transporting vehicle or vessel to the effect that such shipping devices have been exempted from serial numbering or marking requirements pursuant to an application approved under 19 CFR 10.41b(b). Also, Customs has determined to amend § 10.41b(b)(2)(vi) in order to emphasize that the location of the supporting records in the U.S., which is required to be identified in the importer's application, must be so identified therein by specific name and address; and § 10.41b(b)(6) is changed to provide that if an approved application should later be revoked by the port director, the procedures described in § 10.41b(b)(5) will apply. Furthermore, at the end of the introductory text of § 10.41b(b), a provision is added that pallets and other solid wood shipping devices must be accompanied by an importer document, to the extent that this is required by the Animal and Plant Health Inspection Service, Department of Agriculture, regarding plant pest risk.

Regulatory Flexibility Act and Executive Order 12866

For the reasons set forth in the preamble, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604. Nor do the amendments result in a "significant regulatory action" under E.O. 12866.

Drafting Information: The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 113

Air carriers, Customs duties and inspection, Exports, Freight, Imports, Surety bonds, Vessels.

Amendments to the Regulations

Parts 10 and 113, Customs Regulations (19 CFR parts 10 and 113), are amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows, and the specific sectional authority for part 10 is amended by adding specific sectional authority for § 10.41b, in appropriate numerical order thereunder, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

Section 10.41b also issued under 19 U.S.C. 1202 (Chapter 98, Subchapter III, U.S. Note 3, Harmonized Tariff Schedule of the U.S. (HTSUS));

* * * * *

2. Section 10.41b is amended by redesignating paragraphs (b), (c), (d), (e), (f), (g) and (h) as (c), (d), (e), (f), (g), (h) and (i), respectively, and by adding a new paragraph (b) to read as follows:

§ 10.41b Clearance of serially numbered substantial holders or outer containers.

* * * * *

(b) Subject to the approval of a port director pursuant to the procedures described in this paragraph, certain foreign- or U.S.-made shipping devices arriving from Canada or Mexico, 12 including racks, holders, pallets, totes, boxes and cans, need not be serially numbered or marked if they are always transported on or within either intermodal and similar containers or containers which are themselves vehicles or vehicle appurtenances and accessories such as twenty and forty foot containers of general use and "igloo" air freight containers. The following or similar notation shall appear on the vehicle or vessel manifest in relation to such shipping devices which are exempt from serial numbering or marking requirements pursuant to this paragraph: "The shipping devices transported herein, which are not serially numbered or marked, have been exempted from such requirement pursuant to an application approved under 19 CFR 10.41b(b)." Also, pallets and other solid wood shipping devices must be accompanied by an importer document, to the extent that this is required by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, attesting to the admissibility of such devices as regards plant pest risk, as provided for in 7 CFR 319.40–3.

(1) An importer or his agent, regardless of whether the importer is the owner of the foreign- or U.S.-manufactured shipping devices, may apply to a port director of Customs at one of the importer's chiefly utilized Customs ports or the port within which the importer's or agent's recordkeeping center is located for permission to have such shipping devices arriving from Canada or Mexico released without entry and payment of duty at the time of arrival and without the devices being serially 13 numbered or marked. Application may be filed in only one port. Although no particular format is specified for the application, it must contain the information enumerated in paragraph (b)(2) of this section. Any duty which may be due on these shipping devices shall be tendered and paid cumulatively at the time specified in an approved application, which may be either before or after the arrival of the shipping devices in the U.S. (such as, at the time a contract, purchase order or lease agreement is issued).

(2) The application shall:

(i) Describe the types of shipping devices covered, their classification under the Harmonized Tariff Schedule of the U.S. (HTSUS), their countries of origin, and whether and to whom required duty was paid for them or when it will be paid for them, including duties for repair and modifications to such shipping devices while outside the U.S.;

(ii) Identify the intended ports where it is anticipated the shipping devices will be arriving and departing the U.S., as well as the particular movements and conveyances in which they are intended to be utilized;

(iii) Describe the applicant's proposed program for accounting for and reporting these shipping devices;

(iv) Identify the reporting period (which shall in no event be less frequent than annual), as well as the payment period within which applicable duty and fees must be tendered 14 (which shall in no event exceed 90 days following the close of the related reporting period);

(v) Describe the type of inventory control and recordkeeping, including the specific records, to be maintained to support the reports of the shipping devices; and

(vi) Provide the location in the United States, including the name and address, where the records supporting the reports will be retained by law and will be made available for inspection and audit upon reasonable notice. (The records supporting the reports of the shipping devices must be kept for a period of at least 3 years from the date such reports are filed with the port director.)

(3) The application shall be filed along with a continuous bond containing the conditions set forth in § 113.66(c) of this chapter. If the application is approved by the port director and the conditions set forth in the application or of the bond are violated, the port director may issue a claim for liquidated damages equal to the domestic value of the container. If the domestic value exceeds the amount of the bond, the claim for liquidated damages will be equal to the amount of the bond.

(4) The port director receiving the application shall evaluate the program proposed to account for, report and maintain records of the shipping devices. The port director may suggest amendments to the applicant's proposal. The port director shall notify the applicant in writing of his decision on the 15 application within 90 days of its receipt, unless this period is extended for good cause and the applicant is so informed in writing. Approval of the application by the port director with whom it is filed shall be binding on all Customs ports nationwide.

(5) If the decision is to deny the application, in whole or in part, the port director shall specify the reason for the denial in a written reply, and inform the applicant that such denial may be appealed to the Assistant Commissioner, Office of Field Operations, Customs Headquarters, within 21 days of its date. The Assistant Commissioner's decision shall be issued, in writing, within 30 days of the receipt of the appeal, and shall constitute the final Customs determination concerning the application.

(6) If the application is approved, an importer may later apply to amend his application to add or delete particular types of shipping devices listed in the application in which the procedures set forth in the application may be utilized. If a requested amendment to an approved application should be denied, or if an approved application should be

revoked, in whole or in part, by the port director, the procedures described in paragraph (b)(5) of this section shall apply.

(7) Application for and approval of a reporting program shall not limit or restrict the use of other alternative 16 means for obtaining the release of holders, containers and shipping devices.

* * * * *

PART 113—CUSTOMS BONDS

1. The general authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

2. Section 113.66 is amended by redesignating paragraph (c) as (d) and by adding a new paragraph (c) to read as follows:

§ 113.66 Control of containers and instruments of international traffic bond conditions.

* * * * *

(c) *Agreement to comply with application approved under 19 CFR 10.41b(b).* If the principal establishes a program for the cross-border movements of shipping devices based upon an application approved as provided in § 10.41b(b) of this chapter (19 CFR 10.41b(b)), the principal agrees:

(1) To timely file complete and accurate reports on the shipping devices, and to pay any applicable duty due on the devices and repairs made to such devices, as provided in the approved application;

(2) To retain complete and accurate records regarding the shipping devices, and to make such records available to Customs for inspection and audit upon reasonable notice, as also required in the approved application; and

(3) To otherwise comply with every other condition of the approved application.

Approved: January 31, 1996.

George J. Weise,

Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–4797 Filed 2–29–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 95C–0091]

Listing of Color Additives Exempt From Certification; Fruit Juice Color Additive and Vegetable Juice Color Additive; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of November 13, 1995, of the final rule published in the **Federal Register** of October 10, 1995 (60 FR 52628), that amended the color additive regulations to provide for the safe use in food of dried fruit juice color additive, dried vegetable juice color additive, and vegetable juice color additive prepared by water infusion of the dried vegetable.

DATES: Effective date confirmed: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 10, 1995 (60 FR 52628), FDA amended the color additive regulations in § 73.250 *Fruit juice* (21 CFR 73.250) to provide for the safe use of dried fruit juice color additive and in § 73.260 *Vegetable juice* (21 CFR 73.260) to provide for the safe use of dried vegetable juice color additive and vegetable juice color additive prepared by water infusion of the dried vegetable.

FDA gave interested persons until November 9, 1995, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the final rule published in the **Federal Register** of October 10, 1995, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, notice is given that no objections or requests for a hearing were filed in response to the October 10, 1995, final rule. Accordingly, the amendments promulgated thereby became effective November 13, 1995.

Dated: February 12, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–4717 Filed 2–29–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 180

[Docket No. 94F–0152]

Food Additives Permitted in Food on an Interim Basis or in Contact With Food Pending Additional Study; Mannitol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to permit the manufacture of mannitol by fermentation of sugars or sugar alcohols such as glucose, sucrose, fructose, or sorbitol by the action of the yeast *Zygosaccharomyces rouxii*. This action is in response to a petition filed by Roquette America, Inc.

DATES: Effective March 1, 1996; written objections and requests for a hearing by April 1, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3107.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 13, 1994 (59 FR 64207), FDA announced that a food additive petition (FAP 4A4412) had been filed by Roquette America, Inc., c/o Keller and Heckman, 1001 G St. NW., Washington, DC 20001. The petition proposed to amend the food additive regulations in § 180.25 *Mannitol* (21 CFR 180.25) to permit the manufacture of mannitol by fermentation of sugars or sugar alcohols such as glucose, sucrose, fructose, or sorbitol by the action of the yeast *Z. rouxii*:

As discussed in the notice of filing (59 FR 64207), in 1973 the agency proposed to affirm mannitol as generally recognized as safe (GRAS) based on the findings by the Select Committee on GRAS Substances from the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (38 FR 20046, July 26, 1973). In response to the proposal, the agency received comments, including information raising questions about the safety of mannitol. Therefore, the agency did not affirm the GRAS status of mannitol but instead established an interim food additive regulation for mannitol, pending additional study of the ingredient (39 FR 34178, September 23, 1974). At the time the interim regulation was established, the agency concluded that there would be no increased risk to the public health to continue existing uses and levels of use of mannitol while additional studies were carried out.

The interim regulation on mannitol specifies manufacturing procedures that do not include the fermentation process for manufacturing mannitol proposed in the petition. The petitioner provided evidence that mannitol produced using the proposed process is equivalent to mannitol produced as described in § 180.25. The petition, however, proposed no change in the allowed uses of mannitol. The agency concludes from its review that no change in consumer exposure to mannitol will result from the promulgation of an amendment to § 180.25 as proposed in the petition (Ref. 1).

FDA has evaluated the data in the petition and other relevant material. Based upon its review, the agency concludes that the use of the proposed manufacturing method for mannitol by fermentation of sugars or sugar alcohols such as glucose, sucrose, fructose, or sorbitol by the action of the yeast *Z. rouxii* is appropriate and that mannitol produced by this process is equivalent to mannitol produced as described in current § 180.25. Therefore, FDA concludes that § 180.25 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before April 1, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from S. E. Carberry, Chemistry Review Branch, Center for Food Safety and Applied Nutrition (CFSAN) to R. M. Angeles, Novel Ingredients Branch, CFSAN, May 23, 1994.

List of Subjects in 21 CFR Part 180

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 180 is amended as follows:

PART 180—FOOD ADDITIVES PERMITTED IN FOOD ON AN INTERIM BASIS OR IN CONTACT WITH FOOD PENDING ADDITIONAL STUDY

1. The authority citation for 21 CFR part 180 continues to read as follows:

Authority: Secs. 201, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 343, 348, 371); sec. 301 of the Public Health Service Act (42 U.S.C. 241).

2. Section 180.25 is amended by revising paragraph (a) to read as follows:

§ 180.25 Mannitol.

(a) Mannitol is the chemical 1,2,3,4,5,6,-hexanehexol ($C_6H_{14}O_6$) a hexahydric alcohol, differing from sorbitol principally by having a different optical rotation. Mannitol is produced by one of the following processes:

(1) The electrolytic reduction or transition metal catalytic hydrogenation of sugar solutions containing glucose or fructose.

(2) The fermentation of sugars or sugar alcohols such as glucose, sucrose, fructose, or sorbitol using the yeast *Zygosaccharomyces rouxii*.

* * * * *

Dated: February 14, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–4716 Filed 2–29–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, and 25

[TD 8630]

RIN 1545–AR56

Actuarial Tables Exceptions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations [TD 8630] which were published in the **Federal Register** for Wednesday, December 13, 1995 (60 FR 63913). The final regulations relate to income, estate, and gift tax regulations regarding exceptions to the use of valuation tables.

EFFECTIVE DATE: December 13, 1995.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett, (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under sections 170, 642, 664, 2031, 2512 and 7520 of the Internal Revenue Code.

Need for Correction

As published, TD 8630 contains a typographical error that is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations which is the subject of FR Doc. 95–30272, is corrected as follows:

On page 63913, column 1, in the preamble in the caption **EFFECTIVE DATE**, line 2, the language "effective December 13, 1995." is corrected to read "effective December 13, 1995, and applicable for transfers after December 13, 1995".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–4179 Filed 2–29–96; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 71–8–6938a; FRL–5423–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District, Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules from the following districts: the Kern County Air Pollution Control District (KCAPCD) and the Sacramento Metropolitan Air Management Control District (SMAQMD). This approval action will incorporate two rules into the federally approved SIP and remove one rule from the SIP. The two rules control oxides of nitrogen (NO_x) emissions from the operations of stationary gas turbines and the rule to be removed controls NO_x emissions from steam generators used in the oil production operations.

The intended effect of approving these rules is to regulate emissions of NO_x in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on these rules serves as a final determination that the findings of nonsubmittal for these rules have been corrected and that on the effective date of this action, any Federal Implementation Plan (FIP) clock is stopped. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on April 30, 1996 unless adverse or critical comments are received by April 1, 1996. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street SW., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 "M" Street, Suite 290, Bakersfield, CA 93301.

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826.

FOR FURTHER INFORMATION CONTACT: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: KCAPCD, Rule 425, Cogeneration Gas Turbine Engines (Oxides of Nitrogen), and SMAQMD, Rule 413, Stationary Gas Turbines. The rule being removed from the SIP is KCAPCD Rule 425, Oxides of Nitrogen Emissions from Steam Generators Used in Thermally Enhanced Oil Recovery—Western Kern County Fields. The KCAPCD rules were submitted by the California Air Resources Board (CARB) to EPA on November 18, 1993 and the SMAQMD rule was submitted on June 16, 1995.

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA or the Act) were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_x emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a Notice of Proposed Rulemaking (NPRM) entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_x Supplement) which describes and provides guidance on the requirements of section 182(f). The NO_x Supplement should be referred to for further information on the NO_x requirements and is incorporated into this proposal by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_x ("major" as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. The Kern County area is classified as serious; the Sacramento Metro Area is classified as severe;[1] therefore these areas were subject to the RACT requirements of section 182(b)(2), cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control techniques guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_x CTGs issued before enactment and EPA has not issued a CTG document for any NO_x sources since enactment of the CAA. The RACT rules covering NO_x sources and submitted as SIP revisions, are expected to require final installation of the actual NO_x controls as expeditiously as practicable, but not later than May 31, 1995.

The State of California submitted many revised RACT rules for incorporation into its SIP on November 18, 1993 and June 16, 1995, including the rules being acted on in this

[1] Kern County retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991). The Sacramento Metro Area was reclassified from serious to severe on June 1, 1995. See 60 FR 20237 (April 25, 1995).

document. This document addresses EPA's direct-final action for KCAPCD Rule 425, Cogeneration Gas Turbine Engines (Oxides of Nitrogen), and SMAQMD Rule 413, Stationary Gas Turbines. KCAPCD adopted Rule 425 on August 16, 1993 and SMAQMD adopted Rule 413 on April 6, 1995. These submitted rules were found to be complete on December 27, 1993 and June 30, 1995 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[2] and are being finalized for approval into the SIP. This document also addresses the State of California's request that Rule 425, Oxides of Nitrogen Emissions from Steam Generators Used in Thermally Enhanced Oil Recovery—Western Kern County Fields, be removed from the SIP.

Rules 425 and 413 control the emissions of NO_x from stationary gas turbine operations; rescinded Rule 425' controls emissions from steam generators used in the oil production operations. NO_x emissions contribute to the production of ground level ozone and smog. The rules were adopted as part of KCAPCD's and SMAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the CAA requirements cited above. The following is EPA's evaluation and final action for these rules.

EPA Evaluation and Action

In determining the approvability of a NO_x rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110, and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for this action, appears in the NO_x Supplement (57 FR 55620) and various other EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_x rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_x emissions.

For the purposes of assisting state and local agencies in developing NO_x RACT rules, EPA prepared the NO_x Supplement to the General Preamble, cited above. In the NO_x Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO_x emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_x (see section 4.5 of the NO_x Supplement). In addition, pursuant to section 183(c), EPA has issued alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_x. The ACT documents provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_x. However, the ACTs do not establish a presumptive norm for what is considered RACT for stationary sources of NO_x. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_x RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

KCAPCD's submitted Rule 425, Cogeneration Gas Turbine Engines (Oxides of Nitrogen), is a new rule that will control NO_x emissions from cogeneration gas turbines with rating equal to or greater than 10 megawatts (MW) used in producing steam and generate electric power for use in industrial and power utility operations. The rule limits NO_x emissions from units using selective catalytic reduction (SCR) to 9 parts per million by volume (ppmv) when operated on gaseous fuel and to 25 ppmv when operated on oil fuel. For the same size units (i.e., Westinghouse 251B10) using dry low-NO_x combustors, the rule limits NO_x emissions to 20 ppmv for units operating on gaseous fuel and 42 ppmv for units operating on oil fuel. The limits are corrected to 15 percent oxygen on dry basis.

SMAQMD's submitted Rule 413, Stationary Gas Turbines, is a new rule that will control NO_x emissions from cogeneration units with ratings equal to or greater than 0.3 MW output, or 3 million BTU/hr (MMBTU/hr) input used to generate electricity, supply steam for industrial processes and provide heating supply for buildings. The rule specifies emission limits of 42 ppmv (gas fired) and 65 ppmv (oil fired) for units rated less than or equal to 2.9 MW and operating at less than 877 hours per year. For all other units operating at greater than or equal to 877 hours per year, the rule specifies the following emission limits: (i) 25 ppmv (gas fired) and 65 ppmv (oil fired) for units rated less than 10 MW; (ii) 15 ppmv (gas fired) and 42 ppmv (oil fired) for units rated greater than 10 MW with no SCR; and (iii) 9 ppmv (gas fired) and 25 ppmv (oil fired) for units rated greater than 10 MW with SCR.

KCAPCD's Rule 425, Oxides of Nitrogen Emissions from Steam Generators Used in Thermally Enhanced Oil Recovery—Western Kern County Fields, was submitted to be removed from the SIP. This rule was adopted to control NO_x emissions from steam generators used in the oil production at the western portion of Kern County. KCAPCD, at that time, had jurisdiction over the San Joaquin Valley Air Basin and the Southeast Desert Air Basin. However, on March 20, 1991, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) was formed. This newly formed unified district took over the responsibility and authority over the San Joaquin Valley Air Basin which includes all of the eight counties except the Southeast Desert Air Basin portion of Kern County. As a result of the above delineation of geographical boundaries, KCAPCD (Southeast Desert portion) ceased its authority over the oil production operation at the western portion of Kern County. Consequently, KCAPCD is rescinding Rule 425 because the sources subject to this rule are no longer under its authority. The removal of Rule 425 from the SIP is consistent with EPA's policy requirements and removes an extraneous rule that serves no purpose.

The California Air Resources Board (CARB) has issued a reasonably available control technology/best available retrofit control technology (RACT/BARCT) determination for stationary source gas turbines with a rating of greater than or equal to 0.3 megawatts. The RACT limits are 42 ppmv for gas fired units and 65 ppmv for oil fired units. BARCT limits for units with SCR are 9 ppmv and 25 ppmv for gas fired units and oil fired units respectively. For units without SCR, the BARCT limits are 15 ppmv (gas fired units) and 42 ppmv (oil fired units). The limits in Rule 425 and Rule 413 exceed California and Federal RACT limits by a significant margin.

In evaluating the rules, EPA must determine whether the requirement for RACT implementation by May 31, 1995 is met. Under certain circumstances, the determination of what constitutes RACT could include consideration of advanced control technologies, i.e., California's requirement for BARCT. In this case the CAA's May 1995 date for RACT implementation may be satisfied

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

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in BARCT rules that establish "interim RACT" by May 1995, and require emission limitations based on advanced control technologies such as BARCT be met after May 1995. Rule 425 and Rule 413 require final compliance with BARCT limits by January 1997 and May 1997 respectively. The rules also require that interim measures (submission of compliance plans, and applying for authority to construct) be met by May 31, 1995 to ensure progress toward the final compliance. A more detailed discussion of the sources controlled, the controls required, and the justification for why these controls represent RACT can be found in the Technical Support Documents (TSDs) for Rule 425 and Rule 413, dated November 28, 1995.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, KCAPCD's Rule 425, Cogeneration Gas Turbine Engines (Oxide of Nitrogen), and SMAQMD's Rule 413, Stationary Gas Turbines are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO_X Supplement to the General Preamble. Furthermore, EPA is removing applicable Rule 425 consistent with the requirements of sections 110 (l) and 193.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 30, 1996, unless, by April 1, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 30, 1996.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on affected small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Dated: January 30, 1996.

Felicia Marcus,

Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(194)(i)(B) (*2*) and (*3*) and (222)(i)(C)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(194)* * *

(i) * * *

(B) * * *

(*2*) Rule 425, adopted on August 16, 1993.

(*3*) Previously submitted to EPA on June 28, 1982 and approved in the **Federal Register** on May 3, 1984 and now removed without replacement, Rule 425.

* * * * *

(222) * * *

(i) * * *

(C) * * *

(*2*) Rule 413, adopted on April 6, 1995.

* * * * *

[FR Doc. 96–4571 Filed 2–29–96; 8:45 am]

BILLING CODE 6560–60–P

40 CFR Part 52

[MI44–01–7147a; FRL–5408–5]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is approving the State of Michigan's revision to its State Implementation Plan (SIP) for the Wayne County particulate matter (PM) nonattainment area. The State of Michigan submitted this revision, dated July 18, 1995 to satisfy the contingency measures requirements of section 172(c)(9) of the Clean Air Act (Act). Section 172(c)(9) of the Act requires that States with initial moderate PM nonattainment areas submit contingency measures consisting of specific measures that are not part of the area's control strategy which must take effect without further action by the State or USEPA, upon a determination by USEPA that the area has failed to achieve Reasonable Further Progress (RFP) or attain the PM National Ambient Air Quality Standards (NAAQS) by the applicable statutory deadline.

DATES: This "direct final" is effective April 30, 1996, unless USEPA receives adverse or critical comments by April 1, 1996. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: (It is recommended that you telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 353–8328.

SUPPLEMENTARY INFORMATION:

Background

A portion of Wayne County, Michigan, was designated as a moderate PM nonattainment area upon enactment of the 1990 Amendments to the Act (November 15, 1990). 56 FR 56694, 56705–706, 56779 (November 6, 1991). Among other things, the amended Act made significant changes to the PM air quality planning requirements for certain areas. The USEPA has issued detailed guidance that describes USEPA's preliminary interpretations regarding moderate PM nonattainment area SIP requirements; 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). States containing initial moderate PM nonattainment areas were required to submit a SIP by November 15, 1991, which implemented reasonably available control measures by December 10, 1993, and demonstrated attainment of the PM NAAQS by December 31, 1994. On January 17, 1995 (60 FR 3346), USEPA approved the Wayne County PM nonattainment area SIP originally submitted by the Michigan Department of Natural Resources (MDNR) on June 11, 1993 and revised on October 14, 1994.

As provided in section 172(c)(9) of the Act, States with initial moderate PM nonattainment areas were also required to submit contingency measures by November 15, 1993. See generally 57 FR 13543–13544. These measures should consist of other available measures that are not part of the area's control strategy which must take effect without further action by the State or USEPA, upon a determination by USEPA that the area has failed to achieve RFP or attain the PM NAAQS by the applicable statutory deadline. On January 21, 1994, USEPA sent a letter to the State of Michigan notifying them that a finding of failure to submit had been made, thus starting the process to impose sanctions and promulgate a Federal Implementation Plan (FIP).

Completeness Determination

States are required to observe certain procedural requirements in developing implementation plans and plan revisions for submission to USEPA. The Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. The USEPA also must determine whether a submittal is complete and therefore warrants further USEPA review and action. The USEPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V (1991).

The State of Michigan held a public hearing on March 2, 1995 to receive public comment on the contingency measures plan for the Wayne County PM nonattainment area. Following the public hearing, the plan was adopted by the State, signed by the Governor's designee on July 13, 1995 and submitted to USEPA as a proposed revision to the SIP.

The SIP revision was reviewed by USEPA to determine completeness and was found to be complete. The USEPA sent a letter dated July 17, 1995 to the Director, MDNR, indicating the completeness of the submittal and the next steps to be taken in the review process. This finding of completeness stopped the sanctions process which was started on January 21, 1994.

Review of Contingency Measures Rule

The Michigan SIP submittal consists of the new State Administrative Rule 374 (R 336.1374), effective July 26, 1995, which was designed to satisfy the contingency measures requirement of section 172(c)(9) of the Act. The SIP provides that the measures contained in the rule must take effect without further action by the State or USEPA should USEPA determine that the Wayne County nonattainment area has failed to achieve RFP or to attain the PM standard. Within 60 days of notification by MDNR or USEPA of a violation of the PM NAAQS, companies located within a one mile radius centered around the monitor which recorded the violation must be in compliance with the opacity limit, implement the fugitive dust control strategies, or commence the schedule to implement the process or combustion source control strategies described in the rule. The October 24, 1995 Technical Support Document contains a more detailed explanation of the rule's requirements.

Final Action

In this action, USEPA is approving the SIP revision submitted to USEPA by the State of Michigan on July 13, 1995 for the Wayne County PM nonattainment area. Specifically, USEPA is approving State Administrative Rule 374 (R 336.1374), effective July 26, 1995, as intended to satisfy the contingency measures requirement specified in section 172(c)(9) of the Act.

Miscellaneous

Comment and Approval Procedure

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a "proposed approval" of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments

are filed. The "direct final" approval shall be effective on April 30, 1996, unless USEPA receives adverse or critical comments by April 1, 1996.

If USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw this approval before its effective date, and publish a subsequent **Federal Register** document which withdraws this final action. All public comments received will then be addressed in a subsequent document.

Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this action will be effective on April 30, 1996.

Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for a revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Executive Order 12866

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. Sections 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This approval does not create any new requirements.

Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (1976).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

Petitions for Judicial Review

Under section,307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit April 30, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the SIP for the State of Michigan was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 14, 1995.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

2. 52.1170 is amended by adding paragraph (c)(104) to read as follows:

* * * * *

(c) * * *

(104) On July 13, 1995, the Michigan Department of Natural Resources (MDNR) submitted a contingency measures plan for the Wayne County particulate matter nonattainment area.

(i) Incorporation by reference.

(A) State of Michigan Administrative Rule 374 (R 336.1374), effective July 26, 1995.

[FR Doc. 96–4848 Filed 2–29–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5431–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Arkansas City Dump Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Arkansas City Dump Site in Arkansas City, Kansas from the Superfund National Priorities List (NPL). The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERLCA), as amended. In consultation with the state of Kansas, EPA has determined that the necessary Fund-financed response actions under CERCLA have been implemented. The EPA has concluded that this remedial action is protective of human health, and the environment. The State of Kansas has concurred on the deletion of this site from the NPL.

EFFECTIVE DATE: March 1, 1996.

FOR FURTHER INFORMATION CONTACT: David V. Crawford, Remedial Project Manager, Superfund Division, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7702.

SUPPLEMENTARY INFORMATION: Under section 105(a)(8)(B) of CERCLA, EPA established the NPL as a priority list among known or threatened releases of hazardous substances, pollutants and contaminants throughout the United States, for potential response action. Sites on the NPL may be the subject of Hazardous Substance Superfund (Fund) financed, or responsible party, remedial actions. Sites are deleted from the NPL when all appropriate response actions have been implemented or investigation of the site has shown that the site poses no significant threat. Any sites deleted from the NPL remain eligible for future response actions if conditions at the site are later found to warrant such action. Section 300.425(e)(3) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) provides that whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the Hazard Ranking System. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts. Specific information about this site follows.

Arkansas City Dump

The Arkansas City Dump site is located in Arkansas City, Kansas. The EPA published a Notice of Intent to Delete the Arkansas City Dump site from the NPL on September 20, 1995. The EPA also published a notification in the principal local newspaper on September 14, 1995. The comment period ended on October 25, 1995. The EPA received no comments. Entries in the Deletion Docket may be reviewed at the EPA Region VII office in Kansas City, Kansas, and at the Public Library, 125 East Fifth Avenue, Arkansas City, Kansas. It is EPA's policy to conduct a Five-Year Review at sites in which hazardous substances remain above levels which allow for unlimited use and unrestricted exposure. The EPA expects to complete five-year reviews of the remedial action at the Arkansas City Dump site even though this site has been deleted from the NPL.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund, Water pollution control.

Dated: February 6, 1996.

Dennis Grams,

Regional Administrator.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 191 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Site "Arkansas City Dump Site, Arkansas City, Kansas".

[FR Doc. 96–4526 Filed 2–29–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7635]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Acting Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Georgia: Fort Gaines, city of, Clay County	130550	December 5, 1995.	
Oklahoma: Davidson, town of, Tillman County	400204	December 8, 1995.	
Washington: Yacolt, town of, Clark County	530269	December 14, 1995	July 2, 1976.
Montana: Sanders County, unincorporated areas	300072	December 20, 1995	March 13, 1979.
North Dakota: Pingree, city of, Stutsman County	380126	January 19, 1996.	
Kentucky: Rockcastle County, unincorporated areas	210331	January 26, 1996.	
Michigan: Wells, township of, Delta County	260388	.....do.	
Ohio: Washingtonville, village of, Columbiana and Mahoning Counties.	390087	.....do	June 4, 1976.
Tennessee: Louisville, town of, Blount County	470405	.....do.	
Massachusetts: Ashby, town of, Middlesex County	250178	January 31, 1996	April 29, 1977.
New Eligibles—Regular Program			
New York: West Hampton Dunes, village of, Suffolk County [1].	361649	December 8, 1995.	
Wisconsin: Sun Prairie, city of, Dane County	550573	December 11, 1995	January 17, 1991.
Texas: Josephine, city of, Collin and Hunt Counties	480756	December 15, 1995	January 19, 1996.
Reinstatements			
Indiana: Harrison County, unincorporated areas	180085	March 19, 1975, Emerg.; November 1, 1995, Reg.; November 1, 1995, Susp.; December 4, 1995, Rein.	November 1, 1995.
New Jersey:			
Leonia, borough of, Bergen County	340045	August 25, 1975, Emerg.; July 5, 1982, Reg.; September 20, 1995, Susp.; December 4, 1995, Rein.	September 20, 1995.
North Arlington, borough of, Bergen County	340055	July 3, 1975, Emerg.; April 3, 1978, Reg.; September 20, 1995, Susp.; December 4, 1995, Rein.	Do.
Pennsylvania:			
Churchill, borough of, Allegheny County	420023	July 2, 1974, Emerg.; December 15, 1974, Reg.; October 4, 1995, Susp.; December 5, 1995, Rein.	October 4, 1995.
Ohio, township of, Allegheny County	421089	September 26, 1975, Emerg.; November 4, 1988, Reg.; October 4, 1995, Susp.; December 5, 1995, Rein.	Do.
Springdale, borough of, Allegheny County	421282	October 30, 1974, Emerg.; July 16, 1980, Reg.; October 4, 1995, Susp.; December 5, 1995, Rein.	Do.
Kilbuck, township of, Allegheny County	421073	August 18, 1975, Emerg.; February 1, 1980, Reg.; October 4, 1995, Susp.; December 6, 1995, Rein.	Do.
Scott, township of, Allegheny County	421100	October 9, 1974, Emerg.; May 3, 1982, Reg.; October 4, 1995, Susp.; December 12, 1995, Rein.	Do.
South Park, township of, Allegheny County	421165	April 26, 1974, Emerg.; November 5, 1980, Reg.; October 4, 1995, Susp.; December 12, 1995, Rein.	Do.
Hamilton, township of, Monroe County	421888	March 31, 1978, Emerg.; March 2, 1989, Reg.; September 6, 1995, Susp.; December 15, 1995, Rein.	September 6, 1995.
New Jersey:			
Midland Park, borough of, Bergen County	340051	May 26, 1972, Emerg.; September 30, 1977, Reg.; September 20, 1995, Susp.; December 18, 1995, Rein.	September 20, 1995.
Palisades Park, borough of, Bergen County	340061	May 22, 1975, Emerg.; June 1, 1982, Reg.; September 20, 1995, Susp.; December 18, 1995, Rein.	Do.
Pennsylvania: Roscoe, borough of, Washington County.	420858	March 20, 1975, Reg.; October 18, 1995, Susp.; December 19, 1995, Rein.	October 18, 1995.
New Jersey:			
Garfield, city of, Bergen County	340037	May 5, 1972, Emerg.; September 20, 1995, Reg.; September 20, 1995, Susp.; January 22, 1996, Rein.	September 20, 1995.
Tenafly, borough of, Bergen County	340076	April 21, 1975, Emerg.; April 15, 1980, Reg.; September 20, 1995, Susp.; January 22, 1996, Rein.	Do.
Pennsylvania:			
Shaler, township of, Allegheny County	421101	April 22, 1974, Emerg.; March 18, 1980, Reg.; October 4, 1995, Susp.; January 22, 1996, Rein.	October 4, 1995.
California, borough of, Washington County	420848	July 5, 1974, Emerg.; June 15, 1981, Reg.; September 6, 1995, Susp.; January 22, 1996, Rein.	September 6, 1995.
Dunlevy, borough of, Washington County	422133	December 5, 1974, Emerg.; July 16, 1981, Reg.; October 18, 1995, Susp.; January 22, 1996, Rein.	October 18, 1995.

State/location	Community No.	Effective date of eligibility	Current effective map date
Oakdale, borough of, Allegheny County	420059	July 22, 1975, Emerg.; August 15, 1983, Reg.; October 4, 1995, Susp.; January 22, 1996, Rein.	October 4, 1995.
Ross, township of, Allegheny County	420979	October 24, 1973, Emerg.; December 28, 1979, Reg.; October 4, 1995, Susp.; January 22, 1996, Rein.	Do.
Pittsburgh, city of, Allegheny County	420063	April 13, 1973, Emerg.; December 15, 1981, Reg.; October 4, 1995, Susp.; January 22, 1996, Rein.	Do.
South Fayette, township of, Allegheny County	421106	October 30, 1974, Emerg.; February 3, 1982, Reg.; October 4, 1995, Susp.; January 22, 1996, Rein.	Do.
Indiana: Hendricks County, unincorporated areas	180415	March 17, 1975, Emerg.; March 16, 1981, Reg.; June 2, 1994, Susp.; January 22, 1996, Rein.	March 16, 1981.
Virginia: Haymarket, town of, Prince William County	510121	January 31, 1990, Reg.; January 5, 1995, Susp.; January 22, 1996, Rein.	January 5, 1995.
Pennsylvania:			
Ben Avon, borough of, Allegheny County	420010	June 2, 1976, Emerg.; July 16, 1981, Reg.; October 4, 1995, Susp.; January 23, 1996, Rein.	October 4, 1995.
Wilkins, township of, Allegheny County	420090	March 16, 1973, Emerg.; September 29, 1978, Reg.; October 4, 1995, Susp.; January 23, 1996, Rein.	Do.
East Deer, township of, Allegheny County	421061	February 5, 1975, Emerg.; August 15, 1980, Reg.; October 4, 1995, Susp.; January 25, 1996, Rein.	Do.
Iowa: Humboldt, city of, Humboldt County	190155	January 28, 1975, Emerg.; May 19, 1981, Reg.; November 6, 1991, Susp.; January 25, 1996, Rein.	May 19, 1981.
Pennsylvania:			
Franklin Park, borough of, Allegheny County	420037	January 10, 1975, Emerg.; January 1, 1982, Reg.; October 4, 1995, Susp.; January 26, 1996, Rein.	October 4, 1995.
Millvale, borough of, Allegheny County	420053	May 21, 1973, Emerg.; July 16, 1979, Reg.; October 4, 1995, Susp.; January 26, 1996, Rein.	Do.
Sewickly, borough of, Allegheny County	420070	November 22, 1974, Emerg.; September 14, 1979, Reg.; October 4, 1995, Susp.; January 30, 1996, Rein.	Do.
Indiana: Princeton, city of, Allegheny County	180073	March 19, 1975, Emerg.; January 21, 1983, Reg.; August 16, 1993, Susp.; January 30, 1996, Rein.	January 21, 1983.

[1] The Village of West Hampton Dunes has adopted the Town of Southampton's (CID #365342) Flood Insurance Rate Map (FIRM) and Flood Insurance Study dated 7–2–87 for floodplain management and insurance purposes.

Code for reading third column: Emerg.- Emergency; Reg.- Regular; Rein.- Reinstatement; Susp.- Suspension; With.- Withdrawn.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: February 20, 1996.

Richard W. Krimm,

Acting Associate Director, Mitigation Directorate.

[FR Doc. 96–4815 Filed 2–29–96; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–158; RM–8239 and RM–8317]

Radio Broadcasting Services; Hazlehurst, Utica & Vicksburg, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission denies the petition filed by Donald Brady ("Brady") for reconsideration of the *Report and Order* in MM Docket 93–158, 59 FR 55593, November 8, 1994. The *Report and Order* substituted Channel 265C2 for Channel 225A, Utica, Mississippi, substituted Channel 267A for Channel 266A, Vicksburg, Mississippi, and substituted Channel 225A for Channel 265C3 at Hazlehurst, Mississippi. The *Notice* erroneously indicated that the upgrade at Utica was a non-adjacent upgrade rather than an incompatible channel swap. The Commission concluded that it was within the scope of the *Notice* to treat the Utica upgrade as an incompatible channel swap, thereby obviating the need for competing expressions of interest in the channel. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–4789 Filed 2–29–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 90–189; RM–6904, RM–7114, RM–7186, RM–7415, RM–7298]

Radio Broadcasting Services: Farmington, Grass Valley, Jackson, Linden, Placerville and Fair Oaks, CA, and Carson City and Sun Valley, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule, petition for reconsideration.

SUMMARY: This document dismisses a Petition for Reconsideration filed by Gold Country Communications, Inc. directd to the *First Report and Order* in this proceeding. *See* 60 FR 48425, September 19, 1995.

EFFECTIVE DATE: March 1, 1996.

FOR FUTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Memorandum Opinion and Order* in MM Docket No. 90–189, adopted November 15, 1995, and released February 22, 1996. The full text of this decision is available for

inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commisson.

Douglas W. Webbink,

Chief, Policy and Rules Divtsion, Mass Media Bureau.

[FR Doc. 96–4788 Filed 2–29–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 92–81; RM–7875]

Television Broadcasting Services; Farmington and Gallup, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Pulitzer Broadcasting Company, reallots Channel 3 from Gallup to Farmington, New Mexico, as the community's second local television service, and modifies the construction permit of Station KOAV-TV accordingly. *See* 57 FR 14554, April 21, 1992. Channel 3 can be allotted to Farmington in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.7 kilometers (2.9 miles) southeast, at coordinates 36–41–48 North Latitude and 108-10-39 West Longitude. This allotment is not affected by the Commission's temporary freeze on new television allotments in certain metropolitan areas. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 8, 1996.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 92–81, adopted February 1, 1996, and released February 23, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under New Mexico, is amended by removing Channel 3 at Gallup and adding Channel 3 at Farmington.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–4786 Filed 2–29–96; 8:45 am]

BILLING CODE 6712–01–F

Proposed Rules

Federal Register

Vol. 61, No. 42

Friday, March 1, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Extension of Port Limits of Columbus, Ohio

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to the field organization of Customs by extending the geographical limits of the port of Columbus, Ohio, to include Rickenbacker Airport which is currently operating as a user fee airport. The boundary expansion of the Columbus port is proposed because enough business within the port has shifted to Rickenbacker Airport to make it worthwhile for the Customs Service to plan to relocate its port offices there. If the boundaries of the port are extended as proposed, the Customs Regulations would also be amended to remove Rickenbacker Airport's designation as a user fee airport. This proposed change is being made as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources and to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before April 30, 1996.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to the Regulations Branch, Office of Regulations and Rulings, U. S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, 1099 14th Street NW., Suite 4000, Washington, D.C. on regular business days between the hours of 9:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Harry Denning, Office of Field Operations, (202) 927–0196.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3) by extending the geographical limits of the port of Columbus, Ohio, to include the territory encompassing Rickenbacker Airport. Rickenbacker Airport is currently a user fee airport. Much business has shifted within the port to Rickenbacker Airport to make it worthwhile for Customs to include it within the Columbus port boundaries. Customs even plans to relocate its offices to Rickenbacker Airport. If the boundaries of the port of Columbus are extended as proposed, the Customs Regulations would also be amended to remove Rickenbacker Airport from the list of user fee airports in § 122.15, Customs Regulations. If the proposal is adopted, Customs will use existing staffing to service the expanded area of the port of Columbus, Ohio.

Current Port Limits of Columbus

The current port limits of the port of Columbus, Ohio were established in Treasury Decision (T.D.) 82–9, effective February 11, 1982. The current port limits of the port of Columbus include all of the territory within the corporate limits of Columbus, Ohio, all of the territory completely surrounded by the city of Columbus, and all of the territory enclosed by Interstate Highway 270 (outer belt), which completely surrounds the city.

Proposed Extension of Port

As proposed, the expanded port limits of Columbus, Ohio, would encompass the port limits set forth in T.D. 82–9 as well as the following territory:

Beginning at the intersection of Rohr and Lockbourne Roads, then proceeding southerly along Lockbourne Road to Commerce Street, thence easterly along Commerce Street to its intersection with the N & W railroad tracks, then southerly along the N & W railroad tracks to the Franklin-Pickaway County line, thence easterly along the Franklin-Pickaway County line to its intersection with Pontius Road, then northerly along Pontius Road to its intersection with Rohr Road, thence westerly along Rohr Road to its intersection with Lockbourne Road, the point of beginning, all within the County of Franklin, State of Ohio.

If the proposed extension of the port of Columbus is adopted, the limits in the port column adjacent to the listing of Columbus in the list of Customs ports of entry in 19 CFR 101.3 and the list of user fee airports in 19 CFR 122.15 will be amended accordingly.

Comments

Prior to adoption of this proposal, consideration will be given to written comments timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 1.4), and section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, 1099 14th Street NW., Suite 4000, Washington, D.C.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

The Regulatory Flexibility Act and Executive Order 12866

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Agency organization matters such as this proposed port extension are exempt from consideration under Executive Order 12866.

Drafting Information: The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel

from other offices participated in its development.

George J. Weise,

Commissioner of Customs.

Approved: January 31, 1996.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–4798 Filed 2–29–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 95P–0088]

Chlorofluorocarbon Propellants in Self-Pressurized Containers; Addition to List of Essential Uses

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to grant the petition of Bryan Corp. (Bryan) to add sterile aerosol talc to the list of products containing a chlorofluorocarbon (CFC) propellant for an essential use. Essential use products are exempt from FDA's ban on the use of CFC propellants in FDA-regulated products and the Environmental Protection Agency's (EPA's) ban on the use of CFC's in pressurized dispensers. This document proposes to amend FDA's regulations governing use of CFC's to include sterile aerosol talc as an essential use.

DATES: Written comments by April 1, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1049.

SUPPLEMENTARY INFORMATION:

I. Background

Under § 2.125 (21 CFR 2.125), any food, drug, device, or cosmetic in a self-pressurized container that contains a CFC propellant for a nonessential use is adulterated and/or misbranded under the Federal Food, Drug, and Cosmetic Act. This prohibition is based on scientific research indicating that CFC's may reduce the amount of ozone in the stratosphere and thereby increase the amount of ultraviolet radiation reaching the earth. An increase in ultraviolet radiation may increase the incidence of skin cancer, change the climate, and produce other adverse effects of unknown magnitude on humans, animals, and plants. Section 2.125(d) exempts from the adulteration and misbranding provisions of § 2.125(c) certain products containing CFC propellants that FDA determines provide unique health benefits that would not be available without the use of a CFC. These products are referred to in the regulation as essential uses of CFC's and are listed in § 2.125(e).

Under § 2.125(f), any person may petition the agency to request additions to the list of uses considered essential. To demonstrate that the use of a CFC is essential, the petition must be supported by an adequate showing that: (1) There are no technically feasible alternatives to the use of a CFC in the product; (2) the product provides a substantial health, environmental, or other public benefit unobtainable without the use of the CFC; and (3) the use does not involve a significant release of CFC's into the atmosphere or, if it does, the release is warranted by the consequence if the use were not permitted.

EPA regulations implementing provisions of the Clean Air Act contain a general ban on the use of CFC's in pressurized dispensers (40 CFR 82.64(c) and 82.66(d)). These regulations exempt from the general ban "medical devices" that FDA considers essential and that are listed in § 2.125(e). Section 601(8) of the Clean Air Act (42 U.S.C. 7671(8)) defines "medical device" as any device (as defined in the Federal Food, Drug, and Cosmetic Act), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system, if such device, product, drug, or drug delivery system uses a class I or class II ozone-depleting substance for which no safe and effective alternative has been developed (and where necessary, approved by the Commissioner of Food and Drugs (the Commissioner)); and if such device, product, drug, or drug delivery system has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator of EPA (the Administrator). Class I substances include CFC's, halons, carbon tetrachloride, methyl chloroform, methyl bromide, and other chemicals not relevant to this document (see 40 CFR part 82, appendix A to subpart A). Class II substances include hydrochlorofluorocarbons (HCFC's) (see 40 CFR part 82, appendix B to subpart A).

II. Petition Received by FDA

Bryan submitted a petition under § 2.125(f) and 21 CFR part 10 requesting an addition to the list of CFC uses considered essential. The petition is on file under the docket number appearing in the heading of this document and may be seen in the Dockets Management Branch (address above). The petition requested that sterile aerosol talc be included in § 2.125(e) as an essential use of CFC's. The petition contained a discussion supporting the position that there are no technically feasible alternatives to the use of CFC's in the product. It included information showing that no alternative delivery systems (e.g., the pneumatic atomizer) can assure consistent sterility. The petition also stated that Bryan is unaware of any appropriate substitute propellants (e.g., compressed gases). Also, the petition stated that the product provides a substantial health benefit that would not be obtainable without the use of CFC's. In this regard, the petition contained information to support the use of this product in the treatment of malignant pleural effusions, a condition in which fluid accumulates in the space between the outside surface of the lung and the inside surface of the chest wall (pleural cavity) as a result of involvement by an underlying cancer. The petition also provided information indicating that use of the product would involve a limited release of CFC's into the atmosphere and the release is warranted by the health benefits of the product.

III. FDA'S Review of the Petition

The agency has tentatively decided that for many patients suffering from malignant pleural effusions, the use of sterile aerosol talc provides a special benefit that would be unavailable without the use of CFC's. Based on the evidence currently before it, FDA also agrees that the use of CFC's for this product does not involve a significant release of CFC's into the atmosphere. Therefore, FDA is proposing to amend § 2.125(e) to include sterile aerosol talc administered intrapleurally by thoracoscopy for human use in the list of essential uses of CFC propellants. A copy of this document has been provided to the Administrator.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the agency is not aware of any adverse impact of this proposed rule will have on any small entities, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Opportunity for Public Comment

Interested persons may, on or before April 1, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Devices, Drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 2 be amended as follows:

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

1. The authority citation for 21 CFR part 2 continues to read as follows:

Authority: Secs. 201, 301, 305, 402, 408, 409, 501, 502, 505, 507, 512, 601, 701, 702, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 335, 342, 346a, 348, 351, 352, 355, 357, 360b, 361, 371, 372, 374); 15 U.S.C. 402, 409.

2. Section 2.125 is amended by adding new paragraph (e)(15) to read as follows:

§ 2.125 Use of chlorofluorocarbon propellants in self-pressurized containers.

* * * * *

(e) * * *

(15) Sterile aerosol talc administered intrapleurally by thoracoscopy for human use.

* * * * *

Dated: February 22, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–4714 Filed 2–29–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 324

[DFAS Regulation 5400.11–R]

Defense Finance and Accounting Service Privacy Act Program

AGENCY: Defense Finance and Accounting Service, DOD.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes the Defense Finance and Accounting Service (DFAS) Privacy Act Program. DFAS was established to provide finance and accounting services for the DoD Components and other Federal activities, as designated by the Comptroller, DoD.

The Defense Finance and Accounting Service was activated on January 15, 1991, to improve the overall effectiveness of DoD financial management through the consolidation, standardization and integration of finance and accounting systems, procedures and operations. DFAS is also responsible for identifying and implementing finance and accounting requirements, systems and functions for appropriated and non-appropriated funds, as well as working capital, revolving funds and trust fund activities--including security assistance.

DATES: Comments must be received by April 30, 1996, to be considered by the agency.

ADDRESSES: Send comments to the Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, Room 416, Arlington, VA 22240–5291.

FOR FURTHER INFORMATION CONTACT: Ms. Genevieve Turney (703) 607–5165 or DSN 327–5165.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

This proposed rule establishes the Defense Finance and Accounting Service (DFAS) Privacy Act Program. DFAS was established to provide finance and accounting services for the DoD Components and other Federal activities, as designated by the Comptroller, DoD.

List of subjects in 32 CFR part 324

Privacy.

Accordingly, 32 CFR part 324 is added to read as follows:

PART 324–DFAS PRIVACY ACT PROGRAM

Subpart A–General Information

324.1 Issuance and purpose.
324.2 Applicability and scope.
324.3 Policy.
324.4 Responsibilities.

Subpart B–Systems of Records

324.5 General information.
324.6 Procedural rules.
324.7 Exemption rules.

Subpart C–Individual Access to Records

324.8 Right of access.
324.9 Notification of record's existence.
324.10 Individual requests for access.
324.11 Denials.
324.12 Granting individual access to records
324.13 Access to medical and psychological records.
324.14 Relationship between the Privacy Act and the Freedom of Information Act.
Appendix A to part 324 – DFAS Reporting Requirements
Appendix B to part 324 – System of Records Notice

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

Subpart A – General Information

§ 324.1 Issuance and purpose.

The Defense Finance and Accounting Service fully implements the policy and procedures of the Privacy Act and the DoD 5400.11-R [1], 'Department of Defense Privacy Program' (see 32 CFR part 310). This regulation supplements the DoD Privacy Program only to establish policy for the Defense Finance and Accounting Service (DFAS) and provide DFAS unique procedures.

§ 324.2 Applicability and scope.

This regulation applies to all DFAS, Headquarters, DFAS Centers, the Financial System Organization (FSO), and other organizational components. It applies to contractor personnel who have entered a contractual agreement with DFAS. Prospective contractors will be advised of their responsibilities under the Privacy Act Program.

§ 324.3 Policy.

DFAS personnel will comply with the Privacy Act of 1974, the DoD Privacy Program and the DFAS Privacy Act Program. Strict adherence is required to ensure uniformity in the implementation of the DFAS Privacy Act Program and to create conditions that will foster public trust. Personal information maintained by DFAS organizational elements will be safeguarded. Information will be made available to the individual to whom it pertains to the maximum extent practicable. Specific DFAS policy is provided for Privacy Act training, responsibilities, reporting procedures and implementation requirements. DFAS Components will not define policy for the Privacy Act Program.

§ 324.4 Responsibilities.

(a) *Director, DFAS.*

(1) Ensures the DFAS Privacy Act Program is implemented at all DFAS locations.

(2) The Director, DFAS, will be the Final Denial Appellate Authority. This authority may be delegated to the Director for Resource Management.

(3) Appoints the Director for External Affairs and Administrative Support, or a designated replacement, as the DFAS Headquarters Privacy Act Officer.

(b) *DFAS Headquarters General Counsel.*

(1) Ensures uniformity is maintained in legal rulings and interpretation of the Privacy Act.

(2) Consults with DoD General Counsel on final denials that are inconsistent with other final decisions within DoD. Responsible to raise new legal issues of potential significance to other Government agencies.

(3) Provides advice and assistance to the DFAS Director, Center Directors, and the FSO as required, in the discharge of their responsibilities pertaining to the Privacy Act.

(4) Acts as the DFAS focal point on Privacy Act litigation with the Department of Justice.

(5) Reviews Headquarters' denials of initial requests and appeals.

(c) *DFAS Center Directors.*

(1) Ensures that all DFAS Center personnel, all personnel at subordinate levels, and contractor personnel working with personal data comply with the DFAS Privacy Act Program.

(2) Serves as the DFAS Center Initial Denial Authority for requests made as a result of denying release of requested information at locations within DFAS Center authority. Initial denial authority may not be redelegated. Initial denial appeals will be forwarded to the appropriate DFAS Center marked to the attention of the DFAS Center Initial Denial Authority.

(d) *Director, FSO.*

(1) Ensures that FSO and subordinate personnel and contractors working with personal data comply with the Privacy Act Program.

(2) Serves as the FSO Initial Denial Authority for requests made as a result of denying release of requested information at locations within FSO authority. FSO Initial denial authority may not be redelegated.

(3) Appoints a Privacy Act Officer for the FSO and each Financial System Activity (FSA).

(e) *DFAS Headquarters Privacy Act Officer.*

(1) Establishes, issues and updates policy for the DFAS Privacy Act Program and monitors compliance. Serves as the DFAS single point of contact on all matters concerning Privacy Act policy. Resolves any conflicts resulting from implementation of the DFAS Privacy Act Program policy.

(2) Serves as the DFAS single point of contact with the Department of Defense Privacy Office. This duty may be delegated.

(3) Ensures that the collection, maintenance, use and/or dissemination of records of identifiable personal information is for a necessary and lawful purpose, that the information is current and accurate for the intended use and that adequate security safeguards are provided.

(4) Monitors system notices for agency systems of records. Ensures that new, amended, or altered notices are promptly prepared and published. Reviews all notices submitted by the DFAS Privacy Act Officers for correctness and submits same to the Department of Defense Privacy Office for publication in the **Federal Register.** Maintains and publishes a listing of DFAS Privacy Act system notices.

(5) Establishes DFAS Privacy Act reporting requirement due dates. Compiles all Agency reports and submits the completed annual report to the Defense Privacy Office. DFAS reporting requirements are provided in Appendix A to this part.

(6) Conducts annual Privacy Act Program training for DFAS Headquarters (HQ) personnel. Ensures that subordinate DFAS Center and FSO Privacy Act Officers fulfill annual training requirements.

(f) *FSO and Financial System Activities (FSAs) Legal Support.* The FSO and subordinate FSA organizational elements will be supported by the appropriate DFAS-HQ or DFAS Center General Counsel office.

(g) *DFAS Center(s) Assistant General Counsel.*

(1) Ensures uniformity is maintained in legal rulings and interpretation of the Privacy Act and this regulation. Consults with the DFAS-HQ General Counsel as required.

(2) Provides advice and assistance to the DFAS Center Director and the FSA in the discharge of his/her responsibilities pertaining to the Privacy Act.

(3) Coordinates on DFAS Center and the FSA denials of initial requests.

(h) *DFAS Center Privacy Act Officer.*

(1) Implements and administers the DFAS Privacy Act Program for all personnel, to include contractor personnel, within the Center, Operating Locations (OpLocs) and Defense Accounting Offices (DAOs).

(2) Ensures that the collection, maintenance, use, or dissemination of records of identifiable personal information is in a manner that assures that such action is for a necessary and lawful purpose; the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information. Advises the Program Manager that systems notices must be published in the **Federal Register** prior to collecting or maintenance of the information. Submits system notices to the DFAS-HQ Privacy Act Officer for review and subsequent submission to the Department of Defense Privacy Office.

(3) Administratively controls and processes Privacy Act requests. Ensures that the provisions of this regulation and the DoD Privacy Act Program are followed in processing requests for records. Ensures all Privacy Act requests are promptly reviewed. Coordinates the reply with other organizational elements as required.

(4) Prepares denials and partial denials for the Center Director's signature and obtain required coordination with the assistant General Counsel. Responses will include written justification citing a specific exemption or exemptions.

(5) Prepares input for the annual Privacy Act Report as required using the guidelines provided in Appendix A to this part.

(6) Conducts training on the DFAS Privacy Act Program for Center personnel.

(i) *FSO Privacy Act Officer.*

(1) Implements and administers the DFAS Privacy Act Program for all personnel, to include contractor personnel, within the FSO.

(2) Ensures that the collection, maintenance, use, or dissemination of records of identifiable personal information is in a manner that assures that such action is for a necessary and lawful purpose; the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information. Advises the Program Manager that systems notices must be published in the **Federal Register** prior to collecting or maintenance of the information. Submits system notices to the DFAS-HQ Privacy Act Officer for review and subsequent submission to the Department of Defense Privacy Office.

(3) Administratively controls and processes Privacy Act requests. Ensures that the provisions of this regulation and the DoD Privacy Act Program are followed in processing requests for records. Ensure all Privacy Act requests are promptly reviewed. Coordinate the reply with other organizational elements as required.

(4) Prepares denials and partial denials for signature by the Director, FSO and obtains required coordination with the assistant General Counsel. Responses will include written justification citing a specific exemption or exemptions.

(5) Prepares input for the annual Privacy Act Report (RCS: DD-DA&M(A)1379) as required using the guidelines provided in Appendix A to this part.

(6) Conducts training on the DFAS Privacy Act Program for FSO personnel.

(j) *DFAS employees.*

(1) Will not disclose any personal information contained in any system of records, except as authorized by this regulation.

(2) Will not maintain any official files which are retrieved by name or other personal identifier without first ensuring that a system notice has been published in the **Federal Register.**

(3) Reports any disclosures of personal information from a system of records or the maintenance of any system of records not authorized by this regulation to the appropriate Privacy Act Officer for action.

(k) *DFAS system managers (SM).*

(1) Ensures adequate safeguards have been established and are enforced to prevent the misuse, unauthorized disclosure, alteration, or destruction of personal information contained in system records.

(2) Ensures that all personnel who have access to the system of records or are engaged in developing or supervising procedures for handling records are totally aware of their responsibilities to protect personal information established by the DFAS Privacy Act Program.

(3) Evaluates each new proposed system of records during the planning stage. The following factors should be considered:

(i) Relationship of data to be collected and retained to the purpose for which the system is maintained. All information must be relevant to the purpose.

(ii) The impact on the purpose or mission if categories of information are not collected. All data fields must be necessary to accomplish a lawful purpose or mission.

(iii) Whether informational needs can be met without using personal identifiers.

(iv) The disposition schedule for information.

(v) The method of disposal.

(vi) Cost of maintaining the information.

(4) Complies with the publication requirements of DoD 5400.11-R, 'Department of Defense Privacy Program' (see 32 CFR part 310). Submits final publication requirements to the appropriate DFAS Privacy Act Officer.

(l) *DFAS program manager(s).* Reviews system alterations or amendments to evaluate for relevancy and necessity. Reviews will be conducted annually and reports prepared outlining the results and corrective actions taken to resolve problems. Reports will be forwarded to the appropriate Privacy Act Officer.

(m) *Federal government contractors.* When a DFAS organizational element contracts to accomplish an agency function and performance of the contract requires the operation of a system of records or a portion thereof, DoD 5400.11-R, 'Department of Defense Privacy Program' (see 32 CFR part 310) and this part apply. For purposes of criminal penalties, the contractor and its employees shall be considered employees of DFAS during the performance of the contract.

(1) *Contracting Involving Operation of Systems of Records.* Consistent with Federal Acquisition Regulation (FAR) [2] and the DoD Supplement to the Federal Acquisition Regulation (DFAR) [3], Part 224.1, contracts involving the operation of a system of records or portion thereof shall specifically identify the record system, the work to be performed and shall include in the solicitations and resulting contract such terms specifically prescribed by the FAR and DFAR.

(2) *Contracting.* For contracting subject to this part, the Agency shall:

(i) Informs prospective contractors of their responsibilities under the DFAS Privacy Act Program.

(ii) Establishes an internal system for reviewing contractor performance to ensure compliance with the DFAS Privacy Act Program.

(3) *Exceptions.* This rule does not apply to contractor records that are:

(i) Established and maintained solely to assist the contractor in making internal contractor management decisions, such as records maintained by the contractor for use in managing the contract.

(ii) Maintained as internal contractor employee records, even when used in conjunction with providing goods or services to the agency.

(4) *Contracting procedures.* The Defense Acquisition Regulatory Council

[1] Copies may be obtained at cost from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] Copies may be obtained at cost from the Superintendent of Documents, PO Box 37195, Pittsburgh, PA 15250–7954.

[3] See footnote 2 to § 324.4(m)(1)

is responsible for developing the specific policies and procedures for soliciting, awarding, and administering contracts.

(5) *Disclosing records to contractors.* Disclosing records to a contractor for use in performing a DFAS contract is considered a disclosure within DFAS. The contractor is considered the agent of DFAS when receiving and maintaining the records for the agency.

Subpart B – Systems of Records

§ 324.5 General information.

(a) The provisions of DoD 5400.11-R, 'Department of Defense Privacy Program' (see 32 CFR part 310) apply to all DFAS systems of records. DFAS Privacy Act Program Procedural Rules, DFAS Exemption Rules and System of Record Notices are the three types of documents relating to the Privacy Act Program that must be published in the **Federal Register.**

(b) A system of records used to retrieve records by a name or some other personal identifier of an individual must be under DFAS control for consideration under this regulation. DFAS will maintain only those Systems of Records that have been described through notices published in the **Federal Register.**

(1) *First amendment guarantee.* No records will be maintained that describe how individuals exercise their rights guaranteed by the First Amendment unless maintenance of the record is expressly authorized by Statute, the individual or for an authorized law enforcement purpose.

(2) *Conflicts.* In case of conflict, the provisions of DoD 5400.11-R take precedence over this supplement or any DFAS directive or procedure concerning the collection, maintenance, use or disclosure of information from individual records.

(3) *Record system notices.* Record system notices are published in the **Federal Register** as notices and are not subject to the rule making procedures. The public must be given 30 days to comment on any proposed routine uses prior to implementing the system of record.

(4) *Amendments.* Amendments to system notices are submitted in the same manner as the original notices.

§ 324.6 Procedural rules.

DFAS procedural rules (regulations having a substantial and direct impact on the public) must be published in the **Federal Register** first as a proposed rule to allow for public comment and then as a final rule. Procedural rules will be submitted through the appropriate DFAS Privacy Act Officer to the Department of Defense Privacy Office. Appendix B to this part provides the correct format. Guidance may be obtained from the DFAS-HQ and DFAS Center Records Managers on the preparation of procedural rules for publication.

§ 324.7 Exemption rules.

(a) *Submitting proposed exemption rules.* Each proposed exemption rule submitted for publication in the **Federal Register** must contain: The agency identification and name of the record system for which an exemption will be established; The subsection(s) of the Privacy Act which grants the agency authority to claim an exemption for the system; The particular subsection(s) of the Privacy Act from which the system will be exempt; and the reasons why an exemption from the particular subsection identified in the preceding subparagraph is being claimed. No exemption to all provisions of the Privacy Act for any System of records will be granted. Only the Director, DFAS may make a determination that an exemption should be established for a system of record.

(b) *Submitting exemption rules for publication.* Exemption rules must be published in the **Federal Register** first as proposed rules to allow for public comment, then as final rules. No system of records shall be exempt from any provision of the Privacy Act until the exemption rule has been published in the **Federal Register** as a final rule. The DFAS Privacy Act Officer will submit proposed exemption rules, in proper format, to the Defense Privacy Office, for review and submission to the **Federal Register** for publication. Amendments to exemption rules are submitted in the same manner as the original exemption rules.

(c) *Exemption for classified records.* Any record in a system of records maintained by the Defense Finance and Accounting Service which falls within the provisions of 5 U.S.C. 552a(k)(1) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G)-(e)(4)(I) and (f) to the extent that a record system contains any record properly classified under Executive Order 12589 and that the record is required to be kept classified in the interest of national defense or foreign policy. This specific exemption rule, claimed by the Defense Finance and Accounting Service under authority of 5 U.S.C. 552a(k)(1), is applicable to all systems of records maintained, including those individually designated for an exemption herein as well as those not otherwise specifically designated for an exemption, which may contain isolated items of properly classified information

(1) *General exemptions.* [Reserved]

(2) *Specific exemptions.* [Reserved]

Subpart C – Individual Access to Records

§ 324.8 Right of access.

The provisions of DoD 5400.11-R, 'Department of Defense Privacy Program' (see 32 CFR part 310) apply to all DFAS personnel about whom records are maintained in systems of records. All information that can be released consistent with applicable laws and regulations should be made available to the subject of record.

§ 324.9 Notification of record's existence.

All DFAS Privacy Act Officers shall establish procedures for notifying an individual, in response to a request, if the system of records contains a record pertaining to him/her.

§ 324.10 Individual requests for access.

Individuals shall address requests for access to records to the appropriate Privacy Act Officer by mail or in person. Requests for access should be acknowledged within 10 working days after receipt and provided access within 30 working days. Every effort will be made to provide access rapidly; however, records cannot usually be made available for review on the day of request. Requests must provide information needed to locate and identify the record, such as individual identifiers required by a particular system, to include the requester's full name and social security number.

§ 324.11 Denials.

Only a designated denial authority may deny access. The denial must be in writing.

§ 324.12 Granting individual access to records.

(a) The individual should be granted access to the original record (or exact copy) without any changes or deletions. A record that has been amended is considered the original.

(b) The DFAS component that maintains control of the records will provide an area where the records can be reviewed. The hours for review will be set by each DFAS location.

(c) The custodian will require presentation of identification prior to providing access to records. Acceptable identification forms include military or government civilian identification cards, driver's license, or other similar photo identification documents.

(d) Individuals may be accompanied by a person of their own choosing when reviewing the record; however, the custodian will not discuss the record in the presence of the third person without written authorization.

(e) On request, copies of the record will be provided at a cost of $.15 per page. Fees will not be assessed if the cost is less that $30.00. Individuals requesting copies of their official personnel records are entitled to one free copy and then a charge will be assessed for additional copies.

§ 324.13 Access to medical and psychological records.

Individual access to medical and psychological records should be provided, even if the individual is a minor, unless it is determined that access could have an adverse effect on the mental or physical health of the individual. In this instance, the individual will be asked to provide the name of a personal physician, and the record will be provided to that physician in accordance with guidance in Department of Defense 5400.11-R, 'Department of Defense Privacy Program' (see 32 CFR part 310).

§ 324.14 Relationship between the Privacy Act and the Freedom of Information Act.

Access requests that specifically state or reasonably imply that they are made under FOIA, are processed pursuant to the DFAS Freedom of Information Act Regulation. Access requests that specifically state or reasonably imply that they are made under the PA are processed pursuant to this regulation. Access requests that cite both the FOIA and the PA are processed under the Act that provides the greater degree of access. Individual access should not be denied to records otherwise releasable under the PA or the FOIA solely because the request does not cite the appropriate statute. The requester should be informed which Act was used in granting or denying access.

Appendix A to part 324–DFAS Reporting Requirements

By February 1, of each calendar year, DFAS Centers and Financial Systems Organizations will provide the DFAS Headquarters Privacy Act Officer with the following information:

1. Total number of access requests granted in whole:
2. Total number of access requests granted in part:
3. Total number of access requests wholly denied:
4. Total number of access requests for which no record was found:
5. Total number of Amendment Requests Granted in whole:
6. Total number of Amendment Requests Granted in part:
7. Total number of Amendment Requests wholly denied:
8. The results of reviews undertaken in response to paragraph 3a of Appendix I to OMB Circular A-130[4].

Appendix B to part 324–System of Records Notice

The following data captions are required for each system of records notice published in the **Federal Register.** An explanation for each caption is provided.

1. *System identifier.* The system identifier must appear in all system notices. It is limited to 21 positions, including agency code, file number, symbols, punctuation, and spaces.

2. *Security classification.* Self explanatory. (DoD does not publish this caption. However, each agency is responsible for maintaining the information.)

3. *System name.* The system name must indicate the general nature of the system of records and, if possible, the general category of individuals to whom it pertains. Acronyms should be established parenthetically following the first use of the name (e.g., 'Field Audit Office Management Information System (FMIS)'). Acronyms shall not be used unless preceded by such an explanation. The system name may not exceed 55 character positions, including punctuation and spaces.

4. *Security classification.* This category is not published in the **Federal Register** but is required to be kept by the Headquarters Privacy Act Officer.

5. *System location.* a. For a system maintained in a single location, provide the exact office name, organizational identity, routing symbol, and full mailing address. Do not use acronyms in the location address.

b. For a geographically or organizationally decentralized system, describe each level of organization or element that maintains a portion of the system of records.

c. For an automated data system with a central computer facility and input or output terminals at geographically separate locations, list each location by category.

d. If multiple locations are identified by type of organization, the system location may indicate that official mailing addresses are published as an appendix to the agency's compilation of systems of records notices in the **Federal Register.** If no address directory is used, or if the addresses in the directory are incomplete, the address of each location where a portion of the record system is maintained must appear under the 'system location' caption.

e. Classified addresses shall not be listed but the fact that they are classified shall be indicated.

f. The U.S. Postal Service two-letter state abbreviation and the nine-digit zip code shall be used for all domestic addresses.

6. *Categories of individuals covered by the system.* Use clear, non technical terms which show the specific categories of individuals to whom records in the system pertain. Broad descriptions such as 'all DFAS personnel' or 'all employees' should be avoided unless the term actually reflects the category of individuals involved.

7. *Categories of records in the system.* Use clear, non technical terms to describe the types of records maintained in the system. The description of documents should be limited to those actually retained in the system of records. Source documents used only to collect data and then destroyed should not be described.

8. *Authority for maintenance of the system.* The system of records must be authorized by a Federal law or Executive Order of the President, and the specific provision must be cited. When citing federal laws, include the popular names (e.g., '5 U.S.C. 552a, The Privacy Act of 1974') and for Executive Orders, the official titles (e.g., 'Executive Order 9397, Numbering System for Federal Accounts Relating to Individual Persons').

9. *Purpose(s).* The specific purpose(s) for which the system of records was created and maintained; that is, the uses of the records within DFAS and the rest of the Department of Defense should be listed.

10. *Routine uses of records maintained in the system, including categories of users and purposes of the uses.* All disclosures of the records outside DoD, including the recipient of the disclosed information and the uses the recipient will make of it should be listed. If possible, the specific activity or element to which the record may be disclosed (e.g., 'to the Department of Veterans Affairs, Office of Disability Benefits') should be listed. General statements such as 'to other Federal Agencies as required' or 'to any other appropriate Federal Agency' should not be used. The blanket routine uses, published at the beginning of the agency's compilation, applies to all system notices, unless the individual system notice states otherwise.

[4] Copies available from the Office of Personnel Management, 1900 E. Street, Washington, DC 20415.

11. *Disclosure to consumer reporting agencies:* This entry is optional for certain debt collection systems of records.

12. *Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system.* This section is divided into four parts.

13. *Storage:* The method(s) used to store the information in the system (e.g., 'automated, maintained in computers and computer output products' or 'manual, maintained in paper files' or 'hybrid, maintained in paper files and in computers') should be stated. Storage does not refer to the container or facility in which the records are kept.

14. *Retrievability:* How records are retrieved from the system (e.g., 'by name,' 'by SSN,' or 'by name and SSN') should be indicated.

15. *Safeguards:* The categories of agency personnel who use the records and those responsible for protecting the records from unauthorized access should be stated. Generally the methods used to protect the records, such as safes, vaults, locked cabinets or rooms, guards, visitor registers, personnel screening, or computer 'fail-safe' systems software should be identified. Safeguards should not be described in such detail as to compromise system security.

16. *Retention and disposal:* Describe how long records are maintained. When appropriate, the length of time records are maintained by the agency in an active status, when they are transferred to a Federal Records Center, how long they are kept at the Federal Records Center, and when they are transferred to the National Archives or destroyed should be stated. If records eventually are destroyed, the method of destruction (e.g., shredding, burning, pulping, etc.) should be stated. If the agency rule is cited, the applicable disposition schedule shall also be identified.

17. *System manager(s) and address.* The title (not the name) and address of the official or officials responsible for managing the system of records should be listed. If the title of the specific official is unknown, such as with a local system, the local director or office head as the system manager should be indicated. For geographically separated or organizationally decentralized activities with which individuals may correspond directly when exercising their rights, the position or title of each category of officials responsible for the system or portion thereof should be listed. Addresses that already are listed in the agency address directory or simply refer to the directory should not be included.

18. *Notification procedures.* (1) Notification procedures describe how an individual can determine if a record in the system pertains to him/her. If the record system has been exempted from the notification requirements of subsection (f)(l) or subsection (e)(4)(G) of the Privacy Act, it should be so stated. If the system has not been exempted, the notice must provide sufficient information to enable an individual to request notification of whether a record in the system pertains to him/her. Merely referring to a DFAS regulation is not sufficient. This section should also include the title (not the name) and address of the official (usually the Program Manager) to whom the request must be directed; any specific information the individual must provide in order for DFAS to respond to the request (e.g., name, SSN, date of birth, etc.); and any description of proof of identity for verification purposes required for personal visits by the requester.

19. *Record access procedures.* This section describes how an individual can review the record and obtain a copy of it. If the system has been exempted from access and publishing access procedures under subsections (d)(1) and (e)(4)(H), respectively, of the Privacy Act, it should be so indicated. If the system has not been exempted, describe the procedures an individual must follow in order to review the record and obtain a copy of it, including any requirements for identity verification. If appropriate, the individual may be referred to the system manager or another DFAS official who shall provide a detailed description of the access procedures. Any addresses already listed in the address directory should not be repeated.

20. *Contesting records procedures.* This section describes how an individual may challenge the denial of access or the contents of a record that pertains to him or her. If the system of record has been exempted from allowing amendments to records or publishing amendment procedures under subsections (d)(1) and (e)(4)(H), respectively, of the Privacy Act, it should be so stated. If the system has not been exempted, this caption describes the procedures an individual must follow in order to challenge the content of a record pertaining to him/her, or explain how he/she can obtain a copy of the procedures (e.g., by contacting the Program Manager or the appropriate DFAS Privacy Act Officer).

21. *Record source categories:* If the system has been exempted from publishing record source categories under subsection (e)(4)(I) of the Privacy Act, it should be so stated. If the system has not been exempted, this caption must describe where DFAS obtained the information maintained in the system. Describing the record sources in general terms is sufficient; specific individuals, organizations, or institutions need not be identified.

22. *Exemptions claimed for the system.* If no exemption has been established for the system, indicate 'None.' If an exemption has been established, state under which provision of the Privacy Act it is established (e.g., 'Portions of this system of records may be exempt under the provisions of 5 U.S.C. 552a(k)(2).')

Dated: February 26, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–4750 Filed 2–29–96; 8:45 am]

BILLING CODE 5000–04–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 71–8–6938b; FRL–5424–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Kern County Air Pollution Control District, Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of oxides of nitrogen (NO_x) emissions from the operations of stationary gas turbines and the removal of a rule from the SIP that controls NO_x emissions from steam generators used in the oil production operations.

The intended effect of proposing approval of these rules is to regulate emissions of NO_x in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 1, 1996.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 M Street, Suite 290, Bakersfield, CA 93301.

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826.

FOR FURTHER INFORMATION CONTACT: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION: This document concerns Kern County Air Pollution Control District's (KCAPCD) Rule 425, Cogeneration Gas Turbine Engines (Oxides of Nitrogen), and Sacramento Metropolitan Air Quality Management District's (SMAQMD) Rule 413, Stationary Gas Turbines. The rule being removed from the SIP is KCAPCD Rule 425, Oxides of Nitrogen Emissions from Steam Generators Used in Thermally Enhanced Oil Recovery—Western Kern County Fields. The KCPACD rules were submitted by the California Air Resources Board (CARB) to EPA on November 18, 1993 and the SMAQMD rule was submitted on June 16, 1995. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 30, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–4572 Filed 2–29–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MI44–01–7147b; FRL–5408–6]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: In this action, USEPA proposes to approve the State Implementation Plan (SIP) revision for the Wayne County, Michigan, particulate matter nonattainment area. The SIP submittal consists of State Administrative Rule 374 (R 336.1374), effective July 26, 1995, and is intended to satisfy the contingency measures requirement specified in section 172(c)(9) of the Clean Air Act. In the final rules section of this **Federal Register**, USEPA is approving the SIP revision as a direct final rule without prior proposal, because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received by April 1, 1996.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**. Copies of the request and the USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Authority: 42 U.S.C. 7401–7671(q).

Dated: December 14, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 96–4849 Filed 2–29–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MD3–1–7132, MD25–2–6170; FRL–5432–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Major VOC Source RACT and Minor VOC Source Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing conditional approval of State Implementation Plan (SIP) revisions submitted by the State of Maryland. These revisions pertain to Maryland's major source volatile organic compound (VOC) reasonably available control technology (RACT) regulation and minor VOC source requirements. The RACT regulation applies to major VOC sources that are not covered by Maryland's category specific VOC RACT regulations. The minor source requirements apply to smaller VOC sources that are not covered by RACT regulations. EPA is proposing approval of these SIP revisions on the condition that the State of Maryland certifies that it has determined and imposed RACT for all the major VOC sources covered by the VOC RACT regulation, and has submitted those enforceable RACT determinations to EPA as SIP revisions. That certification must be made by the Maryland Department of the Environment by no later than one year from the date EPA promulgates final conditional approval of this SIP revision. If the State fails to do so, that final conditional approval will convert to a disapproval. This action is being taken in accordance with the SIP submittal and revision provisions of the Act.

DATES: Comments must be received on or before April 1, 1996.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air, Radiation, and Toxics Division, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 597–9337, at the EPA Region III office, or via e-mail at pino.maria@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On April 5, 1991, the State of Maryland formally submitted amendments to its air quality regulations to EPA as a SIP revision. Among the amendments submitted were revisions to COMAR 26.11.06.06, Maryland's minor VOC source requirements. Also included in Maryland's April 5, 1991 SIP revision request was the addition of COMAR 26.11.19.02G, which requires RACT for major sources of VOC that are not covered by Maryland's category specific VOC RACT regulations. Throughout the remainder of this notice, COMAR 26.11.19.02G shall be termed Maryland's generic major source VOC RACT regulation. All other amendments submitted to EPA in Maryland's April 5, 1991 SIP revision request have been approved into Maryland's SIP through separate rulemaking actions. (See 58 FR 63085, 59 FR 60908 and 60 FR 2018.) This rulemaking action only pertains to the portion of Maryland's April 5, 1991 submittal related to the addition of COMAR 26.11.19.02G, Maryland's generic major VOC source RACT regulation, and revisions to COMAR 26.11.06.06, Maryland's minor VOC source requirements.

On June 8, 1993, the Maryland Department of the Environment again submitted amendments to its air quality regulations to EPA as a SIP revision. The June 8, 1993 submittal establishes statewide applicability for Maryland's major VOC source generic RACT regulation and category specific VOC RACT regulations, lowers the applicability threshold for VOC RACT regulations, expands the geographic applicability of Maryland's minor VOC source requirements, and corrects deficiencies in Maryland's Stage I Vapor Recovery regulation. This rulemaking action pertains only to the amendments contained in Maryland's June 8, 1993 submittal related to its generic major VOC source RACT regulation and its minor VOC source regulations, COMAR 26.11.19.02G and COMAR 26.11.06.06, respectively. All other regulations contained in the June 8, 1993 submittal were the subject of a separate rulemaking action. (See 60 FR 2018.)

As required by 40 CFR 51.102, the State of Maryland has certified that public hearings with regard to these proposed revisions were held in Maryland on October 11, 1990 in Annapolis, Maryland and on November 17, 18, and 20, 1992 in Frederick, Centreville, and Columbia, respectively. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

I. Background

To comply with the RACT provisions of the Act, Maryland was required to expand its RACT regulations to apply statewide. It had to adopt all RACT regulations for all VOC sources for which EPA has published a Control Techniques Guideline (CTG) and all major non-CTG VOC sources (so-called generic VOC sources) with the potential to emit ≥ 25 TPY in Cecil County and the Baltimore nonattainment area and ≥ 50 TPY in the remainder of the State. These major non-CTG sources are subject to Maryland's generic VOC RACT regulation.

II. EPA Evaluation and Proposed Action

The following is EPA's evaluation and proposed action for the State of Maryland. Detailed descriptions of the amendments addressed in this document, and EPA's evaluation of the amendments, are contained in the technical support document (TSD) prepared for these revisions. Copies of the TSD are available from the EPA Regional office listed in the **ADDRESSES** section of this document.

State Submittal: Maryland's generic major source VOC RACT regulation, COMAR 26.11.19.02G, was originally submitted to EPA on April 5, 1991 to comply with the RACT Fix-up requirements of section 182(a)(2) of the Act. COMAR 26.11.19.02G required RACT for sources in the Baltimore and the Maryland portion of pre-enactment Washington, DC nonattainment areas with the potential to emit ≥ 100 TPY of VOC and which were not subject to COMAR 26.11.11, 26.11.13, or 26.11.19.03–.15, Maryland's category-specific VOC RACT regulations.

Subsequently, Maryland revised its generic major source VOC RACT regulation to comply with the RACT Catch-up provisions of section 182(b)(2) of the Act. The regulation was revised to make it applicable statewide and to apply to "major stationary sources of VOC" rather than to VOC sources that have the potential to emit ≥ 100 TPY. The term "major stationary source of VOC," COMAR 26.11.19.01B(4), is defined as any stationary source with the potential to emit: (a) 25 TPY of VOC or more in the City of Baltimore and Anne Arundel, Baltimore, Carroll, Cecil, Harford, and Howard Counties, and (b) 50 TPY in the remainder of the State. Approval of the addition of this term to Maryland's SIP was the subject of a separate rulemaking action. (See 60 FR 2018.)

Furthermore, Maryland revised COMAR 26.11.19.02G to require non-CTG generic VOC sources to notify Maryland by August 15, 1993 if they are major sources subject to RACT. Under Maryland's regulation, these sources were required to submit a written RACT proposal and schedule for compliance by November 15, 1993. These sources must comply with RACT, as determined by Maryland, by no later than May 15, 1995. Upon Maryland's approval of a RACT proposal, the regulation requires the State to either amend the source's permit to operate to incorporate the RACT conditions, adopt a regulation that reflects the RACT requirement, or issue an order that includes the RACT requirement. Finally, COMAR 26.11.19.02G states that Maryland will submit all RACT determinations to EPA for approval via the federal rulemaking process for incorporation into the SIP.

Maryland's minor VOC source regulation, COMAR 26.11.06.06, was also submitted as part of Maryland's RACT Fix-ups. (See 58 FR 50307.) This regulation was applicable in the Baltimore and the Maryland portion of the pre-enactment Washington, DC nonattainment areas. This regulation exempted sources which were subject to other VOC regulations, including RACT as established by Maryland pursuant to COMAR 26.11.19.02G.

Maryland amended COMAR 26.11.06.06A (Applicability) to expand the applicability of COMAR 26.11.06.06C-E (VOC-Water Separators, VOC Disposal, and Exceptions) statewide. Additionally, Maryland's minor source regulation, COMAR 26.11.06.06B (Control of VOC from Installations), was revised to add new requirements for sources located in Cecil County and the counties which were added to the Maryland portion of the Washington, DC nonattainment area, namely Calvert, Charles, and Frederick Counties. Sources in these newly regulated areas, Calvert, Cecil, Charles, and Frederick Counties, are required to reduce their VOC emissions by 85 percent overall. Finally, COMAR 26.11.06.06A was revised to exempt sources "subject to the provisions of" Maryland's generic major source VOC RACT regulation, COMAR 26.11.19.02G, from the requirements of COMAR 26.11.06.06. Thus, sources subject to COMAR 26.11.19.02G, which have not yet had a RACT determination approved by Maryland, are not subject to any VOC emission standard.

EPA's Evaluation: Through revisions made to Maryland general VOC regulation, COMAR 26.11.06.06, its geographic applicability was expanded, resulting in the regulation of sources which were previously not regulated. However, other specific amendments to COMAR 26.11.06.06, found at 26.11.06.06A, narrowed the applicability of COMAR 26.11.06.06B such that certain sources in Maryland's pre-enactment nonattainment areas that were previously subject to COMAR 26.11.06.06B are no longer covered by any enforceable emissions limit until such time as Maryland approves RACT standards for them pursuant to the requirements its generic major VOC RACT regulation, COMAR 26.11.19.02G. This results in a lapse of coverage for previously regulated non-CTG generic sources major VOC sources in the State of Maryland.

Maryland's generic major source VOC RACT regulation, COMAR 26.11.19.02G, requires all case-by-case, category-specific or source-specific RACT requirements to be submitted as SIP revisions to EPA. It does not, itself, contain enforceable RACT standards for these major non-CTG VOC sources. Because COMAR 26.11.19.02G does not, in and of itself, fully satisfy the Act's requirements requiring for RACT on all major VOC sources, it is not unconditionally approvable. The Act's major source RACT requirements will be fully satisfied only when Maryland determines and imposes actual RACT standards on the generic sources and submits those RACT determinations to EPA as SIP revisions.

EPA has evaluated Maryland's generic major source VOC RACT regulation and its minor VOC source regulations for consistency with the Act and EPA regulations, and has found that they do not fully comply with the Act's major source RACT requirements.

However, in a letter dated February 7, 1996, Maryland affirmed that it will submit all RACT determinations for major sources of VOC in the state, and will provide a written statement to EPA that, to the best of its knowledge, there are no other sources subject to the RACT requirement.

Therefore, EPA is proposing approval of this SIP revision on the condition that the Maryland Department of the Environment certifies that it has determined and imposed RACT for the major VOC sources covered by COMAR 26.11.19.02G, and has submitted those enforceable and approvable RACT determinations to EPA as SIP revisions. If the State fails to do so, that final conditional approval will convert to a disapproval using the mechanism described below.

Proposed Action: Pursuant to section 110(k)(4) of the Act, EPA is proposing to approve, conditionally, the addition of and subsequent revisions to COMAR 26.11.19.02G and the revisions to COMAR 26.11.06.06A and B submitted by the State of Maryland on April 5, 1991 and June 8, 1993. In order to receive a full approval for meeting the non-CTG RACT requirement, the Maryland Department of the Environment must certify that it has determined and imposed approvable RACT standards for its major non-CTG VOC sources, pursuant to COMAR 26.11.19.02G, and submitted those approvable RACT rules to EPA as SIP revisions. If the State submits the case-by-case RACT rules, the conditional approval will remain in place until such time as EPA takes final action approving or disapproving the case-by-case SIP revisions. When EPA determines that Maryland has submitted approvable case-by-case RACT determinations for its non-CTG major VOC sources, EPA will convert the conditional approval to a full approval. A document will be published in the **Federal Register** announcing that the SIP revision has been fully approved. If Maryland fails to submit approvable rules, the EPA Regional Administrator will make a finding, by letter, that the conditional approval is converted to a disapproval and the clock for imposition of sanctions under section 179(a) of the Act will start as of the date of the letter. Subsequently, a document will be published in the **Federal Register** announcing that the SIP revision has been disapproved.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA the most cost-effective and least

burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the conditional approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to conditionally approve pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

This action has been classified as a Table 3 action under the SIP processing guidelines of the July 10, 1995 memorandum from the Assistant Administrator for Air and Radiation. Table 3 actions are delegated for Regional Administrator decision and signoff. The OMB has exempted this regulatory action from E.O. 12866 review.

The Regional Administrator's decision to approve or disapprove this SIP revision, pertaining to Maryland's major source VOC RACT and minor VOC source requirements, will be based on whether it meets the requirements of section 110(a)(2)(A)-(K), and Part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 16, 1996.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 96–4832 Filed 2–29–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5433–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Kummer Sanitary Landfill from the National Priorities List; Request for Comments.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) Region V announces its intent to delete the Kummer Sanitary Landfill Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which U.S. EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by U.S. EPA and the State of Minnesota. Both Agencies have determined that no further Federal response under CERCLA is appropriate. Any necessary future response actions will be undertaken by the State under the Minnesota Landfill Law enacted in 1994.

DATES: Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before April 1, 1996.

ADDRESSES: Comments may be mailed to Terry Roundtree (SR–6J), Remedial Project Manager or Gladys Beard (SR–6J), Associate Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604. Comprehensive information on the site is available at U.S. EPA's Region V office and at the local information repository located at: The Bemidji City Library, 6th and Beltrami, Bemidji, MN 56601. Requests for comprehensive copies of documents should be directed formally to the Region V Docket Office. The address and phone number for the Regional Docket Officer is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Gladys Beard (SR–6J), Associate Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7253 or Cheryl Allen (P–19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–6196.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region V announces its intent to delete the Kummer Sanitary Landfill Site from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on the proposed deletion. The EPA identifies sites that may present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund) or by responsible parties. Pursuant to Section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the site warrant such action.

The U.S. EPA will accept comments on this proposal for thirty (30) days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter U.S. EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete Sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, U.S. EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in 300.425(e) has been met, U.S. EPA may formally begin deletion procedures once the State has concurred. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the Site, announce the initiation of a 30-day comment period. The public is asked to comment on U.S. EPA's intention to delete the Site from the NPL. All critical documents needed to evaluate U.S. EPA's decision are included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the U.S. EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the U.S. EPA Region V Office to obtain a copy of this responsiveness summary, if one is prepared. If U.S. EPA then determines the deletion from the NPL is appropriate, final notice of deletion will be published in the **Federal Register**.

IV. Basis for Intended Site Deletion

The Kummer Landfill Sanitary is located in Northern Township, Beltrami County, Minnesota and borders the city of Bemidji. The Northern township has an estimated population of 3,997 in 1993 and contains a large mobile home park which is located east and southeast of the Site. The Kummer Landfill waste occupies approximately 23 acres in the southern portion of the township and is about 750 feet from the nearest residence. The landfill is situated above a shallow surficial sand aquifer which serves as a primary source of drinking water for the area.

In June 1984, the Site was placed on the National Priorities List (NPL), **Federal Register** 51 page 21071.

On September 29, 1984, the U. S. EPA and MPCA executed a Cooperative Agreement for implementing a Remedial Investigation/Feasibility Study (RI/FS). Following the discovery of ground water contamination, a Determination of Emergency was issued by the MPCA on July 17, 1984. This permitted the expenditure of State Superfund money for a temporary water supply for affected residents. The Minnesota Department of Health (MDH) and MPCA delineated a three and one-half block area east of the landfill as a well advisory area. On August 28, 1984, the MPCA authorized the expenditure of State Superfund money for a focused FS on a water system for the advisory area. Eighty-one property owners received letters from MDH on August 29, 1984, which notified them that they should discontinue the use of their private wells for drinking and cooking purposes.

Because of the complexity of work at the Kummer Sanitary Landfill, the activities at the site have been divided into three operable units, which are:

Operable Unit 1. Northern Township Municipal Water System
Operable Unit 2. Source Control of contaminants emanating from the landfill
Operable Unit 3. Management of the contaminated ground water

On June 12, 1985, a Record of Decision (ROD) for Operable Unit 1 was signed which selected an alternative water supply as the remedial action. The selected remedy provided for an extension of the existing public water supply from the city of Bemidji. Construction of the water system began in June 1987, and was completed in the summer of 1990. A total of 198 connections to individual homes, businesses, and a mobile home park were completed in operable unit one.

Due to the complexity of the site, the RI investigation was completed in phases. The Final RI Report was approved in May 1990. The Source Control Operable Unit (Operable Unit 2) FS was completed in September 1988. On September 30, 1988, a second ROD was signed which selected a cover system for the landfill as the remedial action for Operable Unit 2. The selected remedy included a low permeability cap, site deed restrictions, fencing and long-term operation and maintenance to provide inspections and repairs to the cap. The Construction of the cap was completed in October 1991.

The Ground Water Operable unit (Operable Unit 3) RI/FS was completed in July, 1990. Three ground water monitoring programs were completed, and eight rounds of data were collected. The results revealed that VOCs were being introduced into the shallow ground water by the landfill. However, ground water monitoring has shown that the plume does not extend to Lake Bemidji.

On September 29, 1990, a third ROD was signed which selected a remedy that included ground water extraction for an estimated period of 30 years, during which the system's performance would be carefully monitored on a regular basis and adjusted as warranted by the performance data collected during operation.

On November 21, 1995, a ROD Amendment was signed concerning the ground water Operable unit (OU3). The remedy selected was bioremediation which provides no exposure of contaminated ground water to potential receptors. The major components of the amended remedy for OU3 include:

- Installation of a pilot scale field demonstration to determine the feasibility of insitu biodegradation of the chemicals of concern;
- Installation of a full scale insitu bioremediation system after one year of operation of the pilot scale field demonstration if necessary to meet the Maximum Contaminant Level (MCL) for chemicals of concern located in ground water;
- Long term monitoring of ground water to verify that the concentrations of the chemicals of concern are continuing to decline and to measure performance of the pilot scale field demonstration and or full scale insitu bioremediation system;
- Continued observance of the Minnesota Health Department Well Advisory which regulates the location of future potable wells near the Site;
- Institutional Controls in the form of Site access restrictions that protect the remedy; and operation and maintenance of the remedy, including periodic inspection of the Site.

The public accepted the remedy in the 1990 OU3 ROD. A public information meeting was held by the State of Minnesota on June 5, 1995, in Northern Township to inform interested parties on the amend remedy and the State 's desire to amend the 1990 ROD. There were no strong comments against the change in the remedy.

In 1994, the Legislature of the State of Minnesota enacted the Landfill Cleanup Law, Minn. Laws 1994, ch. 639, codified at Minn. Stat. § § 115B.39 to 115B.46 (the Act), authorizing the Commissioner of the Minnesota Pollution Control Agency (MPCA) to assume responsibility for future environmental response actions at qualified landfills that have received notices of compliance from the Commissioner of MPCA. Additionally, the Act established funds to enable the MPCA to perform all necessary response, operation and maintenance at such landfills. At sites where no responsible parties are conducting response actions under CERCLA, MPCA is responsible for issuing a notice of compliance, after it determines that all work that could be expected under a state order or under state closure requirements has been completed.

A notice of compliance was issued by MPCA for the Kummer Sanitary Landfill Site on November 7, 1995. MPCA has since assumed all responsibility for the Kummer Landfill under the Act. Therefore, no further response actions

under CERCLA are appropriate at this time. Consequently, U.S EPA proposed to delete the site from the NPL.

EPA, with concurrence from the State of Minnesota, has determined that all appropriate Fund-financed responses under CERCLA at the Kummer Sanitary Landfill Superfund Site have been completed, and no further CERCLA response is appropriate in order to provide protection of human health and the environment. Therefore, EPA proposes to delete the site from the NPL.

Dated: February 20, 1996.

Valdas V. Adamkus,

Regional Administrator, U.S. EPA, Region V.

[FR Doc. 96–4830 Filed 2–29–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–19; RM–8744]

Television Broadcasting Services; Geneseo, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Renard Communications Corp. seeking the allotment of UHF TV Channel 39– to Geneseo, NY, as the community's first local television transmission service. Channel 39– can be allotted to Geneseo in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.4 kilometers (13.3 miles) east, at coordinates 42–46–10 North Latitude and 77–33–21 West Longitude, to avoid a short-spacing to TV Channel 39+ at Kitchener, Ontario. Canadian concurrence is required since Geneseo is located within 400 kilometers (250 miles) of the U.S.-Canadian border. This proposed allotment is not affected by the Commission's freeze on new allotments in certain metropolitan areas.

DATES: Comments must be filed on or before April 12, 1996, and reply comments on or before April 29, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554: In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Craig L. Fox, President, Renard Communications Corp. 4853 Manor Hill Drive, Syracuse, New York 13215–1336 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96–19, adopted February 6, 1996, and released February 20, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–4787 Filed 2–29–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Ohlone Tiger Beetle as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding on a petition to list the Ohlone tiger beetle (*Cicindela ohlone*) as endangered pursuant to the Endangered Species Act (Act) of 1973, as amended. The Ohlone tiger beetle was discovered in 1990 and is currently known only from Santa Cruz County, California. The five known populations may be threatened by the following factors: habitat fragmentation and destruction due to urban development, habitat degradation due to invasion of non-native vegetation, and vulnerability to stochastic local extirpations. However, the Service finds that the information presented in the petition, in addition to information in the Service's files, does not provide conclusive data on biological vulnerability and threats to the species and/or its habitat. Available information does not confirm that the species is limited to a specific habitat type. After review of all available scientific and commercial information, the Service determines that listing is not warranted for the Ohlone tiger beetle at this time.

DATES: The finding announced in this document was made on November 9, 1995. Comments and information concerning this finding may be submitted until further notice.

ADDRESSES: Data, information, comments or questions concerning this petition finding may be submitted to the Field Supervisor, Ventura Field Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. The petition, finding, supporting data and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Carl Benz, Assistant Field Supervisor, Listing and Recovery (See **ADDRESSES** section) at 805/644–1766.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information, the Service make a finding within 12 months of the date of receipt of the petition whether the petitioned action is (a) not warranted, (b) warranted, or (3) warranted but precluded from immediate proposal by other pending proposals. Such 12-month findings are to be published promptly in the **Federal Register.**

On February 18, 1993, the Service received a petition from Randall Morgan of Soquel, California requesting that the Service add the Ohlone tiger beetle (*Cicindela ohlone*) to the list of threatened and endangered species pursuant to the Act. The petition specified endangered status because of

the beetle's limited distribution, specialized habitat requirements, and threats from proposed residential developments and other habitat disturbances. A 90-day finding was made by the Service that the petition presented substantial information indicating that the requested action may be warranted. The 90-day finding was announced in the **Federal Register** on January 27, 1994 (59 FR 3830). A status review was initiated.

The Service has reviewed the petition, the literature cited in the petition, other available literature and information, and consulted with biologists and researchers familiar with tiger beetles. On the basis of the best available scientific and commercial information, the Service finds that listing the Ohlone tiger beetle (*Cicindela ohlone*) as endangered is not warranted.

The Ohlone tiger beetle is a member of the Coleopteran family Cicindelidae (tiger beetles), which includes more than 2,000 species worldwide and more than 100 species in the United States (Pearson and Cassola 1992). Tiger beetles are crepuscular, predatory insects that prey on small arthropods. Tiger beetle species occur in many different habitats including riparian habitats, beaches, dunes, woodlands, grasslands, and other open areas (Pearson 1988, Knisley and Hill 1992). A common habitat component appears to be open sunny areas that are used by tiger beetles for hunting and thermoregulation (Knisley *et al.* 1990, Knisley and Hill 1992). Individual species are generally highly habitat specific because of larval sensitivity to soil moisture, composition, and temperature (Pearson 1988, Pearson and Cassola 1992, Kaulbars and Freitag 1993).

The Ohlone tiger beetle was first described in 1993 from specimens collected near Soquel, Santa Cruz County, California in 1990. Currently, five populations have been found and both male and female specimens have been collected. The larvae of the Ohlone tiger beetle have yet to be seen or collected, but are presumed to be similar to other tiger beetle species. Collection of Ohlone tiger beetles has occurred only in Santa Cruz County, where populations are known only from coastal terraces supporting remnant patches of native grassland habitat on clay and sandy clay soils.

Two principal features distinguishing the Ohlone tiger beetle from other species of tiger beetles are its early seasonal adult activity period, and its disjunct distribution. While other tiger beetle species, such as *Cicindela purpurea*, are active during spring, summer, or early fall (Nagano 1980, Freitag *et al.* 1993), the Ohlone tiger beetle is active from late January to early April (Freitag *et al.* 1993). The Ohlone tiger beetle is also the southernmost member of its related group of tiger beetles (Freitag *et al.* 1993). These unusual characteristics may, in part account for the lack of historical collections of the species. Collectors would not expect to find tiger beetles during late winter or in the Santa Cruz area. However, because *Cicindela* is a very popular insect genus to collect (C. Nagano, U.S. Fish and Wildlife Service, pers. comm. 1993), and because entomologists commonly collect out of season and out of known ranges in order to find temporally and spatially outlying specimens, one would expect more specimens to have been collected if the Ohlone tiger beetle were more widespread and common. A limited, localized occurrence of the species may also help explain why the Ohlone tiger beetle was not discovered until 1990.

Currently, the known adult Ohlone tiger beetle habitat is characterized by open native grassland, with California oatgrass (*Danthonia californica*) and purple needlegrass (*Stipa pulchra*), on level or nearly level slopes. Substrate is shallow, pale, poorly drained clay or sandy clay soil that bakes to a hard crust by summer, after winter and spring rains cease (Freitag *et al.* 1993). Habitat for oviposition by females and subsequent larval development is unknown.

The historic range of the Ohlone tiger beetle cannot be precisely assessed because the species was only recently discovered, and no historic specimens or records are available. The earliest specimen recorded was collected from a site northwest of Santa Cruz in 1987 (Freitag *et al.* 1993). Based on available information on topography, substrates, soils, and vegetation, potential suitable habitat for the Ohlone tiger beetle may have been more extensive and continuous than at present. If, indeed, the beetle is restricted to coastal terraces of clay or sandy clay soils, then based on soil maps, it may once have extended from southwestern San Mateo County to northwestern Monterey County, California (Freitag *et al.* 1993). Much of this habitat has been destroyed, degraded, and fragmented by urban development and invasion of non-native vegetation. Currently, the extent of habitat that is potentially suitable for the Ohlone tiger beetle is estimated at 200 to 300 acres in Santa Cruz County, California (Freitag *et al.* 1993). However, restriction of the species to these habitat parameters has not been demonstrated and the occurrence of the Ohlone tiger beetle beyond this range is not known. Barry Knisley (entomologist, Randolph-Macon College, pers. comm. 1995) suggests that soil type, rather than plant community, may define the range and emphasized the need for additional field work to verify soil relationships. Extensive range-wide surveys have not been conducted.

The five known populations face threats from habitat fragmentation and destruction due to urban development, habitat degradation due to invasion of non-native vegetation, and vulnerability to stochastic local extirpations. Collection, pesticides, and recreational use of habitat are recognized as potential threats. However, the Service concludes that life history information and survey data are currently inadequate to conclusively determine that the Ohlone tiger beetle is restricted to the described habitat. Listing the species as either endangered or threatened is not warranted at this time because sufficient information is not available indicating that the species is clearly in danger of extinction or expected to become so in the foreseeable future. The Ohlone tiger beetle is a species of concern to the Service and additional information regarding the status, range, and habitat of adult and larval forms will continue to be solicited.

If additional data become available in the future, the Service may reassess the candidate status and listing priority for this species or the need for listing.

References Cited

Freitag, R., D.H. Kavanaugh and R. Morgan. 1993. A new species of *Cicindela* (*Cicindela*) (Coleoptera: Carabidae: Cicindelini) from remnant native grassland in Santa Cruz County, California. The Coleopterists Bulletin 47:113–120.

Kaulbars, M.M. and R. Freitag. 1993. Geographical variation, classification, reconstructed phylogeny, and geographical history of the *Cicindela sexguttata* group (Coleoptera: Cicindelidae). The Canadian Entomologist 125:267–316.
Knisley, C.B. and J.M. Hill. 1992. Effects of habitat change from ecological succession and human impacts on tiger beetles. Virginia Journal of Science 43:133–142.
Knisley, C.B., T.D. Schultz and T.H. Hasewinkel. 1990. Seasonal activity and thermoregulatory behavior of *Cicindela patruela* (Coleoptera: Cicindelidae). Annals of the Entomological Society of America 83:911–915.
Nagano, C.D. 1980. Population status of the tiger beetles of the genus *Cicindela* (Coleoptera: Cicindelidae) inhabiting the marine shoreline of southern California. Atala 8:33–42.
Pearson, D.L. 1988. Biology of Tiger Beetles. Annual Review of Entomology 33:123–147.
Pearson, D.L. and F. Cassola. 1992. World-wide species richness patterns of tiger beetles (Coleoptera: Cicindelidae): indicator taxon for biodiversity and conservation studies. Conservation Biology 6:376–391.

Author: The primary author of this notice is Carl Benz, Ventura Field Office (see **ADDRESSES** section) (telephone 805/644–1766).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 9, 1995.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 96–4802 Filed 2–29–96; 8:45 am]
BILLING CODE 4310–55–P

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Fisher in the Western United States as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the fisher (*Martes pennanti*) in the western United States as threatened under the Endangered Species Act of 1973, as amended. The Service finds that the petition did not present substantial information indicating that the two fisher populations in the western United States requested to be listed constitute distinct vertebrate population segments. Therefore, the Service makes a negative finding on this petition.

DATES: The finding announced in this document was made on November 22, 1995.

ADDRESSES: Data, information, comments or questions concerning this petition should be submitted to the Western Washington Office, U.S. Fish and Wildlife Service, 3704 Griffin Lane S.E., Suite 102, Olympia, Washington 98501. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David C. Frederick, Supervisor (see **ADDRESSES** above), at (360) 753–9440.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.), requires that the Service make a finding on whether a petition to list, delist or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, the Service also is required to commence a review of the status of the species involved if one has not already been initiated under the Service's internal candidate assessment process.

On December 29, 1994, a petition to list the fisher (*Martes pennanti*) in the western United States was received by the Service. The petition, dated December 22, 1994, was submitted by D.C. "Jasper" Carlton, Director for the Biodiversity Legal Foundation, Boulder, Colorado. The petition requested listing of two fisher populations in the western United States (Washington, Oregon, California, Idaho, Montana and Wyoming) as threatened species. The petition stated that two fisher populations from the Pacific Coast and northern Rocky Mountain areas of the western United States are vulnerable to extirpation due to habitat loss and fragmentation of late-successional and old-growth forests from road construction and logging, threats from direct and incidental trapping, and the effects of small population size.

After a review of the above information, and based on the best scientific and commercial information available, the Service finds the petition does not present substantial information indicating that listing two western United States fisher populations may be warranted.

Historically, fishers ranged from northern British Columbia, Canada, into central California in the Pacific region, and into Idaho, Montana and Wyoming in the Rocky Mountains. In the central United States, fishers may have been distributed as far south as southern Illinois, and in the eastern states, fishers occurred as far south as North Carolina and Tennessee in the Appalachian Mountains (Powell and Zielinski 1994). During the late 1800s and early 1900s, fishers were extirpated over much of their range in both the United States and Canada. Overtrapping and logging are believed to have been the primary cause of that decline (Powell and Zielinski 1994).

Fishers today occur across the Canadian provinces (Banci 1989). In the Pacific States, fishers still occur in the Cascade Range and Okanogan Highlands of Washington State, and are probably still present in the Olympic Mountains (Aubry and Houston 1992). The status of the fisher in Washington is believed to be "very rare" although distribution patterns between 1955–1979 and 1980–1991 were similar (Aubry and Houston 1992). Little is known of the status in Oregon, although sightings are extremely rare. Powell and Zielinski (1994) report that fishers have recently been detected by remote camera just west of the Cascade Crest in southern Oregon. In California, the fishers in the Sierra Nevada appear to be isolated from the animals in the northwestern part of the state (Powell and Zielinski 1994). Though the Sierran fishers may be doing well (Powell and Zielinski 1994), California Fish and Game biologists have expressed concern over their long term viability (pers. comm. in Gibilisco 1994). Fishers in northwestern California have apparently remained stable since early in this century, and several researchers suggest this population may have the highest abundance of all the populations in the western United States (Powell and Zielinski 1994) and it may increase in the near future (Gibilisco 1994).

In the Rocky Mountains, fishers occur in central Idaho and northwestern Montana; successful reintroductions have occurred in both states (Gibilisco 1994). Although some reintroductions have been unsuccessful (Powell and Zielinski 1994, Roy 1991), fisher populations in the Rocky Mountains may be more stable than those in the Pacific States (Powell and Zielinski 1994). Fishers are occasionally sighted in Wyoming, but have always been rare (Biodiversity Legal Foundation 1994). Fisher populations have increased in many areas in the eastern United States since trapping seasons were closed in the 1930s and 1940s over much of the species range, in combination with several successful reintroduction efforts in the eastern and central states. In Canada, fisher are relatively abundant in the eastern provinces; however, in British Columbia (i.e., western Canada), populations are low, and the trapping season has recently been closed (Province of British Columbia, undated).

Under the Act, the Service may list a species that is in danger of extinction (endangered), or likely to become an endangered species within the foreseeable future (threatened) throughout all or a significant portion of its range. The term "species" is defined under the Act to include "subspecies * * * and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature" (16 U.S.C. 1532 (16)). The Act's legislative history indicates a Congressional intent that populations be listed only "sparingly" (Senate Report 151, 96th Congress, 1st Session). On December 21, 1994, the Service and the National Marine Fisheries Service jointly published a draft policy regarding distinct vertebrate population segments (59 FR 65884). In determining whether groups of vertebrate fish or wildlife are distinct population segments, the Service has, consistent with the draft policy, considered whether (1) the population is discrete, and (2) the population is significant to the species as a whole.

The petition requested listing the fisher in the western United States and its two populations: The Pacific Coast and Rocky Mountain populations. The petition claimed that "fisher in the Pacific Coast and Rocky Mountain states are geographically separate and distinct from each other * * * and from remaining fisher populations to the east in the remainder of the contiguous United States." In 1991, the Service viewed the Pacific fisher as "probably genetically, though not morphometrically distinct from the Rocky Mountain form" (56 FR 1159).

The best scientific evidence available today indicates that the range of the fisher is contiguous across Canada, with peninsular extensions projecting southward into the United States in the Pacific States, Rocky Mountains, and the central and eastern United States. No evidence was provided by the petitioner to demonstrate that any physical, physiological, ecological, or behavioral factors separate fishers in the western United States from the fishers in the remainder of the species' distribution. Powell and Zielinski (1994) state that the contiguous range of fishers across North America allows free interchange of genes. The petition states that the unsuitable habitat of the Great Plains separates fishers in the western United States from mid-west and northeastern United States populations. However, the continuity of the fisher's range through Canada, and between Canada and the United States, provides for genetic exchange throughout North America.

In the past, the Service questioned whether the Pacific subspecies of the fisher (*Martes pennanti pacifica*) was a distinct subspecies and designated it as a category 2 candidate species for which there was not sufficient information on biological vulnerability and threats to justify a proposed listing. The designation of Category 2 species as candidates has resulted in confusion about the listing status of these taxa. To reduce that confusion, the designation of Category 2 species has been discontinued by the Service. The Service now regards these species as species of concern but not as candidates for listing.

Furthermore, the taxonomic distinctness of fisher subspecies including the Pacific fisher is questionable. Recent literature cited in the petition (Heinemeyer and Jones 1994, Powell and Zielinski 1994) refutes the distinctness of the putative subspecies. Powell and Zielinski (1994) state that "[t]he continuous range of the fisher across North America, allowing free interchange of genes, is consistent with a lack of valid subspecies." The petition does not address the Pacific Coast fishers as a separate subspecies and does not provide new information to support listing those animals either as a subspecies as a distinct population under the Act.

The petition further argues that the Pacific Coast and Rocky Mountain groups of fishers warrant listing based on the Service's precedent with other populations, comparing these groups of fishers with other listed populations such as the woodland caribou (*Rangifer tarandus caribou*), grizzly bear (*Ursus arctos*), bald eagle (*Haliaeetus leucocephalus*) and gray wolf (*Canis lupus*). The petition correctly states that these populations were listed in the lower 48 states despite the fact that the species occur more commonly in Canada and/or Alaska. The Service has listed populations that are delimited by international boundaries within which significant differences in control of exploitation, management of habitat, conservation status or regulatory mechanisms exist. However, in most instances, including those referenced, the population warranted listing throughout the entire range of the species within the conterminous United States. The "United States population" was not broken down into subpopulations. As was stated in the petition finding for the North Cascades lynx (*Felis lynx canadensis*) (58 FR 36924), "'[d]istinct population segments' listed as endangered or threatened species typically consist of: (1) Populations that are reproductively isolated from other members of the species, or (2) the entire United States population of the species." The Service is not required to make a decision based solely on the existence of an international boundary through the range of a species. Service policy has allowed for the flexibility to delimit international boundary populations if that listing is in the best interest of the species. In the case of the fisher, the petition did not provide sufficient information concerning the control of exploitation, management of habitat, conservation status or regulatory mechanisms in Canada to allow the Service to make a determination of the appropriateness of delimiting the western United States population of the fisher based on the international boundary between Canada and the United States.

In summary, the Service finds that the petition does not present substantial information indicating that the fishers in the Pacific Coast and Rocky Mountain areas of the western United States are distinct vertebrate population segments listable under the Act. However, because available information indicates fishers have experienced declines in the past, and may be vulnerable to the removal and fragmentation of mature/old-growth habitat and incidental trapping pressure, the Service will continue to treat the entire fisher species (*Martes pennanti*) as a species of concern. Moreover, the Service will continue to accept information on the status and threats to the fisher.

References Cited

Aubry, K. B., and D. B. Houston. 1992. Distribution and status of the fisher (*Martes pennanti*) in Washington. Northwestern Naturalist 73: 69–79.
Banci, V. 1989. A fisher management strategy for British Columbia. Wildlife Bulletin No. B–63.

Powell, R. A. and W. J. Zielinski. 1994. Fisher. *In:* Ruggiero, L. F., K. B. Aubry, S. W. Buskirk, L. J. Lyon, and W. J. Zielinski, eds.; The Scientific Basis for Conserving Forest Carnivores in the Western United States: American Marten, Fisher, Lynx, and Wolverine. USDA Forest Service, General Technical Report RM–254; pp 38–73.

Author: The primary author of this document is Leslie Propp, Western Washington Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: November 22, 1995.

John G. Rogers,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 96–4803 Filed 2–29–96; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants: 12-Month Finding for a Petition To List the Amargosa Toad (Bufo nelsoni) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding on a petition to list the Amargosa toad (*Bufo nelsoni*) as an endangered species under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information concerning the status of the species, the Service finds that listing of the Amargosa toad is not warranted.

DATES: The finding announced in this document was made on November 9, 1995.

ADDRESSES: Data, information, comments, or questions concerning this notice should be submitted to the State Supervisor, U.S. Fish and Wildlife Service, Nevada State Office, 4600 Kietzke Lane, Building C–125, Reno, Nevada 89502. The petition, findings, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Donna Withers, Staff Biologist, at the above address, or telephone (702) 784–5227.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals. Such 12-month findings are to be published promptly in the **Federal Register.**

On September 21, 1994, the Service received a petition dated September 19, 1994, to emergency list the Amargosa toad (*Bufo nelsoni*) as an endangered species. The Service's finding that substantial information existed indicating the petitioned action may be warranted was published in the **Federal Register** on March 17, 1995 (60 FR 15280). A status review was initiated at that time.

The Amargosa toad has been identified as either a category 1 or category 2 species under the Act, since December 30, 1982 (47 FR 58454; 50 FR 37958; 59 FR 58982). The Amargosa toad was a category 1 candidate species with a listing priority of 2 at the time the petition was received by the Service. On July 26, 1995, the Service recommended removal of the Amargosa toad from category 1 candidate status based information obtained during the 1995 status review. The information suggested that the Amargosa toad is more widespread and abundant within the Oasis Valley than previous reports indicated. However, additional information is necessary to adequately determine the status of the species, and conservation efforts have been initiated to remove identified threats.

The Amargosa toad is unique to riparian habitats associated with the Amargosa River, tributary springs of the Amargosa River in Oasis Valley and isolated spring systems near Beatty, Nye County, Nevada. The petition stated that the Amargosa toad was restricted to seven sites within Oasis Valley, and two isolated spring systems, and that these sites are impacted by livestock and feral burro grazing, water diversion, flood control activities, off-road vehicle use, and nonnative species introductions. The petition stated that the Amargosa toad had declined from thousands in 1958 to only 30 individuals in 1994.

Amargosa toads were first collected in 1891 from an unidentified location in Oasis Valley (Stejneger 1893). Between 1931 and 1981, Amargosa toads were observed at only three sites within Oasis Valley and at one isolated spring system, despite intensive searches (Linsdale 1940, Savage 1959, Altig 1981, Altig and Dodd 1987). Thousands of Amargosa toads were observed in June 1958 (Savage 1959). The Amargosa toad was considered severely restricted in distribution and threatened by habitat destruction by 1981 (Altig 1981).

During a 1983 survey, Amargosa toads were observed at 11 sites within Oasis Valley and two isolated spring systems, and assumed present at 14 additional sites, based on statements from area residents and suitability of habitat, even though toads were not observed (Maciolek 1983a, 1983b). Amargosa toad, though restricted to the Oasis Valley and vicinity, was considered well distributed and abundant in 1983 (Maciolek 1983b).

Amargosa toad surveys have been conducted at 20 sites since 1990, but not all sites were visited during each survey or with equal frequency (Hoff 1993, 1994a, 1994b; Clemmer 1995; Heinrich 1995). Available data from the sites surveyed since 1990 suggests that Amargosa toads have been extirpated from one spring and are not as abundant as in previous years at four other springs (Savage 1959; Altig 1981; Maciolek 1983a, 1983b; Hoff 1993; Hoff 1994a, 1994b; Clemmer 1995; Heinrich 1995). At the other 15 sites, however, observations of Amargosa toad adults, juveniles, tadpoles, and eggs have fluctuated but remained relatively constant, and the occurrence of eggs or tadpoles at sites where no adults were observed implies the presence of adults.

Estimates of the size of the adult population of Amargosa toads during 1993 and 1994 vary from 30 toads for each year to 130 and 85 toads for the 2 years, respectively (Hoff 1994a, 1994b; Heinrich 1995). Both estimates were based on direct observations of Amargosa toad adults, juveniles, tadpoles, and egg masses at the same ten sites. The disparity between these estimates may be due to the difficulty inherent in adequately surveying for Amargosa toads.

The available information does not support the petitioner's claim that the Amargosa toad population is severely restricted in both abundance and distribution. Comprehensive Amargosa toad status information is unavailable because not all historically identified habitats have been surveyed since 1983. Information from Oasis Valley residents suggests that Amargosa toads still occupy springs on several private properties not surveyed in recent years.

A comprehensive evaluation of the status and distribution of Amargosa toad will only be possible when additional surveys are conducted in potential amphibian habitat with Oasis Valley.

Habitats occupied by Amargosa toads are subject to various natural and human-induced modifications resulting from flooding, flood-control and restoration activities, nonnative species introductions, livestock and feral burro grazing, off-road vehicle use, and release of pollutants (Altig 1981, Maciolek 1983a, Hoff 1994b). The information on the release of pollutants is anecdotal. Voluntary conservation activities have been recently initiated to address these threats to Amargosa toads and their habitats. These activities will provide a sound foundation for appropriate management of Amargosa toad habitats. The petitioner acknowledged the existence of these conservation activities, but questioned their effectiveness. The conservation activities initiated to date have only been in place a short time, and additional time is necessary for the benefits of these actions to be realized.

The Nevada Division of Wildlife (NDOW) and Nevada Natural Heritage Program have conducted status surveys and undertaken conservation activities, including initiation of cooperative agreements with involved agencies and local governments and conservation agreements with private landowners. The Bureau of Land Management (BLM) actively manages the public lands occupied by Amargosa toad for the conservation of the species. BLM has restricted off-road vehicle use in or near Amargosa toad habitat, constructed enclosure fences to eliminate damage to riparian habitats from feral burro and livestock use, proposed all occupied habitats as Areas of Critical Environmental Concern, and initiated a cadastral survey of the Amargosa River in Oasis Valley to establish property boundaries. The Nature Conservancy (TNC) has been working with the Beatty Beautification Committee toward development of a park along the Amargosa River or a pond area which would provide recreational opportunities for the residents, and attract tourists, as well as create or conserve Amargosa toad habitat. TNC is currently negotiating the purchase of two private properties that contain Amargosa toad habitat. The Nye County Department of Public Works has agreed to notify NDOW prior to any activity within the Amargosa River channel to avoid impacts to the Amargosa toad. Owners of two private properties with Amargosa toad habitat on their land have initiated conservation activities.

After reviewing all scientific and commercial information available, the Service has determined that listing the Amargosa toad is not warranted at this time. This decision is based on information contained in the petition, received during the status review, and otherwise available to the Service at the time the 12-month finding was made, which indicates that the Amargosa toad is more widespread and abundant within the Oasis Valley than stated in the petition. In addition, conservation efforts have been initiated to remove identified threats. The Service recognizes the need to monitor the species' status to determine Amargosa toad population trends and measure the effectiveness of the conservation measures.

References Cited

A list of references cited is available from the Nevada State Office (see **ADDRESSES** section above).

Author: The primary author of this document is Donna Withers (see **ADDRESSES** section above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 531 *et seq.*).

Dated: November 9, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 96–4804 Filed 2–29–96; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 23

Request for Species Amendments and Resolutions for Consideration at the Tenth Regular Meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for information.

SUMMARY: The Fish and Wildlife Service (Service) announces the time and place of the tenth regular meeting of the Conference of the Parties (COP10) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This notice solicits recommendations for amending CITES Appendices I or II and solicits suggestions for resolutions and agenda items for discussion at COP10. The Service invites information and comment from the public on animal or plant species that should be considered as candidates for U.S. proposals to amend Appendices I or II. Such amendments may concern the addition of species to Appendix I or II, the transfer of species from one appendix to another, or the removal of species from Appendix I or II. This notice also invites information and comments from the public on possible resolutions and agenda items for discussion at COP10.

DATES: The Service will consider all information and comments received by April 30, 1996.

ADDRESSES: Correspondence concerning this request pertaining to species amendments should be sent to the Office of Scientific Authority; Room 750; U.S. Fish and Wildlife Service, 4401 North Fairfax Drive; Arlington, Virginia, 22203. Correspondence concerning this request pertaining to resolutions and agenda items should be sent to the Office of Management Authority, Room 420, at the same address. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Office of Scientific or Management Authority.

FOR FURTHER INFORMATION CONTACT: Dr. Marshall A. Howe, Office of Scientific Authority, phone 703/358–1708, fax 703/358–2276, e-mail marshall_howe@mail.fws.gov; or Dr. Susan S. Lieberman, Office of Management Authority, phone 703/358–2095, fax 703/358–2280, e-mail susan_lieberman@mail.fws.gov.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249, hereinafter referred to as CITES, is an international treaty designed to control and regulate international trade in certain animal and plant species that now or potentially are threatened with extinction. These species are listed in appendices to CITES, copies of which are available from the Office of Management Authority or Office of Scientific Authority at the **ADDRESSES**, above. Currently, 130 countries, including the United States, are CITES Parties. CITES calls for biennial meetings of the Conference of the Parties, which review its implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I

and II or resolutions, for consideration by the other Parties.

This is the first in a series of **Federal Register** notices which, together with announced public meetings, provide an opportunity for the public to participate in the development of the United States' negotiating positions for the tenth regular meeting of the Conference of the Parties to CITES. The Service's regulations governing this public process are found in Title 50 of the Code of Federal Regulations §§ 23.31–23.39.

Notice of the Tenth Regular Meeting of the Conference of the Parties

The Service hereby notifies the public of the convening of the tenth meeting of the Conference of the Parties (COP10) to be held in Zimbabwe, June 9–20, 1997.

Request for Information and Comments: Species

One of the purposes of this notice is to solicit information that will help the Service identify species that are candidates for addition, removal, or reclassification in the CITES appendices or to identify issues warranting attention by the CITES Nomenclature Committee. This request is not limited to species occurring in the United States. Although U.S. proposals submitted for recent Conferences of the Parties have focused on species native to the United States, any Party may submit proposals concerning wild animal or plant species occurring anywhere in the world. The Service encourages the submission of well-documented proposals formatted according to specifications presented below.

The term "species" is defined in CITES as "any species, subspecies, or geographically separate population thereof." Each species for which trade is controlled is included in one of three appendices, either as a separate listing or incorporated within the listing of a higher taxon. The basic standards for inclusion of species in the appendices are contained in Article II of CITES. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily threatened with extinction, may become so unless trade in them is strictly controlled. Appendix II also lists species that must be subject to regulation in order that trade in those currently and potentially threatened species may be brought under effective control. Such listings frequently are required because of difficulty in distinguishing specimens of currently or potentially threatened species from other species at ports of entry.

Appendix III includes species that any Party country identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties to control trade. The present notice concerns only Appendices I and II.

CITES specifies that international trade in any readily recognizable part or derivative of animals listed in Appendix I or II, or plants listed in Appendix I, is subject to the same conditions that apply to trade in the whole organism. With certain standard exclusions formally approved by the Parties, the same applies to parts and derivatives of most plant species listed in Appendix II. Parts and derivatives usually not included (i.e., not regulated) for Appendix II plants are: seeds, spores, pollen (including pollinia), tissue cultures, and flasked seedling cultures. Also see 50 CFR § 23.23(d) and the October 6, 1995 **Federal Register** (60 FR 52450) for further exceptions and limitations. Further guidance on criteria for adding or deleting species in the appendices is contained in several CITES resolutions available from the Office of Scientific Authority (see **ADDRESSES** section).

Until the ninth meeting of the Conference of the Parties in 1994, resolutions Conf. 1.1 and 1.2 had provided the primary criteria for proposing amendments to Appendices I and II. With the adoption of resolution Conf. 9.24, new listing criteria were established by the Parties and Conf. 1.1, 1.2, and ten other related resolutions were repealed. These new criteria apply to all future proposals and are available from the CITES Secretariat or upon written request to the Office of Scientific Authority. Conf. 9.24 establishes a new format for proposals, replacing that described in Conf. 2.17. The new format includes the following categories:

A. Proposal
B. Proponent (Party country)
C. Supporting statement
  1. Taxonomy
  1.1 Class.
  1.2 Order.
  1.3 Family.
  1.4 Genus, species or subspecies including author(s) and year and taxonomic reference, if other than that adopted by the Conference of the Parties.
  1.5 Scientific synonyms.
  1.6 Common names.
  1.7 Code numbers, when applicable, from CITES Identification Manual.
  2. Biological Parameters
  2.1 Distribution.
  2.2 Habitat availability.
  2.3 Population status.
  2.4 Population trends.
  2.5 Geographic trends.
  2.6 Role of the species in its ecosystems.
  2.7 Threats.
  3. Utilization and Trade
  3.1 National utilization.
  3.2 Legal international trade.
  3.3 Illegal trade.
  3.4 Actual or potential trade impacts.
  3.5 Captive breeding or artificial propagation for commercial purposes (outside country of origin).
  4. Conservation and Management
  4.1 Legal status.
  4.1.1 National.
  4.1.2 International.
  4.2. Species management.
  4.2.1 Population monitoring.
  4.2.2 Habitat conservation.
  4.2.3 Management measures.
  4.3 Control measures.
  4.3.1 International trade.
  4.3.2 Domestic measures.
  5. Information on similar species
  6. Other comments (including consultation with range states)
  7. Additional remarks
  8. References (published literature and other documents)

Persons wishing to submit proposals for the United States to consider should consult Conf. 9.24 for detailed explanation of each of the above categories. Proposals to transfer a species from Appendix I to Appendix II, or to remove a species from Appendix II, must be consistent with the new precautionary measures described in Annex 4 of Conf. 9.24.

Persons having information and comments on species that are potential candidates for CITES proposals are urged to contact the Service's Office of Scientific Authority. Submitted proposals should be as fully developed as possible in accordance with the outline provided above and amplified in Conf. 9.24.

Request for Information and Comments: Resolutions and Agenda Items

Although it has not yet received formal notice of the provisional agenda for COP10, the Service invites input from the public on possible agenda items the United States could recommend for inclusion, or on possible resolutions of the Conference of the Parties that the United States could submit. Copies of the agenda for the last meeting of the Conference of the Parties (COP9) in Florida in 1994 are available from the Office of Management Authority under **ADDRESSES**, above. A full agenda for COP9 and summaries of all U.S. negotiating positions on those agenda items and resolutions were published in the November 8, 1994 **Federal Register** (59 FR 55617).

Observers

Article XI, paragraph 7 of CITES provides: Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:

(a) international agencies or bodies, either governmental or nongovernmental, and national governmental agencies and bodies; and

(b) national nongovernmental agencies or bodies which have been approved for this purpose by the State in which they are located.

Once admitted, these observers shall have the right to participate but not to vote. The Service will publish information on how to request approved observer status in a future **Federal Register** notice.

Future Actions

The next regular meeting of the Conference of the Parties (COP10) is scheduled for June 9–20, 1997, in Zimbabwe. Any proposals to amend Appendix I or II, or any draft resolutions or other documents for discussion at COP10, must be submitted by the United States to the CITES Secretariat by January 10, 1997 (150 days prior to COP10). In order to accommodate this deadline, the Service plans to publish a **Federal Register** notice in August 1996 to announce tentative species proposals and draft resolutions to be submitted by the United States and to solicit further information and comments on them. In September, a public meeting will be held to allow for additional public input. All CITES Parties within the geographic ranges of species proposed for amendments to the appendices will be consulted by mid-October 1996 so that final proposals will have the benefit of their input. Another **Federal Register** notice in February 1997 will announce the Service's final decisions and those species proposals and resolutions submitted by the United States to the CITES Secretariat.

Through a series of additional notices in advance of COP10, the Service will inform the public about preliminary and final negotiating positions on resolutions and amendments to the appendices proposed by other Parties for consideration at COP10, and about how to obtain observer status from the Service. The Service will also publish announcements of public meetings to be held in September 1996 and April 1997 to receive public input on its positions regarding COP10 issues.

Authors: This notice was prepared by Dr. Marshall A. Howe, Office of Scientific Authority, and Dr. Susan S. Lieberman, Office of Management Authority, under the authority of U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, Treaties.

Dated: February 13, 1996.

Bruce Blanchard,

Director.

[FR Doc. 96–4853 Filed 2–29–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 960221041–6041–01; I.D. 013196A]

RIN 0648–AI34

Pacific Coast Groundfish Fishery; Delay in Start of Regular Fishing Seasons for Nontrawl Sablefish and Pacific Whiting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing regulations that would delay the start of the "regular" fishing seasons by 1 month or less for the nontrawl sablefish and the Pacific whiting (whiting) limited entry fisheries 3–200 nautical miles off Washington, Oregon, and California (WOC). This proposed rule considers requests from the industry for delayed fishing seasons, which are intended primarily to enable nontrawl sablefish fishers to participate in other fisheries and to enhance the quality of whiting. These actions would be taken under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP) and the Magnuson Fishery Conservation and Management Act (Magnuson Act).

DATES: Comments must be submitted in writing by March 22, 1996.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or Hilda Diaz-Soltero, Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Information relevant to this proposed rule is available for public review during business hours at the Office of the Director, Northwest Region, NMFS, and at the Office of the Director, Southwest Region, NMFS. Copies of the Environmental Assessment/Regulatory Impact Reviews (EA/RIRs) can be obtained from the Pacific Fishery Management Council (Council), 2000 SW First Avenue, Suite 420, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 310–980–4030.

SUPPLEMENTARY INFORMATION:

NMFS is proposing to delay the start of the regular fishing seasons for the limited entry fisheries for nontrawl sablefish and for whiting, as recommended by the Council at its October 1995 meeting in Portland, OR. The background and rationale for this proposed rule are summarized below. More details appear in the EA/RIRs for these actions.

Background

I. Nontrawl Sablefish Season

The commercial sablefish harvest guideline (the annual harvest guideline reduced by the amount set aside for coastal treaty Indian tribes) is allocated between the limited entry and open access fisheries. The limited entry allocation has been further divided into allocations for trawl-gear and nontrawl-gear fisheries. Historically, the trawl-gear fishery has been managed with trip limits, the amount of fish that may be harvested during a fishing trip or set time period, primarily to extend the fishery throughout most of the year. The nontrawl-gear fishery, in contrast, has taken most of its allocation in what has become an intense, open competition called the regular or derby season, during which the only trip limit in effect applies to small sablefish (smaller than 22 inches (56 cm) total length in 1995 and in 1996). Before 1995, the start of the WOC regular season was linked to the first nontrawl sablefish season opening in the Gulf of Alaska under 50 CFR part 672. In 1995, the start of the WOC regular season was changed to August 6, primarily for safety reasons (because winds generally are calmer along the coast at this time of year) and to avoid overlapping with other fisheries and fishing opportunities (60

FR 34472, July 3, 1995). The regular season is followed 3–4 weeks later by a mop-up fishery to take the remainder of the nontrawl allocation, except for small amounts to be taken in the daily trip limits before and after the mop-up season.

At its October 1995 meeting, the Council heard testimony that September 1 would be a preferable date for the start of the 1996 regular season, because it would not conflict as much as August 6 with albacore tuna and expected salmon seasons. The weather, on average, coastwide appears to be as stable in September as in August, in keeping with the Council's goal of minimizing weather-related risk during the regular season. However, a later mop-up season may fall at a time when weather is less stable. Because the mop-up season provides a single, cumulative limit for each vessel, and a longer time in which to take the limit compared to the regular season, fishers are more likely to wait out the storms and fish when conditions are safer. Also, in 1996, tides would be slack on September 1 and therefore would provide a smoother, and possibly safer, transit to the grounds for those vessels crossing the bar at the mouth of the Columbia River. Even though the sablefish would be slightly larger if the fishery were delayed 3 weeks, this would have a negligible impact on recruitment. For the most part, this change in the regular season would be made to accommodate participation in alternate fisheries, while conducting the derby when weather is relatively stable.

The closed period that applies before the regular season (to open access and limited entry vessels using fixed gear to take and retain sablefish) would remain in effect, but would be shifted from early August to late August.

The Federal provisions for ending the regular season also remain the same. However, the State of Washington may establish special procedures for vessels that deliver in Puget Sound, because the transit time is longer than for most vessels operating on the coast. Under both the current and proposed regulations, a small trip limit comes into effect at the end of the regular season. Therefore, a vessel must be in port and offloading its sablefish at the time the regular season ends (that is, before the new lower trip limit is effective), which the Council supports for closing the season. Transit time has become a bigger concern as the regular season becomes shorter, only 7 days in 1995. The transit time from the fishing grounds to ports in Puget Sound is substantially longer than the transit time for most vessels operating on the coast. As a result, vessels that normally would have delivered to processors in Puget Sound have had to choose between reducing their fishing time (by leaving the grounds early enough to get to their normal processors in Puget Sound), or delivering to a different processor closer to the fishing grounds. Therefore, the State of Washington is considering establishing special procedures for vessels landing in Puget Sound that would ensure that they were off the sablefish fishing grounds at the end of the regular season but may not require that they be in port offloading. These proposed Federal regulations would acknowledge the State regulation, and allow for vessels landing in Puget Sound to be governed by the Washington regulation.

The Council is considering a number of other management strategies for this fishery in 1997 and beyond, but has not yet made its recommendation to NMFS. The Council may select yet another opening date, or a framework for determining an opening date, if the regular season fishing structure remains in effect in 1997.

II. Pacific Whiting Season

Since 1991, harvest of the whiting resource has been allocated between user groups. Whiting has been allocated between vessels that deliver their catch shoreside and vessels that deliver their catch at sea (which includes catcher processors that both harvest and process their catch, and catcher vessels that deliver to motherships at sea). The shore-based sector has conducted a longer, slower season (extending through the summer and into the fall), whereas the at-sea sector has conducted a more intense, shorter fishery (less than a month in recent years). To satisfy both strategies, both sectors compete for the first 60 percent of the commercial harvest guideline (the annual harvest guideline reduced by the amount set aside for harvest, if any, by coastal treaty Indian tribes). When 60 percent of the commercial harvest guideline is reached, at-sea processing of whiting is prohibited, and the remainder of the commercial harvest guideline is reserved for the shore-based sector. If not projected to be fully used, the surplus reserve may be released on or after August 15. The regular season currently begins on April 15 north of 42° N. lat. (the Oregon/California border) and south of 40° 30′ N. lat. (the southern border of the Eureka statistical subarea), and on March 1 between 42° and 40° 30′ N. lat. At-sea processing is prohibited south of 42° N. lat. Before and after the regular season, a small "per trip" limit for whiting (currently 10,000 lb (4,536 kg)) is in effect.

At its October 1995 meeting, the Council recommended that the start of the regular season for whiting north of 42° N. lat. be delayed from April 15 to May 15. This delay was supported by most members of the industry testifying for both the at-sea and shore-based sectors. Some suggested an even later opening, but few preferred the current April 15 date. The 1-month delay was recommended for the following reasons: (1) Whiting spawn in the winter, primarily in January-February. They are emaciated afterwards, taking several months to recover and to produce optimal flesh for processing. Although whiting generally are well on their way to recovery by April 15 north of 42° N. lat., the spawning stock as a whole is in better condition by mid-May. If the amount of whiting available for harvest is relatively low, the quality of the product and the product recovery rate are even more important to maintain the economic viability of the fishery. (2) With a month's delay in harvest, whiting will be slightly larger with an additional month's growth, increasing (in small measure) the yield per fish. (3) At the October Council meeting, some Council members and industry representatives speculated that bycatch rates of salmon and other groundfish species could be reduced with a 1-month delay in the start of the regular season, but the data are not conclusive. The at-sea sector has not operated in late May since 1991, so there is little information for these operations at this time of year. The EA/RIR indicates that the shore-based fleet has consistently shown a trend in decreasing salmon bycatch as the season progresses, at least through June. This could be due to a seasonal effect or to start-up problems that sometimes occur at the beginning of a fishing season. Bycatch of salmon by either sector may be more highly correlated with abundance and availability of salmon, the ability of the skipper, and the incentive to avoid bycatch. The influence of these factors is not readily measurable. The EA/RIR states that delaying the season opening date to May 15 is unlikely to affect rockfish bycatch rates. For the most part, the delay in the season would be made to provide better quality fish for processing.

The allocation of whiting between the shore-based and at-sea sectors will be reconsidered in 1996 for fisheries in 1997 and beyond. The start of the regular season may be reconsidered at the same time, and potentially could differ for each sector.

Classification

The Assistant Administrator for Fisheries, NOAA has initially determined that this action is consistent with the FMP and the national standards and other provisions of the Magnuson Act.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This rule, if adopted, would not change the amount of fish caught or retained or the number of vessels participating, and would not confer a competitive advantage to any user group. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 26, 1996.

Gary Matlock,

Program Management Officer, Notional Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 663 is proposed to be amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.23, paragraphs (b)(2)(i)(A), (b)(2)(i)(B), (b)(2)(ii), (b)(2)(iv), and (b)(3)(i) are revised to read as follows:

§ 663.23 Catch restrictions.

* * * * *

(b) * * *

(2) * * *

(i) * * * (A) Sablefish taken with fixed gear in the limited entry or open access fishery in the EEZ may not be retained or landed from 12 noon August 29 through 12 noon September 1.

(B) All fixed gear used to take and retain groundfish must be out of EEZ waters from 12 noon August 29 through 12 noon September 1, except that pot gear used to take and retain groundfish may be deployed and baited in the EEZ after 12 noon on August 31.

(ii) *Regular season—Limited entry fishery.* The regular season for the limited entry nontrawl sablefish fishery begins at 12:01 on September 1. During the regular season, the limited entry nontrawl sablefish fishery may be subject to trip limits to protect juvenile sablefish. The regular season will end when 70 percent of the limited entry nontrawl allocation has been or is projected to be taken. The end of the regular season may be announced in the **Federal Register** either before or during the regular season.

* * * * *

(iv) The dates and times that the regular season ends (and trip limits on sablefish of all sizes are resumed) and the mop-up season begins and ends, and the size of the trip limit for the mop-up fishery, will be announced in the **Federal Register**, and may be modified. Unless otherwise announced, these seasons will begin and end at 12 noon on the specified date. A vessel landing sablefish in Puget Sound that was taken under a limited entry permit with nontrawl gear during a regular season is not subject to trip limits on that trip (except the regular season trip limits to protect juvenile sablefish), provided the landing complies with Washington State regulations governing sablefish landings in Puget Sound after the regular season.

* * * * *

(3) Pacific Whiting—(i) *Season.* The regular season for Pacific whiting begins on May 15 north of 42°00′ N. lat., on March 1 between 42°00′ N. lat. and 40°30′ N. lat., and on April 15 south of 40°30′ N. lat. Before and after the regular season, trip landing or frequency limits may be imposed under paragraph (c) of this section.

* * * * *

[FR Doc. 96–4752 Filed 2–29–96; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 675

[I.D. 022396A]

Groundfish of the Gulf of Alaska; Pollock Seasonal Allowances

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Availability of an amendment to a fishery management plan; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 45 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP) for Secretarial review and is requesting comments from the public. Copies of the amendment may be obtained from the Council (See **ADDRESSES**).

DATES: Comments on Amendment 45 should be submitted on or before April 26, 1996.

ADDRESSES: Comments on Amendment 45 should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802–1668 Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendment 45 and the Environmental Assessment/ Regulatory Impact Review prepared for the amendment are available from the North Pacific Fishery Management Council, 605 West Fourth Ave., Anchorage, AK 99501–2252; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon receiving a fishery management plan or amendment, immediately publish a document that the fishery management plan or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period in determining whether to approve the FMP or amendment.

If approved, Amendment 45 would allow NMFS to establish seasonal allowances of pollock total allowable catch (TAC) by regulation. Included with Amendment 45 is a regulatory amendment that would combine the third and fourth quarterly allowances of pollock TAC in the Western and Central Regulatory Areas of the Gulf of Alaska. Under this proposal, the third and fourth quarterly allowances of pollock would be combined into a single seasonal allowance equal to 50 percent of the TAC available on October 1 in the Western Regulatory Area and September 1 in the Central Regulatory Area.

This action is intended to result in four types of management improvements: (1) Reduced chum salmon bycatch, which has been excessively high during the third quarter (July 1) opening; (2) reduced scheduling conflicts with summer salmon processing activities; (3) reduced operating costs for industry through a reduction in the number of seasonal openings from four to three; and (4) reduced risk of harvest overruns during extremely short openings.

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Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 26, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–4748 Filed 2–26–96; 4:53 pm]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 61, No. 42

Friday, March 1, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

California Spotted Owl—Sierra Nevada—Management Direction for National Forests in California

AGENCY: Forest Service, USDA.

ACTION: Notice of change in responsible official from Chief to Regional Forester.

SUMMARY: The USDA, Forest Service is designating the Pacific Southwest Regional Forester as the responsible official for amending the Pacific Southwest Regional Guide and significantly amending 10 National Forest Plans.

ADDRESSES: Send written comments to Janice Gauthier, California Spotted Owl EIS Team Leader, Land Management Planning, 2999 Fulton Avenue, Sacramento, CA 95821.

FOR FURTHER INFORMATION CONTACT: Janice Gauthier, California Spotted Owl EIS Team Leader, Land Management Planning, (916) 979–2026.

SUPPLEMENTARY INFORMATION: On March 18, 1993, a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) was published in the **Federal Register** (Vol. 58, No. 51, 14554–14555).

Dated: February 23, 1996.

Katherine Clement,

Director, Ecosystem Conservation.

[FR Doc. 96–4805 Filed 2–29–96; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Central Iowa (IA) Area and the State of Montana

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designations of Central Iowa Grain Inspection Service, Inc. (Central Iowa), and the Montana Department of Agriculture (Montana) will end August 31, 1996, according to the Act, and GIPSA is asking persons interested in providing official services in the Central Iowa and Montana areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before March 30, 1996.

ADDRESSES: Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. If an application is submitted by telecopier, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Central Iowa, main office located in Des Moines, Iowa, and Montana, main office located in Great Falls, Montana, to provide official inspection services under the Act on September 1, 1993.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Central Iowa and Montana end on August 31, 1996.

The geographic area presently assigned to Central Iowa, in the State of Iowa, pursuant to Section 7(f)(2) of the USGSA, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by U.S. Route 30 east to N44; N44 south to E53; E53 east to U.S. Route 30; U.S. Route 30 east to the Boone County line; the western Boone County line north to E18; E18 east to U.S. Route 169; U.S. Route 169 north to the Boone County line; the northern Boone County line; the western Hamilton County line north to U.S. Route 20; U.S. Route 20 east to R38; R38 north to the Hamilton County line; the northern Hamilton County line east to Interstate 35; Interstate 35 northeast to C55; C55 east to S41; S41 north to State Route 3; State Route 3 east to U.S. Route 65; U.S. Route 65 north to C25; C25 east to S56; S56 north to C23; C23 east to T47; T47 south to C33; C33 east to T64; T64 north to B60; B60 east to U.S. Route 218; U.S. Route 218 north to Chickasaw County; the western Chickasaw County line; and the western and northern Howard County lines.

Bounded on the East by the eastern Howard and Chickasaw County lines; the eastern and southern Bremer County lines; V49 south to State Route 297; State Route 297 south to D38; D38 west to State Route 21; State Route 21 south to State Route 8; State Route 8 west to U.S. Route 63; U.S. Route 63 south to Interstate 80; Interstate 80 east to the Poweshiek County line; the eastern Poweshiek, Mahaska, Monroe, and Appanoose County lines;

Bounded on the South by the southern Appanoose, Wayne, Decatur, Ringgold, and Taylor County lines;

Bounded on the West by the western Taylor County line; the southern Montgomery County line west to State Route 48; State Route 48 north to M47; M47 north to the Montgomery County line; the northern Montgomery County line; the western Cass and Audubon County lines; the northern Audubon County line east to U.S. Route 71; U.S. Route 71 north to U.S. Route 30.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Farmers Co-op Elevator Company, Chapin, Franklin County; and CENEX Land

O'Lakes, Inc., Rockwell, Cerro Gordo County (located inside D. R. Schaal Agency's area).

Central Iowa's assigned geographic area does not include the following grain elevators inside Central Iowa's area which have been and will continue to be serviced by the following official agencies:

1. A. V. Tischer and Son, Inc.: Farmers Co-op Elevator, Boxholm, Boone County; and

2. Omaha Grain Inspection Service, Inc.: T&K Evans, Elliot, Montgomery County; and Hemphill Feed & Grain, and Hansen Feed & Grain, both in Griswold, Cass County.

The geographic area presently assigned to the State of Montana, pursuant to Section 7(f)(2) of the USGSA, which may be assigned to the applicant selected for designation is the entire State of Montana, except those export port locations within the State which are serviced by FGIS.

Interested persons, including Central Iowa and Montana, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning September 1, 1996, and ending August 31, 1999. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 13, 1996

Neil E. Porter

Director, Compliance Division

[FR Doc. 96–4020 Filed 2–29–96; 8:45 am]

BILLING CODE 3410–EN–F

Inadequate Demand for Official Services in Maine

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA has determined there is inadequate demand for official services to designate an organization to provide official services in the State of Maine after expiration of the current designation.

DATE: The State of Maine's designation ends August 31, 1996.

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

GIPSA announces that the designation of the Maine Department of Agriculture, Food and Rural Resources ends on August 31, 1996. As of January 31, 1996, the State of Maine had not performed any official services since 1991. Accordingly, GIPSA determined that, pursuant to the provisions of the Act, there is an inadequate demand for official services to designate an official agency. Therefore, GIPSA is not asking for applications from persons interested in designation as an official agency to provide services in the area currently assigned to Maine. Any persons in Maine who may require official inspection services after August 31, 1996, should contact GIPSA's Baltimore Office at 410–962–3968 (FAX: 410–766–8604).

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 13, 1996

Neil E. Porter

Director, Compliance Division

[FR Doc. 96–4019 Filed 2–29–96; 8:45 am]

BILLING CODE 3410–EN–F

Amendment to Certification of Central Filing System—Oklahoma

The Statewide central filing system of Oklahoma has been previously certified, pursuant to Section 1324 of the Food Security Act of 1985, on the basis of information submitted by the Oklahoma Secretary of State, for farm products produced in that State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted by Tom Cole, Secretary of State, for an additional farm product produced in that State as follows:

elk

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.18(e)(3), 2.56(a)(3), 55 FR 22795.

Dated: February 26, 1996.

Harold Davis,

Acting Deputy Administrator, Packers and Stockyards Programs.

[FR Doc. 96–4854 Filed 2–29–96; 8:45 am]

BILLING CODE 3410–KD–P

Proposed Posting of Stockyards

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

AR–171

Roden's Auction Service, Dequeen, Arkansas

MD–119

Kolb's Sale Barn, Woodsboro, Maryland

NC–169

North Carolina Horse Auction, Goldston, North Carolina

SC–154

Double H Livestock, Pelzer, South Carolina

Pursuant to the authority under Section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Grain Inspection, Packers and Stockyards Administration, Room 3408–South Building, U. S. Department of Agriculture, Washington, D.C. 20250 by March 9,1996. All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, D.C. this 23rd day of February 1996.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 96–4855 Filed 2–29–96; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 01/18/96–02/20/96

Firm Name	Address	Date petition Accepted	Product
Twang, Inc	800 Buena Vista, Bldg. 2, Ste 200, San Antonio TX 78207.	01/24/96	Salt and lemon confections.
Data Specifics Corporation	2100 E. Moffat Avenue, Springfield IL 62702.	01/30/96	Near-infrared analyzers, radiating & optically collected light, incorporating computer data analysis.
St. Mary's Sewing Industry	501 S. Llano Grande, P.O. Box 157, Edcouch TX 78538.	01/30/96	Women's trousers.
Tifton Textiles, Inc	217 Southwell Boulevard, Tifton GA 31794.	01/30/96	Knit fabric such as jersey, rib, pique, and fleece.
Big Jim Halter Co., DBA Flying Circle Bags.	10045 Johns Road, Boerne TX 78006	01/31/96	Travel, sports, and similar bags.
Littonian Shoe Company	31 Kaystone Street, P.O. Box 95, Littlestown PA 17340.	02/01/96	Infant's and children's shoes and lead-filled protective aprons.
Custom Packaging Systems, Inc	201 Glocheski St., P.O. Box 183, Manistee MI 49660.	02/05/96	Polypropylene and polyethylene bulk bags and liners for packing and transporting liquid & dry goods.
CR Technology, Inc	27752 El Lazo Road, Suite A, Laguna Niguel CA 92656.	02/12/96	Machinery used in electronic manufacturing: X-ray imaging devices.
Magic Novelty Co., Inc	308 Dyckman Street, New York NY 10034-5351.	02/12/96	Imitation Jewelry.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

February 23, 1996.

Lewis R. Podolske,

Director, Trade Adjustment Assistance Division.

[FR Doc. 96–4710 Filed 2–29–96; 8:45 am]

BILLING CODE 3510–24–M

Foreign-Trade Zones Board

[Docket 13–96]

Foreign-Trade Subzone 78A—Nissan Motor Manufacturing Corporation U.S.A. (Motor Vehicles and Components); Expansion of Subzone; Smyrna, TN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Metropolitan Nashville-Davidson County Port Authority, grantee of FTZ 78, Nashville, Tennessee, requesting authority to expand FTZ Subzone 78A (Nissan Motor Manufacturing Corporation U.S.A. (NMMC) plant, Smyrna, Tennessee), to include a site in Decherd, Tennessee. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 21, 1996.

Subzone 78A was approved in 1982 for the manufacture of pickup trucks (Board Order 190, 47 FR 16191, 4–12–82), and the scope of manufacturing authority was expanded to include automobiles, engines and transaxles in 1984 (Board Order 272, 49 FR 35395, 9–7–84). In 1993, the subzone boundaries were expanded, as was the scope of authority to manufacture under zone procedures (Board Order 632, 58 FR 18850, 3–30–93).

NMMC now requests that the subzone status be extended to include its new engine/powertrain plant (currently under construction) in Decherd (Franklin County), Tennessee, some 65 miles west of Chattanooga. The new manufacturing facility (200,000 sq. ft. on 958 acres) will be used to produce 200,000 engines and 300,000 transaxles annually. The engines will equip autos manufactured at NMMC's Smyrna plant. The transaxles will be used to equip autos manufactured in NMMC's Smyrna plant and minivans (a Ford/Nissan joint-venture vehicle) manufactured at

Ford's Avon Lake, Ohio, plant (Subzone 40C). The application states that the powertrain components produced at the new Decherd plant (471 employees) will displace imports of finished Nissan engines and transaxles. Actually, NMMC already has authority to produce these items under zone procedures within FTZ Subzone 78A (450,000 engines, 270,000 transaxles annually) for vehicles assembled at Smyrna and Avon Lake, so this proposed subzone expansion will allow some of these items to be produced under zone procedures at the new plant site.

Parts and materials that would initially be sourced from abroad include: gaskets/seals, articles of plastic and rubber, hoses, roller chain, steel studs, fasteners, cylinder heads, connecting rods, water pumps, filters, valves, camshafts, crankshafts, bearings, flywheels, pulleys, spark plugs, distributors, ignition parts, clutches (and related parts), electronic controlling apparatus, thermostats, other parts of internal combustion engines, lubricating pumps, valve bodies, and electronic controlling apparatus (duty rate range: free–10.8%). The application indicates that the projected level of domestic parts sourcing at the Decherd facility will be similar to the pattern for motor vehicles manufactured at NMMC's Smyrna plant.

Zone procedures would continue to exempt NMMC from Customs duty payments on the foreign components used in production for export. On its domestic sales, the company would be able to continue to choose the lower duty rate that applies to finished autos (2.5%) for the foreign inputs noted above. On finished engines and transaxles transferred to other auto assembly subzones, duties on their foreign components could be paid when those finished vehicles are withdrawn for Customs entry. The application indicates that the savings from zone procedures would help improve the Decherd plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 30, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 15, 1996).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Post Office Box 270008, 939 Airport Service Road, Nashville, TN 37227; and

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: February 22, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–4753 Filed 2–29–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Intent to Revoke Antidumping Duty Orders and Findings and to Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Intent to Revoke Antidumping Duty Orders and Findings and to Terminate Suspended Investigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of March 1996.

EFFECTIVE DATE: March 1, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Proceeding

Australia

Canned Bartlett Pears
A–602–039
38 FR 7566
March 23, 1973
Contact: Matthew Rosenbaum at (202) 482–4377

Chile

Standard Carnations
A–337–602
52 FR 8939
March 20, 1987
Contact: Lyn Johnson at (202) 482–5287

France

Brass Sheet & Strip
A–427–602
52 FR 6995
March 6, 1987
Contact: Thomas Killiam at (202) 482–2704

Israel

Oil Country Tubular Goods
A–508–602
52 FR 7000
March 6, 1987
Contact: Michael Heaney at (202) 482–4475

Italy

Brass Fire Protection Equipment
A–475–401
50 FR 8354
March 1, 1985
Contact: Leon McNeill at (202) 482–4236

Japan

Televisions
A–588–015
36 FR 4597
March 10, 1971
Contact: Sheila Forbes at (202) 482–5253

Taiwan

Light-Walled Welded Rectangular Carbon Steel Tubing
A–583–803
54 FR 12457
March 27, 1989
Contact: Thomas Barlow at (202) 482–0410

The People's Republic of China

Chloropicrin
A–570–002
49 FR 10691
March 22, 1984
Contact: Andrea Chu at (202) 482–4733

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

Opportunity To Object

Domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the suspended investigations by the last day of March 1996. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k) (3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: February 26, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–4851 Filed 2–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–837]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 1, 1996.

FOR FURTHER INFORMATION CONTACT: William Crow or Irene Darzenta, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0116 or (202) 482–6320.

THE APPLICABLE STATUTE: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

PRELIMINARY DETERMINATION: As explained in the memoranda from the Assistant Secretary for Import Administration dated November 22, 1995, and January 11, 1996, the Department of Commerce (the Department) has exercised its discretion to toll all deadlines for the duration of the partial shutdowns of the Federal Government from November 15 through November 21, 1995, and December 16, 1995, through January 6, 1996. Thus, all deadlines in this investigation have been extended by 28 days, *i.e.*, one day for each day (or partial day) the Department was closed. The revised deadline for this preliminary determination is February 23, 1996.

We preliminarily determine that large newspaper printing presses and components thereof (LNPPs) from Japan are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on July 20, 1995 (60 FR 38546 (July 27, 1995)), the following events have occurred:

On August 14, 1995, the United States International Trade Commission (ITC) notified the Department of Commerce (the Department) of its affirmative preliminary determination. (See ITC Investigation No. 731–TA–736 and 737.)

On August 28, 1995, we presented Section A [1] of the questionnaires to the Japanese embassy, counsel for Mitsubishi Heavy Industries, Ltd., (MHI) and Tokyo Kikai Seisakusho, Ltd. (TKS). MHI submitted responses to Section A on September 27, 1995, and October 10, 1995, as revised on December 13, 1995. TKS submitted responses to Section A on September 27, 1995, and October 2,5, and 10, 1995, as revised on October 17, 1995.

On October 20, 1995, at the request of Rockwell Graphics Systems, Inc. And its parent company, Rockwell International Corporation (the petitioner), we postponed the preliminary determination to January 26, 1996. *See* Notice of Postponement of Preliminary Determinations: Antidumping Investigation of Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Japan (60 FR 54841, October 26, 1995).

On October 19, 1995, the petitioner alleged that there are reasonable grounds to believe or suspect that MHI and TKS made below-cost sales of the subject merchandise in Japan, and that these below-cost sales must be excluded from the Department's calculation of profit for constructed value (CV). Because we determined the appropriate basis for normal value (NV) to be CV, we did not address petitioner's below-cost allegation. We did, however, solicit contract price and production costs data for MHI's and TKS's home market sales of subject merchandise in order to compute selling,general and administratie expenses (SG&A) and profit for CV in accordance with section 773(e)(2)(A) of the Act. (*See* "Product Comparisons" section of this notice.)

The Department issued Sections C and D of its questionnaire to MHI on October 27, 1995.[2] The Department issued Section C, D, and E [3] to TKS on October 27, 1995. MHI submitted its response to Section C and D on December 1, 1995, as revised December 13, 1995. TKS submitted its response to Section C, D, and E on December 1, 1995. Because of the first partial federal government shutdown mentioned previously, a supplemental questionnaire was not issued until December 8, 1995. Because of the second partial government shutdown, MHI and TKS responded to the supplemental questionnaires on January 18, 1996.

On October 26 and 31, 1995, TKS requested that the Department exclude a certain sale to the Dallas Morning News and a sale to the Spokane Spokesman Review from our antidumping analysis. During the period preceding this preliminary determination, the petitioner objected on several occasions to TKS's proposal. We determined to include these two sales in our preliminary antidumping analysis, contrary to TKS's arguments, since U.S. sales cannot classified as outside the ordinary course of trade, and because there are no administrative barriers to conducting an analysis of these sales.

[1] Section A requests data concerning corporate organization, accounting practices, markets and merchandise.

[2] Section C requests data on sales to the United States. Section D requests data on the cost of production and constructed value.

[3] Section E requests data on the cost of further manufacturing or assembly performed in the United States.

See February 23, 1996, Memorandum to Richard W. Moreland, from The Team, Re: Request for Exclusion of TKS Sales.

During the period July 28, 1995 through January 23, 1996, the petitioner, MHI and TKS filed comments requesting clarification of the scope of this investigation with respect to elements (*i.e.*, parts or subcomponents) of covered components, and spare and replacement parts. Respondents in the companion investigation of LNPPs from Germany, König Bauer Albert and MAN Roland Druckmaschienen, also submitted comments concerning scope on the record of this preceding. On January 23, 1996, petitioner clarified the scope to exclude used presses. *See* Scope of Investigation section of this notice. At the Department's request, on February 8, 1996, the parties filed comments on suspension of liquidation instructions.

On February 2, 1996, petitioner filed comments on issues concerning MHI to be resolved and on general methodologies to be employed in the preliminary determination. Petitioner filed additional comments concerning MHI issues on February 8, 1996, and concerning TKS issues on February 6, 1996. MHI and TKS filed such comments on February 6 and 16, 1996, respectively.

Respondent Selection

The producers named in the petition were MHI and TKS. On August 2, 1995, we contacted the U.S. Embassy in Tokyo, requesting the identification of Japanese producers and exporters of LNPPs to the United States, and the volume and value of subject merchandise they sold to the United States during the period January 1, 1991 through May 31, 1995. On July 31, 1996, we requested the names and addresses of manufacturers or exporters; and the value and quantity of the subject merchandise sold and shipped to the United States for each company during the period January 1, 1991 through May 31, 1995, from the Embassy of Japan in Washington D.C. On August 11, 1995, we received a reply from the Embassy of Japan indicating that there were no other Japanese exporters of subject merchandise to the United States. At the time of respondent selection, no reply had been received from our Embassy in Tokyo.

Based on the petition and the information received from the Embassy of Japan, we issued questionnaires to MHI and TKS. (See the August 28, 1995, Memorandum to The File Re: Questionnaire Recipients.)

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2)(A) of the Act, on February 9, 1996, MHI requested, and on February 13, 1996, TKS requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 60 days after the date of the scheduled final determination, which is equivalent to 135 days after the publication of an affirmative preliminary determination in the **Federal Register**. In accordance with 19 CFR 353.20(b), because our preliminary determination is affirmative, the respondent accounts for a significant proportion of exports of the subject merchandise, and no compelling reasons for denial exist, we are granting respondents' request and postponing the final determination.

Section 773(d) of the Act provides that provisional measures may not remain in effect for more than four months. However, that provision of the Act also states that the Department may extend that period to six months at the request of exporters representing a significant proportion of exports of the subject merchandise. Such a request was made by both respondents in this investigation on February 23, 1996. Accordingly, we are extending the applicability of the provisional measures to six months in this investigation.

Scope of Investigation

As specified below, we have revised the scope since our notice of initiation to exclude used presses, in accordance with the petitioner's January 23, 1996, clarification. Furthermore, we have clarified the scope to include "elements" (otherwise referred to as "parts" or "subcomponents") of an LNPP system, addition or component, which taken as a whole, constitute a subject LNPP system, addition or component used to fulfill an LNPP contract. See "Scope Issues" section of this notice concerning the treatment of elements in the scope. In addition, we have stipulated that spare or replacement parts, which are imported pursuant to an LNPP contract and are separately identified and valued in that contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of the investigation. (See February 23, 1996, Decision Memorandum to Richard Moreland from The Team Re: Scope Issues.)

The products covered by these investigations are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to complete systems, the scope of these investigations includes the five press system components. They are:

(1) A printing unit, which is any component that prints in monocolor, spot color and/or process (full) color, or a printing-unit cylinder;

(2) A reel tension paster (RTP), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit;

(3) A folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format;

(4) Conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and

(5) A computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of this investigation. Also included in the scope are elements of an LNPP system, addition or component, which taken as a whole, constitute a subject LNPP system, addition or component used to fulfill an LNPP contract.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to an LNPP contract, which are not integral to the original start-up and operation of the LNPP, and are separately identified and valued in an LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of this investigation. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Further, these investigations cover all current and future printing technologies capable of printing newspapers, including, but not limited to lithographic (offset or direct), flexographic, and letterpress systems.

The products covered by these investigations are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, 8524.51.30, 8524.52.20, 8524.53.20, 8524.91.00, 8524.99.00 and 8537.10.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

Scope Issues

Since our initiation, we received numerous comments from interested parties in this investigation and the concurrent investigation involving Germany, requesting that the Department clarify the treatment of "elements" in the scope of the investigation.

In general, respondents believe that if the imported elements do not constitute a complete, albeit unassembled, component, or are missing "essential" elements to function as one of the five components named in the scope, they would not be subject to the scope of this investigation and the concurrent investigation involving Germany. The petitioner believes that, because an imported LNPP press, addition or component will almost always contain elements, which, by themselves, are not subject to the scope, it is not practical to exclude these elements from the scope of the investigation in so far as they comprise an incomplete subject component. (For a complete discussion of these comments, see February 23, 1996 Memorandum to Richard W. Moreland from The Team Re: Scope Issues.)

As stated in the "Scope of Investigations" section above, we interpret the scope to include those elements or collection of elements imported from a subject country in so far as they constitute any one of the five covered components which are, in turn, used to fulfill a contract for a LNPP press system, press addition or press component. Individual parts per se are not covered by the scope of these investigations unless taken as a whole they constitute a subject component used to fulfill an LNPP contract. This interpretation, however, raises a question: at what point do the elements imported from a subject country rise to the level of an LNPP component, addition or system subject to the scope of these investigations?

The Department must decide on a reasonable and practicable approach in determining what constitutes a subject LNPP component, addition or system, and in so doing, establish the basis on which we will include elements in the scope. We are considering two alternative approaches for analyzing what governs the inclusion of parts or subcomponents, other than spare or replacement parts, within the scope of these investigations. One approach would consider, on a case-by-case basis, whether the imported parts or subcomponents when taken together are essentially an LNPP system, addition or component. This so called "essence" approach is of necessity subjective and turns on the question of how near the sum of the imported parts comes to comprising a complete LNPP system, addition or component. A second approach would consider the value of the imported parts or subcomponents relative to the total value of the finished LNPP component, addition or system in the United States. That is, we would determine that the imported parts or subcomponents would be within the scope if they comprised a certain minimum percentage of the value of the parts of a finished LNPP system, addition or component.

Both of these approaches raise threshold questions. Because certain sales reported by respondents in both the German and Japanese investigations consist of imported elements from Germany or Japan, rather than a complete LNPP component, addition or system, acceptance of either of the two approaches will have implications as to which of the respondents sales the Department will consider in its final determination. Therefore, we are presently soliciting comments from interested parties as to the merits of these approaches and/or others that may be relevant for use in the final determination. Interested party comments on this topic are due no later than May 1, 1996.

Period of Investigation (POI)

The petitioner, MHI, and TKS filed comments on October 19, 20, 25 and 26, 1995, concerning the appropriate period of investigation (POI) and the use of home market sales as the basis for NV. On October 27, 1995, we established the appropriate POI for MHI to be July 1, 1991 through June 30, 1995, and for TKS to be July 1, 1992 through June 30, 1995.

As a result of changes to section 773(b)(2)(B) of the Act, which codified the normal period within which sales made below the cost of production are to be analyzed, the Department modified its practice so that the standard POI would cover a one-year period. In this investigation, however, in order to capture sufficient and representative sales, the Department established a POI beyond the normal one-year period because of the nature of the LNPP industry, characterized by custom order sales and long term sales contracts. (See October 27, 1995, Memorandum to Richard W. Moreland, from The Team Re: Establishing the Period of Investigation.)

Exclusion of the Washington Post Sale

On October 27, 1995, the Department decided to exclude MHI's sale to the Washington Post from our antidumping analysis. (See Period of Investigation Memorandum). On November 7, and November 20, 1995, the petitioner requested that the Department reconsider its decision. On November 13 and November 29, 1995, MHI rebutted the petitioner's arguments.

The Department reaffirmed its exclusion of the Washington Post sale from its margin analysis because (1) this sale was unbuilt, unshipped, and uninstalled at the time of our analysis; (2) the Department believes that the historical bench-marking integral to the use of estimated costs was not reasonably available; and (3) because the Department had two other sales available for analysis which were built, delivered and installed. (See February 23, 1996, Memorandum to Richard W. Moreland from The Team Re: Continuing the Exclusion of the Washington Post Sale).

The Nature of the Guard Sale

On November 1, 1995, the petitioner requested that the Department determine that the correct price for the Department to examine with regard to the ultimate purchase of an LNPP by the Guard Publication Company (Guard) is that set between MHI and the Sumitomo Trading Company. In response to the petitioner's questions, the Department held an ex parte meeting with counsel for MHI on December 7, 1995. Following this meeting MHI submitted documentation with respect to this transaction on December 7, 1995. MHI supplemented this submission with more documentation on December 12, 1995. On January 11, 1996, the petitioner submitted comments analyzing MHI's documentation of the transaction. Finally, MHI submitted additional information concerning this sale in its January 18, 1996, supplemental response. MHI maintained that the documentation was evidence that the sale was made by MHI to Guard.

Because of the participation of MHI in the business dealings between Sumitomo and Guard, the documented correspondence between MHI and Guard, and MHI's actual performance pursuant to the Guard's technical requirements, we established that the appropriate transaction to examine was the sale from MHI to Guard Publishing Company. (See February 23, 1996, Memorandum to Richard W. Moreland from The Team Re: Establishing the Proper Guard Sale.)

Product Comparisons

Although the home market was viable, in accordance with section 773 of the Act, we based NV on constructed value (CV) because we determined that the particular market situation, which requires that the subject merchandise be built to each customer's specifications, does not permit proper price-to-price comparisons. (See November 9, 1995, Memorandum to Richard W. Moreland from The Team Re: Determining the Appropriate Basis for Normal Value.)

Fair Value Comparisons

To determine whether MHI's and TKS's sales of LNPPs to the United States were made at less than fair value, we compared Constructed Export Price (CEP) to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(ii), we calculated transaction-specific CEPs (which in this case were synonymous with model-specific CEPs) for comparison to transaction-specific NVs because there are few sales and the merchandise is custom-made.

Constructed Export Price (CEP) and Further Manufacturing (FM)

TKS

TKS reported its sales as CEP and CEP/FM sales. Because we have classified installation expenses as further manufacturing, we have treated all TKS sales as CEP/FM sales. We calculated CEP, in accordance with subsections 772 (b) and (d) of the Act, for (1) those sales to the first unaffiliated purchaser that took place after importation by a seller affiliated with the producer/exporter and (2) those sales involved in further manufacturing in the United States.

We calculated CEP sales based on packed, installed prices to unaffiliated customers. We made deductions from the starting price (gross unit price), for foreign inland freight to port in Japan, foreign brokerage and handling, international freight, combined marine and foreign insurance, U.S. brokerage and handling, U.S. Customs duty, U.S. inland freight port to customer, U.S. inland freight U.S. warehouse to customer, and U.S. inland insurance. We also made deductions for imputed credit, warranty, and other direct selling expenses including certain U.S. trade show expenses.

In calculating imputed credit, we took into account the unique nature and magnitude of the LNPP projects under investigation. These projects require substantial capital expenditures over an extended time period because of their size and their lengthy production process. Moreover, the projects generally call for the purchaser to provide scheduled progress payments prior to the completion of a given project. In consideration of these factors, we computed credit by applying an interest rate to the net balance of production costs incurred and progress payments made during the construction period. We imputed credit expenses for U.S. sales using U.S. prime short-term interest rates as reported by the Federal Reserve, calculated as a weighted-average rate for each fiscal year in the POI, since these sales were denominated in U.S. dollars. However, because TKS reported that it did not borrow in U.S. dollars, we used U.S. prime short-term interest rates as a surrogate rate.

We deducted those indirect selling expenses that related to economic activity in the United States. We have recalculated TKS's reported indirect selling expenses incurred in the United States using the total expenses and total revenue for TKS USA during the fiscal years 1991 through 1995, in order to remove distortions in TKS USA's financial statements caused by auditors' modifications to revenue recognized during the POI.

We also deducted the cost of any further manufacturing or assembly (including additional material and labor). Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

Furthermore, we have reclassified TKS's combined training and U.S. testing expenses as installation expenses. We then reclassified total installation expenses as U.S. further manufacturing activity.

We classified installation charges as part of further manufacturing, because the U.S. installation process involves extensive technical activities on the part of engineers and installation supervisors and the integration of subject and non-subject merchandise necessary for the operation of LNPPs. See Certain Internal-Combustion, Industrial Forklift Trucks from Japan, 53 FR 12565 (Apr. 15, 1988) and Small Business Telephone Systems and Subassemblies thereof from Korea, 54 FR 53151 (Dec. 27, 1989).

We have also classified as part of further manufacturing costs the costs of certain non-Japanese items shipped directly to the United States without further processing in Japan, and non-Japanese items sourced in the United States, for integration into the overall LNPP during the installation process.

We recomputed the U.S. further manufacturer's reported G&A rate using the cost of goods sold amount reported in its audited financial statements; and we included interest expense relating to the cost of installation in U.S. further manufacturing.

MHI

MHI reported its sales as EP sales. We have classified all MHI sales as CEP/FM sales because MHI's affiliated U.S. sales agent acted as more than a processor of sales-related documentation and a communication link with the unaffiliated U.S. customers; the U.S. affiliate engaged in a broad range of activities including coordination of installation, which we have classified as further manufacturing. We calculated CEP, in accordance with subsections 772 (b) and (d) of the Act, for these sales because they involved further manufacturing in the United States.

We calculated CEP sales based on packed, installed prices to unaffiliated customers in the United States. We made deductions for inland freight to port in Japan; foreign brokerage and handling; international freight; combined foreign inland and marine insurance, export insurance and U.S. inland insurance, U.S. brokerage and handling, U.S. Customs duty.

We also made deductions for post-sale warehousing, commissions, imputed credit, direct warranty and training expenses, where applicable.

With respect to reported technical service expenses, direct and indirect, we have included these as part of total installation expenses. We then reclassified total installation expenses as U.S. further manufacturing activity. We are continuing to use the amounts reported for technical expenses for purposes of the preliminary determination. In light of MHI's claim that the expenses are limited in time, the magnitude of any changes, and the relationship between technical services in future years and the nature of MHI product warranties, we are not changing the reported values; we will require MHI to explain explicitly the administration of its technical servicing for purposes of the final determination.

We deducted those indirect selling expenses that related to economic activity in the United States. We have modified the calculation of Mitsubishi Lithographic Presses—(MLP's) reported indirect selling expenses to correct the allocation methodology for common G&A expenses.

In calculating imputed credit, we took into account the unique nature and magnitude of the LNPP projects under investigation. These projects require substantial capital expenditures over an extended time period because of their size and their lengthy production process. Moreover, the projects generally call for the purchaser to provide scheduled progress payments prior to the completion of a given project. In consideration of these factors, we computed credit by applying an interest rate to the net balance of production costs incurred and progress payments made during the construction period. We imputed credit expenses for U.S. sales using U.S. prime short-term interest rates as reported by the Federal Reserve, calculated as a weighted-average rate for each fiscal year in the POI, since these sales were denominated in U.S. dollars. However, because MHI reported that it did not borrow in U.S. dollars, we used U.S. prime short-term interest rates as a surrogate rate.

Furthermore, we classified total installation expenses as part of U.S. further manufacturing activity. We classified installation charges as part of further manufacturing, because the U.S. installation process involves extensive technical activities on the part of engineers and installation supervisors and the integration of subject and non-subject merchandise necessary for the operation of LNPPs.

We have also classified as part of further manufacturing costs the costs of certain non-Japanese items shipped directly to the United States without further processing in Japan, and non-Japanese items sourced in the United States, for integration into the overall LNPP during the installation process.

We also deducted the cost of any further manufacturing or assembly (including additional material and labor). We made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act. Finally, we adjusted MHI's reported U.S. further manufacturing costs to include a portion of MHI's G&A and interest expense.

We also deducted the value of spare and replacement parts which are excluded from the scope of the investigation, from the starting price, where the value of these spare and replacement parts was separately identified in the contractual documentation relevant to the sale.

Normal Value/Constructed Value

For the reasons outlined in the "Product Comparisons" section of this notice, we based NV on CV.

TKS

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, SG&A and U.S. packing costs as reported in the U.S. sales database. In accordance with section 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

We relied on the respondent's CV amounts except in the following specific instance wherein the reported costs were improperly valued: For one Dallas Morning News sale, we included the costs of parts from earlier unsold models.

We calculated imputed credit for CV purposes in accordance with the methodology explained in the "Constructed Export Price" section of this notice. We imputed credit expenses for CV using the weighted-average home market short-term interest rate reported for the POI since these sales were denominated in yen.

We also included in CV the costs of spare and replacement parts for those U.S. sales where the value of these parts could not be separately identified in the contractual documentation and therefore was not excluded from CEP.

For selling expenses, we used the weighted-average home market selling expense rate, calculated based on sales made in the ordinary course of trade, and applied this rate to U.S. cost of manufacture.

In accordance with section 773(a)(6)(B), we added U.S. packing costs to a CV net of packing.

MHI

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, SG&A and U.S. packing costs as reported in the U.S. sales database. In accordance with section 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

We relied on the respondent's CV amounts except in the following specific instances wherein the reported costs were improperly valued:

1. We increased materials and contract labor costs to account for inputs purchased from affiliated parties at below cost prices; and

2. We recalculated G&A and interest expense to include all four years of the POI.

We calculated imputed credit for CV purposes in accordance with the methodology explained in the "Constructed Export Price" section of this notice. We imputed credit expenses for CV using the weighted-average home market short-term interest rate reported for the POI since these sales were denominated in yen.

For selling expenses, we used the weighted-average home market selling expense rate, calculated based on sales made in the ordinary course of trade, and applied this rate to U.S. cost of manufacture.

In accordance with section 773(a)(6)(B), we added the U.S. packing costs to a CV net of packing.

Price to CV Comparisons

TKS

For CEP to CV comparisons, we deducted from CV the weighted-average home market direct selling expenses, pursuant to section 773(a)(8) of the Act.

MHI

For CEP to CV comparisons, we deducted from CV the weighted-average home market direct selling expenses including commissions, pursuant to section 773(a)(8) of the Act.

Currency Conversion

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement. In this case, although one respondent reported that foreign exchange currency contracts applied to its reported U.S. sales, the record information was not sufficient to conclude that these contracts were directly linked to the particular sales in question.

Therefore, for the purpose of the preliminary determination, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." For this preliminary determination, we have determined that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determined a fluctuation existed, we substituted the benchmark for the daily rate.

Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case, because the dates of sale occurred within periods where the Japanese yen remained generally constant against the U.S. dollar.

Verification

As provided in section 782(i) of the Act, we will verify all information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of LNPP systems, additions, and components, whether assembled or unassembled, from Japan, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the **Federal Register**. Furthermore, because we are still in the process of clarifying the definition of a subject LNPP system, addition, or component, as explained in the "Scope Issues" section of this notice, we are also directing the Customs Service to suspend liquidation of entries of elements (parts or subcomponents) of components imported to fulfill a contract for an LNPP system, addition, or component, from Japan, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the **Federal Register**.

In addition, in order to ensure that our suspension of liquidation instructions are not so broad as to cover merchandise imported for non-subject uses, foreign producers/exporters and U.S. importers in the LNPP industry shall be required to provide certification that the imported merchandise would not be used to fulfill an LNPP contract. We will also request that these parties register with the Customs Service the LNPP contract number pursuant to which the merchandise is imported. With respect to entries of LNPP spare and replacement parts, and used presses, from Japan, which are expressly excluded from the scope of the investigation, we will instruct the Customs Service not to suspend liquidation of these entries if they are separately identified and valued in the LNPP contract pursuant to which they are imported.

The Customs Service will require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Mitsubishi Heavy Industries, Ltd.	47.57%
Tokyo Kikai Seisakusho, Ltd.	58.14%
All Others	53.72%

The All Others rate applies to all entries of subject merchandise except for entries of merchandise produced by MHI and TKS.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than May 24,1996, and rebuttal briefs, no later than May 30, 1996. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on June 4, 1996, time and place to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 733(f) of the Act.

Dated: February 23, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–4729 Filed 2–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–821]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 1, 1996.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or William Crow, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–6320 or (202) 482–0116.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

Preliminary Determination

As explained in the memoranda from the Assistant Secretary for Import Administration dated November 22, 1995, and January 11, 1996, the Department of Commerce (the Department) has exercised its discretion to toll all deadlines for the duration of the partial shutdowns of the Federal Government from November 15 through November 21, 1995, and December 16, 1995, through January 6, 1996. Thus, all deadlines in this investigation have been extended by 28 days, *i.e.*, one day for each day (or partial day) the Department was closed. The revised deadline for this preliminary determination is February 23, 1996.

We preliminarily determine that large newspaper printing presses and components thereof ("LNPPs") from Germany are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on July 20, 1995 (Notice of Initiation of Antidumping Duty Investigation: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Disassembled, 60 FR 38546 (July 27, 1995)(Initiation Notice)), the following events have occurred:

On August 14, 1995, the United States International Trade Commission ("ITC") notified the Department of Commerce (the Department) of its affirmative preliminary determination (see ITC Investigation No. 731–TA–736 and 737).

On August 28, 1995, we presented Section A of the Department's questionnaire[1] to MAN Roland Druckmaschinen AG and its U.S. affiliate MAN Roland Inc. (collectively "MAN Roland"), and Koenig & Bauer-Albert AG and its U.S. affiliate KBA-Motter Corp. (collectively, "KBA"). See the "Respondent Selection" section of this notice. MAN Roland's responses to Section A were received on September 27, 1995 (as amended on September 29, 1995), October 4, 1995, and October 10, 1995. On September 25, 1995, KBA informed the Department that it would not be responding to the Department's questionnaire.

On October 20, 1995, at the request of Rockwell International Corporation (the petitioner), we postponed the preliminary determination to January 26, 1996. (See Notice of Postponement of Preliminary Determinations: Antidumping Investigation of Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled From Japan, 60 FR 54841, October 26, 1995.)

On October 24, 1995, the petitioner alleged that there are reasonable grounds to believe or suspect that MAN Roland made below-cost sales of the subject merchandise in Germany, and that these below-cost sales must be excluded from the Department's calculation of profit for constructed value ("CV"). Because we determined the appropriate basis for normal value ("NV") to be CV, we did not address petitioner's below-cost allegation. We did, however, solicit contract price and production cost data for MAN Roland's home market sales of subject merchandise in order to compute selling, general and administrative (SG&A) expenses, and profit for CV in accordance with section 773(e)(2)(A) of the Act. (See "Product Comparisons" section of this notice.)

The Department issued Sections C, D and E of its questionnaire[2] to MAN Roland on October 27, 1995. Responses to these sections of the questionnaire were received on December 13, 1995. A supplemental questionnaire was not issued to MAN Roland on January 18, 1996. On January 30, 1996, MAN Roland submitted corrections to clerical errors contained in its December 13, 1995, Section D response. MAN Roland's responses to the Department's supplemental questionnaire were received on January 31, and February 1, 1996. A revised U.S. sales listing was submitted on February 2, 1996.

During the period July 28, 1995 through January 23, 1996, the petitioner, MAN Roland and KBA filed comments requesting clarification of the scope of this investigation with respect to elements (*i.e.*, parts or subcomponents) of covered components, and spare and replacement parts. Respondents in the concurrent investigation of LNPPs from Japan, Mitsubishi Heavy Industries, Ltd. and Tokyo Kikai Seisakusho, also submitted comments concerning scope. On January 23, 1996, the petitioner clarified the scope to exclude used presses. See "Scope of Investigation" section of this notice. At the Department's request, on February 8, 1996, the parties filed comments on suspension of liquidation instructions.

On February 2 and 9, 1996, the petitioner filed comments on issues to be resolved and methodologies to be employed in the preliminary determination. KBA and MAN Roland filed such comments on February 8 and 12, 1996, respectively.

Facts Available

KBA failed to respond to the Department's questionnaire. Section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination. Because KBA failed to respond to the Department's questionnaire, we must use facts otherwise available with regard to KBA.

Section 776(b) provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. See also Statement of Administrative Action, at 870. KBA's failure to reply to the Department's questionnaire demonstrates that KBA has failed to cooperate to the best of its ability in this

[1] Section A requests data concerning corporate organization, accounting practices, markets and merchandise.

[2] Section C requests data on sales to the United States. Section D requests data on the cost of production and constructed value. Section E requests data on the cost of further manufacturing or assembly performed in the United States.

investigation. Thus, the Department has determined that, in selecting among the facts otherwise available to KBA, an adverse inference is warranted. As facts otherwise available, we are assigning to KBA the margin stated in the notice of initiation, 46.40 percent.

Section 776(c) provides that when the Department relies on secondary information (such as the petition) in using the facts otherwise available it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. When analyzing the petition, the Department reviewed all of the data the petitioner had in calculating the estimated dumping margin. This estimated dumping margin was based on a comparison of the bid price for a sale of a LNPP system made by MAN Roland to an unrelated U.S. customer and the CV of that LNPP system. As a result of that analysis, the Department modified the CV methodology that the petitioner relied upon in calculating the estimated margin. On the basis of those modifications, the Department recalculated the estimated dumping margin and found it to be 46.40 percent. See Initiation Notice. The Department corroborated all of the secondary information from which the margin was calculated during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose at that time. For purposes of the preliminary determination, the Department reexamined the price information provided in the petition in light of information developed during the investigation, and found that it continues to be of probative value.

Respondent Selection

The producers named in the petition were MAN Roland and KBA. On August 4, 1995, we contacted the U.S. Embassy in Bonn, Germany, requesting the identification of German producers and exporters of LNPPs to the United States, and the volume and value of subject merchandise they sold to the United States during the period January 1, 1991 through May 31, 1995. On August 24, 1995, we received a reply cable with information concerning the U.S. sales activities of MAN Roland and KBA. The cable did not indicate that there were other German exporters of subject merchandise to the United States. In addition to this cable, we received a separate cable from the U.S. Embassy replying to the ITC's request for information on German manufacturers of subject merchandise. While this cable identified eight additional German manufacturers of various press technologies, it did not specify whether they were producers/exporters of the subject merchandise.

Based on the petition and the information received from the U.S. Embassy, we issued questionnaires to MAN Roland and KBA. We did not send any additional questionnaires, as no evidence on the record suggested that any other German manufacturer sold LNPPs in the United States during the specified period. (See Memorandum to The File Re: Questionnaire Recipients, dated August 28, 1995.)

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2)(A) of the Act, on February 23, 1996, MAN Roland, requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 60 days after the date of the scheduled final determination, which is equivalent to 135 days after the publication of an affirmative preliminary determination in the **Federal Register**. In accordance with 19 CFR 353.20(b)(1995), because our preliminary determination is affirmative, the respondent accounts for a significant proportion of exports of the subject merchandise, and no compelling reasons for denial exist, we are granting respondent's request and postponing the final determination.

Section 733(d) of the Act provides that provisional measures may not remain in effect for more than four months. However, that provision of the Act also states that the Department may extend that period to six months at the request of exporters representing a significant proportion of exports of the subject merchandise. No such explicit request was made in this case. However, we interpret the request of MAN Roland to extend the final determination in this investigation to contain an implied request to extend provisional measures in accordance with Section 733(d) of the Act. Accordingly, we have extended the period for provisional measures to six months.

Scope of Investigation

As specified below, we have revised the scope since our notice of initiation to exclude used presses, in accordance with the petitioner's January 23, 1996, clarification. Furthermore, we have clarified the scope to include "elements" (otherwise referred to as "parts" or "subcomponents") of an LNPP system, addition or component; which taken as a whole, constitute a subject LNPP system, addition or component used to fulfill an LNPP contract. See "Scope Issues" section of this notice concerning the treatment of elements in the scope. In addition, we have stipulated that spare or replacement parts, which are imported pursuant to an LNPP contract and are separately identified and valued in that contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of the investigation. See February 23, 1996, Decision Memorandum to Richard Moreland from The Team Re: Scope Issues.

The products covered by these investigations are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to complete systems, the scope of these investigations includes the five press system components. They are:

(1) A printing unit, which is any component that prints in monocolor, spot color and/or process (full) color, or a printing-unit cylinder;

(2) A reel tension paster (RTP), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit;

(3) A folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format;

(4) Conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and

(5) A computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of this investigation. Also included in the scope are elements of an LNPP system, addition or component, which taken as a whole, constitute a subject LNPP system, addition or component used to fulfill an LNPP contract.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to an LNPP contract, which are not integral to the original start-up and operation of the LNPP, and are separately identified and valued in an LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of this investigation. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Further, these investigations cover all current and future printing technologies capable of printing newspapers, including, but not limited to lithographic (offset or direct), flexographic, and letterpress systems.

The products covered by these investigations are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, 8524.51.30, 8524.52.20, 8524.53.20, 8524.91.00, 8524.99.00 and 8537.10.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

Scope Issues

Since our initiation, we received numerous comments from interested parties in this investigation and the concurrent investigation involving Japan, requesting that the Department clarify the treatment of "elements" in the scope of the investigation.

In general, respondents believe that if the imported elements do not constitute a complete, albeit unassembled, component, or are missing "essential" elements to function as one of the five components named in the scope, they would not be subject to the scope of this investigation and the concurrent investigation involving Japan. The petitioner believes that, because an imported LNPP press, addition or component will almost always contain elements, which, by themselves, are not subject to the scope, it is not practical to exclude these elements from the scope of the investigation in so far as they comprise an incomplete subject component. For a complete discussion of these comments, see February 23, 1996 Memorandum to Richard W. Moreland from The Team Re: Scope Issues.

As stated in the "Scope of Investigations" section above, we interpret the scope to include those elements or collection of elements imported from a subject country in so far as they constitute any one of the five covered components which are, in turn, used to fulfill a contract for a LNPP press system, press addition or press component. Individual parts per se are not covered by the scope of these investigations unless taken as a whole they constitute a subject component used to fulfill an LNPP contract. This interpretation, however, raises a question: at what point do the elements imported from a subject country rise to the level of an LNPP component, addition or system subject to the scope of these investigations?

The Department must decide on a reasonable and practicable approach in determining what constitutes a subject LNPP component, addition or system, and in so doing, establish the basis on which we will include elements in the scope. We are considering two alternative approaches for analyzing what governs the inclusion of parts or subcomponents, other than spare or replacement parts, within the scope of these investigations. One approach would consider, on a case-by-case basis, whether the imported parts or subcomponents when taken together are essentially an LNPP system, addition or component. This so-called "essence" approach is of necessity subjective and turns on the question of how near the sum of the imported parts comes to comprising a complete LNPP system, addition or component. A second approach would consider the value of the imported parts or subcomponents relative to the total value of the finished LNPP component, addition or system in the United States. That is, we would determine that the imported parts or subcomponents would be within the scope if they comprised a certain minimum percentage of the value of the parts of a finished LNPP system, addition or component.

Both of these approaches raise threshold questions. Because certain sales reported by respondents in both the German and Japanese investigations consist of imported elements from Germany or Japan, rather than a complete LNPP component, addition or system, acceptance of either of the two approaches will have implications as to which of the respondents' sales the Department will consider in its final determination. Therefore, we are presently soliciting comments from interested parties as to the merits of these approaches and/or others that may be relevant for use in the final determination. Interested party comments on this topic are due no later than May 1, 1996.

Period of Investigation (POI)

The petitioner and MAN Roland filed comments during the period October 19 through 26, 1995, concerning the appropriate POI. On October 27, 1995, we established the appropriate POI for MAN Roland to be July 1, 1993 through June 30, 1995.

As a result of changes to section 773(b)(2)(B) of the Act, which codified the normal period within which sales made below the cost of production are to be analyzed, the Department modified the standard POI to cover a one year period. In this investigation, however, in order to capture sufficient and representative sales, the Department extended the POI to two years, instead of the normal one-year period, because of the nature of the LNPP industry, characterized by custom order sales and long term sales contracts. (See October 27, 1995 Memorandum to Richard W. Moreland from The Team Re: Establishing the Period of Investigation.)

Product Comparisons

Although the home market was viable, in accordance with section 773 of the Act, we based NV on CV because we determined that the particular market situation, which requires that the subject merchandise be built to each customer's specifications, does not permit proper price-to-price comparisons. (See November 9, 1995, Memorandum to Richard W. Moreland from The Team Re: Determining the Appropriate Basis for Normal Value.)

Fair Value Comparisons

To determine whether MAN Roland's sales of LNPPs to the United States were made at less than fair value, we compared Constructed Export Price ("CEP") to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(ii), we calculated transaction-specific CEPs (which in this case were synonymous with model-specific CEPs) for comparison to transaction-specific NVs because of the limited number of sales and the custom-made merchandise.

Constructed Export Price

In accordance with subsections 772(b) and (d) of the Act, we calculated CEP for sales to the first unaffiliated purchaser by a seller affiliated with the producer/exporter that took place before importation and involved further manufacturing in the United States.

We calculated CEP sales based on packed, delivered and/or installed prices to unaffiliated customers in the United States. We made deductions from the starting price (gross unit price), where appropriate, for the following charges: inland freight to port in Germany, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. Customs duty and U.S. inland freight. We made corrections to respondent's data where the data reported in the U.S. sales listing conflicted with the data contained in support documentation submitted in its questionnaire responses.

We also made deductions for post-sale warehousing, commissions, imputed credit, training, warranty and product liability. In calculating imputed credit, we took into account the unique nature and magnitude of the LNPP projects under investigation. These projects require substantial capital expenditures over an extended time period because of their size and their lengthy production process. Moreover, the projects generally call for the purchaser to provide scheduled progress payments prior to the completion of a given project. In consideration of these factors, we computed credit by applying an interest rate to the net balance of production costs incurred and progress payments made during the construction period. We imputed credit expenses for U.S. sales using the weighted-average U.S. short-term interest rate reported for the POI because these sales were denominated in U.S. dollars.

We also deducted those indirect selling expenses that related to economic activity in the United States. We recalculated these expenses based on sales revenues, rather than sales orders. We disallowed an adjustment for the warehousing income claimed for one sale because of insufficient evidence on the record to support respondent's claim that such an adjustment was warranted.

We also deducted the value of spare and replacement parts, which are excluded from the scope of the investigation, where the value of these spare and replacement parts was separately identified in the contractual documentation governing the sale. In addition, for one sale, we deducted the value of the used equipment portion of the LNPP which is excluded from the scope of the investigation.

We classified installation expenses, as well as special testing and start-up costs associated with the installation process, as part of further manufacturing in the United States because the U.S. installation process involves extensive technical activities on the part of engineers and installation supervisors, and the integration of subject and non-subject merchandise necessary for the operation of LNPPs. We also classified as part of further manufacturing costs, the cost of certain non-German items either shipped directly to the United States without further processing in Germany, or sourced in the United States, for integration into the overall LNPP during the installation process.

Furthermore, we deducted the cost of any further manufacturing or assembly (including additional material and labor, installation, special testing and start-up costs). We recomputed the U.S. further manufacturer's reported general and administrative ("G&A") expense rate using the cost of sales amount reported in its financial statements; and for one U.S. sale, we reduced the further manufacturing costs by the reported cost of used equipment. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

Normal Value/Constructed Value

For the reasons outlined in the "Product Comparisons" section of this notice, we based NV on CV.

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, SG&A and U.S. packing costs as reported in the U.S. sales database. In accordance with section 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

We relied on the respondent's CV amounts, except in the following specific instances wherein the reported costs were improperly valued:

1. We excluded respondent's reported negative interest expense amounts for all sales;
2. We excluded the multiple facility adjustment reported in cost of manufacturing ("COM");
3. For each uncompleted press, we applied to the submitted standard overhead costs the variance experienced by MAN Roland for the most recently completed fiscal year (July 1, 1994 through June 30, 1995);
4. We recalculated the time variance for manufacturing overhead costs based on the adjusted costs as computed in item 3 above;
5. We recalculated product line research and development costs, and G&A expenses based on the full cost of each U.S. contract;
6. In calculating the CV profit rate and selling expense rates, we adjusted the reported home market cost data for items 1 through 3 noted above;

We also included in CV the costs of spare and replacement parts for those U.S. sales where the value of these parts could not be separately identified in the contractual documentation and therefore could not be excluded from CEP.

For selling expenses, we used the average home market selling expense rate, calculated based on the selling expenses reported for home market sales made in the ordinary course of trade, and applied this rate to the U.S. COM. We recalculated home market indirect selling expenses based on sales revenues, rather than sales orders.

We calculated imputed credit for CV purposes in accordance with the methodology explained in the "Constructed Export Price" section of this notice. We imputed credit expenses for CV using the weighted-average home market short-term interest rate reported for the POI since these sales were denominated in deutschemarks.

In accordance with section 773(a)(6)(B), we added U.S. packing costs to a CV net of packing.

Price to CV Comparisons

For CEP to CV comparisons, we deducted from CV the average home market direct selling expenses pursuant to section 773(a)(8) of the Act.

Currency Conversion

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement. In this case, although MAN Roland reported that forward currency exchange contracts applied to certain U.S. sales, the record information was not sufficient to conclude that these contracts were directly linked to the particular sales in question. Therefore, for the purpose of the preliminary determination, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." For this preliminary determination, we have determined that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determined a fluctuation existed, we substituted the benchmark for the daily rate.

Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. No adjustment period is warranted in this case, because the deutschemark generally remained constant against the U.S. dollar during the POI.

Verification

As provided in section 782(i) of the Act, we will verify all information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of LNPP systems, additions and components, whether assembled or unassembled, from Germany, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the **Federal Register**. Furthermore, because we are still in the process of clarifying the definition of a subject LNPP system, addition or component, as explained in the "Scope Issues" section of this notice, we are also directing the Customs Service to suspend liquidation of entries of elements (parts or subcomponents) of components imported to fulfill a contract for an LNPP system, addition, or component, from Germany, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the **Federal Register**.

In addition, in order to ensure that our suspension of liquidation instructions are not so broad as to cover merchandise imported for non-subject uses, foreign producers/exporters and U.S. importers in the LNPP industry shall be required to provide certification that the imported merchandise would not be used to fulfill an LNPP contract. We will also request that these parties register with the Customs Service the LNPP contract numbers pursuant to which subject merchandise is imported. With respect to entries of LNPP spare and replacement parts, and used presses, from Germany, which are expressly excluded from the scope of the investigation, we will instruct the Customs Service not to suspend liquidation of these entries if they are separately identified and valued in the LNPP contract pursuant to which they are imported. The Customs Service will require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
MAN Roland Druckmaschinen AG	17.70
Koenig & Bauer-Albert AG	46.40
All Others	17.70

The Department has excluded the margin for KBA, which is based on adverse facts available, from the calculation of the All Others rate.

The All Others rate applies to all entries of subject merchandise except for entries of merchandise produced by MAN Roland and KBA.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than May 16, 1996, and rebuttal briefs, no later than May 23, 1996. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on June 4, 1996, time and place to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 733(f) of the Act.

Dated: February 23, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–4730 Filed 2–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–560–801, A–583–825, and A–570–844]

Initiation of Antidumping Duty Investigation: Melamine Institutional Dinnerware Products From Indonesia, Taiwan and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 1, 1996.

FOR FURTHER INFORMATION CONTACT: Kate Johnson at (202) 482–4929 or Erik Warga at (202) 482–0922, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

INITIATION OF INVESTIGATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA").

The Petition

On February 6, 1996, the Department of Commerce ("the Department") received a petition filed in proper form by The American Melamine Institutional Tableware Association ("petitioners"), whose members include Continental/SiLite International Co., Lexington United Corp./National Plastics Corp., and Plastics Manufacturing Company (domestic producers of melamine institutional dinnerware products ("MIDPs")).

In accordance with section 732(b) of the Act, petitioners allege that imports of MIDPs from Indonesia, Taiwan and the People's Republic of China (PRC) are being, or are likely to be sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, a U.S. industry.

Petitioners are an association the majority of whose members are producers of the domestic like product and, therefore, have standing to file the petition because they are an interested party, as defined under section 771(9)(E) of the Act.

Determination of Industry Support for the Petition

Section 732(c)(4)(A) of the Act requires the Department to determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry supports an antidumping petition. A petition meets these minimum requirements if the domestic producers or workers who support the petition account for (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

A review of the production data provided in the petition and other information readily available to the Department indicates that petitioners account for more than 25 percent of the total production of the domestic like product and for more than 50 percent of that produced by companies expressing support for, or opposition to, the petition. Petitioners represent more than 90 percent of total production of the domestic like product. Moreover, the only other known domestic producer of MIDPs, Gessner Products, has expressed support for the petition. The Department received no expressions of opposition to the petition from any domestic producer or workers. Accordingly, the Department determines that the petition is supported by the domestic industry.

Scope of the Investigation

The scope of this investigation is all items of dinnerware (e.g., plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays) that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch. This merchandise is classifiable under subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which our decisions to initiate are based. Should the need arise to use any of this information in our preliminary or final determinations, we will re-examine the information and may revise the margin calculations, if appropriate.

Indonesia

Petitioners based export price (EP) on a price quotation for a 9-inch plate obtained from a market research report. The terms are ex-factory and, hence, no deductions to EP were made.

Petitioners based normal value (NV) on a price quotation for a 9-inch plate obtained from a market research report. The terms are ex-factory and, hence, no deductions to NV were made.

Based on comparisons of EP to NV, the calculated dumping margin for MIDPs from Indonesia is 89.84 percent *ad valorem*.

PRC

Petitioners prepared two calculations of constructed export price (CEP). In the first instance, petitioners calculated CEP based on a PRC producer's affiliated reseller's price quote. Petitioners deducted cash discounts, ocean freight, U.S. inland freight, containerization, and duties. For purposes of initiation, we disallowed the deduction for U.S. inland freight because the petition did not specify the U.S. customer's location and did not contain any evidence indicating the actual amount of any inland freight expenses incurred.

Alternatively, petitioners argue that the Act requires U.S.-incurred selling expenses to be deducted from CEP. Although section 772(d)(1) of the Act requires this deduction from CEP, petitioners did not make a corresponding adjustment to NV for selling expenses. Therefore, we have not accepted this deduction for purposes of the initiation. We may consider this issue further later in the investigation.

Petitioners assert that the PRC is a non-market economy (NME) within the meaning of sections 771(18) of the Act and in accordance with section 773(c) of the Act. Accordingly, the normal value of the product should be based on the producer's factors of production, valued in a surrogate market economy country. In previous investigations, the Department has determined that the PRC is an NME, and the presumption of NME status continues for the initiation of this investigation. See, e.g., Final Determination of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the People's Republic of China, 60 FR 16437 (March 30, 1995).

It is our practice in NME cases to calculate NV based on the factors of production of those factories that produced MIDPs sold to the United States during the period of investigation.

In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters. See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC, 59 FR 22585 (May 2, 1994).

Petitioners based the PRC producers' factors of production (*i.e.*, raw materials, labor, and energy) for MIDPs on petitioners' own usage amounts. Petitioners valued these factors, where possible, on publicly available published Indonesian data. Where this data was unavailable, petitioners used other acceptable sources of information. Petitioners estimated the surrogate value of scrap based on their own experience as to the scrap rate in MIDP production.

Indonesia is an acceptable surrogate country because its level of economic development is comparable to that of the PRC and Indonesia is a significant producer of comparable merchandise.

Petitioners also based factory overhead and general expenses on data contained on the public records of previous investigations in which the information was also used as surrogate values for factors of production of merchandise from the PRC.

Petitioners based profit on a publicly available published industry study of the Reserve Bank of India Bulletin, September 1994, for the Processing and Manufacturing of Metals, Chemicals, and Products thereof.

Finally, petitioners based packing on their own U.S. packing costs, not including packing for ocean voyage. For the purposes of this investigation, we have disallowed the packing costs because they were based on U.S. values rather than a factor value from an appropriate surrogate country.

Based on comparisons of CEP to the factors of production, the calculated dumping margin for MIDPs from the PRC, after adjustments made by the Department, is 7.06 percent *ad valorem*.

Taiwan

Petitioners used a market research firm to obtain an EP price quotation from a Taiwanese producer. Petitioners deducted a discount from this price.

In addition, petitioners calculated CEP based on a Taiwan company's affiliated reseller price quotation. Petitioners believe that the Department should use CEP because there is substantial evidence that, during the POI, this manufacturer produced subject merchandise in Taiwan that was sold in the United States.

Petitioners deducted from CEP discounts, ocean freight, U.S. inland freight, containerization, selling expenses and inventory carrying expenses.

For purposes of initiation, we are rejecting this CEP calculation because there is insufficient evidence that the Taiwan manufacturer, Tar-Hong, produced in Taiwan the subject merchandise sold by its U.S. affiliate during the POI. However, as this investigation proceeds, we will consider this issue further.

Based on comparisons of EP to NV, the calculated dumping margin for MIDPs from Taiwan, after adjustments made by the Department, is 53.13 percent *ad valorem*.

Fair Value Comparisons

Based on the data provided by petitioners, there is reason to believe that imports of MIDPs from Indonesia, the PRC and Taiwan are being, or are likely to be, sold at less than fair value.

Initiation of Investigations

We have examined the petitions on MIDPs and have found that they meet the requirements of section 732 of the Act, including the requirements concerning allegations of the material injury or threat of material injury to the domestic producers of a domestic like product by reason of the complained-of imports, allegedly sold at less than fair value. Therefore, we are initiating antidumping duty investigations to determine whether imports of MIDPs from Indonesia, the PRC and Taiwan are being, or are likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determinations by July 15, 1996.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the governments of Indonesia and PRC, as well as to the Taiwan authorities. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition.

International Trade Commission (ITC) Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by March 22, 1996, whether there is a reasonable indication that imports of MIDPs from Indonesia, the PRC and Taiwan are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination in any of the investigations will result in that investigation being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

Dated: February 26, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–4850 Filed 2–29–96; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–001. *Applicant:* University of California, Davis, 174 Physics/Geology Bldg., Davis, CA 95616-8605. *Instrument:* Water Gas Phase Equilibration System. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used to analyze the stable oxygen and hydrogen isotopic composition ($^{18}O/^{16}O$ and D(euterium) /H) of water samples derived from seawater samples collected during experimental research and ground water samples from hydrographic studies. The experiments will involve studies of the physiological and environmental parameters responsible for stable isotope variability in the calcium carbonate shells of fossil organisms via the study of living representatives in the laboratory and field. In addition, the instrument will be used in the course Geology 227, Stable Isotope Biochemistry introducing graduate students to different applications of stable isotope geochemistry in the research environment. *Application Accepted by Commissioner of Customs:* January 3, 1996.

Docket Number: 96–002. *Applicant:* DHHS/Food and Drug Administration, National Center for Toxicological Research, Division of Chemistry, 3900 NCTR Road, Jefferson, AR 72079. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad XR. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used for studies of food, food ingredients, animal diets, animal tissues and water to determine the quantitation of the levels of trace elements of interest in these samples. The instrument will also be used for speciation studies for toxicologically important elements such as As, Cr, and Mn among others. *Application Accepted by Commissioner of Customs:* January 4, 1996.

Docket Number: 96–003. *Applicant:* Mount Holyoke College, 50 College Street, South Hadley, MA 01075. *Instrument:* Electron Microscope, Model CM100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used in a wide variety of research projects in the

biological sciences which include but are not limited to: (a) assessment of which structural components of the nucleus remain after progressive dismantling of nuclear components by high salt, nuclease, and detergent treatment in research designed to probe nuclear matrix structure and function in plant cells and (b) characterization of cellular defects in various *Drosophila* mutants which figure prominently in molecular biology. In addition, the instrument will be used for educational purposes in several biology courses. *Application Accepted by Commissioner of Customs:* January 4, 1996.

Docket Number: 96–004. *Applicant:* University of California at Berkeley, 485 Hearst Mining Bldg., Berkeley, CA 94720. *Instrument:* Mass/Energy Spectrometer. *Manufacturer:* Hiden Analytical Ltd., United Kingdom. *Intended Use:* The instrument will be used for determining the mass, energy and flux of ions, neutrals and radicals generated by an activated nitrogen source. It will also be used for trace impurity measurements. *Application Accepted by Commissioner of Customs:* January 11, 1996.

Docket Number: 96–005. *Applicant:* Scripps Research Institute, 10666 North Torrey Pines Road, La Jolla, CA 92037. *Instrument:* Electron Microscope, Model CM120. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used for studies of the structure of tobacco, alfalfa, and cucumber mosaic viruses, muscle proteins, nuclear pore complexes, microtubules, CHIP28 water channels, acetylcholine receptors, gap junctions, rotavirus and reovirus, and rice yellow mottle virus. The goals of the investigations are in general to understand the structural basis for how the subcellular organelles and supramolecular assemblies function and to elucidate the role that they play in the life of the cell. In addition, the instrument will be used to provide training in use of the electron microscope as a research tool. *Application Accepted by Commissioner of Customs:* February 6, 1996.

Docket Number: 96–007. *Applicant:* U.S. Department of Commerce, NOAA/ERL/CMDL, R/E/CGI, 325 Broadway, Boulder, CO 80303. *Instrument:* Stable Isotope Mass Spectrometer, Model OPTIMA. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to measure the stable isotope ratios of CO_2 from flask samples of atmospheric air sampled weekly from about 50 sites worldwide and analyzed for the mixing ratios of methane, carbon monoxide and other gases. The instrument will also be used to measure the stable isotope ratios of CO_2 from standard and reference materials as required to maintain the integrity and calibration of the data base of atmospheric measurements. *Application Accepted by Commissioner of Customs:* February 6, 1996.

Docket Number: 96–008. *Applicant:* University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. *Instrument:* Mass Spectrometer, Model Plasma Trace 2. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used for studies of soils, high purity silicon chips, waters and low level waste streams to determine trace analytes in a given sample. *Application Accepted by Commissioner of Customs:* February 7, 1996.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 96–4754 Filed 2–29–96; 8:45 am]

BILLING CODE 3510–DS–F

University of Hawaii, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 94–154R. *Applicant:* University of Hawaii, Honolulu, HI 96822. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* See notice at 60 FR 5165, January 26, 1995. *Reasons:* The foreign instrument provides a UV laser ablation sample introduction system. *Advice Received From:* National Institutes of Health, February 14, 1996.

Docket Number: 95–115. *Applicant:* University of Vermont, Burlington, VT 05405–0082. *Instrument:* Ammonia Emission Measurement Equipment. *Manufacturer:* Swedish Institute of Agricultural Engineering, Sweden. *Intended Use:* See notice at 60 FR 64158, December 14, 1995. *Reasons:* The foreign instrument provides in-situ measurement of equilibrium concentrations of ammonia in a ventilated chamber employing passive diffusion samplers. *Advice Received From:* National Institutes of Health, February 5, 1996.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–4755 Filed 2–29–96; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Bluefin Tuna Dealer Reports

ACTION: Proposed Collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 30, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Kevin Foster, NMFS—One Blackburn Drive, Gloucester, MA 01915 (508–281–9260).

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collected in the Dealer Package is used by NMFS to monitor the U.S. catch in relation to the quota, thereby ensuring that the United States complies with its international obligations to the International Commission for the Conservation of Atlantic Tunas (ICCAT). Other provisions of the domestic regulations are also monitored through this collection of information, such as compliance with area closures, fishing seasons, and subquotas by gear type and/or user group. This information provides the catch data necessary to assess the status of bluefin tuna resources. Assessments are conducted and presented to ICCAT annually. The data provide the basis for ICCAT management recommendations which become binding on member nations. In addition, the Dealer Package provides essential information for domestic management policy and rule making.

II. Method of Collection

Dealers who buy, sell, or receive for commercial purposes any large, medium, or giant size class Atlantic bluefin tuna are required to report all transactions to NMFS via daily and biweekly reporting forms. These collect certain information for each Atlantic bluefin tuna that is sold at landing. Dealers who purchase any other types or sizes of Atlantic tuna, or Pacific coast dealers who export or import bluefin tuna, are required to submit biweekly reports only.

III. Data

OMB Number: 0648–0239
Form Number: None
Type of Review: Regular submission for extension of a currently approved collection
Affected Public: Business or other for-profit (tuna dealers)
Estimated Number of Respondents: 452
Estimated Time Per Response: 3 minutes for the daily reports, 16 minutes for the biweekly Atlantic report, 21 minutes for the Pacific biweekly report, and 13 minutes for the biweekly report on other Atlantic tunas.
Estimated Total Annual Burden Hours: 1,087 hours
Estimated Total Annual Cost: $0

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 26, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–4779 Filed 2–29–96; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 022696B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application to modify permit no. 873 (P77(2) #63).

SUMMARY: Notice is hereby given that the Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, CA 92038–0271, has requested a modification to Permit No. 873.

DATES: Written comments must be received on or before April 1, 1996.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Coordinator, Pacific Area Office, NMFS, NOAA, 2570 Dole Street, Room 106, Honolulu, HI 9682–2396 (808/973–2987).

Written data or views, or requests for a public hearing on this request should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, National Marine Fisheries Service, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject modification is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–222).

The Permit Holder is currently authorized to harass (i.e., through vessel approach, photogrammetry, and photographic identification, and tissue biopsy) several marine mammal species in Pacific, Southern, and Indian Oceans, over a 5-year period.

The Permit Holder is now requesting emergency modification of the Permit for authorization to increase the number of humpback whales (*Megaptera novaeangliae*) to be biopsy sampled from 20 to 100 for 1996, including 15 cow/calf pairs (i.e., 30 animals), in Hawaiian waters during the 1996 field season. In light of the Permittee's need to begin sampling activities in March 1996, or otherwise lose a unique research opportunity, we are considering whether this action meets legal criteria for granting the requested modification prior to the close of the 30-day comment period.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 26, 1996.

Ann D. Terbush,

Chief, Permits and Documentotion Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–4751 Filed 2–26–96; 4:53 pm]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Levels for Certain Cotton, Wool and Man-Made Textile Products Produced or Manufactured in Mexico

February 26, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing levels.

EFFECTIVE DATE: March 4, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current levels for Categories 340/640 and 443 are being increased for carryover.

These restrictions and consultation levels do not apply to NAFTA (North America Free Trade Agreement) originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the agreement. In addition, restrictions and consultation levels do not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 57404, published on November 15, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of Annex 300(B) of the North America Free Trade Agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 26, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 8, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996. The levels established in that directive do not apply to NAFTA (North America Free Trade Agreement) originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of NAFTA or to goods assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90.

Effective on March 4, 1996, you are directed to increase the levels for the following categories, pursuant to the provisions of the agreement between the Governments of the United States, Mexico and Canada:

Category	Twelve-month restraint level [1]
340/640	152,945 dozen.
443	180,086 numbers.

[1] The levels have not been adjusted to account for any imports exported after December 31, 1995.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–4852 Filed 2–29–96; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 1, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 13, December 8 and 29, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 53338, 63026 and 67351) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will not have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Administrative Services, Social Security Administration, Great Lakes Program Service Center, 600 West Madison Street, Chicago, Illinois
Janitorial/Custodial, Basewide, Fort Indiantown Gap, Annville, Pennsylvania
Operation of SERVMART, Naval Station, Everett Home Port, Everett, Washington

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–4856 Filed 2–29–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Pocurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities,

and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 1, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Cutting and Assembly of FTESFB for F–15, Robins Air Force Base, Georgia
NPA: Middle Georgia Easter Seal Society, Inc., Dublin, Georgia
Janitorial/Custodial, U.S. Army Health Clinic, Buildings 100, 101, 105, 162, 163, 165, 170, 170A and 170B, Fort McPherson, Georgia
NPA: WORKTEC, Jonesboro, Georgia
Janitorial/Custodial, Lenkalis USARC, 20 Washington Avenue West Hazelton, Pennsylvania
NPA: White Haven Center, White Haven, Pennsylvania

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action does not appear to have a severe economic impact on future contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Neck Strap, Telephone
5965–00–340–6790
Cover, Service Cap
8405–01–046–8544
8405–01–046–8545

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–4857 Filed 2–29–96; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Base Closure and Community Redevelopment and Homeless Assistance Act; Base Realignments and Closures; Economic Security

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This Notice provides the second partial list of closing or realigning military installations pursuant to the 1995 Defense Base Closure and Realignment (BRAC) Report, and the points of contact, addresses, and telephone numbers for the Local Redevelopment Authorities (LRAs) for those installations. Representatives of State and local governments and homeless providers interested in the reuse of an installation should contact the person or organization listed. The following information will be published in a newspaper of general circulation in the area of each installation. There will be additional Notices providing this same information about the LRAs for other closing or realigning installations as those LRAs are recognized by the Office of Economic Adjustment (OEA).

EFFECTIVE DATE: March 1, 1996.

FOR FURTHER INFORMATION CONTACT: Helene O'Connor, Office of Assistant Secretary of Defense for Economic Security, Office of Economic Adjustment, 400 Army Navy Drive, Suite 200, Arlington, VA 22202, (703) 604–5948.

Local Redevelopment Authorities (LRAs) for Closing and Realigning Military Installations

ARKANSAS

Installation Name: Fort Chaffee
LRA Name: Fort Chaffee Redevelopment Authority
Point of Contact: Mr. W. R. Harper, Sebastian County Judge .
Address: County Court House, 35 South 6th Street, Fort Smith, Arkansas 72901
Phone: (501) 783–6139

CALIFORNIA

Installation Name: Long Beach Naval Shipyard
LRA Name: City of Long Beach
Point of Contact: Mr. Gerald Miller
Address: 200 Pine Avenue, Suite 400, Long Beach, California 90802
Phone: (310) 570–3851

Installation Name: McClellan Air Force Base
LRA Name: Board of Supervisors Sacramento County
Point of Contact: Mr. Rob Leonard
Address: 700 H Street, Room 7650, Sacramento, California 95814
Phone: (916) 440–5833

Installation Name: Rio Vista Army Reserve Center
LRA Name: Rio Vista Local Redevelopment Authority
Point of Contact: Mr. Norman Repanich
Address: City of Rio Vista, 1 Main Street, Rio Vista, CA 94571
Phone: (707) 374–6451

Installation Name: Sierra Army Depot
LRA Name: Sierra Army Depot Local Reuse Authority
Point of Contact: Mr. Patrick Landon
Address: 707 Nevada Street, Room 236, Susanville, California 96130
Phone: (916) 251–8308

GUAM

Installation Name: Navy Ship Repair Facility, Guam Naval Activities, Guam Fleet and Industrial Supply Center, Guam
LRA Name: Government of Guam
Point of Contact: Mr. Larry Toves
Address: Cabras Highway, Suite 201, Piti, Guam 96925
Phone: 011(671)477–5931

ILLINOIS

Installation Name: Savanna Army Depot
LRA Name: Savanna Army Depot Local Redevelopment Authority

Point of Contact: Mr. Steven M. Haring
Address: P.O. Box 325, Savanna, Illinois 61074
Phone: (815) 273–4371

MASSACHUSETTS

Installation Name: Naval Air Station South Weymouth
LRA Name: Naval Air Station Planning Committee
Point of Contact: Ms. Mary S. McElroy
Address: Base Transition Field Office, 1134 Main Street, South Weymouth, Massachusetts 02190–5000
Phone: (617) 682–2187
Installation Name: Squantum Gardens and Naval Terrace
LRA Name: City of Quincy
Point of Contact: Mayor James A. Sheets
Address: City Hall, 1305 Hancock Street, Quincy, Massachusetts 02169
Phone: (617) 376–1990

NEW JERSEY

Installation Name: Camp Kilmer
LRA Name: Township of Edison
Point of Contact: Mayor George A. Spadoro
Address: 100 Municipal Boulevard, Edison, New Jersey 08816
Phone: (908) 248–7298
Installation Name: Camp Pedricktown
LRA Name: Oldmans Township Committee
Point of Contact: Mayor George W. Bradford
Address: Oldmans Township, P.O. Box P, Pedricktown, New Jersey 08067
Phone: (609) 299–0780

NEW YORK

Installation Name: Fort Totten
LRA Name: Fort Totten Redevelopment Authority
Point of Contact: Mr. David Nocenti
Address: Counsel to the Borough President, 120–55 Queens Boulevard, New Gardens, New York 11424–1015
Phone: (718) 286–2880

TEXAS

Installation Name: Kelly Air Force Base
LRA Name: Greater Kelly Development Corporation
Point of Contact: Mr. Paul Roberson
Address: Municipal Plaza Building, 10th Floor, 114 West Commerce Street, San Antonio, Texas 78204
Phone: (210) 207–2147

WASHINGTON

Installation Name: Camp Bonneville
LRA Name: Camp Bonneville Local Redevelopment Authority
Point of Contact: Ms. Janice Davin
Address: Clark County Department of Public Works, 1300 Esther Street, P.O. Box 9810, Vancouver, Washington 98666–9810
Phone: (360) 699–2475 Ext. 4330

Dated: February 26, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–4749 Filed 2–29–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

[FE Docket No. EA–111]

Application To Export Electricity; Northeast Utilities Service Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Northeast Utilities Service Company (NUSCO) has requested authorization to export electric energy to Canada.

DATES: Comments, protests, or requests to intervene must be submitted on or before April 1, 1996.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0350.

FOR FURTHER INFORMATION CONTACT: Warren E. Williams (Program Office) 202–586–9629 or Michael T. Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C.§ 824a(e)).

On January 31, 1995, NUSCO filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Canada pursuant to section 202(e) of the FPA. NUSCO is a Connecticut corporation that provides centralized services to and acts as agent for the Northeast Utilities ("NU") System. NU is an investor-owned registered electric utility holding company made up of the following operating companies: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Power and Electric Company, Holyoke Water Power Company, and Public Service Company of New Hampshire.

In its application, NUSCO asserts that the NU System companies currently have, and will have for more than a decade, generating resources greater than those needed to serve their retail customers and committed sales. Therefore, NUSCO proposes to sell surplus electric energy, when available, to Canada, specifically, Hydro-Quebec.

NUSCO proposes to transmit the exported energy to Hydro-Quebec over the international transmission facilities of Vermont Electric Transmission Company. These facilities, also known as the New England/Hydro-Quebec (NE/HQ) Interconnection, consist of a 450-kilovolt (kV), direct current (DC) transmission line that extends from the Sandy Point converter terminal located between the towns of Ayer and Groton, Massachusetts, to the Comerford converter terminal located in the town of Monroe, New Hampshire, and from there to the U.S.-Canada border in the vicinity of Norton, Vermont. The construction of these facilities previously was authorized by DOE in Presidential Permit PP–76. The NU System companies have the right to use 33% of the transfer capacity of the PP–76 facilities for transactions with Hydro-Quebec. In FE Order EA–76–C (February 19, 1993), the New England Power Pool was authorized to use the PP–76 facilities in the export mode at a maximum rate of transmission of 2000 megawatts (MW). Accordingly, NUSCO has requested that FE authorize an electricity export of approximately 665 MW, or 33% of the total capability of the NE/HQ Interconnection.

Procedural Matters

Any persons desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with: Mr. John Ash and Ms. Phyllis E. Lemell, Northeast Utilities Company, P.O. Box 270, Hartford, CT 06140–0270, (860) 665–5626.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on February 27, 1996.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 96–4827 Filed 2–29–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Environment, Safety and Health; Notice of Availability of Funds and Request for Applications To Support Medical Surveillance for Former Department of Energy Workers

AGENCY: Office of Environment, Safety and Health, Department of Energy.

ACTION: Notice of Availability of Funds and Request for Applications.

SUMMARY: The Department of Energy (DOE) Office of Environment, Safety and Health (EH) announces the availability of funds to evaluate former workers whose employment at departmental facilities may have placed their long-term health at significant risk. This Request for Applications is a follow on to a more general, annual notice of potential availability of grants and cooperative agreements for epidemiology and other health studies published in the **Federal Register** (60 FR 50582) on September 29, 1995.

DATES: Applications submitted in response to this announcement must be received by May 15, 1996.

FOR FURTHER INFORMATION CONTACT: Requests for further information and application forms may be directed to Dr. John Peeters, Office of Occupational Medicine and Medical Surveillance (EH–61), U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290; Telephone: (301) 903–5902; facsimile: (301) 903–5072. Applications may be submitted to Dr. Peeters at the address listed above.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Purpose
II. Project Description
III. Applications
IV. Proposal Format
V. Evaluation Criteria
VI. DOE's Role
VII. Applicants

I. Purpose

Section 3162 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484) directs the Secretary of Energy, in consultation with the Secretary of Health and Human Services, to develop a program of medical evaluation for current and former DOE workers at significant risk for health problems due to exposures to hazardous or radioactive substances during employment.

Approximately five medical surveillance projects will be funded through cooperative agreements to identify, and, where appropriate, notify and medically screen groups of former workers who are potentially at significant risk for health problems due to work-related exposures. Because medical surveillance for former workers is a highly complex process, DOE is proposing to fund at this time cooperative agreements for a limited number of projects as described below.

Experience with these projects will help DOE to evaluate options for a more comprehensive medical surveillance program for former workers and to determine how such a program can be effectively integrated with other ongoing site activities.

II. Project Description

DOE intends to award approximately five cooperative agreements with specific goals. The goals of the projects are to:

- Identify groups of workers at significant risk for occupational diseases.
- Notify members of these risk groups.
- Offer these workers medical screening that can lead to medical interventions.

Each cooperative agreement will potentially have two phases. Phase I will be a needs assessment. Phase II will be the implementation of medical screening.

There will be approximately five awards totalling about $2.5 million for phase I. Phase I will take approximately 12 months. Phase II could continue up to 4 years, renewable annually. The award continuation for phase II, if made, will be based on the results from phase I, the availability of funds, and negotiation of the costs for phase II. Only those who participate in phase I will be eligible to participate in phase II.

Phase I

During phase I, the applicants will conduct a comprehensive needs assessment. The needs assessment will include a review of existing site-specific information and other means to initially identify the most significant radiation and nonradiation exposures. During phase I, investigators will:

1. Identify existing information relevant to exposure and health outcomes among former workers;
2. Utilize this information to identify or develop viable methods for contacting these former workers;
3. Provide an initial determination of the most significant worker hazards, problems and concerns for each site;
4. Identify approaches for conducting the project in partnership with unions, site management, operating contractors, community representatives, and State and local health officials; and
5. Attend semiannual DOE-coordinated meetings of investigators to share information on ongoing needs assessments.

During phase I, investigators will develop a detailed plan and proposed budget for phase II focusing on the groups of workers at significant risk for health effects. This plan for phase II is expected at least 60 days prior to the conclusion of phase I. Phase I will conclude with delivery of the needs assessment to DOE.

Phase II

DOE will determine the need for phase II activities and will support these efforts through continuation awards to phase I participants for new budget periods. Where phase II plans are approved by DOE, the investigators will:

1. Identify and locate those former workers who based on their actual or probable exposure history are "at risk";
2. Ascertain the health concerns of former workers identified in task 1 related to their past DOE employment;
3. Communicate risk information to former workers regarding the nature of their health risk and discuss the actions that could be taken;
4. Provide medical screening to targeted former worker populations based on exposure history and the availability of acceptable screening tests;
5. Assist in the coordination of referrals, diagnostic workup, and followup treatment, including the coordination with workman's compensation and other existing insurance and benefits programs;
6. Ensure dialogue with local parties concerned with the project;
7. Evaluate former workers satisfaction with the project; and
8. Attend semiannual DOE-coordinated meetings of investigators to share information on ongoing screening programs.

Potential Sites

Applicants for the cooperative agreements will propose individual (or alternative groups of) DOE sites for study and justify the factors in site(s) selection. Such factors should consider:

1. The presence of existing worker and community health programs;
2. Availability of information on former workers and their exposures;
3. The levels and types of exposures;
4. The number of former workers and access to them;
5. The concerns of workers about specific past exposures;
6. The concerns of DOE site managers and operating contractors about specific past exposures; and
7. The concerns of both national and local unions about past exposures.

III. Applications

This Notice of Availability is issued pursuant to DOE regulations contained in 10 CFR Part 602: Epidemiology and Other Health Studies Financial Assistance Program, as published in the **Federal Register** on January 31, 1995 (60 FR 5841). The Catalog of Federal Domestic Assistance number for 10 CFR part 602 is 81.108, and its solicitation control number is EOHSFAP 10 CFR part 602. 10 CFR 602 contains the specific requirements for applications, evaluation, and selection criteria. Only those applications following these specific criteria and forms will be considered. Application forms may be obtained at the address cited above. Applications will be peer reviewed by evaluators apart from DOE employees and contractors as described under section 10 CFR 602.9(c), and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

IV. Proposal Format

The proposal shall contain two sections, technical and cost. Technical proposals shall be no more than fifty (50) pages in length; resumes of proposed key personnel should be submitted as an appendix to the technical proposal and will not be counted against the page limit. Cost proposals shall have no page limit. Because each project will be conducted in two phases, and the scope of phase II is dependent on the results of phase I, the technical description for phase II may be less specific than that for phase I, but must clearly demonstrate a capability to conduct phase II. It is left to the proposer to determine how best to structure the proposal. However, the following information shall be included:

a. Proposals shall include a detailed project description that discusses the specific tasks to be performed under the proposed project. At a minimum, the tasks listed under section II above must be described. The project description must include clear statements of what is not known and what is uncertain, as well as statements of what is known. The project description must describe how independent, external peer review of the results of the project will be conducted. The project description must demonstrate that the offeror has the ability to integrate their work with the activities of other organizations conducting medical surveillance activities.

b. Proposals must demonstrate the competency of research personnel and the adequacy of resources. Proposals must demonstrate that the offeror is perceived as neutral and credible, and is capable of conducting scientifically valid and responsible medical surveillance projects.

Proposals must demonstrate that the offeror has the experience and capability to plan, organize, manage, and facilitate worker and union participation in planning and execution. Proposals must also demonstrate that the offeror has the experience and ability to effectively communicate complicated scientific information on potential risks and uncertainties, to workers, local and national stakeholders, concerned citizens, and decision makers at all levels. Proposals must demonstrate that the offeror presently has or is capable of obtaining staff with the training, expertise, and experience needed to conduct scientifically complex needs, assessments and medical surveillance programs. Proposals must identify the technical and scientific staff that will actually conduct the studies and detail their professional experience, as well as their level of program involvement. Proposals must demonstrate that the offeror has capability, for both financial and scientific management, and a demonstrated skill in planning and scheduling projects of comparable magnitude to those proposed under this Request for Applications.

c. The cost proposal must include a summary breakdown of all costs, and provide a detailed breakdown of costs on a task-by-task basis for each task contained in the project description. Any expectation concerning cost sharing must be clearly stated. Cost sharing is encouraged, but it will not be considered in the selection process.

V. Evaluation Criteria

DOE will evaluate applications based upon the following criteria in 10 CFR 602.9(d) that are listed in descending order of importance:

1. The scientific and technical merit of the proposed research;
2. The appropriateness of the proposed method or approach;
3. Competency of research personnel and adequacy of proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

VI. DOE's Role

In order for DOE to utilize cooperative agreements for these medical surveillance projects, there must be substantial involvement between DOE and any awardee(s). DOE established the core tasks for these projects and prepared this **Federal Register** Notice of Availability. DOE will conduct the selection and award process, which will include evaluations by persons outside the Federal government. DOE will evaluate the results of phase I and, where warranted, authorize and fund phase II. DOE will facilitate awardee access to the target sites and exposure records. DOE will establish requirements and controls for data collection and handling. DOE will consult with project investigators and coordinate semiannual meetings. DOE will interact with an independent advisory group that will provide advice to DOE and to project investigators.

Finally, DOE will monitor and evaluate the results of the projects, including the participant's level of satisfaction, to determine how these pilots could be expanded to other groups of former workers both at the project sites and at other DOE sites. In addition to helping former workers, information gained from these projects will contribute to DOE's ongoing efforts to improve health and safety programs for current workers.

VII. Applicants

Applicants for the cooperative agreements could include domestic nonprofit and for profit organizations, universities, medical centers, research institutions, other public and private organizations, including State and local governments, labor unions and other employee representative groups, and small, minority and/or women-owned businesses. Consortiums of interested organizations are encouraged to apply. Awardees for each project will work cooperatively with former workers, DOE site officials, DOE operating contractors, labor organizations, health officials, and designated community representatives.

Issued in Washington, D.C., on February 23, 1996.

Paul J. Seligman,

Deputy Assistant Secretary for Health Studies.

[FR Doc. 96–4826 Filed 2–29–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EG96–45–000, et al.]

Yichange CMI Power Developement Company, Ltd., et al.; Electric Rate and Corporate Regulation Filings

February 23, 1996.

Take notice that the following filings have been made with the Commission

1. Yichang CMI Power Development Company, Ltd.

[Docket No. EG96–45–000]

On February 20, 1996, Yichang CMI Power Development Company, Ltd. ("Applicant"), whose business address is Yichang Economic and Technological Development Zone, Yichang, Hubei Province, People's Republic of China, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant intends, directly or indirectly, to own or operate all or part of eligible facilities, including without limitation a 24 MW electric generating facility located in Hubei Province in the People's Republic of China.

Comment date: March 15, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Jamaica Energy Partners

[Docket No. EG96–46–000]

On February 20, 1996, Jamaica Energy Partners, c/o Wartsila Power Development, Inc., 116 Defense Highway, Suite 301, Annapolis, Maryland 21491, filed with the Federal Energy Regulatory Commission an application for redetermination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant will own an approximately 76 MW floating diesel-engine-powered electric generating facility located at Old Harbour Bay, Jamaica. The Facility's electricity will be sold exclusively at wholesale, with the possible exception of some retail sales in Jamaica. None of the electric energy generated by the Facility will be sold to consumers in the United States.

Redetermination of exempt wholesale generator status is sought to reflect that Montana Power Company and Illinois Power Company have become affiliate and associate companies of Applicant.

Comment date: March 15, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Duquesne Light Company

[Docket No. ER96–1018–000]

Take notice that on February 5, 1996, Duquesne Light Company (DLC) filed a Service Agreement dated January 9, 1996, with Allegheny Electric Cooperative, Inc. under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Allegheny Electric Cooperative, Inc. as a customer under the Tariff. DLC requests an effective date of January 9, 1996 for the Service Agreement.

Comment date: March 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Montaup Electric Company

[Docket No. ER96–1090–000]

Take notice that on February 20, 1996, Montaup Electric Company (Montaup), tendered for filing tariffs providing for point-to-point and network transmission service which Montaup states are consistent in all substantive respects with the terms and conditions of service contained in the draft pro forma tariffs included in the Notice of Proposed Rulemaking in "Promoting Wholesale Competition Through Open-Access Non-Discriminatory Transmission Services by Public Utilities," Docket No. RM95–8–000. Montaup also tendered for filing amendments to its system sales tariff to place the transmission of those sales under its proposed point-to-point tariff. Montaup asks that the Commission allow the filing to become effective on April 21, 1996.

Comment date: March 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. IES Utilities Inc.

[Docket No. ER96–1091–000]

Take notice that on February 20, 1996, IES Utilities Inc. (IES), tendered for filing proposed changes in its FERC Electric Service Tariff, Original Volume 1. The proposed changes would amend the IES and Central Iowa Power Cooperative (CIPCO) Operating and Transmission Agreement by adding Appendix 14.

Appendix 14 deals with the division of revenues received via the Mid-America Power Pool (MAPP) Transmission Service Change. IES and CIPCO operate a combined control area and are recognized as one entity by MAPP. Power sales/purchases that utilize the IES/CIPCO transmission system will result in a revenue stream to IES/CIPCO from MAPP. The method in Appendix 14 divides these revenues on the basis of installed rules of high voltage transmission line averaged with installed MVA of transmission voltage transformers for each of the parties.

Copies of the filing were served upon CIPCO and the Iowa State Utilities Board.

Comment date: March 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Power, Inc.

[Docket No. ER96–1092–000]

Take notice that on February 20, 1996, Entergy Power, Inc. (Entergy Power), tendered for filing a unit power sale agreement between Entergy Power and City of Tallahassee. Entergy Power requests an effective date for the Agreement of March 1, 1996, and respectfully requests waiver of the Commission's notice requirements under § 35.11 of the Commission's Regulations.

Comment date: March 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER96–1093–000]

Take notice that on February 20, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Electric Sales Agreement, dated February 1, 1996, between Cinergy, CG&E, PSI and WestPlains Energy-Kansas (WPE–KS).

The Electric Sales Agreement provides for the following service between Cinergy and WPE–KS:

1. Service Schedule A—Emergency Service
2. Service Schedule B—System Energy
3. Service Schedule C—Negotiated Capacity and Energy

Cinergy and WPE–KS have requested an effective date of March 1, 1996.

Copies of the filing were served on WestPlains Energy-Kansas, the State Corporation Commission, the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: March 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric Company

[Docket No. ER96–1094–000]

Take notice that on February 20, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Rainbow Energy Marketing Corporation under Rate GSS.

Comment date: March 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Louisville Gas and Electric Company

[Docket No. ER96–1095–000]

Take notice that on February 20, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Louis Dreyfus Electric Power Inc. under Rate GSS.

Comment date: March 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Louisville Gas and Electric Company

[Docket No. ER96–1096–000]

Take notice that on February 20, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Koch Power Services Inc. under Rate GSS.

Comment date: March 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas and Electric Company

[Docket No. ER96–1097–000]

Take notice that on February 20, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Catex Vitol Electric under Rate GSS.

Comment date: March 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas and Electric Company

[Docket No. ER96–1098–000]

Take notice that on February 20, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Noram Energy Services under Rate GSS.

Comment date: March 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER96–1099–000]

Take notice that on February 20, 1996, PECO Energy Company (PECO), filed a Service Agreement dated February 1, 1996, with Commonwealth Edison Company (Commonwealth Edison) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Commonwealth Edison as a customer under the Tariff.

PECO requests an effective date of February 1, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Commonwealth Edison and to the Pennsylvania Public Utility Commission.

Comment date: March 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Illinois Power Company

[Docket No. ER96–1100–000]

Take notice that on February 20, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which MidCon Power Services Corp. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of January 17, 1996.

Comment date: March 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. John E. Lobbia

[Docket No. ID–2478–001

Take notice that on December 28, 1995, John E. Lobbia, (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Chief Executive Officer, Chairman and Director—Detroit Edison Company
Director—NBD Bank, Detroit

Comment date: March 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Terence E. Adderley

[Docket No. ID–2930–000]

Take notice that on December 28, 1995, Terence E. Adderley, (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Director—Detroit Edison Company
Director—First Chicago NBD Corporation

Comment date: March 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4767 Filed 2–29–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2170–003 Alaska]

Chugach Electric Association, Inc.; Notice of Availability of Environmental Assessment

February 26, 1996.

An environmental assessment (EA) is available for public review. The EA is for an application to amend the license for the Cooper Lake Project. The application is to relocate an approximately 1.7-mile-long section of the project's existing 115-kilovolt transmission line and associated 100-foot-wide right-of-way. The EA finds that approval of the application would not constitute a major Federal action significantly affecting the quality of the human environment. The Cooper Lake Project is located on Cooper Lake, Cooper Creek, Kenai Lake in the Municipality of Anchorage, Alaska.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for review at the Commission's Reference and Information Center, Room 2–A, 888 First Street, N.E., Washington, DC 20426.

For further information, please contact Jon Cofrancesco at (202) 219–0079.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4765 Filed 2–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–153–000]

Southern Natural Gas Company; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed North Alabama Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

February 26, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the North Alabama Pipeline Project.[1] This EIS will be used by the Commission in its decision-making process to determine whether to approve the project.

We are asking a number of Federal agencies to indicate whether they wish

[1] Southern Natural Gas Company's application was filed with the Commissioner under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

to cooperate with us in the preparation of the EIS. These agencies are listed in appendix 1 and may choose to participate once they have evaluated each proposal relative to their agencies' responsibilities.[2]

Summary of the Proposed Project

Southern Natural Gas Company (Southern) wants to expand the capacity of its facilities in Alabama to transport an additional 76,350 thousand cubic feet per day of natural gas to five local distribution companies. Southern seeks authority to construct and operate:

- About 105 miles of 16-inch-diameter pipeline in Tuscaloosa, Fayette, Walker, Cullman, Morgan, and Madison Counties, Alabama. The proposed pipeline would begin at a tie-in at Southern's existing McConnells Compressor Station in Tuscaloosa County, Alabama, and proceeds northeast to its termination in Madison County, Alabama;
- Two new meter stations: Huntsville Meter Station and North Alabama Gas District Meter Station, both located in Madison County, Alabama;
- About 8.5 miles of 12-inch-diameter lateral and the Decatur Meter Station in Morgan County, Alabama;
- One additional 1,600-horsepower (hp) compressor at Southern's existing McConnells Compressor Station in Tuscaloosa County, Alabama; and
- One additional 4,700-hp compressor at Southern's recently authorized Providence Compressor Station (approved by the Commission in May 1995 in Docket No. CP95–505–000) in Tuscaloosa County, Alabama.

The general location of the project facilities are shown in appendix 2.[3]

Land Requirements for Construction

Construction of the proposed facilities would require about 935 acres of land. Following construction, about 329 acres would be maintained as new right-of-way. The remaining 606 acres of land would be restored and allowed to revert to its former use.

Southern proposes to use a 70-foot-wide right-of-way in nonagricultural areas; and a 90-foot-wide right-of-way in agricultural areas. Southern proposes to maintain a 50-foot-wide permanent easement.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and Soils

—Seismology and soil liquefaction.
—Hazardous waste.
—Effect of blasting.
—Topsoil/subsoil mixing.
—Soil compaction.
—Erosion control.
—Right-of-way restoration.

- Water Resources

—Groundwater withdrawal and discharge to surrounding surface waters.
—Directional drilling of the Tennessee River.
—128 perennial waterbody crossings, including Sipsey Fork, Lost River, and the North River.
—Effect on water quality and riparian resources.

- Biological Resources

—Effect of pipeline construction and operation on wildlife and fisheries habitat.
—Effect on federally threatened, endangered, or sensitive animal and plant species and their habitats.
—Effect on forested wetlands and other wetland habitats.

- Cultural Resources

—Effect on historic and prehistoric sites.
—Native American and tribal concerns.

- Land Use

—Impact on Wheeler Wildlife Refuge and other areas of critical environmental concern.
—Consistency with local land use plans and zoning.
—Impact on residences and recreation areas.

- Air Quality and Noise

—Air quality and noise impacts associated with construction.
—Effect on local and regional air quality and local noise environment as a result of operation of additional compression at the McConnells and Providence Compressor Stations.

- Reliability and Safety

—Assessment of hazards associated with natural gas pipelines.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will result in the publication of a Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for these proceedings. A 45-day comment period will be allocated for the review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Southern. Keep in mind that this is a preliminary list:

- Twenty-three federally listed endangered or threatened species may occur in the proposed project area.
- About 33 acres of forested wetlands would be affected.
- About 128 perennial streams, several over 50 feet-wide, would be crossed by the proposed project.
- About 391 acres of upland forest would be affected.
- The proposed pipeline crosses the Wheeler National Wildlife Refuge (Tennessee River) from mileposts (MP) 107.81 to 108.72.
- Nineteen residences are located within 50 feet of the proposed construction right-of-way.

The list of issues may be added to, subtracted from, or changed based on your comments and our analysis.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426 or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Two nonjurisdictional small-diameter pipeline laterals are associated with this proposal. These laterals would service the municipal of Decatur and Huntsville, Alabama. We have determined that those facilities will be included in the environmental document.

Public Participation/Scoping Meeting

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP96–153–000;
- Send a copy of your letter to: Ms. Alisa Lykens, EIS Project Manager, Federal Energy Regulatory Commission, 888 First St., N.E., PR 11.1, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before April 5, 1996.

Beyond asking for written comments, we invite you to attend our public scoping meeting that will be held on Monday, April 1, 1996 at 7:00 p.m., at the Sheraton Airport Inn, 1000 Glenn Hearn Blvd., Huntsville, Alabama 35824, (205) 772–9661.

The purpose of the scoping meeting is to obtain input from state and local governments and from the public. Federal agencies have formal channels for input into the Federal process (including separate meetings where appropriate) on an interagency basis. Federal agencies are expected to transmit their comments directly to the FERC and not use the scoping meetings for this purpose.

Southern will be invited to present a description of its proposal at the scoping meeting. Interested groups and individuals are encouraged to attend the meeting and present oral comments on the environmental issues which they believe should be addressed in the Draft EIS. The more specific your comments, the more useful they will be. Anyone who would like to make an oral presentation at the meeting should contact the EIS Project Manager identified at the end of this notice to have his or her name placed on the list of speakers. Priority will be given to those persons representing groups. A list will be available at the public meeting to allow for non-preregistered speakers to sign up. A transcript will be made of the meeting and comments will be used to help determine the scope of the Draft EIS.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested and/or potentially affected by the proposed project. It is also being sent to all potential right-of-way grantors to solicit focused comments regarding environmental considerations related to the proposed project.[4] As details of the project become established, representatives of Southern will directly contact landowners, communities, and public agencies concerning any other matters, including acquisition of permits and rights-of-way.

If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EISs, please return the Information Request (appendix 4). If you do not return the Information Request you will be taken off the mailing list.

Additional information about the proposed project is available from Ms. Alisa Lykens, EIS Project Manager, at (202) 208–0766.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4766 Filed 2–29–96; 8:45 am]

BILLING CODE 6717–01–M

[4] Southern has supplied a preliminary landowner list. This list is based on the ownership of the land containing the existing right-of-way. A supplemental mailing will be made, if necessary, after the route has been surveyed.

[Project Nos. 10773–015, et al.]

Hydroelectric Applications [Alaska Aquaculture, Inc. et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: Amendment of license.

b. Project No: 10773–015.

c. Date Filed: Original date: March 13, 1995. Supplemental date: February 8, 1996.

d. Applicant: Alaska Aquaculture, Inc.

e. Name of Project: Burnett River Hatchery.

f. Location: First Judicial District Alaska.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. Section 791(a)–825(r).

h. Applicant Contact: Mr. Tod Jones, Box 830, 730 Case Ave., Suite C, Wrangell, AK 99929, (907) 874–2250.

i. FERC Contact: Susan Tseng, (202) 219–2798.

j. Comment Date: April 3, 1996.

k. Description of Project: Alaska Aquaculture has filed an application to approve revised exhibit G drawings for the Burnett River Hatchery. The revised exhibit G drawings show a change in project boundary for the project. The amount of federal lands within the project boundary for the project would decrease from 550 acres to 170 acres.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

2 a. Type of filing: Notice of Intent to File Application for New License.

b. Project No.: 2060.

c. Date filed: January 22, 1996.

d. Submitted By: Niagara Mohawk Power Corporation, current licensee.

e. Name of Project: Carry Falls.

f. Location: On the Raquette River, in the Town of Colton, St. Lawrence County, New York..

g. Filed Pursuant to: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. Effective date of original license: February 1, 1951.

i. Expiration date of original license: January 31, 2001.

j. The project consists of: (1) a 76-foot-high, 830-foot-long concrete gravity-type dam with an overflow spillway; (2) two 14.5-foot by 27-foot Tainter regulating gates; (3) an intake for future power installation; (4) five earth dikes with lengths varying from 320 feet to 1,015 feet and maximum heights varying from 12 feet to 31 feet; (5) a 5-mile-long reservoir having a 3,170 acre surface area and a 114,000 acre-foot storage capacity at normal pool elevation 1,385 feet m.s.l.; and (6) appurtenant facilities. The project has no installed generating capacity.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Niagara Mohawk Power Corporation, Hydro Licensing & Regulatory Compliance, D–2, 300 Erie Boulevard West, Syracuse, New York 13202, Contact: Jerry L. Sabattis (315) 428–5582.

l. FERC contact: Charles T. Raabe (202) 219–2811.

m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by January 31, 1999.

3 a. Type of filing: Notice of Intent to File Application for New License.

b. Project No.: 2084.

c. Date filed: January 22, 1996.

d. Submitted By: Niagara Mohawk Power Corporation, current licensee.

e. Name of Project: Upper Raquette River.

f. Location: On the Raquette River, in the Towns of Colton and Parishville, St. Lawrence County, New York.

g. Filed Pursuant to: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. Effective date of original license: February 1, 1952.

i. Expiration date of original license: January 31, 2002.

j. The project consists of five developments:

(1) the Stark Falls Development comprising: (a) a 35-foot-high concrete gravity-type dam with a concrete overflow section and a control gate section flanked by earth dikes; (b) six earth saddle dikes; (c) a 1.5-mile-long reservoir at normal pool elevation 1,355.0 feet USGS; (d) an intake; (e) a penstock; (f) a powerhouse containing a 23,872–Kw generating unit; and (g) appurtenant facilities;

(2) the Blake Falls Development comprising: (a) a 75-foot-high concrete gravity-type dam with a concrete overflow section; (b) an earth dike; (c) a 5.5-mile-long reservoir at normal pool elevation 1,250.5 feet USGS; (d) an intake; (e) a penstock; (f) a powerhouse containing a 13,913–Kw generating unit; and (g) appurtenant facilities;

(3) the Rainbow Falls Development comprising: (a) a 75-foot-high concrete gravity-type dam with a concrete overflow section flanked by a 1,600-foot-long earth dike; (b) an earth saddle dike; (c) a 3.5-mile-long reservoir at normal pool elevation 1,181.5 feet USGS; (d) an intake; (e) a penstock; (f) a powerhouse containing a 22,828–Kw generating unit; and (g) appurtenant facilities;

(4) the Five Falls Development comprising: (a) a 50-foot-high concrete gravity-type dam with a concrete overflow section flanked at each end by an earth dike; (b) a 1.0-mile-long reservoir at normal pool elevation 1,077.0 feet USGS; (c) an intake; (d) a 1,200-foot-long penstock; (e) a powerhouse containing a 22,828–Kw generating unit; and (f) appurtenant facilities; and

(5) the South Colton Development comprising: (a) a 45-foot-high concrete gravity-type dam with a concrete overflow section and earth abutments; (b) a 1.5-mile-long reservoir at normal pool elevation 973.5 feet USGS; (c) an intake; (d) a 1,300-foot-long penstock; (e) a powerhouse containing an 18,948–Kw generating unit; and (f) appurtenant facilities.

The project has a total installed capacity of 102,389–Kw.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Niagara Mohawk Power Corporation Hydro Licensing & Regulatory Compliance, D–2, 300 Erie Boulevard West, Syracuse, New York 13202, Contact: Jerry L. Sabattis (315) 428–5582.

l. FERC contact: Charles T. Raabe (202) 219–2811.

m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by January 31, 2000.

4 a. Type of Application: Plans and specifications for the Queensbury Site Remedial Action Plan.

b. Project No.: 2482.

c. Dated Filed: February 12, 1996.

d. Applicant: Niagara Mohawk Power Corp. (NIMO).

e. Name of Project: Hudson Project, Sherman Island Development.

f. Location: Hudson River, at Corinth Road, 4 miles west of the City of Glens Falls, Warren County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Mr. Sam S. Hirschey, Niagara Mohawk Power Corp., 300 Erie Boulevard West, Syracuse, NY 13202 (315) 428–5561.

i. FERC Contact: Joseph C. Adamson, (202) 219–1040.

j. Comment Date: March 25, 1996.

k. Description of Proposed Action: NIMO filed, for Commission approval, plans and specifications for the Queensbury Site Remedial Action Plan for the removal of polychlorinated biphenyls (PCBs) contaminated sediments within the project boundary. The site consists of approximately 0.75 acre of upland and 8 acres of contaminated sediment along the shoreline of the Hudson River. The proposal consists of removing approximately 5,150 tons of contaminated sediment from the site, of which 3,800 tons are non-hazardous and 1,250 tons hazardous. The hazardous sediment will be transported and deposited in a hazardous material disposal site. The removal plan consists of: (a) lowering the project's reservoir by 4 feet to the approximate elevation of 346 feet; (b) installing a water-filled bladder cofferdam along the edge of the river side of the site; (c) excavation of near shore material to a uniform depth of 2 feet; (d) excavation of upland soil to a uniform depth of 1 foot, within the upland soil excavation limits; and (e) placement of erosion and sediment control measures. After removal is completed the site will be restored. The restoration plan consists of: (a) backfilling the site with 5,000 tons of backfill material and 1,550 tons of topsoil; (b) grading and placement of rip rap, a boulder edge system, stone channels, and a boulder wall; and (b) revegetating the site with woody species and field grass.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

5 a. Type of filing: Notice of Intent to File An Application for a New License.

b. Project No.: 2697.

c. Date filed: January 31, 1996.

d. Submitted By: Northern States Power Company, current licensee.

e. Name of Project: Cedar Falls.

f. Location: On Red Cedar River, in Dunn County, Wisconsin.

g. Filed Pursuant to: 18 CFR 16.6 of the Commission's regulations.

h. Effective date of original license: April 17, 1956.

i. Expiration date of original license: January 31, 2001.

j. The project consists of: (1) a 19-foot-high, 508-foot-long concrete dam; (2) a 7-mile-long reservoir having an 1,800 acre surface area at normal pool

elevation; (3) an intake structure; (4) a penstock; (5) a powerhouse containing three generators with a total installed capacity of 6,000-kW; and (6) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Northern States Power Company, 100 North Barstow street, P.O. Box 8, Eau Claire, WI 54702, Contact: Lloyd Everhart (715) 839–2692.

l. FERC contact: Charles T. Raabe (202) 219–2811.

m. Pursuant to 18 CFR 16.8, 16.9, and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by January 31, 1999.

6 a. Type of Application: Major License.

b. Project No.: 10805–002.

c. Date filed: September 25, 1992.

d. Applicant: Midwest Hydraulic Company.

e. Name of Project: Hatfield Hydro Project.

f. Location: On the Black River, in Jackson and Clark Counties, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. Applicant Contact: Peter H. Burno, R.R. #2, Box 345, Edgerton, WI 53534, (608) 884–9416.

i. FERC Contact: Mary C. Golato (202) 219–2804.

j. Deadline Date: April 12, 1996.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D10.

l. Description of Project: The proposed project consists of the following: (1) an existing diversion dam 3,100 feet long and 48 feet high; (2) an existing reservoir with a surface area of 945 acres with a gross storage capacity of 10,800 acre-feet; (3) two 10-foot-diameter penstocks extending 265 feet long; (4) an existing powerhouse containing two existing turbine-generator units at a total capacity of 6,000 kilowatts (Kw) and two proposed low flow units at a total rated capacity of 532 Kw; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 20,000,000 kilowatthours. The dam is owned by Hatfield Hydro Partnership.

m. Purpose of the Project; All project energy generated would be utilized by the applicant for sale.

n. This notice also consists of the following standard paragraphs: A4 and D10.

In responding, commenters may submit a copy of their comments on a 3½ inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the text need only be submitted in the format and version that it was generated (i.e., MS Word, WordPerfect 5.1/5.2, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS machines.

o. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 1st Street, NE., Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. Peter H. Burno, R.R. #2, Box 345, Edgerton, WI (608) 884–9416.

7 a. Type of Application: Original License.

b. Project No.: 11478–000.

c. Date Filed: May 9, 1994, and amended on April 21, 1995.

d. Applicant: Central Vermont Public Service Corporation.

e. Name of Project: Silver Lake Project.

f. Location: On the Sucker Brook in Addison County, Vermont.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Bruce Peacock, Central Vermont Public Service Corporation, 77 Grove Street, Rutland, Vt. 05701, (802) 747–5463.

i. FERC Contact: Jim Haimes (202) 219–2780.

j. Deadline Date: See standard paragraph D10.

k. Status of Environmental Analysis: This application has been accepted for filing and is ready for environmental analysis at this time.

l. Description of Project: The existing, operating Silver Lake Project consists of three separate developments: (1) the Sugar Hill storage reservoir; (2) the Sucker Brook diversion facility; and (3) the Silver Lake dam, reservoir, and powerhouse.

The Sugar Hill reservoir, created by the Goshen Dam, has a surface area of 74 acres and a gross storage capacity of 1,590 acre-feet at the normal surface elevation of 1,768 feet United States Geological Survey (USGS) datum. The Goshen Dam consists of an earthfill embankment section, about 680 feet long with a maximum height of 60 feet, and a spillway with a crest elevation of 1,768 feet (USGS) composed of two sections. The eastern section, about 50 feet long, is constructed of mortared rubble and capped with reinforced concrete; the western section is about 100 feet long, and is constructed of reinforced concrete, with wooden trash racks and a concrete gate. A square, reinforced concrete conduit (4 feet by 4 feet), 12 inches thick, and about 232 feet long, conveys water from an intake structure through the embankment to the outlet structure. The reinforced concrete outlet structure is controlled by five gate valves (with two 6-inch, two 8-inch, and one 10-inch diameter valves) and discharges into Sucker Brook.

The Sucker Brook diversion dam creates an impoundment with a surface area of about 2 acres and a gross storage capacity of 20 acre-feet at the maximum surface elevation of 1,312 feet USGS. At the normal pond elevation of 1,288 feet USGS, the surface area of the impoundment is less than a quarter of an acre, resulting in about 1 acre-foot of storage volume. The dam consists of an earth embankment, approximately 665 feet long with a maximum height of 38 feet; the spillway consists of a 60-foot-long concrete weir. An intake structure contains a manually operated timber headgate with trash racks. A penstock with a diameter ranging from 36 inches at the intake structure to 42 inches at the outfall extends 7,000 feet from the Sucker Brook diversion dam to Silver Lake, with sections comprised of corrugated metal, wood stave, and concrete pipe.

The Silver Lake portion of the project consists of a reservoir with a surface area of 110 acres and a gross storage volume of 3,120 acre-feet at the normal surface elevation of 1,250 feet USGS. The dam consists of a buttressed concrete wall section with earthfill on the upstream and downstream sides of the wall. The dam is approximately 257 feet long with a maximum height of 30 feet. The intake is a reinforced concrete structure with trash racks. There is a 60-foot-long conduit that conveys water from the intake structure into the outlet structure, which is also reinforced concrete topped with a wooden superstructure, containing an electrically operated slide gate. A penstock extends about 5,200 feet from the Silver Lake outlet structure to the powerhouse. It is constructed of fiberglass (2,400 feet), wood stave (100 feet), and steel (2,400 feet), with a surge tank located between the wood stave section and the steel section. The penstock diameter ranges from 48 inches at the intake structure to 36 inches at the surge tank.

The project powerhouse is about 47 feet by 67 feet, with a concrete substructure and a brick superstructure, containing: a single horizontal Francis turbine, rated at 3,000 horsepower (hp), with a maximum hydraulic capacity of 60 cubic feet per second (cfs), which operates with a net head of 645 feet; a horizontal shaft generator, rated 2,750 kilovolt-ampere (kVA); and appurtenant facilities. The project's 2,200-kilowatt generator produces an average annual generation of 6,443,000 kilowatt-hours.

m. Purpose of Project: Project power is distributed to customers of the Central Vermont Public Service Corporation.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. Available Location of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the Central Vermont Public Service Corporation, 77 Grove Street, Rutland, Vt. 05701, (802) 747–5463.

8 a. Type of Application: New License.

b. Project No.: 137–002.

c. Date Filed: December 26, 1972.

d. Applicant: Pacific Gas and Electric Company (PG&E).

e. Name of Project: Mokelumne River Project.

f. Location: On the North Fork Mokelumne River in Alpine, Amador, and Calaveras Counties, California.

g. Field pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. David Moller, Pacific Gas and Electric Company, 201 Mission Street, P.O. Box 770000, San Francisco, CA 94177, (415) 973–4696.

i. FERC Contact: Tom Dean (202) 219–2778.

j. Deadline Date: See standard paragraph D10.

k. State of Environmental Analysis: This application has been accepted for filing and is ready for environmental analysis at this time.

l. Description of Project: The existing Mokelumne Project consists of six storage reservoirs and four developments.

The six storage reservoirs include: (1) the 343-acre Upper Blue Lake with a useable storage capacity of 7,300 acre-feet, and a 837-foot-long, 31-foot-high dam; (2) the 198-acre Lower Blue Lake with a useable storage capacity of 5,091 acre-feet, and a 1,063-foot-long, 40-foot-high dam; (3) the 106-acre Twin Lake with a useable storage capacity of 1,207 acre-feet, and a 1,520-foot-long, 22-foot-high dam; (4) the 140-acre Meadow Lake with a useable storage capacity of 5,656 acre-feet, and a 775-foot-long, 77-foot-high dam; (5) the 169-acre Upper Bear River reservoir with a usable storage capacity of 6,756 acre-feet, and a 760-foot-long, 77-foot-high dam; and (6) the 727-acre Lower Bear River reservoir with a useable storage capacity of 49,079 acre-feet, and a 979-foot-long, 249-foot-high dam connected by rock to a 865-foot-long, 145-foot-high second dam.

The Salt Springs Development consists of: (1) a 1,257-foot-long, 328-foot-high dam with a 480-foot-long spillway and 13 radial gates; (2) the 963-acre Salt Springs reservoir with a useable storage capacity of 141,817 acre-feet; (3) a 19-foot-long, 10-foot-diameter buried penstock; (4) a powerhouse with two turbine generators having a combined installed capacity of 39.1 megawatts (MW); (5) a 16.5-mile-long, 115 kilovolt (kV) transmission line; and (6) appurtenant facilities.

The Tiger Creek Development consists of: (1) the upper Tiger Creek Conduit comprised of 14.8 miles of flume, 2.7 miles of tunnel, and 0.3 miles of penstock; (2) the lower Tiger Creek Conduit is a 2.5-mile-long flume receiving water from six diversion dams including: (a) the 187-foot-long Cole Creek diversion; (b) the 91-foot-long Cole Creek feeder, and a 315-foot-long, 3 and 5-foot-diameter penstock; (c) the 102-foot-long Bear River feeder, and a 528-foot-long, 6-foot horseshoe tunnel, and 737-foot-long flume; (d) the 43-foot-long Beaver Creek feeder, and a 475-foot-long, 16-inch-diameter penstock; (e) the 64-foot-long East Panther Creek feeder, and a 635-foot-long, 36-inch-diameter penstock; and (f) the 58-foot-long West Panther Creek feeder, and a 3,696-foot-long penstock; (3) the 486-foot-long, 100-foot-high Tiger Creek Regulator dam; (4) a 13-acre reservoir with a useable storage capacity of 234-acre-feet; (5) the 900-foot-long, 33-foot-high Tiger Creek Forebay dam; (6) a 2.3-acre reservoir with a useable storage capacity of 42 acre-feet; (7) a 96-inch-diameter penstock, and a 24-inch-diameter sluice penstock; (8) a powerhouse with two turbine generators having a combined installed capacity of 51 MW; (9) a 13.8-mile-long and a 23.4-mile-long, 230 kV transmission line; and (10) appurtenant facilities.

The West Point Development consists of: (1) the 448-foot-long, 100-foot-high Tiger Creek Afterbay dam; (2) a 70-acre reservoir with a useable storage capacity of 2,606 acre-feet; (3) the 15-foot 6-inch by 13-foot, 2.7-mile-long West Point Tunnel; (4) a 84 and 120-inch-diameter penstock; (5) a powerhouse with a turbine generator having an installed capacity of 12.8 MW; (6) a 23.5-mile-long, 60 kV transmission line; and (7) appurtenant facilities. PG&E proposes to upgrade the turbine generator unit by 0.8 MW to 13.6 MW.

The Electra Development consists of: (1) the 188-foot-long Electra diversion dam; (2) the 15-foot 6-inch by 13-foot-wide, 8-mile-long Electra Tunnel; (3) the 636-foot-long, 123-foot-high Lake Tabeaud dam; (4) a 42-acre reservoir with a useable storage capacity of 990 acre-feet; (5) the 12-foot by 12-foot, 0.5-mile-long Tabeaud Tunnel; (6) a powerhouse with three turbine generators with an installed capacity of 84.4 MW; and (7) appurtenant facilities.

The project lands for the Mokelumne Project include 1,059 acres administered by the Eldorado and Stanislaus National Forests and 49 acres administered by the Bureau of Land Management (BLM). A 25,000-acre State Game Refuge and the 12,200-acre Mokelumne Archaeological District are also within the project boundaries.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2–A, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Pacific Gas and Electric Company, 201 Mission Street, San Francisco, CA 94177, or by calling David Moller at (415) 973–4696.

9 a. Type of Application: Major New License.

b. Project No.: 1984–056.

c. Date filed: January 25, 1996.

d. Applicant: Wisconsin River Power Company.

e. Name of Project: Petenwell and Castle Rock Project.

f. Location: on the Wisconsin River in Adams, Juneau, and Wood Counties, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. Applicant Contact: Mr. Richard L. Hilliker, President, Wisconsin River Power Company, P. O. Box 8050, Wisconsin Rapids, WI 54495, (715) 422–3722.

i. FERC Contact: Robert Bell (202) 219–2806.

j. Comment Date: 60 days from the filing date in paragraph C.

k. Description of Project: The current licensed project consists of the following two developments:

Petenwell Development

(1) the existing Petenwell Dam consists of a series of dams and dikes 15,505 feet long and approximately 38 feet high; (2) an impoundment having a surface area of 25,180 acres, with a storage capacity of 495,000 acre-feet at normal water surface elevation of 923.9 feet msl; (3) the Existing intake structure; (4) the existing powerhouse having 4 generating units having a total installed capacity of 20–MW; (5) an existing transmission line; and (6) appurtenant facilities.

Castle Rock Development

(1) the existing Castle Rock Dam consist of a series of dams and dikes 19,374 feet long and approximately 30 feet high; (2) an impoundment having a surface area of 14,900 acres and storage capacity of 136,000 acre-feet at normal water surface elevation of 881.9 feet msl; (3) the Existing intake structure; (4) the existing powerhouse having 5 generating units having a total installed capacity of 15–MW; (5) an existing transmission line; and (6) appurtenant facilities.

No additional is being proposed for this project under this new license.

l. With this notice, we are initiating consultation with the *Wisconsin STATE HISTORIC PRESERVATION OFFICER (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's Regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (April 22, 1996 for Project No. 11478–000 and April 23, 1996 for Project No. 137–002). All reply comments must be filed with the Commission within 105 days from the date of this notice (June 6, 1996 for Project No. 11478–000 and June 7, 1996 for Project No. 137–002). Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: February 26, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4768 Filed 2–29–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–191–000, et al.]

Southern Natural Gas Company, et al.; Natural Gas Certificate Filings

February 23, 1996.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

[Docket No. CP96–191–000]

Take notice that on February 15, 1996, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama, 35202–2563, filed in Docket No. CP96–191–000 a request pursuant to Section 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval to change the operation of a meter station for delivery of gas to Apache Corporation (Apache), a producer, for use in its production activities located offshore, Louisiana, under Southern's blanket certificate authority issued in Docket No. CP82–406–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to modify an existing meter station located on the production platform at or near Block 151, offshore, Louisiana, by replacing and reversing one of two 6 inch meters at the existing meter station with a three inch meter in order to deliver gas to Apache. Southern indicates that Apache has agreed to reimburse Southern for the total actual cost of modifying the existing station to allow for the delivery of gas. It is further indicated that such cost is estimated to be $52,172.

Southern advises that it will provide the transportation service to the meter station pursuant to the terms and conditions of Southern's Rate Schedule IT. Southern states that SONAT Marketing Company has requested transportation of the gas for delivery at the meter station under Southern's FERC Gas Tariff by having the meter station added as a delivery point to its Service Agreement dated October 1, 1995. Southern indicates that it will provide Apache with an average 500 Mcf of natural gas per day and 182,500 Mcf annually on an interruptible basis under its Part 284 blanket certificate.

Southern states that performance of the interruptible transportation service for delivery to Apache at the meter station will have no significant impact on Southern's peak day or firm service obligations. Southern further states that the modification and operation of the existing facilities is allowed by its tariff. It is indicated that Southern has the capacity to accomplish the deliveries proposed by the installation without detriment or disadvantage to its firm customers.

Comment date: April 8, 1996, in accordance with Standard Paragraph G at the end of this notice.

2. K N Wattenberg Transmission Limited Liability Company

[Docket No. CP96–195–000]

Take notice that on February 16, 1996, K N Wattenberg Transmission Limited Liability Company (K N Wattenberg), located at 370 Van Gordon Street, Lakewood, Colorado 80228, filed in Docket No. CP96–195–000, an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Part 157 of the Commission's Regulations for authorization permitting and approving the abandonment of three compressor units and appurtenant facilities currently located at its Brighton Compressor Station in Adams County, Colorado by transfer to K N Gas Gathering, Inc. (KNGG). K N Wattenberg further states that it does not have any need for these excess compressor units elsewhere on its system. Finally, K N Wattenberg states that no customer will have its existing service terminated or diminished as a result of the proposal herein.

Comment date: March 15, 1996, in accordance with Standard Paragraph F at the end of this notice.

3. NorAm Gas Transmission Company

[Docket No. CP96–197–000]

Take notice that on February 16, 1996, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–197–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.216) for authorization to replace certain meter facilities used to provide service to Arkla, a distribution division of NorAm Energy Corp. (Arkla), under NGT's blanket certificate issued in Docket No. CP82–384–000, et al., pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to continue to operate certain meter facilities which were installed due to the emergency situation created by extreme cold winter conditions and the sudden unanticipated increase in demand from its existing customer base located at its Town Border Station No. 2 in Searcy, Arkansas, as reported in Docket No. EM96–7–000. NGT specifically seeks authority to abandon a 4-inch diaphragm meter and two 1-inch regulators originally installed under authorization in Docket No. CP68–108–000.[1] Further, NGT seeks to continue operating a new 4-inch rotary meter and two new 1-inch regulators that were installed under the emergency provisions of Section 284.261. NGT states that it replaced its meter station facilities to allow for peak deliveries of 1,200 MMBtu per day. NGT advises that Arkla has agreed to reimburse NGT for the cost of replacing the facilities, estimated to be $10,529.

Comment date: April 8, 1996, in accordance with Standard Paragraph G at the end of this notice.

4. Koch Gateway Pipeline Company and Texas Eastern Transmission Corporation

[Docket No. CP96–200–000]

Take notice that on February 20, 1996, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, and Texas Eastern Transmission Corporation (TETCO), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP96–200–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to reassign certain exchange volumes to various delivery points under blanket certificates issued to Koch Gateway in Docket No. CP82–430–000 and to TETCO in Docket No. CP82–535–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway and TETCO propose to remove the Sharon exchange point from the transmission and exchange agreements on file with the Commission as Koch Gateway's Rate Schedule Nos. X–2 and X–3, and TETCO's Rate Schedule No. X–6. It is stated that such delivery point is located at an existing interconnect between the two pipelines in Claiborne Parish, Louisiana. It is further stated that volumes for this point would be reassigned to the remaining exchange points covered by the agreements.

Koch Gateway and TETCO state that the proposed change would not impact either of the certificate holder's peak day or annual deliveries and neither pipeline's tariff prohibits the proposed elimination of the delivery point.

Comment date: April 8, 1996, in accordance with Standard Paragraph G at the end of this notice.

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[1] 38 FPC 1162 (1967).

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4769 Filed 2–29–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5433–5]

Accidental Release Prevention Requirements: Risk Management Programs Under Section 112(r)(7) of the Clean Air Act as Amended; Draft Guidances

AGENCY: Environmental Protection Agency.

ACTION: Extension of Comment Deadline.

SUMMARY: EPA published a notice on January 30, 1996 (61 FR 3031) announcing the availability of draft guidance documents associated with risk management programs under Section 112(r)(7) of the Clean Air Act (CAA), as amended. These draft guidance documents are: "Offsite Consequence Assessment"; "Generic Guidance Risk Management Program (RMP) for Ammonia Refrigeration Facilities"; and "Risk Management Plan Data Elements" and "Data Elements Instructions." EPA has learned that some of guidance materials were not immediately available and that more time is necessary for review and comment. This notice extends the deadline for submission of comments. As the initial notice of availability stated, these documents are not rules or proposed rules. The Agency is willing to accept and consider comments at any time during the life of these guidance documents. However, the CAA requires that certain guidance materials must be issued when EPA promulgates regulations under section 112(r)(7)(B). Consequently, comments received by the deadline will be used to shape the guidance to be issued at that time. While comments received after the deadline may be considered, those comments and even those after publication may be used in future revisions to the guidance documents.

DATES: Those who wish to express their views concerning the material contained in the guidances should submit written comments by March 29, 1996 to Docket A–91–73 Category VIII–B, at the address below, or via e-mail to A–and–R–Docket@epamail.epa.gov.

ADDRESSES: *Docket.* EPA Air and Radiation Docket and Information Center, room M1500, U.S. Environmental Protection Agency (6102), 401 M Street S.W., Washington, D.C. 20460. Please identify comments with the docket number A–91–73 Category VIII–B. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: A–and–R–Docket@epamail.epa.gov. Electronic comments must be submitted as ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–91–73 Category VIII–B. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this draft guidance may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Contact the Emergency Planning and Community Right-to-Know Information Hotline at (800) 535–0202 or (703) 412–9877 when calling from local Washington, D.C. area or contact Craig Matthiessen in the Chemical Emergency Preparedness and Prevention Office at (202) 260–9781.

Dated: February 26, 1996.

Jim Makris,

Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 96–4833 Filed 2–29–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5432–1]

Formation and Open Meeting of the Industrial Non-Hazardous Waste Stakeholders Focus Group

AGENCY: Environmental Protection Agency.

ACTION: Notice of establishment of the Industrial Non-Hazardous Waste Stakeholders Focus Group and Notice of first meeting.

SUMMARY: As required by sections 9 (a)(2) and 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), EPA is giving notice of the formation of the Industrial Non-Hazardous Waste Stakeholders' Focus Group and of its first meeting. EPA has determined that this action is in the public interest. The purpose of this committee is to advise EPA and ASTSWMO (the Association of State and Territorial Solid Waste Management Officials) in developing voluntary guidance for the management of industrial nonhazardous waste in land-based disposal units. The Focus Group will facilitate the exchange of information and ideas among the interested parties relating to the development of such guidance. The agenda of the first meeting will include a discussion of the purpose and scope of the guidance under development, the ground rules for future meetings, tailoring management practices to risk, and liner system designs at industrial nonhazardous waste facilities. There will be an opportunity for public comment before the close of the meeting.

DATES: The committee's first meeting will be held on April 11–12, 1996 beginning at 9:00 A.M. on each day. The meeting will conclude at 5:00 P.M. on April 11 and at 3:00 P.M. on April 12.

ADDRESSES: The location of the meeting is the Hall of States, Room 383–385, 444 N. Capitol Street, N.W., Washington, D.C. The seating capacity of the room is approximately 75 people, and seating will be on a first-come basis. Supporting materials are available for viewing at Docket # F–96–INHA-FFFFF in the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page. For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9610 or TDD 703–412–3323.

FOR FURTHER INFORMATION, CONTACT: Persons needing further information on the committee should contact Patricia Cohn, Municipal and Industrial Solid Waste Division, Office of Solid Waste, at (703) 308–8675.

SUPPLEMENTARY INFORMATION:

Purpose of the Focus Group

EPA and ASTSWMO have formed a State/EPA Steering Committee to jointly develop voluntary facility guidance for the management of industrial nonhazardous waste in land-based disposal units. The purpose of the guidance is to recommend management practices that are environmentally sound, that are protective of public health, and that recognize opportunities for pollution prevention and waste minimization. The guidance will address such topics as appropriate groundwater monitoring and corrective action requirements, liner designs, daily operating requirements, and closure and post-closure practices.

The State/EPA Steering Committee is convening this Stakeholders Focus Group to obtain recommendations from individuals who are members of a broad spectrum of public interest groups and affected industries. All recommendations from Focus Group participants will be forwarded to the State/EPA Steering Committee for consideration, as the Stakeholders' Focus Group will not strive for consensus. The State/EPA Steering Committee will also provide an opportunity for public comment on the draft guidance document.

Background

"Industrial nonhazardous waste" under the federal Resource Conservation and Recovery Act (RCRA) means waste that is neither municipal solid waste under RCRA Subtitle D nor a hazardous waste under RCRA Subtitle C. Industrial nonhazardous waste consists primarily of manufacturing process wastes, including wastewaters and non-wastewater sludges and solids.

EPA estimates there are 7.6 billion tons of industrial nonhazardous waste generated annually in the U.S. and disposed on-site by approximately 12,000 industrial facilities in surface impoundments, landfills, land application units, or waste piles. Most of this waste is managed in surface impoundments, which are designed to hold wastewaters. These wastes present a broad range of risk, from nearly hazardous to inert.

Under RCRA Subtitle D, the states are responsible for regulating the management of industrial nonhazardous waste. State requirements vary widely, and may include standards for design and operation, location, monitoring, and record keeping. This guidance is intended to complement existing state programs.

EPA's role in the management of industrial nonhazardous waste is very limited. Under RCRA Subtitle D, EPA issued minimal criteria prohibiting "open dumps" (40 CFR 257) in 1979. The states, not EPA, are responsible for implementing the "open dumping criteria," and EPA has no back-up enforcement role.

Copies of the minutes of all Stakeholder Focus Group meetings will be made available through the docket at the RCRA Information Center.

Participants

The Stakeholders Focus Group will consist of approximately 25 members, who represent public interest groups, affected industries, states, and federal officials. Following is a list of representatives from the interested parties:

Public interest groups—Doris Cellarius, Sierra Club; Michael Gregory, Sierra Club; John Harney, Citizens Round Table/Pennsylvanians United to Rescue the Environment; and Rick Lowery, Texas Center for Policy Studies.

Industry sectors—Tim Saylor, International Paper; Gary Robbins, Exxon Company USA; Walter Carey, New Milford Farms/Nestle USA; Robert Giraud, Dupont Company; Paul Bork, Dow Chemical Company; Bruce Steiner, American Iron and Steel Institute; James Meiers, Indianapolis Power and Light Company; Andrew Miles, The Dexter Corporation; Scott Murto, General Motors Corporation; Lisa Williams, The Aluminum Association; Jonathan Greenberg, Browning-Ferris Industries; and Ed Skernolis, WMX Technologies, Inc.

States—James Warner, Minnesota Pollution Control Agency; Anne Dobbs, Texas Natural Resources Conservation Commission.

Federal officials—Paul Cassidy, Patricia Cohn, Richard Kinch, John Sager and Bruce Weddle of the U.S. Environmental Protection Agency.

Dated: February 22, 1995.

Bruce R. Weddle,

Acting Director, Office of Solid Waste.

[FR Doc. 96–4835 Filed 2–29–96; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5413–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 12, 1996 through February 16, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–DOE–A09825–00 Rating EC2, Disposition of Surplus Weapons-Usable Highly Enriched Uranium (HEU) to Low Enriched Uranium (LEU), Site Selection, Y–12 Plant Oak Ridge, TN; Savannah River Site, Aiken, SC; Babcock & Wilcox Naval Nuclear Fuel

Division, Lynchburg, VA and Nuclear Fuel Services Plant, Erwin, TN.

Summary: EPA requested additional information concerning the highly enriched uranium and the preferred alternative to strenghten the final EIS and provide more clarity to the public.

ERP No. D–FHW–D40272–PA Rating EC2, PA–0322 (Section B01) Transportation Corridor, Improvements from PA–0655 to Mt. Pleasant, Funding and COE Section 404 Permit, Mifflin County, PA.

Summary: EPA expressed concerns for the potential impacts to wetlands, farmlands, and the Anabaptist community in the project area. In addition, there is insufficient information provided to determine the potential indirect impacts of the project.

ERP No. D–FHW–D40273–PA Rating EO2, US 220 Transportation Improvements Project, Bald Eagle Village to Interstate 80 (I–80), Funding and COE Section 404 Permit, Blair and Centre Counties, PA.

Summary: EPA expressed objections to the potential impacts to high quality streams, terrestrial and wildlife habitat, wetlands productive agricultural lands and farm operations.

ERP No. D–FHW–D40274–PA Rating EC2, US 222 Relocation/Reconstruction Project, Construction of the Warren Street Extension, Funding, Berks County, PA.

Summary: EPA expressed concerns with the potential impacts to streams and wetlands from both the limited and controlled access alternatives. The project alternatives also have the potential to significantly impact floodplains and wetlands.

ERP No. D–FHW–D40276–PA Rating EC2, US 22 (S.R. 0022—Section C02) Highway Improvement, US 22 west of the Strodes Mills Area to US 322 near Lewistown. Funding and COE Section 404 Permit Issuance, Mifflin County, PA.

Summary: EPA expressed concerns for secondary impacts, air quality, and for the 200 acres of forested habitat impacted by the proposed project.

ERP No. D–FHW–D40277–WV Rating EC2, Merrick Creek Connector Improvements Project, between US 60 to WV–2 also a New Interchange at I–64, Funding and COE Section 404 Permit, Cabell County, WV.

Summary: EPA's rating is based, in part, on the potential impacts to area streams resulting from various stream channel relocations, pipes and/or culverts and bridging which EPA believes will adversely affect the quality of the existing environment.

ERP No. D–FHW–D40278–PA Rating LO, PA–26 Transportation Improvements, (College Avenue) between State College and Pleasant Gap, Funding, Appalachian Mountain, Centre County, PA.

Summary: Based on our review and due to the diligent efforts of PADOT project team to avoid impacts to environmental resources, EPA has assigned a rating of LO. EPA supports the selection of Yellow-Green Option I as the environmentally preferable alternative.

ERP No. D–ICC–D53008–WV Rating EC2, Elk River Railroad Railline (Docket No. 31989), Construction Exemption and Operation, NPDES Permit and Approval of Permits, Clay and Kanawha Counties, WV.

Summary: The ICC should propose adequate mitigation for noise impacts in the final EIS as well as a clear statement of purpose and need.

ERP No. D–NPS–D61042–VA Rating LO, Richmond National Battlefield Park General Management Plan and Land Protection Plan, Implementation, Hanover, Henrico and Chesterfield Counties, VA.

Summary: EPA expressed lack of objections with the proposed action. EPA recommends that the final EIS include an impact assessment of the proposed action on visitor use.

ERP No. D1–NAS–A12038–00 Rating LO, International Space Station, Assembly and Operation, Space Station Freedom (SSF).

Summary: EPA's abbreviated review revealed no concerns with the proposed project.

Final EISs

ERP No. F–NPS–E61071–FL, Timucuan Ecological and Historic Preserve, General Management Plan and Development Concept Plans, Implementation, Fort Caroline National Memorial Area, Duval County, FL.

Summary: EPA expressed concerns regarding impacts due to off-road vehicular use. It is proposed that impacts will be mitigated by the development of off-road vehicular use guidelines.

Dated: February 26, 1996

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities

[FR Doc. 96–4846 Filed 2–29–96; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5413–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed February 19, 1996 Through February 23, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960087, Draft EIS, COE, CA, San Pedro Creek Section 205 Flood Control Project, Construction, Flood Protection, COE Section 10 and 404 Permits and Permits Approval, San Mateo County, CA, Due: April 15, 1996, Contact: Bill Dejager (415) 744–3341.

EIS No. 960088, Draft EIS, FHW, PA, Erie East Side Access Study, Transportation Improvement, PA–4034, Section A40, COE Section 404 Permit, Erie County, PA, Due: April 22, 1996, Contact: Manuel A. Mark (717) 782–3461.

EIS No. 960089, Final EIS, AFS, MT, Beaverhead National Forests Oil and Gas Leasing, Exploration, Development and Land Acquisition, Beaverhead, Madison, Silver Bow, Deer Lodge and Gallatin, MT, Due: April 01, 1996, Contact: Peri Suenram (406) 683–3900.

EIS No. 960090, Final EIS, FHW, IL, FAP Route 340 Transportation Project, Construction from I–55 to I–80, Funding, US Coast Guard Permit and COE Section 404 Permit, Cook, Dupage and Will Counties, IL, Due: April 01, 1996, Contact: Kennett Perret (708) 283–3510.

EIS No. 960091, Final EIS, SFW, CA, Stephens' Kangaroo Rat (SKR) Authorization for Incidental Take and Implementation of a Long-Term Habitat Conservation Plan, Western Riverside County, CA, Due: April 01, 1996, Contact: Jeff Newman (619) 431–9440.

EIS No. 960092, Draft Supplement, COE, IL, Sugar Creek Municipal Water Supply Reservoir Construction, Additional Information, COE Section 404 Permit Issuance, City of Marion, Williamson and Johnson Counties, IL, Due: April 15, 1996, Contact: Terry S. Siemsen (502) 582–5550.

EIS No. 960093, Final EIS, AFS, MT, Bull Sweats Vegetation Manipulation Project, Implementation, Helena National Forest, Helena Ranger District, Lewis and Clark County, MT, Due: March 11, 1996, Contact: David Turner (406) 449–5490.

The above FEIS was inadvertenly not published in the February 9, 1996 **Federal Register**. The 30 day Wait Period is Calculated from the Intended **Federal Register** Date of 2–9–96.

Amended Notices

EIS No. 950098, Draft Supplement, FTA, MA, Old Colony Railroad Rehabilitation Project, Transit Improvements, New and Updated Information concerning construction of the Greenbush Line Corridor, MA, Due: May 22, 1995, Contact: Mary Beth Mello (617) 494–2055.

Published FR 03–24–95—Officially Cancelled by the Preparing Agency.

EIS No. 950533, Draft EIS, NPS, ID, Hagerman Fossil Beds National Monument, General Management Plan, Implementation, Twin Falls and Gooding County, ID, Due: March 08, 1996, Contact: Rick Ernenwein (303) 969–2274.

Published FR 11–17–95—Review Period Extended.

EIS No. 950583, Draft EIS, FHW, WA, WA–509 Extension/South Access Road Corridor Project, Construction, Funding and Possible COE Section 404 Permit, the Cities of SeaTac, Des Moines, Kent and Federal Way, King County, WA, Due: March 11, 1996, Contact: Dale Morimoto (206) 440–4548.

Published FR 01–26–96—Review Period Extended.

Dated: February 27, 1996.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–4847 Filed 2–29–96; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5432–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740, Please refer to the EPA ICR No.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1246.05; Reporting and Recordkeeping for Asbestos Abatement Worker Protection; was approved 08/17/95; OMB No. 2070–0072; expires 08/31/98.

EPA ICR No. 0783.28; The California Pilot Test Program and Clean-Fuel Vehicle Standards for Light-Duty Vehicles and Light-Duty Trucks; was approved 09/29/95; OMB No. 2060–0104; expires 08/31/98.

EPA ICR No. 1426.04; EPA Worker Protection Standard for Hazardous Waste Operations and Emergency Response; was approved 01/30/96; OMB No. 2050–0105; expires 01/31/99.

EPA ICR No. 1569.03; Approval of State Coastal Nonpoint Pollution Control Programs (CZARA Section 6217); was approved 01/30/96; OMB No. 2040–0153; expires 01/32/99.

EPA ICR No. 1100.08; National Emission Standards for Hazardous Air Pollutants: Radionuclide; was approved 01/31/96; OMB No. 2060–0191; expires 01/31/99.

EPA ICR No. 1154.04; NESHAP for Benzene Emissions from Bulk Transfer Operations (Subpart BB); was approved 01/31/96; OMB No. 2060–0182; expires 01/31/99.

EPA ICR No. 1753.01; National Survey of Gross Alpha Methodology; was approved 08/10/95; OMB No. 2080–0054; expires 08/31/98.

OMB Disapproval

EPA ICR No. 0226.13; NPDES Wastewater Permit Application Forms and Regulatory Revisions for Municipal Discharges and Sewage Sludge Use or Disposal—Forms 2A/2S; was disapproved 02/15/96.

Dated: February 23, 1996.

David Schwartz,

Acting Director, Regulatory Information Division.

[FR Doc. 96–4834 Filed 2–29–96; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board Sunshine Act Meeting; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the March 14, 1996 regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Tuesday, March 12, 1996 at 10:00 a.m. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: February 27, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–4994 Filed 2–28–96; 2:40 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

February 22, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before [insert date 30 days after date of publication in the Federal Register]. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0402.

Title: Application for New or Modified Microwave Radio Station License Authorization Under Part 21.

Form No.: 494.

Type of Review: Reinstatement of a previously approved collection.

Respondents: Business or other for profit.

Number of Respondents: 9,700.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 19,400 hours.

Total Annualized Cost per respondent: The costs for this collection are $180 filing fee and $140 regulatory fee for each new application. There is $180 filing fee for application modifications. The Commission estimates 2,910 new applications and 6,790 modifications will be submitted.

Needs and Uses: The FCC 494 is used by telecommunications entities to request authorization to construct and operate microwave facilities. It is the initial application for requesting authorization for facilities governed under Part 21 of the Commission rules. The FCC 494 is a multipurpose application to request authorization for new or modified radio station facilities in the following Part 21 services: Point to Point Microwave; Local Television Transmission Service and Digital Electronic Message Service. The form is used to apply for a license for a new radio station; to amend an pending license application; to modify a granted license; and to notify the Commission of certain changes. The Commission used the information to determine if an applicant is qualified legally, technically and financially to be licensed to use microwave radio frequencies.

OMB Approval No.: 3060–0436.

Title: Equipment Authorization - Cordless Telephone Security Coding Sections 15.214(c), 68.200(k).

Form No.: N/A.

Type of Review: Reinstatement of a previously approved collection.

Respondents: Business or other for profit.

Number of Respondents: 100 respondents for Section 15.214(d)(3) and 100 respondents for section 68.200(k).

Estimated Time Per Response: 1.5 hours per response for section 15.24(d)(3) and .5 hours per response for section 68.200(k).

Total Annual Burden: 200 hours.

Total Annualized Cost per respondent: There are no start-up or operational and maintenance costs associated with this collection.

Needs and Uses: Cordless telephone security features protect the public switched telephone network from unintentional line seizure and telephone dialing. These features prevent unauthorized access to the telephone line, the dailing of calls in response to signals other than those from the owner's handset and the unintentional ringing of a cordless telephone handset. Use of cordless telephone security features reduce the harm caused by some cordless telephones to the "911" Emergency Service Telephone System and the telephone network in general.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–4722 Filed 2–29–96; 8:45 am]

BILLING CODE 6712–01–F

[DA 95–2341]

Applications in the 37.0–38.6 GHz and 38.6–40 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On November 13, 1995, the Acting Chief, Wireless Telecommunications Bureau adopted an Order that imposes a freeze on the Commission accepting applications in the Common Carrier or Operational Fixed Point-to-Point Microwave Radio Services for the 38.6–40.0 GHz frequency assignments. The Order was released November 13, 1995. The freeze was necessary so that the public interest can be served by not accepting further applications pending Commission action on a rulemaking petition that would modify application processing and technical rules for this frequency band. The effect of the freeze is to give the public consistent technical standards for the 38.6–40.0 GHz frequency assignments.

EFFECTIVE DATE: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Robert James of the Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION:

Order

Adopted: November 13, 1995
Released: November 13, 1995

By the Acting Chief, Wireless Telecommunications Bureau:

1. Pending before the Commission is a petition for rulemaking (RM–8553, Public Notice, Report No. 2044, released December 1, 1994) filed by the Point-to-Point Microwave Section of the Telecommunications Industry Association, concerning use of the 37.0–38.6 GHz (37 GHz) and 38.6–40.0 GHz (39 GHz) bands. The petition requests that the Commission, among other things, modify the existing technical standards governing point-to-point operations in the 39 GHz band. The existing rules governing the 39 GHz band are inconsistent with the proposal contained in the petition. Thus, the petition for rulemaking, if granted, would require new application processing and technical rules for this frequency band.

2. Over 2,100 applications for 39 GHz licenses have been filed since January 1995. The increasing number of applications constitutes a burden on the Commission's scarce resources and may limit the impact of a Commission rulemaking in response to the petition because applications being filed and processed are not necessarily in conformance with application and technical requirements that may be developed for the 39 GHz bands if the rulemaking petition is granted. Consequently, we find that the public interest will be served by not accepting any further applications for licensing new 39 GHz frequency assignments, pending Commission action on the rulemaking petition. Accordingly, effective upon the release date of this Order, no applications in the Common Carrier or Operational Fixed Point-to-Point Microwave Radio Services for the 39 GHz band will be accepted for filing. Any such applications received on or after this date will be returned as unacceptable for filing. This freeze does not apply to applications for assignment or transfer of control of license.

3. The Commission's decision to impose this freeze is procedural in nature and therefore the freeze is not subject to the notice and comment and effective date requirements of the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(A), (d); *Kessler* v. *FCC*, 326 F.2d 673 (D.C. Cir. 1963). Moreover, there is good cause for the Commission's not using notice and comment procedures in this case, or making the freeze effective 30 days after publication in the **Federal Register**, because to do so would be impractical, unnecessary, and contrary to the public interest because compliance would undercut the purposes of the freeze. *See* 5 U.S.C. 553(b)(B), (d)(3).

4. Wherefore, as discussed herein, *it is hereby ordered that* effective upon the release date of this Order, no applications will be accepted for filing for the 38.6–40.0 GHz frequency band in the Common Carrier or Operational Fixed Point-to-Point Microwave Radio Services. This freeze will continue until

the Commission makes an announcement that such application acceptance will resume.

Federal Communications Commission.

Gerald P. Vaughan,

Acting Chief, Wireless Telecommunications Bureau.

[FR Doc. 96–4721 Filed 2–29–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:10 a.m. on Tuesday, February 27, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: February 27, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–4950 Filed 2–28–96; 2:40 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1102–DR]

Idaho; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Idaho, (FEMA–1102–DR), dated February 11, 1996, and related determinations.

EFFECTIVE DATE: February 20, 1996

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Idaho, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 11, 1996:

Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties and the Nez Perce Indian Reservation for Public Assistance and Hazard Mitigation (already designated for Individual Assistance)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–4820 Filed 2–29–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1094–DR]

Maryland; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maryland (FEMA–1094–DR), dated January 23, 1996, and related determinations.

EFFECTIVE DATE: February 12, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 12, 1996, the President amended the major disaster declaration of January 23, 1996, under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Maryland, resulting from flooding on January 19–31, 1996, is of sufficient severity and magnitude to warrant the expansion of the incident type to include damage resulting from severe storms and flooding in the major disaster declaration of January 23, 1996, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act").

All other conditions specified in the original declaration remain the same.

Please notify the Governor of the State of Maryland and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–4817 Filed 2–29–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1097–DR]

Ohio; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–1097–DR), dated January 27, 1996, and related determinations.

EFFECTIVE DATE: February 15, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 31, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–4816 Filed 2–29–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1099–DR]

Oregon; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oregon, (FEMA–1099–DR), dated February 9, 1996, and related determinations.

EFFECTIVE DATE: February 18, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oregon dated February 9, 1996, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1996:

Gilliam County for Public Assistance and Hazard Mitigation Assistance.

Benton, Hood River, Jefferson, Morrow, Union, Wallowa, and Washington Counties for Public Assistance and Hazard Mitigation Assistance. (Already designated for Individual Assistance)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–4821 Filed 2–29–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1099–DR]

Oregon; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oregon, (FEMA–1099–DR), dated February 9, 1996, and related determinations.

EFFECTIVE DATE: February 15, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oregon is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1996:

Douglas, Jefferson, Josephine, and Wallowa Counties for Individual Assistance

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–4822 Filed 2–29–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1093–DR]

Pennsylvania; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania, (FEMA–1093–DR), dated January 21, 1996, and related determinations.

EFFECTIVE DATE: February 12, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 12, 1996, the President amended the major disaster declaration of January 21, 1996, under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania, resulting from flooding on January 19 through February 1, 1996, is of sufficient severity and magnitude to warrant the expansion of the incident type to include damage resulting from severe storms and flooding in the major disaster declaration of January 21, 1996, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act").

All other conditions specified in the original declaration remain the same.

Please notify the Governor of the Commonwealth of Pennsylvania and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–4818.Filed 2–29–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1098–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1098–DR), dated January 27, 1996, and related determinations.

EFFECTIVE DATE: February 20, 1996

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 27, 1996:

Clarke County for Public Assistance and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–4823 Filed 2–29–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1100–DR]

Washington; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington, (FEMA–1100–DR), dated February 9, 1996, and related determinations.

EFFECTIVE DATE: February 16, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Washington, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1996:

Garfield County for Individual Assistance, Public Assistance, and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–4819 Filed 2–29–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. § 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. § 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 25, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Crawford Financial Corporation, Indianapolis, Indiana; to become a bank holding company by acquiring 71.38 percent of the voting shares of Marengo State Bank, Marengo, Indiana.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. The Stuart Family Partnership, Lincoln, Nebraska; The Catherine Stuart Schmoker Family Partnership, Lincoln, Nebraska; The James Stuart, Jr. Family Partnership, Lincoln, Nebraska; The Scott Stuart Family Partnership, Lincoln, Nebraska; First Commerce Bancshares, Inc., Lincoln, Nebraska, and National Bank of Commerce Trust and Savings Association, Lincoln, Nebraska, as trustees, to control 5.2 percent of the voting shares of First State Bank, Randolph, Nebraska and 14.1 percent of the voting shares of Bank of Bertrand, Bertrand, Nebraska.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Outsource Capital Group, Inc., Lubbock, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Outsource Delaware Capital Group, Inc., Dover, Delaware, and thereby indirectly acquire First Bank & Trust Co. White Deer, Texas

In addition with this application, Outsource Delaware Capital Group, Inc., Dover, Delaware, also has applied to become a bank holding company by acquiring at least 88.4 percent of the voting shares of First Bank & Trust Co., White Deer, Texas.

In connection with this application, Outsource Capital Group, Inc., Lubbock, Texas, has also applied to engage in through its subsidiary, Outsource Capital Group, Inc., d/b/a Outsource Lease, Lubbock, Texas, in leasing activities, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 26, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–4770 Filed 2–29–96; 8:45 am]

BILLING CODE 6210–01–F

Board of Governors, Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, March 6, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 28, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–4910 Filed 2–28–96; 10:09 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Requestq01

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 619–1053.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

1. Alternative Models of Personal Assistance Services—NEW—The Office of the Assistant Secretary for Planning and Evaluation is planning a data collection which will compare modes of service delivery used to provide personal care services to the frail elderly and disabled persons of all ages. The three main provider modes to be compared are consumer-directed independent providers, supported independent providers, and contract or agency providers. The comparison is intended to further knowledge of the advantages and disadvantages of the alternative provider modes. Respondents: Individuals or households; state or local governments, business or other for-profit, not-for-profit institutions. Burden Information for Client Questionnaire—Responses: 1230; Burden per Response: 45 minutes; Total Burden: 923 hours—Burden for Provider Questionnaire—Response: 530; Burden per Response: 40 minutes; Total Burden: 353 hours—Burden Information for Case Manager Questionnaire—Responses: 100; Burden per Response: 60 minutes; Total Burden: 100 hours—Burden Information for Client Qualitative Interview—Responses: 100; Burden per Response: 60 minutes; Total Burden: 100 hours—Burden Information for Provider Qualitative Interview—Responses: 150; Burden per Response: 55 minutes; Total Burden: 137 hours—Burden Information for Family Qualitative Interview—Responses: 150; Burden per Response: 45 minutes; Total Burden: 113 hours—Total Burden for Project: 1,726 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington, DC, 20201. Written comments should be received within 60 days of this notice.

Dated: February 26, 1996.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 96–4796 Filed 2–29–96; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 88F–0167]

Ciba-Geigy Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 8B4080), filed by Ciba-Geigy Corp. proposing that the food additive regulations be amended to provide for the safe use of *N,N'*-1,4-phenylenebis[4-[(2,5-dichlorophenyl)azo]-3-hydroxy-2-naphthalenecarboxamide] as a colorant for food-contact polymers.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 26, 1988 (53 FR 19045), FDA announced that a food additive petition (FAP 8B4080) had been filed on behalf of Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532 (currently c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001). The petition proposed to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of *N,N'*-1,4-phenylenebis[4-(2,5-dichlorophenyl)azo]-3-hydroxy-2-naphthalenecarboxamide] as a colorant for food-contact polymers. Ciba-Geigy Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: February 12, 1996.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–4712 Filed 2–29–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 90F–0071]

Ciba-Geigy Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to future filing, of a food additive petition (FAP 9B4162), filed by Ciba-Geigy Corp. proposing that the food additive regulations be amended to provide for the safe use of 3,3'-[(2-chloro-5-methyl-1,4-phenylene)bis[imino(1-acetyl-2-oxo-2,1-ethanediyl)azo]]bis[4-chloro-*N*-(3-chloro-2-methylphenyl)benzamide] as a colorant for food-contact polymers.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 16, 1990 (55 FR 9975), FDA announced that a food additive petition (FAP 9B4162) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188 (currently, c/o 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of 3,3'-[(2-chloro-5-methyl-1,4-phenylene)bis[imino(1-acetyl-2-oxo-2,1-ethanediyl)azo]]bis[4-chloro-*N*-(3-chloro 2-methylphenyl)benzamide] as a colorant for food-contact polymers. Ciba-Geigy Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: February 9, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–4713 Filed 2–29–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 88F–0208]

Ciba-Geigy Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to future filing, of a food additive petition (FAP 8B4079), filed by Ciba-Geigy Corp., proposing that the food additive regulations be amended to provide for the safe use of N,N'-(2-chloro-1,4-phenylene)bis[4-[(2,5-dichlorophenyl)azo]-3-hydroxy-2-naphthalenecarboxamide] as a colorant for food-contact polymers.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 20, 1988 (53 FR 27399), FDA announced that a food additive petition (FAP 8B4079) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532 (currently, c/o 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in §.178.3297 Colorants for polymers (21 CFR 178.3297) to provide for the safe use of N,N'-(2-chloro-1,4-phenylene)bis[4-[(2,5-dichlorophenyl)azo]-3-hydroxy-2-naphthalenecarboxamide] as a colorant for food-contact polymers. Ciba-Geigy Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: February 9, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–4715 Filed 2–29–96; 8:45 am]

BILLING CODE 4160–01–F

Investigational Biological Product Trials; Procedure to Monitor Clinical Hold Process; Meeting of Review Committee and Request for Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a meeting of its clinical hold review committee, which reviews the clinical hold orders that the Center for Biologics Evaluation and Research (CBER) has placed on certain investigational biological product trials. FDA is inviting any interested biological product company to use this confidential mechanism to submit to the committee for its review the name and number of any investigational biological product trial placed on clinical hold during the past 12 months that the company wants the committee to review.

DATES: The meeting will be held in May 1996. Biological product companies may submit review requests for the May meeting by April 1, 1996.

ADDRESSES: Submit clinical hold review requests to Amanda B. Pedersen, FDA Chief Mediator and Ombudsman, Office of the Commissioner (HF–7), Food and Drug Administration, 5600 Fishers Lane, rm. 14–105, Rockville, MD 20857, 301–827–3390.

FOR FURTHER INFORMATION CONTACT: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–2), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0379.

SUPPLEMENTARY INFORMATION: FDA regulations in part 312 (21 CFR part 312) provide procedures that govern the use of investigational new drugs and biologics in human subjects. If FDA determines that a proposed or ongoing study may pose significant risks for human subjects or is otherwise seriously deficient, as discussed in the investigational new drug regulations, it may order a clinical hold on the study. The clinical hold is one of FDA's primary mechanisms for protecting subjects who are involved in investigational new drug or biologic trials. Section 312.42 describes the grounds for ordering a clinical hold.

A clinical hold is an order that FDA issues to a sponsor to delay a proposed investigation or to suspend an ongoing investigation. The clinical hold may be ordered on one or more of the investigations covered by an investigational new drug application (IND). When a proposed study is placed on clinical hold, subjects may not be given the investigational drug or biologic as part of that study. When an ongoing study is placed on clinical hold, no new subjects may be recruited to the study and placed on the investigational drug or biologic and patients already in the study should stop receiving therapy involving the investigational drug or biologic unless FDA specifically permits it.

When FDA concludes that there is a deficiency in a proposed or ongoing clinical trial that may be grounds for ordering a clinical hold, ordinarily FDA will attempt to resolve the matter through informal discussions with the sponsor. If that attempt is unsuccessful, a clinical hold may be ordered by or on behalf of the director of the division that is responsible for the review of the IND.

FDA regulations in § 312.48 provide dispute resolution mechanisms through which sponsors may request reconsideration of clinical hold orders. The regulations encourage the sponsor to attempt to resolve disputes directly with the review staff responsible for the review of the IND. If necessary, the sponsor may request a meeting with the review staff and management to discuss the clinical hold.

CBER began a process to evaluate the consistency and fairness of practices in ordering clinical holds by instituting a review committee to review clinical holds (see 61 FR 1033, January 11, 1996). CBER held its first clinical hold review committee meeting on May 17, 1995, and plans to conduct further quality assurance oversight of the IND process. The committee last met in February 1996. The review procedure of the committee is designed to afford an opportunity for a sponsor who does not wish to seek formal reconsideration of a pending clinical hold to have that clinical hold considered "anonymously." The committee consists of senior managers of CBER, a senior official from the Center for Drug Evaluation and Research, and the FDA Chief Mediator and Ombudsman.

Clinical holds to be reviewed will be chosen randomly. In addition, the committee will review some of the clinical holds proposed for review by biological product sponsors. In general, a biological product sponsor should consider requesting review when it disagrees with FDA's scientific or procedural basis for the decision.

Requests for committee review of a clinical hold should be submitted to the FDA Chief Mediator and Ombudsman, who is responsible for selecting clinical holds for review. The committee and CBER staff, with the exception of the FDA Chief Mediator and Ombudsman, are never advised, either in the review process or thereafter, which of the clinical holds were randomly chosen and which were submitted by sponsors. The committee will evaluate the selected clinical holds for scientific content and consistency with FDA regulations and CBER policy.

The meetings of the review committee are closed to the public because committee discussions deal with confidential commercial information. Summaries of the committee deliberations, excluding confidential commercial information, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If the status of a clinical hold changes following the committee's review, the appropriate division will notify the sponsor.

FDA invites biological product companies to submit to the FDA Chief Mediator and Ombudsman the name and IND number of any investigational biological product trial that was placed on clinical hold during the past 12 months that they want the committee to review at its May 1996 meeting. Submissions should be made by April 1, 1996, to Amanda B. Pedersen, FDA Chief Mediator and Ombudsman (address above).

Dated: February 26, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–4785 Filed 2–29–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

The Ryan White Comprehensive AIDS Resources Emergency Act of 1990 Availability of Funds for Early Intervention Services

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Pre-Application Technical Assistance Workshops.

SUMMARY: The Health Resources and Services Administration will hold two pre-application technical assistance workshops for competing applicants under Title III(b), HIV Early Intervention Services, of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Public Law 101–381.

Eligible applicants are public entities and nonprofit private entities that are: Migrant health centers under Section 329 of the PHS Act; community health centers under Section 330 of the PHS Act; health care for the homeless grantees under Section 340 of the PHS Act; family planning grantees under Section 1001 of the PHS Act other than States; comprehensive hemophilia diagnostic and treatment centers; federally-qualified health centers under section 1905(1)(2)(B) of the Social Security Act; or public and private nonprofit entities that currently provide comprehensive primary care services to populations at risk of HIV disease.

PURPOSE: The purpose of the technical assistance workshops is to provide information about the Ryan White CARE Act Early Intervention Services program and application procedures. Eligible entities will have an opportunity to review the program guidance and to receive technical assistance pertaining to all aspects of writing a grant applications.

FOR FURTHER INFORMATION CONTACT: Anyone interested in attending the meetings should contact Ms. Andrea Kay, Professional and Scientific Associates, Inc., 8180 Greensboro Drive, Suite 1050, McLean, VA 22102. She may be reached by telephone at 703–442–9824 or by fax at 703–442–9826. Room reservations should be made directly with the hotel. Costs of attending the workshop are the sole responsibility of the attendee.

DATE, TIME, LOCATION:

Thursday, March 14, 1996, 9:00 a.m.–5:00 p.m., Radisson Hotel Dallas, Dallas, Texas, 214–634–8850

Friday, March 22, 1996, 9:00 a.m.–5:00 p.m., Doubletree Hotel, Rockville, Maryland, 301–468–1100

The OMB Catalog of Federal Domestic Assistance number for this program is 93.918.

Dated: February 26, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–4720 Filed 2–29–96; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Cancer Institute Notice of Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Cancer Institute Board of Scientific Advisors and the Board of Scientific Counselors, National Cancer Institutes on March 21, 1996 at the National Institutes of Health, 9000 Rockville Pike Building 31, C Wing, 6th Floor, Conference Rooms 10, 9 and 8, Bethesda, MD 20892.

A joint session of the two committees will be open to the public in Conference Room 10 from 8:30 am to 12:30 pm for orientation of members.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. for discussion of confidential issues relating to the review and evaluation of individual programs and projects. These discussions will reveal confidential trade secrets or commercial property such as patentable material, and personal information including consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Committee Name: National Cancer Institute Board of Scientific Advisors.

Closed: March 21, 1996, 12:30 to 5:00 pm.

Agenda: To discuss confidential issues relating to the review and evaluation of individual extramural programs and projects.

Committee Name: Board of Scientific Counselors, National Cancer Institute.

Closed: March 21, 1996, 12:30 to 5:00 pm.

Agenda: To discuss administrative confidential site visit reports pertaining to laboratories in the Divisions of Basic and Clinical Sciences.

Information pertaining to the meetings may be obtained from Dr. Paulette Gray, Executive Secretary, National Cancer Institute Board of Scientific Advisors, National Cancer Institute, 6130 Executive Blvd., EPN, Rm 600, Bethesda, MD 20892, (301–496–4218). Individuals who plan to attend the open session and need special assistance such as sign language interpretation or other reasonable accommodations should contact Dr. Paulette Gray in advance of the meeting.

Dated: February 23, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4746 Filed 2–29–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Review on the Early Natural History of Arteriosclerosis.

Date: March 28, 1996.

Time: 11 a.m.

Place: DoubleTree Hotel, 300 Army Navy Drive, Arlington, Virginia.

Contact Person: C. James Scheirer, Ph.D., Two Rockledge Center, Room 7220, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0266.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: February 26, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4742 Filed 2–29–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis panel (SEP) meeting:

Name of SEP: Cooperative Clinical Trial in Adult Transplantation.

Date: March 21, 1996.

Time: 10:30 a.m.

Place: Solar Bldg., Room 4A07, 6003 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Dr. Kevin Callahan, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C20, Bethesda, MD 20892–7610, (301) 496–8424.

Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institute of Health.)

Dated: February 26, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4743 Filed 2–29–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: March 14, 1996.

Time: 10 a.m.

Place: Holiday Inn, Bethesda, MD.

Contact Person: Dr. Herman Teitelbaum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5190, Bethesda, Maryland 20892, (301) 435–1254.

Name of SEP: Clinical Sciences.

Date: March 20, 1996.

Time: 10 a.m.

Place: NIH, Rockledge 2, Room 4218, Telephone Conference.

Contact Person: Dr. Shirley Hilden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4218, Bethesda, Maryland 20892, (301) 435–1198.

Name of SEP: Behavioral and Neurosciences.

Date: March 25, 1996.

Time: 8:30 a.m.

Place: Holiday Inn, Bethesda, MD.

Contact Person: Dr. Lillian Pubols, Scientific Review Administrator, 6701 Rockledge Drive, Room 5184, Bethesda, Maryland 20892, (301) 435–1255.

Name of SEP: Biological and Physiological Sciences.

Date: March 26–27, 1996.

Time: 8 a.m.

Place: The Courtyard by Marriott, Rockville, MD.

Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 4200, Bethesda, Maryland 20892, (301) 435–1219.

Name of SEP: Biological and Physiological Sciences.

Date: March 28, 1996.

Time: 8 a.m.

Place: American Inn, Bethesda, MD.

Contact Person: Dr. Nicholas Mazarella, Scientific Review Administrator, 6701 Rockledge Drive, Room 5128, Bethesda, Maryland 20892, (301) 435–1018.

Name of SEP: Behavioral and Neurosciences.

Date: March 29, 1996.

Time: 9 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5158, Bethesda, Maryland 20892, (301) 435–1245.

Name of SEP: Biological and Physiological Sciences.

Date: April 15, 1996.

Time: 10 a.m.

Place: NIH, Rockledge 2, Room 5200, Telephone Conference.

Contact Person: Dr. Robert Weller, Scientific Review Administrator, 6701 Rockledge Drive, Room 5200, Bethesda, Maryland 20892, (301) 435–1259.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 23, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4726 Filed 2–29–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Amended Notice of Meeting

Notice is hereby given of a change in the meeting April 9–10, 1996, 8:30 a.m., ANA Hotel, Washington, DC, of the Oral Biology and Medicine Study Section (1), which was published in the **Federal Register** on February 9, 1996 (61 28 FR 5006).

This meeting has been changed to March 27–28, 1996, Holiday Inn Old Town, Alexandria, Virginia. As previously announced the meeting will begin at 8:30 a.m. and is closed to the public.

Dated: February 23, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4744 Filed 2–29–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: March 21–22, 1996.

Time: 7:00 p.m.

Place: Ramada Inn, Rockville, Maryland.

Contact Person: Dr. Anthony D. Carter, Scientific Review Administrator, 6701 Rockledge Drive, Room 5108, Bethesda, Maryland 20892, (301) 435–1167.

Name of SEP: Clinical Sciences.

Date: March 27, 1996.

Time: 8:30 a.m.

Place: Holiday Inn, Bethesda, Maryland.

Contact Person: Dr. Gertrude McFarland, Scientific Review Administrator, 6701 Rockledge Drive, Room 4110, Bethesda, Maryland 20892, (301) 435–1784.

Name of SEP: Chemistry and Related Sciences.

Date: March 28, 1996.

Time: 11:00 a.m.

Place: NIH, Rockledge 2, Room 4176, Telephone Conference.

Contact Person: Dr. Mike Radtke, Scientific Review Administrator, 6701 Rockledge Drive, Room 4176, Bethesda, Maryland 20892, (301) 435–1728.

Name of SEP: Biological and Physiological Sciences.

Date: April 1, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 5124, Telephone Conference.

Contact Person: Dr. Everett Sinnett, Scientific Review Administrator, 6701 Rockledge Drive, Room 5124, Bethesda, Maryland 20892, (301) 435–1016.

Name of SEP: Biological and Physiological Sciences.

Date: April 4, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 5124, Telephone Conference.

Contact Person: Dr. Everett Sinnett, Scientific Review Administrator, 6701 Rockledge Drive, Room 5124, Bethesda, Maryland 20892, (301) 435–1016.

Name of SEP: Chemistry and Related Sciences.

Date: April 10, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4154, Telephone Conference.

Contact Person: Dr. Gopa Rakhit, Scientific Review Administrator, 6701 Rockledge Drive,

Room 4154, Bethesda, Maryland 20892, (301) 435–1721.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93, 893, National Institutes of Health, HHS)

Date: February 23, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4745 Filed 2–29–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

Notice of Availability of the Final Joint Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) on the proposed issuance of an incidental take permit for the endangered Stephens' Kangaroo Rat (SKR) in Western Riverside County, California. The Record of Decision will be published no sooner than 30 days from this notice.

SUMMARY: This notice advises the public that the Final Joint EIS/EIR on the application to incidentally take SKR is available for public review. The Riverside County Habitat Conservation Agency (RCHCA) has applied to the U.S. Fish and Wildlife Service (Service) for a 30-year Incidental Take Permit pursuant to section 10(a)(1)(B) of the Endangered Species Act. Publication of the Record of Decision and issuance of the permit will occur no sooner than 30 days from this notice. This notice is provided pursuant to section 10 of the Act and the National Environmental Policy Act Regulations (40 CFR 1506.6).

FOR FURTHER INFORMATION CONTACT: Pete Sorensen, Endangered Species Division, Chief, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Ave. West, Carlsbad, California 92008, (619) 431–9440).

Individuals wishing copies of this Final EIS/EIR should immediately contact the RCHCA at (909) 275–1100. Documents will be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m., Monday through Thursday) at the RCHCA, 4080 Lemon Street, 12th Floor, Riverside, California, 92501. Documents will also be available for public inspection by appointment during normal business hours (8 am to 5 pm, Monday through Friday) at the Service Office at the above referenced address and telephone. A letter announcing availability of the Final Joint EIS/EIR has been sent to all agencies and parties who previously received notice of availability of the Draft EIS/EIR, and/or who requested a copy of the Draft EIS/EIR or commented on the Draft EIS/EIR.

SUPPLEMENTARY INFORMATION:

Background

The Service listed the SKR as an endangered species, on October 31, 1988 (53 FR 38485), under the Endangered Species Act of 1973, as amended (Act). Under the Act, no person may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect the species, or attempt to engage in such conduct (16 USC 1538). The Service, however, may issue permits to conduct activities involving endangered species under certain circumstances, including carrying out scientific purposes, enhancing the propagation or survival of the species, or incidentally taking the species in connection with otherwise lawful activities. Regulations governing permits are in 50 CFR 17.22, 17.23, and 17.32.

The RCHCA presently has a short-term 10(a)(1)(B) permit from the Service to incidentally take SKR's in connection with various proposed public and private projects in the western portion of Riverside County. Under the program established through this interim permit, SKR habitat in public and private ownership is being acquired and managed for the long-term benefit of the species. Acquisition of private lands is funded in part from mitigation fees collected by the RCHCA as developments proceed. As intended when the interim permit was granted in August 1990, the RCHCA is applying to the Service for a 30-year incidental take permit for the same purposes. The area covered by the proposed 30-year permit will include much of the historical range of the SKR in Riverside County and will allow development to proceed on 15,000 acres of occupied SKR habitat. The permit application was received on April 14, 1995, and was accompanied by the Long-term SKR Habitat Conservation Plan that details proposed measures to minimize, monitor, and mitigate impacts of the proposed take of SKR.

The applicants propose to minimize and mitigate the impacts of take by ensuring that the seven proposed Core Reserves are established by completing the acquisitions and securing the remaining agreements necessary to conserve the remaining private lands in those reserves. The habitat within the reserves will be conserved by restricting any take within the Core Reserves. To help manage the reserves the non-wasting endowments or equivalent annual funding sources will be established in the amount of $6,000,600. Through cooperative agreements with BLM, the Core Reserves will be expanded to 15,000 acres of occupied SKR habitat.

The funding for the implementation of the plan will be provided through a combination of local, Federal and State contributions. Federal and State agencies will provide $2.5 million in land acquisition funding and "in lieu" land management services, and a matching fund of $1.6 million towards financing the plan. BLM will provide 10,700 acres of Federal land for exchange, which will then be sold to purchase an additional 2,500 acres of occupied SKR habitat adjacent to the current reserves. The State will provide partial management for the state lands at San Jacinto/Perris Core Reserve and through a cooperative effort with RCHCA try to reduce or eliminate the balance of management funds required for this reserve.

The underlying purpose or goal of the proposed action is to develop a program designed to ensure the continued existence of the species, while resolving potential conflicts that may arise from otherwise lawful private and public improvement projects.

Development of the Final EIS/EIR

This draft Joint EIS/EIR has been developed cooperatively by the Service, Carlsbad Field Office (lead agency); and the RCHCA.

In the development of this Final Joint EIS/EIR, the Service has initiated action to assure compliance with the purpose and intent of the National Environmental Policy Act of 1969 (NEPA), as amended. Scoping activities were undertaken preparatory to developing the Draft EIS/EIR with a variety of Federal, State, and local entities. A Notice of Intent to prepare the EIS/EIR was published in the **Federal Register** on March 2, 1993.

The RCHCA's preparation of the long-term HCP has been on-going since the short-term permit was authorized. In March 1993, the Service and the RCHCA initiated a joint scoping process for the preparation of a combined EIS/EIR in anticipation of the Service receiving a permit application for a 30-year Section 10(a) permit for incidental take SKR. The scoping process was initiated in accordance with NEPA to solicit comments on issues and alternatives to be addressed in the EIS/EIR. Because of the extended two-year scoping process, the Draft Scoping Report was prepared to update public knowledge of the scoping process. This report summarized the 2-year scoping process, identified the scoping issues raised by interested parties at public meetings and in written statements, and outlined the issues and alternatives to be addressed in the Draft EIS/EIR. The availability of the Draft Scoping Report was published in the **Federal Register** on March 24, 1995.

A Notice of Availability of a Draft EIS/EIR and receipt of an Application for an Incidental Take Permit for SKR in Western Riverside County, California was published in the **Federal Register** August 4, 1995.

Potential consequences, in terms of adverse impacts and benefits associated with the implementation of each alternative, were described in the Draft EIS/EIR. The Service received 39 letters of comment on the Draft EIS/EIR that primarily focused on the following subject areas: (1) The range of alternatives in the document; (2) inadequate analysis of effects to SKR, effects on local General Plans, effects on local economic conditions, cumulative effects, and growth-inducing effects; (3) mitigation measures for effects to SKR; (4) population viability analysis model; and (5) analysis of funding requirements, sources and assurances.

The Responses to Comments document for the FEIS/EIR contains copies of all comments received and responses to all comments received. Issues and potential consequences remain constant from the Draft to the Final EIS/EIR.

Alternatives Analyzed in the Final EIS/EIR

Four alternatives were considered for analysis in the Final EIS/EIR: (1) Proposed Action/Project (approve and implement the Long-term SKR HCP); (2) Expanded Conservation/Protection (conserve additional SKR habitat); (3) Existing Reserves/Public Lands (focus of SKR habitat already protected); and (4) a No Project/No Action Alternative (assume no regional program). Issuance of the permit with the mitigating, minimizing, and monitoring measures outlined in the Proposed Action/Project alternative is the Service's preferred action and is discussed above. Key issues addressed in the Final EIS/EIR are identified as the effects that implementation of various alternatives would have upon: (1) The endangered SKR; (2) other wildlife and their habitats; (3) land uses and general plans; (4) provision of public facilities, services and utilities; and (5) social and economic conditions. In addition, a second assessment of funding was prepared in response to comments on the Draft EIS/EIR.

Each alternative was evaluated for its potential to result in significant adverse impacts, and the adequacy or inadequacy of the proposed measures to avoid, minimize, and substantially reduce the effects.

Dated: February 22, 1996.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 96–4496 Filed 2–29–96; 8:45 am]

BILLING CODE 4310–55–P

Extension of the Public Comment Period for the "Black-footed Ferret Survey Guidelines for Oil and Gas Activities In Wyoming for Compliance With the Endangered Species Act"

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of comment period.

SUMMARY: The Fish and Wildlife Service is extending the comment period for review of the draft "Black-footed Ferret Survey Guidelines For Oil And Gas Activities In Wyoming For Compliance With The Endangered Species Act."

DATES: Comments on the draft guidelines must be received on or before March 15, 1996, to ensure they receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft guidelines may obtain a copy by contacting the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, 4000 Morrie Avenue, Cheyenne, Wyoming 82001. Written comments and materials regarding the draft guidelines should be sent to the Field Supervisor at the Cheyenne address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Chuck Davis (see **ADDRESSES** above), at telephone 307/772–2374.

SUPPLEMENTARY INFORMATION:

Background

The Fish and Wildlife Service (Service) published a Notice of Availability of the draft "Black-footed Ferret Survey Guidelines for Oil and Gas Activities in Wyoming for Compliance with the Endangered Species Act" which appeared in the **Federal Register** on January 30, 1996 (61 FR 3051). It established a public comment period ending on February 29, 1996. Requests for extending the comment period have been received from persons that have indicated that 30 days is not sufficient time to review and comment on the Guidelines. The comment period is, therefore, extended to march 15, 1996.

Public Comments Solicited

The Service solicits written comments on the draft guidelines described above. All comments received by the date specified in the **DATES** section above will be considered prior to approval of the guidelines.

Dated: February 23, 1996.

Terry T. Terrell,

Deputy Regional Director, Denver, CO.

[FR Doc. 96–4806 Filed 2–29–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[UT–054–1040–00–24–1A]

Land Closure; Utah

AGENCY: Bureau of Land Management.

ACTION: Notice of closure and restriction on public land.

SUMMARY: Notice is hereby given that, effective immediately and until further notice, the last 1,000 feet of the road lesding to the warm springs, near Gandy Utah, located in the SW¼ of Sec. 31, T. 15 S., R. 19 W. S.L.B.M., Utah, is closed to all vehicular traffic. Personnel that are exempt from the closure include any federal, state, or local officer, or member of any organized rescue or fire fighting force in the performance of an official duty, or any person authorized by the Bureau. Foot traffic will be allowed.

The purpose of the closure is to protect the riparian and wildlife values associated with the spring and to reduce erosion caused by vehicle travel on this section of road.

The authority for this closure is the Code of Federal Regulations, Title 43 Subpart 8364.1.

FOR FURTHER INFORMATION CONTACT: Rex Rowley, House Range Resource Area Manager. P.O. Box 778 Fillmore, UT 84631 or Phone 801–743–6811.

Dated: February 22, 1996.
David R. Henderson,
Associate District Manager.
[FR Doc. 96–4812 Filed 2–29–96; 8:45 am]
BILLING CODE 4310–DQ–P

Notice of Meeting; Lower Snake River District

AGENCY: Lower Snake River District, Bureau of Land Management, Interior.
ACTION: Notice of meeting.

SUMMARY: The Lower Snake River District Resource Advisory Council will meet on March 16, 1996 at 9:00 a.m. to begin developing proposed guidelines for managing livestock grazing on public lands. The Council will continue their work on the proposed guidelines on March 28 and 29 beginning at 8:30 a.m. both days. A public comment period will be held at 11:00 a.m. on all three days.
DATES: March 16, 1996, beginning at 9:00 a.m.; March 28 and 29, 1996, beginning at 8: 30 a.m.
ADDRESSES: The meetings will be held at the Bureau of Land Management's Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706.
FOR FURTHER INFORMATION CONTACT: Barry Rose, Lower Snake River District Office (208–384–3393).
Barry Rose,
Public Affairs Specialist.
[FR Doc. 96–4809 Filed 2–29–96; 8:45 am]
BILLING CODE 1699–GG–P

Bureau of Land Management

[OR–030–06–1220–00: GP6–0075]

Notice of Meeting of Southeastern Oregon Resource Advisory Council

AGENCY: Vale District, Bureau of Land Management, Interior.
ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Southeastern Oregon Resource Advisory Council will be held April 1, 1996 from 8 a.m. to 9 p.m. and April 2, 1996 from 8 a.m. to 12 p.m. at the Harney County Museum Club Room, 18 West "D" Street, Burns, Oregon.

At an appropriate time, the Council will recess for approximately one hour for lunch and one and one-half hours for dinner. Public comments will be received from 7 p.m. to 7:30 p.m., April 1. Topics to be discussed are administrative activities of the Council, the Southeastern Oregon Resource Management Plan, and standards and guidelines for livestock grazing on public lands.
DATES: The meeting will begin at 8 a.m. and run to 9 p.m. April 1, 1996 and 8 a.m. to 12 p.m. April 2, 1996.
ADDRESSES: The meeting will take place in the Harney County Museum Club Room, 18 West "D" Street, Burns, Oregon.
FOR FURTHER INFORMATION CONTACT: Jonne Hower, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918 (Telephone 541 473–3144).
James E. May,
District Manager.
[FR Doc. 96–4747 Filed 2–29–96; 8:45 am]
BILLING CODE 4310–33–M

Bureau of Land Management

State Office Identifier (NM–930–1310–01); (NMNM 84866) New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NMNM 84866 for lands in Eddy County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from September 1, 1995, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 USC 188), and the Bureau of Land Management is proposing to reinstate the lease effective September 1, 1995, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Becky C. Olivas, BLM, New Mexico State Office, (505) 438–7609.

Dated: February 22, 1996.
Becky C. Olivas,
Land Law Examiner, Fluids Adjudication Team 1.
[FR Doc. 96–4808 Filed 2–29–96; 8:45 am]
BILLING CODE 4310–FB–M

[NM–070–1430–01; NMNM95249]

Notice of Realty Action; Recreation and Public Purpose (R&PP) Act Classification, New Mexico

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice of R&PP lease/patent of public land in Sandoval County, New Mexico.

SUMMARY: The following described public land is determined suitable for classification for leasing and patenting to the Presbyterian Medical Services (Presbyterian), Cuba, New Mexico under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 *et seq.*). Presbyterian proposes to use the land for medical clinic facilities.

New Mexico Principal Meridian
T. 23 N., R. 6 W.,
Sec. 21, E½SE¼NW¼NE¼.
Containing 5 acres, more or less.

COMMENT DATES: On or before April 15, 1996 interested parties may submit comments regarding the proposed leasing and conveyance or classification of the lands to the Bureau of Land Management at the following address. Any adverse comments will be reviewed by the Bureau of Land Management, Farmington District Manager, 1235 LaPlata Highway, Farmington, NM 87401, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action becomes the final determination of the Department of the Interior and effective April 29, 1996.
FURTHER INFORMATION: Information related to this action including the environmental assessment, is available for review at the Bureau of Land Management, Farmington District Office, 1235 LaPlata Highway, Farmington, NM 87401.
SUPPLEMENTARY INFORMATION: Publication of this notice segregates the public land described above from all other forms of appropriation under the public land laws, including the general mining laws, except for leasing and conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws for a period of two (2) years from date of this publication in the Federal Register. The segregative affect will terminate upon issuance of the lease and patent to Presbyterian, or two (2) years from the date of this publication, whichever occurs first.

The lease, when issued, will be subject to the following terms:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. Provisions of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended, 42 U.S.C. 6901–6987 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. 9601 and all applicable regulations.

3. Provisions of Title VI of the Civil Rights Act of 1964.

4. Provisions that the lease be operated in compliance with the approved Development Plan.

The patent, when issued, will be subject to the following terms:

1. Reservation to the United States of a right-of-way for ditches and canals in accordance with 43 U.S.C. 945.

2. Reservation to the United States of all minerals.

3. All valid existing rights, e.g. rights-of-way and leases of record.

4. Provisions that if the patentee or its successor attempts to transfer title to or control over the land to another or the land is devoted to a use other than that for which the land was conveyed, without the consent of the Secretary of the Interior or his delegate, or prohibits or restricts, directly or indirectly, or permits its agents, employees, contractors, or subcontractors, including without limitation, lessees and permittees), to prohibit or restrict, directly or indirectly, the use of any part of the patented lands or any of the facilities whereon by any person because of such person's race, creed, color, or national origin, title shall revert to the United States.

The lands are not needed for Federal purposes. Leasing and later patenting is consistent with current Bureau of Land Management policies and land use planning. The estimated intended time of lease issuance is April 30, 1996, with the patent being issued upon substantial development taking place. The proposal serves the public interest since it would provide modern facilities that would meet the medical needs of the surrounding public.

Dated: February 22, 1996.
Robert Moore,
Acting Assistant District Manager for Lands and Renewable Resources.
[FR Doc. 96–4724 Filed 2–29–96; 8:45 am]
BILLING CODE 4310–FB–M

[UT–942–1430–01; U–67483]

Notice, Direct Sale of Public Lands and Application to Purchase the Mineral Estate, and Recreation and Public Purposes Classification Termination, Washington County, Utah

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice.

SUMMARY: The following described public lands have been found suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value. The lands will not be offered for sale for at least 60 days after the date of publication of this notice.

Salt Lake Meridian
T. 41 S., R. 13 W.,
Sec. 29, N½NE¼NW¼SW¼, W½NW¼SW, N½NW¼SW¼SW¼, SW¼NW¼SW¼SW¼;
Containing 32.50 acres.

Publication of this notice segregates the public lands described above from appropriation under the public land laws and the mining laws. The segregation will end upon disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered for direct sale to the City of Hurricane, Utah, for a municipal golf course. Disposal of this tract would serve important public objectives, including community expansion and economic development. Pursuant to Section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719) the City has made application to purchase the mineral estate of the above described land.

The patent, when issued, would reserve to the United States:

A right-of-way for ditches and canals constructed under the authority of the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945 (1970)).

The patent would also be subject to the following existing rights:

1. Rights-of-way to the City of Hurricane for a road and powerline, serial number U–55652, and sewer line, serial number U–44040.

2. Right-of-way to the Utah Association of Municipal Power for a powerline, serial number U–72212.

In conjunction with this land sale, there is an exchange being processed with the City of Hurricane which involves public lands adjacent to the 32.5 acres proposed for sale. These lands are currently under a Recreation and Public lease. There are 155 acres currently classified for Recreation and Public Purposes, located in the S½ section 29, T. 43 S., R. 13 W. For a complete legal description of these lands contact the Dixie Resource Area Office at the address listed below. The classification for these lands will be terminated upon issuance of a patent conveying title to the public lands.

Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Dixie Resource Area Office Bureau of Land Management, 345 East Riverside Drive, St. George.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Area Manager, Dixie Resource Area, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: February 21, 1996.
Jerry Meredith,
District Manager.
[FR Doc. 96–4811 Filed 2–29–96; 8:45 am]
BILLING CODE 4310–DQ–M

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., February 21, 1996.

The plat representing the corrective dependent resurvey of portions of the subdivisional lines and subdivision of section 11, T. 10 S., R. 27 E., Boise, Meridian, Idaho, Group No. 925, was accepted, February 21, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: February 21, 1996.
Duane E. Olsen,
Chief Cadastral Surveyor for Idaho.
[FR Doc. 96–4810 Filed 2–29–96; 8:45 am]
BILLING CODE 4310–GG–M

National Park Service

Dayton Aviation Heritage Commission

AGENCY: National Park Service, Interior.
ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the

Dayton Aviation Heritage Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Monday, March 25, 1996; 5:15 p.m. to 6:30 p.m.

ADDRESSES: Innerwest Priority Board conference room, 1024 West Third Street, Dayton, Ohio 45407.

AGENDA TOPICS INCLUDE: Update on the park and general management plan. This business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the Superintendent, Dayton Aviation, one week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: William Gibson, Superintendent, Dayton Aviation, National Park Service, P.O. Box 9280, Wright Brothers Station, Dayton, Ohio 45409, or telephone 513–225–7705.

SUPPLEMENTARY INFORMATION: The Dayton Aviation Heritage Commission was established by Public Law 102–419, October 16, 1992.

Dated: February 16, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–4782 Filed 2–29–96; 8:45 am]

BILLING CODE 4310–70–P

Mississippi River Coordinating Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: Monday, April 1, 1996; 6:30 p.m. to 9:30 p.m.

ADDRESSES: Metropolitan Council Chambers, 230 Fifth Street East, St. Paul, Minnesota.

An agenda for the meeting will be available by March 20, 1996, from the Superintendent of the Mississippi National River and Recreation Area at the address below. Public statements about matters related to the Mississippi National River and Recreation Area will be taken at the meeting.

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100–696, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Superintendent JoAnn Kyral, Mississippi National River and Recreation Area, 175 East Fifth Street, Suite 418, St. Paul, Minnesota 55101 or telephone 612–290–4160.

Dated: February 16, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–4783 Filed 2–29–96; 8:45 am]

BILLING CODE 4310–70–P

Office of Surface Mining Reclamation and Enforcement

Cancellation of a Notice of Intent To Prepare an Environmental Impact Statement on the Proposed Development of the Bull Mountains Mine No. 1 and Associated Support Facilities, Musselshell and Yellowstone Counties, Montana

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Cancellation of a notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Office of Surface Mining Reclamation and Enforcement (OSM) is cancelling the notice published in the **Federal Register** on May 9, 1990 (55 FR 19365) for the preparation of an environmental impact statement (EIS) on the proposed development of the Bull Mountains Mine No. 1 and its associated support facilities. Meridian Minerals Company (Meridian) had submitted a permit application package (PAP) for their proposed underground coal mine and its associated support facilities, located about 35 miles northeast of Billings, Montana and 12 miles southeast of Roundup, Montana. Decisions on the application for a Federal permit to mine coal and for the possible Federal approval of a mining plan are no longer required.

FOR FURTHER INFORMATION CONTACT: Floyd McMullen, Environmental Project Manager, Office of Surface Mining Reclamation and Enforcement, Western Regional Coordinating Center, 1999 Broadway, Suite 3320, Denver, Colorado 80202–5733 (telephone: 303–672–5601).

Dated: February 14, 1996.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 96–4800 Filed 2–29–96; 8:45 am]

BILLING CODE 4310–05–M

Request for Determination of Valid Existing Rights Within the Wayne National Forest

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of request for determination and invitation for interested persons to participate.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) has received a request for a determination that Buckingham Coal Co., Inc. (the requester) has valid existing rights (VER) pursuant to section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to mine coal by surface methods on 25.2 acres of Federal land within the Wayne National Forest in Perry County, Ohio. By this notice, OSM is inviting interested persons to participate in the proceeding and to submit relevant factual information on the matter.

DATES: OSM will accept written comments on this request until 5:00 p.m. local time on April 15, 1996.

ADDRESSES: Mail or hand deliver written comments to the Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, Room 218, Three Parkway Center, Pittsburgh, PA 15220.

The Administrative Record for this request is available for review at both the address above and OSM's Columbus Office, Eastland Professional Plaza, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232 during normal business hours, Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Peter Michael, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, Room 218, Three Parkway Center, Pittsburgh, PA 15220. Telephone: (412) 937–2867.

SUPPLEMENTARY INFORMATION:

I. Background on VER Requirements for National Forest Lands

Section 522(e) of SMCRA (30 U.S.C. 1272(e)) prohibits surface coal mining operations on certain lands unless a person has VER to conduct such operations or unless the operation was in existence on August 3, 1977. Section 522(e)(2) applies the prohibition to Federal lands within the boundaries of any national forest unless the Secretary of the Interior finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations and the surface operations and impacts are incident to an underground coal mine.

Under section 523 of the Act and 30 CFR 740.11, the approved State program (including the State definition of VER) applies to all Federal lands within States with approved regulatory programs. However, under 30 CFR 745.13, the Secretary has exclusive authority to determine VER for surface coal mining and reclamation operations on Federal lands within the boundaries of the areas specified in paragraphs (e)(1) and (e)(2) of section 522 of the Act. OSM reaffirmed these basic principles in the preamble to the suspension notice concerning VER published on November 20, 1986 (51 FR 41954) with the caveat that, in States with an all-permits standard for VER, OSM would apply the standard as if it contained a good-faith component.

Ohio represents a special case in that OSM is not restricted to use of the State program definition of VER. In situations in which application of the State definition would result in a denial of permission to conduct surface coal mining operations, OSM may rely on a takings standard, in accordance with *Belville Mining Co.* v. *Lujan*, No. C–1–89–790 (S.D. Ohio 1991), *Mot. for recons. granted*, Sept. 18, 1992. In other words, OSM may find that a person has VER if application of the prohibitions of section 522(e) of the Act would result in a compensable taking under the Fifth and Fourteenth Amendments to the U.S. Constitution.

II. Request for VER Determination

By letter dated August 14, 1995, James F. Graham of Buckingham Coal Company, Inc. requested that OSM determine whether he has VER to remove the No. 6 coal seam, using block cut, contour, and area mining methods, from 25.2 acres located within the Wayne National Forest in Perry County, Ohio. The requester alleges that he is the lessee of all coal underlying this tract. The United States of America purchased the surface rights from Daniel C. Jenkins, Jr. and other interested parties on April 24, 1967, and from Edward G. Blaire on May 1, 1967. The land is currently managed by the U.S. Department of Agriculture as part of the Wayne National Forest.

The property extends from north to south along an ephemeral tributary of Pine Run and is about 1.8 miles northeast of the city of Shawnee, Ohio. Its southern limit is adjacent to County Route 43. The center of the property lies on the boundary between Sections 11 and 14 on the New Straightsville, Ohio USGS Quadrangle, Its southern limit is adjacent to County Route 43.

OSM invites interested persons to provide factual information as to whether the requester has the property right to mine by the proposed methods. OSM also solicits comment on whether the request meets the VER criteria of the approved Ohio program, as defined in OAC 1501:13–1–02 of the Ohio Administrative Code; or whether application of the prohibitions in section 522(e)(2) of SMCRA or OAC 1501:13–3–03 of the Ohio Administrative Code would constitute a compensable taking of property under the Fifth and Fourteenth Amendments to the U.S. Constitution.

If OSM determines that the requester has VER, he may apply for a permit from the Ohio Department of Natural Resources, which, if granted, would authorize surface coal mining operations on the property in question. If OSM determines that the requester does not have VER, no permits may be issued for surface coal mining operations. However, the lack of VER would not prohibit issuance of a permit for underground coal mining operations, provided the Secretary determines that such operations are compatible with the recreational, timber, economic, and other values associated with this property.

Dated: February 7, 1996.

Ron Recker,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 96–4799 Filed 2–29–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Edward Byrne Memorial State and Local Law Enforcement Assistance Program.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 Code of Federal Regulation, § 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The proposed collection is listed below:

(1) Type of information collection. Revision of a currently approved collection.

(2) The title of the form/collection. Edward Byrne Memorial State and Local Law Enforcement Assistance Program.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Office of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: State, Local or Tribal Governments. Other: None.

This collection contains the "Program Guidance and Application Kit" the states will use to apply for grants under the Edward Byrne Memorial State and

Local Law Enforcement Assistance Program.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond. 56 respondents: Items (a–d) at 10 minutes per response, item (e) at 60 hours per response, item (f) at 30. minutes per response, and item (g) 10 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection. 26,829 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: February 26, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–4725 Filed 2–29–96; 8:45 am]

BILLING CODE 4410–18–M

Immigration and Naturalization Service

[INS No. 1746–96; AG Order No. 2011–96]

RIN 1115–AE26

Extension of Designation of Liberia Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends, until March 28, 1997, the Attorney General's designation of Liberia under the Temporary Protected Status (TPS) program provided for in section 244A of the Immigration and Nationality Act, as amended ("the Act"). Accordingly, eligible aliens who are nationals of Liberia, or who have no nationality and who last habitually resided in Liberia, may re-register for Temporary Protected Status and extension of employment authorization. This re-registration is limited to persons who already have registered for the initial period of TPS which ended on March 27, 1992. In addition, some Liberians may be eligible for late initial registration pursuant to 8 CFR 240.2(f)(2).

EFFECTIVE DATES: This extension of designation is effective on March 29, 1996, and will remain in effect until March 28, 1997. The primary re-registration procedures become effective on March 1, 1996, and will remain in effect until April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ronald Chirlin, Adjudications Officer, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Under section 244A of the Act, as amended by section 302(a) of Public Law 101–649 and section 304(b) of Public Law 102–232 (8 U.S.C. 1254a), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible aliens who are nationals of a foreign state designated by the Attorney General, or who have no nationality and who last habitually resided in that state. The Attorney General may designate a state upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or certain other extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

Effective on March 27, 1991, the Attorney General designated Liberia for Temporary Protected Status for a period of 12 months, 56 FR 12746. The Attorney General extended the designation of Liberia under the TPS program for additional 12-month periods until March 28, 1996, 60 FR 16163.

This notice extends the designation of Liberia under the Temporary Protected Status program for an additional 12 months, in accordance with sections 244A(b)(3) (A) and (C) of the Act. This notice also describes the procedures which eligible aliens who are nationals of Liberia, or who have no nationality and who last habitually resided in Liberia, must comply with in order to re-register for TPS.

In addition to timely re-registrations and late re-registrations authorized by this notice's extension of Liberia's TPS designation, late initial registrations are possible for some Liberians under 8 CFR 240.2(f)(2). Such late initial registrants must have been "continuously physically present" in the United States since March 27, 1991, must have had a valid immigrant or non-immigrant status during the original registration period, and must register no later than 30 days from the expiration of such status.

An Application for Employment Authorization, Form I–765, must always be filed as part of either a re-registration or as part of a late initial registration together with the Application for Temporary Protected Status, Form I–821. The appropriate filing fee must accompany Form I–765 unless a properly documented fee waiver request is submitted to the Immigration and Naturalization Service or unless the applicant does not request employment authorization. The Immigration and Naturalization Service requires TPS registrants to submit Form I–765 for data-gathering purposes.

Notice of Extension of Designation of Liberia Under the Temporary Protected Status Program

By the authority vested in me as Attorney General under sections 244A of the Immigration and Nationality Act, as amended, (8 U.S.C. 1254a), and pursuant to sections 244A(b)(3) (A) and (C) of the Act, I have had consultations with the appropriate agencies of the Government concerning (a) the conditions in Liberia; and (b) whether permitting nationals of Liberia, and aliens having no nationality who last habitually resided in Liberia, to remain temporarily in the United States is contrary to the national interest of the United States. As a result, I determine that the conditions for the original designation of Temporary Protected Status for Liberia continue to be met. Accordingly, it is ordered as follows:

(1) The designation of Liberia under section 244A(b) of the Act is extended for an additional 12-month period from March 29, 1996, to March 28, 1997.

(2) I estimate that there are approximately 4000 nationals of Liberia, and aliens having no nationality who last habitually resided in Liberia, who have been granted Temporary Protected Status and who are eligible for re-registration.

(3) In order to maintain current registration for Temporary Protected Status, a national of Liberia, or an alien having no nationality who last habitually resided in Liberia, who received a grant of TPS during the initial period of designation from March 27, 1991, to March 27, 1992, must comply with the re-registration requirements contained in 8 CFR 240.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Liberia, or an alien having no nationality who last habitually resided in Liberia, who previously has been granted TPS, must re-register by filing a new Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on March 1, 1996, and ending on April 1, 1996, in order to be eligible for Temporary Protected Status during the period from March 29, 1996, until March 28, 1997. Late re-registration applications will be allowed pursuant to 8 CFR 240.17(c).

(5) There is no fee for Form I–821 filed as part of the re-registration application. The fee prescribed in 8 CFR 103.7(b)(1), currently seventy dollars ($70), will be charged for Form I–765, filed by an alien requesting employment authorization pursuant to the provisions of paragraph (4) of this notice. An alien who does not request employment authorization must nonetheless file Form I–821 together with Form I–765, but in such cases both Form I–821 and Form I–765 should be submitted without fee.

(6) Pursuant to section 244A(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before March 28, 1997, the designation of Liberia under the TPS program to determine whether the conditions for designation continue to be met. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

(7) Information concerning the TPS program for nationals of Liberia, and aliens having no nationality who last habitually resided in Liberia, will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: February 26, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–4924 Filed 2–29–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wage payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C., this 23rd day of February 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–4539 Filed 2–29–96; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before April 15, 1996. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin; the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Defense Contract Audit Agency (N1–372–96–1). Records of a general nature pertaining to Internal Management Control.

2. Department of Defense Inspector General (N1–509–93–3). Routine records relating to preliminary aspects of the "Tailhook" investigation and to persons who were cleared of wrong-doing. (Substantive records, such as the DOD IG review of the Naval Investigative Service investigation, policy and procedural records, subpoenas, evidence and exhibits, individual jackets and related records, background files, and final report, are all proposed as permanent.)

3. Department of Energy (N1–434–96–3). Administrative records relating to the clearance and vetting of persons appointed to non-career positions. Required documentation will be maintained in the employee's Official Personnel File.

4. Department of Energy (N1–434–96–4). Film badges that measure radiation exposure of employees. Records will be retained for 75 years.

5. Department of Interior, Bureau of Land Management (N1–49–94–1). Routine administrative records for and records migrated to a new electronic system.

6. National Telecommunications and Information Administration (N1–417–96–1). Records of the Interdepartmental Radio Advisory Committee.

7. Office of Thrift Supervision (N1–483–93–22). Databases used to assemble and edit data as prescribed by the Home Mortgage Disclosure Act.

8. U.S. Atlantic Command (N1–528–96–1). Medical treatment records of Cuban Refugees at U.S. Naval Base Guantanamo Bay, Cuba, during calendar year 1995. Records will be retained for 10 years.

Dated: February 12, 1996.

James W. Moore,

Assistant Archivist for Records Administration.

[FR Doc. 96–4813 Filed 2–29–96; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Alan T. Waterman Award Committee (1172).

Date and Time: Friday, March 22, 1996; 8:30 a.m.–3:00 p.m.

Place: Room 370, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Executive Secretary, Room 1220, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703/306–1096.

Purpose of Meeting: To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: February 26, 1996.

M. Rebecca Winkler

Committee Management Officer

[FR Doc. 96–4764 Filed 2–29–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and Time: March 13–14, 1996; 8:30 am–5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1295, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Gilbert B. Devey, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 26, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–4762 Filed 2–29–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Computer and Information Science and Engineering; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Computer and Information Science and Engineering; Committee of Visitors, NSFNET Program (1115).

Date and Time: March 19–20, 1996; 8:30 a.m. to 5 p.m. each day.

Place: Room 1120, National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Mr. David A. Staudt, Division of NCRI, National Science Foundation, Rm. 1175, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1949.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the NSFNET Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: February 26, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–4761 Filed 2–29–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Elementary, Secondary and Informal Education (#59).

Date and Time: March 21–22, 1996.

Place: Room 340 National Science Foundation, 4201 Wilson Boulevard. Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Janice Earle, Program Director, Division of Elementary, Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1614.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: To proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 26, 1996.

Rebecca M. Winkler,

Committee Management Officer.

[FR Doc. 96–4759 Filed 2–29–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Geosciences (1755); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (#1755).

Dates: March 18–19, 1996.

Time: 8:30 am.–5:00 p.m.

Place: Room 1235, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Dr. Thomas J. Baerwald, Deputy Assistant Director for Geosciences, Suite 705, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230, 703–306–1502.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

Agenda: GEO budgetary and operational updates, GEO long-range planning; The role of centers in geoscience research and education, Geoscience education, NSF-wide initiatives related to the integration of research and education, NSF-wide operational and management activities, Issues referred to AC/GEO by subcommittees, Continuation of items from previous meeting.

Dated: February 26, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–4760 Filed 2–29–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: March 19, 1996; 8 a.m–5 p.m.

Place: Room #730, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Michael Mayhew, Program Director, Education and Human Resources Program, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1557.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Postdoctoral Fellowship Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1996.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 96–4757 Filed 2–29–96; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR).
Date and Time: March 21, 1996, 8:00 pm–5:00 pm.
Place: National Science Foundation, 4201 Wilson Boulevard, Room 1020, Arlington, VA 22230.
Type of Meetings: Closed.
Contact Person: Dr. Bruce A. MacDonald, Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Blvd, Arlington, VA, 22230, Telephone (703) 306–1835.
Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals submitted to the Faculty Early Career Development (CAREER) Program.
Reason for Closing: The proposals being reviewed may include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552 b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: February 26, 1996.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 96–4763 Filed 2–29–96; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (#1208).
Date: March 20–22, 1996.
Place: Massachusetts Institute of Technology, Room 37–252, The Marlar Lounge, 70 Vassar Street, Cambridge, Massachusetts.
Type of Meeting: closed.
Contact Person: Dr. David Berley, Program Manager, Laser Interferometer Gravitational Observatory, Physics Division, Room 1015, National Science Foundation, 4201 Arlington Blvd., Arlington, VA 22230. Telephone: (703) 306–1892.
Purpose of Meeting: To review the MIT subactivity of the LIGO project including the Research and Development, the Detector Fabrication, and the Facilities Support. Evaluate the past activities and assess the proposed program through the end of the LIGO construction period (1999) with the view toward the long term operations.
Agenda: To review the MIT subactivity of the LIGO project, the past activities and the proposed program.
Reason for Closing: The Project plans being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (8) of the Government in the Sunshine Act.

Dated: February 26, 1996.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 96–4758 Filed 2–29–96; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[IA 96–009]

Bolton, Eugene; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Eugene Bolton (Mr. Bolton) was employed as a Senior Nuclear Production Technician at the New York Power Authority (NYPA) (Licensee). Licensee is the holder of License No. DPR–64 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. The license authorizes the operation of Indian Point 3 (facility) in accordance with the conditions specified therein. The facility is located on the Licensee's site in Buchanan, New York.

II

On March 10, 1993, the NRC, Region I, received information from NYPA that Mr. Bolton had attempted to substitute a "cold" [surrogate] urine sample during random Fitness-for-Duty (FFD) testing required by NRC regulations, that a subsequent witnessed sample provided by Mr. Bolton had tested positive for marijuana, that Mr. Bolton had been referred to the Employee Assistance Program, and his authorization for access to the Indian Point 3 facility had been suspended. In response to this information, NRC initiated an investigation by the Office of Investigations (OI) of this matter. The investigation established that:

1. When called for a FFD test on March 9, 1993, Mr. Bolton knowingly submitted a surrogate urine sample which he had collected on a previous date and maintained for that purpose.

2. Mr. Bolton admitted that he provided surrogate urine samples in the past when selected for FFD testing in order to avoid detection of the presence of illegal substances.

On October 6, 1995, a Demand for Information (DFI) was issued to Mr. Bolton based on the findings of the OI investigation. The DFI indicated that Mr. Bolton had engaged in deliberate misconduct in violation of 10 CFR 50.5(a)(2), in that he provided to the facility licensee information which he knew to be inaccurate in some respect material to the NRC. Mr. Bolton's actions also constituted a violation of 10 CFR 50.5(a)(1) in that he deliberately provided a urine sample that he knew to be inaccurate and which, but for detection, would have caused the Licensee to be in violation of 10 CFR 50.9, "Completeness and accuracy of information."

The DFI requested that Mr. Bolton provide a response, within 30 days from the date of the DFI, that would: (A) Identify whether he currently is employed by any company subject to NRC regulation, and if so, describe in what capacity; and (B) Describe why the NRC should have confidence that Mr. Bolton will meet NRC requirements to provide complete and accurate information to the NRC and its licensees in the future.

The DFI further stated that, if Mr. Bolton did not respond as specified, the NRC would proceed on the basis of available information and could take other actions as necessary to ensure compliance with regulatory requirements. Although a response to the DFI was due on November 6, 1995, as of the date of this Order, Mr. Bolton has not responded.

III

Based on the above, it appears that Mr. Bolton, an employee of the Licensee at the time of the incident, engaged in deliberate misconduct in violation of 10 CFR 50.5(a)(2), in that he submitted to the Licensee information which he knew to be inaccurate in some respect material to the NRC, and 10 CFR 50.5(a)(1), in that he deliberately provided a urine sample that he knew to be inaccurate and which, but for detection, would have caused the facility licensee to be in violation of 10 CFR 50.9.

The NRC must be able to rely on its Licensees and their employees to comply with NRC requirements, including the requirement to provide information and maintain records that

are complete and accurate in all material respects. Mr. Bolton's actions in using illegal drugs and attempting to circumvent FFD requirements have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC and its Licensees. Although a DFI was issued on October 6, 1995, which provided Mr. Bolton an opportunity to describe why the NRC should have confidence that he will meet NRC requirements to provide complete and accurate information to the NRC and its Licensees in the future, Mr. Bolton has not responded to the DFI.

Consequently, I lack the requisite reasonable assurance that: (1) Mr. Bolton will conduct any NRC-licensed activities in compliance with the Commission's requirements; and (2) that the health and safety of the public will be protected with Mr. Bolton granted unescorted access to NRC-licensed facilities at this time. Therefore, I find that the public health, safety, and interest require that Mr. Bolton be prohibited from seeking unescorted access to NRC-licensed facilities for five years from the date of his termination of unescorted access by NYPA on March 9, 1993. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the misconduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 50.5, it is hereby ordered, effective immediately, that:

Mr. Bolton is prohibited for five years from the date of his termination of unescorted access by NYPA on March 9, 1993, from seeking unescorted access to facilities licensed by the NRC.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Bolton of good cause.

V

In accordance with 10 CFR 2.202, Mr. Bolton must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Bolton or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Bolton if the answer or hearing request is by a person other than Mr. Bolton. If a person other than Mr. Bolton requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Bolton or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Bolton, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated: February 23, 1996.

For the Nuclear Regulatory Commission.
James L. Milhoan,
Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations, and Research.
[FR Doc. 96–4790 Filed 2–29–96; 8:45 am]
BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Agricultural Policy Advisory Committee for Trade and Agricultural Technical Advisory Committees for Trade Meetings

AGENCY: Office of the United States Trade Representative.
ACTION: Notice.

SUMMARY: The Agricultural Policy Advisory Committee for Trade (APAC) and the Agricultural Technical Advisory Committees for Trade (ATACs) will hold meetings during the period of March 1, 1996–June 30, 1996. The meetings will include a review and discussion of current issues which influence U.S. agricultural trade policy that include, but are not limited to, issues concerning GATT accession negotiations with various countries; U.S./Mexico bilateral agricultural trade issues; U.S./Canada bilateral agricultural trade issues; Chile NAFTA accession negotiations; international sanitary and phytosanitary barriers to trade; and WTO Uruguay Round Agreement implementation issues.

Pursuant to section 2155(f)(2) of title 19 of the United States Code, the U.S. Trade Representative has determined that these meetings will be concerned solely with matters the matters of disclosure of which would seriously compromise the development by the United States Government of trade policy priorities, negotiating objectives, bargaining positions. Accordingly, these meetings will be closed to the public.

ADDRESSES: The meetings will be held at the U.S. Department Agriculture, 14th and Independence Avenue, SW, Washington, D.C. 20250 unless an alternate site is necessary.

FOR FURTHER INFORMATION CONTACT: Clayton Parker, Director of Intergovernmental Affairs, Office of the United States Representative at (202) 395–6120 or John B. Winski, Joint Executive Secretary, Agricultural Policy Advisory Committee for Trade, Foreign Agricultural Services, U.S. Department of Agriculture, at (202) 720–6829.

Michael Kantor,
United States Trade Representative.
[FR Doc. 96–4776 Filed 2–29–96; 8:45 am]
BILLING CODE 3190–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Intention to Request Reclearance of Information Collection Forms SF 2802, SF 2802B and RI 36–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for reclearance of the following information collections. SF 2802, Application for Refund of Retirement Deductions (CSRS), SF 2802B, Current/Former Spouse's Notification of Application for Refund of Retirement Deductions, and RI 36–7, Marital Information Required of Refund Applicants. OPM must have the SF 2802 completely filled out and signed before paying a refund of retirement contributions. SF 2802B must also be completed if there are spouse(s) or former spouse(s) who must be notified of the employee's intent to take a refund. RI 36–7 is needed when the SF 2802 is incomplete as to the applicant's marital status.

Approximately 35,000 SF 2802 forms are completed annually. Each form takes approximately 45 minutes to complete. The annual estimated burden is 26,250 hours. Approximately 31,500 SF 2802B forms are completed annually. Each form takes approximately 15 minutes to complete. The annual estimated burden is 7,875 hours. Approximately 21,050 RI 36–7 forms are completed annually. Each form takes approximately 10 minutes to complete. The annual estimated burden is 3,508 hours. The combined total annual burden is 37,633 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or e-mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received on or before April 30, 1996.

ADDRESSES: Send or deliver comments to Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION, CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–9583 Filed 2–29–96; 8:45 am]

BILLING CODE 6325–01–M

Federal Salary Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the forty-eighth meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting is open to the public.

DATES: March 14, 1996, at 1:00 p.m.

ADDRESSES: Office of Personnel Management, 1900 E Street NW., Room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street NW., Room 6H31, Washington, DC 20415–0001, (202) 606–2838.

For the President's Pay Agent.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–4582 Filed 2–29–96; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 21774; 811–2534]

Eaton Vance Cash Management Fund; Notice of Application

February 23, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Eaton Vance Cash Management Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 8, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 19, 1996 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, c/o Eric G. Woodbury, Esq., 24 Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On October 16, 1974, applicant registered under the Act, and on the same date filed a registration statement pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on January 27, 1975, and applicant's initial public offering commenced soon thereafter. Applicant is a feeder fund in a master-feeder structure and therefore has no investment adviser.

2. On June 19, 1995, applicant's board of trustees approved an Agreement and Plan of Reorganization whereby applicant would transfer all of its assets and liabilities to a corresponding new series of Eaton Vance Government Obligations Trust (now named Eaton Vance Mutual Funds Trust) (the "Trust"). The new series is Eaton Vance Cash Management Fund (the "Successor Fund").

3. Pursuant to rule 17a–8, which governs mergers of certain affiliated investment companies, applicant's board of directors determined that such reorganization would be in the best interests of applicant and the interests of applicant's existing shareholders would not be diluted.[1] No shareholder approval was required by the Declaration of Trust of applicant or the Trust, or by applicable law.

4. On August 31, 1995, applicant transferred all of the assets and liabilities to the Successor Fund. Shareholders in applicant received shares of beneficial interest of the Successor Fund equal in value to their shares in the applicant in complete liquidation and dissolution of applicant. Specifically, in exchange for $128,833,538 of assets transferred to the Successor Fund, applicant issued 128,833,538 shares of beneficial interest. No brokerage commissions were paid as a result of the exchange.

5. The applicant and the Successor Fund each assumed its own expenses in connection with the reorganization. Such expenses included, but were not limited to legal fees, registration fees and printing expenses.

6. At the time of the filing of the application, applicant had no assets or liabilities and was not a party to any litigation or administrative proceeding and had no shareholders. Applicant is neither engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

[1] Although purchases and sales between affiliated persons generally are prohibited by Section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common trustees, and/or common officers. Applicant and the Trust may be deemed to be affiliated persons of each other by reason of having common trustees and officers, and therefore may rely on the rule.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4738 Filed 2–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 178; 811–5453]

Eaton Vance Equity-Income Trust; Notice of Application

February 3, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Eaton Vance Equity-Income Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 8, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 19, 1996 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 0549. Applicant, c/o Eric G. Woodbury, Esq., 24 Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On August 11, 1987, applicant registered under the Act, and filed a registration statement pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on October 20, 1987, and applicant's initial public offering commenced soon thereafter. Applicant is a feeder fund in a master-feeder structure and therefore has no investment adviser.

2. On August 7, 1995, applicant's board of trustees approved an Agreement and Plan of Reorganization whereby applicant would transfer all of its assets and liabilities to EV Marathon Total Return Fund (the "Fund") a series of Eaton Vance Special Investment Trust (the "Trust").

3. Pursuant to rule 17a–8, which governs mergers of certain affiliated investment companies, applicant's trustees determined that the reorganization was in the best interests of applicant and the interests of applicant's existing shareholders would not be diluted.[1] No shareholder approval was required by the Declaration of Trust of applicant or the Trust, or by applicable law.

4. On November 3, 1995, applicant transferred all of its assets and liabilities to the Fund. Shareholders in the applicant received shares of beneficial interest of the Fund equal in value to their shares in applicant in complete liquidation and dissolution of applicant. Specifically, in exchange for $23,814,445 of assets transferred to the Fund applicant issued 2,027,296 shares of beneficial interest. No brokerage commissions were paid as a result of the exchange.

5. Applicant assumed all expenses in connection with the reorganization. Such expenses were approximately $30,644 and included, but were not limited to legal fees and registration fees.

6. At the time of the filing of the application, applicant had no assets or liabilities and was not a party to any litigation or administrative proceeding and had no shareholders. Applicant is neither engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4731 Filed 2–9–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21777; 811–6157]

Eaton Vance Investment Fund, Inc.; Notice of Application

February 23, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Eaton Vance Investment Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

[1] Although purchases and sales between affiliated persons generally are prohibited by Section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common trustees, and/or common officers. Applicant and the Trust may be deemed to be affiliated persons of each other by reason of having common trustees and officers, and therefore may rely on the rule.

FILING DATE: The application was filed on February 8, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 19, 1996 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicant, c/o Eric G. Woodbury, Esq., 24 Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Maryland business corporation. On August 22, 1990, applicant registered under the Act, and on August 23, 1990 filed a registration statement pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on November 20, 1990, and applicant's initial public offering commenced soon thereafter. Applicant consists of two series, EV Classic Strategic Income Fund ("Classic Strategic") and EV Marathon Strategic Income Fund ("Marathon Strategic") (collectively the "Funds"). Applicant's series are feeder funds in a master-feeder structure and therefore have no investment adviser.

2. On June 19, 1995, applicant's board of trustees approved an Agreement and Plan of Reorganization whereby applicant would transfer all of the assets and liabilities of Classic Strategic and Marathon Strategic to a corresponding new series of Eaton Vance Government Obligations Trust (now named Eaton Vance Mutual Funds Trust) (the "Trust"). These new series are EV Classic Strategic Income Fund and EV Marathon Strategic Fund (together, the "Successor Funds").

3. Pursuant to rule 17a–8, which governs mergers of certain affiliated investment companies, applicant's board of directors determined that such reorganizations would be in the best interests of applicant and the interests of applicant's existing shareholders would not be diluted.[1]

4. Applicant filed its preliminary proxy materials on Form N–14 with the SEC on June 29, 1995 and filed definitive copies of its proxy materials on July 18, 1995. EV Marathon Strategic Income Fund's shareholders approved the Plan at a meeting held on August 31, 1995, and the sole shareholder of EV Classic Strategic Income Fund approved its Plan.

5. On October 31, 1995, applicant transferred all of its assets and liabilities of the Funds to their corresponding Successor Funds. Shareholders in the Funds received shares of beneficial interest of each Successor Fund equal in value to their shares in a Fund in complete liquidation and dissolution of applicant. Specifically, in exchange for $11,407 and $150,878,362, respectively of assets transferred to New Classic Strategic and New Marathon Strategic, the Trust, on behalf of each Successor Fund, issued 1,006 and 17,756,597 shares. No brokerage commissions were paid as a result of the exchange.

6. Each Fund and each Successor Fund assumed its own expenses in connection with the reorganization. Such expenses included, but were not limited to legal fees, registration fees and printing expenses.

7. At the time of the filing of the application, applicant had no assets or liabilities and was not a party to any litigation or administrative proceeding and had no shareholders. Applicant is neither engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4736 Filed 2–29–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Although purchases and sales between affiliated persons generally are prohibited by Section 17(a) of the Act, rule 17a-8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common trustees, and/or common officers. Applicant and the Trust may be deemed to be affiliated persons of each other by reason of having common trustees and officers, and therefore may rely on the rule.

[Investment Company Act Release No. 21780; 811–8]

Eaton Vance Investors Trust; Notice of Application

February 23, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Eaton Vance Investors Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 08, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 19, 1996 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicant, c/o Eric G. Woodbury, Esq., 24 Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On June 24, 1946, applicant registered under the Act, and filed a registration statement pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on July 26, 1946, and applicant's initial public offering commenced soon thereafter. Applicant consists of three series, EV Classic Investors Fund ("Classic Investors"), EV Marathon Investors Fund ("Marathon Investors") and EV Traditional Investors Fund ("Traditional Investors") (collectively the "Funds"). Applicant's series are feeder funds in a master-feeder structure and therefore have no investment adviser.

2. On June 19, 1995, applicant's board of trustees approved an Agreement and Plan of Reorganization for each Fund whereby applicant would transfer all of the assets and liabilities of Classic Investors, Marathon Investors and Traditional Investors to a corresponding new series of Eaton Vance Special Investment Trust (the "Trust"). These new series are EV Classic Investors Fund, EV Marathon Investors Fund and EV Traditional Investors Fund (together, the "Successor Funds").

3. Pursuant to rule 17a–8, which governs mergers of certain affiliated investment companies, applicant's trustees determined that the reorganization was in the best interests of applicant and the interests of applicant's existing shareholders would not be diluted.[1] No shareholder approval was required by the Declaration of Trust of applicant or the Trust, or by applicable law.

4. On July 31, 1995, applicant transferred all of the assets and liabilities of the Funds to their corresponding Successor Funds. Shareholders in the Funds received shares of beneficial interest of each Successor Fund equal in value to their shares in the appropriate Fund in complete liquidation and dissolution of applicant. Specifically, in exchange for $5,277,910, $22,828,748 and $222,844,596, respectively of assets transferred to new Classic Total Return, New Marathon Total Return and New Traditional Total Return, the Trust, on behalf of each Successor Fund, issued 479,374, 2,072,701 and 28,231,149 shares, respectively, of beneficial interest. No brokerage commissions were paid as a result of the exchange.

5. Each Fund and each Successor Fund assumed its own expenses in connection with the reorganization. Such expenses included, but were not limited to, legal fees, registration fees and printing expenses.

6. At the time of the filing of the application, applicant had no assets or liabilities and was not a party to any litigation or administrative proceeding and had no shareholders. Applicant is neither engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4733 Filed 2–29–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Although purchases and sales between affiliated persons generally are prohibited by Section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common trustees, and/or common officers. Applicant and the Trust may be deemed to be affiliated persons of each other by reason of having common trustees and officers, and therefore may rely on the rule.

[Investment Company Act Release No. 21781; 811–5176]

Eaton Vance Liquid Asset Trust; Notice of Application

February 23, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Eaton Vance Liquid Assets Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 08, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 19, 1996 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, c/o Eric G. Woodbury, Esq., 24 Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On May 20, 1987, applicant registered under the Act, and filed a registration statement pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on May 28, 1987, and applicant's initial public offering commenced soon thereafter. Applicant consists of two series, Eaton Vance Liquid Assets Fund ("Liquid Assets") and Eaton Vance Money Market Fund ("Money Market Fund") (collectively the "Funds"). Applicant's series are feeder funds in a master-feeder structure and therefore have no investment adviser.

2. On June 19, 1995, applicant's board of trustees approved an Agreement and Plan of Reorganization for each Fund whereby applicant would transfer all of the assets and liabilities of Liquid Assets and Money Market Fund to a corresponding new series of Eaton Vance Government Obligations Trust (now named Eaton Vance Mutual Funds Trust) (the "Trust"). These new series are Eaton Vance Liquid Assets Fund and Eaton Vance Money Market Fund (together, the "Successor Funds").

3. Pursuant to rule 17a–8, which governs mergers of certain affiliated investment companies, applicant's trustees determined that the reorganization was in the best interests of applicant and the interests of applicant's existing shareholders would not be diluted.[1] No shareholder approval was required by the Declaration of Trust of applicant or the Trust, or by applicable law.

4. On August 31, 1995, applicant transferred all of the assets and liabilities of the Funds to their corresponding Successor Funds. Shareholders in the Funds received shares of beneficial interest of each Successor Fund equal in value to their shares in the appropriate Fund in complete liquidation and dissolution of applicant. Specifically, in exchange for $40,734,914 and $11,991,558, respectively of assets transferred to New

[1] Although purchases and sales between affiliated persons generally are prohibited by Section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common trustees, and/or common officers. Applicant and the Trust may be deemed to be affiliated persons of each other by reason of having common trustees and officers, and therefore may rely on the rule.

Liquid Assets and New Money Market Fund, the Trust, on behalf of each Successor Fund, issued 40,734,914 and 11,991,558 shares, respectively, of beneficial interest. No brokerage commissions were paid as a result of the exchange.

5. Each Fund and each Successor Fund assumed its own expenses in connection with the reorganization. Such expenses included, but were not limited to legal fees and registration fees.

6. At the time of the filing of the application, applicant had no assets or liabilities and was not a party to any litigation or administrative proceeding and had no shareholders. Applicant is neither engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4732 Filed 2–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21776; 811–161]

Eaton Vance Securities Trust

February 23, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Eaton Vance Securities Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that is has ceased to be an investment company.

FILING DATE: The application was filed on February 8, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 19, 1996 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicant, c/o Eric G. Woodbury, Esq., 24 Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On July 12, 1941, applicant registered under the Act, and on January 31, 1955 filed a registration statement pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on February 15, 1955, and applicant's initial public offering commenced soon thereafter. Applicant consists of three series, EV Classic Stock Fund ("Classic Stock"), EV Marathon Stock Fund ("Marathon Stock") and EV Traditional Stock Fund ("Traditional Stock") (collectively the "Funds"). Applicant's series are feeder funds in a master-feeder structure and therefore have no investment adviser.

2. On June 19, 1995, applicant's board of trustees approved an Agreement and Plan of Reorganization for each fund whereby applicant would transfer all of the assets and liabilities of Classic Stock, Marathon Stock and Traditional Stock to a corresponding new series of Eaton Vance Special Investment Trust (the "Trust"). These new series are EV Classic Stock Fund, EV Marathon Stock Fund and EV Traditional Stock Fund (together, the "Successor Funds").

3. Pursuant to rule 17a–8, which governs mergers of certain affiliated investment companies, applicant's board of directors determined that such reorganizations would be in the best interests of applicant and the interests of applicant's existing shareholders would not be diluted.[1] No shareholder approval was required by the Declaration of Trust of applicant or the Trust, or by applicable law.

4. On July 31, 1995, applicant transferred all of the assets and liabilities of the Funds to their corresponding Successor Funds. Shareholders in the Funds received shares of beneficial interest of each Successor Fund equal in value to their shares in a Fund in complete liquidation and dissolution of applicant. Specifically, in exchange for $860,560, $4,029,963 and $95,421,833, respectively of assets transferred to New Classic Stock, New Marathon Stock and New Traditional Stock, the Trust, on behalf of each Successor Fund, issued 73,138, 350,279 and 7,296,249 shares. No brokerage commissions were paid as a result of the exchange.

5. Each Fund and each Successor Fund assumed its own expenses in connection with the reorganization. Such expenses included, but were not limited to legal fees, registration fees and printing expenses.

6. At the time of the filing of the application, applicant had no assets or liabilities and was not a party to any litigation or administrative proceeding and had no shareholders. Applicant is neither engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4737 Filed 2–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21775; 811–3226]

Eaton Vance Tax Free Reserves; Notice of Application

February 23, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Eaton Vance Tax Free Reserves.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 08, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 19, 1996 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Eric G. Woodbury, Esq., 24 Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On July 15, 1981, applicant registered under the Act, and on the same date filed a registration statement pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on November 24, 1982, and applicant's initial public offering commenced soon thereafter.

2. On June 19, 1995, applicant's board of trustees approved an Agreement and Plan of Reorganization whereby applicant would transfer all of its assets and liabilities to a corresponding new series of Eaton Vance Government Obligations Trust (now named Eaton Vance Mutual Funds Trust) (the "Trust"). The new series is Eaton Vance Tax Free Reserves (the "Successor Fund").

3. Pursuant to rule 17a–8, which governs mergers of certain affiliated investment companies, applicant's board of directors determined that such reorganization would be in the best interests of applicant and the interests of applicant's existing shareholders would not be diluted.[1] No shareholder approval was required by the Declaration of Trust of applicant or the Trust or by applicable law.

4. On August 31, 1995, applicant transferred all of the assets and liabilities to the Successor Fund. Shareholders in the applicant received shares of beneficial interest of the Successor Fund equal in value to their shares in the applicant in complete liquidation and dissolution of applicant. Specifically, in exchange for $52,556,898 of assets transferred to the Successor Fund, applicant issued 52,556,898 shares of beneficial interest. No brokerage commissions were paid as a result of the exchange.

5. The applicant and the Successor Fund each assumed its own expenses in connection with the reorganization. Such expenses included, but were not limited to legal fees, registration fees and printing expenses.

6. At the time of the filing of the application, applicant had no assets or liabilities and was not a party to any litigation or administrative proceeding and had no shareholders. Applicant is neither engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4739 Filed 2–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21779; 811–3283]

Eaton Vance Total Return Trust; Notice of Application

February 23, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Eaton Vance Total Return Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 08, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 19, 1996 an should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, c/o Eric G. Woodbury, Esq., 24 Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On October 9, 1981, applicant registered under the Act, and filed a registration statement pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on November 13, 1981, and applicant's initial public offering commenced soon thereafter. Applicant consists of three series, EV Classic Total Return Fund ("Classic Total Return"), EV Marathon Investors Fund ("Marathon Total Return") and EV Traditional Total Return Fund ("Traditional Total Return") (collectively the "Funds"). Applicant's series are feeder funds in a master-feeder structure and therefore have no investment adviser.

2. On June 19, 1995, applicant's board of trustees approved an Agreement and Plan of Reorganization for each Fund whereby applicant would transfer all of the assets and liabilities of Classic Total Return, Marathon Total Return and Traditional Total Return to a corresponding new series of Eaton Vance Special Investment Trust (the "Trust"). These new series are EV Classic Total Return Fund, EV Marathon Total Return Fund and EV Traditional

[1] Although purchases and sales between affiliated persons generally are prohibited by Section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common trustees, and/or common officers. Applicant and the Trust may be deemed to be affiliated persons of each other by reason of having common trustees and officers, and therefore may rely on the rule.

[1] Although purchases and sales between affiliated persons generally are prohibited by Section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common trustees, and/or common offices. Applicant and the Trust may be deemed to be affiliated persons of each other by reason of having common trustees and officers, and therefore may rely on the rule.

Total Return Fund (together, the "Successor Funds").

3. Pursuant to rule 17a–8, which governs mergers of certain affiliated investment companies, applicant's trustees determined that the reorganization was in the best interests of applicant and the interests of applicant's existing shareholders would not be diluted.[1] No shareholder approval was required by the Declaration of Trust of applicant or the Trust, or by applicable law.

4. On July 31, 1995, applicant transferred all of the assets and liabilities of the Funds to their corresponding Successor Funds. Shareholders in the Funds received shares of beneficial interest of each Successor Fund equal in value to their shares in the appropriate Fund in complete liquidation and dissolution of applicant. Specifically, in exchange for $5,443,056, $29,878,953 and $438,492,388, respectively of assets transferred to New Classic Total Return, New Marathon Total Return and New Traditional Total Return, the Trust, on behalf of each Successor Fund, issued 595,351, 3,299,729 and 52,639,765 shares, respectively, of beneficial interest. No brokerage commissions were paid as a result of the exchange.

5. Each Fund and each Successor Fund assumed its own expenses in connection with the reorganization. Such expenses included, but were not limited to, legal fees, registration fees and printing expenses.

6. At the time of the filing of the application, applicant had no assets or liabilities and was not a party to any litigation or administrative proceeding and had no shareholders. Applicant is neither engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4734 Filed 2–29–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Although purchases and sales between affiliated persons generally are prohibited by Section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common trustees, and/or common officers. Applicant and the Trust may be deemed to be affiliated persons of each other by reason of having common trustees and officers, and therefore may rely on the rule.

[Investment Company Act Release No. 21778; 811–5272]

EV Marathon Gold & Natural Resources Fund; Notice of Application

February 23, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: EV Marathon Gold & Natural Resources Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 8, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 19, 1996 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Eric G. Woodbury, Esq., 24 Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On August 7, 1987, applicant registered under the Act, and filed a registration statement pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on October 20, 1987, and applicant's initial public offering commenced soon thereafter.

2. On June 19, 1995, applicant's board of trustees approved an Agreement and Plan of Reorganization whereby applicant would transfer all of its assets and liabilities to a corresponding new series of Eaton Vance Growth Trust (the "Trust"). The new series is EV Marathon Gold and Natural Resources Fund (the "Successor Fund").

3. Pursuant to rule 17a–8, which governs mergers of certain affiliated investment companies, applicant's trustees determined that the reorganization was in the best interests of applicant and the interests of applicant's existing shareholders would not be diluted.[1]

4. Applicant filed its preliminary proxy materials on Form N–14 with the SEC on June 28, 1995 and filed definitive copies of its proxy materials on July 18, 1995. Applicant's shareholders approved the Plan at a meeting held on August 30, 1995. No shareholder approval was required by the Declaration of Trust of applicant or the Trust, or by applicable law.

5. On August 31, 1995, applicant transferred all of its assets and liabilities to the Successor Fund. Shareholders in the applicant received shares of beneficial interest of the Successor Fund equal in value to their shares in applicant in complete liquidation and dissolution of applicant. Specifically, in exchange for $15,246,776 of assets transferred to the Fund applicant issued 928,590 shares of beneficial interest. No brokerage commissions were paid as a result of the exchange.

5. Ap: licant assumed all expenses in connection with the reorganization. Such expenses were included, but were not limited to legal fees, registration fees and printing expenses.

6. At the time of the filing of the application, applicant had no assets or liabilities and was not a party to any litigation or administrative proceeding and had no shareholders. Applicant is neither engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4735 Filed 2–29–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Although purchases and sales between affiliated persons generally are prohibited by Section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common trustees, and/or common officers. Applicant and the Trust may be deemed to be affiliated persons of each other by reason of having common trustees and officers, and therefore may rely on the rule.

[Release No. 35–26476]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 23, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transactions summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 18, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc., et al. (70–8779)

American Electric Power Company, Inc. ("AEP"), a registered holding company, its service company subsidiary, American Electric Power Service Corporation ("AEPSC"), both of 1 Riverside Plaza, Columbus, Ohio 43215, and all of AEP's public-utility company subsidiaries ("Operating Companies"),[1] have filed an application-declaration under sections 6(a), 7, 9(a), 12(b) and 13(b) of the Act and rules 45 and 52 thereunder.

AEP proposes from time to time through December 31, 2000, to form one or more direct or indirect new subsidiaries ("New Subsidiaries") to engage in the business of brokering and marketing energy commodities, which are defined to include natural and manufactured gas, electric power, emission allowances, coal, oil, refined petroleum and petroleum products and natural gas liquids ("Energy Commodities"). The New Subsidiaries will receive a commission for their brokering activities, which will include arranging the sale and purchase, transportation, transmission and storage of Energy Commodities. Their proposed marketing activities encompass entering into contracts to sell, purchase, exchange, pool, transport, transmit, distribute, store and otherwise deal in Energy Commodities. The New Subsidiaries may from time to time have an inventory of Energy Commodities; however, they will not own or operate facilities used for the production, generation, processing, storage, transmission, transportation, or distribution of Energy Commodities. The applicants assert that no New Subsidiary will be a public utility company under the Act.

The New Subsidiaries propose to broker and market Energy Commodities to wholesale customers and, where permitted by law, to retail customers. In order to manage risks associated with brokering and marketing Energy Commodities, the New Subsidiaries may enter into futures, forwards, swaps and options contracts relating to Energy Commodities ("Arbitrage Transaction"). No Arbitrage Transaction will be entered into for speculation.

The applicants propose that a New Subsidiary initially issue and sell up to 100 shares of common stock for approximately $100 to AEP or a subsidiary of AEP. Subsequently, American intends to acquire additional shares of stock or make capital contributions to the New Subsidiaries in an amount that, when aggregated with the initial capitalization of the New Subsidiaries, will not exceed $100 million.

AEP also proposes from time to time through December 31, 2000, to guarantee the debt and other obligations of the New Subsidiaries. The maximum amount of debt and other obligations that AEP proposes to guarantee is $50 million and $200 million, respectively. Debt financing of the New Subsidiaries that is guaranteed by AEP will not (i) exceed a term of 15 years or (ii)(a) bear a rate equivalent to a floating interest rate in excess of 2.0% over the prime rate, London Interbank Offered Rate or other appropriate index in effect from time to time or (b) bear a fixed rate in excess of 2.5% above the yield at the time of issuance of United States Treasury obligations of a comparable maturity. Any commitment and other fees on the debt will not exceed 50 basis points per annum on the total amount of debt financing.

AEP may guarantee other obligations where needed for the New Subsidiaries to demonstrate that they have support for their contractual obligations. Other obligations that AEP may guarantee, excluding debt, may take the form of bid bonds or performance or other direct or indirect guarantees of contractual or other obligations.

The New Subsidiaries propose to enter into service agreements with AEPSC and the Operating Companies, under which personnel and other resources, if available, of AEPSC and the Operating Companies may be used to support the New Subsidiaries' activities. Any service agreements will require that AEPSC and the Operating Companies provide, account for and bill their services, utilizing a work order system, on a full cost reimbursement in accordance with rules 90 and 91. All direct charges and prorated shares of other related service costs will be reimbursed.

Any service agreements also will provide that AEPSC and the Operating Companies make warranties of due care and compliance with applicable laws to the New Subsidiaries with respect to the performance of the servicesrequested, but failure to meet these obligations will not subject them to any claim or liability, other than to reperform the work at cost. Furthermore, AEPSC and the Operating Companies will be indemnified by the New Subsidiaries against liabilities to or claims of third parties arising out of the performance of work on behalf of the New Subsidiaries.

Initially, the New Subsidiaries are not expected to have employees and will use the personnel and resources of AEPSC and the Operating Companies to broker and market Energy Commodities. No more than 1% of the employees of the Operating Companies will render, directly or indirectly, services to the New Subsidiaries at any one time.

New England Electric System, et al. (70–8733)

New England Electric System (NEES), a registered holding company, and its nonutility subsidiary company, New England Electric Resources, Inc. ("NEERI") (together, "Applicants"), both located at 25 Research Drive,

[1] Appalachian Power Company, 40 Franklin Rd., Roanoke, Virginia, 24022; Columbus Southern Power Company, 215 No. Front St., Columbus, Ohio, 43215; Indiana Michigan Power Company, One Summit Sq., Fort Wayne, Indiana, 46801; Kentucky Power Company, 1701 Central Ave., Ashland, Kentucky, 41101; Kingsport Power Company, 422 Broad St., Kingsport, Tennessee, 37660; Ohio Power Company, 339 Cleveland Ave., S.W., Canton, Ohio 44702; and Wheeling Power Company 51–16th St., Wheeling, West Virginia, 26003.

Westborough, Massachusetts 01582, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 13(b), 32, and 33 of the Act and rules 45 and 54 thereunder.

NEES and NEERI propose to acquire interests in, finance the acquisition, and hold the securities, of one or more exempt wholesale generators ("EWG") as defined in section 32 of the Act and/or foreign utility companies ("FUCO") as defined in section 33 (together, "Exempt Companies"), either directly or indirectly, through a project entity ("Project Parent"), as discussed below, without filing specific project applications. The Applicants propose the following limitations on such authority: (1) The full amount of any investment or financing, as well as any authorized guarantees or assumptions of liability, shall be counted as part of a total investment cap of $60 million ("Total Authority"), as defined below; and (2) no investment or financing will be made unless at the time of the investment or financing, and after giving effect to the investment or financing, NEES' "aggregate investment," as defined in rule 53(a)(1)(i), in EWGs, FUCOs and Project Parents does not exceed 50% of the system's "consolidated retained earnings," as defined in rule 53(a)(1)(ii).

To facilitate the acquisition and ownership of Exempt Companies, NEES and NEERI seek authority to organize, form or acquire, and to liquidate, dissolve or sell, in whole or in part, subsidiary Project Parents. Project Parents shall engage, directly or indirectly, and exclusively, in the business of owning and holding the interests and securities of one or more Exempt Companies and in project development activities relating to the acquisition of such interests and securities and the underlying electrical generation, transmission and distribution projects ("Investment Projects").

Project parents shall be special purpose domestic or foreign corporations, partnerships or limited liability companies (or the equivalent of such entities in the foreign country where such Project Parent may be formed). NEES and NEERI propose to form Project Parents at any time: (1) To make bids or submit proposals to acquire interests in Exempt Companies; and (2) to facilitate and/or close on the acquisition or financing of interests in Exempt Companies. Project Parents may also be formed to participate in joint ventures with nonassociates for the purpose of owning interests in Exempt Companies and/or engaging in Investment Projects.

The Project Parents may issue securities to NEES and/or NEERI and NEES and/or NEERI may acquire such securities. The securities may take the form of capital stock or shares, debt securities, trust certificates, partnership interests or other equity or participation interests.

NEERI may provide Project Parents, and Project Parents may provide their subsidiaries, services necessary or desirable for their operations, including, without limitation, management, engineering, employment, administrative, tax, consulting, accounting, and computer and software support. The services that NEERI and/or the Project Parents will provide will not be provided for any associate company which derives, directly or indirectly, any material part of its income from sources within the United States, and which is a public utility company operating within the United States. In these cases the Applicants have requested an exemption under section 13(b) of the Act.

NEES proposes to finance, from time-to-time through December 31, 1998, the activities of NEERI and Project Parents ("NEES Investments"). The NEES Investments may take the form of purchases of capital shares, partnership interests, trust certificates (or the equivalent of any of the foregoing under the laws of foreign jurisdictions), capital contributions, subordinated loans evidenced by subordinated promissory notes, open account advances, guarantees, bid bonds or other credit support to secure obligations incurred by NEERI and/or Project Parents in connection with Exempt Company investments or of NEERI's undertaking to contribute equity to a Project Parent.

NEES may enter into reimbursement agreements with banks to support letters of credit delivered as security for NEES' or NEERI's equity contribution obligation to a Project Parent or otherwise in connection with a Project Parent's or NEERI's Exempt Company project development activities.

NEES and NEERI also propose to, from time-to-time through December 31, 1998: (1) Guarantee the indebtedness or other obligations of one or more Exempt Companies; (2) assume the liabilities of one or more Exempt Companies; and/or (3) enter into guarantees and letters of credit reimbursement agreements in support of equity contribution obligations or otherwise in connection with project development activities for one or more Exempt Companies ("Exempt Company Investments"), as discussed below.

NEES and NEERI propose that the amount of the Total Authority be reduced from time-to-time by the amount of NEES Investments and/or Exempt Company Investments made, and Non-Recourse Debt issued, and be increased from time-to-time by: (1) Proceeds received upon the sale, liquidation, repayment or other disposition of any NEES Investment or Exempt Company Investment; (2) proceeds generated from NEERI or Project Parents' activities in connection with their investments in Exempt Companies or any particular Investment Project in which NEERI or NEES has an interest; (3) the reimbursement of such NEES Investments or Exempt Company Investments out of the proceeds of any third party financing of NEERI's or Project Parents' activities or any particular Investment Project in which NEERI or NEES, directly or indirectly, has an interest; or (4) the extent to which Non-Recourse Debt issued has been paid. In any case in which NEES and NEERI together own less than all of the equity interests of a Project Parent, only that percentage of the non-recourse indebtedness of such Project Parent equal to NEES' and NEERI's combined equity ownership percentage shall be included for purposes of the foregoing limitation.

NEES Investments may be made from NEES to NEERI and/or Project Parents directly or indirectly. Any open account advance made by NEES will be non-interest bearing and shall have a maturity not exceeding one year. Any promissory note issued to NEES by NEERI or a Project Parent, or to NEERI by a Project Parent, and any promissory note or other similar evidence of indebtedness issued by a Project Parent to a person other than NEES or NEERI with respect to which NEES or NEERI may issue a guarantee, would mature not later than 30 years after the date of issuance. It would bear interest at a rate not greater than the prime rate of a bank to be designated by NEES in the case of a promissory note issued to NEES or NEERI. In the case of any note or similar evidence of indebtedness issued to a person other than NEES or NEERI and guaranteed by NEES or NEERI, the rate would not exceed (a) the greater of 250 basis points above the lending bank's or other recognized prime rate and 50 basis points above the federal funds rate; (b) 400 basis points above the specified London Interbank Offered Rate plus any applicable reserve requirement; or (c) a negotiated fixed rate 500 basis points above the 30 year "current coupon" treasury bond rate if such note or other indebtedness is U.S. dollar denominated. If such note or other indebtedness is denominated in the currency of a foreign nation, the interest rate will not exceed a fixed or floating rate which, when adjusted for the prevailing rate of inflation, would be equivalent to a rate on a U.S. dollar denominated borrowing of identical average life that does not exceed 10% over the highest rate set forth above.

Any reimbursement agreement supporting a letter of credit would have a term not in excess of 30 years. Drawings under any such letter of credit would bear interest at not more than 5% above the prime rate of the letter of credit bank as in effect from time-to-time, and letter of credit fees would not exceed 1% annually of the face amount of the letter of credit.

New England Electric Resources, Inc. (70–8785)

New England Electric System ("NEES"), a registered holding company, and its research and development subsidiary company, New England Electric Resources, Inc. ("NEERI") (together, "Applicants"), both located at 25 Research Drive, Westborough, Massachusetts 01582, have filed an application under sections 9(a) and 10 of the Act.

By order dated February 23, 1995 (HCAR No. 26235) ("Order"), NEERI was authorized to invest up to $10 million in research and development activities. The Order provided that NEERI could invest in projects and technologies, which could include electro-technologies, energy efficiency and power quality measures, other developing environmental technologies and new generation and transmission technologies. The Order was issued on the condition that particular acquisitions remained subject to further Commission authorization.

Applicants now propose to make an initial investment of $500,000, and a possible second investment in the same amount, in Monitoring Technology Corporation ("MTC"), a Virginia corporation and the developer of a vibration monitoring technology for the risk management and performance monitoring of power turbines. MTC is developing a method to read vibration frequency "signatures" of power turbines and other turbomachines. This technology, referred to as Rotational Vibration Monitoring ("RVM"), would enable turbine operators to monitor their machines during normal operations and quantitatively analyze turbine performance and predict mechanical problems. This method of continuous, automated on-line monitoring, when compared to present technology, would result in: (1) Reduced turbine maintenance costs; (2) early warning of some potential catastrophic failures; and (3) ultimately more efficient turbine performance. While initially targeted at electric utilities, RVM technology has the potential for further application in other areas, such as propulsion and industrial turbines.

In consideration of NEERI's initial $500,000 equity investment and subsequent investments in the same amount, MTC will: (1) Issue shares of preferred stock and warrants to NEERI; (2) waive a participation fee, currently estimated at $200,000, for NEERI's associated power company, New England Power ("NEP"), to participate as a testing site for MTC's vibration monitoring technology; and (3) offer NEP significant discounts on certain future services from MTC.

NEERI proposes to purchase shares of MTC's convertible preferred stock ("Shares") at a price of $1.75 per share, for a total equity investment of $500,000. NEERI's investment in the Shares will result in NEERI's ownership of not more than 4.99% of the voting securities of MTC. The Shares may be converted to shares of common stock upon the closing of an initial public offering, in which MTC's proceeds from such offering are not less than $10 million and in which the share offering price is $3.50 or more. NEERI will also receive A and B warrants which will be exercisable under certain terms and conditions to ensure that NEERI's ownership does not exceed 4.99% of the voting securities of MTC. Both the Shares and warrants will have full ratchet anti-dilution protection.

Further, the Applicants propose to make additional investments in MTC on an emergency basis prior to its commercialization period in amounts of up to $500,000. The investments will take the form of preferred or common stock, warrants or debt that is convertible to equity.

General Public Utilities Corporation (70–8793)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, has filed a declaration under sections 6(a), 7 and 12(b) of the Act and rules 45 and 54 thereunder.

By order dated September 29, 1993 (HCAR No. 25898), the Commission, among other things, authorized GPU Service Corporation, GPU's subsidiary service compeny ("Service Company"), to enter into a Term Loan, Revolving Credit and Guaranty Agreement, dated September 30, 1993 ("FUNB Loan Agreement"), with First Union National Bank (successor in interest to First Fidelity Bank, National Association, New Jersey) ("FUNB") and to issue to FUNB its unsecured promissory notes maturing not later than September 30, 1998, representing borrowings thereunder in the amount of up to $16.5 million (of which $11.5 million constituted a term loan and $5 million a revolving credit facility which facility has expired). The proceeds of the term loan borrowings were used to refinance $11.5 million of Service Company's then outstanding indebtedness which Service Company had incurred to finance the construction and equipping of its Parsippany, New Jersey headquarters office building. The revolving credit borrowings were to be used for general corporate purposes including capital expenditures. The Commission further authorized GPU to unconditionally guarantee payment of principal of and interest on the notes and Service Company's other obligations to FUNB under the FUN Loan Agreement.

By order dated April 24, 1986 (HCAR No. 24069) ("April Order"), the Commission, among other things, authorized Service Company to issue to Aetna Life Insurance Company ("Aetna") $32 million aggregate principal amount of its secured notes ("Aetna Loan"), maturing not later than December 31, 2001, secured by a first lien and security interest in Service Company's Reading, Pennsylvania office building. The proceeds of such borrowing were used to repay then outstanding borrowings incurred to finance the construction and equipping of the Reading office building and for working capital purposes. The April Order also authorized GPU to guarantee Service Company's payment of principal and interest on and performance of its other obligations with respect to these secured notes.

As of February 1, 1996, the principal amount of borrowings outstanding under the FUNB Loan Agreement and Aetna Loan was $11.5 million and $19.2 million, respectively. The Aetna Loan bears interest at a fixed rate of 10.87% per annum. Notes issued under the FUNB Loan Agreement bear interest at fluctuating rates based upon (i) FUNB's base rate, or (ii) the London Interbank Offered Rate plus 37.5 basis points and the applicable reserve.

Service Company has determined that market conditions are sufficiently favorable to warrant a refinancing of the Aetna Loan and, possibly, at the same time a refinancing of borrowings under the FUNB Loan Agreement as well. Accordingly, Service Company now intends, from time to time through February 1, 2006, to borrow up to $40

million from one or more commercial banks or other institutions under one or more new term loan and/or revolving credit facilities ("New Loan Agreement") entered into on or before February 1, 2006. Each New Loan Agreement would provide for interest at negotiated market rates but, in any case, not in excess of the greater of (i) 150 basis points above the greater of (a) the lending bank's or other recognized prime rate and (b) 50 basis points above the federal funds rate, (ii) 200 basis points above the specified London Interbank Offered Rate plus any applicable reserve requirement, (iii) a negotiated fixed rate which, in any event, would not exceed 300 basis points above the treasury bond rate with an identical average life, or (iv) a rate equal to the average domestic money bid rate for certificates of deposit of similar maturities, plus up to 100 basis points and any applicable reserve requirements; and would include other customary terms and conditions. Loans under each New Loan Agreement would have a maturity of up to 20 years and may be evidenced by promissory notes. Proceeds of borrowings under the New Loan Agreement would be used to repay all or a portion of the outstanding borrowings under the FUNB Loan Agreement. The balance would be used for working capital and other corporate purposes.

In order to enable Service Company to borrow at more favorable rates and other terms, GPU proposes, from time to time through February 1, 2006, to enter into guaranty agreements in favor of the banks or other institutional lenders under the New Loan Agreements to unconditionally guarantee payment of principal, interest and Service Company's other obligations under the New Loan Agreements.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4740 Filed 2–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Release Nos. 33–7266; 34–36881; File No. 265–20]

Advisory Committee on the Capital Formation and Regulatory Processes; Renewal

AGENCY: Securities and Exchange Commission.

ACTION: Notice of the Renewal of the Securities and Exchange Commission Advisory Committee on the Capital Formation and Regulatory Processes.

SUMMARY: The Chairman of the Commission, with the concurrence of the other member of the Commission, has renewed the Securities and Exchange Commission Advisory Committee on the Capital Formation and Regulatory Processes ("Committee"), which will advise the Commission regarding the informational needs of investors and the regulatory costs imposed on the U.S. securities markets.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265–20. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Meridith Mitchell, Assistant General Counsel, Office of the General Counsel, at 202–942–0890; Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., the Securities and Exchange Commission has directed publication of this notice that Chairman Arthur Levitt, with the concurrence of the other member of the Commission, has renewed the "Securities and Exchange Commission Advisory Committee on the Capital Formation and Regulatory Processes." Chairman Levitt certifies that he has determined that the renewal of the Committee is necessary and in the public interest.

The Committee's charter directs the Committee to assist the Commission in evaluating the efficiency and effectiveness of the regulatory process and the disclose requirements relating to public offerings of securities, secondary market trading and corporate reporting, and in identifying and developing means to minimize costs imposed by current regulatory programs, from the perspective of investors, issuers, the various market participants, and other interested persons and regulatory authorities.

The Committee members are able to represent the varied interests affected by the range of issues being considered. The Committee's membership includes, among others, persons who represent investors, issuers, market participants, independent public accountants, regulators and the public at large. The Committee's members are able to represent a variety of viewpoints and have varying experience, and the Committee is fairly balanced in terms of points of view, backgrounds and tasks. The Chairman of the Committee is Commissioner Steven M.H. Wallman.

The Committee will conduct its operations in accordance with the provisions of the Federal Advisory Committee Act. The duties of the Committee are solely advisory. Determinations of action to be taken and policy to be expressed with respect to matters upon which the Advisory Committee provides advice or recommendations shall be made solely by the Commission.

The Committee will meet at such intervals as are necessary to carry out its functions. It is expected that meetings of the full Committee generally will occur no more frequently than 5 times; meetings of subgroups of the full Advisory Committee will likely occur more frequently. The Securities and Exchange Commission will provide necessary support services to the Committee.

The Committee will terminate on September 30, 1996 unless, prior to such time, its charter is renewed for a further period in accordance with the Federal Advisory Committee Act, or unless the Chairman, with the concurrence of the other members of the Commission, determines that continuance of the Committee is no longer in the public interest.

Concurrent with publication of this notice in the **Federal Register**, a copy of the charter of the Committee will be filed with the Chairman of the Commission, the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Commerce. A copy of the charter will also be furnished to the Library of Congress and placed in the Commission's Public Reference Room for public inspection.

Dated: February 23, 1996.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–4741 Filed 2–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36874; File No. SR–PSE–95–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Pacific Stock Exchange, Inc. to Establish a Competing Specialist Program

February 22, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 21, 1995, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, and on February 16, 1996, Amendment No. 1 to the proposed rule change,[1] as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to establish a competing specialist pilot program. The proposal includes specific procedures for competing specialists, including procedures for registration, withdrawal, and participation in the competing specialist program. The Exchange is also proposing to extend its official policies relating to circuit breakers to Competing Specialists.[2]

The Text of the proposed procedures for competing specialists is as follows:

Pacific Stock Exchange incorporated;
Procedures for Competing Specialists

The following are procedures for the Competing Specialist Pilot Program.

1. Registered Specialists are not eligible to act as Competing Specialists.

2. Applications to compete must be directed to the Equity Floor Trading Committee in writing and must list in order of preference the stock(s) in which the applicant intends to compete. The Equity Floor Trading Committee will consider the following in reviewing an application:

- Financial capability.
- Adequacy of staffing on the Floor.
- Existence of adequate Chinese Wall Procedures at the applicant firm.
- Agreement of both Registered Specialist to allow trading of specific issues by the Competing Specialist.

3. All applicants must be registered as members with the Exchange and must meet the net capital requirements pursuant to SEC Rule 15c3–1 and capital requirements set forth in Rule 2.2(b) of the Rules of the Exchange, and conform to all other performance requirements and standards set forth in the Rules of the Exchange. All applicants who control, are controlled by, or are under common control with another person engaged in a securities or related business shall have and maintain appropriate Chinese Wall procedures as approved by a self-regulatory organization. A competing specialist will be subject to all the rules and policies applicable to a regular specialist, unless otherwise indicated.

4. All applicant organizations, existing or newly created, must satisfy the Equity Floor Trading Committee that they have sufficient staffing to enable them to fulfill the functions of a specialist in all of the stocks in which the applicant will be registered as a Competing Specialist.

5. Order flow not specifically designated for a Competing Specialist must be routed to either Registered Specialist. However, a firm that is affiliated with a competing specialist in an issue must designate all PSE order flow to that competing specialist in that issue.

6. In a competitive situation, if the Competing Specialist organization that received approval to compete with the Registered Specialist desires to terminate the competition by requesting that it be relieved of the stock that is the subject of the competition, it should so notify the Equity Floor Trading Committee at least 3 business days prior to the desired effective date of such withdrawal, except in those situations when such notice is not practicable.

7. Any Competing Specialist who withdraws his/her registration in a stock will be barred from applying to compete in that same stock for a period of ninety (90) days following the effective date of withdrawal.

8. Notwithstanding the existence of Competing Specialist situations, there is only one Exchange market in a security subject to competition. Competitors must cooperate with the Registered Specialist regarding openings and reopenings to ensure that they are unitary.

9. Limit orders entrusted to the Competing Specialist are to be represented and executed strictly according to time priority as to receipt of the order on the Exchange in accordance with Exchange rules.

10. Competing Specialists must keep the Registered Specialists informed about the full size of any executable "all or none" orders in their possession since all-or-none orders cannot be represented in the disseminated quote. The Competing Specialist is expected to represent such orders on a "best efforts" basis to ensure the execution of the entire order at a single price or prices, or not at all.

11. The registration of any Competing Specialist may be suspended or terminated by the Equity Floor Trading Committee upon a determination of any substantial or continued failure by such Competing Specialist to engage in dealing in accordance with the Constitution and Rules of the Exchange.

12. The Exchange shall establish an effective date for competition to commerce. Since the Exchange cannot know what the impact of competition will be on its marketplace, it will limit competition during the first year of operation as follows:

a. The total number of stocks in which competition will be permitted shall initially be limited to ten per applicant firm, or a number (not to exceed twenty) as determined by the Board of Governors.

b. No applicant firm will have more than one Competing Specialist.

c. The number of Competing Specialists will be limited to two on each Equity Floor.

d. The number of competitors in any given stock will be limited to three (two Registered Specialists and one Competing Specialist).

e. There will be a quarterly review of the program, or upon request by a Registered Specialist in a specific Competing Specialist issue.

Once the program has operated for one year, the Board of Governors will evaluate it and determine whether to continue the program or to modify its terms.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish a competing specialist pilot program. Under the proposal, competing specialists are permitted to compete with registered specialist on the floor of the Exchange. Orders are directed either to a registered specialist or the competing specialist in an issue based on each customer's independent decision, but all orders in a stock received by the Exchange are executed in accordance with strict time priority. Once all limit orders at a price level are depleted, each specialist is responsible for the market orders directed to them.

The registered specialists are responsible for updating quotations and coordinating openings and reopenings to ensure that they are unitary. All ITS activity must be cleared through a

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[1] See letter from David P. Semak, Vice President Regulation, to Katherine A. Simmons, Attorney, SEC, dated February 15, 1996. Amendment No. 1 provided additional description of the proposal and changes to the Procedures for Competing Specialists. These additions and changes are incorporated herein.

[2] Securities Exchange Act Release No. 26368 (December 16, 1988), 53 FR 51942 (December 23, 1996). The PSE filed the rule in the form of an official policy that stated it would cooperate with a request from the Commission to halt trading in all equity and equity-related products traded on the Exchange in conjunction with halted trading at other U.S. markets. The Commission, in approving the PSE's proposed rule change, requested that the PSE implement its policy statement by imposing a trading halt as quickly as practicable whenever the NYSE and other equity markets have suspended trading. See also Securities Exchange Act Release No. 27370 (October 23, 1989), 54 FR 43881, n.5 (October 27, 1989).

[3] The Commission notes that the Exchange will be required to file a proposed rule change pursuant to Section 19(b) of the Act before it may modify the terms of the program.

registered specialist. To all other markets in the national market system, there is only one PSE market. Trading halts are coordinated through a registered specialist and apply to all competitors in the stock.

Under the proposed competing specialist program, the Exchange's rules governing the auction market principles of priority, parity, and precedence remain unchanged for quotes at the NBBO.[4] Under the PSE's rules, if two or more specialists are quoting at the NBBO, the earliest bid/offer at that price has time priority and will be filled first up to its specified size.[5] When none of the specialists are quoting at the NBBO, the competing specialist program permits orders to be executed by a particular specialist at the NBBO or better.[6] If a particular specialist is not specified, the order is directed to a regular specialist. However, if a routine firm is affiliated with a Competing Specialist, that firm may not route orders to another specialist, but must route them to the member firm's affiliated specialist, thereby preventing member firms affiliated with a specialist from routing non-profitable orders to another specialist when market conditions are unfavorable.[7]

All limit orders will be represented and executed strictly according to time priority on the Exchange.[8] Incoming orders are first executed against any contra-side limit orders on the Exchange. All specialists may execute their designated order flow unless there is a contra-side limit order on the Exchange or another specialist has a superior quote (with tie priority) at the NBBO.

Where a security is traded on both equity floors, each specialist is responsible for properly coordinating and synchronizing orders (and executions) with the corresponding specialist on the other Floor.[9] PSE specialists currently have the capability to enter their own quotes into P/COAST, and Competing Specialists at the PSE will have the same capability. In addition, the Exchange anticipates having in place by March 31, 1996, a Consolidated Limit Order File, which will allow all of the PSE specialists in a given issue to have access to the information in each other's limit order books.[10]

All competing specialists will be evaluated on competing stocks in accordance with the Exchange's Specialist Performance Evaluation Program. In addition, at any time, a registered specialist may request an evaluation of a competing specialist's performance in an issue that is traded by both the registered and competing specialists.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance wit the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–95–32 and should be submitted by March 22, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4824 Filed 2–29–96; 8:45 am]

BILLING CODE 8010–01–M

[4] See PSE Rules 5.8(a)–(i). PSE Rule 5.8(c) states in part: "When a bid or offer is clearly established as the first made at a particular price regardless of the floor, the maker shall be entitled to priority and shall have precedence on the next sale at that price * * *."

[5] See PSE Rule 5.8(c).

[6] For example, assume that the NBBO is 20 bid to 20/16 offered, and specialist A is bidding 19¾ while specialist B is bidding 19½. A market order to sell may be directed to specialist B for execution even though specialist A has a better bid because neither specialist is bidding at the NBBO. Under the competing specialist program, specialist B would execute the order at 20 (the NBBO) or better. If specialist A had been bidding 20 (the NBBO), specialist A would have had priority to execute the order even though it was designated to specialist B.

[7] As noted above, however, if another specialist is quoting the NBBO and clearly has established priority on the PSE floors, then that specialist will fill the order despite the fact that the order was designated for the affiliated Competing Specialist.

[8] There is only one PSE market in a particular security, and time priority is maintained among all orders received by the PSE.

[9] See PSE Rule 5.8(c).

[10] See letter from David P. Semak, Vice President Regulation, PSE, to Katherine A. Simmons, Attorney, SEC, dated February 20, 1996.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2833]

Pennsylvania (and Contiguous Counties in New Jersey); Declaration of Disaster Loan Area (Amendment #1)

The above-numbered Declaration is hereby amended to reflect new interest rates effective for all disasters which occurred on or after January 24, 1996:

The current interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.250
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

Dated: February 15, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–4780 Filed 2–29–96; 8:45 am]

BILLING CODE 8025–01–P

[License No. 04/04–0230]

North Riverside Capital Corporation; Notice of Surrender of Licensee

Notice is hereby given that North Riverside Capital Corporation, 50 Technology Park/Atlanta, Norcross, Georgia 30092, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). North Riverside Captial Corporation was licensed by the Small Business Administration on August 24, 1984.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the License was accepted on this date, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 22, 1996.

Donald A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–4781 Filed 2–29–96; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Request

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act. Since the last list was published in the **Federal Register** on February 26, 1996, the information collections listed below have been proposed or will require extension of the current OMB approvals.

(Call the SSA Reports Clearance Officer on (410) 965–4142 for a copy of the form(s) or package(s), or write to her at the address listed below the information collections.)

1. Letter to Landlord Requesting Rental Information—0960–0454. The information collected on form SSA–L5061 is used to determine if a rental subsidy agreement exists between a landlord and an applicant for, or recipient of, Supplemental Security Income benefits. The affected public is landlords who may be subsidizing such a rental arrangement.

Number of Respondents: 49,000
Frequency of Response: As needed to verify subsidy arrangements
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 8,167 hours

2. Farm Arrangement Questionnaire—0960–0064. The information collected on form SSA–7157 is used to determine if farm rental income may be considered self-employment income for Social Security coverage purposes. The respondents are individuals alleging self-employment income from the activity of renting land for farming activities.

Number of Respondents: 38,000
Frequency of Responses: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 19,000 hours

3. Request for Hearing By Administrative Law Judge—0960–0269. The information on form HA–501 is used by the Social Security Administration to document an individual's request for a hearing on an unfavorable determination concerning his or her benefits. The respondents are such individuals who request a hearing.

Number of Respondents: 625,563
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 104,260

4. Petition to Obtain Approval of a Fee for Representing a Claimant before the Social Security Administration—0960–104. The information on form SSA–1560 is used to determine if a representative is asking for a reasonable fee for representing a claimant before the Social Security Administration (SSA). The respondents are attorneys or other persons representing claimants before SSA.

Number of Respondents: 89,724
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 44,862

5. State Mental Institution Policy Review—0960–0110. The information collected on form SSA–9584 is used by the Social Security Administration to determine whether an institution's policies and practices conform with SSA's regulations in the use of benefits, and whether the institution is performing other duties and responsibilities required of a representative payee. The information also provides the basis for conducting the actual onsite review and is used in the preparation of the subsequent report of findings and recommendations which is provided to the institution. The respondents are state mental institutions which serve as representative payees for Social Security beneficiaries.

Number of Respondents: 183
Frequency of Response: 1 per year
Average Burden per Response: 1 hour
Estimated Annual Burden: 183 hours

Social Security Administration

Written comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Charlotte S. Whitenight, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Agency Information Collection Activities: Submission for OMB Review; Comment Request.

The information collection listed below, which was published in the **Federal Register** on December 29, 1995, has been submitted to OMB.

Plans for Achieving Self-Support—0960–NEW. The information is collected when a Supplemental Security Income (SSI) recipient desires to use available income and resources to obtain education and/or training in order to become self-supportive. The information is used to evaluate the recipient's plan for achieving self-support to determine whether the plan may be approved. The respondents are SSI recipients.

Number of Respondents: 5,500
Frequency of Response: 1
Average Burden Per Response: 20 minutes
Estimated Annual Burden: 1,833 hours

Social Security Administration

Written comments and recommendations regarding this

information collection should be sent within 30 days of the date of this publication. Comments may be directed to OMB and SSA at the following addresses:

(OMB), Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, Washington, D.C. 20503

(SSA), Social Security Administration, DCFAM, Attn: Charlotte S. Whitenight, 6401 Security Blvd, 1–A–21 Operations Bldg., Baltimore, MD 21235

Dated: February 22, 1996.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 96–4482 Filed 2–29–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2350]

Extension of the Restriction on the Use of United States Passports for Travel To, in, or Through Lebanon

On January 26, 1987, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(3), all United States passports, with the exception of passports of immediate family members of hostages in Lebanon, were declared invalid for travel to, in, or through Lebanon unless specifically validated for such travel. This action was taken because the situation in Lebanon was such that American citizens there could not be considered safe from terrorist acts.

Although there continues to be improvement in the security situation, review of the situation there has led me to conclude that Lebanon continues to be an area "* * * where there is imminent danger to the public health or the physical safety of United States travelers" within the meaning of 22 U.S.C. 211a and 22 CFR 51.73(a)(3).

Accordingly, all United States passports shall remain invalid for travel to, in, or through Lebanon unless specifically validated for such travel under the authority of the Secretary of State.

This Public Notice shall be effective upon publication in the **Federal Register** and shall expire at the end of six months unless extended or sooner revoked by Public Notice.

Dated: February 27, 1996.

Warren Christopher,

Secretary of State.

[FR Doc. 96–4972 Filed 2–28–96; 3:23 pm]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Accounting and Reporting Requirements for Large Certificated Air Carriers

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics (BTS) invites the general public, industry and other Federal Agencies to comment on the continuing need and usefulness of the BTS Form 41. Comments are requested concerning whether (a) the continuation of Form 41 is necessary for DOT to carry out its mission of promoting air transportation; (b) BTS accurately estimated the reporting burden; (c) there are other ways to enhance the quality, utility and clarity of the information collected; and (d) there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by April 30, 1996.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, BTS, at (202) 366–4387.

SUPPLEMENTARY INFORMATION: OMB Approval No. 2138–0013.

Title: Report of Financial and Operation Statistics for Large Certificated Air Carriers

Form No.: BTS Form 41

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers

Number of Respondents: 98

Estimated Time Per Response: 4 hours

Total Annual Burden: 35287

Needs and Uses: DOT uses Form 41 traffic data to help formulate the United States position in international negotiations, to select carriers for international routes and to conduct environmental impact analyses. DOT uses Form 41 cost data to calculate the Standard Fare Levels (Passenger and Cargo) and to set the Intra-Alaska and international mail rates. The Department of the Air Force, Military Airlift Command uses Form 41 data in ratemaking for the Civil Reserve Air Fleet Program, and for its Air Carrier Analysis Support System (ACAS).

DOT uses operational and financial data to review International Air Transport Association Agreements (IATA), to review initial air carrier fitness, to review air carrier continuing fitness, to review foreign air carrier applications and monitor the status of the air transport industry. The Justice Department uses the data in its antitrust analyses. DOT meets its responsibility to International Civil Aviation Organization, an arm of the United Nations, by the use of Form 41 data.

Traffic data, especially enplanement data, are used for the National Plan of Integrated Airport Systems, airport capacity analyses, the Airport Improvement Program, systems planning at airports, exemption requests to transport hazardous materials, and essential air service analyses.

The Department of Energy uses Form 41 fuel data in monitoring industry fuel consumption for emergency preparedness planning.

The Federal Aviation Administration and the National Transportation Safety Board use Form 41 data in safety analyses (operational), air carrier certification, safety forecasting/ regulatory analysis and air carrier safety surveillance and inspection.

DOT uses aircraft inventory data in its administration of the War Air Service Program (Emergency Preparedness).

The Department of Commerce, Bureau of Economic Analysis, uses Form 41 data in its estimation of the Gross National Product, analyses of international trade accounts and to compile the Input-Output Tables of the United States.

The Department of Labor uses employment statistics in its Productivity Studies and Indices.

Dated: February 26, 1996.

Timothy E. Carmody,

Acting Director, Office of Airline Statistics, Bureau of Transportation Statistics.

[FR Doc. 96–4801 Filed 2–29–96; 8:45 am]

BILLING CODE 4910–7E–P

Aviation Proceedings; Agreements Filed During the Week Ending February 23, 1996

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1092.
Date filed: February 21, 1996.
Parties: Members of the International Air Transport Association.
Subject: TC1 Telex Mail Vote 781, St. Croix and St. Thomas add-ons, Intended effective date: March 1, 1996.

Docket Number: OST–96–1093.
Date filed: February 21, 1996.
Parties: Members of the International Air Transport Association.
Subject: COMP Telex Mail Vote 782, Burundi Currency Change, r-1— 010z r-2—010ff, Intended effective date: April 1, 1996.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–4840 Filed 2–29–96; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending February 23, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1091
Date filed: February 21, 1996
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 20, 1996
Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. Section 41108 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing foreign air transportation of persons, property and mail between the terminal points Chicago, Illinois, Los Angeles, California, and New York, New York and the terminal point Tokyo, Japan, with the right to integrate such authority with its certificate for Route 137.

Docket Number: OST–96–1102
Date filed: February 23, 1996
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 22, 1996
Description: Application of Sky Trek International Airlines, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, requests authority to engage in charter air transportation of passengers, property, and mail: Between a place in (i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory or possession of the United States; (ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii; (iii) the District of Columbia and another place in the District of Columbia; and (iv) a territory or possession of the United States and another place in the same territory or possession.

Docket Number: OST–96–1103
Date filed: February 23, 1996
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 22, 1996
Description: Application of Sky Trek International Airlines, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regualtions, requests authority to engage in charter air transportation of passengers, property, and mail: Between any place in the United States and any place outside thereof.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–4839 Filed 2–29–96; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

Annual List of Nonconforming Vehicles Decided To Be Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Annual list of nonconforming vehicles decided to be eligible for importation.

SUMMARY: This notice lists all vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards that have been decided, as of January 22, 1996, to be eligible for importation into the United States.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) (formerly section 108(c)(3)(A)(i)(II) of the Act) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as the Secretary of Transportation decides to be adequate.

Under 49 U.S.C. 30141(a)(1) (formerly section 108(c)(3)(C)(i) of the Act), import eligibility decisions may be made "on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under [49 U.S.C. 30141(c)]." The Secretary's authority to make these decisions has been delegated to the Administrator of NHTSA under 49 CFR 1.50(a). The Administrator initially redelegated to the Associate Administrator for Enforcement (now Safety Assurance) the authority to grant or deny petitions for import eligibility decisions submitted by motor vehicle manufacturers and registered importers, and subsequently transferred this authority to the Director, Office of Vehicle Safety Compliance (49 CFR 501.8(l)). Thus far, a number of import eligibility decisions have been made on the Administrator's own initiative, and the Associate Administrator and Office Director have granted many petitions for such decisions submitted by registered importers.

Under 49 U.S.C. 30141(b)(2) (formerly section 108(c)(3)(C)(iv) of the Act), a list of all import eligibility decisions must be published annually in the **Federal Register**. That list is set forth in Annex A and is current as of January 22, 1996.

Each vehicle on the list is preceded by a vehicle eligibility number. The importer of a vehicle admissible under any eligibility decision must write that number on the Form HS–7 accompanying entry to indicate that the vehicle is eligible for importation. "VSA" eligibility numbers are assigned to all vehicles that are decided to be eligible for importation on the initiative of the Administrator. "VSP" eligibility numbers are assigned to vehicles that are decided to be eligible under 49

U.S.C. 30141(a)(1)(A), based on a petition from a manufacturer or registered importer which establishes that a substantially similar U.S.-certified vehicle exists. "VCP" eligibility numbers are assigned to vehicles that are decided to be eligible under 49 U.S.C. 30141(a)(1)(B), based on a petition from a manufacturer or registered importer which establishes that the vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards. Vehicles for which eligibility decisions have been made are listed in Annex A alphabetically by make. Eligible models within each make are listed numerically by "VSA," "VSP," or "VCP" number.

Under 49 U.S.C. 30112(b)(9) (formerly section 108(i) of the Act), "any motor vehicle that is at least 25 years old" is not subject to importation restrictions. Such vehicles may therefore be imported into the United States without regard to their compliance with applicable Federal motor vehicle safety standards. Since the importation of a vehicle more than 25 years old is not conditioned on the existence of an eligibility decision, NHTSA has amended its eligibility decisions so that they no longer apply to such vehicles.

Authority: 49 U.S.C. 30141(b)(2); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 27, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

Annex A—Vehicles Certified by Their Original Manufacturer as Complying With All Applicable Canadian Motor Vehicle Safety Standards

VSA #1

(a) All passenger cars less than 25 years old that were manufactured before September 1, 1989;

(b) All passenger cars manufactured on or after September 1, 1989, and before September 1, 1996, which are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208;

(c) All multipurpose passenger vehicles, trucks, and buses less than 25 years old that were manufactured before September 1, 1991;

(d) All multipurpose passenger vehicles, trucks, and buses manufactured on and after September 1, 1991, certified by their original manufacturer to comply with the requirements of FMVSS No. 202 and 208 to which they would have been subject had they been manufactured for sale in the United States; and

(e) All trailers and motorcycles less than 25 years old.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET

VSP No.	Model type	Model year
Acura		
51	Legend	1988.
77	Legend	1989.
Alfa Romeo		
44	Spider	1972.
70	Spider	1987.
76	164	1991.
124	GTV	1985.
Aston Martin		
123	Volante	1990 through 1991.
Audi		
93	100	1989.
BMW		
3	2002	1972 through 1976.
7	2002A	1972 through 1976.
10	2002Tii	1972 through 1974.
11	3.0 and 3.0A Bavaria	1972.
12	3.0CSi and 3.0SiA	1972 through 1974.
13	3.0S and 3.0SA	1974.
14	3.0Si and 3.0SiA	1975.
15	530i and 530iA	1975 through 1978.
16	320, 320i, and 320iA	1976 through 1985.
17	630CSi 630CSiA	1977.
18	633CSi and 633CSiA	1977 through 1984.
19	733i and 733iA	1977 through 1984.
20	528i and 528iA	1979 through 1984.
21	528e and 528eA	1982 through 1988.
22	533i and 533iA	1983 through 1984.
23	318i and 318iA	1981 through 1989.
24	325e and 325eA	1984 through 1987.
25	535i and 535iA	1985 through 1989.
26	524tdA	1985 through 1986.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

VSP No.	Model type	Model year
27	635, 635CSi, and 635CSiA	1979 through 1989.
28	735, 735i, and 735iA	1980 through 1989.
29	L7	1986 through 1987.
30	325, 325i, 325iA, and 325E	1985 through 1989.
31	325 is and 325isA	1987 through 1989.
32	M6	1987 through 1988.
33	325iX and 325iXA	1988 through 1989.
34	M5	1988.
35	M3	1988 through 1989.
66	316	1978 through 1982.
67	323i	1978 through 1985.
68	520 and 520i	1978 through 1983.
69	525 and 525i	1979 through 1982.
70	728 and 728i	1977 through 1985.
71	730, 730i, and 730iA	1978 through 1980.
72	732i	1980 through 1984.
73	745i	1980 through 1986.
78	All other models except those in the M1 and Z1 series	1972 through 1989.
BMW		
4	518i	1986.
5	525i	1989.
6	730iA	1988.
9	520iA	1989.
10	850i	1991.
14	728i	1986.
15	625CSi	1981.
24	730i	1991.
25	316	1986.
32	628CSi	1980.
41	750iL	1993.
46	518i	1991.
55	850i	1993.
57	730i	1993.
79	525i	1991–1992.
81	750iL	1991.
91	750iL	1990.
96	325i	1991.
99	840Ci	1993.
110	520i	1992.
119	520i	1994.
131	730i	1993 through 1994.
133	525i	1993.
BMW Motorcycle		
30	R75/6	1974.
58	R100S	1977.
Bristol Bus		
2	VRT Bus—Double Decker	1978–1981.
4	VRT Bus—Double Decker	1977.
10	VRT Bus—Double Decker	1972 through 1973.
Citroen		
1	XM	1990 through 1992.
Dodge		
112	Colt	1973.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET

VSP No.	Model type	Model year
135	Ram	1994 through 1995.
	Ferrari	
36	308 (all models)	1974 through 1985.
37	328 GTS	1985 through 1989.
37	328 (all other models)	1985 and 1988 through 1989.
38	GTO	1985.
39	Testarossa	1987 through 1989.
74	Mondial (all models)	1980 through 1989.
76	208, 208 Turbo (all models)	1974 through 1988.
	Ferrari	
86	348TB	1992.
100	365 GTB/4 Daytona	1972–1973.
107	Dino	1973.
	Ford	
9	Escort RS	1994 through 1995.
	GMC	
134	Suburban	1992 through 1994.
	Hobson	
8	Horse Trailer	1985.
	Honda	
128	Civic DX	1989.
	Honda Motorcycle	
34	VFR750	1990.
106	CB1000F	1988.
	Jaguar	
40	XJS	1980 through 1987.
41	XJ6	1972 through 1986.
47	XJ6	1987.
78	Sovereign	1993
129	XJS	1992.
	Jaguar Daimler	
12	Limousine	1985.
	Kenworth	
115	T800	1992.
	Lancia	
7	Fulvia	1973.
	Laverda Motorcycle	
37	1000	1975.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

VSP No.	Model type	Model year
	Mazda	
42	RX7	1978 through 1981.

VSA No.	Model type	Model ID	Model year
	Mercedes Benz		
43	600	100.012	1972 through 1981.
43	600 Long 4dr	100.014	1972 through 1981.
43	600 Landaulet	100.015	1972 through 1981.
43	600 Long 6dr	100.016	1972 through 1981.
44	280 S.C	107.022	1975 through 1981.
44	350 S.C	107.023	1972 through 1979.
44	450 S.C	107.024	1973 through 1989.
44	380 S.C	107.025	1981 through 1989.
44	500 S.C	107.026	1978 through 1981.
44	300 SL	107.041	1986 through 1988.
44	280 SL	107.042	1972 through 1985.
44	350 SL	107.043	1972 through 1978.
44	450 SL	107.044	1972 through 1989.
44	380 SL	107.045	1980 through 1989.
44	500 SL	107.046	1980 through 1989.
44	420 SL	107.047	1986.
44	560 SL	107.048	1986 through 1989.
45	280 S	108.016	1972.
45	280 SE	108.018	1972.
45	280 SEL	108.019	1972.
45	280 SE (3.5)	108.057	1972 through 1973.
45	280 SEL (3.5)	108.058	1972 through 1973.
45	280 SE (4.5)	108.067	1972.
45	280 SEL (4.5)	108.068	1972.
46	300 SEL	109.016	1972.
46	300 SEL (6.3)	109.018	1972.
46	300 SEL (4.5)	109.057	1972.
49	230.6	114.015	1972 through 1976.
49	250	114.010	1972 through 1976.
49	250	114.011	1972 through 1976.
49	250 CE	114.022	1972 through 1976.
49	250 C	114.023	1972 through 1976.
49	280	114.060	1972 through 1976.
49	280 E	114.062	1972 through 1976.
49	280 CE	114.072	1972 through 1976.
49	280 C	114.073	1972 through 1976.
50	200	115.015	1976 through 1976.
59	230.4	115.017	1974 through 1976.
50	220 D	115.110	1972 through 1976.
50	240 D (3.0)	115.114	1974 through 1976.
50	240 D	115.117	1974 through 1976.
51	280 S	116.020	1973 through 1980.
51	280 SE	116.024	1972 through 1988.
51	280 SEL	116.025	1972 through 1980.
51	350 SE	116.028	1973 through 1980.
51	350 SEL	116.029	1972 through 1980.
51	450 SE	116.032	1972 through 1980.
51	450 SEL	116.033	1972 through 1988.
51	450 SEL (6.9)	116.036	1972 through 1988.
52	200	123.020	1976 through 1980.
52	230	123.023	1976 through 1985.
52	250	123.026	1976 through 1985.
52	280	123.030	1976 through 1985.
52	280 E	123.033	1976 through 1985.
52	230 C	123.043	1978 through 1980.
52	280 C	123.050	1977 through 1980.
52	280 CE	123.053	1977 through 1985.
52	230 T	123.083	1977 through 1985.
52	280 TE	123.093	1977 through 1985.
52	200 D	123.120	1980 through 1982.
52	240 D	123.123	1977 through 1985.
52	300 D	123.130	1976 through 1985.
52	300 D	123.133	1977 through 1985.

VSA No.	Model type	Model ID	Model year
52	300 CD	123.150	1978 through 1985.
52	240 TD	123.183	1977 through 1985.
52	300 TD	123.193	1977 through 1985.
52	200	123.220	1979 through 1985.
52	230 E	123.223	1977 through 1985.
52	230 CE	123.243	1980 through 1984.
52	230 TE	123.283	1977 through 1985.
53	280 S	126.021	1980 through 1983.
53	280 SE	126.022	1980 through 1985.
53	280 SEL	126.023	1980 through 1985.
53	300 SE	126.024	1985 through 1989.
53	300 SEL	126.025	1986 through 1989.
53	380 SE	126.032	1979 through 1989.
53	380 SEL	126.033	1980 through 1989.
53	420 SE	126.034	1985 through 1989.
53	420 SEL	126.035	1986 through 1989.
53	500 SE	126.036	1980 through 1986.
53	500 SEL	126.037	1980 through 1989.
53	560 SEL	126.039	1986 through 1989.
53	380 SE	126.043	1982 through 1989.
53	500 SEC	126.044	1981 through 1989.
53	560 SEC	126.045	1988 through 1989.
53	300 SD	126.120	1981 through 1989.
54	190	201.022	1984.
54	190 E (2.3)	201.024	1983 through 1989.
54	190 E	201.028	1986 through 1989.
54	190 E (2.6)	201.029	1986 through 1989.
54	190 E 2.3 16	201.034	1984 through 1989.
54	190D (2.2)	201.122	1984 through 1989.
54	190 D	201.126	1984 through 1989.
55	200	124.020	1985.
55	230E	124.023	1985 through 1987.
55	260E	124.026	1985 through 1989.
55	300 E	124.030	1985 through 1989.
55	300 CE	124.050	1988 through 1989.
55	230 TE	124.083	1985.
55	300 TE	124.090	1986 through 1989.
55	300 D	124.130	1985 and 1986.
55	300 D Turbo	124.133	1985 through 1989.
55	300 TD Turbo	124.193	1986 through 1989.
77	All other models except Model ID 114 and 115 with sales designations "long," "station wagon," or "ambulance"		1972 through 1989.
1	230 E	124.023	1988.
2	230 TE	124.083	1989.
3	200 TE	124.081	1989.
7	300SL	107.041	1989.
11	200E	124.021	1989.
17	200D	124.120	1986.
18	260SE	126.020	1986.
19	230E	124.023	1990.
20	230E	124.023	1989.
21	300SEL	126.025	1990.
22	190E	201.024	1990.
23	500SEL	129.066	1989.
26	500SE	140.050	1991.
27	600SEL	140.057	1992.
28	260SE	126.020	1989.
33	500SL	129.066	1991.
35	500SE	126.036	1988.
40	300TE	124.090	1990.
45	190E	201.024	1991.
48	420SEL	126.035	1990.
50	500SE	140.050	1992.
54	300SL	129.006	1992.
56	500E	124.036	1991.
60	500SL	129.006	1992.
63	500SEL	126.037	1991.
64	300CE	124.051	1990.
66	500SEC	126.044	1990.
67	300SE	140.032	1993.
68	300SE	126.024	1990.
69	300SE	140.032	1992.
71	190E	201.028	1992.

VSA No.	Model type	Model ID	Model year
74	230E	124.023	1991.
75	200E	124.019	1993.
83	300CE	124.051	1991.
84	230CE	124.043	1991.
85	S280	140.028	1994.
89	560SEL	126.039	1990.
105	260E	124.026	1992.
109	200E	124.012	1991.
114	300E	124.031	1992.
117	300Ce	124.050	1992.
120	S320	140.033	1994.
121	600SL	129.076	1992.
126	190E	201.018	1992.
127	230E	124.023	1993.
130	600SL	129.076	1992 through 1993.
140	500SL	129.067	1993 through 1995.
141	560SEC	126.045	1990.
3	300GE	463.228	1993.
5	300GE	463.228	1990–1992, 1994.
6	G320		1995.
11	463		1996.

VSP No.	Model type	Model year
	MG	
98	MGB GT Coupe	1972
136	MGB Roadster	1972
	Mitsubishi	
8	Galant VX	1988
13	Galant SUP	1989
	Moto Guzzi	
118	Daytona	1993
	Nissan	
75	Z and 280Z	1973 through 1981
75	Fairlady and Fairlady Z	1975 through 1979
138	Maxima	1989
	Peugeot	
65	405	1989
	Porsche	
56	911 Coupe	1972 through 1989
56	911 Targa	1972 through 1989
56	911 Turbo	1976 through 1989
56	911 Cabriolet	1984 through 1989
56	911 Carrera	1972 through 1989.
58	914	1972 through 1976.
59	924 Coupe	1976 through 1989.
59	924 Turbo Coupe	1979 through 1989.
59	924 S	1987 through 1989.
60	928 Coupe	1976 through 1989.
60	928 S Coupe	1983 through 1989.
60	928 S4	1979 through 1989.
60	928 GT	1979 through 1989.
61	944 Coupe	1982 through 1989.
61	944 Turbo Coupe	1985 through 1989.
61	944 S Coupe	1987 through 1989.
79	All other models except Model 959	1972 through 1989.
29	911 C4	1990.
52	911 Carrera	1992.
97	944	1990.

VSP No.	Model type	Model year
103	Carrera	1994.
116	946	1994.
125	911 Turbo	1992.
	Rolls Royce	
62	Silver Shadow	1972 through 1979.
16	Bentley	1989.
53	Bentley Turbo	1986.
122	Camargue	1984 through 1985.
	Saab	
59	900	1988.
	Sprite	
12	Musketeer Trailer	1980.
	Suzuki Motorcycle	
111	GS850	1985.
	Toyota	
63	Camry	1987 through 1988.
64	Celica	1987 through 1988.
65	Corolla	1987 through 1988.
39	Camry	1989.
101	Landcruiser	1989.
102	Landcruiser	1991.
	Triumph	
108	Spitfire	1973.
	Volkswagen	
42	Scirocco	1986.
73	Golf Rally	1988.
80	Golf	1988.
92	Golf	1993.
	Volvo	
43	262C	1981.
87	740 Sedan	1988.
95	940GL	1993.
	Yamaha	
113	FJ1200	1991.

[FR Doc. 96–4837 Filed 2–29–96; 8:45 am]
BILLING CODE 4910–59–P–M

Surface Transportation Board [1]

[STB Finance Docket No. 32863]

Genesee & Wyoming, Inc.—Continuance in Control Exemption—Illinois & Midland Railroad, Inc.

Genesee & Wyoming, Inc. (GWI), a noncarrier, has filed a verified notice under 49 CFR 1180.2(d)(2) to continue in control of Illinois & Midland Railroad, Inc. (IMR), upon IMR's becoming a class III rail carrier. IMR, a noncarrier, has concurrently filed a notice of exemption in *Illinois & Midland Railroad, Inc.—Acquisition and Operation Exemption—Chicago & Illinois Midland Railway Company*, STB Finance Docket No. 32862, in which IMR seeks to acquire and operate 98 miles of rail lines of Chicago & Illinois Midland Railway Company (CIMR), in the State of Illinois. IMR also seeks to acquire the interest of CIMR in 25.4 miles of overhead trackage rights in the State of Illinois. The transaction was to have been consummated on or about February 8, 1996.

GWI also controls through stock ownership 9 other nonconnecting class III rail carriers: Genesee & Wyoming Railroad Company; Dansville and Mount Morris Railroad Company; Rochester & Southern Railroad, Inc.; Louisiana & Delta Railroad, Inc.; Buffalo & Pittsburgh Railroad, Inc.; Bradford Industrial Rail, Inc.; Allegheny & Eastern Railroad, Inc.; Willamette & Pacific Railroad, Inc.; and GWI Switching Services.[2]

The transaction is exempt from the prior approval requirements of 49 U.S.C. 11323 [formerly section 11343] because: (1) The railroads will not connect with each other or with any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or with any railroad in their corporate family; and (3) the transaction does not involve a class I carrier.

As a condition to this exemption, any employees adversely affected by the transaction will be protected under *New York Doc Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) [formerly section 10505(d)] may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32863, must be filed with the Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Ave., N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.O. Box 796, 213 West Miner St., West Chester, PA 19381–0796.

Decided: February 22, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–4794 Filed 2–29–96; 8:45 am]
BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323.

[2] Also, GWI has in *Genesee & Wyoming Industries, Inc.—Continuance in Control Exemption—Portland & Western Railroad*, Finance Docket No. 32759, a pending petition for exemption to continue in control of a connecting Class III railroad.

[STB Finance Docket No. 32862]

Illinois & Midland Railroad, Inc.; Acquisition and Operation Exemption; Chicago & Illinois Midland Railway Company

Illinois & Midland Railroad, Inc. (IMR), a noncarrier, has filed a notice of exemption to acquire and operate 98 miles of rail lines of Chicago & Illinois Midland Railway Company (CIMR) extending from milepost 10 at Pekin to milepost 87 at Springfield, and extending from milepost 100 at Cimic to milepost 121 at Taylorville, in the State of Illinois. IMR will also acquire the interest of CIMR in 25.4 miles of overhead trackage rights over: (1) The line of railroad of Peoria & Pekin Union Railway Company extending from milepost 0.0 at Peoria to milepost 10 at Pekin; and (2) the line of railroad of Illinois Central Railroad Company extending from milepost 191.9 at Springfield to milepost 207.3 at Cimic, in the State of Illinois. The transaction was to have been consummated on or about February 8, 1996.

This proceeding is related to *Genesee & Wyoming, Inc.—Continuance in Control Exemption—Illinois & Midland Railroad, Inc.*, STB Finance Docket No. 32863, wherein Genesee & Wyoming, Inc., has concurrently filed a notice of exemption to continue to control IMR upon its becoming a rail carrier.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) [formerly section 10505(d)] may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32862, must be filed with the Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Ave., N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.O. Box 796, 213 West Miner St., West Chester, PA 19381–0796.

Decided: February 22, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–4793 Filed 2–29–96; 8:45 am]
BILLING CODE 4915–00–P

[STB Finance Docket No. 32858]

Illinois Central Corporation and Illinois Central Railroad Company; Control; CCP Holdings, Inc., Chicago, Central & Pacific Railroad Company and Cedar River Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of acceptance of application.

SUMMARY: The Board accepts for consideration the application filed January 31, 1996, by Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), CCP Holdings, Inc. (Holdings), Chicago, Central and Pacific Railroad Company (CCPR), and Cedar River Railroad Company (CRRC) (collectively referred to as applicants) for approval and authorization of IC Corp.'s acquisition of control of CCPR and CRRC through ownership of the stock of Holdings, CCPR/CRRC's parent. IC Corp. already controls ICR through ownership of all of ICR's stock.[2] In accordance with 49 CFR 1180.4(b)(2)(iv), the Board finds that this is a minor transaction as described in 49 CFR 1180.2(c).

DATES: This decision is effective on March 1, 1996. Written comments, including comments from the Secretary of Transportation and the Attorney General of the United States, must be filed with the Board no later than April 1, 1996, and concurrently served on applicants' representatives. The Board will issue a service list shortly thereafter. Comments must be served on all parties of record within 5 days after the Board issues the service list and confirmed by certificate of service filed with the Board indicating that all designated individuals and

[1] The ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This notice relates to a railroad acquisition of control transaction that is subject to Board jurisdiction pursuant to 49 U.S.C. 11323–25.

[2] Where appropriate, IC Corp. and ICR are collectively referred to as IC, and CCPR and CRRC are collectively referred to as CC&P.

organizations on the service list have been properly served. Applicants' reply is due April 22, 1996.[3]

ADDRESSES: Send an original and 10 copies of pleadings referring to STB Finance Docket No. 32858 to: Office of the Secretary, Surface Transportation Board, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, send one copy of all documents to applicants' representatives: (1) William C. Sippel, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601; (2) Myles L. Tobin, 455 North Cityfront Plaza Drive, Chicago, IL 60611–5504; and (3) Byron D. Olsen, 4200 First Bank Place, 601 2nd Avenue South, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: By application filed January 31, 1996, Board approval is being sought under 49 U.S.C. 11323–25 (formerly 49 U.S.C. 11343–45) for IC Corp.'s acquisition of control of CCPR and CRRC through ownership of the stock of Holdings.

The applicants recite that their transaction is a "minor transaction" subject to the provisions of 49 CFR 1180.2, the regulations that implemented former sections 11343–45. The transaction here specifically is subject to the standards of new section 11324(d), because it does not involve the merger or control of two Class I railroads. Also, as discussed below, because we have determined that the transaction is not of regional or national significance, the procedures set out at new section 11325(d) apply. Section 204(a) of the Act provides that all ICC rules in effect on the date of the enactment of the Act "shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Board . . . or operation of law." While the standards and procedures of former sections 11343–45 and new sections 11323–25 are substantially similar insofar as minor transactions are concerned, the procedures of new section 11325(d) differ slightly from those contained in the regulations at 49 CFR 1180.4 and, therefore, shall govern. Otherwise, the use of the regulations at 49 CFR Part 1180 for this proceeding appears proper.

Applicant ICR is a Class I railroad operating approximately 2,624 route miles of rail lines in six Midwestern and South Central States. ICR is a wholly owned subsidiary of IC Corp., a noncarrier holding company. ICR controls and operates the Kensington & Eastern Railroad Company and Waterloo Railway Company, applicant carriers that own rail property in the States of Illinois and Mississippi. ICR also owns non-controlling stock interests in several switching and terminal railroads.[4]

Applicant CCPR is a Class II rail carrier that owns and operates approximately 724 miles of rail line between Chicago, IL, on the east and Sioux City, IA, and Council Bluffs, IA/Omaha, NE, on the west. The Chicago-Sioux City/Omaha line was formerly the Iowa Division of IC; CCPR purchased the line from IC and began operations in 1985.

Applicant CRRC is a Class III rail carrier that owns or operates approximately 102 miles of rail lines between Waterloo, IA, and Glenville, MN. CRRC was formed in 1991 as a wholly owned subsidiary of CCPR[5] to acquire the Waterloo-Albert Lea, MN line from the defunct Cedar Valley Railroad Company.

Applicant Holdings is a noncarrier holding company which directly controls CCPR and CRRC. Holdings also controls Iron Horse Properties, Inc. and the Missouri River Bridge Company, both noncarriers. Holdings is controlled by Donald R. Wood, Jr.

IC Corp. proposes to acquire control of CCPR and CRRC through purchase of all of the issued and outstanding common stock of Holdings. Although CCPR and CRRC will be marketed as part of the IC rail system and CCPR's operations will be coordinated with those of ICR, they will remain separate legal entities. IC Corp. has no present plans to merge CCPR or CRRC into IC.

IC proposes to consummate control of CC&P (through IC Corp.'s acquisition of Holdings' stock) as soon as a Board decision approving this application and authorizing the proposed control transaction has become effective.

Applicants state that common control of IC and CC&P will position both rail systems to more effectively serve their customers and compete in the increasingly concentrated rail marketplace which surrounds them. The proposed transaction assertedly will provide shippers and receivers on IC and CC&P with new routing options and more efficient and competitive single-line service. For example, according to applicants, CC&P grain shippers will gain direct, single-line access to long-haul destination markets in the South-Central United States and to export markets through the Gulf ports of New Orleans and Mobile, AL. At the same time, grain receivers on IC will be assured reliable, independent and long-term access to grain from Iowa origins. Coal shippers and receivers on IC's lines will likewise gain access to additional markets via CC&P's lines. Applicants state that all customers will benefit from the improved transit times, better equipment utilization and other operating efficiencies made possible by common control.

Applicants maintain that, in addition to generating benefits for the shipping public, the proposed transaction will strengthen the combined IC/CC&P system and improve both its operating and financial performance. Applicants estimate that common control will attract approximately 11,500 new carloads of traffic annually to the IC/CC&P system and will present significant opportunities to reduce expenses and rationalize operations. Applicants maintain that the proposed transaction will help position IC to remain a competitive, independent and viable carrier amid consolidation and market aggregation in the rail industry.[6]

Applicants submit that the proposed end-to-end combination of IC and CC&P under common control will have no adverse impact on competition. To the contrary, they state that common control of IC and CC&P will enhance competition and provide improved service and routing options for shippers on ICR and CC&P lines. According to applicants, grain shippers on CC&P in particular will benefit from new single-line routes to major grain processing plants on ICR and from competitive single-line rail access to export grain markets via ICR's lines to the ports of New Orleans and Mobile. These shippers will also benefit by having access to ICR's fleet of over 4,000 covered hopper cars. Applicants also state that grain receivers on ICR, including grain processors in Illinois, Tennessee, Mississippi, Louisiana and Alabama will benefit from reliable, long-term, independent access to Iowa grain.

In addition to grain shippers and receivers, applicants submit that the combination of CC&P and IC into a single system will open new single-line routes for shippers of Illinois Basin coal from ICR origins in Illinois to destinations on CC&P's lines and new marketing opportunities for intermodal shippers.

Applicants maintain that shippers on both railroads will benefit from improved car supply from access to the larger car fleet of the combined system, and from faster transit times and improved operating efficiency. They state that no customer will lose rail service as a result of the transaction. Indeed, they claim that a combined IC/CC&P system will be stronger, financially and operationally, than either carrier could be separately, and thus will be better able to compete with other railroads, motor carriers and barges in providing effective and efficient service to the shipping public.

According to applicants, common control will have no adverse impact on the continuation of essential transportation services by IC, CC&P or any other carrier. Diversions of traffic from other rail carriers will be minimal. Furthermore, they state that the transaction will assure the preservation and continued viability of CC&P's lines.

Applicants do not anticipate that any existing ICR employees will be adversely affected by the proposed control transaction. All of CCPR's non-management employees and CRRC's maintenance-of-way employees are represented by national unions and covered under existing collective bargaining agreements. According to applicants, these agreements will remain in force, modified as necessary to achieve the efficiency benefits of the proposed transaction, after consummation of control. Some work currently performed by CC&P employees will be transferred to IC locations.

As a result of the proposed transaction, applicants anticipate that a total of 57 positions subject to collective bargaining will be eliminated in the first year of common control. No labor impacts are anticipated in the second and third years after consummation.

In addition, five CC&P dispatchers currently located in Waterloo will be transferred to IC's dispatching center in Homewood, IL, as a result of the consolidation of dispatching functions at the latter facility. Some CC&P maintenance-of-way positions will be eliminated by introduction of modern mechanized track maintenance procedures on CC&P's lines. However, all maintenance work on CC&P lines will continue to be performed by CC&P employees.

The applicable level of labor protection for the control transaction proposed herein is that set forth in *New York Dock Ry.—Control—Brooklyn Eastern Term. Dist.*, 360 I.C.C. 60 (1979). No employee protection agreements have been reached as of the date of the application. IC anticipates offering transfer or a severance package to employees whose positions are eliminated as a result of IC's acquisition of control of CC&P.

Under 49 CFR 1180, we must determine whether a proposed transaction is a major, significant, or minor transaction. The proposed transaction, which does not involve the merger or control of two or more Class I railroads and which will reunite under common control rail lines that were previously operated by IC as a single system, has no regional or national significance and will not have any anticompetitive effects. Accordingly, we find the proposal to be a minor transaction under 49 CFR 1180.2(c), consistent with the categories of transactions now defined at 49 U.S.C. 11325(a). Because the application substantially complies with the regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Surface Transportation Board in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Interested persons, including government entities, may participate in this proceeding by submitting written comments. Any person who files timely comments will be considered a party of record if the person so requests. No petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall me made;

(c) The commenting party's position, i.e., whether it supports or opposes the proposed transaction;

(d) A statement whether the commenting party intends to participate formally in the proceeding, or merely comment on the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can be resolved only at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. Except as noted above, the time limits for processing a minor transaction, set forth at 49 U.S.C. 11325(d), govern.

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is accepted for consideration under 49 U.S.C. 11323–25 as a minor transaction under 49 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

3. This decision is effective on March 1, 1996.

Decided: February 23, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–4795 Filed 2–29–96; 8:45 am]

BILLING CODE 4915–00–P

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[3] This procedural schedule comports with the schedule proposed by applicants in their petition for establishment of a procedural schedule, filed concurrently with the application.

[4] IC owns non-controlling stock interests in The Belt Railway Company of Chicago, the Mississippi Export Railroad Company, the Paducah & Illinois Railroad Company, the Peoria & Pekin Union Railway Company and the Terminal Railroad Association of St. Louis.

[5] CRRC is now a wholly owned subsidiary of Holdings and a sister company to CCPR.

[6] In *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company*, Finance Docket No. 32760, applicants in that proceeding have submitted a settlement agreement entered into with IC that, among other things, calls for developing traffic through joint marketing efforts after consummation of the UP/SP merger if it is approved. See applicants' submission of settlement agreements with Utah Railway and Illinois Central, UP/SP–74, filed February 2, 1996, in Finance Docket No. 32760.

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Agayuliyararput (Our Way of Making Prayer): The Living Tradition of Yup'ik

Masks" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Anchorage Museum of History and Art, Anchorage, Alaska from on or about May 9, 1996 to on or about October 29, 1996, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: February 27, 1996.

Les Jin,

General Counsel.

[FR Doc. 96–4844 Filed 2–29–96; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Marc Chagall 1907–1917" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at The Jewish Museum, New York, NY, on or about March 31, 1996 through August 30, 1996, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: February 27, 1996.

Les Jin,

General Counsel.

[FR Doc. 96–4845 Filed 2–29–96; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Picasso and Potraiture: Representation and Transformation" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at The Museum of Modern Art, New York, NY, from on or about April 24, 1996, to on or about September 17, 1996, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: February 27, 1996.

Les Jin,

General Counsel.

[FR Doc. 96–4843 Filed 2–29–96; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination

On February 2, 1996, notice was published at page 3964 of the **Federal Register** [61 FR 3964] by the United States Information Agency pursuant to the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459) relating to objects being imported by the Yeshiva University Museum for an exhibit entitled "Sacred Realm: The Emergence of the Synagogue in the Ancient World." Since that notice was published, the Yeshiva University Museum has decided to add an additional object to the proposed exhibit, namely a certain seven-armed marble chandelier from the 3rd century.[1] I hereby determine that the chandelier to be added to the exhibit, imported fro abroad for the temporary exhibition without profit within the United States, is of cultural significance. The object will be imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the additional object at Yeshiva University Museum, New York, New York, from on or about March 1, 1996, to on or about February 28, 1997, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: February 27, 1996.

Les Jin,

General Counsel.

[FR Doc. 96–4842 Filed 2–27–96; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning, Assistant General Counsel, at 202 619–5997, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547–0001.

[1] A Copy of this list may be obtained by contacting Mr. Paul W. Manning, Assistant General Counsel, at 202/619–5997, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547–0001.

[1] A copy of this list may be obtained by contacting Ms. Jacqueline H. Caldwell, Assistant General Counsel, at 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547–0001.

[1] A copy of the complete list of objects may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619–5997, and the address is Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547.

federal register

Friday
March 1, 1996

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Federal Property Suitable as Facilities to Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–74]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans' Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Air Force: Ms. Barbara Jenkins, Air Force Real Estate Agency (Area–MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; Navy: Mr. John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; (These are not toll-free numbers).

Dated: February 22, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 03/01/96

Suitable/Available Properties

Buildings (by State)

Arizona

Facility #18
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510024
Status: Excess
Comment: 5925 sq. ft., 1 story, good condition, off-site removal only, most recent use—storage.

Facility #21
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510025
Status: Excess
Comment: 2500 sq. ft., slump blocks frame, 1 story, good condition, off-site removal only, most recent use—child care.

Facility #22
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510026
Status: Excess
Comment: 13752 sq. ft., slump blocks frame, 1 story, good condition, off-site removal only, most recent use—gymnasium.

Facility #23
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510027
Status: Excess
Comment: 485 sq. ft., slump blocks frame, 1 story, good condition, off-site removal only, most recent use—storage.

Facility #27
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510028
Status: Excess
Comment: 3252 sq. ft., wood frame, 1 story, good condition, off-site removal only, most recent use—base chapel.

Facility #29
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510029
Status: Excess
Comment: 85 sq. ft., wood frame, 1 story, good condition, off-site removal only, most recent use—storage.

Facility #31

Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510030
Status: Excess
Comment: 2720 sq. ft., steel frame, 1 story, good condition, off-site removal only, most recent use—sales store.

Facility #32
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510031
Status: Excess
Comment: 1200 sq. ft., wood frame, 1 story, good condition, off-site removal only, most recent use—hobby shop.

Facility #34
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510032
Status: Excess
Comment: 1937 sq. ft., slump blocks frame, 1 story, good condition, off-site removal only, most recent use—bath house.

Facility #35
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510033
Status: Excess
Comment: 7685 sq. ft., concrete block frame, 1 story, good condition, off-site removal only, most recent use—open mess.

Facility #37
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510034
Status: Excess
Comment: 21295 sq. ft., wood frame, 2 story, good condition, off-site removal only, most recent use—dormitory/multi-purpose.

Facility #38
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510035
Status: Excess
Comment: 4115 sq. ft., metal frame, good condition, 1 story, off-site removal only, most recent use—commissary.

38 Family Housing
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510036
Status: Excess
Comment: 1170 sq. ft. ea., 1 story relocatable framed residences, good condition, secured area w/alternate access.

26 Family Housing
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510037
Status: Excess
Comment: 1456 sq. ft. ea., 1 story slump block frame residences, off-site removal only, good condition.

Facility #510
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510038
Status: Excess
Comment: 373 sq. ft. slump blocks frame, 1 story, good condition, off-site removal only, most recent use—storage.

18 Detached Garages
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Location: Inc. bldgs. 630, 640, 670, 680, 710, 720, 740, 760, 790, 800, 820, 840, 870, 880, 910, 920, 950, 960 on Milan Loop
Landholding Agency: Air Force
Property Number: 189510039
Status: Excess
Comment: 186 sq. ft. ea., wood frame, 1 story, good condition, off-site removal only, most recent use—storage.

Facility #1004
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510040
Status: Excess
Comment: 1734 sq. ft., slump blocks frame, 1 story, good condition, off-site removal only, most recent use—residence.

Facility #1010
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510041
Status: Excess
Comment: 4155 sq. ft., quonset hut frame, good condition, off-site removal only, most recent use—theater.

Facility # 4140
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510042
Status: Excess
Comment: 3584 sq. ft., metal frame, 1 story, good condition, off-site removal only, most recent use—bowling center.

Facility # 4520
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510043
Status: Excess
Comment: 7800 sq. ft., prefab steel frame, 2 story, good condition, off-site removal only, most recent use—dormitory.

Facility # 4252
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510044
Status: Excess
Comment: 144 sq. ft., metal frame, 1 story, good condition, off-site removal only, most recent use—storage.

10 Duplex Family Housing
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Location: Inc. bldgs. 2334, 2335, 2340, 2343, 2344, 2348, 2351, 2352, 2356, 2360 on Conrad Circle
Landholding Agency: Air Force
Property Number: 189510045
Status: Excess
Comment: 3176 sq. ft., slump blocks frame, 1 story, good condition, off-site removal, most recent use—residences.

4—Fourplex Family Housing
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Location: Inc. bldgs. 2337, 2339, 2347, 2355 on Conrad Circle
Landholding Agency: Air Force
Property Number: 189510046
Status: Excess
Comment: 4728 sq. ft., slump blocks frame, 1 story, good condition, off-site removal only, most recent use—residences.

California

Bldg. 604
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010237
Status: Unutilized
Comment: 1232 sq ft.; stucco-wood frame; most recent use—housing.

Bldg. 605
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010238
Status: Unutilized
Comment: 1232 sq ft.; stucco-wood frame; most recent use—housing.

Bldg. 612
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010239
Status: Unutilized
Comment: 1232 sq ft.; stucco-wood frame; most recent use—housing.

Bldg. 611
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010240
Status: Unutilized
Comment: 1232 sq ft.; stucco-wood frame; most recent use—housing.

Bldg. 613
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010241
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 614
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010242
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 615
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010243
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 616
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010244
Status: Unutilized

Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.
Bldg. 617
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010245
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.
Bldg. 618
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010246
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing; needs rehab.

Florida

Bldg. 244
MacDill Auxiliary Airfield No. 1
Avon Park Co: Polk FL 33825–
Landholding Agency: Air Force
Property Number: 189520001
Status: Excess
Comment: 6239 sq. ft.; masonry frame, needs rehab, secured area w/alternate access, most recent use—commissary.
Bldg. 242
MacDill Auxiliary Airfield No. 1
Avon Park Co: Polk FL 33825–
Landholding Agency: Air Force
Property Number: 189520002
Status: Excess
Comment: 8554 sq. ft.; steel frame module, secured area w/alternate access, most recent use—exchange branch.
Bldg. 427
MacDill Auxiliary Airfield No. 1
Avon Park Co: Polk FL 33825–
Landholding Agency: Air Force
Property Number: 189520003
Status: Excess
Comment: 5258 sq. ft.; metal & masonry frame, secured area w/alternate access, most recent use—bowling center.

Guam

Anderson VOR
In the municipality of Dededo
Dededo Co: Guam GU 96912–
Location: Access is through Route 1 and Route 3, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010267
Status: Unutilized
Comment: 550 sq. ft.; 1 story perm/concrete; on 226 acres.
Anderson Radio Beacon Annex
In the municipality Dededo
Dededo Co: Guam GU 96912–
Location: Approximately 7.2 miles southwest of Anderson AFB proper; access is from Route 3, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010268
Status: Unutilized
Comment: 480 sq. ft.; 1 story perm/concrete; on 25 acres; most recent use—radio beacon facility.
Annex No. 4
Anderson Family Housing
Municipality of Dededo
Dededo Co: Guam GU 96912–
Location: Access is through Route 1, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010545
Status: Unutilized
Comment: various sq. ft.; 1 story frame/modified quonset; on 376 acres; portions of building and land leased to Government of Guam
Harmon VORsite (Portion) (AJKZ)
Municipality of Dededo
Dededo Co: Guam GU 96912–
Location: Approx. 12 miles southwest of Anderson AFB proper.
Landholding Agency: Air Force
Property Number: 189120234
Status: Unutilized
Comment: 550 sq. ft. bldg., needs rehab on 82 acres.

Hawaii

Bldg. S87, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779240011
Status: Unutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.
Bldg. 466, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779240012
Status: Unutilized
Comment: 100 sq. ft., 1-story, needs rehab, most recent use—gas station, off-site use only.
Bldg. T33, Radio Trans. Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310003
Status: Unutilized
Comment: 1536 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only.
Bldg. 64, Radio Trans. Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310004
Status: Unutilized
Comment: 3612 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only.

Idaho

Bldg. 121
Mountain Home Air Force Base
Main Avenue (See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189030007
Status: Excess
Comment: 3375 sq. ft., 1 story wood frame; potential utilities; needs rehab; presence of asbestos; building is set on piers; most recent use—medical administration, veterinary services.
Bldg. 611
Mountain Home Air Force Base
Mountain Home AFB Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189440016
Status: Underutilized
Comment: 3200 sq. ft., 1 story wood frame, needs repair, presence of lead base paint and asbestos, most recent use—base chapel.
Bldg. 2201
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189520005
Status: Underutilized
Comment: 6804 sq. ft., 1 story wood frame, most recent use—temporary garage for base fire dept. vehicles, presence of lead paint and asbestos shingles.

Iowa

Bldg. 00627
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310001
Status: Unutilized
Comment: 1932 sq. ft., 1-story concrete block bldg., most recent use—storage, pigeon infested, contamination investigation in progress.
Bldg. 00669
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310002
Status: Unutilized
Comment: 1113 sq. ft., 1 story concrete block bldg., contamination clean-up in process.

Louisiana

Barksdale Radio Beacon Annex
Curtis Co: Bossier LA 71111–
Location: 7 miles south of Bossier City on highway 71 south; left 1¾ miles on highway C1552.
Landholding Agency: Air Force
Property Number: 189010269
Status: Unutilized
Comment: 360 sq. ft., 1 story wood/concrete; on 11.25 acres.

Maine

Naval Air Station
Transmitter Site
Old Bath Road
Brunswick Co: Cumberland ME 04053–
Landholding Agency: Navy
Property Number: 779010110
Status: Underutilized
Comment: 7,270 sq. ft., 1 story bldg, most recent use—storage, structural deficiencies.
Bldg. 373, Topsham Annex
Naval Air Station
Topsham Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779320024
Status: Excess
Comment: 1300 sq. ft., 1 story, most recent use—public works maintenance shop, on 2.55 acres.

Michigan

Bldg. 30
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010779
Status: Excess
Comment: 2593 sq. ft.; 1 floor; concrete block; possible asbestos; potential utilities; most recent use—communications transmitter building.

Bldg. 46
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010786
Status: Excess
Comment: 5898 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—visiting personnel housing.
Bldg. 51
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010791
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 52
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010792
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 53
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010793
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 54
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010794
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos
Bldg. 55
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010795
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 56
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010796
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos
Bldg. 57
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010797
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 58
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913—
Landholding Agency: Air Force
Property Number: 189010798
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 59
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913—
Landholding Agency: Air Force
Property Number: 189010799
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 60
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913—
Landholding Agency: Air Force
Property Number: 189010800
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 61
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913—
Landholding Agency: Air Force
Property Number: 189010801
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 62
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913—
Landholding Agency: Air Force
Property Number: 189010802
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 63
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913—
Landholding Agency: Air Force
Property Number: 189010803
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 64
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913—
Landholding Agency: Air Force
Property Number: 189010804
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 65
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913—
Landholding Agency: Air Force
Property Number: 189010805
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 66
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913—
Landholding Agency: Air Force
Property Number: 189010806
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 67
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913—
Landholding Agency: Air Force
Property Number: 189010807
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 68
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010808
Status: Excess
Comment: 1478 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 70
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010809
Status: Excess
Comment: 1394 sq. ft.; 1 story concrete block; possible asbestos; most recent use—youth center
Bldg. 72
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010811
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 73
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010812
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 74
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010813
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 75
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010814
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 76
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010815
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 77
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010816
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 78
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010817

Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.

Bldg. 79
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010818
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.

Bldg. 80
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010819
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.

Bldg. 81
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010820
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.

Bldg. 82
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010821
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.

Bldg. 83
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010822
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.

Bldg. 84
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010823
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; possible utilities; possible asbestos.

Bldg. 85
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010824
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.

Bldg. 86
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010825
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.

Bldg. 87
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010826
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.

Bldg. 88
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010827
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.

Bldg. 89
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010828
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.

Bldg. 97
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010829
Status: Excess
Comment: 171 sq. ft.; 1 floor; potential utilities; most recent use—pump house.

Bldg. 98
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010830
Status: Excess
Comment: 114 sq. ft., 1 floor; potential utilities; most recent use—pump house.

Bldg. 10
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010836
Status: Excess
Comment: 1056 sq. ft., 1 story wood frame residence.

Bldg. 216
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010847
Status: Excess
Comment: 780 sq. ft., 1 story wood frame housing garage.

Bldg. 217
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010848
Status: Excess
Comment: 780 sq. ft., 1 story wood frame housing garage.

Bldg. 218
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010849
Status: Excess
Comment: 780 sq. ft., 1 story wood frame housing garage.

Bldg. 219
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010850
Status: Excess
Comment: 780 sq. ft., 1 story wood frame housing garage.

Bldg. 220
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010851
Status: Excess
Comment: 780 sq. ft., 1 story wood frame housing garage.

Bldg. 221
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010852
Status: Excess
Comment: 780 sq. ft., 1 story wood frame housing garage.

Bldg. 222
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010853
Status: Excess
Comment: 780 sq. ft., 1 story wood frame housing garage.

Bldg. 223
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010854
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.

Bldg. 224
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010855
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.

Bldg. 215
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010856
Status: Excess
Comment: 390 sq. ft.; 1 story wood frame housing garage.

Bldg. 212
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010859
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.

Bldg. 214
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010861
Status: Excess

Comment: 780 sq. ft.; 1 story wood frame housing garage.

Bldg. 23
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010865
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.

Bldg. 24
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010866
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.

Bldg. 36
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010872
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 37
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010873
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 201
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010879
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Montana

Bldg. — Conrad Training Site
15 miles east of the City of Conrad Co: Pondera MT 59425–
Landholding Agency: Air Force
Property Number: 189420025
Status: Unutilized
Comment: 7000 sq. ft., 1-story brick, most recent use—technical training site.

Bldg. 1807, Malstrom AFB
Malstrom Communications Annex
Malstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510023
Status: Excess
Comment: 1966 sq. ft., 1-story masonry block bldg. on 22 acres, limited utilities, roof needs replacement.

Facility #1
Havre Training Site Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189530047
Status: Excess
Comment: 6843 sq. ft., 1-story brick frame, good condition, most recent use—technical training site.

New Hampshire

Naval & Marine Corp. Rsv. Ctr.
199 North Main St.
Manchester NH 03102–
Landholding Agency: Navy
Property Number: 779530005
Status: Excess
Comment: 3 bldgs. on 2.53 acres of land, - limited utilities, limited use prior to environmental cleanup.

Pennsylvania

Naval Reserve Center
Dalton Ave. & Mayfair St.
McKeesport Co: Allegheny PA 15132–
Landholding Agency: Navy
Property Number: 779520034
Status: Excess
Comment: 3 interconnected quonset huts, need rehab, possible lead paint, lease restrictions, off-site removal only.

South Dakota

West Communications Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340051
Status: Unutilized
Comment: 2 bldgs. on 2.37 acres, remote area, lacks infrastructure, road hazardous during winter storms, most recent use—industrial storage.

Land (by State)

California

60 ARG/DE
Travis ILS Outer Marker Annex
Rio-Dixon Road
Travis AFB Co: Solano CA 94535–5496
Location: State Highway 113
Landholding Agency: Air Force
Property Number: 189010189
Status: Excess
Comment: .13 acres; most recent use—location for instrument landing systems equipment.

Georgia

Naval Submarine Base
Grid R–2 to R–3 to V–4 to V–1
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010229
Status: Underutilized
Comment: 111.57 acres; areas may be environmentally protected; secured area with alternate access.

Guam

Annex 1
Andersen Communication
Dededo Co: Guam GU 96912–
Location: In the municipality of Dededo.
Landholding Agency: Air Force
Property Number: 189010427
Status: Underutilized
Comment: 862 acres; subject to utilities easements.

Annex 2, (Partial)
Andersen Petroleum Storage
Dededo Co: Guam GU 96912–
Location: In the municipality of Dededo.
Landholding Agency: Air Force
Property Number: 189010428
Status: Underutilized
Comment: 35 acres, subject to utilities easements.

Michigan

Calumet Air Force Station
Section 1, T57N, R31W
Houghton Township
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010862
Status: Excess
Comment: 34 acres; potential utilities.

Calumet Air Force Station
Section 31, T58N, R30W
Houghton Township
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010863
Status: Excess
Comment: 3.78 acres; potential utilities.

Texas

Peary Point #2
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5000
Landholding Agency: Navy
Property Number: 779030001
Status: Excess
Comment: 43.46 acres; 60% of land under lease until 8/93.
GSA Number: 7–N–TX–402–V.

Suitable/Unavailable Properties

Buildings (by State)

California

Hawes Site (KHGM)
March AFB
Hinckley Co: San Bernardino CA 92402–
Landholding Agency: Air Force
Property Number: 189010084
Status: Unutilized
Comment: 9290 sq. ft., 2 story concrete, most recent use-radio relay station, possible asbestos, land belongs to Bureau of Land Management, potential utilities.

Idaho

Bldg. 516
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 86348–
Landholding Agency: Air Force
Property Number: 189520004
Status: Excess
Comment: 4928 sq. ft., 1 story wood frame, presence of lead paint and asbestos, most recent use—offices.

Maine

Bldg. 376, Naval Air Station
Topsham Annex
Topsham Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779320011
Status: Unutilized
Comment: 4530 sq. ft., 2-story, most recent use—quarters, needs rehab.

Maryland

Bldg. 230
Naval Communication Detachment
9190 Commo Road
Cheltenham Co: Prince George MD 20397–5520
Landholding Agency: Navy
Property Number: 779330010
Status: Unutilized
Comment: 12,384 sq. ft., 4-story, needs rehab, potential utilities, includes 37 acres of land.

Michigan

Bldg. 20
Calumet Air Force Station

Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010775
Status: Excess
Comment: 13404 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—warehouse/supply facility.

Bldg. 21
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010776
Status: Excess
Comment: 2146 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—storage.

Bldg. 22
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010777
Status: Excess
Comment: 1546 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 28
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010778
Status: Excess
Comment: 1000 sq. ft.; 1 floor; possible asbestos; potential utilities; most recent use—maintenance facility.

Bldg. 40
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010780
Status: Excess
Comment: 2069 sq. ft.; 2 floors; concrete block; possible asbestos; potential utilities; most recent use—administrative facility.

Bldg. 41
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010781
Status: Excess
Comment: 2069 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 42
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010782
Status: Excess
Comment: 4017 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dining hall.

Bldg. 43
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010783
Status: Excess
Comment: 3674 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 44
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010784
Status: Excess
Comment: 7216 sq. ft.; 2 story; concrete block; possible asbestos; potential utilities; most recent use—dormitory.

Bldg. 45
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010785
Status: Excess
Comment: 6070 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 47
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010787
Status: Excess
Comment: 83 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 48
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010788
Status: Excess
Comment: 96 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 49
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010789
Status: Excess
Comment: 1944 sq. ft.; 1 story; concrete block; potential utilities; most recent use—dormitory.

Bldg. 50
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010790
Status: Excess
Comment: 6171 sq. ft.; 1 story; concrete block; potential utilities; possible asbestos; most recent use—Fire Department vehicle parking building.

Bldg. 14
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010833
Status: Excess
Comment: 6751 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—gymnasium.

Bldg. 16
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010834
Status: Excess
Comment: 3000 sq. ft.; 1 floor concrete block; most recent use—commissary facility.

Bldg. 9
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010835
Status: Excess
Comment: 1056 sq. ft.; 1 story wood frame residence.

Bldg. 11
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010837
Status: Excess
Comment: 1056 sq. ft.; 1 floor wood frame residence.

Bldg. 12
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010838
Status: Excess
Comment: 1056 sq. ft.; 1 story wood frame residence.

Bldg. 13
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010839
Status: Excess
Comment: 1056 sq. ft., 1 story wood frame residence.

Bldg. 5
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010840
Status: Excess
Comment: 864 sq. ft., 1 floor wood frame residence; possible asbestos.

Bldg. 6
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010841
Status: Excess
Comment: 864 sq. ft., 1 floor wood frame residence; possible asbestos.

Bldg. 7
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010842
Status: Excess
Comment: 864 sq. ft., 1 floor wood frame residence; possible asbestos.

Bldg. 8
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010843
Status: Excess
Comment: 864 sq. ft., 1 floor wood frame residence; possible asbestos.

Bldg. 4
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010844
Status: Excess
Comment: 2340 sq. ft., 1 floor concrete block; most recent use—heating facility.

Bldg. 3
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010845
Status: Excess

Comment: 5314 sq. ft., 1 floor concrete block; possible asbestos; most recent use—maintenance shop and office.

Bldg. 1
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010846
Status: Excess
Comment: 4528 sq. ft., 1 floor concrete block; possible asbestos; most recent use—office.

Bldg. 158
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010857
Status: Excess
Comment: 3603 sq. ft., 1 story concrete/steel; possible asbestos; most recent use—electrical power station.

Bldg. 15
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010864
Status: Excess
Comment: 538 sq. ft., 1 floor; concrete/wood structure; potential utilities; most recent use—gymnasium facility.

Bldg. 31
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010867
Status: Excess
Comment: 36 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.

Bldg. 32
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010868
Status: Excess
Comment: 36 sq. ft.; 1 story metal frame; prior use—storage of fire hoses.

Bldg. 33
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010869
Status: Excess
Comment: 36 sq. ft.; 1 story metal frame; prior use—storage of fire hoses.

Bldg. 34
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010870
Status: Excess
Comment: 36 sq. ft.; 1 story metal frame; prior use—storage of fire hoses.

Bldg. 35
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010871
Status: Excess
Comment: 36 sq. ft.; 1 story metal frame; prior use—storage of fire hose.

Bldg. 39
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010874
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 202
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010880
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 203
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010881
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 204
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010882
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 205
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010883
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 206
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010884
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 207
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010885
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 153
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010886
Status: Excess
Comment: 4314 sq. ft.; 2 story concrete block facility; (radar tower bldg.) potential use—storage.

Bldg. 154
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010887
Status: Excess
Comment: 8960 sq. ft.; 4 story concrete block facility; (radar tower bldg.) potential use—storage.

Bldg. 157
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010888
Status: Excess
Comment: 3744 sq. ft.; 1 story concrete/steel facility; (radar tower bldg.); potential use—storage.

Missouri

Jefferson Barracks ANG Base
Missouri National Guard
1 Grant Road
St. Louis Co: St. Louis MO 63125–4118
Landholding Agency: Air Force
Property Number: 189010081
Status: Underutilized
Comment: 20 acres; portion near flammable materials; portion on archaeological site; special fencing required.

Montana

Bldg. 00007
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330066
Status: Unutilized
Comment: 992 sq. ft., 1-story metal, most recent use—auto/hobby shop.

Bldg. 00008
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330067
Status: Unutilized
Comment: 2640 sq. ft., 1-story metal, most recent use—vehicle parking.

Bldg. 00016
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330068
Status: Unutilized
Comment: 3640 sq. ft., 1-story cinder block, most recent use—storage.

Bldg. 00023
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330069
Status: Unutilized
Comment: 3315 sq. ft., 1-story wood, most recent use—fire station.

Bldg. 00024
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330070
Status: Unutilized
Comment: 5016 sq. ft., 1-story brick, most recent use—dormitory.

Bldg. 00027
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330071
Status: Unutilized
Comment: 14280 sq. ft., 1-story cinder block, most recent use—recreation center and commissary store.

Bldg. 00029
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330072
Status: Unutilized
Comment: 63 sq. ft., 1-story metal.

Bldg. 00031
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330073
Status: Unutilized
Comment: 3130 sq. ft., 1-story cinder block, most recent use—maintenance shop and admin.

Bldg. 00032
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330074
Status: Unutilized
Comment: 64 sq. ft., metal, most recent use—storage.
Bldg. 00035
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330075
Status: Unutilized
Comment: 2252 sq. ft., 4-story metal, most recent use—storage.
Bldg. 00039
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330076
Status: Unutilized
Comment: 21824 sq. ft., 1-story masonry, most recent use—storage.
Bldg. 00040
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330077
Status: Unutilized
Comment: 874 sq. ft., 1-story masonry, most recent use—storage.
Bldg. 00041
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330078
Status: Unutilized
Comment: 108 sq. ft., 1-story masonry.
Bldg. 00042
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330079
Status: Unutilized
Comment: 760 sq. ft., 1-story masonry, most recent use—warehouse.
Bldg. 00044
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330080
Status: Unutilized
Comment: 3298 sq. ft., 1-story metal, most recent use—wood hobby shop.
Bldgs. 51, 52, 56, 58
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330081
Status: Unutilized
Comment: 1352 sq. ft. each, 1-story wood, most recent use—residential.
Bldgs. 53–55, 57, 59, 61, 63, 65, 67, 69, 71
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330082
Status: Unutilized
Comment: 1152 sq. ft. each, 1-story wood, most recent use—residential.
Bldgs. 60, 62, 64, 66, 68
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330083
Status: Unutilized
Comment: 1361 sq. ft. each, 1-story wood, most recent use—residential.
Bldgs. 70, 72, 74, 78
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330084
Status: Unutilized
Comment: 1455 sq. ft. each, 1-story wood, most recent use—residential.
Bldgs. 76, 80
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330085
Status: Unutilized
Comment: 1343 sq. ft. each, 1-story wood, most recent use—residential.
Bldg. 82
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330086
Status: Unutilized
Comment: 1553 sq. ft., 1-story wood, most recent use—residential.
Bldgs. 150, 152, 154, 156, 158, 160, 162, 164, 168, 170, 172, 174, 176, 178, 180, 182, 184
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330087
Status: Unutilized
Comment: 1247 sq. ft. each, 1-story wood, most recent use—residential.
Bldgs. 106–109, 112–113
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330088
Status: Unutilized
Comment: 36 sq. ft. each, most recent use—fire hose house.
Bldgs. 202, 204, 206, 212, 214, 216, 218
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330089
Status: Unutilized
Comment: 72 sq. ft. each, most recent use—storage units.
Bldgs. 208, 210
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330090
Status: Unutilized
Comment: 36 sq. ft. each, most recent use—storage.

New Hampshire

Bldg. 127
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320057
Status: Excess
Comment: 698 sq. ft., 1-story, concrete and metal frame, possible asbestos, access restrictions, most recent use—storage.

Ohio

Naval & Marine Corps Res. Cntr
315 East LaClede Avenue
Youngstown OH
Landholding Agency: Navy
Property Number: 779320012
Status: Unutilized
Comment: 3067 sq. ft. 2 story, possible asbestos.

Puerto Rico

Bldgs. 501 & 502
U.S. Naval Radio Transmitter Facility
State Road No. 2
Juana Diaz PR 00795–
Landholding Agency: Navy
Property Number: 779530007
Status: Unutilized
Comment: Reinforced concrete structures, limited access, needs rehab, most recent use—transmitter and power house.

Texas

Bldg. 696
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110091
Status: Unutilized
Comment: 1344 sq. ft.; possible asbestos; most recent use—auto hobby shop; needs rehab.
Bldg. 697
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110092
Status: Unutilized
Comment: 770 sq. ft.; possible asbestos; most recent use—supply store; needs rehab.
Bldg. 698
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110093
Status: Unutilized
Comment: 5815 sq. ft.; 1 story corrugated iron; possible asbestos; needs rehab; most recent use—recreation, workshop.
Bldg. 2435
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010161
Status: Underutilized
Comment: 1730 sq. ft.; 1 story residence.
Bldg. 2436
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010162
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.
Bldg. 2460
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010163
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2462
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010164
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2464
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010165
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2466
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–

Landholding Agency: Navy
Property Number: 779010166
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.
Bldg. 2467
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010167
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.
Bldg. 2468
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010168
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2472
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010169
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2476
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010170
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2482
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010171
Status: Underutilized
Comment: 1760 sq. ft.; 1 story residence.
Bldg. 2495
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010172
Status: Underutilized
Comment: 1760 sq. ft.; 1 story residence.
Bldg. 2514
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010173
Status: Underutilized
Comment: 1730 sq. ft.; 1 story residence.
Bldg. 2518
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010174
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.
Bldg. 2520
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010175
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.
Bldg. 2522
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010176
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.
Bldg. 2526
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010177
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.
Bldg. 2423
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010178
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.
Bldg. 2427
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010179
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.
Bldg. 2431
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010180
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.
Bldg. 2424
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010181
Status: Underutilized
Comment 3352 sq. ft.; 1 story residence.
Bldg. 2433
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010182
Status: Underutilized
Comment 3352 sq. ft.; 1 story residence.
Bldg. 2428
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010183
Status: Underutilized
Comment 3352 sq. ft.; 1 story residence.
Bldg. 2429
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010184
Status: Underutilized
Comment 3152 sq. ft.; 1 story residence.
Bldg. 2454
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010185
Status: Underutilized
Comment 3152 sq. ft.; 1 story residence.
Bldg. 2477
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010186
Status: Underutilized
Comment 3152 sq. ft.; 1 story residence.
Bldg. 2485
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010187
Status: Underutilized
Comment 3152 sq. ft.; 1 story residence.
Bldg. 2499
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010188
Status: Underutilized
Comment 3152 sq. ft.; 1 story residence.
Bldg. 2503
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010189
Status: Underutilized
Comment 3152 sq. ft.; 1 story residence.
Bldg. 2507
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010190
Status: Underutilized
Comment 3152 sq. ft.; 1 story residence.
Bldg. 2513
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010191
Status: Underutilized
Comment 3152 sq. ft.; 1 story residence.
Bldg. 2521
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010192
Status: Underutilized
Comment 3152 sq. ft.; 1 story residence.
Bldg. 2451
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010193
Status: Underutilized
Comment 1758 sq. ft.; 1 story residence.
Bldg. 2458
Laguna Housing Area

NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010194
Status: Underutilized
Comment 1758 sq. ft.; 1 story residence.

Bldg. 2461
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010195
Status: Underutilized
Comment 1758 sq. ft.; 1 story residence.

Bldg. 2473
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010196
Status: Underutilized
Comment 1758 sq. ft.; 1 story residence.

Bldg. 2478
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010197
Status: Underutilized
Comment 1758 sq. ft.; 1 story residence.

Bldg. 2480
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010198
Status: Underutilized
Comment 1758 sq. ft.; 1 story residence.

Bldg. 2484
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010199
Status: Underutilized
Comment 1758 sq. ft.; 1 story residence.

Bldg. 2486
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010200
Status: Underutilized
Comment 1758 sq. ft.; 1 story residence.

Bldg. 2487
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010201
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2488
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010202
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2494
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010203
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2500
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010204
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2502
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010205
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2506
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010206
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2508
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010207
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2525
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010208
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2452
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010209
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2475
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010210
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2479
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010211
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2497
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010212
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2501
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010213
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2505
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010214
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2515
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010215
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2517
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010216
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2519
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010217
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2523
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010218
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2465
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010219
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2493
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010220
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2510
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010221
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2474
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010222
Status: Underutilized
Comment: 3528 sq. ft.; 1 story residence.

Bldg. 2481
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010223
Status: Underutilized
Comment: 3528 sq. ft.; 1 story residence.

Bldg. 2509
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010224
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2511
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010225
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2512
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010226
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2527
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010227
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Virginia

Naval Medical Clinic
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508–
Landholding Agency: Navy
Property Number: 779010109
Status: Unutilized
Comment: 3665 sq. ft., 1 story, possible asbestos, most recent use—laundry.

West Virginia

Naval & Marine Corps Res. Ctr.
N. 13th St & Ohio River
Wheeling Co: Ohio WV 26003–
Landholding Agency: Navy
Property Number: 779010077
Status: Excess
Comment: 32000 sq. ft.; 1 floor; most recent use—offices; 15% of total space occupied; needs rehab; land leased from city—expires September 1990.

Land (by State)

California

Camp Kohler Annex
McClellan AFB
Sacramento Co: Sacramento CA 95652–5000
Landholding Agency: Air Force
Property Number: 189010045
Status: Excess
Comment: 35.30 acres + .11 acres easement; 30 + acres undeveloped; potential utilities; secured area; alternate access.

Norton Com. Facility Annex
Norton AFB
Sixth and Central Streets
Highland Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010194
Status: Excess
Comment: 30.3 acres; most recent use—recreational area; portion subject to easements.

Florida

Woodland Tract
Elgin AFB, AF Enlisted Widows' Home
Ft. Walton Beach Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540020
Status: Unutilized
Comment: 3.43 acres, easement.

Naval Public Works Center
Naval Air Station
Pensacola Co: Escambia FL 32508–
Location: Southeast corner of Corey station—next to family housing.
Landholding Agency: Navy
Property Number: 779010157
Status: Unutilized
Comment: 22 acres.

Georgia

Naval Submarine Base
Grid AA–1 to AA–4 to EE–7 to FF–2
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010255
Status: Underutilized
Comment: 495 acres, 86 acre portion located in floodway; secured area with alternate access.

Virgin Islands

Ham's Bluff Test Site
Freddriksted Co: St. Croix VI 00840–
Landholding Agency: Navy
Property Number: 779530006
Status: Unutilized
Comment: 22.5 acres, bldg. construction underway, secured area w/alternate access, property reverts to transportation when Navy vacates.

Virginia

Naval Base
Norfolk Co: Norfolk VA 23508–
Location: Northeast corner of base, near Willoughby housing area.
Landholding Agency: Navy
Property Number: 779010156
Status: Unutilized
Comment: 60 acres; most recent use—sandpit; secured area with alternate access.

Suitable/To Be Excessed

Buildings (by State)

California

Bldg. 100
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010259
Status: Unutilized
Comment: 2628 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; use—office space.

Bldg. 102
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010260
Status: Unutilized
Comment: 580 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—office.

Bldg. 103
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010261
Status: Unutilized
Comment: 3675 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—dinning hall.

Bldg. 109
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010262
Status: Unutilized
Comment: 1045 sq. ft.; 2 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—barracks.

Bldg. 110
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010263
Status: Unutilized
Comment: 4439 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—shop.

Bldg. 113
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010264
Status: Unutilized
Comment: 100 sq. ft.; 1 story permanent bldg; secured facility with alternate access; most recent use—storage.

Bldg. 138
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010265
Status: Unutilized
Comment: 110 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—filling station.

Bldg. 144
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010266
Status: Unutilized

Comment: 4320 sq. ft.; 1 story semi-permanent bldg; possible asbestos; secure facility with alternate access; most recent use—bowling alley.

Bldg. 145
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010267
Status: Unutilized
Comment: 4000 sq. ft.; 1 story semi-permanent bldg; possible asbestos secure facility with alternate access; most recent use—recreation building.

Nevada

Bldg. 300
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120001
Status: Unutilized
Comment: 1573 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 301
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120002
Status: Unutilized
Comment: 1573 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 302
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120003
Status: Unutilized
Comment: 1573 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 303
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120004
Status: Unutilized
Comment: 2750 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 304
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120005
Status: Unutilized
Comment: 2750 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 305
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120006
Status: Unutilized
Comment: 2750 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 306
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120007
Status: Unutilized
Comment: 2750 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 307
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120008
Status: Unutilized
Comment: 2170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 308
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120009
Status: Unutilized
Comment: 2170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 309
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120010
Status: Unutilized
Comment: 2170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 310
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120011
Status: Unutilized
Comment: 2170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 311
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120012
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 312
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120013
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 313
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120014
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 314
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120015
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 315
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120016
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 316
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120017
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 317
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120018
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 318
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120019
Status: Unutilized
Comment: 2170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 319
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120020
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 320
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120021
Status: Unutilized
Comment: 2170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 321
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120022
Status: Unutilized
Comment: 2170 Sq. ft., one story family housing; easement restrictions, potential utilities, off-site removal only.

Bldg. 322
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120023
Status: Unutilized
Comment: 2170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 323
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120024
Status: Unutilized
Comment: 1233 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 324
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120025
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 325
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120026
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 326
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120027
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 331
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120028
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 332
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120029
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 333
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120030
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 334
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120031
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 335
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120032
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 336
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120033
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 337
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120034
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 338
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120035
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 339
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120036
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 340
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120037
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 341
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120038
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 343
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120039
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 345
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120040
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 346
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120041
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 348
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120042
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 349
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120043
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 350

Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120044
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 351
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120045
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 352
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120046
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 353
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120047
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 400
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120048
Status: Unutilized
Comment: 2464 Sq. ft., one story, most recent use—maintenance shop, easement restrictions, potential utilities, off-site removal only.

Bldg. 402
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120049
Status: Unutilized
Comment: 2570 Sq. ft., one story, most recent use—Chapel, easement restrictions, potential utilities, off-site removal only.

Bldg. 404
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120050
Status: Unutilized
Comment: 2376 Sq. ft., one story, most recent use—religious education facility, easement restrictions, potential utilities, off-site removal only.

Bldg. 406
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120051
Status: Unutilized
Comment: 2605 Sq. ft., one story, most recent use—child care facility, easement restrictions, potential utilities, off-site removal only.

Bldg. 3027
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120052
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3028
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120053
Status: Unutilized
Comment: 60 Sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3029
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120054
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3030
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120055
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3031
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120056
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3032
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120057
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3033
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120058
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3034
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120059
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3035
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120060
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3036
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120061
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3037
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120062
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3038
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120063
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3039
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120064
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3040
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120065
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

New York

Bldg. 1

Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530048
Status: Excess
Comment: 4955 sq. ft., 2 story concrete block, needs rehab, most recent use—administration.

Bldg. 2
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530049
Status: Excess
Comment: 1476 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop.

Bldg. 6
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530050
Status: Excess
Comment: 2466 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop.

Bldg. 11
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530051
Status: Excess
Comment: 1750 sq. ft., 1 story wood frame, needs rehab, most recent use—storage.

Bldg. 8
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530052
Status: Excess
Comment: 1812 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop communications.

Bldg. 14
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530053
Status: Excess
Comment: 156 sq. ft., 1 story wood frame, most recent use—vehicle fuel station.

Bldg. 30
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530054
Status: Excess
Comment: 3649 sq. ft., 1 story, needs rehab, most recent use—assembly hall.

Bldg. 31
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530055
Status: Excess
Comment: 8252 sq. ft., one story concrete block, most recent use—storage.

Bldg. 32
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530056
Status: Excess
Comment: 8252 sq. ft., one story concrete block, most recent use—storage.

Land (by State)

Illinois

Libertyville Training Site
Libertyville Co: Lake IL 60048–
Landholding Agency: Navy
Property Number: 779010073
Status: Excess
Comment: 114 acres; possible radiation hazard; existing FAA use license.

Michigan

Marine Corps Reserve Center
3109 Collowingwood Parkway
Flint MI 48502–
Landholding Agency: Navy
Property Number: 779240019
Status: Excess
Comment: 5 acres, previously had four bldgs. on it.

New York

14.90 Acres
Hancock Field
Syracus Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530057
Status: Excess
Comment: Fenced in compound, most recent use—Air Natl. Guard Communication & Electronics Group.

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. 1435
Maxwell Air Force Base
Mimosa Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189030220
Status: Unutilized
Comment: Floodway, Secured Area.

Education Center
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189320044
Status: Unutilized
Reason: Secured Area, Other
Comment: Extensive Deterioration.

Admin. Office
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189320045
Status: Unutilized
Reason: Secured Area, Other
Comment: Extensive Deterioration.

Bldg. 402
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330049
Status: Unutilized
Reason: Secured Area.

Bldg. 864
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330064
Status: Unutilized
Reason: Extensive deterioration, Secured Area.

Bldg. 875
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330065
Status: Unutilized
Reason: Secured Area.

Alaska

Bldg. 203
Tin City Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010296
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 165
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010298
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 150
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010299
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 130
Sparrevohn Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010300
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 306
King Salmon Airport
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010301
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 11–230
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010303
Status: Unutilized
Reason: Secured Area, Contamination.

Bldg. 21–116
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010304

Status: Unutilized
Reason: Secured Area, Contamination.
Bldg. 63–320
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010307
Status: Unutilized
Reason: Secured Area, Contamination.
Bldg. 63–325
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010308
Status: Unutilized
Reason: Secured Area; Contamination.
Bldg. 103
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010309
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 110
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010310
Status: Unutilized
Reason: Secured Area, Isolated area; Not accessible by road, Contamination.
Bldg. 112
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010311
Status: Unutilized
Reason: Secured Area, Isolated area; Not accessible by road; Contamination.
Bldg. 113
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010312
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 114
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010313
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 115
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010314
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 118
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010315
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 1018
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010317
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 1025
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010318
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 1055
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010319
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 107
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010320
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 115
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010321
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 113
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010322
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 150
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010323
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 152
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010324
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 301
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010325
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 1001
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010326
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 1003
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010327
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 1055
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010328
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 1056
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010329
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 103
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000

Landholding Agency: Air Force
Property Number: 189010330
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 104
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010331
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 105
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010332
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 110
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010333
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 114
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010334
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 202
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010335
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 204
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010336
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 205
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010337
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 1001
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010338
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 1015
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010339
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.
Bldg. 50
Cold Bay Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010433
Status: Unutilized
Reason: Other, Isolated area, Not accessible by road
Comment: Isolated and remote; Arctic environment.
Bldg. 1548, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420001
Status: Unutilized
Reason: Floodway, Secured Area, Extensive deterioration.
Bldg. 1568, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420002
Status: Unutilized
Reason: Floodway, Secured Area, Extensive deterioration.
Bldg. 1570, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420003
Status: Unutilized
Reason: Floodway, Secured Area, Extensive deterioration.
Bldg. 1700, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420004
Status: Unutilized
Reason: Floodway, Secured Area, Extensive deterioration.
Bldg. 1832, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420005
Status: Unutilized
Reason: Floodway, Secured Area, Extensive deterioration.
Bldg. 1842, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420006
Status: Unutilized
Reason: Floodway, Secured Area, Extensive deterioration.
Bldg. 1844, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420007
Status: Unutilized
Reason: Floodway, Secured Area, Extensive deterioration.
Bldg. 1853, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189440011
Status: Unutilized
Reason: Secured Area, Floodway.
Bldg. 24–825
Elmendorf Air Force Base
Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189440012
Status: Unutilized
Reason: Secured Area, Within airport runway clear zone.
Bldg. 24–820
Elmendorf Air Force Base
Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189440013
Status: Unutilized
Reason: Secured Area, Within airport runway clear zone.
Bldg. 21–878
Elmendorf Air Force Base
Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189440014
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 10–480
Elmendorf Air Force Base
Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189440015
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 142
Tin City Long Range Radar Site
Wales Co: Nome AK
Landholding Agency: Air Force
Property Number: 189520013
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 110
Tin City Long Range Radar Site
Wales Co: Nome AK
Landholding Agency: Air Force
Property Number: 189520014
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 646
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 189520015
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 2541
Galena Airport
Galena Co: Yukon AK
Landholding Agency: Air Force
Property Number: 189520016

Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 1770
Galena Airport
Galena Co: Yukon AK
Landholding Agency: Air Force
Property Number: 189520017
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 1
Lonely Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520024
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 2
Lonely Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520025
Status: Unutilized
Reason: Extensive deterioration; Not accessible by road.
Bldg. 12
Lonely Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520026
Status: Unutilized
Reason: Extensive deterioration; Not accessible by road.
Bldg. 1
Wainwright Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520027
Status: Unutilized
Reason: Extensive deterioration; Not accessible by road.
Bldg. 2
Wainwright Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520028
Status: Unutilized
Reason: Extensive deterioration; Not accessible by road.
Bldg. 3
Wainwright Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520029
Status: Unutilized
Reason: Extensive deterioration; Not accessible by road.
Bldg. 3024
Tatalina Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530001
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 3045
Tatalina Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530002
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 18
Lonely Dewline Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530003
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 23
Lonely Dewline Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530004
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 1015
Kotzebue Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530005
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 1
Flaxman Island DEW Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530006
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 2
Flaxman Island DEW Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530007
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 3
Flaxman Island DEW Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530008
Status: Unutilized
Reason: Secured Area, Extensive deterioration.
Bldg. 4100
Cape Romanzof Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18530009
Status: Unutilized
Reason: Secured Area, Extensive deterioration.
Bldg. 200
Cape Newenham Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18530010
Status: Unutilized
Reason: Secured Area, Extensive deterioration.
Bldg. 2166
Cape Newenham Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18530011
Status: Unutilized
Reason: Secured Area, Extensive deterioration.
Bldg. 5500
Cape Newenham Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18530012
Status: Unutilized
Reason: Secured Area, Extensive deterioration.
Bldg. 8
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530013
Status: Unutilized
Reason: Secured Area, Extensive deterioration.
Bldg. 75
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530014
Status: Unutilized
Reason: Secured Area, Extensive deterioration.
Bldg. 86
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530015
Status: Unutilized
Reason: Secured Area, Extensive deterioration.
Bldg. 3060
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530016
Status: Unutilized
Reason: Secured Area, Extensive deterioration.
Bldg. 11–330
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530017
Status: Unutilized
Reason: With airport runway clear zone, Secured Area, Extensive deterioration.
Bldg. 11–490
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530018
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area, Extensive deterioration.
Bldg. 21–870
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530019
Status: Unutilized
Reason: Secured Area.
Bldg. 22–010
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530020
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.
Bldg. 24–811
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530021

Status: Unutilized
Reason: Within airport runway clear zone, Secured Area, Extensive deterioration.
Bldg. 31–342
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530022
Status: Unutilized
Reason: Secured Area, Extensive deterioration.
Bldg. 32–126
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530023
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area, Extensive deterioration.
Bldg. 32–129
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530024
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area, Extensive deterioration.
Bldg. 42–350
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530025
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area, Extensive deterioration.
Bldg. 44–775
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530026
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area, Extensive deterioration.
Bldg. 73–402
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530027
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area.
Bldg. 73–403
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530028
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area, Extensive deterioration.
Bldg. 21–737
Elmendorf Air Force Base
Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189540001
Status: Unutilized
Reason: Secured Area, Extensive deterioration.
Sand Shed, Map Grid 45024
Naval Air Station
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779120004
Status: Unutilized
Reason: Secured Area.
LORAN Station, Map Grid 09L11
Naval Air Station
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779120006
Status: Unutilized
Reason: Secured Area.
Bldg. 10196
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310021
Status: Unutilized
Reason: Secured Area.
Bldg. 10517
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310022
Status: Unutilized
Reason: Secured Area.
Bldg. 10518
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310023
Status: Unutilized
Reason: Secured Area.
Bldg. 10535
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310024
Status: Unutilized
Reason: Secured Area.
Bldg. 10538
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310025
Status: Unutilized
Reason: Secured Area.
Bldg. 10539
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310026
Status: Unutilized
Reason: Secured Area.
Bldg. 10540
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310027
Status: Unutilized
Reason: Secured Area.
Bldg. 10603
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310028
Status: Unutilized
Reason: Secured Area.
Generator Bldg.
Naval Security Group Activity
Adak Island AK
Landholding Agency: Navy
Property Number: 779430017
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Arizona

Facility 90002
Holbrook Radar Site
Holbrook Co: Navajo AZ 86025–
Landholding Agency: Air Force
Property Number: 189340049
Status: Unutilized
Reason: Within airport runway clear zone.

California

Bldg. 4052
March AFB
Ice House in West March
Riverside Co: Riverside CA 92518–
Landholding Agency: Air Force
Property Number: 189010082
Status: Unutilized
Reason: Within airport runway clear zone.
Bldg. 1182 60 ABG/DE
Travis Air Force Base
Perimeter Road
Travis AFB Co: Solano CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010188
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area.
Bldg. 152 60 ABG/DE
Travis Air Force Base
Broadway Street
Travis AFB Co: Solano CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010190
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.
Bldg. 159 60 ABG/DE
Travis Air Force Base
Broadway Street
Travis AFB Co: Solano CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010191
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.
Bldg. 384 60 ABG/DE
Travis Air Force Base
Hospital Drive
Travis AFB Co: Solano CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010192
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.
Bldg. 707 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010193
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.
Bldg. 575 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010195
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.
Bldg. 502 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010196
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 23 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010197
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 100
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010233
Status: Unutilized
Reason: Secured Area.

Bldg. 101
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010234
Status: Underutilized
Reason: Secured Area.

Bldg. 116
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010235
Status: Unutilized
Reason: Secured Area.

Bldg. 202
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010236
Status: Unutilized
Reason: Secured Area.

Bldg. 201
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010546
Status: Unutilized
Reason: Secured Area.

Bldg. 202
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010547
Status: Unutilized
Reason: Secured Area.

Bldg. 203
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010548
Status: Unutilized
Reason: Secured Area.

Bldg. 204
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010549
Status: Unutilized
Reason: Secured Area.

Bldg. 1823
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, PT Sal Rd., Miguelito CYN
Landholding Agency: Air Force
Property Number: 189130360
Status: Excess
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.

Bldg. 10312
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189210026
Status: Unutilized
Reason: Secured Area.

Bldg. 10503
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189210028
Status: Unutilized
Reason: Secured Area.

Bldg. 16104, Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Rd., Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189230020
Status: Underutilized
Reason: Secured Area.

Bldg. 1791
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, PT Sal Road; Miguelito CYN
Landholding Agency: Air Force
Property Number: 189240044
Status: Unutilized
Reason: Secured Area.

Bldg. 10721
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, PT Sal Road; Miguelito CYN
Landholding Agency: Air Force
Property Number: 189240048
Status: Underutilized
Reason: Secured Area.

Bldg. 13028
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246; Coast Rd., PT Sal Road; Miguelito CYN
Landholding Agency: Air Force
Property Number: 189240050
Status: Unutilized
Reason: Secured Area.

Bldg. 5427, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310014
Status: Unutilized
Reason: Secured Area.

Bldg. 5428, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310015
Status: Unutilized
Reason: Secured Area.

Bldg. 5430, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310016
Status: Unutilized
Reason: Secured Area.

Bldg. 5431, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310017
Status: Unutilized
Reason: Secured Area.

Bldg. 6407, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310024
Status: Unutilized
Reason: Secured Area.

Bldg. 6425, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310027
Status: Unutilized
Reason: Secured Area.

Bldg. 6444, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310028
Status: Unutilized
Reason: Secured Area.

Bldg. 7304, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310030
Status: Unutilized
Reason: Secured Area.

Bldg. 13010, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310036
Status: Unutilized
Reason: Secured Area.

Bldg. 5437
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330011
Status: Unutilized
Reason: Secured Area.

Bldg. 6206
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330013
Status: Unutilized
Reason: Secured Area.

Bldg. 8215
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330016
Status: Unutilized
Reason: Secured Area.

Bldg. 8220
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330019
Status: Unutilized
Reason: Secured Area.

Bldg. 9001
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330028
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 13025
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330032
Status: Unutilized
Reason: Secured Area.

Bldg. 1988
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340003
Status: Unutilized
Reason: Other; Secured Area.
Comment: Electrical Power Generator Bldg.

Bldg. 1324
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340006
Status: Unutilized
Reason: Secured Area.

Bldg. 1341
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340007
Status: Unutilized
Reason: Secured Area.

Bldg. 1955
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340008
Status: Unutilized
Reason: Secured Area.

Bldg. 5007
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340009
Status: Unutilized
Reason: Secured Area.

Bldg. 6008
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340014
Status: Unutilized
Reason: Secured Area.

Bldg. 6418
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340015
Status: Unutilized
Reason: Secured Area.

Bldg. 6429
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340017
Status: Unutilized
Reason: Secured Area.

Bldg. 6441
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340018
Status: Unutilized
Reason: Secured Area.

Bldg. 6442
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340019
Status: Unutilized
Reason: Secured Area.

Bldg. 6443
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340020
Status: Unutilized
Reason: Secured Area.

Bldg. 7301
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340021
Status: Unutilized
Reason: Secured Area.

Bldg. 7306
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340022
Status: Unutilized
Reason: Secured Area.

Bldg. 8309
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340023
Status: Unutilized
Reason: Secured Area.

Bldg. 9310
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340024
Status: Unutilized
Reason: Secured Area.

Bldg. 11190
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340025
Status: Unutilized
Reason: Secured Area.

Bldg. 11308
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340026
Status: Unutilized
Reason: Secured Area.

Bldg. 16164
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340028
Status: Unutilized
Reason: Secured Area.

Bldg. 6521
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189410004
Status: Unutilized
Reason: Secured Area.

Bldg. 13019
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189410005
Status: Unutilized
Reason: Secured Area.

Bldg. 501
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189420008
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 13020
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189420011
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 1203
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440001
Status: Unutilized
Reason: Secured Area.

Bldg. 1786
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440002
Status: Unutilized
Reason: Secured Area.

Bldg. 11183
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440005
Status: Unutilized
Reason: Secured Area.

Bldg. 11219
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440006
Status: Unutilized
Reason: Secured Area.

Bldg. 11238
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440007
Status: Unutilized
Reason: Secured Area.

Bldg. 11511
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440008
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 13412
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440009
Status: Unutilized
Reason: Secured Area.

Bldg. 460
Vandenburg Air Force Base
Vandenburg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189510019
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 6348
Vandenburg Air Force Base
Vandenburg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189510020
Status: Unutilized
Reason: Secured Area.

Bldg. 908
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189520018
Status: Excess
Reason: Other
Comment: Detached Latrine.

Bldg. 11514
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189520019
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 11559
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189520020
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 13002
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189520021
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 13004
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189520022
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 16195
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189520023
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 422
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530029
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 431
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530030
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 470
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530031
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 480
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530032
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 508
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530033
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 951
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530034
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 6011
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530035
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 6520
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530036
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 6606
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530037
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 7200
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530038
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 7307
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530039
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 9351
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530040
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 10717
Vandenberg Air Force Base

Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530041
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 10720
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530042
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 10722
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530043
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 13213
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530044
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 13215
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530045
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 105
Naval FPS, CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010159
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 165
Naval FPS, CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010160
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 146
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010268
Status: Unutilized
Reason: Other
Comment: Sewer treatment facility.

Bldg. 31104
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–
Landholding Agency: Navy
Property Number: 779340003
Status: Unutilized
Reason: Secured Area.

Bldg. 31107
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–
Landholding Agency: Navy
Property Number: 779420001
Status: Unutilized
Reason: Secured Area.

Bldg. 15951
Naval Air Weapons Stations
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779430006
Status: Unutilized
Reason: Secured Area; Extensive deterioration; Within 2000 ft. of flammable or explosive material.

Bldg. 31539
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–
Landholding Agency: Navy
Property Number: 779430016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration.

Bldg. 00366
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520001
Status: Excess
Reason: Secured Area.

Bldg. 00405
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520002
Status: Excess
Reason: Secured Area.

Bldg. 00418
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520003
Status: Excess
Reason: Secured Area.

Bldg. 00421
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520004
Status: Excess
Reason: Secured Area.

Bldg. 00426
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520005
Status: Excess
Reason: Secured Area.

Bldg. 00427
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520006
Status: Excess
Reason: Secured Area.

Bldg. 00429
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520007
Status: Excess
Reason: Secured Area.

Bldg. 00430
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520008
Status: Excess
Reason: Secured Area.

5 Bldgs.
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Location: Include: #'s 00360, 00415, 00419, 00423, 00414
Landholding Agency: Navy
Property Number: 779520009
Status: Excess
Reason: Secured Area.

5 Bldgs.
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Location: Include: #'s 00428, 00359, 00362, 00369, 00409
Landholding Agency: Navy
Property Number: 779520010
Status: Excess
Reason: Secured Area.

5 Bldgs.
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Location: Include: #'s 00367, 00416, 00425, 00365, 00368
Landholding Agency: Navy
Property Number: 779520011
Status: Excess
Reason: Secured Area.

4 Bldgs.
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Location: Include: #'s 00370, 00371, 00385, 00404
Landholding Agency: Navy
Property Number: 779520012
Status: Excess
Reason: Secured Area.

4 Bldgs.
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Location: Include: #'s 00412, 00433, 00434, 00435
Landholding Agency: Navy
Property Number: 779520013
Status: Excess
Reason: Secured Area.

Bldgs. 31030, 31031 & 31034
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779520015
Status: Excess
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.

Bldg. 481
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520018
Status: Unutilized
Reason: Secured Area.

Bldg. 482
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy

Property Number: 779520019
Status: Excess
Reason: Secured Area.

Bldg. 356
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520020
Status: Excess
Reason: Secured Area.

Bldg. 361
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520021
Status: Excess
Reason: Secured Area.

Bldg. 364
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520022
Status: Excess
Reason: Secured Area.

Bldg. 373
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520023
Status: Excess
Reason: Secured Area.

Bldg. 407
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520024
Status: Excess
Reason: Secured Area.

Bldg. 413
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520025
Status: Excess
Reason: Secured Area.

Bldg. 366
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520026
Status: Unutilized
Reason: Secured Area.

Bldg. 432
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520027
Status: Excess
Reason: Secured Area.

Bldg. 472
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520028
Status: Excess
Reason: Secured Area.

Bldg. 417
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520029
Status: Excess
Reason: Secured Area.

Bldg. 422
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520030
Status: Excess
Reason: Secured Area.

Bldg. 424
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520031
Status: Excess
Reason: Secured Area.

Bldg. 30735
Naval Air Weapons Center
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779530029
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 20186
Observation Tower, Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779540001
Status: Excess
Reason: Extensive deterioration.

Bldg. 120
Naval Air Weapons Station, Point Mugu
San Nicholas Island Co: Ventura CA 97042–
Landholding Agency: Navy
Property Number: 779540002
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Colorado

Bldg. 712
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330002
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 518
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330003
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 505
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330004
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 504
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330005
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 503
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330006
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 502
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330007
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 32
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330008
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 27
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330009
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 23
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330010
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 00910
"Blue Barn"—Falcon Air Force Base
Falcon CO: El Paso CO 80912–
Landholding Agency: Air Force
Property Number: 189530048
Status: Underutilized
Reason: Secured Area.

Connecticut

Naval Housing—7 Bldgs.
Naval Submarine Base
New London Co: Groton CT
Landholding Agency: Navy
Property Number: 779510001
Status: Unutilized
Reason: Secured Area.

Delaware

Bldg. 1304 (436 CSG)
Dover Air Force Base
Dover Co: Kent DE 19902–5065
Landholding Agency: Air Force
Property Number: 189140018
Status: Unutilized
Reason: Secured Area; Within airport runway clear zone.

Florida

Bldg. 902
Tyndall Air Force Base
Panama City Co: Bay FL 32403–5000
Landholding Agency: Air Force
Property Number: 189130348
Status: Underutilized
Reason: Secured Area.

Bldg. 400
Patrick Air Force Base
C Street bet. First & Second Streets
Cocoa Beach Co: Brevard FL 32925–
Landholding Agency: Air Force

Property Number: 189220001
Status: Underutilized
Reason: Secured Area.

Bldg. 430
Patrick Air Force Base
Third Street bet. B and C Streets
Cocoa Beach Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189220002
Status: Underutilized
Reason: Secured Area.

Bldg. 1176
Patrick Air Force Base
1176 School Avenue Co: Brevard FL 32935–
Landholding Agency: Air Force
Property Number: 189240029
Status: Underutilized
Reason: Secured Area; Other
Comment: Extensive Deterioration.

Bldg. 1179
Patrick Air Force Base
1179 School Avenue Co: Brevard FL 32935–
Landholding Agency: Air Force
Property Number: 189240030
Status: Underutilized
Reason: Secured Area; Other
Comment: Extensive Deterioration.

Bldg. 321
Patrick Air Force Base Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189320001
Status: Underutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material; Other.
Comment: Extensive Deterioration.

Bldg. 510
Patrick Air Force Base Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189320002
Status: Underutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material; Other
Comment: Extensive Deterioration.

Bldg. 575
Patrick Air Force Base Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189320004
Status: Underutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Other
Comment: Extensive Deterioration.

Bldg. 184, MacDill AFB
MacDill AFB Co: Hillsbourgh FL 33608–
Landholding Agency: Air Force
Property Number: 189320100
Status: Unutilized
Reason: Extensive deterioration.

Facility 90523
Cape Canaveral AFS
Cape Canaveral AFS Co: Brevard FL
Landholding Agency: Air Force
Property Number: 189330001
Status: Underutilized
Reason: Secured Area.

Bldg. 921
Patrick Air Force Base Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189430002
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility No. 01676V
Cape Canaveral AFS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189430003
Status: Unutilized
Reason: Secured Area.

Bldg. 2613
Tyndall Air force Base
Panama City Co: Bay FL 32403–
Landholding Agency: Air Force
Property Number: 189430004
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 2625
Tyndall Air force Base
Panama City Co: Bay FL 32403–
Landholding Agency: Air Force
Property Number: 189430005
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 2639
Tyndall Air force Base
Panama City Co: Bay FL 32403–
Landholding Agency: Air Force
Property Number: 189430006
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 2642
Tyndall Air Force Base
Panama City Co: Bay FL 32403–
Landholding Agency: Air Force
Property Number: 189430007
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

23 Family Housing
MacDill Auxiliary Airfield No. 1
Avon Park Co: Polk FL 33825–
Location: Include Bldgs: 448, 451 thru 470. 472 and 474
Landholding Agency: Air Force
Property Number: 189520006
Status: Excess
Reason: Within airport runway clear zone.

Bldg. 240
MacDill Auxiliary Airfield No. 1
Avon Park Co: Polk FL 33825–
Landholding Agency: Air Force
Property Number: 189520007
Status: Excess
Reason: Extensive deterioration.

Bldg. 243
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540002
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 510
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540003
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 521
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540004
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 872
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540005
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 30004
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540006
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 12513
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540007
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

East Martello Bunker #1
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 779010101
Status: Excess
Reason: Within airport runway clear zone.

Georgia

Naval Submarine Base—Kings Bay
1011 USS Daniel Boone Avenue
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010107
Status: Unutilized
Reason: Secured Area.

Guam

Bldg. 96
U.S. Naval Ship Repair Facility
PSC 455 Co: Box 191, FPO AP GU 96540–1400
Landholding Agency: Navy
Property Number: 779240018
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1720
Marine Drive
Agana GU 96540–1000
Landholding Agency: Navy
Property Number: 779530008
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 1986, Naval Activities
Sierra Waterfront Center
Agana GU 96540–1000
Landholding Agency: Navy
Property Number: 779530012
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 3113, Naval Activities
Corner of Tango/Uniform Wharves
Agana GU 96540–1000
Landholding Agency: Navy
Property Number: 779530013
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 6002, Naval Activities
Wharf V–6
Agana GU 96540–1000
Landholding Agency: Navy
Property Number: 779530014
Status: Excess
Reason: Extensive deterioration.

Hawaii

Bldg. 126, Naval Magazine
Waikele Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230012
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material; Other Comment: Extensive Deterioration.

Bldg. Q75, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230013
Status: Unutilized
Reason: Secured Area; Other Comment: Extensive Deterioration.

Bldg. 7, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230014
Status: Unutilized
Reason: Secured Area; Other Comment: Extensive Deterioration.

Facility 189, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310045
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Facility 342, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310046
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Facility 343, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310047
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Facility S6194
Naval Air Facility
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310048
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Facility S7124
Naval Air Facility
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310049
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Facility 5985
Naval Station Pearl Harbor
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779310086
Status: Excess
Reason: Extensive deterioration.

Bldg. 6, Pearl Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410003
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 10, Pearl Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410004
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 7
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510002
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 8
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510003
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 9
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510004
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 10
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510005
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 11
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510006
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 12
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510007
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 13
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510008
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 14
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510009
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 15
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510010
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 39
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510011
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 40
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510012
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 43
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510013
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 44
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510014
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 45
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510015
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 46
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510016
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 101
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510017
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 9
Naval Public Works Center
Kolekole Road
Lualualei Co: Honolulu HI 96782–
Landholding Agency: Navy
Property Number: 779530009
Status: Excess
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.

Bldg. X5
Nanumea Road
Pearl Harbor Co: Honolulu HI 96782–
Landholding Agency: Navy
Property Number: 779530010
Status: Excess

Reason: Secured Area.

Bldg. SX30
Nanumea Road
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779530011
Status: Excess
Reason: Secured Area.

Bldg. 541, Ford Island
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779610015
Status: Unutilized
Reason: Extensive deterioration.

Idaho

Bldg. 1012
Mountain Home Air Force Base
7th Avenue (See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189030004
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 923
Mountain Home Air Force Base
7th Avenue (See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189030005
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 604
Mountain Home Air Force Base
Pine Street (See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189030006
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 229
Mt. Home Air Force Base
1st Avenue and A Street
Mt. Home AFB Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189040857
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone.

Bldg. 4403
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 83647–
Landholding Agency: Air Force
Property Number: 189520008
Status: Unutilized
Reason: Extensive deterioration.

Illinois

Bldg. 3191
Scott Air Force Base
East Drive 375/ABG/DE
Scott AFB Co: St. Clair IL 62225–5001
Landholding Agency: Air Force
Property Number: 189010247
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

Bldg. 3670
Scott Air Force Base
East Drive 375 ABG/DE
Scott AFB Co: St. Clair IL 62225–5001
Landholding Agency: Air Force
Property Number: 189010248
Status: Unutilized
Reason: Secured Area.

Bldg. 503
Scott Air Force Base
Scott AFB Co: St. Clair IL 62225–
Landholding Agency: Air Force
Property Number: 189010725
Status: Unutilized
Reason: Secured Area.

Bldg. 869
Scott Air Force Base
375 CSG/DEER
Scott AFB Co: St. Clair IL 62225–5045
Landholding Agency: Air Force
Property Number: 189110087
Status: Unutilized
Reason: Secured Area.

Bldg. 865
Scott Air Force Base
Belleville Co: St. Clair IL 62225–
Landholding Agency: Air Force
Property Number: 189130347
Status: Unutilized
Reason: Secured Area.

Bldg. 928
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010120
Status: Underutilized
Reason: Secured Area.

Bldg. 28
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010123
Status: Unutilized
Reason: Secured Area.

Bldg. 25
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010126
Status: Unutilized
Reason: Secured Area.

South Wing—Building No. 62
Great Lakes Co: Lake IL 60088–5000
Landholding Agency: Navy
Property Number: 779110001
Status: Underutilized
Reason: Secured Area.

Bldg. 235
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310039
Status: Unutilized
Reason: Secured Area.

Bldg. 2B
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310040
Status: Unutilized
Reason: Secured Area.

Bldg. 90
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310041
Status: Unutilized
Reason: Secured Area.

Bldg. 232
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310042
Status: Unutilized
Reason: Secured Area.

Bldg. 233
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310043
Status: Unutilized
Reason: Secured Area.

Bldg. 234
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310044
Status: Unutilized
Reason: Secured Area.

Iowa

Bldg. 00273
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310008
Status: Unutilized
Reason: Secured Area.

Bldg. 00671
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310009
Status: Unutilized
Reason: Other
Comment: Fuel pump station.

Bldg. 00736
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310010
Status: Unutilized
Reason: Other
Comment: Pump station.

Kansas

Bldg. 1407
McConnell Air Force Base
Wichita Co: Sedgwick KS 67221–
Landholding Agency: Air Force
Property Number: 189340029
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

Bldg. 186
McConnell Air Force Base
Wichita Co: Sedgwick KS 67221–
Landholding Agency: Air Force
Property Number: 189340030
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 187
McConnell Air Force Base
Wichita Co: Sedgwick KS 67221–
Landholding Agency: Air Force
Property Number: 189340031
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Louisiana

Bldg. 3477
Barksdale Air Force Base
Davis Avenue
Barksdale AFB Co: Bossier LA 71110–5000
Landholding Agency: Air Force
Property Number: 189140015
Status: Unutilized
Reason: Secured Area.

Maine

Bldg. 293, Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779240015
Status: Excess
Reason: Secured Area.

Bldg. 384
Naval Air Station Topsham
Brunswick Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779340001
Status: Unutilized
Reason: Extensive deterioration.

Massachusetts

Bldg. 1900
Westover Air Force Base
Chicopee Co: Hampden MA 01022–
Landholding Agency: Air Force
Property Number: 189010438
Status: Unutilized
Reason: Secured Area.

Bldg. 1833
Westover Air Force Base
Chicopee Co: Hampden MA 01022–5000
Landholding Agency: Air Force
Property Number: 189040002
Status: Unutilized
Reason: Secured Area.

Michigan

Bldg. 560
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Location: North end of airfield
Landholding Agency: Air Force
Property Number: 189010522
Status: Unutilized
Reason: Secured Area.

Bldg. 5658
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Location: Near South Perimeter Road, near Building 590.
Landholding Agency: Air Force
Property Number: 189010523
Status: Unutilized
Reason: Secured Area.

Bldg. 580
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Location: South end of airfield.
Landholding Agency: Air Force
Property Number: 189010524
Status: Unutilized
Reason: Secured Area.

Bldg. 856
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010525
Status: Unutilized
Reason: Secured Area.

Bldg. 1005
Selfridge Air National Guard Base
1005 C. Street
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010526
Status: Unutilized
Reason: Secured Area.

Bldg. 1012
Selfridge Air National Guard Base
1012 A. Street
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010527
Status: Unutilized
Reason: Secured Area.

Bldg. 1041
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010528
Status: Unutilized
Reason: Secured Area.

Bldg. 1412
Selfridge Air National Guard Base
1412 Castle Avenue
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010529
Status: Unutilized
Reason: Secured Area.

Bldg. 1434
Selfridge Air National Guard Base
1434 Castle Avenue
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010530
Status: Unutilized
Reason: Secured Area.

Bldg. 1688
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Location: Near South Perimeter Road, near Building 1694.
Landholding Agency: Air Force
Property Number: 189010531
Status: Unutilized
Reason: Secured Area.

Bldg. 1689
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Location: Near South Perimeter Road, near Building 1694.
Landholding Agency: Air Force
Property Number: 189010532
Status: Unutilized
Reason: Secured Area.

Bldg. 5670
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010533
Status: Unutilized
Reason: Secured Area.

Bldg. 71
Calumet Air Force Station
Calument Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010810
Status: Excess
Reason: Other
Comment: sewage treatment and disposal facility.

Bldg. 99 (WATER WELL)
Calumet Air Force Station
Calument Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010831
Status: Excess
Reason: Other
Comment: water well.

Bldg. 100 (WATER WELL)
Calumet Air Force Station
Calument Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010832
Status: Excess
Reason: Other
Comment: water well.

Bldg. 118
Calumet Air Force Station
Calument Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010875
Status: Excess
Reason: Other
Comment: Gasoline Station.

Bldg. 120
Calumet Air Force Station
Calument Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010876
Status: Excess
Reason: Other
Comment: Gasoline Station.

Bldg. 166
Calumet Air Force Station
Calument Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010877
Status: Excess
Reason: Other
Comment: Pump lift station.

Bldg. 168
Calumet Air Force Station
Calument Co: Keweenaw MI 49913–
Landholding Agency; Air Force
Property Number: 189010878
Status: Excess
Reason: Other
Comment: Gasoline station.

Bldg. 69
Calumet Air Force Station
Calument Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010889
Status: Excess
Reason: Other
Comment: Sewer pump facility.

Bldg. 2
Calumet Air Force Station
Calument Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010890
Status: Excess
Reason: Other
Comment: Water pump station.

Missouri

Bldg. 42
Jefferson Barracks ANG Base
1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125–
Landholding Agency: Air Force
Property Number: 189010728
Status: Unutilized
Reason: Secured Area.

Bldg. 45
Jefferson Barracks ANG Base
1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125–

Landholding Agency: Air Force
Property Number: 189010728
Status: Unutilized
Reason: Secured Area.

Bldg. 46
Jefferson Barracks ANG Base
1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125–
Landholding Agency: Air Force
Property Number: 189010729
Status: Unutilized
Reason: Secured Area.

Bldg. 47
Jefferson Barracks ANG Base
1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125–
Landholding Agency: Air Force
Property Number: 189010730
Status: Unutilized
Reason: Secured Area.

Bldg. 61
Jefferson Barracks ANG Base
1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125–
Landholding Agency: Air Force
Property Number: 189010731
Status: Unutilized
Reason: Secured Area.

Montana

Bldg. 280
Malmstrom AFB
Flightline & Avenue G
Malmstrom Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189010077
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area; Other environmental.

Bldg. 440
Malmstrom Air Force Base
Great Falls Co: Cascade MT 59402–7525
Landholding Agency: Air Force
Property Number: 189430008
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 444
Malmstrom Air Force Base
Great Falls Co: Cascade MT 59402–7525
Landholding Agency: Air Force
Property Number: 189430009
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 464
Malmstrom Air Force Base
Great Falls Co: Cascade MT 59402–7525
Landholding Agency: Air Force
Property Number: 189430010
Status: Unutilized
Reason: Secured Area.

Bldg. 495
Malmstrom Air Force Base
Great Falls Co: Cascade MT 59402–7525
Landholding Agency: Air Force
Property Number: 189430011
Status: Unutilized
Reason: Secured Area.

Bldg. 205
Malstrom Air Force Base
Malstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510004
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 210
Malstrom Air Force Base
Malstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510005
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 529
Malstrom Air Force Base
Malstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510011
Status: Underutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.

Bldg. 625
Malstrom Air Force Base
Malstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510014
Status: Unutilized
Reason: Secured Area.

Bldg. 780
Malstrom Air Force Base
Malstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189520012
Status: Unutilized
Reason: Secured Area.

Bldg. 546, Malstrom AFB
Malstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540008
Status: Underutilized
Reason: Secured Area.

Bldg. 548, Malstrom AFB
Malstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540009
Status: Underutilized
Reason: Secured Area.

Bldg. 557, Malstrom AFB
Malstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540010
Status: Underutilized
Reason: Secured Area.

Bldg. 666, Malstrom AFB
Malstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540011
Status: Underutilized
Reason: Secured Area.

Bldg. 766, Malstrom AFB
Malstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540012
Status: Underutilized
Reason: Secured Area.

Bldg. 1189, Malstrom AFB
Malstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540013
Status: Underutilized
Reason: Secured Area.

Bldg. 1308, Malstrom AFB
Malstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540014
Status: Underutilized
Reason: Secured Area.

Bldg. 1309, Malstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540015
Status: Underutilized
Reason: Secured Area.

Nebraska

Offutt Communications Annex—#3
Offutt Air Force Base
Scribner Co: Dodge NE 68031–
Landholding Agency: Air Force
Property Number: 189210006
Status: Unutilized
Reason: Other.
Comment: Former sewage lagoon.

Bldg. 637
Lincoln Municipal Airport
2301 West Adams
Lincoln Co: Lancaster NE 68524–
Landholding Agency: Air Force
Property Number: 189230021
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 639
Lincoln Municipal Airport
2301 West Adams
Lincoln Co: Lancaster, NE 68524–
Landholding Agency: Air Force
Property Number: 189230022
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 31
Offutt Air Force Base
Sac Boulevard
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240007
Status: Unutilized
Reason: Secured Area.

Bldg. 311
Offutt Air Force Base
Nelson Drive
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240008
Status: Unutilized
Reason: Secured Area.

Bldg. 401
Offutt Air Force Base
Custer Drive
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240009
Status: Unutilized
Reason: Secured Area.

Bldg. 416
Offutt Air Force Base
Sherman Turnpike
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240010
Status: Unutilized
Reason: Secured Area.

Bldg. 417
Offutt Air Force Base
Sherman Turnpike
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240011
Status: Unutilized
Reason: Secured Area.

Bldg. 545

Offutt Air Force Base
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240012
Status: Unutilized
Reason: Secured Area.

Bldg. 21
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320058
Status: Excess
Reason: Other Comment: Generator.

Bldg. 4, Hastings Family Hsg.
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320059
Status: Excess
Reason: Other Comment: Contamination.

Bldg. 500
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320060
Status: Excess
Reason: Other Comment: Contamination.

Bldg. 502
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320061
Status: Excess
Reason: Other Comment: Contamination.

Bldg. 504
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320062
Status: Excess
Reason: Other Comment: Contamination.

Bldg. 506
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320063
Status: Excess
Reason: Other Comment: Contamination.

Bldg. 507
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320064
Status: Excess
Reason: Other Comment: Contamination.

Bldg. 509
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320065
Status: Excess
Reason: Other Comment: Contamination.

Bldg. 511
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320066
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 512
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320067
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 515
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320068
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 517
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320069
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 519
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320070
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 521
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320071
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 523
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320072
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 525
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320073
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 526
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320074
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 529
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320075
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 531
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320076
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 533
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320077
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 534
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320078
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 536
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320079
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 538
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320080
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 541
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320081
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 542
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320082
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 544
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320083
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 546
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320084
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 549
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320085
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 550
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320086
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 552
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320087
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 553
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320088
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 555
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320089
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 557
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320090
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 558
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320091
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 560
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320092
Status: Excess
Reason: Other
Comment: Contamination.

27 Detached Garages
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320093
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 17
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320094
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 16
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320095
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 18
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320096
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 6
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320097
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 547
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320098
Status: Excess
Reason: Other Comment: Contamination.

Bldg. 604
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320099
Status: Excess
Reason: Other Comment: Contamination.

Bldg. 686
Offutt Air Force Base
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189510021
Status: Unutilized
Reason: Secured Area.

Bldg. 439
Offutt Air Force Base
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189510022
Status: Unutilized
Reason: Secured Area.

New Hampshire

Bldg. 101
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 102
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 104
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 1893200076
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 116
New Boston Air Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189540016
Status: Unutilized
Reason: Extensive deterioration..

New Mexico

Bldg. 831
833 CSG/DEER
Holloman AFB Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189130333
Status: Unutilized
Reason: Secured Area.

Bldg. 21
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240032
Status: Unutilized
Reason: Secured Area.

Bldg. 80
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240033
Status: Unutilized
Reason: Secured Area.

Bldg. 98
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240034

Status: Unutilized
Reason: Secured Area.
Bldg. 324
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240035
Status: Unutilized
Reason: Secured Area.
Bldg. 598
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240036
Status: Unutilized
Reason: Secured Area.
Bldg. 801
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240037
Status: Unutilized
Reason: Secured Area.
Bldg. 802
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240038
Status: Unutilized
Reason: Secured Area.
Bldg. 1095
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240039
Status: Unutilized
Reason: Secured Area.
Bldg. 1096
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240040
Status: Unutilized
Reason: Secured Area.
Facility 321
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240041
Status: Unutilized
Reason: Secured Area.
Facility 75115
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240042
Status: Unutilized
Reason: Secured Area.
Bldg. 374
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189320041
Status: Unutilized
Reason: Secured Area; Other Comment: Extensive Deterioration.
Bldg. 1258
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189320042
Status: Unutilized
Reason: Secured Area; Other Comment: Extensive Deterioration.
Bldg. 134
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430014
Status: Unutilized
Reason: Secured Area.
Bldg. 640
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430015
Status: Unutilized
Reason: Secured Area.
Bldg. 703
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430016
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.
Bldg. 813
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430017
Status: Unutilized
Reason: Secured Area.
Bldg. 821
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430018
Status: Unutilized
Reason: Secured Area.
Bldg. 829
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430019
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.
Bldg. 867
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430020
Status: Unutilized
Reason: Secured Area.
Bldg. 884
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430021
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.
Bldg. 886
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430022
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.
Bldg. 908
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430023
Status: Unutilized
Reason: Secured Area.
Bldg. 599
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189510001
Status: Unutilized
Reason: Secured Area.
Bldg. 600
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189510002
Status: Unutilized
Reason: Secured Area.
Bldg. 599
Holloman AFB Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189610007
Status: Unutilized
Reason: Secured Area.
Bldg. 600
Holloman AFB Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189610008
Status: Unutilized
Reason: Secured Area.
Bldg. 995
Holloman AFB Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189610009
Status: Unutilized
Reason: Secured Area.

New York

Bldg. 626 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls Co: Niagara NY 14303–5000
Landholding Agency: Air Force
Property Number: 189010075
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 272
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189140022
Status: Excess
Reason: Secured Area.
Bldg. 888
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189140023
Status: Excess
Reason: Secured Area.
Facility 814, Griffiss AFB
NE of Weapons Storage Area
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189230001
Status: Excess
Reason: Within airport runway clear zone; Secured Area.
Facility 808, Griffiss AFB
Perimeter Road
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189230002
Status: Excess
Reason: Within airport runway clear zone; Secured Area.
Facility 807, Griffiss AFB
Perimeter Road
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189230003
Status: Excess
Reason: Within airport runway clear zone; Secured Area.
Facility 126
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240020
Status: Unutilized
Reason: Secured Area.
Facility 127
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240021
Status: Unutilized
Reason: Secured Area.
Facility 135
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240022
Status: Unutilized
Reason: Secured Area.
Facility 137
Griffiss Air Force Base
Otis Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240023
Status: Unutilized
Reason: Secured Area.
Facility 138
Griffiss Air Force Base
Otis Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240024
Status: Unutilized
Reason: Secured Area.
Facility 173
Griffiss Air Force Base
Selfridge Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240025
Status: Unutilized
Reason: Secured Area.
Facility 261
Griffiss Air Force Base
McDill Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240026
Status: Unutilized
Reason: Secured Area.
Facility 308
Griffiss Air Force Base
205 Chanute Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240027
Status: Unutilized
Reason: Secured Area.
Facility 1200
Griffiss Air Force Base
Donaldson Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240028
Status: Unutilized
Reason: Secured Area.
Bldg. 759, Hancock Field
6001 East Molloy Road
Syracuse Co: Onondaga NY 13211–7099
Landholding Agency: Air Force
Property Number: 189310007
Status: Unutilized
Reason: Extensive deterioration, Secured Area.
Facility 841
Griffiss Air Force Base
Rome Co: Onelda NY 13441–4520
Landholding Agency: Air Force
Property Number: 189330097
Status: Unutilized
Reason: Secured Area.
Bldg. 852
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls Co: Niagara NY 14304–5000
Landholding Agency: Air Force
Property Number: 189240013
Status: Unutilized
Reason: Secured Area.

North Carolina

Bldg. 4230—Youth Center
Cannon Ave.
Goldsboro Co: Wayne NC 27531–5005
Landholding Agency: Air Force
Property Number: 189120233
Status: Underutilized
Reason: Secured Area.
Bldg. 607, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330041
Status: Unutilized
Reason: Extensive deterioration; Secured Area.
Bldg. 255, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420019
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 370, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189240020
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 904, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420021
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 910, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420022
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 912, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420023
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 914, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420024
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 633, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–
Landholding Agency: Air Force
Property Number: 189540019
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. SH–7
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410017
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. SH–11
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410018
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. SH–13
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410019
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. SH–16
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410020
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. SH–17
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410021
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. SH–21
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410022
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. SH–31
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410023
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. SSH–10
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410024
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS–209
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410025
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS–589
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410026
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS–590
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410027
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS–4138
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410028
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS–4139
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410029
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 867
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410030
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 939
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410031
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 940
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410032
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. H–38
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410033
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. SM–173
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410034
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1744
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410035
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. PT–42
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420002
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. S–93
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420003
Status: Unutilized
Reason: Secured Area.

Bldg. TC–910
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420004
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. S–942
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420005
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. S–1213
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420006
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 79
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420008
Status: Excess
Reason: Secured Area.

Bldg. 281
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420009
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 282
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420010
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 88
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420011
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 98
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420012
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 99
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420013
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 1234
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420014
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 1235
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420015
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 1246
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420016
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 1390
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420017
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 1710
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420018
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 1742
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420019
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 1743
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420020
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 1744
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420021
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 1745
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420022
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 3450
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420023
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 8067
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420024
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 3546
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420025
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 9017
Piney Island
Marine Corps Air Stations
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430001
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 9019
Piney Island
Marine Corps Air Stations
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430002
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 9021
Piney Island
Marine Corps Air Stations
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430003
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 9023
Piney Island
Marine Corps Air Stations
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430004
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 9035
Piney Island
Marine Corps Air Stations
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430005
Status: Unutilized
Reason: Extensive deterioration.

Structure #AS582
New River Air Station
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430015
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS–299, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430020
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 854, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430021
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 883, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430022
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. TC–174, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430023
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. TC–179, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430024
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 935, Cherry Point
Marine Corps Air Station
Havelock co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779430025
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Facility 1972, Cherry Point
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779430026
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 3248
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779440009
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS 552, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440010
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS 587, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440011
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. TT 38, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440012
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 49, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440013
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS 147, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440014
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. BB 166, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440015
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. SM 183, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440016
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. BB 222, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440017
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 451, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440018
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 630, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440019
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. S 745, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440020
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 805, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440021
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS 866, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440022
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 954, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440023
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1808, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440024
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1810, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440025
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Structure #SVL 142
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510021
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Structure #FC 363
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510022
Status: Unutilized
Reason: Secured Area.

Structure #AS 583
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510023
Status: Unutilized
Reason: Secured Area.

Structure # 1966
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510024
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Structure # 2322
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510025
Status: Unutilized
Reason: Secured Area.

Structure RR–85
Camp Lejeune, Base Rifle Range
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779520016
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Structure SRR–86
Camp Lejeune, Base Rifle Range
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779520017
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 168
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530015
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 959
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530016
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 977
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530017
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 1056
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530018
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 1739
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530019
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 1741
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530020
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 1990
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530021
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 1991
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530022
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 914
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530023
Status: Excess
Reason: Extensive deterioration.

Bldg. 981
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530024
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 986
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530025
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 987
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530026
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 988
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530027
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 1652
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530028
Status: Excess
Reason: Other
Comment: Detached Latrine.

North Dakota

Bldg. 422
Minot Air Force Base
Minot Co: Ward ND 58705–
Landholding Agency: Air Force
Property Number: 189010724
Status: Underutilized
Reason: Secured Area.

Bldg. 50
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310107
Status: Excess
Reason: Other
Comment: Garbage Incinerator.

Bldg. 119
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320034
Status: Unutilized
Reason: Secured Area.

Bldg. 191
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320035
Status: Unutilized
Reason: Secured Area.

Bldg. 490
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320036
Status: Unutilized
Reason: Secured Area.

Bldg. 509
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320037
Status: Unutilized
Reason: Secured Area.

Bldg. 526
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320038
Status: Unutilized
Reason: Secured Area.

Bldg. 895
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320039
Status: Unutilized
Reason: Secured Area.

Bldg. 1019
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320040
Status: Unutilized
Reason: Secured Area.

Ohio

Bldg. 404, Hydrant Fuel
910 Airlift Group
Kings-Graves Road
Vienna Co: Trumbull OH 44473–5000
Landholding Agency: Air Force
Property Number: 189220015
Status: Unutilized
Reason: Secured Area.

Bldg. 405, Test Cell
910 Airlift Group
Kings-Graves Road
Vienna Co: Trumbull OH 44473–5000
Landholding Agency: Air Force
Property Number: 189220016
Status: Unutilized
Reason: Secured Area.

Puerto Rico

Bldg. 10
Punta Salinas Radar Site
Toa Baja Co: Toa Baja PR 00759–
Landholding Agency: Air Force
Property Number: 189010544
Status: Underutilized
Reason: Secured Area.

Rhode Island

Bldg. 32
Naval Underwater Systems Center
Gould Island Annex
Middletown Co: Newport RI 02840–
Landholding Agency: Navy
Property Number: 779010273
Status: Excess
Reason: Secured Area.

South Dakota

Bldg. 88513
Ellsworth Air Force Base
Porter Avenue
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189210001
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 88501
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189210002
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 200, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320048
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 201, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320049
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 203, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320050
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 204, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320051
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 205, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320052
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 206, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320053
Status: Unutilized
Reason: Extension deterioration.

Bldg. 00605
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320054
Status: Underutilized
Reason: Secured Area.

Bldg. 88535
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340032
Status: Unutilized
Reason: Secured Area.

Bldg. 88470
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340033
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 88304
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340034
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area.
Comment: Extension deterioration.

Bldg. 9011
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340035
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area.
Comment: Extensive deterioration.

Bldg. 7506
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340037
Status: Unutilized
Reason: Secured Area.

Bldg. 6908
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340038
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; other; Secured Area.
Comment: Extensive deterioration.

Bldg. 6904
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340039
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area.
Comment: Extensive deterioration.

Bldg. 4102

Ellsworth Air Force Base
Ellsworth AFB Co: Mead SD 57706–
Landholding Agency: Air Force
Property Number: 189340040
Status: Unutilized
Reason: Secured Area.

Bldg. 4101
Ellsworth Air Force Base
Ellsworth AFB Co: Mead SD 57706–
Landholding Agency: Air Force
Property Number: 189340041
Status: Unutilized
Reason: Secured Area.

Bldg. 4100
Ellsworth Air Force Base
Ellsworth AFB Co: Mead SD 57706–
Landholding Agency: Air Force
Property Number: 189340042
Status: Unutilized
Reason: Secured Area.

Bldg. 3016
Ellsworth Air Force Base
Ellsworth AFB Co: Mead SD 57706–
Landholding Agency: Air Force
Property Number: 189340043
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other, Secured Area
Comment: Waste treatment bldg.

Bldg. 1115
Ellsworth Air Force Base
Ellsworth AFB Co: Mead SD 57706–
Landholding Agency: Air Force
Property Number: 189340044
Status: Unutilized
Reason: Secured Area.

Bldg. 1210
Ellsworth Air Force Base
Ellsworth AFB Co: Mead SD 57706–
Landholding Agency: Air Force
Property Number: 189340045
Status: Unutilized
Reason: Secured Area.

Bldg. 1112
Ellsworth Air Force Base
Ellsworth AFB Co: Mead SD 57706–
Landholding Agency: Air Force
Property Number: 189340046
Status: Unutilized
Reason: Secured Area.

Bldg. 1110
Ellsworth Air Force Base
Ellsworth AFB Co: Mead SD 57706–
Landholding Agency: Air Force
Property Number: 189340047
Status: Unutilized
Reason: Secured Area.

Bldg. 606
Ellsworth Air Force Base
Ellsworth AFB Co: Mead SD 57706–
Landholding Agency: Air Force
Property Number: 189340048
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 6905, Ellsworth AFB
Ellsworth AFB Co: Mead SD 57706–
Landholding Agency: Air Force
Property Number: 189340010
Status: Underutilized
Reason: Secured Area.

Bldg. 1208
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189520009
Status: Unutilized
Reason: Secured Area.

Bldg. 7245
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189520010
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material; Within airport runway clear zone.

Bldg. 7502
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189520011
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.

Bldg. 1111
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189610005
Status: Unutilized
Reason: Secured Area.

Bldg. 1213
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189610006
Status: Unutilized
Reason: Secured Area.

Texas.

Bldg. 400
Laughlin Air Force Base
Val Verde Co. Co: Val Verde TX 78843–5000
Location: Six miles on Highway 90 east of Del Rio, Texas.
Landholding Agency: Air Force
Property Number: 189010173
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone.

Bldg. 40
Laughlin Air Force Base Co: Val Verde TX 78843–5000
Landholding Agency: Air Force
Property Number: 189420014
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 107
Laughlin Air Force Base Co: Val Verde TX 78843–5000
Landholding Agency: Air Force
Property Number: 189420015
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 119
Laughlin Air Force Base Co: Val Verde TX 78843–5000
Landholding Agency: Air Force
Property Number: 189420016
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 00153
Reese Air Force Base
Lubbock Co: Lubbock TX 79489–5000
Landholding Agency: Air Force
Property Number: 189540017
Status: Unutilized
Reason: Secured Area.

Bldg. 03130
Reese Air Force Base
Lubbock Co: Lubbock TX 79489–5000
Landholding Agency: Air force
Property Number: 189540018
Status: Unutilized
Reason: Secured Area.

Bldg. 2426
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010279
Status: Underutilized
Reason: Floodway.

Bldg. 2432
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010280
Status: Underutilized
Reason: Floodway.

Bldg. 2476
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010281
Status: Underutilized
Reason: Floodway.

Bldg. 2498
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010282
Status: Underutilized
Reason: Floodway.

Bldg. 2504
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010283
Status: Underutilized
Reason: Floodway.

Bldg. 1730
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010284
Status: Underutilized
Reason: Floodway.

Bldg. 2422
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010285
Status: Underutilized
Reason: Floodway.

Bldg. 2425
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010286
Status: Underutilized
Reason: Floodway.

Bldg. 2430
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010287
Status: Underutilized
Reason: Floodway.

Bldg. 2434
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010288
Status: Underutilized
Reason: Floodway.

Bldg. 2449
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010289
Status: Underutilized
Reason: Floodway.

Bldg. 2450
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010290
Status: Underutilized
Reason: Floodway.

Bldg. 2453
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010291
Status: Underutilized
Reason: Floodway.

Bldg. 2455
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010292
Status: Underutilized
Reason: Floodway.

Bldg. 2456
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010293
Status: Underutilized
Reason: Floodway.

Bldg. 2463
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010294
Status: Underutilized
Reason: Floodway.

Bldg. 2483
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010295
Status: Underutilized
Reason: Floodway.

Bldg. 2516
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010296
Status: Underutilized
Reason: Floodway.

Bldg. 2524
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010297
Status: Underutilized
Reason: Floodway.

Bldg. 2528
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010298
Status: Underutilized
Reason: Floodway.

Utah

Bldg. 789
Hill Air Force Base
(See County) Co: Davis UT 84056–
Landholding Agency: Air Force
Property Number: 189040859
Status: Unutilized
Reason: Within airport runway clear zone Secured Area.

Virginia

Bldg. 63
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520035
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. 244
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520036
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. 286
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520037
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. 416
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520038
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. 521
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520039
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. 539
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520040
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. 760
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520041
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area. Extensive deterioration.

Bldg. 763
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520042
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. 1335
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520043
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. 1488
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520044
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Washington

Bldg. 640
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010139
Status: Unutilized
Reason: Secured Area.

Bldg. 641
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010140
Status: Unutilized
Reason: Secured Area.

Bldg. 642
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010141
Status: Unutilized
Reason: Secured Area.

Bldg. 643
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010142
Status: Unutilized
Reason: Secured Area.

Bldg. 645
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010143
Status: Unutilized
Reason: Secured Area.

Bldg. 646
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010144
Status: Unutilized
Reason: Secured Area.

Bldg. 647
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010145
Status: Unutilized
Reason: Secured Area.

Bldg. 1415
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010146
Status: Unutilized

Reason: Within 2000 ft. of flammable or explosive material Secured Area.
Bldg. 1429
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010147
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.
Bldg. 1464
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010148
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.
Bldg. 1465
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010149
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.
Bldg. 1466
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010150
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.
Bldg. 3503
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010151
Status: Unutilized
Reason: Secured Area.
Bldg. 3504
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010152
Status: Unutilized
Reason: Secured Area.
Bldg. 3505
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010153
Status: Unutilized
Reason: Secured Area.
Bldg. 3506
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010154
Status: Unutilized
Reason: Secured Area.
Bldg. 3507
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010155
Status: Unutilized
Reason: Secured Area.
Bldg. 3510
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010156
Status: Unutilized
Reason: Secured Area.
Bldg. 3514
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010157
Status: Unutilized
Reason: Secured Area.
Bldg. 3518
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010158
Status: Unutilized
Reason: Secured Area.
Bldg. 3521
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010159
Status: Unutilized
Reason: Secured Area.
Bldg. 100, Geiger Heights
Grove and Hallet Streets
Fairchild AFB Co: Spokane WA 99204–
Landholding Agency: Air Force
Property Number: 189210004
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 261
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310053
Status: Unutilized
Reason: Secured Area.
Bldg. 284
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310054
Status: Unutilized
Reason: Secured Area.
Facility 923
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310055
Status: Unutilized
Reason: Secured Area.
Bldg. 1330
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310056
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.
Bldg. 1336
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310057
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.
Bldg. 2000
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310058
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.
Bldg. 2143
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310059
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.
Bldg. 2385
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310060
Status: Unutilized
Reason: Secured Area.
Bldg. 3509
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310061
Status: Unutilized
Reason: Secured Area.
Bldg. 1405
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310062
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.
Bldg. 1468
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310063
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.
Bldg. 1469
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310064
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.
Bldg. 2450
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310065
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.
Bldg. 1, Waste Annex
West of Craig Road Co: Spokane WA 99022–
Landholding Agency: Air Force
Property Number: 189320043
Status: Unutilized
Reason: Secured Area.
Bldg. 1220
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330091
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 1224
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330092
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 2004
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330093
Status: Unutilized
Reason: Secured Area.
Bldg. 2018
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330094
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 2150
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330095
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 2164
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330096
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 57
Naval Supply Center Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010091
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 47 (Report 1)
Naval Supply Center Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010230
Status: Unutilized
Reason: Secured Area.
Bldg. 14
Naval Undersea Warfare Center Div., Keyport
Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 779440001
Status: Unutilized
Reason: Secured Area.
Bldg. 39
Naval Undersea Warfare Center Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 779510020
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Wisconsin

Bldg. 204, 440 Airlift Wing
Gen. Mitchell IAP
Milwaukee Co: Milwaukee WI 53207–6299
Landholding Agency: Air Force
Property Number: 189320032
Status: Unutilized
Reason: Secured Area.
Bldg. 306, 440 Airlift Wing
Gen. Mitchell IAP
Milwaukee Co: Milwaukee WI 53207–6299
Landholding Agency: Air Force
Property Number: 189320033
Status: Unutilized
Reason: Secured Area.

Wyoming

Bldg. 31
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010198
Status: Unutilized
Reason: Secured Area.
Bldg. 34
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010199
Status: Unutilized
Reason: Secured Area.
Bldg. 37
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010200
Status: Unutilized
Reason: Secured Area.
Bldg. 284
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010201
Status: Unutilized
Reason: Secured Area.
Bldg. 385
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010202
Status: Unutilized
Reason: Secured Area.
Bldg. 2780
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189240005
Status: Unutilized
Reason: Secured Area.
Bldg. 2781
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189240006
Status: Unutilized
Reason: Secured Area.

Land (by State)

Alaska

Campion Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010430
Status: Unutilized
Reason: Other; Isolated area; Not accessible by road
Comment: isolated and remote area; Arctic environment.
Lake Louise Recreation
21 CSG–DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010431
Status: Unutilized
Reason: Other; Isolated area; Not accessible by road
Comment: Isolated and remote area; Arctic coast.
Nikolski Radio Relay Site
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010432
Status: Unutilized
Reason: Other; Isolated area; Not accessible by road.
Comment: Isolated and remote area; Arctic coast.

California

Naval Air Station, Miramar
SAn Diego Co: San Diego CA 92145–5005
Landholding Agency: Navy
Property Number: 779440026
Status: Underutilized
Reason: Within airport runway clear zone; Other
Comment: Inaccessible.

Florida

Land
MacDill Air Force Base
6601 S. Manhattan Avenue
Tampa Co: Hillsborough FL 33608–
Landholding Agency: Air Force
Property Number: 189030003
Status: Excess
Reason: Floodway.
Boca Chica Field
Naval Air Station
Key West Co: Monroe FL 23040–
Landholding Agency: Navy
Property Number: 779010097
Status: Unutilized
Reason: Floodway.
East Martello Battery #2
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 779010275
Status: Excess
Reason: Within airport runway clear zone.

Georgia

Naval Submarine Base
Grid G–5 to G–10 to Q–6 to P–2
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010228
Status: Underutilized
Reason: Secured Area.

Maryland

Land
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB Co: Prince Georges MD 20613–
Landholding Agency: Air Force
Property Number: 189010263
Status: Unutilized
Reason: Secured Area.
5,635 sq. ft. of Land
Solonon's Annex
Solomon's MD
Landholding Agency: Navy
Property Number: 779230001
Status: Excess
Reason: Other
Comment: Drainage Ditch.

New Mexico

Facility 75100
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240043
Status: Unutilized
Reason: Secured Area.

Puerto Rico

Destino Tract
Eastern Maneuver Area
Vieques PR 00765–
Landholding Agency: Navy
Property Number: 779240016
Status: Excess
Reason: Other
Comment: Inaccessible.

Punta Figueras—Naval Station
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 779240017
Status: Excess
Reason: Floodway.

South Dakota

Badlands Bomb Range
60 miles southeast of Rapid City, SD
1½ miles south of Highway 44 Co: Shannon SD
Landholding Agency: Air Force
Property Number: 189210003
Status: Unutilized
Reason: Secured Area.

Virginia

Parcel 1 (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010435
Status: Unutilized
Reason: Floodway.

Parcel 3, (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010436
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Parcel 2, (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010437
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

ANG Site
Camp Pendleton
Virginia Air National Guard
Virginia Beach Co: (See County) VA 23451–
Landholding Agency: Air Force
Property Number: 189010589
Status: Unutilized
Reason: Secured Area.

Washington

Fairchild AFB
SE corner of base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010137
Status: Unutilized
Reason: Secured Area.

Fairchild AFB
Fairchild AFB Co: Spokane WA 99011–
Location: NW corner of base
Landholding Agency: Air Force
Property Number: 189010138
Status: Unutilized
Reason: Secured Area.

Land (Report 2), 234 acres
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010231
Status: Unutilized
Reason: Secured Area.

[FR Doc. 96–4436 Filed 2–29–96; 8:45 am]

BILLING CODE 4210–29–M

federal register

Friday
March 1, 1996

Part III

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95D–0217]

International Conference on Harmonisation; Final Guideline on the Need for Long-Term Rodent Carcinogenicity Studies of Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a final guideline entitled "Guideline on the Need for Long-Term Rodent Carcinogenicity Studies of Pharmaceuticals." The guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guideline is intended to define the conditions for which carcinogenicity studies should be conducted, to provide guidance to avoid the unnecessary use of animals in testing, and to provide consistency in worldwide regulatory assessments of applications.

DATES: Effective March 1, 1996. Submit written comments at any time.

ADDRESSES: Submit written comments on the guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guideline are available from the Division of Communications Management (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1012. An electronic version of this guideline is also available via Internet by connecting to the CDER file transfer protocol (FTP) server (CDVS2.CDER.FDA.GOV).

FOR FURTHER INFORMATION CONTACT:
Regarding the guideline: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–500), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0379.
Regarding ICH: Janet Showalter, Office of Health Affairs (HFY–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of August 21, 1995 (60 FR 43498), FDA published a draft tripartite guideline entitled "Conditions Which Require Carcinogenicity Studies for Pharmaceuticals." The notice gave interested persons an opportunity to submit comments by October 5, 1995.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies at the ICH meeting held on November 29, 1995.

The guideline is intended to define the conditions for which carcinogenicity studies should be conducted, to provide guidance to avoid the unnecessary use of animals in testing, and to provide consistency in worldwide regulatory assessments of applications. The objectives of carcinogenicity studies are to identify a tumorigenic potential in animals and to understand the potential for such risk in humans. Any cause for concern derived from laboratory investigations, animal toxicity studies, and data in humans may lead to a need for carcinogenicity studies. The fundamental considerations in assessing the need for carcinogenicity studies are the maximum duration of patient treatment and any perceived cause for concern arising from other investigations. Other factors may also be considered such as the intended patient population, prior assessment of carcinogenic potential, the extent of systemic exposure, the (dis)similarity to endogenous substances, the appropriate study design, or the timing of study performance relative to clinical development.

In the past, guidelines have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Although this guideline does not create or confer any rights on or for any person and does not operate to bind FDA in any way, it does represent the agency's current thinking on long-term rodent carcinogenicity studies of pharmaceuticals.

As with all of FDA's guidelines, the public is encouraged to submit written comments with new data or other new information pertinent to this guideline. The comments in the docket will be periodically reviewed, and, where appropriate, the guideline will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the final guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the guideline follows:

Guideline on the Need for Long-Term Rodent Carcinogenicity Studies of Pharmaceuticals

1. Introduction

The objectives of carcinogenicity studies are to identify a tumorigenic potential in animals and to assess the relevant risk in humans. Any cause for concern derived from laboratory investigations, animal toxicology studies, and data in humans may lead to a need for carcinogenicity studies. The practice of requiring carcinogenicity studies in rodents was instituted for pharmaceuticals that were expected to be administered regularly over a substantial part of a patient's lifetime. The design and interpretation of the results from these studies preceded much of the available current technology to test for genotoxic potential and the more recent advances in technologies to assess systemic exposure. These studies also preceded our current understanding of tumorigenesis with nongenotoxic agents. Results from genotoxicity studies, toxicokinetics, and mechanistic studies can now be routinely applied in preclinical safety assessment. These additional data are important not only in considering whether to perform carcinogenicity studies but for interpreting study outcomes with respect to relevance for human safety. Since carcinogenicity studies are time consuming and resource intensive, they should be performed only when human exposure warrants the need for information from life-time studies in animals in order to assess carcinogenic potential.

2. Historical Background

In Japan, according to the 1990 "Guidelines for Toxicity Studies of Drugs Manual," carcinogenicity studies were needed if the clinical use was expected to be continuously for 6 months or longer. If there was cause for concern, pharmaceuticals generally used continuously for less than 6 months may have needed carcinogenicity studies. In the United States, most pharmaceuticals were tested in animals for their carcinogenic potential before widespread use in humans. According to the U.S. Food and Drug Administration, pharmaceuticals generally used for 3 months or more necessitated carcinogenicity studies. In Europe, the Rules Governing Medicinal Products in the European Community defined the circumstances when carcinogenicity studies were required. These circumstances included administration over a substantial period of life, i.e., continuously during a minimum period of 6 months or frequently in an intermittent manner so that the total exposure was similar.

3. Objective of the Guideline

The objective of this guideline is to define the conditions under which carcinogenicity studies should be conducted to avoid the unnecessary use of animals in testing, and to provide consistency in worldwide regulatory assessments of applications. It is expected that these studies will be performed in a manner that reflects currently accepted scientific standards.

The fundamental considerations in assessing the need for carcinogenicity studies are the maximum duration of patient treatment and any perceived cause for concern arising from other investigations. Other factors may also be considered such as the intended patient population, prior assessment of carcinogenic potential, the extent of systemic exposure, the (dis)similarity to endogenous substances, the appropriate study design, or the timing of study performance relative to clinical development.

4. Factors to Consider for Carcinogenicity Testing

4.1 Duration and Exposure

Carcinogenicity studies should be performed for any pharmaceutical whose expected clinical use is continuous for at least 6 months (see Note 1).

Certain classes of compounds may not be used continuously over a minimum of 6 months but may be expected to be used repeatedly in an intermittent manner. It is difficult to determine and to justify scientifically what time represents a clinically relevant treatment period for frequent use with regard to carcinogenic potential, especially for discontinuous treatment periods. For pharmaceuticals used frequently in an intermittent manner in the treatment of chronic or recurrent conditions, carcinogenicity studies are generally needed. Examples of such conditions include allergic rhinitis, depression, and anxiety. Carcinogenicity studies may also need to be considered for certain delivery systems which may result in prolonged exposures. Pharmaceuticals administered infrequently or for short duration of exposure (e.g., anesthetics and radiolabeled imaging agents) do not need carcinogenicity studies unless there is cause for concern.

4.2 Cause for Concern

Carcinogenicity studies may be recommended for some pharmaceuticals if there is concern about their carcinogenic potential. Criteria for defining these cases should be very carefully considered because this is the most important reason to conduct carcinogenicity studies for most categories of pharmaceuticals. Several factors which could be considered may include: (1) Previous demonstration of carcinogenic potential in the product class that is considered relevant to humans; (2) structure-activity relationship suggesting carcinogenic risk; (3) evidence of preneoplastic lesions in repeated dose toxicity studies; and (4) long-term tissue retention of parent compound or metabolite(s) resulting in local tissue reactions or other pathophysiological responses.

4.3 Genotoxicity

Unequivocally genotoxic compounds, in the absence of other data, are presumed to be transspecies carcinogens, implying a hazard to humans. Such compounds need not be subjected to long-term carcinogenicity studies. However, if such a drug is intended to be administered chronically to humans, a chronic toxicity study (up to 1 year) may be necessary to detect early tumorigenic effects.

Assessment of the genotoxic potential of a compound should take into account the totality of the findings and acknowledge the intrinsic value and limitations of both in vitro and in vivo tests. The test battery approach of in vitro and in vivo tests is designed to reduce the risk of false negative results for compounds with genotoxic potential. A single positive result in any assay for genotoxicity does not necessarily mean that the test compound poses a genotoxic hazard to humans (see the ICH Guideline on Specific Aspects of Regulatory Genotoxicity Tests).

4.4 Indication and Patient Population

When carcinogenicity studies are required they usually need to be completed before application for marketing approval. However, completed rodent carcinogenicity studies are not needed in advance of the conduct of large scale clinical trials unless there is special concern for the patient population.

For pharmaceuticals developed to treat certain serious diseases, carcinogenicity testing need not be conducted before market approval although these studies should be conducted post-approval. This speeds the availability of pharmaceuticals for life-threatening or severely debilitating diseases, especially where no satisfactory alternative therapy exists.

In instances where the life-expectancy in the indicated population is short (i.e., less than 2 to 3 years), no long-term carcinogenicity studies may be required. For example, oncolytic agents intended for treatment of advanced systemic disease do not generally need carcinogenicity studies. In cases where the therapeutic agent for cancer is generally successful and life is significantly prolonged, there may be later concerns regarding secondary cancers. When such pharmaceuticals are intended for adjuvant therapy in tumor free patients or for prolonged use in noncancer indications, carcinogenicity studies are usually needed.

4.5 Route of Exposure

The route of exposure in animals should be the same as the intended clinical route when feasible (see the ICH Guideline on Dose Selection for Carcinogenicity Studies of Pharmaceuticals). If similar metabolism and systemic exposure can be demonstrated by differing routes of administration, carcinogenicity studies should only be conducted by a single route, recognizing that it is important that relevant organs for the clinical route (e.g., lung for inhalational agents) be adequately exposed to the test material. Evidence of adequate exposure may be derived from pharmacokinetic data (see the ICH Guideline on Repeated Dose Tissue Distribution Studies).

4.6 Extent of Systemic Exposure

Pharmaceuticals applied topically (e.g., dermal and ocular routes of administration) may need carcinogenicity studies. Pharmaceuticals showing poor systemic exposure from topical routes in humans may not need studies by the oral route to assess the carcinogenic potential to internal organs. Where there is cause for concern for photocarcinogenic potential, carcinogenicity studies by dermal application (generally in mice) may be needed. Pharmaceuticals administered by the ocular route may not need carcinogenicity studies unless there is cause for concern or unless there is significant systemic exposure.

For different salts, acids, or bases of the same therapeutic moiety, where prior carcinogenicity studies are available, evidence should be provided that there are

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no significant changes in pharmacokinetics, pharmacodynamics, or toxicity. When changes in exposure and consequent toxicity are noted, additional bridging studies may be used to determine whether additional carcinogenicity studies are needed. For esters and complex derivatives, similar data would be valuable in assessing the need for an additional carcinogenicity study, but this should be considered on a case-by-case basis.

4.7 Endogenous Peptides and Protein Substances or Their Analogs

Endogenous peptides or proteins and their analogs produced by chemical synthesis, by extraction/purification from an animal/human source, or by biotechnological methods such as recombinant DNA technology, may require special considerations.

Carcinogenicity studies are not generally needed for endogenous substances given essentially as replacement therapy (i.e., physiological levels), particularly where there is previous clinical experience with similar products (e.g., animal insulins, pituitary-derived growth hormone, and calcitonin).

Although not usually necessary, long-term carcinogenicity studies in rodent species should be considered for the other biotechnology products noted above if indicated by the treatment duration, clinical indication, or patient population (provided neutralizing antibodies are not elicited to such an extent in repeated dose studies as to invalidate the results). Conduct of carcinogenicity studies may be important in the following circumstances: (1) For products where there are significant differences in biological effects to the natural counterpart(s); (2) for products where modifications lead to significant changes in structure compared to the natural counterpart; and (3) for products resulting in humans in a significant increase over the existing local or systemic concentration (i.e., pharmacological levels).

5. Need for Additional Testing

The relevance of the results obtained from animal carcinogenicity studies for assessment of human safety are often cause for debate. Further research may be needed, investigating the mode of action, which may result in confirming the presence or the lack of carcinogenic potential for humans. Mechanistic studies are useful to evaluate the relevance of tumor findings in animals for human safety.

Supplementary Note

Note 1: It is expected that most pharmaceuticals indicated for 3-months treatment would also likely be used for 6 months. In an inquiry to a number of pharmaceutical research and regulatory groups, no cases were identified in which a pharmaceutical would be used only for 3 months.

Dated: February 23, 1996

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–4791 Filed 2–29–96; 8:45 am]

BILLING CODE 4160–01–F

federal register

Friday
March 1, 1996

Part IV

Department of Education

34 CFR Part 345

State Grants Program for Technology-Related Assistance for Individuals With Disabilities; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 345

RIN 1820–AB28

State Grants Program for Technology-Related Assistance for Individuals With Disabilities

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues these final regulations for the State Grants Program for Technology-Related Assistance for Individuals with Disabilities. This program provides grants to States to support systems change and advocacy activities designed to assist States in developing and implementing consumer-responsive comprehensive Statewide programs of technology-related assistance. These regulations are needed to implement the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994. The final regulations incorporate statutory requirements and provide rules for applying for and spending Federal funds under this program.

EFFECTIVE DATES: These regulations take effect April 1, 1996. Compliance with §§ 345.30, 345.31, 345.42, 345.50, 345.53, and 345.55 is not required until the information collection requirements in those sections have been approved by the Office of Management and Budget (OMB).

FOR FURTHER INFORMATION CONTACT: Carol G. Cohen. Telephone: (202) 205–5666. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 5 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These proposed regulations would implement Title I of the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (the Act), as amended by the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994 (1994 Amendments) (Pub. L. 103–218, enacted March 9, 1994). Title I of the Act establishes the State Grants Program for Technology-Related Assistance for Individuals with Disabilities. This program provides grants to States to support systems change and advocacy activities designed to assist States in developing and implementing consumer-responsive comprehensive Statewide programs of technology-related assistance.

On August 9, 1995, the Secretary published a notice of proposed rulemaking for this program in the **Federal Register** (60 FR 40688). The preamble to the notice of proposed rulemaking (60 FR 40688 - 40690) included a summary and discussion of the 1994 Amendments and other major issues that were addressed in the proposed regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed rulemaking, 5 parties submitted comments on the proposed regulations, including one letter that represented the comments of 28 parties. An analysis of the comments and of the changes in the regulations since publication of the notice of proposed rulemaking follows.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Technical and other minor changes are not addressed.

Purposes of the Program (§ 345.2)

Comments: Commenters stated that the proposed § 345.2 omitted two purposes pertaining to Federal policy as contained in sections 2(b) (2) and (3) of the Act. The commenters recommended that the Secretary include all purposes of the Act.

Discussion: The Secretary listed in the proposed regulations only those purposes in section 2(b)(1) of the Act because section 102(e)(7) of the Act specifically requires States to make an assurance that it will carry out activities to meet the purposes in section 2(b)(1). The Secretary did not intend to imply that sections 2(b) (2) and (3) were not important purposes of the Act. The Secretary believes that the purposes in sections 2(b) (2) and (3) authorize, but do not require, grantees to carry out activities to accomplish these purposes. Therefore, the Secretary believes that a reference to these purposes in the regulatory provision that lists allowable program activities is necessary.

Changes: The Secretary adds the purposes in sections 2(b)(2) and (3) of the Act to § 345.2. In addition, the Secretary adds paragraph (4) to § 345.20(b) to reflect that States may carry out activities that accomplish the purposes in sections 2(b)(2) and (3). All cross-references have been amended to reflect these changes.

Increases in Extension Grants (§ 345.3)

Comments: One commenter urged the Secretary to add the statutory language "with a wide geographic spread" in § 345.3 to clarify which States are sparsely populated.

Discussion: The language "sparsely populated, with a wide geographic spread" comes directly from the Act in section 103(c)(1)(D)(ii). The Secretary believes that adding the additional statutory language "with a wide geographic spread" will help to clarify "sparsely populated".

Changes: The Secretary has added the statutory language "with a wide geographic spread" as stated in section 103(c)(1)(D)(ii) of the Act.

Public Agencies and Lead Agencies (§ 345.4, 345.5)

Comments: One letter requested a clarification of what constitutes a public agency. The commenter also asked whether a State must designate both a responsible public agency and a lead agency.

Discussion: The regulations already refer to the definition of "public" in 34 CFR 77.1. The Secretary believes this definition is sufficient guidance regarding what constitutes a public agency. The Act does not require the lead agency also to be a public agency, but does require that money received from this program must flow through a public agency. Although a structure that uses two agencies could result in additional administrative complexity, the Act permits this type of arrangement which the Secretary is not authorized to change.

Changes: None.

University-Affiliated Program (§ 345.6)

Comments: Commenters thought it would be helpful if the Secretary included in the regulations a notation that a university-affiliated program is generally also a public agency.

Discussion: The Secretary does not believe it is necessary to add the language that the commenters suggested. The Secretary believes it could be confusing to add the word "generally" rather than giving a specific rule. Also, the regulations already refer to the definition of public in 34 CFR 77.1, which the Secretary believes is sufficient guidance about whether a university-affiliated program constitutes a public agency. Furthermore, the Developmental Disabilities Assistance and Bill of Rights Act (Developmental Disabilities Assistance Act) specifies that university-affiliated programs are public agencies if they are associated with a public entity.

Changes: None.

Allowable Expenses (§ 345.20(d))

Comments: One commenter stated that the term "in financial need" used in § 345.20(d) needs clarification. The commenter stated that many definitions would include only individuals receiving some State or Federal assistance and would exclude many individuals who might otherwise be unable to participate in the program activities. The commenter also stated that the term "eligible" needed clarification.

Commenters also urged the Secretary to add to the list of examples of allowable expenses items such as child care, respite care, drivers, and other supportive services.

Discussion: In implementing this program, the Secretary has attempted to give States and subrecipients the most flexibility and autonomy possible while adhering to the purposes of the statute. The Secretary believes that the State should make determinations regarding financial need and which individuals to support. The Secretary believes this matter is best determined on a case-by-case basis and that a single regulatory rule would not meet all States' concerns. Also, "eligible" was used only in the preamble to the notice of proposed rulemaking and not in the proposed regulations. As used in the preamble to the notice of proposed rulemaking, "eligible" referred to those participants that the State determined could participate in the program.

Moreover, the regulations allow a State to include the suggested additional examples as allowable expenses. The Secretary believes that each State should have the flexibility to make its own determination about what expenses may be necessary to ensure access to the comprehensive statewide program.

Changes: None.

Development Grant Application Content (§ 345.30(b)(12)(i))

Comments: Commenters expressed their belief that the conjunction between the Developmental Disabilities Assistance Act, the Protection and Advocacy for Mentally Ill Individuals Act, and section 509 of the Rehabilitation Act of 1973 should be an "or" rather than an "and". The commenters stated that the "and" implies that a State must contract with an entity that provides all three of these programs and that in some States multiple entities provide these three programs.

Discussion: The conjunction connecting these three programs is correct because it reflects the language of the Act. Awards under each of these programs are made to the protection and advocacy system designated for each State. Under the Developmental Disabilities Assistance Act, there is only one designated protection and advocacy system for each State.

Changes: None.

Contracting To Provide Protection and Advocacy Services (§ 345.30(b)(12)(ii))

Comments: Commenters advised the Secretary that they believed the regulations omitted a section of the Act that allows States to continue to contract with an entity that is capable of performing the functions that would otherwise be performed by the protection and advocacy services providers.

Discussion: The Secretary provides for that statutory option in § 345.55(a)(i). The Secretary recognizes that the proposed regulations did not refer to that statutory option in the regulatory provisions regarding the content of an application for a development grant. The Secretary believes it would be useful and helpful to users of the regulations to refer to this option in discussing application content.

Changes: In § 345.30(b)(12)(i), the Secretary has added a reference to the provision regarding the statutory option.

Indirect Costs (§ 345.30(b)(14))

Comments: Commenters stated that the Secretary should provide more guidance regarding the implementation of the 10 percent cap on indirect costs. The commenters requested more guidance on whether the 10 percent cap on indirect costs applies to the lead agency, the lead agency's subcontractors, or a combination of both. Another commenter, who is a subcontractor under this program, stated that it had negotiated an agreement, in the capacity as a lead agency, with another U.S. agency to allocate 12.6 percent of its grants to indirect costs. Therefore, the commenter suggested that the final regulations should allow indirect costs for subcontractors to be limited to an approved indirect cost rate, rather than left up to the lead agency to determine.

Discussion: As clearly explained in the preamble to the notice of proposed rulemaking, the amount of indirect costs may not exceed 10 percent of the total amount of the grant as stated in section 102(e)(22) of the Act. Also in the preamble, on page 40689, the Secretary states that the indirect cost rate must be negotiated by the State and the subcontractor or subgrantee. The clarifying language used in the preamble is confusing because there is no authority requiring a State to negotiate an indirect cost rate with a subcontractor or subgrantee; rather, the Secretary strongly encourages States to negotiate indirect cost rates. The Secretary declines to regulate on this issue because the Act leaves how to apportion the indirect cost rate to the discretion of States and the Secretary supports giving States the flexibility to negotiate these rates.

Changes: None.

Compliance With Section 508 of the Rehabilitation Act of 1973 (§ 345.31(d))

Comments: Commenters expressed the belief that, because the Secretary's interpretation of section 508 of the Rehabilitation Act of 1973 (section 508) was broad, the interpretation needed to be clarified in the regulations. These commenters also pointed out that the language in the preamble summarizing this section was overly inclusive because it stated that section 508 would apply to "all offices, agencies, and entities in a State." Furthermore, commenters stated that the Secretary needs to clarify what entities are included as a part of "the State" for the purposes of the assurance that the State will comply with guidelines established under section 508.

Discussion: Based on the language in the Act and section 508, the Secretary believes that the requirements of section 508 apply broadly. In the proposed regulations, the Secretary intended to reflect that section 508 applies to the State (including any State offices, agencies, and entities) and all recipients and subrecipients of funds made available to the State under the Act. The Secretary believes it is unnecessary to regulate what entities are encompassed in the term "the State" because each State should determine which of its entities are considered part of the State. In addition, the Secretary believes that a State needs only to submit an assurance regarding compliance with section 508. The Secretary believes that a State should determine how it will ensure that its subrecipients comply with section 508.

Changes: Because the language in the preamble and § 345.31(d) was unclear, the Secretary has modified the language to include a reference to any subrecipients. This addition clarifies that all State offices, agencies, and entities are required to comply with section 508.

Reporting Requirement (§ 345.50(b))

Comments: Commenters expressed concern that requiring States to make reports readily available to the public at no extra cost could be burdensome if States may not charge for reasonable duplication and handling costs.

Discussion: This section of the regulations does not allow a State to charge for duplication or handling costs, however, the provision does not require a State to make copies and send them

out to individuals who request the report. The Secretary believes a State could make a report readily available to the public through a variety of means such as putting the report in a location to which the public has access, a library for example, or making the report available electronically. In making a report available to the public, a State should ensure the public's access to the report and realize that using only one method of making a report available may not be sufficient.

Changes: None.

Minimum Amount for Protection and Advocacy Services (§ 345.55)

Comments: Commenters questioned the reliance on the size of a State's grant in determining the minimum amount that a State must expend on protection and advocacy services.

Another commenter stated that the language regarding the minimum funding amounts to be received by the State protection and advocacy systems was confusing. The commenter suggested that the Secretary add the statement in the preamble that there is no statutory limit or ceiling on the amount a State may expend on protection and advocacy services.

Discussion: The Secretary does not rely solely on the size of the State's grant in determining the minimum amount a State must spend on protection and advocacy activities. As required by the Act, the Secretary also considers other factors in determining the minimum protection and advocacy amount. These factors include the needs of individuals with disabilities within the State, the population of the State, and the geographic size of the State. Because the Secretary takes the population into account in determining the State's grant, the Secretary believes it is appropriate to base the protection and advocacy minimum primarily on the size of the State's.

The Secretary agrees that the language regarding the minimum funding amounts to be received by the State protection and advocacy systems may be confusing. The Secretary has clarified the language to specify that a minimum amount is established for each State and the minimum amount may range from $40,000 to $100,000. However, the Secretary does not believe it is necessary to include in the regulations the explanatory language used in the preamble. The preamble and regulations clearly explain that each State may have a different minimum amount and that there is no maximum amount. Additional regulations on this issue are unnecessary.

Changes: In § 345.55(e)(2)(ii), the Secretary has clarified the language regarding the minimum amount.

State Redesignation of Protection and Advocacy Service Providers (§ 345.63)

Comments: One commenter suggested that the Secretary specify the hearing and posthearing procedures for cases that reach the Secretary or incorporate the procedures that address redesignation under the Developmental Disabilities Assistance Act. The commenter also suggested that the Secretary require the type of notice and specific timelines for giving individuals with disabilities and their representatives timely notice and an opportunity for public comment.

In addition, the commenter made some suggestions regarding how to give notification in an accessible format. The commenter suggested that individuals be able to offer verbal or written comments in addition to any public meetings.

Lastly, the commenter noted that the standard to meet the protection and advocacy service needs in § 345.63(a) is too high because of limited available resources. The commenter suggested that the Secretary require that an entity providing services may be changed only if the protection and advocacy entity does not set priorities, goals, and objectives in consultation with consumers and work toward achieving those priorities, goals, and objectives.

Discussion: The Secretary believes using "redesignate" in this context is confusing because of the particular meaning of "redesignate" in the Developmental Disabilities Assistance Act. The procedures outlined in § 345.63 apply only to situations in which the State determines that the entity providing protection and advocacy services under the Act has not met the protection and advocacy service needs of the individuals with disabilities and their family members, guardians, advocates, or authorized representatives under the Act. This process is not to be confused with the redesignation of a protection and advocacy agency when the entire agency is in jeopardy. If a protection and advocacy agency is being redesignated, then the procedures in the Developmental Disabilities Assistance Act will govern.

The Secretary believes it is unnecessary to regulate the amount of time and the format for giving notice and opportunity for public comment. Section 345.30(b)(9) requires States to assure that they will make available to individuals with disabilities and their family members information concerning technology-related assistance in a form that will allow individuals to effectively use the information. The Secretary believes that States are capable of making determinations regarding how to make information available and how to give notice and to accept comments. Therefore, the Secretary gives States flexibility to set their own procedures.

The Secretary disagrees with the commenter's belief that the standard in § 345.63(a) is too high given a limited amount of resources. Before a protection and advocacy services provider may be changed, the regulations require that there must be good cause to provide the protection and advocacy services for the State through a contract with a second entity. If the only reason a protection and advocacy entity cannot meet the needs is because of limited resources, other protection and advocacy entities will face the same difficulties. If the State chooses to change a protection and advocacy services provider under the Act, it may not change the provider simply because the protection and advocacy entity does not have enough resources to meet all the protection and advocacy services needs; the State must also find another provider that it believes can better meet the needs.

The Secretary believes that the State and the protection and advocacy services provider should work together to define an acceptable and reasonable scope of work based on the amount of resources available. Ideally the State and the protection and advocacy services provider would negotiate to agree on deliverable services and expected outcomes.

Changes: The Secretary changes the title of § 345.63 so that changing a protection and advocacy service provider under the Act is not confused with redesignating a protection and advocacy entity.

Technical Assistance

Comments: Commenters pointed out that, on page 40689 of the preamble, the Secretary made reference to providing information and technical assistance to participating States, as well as to individuals with disabilities, but that there was no mention of the provision of technical assistance in the regulations.

Discussion: The provision of technical assistance is an activity performed by the Secretary and, thus, is not required to be in regulations. As a general Department policy, regulations are for grantees' use and compliance and not for the purpose of regulating the Department.

Changes: None.

Performance Guidelines

Comments: Commenters noted that the language regarding performance guidelines on pages 40689–40690 of the preamble was not in the regulations and existed only in the preamble. The commenters suggested that the Secretary clarify the language. They also suggested that the guidelines should be distributed well in advance of progress report and application deadlines to allow States to collect needed information and to understand what is expected of them.

Discussion: The Department is currently developing the performance guidelines with input from the States. Once the performance guidelines are finalized the Secretary will make them available to the States. Under a new Department policy regarding non-competing continuation grants, the Department will not require submissions of project performance reports until seven months after the beginning of a project period at the earliest. Thus, the guidelines will be available well in advance of any reporting deadlines. The Secretary expects the performance guidelines to remain the same for the entire authorization of the program. Therefore, grantees may use the same guidelines every year and will know exactly what is expected of them.

Because these guidelines are not binding, the Secretary will not publish the guidelines in the regulations.

Changes: None.

Recycling Devices

Comments: Commenters suggested that in order for the Secretary to administer the recycling of assistive technology devices as discussed on page 40690 of the preamble, he would need to formally encourage individuals and provide information regarding who to call to facilitate recycling.

Discussion: The Secretary only recommends recycling and cannot mandate recycling because it is allowable, not mandatory, under the Act. The Secretary is gathering information about recycling devices and will provide that information once the Department completes the project.

Changes: None.

Access to Records

Comments: One commenter suggested that the Secretary add requirements similar to the Developmental Disabilities Assistance Act allowing access to client records.

Discussion: The Act does not authorize the Secretary to include provisions regarding access to client records. To the extent the Developmental Disabilities Assistance Act governs a protection and advocacy system, those right of access provisions would apply.

Changes: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

Summary of Potential Costs and Benefits

The potential costs and benefits of these final regulations are discussed elsewhere in this preamble under the following heading: *Analysis of Comments and Changes.*

Paperwork Reduction Act of 1995

Sections 345.30, 345.31, 345.42, 345.50, 345.53, and 345.55 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the OMB for its review.

Collection of Information: State Grants Program for Technology-Related Assistance for Individuals with Disabilities.

States are eligible to apply for grants under these regulations. The Department needs and uses the information to make grants and to evaluate a recipient's performance. Annual public reporting burden for this collection of information is estimated to be 30 hours per response for 56 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 1,680 hours.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 345

Disabled, Education, Grant program-education, Handicapped, Reporting and recordkeeping requirements, Science and technology.

Dated: January 16, 1996.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Number 84.224—State Grants Program for Technology-Related Assistance for Individuals with Disabilities)

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 345 to read as follows:

PART 345—STATE GRANTS PROGRAM FOR TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

Sec.

345.1 What is the State Grants Program for Technology-Related Assistance for Individuals with Disabilities?
345.2 What are the purposes of the State grants program for technology-related assistance for individuals with disabilities?
345.3 What are the types of awards under this program?
345.4 Who is eligible to receive a development grant?
345.5 What are the responsibilities of the lead agency or public agency in applying for and in administering a development grant?
345.6 How does a State designate the lead agency?
345.7 Who is eligible to receive an extension grant?
345.8 What are the responsibilities of the lead agency in applying for and in administering an extension grant?
345.9 What regulations apply to this program?

345.10 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support?

345.20 What types of activities are authorized under this program?

Subpart C—How Does a State Apply for a Grant?

345.30 What is the content of an application for a development grant?
345.31 What is the content of an application for an extension grant?

Subpart D—How Does the Secretary Make a Grant?

345.40 How does the Secretary evaluate an application for a development grant under this program?
345.41 What other factors does the Secretary take into consideration in making development grant awards under this program?
345.42 What is the review process for an application for an extension grant?
345.43 What priorities does the Secretary establish?

Subpart E—What Conditions Must Be Met After an Award?

345.50 What are the reporting requirements for the recipients of development and extension grants?
345.51 When is a State making significant progress?
345.52 Who retains title to devices provided under this program?
345.53 What are the requirements for grantee participation in the Secretary's progress assessments?
345.54 How may grant funds be used under this program?
345.55 What are the responsibilities of a State in carrying out protection and advocacy services?

Subpart F—What Compliance Procedures May the Secretary Use?

345.60 Who is subject to a corrective action plan?
345.61 What penalties may the Secretary impose on a grantee that is subject to corrective action?
345.62 How does a State redesignate the lead agency when it is subject to corrective action?
345.63 How does a State change the entity responsible for providing protection and advocacy services?

Authority: 29 U.S.C. 2201–2217, unless otherwise noted.

PART 345—STATE GRANTS PROGRAM FOR TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

§ 345.1 What is the State Grants Program for Technology-Related Assistance for Individuals with Disabilities?

This program provides grants to States to support systems change and advocacy activities designed to assist States in developing and implementing consumer-responsive comprehensive Statewide programs of technology-related assistance that accomplish the purposes in § 345.2.

(Authority: 29 U.S.C. 2211(a); Section 101(a) of the Act)

§ 345.2 What are the purposes of the State grants program for technology-related assistance for individuals with disabilities?

The purposes of this program are to provide financial assistance to States to support systems change and advocacy activities designed to assist each State in developing and implementing a consumer-responsive comprehensive statewide program of technology-related assistance, for individuals with disabilities of all ages, that is designed to—

(a)(1) Increase the availability of, funding for, access to, and provision of, assistive technology devices and assistive technology services;

(2) Increase the active involvement of individuals with disabilities and their family members, guardians, advocates, and authorized representatives, in the planning, development, implementation, and evaluation of the program;

(3) Increase the involvement of individuals with disabilities and, if appropriate, their family members, guardians, advocates, or authorized representatives, in decisions related to the provision of assistive technology devices and assistive technology services;

(4) Increase the provision of outreach to underrepresented populations and rural populations, to enable the two populations to enjoy the benefits of programs carried out to accomplish the purposes described in this section to the same extent as other populations;

(5) Increase and promote coordination among State agencies, and between State agencies and private entities, that are involved in carrying out activities under this part, particularly providing assistive technology devices and assistive technology services, that accomplish a purpose described in another paragraph of this section;

(6)(i) Increase the awareness of laws, regulations, policies, practices, procedures, and organizational structures, that facilitate the availability or provision of assistive technology devices and assistive technology services; and

(ii) Facilitate the change of laws, regulations, policies, practices, procedures, and organizational structures, that impede the availability or provision of assistive technology devices and assistive technology services;

(7) Increase the probability that individuals with disabilities of all ages will, to the extent appropriate, be able to secure and maintain possession of assistive technology devices as these individuals make the transition between services offered by human service agencies or between settings of daily living;

(8) Enhance the skills and competencies of individuals involved in providing assistive technology devices and assistive technology services;

(9) Increase awareness and knowledge of the efficacy of assistive technology devices and assistive technology services among—

(i) Individuals with disabilities and their family members, guardians, advocates, and authorized representatives;

(ii) Individuals who work for public agencies, or for private entities (including insurers), that have contact with individuals with disabilities;

(iii) Educators and related services personnel;

(iv) Technology experts (including engineers);

(v) Employers; and

(vi) Other appropriate individuals;

(10) Increase the capacity of public agencies and private entities to provide and pay for assistive technology devices and assistive technology services on a statewide basis for individuals with disabilities of all ages; and

(11) Increase the awareness of the needs of individuals with disabilities for assistive technology devices and for assistive technology services.

(b)(1) Identify Federal policies that facilitate payment for assistive technology devices and assistive technology services.

(2) Identify Federal policies that impede this payment.

(3) Eliminate inappropriate barriers to this payment.

(c) Enhance the ability of the Federal Government to provide States with—

(1) Technical assistance, information, training, and public awareness programs relating to the provision of assistive technology devices and assistive technology services; and

(2) Funding for demonstration projects.

(Authority: 29 U.S.C. 2201(b); Section 2(b) of the Act)

§ 345.3 What are the types of awards under this program?

(a) Under this program, the Secretary—

(1) Awards three-year development grants to assist States in developing and implementing consumer-responsive comprehensive statewide programs that accomplish the purposes in § 345.2;

(2) May award an initial two-year extension grant to any State that meets the standards in § 345.42(a); and

(3) May award a second extension grant, for a period of not more than 5 years, to any State that meets the standards in § 345.42(b).

(b) The Secretary calculates the amount of the development grants in paragraph (a)(1) of this section on the basis of—

(1) Amounts available for making grants under this part;

(2) The population of the State or territory concerned; and

(3) The types of activities proposed by the State relating to the development of a consumer-responsive comprehensive statewide program of technology-related assistance.

(c) The Secretary calculates the amount of the extension grants in paragraph (a)(2) of this section on the basis of—

(1) Amounts available for making grants;

(2) The population of the State;

(3) The types of assistance proposed by the State in its application; and

(4) A description in its application of the amount of resources committed by the State and available to the State from other sources to sustain the program after federal funding ends.

(d)(1) In providing any increases in initial extension grants in paragraph (a)(2) of this section above the amounts provided to States for Fiscal Year 1993, the Secretary may give priority to States (other than the territories) that—

(i) Have the largest populations, based on the most recent census data; and

(ii) Are sparsely populated, with a wide geographic spread.

(2) To be eligible for the priority in paragraph (d)(1) of this section, the circumstances in paragraphs (d)(1)(i) or (ii) must have impeded the development of a consumer-responsive, comprehensive statewide program of technology-related assistance in a State.

(e) During the fourth and fifth years of a State's second extension grant, the amount received by a State will be reduced to 75% and 50%, respectively, of the amount paid to the State for the third year of the grant.

(Authority: 29 U.S.C. 2212(b), 2213(a), 2213(c)(1)(B) and (2), and 2213(c)(1)(D); Sections 102(b), 103(a), 103(c)(1)(B) and (2), 103(c)(1)(D) of the Act)

§ 345.4 Who is eligible to receive a development grant?

A State is eligible to receive a development grant under this program, provided that the Governor has designated a lead agency to carry out the responsibilities contained in § 345.5.

(Authority: 29 U.S.C. 2212(a)(1) and 2212(d)(1); Section 102(a) and 102(d)(1) of the Act)

§ 345.5 What are the responsibilities of the lead agency or public agency in applying for and in administering a development grant?

(a) The lead agency is responsible for the following:

(1) Submitting the application containing the information and assurances contained in § 345.30.

(2) Administering and supervising the use of amounts made available under the grant.

(3)(i) Coordinating efforts related to, and supervising the preparation of, the application;

(ii) Coordinating the planning, development, implementation, and evaluation of the consumer-responsive comprehensive statewide program of technology-related assistance among public agencies and between public agencies and private agencies, including coordinating efforts related to entering into interagency agreements; and

(iii) Coordinating efforts related to, and supervising, the active, timely, and meaningful participation by individuals with disabilities and their family members, guardians, advocates, or authorized representatives, and other appropriate individuals, with respect to activities carried out under the grant.

(4) The delegation, in whole or in part, of any responsibilities described in paragraphs (a)(1) through (3) of this section to one or more appropriate offices, agencies, entities, or individuals.

(b) If the lead agency is not a public agency, a public agency shall have the responsibility of controlling and administering amounts received under the grant.

(Authority: 29 U.S.C. 2212(d)(1) and 2212(e)(12)(A); Section 102(d)(1) and 102(e)(12)(A) of the Act)

§ 345.6 How does a State designate the lead agency?

(a) The Governor may designate—

(1) A commission appointed by the Governor;

(2) A public-private partnership or consortium;

(3) A university-affiliated program;

(4) A public agency;

(5) A council established under Federal or State law; or

(6) Another appropriate office, agency, entity, or individual.

(b) The State shall provide evidence that the lead agency has the ability—

(1) To respond to assistive technology needs across disabilities and ages;

(2) To promote the availability throughout the State of assistive technology devices and assistive technology services;

(3) To promote and implement systems change and advocacy activities;

(4) To promote and develop public-private partnerships;

(5) To exercise leadership in identifying and responding to the technology needs of individuals with disabilities and their family members, guardians, advocates, and authorized representatives;

(6) To promote consumer confidence, responsiveness, and advocacy; and

(7) To exercise leadership in implementing effective strategies for capacity building, staff and consumer training, and enhancement of access to funding for assistive technology devices and assistive technology services across agencies.

(Authority: 29 U.S.C. 2212(d)(2) and (3); Sections 102(d)(2) and (3) of the Act)

§ 345.7 Who is eligible to receive an extension grant?

A State is eligible to receive an extension grant under this program.

§ 345.8 What are the responsibilities of the lead agency in applying for and in administering an extension grant?

(a) To be eligible to receive an initial extension grant, the lead agency shall—

(1) Submit an application containing the information and assurances in § 345.31; and

(2) Hold a public hearing in the third year of a program carried out under a development grant, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.

(b) To be eligible to receive a second extension grant, the lead agency shall—

(1) Submit an application containing the information and assurances in § 345.31; and

(2) Hold a public hearing in the second year of a program carried out under an initial extension grant, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.

(Authority: 29 U.S.C. 2213(d) and (e); Section 103(d) and (e) of the Act)

§ 345.9 What regulations apply to this program?

The following regulations apply to the State Grants Program for Technology-

Related Assistance for Individuals with Disabilities:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

(2) 34 CFR Part 75 (Direct Grant Programs), except § 75.618;

(3) 34 CFR Part 77 (Definitions That Apply to Department Regulations);

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), except §§ 80.32(a) and 80.33(a);

(6) 34 CFR Part 81 (General Education Provisions Act—Enforcement);

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension [Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(8) Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part.

(Authority: 29 U.S.C. 2201–2217; Sections 101–107 of the Act)

§ 345.10 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Nonprofit
Nonpublic
Private
Project
Project period
Public

(b) *Definitions in the Technology-Related Assistance for Individuals with Disabilities Act of 1988.*

(1) The following terms used in this part are defined in section 3 of the Act:

Advocacy services
Assistive technology device
Assistive technology service
Comprehensive statewide program of technology-related assistance
Consumer-responsive
Disability
Individual with a disability; individuals with disabilities
Institution of higher education
Protection and advocacy services
Secretary
State
Systems change and related activities
Technology-related assistance
Underrepresented population

(2) The following term used in this part is defined in section 102(b)(5) of the Act:

Territory

(d) *Other definitions.* The following definitions also apply to this part:

Initial extension grant means the two-year extension grant following a three-year development grant under this program.

Second extension grant means the extension grant following the initial extension grant under this program. The period of this grant is for a period of not more than 5 years.

(Authority: 29 U.S.C. 2201–2217; Sections 101–107 of the Act)

Subpart B—What Kinds of Activities Does the Department Support

§ 345.20 What type of activities are authorized under this program?

Any State that receives a development or extension grant shall use the funds made available through the grant to accomplish the purposes described in § 345.2(a) and, in accomplishing such purposes, may carry out any of the following systems change and advocacy activities:

(a) Support activities to increase access to, and funding for, assistive technology, including—

(1) The development, and evaluation of the efficacy, of model delivery systems that provide assistive technology devices and assistive technology services to individuals with disabilities, that pay for devices and services, and that, if successful, could be replicated or generally applied, such as—

(i) The development of systems for the purchase, lease, other acquisition, or payment for the provision, of assistive technology devices and assistive technology services; or

(ii) The establishment of alternative State or privately financed systems of subsidies for the provision of assistive technology devices and assistive technology services, such as—

(A) A loan system for assistive technology devices;

(B) An income-contingent loan fund;

(C) A low interest loan fund;

(D) A revolving loan fund;

(E) A loan insurance program; or

(F) A partnership with private entities for the purchase, lease, or other acquisition of assistive technology devices and the provision of assistive technology services;

(2) The demonstration of assistive technology devices, including—

(i) The provision of a location or locations within the State where the following individuals can see and touch assistive technology devices, and learn about the devices from personnel who are familiar with such devices and their applications:

(A) Individuals with disabilities and their family members, guardians, advocates, and authorized representatives;

(B) Education, rehabilitation, health care, and other service providers;

(C) Individuals who work for Federal, State, or local government entities; and

(D) Employers.

(ii) The provision of counseling and assistance to individuals with disabilities and their family members, guardians, advocates, and authorized representatives to determine individual needs for assistive technology devices and assistive technology services; and

(iii) The demonstration or short-term loan of assistive technology devices to individuals, employers, public agencies, or public accommodations seeking strategies to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(3) The establishment of information systems about, and recycling centers for, the redistribution of assistive technology devices and equipment that may include device and equipment loans, rentals, or gifts.

(b) Support activities to—

(1) Identify and coordinate Federal and State policies, resources, and services, relating to the provision of assistive technology devices and assistive technology services, including entering into interagency agreements;

(2) Convene interagency work groups to enhance public funding options and coordinate access to funding for assistive technology devices and assistive technology services for individuals with disabilities of all ages, with special attention to the issues of transition (such as transition from school to work, and transition from participation in programs under part H of the Individuals with Disabilities Education Act (20 U.S.C. 1471 et seq.), to participation in programs under part B of such Act (20 U.S.C. 1411 et seq.)) home use, and individual involvement in the identification, planning, use, delivery, and evaluation of such devices and services; or

(3) Document and disseminate information about interagency activities that promote coordination with respect to assistive technology devices and

assistive technology services, including evidence of increased participation of State and local special education, vocational rehabilitation, and State medical assistance agencies and departments.

(c) Carry out activities to encourage the creation or maintenance of, support, or provide assistance to, statewide and community-based organizations, or systems, that provide assistive technology devices and assistive technology services to individuals with disabilities or that assist individuals with disabilities in using assistive technology devices or assistive technology services. The activities may include outreach to consumer organizations and groups in the State to coordinate the activities of the organizations and groups with efforts (including self-help, support groups, and peer mentoring) to assist individuals with disabilities and their family members, guardians, advocates, or authorized representatives, to obtain funding for, and access to, assistive technology devices and assistive technology services.

(d) Pay for expenses, including travel expenses, and services, including services of qualified interpreters, readers, and personal assistants services that may be necessary to ensure access to the comprehensive statewide program of technology-related assistance by individuals with disabilities who are determined by the State to be in financial need. The expenses must be incurred by participants in activities associated with the state technology program.

(e) Conduct a statewide needs assessment that may be based on data in existence on the date on which the assessment is initiated and may include—

(1) Estimates of the numbers of individuals with disabilities within the State, categorized by residence, type and extent of disabilities, age, race, gender, and ethnicity;

(2) In the case of an assessment carried out under a development grant, a description of efforts, during the fiscal year preceding the first fiscal year for which the State received a grant, to provide assistive technology devices and assistive technology services to individuals with disabilities within the State, including—

(i) The number of individuals with disabilities who received appropriate assistive technology devices and assistive technology services; and

(ii) A description of the devices and services provided;

(3) Information on the number of individuals with disabilities who are in need of assistive technology devices and assistive technology services, and a description of the devices and services needed;

(4) Information on the cost of providing assistive technology devices and assistive technology services to all individuals with disabilities within the State who need such devices and services;

(5) A description of State and local public resources and private resources (including insurance) that are available to establish a consumer-responsive comprehensive statewide program of technology-related assistance;

(6) Information identifying Federal and State laws, regulations, policies, practices, procedures, and organizational structures, that facilitate or interfere with the operation of a consumer responsive comprehensive statewide program of technology related assistance;

(7) A description of the procurement policies of the State and the extent to which such policies will ensure, to the extent practicable, that assistive technology devices purchased, leased, or otherwise acquired with assistance made available through a development or extension grant under this part are compatible with other technology devices, including technology devices designed primarily for use by—

(i) Individuals who are not individuals with disabilities;

(ii) Individuals who are elderly; or

(iii) Individuals with particular disabilities; and

(8) Information resulting from an inquiry about whether a State agency or task force (composed of individuals representing the State and individuals representing the private sector) should study the practices of private insurance companies holding licenses within the State that offer health or disability insurance policies under which an individual may obtain reimbursement for—

(i) The purchase, lease, or other acquisition of assistive technology devices; or

(ii) The use of assistive technology services.

(f) Support—

(1)(i) A public awareness program designed to provide information relating to the availability and efficacy of assistive technology devices and assistive technology services for—

(A) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives;

(B) Individuals who work for public agencies, or for private entities (including insurers), that have contact with individuals with disabilities;

(C) Educators and related services personnel;

(D) Technology experts (including engineers);

(E) Employers; and

(F) Other appropriate individuals and entities; or

(ii) Establish and support the program if no such program exists.

(2) A public awareness program that may include the—

(i) Development and dissemination of information relating to the—

(A) Nature of assistive technology devices and assistive technology services;

(B) Appropriateness, cost, and availability of, and access to, assistive technology devices and assistive technology services; and

(C) Efficacy of assistive technology devices and assistive technology services with respect to enhancing the capacity of individuals with disabilities;

(ii) Development of procedures for providing direct communication among public providers of assistive technology devices and assistive technology services and between public providers and private providers of devices and services (including employers); and

(iii) Development and dissemination of information relating to the use of the program by individuals with disabilities and their family members, guardians, advocates, or authorized representatives, professionals who work in a field related to an activity described in this section, and other appropriate individuals.

(g) Carry out directly, or may provide support to a public or private entity to carry out, training and technical assistance activities that—

(1)(i) Are provided for individuals with disabilities and their family members, guardians, advocates, and authorized representatives, and other appropriate individuals; and

(ii) May include—

(A) Training in the use of assistive technology devices and assistive technology services;

(B) The development of written materials, training, and technical assistance describing the means by which agencies consider the needs of an individual with a disability for assistive technology devices and assistive technology services in developing, for the individual, any individualized education program described in section 614(a)(5) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(a)(5)), any individualized written rehabilitation program described in section 102 of the Rehabilitation Act of

1973 (29 U.S.C. 722), any individualized family service plan described in section 677 of the Individuals with Disabilities Education Act (20 U.S.C. 1477), and any other individualized plans or programs;

(C) Training regarding the rights of the persons described in paragraph (f)(1)(i) of this section to assistive technology devices and assistive technology services under any law other than this Act, to promote fuller independence, productivity, and inclusion in and integration into society of such persons; and

(D) Training to increase consumer participation in the identification, planning, use, delivery, and evaluation of assistive technology devices and assistive technology services; and

(2)(i) Enhance the assistive technology skills and competencies of—

(A) Individuals who work for public agencies or for private entities (including insurers) that have contact with individuals with disabilities;

(B) Educators and related services personnel;

(C) Technology experts (including engineers);

(D) Employers; and

(E) Other appropriate personnel; and

(ii) Include taking actions to facilitate the development of standards, or, when appropriate, the application of standards, to ensure the availability of qualified personnel.

(h) Support the compilation and evaluation of appropriate data related to a program described in § 345.1.

(i)(1) Develop, operate, or expand a system for public access to information concerning an activity carried out under another paragraph of this section, including information about assistive technology devices and assistive technology services, funding sources and costs of assistance, and individuals, organizations, and agencies capable of carrying out such an activity for individuals with disabilities.

(2) Access to the system may be provided through community-based entities, including public libraries, centers for independent living (as defined in section 702(1) of the Rehabilitation Act of 1973 (29 U.S.C. 796a(1)), and community rehabilitation programs, as defined in section 7(25) of such Act (29 U.S.C. 706(25)).

(3) In developing, operating, or expanding a system described in paragraph (i)(1) of this section, the State may—

(i) Develop, compile, and categorize print, large print, braille, audio, and video materials, computer disks, compact discs (including compact discs formatted with read-only memory), information that can be used in telephone-based information systems, and other media as technological innovation may make appropriate;

(ii) Identify and classify existing funding sources, and the conditions of and criteria for access to such sources, including any funding mechanisms or strategies developed by the State;

(iii) Identify existing support groups and systems designed to help individuals with disabilities make effective use of an activity carried out under another paragraph of this section; and

(iv) Maintain a record of the extent to which citizens of the State use or make inquiries of the system established in paragraph (i)(1) of this section, and of the nature of inquiries.

(4) The information system may be organized on an interstate basis or as part of a regional consortium of States in order to facilitate the establishment of compatible, linked information systems.

(j)(1) The State may enter into cooperative agreements with other States to expand the capacity of the States involved to assist individuals with disabilities of all ages to learn about, acquire, use, maintain, adapt, and upgrade assistive technology devices and assistive technology services that individuals need at home, at school, at work, or in other environments that are part of daily living.

(2) The State may operate or participate in a computer system through which the State may electronically communicate with other States to gain technical assistance in a timely fashion and to avoid the duplication of efforts already undertaken in other States.

(k) Support the establishment or continuation of partnerships and cooperative initiatives between the public sector and the private sector to promote the greater participation by business and industry in the—

(1) Development, demonstration, and dissemination of assistive technology devices; and

(2) Ongoing provision of information about new products to assist individuals with disabilities.

(l) Provide advocacy services.

(m) Utilize amounts made available through development and extension grants for any systems change and advocacy activities, other than the activities described in another paragraph of this section, that are necessary for developing, implementing, or evaluating the consumer-responsive comprehensive statewide program of technology-related assistance.

(n)(1) Accomplish the purposes in § 345.2(b) and (c).

(Authority: 29 U.S.C. 2201(b) and 2211(b); Sections 2(b)(2), 2(b)(3) and 101(b) of the Act)

Subpart C—How Does a State Apply for a Grant?

§ 345.30 What is the content of an application for a development grant?

(a) Applicants for development grants under this program shall include the following information in their applications:

(1) Information identifying the lead agency designated by the Governor under § 345.4 and the evidence described in § 345.6(b).

(2) A description of the nature and extent of involvement of various State agencies, including the State insurance department, in the preparation of the application and the continuing role of each agency in the development and implementation of the consumer-responsive comprehensive statewide program of technology-related assistance, including the identification of the available resources and financial responsibility of each agency for paying for assistive technology devices and assistive technology services.

(3)(i) A description of procedures that provide for—

(A)(1) The active involvement of individuals with disabilities and their family members, guardians, advocates, and authorized representatives, and other appropriate individuals, in the development, implementation, and evaluation of the program; and

(2) To the maximum extent appropriate, the active involvement of individuals with disabilities who use assistive technology devices or assistive technology services, in decisions relating to such devices and services; and

(B) Mechanisms for determining consumer satisfaction and participation of individuals with disabilities who represent a variety of ages and types of disabilities, in the consumer-responsive comprehensive statewide program of technology-related assistance.

(ii) A description of the nature and extent of the—

(A) Involvement, in the designation of the lead agency under § 345.4, and in the development of the application, of—

(1) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives;

(2) Other appropriate individuals who are not employed by a State agency; and

(3) Organizations, providers, and interested parties, in the private sector; and

(B) Continuing role of the individuals and entities described in paragraph

(a)(3)(ii)(A) of this section in the program.

(4) A tentative assessment of the extent of the need of individuals with disabilities in the State, including individuals from underrepresented populations or rural populations for a statewide program of technology-related assistance and a description of previous efforts and efforts continuing on the date of the application to develop a consumer-responsive comprehensive statewide program of technology-related assistance.

(5) A description of State resources and other resources (to the extent this information is available) that are available to commit to the development of a consumer-responsive comprehensive statewide program of technology-related assistance.

(6) Information on the program with respect to the—

(i) Goals and objectives of the State for the program;

(ii) Systems change and advocacy activities that the State plans to carry out under the program; and

(iii) Expected outcomes of the State for the program, consistent with the purposes described in § 345.2(a).

(7)(i) A description of the data collection system used for compiling information on the program, consistent with requirements established by the Secretary for systems, and, when a national classification system is developed pursuant to section 201 of the Act, consistent with the classification system; and

(ii) Procedures that will be used to conduct evaluations of the program.

(8) A description of the policies and procedures governing contracts, grants, and other arrangements with public agencies, private nonprofit organizations, and other entities or individuals for the purpose of providing assistive technology devices and assistive technology services consistent with this part.

(b) Applicants for development grants shall include the following assurances in their applications:

(1)(i) An assurance that the State will use funds from a development or extension grant to accomplish the purposes described in § 345.2(a) and the goals, objectives, and outcomes described in paragraph (a)(6) of this section, and to carry out the systems change and advocacy activities described in paragraph (a)(6)(ii) of this section, in a manner that is consumer-responsive.

(ii) An assurance that the State, in carrying out systems change and advocacy activities, shall carry out the following activities, unless the State demonstrates through the progress reports required under § 345.50 that significant progress has been made in the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance, and that other systems change and advocacy activities will increase the likelihood that the program will accomplish the purposes described in § 345.2(a):

(A) The development, implementation, and monitoring of State, regional, and local laws, regulations, policies, practices, procedures, and organizational structures, that will improve access to, provision of, funding for, and timely acquisition and delivery of, assistive technology devices and assistive technology services;

(B) The development and implementation of strategies to overcome barriers regarding access to, provision of, and funding for, such devices and services, with priority for identification of barriers to funding through State education (including special education) services, vocational rehabilitation services, and medical assistance services or, as appropriate, other health and human services, and with particular emphasis on overcoming barriers for underrepresented populations and rural populations;

(C) Coordination of activities among State agencies, in order to facilitate access to, provision of, and funding for, assistive technology devices and assistive technology services;

(D) The development and implementation of strategies to empower individuals with disabilities and their family members, guardians, advocates, and authorized representatives, to successfully advocate for increased access to, funding for, and provision of, assistive technology devices and assistive technology services, and to increase the participation, choice, and control of individuals with disabilities and their family members, guardians, advocates, and authorized representatives in the selection and procurement of assistive technology devices and assistive technology services;

(E) The provision of outreach to underrepresented populations and rural populations, including identifying and assessing the needs of such populations, providing activities to increase the accessibility of services to such populations, training representatives of such populations to become service providers, and training staff of the consumer-responsive comprehensive statewide program of technology-related assistance to work with such populations; and

(F) The development and implementation of strategies to ensure timely acquisition and delivery of assistive technology devices and assistive technology services, particularly for children.

(2) An assurance that the State will conduct an annual assessment of the consumer-responsive comprehensive statewide program of technology-related assistance, in order to determine—

(i) The extent to which the State's goals and objectives for systems change and advocacy activities, as identified in the State plan under paragraph (a)(6) of this section, have been achieved; and

(ii) The areas of need that require attention in the next year.

(3) An assurance that amounts received under the grant will be expended in accordance with the provisions of this part;

(4) An assurance that amounts received under the grant—

(i) Will be used to supplement amounts available from other sources that are expended for technology-related assistance, including the provision of assistive technology devices and assistive technology services; and

(ii) Will not be used to pay a financial obligation for technology-related assistance (including the provision of assistive technology devices or assistive technology services) that would have been paid with amounts available from other sources if amounts under the grant had not been available, unless—

(A) The payment is made only to prevent a delay in the receipt of appropriate technology-related assistance (including the provision of assistive technology devices or assistive technology services) by an individual with a disability; and

(B) The entity or agency responsible subsequently reimburses the appropriate account with respect to programs and activities under the grant in an amount equal to the amount of the payment;

(5) An assurance that—

(i) A public agency shall control and administer amounts received under the grant; and

(ii) A public agency or an individual with a disability shall—

(A) Hold title to property purchased with such amounts; and

(B) Administer such property.

(6) An assurance that the State will—

(i) Prepare reports to the Secretary in the form and containing information required by the Secretary to carry out the Secretary's functions under this part; and

(ii) Keep records and allow access to records as the Secretary may require to

ensure the correctness and verification of information provided to the Secretary under this paragraph of this section.

(7) An assurance that amounts received under the grant will not be commingled with State or other funds;

(8) An assurance that the State will adopt fiscal control and accounting procedures as may be necessary to ensure proper disbursement of an accounting for amounts received under the grant;

(9) An assurance that the State will—

(i) Make available to individuals with disabilities and their family members, guardians, advocates, or authorized representatives information concerning technology-related assistance in a form that will allow individuals to effectively use the information; and

(ii) In preparing information for dissemination, consider the media-related needs of individuals with disabilities who have sensory and cognitive limitations and consider the use of auditory materials, including audio cassettes, visual materials, including video cassettes and video discs, and braille materials.

(10) An assurance that, to the extent practicable, technology-related assistance made available with amounts received under the grant will be equitably distributed among all geographical areas of the State;

(11) An assurance that the lead agency will have the authority to use funds made available through a development or extension grant to comply with the requirements of this part, including the ability to hire qualified staff necessary to carry out activities under the program;

(12)(i) An assurance that the State will annually provide, from the funds made available to the State through a development or extension grant under this part, an amount calculated in accordance with section 102(f)(4) of the Act in order to make a grant to, or enter into a contract with—

(A) An entity to support protection and advocacy services through the systems established to provide protection and advocacy under the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 et seq.), the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10801 et seq.), and section 509 of the Rehabilitation Act of 1973 (29 U.S.C. 794e); or

(B) An entity described in § 345.55(a)(1).

(ii) The State need not provide the assurance in paragraph (b)(12)(i) of this section, if the State requests in its annual progress report or first or second extension application, as applicable, that the Secretary annually reserve, from the funds made available for a development or extension grant, an amount calculated in accordance with section 102(f)(4) of the Act, in order for the Secretary to make a grant to or enter into a contract with a system to support protection and advocacy services.

(13) An assurance that the State—

(i) Will develop and implement strategies for including personnel training regarding assistive technology within existing Federal- and State-funded training initiatives, in order to enhance assistive technology skills and competencies; and

(ii) Will document the training;

(14) An assurance that the percentage of the funds received under the grant that is used for indirect costs (as defined in OMB Circular A–87 incorporated by reference in 34 CFR 80.22(b)) shall not exceed 10 percent of the total amount of the grant; and

(15) An assurance that the lead agency will coordinate the activities funded through a development or extension grant under this part with the activities carried out by councils within the State, including—

(i) Any council or commission specified in the assurance provided by the State in accordance with section 101(a)(36) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(36));

(ii) The Statewide Independent Living Council established under section 705 of the Rehabilitation Act of 1973 (29 U.S.C. 796d));

(iii) The advisory panel established under section 613(a)(12) of the Individuals with Disabilities Education Act (20 U.S.C. 1413(a)(12));

(iv) The State Interagency Coordinating Council established under section 682 of the Individuals with Disabilities Education Act (20 U.S.C. 1482));

(v) The State Planning Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act (20 U.S.C. 6024);

(vi) The State mental health planning council established under section 1914 of the Public Health Service Act (42 U.S.C. 300x–3);

(vii) Any council established under section 204, 206(g)(2)(A), or 712(a)(3)(H) of the Older Americans Act of 1965 (42 U.S.C. 3015, 3017(g)(2)(A), or 3058g(a)(3)(H)).

(16) An assurance that there will be coordination between the activities funded through the grant and other related systems change and advocacy activities funded by either Federal or State sources.

(c) Applicants for development grants shall provide any other related information and assurances that the Secretary may reasonably require.

(Authority: 29 U.S.C. 2212(e); Section 102(e) of the Act)

345.31 What is the content of an application for an extension grant?

A State that seeks an extension grant shall include the following in an application:

(a) The information and assurances described in § 345.30, except the preliminary needs assessment described in § 345.30(a)(4).

(b) A description of the following:

(1) The needs relating to technology-related assistance of individuals with disabilities (including individuals from underrepresented populations or rural populations) and their family members, guardians, advocates, or authorized representatives, and other appropriate individuals within the State.

(2) Any problems or gaps that remain with the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance in the State.

(3) The strategies that the State will pursue during the grant period to remedy the problems or gaps with the development and implementation of a program.

(4) Outreach activities to be conducted by the State, including dissemination of information to eligible populations, with special attention to underrepresented populations and rural populations.

(5)(i) The specific systems change and advocacy activities described in § 345.20 (including the activities described in § 345.30(b)(1)) carried out under the development grant received by the State, or, in the case of an application for a second extension grant, under an initial extension grant received by the State under this section, including—

(A) A description of systems change and advocacy activities that were undertaken to produce change on a permanent basis for individuals with disabilities of all ages;

(B) A description of activities undertaken to improve the involvement of individuals with disabilities in the program, including training and technical assistance efforts to improve individual access to assistive technology devices and assistive technology services as mandated under other laws and regulations in effect on the date of the application, and including actions undertaken to improve the participation of underrepresented populations and rural populations, such as outreach efforts; and

(C) An evaluation of the impact and results of the activities described in paragraph (b)(5)(i)(A) and (B) of this section.

(ii) The relationship of systems change and advocacy activities to the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance.

(iii) The progress made toward the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance.

(6)(i) In the case of an application for an initial extension grant, a report on the hearing described in § 345.8(a)(2) or, in the case of an application for a second extension grant, a report on the hearing described in § 345.8(b)(2).

(ii) A description of State actions, other than a hearing, designed to determine the degree of satisfaction of individuals with disabilities, and their family members, guardians, advocates, or authorized representatives, public service providers and private service providers, educators and related service providers, technology experts (including engineers), employers, and other appropriate individuals and entities with—

(A) The degree of their ongoing involvement in the development and implementation of the consumer-responsive comprehensive statewide program of technology-related assistance;

(B) The specific systems change and advocacy activities described in § 345.20 (including the activities described in § 345.30(b)(1)) carried out by the State under the development grant or the initial extension grant;

(C) Progress made toward the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance; and

(D) The ability of the lead agency to carry out the activities described in § 345.6(b).

(c) A summary of any comments received concerning the issues described in paragraph (b)(6) of this section and response of the State to such comments, solicited through a public hearing or through other means, from individuals affected by the consumer-responsive comprehensive statewide program of technology-related assistance, including—

(1) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives;

(2) Public service providers and private service providers;

(3) Educators and related services personnel;

(4) Technology experts (including engineers);

(5) Employers; and

(6) Other appropriate individuals and entities.

(d) An assurance that the State, any recipient, and any subrecipient of funds made available to the State under the Act will comply with guidelines established under section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

(e)(1) A copy of the protection and advocacy contract or grant agreement entered into by the State;

(2) Evidence of ongoing negotiations with an entity to provide protection and advocacy services, if the State has not yet entered into a grant or contract; or

(3) A request that the Secretary enter into a grant agreement with an entity to provide protection and advocacy services, pursuant to § 345.30(b)(12)(ii).

(Authority: 29 U.S.C. 2213 (d) and (e); Section 103 (d) and (e) of the Act).

Subpart D—How Does the Secretary Make a Grant?

§ 345.40 How does the Secretary evaluate an application for a development grant under this program?

The Secretary evaluates each application using the selection criteria in 34 CFR 75.210.

(Authority: 29 U.S.C. 2212(a); Section 102(a) of the Act)

§ 345.41 What other factors does the Secretary take into consideration in making development grant awards under this program?

In making development grants under this program, the Secretary takes into consideration, to the extent feasible—

(a) Achieving a balance among States that have differing levels of development of consumer-responsive comprehensive statewide programs of technology-related assistance; and

(b) Achieving a geographically equitable distribution of the grants.

(Authority: 29 U.S.C. 2212(c); Section 102(c) of the Act)

§ 345.42 What is the review process for an application for an extension grant?

(a) The Secretary may award an initial extension grant to any State that—

(1) Provides the evidence described in § 345.6(b) and makes the demonstration described in paragraph (a)(2) of this section;

(2) Demonstrates that the State has made significant progress, and has carried out systems change and advocacy activities that have resulted in significant progress, toward the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance, consistent with this part; and

(3) Holds a public hearing in the third year of a program carried out under a development grant, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.

(b) The Secretary may award a second extension grant to any State that-(1) Provides the evidence described in § 345.6(b) and makes the demonstration described in paragraph (a)(2) of this section;

(2) Describes the steps the State has taken or will take to continue on a permanent basis the consumer-responsive comprehensive statewide program of technology-related assistance with the ability to maintain, at a minimum, the outcomes achieved by the systems change and advocacy activities;

(3) Identifies future funding options and commitments for the program from the public and private sector and the key individuals, agencies, and organizations to be involved in, and to direct future efforts of, the program; and

(4) Holds a public hearing in the second year of a program carried out under an initial extension grant, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.

(c) In making any award to a State for a second extension grant, the Secretary makes an award contingent on a determination, based on the on-site visit in § 345.53, that the State is making significant progress toward development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance, except where the Secretary determines that the on-site visit is unnecessary. If the Secretary determines that the State is not making significant progress, the Secretary may take an action described in § 345.61.

(Authority: 29 U.S.C. 2213 (b) and (e) and 2215(a)(2); Section 103 (b) and (e) and 105(a)(2) of the Act)

§ 345.43 What priorities does the Secretary establish?

(a) The Secretary gives, in each of the 2 fiscal years succeeding the fiscal year in which amounts are first appropriated for carrying out development grants, priority for funding to States that received development grants under this

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part during the fiscal year preceding the fiscal year concerned.

(b) For States that are applying for initial extension grants, the Secretary gives, in any fiscal year, priority to States that received initial extension grants during the fiscal year preceding the fiscal year concerned.

(c) The Secretary may establish other appropriate priorities under the Act.

(Authority: 29 U.S.C. 2212(b)(4) and 2213(c); Section 102(b)(4) and 103(c) of the Act)

Subpart E—What Conditions Must Be Met After an Award?

§ 345.50 What are the reporting requirements for the recipients of development and extension grants?

(a) States receiving development and extension grants shall submit annually to the Secretary a report that documents significant progress in developing and implementing a consumer-responsive comprehensive statewide program of technology-related assistance documenting the following:

(1) The progress the State has made, as determined in the State's annual assessment (consistent with the guidelines established by the Secretary under § 345.51) in achieving the State's goals, objectives, and outcomes as identified in the State's application, and areas of need that require attention in the next year, including unanticipated problems with the achievement of the goals, objectives, and outcomes described in the application, and the activities the State has undertaken to rectify these problems.

(2) The systems change and advocacy activities carried out by the State including—

(i) An analysis of the laws, regulations, policies, practices, procedures, and organizational structure that the State has changed, has attempted to change, or will attempt to change during the next year, to facilitate and increase timely access to, provision of, or funding for, assistive technology devices and assistive technology services; and

(ii) A description of any written policies and procedures that the State has developed and implemented regarding access to, provision of, and funding for, assistive technology devices and assistive technology services, particularly policies and procedures regarding access to, provision of, and funding for, such devices and services under education (including special education), vocational rehabilitation, and medical assistance programs.

(3) The degree of involvement of various State agencies, including the State insurance department, in the development, implementation, and evaluation of the program, including any interagency agreements that the State has developed and implemented regarding access to, provision of, and funding for, assistive technology devices and assistive technology services such as agreements that identify available resources for, assistive technology devices and assistive technology services and the responsibility of each agency for paying for such devices and services.

(4) The activities undertaken to collect and disseminate information about the documents or activities analyzed or described in paragraphs (a)(1) through (3) of this section, including outreach activities to underrepresented populations and rural populations and efforts to disseminate information by means of electronic communication.

(5) The involvement of individuals with disabilities who represent a variety of ages and types of disabilities in the planning, development, implementation, and assessment of the consumer-responsive comprehensive statewide program of technology-related assistance, including activities undertaken to improve such involvement, such as consumer training and outreach activities to underrepresented populations and rural populations.

(6) The degree of consumer satisfaction with the program, including satisfaction by underrepresented populations and rural populations.

(7) Efforts to train personnel as well as consumers.

(8) Efforts to reduce the service delivery time for receiving assistive technology devices and assistive technology services.

(9) Significant progress in the provision of protection and advocacy services, in each of the areas described in § 345.55(c)(1)(ii).

(b) The State shall make these reports readily available to the public at no extra cost.

(c) The State shall submit on an annual basis—

(1) A copy of the protection and advocacy contract or grant agreement entered into by the State;

(2) Evidence of ongoing negotiations with an entity to provide protection and advocacy services, if the State has not yet entered into a grant or contract; or

(3) A request that the Secretary enter into a grant agreement with an entity to provide protection and advocacy services, pursuant to § 345.30(b)(12)(ii).

(Authority: 29 U.S.C. 2212(e)(16)(A) and 2214(b); Sections 102(e)(16)(A) and 104(b) of the Act)

§ 345.51 When is a State making significant progress?

A State is making significant progress when it carries out—

(a) The systems change and advocacy activities listed in § 345.30(b)(1)(ii)(A) through (F); or

(b) Other systems change and advocacy activities, if the State demonstrates through the progress reports developed by the Secretary and required to be submitted by a State in § 345.50 that it has accomplished the purposes of the program listed in § 345.2(a).

(Authority: 29 U.S.C. 2212(e)(7) and 2214(a); Sections 102(e)(7) and 104(a) of the Act)

§ 345.52 Who retains title to devices provided under this program?

Title to devices purchased with grant funds under this part, either directly or through any contract or subgrant, must be held by a public agency or by an individual with a disability who is the beneficiary of the device. If the disabled individual does not have legal status to hold title, the title may be retained by a parent or legal guardian.

(Authority: 29 U.S.C. 2212(e)(12)(B); Section 102(e)(12)(B) of the Act)

§ 345.53 What are the requirements for grantee participation in the Secretary's progress assessments?

Recipients of development grants shall participate in the Secretary's assessment of the extent to which States are making significant progress by—

(a) Participating in the on-site monitoring visits that will be made to each grantee during the final year of the development grant;

(b) Participating in an on-site monitoring visit, that is in addition to the visit in paragraph (a), if the State applies for a second extension grant and whose initial on-site visit occurred prior to the date of the enactment of the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994, unless the Secretary determines that the visit is not necessary.

(c) Providing written evaluations of the State's progress toward fulfilling its goals and the objectives of the project, and such other documents as the Secretary may reasonably require to complete the required assessment.

(Authority: 29 U.S.C. 2215(a); Section 105(a) of the Act)

§ 345.54 How may grant funds be used under this program?

(a) States receiving funds under this part shall comply with the assurances provided under §§ 345.30 and 345.31.

(b) A State receiving a grant may make contracts or subgrants to the eligible entities in § 345.6, provided that—

(1) A designated public agency maintains fiscal responsibility and accountability; and

(2) All appropriate provisions related to data collection, recordkeeping, and cooperation with the Secretary's evaluation and program monitoring efforts are applied to all subcontractors and subgrantees as well as to the agency receiving the grant.

(Authority: 29 U.S.C. 2212(e), 2213(d), and 2215(a)(5); Sections 102(e), 103(d), and 105(a)(5) of the Act; Section 437 of the General Education Provisions Act; 20 U.S.C. 1232f)

§ 345.55 What are the responsibilities of a State in carrying out protection and advocacy services?

(a)(1) A State is eligible to receive funding to provide protection and advocacy services if—

(i) The State, as of June 30, 1993, has provided for protection and advocacy services through an entity that is capable of performing the functions that would otherwise be performed under § 345.30(b)(12) by the system described in that section; and

(ii) The entity referred to in § 345.30(b)(12)(i) is not a system described in that section.

(b) A State that meets both of the descriptions in paragraph (a)(1) of this section also shall comply with the same requirements of this part as a system that receives funding under § 345.30(b)(12).

(c)(1) A system that receives funds under § 345.30(b)(12)(i) to carry out the protection and advocacy services described in § 345.30(b)(12)(i) in a State, or an entity described in paragraph (a)(1) of this section, shall prepare reports that contain the information required by the Secretary, including the following:

(i) A description of the activities carried out by the system or entity with the funds;

(ii) Documentation of significant progress, in providing protection and advocacy services, in each of the following areas:

(A) Conducting activities that are consumer-responsive, including activities that will lead to increased access to funding for assistive technology devices and assistive technology services.

(B) Executing legal, administrative, and other appropriate means of representation to implement systems change and advocacy activities.

(C) Developing and implementing strategies designed to enhance the long-term abilities of individuals with disabilities and their family members, guardians, advocates, and authorized representatives to successfully advocate for assistive technology devices and assistive technology services to which the individuals with disabilities are entitled under law other than this Act.

(D) Coordinating activities with protection and advocacy services funded through sources other than this Act, and coordinating activities with the systems change and advocacy activities carried out by the State lead agency.

(2) The system or entity shall submit the reports to the lead agency in the State not less often than every 6 months.

(3) The system or entity shall provide monthly updates to the lead agency concerning the activities and information described in paragraph (c) of this section.

(d) Before making a grant or entering into a contract under § 345.30(b)(12)(ii) to support the protection and advocacy services described in § 345.30(b)(12)(ii) in a State, the Secretary shall solicit and consider the opinions of the lead agency in the State with respect to the terms of the grant or contract.

(e)(1) In each fiscal year, the Secretary specifies for each State receiving a development or an extension grant the minimum amount that the State shall use to provide protection and advocacy services.

(2)(i) Except as provided for in paragraphs (e) (3) and (4), the Secretary calculates this minimum amount based on the size of the grant, the needs of individuals with disabilities within the State, the population of the State, and the geographic size of the State.

(ii) The Secretary establishes a minimum amount for each State that ranges from at least $40,000 up to $100,000.

(3) If a State receives a second extension grant, the Secretary specifies a minimum amount for the fourth year (if any) of the grant period that equals 75 percent of the minimum amount specified for the State for the third year of the second extension grant of the State.

(4) If a State receives a second extension grant, the Secretary specifies a minimum amount for the fifth year (if any) of the grant period that equals 50 percent of the minimum amount specified for the State for the third year of the second extension grant of the State.

(5) After the fifth year (if any) of the grant period, no Federal funds may be made available under this title by the State to a system described in § 345.30(b)(12) or an entity described in paragraph (a) of this section.

(Authority: 29 U.S.C. 2212(f); Section 102(f) of the Act)

Subpart F—What Compliance Procedures May the Secretary Use?

§ 345.60 Who is subject to a corrective action plan?

(a) Any State that fails to comply with the requirements of this part is subject to a corrective action plan.

(b) A State may appeal a finding that it is subject to corrective action within 30 days of being notified in writing by the Secretary of the finding.

(Authority: 29 U.S.C. 2215(b)(1); Section 105(b)(1) of the Act)

§ 345.61 What penalties may the Secretary impose on a grantee that is subject to corrective action?

A State that fails to comply with the requirements of this part may be subject to corrective actions such as—

(a) Partial or complete termination of funds;

(b) Ineligibility to participate in the grant program in the following year;

(c) Reduction in funding for the following year; or

(d) Required redesignation of the lead agency.

(Authority: 29 U.S.C. 2215(b)(2); Section 105(b)(2) of the Act)

§ 345.62 How does a State redesignate the lead agency when it is subject to corrective action?

(a) Once a State becomes subject to a corrective action plan under § 345.60, the Governor of the State, subject to approval by the Secretary, shall appoint, within 30 days after the submission of the plan to the Secretary, a monitoring panel consisting of the following representatives:

(1) The head of the lead agency designated by the Governor;

(2) Two representatives from different public or private nonprofit organizations that represent the interests of individuals with disabilities;

(3) Two consumers who are users of assistive technology devices and assistive technology services and who are not—

(i) Members of the advisory council, if any, of the consumer-responsive comprehensive statewide program of technology-related assistance; or

(ii) Employees of the State lead agency; and

(4) Two service providers with knowledge and expertise in assistive technology devices and assistive technology services.

(b) The monitoring panel must be ethnically diverse. The panel shall select a chairperson from among the members of the panel.

(c) The panel shall receive periodic reports from the State regarding progress in implementing the corrective action plan and shall have the authority to request additional information necessary to determine compliance.

(d) The meetings of the panel to determine compliance shall be open to the public (subject to confidentiality concerns) and held at locations that are accessible to individuals with disabilities.

(e) The panel shall carry out the duties of the panel for the entire period of the corrective action plan, as determined by the Secretary.

(f) A failure by a Governor of a State to comply with the requirements of paragraphs (a) through (e) of this section results in the termination of funding for the State under this part.

(g) Based on its findings, a monitoring panel may determine that a lead agency designated by a Governor has not accomplished the purposes described in § 345.2(a) and that there is good cause for redesignation of the agency and the temporary loss of funds by the State under this part.

(h) For the purposes of this section, "good cause" includes the following:

(1) Lack of progress with employment of qualified staff;

(2) Lack of consumer-responsive activities;

(3) Lack of resource allocation to systems change and advocacy activities;

(4) Lack of progress with meeting the assurances in § 345.30(b); or

(5) Inadequate fiscal management.

(i) If a monitoring panel determines that the lead agency should be redesignated, the panel shall recommend to the Secretary that further remedial action be taken or that the Secretary order the Governor to redesignate the lead agency within 90 days or lose funds under this part. The Secretary, based on the findings and recommendations of the monitoring panel, and after providing to the public notice and opportunity for comment, shall make a final determination regarding whether to order the Governor to redesignate the lead agency. The Governor shall make any redesignation in accordance with the requirements that apply to designations under § 345.6.

(Authority: 29 U.S.C. 2215(c); Section 105(c) of the Act)

§ 345.63 How does a State change the entity responsible for providing protection and advocacy services?

(a) The Governor of a State, based on input from individuals with disabilities and their family members, guardians, advocates, or authorized representatives, may determine that the entity providing protection and advocacy services has not met the protection and advocacy service needs of the individuals with disabilities and their family members, guardians, advocates, or authorized representatives, for securing funding for and access to assistive technology devices and assistive technology services, and that there is good cause to provide the protection and advocacy services for the State through a contract with a second entity.

(b) On making the determination in paragraph (a) of this section, the Governor may not enter into a contract with a second entity to provide the protection and advocacy services unless good cause exists and unless—

(1) The Governor has given the first entity 30 days notice of the intention to enter into the contract, including specification of good cause, and an opportunity to respond to the assertion that good cause has been shown;

(2) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives, have timely notice of the determination and opportunity for public comment; and

(3) The first entity has the opportunity to appeal the determination to the Secretary within 30 days of the determination on the basis that there is not good cause to enter into the contract.

(c)(1) When the Governor of a State determines that there is good cause to enter into a contract with a second entity to provide the protection and advocacy services, the Governor shall hold an open competition within the State and issue a request for proposals by entities desiring to provide the services.

(2) The Governor shall not issue a request for proposals by entities desiring to provide protection and advocacy services until the first entity has been given notice and an opportunity to respond. If the first entity appeals the determination to the Secretary, the Governor shall issue such request only if the Secretary decides not to overturn the determination of the Governor. The Governor shall issue such request within 30 days after the end of the period during which the first entity has the opportunity to respond, or after the decision of the Secretary, as appropriate.

(3) The competition shall be open to entities with the same expertise and ability to provide legal services as a system in § 345.30(b)(12). The competition shall ensure public involvement, including a public hearing and adequate opportunity for public comment.

(Authority: 29 U.S.C. 2215(d); Section 105(d) of the Act)

[FR Doc. 96–4861 Filed 2–29–96; 8:45 am]
BILLING CODE 4000–01–P

federal register

Friday
March 1, 1996

Part V

Environmental Protection Agency

40 CFR Part 180

Pesticide Tolerances, Proposed Revocations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300415; FRL–5351–6]

RIN 2070–AB18

Pesticide Tolerances; Proposed Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA announces its decision on whether to propose revocation of 41 section 408 tolerances for 22 pesticides. Under EPA's policy concerning the coordination of its authorities under sections 408 and 409 of the Federal Food, Drug and Cosmetic Act (FFDCA), EPA proposes to revoke the following nine section 408 tolerances: dicofol on apples, grapes, and plums; mancozeb on oats and wheat; propargite on apples and figs; simazine on sugarcane; and triadimefon on wheat. These proposed revocations are one of a series of actions being taken in response to a decision of the Ninth Circuit Court of Appeals regarding the Delaney clause in section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA). EPA proposes to leave the remaining tolerances in place.

DATES: Written comments, identified by the docket number [OPP–300415], must be received on or before May 30, 1996.

ADDRESSES: By mail, submit comments to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: OPP Docket, Public Information Branch, Field Operations Division, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The telephone number for the OPP docket is (703) 305–5805. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2 and in section 10 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). For questions related to disclosure of materials, contact the OPP Docket at the telephone number given above. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in the OPP Docket, Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–300415]. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in [OPP–300415]. of this document.

FOR FURTHER INFORMATION CONTACT: By mail: Niloufar Nazmi, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St. SW., Washington, DC, 20460. Office location and telephone number: Crystal Station #1, 2800 Crystal Drive, Arlington, VA. Telephone 703–308–8028, nazmi@niloufar@epamail.epa.gov.

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I. Introduction

In this notice, EPA announces its decision whether 41 section 408 tolerances for 22 pesticides should be revoked under EPA's policy concerning the coordination of its authorities under sections 408 and 409 of FFDCA. For those tolerances that EPA has determined should be revoked, EPA is in this notice proposing revocation.

II. Background

A. Statutory Background

The Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 301 et seq.) authorizes the establishment of maximum permissible levels of pesticides in foods, which are referred to as "tolerances" (21 U.S.C. 346a, 348). Without such a tolerance or an exemption from a tolerance, a food containing a pesticide residue is "adulterated" under section 402 of the FFDCA and may not be legally moved in interstate commerce (21 U.S.C. 342). Monitoring and enforcement of pesticide residues are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA).

The FFDCA governs tolerances for raw agricultural commodities (RACs) and processed foods separately. For pesticide residues in or on RACs, EPA establishes tolerances, or exemptions from tolerances when appropriate, under section 408. For processed foods, food additive regulations (FARs) setting maximum permissible levels of pesticide residues are established under section 409. Section 409 FARs are needed, however, only for certain pesticide residues in processed food. Under section 402(a)(2) of the FFDCA, no section 409 FAR is required for pesticide residues carrying from raw to processed food if the residue in the processed food, when ready to eat, is equal to or below the section 408 tolerance for that pesticide in or on the RAC from which it was derived, and all other conditions of section 402(a)(2) are met. This exemption in section 402(a)(2) is commonly referred to as the "flow-through" provision because it allows the section 408 raw food tolerance to flow through to the processed food form. Thus, a section 409 FAR is necessary to prevent foods from being deemed adulterated when the concentration of the pesticide residue in a processed food carrying over from the RAC is greater than the tolerance prescribed for the RAC, or if the processed food itself is treated or comes in contact with a pesticide.

To establish a tolerance regulation under section 408, EPA must find that the regulation would "protect the public health." 21 U.S.C. 346a(b). In reaching this determination, EPA is directed to consider, among other things, the "necessity for the production of an adequate, wholesome, and economical food supply." Id. If a food additive regulation must be established, section 409 of the FFDCA requires that the use of the pesticide will be "safe" (21 U.S.C. 348(c)(3)). Section 409 also contains the Delaney clause, which specifically provides that, with little exception, "no additive shall be deemed safe if it has been found to induce cancer when ingested by man or animal" (21 U.S.C. 348(c)(3)).

B. EPA's Policy Concerning Coordination Of Its Authorities Under Sections 408 and 409 of the FFDCA

EPA traditionally has followed a policy of coordinating its authorities under section 408 and section 409 of the FFDCA. Thus, if use of a pesticide would result in residues in a RAC needing a section 408 tolerance and residues in a processed food needing a section 409 FAR, EPA would not approve either the section 408 tolerance or the section 409 FAR if EPA could not approve both. Similarly, EPA would not approve a FIFRA registration for a use of a pesticide if all needed tolerances and FARs connected with that use could not be approved.

In September 1992, the National Food Processors' Association (NFPA) and other food-related organizations filed a petition with EPA challenging the legality of EPA's coordination policy. In a policy statement issued on January 25, 1996, (61 FR 2378) EPA for the most part rejected the NFPA's arguments concerning the coordination policy. EPA will continue to coordinate its actions under sections 408 and 409. Where a pesticide needs a section 409 FAR but such FAR cannot be granted because of the Delaney clause, EPA generally will not grant, or allow to continue, the associated section 408 tolerance.

The critical issue in the application of the coordination policy is whether there is a likelihood of residues exceeding the section 408 tolerance in ready-to-eat (RTE) processed food. If there is such a likelihood of over-tolerance residues, EPA believes it is a reasonable interpretation of section 408 to conclude that the section 408 tolerance does not meet the statutory standard under section 408 ("protect the public health") and thus must be revoked. The criteria EPA follows in determining the likelihood that residues in processed food will exceed the section 408 tolerance are called the concentration policy. Until recently, EPA's concentration policy had focused almost entirely on the results of food processing studies and concentration factors derived from those studies. Concentration factors measure the ratio between residue levels in the processed food and the precursor raw crop (e.g., a concentration factor of 2 indicates that residues in the processed food are twice the level of residues in the raw crop). However, in responding to the NFPA petition on June 14, 1995 (60 FR 31300), EPA announced it would consider a far greater range of information in making the determination concerning the likelihood of residues in processed food exceeding the section 408 tolerance.

C. Regulatory Background

1. *Les v. Reilly.* On May 25, 1989, the State of California, the Natural Resources Defense Council (NRDC), Public Citizen, the AFL-CIO, and several individuals filed a petition requesting that EPA revoke several food additive regulations. The petitioners argued that these food additive regulations should be revoked because they violated the Delaney clause.

EPA responded to the petition by revoking certain food additive regulations, but retained several others on the grounds that the Delaney clause provides an exception for pesticide residues posing *de minimis* risk; EPA denied the petition with respect to the food additive regulations determined to fall under this exception. EPA's response was challenged by the petitioners in the U.S. Court of Appeals, Ninth Circuit. On July 8, 1992, the court ruled in *Les v. Reilly*, 968 F.2d 985 (9th Cir.), cert. denied, 113 S.Ct. 1361 (1993), that the Delaney clause barred the establishment of a food additive regulation for pesticides which "induce cancer" no matter how infinitesimal the risk. In response to the court's decision in *Les v. Reilly*, EPA has taken steps to identify and revoke all section 409 FARs for pesticides which "induce cancer." On March 30, 1994, EPA issued a list of pesticide uses which potentially could be affected by the court's decision. (59 FR 14980) (Note that, for the purpose of today's document, this list has been superseded by Appendices to the court-approved settlement in *California v. Browner.*) EPA has taken the following actions in response to *Les v. Reilly*:

(1) Revoked certain FARs of six pesticides that were the subject of the original NRDC petition. (58 FR 37862, July 14, 1993; 58 FR 59663, November 10, 1993; and 59 FR 10993, March 9, 1994-a number of these actions have been challenged in court or have been stayed).

(2) Proposed to revoke 26 FARs for seven pesticides (59 FR 33941, July 1, 1994).

(3) Proposed to revoke six FARs for four pesticides (60 FR 3607, January 18, 1995).

(4) Proposed to revoke two FARs for two pesticides as inconsistent with the Delaney clause and proposed to revoke 34 other FARs for 16 pesticides because the FARs were not needed to prevent the adulteration of food (60 FR 49142, September 21, 1995).

Having completed review (at least through the stage of issuing a proposed action) of the section 409 FARs identified as potentially inconsistent with the Delaney clause, EPA, in this notice, has focused its attention on the application of the coordination policy to the section 408 tolerances. Specifically, EPA is focusing on the section 408 tolerances associated with the section 409 FARs considered in the July 1994, January 1995, and September 21, 1995 notices, as well as several other section 408 tolerances identified previously as potentially affected by EPA's coordination policy. Today's notice announces decisions on 41 section 408 tolerances of 22 pesticides. These pesticides are summarized in Table 1 of Unit III of this document. EPA is proposing to revoke 9 section 408 tolerances for 5 pesticides and is proposing not to revoke the remaining 31 section 408 tolerances. The one remaining section 408 tolerance was previously revoked.

2. *California v. Browner.* In a court approved settlement, entered on February 9, 1995, in the case of *California v. Browner*, EPA agreed to make decisions regarding pesticides that may be affected by the Delaney clause. This settlement agreement includes appendices listing pesticides and uses upon which EPA must make decisions, and a timetable for making the decisions. The settlement required EPA to rule on the NFPA petition that challenged a number of policies under which EPA administers its tolerance-setting program. This proposal complies with the timeframes in the *California v. Browner* settlement.

On June 14, 1995, EPA published a partial response to the NFPA petition (60 FR 31300). The Agency concluded that some changes were warranted to its policies concerning application of the Delaney clause. On January 25, 1996 (61 FR 2378) EPA completed its response to the NFPA petition by reaffirming its coordination policy. Today's proposals are in accordance with EPA's responses to the NFPA petition.

III. Today's Action

In the *California v. Browner* settlement, EPA agreed to make decisions by April, 1997 concerning whether 81 section 408 tolerances violated EPA policies regarding the coordination of its authority under sections 408 and 409. The settlement recognized that these policies might be modified by EPA's response to the NFPA petition. Today's notice announces EPA's decisions regarding 41

of those tolerances (See Table 1 of this document.) EPA has treated the *California v. Browner* consent decree as the equivalent of a petition under section 408(e) requesting the reexamination of the legality, under the coordination policy, of the tolerances listed in the appendices to the decree. This notice, in effect, acts on the petition by proposing revocation of those tolerances that EPA has determined do not meet the statutory standard under section 408 and by proposing not to initiate a revocation proceeding against those tolerances to which EPA has found the coordination policy is inapplicable. EPA is seeking comment on both the proposed revocations and its proposed decisions not to revoke and will issue a final order following the receipt and review of such comments.

TABLE 1.—SECTION 408 RAW FOOD TOLERANCES IN THIS NOTICE.

Pesticide	Crop	CFR Cite	Proposed Decisions
Acephate.	Cottonseed	180.108	Retain
Alachlor	Sunflower seed.	180.249	Previously revoked
Benomyl	Citrus	180.294	Retain
.....	Rice	180.294	Retain
Captan ..	Grapes	180.103	Retain
.....	Tomatoes ..	180.103	Retain
Carbaryl	Pineapples .	180.169	Retain
Dicofol ..	Apples	180.163	Revoke
.....	Grapes	180.163	Revoke
.....	Plums	180.163	Revoke
.....	Tomatoes ..	180.163	Retain
Diflubenzuron.	Soybeans ..	180.377	Retain
Dimethipin.	Cottonseed	180.406	Retain
Ethylene Oxide.	Whole spices (direct treatment).	180.151	Retain
Iprodione	Peanuts	180.399	Retain
.....	Rice	180.399	Retain
Lindane .	Tomatoes ..	180.133	Retain
Mancozeb.	Barley	180.176	Retain
.....	Grapes	180.176	Retain
.....	Oats	180.176	Revoke
.....	Rye	180.176	Retain
.....	Wheat	180.176	Revoke
Maneb ..	Grapes	180.110	Retain
Methomyl.	Wheat	180.253	Retain
Norflurazon.	Grapes	180.356	Retain

TABLE 1.—SECTION 408 RAW FOOD TOLERANCES IN THIS NOTICE.—Continued

Pesticide	Crop	CFR Cite	Proposed Decisions
Oxyfluorfen.	Cottonseed	180.381	Retain
.....	Peppermint	180.381	Retain
.....	Spearmint ..	180.381	Retain
.....	Soybeans ..	180.381	Retain
PCNB ...	Tomatoes ..	180.319	Retain
Permethrin.	Tomatoes ..	180.378	Retain
Propargite.	Apples	180.259	Revoke
.....	Figs	180.259	Revoke
.....	Grapes	180.259	Retain
.....	Plums	180.259	Retain
Simazine	Sugarcane .	180.213	Revoke
Thiodicarb.	Cottonseed	180.407	Retain
.....	Soybeans ..	180.307	Retain
Triadimefon.	Grapes	180.410	Retain
.....	Wheat	180.410	Revoke
.....	Pineapple ..	180.410	Retain

In reviewing these 41 section 408 tolerances under its coordination pplicy, EPA's first step was to determine whether the section 409 FARs for such tolerances were needed. If a section 409 FAR is not needed in connection with a section 408 tolerance, the coordination policy would not be triggered because it only addresses the appropriate action to be taken where approvals are needed under both sections 408 and 409.

If EPA determined that a section 409 FAR is needed, EPA then determined whether a section 409 FAR for the pesticide in question would comply with the Delaney clause. If a needed section 409 FAR would violate the Delaney clause, EPA applied its coordination policy and has, where appropriate, proposed in this notice the revocation of each section 408 tolerance for which the Delaney clause bars the establishment or maintenance of a section 409 FAR.

IV. Determination of the Need For a Section 409 FAR

Because the coordination policy has no application to section 408 tolerances that do not need section 409 FARs, EPA has first examined whether each of the 41 section 408 tolerances need FARs under current Agency policies. The determination whether a section 409 FAR is needed to prevent a food from being considered adulterated primarily involves application of EPA's concentration policy. EPA applies the concentration policy to examine the likelihood that use of a pesticide on a raw agricultural commodity will result in residues in a processed food exceeding the section 408 tolerance.

A. Pesticide Uses that Do Not Need a Section 409 FAR

EPA has determined that its coordination policy does not warrant revoking 31 of the 41 section 408 tolerances because no section 409 FAR is needed for these tolerances. EPA has concluded that section 409 FARs are not needed principally for one of three reasons. First, for several pesticide/processed food combinations, EPA has received new processing studies indicating that residues in processed food are not likely to exceed the section 408 tolerance. Second, application of EPA's new concentration policy has shown that, for several of the pesticide uses, residues in processed food are not likely to exceed the section 408 tolerance. Third, several processing byproducts have been dropped from EPA's list of significant animal feed items and therefore FARs are no longer needed for these processed commodities. See 60 FR 49144.

In a proposed revocation published September 21, 1995 (60 FR 49142), EPA explained which of these factors applied to several of the section 409 FARs associated with section 408 tolerances addressed in this notice. Those FARs are listed in this unit with a cross-reference to the earlier notice. EPA has also evaluated additional pesticide uses having section 408 tolerances to determine where section 409 FARs would be needed. This notice includes explanations of EPA's conclusions regarding whether section 409 FARs are, or are not needed. A fuller explanation as to each pesticide use is included in the public docket.

B. Pesticide Uses Previously Found Not to Need Any Section 409 FARs

On September 21, 1995, EPA proposed to revoke the following FARs on the ground that no section 409 FAR was needed to prevent processed food from being considered adulterated: (1) Acephate on cottonseed hulls and cottonseed meal; (2) benomyl on dried citrus pulp and rice hulls; (3) carbaryl on pineapple bran; (4) diflubenzuron on soybean hulls and soybean soapstock; (5) dimethipin on cottonseed hulls; (6) iprodione on peanut soapstock, rice bran and rice hulls; (7) mancozeb on milled fractions of barley, oats, rye and wheat; (8) propargite on dried apple pomace and dried grape pomace; (9) thiodicarb on cottonseed hulls and soybean hulls; and (10) triadimefon on wet and dry grape pomace and raisin waste. 60 FR 49142, September 21, 1995).

Based on these determinations, EPA concludes that the following 10 section 408 tolerances have or need no other section 409 FARs and thus there is no reason under the coordination policy to revoke these tolerances: (1) Acephate on cottonseed; (2) benomyl on citrus; (3) carbaryl on pineapple; (4) diflubenzuron on soybeans; (5) dimethipin on cottonseed, (6) iprodione on peanuts and rice; (7) thiodicarb on cottonseed and soybeans; and (8) triadimefon on grapes.

It should be noted that unless all needed section 409 FARs can be approved, EPA will apply the coordination policy to revoke the underlying section 408 tolerance for the RAC. This means that even if EPA can determine that one section 409 FAR is not needed by application of the factors noted above, but other section 409 FARs continue to be needed, the coordination policy applies. For example, in the list above, propargite no longer requires a FAR on dried apple pomace because it is not a significant animal feed, but does require a FAR on wet apple pomace. Since the FAR on wet apple pomace is needed and violates the Delaney clause (see Unit IV.D. of this document), EPA is proposing to revoke the section 408 tolerance for propargite on apples.

C. Additional Pesticide Uses Found Not to Need Any Section 409 FARs

1. *Recent processing studies*— a. *oxyfluorfen on soybeans.* This use has a section 409 FAR for soybean oil. Based on a new processing study, EPA has determined that the concentration factor for oxyfluorfen residues in soybean oil compared to soybeans is less than one. Therefore, EPA concludes that residues in soybean oil are unlikely to exceed the section 408 tolerance and no section 409 FAR is needed for soybean oil. Oxyfluorfen on soybeans has or needs no other section 409 FARs.

b. *Benomyl on rice.* This use was previously identified as needing a section 409 FAR for rice bran. Based on a new processing study, EPA has determined that the concentration factor for benomyl residues in rice bran compared to rice is less than one. Therefore, no section 409 FAR is needed for rice bran. As noted above, EPA determined in the September 1995 notice that no section 409 FAR is needed for benomyl on rice hulls. Benomyl on rice has or needs no other section 409 FARs.

c. *Propargite on plums.* This use was previously identified as needing a section 409 FAR for prunes. Based on a new processing study, EPA has determined that the concentration factor for propargite on prunes compared to plums is less than one. Therefore, no section 409 FAR is needed for prunes. Propargite on plums has or needs no other section 409 FARs.

2. *Revised concentration policy.* EPA's concentration policy is used to determine whether a section 409 FAR is necessary. EPA's determination focuses on the likelihood that residue levels in the processed food will exceed the associated section 408 tolerance level. In determining the likelihood of tolerance exceedance, EPA now considers the averaging of residue values that results from the blending of crops (highest average field trial or HAFT), average concentration factor (from multiple processing studies), and the dilution of residues that occurs when a not ready-to-eat processed food is made into ready-to-eat food. Below EPA explains which of those factors resulted in the determination that section 409 FARs are not needed for the following section 408 tolerances.

a. *Captan on grapes.* This use has section 409 FARs for pre-harvest treatment of grapes and post-harvest treatment of raisins.

Pre-harvest treatment of grapes. EPA has reconsidered the available grape/raisin processing studies and has determined that only those studies that involve washing the fruit after it has been dried in the field reflect current processing practices. When those data which include a washing step were used to evaluate the need for a section 409 FAR for raisins, the average concentration factor for residues of captan *per se* on washed raisins is less than one. Therefore, no section 409 FAR is needed for residues from pre-harvest treatment. The Captan Task Force has petitioned EPA to revoke the section 409 FAR to the extent it is premised on pre-harvest treatment of grapes and EPA will be acting on that petition shortly.

Post-harvest treatment of raisins. EPA has received a petition from the Captan Task Force requesting revocation of the section 409 FAR covering the post-harvest treatment of raisins because, they claim, captan is not used on drying raisins and the FAR is outdated and erroneous. EPA agrees with the Petitioner and will shortly publish its formal determination that no FAR is needed for post-harvest treatment in a final rule.

Grape juice. After examining 17 processing studies, EPA has determined that the average concentration factor in juice is less than one. Therefore, this FAR is not needed. Captan on grapes has or needs no other section 409 FARs.

b. *Mancozeb on barley and rye.* There are section 409 FARs for residues of mancozeb on bran, flour and milled fractions as an animal feed.

Flours of barley and rye. After examining several processing studies involving mancozeb residues on grains, EPA has determined that the average concentration factor for the processing of flours is less than one. Therefore, the section 409 FARs are not needed for these flours.

Brans of barley and rye. The use of mancozeb on barley and rye have section 409 FARs for bran. On May 19, 1993, EPA published the receipt of a petition requesting the revocation of brans of barley and rye on the basis that they are not needed (58 FR 29318). EPA has determined that rye bran is not a significant human food item. EPA has also determined that both rye and barley bran are not RTE foods and that once they are prepared to their RTE forms, mancozeb residues are unlikely to exceed the section 408 tolerances for rye and barley grains. Therefore, the section 409 FARs for mancozeb on brans of barley and rye are not needed and EPA will soon be publishing a **Federal Register** notice revoking them.

Mancozeb on barley and rye has or needs no other section 409 FARs.

c. *Methomyl on wheat.* This use does not have a section 409 FAR for wheat bran but was previously identified as needing one. EPA has multiplied the HAFT by the average concentration factor to calculate the expected residue levels in bran. The data show that residues in bran are not likely to significantly exceed the section 408 tolerance and therefore a section 409 FAR for bran is not required. Methomyl on wheat has or needs no other section 409 FARs.

d. *Oxyfluorfen on cottonseed, peppermint, and spearmint.* The uses of oxyfluorfen on cottonseed, peppermint, and spearmint have section 409 FARs for oils produced from these crops. EPA has determined that cottonseed oil, peppermint oil, and spearmint oils are not RTE human foods and once in their RTE forms, the residues of oxyfluorfen are unlikely to exceed the section 408 tolerences. EPA will soon be acting on a petition requesting revocation of these FARs on these grounds. Oxyfluorfen on cottonseed, peppermint, and spearmint have or need no other section 409 FARs.

The Agency believes that most refined oils (e.g., soybean oil, olive oil) should be considered RTE commodities based on their availability to the general public in typical grocery stores and subsequent use on salads. The latter use

is very similar to condiments, which the Agency noted in its June 1995 response to the NFPA petition should be considered RTE foods. In this notice, EPA for the first time makes a RTE determination for cottonseed oil. Unlike most other refined oils, cottonseed oil has very limited availability in grocery stores. The National Cottonseed Products Association (NCPA) has estimated that only 0.1% of all U.S. cottonseed oil production is sold at the grocery store level. NCPA has informed the Agency that most cottonseed oil is used by the snack food industry. As an example, it is a good frying medium for production of potato chips. Based on its almost exclusive use by the food processing industry, the Agency has determined that cottonseed oil is not ready to eat. As noted above, EPA believes that most other refined oils should be considered ready to eat. The Agency is requesting public comment and information on whether oils such as soybean, peanut, olive and corn should be considered ready to eat.

e. *Propargite on grapes.* This use has a section 409 FAR for raisins. EPA has multiplied the HAFT by the average concentration factor to calculate the expected residue levels in raisins. The data show that residues in raisins are not likely to exceed the section 408 tolerance for grapes and therefore a section 409 FAR is not needed. EPA will soon be publishing a **Federal Register** notice revoking this FAR. The section 409 FAR for dry grape pomace was proposed for revocation in September 21, 1995. Propargite on grapes has or needs no other section 409 FARs.

3. *Insignificant animal feeds.* As explained above, several processing byproducts (including tomato pomace, dried grape pomace, and raisin waste) have been dropped from EPA's list of significant animal feed items and therefore their section 409 FARs are not needed. Table 2 of this unit lists section 408 tolerances with the corresponding animal feeds that do not need section 409 FARs: (1) Captan on grapes does not need a raisin waste FAR; (2) captan on tomatoes does not need a dry tomato pomace FAR; (3) dicofol on grapes does not need a dry grape pomace or a raisin waste FAR; (4) dicofol on tomatoes does not need a dry/wet tomato pomace FAR; (5) lindane on tomatoes does not need a dry tomato pomace FAR; (6) mancozeb on grapes does not need a raisin waste FAR; (7) maneb on grapes does not need a raisin waste FAR; (8) norflurazon on grapes does not need a raisin waste FAR; (9) PCNB on tomatoes does not need a dry tomato pomace FAR; (10) permethrin on tomatoes does not need dry/ wet tomato pomace FAR; and (11)Propargite on grapes does not need a raisin waste FAR. If no other section 409 FARs are needed, the coordination policy does not require revocation of the section 408 tolerances.

4. *Other*— a. *Alachlor on sunflower seeds.* This tolerance was revoked on August 3, 1994 (59 FR 39464).

b. *Ethylene oxide on raw whole spices.* Ethylene oxide is used as direct treatment of raw whole spices and processed ground spices. Ethylene oxide has both a section 408 tolerance (raw whole spices) and a section 409 FAR (processed ground spices). The FAR, however, is needed only for direct treatment of processed ground spices and not because of any concern that treatment of raw whole spices will lead to residues in processed spices at a level exceeding the section 408 tolerance. The residues of ethylene oxide in processed ground spices from treatment of whole raw spices are not expected to exceed the section 408 tolerance.

c. *Triadimefon on pineapple.* Pure pineapple bran is no longer considered a significant feed item and has been dropped from the list of significant feed items in the Agency's Residue Chemistry Guidelines. However, EPA has added pineapple process residue to this table of significant feed items because the Agency has determined that the material typically fed to livestock is pineapple process residue. This feed item consists of tops (minus crowns), bottoms, trimmings, pulp (remaining after squeezing for juice), and, in some cases, cull pineapples. Since the processing study for triadimefon in pineapples shows that residues do not concentrate in the process residue, a section 409 FAR is not needed. Triadimefon on pineapple has or needs no other section 409 FARs.

Table 2 below summarizes the section 408 raw food tolerances that EPA is not proposing to revoke under its coordination policy.

TABLE 2.—SECTION 408 RAW FOOD TOLERANCES BEING PROPOSED FOR RETENTION

Pesticide	Raw commodity	
	Crop	CFR cite
Acephate	Cottonseed	180.108
Benomyl	Citrus	180.294
	Rice	180.294
Captan	Grapes	180.103
	Tomatoes	180.103
Carbaryl	Pineapples	180.169
Dicofol	Tomatoes	180.163
Diflubenzuron	Soybeans	180.377
Dimethipin	Cottonseed	180.406
Ethylene Oxide	Whole spices (direct treatment).	180.151
Iprodione	Peanuts	180.399
	Rice	180.399
Lindane	Tomatoes	180.133
Mancozeb	Barley	180.176
	Grapes	180.176
	Rye	180.176
Maneb	Grapes	180.110
Methomyl	Wheat	180.253
Norflurazon	Grapes	180.356
Oxyfluorfen	Cottonseed	180.381
	Peppermint	180.381
	Spearmint	180.381
	Soybeans	180.381
PCNB	Tomatoes	180.319
Permethrin	Tomatoes	180.378
Propargite	Grapes	180.259
	Plums	180.259
Thiodicarb	Cottonseed	180.407
	Soybeans	180.407
Triadimefon	Grapes	180.410
	Pineapple	180.410

D. Pesticide Uses that Need a Section 409 FAR

EPA has determined that under its revised concentration policy the pesticide uses listed in this unit need section 409 FARs to prevent the adulteration of processed food.

In analyzing the need for section 409 FARs, EPA has taken into account not only existing section 408 tolerances but also available residue data bearing on whether the current section 408 tolerance should be revised under existing tolerance-setting policies. EPA has received large amounts of residue data as part of the reregistration program. Review of these data shows that, in several instances, the existing section 408 tolerance is set either too high or too low. Tolerance adjustments would normally be accomplished through the reregistration program.

EPA, however, sees no reason to wait until these tolerances are formally revised to determine whether the pesticide concentrates for the purpose of applying the coordination policy. EPA has decided that it should base its concentration decision upon the most recent data on residues in raw crops. If those data indicate that section 408 tolerances should be adjusted, EPA has used the adjusted section 408 tolerance level as the basis for its determination of whether a section 409 FAR is needed. The basis for EPA's determination that the tolerance should be adjusted is in the docket.

In two cases (dicofol/plums and mancozeb/oats), the level of residues in the processed food is between the current section 408 tolerance and an adjusted lower 408 tolerance. If EPA were to make its determination of the need for a section 409 FAR based on the current higher tolerance, EPA might in this notice decide that revocation was not warranted only to have to revise that determination in the near future once the overall tolerance reassessment for the pesticide is complete. Once the overall tolerance reassessment for the pesticide is complete, EPA would take the identical action proposed here: EPA would explain why the tolerance needed to be lowered but then propose to revoke the existing tolerance because amending the existing tolerance would not be consistent with the coordination policy.

In two other cases (dicofol/apples and propargite/apples), the level of residues in the processed food is higher than both the current and adjusted section 408 tolerances. In this case, adjusting the tolerance is irrelevant to the need for a section 409 FAR. Nonetheless, in all situations where a tolerance needs to be adjusted (whether raised or lowered), EPA believes the focus of the coordination policy analysis should be the tolerance value that would be set taking into account the most current data.

1. *Dicofol on apples.* The current section 408 tolerance for dicofol on apples is 5 ppm (40 CFR 180.163). Evaluation of new residue data indicates that the tolerance should be raised to 7 ppm.

This use needs a section 409 FAR for wet apple pomace. When apples are processed, residues may concentrate in both wet and dried apple pomace, with a greater potential concentration in dried apple pomace. A section 409 FAR for dried apple pomace would therefore cover the lower level of residues in wet apple pomace. In years past EPA often did not establish a separate section 409 FAR for wet apple pomace, which tended to obscure the fact that wet pomace itself was regarded by EPA as a significant animal feed. More recently, tolerance listings for apple pomace have included both wet and dried pomace, either with a single tolerance level based on the dried apple pomace or separate tolerance levels.

EPA determined in its June 1994 revision to the Residue Chemistry Guidelines Table II (June 8, 1994; 59 FR 29603) and reaffirmed in September 1995 (September 21, 1995; 60 FR 49150) that dried apple pomace is not a significant animal feed. FARs for dried apple pomace will eventually be revoked because they are not needed. However, without a FAR for dried pomace, wet apple pomace needs a FAR. Under the criteria of both the June 1994 and the September 1995 Table II, wet apple pomace is considered a significant animal feed. This is not a new determination by EPA; however, the decision to remove dried apple pomace highlighted the continued status of wet apple pomace as a significant animal feed. Wet apple pomace is also considered a RTE animal feed.

Dicofol currently has no FARs for apple pomace, wet or dried. Under the new Residue Table II, no FAR is needed for dried apple pomace, but one is needed for wet apple pomace. The average concentration factor in the processing of wet apple pomace is 6.6 and the HAFT for dicofol on apples is 2.32. Because multiplying the average concentration factor by the HAFT exceeds the adjusted section 408 tolerance of 7 ppm for dicofol on apples, EPA believes that it is likely that some wet apple pomace will contain residues exceeding the adjusted tolerance level.

2. *Dicofol on grapes.* This use needs a section 409 for raisins. The average concentration factor in the processing of raisins is 6.6 and the HAFT for dicofol on grapes is 3.02. Because multiplying the average concentration factor by the HAFT exceeds the section 408 tolerance for dicofol on grapes (5 ppm), EPA believes that it is likely that some raisins will contain residues exceeding the tolerance.

3. *Dicofol on plums.* The current section 408 tolerance for dicofol on plums is 5 ppm (40 CFR 180.163). Evaluation of new residue data indicates that the tolerance should be reduced to 1 ppm. This use needs a section 409 FAR for prunes. The average concentration factor in the processing of prunes is 3.1 and the HAFT for dicofol on plums is 0.79. Because multiplying the average concentration factor by the HAFT exceeds the adjusted section 408 tolerance for dicofol on plums, EPA believes that it is likely that some prunes will contain residues exceeding the adjusted tolerance level.

4. *Mancozeb on oats.* The current section 408 tolerance for mancozeb on oat grain is 5 ppm (40 CFR 180.176). Evaluation of new residue data indicates that the tolerance should be reduced to 1 ppm. This use has a section 409 FAR for oat bran and oat flour. EPA believes that the bran FAR is needed under its concentration policy but the flour FAR is not. EPA considers oat bran a significant human food item which is RTE. The average concentration factor in the processing of oat bran is 2 and the HAFT for mancozeb on oats is 0.98 ppm. Because multiplying the average concentration factor by the HAFT exceeds the adjusted section 408 tolerance for mancozeb on oats, EPA believes that it is likely that some oat bran will contain residues exceeding the recommended tolerance level. After examining several processing studies involving mancozeb residues on grains, EPA has determined that the average concentration factor for the processing of flours is less than one.

In addition to a section 408 tolerance for oat grain, mancozeb has a section 408 tolerance for oat straw. EPA believes that straw production cannot be separated from grain production because oat grain and straw are harvested simultaneously from the mature plant. Oats would not be grown solely for straw considering its low value relative to grain. Therefore, it is not practical to limit use of a pesticide to oats grown for straw and the Agency is proposing to revoke the oat straw tolerance for mancozeb.

5. *Mancozeb on wheat.* The current section 408 tolerance for mancozeb on wheat grain is 5 ppm (40 CFR 180.176). Evaluation of new residue data indicates that the tolerance should be reduced to 1 ppm. This use has a section 409 FAR for wheat flour. EPA believes that the flour FAR is not needed under its concentration policy. After examining several processing studies involving mancozeb residues on grains, EPA has determined that the average concentration factor for the processing of flours is less than one. The section 409 FAR for wheat bran was revoked on July 14, 1993 (58 FR 37682) because it violated the Delaney clause. The bran FAR is needed to prevent the adulteration of wheat bran. Multiplying the average concentration factor in the processing of wheat bran (2) times the HAFT for mancozeb on wheat (0.97 ppm) yields a result exceeding the adjusted tolerance level (1 ppm).

In addition to a section 408 tolerance for wheat grain, mancozeb has a section 408 tolerance for wheat straw. Wheat production is similar to oat production with respect to straw, and EPA is therefore proposing to revoke the section 408 tolerance for mancozeb on wheat straw.

6. *Propargite on apples.* The current section 408 tolerance for propargite on

apples is 3 ppm (40 CFR 180.259). Evaluation of new residue data indicates that the tolerance should be raised to 20 ppm.

This use currently has a section 409 FAR for dried apple pomace, which covers residues in wet apple pomace. The FAR for dried apple pomace is not needed; without the FAR for dried pomace, a FAR for wet apple pomace is needed. The average concentration factor in the processing of wet apple pomace is 5 and the HAFT for propargite on apples is 13.4 ppm. Because multiplying the average concentration factor by the HAFT exceeds the adjusted section 408 tolerance for propargite on apples, EPA believes that it is likely that some wet apple pomace will contain residues exceeding the tolerance.

7. *Propargite on figs.* This use has a section 409 FAR for dried figs and EPA believes that this FAR is needed under its concentration policy. The average concentration factor in the processing of dried figs is 2.7 and the HAFT for propargite on figs is 1.8 ppm. Because multiplying the average concentration factor by the HAFT exceeds the section 408 tolerance for propargite on figs (3 ppm), EPA believes that it is likely that some dried figs will contain residues exceeding the tolerance.

8. *Simazine on sugarcane.* This use has a corresponding section 409 FAR for molasses as human food and animal feed and previously was identified as needing FARs for syrup and bagasse. EPA considers molasses to be a RTE food and feed item. The average concentration factor in the processing of molasses is 10. A determination of the HAFT has not been made since the concentration factor is so large that the HAFT multiplied by that number is certain to appreciably exceed the section 408 tolerance (.25 ppm).

EPA expects that in most cases the HAFT will not be lower than the tolerance by a factor of two. This conclusion is based on EPA's experience with setting 408 tolerances (i.e., how they are derived based on the highest residue values) and with the relationships between average residues in field trials and either tolerances or maximum field trial residues, which are usually close to the tolerance. In most cases, average residues across all field trials for a given crop are 2 to 6 times less than a tolerance or maximum field trial value. The highest average field trial (HAFT) will be higher than the average residue across all trials. Therefore, in this particular case the Agency is confident that 10 times the HAFT will be appreciably higher than the 408 tolerance. Examples of the relationships between average residues and tolerances or maximum field trial residues will be placed in the docket for this notice. EPA's conclusion regarding the level of simazine residues in sugarcane molasses is confirmed by a processing study in which sugarcane treated at the maximum application rate showed total residues of 0.63 ppm in molasses, well above the 0.25 ppm sugarcane tolerance. Therefore, EPA believes that it is likely that some molasses will contain residues exceeding the tolerance. Sugarcane syrup is not considered a significant human food and therefore no section 409 FAR is needed. Bagasse is not considered a significant animal feed.

9. *Triadimefon on wheat.* This use has a section 409 FAR for milled fractions of wheat. EPA considers milled fractions of wheat to be RTE human food (i.e. bran). The average concentration factor in the processing of milled fractions of wheat is 3.7 and the HAFT for triadimefon on wheat is 0.6 ppm. Because multiplying the average concentration factor by the HAFT exceeds the section 408 tolerance for triadimefon on wheat (1.0 ppm), EPA believes that it is likely that some milled fractions will contain residues exceeding the tolerance.

In addition to a section 408 tolerance for wheat grain, triadimefon also has section 408 tolerances for wheat green forage and straw. EPA is proposing to revoke the section 408 tolerance for triadimefon on wheat straw for the same reasons given for mancozeb. However, wheat forage in some areas is grown solely for the purpose of producing forage, and not grown to maturity to produce wheat grain. Some is grown in mixed stands with other grassy crops such as ryegrass, making it impractical to produce wheat grain from such fields. Based on these agronomic practices, EPA believes that a pesticide label restriction limiting the use of triadimefon to wheat grown for forage is practical. Therefore, EPA is not proposing to revoke the section 408 tolerance for triadimefon on wheat green forage even though the grain and straw tolerances are proposed for revocation.

V. Delaney Clause Determinations For Needed Section 409 FARs

A. Induce cancer

For each of the pesticides listed in Unit IV.D., section 409 FARs are either established or needed. In a number of published proposed revocations, EPA has previously determined that the five pesticides "induce cancer" within the meaning of the Delaney clause (59 FR 10993; 59 FR 33941; 60 FR 3607). Full copies of each of these reviews and other references in this document are available in the OPP Docket, the location of which is given under 'ADDRESSES" above. Information on dicofol is contained in OPP Docket OPP–300238, on mancozeb, propargite and simazine in OPP Docket OPP–300335, and on triadimefon in OPP Docket OPP–300360.

EPA is currently considering comments on the proposed revocations of section 409 FARs for propargite, mancozeb, simazine and triadimefon.

B. DES Proviso

EPA may establish or maintain a section 409 FAR for a pesticide that induces cancer if the *DES proviso* excepts the FAR from the Delaney clause. Thus, when a pesticide needing a FAR is found to induce cancer, EPA must determine if the FAR is nonetheless excepted from the Delaney clause prohibition by the *DES proviso.*

The *DES proviso* applies to a FAR when no detectable residues are expected in the animal commodities (meat, milk, poultry, eggs) as a result of animal consumption of feeds containing residues permitted by the FAR (60 FR 49142, September 21, 1995). If no detectable residues of the chemical can be found in the animal commodities, the FAR can be maintained or established.

The nine pesticide uses listed in Unit IV. D of this document have or need section 409 FARs that are or would be inconsistent with the Delaney clause. However, only three of these FARs are for animal feed items and thus have been further analyzed to determine whether they are allowed under the DES proviso.

1. *Dicofol on wet apple pomace.* EPA concludes that the DES proviso would not except the dicofol FAR from the Delaney clause. A dicofol FAR for wet apple pomace does not qualify because detectable residues in animal commodities are expected as a result of feeding treated wet apple pomace to animals. A memorandum explaining EPA's analysis is included in the docket.

2. *Propargite on wet apple pomace.* EPA concludes that the DES proviso does not except the propargite FAR from the Delaney clause. The propargite FAR does not qualify because detectable residues in animal commodities are expected as a result of feeding propargite treated wet apple pomace to animals. A memorandum explaining EPA's analysis is included in the docket.

3. *Simazine on molasses.* EPA has previously concluded that the DES proviso does not except the simazine FAR from the Delaney clause. (60 FR 49142, September 21, 1995).

VI. Proposed Revocations

A. Section 408 Tolerances

EPA proposes that the nine section 408 tolerances listed in Table 3 of this unit be revoked. EPA no longer believes that these tolerances meet the statutory standard under section 408 ("protect the public health") because use of a pesticide under these tolerances is likely to result in residues in processed food exceeding such tolerance. Such residues will render the processed food adulterated under the FFDCA unless there is a section 409 FAR. Some of the nine section 408 tolerances have existing section 409 FARs that are inconsistent with the Delaney clause and they will be or have been revoked. The others need FARs but such FARs have not been, and under the Delaney clause cannot be, established.

As EPA explained in its recent statement on the coordination policy, (January 25, 1996, 61 FR 2378) it believes that, if the use of a pesticide under a section 408 tolerance is likely to result in residues in a processed food which Congress has, in the clearest terms, deemed unacceptable, Congress' heightened concern regarding such residues in processed food must be taken into account in determining whether the section 408 tolerance complies with the statutory standard for establishing or maintaining tolerances under section 408. Moreover, EPA believes that where evaluation of available data indicate that residues in processed food can exceed the section 408 tolerance, Congress' heightened concern about such residues is determinative of the finding under the section 408 standard, absent some extraordinary impact upon the food supply. EPA believes that its revised concentration policy (60 FR 31300, June 14, 1995) involves a reasonable approach to determining the likelihood of residues in processed food exceeding the associated section 408 tolerance. EPA expressly noted its willingness to use all relevant and appropriate data in examining this question. For example, EPA stated it would, where appropriate, consider some type of average residue value, average concentration values, and dilution factors for not RTE food.

Because EPA has concluded that the application of its concentration policy to each of the nine section 408 tolerances in the following Table 3 has shown that residues in processed food can exceed the section 408 tolerance and because removal of these uses is unlikely to have a significant, much less extraordinary, impact on the food supply, EPA is proposing to revoke these section 408 tolerances because they fail to meet the section 408 standard for establishing or maintaining tolerances.

TABLE 3.—SECTION 408 TOLERANCES PROPOSED FOR REVOCATION

Pesticide	Raw Crop	CFR Cite
Dicofol	Apples	180.163
	Grapes	180.163
	Plums	180.163
Mancozeb	Oats	180.176
	Wheat	180.176
Propargite	Apples	180.259
	Figs	180.259
Simazine	Sugarcane	180.213
Triadimefon	Wheat	180.410

B. Impacts

As noted in Unit IV.D. of this document, evaluation of the nine pesticide uses listed in Table 3 of this document, under EPA's concentration policy yields the conclusion that, in all likelihood, residues in processed food can exceed the associated section 408 tolerance. For these pesticide uses, EPA also examined what the impact on the food supply would be if these uses were disallowed. EPA has concluded that removal of the uses would have little or no impact on the price or availability of food to the consumer. In fact, removal of most of these uses is not expected to have much effect on growers. For four of the uses no impact is expected. For the other five, the impact will be minor. Some individual apple, fig, and wheat growers may incur significant impacts. See Unit IX. A. below for details.

VII. Consideration of Comments

Any interested person may submit comments on the proposed revocations of tolerance or EPA's decisions not to revoke certain tolerances on or before May 30, 1996 at the address given under the "ADDRESSES" section above. Before issuing final orders, EPA will consider all relevant comments. After consideration of comments, EPA will issue a final order. Such order will be subject to objections pursuant to section 409(f) (21 U.S.C. 348(f)). Failure to file an objection within the appointed period will constitute waiver of the right to raise issues resolved in the order in future proceedings.

VIII. Public Docket

A record has been established for this rulemaking under docket number [OPP–300415] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

A. Executive Order 12866

EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 (58 FR 51735, October 4, 1993). Any comments or changes made during that review have been documented in the public record.

EPA has evaluated the economic impacts of this particular action for the nine proposed revocations. Below is a summary of the results of the economic analysis by crop.

Apples. The most significant economic impacts of the 408 tolerances currently proposed for revocation are expected on apples from the loss of propargite and dicofol. Eight states produce more than 70% of the apples grown in the United States; regionally, these include the Northwest (CA, OR and WA), Michigan in the Midwest, and the New York/Pennsylvania and North/South Carolina areas of the East.

In these areas, losses will be more acute for propargite which is used on 29% of the overall acreage, but up to 50% of the acreage in New York and Michigan. Dicofol, on the other hand, averages use on only 5% of the overall acreage, with a range of 3% - 9% in the major producing states.

The most likely chemical alternatives are projected to be fenbutatin-oxide, formetanate hydrochloride, and oxythioquinox. These alternatives are more toxic than propargite and dicofol to some beneficial insects in some states, but would likely be used as replacements in most cases. There are mixed results on efficacy of the alternatives compared to propargite and dicofol for controlling mite pests from field trials. Many trials suggest the alternatives have equal or superior efficacy, while some others suggest that propargite and dicofol are superior. The Agency assumed a three percent yield loss due to substitution of the alternatives, resulting in a projected loss of nearly $16 million annually to current users of propargite and dicofol. This may overstate potential yield loss because the data on the relative efficacy of these pesticides are mixed. This figure does not include losses from higher toxicity of alternatives to beneficial insects, or increased development of resistance to the remaining alternatives. Alternatives are approximately the same or lower cost than propargite and dicofol, so that there would be little increased cost for alternatives.

Figs. Since there are no miticide alternatives to propargite, annual loss to growers could be up to $100,000 in those years when mite pressures are high.

Wheat. Triadimefon use on wheat is insignificant. Mancozeb is used on less than 5% of the wheat acres, and numerous alternatives, some of which may be more efficacious than mancozeb, are available.

Grapes. Impacts will be limited to the loss of dicofol, which is expected to cause only marginal impacts. Dicofol was not used in California in 1994, and is not recommended by grape specialists because its non-selective mode of action kills beneficial insects. The preferred alternative (propargite) offers superior mite control while not harming beneficial insects.

The Delaney clause prohibits establishing or maintaining section 409 FARs for any pesticide meeting the "induces cancer" standard, without regard to economic impacts. However, this proposed action to revoke section 408 tolerances is due to the combined effect of the Delaney clause and EPA's coordination policy. EPA believes that the impacts due to these proposed revocations (and ultimately the cancellation of the registered uses) are less burdensome than the alternative of maintaining these tolerances and registrations. If the uses and 408 tolerances remain in effect without needed 409 FARs (prohibited by the Delaney clause), lawfully treated foods could potentially be adulterated, and subject to seizure, and the need for costly Federal monitoring and enforcement would increase. The possibility of adulterated foods could create uncertainty among pesticide users and food processors and erode consumer confidence in the food supply.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 et seq.) requires EPA to analyze regulatory options to assess the economic impact on small businesses, small governments, and small organizations.

Regulating pesticide residues in food is, by its nature, indiscriminate with respect to the size of the business or farm that was the source of the food. The existence or absence of a tolerance, and the levels at which they are set must logically apply to all food available to U.S. consumers. It is also not feasible to segregate and track food from different farm sizes, once it is in channels of trade. Therefore, there is no potential regulatory option that would treat small farms differently from large farms with respect to pesticide tolerances.

The Delaney clause leaves no option to retain the applicable section 409 FARs. The section 408 tolerances could either be revoked, as called for by the coordination policy, or maintained in the absence of the needed 409 FARs. It is not feasible to quantify the economic impacts of retaining the 408 tolerances, for the reasons discussed above, and therefore a comparison of the impacts of these two options cannot be made. The Agency's choice to revoke the 408 tolerances will not disproportionately affect small farms over large farms, since the loss of a pesticide is generally proportional to the crop acreage.

C. Unfunded Mandates Reform Act and Executive Order 12875

Under Title II of the Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4), this action does not result in the expenditure of $100 million or more by any State, local or tribal governments, or by anyone in the private sector, and will not result in any "unfunded mandates" as defined by Title II. The costs associated with this action are described in Unit IX. A of this notice.

Under Executive Order 12875 (58 FR 58093, October 28, 1993), EPA must consult with representatives of affected State, local, and tribal governments before promulgating a discretionary regulation containing an unfunded mandate. This action does not contain any mandates on States, localities or tribes and is therefore not subject to the requirements of Executive Order 12875.

D. Paperwork Reduction Act

This order does not contain any information collection requirements and therefore is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 26, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR, chapter I, part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.163 [Amended]

2. In § 180.163, in the paragraph beginning with "5 parts per million...," remove the entries "apples," "grapes," and "plums (fresh prunes),".

§ 180.176 [Amended]

3. In § 180.176 by revising the paragraphs beginning with "25 parts per million..." and "5 parts per million..." to read respectively as follows:

§ 180.176 Coordination product of zinc ion and maneb; tolerances for residues.

* * * * *

25 parts per million in or on the straws of barley and rye.

* * * * *

5 parts per million in or on celery; corn fodder and forage; and the grains of barley and rye.

* * * * *

§ 180.213 [Amended]

4. By removing from the table in § 180.213 the entry for "sugarcane".

§ 180.259 [Amended]

5. By removing from the table in § 180.259 the entries for "apples" and "figs".

§ 180.410 [Amended]

6. By removing from the table in § 180.410 the entries for "Wheat, grain", and "Wheat, straw".

[FR Doc. 96–4836 Filed 2–29–96; 8:45 am]
BILLING CODE 6560–50–F

VOL
61

ISS
42

MR
1

1996

UMI

federal register

Friday
March 1, 1996

Part VI

Environmental Protection Agency

Cyanazine; Notice of Preliminary Determination To Terminate Special Review; Notice of Receipt of Requests for Voluntary Cancellation; Notice

VOL 61 ISS 42 MR 1 1996 UMI

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30000/60A; FRL–5352–6]

Cyanazine; Notice of Preliminary Determination to Terminate Special Review; Notice of Receipt of Requests for Voluntary Cancellation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Preliminary Determination to Terminate Special Review; Announcement of Receipt of Voluntary Cancellation.

SUMMARY: This Notice sets forth EPA's preliminary determination to terminate the Special Review of cyanazine based on amendments to the terms and conditions of cyanazine registrations. In effect, the terms and conditions call for an incremental phaseout and voluntary cancellation of all pesticide products containing cyanazine that are registered for use in the United States. The Agency has concluded that, based on these terms and conditions of the amended registration of cyanazine, any unreasonable adverse effects posed by cyanazine use will be eliminated by the phaseout and voluntary cancellation of the chemical. The Agency concludes that the benefits of use of the chemical for the limited period of time and in strict accordance with all of the terms and conditions of registration, outweigh the risks. In making this determination, the Agency considered the risks and benefits of cyanazine use in the 7-year phaseout, during which maximum label rates will be reduced and closed cab application equipment will be required, as well as the risks and benefits associated with the ultimate cancellation of all use of cyanazine. In addition, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), this Notice announces EPA's receipt of requests to voluntarily cancel all registrations containing cyanazine, effective December 31, 1999.

DATES: Comments, data and information relevant to the Agency's proposed decision must be received on or before April 1, 1996.

ADDRESS: Submit three copies of written comments bearing the document number [30000/60A]. By mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to Room 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, Telephone: 703-305-5805.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP–30000/60A." No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit IX. of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph E. Bailey, Review Manager, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Special Review Branch, 3rd Floor, Crystal Station, 2800 Jefferson Davis Highway, Arlington, VA, Telephone: 703-308-8173, e-mail: bailey.joseph@epamail.epa.gov. For a copy of documents in the public docket, to request information concerning the Special Review, or to request indices to the Special Review public docket, contact the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 703-305-5805.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Regulatory Background

Cyanazine is the common name for [2-((4-chloro-6-(ethylamino)-s-triazine-2-yl)amino)-2-methylpropionitrile], an herbicide sold under the tradenames of Bladex and Cynex that is available as a granular or liquid formulation. It is classified as a "Restricted Use Pesticide" based on its reproductive effects and detection in ground and surface water. Cyanazine was first registered by Shell Chemical Company in 1971. Today, DuPont Agricultural Products and Griffin Corporation are the only registrants of technical grade cyanazine. Ciba Plant Protection also has one registered product, a mixture of cyanazine and metalochlor, but submitted a request for voluntary cancellation of this product which was announced in the **Federal Register** of November 8, 1995 (60 FR 56333) (Ref. 1). A final cancellation order for this product was effective February 8, 1996.

In April 1985, a Special Review of cyanazine was initiated based on studies indicating developmental toxicity in two species after oral administration of the chemical. The Agency was concerned about potential risks to mixer/loaders and applicators exposed to cyanazine. Additional dermal developmental toxicity studies that were submitted to the Agency led to a refinement of the risk estimates. The Special Review was concluded in 1988 by requiring personal protective equipment and revised label language.

The Agency continued to assess ground and surface water monitoring data for cyanazine contamination and, to help address contamination concerns, approved label amendments in 1993 that reduced maximum application rates and required surface water setbacks. These amendments, however, did not ameliorate all of the Agency's risk concerns and on February 8, 1994, a preliminary notification letter was issued to all cyanazine registrants indicating that the Agency was considering initiating a Special Review of cyanazine because of potential cancer risks from dietary (food and drinking water) and non-dietary exposure. Additionally, the Agency was also concerned about possible ecological risks to nontarget organisms (aquatic organisms, terrestrial plants) and their ecosystems that may result from the use of cyanazine.

On November 10, 1994, EPA issued the Notice of Initiation of Special Review (Position Document 1 or PD 1) formally announcing that a Special Review was being initiated for cyanazine, along with atrazine and simazine (58 FR 60412) (Ref. 2). The Agency formally initiated the Special Review based only on the cancer risk concern to humans. The Agency remains concerned about possible ecological effects; however, these effects were not considered as formal criteria to initiate the Special Review.

On August 2, 1995, DuPont voluntarily proposed to amend its cyanazine registrations to effectively phaseout the production of cyanazine for use in the U.S. by the end of 1999, with incremental reductions in maximum label application rates in 1997, 1998, and 1999 and a closed cab requirement for applicators beginning in 1998 (Ref. 3). Cyanazine products that have been released for shipment by a registrant on or before December 31, 1999, may only be distributed and sold in the channels of trade in accordance with their labels through September 30, 2002. Such products may only be used through December 31, 2002. EPA accepted DuPont's proposal to amend its cyanazine registrations. Since the acceptance of DuPont's proposal to amend cyanazine registrations, EPA has granted new conditional cyanazine registrations to Griffin based on Griffin's agreement to accept the same terms and conditions as part of its cyanazine registrations (Refs. 4, 5, 6, 7, and 8).

The Agency has evaluated the risks and benefits posed by the terms and conditions of the phaseout and voluntary cancellations submitted by the manufacturers of cyanazine and approved by EPA. Among the factors considered were the risks of use during and after the phaseout period and arising from use of existing stocks, the benefits that will accrue from use during the phaseout and use of existing stocks, the incentives for and likelihood of the development of alternative control strategies of a phaseout as opposed to an immediate commencement of cancellation proceedings, and the litigative risks and uncertainties attendant to a contested regulatory action as opposed to a voluntary action. Taking all of these factors into consideration, the Agency has concluded that risks associated with the proposed voluntary phaseout and cancellation are outweighed by its benefits. Accordingly, the Agency believes the Special Review of cyanazine may be terminated on the basis of the voluntary cancellation.

In response to the triazine PD 1 issued in November 1994, the Agency received a number of comments about the risks and benefits of cyanazine. All of the issues raised in the cyanazine comments received during the comment period are addressed in this Notice and are on file in the triazine public docket (OPP–30000/60). While a number of the comments challenged the Agency's decision to initiate the Special Review of the triazines and questioned various components of the Agency's assessments, no additional scientific data were received by the Agency that change the Agency's previous conclusions about potential risks from cyanazine exposure. The majority of the comments received were undocumented testimonials that generally made claims concerning the usefulness of cyanazine. A few commenters provided additional ground and surface water monitoring data. All of the comments relating to cyanazine benefits have been considered in assessing the economic impacts of phasing out cyanazine. Similarly, all of the comments relating to cyanazine risks have been considered in assessing the risks associated with the phaseout of cyanazine. Significant comments and the Agency's responses to the comments are discussed in appropriate sections of this Notice. Supporting documentation may be found in the cyanazine public docket (OPP–30000/60).

As discussed above, the Agency has recently granted cyanazine conditional registrations to Griffin Corporation. These recently-approved cyanazine registrations, as well as any others that may be granted by the Agency in the future, are required to comply with all of the same terms and conditions of registration for cyanazine as approved by the Agency for DuPont's registrations. The Griffin products were conditionally registered by the Agency provided that Griffin comply with all of the same terms and conditions of the DuPont cyanazine registrations. If Griffin does not comply with the same terms and conditions of the cyanazine registration, its registrations are subject to cancellation by the Agency in accordance with FIFRA section 6(e). Griffin's release for shipment of its products containing cyanazine constitutes acceptance of the terms and conditions of the registrations. In accordance with FIFRA section 3(c)(7)(A), these conditional registrations have been approved because the Agency has determined that they are substantially similar to other currently registered cyanazine products or differ only in ways that do not significantly increase the risk of unreasonable adverse effects to the environment.

B. Legal Background

In order to obtain a registration for a pesticide under FIFRA, an applicant must demonstrate that the pesticide satisfies the statutory standard for registration. The standard requires, among other things, that the pesticide will not cause "unreasonable adverse effects on the environment" [FIFRA section 3(c)(5)]. The term "unreasonable adverse effects on the environment" means "any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide" [FIFRA section 2(bb)]. This standard requires a finding that the benefits of each use of the pesticide outweigh the risks of such use, when the pesticide is used in compliance with the terms and conditions of registration and in accordance with commonly recognized practices.

The burden of proving that a pesticide satisfies the statutory standard is on the proponents of registration and continues as long as the registration remains in effect. Under FIFRA section 6, the Administrator may cancel the registration of a pesticide or require modification of the terms and conditions of a registration if the Administrator determines that the pesticide product causes unreasonable adverse effects to man or the environment. EPA created the Special Review process to facilitate the identification of pesticide uses that may not satisfy the statutory standard for registration and to provide a public procedure to gather and evaluate information about the risks and benefits of these uses.

A Special Review may be initiated if a pesticide meets or exceeds the risk criteria set out in the regulations at 40 CFR part 154. When EPA believes that a pesticide has met such risk criteria, a notice is published in the **Federal Register** which announces the initiation of the Special Review. After a PD 1 is issued, registrants and other interested persons are invited to review the data upon which the review is based and to submit data and information to rebut EPA's conclusions by showing that EPA's initial determination was in error, or by showing that use of the pesticide is not likely to result in unreasonable adverse effects on human health or the environment. In addition to submitting rebuttal evidence, commenters may submit relevant information to support EPA's initial conclusions or to aid in the determination of whether the economic, social and environmental benefits of the use of the pesticide outweigh the risks. After reviewing the comments received and other relevant materials obtained during the Special Review process, EPA makes a proposed decision on the future status of registrations of the pesticide.

The Special Review process may be concluded in various ways depending upon the outcome of EPA's risk/benefit assessment. If EPA concludes that all of its risk concerns have been adequately

rebutted, the pesticide registration will be maintained unchanged. If, however, all risk concerns are not rebutted, then EPA will proceed to assess risks and benefits. EPA considers possible changes to the terms and conditions of registration that can reduce risks to a level that satisfies the risk criteria used to initiate Special Review. If risks can be reduced to the level, then the Agency considers whether the benefits outweigh those risks. Based upon this analysis, it may require that such changes be made in the terms and conditions of the registration. Alternatively, EPA may determine that no changes in the terms and conditions of a registration will adequately assure that use of the pesticide will not cause any unreasonable adverse effects. If EPA makes such a determination, it may seek cancellation, suspension, or change in classification of the pesticide's registration. This determination would be set forth in a Notice of Final Determination issued in accordance with 40 CFR 154.33.

When the Administrator proposes to cancel, deny, or change the classification of the registration of a pesticide product which is the subject of a Special Review, regulations at 40 CFR 154.31(b) require that the Agency submit notices of preliminary determination to the Secretary of Agriculture and the Scientific Advisory Panel for review and comment. In the case of the proposed decision for cyanazine, the Agency does not deem this necessary because the cancellation of all cyanazine products is a voluntary action on behalf of the registrants.

Issuance of this Notice means that the Agency has assessed the potential adverse effects of cyanazine and has preliminarily determined that continued, but limited, use of the pesticide under the agreed-upon terms and conditions of cyanazine registration with DuPont and Griffin will not present unreasonable adverse effects when considering: (1) Risks and benefits of restricted, continued use of cyanazine through the phaseout period and (2) the ultimate cancellation of all cyanazine registrations. The Agency is proposing to terminate the Special Review of cyanazine based on the fact that use will be restricted during the phaseout period and no cyanazine use will be allowed after December 31, 2002, and, therefore, continuation of the Special Review is no longer necessary. Included as part of the terms and conditions of cyanazine registration are cyanazine registrants' waivers of rights to challenge the Agency's final action on the cyanazine Special Review or the terms and conditions of registration, including label amendments, required by agreements in any court or administrative forum. The complete terms and conditions that amend cyanazine registration are provided in Unit X. of this Notice.

II. Summary of Toxicological Concerns

A. Carcinogenicity

The initiation of the Special Review of cyanazine in 1994 was based on evidence that cyanazine may cause cancer in persons exposed to the chemical through their diet (food and drinking water) and through exposure while handling the chemical (mixer/loaders and applicators). This risk concern is based on a statistically-significant incidence of malignant mammary gland tumors in female Sprague-Dawley rats that were exposed to cyanazine through their diet for 2 years. In addition to the mammary gland tumors observed in these rats, the weight-of-the-evidence for the carcinogenic potential of cyanazine includes the evidence that cyanazine is structurally related to the other chloro-s-triazines which also induce mammary gland cancer in female Sprague-Dawley rats. Although cyanazine is structurally related to the other chloro-s-triazines, cyanazine differs in that it contains a cyano (nitrile) functional group that is highly reactive.

In March 1991, the OPP Carcinogenicity Peer Review Committee evaluated the weight-of-the-evidence for cyanazine, with particular emphasis on its carcinogenic potential. The Peer Review Committee concluded that cyanazine should be classified as a Group C, possible human carcinogen, and recommended quantification of human risk using a linearized multi-stage model to extrapolate from effects seen at high doses in laboratory studies to predict tumor response at low doses. Using this model, the cancer potency equivalent (Q_1^*) for cyanazine is 1.0×10^0 $(mg/kg/day)^{-1}$ based on the development of mammary gland adenocarcinomas and carcinosarcomas in female rats. This represents the 95 percent upper confidence limit of tumor induction likely to occur from a unit dose. The cancer classification of cyanazine has not been presented to the FIFRA Scientific Advisory Panel (SAP) for review.

A more detailed discussion about the evidence that cyanazine may cause cancer can be found in the PD 1.

B. Comments Regarding the Carcinogenicity of Cyanazine and the Agency's Response

Comment: DuPont Agricultural Products and Griffin Corporation responded that the Agency does not have sufficient toxicological evidence to support its position that cyanazine may pose a cancer risk to humans. Both state that the Sprague-Dawley rat model is inappropriate and that evidence supports their assertion that cyanazine. tumorigenicity is associated with a hormonally-mediated threshold effect.
Agency Response: In the PD 1 for atrazine, simazine, and cyanazine, the Agency considered all information available at that time to evaluate the carcinogenic potential of the triazines, including the appropriateness of the Sprague-Dawley rat model, the method of quantifying the carcinogenic risk and DuPont's assertion that cyanazine tumorigenicity occurs through a hormonal mechanism. In response to the PD 1, the Agency received additional information with comments submitted for atrazine and simazine that will be reviewed and evaluated in the continuing Special Review of those chemicals. The Agency received no new information, however, to dispute the carcinogenicity classification for cyanazine. Currently, it is the Agency's policy to regulate carcinogens based on risk assessment procedures that utilize the Q_1^* approach in the absence of data to support the hypothesis of hormonally-mediated threshold responses. On several occasions, DuPont has indicated that they have undertaken research that will attempt to validate a hormonally-mediated mechanism of carcinogenicity; however, the Agency received no information from DuPont that attempts to prove such a mechanism exists.
Comment: DuPont does not believe that a link between breast cancer and exposure to cyanazine exists and has stated that reviews of several epidemiology studies on estrogen replacement therapy find no such link.
Agency Response: When the Agency initiated the Special Review for the triazines, it had not concluded that cyanazine was directly related to an incidence of human breast cancer. Upon review of published literature, the Agency indicated that such tumor development in humans seemed possible and that during the course of the Special Review, further research into epidemiological studies would hopefully provide information to make rational decisions about such cause and effect relationships. The Agency is not in a position at this point to draw any definitive conclusions about human breast cancer and cyanazine; however, the Agency will continue to consider information throughout the Special Review of the other triazines that may help clarify whether an association exists. Information in published literature support the possibility that some link between breast cancer and the triazine herbicides is possible.
Comment: The National Coalition Against the Misuse of Pesticides (NCAMP) provided comments about the triazines in general without reference to cyanazine specifically. NCAMP supports the Agency's Special Review of the triazines but unequivocally states that the Agency must cancel the triazines due to unreasonable cancer risks.
Agency Response: The terms and conditions of DuPont and Griffin cyanazine registrations now provide for voluntary cancellation of all cyanazine registrations in 1999 and will eventually result in a total phaseout of the use of cyanazine in the U.S. During the period of the phaseout, the Agency estimates that the risks will be decreasing because of the reductions in allowable maximum application rates and the requirement that applicators must work in closed cabs. Taking the cyanazine phaseout and voluntary cancellation into consideration, the Agency has evaluated the risks and benefits of cyanazine and determined that the terms and conditions of the phaseout and voluntary cancellations, as submitted by the manufacturers and approved by EPA, will ultimately eliminate any unreasonable adverse effects associated with the use of cyanazine. Accordingly, the Agency is proposing to terminate the Special Review. As with all Special Reviews, cancellation of uses is an available option but is only imposed when other less severe risk reduction measures are not adequate to eliminate unreasonable adverse effects.
Comment: NCAMP commented that evidence supports the classification of all of the triazines as Group B carcinogens.
Agency Response: The Agency has taken its decision about the cancer classification of atrazine and simazine to the SAP on a number of occasions. The SAP agreed with the Agency's cancer classification of atrazine and simazine. Current weight-of-the-evidence for cyanazine supports its classification as a Group C carcinogen. Further, NCAMP did not provide any additional data or evidence to support their assertion. Accordingly, the Agency has concluded that cyanazine is a class C carcinogen. The Agency has not presented the cancer classification of cyanazine to the SAP, and in light of the cyanazine phaseout and the ultimate cancellation of this chemical, does not believe that it is necessary to do so.
Comment: In general, Griffin commented that the Agency failed to provide adequate information to allow others to fully evaluate its risk assessments.
Agency Response: As required by the regulations governing Special Review procedures, the Agency has provided a record of all background documents used in its assessments through the public docket. The public docket contains all supporting documentation that describes all of the assumptions and values used by the Agency to conduct the risk assessments. The Agency has made available the same level of information for the cyanazine Special Review as it has for other Special Reviews, and this information should be adequate to evaluate the assessments.

III. Summary of Exposure and Related Human Health Risks

In the PD 1, the Agency provided upper bound estimates of carcinogenic risks from dietary exposure from both food and drinking water and occupational exposure to handlers (mixer/loader/applicators) of cyanazine.

A. Dietary Exposure and Associated Risks

Dietary exposure to cyanazine can occur through the direct consumption of cyanazine residues in treated food as well as from commodities that contain secondary residues from animals that were fed cyanazine-treated crops. In the PD 1, the Agency considered all residues (per its equivalency policy), including parent cyanazine and both chloro and hydroxy metabolites, to be of toxicological concern. Anticipated residues were calculated using data from field trials, processing studies, and metabolism studies.

The total upper bound dietary risk estimate from exposure to cyanazine residues in food, as reported in the PD 1, is 2.9×10^{-5}. This estimate did contain a risk contribution from wheat and sorghum, uses which have been voluntarily cancelled and thus removed from cyanazine labels. Removing the risk contribution for wheat and sorghum from the total decreases the total upper bound risk to 2.7×10^{-5}. The Agency has not received any data that justifies the revision of any of the assumptions used in its dietary risk assessment other than the information with respect to the voluntary cancellation of the wheat and sorghum uses. For a detailed discussion of those assumptions, the reader is referred to the PD 1. Table 1 below provides the dietary risk estimates as discussed in the PD 1.

Table 1.—Dietary Cancer Risk Estimates for Cyanazine

Commodity	Anticipated Residue (ppm)	Percent Crop Treated	Exposure (mg/kg/day)	Upper Bound Cancer Risk Estimates
Corn	0.12	20	1.2×10^{-5}	1.2×10^{-5}
Cottonseed	0.09	5	9.3×10^{-8}	9.3×10^{-8}
Milk	0.00028 (milk) 0.000034 (non-fat solids)	—	1.2×10^{-6}	1.2×10^{-6}
Poultry and eggs	0.00232 0.00432[2]	—	3.1×10^{-6}	3.1×10^{-6}
Red meat	0.00345 0.0103[1]	—	1.0×10^{-5}	1.0×10^{-5}
Sorghum	0.10	5	1.2×10^{-7}	1.2×10^{-7}
Wheat	0.16	1	2.3×10^{-6}	2.3×10^{-6}
Total				2.9×10^{-5}
Total excluding wheat and sorghum				2.7×10^{-5}

[1]Range of values were used for meat, meat byproducts, fat, liver, and kidney.
[2]Range of values were used for meat, meat byproducts, fat, liver, kidney and eggs.

B. Comments Regarding Cyanazine Dietary Risk Estimates and the Agency's Response

Comment: Griffin contends that Anticipated Residue (AR) values used by EPA were not identified and interpolation of EPA's calculations reveals that values used are exaggerated and inappropriate for determining actual dietary risks. Griffin further objects to the Agency's use of translated data from cattle to estimate anticipated residues in other animal commodities. DuPont disagreed with the extrapolation from metabolism studies to estimate residues in meat, milk, and eggs and the assumption that 100 percent of the livestock feed from corn, cotton, wheat, and sorghum has been treated with cyanazine.

Agency Response: The AR values used in the Agency's risk assessment are listed in Table 1 above and were identified in the PD 1 as well as in the supporting documentation that was in the public docket at the time of publication of the PD 1. In completing the dietary risk assessment for cyanazine, the Agency utilized its standard approach to estimate AR values and then used those values in determining dietary exposure estimates and carcinogenic risk through its Dietary Risk Evaluation System (DRES). Documentation supporting the estimation of ARs and dietary exposure values is contained in the references used for the triazine PD 1 and can be found in the triazine public docket. To determine the cyanazine AR values for risk assessment purposes for crop commodities, the Agency averaged the actual residues detected in field trials; for nondetectable residues, the Agency assumed the residue level equalled one-half of the analytical method's limit of detection. This approach precludes the possibility of overestimating or underestimating risks that could otherwise be based on residue values at high or low detections. To estimate the ARs for animal commodities, the Agency used animal dietary burden data which take into consideration anticipated residues on feed crops as well as percent crop treated data and animal metabolism studies. Since the consumption of feed by animals has already been adjusted to account for the percent of the crop that has been treated with cyanazine, use of the 100 percent assumption is appropriate.

The Agency routinely translates data between commodities with sufficient similarities, such as translating apple data to pears. Translation is performed when data are either not available or are insufficient. In the case of cyanazine, crop data do exist. Data for cattle and other ruminants can be translated only to other animals such as goats, sheep, hogs or horses, but not to poultry. Ruminant data exist for cyanazine and were used to estimate risks in the PD 1. However, at the time the PD 1 was published, cyanazine poultry metabolism data were not available. Therefore, atrazine poultry metabolism data were translated to cyanazine. Since atrazine and cyanazine were grouped for Special Review purposes due to their structural and metabolic similarities, the Agency considered it to be appropriate to bridge this data gap by translation. Griffin did not provide an alternative risk assessment for the Agency to review or any additional data for review and consideration in refining risk estimates.

Comment: Griffin stated that the Agency's use of information from the 1977 - 1978 National Food Consumption Survey to estimate consumption values is inappropriate because food consumption patterns have changed dramatically over the past 17 years; therefore, ingestion rates used in the dietary risk assessment are invalid. Griffin also stated that the source of the percent crop treated data was not provided.

Agency Response: Although Griffin did not agree with the Agency's use of the 1977 - 1978 information to predict ingestion rates, it provided no data that the Agency could use to revise the consumption values. The Agency acknowledges that the 1977 - 1978 National Food Consumption Survey may not reflect the most current consumption profile of individuals in the United States. The continuing surveys of food intake by individuals were performed in 1989 through 1991; the Agency is working to translate these data into a form useful for the Agency's Dietary Risk Evaluation System. However, until these data are in a useable form, the Agency will continue to use the 1977 - 1978 data.

The Agency revised the percent crop treated data for cyanazine in 1994 using the most current United States Department of Agriculture (USDA) and other proprietary usage estimates that were available at that time. The data reflect annual fluctuations in use patterns as well as variability as a consequence of using data from various information sources. Griffin did not supply any percent crop treated data for the Agency to evaluate.

Comment: Griffin asserts that EPA calculations incorrectly assume that all secondary sources of ingested cyanazine are contaminated with 100 percent of the AR level.

Agency Response: The Agency does use 100 percent of the AR level in its calculations to estimate dietary risk; however, as discussed above, the AR value has taken factors into consideration to adjust for the fact that 100 percent of a crop may not be treated with the chemical. Therefore, further percent crop treated adjustments are not necessary and would tend to underestimate potential risks.

Comment: Griffin purports that EPA provided no specific information about the exposure frequency and exposure duration values used in its calculations; i.e., EPA assumes that an individual consumes a maximum amount of a particular food all in the same day, every day, for an entire lifetime and does not account for differences in exposure duration for people living in urban areas, rural areas and farms.

Agency Response: The Agency acknowledges that there are differences in food consumption habits across the U.S. To estimate chronic dietary risk, the Agency considered information it has on the general U.S. population as well as 22 population subgroups. The Agency's Dietary Risk Evaluation System utilizes information that was obtained from the 1977 - 1978 food consumption survey discussed above. This survey was designed to statistically encompass all income levels and all population areas of the U.S., including participants from both rural and urban areas. Average dietary consumption of an individual over a 3–day period is determined. The consumption value is then matched to the self-reported body weight of the individual. All data for both consumers and non-consumers of a particular commodity are then combined or averaged to determine dietary exposure. Currently, this survey provides the best estimate of food consumption patterns in the U.S., assuming average consumption over a 70-year lifetime.

Comment: Griffin contends that EPA provided no information indicating the values used for body weight assumptions.

Agency Response: Details about the assumptions used in the DRES calculations were provided in the public docket. To calculate dietary risk estimates for food and drinking water consumption, the Agency has used information that was obtained in the 1977 - 1978 food consumption survey. This survey matched individual consumption with individual reported body weights of the respondents and the information is then used by the Dietary Risk Evaluation System to estimate risk. Therefore, the Agency has used the self-reported body weights to calculate both the dietary and drinking water risk estimates. The self-reported body weights average out to approximately 58 kg.

Comment: DuPont states that, because the use of cyanazine on sorghum and wheat was voluntarily canceled, risks from these sources should be removed from the risk assessment calculations.

Agency Response: The Agency accepted DuPont's request to voluntarily cancel cyanazine use on wheat and sorghum. The Agency has removed the risk contribution from use on wheat and sorghum from the dietary risk assessment. The upper bound dietary risk estimate without the contribution from wheat and sorghum is 2.7×10^{-5} which is still considered to be unacceptable.

Comment: DuPont commented that EPA has presented upper bound risk estimates only and ignored the most likely estimates which would be orders of magnitude lower.

Agency Response: It is standard policy for the Agency to provide upper bound carcinogenic risk estimates. The use of less than upper bound risk estimates may not adequately account for risks to the most sensitive populations such as infants, children, or the elderly. The Agency acknowledges that the true risk estimates may be as low as zero for some people in some risk scenarios; i.e. where no exposure is present.

Comment: DuPont stated that EPA should not make the assumption that chloro and hydroxy metabolites of cyanazine are as toxic as the parent chemical.

Agency Response: In the absence of appropriate toxicological information, it is the Agency's policy to use a default assumption that metabolites are no more or no less toxic than the parent compound. The Agency is not aware of any information that indicates that cyanazine metabolites are less toxic than cyanazine itself. The Agency has completed its review of the hydroxyatrazine study and is currently determining the study's impact on atrazine and simazine anticipated residue calculations. The Agency has decided that translation of the results of this study to simazine is appropriate. However, because the structure of cyanazine contains the cyano functional group and the other two triazines in Special Review do not, the Agency has decided that it would not be appropriate to translate results of the hydroxyatrazine study to cyanazine.

C. Drinking Water Exposure and Associated Risks

Ground and surface water sources provide drinking water for human consumption. While the Agency does not yet have an enforceable regulatory standard or Maximum Contaminant Level (MCL) for cyanazine contamination of drinking water, a lifetime Health Advisory Level (HAL) has been established at 1.0 µg/L. Information from a number of ground and surface water monitoring studies has indicated that cyanazine detections are frequently found, especially in surface waters.

To prepare the PD 1, the Agency considered information from a number of surface water monitoring studies that indicated the presence of cyanazine in areas of the Midwest where it is frequently used. The information from these studies indicates that cyanazine is detected in many streams and rivers for several months post-application at concentrations of at least several µg/L due to runoff. However, the percentage of detections is lower during early spring (pre-application) and during fall and winter, many months after application. Concentrations are usually less than 1.0 µg/L. There are reports of cyanazine detections in some lakes and reservoirs that remain constant at several µg/L almost year round. The ground and surface water monitoring studies that provide evidence of cyanazine contamination of water supplies are discussed in the PD 1.

The Agency based its drinking water risk concerns on the cyanazine detections discussed above and calculated high end (90th percentile) as well as risk estimates for mean consumption of cyanazine-contaminated drinking water derived from both ground and surface water sources. In the PD 1, the Agency's estimates from exposure to a mean concentration of cyanazine in ground and surface water are 2.3×10^{-6} and 9.7×10^{-6}, respectively. The upper bound risk estimates from a 90th percentile exposure in ground and surface water are 4.0×10^{-6} and 6.6×10^{-5}, respectively. These risk estimates may underestimate the actual risk because they are based on exposure to cyanazine parent compound only and do not include the potential contribution to risk from cyanazine degradates. The Agency is also concerned about exposure to cyanazine degradates that are assumed to be no more or less toxic than the parent compound. It is important to note that the cyanazine drinking water risk estimates are representative values for individuals residing in the corn belt region where the chemical is used and do not apply to the entire U.S. population, particularly areas where the chemical is not used. Details about the Agency's drinking water assessments for ground and surface water may be found in the PD 1. Since the publication of the PD 1, the Agency has not received any information that would significantly alter the cyanazine risk estimates. Table 2 below shows the drinking water risk estimates as provided in the PD 1.

Table 2.—Excess Individual Lifetime Cancer Risk Estimates from Consumption of Cyanazine-Contaminated Surface and Ground Water

	Mean Exposure	90th Percentile
Cyanazine - surface water	9.7×10^{-6}	6.6×10^{-5}
Cyanazine - ground water	2.3×10^{-6}	4.0×10^{-6}

D. Comments Regarding Cyanazine Drinking Water Risk Estimates and the Agency's Response

Comment: DuPont and Griffin contend that data from ground water monitoring programs conclusively demonstrate that cyanazine ground water detections are either nonexistent or extremely low. Neither EPA's modeling nor actual ground water survey data support any regulatory action to alter cyanazine registration status. DuPont and Griffin specifically noted that studies cited in the PD 1 do not support the claim that ground water contamination with cyanazine is a concern.

Agency Response: The Agency continues to believe that cyanazine contamination of ground water supplies poses concerns. Griffin was correct in stating that cyanazine was not detected in EPA's National Survey of Pesticides in Drinking Water Wells. However, the detection limit in the survey was 2.4 µg/L whereas the Agency's HAL for cyanazine is 1.0 µg/L. It is quite possible that there were undetected residues of cyanazine at or greater than the HAL but less than the detection limit. The fact that cyanazine was detected in few

wells in the Monsanto National Alachlor Well Water Survey is reasonable because the survey focused on the alachlor use area. The Agency does not believe that the use of cyanazine geographically coincides closely enough with the use of alachlor to rely heavily on the results of this study to be representative of the contamination potential of cyanazine. For example, in Illinois, only a small percentage of the total corn acreage is treated with both alachlor and cyanazine. Most alachlor applications are accompanied by treatments with atrazine, dicamba, or glyphosate. Therefore, it would be less likely to detect cyanazine in alachlor use areas. Also, no degradates were analyzed for in the survey. Griffin further stated that no cyanazine was detected in ground water during retrospective studies conducted by Shell. Although the wells were located near fields in which corn had been grown in the last 5 years, in areas where 60 - 69 percent of the wells were tested, cyanazine was not used or usage could not be confirmed in the associated corn field. Therefore, these studies do not represent the most accurate impact of cyanazine use on ground water quality. Cyanazine was detected in 155 of 7,468 wells as noted in EPA's Pesticides in Ground Water Database. The cyanazine detections in the wells of 14 states probably resulted from nonpoint source mechanisms.

The Agency acknowledges that the parent cyanazine compound may not be very persistent under most field conditions; however, total chloro-degradate residues of cyanazine are potentially very persistent depending on environmental conditions such as those that may be found in ground water reservoirs. The Agency also acknowledges that less information is available about the contamination of ground water with cyanazine than with atrazine simply because cyanazine has not been as extensively researched as atrazine. However, the information that the Agency does have about the fate characteristics of cyanazine, the monitoring data, and the large amounts of cyanazine that are used continues to support the Agency's concern for ground water contamination.

Comment: DuPont stated that the Agency has no information indicating that cyanazine metabolites will reach ground water in concentrations of toxicological concern.

Agency Response: The Agency has limited data on the detection of cyanazine degradates in ground water; however, cyanazine is structurally similar to atrazine and simazine and has similar environmental fate characteristics with some common degradates. Because of the similarity in fate characteristics, the Agency believes that it is reasonable to assume that cyanazine degradates may reach ground water supplies. Both atrazine and cyanazine degrade to deisopropyl atrazine, a chlorodegradate that the Agency assumes to be no more or less toxic than the parent compound.

Comment: Griffin commented that EPA's use of CHEMRANK and LEACH models overestimates cyanazine's leaching potential.

Agency Response: The Agency believes that the models used are helpful in judging whether significant differences exist in the leaching potential between different pesticides but are not truly predictive of the amounts of pesticides that will leach to ground water at a particular site. In addition, the screening models used do not take degradates into account; one particular cyanazine degradate, deisopropyl atrazine, is extremely mobile and has been widely found in ground water. So, the models may in fact underestimate risk.

Comment: The South Dakota and Minnesota Departments of Agriculture and the Illinois Environmental Protection Agency submitted surface water monitoring data in response to the PD 1 that included information for cyanazine.

Agency Response: The Agency has considered the data submitted by each of these commenters. The South Dakota and Minnesota data were consistent with United States Geological Survey (USGS) 1989 and 1990 reconnaissance studies of the Midwestern corn belt that showed levels of cyanazine in the surface waters of those states generally to be substantially lower than in several other states such as Illinois, Iowa and Ohio. Although the available data are not sufficient to conclude with certainty that cyanazine is not a potential problem in either state, the Agency's primary concerns were and remain at this time with some of the other corn belt states. For example, arithmetic average annual cyanazine concentrations for samples collected from West Lake, IA, exceeded the HAL in 1992 and 1993, and for samples collected from Rathbun Reservoir, IA, exceeded the HAL in 1992 and 1994. Although these averages are arithmetic and are only of detects, the Agency believes in this case that the arithmetic averages are relatively close to time-weighted mean concentrations because of the regularity of the sampling dates. Such regularity would not be observed if there were a significant number of non-detects or if the sampling schedule was skewed. Additionally, the Agency received raw data from the Environmental Working Group in which 29 surface water supplies were monitored for cyanazine biweekly from March, April or May through August 1995. Using these data, the Agency calculated time-weighted mean concentrations. Six of the 29 systems sampled had cyanazine estimated-time-weighted mean concentrations greater than the HAL of 1.0 µg/L (Bowling Green, OH - 1.4 µg/L; Columbus, OH - 1.04 µg/L; Danville, IL - 2.47 µg/L; Decatur, IL - 1.88 µg/L; Johnson County, KS - 1.01 µg/L; and Springfield, IL - 3.07 µg/L) (Ref 6).

In response to the PD 1, the Illinois Environmental Protection Agency submitted data to update their network of 30 raw surface water sampling sites from the Moyer and Cross report that covered 1985 - 1988 to include 1989 - 1993. Also provided were data on cyanazine concentrations in finished water samples collected quarterly from September 1992, to June 1994, from numerous surface water source supplies throughout the state. Although the data updating the 30 raw water sampling stations is in summary form with only mean concentrations provided for the entire sampling period (1985 - 1993) given for each site, the reported cyanazine average concentrations equaled or exceeded the HAL at 7 of the 30 sites and equaled or exceeded 3 µg/L at 2 of those sites, even with the damping effect associated with long-term multiple year averaging. Although the arithmetic averages may be somewhat greater than time-weighted mean concentrations, the Agency believes that they are probably not that much greater due to the general collection of samples pre-application and during the fall as well as a small number post-application. The data further support the Agency's position that cyanazine detections in the surface waters of Illinois remain of concern.

Comment: Griffin and DuPont commented that detections of cyanazine in surface water fluctuate seasonally with detections peaking in spring and summer but returning to background levels that do not present health concerns for the majority of the year. DuPont believes that studies on effectiveness of best management practices (BMP) provide evidence that DuPont's BMP efforts have helped reduce surface water levels.

Agency Response: The Agency agrees that cyanazine detections tend to be seasonal; however, the detections that are reported remain as a concern to the Agency. Monitoring data post 1990 from West Lake and Rathbun Reservoir in Iowa, as well as data provided to the Agency by the Environmental Working Group and the Illinois Environmental Protection Agency, support the Agency's concern that average annual cyanazine concentrations in some surface source drinking water supplies continue to exceed the HAL of 1 µg/L. Data from studies conducted by Baker in Ohio and the USGS in the Midwestern corn belt show that maximum cyanazine concentrations exceed the HAL and that such concentrations may last several weeks post-application. The Agency agrees with DuPont's statement that concentrations of cyanazine exceeding 10 µg/L are more likely to occur in small streams rather than larger streams and rivers where the concentration is likely to be diluted. DuPont's assertion that small streams do not generally supply drinking water is true. However, cyanazine concentrations often remain elevated for longer periods of time in larger streams and rivers due to cyanazine loadings that occur at different times within the watershed upstream from the sampling location. Also, cyanazine concentrations appear to remain elevated longer in lakes and reservoirs such as West Lake and Rathbun Reservoir due to lower microbiological activities coupled with long hydrological residence times. In the USGS reconnaissance survey of 129 surface water sites within the Midwestern corn belt, greater than 10 percent of the sites had post-application concentrations of cyanazine greater than 10 µg/L; in the study by Baker of eight tributaries of Lake Erie over 4 years (32 site-years), 19 percent had maximum concentrations exceeding 10 µg/L.

The Agency does believe that the changes brought about by the adoption of the BMPs has helped to decrease the triazine loading of surface waters. The Agency believes that the reduction in use rates called for during the phaseout of cyanazine will further help reduce the loading to surface waters from agricultural runoff. However, the decreases observed since the use of BMPs are small and recent data show that cyanazine contamination of some surface water source drinking supplies continues to be a concern.

Comment: DuPont disagrees with the Agency's use of a 20 percent Relative Source Contribution (RSC) factor to calculate the HAL and suggests that the Agency revisit this issue before assessing risk based on the current number.

Agency Response: The RSC value is a factor that is used to establish regulatory standards for levels of a contaminant in drinking water. The RSC apportions the allowable doses of a contaminant that are derived from food, water and air. In the case of cyanazine, the Agency has used the default value of 20 percent due to lack of data to support any other value. In other words, the Agency is allowing only 20 percent of the total amount of cyanazine exposure to come from drinking water; the remaining 80 percent can be contributed through other exposure routes such as food and air. In 1994, DuPont requested that the Agency revise the RSC value and modify the cyanazine HAL accordingly. The Agency responded to DuPont's request, concluding that the 20 percent default value for the RSC was appropriate at this time due to uncertainties associated with the contribution of total triazines and their degradates to the total exposure. The Agency has received no additional information that warrants making this change and, therefore, continues to believe that the default value is appropriate. In the PD 1, the Agency's calculations to determine drinking water risk estimates do not use the RSC value or the HAL for cyanazine since actual intake survey data were used to estimate consumption of drinking water and monitoring data were used to estimate exposure to cyanazine. Therefore, changing the RSC value would have no effect on the Agency's drinking water risk estimates.

Comment: DuPont disagrees that inclusion of cyanazine metabolites may increase exposure to cyanazine by 10 percent. DuPont submitted data on metabolites in several reservoirs.

Agency Response: In the PD 1, the Agency's statement that degradates could increase exposure by 10 percent referred to total triazine degradates in general and did not refer specifically to cyanazine. The study on metabolites in reservoirs, to which DuPont refers, had very high detection limits for major cyanazine degradates; therefore, it is reasonable to conclude that cyanazine degradates were detected in a relatively low percentage of samples. However, in some of the samples where degradates were detected, they were at concentrations comparable to those of parent cyanazine.

Comment: DuPont agrees that there are numerous sites where a single measurement or even several measurements may exceed the HAL for cyanazine, yet the annual mean may not exceed the HAL. DuPont states that it is inappropriate to use chronic exposure standards in dealing with exposure from surface waters which are highly variable.

Agency Response: The Agency agrees that the concentration of individual surface water samples taken at a given point in time should not be compared to long-term regulatory standards and has only compared arithmetic and time-weighted annual mean concentrations to the HAL for cyanazine. The Agency has compared some maximum and individual cyanazine concentrations to short-term HALs and to 4 times the HAL. The rationale for comparing maximum or other individual concentrations to 4 times the guidance value is that any single quarterly concentration that is greater than 4 times the guidance value will automatically make the annual average of four successive quarterly samples greater than the guidance value. If this guidance value was actually a regulatory standard, the system would be out of compliance with the Safe Drinking Water Act.

Comment: EPA reports that a high percentage of samples from the Chesapeake Bay have triazine detects. DuPont believes such detects should be quantified when assessing risk.

Agency Response: The statement in the PD 1 about a percentage of triazine detections in the Chesapeake Bay was intended to support the fact that the triazines are widely distributed in surface waters. The statement was not meant to be interpreted as any measure of risk but rather the far ranging distribution of the triazines in the environment. Also, the statement referred to atrazine only, not cyanazine, and stated that a small percentage of detections were greater than 3 µg/L.

Comment: DuPont recommends that EPA reconsider appropriate action levels for regulating drinking water contaminants that can occur at varying levels over time. Using an identical exposure level over 70 years of exposure represents excessive conservatism in risk management.

Agency Response: Actual exposure data on the same watershed over many years are not available so the Agency cannot conduct assessments as recommended by DuPont. Results using modeling, a possible future option, are currently not sufficiently reliable to use in absolute comparisons to MCLs or MCLGs. In addition, for regulatory purposes, the Safe Drinking Water Act requires the comparison of running annual average concentrations based upon four successive quarterly samples to be compared to the MCL. The Agency acknowledges that the use of water from the same source containing the same contaminant level is conservative since most of the U.S. population moves at some time during their life and does not live in the same area drinking from the same water source for a 70-year lifetime. However, it could be considered as

either an over- estimation or under-estimation depending on the contaminant levels in the other sources of drinking water.

Comment: DuPont disagrees with EPA's statement that the concentration of cyanazine in a watershed is proportional to the watershed's size.

Agency Response: The Agency did not state that the concentration of cyanazine in a watershed is directly proportional to the watershed size. DuPont has misquoted the statement actually made in the PD 1. The Agency stated that "peak concentrations of triazines are generally greater in surface waters draining small watersheds than in those draining large watersheds. . . ." The statement was intended to be interpreted in the context of discussing watersheds which receive high cyanazine applications. As discussed earlier, smaller streams tend to have higher concentrations than do larger streams and rivers.

Comment: DuPont is not aware of any data showing that tile drainage and/or ground water inflow contributes substantially to cyanazine loading of surface waters.

Agency Response: Both Moyer and Cross (1990) and Squillace and Engberg (1988) believe that tile drainage and/or ground water inflow sometimes contribute significantly to triazine loadings of surface waters. Because cyanazine has a shorter half-life in surface soil than does atrazine, such contributions are probably substantially smaller for cyanazine than for atrazine.

Comment: DuPont commented that EPA indicates that the cumulative effects of various triazines are assumed to be additive. DuPont disagreed stating that information in a study report they submitted in response to the PD 1 entitled "Assessment of the Reproductive and Developmental Toxicity of Pesticide/Fertilizer Mixtures Based on Confirmed Pesticide Contamination in California and Iowa Ground Water," indicates no additive effects and that safety margins in the HAL are more than adequate to protect human health and the environment.

Agency Response: Although it is unclear, the Agency assumes that DuPont is referring to additive toxic effects of pesticides as it relates to the Agency's combined risk assessment across several triazines and exposure routes in the PD 1. The study to which DuPont is referring assessed the reproductive and developmental toxicity, not carcinogenicity, of pesticide/fertilizer mixtures based on ground water contamination. The Agency continues to believe that additive effects of exposure to multiple chemicals may increase risks and will continue to evaluate and revise the combined risk assessment as appropriate though the continuing triazine Special Review. Safety margins built into HALs do not account for additive effects of multiple chemical exposures.

Comment: Griffin commented that the exposure values EPA used to characterize daily intake of drinking water are not consistent among the calculations to determine risk from exposure at the HAL, risk from surface water exposure and risk from ground water exposure or with accepted risk assessment methodology.

Agency Response: The Agency acknowledges that different body weight assumptions were used in calculating the risk assessment performed for exposure at the HAL (The Agency specified a 70 kg body weight and 2 L/day water consumption value in the PD 1) than were used to calculate risks from ground and surface water consumption. Calculating risk at the HAL is a screening level assessment similar to using tolerance level residues to estimate risk for dietary consumption. The Agency acknowledges that there can be different default assumptions for water consumption; however, the 2L value used to determine the HAL is a traditionally accepted value. However, the Agency provided a refined assessment for the PD 1 that used actual ground and surface water monitoring data and self-reported body weights from the 1977 - 1978 food consumption survey. Use of actual data to estimate risks, as was done in this case, provides a more realistic estimation than does using default assumptions such as exposure at the HAL or an assumed value for body weight.

Comment: Griffin stated that EPA has consistently used maximum or high-end values in the drinking water evaluation. The basis for using time-weighted averages is not clear. Actual exposure and risk is doubled because: (1) EPA has not considered surface water treatments that may reduce contamination, (2) it appears that EPA used a body weight of 50 kg in its calculations, and (3) EPA applied an exposure value reflecting tap water only and not commercial beverages. EPA has used maximum values in its drinking water assessment even though cyanazine has actually been detected in few samples.

Agency Response: The Agency disagrees with Griffin's statement that maximum or high-end values have been used to estimate exposure in drinking water. The Agency has used time-weighted mean concentrations to provide a better estimate of the exposure to triazine residues over an extended period of time in order to reduce any over- or underestimation effects that may result from the variability of detection levels at specific sampling times. In estimating exposures in surface waters, time-weighted mean concentrations are generally better approximations of the actual time integrated mean concentration than are arithmetic means whose values tend to be greater due to the general increase in sampling frequency during periods when the highest triazine concentrations are expected.

The Agency has not considered surface water treatment effects on the exposure to cyanazine because it cannot be assumed that all individuals are consuming drinking water that has actually been treated. It cannot be assumed that every household is connected to a public water system that provides adequate treatment to remove possible triazine contamination. Since most water systems employ only primary treatment methods (e.g., solids removal), cyanazine concentration in raw and in finished water should generally be comparable. It is true that the Agency did not include "commercial water" such as that added during the manufacturing and processing of beverages. The survey from which the Agency has taken the drinking water consumption value only included tap water that is consumed directly or that is used in the preparation of foods or beverages in the home.

Comment: DuPont submitted a number of studies in response to the PD 1 that provides information about the effects of BMPs on cyanazine movement in the environment.

Agency Response: The Agency has not reviewed these studies to prepare this Notice. As discussed earlier, the Agency does not believe that the BMPs that have been put in place have totally addressed the Agency's ground and surface water concerns because of the more recent monitoring data that continue to show detections. These studies will be considered in the continuing Special Review of atrazine and simazine to evaluate the effects of BMPs on herbicide environmental contamination. Even though some of the BMPs may have a positive impact on ground and surface water contamination and potential ecological effects, the risk concerns associated with occupational exposure and dietary exposure from food consumption will remain unchanged.

Comment: The Environmental Working Group (EWG) submitted its report "Tap Water Blues" to the Agency in response to the initiation of the triazine review. EWG also submitted a follow-up report entitled "Weed Killers by the Glass" which indicates cyanazine detections in drinking water samples taken directly from the taps in people's homes or offices.

Agency Response: The Agency thinks that the data indicating cyanazine detections in drinking water are significant and support the Agency's risk concerns. As discussed earlier, some of the water systems that were sampled by EWG had time-weighted mean concentrations higher than the cyanazine HAL of 1.0 µg/L. The Agency will fully evaluate the information with respect to atrazine and simazine as part of the continuing Special Review of the triazines.

Comment: EWG comments that EPA standards for triazines in food and drinking water are not consistent and allow levels in drinking water that are unsafe and would not be allowed in foods. EWG points out that there is no enforceable standard for cyanazine and recommends promulgation of a combined MCL for the triazines, including metabolites. NCAMP also commented that the Agency's regulation of contaminants in drinking water is less stringent than the regulation of residues in food and that metabolites should be included in all regulatory standards.

Agency Response: While the Agency does not have an MCL for combined triazines, including metabolites at this time, it is considering establishing such an enforceable standard. Because cyanazine is being phased out over the next several years, it is unlikely that the Agency will establish an MCL for cyanazine.

Comment: EWG recommends weekly monitoring of drinking water in susceptible regions for all triazines and metabolites during high runoff and vulnerable periods. EWG also recommended that exposure estimates must include recent data from Missouri and other states demonstrating that peak exposures and annual average concentrations for many rural communities far exceed health standards.

Agency Response: The Safe Drinking Water Act establishes the requirements for monitoring pollutants in drinking water. The Agency will consider the most recent monitoring data available to estimate triazine exposure in drinking water when the risk estimates are revised for the preliminary determination of the triazine Special Review.

Comment: EWG commented that the Agency must concentrate its risk assessment only on exposed populations. Unexposed populations deflate risks faced by people with contaminated water.

Agency Response: The Agency acknowledges the value of this comment and, providing that adequate information is available, will respond to this issue in the PD 2/3 for atrazine and simazine.

E. Occupational Exposure and Associated Risks

For the PD 1, the Agency determined exposure estimates for cyanazine use on corn, the predominant use site, for different scenarios depending on whether the person exposed to cyanazine was mixing, loading or applying cyanazine or performing a combination of these tasks. Additionally, estimates were provided for growers and commercial applicators and whether open or closed equipment is used. Those estimates were based only on dermal exposure assuming a dermal absorption value of 2 percent and a use rate of 3 pounds active ingredient per acre (lb/ai/acre).

Just prior to initiating the triazine Special Review, DuPont provided the Agency with its own occupational risk assessment that estimated exposure to cyanazine by using information in the Pesticide Handlers Exposure Database (PHED) for ground application (Ref. 7). After reviewing DuPont's assessment, the Agency revised its own risk assessment for ground application of cyanazine by using PHED information to estimate worker exposure (Ref. 8). Aerial application risks were not revised and remain as reported in the PD 1. The Agency used a more recent version of PHED (version 1.1) than did DuPont (version 1.01) that contains more data and therefore provides a greater degree of confidence in the exposure estimates. Table 3 below provides the Agency's revised occupational risk estimates as well as DuPont's estimates for groundboom application of cyanazine.

Table 3—Exposure and Risk Estimates for Groundboom Applications of Cyanazine to Corn

	Daily Exposure mg/kg/day	Annual Exposure mg/kg/year	LADE mg/kg/day	Estimated Upper Bound Risk (EPA)	Estimated Risk (Dupont)
Grower					
Mixer/Loader Open	0.0099	0.0109	1.5×10^{-5}	1.5×10^{-5}	1.71×10^{-6}
Applicator Open	0.0044	0.0048	6.5×10^{-6}	6.5×10^{-6}	5.2×10^{-7}
M/L/A Open	0.0143	0.0157	2.2×10^{-5}	2.2×10^{-5}	2.23×10^{-6}
Mixer/Loader Closed	0.0020	0.0022	3.0×10^{-6}	3.0×10^{-6}	N/A
Applicator Closed	0.0016	0.0018	2.4×10^{-6}	2.4×10^{-6}	N/A
M/L/A Closed	0.0036	0.0040	5.4×10^{-6}	5.4×10^{-6}	N/A
Commercial					
Mixer/Loader Open	0.0729	0.0874	1.2×10^{-4}	1.2×10^{-4}	5.28×10^{-5}
Applicator Open	0.0321	0.0385	5.3×10^{-5}	5.3×10^{-5}	4.64×10^{-6}
M/L/A Open	0.1050	0.1259	1.7×10^{-4}	1.7×10^{-4}	5.75×10^{-5}
Mixer/Loader Closed	0.0147	0.0177	2.4×10^{-5}	2.4×10^{-5}	N/A
Applicator Closed	0.0117	0.0139	1.9×10^{-5}	1.9×10^{-5}	N/A
M/L/A Closed	0.0264	0.0316	4.3×10^{-5}	4.3×10^{-5}	N/A

Daily Exposure = lb ai/day X Unit exposure X % Dermal absorption/70
Annual Exposure = lb ai/year X Unit exposure X % Dermal absorption/70
LADE = Annual exposure] 365 X 35/70
Risk = LADE X Q^*
Dermal absorption = 2% (DuPont's estimates are based on 1% dermal absorption)
$Q^* = 1$

F. Comments Regarding Cyanazine Occupational Exposure Risk Estimates and Agency's Response

Comment: Griffin asserts that: (1) EPA has used an application rate of 3 lb/ai/a, but states that 1.5 lb/ai/acre is commonly used for cyanazine, and that using the higher rate is a violation of EPA's legal obligation to base regulatory activities on actual data, (2) EPA used a dermal absorption value of 2 percent to calculate risks, while studies indicate the actual dermal absorption value to be .84 percent, and (3) EPA's risk assessment is overestimated and meaningless because application rates were doubled and the dermal absorption value was exaggerated.

Agency Response: The Agency has estimated occupational exposure to cyanazine based on an application rate of 3 pounds per acre when applying cyanazine alone. The Agency noted in its risk assessment that a rate of 1.5 pounds per acre is often used; however, this rate is typically used when cyanazine is applied in combination with another herbicide, often atrazine. While some cyanazine usage occurs at rates greater than 3 lb/ai/acre (up to greater than 5.0 lb/ai/acre) the majority of usage occurs at rates of 3 lb/ai/acre or less. The dermal absorption rate used in the Agency's risk calculation is based on the actual amount absorbed plus the amount remaining bound to the skin after washing as shown in a dermal absorption study. Therefore, the 2 percent value used in the Agency's risk assessment represents the total amount of cyanazine that could potentially be absorbed through the skin. Assuming that the amount remaining bound to the skin after washing will be absorbed over time is consistent with the Office of Pesticide Programs' risk assessment practices.

Comment: DuPont commented that occupational exposure risks were in the acceptable range and referenced their risk assessment submitted to the Agency.

Agency Response: After reviewing DuPont's assessment, the Agency revised its occupational risk assessment and then compared the two. In using updated PHED information, the Agency's revised risk estimates were lower than those estimates originally reported in the PD 1; however, the risk estimates are not as low as those estimated in DuPont's assessment. The assumptions that the Agency used in its risk estimates vary from the assumptions used by DuPont. The Agency's unit exposure estimates are based on a newer version of PHED and the Agency has also used a different dermal absorption value than DuPont, as discussed above. The Agency used information from PHED derived from atrazine studies in which application parameters comparable to those for cyanazine were used. DuPont's assessment for applicators is unacceptable due to the lack of sufficient replicates used. Most of the exposure estimates for applicators were based on data representing less than the required minimum of 15 replicates per body part. Further, for some of the exposure scenarios used by DuPont, the risks were higher than negligible and of concern. The Agency has used updated use and usage information to estimate the number of acres treated for exposure estimations. Therefore, the Agency believes its revised estimates are more accurate than those presented in the PD 1 and those calculated by DuPont.

G. Combined Cancer Risks Across Multiple Exposure Pathways and Chemicals

In the notice initiating the Special Review of the triazine herbicides, the Agency provided examples of assessments of total risk that was possible to individuals who may be exposed to more than one of the triazines and from more than one exposure pathway. This was the first time that the Agency looked at the additive risks associated with a group of similar pesticide chemicals. In the combined risk assessment, the Agency provided estimates of the total risk from exposure to atrazine, simazine and cyanazine from dietary, drinking water, occupational and residential exposure. In the PD 1, the Agency acknowledged that various total risk estimates were possible depending on the combination of chemicals to which one is exposed and the combination of exposure routes. With the ultimate phaseout of the use of cyanazine, this chemical will eventually cease to contribute to the total combined triazine risk. However, during the phaseout, while cyanazine continues to be used, the Agency will continue to evaluate its contribution to the total risks of the triazine herbicides in Special Review. Table 4 below shows the Agency's upper bound estimates of total cancer risks across several exposure pathways and triazines.

Table 4.—Upper Bound Total Cancer Risks Across Several Exposure Pathways and Triazines

Exposure Pathway	Atrazine	Simazine	Cyanazine[1]	Total
Dietary	4.4×10^{-5}	1.1×10^{-5}	2.7×10^{-5}	8.2×10^{-5}
Drinking Water[2]	4.2×10^{-6}	6.2×10^{-7}	9.7×10^{-6}	1.5×10^{-5}
Occupational[3,4]	1.1×10^{-3}	N/A	N/A	1.1×10^{-3}
Residential[5]	1.1×10^{-4}	N/A	N/A	1.1×10^{-4}
Total	1.3×10^{-3}	1.2×10^{-5}	3.7×10^{-5}	1.3×10^{-3}

[1]Risk contribution from use on wheat not included.
[2]Derived from surface water.
[3]Private grower application to corn using ground boom equipment - mixer/loader/applicator.
[4]Application of a combination of atrazine and cyanazine.
[5]Lawn treatment by homeowner using hand cyclone spreader.

H. Comments Regarding Combined Risk Estimates and Agency's Response

Comment: Griffin commented that EPA has failed to recognize that a critical factor to be addressed when combining risks is the compounding of maximum values. For example, if 90th percentile values are used to assess risk for each pathway to be combined, the total risk actually represents an estimate closer to a 95-99th percentile range, an overexaggeration that reduces the value of the risk estimate for decision making.

Agency Response: The Agency acknowledges that a simple additive approach was used in combining the risks for atrazine, simazine, and cyanazine. This approach was deemed scientifically sound as the estimates were based on the induction of the same tumor type in the same animal strain, quite possibly via the same or similar mode or mechanism of action. The combined risk estimate contains all of the uncertainties of the numbers used in the individual calculations. If all of the triazine risk numbers were roughly of the same magnitude, then addition of many upper bound numbers could eventually lead to an over-estimate of risk. However, adding upper bounds in this case should not be considered to over-estimate the risk since one chemical or one pathway "drives" the risk. In the case of the triazines, the occupational risk from atrazine of 1.1×10^{-3} is driving the overall risk of 1.3×10^{-3}.

Comment: EWG and NCAMP support the Agency's combined risk assessment for the triazines. EWG requests that the Agency calculate the effect of exposure to infants and children on their lifetime cancer risks, the average exposure levels for infants and young children, the degree to which it is disproportionately occurring in early life and the significance of this exposure. NCAMP further urges the Agency to extend that risk assessment concept to include all pesticides with similar toxic endpoints.

Agency Response: The Agency agrees that it is important to consider the differences between infants, children, and adults when estimating risks and is working to develop scientifically-sound methodologies to account for such differences in sensitivity and/or exposure and their impact on the lifetime cancer risk estimates. Many factors such as the length of exposure and variations in exposure levels need to be considered in the risk assessment process. The triazines Special Review is the first case study for estimating total risks from chemicals which are similar. The Agency will likely apply the principles that are used in the combined risk assessment in the triazine case study to estimate combined risks from other pesticides that have concurrent exposure and/or common mechanisms of toxicity in future risk assessments.

IV. Summary of Exposure and Related Ecological Risks

At the time the Agency initiated the Special Review of atrazine, simazine, and cyanazine, it did not include ecological risk as a formal trigger to initiate the review. The Agency did, however, express concerns about the potential risks to aquatic organisms, terrestrial plants and their ecosystems. The Agency based its concern on a number of studies that indicate acute effects on various aquatic organisms and terrestrial plants. These studies were discussed in detail in the PD 1 and the Agency requested any additional information about ecological effects at the time the Notice was published. The Agency did not receive any new information or new studies that either supported or rebutted its concern about potential ecological risks from the use of the triazines; therefore the Agency has not changed its position regarding the ecological effects. Even though this Notice is proposing the termination of the cyanazine Special Review, the Agency will continue to look at adverse effects on ecological parameters in the continuing Special Review of atrazine and simazine.

Comments Regarding Ecological Risks and Agency's Response

Comment: NCAMP supported the Agency's concerns about potential ecological risks associated with the triazines and cited a number of published studies about the toxic effects on aquatic and terrestrial organisms.

Agency Response: NCAMP did not provide any information other than citing several studies about the potential ecological risks of the triazines. The Agency conducted a comprehensive literature search and considered all published information in its assessment of triazine ecological risks at the time the triazine PD 1 was issued. The studies that supported the Agency's ecological concerns are discussed in detail in the PD 1. In the PD 1, the Agency stated that exclusion of ecological risks as a Special Review trigger at that time would not preclude the Agency from including those risks in the review at a later time, should additional information warrant it. The Agency will continue to evaluate ecological concerns as the Special Review of atrazine and simazine proceeds. If new information becomes available that changes the Agency's position regarding the ecological risks of atrazine and simazine, the Agency may include them in the Special Review.

V. Summary of Qualitative Benefits and Impacts of Phaseout and Voluntary Cancellation

Cyanazine is a broad spectrum herbicide which is registered for the control of many annual grasses and broadleaf weeds in corn, cotton, and sorghum. About 23 - 36 million pounds active ingredient of cyanazine are applied each year in the U.S. Corn accounts for 95 percent of cyanazine usage with between 18 and 21 percent of the field corn acreage treated each year. Cotton accounts for about 3 percent of all usage with between 12 and 20 percent of the cotton acreage treated annually. Sorghum and sweetcorn account for less than 1 percent of all cyanazine usage with between 1 and 3 percent of the sorghum acreage and about 20 percent of sweet corn acreage treated annually.

Cyanazine provides the grower with flexibility of application (preplant, preemergence, postemergence) and residual activity in addition to burndown in no-till crop management. A second advantage, compared to the widely used atrazine-based products, is that cyanazine is less persistent following application, which results in shorter residual activity. Thus, a significant advantage of cyanazine alone or in mixtures with atrazine, compared to atrazine alone or atrazine in combination with other herbicides, is the ability to plant any triazine-sensitive rotational crop in the fall or the spring following the application without the concern of carryover. This flexibility is extremely important in regions where growing seasons are shorter, which may result in herbicide applications being made later in the spring. A third advantage is that cyanazine offers the grower a wide weed control spectrum, especially against several problem grass species. Therefore, in some cases a second grass herbicide may be unnecessary, or can be used at a reduced application rate.

The Agency has evaluated how the phaseout of cyanazine will impact users as compared to an immediate cancellation. Data and information from publications of the USDA National Agricultural Statistical Service (NASS), USDA/University State Extension Pesticide Use Recommendation Reports, other proprietary marketing research sources, and comments received in response to the triazine PD 1 were used as the basis for this analysis. Although USDA National Agricultural Pesticide Impact Assessment Program (NAPIAP) reports on field corn (1995), cotton (1993), and sorghum (1994) exist, they have limited usefulness to EPA in terms of quantitative estimates of impacts.

The NAPIAP reports generally contain estimates of yield losses and direct costs resulting from the use of some alternative chemicals. The NAPIAP report on corn also includes estimates of crop damage. The yield loss estimates were based on a survey of regional weed scientists. For the corn assessment, scientists from 15 states were interviewed as a group to encourage dialogue. Survey responses were then used as a basis for quantitative estimates of the economic impact of a cancellation of cyanazine and substitution of alternative control methods. The report does not specify the basis for the opinions of the weed scientists. Thus, it is not clear to what extent the opinions of the weed scientists are based on comparative product performance tests or other comparable scientific data. The Agency has concluded that a reliable projection of the comparative performance of pesticide products must

be based on scientifically derived data. Projections based solely on opinions, even the opinions of experts, do not provide a sufficiently reliable basis for the quantitative estimation of economic impacts. Accordingly, the Agency has not relied on the NAPIAP reports to estimate potential economic impacts of the cancellation or phaseout of cyanazine registrations.

The NAPIAP reports are limited in several other respects. The commodity assessments do not focus on cyanazine, nor do they address specific aspects that could affect the impacts associated with its anticipated phaseout. Additional factors that were not considered in the NAPIAP reports include tillage practices, potential for crop injury, farm size, and regional preferences that could also influence the overall economic impacts to users. Perhaps most significantly, the corn and cotton assessments were completed before several newly registered herbicides entered the market, so they were not considered.

The Agency has not adopted the NAPIAP reports' quantitative estimates of the economic impacts of a cancellation or phaseout, but has used the reports for other purposes in the Agency's analysis. For example, the NAPIAP reports do provide useful information about the manner and extent of cyanazine use. The NAPIAP quantitative estimates have been used only for the limited purpose of illustrating the relative economic differences between the two regulatory options: a complete cancellation or a phase-down of use followed by a complete cancellation. In such an analysis, the accuracy and reliability of the NAPIAP quantitative estimates are not crucial because the Agency is using them for the limited purpose of illustrating the relative relationship between the two regulatory options.

Because the terms and conditions of the cyanazine phaseout call for incremental annual reductions in cyanazine usage beginning in 1997, reaching a maximum of 1 lb/ai/a in 1999, and requirements for closed cab application equipment beginning in 1998 and remaining throughout the phaseout period, the full impacts of the cyanazine phaseout will not be realized until after 2002, when all use of the chemical is prohibited. However, the Agency does believe that some impacts will occur during the phaseout period as a result of a decrease in the maximum rates allowed per acre and the closed cab requirements.

Most cyanazine users are not expected to be adversely affected by the phaseout until the maximum use rate drops below the rate at which they are currently applying the chemical. For example, the majority of cyanazine usage on corn is applied at rates between 1 and 3 lb/ai/acre. Therefore, the use on corn will not be significantly affected until 1999 when the maximum rate is reduced to 1 lb/ai/acre. Similarly, for cotton, the majority of usage occurs at rates of less than 1 lb/ai/a; therefore, most uses in cotton will remain unaffected, assuming adequate supplies, through 2002, at which time cyanazine will no longer be available for use. Table 5 below presents the frequency distribution of cyanazine acre treatments by application rate for each of the use sites.

Table 5.—Distribution of Cyanazine Usage (Acre Treatments) by Application Rate (1993 - 1994)

Application Rate (lb/ai/acre)	Field Corn	Cotton	Sweet Corn
0 to 1	18%	91%	16%
>1 to 3	72%	8%	81%
>3 to 5	9.8	1%	3%
>5 to 6.5	0.2%	–	–
Total	100%	100%	100%

Source: U.S. EPA; Based on proprietary and publicly available data.

The Agency acknowledges that some benefits are associated with the use of cyanazine throughout the phaseout period; however, quantitative estimates of the impact of the phaseout have not been determined. As discussed earlier, the Agency has used the quantitative estimates of an immediate cancellation as reported by NAPIAP for the limited purpose of illustrating the relative differences between a phaseout of cyanazine followed by a complete cancellation and an immediate cancellation. The Agency has not relied on the NAPIAP reports to estimate the potential economic impact of the phaseout and cancellation of cyanazine other than to merely illustrate that a phaseout incurs less of an impact to growers than would an immediate cancellation. The NAPIAP reports estimate that the aggregrate economic impacts of an immediate ban of cyanazine would be $25 million for corn and $14 million for cotton. In Table 6, the NAPIAP estimates have been used to illustrate the ameliorating effect that the phaseout of cyanazine may have on individual uses (Ref. 12).

Table 6—Allocation of the Impacts of the Phaseout and Voluntary Cancellation of Cyanazine

Year	App Rate (lb/ai/acre)	Field Corn ($mil)	Cotton ($mil)	Sweet Corn ($mil)	Total Impacts ($mil)
1996	6.5	$0.00	$0.00	$0.00	$0.00
1997	5	$0.05	$0.00	$0.00	$0.05
1998	3	$6.8	$8.6	$0.1	$15.5
1999	1	$21.4	$9.0	$0.7	$31.1
2000	1	$21.4	$9.0	$0.7	$31.1
2001	1	$21.4	$9.0	$0.7	$31.1
2002	1	$21.4	$9.0	$0.7	$31.1
2003	0	$25	$14	$0.8	$39.8

While the Agency has used the NAPIAP quantitative estimates of impacts in Table 6 above, the Agency neither accepts nor rejects them. The quantitative estimates are used only to illustrate the relative difference between immediate cancellation and a phaseout.

1. *Field corn.* Between 18 and 21 percent of the 73 million acres planted to field corn receives one or more applications of cyanazine per growing season at an average rate of 1.9 lb/ai/acre. Approximately 22 - 33 million pounds of cyanazine are applied annually. Treatments are predominantly preemergence and preplant incorporated; however, cyanazine combined with atrazine is commonly used in no-till corn as an early post-emergence or burndown agent. Cyanazine is applied alone or in combination with another herbicide approximately 35 and 65 percent of the time, respectively. About 90 percent of cyanazine products are applied broadcast using ground equipment and most of the remaining 10 percent applied as a band treatment. Cyanazine used alone is applied at an average rate of 2.25 lb/ai/acre. When used in combination with another herbicide, cyanazine is applied at an average rate of 1.67 lb/ai/acre.

The majority of users who apply cyanazine to field corn will not be affected until 1999 when the maximum use rate is lowered to 1 lb/ai/a. However, about 10 percent of cyanazine usage does occur at rates of 3 lb/ai/acre or higher on heavier clay soils that generally contain greater than 3 percent organic matter or on soils with greater than 30 percent surface residue. In 1999, when the maximum rate is reduced to 1 lb/ai/a, approximately 82 percent of cyanazine usage will be affected. Compared to an immediate cancellation, the phaseout reduces annual impacts because cyanazine will continue to be available to some growers through 2002. Table 6 above illustrates the ameliorating effect that the phaseout of cyanazine followed by a voluntary cancellation has on corn growers relative to an immediate ban. Efficacious alternatives to cyanazine include atrazine, nicosulfuron, metolachlor, alachlor, dicamba, acetochlor, halosulfuron and prosulfuron.

2. *Cotton.* Cotton is the second largest crop on which cyanazine is used and it accounts for 3 percent of the total cyanazine used in the United States or about 1 - 2 million pounds of active ingredient. About 62 percent of cyanazine usage in cotton are postemergence directed applications, 25 percent are preemergence applications and 11 percent are layby applications. About 12 - 20 percent of the U.S. cotton acreage received a cyanazine application at an average rate of 0.8 lb/ai/a. Preplant applications were typically made at the rate of 1.5 - 2.0 lb/ai/acre while postemergence applications were made at the rate of 0.5 - 1 lb/ai/a. Alternatives that are available for use on cotton include diuron, fluometuron, oxyfluorfen, prometryn, and the recently registered herbicide pyrithiobac-sodium. Since the majority of cyanazine usage in cotton occurs at rates less than 1 lb/ai/a, the phaseout should not adversely impact cotton growers until cyanazine use is prohibited after 2002. Table 6 above illustrates the ameliorating effect that the phaseout of cyanazine followed by a voluntary cancellation has on cotton growers relative to an immediate ban.

3. *Sweet Corn.* Approximately 200,000 to 300,000 pounds active ingredient of cyanazine is applied to sweet corn per year at an average rate of 1.5 lb/ai/acre. About 6 percent of the 164,000 acres of fresh market sweet corn and about 24 percent of the 503,000 acres of processed sweet corn receive cyanazine applications, with Wisconsin, Illinois, New York, Michigan, New Jersey, and Minnesota having significant cyanazine use on this commodity. The heavy usage in Wisconsin is probably due to the restrictions placed on atrazine in that state. There are fewer alternative herbicides registered for use on sweet corn than for field corn, with atrazine being the primary preemergence alternative. Dicamba and 2,4-D are postemergence alternatives for broadleaf weed control and alachlor and metolachlor are alternatives for grass control.

As stated earlier, no published information was available that estimated the impacts of the unavailability of cyanazine for sweet corn production. The Agency calculated estimates for sweet corn based on information that was available for field corn. The economic impact on field corn is adjusted to account for differences between the total acres planted and the per acre value of sweet corn and field corn. The following formula is used to estimate this impact:

Sweet Corn Impact = Field Corn Impact ($25 million) x total acres sweet corn (800,000)/total acres field corn (70,000,000) x per acre value sweet corn ($850)/per acre value field corn ($303).

The per acre value of sweet corn is a weighted average of sweet corn grown for the fresh market (224,900 acres, $373.7 million) and the processed market (516,200 acres, $256.1 million). The per acre value of field corn was calculated on the basis of 72.9 million acres with a total crop value of $22.16 billion. Using the above formula, the annual economic impact of banning cyanazine use on sweet corn is estimated to be $0.8 million. Annual impacts that result from the phaseout of cyanazine will not significantly impact sweet corn growers until 1999 when the maximum allowable application rate is reduced to 1 lb/ai/a.

Wisconsin sweet corn growers may be severely impacted by the phaseout of cyanazine since it is believed that a large percentage of cyanazine usage in that state is a result of the state restrictions that have been placed on atrazine. In some counties, rate restrictions have reduced the performance of atrazine as a preemergence treatment. Therefore, sweet corn growers may have to resort to using postemergence herbicides to control broadleaf weeds unless new preemergence herbicides are registered. The Agency anticipates that the impact to sweet corn growers will be similar to that anticipated for field corn growers. Table 6 above illustrates the ameliorating effect that the phaseout of cyanazine followed by a voluntary cancellation has on sweet corn growers relative to an immediate ban.

Comments Regarding Benefits of Cyanazine and the Agency's Response

A number of commenters, including academia and weed extension scientists, grower groups, and chemical producers, submitted comments about the general benefits of cyanazine use in agricultural practices. These general arguments support cyanazine's continued use because of its shorter residual life and therefore less crop rotation restrictions, better control of certain grass weeds other than triazines, effectiveness against germinating and emerged weeds with good burndown action in no-till practices, role in weed resistance management, no drift damage to sensitive crops nearby, and its generally greater flexibility in weed control programs. The Agency acknowledges that there are certain benefits associated with the use of cyanazine and, as required, has considered all of cyanazine's advantages in its assessments.

Comment: NCAMP and EWG criticized the methodology of the Agency's analyses of pesticide benefits. NCAMP commented that a comprehensive benefits assessment will demonstrate the appropriateness of cancelling all registrations of the triazines. NCAMP further stated that the Agency's method of assessing benefits is inappropriate because the assessment looks only at

alternative chemical means of controlling weed pests. The EWG commented that the Agency must consider the total social costs of using pesticides in its benefits assessment and that it is not proper to allow a chemical risk to support the production of commodities that are subsidized and where supply exceeds demand.

Agency Response: Because these comments were not specific to cyanazine, the Agency intends to respond to them later in the Special Review when comments on all triazines are addressed, unless it receives additional comments demonstrating that these criticisms apply specifically to cyanazine.

Comment: Griffin provided an assessment of the general benefits of cyanazine that addressed the following aspects of cyanazine: (1) Importance in controlling a wide spectrum of weeds, (2) providing greater crop rotation flexibility, (3) usefulness in no-till practices, (4) weed resistance management, and (5) lower cost than alternative chemicals.

Agency Response: The Agency agrees with Griffin that cyanazine offers those benefits as Griffin pointed out; however, the Agency also believes that alternative herbicides are available that provide comparable weed control at similar costs. Earlier in this Notice, the Agency acknowledged many of the same advantages of using cyanazine as Griffin noted.

VI. Risk/Benefit Analysis and the Agency's Proposed Decision Regarding Special Review

A. Risks

The terms and conditions of the phaseout and cancellation are expected to reduce risk from use of cyanazine as estimated in the cyanazine PD 1 to zero over the course of the phaseout and depletion of existing stocks. While both users and the public will be subject to some continued risk during this time, the risk to users will decline during the phaseout and depletion of existing stocks due to the imposition of use restrictions and the risk to the public will decline due to the reduction in use rates.

B. Benefits

In Unit V. of this Notice, a discussion of the impacts of phasing out cyanazine compared to an immediate cancellation is presented. The cyanazine phaseout allows for a gradual reduction in use of the chemical over a period of 7 years.

There are a number of elements inherent in the phaseout of cyanazine that will, in effect, lessen the economic impact to growers who have used cyanazine in their weed management practices in the past. First, the phaseout should allow growers sufficient time to find suitable alternatives to replace cyanazine, thereby causing little disruption to agricultural production. For example, the majority of cyanazine used is applied to field corn. With the phaseout, there will be little impact to corn growers until 1999 when the maximum allowable use rate drops to 1 lb/ai/a. With all uses, the full impact of the phaseout will not be realized until after 2002 when cyanazine use will be prohibited.

C. Risks of Alternatives

The Agency has identified the major chemical alternatives to cyanazine in this Notice. Atrazine, one alternative to cyanazine, was placed into Special Review concurrently with cyanazine based on the potential risk of carcinogenicity to humans. No significant risk concerns have been identified with the other alternatives except for 2,4-D, which is currently being considered for possible Special Review pending results of further studies on its carcinogenic potential.

D. Risk/Benefit Analysis

In light of the terms and conditions of the DuPont and Griffin cyanazine registrations, the Agency has considered the risks and benefits of cyanazine for the remaining 7 years that the pesticide will be allowed for use. During the phaseout, people will be exposed to cyanazine for a limited time period during which application rates will be reduced and closed cab application equipment will be required. As discussed earlier, the Agency believes that the potential risks that may result, while considering the factors of time and exposure imposed by the cyanazine phaseout, will be less than those risks articulated in the PD 1. Further, the Agency has evaluated the impacts of the cyanazine phaseout and has concluded that there are benefits associated with the phaseout of cyanazine.

The phaseout also confers benefits by making it unnecessary to recall and dispose of unused product and by allowing users to reduce costs through various mechanisms such as allowing them time to gradually modify weed management strategies to replace cyanazine. The Agency also considered the costs, time, and uncertainties associated with involuntary imposition of regulatory measures. In the absence of the voluntary cancellation and phaseout, the Agency may have used its authority under FIFRA section 6 to cancel cyanazine registrations. The Agency believes that this action would have been contested and would have required enormous resources and several years of litigation before a final order could have been implemented. The resources saved by voluntary cancellation and phaseout may now be applied to risk reduction of other products. Also, a contested cancellation would not have brought about the phased-in measures to reduce risk as currently provided for by the terms and conditions of the voluntary cancellation and phaseout. Finally, the outcome of litigation is uncertain in both result and when those results may be achieved; the voluntary cancellation and phaseout has set a firm schedule for the implementation of risk reduction measures and has established a date certain for the final cancellation of cyanazine registrations.

For all of the foregoing reasons, the Agency has determined that implementation of the voluntary cancellation and phaseout of cyanazine will eliminate the potential risks posed by cyanazine identified in the triazine PD 1.

E. Proposed Decision Regarding Special Review

In view of its determination discussed above, that the terms and conditions of the cyanazine voluntary cancellation and phaseout will eliminate any unreasonable adverse effects posed by the registration of cyanazine, the Special Review need not be continued.

VII. Request for Voluntary Cancellation

As part of the terms and conditions of all registered cyanazine products, including those of both DuPont and Griffin, voluntary cancellations of all cyanazine registrations will become effective December 31, 1999. Shortly thereafter, the Agency will issue a cancellation order for all cyanazine products. Also, as part of the terms and conditions, EPA is required to provide advance public notification of the voluntary cancellation of cyanazine products as part of the proposal to terminate the Special Review of cyanazine. This section, Unit VII., will serve as the Agency's notification of the requests for voluntary cancellation.

The cyanazine products that, according to the amended terms and conditions of cyanazine registration, will be voluntarily canceled, effective December 31, 1999, are listed below by EPA registration number and product name.

Registration No.	Product Name
352-475	DuPont Cyanazine Technical
352-470	DuPont Bladex (R)4L Herbicide
352-495	DuPont Bladex (R)90 DF Herbicide
352-500	DuPont Extrazine (R)II 4L Herbicide
352-577	DuPont Extrazine (R)II DF Herbicide
1812-364	Griffin Cyanazine Technical
1812-365	Griffin Cynex DF
1812-366	Griffin Cynex 4L Herbicide Liquid
1812-367	Griffin Cynex Extra 4L
1812-368	Griffin Cynex Extra DF

Comments on the requests for voluntary cancellation of these registrations may be submitted to the contact person listed under the FOR FURTHER INFORMATION CONTACT unit of this document during the 30-day comment period provided in this Notice.

Also included in the terms and conditions of cyanazine registrations is a provision for allowing the continued distribution and use of cyanazine end use products beyond the effective voluntary cancellation date. The terms and conditions specifically state that all cyanazine formulated end use products released for shipment by a registrant on or before December 31, 1999, may continue to be distributed and sold in the channels of trade in accordance with labels through September 30, 2002. The terms and conditions further state that use of such existing products in accordance with their labels may continue through December 31, 2002. All labels of cyanazine formulated end use products released for shipment by a registrant after July 25, 1996, will state that the product may not be sold or distributed after September 30, 2002, and that the products may not be used after December 31, 2002. The existing stocks provision will allow any remaining product in the channels of trade to be used, thereby precluding the need for recall and disposal of unused product.

VIII. Public Comment Opportunity

During the 30-day comment period, specific comments are requested on the Agency's preliminary determination to terminate the Special Review of cyanazine and on the requests for voluntary cancellation of cyanazine products. The Agency will review and consider any comments received during the official comment period before issuing a final determination on conclusion of the Special Review of cyanazine. All written comments submitted pursuant to this Notice, except "CBI," will be available for public inspection in Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA Telephone: 703-308-5805.

Comments claimed as CBI must be clearly marked as "confidential," "trade secret," or other appropriate designation on the face of the comments. Comments marked as such will be treated in accordance with the procedures in 40 CFR 2.204(e)(4). Comments not claimed as confidential at the time of submission, or not clearly labeled as containing CBI, will be placed in the public docket. The Agency will consider the failure to clearly identify the claimed confidential status on the face of the comment as a waiver of such claim, and will make such information available to the public without further notice to the submitter.

All comments and information should be submitted in triplicate to the address given in this Notice under ADDRESSES to facilitate the work of EPA and others interested in inspecting them. The comments and information should bear the docket control number, "OPP–30000/60A."

IX. Public Docket

A record has been established for the action under docket number "OPP–30000/60A" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for the document, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

X. Terms and Conditions Amending Cyanazine Registrations

On August 2, 1995, EPA accepted DuPont's proposed amendments to its cyanazine registrations that effectively phases out the production of cyanazine for use in the United States by the end of 1999. The amendments also included an incremental reduction of the maximum label rates over the course of the phaseout and a requirement for closed cab application equipment in 1998. The terms and conditions of the amendments apply to all current DuPont cyanazine registrations as well as any new registration that the Agency may approve since the acceptance of DuPont's proposal, including Griffin's recent conditional registrations that were approved by the Agency. As part of the requirements for approval of any future cyanazine registrations, any registrant must agree to comply with all of the same terms and conditions to effectively phaseout cyanazine production for use in the United States by end of 1999. The amended terms and conditions that are required of all cyanazine registrants appear below.

Terms and Conditions to Amend Cyanazine Registrations

1. On November 23, 1994, the U.S. Environmental Protection Agency ("EPA") initiated a Special Review under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), for pesticide products that contain a triazine herbicide as an active ingredient, Federal Register Notice, Vol. 59, No. 225 ("the Special Review"). Cyanazine is one of the triazine products subject to the Special Review, and E. I. du Pont de Nemours and Company ("DuPont") is the primary registrant of cyanazine in the United States.

2. EPA's initiation of the Special Review for triazine containing products was based on the Agency's preliminary determination that triazine products trigger risk criteria that indicate these products may present unreasonable risks as described in the Notice of Special Review. This preliminary determination by EPA with respect to cyanazine, however, is not a finding, conclusion or other determination, that cyanazine does in fact present a risk to humans or the environment.

3. The purpose of this letter is to propose a comprehensive listing of the terms and conditions of amendments to DuPont's cyanazine product registrations. The specific mitigation steps proposed in these amendments are designed to reduce the potential for the risk criteria being triggered in the future and to satisfactorily address EPA's concerns over potential risks as described in the Notice of Special Review. DuPont's understanding in agreeing to the

proposed mitigation steps is that if they are required of all current and potential future cyanazine-containing products and registrations, including but not limited to DuPont's cyanazine products and registrations, they will adequately address EPA's concerns that cyanazine products may present risks as described by EPA in the Notice of Special Review. It is DuPont's further understanding that based on this determination, EPA will proceed to conclude the Special Review as to cyanazine as soon as practicable.

4. DuPont's agreement to the proposed amendments set forth herein is not, and shall not be considered as, an admission by DuPont that cyanazine used in accordance with DuPont's registrations and labels triggers risk criteria as described in the Notice of Special Review, or otherwise poses risks to humans or the environment.

5. Cyanazine Risk Mitigation Measures shall be comprised of the following steps: (a) The labels of all cyanazine formulated end use products released for shipment by a registrant[1] after July 25, 1996, for use in the U.S., shall specify seasonal use rates that limit the maximum amount of cyanazine active ingredient that may be applied on a per acre basis as follows:

FOR USE: MAXIMUM SEASONAL USE RATE CAP (AI/ACRE):
Beginning Jan. 1, 1997 5 lbs per acre
Beginning Jan. 1, 1998 3 lbs per acre
Beginning Jan. 1, 1999 1 lb per acre

(b) Subject to all the terms and conditions of these amendments, this letter shall serve as DuPont's request, pursuant to FIFRA, that EPA accept the voluntary cancellation of all of DuPont's existing registrations for formulated end use products containing cyanazine to become effective December 31, 1999. The cancellation date of December 31, 1999, shall become a part of the terms and conditions of DuPont's registrations for formulated end use products that contain cyanazine.

(c) The labels of all cyanazine products released for shipment by a registrant after July 25, 1996, for use in the U.S., shall specify that closed cab application will be required for applications to be made during or after the 1998 use season.

(d) No cyanazine formulated end use products registered for use in the U.S. shall be released for shipment by a registrant after December 31, 1999.

(e) EPA shall authorize existing stocks of all cyanazine formulated end use products that have been released for shipment by a registrant of such products on or before December 31, 1999, to continue to be distributed and sold in the channels of trade in accordance with their labels through September 30, 2002. EPA shall authorize the continued use of such existing stocks in accordance with their labels through December 31, 2002. Labels of all cyanazine formulated end use products released for shipment by a registrant after July 25, 1996, shall bear the following statements: "This product may not be sold or distributed after September 30, 2002" "This product may not be used after December 31, 2002."

(f) The public will have advance notification of the voluntary cancellation of DuPont's cyanazine formulated end use registrations and the existing stocks provisions provided for herein as part of the conclusion of the Special Review, and DuPont shall have no obligation to recover or recall any cyanazine products, or to reimburse, or otherwise compensate or provide additional notice to any purchaser or other party in connection with or as a result of the voluntary cancellation provided for herein.

(g) cyanazine technical products released for shipment by a registrant after July 25, 1996, shall bear labels stating that any formulated end use products that are made from the technical products and that are registered for use in the U.S., shall be subject to the terms and conditions of cyanazine registrations set forth in paragraph 5 of this letter.

6.(a) It is DuPont's understanding that upon its submission to EPA of a signed copy of this letter proposing amendments to its registrations, EPA will commence such steps as are necessary to approve finally the amendments and to conclude the Special Review of cyanazine, without requiring further mitigation steps by DuPont, and that EPA will complete such final Agency action, including any public comment or required notice to other federal agencies, as soon as practicable. In the event EPA is unable to so approve the amendments or to finally conclude the Special Review, for whatever reason, or if after August 2, 1995, and prior to the date EPA finally approves these amendments and finally concludes the Special Review, another party obtains a cyanazine registration that does not contain the terms and conditions set forth in these amendments, for whatever reason, these amendments may, at DuPont's election, be withdrawn and be without effect, and the current terms and conditions of DuPont's cyanazine registrations shall remain in effect. In such event, DuPont will retain all of its rights to participate fully in the Special Review, or any Agency or judicial review of the same, or to contest any regulatory action that may be initiated against its products and registrations, pursuant to FIFRA or other applicable laws and regulations, as it deems appropriate.

(b) In the event another party obtains a registration of a cyanazine product that does not require the terms and conditions of registration as specified in this letter, including cancellation as of December 31, 1999, or said terms and conditions are proposed or imposed upon another party's registrations, but are stayed or enjoined in whole or in part by the Agency or any court, EPA agrees to permit DuPont to continue its registrations in effect beyond December 31, 1999, and/or amend its cyanazine registrations, on a specific use and/or site specific or use rate basis, in order to delete any term or condition of registration set forth in this letter that is not required of the other party or as a term or condition of that party's registration, and to make such other amendments to its cyanazine registrations, including but not limited to adding new uses or application methods, as are necessary so that DuPont's cyanazine registrations may contain the same terms and conditions as are contained in the other party's registrations. Any such amendments are to be accomplished in accordance with the requirements of FIFRA.

7. On April 16, 1992, EPA issued a Data Call In for cyanazine (the "DCI"). DuPont has completed and submitted all of the studies requested in the DCI. EPA agrees that DuPont has submitted all of the studies requested by the DCI, and that EPA will not request further data from DuPont in connection with said DCI. Nothing contained in these amendments shall be interpreted as restricting EPA's authority to issue a future Data Call In, or otherwise to regulate cyanazine registrations pursuant to FIFRA, should the Agency determine that there is significant new evidence about potential unreasonable risks to the environment presented by use of products containing cyanazine. DuPont shall retain all of its rights under FIFRA and other applicable laws and regulations to challenge any such action by EPA.

8. Upon EPA's final acceptance of these amendments, and the Agency's final action concluding the Special Review in accordance with the amendments and understandings set forth herein, DuPont agrees to waive its rights to challenge EPA's final action on the Special Review, or the terms and conditions of label amendments that are required by these amendments, in any court or administrative forum, and agrees not to assist or encourage any other party to challenge EPA's final actions. Except as expressly set forth in these amendments, DuPont shall retain all of its rights under FIFRA, and other applicable laws and regulations, to challenge any action, proceeding or determination by EPA, or to challenge or intervene in any action by or involving a third party, with respect to the registration of DuPont's or any other party's cyanazine products.

[1]For the purpose of determining compliance with the proposed terms and conditions of amended registrations as set forth in paragraph 5., whenever the term "released for shipment by a registrant appears in these amendments, it shall mean the shipment of cyanazine formulated end use products, shipped by or at the direction of a registrant from the facility at which they are finally formulated for distribution, sale and use in the U.S. as evidenced by a bill of lading or other verifiable shipping documents. The term shall not apply to a) shipments of cyanazine formulated end use products by agents, distributors, or dealers who receive and further distribute cyanazine products to customers, or b) to cyanazine technical products shipped within the U.S. for formulation into end use products, or c) to shipments of cyanazine technical or formulated end use products for export. Any formulated end use product containing cyanazine technical products and registered for use in the U.S. shall be subject to the terms and conditions of paragraph 5 of this letter.

XI. References

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10. DuPont Agricultural Products. Letter from Tony E. Catka. "Cyanazine Mixer/Loader/Applicator Occupational Cancer Risk Estimates." October 19, 1994.
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12. U.S. Environmental Protection Agency. Biological and Economic Assessment of the Cyanazine Phaseout. February 9, 1996.

Dated: February 26, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pollution and Toxic Substances.

[FR Doc. 96–4963 Filed 2–29–96; 8:45 am]
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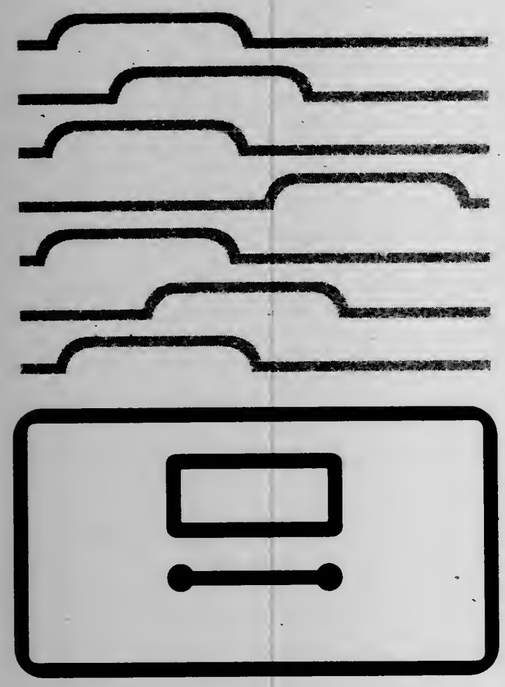
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 91–155–18]

Mediterranean Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rules as final rule.

SUMMARY: We are adopting as a final rule, without change, the Mediterranean fruit fly regulations, as established and amended by a series of interim rules published in the **Federal Register** between November 1991 and August 1995. The regulations quarantine portions of California and restrict the interstate movement of regulated articles for those areas to help prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

EFFECTIVE DATE: April 3, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

In an interim rule effective November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573–57579, Docket No. 91–155), we established the Mediterranean fruit fly (Medfly) regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations) and quarantined the Hancock Park area of Los Angeles County, CA. The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Medfly to noninfested areas of the United States. We have published a series of interim rules amending these regulations by adding to or removing from the list of quarantined areas certain portions of Los Angeles, Santa Clara, Orange, Riverside, San Bernardino, San Diego, and Ventura Counties, CA, and by adding three treatments for fruit. Amendments affecting the quarantined areas in California were made effective on September 10 and November 12, 1992; and on January 19, July 16, August 3, September 15, October 8, November 22, and December 16, 1993; and on January 10, February 14, March 4, July 7, August 2, and October 12, 1994; and on August 1, 1995 (57 FR 42485–42486, Docket No. 91–155–2; 57 FR 54166–54169, Docket No. 91–155–3; 58 FR 6343–6346, Docket No. 91–155–4; 58 FR 39123–39124, Docket No. 91–155–5; 58 FR 42489–42491, Docket No. 91–155–6; 58 FR 49186–49190, Docket No. 91–155–7; 58 FR 53105–53109, Docket No. 91–155–8; 58 FR 63027–63031, Docket No. 91–155–9; 58 FR 67627–67630, Docket No. 91–155–10; 59 FR 2281–2283, Docket No. 91–155–11; 59 FR 7895–7896, Docket No. 91–155–12; 59 FR 11177–11180, Docket No. 91–155–13; 59 FR 35611–35612, Docket No. 91–155–14; 59 FR 40207–40209, Docket No. 91–155–15; and 59 FR 52405–52407, Docket No. 91–155–16; 60 FR 40053–40054, Docket No. 91–155–17).

Comments on these interim rules were required to be received on or before 60 days after the date of publication in the **Federal Register**. We did not receive any comments. The facts presented in the interim rules still provide a basis for these rules.

This action also affirms the information contained in the interim rules concerning Executive Orders 12291 and 12866 and Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the regulations at 7 CFR 301.78 through 301.78–10, as amended by interim rules that were published at 56 FR 57573–57579 on November 13, 1991; 57 FR 42485–42486 on September 15, 1992; 57 FR 54166–54169 on November 17, 1992; 58 FR 6343–6346 on January 28, 1993; 58 FR 39123–39124 on July 22, 1993; 58 FR 42489–42491 on August 10, 1993; 58 FR 49186–49190 on September 22, 1993; 58 FR 53105–53109 on October 14, 1993; 58 FR 63027–63031 on November 30, 1993; 58 FR 67627–67630 on December 22, 1993; 59 FR 2281–2283 on January 14, 1994; 59 FR 7895–7896 on February 17, 1994; 59 FR 11177–11180 on March 10, 1994; 59 FR 35611–35612 on July 13, 1994; 59 FR 40207–40208 on August 8, 1994; and 59 FR 52405–52407 on October 18, 1994; 60 FR 40053–40054 on August 7, 1995.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 26th day of February 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–4951 Filed 3–1–96; 8:45 am]

BILLING CODE 3410–34–P

7 CFR Part 319

[Docket No. 93–119–2]

Importation of Citrus Fruits From Australia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Fruits and Vegetables regulations to allow oranges, lemons, limes, mandarins, and grapefruit from the Riverina and

Sunraysia districts of Australia to be imported into the United States. We are taking this action because we have determined that the citrus may be imported without presenting a significant risk of introducing injurious plant pests into the United States. This rule provides importers and consumers in the United States with an additional source of citrus fruit.

EFFECTIVE DATE: March 4, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236, (301) 734–8891.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations in 7 CFR 319.56 through 319.56–8 (referred to below as "the regulations") prohibit or restrict the importation of fruits and vegetables to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed in the United States. Paragraphs (e) and (f) of § 319.56–2 contain requirements for the importation of certain fruits and vegetables based on their origin in a definite area or district. The definite area or district must meet certain criteria, including criteria designed to ensure that the area or district is free from all or certain injurious insects. Section 319.56–2v contains provisions for importing citrus fruit from Australia.

On September 11, 1995, we published in the **Federal Register** (60 FR 47101–47103, Docket No. 93–119–1) a proposal to amend the regulations to allow oranges, lemons, limes, mandarins, and grapefruit from the Riverina and Sunraysia districts of Australia to be imported into the United States. We proposed to allow importation of the citrus fruit without cold treatment for fruit flies, provided that the districts remain free of fruit flies that attack citrus. If any such fruit flies were detected in the districts, we proposed to allow importation of the citrus fruit subject to the completion of an Animal and Plant Health Inspection Service authorized cold treatment and subject to all other applicable requirements of the regulations.

We solicited comments concerning our proposal for 30 days ending October 11, 1995. We received 12 comments by that date. They were from growers, packers, producers, shippers, grocery chains, and an independent distributor. Nine of the commenters completely supported the proposed rule. The remarks of the three remaining commenters are discussed below by topic. Two of the comments were on reciprocal trade agreements and were nearly identical.

Disease Risk

Comment: The proposed importation into the United States of citrus fruits from the Riverina and Sunraysia districts of Australia could introduce several serious citrus diseases, including Australian scab, citrus black spot, and diseases of the species *Guignardia*, into the United States. Disease surveys for these pathogens should be performed in the Riverina and Sunraysia districts of Australia prior to allowing citrus fruits from these districts to be imported into the United States. Additionally, provisions should be made for ongoing disease surveys in these districts before the proposed importation is allowed.

Response: We do not believe that citrus fruits from the Riverina and Sunraysia districts of Australia are likely to introduce serious diseases into the United States. Citrus black spot, *Guignardia citricarpa*, and Australian citrus scab, *Sphaceloma fawcetti* var. *scabiosa*, occur where abundant rainfall and a suitable temperature range favor development of infection, not in inland areas such as the arid, hot Riverina and Sunraysia districts. We do not believe that these pathogens could survive in the irrigated horticultural areas of the Riverina and Sunraysia districts. Additionally, no other species of *Guignardia* has been reported as the cause for a disease on citrus. These facts, plus the pest and disease monitoring system continuously maintained by the plant pest authorities in the Riverina and Sunraysia districts, convince us that the disease risk posed by citrus fruits from the Riverina and Sunraysia districts of Australia is insignificant. If either *Guignardia citricarpa* or *Sphaceloma fawcetti* var. *scabiosa* were detected in citrus fruits from the Riverina and Sunraysia districts of Australia, our importation program would cease immediately.

Reciprocal Trade Agreements

Comment: More than 3 years ago, Florida's citrus industry petitioned the Australian Quarantine and Inspection Service (AQIS) to allow Florida citrus fruits to be imported into Australia. AQIS should respond to Florida's petition before a decision is reached regarding the importation into the United States of citrus fruits from the Riverina and Sunraysia districts of Australia.

Response: Our proposal and decision to allow importation of citrus fruits from the Riverina and Sunraysia districts of Australia are based solely on whether these importations can be made without significant risk of pest introduction. We have no authority to base these decisions on the presence or absence of reciprocal arrangements.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with a minor editorial change for clarity.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the Fruits and Vegetables regulations by allowing the importation of oranges, lemons, limes, mandarins, and grapefruit from the Riverina and Sunraysia districts of Australia.

According to a U.S. Department of Agriculture estimate, the total U.S. production of citrus fruits was approximately 11.172 million metric tons in 1992. Approximately 1.1 million metric tons of citrus fruits were exported from the United States in 1992, with about 9,741 metric tons exported to Australia.

According to an estimate offered by the Australian Office of the Counsellor, Australia produced approximately 592,000 metric tons of citrus fruits in 1992. Citrus production in Australia is oriented primarily to domestic consumption, with exports accounting for approximately 79,000 metric tons, or only about 13 percent of the total production, in 1992. Of the total quantity exported, 2,517 metric tons (about 3 percent) went to the United States.

The U.S. entities who will be most affected by this rule include citrus fruit producers, exporters, and importers. It is estimated that 93 percent of the U.S. farms that produce citrus fruit, approximately 21,225 farms in all, qualify as small businesses. While this rule provides an additional supply of citrus fruit in the United States, domestic citrus fruit producers, including small entities, can expect a very insignificant decline in the price of citrus fruits. Due to the seasonal difference in availability, U.S. and Australian producers will not be in direct competition for the domestic citrus market. Both exporters and importers are expected to benefit from the rule. The projected benefit to exporters may accrue from the expanded export opportunities that may result from a favorable reciprocal trade treatment given by Australia. Importers may also benefit from the increased availability of citrus fruit, especially navel oranges, during the time of year when U.S. production is lowest. However, the economic benefits to importers and exporters are not expected to be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule allows oranges, lemons, limes, mandarins, and grapefruit to be imported into the United States from the Riverina and Sunraysia districts of Australia. State and local laws and regulations regarding citrus fruit imported under this rule will be preempted while the fruit is in foreign commerce. Fresh citrus fruits are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 319.56–2v is revised to read as follows:

§ 319.56–2v Conditions governing the entry of citrus from Australia.

(a) The Administrator has determined that the irrigated horticultural areas within the following districts of Australia meet the criteria of § 319.56–2 (e) and (f) with regard to the Mediterranean fruit fly (*Ceratitis capitata* [Wiedemann]), the Queensland fruit fly (*Dacus tryoni* [Frogg]), and other fruit flies destructive of citrus:

(1) The Riverland district of South Australia, defined as the county of Hamley and the geographical subdivisions, called "hundreds," of Bookpurnong, Cadell, Gordon, Holder, Katarapko, Loveday, Markaranka, Morook, Murtho, Parcoola, Paringa, Pooginook, Pyap, Stuart, and Waikerie;

(2) The Riverina district of New South Wales, defined as:

(i) The shire of Carrathool; and

(ii) The Murrumbidgee Irrigation Area, which is within the administrative boundaries of the city of Griffith and the shires of Leeton, Narrendera, and Murrumbidgee; and

(3) The Sunraysia district, defined as the shires of Wentworth and Balranald in New South Wales and the shires of Mildura, Swan Hill, Wakool, and Kerang, the cities of Mildura and Swan Hill, and the borough of Kerang in Victoria.

(b) Oranges (*Citrus sinensis* [Osbeck]); lemons (*C. limonia* [Osbeck] and *meyeri* [Tanaka]); limes (*C. aurantiifolia* [Swingle] and *latifolia* [Tanaka]); mandarins, including satsumas, tangerines, tangors, and other fruits grown from this species or its hybrids (*C. reticulata* [Blanco]); and grapefruit (*C. paradisi* [MacFad.]) may be imported from the Riverland, Riverina, and Sunraysia districts without treatment for fruit flies, subject to paragraph (c) of this section and all other applicable requirements of this subpart.

(c) If surveys conducted in accordance with § 319.56–2d(f) detect, in a district listed in paragraph (a) of this section, the Mediterranean fruit fly (*Ceratitis capitata* [Wiedemann]), the Queensland fruit fly (*Dacus tryoni* [Frogg]), or other fruit flies that attack citrus and for which a treatment is listed in the Plant Protection and Quarantine (PPQ) Treatment Manual, citrus fruit from that district will remain eligible for importation into the United States in accordance with § 319.56–2(e)(2), provided the fruit undergoes cold treatment in accordance with the PPQ Treatment Manual, which is incorporated by reference at § 300.1 of this chapter, and provided the fruit meets all other applicable requirements of this subpart. Entry is limited to ports listed in § 319.56–2d(b)(1) of this subpart if the treatment is to be completed in the United States. Entry may be through any port if the treatment has been completed in Australia or in transit to the United States. If no approved treatment for the detected fruit fly appears in the PPQ Treatment Manual, importation of citrus from the affected district or districts is prohibited.

Done in Washington, DC, this 28th day of February 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–4952 Filed 3–1–96; 8:45 am]

BILLING CODE 3410–34–P

Commodity Credit Corporation

7 CFR Parts 1487, 1491, 1492 and 1495

Regulatory Reform Initiative

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Final rule.

SUMMARY: In response to the President's Regulatory Reform Initiative, the Commodity Credit Corporation is issuing this final rule to amend its regulations to eliminate the following programs: Noncommercial Risk Assurance Program (GSM–101); CCC Intermediate Credit Export Sales Program for Breeding Animals (GSM–201); CCC Intermediate Credit Export Sales Program for Foreign Market Development Facilities (GSM–301); and Disposition of Agricultural Commodities under the CCC Barter Program (Barter Program). These programs are inactive or obsolete and have not been used in 15 years or more.

EFFECTIVE DATE: April 3, 1996.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, AG Box 1035, Washington D.C., 20250–1035; Fax (202) 720–2949; Telephone (202) 720–6211. The U.S. Department of Agriculture (USDA) prohibits

discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs and marital or familial status. Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact the USDA Office of Communications at (202) 720–5881 (voice) or (202) 720–7808 (TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. It has been determined to be neither significant nor economically significant for the purposes of E.O. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

Executive Order 12372

These programs are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Paperwork Reduction Act

The amendment to 7 CFR parts 1487, 1491, 1492 and 1495 set forth in this final rule does not contain information collections that require clearance by the OMB under the provisions of 44 U.S.C. 35.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. The final rule would not have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The rule would not have retroactive effect.

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations.

Background

CCC published a proposed rule in the **Federal Register** on December 13, 1995, in response to the President's Regulatory Reform Initiative, that would amend Title 7 of the Code of Federal Regulations to remove the following parts:

- Part 1487—Noncommercial Risk Assurance Program (GSM–101);
- Part 1491—CCC Intermediate Credit Export Sales Program for Breeding Animals (GSM–201);
- Part 1492—CCC Intermediate Credit Export Sales Program for Foreign Market Development Facilities (GSM–301); and
- Part 1495—Disposition of Agricultural Commodities under the CCC Barter Program (Barter Program).

Reasons for Removal

CCC proposed to remove these parts for the following reasons:

- GSM–101—This risk assurance program, implemented in 1979, covered only non-commercial or political risk and became obsolete when the CCC Export Credit Guarantee Program (GSM–102) was introduced in 1980 to cover political and commercial risk. The GSM–101 program was last used in 1981.
- GSM–201—This direct credit program has been used only once (a transaction for livestock exports to Spain in 1979). The terms available under the program—3 to 10 year direct credits—could be made available under a modified GSM–5 Program (7 CFR Part 1488) Financing of Sales of Agricultural Commodities Program.
- GSM–301—This direct credit program was intended to facilitate commodity exports which would be sold to generate funds to finance the construction of a market development project. The program was used only once (in connection with a bulk grain discharge and storage facility developed at Ashdod, Israel). That project began in 1978 and was completed in the early 1980's. For a number of years, funding has not been made available for this program.
- Barter Program—From 1950 through 1973, CCC exchanged CCC-owned agricultural commodities for strategic and critical materials for the National Defense Stockpile. The program could also be used to obtain foreign-produced supplies and services used in Department of Defense construction projects and Agency for International Development projects. The program was terminated in 1973 when CCC stocks were depleted. The National Defense Stockpile is now liquidating many strategic materials. Also, CCC has authority, which it has at times used, to enter into direct barter arrangements under the CCC Charter Act in order to obtain strategic materials for defense stock piles.

Comments

The deadline for submitting comments on the proposed rule was January 12, 1996. CCC did not receive any comments on this proposed rule. CCC has determined to make the changes to 7 CFR Part 1487, Part 1491, Part 1492, and Part 1495 as proposed.

List of Subjects

7 CFR Part 1487

Agricultural commodities, Exports, Insurance, Reporting and recordkeeping requirements.

7 CFR Part 1491 and 1492

Exports, Livestock, Loan programs—agriculture, Reporting and recordkeeping requirements.

7 CFR Part 1495

Agricultural commodities, Exports, Government procurement, Strategic and critical materials.

PARTS 1487, 1491, 1492, 1495—[REMOVED]

For the reasons set out in the preamble under the authority at 5 U.S.C. Section 552(a)(1)(E), 7 CFR Chapter XIV is amended by removing and reserving parts 1487, 1491, 1492 and 1495.

Signed at Washington, DC, on February 27, 1996.

Christopher E. Goldthwait,

General Soles Monager and Vice President, Commodity Credit Corporation.

[FR Doc. 96–4953 Filed 3–1–96; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–118–AD; Amendment 39–9525; AD 96–05–01]

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes, that currently requires inspection and replacement of certain suspect horizontal stabilizer primary trim motors. That AD was prompted by an analysis which revealed that certain incorrectly manufactured motor shafts could fail prematurely and, in turn, cause the primary trim motor to fail. The actions specified in that AD are intended to prevent such failures of the primary trim motor, which could ultimately result in reduced controllability of the airplane. This amendment expands the applicability of the existing AD to include additional affected airplanes.

DATES: Effective April 3, 1996.

The incorporation by reference of certain other publications listed in the regulations is approved by the Director of the Federal Register as of April 3, 1996.

The incorporation by reference of McDonnell Douglas MD–80 Alert Service Bulletin A27–342, dated August 4, 1994, was approved previously by the Director of the Federal Register as of April 3, 1996 (60 FR 15034, March 22, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60); or from Sundstrand Aerospace, 4747 Harrison Avenue, P.O. Box 7002, Rockford, Illinois 61125–7002. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5336; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–06–04, amendment 39–9174 (60 FR 15034, March 22, 1995), which is applicable to McDonnell Douglas Model DC–9–80 series airplanes, was published in the **Federal Register** on September 26, 1995 (60 FR 49525). That action proposed to continue to require the current inspections and replacement of certain suspect horizontal stabilizer primary trim motors. That action also proposed to expand the applicability of the current AD to include additional affected airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Three commenters support the proposal.

One commenter requests that the proposal be revised to allow operators to conduct a records search, rather than a visual inspection, to determine if the subject motor is installed on the airplane. This commenter, an operator of affected airplanes, states that it tracks the subject motors by the manufacturer's serial number, which enables it to identify quickly the location of any of the subject motors at any given time. Therefore, the commenter considers that, in lieu of requiring it (and possibly other operators) to apply for an alternative method of compliance with the AD, the final rule should provide for this alternative action.

The FAA concurs with the commenter's request. The final rule has been revised to provide for the option of conducting a records search to determine if the motor installed on the airplane is identified with one of the suspect serial numbers.

Two commenters request that the proposed AD be revised to preclude operators from having to reinspect for units that were previously modified and re-identified (i.e., in accordance with Sundstrand Service Bulletin 9590–27–012). One of these commenters points out that these units require an overhaul every 3,500 hours; at that time they are removed from the airplane and, after overhaul, may be installed on a different airplane or placed in spare status (pending installation on another airplane). One commenter points out that the proposed AD does not take into account the situation where a unit originally installed on an airplane subject to AD 95–06–04 may be removed from that airplane and later installed on another airplane that is subject to the proposed AD. If this situation occurs, the commenter is concerned that operators will be required to duplicate inspections and other actions unnecessarily.

The FAA concurs that some clarification is necessary. As for motors modified (and re-identified) in accordance with Sundstrand Service Bulletin 9590–27–012, the final rule allows for their installation on airplanes that are subject to either AD 95–06–04 or this new AD. If a modified unit is installed on any of these airplanes no further action, including any duplicating "re-identification," is required by the AD. In order to make this eminently clear, the FAA has revised paragraphs (a) and (b) of the final rule to specify that, if the trim motor installed on the airplane has been modified previously in accordance with the applicable Sundstrand service bulletin, no further action is required.

As for the possibility of suspect units being installed as spares, the FAA is not certain that this possibility would occur, since the FAA has been advised that apparently all motors affected by AD 95–06–04 have been modified. However, the FAA has added paragraph (c) to the final rule to preclude the future installation, on any airplane, of a motor having one of the suspect serial numbers.

As for duplicating inspections, as discussed above, the FAA has revised the final rule to allow operators to conduct a records search, in lieu of a visual inspection, to determine if the suspect motor is installed. A records search would expedite the determination as to whether or not a suspect unit is installed; it would also be far less expensive to accomplish than a visual inspection of the airplane.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 142 Model DC–9–80 series airplanes of the affected design in the worldwide fleet. The FAA estimates that a total of 73 airplanes of

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U.S. registry will be affected by this proposed AD.

The inspection of the horizontal stabilizer primary trim motor is expected to take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this requirement is estimated to be $60 per airplane.

The inspection specified in this rule previously was required by AD 95–06–04, which was applicable to approximately 13 U.S.-registered airplanes. Based on the figures discussed above, the cost impact of the current inspection requirements of that AD on U.S. operators of those 13 airplanes is estimated to be $780. In consideration of the compliance time and effective date of AD 95–06–04, the FAA assumes that the operators of the 13 airplanes subject to that AD have already initiated the required actions. This new AD action will add no new costs associated with those airplanes.

This new AD is applicable to approximately 60 additional airplanes. Based on the figures discussed above, the new (inspection) costs to U.S. operators that will be imposed by this new AD are estimated to be $3,600. This figure is based on assumptions that no operator of these additional airplanes has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to replace a suspect motor, that action will require 5 work hours to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by Sundstrand Electric Power Systems (the manufacturer of the horizontal stabilizer primary trim motors) at no charge to operators. Based on these figures, the cost impact on U.S. operators for the replacement of a suspect motor is estimated to be $300 per airplane.

Should an operator elect to modify a suspect motor, that action will require 4 work hours to disassemble, modify, reassemble, and test the motor (excluding removal and reinstallation of the motor from the airplane). The average labor rate is $60 per work hour. Required parts will be provided by Sundstrand at no charge to operators. Based on these figures, the cost impact on U.S. operators for the modification of a suspect motor is estimated to be $240 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9174 (60 FR 15034, March 22, 1995), and by adding a new airworthiness directive (AD), amendment 39–9525, to read as follows:

96–05–01 McDonnell Douglas: Amendment 39–9525. Docket 95–NM–118–AD. Supersedes AD 95–06–04, Amendment 39–9174.

Applicability: Model DC–9–80 series airplanes; as listed in McDonnell Douglas MD–80 Alert Service Bulletin A27–342, dated August 4, 1994, and in McDonnell Douglas MD–80 Alert Service Bulletin A27–342, Revision 1, dated May 15, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Paragraph (a) of this AD merely restates the requirements of paragraph (a) of AD 95–06–04, amendment 39–9174. As allowed by the phrase, "unless accomplished previously," if those requirements of AD 95–06–04 have already been accomplished, this AD does not require that those actions be repeated.

To prevent failure of the horizontal stabilizer primary trim motor, accomplish the following:

(a) For airplanes listed in McDonnell Douglas MD–80 Alert Service Bulletin A27–342, dated August 4, 1994: Within 6 months after April 21, 1995 (the effective date of AD 95–06–04, amendment 39–9174), conduct either a visual inspection of the horizontal stabilizer primary trim motor or a records search to determine if the motor is identified with one of the suspect serial numbers listed in McDonnell Douglas MD–80 Alert Service Bulletin A27–342, dated August 4, 1994, or Revision 1, dated May 15, 1995. If a visual inspection is conducted, it must be performed in accordance with the procedures specified in the service bulletin.

(1) If the horizontal stabilizer primary trim motor is not identified with a suspect serial number; or if the horizontal stabilizer primary trim motor has been modified previously in accordance with Sundstrand Service Bulletin 9590–27–012, dated August 8, 1995; no further action is required by this AD.

(2) If the horizontal stabilizer primary trim motor is identified with a suspect serial number and has not been modified previously in accordance with Sundstrand Service Bulletin 9590–27–012, dated August 8, 1995; prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Replace the motor in accordance with the McDonnell Douglas alert service bulletin. Or

(ii) Modify the motor in accordance with Sundstrand Service Bulletin 9590–27–012, dated August 8, 1995; and install the modified motor in accordance with the McDonnell Douglas alert service bulletin.

(b) For airplanes listed in McDonnell Douglas MD–80 Alert Service Bulletin A27–342, Revision 1, dated May 15, 1995, and not subject to paragraph (a) of this AD: Within 6 months after the effective date of this AD, conduct either a visual inspection of the horizontal stabilizer primary trim motor or a records search to determine if the motor is identified with one of the suspect serial numbers listed in McDonnell Douglas MD–80 Alert Service Bulletin A27–342, Revision 1, dated May 15, 1995. If a visual inspection is conducted, it must be performed in accordance with the procedures specified in that service bulletin.

(1) If the horizontal stabilizer primary trim motor is not identified with a suspect serial number; or if the horizontal stabilizer primary trim motor has been modified previously in accordance with Sundstrand Service Bulletin 9590–27–012, dated August 8, 1995; no further action is required by this AD.

(2) If the horizontal stabilizer primary trim motor is identified with a suspect serial number and has not been modified previously in accordance with Sundstrand Service Bulletin 9590–27–012, dated August 8, 1995; prior to further flight, accomplish either paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(i) Replace the motor in accordance with the McDonnell Douglas alert service bulletin. Or

(ii) Modify the motor in accordance with Sundstrand Service Bulletin 9590–27–012, dated August 8, 1995; and install the modified motor in accordance with the McDonnell Douglas alert service bulletin.

(c) As of six months after the effective date of this AD, no person shall install, on any airplane, a horizontal stabilizer primary trim motor identified with one of the suspect serial numbers listed in McDonnell Douglas MD–80 Alert Service Bulletin A27–342, dated August 4, 1994, or Revision 1, dated May 15, 1995; unless that motor has been modified in accordance with Sundstrand Service Bulletin 9590–27–012, dated August 8, 1995.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and replacement shall be done in accordance with McDonnell Douglas MD–80 Alert Service Bulletin A27–342, dated August 4, 1994; and McDonnell Douglas MD–80 Alert Service Bulletin A27–342, Revision 1, dated May 15, 1995, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–5, 7–10	1	May 15, 1995.
6	Original	Aug. 4, 1994.

The modification shall be done in accordance with Sundstrand Service Bulletin 9590–27–012, dated August 8, 1995. The incorporation by reference of McDonnell Douglas MD–80 Alert Service Bulletin A27–342, dated August 4, 1994, was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of April 21, 1995 (60 FR 15034, March 22, 1995). The incorporation by reference of McDonnell Douglas MD–80 Alert Service Bulletin A27–342, Revision 1, dated May 15, 1995; and Sundstrand Service Bulletin 9590–27–012, dated August 8, 1995; was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60); or from Sundstrand Aerospace, 4747 Harrison Avenue, P.O. Box 7002, Rockford, Illinois 61125–7002. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on April 3, 1996.

Issued in Renton, Washington, on February 22, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–4508 Filed 3–1–96; 8:45 am]

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14 CFR Part 39

[Docket No. 94–NM–122–AD; Amendment 39–9527; AD 96–05–02]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires modification of a certain galley; repetitive inspections to detect damage and to determine the clearance of generator wires in the auxiliary power unit (APU); and repair or replacement of the damaged wires. This amendment is prompted by reports indicating that, during an unscheduled removal of a galley from the production line, the insulation of one of the generator wires of the APU was found damaged due to inadequate clearance with the adjacent structure. The actions specified by this AD are intended to prevent such damage, which could result in a short in the electrical wiring of the APU and, thus, pose a potential fire hazard.

DATES: Effective April 3, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 3, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on December 9, 1994 (59 FR 236). That action proposed to require modification of a Nordskog Galley Model 1–871galley. It also proposed to require repetitive inspections to detect damage and determine the clearance of generator wires in the auxiliary power unit (APU); and repair or replacement of the damaged wires.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter requests that the rule be revised to delete proposed paragraph (a)(2)(i), which would require operators to conduct repetitive inspections if the initial inspection shows that no damage to the feeder cables exists and that the cables adequately clear the adjacent structure. This commenter, an operator, states that it has conducted a boroscope inspection of the APU generator cables on all of its airplanes, and has found nothing anywhere near the cables that could cause damage to them. This operator notes that its initial inspection, which was conducted using a flexible boroscope from the cockpit, provided an excellent view of both the cables and the drain enclosure. The inspection revealed that there is a clearance between the wiring and adjacent structure (drain screws) on the order of six inches.

The FAA concurs with the commenter's request. According to the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, the clearance between the drain screws and the APU feeder cable (generator wires) found on airplanes on the production line was on the order of one inch. This amount of clearance was considered to be inadequate, such that chafing or damage of the wire installation could occur. Also, according to the RLD, the reason that the referenced service bulletin specifies that the inspection be accomplished with a mirror is because the manufacturer considered that a mirror would give a better estimate of the clearance than could a boroscope inspection. However, the FAA, in consultation with the RLD, recently has concluded that, since the clearance between the drain screws and the wires has been determined to be on the order of 6 inches on all affected airplanes that have not already been modified in accordance with this AD, there is little reason to believe that chafing would occur. In light of this, the FAA finds that there is no need for a repetitive inspection of the wires. Therefore, the FAA has revised paragraph (a)(2)(i) of the final rule to indicate that, if no wires are found damaged as a result of the inspection and they adequately clear the adjacent structure (positive clearance), no further inspections are required.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 52 airplanes of U.S. registry will be affected by this proposed AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,000 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $58,240, or $1,120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96-05-02 Fokker: Amendment 39-9527. Docket 94-NM-122-AD.

Applicability: Model F28 Mark 0100 series airplanes; as listed in Fokker Service Bulletin SBF100-24-029, dated June 28, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a short in the electrical wiring of the auxiliary power unit (APU) and a potential fire hazard, accomplish the following:

(a) Within 250 flight hours after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify Nordskog Galley Model 1-871, in accordance with paragraphs 2.A., 2.B., and 2.C. of the Accomplishment Instructions of Fokker Service Bulletin SBF100-24-029, dated June 28, 1993.

(2) Perform an inspection to detect damage of and to determine the adequacy of clearance of the generator wires, having part numbers (P/N) AJC0001A, AJ0001B, and AJC0001C, of the auxiliary power unit (APU), in accordance with Fokker Service Bulletin SBF100-24-029, dated June 28, 1993.

(i) If no wires are found damaged and they adequately clear the adjacent structure (positive clearance), no further action is required by this paragraph.

(ii) If no wires are found damaged, but they do not adequately clear the adjacent structure, repeat the inspection thereafter at intervals not to exceed 250 flight hours.

(iii) If any wire is found damaged, prior to further flight, modify the Nordskog Galley Model 1-871 in accordance with paragraph (b) of this AD, and repair or replace the damaged wire in accordance with the service bulletin. However, the modification and repair/replacement actions may be postponed for a maximum of 10 days after detection of the damage, provided that the APU generator is rendered inoperative in accordance with the Master Minimum Equipment List (MMEL), and that modification and repair/replacement actions are accomplished prior to reactivation of the APU generator.

(b) At the next removal of the Nordskog Galley Model 1-871, or within 9,000 flight hours after the effective date of this AD, whichever occurs first, modify the Nordskog Galley in accordance with Fokker Service Bulletin SBF100-24-029 (reference Nordskog Engineering Change Order 43589 Attachment), dated June 28, 1993. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Fokker Service Bulletin SBF100-24-029, dated June 28, 1993, including Nordskog Engineering Change Order 43589 Attachment. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 3, 1996.

Issued in Renton, Washington, on February 23, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-4669 Filed 3-1-96; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81-19-000]

Project Cost and Annual Limits

Issued: February 27, 1996.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(e)(1), the Director of the Office of Pipeline Regulation computes and publishes the project cost and annual limits specified in Table I of § 157.208(d) and Table II of § 157.215(a) for each calendar year.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Michael J. McGehee, Division of Pipeline Certificates, OPR, (202) 208-2257.

SUPPLEMENTARY INFORMATION:

Order of the Director, OPR

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the "limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GNP implicit price deflator' published by the Department of Commerce for the previous calendar year."

Pursuant to § 375.307(e)(1) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Pipeline Regulation. The cost limits for calendar years 1982 through 1996, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

Note that these inflation adjustments are based on the Gross Domestic Product (GDP) Implicit Price Deflator, and include the Commerce Department's estimated fourth quarter GDP Implicit Price Deflator rather than the annual GDP Implicit Price Deflator or Gross National Product (GNP) Implicit Price Deflator, which are not yet available for 1995. The Commerce Department advises that in recent years the annual change has been virtually the same for both indices. Further adjustments will be made, if necessary.

List of Subjects in 18 CFR Part 157

Natural Gas.

Kevin P. Madden,

Director, Office of Pipeline Regulation.

Accordingly, 18 CFR Part 157 is amended as follows:

PART 157—[AMENDED]

1. The authority citation for Part 157 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352.

§ 157.208 [Amended]

2. Table I in § 157.208(d) is revised to read as follows:

TABLE I

Year	Limit	
	Auto. proj. cost limit (col. 1)	Prior notice pro. cost limit (col. 2)
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000
1988	5,400,000	15,100,000
1989	5,600,000	15,600,000
1990	5,800,000	16,000,000
1991	6,000,000	16,700,000
1992	6,200,000	17,300,000
1993	6,400,000	17,700,000
1994	6,600,000	18,100,000
1995	6,700,000	18,400,000
1996	6,900,000	18,800,000

§ 157.215 [Amended]

3. Table II in § 157.215(a) is revised to read as follows:

TABLE II

Year	Limit
1982	$2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000
1987	3,300,000
1988	3,400,000
1989	3,500,000
1990	3,600,000
1991	3,800,000
1992	3,900,000
1993	4,000,000
1994	4,100,000
1995	4,200,000
1996	4,300,000

[FR Doc. 96-4925 Filed 3-1-96; 8:45 am]

BILLING CODE 6717-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 368

RIN 3220-AB20

Prohibition of Cigarette Sales to Minors

AGENCY: Railroad Retirement Board.

ACTION: Interim final rule.

SUMMARY: The Railroad Retirement Board (Board) adds regulations to implement the Prohibition of Cigarette Sales to Minors in Federal Buildings and Lands Act which prohibits the sale of tobacco through vending machines and the distribution of free tobacco samples on Federal property.

DATES: *Effective Date:* This regulation will be effective March 4, 1996.

Comment Date: Comments due on or before April 3, 1996.

ADDRESSES: Comments may be mailed to the Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General

Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, telephone (312) 751–4513, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The Board conducts its business in real property owned or leased by the General Services Administration. All property occupied or reserved for Board use must comply with Public Law 104–52. Tobacco products may not be sold in vending machines and free samples of tobacco products may not be distributed in or around property occupied and maintained by the Board. The Board will permit the sale of tobacco products to individuals 18 and older by staffed concession stands on property occupied and maintained by the Board.

Because of the importance of the subject matter of this rule, the Board is publishing it as an interim final rule rather than as a proposed rule. However, any person wishing to comment on this rule may do so within 30 days of the date of this publication in the **Federal Register.**

The agency has determined that this is not a significant regulatory action for purposes of Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 368

Railroad retirement, Smoking, Tobacco.

Title 20 CFR, chapter II is amended by adding a new part 368 to read as follows:

PART 368—PROHIBITION OF CIGARETTE SALES TO MINORS

Sec.
368.1 Introduction.
368.2 Definitions.
368.3 Vending machines.
368.4 Concession stands.
368.5 Free tobacco samples.

Authority: Sec. 636, Pub. L. 104–52, 109 Stat. 507 (40 U.S.C. 486nt).

§ 368.1 Introduction.

This part implements Public Law 104–52, the "Prohibition of Cigarette Sales to Minors in Federal Buildings and Lands Act," which prohibits the sale of tobacco products through vending machines and the distribution of free samples of tobacco products on Federal property.

§ 368.2 Definitions.

As used in this part—

Federal property includes any building and real property occupied and maintained by the Board.

Minor means an individual under the age of 18 years.

Tobacco product means cigarettes, cigars, little cigars, pipe tobacco, smokeless tobacco, snuff, and chewing tobacco.

§ 368.3 Vending machines.

The sale of tobacco products in vending machines is prohibited in or around Federal property occupied and maintained by the Railroad Retirement Board.

§ 368.4 Concession stands.

Tobacco products may be sold on property occupied and maintained by the Railroad Retirement Board only as authorized by the Railroad Retirement Board or the General Services Administration or other Federal agency. Concession stands may not sell tobacco products to minors.

§ 368.5 Free tobacco samples.

The distribution of free samples of tobacco products is prohibited in or around Federal property occupied and maintained by the Railroad Retirement Board.

Dated: February 21, 1996.
By Authority of the Board.
For the Board.
Beatrice Ezerski,
Secretary to the Board.

[FR Doc. 96–4676 Filed 3–1–96; 8:45 am]
BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Issuance of Notices Relating to Debarment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to FDA officials in the Center for Drug Evaluation and Research (CDER), the Center for Veterinary Medicine (CVM), and the Center for Biologics Evaluation and Research (CBER) by adding a new delegations section concerning the issuance of notices relating to proposals and orders for debarment and denial of an application to terminate debarment. Additionally, FDA is amending the regulations regarding petitions so that certain officials of CDER, CVM, and CBER are authorized to respond to petitions concerning debarment and refusal to terminate debarment. This action will make the process of issuing such notices and responses to petitions more efficient.

EFFECTIVE DATE: March 4, 1996.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: New section 306 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a), created by the Generic Drug Enforcement Act of 1992, authorizes the Secretary of Health and Human Services and, by previous delegation, the Commissioner of Food and Drugs (the Commissioner) to take actions relating to debarment proposals and orders as well as proposals and orders to deny an application to terminate a debarment order. Certain aspects of this authority are being redelegated in new § 5.98 from the Commissioner to the Directors of CDER, CVM, and CBER, to the Deputy Directors of CDER and CVM, and the Associate Director for Policy Coordination and Public Relations, CBER, as appropriate. In addition, FDA is amending § 5.31 (21 CFR 5.31) by delegating authority to the Directors of CDER, CVM, and CBER, to the Deputy Directors of CDER and CVM, and the Associate Director for Policy Coordination and Public Relations of CBER to respond to petitions concerning actions they are authorized to take under new § 5.98. The redelegations will make the process of issuing such notices and responses to petitions more efficient.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.31 is amended by adding new paragraphs (f)(1)(vi), (f)(2)(x), and (f)(8) to read as follows:

§ 5.31 Petitions under part 10.

* * * * *

(f) * * *

(1) * * *

(vi) Section 5.98 *Issuance of notices relating to proposals and orders for debarment and denial of an application to terminate debarment.*

(2) * * *

(x) Section 5.98 *Issuance of notices relating to proposals and orders for debarment and denial of an application to terminate debarment.*

* * * * *

(8) The Director and Deputy Director, CVM, are authorized to grant or deny citizen petitions submitted under § 10.30 of this chapter concerning actions they are authorized to take under § 5.98 *Issuance of notices relating to proposals and orders for debarment and denial of an application to terminate debarment.*

3. New § 5.98 is added to subpart B to read as follows:

§ 5.98 Issuance of notices relating to proposals and orders for debarment and denial of an application to terminate debarment.

The Director and Deputy Director, Center for Drug Evaluation and Research (CDER), the Director and Deputy Director, Center for Veterinary Medicine (CVM), and the Director and Associate Director for Policy Coordination and Public Relations, Center for Biologics Evaluation and Research (CBER) are authorized to issue the following notices under section 306 of the Federal Food, Drug, and Cosmetic Act (the act) which relate to the assigned functions of their organizations:

(a) Notices of opportunity for hearing on proposals for mandatory or permissive debarment.

(b) Notices ordering debarment when opportunity for a hearing has been waived.

(c) Notices ordering debarment where the person notifies the agency that the person acquiesces to debarment under section 306(c)(2)(B) of the act.

(d) Notices of opportunity for hearing on proposals denying an application to terminate debarment under section 306(d)(3) of the act.

(e) Orders denying an application to terminate debarment under section 306(d)(3) of the act when opportunity for a hearing has been waived.

Dated: February 26, 1996.
William K. Hubbard,
Associate Commissioner for Policy Coordination.

[FR Doc. 96–4914 Filed 3–1–96; 8:45 am]
BILLING CODE 4160–01–F

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Statement of policy and notice to sponsors.

SUMMARY: Public Law 104–72 directs the Agency to continue its oversight of au pair activities in the United States until September 30, 1997. This announcement sets forth the Agency's intended implementation of this law.

EFFECTIVE DATE: This policy statement is effective March 4, 1996.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, United States Information Agency, 301 4th Street SW., Washington, DC 20547; telephone, (202) 619–6829.

SUPPLEMENTARY INFORMATION: Au pair programs, whereby European youths are placed with American host families seeking child care, have been overseen by the Agency since 1986. Originally begun as a pilot project, the au pair program has expanded over the past ten years to now encompass eight Agency-designated sponsors who facilitated the entry of some 11,000 au pair participants in 1995. Congress, in enacting Public Law 104–72, extended temporarily the Agency's authority to oversee this activity. As discussed below, the Congress also addressed two long-standing programmatic matters of concern to the Agency.

Since begun in 1986, au pair participants have only been selected from the countries of Western Europe. This limitation was set forth in initial pilot-project guidelines but remained in place pursuant to subsequent legislation that directed the Agency to continue its oversight of au pair activities under the "same terms and conditions" of the pilot guidelines. Public Law 104–72 removes this programmatic limitation by directing the Agency to oversee au pair activities conducted on a "world-wide basis."

Accordingly, the Agency has advised au pair sponsors that, unless otherwise prohibited by law, au pair participants may be recruited from all world countries. The Agency construes "world-wide" basis to not include nationals of countries lacking diplomatic relations with the United States. Further, the Agency is of the opinion that "World wide basis" would allow a national of one country, resident in another, to be recruited and issued a visa in the country of residence.

The Agency concludes that Public Law 104–72 renders inoperative, the "same terms and conditions" requirement of prior legislation. Accordingly, the Agency will accept applications from United States organizations seeking designation as an au pair sponsor. Due to the time-limited authority given the Agency in Public-Law 104–72, all designated au pair sponsors will continue to be given temporary, not permanent, program designations. Such designations will be made by the Agency under the authority of Public Law 104–72 and not under the Agency's Fulbright-Hays Act authorities as set forth at 22 U.S.C. 1474 et seq.

Finally, the Agency hereby gives notice of its intent to limit the number of au pair participants to not more than 22,720. The Agency does not believe that currently designated sponsors, and those organizations receiving new designations, will be affected by this numerical limitation. This belief is based upon the past history of au pair activities and the Agency's knowledge of the growth rates of similar programs overseen by the Agency.

The Agency specifically reserves the right to limit the number of participants sponsored by an individual organization. Participant levels for newly designated au pair sponsors will be determined by the Agency in consultation with the sponsor. The organization's prior experience, organizational capacity, and resources will be specifically considered in determining participant levels.

List of Subjects in 22 CFR Part 514

Cultural exchange programs.

Dated: February 28, 1996.

Lee Jin,

General Counsel.

[FR Doc. 96–4973 Filed 3–1–96; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 535

Iranian Assets Control Regulations; Shams Pahlavi Assets Unblocked

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendment to the list of persons whose assets are subject to blocking.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is amending section 535.217 of the Iranian Assets Control Regulations, 31 CFR § 535.217, to remove the name Shams Pahlavi from § 535.217(b). Shams Pahlavi, sister of Mohammed Reza Pahlavi, the former Shah of Iran, previously was identified in § 535.217(b) as a person who had been served as a defendant in litigation brought by Iran in a court within the United States seeking the return of property alleged to belong to Iran. She therefore was identified as a person whose United States assets were blocked pursuant to the provisions of § 535.217(a). Reference to Shams Pahlavi is now removed from § 535.217(b) based upon the final termination of all pertinent litigation against her. Accordingly, her United States assets are no longer blocked pursuant to § 535.217(a).

EFFECTIVE DATE: March 1, 1996.

FOR FURTHER INFORMATION CONTACT: Regarding the status of blocked assets, Loren L. Dohm, Blocked Assets Division (tel.: 202/622–2440); regarding legal questions, William B. Hoffman, Chief Counsel (tel.: 202/622–2410); Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

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Background

The Office of Foreign Assets Control is amending § 535.217(b) of the Iranian Assets Control Regulations, 31 CFR part 535, to reflect changes in the status of litigation brought by Iran against close relatives of the former Shah of Iran seeking the return of property alleged to belong to Iran. In 1991, Shams Pahlavi was identified in § 535.217(b) based on proof of service upon her in litigation of the type described in § 535.217(a). Pursuant to that provision, all property and assets located in the United States within the control of Shams Pahlavi were blocked until all pertinent litigation against her was finally terminated. Because that litigation has been finally terminated, reference to Shams Pahlavi is deleted from § 535.217(b).

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply. Wherever possible, however, it is the practice of the Office of Foreign Assets Control to receive written submissions or hold informal consultations with interested parties before the issuance of any rule or other public document.

List of Subjects in 31 CFR Part 535

Administrative practice and procedure, Banking, Banks, Blocking of assets, Currency, Foreign investment in the United States, Iran, Penalties, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, 31 CFR part 535 is amended as follows:

PART 535—IRANIAN ASSETS CONTROL REGULATIONS

1. The authority citation for Part 535 continues to read as follows:

Authority: 50 U.S.C. 1701–1706; E.O. 12710, 44 FR 65729, 3 CFR, 1979 Comp., p. 457; E.O. 12205, 45 FR 24099, 3 CFR, 1980 Comp., p. 248; E.O. 12211, 45 FR 26685, 3 CFR, 1980, Comp., p. 253; E.O. 12276, 46 FR 7913, 3 CFR, 1981 Comp., p. 104; E.O. 12279, 46 FR 7919, 3 CFR 1981 Comp., p. 109; E.O. 12280, 46 FR 7921, 3 CFR 1981 Comp., p. 110; E.O. 12281, 46 FR 7923, 3 CFR, 1981 Comp., p. 112; E.O. 12282, 46 FR 7925, 3 CFR, 1981 Comp., p. 113; E.O. 12282, 46 FR 7927, 3 CFR, 1981 Comp., p. 113; E.O. 12283, 46 FR 7927, 3 CFR 1981 Comp., p. 114; and E.O. 12294, 46 FR 14111, 3 CFR, 1981 Comp., p. 139.

Subpart B—Prohibitions

2. Section 535.217 is amended by revising paragraph (b) to read as follows:

§ 535.201 Blocking of property of the former Shah of Iran and of certain Iranian nationals.

* * * * *

(b) [No persons presently listed].

* * * * *

Dated: February 1, 1996.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: February 8, 1996.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary (Regulatory, Tariff & Law Enforcement).

[FR Doc. 96–4899 Filed 3–1–96; 8:45 am]

BILLING CODE 4810–25–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–96–003]

RIN 2115–AE46

Special Local Regulations: Manatee River, Palmetto, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the A.P.B.A. (American Power Boat Association) Green Bridget Regatta. This event will be held on Saturday, March 23, and Sunday, March 24, 1996 between 10 a.m. and 6 p.m. edt (eastern daylight time). This event will attract large spectator crowds and create congestion. Therefore, these regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: This rule is effective from 9 a.m. to 7 p.m. edt on March 23 and 24, 1996.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at U.S. Coast Guard Group ST. Petersburg, 600 8th Avenue SE., St. Petersburg, FL 33701–5099, between 8 a.m. and 3 p.m. edt, Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG J.W. Nelson, U.S. Coast Guard Group St. Petersburg, FL at (813) 824–7533.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. The permit application was not received until late January. Following normal rulemaking procedures would have been impracticable, as there was insufficient time to publish the proposed rule in advance of the event or to provide for a delayed effective date.

Discussion of Regulations

This rule is needed to provide for the safety of life on navigable waters, to protect the vessels participating in the races, and to protect marine mammals during the A.P.B.A. (American Power Boat Association) Green Bridge Regatta. There will be approximately 50–75 power boats, 21 to 50 feet in length, engaged in a power boat race, and no spectator craft are expected. A regulated area is established between daybecacons #1 (27°30.6N, 82°34.6W, LLNR 19525) and #21A (27°30.5N, 82°34.7W, LLNR 19570) in the Manatee River. All coordinates referenced are datum: NAD 83. The Manatee River will be closed to all inbound and outbound vessel traffic, other than spectator craft, at various times between the hours of 10 a.m. and 6 p.m. edt, March 23 and 24, 1996. Vessel traffic will be allowed to transit the area during intermissions.

Regulatory Evaluation

These regulations are not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the area is prohibited for only 10 hours each day of the event.

Since the impact of these regulations is to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Collection of Information

These regulations contain no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with Section 2.B.2. of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29m, 1994). In accordance with that section, this action has been environmentally assessed (EA completed), and the Coast Guard has determined that it will not significantly affect the quality of the human environment. An environmental assessment and finding of no significant impact have been prepared and are available for inspection and copying at the address listed under **ADDRESSES.** Specifically, the Coast Guard has consulted with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding the environmental impact of this event, and it was determined that the event does not jeopardize the continued existence of protected species. As a condition to this permit, the applicant is required to educate the operators of spectator craft and race participants regarding the possible presence of manatees and the appropriate precautions to take if the animals are sighted.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T07–003 is added to read as follows:

§ 100.35–T07–003 Manatee River, Palmetto, FL.

(a) *Regulated area.* A regulated area is established in the Manatee River with the northwest corner point at Pt Ogden, position 27°30′41″ N, 82°34′47″ W, extending to the northeast corner point at northern approach to Green Bridge, position 27°30′35″ N, 82°34′22″ W, then extending to the southeast corner point at southern approach to Green Bridge, position 27°29′58″ N, 82°34′17″ W, and then to the southwest corner point at Point Pleasant, position 27°30′07″ N, 82°34′42″ W. All coordinates referenced use Datum: NAD 83.

(b) *Special local regulations* (1) In accordance with these regulations, the regulated area is designated as a no entry zone. Vessel traffic is permitted into the area during intermission, but is prohibited from entering the course area described in paragraph (b)(2) of this section during the race.

(2) Inside the no entry zone is a designated area surrounding the race course. The course consists of two ½ mile straight-aways and two ⅓ mile turns. The course is bounded by a line connecting the northeast corner point at position 27°30′10″ N, 82°34′30″ W, a southeast corner point at position 27°30′10″ N, 82°34′27″ W, a southwest corner point at position 27°30′15″ N, 82°34′38″ W, and a northwest corner point at position 27°30′30″ N, 82°34′40″ W. All coordinates referenced use Datum: Nad 83.

(c) *Effective dates.* This section is effective at 9 a.m. and terminate at 7 p.m. edt on March 23 and 24, 1996.

Dated: February 20, 1996.

Roger T. Rufe, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 96–4917 Filed 3–1–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD07–96–004]

RIN 2115–AE46

Special Local Regulations; City of Augusta, GA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being adopted for the Augusta Port Authority Invitational Rowing Regatta. The event will be held from 7 a.m. to 5 p.m. edt (Eastern Daylight Time) on March 21–24, 1996 on the Savannah River at August, GA. These regulations are necessary to

provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: This rule is effective from 6:30 a.m. to 5:30 p.m. edt on March 21–24, 1996.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for copying and inspection at U.S. Coast Guard Group Charleston, 196 Tradd Street, Charleston, SC 29401–1817, between 8 a.m. and 3 p.m. edt, Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: ENS M. Deponte, U.S. Coast Guard Group Charleston, SC at (803) 724–7621.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for these regulations. Following normal rulemaking procedures would have been impracticable. The information necessary to hold the event was not received until January 10 1996, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Discussion of Regulations

There will be 1000 participants racing 4 and 8 man rowing shells on a fixed course. The event will take place on the portion of the Savannah River at Augusta, Georgia between U.S. Highway 1/78/278 Bridge, at mile marker 199.45, and mile marker 197, on March 21–24, 1996. This rule is required to provide for the safety of life on the navigable waters during the running of the Invitational Rowing Regatta.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(f) of that order. It has not been reviewed review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The regulated area encompasses less than 1.5 nautical miles on the Savannah River between U.S. Highway 1/78/278 Bridge, at mile marker 199.45, and mile marker 197, entry into which is prohibited only for eleven hours on each day of the event.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with Section 2.B.2. of Commandant Instruction M16475.1B. In accordance with that section, this action has been environmentally assessed (EA completed), and the Coast Guard has determined that it will not significantly affect the quality of the human environment. An environmental assessment and finding of no significant impact have been prepared and are available for inspection and copying at the address listed under **ADDRESSES.** As a condition to the permit, the applicant is required to educate the operators of spectator craft and parade participants regarding the possible presence of manatees and the appropriate precautions to take if the animals are sighted.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–07–004 is added as follows:

§ 100.35–07–004 Special Local Regulations; Savannah River at Augusta, GA.

(a) *Regulated area.* A regulated area is established on that portion of the Savannah River at Augusta, Georgia between U.S. Highway 1/78/278 Bridge, at mile marker 199.45, and mile marker 197. The regulated area encompasses the width of the Savannah River between these two points.

(b) *Special local regulations.* (1) Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander. After termination of the Augusta Invitational Rowing Regatta on March 24, 1996, all vessels may resume normal operation.

(2) Four temporary overhead cables will be used to delineate the course's racing lanes, and floats will be used on the surface of the river to mark lane separations.

(c) *Effective dates.* This section is effective from 6:30 a.m. to 5:30 p.m. est on March 21–24, 1996.

Dated: February 20, 1996.

Roger T. Rufe, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 96–4920 Filed 3–1–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CG11–96–002]

RIN 2115–AE46

Special Local Regulations; Parker 500 Enduro

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements 33 CFR 100.1102, "Marine Events on the Colorado River, between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona)," for the Parker 500 Enduro" listed as "Parker Enduro."

This event consists of circle races and a marathon race by powerboats 12 to 22 feet in length. These regulations will be effective in the area of the Colorado River known as Parker Strip from Headgate Dam to Badenochs Marina approximately 2.5 miles north. This is a smaller area than that published in 33 CFR 100.1102. Implementation of section 33 CFR 100.1102 is necessary to control vessel traffic in the regulated areas during the event to ensure the safety of participants and spectators.

EFFECTIVE DATE: Section 33 CFR 100.1102 is effective from 11 a.m., on March 9, 1996 and until 6 p.m. on March 10, 1996, unless cancelled earlier by the San Diego Activities Commander.

FOR FURTHER INFORMATION CONTACT: QMC Paul Appleton, U.S. Coast Guard Activities San Diego, California; Tel: (619) 683–6309.

Discussion of Notice

The Parker 500 Enduro is scheduled to occur on March 9 and 10, 1996. These Special Local Regulations permit Coast Guard control of vessel traffic in order to ensure the safety of spectators and participant vessels. In accordance with the regulations in 33 CFR 100.1102, no spectators shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for such entry by or through an official patrol vessel.

Dated: February 16, 1996.

R.A. Appelbaum,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 96–4922 Filed 3–1–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD07–96–009]

RIN 2115–AE84

Regulated Navigation Area Regulations; Fort Pierce, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area at the Peter P. Cobb bridge in Fort Pierce, Florida. This regulated navigation area is needed to protect all vessels from a safety hazard created by damage to the Peter P. Cobb bridge and associated debris in the surrounding area. Entry into this zone is prohibited unless authorized by the Captain of the Port, Miami, Florida.

EFFECTIVE DATE: This regulation is effective from 12 p.m. on February 24, 1996 and terminates at 12 p.m. on March 31, 1996.

FOR FURTHER INFORMATION CONTACT: BMC J. L. Belk, Port Management and Response Department, USCG Marine Safety Office Miami, Florida at (305) 536–5693.

SUPPLEMENTARY INFORMATION:

Background and Purpose

At approximately 4 p.m. on November 7, 1995, a vessel allided with the east side of the fender system of the Peter P. Cobb Bridge (also known as the South Bridge) on the Indian River South Section at Fort Pierce, Florida. The center section of the east fender system was destroyed leaving the bridge support piling unprotected. Construction crews are replacing the fender system which was destroyed.

A regulated navigation area has been established on the Indian River South Section which includes the area under the main span of the bridge extending 100 feet either side of the bridge within the main channel. A previous regulated navigation area (CGD07–95–073) was established for this area. This regulation will terminate at 12 p.m. on February 24, 1996. Since repairs on the Peter P. Cobb bridge have not been completed, a new regulation is needed to continue the repairs without creating unusual hazards on the waterway for vessels traversing the area. This area will have the following restrictions and conditions for vessel traffic.

All barge traffic must obtain permission from the Captain of the Port or his designated representative prior to transiting. Any barges allowed to transit the zone by the Captain of the Port will be required to meet the following conditions: the barge must be assisted by two tugs made fast fore and aft; tugs must be of adequate horse power to fully maneuver the barge; and the zone shall be transited by barge traffic at slack water only. All other vessel traffic shall stay clear of the damaged section of the bridge and the repair work underway.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publication of notice of proposed rulemaking and delay of effective date would be contrary to public interest because immediate action is necessary to prevent vessels from allíding with the bridge support pilings, causing potential danger to the public.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

The action has been analyzed under the principles and criteria contained in executive order 12612 and has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Section 2.B.2. of Commandant Instruction M16475.1B that this action is categorically excluded from further environmental documentation. A categorical exclusion checklist and categorical exclusion determination have been completed and are available for inspection and copying.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (waters), Reporting and recordkeeping requirements, Safety measures, Waterways.

Final Regulations

For the reasons set out in the preamble the Coast Guard amends 33 CFR Part 165 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T07–009 is added to read as follows:

§ 165.T07–009 Regulated Navigation Area; Indian River South Section, Peter P. Cobb Bridge, Fort Pierce, FL.

(a) *Location.* The following area is a regulated navigation area:

All waters under the main bridge span extending 100 feet either side of the bridge within the main channel.

(b) *Regulations.* In accordance with general regulations in § 165.11 of this

part, no vessel may operate within the regulated navigation area contrary to this regulation. All barge traffic must obtain permission from the Captain of the Port or his designated representative prior to transiting. Any barges allowed to transit the zone by the Captain of the Port will be required to meet the following conditions: the barge must be assisted by two tugs made fast fore and aft; tugs must be of adequate horsepower to fully maneuver the barge; and the zone shall be transited by barge traffic at slack water only. All other vessel traffic shall stay clear of the damaged section of the bridge and repair work underway. The Captain of the Port will notify the public of changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(c) *Effective dates.* This section is effective at 12 p.m. on February 24, 1996 and terminates at 12 p.m. on March 31, 1996.

Dated: February 23, 1996.

Roger T. Rufe, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 96–4916 Filed 3–1–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD 05–96–007]

RIN 2115–AA97

Safety Zone: Atlantic Intracoastal Waterway, Vicinity of Marine Corps Base Camp Lejeune, NC

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard Captain of the Port, Wilmington, has established a safety zone in the Atlantic Intracoastal Waterway (AICW) along Marine Corps Base Camp Lejeune (Marine Corps Base), North Carolina. The safety zone encompasses the waters of the Atlantic Intracoastal Waterway between lighted dayboards 64 and 65A. The safety zone is needed to protect people, vessels, and property from safety hazards associated with the launching of insert line charges in support of amphibious assault training. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port.

EFFECTIVE DATE: This rule is effective from 8 a.m. March 8 to 6 a.m. March 14 1996 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LTJG K.J. DELOOFF, USCG, Project Officer, c/o Commanding Officer, U.S. Coast Guard Marine Safety Office, 272 North Front Street, Wilmington, North Carolina 28401–3907. Phone: (910) 343–4895, Extension 108.

SUPPLEMENTARY INFORMATION:

Discussion of Regulation

Marine Corps Base Camp Lejeune will conduct training assaults on a simulated mined beach. Up to three exercises will be held each day and each exercise will last 30–45 minutes. Each assault involves firing an inert line charge which clears the simulated minefield. The inert charge is propelled by a 5 foot solid fuel rocket from which the inert explosives trail. The rocket is typically prevented from flying its full flight by a cable attached to the firing point. If this cable breaks, the rocket motor, and possibly the inert line charge could impact in the Atlantic Intracoastal Waterway. The Coast Guard is establishing a safety zone to prevent damage or injury which could result from this training exercise and will prevent vessels from transiting during the firing of the line charge.

The safety zone will be effective from 8 a.m. on March 8, 1996 to 6 a.m. on March 14, 1996 unless terminated sooner by the Captain of the Port Wilmington (COTP). The actual times the waterway will be closed will be approximately 30–45 minute periods one to three times per day. Before firing the inert line charge, the COTP will announce via VHF channel 16 that this section will be enforced and the waterway will be closed to traffic. Vessels from either the U.S. Coast Guard or U.S. Navy will patrol each end of the safety zone to inform and control vessel traffic.

The safety zone includes:

The waters of the Atlantic Intracoastal Waterway from lighted dayboard number 64 at approximately 34°33′ 59.7″ North, 077°16′ 50.5″ West to lighted dayboard 65A at approximately 34°32′ 40.0″ North, 077°19′ West.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making this regulation effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying the effective date would be contrary to the public interest since immediate action is needed to protect mariners from potential hazards associated with potential flight of an rocket propelled inert line charge over navigable waters. The final schedule for this event and other related activities was not finalized and communicated to the Coast Guard in sufficient time to allow for a period for comments.

Assessment

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.e(34) of Commandant Instruction M16475.1B (amended by 59 FR 38654), this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T05.007 is added to read as follows:

§ 165.T05.007 Safety Zone: Atlantic Intracoastal Waterway, Marine Corps Base Camp Lejeune, North Carolina.

(a) *Location.* The following area is a safety zone:

(1) The waters of the Atlantic Intracoastal Waterway from lighted dayboard number 64 at approximately 34°33′59.7″ North, 077°16′50.5″ West to lighted dayboard 65A at approximately 34°32′40.0″ North, 077°19′ West.

(b) This section is effective from 8 a.m., March 8, 1996 to 6 a.m., March 14, 1996, unless terminated earlier by the Captain of the Port (COTP), Wilmington, NC.

(c) No person or vessel may enter the safety zone without the permission of the COTP or his designated representative.

(d) The COTP or his designated representative will announce times during which this section will be enforced.

(e) The COTP or his designated representative may be contacted at the Marine Safety Office, Wilmington, NC by telephone at (910) 343–4895 or by radio on VHF–FM channel 16.

Dated: February 12, 1996.

T.L. Rice,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, NC.

[FR Doc. 96–4918 Filed 3–1–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5433–8]

RIN 2060–AD55

Prohibition on Gasoline Containing Lead or Lead Additives for Highway Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: On February 2, 1996, EPA published a direct final rule (61 FR 3832) revising EPA regulations to reflect the Clean Air Act's statutory prohibition of the introduction into commerce of gasoline containing lead or lead additives for use as a motor vehicle fuel after December 31, 1995. This action was published without prior proposal. Because EPA has received adverse comment with respect to paragraph 40 CFR 80.24(b) of this action, EPA withdraws this paragraph from the direct final rule. The withdrawal of this paragraph does not otherwise affect the February 2, 1996 direct final rule, for which all other actions will become effective March 4, 1996.

EFFECTIVE DATE: March 4, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Babst, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 233–9473.

SUPPLEMENTARY INFORMATION: On February 2, 1996, EPA published in the **Federal Register** a direct final rule revising its regulations in accordance with the Clean Air Act prohibition of the introduction of gasoline containing lead or lead additives into commerce for use as a motor vehicle fuel after December 31, 1995. Among other actions, the direct final rule would have revised paragraph 40 CFR 80.24(b), which contains a specification regarding gasoline tank filler inlets for motor vehicles. The direct final rule was published without prior proposal in the **Federal Register** with a provision for a 15 day comment period. In addition, EPA published a proposed rule, also on February 2, 1996 (61 FR 3894). EPA announced in both rules that, should EPA receive adverse comment on the direct final rule, the Agency would withdraw the direct final rule and address the comments received in a subsequent final rule based on the related proposed rule. EPA received adverse comment within the prescribed comment period specifically addressing a revision that would have been made to 40 CFR 80.24(b). With this document, EPA is withdrawing revisions to 40 CFR 80.24(b) from the February 2, 1996 direct final rule (61 FR 3832). The withdrawal of this paragraph does not affect the other actions in the February 2, 1996 direct final rule, and all other actions will become effective March 4, 1996 as indicated in the direct final rule. The adverse comment received will be addressed in a subsequent final rule based on the related proposed rule (61 FR 3894).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Leaded gasoline, Unleaded gasoline, Motor vehicle pollution.

For the reasons set forth in the preamble, the amendment revising 40 CFR 80.24(b) published at 61 FR 3838 (February 2, 1996) is withdrawn.

Dated: February 27, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–4958 Filed 3–1–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 167

[OECA; FRL–5433–4]

Pesticide Reports for Pesticide-Producing Establishments; (EPA Form 3540–16); Additional Time To Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Time extension for submission of reports.

SUMMARY: Because of delays in completing and distributing reporting packages, EPA is announcing that it will extend the due date for submission of annual pesticide production reports (EPA Form 3540–16) for calendar year 1995 until two months after reporting packages are mailed by EPA. These reports under Section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and supporting regulations at 40 CFR Part 167 would otherwise be due on or before March 1, 1996.

DATES: Annual pesticide production reports for calendar year 1995 will be due May 1, 1996.

FOR FURTHER INFORMATION CONTACT: Carol L. Buckingham, (202) 564–5008, fax (202) 564–0085, Environmental Protection Agency, Mail Code 2225A, 401 M Street, SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

Background

Section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the supporting regulations at 40 CFR Part 167 requires certain facilities who manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of the Act, any active ingredient, or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device to report annually on the amounts and types, etc. of pesticides produced.

Each year prior to the reporting deadline (March 1) EPA develops and sends to facilities a reporting package containing the current pesticide reporting forms (EPA Form 3540–16), and instructions for reporting.

Because of delays in development of the reporting package, it will not be distributed to the pesticide-producing establishments in time to meet the March 1 reporting date. Therefore, EPA is extending the reporting deadline to two (2) months after the packages are mailed out.

This allowance of additional time for reporting applies only to the FIFRA section 7 and 40 CFR Part 167 reporting

obligations for pesticide reports otherwise due on March 1, 1996, covering calendar year 1995. Nothing in this Notice shall be construed to apply to any other FIFRA reporting obligations, or to any pesticide reports (EPA Form 3540–16) due for past or future reporting years. Further, this allowance of additional time for reporting applies only to the Federal FIFRA section 7 and 40 CFR Part 167 reporting obligation; it does not apply to independent obligations under State laws which may require pesticide-production type reports.

To the extent that this action might be construed as rulemaking subject to section 553 of the Administrative Procedures Act, for the reasons stated above, EPA has determined that notice and an opportunity for public comment are impracticable and unnecessary. Providing for public comment might further delay reporting, and, because there is no substantive change in the reporting obligation, the public will continue to receive the same information, though slightly delayed.

List of Subjects in 40 CFR Part 167

Registration of pesticide and active ingredient producing establishments, Submission of pesticide reports.

Dated: February 23, 1996.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 96–4829 Filed 3–1–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AC42

National Flood Insurance Program; Insurance Rates

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This final rule increases the National Flood Insurance Program (NFIP) chargeable (subsidized) rates, which apply to all structures located in communities participating in the Emergency Program of the NFIP and to certain structures in communities in the Regular Program of the NFIP. The rule is promulgated in order to bring subsidized premiums more in line with the risk. This rule will help the NFIP increase the capability to build reserves for catastrophic loss years.

EFFECTIVE DATE: April 30, 1996.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, (202) 646–3422.

SUPPLEMENTARY INFORMATION: FEMA published a proposed rule (60 FR 56552, November 9, 1995) to increase the National Flood Insurance Program (NFIP) chargeable (subsidized) rates. Comments were solicited from the public with the comment period ending January 8, 1996. During this period, no comments were received. As a result, this final rule contains no changes from the proposed rule.

This rule increases the NFIP chargeable (subsidized) rates. The increase results from an ongoing review and reappraisal of the NFIP and of continuing efforts to maintain a business-like approach to its administration by emulating successful property insurance programs in the private sector and, at the same time, to achieve greater administrative and fiscal effectiveness in its operations. The amendments in the rates will help the NFIP increase the capability to build reserves for catastrophic loss years. Coverage changes and optional deductibles, in addition to rate increases, are part of the ongoing effort to achieve these goals.

The chargeable (subsidized) rates, to which this rule applies, are the rates applicable to structures located in communities participating in the Emergency Program of the NFIP and to certain structures in communities in the Regular Program of the NFIP.

These rates are countrywide rates for two broad building type classifications which, when applied to the amount of insurance purchased and added to the expense constant and Federal policy fee, produce a premium income less than the expense and loss payments that can be expected on the flood insurance policies issued on that basis. Funds needed to supplement the inadequate premium income are provided by the National Flood Insurance Fund. The subsidized rates are promulgated by the Administrator for use under the Emergency Program (added to the NFIP by the Congress in Section 408 of the Housing and Urban Development Act of 1969) and for use in the Regular Program on construction or substantial improvement started before the effective date of the initial Flood Insurance Rate Map (FIRM) or on or before December 31, 1974 (this additional grandfathering was added to the NFIP by Congress in section 103 of the Flood Disaster Protection Act of 1973), whichever is later.

It should be noted that over the NFIP's history, the Program has not been subjected to a truly catastrophic flood event. Thus, the historical average is substantially less than could be expected over the long term when the influence of the extremely infrequent, truly catastrophic flood would result in a significant increase in the average historical year's losses. It is because of these fortuitous conditions, the lack of market penetration in areas suffering very large floods, and relatively high market penetration in the southeastern part of the United States, which has not suffered a catastrophic flood event recently, that the Program remained self-supporting since 1986 relying only on policyholder funding. However, the chargeable (subsidized) rates are significantly less than those that would be charged on a full risk basis.

Using current subsidized rates and projected full risk loss costs at 1995 levels, it is expected that the average annual shortfall in the risk portion of premiums needed to fund loss expenses, including the catastrophic potential, is over $400.00 for each subsidized policyholder.

The statutory mandate to establish chargeable rates requires the Federal Emergency Management Agency (FEMA) to balance the need for providing reasonable rates to encourage potential insureds to purchase flood insurance with the requirement that the NFIP be a flexible program that minimizes cost and distributes burdens equitably among those who will be protected by flood insurance and the general public.

In the past, appropriations were required to replenish the program's borrowing authority when income was not sufficient due to the subsidy. Since 1986, FEMA has not asked Congress to appropriate any taxpayer funds to pay for this subsidy. Recent years have been extremely high loss years starting with Hurricane Hugo in 1989, Hurricanes Andrew and Iniki in 1992, the great Midwest flooding of 1993, and several other major flooding events, including the recent flooding in Louisiana. The Louisiana flooding has resulted in the most losses the Program has ever had and will result in the biggest payout the Program has ever had from a single event. Because of this mounting loss experience, we must reduce the subsidy.

Section 1308(e) of the National Flood Insurance Act of 1968, as amended, contains an annual rate increase limitation of 10 percent. The rates to accomplish the increase are in the following table. It should be noted that

although the rates in the table have been increased more than 10 percent, the entire premium, which also includes an expense constant, increases only by 10 percent.

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.68	$0.79
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.79	1.58

For comparison, the subsidized rates being replaced by the preceding rates are as follows:

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.60	$0.70
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.70	1.40

The increase is balanced between the provisions of the statute for chargeable rates that are less than actuarial rates, consistent with the objective of making flood insurance available at reasonable rates so as to encourage prospective insureds to purchase flood insurance, and the need to decrease the subsidy.

The projected average annual premium for subsidized policies using the revised chargeable rates and purchasing 1995 amounts of insurance is $441.00, a $40.00 increase over the present average. Despite this increase, the new rates produce only an estimated 39 percent of the premium that would have to be charged if these policies were actuarially rated (i.e., not subsidized).

National Environmental Policy Act

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4371 *et seq.*, and the implementing regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, FEMA prepared an environmental assessment for this rule. The assessment concludes that there will be no significant impact on the human environment as a result of the issuance of the proposed rule. This final rule is not a major Federal action significantly affecting the quality of the human environment. An Environmental Impact Statement has not been prepared. Copies of the environmental assessment are available for inspection through the Rules Docket Clerk, Federal Emergency Management Agency, room 840, 500 C Street SW., Washington, DC 20472.

Executive Order 12866, Regulatory Planning and Review

This rule is not a significant regulatory action as defined under Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735, October 4, 1993. To the extent possible, this rule adheres to the principles of regulation as set forth in Executive Order 12866. This rule has not been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

Paperwork Reduction Act

This rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act of 1995.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, 44 CFR part 61 is amended as follows:

PART 61— INSURANCE COVERAGE AND RATES

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 61.9 is revised to read as follows:

§ 61.9 Establishment of chargeable rates.

(a) Pursuant to section 1308 of the Act, chargeable rates per year per $100 of flood insurance are established as follows for all areas designated by the Administrator under part 64 of this subchapter for the offering of flood insurance.

RATES FOR NEW AND RENEWAL POLICIES

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.68	$0.79
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration	.79	1.58

(b) The contents rate shall be based upon the use of the individual premises for which contents coverage is purchased.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance").

Dated: February 27, 1996.

Elaine A. McReynolds,

Administrator, Federal Insurance Administration.

[FR Doc. 96–4930 Filed 3–1–96; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 010496B]

Atlantic Tuna Fisheries; Bluefin Tuna Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishery closure; catch limit adjustment.

SUMMARY: As of February 25, 1996, reported recreational fishery landings of Atlantic bluefin tuna (ABT) larger than 73 inches (185 cm) totalled 3.7 metric tons (mt). The annual quota allocated to recreational catch of large medium and giant ABT is 4 mt. Therefore, landing large medium and giant ABT under the Angling category is prohibited effective at 11:30 p.m. on February 28, 1996. This action is being taken to prevent overharvest of this category. In addition, the daily catch limit for ABT is adjusted to one fish per vessel, which may be from the school, large school, or small medium size class. This action is being taken to lengthen the fishing season and ensure reasonable fishing opportunities in all geographic areas.

EFFECTIVE DATES: The closure is effective 11:30 p.m., local time, February 28,

1996, through December 31, 1996, or until the effective date of any future adjustment, which will be published in the **Federal Register**. The daily catch limit adjustment is effective 11:30 p.m., local time, March 11, 1996, through December 31, 1996, or until the effective date of any future adjustment, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: William Hogarth, 301–713–2347.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a total annual quota of 4 mt of large medium and giant ABT to be harvested from the regulatory area by vessels permitted in the Angling category or the Charter/Headboat category. NMFS is required, under § 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota applicable to any period.

As of February 25, 1996, reported recreational fishery landings of Atlantic bluefin tuna (ABT) larger than 73 inches (185 cm) totaled 3.7 metric tons (mt). Information on fishing effort available to NMFS indicates that the remaining quota is likely to be taken within the next few days. Therefore, fishing for, retention, possessing, or landing large medium or giant ABT by vessels in the Angling category or Charter/Headboat category must cease at 11:30 p.m., local time, February 28, 1996. This action is to prevent overharvest of the quota established for this category. Recreational anglers may continue to fish for large medium and giant ABT under the NMFS tag and release program (§ 285.27).

The Angling category fishery for school, large school, and small medium size ABT remains open. Implementing regulations for the Atlantic tuna fisheries at § 285.24 allow for inseason adjustments to the daily catch limits in order to lengthen the fishing season and ensure reasonable fishing opportunities for all geographic areas. The Assistant Administrator for Fisheries, NOAA, may increase or reduce the per angler catch limit for any size class bluefin tuna or may change the per angler limit to a per boat limit or a per boat limit to a per angler limit.

Based on a review of daily landing trends, availability of ABT on the fishing grounds, and anticipated fishing effort, the daily catch limit is adjusted as follows: No more than one bluefin tuna may be retained each day per Angling category vessel, which may be from the school, large school, or small medium size class. Notice of adjustments must be published at least 5 calendar days prior to a change in daily catch limit becoming effective. Therefore, the catch limit adjustment shall take effect at 11:30 p.m., local time on March 11, 1996.

Subsequent adjustments to the daily catch limit, if any, shall be announced through publication in the **Federal Register**. Charter/Headboat and General category vessels, when engaged in recreational fishing for school ABT, are subject to the same rules as Angling category vessels.

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: February 27, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–4876 Filed 2–27–96; 4:44 pm]

BILLING CODE 3510–22–F

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50 CFR Part 290

[Docket No. 960221042–6042–01; I.D. 122195B]

RIN 0648–A159

Fishery Marketing Cooperatives; Issuance of Cease and Desist Orders; Removal of Regulation

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS amends the Code of Federal Regulations (CFR) to remove a regulation that is no longer needed concerning the issuance of cease and desist orders to associations of aquatic products. This action is consistent with the President's Regulatory Reform Initiative.

EFFECTIVE DATE: March 4, 1996.

FOR FURTHER INFORMATION CONTACT: Bruce C. Morehead, (301)713-2358.

SUPPLEMENTARY INFORMATION: On March 4, 1995, as part of the President's Regulatory Reform Initiative, the President directed agencies to conduct a page-by-page review of all regulations and eliminate or revise those that are outdated or otherwise in need of reform. After conducting a review of 50 CFR part 290, it was determined that it was no longer needed and could be removed.

Part 290 of title 50 CFR provides a remedy under the authority of The Act of June 25, 1934 (48 Stat. 1213) (Act), whereby an association of producers of aquatic products (association) authorized by the Act may be ordered by the Secretary of Commerce (Secretary) to cease and desist from monopolizing or restraining trade to such an extent the price of any aquatic product is unduly enhanced. The regulation provides for a proceeding initiated by the filing of a complaint against an association with the Secretary. Since the establishment of NOAA 25 years ago under Reorganization Plan No. 4 of 1970 (84 Stat. 2090), no such complaints have been filed and NMFS is unaware of any such complaints that may be filed. Therefore, 50 CFR part 290 is no longer needed and is being removed.

Classification

Because this rule merely removes a regulation that is no longer necessary, no useful purpose would be served by providing prior notice and opportunity for public comment. Accordingly, under 5 U.S.C.553(b)(3)(B), for good cause, the Assistant Administrator for Fisheries, NOAA (AA) finds that it is unnecessary to provide prior notice and an opportunity for public comment for this rule. Also, because this rule merely removes a regulation that is no longer needed, the AA finds that no useful purpose would be served by delaying the rule's effective date for 30 days. Therefore, this rule is made effective upon publication.

This final rule has been determined to be not significant for the purpose of E.O. 12866.

List of Subjects in 50 CFR Part 290

Administrative practice and procedure, Antitrust, Cooperatives, Fisheries

Dated: February 26, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, under the authority of 70 Stat. 1121, as amended; 16 U.S.C. 742 (c), as amended; and Reorganization No. 4 of 1970, 50 CFR part 290 is removed and Subchapter J is vacated.

[FR Doc. 96–4841 Filed 3–1–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 43
Monday, March 4, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV95–916–5–PR]

Nectarines and Peaches Grown In California; Relaxation of Quality Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would relax, for the 1996 season only, the quality requirements for California nectarines and peaches. This proposal would establish a California Tree Fruit Agreement (CTFA) Utility quality requirement. California nectarines and peaches are currently subject to a minimum requirement of a modified U.S. No. 1 grade. The CTFA Utility quality requirement would be the same as a U.S. No. 2 except that misshapened fruit and fruit with serious damage due to scarring would be permitted. This proposed rule would also require that containers of nectarines and peaches meeting the CTFA Utility quality requirement be clearly marked "CTFA Utility." This proposed rule is intended to allow more nectarines and peaches into fresh market channels.

DATES: Comments must be received by April 3, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; or by facsimile at 202–720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth Johnson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2861; or Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order Nos. 916 and 917 [7 CFR Parts 916 and 917] regulating the handling of nectarines and peaches grown in California, hereinafter referred to as the orders. The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A majority of these handlers and producers may be classified as small entities.

The Department is proposing to establish, for the 1996 season only, a California Tree Fruit Agreement (CTFA) Utility quality requirement and a container marking requirement for shipments of fruit meeting CTFA Utility.

Minimum grade requirements for fresh nectarines and peaches grown in California are in effect under § 916.356 and § 917.459, respectively. This rule would amend §§ 916.356 and 917.459 by revising paragraph (a)(1) under each section, to permit shipments of fruit meeting CTFA Utility. CTFA Utility quality requirements are the same as the U.S. No. 2 grade requirements as set forth in the U.S. Standards for Grades of Nectarines [7 CFR 51.3145 through 51.3160] and the U.S. Standards for Grades of Peaches [7 CFR 51.1210 through 51.1223], except that misshapened fruit and fruit with serious damage due to scarring would be permitted. All other applicable size and maturity requirements would remain in effect. CTFA Utility fruit would be inspected by the Federal-State Inspection Service as meeting the CTFA Utility quality requirements. CTFA

Utility fruit would be subject to assessment and all other requirements of the orders. This rule would also amend §§ 916.350 and 917.442 by adding a paragraph to each section to specify that each package or container of nectarines and peaches shipped, meeting the requirements of the newly established CTFA Utility quality requirements, must be conspicuously marked with the words "CTFA Utility".

Shipments of California nectarines and peaches are subject to minimum grade, size, and maturity requirements under the provisions of Federal Marketing Orders 916 (section 916.356) during the period April 1 through October 31 each year and 917 (section 917.459) during the period April 1 through November 23 each year. Currently, nectarine shipments are required to meet the requirements of U.S. No. 1 except less scarring is permitted than the U.S. No. 1 Grade but the tolerance for fruit not well formed is greater than the U.S. No. 1 Grade. Different minimum size requirements are in effect for different groupings of nectarine varieties. Currently peach shipments are required to meet the requirements of U.S. No. 1 Grade except there is an additional tolerance for fruit damage caused by open sutures. Also, different minimum size requirements are in effect for different groupings of peach varieties. Both the nectarine and peach regulations allow the shipment of fruit one size smaller than the specified minimum if the fruit meets higher maturity requirements. Both nectarine and peach shipments are subject to container, pack, and container marking requirements.

Prior to the 1995 shipping season the Nectarine Administrative and Peach Commodity Committees (Committees) considered recommending a change in the nectarine and peach regulations to allow a utility grade for these fruits (Utility grade is a lower quality fruit than U.S. No. 1). During the 1995 season, changes were made to allow use of the utility grade for California plums which are regulated under a State program. The plum utility grade was based on the California Agricultural Code requirements. The Committees voted not to recommend a utility grade for nectarines and peaches in the 1995 season. The Committees did, however, hire Dr. Dennis Nef, California State University, Fresno, to conduct a research project to study the impact of a utility grade for nectarines and peaches. The Committees also believed that the industry experiences from the plum utility grade would be helpful in making future recommendations for a utility grade for nectarines and peaches.

The report prepared by Dr. Nef was presented to the Nectarine and Peach Grade and Size Subcommittees in October 1995. The report found that about 22 percent of the peaches sampled in packinghouse cull bins in 1995 would have met California agricultural code requirements. Of the nectarines sampled from packinghouse culls in that year, about 6 percent would have met California agricultural code requirements and an additional 14 percent failed marketing order quality requirements but would have met U.S. No. 1 Grade (as indicated previously, the nectarine grade requirements under the marketing order permit less fruit scarring than allowed under U.S. No. 1). The report pointed out that these findings were based on a crop season which was marked by unusual crop and weather conditions. After reviewing the report, the nectarine and peach subcommittees voted to not recommend to the full Committees that a utility grade be implemented in 1996 for nectarines and peaches citing the unusual weather conditions that resulted in below normal crops. They believed that Dr. Nef's research project should be continued for another year to allow for the collection of data based on a more normal year.

On November 29, 1995, the Department wrote to the Committees recommending that a utility grade be adopted for nectarines and peaches for the 1996 season beginning April 1, 1996. These Committees met on December 6–7, 1995, to discuss possible implementation of a utility grade for nectarines and peaches for the 1996 season. Committee members and others in attendance at the meetings expressed views in opposition to and in support of implementing a utility grade.

Commenters in opposition to a utility grade for nectarines and peaches stated that the 1995 season was not a normal season for plums, nectarines, or peaches and should not be used as a basis for recommending a utility grade. They also said that the tree fruit industry is facing competition in both domestic and in foreign markets. One commenter stated that utility grade fruit would damage the reputation of California-produced tree fruit and another stated that poor quality California plums had been shipped to Hong Kong last year and that these plums had damaged the reputation of California plums. One commenter stated that allowing a utility grade would result in inspections of fruit which only serve to verify that the fruit in the container is poor quality. Others stated that lower quality fruit is not wasted and may be used for cattle feed. Another stated that the results of the recent grower referendum indicated support for the continuation of the program and the continuation of the quality standards.

One commenter in support of a utility grade for nectarines stated that the implementation of a utility grade for plums in 1995 resulted in a $10 million increase in plum grower revenue. Commenters noted that less than 10 percent of the plum pack was utility grade. One commenter stated that while less than one percent of his organization's plum pack was utility grade, this lower grade should be available for use by nectarine and peach handlers if a market exists. Others commented that the Department had recommended a utility grade for nectarines and peaches for one year only—1996.

Data on recent production of California nectarines and peaches in relation to season average producer prices appears to indicate that lesser quality fruit could be marketed successfully without interfering with sales of higher quality fruit. The limited quantity expected to be available would be expected to have a minimal effect on consumer purchases and season average producer prices for California nectarines and peaches. Sales of lesser quality fruit to a niche market could increase producer revenue and promote consumer satisfaction.

The Department's proposal to implement the "CTFA Utility" quality requirement for the 1996 season would authorize fruit meeting this requirement to be shipped to market and provide actual information on consumer and retailer acceptability of such fruit. This information could then be used to supplement information collected by Dr. Nef and assist the respective industries in developing their quality requirements for the 1997 season.

Based on the foregoing, the Department proposes that a utility grade for nectarines and peaches should be implemented on an experimental basis for the 1996 season. The Department proposes, for purposes of this regulation, to define "CTFA Utility" to mean fruit which meets the requirements of U.S. No. 2 Grade defined in the United States Standards for Grades of Nectarines (7 CFR 51.3145 through 51.3160) and the United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223) except that misshapened fruit and fruit with serious damage due to scarring would be permitted.

Committee members and others who commented at the December 6–7 Committee meetings indicated that a niche market may exist for utility grade fruit and that the opportunity should be made available to market lower quality fruit to meet demand. This proposal could allow more fruit to be marketed.

In order to prevent confusion in the marketplace and to clearly differentiate shipments of "CTFA Utility" fruit from better quality fruit, this proposal requires that containers of "CTFA Utility" fruit be conspicuously marked with the words "CTFA Utility". In addition, shipments of such fruit would be required to meet the same container, pack, and container marking requirements in effect for shipments of higher quality fruit.

This proposed rule reflects the Department's appraisal of the need to revise the quality and container requirements for California nectarines and peaches as specified. The Department believes that this rule may have a beneficial impact on producers, handlers, and consumers of California nectarines and peaches.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on these matters.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Parts 916 and 917 are proposed to be amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 916 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 916.350 is amended by adding a new paragraph (d) to read as follows:

§ 916.350 California Nectarine Container and Pack Regulation.

* * * * *

(d) During the period April 1 through October 31, 1996, each container or package when packed with nectarines meeting CTFA Utility requirements, shall bear the words "CTFA Utility" marked on all containers and packages, along with all other required container markings, in letters of ¾ inch minimum height on the principal display panel. Consumer bags or packages must also be clearly marked on the bag or package as "CTFA Utility" along with other required markings.

3. Section 916.356 is amended by revising paragraph (a)(1) to read as follows:

§ 916.356 California Nectarine Grade and Size Regulation.

(a) * * *

(1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade: Provided, that nectarines 2 inches in diameter or smaller, shall not have fairly light colored, fairly smooth scars which exceed an aggregate area of a circle ⅜ inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light colored, fairly smooth scars which exceed an aggregate area of a circle ½ inch in diameter: Provided further, That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen. Provided further, that, during the period April 1 through October 31, 1996, any handler may handle nectarines if such nectarines meet CTFA Utility quality requirements. The term CTFA Utility means nectarines that have been inspected by the Federal or Federal-State Inspection Service and meet the requirements of the U.S. No. 2 grade as defined in the United States Standards for Grades of Nectarines [7 CFR 51.3145 through 51.3160], except that misshapened fruit and fruit with serious damage due to scarring would be permitted. The Federal or Federal-State Inspection Service shall make final determinations on maturity through the use of color guides or such other tests as determined appropriate by the inspection agency.

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 917.442 is amended by adding and reserving a new paragraph (c) and adding paragraph (d) to read as follows:

§ 917.442 California Peach Container and Pack Regulation.

* * * * *

(d) During the period April 1 through November 23, 1996, each container or package when packed with peaches meeting CTFA Utility requirements, shall bear the words "CTFA Utility" marked on all containers and packages, along with all other required container markings, in letters of ¾ inch minimum height on the principal display panel. Additional consumer bags or packages must also be clearly marked on the bag or package as "CTFA Utility" along with other required markings.

3. Section 917.459 is amended by revising paragraph (a)(1) to read as follows:

§ 917.459 California Peach Grade and Size Regulation.

(a) * * *

(1) Any lot or package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade: Provided, that an additional 25 percent tolerance shall be permitted for fruit with open sutures which are damaged, but not seriously damaged. Provided, that, during the period April 1 through November 23, 1996, any handler may handle peaches if such peaches meet CTFA Utility quality requirements. The term CTFA Utility means peaches that have been inspected by the Federal or Federal State Inspection Service and meet the requirements of the U.S. No. 2 grade as defined in the United States Standards for Grades of Peaches [7 CFR 51.1210 through 51.1223], except that misshapened fruit and fruit with serious damage due to scarring would be permitted. The Federal or Federal-State Inspection Service shall make final determinations on maturity through the use of color chips or other tests as determined appropriate by the inspection agency.

* * * * *

Dated: February 26, 1996.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–4871 Filed 3–1–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–95–168]

RIN 2115–AE46

Special Local Regulation: World's Fastest Lobster Boat Race, Moosabec Reach, Jonesport, ME

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent special local regulation for the World's Fastest Lobster Boat Race. The event will be held annually on the observed Independence Day in the waters of Moosabec Reach, Jonesport, ME. This regulation is needed to protect the boating public from the hazards associated with high speed powerboat racing in confined waters.

DATES: Comments must be received on or before May 3, 1996.

ADDRESSES: Comments should be mailed to Commander (b), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, MA 02110–3350, or may be hand delivered to Room 428 at the same address, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant (jg) B.M. Algeo, Chief, Boating Affairs Branch, First Coast Guard District, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD01–95–168), the specific section of the proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½" x 11" unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (b), First Coast Guard District at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Discussion of Proposed Amendments

The World's Fastest Lobsterboat Race is a local, traditional event that has been held for many years in Jonesport, ME. In the past, the Coast Guard has promulgated individual regulations for each year's running of the race. Given the recurring nature of the event, the Coast Guard desires to establish a permanent regulation for this event. The proposed regulation would establish a regulated area on Moosabec Reach and would provide specific guidance to control vessel movement during the race.

This event includes up to 60 power-driven lobster boats competing in heats on a marked course at speeds approaching 25 m.p.h. The Coast Guard will assign a patrol to the event, and the race course will be marked. However, due to the speed, large wakes, and proximity of the participating vessels, it is necessary to establish a special local regulation to control spectator and commercial vessel movement within this confined area. Spectator craft are authorized to watch the race from any area as long as they remain outside the designated regulated area.

The proposed section will be effective annually on the observed Independence Day holiday or as published in a Coast Guard Notice to Mariners. A rain date may be established and announced in a Coast Guard Notice to Mariners. In emergency situations, the Coast Guard patrol commander may establish escort procedures for vessels requiring transit through the regulated area.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the limited duration of the race, the extensive advisories that will be made to the affected maritime community, and the minimal restrictions the regulation places on vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. For the reasons discussed in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impacts of this proposal and concluded that, under paragraph 2.B.2.e.34(h) of COMDTINST 16475.1B (as revised by 59 FR 38654, July 29, 1994), this proposal is a regulation issued in conjunction with an annually issued regatta or marine parade permit and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A permanent section, § 100.110, is added to read as follows:

§ 100.110 World's Fastest Lobster Boat Race, Jonesport, ME.

(a) *Regulated Area.* The regulated area includes all waters of Moosabec Reach within the following points (NAD 83):

Latitude	*Longitude*
44°31'36" N	067°36'54" W
44°31'48" N	067°34'42" W
44°31'36" N	067°34'42" W
44°31'18" N	067°36'54" W

(b) *Special local regulations.* (1) The Coast Guard patrol commander may delay, modify, or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area unless participating in the event or unless authorized by the Coast Guard patrol commander.

(3) Vessels encountering emergencies which require transit through the regulated area should contact the Coast Guard patrol commander on VHF Channel 16. In the event of an emergency, the Coast Guard patrol commander may authorize a vessel to transit through the regulated area with a Coast Guard designated escort.

(4) All persons and vessels shall comply with the instructions of the on-scene Coast Guard patrol commander. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon hearing five or more short blasts from a U.S. Coast Guard vessel, the operator of a vessel shall proceed as directed. Members of the Coast Guard Auxiliary will also be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective period.* This section is in effect from 10 a.m. to 1 p.m. annually on the observed Independence Day holiday, unless otherwise specified in a Coast Guard Notice to Mariners.

Dated: February 20, 1996.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 96–4919 Filed 3–1–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 09–95–017]

RIN 2115–AE46

Special Local Regulation; Detroit Grand Prix, Detroit River, Fleming Channel and Scott Middle Ground, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination.

SUMMARY: This rulemaking project was initiated to adopt regulations requiring a "NO STOPPING ZONE" in the Fleming Channel, and a "CAUTION AREA" in the Scott Middle Ground of the Detroit River during the annual Detroit Grand Prix held on Belle Isle. The project is no longer necessary due to a further review of the event by the Coast Guard that determined mariners observing the Inland Navigation Rules will be able to safely watch the event. The Coast Guard is therefore terminating further rulemaking under docket number CGD09–95–017.

FOR FURTHER INFORMATION CONTACT:

Marine Science Technician Second Class Jeffrey M. Yunker, Ninth Coast Guard District, Aids to Navigation Branch, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, (216) 522–3990.

SUPPLEMENTARY INFORMATION:

Regulatory History

On July 26, 1995, the Coast Guard published a Notice of Proposed Rulemaking entitled Special Local Regulation; Detroit Grand Prix, Detroit River, Fleming Channel and Scott Middle Ground, MI in the **Federal Register** (60 FR 38291). The deadline for the submission of comments was September 25, 1995. The Coast Guard received one comment on the proposal. The proposal recommended both the "NO-STOPPING ZONE" and "CAUTION AREA" be made into anchorage areas. The recommended size of the anchorage area in the Scott Middle Ground would also be greatly decreased. Further review of the event's history was conducted by Coast Guard Group Detroit and Coast Guard Station Belle Isle. It was determined that no regulated areas are required for this event. Mariners will be able to safely watch the event while adhering to the Inland Navigation Rules. Regulations were first written for this event in 1992. The event was expected to draw an estimated 2000 spectator craft which could pose hazards to navigation in the area. A large number of spectator craft has not been encountered during the event due to the poor visibility of the event from the water. Because there is no further need for regulations during the Detroit Grand Prix, the Coast Guard is terminating further rulemaking under docket number CGD09–95–017.

Dated: February 15, 1996.

G. F. Woolever,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 96–4921 Filed 3–1–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 403, and 501

[FRL–5432–8]

National Pollutant Discharge Elimination System Permit Application Requirements for Publicly Owned Treatment Works and Other Treatment Works Treating Domestic Sewage

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) announces that the public comment period for the National Pollutant Discharge Elimination System (NPDES) Permit Application Requirements for Publicly Owned Treatment Works and Other Treatment Works treating Domestic Sewage proposed rulemaking (60 FR 62546, December 6, 1995) will be extended from March 6, 1996 to March 29,1996 due to the effects of the recent Federal government shutdown. EPA is proposing to revise its NPDES permit application requirements and to develop a new permit application form, Form 2A, in order to streamline the permit application process for POTWs and improve the quality of permits issued to those facilities. The Agency is also proposing permit application requirements and an application form, Form 2S, for Treatment Works Treating Domestic Sewage to provide permit writers with the information necessary to issue effective permits for these facilities. In developing these proposed forms and application requirements, the Agency has consulted with State and municipal representatives and has addressed their concerns. As a result, the proposed forms and applications would minimize the burden on permittees and permitting authorities and result in greater environmental protection through more effective NPDES permits.

DATES: In order to be considered, comments must be received on or before March 29, 1996.

ADDRESSES: Comments should be addressed to Municipal and Sludge Application Rule Comment Clerk, Water Docket MC–4101; United States Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460. Commenters are also requested to submit an original and 3 copies of their written comments as well as an original and 3 copies of any attachments, enclosures, or other documents referenced in the comments.

Commenters who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. All comments must be postmarked or delivered by hand by March 29, 1996. No facsimiles (faxes) will be accepted.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) March 29, 1996. EPA is experimenting with electronic commenting, therefore commenters may want to submit both electronic comments and duplicate paper comments. This document has also been placed on the Internet for public review and downloading at the following location: gopher.epa.gov.

FOR FURTHER INFORMATION CONTACT: For information on Form 2A and municipal wastewater permitting issues in this notice, contact Robin Danesi, (202) 260–2991, Permits Division (4203), United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C., 20460.

For information on Form 2S and sewage sludge permitting issues in this notice, contact Wendy Bell, (202) 260–9534, Permits Division (4203), United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C., 20460. Copies of the proposed rulemaking can be obtained from the National Center for Environmental Publications and Information, Cincinnati, Ohio, (800) 553–6847, document number 833–Z–95–006.

Dated: February 26, 1996.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 96–4831 Filed 3–1–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–15, RM–8748]

Radio Broadcasting Services; Barron, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Barron Broadcasting Corporation requesting the allotment of Channel 256A at Barron, Wisconsin, as that community's first local FM broadcast service. Canadian concurrence will be requested for this allotment at coordinates 45–24–00 and 91–51–12.

DATES: Comments must be filed on or before April 22, 1996, and reply comments on or before May 7, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Steven T. Moravec, Barron Broadcasting Corporation, 1407 Sumner Street, Suite 200, St. Paul, Minnesota 55116–2645.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96–15, adopted February 5, 1996, and released February 28, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–4877 Filed 3–1–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–14, RM–8746]

Television Broadcasting Services; Memphis, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Cossitt Library d/b/a Memphis Shelby County Public Library seeking the allotment of UHF TV Channel 56 to Memphis, Tennessee, and its reservation for noncommercial educational use. Channel *56 can be allotted to Memphis in compliance with the minimum distance separation requirements of Sections 73.610 and 73.698 of the Commission's Rules without the imposition of a site restriction. The coordinates for *56 are 35–08–58 and 90–02–56. Memphis is not affected by the Commission's temporary freeze on new television allotments in certain metropolitan areas.

DATES: Comments must be filed on or before April 22, 1996, and reply comments on or before May 7, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Matthew H. McCormick, Reddy, Begley & McCormick, 1001 22nd Street, NW., Suite 350, Washington, DC 20037 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96–14, adopted February 5, 1996, and released February 28, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–4875 Filed 3–1–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192, 193, and 195

[Docket No. PS–143]

RIN 2137–AC74

Periodic Updates to the Pipeline Safety Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This NPRM proposes to update the references to voluntary specifications and standards to reflect more recently published editions of each document. Many referenced standards currently cited in the code are outdated. This NPRM would enable pipeline operators to utilize current technology, materials, and practices, thereby reducing costs and enhancing economic growth. This is consistent with the President's goals of regulatory reinvention and improvement of customer service to the American people. In addition, this NPRM proposes to eliminate the requirements for odorization of hydrogen transmission lines. The purpose of this proposal is to eliminate unnecessary regulatory burdens without compromising safety.

DATES: Comments to this NPRM are due on or before April 3, 1996.

ADDRESSES: Written comments regarding this NPRM should be sent to the RSPA dockets office, attention Verdell Simpkins, room 8421, U.S. Department of Transportation, 400 7th Street SW., Washington, DC. 20590.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, regarding the subject matter of this Notice; or the Dockets Unit, (202) 366–4453, for copies of this Notice or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Reinvention Initiative

In March of 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those that are outdated or in need of reform. The "Regulatory Reinvention Initiative" (RRI) was a Presidential directive requiring Federal regulatory agencies, among other things, to conduct a page-by-page review of all agency regulations, cutting or revising those that were obsolete, intrusive, or better handled by parties other than the Federal government (i.e., private business, State or local government).

RSPA has reviewed the pipeline safety regulations and is making changes and revisions where deemed appropriate. In addition, RSPA conducted three outreach meetings in 1995 in Dallas, TX, Lakewood CO, and Houston, TX in support of the President's goal of enhancing partnership with the pipeline industry. Comments received in these outreach meetings and in the RRI docket have resulted in the proposals in this NPRM.

Incorporations by Reference

RSPA has reviewed the voluntary consensus standards currently referred to in the pipeline safety regulations and in its appendices, and proposes to update the various voluntary consensus standards that are cited throughout 49 CFR Parts 192, 193, and 195. The respective organizations responsible for producing these standards often update or revise them to better suit the needs of changing pipeline systems.

Parts 192, 193, and 195 incorporate by reference all or portions of over 40 different documents or their equivalent containing practices, codes, standards, and specifications developed and published by technical organizations, including the American Petroleum Institute, American Gas Association, American Society of Mechanical Engineers, American Society of Civil Engineers, American Concrete Institute, American Society of Testing and Materials, International Conference of Building Officials, Manufacturers Standardization Society of the Valve and Fittings Industry, and National Fire Protection Agency. Many of the editions currently referenced are now out of print or obsolete. Later published editions of these documents utilize or focus on up-to-date technology. Pipeline operators could be unnecessarily burdened with design and construction requirements that are referred to in earlier editions.

To avoid these burdens and allow operators to benefit from various technological improvements in materials and methods, this NPRM proposes to update references to these outdated documents where the latest editions have been reviewed and accepted by OPS. The later editions referenced are set forth by name and date in the proposed amendments to appendices A and B of Part 192, appendix A of Part 193, and Part 195 (§ 195.3). The order and appearance in the CFR of the consensus standards would remain unchanged. Only the year representing the edition of the document would be revised. In addition to the proposed incorporating of current standards, some minor conforming amendments are also proposed.

The address for the American Society for Testing and Materials (ASTM) has changed. The correct address is: 100 Barr Harbor Drive, Conshohocken, PA, 19428. Parts 192 and 195 will be amended to reflect this change.

Section 192.63(a)(1) would be revised to refer to the 1995 edition of ASTM D 2513, replacing the 1987 edition.

Section 192.189(c) would be amended by correcting the reference to the National Electric Code. The "C1" nomenclature identifies the electrical code committee within the American National Standards Institute (ANSI), but is in no way related to identifying the code itself. The correct reference is "ANSI/NFPA 70", and would be so amended under the proposed rulemaking.

Requirement to Odorize Hydrogen Transmission Pipelines

In support of the President's goal to eliminate obsolete and unnecessary regulations, RSPA proposes to amend 49 CFR 192.625 to eliminate the odorization requirement for hydrogen transmission lines in cases where the odorization interferes with industrial end uses. Hydrogen pipelines that were operating without an odorant before May 5, 1975, are already exempt from the odorization requirement.

The requirement to odorize hydrogen in new and existing hydrogen transmission lines that do not fall under this "grandfather clause" may impose unreasonable costs on industry without any quantifiable safety benefit. This is because odorization renders hydrogen, which is primarily an industrial process feedstock, unfit for its uses without expensive deodorization. RSPA recognized that problems with the odorization requirements could be expected to occur after the "grandfather" date, but stated that it "* * * prefers to address these problems on an individual basis in the waiver process." 40 FR 20279 at 20,280–281 (May 9, 1971).

There appears to be no advantage to continuing to use a waiver procedure. The potential advantages of odorization for hydrogen pipelines appear to be negligible, while the costs to industry for removal of the odorant may be unreasonably large. Also, the magnitude of any hazard from hydrogen pipeline leaks appear to be small. Hydrogen is not only much less dense than air, and thus tends to dissipate rapidly, but also has relatively low energy content for a given volume compared to natural gas. In addition, it appears that the ignition energy of hydrogen is so low that even static electricity can ignite the gas, making a build-up of gas unlikely. In addition, hydrogen is not generally used as a fuel, but rather as an industrial feedstock. Odorization renders hydrogen unfit for most of its industrial uses. Odorant can poison or reduce the reactivity of catalysts, make the end product unfit for the purpose for which it is intended, or reduce the percentage completion of a chemical reaction. This means that the odorant needs to be removed, an expensive process, prior to its use in manufacture.

The proposed language adds a paragraph to Section 192.625 to except from odorization requirements transmission lines if the gas is intended for an industrial plant using hydrogen in a manufacturing process.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget (OMB). The notice is also not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Executive Order 12612

The proposed rule has been analyzed with the principles and criteria in Executive Order 12612 ("Federalism"), and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

Based on the facts available, I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal.

Paperwork Reduction Act

The cumulative effect of the proposals in this NPRM will be no change in the current information collection burden requirements for gas, hazardous liquid, and carbon dioxide pipeline operators.

List of Subjects

49 CFR Part 192

Incorporation by reference, Natural gas, Pipeline safety.

49 CFR Part 193

Incorporation by reference, Liquefied natural gas (LNG), Pipeline safety.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety.

In consideration of the foregoing, RSPA proposes to amend 49 CFR parts 192, 193, and 195 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 60101 *et seq.*; 49 CFR 1.53.

2. Paragraph (a)(1) of § 192.63 would be revised to read as follows:

§ 192.63 Marking of materials.

(a) * * *

(1) As prescribed in the specification or standard to which it was manufactured, except that thermoplastic fitting must be marked in accordance with the 1995 edition of ASTM D 2513; or

* * * * *

3. Paragraph (c) of § 192.189 would be revised to read as follows:

§ 192.189 Vaults: Drainage and waterproofing.

* * * * *

(c) Electrical equipment in vaults must conform to the applicable requirements of Class 1, Group D, of the National Electric Code, ANSI/NFPA 70.

4. Section 192.625 would be amended by revising paragraphs (b)(2)(iv)(C) and (b)(3) and by adding paragraph (b)(4) to read as follows:

§ 192.625 Odorization of gas.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(C) Reduces the percentage completion of a chemical reaction;

(3) In the case of a lateral line which transports gas to a distribution center, at least 50 percent of the length of that line is in a Class 1 or Class 2 location; or

(4) The combustible gas is hydrogen intended for use as a feedstock in a manufacturing process.

* * * * *

5. Appendix A of part 192 would be amended by revising paragraphs *I.* D, *II.* A 1, 3, and 4, *II.* B, *II.* C 3–6, and *II.* E to read as follows:

Appendix A to Part 192—Incorporated by Reference

I. List of Organizations and Addresses

* * * * *

D. American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Conshohocken, PA 19428.

* * * * *

II. Documents Incorporated by Reference. (Numbers in Parentheses Indicate Applicable Editions.)

A. * * *

1. API Specification 5L "Specification for Line Pipe (41st edition, 1995).

* * * * *

3. API Specification 6D "Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves)" (21st edition, 1994).

4. API Standard 1104 "Welding of Pipelines and Related Facilities" (18th edition, 1994).

B. American Society for Testing and Materials (ASTM):

1. ASTM Designation: A53 "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless" (A53–94).

2. ASTM Designation A106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A106–94).

3. ASTM Designation: A333/A333M "Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service" (A333/A333M–94).

4. ASTM Designation: A372/A372M "Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels" (A372/A372M–95).

5. ASTM Designation: A381 "Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems" (A 381–93).

6. ASTM Designation: A671 "Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (A 671–94).

7. ASTM Designation: A672 "Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (A672–94).

8. ASTM Designation A691 "Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High-Pressure Service at High Temperatures" (A691–93).

9. ASTM Designation D638 "Standard Test Method for Tensile Properties of Plastics" (D638–94b).

10. ASTM Designation D2513 "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing and Fittings" (D2513–95a).

11. ASTM Designation D2517 "Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings" (D2517–94).

C. * * *

3. ASME Boiler and Pressure Vessel Code, Section I "Power Boilers" (1995 edition with addenda).

4. ASME Boiler and Pressure Vessel Code, Section VIII, Division 1 "Pressure Vessels" (1995 edition with addenda).

5. ASME Boiler and Pressure Vessel Code, Section VIII, Division 2 "Pressure Vessels: Alternative Rules" (1995 edition with addenda).

6. ASME Boiler and Pressure Vessel Code, Section IX "Welding and Brazing Qualifications" (1995 edition with addenda).

* * * * *

E. National Fire Protection Association (NFPA):

1. ANSI/NFPA 30 "Flammable and Combustible Liquids Code" (1995).

2. ANSI/NFPA 58 "Standard for the Storage and Handling of Liquefied Petroleum Gases" (1995).

3. ANSI/NFPA 59 "Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants" (1995).

4. ANSI/NFPA 70 "National Electrical Code" (1996).

PART 193—[AMENDED]

1. The authority citation for part 193 continues to read as follows:

Authority: 49 U.S.C. 60101 *et seq.*; 49 CFR 1.53.

2. Appendix A to part 193 would be amended by revising paragraphs *II.* C, *II* D .1 and 3, *II.* E, *II.* F, and *II.* G, to read as follows:

Appendix A to Part 193—Incorporation by Reference

* * * * *

II. Documents Incorporated by Reference. (Numbers in Parentheses Indicate Applicable Editions.)

* * * * *

C. American Society of Civil Engineers (ASCE):

1. ASCE 7–88 "Minimum Design Loads for Buildings and Other Structures" (1995)

D. * * *

1. API Specification 6D "Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves)" (21st edition, 1994).

* * * * *

3. API Standard 1104 "Welding of Pipelines and Related Facilities" (18th edition, 1994).

E. American Society of Mechanical Engineers (ASME):

1. ASME/ANSI B31.3 "Chemical Plant and Petroleum Refinery Piping" (1993).

2. ASME/ANSI B31.5 "Refrigeration Piping" (1992).

3. ASME/ANSI B31.8 "Gas Transmission and Distribution Piping Systems" (1995).

4. ASME Boiler and Pressure Vessel Code, Section I "Power Boilers" (1995 edition with Addenda).

5. ASME Boiler and Pressure Vessel Code, Section IV, "Heating Boilers" (1995 edition with Addenda).

6. ASME Boiler and Pressure Vessel Code, Section VIII, Division 1 "Pressure Vessels" (1995 edition with Addenda).

7. ASME Boiler and Pressure Vessel Code, Section VIII, Division 2, "Pressure Vessels: Alternative Rules" (1995 edition with Addenda).

8. ASME Boiler and Pressure Vessel Code, Section IX, "Welding and Brazing Qualifications" (1995 edition with Addenda).

F. International Conference of Building Officials (ICBU):

1. "Uniform Building Code" (UBC) (1994).

G. National Fire Protection Association (NFPA):

1. ANSI/NFPA 30 "Flammable and Combustible Liquids Code" (1993)

2. ANSI/NFPA 37 "Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines" (1994).

3. ANSI/NFPA 51B "Standard for Fire Prevention in Use of Cutting and Welding Processes" (1994).

4. ANSI/NFPA 59A "Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)" (1994).

5. ANSI/NFPA 70 "National Electrical Code" (1996).

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 60101 *et seq.*; 49 CFR 1.53.

2. Section 195.3 would be amended by revising paragraph (b)(6) and paragraphs (c) (2)–(5) to read as follows:

§ 195.3 Matter incorporated by reference.

* * * * *

(b) * * *

(6) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Conshohocken, PA 19428.

(c) * * *

(2) American Petroleum Institute (API):

(i) API Specification 5L "Specification for Line Pipe" (41st edition, 1995).

(ii) API Specification 6D "Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves)" (21st Edition, 1994).

(iii) API Specification 1104 "Welding of Pipelines and Related Facilities" (18th edition, 1994).

(3) American Society of Mechanical Engineers (ASME):

(i) ASME/ANSI B16.9 "Factory-Made Wrought Steel Buttwelding Fittings" (1993).

(ii) ASME/ANSI B31.4 "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols" (1992 edition with 1994 addenda).

(iii) ASME/ANSI B31.8 "Gas Transmission and Distribution Piping Systems" (1995)

(iv) ASME/ANSI B31G "Manual for Determining the Remaining Strength of Corroded Pipelines" (1991).

(v) Boiler and Pressure Vessel Code, Section VIII, Division 1 "Pressure Vessels" (1995 with Addenda).

(vi) ASME Boiler and Pressure Vessel Code, Section IX "Welding and Brazing Qualifications" (1995 with Addenda).

(4) Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):

(i) MSS SP–75 "Specification for High Test Wrought Butt Welding Fittings" (1993).

(ii) [Reserved]

(5) American Society for Testing and Materials (ASTM):

(i) ASTM Designation: A 53 "Standard specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless" (A 53–94).

(ii) ASTM Designation: A 106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A 106–94).

(iii) ASTM Designation: A 333/A 333M "Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service"(A 333/A 333M–94).

(iv) ASTM Designation: A 381 "Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems" (A 381–93).

(v) ASTM Designation: A 671 "Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (A 671–94).

(vi) ASTM Designation: A 672 "Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (A 672–94).

(vii) ASTM Designation: A 691 "Standard Specification for Carbon and Alloy Steel Pipe Electric-Fusion-Welded for High-Pressure Service at High Temperatures" (A 691–93).

Issued in Washington, DC on February 23, 1996.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 96–4622 Filed 3–1–96; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 61, No. 43
Monday, March 4, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Formulation of the Prerevision Review Process for the Cibola National Forest Land and Resource Management Plan Revision

AGENCY: Forest Service, USDA.

SUMMARY: The Cibola National Forest requests comments on draft Prerevision review topics that have been developed through the monitoring of the current Forest Plan and interdisciplinary team review. This is an invitation to the public and representatives of government entities to express their ideas and suggestions on what needs to be changed in the current Forest Plan. Upon completion of the prerevision review, the Regional Forester shall initiate the forest plan revision process by publishing a Notice of intent to revise the forest plan and to prepare the draft environmental impact statement.

DATES: This notice is effective March 6, 1996. Comments must be submitted in writing on or before April 15, 1996.

ADDRESSES: Direct comments to: Jeanine A. Derby, Forest Supervisor, Cibola National Forest, 2113 Osuna Road NE, Suite A, Albuquerque, New Mexico, 87110.

FOR FURTHER INFORMATION CONTACT: Barney Lyons, Forest Planner, Cibola National Forest at 505–761–4650.

Background

The Land and Resource Management Plan defines the long-term direction for managing the Cibola National Forest and the Kiowa, Rita Blanca, Black Kettle, and McClellan Creek National Grasslands. The Forest Plan will take an ecological approach to achieve multiple-use management of the National Forest and National Grasslands. It means that we must blend the needs of people and environmental values in such a way that the National Forest and Grasslands represent diverse, healthy, productive, and sustainable ecosystems. The present Cibola National Forest Plan was approved in 1985 and has been amended six times. Revision of a forest plan should occur about every 10 years, but no later than 15 years from the date of approval of the original plan or the latest plan revision.

A prerevision review of the forest plan has been conducted to identified changed conditions and/or new information which appears to indicate a need to change direction in the current plan. The Cibola National Forest developed criteria to separate between Revision Topics, Implementation Topics, Legislative Topics, Topics for other Government Entities, and Research Topics. Other information required by the National Forest Management Act will also be evaluated with the topics that indicate a need for change, such as roadless areas and wild and scenic rivers. This review was a combination of interdisciplinary team efforts and Forest plan monitoring. We are seeking comments on these topics as well as any other topics that might surface.

The revision topics that surfaced during the prerevision review are: balancing land capability with resource demand; watershed condition assessment and water uses, rights, quality and availability assessment; biological diversity; Native American collaboration; Land Grant Community collaboration; land uses; oil and gas leasing; population growth and social demographics; rural community economics; Scenery Management System; urban interface; wilderness management; recreation management; fire management; response to legal mandates; access management; and Range Management.

Implementation Topics were topics that needed additional emphasis but the present plan provide adequate direction for implementation. These topics are: infrastructure; balanced heritage resource management; land line location; limiting factors for wildlife; monitoring; resource inventories; small products as a vegetation management tool; planning coordination with local governments; Recreation Opportunity Spectrum, roadless areas and other special areas; public information and education; Research Natural Areas; budget constraints and workforce reductions; and law enforcement.

Several topics will be referred to other agencies for their consideration and input. These are:

Clean Air Act implementation; State wildlife departments regulations and hunting seasons; State forestry's responsibility for forestry practices on state and private lands; State's water quality management under the Clean Water Act; and the Department of Energy/Department of Defense responsibilities on land withdrawals.

Some of the research topics include:

Social impact on ecosystems; bats and their habitat; recreation uses and acceptable limits; grassland ecosystems and disturbances; pinyon-juniper treatment thresholds; medicinal plants and other forest products; bio-solid effects and applications; stream channel/wet meadow restoration, and health effects of smoke from prescribed burning.

No legislative topics have surfaced to date.

A copy of the draft Prerevision Review Topics is available at the Cibola National Forest Supervisor's Office, 2113 Osuna Road NE, Suite A, Albuquerque, New Mexico 87110, 505–761–4650.

Dated: February 26, 1996.

Kenneth D. Knarr,

Acting Forest Supervisor.

[FR Doc. 96–4937 Filed 3–1–96; 8:45 am]

BILLING CODE 3410–11–M

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on March 27 and March 28, 1996 at the Best Western Ponderosa Inn Conference Room, 2220 Pine Street, Redding, California. The meeting will begin at 10:00 a.m. on March 27 and adjourn at 5:30 p.m. The meeting will reconvene at 8:00 a.m. on March 28 and continue until 4:00 p.m. Agenda items to be covered include: (1) Province-wide forest health work group discussion/presentation; (2) salvage timber sale monitoring; (3) Regional Ecosystem Office monitoring proposal; (4) Guidance for salvage sale activity in sensitive areas; (5) standing committee reports; and (6) public comment

periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 916–842–6131, (FTS) 700–467–1309.

Dated: February 22, 1996.

Barbara Holder,

Designated Federal Official.

[FR Doc. 96–4869 Filed 3–1–96; 8:45 am]

BILLING CODE 3410–11–M

Natural Resources Conservation Service

PTE–26b Brady Canal Hydrologic Restoration Project, Terrebonne Parish, Louisiana; Finding of No Significant Impact

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Brady Canal Hydrologic Restoration Project, Terrebonne Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This plan proposes to maintain and enhance wetland loss on 7,653 acres of combination marsh in Terrebonne Parish, Louisiana. Project measures include 315 linear feet of rock plug, 15,000 linear feet of earthen embankment, maintenance of 21,600 linear feet of overflow embankment, replacement of three fixed crest weirs with variable crest sections, replacement of one fixed crest weir, construction of one fixed crest weir with a barge bay, and two stabilized channel rock cross-sections.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action in implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 96–4863 Filed 3–1–96; 8:45 am]

BILLING CODE 3410–16–M

Rural Telephone Bank

Determination of the 1995 Fiscal Year Interest Rates on Rural Telephone Bank Loans

AGENCY: Rural Telephone Bank.

ACTION: Technical correction to Notice of 1995 fiscal year interest rates determination.

SUMMARY: The Rural Telephone Bank (Bank) hereby announces a technical amendment to a footnote regarding the Bank's calculation of the interest rate to be applied to loan advances made from the financing account during fiscal year 1995.

FOR FURTHER INFORMATION CONTACT: Barbara L. Eddy, Deputy Assistant Governor, Rural Telephone Bank, room 4056, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 720–9556.

SUPPLEMENTARY INFORMATION: In accordance with 7 CFR 1610.10, on November 9, 1995, the Bank published its fiscal year 1995 interest rates for advances on liquidating and financing account loans (60 FR 56561). Interest rates for advances on liquidating and financing account loans are based on the Bank's cost of money. the cost of money rate methodology is the same for both accounts. It develops a weighted average rate for the Bank's cost of money considering total fiscal year loan advances; the excess of fiscal year loan advances over amounts received in the fiscal year from the issuances of Class A, B, and C stocks, debentures and other obligations; and the costs to the Bank of obtaining funds from these sources.

The interest rate for advances during fiscal year 1995 on financing account loans was established as shown in Table 1b, Financing Account, Cost of Money Rate, of the aforementioned notice (60 FR 56563). One component of the calculation to determine the cost of money rate for fiscal year 1995 was the issuance of debentures and other obligations.

As indicated in footnote number 2 to Table 1b, obligations incurred by the Bank, that is, funds borrowed for fiscal year 1995 financing account loan advances, were in excess of its borrowers' demands by approximately $90.4 million. In conformance with the established practice of the Bank, these excess funds would therefore be carried over to make advances in the next fiscal year (fiscal year 1996).

Subsequent to the Bank establishing its costs of money rate for fiscal year 1995, the practice of carrying over funds from one fiscal year to another was discontinued. The $90.4 million in excess funds will therefore not be used to make advances in fiscal year 1996 as previously indicated in footnote number 2 to Table 1b (60 FR 56563).

The Bank's fiscal year 1995 cost of money rates previously established at 6.04% and 6.88% for advances from the liquidating account and financing account, respectively, remain unchanged (60 FR 56561).

Dated: February 26, 1996

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 96–4872 Filed 3–1–96; 8:45 am]

BILLING CODE 3410–15–M

Rural Utilities Service

Notice of Request for Reinstatement of a Previously Approved Information Collection for Which Approval Has Expired

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the Rural Utilities Service's (RUS) intentions to reinstate a previously approved information collection for which approval has expired.

DATES: Comments on this notice must be received by May 3, 1996.

FOR FURTHER INFORMATION CONTACT: Dawn D. Wolfgang, Management Analyst, Program Support Staff, Rural Utilities Service, U.S. Department of Agriculture, 14th & Independence Ave., SW., AG Box 1522, Washington, DC 20250–1522. Telephone: (202) 720–0812. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: Certification of Authority.

OMB Control Number: 0572–0074.

Type of Request: Reinstatement, with change, of a previously approved information collection for which approval has expired.

Abstract: The Rural Utilities Service (RUS) manages loan programs in accordance with the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*), as amended. A major factor in managing loan programs is controlling the advance of funds. One reason to control funds is so that the actual borrowers get their money. The use of RUS Form 675 allows this control to be achieved by providing a list of authorized signatures against which signatures requesting funds are compared. RUS Form 675 provides an effective control against the unauthorized release of funds by providing a list of authorized signatures. OMB Circular A–123, Management Accountability and Control, states that information should be maintained on a current basis and that cash should be protected from unauthorized use. This form allows borrowers to keep RUS up-to-date of any changes in signature authority and controls the release of funds only to authorized borrower representatives.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.1 of an hour per response.

Respondents: Small business or organization.

Estimated Number of Respondents: 490

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 49.

Copies of this information collection, and related form and instructions, can be obtained from Dawn Wolfgang, Program Support Staff, at (202) 720–0812.

Comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, Rural Utilities Service, U.S. Department of Agriculture, 14th & Independence Ave., SW., AG Box 1522, Washington, DC 20250–1522. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 23, 1996.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 96–4962 Filed 3–1–96; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 803]

Grant of Authority for Subzone Status Mercedes-Benz U.S. International, Inc. (Motor Vehicles), Tuscaloosa County, Alabama

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the City of Birmingham, Alabama, grantee of Foreign Trade Zone 98, for authority to establish special-purpose subzone status at the motor vehicle manufacturing plant of Mercedes-Benz U.S. International, Inc., in Tuscaloosa County, Alabama, was filed by the Board on February 16, 1995, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 6–95, 60 FR 11070, 3–1–95); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 98A) at the Mercedes-Benz U.S. International, Inc., plant, in Tuscaloosa County, Alabama, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 21st day of February 1996.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–4980 Filed 3–1–96; 8:45 am]

BILLING CODE 3510–DS–M

[Docket 14–96]

Foreign-Trade Zone 94—Laredo, Texas, Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Laredo, Texas, grantee of Foreign-Trade Zone 94, requesting authority to expand its zone in Laredo, Texas, within the Laredo Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 21, 1996.

FTZ 94 was approved on November 22, 1983 (Board Order 235, 48 FR 53737, 11/29/83) and expanded on March 26, 1990 (Board Order 468, 55 FR 12696, 4/5/90) and December 29, 1992 (Board Order 620, 58 FR 3533, 1/11/93). The zone project currently consists of four sites in the Laredo area: *Site 1* (500 acres)—within the 1,600-acre city-owned Laredo International Airport Industrial Park; *Site 2* (20 acres)—owned by the Texas-Mexican Railway, along Highway 359 in Webb County; *Site 3* (550 acres)—within the 1,400-acre Killiam industrial area, owned by Killiam Oil Co., at 12800 Old Mines Road; *Site 4* (1,500-acres)—within 7,000-acre International Commerce Center, Laredo Northwest business and residential development.

The applicant is now requesting authority to expand the zone to include a site (proposed *Site 5*—930 acres)—located at a proposed industrial park (currently known as the "La Barranca Ranch" site), Interstate Highway 35,

adjacent to the Union Pacific rail line, in northern Webb County, some 15 miles north of Laredo. The site is owned by Librado Pina, Inc.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 3, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 20, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Lincoln Juarez Bridge, Bldg. #2, Laredo, Texas 78044–3130

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: February 23, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–4981 Filed 3–1–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than March 31, 1996, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

	Period
Antidumping Duty Proceedings:	
Australia: Canned Bartlett Pears (A–602–039)	03/01/95–02/29/96
Bangladesh: Shop Towels (A–538–802)	03/01/95–02/29/96
Brazil: Ferrosilicon (A–351–820)	03/01/95–02/29/96
Brazil: Lead and Bismuth Steel (A–351–811)	03/01/95–02/29/96
Canada: Iron Construction Castings (A–122–503)	03/01/95–02/29/96
Chile: Standard Carnations (A–337–603)	03/01/95–02/29/96
Columbia: Certain Fresh Cut Flowers (A–301–602)	03/01/95–02/29/96
Equador: Certain Fresh Cut Flowers (A–331–602)	03/01/95–02/29/96
France: Brass Sheet and Strip (A–427–804)	03/01/95–02/29/96
France: Lead and Bismuth Steel (A–427–804)	03/01/95–02/29/96
Germany: Brass Sheet and Strip (A–428–602)	03/01/95–02/29/96
Germany: Lead and Bismuth Steel (A–428–811)	03/01/95–02/29/96
India: Sulfanilic Acid (A–533–806)	03/01/95–02/29/96
Israel: Oil Country Tubular Goods (A–508–602)	03/01/95–02/29/96
Italy: Certain Valves and Connections of Brass, for Use in Fire Protection Systems (A–475–401)	03/01/95–02/29/96
Italy: Brass Sheet and Strip (A–475–601)	03/01/95–02/29/96
Japan: Defrost Timers (A–588–829)	03/01/95–02/29/96
Japan: Stainless Steel Butt-Weld Pipe Fittings (A–588–702)	03/01/95–02/29/96
Japan: Television Receivers Monochrome and Color (A–588–015)	03/01/95–02/29/96
Mexico: Steel Wire Rope (A–201–806)	03/01/95–02/29/96
Korea: Steel Wire Rope (A–580–811)	03/01/95–02/29/96
Spain: Stainless Steel Bar (A–469–805)	08/04/94–02/29/96
Sweden: Brass Sheet and Strip (A–401–601)	03/01/95–02/29/96
Taiwan: Light-Walled Welded Rectangular Carbon Steel Tubing (A–583–803)	03/01/95–02/29/96
Thailand: Certain Circular Welded Carbon Steel Pipes and Tubes (A–549–502)	03/01/95–02/29/96
People's Republic of China: Chloropicrin (A–570–002)	03/01/95–02/29/96
People's Republic of China: Ferrosilicon (A–570–819)	03/01/95–02/29/96
People's Republic of China: Glycine (A–570–836)	11/16/94–02/29/96
United Kingdom: Lead and Bismuth Steel (A–412–810)	03/01/95–02/29/96
Suspension Agreements:	
Brazil: Frozen Concentrated Orange Juice (C–351–005)	01/01/95–12/31/95
Columbia: Certain Textile Mill Products (C–301–401)	03/01/95–02/29/96
Thailand: Certain Textile Mill Products (C–549–401)	03/01/95–02/29/96
Countervailing Duty Proceedings:	
Brazil: Cotton Yarn (C–351–037)	01/01/95–12/31/95
Brazil: Certain Castor Oil Products (C–351–029)	01/01/95–12/31/95
Brazil: Hot-Rolled Lead and Bismuth CSP (C–351–812)	01/01/95–12/31/95
Chile: Standard Carnations (C–337–601)	01/01/95–12/31/95
France: Brass Sheet and Strip (C–427–603)	01/01/95–12/31/95
France: Hot-Rolled Lead and Bismuth CSP (C–427–805)	01/01/95–12/31/95
Germany: Hot-Rolled Lead and Bismuth CSP (C–428–812)	01/01/95–12/31/95
India: Sulfanilic Acid (C–533–807)	01/01/95–12/31/95
Iran: In-Shell Pistachios (C–507–501)	01/01/95–12/31/95
Israel: Oil Country Tubular Goods (C–508–601)	01/01/95–12/31/95
Netherlands: Standard Chrysanthemums (C–421–601)	01/01/95–12/31/95
Pakistan: Cotton Shop Towels (C–535–001)	01/01/95–12/31/95
Turkey: Certain Welded Carbon Steel Pipe and Tube (C–489–502)	01/01/95–12/31/95
Turkey: Welded Carbon Steel Line Pipe (C–489–502)	01/01/95–12/31/95
United Kingdom: Hot-Rolled Lead and Bismuth CSP (C–412–811)	01/01/95–12/31/95

In accordance with sections 353.22(a) and 355.22(a) of the regulations, an interested party as defined by section 353.2(k) may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 19 C.F.R. 355.22(a) of the Department's Interim Regulations (60 FR 25137 (May 11, 1995)), an interested party must specify the individual producers or exporters covered by the order for which they are requesting a review. Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends or the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by March 31, 1996. If the Department does not receive, by March 31, 1996, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: February 28, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–4982 Filed 3–1–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–047]

Elemental Sulphur From Canada; Final Results of Antidumping Finding Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Finding Administrative Review.

SUMMARY: On July 24, 1995, the Department of Commerce (the Department) published the preliminary results of its 1991–92 administrative review of the antidumping finding on elemental sulphur from Canada (60 FR 7872). The review covers 15 manufacturers/exporters of the subject merchandise to the United States and the period December 1, 1991 through November 30, 1992 (the POR). We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have made changes, including corrections of certain clerical errors, in the margin calculation for Husky Oil Ltd. (Husky). These changes have resulted in a change in the best information available (BIA) rates assigned to Mobil Oil Canada, Ltd. and Petrosul International (Petrosul) for this review. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for each of the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: March 4, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230; telephone: (202) 482–0410 or –4733, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1995, the Department published in the **Federal Register** the preliminary results of review (60 FR 6872) of the period December 1, 1991 through November 30, 1992. Pennzoil, a domestic producer, and two exporters, Husky and Mobil, requested a public hearing which was held on September 27, 1995. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of the Review

The period of review (POR) is December 1, 1991 through November 30, 1992. Imports covered by this review are shipments of elemental sulphur from Canada. This merchandise is classifiable under Harmonized Tariff Schedule (HTS) subheadings 2503.10.00, 2503.90.00, and 2802.00.00.

The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description of the scope of this order remains dispositive as to product coverage.

Verification

As provided in section 776(b) of the Tariff Act, we conducted sales and cost verifications of Husky and Mobil and verified information provided by these respondents by using standard verification procedures, including on-site inspection of the producer's facilities, the examination of relevant

sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case briefs and rebuttal briefs from Pennzoil, Husky, Mobil, and Petrosul.

Comment 1

Pennzoil agrees with the Department's decision to base Husky's foreign market value (FMV) on constructed value (CV). Pennzoil maintains, however, that the Department understated Husky's CV by failing to include in the calculations the direct operating and general facilities expenses relating to the sulphur block storage area. Additionally, Pennzoil argues that the Department failed to include in the sulphur cost of manufacture (COM) a portion of the property, plant and equipment (PP&E) writedown attributable to the sections of its processing plants after the split-off point for sulphur production.

Husky argues that it was proper to exclude the direct operating and general facilities expenses it incurred for the sulphur block storage lease. Husky maintains that these expenses relate to natural gas processing and, therefore are not a sulphur handling cost.

Department's Position

We agree with Pennzoil that inclusion of the direct operating and general facility costs related to sulphur block storage in CV is appropriate. As explained in the decision memorandum, *Memorandum To Susan G. Esserman From Joseph A. Spetrini: Team Recommendation Related to the Cost Accounting Treatment of Elemental Sulphur from Canada*, June 29, 1995, all costs incurred after the liquid sulphur exits the sulphur recovery unit relate to the production of sulphur. At this point in the production process, Husky has the choice of either selling the liquid sulphur, forming it for overseas sale, or pouring it to block for long-term storage. All of these choices relate to selling sulphur, either currently or in the future. Accordingly, we consider it appropriate to include, as part of the cost of producing sulphur, all costs incurred in the sulphur block storage lease.

We disagree with Pennzoil, however, that a portion of Husky's writedown of PP&E should be included in the COM for sulphur. These writedowns relate to certain properties in which the carrying value on Husky's books exceeds the estimated future cash value of mineral reserves. Since such costs are associated entirely with exploration and development of mineral reserves, we consider this type of writedown to be a cost incurred prior to the sulphur production split-off point. As such, we consider these costs to be part of Husky's natural gas operations. We have, therefore, excluded Husky's PP&E writedown from our calculated sulphur costs (*see* related byproduct/coproduct issue at Comments 2 and 3).

Comment 2

Pennzoil claims that the Department erred in finding that sulphur produced by Husky is not a coproduct. Pennzoil contends that, in accordance with Generally Accepted Cost Accounting Principles (GACAP), a joint product is deemed to be a coproduct if the value of its production during a certain period of time is significant in relation to the other products generated from the same production process during the same time period (relative value analysis). Pennzoil maintains that, in accordance with GACAP and the Treasury Department's position in *Elemental Sulphur from Canada: Antidumping; Tentative Determination to Modify or Revoke Dumping Finding*, 44 FR 8057, 8058 (February 8, 1979), the standard for significant value is whether the value of production for the joint product exceeds ten percent of the total joint product revenues. Pennzoil argues that the value of Husky's sulphur production during the POR exceeds the threshold for classifying it as a coproduct.

Pennzoil also argues that the Department erred in its preliminary results by determining relative value on a company-wide basis rather than on a plant-specific basis. According to Pennzoil, the value of sulphur production at each of Husky's sour gas processing plants is clearly significant in relation to the value of all other products generated from the same process during the POR. Pennzoil claims that it is Departmental practice to follow GACAP, and that GACAP requires that the relative value analysis be applied only to products that are in fact jointly produced in the same manufacturing process. Pennzoil avers that it is illogical to combine revenues from both sour and sweet gas processing facilities in determining relative value since sweet gas operations have different production processes, a different cost structure, and do not produce sulphur. Furthermore, Pennzoil notes that investments in sour gas facilities are made with the expectation of sulphur revenues, whereas such is not the case with sweet facilities. Accordingly, Pennzoil concludes, sweet gas revenues should not play a role in determining the cost of production (COP) for sulphur. However, even if the Department determines that relative value must be determined on a company-wide basis, Pennzoil maintains that the value of sulphur production during the POR still exceeds the threshold for classifying Husky's sulphur as a coproduct.

In addition to relative sales value considerations, Pennzoil notes several qualitative factors which it claims further support its position that sulphur is a coproduct of natural gas production. First, Pennzoil notes that Husky's normal accounting system does not separately identify the costs of producing individual products. Second, Pennzoil notes that very significant additional processing of hydrogen sulfide (H_2S) occurs after the split-off point. Third, Pennzoil contends that Husky intentionally produces sulphur, as illustrated by its investment in a highly sour gas field and its purchase of liquid sulphur for the manufacture of formed sulphur. According to Pennzoil, all of these factors lead to the conclusion that sulphur must be treated as a coproduct of natural gas production, and that a portion of Husky's joint production costs must therefore be allocated to sulphur based on the volume of H_2S in the raw gas stream.

Husky argues that the record is replete with evidence to support the Department's preliminary results to treat sulphur as a byproduct of natural gas production. Husky maintains that it normally accounts for sulphur as a byproduct and, thus, assigns no inventory value to sulphur production in the ordinary course of its business. Husky notes that this practice is in accordance with its home country Generally Accepted Accounting Principles (GAAP). Husky also argues that GACAP is not a recognized set of authoritative accounting principles. Husky states that the production of sulphur is an unavoidable consequence of natural gas production from sour gas wells and, thus, will occur regardless of any action the company takes. Husky maintains that the only reason it produces sulphur is to fulfill its obligation under Canadian environmental laws to remove H_2S from the unrefined natural gas stream and convert it into elemental sulphur.

Moreover, Husky claims that Pennzoil's assertion that Husky invested in certain sour gas fields with the intention of producing sulphur is misplaced. Husky claims that while it may have hoped to earn supplemental sulphur income from its investment in sour gas fields, sulphur amounts to little more than a liability to Husky.

Husky argues that its revenue from sulphur production during the POR is insignificant compared to that of the other products produced during the same time period. Husky maintains that, in analyzing relative value, the Department has never held to a bright-line test. In fact, Husky notes that there have been numerous recent antidumping decisions involving byproduct/coproduct issues, and in none of these instances did the Department impose a ten-percent bright-line standard as part of its relative value analysis. Husky claims that Pennzoil's reference to the 1979 tentative Treasury Department decision in support of a ten-percent threshold has never been accepted by the Department and is, therefore, unpersuasive. Husky also notes that Pennzoil's proposed adjustments to relative value analysis performed in the preliminary results are without merit.

Additionally, Husky contends that the relative value analysis must be performed on a company-wide basis for two reasons. First, Husky asserts, not all sulphur processed at a certain facility is associated with sour gas from that same facility. However, Husky argues, when sulphur is sold from the processing facility, the revenues are recorded on the books of the processing facility rather than on the books of the refining facility. Second, Husky claims that it makes all decisions regarding its treatment of sulphur on a company-wide basis. Husky notes that, although each facility maintains lease statistics regarding production and sales quantities for all products and for all producers, corporate sales personnel rather than the individual facility operators make sulphur sales decisions.

Department's Position

In calculating the costs of producing subject merchandise, the Department's practice is to adhere to an individual firm's recording of costs in accordance with GAAP of its home country if the Department is satisfied that such principles reasonably reflect the costs of producing the subject merchandise. *See, e.g., Final Determination of Sales at Less Than Fair Value: Canned Pineapple From Thailand*, 60 FR 29553, 29559–62 (June 5, 1995); *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa*, 60 FR 22556 (May 8, 1995) ("The Department normally relies on the respondent's books and records prepared in accordance with the home country GAAP unless these accounting principles do not reasonably reflect the COP of the merchandise"). The Department's practice has been sustained by the CIT. *See, e.g., Laclede Steel Co. v. United States*, Slip Op. 94–160 at 21–25 (CIT October 12, 1994) (CIT upheld the Department's decision to reject the respondent's reported depreciation expenses in favor of verified information obtained directly from the company's financial statements that was consistent with Korean GAAP).

Normal accounting practices provide an objective standard by which to measure costs, while allowing a respondent a predictable basis on which to compute those costs. However, in those instances where it is determined that a company's normal accounting practices result in an unreasonable allocation of production costs, the Department will make certain adjustments or may use alternative methodologies that more accurately capture the costs incurred. *See, e.g., Final Determination of Sales at Less Than Fair Value: New Minivans from Japan*, 57 FR 21937, 21952 (May 26, 1992) (Department adjusted a company's U.S. further manufacturing costs because the company's normal accounting methodology did not result in an accurate measure of production costs); *Pineapple*, 60 FR at 29560 (Department adjusted a company's allocation of fruit costs because the company's normal accounting methodology resulted in an unreasonable allocation of such costs between canned pineapple fruit and juice products).

In the instant proceeding, therefore, the Department examined whether Husky's accounting treatment of sulphur was reasonable. In examining Husky's books and records at verification we found that Husky had treated sulphur as a byproduct for at least a number of years. Furthermore, we found no evidence that Husky had not relied historically upon its byproduct treatment of sulphur to compute its production costs. In addition, evidence on the record, *i.e.*, audited financial statements, indicates that Husky's byproduct methodology was accepted by its independent auditors. Given the auditors' acceptance of the respondent's financial statements and any lack of evidence to the contrary, we conclude that Husky's normal accounting treatment of sulphur is consistent with Canadian GAAP.

Notwithstanding the Department's conclusion that Husky's treatment of sulphur as a byproduct is in accordance with Canadian GAAP, the Department's byproduct/coproduct analysis includes a number of additional factors. (As discussed in comment 3 below, the Department accepted Husky's assignment of no sulphur processing plant costs to sulphur production. However, the Department did not accept Husky's normal accounting treatment of sulphur handling facility costs because such treatment did not reasonably reflect the costs associated with production of sulphur.)

The Department's practice, in accordance with GAAP, is to recognize a particular joint product as either a coproduct or byproduct based, in part, on the significance of that product relative to the other joint product[s] and to the producing company as a whole. *See e.g.*, Preliminary Determination of Sales at Less Than Fair Value: Sebacic Acid From the People's Republic of China, 59 FR 565, 568–69 (January 5, 1994); *Cost Accounting: A Managerial Emphasis*, Charles Horngren, George Foster, Seventh Edition, Prentice Hall, Englewood Cliffs, N.J., 1991 at 539–44 (*Horngren*). In this case, we have determined that sulphur is a relatively insignificant byproduct of Husky's natural gas operations. As a result of our relative value analysis and our analysis of other relevant factors, discussed below, we have accepted Husky's treatment of sulphur as a byproduct and have assigned to the subject merchandise only those costs that Husky incurred on the product after it left the sulphur recovery unit. (See our response to related Comment 3 below regarding sulphur production costs.)

In past cases involving coproducts and byproducts, the Department has looked to several factors in order to measure the significance of particular joint products (*see, e.g., Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa*, 60 FR 22550 (May 8, 1995) (*Furfuryl Alcohol*) and *Concurrence Memorandum: Final Determination: Antidumping Duty Investigation of Furfuryl Alcohol from South Africa*, May 1, 1995 (*Furfuryl Memo*) (*See Memo To File From Case Analyst*, December 13, 1995 (making *Furfuryl Memo* part of record of this proceeding); *Final Determination of Sales at Less Than Fair Value: Sebacic Acid From the People's Republic of China*, 59 FR 28056 (May 31, 1994) (*Sebacic Acid*)). Among these factors were the following: 1) the relative sales value of the product compared to that of all other joint products produced during the same time period, 2) whether the product is an unavoidable consequence of producing another product, 3) whether management intentionally controls production of the product, 4) whether

the product requires significant further processing after the split-off point, and 5) how the company has historically accounted for the product. No single factor is dispositive in our determination. Rather, we must consider each factor in light of all of the facts and circumstances surrounding the case. In this case, we considered each of the preceding factors in reaching our decision to treat sulphur as a byproduct of the natural gas production process.

For the first factor, relative sales value, we compared the sales value of sulphur produced during the POR to that of all other joint products respondent produced during the same time period. From this analysis, we determined that the value of sulphur Husky produced represented a relatively insignificant portion of the total revenues generated by Husky's joint production process for refining natural gas.

In making this determination, we analyzed joint product revenues on a company-wide basis for the natural gas production process rather than on a plant-by-plant basis as Pennzoil requested. Pennzoil argued that, since natural gas from sour gas fields must undergo additional processing to remove the sulphur content, the cost structure of sour gas production facilities differs from that of the sweet gas facilities and, thus, should be subjected to a separate relative sales value analysis. While it may be possible, and even reasonable in certain circumstances, to perform a joint product analysis on a plant-by-plant basis, it certainly is not mandated by law, by general accounting practices, or by any other authority. In a case involving joint products, the Department considers the significance of individual joint products resulting from a common production process. (*See Sebacic Acid*). In this case, Husky's common production process is the production of natural gas, a process which yields sulphur. This reality is not changed by the fact that certain of Husky's gas fields (*i.e.*, sweet fields) did not yield levels of H_2S necessitating the conversion of H_2S to sulphur; overall, due to the nature of Husky's natural gas operations, sulphur is an inevitable consequence of that natural gas production process. Husky's primary business objective is the exploration, refinement, and sale of natural gas (and oil). Relative to Husky's natural gas production and revenue, sulphur production and revenue resulting from that natural gas production was not significant during the period under review. Given these considerations, we believe that Husky's sulphur production should be evaluated within the context of its overall natural gas operations.

Furthermore, Husky makes decisions regarding the treatment of sulphur, particularly the accounting treatment of sulphur, on a company-wide basis. In addition, sulphur sales decisions are made by corporate sales personnel and not by the individual facility operators. Given the relationship of sulphur to natural gas production by Husky, Husky's corporate-wide decision-making practices, and the fact that such practices are consistent with Canadian and U.S. GAAP, we believe that it is appropriate to perform our relative sales value analysis on a company-wide basis for the natural gas process.

Lastly with regard to relative sales value, we disagree with Pennzoil's contention that the Department has established a ten-percent threshold in determining the significance of revenues generated by joint products. Pennzoil's reference to the Treasury Department's 1979 tentative determination as the standard in this case does not reflect recent Department decisions involving coproduct/byproduct determinations. As explained above, the Department considers the relative revenues generated by joint products in conjunction with other important factors in order to determine the significance of the joint product in question. *See, e.g., Furfuryl Alcohol* and *Furfuryl Memo*, where the Department based its determination of the coproduct/byproduct issue on the same five factors noted above. Because the relative value analysis must be viewed within the context of other factors, as well as within the specific circumstances of the case, it would be inappropriate for the Department to establish Pennzoil's suggested "bright-line" threshold under which the entire coproduct/byproduct analysis would rest solely on whether revenues from the joint product exceeded ten percent of total revenues for all joint products. Pennzoil's minor proposed adjustments to our relative value calculations, therefore, would not effect our analysis of the relative sales value factor, nor our overall analysis.

Concerning the second factor, whether sulphur is an unavoidable consequence of producing natural gas, we believe that Husky's natural gas production determines the amount of sulphur that the company produces. In order to produce natural gas, Husky must remove poisonous H_2S from the unrefined gas stream and convert it to elemental sulphur in accordance with strict environmental laws. Because Husky has no control over the amount of H_2S in the gas stream and, therefore, the production of sulphur, Husky further processed and sold only part of the sulphur resulting from the treatment of H_2S during the POR. Without limiting the production of refined natural gas, Husky did not have the option of limiting sulphur production, and, therefore, poured the remaining portion of sulphur production to block as a means of long-term storage. It is clear that when producing natural gas, Husky has no choice but to produce elemental sulphur from H_2S, if for no other reason than it must do so to meet environmental standards. Sulphur, therefore, is an unavoidable consequence of natural gas production.

In the case of the third factor, whether management intentionally controls production of the product, while we cannot overlook the fact that Husky derives a portion of its revenues from sulphur, we do not find this to be evidence that the company's management intends to produce sulphur. Rather, as noted above, sulphur production is a requirement, resulting from Husky's decision to produce natural gas. The fact remains that, at significantly high levels, sulphur becomes an impediment to cost-effective natural gas production. In these instances, the high sulphur content in natural gas may force producers to abandon their plans to produce either product.

We disagree with Pennzoil's comment that Husky's investment in highly sour gas fields and its purchase of liquid sulphur during the POR indicate an intent on the part of the company's management to produce sulphur. Pennzoil's point concerning Husky's gas field investment is purely speculative. As to Husky's purchase of liquid sulphur from another supplier, the reason Husky purchases liquid sulphur is explained at page 9 of its proprietary January 9, 1994 cost submission to the Department, and this explanation does not support Pennzoil's position.

For the fourth factor, whether the product requires significant further processing after the split-off point, we found that the H_2S resulting from natural gas refining did undergo significant additional processing after the split-off point in order to transform it into marketable sulphur. As further explained in our response to Comment 3 below, however, we consider much of the additional processing to be associated with natural gas production in that it relates to the removal and treatment of the poisonous H_2S gas which, due to environmental laws, Husky must break down into its primary elements of sulphur and water. As a result, any further processing generally is necessitated by factors not within the company's control.

Finally, with regard to the last factor, how the company has historically accounted for the product, the Department verified that Husky did not assign any of its production costs to sulphur during the POR. Instead, as discussed above, under its normal accounting system, Husky charged all sulphur processing and handling costs to its natural gas operations. Husky's accounting treatment of assigning no costs to sulphur was in accordance with Canadian GAAP and sanctioned by its auditors as demonstrated by the fact that the company's 1991 and 1992 financial statements did not report inventory balances for the sulphur that Husky produced in those years. Notably, for accounting purposes, U.S. producers of natural gas also consider sulphur to be a byproduct.

Contrary to Pennzoil's assertions, we are unaware of the existence of GACAP as a unified body of cost accounting principles that mandates our treating sulphur as a coproduct in this case. We believe that the method Husky used to account for its sulphur production was consistent both with the company's home market GAAP and with its view of sulphur as a byproduct of its natural gas operations. Based on our analysis of the above factors as they relate to the facts in this case, we have determined that the sulphur Husky produced during the POR was a byproduct of its natural gas production operations.

Comment 3

Pennzoil argues that, even if the Department decides to treat sulphur as a natural gas byproduct, it violated the antidumping statute in its preliminary results of review by accounting only for the processing costs Husky incurred subsequent to the sulphur recovery unit. Pennzoil states that section 773(e) of the Tariff Act expressly requires that the cost of fabrication or other processing of any kind be included in CV. Pennzoil maintains that sulphur recovery costs are, in fact, processing costs related to sulphur production that must be included in the Department's CV calculation in accordance with the statute. Pennzoil further argues that, by excluding sulphur recovery costs from its CV calculation, the Department also violated congressional intent as manifested in the sales-below-cost provision of the statute. Pennzoil claims that one of the reasons that Congress enacted the sales-below-cost provision was to afford protection to the U.S. sulphur industry.

According to Pennzoil, the Department's accounting treatment of sulphur production costs is in opposition to what it calls "GACAP". Pennzoil maintains that GACAP represents a common and accepted body of cost accounting principles that, among other things, provides guidance concerning the appropriate method for assigning costs to byproducts. According to Pennzoil, in accounting for joint products under GACAP, costs incurred after the production split-off point are separately identifiable and must therefore be charged directly to the specific products produced. In keeping with this principle, Pennzoil contends that, having correctly determined the split-off point in the natural gas production process as occurring prior to the sulphur recovery unit, the Department was compelled under GACAP to account for all of Husky's sulphur recovery costs as part of the cost of processing sulphur. Pennzoil argues that, if the Department continues to treat sulphur as a byproduct, it cannot assign to natural gas production all of the costs associated with Husky's sulphur recovery unit.

Pennzoil notes that, in calculating production costs, the Department relies on respondent's normal cost accounting methodologies so long as those methodologies are in accordance with the company's home market GAAP and reasonably reflect the costs associated with producing the subject merchandise. Pennzoil claims, however, that it cannot find from the record where Husky assigns production costs to either natural gas or sulphur under its normal accounting system. Thus, according to Pennzoil, the Department's assignment of all processing costs (including sulphur recovery unit costs) to natural gas production while charging none to sulphur contravenes Husky's normal accounting practices. Moreover, Pennzoil notes that, even if Husky's accounting method assigns zero production costs to sulphur production, this treatment is distortive because it fails to assign to sulphur the actual costs of producing the sulphur. Thus, Pennzoil contends, the Department should not follow Husky's cost accounting method because it would not reasonably reflect the costs of producing the subject merchandise.

Pennzoil also maintains that Department precedent requires that byproducts absorb all separately identifiable costs incurred after the split-off point in production. In support of this argument, Pennzoil cites *Silicomanganese from Venezuela: Notice of Final Determination of Sales at Less Than Fair Value*, 59 FR 55436 (November 7, 1994), where the Department assigned to merchandise it deemed a byproduct all of the separable further processing costs incurred by the respondent. Pennzoil maintains that the facts in this case are similar to those in the *Silicomanganese from Venezuela* and, thus, there is no reason for the Department to exclude sulphur recovery costs from its sulphur cost calculations if it chooses to treat the subject merchandise as a byproduct.

Pennzoil states that the U.S. Department of Interior (DOI) has prescribed rules for assigning costs to sulphur which mandate that sulphur production be assigned all costs incurred after separation from natural gas. Pennzoil notes that the DOI rules relate to the calculation of royalty payments affecting the joint production of natural gas and sulphur on federal land, and argues that it would be erroneous and contrary to law for the Department to depart from these rules by treating sulphur recovery costs as part of natural gas production costs.

Husky maintains that, contrary to Pennzoil's assertion, Section 773(c) of the Tariff Act does not mandate specific cost allocation methodologies and that the Department's preliminary CV calculations were fully in accordance with its statutory mandate. Husky contends that the Department properly defined the split-off point for purposes of the preliminary results of review, but that H_2S is not a separately identifiable product until after it has been converted into elemental sulphur. According to Husky, the process of converting H_2S into sulphur, a function of the sulphur recovery unit, is a gas cost and is identifiable solely with the process of preparing gas for market. Therefore, Husky contends that the Department should continue to treat all costs up to and including the sulphur recovery unit as related to gas production operations.

Department's Position

We disagree with Pennzoil that the costs Husky incurred in its sulphur recovery unit should be allocated to sulphur production. Rather, we have determined that these costs are associated with Husky's gas production operations. Whether or not Congress enacted the sales-below-cost provision to afford protection to the U.S. sulphur industry, as Pennzoil claims, the statute nowhere specifies how specific processing costs should be allocated among products.

Normally, we consider the split-off point in a joint production process to be where the products become physically separable. We normally assign these post-split-off costs to each separately identifiable product because this is the point where a company has a choice of

whether to further process each separable product or to dispose of it. This case is unique, however, in that even though the physical split-off point is prior to the sulphur recovery unit, Husky does not have the option of disposing of all H_2S. As explained below, in order to refine natural gas, Husky must incur costs in the sulphur recovery unit.

As part of the natural gas production process, H_2S is separated from the unrefined gas stream in the gas processing plant. H_2S output from the gas processing plant enters the sulphur recovery unit where it breaks down into its primary components of sulphur and water. H_2S is a poisonous, corrosive compound for which there is no market and, by Canadian law, it cannot be released into the atmosphere. In order to refine natural gas, Husky has no choice under Canadian environmental regulations but to incur H_2S processing costs in its sulphur recovery unit. To operate or use a natural gas plant and process natural gas, Canadian law requires companies to have certain licenses. These licenses dictate, among other things, certain minimum standards for the reclamation of sulphur contained in the gas delivered to a plant, and the types and quantities of effluent permissible from a plant. Furthermore, agreements with natural gas pipe-line operators specify that no more than a maximum amount of contaminants, including H_2S, be contained in gas introduced into a pipe-line. In addition, there is no dispute as to the extremely poisonous nature of H_2S, a compelling reason to stabilize this element into sulphur and water. Finally, it is undisputed that there is a positive direct correlation between the processing of sour natural gas and the production of H_2S. As saleable natural gas is produced from a sour gas stream and moved into the pipeline, so too must the movement of H_2S proceed within permissible means; otherwise the gas plant must cease operations. Therefore, it is of limited concern to Husky to analyze whether sales revenue it receives for sulphur sales is able to offset costs it incurs in the sulphur recovery unit and handling facility because it must by law dispose of the H_2S in a harmless manner. Rather, only where the costs of the sulphur recovery unit and handling facility impair the profits of refined natural gas might an analysis of sulphur sales revenue vis-a-vis the costs incurred in the sulphur recovery unit and handling facility be of greater consideration. In that case, it is likely that overall production for a particular gas field would cease if the costs associated with the removal and sale of sulphur caused the natural gas line of business to operate at a loss.

Contrary to Pennzoil's claim that Husky assigns no production costs to natural gas under its normal accounting system, we noted during verification that Husky assigns all gas and sulphur processing costs to production of natural gas (see the Department's position to Comment 2).

We disagree with Pennzoil's categorization of GACAP as the accounting rules which dictate our accounting treatment for COP and CV cases. Neither the accounting profession nor the Department recognizes GACAP as an authoritative source. This is a creation of Pennzoil, which selectively chose different cost accounting concepts from over 15 different texts dating back to 1920. While we recognize certain cost accounting concepts, we do not advocate one acceptable concept over another for all cases. Rather, we consider the facts surrounding each case. Cost accounting texts are fairly general in nature, with their purpose being to illustrate the various acceptable methods for allocating costs in certain situations. One of the key points cost accounting texts try to emphasize is that in most instances there is no *single*, right answer *see e.g. Horngren*. The way a company ultimately allocates costs to the various product lines depends on numerous factors unique to that company, including the products it manufactures, its corporate structure, and the way in which its management uses its accounting data. Id.

We disagree with Pennzoil that the facts of this case require that we allocate costs of the sulphur recovery unit. In *Silicomanganese from Venezuela*, the slag which resulted from the production of Grade B silicomanganese did not require further processing and it could have been disposed of in its current state, unlike the H_2S which results from the production of natural gas. The respondent company, however, chose to process it into Grade C product rather than to dispose of it. In this case, Husky does not have this option, but must process the dangerous H_2S in order to break it down into a stable and safe form (*i.e.*, sulphur and water) in accordance with Canadian law.

Finally, there is no connection between the DOI's proposed rules and our statute and regulations. Accordingly, we consider it irrelevant how DOI proposes to calculate royalty payments for sulphur produced on federal land.

In conclusion, we have allocated only costs incurred subsequent to the sulphur recovery unit to sulphur production. We believe these costs reasonably reflect the costs associated with the production of sulphur.

Comment 4

Husky maintains that, in accordance with past precedents, the Department should allow the company to offset its sulphur processing costs with revenues it earned from processing other companies' sulphur. Husky claims that, as a matter of law, costs for antidumping purposes can be offset by income so long as that income is directly related to the production of the product under review.

In support of its position, Husky cites two cases in which the Department offset costs for miscellaneous income, and several cases in which the Department allowed an offset to production costs for the sale of byproducts and scrap which resulted from the production of the subject merchandise. Husky cites *Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Antidumping Administrative Review*, 55 FR 21061, 21063 (May 22, 1990) (*Cooking Ware*), and *Frozen Concentrated Orange Juice from Brazil: Final Determination of Sales at Less Than Fair Value*, 52 FR 8324, 8329 (March 17, 1987) (*Orange Juice*) to support its position.

Pennzoil contends that the Department was correct in not allowing Husky to deduct processing fees from its sulphur COM. According to Pennzoil, the processing fees do not result from Husky's normal operations but, rather, relate to the company's acting as a subcontractor on behalf of other sulphur producers. Pennzoil claims that it is unaware of any situation in which the Department has allowed respondents to offset their production costs for fee income generated from another line of business.

Department's Position

We disagree with Husky's contention that the sulphur processing revenues it received represent a reduction in the company's sulphur production costs. During the POR, in addition to processing its own sulphur, Husky processed large quantities of sulphur belonging to other companies. These companies paid Husky processing fees based on the quantity of sulphur that Husky processed for them. In computing its sulphur costs, Husky offset the total cost of all sulphur it produced during the POR by an amount representing the gross earnings from the sulphur which it processed for the other companies. Husky then calculated a per-unit sulphur cost by dividing the remaining balance of production costs, net of gross processing revenues, by the quantity of sulphur that the company had produced for its own account. The effect of this methodology was to reduce Husky's own sulphur production costs by the amount of profits that the company earned from processing sulphur that belonged to the other companies.

Contrary to Husky's assertions, we find that the revenues it received from processing sulphur for other companies do not relate directly to the production costs it incurred in producing the subject merchandise on its own account. Instead, these fees represent income Husky earned from a separate line of business as a subcontractor offering sulphur processing services. Husky provided these services to its customers for a fee which represented the processing costs Husky incurred, plus a mark-up for profit. However, the net profits that Husky earned from processing sulphur as part of its separate subcontractor operations did not reduce the costs that it incurred to process and sell its own sulphur.

We disagree with Husky that, by disallowing its processing revenue offset, we are deviating from our position in past cases. In neither of the cases cited by Husky, *Cooking Ware* and *Orange Juice*, did we allow respondents to reduce the production costs of subject merchandise by profit earned from another line of business. Rather, consistent with our normal practice, we allowed offsets to the cost of producing the subject merchandise for revenues earned on the sale of byproducts and scrap which resulted from the production of the subject merchandise. This practice is distinguishable from Husky's situation in that the revenues Husky earned on its subcontracting operations do not directly relate to Husky's production of the subject merchandise. Rather, they relate to its subcontracting operations which is a separate line of business. Therefore, we have not offset Husky's sulphur COP and CV by revenues it earned on its subcontracting operations.

Comment 5

Husky argues that the Department should allocate depreciation expense to the sulphur handling facility on a net realizable value (NRV) basis. Husky maintains that an NRV allocation basis is reasonable since, in its normal accounting system, it allocates no expenses to sulphur. Husky further maintains that it is within the Department's discretion to use a value-based allocation methodology. In support of its position, Husky cites *Pineapple* as a recent determination in which the Department relied on a value-based cost allocation methodology. Husky argues that, using a cost-based allocation methodology, as the Department did for purposes of the preliminary results of this review, overstates the depreciation expense allocated to sulphur production. Husky also claims that it is inconsistent for the Department to determine, as it did in the preliminary results of review, that sulphur is a byproduct based on its relative sales value while, at the same time, rejecting an allocation of depreciation expense that similarly relies on relative sales values.

Husky further contends that, regardless of how the Department decides to allocate depreciation expense to sulphur, it must adjust for the fact that an unrelated company pays Husky a capital charge which, in effect, reimburses Husky for a portion of its depreciation expense incurred for the use of its facility. Husky maintains that, in the preliminary results of review, the Department erroneously computed per-unit depreciation expense for sulphur by including this capital charge in total depreciation costs, but failed to include this company's related quantity of sulphur production. According to Husky, the Department should correct this error either by reducing Husky's depreciation expense for the year by the capital charge payment, or by allocating total depreciation expense over the total quantity of sulphur Husky produced, regardless of ownership.

Pennzoil argues that the Department correctly allocated depreciation expense based on the direct operating costs Husky incurred in each functional leasehold area. According to Pennzoil, the Department prefers to allocate indirect costs using a cost-based allocation methodology rather than one based on net sales revenue. Additionally, Pennzoil notes that Husky recognized this fact when it allocated the cost of its general facilities and other expenses to each lease based on the direct costs incurred for each lease. Pennzoil maintains that depreciation expense incurred in connection with each lease is more closely related to the lease's operating expenses than to the NRV of the products produced at the facility. Additionally, Pennzoil contends that Husky's cite to *Pineapple* as support for a sales-based allocation is misplaced. Pennzoil notes that, in that case, the Department determined that it was appropriate to rely on the value-based allocation method because the respondent had used this method for a number of years in its normal accounting system. Pennzoil notes that, in the instant case, Husky created its NRV allocation methodology solely for the purpose of this review.

Pennzoil also contends that, consistent with its finding in the preliminary results, just as the Department should not reduce Husky's per-unit sulphur COP by the profit earned on processing a certain other company's sulphur, neither should the Department adjust Husky's depreciation expense to account for the capital charge received from the other company.

Department's Position

We disagree with Husky that it is appropriate to allocate depreciation expense among its products based on a relative sales values methodology. Although Husky claims that it does not maintain a fixed asset ledger that records depreciation expense for each of its leases, this does not mean that the company's depreciation expense represents an actual joint production cost that, under certain circumstances, may be appropriately allocated on the basis of relative sales value. On the contrary, in this instance, the depreciation expense for fixed assets that Husky used to produce sulphur, natural gas, and other products bears no direct relationship to the sales value generated from those products. Therefore, allocation on the basis of sales value could lead to cost distortions and would not be appropriate.

The Department typically has found that respondents maintain sufficiently detailed fixed asset records that allow them to account for depreciation expense on a product-specific basis. In this case, however, because Husky's records do not permit the company to trace depreciation expense in such a manner, we believe that it is appropriate to treat these costs like other indirect costs, such as manufacturing overhead or general and administrative expenses. The Department generally favors a cost-based allocation methodology for indirect costs. For example, the Department has consistently required that respondents allocate general and administrative expenses on the basis of cost of sales rather than on relative sales revenue or other inappropriate bases. *See, e.g., Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof from Japan, Final Results of Antidumping Administrative Review*, 56 FR 41508, 41516, August 21, 1991). As Pennzoil has pointed out, Husky itself adopted such a cost-based methodology in allocating its indirect general facilities costs on the basis of the direct costs it incurred at each lease. Thus, the cost-based methodology the Department used to re-allocate Husky's depreciation

expense for the preliminary results was both consistent with past Department practice and with Husky's own method of allocating the other indirect costs the company incurred during the POR.

Husky is incorrect in referring to the Department's determination in *Pineapple* as support for its value-based allocation of depreciation expense. As noted above, in the instant case, the need to treat depreciation expense as an indirect cost (and thereby allocate the amount incurred among the various products produced by Husky) arises from limitations in the company's own accounting system. Since Husky's accounting system does not distinguish fixed assets used to produce sulphur after the split off point in production, some method must be used to allocate the otherwise fully separable costs associated with fixed assets to produce sulphur. In *Pineapple*, however, the Department dealt with the issue of allocating genuine joint production costs that were otherwise inseparable up to the production split-off point where the process yielded distinct products.

Pineapple also differs from the instant case in the fact that the pineapple growers had, for many years prior to the antidumping investigation, accounted for joint processing costs on the basis of relative sales value. As noted previously, however, Husky's value-based methodology is not part of its normal accounting system and was devised by the company specifically for the purpose of allocating depreciation costs in this review.

We disagree with Husky's claim that use of the relative sales value in our sulphur byproduct analysis is inconsistent with our rejection of it as the basis for allocating depreciation expense among the company's products. As discussed in our response to Comment 2, relative sales value is but one of several factors that we considered in measuring the significance of sulphur as part of our coproduct/byproduct analysis. It is not a dispositive factor, especially in situations in which the relative sales values of subject and non-subject merchandise are measured only during periods covered by an antidumping investigation or administrative review. Contrary to Husky's assertions, the fact that the Department considers sales value as one of several factors in its coproduct/byproduct analysis for the subject merchandise does not, as a consequence, make the price charged for that merchandise a reliable basis upon which to allocate depreciation expenses or other such normally separable costs. Accordingly, the Department has allocated depreciation expense using a cost-based methodology, consistent with its treatment in the preliminary results.

Lastly, we agree with Husky that it is appropriate to include a certain company's sulphur production quantity in the calculation of per-unit depreciation expense. Therefore, we have accounted for all quantities processed at the facility, regardless of whether the product was owned by Husky, in establishing the per-unit depreciation costs.

Comment 6

Pennzoil asserts that, with regard to selling, general and administrative (SG&A) expenses included in CV, the Department properly included Husky's third-country royalty expenses, but neglected to include PRISM Sulphur Corporation's (PRISM's) SG&A expenses incurred on Husky's behalf. Pennzoil cites the Department's Dumping Manual at p. 53 and *Final Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts From the Federal Republic of Germany*, 52 FR 28170 (July 28, 1987), to support its position.

Husky asserts that the Department properly excluded PRISM's general expenses from CV and that the Department correctly limited general expenses to those Husky incurred, since only Husky's general expenses are included in the third-country sales prices it reported. Husky asserts that the third-country prices the Department used in its analysis were not the prices PRISM charged to its unrelated customers but rather were the "netback" revenue Husky received from PRISM, which represents Husky's net return, exclusive of the expenses (including general expenses) PRISM incurred in selling the sulphur to third countries. Husky asserts that exceeding the 20-percent difference-in-merchandise threshold (DIFMER) is the only reason the Department did not use the reported prices (netback revenues) and, since these prices were the verified arm's-length prices from Husky to PRISM, the Department appropriately limited the general expenses included in the CV calculation to the general expenses in that price. Therefore, Husky contends that the Department should dismiss Pennzoil's argument and base the final results on the reported and verified expenses Husky incurred.

Department's Position

We agree with Pennzoil and have attributed a portion of PRISM's selling expenses to Husky for CV purposes. Section 773(e) of the Tariff Act specifies that general expenses be equal to that usually reflected in sales of merchandise of the same general class or kind but not less than 10 percent of COM. Because PRISM, essentially a sales organization, incurred expenses of the kind usually reflected in sales of merchandise of the same general class or kind on Husky's behalf, we have allocated PRISM's operating expenses to Husky, and, therefore, to the calculation of CV in our determination of Husky's dumping margin.

Comment 7

Pennzoil asserts that the Department's margin calculation for Husky contains an error in that the Department calculated Husky's weighted-average margin by dividing total duties due by the gross sales value of U.S. sales instead of dividing the total duties due by the net U.S. sales value.

Department's Position

We agree and have recalculated Husky's weighted-average dumping margin by dividing total duties due by the net U.S. sales value, consistent with our normal practice.

Comment 8

Husky asserts that the Department made two ministerial errors in its calculation of Husky's margin and requests the Department to correct these errors. Husky indicates that the Department double-counted U.S. packing costs for bagged and powdered sulphur and that the royalty expense the Department included as a direct selling expense component of general expenses was not equivalent to the royalty expense the Department subtracted as a circumstance-of-sale adjustment as required by statute and Department practice.

Department's Position

We agree and have corrected the errors in these final results.

Comment 9

Pennzoil asserts that the Department erred in determining that the rate it calculated for Husky should be applied to Mobil as BIA, because Petrosul's margin would be more adverse and must be applied to Mobil as BIA.

Mobil asserts that, if the Department calculates a margin for Petrosul based on Pennzoil's cost allegation or on Husky's CV as Pennzoil proposes, under no circumstances should the Department apply this rate to Mobil. Mobil asserts that the Department's preference is to use verified information as the basis of BIA for a cooperative respondent and cites *In the Matter of Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada*, USA–90–1904–01 at 81 (May 15, 1992), concerning the Department's selection of BIA, *Smith Corona* v. *United States*, 796 F. Supp. 1532, 1536–37 (CIT 1992), and other cases for the proposition that the court favors a verified BIA rate over an unverified BIA rate, and favors BIA based on "reasonably accurate" information of record if verified data is not available (*Associacion Colombiana de Exportadores de Flores*, 717 F. Supp. 834 (CIT 1989); *Alberta Pork Producers' Marketing Board* v. *United States*, 669 F. Supp. 445 (CIT 1987)). Mobil asserts that, because it cooperated in this review, the Department based its BIA margin on Husky's verified information and that it would be unreasonable to penalize Mobil by using unverified information that results in an artificially high dumping margin.

Mobil asserts that there is no support for Pennzoil's approach because 1) the Department did not verify the price information Petrosul submitted, 2) the CV information in Pennzoil's cost allegation was not only not verified, but was based on a coproduct methodology, and 3) the Department thoroughly and successfully verified Mobil's cost responses and determined Mobil produces sulphur as a byproduct.

Department's Position

In our preliminary results, we determined that, because Mobil substantially cooperated in this segment of the proceeding by responding to our requests for information and participating in verification, application of second-tier BIA for Mobil was appropriate. The second-tier approach results in the application of the higher of (1) the highest rate ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review or, if the firm has never before been investigated or reviewed, the "all others" rate from the LTFV investigation; or (2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin (*see, e.g., Allied-Signal Aerospace Co.* v. *United States*, 966 F.2d 1185, 1191 (Fed. Cir. 1993); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Antidumping Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900, 10908 (February 28, 1995)). The highest rate previously applicable to Mobil is 5.56 percent. Therefore, the rate calculated for Husky, the highest calculated rate in this review, shall apply to Mobil as this rate is higher than the rate previously applicable to Mobil. Pennzoil has not presented an argument which persuades the Department to deviate from application of its established BIA policy with regard to Mobil. With regard to the Department's treatment of Petrosul, see Comment 13.

Comment 10

Pennzoil asserts that the Department erred in concluding that 5.66 [sic] percent was the highest rate previously assigned to Mobil, as the Department's first administrative review found a margin for Mobil of 12.9 percent, and, although unpublished, Mobil's entries were liquidated at that rate. Pennzoil cites *Elemental Sulphur from Canada: Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination to Revoke in Part*, 49 FR 45789, 45790 (September 15, 1981), and provides copies of telexes to Customs and an attachment to a letter to a respondent with proposed assessment rates to support its position. Accordingly, Pennzoil asserts, if the revised BIA rate the Department calculates for Petrosul is the highest calculated rate in this review, the Department should apply that rate to Mobil, but under no circumstances should Mobil receive a rate lower than 12.9 percent.

Mobil asserts that its highest previous rate is 5.56 percent, and disputes Pennzoil's assertion that its highest previous rate is 12.9 percent. Mobil claims that although the Department's September 15, 1981 preliminary results indicate a 12.9-percent rate for the period July 1, 1978 through December 31, 1978 and a 75.19-percent rate for the period January 1, 1979 through November 30, 1980, there was a correction to the November 28, 1986 instructions on which Pennzoil relies in its arguments. Mobil explains that the Department issued instructions stating that entries for the January 1979 through November 1981 should not be liquidated. Mobil points to the Department's 1987 final results for the period January 1, 1979 through November 30, 1981, which established a rate of zero for Mobil (52 FR 41601). Mobil concludes that there are no published final results or Customs instructions that would support Pennzoil's claimed rate of 12.9 percent for the period July 1, 1978 through December 31, 1978. Concerning the October 6, 1986 telex identified by Pennzoil relating to Mobil's entries for 1982–83 at 12.9 percent, Mobil asserts that it was obviously based on the same error underlying the November 28, 1986 instruction.

Department's Position

We agree with Mobil. The Department's practice is to rely on the published final results of a review or investigation to determine the highest rate ever applicable to a firm. We never published final results of review with a rate of 12.9 percent, for any period, for Mobil's sales. The highest published final review rate the Department has been able to ascertain for Mobil is 5.56 percent.

However, because the rate calculated in this review for Husky is higher than 5.56 percent, that rate shall apply to Mobil's transactions as second-tier BIA in this review.

Comment 11

Mobil believes a 1978 U.S. Customs ruling issued to Mobil Chemical (Mochem) (predecessor of Mobil Mining and Minerals (MMM), a U.S. affiliate of Mobil), holding that sulphur purchased by Mochem for internal use was exempt from antidumping duties, is still applicable. Mobil asserts that the reason for the exemption was that, although the sulphur is used in the manufacture of diammonium phosphate fertilizer (DAP), the end-product, DAP, contains no sulphur as it ends up in the form of gypsum, a waste product. Thus, Mobil contends that there is no sale to an unrelated customer of sulphur or of the product containing sulphur from which U.S. price could be derived. Mobil asserts that Mobil, Mochem, and MMM have relied on this ruling and Customs has never assessed antidumping duties on sulphur imported by MoChem and MMM for use in the manufacture of DAP.

Mobil further asserts that it has an arrangement with MMM and a certain unrelated U.S. entity whereby Mobil sells sulphur to its U.S. affiliate, MMM, which then "swaps" this sulphur with the unrelated U.S. entity, such that Mobil sulphur is delivered to this unrelated U.S. entity in return for the delivery of sulphur from this unrelated U.S. entity to MMM.

Mobil asserts that MMM does not resell the sulphur, but discards it as a waste product in the form of gypsum. As there is no arm's-length price, Mobil contends that the Customs Service ruling applies. Mobil requests that the Department issue liquidation instructions which direct Customs not to assess duties on any imports of Mobil sulphur by a certain unrelated U.S. entity which that entity purchased pursuant to the swap arrangement.

Pennzoil asserts that the Department may not exempt imports of Mobil sulphur by this unrelated U.S. entity from the assessment of antidumping duties. Pennzoil argues that the 1978 Customs ruling does not apply to the sulphur the unrelated entity acquired in its swap transactions.

Pennzoil asserts that the limited exemption in the 1978 Customs ruling was based on a repealed statute and Treasury Department regulation and that the ruling applies only to sulphur MMM used to produce DAP at a plant which closed in 1987. Pennzoil further asserts that, because Mobil has not disclosed the purpose for which the entity used the sulphur, the Department cannot determine that the ruling applies to Mobil's sulphur, given that Customs granted the exemption under the provision that the sulphur was consumed in the production of DAP. Pennzoil contends that the unrelated U.S. entity may have imported the Mobil sulphur for resale to U.S. customers and there is no evidence on the record of this review that the entity ever produced DAP, let alone consumed the Mobil sulphur in the course of producing that product. Pennzoil notes that, contrary to the statement in the Customs ruling, gypsum is a salable product.

Pennzoil asserts that, given the Department's application of total BIA to Mobil, the Department should not rely on Mobil's factual assertions and reward it by excluding U.S. sales from coverage by the finding.

Finally, Pennzoil asserts that Mobil's request constitutes an improper request for a scope determination and that such an exclusion would create significant administrative burdens for Customs and the Department. Pennzoil contends that any liquidation instructions would need to contain certain restrictions in view of the fact that the 1978 ruling expressly does not cover a percentage of sulphur imported by Mobil's related entity that do not go to the Depue Plant, or that go to Depue but are used in the production of sulfuric acid.

Department's Position

The 1978 Treasury ruling does not apply to these transactions since the ruling is narrowly drafted to apply only to shipments of Mobil sulphur to a Mobil affiliate used for a specific purpose. Moreover, the specific language of the Treasury ruling does not address "swap" transactions.

After discussing the basis for the exclusion, the ruling concludes: "Sulphur imported by Mobil Chemical from its Canadian affiliate, Mobil Oil Canada, and used in the production of diammonium phosphate fertilizer (DAP) will be appraised by U.S. Customs without regard to the Antidumping Act, 1921, as amended. That portion of the Canadian elemental sulphur imported by Mobil Chemical from Mobil Oil Canada and not shipped to the Depue plant or that used in the production of sulfuric acid will be appraised for antidumping duties." *Letter to Patrick F.J. Macrory, Esq. from Salvatore E. Caramagno, Director, Classification and Value Division, Department of the Treasury, U.S. Customs Service*, January 10, 1978.

The ruling does not apply to Mobil's Canadian sulphur actually consumed by an unrelated U.S. entity, regardless of the use to which MMM ultimately put the exchanged or "swapped" sulphur (ostensibly, this is U.S.-produced sulphur, obtained from the unrelated U.S. entity). It is the U.S.-produced product that is "discarded as a waste product in the form of gypsum" (*Mobil Brief*, August 28, 1995 at 5), and not Mobil's Canadian sulphur.

In any event, even if the ruling applied to these transactions, the Department agrees with Pennzoil that any exemption of this sulphur would be improper in the context of the application of total BIA to Mobil, given the serious doubts concerning the reliability and completeness of its submissions. While Mobil segregated the volumes of sulphur that were subject to these swap transactions in its sales listings, as exhibited by *Verification of Sales Questionnaire Response of Mobil Oil Canada Ltd.*, November 22, 1994 (*Verification Report*), and explained in *Memorandum to Joseph A. Spetrini from Holly A. Kuga, re: Use of Best Information Available for Mobil Oil Canada, Ltd., in 1991–92 Administrative Review of Antidumping Finding on Elemental Sulphur from Canada* (May 10, 1995)) (*Memo*), the Department concluded that problems it encountered at Mobil's sales verification rendered "Mobil's entire sales response seriously defective and an inappropriate basis on which to conduct a dumping analysis." *Memo* at 4. The Department further concluded, among other things, that, "given the magnitude and scope of the other problems encountered at verification of Mobil, the Department has serious doubts concerning the overall reliability and completeness of Mobil's submission. Therefore, we do not believe that Mobil's responses constitute a proper basis on which to base a calculated margin." *Memo* at 4–5.

For purposes of these final results, we believe that a problem exists in addition to our inability to conduct a proper dumping analysis. This problem concerns the proper segregation of the swap transactions by Mobil in its sales response, since not all transactions with this unrelated U.S. entity during the POR were the subject of these swaps. Given the overall unreliability of Mobil's sales submissions to the Department, and for the additional reason above, the Department will not exempt from the assessment of antidumping duties any of the Canadian sulphur delivered to this unrelated U.S. entity during the POR.

Comment 12

Mobil states that it recognizes that the Department applied total BIA to its transactions because of difficulties during its sales verification, but offers comments concerning its reported costs that were successfully verified in the event the Department decides to use its costs.

Pennzoil asserts that the Department cannot use the cost data provided by Mobil and urges the Department to reject Mobil's suggestion for a number of reasons. First, Pennzoil comments that Mobil failed the sales verification and the Department's use of total BIA is consistent with the statute, Department precedent and decisions of the CIT. Citing *Empresa Nacional Siderurgica, S.A. and the Government of Spain v. United States*, Ct. No. 93–09–00630–AD, Slip Op. 95–33 at 9 (CIT March 6, 1995), and *Rhone-Poulenc, Inc. v. United States*, 710 F. Supp. 341, 346 (CIT, 1990), Pennzoil asserts that where a company fails verification so that the Department cannot rely on its U.S. selling prices, it has no choice but to resort to total BIA because U.S. prices are an absolutely essential element of the calculation of a dumping margin. Second, Pennzoil argues that the Department cannot rely on Mobil's cost information as the basis for FMV because Mobil failed to report production costs for its sulphur-producing facilities in the manner and detail which the Department's questionnaire requires. Pennzoil asserts that Mobil failed to separately identify the costs associated with sulphur handling and without this information the Department cannot compute the CV of sulphur under either a coproduct or byproduct cost accounting methodology. Third, Pennzoil contends that Mobil's cost data are useless as a basis for determining CV because the Department could not verify the barrel-of-oil equivalent method Mobil used. In addition, Pennzoil asserts that this method is totally inappropriate for identifying sulphur production costs, since the market value of sulphur derives from its value in fertilizer, not its thermal heat. Further, Pennzoil argues, the relative BOE figures bear no relationship to those products' volume or value and Mobil failed to provide any basis for its BOE-per-MT conversion factor. Pennzoil notes the Department's cost verification report wherein the Department stated the BOE methodology "might not be an appropriate basis for the allocation of joint costs." Finally, citing the Department's BIA memorandum for Mobil wherein the Department states it has "serious doubts concerning the overall reliability and completeness of Mobil's submissions," Pennzoil asserts that the Department determined that it could not rely on any of Mobil's responses to calculate a dumping margin.

Department's Position

We affirm our decision in the preliminary results to assign Mobil total BIA for this review based on problems we encountered at verification of its sales responses. Given those problems, we do not believe that Mobil's responses constitute a proper basis on which to base a calculated margin. *See Memo at 4–5.* Mobil's costs would be of use only if there were reliable, verified sales information, which there is not. The issue of the appropriateness or validity of Mobil's reported costs is, therefore, moot.

Comment 13

Pennzoil asserts that the Department properly resorted to BIA for Petrosul but did not select the correct BIA rate to apply to Petrosul's sales. Pennzoil asserts that, in applying Husky's calculated margin to Petrosul, the Department rewarded Petrosul and its suppliers for their failure to supply requested COP information. Pennzoil argues that the use of Husky's margin assumes that Petrosul's sulphur is produced as a byproduct, and that, in any event, the record demonstrates that Petrosul's U.S. prices varied from Husky's. Instead, Pennzoil contends that the Department should calculate a margin for Petrosul by comparing its reported U.S. prices to a CV calculated from information in Pennzoil's cost allegation, or compare Petrosul's United States prices (USPs) to a public CV calculated for Husky.

Citing the Department's *Final Results of Antidumping Duty Administrative Reviews; Oil Country Tubular Goods from Canada, 56* FR 38408, 38410 (August 13, 1991) (*OCTG*), Pennzoil asserts that it is the Department's practice to use cost information provided by the petitioners as BIA when the suppliers of an otherwise cooperative exporter fail to provide COP information: this information is then compared to the USPs of the exporter to determine margins. Pennzoil states that in relying on a "company-specific" finding for Husky and Mobil that sulphur is a byproduct, the Department concluded that because "only sulphur handling facility costs should be allocated to sulphur production, the necessary [cost] information is not available from Pennzoil's cost allegation" to use as BIA for Petrosul's suppliers' cost information. Pennzoil asserts that the Department's assumption that a byproduct cost methodology is appropriate for Petrosul is unsupported by evidence on the record and is contrary to the Department's BIA practice of making adverse assumptions when a party fails to provide requested information. Pennzoil asserts that the Department must assume that Petrosul's sulphur was a coproduct and should, as in OCTG, compare Petrosul's USPs to a CV based on the coproduct information in Pennzoil's cost allegation.

Citing *Shop Towels of Cotton from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 55 FR 7756 (March 5, 1990), Pennzoil further asserts that the Department acted contrary to its practice when it failed to use "other information" on the record that indicated a higher margin existed for Petrosul and insists that the Department should have compared Petrosul's USPs to the CV calculated for Husky plus Petrosul's SG&A expense and profit.

Pennzoil claims that the Department failed to compare Petrosul's USP to Husky's CV on the grounds that Department policy prohibits cross-respondent use of proprietary data, but Pennzoil asserts that *Pineapple* and *Silicon Metal from Brazil*, 59 FR 42806 (August 19, 1994), demonstrate that no such policy exists and that, even if such a policy exists, the Department should not apply it in a manner that thwarts its established BIA practice. Pennzoil concludes that, at a minimum, the Department should calculate a margin for Petrosul by comparing its reported USPs to a CV calculated, in part, using Husky's public data and adding Petrosul's SG&A and profit.

Citing *Allied-Signal Aerospace Co.* v. *United States*, 966 F.2d 1185, 1191 (Fed. Cir. 1993), *Krupp Stahl A.G.* v. *United States*, 822 F. Supp. 789, 792 (CIT 1993), and *Chemical Products Corp.* v. *United States*, 645 F. Supp. 289, 295 (CIT 1986), Petrosul asserts that the Department is accorded substantial discretion and deference in determining BIA and claims that, while it may rely on information submitted by petitioner, it is not required to do so. Petrosul asserts that the Department followed its practice of assigning to Petrosul, a cooperative respondent, the highest calculated rate in this review based on the second-tier of its two-tiered methodology. Citing *Citrosuco Paulista, S.A.* v. *United States*, 704 F. Supp. 1075, 1088 (CIT 1988), Petrosul asserts that the Department must either conform itself to prior decisions or explain the reasons for a departure, and that Pennzoil has provided no new arguments or facts that would justify such a departure.

Petrosul asserts that Pennzoil's reliance on *OCTG* is misplaced because in *OCTG* the Department noted that it could have simply used total BIA, but that it was more reasonable to use BIA to calculate only the COP. In addition, Petrosul asserts that because the review covered only one exporter, the Department was prevented from using other respondents' COP information as surrogate information. Petrosul asserts the only alternative open to the Department would have been to use the highest margin previously assigned to the exporter, but because the exporter was cooperative, the Department declined to do so.

In addition, Petrosul disputes Pennzoil's contentions that, first, application of Husky's rate, calculated using a byproduct methodology, results in a less adverse rate for Petrosul and, second, that the Department should have assigned a higher BIA rate to Petrosul based on Petrosul's U.S. pricing data. Citing *Disposable Pocket Lighters from the People's Republic of China; Final Determination of Sales at Less Than Fair Value*, 60 FR 22359, 22360 (May 5, 1995), Petrosul asserts that the Department normally assigns less adverse margins to respondents that cooperate, and citing *Emerson Power Transmission Corporation* v. *United States*, No. 92–07–00480, Slip Op. at 19 (CIT Sept. 1, 1995), Petrosul asserts that once the Department establishes that BIA is appropriate, it has broad discretion in determining what information to use. Citing the preliminary results in this review, Petrosul asserts that the Department may apply either total BIA or select individual pieces of data to substitute for missing or unreliable data. Citing *Shop Towels of Cotton from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 55 FR 7756 (March 5, 1990), Petrosul asserts that, while it may be appropriate to rely on other information as BIA, the Department is not required

to rely on more adverse information, particularly where a respondent has been cooperative, and, thus, the Department is not required to assign Petrosul a higher BIA based on information which differs from the information on which it calculated Husky's dumping margin.

Department's Position

We disagree with Pennzoil that we should calculate a margin for Petrosul by comparing its reported USPs to a CV calculated from information in Pennzoil's cost allegation, or compare Petrosul's USPs to a public CV calculated for Husky. We are satisfied that selection of Husky's calculated rate is the appropriate BIA for Petrosul for this review, is consistent with our practice, and effectuates the purpose of the BIA rule.

The Department has broad discretion in determining what constitutes BIA in a given situation (*Krupp Stahl A.G.* v. *United States*, 822 F. Supp. 789, 792 (CIT 1993); *see also Allied-Signal Aerospace Co.* v. *United States, 966 F.2d 1185, 1191 (Fed. Cir. 1993) "[B]ecause Congress has 'explicitly left a gap for the agency to fill' in determining what constitutes the best information available, the ITA's construction of the statute must be accorded considerable deference."). The court has upheld the Department's two-tiered BIA methodology as "a reasonable and permissible exercise of the ITA's statutory authority to use the best information available when a respondent refuses or is unable to provide requested information." Allied Signal* at 1192.

We agree with Pennzoil that we are not prohibited from resorting to a petitioner's cost information for BIA when the suppliers of an otherwise cooperative exporter fail to provide COP information. However, we are not compelled to do so. Furthermore, in this case, Pennzoil's cost allegation does not contain the necessary information, as the allegation does not individually identify the costs we have determined to be related to sulphur production and we are not able to ascertain them.

For the preliminary results, the Department concluded that "[b]ecause the Department has determined that only sulphur handling facility costs should be allocated to sulphur production, the necessary information is not available from Pennzoil's cost allegation. As a result, we do not have the option of utilizing Pennzoil's cost data." *See Memorandum to Joseph A. Spetrini, from Holly A. Kuga, re: 1991–92 Antidumping Administrative Review of the Antidumping Finding on Elemental Sulphur from Canada: Use of Best Information Available for Petrosul International Due to Lack of Any Useable Cost of Production Information* (July 11, 1995) at 6 (*Petrosul Memo*). While the determination that "only sulphur handling facility costs should be allocated to sulphur production" is based on company-specific determinations of the status of sulphur as either a coproduct or byproduct, the Department notes that it made these determinations with regard to two of the three respondents that actively participated in this review. In *OCTG*, noting the wide discretion afforded it in determining what constitutes BIA, the Department determined that it would be more reasonable to use BIA to calculate cost of production for the respondent instead of applying total BIA because the cost information was not in the control of the respondent (*OCTG* at 38411). The Department acknowledges that it could assume that Petrosul's sulphur is a coproduct, but where we have found byproduct status for two of three respondents' sulphur, and where Petrosul has been deemed to be a cooperative respondent (*see Petrosul Memo at 7*), it is reasonable to disregard Pennzoil's cost data reported under a coproduct methodology.

Furthermore, the Department's decisions in *Pineapple* and *Silicon Metal from Brazil* do not stand for the proposition that cross-respondent use of proprietary data is permissible absent consent or adequate safeguards to protect the confidentiality of the data. In *Pineapple* and *Silicon Metal from Brazil*, adequate safeguards to protect the confidentiality of the data were present, *i.e.*, in *Pineapple*, we used proprietary data from several respondents such that no one respondent's proprietary data was vulnerable to disclosure. That is not the case in this review. The Department does not believe that use of Husky's public or ranged proprietary data would protect the confidentiality of the data.

In addition, in *TECHNOIMPORTEXPORT and Peer Bearing Company* v. *United States*, 766 F. Supp. 1169, 1177 (CIT 1991), the court stated that "the use of confidential data without the communicated consent of the company from which the data is compiled is contrary to law and established ITA policy."

Finally, the fact that Petrosul's U.S. sales data indicate USPs that differ from Husky's does not alter our decision. The Department must assess all of the facts on the record in making its determination, including the degree of cooperation or noncooperation of a respondent. For these final results, we determine that it is appropriate to apply total cooperative BIA to Petrosul since it is consistent both with our practice and the purpose of the BIA rule.

Comment 14

Petrosul asserts that the Department's COP investigation should focus on Petrosul's cost of acquisition (COA) rather than production costs of its suppliers and that as a matter of law the Department is not entitled to disregard Petrosul's COA in a COP investigation. Petrosul asserts that there is no statutory basis for disregarding Petrosul's COA as Petrosul is not related to its suppliers and, citing section 773(e)(4) of the Tariff Act, asserts that the scope of the Department's authority to disregard transaction values is limited expressly to transactions between related parties. Therefore, in determining FMV through CV, Petrosul contends that the Department may not look beyond the cost of acquiring materials to the supplier's COP where the transactions are between parties that are not related as defined by the Tariff Act.

Citing *Consolidated International Automotive, Inc.* v. *United States*, 809 F. Supp. 125 (CIT 1992), and *Washington Red Raspberry Comm.* v. *United States*, 657 F. Supp. 537 (CIT 1987), Petrosul asserts that the court rejected the argument that a CV analysis should look beyond transfer prices of inputs to the COP of such inputs incurred by unrelated suppliers, and explicitly reversed the Department's refusal to accept transaction prices in COP investigations of resellers where the transactions were unrelated. Petrosul asserts that it is unrelated to its suppliers, and, unlike the exporters in *Red Raspberry*, it is a truly independent reseller. Petrosul contends that the total absence of any relationship precludes the Department from pursuing an investigation based on the COP of Petrosul's suppliers.

Pennzoil asserts that, while section 773(b) of the Tariff Act does not define the "cost of production", by its terms it requires actual production costs, not a purchaser's cost of acquiring the finished product, to be compared to home market prices, and that Department regulations expressly state that COP will be based on "the cost of materials, fabrication, and general expenses, but excluding profit." Pennzoil asserts that Petrosul's argument for basing COP on acquisition cost does not address the language of section 773(b) of the Tariff Act, Department precedent, the Department's explanation for its use of BIA in the preliminary results, or the Department memorandum on these matters. Instead, Pennzoil argues, Petrosul's cites to statutory language and cases dealing with the valuation of inputs used in producing subject merchandise in determining CV which, according to Pennzoil, is irrelevant since Petrosul, a reseller, did not manufacture sulphur from any inputs.

Pennzoil rebuts Petrosul's reference to section 773(e)(4) of the Tariff Act, and argues that it defines "related parties" for the purposes of sections 773(e) (2) and (3), and that these sections address valuation of inputs in determining CV. Pennzoil asserts that section 773(e)(1) requires that CV include all inputs in the production of subject merchandise and that, since Petrosul did not purchase liquid sulphur as a material input in the production of that same subject merchandise, Pennzoil contends that these provisions are irrelevant.

Pennzoil further asserts that *Consolidated Automotive* and *Red Raspberry* involve valuation of inputs in calculating CV, the first which upheld the Department's use of the transaction price of lug nut blanks (an input) in determining the CV of chrome-plated lug nuts (subject merchandise), and the latter which found unlawful the Department's failure to use the transaction price of red raspberries (an input) in determining the CV of fresh and frozen red raspberries packed in bulk containers and suitable for further processing (the subject merchandise). Pennzoil asserts that, contrary to Petrosul's assertion, the exporters in *Red Raspberry* were not resellers, but rather manufacturers.

Pennzoil concludes that the CIT has not reviewed the Department's practice of rejecting acquisition cost as a basis for the COP of merchandise sold by a reseller, but that, given the substantial discretion afforded the Department, its interpretation of section 773(b) is proper because using acquisition cost would be contrary to the plain language of the sales-below-cost provision and would defeat its purpose.

Department's Position

The record indicates that Petrosul purchases elemental sulphur after its conversion from H_2S and without further processing. Petrosul admits it is not a producer of elemental sulphur, but rather merely a reseller. Because Petrosul is not involved in the production of elemental sulphur, the issue of the proper valuation of inputs is not relevant. Therefore, the statutory provisions and cases cited by Petrosul are not relevant.

Petrosul does not itself produce the elemental sulphur it sells. Department practice in such situations is to compare the production costs of the producer (Petrosul's supplier/producers), plus the producer's SG&A and the SG&A of the seller (Petrosul), to the seller's home market sales to determine whether home market sales were made below the COP. Upon receiving a satisfactory allegation of sales below cost, the Department is required to investigate those allegations. This investigation is mandated by section 773(b) of the Tariff Act, which provides that:

> Whenever the administering authority has reasonable grounds to believe or suspect that sales in the home market of the country of exportation, or, as appropriate, to countries other than the United States, have been made at prices which represent less than the *cost of producing the merchandise* in question, it shall determine whether, in fact, such sales were made at less than the *cost of producing the merchandise*. . . .

Section 773(b) of the Act (1994) (emphasis added).

As stated above, consistent with the Department's policy on this matter with regard to resellers, the Department has interpreted "cost of producing the merchandise" to mean the production costs of the producer, plus the producer's SG&A, plus the SG&A of the reseller. *See Memorandum from David Mueller to Reviewers*, December 18, 1990, attached to *Petrosul Memo; see, also, Fresh and Chilled Atlantic Salmon from Norway*, 56 FR 7661 (February 25, 1991); *Oil Country Tubular Goods (OCTG) from Canada*, 56 FR 38406 (August 13, 1991); and *Fresh Kiwifruit from New Zealand*, 57 FR 13695 (April 17, 1992). *See also Petrosul Memo*. While this interpretation may create a burden upon a respondent such as Petrosul, to hold otherwise would allow a huge loophole and open domestic producers to competition with below cost exports without remedy because the producer could continue to sell his production below cost, and, as long as he does not know the destination, the intermediate prices would be taken as COP for resellers, regardless of the actual costs incurred. Because the Department was unable to obtain the costs of producing the elemental sulphur supplied to Petrosul, the Department was unable to proceed to the next step in a sales-below-cost-investigation: comparison of the sulphur COP to Petrosul's home-market prices. Therefore, the Department relied on BIA.

Comment 15

Petrosul asserts that the use of its COA is particularly appropriate in the case of a waste product like elemental sulphur and claims that the substance actually recovered from natural gas or oil is hydrogen sulphide gas, which is not "merchandise" within the COP language of section 773(b) of the Tariff Act (19 U.S.C. § 1677b(b)). Therefore, Petrosul contends that the cost of extracting hydrogen sulphide and converting it into elemental sulphur is not a "cost of producing the merchandise" but is a cost mandated by both commerce and law of disposal of hydrogen-sulphide, a byproduct or waste product.

Petrosul asserts that production of recovered elemental sulphur is involuntary, that it is purchased immediately after its conversion from hydrogen sulphide without further processing, and, therefore, the "cost of producing the merchandise" is properly limited to acquisition, handling, administrative and sales costs incurred by Petrosul. Petrosul asserts that its COA is the most accurate measure of the product's COP since that is the first time value is attributed to the product.

Department's Position

Petrosul obtains elemental sulphur for resale and not H_2S. Therefore, we need the COP of sulphur for our analysis. In addition, the Department has determined that it must ascribe some costs to the production of sulphur, even if it considers sulphur a byproduct (*see, e.g., Comment 3; see also* Memorandum to Susan G. Esserman from Joseph A. Spetrini; Team Recommendation Related to The Cost Accounting Treatment of Elemental Sulphur From Canada, June 29, 1995). It is clear that Petrosul's suppliers bear some of these costs in handling elemental sulphur after converting it from H_2S as the Department determined that costs incurred in the sulphur handling facility, including loading, transferring of the product and a portion of general facilities costs relate directly to the sale of sulphur (*Id.* at 6). Because the Department does not have these costs, it was unable to proceed with its cost investigation of Petrosul.

Comment 16

Petrosul asserts that the Department acknowledged that Petrosul cooperated fully in this review, and that it provided all information requested except for its suppliers' COPs, which it does not have and cannot force its suppliers to provide. Under such circumstances, Petrosul contends that reliance on BIA is arbitrary, capricious, an abuse of discretion and contrary to law as there is nothing that Petrosul could do.

Petrosul asserts that even in antidumping proceedings, parties are entitled to due process protection, citing *Sugiyama Chain Co., Ltd.* v. *United*

States, 852 F. Supp. 1103, 1115 (CIT 1994) (*Sugiyama*), yet the Department's approach here condemns all independent resellers to BIA margins in COP investigations where the unrelated supplier chooses not to cooperate. Petrosul contends that it is a violation of due process of law for the Department to assign BIA margins to respondents that cannot produce information which is not, and will never be, in their possession.

Petrosul asserts that it never had an opportunity to respond to the Department's request for its suppliers' costs, information which is beyond Petrosul's reach, and that Petrosul is being denied the opportunity to respond. Petrosul cites *Sigma Corp.* v. *United States*, 841 F. Supp. 1255 (CIT 1993), where the court reversed the Department's reliance on BIA for a respondent that never was given an opportunity to respond, to support its position.

Pennzoil asserts that basing Petrosul's margin of dumping on BIA is not fundamentally unfair, an abuse of discretion or a denial of due process. Pennzoil argues that there is no alternative to reliance on BIA for Petrosul in the absence of actual COP data, as use of acquisition cost would subvert the sales-below-cost provision of the Tariff Act.

Department's Position

The Department believes Petrosul has been fully afforded procedural due process. The Department requested cost information from Petrosul's suppliers, all of whom refused to provide such information. Section 776(c) of the Act requires the Department to use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation." Further, Department regulations provide that "[t]he Secretary will use the best information available whenever the Secretary (1) [d]oes not receive a complete, accurate, and timely response to the Secretary's request for factual information; or (2) [i]s unable to verify, within the time specified, the accuracy and completeness of the factual information submitted." 19 CFR 353.37(a). Because the Department could not identify any other source of data that would provide a reasonable surrogate for the missing supplier-producers' cost of producing elemental sulphur, the only alternative open to the Department is to apply total BIA to Petrosul.

With regard to Petrosul's assertion that it never had an opportunity to respond to the Department's request for its suppliers's costs, given the Department's practice, Petrosul was fully aware of the import of its suppliers' refusal to reply to the Department's questionnaire.

Final Results of Review

We determine the following percentage weighted-average margins exist for the period December 1, 1991 through November 30, 1992:

Manufacturer/exporter	Percent margin
Husky Oil Ltd.	7.17
Mobil Oil Canada, Ltd.	[1] 7.17
Petrosul	[1] 7.17
Alberta	[2]
Allied	[2]
Norcen	[2]
Brimstone	[3] 28.9
Burza	[3] 28.9
Canamex	[3] 28.9
Delta	[3] 28.9
Drummond	[3] 28.9
Fanchem	[3] 28.9
Real	[3] 28.9
Saratoga	[3] 28.9
Sulbow	[3] 28.9

[1] Cooperative BIA rate.
[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding. As a result, the firm will be subject to the "all others" rate.
[3] Non-cooperative BIA rate.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of elemental sulphur, entered or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751)a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed companies will be the rates listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, or the less-than-fair-value (LTFV) investigation, the cash deposit rate will be the "new shipper" rate established in the first review conducted by the Department in which a "new shipper" rate was established, as discussed below.

On May 25, 1993, the Court of International Trade (CIT), in *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993), and *Federal-Mogul Corporation and The Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993), decided that once an "All Others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the "All Others" rate from the LTFV investigation (or that rate as amended for correction or clerical errors as a result of litigation) in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "All Others" rate from the Treasury LTFV investigation, we have determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review we published (or that rate as amended for correction or clerical errors as a result of litigation) as the "All Others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping finding, and we are unable to ascertain the "All Others" rate from the Treasury LTFV investigation, the "All Others" rate for the purposes of this review would normally be the "new shipper" rate established in the first notice of final results of administrative review we published. However, a "new shipper" rate was not established or ascertainable in that notice. Therefore, for the purposes of this review, we have drawn the "All Others" rate of 5.56 percent from the final results of administrative review of this finding we conducted generally for the period December 1, 1980 through November 30, 1982. *See Elemental Sulphur from Canada; Final Results of Administrative Review of Antidumping Finding*, 48 FR 53592 (November 28, 1983).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 22, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96-4979 Filed 3-1-96; 8:45 am]

BILLING CODE 3510-DS-P

[A-580-601]

Certain Stainless Steel Cooking Ware From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from Farberware, Inc. (petitioner), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea. This notice of preliminary results covers the period January 1, 1994 through December 31, 1994. This review covers one manufacturer/exporter, Daelim Trading Company, Ltd. (Daelim). The review indicates the existence of dumping margins during this period.

We have preliminarily determined that sales have been made below the normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties equal to the difference between the United States price (USP) and the NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: March 4, 1996.

FOR FURTHER INFORMATION CONTACT: Amy S. Wei or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202)482-5253.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations of the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act (URAA).

Background

The Department published an antidumping duty order on certain stainless steel cooking ware from the Republic of Korea on January 20, 1987 (52 FR 2139). The Department published a notice of "Opportunity To Request an Administrative Review" of the antidumping duty order for the 1994 review period on January 12, 1995 (60 FR 2941). On January 30, 1995, petitioner requested that the Department conduct an administrative review of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea for one manufacturer/exporter, covering the period January 1, 1994 through December 31, 1994. We initiated the review on February 15, 1995 (60 FR 8629).

The Department extended the time limits for the deadlines for the preliminary and final results of review because of the additional time required for the development of a new questionnaire that accorded with the URAA. See *Antidumping Duty Administrative Reviews; Time Limits*, 60 FR 56141 (November 7, 1995). As a result of the federal government 28-day total shutdown, these deadlines were further extended.

The Department is now conducting this administrative review in accordance with section 751 of the Act.

In addition, on September 11, 1995, petitioner requested that the Department conduct an investigation to determine if Daelim made sales at prices below its cost of production (COP) during the review period. On October 19, 1995, based on petitioner's allegation and the totality of evidence on record, the Department determined that there were reasonable grounds to believe or suspect that Daelim made sales at prices below its COP, in accordance with section 773(b)(2)(A)(i) of the Act, and initiated a COP investigation for Daelim, pursuant to section 773(b)(1) of the Act. See *Certain Stainless Steel Cooking Ware from Korea—Home Market Sales Below Cost Allegation for Daelim Trading Company, Ltd.*, October 19, 1995.

Scope of the Review

The products covered by this administrative review are certain stainless steel cooking ware from the Republic of Korea. During the review period, such merchandise was classifiable under Harmonized Tariff Schedule (HTS) item number 7323.93.00. The products covered by this order are skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope is stainless steel kitchen ware. The HTS item number is provided for convenience and Customs' purposes. The written description remains dispositive as to the scope of product coverage.

The period of review (POR) is January 1, 1994 through December 31, 1994, covering one manufacturer/exporter, Daelim.

Use of Facts Available

A large portion of Daelim's home market sales were to an affiliated reseller. Because an extremely small percentage of Daelim's total home market sales were to unaffiliated customers, there is not a sufficient factual basis to determine whether sales to the affiliated reseller were made at arm's-length prices. See *Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review*, 52 FR 8940, 8943 (March 20, 1987). Therefore, the Department will request that Daelim provide the information on sales by its affiliated reseller to the first unaffiliated customer for certain home market models.

For purposes of the preliminary results, the Department has applied a neutral facts available (FA) rate for the missing downstream sales information, in accordance with section 776(a)(1) of the Act. For a neutral FA rate, we applied the weighted-average margin calculated for sales to the United States (U.S.) for which there were appropriate home market sales for matching

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purposes. If Daelim timely responds to our request for additional information, we will examine Daelim's response and incorporate the information provided in our analysis in the final results of administrative review. If Daelim fails to provide the requested data, we may evaluate the application of FA accordingly.

United States Price

In calculating USP for Daelim, we used export price, as defined in section 772(a) of the Act, because the merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation. Daelim reported that export price was based on the packed, FOB price to unaffiliated purchasers in the United States. We made deductions for brokerage and handling charges, inland freight from the plant, credit expense, wharfage, container freight station (CFS) charges, and export license recommendation fees, in accordance with section 772(c)(2)(A) of the Act, because these expenses were incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States. We increased USP for duty drawback, in accordance with section 772(c)(1)(B) of the Act. In addition, because there is a concurrent countervailing duty order on the subject merchandise, we increased USP by the amount of the countervailing duty imposed on the subject merchandise to offset the export subsidy, in accordance with section 772(c)(1)(C) of the Act.

No other adjustments to USP were claimed or allowed.

Normal Value

A. Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Daelim's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because Daelim's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV for Daelim, pursuant to section 773(a)(1)(C) of the Act.

B. COP Test

As stated above in the *Background* section, the Department initiated a cost investigation to determine whether Daelim made home market sales during the POR at prices below its COP, as defined in section 773(b) of the Act. We calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses (SG&A), and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment, in accordance with section 773(b)(3) of the Act. We relied on the home market sales and COP information provided by Daelim in its questionnaire responses.

In accordance with section 773(b)(1) of the Act, in order to determine whether to disregard home market sales made at prices below the COP, we examined whether such sales were made in substantial quantities within an extended period of time, and whether such sales were made at prices which permit the recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of home market sales of a given model are at prices less than the COP, we do not disregard any below-cost sales of that model because the below-cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of home market sales of a given model are at prices less than the COP, we find that sales of that model were made within an extended period of time in "substantial quantities," in accordance with section 773(b)(2)(B) of the Act. Moreover, we determine whether the below-cost sales of a given product are at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. If we find that sales have been made within an extended period of time in "substantial quantities" and were not at prices which would permit recovery within a reasonable period of time, we disregard the below-cost sales, in accordance with section 773(b)(1) of the Act.

The results of our cost test indicated that within an extended period of time, for certain home market models, more than 20 percent of the home market sales were sold at below the COP prices, which would not permit the recovery of all costs within a reasonable period of time. Thus, we excluded these below-cost sales and used the remaining above-cost sales as the basis of determining NV, in accordance with section 773(b)(1). For those home market models for which there were no above-cost sales, we compared export prices to constructed value (CV), in accordance with section 773(b)(1).

C. Model Match

The Department determined that the model match methodology provided by Daelim in its questionnaire response was too restrictive. Daelim's methodology limited the selection of matches to essentially identical merchandise. When there were no contemporaneous sales of this identical merchandise, Daelim's methodology did not select acceptable similar merchandise, but, instead, resorted to CV as the basis for NV. Therefore, we revised Daelim's model match for the preliminary results of review in order to search for the HM model which is most like or most similar in characteristics and uses with each US model, pursuant to section 771(10) of the Act. First, from Daelim's one product category, we established three foreign like product categories: (1) Sauce pans and pots; (2) frying pans; and (3) other cooking ware, such as steamers, covers, or boiler inserts. Second, we broadened Daelim's model match criteria of capacity, gauge, and body style, and did not use the parameters Daelim suggested. To perform the model match, we first searched for the most similar home market model with regard to capacity. If there were several home market models with identical capacities, we then searched for the most similar home market model with regard to gauge. We continued this process with regard to body shape. If, as a result of this analysis, several home market models were deemed equally similar, we chose the home market model which, when compared to the U.S. model, had the lowest difference in variable costs of manufacturing (difmer), provided the difmer did not exceed 20 percent of the total cost of manufacturing of the U.S. model.

Our model match resulted in several price-to-price comparisons involving sales to the affiliated reseller, requiring downstream sales information. For those U.S. models where no foreign like product was found with a difmer of less than 20 percent or where the U.S. model matched to a home market model which was found to be sold at below cost, we resorted to CV as the basis of NV, in accordance with section 773(a)(4) of the Act.

D. Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on Daelim's cost of materials and fabrication employed in producing the subject merchandise, SG&A and profit incurred and realized in connection with the production and sale of the foreign like product, and U.S. packing costs. We used the costs of materials, fabrication, and G&A as reported in the CV portion of Daelim's questionnaire response. We used the U.S. packing costs as reported in the U.S. sales portion of Daelim's questionnaire response. We based selling expenses and profit on the information reported in the home market sales portion of Daelim's questionnaire response. See *Certain Pasta from Italy; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 61 FR 1344, 1349 (January 19, 1996). For selling expenses, we used the average of above-cost per-unit HM selling expenses weighted by the total quantity sold. For actual profit, we first calculated the difference between the home market sales value and home market COP, and divided the difference by the home market COP. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

E. Price-to-Price Comparisons

For those price-to-price comparisons where we did not resort to CV or the facts available, we based NV on the price which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and to the extent practicable, at the same level of trade as the export price, as defined by section 773(a)(1)(B)(i) of the Act. We reduced NV for home market credit and advertising expenses, in accordance with section 773(a)(6)(C)(iii), due to differences in circumstances of sale. We also reduced NV by packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i). In addition, we increased NV for U.S. packing costs, in accordance with section 773(a)(6)(A). We made further adjustments to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57 of the Department's regulations.

When NV was based on CV or home market sales, we adjusted for commissions paid on U.S. sales. In accordance with 19 CFR 353.56(b)(1), we offset these commissions with the weighted average of home market indirect selling expenses, because no sales commissions were incurred in the home market, up to the amount of the commissions paid on U.S. sales. In addition, we increased NV by U.S. credit expenses, in accordance with section 773(a)(6)(C)(iii) of the Act, because of differences in the circumstances of sale. No other adjustments were claimed or allowed.

Preliminary Results

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/ exporter	Period	Margin (percent)
Daelim Trading Co., Ltd	1/1/94–12/31/94	6.31

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department will publish a notice of the final results of the administrative review, which will include the results of its analysis of issues raised in any such written comments or at the hearing, within 180 days from the issuance of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping dumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of certain stainless steel cooking ware from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Daelim will be the rate established in the final results of administrative review; (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in these reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews; or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews, the cash deposit rate will be 8.10 percent, the "all others" rate established in the LTFV investigation (52 FR 2139, January 20, 1987).

This notice serves as a preliminary reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26(b) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: February 28, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–4983 Filed 3–1–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–508–605]

Industrial Phosphoric Acid From Israel; Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of preliminary results of Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) is conducting two administrative reviews of the countervailing duty order on industrial phosphoric acid from Israel. We preliminarily determine the net subsidy to be 3.84 percent *ad valorem* for all companies for the period January 1, 1992 through December 31, 1992, and 5.50 percent *ad valorem* for all companies for the period January 1, 1993 through December 31, 1993. If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess countervailing duties as indicated above. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 4, 1996.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Cameron Cardozo, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1987, the Department published in the **Federal Register** (52 FR 31057) the countervailing duty order on industrial phosphoric acid from Israel. On August 3, 1993, and August 3, 1994, the Department published notices of "Opportunity to Request Administrative Review" of this countervailing duty order for the periods January 1, 1992 through December 31, 1992 and January 1, 1993 through December 31, 1993, respectively (58 FR 41240 and 59 FR 39543). We received a timely request for review for the 1992 review period from the petitioners, FMC Corporation and the Monsanto Company. We received timely requests for review for the 1993 review period from both the petitioners and the respondent, Rotem Fertilizers Ltd.

We initiated the review covering the period January 1, 1992 through December 31, 1992, on September 30, 1993 (58 FR 51054). We initiated the review covering the period January 1, 1993 through December 31, 1993, on September 16, 1994 (59 FR 47609). Each review covers one manufacturer/exporter of the subject merchandise, which accounts for virtually all of the exports of subject merchandise from Israel to the United States during the review period, and ten programs.

Applicable Statute and Regulations

The Department is conducting these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. *See* 60 FR 80 (Jan. 3, 1995).

Scope of Review

Imports covered by this review are shipments of industrial phosphoric acid (IPA) from Israel. Such merchandise is classifiable under item number 2809.20.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Calculation Methodology for Assessment and Cash Deposit Purposes

Because Rotem is the only manufacturer/exporter of the subject merchandise to the United States, Rotem's net subsidy rate is also the country-wide rate.

Privatization

Israeli Chemicals Ltd. (ICL), the parent company which holds one hundred percent of Rotem's shares, was partially privatized in 1992 and again in 1993. Accordingly, we have determined that the partial privatization of ICL represents a partial privatization of each of the companies in which ICL holds an ownership interest.

In these reviews and prior reviews of the subject merchandise, the Department has found that Rotem and/or its predecessor, Negev Phosphates Ltd., received non-recurring countervailable subsidies prior to these partial privatizations. Further, the Department has found that a private party purchasing all or part of a government-owned company can repay prior non-recurring subsidies on behalf of the company as part or all of the sales price (*see* the General Issues Appendix appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37262 (July 9, 1993) (*General Issues Appendix*)). Therefore, to the extent that a portion of the sales price paid for a privatized company can be reasonably attributed to prior subsidies, that portion of those subsidies are repaid.

To calculate the non-recurring subsidies remaining with Rotem after each partial privatization, we performed the following calculations. We first calculated the amount of the purchase price paid for the ICL shares which could be attributed to Rotem using the ratio of Rotem's net assets to ICL's net assets in the year of sale. (For a further explanation of the Department's analysis of the purchase price attributable to Rotem, *see* October 25, 1995 memorandum to Barbara E. Tillman regarding partial privatization of ICL, which is on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce.) We then calculated the net present value (NPV) of the future benefit stream of the non-recurring subsidies received by Rotem at the time of the sale of the shares. Next, we calculated the portion of the purchase price which represents repayment of prior subsidies in accordance with the methodology described in the "Privatization" section of the *General Issues Appendix* (58 FR 37259). This amount was then subtracted from the NPV of the subsidies, and the result was divided by the NPV of the subsidies to calculate the ratio representing the amount of subsidies remaining with Rotem after each partial privatization.

To calculate the benefit provided to Rotem for 1992 and 1993, we multiplied the benefit calculated for Encouragement of Capital Investment Law grants (the only subsidies relevant to the privatization calculation) for each period by the ratio representing the amount of subsidies remaining with Rotem after the partial privatization. We then divided the results by the company's total sales of subject merchandise in each respective period.

Analysis of Programs

I. Programs Preliminarily Determined to Confer Subsidies

(A) Encouragement of Capital Investments Law (ECIL) Grants

The ECIL grants program was established to attract capital to Israel. In order to be eligible to receive various benefits under the ECIL, including investment grants, capital grants, accelerated depreciation, reduced tax rates, and certain loans, the applicant must obtain approved enterprise status. Approved enterprise status is obtained after a review of information submitted to the Investment Center of the Israeli Ministry of Industry and Trade. Investment grants are given as a percentage of the cost of the approved investment. The amount of the grant benefits received by approved enterprises depends on the geographic location of the eligible enterprise. For purposes of the ECIL program, Israel is divided into three zones—Development Zone A, Development Zone B, and the Central Zone—each with a different funding level.

Since 1978, only investment projects outside the Central Zone have been eligible to receive grants. The Central Zone comprises the geographic center of Israel, including its largest and most developed population centers. In *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel*, 52 FR 25447 (July 7, 1987) (*IPA Investigation*), the Department found the ECIL grants program to be *de jure* specific and thus countervailable because the grants are limited to enterprises located in specific regions. In these reviews, the Government of Israel (GOI) has provided no new information or evidence of changed circumstances to warrant reconsideration of this determination.

Rotem Fertilizers Ltd. (Rotem) is located in Development Zone A, and received ECIL investment, drawback, and capital grants in disbursements over a period of years for several projects. We followed the methodology developed in *IPA Investigation* to determine the benefits from the ECIL grants. However, consistent with the *Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings From Israel*, 60 FR 10569 (February 27, 1995) (*Butt-Weld Pipe Investigation*), in these reviews we have amended the calculation methodology to conform with the use of variable rather than fixed interest rates in the years these grants were disbursed. Section 355.49(b)(3) of the Department's *Proposed Regulations* relies on a discount rate, based on the cost of fixed-rate long-term debt for the firm under review or generally in the country under review. However, Rotem had no fixed-rate long-term debt during the years in which it received ECIL grants. Moreover, in *Butt-Weld Pipe Investigation*, the Department determined that no long-term loans with fixed interest rates (or other long-term debt) were available in Israel during that period; the only long-term loans (or other long-term debt) available to companies in Israel were provided at variable interest rates.

This methodology reflects the actual long-term options open to Israeli firms, and also ensures that the net present value of the amount countervailed in the year of receipt does not exceed the face value of the grant. In accordance with *General Issues Appendix*, we allocated these grants over ten years (the average useful life of renewable physical assets in the chemical manufacturing industry, as determined under the U.S. Internal Revenue Service Asset Depreciation Range System). As the discount rate, we have used the rate of return on CPI-indexed commercial bonds (the real rate of return, as published in the Bank of Israel Annual Reports, plus the CPI).

We summed the benefits from these projects for each year (1992 and 1993), and then reduced the annual benefits according to the methodology outlined in the "Privatization" section above. We then divided the results by the value of IPA sold by Rotem during the relevant review period. On this basis, we preliminarily determine the net subsidy from this program to be 3.82 percent *ad valorem* for 1992 and 5.47 percent *ad valorem* for 1993.

(B) Long-term Industrial Development Loans

Prior to July 1985, approved enterprises were eligible to receive long-term industrial development loans funded by the Government of Israel (GOI). During the original investigation, we verified that these loans, like the ECIL grants, were project-specific. They were disbursed through the Industrial Development Bank of Israel (IDBI) and other industrial development banks which no longer exist.

The long-term industrial development loans were provided to a diverse number of industries, including agricultural, chemical, mining, machine, and others. However, the interest rates on loans vary depending on the Development Zone in which the borrower is located. The interest rates on loans to borrowers in Development Zone A are lowest, while those on loans to borrowers in the Central Zone are highest. Therefore, loans to companies in Zone A are provided on preferential terms relative to loans received by companies in the heavily populated and developed Central Zone. In *IPA Investigation*, the Department found long-term industrial development loans to be regional subsidies and countervailable to the extent that they are provided at interest rates which are lower than those applied on loans provided to companies located in the Central Zone. In these reviews, the Government of Israel (GOI) has provided no new information or evidence of changed circumstances to warrant reconsideration of this determination. Rotem had loans outstanding under this program during both review periods. The loans carry the Zone A interest rates because of Rotem's location. Therefore, we determine that Rotem received countervailable benefits under this program because the interest rates paid by Rotem are less than those which would apply in the Central Zone.

As was determined in the *Butt-Weld Pipe Investigation*, under the terms of this program, the interest rates on these loans have two components—a fixed real interest rate and a variable interest rate, the latter of which is based on either the CPI or the dollar/shekel exchange rate. All of Rotem's loans were linked to the dollar/shekel exchange rate. Because the dollar-shekel exchange rate varies from year-to-year, we were unable to apply the Department's methodology described in the *Proposed Regulations* because we cannot calculate *a priori* the payments due over the life of these loans, and hence cannot calculate the "grant equivalent" of the loans. Accordingly, in accordance with section 355.49(d)(1) of the *Proposed Regulations*, we have compared the interest that would have been paid by a company in the Central Zone, as a benchmark, to the amount actually paid by Rotem during the review periods.

For each project, we calculated the interest savings accrued during the period of review (POR). We then summed the benefits and divided the total by the value of all IPA sold by Rotem during the POR. On this basis, we preliminarily determine the net subsidy from this program to be 0.01 percent *ad valorem* for 1992, and less than 0.005 percent *ad valorem* for 1993.

(C) Exchange Rate Risk Insurance Scheme

Prior to September 1993, the Exchange Rate Risk Insurance Scheme (EIS), operated by the Israel Foreign Trade Risk Insurance Corporation Ltd. (IFTRIC), was designed to insure exporters against losses which resulted when the rate of inflation exceeded the rate of devaluation and the new Israeli Shekel (NIS) value of an exporter's foreign currency receivables did not rise enough to cover increases in local costs.

The EIS was optional and open to any exporter willing to pay a premium to IFTRIC. Compensation was based on a

comparison of the rate of devaluation of the NIS against a basket of foreign currencies with the change in the consumer price index. If the rate of inflation exceeded the rate of devaluation, the exporter was compensated by an amount equal to the difference between these two rates multiplied by the value-added of the exports. If the rate of devaluation was higher than the rate of inflation, however, the exporter was required to compensate IFTRIC. The premium was calculated for all participants as a percentage of the value-added sales value of exports. IFTRIC changed this percentage rate periodically, but at any given time it was the same for all exporters.

In determining whether an export insurance program provides a countervailable benefit, we examine whether the premiums and other charges are adequate to cover the program's long-term operating costs and losses. Despite periodic increases in the premium rate, we determined in *IPA Investigation* that this program did not cover its long term costs and losses and, therefore, conferred an export subsidy on exports of IPA from Israel. In addition, in the *Final Results of Countervailing Duty Administrative Review; Industrial Phosphoric Acid from Israel* (59 FR 5176; February 3, 1994), covering the 1991 review period, we found that this program conferred a countervailable benefit on exporters in Israel of the subject merchandise. Normally, five years is a sufficiently long enough period of time to establish that the premiums and other charges are manifestly inadequate to cover the long-term operating costs and losses of the program. (See section 355.44(d)(1) of the *Proposed Regulations*). We reviewed EIS financial statements in these reviews which showed that EIS has continuously operated at a loss from 1981 through 1992. Since EIS has operated at a loss for 12 years, the determination that this program is countervailable remains unchanged.

We verified that Rotem did not receive benefits from IFTRIC for its IPA exports to the United States during 1992. However, Rotem did receive benefits from IFTRIC for its IPA exports to United States during 1993. Therefore, for the 1993 review period, we have calculated the benefit rate by dividing the net amount of compensation Rotem received during the review period from IFTRIC for IPA exported to the United States, by the value of the company's exports of IPA to the United States during the same period. On this basis, we preliminarily determine the benefit from this program to be zero for the 1992 review period and 0.02 percent *ad valorem* for the 1993 review period.

(D) Encouragement of Industrial Research and Development Grants (EIRD)

Rotem received several grants under this program in both the 1992 and 1993 review periods. In *IPA Investigation*, we determined that the results of research funded by EIRD grants are not made publicly available, and that such grants are countervailable. (See also section 355.44(l) of the *Proposed Regulations*). We followed the methodology developed in *IPA Investigation* in determining the benefits from the EIRD funding.

The EIRD grant issued to Rotem on January 13, 1992 benefited a research project concerning green acid, which is used as an input in the production of IPA. We view this as a "non-recurring" grant based on the analysis set forth in the Allocation section of the *General Issues Appendix*. Since the grant value was less than 0.50 percent of all Rotem's sales, we allocated the full amount of the grant to 1992 and divided by Rotem's total sales of all products. On this basis, we preliminarily determine the benefit from this program to be less than 0.005 percent *ad valorem*.

II. New Program Preliminarily Determined Not to Confer Subsidies Law for the Encouragement of the Business Sector (Absorption of Workers)

The questionnaire responses submitted by the GOI and Rotem for the 1992 and 1993 review periods stated that Rotem participated in a temporary program aimed at encouraging employment in order to cope with the problems caused by immigration. This program, enacted under the temporary Law for the Encouragement of the Business Sector (Absorption of Workers), has not been examined in any prior reviews or in the investigation of the subject merchandise. Therefore, we requested additional information on this program, and on the benefits received by Rotem, in a supplemental questionnaire, and we verified the information in both responses in order to determine whether the program was limited, either *de jure* or *de facto*, to a specific enterprise or industry, or a group of enterprises or industries, and thus countervailable.

The temporary Law for the Encouragement of the Business Sector (Absorption of Workers) was instituted in 1991 in an effort to expand employment opportunities in the Israeli economy, following rising levels of unemployment between 1988–1991 caused by large Russian immigration. Under the Absorption of Workers program, funded by the Treasury and administered by the National Insurance Institute (NII), any employer in the business sector employing a monthly average of over five employees is eligible to receive a monthly grant from the Treasury for each additional employee hired. The period of payment of the grant for each employee is limited to two years. During the first year, the grant consists of one-third of the monthly wages paid to the employee but cannot exceed NIS 1000 per month. During the second year, the grant consists of one-fourth of the monthly wages paid to the employee but cannot exceed NIS 750 per month. Payments under the program began in July 1991 and are scheduled to terminate in December 1995.

Companies that wish to participate in this program submit an application, certified by a CPA, through their bank to the NII within nine months of the end of the quarter for which they are requesting assistance. The NII reviews the application form and compares it to the company's insurance records and Department of the Interior records to calculate the average number of workers employed prior to the period of application. Any workers hired over this baseline number make the company eligible for participation in the program. For eligible companies, payment is transferred directly into the employer's bank account within 45 days of the application. The NII conducts random audits of approximately 20 percent of the recipients.

We verified that all companies in the business sector employing a minimum of five workers are eligible to participate in the program and, upon submission of a complete and accurate application within the specified time frame, will receive a grant for each additional worker hired. Moreover, we found no evidence that the program is regional or that approval is contingent upon the export performance of the company. Finally, we found no evidence that the program is limited to a specific enterprise or industry, or a group of enterprises or industries. There are a large number and wide variety of users of the program. The range of industrial branches that received grants includes agriculture, general industry, electricity and water, construction, food and hospitality, transportation, financial, public services, and private services. Chemical producers are neither a dominant nor disproportionate recipient of the grants, and there is no evidence that the GOI exercises discretion, in general or across industries, in conferring the grants. Thus, we preliminarily determine that this program is not countervailable within the meaning of section 701(a) of the Act. (For a more detailed explanation of the Department's decision, *see* the May 26, 1995 Memorandum for the 1992 Administrative Reviews of IPA from Israel, on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce).

III. Programs Preliminarily Determined Not to Be Used

We also examined the following programs and preliminarily determine that the producer/exporter of the subject merchandise did not apply for or receive benefits under these programs during the 1992 or 1993 review periods:

A. Reduced tax rates under ECIL;
B. ECIL section 24 loans;
C. Preferential accelerated depreciation under ECIL;
D. Labor training grants; and
E. Dividends and Interest Tax Benefits under Section 46 of the ECIL.

Preliminary Results of Reviews

For the period January 1, 1992, through December 31, 1992, we preliminarily determine the net subsidy to be 3.84 percent *ad valorem* for all firms. For the period January 1, 1993 through December 31, 1993, we preliminarily determine the net subsidy to be 5.50 percent *ad valorem* for all firms.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess the following countervailing duties:

Manufacturer/ exporter	Period	Rate (percent)
All companies ...	1992	3.84
All companies ...	1993	5.50

The Department also intends to instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Act, of 5.50 percent of the f.o.b. invoice price on all shipments of the subject merchandise from Israel entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

Parties to the proceedings may request disclosure of the calculation methodology used in either review and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in the case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit written arguments in these proceedings are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Written arguments that are intended to comment on the preliminary results for both the 1992 and 1993 reviews must be submitted to the file for each proceeding. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to these proceedings may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under section 355.38(c), are due. The Department will publish the final results of these administrative reviews including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: February 22, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–4984 Filed 3–1–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

National Weather Service To Discontinue the Issuance of All Routine Agricultural Forecasts and Fruit Frost Forecasts

AGENCY: National Weather Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice updates the National Weather Services (NWS) plans to transfer Agricultural Weather Services to the private sector, notice of which was published on July 5, 1995; *see* National Weather Service Transfer of Specific Products and Services to the Private Sector, 60 Fed. Reg. 34969.

EFFECTIVE DATE: This action becomes effective April 1, 1996, for routine agricultural forecasts and April 20, 1996, for fruit frost forecasts.

ADDRESSES: National Weather Service, Industrial Meteorology Staff, 1325 East-West Highway, #18462, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Edward Gross, 301–713–0258.

SUPPLEMENTARY INFORMATION: On July 5, 1995, the National Weather Service (NWS) announced that it planned to transfer specific products and services to the private sector effective October 1, 1995. Subsequently, concerns were raised about the disruption of critical forecasts to regions of the United States dependent on receiving NWS agricultural weather services and the Conference Report for the Department of Commerce Fiscal Year 1996.

Appropriations Bill to accompany H.R. 2076 noted that, "it may be necessary within funds available to provide Agricultural Weather Services for a limited time."

Accordingly, NWS has continued and will continue routine agricultural forecasts until April 1, 1996, and will continue those Fruit Frost Forecasts that it has already commenced providing until April 20, 1996. At that time, funds available for Agricultural Weather Services will be exhausted. However, if a freeze or very cold weather is in progress on April 20, 1996, fruit frost products will continue until the episode ends.

The NWS has been notifying customers of changes to its Agricultural Weather Services program since July 1995. The provision of these services has been extended from October 1, 1995 until April 20, 1996 for the purpose of minimizing the disruption of critical forecasts to certain regions and to allow customers an opportunity to find alternative sources of agricultural weather information from the private sector. This action complies with the conference language of maintaining a goal of smoothly transferring services to those private sector vendors capable and willing to assume them.

The following NWS agricultural products will no longer be available:

Agricultural Weather Forecast
Fruit Frost Forecast
Special Agricultural Weather Advisory
Weather Advisory for Ag Operations
30-day Agricultural Weather Outlook
National Agricultural Weather Highlights
Cranberry Bog Forecasts

The U.S. Department of Agriculture's Joint Agricultural Weather Facility will continue producing the International Weather and Crop Bulletin.

Dated: February 27, 1996.
Susan F. Zavin,
Deputy Administrator for Operations.
[FR Doc. 96–4902 Filed 3–1–96; 8:45 am]
BILLING CODE 3510–09–M

Patent and Trademark Office

Address-Affecting Provisions

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 3, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument(s) and instructions should be directed to Robert J. Spar, Patent and Trademark Office, Washington, DC 20231, (703)305–9285.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under existing law, a patent applicant or assignee may appoint, revoke or change a representative to act in a representative capacity. Also, an appointed representative may withdraw from acting in a representative capacity. This collection includes the information needed to ensure that PTO correspondence reaches the appropriate individual.

II. Method of Collection

By mail, facsimile or hand-carry when the applicant or agent is to notify the Patent and Trademark Office (PTO) of changes, revocations or additions in powers of attorney or agents and changes in addresses, or when an appointed representative withdraws.

III. Data

OMB Number: 0651–0035.
Form Number: PTO/SB/82/83.
Type of Review: Revision.
Affected Public: Individuals or households, business or other non-profit institutions, not-for-profit institutions and Federal Government.
Estimated Number of Respondents: 45,350.
Estimated Time Per Response: .2 hours.
Estimated Total Annual Burden Hours: 9070 hours/year.
Estimated Total Annual Cost: $87,979/year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 27, 1996.
Linda Engelmeier,
Acting Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 96–4903 Filed 3–1–96; 8:45 am]
BILLING CODE 3510–16–P

Disclosure Document Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 3, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument(s) and instructions should be directed to Robert J. Spar, Patent and Trademark Office, Washington, DC 20231, (703) 305–9285.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Disclosure Document Program allows inventors to submit papers that provide evidence of the date of conception of an invention. The disclosure document papers will be retained by the PTO for two years, during which time the inventors should file a patent application if patent protection is desired.

II. Method of Collection

By mail, facsimile and hand-carry when the inventor desires to participate in the information collection.

III. Data

OMB Number: 0651–0030.
Form Number: PTO/SB/95.
Type of Review: Revision.
Affected Public: Individuals or households, business or other non-profit institutions, not-for-profit institutions, and Federal Government.
Estimated Number of Respondents: 27,000.
Estimated Time Per Response: .2 hours.
Estimated Total Annual Burden Hours: 5,400 hours.
Estimated Total Annual Cost: $12,757.5/year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 27, 1996.
Linda Engelmeier,
Acting Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc 96–4904 Filed 3–1–96; 8:45 am]
BILLING CODE 3510–16–P

Post Allowance and Refiling

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 3, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument(s) and instructions should be directed to Robert J. Spar, Patent and Trademark Office, Washington, DC 20231, (703) 305–9285.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is required to administer the patent laws pursuant to Title 35 of the U.S. Code concerning the issuance of patents and related actions. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

II. Method of Collection

By mail, facsimile and hand-carry when the inventor desires or is required to participate in the information collection.

III. Data

OMB Number: 0651–0033.

Title of form	Form No.	Estimated time for response	Estimated annual burden hours	Estimated annual responses
Request for filing patent application under 37 CFR 1.60/.62	PTO/SB/3/14	.50	22,500	45,000
Issue Fee transmittal	PTOL–85b	.20	20,400	102,000
Certificate of correction	PTO/SB/44	1	3,000	3,000
Request for reexamination	PTO/SB/57	2	700	350
Reissue	PTO/SB/51–56	5	2,500	500

Type of Review: Regular.
Affected Public: Individuals or households, business or other non-profit, institutions, not-for-profit institutions, and Federal Government.
Estimated Number of Respondents: 150,850.
Estimated Total Annual Burden Hours: 49,100 hours.
Estimated Total Annual Cost: $7,217,700/year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 27, 1996.
Linda Engelmeier,
Acting Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 96–4905 Filed 3–1–95; 8:45 am]
BILLING CODE 3510–16–P

Patent Processing (Updating)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 4, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Request for additional information or copies of the information collection instrument(s) and instructions should be directed to Robert J. Spar, Patent and Trademark Office, Washington, DC 20231, (703)305–9285.

SUPPLEMENTARY INFORMATION:

I. Abstract

During the processing for an application for a patent, the applicant/agent may be required or desire to submit additional information to the Patent and Trademark Office(PTO) concerning the examination of a specific application. The specific information required or which may be submitted: Information Disclosure Citations; Terminal Disclaimers; Petitions to Revive; Express Abandonment; Appeal Notice; Small Entity; Petition for Access; Power to Inspect; Certificate of Mailing; Amendment Transmittal Letter; Deposit Account Order Form.

II. Method of Collection

By mail, facsimile and hand-carry when the inventor(s) desires or is required to participate in the information collection.

III. Data

OMB Number: 0651–0031.

Title of form	Form No.	Estimated time for response (hours)	Est. annual burden hours	Est. annual responses
Information Disclosure (in Appl'n)	PTO/SB/08 ..	2.0	280,000	140,000
Information Disclosure (in patent)	PTO/SB/42 ..	2.0	2,000	1,000
Statutory 7,500 Disclaimers	PTO/SB/43 ..	.20	1,500	
Terminal Disclaimers	PTO/SB	.20	1,500	7,500
	25–26			
	62–63			
Extensions of Time	PTO/SB	.10	11,000	110,000
	22–23,32			
Petitions to Revive	PTO/SB	1.0	4,000	4,000
	61,			
	61/PCT,			
	64,			
	64/PCT			
Express Abandonment	PTO/SB/24 ..	.20	800	4,000
Small Entity	PTO/SB	.30	18,000	60,000
	09–12			
Petition for Access	PTO/SB/68 ..	.20	4	20
Power to Inspect/Copy	PTO/SB/67 ..	.20	4,000	10,000
Certificate of Mailing	PTO/SB	.10	300,000	30,000
	92–93			
Amendment Transmittal Letter	PTO/SB/21 ..	.20	200,000	40,000
Deposit 100,000	PTO/SB/91 ..	.20	20,000	

Type of Review: Regular.

Affected Public: Individuals or households, business or other non-profit, not-for-profit institutions, and Federal Government.

Estimated Number of Respondents: 659,020.

Estimated Total Annual Burden Hours: 385,804 hours.

Estimated Total Annual Cost: $116,766,376/year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 27, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc 96–4906 Filed 3–1–96; 8:45 a.m.]

BILLING CODE 3510–16–P

Rules for Patent Maintenance Fees

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 3, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument(s) and instructions should be directed to Robert J. Spar, Patent and Trademark Office, Washington, DC 20231, (703) 305–9285.

SUPPLEMENTARY INFORMATION:

I. Abstract

Maintenance fees are required to maintain a patent in force under Title 35 of the U.S. Code. Payment of maintenance fees are required at 3½, 7½ and 11½ years after the grant of the patent. A patent number and serial number of the patent on which maintenance fees are paid are required in order to insure proper crediting of such payments.

II. Method of collection

By mail, facsimile or hand-carry when the applicant or agent is to pay the maintenance fee required to maintain the benefit patent protection.

III. Data

OMB Number: 0651–0016.

Form Number: PTO/SB/45.

Type of Review: Regular.

Affected Public: Individuals or households, business or other non-profit institutions, not-for-profit institutions, and Federal Government.

Estimated Number of Respondents: 104,569.

Estimated Time Per Response: .08 hours.

Estimated Total Annual Burden Hours: 8,714 hours/year.

Estimated Total Annual Cost: $43,570/year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;(b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 27, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc 96–4907 Filed 3–1–96; 8:45 a.m.]

BILLING CODE 3510–16–P

Grant of Certificate of Interim Extension of the term of U.S. Patent No. 4,062,848; REMERON

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Term Extension.

SUMMARY: The Patent and Trademark Office has issued a certificate under 35 U.S.C. § 156(d)(5) for a one-year interim extension of the term of U.S. Patent No. 4,062,848 that claims the active ingredient of the human drug product "REMERON."

FOR FURTHER INFORMATION CONTACT: Hiram A. Bernstein by telephone at (703) 305–9285; by mail marked to his attention and addressed to the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231; or by fax marked to his attention at (703) 308–6916.

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to 5 years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review. Under § 156, a patent is eligible for term extension only if regulatory review of the claimed product was completed before the original patent term expired.

On December 3, 1993, § 156 was amended by Pub. L. No. 103–179 to provide that if the owner of record of the patent or its agent reasonably expects the applicable regulatory review period to extend beyond the expiration of the patent, the owner or its agent may submit an application to the Commissioner of Patents and Trademarks for an interim extension of the patent term. If the Commissioner determines that, except for permission to market or use the product commercially, the patent would be eligible for a statutory extension of the patent term, the Commissioner shall issue to the applicant a certificate of interim extension for a period of not more than one year.

On November 13, 1995, Akzona Incorporated, owner of record in the Patent and Trademark Office of U.S. Patent No. 4,062,848, filed an application for interim extension of the term of this patent under 35 U.S.C. § 156(d)(5). The application states that the patent claims a compound comprising the active ingredient of the drug product "REMERON." The application states that the product is currently undergoing a regulatory review before the Food and Drug Administration for permission to market or use the product commercially. The original term of the patent expired on December 13, 1994. On December 5, 1994, the patent was granted a first interim extension under 35 U.S.C. § 156(d)(5) for a period of one year. Applicant now requests another interim extension of the term of the patent for a period of one year.

Review of the application indicates that except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. § 156. Since it is apparent that the regulatory review period may extend beyond the date of expiration of the patent, as extended by the first interim extension, a second and final interim extension of the patent term under 35 U.S.C. § 156(d)(5) is appropriate. Accordingly, an interim extension under 35 U.S.C. § 156(d)(5) of the term of U.S. Patent No. 4,062,848 has been granted for a period of one year from the extended expiration date of the patent term in effect.

Dated: February 21, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 96–4974 Filed 3–1–96; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF DEFENSE

Department of the Army

Rules, Security and Accessorial Services Governing the Movement of Department of Defense Freight Traffic by Air Carrier, Air Forwarder, Air Taxi

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command proposes to set forth rules, procedures, and accessorial service charge provisions to standardize all Department of Defense procedures for the movement of freight via air carrier, air forwarder, and air taxi. The publication, MTMC Freight Traffic Rules Publication No. 5 (MFTRP No. 5), will govern air shipments between locations in the Continental United States and to and from locations in Alaska, Hawaii, Puerto Rico, and Canada. Every air Standard Tender of Freight Services, MT Form 364R, issued on or after the effective date of MFTRP No. 5 must cite MFTRP No. 5 as the governing publication, in Section B, Paragraph g. of the tender. The draft publication may be obtained from the MTMC Homepage on the Internet at the following address: http://baileys-mtmcwww.army.mil. When the MTMC Homepage screen has loaded, access the "Functional Support" button on the screen. After that screen appears, access the "Global Traffic Management" button. Then access "Freight Regulations". Then access "MFTRP No. 5", and the draft regulation will load for you to highlight and copy to any word processor for reading and/or printing.

Written comments may be sent to Headquarters, MTMC; ATTN: MTOP–T–SR; Room 629; 5611 Columbia Pike; Falls Church, VA 22041–5050, to be received no later than April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Wade Rice, e-mail ricew@baileys–emh5.army.mil or Mr. Frank Lamm, lammf@baileys–emh5.army.mil, Headquarters, Military Traffic Management Command, ATTN: MTOP–T–ND, 5611 Columbia Pike, Falls Church, VA 22041–5050, telephone (703) 681–6103.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–4865 Filed 3–1–96; 8:45 am]

BILLING CODE 3710–08–M

Availability of Non-Exclusive, Exclusive or Partially Exclusive Licensing of Object Recognition Technology

AGENCY: Picatinny Arsenal, New Jersey.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses under patent application Serial Number 08/591,839 filed January 25, 1996, Docket No. DAR–28–95, by Paul D. Wilson entitled "Apparatus and Method of Automatic Recognition of Concealed Objects Using Multiple Energy Computer Tomography". Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Goldberg, Chief, Intellectual Property Law Division, AMSTA–AR–GCL, U.S. Army ARDEC, Picatinny

Arsenal, NJ 07806–5000, telephone number (201) 724–6950.

SUPPLEMENTARY INFORMATION: Written objections must be filed within 3 months from the date of publication of this notice in the **Federal Register**.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–4867 Filed 3–1–96; 8:45 am]

BILLING CODE 3710–08–M

Availability of U.S. Patents for Non-Exclusive, Exclusive or Partially Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Physical Sciences Directorate, and U.S. Army Communications-Electronics Command.

ACTION: Notice of availability.

SUMMARY: In accordance with 37 CFR 404.6 announcement is made of the availability of the following U.S. patents for non-exclusive, exclusive or partially exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

These patents cover a wide variety of technical arts including permanent magnet designs for various applications, power sources, phased array antennas, microstrip devices and applications, varying types resonators and oscillators for different applications, as well as many other different technical arts.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the Army Research Laboratory, Physical Sciences Directorate, and the Communications-Electronics Command wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Tunable heavy and light hole coupled bands in variable-strain quantum well semi-conductor heterostructure for novel opto-electronic devices.

Inventor(s): Mitra Dutta, Weimin Zhou, Hongen Shen, Jagadeesh Pamulapati.

Patent No.: 5,412,225—Issued 05/02/95.

Title: Millimeter wave ferrite switch utilizing a superconducting switching coil.

Inventor(s): Richard A. Stern, Richard W. Babbitt, Thomas E. Koscica.

Patent No.: 5,413,983—Issued 05/09/95.

Title: Line-width measurement of metallization coated with insulator on microelectronic circuits using energy dispersive X-ray analysis.

Inventor(s): Richard G. Sartore.

Patent No.: 5,414,265—Issued 05/09/95.

Title: Crystal resonator with multiple segmented lateral-field excitation electrodes.

Inventor(s): John A. Kosinski, Arthur Ballato, Yicheng Lu.

Patent No.: 5,414,322—Issued 05/09/95.

Title: Electric charge metering device and method.

Inventor(s): Bruce D. Jette.

Patent No.: 5,416,406—Issued 05/16/95.

Title: C-axis oriented high temperature superconductors deposited onto single crystals of gadolinium gallium garnet and method of making the same.

Inventor(s): Arthur Tauber, Steven C. Tidrow.

Patent No.: 5,418,215—Issued 05/23/95.

Title: Single electron device including clusters of pure carbon atoms.

Inventor(s): Doran C. Smith.

Patent No.: 5,420,746—Issued 05/30/95.

Title: Piezoelectric resonator.

Inventor(s): John A. Kosinski, Yicheng Lu.

Patent No.: 5,422,533—Issued 06/06/95.

Title: Toroidal permanent magnet solenoid.

Inventor(s): Herbert A. Leupold.

Patent No.: 5,422,618—Issued 06/06/95.

Title: Wide dynamic range detection circuit.

Inventor(s): William J. Skudera, Jr., Elic A. Mariani, Stuart D. Albert.

Patent No.: 5,424,674—Issued 06/13/95.

Title: High-power electrical machine with toroidal permanent magnets.

Inventor(s): Herbert A. Leupold.

Patent No.: 5,426,338—Issued 06/20/95.

Title: Preselector filter with tunable narrowband excision.

Inventor(s): Elio A. Mariani.

Patent No.: 5,426,402—Issued 06/20/95.

Title: Method of forming porous silicon.

Inventor(s): Jagadeesh Pamulapati, Hongen Shen, Mitra Dutta.

Patent No.: 5,427,648—Issued 06/27/95.

Title: Coupled quantum well optical intensity modulator for INP based optoelectronic integrated circuits and methods therefor.

Inventor(s): Milson Silva, Peter R. Herczfeld, Steven A. Malone, Arthur C. Paolella.

Patent No.: 5,428,225—Issued 06/27/95.

Title: Method of making radiation hardened quartz crystal oscillators.

Inventor(s): John R. Vig, Arthur Ballato.

Patent No.: 5,428,315—Issued 06/27/95.

Title: Fast turn-on, temperature stable dielectric resonator oscillator.

Inventor(s): Mohammad A. Mizan, Thomas P. Higgins, Dana J. Sturzebecher.

Patent No.: 5,428,326—Issued 06/27/95.

Title: Field augmented permanent magnet structures.

Inventor(s): Herbert A. Leupold, Anup Tilak.

Patent No.: 5,428,334—Issued 06/27/95.

Title: Field augmented permanent magnet structures.

Inventor(s): Herbert A. Leupold, Anup Tilak.

Patent No.: 5,428,335—Issued 06/27/95.

Title: Method for reducing synchronizing overhead of frequency hopping communications systems.

Inventor(s): George R. Oliva, Jr., Gregory Lorenzo, Kenneth J. Loffer.

Patent No.: 5,428,637—Issued 06/27/95.

Title: Target configurations for increasing the size of films prepared by laser ablation.

Inventor(s): Steven C. Tidrow, William D. Wilber, Arthur Tauber.

Patent No.: 5,432,313—Issued 07/11/95.

Title: High power electrical machinery.

Inventor(s): Herbert A. Leupold, John T. Rehberg.

Patent No.: 5,434,462—Issued 07/18/95.

Title: Yokeless permanent magnet solenoids.

Inventor(s): Herbert A. Leupold, Ernest Potenziani, II.

Patent No.: 5,438,308—Issued 08/01/95.

Title: Method and apparatus for depositing a refractory thin film by chemical vapor deposition.

Inventor(s): Thomas R. AuCoin, Richard H. Wittstruck, Jing Zhao, Peter A. Zawadzki, William R. Baarck, Peter E. Norris.

Patent No.: 5,443,647—Issued 08/22/95.

Title: Method for measuring thin film thickness.

Inventor(s): Donald W. Eckart, Luis M. Casas, Richard T. Lareau.

Patent No.: 5,443,684—Issued 08/22/95.

Title: Microelectronic 3D bipolar magnetotransistor magnetometer.

Inventor(s): Robert A. Lux, James F. Harvey, Charles D. Mulford, Jr., Louis C. Poli.

Patent No.: 5,446,307—Issued 08/29/95.

Title: Planar magnetically-tunable band-rejection filter.

Inventor(s): Elio A. Mariani.

Patent No.: 5,448,211—Issued 09/05/95.

Title: Optically injection-locked self-oscillating dual-gate mesfet mixer.

Inventor(s): Thomas P. Higgins, Dana J. Sturzebecher, Roland Cadotte, Jr., Arthur Paolella.

Patent No.: 5,450,227—Issued 09/12/95.

Title: Solid state electrochemical cell oxygen sensor.

Inventor(s): Wishvender K. Behl, Edward J. Plichta.

Patent No.: 5,451,310—Issued 09/19/95.

Title: Process for setting the frequency of a silicon microresonator.

Inventor(s): John R. Vig.

Patent No.: 5,451,425—Issued 09/19/95.

Title: Quick-mount measuring device for evaluating the electrical characteristics of ferroelectric materials.

Inventor(s): William C. Drach, Thomas E. Koscica, Richard W. Babbit.

Patent No.: 5,451,866—Issued 09/19/95.

Title: Variable gain optical detector.

Inventor(s): Arthur Paolella, Peter R. Herczfeld.

Patent No.: 5,453,630—Issued 09/19/95.

Title: Thin film of $MGIN_2O_4$ for use as an electrode in a ferroelectric device.

Inventor(s): William Wilber, Milind Bedekar.

Patent No.: 5,458,986—Issued 10/17/95.

Title: Solid State electrochemical cell including lithium iodide as an electrolyte additive.

Inventor(s): Wishvender K. Behl, Edward J. Plichta.

Patent No.: 5,458,995—Issued 10/17/95.

Title: Negative absolute conductance device and method.

Inventor(s): Mitra Dutta, Michael A. Stroscio, Vladimir V. Mitin, Rimvydas Mickevicius.

Patent No.: 5,459,334—Issued 10/17/95.

Title: High temperature sodium-graphite electrochemical cell.

Inventor(s): Edward J. Plichta, Wishvender K. Behl.

Patent No.: 5,462,818—Issued 10/31/95.

Title: Passive saw-id tags using a chirp transducer.

Inventor(s): Elio A. Mariani.

Patent No.: 5,469,170—Issued 11/21/95.

Title: Monitoring phase characteristics of BPSK and CW signals.

Inventor(s): William J. Skudera, Jr.

Patent No.: 5,469,173—Issued 11/21/95.

Title: Dual-frequency microstrip antenna with inserted strips.

Inventor(s): Vahakn Nalbandian, Choon S. Lee.

Patent No.: 5,471,221—Issued 11/28/95.

Title: Radiation sensor dosimetry circuit.

Inventor(s): Stanley Kronenberg, Arnold Bard.

Patent No.: 5,477,050—Issued 12/19/95.

Title: Infrared hot electron transistor with a superlattice base.

Inventor(s): Kwong-Kit Choi.

Patent No.: 5,477,060—Issued 12/19/95.

Title: Molten salt electrochemical cell including a alkali metal intercalated petroleum coke as the anode.

Inventor(s): Edward J. Plichta, Wishvender K. Behl.

Patent No.: 5,478,666—Issued 12/26/95.

Title: System and method for calibrating a ferroelectric phase shifter.

Inventor(s): Thomas E. Koscica, Richard W. Babbitt, William C. Drach.

Patent No.: 5,479,139—Issued 12/26/96.

Title: Real time imaging of acoustic wave devices.

Inventor(s): John G. Gualtieri.

Patent No.: 5,479,375—Issued 12/26/95.

Title: High power ultra broadband antenna.

Inventor(s): Erik H. Lenzing, Harry F. Lenzing, Charles D. Hechtman.

Patent No.: 5,479,180—Issued 12/26/96.

Title: Quantum grid infrared photodetector.

Inventor(s): Kwong-Kit Choi.

Patent No.: 5,485,015—Issued 01/16/96.

Title: Spherical magnet structure for use in synchrotron radiation source.

Inventor(s): Herbert A. Leupold.

Patent No.: 5,486,801—Issued 01/23/96.

Title: Spherical magnet structure and use thereof in synchrotron radiation source.

Inventor(s): Herbert A. Leupold.

Patent No.: 5,486,802—Issued 01/23/96.

Title: High voltage direct current power supply with feedback control and circuit protection.

Inventor(s): Thomas E. Koscica, William C. Drach.

Patent No.: 5,486,992—Issuance 01/23/96.

Title: Low cost automated system for evaluating the electrical characteristics of ferroelectric materials.

Inventor(s): William C. Drach, Richard W. Babbitt, Thomas E. Koscica.

Patent No.: 5,487,014—01/23/96.

Title: Wireless thermally insulated crystal oscillator having power and signals coupled through transceivers.

Inventor(s): John R. Vig.

Patent No.: 5,488,333—01/30/96.

Title: Infrared imaging array based on temperature driven anisotropic optical absorption.

Inventor(s): Gerald J. Iafrate, Mitra Dutta, Paul H. Shen, Michael A. Stroscio.

Patent No.: 5,488,266—Issued 1/30/96.

Title: Magic sphere providing distortion-free access to a large internal working space containing a uniform high-intensity magnetic field.

Inventor(s): Herbert A. Leupold.

Patent No.: 5,491,459—Issued 02/13/96.

Title: Photon-triggered RF radiator having discrete energy storage and energy radiation sections.

Inventor(s): Anderson H. Kim, Robert J. Youmans, Stephen E. Saddow, Louis J. Jasper, Jr., Maurice Weiner.

Patent No.: 5,491,490—Issued 02/13/96.

Title: Solid state electrochemical cell for performing electrochemical measurements on a solid electrolyte at high temperatures.

Inventor(s): Wishvender K. Behl, Edward J. Plichta.

Patent No.: 5,492,610—Issued 02/20/96.

Title: Electrochemical cell.

Inventor(s): Wishvender K. Behl, Edward J. Plichta.

Patent No.: 5,494,763—Issued 02/27/96.

Title: Solution rejection filter.

Inventor(s): Stuart D. Albert, William J. Skudera, Jr.

Patent No.: 5,495,253—Issued 02/27/96.

FOR FURTHER INFORMATION OR COPIES OF THE PATENTS LISTED CONTACT:
Mr. William H. Anderson, United States Army Communications-Electronics Command, ATTN: AMSEL–LG–L, Fort Monmouth, New Jersey 07703–5010 (908) 532–4112.

Gregory D. Showalter,
Army Federal Register Liaison Officer.

[FR Doc. 96–4673 Filed 3–1–96; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 3, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 27, 1996.

Gloria Parker,
Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Revision
Title: Applications foe Seven Foreign Language and Area Studies Programs
Frequency: Annually
Affected Public: Individuals or households; Not-for-profit institutions
Annual Reporting and Recordkeeping Hour Burden:
Responses: 575
Burden Hours: 55,640
Abstract: Collect program and budget information to evaluate grant applications by institutions of higher education, nonprofit organizations and individuals. Collected information will be used to make grant awards under seven international education programs.

[FR Doc. 96–4901 Filed 3–1–96; 8:45 am]
BILLING CODE 4000–01–P

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Education Research Policy and Priorities Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE AND TIME: March 21, 1996, 8 a.m. to 5 p.m.; March 22, 1996, 9 a.m. to 2 p.m.

ADDRESSES: On March 21, the meeting will be held in the Stauffer Auditorium, Hoover Institution, Stanford University, Standford, CA 94305. On March 22, the meeting will be held in the John Hemphill Board Room, Far West Laboratory for Educational Research and Development/WestEd, 730 Harrison Street, San Francisco, CA 94107–1242.

FOR FURTHER INFORMATION CONTACT: John Christensen, Designated Federal Official, National Educational Research Policy and Priorities Board, 555 New Jersey Avenue, NW, Washington, DC 20208–7564. Telephone: (202) 219–2065; Fax: (202) 219–1528. Internet: John—Christensen@ed.gov.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (the Act). The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement (the Office) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The Act directs the Board to provide guidance to the Congress in its oversight of the Office; to advise the United States on the Federal educational research and development effort; and to solicit advice from practitioners, policymakers, and researchers to define research needs and suggestions for research topics. The meeting of the Board is open to the public.

The agenda for both days will provide an opportunity for the Board to solicit recommendations from education researchers, teachers, school administrators and others on priorities for the investment of the resources of the Office of Educational Research and Improvement for the next 5-, 10-, and 15-year periods. This meeting continues the Board's program of consultation with the public prior to the publication of a Research Priorities Plan. A final agenda will be available from the Board's office on March 12, 1996.

Records are kept of all Board proceedings, and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 555 New Jersey Avenue, NW., Washington, DC 20208–7564.

Dated: February 27, 1996.

Sharon P. Robinson,
Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 96–4938 Filed 3–1–96; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP94–260–003]

Algonquin Gas Transmission Company; Notice of Amended Application

February 27, 1996.

Take notice that on February 20, 1996, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP94–260–003 an application pursuant to Section 7(c) of the Natural Gas Act to amend its authorized initial rate under Rate Schedule AFT–CL, for service to Canal Electric Company and Montaup Electric Company (collectively referred to as Canal Electric) to reflect increased estimated cost of facilities not yet in service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Algonquin states that on April 19, 1995, the Commission authorized Algonquin to construct and operate approximately 4 miles of 18-inch pipeline, a new meter station and appurtenant facilities and to provide firm transportation service to Canal Electric of up to 75,000 MMBtu per day under a separately-stated incremental rate schedule under Algonquin's Part 284 open-access transportation certificate.[1] Algonquin indicates that the estimated cost of the facilities has risen from approximately $7.5 million to approximately $8.3 million

Algonquin asserts that since it filed its application certain events have contributed to the increased estimated cost for these facilities. Algonquin states that actual experience indicates that company and consulting cost to acquire permits and other approvals will be higher than expected. Algonquin also states that the estimated installation cost is also higher in large part due to changed construction schedules and a change to the proposed in-service date.

Algonquin now seeks to charge an initial rate consisting of a one-part maximum monthly demand charge of $2.4132 per MMBtu, effective upon the commencement of service. Algonquin claims that this initial rate is based upon the same general methodology approved in the April 19, 1995 order and upon the settlement cost of service parameters approved in Algonquin's rate case in Docket No. RP93–14.

Algonquin also states that, in addition to the change for the estimated facility cost, its Exhibit P to the March 2, 1994 application contained an erroneous assumption that results in a minor change to the authorized initial rate, when corrected. Algonquin contends that in the original filing it was assumed that the meter station would be located on land owned in fee instead of under easement. Algonquin further states the Exhibit P included in the amended application contains workpapers showing the effect on the authorized rate if land cost is correctly reflected in the rate calculation.

Additionally, Algonquin states that the pipeline and related facilities are proposed to be placed in service on or around April 1, 1996, to synchronize with Canal Electric's start-up requirements.

Any person desiring to be heard or to make any protest with reference to said amended application should on or before March 19, 1996, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Algonquin to appear or be represented at the hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 96–4893 Filed 3–1–96; 8:45 am]
BILLING CODE 6717–01–M

[1] 71 FERC ¶ 61,060 (1995).

[Docket No. RP96–147–000]

Equitrans, L.P., Notice of Proposed Changes in FERC Gas Tariff

February 27, 1996.

Take notice that on February 23, 1996, Equitrans, L.P., (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following proposed tariff sheets, with an effective date on March 1, 1996:

Third Revised Sheet Nos. 41–43
Third Revised Sheet Nos. 47–49
Third Revised Sheet Nos. 53–55
First Revised Sheets No. 220
Original Sheet Nos. 220A–220C
First Revised Sheets Nos. 223–224
Second Revised Sheet No. 225

Equitrans states that it is making this filing in accordance with the Commission's "Order on Storage Operations Report" issued on January 23, 1996. 74 FERC ¶ 61,054. Equitrans proposes to implement late winter deliverability ratchets, on the peaking storage services which Equitrans' offers under Rate Schedules 10SS, 30SS, and 60SS. Equitrans states that withdrawals will be reduced first for Rate Schedule 10SS service at a total inventory level of 44,140 MMcf followed by Rate Schedule 30SS withdrawals at an inventory level of 37,000 MMcf, and finally Rate Schedule 60SS withdrawals at a total inventory level of 31,990 MMcf.

Equitrans requests a waiver of the Commission's notice requirements to permit the tariff sheets to take effect on March 1, 1996.

Any person desiring to be heard or to protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Steet, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

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inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4894 Filed 3–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10867–001 Indiana]

Holliday Historic Restoration Associates; Teleconference Meeting Notice

February 27, 1996.

A. Teleconference Meeting for the Holliday Project will be held on March 14, 1996, at 10:00 a.m. to discuss the ownership/leasee relationship between Holliday Historic Restoration Associates and PSI Energy, Inc. as it relates to use of the Holliday dam for project operation.

B. The following parties will participate in the teleconference: FERC staff, Holliday Historic Restoration Associates, PSI Energy, Inc.

C. Any interested party who wants to participate in this teleconference, please call Ms. Mary Golato (202) 219–2804 no later than March 7, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4891 Filed 3–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–4–001]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 27, 1996.

Take notice that on February 16, 1996, Mid Louisiana Gas Company, (Mid Louisiana) filed the following tariff sheets to be included in its FERC Gas Tariff, Third Revised Volume No. 1:

Original Sheet No. 0

Mid Louisiana states that the purpose of the filing of the Revised Tariff Sheet is to correct the Tariff Sheet Revision numbering sequence (pagination error).

Pursuant to Section 154.7(d) of the Commission's Regulations, Mid Louisiana respectfully requests waiver of § 154.207, Notice requirements, as well as any other requirement of the Regulations in order to permit the tendered tariff sheet to become effective January 25, 1996, as submitted.

Mid Louisiana states that, in compliance with § 154.208, paper copies of the Revised Tariff Pages and this filing were served upon its jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to protest said compliance filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this compliance filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4897 Filed 3–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–6–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 27, 1996.

Take notice that on February 15, 1996, National Fuel Gas Supply Corporation (National) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheets Nos. 232 and 233, proposed to become effective on March 18, 1996.

National's proposed tariff sheets are filed to comply with the requirement in Section 250.16 of the Commission's Regulations (18 CFR Section 250.16) that pipelines which conduct transportation transactions with affiliated marketing or brokering entities must update and refile, to reflect changes, the tariff provisions required by that regulation.

National states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). All such motions to intervene and protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4896 Filed 3–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–409–004]

Northwest Pipeline Corporation; Notice of Compliance Filing

February 27, 1996.

Take notice that on February 20, 1996, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revision Volume No. 1, the following tariff sheets, to become effective February 1, 1996:

Second Substitute Fifth Revised Sheet No. 375
Second Substitute Fourth Revised Sheet No. 376
Second Substitute Fifth Revised Sheet No. 377

Northwest states that the purpose of this filing is to comply with the Commission's directives in its order on Motion Filing issued February 7, 1996 in Docket No. RP95–409–003. 74 FERC ¶ 61,115. The Commission directed Northwest to file revised tariff sheets within 15 days of this Order to include in its Index of Customers shippers holding permanent capacity acquired through capacity release transactions.

Northwest states that it began including holders of permanent capacity acquired through capacity release transactions in its Index of Shippers (now called the Index of Customers) in 1994. Accordingly, on December 28, 1995, the date that Northwest submitted the last Index of Customers, it believed the composition of the Index of Customers was already in compliance with the Commission's February 7, 1996 Order.

Northwest states that it had incomplete information on two new permanent capacity release agreements at the time that the Index of Customers was being compiled. Northwest is proposing to add these two agreements at this time.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4890 Filed 3–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–198–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

February 27, 1996.

Take notice that on February 16, 1996, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP96–198–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point, including measurement and appurtenant facilities for service to Alabama Gas Corporation (Alagasco), under Southern's blanket certificate issued in Docket No. CP82–406–000 pursuant to Section 7 of Natural Gas Act, all as more fully set forth in request that is on file with the Commission and open to public inspection.

Southern proposes to construct and operate certain measurement and other appurtenant facilities to provide transportation service to Alagasco at a new delivery point so Alagasco may provide natural gas service to International Paper's manufacturing plant in Dallas County, Alabama. Southern will locate the facilities around Mile Post 187.265 on its 26-inch South Main Loop Line in Autauga County, Alabama. The estimated cost of the construction and installation of the measurement facilities is $297,200 and will be reimbursed to Southern by Alagasco. Southern states it will transport gas on behalf of Alagasco under its existing Service Agreements pursuant to Southern's Rate Schedules FT and IT. Alagasco will assign a Maximum Daily Delivery Quantity of 2 Mcf per day to the new delivery point from its existing Tuscaloosa Area Delivery Point. Alagasco does not propose to add any transportation demand to its firm service due to the additional delivery point. Southern states that there is sufficient capacity to accomplish deliveries without detriment or disadvantage to its other customers.

Any person or Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4892 Filed 3–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL96–35–000]

Wabash Valley Power Association, Inc. v. Northern Indiana Public Service Company, Inc.; Notice of Filing

February 20, 1996.

Take notice that on February 14, 1996, Wabash Power Association, Inc. (Wabash Valley) tendered for filing its complaint against Northern Indiana Public Service Company (NIPSCO) alleging that NIPSCO's transmission and distribution rates to Wabash are excessive, unjust and unreasonable.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 21, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint shall be due on or before March 21, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4898 Filed 3–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG96–47–000, et al.]

NFR Power, Inc., et al.; Electric Rate and Corporate Regulation Filings

February 26, 1996.

Take notice that the following filings have been made with the Commission:

1. NFR Power, Inc.

[Docket No. EG96–47–000]

On February 21, 1996, NFR Power, Inc. ("NFR Power"), 478 Main Street, Buffalo, New York 14202, filed with the Federal Energy Regulatory Commission ("Commission") an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Comment date: March 19, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Louis Dreyfus Electric Power Inc. and Duke/Louis Dreyfus L.L.C.

[Docket No. EC96–12–000]

Take notice that on February 22, 1996, Louis Dreyfus Electric Power Inc. (Louis Dreyfus) and Duke/Louis Dreyfus L.L.C. (Duke/Louis Dreyfus) filed an application for permission to transfer Louis Dreyfus' wholesale power contracts to Duke/Louis Dreyfus.

Comment date: March 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Illinois Power Company

[Docket No. ER96–1101–000]

Take notice that on February 20, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which UtiliCorp United Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of January 29, 1996.

Comment date: March 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Public Service Corporation

[Docket No. ER96–1102–000]

Take notice that on February 20, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 1 to Supplement No. 10 to Exhibit 1–F to its Service Agreement No. 1 for service to Eagle River, Wisconsin, pursuant to WPSC's Tariff Original

Volume No. 2. The new Supplement No. 1 to Supplement No. 10 makes provision for modification of an existing delivery point for service to Eagle River. WPSC states that the filing proposes no other changes to the terms and conditions under which WPSC provides service to Eagle River.

WPSC asks that the 60 day notice requirement be waived and that Supplement No. 1 to Supplement No. 10 be allowed to retroactively become effective on February 1, 1996. WPSC states that Eagle River consents to and supports this requested effective date. WPSC further states that copies of the filing have been served upon Eagle River and the Wisconsin Public Service Commission.

Comment date: March 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Minnesota Power & Light Company

[Docket No. ER96–1103–000]

Take notice that on February 20, 1996, Minnesota Power & Light Company (MP), tendered for filing Amendment No. 2 to its Electric Service and Interchange Agreement with Dahberg Light and Power Company, a Wisconsin Corporation (Dahberg). MP requests waiver of the Commission's notice requirements to permit an effective date of January 1, 1996.

MP states that the amendment extends the term of the Agreement to December 31, 2010, and a weekday on-peak period to allow Dahberg to more efficiently control and operate its system.

Comment date: March 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Company Services, Inc.

[Docket No. ER96–1104–000]

Take notice that on February 20, 1996, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Southern Companies), tendered for filing an Interchange Service Contract between Southern Companies and NoRam Energy Services, Inc. The Interchange Service Contract establishes the terms and conditions of power supply, including provisions relating to service conditions, control of system disturbances, metering and other matters related to the administration of the agreement.

Comment date: March 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER96–1105–000]

Take notice that on February 20, 1996, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Southern Companies), tendered for filing an Interchange Service Contract between Southern Companies and Western Gas Resources Power Marketing, Inc. The Interchange Service Contract establishes the terms and conditions of power supply, including provisions relating to service conditions, control of system disturbances, metering and other matters related to the administration of the agreement.

Comment date: March 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER96–1106–000]

Take notice that on February 20, 1996, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Southern Companies), tendered for filing an Interchange Service Contract between Southern Companies and Valero Power Services Company. The Interchange Service contract establishes the terms and conditions of power supply, including provision relating to service conditions, control of system disturbances, metering and other matters related to the administration of the agreement.

Comment date: March 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Interstate Power Company

[Docket No. ER96–1107–000]

Take notice that on February 20, 1996, Interstate Power Company, tendered for filing a Notice of Cancellation of its Municipal Electric Wholesale Agreement with the City of Lawler filed with FERC under Original Volume No. 1.

Comment date: March 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Interstate Power Company

[Docket No. ER96–1108–000]

Take notice that on February 20, 1996, Interstate Power Company, tendered for filing a Notice of Cancellation of its Rate Schedule FERC No. 0110.

Comment date: March 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Pacific Gas and Electric Company

[Docket No. ER96–1109–000]

Take notice that on February 20, 1996, Pacific Gas and Electric Company (PG&E), tendered for filing a Letter of Agreement No. 96SNR00065 (1996 Rate Settlement Agreement) with the Western Area Power Administration (Western). The 1996 Rate Settlement Agreement changes rates for certain transmission services provided to Western under Contracts Nos. 14–06–200–2946A DE–AC65–80WP59000, and DE–MS65–63WP–59055, for the period April 1, 1996 through March 31, 2001.

Comment date: March 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Edison Company

[Docket No. ER96–1110–000]

Take notice that on February 20, 1996, Commonwealth Edison Company (ComEd), submitted two Service Agreements, establishing Delhi Energy Services, Inc. (DESI), dated January 2, 1996, and City of Tallahassee (Tallahassee), dated December 4, 1995, as customers under the terms of ComEd's Power Sales Tariff PS–1 (PS–1 Tariff). ComEd also submitted for filing two Service Agreements, establishing Koch Power Services, Inc. (Koch), dated January 19, 1996, and City of Tallahassee (Tallahassee), dated December 4, 1995, as customers under the terms of ComEd's Flexible Transmission Service Tariff FTS–1 (FTS–1 Tariff). The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2, and the FTS–1 Tariff as FERC Electric Tariff, Second Revised Volume No. 3.

ComEd requests an effective date of January 20, 1996, for all four Service Agreements and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon DESI, Tallahassee, Koch and the Illinois Commerce Commission.

Comment date: March 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER96–1111–000]

Take notice that on February 20, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Point-to-Point Transmission Service Tariff (the Tariff) entered into between Cinergy and Koch Power Services, Inc.

Comment date: March 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4926 Filed 3–1–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2438–007–NY]

Seneca Falls Power Corporation; Notice of Availability of Draft Environmental Assessment

February 27, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Waterloo and Seneca Falls Hydroelectric Project, located in Yates, Schuyler, and Ontario Counties, New York, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing licensed project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street N.E., Room 1–A, Washington, D.C. 20426. Please affix "Waterloo and Seneca Falls Hydroelectric Project No. 2438" to all comments. For further information, please contact Tom Dean at (202) 219–2778.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4895 Filed 3–1–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ASM–FRL–5432–7]

Agency Information Collection Activities Up for Renewal: OMB Control Number 2060–0007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

REQUEST FOR COMMENTS: Pre-Certification and Testing Exemption Reporting and Record keeping Requirements for motor vehicle and motor vehicle engines.

SUMMARY: In compliance with the paperwork Reduction Act (44 U.S.C. 3506(c)(2)), this notice announces that the Information Collection Request listed below is coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before May 3, 1996.

ADDRESSES: Vehicle Programs and Compliance Division, 401 M Street SW., (6405J), Washington, DC 20460.

FOR FURTHER INFORMATION OR COPIES: Interested persons may request a copy of the ICR, without charge, by writing, faxing, or phoning Anthony Tesoriero, Vehicle Programs and Compliance Division, U.S. EPA, 401 M Street SW., (6405J), Washington, DC 20460; (202) 233–9327, Fax (202) 233–9596.

SUPPLEMENTARY INFORMATION:

Affected Entities: Parties potentially affected by this action include: manufacturers of new motor vehicles or engines, manufacturers of parts or equipment that is used on motor vehicles or engines, fuel refiners, manufacturers in the business of importing, modifying, or testing uncertified vehicles for resale, and Independent Commercial Importers (ICIs).

Title: Pre-Certification and Testing Exemptions Reporting and Record keeping Requirements, OMB No. 2060–0007, Expiration Date 3/31/96.

Abstract: Manufacturers of new motor vehicles or engines, manufacturers of vehicle or engine parts, fuel refiners, manufacturers in the business of importing, modifying, or testing uncertified vehicles for resale, and Independent Commercial Importers (ICIs) will report and keep records of applications for pre-certification and testing exemptions. They will submit reports as part of their testing programs when an uncertified vehicle or engine is required. EPA will use this information to ensure that uncertified vehicles or engines from the pre-certification program or the testing exemption program are introduced into commerce only on a temporary basis for legitimate purposes.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

BURDEN STATEMENT
[Estimated Avg]

Activity	Burden hours	Cost per response	Frequency	No. of respondents
A. Pre-Certification Exemptions:				
1. Manufacturers	3	$180.00	1	40
2. ICI	5.25	315.50	1	25
B. Testing Exemptions:				
1. Manufacturers	40	2,400.00	1	15
2. NonManufacturers/Importation	3	180.00	1	55
3. NonManufacturers/No Importation	5.25	315.50	1	5

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing, and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 23, 1996.

Robin Miles-Mclean,

Acting Director, Office of Mobile Sources.

[FR Doc. 96–4956 Filed 3–1–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5433–7]

Agency Information Collection Activities Up for Renewal; Request for Comments: Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program—OMB Control Number: 2060–0060

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3506(c)(2)), this notice announces that the Information Collection Request (ICR) listed below is coming up for renewal. Before submitting the renewal package to the office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before May 3, 1996.

ADDRESSES: Requests for a copy of the ICR should be sent to Chestine Payton, U.S. EPA, 401 M Street, S.W. (6405J), Washington, D.C. 20460. Please include a daytime telephone number, and a current mailing address with any request.

FOR FURTHER INFORMATION CONTACT: Chestine Payton, Vehicle Programs and Compliance Division, U.S. EPA, 401 M Street S.W.(6405J), Washington, DC 20460; (202) 233–9328, FAX (202) 233–9596.

SUPPLEMENTARY INFORMATION: Affected entities: Parties potentially affected by this action are those which are automotive manufacturers and builders of automotive after market parts.

Title: Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program, OMB# 2060–0060, Expiration date 4/30/96.

Abstract: The information required is the minimal necessary to ensure that the part to be certified actually performs as required. Without this information EPA would have no way to control and audit fraudulent or marginal submissions. Since information is only collected when the part is tested to be certified, if no information is collected at the time of testing there will be no means of showing later that the part was properly designed. EPA would not be able to control the self-certification of parts and this could, therefore, result in certified parts that cause vehicles to fail emissions standards.

The information collected is part of the requirement of Section 207(a) of the Clean Air Act, and as described in section 40 CFR Part 85, Subpart V. This is a voluntary certification program and there is no requirement that any manufacturer participate.

The total estimated involvement of the aftermarket part industry (replacement and specialty parts) is 2 parts per year.

The estimation of respondent burden in hours is based on Certification burden estimates for vehicle manufacturers compiled in the April 1985 Information Collection Report for the basic vehicle certification program (RE: the April 1985 report). Estimation of respondent burden will be broken down into three parts: reporting Burden, Testing Burden and Recordkeeping Burden. A total burden estimate will be compiled from these three categories.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA's burden estimated for this information collection are broken down into three parts: reporting, testing, and recordkeeping burden. EPA estimates that the reporting burden will be 116 hours, testing 260 hours and annual recordkeeping 3 hours. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB contol numbers for EPA's regulations are displayed in 40 CFR Part 9.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: February 23, 1996.

Robin Miles-McLean,

Acting Director, Office of Mobile Sources.

[FR Doc. 96–4959 Filed 3–1–96; 8:45 am]

BILLING CODE 6560–50–P

[AMS-FRL–5432–6]

Agency Information Collection Activities Up for Renewal; Emission Defect Information Report; Emission Recall Audit Program; and Emission Control Defect Survey

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before May 3, 1996.

ADDRESSES: Vehicle Programs & Compliance Division (6405J), 401 M Street, SW, Washington, D.C. 20460. Interested persons may request a copy of the ICRs, without charge, by writing, faxing, or phoning the contact persons below.

FOR FURTHER INFORMATION CONTACT: ICR–1: Steve Albrink, Office of Mobile Sources, Vehicle Programs & Compliance Division, (202) 233–9003, (202) 233–9596 fax).

ICR–2: Kerrin Bressant, Office of Mobile Sources, Vehicle Programs & Compliance Division, (202) 233–9291, (202) 233–9596 (fax).

ICR–3: Sonny Kakar, Office of Mobile Sources, Vehicle Programs & Compliance Division, (202) 233–9467, (202) 233–9596 (fax), E-mail address: kakar.sonny@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Request for Comments: This notice requests comments on three different Information Collection Activities (ICRs) related to highway and nonroad motor vehicles and other engines for which the Agency plans to request renewal of their authorizations under the Paperwork Reduction Act. The different ICRs will be referred to as ICR–1, ICR–2 and ICR–3 in the succeeding sections below.

ICR–1: Emission defect information and voluntary emissions recall reporting and record keeping requirements for manufacturers of on-highway light-duty motor vehicles, light-duty trucks, and heavy-duty engines; and large nonroad compression ignition engines; and nonroad spark-ignition engines at and below 19 kilowatts.

ICR–2: Emission recall audit program voluntary request for information to determine whether manufacturers are in compliance with recall procedural regulations, and to determine the cause of ineffectual recall campaigns.

ICR–3: Vehicle emission control defect survey questionnaire reporting and record keeping requirements for owners and repair facilities of on-highway light-duty motor vehicles, light-duty trucks, heavy-duty engines; and large non-road compression ignition engines.

Information Collection Activities Up for Renewal: ICR–1: OMB No. 2060–0048.

ICR–2: OMB No. 2060–0046.

ICR–3: OMB No. 2060–0047.

Affected Entities: ICR–1: Entities potentially affected by this action are manufacturers of on-highway light-duty vehicles, light-duty trucks, and heavy-duty engines; manufacturers of large nonroad compression ignition engines; and manufacturers of small nonroad spark-ignition engines.

ICR–2: Entities potentially affected by this action are individual vehicle owners of on-highway light-duty vehicles and light-duty trucks.

ICR–3: Entities potentially affected by this action are owners and repair facilities of on-highway light-duty vehicles, light-duty trucks, heavy-duty engines, and large non-road compression ignition engines.

Titles: ICR–1: Emission Defect Information Reports and Voluntary Emissions Recall Reports (OMB # 2060–0048, approved through 5/31/96.)

ICR–2: Emission Recall Audit Program Owner Questionnaire (OMB # 2060–0046, approved through 5/31/96.)

ICR–3: Vehicle Emission Control Defect Survey Questionnaire for on-highway light-duty motor vehicles, light-duty trucks, heavy-duty engines, and large non-road compression ignition engines. (OMB # 2060–0047, approved through 5/31/96.)

Abstracts: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

EPA would like to solicit comments to:

(i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodologies and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of the appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ICR–1: Some manufacturers of motor vehicles and certain engines are required to submit two different reports under 40 CFR Part 85, Subpart T, Part 89, Subpart I and Part 90, Subpart I. These reports are only required where certain conditions involving emission defects or voluntary recalls occur. The "defect information report" (DIR) contains data regarding the class or engine family and number of vehicles or engines on which a defect has been found, and a description of the defect and its effects on vehicle or engine performance and emissions. The Agency uses the DIR to help identify emission-related defects or classes of vehicles or engines which may not comply with federal emissions standards.

The "voluntary emission recall" (VER) report contains data on voluntary recall campaigns conducted by manufacturers, including the procedures used by the manufacturers to conduct voluntary recall campaigns, the identification of vehicles or engines affected by the campaign, and the repair to be completed on recalled vehicles or engines; progress or quarterly updates of the VER reports track the number of vehicles or engines repaired. The Agency uses the VER report and progress reports to ensure that manufacturers are following acceptable procedures when conducting recalls and to track the progress and effectiveness of voluntary recall campaigns.

ICR–2: The Vehicle Compliance Programs Group (VCPG), Vehicle Programs and Compliance Division (VPCD), Office of Mobile Sources (OMS), Office of Air and Radiation (OAR), uses this information collection to enforce the Recall and Defect Reporting Regulations of 40 CFR Part 85, Subparts S and T. Individual owners of on-road light-duty motor vehicles and light-duty trucks may be asked to provide information on vehicles that have been recalled. The Vehicles Compliance Programs Group (VCPG) uses such information to evaluate the effectiveness of various aspects of a recall campaign, to determine whether manufacturers are in compliance with

recall procedural regulations, and to determine the cause of ineffective recall campaigns. The information is obtained from individuals through a questionnaire administered by telephone interviews or in written format. The information collection effort will involve approximately 300 respondents at a cost of $900.00 over a one-year period.

The projected annual cost burden per respondent is as follows: reading or listening to questions, burden cost is $1.60. Responding to questions (verbally or in writing), burden cost is $1.40.

The total annual hour burden for respondents is 75 hours at a total annual cost of $900.

ICR–3: The Vehicle Compliance Programs Group (VCPG) of the Vehicle Programs and Compliance Division (VPCD) and the Engine Compliance Programs Group (ECPG) of the Engine Programs and Compliance Division (EPCD), Office of Mobile Sources (OMS), Office of Air and Radiation (OAR), uses this information collection to gather additional data to supplement in-use testing programs as well as provide possible evidence in support of EPA's position during an administrative hearing. When EPA orders a manufacturer to recall a certain class of motor vehicles (in accordance with Clean Air Act § 207(c)) but the manufacturer disagrees with EPA's findings, the manufacturer may request an administrative hearing. During such a hearing, EPA must make a detailed presentation of facts showing that the class of vehicles in question should indeed be recalled. Facts to be included in such a presentation consist of information on the maintenance and performance history of vehicles belonging to the class. Dealerships, fleets, or individual owners of motor vehicles or engines may be asked to provide information on the vehicles or engines at issue. The information is obtained through a questionnaire administered by telephone interviews with individual vehicle owners, and by telephone or in-person interviews with dealerships or fleets.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting the existing ways to comply with any previously applicable instructions and requirements; training personnel to be able to respond to a collection of information; searching data sources; completing and reviewing the collection of information; and transmitting or otherwise disclosing the information.

ICR–1: Tables 1, 2 and 3 below represent the estimated annual burden for this ICR.

TABLE 1.—ON-HIGHWAY LIGHT-DUTY MOTOR VEHICLE, LIGHT-DUTY TRUCK, AND HEAVY-DUTY ENGINE MANUFACTURER BURDEN HOURS AND COSTS

Collection activity	Defect information reports	Voluntary emission recall (VER) reports/ records	VER quarterly (progress) reports
Ave. Burden Hours/Response	14	11.5	1.5
Estimated Frequency of Response	2.8	2.9	17.4
Total Burden Hours Per Respondent	39.2	33.4	26.1
Estimated No. of Respondents	15	13	13
Total Burden Hours	588	434.2	339.3
Total Cost Per Respondent ($)	2,290	1,427	1,375
Total Cost ($)	34,350	18,551	17,875

TABLE 2.—LARGE NON-ROAD COMPRESSION IGNITION ENGINE MANUFACTURER BURDEN HOURS AND COSTS

Collection activity	Defect information reports	Voluntary emission recall (VER) reports/ records	VER quarterly (progress) reports
Ave. Burden Hours/Response	14	11.5	1.5
Estimated Frequency of Response	1	1	6
Total Burden Hours Per Respondent	14	11.5	9
Estimated No. of Respondents	5	5	5
Total Burden Hours	70	57.5	45
Total Cost Per Respondent ($)	818	492	474
Total Cost ($)	4,090	2,460	2,370

TABLE 3.—SMALL NONROAD SPARK IGNITION ENGINE MANUFACTURER BURDEN HOURS AND COSTS

Collection activity	Defect information reports	Voluntary emission recall (VER) reports/ records	VER progress reports
Ave. Burden Hours/Response	14	11.5	1.5
Estimated Frequency of Response	1	1	1
Total Burden Hours Per Respondent	14	11.5	1.5
Estimated No. of Respondents	5	5	5
Total Burden Hours	70	57.5	7.5

TABLE 3.—SMALL NONROAD SPARK IGNITION ENGINE MANUFACTURER BURDEN HOURS AND COSTS—Continued

Collection activity	Defect information reports	Voluntary emission recall (VER) reports/ records	VER progress reports
Total Cost Per Respondent ($)	818	492	79
Total Cost ($)	4,090	2,460	395

ICR–2: The projected hour burden is as follows: reading or listening to questions, burden hours = 8 minutes. Responding to questions (verbally or in writing), burden hours = 7 minutes. The frequency of response is once per respondent per year. The estimated number of likely respondents is 300. The total burden for all respondents is 75 hours.

The projected *cost* burden is as follows: reading or listening to questions, burden cost = $1.60. Responding to questions (verbally or in writing), burden cost = $1.40. The total cost for all respondents is $900.

ICR–3: EPA's burden estimates for this collection are broken down according to the respondent burden and cost. EPA may perform two surveys annually, one of manufacturers of on-highway light-duty motor vehicles or light-duty trucks, and the other of heavy-duty engines or large non-road compression ignition engines, which will require either telephone or in-person interviews with one hundred (100) individual vehicle owners or dealerships or fleets per survey. A burden estimate of twenty (20) minutes per individual vehicle owner is based on agency experience with similar questions asked of individuals as part of the in-use recall testing program. A burden estimate of thirty (30) minutes per dealership or fleet is based on contact with dealership and fleets made as part of the in-use recall testing program. The burden estimate is calculated from an average of the two different burdens assuming that one half of the respondents are individual vehicle owners and the other half are dealerships or fleets. Therefore, the total respondent burden will be 2,500 minutes for each survey. Individuals, dealerships, or fleets will be asked to respond to only one survey in any given year. Costs to respondents associated with this ICR are attributed to individual or staff time involved in responding to the information requests. The costs for respondents for reading or listening to and responding to questions (verbally or in writing) are $8.50 per respondent. Therefore, the total respondent cost for each survey will be $850.

Dated: February 23, 1996.

Robin Miles-McLean,

Acting Director, Office of Mobile Sources.

[FR Doc. 96–4961 Filed 3–1–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5433–6]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of Cost Information Related to the Certification of Retrofit/Rebuild Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of agency receipt of cost information related to certification of equipment and initiation of 45-day public review and comment period.

SUMMARY: This notice addresses a shortcoming in the current certification of certain equipment certified under the urban bus retrofit/rebuild program. The effective date of certification of Detroit Diesel Corporation's (DDC) equipment for upgrading its 1979 through 1989 model year urban bus engines of model 6V92TA equipped with mechanical unit injection (MUI) is October 2, 1995 (60 FR 51472). That certification was based on reduction in particulate matter (PM) of 25 percent or more, but not on DDC's guarantee to make the equipment available to all operators for less than the applicable life cycle ceiling (hereinafter referred to as "cost/availability"). Although DDC, in its notification of intent to certify, requested certification on the basis of cost/availability, as stated in the October 2, 1995 **Federal Register** notice, the Agency at that time saw no advantage to certification on that basis. Upon reconsideration, the Agency believes that it may be beneficial to the program to expand the basis of certification of DDC's upgrade kit to include the basis of cost/availability. Further, in addition to the request in its notification of intent to certify signed March 16, 1995, DDC reiterated its request in a letter to the Agency dated December 15, 1995, that this equipment be certified on the basis of cost/availability. Copies of both DDC's notification and the letter are available for review in the public docket located at the address indicated above.

DDC has submitted to the Agency new information relevant to the certification of urban bus retrofit/rebuild equipment pursuant to 40 CFR Part 85, Subpart O. Pursuant to section 85.1407(a)(7), today's **Federal Register** notice announces that the information is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review this information, as well as comments received, to determine whether certification of the DDC equipment should be expanded to include the basis of cost/availability. If DDC's certification is expanded to include the cost/availability basis, then the certification level of the equipment may be considered when "post-rebuild" PM levels are established in mid-1996. The post-rebuild levels to be established in mid-1996 would be used by operators complying with compliance program 2 when calculating average fleet emissions for 1998 and thereafter. Therefore, to expand DDC's certification to include the basis of cost/availability may tend to lower ambient levels of PM emissions from fleets which comply with compliance program 2.

Category VII of Public Docket A–93–42, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment" contains the new cost information and DDC's notification of intent to certify, as well as other materials specifically relevant to it. This docket is located at the address below.

Today's notice initiates a 45-day period during which the Agency will accept written comments relevant to whether the certification of DDC's equipment should be expanded to include the basis of cost/availability. Comments should be provided in writing to Public Docket A–93–42, Category VII, at the address below. An identical copy should be submitted to William Rutledge, also at the address below.

DATES: Comments must be submitted on or before April 18, 1996.

ADDRESSES: Submit separate copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category VII), Room M–1500, 401 M Street S.W., Washington, DC 20460.
2. William Rutledge, Engine Programs and Compliance Division (mail code 6403J), 401 "M" Street S.W., Washington, DC 20460.

The DDC notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. Telephone: (202) 233–9297.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Program 1 sets particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Program 2 is a fleet averaging program that establishes specific annual target levels for average PM emissions from urban buses in an operator's fleet. In general, to meet either of the two compliance options, operators of the affected buses must use equipment which has been certified by the Agency.

A key aspect of the program is the certification of retrofit/rebuild equipment. Emissions requirements under either of the two compliance options depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Program 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or, if equipment is not certified as meeting the 0.10 PM standard, as achieving a 25 percent reduction in PM. Equipment used for Program 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. For Program 1, information on life cycle costs must be submitted in the notification of intent to certify in order for certification of the equipment to initiate (or trigger) program requirements. To trigger program requirements, the certifier must guarantee that the equipment will be available to all affected operators for a life cycle cost of $7,940 or less at the 0.10 g/bhp-hr PM level, or for a life cycle cost of $2,000 or less for the 25 percent or greater reduction in PM emissions. Both of these values are based on 1992 dollars and are increments above costs associated with a standard rebuild. If the Agency determines that the life cycle cost limit is met, then certification would be based on "cost/availability" in addition to reducing PM emissions.

Under program 2, operators calculate their average fleet emissions using specified "pre-rebuild" and "post-rebuild" engine PM emission levels (as well as other factors). The final rulemaking of April 21, 1993, established the pre-rebuild emissions levels, and intended that post-rebuild levels be established at two subsequent points in time, based on the certification levels of equipment certified by those points. Post-rebuild levels were established for the first two years of the program in a **Federal Register** notice of September 2, 1994 (59 FR 45626), which set 0.30 g/bhp-hr for 6V92TA engines of model years 1979 through 1987. This level was established as required by the final rule, that is, as a "default" level for these engines in the event that no equipment was certified by July 1, 1994. As explained in the final rulemaking and the September 2, 1994, **Federal Register**, EPA determined that this "default" level could be attained by rebuilding the engines with the available DDC upgrade kit which, although not certified by July 1, 1994 under the urban bus program, has emissions performance supported by data from the Agency's new-engine certification program.

The post-rebuild level established by the above-mentioned September 2, 1994, **Federal Register** notice for the 1979–1987 6V92TA engines (0.30 g/bhp-hr) is less than the pre-rebuild level (0.50 g/bhp-hr). That reduction in PM levels, and the assumed rebuild schedule of the regulation [§ 85.1403(c)(1)(iv)], means that operators choosing to comply with compliance program 2 and having 6V92TA MUI engines of certain model years must reduce average fleet PM emissions during calendar years 1995 and 1996 an amount equivalent to rebuilding those model year engines with DDC's upgrade kit.

Section 85.1403(c) requires that final post-rebuild levels be established based on equipment certified by July 1, 1996, to meet the PM standard *and* as being available to all operators for less than an appropriate life cycle cost ceiling. These "post-rebuild" levels are to be used in the calculations of fleet target levels for 1998 and thereafter, for engines scheduled for retrofit/rebuild in calendar years 1997 and thereafter. Section 85.1403(c)(1)(iii) requires that post-rebuild emission levels be the *lowest* emission level (greater than 0.1 g/bhp-hr) certified as meeting the emission *and* cost requirements of § 85.1403(b)(2), for any engine model for which no equipment has been certified by July 1, 1996 as meeting the requirements of § 85.1403(b)(1).

The Agency announced certification of the DDC upgrade kit for the 1979–1989 6V92TA engines in the **Federal Register** on October 2, 1995 (60 FR 51472) based on compliance with the 25% reduction standard, but without determination of compliance with the life cycle cost ceiling. That certification does not restrict use of the upgrade kit by operators under either compliance program 1 or 2, until other equipment is certified which triggers the 0.10 g/bhp-hr standard.

Section 85.1403 of the program regulations requires that the post-rebuild emission levels established in mid-1996 be the *lowest* emission level (greater than 0.10 g/bhp-hr) certified as meeting the emission *and* life cycle cost requirements. The DDC upgrade kit is currently certified to 0.30 g/bhp-hr for the above-mentioned 1979 through 1987 6V92TA engines, but unless certification includes the basis of cost/availability, it would not be considered when we establish the final post-rebuild levels. Other equipment is certified to 0.38 g/bhp-hr for the 1979 through 1987 6V92TA engines and is also certified as available to all operators for no more than the applicable life cycle cost. If no other equipment is certified in the meantime, the "post-rebuild" level would probably be set to this 0.38 level.

Additionally, as noted above, the post-rebuild level for the 1979 through 1987 6V92TA engines has already been established at 0.30 g/bhp-hr (the **Federal Register** notice of September 2, 1994), but only for the first two years of the program. Therefore, if no other equipment is certified prior to July 1, 1996 to a lower level, and lacking any compelling reason not to certify this equipment on the basis of cost/availability, then it would not be consistent with the **Federal Register** notice of September 2, 1994 to establish the post-rebuild level higher than 0.30 g/bhp-hr.

II. Information Concerning Cost and Availability

By a notification of intent to certify signed March 16, 1995, and with cover letter dated April 11, 1995, Detroit Diesel Corporation (DDC) applied for certification of equipment applicable to its 6V92TA model engines having mechanical unit injectors (MUI) that were originally manufactured between January 1979 and December 1989. The effective date of certification of that DDC equipment was established in the **Federal Register** on October 2, 1995 (60 FR 51472). That certification is currently based on reduction in particulate matter (PM) of 25 per cent or more. DDC, in its notification of intent to certify, requests certification on the basis of cost/availability and guarantees to make the equipment available to all operators for less than the applicable life cycle ceiling (hereinafter referred to as "cost/availability"). As stated in the **Federal Register** notice of October 2, 1995, however, the Agency saw no advantage to such certification at that time because the emission standard had been triggered earlier by certification of other equipment. As explained above, the Agency upon reconsideration believes that it may be beneficial to the program to expand the basis of certification of DDC's upgrade kit to include the basis of cost/availability.

In its notification, DDC states that the equipment will be offered to all affected urban bus operators for a maximum purchase price of $5,562, and has submitted life cycle cost information. DDC claims that the life cycle cost is less than $2,000 (1992 dollars) incremental to the cost for a standard rebuild. DDC claims that the only incremental cost, compared to a standard rebuild, is the cost of a blower by-pass valve assembly, which DDC states has a suggested price of $97.36 if purchased separately. DDC indicates that there is no incremental installation cost, fuel cost, or maintenance cost compared to that related to a standard engine overhaul.

In addition to its initial request in its notification of intent to certify, DDC re-iterated its request that this equipment be certified on the basis of cost/availability in a letter to the Agency dated December 15, 1995, and provided updated information concerning transit pricing level. DDC indicates that the suggested transit list price of the upgrade kit is less than the suggested list price of the individual components, if purchased separately, that are currently replaced or reworked during a standard rebuild. In other words, all of the components of their upgrade kit, with exception of the blower by-pass valve assembly, are non-incremental to a "standard" rebuild. Other new information in the docket include a summary of a survey conducted by the American Public Transit Association (APTA) on engine rebuilding practices.

Several public comments concerning cost/availability were received in response to DDC's notification. The following is a summary of the comments, along with the Agency's response, as appropriate:

The People Moving Company of the Greater Bridgeport Transit District states that thirteen of its engines have been rebuilt using DDC's low-emission rebuild kits, and their experience has been positive. They support DDC's claim that the kits provide better fuel economy.

The Muncie Indiana Transit System comments that the DDC kit exceeds the life cycle cost ceiling and does not contain all parts to rebuild an engine, such as rod and main bearings. Muncie, however, does not provide any detailed information to support its claim concerning costs. The comment that the kit does not contain all of the parts necessary to rebuild an engine, may be correct. However, there is no requirement that every part necessary to rebuild an engine be included with equipment certified under the program. The life cycle cost ceiling is meant to reflect costs of certified equipment which are incremental to costs of a standard rebuild. In particular, section 85.1403(b)(2) states that the purchase price of retrofit/rebuild equipment excludes equipment costs incurred for a standard rebuild. Therefore, to the extent that a component (such as a bearing) is replaced in a standard rebuild, it is not necessary to include the component as part of the certified upgrade kit, or to include its cost in the purchase price of the kit.

Muncie also questions whether tune-ups and related emissions-affecting parts are considered warranty items. The emissions performance and defect warranties, required pursuant to section 85.1409, apply to all parts of the certified equipment described in DDC's notification of intent to certify, for the mileage intervals specified in section 85.1409. In its notification, DDC states that the scheduled maintenance and parts necessary to perform the scheduled maintenance are identical before and after rebuild and, therefore, there are no incremental maintenance costs involved.

The Engelhard Corporation provides in-depth comments concerning the life cycle costs. Engelhard states that the DDC upgrade kit will exceed the life cycle cost ceiling, and notes three areas that DDC has not addressed in its life cycle cost analysis. First, Engelhard indicates that an engine must be removed from a bus in order to install the components of the DDC upgrade kit, which would require additional labor hours over an in-frame overhaul. Second, Engelhard states that the DDC kit contains additional components which are not typically replaced during an in-frame overhaul, including camshafts, turbocharger, rollers, injectors, heads, and valves. Third, Engelhard notes that transit operators commonly use aftermarket components which are priced substantially less than DDC components.

With regard to Engelhard's first concern, the preamble to the final rulemaking (April 21, 1993, 58 FR 21367) is clear—the certifier may assume that the engine is removed from the coach during a standard rebuild. It is therefore not necessary for DDC to include cost related to removing an engine for installation of the DDC upgrade kit. Second, the Agency believes that the parts, which Engelhard refers to as "additional" and not typically replaced during an in-frame overhaul, are emission-related components. The Agency believes that it is not unreasonable to include emission-related components in a kit because it provides assurance that engines so rebuilt will result in a known condition and a known engine emissions configuration, both of which are important to in-use emissions performance. Further, DDC indicates that all of the parts in its kit, with exception of the blower bypass valve assembly, are normally replaced at engine overhaul.

Third, the cost differential related to use of aftermarket parts is addressed by a cost analysis presented by Engelhard. Engelhard provides an analysis of the cost of a rebuild using aftermarket parts, and compares it to the purchase price of the DDC kit added to the cost of the labor required to remove and install an engine. This comparison indicates that the difference in costs is greater than the life cycle cost ceiling of $2,000. The Agency notes, however, that when the engine removal/installation costs are not included pursuant to the above discussion, the cost differential is less than $2,000. Therefore, this data does not substantiate Engelhard's claim that the life cycle cost ceiling is exceeded.

Copies of the DDC notification, DDC's letter to the Agency dated December 15, 1995, the summary of the APTA survey, and public comments are available for review in the public docket located at the address indicated above.

Today's **Federal Register** notice announces that information is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review this information, as well as comments received, to determine whether certification of the DDC equipment should be expanded to include the basis of cost/availability. If the Agency expands the certification of this equipment to include the basis of cost/availability, then the certification emission levels of the equipment will be considered by the Agency when it establishes final post-rebuild levels as required pursuant to 85.1403(c)(1)(iii). DDC's upgrade kit is certified to emission levels of 0.30 g/bhp-hr for 1979 through 1987 model year 6V92TA MUI engines, and 0.23 g/bhp-hr for 1988 and 1989 model year 6V92TA MUI engines. If either or both of those certification levels are established as post-rebuild values, then operators complying with compliance program 2 would use such levels, as appropriate, in calculations for determining fleet target emissions for 1998 and thereafter.

At a minimum, EPA expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with the cost/availability requirements of § 85.1403(b)(2) and § 85.1407(a)(2), including whether the data provided by DDC complies with the life cycle cost requirements.

The Agency requests that those commenting also consider the regulatory requirements, plus provide comments on experience and/or knowledge related to rebuilding DDC 6V92TA MUI engines, including the specific parts, respective frequency of usage in rebuilds, and costs.

The date of this notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment described in the DDC notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review the notification of intent to certify and provide comment during the 45-day period. Please send separate copies of your comments to each of the above two addresses.

The Agency will review the cost information related to the notification of intent to certify, along with comments received from interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45-day period.

Dated: February 23, 1996.

Richard Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 96–4954 Filed 3–1–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5433–9]

Common Sense Initiative Council (CSIC); Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notification of Public Advisory CSIC Printing Sector Subcommittee Meeting; Common Sense Initiative Council Meeting; and CSIC Petroleum Sector Subcommittee Meeting; Open Meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that, pending resolution of EPA's FY 1996 appropriation, the Common Sense Initiative Council, and the Printing and Petroleum Sector Subcommittees of the Common Sense Initiative Council will meet on the dates and times described below. All meetings are open to the public. Seating at all three meetings will be on a first-come basis and limited time will be provided for public comment. For further information concerning specific meetings, please contact the individuals listed with the Council and two Sector Subcommittee announcements below.

(1) Printing Sector Subcommittee—March 18 and 19, 1996

Notice is hereby given that the Printing Sector Subcommittee, pending resolution of EPA's FY 1996 appropriation, will hold an open meeting on Monday, March 18, 1996, from 2:30 p.m. EST to 5:00 p.m. EST and Tuesday, March 19, 1996, from 1:00 p.m. EST to 4:00 p.m. EST. The Printing Sector's Workgroups will meet on Monday, March 18, from 10:00 a.m., EST until 2:00 p.m. EST and on Tuesday, March 19, 1996, from approximately 8:30 a.m. EST until noon, EST. The Subcommittee and Workgroup Meetings will be at the Embassy Suites Hotel, 1250 22nd Street, N.W., Washington, DC 20037 (telephone number 857–3388).

The purpose of the Subcommittee meeting is to discuss the three projects under consideration by the Subcommittee. The Compliance Tools Workgroup is working on the Multi-Media Flexible Permitting Project, the New York City Education Workgroup is moving ahead with plans for pollution prevention education for small printers, and the Living Lab Workgroup has been looking at information/data collection and management systems. The purpose of the workgroup meetings prior to the Subcommittee meeting is to further develop the workplan for these projects. Agendas will be available March 11, 1996.

For further information concerning this meeting of the Printing Sector Subcommittee, please contact Ginger Gotliffe of EPA's Office of Enforcement and Compliance Assurance at 202–564–7072, or Nancy Cichowicz, EPA, Region III, at 597–2030.

(2) Common Sense Initiative Council Meeting—March 20 and 21, 1996

The Common Sense Initiative Council, pending resolution of EPA's FY 1996 appropriation, will hold an open meeting on Wednesday, March 20, 1996, from 1:30 p.m. EST to 5:30 p.m. EST, and on Thursday, March 21, 1996, from 8:30 a.m. EST to 3:30 p.m. EST. The meeting will be held at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia (telephone number 703–920–3230).

The Council agenda will focus on a variety of topics including: anticipated second year CSI activities; presentations and discussions with the Council's Operating Principles and Public Health Workgroups; and cross-cutting, broad policy discussions on CSI community-based efforts and alternative regulatory strategies. In addition to these topics, the Iron and Steel Sector Subcommittee will present a Brownfields recommendation for the Council's consideration. Other sector recommendations may be presented to the Council for review and action. Also, EPA will present a preliminary draft workplan (on ensuring stakeholder awareness of and ready access to agency regulatory interpretations and determinations that affect environmental practices of the regulated community) as a followup action to a previously approved Council recommendation.

For further information concerning this Common Sense Initiative Council Meeting, contact Prudence Goforth, DFO on (202) 260–7417.

(3) Petroleum Refining Sector Subcommittee—April 18, 1996

Notice is hereby given that the Environmental Protection Agency, pending resolution of its FY 1996 appropriation, will hold an open meeting of the Petroleum Refining Sector Subcommittee on Thursday, April 18, 1996, from 8:30 a.m. EST until 5:00 p.m. EST. The Petroleum Refining Sector Subcommittee's workgroups will meet the preceding day, Wednesday, April 17, 1996 from 1:00 p.m. EST until 5:00 p.m., EST. The meetings will be held at the Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, DC (telephone number 202–234–0700).

On April 18, 1996, the Petroleum Refining Subcommittee will convene to evaluate progress on the "One-Stop Reporting/Public Access" project and the proposed workplan for the "Fugitive Emissions" project. The group will also determine by consensus whether any recommendations unrelated to these two projects should be sent forward to the Common Sense Initiative Council.

For further information regarding this Petroleum Refining Sector Subcommittee Meeting, please contact either Meg Kelly at EPA, 401 M Street, S.W., Washington, DC. (703–308–8748), or Craig Weeks, EPA, Region VI at 214–665–7505.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the above Council and Sector Subcommittee announcements, will be publicly available at the meeting. Thereafter, these documents, together with the official minutes for the meetings, will be available for public inspection in room 2821M of EPA Headquarters, Common Sense Initiative Staff, 401 M Street, SW, Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically through contacting Katherine Brown at brown.katherine@epamail.gov.

Dated: February 27, 1996.

Prudence Goforth,

Designated Federal Officer.

[FR Doc. 96–4957 Filed 3–1–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–00423; FRL–4990–3]

Testing Guidelines; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has established a unified library for Test Guidelines issued by the Office of Prevention, Pesticides and Toxic Substances (OPPTS), and is announcing the availability of testing guidelines for the following three series: Series 875–Occupational and Residential Exposure Test Guidelines, Series 880–Biochemicals Test Guidelines, and Series 885–Microbial Pesticide Test Guidelines. The guidelines in these three series have been minimally edited for re-publication, but have not been changed in any substantive way. Issuance of guidelines in these three series initiates the publication of the unified library of OPPTS Test Guidelines. This notice also describes the process of developing this unified library of OPPTS Test Guidelines. The Agency intends to issue **Federal Register** notices periodically as new test guidelines are added to the OPPTS unified library.

ADDRESSES: The guidelines are available from the U.S. Government Printing Office, Washington, DC 20402 on *The Federal Bulletin Board*. By modem dial (202) 512–1387, telnet and ftp: fedbbs.access.gpo.gov (IP 162.140.64.19), or call (202) 512–1530 for disks or paper copies. The guidelines are also available electronically in ASCII and PDF (portable document format) from the EPA Public Access Gopher (gopher.epa.gov) under the heading "Environmental Test Methods and Guidelines."

FOR FURTHER INFORMATION CONTACT: For general information: By mail:

Toxic Substances Control Act (TSCA) information: Contact the TSCA Hotline at: TAIS/7408, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone number: (202) 554–1404; fax (202) 554–5603, e-mail: tsca-hotline@epamail.epa.gov.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) information: Contact the Communications Branch (7506C), Field Operations Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone number: (703) 305–5017; fax is (703) 305–5558.

For technical information on series 875: Alan Nielsen, (703) 305–5242, e-mail: nielsen.alan@epamail.epa.gov.

For technical information on series 880 and series 885: William Schneider, (703) 308–8683, e-mail: schneider.william@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. EPA's Process for Developing a Unified Library of Test Guidelines

EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) is close to completion of a multi-year project to harmonize and/or update test guidelines among the Office of Pesticide Programs (OPP), the Office of Pollution Prevention and Toxics (OPPT), and the Organization for Economic Cooperation and Development (OECD). The goals of the project include the formulation of harmonized OPP and OPPT guidelines for those in common between the two programs, the harmonization of OPPT and/or OPP guidelines with those of the OECD, as well as the updating of any guidelines unique to OPP or OPPT programs.

Testing guidelines that are changed substantively in the harmonization process or through other updating/amending activities, or which are new (e.g., for a previously unaddressed testing endpoint) will be made available for public comment by notice in the **Federal Register**. Additionally, EPA will submit these substantively revised and new test guidelines to peer review by expert scientific panels. Guidelines which are reformatted but not changed in any substantive way will not be made available for public comment or submitted to peer review. Because harmonization and updating is an ongoing task that will periodically result in modified guidelines, some guidelines being made available via GPO and Internet will be subject to revisions in the future. These efforts will ensure that industry is provided with testing guidelines that are current.

All final guidelines will be made available through the GPO Electronic Bulletin Board and the Internet on the EPA Public Access Gopher as a unified library of OPPTS Test Guidelines for use by either program office. Printed versions of the unified library of OPPTS test guidelines will also be available through the GPO. For purposes of this **Federal Register** notice, "publication" of the unified library of guidelines generally describes the availability of these guidelines with the GPO and Internet.

The test guidelines appearing in the unified library will be given numerical designations that are different from the designations provided at 40 CFR parts 158, 795, 796, 797, 798, and 799. OPPTS test guidelines will be published in 10 disciplinary series as follows:

Series 810–Product Performance Test Guidelines

Series 830–Product Properties Test Guidelines

Series 835–Fate, Transport and Transformation Test Guidelines

Series 840–Spray Drift Test Guidelines

Series 850–Ecological Effects Test Guidelines

Series 860–Residue Chemistry Test Guidelines

Series 870–Health Effects Test Guidelines

Series 875–Occupational and Residential Exposure Test Guidelines

Series 880–Biochemicals Test Guidelines

Series 885–Microbial Pesticide Test Guidelines

The Agency intends to issue **Federal Register** notices periodically as new test guidelines are added to the OPPTS unified library. As each set of guidelines is published, it will be accompanied by a Master List which cross references the new OPPTS guideline numbers to the original OPP and OPPT numbers.

II. Impact on OPP and OPPT

Currently, OPP makes its test guidelines available through the National Technical Information Service (NTIS) as a series of twelve subdivisions. Explicit test requirements for pesticide registration are set out in 40 CFR part 158 which refers to specific guidelines by guideline number. EPA recommends that the test guidelines published through GPO and Internet be consulted instead of those test guidelines that were published through NTIS; studies initiated 45 days or more after final publication should be performed in accordance with the revised guidelines. As test guidelines are published, the Agency will inform industry and the general public by means of PR Notices as well as FR Notices. In addition, Data Call In letters to pesticide registrants will carry a dual numbering system in reference to test guidelines until all test guidelines have been published. Part 158, which is currently under revision, will also carry a dual numbering system for test guidelines when it is proposed and finalized in the **Federal Register**.

In contrast, OPPT has been publishing its test guidelines in the Code of Federal Regulations (CFR) in 40 CFR parts 795 through 798 and are referenced on a chemical-specific basis in its TSCA section 4 test rules in 40 CFR part 799. Although OPPT is currently evaluating whether to continue to publish its test guidelines in the CFR, OPPT test guidelines and modifications to those test guidelines that have been incorporated by an existing test rule will be retained in the CFR until OPPT announces that it will no longer publish its test guidelines in the CFR. Therefore, to the extent that a manufacturer or processor became subject to a test rule prior to the adoption of a harmonized test guideline, that test rule still requires compliance with the test guideline that was referenced by the test rule and published in the CFR. However, if the manufacturer or processor subject to the test rule is interested in seeking a modification to the requirement to comply with the test guideline that appears in the CFR, and which is incorporated by reference in that test rule, EPA encourages that manufacturer or processor to consult the modification procedures outlined in 40 CFR part 790. EPA has removed, and will continue to remove from the CFR those test guidelines that are no longer incorporated by reference in an existing and applicable test rule.

III. Peer Review of Test Guidelines

The Agency has updated and harmonized test guidelines for Product Properties (830 series) and Residue Chemistry (860 series) (60 FR 44343, August 25, 1995) (FRL–4974–3). EPA submitted the revisions to those series to peer review by the FIFRA Scientific Advisory Panel on September 27, 1995. EPA also made these revisions available to the public for comment through the EPA docket. They will be revised in response to all comments received and published as final guidelines early in 1996.

EPA is also announcing that it intends to make available for public comment prior to peer review meetings the revised test guidelines for Ecological Effects (850 series), Health Effects (870 series), and Fate and Transport (840 series) during 1996.

IV. Notice of Availability of Republished Test Guidelines

This notice announces the availability of OPP unique test guidelines in the 875, 880, and 885 series. The test guidelines in series 875, 880, and 885 have been minimally edited for publication with GPO and Internet, but have not been changed in any substantive way. Guideline Series 880 is drawn from Subdivision M of the Pesticide Assessment Guidelines and pertains to special testing approaches to biochemical pesticides. Only those guidelines from Subdivision M which are truly unique to biochemical pesticides are being published in series 880. The other non-unique tests for biochemical pesticides should be performed using the guidelines for chemical pesticides. Although the Agency is in the process of revising its test guidelines for Post-Application Exposure (875B), the current guidelines are still official and are being published as part of the unified library of OPPTS test guidelines. When EPA has completed the process for revising the Post-Application Exposure guidelines in 1997, the revised guidelines will replace the current guidelines. In the interim, registrants are advised to contact EPA's Occupational and Residential Exposure Branch, within the Office of Pesticide Programs, at (703) 305–6094.

The following is the complete list of guidelines being made available at this time.

SERIES 875—OCCUPATIONAL AND RESIDENTIAL EXPOSURE TEST GUIDELINES

OPPTS Number	Name	Existing Numbers			EPA Pub. no.
		OTS	OPP	OECD	712–C–
	Group A—Applicator Exposure Monitoring Test Guidelines.				
875.1000	Background for application exposure monitoring test guidelines	none	230	none	96–261
875.1100	Dermal exposure—outdoor	none	231	none	96–262
875.1200	Dermal exposure—indoor	none	233	none	96–209
875.1300	Inhalation exposure—outdoor	none	232	none	96–263
875.1400	Inhalation exposure—indoor	none	234	none	96–213
875.1500	Biological monitoring	none	235	none	96–264
875.1600	Application exposure monitoring data reporting	none	236	none	96–265
	Group B—Postapplication Exposure Monitoring Test Guidelines.				
875.2000	Background for postapplication exposure monitoring test guidelines	none	130, 131	none	96–266

SERIES 875—OCCUPATIONAL AND RESIDENTIAL EXPOSURE TEST GUIDELINES—Continued

OPPTS Number	Name	Existing Numbers			EPA Pub. no.
		OTS	OPP	OECD	712–C–
875.2100	Foliar dislodgeable residue dissipation	none	132–1	none	96–267
875.2200	Soil residue dissipation	none	132–1	none	96–243
875.2400	Dermal exposure	none	133–3	none	96–269
875.2500	Inhalation exposure	none	133–4	none	96–270
875.2600	Biological monitoring	none	235	none	96–271
875.2800	Descriptions of human activity	none	133–1	none	96–283
875.2900	Data reporting and calculations	none	134	none	96–272

SERIES 880—BIOCHEMICALS TEST GUIDELINES

OPPTS Number	Name	Existing Numbers			EPA Pub. no.
		OTS	OPP	OECD	712–C–
	Group A—Product Analysis Test Guidelines.				
880.1100	Product identity and composition	none	151–10	none	96–273
880.1200	Description of starting materials, production and formulation process	none	151–11	none	96–274
880.1400	Discussion of formation of impurities	none	151–12	none	96–275
	Group B—Toxicology Test Guidelines.				
880.3550	Immunotoxicity	none	152–18	none	96–280
880.3800	Immune response	none	152–24	none	96–281
	Group C—Nontarget Organisms and Environmental Testing Test Guidelines.				
880.4350	Nontarget insect testing	none	154–11	none	96–285
880.4425	Dispenser water leaching	none	155–5	none	96–286

SERIES 885—MICROBIAL PESTICIDE TEST GUIDELINES

OPPTS Number	Name	Existing Numbers			EPA Pub. no.
		OTS	OPP	OECD	712–C–
885.0001	Overview for microbial pest control agents	none	150A	none	96–290
	Group A—Product Analysis Test Guidelines.				
885.1100	Product identity	none	151A–10	none	96–292
885.1200	Manufacturing process	none	151A–11	none	96–293
885.1300	Discussion of formation of unintentional ingredients	none	151A–01	none	96–294
885.1400	Analysis of samples	none	151A–13	none	96–295
885.1500	Certification of limits	none	151A–15	none	96–296
	Group B—Residues Test Guidelines.				
885.2000	Background for residue analysis of microbial pest control agents	none	153A–1	none	96–299
885.2100	Chemical identity	none	153A–4	none	96–300
885.2200	Nature of the residue in plants	none	153A–6	none	96–302
885.2250	Nature of the residue in animals	none	153A–7	none	96–311
885.2300	Analytical methods—plants	none	153A–8a	none	96–301
885.2350	Analytical methods—animals	none	153A–8b	none	96–305
885.2400	Storage stability	none	153A–9	none	96–306
885.2500	Magnitude of residues in plants	none	153A–10	none	96–307
885.2550	Magnitude of residues in meat, milk, poultry, eggs	none	153A–11	none	96–308
885.2600	Magnitude of residues in potable water, fish, and irrigated crops	none	153A–01	none	96–309
	Group C—Toxicology Test Guidelines.				
885.3000	Background–mammalian toxicity/pathogenicity/infectivity	none	152A–1	none	96–314
885.3050	Acute oral toxicity/pathogenicity	none	152A–10	none	96–315
885.3100	Acute dermal toxicity/pathology	none	152A–11	none	96–316
885.3150	Acute pulmonary toxicity/pathogenicity	none	152A–12	none	96–317

SERIES 885—MICROBIAL PESTICIDE TEST GUIDELINES—Continued

OPPTS Number	Name	Existing Numbers			EPA Pub. no.
		OTS	OPP	OECD	712–C–
885.3200	Acute injection toxicity/pathogenicity	none	152A–13	none	96–318
885.3400	Hypersensitivity incidents	none	152A–15	none	96–320
885.3500	Cell culture	none	152A–16	none	96–321
885.3550	Acute toxicology, Tier II	none	152A–20	none	96–322
885.3600	Subchronic toxicity/pathogenicity	none	152A–21	none	96–323
885.3650	Reproductive/fertility effects	none	152A–30	none	96–324
	Group D—Nontarget Organism and Environmental Expression Test Guidelines.				
885.4000	Background for nontarget organism testing of microbial pest control agents	none	154A–1, 2, 3, 4, 5	none	96–328
885.4050	Avian oral, Tier I	none	154A–16	none	96–329
885.4100	Avian inhalation test, Tier I	none	154A–17	none	96–330
885.4150	Wild mammal testing, Tier I	none	154A–18	none	96–331
885.4200	Freshwater fish testing, Tier I	none	154A–19	none	96–332
885.4240	Freshwater aquatic invertebrate testing, Tier I	none	154A–20	none	96–333
885.4280	Estuarine and marine animal testing, Tier I	none	154A–21	none	96–334
885.4300	Nontarget plant studies, Tier I	none	154A–22	none	96–335
885.4340	Nontarget insect testing, Tier I	none	154A–23	none	96–336
885.4380	Honey bee testing, Tier I	none	154A–24	none	96–337
885.4600	Avian chronic pathogenicity and reproduction test, Tier III	none	154A–26	none	96–342
885.4650	Aquatic invertebrate range testing, Tier III	none	154A–27	none	96–343
885.4700	Fish life cycle studies, Tier III	none	154A–28	none	96–344
885.4750	Aquatic ecosystem test	none	154A–29	none	96–345
	Group E—Environmental Expression Test Guidelines.				
885.5000	Background for microbial pesticides testing	none	155A–1, 2	none	96–056
885.5200	Expression in a terrestrial environment	none	155A–10	none	96–338
885.5300	Expression in a freshwater environment	none	155A–11	none	96–339
885.5400	Expression in a marine or estuarine environment	none	155A–12	none	96–340

List of Subjects

Environmental protection, Test guidelines.

Dated: February 28, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–4964 Filed 2–28–96; 3:49 pm]

BILLING CODE 6560–50–F

[OPP–00413A; FRL–4991–7]

Revision of Prenatal Developmental Toxicity Study and Reproduction and Fertility Effects Testing Guidelines Under FIFRA and TSCA; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comments.

SUMMARY: EPA is making available for public comment revised proposed guidelines for OPPTS 870.3700 Prenatal Developmental Toxicity Study and OPPTS 870.3800 Reproduction and Fertility Effects. When final, these revised guidelines will replace OPP Guidelines 83–3 and 83–4 under 40 CFR 158.340 and OPPT Guidelines under 40 CFR 798.4700 and 798.4900.

DATES: Comments must be received on or before May 3, 1996. If circumstances warrant, EPA may reopen the comment period, by notice in the **Federal Register**, at a later date.

ADDRESSES: Interested persons are invited to submit written comments in triplicate to: By mail: Public Response and Program Resources Branch, Field Operations Division (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person: bring comments to : Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: guidelines@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP–00413A." No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under the "SUPPLEMENTARY INFORMATION" caption of this preamble.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. All statements will be made part of the record and will be taken into consideration by the Agency Scientists.

FOR FURTHER INFORMATION CONTACT: By mail: Susan L. Makris (7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 816F, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5222; e-mail: makris.susan@epamail.epa.gov.

By mail: Katherine Anitole (7509C), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E613B, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–3993; e-mail: anitole.katherine@epamail.epa.gov.

Copies of documents may be obtained by contacting: By mail: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or for courier pick-up: Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5805 or 305–5454. By internet: e-mail requests to: guidelines@epamail.epa.gov or via the EPA Public Access Gopher (gopher.epa.gov) under the heading "Environmental Test Methods and Guidelines."

SUPPLEMENTARY INFORMATION: The Agency is revising its test guidelines for Prenatal Developmental Toxicity (870.3700) and Reproduction and Fertility Effects (870.3800). These guidelines would replace FIFRA Subdivision F guidelines 83–3 and 83–4 and TSCA guidelines at 40 CFR 798.4700 and 798.4900. Both draft guidelines were submitted to peer review by the FIFRA Scientific Advisory Panel December 1993 and have been made available to the public for comment.

The current draft revised guidelines are now being made available for additional comment. All interested parties are encouraged to submit comments on the proposed revised guidelines for Prenatal Developmental Toxicity Study and Reproduction and Fertility Effects. Specific comments should reference the specific number and paragraph or subparagraph of the appropriate revised guideline. Recommended technical or scientific changes/modifications should be supported by current scientific/technical knowledge and include supporting references. References may be to the published literature, studies submitted to the Agency in support of registration, and unpublished data. Citations must be sufficiently detailed so as to allow the Agency to obtain copies of the original documents and unpublished data supplied to allow their evaluation.

Comments on the proposed revised guidelines will be considered by the Agency and such modifications of the guidelines considered to be of merit will be incorporated into the final guidelines. The draft modifications and the public comments will be presented to the FIFRA Scientific Advisory Panel and additional experts at a public meeting for its comments before being published as final guidelines. Notice of this meeting will be published in the **Federal Register** and all interested parties will be offered the opportunity to present written and public comments to the FIFRA Scientific Advisory Panel and additional experts at the public meeting.

A record has been established for this notice under docket number "OPP–00413A" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

guidelines@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Test guidelines.

Dated: February 28, 1996.

Lynn R. Goldman,

Assistant Administrator, Office for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–4967 Filed 2–28–96; 3:49 pm]

BILLING CODE 6560–50–F

[FRL–5434–1]

Risk Assessment and Risk Management Commission

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Commission on Risk Assessment and Risk Management, established as an Advisory Committee under Section 303 of the Clean Air Act Amendments of 1990, will release its draft report on April 24th from 1:00–300 p.m. at the National Press Club conference rooms on the 13th floor. The Press Building is located at 529 14th Street, NW., Washington, DC 20045. There will be a briefing and the draft report will be available to the public at that time. If you are unable to attend, but wish to receive a copy of the draft report, either fax your request to 202–233–9540, mail your request to the Commission on Risk Assessment and Risk Management, 529 14th Street, NW., Room 452, Washington, DC 20045, or obtain via the internet at http://www.riskworld.com. Be sure to indicate your complete mailing address and a phone number where you can be reached.

Comments on the draft report must be received no later than June 15. Please send you comments to the Commission address listed above.

If you need additional information, please call 202–233–9537. The report will not be available prior to April 24th.

Dated: February 27, 1996.

Gail Charnley,

Executive Director, Commission on Risk Assessment And Risk Management.

[FR Doc. 96–4955 Filed 3–1–95; 8:45 am]

BILLING CODE 6560–50–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, March 12, 1996—2:00 p.m.

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, N.W., Washington, D.C. 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes.
2. Panel Presentation by Invited Experts on Employment Discrimination Issues Affecting Americans with Disabilities.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: February 29, 1996.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 96–5140 Filed 2–29–96; 3:16 pm]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission; Comments Requested

February 26, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 3, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Number: 3060–0214.

Title: Section 73.3526 Local Public Inspection File of Commercial Stations.

Form Number: None.

Type of Review: Extension.

Respondents: Business or other for-profit.

Number of Respondents: 10,215 commecial radio licensees recordkeepers; 1181 commercial TV licensees recordkeepers; 1181 commercial TV stations making must-carry/retransmission consent elections.

Estimated time per response: 104 hours per year for radio recordkeeping; 130 hours per year for TV recordkeeping; 5 hours per election statement to 150 cable systems per TV station.

Total annual burden: 2,101,640 hours.

Needs and Uses: Section 73.3526 requires that each licensee/permittee of a commercial broadcast station maintain a file for public inspection. The contents of the file vary according to type of service and status. The contents include, but are not limited to, copies of certain applications tendered for filing, a statement concerning petitions to deny filed against such applications, copies of ownership reports and annual employment reports, statements certifying compliance with filing announcements in connection with renewal applications, letters received from members of the public, etc. The data are used by the public and FCC to evaluate information about the broadcast licensee's performance, to ensure that broadcast stations are addressing issues concerning the community to which it is licensed to serve and to ensure that radio stations entering into time brokerage agreements comply with Commission policies pertaining to licensee control and to the Communications Act and the antitrust laws. Broadcasters are required to send each cable operator in the station's market a copy of the election statement applicable to that particular cable operator. Placing these retransmission consent/must-carry elections in the public file provide public access to documentation of station's elections which are used by cable operators in negotiations with television stations and by the public to ascertain why some stations are/are not carried by the cable systems.

OMB Number: 3060–0245.

Title: Section 74.537 Temporary Authorizations.

Form Number: None.

Type of Review: Extension.

Respondents: Business or other for-profit.

Number of Respondents: 50.

Estimated time per response: 2 hours (this time is split 1hour 30 minutes burden for the licensee and 30 minutes cost for a communications attorney).

Total annual burden: 75 hours.

Needs and Uses: Section 74.537 requires licensees of an aural broadcast studio transmitter link (STL) or intercity relay station to file an informal request for special temporary authorization for operations of a temporary nature. The data is used by FCC staff to insure that the temporary operation of an STL or intercity relay station will not cause interference to existing stations.

OMB Number: 3060–0243.

Title: Section 74.551 Equipment Changes.

Form Number: None.

Type of Review: Extension.

Respondents: Business or other for-profit.

Number of Respondents: 25.

Estimated time per response: 1 hour (this hour is split between cost and burden, 30 minutes burden for the licensee and 30 minutes cost for a communications attorney).

Total annual burden: 13 hours.

Needs and Uses: Section 74.551(b) requires licensees of aural broadcast studio transmitter links (STL) or intercity relay stations to notify the Commission in writing of minor equipment changes that can be made without prior Commission authorization upon completion of such changes. The data is used by FCC staff to assure that the changes made comply with the rules and regulations.

OMB Number: 3060–0543.

Title: Section 21.913 Signal booster stations.

Form Number: None.

Type of Review: Reinstatement/revision.

Respondents: Business or other for-profit.

Number of Respondents: 300.

Estimated time per response: 2.5 hours per certification. This includes 0.5 hours for the licensee to convey its desire to install a low power booster station and 2 hours for a consulting engineer to prepare the certification.

Total annual burden: 150.

Needs and Uses: On 6/9/93, OMB approved the Amendment of Parts 1, 2 and 21 of the Commission's Rules Governing Use of the Frequencies in the 2.1 amd 2.5 GHz Bands. That approval contained various rule parts contained in Parts 21 and 74 of the Commission's Rules. Since that time, all rule sections incorporated into that approval have been reapproved under different OMB control numbers expect Section 21.913. Section 21.913(g) permits an MDS or ITFS licensee to install and commence operation of low power signal booster stations without a formal application. Licensees seeking to install a low power signal booster station must, however, submit a certification demonstrating compliance with the various components of Sections 21.913(g). This certification must be submitted within 48 hours of installation of the booster station. The data are used by FCC staff to verify that the licensee has complied with guidelines to use the certification process and that the booster would not cause objectionable interference.

OMB Number: 3060–0280.

Title: Section 90.633(f)&(g) Conventional systems loading requirement.

Form Number: None.

Type of Review: Extension.

Respondents: State or local government; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 15.

Estimated time per response: 1 hour.

Total annual burden: 15 hours.

Needs and Uses: Section 90.633(f)&(g) provides for the authorization of wide area or ribbon systems upon an appropriate showing of need. The information is used to determine if such systems should be authorized, thus maintaining spectrum efficiency.

OMB Number: 3060–0441.

Title: Section 90.621(b)(4) Selection and assignment of frequencies.

Form Number: None.

Type of Review: Extension.

Respondents: State or local government; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 33.

Estimated time per response: 1.5 hours.

Total annual burden: 25 hours.

Needs and Uses: Section 90.621(b) requires SMR applicants who wish to locate stations closer than required mileage separation from existing co-channel stations to file additional information and in some instances to request a waiver.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–4878 Filed 3–1–96; 8:45 am]

BILLING CODE 6712–01–F

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

February 28, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 3, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov. Copies may also be obtained via fax by contacting the Commission's Fax on Demand System. To obtain fax copies call 202–418–0177 from the handset on your fax machine, and enter the document retrieval number indicated below for the collection you wish to request, when prompted.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0057.

Title: Application for Equipment Authorization, Section 2.911.

Form No.: FCC Form 731.

Type of Review: Extension of existing collection.

Respondents: Businesses or other for-profit; Small businesses or organizations.

Number of Respondents: 8,605.

Estimated Time Per Response: 24 hours.

Total Annual Burden: 206,520 hours.

Needs and Uses: Equipment testing is performed, and data is gathered, to provide information to aid in controlling interference to radio communications. A completed application combined with descriptive information, test data, and occasionally a test sample documents the compliance of the subject with the FCC Rules, and may also be use to aid in enforcement of the Rules.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–5042 Filed 3–1–96; 8:45 am]

BILLING CODE 6712–01–F

Sunshine Act Meeting; Deletion of Agenda Item From February 29th Open Meeting

The following item has been deleted from the list of agenda items scheduled for consideration at the February 29, 1996, Open Meeting and previously listed in the Commission's Notice of February 22, 1996.

Item No., Bureau, Subject

4—Common Carrier—Title: Federal-State Joint Board on Universal Service. Summary: Pursuant to the Telecommunica-tions Act of 1996, the Commission will consider referring the issue of the definition of "universal service" to the Federal State-Joint Board.

Dated February 28, 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–5051 Filed 2–29–96; 1:12 pm]

BILLING CODE 6712–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 7048–9, February 23, 1996.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, February 28, 1996.

CHANGES IN THE MEETING: The open meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: February 29, 1996.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 96–5102 Filed 2–29–96; 1:12 pm]
BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Annual Update of the HHS Poverty Guidelines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides an update of the HHS poverty guidelines to account for last (calendar) year's increase in prices as measured by the Consumer Price Index.

EFFECTIVE DATE: These guidelines go into effect on the day they are published (unless an office administering a program using the guidelines specifies a different effective date for that particular program).

ADDRESSES: Office of the Assistant Secretary for Planning and Evaluation, Room 438F, Humphrey Building, Department of Health and Human Services (HHS), Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: For information about how the poverty guidelines are used in a particular program, contact the Federal (or other) office which is responsible for that program.

For general information about the poverty guidelines (but not for information about how they are used in a particular program), contact Gordon Fisher, Office of the Assistant Secretary for Planning and Evaluation, Room 438F, Humphrey Building, Department of Health and Human Services, Washington, D.C. 20201—telephone: (202) 690–6141.

For information about the Hill-Burton Uncompensated Services Program (no-fee or reduced-fee health care services at certain hospitals and other health care facilities for certain persons unable to pay for such care), contact the Office of the Director, Division of Facilities Compliance and Recovery, HRSA, HHS, Room 7–31, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857—telephone: (301) 443–5656 or 1–800–638–0742 (for callers outside Maryland) or 1–800–492–0359 (for callers in Maryland). The Division of Facilities Compliance and Recovery notes that as set by 42 CFR 124.505(b), the effective date of this update of the poverty guidelines for facilities obligated under the Hill-Burton Uncompensated Services Program is sixty days from the date of this publication.

Under an amendment to the Older Americans Act, the figures in this notice are the figures that state and area agencies on aging should use to determine "greatest economic need" for Administration on Aging programs. *For information about Administration on Aging programs,* contact Donald Fowles, Administration on Aging, HHS—telephone: (202) 619–0011.

For information about the Department of Labor's Lower Living Standard Income Level (an alternative eligibility criterion with the poverty guidelines for certain Job Training Partnership Act programs), contact Josephine Nieves, Associate Assistant Secretary for Employment and Training, U.S. Department of Labor—telephone: (202) 219–6236.

For information about the number of persons in poverty or about the Census Bureau (statistical) poverty thresholds, contact Income, Poverty, and Labor Force Information Staff, U.S. Bureau of the Census—telephone: (301) 763–8578.

1996 Poverty Guidelines for the 48 Contiguous States and the District of Columbia

Size of family unit	Poverty guideline
1	$7,740
2	10,360
3	12,980
4	15,600
5	18,220
6	20,840
7	23,460
8	26,080

For family units with more than 8 members, add $2,620 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

1996 Poverty Guidelines for Alaska

Size of family unit	Poverty guideline
1	$9,660
2	12,940
3	16,220
4	19,500
5	22,780
6	26,060
7	29,340
8	32,620

For family units with more than 8 members, add $3,280 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

1996 Poverty Guidelines for Hawaii

Size of family unit	Poverty guideline
1	$8,910
2	11,920
3	14,930
4	17,940
5	20,950
6	23,960
7	26,970
8	29,980

For family units with more than 8 members, add $3,010 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

The preceding figures are the 1996 update of the poverty guidelines required by sections 652 and 673(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Pub.L. 97–35). As required by law, this update reflects last year's change in the Consumer Price Index (CPI-U); it was done using the same procedure used in previous years.

Section 673(2) of OBRA–1981 (42 U.S.C. 9902(2)) requires the use of the poverty guidelines as an eligibility criterion for the Community Services Block Grant program, while section 652 (42 U.S.C. 9847) requires the use of the poverty guidelines as an eligibility criterion for the Head Start program. The poverty guidelines are also used as an eligibility criterion by a number of other Federal programs (both HHS and non-HHS). When such programs give an OBRA–1981 citation for the poverty guidelines, they cite section 673(2). Due to confusing legislative language dating back to 1972, the poverty guidelines have sometimes been mistakenly referred to as the "OMB" (Office of Management and Budget) poverty guidelines or poverty line. In fact, OMB has never issued the guidelines; the guidelines are issued each year by the Department of Health and Human Services (formerly by the Office of Economic Opportunity/Community Services Administration). The poverty guidelines may be formally referenced as "the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981."

The poverty guidelines are a simplified version of the Federal Government's statistical poverty thresholds used by the Bureau of the Census to prepare its statistical estimates of the number of persons and families in poverty. The poverty guidelines issued by the Department of Health and Human Services are used for administrative purposes—for instance, for determining whether a person or family is financially eligible for assistance or services under a particular Federal program. The poverty thresholds are used primarily for statistical purposes. Since the poverty guidelines in this notice—the 1996 guidelines—reflect price changes through calendar year 1995, they are approximately equal to the poverty thresholds for calendar year 1995 which the Census Bureau will issue in late summer or autumn 1996. (A preliminary version of the 1995 thresholds is now available from the Census Bureau.)

In certain cases, as noted in the relevant authorizing legislation or program regulations, a program uses the poverty guidelines as only one of several eligibility criteria, or uses a percentage multiple of the guidelines (for example, 130 percent or 185 percent of the guidelines). Some other programs, while not using the guidelines to exclude non-lower-income persons as ineligible, use them for the purpose of giving priority to lower-income persons or families in the provision of assistance or services.

In some cases, these poverty guidelines may not become effective for a particular program until a regulation or notice specifically applying to the program in question has been issued.

The poverty guidelines given above should be used for both farm and nonfarm families. Similarly, these guidelines should be used for both aged and non-aged units. The poverty guidelines have never had an aged/non-aged distinction; only the Census Bureau (statistical) poverty thresholds have separate figures for aged and non-aged one-person and two-person units.

Definitions

There is no universal administrative definition of "income," "family," "family unit," or "household" that is valid for all programs that use the poverty guidelines. Federal programs may use administrative definitions that differ somewhat from the statistical definitions given below; the Federal office which administers a program has the responsibility for making decisions about administrative definitions. Similarly, non-Federal organizations which use the poverty guidelines in non-Federally-funded activities may use administrative definitions that differ from the statistical definitions given below. In either case, to find out the precise definitions used by a particular program, one must consult the office or organization administering the program in question. The following statistical definitions (derived for the most part from language used in U.S. Bureau of the Census, Current Population Reports, Series P60–188 and earlier reports in the same series) are made available for illustrative purposes only.

(a) *Family.* A family is a group of two or more persons related by birth, marriage, or adoption who live together; all such related persons are considered as members of one family. For instance, if an older married couple, their daughter and her husband and two children, and the older couple's nephew all lived in the same house or apartment, they would all be considered members of a single family.

(b) *Unrelated individual.* An unrelated individual is a person 15 years old or over (other than an inmate of an institution) who is not living with any relatives. An unrelated individual may be the only person living in a house or apartment, or may be living in a house or apartment (or in group quarters such as a rooming house) in which one or more persons also live who are not related to the individual in question by birth, marriage, or adoption. Examples of unrelated individuals residing with others include a lodger, a foster child, a ward, or an employee.

(c) *Household.* As defined by the Bureau of the Census for statistical purposes, a household consists of all the persons who occupy a housing unit (house or apartment), whether they are related to each other or not. If a family and an unrelated individual, or two unrelated individuals, are living in the same housing unit, they would constitute two family units (see next item), but only one household. Some programs, such as the food stamp program and the Low-Income Home Energy Assistance Program, employ administrative variations of the "household" concept in determining income eligibility. A number of other programs use administrative variations of the "family" concept in determining income eligibility. Depending on the precise program definition used, programs using a "family" concept would generally apply the poverty guidelines separately to each family and/or unrelated individual within a household if the household includes more than one family and/or unrelated individual.

(d) *Family unit.* "Family unit" is not an official U.S. Bureau of the Census term, although it has been used in the poverty guidelines **Federal Register** notice since 1978. As used here, either an unrelated individual or a family (as defined above) constitutes a family unit. In other words, a family unit of size one is an unrelated individual, while a family unit of two/three/etc. is the same as a family of two/three/etc.

(e) *Income.* Programs which use the poverty guidelines in determining eligibility may use administrative definitions of "income" (or "countable income") which differ from the statistical definition given below. Note that for administrative purposes, in many cases, income data for a part of a year may be annualized in order to determine eligibility—for instance, by multiplying by four the amount of income received during the most recent three months.

For statistical purposes—to determine official income and poverty statistics—the Bureau of the Census defines income to include total annual cash receipts before taxes from all sources, with the exceptions noted below. Income includes money wages and salaries before any deductions; net receipts from nonfarm self-employment (receipts from a person's own unincorporated business, professional enterprise, or partnership, after deductions for business expenses); net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses); regular payments from social security, railroad retirement, unemployment compensation, strike benefits from union funds, workers' compensation, veterans' payments, public assistance (including Aid to Families with Dependent Children, Supplemental Security Income, Emergency Assistance money payments, and non-Federally-funded General Assistance or General Relief money payments), and training stipends; alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, government employee pensions (including military retirement pay), and regular insurance or annuity payments; college or university scholarships, grants, fellowships, and assistantships; and dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts, and net gambling or lottery winnings.

For official statistical purposes, income does not include the following types of money received: Capital gains;

any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car; or tax refunds, gifts, loans, lump-sum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such Federal noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, and housing assistance.

Dated: February 27, 1996.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 96–4915 Filed 2–29–96; 10:52 am]

BILLING CODE 4150–04–P

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Aid to Families With Dependent Children, Medicaid, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 1996 Through September 30, 1997

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: The Federal Percentages and Federal Medical Assistance Percentages for Fiscal Year 1997 have been calculated pursuant to the Social Security Act (the Act). These percentages will be effective from October 1, 1996 through September 30, 1997. This notice announces the calculated "Federal percentages" and "Federal medical assistance percentages" that we will use in determining the amount of Federal matching in State welfare and medical expenditures. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Programs under title XIX of the Act exist in each jurisdiction; title IV–A programs exist in all jurisdictions except American Samoa and the Northern Mariana Islands; programs under titles I, X, and XIV operate only in Guam and the Virgin Islands; while a program under title XVI (AABD) operates only in Puerto Rico. The percentages in this notice apply to State expenditures for assistance payments and medical services (except family planning which is subject to a higher matching rate). The statute provides separately for Federal matching of administrative costs.

Sections 1101(a)(8) and 1905(b) of the Act, as revised by section 9528 of Public Law 99–272, require the Secretary of Health and Human Services to publish these percentages each year. The Secretary is to figure the percentages, by formulas in sections 1101(a)(8) and 1905(b) of the Act, from the Department of Commerce's statistics of average income per person in each State and in the National as a whole. The percentages are within upper and lower limits given in those two sections of the Act. The statute specifies the percentages to be applied to Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

The "Federal percentages" are for Aid to Families with Dependent Children (AFDC) and aid to needy aged, blind, or disabled persons, and the "Federal medical assistance percentages" are for Medicaid. However, under section 1118 of the Act, States with approved Medicaid plans may claim Federal matching funds for expenditures under approved State plans for these other programs using either the Federal percentage or the Federal medical assistance percentage. These States may claim at the Federal medical assistance percentage without regard to any maximum on the dollar amounts per recipient which may be counted under paragraphs (1) and (2) of sections 3(a), 403(a), 1003(a), 1403(a), and 1603(a) of the Act.

DATES: The percentages listed will be effective for each of the 4 quarter-year periods in the period beginning October 1, 1996 and ending September 30, 1997.

FOR FURTHER INFORMATION CONTACT:

Mr. Gene Moyer, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 442E Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, D.C. 20201, Telephone (202) 690–7861.

(Catalog of Federal Domestic Assistance Program Nos. 93.560—Assistance Payments—Maintenance Assistance (State Aid); 93.778—Medicaid Assistance Program)

Dated: February 26, 1996.

Donna Shalala,

Secretary of Health and Human Services.

FEDERAL PERCENTAGES AND FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 1996–SEPTEMBER 30, 1997 (FISCAL YEAR 1997)

State	Federal percentages	Federal medical assistance percentages
Alabama	65.00	69.54
Alaska	50.00	50.00
American Samoa	50.00	*50.00
Arizona	61.70	65.53
Arkansas	65.00	73.29
California	50.00	50.23
Colorado	50.00	52.32
Connecticut	50.00	50.00
Delaware	50.00	50.00
District of Columbia	50.00	50.00
Florida	50.88	55.79
Georgia	57.24	61.52
Guam	50.00	*50.00
Hawaii	50.00	50.00
Idaho	64.41	67.97
Illinois	50.00	50.00
Indiana	57.31	61.58
Iowa	58.83	62.94
Kansas	54.30	58.87
Kentucky	65.00	70.09
Louisiana	65.00	71.36
Maine	59.69	63.72
Maryland	50.00	50.00
Massachusetts	50.00	50.00
Michigan	50.22	55.20
Minnesota	50.00	53.60
Mississippi	65.00	77.22
Missouri	55.60	60.04
Montana	65.00	69.01
Nebraska	54.59	59.13
Nevada	50.00	50.00
New Hampshire	50.00	50.00
New Jersey	50.00	50.00
New Mexico	65.00	72.66
New York	50.00	50.00
North Carolina	59.88	63.89
North Dakota	64.14	67.73
Northern Mariana Islands	50.00	*50.00
Ohio	54.76	59.28
Oklahoma	65.00	70.01
Oregon	56.14	60.52
Pennsylvania	50.00	52.85
Puerto Rico	50.00	*50.00
Rhode Island	50.00	53.90
South Carolina	65.00	70.43
South Dakota	60.99	64.89
Tennessee	60.64	64.58
Texas	58.40	62.56
Utah	65.00	72.33
Vermont	56.72	61.05
Virgin Islands	50.00	*50.00
Virginia	50.00	51.45
Washington	50.00	50.52
West Virginia	65.00	72.60
Wisconsin	54.44	59.00

FEDERAL PERCENTAGES AND FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 1996–SEPTEMBER 30, 1997 (FISCAL YEAR 1997)—Continued

State	Federal percentages	Federal medical assistance percentages
Wyoming	55.42	59.88

* For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI and Part A of title IV will be 75 per centum.

[FR Doc. 96–4870 Filed 3–1–96; 8:45 am]

BILLING CODE 4110–90–M

Food and Drug Administration

[Docket No. 96N–0049]

Drug Export; Abbott MATRIX HCV 2.0

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Abbott Laboratories has filed an application requesting approval for the export of the human biological product Abbott MATRIX HCV 2.0 to Australia, New Zealand, and to The Federal Republic of Germany solely for the purpose of further export to Austria, Belgium, Denmark, Finland, Iceland, Ireland, Italy, The Netherlands, Norway, Portugal, Spain, Sweden, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Cathy E. Conn, Center for Biologics Evaluation and Research (HFM–610), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–2006.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of human biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Abbott Laboratories, One Abbot Park Rd., Abbott Park, IL 60064, has filed an application requesting approval for the export of the human biological product Abbott MATRIX HCV 2.0 to Australia, New Zealand, and to The Federal Republic of Germany solely for the purpose of further export to Austria, Belgium, Denmark, Finland, Iceland, Ireland, Italy, The Netherlands, Norway, Portugal, Spain, Sweden, and The United Kingdom. The Abbott MATRIX HCV 2.0 is an in vitro immunodot assay which has been developed to qualitatively detect antibodies to putative structural and nonstructural proteins expressed from the HCV genome in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on January 24, 1996, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 14, 1996, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: January 26, 1996.

James C. Simmons,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 96–4859 Filed 3–1–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0064]

Drug Export; Acellular Pertussis Toxoid Adsorbed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that AMVAX, Inc., has filed an application requesting approval for the export of the human biological product Acellular Pertussis Toxoid Adsorbed to Denmark for further shipment to Sweden.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Cathy E. Conn, Center for Biologics Evaluation and Research (HFM–610), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–2006.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of human biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that AMVAX, Inc., 12103 Indian Creek Ct., Beltsville, MD 20705, has filed an application requesting approval for the export of the human biological

product Acellular Pertussis Toxoid Adsorbed to Denmark for further shipment to Sweden. The Pertussis component is an acellular monocomponent vaccine containing inactivated pertussis toxin. The application was received and filed in the Center for Biologics Evaluation and Research on February 8, 1996, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 14, 1996, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: February 16, 1996.

James C. Simmons,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 96–4978 Filed 3–1–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96F–0062]

Cytec Industries Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cytec Industries Inc. has filed a petition proposing that the food additive regulations be amended to correct nomenclature. The amendment would change the two listings for sulfosuccinic acid 4-ester with polyethylene glycol dodecyl ether, disodium salt (CAS Reg. No. 39354–45–5) to polyethyleneglycol alkyl (C10–C12) ether sulfosuccinate, disodium salt (CAS Reg. No. 68954–91–6).

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–606–0202.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (Sec. 409(b)(5) (21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 6B4485) has been filed by Cytec Industries Inc., c/o Keller and Heckman, 1001 G St., NW., suite 500 West, Washington, DC 20001. The petition proposes that the food additive regulations in § § 175.105 Adhesives (21 CFR 175.105) and 178.3400 Emulsifiers and/or surface-active agents (21 CFR 178.3400) be amended to correct nomenclature. The amendment would change the two listings for sulfosuccinic acid 4-ester with polyethylene glycol dodecyl ether, disodium salt (CAS Reg. No. 39354–45–5) to use the nomenclature polyethyleneglycol alkyl (C10–C12) ether sulfosuccinate, disodium salt (CAS Reg. No. 68954–91–6)The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: February 9, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–4976 Filed 3–1–96; 8:45 am]

BILLING CODE 4160–01–F

Product and Establishment License Applications, Refusal to File; Meeting of Oversight Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a meeting of its standing oversight committee in the Center for Biologics Evaluation and Research (CBER) that conducts a periodic review of CBER's use of its refusal to file (RTF) practices on product license applications (PLA's) and establishment license applications (ELA's). CBER's RTF oversight committee examines all RTF decisions that occurred during the previous quarter to assess consistency across CBER offices and divisions in RTF decisions.

DATES: The meeting will be held in April 1996.

FOR FURTHER INFORMATION CONTACT: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–4), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0379.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 15, 1995 (60 FR 25920), FDA announced the establishment and first meeting of CBER's standing oversight committee. As explained in the notice, the importance to the public health of getting new biological products on the market as efficiently as possible has made improving the biological product evaluation process an FDA priority. CBER's managed review process focuses on specific milestones or intermediate goals to ensure that a quality review is conducted within a specified time period. CBER's RTF oversight committee meetings continue CBER's effort to promote the timely, efficient, and consistent review of PLA's and ELA's.

FDA regulations on filing PLA's and ELA's are found in 21 CFR 601.2(a) and 601.3. A sponsor who receives an RTF notification may request an informal conference with CBER, and thereafter may ask that the application be filed over protest, similar to the procedure for drugs described under 21 CFR 314.101(a)(3) (see 57 FR 17950, April 28, 1992).

CBER's standing RTF oversight committee consists of senior CBER officials, a senior official from FDA's Center for Drug Evaluation and Research, and FDA's Chief Mediator and Ombudsman. Meetings, ordinarily, will be held once a quarter to review all of the RTF decisions. The purpose of such a review is to assess the consistency within CBER in rendering RTF decisions.

Because the committee's deliberations will deal with confidential commercial information, all meetings will be closed to the public. The committee's deliberations will be reported in the minutes of the meeting. Although those minutes will not be publicly available because they will contain confidential commercial information, summaries of the committee's deliberations, with all confidential commercial information omitted, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If, following the committee's review, an RTF decision changes, the appropriate division will notify the sponsor.

Dated: February 27, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–4913 Filed 3–1–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0409]

Alternative and Traditional Models for Safety Evaluation of Food Ingredients; Announcement of Study; Request for Scientific Data and Information; Announcement of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB) will undertake a comprehensive discussion of the scientific criteria and principles generally agreed upon by scientists in the food safety community as necessary for demonstrating that a food ingredient is safe. This discussion will include both a description of the data needed to ensure safety or to achieve a reasonable certainty that the ingredient will not cause harm and alternative approaches for achieving that assurance when traditional approaches do not definitively resolve safety questions.

To assist in the preparation of a scientific report, LSRO/FASEB is inviting the submission of scientific data and information regarding this topic. LSRO/FASEB will provide an opportunity for oral presentations at an open meeting.

DATES: LSRO/FASEB has scheduled a 1-day public meeting on this topic for May 15, 1996. Requests to make oral presentations at the open meeting must be submitted in writing and received by April 24, 1996. Submit written presentations of scientific data, information, and views on or before May 10, 1996.

ADDRESSES: Submit written requests to make oral presentations at the open meeting to both the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814–3998 and to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of the scientific data, information, and views for presentation should be submitted to each office. The meeting will be held in the Chen Auditorium, Lee Bldg., FASEB (address above).

FOR FURTHER INFORMATION CONTACT: Daniel J. Raiten or Sue Ann Anderson, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814–3998, 301–530–7030, on the scheduling of presentations at the public meeting and related matters. Other information may be obtained from Victor Frattali, Center for Food Safety and Applied Nutrition (HFS–2), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–1730.

SUPPLEMENTARY INFORMATION: FDA has a contract (223–92–2185) with LSRO/FASEB concerning the analysis of scientific issues that bear on the safety of foods and cosmetics. The objectives of this contract are to provide information to FDA on general and specific issues of scientific fact associated with the analysis of human nutrition.

As one task under the contract, FDA has requested information on matters related to the adequacy of data needed to support decisions on the safety of food ingredients. Currently, FDA provides safety testing guidelines for food ingredients through a publication entitled "Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food" (also known as the "Redbook"). This document gives guidance to petitioners primarily for those situations in which a traditional approach to safety testing is appropriate (i.e., those in which food additives to be used in low concentrations are tested for safety).

However, traditional studies involving administration of substances constituting a large part of an animal's diet may produce adverse effects simply as a result of the unusual diet rather than the inherent toxicity of the test substance. Further, FDA recognizes that the advent of new technologies such as genetic engineering of traditional foods and novel uses of plant products, as well as development of macroingredients, present new situations for which an alternative approach to safety assessment may be needed. While FDA has successfully reached decisions on food ingredients produced with such new technologies on a case-by-case basis, it has become clear that a need exists for information on the criteria that the scientific community believes are appropriate so that both a requirement for new types of safety studies and any elimination or limitation of the role of traditional studies can be justified. Types of food ingredients for which an alternative model may be appropriate include, for example, macroingredient substitutes such as psyllium, ingredients derived from botanicals such as *Stevia rebaudiana Bertoni*, restructured fats such as caprenin, and ingredients derived using biotechnology.

Based on an evolving need to be responsive to the development of food ingredients resulting from new technologies, FDA wishes to have LSRO/FASEB prepare a comprehensive report on the principles and criteria generally agreed upon by the community of food safety experts for determining when the traditional safety model is appropriate. The agency is also interested in a discussion identifying the principles and criteria to be used to determine the safety of a food ingredient when the traditional safety model is not appropriate. FDA is especially interested in a discussion of how different principles and criteria should be ranked and weighted, interrelationships that should be considered, and any situation where a principle or criterion might be considered determinative without regard to other considerations. It would also be desirable to have a discussion about how the new testing approaches may substitute for more traditional testing.

In framing this discussion, FDA has suggested that the following questions be considered. These questions are not intended as a statement of specific tasks. They are intended to be illustrative and to be used as a basis for stimulating thinking regarding the determination of the safe use of food ingredients.

1. In what cases, if any, are animal feeding studies not necessary to ensure safety? For example: Do such studies need to be conducted for ingredients that also occur naturally in foods at similar or higher concentrations? Is it reasonable and necessary to test food-like substances for toxicity and nutritional influences recognizing the potential for confounding results? If so, how?

2. To what extent can chemical and structural similarity to food ingredients known to be safe obviate the need for animal or human testing?

3. What criteria should be used to determine when a treatment-related effect (including effects from nutritional imbalance or interference) is an adverse effect?

4. Are there criteria that can be used to determine whether an adverse effect observed in a study is relevant to human safety as opposed to an effect that is dependent on study design and has no

relevance to safety under actual use conditions?

5. Under what circumstances should clinical studies in humans supplement or replace studies in laboratory animals? How will use of human data affect the need for safety factors? Which parameters should be measured and what study duration is necessary?

6. Is there an agreed-upon basis for determining the maximum level of an additive to be administered in a test diet above which a study should be presumed unacceptable?

7. Can postmarketing surveillance (such as monitoring of use or monitoring of adverse reaction reports by consumers and physicians) be used to ensure safety? For example, can such surveillance be used without compromising safety to verify exposure estimates or to eliminate the need for specific data prior to marketing, thus reducing the need to use worst-case assumptions in a safety evaluation? If so, how could this be accomplished?

The objective of this review is to make recommendations on the set of circumstances under which the scientific community believes that the use of a safety model that is an alternative to the traditional safety model is justified and will ensure the safety of food ingredients. Such discussions would include: (1) Circumstances prompting the need for new types of studies, (2) circumstances in which traditional studies should not be required or should be modified or their use limited, and (3) the appropriate use of safety factors. FDA also requests a description of the principles and criteria that would be used in the nontraditional or alternative situations and a ranking/weighting of these criteria and principles.

The project is divided into two phases. In the first phase, LSRO/FASEB will solicit input from 40 to 60 members of the food safety community. The nature of this input from each individual will be in the form of a 3- to 5-page "white paper" which will contain expert opinion on issues related to food ingredient safety evaluations. Individuals will be asked to furnish sufficient background material with their white papers to provide a basis for comment on the issues being addressed by LSRO/FASEB in this contract.

A Phase I Expert Panel composed of five members will be convened by LSRO/FASEB. LSRO/FASEB staff will assemble a background document for the Phase I Expert Panel that consists of a compilation of the previously obtained comments from the scientific community. This background document is intended to provide a perspective for the Phase I Expert Panel in its deliberations; it will not be a preliminary draft of the report to be delivered to FDA in fulfillment of the scope of work for the contract task. Upon approval by the Phase I Expert Panel, the background document will be available on or before April 12, 1996, from LSRO/FASEB (address above). The background document will be on display at LSRO/FASEB and the Dockets Management Branch (addresses above).

In Phase II, the Expert Panel will be expanded to eight members. The Phase II Expert Panel will conduct a comprehensive discussion of the principles and criteria generally agreed upon by the community of food safety experts for determining when the traditional safety model is appropriate. More specifically, based on the deliberations of the Phase II Expert Panel, LSRO/FASEB will organize the scientific concepts of food ingredient safety to yield a set of criteria in a report that the agency could then consider in evaluating the safety of food ingredients. Additionally, based on the discussions of the Phase II Expert Panel, the report will identify a ranking and weighting of such considerations that the scientific community would agree could be used to evaluate whether a new or modified food ingredient should be considered safe.

FDA and LSRO/FASEB are announcing that LSRO/FASEB will hold a public meeting on this topic on May 15, 1996. It is anticipated that the meeting will last 1 day, depending on the number of requests to make oral presentations. Requests to make oral presentations at the open meeting must be submitted in writing and received by April 24, 1996. Participants will be required to submit two copies of the written text of oral presentations of scientific data, information, and views on or before May 10, 1996, to LSRO/FASEB (address above) and two copies to the Dockets Management Branch (address above). The meeting will be held in the Chen Auditorium, Lee Bldg., FASEB (address above).

For individuals not wishing to make an oral presentation, FDA and LSRO/FASEB are also inviting submission in writing of scientific data, information, and views. Two copies of these materials must be submitted on or before May 10, 1996, to both LSRO/FASEB and the Dockets Management Branch (addresses above).

Pursuant to its contract with FDA, LSRO/FASEB will provide the agency with a scientific report on the Phase II review and discussions on or about July 31, 1997.

Dated: February 26, 1996.

William K. Hubbard,

Associate Commissioner for Policy.

[FR Doc. 96–4858 Filed 3–1–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Emergency Medical Services for Children Demonstration Grants

AGENCY: Health Resources and Services Administration HHS.

ACTION: Notice of availability of funds.

SUMMARY: The HRSA in collaboration with the National Highway Traffic Safety Administration (NHTSA) announces that applications will be accepted for fiscal year (FY) 1996 funds for grants authorized under section 1910 of the PHS Act. These discretionary grants will be made to States or accredited schools of medicine to support projects for the expansion and improvement of emergency medical services for children (EMSC). Within the HRSA, EMSC grants are administered by the Maternal and Child Health Bureau (MCHB).

This program announcement is subject to the appropriation of funds. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. At this time, given a continuing resolution and the absence of FY 1996 appropriations for the EMSC program, the amount of available funding for this specific grant program cannot be estimated.

The NHTSA participated with the MCHB in developing program priorities for the EMSC program for FY 1996. The NHTSA will share the Federal monitoring responsibilities for EMSC awards made during FY 1996 and will continue to provide ongoing technical assistance and consultation in regard to the required collaboration/linkages between applicants and their Highway Safety Offices and Emergency Medical Services Agencies for the State(s). Grantees funded under this program are expected to work collaboratively with the State agency or agencies administering the Maternal and Child Health (MCH) and the Children with Special Health Needs (CSHN) programs under the MCH Services Block Grant, Title V of the Social Security Act (42 U.S.C. 701).

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS led national activity for setting priority areas. The EMSC grant program will directly address the Healthy People 2000 objectives related to emergency medical services and trauma systems linking prehospital, hospital, and rehabilitation services in order to prevent trauma deaths and long-term disability. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (telephone, (202) 783–3238).

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

ADDRESSES: Grant applications for Emergency Medical Services for Children Demonstration Grants (Revised PHS form #5161–1, approved under OMB #0937–0189) must be obtained from and submitted to: Grants Management Branch, Maternal and Child Health Bureau, HRSA, Room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Attn: EMSC, telephone 301–443–1440. You must obtain application materials in the mail.

Federal Register notices and application guidance for MCHB programs are available on the World Wide Web via the Internet at address: http://www.os.dhhs.gov/hrsa/mchb. Click on the file name you want to download to your computer. It will be saved as a self-extracting (Macintosh or) Wordperfect 5.1 file. To decompress the file once it is downloaded, type in the file name followed by a <return>. The file will expand to a Wordperfect 5.1 file. If you have difficulty accessing the MCHB Home Page via the Internet and need technical assistance, please contact Linda L. Schneider at 301–443–0767 or "lschneider@hrsa.ssw.dhhs.gov".

DATES: The application deadline date is April 26, 1996. Competing applications will be considered to be on time if they are either received on or before the deadline date or postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated receipt from a commercial carrier or the U.S. Postal Service, or obtain a legibly dated U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Late competing applications or those sent to an address other than specified in the **ADDRESSES** section will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information from MCHB should be directed to Jean Athey, Ph.D., or Mark E. Nehring, D.M.D., M.P.H., Division of Maternal, Infant, Child and Adolescent Health, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–4026. Requests for technical or programmatic information from NHTSA should be directed to Garry Criddle, R.N., CDR, USCG/USPHS, Department of Transportation, NHTSA EMS Division, NTS–42, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366–5440. Requests for information concerning business management issues should be directed to: Maria Carter, Grants Management Specialist, Grants Management Branch, Maternal and Child Health Bureau, at the address listed in the ADDRESS section above.

The EMSC program funds three national EMSC resource centers that are available to provide technical assistance and support to applicants, particularly in the areas of: (1) understanding EMSC terminology; (2) developing a manageable approach to EMSC implementation; (3) obtaining local support for the grant application process; (4) facilitating development of community linkages for a collaborative effort; (5) identifying products of previously-funded EMSC projects of interest to potential applicants; (6) offering advice on grant writing; and (7) data collection and analysis. Applicants may contact: James Seidel, M.D., Ph.D., or Deborah Henderson, R.N., M.A., National EMSC Resource Alliance, Research and Education Institute, Harbor/UCLA Medical Center, 1001 West Carson Street, Suite S, Torrance, CA 90502, telephone 310 328–0720; or Jane Ball, R.N., Dr. P.H., EMSC National Resource Center, Children's National Medical Center, Emergency Trauma Services, 111 Michigan Ave., N.W., Washington, DC 20010, telephone 202 745–5188; or J. Michael Dean, M.D., National EMSC Data Analysis Resource Center, University of Utah School of Medicine, 309 Park Building, Salt Lake City, UT 84112, telephone (801) 588–2360.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

The Emergency Medical Services for Children statute (Section 1910 of the PHS Act, as amended) establishes a program of two-year grants to States, through a State-designated agency, or to accredited medical schools within States, for projects for the expansion and improvement of emergency medical services for children who need treatment for trauma or critical illness. For purposes of this grant program, the term "State" includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Northern Mariana Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia. The term "school of medicine" is defined as having the same meaning as set forth in Section 799(1)(A) of the PHS Act (42 U.S.C. 295p(1)(A)). "Accredited" in this context has the same meaning as set forth in section 799(1)(E) of the PHS Act (42 U.S.C. 295p(1)(E)). It is the intent of this grant program to stimulate further development or expansion of ongoing efforts in the States to reduce the problems of life-threatening pediatric trauma and critical illness. The Department does not intend to award grants which would duplicate grants previously funded under the Emergency Medical Services Systems Act of 1972 or which would be used simply to increase the availability of emergency medical services funds allotted to the State under the Preventive Health Services Block Grant.

Funding Categories

There will be three categories of competition for funding this year: State planning grants, State systems grants, and targeted issue grants. States may apply for only one of the first two categories, but are not restricted in applying for the last category.

Category (1): State Planning Grants

Planning grants are intended for States that have never received an EMSC grant and that are not at a stage of readiness to initiate a full-scale implementation project. States (or medical schools within those States) that have not received prior EMSC implementation grants are the only applicants eligible for this category. Planning grants are designed to enable a State to assess needs and develop a strategy to begin to address those needs.

Funds may be used to hire staff to assist in the assessment of EMSC needs of the State; obtain technical assistance from national, State, regional or local resources; help formulate a State plan for the integration of EMSC services into the existing State EMS plan; and plan a more comprehensive grant proposal based upon a needs assessment performed during the planning grant project period. A comprehensive approach, addressing physical, psychological, and social aspects of EMSC along the continuum of care, should be reflected. An ongoing working relationship with Federal EMSC program staff and resource center staff, beginning with the initiation of a planning grant application, is desirable. The project period is for one year only.

Category (2): State Systems Grants

This category of grants has two subcategories: implementation grants and system enhancement grants. For both subcategories, proposals are sought which include strategies and/or models to ensure that pediatric emergency care is family centered. "Family centered" includes the following key elements: maximum possible involvement of families in all phases of the EMSC continuum of care; clear and continuous communication between family members and the emergency care team; attention to the psychological needs of all family members; cultural competence of providers; consumer (parental) involvement in planning and needs assessment; organizational support for the formation of parent involvement groups; and ongoing partnerships with such groups.

Applications will not be accepted for both planning grants and state systems grants simultaneously from the same State.

Subcategory (A): Implementation Grants

Implementation grants will improve the capacity of a State's Emergency Medical Services program to address the particular needs of children. Implementation grants are used to assist States in integrating research-based knowledge and state-of-the-art systems development approaches into the existing State EMS, MCH and CSHN systems, using the experience and products of previous EMSC grantees. The program components of these grants should reflect the goals of the MCHB/NHTSA Five Year Plan for EMSC. This plan outlines the direction of the EMSC program and identifies specific objectives for the program. It builds on the 1993 report for EMSC conducted by a blue ribbon Institute of Medicine panel. The plan will be included with the application kit. Depending upon the appropriation of funds, project periods are up to two years. For this competition, we intend to fund applications from States (and medical schools within those States) that have not as yet received support, or that have received only partial support under this program as part of a regional alliance. This means that approved applications from States (and medical schools within those States) with no or very limited prior EMSC program support will be funded before approved applications from outside this group.

Subcategory (B): System Enhancement Grants

System enhancement grants will fund activities that represent the next logical step or steps to take in institutionalizing EMSC activities within the State EMS, MCH and CSHN systems and achieving program goals outlined in this announcement. The program components of these grants should reflect the goals and objectives of the MCHB/NHTSA Five Year Plan for EMSC. For example, funding might be used to improve linkages between local and regional or State agencies, to develop pediatric standards for a region, or to assure effective field triage of the child in physical or emotional crisis to appropriate facilities and/or other resources. Activities implemented under prior EMSC program funding but not completed or made self-sustaining during the original implementation project period will not be considered suitable. States that have previously received EMSC funds may apply for a system enhancement grant, as long as they will not also be receiving continuation funding for a State implementation grant during the project period of the systems enhancement grant.

Category (3): Targeted Issues Grants

The third funding category is that of targeted issues grants on topics of importance to EMSC. Targeted issues grants are intended to address specific, focused issues related to the development of EMSC capacity. Proposals under this category must have a well-conceived methodology for evaluation of the impact of the activity. The EMSC Five Year Plan identifies several activities judged to be appropriate for support through targeted issues grants for FY 1996. They include the following:

1. Cost-Benefit Analyses Related to EMSC

Very limited information is available on the costs related to different aspects of EMSC, and yet such information is critical to decision making. Projects in this category may include topics such as the following:

- Analyses of the impact of insurance, managed care, and Federal and/or State health care financing policies and protocols on pediatric emergency medical services.
- Analyses of the impact of differing reimbursement policies in contiguous jurisdictions on pediatric patients.
- Assessment of the marginal incremental cost of different approaches to improving EMSC.
- Evaluation of the cost-effectiveness of different EMSC program configurations (such as different approaches to medical control, categorization, and regionalization).

2. Risk-Taking Behaviors of Children and Adolescents

Emergency department health professionals are uniquely positioned to provide interventions to reduce the incidence of repeated episodes when treating a child or adolescent for an injury or medical condition (e.g., noncompliant child or adolescent with a chronic condition, such as diabetes) resulting from risk-taking behavior. Projects in this category can be directed to development and evaluation of materials and strategies for emergency departments in one or more of the following areas:

- Unintentional injury prevention.
- Violence or suicide prevention.
- Integration of mental health services with preventive interventions (injury or medical).

3. Care of Children With Special Health Needs (CSHN)

An organized system of emergency care is needed for children who have special health care needs (children who are respirator dependent, children with tracheostomies, indwelling (broviac) catheters, gastric tubes, etc.) on discharge from acute care settings. Projects in this category can be directed to one or more of the following:

- Development, implementation and evaluation of educational or training programs for families.
- Development, implementation, and evaluation of educational or training programs for health care providers (e.g., prehospital, emergency department, school nurses. etc.).
- Evaluation of models for comprehensive discharge planning.
- Development and evaluation of model injury prevention programs for CSHN.

Projects in this category must demonstrate collaboration and linkages among EMS and CSHN agencies, as well as families and other agencies and organizations, as appropriate (e.g., schools).

4. EMSC-Related Models for Improving the Care of Culturally Diverse Populations

In emergencies, health care providers are often required to meet the needs of linguistically, culturally and ethnically diverse children and families, but little training is provided in this area. Projects in this category can be directed to one or more of the following:

- Development, implementation and evaluation of education and training programs in cultural sensitivity for prehospital providers, nurses, and physicians.
- Development (or translation), implementation, and evaluation of discharge, injury prevention and health care materials for low literacy populations and for culturally and/or ethnically diverse populations.

Projects in this category must demonstrate collaboration and linkages among EMS or MCH agencies, acute care facilities, and ethnically-oriented community organizations and agencies to assure sensitivity to ethnic and cultural issues.

5. Children's Emergencies in Disasters

Local, regional, and State disaster plans typically do not address the training and equipment necessary to meet the special needs of children in disasters. Projects in this category should address one or more of the seven recommendations identified in the September 21–22, 1995, Workshop on Children's Emergencies in Disasters, co-sponsored by the Maternal and Child Health Bureau, the Federal Emergency Management Agency, and the Substance Abuse and Mental Health Services Administration (a copy of these recommendations is included in the application kit). Examples of projects appropriate for this category include the following:

- Development of a strategy to integrate pediatrics into existing disaster plans, in particular focusing on the following components: Training, equipment, psychosocial support, system access and cost reimbursement, shelter services, and mitigation.
- Identification of key data to be collected, collection, and analysis of data on children's health and mental health needs in disasters.

Proposals may be submitted on emerging issues that are not included in the above list. However, any such proposal must demonstrate relevance to the EMSC Five Year Plan and must make a persuasive argument that the issue is particularly critical. The justification provided should clearly link the activities in the application with the Plan's objectives. Current targeted issues grantees may apply for one additional year of funding.

Prospective applicants are urged to contact EMSC program staff well in advance of submitting their formal applications, so that the work of proposal development can be avoided if the proposed project is inappropriate for submission in this category.

Special Concerns

HRSA's Maternal and Child Health Bureau places special emphasis on improving service delivery to women, children and youth from communities with limited access to comprehensive care. In order to assure access and cultural competence, it is expected that projects will involve individuals from the populations to be served in the planning and implementation of the project. The Bureau's intent is to ensure that project interventions are responsive to the cultural and linguistic needs of special populations, that services are accessible to consumers, and that the broadest possible representation of culturally distinct and historically underrepresented groups is supported through programs and projects sponsored by the MCHB. This same special emphasis applies to improving service delivery to children with special health care needs.

In keeping with the goals of advancing the development of human potential, strengthening the Nation's capacity to provide high quality education by broadening participation in MCHB programs of institutions that may have perspectives uniquely reflecting the Nation's cultural and linguistic diversity, and increasing opportunities for all Americans to participate in and benefit from Federal public health programs, HRSA will place a funding priority on projects from Historically Black Colleges and Universities (HBCU) or Hispanic Serving Institutions (HSI) in all categories and subcategories in this notice for which applications from academic institutions are encouraged. This is in conformity with the Federal Government's policies in support of White House Initiatives on Historically Black Colleges and Universities (Executive Order 12876) and Educational Excellence for Hispanic Americans (Executive Order 12900). An approved proposal from a HBCU or HSI will receive a 0.5 point favorable adjustment of the priority score in a 4 point range before funding decisions are made.

Evaluation Protocol

A maternal and child health discretionary grant project, including any project awarded as part of the Emergency Medical Services for Children Demonstration Grants program, is expected to incorporate a carefully designed and well planned evaluation protocol capable of demonstrating and documenting measurable progress toward achieving the project's stated goals. The protocol should be based on a clear rationale relating the grant activities, the project goals, and the evaluation measures. Wherever possible, the measurements of progress toward goals should focus on health outcome indicators, rather than on intermediate measures such as process or outputs. A project lacking a complete and well-conceived evaluation protocol as part of the planned activities will not be funded.

Public Comment

If time permits, comments from the public will be accepted on the categories, priorities, and preferences described in this notice. Public comments received too late for consideration this year will be considered in the development of program categories, priorities, or preferences for FY 1997. Members of the public should submit any comments to: Chief, Grants Management Branch, MCHB, at the address listed in the **ADDRESS** section.

Project Review and Funding

The Department will review applications in the preceding funding categories as competing applications and will fund those which, in the Department's view, are consistent with the statutory purpose of the program, with particular attention to children from culturally distinct populations and children with special health care needs; and that best meet the purposes of the EMSC program and address achievement of applicable Healthy People 2000 objectives related to emergency medical services and trauma systems.

Review Criteria

The review of applications will take into consideration the following criteria:

- For Category (1) State Planning Grants:

—Evidence of the State's commitment to improve pediatric emergency care services and to continue with EMSC program implementation.

—The adequacy of the applicant's proposed method to identify problems and conduct a needs assessment.
—Evidence of the applicant's understanding of obstacles to EMSC activity in the past, and the completeness of proposed strategies to overcome these obstacles.
—The adequacy of the applicant's proposed planning process for improving EMSC.
—The soundness of the methods the applicant will use to: (1) recruit, select and assemble appropriate participants, including members of culturally distinct populations, with demonstrated expertise and experience in EMS; trauma systems; child health issues; and emergency care for children; and (2) obtain input from potential consumers (i.e., families) of a State EMSC plan.
—Reasonableness of the proposed budget, soundness of the arrangements for fiscal management, effectiveness of use of personnel, and likelihood of project completion within the proposed grant period.

• For Categories (2) and (3) State Systems and Targeted Issues Grants:
—The appropriateness of project objectives and outcomes in relation to the specific nature of the problems identified by the applicant.
—The adequacy of the proposed methodology for achieving project goals and objectives.
—The soundness of the plan for evaluating progress in achieving project objectives and outcomes.
—The adequacy of the plan for organizing and carrying out the project.
—The qualifications and experience of the Project Director and proposed staff.
—The reasonableness of the proposed budget and soundness of the arrangements for fiscal management.
—The extent to which the project gives special emphasis to the issues identified in the Special Concerns section of this notice.

• For Category (2) State Systems Grants only, the following additional criteria:
—The adequacy of the applicant's understanding of the problem of pediatric trauma and critical illness in the grant locale, including the special problems of (a) children with special health needs (CSHN) and their families; and (b) minority children and families (including Native Americans, Native Hawaiians, and Alaska Natives).
—The extent to which the applicant will employ products and expertise of EMSC programs from other States, especially of current and former grantees of the Federal EMSC program.
—The adequacy with which the applicant addresses institutionalization of the proposed project.
—The extent to which the applicant demonstrates the involvement and participation of consumers (e.g., families) and parent advocacy groups in planning, needs assessment, and project implementation.
—The extent to which the applicant demonstrates a multi-disciplinary approach to EMSC system development, including providers at all levels (e.g., physicians, nurses, emergency medical technicians, social workers and others appropriate to project activities).
—Evidence that the applicant will collaborate and coordinate with other participants in the EMSC continuum, e.g., the State EMS agency; the State MCH/CSHN agency; the State Highway Safety Office; other relevant State agencies; tribal nations; state and local professional organizations; private sector voluntary organizations; business organizations; hospital organizations; and any other ongoing Federally-funded projects in EMS, injury prevention, and rural health.
—The adequacy of the applicant's plan to integrate pediatric emergency care into the primary care delivery system.

For Category (3) Targeted Issues Grants only, the following additional criteria:
—The relevance of the proposed project to the MCHB/NHTSA Five Year Plan for EMSC.

Eligible Applicants

No more than one grant under this program will be made in any State (to a State or a school of medicine in the State) in any fiscal year. Applications for funding will be accepted from States and accredited schools of medicine. Applications which involve more than a single State will also be accepted. In developing the proposed project, applicants must seek the participation and support of local or regional trauma centers and other interested entities within the State, such as local government and health and medical organizations in the private sector. If the applicant is a school of medicine, the application must be endorsed by the State. The State's endorsement must acknowledge that the applicant has consulted with the State and that the State has been assured that the applicant will work with the State on the proposed project.

Any State (or medical school within that State) may apply for any category or subcategory of grant, subject to the following considerations based on equitable geographic distribution of EMSC funds, differences in purpose among EMSC grant categories, and variation among States in EMSC program progress:

• For Category (1) Planning Grants, States (or medical schools within those States) that have received prior EMSC state systems grants may not apply for a planning grant.

• For Category (2)(A) Implementation Grants, applications from States (and medical schools within those States) that have not previously received EMSC program funds, or that have received only partial support under this program as part of a regional alliance, will receive preference for funding in this subcategory. This means that approved applications from States (and medical schools within those States) with no or very limited prior EMSC program support will be funded ahead of approved applications from outside this group.

• For Category (2)(B) System Enhancement Grants, States (and medical schools within those States) that have previously received EMSC funds may apply for a system enhancement grant, as long as they will not also be receiving implementation funds during the project period of the system enhancement grant. States that have not previously received EMSC funds are advised to apply first for implementation category funds.

• For Category (3) Targeted Issues Grants, eligibility is not affected by previous receipt of other EMSC funding. Applications will not be considered for both Category (1) State Planning Grants and Category (2) State Systems Grants simultaneously from the same State. Funding of an application for a planning grant or for a Category (2)(A) implementation grant bars a State from future competitions for that category or subcategory.

Allowable Costs

The HRSA may support reasonable and necessary costs of EMSC Demonstration Grant projects within the scope of approved projects. Allowable costs may include salaries, equipment and supplies, travel, contracts, consultants, and others, as well as indirect costs as negotiated and certified. The HRSA adheres to administrative standards reflected in the Code of Federal Regulations, 45 CFR Part 92 and 45 CFR Part 74.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, community-based nongovernmental applicants must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions. Community-based non-governmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

The project abstract may be used in lieu of the one-page PHSIS, if the applicant is required to submit a PHSIS.

Executive Order 12372

This program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (See Part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR Part 100 for a description of the review process and requirements).

The OMB Catalog of Federal Domestic Assistance number is 93.127.

Dated: February 27, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–4860 Filed 3–1–96; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

Indian Health Service; Health Professions Recruitment Program for Indians

AGENCY: Indian Health Service, HHS.

ACTION: Notice of Competitive Grant Applications for the Health Professions Recruitment Program for Indians.

SUMMARY: The Indian Health Service (IHS) announces that competitive grant applications are now being accepted for the Health Professions Recruitment Program for Indians established by sec. 102 of the Indian Health Care Improvement Act of 1976 (25 U.S.C. 1612), as amended by Pub. L. 102–573. There will be only one funding cycle during fiscal year (FY) 1996. This program is described at sec. 93.970 in the Catalog of Federal Domestic Assistance and is governed by regulations at 42 CFR sec. 36.310 *et seq.* Costs will be determined in accordance with OMB Circulars A–21, A–87, and A–122 (cost principles for different types of applicant organizations); and 45 CFR part 74 or 45 CFR part 92 (as applicable). Executive Order 12372 requiring intergovernmental review is not applicable to this program. This program is not subject to the Public Health System Reporting requirements.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2000*, a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Educational and Community-based programs. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Smoke Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

DATES: A. Applicant Receipt Date—An original and two copies of the completed grant application must be submitted with all required documentation to the Grants Management Branch, Division of Acquisition and Grants Operations, Twinbrook Building, Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852, by close of business June 3, 1996.

Applications shall be considered as meeting the deadline if they are either: (1) received on or before the deadline with hand carried applications received by close of business 5 p.m.; or (2) postmarked on or before the deadline and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications not accepted for processing will be returned to the applicant and will *not* be considered for funding.

B. Additional Dates:

1. Application Review: July 17, 1996
2. Applicants Notified of Results: on or about August 1, 1996 (approved, recommended for approval but not funded, or disapproved)
3. Anticipated Start Date: September 1, 1996

FOR FURTHER INFORMATION CONTACT: For program information, contact Robin L. Bristow, Project Officer, Scholarship Branch, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Suite 100, Rockville, Maryland 20852, (301) 443–6197. For grants application and business management information, contact M. Kay Carpentier, Grants Management Officer, Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, Twinbrook Building, Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852 (301) 443–5204. (The telephone numbers are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program purpose, eligibility

and preference, program objectives, required affiliation, fund availability and period of support, type of program activities considered for support, and application procedures for FY 1996.

A. General Program Purpose

The purpose of the Health Professions Recruitment program is to increase the number of American Indians and Alaska Natives entering the health professions and to assure an adequate supply of health professionals to the IHS, Indian tribes, tribal organizations, and urban Indian organizations involved in the provision of health care to Indian people.

B. Eligibility and Preference

The following organizations are eligible with preference given in the order of priority to:

1. Indian tribes,
2. Indian tribal organizations,
3. urban Indian organizations and other Indian health organizations; and
4. public and other nonprofit private health or educational entities.

C. Program Objectives

Each proposal must address the following *four* objectives to be considered for funding:

1. To identify Indians with a potential for education or training in Public Health (Masters level) and other health professions (excluding nursing), and to encourage and assist them to enroll in such programs. The Nursing profession is excluded because the IHS Nursing Recruitment Grant Program provides funding to increase the number of nurses who deliver health care services to Indians.

2. To deliver the necessary student support systems to help to ensure that students who are recruited successfully complete their academic training. Support services may include providing career counseling and academic advice; assisting students to identify academic deficiencies and to develop plans to correct those deficiencies; assisting students to locate financial aid; monitoring students to identify possible problems; assisting with the determination of need for and location of tutorial services; and other related activities which will help to retain students in school.

3. To publicize existing sources of financial aid available to Indian students interested in enrolling in or enrolled in an accredited Masters of Public Health program or accredited health professions program (excluding nursing).

4. To work in close cooperation with the IHS, tribes, tribal organizations and urban Indian organizations, in locating and identifying non-academic period placement opportunities and practicum experiences, i.e., the IHS Extern Program authorized under Section 105 of Pub. L. 94–437, as amended; assisting students with individual development plans in conjunction with identified placement opportunities; monitoring students to identify and evaluate possible problems; and monitoring and evaluating all placement and practicum experiences within the IHS to further develop and modify the program.

D. Required Affiliation

If the applicant is an Indian tribe, tribal organization, urban organization or other Indian health organization, or a public or nonprofit private health organization, the applicant must submit a letter of support from at least one accredited school of public health or health professions program (excluding nursing), depending on the type of program for which it proposes to recruit. This letter must document linkage with that educational organization.

When the target population of a proposed project includes a particular Indian tribe or tribes, an official document, i.e., a letter of support or tribal resolution, must be submitted indicating that the tribe or tribes will cooperate with the applicant.

E. Fund Availability and Period of Support

It is anticipated that approximately $250,000 will be available for approximately 3 new grants. The average funding level for projects in FY 1995 was $98,000. The anticipated start date for selected projects will be September 1, 1996. Pursuant to 42 Code of Federal Regulations § 36.313(c), the project period "will usually be for one to two years." However, under this notice, projects will be awarded for a budget term of 12 months, with a maximum project period of up to three (3) years. A maximum project period of three (3) years is required so that key staff, such as project directors, may be recruited, without the financial and career uncertainty of a one or two year budget period and to enable the projects to carry out their recruitment activities without the added activity of applying for a grant every one or two years. Grant funding levels include both direct and indirect costs. Funding of succeeding years will be based on the FY 1996 level, continuing need for the program, satisfactory performance, and the availability of appropriations in those years.

F. Type of Program Activities Considered for Support

Funds are available to develop grant programs to located and recruit students with potential for (1) Masters of Public Health or (2) other health professions degree programs (excluding nursing), and to provide support services to Indian students who are recruited.

G. Application Process

An *IHS Recruitment Grant Application Kit*, including the required PHS 5161–1 (Rev. 7/92) (OMB Approval No. 0937–0189) and the U.S. Government Standard forms (SF–424, SF–424A and SF–424B), may be obtained from the Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, 12300 Twinbrook Parkway, Suite 100, Rockville, Maryland 20852, telephone (301) 443–5204. (This is not a toll free number.)

H. Grant Application Requirements

All applications must be single-spaced, typewritten, and consecutively numbered pages using black type not smaller than 12 characters per one inch, with conventional one inch border margins, on only one side of standard size 8½x11 paper that can be photocopied. The application narrative (not including abstract, tribal resolutions or letters of support, standard forms, table of contents or the appendix) must not exceed 20 typed pages as described above. All applications must include the following in the order presented:

—Standard Form 424, Application for Federal Assistance
—Standard Form 424A, Budget Information—Non-Construction Programs, (pages 1 and 2)
—Standard Form 424B, Assurances—Non-Construction Programs (front and back)
—Certifications, PHS 5161–1, (pages 17–18)
—Checklist, PHS 5161–1, (pages 23–24), NOTE: Each standard form and the checklist is contained in the PHS Grant Application, Form PHS 5161–1 (Revised 7/92)
—Project Abstract (one page)
—Table of Contents
—Program Narrative to include:
—Introduction and Potential Effectiveness of Project
—Project Administration
—Accessibility to Target Population
—Relationship of Objectives to Manpower Deficiencies
—Project Budget, including multi-year narratives, and Budget Justifications
—Appendix to include:

—Tribal Resolution(s) or Letters of Support
—Biographical sketches for key personnel or position descriptions if position is vacant
—Organizational chart
—Workplan
—Completed IHS Application Checklist
—Application Receipt Card, PHS 3038–1 Rev. 5–90.

I. Application Instructions

The following instructions for preparing the application narrative also constitute the standards (criteria or basis for evaluation) for reviewing and scoring the application. Weights assigned each section are noted in parenthesis.

Abstract—An abstract may not exceed one typewritten page. The abstract should clearly present the application in summary form, from a "who-what-when-where-how-cost" point of view so that reviewers see how the multiple parts of the application fit together to form a coherent whole.

Table of Contents—Provide a one page typewritten table of contents.

Narrative

1. Introduction and Potential Effectiveness (30 pts.)

a. Describe your legal status and organization.

b. State specific objectives of the project, which are measurable in terms of being quantified, significant to the needs of Indian people, logical, complete and consistent with the purpose of sec. 102.

c. Describe briefly what the project intends to accomplish. Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project.

d. Provide a project specific work plan (milestone chart) which lists each objectives, the tasks to be conducted in order to reach the objective, and the timeframe needed to accomplish each task. Timeframes should be projected in a realistic manner to assure that the scope of work can be completed within each budget period. (A work plan format is provided.)

e. In the case of proposed projects for identification of Indians with a potential for education or training in the health professions (excluding nursing), include a method for assessing the potential of interested Indians for undertaking necessary education or training in such health professions.

f. State clearly the criteria by which the project's progress will be evaluated and by which the success of the project will be determined.

g. Explain the methodology that will be used to determine if the needs, goals, and objectives identified and discussed in the application are being met and if the results and benefits identified are being achieved.

h. Identify who will perform the evaluation and when.

2. Project Administration (20 pts.)

a. Provide an organizational chart (include in appendix). Describe the administrative, managerial and organizational arrangements, and the facilities and resources to be utilized to conduct the proposed project.

b. Provide the name and qualifications of the project director or other individuals responsible for the conduct of the project; the qualifications of the principal staff carrying out the project; and a description of the manner in which the application's staff is or will be organized and supervised to carry out the proposed project. Include biographical sketches of key personnel (or job descriptions if the position is vacant) (include in appendix).

c. Describe any prior experience in administering similar projects.

d. Discuss the commitment of the organization, i.e., although not required, the level of non-Federal support. List the intended financial participation, if any, of the applicant in the proposed project specifying the type of contributions such as cash or services, loans of full or part-time staff, equipment, space, materials or facilities or other contributions.

3. Accessibility to Target Population (20 pts.)

a. Describe the current and proposed participation of Indians (if any) in your organization.

b. Identify the target Indian population to be served by your proposed project and the relationship of your organization to that population.

c. Describe the methodology to be used to access the target population.

4. Relationship of Objectives to Manpower Deficiencies (20 pts.)

a. Provide data and supporting documentation to address the relationship of objectives to manpower deficiencies.

b. Indicate the number of potential Indian students to be contacted and recruited as well as potential cost per student recruited. Those projects that have the potential to serve a greater number of Indians will be given first consideration.

5. Soundness of Fiscal Plan (10 pts.)

a. Clearly define the budget. Provide a justification and detailed breakdown of the funding by category for the project. Information on the project director and project staff should include salaries and percentage of time assigned to the grant. List equipment purchases necessary for the conduct of the project.

b. The available funding level of $250,000 is inclusive of both direct and indirect costs. Pursuant to Public Health Service Grants policy (DHHS Publication No. (OASH) 94–50,000 (Rev.) April 1, 1994), a 'training grant' includes a grant for "training or other educational purposes", and the Department of Health and Human Services considers this grant activity as having an educational purpose. Because this project has an educational purpose, and, therefore, is for a training grant, the Department of Health and Human Services' policy limiting reimbursement of indirect cost to the lesser of the applicant's actual indirect costs or 8 percent of total direct costs (exclusive of tuition and related fees and expenditures for equipment) is applicable. This limitation applies to all institutions of higher education other than agencies of State and local government.

c. Projects requiring additional years must include a program narrative and categorical budget and justification for each additional year of funding requested (this is not considered part of the 20-page narrative).

Appendix—to include:

a. Tribal Resolution(s) or Letters of Support
b. Biographical sketches of key personnel or position descriptions if position is vacant
c. Organizational chart
d. Workplan
e. Completed IHS Application Checklist
f. Application Receipt Card, PHS 3038–1 Rev. 5–90

J. Reporting

1. Progress Report—Program progress reports shall be required semiannually. These reports will include a brief description of a comparison of actual accomplishments to the goals established for the period, reasons for slippage and other pertinent information as required. A final report is due 90 days after expiration of the budget/project period.

2. Financial Status Report—Semi-annually financial status reports will be submitted 30 days after the end of the half year. A final financial status report is due 90 days after expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting.

K. Grant Administration Requirements

Grants are administered in accordance with the following documents:

1. 45 CFR part 92, HHS, Uniform Administrative Requirements for Grants

and Cooperative Agreements to State and Local Governments, or 45 CFR part 74, Administration of Grants to Non-Profit Recipients.

2. PHS Grants Policy Statement, and

3. Appropriate Cost Principles: OMB Circular A–21, Educational Institutions, OMB Circular A–87, State and Local Governments, and OMB Circular A–122, Non-profit Organizations.

L. Objective Review Process

Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed by an Objective Review Committee (ORC) in accordance with IHS objective review procedures. The objective review process ensures a nationwide competition for limited funding. The ORC will be comprised of IHS (40% or less) and other federal or non-federal individuals (60% or more) with appropriate expertise. The ORC will review each application against established criteria. Based upon the evaluation criteria, the reviewers will assign a numerical score to each application, which will be used in making the final funding decision. Approved applications scoring less than 60 points will not be considered for funding.

M. Results of the Review

The results of the objective review are forwarded to the Acting Associate Director, Office of Human Resources (OHR), for final review and approval. The Acting Associate Director, OHR, will also consider the recommendations from the Director, Division of Health Professions, Recruitment and Training, and the Grants Management Branch. Applicants are notified in writing on or about August 1, 1996. A Notice of Grant Award will be issued to successful applicants. Unsuccessful applicants are notified in writing of disapproval. A brief explanation of the reasons the application was not approved is provided along with the name of an IHS official to contact if more information is desired.

Dated: February 21, 1996.

Michael H. Trujillo,

Assistant Surgeon General Director.

[FR Doc. 96–4931 Filed 3–1–96; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit From Sage Development Company, LLC, Daphne, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Sage Development Company, LLC, (Applicant), has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize for a period of 30 years the incidental take of an endangered species, the Alabama beach mouse (*Peromyscus polionotus ammobates*), known to occupy a 25.7-acre tract of land owned by the Applicant on the Fort Morgan Peninsula, Baldwin County, Alabama. The Application proposes to construct a project known as The Dunes, which will include 3 condominium complexes, 38 single family/duplex lots, their associated landscaped grounds and parking areas, recreational amenities, and dune walkover structures (Project).

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making requests to the addresses below. This notice is provided pursuant to Section 10© of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be received on or before April 3, 1996.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Persons wishing to review the EA or HCP may obtain a copy by writing the Regional Office or the Jackson, Mississippi, Field Office. Requests must be writing to properly process requests. Documents will also be available for public inspection, by appointment, during normal business hours at the Regional Office, or the Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–811416 in such comments.

Regional Permit Coordinator (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, FAX 404/679–7081). Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213 (telephone 601/965–4900, FAX 601/965–4340).

FOR FURTHER INFORMATION CONTACT: Mr. Will McDearman at the above Jackson, Mississippi, Field Office.

SUPPLEMENTARY INFORMATION: The Alabama beach mouse (ABM), *Peromyscus polionotus ammobates*, is a subspecies of the common oldfield mouse *Peromyscus polionotus* and is restricted to the dune systems of the Gulf Coast of Alabama. The known change of ABM extends from Fort Morgan eastward to the western terminus of Alabama Highway 182, including the Perdue Unit on the Bon Secour National Wildlife Refuge. The sand dune systems inhabited by this species are not uniform; several habitat types are distinguishable. The species inhabits primary dunes, interdune areas, secondary dunes, and scrub dunes. The depth and area of these habitats from the beach inland varies. Population surveys indicate that this subspecies is usually more abundant in primary dunes that in secondary dunes, and usually more abundant in secondary dunes than in scrub dunes. Optimal habitat consists of dune systems with all dune types. Though fewer ABM inhabit scrub dunes, these high dunes can serve as refugia during devastating hurricanes that overwash, flood, and destroy or alter secondary and frontal dunes. ABM surveys on the Applicant's property reveal habitat occupied by ABM. The Applicant's property contains designated critical habitat for the ABM. Construction of the Project may result in the death of, or injury to, ABM. Habitat alterations due to condominium placement and subsequent human habitation of the project may reduce available habitat for food, shelter, and reproduction.

The EA considers the environmental consequences of several alternatives. One action proposed is the issuance of the incidental take permit based upon submittal of the HCP as proposed. This alternative provides for restrictions that include placing no habitable structures seaward of the designated ABM critical habitat, establishment of walkover structures across designated critical habitat, a prohibition against housing or keeping pet cats, ABM competitor control and monitoring measures, scavenger-proof garbage containers, creation of educational and information brochures on ABM conservation, and the minimization and control of outdoor lighting. Further, the HCP proposes to provide an endowment to acquire ABM habitat off-site or otherwise perform some other conservation measure for the ABM. The HCP provides a funding source for these mitigation measures. Another alternative is consideration of a different project design that further minimizes permanent loss of ABM habitat. A third alternative is no-action, or deny the request for authorization to incidentally take the ABM.

Dated: February 26, 1996.

Noreen K. Clough,

Regional Director.

[FR Doc. 96–4933 Filed 3–1–96; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Timber Management Practices in Conecuh and Monroe Counties, Alabama by MacMillan Bloedel Timberlands, Incorporated

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: MacMillan Bloedel Timberlands, Incorporated, (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize for a period of 30 years the incidental take of a threatened species, the Red Hills salamander, *Phaeognathus hubrichti*, known to occupy lands owned by the Applicant in Conecuh and Monroe Counties, south-central Alabama.

The Service also announces the availability of an Environmental Assessment (EA) and Habitat Conservation Plan (HCP) for the incidental take application. The Applicant's HCP describes *Phaeognathus hubrichti* conservation measures to be employed to address the anticipated level of incidental take. The EA prepared by the Service describes the environmental consequences of issuing or denying the Applicant's request for an incidental take permit. As stated in the EA, the Service proposes to issue the requested permit. This proposal is based on a preliminary determination that the Applicant has satisfied the requirements for permit issuance and that the HCP provides conservation benefits to *Phaeognathus hubrichti*. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10© of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6). Copies of the EA and HCP may be obtained by making a written request to the Regional Office [See **ADDRESSES** below]. Note that requests must be in writing to be properly processed.

DATES: Written comments should be received on or before April 3, 1996.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Persons wishing to review the EA or HCP may obtain a copy by writing the Regional Office or the Jackson, Mississippi, Field Office. Documents will also be available for public inspection, by appointment, during normal business hours at the Regional Office, or the Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit number PRT–811415 in such comments:

Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia (404–679–7110, fax 404–679–7081)

Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213 (601–965–4900, fax 601–965–4340)

FOR FURTHER INFORMATION CONTACT: Will McDearman, Jackson, Mississippi Field Office or Rick Gooch at the Atlanta, Georgia Regional Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act, and implementing regulations, prohibits the take of threatened and endangered species. Take, in part, is defined as an activity that kills, injures, harms, or harasses a listed endangered or threatened species.

Section 10(a)(1)(B) of the Act provides an exemption, under certain circumstances, to the Section 9 prohibition if the taking is incidental to, and not the purpose of an otherwise lawful activities.

Phaeognathus hubrichti is a plethodontid salamander and the sole member of its genus. Its range is confined to a small area of southern Alabama. Portions of the Applicant's lands in the Red Hills physiographic province of south-central Alabama are occupied by this species. According to the surveys identified in the HCP, the Applicant owns approximately 3,800 acres within the species' historic range in Conecuh and Monroe Counties. The Applicant's HCP attempts to define certain management prescriptions according to known occurrences of *Phaeognathus hubrichti* as well as the species' habitat selection preferences. The HCP identifies three habitat classifications: Optimal; Moderately Suitable; and Marginal. The Applicant owns approximately 1,200 acres; 1,300 acres; and 1,300 acres, respectively of each habitat type.

Within the Optimal habitats of the Applicant's properties encompassed by the HCP, either no timber harvests will occur or very limited single tree selections with at least 90 percent hardwood canopy maintained. To minimize impacts to the soil, any trees removed from optimal habitat will be felled by chain saw and pulled from the area by cable, or other applicable method with no heavy machinery permitted in the area.

Within the Moderately Suitable habitats of the Applicant's properties encompassed by the HCP, an increased level of selective cutting (followed by natural regeneration of tree species characteristic of *Phaeognathus hubrichti* habitat), provided hardwood canopy cover is not reduced by more than 35 percent.

Within the Marginal to Unsuitable habitats, options on these areas will include normal silvicultural practices, such as clearcutting, select tree harvest, chemical and mechanical site preparation, replanting, and prescribed burning. Clear-cut areas will be planted with pine or hardwood seedlings. Site preparation methods vary depending on the site but usually will include a combination of herbicides and fire. Although rotation lengths may change in the future due to economic and/or biological considerations, plantations are currently managed on a pulpwood/sawtimber rotation averaging 20–35 years. Prescribed burning rotations range from 3 to 7 years.

Pest or disease infested trees are removed from all habitat classification, if necessary, to prevent further infection of healthy trees. Forested buffers of approximately 50 feet width will be maintained above and below areas classified as *Phaeognathus hubrichti* Optimal habitat. Timber harvesting will be conducted within these buffers with at least 50 percent of the canopy cover maintained.

The HCP also contained funding for the development of an integrated

management plan incorporating the above prescriptions, as well as employee/contractor training, and maintenance of the permit's terms and conditions.

The EA considers the environmental consequences of two alternatives. The no action alternative would probably result in continued insidious and direct habitat loss for *Phaeognathus hubrichti* resulting in further jeopardy to the species and continued exposure of the Applicant under Section 9 of the Act. This action is inconsistent with the purposes and intent of Section 10 of the Act. The proposed action alternative is issuance of the incidental take permit. The issuance of the permit will be predicated on implementation of the Applicant's HCP, and the measures contained in the authorizing permit.

Dated: February 26, 1996.

Noreen K. Clough,

Regional Director.

[FR Doc. 96–4934 Filed 3–1–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[NV–050–1020–001]

Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council Meeting Locations and Times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), council meeting of the Mojave-Southern Great Basin Resource Advisory Council will be held as indicated below. The agenda includes a field trip, public meeting, discussion of laws and regulations that pertain to grazing, and a statewide update of standards and guidelines.

All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meeting is listed below. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Michael Dwyer at the Las Vegas District Office, 4765 Vegas Dr., Las Vegas, NV 89108, telephone, (702) 647–5000.

DATES AND TIMES: Dates are March 21 and 22, 1996. The council will meet at the BLM Las Vegas District Office located at 4765 Vegas Drive, Las Vegas, Nevada, at 7:30 a.m. on March 21, 1996, and will depart for a field trip at 8 a.m. Individuals who want to attend the field trip must provide their own transportation and lunch. A schedule for the field trip will be available prior to departure. The council members and BLM support staff will host an open house for public input on the development of Standards and Guidelines for range reform from 5:30 p.m. to 7:30 p.m. at the Caliente Youth Center, U.S. Highway 93, Caliente, NV. On March 22, the council will meet from 8 a.m. to approximately 4 p.m. at the Caliente City Hall in the historic Union Pacific Railroad Station building.

SUPPLEMENTARY INFORMATION: The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands.

FOR FURTHER INFORMATION CONTACT: Lorraine Buck, Public Affairs Specialist, Las Vegas District, telephone: (702) 647–5000.

Michael F. Dwyer,

District Manager.

[FR Doc. 96–4784 Filed 3–1–96; 8:45 am]

BILLING CODE 4310–HC–M

[UT–080–1430–00]

Leasing of Public Land; Uintah and Duchesne Counties, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Leasing of Public Land.

SUMMARY: The following public lands, located in Uintah and Duchesne Counties, Utah may be leased on a non-competitive basis to existing land use permit holders pursuant to Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732) and 43 CFR 2920.

Leases would be offered to the adjoining landowners who currently hold short-term, land use permits for the purposes specified below:

Brad Nelson: Permit Serial Number #UTU–65105, agricultural crop production, haystack yards and silage pit.

Salt Lake Meridian, Utah

T. 8 S., R. 17 E.,
Sec. 22: NW¼NW¼SE¼, S½NW¼SE¼, SW¼NE¼SE¼;
Sec. 23: S¾NE¼SW¼, SE¼NW¼SW¼, N¾SW¼SE¼, SW¼SW¼SE¼.

Amounting to 20.00 acres, more or less.

Hunt Oil Company, c/o Ed Webster: Permit Serial Number #UTU–65111, agricultural crop production and corral facility.

Salt Lake Meridian, Utah

T. 11 S., R. 15 E.,
Sec. 31: NW¼SE¼;
Sec. 33: SW¼NW¼SE¼.

Amounting to 11.50 acres, more or less.

H. Lee Wimmer: Permit Serial Number #UTU–63981, agricultural crop production.

Salt Lake Meridian, Utah

T. 11 S., R. 13 E.,
Sec. 21: NE¼SE¼;
Sec. 33: W½NE¼, NW¼NW¼.

Amounting to 25.00 acres, more or less.

Woody Searle: Permit Serial Number #UTU–71224, irrigation system and storage area.

Salt Lake Meridian, Utah

T. 4 S., R. 21 E.,
Sec. 4: NW¼NSW¼SE¼.

Amounting to 1.00 acre, more or less.

This action would convert existing land use permits to long-term leases. The leases would be for a term of from ten to fifteen years from date of issuance. Applications for the leases will be accepted for processing upon completion of the comment period. Leases would be issued for not less than fair market rental and the lessee shall reimburse the United States for reasonable administrative and other costs incurred in the process of converting these permits to leases.

Conversion of these land use permits to leases would be in conformance with Lands and Realty Management Decisions (LR03) and (LR08) described in the December 21, 1994, Record of Decision implementing the Diamond Mountain Resource Area Resource Management Plan.

DATES: On or before April 18, 1996, interested persons may submit comments regarding the proposed leases to Peter Kempenich, Natural Resource Specialist, Bureau of Land Management, Vernal District, 170 South 500 East, Vernal, Utah 84078, (801) 781–4432.

Any adverse comments will be evaluated by the Area Manager for the Diamond Mountain Resource Area who may vacate or modify this notice and issue a final determination. In the absence of any action by the Area Manager, this Notice of Realty Action will become the final determination of the Bureau.

Dated: February 21, 1996.

Paul Andrews,

Acting District Manager.

[FR Doc. 96–4868 Filed 3–1–96; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 29, 1995, and published in the **Federal Register** on October 11, 1995, (60 FR 52923), Ciba-Geigy Corporation, Pharmaceuticals Division Regulatory Compliance, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Ciba-Geigy Corporation to manufacture the listed controlled substance is consistent with the public interest at this time. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–4946 Filed 3–1–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 19, 1995, and published in the **Federal Register** on October 25, 1995, (60 FR 54707), Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146 7, State Road 2, Mayaguez, Puerto Rico 00680, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of dextropropoxyphene, bulk (non-dosage forms) (9273), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Eli Lilly Industries, Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: February 26, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–4947 Filed 3–1–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 13, 1995, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396)	I
Difenoxin (9168)	I
Methylphenidate (1724)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Meperidine intermediate-C (9234)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Oxymorphone (9652)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances in bulk to supply final dosage form manufacturers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 3, 1996.

Dated: February 26, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–4944 Filed 3–1–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 19, 1995, MD Pharmaceutical, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

The firm plans to manufacture the listed controlled substances to make finished dosage forms for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objects to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 3, 1996.

Dated: February 26, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–4945 Filed 3–1–96; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Notice of Registration

By Notice dated December 15, 1995, and published in the **Federal Register** on December 28, 1995, (60 FR 67141), North Pacific Trading Company, 1505 SE Gideon Street, Portland, Oregon 97202, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basic class of controlled substance listed in Schedule I.

No comment or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of North Pacific Trading Company to import the listed controlled substance is consistent with the public interest at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: February 26, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–4948 Filed 3–1–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 29, 1995, and published in the **Federal Register** on July 6, 1995, (60 FR 35225), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Pholcodine (9314)	I
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium powdered (9639)	II
Opium granulated (9640)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

A registered manufacturer filed a comment requesting that Penick's application for registration be denied for considerations of the public interest. The commenter also questioned whether Penick has the manufacturing and processing capabilities to manufacture the listed controlled substances. DEA has conducted inspection of Penick and determined that Penick has complied with the factors in Title 21, United States Code, Section 823(a). Penick's current application was filed to renew a manufacturer registration which the firm has maintained for several years and under which the firm manufactured controlled substances in the past in conformance with the Controlled Substances Act and its implementing regulations. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: February 26, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–4949 Filed 3–1–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Mackie J. Coal Company, Inc.

[Docket No. M–95–169–C]

Mackie J. Coal Company, Inc., Route 2, Box 530, Grundy, Virginia 24614 has filed a petition to modify the application of 30 CFR 75.1710–1 (canopies or cabs; self-propelled electric face equipment; installation requirements) to its Mine No. 4 (I.D. No. 44–06051) located in Buchanan County, Virginia. The petitioner proposes to use self-propelled electric face equipment without cabs or canopies in mining heights of 48 inches or less. The petitioner states that application of the standard would result in a diminution of safety to the equipment operator.

2. Marfork Coal Company, Inc.

[Docket No. M–95–170–C]

Marfork Coal Company, Inc., P.O. Box 457, Whitesville, West Virginia 25209 has filed a petition to modify the application of 30 CFR 75.333(d)(1) (ventilation controls) to its Outpost East Mine (I.D. No. 46–08296); its Outpost West Mine (I.D. No. 46–08295); its White Queen Mine (I.D. No. 46–08297); its Brushy Eagle Mine (I.D. No. 46–08315); its Low Gap Mine (I.D. No. 46–08442); and its Birch Fork Mine (I.D. No. 46–08493) all located in Raleigh County, West Virginia. The petitioner proposes to use electronically operated Roll-Down Doors constructed of rubber material similar to those used in conveyor belts to control ventilation within the air course in the main entries instead of using heavy Metal Doors. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Leeco, Inc.

[Docket No. M–95–171–C]

Leeco, Inc., 100 Coal Drive, London, Kentucky 40741 has filed a petition to modify the application of 30 CFR 75.388(a)(1) (boreholes in advance of mining) to its Mine No. 63 (I.D. No. 15–16413); its Mine No. 68 (I.D. No. 15–17497) located in Perry County, Kentucky; its Mine No. 60 (I.D. No. 15–12941); and its Mine No. 66 (I.D. No. 15–17172) located in Leslie County, Kentucky. Instead of drilling boreholes, the petitioner proposes to advance panels parallel to gob areas maintaining a nominal distance of 35 feet and to second mine the panel; and to mine out the 35 foot barrier to the previous gob as the panel retreats. The petitioner states that this alternative method would only apply to working sections mining within 50 feet of the pillared areas in the same coal mine. The petitioner asserts that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Basin Resources, Inc.

[Docket No. M–95–172–C]

Basin Resources, Inc., 14300 Highway 12, Weston, Colorado 81091 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Golden Eagle Mine (I.D. No. 05–02820) located in Las Animas, Colorado. The petitioner proposes to use high-voltage (2,400 volts) cables to supply power to longwall mining equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Genwal Resources, Inc.

[Docket No. M–95–173–C]

Genwal Resources, Inc., P.O. Box 1420, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.352 (return air courses) to its Crandall Canyon Mine (I.D. No. 42–01715) located in Emery County, Utah. The petitioner proposes to use belt air in a two-entry mining system and install a low-level carbon monoxide detection system as an early warning fire-detection system in the intake escapeway and the belt entry using specific procedures outlined in its petition for modification. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Bituminous-Laurel Mining, Inc.

[Docket No. M–95–174–C]

Bituminous-Laurel Mining, Inc., 100 Coal Drive, London, Kentucky 40741 has filed a petition to modify the application of 30 CFR 75.388(a)(1) (boreholes in advance of mining) to its Mine No. 4 (I.D. No. 15–11065) located in Leslie County, Kentucky. Instead of drilling boreholes, the petitioner proposes to advance panels parallel to gob areas maintaining a nominal distance of 35 feet and to second mine the panel; and to mine out the 35 foot barrier to the previous gob as the panel retreats. The petitioner states that this alternative method would only apply to working sections mining within 50 feet of the pillared areas in the same coal mine. The petitioner asserts that application of the standard would result in a diminution of safety to the miners. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Philippi Development, Inc.

[Docket No. M–95–175–C]

Philippi Development, Inc., 2708 Cranberry Square, Morgantown, West Virginia 26505 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Sentinel Mine (I.D. No. 46–04168) located in Barbour County, West Virginia. The petitioner proposes to increase the maximum length of its trailing cables to 900 feet for supplying power to shuttle cars, roof bolters and mobile roof supports. The petitioner has outlined specific procedures in its petition for modification to support its proposed alternative method; and states that proposed revisions to the part 48 training plan would be submitted to the District Manager within 60 days after the Proposed Decision and Order becomes final that would specify task training for all miners designated to examine and verify the short-circuit settings and circuit interrupting device(s). The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Consolidation Coal Company

[Docket No. M–95–176–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Robinson Run No. 95 Mine (I.D. No. 46–01318) located in Harrison County, West Virginia. Due to deteriorating roof and rib conditions and roof falls in certain areas of the intake air course, traveling the area would be unsafe. The petitioner proposes to establish evaluation points to monitor the quantity and quality of air in the affected area. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. McElroy Coal Company

[Docket No. M–95–177–C]

McElroy Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its McElroy Mine (I.D. No. 46–01437) located in Marshall County, West Virginia. The petitioner proposes to use a high-voltage cable with an internal ground check conductor smaller than No. 10 (A.W.G.) as part of its 4,160-volt longwall mining system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Leeco, Inc.

[Docket No. M–95–178–C]

Leeco, Inc., 100 Coal Drive, London, Kentucky 40741 has filed a petition to modify the application of 30 CFR 75.333(a) to its Mine No. 63 (I.D. No. 15–16413) located in Perry County, Kentucky. The petitioner proposes to use semipermanent stoppings in rooms where second mining is projected. The petitioner states that the semipermanent stoppings would be constructed of 6-inch, hollow-core concrete blocks, dry stacked and coated on one side with wood-fiber based plaster; and that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. White Oak Mining & Construction Company, Inc.

[Docket No. M–95–179–C]

White Oak Mining & Construction Company, Inc., Scofield Route, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.364(b)(4) to its White Oak Mine #2 (I.D. No. 42–01280) located in Carbon County, Utah. Due to deteriorating roof conditions, the Main East intake at the 2nd Right seals and the bleeder entry at the north end of the 2nd & 3rd Left panels cannot be traveled safely. The petitioner proposes to establish evaluation points to monitor the quantity and quality of air in the affected area. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would

provide at least the same measure of protection as would the mandatory standard.

12. Performance Coal Company

[Docket No. M–95–180–C]

Performance Coal Company, P.O. Box 69, Naoma, West Virginia 25140 has filed a petition to modify the application of 30 CFR 75.333(d)(1) (ventilation controls) to its Upper Big Branch Mine South (I.D. No. 46–08436) located in Raleigh County, West Virginia. The petitioner proposes to use electronically operated Roll-Down Doors constructed of rubber material similar to those used in conveyor belts to control ventilation within the air course in the main entries instead of using heavy Metal Doors. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

13. Philippi Development, Inc.

[Docket No. M–95–181–C]

Philippi Development, Inc., 2708 Cranberry Square, Morgantown, West Virginia 26505 has filed a petition to modify the application of 30 CFR 75.350 (air course and belt haulage entries) to its Sentinel Mine (I.D. No. 46–04168) located in Barbour County, West Virginia. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used as intake air courses. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

14. Jacks Branch Coal Company

[Docket No. M–95–182–C]

Jacks Branch Coal Company, P.O. Box 567, Madison, West Virginia 25130 has filed a petition to modify the application of 30 CFR 75.333(d)(1) (ventilation controls) to its Mine No. 1 (I.D. No. 46–07273) located in Boone County, West Virginia. The petitioner proposes to use electronically operated Roll-Down Doors constructed of rubber material similar to those used in conveyor belts to control ventilation within the air course in the main entries instead of using heavy Metal Doors. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

15. Mountain Coal Company

[Docket No. M–95–183–C]

Mountain Coal Company, P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.1002–1(a) (location of other electric equipment; requirements for permissibility) to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner proposes to use non-permissible electronic testing or diagnostic equipment within 150 feet of pillar workings. The petitioner proposes to use low-voltage or battery operated non-permissible equipment such as, but not limited to, laptop computers, oscilloscopes, vibration analysis machines, and cable fault detectors. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

16. Mountain Coal Company

[Docket No. M–95–184–C]

Mountain Coal Company, P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.500(d) (permissible electric equipment) to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner proposes to use non-permissible electronic testing or diagnostic equipment in or inby the last open crosscut. The petitioner proposes to use low-voltage or battery operated non-permissible equipment such as, but not limited to, laptop computers, oscilloscopes, vibration analysis machines, and cable fault detectors. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

17. Rock of Ages Quarries, Inc.

[Docket No. M–95–12–M]

Rock of Ages Quarries, Inc., P.O. Box 482, Barre, Vermont 05641–0482 has filed a petition to modify the application of 30 CFR 56.19003 (driving mechanism connections) to its Rock of Ages Light Side (I.D. No. 43–00024), U–13 American Hoist, Serial Number H–4121, Model 380/2 located in Washington County, Vermont. The petitioner requests relief from the mandatory standard as it applies to chain drives between the driving mechanism and the gear train of the hoists, allowing the use of chain drives for such application. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

18. Rock of Ages Quarries, Inc.

[Docket No. M–95–13–M]

Rock of Ages Quarries, Inc., P.O. Box 482, Barre, Vermont 05641–0482 has filed a petition to modify the application of 30 CFR 56.19003 (driving mechanism connections) to its Rock of Ages Light Side (I.D. No. 43–00024), U–11 American Hoist, Serial Number H–3783, Model 250/4 located in Washington County, Vermont. The petitioner requests relief from the mandatory standard as it applies to chain drives between the driving mechanism and the gear train of the hoists, allowing the use of chain drives for such application. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

19. Rock of Ages Quarries, Inc.

[Docket No. M–95–14–M]

Rock of Ages Quarries, Inc., P.O. Box 482, Barre, Vermont 05641–0482 has filed a petition to modify the application of 30 CFR 56.19003 (driving mechanism connections) to its Rock of Ages Light Side (I.D. No. 43–00024), W–2 American Hoist, Serial Number 21878, Model 180/3 located in Washington County, Vermont. The petitioner requests relief from the mandatory standard as it applies to chain drives between the driving mechanism and the gear train of the hoists, allowing the use of chain drives for such application. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

20. Rock of Ages Quarries, Inc.

[Docket No. M–95–15–M]

Rock of Ages Quarries, Inc., P.O. Box 482, Barre, Vermont 05641–0482 has filed a petition to modify the application of 30 CFR 56.19003 (driving mechanism connections) to its Rock of Ages Light Side (I.D. No. 43–00024), U–1 American Hoist, Serial Number 22440, Model 180/3 located in Washington County, Vermont. The petitioner requests relief from the mandatory standard as it applies to chain drives between the driving mechanism and the gear train of the hoists, allowing the use of chain drives for such application. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

21. Rock of Ages Quarries, Inc.

[Docket No. M–95–16–M]

Rock of Ages Quarries, Inc., P.O. Box 482, Barre, Vermont 05641–0482 has filed a petition to modify the application of 30 CFR 56.19003 (driving mechanism connections) to its Rock of Ages Light Side (I.D. No. 43–00024), Clyde JJ/Hoist, Serial Number 11430 located in Washington County, Vermont. The petitioner requests relief from the mandatory standard as it applies to chain drives between the driving mechanism and the gear train of the hoists, allowing the use of chain drives for such application. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

22. Swenson Granite Company, Inc.

[Docket No. M–95–17–M]

Swenson Granite Company, Inc., 369 North State Street, Concord, New Hampshire 03301 has filed a petition to modify the application of 30 CFR 56.19003 (driving mechanism connections) to its Gray Quarry (I.D. No. 27–00083), Hilltop Derrick, Timberland Hoist, Serial Number 65–10943, Model 480–2–IR–100E located in Merrimack County, New Hampshire. The petitioner requests relief from the mandatory standard as it applies to chain drives between the driving mechanism and the gear train of the hoists, allowing the use of chain drives for such application. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

23. Swenson Granite Company, Inc.

[Docket No. M–95–18–M]

Swenson Granite Company, Inc., 369 North State Street, Concord, New Hampshire 03301 has filed a petition to modify the application of 30 CFR 56.19003 (driving mechanism connections) to its Gray Quarry (I.D. No. 27–00083), Lower Quarry, Clyde Hoist, Serial Number 21850, Frame 6/2 Drum located in Merrimack County, New Hampshire. The petitioner requests relief from the mandatory standard as it applies to chain drives between the driving mechanism and the gear train of the hoists, allowing the use of chain drives for such application. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

24. Rock of Ages Quarries, Inc.

[Docket No. M–94–37–M]

This notice amends this petition document published in the **Federal Register** on August 25, 1994 (59 FR 43869), to modify the application of 30 CFR 56.19003. This document is only for the Rock of Ages Light Side (I.D. No. 43–00024), for U–2 American Hoist, Serial Number 5645, Model 180/3 located in Washington County, Vermont. The petitioner requests relief from the mandatory standard as it applies to chain drives between the driving mechanism and the gear train of the hoists, allowing the use of chain drives for such application. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 3, 1996. Copies of these petitions are available for inspection at that address.

Date: February 23, 1996.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 96–4866 Filed 3–1–96; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397]

Washington Public Power Supply System (WPPSS); Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–21, issued to the Washington Public Power Supply System (the Supply System, or the licensee), for operation of the WPPSS Nuclear Project No. 2, located in Benton County, Washington.

The proposed amendment would modify the technical specifications (TS) to reflect replacement of the existing reactor recirculation (RRC) flow control system with an adjustable speed drive (ASD) system. The current system relies on operation of the RRC pumps at two discrete speeds, using flow control valves to vary the flow in the RRC system. Following the design change, the flow control valves and the existing pump controllers would be deactivated in place. The existing analog-hydraulic flow control system will be replaced with dual channel, variable frequency ASDs and a digital recirculation flow control system that would vary RRC flow by varying RRC pump speed. The proposed TS changes would reflect the new RRC flow control system.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 29, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible

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effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman, Director, Project Directorate IV–2, MS O–13–E–18, Washington, D.C. 20555: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to M.H. Philips, Jr., Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C., 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated October 26, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 27th day of February 1996.

For the Nuclear Regulatory Commission.

James W. Clifford,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–4943 Filed 3–1–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–424 and 50–425]

Georgia Power Company, et al.; Vogtle Electric Generating Plant, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–68 and NPF–81, issued to Georgia Power Company, et al. (the licensee) for operation of the Vogtle Electric Generating Plant (Vogtle), Units 1 and 2, located at the licensee's site in Burke County, Georgia.

Environmental Assessment

Identification of Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application dated May 1, 1995, as supplemented by letters dated August 3 and 9, September 22, November 20, and December 21, 1995, and January 26 and 30, 1996. The proposed action will replace the existing Vogtle Technical Specifications (TS) in their entirety with a new set of TS based on Revision 1 to NUREG–1431, "Standard Technical Specifications Westinghouse Plants," and the existing VEGP TS.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of TS. The "NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," (52 FR 3788, February 6, 1987), and later the Final Policy Statement (58 FR 39132, July 22, 1993), formalized this need. To facilitate the development of individual improved TS, each reactor vendor owners group (OG) and the NRC staff developed standard TS (STS). For Westinghouse plants, the STS are published as NUREG–1431, and this document was the basis for the new Vogtle TS. The NRC Committee to Review Generic Requirements (CRGR) reviewed the STS and made note of the safety merits of the STS and indicated its support of conversion to the STS by operating plants.

Description of the Proposed Change

The proposed revision to the TS is based on NUREG–1431 and on guidance provided in the Final Policy Statement. Its objective is to completely rewrite, reformat, and streamline the existing TS. Emphasis is placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1431, portions of the existing TS were also used as the basis for the improved TS (ITS). Plant-specific issues (unique design features, requirements, and operating practices) were discussed at length with the licensee, and generic matters with the OG.

The proposed changes from the existing TS can be grouped into four general categories, as follows:

1. Non-technical (administrative) changes, which were intended to make the ITS easier to use for plant operations personnel. They are purely editorial in nature or involve the movement or reformatting of requirements without affecting technical content. Every section of the Vogtle TS has undergone these types of changes. In order to ensure consistency, the NRC staff and the licensee have used NUREG–1431 as guidance to reformat and make other administrative changes.

2. Relocation of requirements, which includes items that were in the existing Vogtle TS but did not meet the criteria set forth in the Final Policy Statement for inclusion in the TS. In general, the proposed relocation of items in the Vogtle TS to the Final Safety Analysis Report (FSAR), appropriate plant-specific programs, procedures and ITS Bases follows the guidance of the Westinghouse STS (NUREG–1431). Once these items have been relocated by removing them from the TS to licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC staff-approved control mechanisms, which provide appropriate procedural means to control changes.

3. More restrictive requirements, which consist of proposed Vogtle ITS items that are either more conservative than corresponding requirements in the existing Vogtle TS, or are additional restrictions that are not in the existing Vogtle TS but are contained in NUREG–1431. Examples of more restrictive requirements include: placing a Limiting Condition of Operation (LCO) on plant equipment that is not required by the present TS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

4. Less restrictive requirements, which are relaxations of corresponding requirements in the existing Vogtle TS that provide little or no safety benefit and place unnecessary burdens on the licensee. These relaxations were the result of generic NRC actions or other analyses. They have been justified on a case-by-case basis for Vogtle as will be described in the staff's Safety Evaluation to be issued with the license amendments, which will be noticed in the **Federal Register**.

In addition to the changes described above, the licensee proposed certain changes to the existing TS that deviated from the STS in NUREG–1431. Each of these additional proposed changes is described in the licensee's application and in the staff's Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing (60 FR 46633). These changes have been justified on a case-by-case basis for Vogtle as will be described in the staff's Safety Evaluation to be issued with the license amendments.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed TS conversion would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents.

Changes that are administrative in nature have been found to have no effect on the technical content of the TS, and are acceptable. The increased clarity and understanding these changes bring to the TS are expected to improve the operator's control of the plant in normal and accident conditions.

Relocation of requirements to licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may be made by the licensee under 10 CFR 50.59 or other NRC-approved control mechanisms, which ensures continued maintenance of adequate requirements. All such relocations have been found to be in conformance with the guidelines of NUREG–1431 and the Final Policy Statement, and, therefore, are acceptable.

Changes involving more restrictive requirements have been found to be acceptable and are likely to enhance the safety of plant operations.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit or to place unnecessary burdens on the licensee, their removal from the TS was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic NRC action, or of agreements reached during discussions with the OG and found to be acceptable for Vogtle. Generic relaxations contained in NUREG–1431 as well as proposed deviations from NUREG–1431 have also been reviewed by the NRC staff and have been found to be acceptable.

In summary, the proposed revision to the TS was found to provide control of plant operations such that reasonable assurance will be provided so that the health and safety of the public will be adequately protected.

These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendments, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to this action would be to deny the request for amendments. Such action would not reduce the environmental impacts of plant operations.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of the Vogtle Electric Generating Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on February 8, 1996, the staff consulted with the Georgia State official, Mr. James Hardeman of the Environmental Protection Division, Georgia Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes

that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendments.

For further details with respect to this action, see the licensee's letter dated May 1, 1995, and supplemental letters dated August 3 and 9, September 22, November 20, and December 21, 1995, and January 26 and 30, 1996, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia.

Dated at Rockville, Maryland, this 27th day of February 1996.

For the Nuclear Regulatory Commission.

Leonard A. Wiens,

Acting Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–4942 Filed 3–1–96; 8:45 am]

BILLING CODE 7590–01–P

Notice of Organization of Agreement States Technical Workshop

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) and Agreement State staffs plan to hold a public meeting with various vendors for the purpose of discussing and clarifying an NRC draft Information Notice on how radiography licensees can verify that their associated equipment meets the requirements of 10 CFR 34.20. Vendors are being invited to provide procedures for identifying associated equipment they manufacture. Agreement States are States which have assumed regulatory authority over certain radioactive materials. NRC expects to use the findings from this meeting to finalize an Information Notice on identification of associated equipment. This meeting will be held a day in advance of the previously announced March 5–6, 1996 Organization of Agreement States technical meeting, in which Agreement State Program issues, including this issue, will be discussed with Agreement State technical representatives (61 FR 5414).

DATES: The meeting will be held from 2:00 p.m. til 5:00 p.m on March 4, 1996.

ADDRESSES: The meeting will be held at the Red Lion Inn at the Quay, 100 Columbia Street, Vancouver, Washington, 360/694–8341. Vancouver is located directly across the Columbia River from Portland, Oregon, and is served by the Portland airport.

FOR FURTHER INFORMATION CONTACT: James H. Myers, Office of State Programs, Mail Stop OWFN–3–D–23, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone 301/415–2328.

CONDUCT OF THE MEETING: The meeting will be conducted in a manner that will expedite the orderly conduct of business. The following procedures apply to public attendance at the meeting:

1. Questions or statements will be entertained as time permits on a first-come, first-served basis, following discussion and summary.
2. Seating will be on a first-come, first-served basis.

Dated at Rockville, Maryland, this 26th day of February, 1996.

For the Nuclear Regulatory Commission.

Richard L. Bangart,

Director, Office of State Programs.

[FR Doc. 96–4941 Filed 3–1–96; 8:45 am]

BILLING CODE 7590–01–P

Notice of Spent Fuel Storage and Transportation Public Workshop

The Nuclear Regulatory Commission will conduct a public workshop on May 17, 1996, to discuss the NRC's Spent Fuel Storage and Transportation Program. This program focuses the agency's efforts on the important issues associated with interim storage and transportation of spent fuel from the nation's nuclear power generators. The purpose of the workshop is to provide applicants, licensees, and other interested parties with an understanding of staff initiatives and to provide an opportunity for interested parties to obtain both NRC and licensee perspectives on issues associated with spent fuel management.

The workshop will focus on participant experience gained through the licensing and inspection programs for dry cask storage. The NRC staff will discuss current and planned staff initiatives, including the development of staff guidance for both the licensing and inspection programs. The staff will also be interested in obtaining feedback on its "Draft Standard Review Plan For Independent Spent Fuel Storage Casks." A tentative agenda is provided below in the Supplementary Information section.

TIME AND LOCATION: The workshop will be held on May 17, 1996, from 8:30 am to 4:30 pm, at the NRC Auditorium. The NRC Auditorium is located in the Two White Flint North Building at 11545 Rockville Pike, Rockville, MD. The White Flint Metro Station is located at the intersection of Marinelli Drive and Rockville Pike. The NRC complex is directly across Marinelli Drive from the Metro Station.

REGISTRATION: To ensure availability of adequate copies of workshop materials, pre-registration is requested by April 15, 1996, to Mr. James Schneider via mail to the U.S. Nuclear Regulatory Commission, Mail Stop O–6–F–18, Washington, DC 20555–0001; telephone (301) 415–8523; or facsimile (301) 415–8555. When registering, please provide the full name of attendee(s), name of organization, mailing address, daytime telephone number, and facsimile number.

SUPPLEMENTARY INFORMATION:

Tentative Agenda

8:30 Introduction
The Licensing Process
—10 CFR Parts 71 and 72
—10 CFR Part 50 Interface
NRC Experience with Dry Cask Storage
—Licensing and Inspection Observations and Lessons Learned
Break
NRC Experience with Dry Cask Storage (cont'd)
—NRC Action Plan
—Change Processes (10 CFR 50.59 and 10 CFR 72.48)
—Quality Assurance and Inspections
12:00 Lunch
1:00 Industry Experience With Dry Cask Storage
Break
Staff Initiatives and Feedback
—Development and Implementation—Standard Review Plan and Inspection Procedures
—Communications—NRC, Industry, and the Public Workshop Summary
4:30 Adjournment

Note: Time for questions and discussion has been allotted at the end of each presentation.

For further information contact Mark S. Delligatti, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, Mail Stop 0–6–G–22, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8518.

Dated at Rockville, Maryland, this 27th day of February 1996.

For the Nuclear Regulatory Commission.

William D. Travers,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–4939 Filed 3–1–96; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

NUCLEAR REGULATION COMMISSION

DATE: Thursday, March 7, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public

MATTERS TO BE CONSIDERED:

Thursday, March 7

4:00 p.m.
Affirmation Session (Public Meeting)
a. Cleveland Electric Illuminating Co.—Licensee's Petition for Review of LBP–95–17
(Contact: Andrew Bates, (301) 415–1963)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: February 28, 1996.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 96–5101 Filed 2–29–96; 1:12 pm]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.162, "Format and Content of Report for Thermal Annealing of Reactor Pressure Vessels," describes a format and content acceptable to the NRC staff for the Thermal Annealing Report to be submitted to the NRC for describing the licensee's plan for thermal annealing a reactor vessel. This guide also describes the Thermal Annealing Results Report that must be submitted after the thermal annealing.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides may be obtained free of charge by writing the Office of Administration, Attention: Distribution and Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; or by fax at (301) 415–2260. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 15th day of February 1996.

For the Nuclear Regulatory Commission.

David L. Morrison,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 96–4940 Filed 3–1–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26479]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 26, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 21, 1996, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy of the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Columbia Gas System, Inc. (70–8791)

Notice of Proposal to Issue Common Stock; Order Authorizing Solicitation of Proxies

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware, 19807, a registered holding company, has filed a declaration under sections 6(a), 7, 12(c) and 12(e) of the Act and rules 42, 62 and 65 thereunder.

Columbia proposes to adopt, subject to shareholder approval at the annual meeting of shareholders to be held on April 26, 1996 ("1996 Annual Meeting"), The Columbia Gas System, Inc. Long-Term Incentive Plan ("Plan"). The Columbia Board of Directors ("Board") approved the Plan on December 20, 1995. Columbia states that the purpose of the Plan is to provide incentives to specific individuals to attract, retain and motivate certain employees and directors and to align the interests of these individuals with the shareholders' interests.

The Plan provides long-term incentives to (1) officers and key employees ("Employees") of Columbia and its subsidiaries (the "System") who, in the opinion of the Compensation Committee of Columbia's Board ("Committee"), may be able to make substantial contributions to the System by their ability and efforts; and (2) members of the Board who are not employees ("Outside Directors"). The Plan authorizes as incentive awards: stock options, including incentive and nonqualified stock options; stock appreciation rights ("SARs"); contingent stock; restricted stock; and awards in other forms, including a combination of the foregoing, that the Committee may

deem appropriate and consistent with the Plan's purpose. Employees could receive any form of award, while Outside Directors are eligible only for nonqualified stock option awards in accordance with a formula contained in the Plan.

Up to three million shares of common stock, $10 par value, may be granted under the Plan, subject to equitable adjustment in certain instances to prevent dilution or enlargement of the participants' rights. No more than 20% of the total shares authorized for issuance under the Plan, or 600,000 shares, may be awarded pursuant to the contingent and restricted stock award provisions. The maximum number of shares that may be awarded to any individual during the life of the Plan will be 20% of the total shares authorized for issuance under the Plan, or 600,000 shares. Shares issued under the Plan may be authorized and unissued shares or treasury shares. Shares of common stock subject to options and awards that expire or terminate for reasons other than the exercise of a SAR would be available again for awards under the Plan.

The Board may suspend, terminate or amend the Plan; the Board may not, however, without Commission authorization, if required, and shareholder approval, adopt an amendment that would: (1) Materially increase the benefits accruing to participants; (2) materially increase the maximum number of shares that may be issued under the Plan; (3) materially modify the Plan's eligibility requirements; or (4) change the basis on which awards are granted to Outside Directors. Columbia reserves the right to terminate all or part of the Plan for any reason, so long as participants are equitably compensated for their interests.

The portion of the Plan applicable to Employees will be administered by the Committee, which is composed of Outside Directors who qualify as "disinterested persons" under Rule 16b–3 of the Securities Exchange Act of 1934, as amended ("Exchange Act"), and as "outside directors" under Section 162(m) of the Internal Revenue Code of 1986, as amended ("IRC"), and the regulations thereunder. In administering the Plan for Employees, the Committee will have full and final authority in its discretion to interpret the provisions of the Plan conclusively and to decide all questions of fact arising in its application; to determine the Employees to who awards shall be made and the type of award to be made and the amount, size and terms of each such award; to determine the time when awards will be granted; to make all other determinations necessary or advisable for the administration of the Plan; and to accelerate the exercise period of an option or the restriction/contingency period of restricted and continent stock awards.

The Committee also will administer the portions of the Plan applicable to Outside Directors, but only with respect to ministerial matters. Columbia states that the Plan is designed to be a "formula plan" for Outside Directors meeting the requirements of Exchange Act Rule 16b–3(c)(2) and, accordingly, is intended to be self-governing. The Committee will have no discretion with respect to the amount, price and timing of awards to Outside Directors. The Plan may not be amended more than once every six months except as may be consistent with Exchange Act Rule 16b–3(c)(2)(ii)(B).

Nonqualified stock option awards will be made to Outside Directors if Columbia's total shareholder return (market appreciation and dividends declared in a year) for a fiscal year exceeds the median of the total shareholder return for the peer group of companies utilized for comparison purposes in Columbia's annual proxy statement. If Columbia's total shareholder return falls within the third quartile (between 50% and 75%) or the fourth quartile (between 75% and 100%) of the peer group, then options will be granted to each Outside Director to purchase 3,000 or 6,000 shares of Columbia common stock, respectively. No award options will be made to Outside Directors if total shareholder return is at or below the median.

Outside Director's nonqualified stock option awards would be granted effective as of 90 days after the close of Columbia's fiscal year for total shareholder return performance for the preceding fiscal year. Grants to Outside Directors would vest one-third upon the date of the grant, one-third upon the first anniversary of the grant, and one-third upon the second anniversary of the grant. The purchase price per share of stock for Outside Directors' awards would be 100% of the fair market value of the stock on the day the option is granted, less any dividends paid as long as the option is outstanding, but no less than par value. Fair market value is the average of the high and low sales prices per share of Columbia's common stock on the New York Stock Exchange as reported in the Wall Street Journal for a given date. In all other respects and to the extent consistent with Exchange Act Rule 16b–3(c)(2), Outside Director stock options will be governed by the provisions of the Plan governing Employee options.

Options will be evidenced by stock option agreements with, in substance, the following terms and conditions. The purchase price per share deliverable upon the exercise of an incentive stock option will be 100% of the fair market value of the stock on the day the option is granted. The purchase price per share deliverable upon the exercise of a nonqualified stock option will be 100% of the fair market value of the stock on the day the option is granted, less any dividends paid while the option is outstanding, but no less than the par value of the stock. The option period will not start earlier than six months or end not more than ten years after the date of the grant of the option. The Committee may permit an acceleration of the previously determined exercise terms, subject to the terms of the Plan and to the extent permitted by Exchange Act Rule 16b–3(c). If an optionee ceases to be an Employee of the System or an Outside Director of Columbia for any cause other than death, disability or retirement or a change in control, the optionee may be able to exercise the option during its term within a period of three months after such termination. Incentive stock option agreements may contain such terms, conditions and provisions as the Committee may determine to be necessary or desirable to qualify the option as a tax-favored option under the IRC. Stock purchased pursuant to an option agreement is to be paid for in full at the time of purchase, either in the form of cash, common stock of Columbia at fair market value or in a combination thereof, as determined by the Committee.

SARS may be granted in connection with options and will entitle the grantee to receive all or a portion of the excess of (1) the fair market value of a specified number of shares of Columbia's common stock at the option's surrender, over (2) 100% of the fair market value of the same number of shares at the time the option was granted, less any dividends paid while the option was outstanding but unexercised. SARs will be granted for a period of not less than six months nor more than 10 years. No SAR will exercisable during the first six months from the date of the grant or after a grantee's employment by the System is terminated, except that the Committee may permit an SAR to be exercisable for up to three months after the grantee's employment is terminated. If the termination was due to death, retirement or disability, however, the grantee or his successor may be able to exercise the SAR within 24 months after the date of the termination. The Committee may reserve the right to accelerate previously determined exercise terms.

In contingent stock awards, the stock is not issued until the right to receive the stock is vested. For restricted stock awards, shares will be issued in the name of the recipient, but the recipient will not receive them until the specified restrictions lapse, or if he receives them, the shares will bear a legend referring to all applicable restrictions. Attempts to dispose of such stock in contravention of the restrictions will be ineffective. Recipients of restricted stock awards will have all the rights of a stockholder during the restricted period.

Under contingent and restricted stock awards, Employees are given the right to receive shares of stock when the specified contingencies and/or restrictions are satisfied. The Committee may determine such restrictions and, except for an initial six month period, may accelerate any applicable contingency or restriction period. Termination of employment for any reason prior to the lapse of contingencies or restrictions and unless otherwise provided for in the Plan or award agreement will result in the forfeiture by the participant to Columbia, without payment or any other consideration, of all rights to the shares as to which there remain unlapsed contingencies or restrictions. If a recipient of a contingent or restricted stock award is terminated but continues to receive a salary because of an agreement, severance program or other arrangement, then contingencies and restrictions that are or could have been satisfied during the period the salary payments are continued will be deemed to have been satisfied and the applicable shares will be issued and delivered to the recipient before the salary payments are ended.

Upon a change in control, all contingent, restricted and stock option awards (including SARs) automatically vest and all restrictions or contingencies will be deemed to have been satisfied. A change in control will occur upon: (1) the acquisition by any party or parties of the beneficial ownership of 25% or more of the voting shares of Columbia; (2) the occurrence of a transaction requiring shareholders' approval for the acquisition of Columbia through purchase or exchange of stock or assets, or by merger or otherwise; or (3) the election during a period of 24 months or less of 30% or more of the members of the Board, without the approval of a majority of the Board as constituted at the beginning of the period.

Columbia proposes to submit the Plan for consideration and action by its stockholders at the annual meeting to be held on April 26, 1996, and in connection therewith, to solicit proxies from its stockholders. Consequently, Columbia requests that the effectiveness of its declaration with respect to such solicitation of proxies be permitted to become effective as soon as practicable as provided in rule 62(d).

It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

It appearing to the Commission that Columbia's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to rule 62:

It is Ordered, that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith, pursuant to rule 62 and subject to the terms and conditions prescribed in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4883 Filed 3–1–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36892; File No. 4–388]

Symposium on Intangible Assets

AGENCY: Securities and Exchange Commission.

ACTION: Notice of symposium.

SUMMARY: The Securities and Exchange Commission ("Commission") is announcing that it will hold a symposium on issues related to the financial accounting and reporting of intangible assets. The symposium will have various panels that will address such topics as the nature and types of intangible assets, including intellectual property, human capital, research and development, software and related items. Discussion at the symposium also will center upon the types of companies that utilize intangible assets, the importance of disclosure relating to these assets from the perspective of investors and other users of financial reporting, and the sources of information relating to intangible assets. Invited panelists also will discuss issues related to the measurement of intangible assets by preparers of financial reports, concerns about disclosures related to intangible assets, academic research pertaining to such assets, and the experience of U.S. and foreign standards setters with regard to accounting and disclosure of intangible assets. The symposium will conclude with a general discussion of issues raised by the various panels and measures that might be taken to address these issues.x

Invited panelists will include academics engaged in the study of intangible assets, representatives of U.S. and foreign companies that utilize intangibles, and various representatives of the accounting profession and standard setting community. A list of the panelists will be published at a later date.

DATES: The symposium will be held on Thursday, April 11, 1996 from 1:00 p.m. to 5:30 p.m., and on Friday, April 12, 1996 from 9:00 a.m. to 4:30 p.m..

ADDRESSES: The symposium will take place in Room 1C–30 at the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: The symposium is open to the public. Members of the public planning to attend the symposium are encouraged to contact Terry Warfield at (202) 942–4400 or Andre Owens at (202) 942–0800.

Dated: February 27, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4886 Filed 3–1–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36886; File No. SR–Amex–96–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Minor Corrections to the Exchange's Company Guide

February 26, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 5, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On February 15, and February 26, 1996, the Exchange submitted Amendments No. 1 and 2 to the proposed rule change to the Commission.[2] The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 corrected the proposed renumbering of existing Item 6 of Section 212 of the *Company Guide* and redesignated the proposed rule change as a "noncontroversial" filing under Section

Continued

publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to make several minor corrections to its *Company Guide*. The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make several minor corrections to its *Company Guide*. First, Section 108 is being amended to delete its prohibition against listing voting trust certificates. With the adoption of the uniform voting rights policy on December 19, 1994, which eliminated the Exchange's prohibition against listing non-voting stock, the Exchange believes that it is no longer appropriate to retain this restriction as to voting trust certificates because such certificates may be eligible for listing if the issuer is otherwise in conformance with the policy. Due to an oversight, Section 108 was not amended at the time Section 122 was amended to adopt the uniform voting rights policy.[3]

Second, Section 140 of the *Company Guide* is being amended to delete the reference to "long-term" warrants. All warrants listed on the Exchange are subject to the same fee schedule, and the inadvertent inclusion of the phrase "long-term" is confusing to issuers.

Third, Section 212 of the *Company Guide* is being corrected to delete several superfluous items. The Exchange no longer requires that the information referenced in Items 3(a), 4 and 5 be included in a listing application because such information is contained in other documents submitted by listing applicants in connection with the application. The requirement that this information be reiterated on the listing application is unduly confusing to listing applicants. Additionally, the requirement in Item 6 that the applicant's corporate seal be affixed to the certificate submitted in connection with the application is being deleted because the use of a corporate seal is not necessary to authenticate the officer's signature on the certificate, and some companies no longer have corporate seals.

Finally, as a result of the above deletions to Section 212, two additional changes are being made. First, the requirement that applicants for listing indicate the number of shares outstanding of any class of stock that is not being listed, the quantity of shares reserved for future issuance, and the purpose for which such shares have been reserved is being moved from Item 3(b) to Item 1. Second, Item 6 is being renumbered as Item 3.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[4] in general and furthers the objectives of Section 6(b)(5)[5] in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating and processing information with respect to transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(e)(6) thereunder.[7]

A proposed rule change filed under Rule 19b–4(e)[8] does not become operative prior to thirty days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. In order for the Exchange to include the proposed rule changes in its pending printing of the *Company Guide*, the Amex has requested that the Commission accelerate the implementation of the proposed rule change so that it may take effect prior to the thirty days specified under Rule 19b–4(e)(iii).[9] The Commission finds that the proposed rule change is consistent with the protection of investors and the public interest and therefore has determined to make the proposed rule change operative as of the date of this order.

19(b)(3)(A) and Rule 19b–4(e)(6)(iii) thereunder. *See* Letter dated February 15, 1996, from Claudia Crowley, Special Counsel, Amex, to Glen Barrentine, Senior Counsel/Team Leader, SEC. Amendment No. 2 further amends Section 212 by moving from Item 3(b) to Item 1 the requirement that applicants for listing indicate the number of shares outstanding of any class of stock that is not being listed, the quantity of shares reserved for future issuance, and the purpose for which such shares have been reserved. *See* Letter dated February 26, 1996, from Claudia Crowley, Special Counsel, Amex, to Glen Barrentine, Senior Counsel/Team Leader, SEC.

[3] The Commission notes that the Amex would have to apply its voting rights policy in Section 122 to voting trusts.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(e)(6).

[8] 17 CFR 240.19b–4(e).

[9] 17 CFR 240.19b–4(e)(6)(iii).

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Intersted persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six opies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–96–07 and should be submitted by March 25, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4884 Filed 3–1–96; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 200.30–3(a)(12).

[Release No. 34–36835; International Series Release No. 939; File No. SR–AMEX–95–50]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Listing and Trading of Commodity Indexed Securities

February 26, 1996

I. Introduction

On December 11, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade commodity indexed preferred or debt securities ("ComPS"), whose value will be linked to the price of a single commodity.

Notice of the proposed rule change was published for comment and appeared in the **Federal Register** on January 3, 1996.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of Proposal

Under Section 107 of the Amex Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures and warrants. The Amex now proposes to list for trading ComPS, which will conform to the Amex's listing guidelines under Section 107 of the Company Guide.[4] Accordingly, all issuances of ComPS must have: (1) A public distribution of one million trading units; (2) 400 holders; and (3) a market value of not less than $4 million. The Exchange also will require that the issuer have a minimum tangible net worth of $150 million. In addition, the Exchange will require that the total original issue price of the notes (when combined with all of the issuer's commodity linked notes which are listed on a national securities exchange or traded through the facilities of NASDAQ), shall be greater than 25% of the issuer's tangible net worth at the time of issuance.

Holders of ComPS generally will receive a dividend or interest as applicable on the face value of their securities. The frequency and rate of the dividend or interest payment will vary from issue to issue based upon prevailing interest rates and other factors. In addition, investors will receive at maturity a payment linked to the price of a single commodity in accordance with the following formula:

Fact Amount * (Ending Commodity Price/Beginning Commodity Price)

Commodity prices will be determined in a manner as described in greater detail below. In addition, commodity prices for the purpose of determining the payment to holders at maturity will be determined by reference to prices for a linked commodity over at least a ten business day period. The securities will have a term of from two to ten years. Holders of the securities have no claim to any of the underlying physical linked commodities. Under the proposal, the Exchange may only link different issues of ComPS to the following commodities: West Texas Intermediate ("WTI") crude oil, natural gas, unleaded gasoline, hearing oil, alumium ("Al"), copper ("Cu"), zinc ("Zn"), nickel ("Ni"), gold, silver and platium.

The prices for the commodities linked to the proposed ComPS will be based upon: (i) London Metal Exchange ("LME") closing prices for the futures contracts expiring the third Wednesday of March, June, September and December (with respect to the linked base metals); (ii) New York Mercantile Exchange ("NYMEX") official settlement prices for the near term futures contract expiring every month (with respect to the linked energy commodities); (iii) NYMEX official settlement prices for the platium contract expiring January, April, July and October; (iv) Commodity Exchange ("COMEX") official settlement prices for the gold contract expiring February, April, June, August and December; and (v) COMEX official settlement prices for the silver contract expiring March, May, July, September and December.

These prices are widely reported by vendors of financial information and the press. The following charts describe the linked contracts:

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR § 240.19b–4 (1993).

[3] *See* Securities Exchange Act Release No. 36639 (Dec. 27, 1995), 61 FR 196.

[4] The proposed underwriter of ComPS has advised the Exchange that the securities will comply with the "hybrid exemption" of the Commodity Futures Trading Commission ("CFTC") under 17 CFR Part 34. The underwriter has further advised the Exchange that it has presented a description of the structure and sample term sheet of ComPS to the staff of the CFTC, who have raised no objection to the structure.

Official Commodity Name and Units	Exchange	Units per contract	Contract used for ComPS
1. Aluminum $/MT (Metric Tons)	LME	25 tons	Third Wednesday of Mar, Jun, Sep and Dec.
2. Copper $/MT	LME	25 tons	Third Wednesday of Mar, Jun, Sep and Dec.
3. Nickel $/MT	LME	6 tons	Third Wednesday of Mar, Jun, Sep and Dec.
4. Zinc $/MT	LME	25 tons	Third Wednesday of Mar, Jun, Sep and Dec.
5. Heating Oil #2 $/gal	NYMEX	42,000 gal	Every month.
6. Natural Gas $/MM BTU	NYMEX	10,000 MM BTU	Every month.
7. Unleaded Gas $/gal	NYMEX	42,000 gal	Every month.
8. WTI Light Sweet Crude $/BBL	NYMEX	1,000 bbl	Every month.
9. Platinum $/troy oz	NYMEX	50 troy oz	Jan, Apr, Jul, Oct.
10. Gold	COMEX	100 troy oz	Feb, Apr, Jun, Aug and Dec.
11. Silver	COMEX	5,000 troy oz	Mar, May, Jul, Sep and Dec.

Commodity	Avg. daily volume (in contracts)	Avg. open interest (in contracts)
A1	58,417	257,886
Cu	68,945	207,748
Ni	13,620	58,515
ZN	21,212	100,518
Heating Oil	36,184	159,614
Natural Gas	25,495	130,255
Unleaded Gas	30,331	93,225
WTI	107,654	411,483
Gold	33,860	155,347
Silver	23,954	120,027
Platinum	3,572	23,239

The value of the linked commodities will be calculated using one of three pricing methodologies, as described below; (1) Excess Return, (2) Total Return or (3) Price Return methodologies.

1. Excess Return

When the Excess Return methodology is employed to value ComPS, it is anticipated that holders of the proposed ComPS will realize a return on their investment equivalent to a trading strategy that holds a fully collateralized near term commodity futures contract for the linked commodity and, near the expiration of the contract, rolls the position into the next nearest designated contract. Accordingly, this methodology can be characterized as the sum of "price" return and "roll" return.

Price return is the return that arises solely from changes over time in the price of the nearby contract. Thus, if on the first day of a given month the price of the nearby contract is $15.00, and on the 30th day of such month the price of the contract is $15.50, the investor in such contract has earned a price return of 3.3% ($0.50/$15 or 3.33%). Roll return represents the yields which are potentially available as a result of the differential between the prices for shorter-dated commodity future positions and the prices for longer-dated commodity futures positions. The price of the longer-dated position may be higher or lower than the price of the shorter-dated position based on a variety of factors, including the cost of transportation, storage and insurance of commodities, the expectations of market participants with respect to future price trends and general supply and demand trends.

To minimize possible pricing volatility arising from conducting the "roll" on a single business day, the substitution of the new contract for the old will be accomplished over a five business day period in increments of 20% of the index value. For example, the index change on the day immediately following the first roll is 80% of the old contract change plus 20% of the new contract change. On the next day, the index change is 60% old contract and 40% new contract and so forth until after the last roll day the index change is now 100% the new contract change. For energy commodities, the "roll" will be conducted each month. For base and precious metals, due to the absence of a designated contract for each month, the "roll" will be conducted periodically into the designated contract. Rolls for all commodities will begin on the fifth business day of the month. If a market disruption (*e.g.*, a limit price move, no trading or limited trading) occurs on a roll day, then the affected commodity will not roll on that day, and the volume to roll will accumulate and roll on the next available day.

Many commodity markets, including those for base metals and energy products, have historically been in backwardation for extended periods (*i.e.*, the nearby futures contracts are more expensive than longer dated contracts). This creates an opportunity to increase the return available through an investment in such commodities by establishing longer-dated positions in the commodities and continuously "rolling" such positions forward as they approach expiration. With the passage of time, longer-dated positions replace expiring shorter-dated positions. Positions that were formerly longer-dated but which have become shorter-dated positions are rolled forward and sold, with the proceeds used to purchase longer-dated replacement contracts. This process results in the realization of the roll return. However, if the prices for shorter-dated positions are less than the prices for longer-dated positions (a condition referred to as "contango") the investor may bear a cost with rolling futures positions forward, even where prices for shorter-dated positions remain constant or increase. This potential cost arises from the fact that as longer-dated contracts become shorter-dated contracts and then approach expiration, the prices of such contracts may decrease relative to the prices for the same contract when it was further away from expiration. Thus, as the maturing contracts are sold and rolled into longer-dated positions, the investor realizes a relatively smaller amount of proceeds, and must purchase the newly acquired longer dated futures contract at a higher price.

The example that follows illustrates the calculation of Excess Return as the sum of price and roll return. In the example, spot prices move from $15 to $15.50 over one month, and the second nearby monthly contract moves from $14.40 to $15 (*i.e.*, the price curve remains in a constant $0.50 backwardation). Holding period Excess Return, therefore, is $15.50–$14.50)/$14.50 or 6.9%.

	Aug 1st	Sept 1st
Calculating excess return in a backwardated market:		
1st Nearby Contract and Price	Sep @ $15.00	Oct @ $15.50.
2nd Nearby Contract and Price	Oct @ $14.50	Nov @ $15.00.
P/L on Oct Position Initiated Aug 1st		$1.00.
Holding Period Spot Return		3.3% (on Sep contract).
Holding Period Excess Return		6.9% (on Oct contract).

2. Total Return

As stated above, the proposed securities also may use a "Total Return" methodology to value the linked commodities. The Total Return methodology simply adds the element of return arising from an investment in U.S. Treasury bills to the value of the linked commodity as calculated by the Excess Return methodology described above. The element of return arising from an investment in Treasury bills is referred to as collateral return ("collateral return"). Thus, Total Return equals Excess Return plus an interest rate equivalent to the U.S. Treasury bill rate. If the Total Return methodology is used, securities will not have a separate dividend or interest payment, or if they do have a separate dividend or interest payment, it will be substantially less than if the Excess Return methodology were used. The return based upon the Treasury bill rate will be calculated using a 13 week T-bill yield, compounded daily at the decompounded discount rate of the most recent weekly U.S. Treasury bill auction as found in the H.15 (519) report published by the Board of Governors of the Federal Reserve System, on the full value of the commodity. Interest will accrue on an actual day basis over weekends and holidays at the previous day's rate.

3. Price Return

If a Price Return methodology is employed, the value of the linked commodity at maturity of the ComPS will be determined by reference to the price of a specified near term futures contract. The use of the Price Return methodology eliminates the elements of roll and collateral return from the valuation of the linked commodities. If the Price Return methodology is used to determine the value of the linked commodity, the holders of the proposed ComPS generally will receive a dividend or interest payment on the face value of their securities, the frequency and rate of which will vary from issue to issue depending upon prevailing interest rates and other factors.

It is anticipated that the futures contract underlying a particular ComPS will remain unchanged during the term of the instrument. Certain developments, however, may necessitate changes with respect to the underlying futures contract.[5] Decisions regarding such changes will be determined by a policy committee consisting of employees of the commodities and research areas of the underwriter or its affiliates as well as independent industry and academic experts. Employees of the underwriter or its affiliates will be restricted to an advisory, non-voting membership on the committee. Members of the policy committee will be prohibited from trading ComPS.

If it becomes necessary to choose a replacement futures contract, the "new" replacement contract will meet the following criteria: (i) it will be priced in U.S. dollars, or if priced in a foreign currency, the exchange on which the contract is traded must publish an official exchange rate for conversion of the price into U.S. dollars and such currency must be freely convertible into U.S. currency, (ii) it will be traded on a regulated futures exchange in the U.S., Canada, U.K, Japan, Singapore or an O.E.C.D. country,[6] and (iii) at the time of replacement, it will have a minimum annual volume of 300,000 contracts or $500 million. The underwriter will immediately notify the Exchange and vendors of financial information in the event that there is a chance in the futures contract underlying a particular series of ComPS.[7]

The Amex represents that it is able to obtain market surveillance information, including customer identity information, with respect to transactions occurring on the LME pursuant to its information sharing arrangements with the Securities and Futures Authority ("SFA") in the United Kingdom through the Intermarket Surveillance Group ("ISG").[8] The Exchange also is able to obtain market surveillance information, including customer identity information, with respect to transactions occurring on NYMEX or COMEX pursuant to its information sharing agreement with NYMEX. In addition, the Exchange is able to obtain market surveillance information, including customer identity information, regarding transactions on several other futures exchanges in the U.S. and abroad through the ISG.[9]

In the event that the policy committee determines that the futures contract underlying a ComPS should be changed, and it identifies an appropriate benchmark replacement contract, the substitution of the new contract for the old only will be done where: (1) the Exchange has established a comprehensive information sharing agreement with the market or self-

[5] Such developments could include, among other things, changing liquidity conditions or the discontinuation of existing contracts or the emergence of new "benchmark" contracts for the particular linked commodity.

[6] The O.E.C.D. (Organization of Economic Cooperation and Development) consists of the following countries: the U.S., Japan, Germany, France, Italy, U.K., Canada, Australia, Austria, Belgium, Denmark, Finland, Greece, Iceland, Ireland, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland and Turkey.

[7] The Amex would also have to have suitable surveillance arrangements for any replacement contract, as discussed above.

[8] The ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The domestic members of the ISG are the Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. The SFA is an affiliate member of ISG.

[9] *See infra* note 10.

regulator for the replacement contract,[10] or (2) the SEC has established suitable alternative arrangements with an appropriate regulator of the market for the replacement contract.[11] When there is no suitable benchmark replacement contract or, there is a suitable benchmark contract but the Exchange's or the Commission's information sharing arrangements do not meet the above criteria, then the affected ComPS either will be called by the issuer or the payment to be made to holders at maturity will be fixed as of a certain time and in a manner established by the underwriter, and thereafter the principal amount will not fluctuate throughout the term of the instrument as a result of the price of a linked commodity.

The underwriter intends to retain the services of an independent calculation agent to compute the value of the linked commodities in accordance with the protocols described above if a Total Return or an Excess Return methodology is employed since the value of the linked commodities will vary from the prices of the relevant futures contracts then trading as a result of the incorporation of roll and collateral return (in the case of Total Return methodology). With respect to ComPS overlying the linked energy and precious metal commodities (*i.e.*, those commodities traded in the U.S.), the value of such ComPS will be calculated every 60 seconds and disseminated to vendors of financial data via the Exchange's Network B. With respect to ComPS overlying base metals (*i.e.*, those traded on the LME), the value of such ComPS will be continuously disseminated on Network B, but will be updated only once per day during U.S. market hours as the market for the relevant underlying contracts does not trade in a continuous fashion when the U.S. securities markets are open.

Since commodity returns historically have been negatively correlated with financial assets, the Exchange believes that the ownership of ComPS (although their return is uncertain) will help to diversify a portfolio of financial instruments. According to the Exchange, ComPS also will benefit the producers, consumers and dealers of the underlying commodities by permitting them, through the issuance of ComPS, to raise low cost capital.

Returns to investors in ComPS are unleveraged with neither a cap nor a floor. There is an element of derivative pricing, however, with respect to the calculation of the final payment. The Exchange, accordingly, will require members, member organizations and employees thereof to make a determination with respect to customers whose accounts have not previously been approved to trade futures or options that a transaction in the proposed securities is suitable for such customer. In addition, members, member organizations or employees thereof recommending a transaction in ComPS will be required: (1) to determine that the transaction recommended is suitable for the customer and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the recommended transaction. The Exchange will distribute a circular to its membership prior to trading ComPS providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in such securities and highlighting the special risks and characteristics thereof.

ComPS will be subject to the equity margin and trading rules of the Exchange that, where ComPS are issued as debt in denominations with a face value of $1,000 or greater, they will be traded subject to the Exchange's debt trading rules (although they will still remain subject to equity margin rules).

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5). In particular, the Commission believes that the availability of exchange-traded ComPS will provide an instrument for investors to achieve desired investment objectives (*e.g.*, commodity exposure and portfolio diversification) through the purchase of an exchange-traded securities product linked to one of the single commodities noted above.[12] For the reasons discussed below, the Commission has concluded that the Amex listing standards applicable to ComPS are consistent with the Act.

ComPS are similar in structure to a previous Amex proposed product, Commodity Indexed Notes ("COINs"), which the Commission approved in March 1995.[13] COINs, similar to ComPS, were proposed to be listed pursuant to Section 107 of the Amex Company Guide. The principal value of COINs was to be derived from the performance of a commodity index comprised of futures contracts overlying certain selected physical commodities.

Like COINs, the value of ComPS will be affected partially by certain risks that are associated with the purchase and sale of exchange-traded futures contracts. Furthermore, the Commission notes that the prices of commodities, including the eleven individual commodities which may underlie a particular ComPS issuance, may be subject to volatile price movements caused by numerous factors.[14] Accordingly, an investment in ComPS may also be subject to volatile price movements due to price changes in the underlying commodities and related futures contracts. In addition, ComPS possess many complex features, such as the incorporation of roll return and collateral return into their pricing methodologies.

In order to address the complex and risky nature of ComPS, the Amex has proposed special suitability, disclosure, and compliance requirements. First, the Exchange will require members to make a determination with respect to customers whose accounts have not previously been approved to trade futures or options that a transaction in the proposed securities is suitable for such customer.[15] This is important given the embedded derivative component of ComPS. Second, the Amex will require that members who make recommendations in ComPS determine that the transaction recommended is suitable for the customer and have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the recommended transaction. Third, because ComPS are cash-settled, holders will not receive, nor be required to liquidate, the underlying physical commodities or overlying futures contracts. The Commission notes that this provision will effectively terminate a ComPS investor's exposure to commodity market risk at the security's maturity and limit an investor's loss to the amount of his initial investment. Finally, the Exchange plans to distribute a circular to its membership calling attention to the specific risks associated with ComPS.[16] This will assist members in determining the customers eligible to trade ComPS, formulating recommendations in ComPS, and in monitoring customer and firm transactions in ComPS.

The Commission also believes that several factors significantly minimize the potential for manipulation of ComPS. First, each of the futures contracts overlying the commodities is relatively actively traded, and has considerable open interest. Second, the majority of futures contracts overlying the component commodities trade on exchanges that impose position limits on speculative trading activity, which are designed, and serve, to minimize potential manipulation and other market impact concerns. Third, as discussed below, the Amex has entered into certain surveillance sharing agreements with each of the futures exchanges upon which the underlying designated futures contracts trade. These agreements should help to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making ComPS less readily susceptible to manipulation.[17] Fourth, the price of ComPS (with respect to those commodities traded in the U.S.) will be calculated every 60 seconds and disseminated to vendors of electronic financial information via the Exchange's Network B.[18] Fifth, adequate procedures are in place to prevent the misuse of information by members of the policy committee responsible for replacements with respect to the underlying contract.[19] Accordingly, for the reasons discussed above, the Commission believes that ComPS are not readily susceptible to manipulation and that in any event; the surveillance procedures in place are sufficient to detect and deter potential manipulation.

The Commission notes the ComPS, unlike standardized options, do not contain a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that a purchaser of ComPS may not be able to receive any cash payment due upon maturity. To some extent this credit risk is minimized by the Exchange's listing guidelines requiring ComPS issuers to possess at least $100 million in assets and stockholders' equity of at least $10 million. In any event, financial information regarding the issuer will be disclosed or incorporated in the prospectus accompanying the offering of ComPS.

Based on the above, the Commission finds that the proposal to trade ComPS is consistent with the Act, and, in particular, the requirements of Section 6(b)(5).[20]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

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[10] The Exchange currently has information sharing arrangements that qualify as comprehensive information sharing agreements with the following futures markets and self-regulators: Chicago Board of Trade, Chicago Mercantile Exchange, London International Financial Futures and Options Exchange, Montreal Exchange, New York Futures Exchange, New York Mercantile Exchange and the U.K. Securities and Futures Authority. From time to time, moreover, the Exchange enters into new information sharing arrangements that qualify as comprehensive information sharing agreements with securities and futures markets and self-regulators other than those with which the Exchange currently has such agreements.

[11] Amex will notify the Commission staff prior to the commencement of a ComPS replacement contract change. Telephone conversation between Michael Bickford, Amex, and Michael Walinskas, SEC, on February 21, 1996.

[12] Pursuant to Section 6(b)(5) of the Act the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[13] *See* Securities Exchange Act Release No. 35518 (March 21, 1995).

[14] Such factors include, but are not limited to, international economic, social and political conditions and levels of supply and demand for the individual commodities.

[15] Such a requirement is more than the duty to know and approve customers, but entails an obligation to make a determinetion that the transection is suitable for the customer.

[16] The ComPS circular will be submitted to the Commission for its review and should include, among other things, a discussion of those risks which may cause commodities to experience volatile price movements in addition to details on the pricing methodology to be used for that particular issuance.

[17] The Amex has comprehensive surveillance sharing agreements with all of the exchanges upon which the futures contracts relating to a particular ComPS trade. Specifically, Amex is able to obtain market surveillance information, including customer identity information, for transactions occurring on NYMEX and Comex. Furthermore, under the ISG information sharing agreement, SFA will be able to provide, upon Amex request, surveillance information with respect to trades effected on the LME, including client identity information. Finally, if the underlying commodity for an issuance of ComPS changes or if a different market is utilized for purposes of calculating the value of a designated futures contract, the Amex will ensure that it has entered into a surveillance sharing agreement with respect to the new relevant market.

[18] For commodities traded on the LME, as discussed above, prices for ComPS will be continuously disseminated on Network B, however, they will only be updated once per day during U.S. hours.

[19] As discussed above, members of the policy committee are expressly prohibited from trading ComPS and from communicating any knowledge concerning changes in the value of the underlying commodities. Amex will also have surveillance procedures in place to periodically review activity in the securities.

[20] The Commission notes that a Rule 19b–4 filing might be required in order to list any other derivative product based upon a commodity interest that differs from the proposed ComPS or previously approved COINs products.

[21] 15 U.S.C. § 78s(b)(2) (1982).

[22] 17 CFR § 200.30–3(a)(12) (1994).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4887 Filed 3–1–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36884; File No. SR–Amex–96–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to a Gratuity Fund Interpretation

February 23, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 16, 1996 the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board of the American Stock Exchange, Inc. has made an interpretation of Article IX of the Exchange Constitution with respect to the Gratuity Fund eligibility of individuals who inherited their regular memberships.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective May 16, 1995, the Commission approved various amendments to the Exchange Constitution and Rules relating to the Gratuity Fund.[2] These changes, among other things, include options principal members and options principal and regular member lessees in the Gratuity Fund, increase the Gratuity Fund benefit to $125,000, subject to a "phase-in" schedule for new Gratuity Fund Participants ("Participants"), and include a two-year "active" requirement for participation.[3] The changes also include a grandfathering provision, which provides that all individuals who were regular members or regular member lessors on June 10, 1993 are grandfathered with respect to the "active" requirement (i.e., they are deemed to have met it, even though they were never active for a two-year period).[4]

Except for those who are grandfathered, inactive owners of memberships are not Gratuity Fund Participants, and thus are generally not subject to assessments upon the death of a Participant.[5] The Constitution, however, does require that each membership pay at least one assessment upon the death of a Gratuity Fund Participant.[6] Accordingly, a non-Participant does have to pay an assessment when there is no lessee or nominee on the seat who is a participant.[7]

An ambiguity arose making it appropriate to interpret these provisions. Pursuant to Article II, Section 2 of the Exchange Constitution, the Exchange's Board of Governors has the authority to interpret the Exchange Constitution and Rules.

It has for many years been the case that an individual who inherited a regular seat (after collecting a Gratuity Fund benefit) would not be eligible to participate in the Gratuity Fund himself or herself unless he or she fulfilled all membership requirements (except taking the Floor examinations), including paying the $2,500 transfer fee. This was considered analogous to the beneficiary selling the inherited seat and purchasing a new one.[8]

There are currently ten beneficiaries who inherited their memberships prior to June 10, 1993, and chose to retain the memberships and lease them out. Of the ten, five beneficiaries qualified for membership and paid the $2,500 transfer fee, and five did not. The five who did not take steps to qualify for membership and pay the $2,500 transfer fee were still required to pay a Gratuity Fund assessment every time that a regular member or regular member lessor died.[9]

The question has now arisen whether the beneficiaries who did not take steps to qualify for membership must still pay Gratuity Fund assessments in light of the Gratuity Fund provisions which were adopted in May 1995.[10] It is arguably inappropriate for the Exchange to continue to assess these non-Participants for contributions since other non-Participants do not have to pay assessments if there is a Participant affiliated with a seat.

On December 14, 1995 the Exchange's Board of Governors adopted an interpretation of Article IX of the Exchange Constitution regarding the situation described above. This interpretation provides that the Exchange will continue to take the position that each of the five individuals is not a Gratuity Fund Participant, but that the Exchange should treat them equally with other owners who are non-Participants, and not subject them to assessments, so long as the membership is leased to (or has a nominee who is) a Participant in the Gratuity Fund. This interpretation is retroactive to May 16, 1995, the date that the new rules were implemented.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[11] in general and furthers the objectives of Section 6(b)(5)[12] in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and subparagraph (e) of Rule 19b–4 thereunder.[14]

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the American Stock Exchange. All submissions should refer to File No. SR–Amex–96–02 and should be submitted by March 25, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4888 Filed 3–1–96; 8:45 am]

BILLING CODE 8010–01–M

[2] See Securities Exchange Act Release No. 35723 (May 16, 1995), 60 FR 27353 (May 23, 1995) (Order approving File No. SR–Amex–95–06).

[3] *Id.*

[4] Individuals who owned options principal memberships on May 16, 1995 were given a one-time opportunity to elect to "opt-in" or "opt-out" of the Gratuity Fund, and those who choose to "opt-in" are grandfathered with respect to the "active" requirement as well. See Securities Exchange Act Release No. 36585 (Dec. 13, 1995), 60 FR 65701 (Dec. 20, 1995) (Order approving File No. SR–Amex–95–49). An election to "opt-out" is irrevocable for the rest of the person's life, unless he or she subsequently buys a regular membership. *Id.* In addition, those individuals who were either regular or options principal member lessees on May 16, 1995 have the right to "opt-out" of the Gratuity Fund for the duration of their lease. *Id.*

[5] Inactive members are those that do not meet all Exchange requirements to be active on the Floor. See Para. 9176 of the Amex Guide ("Membership Requirements and Admissions Procedures").

[6] See Amex Constitution, Article IX, Section 4.

[7] *Id.*

[8] It is the Exchange's understanding that the New York Stock Exchange treats individuals who inherit memberships in the same manner.

[9] Note that under the new rules, the ambiguity being dealt with here is not likely to arise. Pursuant to Article IX, Section 23(e), an individual must be a regular member or regular member lessor on June 10, 1993 to be grandfathered from the requirement that one must have been an "active" member to be a Gratuity Fund Participant. A previously active exchange member, however, would again become a participant in the Gratuity Fund upon becoming a lessor so long as no more than five years has elapsed since such individual last participated in the fund. Typically, however, it can be expected that those who inherit seats upon the death of the owner will not have previously been active Exchange members themselves, so that if they hold on to the seats as owners they will not be eligible to be Participants under the new rules, and thus will not be subject to assessments unless there is no lessee or nominee Participant on the seat.

[10] See Securities Exchange Act Release No. 35723, *supra*, note 2.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 76f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4.

[15] 17 CFR 200.30–3(a)(12).

[Release No. 34–36683; File No. SR–PSE–96–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Its Options Firm Quote Rule

February 23, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 16, 1996, the Pacific Stock Exchange, Inc. ("PSE" of "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Options Firm Quote Rule (Rule 6.86, the "rule") in order to codify some related floor policies and also to clarify certain provisions of the rule.

The text of the proposed rule change is available at the Office of the Secretary, the PSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to modify its Options Firm Quote Rule as follows:

Order Identification

Subsection (a) of the rule currently provides that members and member organizations who enter orders for execution on the Options Floor must ascertain the account origin of such orders and provide a notation of the account origin on the order ticket. The Exchange is proposing to modify this provision to provide that such members and member organizations would be required to communicate such account information to the executing member organization. Accordingly, the member or member organization entering the order must indicate to the executing member organization whether the order is for the account of a customer, firm or market maker.

The proposal would also set forth the duty of executing floor brokers to inquire personally as to the account origin of each eligible order upon receipt thereof or prior to its execution and to note such information on the order ticket.

Finally, under the proposal, the executing member organization and the clearing member organization would bear greater responsibility with respect to the proper identification of orders that are executed on behalf on non-members of the Exchange.

Commentary .05

Proposed Commentary .05 sets forth certain types of orders that are subject to the rule and the extent to which the rule applies to such orders. The rule specifically addresses the treatment of combination orders, spread orders, straddle orders and contingency orders. With respect to combination orders, market Makers in a trading crowd would only be responsible for providing an aggregate of 20 contracts on one side of the market; however, Market Makers would be required to provide a depth of twenty contracts on both sides of the market for spread and straddle orders.

The proposed Commentary also enumerates the types of contingency orders that are subject to the rule, *i.e.*, "minimum" orders of 20 contracts or less and market not-held, limit not-held and delta orders that can be executed immediately. The types of contingency orders that are not subject to the rule include: "minimum" orders for more than 20 contracts, buy-writes, all-or-none orders for more than 20 contracts, delta orders traded with stock and contingency orders that have been partly executed.

The proposed Commentary also provides that in executing contingency orders pursuant to the rule, the order ticket must be time stamped upon being taken into the trading crowd. The Commentary also states that such orders are entitled to 20 contracts on the market disseminated at that time.

Commentary .06

Proposed Commentary .06 provides that Market Makers must be afforded a "reasonable" opportunity to update their disseminated markets for the execution of consecutive eligible customers orders in options on the same underlying security. The Commentary further provides that orders shall be executed on a time priority basis so that the order with the earliest time stamp will receive a guaranteed fill of 20 contracts.

Commentary .07

Proposed Commentary .07 provides that a Floor Broker may be held liable for an entire order if such Floor Broker attempts to solicit a better price than the limit price stipulated on the order ticket and such attempt creates a change in the market that does not result in an immediate execution.

Commentary .08

Proposed Commentary .08 designates those Market Makers to whom the Order Book Official may, pursuant to current Subsection (d), allocate the balance of contracts necessary to provide an execution of 20 contracts when the response of the members present at the trading post is insufficient to provide a depth of 20 contracts. Specifically, such allocations may be made to Market Makers who: (1) Are present at the trading post at the time of a call for a

market; and either (2) hold an appointment in the option classes at the trading post or (3) regularly effect transactions in person for their trading accounts at that trading post.

In addition, this proposed Commentary provides that Market Makers who have logged on to the Automatic Execution system, but who are not present in the trading crowd will not be eligible for an allocation by the Order Book Official pursuant to current Subsection (d).

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it facilitates transactions in securities and promotes just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20459. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–96–01 and should be submitted by March 25, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4885 Filed 3–1–96; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2349]

Notice Convening an Accountability Review Board for the Attack on the Headquarters of the Office of Program Manager, Saudi Arabian National Guard in Riyadh, In Which Five Americans Were Killed

Pursuant to section 301 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4831 *et seq.*), I have determined that the November 13, 1995, car-bomb attack on the headquarters of the Office of Program Manager, Saudi Arabian National Guard in Riyadh, Saudi Arabia, involved loss of life related to a U.S. mission abroad. Therefore, I am convening an Accountability Review Board, as required by that statute, to examine the facts and circumstances of the attack and report to me such findings and recommendations as it deems appropriate, in keeping with the attached mandate.

I have appointed Ambassador Alfred L. Atherton as chairman of the Board. He will be assisted by former Ambassador Peter Sebastian; Brigadier General Thomas J. Konitzer, USA; Mr. William Piekney; and Mr. James A. Brooke. Mr. Andrew Winter will act as Executive Secretary. The members will bring to their deliberations distinguished backgrounds in government service and the private sector.

I have asked the Board to submit its conclusions and recommendations to me within sixty days of its first meeting, unless the chairman determines a need for additional time. Appropriate action will be taken and reports submitted to the Congress on any recommendations made by the Board.

Anyone with information relevant to the Board's examination of this incident should contact the Board promptly at (202) 647–3300.

Dated: February 22, 1996.

Strobe Talbott,

Deputy Secretary of State.

Attachment

Mandate

Accountability Review Board Mandate

A. *Review and Report.* The Accountability Review Board shall examine the facts and circumstances surrounding the November 13, 1995, car bomb attack on the headquarters of the Office of Program Manager, Saudi Arabian National Guard (OPM/SANG) in Riyadh, Saudi Arabia, which killed five American and two third country national employees and wounded over thirty others, and shall submit a detailed written report to the Deputy Secretary of State within 60 days of its first meeting. If the chairman determines that more than 60 days are necessary to complete the Board's review, he shall notify the Deputy Secretary of State of that fact and the amount of additional time needed.

B. *Findings.* In accordance with section 304(a) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 ("the Act"), the Board shall make written findings in its report to include at least the following matters:

(1) The extent to which the incident with respect to which the Board was convened was security-related;

(2) whether in this case the security systems and security procedures at the mission were adequate;

(3) whether the security systems and security procedures were properly implemented in this case;

(4) the impact of intelligence and information availability in this case; and

(5) such other facts and circumstances in this case which may be relevant to the appropriate security management of United States missions abroad.

C. *Program Findings and Recommendations.* The Board shall submit its findings (which may be classified to the extent deemed necessary by the Board) to the Deputy Secretary of State, together with recommendations as appropriate to improve the security and efficiency of any program or operation which the Board has reviewed.

D. *Personnel Findings and Recommendations.* If the Board finds reasonable cause to believe that an employee of the United States Government or member of the uniformed services, as defined by section 303(a)(1)(B) of the Act, has breached his or her duty, the Board shall:

(1) Notify the individual concerned;

(2) transmit the finding of reasonable cause, together with all information relevant to such finding, to the head of the appropriate Federal agency or instrumentality; and

(3) recommend that such agency or instrumentality initiate an appropriate investigatory or disciplinary action.

E. *Termination.* The Board shall terminate 30 days after submission of its report to the Deputy Secretary of State, unless the Deputy Secretary of State within that time requests that further proceedings be held by the Board and specifies a new termination date.

Strobe Talbott,

Deputy Secretary of State.

[FR Doc. 96–4862 Filed 3–1–96; 8:45 am]

BILLING CODE 4710–10–M

[1] 17 CFR 200.30–3a(a)(12).

[Public Notice 2346]

Notice To Seek Public Comment on Entering Into Bilateral Agreements With Parties to the Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal To Allow Those Countries To Export Wastes to the United States Consistent With the Convention

LEAD AGENCY: Department of State, Washington, DC.

COOPERATING AGENCIES: Environmental Protection Agency (EPA), U.S. Department of Commerce, Office of the U.S. Trade Representative.

SUMMARY: The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal prohibits a Party to the Convention from trading in Basel-covered wastes (i.e., hazardous and other wastes) with a non-Party, absent an agreement or arrangement consistent with Article 11 of the Convention. The United States is not a Party to the Convention, and there is interest in agreements or arrangements to allow the import of hazardous wastes from Convention Parties to the United States. The United States Government is seeking public comment to evaluate the need for additional waste agreements or arrangements.

SUPPLEMENTARY INFORMATION:

I. Background on the Convention

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal was adopted in 1989, and entered into force in 1992. The Convention's general objective is to protect human health and the environment against adverse effects of wastes under its scope by minimizing their generation and transboundary movement, and ensuring their environmentally sound management. Wastes covered by the Convention include certain wastes exhibiting hazardous characteristics set forth in the Convention, as well as "other wastes" (consisting of household wastes and residues from incineration of household wastes).

Among other provisions, the Convention establishes conditions under which transboundary movements of Basel-covered wastes may occur. These conditions include a requirement that the exporting Party obtain the prior written informed consent of the importing Party before a shipment can proceed, as well as requirements that the waste be managed in an environmentally sound manner. The Convention, along with a detailed explanation of its provisions and an outline of the history of its development, is contained in **Federal Register** Notice, 57 FR 20602 (May 13, 1992).

Currently, 97 States and the European Community are Parties to the Convention. The United States was among the original signatories of the Basel Convention, and the U.S. Senate subsequently gave its advice and consent to ratify it. However, for the United States to meet the obligations of the Convention, additional statutory authorities are needed. Administrations have sought without success since 1991 to obtain these statutory authorities. As a consequence, the United States has not ratified the Convention. However, the United States has continued to participate actively, as a non-Party observer, in meetings and Conferences of the Basel Parties.

The Convention specifies particular controls on trade between Basel Parties and non-Parties. Parties are prohibited from trading in Basel-covered wastes with non-Parties, except in cases in which a Party concludes an agreement or arrangement pursuant to Article 11 of the Convention. Article 11(1) enables Parties to enter into bilateral, multilateral or regional agreements or arrangements for the transboundary movement of Basel-covered wastes with Parties or non-Parties, provided that such agreements or arrangements do not derogate from the environmentally sound management of Basel-covered wastes as required by the Convention. It also provides that agreements or arrangements entered into by Basel Parties shall stipulate provisions which are not less environmentally sound than those provided for by the Convention.

Because the United States is not currently a Party to the Convention, several Basel Parties and U.S. firms have expressed an interest in the United States entering into Article 11 bilateral agreements/arrangements in order to enable continued export of Basel-covered waste to the United States for recycling or disposal. The Department of State, on behalf of the U.S. government recently concluded such a bilateral agreement with Malaysia covering exports of hazardous wastes into the United States, and is developing agreements with several other Basel Parties.

The requirements for agreements or arrangements developed by States prior to the entry into force of the Convention are somewhat different, and apply to three pre-existing agreements and arrangements of which the United States is a Party. Article 11(2) provides that the provisions of the Basel Convention shall not affect transboundary movements which take place pursuant to such agreements provided that such agreements are compatible with the environmentally sound management of hazardous wastes and other wastes as required by the Convention. The U.S. has bilateral waste agreements with Canada and Mexico which predate entry into force of the Convention. In addition, a decision by the Organization for Economic Cooperation and Development (OECD, of which the United States is a Party), covering trade of hazardous wastes between OECD states for recycling only, is considered an arrangement under Article 11.

Today's notice seeks comment on entering into bilateral agreements or arrangements for imports of Basel-covered waste into the United States for disposal and recycling. These agreements would not address Basel-covered waste exports from the United States to Basel Parties. The Administration may address export bilaterals in a future **Federal Register** notice.

The import agreements under consideration would have to meet the requirements of Article 11 of the Basel Convention. Only Parties to the Basel Convention, and not the United States, have the obligation under the Convention to meet the Convention's requirements. Thus, each exporting Party will ultimately need to determine for itself whether an agreement meets its Basel Convention obligations. At the same time, the United States would only negotiate and conclude agreements that the U.S. Government believes will meet the Convention's requirements, as stipulated under Article 11.

The U.S. import of Basel-covered wastes pursuant to Basel-consistent agreements should not pose environmental difficulties for the United States. Wastes imported into the United States will be managed in an environmentally sound manner pursuant to U.S. laws and regulations.

and may often be better managed than in the country of origin. It may be more economically efficient to export wastes to the United States for management in existing U.S. facilities, particularly for specialized waste streams and substances, than to construct new facilities in the country of origin. In many cases, advanced facilities in the United States enable the environmentally sound recovery of valuable secondary materials.

Under the type of import agreements described in this notice, the Environmental Protection Agency (EPA), the designated competent authority of the U.S. Government, will be able to express its consent, conditional consent, or objection to proposed imports of hazardous wastes. EPA will exercise its prerogative to consent or object to imports consistent with its statutory and regulatory authority. Current U.S. Government policy is to withhold consent only if it has reason to believe a shipment may not be managed in accordance with applicable U.S. laws and regulations.

Based on experience to date, the negotiation of each agreement is likely to take some time (several months). Administration resources are limited, and it is not expected that additional resources will be available for these purposes. In addition, the notice and consent procedures referred to above will impose an increased administrative burden on the U.S. Government. Once the U.S. Government evaluates the demand for these agreements, it will consider how many agreements to enter into, and how to prioritize requests, if necessary.

Public Comment

The Department of State is seeking the comment from the public on the potential demand for additional agreements for the movements of Basel-covered waste to the United States, and would be interested in the following specific information, where applicable, from firms and others with an interest in such agreements:

(a) Expected country of export, expected amount and frequency of such exports to the United States;

(b) whether more than one generator produces wastes which could be handled under an agreement;

(c) types of waste (including whether the wastes are considered to be hazardous under the Convention and/or under the laws and regulations of the United States or the exporting party);

(d) whether such wastes are for final disposal or treatment or recovery, and whether a substantially increased proportion is likely to be recovered in the future;

(e) whether such wastes are being exported because of a lack of adequate management capabilities and/or pressing environmental conditions in the exporting country;

(f) whether destinations closer than the United States to the generation of the waste would also provide environmentally sound and efficient management;

(g) whether U.S. waste management capabilities are superior to those in the exporting country; and

(h) whether acceptance of such wastes by the United States would reasonable be expected to provide a disincentive to the future development of adequate environmental facilities in the exporting country;

(i) whether any other conditions require that such wastes be exported to the United States for disposal or recovery.

The State Department will use this information to determine whether, given available resources, it will be necessary to develop criteria for entering into and prioritizing among proposed bilateral agreements. The State Department welcomes public input regarding such criteria.

Individuals or organizations are invited to provide written comments to: U.S. Department of State, OES/ENV, ATTN: Mr. Trigg Talley, 2201 "C" Street, N.W., Washington, D.C. 20520, TEL: (202) 647–5808, FAX: (202) 647–5947.

Comments and suggestions should be received no later than 60 days following the date of publication of this notice in order to be considered.

Dated: February 16, 1996.

Trigg Talley,

Environmental Affairs Officer, Department of State, OES/ENV.

[FR Doc. 96–4864 Filed 3–1–96; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–96–004]

Eighth Coast Guard District Industry Day Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Commander, Eighth Coast Guard District, is sponsoring a Marine Safety Industry Day to discuss various topics of interest to the marine community. The meeting will be open to the public.

DATES: The meeting will be held on May 15, 1996, from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Fairmont Hotel, 123 Baronne Street (at University Place), New Orleans, LA. The telephone number for the hotel is (504) 529–7111.

FOR FURTHER INFORMATION CONTACT: CDR S.P. Glenn, U.S. Coast Guard, c/o Commander (mep), Eighth Coast Guard District, Hale Boggs Federal Bldg., Room 1341, 501 Magazine Street, New Orleans, LA 70130–3396; telephone number (504) 589–3656; fax number (504) 589–4999.

SUPPLEMENTARY INFORMATION: For this year's industry day, we plan to present a series of speakers representing all segments of the industry followed by panel sessions in the afternoon. These presentations, among other topics, will include: Prevention Through People, New Spill Doctrine, Offshore Issues, Spill Management, Maritime Law Issues, Licensing, and Commercial Vessel Safety.

The agenda is:

May 15, 1996—Fairmont Hotel
- 8:30 a.m. Registration
- 9:30 a.m. Welcome and Introductions
- Speaker presentations (plenary)
- 12:00 a.m. Luncheon with keynote speaker
- 2:00 p.m. Panel sessions
- 4:00 p.m. Industry Day concludes

Attendance is open to the public. Preregistration for the program is required to assure adequate space. The conference and luncheon fee will be $30.00. Contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section to obtain registration forms and luncheon menu. Reservations must be received no later than April 30, 1996.

Dated: February 12, 1996.

R.C. North,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 96–4923 Filed 3–1–96; 8:45 am]

BILLING CODE 4910–14–M

Surface Transportation Board [1]

[STB Finance Docket No. 32869]

Cimarron Valley Railroad, L.C.; Acquisition and Operation Exemption; Cimarron Valley and Manter Branches of The Atchison, Topeka and Santa Fe Railway Company

Cimarron Valley Railroad, L.C. (CVR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate the Cimarron Valley and the Manter Branches, including overhead trackage rights, from The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") as follows: (1) 151.04 miles of the Cimarron Valley Branch extending from East Ensign, KS, at milepost 3.76, to east of Boise City, OK, at milepost 154.80; (2) incidental overhead trackage rights to permit interchange on Santa Fe's C.V. Subdivision between milepost 154.80 and milepost 158.33, on Track No. 2 of Santa Fe's Boise City Subdivision between milepost 158.33 and milepost 159.74, and on Track Nos. 11, 12, 13 and 14 of Santa Fe's Boise City Yard near Boise City, OK; (3) 103.83 miles of the Manter Branch from Satanta, KS, at milepost 0.06 to east of Springfield, CO, at milepost 91.03 together with the Pritchett Industrial Spur from North Junction, north of Springfield, CO, at milepost 96.84, to near Pirtchett, CO, at milepost 109.70; and (4) incidental overhead trackage rights to permit interchange on Santa Fe's Manter Subdivision between milepost 91.03 and the west end of Santa Fe's Manter Subdivision at South Junction, CO, near milepost 95.00, and on Santa Fe's Boise City Subdivision between milepost 172.60 and milepost 174.40, and on the siding of Santa Fe's Boise City Subdivision at Springfield, CO.

Consummation was expected to occur on or shortly after February 23, 1996.

This proceeding is related to *David L. Durbano—Continuance in Control Exemption—Cimarron Valley Railroad, L.C.*, STB Finance Docket No. 32870, wherein David L. Durbano has concurrently filed a verified notice to continue to control CVR, upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) [formerly section 10505(d)] may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32869, must be filed with the Office of the Secretary, Surface Transportation Board, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423. In addition, a copy of each pleading must be served on Walter T. Merrill, Durbano & Associates, 3340 Harrison Boulevard, Suite 200, Ogden, UT 84403.

Decided: February 27, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–4929 Filed 3–1–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

[STB Finance Docket No. 32870]

David L. Durbano—Continuance in Control Exemption—Cimarron Valley Railroad, L.C.

David L. Durbano (Applicant), a noncarrier, has filed a verified notice under 49 CFR 1180.2(d)(2) to continue in control of Cimarron Valley Railroad, L.C. (CVR), upon CVR's becoming a Class III rail carrier. Consummation was expected to occur on or shortly after February 23, 1996.

CVR, a noncarrier, has concurrently filed a verified notice of exemption under 49 CFR 1150.31 in *Cimarron Valley Railroad, L.C.—Exemption to Acquire and Operate—Cimarron Valley and Manter Branches of The Atchison, Topeka and Santa Fe Railway Company*, STB Finance Docket No. 32869, in which CVR seeks to acquire and operate 151.04 miles of the Cimarron Valley Branch rail line and 103.83 miles of the Manter Branch rail line both of which are owned by The Atchison, Topeka and Santa Fe Railroad Company. CVR's acquisition of the rail lines was expected to have been consummated on or shortly after February 23, 1996.

Applicant controls four other Class III rail carriers: Wyoming and Colorado Railroad Company, Inc. (WYCO); Oregon Eastern Railroad Company, Inc. (OER); Arizona Central Railroad, Inc. (AZCR); and Southwestern Railroad Company, Inc. (SWR).

The transaction is exempt from the prior approval requirements of 49 U.S.C. 11323 [formerly section 11343] because Applicant states that: (1) CVR, WYCO, OER, AZCR, and SWR will not connect with each other; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other; and (3) the transaction does not involve a Class I carrier.

As a condition to this exemption, any employees adversely affected by the transaction will be protected under *New York Doc Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) [formerly section 10505(d)] may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32870, must be filed with the Office of the Secretary, Surface Transportation Board, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Walter T. Merrill, Durbano & Associates, 3340 Harrison Boulevard, Suite 200, Ogden, UT 84403.

Decided: February 27, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–4928 Filed 3–1–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans

The Department of Veterans Affairs' notice that a meeting of the Advisory Committee on Minority Veterans, authorized by P.L. 103–446, to be held from March 11, 1996 to March 13, 1996, is hereby canceled. The notice appeared in the **Federal Register** on February 14, 1996, Vol. 61, No. 31, page 5837.

If you have any questions, please contact Mr. Anthony T. Hawkins, Associate Director, Center for Minority Veterans, (phone 202–273–6708).

Dated: February 26, 1996.

By direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–4882 Filed 3–1–96; 8:45 am]

BILLING CODE 8320–01–M

Rehabilitation Research and Development Service Scientific Merit Review Board, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) as amended, by section 5(c) of Pubic Law 94–409 that a meeting of the

Rehabilitation Research and Development Service Scientific Merit Review Board will be held at the Vista International Hotel, 1400 "M" Street NW, Washington, DC on July 16 through July 18, 1996.

The session on July 16, 1996 is scheduled to begin at 6:30 p.m. and end at 9:30 p.m. The sessions on July 17 and July 18, 1996, are scheduled to begin at 8 a.m. and end at 5 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public up to the seating capacity of the room for the July 16 session for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On July 16–18, 1996 the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 522b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under Sections 10(d) of Public Law 92–463 as amended by Section 5(c) of Public Law 94–409.

Due to the limited seating capacity of the room, those who plan to attend the open session should write to Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service, Department of Veterans Affairs, 103 South Gay Street, Baltimore, Maryland 21202 (Phone: (410–962–2563) at least five days before the meeting.

Dated: February 26, 1996.
By Direction of the Secretary.

Heyward Bannister,
Committee Management Officer.

[FR Doc. 96–4881 Filed 3–1–96; 8:45 am]
BILLING CODE 8320–01–M

Wage Committee, Notice of Meetings

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, April 24, 1996, at 2:00 p.m.
Wednesday, May 22, 1996, at 2:00 p.m.
Wednesday, June 5, 1996, at 2:00 p.m.
Wednesday, June 19, 1996, at 2:00 p.m.

The meetings will be held in Room 1225, Department of Veterans Affairs, Tech World Plaza, 801 I Street, NW, Washington, DC 20001.

The Committee's purpose is to advise the Under Secretary for Health on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered as related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, Room 1225, 801 I Street, NW, Washington, DC 20001.

Dated: February 26, 1996.
By Direction of the Secretary.

Heyward Bannister,
Committee Management Officer.

[FR Doc. 96–4880 Filed 3–1–96; 8:45 am]
BILLING CODE 8320–01–M

federal register

Monday
March 4, 1996

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 173, and 178
Restructuring of Cylinder Specifications Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, and 178

[Docket HM–220B; Notice No. 96–2]

RIN 2137–AC61

Restructuring of Cylinder Specifications Requirements

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA is proposing to revise the Hazardous Materials Regulations (HMR) by restructuring the cylinder specification requirements. The intended effect of this rulemaking is to reduce the size of the HMR through consolidation of repetitive requirements and other formatting changes. This action will eliminate pages of regulations without substantially changing the regulatory requirements or affecting safety. It is in response to President Clinton's March 4, 1995 Regulatory Reinvention Initiative memorandum to heads of departments and agencies calling for a review of all agency regulations. RSPA is also proposing to make corresponding reference changes throughout the HMR.

DATES: Comments must be received on or before April 26, 1996.

ADDRESSES: Please address written comments to the Dockets Unit (DHM–30), Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001. Comments may also be faxed to (202) 366–3753. Comments should identify the docket (Docket No. HM–220B). The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, except on public holidays when the office is closed.

FOR FURTHER INFORMATION CONTACT: John A. Gale, (202) 366–8553; Office of Hazardous Materials Standards, RSPA, Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1995, President Clinton issued a Regulatory Reinvention Initiative memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those regulations that are outdated or in need of reform. RSPA has performed an extensive review of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) and associated procedural rules (49 CFR Parts 106 and 107) in response to the President's directive.

The President also directed that front line regulators "* * * get out of Washington and create grassroots partnerships" with people affected by agency regulations. On April 4, 1995, RSPA published in the **Federal Register** (60 FR 17049) a Notice of Public Meetings and request for comment on its hazardous materials safety program. Comments were requested on ways to improve the HMR and the kind and quality of services its customers want. RSPA held seven public meetings and received over 50 comments in response to the notice. On July 28, 1995, RSPA published a second Notice of Public Meetings in the **Federal Register** (60 FR 38888) which announced five more public meetings that were held from September through January 1996.

One area identified by RSPA in its review of the HMR was the need to reform the cylinder specifications in 49 CFR Part 178. RSPA estimates that by consolidating duplicative requirements in 23 cylinder specifications, that it will eliminate at least 40 pages from the CFR. By reformatting the specifications, RSPA proposes to eliminate over 450 sections from Part 178 of Title 49. The combined effect of these changes will be to make the regulations shorter and easier to use and help RSPA move toward a goal of being able to issue the HMR in one volume of the Code of Federal Regulations, rather than two.

This rulemaking also serves as the model for a more comprehensive rulemaking, being developed by RSPA in cooperation with the Compressed Gas Association, for which a notice of proposed rulemaking is anticipated later this year. In this latter rulemaking, under Docket HM–220, RSPA intends to propose substantive changes to the cylinder specifications to accommodate contemporary manufacturing techniques, eliminate obsolete requirements, contemporize regulatory language and make safety enhancements to the regulations.

II. Proposed Changes

In this NPRM, RSPA is proposing to revise the HMR by restructuring the cylinder specification requirements in 49 CFR Part 178. The proposed restructuring of the cylinder specifications would: (1) consolidate similar sections; (2) reformat subpart C of Part 178 for consistency with the format of the rest of Part 178; and (3) revise section references throughout the HMR to correspond to the revised sections. RSPA intends to streamline the cylinder specification requirements without making substantive changes to them.

Sections that have been identified by RSPA for consolidation are the sections of each specification addressing compliance, authorized inspectors, duties of the inspector, the inspector's report, record retention, defects, safety relief devices, and marking. These sections will be consolidated into a new § 178.35. Proposed § 178.35, entitled "General requirements for all DOT specification cylinders" will prescribe these general requirements for all DOT specification cylinders. However, because some of the duties of the inspector and marking requirements are specific to the individual cylinder design, some specifications would have additional marking and inspector requirements remaining in their sections.

For the inspector's report, RSPA has proposed to adopt the inspector report formats in Compressed Gas Association (CGA) Pamphlet C–11, "Recommended Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture." The report formats can be modified to represent the inspection of specific cylinders. Additional information may be required as stated in each specification.

Those sections remaining in each specification will be consolidated into a single section. Presently, each specification is set forth in approximately 22 different sections. Under this proposal, there would be only one section for each specification. For example, Specification 3B is currently set forth in 24 sections, §§ 178.38 through 178.38–23. In this NPRM, Specification 3B is set forth in one section, § 178.38. Some of the requirements are relocated in § 178.35. Sixteen of the old sections are converted to paragraphs (a) through (o) of § 178.38. As an aid to the reader, the regulatory text in this notice includes all of the requirements for cylinders in the current Subpart C of part 178, even though not all of the requirements are changed.

The purpose of this rulemaking action is to reduce the size of the HMR and make it easier to use. It is not intended to make substantive changes to regulatory requirements and no adverse impacts are anticipated on the regulated community.

III. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The economic impact of this rule is minimal to the extent that the preparation of a regulatory evaluation is not warranted.

Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous materials transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

The Federal hazardous materials transportation law provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. 49 U.S.C. 5125(b)(2). That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. This proposed rule deals with the packaging of compressed gases. Although this proposal does not contemplate substantive changes, RSPA solicits comments on whether the proposed rule would have any effect on State, local or Indian tribe requirements and, if so, the most appropriate effective date of Federal preemption. Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

Regulatory Flexibility Act

I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule does not impose any new requirements on persons subject to the HMR.

Paperwork Reduction Act

This proposed rule does not propose any new information collection requirements.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 171, 173, and 178 would be amended to read as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR part 1.53.

2. In § 171.7(a)(3), in the table, under the entry "Aluminum Standards and Data, Seventh Edition, June 1982", the section reference "178.65–5" is revised to read "178.65"; and under the entry *Compressed Gas Association, Inc.*, a new entry is added in alpha-numerical order to read as follows:

§ 171.7 Reference material.

* * * * *

(a) * * *

(3) * * *

Source and name of material	49 CFR reference
. . . . .	
Compressed Gas Association, Inc.,	
. . . . .	
CGA Pamphlet C–11, Recommended Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture, 1993	178.35
. . . . .	

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for Part 173 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR part 1.53.

§ 173.34 [Amended]

4. In § 173.34, paragraph (h) would be amended by:

a. Removing, in the first sentence, the phrase "§§ 178.36–9(a), 178.37–9(a), 178.38–9(a), and 178.40–9(a)" and replacing it with the phrase "§§ 178.36(e), 178.37(e), 178.38(e), and 178.40(e)".

b. Removing, in the fourth sentence, the phrase "§ 178.36–9(a), § 178.37–9(a), § 178.38–9(a), or § 178.40–9(a)" and replacing it with the phrase "§ 178.36(e), § 178.37(e), § 178.38(e), or § 178.40(e)".

§ 173.316 [Amended]

5. In § 173.316, in paragraph (a)(8), the section reference "178.57- 20(a)(4)" would be revised to read "178.35" and in paragraph (c)(3)(ii) the section reference "178.57–20" would be revised to read "178.35".

PART 178—SPECIFICATIONS FOR PACKAGINGS

6. The authority citation for Part 178 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

7. Subpart C of Part 178 would be revised to read as follows:

Subpart C—Specifications for Cylinders

Sec.

178.35 General requirements for specification cylinders.
178.36 Specifications 3A and 3AX seamless steel cylinders.
178.37 Specification 3AA and 3AAX seamless steel cylinders.

178.38 Specification 3B seamless steel cylinders.
178.39 Specification 3BN seamless nickel cylinders.
178.42 Specification 3E seamless steel cylinders.
178.44 Specification 3HT seamless steel cylinders for aircraft use.
178.45 Specification 3T seamless steel cylinder.
178.46 Specification 3AL seamless aluminum cylinders.
178.47 Specification 4DS welded stainless steel cylinders for aircraft use.
178.50 Specification 4B welded or brazed steel cylinders.
178.51 Specification 4BA welded or brazed steel cylinders.
178.53 Specification 4D welded steel cylinders for aircraft use.
178.55 Specification 4B240ET welded or brazed cylinders.
178.56 Specification 4AA480 welded steel cylinders.
178.57 Specification 4L welded insulated cylinders.
178.58 Specification 4DA welded steel cylinders for aircraft use.
178.59 Specification 8 steel cylinders with porous fillings for acetylene.
178.60 Specification 8AL steel cylinders with porous fillings for acetylene.
178.61 Specification 4BW welded steel cylinders with electric-arc welded longitudinal seam.
178.65 Specification 39 non-reusable (non-refillable) cylinders.
178.68 Specification 4E welded aluminum cylinders.

Subpart C—Specifications for Cylinders

§ 178.35 General requirements for specification cylinders.

(a) Compliance with the requirements of this subpart is required in all details.

(b) *Inspections and analyses.* Chemical analyses and tests as specified must be made within the United States unless otherwise approved in writing by the Associate Administrator, in accordance with § 173.300b of this subchapter. Inspections and verifications must be performed by—

(1) An independent inspection agency approved in writing by the Associate Administrator, in accordance with § 173.300a of this subchapter; or

(2) For DOT Specifications 3B, 3BN, 4B, 4BA, 4D (water capacity less than 1,100 cubic inches), 4B240ET, 4AA480, 4L, 8, 8AL, 4BW, 39 (marked service pressure 900 p.s.i.g. or lower) and 4E manufactured in the United States, a competent inspector of the manufacturer.

(c) *Duties of inspector.* The inspector shall determine that each cylinder made is in conformance with the applicable specification. Except as otherwise specified in the applicable specification, the inspector shall perform the following:

(1) Inspect all material and reject any not meeting applicable requirements. For cylinders made by the billet-piercing process, billets must be inspected and shown to be free from pipe, cracks, excessive segregation and other injurious defects after parting or, when applicable, after nick and cold break.

(2) Verify the material of construction meets the requirements of the applicable specification by—

(i) Making a chemical analysis of each heat of material;

(ii) Obtaining a certified chemical analysis from the material manufacturer for each heat of material (a ladle analysis is acceptable); or

(iii) If an analysis is not provided for each heat of material by the material manufacturer, by making a check analysis of a sample from each coil, sheet, or tube.

(3) Verify compliance of cylinders with the applicable specification by—

(i) Verifying identification of material is proper;

(ii) Inspecting the inside of the cylinder before closing in ends;

(iii) Verifying that the heat treatment is proper;

(iv) Obtaining samples for all tests and check chemical analyses;

(v) Witnessing all tests;

(vi) Verify threads by gauge;

(vii) Reporting volumetric capacity and tare weight (see report form) and minimum thickness of wall noted; and

(viii) Verifying that each cylinder is marked in accordance with the applicable specification.

(4) Furnish complete test reports required by this subpart to the maker of the cylinder and, upon request, to the purchaser. The test report must be retained by the inspector for fifteen years from the original test date of the cylinder.

(d) *Defects.* A cylinder may not be constructed of material with seams, cracks, laminations, or other injurious defects.

(e) Safety devices and protection for valves, safety devices, and other connections, if applied, must be as required or authorized by the appropriate specification, and as required in §§ 173.34 and 173.301 of this subchapter.

(f) *Markings.* Markings on a DOT Specification cylinder must conform to applicable requirements.

(1) Each cylinder must be marked with the following information:

(i) The DOT specification marking must appear first, followed immediately by the service pressure. For example, DOT–3A1800.

(ii) The serial number must be placed just below or immediately following the DOT specification marking.

(iii) A symbol (letters) must be placed just below, immediately before or following the serial number. Other variations in sequence of markings are authorized only when necessitated by a lack of space. The symbol and numbers must be those of the manufacturer. The symbol must be registered with the Associate Administrator; duplications are not authorized.

(iv) The inspector's official mark and date of test (such as 5–95 for May 1995) must be placed near the serial number. This information must be placed so that dates of subsequent tests can be easily added. An example of the markings prescribed in this paragraph (f)(1) is as follows:

DOT–3A1800
1234
XY
AB 5–95

or;

DOT–3A1800–1234–XY
AB 5–95

where:

DOT–3A = specification number
1800 = service pressure
1234 = serial number
xy = symbol of manufacturer
AB = inspector's mark
5–95 = date of test

(2) Additional required marking must be applied to the cylinder as follows:

(i) The word "spun" or "plug" must be placed near the DOT specification marking when an end closure in the finished cylinder has been welded by the spinning process, or effected by plugging.

(ii) As prescribed in specification 3HT (§ 178.44) or 3T (§ 178.45), if applicable.

(3) Marking exceptions.

(i) A DOT 3E cylinder is not required to be marked with the inspector mark.

(ii) An identifying lot number may be marked on the cylinder in place of a serial number for cylinders not over 2 inches outside diameter or for cylinders with a volumetric capacity not exceeding 60 cubic inches. Each lot shall not have over 500 cylinders.

(4) Unless otherwise specified in the applicable specification, the markings on each cylinder must be stamped plainly and permanently on the shoulder, top head, or neck.

(5) The size of each marking must be least 0.25 inch or as space permits.

(6) Other markings are authorized provided they are made in low stress areas other than the side wall and are not of a size and depth that will create harmful stress concentrations. Such marks may not conflict with any DOT required markings.

(g) *Inspector's report.* Each inspector shall prepare a report containing, at a minimum, the applicable information listed in CGA Pamphlet C–11. Any additional information or markings that are required by the applicable specification must be shown on the test report. The signature of the inspector on the reports certifies that the processes of manufacture and heat treatment of cylinders were observed and found satisfactory.

(h) *Report Retention.* The manufacturer of the cylinders shall retain the reports required by this subpart for 15 years from the original test date of the cylinder.

§ 178.36 Specification 3A and 3AX seamless steel cylinders.

(a) *Type size and service pressure.* In addition to the requirements of § 178.35, cylinders must conform to the following:

(1) A DOT–3A cylinder is a seamless steel cylinder with a water capacity (nominal) not over 1,000 pounds and a service pressure of at least 150 pounds per square inch.

(2) A DOT–3AX is a seamless stainless steel cylinder with a water capacity not less than 1,000 pounds and a service pressure of at least 500 pounds per square inch, conforming to the following requirements:

(i) Assuming the cylinder is to be supported horizontally at its two ends only and to be uniformly loaded over its entire length consisting of the weight per unit of length of the straight cylindrical portion filled with water and compressed to the specified test pressure; the sum of two times the maximum tensile stress in the bottom fibers due to bending, plus that in the same fibers (longitudinal stress), due to hydrostatic test may not exceed 80 percent of the minimum yield strength of the steel at such maximum stress. Wall thickness must be increased when necessary to meet the requirement.

(ii) To calculate the maximum longitudinal tensile stress due to bending, the following formula must be used:

$S=Mc/I$

(iii) To calculate the maximum longitudinal tensile stress due to hydrostatic test pressure, the following formula must be used:

$S=A_1P/A_2$

where:

S = tensile stress-p.s.i.;
M = bending moment-inch pounds $(wl^2)/8$;
w = weight per inch of cylinder filled with water;
l = length of cylinder-inches;
c = radius (D)/(2) of cylinder-inches;
I = moment of inertia-0.04909 $(D^4 - d^4)$ inches fourth;
D = outside diameter-inches;
d = inside diameter-inches;
A_1 = internal area in cross section of cylinder-square inches;
A_2 = area of metal in cross section of cylinder-square inches;
P = hydrostatic test pressure-p.s.i.

(b) *Steel.* Open-hearth or electric steel of uniform quality must be used. Content percent may not exceed the following: Carbon, 0.55; phosphorous, 0.045; sulphur, 0.050.

(c) *Identification of material.* Material must be identified by any suitable method, except that plates and billets for hot-drawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No fissure or other defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. If not originally free from such defects, the surface may be machined or otherwise treated to eliminate these defects. The thickness of the bottoms of cylinders welded or formed by spinning is, under no condition, to be less than two times the minimum wall thickness of the cylindrical shell; such bottom thicknesses must be measured within an area bounded by a line representing the points of contact between the cylinder and floor when the cylinder is in a vertical position.

(e) *Welding or brazing.* Welding or brazing for any purpose whatsoever is prohibited except as follows:

(1) Welding or brazing is authorized for the attachment of neckrings and footrings which are non-pressure parts and only to the tops and bottoms of cylinders having a service pressure of 500 pounds per square inch or less. Cylinders, neckrings, and footrings must be made of weldable steel, the carbon content of which may not exceed 0.25 percent except in the case of 4130X steel which may be used with proper welding procedures.

(2) As permitted in paragraph (d) of this section.

(3) Cylinders used solely in anhydrous ammonia service may have a ½ inch diameter bar welded within their concave bottoms.

(f) *Wall thickness.* For cylinders with service pressure less than 900 pounds, the wall stress may not exceed 24,000 pounds per square inch. A minimum wall thickness of 0.100 inch is required for any cylinder over 5 inches outside diameter. Wall stress calculation must be made by using the following formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test or 450 pounds per square inch whichever is the greater;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* The completed cylinder must be uniformly and properly heat-treated prior to tests.

(h) *Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.* Threads are required on openings.

(1) Threads must be clean cut, even, without checks, and to gauge.

(2) Taper threads, when used, must be of length not less than as specified for American Standard taper pipe threads.

(3) Straight threads having at least 6 engaged threads are authorized. Straight threads must have a tight fit and calculated shear strength of at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test, as follows:

(1) The test must be by water-jacket, or other suitable methods, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus the test pressure cannot be maintained the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent, volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(4) Each cylinder must be tested to at least 5/3 times service pressure.

(j) *Flattening test.* A flattening test must be performed on one cylinder taken at random out or each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60° included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to

knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(k) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material as follows:

(1) The test is required on 2 specimens cut from 1 cylinder taken at random out of each lot of 200 or less. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(2) Specimens must conform to the following:

(i) Gauge length of 8 inches with a width of not over 1½ inches, a gauge length of 2 inches with a width of not over 1½ inches, or a gauge length of at least 24 times thickness with width not over 6 times thickness is authorized when cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within 1 inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8–78.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2-percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading must be set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(l) *Acceptable results for physical and flattening tests.* Either of the following is an acceptable result:

(1) An elongation at least 40 percent for a 2-inch gauge length or at least 20 percent in other cases and yield strength not over 73 percent of tensile strength. In this instance, the flattening test is not required.

(2) An elongation at least 20 percent for a 2-inch gauge length or 10 percent in other cases and a yield strength not over 73 percent of tensile strength. In this instance, the flattening test is required, without cracking, to 6 times the wall thickness.

(m) *Leakage test.* All spun cylinders and plugged cylinders must be tested for leakage by gas or air pressure after the bottom has been cleaned and is free from all moisture subject to the following conditions and limitations:

(1) Pressure, approximately the same as but no less than service pressure, must be applied to one side of the finished bottom over an area of at least 1/16 of the total area of the bottom but not less than ¾ inch in diameter, including the closure, for at least 1 minute, during which time the other side of the bottom exposed to pressure must be covered with water and closely examined for indications of leakage. Except as provided in paragraph (n) of this section, a cylinder that is leaking must be rejected.

(2) A spun cylinder is one in which an end closure in the finished cylinder has been welded by the spinning process.

(3) A plugged cylinder is one in which a permanent closure in the bottom of a finished cylinder has been effected by a plug.

(4) As a safety precaution, if the manufacturer elects to make this test before the hydrostatic test, the manufacturer should design the test apparatus so that the pressure is applied to the smallest area practicable, around the point of closure, and so as to use the smallest possible volume of air or gas.

(n) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding or spinning is not authorized. Spun cylinders rejected under the provisions of paragraph (m) of this section may be removed from the spun cylinder category by drilling to remove defective material, tapping and plugging.

§ 178.37 Specification 3AA and 3AAX seamless steel cylinders.

(a) *Type, size and service pressure.* In addition to the requirements of § 178.35, cylinders must conform to the following:

(1) A DOT–3AA cylinder is a seamless steel cylinder with a water capacity (nominal) of not over 1,000 pounds and a service pressure of at least 150 pounds per square inch.

(2) A DOT–3AAX cylinder is a seamless steel cylinder with a water capacity of not less than 1,000 pounds and a service pressure of at least 500 pounds per square inch, conforming to the following requirements:

(i) Assuming the cylinder is to be supported horizontally at its two ends only and to be uniformly loaded over its entire length consisting of the weight per unit of length of the straight cylindrical portion filled with water and compressed to the specified test pressure; the sum of two times the maximum tensile stress in the bottom fibers due to bending, plus that in the same fibers (longitudinal stress), due to hydrostatic test pressure may not exceed 80 percent of the minimum yield strength of the steel at such maximum stress. Wall thickness must be increased when necessary to meet the requirement.

(ii) To calculate the maximum tensile stress due to bending, the following formula must be used:

$$S = Mc/I$$

(iii) To calculate the maximum longitudinal tensile stress due to hydrostatic test pressure, the following formula must be used:

$$S = A^1P/A^2$$

where:

S=tensile stress-p.s.i.;
M=bending moment-inch pounds $(wl^2)/8$;
w=weight per inch of cylinder filled with water;
l=length of cylinder-inches;
c=radius (D)/(2) of cylinder-inches;
I=moment of inertia-$0.04909\ (D^4 - d^4)$ inches fourth;
D=outside diameter-inches;
d=inside diameter-inches;
A^1=internal area in cross section of cylinder-square inches;
A^2=area of metal in cross section of cylinder-square inches;
P=hydrostatic test pressure-p.s.i.

(b) *Authorized steel.* Open-hearth, basic oxygen, or electric steel of uniform quality must be used. A heat of steel made under the specifications in Table 1 of this paragraph (b), check chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the tolerance shown in Table 2 of this paragraph (b) are not exceeded. When a carbon-boron steel is used, a hardenability test must be performed on the first and last ingot of each heat of steel. The results of this test must be recorded on the Record of Chemical Analysis of Material for Cylinders required by § 178.35. This hardness test must be made 5/16-inch from the quenched end of the Jominy quench bar and the hardness must be at least Rc 33 and no more than Rc 53. The following chemical analyses are authorized:

TABLE 1.—AUTHORIZED MATERIALS

Designation	4130X (percent) (see Note 1)	NE–8630 (percent) (see Note 1)	9115 (percent) (see Note 1)	9125 (percent) (see Note 1)	Carbon-boron (percent)	Intermediate manganese (percent)
Carbon	0.25/0.35	0.28/0.33	0.10/0.20	0.20/0.30	0.27–0.37	0.40 max.
Manganese	0.40/0.90	0.70/0.90	0.50/0.75	0.50/0.75	0.80–1.40	1.35/1.65
Phosphorus	0.04 max	0.04 max	0.04 max	0.04 max	0.035 max	0.04 max.
Sulfur	0.05 max	0.04 max	0.04 max	0.04 max	0.045 max	0.05 max.
Silicon	0.15/0.35	0.20/0.35	0.60/0.90	0.60/0.90	0.3 max	0.10/0.30
Chromium	0.80/1.10	0.40/0.60	0.50/0.65	0.50/0.65		
Molybdenum	0.15/0.25	0.15/0.25				
Zirconium			0.05/0.15	0.05/0.15		
Nickel		0.40/0.70				
Boron					0.0005/0.003	

NOTE 1: This designation may not be restrictive and the commercial steel is limited in analysis as shown in this Table 1.

TABLE 2.—CHECK ANALYSIS TOLERANCES

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
Carbon	To 0.15 incl	0.02	0.03
	Over 0.15 to 0.40 incl	.03	.04
Manganese	To 0.60 incl	.03	.03
	Over 0.60 to 1.15 incl	.04	.04
	Over 1.15 to 2.50 incl	.05	.05
Phosphorus [1]	All ranges		.01
Sulphur	All ranges		.01
Silicon	To 0.30 incl	.02	.03
	Over 0.30 to 1.00 incl	.05	.05
Nickel	To 1.00 incl	.03	.03
Chromium	To 0.90 incl	.03	.03
	0.90 to 2.90 incl	.05	.05
Molybdenum	To 0.20 incl	.01	.01
	Over 0.20 to 0.40	.02	.02
Zirconium	All ranges	.01	.05

[1] Rephosphorized steels not subject to check analysis for phosphorus.

(c) *Identification of material.* Material must be identified by any suitable method except that plates and billets for hot-drawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No fissure or other defects is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. If not originally free from such defects, the surface may be machined or otherwise treated to eliminate these defects. The thickness of the bottoms of cylinders welded or formed by spinning is, under no condition, to be less than two times the minimum wall thickness of the cylindrical shell; such bottom thicknesses must be measured within an area bounded by a line representing the points of contact between the cylinder and floor when the cylinder is in a vertical position.

(e) *Welding or brazing.* Welding or brazing for any purpose whatsoever is prohibited except as follows:

(1) Welding or brazing is authorized for the attachment of neckrings and footrings which are non-pressure parts, and only to the tops and bottoms of cylinders having a service pressure of 500 pounds per square inch or less. Cylinders, neckrings, and footrings must be made of weldable steel, the carbon content of which may not exceed 0.25 percent except in the case of 4130X steel which may be used with proper welding procedure.

(2) As permitted in paragraph (d) of this section.

(f) *Wall thickness.* The thickness of each cylinder must conform to the following:

(1) For cylinders with a service pressure of less than 900 pounds, the wall stress may not exceed 24,000 pounds per square inch. A minimum wall thickness of 0.100 inch is required for any cylinder with an outside diameter of over 5 inches.

(2) For cylinders with service pressure of 900 p.s.i. or more the minimum wall must be such that the wall stress at the

minimum specified test pressure may not exceed 67 percent of the minimum tensile strength of the steel as determined from the physical tests required in paragraphs (k) and (l) of this section and must be not over 70,000 p.s.i.

(3) Calculation must be made by the formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test or 450 pounds per square inch whichever is the greater;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* The completed cylinders must be uniformly and properly heat treated prior to tests. Heat treatment of cylinders of the authorized analyses must be as follows:

(1) All cylinders must be quenched by oil, or other suitable medium except as provided in paragraph (g)(5) of this section.

(2) The steel temperature on quenching must be that recommended for the steel analysis, but may not exceed 1750 °F.

(3) All steels must be tempered at a temperature most suitable for that steel.

(4) The minimum tempering temperature may not be less than 1000 °F except as noted in paragraph (l)(vi) of this section.

(5) Steel 4130X may be normalized at a temperature of 1650 °F instead of being quenched and cylinders so normalized need not be tempered.

(6) Intermediate manganese steels may be tempered at temperatures not less than 1150 °F, and after heat treating each cylinder must be submitted to a magnetic test to detect the presence of quenching cracks. Cracked cylinders must be rejected and destroyed.

(7) Except as otherwise provided in paragraph (g)(6) of this section, all cylinders, if water quenched or quenched with a liquid producing a cooling rate in excess of 80 percent of the cooling rate of water, must be inspected by the magnetic particle, dye penetrant or ultrasonic method to detect the presence of quenching cracks. Any cylinder designed to the requirements for specification 3AA and found to have a quenching crack must be rejected and may not be requalified. Cylinders designed to the requirements for specification 3AAX and found to have cracks must have cracks removed to sound metal by mechanical means. Such specification 3AAX cylinders will be acceptable if the repaired area is subsequently examined to assure no defect, and it is determined that design thickness requirements are met.

(h) *Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.* Threads are required on openings.

(1) Threads must be clean cut, even, without checks, and to gauge.

(2) Taper threads, when used, must be of a length not less than as specified for American Standard taper pipe threads.

(3) Straight threads having at least 6 engaged threads are authorized. Straight threads must have a tight fit and a calculated shear strength of at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Each cylinder must be tested to at least ⅝ times the service pressure.

(j) *Flattening test.* A flattening test must be performed on one cylinder taken at random out of each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60° included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(k) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material as follows:

(1) The test is required on 2 specimens cut from 1 cylinder taken at random out of each lot of 200 or less. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(2) Specimens must conform to the following:

(i) Gauge length of 8 inches with a width of not over 1½ inches, a gauge length of 2 inches with a width of not over 1½ inches, or a gauge length of at least 24 times the thickness with width not over 6 times thickness when the thickness of the cylinder wall is not over 3/16 inch.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8–78.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch, the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(l) *Acceptable results for physical and flattening tests.* An acceptable result for physical and flattening tests is elongation at least 20 percent for 2 inches of gauge length or at least 10 percent in other cases. Flattening is required without cracking to 6 times the wall thickness of the cylinder.

(m) *Leakage test.* All spun cylinders and plugged cylinders must be tested for leakage by gas or air pressure after the bottom has been cleaned and is free from all moisture. Pressure, approximately the same as but no less than the service pressure, must be applied to one side of the finished bottom over an area of at least 1/16 of the total area of the bottom but not less than ¾ inch in diameter, including the closure, for at least one minute, during which time the other side of the bottom exposed to pressure must be covered with water and closely examined for indications of leakage. Except as provided in paragraph (n) of this section, a cylinder must be rejected if there is any leaking.

(1) A spun cylinder is one in which an end closure in the finished cylinder has been welded by the spinning process.

(2) A plugged cylinder is one in which a permanent closure in the bottom of a finished cylinder has been effected by a plug.

(3) As a safety precaution, if the manufacturer elects to make this test before the hydrostatic test, the manufacturer should design the test apparatus so that the pressure is applied to the smallest area practicable, around the point of closure, and so as to use the smallest possible volume of air or gas.

(n) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding or spinning is not authorized. Spun cylinders rejected under the provision of paragraph (m) of this section may be removed from the spun cylinder category by drilling to remove defective material, tapping and plugging.

§ 178.38 Specification 3B seamless steel cylinders.

(a) *Type, size, and service pressure.* A DOT 3B cylinder is a seamless steel cylinder with a water capacity (nominal) of not over 1,000 pounds and a service pressure of at least 150 to not over 500 pounds per square inch.

(b) *Steel.* Open-hearth or electric steel of uniform quality must be used. Content percent may not exceed the following: carbon, 0.55; phosphorus, 0.045; sulphur, 0.050.

(c) *Identification of material.* Material must be identified by any suitable method except that plates and billets for hot-drawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No fissure or other defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. If not originally free from such defects, the surface may be machined or otherwise treated to eliminate these defects. The thickness of the bottoms of cylinders welded or formed by spinning is, under no condition, to be less than two times the minimum wall thickness of the cylindrical shell; such bottom thicknesses to be measured within an area bounded by a line representing the points of contact between the cylinder and floor when the cylinder is in a vertical position.

(e) *Welding or brazing.* Welding or brazing for any purpose whatsoever is prohibited except as follows:

(1) Welding or brazing is authorized for the attachment of neckrings and footrings which are non-pressure parts, and only to the tops and bottoms of cylinders having a service pressure of 500 pounds per square inch or less. Cylinders, neckrings, and footrings must be made of weldable steel, carbon content of which may not exceed 0.25 percent except in the case of 4130X steel which may be used with proper welding procedure.

(2) As permitted in paragraph (d) of this section.

(f) *Wall thickness.* The wall stress may not exceed 24,000 pounds per square inch. The minimum wall thickness is 0.090 inch for any cylinder with an outside diameter of 6 inches. Calculation must be made by the following formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

where:

S=wall stress in pounds per square inch;
P=at least two times service pressure or 450 pounds per square inch, whichever is the greater;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* The completed cylinders must be uniformly and properly heat-treated prior to tests.

(h) *Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.* Threads, conforming to the following, are required on all openings.

(1) Threads must be clean cut, even, without checks, and to gauge.

(2) Taper threads when used, must be of a length not less than as specified for American Standard taper pipe threads.

(3) Straight threads having at least 4 engaged threads are authorized. Straight threads must have a tight fit, and calculated shear strength at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(i) *Hydrostotic test.* Cylinders must successfully withstand a hydrostatic test, as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to insure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Cylinders must be tested as follows:

(i) Each cylinder; to at least 2 times service pressure; or

(ii) 1 cylinder out of each lot of 200 or less; to at least 3 times service pressure. Others must be examined under pressure of 2 times service pressure and show no defect.

(j) *Flattening test.* A flattening test must be performed on one cylinder taken at random out or each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60° included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(k) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material, as follows:

(1) The test is required on 2 specimens cut from 1 cylinder taken at random out of each lot of 200 or less. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(2) Specimens must conform to the following:

(i) Gauge length of 8 inches with a width of not over 1½ inches; or a gauge length of 2 inches with a width of not over 1½ inches; or a gauge length at least 24 times the thickness with a width not over 6 times thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8–78.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch, and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(l) *Acceptable results for physical and flattening tests.* Either of the following is an acceptable result:

(1) An elongation of at least 40 percent for a 2-inch gauge length or at least 20 percent in other cases and yield strength not over 73 percent of tensile strength. In this instance, the flattening test is not required.

(2) An elongation of at least 20 percent for a 2-inch gauge length or 10 percent in other cases and yield strength not over 73 percent of tensile strength. Flattening is required, without cracking, to 6 times the wall thickness.

(m) *Leakage test.* All spun cylinders and plugged cylinders must be tested for leakage by gas or air pressure after the bottom has been cleaned and is free from all moisture, subject to the following conditions and limitations:

(1) Pressure, approximately the same as but no less than service pressure, must be applied to one side of the finished bottom over an area of at least 1/16 of the total area of the bottom but not less than ¾ inch in diameter, including the closure, for at least one minute, during which time the other side of the bottom exposed to pressure must be covered with water and closely examined for indications of leakage. Except as provided in paragraph (n) of this section, a cylinder must be rejected if there is any leaking.

(2) A spun cylinder is one in which an end closure in the finished cylinder has been welded by the spinning process.

(3) A plugged cylinder is one in which a permanent closure in the bottom of a finished cylinder has been effected by a plug.

(4) As a safety precaution, if the manufacturer elects to make this test before the hydrostatic test, he should design his apparatus so that the pressure is applied to the smallest area practicable, around the point of closure, and so as to use the smallest possible volume of air or gas.

(n) *Rejected cylinders.* Reheat treatment of rejected cylinders is authorized. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding or spinning is not authorized. Spun cylinders rejected under the provisions of paragraph (m) of this section may be removed from the spun cylinder category by drilling to remove defective material, tapping and plugging.

(o) *Marking.* Markings may be stamped into the sidewalls of cylinders having a service pressure of 150 psi if all of the following conditions are met:

(1) Wall stress at test pressure may not exceed 24,000 psi.

(2) Minimum wall thickness must be not less than 0.090 inch.

(3) Depth of stamping must be no greater than 15 percent of the minimum wall thickness, but may not exceed 0.015 inch.

(4) Maximum outside diameter of cylinder may not exceed 5 inches.

(5) Carbon content of cylinder may not exceed 0.25 percent. If the carbon content exceeds 0.25 percent, the complete cylinder must be normalized after stamping.

(6) Stamping must be adjacent to the top head.

§ 178.39 Specification 3BN seamless nickel cylinders.

(a) *Type, size and service pressure.* A DOT 3BN cylinder is a seamless nickel cylinder with a water capacity (nominal) not over 125 pounds water capacity (nominal) and a service pressure at least 150 to not over 500 pounds per square inch.

(b) *Nickel.* The percentage of nickel plus cobalt must be at least 99.0 percent.

(c) *Identification of material.* The material must be identified by any suitable method except that plates and billets for hot-drawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Cylinders closed in by spinning process are not authorized.

(e) *Welding or brazing.* Welding or brazing for any purpose whatsoever is prohibited except that welding is authorized for the attachment of neckrings and footrings which are nonpressure parts, and only to the tops and bottoms of cylinders. Neckrings and footrings must be of weldable material, the carbon content of which may not exceed 0.25 percent. Nickel welding rod must be used.

(f) *Wall thickness.* The wall stress may not exceed 15,000 pounds per square inch. A minimum wall thickness of 0.100 inch is required for any cylinder over 5 inches in outside diameter. Wall stress calculation must be made by using the following formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

where:

S=Wall stress in pounds per square inch;
P=Minimum test pressure prescribed for water jacket test or 450 pounds per square inch whichever is the greater;
D=Outside diameter in inches;
d=Inside diameter in inches.

(g) *Heat treatment.* The completed cylinders must be uniformly and properly heat-treated prior to tests.

(h) *Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.* Threads conforming to the following are required on openings.

(1) Threads must be clean cut, even, without checks, and to gauge.

(2) Taper threads, when used, to be of length not less than as specified for American Standard taper pipe threads.

(3) Straight threads having at least 6 engaged threads are authorized. Straight threads must have a tight fit and a calculated shear strength of at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test, as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Each cylinder must be tested to at least 2 times service pressure.

(j) *Flattening test.* A flattening test must be performed on one cylinder taken at random out or each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60° included angle, rounded to ½ inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(k) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material, as follows:

(1) The test is required on 2 specimens cut from 1 cylinder taken at random out of each lot of 200 or less. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width of not over 1½ inches, a gauge length of 2 inches with a width of not over 1½ inches, or a gauge length of at least 24 times the thickness with a width not over 6 times thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8–78.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch, and the strain indicator reading must be set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(l) *Acceptable results for physical and flattening tests.* Either of the following is an acceptable result:

(1) An elongation of at least 40 percent for a 2 inch gauge length or at least 20 percent in other cases and yield point not over 50 percent of tensile strength. In this instance, the flattening test is not required.

(2) An elongation of at least 20 percent for a 2 inch gauge length or 10 percent in other cases and a yield point not over 50 percent of tensile strength. Flattening is required, without cracking, to 6 times the wall thickness.

(m) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding is not authorized.

§ 178.42 Specification 3E seamless steel cylinders.

(a) *Type, size, and service pressure.* A DOT 3E cylinder is a seamless steel cylinder with an outside diameter not greater than 2 inches nominal, a length less than 2 feet and a service pressure of 1,800 pounds per square inch.

(b) *Steel.* Open-hearth or electric steel of uniform quality must be used. Content percent may not exceed the following: Carbon, 0.55; phosphorus, 0.045; sulphur, 0.050.

(c) *Identificotion of steel.* Materials must be identified by any suitable method.

(d) *Monufacture.* Cylinders must be manufactured by best appliances and methods. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. The thickness of the spun bottom is, under no condition, to be less than two times the minimum wall thickness of the cylindrical shell; such bottom thickness must be measured within an area bounded by a line representing the points of contact between the cylinder and floor when the cylinder is in a vertical position.

(e) *Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.* Threads conforming to the following are required on openings.

(1) Threads must be clean cut, even, without checks, and to gauge.

(2) Taper threads, when used, must be of length not less than as specified for American Standard taper pipe threads.

(3) Straight threads having at least 4 engaged threads are authorized. Straight threads must have a tight fit and a calculated shear strength of at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(f) *Hydrostatic test.* Cylinders must be tested as follows:

(1) One cylinder out of each lot of 500 or less must be subjected to a hydrostatic pressure of 6,000 pounds per square inch or higher.

(2) The cylinder referred to in paragraph (f)(1) of this section must burst at a pressure higher than 6,000 pounds per square inch without fragmenting or otherwise showing lack of ductility, or must hold a pressure of

12,000 pounds per square inch for 30 seconds without bursting. In which case, it must be subjected to a flattening test without cracking to six times wall thickness between knife edges, wedge shaped 60 degree angle, rounded out to a ½ inch radius. The inspector's report must be suitably changed to show results of latter alternate and flattening test.

(3) Other cylinders must be examined under pressure of at least 3,000 pounds per square inch and not to exceed 4,500 pounds per square inch and show no defect. Cylinders tested at a pressure in excess of 3,600 pounds per square inch must burst at a pressure higher than 7,500 pounds per square inch when tested as specified in paragraph (f)(2) of this section. The pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete examination.

(g) *Leakage test.* All spun cylinders and plugged cylinders must be tested for leakage by gas or air pressure after the bottom has been cleaned and is free from all moisture subject to the following conditions and limitations:

(1) A pressure, approximately the same as but not less than the service pressure, must be applied to one side of the finished bottom over an area of at least 1/16 of the total area of the bottom but not less than ¾ inch in diameter, including the closure, for at least one minute, during which time the other side of the bottom exposed to pressure must be covered with water and closely examined for indications of leakage. Accept as provided in paragraph (b) of this section, a cylinder must be rejected if there is any leakage.

(2) A spun cylinder is one in which an end closure in the finished cylinder has been welded by the spinning process.

(3) A plugged cylinder is one in which a permanent closure in the bottom of a finished cylinder has been effected by a plug.

(4) As a safety precaution, if the manufacturer elects to make this test before the hydrostatic test, the manufacturer shall design the test apparatus so that the pressure is applied to the smallest area practicable, around the point of closure, and so as to use the smallest possible volume of air or gas.

(h) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding or spinning is not authorized. Spun cylinders rejected under the provisions of paragraph (g) of this section may be removed from the spun cylinder category by drilling to remove defective material, tapping and plugging.

(i) *Marking.* Markings required by § 178.35 must be stamped plainly and permanently on the shoulder, top head, neck or sidewall of each cylinder.

§ 178.44 Specification 3HT seamless steel cylinders for aircraft use.

(a) *Type, size and service pressure.* A DOT 3HT cylinder is a seamless steel cylinder with a water capacity (nominal) of not over 150 pounds and a service pressure of at least 900 pounds per square inch.

(b) *Authorized steel.* Open hearth or electric furnace steel of uniform quality must be used. A heat of steel made under the specifications listed in Table 1 of this paragraph (b), check chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the tolerances shown in Table 2 of this paragraph (b) are not exceeded. Grain size 6 or finer according to ASTM Spec. E19–46. Steel of the following chemical analysis is authorized:

TABLE 1.—AUTHORIZED MATERIALS

Designation	AISI 4130 (percent)
Carbon	0.28/0.33
Manganese	0.40/0.60
Phosphorus	0.040 maximum
Sulfur	0.040 maximum
Silicon	0.15/0.35
Chromium	0.80/1.10
Molybdenum	0.18/0.25.

TABLE 2—CHECK ANALYSIS TOLERANCES

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
Carbon	Over 0.15 to 0.40 incl	.03	.04
Manganese	To 0.60 incl	.03	.03
Phosphorus [1]	All ranges		.01
Sulphur	All ranges		.01
Silicon	To 0.30 incl	.02	.03
	Over 0.30 to 1.00 incl	.05	.05
Chromium	To 0.90 incl	.03	.03
	Over 0.90 to 2.10 incl	.05	.05
Molybdenum	To 0.20 incl	.01	.01
	Over 0.20 to 0.40 incl	.02	.02

[1] Rephosphorized steels not subject to check analysis for phosphorus.

(c) *Identification of material.* Material must be identified by any suitable method. Steel stamping of heat identifications may not be made in any area which will eventually become the side wall of the cylinder. Depth of stamping may not encroach upon the minimum prescribed wall thickness of the cylinder.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No fissure or other defect is permitted that is likely to weaken the finished container appreciably. The general surface finish may not exceed a roughness of 250 RMS. Individual irregularities such as draw marks, scratches, pits, etc., should be held to a minimum consistent with good high stress pressure vessel manufacturing practices. If the cylinder is not originally free of such defects or does not meet the finish requirements, the surface may be machined or otherwise treated to eliminate these defects. The point of closure of cylinders closed by spinning may not be less than two times the prescribed wall thickness of the cylindrical shell. The cylinder end contour must be hemispherical or ellipsoidal with a ratio of major-to-minor axis not exceeding two to one and with the concave side to pressure.

(e) *Welding or brazing.* Welding or brazing for any purpose whatsoever is prohibited, except that welding by spinning is permitted to close the bottom of spun cylinders. Machining or grinding to produce proper surface finish at point of closure is required.

(f) *Wall thickness.* (1) Minimum wall thickness for any cylinder must be 0.050 inch. The minimum wall thickness must be such that the wall stress at the minimum specified test pressure may not exceed 75 percent of the minimum tensile strength of the steel as determined from the physical tests required in paragraph (m) of this section and may not be over 105,000 psi.

(2) Calculations must be made by the formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

where:

S=Wall stress in pounds per square inch;
P=Minimum test pressure prescribed for water jacket test;
D=Outside diameter in inches;
d=Inside diameter in inches.

(3) Wall thickness of hemispherical bottoms only permitted to 90 percent of minimum wall thickness of cylinder sidewall but may not be less than 0.050 inch. In all other cases, thickness to be no less than prescribed minimum wall.

(g) *Heat treatment.* The completed cylinders must be uniformly and properly heated prior to tests. Heat treatment of the cylinders of the authorized analysis must be as follows:

(1) All cylinders must be quenched by oil, or other suitable medium.

(2) The steel temperature on quenching must be that recommended for the steel analysis, but may not exceed 1750° F.

(3) The steel must be tempered at a temperature most suitable for the particular steel analysis but not less than 850° F.

(4) All cylinders must be inspected by the magnetic particle or dye penetrant method to detect the presence of quenching cracks. Any cylinder found to have a quenching crack must be rejected and may not be requalified.

(h) *Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.* Threads conforming to the following are required on openings:

(1) Threads must be clean cut, even, without cracks, and to gauge.

(2) Taper threads, when used, must be of length not less than as specified for National Gas Tapered Thread (NGT) as required by American Standard Compressed Gas Cylinder Valve Outlet and Inlet Connections.

(3) Straight threads having at least 6 engaged threads are authorized. Straight threads must have a tight fit and a calculated shear stress of at least 10 times the test pressure of the cylinder.

Gaskets, adequate to prevent leakage, are required.

(i) *Hydrostatic test.* Each cylinder must withstand a hydrostatic test, as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. Pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy either of 1 percent of 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, which ever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Each cylinder must be tested to at least 5/3 times service pressure.

(j) *Cycling tests.* Prior to the initial shipment of any specific cylinder design, cyclic pressurization tests must have been performed on at least three representative samples without failure as follows:

(1) Pressurization must be performed hydrostatically between approximately zero psig and the service pressure at a rate not in excess of 10 cycles per minute. Adequate recording instrumentation must be provided if equipment is to be left unattended for periods of time.

(2) Tests prescribed in paragraph (j)(1) of this section must be repeated on one random sample out of each lot of cylinders. The cylinder may then be subjected to a burst test.

(3) A lot is defined as a group of cylinders fabricated from the same heat of steel, manufactured by the same process and heat treated in the same equipment under the same conditions of time, temperature, and atmosphere, and may not exceed a quantity of 200 cylinders.

(4) All cylinders used in cycling tests must be destroyed.

(k) *Burst test.* One cylinder taken at random out of each lot of cylinders must be hydrostatically tested to destruction.

(l) Flattening test. A flattening test must be performed on one cylinder taken at random out or each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60° included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(m) *Physical tests.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material , as follows:

(1) Test is required on 2 specimens cut from 1 cylinder taken at random out of each lot oi cylinders.

(2) Specimens must conform to the following:

(i) A gauge length of at least 24 times the thickness with a width not over six times the thickness. The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section. When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with the record of physical tests detailed information in regard to such specimens.

(ii) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length.

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8–78.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch, the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(n) *Magnetic particle inspection.* Inspection must be performed on the inside of each container before closing and externally on each finished container after heat treatment. Evidence of discontinuities, which in the opinion of a qualified inspector may appreciably weaken or decrease the durability of the cylinder, must be cause for rejection.

(o) *Leakage test.* All spun cylinders and plugged cylinders must be tested for leakage by dry gas or dry air pressure after the bottom has been cleaned and is free from all moisture, subject to the following conditions and limitations:

(1) Pressure, approximately the same as but not less than service pressure, must be applied to one side of the finished bottom over an area of at least ⅛ of the total area of the bottom but not less than ¾ inch in diameter, including the closure, for at least one minute, during which time the other side of the bottom exposed to pressure must be covered with water and closely examined for indications of leakage. Except as provided in paragraph (q) of this section, a cylinder must be rejected if there is leakage.

(2) A spun cylinder is one in which an end closure in the finished cylinder has been welded by the spinning process.

(3) A plugged cylinder is one in which a permanent closure in the bottom of a finished cylinder has been effected by a plug.

(4) As a safety precaution, if the manufacturer elects to make this test before the hydrostatic test, the manufacturer should design the test apparatus so that the pressure is applied to the smallest area practicable, around the point of closure, and so as to use the smallest possible volume of air or gas.

(p) *Acceptable results of tests.* Results of the flattening test, physical tests, burst test, and cycling test must conform to the following:

(1) Flattening required without cracking to ten times the wall thickness of the cylinder.

(2) Physical tests:

(i) An elongation of at least 6 percent for a gauge length of 24 times the wall thickness.

(ii) The tensile strength may not exceed 165,000 p.s.i.

(3) The burst pressure must be at least ¾ times the test pressure.

(4) Cycling-at least 10,000 pressurizations.

(q) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding or spinning is not authorized. For each cylinder subjected to reheat treatment during original manufacture, sidewall measurements must be made to verify that the minimum sidewall thickness meets specification requirements after the final heat treatment.

(r) *Marking.* (1) Cylinders must be marked by low stress type steel stamping in an area and to a depth which will insure that the wall thickness measured from the root of the stamping to the interior surface is equal to or greater than the minimum prescribed wall thickness. Stamping must be permanent and legible. Stamping on side wall not authorized.

(2) The rejection elastic expansion (REE), in cubic centimeters (cc), must be marked on the cylinder near the date of test. The REE for a cylinder is 1.05 times its original elastic expansion.

(3) Name plates are authorized, provided that they can be permanently and securely attached to the cylinder. Attachment by either brazing or welding is not permitted. Attachment by soldering is permitted provided steel temperature does not exceed 500 °F.

(s) *Inspector's report.* In addition to the requirements of § 178.35, the inspector's report must indicate the rejection elastic expansion (REE), in cubic centimeters (cc).

§ 178.46 Specification 3T seamless steel cylinder.

(a) *Type, size, and service pressure.* A DOT 3T cylinder is a seamless steel cylinder with a minimum water capacity of 1,000 pounds and a minimum service pressure of 1,800 p.s.i. Each cylinder must have integrally formed heads concave to pressure at both ends. The inside head shape must be hemispherical, ellipsoidal in which the major axis is two times the minor axis, or a dished shape falling within these two limits. Permanent closures formed by spinning are prohibited.

(b) *Material, steel.* Only open hearth, basic oxygen, or electric furnace process steel of uniform quality is authorized. The steel analysis must conform to the following:

ANALYSIS TOLERANCES

Element	Ladle analysis	Check analysis	
		Under	Over
Carbon	0.35 to 0.50	0.03	0.04
Manganese	0.75 to 1.05	.04	.04
Phosphorus (max)	0.035		.01
Sulphur (max)	.04		.01
Silicon	0.15 to 0.35	.02	.03
Chromium	0.80 to 1.15	.05	.05
Molybdenum	0.15 to 0.25	.02	.02

(1) A heat of steel made under the specifications in the table in this paragraph (b), the ladle analysis of which is slightly out of the specified range, is acceptable if satisfactory in all other aspects. However, the check analysis tolerances shown in the table in this paragraph (b) may not be exceeded except as approved by the Department.

(2) Material with seams, cracks, laminations, or other injurious defects is not permitted.

(3) Material used must be identified by any suitable method.

(c) *Manufacture.* General manufacturing requirements are as follows:

(1) Surface finish must be uniform and reasonably smooth.

(2) Inside surfaces must be clean, dry, and free of loose particles.

(3) No defect of any kind is permitted if it is likely to weaken a finished cylinder.

(4) If the cylinder surface is not originally free from the defects, the surface may be machined or otherwise treated to eliminate these defects provided the minimum wall thickness is maintained.

(5) Welding or brazing on a cylinder is not permitted.

(d) *Wall thickness.* The minimum wall thickness must be such that the wall stress at the minimum specified test pressure does not exceed 67 percent of the minimum tensile strength of the steel as determined by the physical tests required in paragraphs (j) and (k) of this section. A wall stress of more than 90,500 p.s.i. is not permitted. The minimum wall thickness for any cylinder may not be less than 0.225 inch.

(1) Calculation of the stress for cylinders must be made by the following formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

where:

S=Wall stress in pounds per square inch;
P=Minimum test pressure, at least 5/3 service pressure;
D=Outside diameter in inches;
d=Inside diameter in inches.

(2) Each cylinder must meet the following additional requirement which assumes a cylinder horizontally supported at its two ends and uniformly loaded over its entire length. This load consists of the weight per inch of length of the straight cylindrical portion filled with water compressed to the specified test pressure. The wall thickness must be increased when necessary to meet this additional requirement:

(i) The sum of two times the maximum tensile stress in the bottom fibers due to bending (see paragraph (d)(2)(ii) of this section), plus the maximum tensile stress in the same fibers due to hydrostatic testing (see paragraph (d)(2)(iii) of this section) may not exceed 80 percent of the minimum yield strength of the steel at this maximum stress.

(ii) The following formula must be used to calculate the maximum tensile stress due to bending:

$$S=Mc/I$$

where:

S=Tensile stress in pounds per square inch;
M=Bending moment in inch-pounds ($wl^2/8$);
I=Moment of inertia-0.04909 (D^4-d^4) in inches fourth;
c=Radius (D/2) of cylinder in inches;
w=Weight per inch of cylinder filled with water;
l=Length of cylinder in inches;
D=Outside diameter in inches;
d=Inside diameter in inches.

(iii) The following formula must be used to calculate the maximum longitudinal tensile stress due to hydrostatic test pressure:

$$S=A_1P/A_2$$

where:

S=Tensile stress in pounds per square inch;
A_1=Internal area in cross section of cylinder in square inches;
P=Hydrostatic test pressure in pounds per square, inch;
A_2=Area of metal in cross section of cylinder in square inches.

(e) *Heat treatment.* Each completed cylinder must be uniformly and properly heat treated prior to testing, as follows:

(1) Each cylinder must be heated and held at the proper temperature for at least one hour per inch of thickness based on the maximum thickness of the cylinder and then quenched in a suitable liquid medium having a cooling rate not in excess of 80 percent of water. The steel temperature on quenching must be that recommended for the steel analysis, but it must never exceed 1750 °F. (2) After quenching, each cylinder must be reheated to a temperature below the transformation range but not less than 1050 °F., and must be held at this temperature for at least one hour per inch of thickness based on the maximum thickness of the cylinder. Each cylinder must then be cooled under conditions recommended for the steel.

(f) *Openings.* Openings in cylinders must comply with the following:

(1) Openings are permitted on heads only.

(2) The size of any centered opening in a head may not exceed one half the outside diameter of the cylinder.

(3) Openings in a head must have ligaments between openings of at least three times the average of their hole diameter. No off-center opening may exceed 2.625 inches in diameter.

(4) All openings must be circular.

(5) All openings must be threaded. Threads must be in compliance with the following:

(i) Each thread must be clean cut, even, without any checks, and to gauge.

(ii) Taper threads, when used, must be the American Standard Pipe thread (NPT) type and must be in compliance with the requirements of NBS Handbook H–28, Part II, Section VII.

(iii) Taper threads conforming to National Gas Taper thread (NGT) standards must be in compliance with the requirements of NBS Handbook H–28, Part II, Sections VII and IX.

(iv) Straight threads conforming with National Gas Straight thread (NGS) standards are authorized. These threads must be in compliance with the requirements of NBS Handbook H–28, Part II, Sections VII and IX.

(g) *Hydrostatic test.* Each cylinder must be tested at an internal pressure by the water jacket method or other suitable method, conforming to the following requirements:

(1) The testing apparatus must be operated in a manner that will obtain accurate data. Any pressure gauge used must permit reading to an accuracy of one percent. Any expansion gauge used must permit reading of the total expansion to an accuracy of one percent.

(2) Any internal pressure applied to the cylinder after heat treatment and before the official test may not exceed 90 percent of the test pressure.

(3) The pressure must be maintained sufficiently long to assure complete expansion of the cylinder. In no case may the pressure be held less than 30 seconds.

(4) If, due to failure of the test apparatus, the required test pressure cannot be maintained, the test must be repeated at a pressure increased by 10 percent or 100 p.s.i., whichever is lower or, the cylinder must be reheat treated.

(5) Permanent volumetric expansion of the cylinder may not exceed 10 percent of its total volumetric expansion at the required test pressure.

(6) Each cylinder must be tested to at least 5/3 times its service pressure.

(h) *Ultrasonic examination.* After the hydrostatic test, the cylindrical section of each vessel must be examined in accordance with ASTM Standard A–388–67 using the angle beam technique. The equipment used must be calibrated to detect a notch equal to five percent of the design minimum wall thickness. Any discontinuity indication greater than that produced by the five percent notch must be cause for rejection of the

cylinder unless the discontinuity is repaired within the requirements of this specification.

(i) *Basic requirements for tension and Charpy impact tests.* Cylinders must be subjected to a tension and Charpy impact as follows:

(1) When the cylinders are heat treated in a batch furnace, two tension specimens and three Charpy impact specimens must be tested from one of the cylinders or a test ring from each batch. The lot size represented by these tests may not exceed 200 cylinders.

(2) When the cylinders are heat treated in a continuous furnace, two tension specimens and three Charpy impact specimens must be tested from one of the cylinders or a test ring from each four hours or less of production. However, in no case may a test lot based on this production period exceed 200 cylinders.

(3) Each specimen for the tension and Charpy impact tests must be taken from the side wall of a cylinder or from a ring which has been heat treated with the finished cylinders of which the specimens must be representative. The axis of the specimens must be parallel to the axis of the cylinder. Each cylinder or ring specimen for test must be of the same diameter, thickness, and metal as the finished cylinders they represent. A test ring must be at least 24 inches long with ends covered during the heat treatment process so as to simulate the heat treatment process of the finished cylinders it represents.

(4) A test cylinder or test ring need represent only one of the heats in a furnace batch provided the other heats in the batch have previously been tested and have passed the tests and that such tests do not represent more than 200 cylinders from any one heat.

(5) The test results must conform to the requirements specified in paragraphs (j) and (k) of this section.

(6) When the test results do not conform to the requirements specified, the cylinders represented by the tests may be reheat treated and the tests repeated. Paragraph (i)(5) of this section applies to any retesting.

(j) *Basic conditions for acceptable physical testing.* The following criteria must be followed to obtain acceptable physical test results:

(1) Each tension specimen must have a gauge length of two inches with a width not exceeding one and one-half inches. Except for the grip ends, the specimen may not be flattened. The grip ends may be flattened to within one inch of each end of the reduced section.

(2) A specimen may not be heated after heat treatment specified in paragraph (d) of this section.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gage length.

(i) This yield strength must be determined by the "offset" method or the "extension under load" method described in ASTM Standard E8–69.

(ii) For the "extension under load" method, the total strain (or extension under load) corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gage length under appropriate load and adding thereto 0.2 percent of the gage length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. However, when the degree of accuracy of this method is questionable the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set with the specimen under a stress of 12,000 p.s.i. and the strain indicator reading set at the calculated corresponding strain.

(iv) The cross-head speed of the testing machine may not exceed ⅛ inch per minute during the determination of yield strength.

(4) Each impact specimen must be Charpy V-notch type size 10 mm × 10 mm taken in accordance with paragraph 11 of ASTM Standard A–333–67. When a reduced size specimen is used, it must be the largest size obtainable.

(k) *Acceptable physical test results.* Results of physical tests must conform to the following:

(1) The tensile strength may not exceed 155,000 p.s.i.

(2) The elongation must be at least 16 percent for a two-inch gage length.

(3) The Charpy V-notch impact properties for the three impact specimens which must be tested at 0° F may not be less than the values shown as follows:

Size of specimen (mm)	Average value for acceptance (3 specimens)	Minimum value (1 specimen only of the 3)
10.0 × 10.0 ...	25.0 ft. lbs	20.0 ft. lbs.
10.0 × 7.5	21.0 ft. lbs	17.0 ft. lbs.
10.0 × 5.0	17.0 ft. lbs	14.0 ft. lbs.

(4) After the final heat treatment, each vessel must be hardness tested on the cylindrical section. The tensile strength equivalent of the hardness number obtained may not be more than 165,000 p.s.i. (Rc 36). When the result of a hardness test exceeds the maximum permitted, two or more retests may be made; however, the hardness number obtained in each retest may not exceed the maximum permitted.

(l) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. However, each reheat treated cylinder must subsequently pass all the prescribed tests. Repair by welding is not authorized.

(m) *Markings.* Marking must be done by stamping into the metal of the cylinder. All markings must be legible and located on a shoulder.

(n) *Inspector's report.* In addition to the requirements of § 178.35, the inspector's report for the physical test report, must indicate the average value for three specimens and the minimum value for one specimen for each lot number.

§ 178.46 Specification 3AL seamless aluminum cylinders.

(a) *Size and service pressure.* A DOT 3AL cylinder is a seamless aluminum cylinder with a maximum water capacity of 1000 pounds and minimum service pressure of 150 psig.

(b) *Authorized material and identification of material.* The material of construction must meet the following conditions:

(1) Starting stock must be cast stock or traceable to cast stock.

(2) Material with seams, cracks, laminations, or other defects likely to weaken the finished cylinder may not be used.

(3) Material must be identified by a suitable method that will identify the alloy, the aluminum producer's cast number, the solution heat treat batch number and the lot number.

(4) The material must be of uniform quality. Only the following heat treatable aluminum alloys in Tables 1 and 2 of this paragraph (b)(4) are permitted:

TABLE 1.—CHEMICAL COMPOSITION LIMITS[1]

[Chemical composition (in weight percent)]

Aluminum Assoc. alloy designation No.	Si	Fe	Cu	Mn	Mg	Cr	Zn	Ti	Pb	Bi	Other[2]		Al
											Each	Total	
6351	0.7–1.3	0.50	0.10	0.40–0.80	0.40–0.80	.....	0.20	0.20	0.01	0.01	0.05	0.15	Remainder.
6061	0.40–0.80	.70	0.15–0.40	0.15	0.80–1.20	0.04–0.35	.25	.15	.01	.01	.05	.15	Remainder.

[1] ASTM B 221–76 Standard Specification for Aluminum Alloy Extruded Bars, Rods, Shapes, and Tubes, Table 1 Chemical Composition Limits, Except for Pb and Bi. Limits are in percent maximum unless otherwise indicated.

[2] Analysis is regularly made only for the elements for which specific limits are shown, except for unalloyed aluminum. If however, the presence of other elements is suspected to be, or in the course of routine analysis is indicated to be in excess of specified limits, further analysis is made to determine that these other elements are not in excess of the amounts specified. (Aluminum Association Standards and Data/6th Edition, 1979).

TABLE 2—MECHANICAL PROPERTY LIMITS

Alloy and temper	Tensile strength—PSI		Elongation—percent minimum for 2" or 4D[1] size specimen
	Ultimate—minimum	Yield-minimum	
6351–T6	42,000	37,000	[2] 14
6061–T6	38,000	35,000	[2] 14

[1] "D" represents specimen diameters. When the cylinder wall is greater than 3/16-inch thick, a retest without reheat treatment using the 4D size specimen is authorized if the test using the 2 inch size specimen fails to meet elongation requirements.

[2] When cylinder wall is not over 3/16-inch thick, 10 percent elongation is authorized when using a 24t x 6t size test specimen.

(5) All starting stock must be 100 percent ultrasonically inspected, along the length at right angles to the central axis from two positions at 90° to one another. The equipment and continuous scanning procedure must be capable of detecting and rejecting internal defects such as cracks which have an ultrasonic response greater than that of a calibration block with a 5/64-inch diameter flat bottomed hole.

(6) Cast stock must have uniform equiaxed grain structure not to exceed 500 microns maximum.

(7) Any starting stock not complying with the above must be rejected.

(c) *Manufacture.* Cylinders must be manufactured in accordance with the following requirements:

(1) Cylinder shells must be manufactured by the backward extrusion method and have a cleanliness level adequate to ensure proper inspection. No fissure or other defect is acceptable that is likely to weaken the finished cylinder below the design strength requirements. A reasonably smooth and uniform surface finish is required. If not originally free from such defects, the surface may be machined or otherwise conditioned to eliminate these defects.

(2) Thickness of the cylinder base may not be less than the prescribed minimum wall thickness of the cylindrical shell. The cylinder base must have a basic torispherical, hemispherical, or ellipsoidal interior base configuration where the dish radius is no greater than 1.2 times the inside diameter of the shell. The knuckle radius may not be less than 12 percent of the inside diameter of the shell. The interior base contour may deviate from the true torispherical, hemispherical or ellipsoidal configuration provided that—

(i) Any areas of deviation are accompanied by an increase in base thickness;

(ii) All radii of merging surfaces are equal to or greater than the knuckle radius;

(iii) Each design has been qualified by successfully passing the cycling tests in paragraph (c) of this section; and

(iv) Detailed specifications of the base design are available to the inspector.

(3) For free standing cylinders, the base thickness must be at least two times the minimum wall thickness along the line of contact between the cylinder base and the floor when the cylinders are in the vertical position.

(4) Welding or brazing is prohibited.

(5) Each new design and any significant change to any acceptable design must be qualified for production by testing prototype samples as follows:

(i) Three samples must be subjected to 100,000 pressure reversal cycles between zero and service pressure or 10,000 pressure reversal cycles between zero and test pressure, at a rate not in excess of 10 cycles per minute without failure.

(ii) Three samples must be pressurized to destruction and failure may not occur at less than 2.5 times the marked cylinder service pressure. Each cylinder must remain in one piece. Failure must initiate in the cylinder sidewall in a longitudinal direction. Rate of pressurization may not exceed 200 psi per second.

(6) In this specification "significant change" means a 10 percent or greater change in cylinder wall thickness, service pressure, or diameter; a 30 percent or greater change in water capacity or base thickness; any change in material; over 100 percent increase in size of openings; or any change in the number of openings.

(d) *Wall thickness.* The minimum wall thickness must be such that the wall stress at the minimum specified test pressure will not exceed 80 percent of the minimum yield strength nor exceed 67 percent of the minimum ultimate tensile strength as verified by physical tests in paragraph (i) of this section. The minimum wall thickness for any cylinder with an outside diameter greater than 5 inches must be 0.125 inch. Calculations must be made by the following formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

where:

S=Wall stress in pounds per square inch;

P=Prescribed minimum test pressure in pounds per square inch (see paragraph (g) of this section);

D=Outside diameter in inches; and

d=Inside diameter in inches.

(e) *Openings.* Openings must comply with the following requirements:

(1) Openings are permitted in heads only.

(2) The size of any centered opening in a head may not exceed one-half the outside diameter of the cylinder.

(3) Other openings are permitted in the head of a cylinder if:

(i) Each opening does not exceed 2.625 inches in diameter, or one-half the outside diameter of the cylinder, whichever is less;

(ii) Each opening is separated from each other by a ligament; and

(iii) Each ligament which separates two openings must be at least three times the average of the diameters of the two openings.

(4) All openings must be circular.

(5) All openings must be threaded. Threads must comply with the following:

(i) Each thread must be clean cut, even, without checks, and to gauge.

(ii) Taper threads, when used, must conform to one of the following:

(A) American Standard Pipe Thread (NPT) type, conforming to the requirements of Federal Standard H–28 (1978), Section 7;

(B) National Gas Taper Thread (NGT) type, conforming to the requirements of Federal Standard H–28 (1978), Sections 7 and 9; or

(C) Other taper threads conforming to other standards may be used provided the length is not less than that specified for NPT threads.

(iii) Straight threads, when used, must conform to one of the following:

(A) National Gas Straight Thread (NGS) type, conforming to the requirements of Federal Standard H–28, (1978), Sections 7 and 9;

(B) Unified Thread (UN) type, conforming to the requirements of Federal Standard H–28, (1978), Section 2;

(C) Controlled Radius Root Thread (UN) type, conforming to the requirements of Federal Standard H–28 (1978), Section 4; or

(D) Other straight threads conforming to other recognized standards may be used provided that the requirements in paragraph (e)(3)(iv) of this section are met.

(iv) All straight threads must have at least 6 engaged threads, a tight fit, and a factor of safety in shear of at least 10 at the test pressure of the cylinder. Shear stress must be calculated by using the appropriate thread shear area in accordance with Federal Standard H–28 (1978), Appendix A5, Section 3.

(f) *Heat treatment.* Prior to any test, all cylinders must be subjected to a solution heat treatment and aging treatment appropriate for the aluminum alloy used.

(g) *Hydrostatic test.* Each cylinder must be subjected to an internal test pressure using the water jacket equipment and method or other suitable equipment and method and comply with the following requirements:

(1) The testing apparatus must be operated in a manner so as to obtain accurate data. The pressure gauge used must permit reading to an accuracy of one percent. The expansion gauge must permit reading the total expansion to an accuracy of either one percent or 0.1 cubic centimeter.

(2) The test pressure must be maintained for a sufficient period of time to assure complete expansion of the cylinder. In no case may the pressure be held less than 30 seconds. If, due to failure of the test apparatus, the required test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psi, whichever is lower. If the test apparatus again fails to maintain the test pressure, the cylinder being tested must be rejected. Any internal pressure applied to the cylinder before any official test may not exceed 90 percent of the test pressure.

(3) The minimum test pressure is the greatest of the following:

(i) 450 psi regardless of service pressure;

(ii) Two times the service pressure for cylinders having service pressure less than 500 psi; or

(iii) Five-thirds times the service pressure for cylinders having a service pressure of at least 500 psi.

(4) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(h) *Flattening test.* One cylinder taken at random out of each lot must be subjected to a flattening test as follows:

(1) The test must be between knife edges, wedge shaped, having a 60° included angle, and rounded in accordance with the following table. The longitudinal axis of the cylinder must be at an angle 90° to the knife edges during the test. The flattening test table is as follows:

TABLE 3.—FLATTENING TEST TABLE

Cylinder wall thickness in inches	Radius in inches
Under .150	.500
.150 to .249	.875
.250 to .349	1.500
.350 to .449	2.125
.450 to .549	2.750
.550 to .649	3.500
.650 to .749	4.125

(2) An alternate bend test in accordance with ASTM E 290–77 using a mandrel diameter not more than 6 times the wall thickness is authorized to qualify lots that fail the flattening test of this section without reheat treatment. If used, this test must be performed on two samples from one cylinder taken at random out of each lot of 200 cylinders or less.

(3) Each test cylinder must withstand flattening to nine times the wall thickness without cracking. When the alternate bend test is used, the test specimens must remain uncracked when bent inward around a mandrel in the direction of curvature of the cylinder wall until the interior edges are at a distance apart not greater than the diameter of the mandrel.

(i) *Mechanical properties test.* Two test specimens cut from one cylinder representing each lot of 200 cylinders or less must be subjected to the mechanical properties test, as follows:

(1) The results of the test must conform to at least the minimum acceptable mechanical property limits for aluminum alloys as specified in paragraph (b) of this section.

(2) Specimens must be 4D bar or gauge length 2 inches with width not over 1½ inch taken in the direction of extrusion approximately 180° from each other; provided that gauge length at least 24 times thickness with width not over 6 times thickness is authorized, when cylinder wall is not over 3/16 inch thick. The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section. When the size of the cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold by pressure only, not by blows. When such specimens are used, the inspector's report must show that the specimens were so taken and prepared. Heating of specimens for any purpose is forbidden.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length.

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard B–557–79.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 10,000,000 psi. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 6,000 psi, the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed 1/8 inch per minute during yield strength determination.

(j) *Rejected cylinder.* Reheat treatment of rejected cylinders is authorized one time. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable.

(k) *Duties of inspector.* In addition to the requirements of § 178.35, the inspector shall:

(1) Verify compliance with the provisions of paragraph (b) of this section by:

(i) Performing or witnessing the performance of the chemical analyses on each melt or cast lot or other unit of starting material; or

(ii) Obtaining a certified chemical analysis from the material or cylinder manufacturer for each melt, or cast of material; or

(iii) Obtaining a certified check analysis on one cylinder out of each lot of 200 cylinders or less, if a certificate containing data to indicate compliance with the material specification is obtained.

(2) The inspector shall verify ultrasonic inspection of all material by inspection or by obtaining the material producer's certificate of ultrasonic inspection. Ultrasonic inspection must be performed or verified as having been performed in accordance with paragraph (c) of this section.

(3) The inspector must also determine that each cylinder complies with this specification by:

(i) Selecting the samples for check analyses performed by other than the material producer;

(ii) Verifying that the prescribed minimum thickness was met by measuring or witnessing the measurement of the wall thickness; and

(iii) Verifying that the identification of material is proper.

(4) Prior to initial production of any design or design change, verify that the design qualification tests prescribed in paragraph (c)(6) of this section have been performed with acceptable results.

(l) *Definitions.* In this specification, a "lot" means of group of cylinders successively produced having the same:

(i) Size and configuration;

(ii) Specified material of construction;

(iii) Process of manufacture and heat treatment;

(iv) Equipment of manufacture and heat treatment; and

(v) Conditions of time, temperature and atmosphere during heat treatment. In no case may the lot size exceed 200 cylinders, but any cylinder processed for use in the required destructive physical testing need not be counted as being one of the 200.

(m) *Inspector's report.* In addition to the information required by § 178.35, the record of chemical analyses must also include the alloy designation, and applicable information on iron, titanium, zinc, magnesium and any other applicable element used in the construction of the cylinder.

§ 178.47 Specification 4DS welded stainless steel cylinders for aircraft use.

(a) *Type, size, and service pressure.* A DOT 4DS cylinder is either a welded stainless steel sphere (two seamless hemispheres) or circumferentially welded cylinder both with a water capacity of not over 100 pounds and a service pressure of at least 500 but not over 900 pounds per square inch.

(b) *Steel.* Types 304, 321 and 347 stainless steel are authorized with proper welding procedure. A heat of steel made under the specifications in Table 1 of this paragraph (b), check chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the tolerances shown in Table 2 of this paragraph (b) are not exceeded, except as approved by Associate Administrator. The following chemical analyses are authorized:

TABLE 1.—AUTHORIZED MATERIALS

	Stainless steels		
	304 (percent)	321 (percent)	347 (percent)
Carbon (max)	0.08	0.08	0.08
Manganese (max)	2.00	2.00	2.00
Phosphorus[1] (max)	.030	.030	.030
Sulphur (max)	.030	.030	.030
Silicon (max)	.75	.75	.75
Nickel	8.0/11.0	9.0/13.0	9.0/13.0
Chromium	18.0/20.0	17.0/20.0	17.0/20.0
Molybdenum			
Titanium		[1]	
Columbium			[2]

[1] Titanium may not be than 5C and not more than 0.60%.
[2] Columbium may not be less than 10C and not more than 1.0%.

TABLE 2.—CHECK ANALYSIS TOLERANCES

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
Carbon	To 0.15 incl	0.01	0.01
Manganese	Over 1.15 to 2.50 incl	.05	.05
Phosphorus[1]	All ranges		.01
Sulphur	All ranges		.01

TABLE 2.—CHECK ANALYSIS TOLERANCES—Continued

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
Silicon	Over 0.30 to 1.00 incl	.05	.05
Nickel	Over 5.30 to 10.00 incl	.10	.10
	Over 10.00 to 14.00 incl	.15	.15
Chromium	Over 15.00 to 20.00 incl	.20	.20
Titanium	All ranges	.05	.05
Columbium	All ranges	.05	.05

[1] Rephosphorized steels not subject to check analysis for phosphorus.

(c) *Identification of material.* Materials must be identified by any suitable method.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably; a reasonably smooth and uniform surface finish is required. No abrupt change in wall thickness is permitted. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3. All seams of the sphere or cylinder must be fusion welded. Seams must be of the butt type and means must be provided for accomplishing complete penetration of the joint.

(e) *Attachments.* Attachments to the container are authorized by fusion welding provided that such attachments are made of weldable stainless steel in accordance with paragraph (b) of this section.

(f) *Wall thickness.* The minimum wall thickness must be such that the wall stress at the minimum specified test pressure may not be over 60,000 psi. A minimum wall thickness of 0.040 inch is required for any diameter container. Calculations must be made by the following formulas:

(1) Calculation for sphere must be made by the formula:

$S=PD/4tE$

where:

S=Wall stress in pounds per square inch;
P=Test pressure prescribed for water jacket test, i.e., at least two times service pressure, in pounds per square inch;
D=Outside diameter in inches;
t=Minimum wall thickness in inches;
E=0.85 (provides 85 percent weld efficiency factor which must be applied in the girth weld area and heat zones which zone must extend a distance of 6 times wall thickness from center of weld);
E=1.0 (for all other areas).

(2) Calculation for a cylinder must be made by the formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

where:

S=Wall stress in pounds per square inch;
P=Test pressure prescribed for water jacket test, i.e., at least two times service pressure, in pounds per square inch;
D=Outside diameter in inches;
d=Inside diameter in inches.

(g) *Heat treatment.* The seamless hemispheres and cylinders may be stress relieved or annealed for forming. Welded container must be stress relieved at a temperature of 775 °F ±25° after process treatment and before hydrostatic test.

(h) *Openings in container.* Openings must comply with the following:

(1) Each opening in the container must be provided with a fitting, boss or pad of weldable stainless steel securely attached to the container by fusion welding.

(2) Attachments to a fitting, boss, or pad must be adequate to prevent leakage. Threads must comply with the following:

(i) Threads must be clean cut, even, without checks, and tapped to gauge.

(ii) Taper threads to be of length not less than as specified for American Standard taper pipe threads.

(iii) Straight threads having at least 4 engaged threads, to have tight fit and calculated shear strength at least 10 times the test pressure of the container; gaskets required, adequate to prevent leakage.

(i) *Process treatment.* Each container must be hydraulically pressurized in a water jacket to at least 100 percent, but not more than 110 percent, of the test pressure and maintained at this pressure for a minimum of 3 minutes. Total and permanent expansion must be recorded and included in the inspector's report.

(j) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Each container must be tested to at least 2 times service pressure.

(5) Container must then be inspected. Any wall thickness lower than that required by paragraph (f) of this section must be cause for rejection. Bulges and cracks must be cause for rejection. Welded joint defects exceeding requirements of paragraph (k) of this section must be cause for rejection.

(k) *Radiographic inspection.* Radiographic inspection is required on all welded joints which are subjected to internal pressure, except that at the discretion of the disinterested inspector, openings less than 25 percent of the container diameter need not be subjected to radiographic inspection. Evidence of any defects likely to seriously weaken the container is cause for rejection. Radiographic inspection must be performed subsequent to the hydrostatic test.

(l) *Burst test.* One container taken at random out of 200 or less must be hydrostatically tested to destruction. Rupture pressure must be included as part of the inspector's report.

(m) *Flattening test.* A flattening test must be performed as follows:

(1) For spheres the test must be at the weld between parallel steel plates on a press with welded seam at right angles to the plates. Test one sphere taken at random out of each lot of 200 or less after the hydrostatic test. Any projecting appurtenances may be cut off (by mechanical means only) prior to crushing.

(2) For cylinders the test must be between knife edges, wedge shaped, 60° angle, rounded to ½-inch radius. Test one cylinder taken at random out of each lot of 200 or less, after the hydrostatic test.

(n) *Acceptable results for flattening and burst tests.* Acceptable results for flattening and burst tests are as follows:

(1) Flattening required to 50 percent of the original outside diameter without cracking.

(2) Burst pressure must be at least 3 times the service pressure.

(o) *Rejected containers.* Repair of welded seams by welding prior to process treatment is authorized. Subsequent thereto, containers must be heat treated and pass all prescribed tests.

(p) *Duties of inspector.* In addition to the requirements of § 178.35, the inspector must verify that all tests are conducted at temperatures between 60° F and 90° F.

(q) *Marking.* Markings must be stamped plainly and permanently on a permanent attachment or on a metal nameplate permanently secured to the container by means other than soft solder.

§ 178.50 Specificotion 4B welded or brazed steel cylinders.

(a) *Type, size, and service pressure.* A DOT 4B is a welded or brazed steel cylinder with longitudinal seams that are forged lap-welded or brazed and with water capacity (nominal) not over 1,000 pounds and a service pressure of at least 150 but not over 500 pounds per square inch. Cylinders closed in by spinning process are not authorized.

(b) *Steel.* Open-hearth, electric or basic oxygen process steel of uniform quality must be used. Content percent may not exceed the following: Carbon, 0.25; phosphorus, 0.045; sulphur, 0.050.

(c) *Identification of material.* Material must be identified by any suitable method except that plates and billets for hotdrawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Exposed bottom welds on cylinders over 18 inch long must be protected by footrings. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3. Seams must be made as follows:

(1) *Welded or brazed circumferential seams.* Heads attached by brazing must have a driving fit with the shell, unless the shell is crimped, swedged, or curled over the skirt or flange of the head, and be thoroughly brazed until complete penetration by the brazing material of the brazed joint is secured. Depth of brazing from end of shell must be at least four times the thickness of shell metal.

(2) *Longitudinal seams in shells.* Longitudinal seams must be forged lap welded, by copper brazing, by copper alloy brazing, or by silver alloy brazing. Copper alloy composition must be: Copper, 95 percent minimum; Silicon, 1.5 percent to 3.85 percent; Manganese, 0.25 percent to 1.10 percent. The melting point of the silver alloy brazing material must be in excess of 1000° F. When brazed, the plate edge must be lapped at least eight times the thickness of plate, laps being held in position, substantially metal to metal, by riveting or electric spot-welding; brazing must be done by using a suitable flux and by placing brazing material on one side of seam and applying heat until this material shows uniformly along the seam of the other side.

(e) *Welding or brazing.* Only the attachment of neckrings, footrings, handles, bosses, pads, and valve protection rings to the tops and bottoms of cylinders by welding or brazing is authorized. Such attachments and the portion of the container to which they are attached must be made of weldable steel, the carbon content of which may not exceed 0.25 percent except in the case of 4130X steel which may be used with proper welding procedure.

(f) *Wall thickness.* The wall thickness of the cylinder must comply with the following requirements:

(1) For cylinders with outside diameters over 6 inches the minimum wall thickness must be 0.090 inch. In any case, the minimum wall thickness must be such that calculated wall stress at minimum test pressure (paragraph (i)(4) of this section) may not exceed the following values:

(i) 24,000 pounds per square inch for cylinders without longitudinal seam.

(ii) 22,800 pounds per square inch for cylinders having copper brazed or silver alloy brazed longitudinal seam.

(iii) 18,000 pounds per square inch for cylinders having forged lapped welded longitudinal seam.

(2) Calculation must be made by the formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test or 450 pounds per square inch whichever is the greater;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* Cylinder body and heads, formed by drawing or pressing, must be uniformly and properly heat treated prior to tests.

(h) *Opening in cylinders.* Openings in cylinders must conform to the following:

(1) Each opening in cylinders, except those for safety devices, must be provided with a fitting, boss, or pad, securely attached to cylinder by brazing or by welding or by threads. Fitting, boss, or pad must be of steel suitable for the method of attachment employed, and which need not be identified or verified as to analysis except that if attachment is by welding, carbon content may not exceed 0.25 percent. If threads are used, they must comply with the following:

(i) Threads must be clean cut, even without checks, and tapped to gauge.

(ii) Taper threads to be of length not less than as specified for American Standard taper pipe threads.

(iii) Straight threads, having at least 4 engaged threads, to have tight fit and calculated shear strength at least 10 times the test pressure of the cylinder; gaskets required, adequate to prevent leakage.

(iv) A brass fitting may be brazed to the steel boss or flange on cylinders used as component parts of hand fire extinguishers.

(2) The closure of a fitting, boss, or pad must be adequate to prevent leakage.

(i) *Hydrostatic test.* Each cylinder must withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be

maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Cylinders must be tested as follows:

(i) At least one cylinder selected at random out of each lot of 200 or less must be tested as outlined in paragraphs (i)(1), (i)(2), and (i)(3) of this section to at least two times service pressure.

(ii) All cylinders not tested as outlined in paragraph (i)(4)(i) of this section must be examined under pressure of at least two times service pressure and show no defect.

(j) *Flattening test.* After the hydrostatic test, a flattening test must be performed on one cylinder taken at random out or each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60° included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(k) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material as follows:

(1) The test is required on 2 specimens cut from 1 cylinder, or part thereof heat-treated as required, taken at random out of each lot of 200 or less. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width of not over 1½ inches, a gauge length of 2 inches with a width of not over 1½ inches, or a gauge length at least 24 times the thickness with a width not over 6 times the thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8–78.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch, and strain indicator reading must be set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(l) *Acceptable results for physical and flattening tests.* Either of the following is an acceptable result:

(1) An elongation of at least 40 percent for a 2 inch gauge length or at least 20 percent in other cases and yield strength not over 73 percent of tensile strength. In this instance, a flattening test is not required.

(2) When cylinders are constructed of lap welded pipe, flattening test is required, without cracking, to 6 times the wall thickness. In such case, the rings (crop ends) cut from each end of pipe, must be tested with the weld 45° or less from the point of greatest stress. If a ring fails, another from the same end of pipe may be tested.

(m) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinder. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair of brazed seams by brazing and welded seams by welding is authorized.

(n) *Markings.* Markings must be stamped plainly and permanently in any of the following locations on the cylinder:

(1) On shoulders and top heads when they are not less than 0.087-inch thick.

(2) On side wall adjacent to top head for side walls which are not less than 0.090 inch thick.

(3) On a cylindrical portion of the shell which extends beyond the recessed bottom of the cylinder, constituting an integral and non-pressure part of the cylinder.

(4) On a metal plate attached to the top of the cylinder or permanent part thereof; sufficient space must be left on the plate to provide for stamping at least six retest dates; the plate must be at least 1/16 inch thick and must be attached by welding, or by brazing. The brazing rod must melt at a temperature of 1100 °F. Welding or brazing must be along all the edges of the plate.

(5) On the neck, neckring, valve boss, valve protection sleeve, or similar part permanently attached to the top of the cylinder.

(6) On the footring permanently attached to the cylinder, provided the water capacity of the cylinder does not exceed 25 pounds.

§ 178.51 Specification 4BA welded or brazed steel cylinders.

(a) *Type, size, and service pressure.* A DOT 4BA cylinder is a cylinder, either spherical or cylindrical in shape, with a water capacity of 1,000 pounds or less and a service pressure of at least 225 and not over 500 pounds per square inch. Closures made by the spinning process are not authorized.

(1) Spherical type cylinders must be made from two seamless hemispheres joined by the welding of one circumferential seam.

(2) Cylindrical type cylinders must be of circumferentially welded or brazed construction.

(b) *Steel.* The steel used in the construction of the cylinder must be as specified in Table 1 of Appendix A to this part.

(c) *Identification of material.* Material must be identified by any suitable method except that plates and billets for hotdrawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Exposed bottom welds on cylinders over 18 inches long must be protected by footrings.

(1) Seams must be made as follows:

(i) Minimum thickness of heads and bottoms must be not less than 90 percent of the required thickness of the side wall.

(ii) Circumferential seams must be made by welding or by brazing. Heads must be attached by brazing and must have a driving fit with the shell, unless the shell is crimped, swedged or curled over the skirt or flange of the head and must be thoroughly brazed until complete penetration by the brazing material of the brazed joint is secured. Depth of brazing from end of the shell must be at least four times the thickness of shell metal.

(iii) Longitudinal seams in shells must be made by copper brazing, copper alloy brazing, or by silver alloy brazing. Copper alloy composition must be: Copper 95 percent minimum, Silicon 1.5 percent to 3.85 percent, Manganese 0.25 percent to 1.10 percent. The melting point of the silver alloy brazing material must be in excess of 1,000 °F. The plate edge must be lapped at least eight times the thickness of plate, laps being held in position, substantially metal to metal, by riveting or by electric spot-welding. Brazing must be done by using a suitable flux and by placing brazing material on one side of seam and applying heat until this material shows uniformly along the seam of the other side. Strength of longitudinal seam: Copper brazed longitudinal seam must have strength at least ½ times the strength of the steel wall.

(2) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Welding and brazing.* Only the welding or brazing of neckrings, footrings, handles, bosses, pads, and valve protection rings to the tops and bottoms of cylinders is authorized. Provided that such attachments and the portion of the container to which they are attached are made of weldable steel, the carbon content of which may not exceed 0.25 percent except in the case of 4130X steel which may be used with proper welding procedures.

(f) *Wall thickness.* The minimum wall thickness of the cylinder must meet the following conditions:

(1) For any cylinder with an outside diameter of greater than 6 inches, the minimum wall thickness is 0.078 inch. In any case the minimum wall thickness must be such that the calculated wall stress at the minimum test pressure may not exceed the lesser value of any of the following:

(i) The value shown in Table I of Appendix A to this part, for the particular material under consideration;

(ii) One-half of the minimum tensile strength of the material determined as required in paragraph (j) of this section;

(iii) 35,000 pounds per square inch; or

(iv) Further provided that wall stress for cylinders having copper brazed longitudinal seams may not exceed 95 percent of any of the above values. Measured wall thickness may not include galvanizing or other protective coating.

(2) Cylinders that are cylindrical in shape must have the wall stress calculated by the formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test;
D=outside diameter in inches;
d=inside diameter in inches.

(3) Cylinders that are spherical in shape must have the wall stress calculated by the formula:

$$S=PD/4tE$$

where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test;
D=outside diameter in inches;
t=minimum wall thickness in inches;
E=0.85 (provides 85 percent weld efficiency factor which must be applied in the girth weld area and heat affected zones which zone must extend a distance of 6 times wall thickness from center line of weld);
E=1.0 (for all other areas).

(4) For a cylinder with a wall thickness less than 0.100 inch, the ratio of tangential length to outside diameter may not exceed 4.1.

(g) *Heat treatment.* Cylinders must be heat treated in accordance with the following requirements:

(1) Each cylinder must be uniformly and properly heat treated prior to test by the applicable method shown in Table I of Appendix A to this Part. Heat treatment must be accomplished after all forming and welding operations, except that when brazed joints are used, heat treatment must follow any forming and welding operations, but may be done before, during or after the brazing operations.

(2) Heat treatment is not required after the welding or brazing of weldable low carbon parts to attachments of similar material which have been previously welded or brazed to the top or bottom of cylinders and properly heat treated, provided such subsequent welding or brazing does not produce a temperature in excess of 400 °F in any part of the top or bottom material.

(h) *Openings in cylinders.* Openings in cylinders must comply with the following requirements:

(1) Any opening must be placed on other than a cylindrical surface.

(2) Each opening in a spherical type cylinder must be provided with a fitting, boss, or pad of weldable steel securely attached to the container by fusion welding.

(3) Each opening in a cylindrical type cylinder must be provided with a fitting, boss, or pad, securely attached to container by brazing or by welding.

(4) If threads are used, they must comply with the following:

(i) Threads must be clean-cut, even, without checks and tapped to gauge.

(ii) Taper threads must be of a length not less than that specified for American Standard taper pipe threads.

(iii) Straight threads, having at least 4 engaged threads, must have a tight fit and a calculated shear strength of at least 10 times the test pressure of the cylinder. Gaskets; adequate to prevent leakage, are required.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test, as follows:

(1) The test must be by water jacket, or other suitable method, operated so as to obtain accurate data. A pressure gauge must permit reading to an accuracy of 1 percent. An expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat treatment and previous to the official test may not exceed 90 percent of the test pressure.

(3) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(4) Cylinders must be tested as follows:

(i) At least one cylinder selected at random out of each lot of 200 or less must be tested as outlined in paragraphs (i)(1), (i)(2), and (i)(3) of this section to at least two times service pressure.

(ii) All cylinders not tested as outlined in paragraph (i)(4)(i) of this section must be examined under pressure of at least two times service pressure and show no defect.

(j) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material, as follows:

(1) The test is required on 2 specimens cut from one cylinder or part thereof having passed the hydrostatic test and heat-treated as required, taken at random out of each lot of 200 or less. Physical tests for spheres are required on 2 specimens cut from flat representative sample plates of the same heat taken at random from the steel used

to produce the spheres. This flat steel from which 2 specimens are to be cut must receive the same heat treatment as the spheres themselves. Sample plates must be taken from each lot of 200 or less spheres.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, or a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least 24 times the thickness with a width not over 6 times the thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of the cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8–78.

(ii) In using the "extension under load" method, the total strain (or "extension under load"), corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain reference must be set while the specimen is under a stress of 12,000 pounds per square inch, and the strain indicator reading must be set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed 1/8 inch per minute during yield strength determination.

(k) *Elongation.* Physical test specimens must show at least a 40 percent elongation for a 2-inch gauge length or at least 20 percent in other cases. Except that these elongation percentages may be reduced numerically by 2 for 2-inch specimens, and by 1 in other cases, for each 7,500 pounds per square inch increment of tensile strength above 50,000 pounds per square inch to a maximum of four such increments.

(l) *Tests of welds.* Except for brazed seams, welds must be tested as follows:

(1) *Tensile test.* A specimen must be cut from one cylinder of each lot of 200 or less, or welded test plate. The welded test plate must be of one of the heats in the lot of 200 or less which it represents, in the same condition and approximately the same thickness as the cylinder wall except that in no case must it be of a lesser thickness than that required for a quarter size Charpy impact specimen. The weld must be made by the same procedures and subjected to the same heat treatment as the major weld on the cylinder. The specimen must be taken from across the major seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3. Should this specimen fail to meet the requirements, specimens may be taken from two additional cylinders or welded test plates from the same lot and tested. If either of the latter specimens fail to meet the requirements, the entire lot represented must be rejected.

(2) *Guided bend test.* A root bend test specimen must be cut from the cylinder or welded test plate, used for the tensile test specified in paragraph (l)(1) of this section. Specimens must be taken from across the major seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3.

(3) *Alternate guided-bend test.* This test may be used and must be as required by CGA Pamphlet C–3. The specimen must be bent until the elongation at the outer surface, adjacent to the root of the weld, between the lightly scribed gage lines a to b, must be at least 20 percent, except that this percentage may be reduced for steels having a tensile strength in excess of 50,000 pounds per square inch, as provided in paragraph (k) of this section.

(m) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair of brazed seams by brazing and welded seams by welding is authorized.

(n) *Markings.* Markings must be stamped plainly and permanently in one of the following locations on the cylinder:

(1) On shoulders and top heads not less than 0.087 inch thick.

(2) On side wall adjacent to top head for side walls not less than 0.090 inch thick.

(3) On a cylindrical portion of the shell which extends beyond the recessed bottom of the cylinder constituting an integral and non-pressure part of the cylinder.

(4) On a plate attached to the top of the cylinder or permanent part thereof; sufficient space must be left on the plate to provide for stamping at least six retest dates; the plate must be at least 1/16 inch thick and must be attached by welding, or by brazing at a temperature of at least 1100° F., throughout all edges of the plate.

(5) On the neck, neckring, valve boss, valve protection sleeve, or similar part permanently attached to the top of the cylinder.

(6) On the footring permanently attached to the cylinder, provided the water capacity of the cylinder does not exceed 25 pounds.

§ 178.53 Specification 4D welded steel cylinders for aircraft use.

(a) *Type, size, and service pressure.* A DOT 4D cylinder is a welded steel sphere (two seamless hemispheres) or circumferentially welded cylinder (two seamless drawn shells) with a water capacity not over 100 pounds and a service pressure of at least 300 but not over 500 pounds per square inch. Cylinders closed in by spinning process are not authorized.

(b) *Steel.* Open-hearth or electric steel of uniform and weldable quality must be used. Content may not exceed the following: Carbon, 0.25; phosphorus, 0.045; sulphur, 0.050, except that the following steels commercially known as 4130X and Type 304, 316, 321, and 347 stainless steels may be used with proper welding procedure. A heat of steel made under Table 1 of this paragraph (b), check chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the tolerances shown in Table 2 of this paragraph (b) are not exceeded, except as approved by the Associate Administrator. The following chemical analyses are authorized:

TABLE 1.—4130X STEEL

4130X	Percent
Carbon	0.25/0.35.
Manganese	0.40/0.60.
Phosphorus	0.04 max.
Sulphur	0.05 max.
Silicon	0.15/0.35.
Chromium	0.80/1.10.
Molybdenum	0.15/0.25.
Zirconium	None.
Nickel	None.

TABLE 2.—AUTHORIZED STAINLESS STEELS

	Stainless steels			
	304 (percent)	316 (percent)	321 (percent)	347 (percent)
Carbon (max)	0.08	0.08	0.08	0.08
Manganese (max)	2.00	2.00	2.00	2.00
Phosphorus1 (max)	.030	.045	.030	.030
Sulphur (max)	.030	.030	.030	.030
Silicon (max)	.75	1.00	.75	.75
Nickel	8.0/11.0	10.0/14.0	9.0/13.0	9.0/13.0
Chromium	18.0/20.0	16.0/18.0	17.0/20.0	17.0/20.0
Molybdenum		2.0/3.0		
Titanium			(1)	
Columbium				(2)

[1] Titanium may not be less than 5C and not more than 0.60%.
[2] Columbium may not be less than 10C and not more than 1.0%.

TABLE 3.—CHECK ANALYSIS TOLERANCES

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
Carbon	To 0.15 incl	0.01	0.01
	Over 0.15 to 0.40 incl	.03	.04
Manganese	To 0.60 incl	.03	.03
	Over 1.15 to 2.50 incl	.05	.05
Phosphorus[1]	All ranges		.01
Sulphur	All ranges		.01
Silicon	To 0.30 incl	.02	.03
	Over 0.30 to 1.00 incl	.05	.05
Nickel	Over 5.30 to 10.00 incl	.10	.10
	Over 10.00 to 14.00 incl	.15	.15
Chromium	To 0.90 incl	.03	.03
	Over 0.90 to 2.10 incl	.05	.05
	Over 15.00 to 20.00 incl	.20	.20
Molybdenum	To 0.20 incl	.01	.01
	Over 0.20 to 0.40 incl	.02	.02
	Over 1.75 to 3.0 incl	.10	.10
Titanium	All ranges	.05	.05
Columbium	All ranges	.05	.05

[1] Rephosphorized steels not subject to check analysis for phosphorus.

(c) *Identification of material.* Material must be identified by any suitable method except that plates and billets for hotdrawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished container appreciably. A reasonably smooth and uniform surface finish is required. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Wall thickness.* The wall stress at the minimum test pressure may not exceed 24,000 pounds per square inch, except where steels commercially known as 4130X, types 304, 316, 321, and 347 stainless steels are used, stress at the test pressures may not exceed 37,000 pounds per square inch. The minimum wall thickness for any container having a capacity of 1,100 cubic inches or less is 0.04 inch. The

minimum wall thickness for any container having a capacity in excess of 1,100 cubic inches is 0.095 inch. Calculations must be done by the following:

(1) Calculation for a "sphere" must be made by the formula:

$S=PD/4tE$

Where:

S=wall stress in pounds per square inch;
P=test pressure prescribed for water jacket test, i.e., at least two times service pressure, in pounds per square inch;
D=outside diameter in inches;
t=minimum wall thickness in inches;
E=0.85 (provides 85 percent weld efficiency factor which must be applied in the girth weld area and heat affected zones which zone must extend a distance of 6 times wall thickness from center line of weld);
E=1.0 (for all other areas).

(2) Calculation for a cylinder must be made by the formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

Where:

S=wall stress in pounds per square inch;
P=test pressure prescribed for water jacket test, i.e., at least two times service pressure, in pounds per square inch;
D=outside diameter in inches;
d=inside diameter in inches.

(f) *Heat treatment.* The completed cylinders must be uniformly and properly heat-treated prior to tests.

(g) *Openings in container.* Openings in cylinders must comply with the following:

(1) Each opening in the container, except those for safety devices, must be provided with a fitting, boss, or pad, securely attached to the container by brazing or by welding or by threads. If threads are used, they must comply with the following:

(i) Threads must be clean cut, even, without checks, and tapped to gauge.

(ii) Taper threads must be of a length not less than that specified for American Standard taper pipe threads.

(iii) Straight threads, having at least 4 engaged threads, must have a tight fit and calculated shear strength of at least 10 times the test pressure of the container. Gaskets, adequate to prevent leakage, are required.

(2) Closure of a fitting, boss, or pad must be adequate to prevent leakage.

(h) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test, as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. A pressure gauge must permit reading to an accuracy of 1 percent. An expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(4) Containers must be tested as follows:

(i) Each container to at least 2 times service pressure; or

(ii) One container out of each lot of 200 or less to at least 3 times service pressure. Others must be examined under pressure of 2 times service pressure and show no defects.

(i) *Flattening test for spheres and cylinders.* Spheres and cylinders must be subjected to a flattening test as follows:

(1) One sphere taken at random out of each lot of 200 or less must be subjected to a flattening test as follows:

(i) The test must be performed after the hydrostatic test.

(ii) The test must be between parallel steel plates on a press with a welded seam at right angles to the plates. Any projecting appurtenances may be cut off (by mechanical means only) prior to crushing.

(2) One cylinder taken at random out of each lot of 200 or less must be subjected to a flattening test, as follows:

(i) The test must be performed after the hydrostatic test.

(ii) The test must be between knife edges, wedge shaped, 60° angle, rounded to ½ inch radius. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to the same heat treatment as the finished cylinder.

(j) *Physical test and specimens for spheres and cylinders.* Spheres and cylinders must be subjected to a physical test as follows:

(1) Physical test for spheres are required on 2 specimens cut from a flat representative sample plate of the same heat taken at random from the steel used to produce the sphere. This flat steel from which the 2 specimens are to be cut must receive the same heat-treatment as the spheres themselves. Sample plates must be taken for each lot of 200 or less spheres.

(2) Specimens for spheres must have a gauge length 2 inches with a width not over 1½ inches, or a gauge length at least 24 times the thickness with a width not over 6 times the thickness is authorized when a wall is not over 3/16 inch thick.

(3) Physical test for cylinders is required on 2 specimens cut from 1 cylinder taken at random out of each lot of 200 or less. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to the same heat treatment as the finished cylinder.

(4) Specimens for cylinders must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, or a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least 24 times the thickness with a width not over 6 times the thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within 1 inch of each end of the reduced section. Heating of the specimen for any purpose is not authorized.

(5) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8–78.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(k) *Acceptable results for physical and flattening tests.* Either of the following is an acceptable result:

(1) An Elongation of at least 40 percent for a 2 inch gauge length or at least 20 percent in other cases and yield strength not over 73 percent of tensile strength. In this instance, the flattening test is not required.

(2) An elongation of at least 20 percent for a 2 inch gauge length or 10 percent in other cases. Flattening is required to 50 percent of the original outside diameter without cracking.

(l) *Rejected cylinders.* Reheat-treatment is authorized for rejected cylinders. Subsequent thereto, containers must pass all prescribed tests to be acceptable. Repair of welded seams by welding prior to reheat-treatment is authorized.

(m) *Marking.* Marking on each container by stamping plainly and permanently are only authorized where the metal is at least 0.09 inch thick, or on a metal nameplate permanently secured to the container by means other than soft solder, or by means that would not reduce the wall thickness.

§ 178.55 Specification 4B240ET welded or brazed cylinders.

(a) *Type, spinning process, size and service pressure.* A DOT 4B240ET cylinder is a brazed type cylinder made from electric resistance welded tubing. The maximum water capacity of this cylinder is 12 pounds or 333 cubic inches and the service must be 240 pounds per square inch. The maximum outside diameter of the shell must be five inches and maximum length of the shell is 21 inches. Cylinders closed in by a spinning process are authorized.

(b) *Steel.* Open-hearth, basic oxygen, or electric steel of uniform quality must be used. Plain carbon steel content may not exceed the following: Carbon, 0.25; phosphorus, 0.045; sulfur, 0.050. The addition of other elements for alloying effect is prohibited.

(c) *Identification of material.* Material must be identified by any suitable method.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Heads may be attached to shells by lap brazing or may be formed integrally. The thickness of the bottom of cylinders welded or formed by spinning is, under no condition, to be less than two times the minimum wall thickness of the cylindrical shell. Such bottom thicknesses must be measured within an area bounded by a line representing the points of contact between the cylinder and the floor when the cylinder is in a vertical position. Seams must conform to the following:

(1) Circumferential seams must be by brazing only. Heads must be attached to shells by the lap brazing method and must overlap not less than four times the wall thickness. Brazing material must have a melting point of not less than 1000° F. Heads must have a driving fit with the shell unless the shell is crimped, swedged, or curled over the skirt or flange of the head and be thoroughly brazed until complete penetration of the joint by the brazing material is secured. Brazed joints may be repaired by brazing.

(2) Longitudinal seams in shell must be by electric resistance welded joints only. No repairs to longitudinal joints is permitted.

(3) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Welding or brazing.* Only the attachment, by welding or brazing, to the tops and bottoms of cylinders of neckrings, footrings, handles, bosses, pads, and valve protection rings is authorized. Provided that such attachments and the portion of the container to which they are attached are made of weldable steel, the carbon content of which may not exceed 0.25 percent.

(f) *Wall thickness.* The wall stress must be at least two times the service pressure and may not exceed 18,000 pounds per square inch. The minimum wall thickness is 0.044 inch. Calculation must be made by the following formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

where:

S=wall stress in pounds per square inch;
P=2 times service pressure;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* Heads formed by drawing or pressing must be uniformly and properly heat treated prior to tests. Cylinders with integral formed heads or bases must be subjected to a normalizing operation. Normalizing and brazing operations may be combined, provided the operation is carried out at a temperature in excess of the upper critical temperature of the steel.

(h) *Openings in cylinders.* Openings in cylinders must comply with the following:

(1) Each opening in cylinders, except those for safety devices, must be provided with a fitting, boss, or pad, securely attached to the cylinder by brazing or by welding or by threads. A fitting, boss, or pad must be of steel suitable for the method of attachment employed, and which need not be identified or verified as to analysis, except that if attachment is by welding, carbon content may not exceed 0.25 percent. If threads are used, they must comply with the following:

(i) Threads must be clean cut, even without checks, and tapped to gauge.

(ii) Taper threads to be of length not less than as specified for American Standard taper pipe threads.

(iii) Straight threads, having at least 4 engaged threads, to have tight fit and calculated shear strength at least 10 times the test pressure of the cylinder; gaskets required, adequate to prevent leakage.

(2) Closure of a fitting, boss, or pad must be adequate to prevent leakage.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Cylinders must be tested as follows:

(i) At least one cylinder selected at random out of each lot of 200 or less must be tested as outlined in paragraphs (i)(1), (i)(2), and (i)(3) of this section to at least two times service pressure.

(ii) All cylinders not tested as outlined in paragraph (i)(4)(i) of this section must be examined under pressure of at least two times service pressure and show no defect.

(5) Each 1000 cylinders or less successively produced each day must constitute a lot. One cylinder must be selected from each lot and hydrostatically tested to destruction. If this cylinder bursts below five times the service pressure, then two additional cylinders must be selected and subjected to this test. If either of these

cylinders fails by bursting below five times the service pressure then the entire lot must be rejected. All cylinders constituting a lot must be of identical size, construction heat-treatment, finish, and quality.

(j) *Flattening test.* Following the hydrostatic test, one cylinder taken at random out of each lot of 200 or less, must be subjected to a flattening test that is between knife edges, wedge shaped, 60° angle, rounded to ½ inch radius.

(k) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material, as follows:

(1) The test is required on 2 specimens cut from 1 cylinder, or part thereof heat-treated as required, taken at random out of each lot of 200 or less in the case of cylinders of capacity greater than 86 cubic inches and out of each lot of 500 or less for cylinders having a capacity of 86 cubic inches or less.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least 24 times the thickness with a width not over 6 times the thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8–78.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed 1/8 inch per minute during yield strength determination.

(l) *Acceptable results for physical and flattening tests.* Acceptable results for the physical and flattening tests are an elongation of at least 40 percent for a 2 inch gauge length or at least 20 percent in other cases and a yield strength not over 73 percent of tensile strength. In this instance the flattening test is required, without cracking, to six times the wall thickness with a weld 90° from the direction of the applied load. Two rings cut from the ends of length of pipe used in production of a lot may be used for the flattening test provided the rings accompany the lot which they represent in all thermal processing operations. At least one of the rings must pass the flattening test.

(m) *Leakage test.* All spun cylinders and plugged cylinders must be tested for leakage by gas or air pressure after the bottom has been cleaned and is free from all moisture, subject to the following conditions:

(1) Pressure, approximately the same as but no less than service pressure, must be applied to one side of the finished bottom over an area of at least 1/16 of the total area of the bottom but not less than ¾ inch in diameter, including the closure, for at least 1 minute, during which time the other side of the bottom exposed to pressure must be covered with water and closely examined for indications of leakage. Except as provided in paragraph (n) of this section, cylinders which are leaking must be rejected.

(2) A spun cylinder is one in which an end closure in the finished cylinder has been welded by the spinning process.

(3) A plugged cylinder is one in which a permanent closure in the bottom of a finished cylinder has been effected by a plug.

(4) As a safety precaution, if the manufacturer elects to make this test before the hydrostatic test, he should design his apparatus so that the pressure is applied to the smallest area practicable, around the point of closure, and so as to use the smallest possible volume of air or gas.

(n) *Rejected cylinders.* Repairs of rejected cylinders is authorized. Cylinders that are leaking must be rejected, except that:

(1) Spun cylinders rejected under the provisions of paragraph (m) of this section may be removed from the spun cylinder category by drilling to remove defective material, tapping, and plugging.

(2) Brazed joints may be rebrazed.

(3) Subsequent to the operations noted in paragraphs (n)(1) and (n)(2) of this section, acceptable cylinders must pass all prescribed tests.

(o) *Marking.* Markings on each cylinder must be by stamping plainly and permanently on shoulder, top head, neck or valve protection collar which is permanently attached to the cylinders and forming an integral part thereof, provided that cylinders not less than 0.090 inch thick may be stamped on the side wall adjacent to top head.

§ 178.56 Specification 4AA480 welded steel cylinders.

(a) *Type, size, and service pressure.* A DOT 4AA480 cylinder is a welded steel cylinder having a water capacity (nominal) not over 1,000 pounds water capacity and a service pressure of 480 pounds per square inch. Closures welded by spinning process not permitted.

(b) *Steel.* The limiting chemical composition of steel authorized by this specification must be as shown in Table I of Appendix A to this part.

(c) *Identification of material.* Material must be identified by any suitable method except that plates and billets for hotdrawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Exposed bottom welds on cylinders over 18 inches long must be protected by footrings. Minimum thickness of heads and bottoms may not be less than 90 percent of the required thickness of the side wall. Seams must be made as follows:

(1) Circumferential seams must be welded. Brazing is not authorized.

(2) Longitudinal seams are not permitted.

(3) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Welding.* Only the welding of neckrings, footrings, bosses, pads, and valve protection rings to the tops and bottoms of cylinders is authorized. Provided that such attachments are made of weldable steel, the carbon content of which does not exceed 0.25 percent.

(f) *Wall thickness.* The wall thickness of the cylinder must conform to the following:

(1) For cylinders with an outside diameter over 5 inches, the minimum wall thickness is 0.078 inch. In any case, the minimum wall thickness must be such that the calculated wall stress at the minimum test pressure (in paragraph (i) of this section) may not exceed the lesser value of either of the following:

(i) One-half of the minimum tensile strength of the material determined as required in paragraph (j) of this section; or

(ii) 35,000 pounds per square inch.

(2) Calculation must be made by the formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

Where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test;
D=outside diameter in inches;
d=inside diameter in inches.

(3) The ratio of tangential length to outside diameter may not exceed 4.0 for cylinders with a wall thickness less than 0.100 inch.

(g) *Heat treatment.* Each cylinder must be uniformly and properly heat treated prior to tests. Any suitable heat treatment in excess of 1100° F is authorized except that liquid quenching is not permitted. Heat treatment must be accomplished after all forming and welding operations. Heat treatment is not required after welding weldable low carbon parts to attachments of similar material which have been previously welded to the top or bottom of cylinders and properly heat treated, provided such subsequent welding does not produce a temperature in excess of 400° F., in any part of the top or bottom material.

(h) *Openings in cylinders.* Openings in cylinders must conform to the following:

(1) All openings must be in the heads or bases.

(2) Each opening in the cylinder, except those for safety devices, must be provided with a fitting boss, or pad, securely attached to the cylinder by welding or by threads. If threads are used they must comply with the following:

(i) Threads must be clean-cut, even without checks and cut to gauge.

(ii) Taper threads to be of length not less than as specified for American Standard taper pipe threads.

(iii) Straight threads having at least 6 engaged threads, must have a tight fit and a calculated shear strength at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(3) Closure of a fitting, boss or pad must be adequate to prevent leakage.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds or sufficiently longer to assure complete expansion. Any internal pressure applied after heat-treatment and before the official test may not exceed 90 percent of the test pressure. If, due to failure of test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is lower.

(3) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(4) Cylinders must be tested as follows:

(i) At least one cylinder selected at random out of each lot of 200 or less must be tested as described in paragraphs (i)(1), (i)(2), and (i)(3) of this section, to at least two times service pressure. If a selected cylinder fails, then two additional specimens must be selected at random from the same lot and subjected to the prescribed test. If either of these fails the test, then each cylinder in that lot must be so tested; and

(ii) Each cylinder not tested as prescribed in paragraph (i)(4)(i) of this section must be examined under pressure of at least two times service pressure and must show no defect. A cylinder showing a defect must be rejected unless it may be requalified under paragraph (m) of this section.

(j) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material, as follows:

(1) The test is required on 2 specimens cut from one cylinder having passed the hydrostatic test, or part thereof heat-treated as required, taken at random out of each lot of 200 or less.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least 24 times the thickness with a width not over 6 times thickness is authorized when the cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8–78.

(ii) In using the "extension under load" method, the total strain (or "extension under load"), corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain reference must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed 1/8 inch per minute during yield strength determination.

(k) *Elongation.* Physical test specimens must show at least a 40 percent elongation for 2-inch gauge lengths or at least a 20 percent elongation in other cases. Except that these elongation percentages may be reduced numerically by 2 for 2-inch

specimens and by 1 in other cases for each 7,500 pounds per square inch increment of tensile strength above 50,000 pounds per square inch to a maximum of four such increments.

(l) *Tests of welds.* Welds must be tested as follows:

(1) *Tensile test.* A specimen must be cut from one cylinder of each lot of 200 or less, or a welded test plate. The welded test plate must be of one of the heats in the lot of 200 or less which it represents, in the same condition and approximately the same thickness as the cylinder wall except that it may not be of a lesser thickness than that required for a quarter size Charpy impact specimen. The weld must be made by the same procedures and subjected to the same heat treatment as the major weld on the cylinder. The specimens must be taken across the major seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3. Should this specimen fail to meet the requirements, specimens may be taken from two additional cylinders or welded test plates from the same lot and tested. If either of the latter specimens fail to meet the requirements, the entire lot represented must be rejected.

(2) *Guided bend test.* A root bend test specimen must be cut from the cylinder or a welded test plate, used for the tensile test specified in paragraph (l)(1) of this section. Specimens must be taken from across the major seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3.

(3) *Alternate guided-bend test.* This test may be used and must be as required by CGA Pamphlet C–3. The specimen must be bent until the elongation at the outer surface, adjacent to the root of the weld, between the lightly scribed gage lines-a to b, is at least 20 percent, except that this percentage may be reduced for steels having a tensile strength in excess of 50,000 pounds per square inch, as provided in paragraph (k) of this section.

(m) *Rejected cylinders.* Reheat treatment of rejected cylinders is authorized. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair of welded seams by welding is authorized.

(n) *Markings.* Markings must be stamped plainly and permanently in one of the following locations on the cylinder:

(1) On shoulders and top heads not less than 0.087 inch thick.

(2) On neck, valve boss, valve protection sleeve, or similar part permanently attached to top end of cylinder.

(3) On a plate attached to the top of the cylinder or permanent part thereof: sufficient space must be left on the plate to provide for stamping at least six retest dates: the plate must be at least 1/16 inch thick and must be attached by welding or by brazing at a temperature of at least 1100° F, throughout all edges of the plate.

(4) Variations in location of markings authorized only when necessitated by lack of space.

§ 178.57 Specification 4L welded insulated cylinders.

(a) *Type, size, service pressure, and design service temperature.* A DOT 4L cylinder is a fusion welded insulated cylinder with a water capacity (nominal) not over 1,000 pounds water capacity and a service pressure of at least 40 but not greater than 500 pounds per square inch conforming to the following requirements:

(1) For liquefied hydrogen service, the cylinders must be designed to stand on end, with the axis of the cylindrical portion vertical.

(2) The design service temperature is the coldest temperature for which a cylinder is suitable. The required design service temperatures for each cryogenic liquid is as follows:

Cryogenic liquid	Design service temperature
Argon	Minus 320° F or colder.
Helium	Minus 452° F or colder.
Hydrogen	Minus 423° F or colder.
Neon	Minus 411° F or colder.
Nitrogen	Minus 320° F or colder.
Oxygen	Minus 320° F or colder.

(b) *Material.* Material use in the construction of this specification must conform to the following:

(1) *Inner containment vessel (cylinder).* Designations and limiting chemical compositions of steel authorized by this specification must be as shown in Table 1 in paragraph (o) of this section.

(2) *Outer jacket.* Steel or aluminum may be used subject to the requirements of paragraph (o)(2) of this section.

(c) *Identification of material.* Material must be identified by any suitable method.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart and to the following requirements:

(1) No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. The shell portion must be a reasonably true cylinder.

(2) The heads must be seamless, concave side to the pressure, hemispherical or ellipsoidal in shape with the major diameter not more than twice the minor diameter. Minimum thickness of heads may not be less than 90 percent of the required thickness of the sidewall. The heads must be reasonably true to shape, have no abrupt shape changes, and the skirts must be reasonably true to round.

(3) The surface of the cylinder must be insulated. The insulating material must be fire resistant. The insulation on non-evacuated jackets must be covered with a steel jacket not less than 0.060-inch thick or an aluminum jacket not less than 0.070 inch thick, so constructed that moisture cannot come in contact with the insulating material. If a vacuum is maintained in the insulation space, the evacuated jacket must be designed for a minimum collapsing pressure of 30 psi differential whether made of steel or aluminum. The construction must be such that the total heat transfer, from the atmosphere at ambient temperature to the contents of the cylinder, will not exceed 0.0005 Btu per hour, per Fahrenheit degree differential in temperature, per pound of water capacity of the cylinder. For hydrogen, cryogenic liquid service, the total heat transfer, with a temperature differential of 520 Fahrenheit degrees, may not exceed that required to vent 30 SCF of hydrogen gas per hour.

(4) For a cylinder having a design service temperature colder than minus 320° F, a calculation of the maximum weight of contents must be made and that weight must be marked on the cylinder as prescribed in § 178.35.

(5) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3. In addition, an impact test of the weld must be performed in accordance with paragraph (l) of this section as part of the qualification of each welding procedure and operator.

(e) *Welding.* Welding of the cylinder must be as follows:

(1) All seams of the cylinder must be fusion welded. A means must be provided for accomplishing complete penetration of the joint. Only butt or joggle butt joints for the cylinder seams are authorized. All joints in the cylinder must have reasonably true alignment.

(2) All attachments to the sidewalls and heads of the cylinder must be by fusion welding and must be of a weldable material complying with the impact requirements of paragraph (l) of this section.

(3) For welding the cylinder, each procedure and operator must be qualified in accordance with the sections of CGA Pamphlet C–3 that apply. In addition, impact tests of the weld must be performed in accordance with paragraph (l) of this section as part of the qualification of each welding procedure and operator.

(4) Brazing, soldering and threading are permitted only for joints not made directly to the cylinder body. Threads must comply with the requirements of paragraph (h) of this section.

(f) *Wall thickness.* The minimum wall thickness of the cylinder must be such that the calculated wall stress at the minimum required test pressure may not exceed the least value of the following:

(1) 45,000 pounds per square inch.

(2) One-half of the minimum tensile strength across the welded seam determined in paragraph (l) of this section.

(3) One-half of the minimum tensile strength of the base metal determined as required in paragraph (j) of this section.

(4) The yield strength of the base metal determined as required in paragraph (l) of this section.

(5) Further provided that wall stress for cylinders having longitudinal seams may not exceed 85 percent of the value in paragraph (f)(4) of this section, whichever applies.

(6) Calculation must be made by the following formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

where:

S=Wall stress in pounds per square inch;

P=Minimum test pressure prescribed for pressure test in pounds per square inch;

D=Outside diameter in inches;

d=Inside diameter in inches.

(g) *Heat treatment.* Heat treatment is not permitted.

(h) *Openings in cylinder.* Openings in cylinders must conform to the following:

(1) Openings are permitted in heads only. They must be circular and may not exceed 3 inches in diameter or one third of the cylinder diameter, whichever is less. Each opening in the cylinder must be provided with a fitting, boss or pad, either integral with, or securely attached to, the cylinder body by fusion welding. Attachments to a fitting, boss or pad may be made by welding, brazing, mechanical attachment, or threading.

(2) Threads must comply with the following:

(i) Threads must be clean-cut, even, without checks and cut to gauge.

(ii) Taper threads to be of a length not less than that specified for NPT.

(iii) Straight threads must have at least 4 engaged threads, tight fit and calculated shear strength at least 10 times the test pressure of the cylinder. Gaskets, which prevent leakage and are inert to the hazardous material, are required.

(i) *Pressure test.* Each cylinder, before insulating and jacketing, must be examined under a pressure of at least 2 times the service pressure maintained for at least 30 seconds without evidence of leakage, visible distortion or other defect. The pressure gauge must permit reading to an accuracy of 1 percent.

(j) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, and elongation as follows:

(1) The test is required on 2 specimens selected from material of each heat and in the same condition as that in the completed cylinder.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with width not over 1½ inches, or a gauge length at least 24 times thickness with a width not over 6 times thickness (authorized when cylinder wall is not over 3/16 inch thick).

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of the cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8–78.

(ii) In using the "extension under load" method, the total strain (or "extension under load"), corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic expansion of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on the elastic modulus of the material used. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain reference must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed 1/8 inch per minute during yield strength determination.

(k) *Acceptable results for physical tests.* Physical properties must meet the limits specified in paragraph (o)(1), Table 1, for the particular steel in the annealed condition. The specimens must show at least a 20 percent elongation for a 2-inch gage length. Except that the percentage may be reduced numerically by 2 for each 7,500 pounds per square inch increment of tensile strength above 100,000 pounds per square inch to a maximum of 5 such increments. Yield strength and tensile strength must meet the requirements of paragraph (o)(1), Table 1, of this section.

(l) *Tests of welds.* Welds must be tested as follows:

(1) *Tensile test.* A specimen must be cut from one cylinder of each lot of 200 or less, or welded test plate. The welded test plate must be of one of the heats in the lot of 200 or less which it represents, in the same condition and approximately the same thickness as the cylinder wall except that it may not of a lesser thickness than that required for a quarter size Charpy impact specimen. The weld must be made by the same procedures and subjected to the same heat treatment as the major weld on the cylinder. The specimen must be taken across the major seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3. Should this specimen fail to meet the requirements, specimens may be taken from two additional cylinders or welded test plates from the same lot and tested. If either of the latter specimens fails to meet the requirements, the entire lot represented must be rejected.

(2) *Guided bend test.* A "root" bend test specimen must be cut from the cylinder or welded test plate, used for the tensile test specified in paragraph (l)(1) of this section and from any other seam or equivalent welded test plate if the seam is welded by a procedure different from that used for the major seam. Specimens must be taken across the particular seam being tested and

must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3.

(3) *Alternate guided-bend test.* This test may be used and must be as specified in CGA Pamphlet C–3. The specimen must be bent until the elongation at the outer surface, adjacent to the root of the weld, between the lightly scribed gage lines-a to b, is at least 20 percent, except that this percentage may be reduced for steels having a tensile strength in excess of 100,000 pounds per square inch, as provided in paragraph (c) of this section.

(4) *Impact tests.* One set of three impact test specimens (for each test) must be prepared and tested for determining the impact properties of the deposited weld metal—

(i) As part of the qualification of the welding procedure.

(ii) As part of the qualification of the operators.

(iii) For each "heat" of welding rodor wire used.

(iv) For each 1,000 feet of weld made with the same heat of welding rod or wire.

(v) All impact test specimens must be of the Charpy type, keyhole or milled U-notch, and must conform in all respects to Figure 3 of ASTM E–23–60T. Each set of impact specimens must be taken across the weld and have the notch located in the weld metal. When the cylinder material thickness is 2.5 mm or thicker, impact specimens must be cut from a cylinder or welded test plate used for the tensile or bend test specimens. The dimension along the axis of the notch must be reduced to the largest possible of 10 mm, 7.5 mm, 5 mm or 2.5 mm, depending upon cylinder thickness. When the material in the cylinder or welded test plate is not of sufficient thickness to prepare 2.5 mm impact test specimens, 2.5 mm specimens must be prepared from a welded test plate made from ⅛ inch thick material meeting the requirements specified in paragraph (o)(1), Table 1, of this section and having a carbon analysis of .05 minimum, but not necessarily from one of the heats used in the lot of cylinders. The test piece must be welded by the same welding procedure as used on the particular cylinder seam being qualified and must be subjected to the same heat treatment.

(vi) Impact test specimens must be cooled to the design service temperature. The apparatus for testing the specimens must conform to the requirements of ASTM Standard E–23–60T. The test piece, as well as the handling tongs, must be cooled for a length of time sufficient to reach the service temperature. The temperature of the cooling device must be maintained within a range of plus or minus 3° F. The specimen must be quickly transferred from the cooling device to the anvil of the testing machine and broken within a time lapse of not more than six seconds.

(vii) The impact properties of each set of impact specimens may not be less than the values in the following table:

Size of specimen	Minimum impact value required for avg. of each set of three specimens (ft.-lb.)	Minimum impact value permitted on one only of a set of three (ft.- lb.)
10 mm×10 mm	15	10
10 mm×7.5 mm	12.5	8.5
10 mm×5 mm	10	7.0
10 mm×2.5 mm	5	3.5

(viii) When the average value of the three specimens equals or exceeds the minimum value permitted for a single specimen and the value for more than one specimen is below the required average value, or when the value for one specimen is below the minimum value permitted for a single specimen, a retest of three additional specimens must be made. The value of each of these retest specimens must equal or exceed the required average value. When an erratic result is caused by a defective specimen, or there is uncertainty in test procedure, a retest is authorized.

(m) *Radiographic examination.* Cylinders must be subject to a radiographic examination as follows:

(1) The techniques and acceptability of radiographic inspection must conform to the standards set forth in CGA Pamphlet C–3.

(2) One finished longitudinal seam must be selected at random from each lot of 100 or less successively produced and be radiographed throughout its entire length. Should the radiographic examination fail to meet the requirements of paragraph (m)(1) of this section, two additional seams of the same lot must be examined, and if either of these fail to meet the requirements of (m)(1) of this section, only those passing are acceptable.

(n) *Rejected cylinders.* Reheat treatment of rejected cylinders is authorized. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Welds may be repaired by suitable methods of fusion welding.

(o) *Authorized materials of construction.* Authorized materials of construction are as follows:

(1) *Inner containment vessel (cylinder).* Electric furnace steel of uniform quality must be used. Chemical analysis must conform to ASTM A240, Type 304 Stainless Steel. A heat of steel made under Table 1 and Table 2 of this paragraph (o)(1) is acceptable, even though its check chemical analysis is slightly out of the specified range, if it is satisfactory in all other respects, provided the tolerances shown in Table 3 of this paragraph (o)(1) are not exceeded. The following chemical analyses and physical properties are authorized:

TABLE 1.—AUTHORIZED MATERIALS

Designation	Chemical analysis, limits in percent
Carbon[1]	0.08 max.
Manganese	2.00 max.
Phosphorus	0.045 max.
Sulphur	0.030 max.
Silicon	1.00 max.
Nickel	8.00–10.50
Chromium	18.00–20.00
Molybdenum	None.
Titanium	None.
Columbium	None.

[1] The carbon analysis must be reported to the nearest hundredth of one percent.

TABLE 2.—PHYSICAL PROPERTIES

	Physical properties (annealed)
Tensile strength, p.s.i. (minimum)	75,000
Yield strength, p.s.i. (minimum)	30,000
Elongation in 2 inches (minimum) percent	30.0
Elongation other permissible gauge lengths (minimum) percent	15.0

TABLE 3.—CHECK ANALYSIS TOLERANCES

Elements	Limit or specified range (percent)	Tolerance over the maximum limit or under the minimum limit
Carbon	To 0.030, incl	0.005
	Over 0.30 to 0.20, incl	0.01
Manganese	To 1.00 incl	.03
	Over 1.00 to 3.00, incl	0.04
Phosphorus[1]	To 0.040, incl	0.005
	Over 0.040 to 0.020 incl	0.010
Sulphur	To .40 incl	0.005
Silicon	To 1.00, incl	0.05
Nickel	Over 5.00 to 10.00, incl	0.10
	Over 10.00 to 20.00, incl	0.15
Chromium	Over 15.00 to 20.00, incl	0.20

[1] Rephosphorized steels not subject to check analysis for phosphorus.

(2) *Outer jacket.* (i) Nonflammable cryogenic liquids. Cylinders intended for use in the transportation of nonflammable cryogenic liquid must have an outer jacket made of steel or aluminum.

(ii) Flammable cryogenic liquids. Cylinders intended for use in the transportation of flammable cryogenic liquid must have an outer jacket made of steel.

(p) *Markings.* (1) Markings must be stamped plainly and permanently on shoulder or top head of jacket or on a permanently attached plate or head protective ring.

(2) The letters "ST", followed by the design service temperature (for example, ST–423F), must be marked on cylinders having a design service temperature of colder than minus 320° F only. Location to be just below the DOT mark.

(3) The maximum weight of contents, in pounds (for example, "Max. Content 51 #"), must be marked on cylinders having a design service temperature colder than minus 320° F only. Location to be near symbol.

(4) Special orientation instructions must be marked on the cylinder (for example, THIS END UP), if the cylinder is used in an orientation other than vertical with openings at the top of the cylinder.

(5) If the jacket of the cylinder is constructed of aluminum, the letters "AL" must be marked after the service pressure marking. Example: DOT–4L150 AL.

(6) Except for serial number and jacket material designation, each marking prescribed in this paragraph (p) must be duplicated on each cylinder by any suitable means.

(q) *Inspector's report.* In addition to the information required by § 178.35, the inspector's reports must contain information on:

(1) The jacket material and insulation type;

(2) The design service temperature (° F); and

(3) The impact test results, on a lot basis.

§ 178.58 Specification 4DA welded steel cylinders for aircraft use.

(a) *Type, size, and service pressure.* A DOT 4DA is a welded steel sphere (two seamless hemispheres) or a circumferentially welded cylinder (two seamless drawn shells) with a water capacity not over 100 pounds and a service pressure of at least 500 but not over 900 pounds per square inch.

(b) *Steel.* Open-hearth or electric steel of uniform quality must be used. A heat of steel made under Table 1 of this paragraph (b), check chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the tolerances shown in Table 2 of this paragraph (b) are not exceeded except as approved by the Associate Administrator. The following chemical analyses are authorized:

TABLE 1.—AUTHORIZED MATERIALS

4130	Percent
Carbon	0.28/0.33.
Manganese	0.40/0.60.
Phosphorus	0.040 max.
Sulfur	0.040 max.
Silicon	0.15/0.35.
Chromium	0.80/1.10.
Molybdenum	0.15/0.25.

TABLE 2.—CHECK ANALYSIS TOLERANCES

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
Carbon	Over 0.15 to 0.40 incl	.03	.04
Manganese	To 0.60 incl	.03	.03
Phosphorus [1]	All ranges		.01
Sulphur	All ranges		.01
Silicon	To 0.30 incl	.02	.03
	Over 0.30 to 1.00 incl	.05	.05
Chromium	To 0.90 incl	.03	.03
	Over 0.90 to 2.10 incl	.05	.05
Molybdenum	To 0.20 incl	.01	.01
	Over 0.20 to 0.40, incl	.02	.02

[1] Rephosphorized steels not subject to check analysis for phosphorus.

(c) *Identification of material.* Materials must be identified by any suitable method except that plates and billets for hot-drawn containers must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured in accordance with the following requirements:

(1) By best appliances and methods. No defect is acceptable that is likely to weaken the finished container appreciably. A reasonably smooth and uniform surface finish is required. No abrupt change in wall thickness is permitted. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(2) All seams of the sphere or cylinders must be fusion welded. Seams must be of the butt or joggle butt type and means must be provided for accomplishing complete penetration of the joint.

(e) *Welding.* Attachments to the container are authorized by fusion welding provided that such attachments are made of weldable steel, the carbon content of which may not exceed 0.25 percent except in the case of 4130 steel.

(f) *Wall thickness.* The minimum wall thickness must be such that the wall stress at the minimum specified test pressure may not exceed 67 percent of the minimum tensile strength of the steel as determined from the physical and burst tests required and may not be over 70,000 p.s.i. For any diameter container, the minimum wall thickness is 0.040 inch. Calculations must be made by the formulas in paragraph (f)(1) or (f)(2) of this section:

(1) Calculation for a sphere must be made by the following formula:

$S=PD/4tE$

where:

S=Wall stress in pounds per square inch;
P=Test pressure prescribed for water jacket test, i.e., at least 2 times service pressure, in pounds per square inch;
D=Outside diameter in inches;
t=Minimum wall thickness in inches;
E=0.85 (provides 85 percent weld efficiency factor which must be applied in the girth weld area and heat affected zones which zone must extend a distance of 6 times wall thickness from center line of weld);
E=1.0 (for all other areas).

(2) Calculation for a cylinder must be made by the following formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

Where:

S=wall stress in pounds per square inch;
P=test pressure prescribed for water jacket test, i.e., at least 2 times service pressure, in pounds per square inch;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* The completed containers must be uniformly and properly heat-treated prior to tests. Heat-treatment of containers of the authorized analysis must be as follows:

(1) All containers must be quenched by oil, or other suitable medium except as provided in paragraph (l)(iv) of this section.

(2) The steel temperature on quenching must be that recommended for the steel analysis, but may not exceed 1,750° F.

(3) The steel must be tempered at the temperature most suitable for the analysis except that in no case shall the tempering temperature be less than 1,000° F.

(4) The steel may be normalized at a temperature of 1,650° F instead of being quenched, and containers so normalized need not be tempered.

(5) All cylinders, if water quenched or quenched with a liquid producing a cooling rate in excess of 80 percent of the cooling rate of water, must be inspected by the magnetic particle or dye penetrant method to detect the presence of quenching cracks. Any cylinder found to have a quench crack must be rejected and may not be requalified.

(h) *Openings in container.* Openings in the container must comply with the following requirements:

(1) Each opening in the container must be provided with a fitting, boss, or pad of weldable steel securely attached to the container by fusion welding.

(2) Attachments to a fitting, boss, or pad must be adequate to prevent leakage. Threads must comply with the following:

(i) Threads must be clean cut, even, without checks, and tapped to gauge.

(ii) Taper threads to be of length not less than as specified for American Standard taper pipe threads.

(iii) Straight threads, having at least 4 engaged threads, to have tight fit and calculated shear strength at least 10 times the test pressure of the container; gaskets required, adequate to prevent leakage.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Each container must be tested to at least 2 times service pressure.

(j) *Burst test.* One container taken at random out of 200 or less must be hydrostatically tested to destruction. The rupture pressure must be included as part of the inspector's report.

(k) *Flattening test.* Spheres and cylinders must be subjected to a flattening test as follows:

(1) *Flattening test for spheres.* One sphere taken at random out of each lot of 200 or less must be subjected to a flattening test as follows:

(i) The test must be performed after the hydrostatic test.

(ii) The test must be at the weld between the parallel steel plates on a press with a welded seam, at right angles to the plates. Any projecting appurtenances may be cut off (by mechanical means only) prior to crushing.

(2) *Flattening test for cylinders.* One cylinder taken at random out of each lot of 200 or less, must be subjected to a flattening test as follows:

(i) The test must be performed after the hydrostatic test.

(ii) The test must between knife edges, wedge shaped, 60° angle, rounded to ½ inch radius; test

(l) *Radiographic inspection.* Radiographic examination is required on all welded joints which are subjected to internal pressure, except that at the discretion of the disinterested inspector, openings less than 25 percent of the sphere diameter need not be subjected to radiographic inspection. Evidence of any defects likely to seriously weaken the container must be cause for rejection.

(m) *Physical test and specimens for spheres and cylinders.* Spheres and cylinders must be subjected to a physical test as follows:

(1) A physical test for a sphere is required on 2 specimens cut from a flat representative sample plate of the same heat taken at random from the steel used to produce the sphere. This flat steel from which the 2 specimens are to be cut must receive the same heat-treatment as the spheres themselves. Sample plates to be taken for each lot of 200 or less spheres.

(2) Specimens for spheres have a gauge length 2 inches with a width not over 1½ inches, or a gauge length at least 24 times thickness with a width not over 6 times thickness is authorized when wall of sphere is not over 3/16 inch thick.

(3) A physical test for cylinders is required on 2 specimens cut from 1 cylinder taken at random out of each lot of 200 or less.

(4) Specimens for cylinder must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with a width not over 1½ inches, a gauge length at least 24 times thickness with a width not over 6 times thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within 1 inch of each end of the reduced section.

(iii) Heating of a specimen for any purpose is not authorized.

(5) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8–78.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(n) *Acceptable results for physical, flattening, and burst tests.* The following are acceptable results of the physical, flattening and burst test:

(1) Elongation must be at least 20 percent for a 2-inch gauge length or 10 percent in other cases.

(2) Flattening is required to 50 percent of the original outside diameter without cracking.

(3) Burst pressure must be at least 3 times service pressure.

(o) *Rejected containers.* Reheat-treatment of rejected cylinders is authorized. Subsequent thereto, containers must pass all prescribed tests to be acceptable. Repair of welded seams by welding prior to reheat-treatment is authorized.

(p) *Marking.* Markings on each container must be stamped plainly and permanently on a permanent attachment or on a metal nameplate permanently secured to the container by means other than soft solder.

§ 178.59 Specification 8 steel cylinders with porous fillings for acetylene.

(a) Type and service pressure. A DOT 8 cylinder is a seamless cylinder with a service pressure of 250 pounds per square inch. The following steel is authorized:

(1) A longitudinal seam if forge lap welded;

(2) Attachment of heads by welding or by brazing by dipping process; or

(3) A welded circumferential body seam if the cylinder has no longitudinal seam.

(b) *Steel.* Open-hearth, electric or basic oxygen process steel of uniform quality must be used. Content percent may not exceed the following: Carbon, 0.25; phosphorus, 0.045; sulphur, 0.050.

(c) *Identification of steel.* Materials must be identified by any suitable method except that plates and billets for hot-drawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is acceptable that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Exposed bottom welds.* Exposed bottom welds on cylinders over 18 inches long must be protected by footrings.

(f) *Heat treatment.* Body and heads formed by drawing or pressing must be uniformly and properly heat treated prior to tests.

(g) *Openings.* Openings in the cylinders must comply with the following:

(1) Standard taper pipe threads are required;

(2) Length may not be less than as specified for American Standard pipe threads; tapped to gauge; clean cut, even, and without checks.

(h) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) One cylinder out of each lot of 200 or less must be hydrostatically tested to at least 750 pounds per square inch. Cylinders not so tested must be examined under pressure of between 500 and 600 pounds per square inch and show no defect. If hydrostatically tested cylinder fails, each cylinder in the lot may be hydrostatically tested and those passing are acceptable.

(i) *Leakage test.* Cylinders with bottoms closed in by spinning must be subjected to a leakage test by setting the interior air or gas pressure to not less than the service pressure. Cylinders which leak must be rejected.

(j) *Physical test.* A physical test must be conducted as follows:

(1) The test is required on 2 specimens cut longitudinally from 1 cylinder or part thereof taken at random out of each lot of 200 or less, after heat treatment.

(2) Specimens must conform to a gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with width not over 1½, or a gauge length at least 24 times thickness with a width not over 6 times thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8–78.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per-minute during yield strength determination.

(4) Yield strength may not exceed 73 percent of tensile strength. Elongation must be at least 40 percent in 2 inch or 20 percent in other cases.

(k) *Rejected cylinders.* Reheat treatment of rejected cylinder is authorized. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding is authorized.

(l) *Porous filling.* (1) Cylinders must be filled with a porous material in accordance with the following:

(i) The porous material may not disintegrate or sag when wet with solvent or when subjected to normal service;

(ii) The porous filling material must be uniform in quality and free of voids, except that a well drilled into the filling material beneath the valve is authorized if the well is filled with a material of such type that the functions of the filling material are not impaired;

(iii) Overall shrinkage of the filling material is authorized if the total clearance between the cylinder shell and filling material, after solvent has been added, does not exceed ½ of 1 percent of the respective diameter or length, but not to exceed ⅛ inch, measured diametrically and longitudinally;

(iv) The clearance may not impair the functions of the filling material;

(v) The installed filling material must meet the requirements of CGA Pamphlet C–12; and

(vi) Porosity of filling material may not exceed 80 percent except that filling material with a porosity of up to 92 percent may be used when tested with satisfactory results in accordance with CGA Pamphlet C–12.

(2) When the porosity of each cylinder is not known, a cylinder taken at random from a lot of 200 or less must be tested for porosity. If the test cylinder fails, each cylinder in the lot may be tested individually and those cylinders that pass the test are acceptable.

(3) For filling that is molded and dried before insertion in cylinders, porosity test may be made on a sample block taken at random from material to be used.

(4) The porosity of the filling material must be determined. The amount of solvent at 70° F for a cylinder:

(i) Having shell volumetric capacity above 20 pounds water capacity (nominal) may not exceed the following:

Percent porosity of filler	Maximum acetone solvent percent shell capacity by volume
90 to 92	43.4
87 to 90	42.0
83 to 87	40.0
80 to 83	38.6
75 to 80	36.2
70 to 75	33.8
65 to 70	31.4

(ii) Having volumetric capacity of 20 pounds or less water capacity (nominal), may not exceed the following:

Percent porosity of filler	Maximum acetone solvent percent shell capacity by volume
90 to 92	41.8
83 to 90	38.5
80 to 83	37.1
75 to 80	34.8
70 to 75	32.5
65 to 70	30.2

(m) *Tare weight.* The tare weight is the combined weight of the cylinder proper, porous filling, valve, and solvent, without removable cap.

(n) *Duties of inspector.* In addition to the requirements of § 178.35, the inspector is required to—

(1) Certify chemical analyses of steel used, signed by manufacturer thereof; also verify by, check analyses of samples taken from each heat or from 1 out of each lot of 200 or less, plates, shells, or tubes used.

(2) Verify compliance of cylinder shells with all shell requirements; inspect inside before closing in both ends; verify heat treatment as proper; obtain all samples for all tests and for check analyses; witness all tests; verify threads by gauge; report volumetric capacity and minimum thickness of wall noted.

(3) Prepare report on manufacture of steel shells in form prescribed in § 178.35. Furnish one copy to manufacturer and three copies to the company that is to complete the cylinders.

(4) Determine porosity of filling and tare weights; verify compliance of marking with prescribed requirements; obtain necessary copies of steel shell reports; and furnish complete reports required by this specification to the person who has completed the manufacture of the cylinders and, upon request, to the purchaser. The test reports must be retained by the inspector for fifteen years from the original test date of the cylinder.

(o) *Marking.* (1) Marking on each cylinder must be stamped plainly and permanently on or near the shoulder, top head, neck or valve protection collar which is permanently attached to the cylinder and forming integral part thereof.

(2) Tare weight of cylinder, in pounds and ounces, must be marked on the cylinder.

(3) Cylinders, not completed, when delivered must each be marked for identification of each lot of 200 or less.

§ 178.60 Specification 8AL steel cylinders with porous fillings for acetylene.

(a) *Type and service pressure.* A DOT 8AL cylinder is a seamless steel cylinder with a service pressure of 250 pounds per square inch. However, the attachment of heads by welding or by brazing by dipping process and a welded circumferential body seam is authorized. Longitudinal seams are not authorized.

(b) *Authorized steel.* The authorized steel is as specified in Table I of Appendix A to this part.

(c) *Identification of steel.* Material must be identified by any suitable method except that plates and billets for hot-drawn cylinders must be marked with heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Footrings.* Exposed bottom welds on cylinders over 18 inches long must be protected by footrings.

(f) *Welding or brazing.* Welding or brazing for any purpose whatsoever is prohibited except as follows:

(1) The attachment to the tops or bottoms of cylinders of neckrings, footrings, handlers, bosses, pads, and valve protecting rings is authorized provided that such attachments and the portion of the container to which they are attached are made of weldable steel, the carbon content of which may not exceed 0.25 percent.

(2) Heat treatment is not required after welding or brazing weldable low carbon parts to attachments, specified in paragraph (f)(1) of this section, of similar material which have been previously welded or brazed to the top or bottom of cylinders and properly heat treated, provided such subsequent welding or brazing does not produce a temperature in excess of 400° F in any part of the top or bottom material.

(g) *Wall thickness; wall stress.* The wall thickness/wall stress of the cylinder must conform to the following:

(1) The calculated wall stress at 750 pounds per square inch may not exceed 35,000 pounds per square inch, or one-half of the minimum ultimate strength of the steel as determined in paragraph (l) of this section, whichever value is the smaller. The measured wall thickness may not include galvanizing or other protective coating.

(i) Calculation of wall stress must be made by the following formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

Where:

S=Wall stress in pounds per square inch;

P=750 pounds per square inch (minimum test pressure);

D=Outside diameter in inches;

d=Inside diameter in inches.

(ii) Either D or d must be calculated from the relation D=d + 2t, where t=minimum wall thickness.

(2) Cylinders with a wall thickness less than 0.100 inch, the ratio of straight side wall length to outside diameter may not exceed 3.5.

(3) For cylinders having outside diameter over 5 inches, the minimum wall thickness must be 0.087 inch.

(h) *Heat treatment.* Each cylinder must be uniformly and properly heat treated, prior to tests, by any suitable method in excess of 1100° F. Heat treatment must be accomplished after all forming and welding operations, except that when brazed joints are used, heat treatment must follow any forming and welding operations but may be done before, during, or after the brazing operations. Liquid quenching is not authorized.

(i) *Openings.* Standard taper pipe threads required in all openings. The length of the opening may not be less than as specified for American Standard pipe threads; tapped to gauge; clean cut, even, and without checks.

(j) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows;

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) One cylinder out of each lot of 200 or less must be hydrostatically tested to at least 750 pounds per square inch. Cylinders not so tested must be examined under pressure of between 500 and 600 pounds per square inch and show no defect. If a hydrostatically tested cylinder fails, each cylinder in the lot may be hydrostatically tested and those passing are acceptable.

(k) *Leakage test.* Cylinders with bottoms closed in by spinning must be leakage tested by setting the interior air or gas pressure at not less than the service pressure. Any cylinder that leaks must be rejected.

(l) *Physical test.* A physical test must be conducted as follows;

(1) The test is required on 2 specimens cut longitudinally from 1 cylinder or part thereof taken at random out of each lot of 200 or less, after heat treatment.

(2) Specimens must conform to a gauge length of 8 inches with a width not over 1½ inches, a gauge length 2 inches with a width not over 1½ inches, or a gauge length at least 24 times thickness with a width not over 6 times thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply;

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8–78.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy,

the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch, the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed 1/8 inch per minute during yield strength determination.

(m) *Elongation.* Physical test specimens must show at least a 40 percent elongation for a 2 inch gauge length or at least a 20 percent elongation in other cases. Except that these elongation percentages may be reduced numerically by 2 for 2 inch specimens and 1 in other cases for each 7,500 pounds per square inch increment of tensile strength above 50,000 pounds per square inch to a maximum of four such increments.

(n) *Weld tests.* Specimens taken across the circumferentially welded seam must be cut from one cylinder taken at random from each lot of 200 or less cylinders after heat treatment and must pass satisfactorily the following tests:

(1) *Tensile test.* A specimen must be cut from one cylinder of each lot of 200 or less, or welded test plate. The specimen must be taken from across the major seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3. Should this specimen fail to meet the requirements, specimens may be taken from two additional cylinders or welded test plates from the same lot and tested. If either of the latter specimens fail to meet the requirements, the entire lot represented must be rejected.

(2) *Guided bend test.* A root bend test specimen must be cut from the cylinder or welded test plate, used for the tensile test specified in paragraph (n)(1) of this section. Specimens must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3.

(3) *Alternate guided-bend test.* This test may be used and must be as required by CGA Pamphlet C–3. The specimen must be bent until the elongation at the outer surface, adjacent to the root of the weld, between the lightly scribed gage lines—a to b, must be at least 20 percent, except that this percentage may be reduced for steels having a tensile strength in excess of 50,000 pounds per square inch, as provided in paragraph (m) of this section.

(o) *Rejected cylinders.* Reheat treatment of rejected cylinders is authorized. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding is authorized.

(p) *Porous filling.* (1) Cylinders must be filled with a porous material in accordance with the following:

(i) The porous material may not disintegrate or sag when wet with solvent or when subjected to normal service;

(ii) The filling material must be uniform in quality and free of voids, except that a well drilled into the filling material beneath the valve is authorized if the well is filled with a material of such type that the functions of the filling material are not impaired;

(iii) Overall shrinkage of the filling material is authorized if the total clearance between the cylinder shell and filling material, after solvent has been added, does not exceed ½ of 1 percent of the respective diameter or length but not to exceed ⅛ inch, measured diametrically and longitudinally;

(iv) The clearance may not impair the functions of the filling material;

(v) The installed filling material must meet the requirements of CGA Pamphlet C–12; and

(vi) Porosity of filling material may not exceed 80 percent except that filling material with a porosity of up to 92 percent may be used when tested with satisfactory results in accordance with CGA Pamphlet C–12.

(2) When the porosity of each cylinder is not known, a cylinder taken at random from a lot of 200 or less must be tested for porosity. If the test cylinder fails, each cylinder in the lot may be tested individually and those cylinders that pass the test are acceptable.

(3) For filling that is molded and dried before insertion in cylinders, porosity test may be made on sample block taken at random from material to be used.

(4) The porosity of the filling material must be determined; the amount of solvent at 70° F for a cylinder:

(i) Having shell volumetric capacity above 20 pounds water capacity (nominal) may not exceed the following:

Percent porosity of filler	Maximum acetone solvent percent shell capacity by volume
90 to 92	43.4
87 to 90	42.0
83 to 87	40.0
80 to 83	38.6
75 to 80	36.2
70 to 75	33.8
65 to 70	31.4

(ii) Having volumetric capacity of 20 pounds or less water capacity (nominal), may not exceed the following:

Percent porosity of filler	Maximum acetone solvent percent shell capacity by volume
90 to 92	41.8
83 to 90	38.5
80 to 83	37.1
75 to 80	34.8
70 to 75	32.5
65 to 70	30.2

(q) *Tare weight.* The tare weight is the combined weight of the cylinder proper, porous filling, valve, and solvent, but without removable cap.

(r) *Duties of inspector.* In addition to the requirements of § 178.35, the inspector shall—

(1) Certify chemical analyses of steel used, signed by manufacturer thereof; also verify by check analyses, of samples taken from each heat or from 1 out of each lot of 200 or less plates, shells, or tubes used.

(2) Verify compliance of cylinder shells with all shell requirements, inspect inside before closing in both ends, verify heat treatment as proper; obtain all samples for all tests and for check analyses, witness all tests; verify threads by gauge, report volumetric capacity and minimum thickness of wall noted.

(3) Report percentage of each specified alloying element in the steel. Prepare report on manufacture of steel shells in form prescribed in § 178.35. Furnish one copy to manufacturer and three copies to the company that is to complete the cylinders.

(4) Determine porosity of filling and tare weights; verify compliance of marking with prescribed requirements; obtain necessary copies of steel shell reports prescribed in paragraph (b) of this section; and furnish complete test reports required by this specification to the person who has completed the manufacture of the cylinders and, upon request, to the purchaser. The test reports must be retained by the inspector for fifteen years from the original test date of the cylinder.

(s) *Marking.* (1) Tare weight of cylinder, in pounds and ounces, must be marked on the cylinder.

(2) Cylinders, not completed, when delivered must each be marked for identification of each lot of 200 or less.

(3) Markings must be stamped plainly and permanently in locations in accordance with the following:

(i) On shoulders and top heads not less than 0.087 inch thick; or

(ii) On neck, valve boss, valve protection sleeve, or similar part permanently attached to the top end of cylinder; or

(iii) On a plate of ferrous material attached to the top of the cylinder or permanent part thereof; the plate must be at least 1/16 inch thick, and must be attached by welding, or by brazing at a temperature of at least 1,100 °F throughout all edges of the plate. Sufficient space must be left on the plate to provide for stamping at least four (4) retest dates.

§ 178.61 Specification 4BW welded steel cylinders with electric-arc welded longitudinal seam.

(a) *Type, size and service pressure.* A DOT 4BW cylinder is a welded type steel cylinder with a longitudinal electric-arc welded seam, a water capacity (nominal) not over 1,000 pounds and a service pressure at least 225 and not over 500 pounds per square inch gauge. Cylinders closed in by spinning process are not authorized.

(b) *Authorized steel.* Steel used in the construction of the cylinder must conform to the following:

(1) The body of the cylinder must be constructed of steel conforming to the limits specified in Table I of Appendix A to this part.

(2) Material for heads must meet the requirements of paragraph (a) of this section or be open hearth, electric or basic oxygen carbon steel of uniform quality. Content percent may not exceed the following: Carbon 0.25, Manganese 0.60, Phosphorus 0.045, Sulfur 0.050. Heads must be hemispherical or ellipsoidal in shape with a maximum ratio of 2.1. If low carbon steel is used, the thickness of such heads must be determined by using a maximum wall stress of 24,000 p.s.i. in the formula described in paragraph (f)(1) of this section.

(c) *Identification of material.* Material must be identified by any suitable method.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart and the following:

(1) No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface is required. Exposed bottom welds on cylinders over 18 inches long must be protected by footrings. Minimum thickness of heads may not be less than 90 percent of the required thickness of the sidewall. Heads must be concave to pressure.

(2) Circumferential seams must be by electric-arc welding. Joints must be butt with one member offset (joggle butt) or lap with minimum overlap of at least four times nominal sheet thickness.

(3) Longitudinal seams in shells must conform to the following:

(i) Longitudinal electric-arc welded seams must be of the butt welded type. Welds must be made by a machine process including automatic feed and welding guidance mechanisms. Longitudinal seams must have complete joint penetration, and must be free from undercuts, overlaps or abrupt ridges or valleys. Misalignment of mating butt edges may not exceed ⅛ of nominal sheet thickness or 1/32 inch whichever is less. All joints with nominal sheet thickness up to and including ⅛ inch must be tightly butted. When nominal sheet thickness is greater than ⅛ inch, the joint must be gapped with maximum distance equal to one-half the nominal sheet thickness or 1/32 inch whichever is less. Joint design, preparation and fit-up must be such that requirements of this paragraph (d) are satisfied.

(ii) Maximum joint efficiency must be 1.0 when each seam is radiographed completely. Maximum joint efficiency must be 0.90 when one cylinder from each lot of 50 consecutively welded cylinders is spot radiographed. In addition, one out of the first five cylinders welded following a shut down of welding operations exceeding four hours must be spot radiographed. Spot radiographs, when required, must be made of a finished welded cylinder and must include the girth weld for 2 inches in both directions from the intersection of the longitudinal and girth welds and include at least 6 inches of the longitudinal weld. Maximum joint efficacy of 0.75 must be permissible without radiography.

(4) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Welding of attachments.* The attachment to the tops and bottoms only of cylinders by welding of neckrings, footrings, handles, bosses, pads and valve protection rings is authorized provided that such attachments and the portion of the container to which they are attached are made of weldable steel, the carbon content of which may not exceed 0.25 percent.

(f) *Wall thickness.* For outside diameters over 6 inches the minimum wall thickness must be 0.078 inch. For a cylinder with a wall thickness less than 0.100 inch, the ratio of tangential length to outside diameter may not exceed 4 to 1 (4:1). In any case the minimum wall thickness must be such that the wall stress calculated by the formula listed in paragraph (f)(4) of this section may not exceed the lesser value of any of the following:

(1) The value referenced in paragraph (b) of this section for the particular material under consideration.

(2) One-half of the minimum tensile strength of the material determined as required in paragraph (m) of this section.

(3) 35,000 pounds per square inch.

(4) Stress must be calculated by the following formula:

$$S=[2P(1.3D^2+0.4d^2)]/[E(D^2-d^2)]$$

where:

S=wall stress, p.s.i.;
P=service pressure, p.s.i.;
D=outside diameter, inches;
d=inside diameter, inches;
E=joint efficiency of the longitudinal seam (from paragraph (d) of this section).

(g) *Heat treatment.* Each cylinder must be uniformly and properly heat treated prior to test by the applicable method referenced in paragraph (b) of this section. Heat treatment must be accomplished after all forming and welding operations. Heat treatment is not required after welding or brazing of weldable low carbon parts to attachments of similar material which have been previously welded to the top or bottom of cylinders and properly heat treated, provided such subsequent welding or brazing does not produce a temperature in excess of 400° F in any part of the top or bottom material.

(h) *Openings in cylinders.* Openings in the cylinder must conform to the following:

(1) All openings must be in the heads or bases.

(2) Openings in cylinders must be provided with adequate fittings, bosses, or pads, integral with or securely attached to the cylinder by welding.

(3) Threads must comply with the following:

(i) Threads must be clean cut and to gauge.

(ii) Taper threads must be of length not less than as specified for American Standard Taper Pipe threads.

(iii) Straight threads, having at least 4 engaged threads, to have tight fit and calculated shear strength at least 10 times the test pressure of the cylinder; gaskets required, adequate to prevent leakage.

(4) Closure of fittings, boss or pads must be adequate to prevent leakage.

(i) *Hydrostatic test.* Cylinders must withstand a hydrostatic test, as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit readings to an

accuracy of 1 percent. The expansion gauge must permit readings of total volumetric expansion to an accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat treatment and previous to the official test may not exceed 90 percent of the test pressure.

(3) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(4) Cylinders must be tested as follows:

(i) At least 1 cylinder selected at random out of each lot of 200 or less must be tested as outlined in paragraphs (i)(1), (i)(2), and (l)(3) of this section to at least two times service pressure.

(ii) All cylinders not tested as outlined in paragraph (i)(4)(i) of this section must be examined under pressure of at least two times service pressure and show no defect.

(5) One finished cylinder selected at random out of each lot of 500 or less successively produced must be hydrostatically tested to 4 times service pressure without bursting.

(j) *Physical tests.* Cylinders must be subjected to a physical test as follows:

(1) Specimens must be taken from one cylinder after heat treatment and chosen at random from each lot of 200 or less, as follows:

(i) Body specimen. One specimen must be taken longitudinally from the body section at least 90 degrees away from the weld.

(ii) Head specimen. One specimen must be taken from either head on a cylinder when both heads are made of the same material. However, if the two heads are made of differing materials, a specimen must be taken from each head.

(iii) If due to welded attachments on the top head there is insufficient surface from which to take a specimen, it may be taken from a representative head of the same heat treatment as the test cylinder.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least 24 times thickness with a width not over 6 times thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within 1 inch of each end of the reduced section.

(iii) When size of the cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows when specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "off-set" method or the "extension under load" method as prescribed in ASTM Standard E8–78.

(ii) In using the "extension under load" method, the total strain (or "extension under load"), corresponding to the stress at which the 0.2-percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2-percent offset.

(iii) For the purpose of strain measurement, the initial strain reference must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(k) *Elongation.* Physical test specimens must show at least a 40 percent elongation for a 2-inch gauge length or at least a 20 percent elongation in other cases. Except that these elongation percentages may be reduced numerically by 2 for 2-inch specimens and by 1 in other cases for each 7,500 pounds per square inch increment of tensile strength above 50,000 pounds per square inch to a maximum of four increments.

(l) *Tests of welds.* Welds must be subjected to the following tests:

(1) *Tensile test.* A specimen must be cut from one cylinder of each lot of 200 or less. The specimen must be taken from across the longitudinal seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3.

(2) *Guided bend test.* A root test specimen must be cut from the cylinder used for the tensile test specified in paragraph (l)(1) of this section. Specimens must be taken from across the longitudinal seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3.

(3) *Alternate guided bend test.* This test may be used and must be as required by CGA Pamphlet C–3. The specimen must be bent until the elongation at the outer surface, adjacent to the root of the weld, between the lightly scribed gauge lines a to b, must be at least 20 percent, except that this percentage may be reduced for steels having a tensile strength in excess of 50,000 pounds per square inch, as provided in paragraph (k) of this section.

(m) *Radiographic examination.* Welds of the cylinders must be subjected to a radiographic examination as follows:

(1) Radiographic inspection must conform to the techniques and acceptability criteria set forth in CGA Pamphlet C–3. When fluoroscopic inspection is used, permanent film records need not be retained.

(2) Should spot radiographic examination fail to meet the requirements of paragraph (m)(1) of this section, two additional welds from the same lot of 50 cylinders or less must be examined, and if either of these fail to meet the requirements, each cylinder must be examined as previously outlined; only those passing are acceptable.

(n) *Rejected cylinders.* (1) Unless otherwise stated, if a sample cylinder or specimen taken from a lot of cylinders fails the prescribed test, then two additional specimens must be selected from the same lot and subjected to the prescribed test. If either of these fails the test, then the entire lot must be rejected.

(2) Reheat treatment of rejected cylinders is authorized. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair of welded seams by welding is authorized provided that all defective metal is cut away and the joint is rewelded as prescribed for original welded joints.

(o) *Markings.* Markings must be stamped plainly and permanently in any of the following locations on the cylinder:

(1) On shoulders and top heads when they are not less than 0.087-inch thick.

(2) On a metal plate attached to the top of the cylinder or permanent part thereof; sufficient space must be left on the plate to provide for stamping at least six retest dates; the plate must be at least 1/16-inch thick and must be attached by welding, or by brazing. The brazing rod is to melt at a temperature of 1100° F. Welding or brazing must be along all the edges of the plate.

(3) On the neck, valve boss, valve protection sleeve, or similar part permanently attached to the top of the cylinder.

(4) On the footring permanently attached to the cylinder, provided the water capacity of the cylinder does not exceed 25 pounds.

(p) *Inspector's report.* In addition to the information required by § 178.35, the inspector's report must indicate the type and amount of radiography.

§ 178.65 Specification 39 non-reusable (non-refillable) cylinders.

(a) *Type, size, service pressure, and test pressure.* A DOT 39 cylinder is a seamless, welded, or brazed cylinder with a service pressure not to exceed 80 percent of the test pressure. Spherical pressure vessels are authorized and covered by references to cylinders in this specification.

(1) *Size limitation.* Maximum water capacity may not exceed:

(i) 55 pounds (1,526 cubic inches) for a service pressure of 500 p.s.i.g. or less, and

(ii) 10 pounds (277 cubic inches) for a service pressure in excess of 500 p.s.i.g.

(2) *Test pressure.* The minimum test pressure is the maximum pressure of contents at 130° F or 180 p.s.i.g. whichever is greater.

(3) *Pressure of contents.* The term "pressure of contents" as used in this specification means the total pressure of all the materials to be shipped in the cylinder.

(b) *Material; steel or aluminum.* The cylinder must be constructed of either steel or aluminum conforming to the following requirements:

(1) *Steel.* (i) The steel analysis must conform to the following:

	Ladle analysis	Check analysis
Carbon, maximum percent	0.12	0.15
Phosphorus, maximum percent	0.04	0.05
Sulfur, maximum percent	0.05	0.06

(ii) For a cylinder made of seamless steel tubing with integrally formed ends, hot drawn, and finished, content percent for the following may not exceed: Carbon, 0.55; phosphorous, 0.045; sulfur, 0.050.

(iii) For non-heat treated welded steel cylinders, adequately killed deep drawing quality steel is required.

(iv) Longitudinal or helical welded cylinders are not authorized for service pressures in excess of 500 p.s.i.g.

(2) *Aluminum.* Aluminum is not authorized for service pressures in excess of 500 p.s.i.g. The analysis of the aluminum must conform to the Aluminum Association standard for alloys 1060, 1100, 1170, 3003, 5052, 5086, 5154, 6061, and 6063 as specified in its publication entitled "Aluminum Standards and Data" (7th edition dated June 1982).

(3) *Unauthorized material.* Material with seams, cracks, laminations, or other injurious defects not permitted.

(4) *Identification.* Material used must be identified by any suitable method.

(c) *Manufacture.* (1) General manufacturing requirements are as follows:

(i) The surface finish must be uniform and reasonably smooth.

(ii) Inside surfaces must be clean, dry, and free of loose particles.

(iii) No defect of any kind is permitted if it is likely to weaken a finished cylinder.

(2) Requirements for seams:

(i) Brazing is not authorized on aluminum cylinders.

(ii) Brazing material must have a melting point of not lower than 1,000° F.

(iii) Brazed seams must be assembled with proper fit to ensure complete penetration of the brazing material throughout the brazed joint.

(iv) Minimum width of brazed joints must be at least four times the thickness of the shell wall.

(v) Brazed seams must have design strength equal to or greater than 1.5 times the minimum strength of the shell wall.

(vi) Welded seams must be properly aligned and welded by a method that provides clean, uniform joints with adequate penetration.

(vii) Welded joints must have a strength equal to or greater than the minimum strength of the shell material in the finished cylinder.

(3) Attachments to the cylinder are permitted by any means which will not be detrimental to the integrity of the cylinder. Welding or brazing of attachments to the cylinder must be completed prior to all pressure tests.

(4) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(d) *Wall thickness.* The minimum wall thickness must be such that the wall stress at test pressure does not exceed the yield strength of the material of the finished cylinder wall. Calculations must be made by the following formulas:

(1) Calculation of the stress for cylinders must be made by the following formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

where:

S=Wall stress, in p.s.i.;
P=Test pressure;
D=Outside diameter, in inches;
d=Inside diameter, in inches.

(2) Calculation of the stress for spheres must be made by the following formula:

$$S=PD/4t$$

Where:

S=Wall stress, in p.s.i.;
P=Test pressure;
D=Outside diameter, in inches;
t=Minimum wall thickness, in inches.

(e) *Openings and attachments.* Openings and attachments must conform to the following:

(1) Openings and attachments are permitted on heads only.

(2) All openings and their reinforcements must be within an imaginary circle, concentric to the axis of the cylinder. The diameter of the circle may not exceed 80 percent of the outside diameter of the cylinder. The plane of the circle must be parallel to the plane of a circumferential weld and normal to the long axis of the cylinder.

(3) Unless a head has adequate thickness, each opening must be reinforced by a securely attached fitting, boss, pad, collar, or other suitable means.

(4) Material used for welded openings and attachments must be of weldable quality and compatible with the material of the cylinder.

(f) *Pressure tests.* (1) Each cylinder must be tested at an internal pressure of at least the test pressure and must be held at that pressure for at least 30 seconds.

(i) The leakage test must be conducted by submersion under water or by some

other method that will be equally sensitive.

(ii) If the cylinder leaks, evidences visible distortion, or any other defect, while under test, it must be rejected (see paragraph (h) of this section).

(2) One cylinder taken from the beginning of each lot, and one from each 1,000 or less successively produced within the lot thereafter, must be hydrostatically tested to destruction. The entire lot must be rejected (see paragraph (h) of this section) if:

(i) A failure occurs at a gage pressure less than 2.0 times the test pressure;

(ii) A failure initiates in a braze or a weld or the heat affected zone thereof;

(iii) A failure is other than in the sidewall of a cylinder longitudinal with its long axis; or

(iv) In a sphere, a failure occurs in any opening, reinforcement, or at a point of attachment.

(3) A "lot" is defined as the quantity of cylinders successively produced per production shift (not exceeding 10 hours) having identical size, design, construction, material, heat treatment, finish, and quality.

(g) *Flattening test.* One cylinder must be taken from the beginning of production of each lot (as defined above) and subjected to a flattening test as follows:

(1) The flattening test must be made on a cylinder that has been tested at test pressure.

(2) A ring taken from a cylinder may be flattened as an alternative to a test on a complete cylinder. The test ring may not include the heat affected zone or any weld. However, for a sphere, the test ring may include the circumferential weld if it is located at a 45 degree angle to the ring, +/−5 degrees.

(3) The flattening must be between 60 degrees included-angle, wedge shaped knife edges, rounded to a 0.5 inch radius.

(4) Cylinders and test rings may not crack when flattened so that their outer surfaces are not more than six times wall thickness apart when made of steel or not more than ten times wall thickness apart when made of aluminum.

(5) If any cylinder or ring cracks when subjected to the specified flattening test, the lot of cylinders represented by the test must be rejected (see paragraph (h) of this section).

(h) *Rejected cylinders.* Rejected cylinders must conform to the following requirements:

(1) If the cause for rejection of a lot is determinable, and if by test or inspection defective cylinders are eliminated from the lot, the remaining cylinders must be qualified as a new lot under paragraphs (f) and (g) of this section.

(2) Repairs to welds are permitted. Following repair, a cylinder must pass the pressure test specified in paragraph (f) of this section.

(3) If a cylinder made from seamless steel tubing fails the flattening test described in paragraph (g) of this section, suitable uniform heat treatment must be used on each cylinder in the lot. All prescribed tests must be performed subsequent to this heat treatment.

(i) *Markings.* (1) The markings required by this section must be durable and waterproof. The requirements of § 173.24 (c)(1) (ii) and (iv) of this subchapter and § 178.35(h) do not apply to this section.

(2) Required markings are as follow:

(i) DOT–39.

(ii) NRC.

(iii) The service pressure.

(iv) The test pressure.

(v) The registration number (M****) of the manufacturer.

(vi) The lot number.

(vii) The date of manufacture if the lot number does not establish the date of manufacture.

(viii) The following statement: Federal law forbids transportation if refilled-penalty up to $500,000 fine and 5 years imprisonment (49 U.S.C. 5124).

(3) The markings required by paragraphs (i)(2)(i) through (i)(2)(v) of this section must be in numbers and letters at least ⅛ inch high and displayed sequentially. For example:

DOT–39 NRC 250/500 M1001.

(4) No person may mark any cylinder with the specification identification "DOT–39" unless it was manufactured in compliance with the requirements of this section and its manufacturer has a registration number (M****) from the Associate Administrator.

§ 178.66 Specification 4E welded aluminum cylinders.

(a) *Type, size and service pressure.* A DOT 4E cylinder is a welded aluminum cylinder with a water capacity (nominal) of not over 1,000 pounds and a service pressure of at least 250 to not over 500 pounds per square inch. The cylinder must be constructed of not more than two seamless drawn shells with no more than one circumferential weld. The circumferential weld may not be closer to the point of tangency of the cylindrical portion with the shoulder than 20 times the cylinder wall thickness. Cylinders or shells closed in by spinning process and cylinders with longitudinal seams are not authorized.

(b) *Authorized material.* The cylinder must be constructed of aluminum of uniform quality. The following chemical analyses are authorized:

TABLE 1.—AUTHORIZED MATERIALS

Designation	Chemical analysis—limits in percent 5154 [1]
Iron plus silicon	0.45 maximum.
Copper	0.10 maximum.
Manganese	0.10 maximum.
Magnesium	3.10/3.90.
Chromium	0.15/0.35.
Zinc	0.20 maximum.
Titanium	0.20 maximum.
Others, each	0.05 maximum.
Others, total	0.15 maximum.
Aluminum	Remainder.

[1] Analysis must regularly be made only for the elements specifically mentioned in this table. If, however, the presence of other elements is indicated in the course of routine analysis, further analysis should be made to determine conformance with the limits specified for other elements.

(c) *Identification.* Material must be identified by any suitable method that will identify the alloy and manufacturer's lot number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. All welding must be by the gas shielded arc process.

(e) *Welding.* The attachment to the tops and bottoms only of cylinders by welding of neckrings or flanges, footrings, handles, bosses and pads and valve protection rings is authorized. However, such attachments and the portion of the cylinder to which it is attached must be made of weldable aluminum alloys.

(f) *Wall thickness.* The wall thickness of the cylinder must conform to the following:

(1) The minimum wall thickness of the cylinder must be 0.140 inch. In any case, the minimum wall thickness must be such that calculated wall stress at twice service pressure may not exceed the lesser value of either of the following:

(i) 20,000 pounds per square inch.

(ii) One-half of the minimum tensile strength of the material as required in paragraph (m) of this section.

(2) Calculation must be made by the following formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

where:

S=Wall stress in pounds per square inch;

P=Minimum test pressure prescribed for water jacket test;

D=Outside diameter in inches;

d=Inside diameter in inches.

(3) Minimum thickness of heads and bottoms may not be less than the minimum required thickness of the side wall.

(g) *Opening in cylinder.* Openings in cylinders must conform to the following:

(1) All openings must be in the heads or bases.

(2) Each opening in cylinders, except those for safety devices, must be provided with a fitting, boss, or pad, securely attached to cylinder by welding by inert gas shielded arc process or by threads. If threads are used, they must comply with the following:

(i) Threads must be clean-cut, even, without checks and cut to gauge.

(ii) Taper threads to be of length not less than as specified for American Standard taper pipe threads.

(iii) Straight threads, having at least 4 engaged threads, to have tight fit and calculated shear strength at least 10 times the test pressure of the cylinder; gaskets required, adequate to prevent leakage.

(3) Closure of a fitting, boss, or pad must be adequate to prevent leakage.

(h) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test, as follows:

(1) The test must be by water jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit a reading of the total expansion to an accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure of 2 times service pressure must be maintained for at least 30 seconds and sufficiently longer to insure complete expansion. Any internal pressure applied previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent over the pressure otherwise specified.

(3) Permanent volumetric expansion may not exceed 12 percent of total volumetric expansion at test pressure.

(4) Cylinders having a calculated wall stress of 18,000 pounds per square inch or less at test pressure may be tested as follows:

(i) At least one cylinder selected at random out of each lot of 200 or less must be tested in accordance with paragraphs (h)(1), (h)(2), and (h)(3) of this section.

(ii) All cylinders not tested as provided in paragraph (h)(4)(i) of this section must be examined under pressure of at least 2 times service pressure and show no defect.

(5) One finished cylinder selected at random out of each lot of 1,000 or less must be hydrostatically tested to 4 times the service pressure without bursting. Inability to meet this requirement must result in rejection of the lot.

(i) *Flattening test.* After hydrostatic testing, a flattening test is required on one section of a cylinder, taken at random out of each lot of 200 or less as follows:

(1) If the weld is not at midlength of the cylinder, the test section must be no less in width than 30 times the cylinder wall thickness. The weld must be in the center of the section. Weld reinforcement must be removed by machining or grinding so that the weld is flush with the exterior of the parent metal. There must be no evidence of cracking in the sample when it is flattened between flat plates to no more than 6 times the wall thickness.

(2) If the weld is at midlength of the cylinder, the test may be made as specified in paragraph (i)(1)(i) of this section or must be made between wedge shaped knife edges (60° angle) rounded to a ½-inch radius. There must be no evidence of cracking in the sample when it is flattened to no more than 6 times the wall thickness.

(j) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material as follows:

(1) The test is required on 2 specimens cut from one cylinder or part thereof taken at random out of each lot of 200 or less.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with a width not over 1½ inches.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within 1 inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows; when specimens are so taken and prepared, the inspector's report must show in connection with record of physical test detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by the "offset" method as prescribed in ASTM Standard E8–78.

(ii) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(k) *Acceptable results for physical tests.* An acceptable result of the physical test requires an elongation to at least 7 percent and yield strength not over 80 percent of tensile strength.

(l) *Weld tests.* Welds of the cylinder are required to successfully pass the following tests:

(1) *Reduced section tensile test.* A specimen must be cut from the cylinder used for the physical tests specified in paragraph (j) of this section. The specimen must be taken from across the seam, edges must be parallel for a distance of approximately 2 inches on

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either side of the weld. The specimen must be fractured in tension. The apparent breaking stress calculated on the minimum wall thickness must be at least equal to 2 times the stress calculated under paragraph (f)(2) of this section, and in addition must have an actual breaking stress of at least 30,000 pounds per square inch. Should this specimen fail to meet the requirements, specimens may be taken from 2 additional cylinders from the same lot and tested. If either of the latter specimens fails to meet requirements, the entire lot represented must be rejected.

(2) *Guided bend test.* A bend test specimen must be cut from the cylinder used for the physical tests specified in paragraph (j) of this section. Specimen must be taken across the seam, must be 1½ inches wide, edges must be parallel and rounded with a file, and back-up strip, if used, must be removed by machining. The specimen must be bent to refusal in the guided bend test jig illustrated in paragraph 6.10 of CGA Pamphlet C–3. The root of the weld (inside surface of the cylinder) must be located away from the ram of the jig. No specimen must show a crack or other open defect exceeding ⅛ inch in any direction upon completion of the test. Should this specimen fail to meet the requirements, specimens may be taken from each of 2 additional cylinders from the same lot and tested. If either of the latter specimens fail to meet requirements, the entire lot represented must be rejected.

(m) *Rejected cylinders.* Repair of welded seams is authorized. Acceptable cylinders must pass all prescribed tests.

(n) *Inspector's report.* In addition to the information required by § 178.35, the record of chemical analyses must also include applicable information on iron, titanium, zinc, and magnesium used in the construction of the cylinder.

Issued in Washington, DC on February 12, 1996, under authority delegated in 49 CFR Part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 96–3554 Filed 3–1–96; 8:45 am]

BILLING CODE 4910–60–P

federal register

Monday
March 4, 1996

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 70, et al.
Permanent Listing of Color Additive Lakes; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 70, 73, 74, 80, 81, 82, 101, 178, 201, and 701

[Docket Nos. 78N-0043 and 92N-0334]

Permanent Listing of Color Additive Lakes

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to list certain color additive lakes permanently as suitable and safe for use in food, drugs, and cosmetics. The agency is proposing to permit the use of more than one straight color in the preparation of a lake, to modify the nomenclature for lakes, and to simplify the batch certification procedure for lakes. As part of these actions, the agency is proposing to amend its regulations to require the preparation of lakes from certified batches of straight color; to provide simplified nomenclature for declaring color additives, including lakes, on cosmetic products; to require declaration of FD&C Yellow No. 5 and FD&C Yellow No. 6 on all foods and some drug products containing lakes of these straight colors; and to terminate the listing of certain straight colors as components of lakes for drug and cosmetic use and the listing of calcium salts as components of lakes for food use.

This proposed rule is intended to complete the agency's disposition of the provisional list of color additives that was established under the transitional provisions of the Color Additive Amendments of 1960 (the 1960 amendments) and to establish regulations prescribing conditions under which lakes may be prepared, labeled, and safely used in food, drugs, and cosmetics.

DATES: Written comments by June 3, 1996, except that comments regarding information collection should be submitted by April 3, 1996, but not later than May 3, 1996.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Comments regarding information collection to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, rm. 10235, Washington, DC 20503, ATTN: Desk Officer for FDA. Process descriptions, identity information for anions in precipitants, and ingredient specifications for substrata (including rosin), and rosin samples to the Colors Technology Branch (HFS–126), Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT:

Regarding proposed certification procedures, including proposed paperwork requirements, and for proposed product ingredient declarations:

Julie N. Barrows, Center for Food Safety and Applied Nutrition (HFS–126), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4662.

Regarding other issues:

Arthur L. Lipman, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3073.

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I. Identity, Manufacture, and Properties of Lakes

Color additives may be added to food, drugs, cosmetics, and certain medical devices for the purpose of imparting color. The three categories of color additives are: (1) "Straight colors" (color additives that have not been mixed or chemically reacted with any other substance); (2) lakes (color additives formed by chemically reacting a straight color with water-insoluble substances); and (3) mixtures (color additives formed by mixing a color additive with one or more other color additives or noncolored substances, without chemical reaction).

A lake is a water-insoluble pigment composed of a water-soluble straight color strongly adsorbed onto an insoluble substratum through use of a precipitant. The regulations in part 82 (21 CFR part 82), where lakes are provisionally listed, use the term "basic radical" to denote a precipitant. As more fully described in section III.A.6. of this document, the agency is proposing to replace the term "basic radical" with the more scientifically accurate term "precipitant." The proposed terminology will be used throughout the rest of this document.

The first step in manufacturing a lake is the preparation of an aqueous slurry of the substratum (e.g., alumina). This aqueous slurry is mixed with an aqueous solution of a straight color to produce a partially precipitated (or laked) product. The laking process is completed by the addition of a precipitant (e.g., aluminum chloride), which results in the production of the salt (e.g., aluminum salt) of the straight color and the adsorption of the salt onto the substratum. The resulting lake is washed, dried, and finely ground before marketing.

The literature reports several variations of the basic laking process (Refs. 1 through 5). Some substrata are synthesized in situ; i.e., the components used to prepare the substratum, rather than the preformed substratum, are added during the laking procedure. For example, alumina slurries may be prepared by precipitation of hydrated alumina from an aluminum sulfate solution with a sodium carbonate or sodium hydroxide solution. These slurries are used directly in the synthesis of lakes, without isolation of the precipitated substratum.

Some lakes are themselves prepared in situ. In this process, the chemical precursors for the straight color are mixed directly with the substratum and the precipitant during the laking procedure. The lake is produced as the straight color is synthesized, without isolation of the straight color as a discrete batch.

The chemical association between the components of a lake may involve various types of interactions, including ionic bonds, hydrogen bonds, and van der Waals forces (Refs. 4 through 9). Lakes generally contain 10 to 40 percent by weight of the straight color. They also contain approximately 1 to 4 percent of the weight of the lake as the cationic precipitant. The remaining 56 to 89 percent, by weight, of lakes consists primarily of substrata. The color content of a lake depends on the desired color intensity and shade of the lake.

Lakes offer many technical advantages over water-soluble straight colors. The chemical bonding of the color with substrata generally promotes light and heat stability. Furthermore, because lakes are not water-soluble, the use of lakes in aqueous foods reduces color migration.

The agency's current regulations for lakes in part 82 were issued under section 203 of the Color Additive Amendments of 1960 (Pub. L. 86–618), which provided for the temporary, provisional listing of commercially established colors. The regulations provide that before a lake may be used in a food, drug, or cosmetic product, each batch of the lake must be certified by FDA. When requesting certification of a batch of a lake, the requester submits a sample from the batch to the agency for analysis. If the agency finds that the concentrations of impurities in the sample are within the levels specified, and the batch otherwise appears to comply with the applicable regulations, the agency certifies the batch by issuing the requester a certificate showing the certification lot number assigned to that batch of lake.

Lakes represent approximately 25 percent of the total poundage of color additives certified by FDA. Approximately 80 percent of the lakes certified are FD&C (food, drugs, and cosmetics) lakes and the remaining 20 percent are D&C (drugs and cosmetics) lakes. (See section II.A. of this document for an explanation of the terms "FD&C" and "D&C".)

II. Regulatory History and Current Listings of Lakes

A. Regulatory History of Lakes

Section 7 of the Food and Drugs Act of 1906 (Pub. L. 59–384) prohibited the use of poisonous or deleterious colors in confectionery and the coloring or staining of food to conceal damage or inferiority. In 1907, the agency, then part of the Department of Agriculture, issued Food Inspection Decision 76 (Ref. 10), which contains a list of seven straight colors approved for use in food. Between 1907 and 1939, the agency expanded the list of straight colors approved for use in food from 7 to 15. These colors were known as "coal tar colors" because they were synthesized mainly from substances obtained from coal tar. However, prior to 1939, the agency's list of acceptable colors did not include lakes of coal tar colors because such lakes were not used in food. Also, prior to 1938, the government program for batch analysis and certification of colors was voluntary.

The Federal Food, Drug, and Cosmetic Act of 1938 (21 U.S.C. 301 *et seq.* (the act)) (Pub. L. 75–717) required FDA to list coal tar colors "harmless and suitable" for use in foods, drugs, and cosmetics, and to certify all batches of listed colors, including lakes. The agency issued regulations under the act listing lakes for food use, as well as for drug and cosmetic use, and establishing conditions for certification of batches of lakes (4 FR 1922, May 9, 1939; 4 FR 3931, September 16, 1939; and 5 FR 1138, March 23, 1940). The agency issued the first certificate for a lake under the act on May 11, 1939 (Ref. 11).

The initial listing of lakes for food use under the act restricted their use to coloring shell eggs (egg dyeing) (5 FR 1138). In 1959, at the request of industry, the agency expanded the uses of lakes prepared from FD&C straight colors to encompass general use in foods (24 FR 3818, May 13, 1959; and 24 FR 5302, June 30, 1959).

The 1960 amendments amended the act by defining the term "color additive" (section 201(t) (21 U.S.C. 321(t))) for the first time and restricting the use of color additives in or on food, drugs, cosmetics, or the human body to those listed in FDA regulations. (The Medical Device Amendments of 1976 (Pub. L. 94–295) extended these restrictions to the use of color additives in certain medical devices.) As amended, the act provides that a food (section 402(c) (21 U.S.C. 342(c))), drug or device (section 501(a)(4) (21 U.S.C. 351(a)(4))), or cosmetic, other than a coal tar hair dye (section 601(e) (21 U.S.C. 361(e))), is adulterated if it is, bears, or contains an unsafe color additive. Section 721 (formerly section 706) of the amended act (21 U.S.C. 379e) provides for the listing of safe and suitable color additives for use in foods, drugs, cosmetics, and medical devices; it prohibits the listing of a color additive for a proposed use unless data establish that such use will be safe. Section 721 of the act also continues the requirement for certification of batches of color additives, with or without diluents, to determine whether each batch conforms to the purity and identity specifications in the applicable listing regulation. However, the amendments allow FDA to exempt color additives from batch certification if certification is unnecessary to protect the public health.

Section 203 of the 1960 amendments also provided for the provisional listing of color additives that were commercially established when the 1960 amendments were enacted, pending completion of scientific investigations necessary to determine their safety under the new standard established by the 1960 amendments. The purpose of section 203 was to allow the use of such color additives on an interim basis, to the extent consistent with the public health. Section 203 directed the agency to recognize as provisionally listed the following color additives: (1) Any color additive which, on the day preceding the enactment date, was listed and certifiable for any use or uses and for which a batch or batches had been certified for such use or uses prior to the enactment date; (2) any color additive which was commercially used or sold prior to the enactment date for any use or uses on any food, drug, or cosmetic, but was not required to be listed under the act; (3) synthetic beta carotene. The provisional listing was to apply only to the use or uses to which the certification applied, or for which the color additive had been commercially used or sold.

Under the authority of the 1960 amendments, in the **Federal Register** of October 12, 1960 (25 FR 9759), the agency provisionally listed those color additives, including lakes, covered by section 203. This listing, originally codified as 21 CFR 8.501 and later recodified as § 81.1 (21 CFR 81.1) (42 FR 15665, March 22, 1977) included many of the coal tar colors (including lakes) that had been previously listed.

In the **Federal Register** of December 27, 1963 (28 FR 14311), the agency determined that batch certification was unnecessary to ensure the safety of most color additives derived from plant, animal, or mineral sources, and designated these color additives as exempt from certification. However, the agency determined that batch certification was necessary to ensure the safety of most color additives, including lakes, derived principally from coal and petroleum sources, and designated those colors as subject to certification. Currently, the color additives exempt from batch certification and the permanently listed color additives

subject to batch certification are listed in parts 73 and 74 (21 CFR parts 73 and 74), respectively.

Since the establishment of the provisional list in 1960, the agency has gradually removed color additives from the list either by permanent listing or by termination of listing due to lack of interest by industry or due to safety concerns prompted by the agency's reviews. At this time, only lakes remain provisionally listed in parts 81 and 82.

After the enactment of the act in 1938, FDA established the designation "FD&C" to identify color additives listed for use in foods, drugs, and cosmetics; the designation "D&C" to identify color additives listed for general use in drugs and cosmetics, but not foods; and the designation "Ext. D&C" to identify color additives listed for use only in externally applied drugs and cosmetics (4 FR 1922 at 1923). These designations are still part of the names of certified color additives. However, the uses of some straight colors (and consequently also of their lakes) were restricted when they were permanently listed, based on the safety reviews conducted by the agency under the 1960 amendments. Consequently, the designations "FD&C" or "D&C" in the name of a certified color additive can no longer be relied upon to accurately describe the approved uses of the color additive.

B. Current Listings of Lakes

1. Provisional Listing and General Provisions for Lakes

Section 81.1 identifies the provisionally listed color additives. The only color additives remaining on the provisional list are lakes (§ 81.1(a), (b), and (c)).

Part 82, subpart A, prescribes the general provisions applicable to provisionally listed color additives. Section 82.3 contains definitions of terms such as "alumina" and "blanc fixe." Section 82.5 prescribes general specifications, including specifications for levels of lead, arsenic, and heavy metals other than lead and arsenic, that are applicable to lakes listed in the other subparts of part 82. It also provides a specification for the level of soluble barium applicable to lakes listed in subpart C or D of part 82 that contain a barium salt.

2. Provisional Listing of Lakes for Use in Foods, Drugs, and Cosmetics

Part 82, subpart B, identifies the lakes that are provisionally listed for use in foods, drugs, and cosmetics. Section 82.50 prescribes the certification requirements for these lakes.

Section 82.51 specifies that lakes for use in foods, drugs, and cosmetics are made by extending, on a substratum of alumina, a salt of one of the following certified water-soluble straight colors with the cation precipitant aluminum or calcium: FD&C Blue No. 1 (§ 82.101); FD&C Blue No. 2 (§ 82.102); FD&C Green No. 3 (§ 82.203); FD&C Yellow No. 5 (§ 82.705); and FD&C Yellow No. 6 (§ 82.706). Only previously certified batches of the straight color may be used. Section 82.51 also provides specifications for soluble chlorides and sulfates and for inorganic matter insoluble in hydrochloric acid (HCl) and prescribes rules for naming the lakes that are listed for use in foods, drugs, and cosmetics.

3. Provisional Listing of Lakes for Use in Drugs and Cosmetics

Part 82, subpart C, identifies the lakes that are provisionally listed for general use in drugs and cosmetics. Section 82.1051 prescribes the certification requirements for these lakes, which may be used both in ingested and externally applied drugs and cosmetics. Externally applied drugs and cosmetics are those that are applied to the external parts of the body and not to the lips or any body surface covered by mucous membrane (§ 70.3(v) (21 CFR 70.3(v))).

Section 82.1051 specifies that lakes for use in drugs and cosmetics are made by extending, on one or more listed substrata, one of the listed straight colors with one or more of the listed precipitants. The precipitant may be added either as a component of the listed straight color, or alone to form the salt of the listed straight color. The following substrata, alone or in any combination, are authorized for use in lakes for drug and cosmetic use: Alumina, blanc fixe, gloss white, clay, titanium dioxide, zinc oxide, talc, rosin, aluminum benzoate, and calcium carbonate. The regulation also lists the following cation precipitants for use in lakes for drug and cosmetic use: Sodium, potassium, aluminum, barium, calcium, strontium, and zirconium.

The regulation provides for the use of the following straight colors in producing lakes for drug and cosmetic use: FD&C Blue No. 1 (§ 82.101); FD&C Blue No. 2 (§ 82.102); FD&C Green No. 3 (§ 82.203), FD&C Red No. 4 (§ 82.304); FD&C Yellow No. 5 (§ 82.705); FD&C Yellow No. 6 (§ 82.706); D&C Blue No. 4 (§ 82.1104), D&C Green No. 5 (§ 82.1205), D&C Orange No. 5 (§ 82.1255), D&C Red No. 6 (§ 82.1306), D&C Red No. 7 (§ 82.1307), D&C Red No. 21 (§ 82.1321), D&C Red No. 22 (§ 82.1322), D&C Red No. 27 (§ 82.1327), D&C Red No. 28 (§ 82.1328), D&C Red No. 30 (§ 82.1330), D&C Red No. 33 (§ 82.1333), D&C Red No. 34 (§ 82.1334), D&C Red No. 36 (§ 82.1336), D&C Violet No. 2 (§ 82.1602), and D&C Yellow No. 10 (§ 82.1710).

The regulations for lakes of D&C Red No. 33 (§ 82.1333), D&C Red No. 36 (§ 82.1336) and FD&C Yellow No. 6 (§ 82.706) further require that lakes of these straight colors for drug and cosmetic use be prepared from previously certified batches of the straight colors. Uncertified batches of the remaining straight colors may be used to prepare lakes for drug and cosmetic use. Section 82.1051 also provides specifications for ether extracts, soluble chlorides and sulfates, and intermediates, and prescribes rules for naming lakes that are listed for drug and cosmetic use.

4. Provisional Listing of Lakes for Use in Externally Applied Drugs and Cosmetics

Part 82, subpart D, identifies the lakes that are provisionally listed for use in externally applied drugs and cosmetics. Section 82.2050 prescribes the certification requirements for these lakes.

Section 82.2051 specifies that lakes for use in externally applied drugs and cosmetics are made by extending, on one or more listed substrata, one or more of the listed precipitants, and the straight color Ext. D&C Yellow No. 7 listed in § 82.2707a. The precipitant may be added either as a component of the listed straight color, or alone to form the salt of the listed straight color.

Although Ext. D&C Yellow No. 7 is the only straight color referred to in subpart D, its lakes are not the only lakes limited to use in externally applied drugs and cosmetics. As noted above, certain straight colors that were provisionally listed for general drug and cosmetic use were restricted to use in externally applied drugs and cosmetics as part of their permanent listing. The agency also amended the provisional listings for the lakes of these straight colors to impose the same restrictions. The provisional listings of the following color additives in subparts B and C of part 82 limit the use of their lakes to externally applied drugs and cosmetics: FD&C Red No. 4 (§ 82.304); D&C Blue No. 4 (§ 82.1104), D&C Green No. 6 (§ 82.1206), D&C Orange No. 4 (§ 82.1254), D&C Orange No. 10 (§ 82.1260), D&C Orange No. 11 (§ 82.1261), D&C Red No. 17 (§ 82.1317), D&C Red No. 31 (§ 82.1331), D&C Yellow No. 7 (§ 82.1707) and D&C Yellow No. 8 (§ 82.1708).

The substrata, precipitants, and additional specifications listed in § 82.2051 for lakes used in externally applied drugs and cosmetics are the same as those listed in § 82.1051 for D&C lakes. Section 82.2051 also specifies that the listed names of Ext. D&C lakes are derived in the same manner as for D&C lakes.

5. Permanently Listed Lakes of FD&C Red No. 40

The color additive FD&C Red No. 40 was not included in the provisional list because FD&C Red No. 40 was not in use in 1960. In the **Federal Register** of April 10, 1971 (36 FR 6892), the agency published a final rule, in response to a color additive petition, permanently listing FD&C Red No. 40 for use in food and drugs. The agency later amended these regulations in response to another petition to provide for use of the lakes of FD&C Red No. 40 in food and drugs (36 FR 23553, December 10, 1971). Subsequently, in response to further petitions, the agency published final rules expanding the listing of FD&C Red No. 40 to cosmetic uses. First, in the **Federal Register** of August 6, 1974 (39 FR 28278), the agency published a final rule permanently listing FD&C Red No. 40 for use in dentifrices that are cosmetics. Subsequently, the agency amended these regulations to expand the use of FD&C Red No. 40 and its lakes to cosmetics generally (39 FR 44198, December 23, 1974).

The permanent listings of FD&C Red No. 40 for food, drug, and cosmetic use in §§ 74.340, 74.1340, and 74.2340, respectively, include its lakes. However, the permanent listings of these lakes cite the provisional listings for lakes in part 82 for the preparation, specifications, and labeling requirements applicable to FD&C Red No. 40 lakes. As a result, any agency action on the provisional listings for lakes will affect the permanent listings for the lakes of FD&C Red No. 40. Therefore, this proposal includes consideration of the lakes of FD&C Red No. 40.

C. The 1965 Proposal for Permanent Listing of Lakes and the 1979 Notice of Intent

In the **Federal Register** of May 11, 1965 (30 FR 6490), the agency proposed to list permanently certain lakes for use in foods, drugs, and cosmetics under conditions similar to their current provisional listing. However, because many straight colors were still provisionally listed and because of the need for more information on lakes, the agency, in 1979, terminated the rulemaking initiated by this proposal without taking final action (44 FR 36411, June 22, 1979).

In the same issue of the **Federal Register** (44 FR 36411), the agency published a notice that announced the agency's intent to repropose regulations concerning lakes (the 1979 notice of intent (NOI)). The agency also addressed the comments it had received in response to the 1965 proposal regarding the permanent listing of lakes. Three of the five comments on the 1965 proposal recommended revising the regulations to provide for the use of more than one previously certified batch of color additive in the preparation of lakes for coloring drugs and cosmetics. In the 1979 NOI, the agency stated its intention to consider this recommendation in developing a new proposal for the permanent listing of lakes. The agency also identified the following issues for the scientific review of lakes: (1) The definition and nomenclature of lakes; (2) the safety of lakes; and (3) the specifications for lakes (stability and certification methodology). The agency requested information and comments pertaining to these issues.

The agency received four comments on the 1979 NOI. These included two brief responses from manufacturers and two extensive comments from trade associations, the International Association of Color Manufacturers (IACM) (formerly the Certified Color Manufacturers' Association (CCMA)) and the Cosmetic, Toiletry, and Fragrance Association, Inc. (CTFA). The issues raised by the agency in the 1979 NOI, along with the four comments received on that notice, and the agency's responses to the comments, are discussed in the following sections. This proposal does not, however, address comments related to the straight colors that were provisionally listed in 1979 but have been denied permanent listing in subsequent rulemakings (FD&C Red No. 3 (externally applied drug and all cosmetic uses), D&C Red Nos. 8, 9, and 19, and D&C Orange No. 17).

III. Development of Proposed Actions for Lakes

A. Terminology of Lakes

The agency is proposing the following changes to the existing definitions relating to lakes.

1. Straight Color

Currently, § 70.3(j) defines the term "straight color" as "a color additive listed in parts 73, 74, and 81 of this chapter, and includes lakes * * *." Thus, the term encompasses all listed color additives, including lakes. Current § 70.3(l) defines the term "lake" as "a straight color extended on a substratum by adsorption, coprecipitation, or chemical combination that does not include any combination of ingredients made by simple mixing process." These two regulations, when read together, suggest that a lake may be used as a color component of another lake. This implication is inconsistent with current regulations for lakes (§§ 82.51, 82.1051, and 82.2051) and with the proposed regulations for lakes in this document, which do not allow the synthesis of a lake using another lake as a color component.

There are other instances in which the existing definition of straight color creates confusion. For example, the procedures for requesting certification of a batch of a color additive treat straight colors (§ 80.21(j)(1) (21 CFR 80.21(j)(1)) and lakes (§ 80.21(j)(2)) separately. **Federal Register** publications relating to color additives also commonly use the term "straight color" to refer to a color additive other than a lake. For example, the 1979 NOI referred to straight colors as distinct from lakes; the agency's request for information concerning the usage of FD&C Red No. 3 requested data on straight colors, lakes, and mixtures (52 FR 44485; November 19, 1987). Communications between the agency and industry also indicate that the common usage of the term "straight color" does not ordinarily include the term "lake." To eliminate the confusion resulting from the existing definition, the agency is proposing to revise the definition for "straight color." As revised, the definition would read "The term 'straight color' means a color additive that is listed in part 73 or 74 of this chapter, but does not include color additive mixtures or lakes."

2. Listed Color

As discussed in section III.A.1., the proposed definition of "straight color" would exclude lakes. Therefore, the agency is proposing a new term "listed color" to refer to any color additive (including a lake) listed in part 73 or 74 for any use. By definition, the term would not include mixtures, which are not themselves listed colors but rather combinations of listed colors. The agency is proposing to add the following definition at § 70.3(w): "The term 'listed color' means a color additive listed in part 73 or 74 of this chapter and includes lakes."

3. Mixture

Currently, § 70.3(k) defines the term "mixture" as "a color additive made by mixing two or more straight colors, or one or more straight colors and one or

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more diluents." The agency is proposing to modify this definition to replace the current reference to "straight color" with "listed color" and to clarify that a mixture does not involve a chemical reaction between its components. Proposed § 70.3(k) would read "The term 'mixture' means a color additive made by mixing two or more listed colors, or one or more listed colors and one or more diluents, without an accompanying chemical reaction."

4. Lake

Currently, § 70.3(l) defines the term "lake" as "a straight color extended on a substratum by adsorption, coprecipitation, or chemical combination that does not include any combination of ingredients made by simple mixing process." As discussed in sections IV. and V. of this document, the agency is proposing to permit the preparation of a lake using more than one straight color. Proposed § 70.3(l) would read "The term 'lake' means a color additive made by extending one or more straight colors on one or more substrata by adsorption, coprecipitation, or chemical combination, but does not include mixtures."

5. Substratum

Currently, § 70.3(n) defines "substratum" as "the substance on which the pure color in a lake is extended." This definition implies that it is only the pure color that is extended on the substratum. However, the data reviewed by the agency on the stability of straight colors after laking clearly demonstrate that intermediates and subsidiary colors are also extended on the substratum during the laking process. Therefore, the agency is proposing to amend the definition of substratum to read "The term 'substratum' means the substance on which the straight color in a lake is extended."

6. Precipitant (Basic Radical)

Although the term "basic radical" is not defined in the color additive regulations, §§ 82.51 and 82.1051 use "basic radical" to denote a substance that may be used to precipitate a lake during its manufacture. The agency believes that "precipitant" is a more descriptive and scientifically accurate term for such a substance. "Precipitant" is the term normally used in technical publications. For example, the Condensed Chemical Dictionary (12th ed., 1993) defines a lake as a pigment produced by the interaction of an "organic dye, a precipitant, and an absorptive inorganic substrate." However, the same source contains no definition of "basic radical." The publications of trade organizations also use the term "precipitant" rather than "basic radical" in discussions of lakes (Ref. 12). Therefore, the agency is proposing to use the term "precipitant" rather than the term "basic radical" in new §§ 74.50 and 74.1050. However, the agency is not proposing any formal definition of "precipitant" in § 70.3.

7. Repack

Currently, § 70.3 does not define the term "repack." However, repacks are one of the four forms of color additive (in addition to straight colors, lakes, and mixtures) that are certified under the procedures in part 80. The other three forms of color additive are defined in § 70.3. Therefore, the agency tentatively concludes that a definition of repack should be added to § 70.3. Proposed § 70.3(x) would read "The term 'repack' means all or a portion of a batch of certified color additive that has been sealed in accordance with § 70.20 and labeled in accordance with § 70.25, but has been either opened for repackaging without further processing, or relabeled for shipment or delivery, by a person other than the person to whom the certificate or acceptance of a notice claiming certification for the batch was issued." Under § 80.32(d), such repackaging or relabeling results in the expiration of the certificate, and the batch therefore ceases to be a certified batch. A repack may be certified under the procedures in part 80 at a lower fee than for the original batch (§ 80.10(b)). The agency notes that if a batch or portion of a batch is processed in any way, including heating, then it is not a repack and must be recertified as a new batch of color additive.

B. Nomenclature of Lakes

The current nomenclature system for lakes is described in §§ 82.51(b), 82.1051(b) and 82.2051(b). These regulations specify that the listed name of a lake is formed from: (1) The listed name of the color from which the lake is prepared; (2) the name of the cation precipitant combined in such color; and (3) the word "lake." This system of nomenclature identifies the color additive as a lake and specifies the straight-color component of the lake and the cation precipitant used to prepare the lake. However, the name of a lake does not identify the substrata used to prepare the lake. Because only one substratum (alumina) is permitted in lakes for food use, this system presents no identity problems for these lakes. However, under the current nomenclature system, lakes listed for drug and cosmetic use are not fully identified, because such lakes may contain a variety of substrata. Thus, lakes produced from a common straight color and cation, but different substrata, are identified with the same name. For example, two lakes of D&C Red No. 21, one prepared with the cation aluminum and the substratum alumina, the other with the cation aluminum and the substrata alumina and titanium dioxide, are both named "D&C Red No. 21 Aluminum Lake."

In the 1979 NOI, the agency described this problem with the current nomenclature system and stated its intention to modify the nomenclature system to include the substrata in the name of the lake. The agency received comments from the IACM and CTFA supporting inclusion of substrata in the name of a lake for the purpose of more accurately identifying the listed color additive. As explained above, although omitting the substratum from the name of a lake for food use presents no problems, omitting the substratum from the name of a lake restricted to drug or cosmetic use could cause confusion as to the identity of the lake. However, as the same batch of lake may be used for a food, a drug, or a cosmetic (if the lake is listed for all three uses), the agency tentatively finds that use of a single nomenclature system to identify all lakes would present the least overall confusion to users of these color additives. Use of a uniform nomenclature system for all lakes is also desirable because it avoids the necessity for manufacturers of lakes to provide different labels for packages of the same lake. Therefore, the agency is proposing that the same nomenclature system be used for all lakes.

Therefore, the agency is proposing to modify the nomenclature of lakes by requiring the inclusion of the identity of substrata in the name of a lake. The proposed nomenclature system would construct the name of a lake from the name(s) of the straight colors present in the lake (in descending order of predominance), followed by the names of the cations of the precipitants, and followed by the words "Lake on _____ and _____" (inserting the listed names of the substrata in descending order of predominance). For example, the name of a lake prepared by the extension of D&C Red No. 27 and D&C Orange No. 5 on alumina and titanium dioxide using aluminum chloride and calcium chloride as precipitants would be "D&C Red No. 27 and D&C Orange No. 5 Aluminum Calcium Lake on Alumina and Titanium Dioxide."

Currently, § 82.1051(b)(1) provides that the name of a D&C lake prepared from an FD&C color shall be formed from the "listed name of the color from which the lake is prepared, except that if such name contains the symbol 'FD&C' such symbol shall be changed to 'D&C'." For example, the name of the lake formed from FD&C Yellow No. 5, rosin, and zirconium cation is D&C Yellow No. 5 zirconium lake. The agency notes that the use of the FD&C, D&C, and Ext. D&C prefixes to designate the approved uses of colors originated in the 1939 listings of coal tar colors, including lakes (4 FR 1922) and was carried over into the provisional listing of these color additives in 1960 (25 FR 9759). The permanently listed straight colors retained the names under which they were provisionally listed, although the prefixes no longer accurately reflected the approved uses in some cases. For example, FD&C Red No. 4 is permitted for use only in externally applied drug and cosmetic products.

The agency is not proposing any action in this rulemaking to change the names of the color additives whose food, drug, or cosmetic use is no longer correctly designated by their FD&C or D&C prefix. However, the agency has tentatively decided not to continue the current system described in § 82.1051(b)(1), in which the prefix 'FD&C' is changed to 'D&C' when naming lakes for drug or cosmetic use that have been prepared from straight colors that contain the 'FD&C' prefix in their name. The agency tentatively concludes that continuation of this nomenclature provision is unnecessary to identify the approved uses of the lake and could be confusing to users of lakes. As discussed above, the designation 'D&C' does not always accurately describe the uses of the lake. Furthermore, under § 70.25, the label of the color additive must contain a declaration of the permitted uses of the lake. Finally, because the proposed procedure for certification of lakes (see section VI.B. of this document) would rely on the certificate for the straight color used to prepare the lake, the agency believes that the name of the lake should accurately identify the certified straight color on which the certification of the lake is based. For example, under the proposed certification procedure for lakes, the certificate for the straight color in the lake cited above would be for "FD&C Yellow No. 5," not "D&C Yellow No. 5."

In the 1979 NOI, the agency also requested comments to address an inconsistency in the current system of nomenclature; namely, that certain lakes of identical composition may have different names. For example, FD&C Blue No. 1 and D&C Blue No. 4 are two separately listed straight colors that are different salt forms of the same dye. (FD&C Blue No. 1 is the disodium salt and D&C Blue No. 4 is the diammonium salt of a triphenylmethane derivative.) During the laking process the accompanying cation in the straight color is replaced by the precipitant cation. Thus, the lakes of these two straight colors, prepared from the same substrata and precipitants, are chemically identical. However, they have different names. For example, under the current nomenclature system, the aluminum lakes on alumina of these two straight colors are named "FD&C Blue No. 1 Aluminum Lake" and "D&C Blue No. 4 Aluminum Lake." (Under the proposed system, they would be named "FD&C Blue No. 1 Aluminum Lake on Alumina" and "D&C Blue No. 4 Aluminum Lake on Alumina," respectively.)

In its comment on the 1979 NOI, CTFA agreed with the agency's assessment of this nomenclature problem. However, the comment suggested that this and other problematic aspects of the current system of nomenclature are better viewed as problems with the general nomenclature of listed colors, not problems specific to lakes.

The agency agrees with CTFA's comment that these issues concerning the nomenclature of lakes are really issues related to the general nomenclature of listed colors. Therefore, the agency is not proposing any modifications in the nomenclature of lakes to address these issues, which are outside the scope of this rulemaking.

Under this proposal, the nomenclature proposed in this section would be used for two purposes: (1) To prescribe the listed name of the lake, because the agency is proposing to issue umbrella regulations for lakes rather than an individual regulation for each listed lake; (2) to identify the color additive on the labels of lakes that are packaged for sale to manufacturers of foods, drugs, and cosmetics to be used in coloring those products. The agency notes that lakes are also required to be declared as ingredients on the label of foods and cosmetics. Section VI.C.3. of this document describes the simplified nomenclature system that FDA is proposing for ingredient labeling of lakes on food and cosmetic labels.

TABLE 1.—CURRENT AND PROPOSED REGULATORY STATUS OF STRAIGHT COLORS USED IN LAKES

Current listings		Proposed listings	
Current regulatory status	Straight color	Proposed regulatory status	Straight color
Permanently listed: Part 74 (Subpart A—Foods, Subpart B—Drugs and Subpart C—Cosmetics).	FD&C Red No. 40	Permanently listed: Part 74 (Subpart A—Foods (§ 74.50)).	FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Red No. 40, FD&C Yellow No. 5, FD&C Yellow No. 6.
Provisionally listed: Part 82 (Subpart B—Foods, Drugs, and Cosmetics).	FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Yellow No. 5, FD&C Yellow No. 6, FD&C Red No. 4.	(Subpart B—Drugs (§ 74.1050) and Subpart C—Cosmetics (§ 74.2050))..	FD&C Blue No.1, FD&C Blue No. 2 (drugs only), FD&C Green No. 3, FD&C Yellow No. 5, FD&C Yellow No. 6, FD&C Red No. 4, FD&C Red No. 40, D&C Blue No. 4, D&C Orange No. 4, D&C Orange No. 5, D&C Orange No. 10, D&C Red No. 6, D&C Red No. 7, D&C Red No. 21, D&C Red No. 22, D&C Red No. 27, D&C Red No. 28, D&C Red No. 31, D&C Red No. 33, D&C Red No. 34, D&C Yellow No. 10.

TABLE 1.—CURRENT AND PROPOSED REGULATORY STATUS OF STRAIGHT COLORS USED IN LAKES—Continued

Current listings		Proposed listings	
Current regulatory status	Straight color	Proposed regulatory status	Straight color
(Subpart C—Drugs and Cosmetics).	FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Yellow No. 5, FD&C Yellow No. 6, FD&C Red No. 4, FD&C Blue No. 4, FD&C Green No. 5, FD&C Green No. 6, FD&C Orange No. 4, FD&C Orange No. 5, FD&C Orange No. 10, FD&C Orange No. 11, FD&C Orange No. 6, FD&C Red No. 7, FD&C Red No. 17, FD&C Red No. 21, FD&C Red No. 22, FD&C Red No. 27, FD&C Red No. 28, FD&C Red No. 30, FD&C Red No. 31, FD&C Red No. 33, FD&C Red No. 34, FD&C Red No. 36, FD&C Violet No. 2, FD&C Yellow No. 7, FD&C Yellow No. 8, FD&C Yellow No. 10.	Listing Terminated (Does not form lakes).	D&C Green No. 6, D&C Red No. 17, D&C Red No. 30, D&C Red No. 36, D&C Violet No. 2.
		Listing Terminated (No batches certified);. Listing Terminated (No confirmation of stability during laking).	D&C Green No. 5, D&C Orange No. 11, D&C Yellow No. 7, D&C Yellow No. 8. Ext. D&C Yellow No. 7.
(Subpart D— Externally Applied Drugs and Cosmetics).	Ext. D&C Yellow No. 7		

C. Issues Relating to Definition of Lakes and Termination of Certain Provisional Listings

1. Straight Colors

A summary of the current and proposed regulatory status of straight colors for use in lakes is given in Table 1.

CTFA's comments on the 1979 NOI include information on the chemical structure of the straight colors currently listed for use in lakes. Based on its evaluation of these data and other information from the published literature, the agency tentatively concludes that, to form a lake, a straight color must contain a salt-forming group (i.e., a salt, an acid, or a lactone group) as part of its chemical structure. The agency finds that the following straight colors listed in part 82 contain a salt-forming group and thus are capable of forming a lake: FD&C Red No. 4, D&C Red No. 6, D&C Red No. 7, D&C Red No. 21, D&C Red No. 22, D&C Red No. 27, D&C Red No. 28, D&C Red No. 31, D&C Red No. 33, D&C Red No. 34, FD&C Blue No. 1, FD&C Blue No. 2, D&C Blue No. 4, FD&C Green No. 3, D&C Green No. 5, D&C Orange No. 4, D&C Orange No. 5, D&C Orange No. 10, D&C Orange No. 11, FD&C Yellow No. 5, FD&C Yellow No. 6, D&C Yellow No. 7, D&C Yellow No. 8, D&C Yellow No. 10, and Ext. D&C Yellow No. 7.

However, based on the same information, the agency notes that the following five straight colors listed in part 82 do not contain a salt-forming group as part of their chemical structure and therefore cannot form lakes: D&C Red No. 17, D&C Red No. 30, D&C Red No. 36, D&C Violet No. 2, and D&C Green No. 6. CTFA's comment on the 1979 NOI also stated that D&C Green No. 6 does not form a lake. Therefore, the agency tentatively concludes that combinations of these straight colors with substrata do not meet the definition of lake in § 70.3(l). Consequently, the agency is proposing to terminate the listing of D&C Red No. 17, D&C Red No. 30, D&C Red No. 36, D&C Violet No. 2, and D&C Green No. 6 as components of lakes. This proposed action would not affect the listing of these color additives as straight colors. Under the proposal, combinations of these straight colors with substrata that are approved diluents or approved color additives would be color additive mixtures rather than lakes. Such mixtures would be exempt from certification under § 80.35(b).

2. Diluents in Color Additive Mixtures for Cosmetic and Drug Use

a. *Cosmetics.* The agency notes that its proposed action to terminate the listing of five straight colors as components of lakes would not affect the use of these straight colors in cosmetic products. Combinations of D&C Red No. 17, D&C Red No. 30, D&C Red No. 36, D&C Violet No. 2, or D&C Green No. 6 with substrata listed in § 82.1051 are color additive mixtures as defined in § 70.3(k), and the "substrata" used in these combinations are diluents as defined in § 70.3(m). Because no regulation limits the diluents that may be used in color additive mixtures intended for use in cosmetic products, the proposed action to terminate the listing of D&C Red No. 17, D&C Red No. 30, D&C Red No. 36, D&C Violet No. 2, and D&C Green No. 6 for use in lakes would not affect their use in cosmetics as color additive mixtures containing, as diluents, the substances now listed as substrata in § 82.1051 (alumina, blanc fixe, gloss white, clay, titanium dioxide, zinc oxide, talc, rosin, aluminum benzoate, and calcium carbonate).

b. *Drugs.* The proposed action to terminate the listing of D&C Red No. 17, D&C Red No. 30, D&C Red No. 36, D&C Violet No. 2, and D&C Green No. 6 for use in lakes would not affect their use in drugs as color additive mixtures containing the following substrata now listed in § 82.1051: Alumina, calcium carbonate, talc, titanium dioxide, and zinc oxide. Alumina, calcium carbonate, talc, and titanium dioxide are listed in §§ 73.1010, 73.1070, 73.1550, and 73.1575, respectively, as color additives exempt from certification for use in drugs generally (ingested drugs and externally applied drugs). Therefore, combinations of these substances with D&C Red No. 17, D&C Red No. 30, D&C Red No. 36, D&C Violet No. 2, and D&C Green No. 6 are permitted as color additive mixtures under existing regulations. Zinc oxide is listed in § 73.1991 as a color additive exempt from certification for use in coloring externally applied drugs. In addition, zinc oxide is generally recognized as safe (GRAS) for use as a dietary supplement (§ 182.5991 (21 CFR 182.5991)) and as a nutrient in food (§ 182.8991 (21 CFR 182.8991)). Section 73.1001 permits the use of substances listed in § 73.1(a) as diluents in color additive mixtures for ingested drug use. In turn, § 73.1(a) permits the use of substances that are GRAS under section 201(s) of the act (21 U.S.C. 321(s)). Therefore, the agency concludes that zinc oxide may be used with D&C Red No. 17, D&C Red No. 30, D&C Red No. 36, D&C Violet No. 2, and D&C Green No. 6 either as an approved diluent in color additive mixtures for coloring ingested drugs or as a straight-color ingredient in color additive mixtures for coloring externally applied drugs.

Rosin is currently listed in § 73.1(b)(1)(i) as a diluent in color additive mixtures for use in inks for marking food supplements in tablet form, gum, and confectionery, and by reference, for use under § 73.1001(a)(2) in inks for branding pharmaceutical forms. In its review of the safety of the substrata currently listed in § 82.1051 (see section V.A.2.j. of this document), the agency determined that the ingested uses of rosin are safe. However, in this same review, the agency stated that it was aware of literature reports of dermal irritation due to rosin (Ref. 13). Recently submitted data on human skin sensitization and photoreaction to commercially available cosmetic products colored with rosin lakes (Ref. 14) establish that lakes containing rosin as a substratum are safe for externally applied drugs and cosmetics. However, the rosin present in lakes, where it is a component of an insoluble pigment, is not identical to free rosin present as a diluent in color additive mixtures. Therefore, the agency tentatively concludes that the data submitted on the safety of externally applied rosin lakes do not resolve the safety issues presented by the use of free rosin as a diluent in externally applied drug products, such as the risk of allergic contact dermatitis and occupational asthma.

Based on its safety review of rosin, the agency is proposing to amend § 73.1001 to list rosin as a diluent in color additive mixtures for ingested drug use only. However, if the agency receives information that adequately supports the safety of rosin as a diluent in color additive mixtures for use in externally applied drugs, the agency will consider listing rosin as a diluent for color additive mixtures for both ingested and externally applied drugs. Anyone interested in the listing of rosin for such use should submit information on the identity, specifications, and dermal safety of the rosin for which listing is sought.

The current regulations do not allow for the use of aluminum benzoate, blanc fixe, clay, and gloss white as diluents in color additive mixtures for drug use, because only the diluents provided for in § 73.1001 may be used in color additive mixtures for coloring drugs. However, FDA has evaluated the safety of these substances, or the materials used to make them, as part of its review of substrata in lakes for drug and cosmetic use in section V.A.2. of this document. This review included data on the ingested and dermal uses of barium sulfate (blanc fixe), kaolin (clay), benzoic acid, and benzoates. Specifically, the agency considered literature reviews of aluminum salts, barium sulfate, kaolin and bentonite (a silicate); information from the color additive petitions for use of certain aluminum lakes in eye-area cosmetics; and safety reviews of aluminum compounds, benzoic acid and benzoates, and kaolin and bentonite as food ingredients. These safety reviews were conducted by the Select Committee on GRAS Substances of the Federation of American Societies for Experimental Biology and the Joint Food and Agriculture Organization (FAO)/World Health Organization (WHO) Expert Committee on Food Additives.

Based on its review, which is discussed in section V.A.2. of this document, the agency tentatively concludes that barium sulfate (blanc fixe), aluminum benzoate, and kaolin (clay) are safe for use as diluents in color additive mixtures for drug use. Therefore, as part of its disposition of the provisional listings in part 82, the agency is proposing to amend § 73.1001 to list barium sulfate, aluminum benzoate, and kaolin as diluents that may be safely used in color additive mixtures exempt from certification that are intended for use in ingested and externally applied drugs. The agency notes that gloss white is a mixture of alumina and barium sulfate and thus would be permitted for any use in color additive mixtures for which both alumina and barium sulfate are permitted.

For the reasons discussed above, the agency tentatively concludes that the proposed action to terminate the listing of D&C Red No. 17, D&C Red No. 30, D&C Red No. 36, D&C Violet No. 2, and D&C Green No. 6 as components of lakes would not affect their use in drugs as color additive mixtures containing alumina, calcium carbonate, kaolin (clay), talc, zinc oxide, barium sulfate (blanc fixe), aluminum benzoate, titanium dioxide, gloss white, or rosin (ingested drugs only). However, the proposed termination would mean that those straight colors could no longer be used in externally applied drugs as color additive mixtures containing rosin, unless the agency receives data that establish the safety of rosin as a diluent for externally applied uses.

3. Extended Toners

In the 1979 NOI, the agency requested information to identify certain insoluble color additives, commercially described as extended toners, that are classified as lakes under part 82. The agency requested comments on the need to modify existing regulations or to promulgate new regulations to address these color additives. FDA noted its intent, in the absence of comments to the contrary, to exclude these products from the definition of lakes.

CTFA's comment on the 1979 NOI provided information that identified the composition of extended toners and of related insoluble color additives known as resinated toners, extended resinated toners, and toners. The comment requested revision of the definitions in 21 CFR 70.3 to better describe these substances. The agency has evaluated the available information and determined that the color additives described commercially as toners, resinated toners, extended toners, and extended resinated toners are not lakes. These substances are either water-insoluble straight colors or mixtures of water-insoluble straight colors with insoluble diluents. Therefore, the agency tentatively concludes that no new or modified regulations are needed to address toners, resinated toners, extended toners, and extended resinated

toners because these substances are mixtures as defined in § 70.3(k), and the "substrata" used in these combinations are diluents, as defined in § 70.3(m).

The proposed reclassification of toners, resinated toners, extended toners, and extended resinated toners as color additive mixtures containing as diluents the ingredients now listed as substrata in § 82.1051 would not affect their use in drugs, because, as discussed in section III.C.2. of this document, these substrata (except rosin for use in externally applied drugs) are listed as GRAS in part 182, 184, or 186 (21 CFR part 182, 184, or 186), approved as color additives for drug use in part 73, or the agency is proposing to list them in § 73.1001 as diluents in color additive mixtures for drug use. Because there is no regulation that limits the diluents that can be used in color additive mixtures for cosmetic use, the proposed reclassification of this group of color additives from lakes to color additive mixtures would not affect their use in cosmetics.

4. Requests for Listing of Additional Lake Components

CTFA's comments on the 1979 NOI included a request that FDA authorize for use in lakes the following straight colors: D&C Brown No. 1, D&C Green No. 8, and Ext. D&C Violet No. 2. These three straight colors are currently listed in part 74 for cosmetic use. In addition, D&C Green No. 8 is currently listed in part 74 for drug use. However, the agency notes that these straight colors are not listed either permanently in part 74 or provisionally in part 82 for use in preparing lakes. Therefore, the agency tentatively concludes that consideration of these straight colors for use in lakes is outside the scope of this proposal, which addresses only the provisionally listed lakes and their components. Interested persons may submit a color additive petition under § 71.1 (21 CFR 71.1) to amend the regulations to permit the use of these straight colors in lakes.

CTFA's comments on the 1979 NOI also suggested that bismuth oxychloride and mica should be listed as acceptable substrata in lakes for coloring drugs and cosmetics. IACM's comments requested the listing of titanium dioxide as a substratum for lakes for coloring foods. However, bismuth oxychloride and mica are not provisionally listed in part 82 as substrata in lakes for drug or cosmetic use, and titanium dioxide is not provisionally listed in part 82 as a substratum in lakes for food use. Therefore, the agency tentatively concludes that consideration of the requested uses of these substances as substrata in lakes is outside the scope of this rulemaking, which addresses provisionally listed lakes and their components. Interested persons may submit a color additive petition under § 71.1 to amend the regulations to permit use of these substances in lakes.

5. Definition of Lakes Versus Mixtures

CTFA's comments on the 1979 NOI noted that the straight-color component of a lake, and not the substratum, provides the coloring effect and, therefore, requested that the agency classify lakes as color additive mixtures and list permitted substrata as diluents for color additive mixtures.

As discussed in section III.C.1. of this document, the agency agrees that combinations of non-salt-forming straight colors with substrata should be classified as mixtures rather than lakes. As to salt-forming straight colors, however, the agency disagrees with CTFA's interpretation. Lakes are very different from color additive mixtures because of the chemical reaction required to produce a lake. The agency finds that, under both the current and proposed definitions of a lake, the substratum is an integral part of the lake. In a mixture, there is little if any chemical interaction between the components, which function as separate ingredients. In the preparation of a lake, however, there is a chemical reaction between the components, and the physical properties of the resulting lake are very different from those of the straight-color component (see section I. of this document). Therefore, the agency tentatively concludes that lakes are not mixtures and that substrata used to prepare a lake are not separate ingredients, but are components of the finished color additive.

6. Pre-Amendments Certification of Provisionally Listed Lakes

As discussed in section II.A. of this document, the transitional provisions of the 1960 amendments limited the provisional listing of certifiable color additives to those for which at least one batch had been certified prior to July 12, 1960, the enactment date of the 1960 amendments. In establishing the provisional list (25 FR 9759), FDA removed 32 colors from listing because the agency had never certified any batches of these colors. In preparing this document, the agency reviewed its batch certification records to confirm that each straight color, substratum, and precipitant included in the provisional listing regulations for lakes was a component of at least one batch of a lake certified between 1939 and July 12, 1960.

a. *Straight Colors.* The agency's search of color certification records between 1939 and the enactment of the 1960 amendments established that the agency did not certify any batches of lakes of D&C Orange No. 11, D&C Yellow No. 7, D&C Yellow No. 8, or D&C Green No. 5 during that time. The agency tentatively concludes that its original provisional listing of these color additives for use in lakes for drugs or cosmetics was therefore incorrect. Accordingly, the agency is proposing to terminate the provisional listings of D&C Orange No. 11, D&C Yellow No. 7, D&C Yellow No. 8, and D&C Green No. 5 as components of lakes for use in drugs or cosmetics. Any future consideration of the use of these color additives as components of lakes would be through the color additive petition process (§ 71.1).

b. *Substrata.* The agency's color certification records show that all of the substrata listed in §§ 82.51, 82.1051, and 82.2051, except calcium carbonate, have been in continuous use in lakes because certification was initiated in 1939 (Ref. 15). The agency added calcium carbonate to the list of permitted substrata in 1959 (24 FR 3818) and certified at least one batch of a lake containing this substratum for drug or cosmetic use before the enactment of the 1960 amendments.

c. *Precipitants.* Section 82.51 lists two cations (calcium and aluminum) as components of precipitants in lakes for food use. The agency certified batches of FD&C aluminum lakes before the enactment of the 1960 amendments. However, in the 1979 NOI, the agency proposed to delete calcium as a listed cation in lakes for food use because the agency had never certified any batches of FD&C calcium lakes.

Comments on the 1979 NOI from IACM and CTFA requested the agency not to take this action. However, because these comments provided no information to document agency certification of any batches of FD&C calcium lakes before the enactment of the 1960 amendments, the agency tentatively concludes that its original provisional listing of these lakes was incorrect. Therefore, the agency is proposing to terminate the provisional listing of calcium as a precipitant in the preparation of lakes for food use. Any future consideration of the use of lakes containing calcium precipitants for coloring food would be through the color additive petition process (§ 71.1).

Sections 82.1051 and 82.2051 list seven cations (sodium, potassium, aluminum, barium, calcium, strontium, and zirconium) as components of precipitants in lakes for drug or cosmetic use. The agency certified batches of lakes containing each of these seven cations for drug or cosmetic use before the enactment of the 1960 amendments.

IV. Safety Review and Proposed Actions for Lakes for Use in Foods

A. Review of Components of Lakes for Use in Foods

The current regulation for provisionally listed lakes for use in foods (21 CFR 82.51) provides for use of the following components in such lakes: (1) Certified batches of the straight colors FD&C Blue No. 1 (21 CFR 82.101), FD&C Blue No. 2 (21 CFR 82.102), FD&C Green No. 3 (21 CFR 82.203), FD&C Yellow No. 5 (21 CFR 82.705), FD&C Yellow No. 6 (21 CFR 82.706); (2) the substratum alumina; (3) precipitants containing the cations aluminum (Al^{+3}) and calcium (Ca^{+2}). Additionally, 21 CFR 74.340 permanently lists lakes of FD&C Red No. 40 that are prepared as described in 21 CFR 82.51 and that meet the specifications and labeling requirements prescribed by § 82.51.

The identity and specifications for the straight colors used in the preparation of the provisionally listed lakes for food use are provided in the regulations for the straight-color components of lakes in part 82, which are cited above. The regulations in part 82 cross-reference the permanent listings of the straight colors in part 74. As to substrata, § 82.3 defines alumina, but provides no specifications for alumina or for the materials used to prepare it in situ. Finally, with regard to precipitants, part 82 does not identify or prescribe specifications for the precipitants that may be used in the preparation of these lakes, other than specifying the cation component and providing specifications that limit the level of soluble chlorides and sulfates in the lake.

1. Straight Colors

a. *Identity.* The agency has already reviewed the identity and safety of the straight colors currently permitted as components of lakes for food use, either as part of its scientific review of provisionally listed straight colors or in response to petitions for the review of new color additives. Based on these reviews, the agency concluded that FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Yellow No. 5, FD&C Yellow No. 6, and FD&C Red No. 40 are safe for use in foods and permanently listed these straight colors in 21 CFR part 74, subpart A. The agency is proposing to continue to permit the use of these straight colors as components of lakes for use in food, subject to the proposed requirements discussed below.

b. *Use of previously certified batches.* Currently, under § 82.51, manufacturers are required to prepare lakes for food use from previously certified batches of straight colors. This requirement was intended to ensure that the levels of intermediates, subsidiary colors, and other impurities in straight colors that are used to prepare lakes for food use are within the levels specified in the applicable regulations. Impurities in the straight color, especially the carcinogenic constituents present in some straight colors, are a primary safety concern with the use of these color additives and their lakes in food.

In the 1979 NOI, the agency requested submission of information about available methods for the determination of total (free plus bound) intermediates, as well as subsidiary colors and other impurities, and stated that without appropriate analytical methodology it might be necessary to require that all lakes be produced from certified batches of straight colors. The agency stated that there was no satisfactory analytical method to determine total intermediates in lakes. The available methods detected free intermediates but not necessarily the intermediates that, like the straight color, are bound to the substratum.

The comments on the 1979 NOI did not provide suitable methodology for the analysis of intermediates and other impurities in lakes. CTFA's comment stated that these problems could be addressed only through a time-consuming and difficult undertaking to develop satisfactory analytical methods. The comment suggested that the issue of certification methodology should be separated from that of the permanent listing of lakes, thus allowing these lakes to be permanently listed while the industry and the agency went on to address the issue of certification methodology jointly.

Section 721(b)(5)(A)(iv) of the act provides that in determining whether the proposed use of a color additive is safe, the agency must consider, among other relevant factors, the availability of any needed practicable methods of analysis for determining the identity and quantity of intermediates and other impurities contained in the color additive. If lakes are prepared from uncertified batches of straight colors, the only way to ensure that the intermediates, subsidiary colors, and other impurities derived from the straight color do not exceed the specification limits for the lake is to analyze the lake itself for those impurities. However, as indicated above, the analytical methods to accomplish this purpose are not currently available. Therefore, the agency tentatively concludes that the lack of adequate analytical methods to determine the levels of intermediates and other impurities in lakes precludes the agency from prescribing conditions of safe use for lakes prepared from uncertified batches of straight colors. Accordingly, to ensure the continued safety of lakes for food use, the agency is proposing to retain the requirement that these lakes be prepared from certified batches of straight colors. As discussed in section V.A. of this document, FDA is also proposing to require that lakes for use in drugs and cosmetics be prepared from certified batches of straight colors.

c. *Stability.* In the 1979 NOI, the agency asked for information about the chemical stability of straight colors during the laking process. The agency stated that if previously certified batches of straight colors are used in the preparation of lakes, the levels of intermediates and subsidiary colors in these lakes should be proportional to those in the original batch of the straight color. However, the agency was concerned that the laking process could cause an unstable straight color to deteriorate and, consequently, increase the levels of intermediates and subsidiary colors.

The agency requested data to confirm the stability of previously certified batches of straight colors during the laking process. The agency stated that, if such data were submitted, the agency would not require specifications for intermediates and subsidiary colors in lakes prepared from certified batches of straight colors. The agency also noted the lack of satisfactory methodology for identifying and quantifying intermediates and certain other contaminants in many lakes, but added that the lack of such methodology does not pose a problem for lakes produced from previously certified batches of colors, provided that there is no measurable degradation of the color during the laking process.

The straight colors that FDA proposes to permit as components of lakes for food use fall into the following four groups, based on chemical structure (the Color Index Structural classification (Ref. 16), as further refined by Marmion (Ref. 17)): Monoazo (FD&C Red No. 40, FD&C Yellow No. 6); pyrazolone (FD&C Yellow No. 5); triphenylmethane (FD&C Blue No. 1, FD&C Green No. 3); and indigoid (FD&C Blue No. 2). The FD&C lakes of these straight colors made up about 80 percent of the total poundage of lakes certified in fiscal year 1995 (FY–95) (Ref. 18). FD&C lakes of three

straight colors (FD&C Yellow No. 5, FD&C Yellow No. 6, and FD&C Red No. 40) made up about 90 percent of the FD&C lakes certified in FY–95. Lakes of FD&C Blue No. 1 and FD&C Blue No. 2 made up the remaining 10 percent. No batches of FD&C Green No. 3 lakes were certified in FY–95. Because lakes of monoazo and pyrazolone dyes make up such a high proportion of lakes certified, the agency is particularly concerned about possible degradation of FD&C lakes of these dyes.

CTFA submitted data (Ref. 19) to confirm the stability during laking on alumina of three straight colors (FD&C Blue No. 1, FD&C Red No. 40, and FD&C Yellow No. 5) that represent three of the four structural groups. The data presented a comparison of the high performance liquid chromatography (HPLC) evaluations of each of five samples of FD&C Red No. 40, FD&C Yellow No. 5, and FD&C Blue No. 1 with the corresponding lake made from each sample. FDA has evaluated the data submitted by CTFA. A quantitative comparison of the levels of intermediates and subsidiary colors present in the straight color and the corresponding lake confirmed that the levels of intermediates and subsidiary colors in the lakes (after adjustment for the percent straight color in the lake) did not differ significantly from those in the corresponding straight colors (Ref. 20).

The agency also conducted a brief study on the stability of FD&C Blue No. 2 during the laking process (Ref. 21). This study presented a comparison of the HPLC evaluations of a sample of a certified batch of FD&C Blue No. 2 and a sample of a certified batch of the aluminum lake prepared from this batch. A quantitative comparison of the levels of intermediates and subsidiary colors present in the straight color and the corresponding lake confirmed that the levels of intermediates and subsidiary colors in the lake (after adjustment for the percent straight color in the lake) did not differ significantly from those in the corresponding straight color.

The data evaluated by the agency provide evidence that lakes of the straight colors FD&C Yellow No. 5, FD&C Red No. 40, FD&C Blue No. 1, and FD&C Blue No. 2 can be produced without significant degradation of the straight color. When produced under conditions of current good manufacturing practice (CGMP), these lakes meet the specifications for intermediates and subsidiary colors in the straight color, after adjustment for total color content of the lake. Although data have not been submitted for all of the straight colors FDA proposes to permit as components of lakes for food use, the remaining such straight colors (FD&C Green No. 3 and FD&C Yellow No. 6) have chemical structures that are similar to other straight colors (FD&C Blue No. 1 and FD&C Red No. 40, respectively) discussed above. The stability of FD&C Yellow No. 6 aluminum lake, which makes up over 25 percent of the total poundage of FD&C lakes certified in FY–95, is also supported by published studies. In these studies, the FD&C Yellow No. 6 aluminum lake showed greater thermal stability than did FD&C Red No. 40 aluminum lake (Ref. 22), and the straight color FD&C Yellow No. 6 was as stable as the straight color FD&C Red No. 40 under the pH conditions studied, showing no appreciable change over a week's exposure (Ref. 17). The agency tentatively finds that because of the similarity of chemical structure, the data available for the lakes of FD&C Blue No. 1 and FD&C Red No. 40 are adequate to confirm the stability of FD&C Green No. 3 and FD&C Yellow No. 6, respectively, during the manufacture of lakes in accordance with CGMP. In addition, the published data on FD&C Yellow No. 6 and its aluminum lake provide corroborative evidence for the stability of this straight color during the laking process when conducted under conditions consistent with CGMP.

Based on its previous evaluations of the safety of the straight colors that FDA proposes to permit as components of lakes for food use and on the scientific evidence that lakes of these straight colors can be produced under conditions consistent with CGMP without significant degradation of the straight color, the agency now tentatively concludes that certified batches of FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Yellow No. 5, FD&C Yellow No. 6, and FD&C Red No. 40 are safe for use as components of lakes for food use that are prepared under conditions of CGMP. Therefore, the agency is proposing to permit certified batches of these straight colors as components of lakes for food use in § 74.50.

The agency is not, however, proposing to establish any definition of CGMP for the preparation of lakes for food use. FDA recognizes that CGMP for laking will vary with the straight color used, may include a variety of combinations of conditions, and may change over time with the introduction of new combinations of conditions. The agency's regulatory goal is to protect the public health by assuring that laking is conducted in a manner such that no significant degradation of the straight color occurs, not to prescribe the details of industry practice. Safety issues relating to the use of CGMP in preparing lakes are discussed further in sections IV.B.5 and IV.C. of this document.

d. *Use of more than one straight color in a lake.* The agency also tentatively concludes that the current prohibition on the use of more than one straight color in a lake is unnecessary. This prohibition was instituted as part of the original listing of lakes as certified colors in 1939 (4 FR 1922, 4 FR 3931, and 5 FR 1138). At that time, the regulations did not require that lakes be prepared from previously certified batches of straight color, and the only food use for which lakes were listed was for dyeing eggs in the shell. The requirement that lakes for food use be prepared from previously certified batches of straight color was initiated in 1959, when the regulations were amended to permit, for the first time, the use of certain lakes in foods generally (24 FR 3818 and 24 FR 5302). The agency now tentatively concludes that, because of the proposed requirement that certified batches of straight colors be used in preparing all lakes, the evidence for the stability of straight colors during the laking process, and the proposed certification requirement for lakes (discussed in section IV.C. of this document), the prohibition against the use of more than one straight color to make a lake is unnecessary. Therefore, the agency is proposing to permit the preparation of a lake from certified batches of more than one straight color.

2. Substratum—Alumina

Alumina is the only substratum provisionally listed for lakes for food use. Section 82.3(g) defines alumina as "a suspension in water of precipitated aluminum hydroxide" but prescribes no quality requirements for alumina substratum. This definition covers both preformed (precipitated and dried) alumina that is subsequently suspended in water and alumina that is prepared in situ, without subsequent recovery and drying.

As noted in section I. of this document, alumina may be prepared in situ from aluminum sulfate and sodium hydroxide or sodium carbonate during the manufacture of lakes. Aluminum sulfate is GRAS for food use (§ 182.1125) and is subject to the specifications in the Food Chemicals Codex 2d. ed. (1972) (§ 170.30(h)(1) (21 CFR 170.30(h)(1))). Sodium carbonate and sodium hydroxide are affirmed as GRAS for food use (§§ 184.1742 and 184.1763, respectively) and are required

to meet the specifications in the Food Chemicals Codex, 3d. ed. (1981).

In addition, § 73.1010 lists alumina (dried aluminum hydroxide) as a color additive for use in drugs and provides identity and specifications for alumina as a color additive. The agency tentatively concludes that, although the listed use of alumina (dried aluminum hydroxide) is for coloring drug products, alumina that meets the identity and quality requirements in § 73.1010 (a)(1) and (b) is safe as a substratum for lakes for food use (Ref. 13).

The agency has evaluated the available data relating to the safety of aluminum salts. These data included literature reviews, information from a color additive petition for use of several aluminum lakes on alumina in eye-area cosmetics, and safety reviews of aluminum compounds (including aluminum salts) as food ingredients by the Select Committee on GRAS Substances of the Federation of American Societies for Experimental Biology and the Joint FAO/WHO Expert Committee of Food Additives. Based on this evaluation, the agency tentatively concludes that alumina conforming to the identity and quality requirements set forth in § 73.1010 (a)(1) and (b) (Refs. 13, 23, and 24) is safe for use as a substratum in lakes for food use. The agency also tentatively concludes that alumina prepared from aluminum sulfate and sodium carbonate or sodium hydroxide that meet the requirements for these compounds in the Food Chemicals Codex 2d ed. (1971) (aluminum sulfate) or 3d ed. (1981) (sodium carbonate and sodium hydroxide) is safe as a component of lakes for food use.

3. Precipitants

a. *Aluminum cation (Al^{+3}).* In its safety review of alumina (see section IV.A.2. of this document), the agency evaluated the safety of the use of the aluminum salts (salts containing the aluminum cation (Al^{+3})). Based on this safety review, the agency tentatively concluded that the use of alumina as a substratum in lakes is safe. Based on the same data, the agency also tentatively concludes that the use of the aluminum cation as a component of precipitants used in the preparation of lakes for food use is safe (Ref. 13, 23, and 24). Aluminum cation is added as a precipitant with an accompanying anion. If an aluminum salt is added as a precipitant, the anion is added as part of the salt. Alternatively, if aluminum oxide or hydroxide is used as a precipitant, the anion is added as an acid to ensure the solubility of the aluminum cation to function as a precipitant. The anions that the agency proposes to permit for use in lakes are discussed in section IV.A.3.c. of this document.

The agency is not proposing to establish quality requirements for precipitants used in the preparation of lakes for food use. The agency recognizes that a variety of precipitant ingredients can be used to produce the aluminum cation that functions as a precipitant in lakes for food use. Furthermore, the agency does not anticipate that the use of precipitant ingredients that form the aluminum cation, under conditions consistent with CGMP, would introduce contaminants that require limitation by specifications for the precipitant ingredients. Precipitants are used at low levels (a small percentage of the total batch weight) and, by virtue of their function in the laking process, are always water-soluble cations. Because lakes are washed when prepared in accordance with CGMP, the agency anticipates that only low levels of water-soluble contaminants will remain in the finished lake. The only possible concern would be the presence of heavy metals deriving from contaminants in the precipitants. To address this potential problem, as discussed below, the proposed specifications for lakes will limit the levels of heavy metal contaminants permitted in the end product. Therefore, the agency tentatively concludes that quality requirements for the ingredients used to form precipitants in lakes for food use are unnecessary.

b. *Calcium cation (Ca^{+2}).* As discussed in section III.C.6.c. of this document, the agency is proposing to terminate the listing of calcium as a cation in lakes for food use because calcium lakes were not used in food in 1960 and thus should not have been provisionally listed. Any future consideration of the use of calcium lakes for coloring foods would be through the color additive petition process (§ 71.1).

c. *Accompanying anions.* The use of the aluminum cation in preparation of lakes results in the formation of chloride or sulfate anions. Chloride and sulfate are components of many food ingredients that the agency has listed or affirmed as GRAS for general food use (for example: Aluminum sulfate, § 182.1125; calcium sulfate, § 184.1230; table salt (sodium chloride), § 182.1(a); potassium chloride, § 184.1622). In the safety reviews conducted as part of the GRAS rulemakings for these ingredients, the agency found that ingestion of chloride and sulfate (in the presence of the accompanying cation) was safe at levels that vastly exceed possible levels of exposure to these anions as components of lakes. Therefore, the agency tentatively concludes that the presence of these anions in lakes for food use is safe when CGMP is observed (Ref. 13).

B. Specifications for Lakes for Use in Foods

1. Intermediates and Other Impurities Derived From Straight Colors

A typical straight color contains, in addition to the primary color component, intermediates and subsidiary colors. Intermediates are unreacted starting materials used to synthesize the primary color. Subsidiary colors are colored by-products of the synthesis of the primary color. As discussed in section IV.A.1.b. of this document, the agency is proposing to require that lakes be prepared from certified batches of straight color. The regulations for straight colors contain specifications that limit the levels of intermediates and subsidiary colors that may be present in the straight color. In this proposal, the agency has also tentatively concluded that the straight colors in lakes for food use do not degrade significantly during preparation of the lakes under conditions consistent with CGMP. Therefore, the agency tentatively concludes that the specifications for intermediates and subsidiary colors in straight colors are sufficient to ensure the safety of lakes prepared from certified batches of straight colors and that separate specifications for intermediates and subsidiary colors in lakes are unnecessary.

2. Heavy Metals

The current specifications for lakes for food use (§ 82.5) establish limits of 10 ppm lead, 1.4 ppm arsenic, and "not more than trace" levels of total heavy metals (other than lead and arsenic). In the 1979 NOI, the agency proposed adding a specification for mercury in lakes. The agency tentatively finds that the manufacturing processes for lakes use metal salts that are sources of potential contamination by heavy metals; moreover, in its certification of lakes, the agency has rejected batches because of the presence of heavy metals, including lead. Therefore, the agency tentatively concludes that specifications to limit the levels of lead, arsenic, and mercury in lakes are necessary to ensure their safe use in food. As a result of its safety reviews of the straight colors used in food, the agency established limits of not more than 10 parts per million

(ppm) lead, 3 ppm arsenic, and 1 ppm mercury in the specifications for most color additives permanently listed for food use in parts 73 and 74. The agency tentatively concludes that such specifications are also sufficient to ensure the safety of lakes.

FDA is unaware of any heavy metals, other than lead, arsenic, and mercury, that have a significant level of toxicity and that would be expected to occur in lakes. Therefore, the agency tentatively concludes that a general heavy metal specification is unnecessary to ensure the safety of lakes for food use.

One comment received in response to the 1979 NOI suggested that a limitation on iron be included in the specifications for lakes for food use. Iron salts may be present in lakes as contaminants inadvertently introduced during the manufacturing process. For example, a batch of lake prepared using rusted equipment or water with a high iron content may contain iron salts.

The agency has evaluated the safety of iron salts as a contaminant in lakes to determine whether their presence would present a sufficient safety hazard to warrant inclusion of a specification for iron. The agency notes that iron is an essential mineral, and that iron and many of its salts are affirmed as GRAS in part 184 for use as nutrients in food (for example, elemental iron, § 184.1375; ferric ammonium citrate, § 184.1296; ferric chloride, § 184.1297; ferric sulfate, § 184.1307; ferrous carbonate, § 184.1307b; ferrous sulfate, § 184.1315). However, the agency also notes that high levels of iron consumption can be toxic, especially for certain subpopulations. (See, e.g., 59 FR 51030, October 6, 1994).

Lakes are generally used at low levels (typically less than 0.05 percent) in foods, except for some low-consumption food items such as candy and candy coatings, colored sugar and frostings, dietary supplements, seasonings, flavorings, and chewing gum (Ref. 25). Therefore, consumption of iron due to its presence in lakes as a contaminant would be low. Under these circumstances, the agency finds no evidence of a safety hazard from exposure to iron as a contaminant in lakes for food use. Therefore, the agency tentatively concludes that a specification to limit the level of iron is unnecessary to ensure the safety of lakes for food use. Moreover, the agency notes that the conditions and practices that lead to the presence of iron salts as a contaminant in a batch of lake are addressed by the proposed requirement that lakes be prepared in accordance with CGMP (see section IV.B.5. of this document).

3. Soluble Chlorides and Sulfates

Current § 82.51 contains a specification that limits the content of the soluble chloride and sulfate anions in lakes for food use. The agency finds that the washing of the lake during the manufacturing process removes most of these water-soluble anions. Furthermore, as discussed above in section IV.A.3.c. of this document, the agency found in safety reviews conducted as part of several GRAS rulemakings that soluble chloride and sulfate anions are safe in foods at levels considerably greater than those found in lakes (Ref. 13). Therefore, the agency tentatively concludes that a specification to limit the levels of soluble chlorides and sulfates is unnecessary to ensure the safety of lakes prepared in conformity with CGMP for food use.

4. Inorganic Material Insoluble in HCl

Current § 82.51 contains specifications that limit the content of inorganic material insoluble in HCl in lakes. This specification was intended to ensure that the lake was prepared in accordance with CGMP and that no foreign material was inadvertently added during the laking process. However, agency certification records for lakes for food use in the past 20 years show that only one batch of lake has been denied certification based on this specification. Even without the specification for inorganic material insoluble in HCl, this batch of lake would not have met the requirements in this proposal because the alumina used as a substratum would not have met the applicable quality requirements. Furthermore, the agency is proposing to include in the specifications for lakes a provision to require that lakes be prepared in accordance with CGMP. Therefore, the agency tentatively concludes that a specification for material insoluble in HCl is unnecessary for lakes that meet the other proposed requirements for lakes, and such a specification is not included in this proposal.

5. Other Impurities and Contaminants

The agency has tentatively concluded above that specifications to limit the level of total heavy metals (except lead, arsenic, and mercury), soluble chlorides and sulfates, and material insoluble in HCl are unnecessary to ensure the safety of lakes for food use as long as a general provision is included in the specifications for lakes to ensure that they are prepared in conformity with CGMP. The identity requirements and specifications in color additive regulations include impurities that are expected to occur at significant levels in a color additive that has been prepared in accordance with CGMP. In its certification of color additives, FDA has occasionally denied certification for batches of color additives due to the presence of significant levels of impurities for which the listing regulation contains no specifications. In a few instances, these impurities could be linked to improper storage of the color additive or to cross-contamination from insufficiently cleaned processing equipment. In most cases, the source of the impurity was unknown. Based on the agency's experience in certifying thousands of batches of color additives annually, corroborated by the agency's analyses of reference standards (reference batches of color additives) used in toxicological studies of various straight colors as part of the safety reviews of these color additives, FDA believes that the impurities in the rejected batches would not have been present had the color additives been manufactured under conditions consistent with CGMP.

As noted above in section IV.A.1.c. of this document, it is important that lakes be prepared in accordance with CGMP to ensure that the straight color does not degrade during preparation of the lake. Manufacturing conditions must be controlled so that levels of uncolored components in the straight color, including the carcinogenic constituents in certain monoazo and pyrazolone straight colors, do not increase during preparation or handling of the lake. CGMP includes use of proper temperatures, especially during drying, to avoid affecting the composition of the lake, and sufficient washing of the lake to remove water-soluble impurities. For example, the agency recently rejected a batch of a monoazo straight color because the batch exceeded the specifications for certain carcinogenic constituents. Subsequent discussions with the manufacturer revealed that the batch had been previously certified, but had failed to meet the manufacturer's microbiological specifications and had been reprocessed (redried). After redrying, the batch no longer met the specification for trace-level carcinogenic constituents. The agency notes, however, that because of their chemical properties, such carcinogenic constituents are unlikely to be incorporated into lakes to the same extent as into straight colors, and sufficient washing of the lake could significantly decrease the levels of these constituents.

To ensure the safety of lakes for use in foods, FDA is proposing to continue

the requirement in existing § 82.5 that lakes shall be free from impurities other than those named in the specifications, to the extent that such impurities may be avoided by CGMP. However, the agency is not proposing to define specific conditions that would constitute CGMP in the preparation of lakes. The agency recognizes that appropriate manufacturing conditions may differ for the preparation of different lakes and, in fact, may change over time. Furthermore, even the preparation of a single lake that meets the requirements of part 74 may be accomplished using different conditions of manufacture. The agency wants to retain the current flexibility in preparation of lakes for food use, but maintain the assurance that there will be no significant degradation of the straight color during preparation of the lake and that the resulting lake will be otherwise in compliance with the requirements of part 74. To accomplish this objective, the agency is not proposing to define any specific conditions of CGMP; however, in its review of notices claiming certification for batches of lake, the agency is proposing to use the accountability of the straight color in the lake, calculated as described below, as an indicator of the use of CGMP in the preparation of the lake.

Under the current certification procedure for FD&C lakes, the agency can monitor both the use of certified batches of straight color in lakes for food use and indicators for the use of CGMP in the preparation or repack of a batch of lake. In a request for certification for a batch of lake, the firm must declare the certified lot number and the poundage from that lot for the straight color that is added to prepare the lake. The agency can determine a poundage accountability of the batches of straight colors that are used to prepare FD&C lakes. This accountability ensures that no more straight color is used in FD&C lakes than has been certified. For example, a firm that owns a 100-pound batch of straight color cannot credibly claim to use 1,000 pounds from that batch to make lakes.

From the information in the request for certification and from analysis of the sample submitted with the request, the agency determines the total color accountability for each batch of lake (the amount of total color that was added to the batch of lake compared to the total color of the resulting batch). This accountability for total color is an indicator for the use of CGMP in the preparation or repack of a batch of lake. In its determination of accountability of the straight color in lakes for food use, the agency calculates a theoretical range for the expected total color content of a lake based on the minimum total color permitted in the listing regulation for the straight color, the maximum total color possible for the straight color (100 percent), the weight of straight color used to prepare the lake, and the weight of the lake. For example, for a 100-pound batch of FD&C Yellow No. 5 aluminum lake on alumina that was prepared from 25 pounds of FD&C Yellow No. 5, the theoretical range for the expected total color content of the lake would be from 21.8 percent to 25 percent. This theoretical range allows for variations in total color resulting from factors that normally occur during the manufacture of a lake, such as incomplete laking of the color and bleeding of the color during washing.

The agency is requesting comments on the usefulness of total color accountability as an indicator of the use of CGMP in the preparation and repacking of batches of lake.

C. Certification Requirement

The agency has evaluated the necessity, in the interest of public health, for the certification of lakes prepared from certified batches of straight color. The agency tentatively concludes that continued batch certification of lakes is necessary to protect the public health. The agency bases this tentative conclusion on two safety issues: The need to ensure the safety of the components (straight colors, precipitants, and substrata) used to prepare a lake; and the need to ensure that lakes are prepared and repacked under conditions of CGMP to prevent degradation of the straight color.

The agency's traditional means for postmarket assurance of product safety is the collection and analysis of a sample. However, as discussed in section IV.A.1.b. of this document, suitable analytical methodology is not available to identify and quantify all potentially harmful impurities that may be present in lakes. Therefore, the agency tentatively concludes that the premarket controls afforded by the certification requirement are necessary to allow FDA to verify that the conditions for safe use of lakes are being met. Therefore, the agency is proposing to list lakes in part 74 as color additives subject to certification.

Certification will allow the agency to confirm, before a lake is marketed, that only safe and suitable components have been used to prepare it; that any batches of straight color used in the lake were previously certified; and that the straight-color component of the lake has not degraded during manufacture or repacking. The agency tentatively concludes, however, that not all aspects of the current batch certification procedure are necessary to accomplish these objectives, and is proposing a simplified procedure for certifying batches of lakes. This proposed procedure is discussed in section VI.B. of this document.

The agency is specifically requesting, as comments on this proposal, comments on the usefulness of its proposed certification procedure for the intended purpose of protecting the public health.

D. Provisions of Proposed § 74.50 Lakes for Use in Foods

The agency is proposing new § 74.50 to list lakes permanently for use in foods as color additives subject to certification. Section 74.50(a)(1), (a)(2), and (a)(3) would designate the components permitted for use in lakes for coloring food. These paragraphs would authorize the use of certified batches of one or more of the straight colors FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Yellow No. 5, FD&C Yellow No. 6, and FD&C Red No. 40; the substratum alumina that either conforms to the requirements for alumina under § 73.1010(a)(1) and (b), or is a suspension in water of precipitated aluminum hydroxide prepared from aluminum sulfate that meets the requirements of the Food Chemicals Codex 2d ed. (1972) and sodium carbonate or sodium hydroxide that meets the requirements of the Food Chemicals Codex 3d ed. (1981); and precipitants that form the aluminum cation (Al^{+3}) and the anion chloride (Cl^{-1}) or sulfate (SO_4^{-2}).

Proposed § 74.50(a)(4) would provide that only diluents that are permitted in mixtures of straight colors for food use may be used in color additive mixtures containing lakes for such use.

Proposed § 74.50(b) would prescribe the following specifications for lakes for food use: Lead (not more than 10 ppm), arsenic (not more than 3 ppm), mercury (not more than 1 ppm). It would also state that lakes shall be free from impurities other than those named in the specifications, to the extent that such impurities may be avoided by CGMP.

Proposed § 74.50(c)(1) would permit the use of lakes in foods generally, except in foods subject to a standard of identity that does not authorize such use. The proviso relating to standardized foods would clarify that authorization for use of lakes in this regulation does not take precedence over any restrictions on color additive use in a food standard regulation.

Currently, all the straight colors authorized for use in lakes for food use are approved for the same food uses. Because this may not always be the case, however, proposed § 74.50(c)(2) would restrict the use of a lake manufactured from more than one straight color to those uses common to all of the straight colors in the lake.

Proposed § 74.50(d) would identify each lake made as prescribed in § 74.50(a) as a listed color and would prescribe the formation of its listed name from the names of the certified straight colors present in the lake (in descending order of predominance), followed by the name of the cation of the precipitant (aluminum) and followed by the words "lake on alumina." The anion component of the precipitant would not be included in the name of the lake because this anion is removed during processing under conditions of CGMP and is not a component of the final lake.

Proposed § 74.50(e)(1) would require that the label of the lake and of any mixtures prepared from it for coloring purposes conform to the requirements of § 70.25. Proposed § 74.50(e)(2) would require that the label of food products that contain a lake declare the presence of the lake in accordance with § 101.22(k) (21 CFR 101.22(k)). Proposed § 74.50(e)(3) would require that butter, cheese, and ice cream that contain a lake of FD&C Yellow No. 5 or FD&C Yellow No. 6 be labeled in accordance with § 101.22(k)(1). These proposed labeling provisions are discussed more fully in sections VI.C.2. and VI.C.3. of this document.

Proposed § 74.50(f) would require that all batches of lakes be certified in accordance with proposed regulations in part 80.

V. Safety Review and Proposed Actions for Lakes for Use in Drugs and Cosmetics

A. Review of Components of Lakes for Use in Drugs and Cosmetics

The current provisional listing regulations for lakes for use in drugs and cosmetics generally (§ 82.1051) and for use in external drugs and cosmetics only (§ 82.2051) provide for use of the following components: (1) The straight colors FD&C Blue No. 1 (§ 82.101), FD&C Blue No. 2 (§ 82.102), FD&C Green No. 3 (§ 82.203), FD&C Yellow No. 5 (§ 82.705), FD&C Yellow No. 6 (§ 82.706), D&C Blue No. 4 (§ 82.1104), D&C Green No. 5 (§ 82.1205), D&C Green No. 6 (§ 82.1206), D&C Orange No. 4 (§ 82.1254), D&C Orange No. 5 (§ 82.1255), D&C Orange No. 10 (§ 82.1260), D&C Orange No. 11 (§ 82.1261), FD&C Red No. 4 (§ 82.304), D&C Red No. 6 (§ 82.1306), D&C Red No. 7 (§ 82.1307), D&C Red No. 17 (§ 82.1317), D&C Red No. 21 (§ 82.1321), D&C Red No. 22 (§ 82.1322), D&C Red No. 27 (§ 82.1327), D&C Red No. 28 (§ 82.1328), D&C Red No. 30 (§ 82.1330), D&C Red No. 31 (§ 82.1331); D&C Red No. 33 (§ 82.1333), D&C Red No. 34 (§ 82.1334), D&C Red No. 36 (§ 82.1336), D&C Violet No. 2 (§ 82.1602), D&C Yellow No. 7 (§ 82.1707), D&C Yellow No. 8 (§ 82.1708), D&C Yellow No. 10 (§ 82.1710), and Ext. D&C Yellow No. 7 (§ 82.2707a); (2) the substrata alumina, blanc fixe, gloss white, clay, titanium dioxide, zinc oxide, talc, rosin, aluminum benzoate, and calcium carbonate; (3) precipitants containing the cations sodium (Na^{+1}), potassium (K^{+1}), aluminum (Al^{+3}), barium (Ba^{+2}), calcium (Ca^{+2}), strontium (Sr^{+2}), and zirconium (Zr^{+4}). Additionally, the lakes of FD&C Red No. 40 prepared with the substrata and precipitants listed above are permanently listed in §§ 74.1340 and 74.2340.

The identity and specifications for the straight colors used to prepare lakes are provided in the regulations cited above and generally cross-reference the requirements of the permanent listing for the straight color in part 74. As to substrata, § 82.3 defines three of the substrata used in lakes (alumina, blanc fixe, gloss white), but provides no specifications for the materials to be used. Part 82 does not identify or prescribe specifications for other substrata (clay, titanium dioxide, zinc oxide, talc, rosin, aluminum benzoate, and calcium carbonate) for lakes for drug or cosmetic use, or for the precipitants to be used in the preparation of these lakes.

1. Straight Colors

a. *Identity and uses.* As discussed in sections III.C.1. and III.C.6.a. of this document, the agency has tentatively concluded that several of the straight colors currently listed for use in lakes for coloring drugs and cosmetics either do not form lakes (D&C Red No. 17, D&C Red No. 30, D&C Red No. 36, D&C Violet No. 2, and D&C Green No. 6) or were not present in any batch of lake certified for drug or cosmetic use before the enactment of the 1960 amendments (D&C Orange No. 11, D&C Yellow No. 7, D&C Yellow No. 8, and D&C Green No. 5). The proposed termination of the provisional listing of these straight colors for use in lakes would mean that lakes of these straight colors would no longer be permitted for coloring drugs and cosmetics. (See Table 1 in section III.C. of this document for a summary of the current and proposed regulatory status of straight colors addressed in this rulemaking.)

The agency has already reviewed the identity and safety of the remaining straight colors currently permitted as components of lakes for coloring drugs and cosmetics, either as part of its scientific review of provisionally listed straight colors or in response to petitions for the review of new color additives (§ 71.1). On the basis of these reviews, the agency concluded that these straight colors are safe for use in drugs and cosmetics and issued regulations in part 74 permanently listing them for such uses. The agency is proposing to continue to permit the use of these straight colors as components of lakes for use in drugs and cosmetics, subject to the exceptions and proposed requirements discussed below.

In the **Federal Register** of September 30, 1975 (40 FR 44812), the agency restricted the provisional listing of FD&C Blue No. 2 to uses in foods and ingested drugs, the uses for which a petition had been filed for the permanent listing of the color additive. In the **Federal Register** of February 4, 1983 (48 FR 5252), the agency published a final rule permanently listing FD&C Blue No. 2 for use in food (§ 74.102) and ingested drugs (§ 74.1102). However, the provisional listing for the lake of FD&C Blue No. 2 (§ 82.102) was not amended accordingly. Therefore, despite the lack of a listing in part 74 authorizing the use of FD&C Blue No. 2 in cosmetics, the provisional listing regulations still permit the use of lakes of FD&C Blue No. 2 in cosmetics. Proposed § 74.2050 would correct this inconsistency by excluding FD&C Blue No. 2 from the straight colors permitted as components of lakes for cosmetic use.

The lakes of D&C Red No. 34 are provisionally listed in part 82 for use in drugs and cosmetics without any restrictions. However, the straight color is listed in part 74 for external drug and external cosmetic uses only (§§ 74.1334 and 74.2334), based on the agency's safety evaluation of the straight color. The proposed permanent listings for lakes for drug and cosmetic use (§§ 74.1050 and 74.2050) would correct this inconsistency by limiting the use of a lake to the use(s) permitted for the straight-color component(s) of the lake. Thus, under the proposed regulations, any lake containing D&C Red No. 34 would be allowed for use only in externally applied drugs and externally applied cosmetics.

b. *Use of previously certified batches.* Currently, under §§ 82.1051 and 82.2051, manufacturers may use uncertified batches of straight colors to prepare most lakes for drug and cosmetic use. The resulting lake is then subject to batch certification. The exceptions are the lakes of D&C Red No. 33 (§ 82.1333), D&C Red No. 36 (§ 82.1336), and FD&C Yellow No. 6 (§ 82.706), which must be prepared from previously certified batches of the straight color. (As discussed in section III.C.1. of this document, the agency is proposing to terminate the listing of D&C Red No. 36 as a straight-color component of a lake for drug or cosmetic use because it does not contain a salt-forming group.)

For the reasons discussed in section IV.A.1.b. of this document, the agency tentatively concludes that the lack of adequate analytical methods to determine levels of intermediates and other impurities in lakes prepared from uncertified batches of straight colors precludes the agency from prescribing conditions of safe use for lakes prepared from uncertified batches of straight colors. Accordingly, the agency is proposing to require that lakes for use in drugs and cosmetics, including externally applied drugs and cosmetics, be prepared from certified batches of straight colors.

As discussed above, under current regulations the lakes of many D&C straight colors are prepared from uncertified batches of the straight colors. However, lakes of D&C Red Nos. 6, 7, 31, and 34 are commonly produced in situ (a process described in section I. of this document). In FY–95 (Ref. 18), lakes of these straight colors represented about 55 percent of the total quantity of D&C lakes certified. The agency recognizes that its proposal to require the use of certified batches of straight color to prepare lakes for coloring drugs and cosmetics would, in effect, prohibit use of the in situ process for preparing lakes. However, as noted above, the reason for this proposed requirement is that the safety of lakes prepared from uncertified batches of straight color (including lakes prepared in situ) has not been demonstrated. Specifically, the agency is not aware of the existence of any methods that may be used to demonstrate that lakes produced by the in situ process meet the specifications for impurities, including carcinogenic constituents (e.g., para-toluidine in D&C Red Nos. 6 and 7), in the listing regulation for the straight color. Because FDA has the responsibility to ensure that color additives in foods, drugs, and cosmetics are safe for their intended uses, the fact that no methods that allow the safety of lakes produced in situ to be demonstrated appear to be available leads the agency to propose that use of the in situ method be discontinued.

FDA recognizes, however, that the potential costs associated with this proposed action may be considerable, and therefore solicits proven methodology for analysis of the lake for the impurities specified in the listing regulation for the straight color. If such information is received in response to this proposal, the need to prohibit the use of lakes prepared by the in situ process will be obviated.

c. *Stability.* The straight colors that FDA proposes to permit as components of lakes for drug or cosmetic use fall into the following eight groups, based on chemical structure (Refs. 16 and 17): Triphenylmethane (FD&C Blue No. 1, FD&C Green No. 3, D&C Blue No. 4); pyrazolone (FD&C Yellow No. 5); monoazo (FD&C Red No. 4, FD&C Red No. 40, FD&C Yellow No. 6, D&C Orange No. 4, D&C Red No. 6, D&C Red No. 7, D&C Red No. 31, D&C Red No. 33, and D&C Red No. 34); indigoid (FD&C Blue No. 2); fluoran (D&C Orange No. 5, D&C Orange No. 10, D&C Red No. 21, and D&C Red No. 27); xanthene (D&C Red No. 22 and FD&C Red No. 28); quinoline (D&C Yellow No. 10), and nitro (Ext. D&C Yellow No. 7). In FY–95, D&C lakes accounted for approximately 20 percent of the total poundage of lakes certified (Ref. 18). Of the D&C lakes certified in FY–95, approximately 55 percent were lakes of the monoazo dyes (primarily lakes of D&C Red Nos. 6 and 7), about 20 percent were lakes of the fluoran and xanthene dyes (primarily lakes of D&C Red Nos. 21 and 27), and about 15 percent were lakes of quinoline dye (D&C Yellow No. 10). No batches of lakes of the nitro dye (Ext. D&C Yellow No. 7) were certified in FY–95.

Section IV.A.1.c. of this document sets forth the agency's evaluation of data confirming the stability of certain straight colors in the triphenylmethane, pyrazolone, monoazo and indigoid classes during the laking process. This information includes data received from CTFA in response to the 1979 NOI (Ref. 19), data generated by FDA (Ref. 21), and published studies (Refs. 17 and 22). In addition to these data, the agency received a preliminary stability study for two additional lakes prepared from monoazo dyes (FD&C Red No. 4 and D&C Orange No. 4) (Ref. 26). The study, which was conducted by a color additive manufacturer, compared the levels of total color, uncombined intermediates, and subsidiary color in a certified batch of each straight color to the levels of these materials in an aluminum lake prepared from the batch. The study found no evidence that the straight color degraded during manufacture of the lake.

Based on its evaluation of all these data, the agency tentatively concludes that when prepared in accordance with CGMP, straight colors in the monoazo, triphenylmethane, pyrazolone, and indigoid classes do not degrade significantly during preparation of lakes for use in drugs or cosmetics.

The agency received no studies evaluating the stability of the straight colors in the fluoran, xanthene, quinoline, or nitro groups during the laking process. However, the agency has reviewed certification records for batches of lakes made from straight colors in the fluoran, xanthene (Ref. 27), and quinoline (Ref. 28) classes. The agency has not certified a batch of lake of Ext. D&C Yellow No. 7 since 1975; therefore, no recent certification data are available for lakes of Ext. D&C Yellow No. 7.

The lakes of straight colors in the fluoran, xanthene, and quinoline groups are not required to be prepared from certified batches of straight color. Nevertheless, for lakes of the quinoline dye, D&C Yellow No. 10, the agency determined that one manufacturer used certified lots of D&C Yellow No. 10 to prepare the lake. The agency evaluated certification reports for the 36 such batches of D&C Yellow No. 10 lake that were certified in FY–95. The agency compared the levels, adjusted for total color content of the lake, of one intermediate (24 batches) and one subsidiary color (36 batches) in the batches certified to the levels permitted for these impurities in the straight color. The agency also determined total color accountability for all 36 batches. As discussed in section IV.B.5. of this document, the total color accountability was determined by comparing the actual total color content of each batch of lake with the range of estimated total color content for the same batch. The actual total color content of the batch of lake was determined during certification of the batch. The range of expected total color content of the lake was determined from the amount (weight) of straight color in the batch, multiplied by the range of expected total color content of the batch of straight color (as a percentage), and divided by the weight of the batch of lake. The lower limit of the range of expected total color content of the straight color was the minimum total color permitted by the applicable specification in the listing regulation for the straight color. The upper limit of the range was assumed to be 100 percent.

All but one of the batches contained levels of the intermediate and subsidiary color that, adjusted for total color content of the lake, were within the limit set by the specification for the

straight color. These data show that it is technologically feasible to prepare lakes of D&C Yellow No. 10 from certified batches of straight color without significant increases in impurities derived from the straight color. Over 40 percent of the batches had a total color content within the theoretical range of expected color content. The data showed that, after an adjustment for the total color content of the lake, the levels of sulfonated quinaldines, which are presumptive products of decomposition, remained within the specification limit for the straight color. Therefore, the agency tentatively finds that the data are adequate to conclude that there is no significant degradation of D&C Yellow No. 10 during laking under conditions of CGMP.

The agency also evaluated FY–95 certification reports for lakes of the fluoran and xanthene straight colors. These lakes were all prepared from uncertified batches of straight color. To make its evaluation as accurate as possible, the agency compared levels (adjusted for total color content of the lake) of impurities found in the lakes to the maximum levels permitted for the same impurities in certified batches of straight color. The agency combined the data from the fluoran and xanthene classes of lakes because, during the laking process, the lactone group in the xanthene dyes is converted to the corresponding salt. Therefore, lakes of straight colors from the xanthene class are structurally identical to the lakes of comparable straight colors from the fluoran class.

The agency evaluated the certification reports from the 104 batches of lakes of the fluoran and xanthene straight colors that had been certified in FY–95, including 16 reports for lakes of the xanthene straight colors D&C Red No. 22 (3 batches) and D&C Red No. 28 (13 batches) and 88 reports for lakes of the fluoran straight colors D&C Orange No. 5 (4 batches), D&C Red No. 21 (23 batches), and D&C Red No. 27 (61 batches). The agency compared the levels (adjusted for total color content of the lake) of three intermediates (55 batches) and one subsidiary color (104 batches) in these batches to the levels of these impurities permitted by the specifications in the listing regulation for the straight color. The agency also determined the total color accountability for 104 batches. (The theoretical range of expected total color content for these batches of lakes was determined in the same manner as described above for batches of D&C Yellow No. 10 lakes.) All but four of the batches contained levels of the intermediates and subsidiary color that, after adjusting for the total color content of the batch, met the specifications for the straight color. These data show that it is technologically feasible to prepare lakes of the fluoran and xanthene straight colors without significant degradation of the straight color. Over 60 percent of the batches had a total color content that was within the theoretical range of expected color content. The analyses showed that, after adjustment for the total color content of the lake, levels of the subsidiary colors tribromofluoresceins (D&C Red Nos. 21 and 22) and the lower halogenated fluoresceins (D&C Red Nos. 27 and 28), which are prime indicators of possible dehalogenation (a decomposition reaction) of the parent compound, remained within the applicable specifications for the straight color. Therefore, the agency tentatively finds that the data are adequate to conclude that no significant degradation of these straight colors occurs during preparation of lakes under conditions consistent with CGMP.

The agency tentatively concludes that the available information provides sufficient evidence for the stability of the straight-color component of lakes prepared from colors in the monoazo, pyrazolone, triphenylmethane, indigoid, fluoran, xanthene, and quinoline classes. Although the agency has not evaluated data for all of the straight colors that FDA is proposing to approve as components of lakes for drug and cosmetic use, the agency tentatively concludes that the available information is adequate to conclude that there is no significant degradation of straight colors in these classes during the preparation of lakes in accordance with CGMP.

The agency has no data on the stability of the nitro straight color, Ext. D&C Yellow No. 7, during the laking process. No lakes of this straight color were certified in FY–95; the last batch of this lake was certified by the agency in 1975. Based on the absence of data concerning the stability of Ext. D&C Yellow No. 7 during the laking process, the agency tentatively concludes that it has insufficient data to ensure the safety of lakes prepared with Ext. D&C Yellow No. 7. Therefore, the agency is not proposing to permit the use of Ext. D&C Yellow No. 7 as a component of lakes for drug or cosmetic use. Consequently, the proposed termination of the provisional listings of lakes (see section VI.A.2. of this document) would remove the listing for lakes of Ext. D&C Yellow No. 7. Anyone interested in the permanent listing of lakes of Ext. D&C Yellow No. 7 should submit, as a comment on this proposal, data showing the stability of Ext. D&C Yellow No. 7 during the laking process. If data on the stability of Ext. D&C Yellow No. 7 lakes are received as a comment on this proposal, the agency will consider permanently listing the lakes of Ext. D&C Yellow No. 7 in the final rule.

The agency has also considered the safety evaluations for the straight colors discussed above. Based on these safety evaluations and the data showing the stability of straight colors when the laking process is conducted in accordance with CGMP, the agency tentatively concludes that, when lakes are prepared under conditions of CGMP, the certified batches of straight colors listed in proposed §§ 74.1051 and 74.2051 are safe for use in lakes for the same drug and cosmetic uses as part 74 allows for the straight colors. Therefore, the agency is proposing to permit certified batches of these straight colors as components of lakes for drug or cosmetic use.

As discussed in section IV.A.1.c. of this document, the agency is not proposing to establish a definition of CGMP for the preparation of lakes. Rather, FDA is proposing to permit any manufacturing method that ensures that straight colors do not significantly degrade during laking.

d. *Use of more than one straight color in a lake.* For the reasons discussed in section IV.A.1.d. of this document, the agency is also proposing to permit the preparation of a lake from certified batches of more than one straight color.

2. Substrata

a. *Regulatory approach.* The agency is proposing to include the following in its permanent listing regulations for lakes for drug and cosmetic use as substrata permitted for preparing such lakes: alumina, barium sulfate, kaolin, titanium dioxide, zinc oxide, talc, aluminum benzoate, calcium carbonate, and rosin. In addition, gloss white will also be permitted, although not explicitly listed in the regulations, because FDA is proposing to allow combinations of substrata. Thus, all of the substrata currently permitted as components of lakes for drug and cosmetic use under §§ 82.1051 and 82.2051, the provisional listing regulations, will continue to be permitted under the proposed regulations.

Ordinarily, the agency establishes identity and specification requirements for the color additive, rather than for the components used to make the color additive. However, because of the unique characteristics of lakes, the agency is proposing to regulate them under a broadly based, flexible system that permits the use, in drug and cosmetic products, of lakes that may contain a variety of components at varying levels. As noted above in section V.A.1.b. of this document, the agency is proposing to establish quality requirements (identity and specifications) for the straight-color components of lakes by requiring the use of certified batches of straight colors to prepare lakes. To ensure the safety of lakes prepared with the substrata listed above, and at the same time to permit manufacturers the continued flexibility to prepare lakes using any one or mixtures of these substrata at varying levels, the agency is proposing to establish quality requirements (identity and specifications) for these substrata or their components. In this way, the agency can ensure the safety of substrata used to prepare lakes without setting rigid specifications for the finished lake to limit impurities in substrata, which may be present at varying levels in a lake, and without requiring analysis of the lake itself for these impurities.

b. *Alumina.* In section IV.A.2. of this document, the agency reviewed the identity and safety of alumina, and tentatively concluded that alumina is safe as a substratum in lakes for food use. Furthermore, alumina is listed in § 73.1010 as a color additive for use in drugs generally at levels consistent with CGMP. Based on its review of the use of alumina as a substratum in lakes for food use and on the listing of alumina as a color additive safe for general use in drugs, the agency tentatively concludes that alumina is also safe for use as a substratum in lakes for drug and cosmetic use, provided that it either conforms to the identity and specification requirements in § 73.1010 (a)(1) and (b), or is a suspension in water of precipitated aluminum hydroxide prepared from aluminum sulfate and sodium carbonate or sodium hydroxide that meet the requirements of Food Chemicals Codex 2d ed. (1972) (aluminum sulfate) or Food Chemicals Codex 3d ed. (1981) (sodium carbonate and sodium hydroxide).

c. *Barium sulfate (blanc fixe).* Section 82.3(h) defines blanc fixe as "a suspension in water of precipitated barium sulfate." The definition provides no quality requirements for blanc fixe as a substratum. This definition covers both preformed barium sulfate that is subsequently suspended in water and barium sulfate that is prepared in situ, without subsequent recovery and drying.

The United States Pharmacopeia 23d ed. (1990) (USP) defines barium sulfate as "$BaSO_4$ 233.39; sulfuric acid, barium salt (1:1); Barium sulfate (1:1) [7727–43–7]" and provides specifications. The act recognizes the USP as an official drug compendium whose specifications are applicable to drug uses of substances listed therein (21 U.S.C. 321(g)(1)(a) and 351(b)). Although the USP specifications for barium sulfate and other compounds discussed below that are recognized by the USP are not directly applicable for purposes of this proposal, the agency tentatively concludes that the USP specifications for these compounds when used as drugs are also appropriate for these compounds when they are used as substrata for lakes to color drugs.

The agency has approved barium sulfate for use in adhesives (§ 175.105) and as a colorant for food-contact use (§§ 178.3297 (21 CFR 178.3297) and 176.170(b)(2)). As part of the current rulemaking, the agency also evaluated data relating to the safety of ingested and dermal uses of barium sulfate, and found no reports in the scientific literature of adverse effects resulting from topical use of barium sulfate. Moreover, scientific data establish that barium sulfate is highly insoluble. For example, the CRC Handbook of Chemistry and Physics (59th ed., 1978) reports that precipitated blanc fixe ($BaSO_4$) has a solubility in water of 0.246 milligram (mg)/100 gram (g) at 26 °C and 0.4113 mg/100g at 100 °C and 60 mg/100g in 3 percent HCl. Consequently, its absorption and toxicity are low. However, to provide further assurance of safety, the agency is proposing to retain the current specification for soluble barium of not more than 0.05 percent in lakes that contain a barium salt (§ 82.5(b)(3)). The agency tentatively concludes that barium sulfate that meets the requirements of the USP is safe for use as a substratum in lakes for drug and cosmetic use (Ref. 13).

The definition in § 82.3(h) for blanc fixe and the definition in § 82.3(i) for gloss white (a suspension in water of co-precipitated aluminum hydroxide and barium sulfate) suggest that barium sulfate may be prepared in situ either alone or with alumina during the manufacture of lakes. The International Pharmacopoeia 3d ed. (1979) describes the preparation of barium sulfate suspension by mixing barium chloride solution, sulfate-free ethanol, and potassium sulfate solution. The WHO's Specifications for Reagents Mentioned in the International Pharmacopoeia (1963) describes barium chloride and potassium sulfate and provides specifications for each. However, the agency has no information to confirm that the International Pharmacopeia method and the identity and specifications for barium chloride in the WHO publication represent CGMP for preparing barium sulfate in situ as substrata for lakes for drug or cosmetic use. Therefore, the agency requests comments on appropriate methodology for the in situ preparation of barium sulfate as a substratum, and on identity requirements and specifications for reagents used to prepare this substratum. If such comments are received and the information provided is satisfactory, the agency will list barium sulfate prepared in situ as a substratum in lakes for use in drugs and cosmetics.

The agency is also proposing to substitute the name "barium sulfate" for "blanc fixe." CTFA's comment on the 1979 NOI suggested this change in terminology. The agency notes that, in the past, the name "blanc fixe" was typically used to identify the substratum composed of barium sulfate in requests for certification of lakes. However, more recently, the name typically used for this substratum in requests for certification is "barium sulfate." Therefore, the agency agrees with CTFA's comment and is proposing to substitute the name "barium sulfate" for the name "blanc fixe."

d. *Gloss white.* Section 82.3(i) defines gloss white as "a suspension in water of co-precipitated aluminum hydroxide and barium sulfate". As discussed above, the agency is proposing to permit both alumina and barium sulfate as substrata in lakes for drug or cosmetic use.

Therefore, the agency is proposing not to list gloss white as a substratum in lakes for drug and cosmetic use, because the proposed regulations provide for combinations of substrata.

e. *Kaolin (clay).* In the 1979 NOI, the agency stated that the term "clay" does not adequately identify the chemical structure of this material. The NOI requested comments identifying the material and suggesting specifications to ensure its safe use as a substratum in lakes. CTFA's comment, submitted in response to the 1979 NOI, identified kaolin as the substratum material used in lakes.

The USP (23d ed., 1995) defines kaolin as "a native hydrated aluminum silicate, powdered and freed from gritty particles by elutriation," and provides specifications. The agency has affirmed clay (kaolin) as GRAS in § 186.1256 as an indirect food ingredient. Section 186.1256 identifies clay (kaolin) as hydrated aluminum silicate ($Al_2O_3.2SiO_2.nH_2O$) and provides a CAS Registry number of 1332–58–7.

The agency has reviewed data relating to the safety of ingested and dermal uses of kaolin and bentonite (a related

mineral containing magnesium aluminum silicate). These data included data developed for the GRAS review of these compounds and data in a color additive master file, which included dermal toxicity data. The agency also considered a 90-day feeding study on magnesium aluminum silicate.

Based on its review, the agency finds that kaolin is inert when applied externally and is not absorbed by the gastrointestinal tract. A search of the scientific literature revealed no reports of adverse effects resulting from topical use of kaolin. Therefore, the agency tentatively concludes that kaolin that meets USP specifications is safe for use as a substratum in lakes for drug and cosmetic use (Ref. 13).

f. *Titanium dioxide.* The color additive regulation for titanium dioxide (§ 73.575) identifies titanium dioxide as "synthetically prepared TiO_2" and provides specifications. Titanium dioxide is listed as a color additive exempt from certification for use in food (§ 73.575), in drugs generally (§ 73.1575), in cosmetics generally (§ 73.2575), and in certain medical devices (§ 73.3126). The USP (23d ed., 1995) recognizes titanium dioxide, defines it as "TiO_2 79.88; Titanium oxide (TiO_2); Titanium oxide (TiO_2) [13463–67–7]," and provides specifications.

The agency has evaluated the available data relating to the safety of ingested and dermal uses of titanium dioxide, including data supporting its use as a color additive, and more recent genetic and chronic toxicity studies in rats and mice. Based on these data, the agency tentatively concludes that titanium dioxide that meets the requirements of § 73.575 (a)(1) and (b) is safe for use as a substratum in lakes for drug and cosmetic use (Ref. 13).

g. *Zinc oxide.* The color additive regulation for zinc oxide (§ 73.1991) identifies zinc oxide as "a white or yellow-white amorphous powder manufactured by the French process (described as the indirect process whereby zinc metal isolated from the zinc-containing ore is vaporized and then oxidized)." Section 73.1991(b) provides specifications for zinc oxide. The USP (23d ed., 1995) recognizes zinc oxide, defines it as "ZnO 81.39; Zinc oxide; Zinc Oxide [1314–13–2]," and provides specifications.

Zinc oxide is listed as a color additive exempt from certification for use in externally applied drugs (§ 73.1991) and in cosmetics generally (§ 73.2991). Zinc oxide is also GRAS for use as a dietary supplement (§ 182.5991) and as a nutrient (§ 182.8991).

The agency has evaluated data relating to the safety of ingested and dermal uses of zinc oxide, including a safety review of zinc compounds as food ingredients by the Select Committee on GRAS Substances of the Federation of American Societies for Experimental Biology and the data supporting the safety of zinc oxide as a color additive. Based on these data, the agency tentatively concludes that zinc oxide that meets the requirements of § 73.1991 (a)(1) and (b) is safe for use as a substratum in lakes for drug and cosmetic use (Ref. 13).

h. *Talc.* The color additive regulation for talc (§ 73.1550) identifies talc as "a finely powdered, native, hydrous magnesium silicate sometimes containing a small proportion of aluminum silicate" and provides specifications. Talc is a color additive exempt from certification for use in coloring drugs generally (§ 73.1550) and is GRAS for certain indirect food uses (§§ 182.70 and 182.90). The USP (23d ed., 1995) defines talc as "a native, hydrous magnesium silicate, sometimes containing a small proportion of aluminum silicate," and provides specifications.

The agency has evaluated the available data relating to the safety of ingested and dermal uses of talc, including a safety review of silicates (including talc) as food ingredients by the Select Committee on GRAS Substances of the Federation of American Societies for Experimental Biology and the data supporting the safety of talc as a color additive. Based on these data, the agency tentatively concludes that talc that meets the requirements of § 73.1550 (a)(1) and (b) is safe for use as a substratum in lakes for drug and cosmetic use (Ref. 13).

i. *Aluminum benzoate.* During the preparation of a lake with aluminum benzoate as a substratum, aluminum benzoate is produced in situ using benzoic acid and the aluminum cation. The Merck Index (11th ed., 1989) identifies aluminum benzoate as $C_{21}H_{15}AlO_6$ or $Al(C_6H_5COO)_3$ with a molecular weight of 390.30. The USP (23d ed., 1995) recognizes aluminum chloride, aluminum sulfate, and benzoic acid (the components used to prepare aluminum benzoate). The USP (23d ed., 1995) defines benzoic acid as "$C_7H_6O_2$ 122.12; Benzoic acid; Benzoic acid [65–85–0]" and provides specifications. The U.S.P. (23d ed., 1995) defines aluminum chloride as "$AlCl_3$ $6H_2O$; Aluminum chloride, hexahydrate; Aluminum chloride hexahydrate [7784–13–6]; Anhydrous 133.34 [7446–70–0]" and provides specifications. The USP (23d ed., 1995) defines aluminum sulfate as "$Al_2(SO_4)_3$ xH_2O (anhydrous) 342.16; Sulfuric acid, aluminum salt (3:2), hydrate; Aluminum sulfate (2:3) hydrate [17927–65–0]; Anhydrous 342.16 [10043–01–3]" and provides specifications.

The agency has affirmed benzoic acid (§ 184.1021) and sodium benzoate (§ 184.1733) as GRAS for use in food as flavoring agents and adjuvants and as antimicrobial agents. In addition, the standard of identity for margarine (21 CFR 166.110) permits the use of the sodium, potassium, and calcium salts of benzoic acid as preservatives. The agency has also reviewed safety data on the ingested and dermal uses of benzoic acid and benzoates, including a safety review of benzoic acid and benzoates as food ingredients by the Select Committee on GRAS Substances of the Federation of American Societies for Experimental Biology and information identified in a search of the scientific literature published from 1981 to 1987 on benzoic acid and benzoates. The agency's review found no reports of adverse toxicological effects of ingested or topically administered benzoic acid.

The agency's evaluation of the safety of aluminum salts, including aluminum chloride and aluminum sulfate, is discussed in section IV.A.2. of this document under the safety of alumina as a substratum in lakes for food use.

Based on these data, the agency tentatively concludes that aluminum benzoate prepared from benzoic acid and aluminum chloride or aluminum sulfate that meet the USP specifications for these compounds is safe for use as a substratum in lakes for drug and cosmetic use (Ref. 13).

j. *Calcium carbonate.* The color additive regulation for calcium carbonate (§ 73.1070) identifies calcium carbonate as "a fine, white, synthetically prepared powder consisting essentially of precipitated calcium carbonate ($CaCO_3$)." Calcium carbonate is listed as a color additive exempt from certification for use in drugs generally (§ 73.1070). Calcium carbonate has also been affirmed as GRAS for general food use (§ 184.1191) and is GRAS for dietary supplement use (§ 182.5191).

The agency has evaluated the available data relating to the safety of ingested and dermal uses of calcium salts, including calcium carbonate. These data, including a safety review of calcium salts as food ingredients by the Select Committee on GRAS Substances of the Federation of American Societies for Experimental Biology and data supporting the safety of calcium carbonate as a color additive, establish that calcium is ubiquitous in nature and that its salts are commonly found in food. Based on its review, the agency tentatively concludes that calcium carbonate that meets the requirements of § 73.1070 (a)(1) and (b) is safe for use as a substratum in lakes for drug and cosmetic use (Ref. 13).

k. *Rosin.* "Rosin" is a generic term encompassing a variety of substances that may vary considerably in their composition. For example, the Merck Index (11th ed., 1989) defines rosin as "Residue left after distilling off the volatile oil from the oleoresin obtained from" various species of *Pinus.* Gum rosin is obtained from the oleoresin of living pine trees and wood rosin is extracted from the wood of the stumps of pine trees. Another type of rosin is tall oil rosin, a by-product of the wood pulp industry. The CRC Handbook of Chemical Synonyms and Trade Names (8th ed., 1978) also lists rosin under its synonym 'colophony' and defines it as "The residue which remains after the volatile oils have been removed by the distillation of crude turpentine." The CRC Handbook lists several varieties of rosins obtained from different species of pine.

Rosin is approved as a food additive for use as a natural flavoring substance for alcoholic beverages (§ 172.510). Various rosins and rosin derivatives are approved for other food additive uses: In coatings of fresh citrus fruits (§ 172.210) and as plasticizing materials or softeners in chewing gum base (§ 172.615). Rosin and rosin derivatives are approved as diluents in color additive mixtures for use in inks for marking food supplements in tablet form, gum, confectionery, fruit, and vegetables (§ 73.1(b)) and, by reference, in inks for branding pharmaceutical forms (§ 73.1001(a)(2)). Numerous rosins and rosin derivatives are approved as indirect food additives (substances that are not added to food directly but that may become part of food through migration from materials in contact with the food) (§ 178.3870).

The agency has evaluated the available data relating to the safety of rosin and related compounds, including data supporting the food additive and color additive diluent uses of rosin and rosin derivatives, and data obtained by the agency from searches of the scientific literature in 1988 and 1994 for information concerning rosin. The agency's literature searches did not find any reports of adverse toxicological effects from ingested rosin. However, many publications reported cases of allergic contact dermatitis and occupational asthma resulting from exposure to certain rosin materials (Ref. 13).

In the 1979 NOI, the agency requested information on the chemical composition of rosin and suggestions for specifications to ensure its safe use in lakes for drug and cosmetic use. CTFA's comment on the 1979 NOI provided general information on rosin, but did not identify the specific types of rosin that are used as substrata in lakes. However, the monograph for rosin in the CTFA International Cosmetic Ingredient Dictionary, 5th ed., 1993 defines rosin as "the residue left after distilling off the volatile oil from the oleoresin obtained from *Pinus palustris* and other species of *Pinaceae* (Ref. 29). Because this definition clearly identifies gum rosin, and not wood rosin or tall oil rosin, the agency tentatively concludes that the rosin used in cosmetic products is gum rosin.

Based on its review of available data (Refs. 29 and 30), the agency has tentatively identified the rosin used as a substratum in lakes for drug and cosmetic use as gum rosin, and is proposing to define and set specifications for rosin based on this tentative conclusion. It is unclear, however, whether all lake manufacturers who use rosin as a substratum are using gum rosin. Therefore, any manufacturer who uses rosin other than gum rosin that meets the requirements in the proposed regulation as a substratum in lakes for drug or cosmetic use should submit information about the identity and specifications of such rosin as a comment on this proposal. The comment should include the manufacturer's product specifications and any analytical data that establish the identity and purity of the rosin. The agency will consider modifying the identity and specifications for rosin if it receives information to substantiate the safe use of rosin other than gum rosin.

In response to the concerns raised by the agency about the topical safety of rosin lakes, the CTFA submitted reports of numerous human sensitization and photosensitization studies on cosmetic products colored with rosinated lakes of D&C Red No. 6, D&C Red No. 7, and D&C Red No. 34. The studies involved a total of 2,381 subjects for sensitization and 312 subjects for photosensitization; products tested included lipsticks, lip liner, blush, rouge, and nail polish. No skin sensitization/photoallergic reactions were reported in any of the test subjects. The agency tentatively concludes that these studies show that there is little risk of developing a skin sensitization reaction from skin contact with various cosmetic products that contain rosinated color additive lakes at levels found in such products, and, therefore, that use of rosin as a substratum in color additive lakes for external drug and cosmetic use is safe (Ref. 14).

3. Precipitants

a. *Aluminum (Al^{+3}), barium (Ba^{+2}), and calcium (Ca^{+2}) cations.* The safety of salts of the cations aluminum, barium, and calcium is discussed in the safety evaluations of alumina (sections IV.A.2. and V.A.2.b. of this document), barium sulfate (blanc fixe) (section V.A.2.c. of this document), and calcium carbonate (section V.A.2.j. of this document). Based on those evaluations, the agency tentatively concludes that these cations are safe as components of precipitants used in the preparation of lakes for drug and cosmetic use (Ref. 13). However, as stated in the discussion of the safety of barium sulfate as a substratum (section V.A.2.c.), the agency is proposing to retain the current specification for soluble barium (0.05 percent) in lakes for drug or cosmetic use.

b. *Zirconium cation (Zr^{+4}).* Zirconium is a rare earth metal that closely resembles aluminum in pharmacological and chemical properties. The agency has evaluated data relating to the safety of ingested and dermal uses of zirconium salts. These data, including a review of published literature on the toxicity, physiological effects, and medicinal uses of zirconium and its salts, revealed nothing to indicate any likelihood of harm from topical administration or ingestion of low levels of zirconium salts (Ref. 13). Therefore, the agency tentatively concludes that zirconium is safe as a component of precipitants used in lakes for drug and cosmetic use.

c. *Sodium (Na^+) and potassium (K^+) cations.* The salts of the sodium and potassium cations, sodium chloride and potassium chloride, are ubiquitous in nature. Sodium chloride (table salt) is GRAS (§ 182.1(e)) and potassium chloride has been affirmed as GRAS for food use (§ 184.1622). Most of the permanently listed water-soluble straight colors subject to certification, including all the straight colors used as components of lakes under § 82.51, are sodium salts. By virtue of their GRAS status, sodium chloride and potassium chloride are permitted under § 73.1(a)(1) for use as diluents in color additive mixtures for coloring food, and under § 73.1001(a)(1) and (b) are also permitted for use as diluents in color additive mixtures for coloring ingested drugs and externally applied drugs. Therefore, the agency tentatively concludes that these salts are safe for

use as components of precipitants in lakes for drug or cosmetic use.

d. *Strontium cation (Sr^{+2}).* Strontium is an alkaline earth element and is a metabolic analog of calcium. The agency has evaluated published data on the safety of strontium cation. Because strontium can substitute for calcium, it can influence certain physiological parameters; however, the concentrations required to adversely affect these parameters are significantly higher than the levels encountered when strontium is used as a precipitant in a lake. Based on its review of the published data, the agency tentatively concludes that the use of strontium cation is safe as a component of precipitants used in lakes for drug and cosmetic use (Ref. 13).

e. *Accompanying anions.* In section IV.A.3.c. of this document, the agency considered the safety of soluble chlorides and sulfates as components of precipitants in lakes for food use. As discussed more fully in that section, chloride and sulfate anions are found in many GRAS ingredients. In the safety reviews conducted as part of the GRAS rulemakings for these ingredients, the agency found that ingestion of chlorides and sulfates (in the presence of the accompanying cation) was safe at levels that vastly exceed the possible level of exposure to these anions as components of lakes. Therefore, the agency tentatively concludes that the presence of these anions in lakes prepared for food use is safe (Ref. 13). Furthermore, by virtue of their GRAS status, the salts of chloride and sulfate are permitted under § 73.1(a)(1) for use as diluents in color additive mixtures for coloring food, and under § 73.1001 (a)(1) and (b) are also permitted for use as diluents in color additive mixtures for coloring ingested drugs and externally applied drugs. Therefore, the agency tentatively concludes that these anions are safe for use as components of precipitants in lakes for drug or cosmetic use.

f. *Tentative conclusions.* The agency tentatively concludes that the water-soluble chloride and sulfate salts of aluminum, barium, calcium, zirconium, sodium, potassium, and strontium are safe for use as components of precipitants in the preparation of lakes for drug or cosmetic use. The agency notes that, although these substances are discussed as distinct chemical compounds, the proposal would permit their use in other forms to prepare lakes, provided that no substance or ion that is not provided for in the regulation is introduced. For example, the proposal would allow the use of a precipitant formed in situ from the combination of a listed cation (as the hydroxide) and either hydrochloric or sulfuric acid.

4. Diluents in Color Additive Mixtures Containing Lakes

The agency is not proposing any limitations on the diluents permitted in color additive mixtures for cosmetic use that are made with lakes. The part 74 listings for the straight colors that are components of lakes for cosmetic use do not limit the use of diluents in mixtures for coloring cosmetics. Moreover, no regulation in part 73 specifies safe diluents for cosmetic use. However, the agency notes that cosmetic products containing color additive mixtures are subject to the adulteration provisions of section 601 of the act.

B. Specifications for Lakes for Use in Drugs and Cosmetics

1. Intermediates and Other Impurities Derived from Straight Colors

The provisional listing regulations for lakes for drug or cosmetic use (§§ 82.1051 and 82.2051) contain specifications for ether extracts (not more than 0.5 percent) and intermediates (not more than 0.2 percent) in such lakes. The agency established these specifications to limit the levels of intermediates and other impurities in lakes prepared from uncertified batches of straight colors. However, as discussed in section IV.A.1.b. of this document, proven methodology to analyze all lakes for intermediates and other impurities is not available. Therefore, the agency is proposing to require the use of certified batches of straight colors to ensure safe levels of intermediates and other impurities in lakes. In light of this proposed requirement, the agency tentatively concludes that specifications for ether extracts, intermediates, and subsidiary colors in lakes for drug or cosmetic use are unnecessary to ensure the safety of such lakes.

2. Precipitants

Because lakes are washed when prepared in accordance with CGMP, the agency anticipates that only low levels of water-soluble contaminants from these precipitants will remain in the finished lake. Furthermore, the proposed specifications for the lake would limit the levels of contaminants of toxicological concern (primarily heavy metals) permitted in the end product. However, the agency tentatively concluded in its discussion of barium sulfate as a substratum (section V.A.2.c. of this document) and barium as a precipitant (section V.A.3.a. of this document) that a specification to limit soluble barium in lakes for drug or cosmetic use should be retained to provide an extra margin of safety. Based on these considerations, the agency tentatively concludes that specifications for residues from precipitants used in lakes for drug or cosmetic use, except for soluble barium, are unnecessary.

3. Heavy Metals

As discussed in section IV.B.2. of this document, the manufacturing processes for lakes involve reagents that are sources of potential contamination by metals. Currently, lakes are subject to the following general specifications in § 82.5 for provisionally listed colors for drug or cosmetic use: 20 ppm lead, 2 ppm arsenic, 0.003 percent total heavy metals (except for lead and arsenic), and, for those colors that contain a barium salt, a limit of 0.05 percent on soluble barium. As discussed in section IV.B.2. of this document, FDA is proposing limits for lead, arsenic, and mercury in lakes for food use. The agency tentatively concludes that specifications to limit the levels of lead, arsenic, mercury, and soluble barium are also necessary to ensure safe use of lakes in drugs and cosmetics. The agency is unaware of any other heavy metals that have a significant level of toxicity and that would be expected to occur in lakes. Therefore, the agency tentatively concludes that a general heavy metal specification is unnecessary to ensure the safety of lakes for drug or cosmetic use.

The agency is proposing to maintain the specifications of not more than 20 ppm lead and 0.05 percent soluble barium for lakes for drug or cosmetic use and to raise the arsenic specification from not more than 2 ppm to not more than 3 ppm. The agency is also proposing to include a mercury specification of not more than 1 ppm. The proposed levels for arsenic and mercury are the levels that the agency tentatively concludes are necessary to ensure the safety of color additives used in drugs and cosmetics, based on safety evaluations in rulemakings for the permanent listing of numerous straight colors.

4. Soluble Chlorides and Sulfates

Current §§ 82.1051 and 82.2051 contain a specification that limits the content of the soluble chloride and sulfate anions in lakes for drug and cosmetic use. As noted in section IV.B.3. of this document, most of the water-soluble chloride and sulfate anions are washed out during preparation of the lake under CGMP conditions. In its safety review, the agency found that these anions are safe in foods, drugs, and cosmetics at levels considerably greater than those found in lakes (Ref. 13). Therefore, the agency tentatively concludes that a specification to limit the levels of soluble chlorides and sulfates is unnecessary to ensure the safety of lakes prepared in conformity with CGMP for drug or cosmetic use.

5. Other Residues

The 1979 NOI requested information on certain other chemicals occasionally used in the laking process, such as citrate, acetate, and surfactants. CTFA's comment did not provide a list of such substances, but stated that the substances used were GRAS. A comment from a color manufacturer identified specific substances that the company uses in the manufacture of lakes and characterized them as food additives or GRAS substances. The company stated that the surfactants were used at very low concentrations and that the nature of the use prevented any significant amount from being present in the final lake.

The agency recognizes that it is impracticable to set specifications for every chemical used in the manufacture of a color additive. The agency generally sets specifications to limit the substances that are normally expected to be present in the final additive, especially those substances that could present a safety hazard at foreseeable levels of exposure. The agency agrees with the comment that the surfactants and other chemicals mentioned are used at low concentrations. The agency further agrees that, because of the washing of lakes during manufacture, these chemicals are unlikely to be present at significant levels in a lake that has been prepared under conditions of CGMP and that is otherwise in compliance with applicable regulations. Therefore, the agency is not proposing specifications for residues of these substances in lakes for drug and cosmetic use.

6. Other Impurities and Contaminants

The agency has tentatively concluded above that specifications to limit the levels of total heavy metals (except lead, arsenic, mercury, and soluble barium), soluble chlorides and sulfates, and residues of other chemicals are unnecessary to ensure the safety of lakes for drug and cosmetic use, as long as a general provision is included in the specifications for lakes to ensure that they are prepared in conformity with CGMP. Therefore, the agency is proposing to continue the requirement in existing § 82.5 that lakes be free from all impurities other than those named in the specifications, to the extent that such impurities can be avoided by CGMP.

C. Certification Requirement

As discussed in section IV.C. of this document, the agency has evaluated the necessity for the certification of lakes and has tentatively concluded that certification is necessary to protect the public health. The simplified procedure the agency is proposing for certification of lakes is described in section VI.B. of this document.

D. Provisions of Proposed Regulations

1. Proposed Section 74.1050 Lakes for Use in Drugs

The agency is proposing a new § 74.1050 to list lakes permanently for use in drugs as color additives subject to certification. Paragraphs (a)(1), (a)(2), and (a)(3) would designate the components permitted for use in preparing lakes for coloring drugs. These paragraphs would permit the use of one or more certified batches of one or more of the color additives FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Yellow No. 5, FD&C Yellow No. 6, FD&C Red No. 4, FD&C Red No. 40, D&C Blue No. 4, D&C Orange No. 4, D&C Orange No. 5, D&C Orange No. 10, D&C Red No. 6, D&C Red No. 7, D&C Red No. 21, D&C Red No. 22, D&C Red No. 27, D&C Red No. 28, D&C Red No. 31, D&C Red No. 33, D&C Red No. 34, and D&C Yellow No. 10 (see Table 1); one or more of the substrata alumina, aluminum benzoate, barium sulfate, calcium carbonate, kaolin, rosin, talc, titanium dioxide, and zinc oxide; and one or more precipitants that form the cation aluminum (Al^{+3}), barium (Ba^{+2}), calcium (Ca^{+2}), potassium (K^{+}), sodium (Na^{+}), strontium (Sr^{+2}), or zirconium (Zr^{+4}), and the anion chloride (Cl^{-}) or sulfate (So^{4-2}). Paragraph (a)(3) would require that the substrata (except alumina), or for aluminum benzoate, the components of the substrata, conform to the identity and purity requirements of the applicable color additive regulation or, if no such regulation exists, to the requirements of the USP 23d ed. (1995). The paragraph would require that alumina conform to the requirements of § 74.50(a)(3).

Proposed § 74.1050(a)(4) would limit the diluents used in color additive mixtures containing lakes to those diluents that are suitable and that are listed in § 73.1001 as diluents for drug use. This requirement is consistent with the existing requirements for mixtures of color additives for drug use and will ensure that color additive mixtures containing lakes are safe for drug use. As discussed in section III.C.2.b. of this document, the agency is proposing to amend § 73.1001 to permit additional diluents in color additive mixtures for drug use.

Proposed § 74.1050(b) would prescribe the following specifications for lakes for drug use: lead (not more than 20 ppm); arsenic (not more than 3 ppm); mercury (not more than 1 ppm); soluble barium (not more than 0.05 percent). It would also state that such lakes shall be free from impurities other than those named in the specifications, to the extent that such impurities may be avoided by CGMP.

Proposed § 74.1050(c)(1) would restrict the use of a lake to uses common to all of the straight colors in the lake. For example, use of a lake of the straight colors FD&C Red No. 4 and FD&C Blue No. 1 would be limited to externally applied drugs and cosmetics because of the limitations on the use of FD&C Red No. 4. Proposed § 74.1050(c)(2) would also specify that where regulations for the straight color impose quantitative limitations for the use of such straight color in drug products, the amount of such straight color in a lake shall be considered as a part of the total amount of such straight color permitted in a drug product.

Proposed § 74.1050(d) would identify each lake made as prescribed in § 74.1050(a) as a listed color and would prescribe the formation of its name from the names of the straight colors present in the lake (in descending order of predominance), followed by the names of the cations of the precipitants, and followed by the words "Lake on _____ and _____" (inserting the listed names of the substrata in descending order of predominance). For example, the name of a lake prepared by the extension of FD&C Yellow No. 5, FD&C Yellow No. 6 and D&C Orange No. 5 on alumina using aluminum chloride as the precipitant would be "FD&C Yellow No. 5, FD&C Yellow No. 6 and D&C Orange No. 5 Aluminum Lake on Alumina". The anion component of the precipitant would not be included in the name of the lake because this anion is removed during processing and is not a component of the finished lake.

Proposed § 74.1050(e)(1) would require that the label of the lake and of any mixtures prepared from it for coloring purposes conform to the requirements of § 70.25 of this chapter. Proposed § 74.1050(e)(2) would require that drug products that contain a lake of FD&C Yellow No. 5 comply with the label declaration requirements of § 74.1705(c)(2) and (c)(3). Proposed § 74.1050(e)(3) would require that drug products that contain a lake of FD&C Yellow No. 6 comply with the label declaration requirements of proposed § 74.1706(c)(2). These proposed labeling

provisions are discussed more fully in sections VI.C.2. and VI.C.3. of this document.

Proposed § 74.1050(f) would require that all batches of lakes be certified in accordance with proposed regulations in part 80.

2. Proposed § 74.2050 Lakes for Use in Cosmetics

The agency is proposing new § 74.2050 to list lakes permanently for use in cosmetics as color additives subject to certification. Proposed paragraph (a) would identify the components permitted for use in preparing lakes for coloring cosmetics by incorporating the identity provisions proposed in § 74.1050(a)(1), (a)(2), and (a)(3) for lakes for use in drugs, except that FD&C Blue No. 2 would not be permitted as a straight-color component in lakes for cosmetic use. Proposed § 74.2050(a) also would incorporate the specifications in proposed § 74.1050(b).

Proposed § 74.2050(b) would prescribe the same uses and restrictions for lakes for cosmetic use as proposed for lakes for drug use in § 74.1050(c).

Proposed § 74.2050(c) would identify each lake made as prescribed in § 74.2050(a) as a listed color and would prescribe the formation of its name in the same manner as proposed in § 74.1050(d).

Proposed § 74.2050(d)(1) would require that the label of the lake and of any mixtures prepared from it for coloring purposes conform to the requirements of § 70.25. Proposed § 74.2050(d)(2) would require the ingredient labeling of lakes in cosmetic products to comply with proposed § 701.3(c)(1)(i). These proposed labeling provisions are discussed more fully in sections VI.C.2. and VI.C.3. of this document.

Proposed § 74.2050(e) would require that all batches of lakes be certified in accordance with proposed regulations in part 80.

VI. Other Proposed Actions

A. Removal of Provisional Listings

1. Removal of 21 CFR Part 81

The agency is proposing to remove Part 81 *General Specifications and General Restrictions for Provisional Color Additives for Use in Foods, Drugs, and Cosmetics.* This part was originally issued in 1960 (25 FR 9759, October 12, 1960) to provide for the listing of commercially established color additives permitted for provisional use under the transitional provisions of the 1960 amendments, and to establish conditions for the continued provisional listing of these color additives pending completion of studies required to establish their safety for permanent listing.

Currently, only lakes are listed in § 81.1 *Provisional lists of color additives.* The final rule based on this proposal will remove these entries. When the final rule becomes effective, the section will no longer be necessary. The remaining three sections, § 81.10 *Termination of provisional listings of color additives;* § 81.30 *Cancellation of certificates;* and § 81.32 *Limitations of certificates,* concern past agency actions on provisionally listed color additives and are purely of historical interest, as the color additives referred to in these sections are no longer permitted for use in FDA-regulated products. In addition, after FDA completes action on this proposal and the final rule terminating all provisional color additive listings becomes effective, no further additions to part 81 will be possible. Therefore, the agency is proposing to remove the entire part.

2. Removal of 21 CFR Part 82

The agency is proposing to remove Part 82—*Listing of Certified Provisionally Listed Colors and Specifications.* The purpose of this part was to prescribe the identity, specifications, and uses of provisionally listed color additives. Currently, the regulations in this part apply only to lakes. When the final rule resulting from this proposal becomes effective, all remaining provisional listings in part 82 will terminate. Therefore, the agency is proposing to remove the entire part.

B. Certification Procedure for Lakes

1. Overview

The current requirements and procedures for batch certification of lakes are described in part 80. Under the provisions of § 80.21, a firm that has prepared or repacked a batch of lake submits a request for certification of the batch to FDA. The request provides the name, batch number, and batch weight of the lake or repack; information on storage pending certification; and the uses for which certification is requested. For a newly manufactured batch of lake, the request also provides the name, quantity, and (where applicable) the lot number of the straight color used, the identity of the precipitant used, the identity and quantity of the substratum used, and the identity (name and address) of the manufacturer of the lake. For a repack of a certified batch of lake, the request provides the original lot number, certified color content, and name and address of the source from which the repacker obtained the lake. (See section III.A.7. of this document for the proposed definition of "repack.") The request must be accompanied by the required certification fee, which varies according to the type of request and weight of the batch (§ 80.10), and a representative sample from the batch accompanied by any label or labeling intended for use with the batch (§ 80.22).

The agency evaluates the request and analyzes the sample to ensure that they meet the requirements of part 82, including identity, specifications, and uses of the lake. After evaluation of the information in the request and laboratory analysis of the sample, the agency determines whether the request meets the requirements for certification. For those requests that meet these requirements, the agency issues the requester a certificate (§ 80.31). The certificate states the name of the requester, the name of the color additive, the FDA certification lot number, the uses and restrictions that apply to the color additive, and the results of the agency's analyses of the batch. Upon receipt of the certificate, the requester then labels the batch with the certification lot number, the percent total color, uses and restrictions, and other labeling as required in § 70.25. The requester is also required to maintain the batch, both before and after certification, under conditions that ensure that the composition of the batch does not change and that the sample submitted to FDA for certification remains representative of the batch until the batch has been packaged and labeled as required by §§ 70.20 and 70.25 (§§ 80.37 and 80.38). The person to whom the certificate is issued is required to keep complete records showing the disposal of all color additive from the batch covered by the certificate until at least 2 years after disposal of the batch (§ 80.39).

The requirement for certification of lakes and repacks ensures that the agency can identify each firm that manufactures or repacks a lake. Under its inspectional authority, the agency can then inspect these establishments and determine compliance with labeling and storage requirements and verify the disposal of the batch. The regulations enable the agency to ensure the continued safety of lakes and other color additives after certification by establishing conditions (§ 80.32) under which a certificate will expire and the batch will be deemed to be uncertified. In addition, the agency can refuse certification service (§ 80.34) to firms that submit requests for certification but fail to comply with requirements designed to ensure the safety of certified color additives, including recordkeeping and allowing inspection of the firm's color additive inventory and records.

This batch certification procedure provides the agency with an integrated system for ensuring the safety of lakes for use in foods, drugs, and cosmetics. For each batch of lake certified, the agency maintains, as records, the original request for certification and a copy of the certificate for the batch, which includes the results of agency analysis of the representative sample. The agency's analysis of the representative sample includes tests for total color, heavy metals, and impurities derived from the straight color used to prepare the lake.

As discussed in section IV.C. of this document, the agency has tentatively concluded that many requirements of the current batch certification system are necessary to ensure that lakes are safe for use in foods, drugs, and cosmetics, and thus to protect the public health. However, the agency also tentatively concludes that FDA analysis of a representative sample of the batch is not necessary in light of the other requirements for lakes being proposed. Therefore, the agency is proposing to establish a simplified procedure in § 80.31(b) for certification of batches of lakes and lake repacks. The agency notes that both new batches of lakes and repacks of previously certified batches of lakes would be subject to the new procedure. In subsequent discussion of the proposed certification requirements for lakes, the agency will address requirements for lakes generically and will distinguish between new batches and repacks only when it is necessary to identify specific requirements relating to only one type of batch. In the remainder of this document, the term "batch of lake" should be understood to encompass both new batches and repacks.

Under the proposed procedure, certification of a batch of lake would rely on the certificates for the batches of straight colors that are used in the lake, either directly to prepare the lake or indirectly as components of a certified batch of lake that is blended into the new batch. The certification of the batch would also rely on representations by the manufacturer or repacker that the batch complies with the requirements of parts 74 and 80.

The proposed procedure would require that a batch of lake meet the requirements of the proposed listing regulation for the lake in part 74, that the manufacturer of the lake be the same firm that was issued the certificates for all batches of straight color in the batch of lake, and that the firm complete the requirements of proposed § 80.33 for notifying the agency of the firm's claim to certification for the batch. The proposed procedure would also require that the firm submitting the notice maintain records of the composition and disposal of the batch, including the certificates for the straight colors used to make the batch. Repackers would be required to retain proof that the original batch of lake was certified, in lieu of the certificates for the batches of straight color used to prepare the lake. The manufacturer or repacker would also be required to retain a representative sample of the batch.

This proposed procedure would provide for routine agency review of only the information necessary to ensure the use of certified batches of straight color and to verify that the straight color in the lake did not degrade significantly during the laking process. Under this proposed procedure, the agency would not routinely monitor compliance with the remaining requirements for the preparation and repacking of lakes under the regulations in part 74. However, as noted above, the certification of a batch of lake would be based both on the agency's review of the critical factors in lake manufacturing and repacking and on the manufacturer's and repacker's representations of compliance with the remaining requirements. The agency would be able to verify these representations by inspecting the manufacturer's or repacker's records, and violations of the requirements for certification would be addressed under proposed §§ 80.32 and 80.34.

Under the proposed procedure, a manufacturer or repacker of a batch of lake would submit to FDA a notice claiming certification for the batch and providing the information and fee specified in proposed §§ 80.10(c) and 80.33. The notice would provide the same information about the batch that is currently provided in a request for certification under § 80.21(j), or generated by the agency as part of its evaluation of the certification request. However, the person submitting the notice would not be required to submit a representative sample of the batch for analysis by the agency. The agency would review the notice and, if the information in the notice was complete and appeared to comply with the requirements of parts 74 and 80, would issue an acceptance of the notice. Upon FDA's issuance of its acceptance of the notice, the batch covered by the notice would be a certified batch.

As noted above, the proposed certification procedure for batches of lakes and certified lake repacks would not require submission of a representative sample for agency analysis. Instead, the proposed new procedure would require that the manufacturer or repacker of the batch provide certain analyses and maintain certain records for agency inspection. Under the proposed procedure, the agency also would not issue a certificate for the batch. As noted above, the proposed certification procedure would rely on the certificates issued by the agency for the straight-color components of batches of lake and the representations of the manufacturer or repacker about the composition of the batch. Under this proposed procedure, certification of a batch of lake would be complete upon the agency's acceptance of the firm's notice claiming certification. This notice would provide information that would allow the agency to identify the certificates for the straight colors on which the certification of the lake relies and to ensure that the batch otherwise complies with the requirements of parts 74 and 80.

The agency is proposing to continue the application of the current storage and labeling requirements for batches pending certification and after certification (§§ 80.37 and 80.38) to batches of lakes certified under the proposed new procedure.

Amended § 80.39 would continue the application of the current recordkeeping requirements for certified color additives to lakes, including repacks, and would add recordkeeping requirements for lakes only to support the information and affirmations contained in the firm's notice to FDA.

Amended § 80.32 would provide for conditions under which the certification of a batch of lake would expire, and would add a provision to allow a certified color additive, including a lake, to be used in a batch of lake without losing its certification.

Amended § 80.34 would continue the agency's authority to refuse certification service to manufacturers and repackers of lakes who falsify records, obtain certification by fraud, or otherwise abuse the certification system.

The proposed certification procedure would provide a simplified system for assuring the safety of a certified batch of lake. For the reasons discussed in section VI.B.2.b. of this document, preparation of a lake would be limited to the firm issued the certificates for the straight colors used in the batch of lake. For each certified batch of lake, the agency would retain the original notice claiming certification for the batch and a copy of its response to the notice. The notice for each new certified batch of lake would contain the lot numbers for

the batches of straight colors used to prepare the batch of lake. This information would allow the agency to ensure that the batch of lake meets the requirements in part 74. The proposed requirement for submission of a premarket notice claiming certification would ensure that the agency could identify every firm that prepares or repacks certified batches of lakes. Under its inspectional authority, the agency could then inspect these establishments and their records to ensure compliance with the composition requirements of part 74 and the certification requirements of part 80, including the recordkeeping requirements of amended § 80.39. As part of a typical inspection, the agency might look at the facility, verify the records of the disposal of the batch, and check compliance with storage and labeling requirements.

The current batch certification procedure for lakes does not provide for certification of mixtures containing lakes. Color additive mixtures containing lakes are exempted from certification under § 80.35(b), subject to the conditions in that regulation. The agency is proposing to retain this exemption.

2. Certification Requirements

a. *Current provisions for batch certification.* The current requirements for batch certification of color additives in § 80.31 include references to parts 81 and 82. As discussed in section VI.A. of this document, the agency is proposing to delete parts 81 and 82 in this rulemaking. Therefore, the agency is proposing to amend § 80.31 to delete all references to parts 81 and 82.

Currently, § 80.31(a)(2) requires that a certified color additive conform to specifications and other conditions in parts 81 and 82. The section does not make any reference to specifications and other conditions in part 74, however. Because it appears that this omission was an oversight, the agency is proposing to amend § 80.31(a)(2) to add a reference to part 74. This action will clarify that permanently listed straight colors are subject, as a condition of certification, to the specifications and other conditions in part 74 of this chapter.

Currently, § 80.31(b) specifies the conditions under which the agency shall refuse to certify a batch and the procedures for contesting such refusal. The agency is proposing to modify this paragraph to cover the proposed changes in the procedure for certification of lakes. The agency is also proposing to redesignate this paragraph as paragraph (c) to allow the addition of the proposed new procedure in new paragraph (b).

b. *Proposed certification provisions for lakes.* The agency is proposing to add new § 80.31(b) to specify the conditions under which a batch of lake or certified lake repack is a certified batch. Proposed § 80.31(b) would require that a certified batch of lake or certified lake repack meet the specifications and any other conditions set forth in part 74 of this chapter. The agency tentatively concludes that this is an essential condition for certification because proposed §§ 74.50, 74.1050, and 74.2050 specify the conditions under which lakes are safe for use in foods, drugs, and cosmetics.

Proposed § 80.31(b) would also require, as a condition of certification for a batch of lake, that the firm preparing the batch be the same firm that was issued the certificate for each batch of straight color used in the lake. The agency tentatively concludes that this provision is a necessary condition for certification because, under the proposed procedure, certification of a batch of lake relies on the certificates issued for the batches of straight colors that were used to prepare the lake.

Under the proposed procedure, the agency would not issue a separate certificate for the batch of lake. Instead, the certificates for the straight colors in the lake would remain in effect provided that the lake was prepared in accordance with the regulations in part 74, including the requirement of preparation under conditions of CGMP such that the straight color does not significantly degrade. The agency recognizes that during the preparation of a lake, some change in the composition of the straight color inevitably occurs because the color goes from a water-soluble form in the straight color to a water-insoluble form in the lake. However, it is the responsibility of the manufacturer of the lake to prevent avoidable changes in the composition of the straight color so that the certificates for all straight colors used in the lake remain valid. The agency tentatively concludes that the responsibility for assuring the validity of the certificates of the straight colors in a lake should be retained by the firm issued the certificates.

The agency notes that a repacker of a certified lake would not be the same firm that was issued the certificates for the straight-color components of the lake. However, the handling of a lake during repacking is significantly less than during the preparation of the lake because no reprocessing occurs and no chemical reaction takes place; thus, the potential for change in composition is much less. Furthermore, a repack is derived from a single batch of lake, and the agency would keep on file all notices claiming certification for a batch of lake under § 80.31(b) and all agency acceptances of such notices. Therefore, the agency would have the necessary information on the certification of the original batch of lake to compare to the information submitted in a notice claiming certification for a repack of the batch.

Proposed § 80.31(b) would require that a firm that prepares or repacks a batch of lake comply with the notification requirements of § 80.33 as a condition of certification. Proposed § 80.33 would require that the firm submit and obtain FDA acceptance of a notice claiming certification of the batch. The proposed notice would provide FDA with the same information, except for the representative sample of the batch, that is currently provided by the request for certification of a batch of lake or generated by the agency when it analyzes the sample and evaluates the request for certification.

Proposed § 80.31(b) would also require that a firm that prepares or repacks a batch of lake comply with the recordkeeping requirements of § 80.39 as a condition of certification. Currently, § 80.39 requires that the person issued a certificate for a batch of color additive maintain records showing the disposal of all the color additive from the batch covered by the certificate. This section also specifies the types of records required to be kept and the required length of time for keeping the records, as well as requiring that such records be made available to agency representatives. This section further provides the agency access to check the correctness of the records. The agency is proposing to maintain the current recordkeeping requirements for lakes. The agency is also proposing to amend § 80.39 to require additional records that would apply to lakes only. These additional records would allow the agency to verify the information provided in the notice claiming certification. The proposed new recordkeeping requirements are essential to the success of the simplified certification procedure for lakes, as they would provide the means for the agency to verify that a batch of lake has been prepared, repacked, and maintained in compliance with safety requirements, and to trace any batches that are found to have problems.

The agency would review the notice claiming certification and, if the batch of lake covered by the notice appeared to comply with these requirements and the notice appeared to contain no untrue statement of a material fact, would issue an acceptance of the notice. Upon issuance of the acceptance, the batch covered by the notice, subject to the terms, conditions and restrictions prescribed in part 74, would be a certified batch.

3. Notification Requirements

a. *General requirements.* An essential component of the agency's proposed certification procedure for lakes is the proposed requirement that a firm claiming certification for a batch of lake comply with the notification requirements in § 80.33. The proposed notice would be the primary vehicle for providing the agency with the information needed to verify that the batch is safe for use in foods, drugs, and cosmetics.

Proposed § 80.33 (a), (b), (c), and (d) would require that a notice claiming certification for a batch of lake be addressed to the Commissioner of Food and Drugs, be prepared in the format specified in § 80.33(i), be submitted in duplicate, and be signed by a responsible officer of the company (or, for a foreign manufacturer or repacker, by a responsible officer of the firm and by an agent of the firm who resides in the United States). Except for the format of the notice, these requirements are identical to the requirements for a request for certification of a batch of lake or repack under § 80.21.

Proposed § 80.33(e) would require that a notice claiming certification for a batch of lake show the name and address of the firm submitting the notice. This information is needed to issue a response to the notice and also to identify the location of the batch and the records supporting the notice.

Like existing § 80.21(f), proposed § 80.33(f) would require that the notice be accompanied by the fee prescribed in § 80.10 unless the firm has advanced a deposit to be used for prepayment of such fees. Currently, the fee for certification of lakes and lake repacks is based on the poundage of the color additive, with a minimum fee of $192.00 for a batch of lake and $30.00 for a repack. Under proposed § 80.10(c), the fee for a notice claiming certification for a batch of lake or lake repack would be $30.00 regardless of the size of the batch. This proposed fee is based on the agency's estimate that reviewing and responding to a notice claiming certification would require approximately 1 hour. The agency estimates that average total personnel costs for these activities would be approximately $25.00 per notice with an additional $5.00 per notice for recordkeeping and other overhead costs. The agency is proposing a flat fee rather than a fee based on the poundage of lake certified because the manufacturer of a lake has already paid a fee based on poundage for the certification of the straight colors used in the lake. The agency estimates that the resources required for the administrative handling, review, and response to a notice claiming certification for a new batch of lake or a lake repack would be essentially the same. Therefore, the agency is proposing the same fee for both types of notices.

Proposed § 80.33(g) would require that a copy of the label or labeling intended to be used with the batch accompany the notice. This proposed requirement is comparable to the current requirement (§ 80.22(c)(5)) that the sample submitted with the request for certification be accompanied by a copy of the label or labeling intended to be used with the batch. The agency notes, however, that under proposed § 80.33, no sample would be submitted with the notice.

Proposed § 80.33(h) would state that the name of the lake is derived as prescribed in part 74. This proposed provision is comparable to § 80.21(h), which cross-references the regulations that prescribe the naming of straight colors, mixtures, and repacks.

Under proposed § 80.33(j), the agency would respond to the notice claiming certification for a batch of lake within 5 working days of receipt. The agency's response would either accept or reject the notice, as discussed in section VI.B.3.d. of this document.

b. *Requirements for new batches of lakes.* Proposed § 80.33(i)(1) would prescribe the format and content of a notice claiming certification for a newly prepared batch of lake. The notice would be required to contain the name of the lake, as prescribed in §§ 74.50, 74.1050, or 74.2050; the batch number (manufacturer's number); the weight of the batch; conditions of storage pending certification; and proposed uses. This information is comparable to that currently required for an application for certification of a lake under § 80.21(j)(2).

Proposed § 80.33(i)(1) would also require that the notice state the total color content of the batch and the color content (as a percent of the batch) for each straight-color component of the lake. The total color content of a lake is essential to the identity of the lake, and necessary for the user of a lake to determine product formulation requirements and to ensure compliance with any quantitative limitations on the use of the straight-color component of a lake. Currently, in its routine certification analysis of the representative sample, the agency determines the total color content of a lake. This information is an essential part of the basis for the certificate issued by the agency. Under the proposed simplified certification procedure for lakes, the agency would not analyze a sample of the batch and determine the total color content. Rather, the manufacturer would provide this information in the notice, based on its analysis of the lake. These analyses would be part of the records that the manufacturer would be required to maintain for the batch of lake.

Proposed § 80.33(i)(1) would also require the notice to contain the following information for the components of the lake: the name, quantity used, and certification lot number of each batch of straight color used in the preparation of the lake; the name and quantity used of each precipitant or substratum ingredient in the lake, including the source of the chloride or sulfate anion; and, for each certified batch of lake blended into the batch, the name, quantity used, and certification lot number or FDA acceptance number (the number assigned to FDA's acceptance of the notice claiming certification). This information is comparable to that currently required for an application for certification of a lake under § 80.21(j)(2). Although § 80.21(j)(2) does not currently require information on certified batches of lakes that are blended into a new batch of lake, such information is important for describing the composition of a batch of lake and reflects a practice that is common in the industry. Such information is routinely included in current requests for certification of lakes under § 80.21.

In evaluating requests it has received for certification of batches of lakes, the agency has noted that, although the regulations for lakes in part 82 specify precipitants and substrata as distinct functional entities, the functions of ingredients that are added to the lake preparation for these purposes may overlap. Also, in some instances, acid is added to make a component water-soluble so that it can function as a precipitant in the laking process. Under proposed § 80.33(i)(1), the required information on ingredients of the lake in the notice claiming certification would encompass all ingredients that are either identified in §§ 74.50(a), 74.1050(a), or 74.2050(a) as components of lakes, or are added to form these components of lakes in situ. This information, together with the name of the lake, would provide the agency with the necessary information on the components of the lake and the ingredients used to form

these components in the preparation of the lake.

Proposed § 80.33(i)(1) would also require statements affirming that the batch meets the requirements of 21 CFR parts 74 and 80; that the records required by § 80.39, including a representative sample of the batch, are available for inspection by FDA; and that the firm submitting the notice is the manufacturer of the batch. These proposed affirmations are necessary to ensure that the batch of lake meets all the requirements of proposed § 80.31(b) and, therefore, that the batch is safe for use in foods, drugs, or cosmetics.

As discussed in section VI.B.1. of this document, the agency is proposing to provide for the certification of batches of lakes based on its review of the critical factors in lake manufacture and on the manufacturer's representations that the remaining requirements have been met. Under this proposed procedure, the agency would not routinely verify compliance with every requirement for the preparation and repacking of lakes in part 74; therefore, affirmations of compliance with these requirements from the manufacturer of each batch are necessary as a condition of certification.

c. *Requirements for repacks of certified lakes.* Proposed § 80.33(i)(2) would prescribe the format and content of a notice claiming certification for a repack of a previously certified batch of lake. The notice would be required to contain the name of the lake, as prescribed in proposed §§ 74.50, 74.1050, or 74.2050, and the following information for the original certified batch of lake that was repacked: FDA acceptance number for the manufacturer's notice claiming certification (or the certification lot number, if the batch was certified under the old procedure); total color content of the batch; color content for each straight color in the batch; and the manufacturer's name and place of business. Proposed § 80.33(i)(2) would also require the following information about the repacked batch of lake: The batch number, weight of batch, total color content, and the color content of each straight color in the batch, as well as conditions of storage pending certification and proposed uses. This information is comparable to that currently required for an application for certification of a repack under § 80.21(j)(3).

Proposed § 80.33(i)(2) would also require statements affirming that the batch meets the requirements of 21 CFR parts 74 and 80; that the records required by § 80.39, including a representative sample of the batch, are available for inspection by FDA; and that the firm submitting the notice is the repacker of the batch.

d. *Agency action on the notice.* Under proposed § 80.33(j), the agency would furnish a response to each notifier within 5 working days of receipt of the notice. The agency would review the notice and, if the information in the notice was complete and appeared to comply with the requirements of parts 74 and 80, would issue an acceptance of the notice. Upon issuance of the acceptance, the batch would be a certified batch. To facilitate identification of the batch, the acceptance document would be assigned a number.

If the information in the notice claiming certification was incomplete or did not appear to comply with the requirements of parts 74 and 80, the agency would issue a rejection of the notice. Proposed § 80.33(j)(2) would state that a batch of lake covered by a rejected notice has not complied with the requirements of § 80.31(b) and is not a certified batch. The proposed procedure would not provide for interim responses by the agency or for amendment of a notice by the submitter. The agency recognizes that a rejection of a notice may result from an oversight on the part of the submitter, such as the inadvertent omission of required information. If the deficiency in the notice was such that it could be corrected, the firm could submit a new notice that contained all the required information or otherwise corrected the deficiency. However, the resubmission would be considered a new notice. In addition, under proposed § 80.31(c), the notifier would also have the option to request a hearing on the rejection.

4. Recordkeeping Requirements

The current recordkeeping requirements for certified color additives are found in § 80.39 *Records of distribution.* This section requires that the person to whom a certificate is issued keep complete records showing the disposal of all the color additive from the batch covered by such certificate. The section also specifies the length of time the records must be kept (2 years after disposal of the batch) and permits FDA access to the facility to check the accuracy of these records. It also specifies that these records must be kept separately from all other records. The agency is proposing to maintain these recordkeeping requirements for certified batches of lakes by modifying the language of § 80.39 to conform to the proposed changes in the certification procedure for lakes.

The agency is also proposing to require in § 80.39(b) that a firm submitting a notice claiming certification for a batch of lake keep additional records that confirm the information submitted in the notice. Under proposed § 80.39(b)(1), a manufacturer or repacker of a batch of lake certified under § 80.31(b) would be required to retain records of all documents that the firm relied upon to establish the certified status of the batch of lake. For the manufacturer of a lake, such documents would include copies of the notice submitted to FDA claiming certification for the batch of lake, the FDA acceptance of the notice, the certificate for each batch of straight color used to prepare the batch of lake, the FDA acceptance (or, for batches certified before the effective date of this final rule, the certificate) for each batch of lake used as an ingredient in the batch of lake, and the manufacturer's specifications for the substrata used to prepare the batch of lake. For the repacker of a lake, such documents would include copies of the notice submitted to FDA claiming certification for the batch of lake, and the FDA acceptance of the notice.

These records would also include complete reports of any chemical analyses performed on the batch or its components, including records of analyses that show the total color content of the batch as a percentage and, if the batch contains more than one straight color, the color content of each straight-color component of the batch of lake. As noted above in section VI.B.3.b. of this document, an accurate statement of total color content is essential for identification and proper use of a lake. Complete records of the analyses would include a method description in sufficient detail to allow the analysis to be repeated, the experimental data, the final results and a clear description or calculations that show how the final results were obtained from the experimental data. The agency tentatively concludes that complete records of the analyses for total color in a batch of lake are necessary to allow the agency to verify the accuracy of the identity of the lake.

For new batches of lakes, proposed § 80.39 would require that, for each batch of lake that contains a barium salt, as permitted under §§ 74.1050 and 74.2050, the manufacturer maintain complete records of the analyses that show that the batch of lake conforms to the specification for soluble barium. Barium is a heavy metal whose safety in lakes is based on its insolubility (see section V.A.2.c. of this document). In lakes containing barium salts, soluble barium is either deliberately introduced as a precipitant, or could form under the conditions of laking. Therefore, the agency tentatively concludes that analysis of the batch for soluble barium is necessary to ensure the safety of lakes that contain barium salts.

For new batches of lakes, the agency is proposing that the records for the batch would also include the manufacturer's specifications for substratum and precipitant ingredients used in the lake, as well as a copy of the certificate for each batch of straight color used to prepare the lake and a copy of the acceptance of the notice claiming certification (or the certificate, during the transition between the old and new procedures) for each batch of lake that was used as an ingredient in the lake. These additional records would allow the agency to verify the information and the affirmations about the identity and composition of the lake in the notice claiming certification.

Under proposed § 80.39(b)(2), the manufacturer or repacker of a batch of lake certified under proposed § 80.31(b) would be required to retain an 8-ounce sample of the batch. The requirements for taking, storing, and labeling this sample are provided in proposed § 80.22(b). The requirements are similar to those in existing § 80.22 for samples to accompany a request for certification. However, proposed § 80.22(b) also specifies when the sample is to be taken; storage conditions for the sample; and additional labeling to show the total color, the date the sample was taken, and (following FDA acceptance of the notice claiming certification) the FDA acceptance number.

The agency is proposing that the timeframes and conditions for agency access to these additional records, including the sample of the batch retained by the firm, be the same as currently specified in § 80.39 for records of distribution for certified color additives.

5. Treatment of Batches of Lakes Pending Certification and After Certification

Current § 80.37 *Treatment of batch pending certification* and § 80.38 *Treatment of batch after certification* contain requirements to ensure that the composition of a batch of color additive subject to certification does not change from the composition of the representative sample of the batch that was submitted to the agency and that formed the basis for the agency's issuance of the certificate for the batch; that the batch remains under control of the person requesting certification until it has been certified; and that the batch is clearly identified as the batch for which certification was requested or obtained. The proposed revision of these sections would maintain these requirements or comparable requirements for batches of lakes to be certified under § 80.31(b).

a. *Treatment of batches of lakes pending certification.* Section 80.37 specifies the storage and labeling requirements for a batch of color additive pending certification. The requirements of this section are triggered by the act of taking a representative sample from the batch of color additive for submission to FDA with the request for certification, and they continue until the requested certificate has been issued. The agency is proposing to amend § 80.37 to continue the requirements and conditions of this section for lakes subject to certification under proposed § 80.31(b). Specifically, the agency is proposing to amend the description of the sample in § 80.37 to include a sample taken and held as a record by the manufacturer or repacker of a batch of lake certifiable under proposed § 80.31(b). The agency is also proposing to amend § 80.37(b) to specify that the batch must be held under the control of the person requesting or claiming certification until certified. Finally, the agency is proposing to amend § 80.37(c) to specify that the batch must be marked in a manner such that there can be no question that the batch may not be used until the issuance of the certificate for the batch or, for lakes, the issuance of FDA's acceptance of the required notice claiming certification.

b. *Treatment of batches after certification.* Section 80.38 specifies the storage, labeling and use requirements, and limitations that apply to a batch of color additive after certification. The agency is proposing to amend § 80.38 to continue the requirements and conditions of this section for lakes under the proposed certification procedures in § 80.31(b). Specifically, the agency is proposing to amend § 80.38 to divide it into two subsections: (a) Labeling and (b) Storage. The agency is also proposing to establish two subparagraphs under § 80.38(a) to describe the labeling requirements for batches of color additives certified under § 80.31(a) and § 80.31(b), respectively. In both cases, the trigger for labeling would be notification from FDA that the batch is a certified batch. However, a batch certified under proposed § 80.31(b) would be identified by labeling it with the FDA acceptance number, rather than with the certified lot number. The agency is also proposing to amend § 80.38(b) to clarify that the person responsible for the storage and use of the batch after certification is the person requesting or claiming certification.

6. Color Additive Mixtures

Current § 80.35 refers to "straight colors" in describing the ingredients in color additive mixtures to be certified (§ 80.35(a)) and in color additive mixtures exempt from certification (§ 80.35(b)). Currently, the term "straight color" is defined to include lakes. As noted in section III.A.1. of this document, the agency is proposing to amend the definition of "straight color" to exclude lakes and to define a new term "listed color" that would include both straight colors and lakes. Therefore, the agency is proposing a conforming amendment to substitute the term "listed color" or "listed colors" for the term "straight color" or "straight colors" in § 80.35.

7. Enforcement Provisions

a. *Limitotions of certification.* Current § 80.32 specifies conditions under which the certificate for a batch of color additive expires. The agency is proposing to adapt the provisions of § 80.32 to the proposed new procedure for certification of lakes.

As explained in section VI.B.1. of this document, under the proposed new certification procedure for lakes, the agency would not issue a certificate for a batch of lake. Instead, the certification of a batch of lake would rely on the certification of the straight colors used in the batch of lake, on the affirmations in the notice claiming certification, and on agency acceptance of the notice. The certification of a repacked batch of lake would rely on the certification of the original batch of lake rather than directly on the certification of the straightcolor components of the lake. The agency is proposing to amend § 80.32 to clarify that the certification of a batch of lake is inextricably linked to the certificates for the straight colors used to prepare the lake. As proposed, the expiration of the certificate for a batch of straight color would result in the expiration of the agency's acceptance of all notices claiming certification of batches of lakes made from that batch of straight color, including any repacks of such batches.

The agency is proposing to change the title of § 80.32 from "Limitations of Certificates" to "Limitations of Certification" to expand the application of § 80.32 to the proposed certification procedure for lakes, which would not result in the issuance of a certificate by the agency.

Current § 80.32(a) provides that a certificate that is obtained through fraud or misrepresentation of a material fact shall not be effective, and that any color additive from the batch covered by the fraudulently obtained certificate shall be considered to be from an uncertified batch. Proposed § 80.32(a) would continue the applicability of this provision to batches of lakes certified under the proposed new procedure by replacing the term "certificate" with the phrase "certificate or acceptance of a notice claiming certification". Proposed § 80.32(a) would also clarify that any lake prepared with the color additive covered by the fraudulently obtained certificate or acceptance would lose its certification.

Current § 80.32(b) provides that if, between the time a representative sample is taken from a batch of color additive and the time a certificate for the batch is received by the person to whom it is issued, the color additive becomes changed in composition, the certificate shall not be effective, and the changed color additive shall be considered to be from an uncertified batch. Proposed § 80.32(b) would continue the applicability of this provision to batches of lakes certified under the proposed new procedure by amending the description of the sample to include a sample retained by a firm claiming certification for a batch of lake and by replacing the word "a certificate" by "a certificate or an acceptance of a notice claiming certification." The agency is also proposing to amend § 80.32(b) to state that if a certificate or acceptance of a notice claiming certification for a batch of color additive ceases to be effective, then any batch of lake prepared with such color additive is also an uncertified batch.

Current § 80.32(c) provides that if, at any time after a certificate is received by the person to whom it is issued, any color additive from the batch covered by the certificate becomes changed in composition, the certificate expires. Proposed § 80.32(c) would continue the applicability of this provision to batches of lakes certified under the proposed new procedure by replacing the term "a certificate" with the phrase "a certificate or an acceptance of a notice claiming certification." The agency is also proposing to amend the second sentence in § 80.32(c) to indicate clearly that the expiration of a certificate or an acceptance of a notice claiming certification of a batch of color additive would cause any lake prepared with such color additive to be an uncertified batch.

To allow certain specified uses of the color additive, current § 80.32(c) provides three exceptions to the expiration of the certificate when a change in composition occurs. A change in composition does not cause the certificate to expire if the change in composition resulted solely from use of the color additive: (1) For coloring a food, drug, or cosmetic; (2) for the purpose of certifying a batch of a mixture in which the color additive was used as an ingredient; or (3) for use in preparing a batch of a mixture for which exemption from certification has been authorized. Proposed § 80.32(c) would add another exception to provide that a change in composition would not cause the certification of a color additive to expire if the change in composition resulted solely from use of the color additive as a component or ingredient in a batch of lake for which certification was claimed under § 80.31(b) of this chapter. This provision would allow the use of certified batches of straight color to prepare a lake, or the use of a portion of a certified batch of lake as an ingredient in another certified batch of lake.

As amended, § 80.32(c) would permit any changes in the straight-color components of a lake that would normally occur during lake manufacture under conditions consistent with CGMP. For example, if the straight color was a sodium salt (e.g. D&C Yellow No. 10), and the lake was prepared with aluminum cation, this provision would allow for the change in the cation associated with the straight color from sodium to aluminum. However, this provision could not be used to justify a claim for certification of a batch of lake containing a straight color that had degraded during preparation of the lake. Such a batch of lake would not meet the requirement in part 74 that lakes be free from impurities other than those named in the specifications, to the extent that such impurities may be avoided by CGMP. Therefore, the batch would not comply with the conditions of § 80.31(b) and could not be a certified batch.

Current § 80.32(d) provides that a certificate expires if the package in which the color additive was closed for shipment or delivery is opened. Current § 80.32(d)(1) through (d)(5) specify five exceptions to the expiration of the certificate. These exceptions allow a package of certified color additive to be opened and the color additive used (1) in coloring a food, drug, or cosmetic (subject to certain restrictions); (2) for the purpose of certifying a batch made by repacking the color additive; (3) for the purpose of certifying a batch of a mixture in which the color additive is used as an ingredient; (4) for the purpose of preparing a batch of a mixture for which exemption from certification has been authorized; and (5) when the package is reopened solely for repackaging by the person to whom the certificate was issued. Proposed § 80.32(d) would continue the applicability of these provisions to certified batches of lakes or certified repacks of such batches by replacing the term "a certificate" by the phrase "a certificate or an acceptance of a notice claiming certification."

Current §§ 80.32(e), (f), and (g) describe additional conditions under which a certificate ceases to be effective with respect to a package of color additive and under which the color additive is therefore considered to be from an uncertified batch. Proposed § 80.32(e), (f), and (g) would continue the applicability of these provisions to batches of lakes certified under the proposed new procedure by replacing the term "a certificate" by the phrase "a certificate or an acceptance of a notice claiming certification."

Current § 80.32(h) describes the consequences of revocation or amendment of the listing or specifications for a color additive. Section 80.32(h) states that on the date specified in the order effecting the revocation or amendment, all certificates for existing batches and portions of batches of the color additive issued under the revoked or amended regulations cease to be effective, and any such lots of the color additive are regarded as uncertified after the date specified unless a new certificate can be and is obtained in conformity with the new regulation. Proposed § 80.32(h) would continue the applicability of this provision to batches of lakes certified under the proposed new procedure by replacing the term "a certificate" by the phrase "a certificate or an acceptance of a notice claiming certification." Proposed § 80.32(h) would also provide that any batch of lake prepared from a batch or portion of a batch of color additive that was certified under the revoked or amended regulations is also regarded as uncertified unless a new certificate is obtained.

b. *Authority to refuse certification.* Certification requirements are enforced through the provisions of § 80.34 *Authority to refuse certification service.* This section currently provides four conditions for refusing certification service to a firm requesting certification. Paragraph 80.34(a)(1) authorizes the agency to deny certification service to a firm that has "obtained or attempted to obtain a certificate through fraud or misrepresentation of a material fact."

The remaining three paragraphs (§ 80.34(a)(2), (a)(3), and (a)(4)) authorize the agency to deny certification service to a firm that violates the recordkeeping requirements of § 80.39 by falsifying the required records; failing to keep the records or to make them available to the agency; or by refusing to permit duly authorized FDA employees full access to inspect the manufacturing facilities, processes and formulae involved in the manufacture of color additives and of intermediates from which such color additives are derived. Proposed § 80.34 would continue the application of these provisions to firms certifying batches of lakes under the proposed new procedure by amending § 80.34 to replace the phrase "a certificate" with the phrase "a certificate or acceptance of a notice claiming certification." Proposed § 80.34(a)(4) would also authorize FDA to examine processes and formulae for substrata, as substances from which color additives are derived.

C. Amendments to Other Regulations

1. Listings in Part 74

a. *Listings for FD&C Red No. 40 lakes.* Except for FD&C Red No. 40, all the straight colors used in lakes were provisionally listed in 1960. FD&C Red No. 40 was never provisionally listed and, when FD&C Red No. 40 was listed (permanently) in 1971 (food and drugs: 36 FR 23552, December 10, 1971) and 1975 (cosmetics: 39 FR 28278, August 6, 1974, and 39 FR 44198, December 23, 1974), the lakes of FD&C Red No. 40 were included, for convenience, in §§ 74.340, 74.1340, and 74.2340. These permanent listings for FD&C Red No. 40 lakes cross-reference the specifications and labeling requirements in the provisional listings for lakes. For consistency, the agency is proposing to move the current listings of lakes of FD&C Red No. 40 in §§ 74.340, 74.1340, and 74.2340 to §§ 74.50, 74.1050, and 74.2050, respectively, to conform the permanent listing of the lakes of FD&C Red No. 40 to the permanent listings for other lakes.

b. *Reference to lakes in listings for straight colors.* The proposed permanent listings for lakes (§§ 74.50, 74.1050, and 74.2050) would specify the straight colors that are permitted as components of a lake. The agency tentatively concludes that the regulations for the straight colors should specify that lakes made with the straight color must conform to the requirements for lakes (§§ 74.50, 75.1050, or 74.2050, as appropriate). Therefore, the agency is proposing to amend the listings in part 74, subpart A, for the straight colors used to prepare lakes for food use to specify that "lakes made with (name of straight color) shall conform to the requirements of § 74.50"; to amend the listings in part 74, subpart B, for the straight colors used to prepare lakes for drug use to specify that "lakes made with (name of straight color) shall conform to the requirements of § 74.1050"; and to amend the listings in part 74, subpart C, for the straight colors used to prepare lakes for cosmetic use to specify that "lakes made with (name of straight color) shall conform to the requirements of § 74.2050."

c. *Listings for eye-area use of lakes.* In 1994, the agency permanently listed the aluminum lakes on alumina of the straight colors FD&C Blue No. 1 and FD&C Red No. 40 (February 16, 1994, 59 FR 7635) and FD&C Yellow No. 5 (November 29, 1994, 59 FR 60893), for use in drugs and cosmetics intended for use in the area of the eye. Because § 81.1 specifically precludes use of provisionally listed lakes in eye-area products, these lakes were included in the permanent listings of the straight color. The agency tentatively concludes that it is appropriate to include the eye-area uses of lakes with the other permanently listed uses of lakes and is therefore proposing to move these eye-area uses from the permanent listings for the straight colors to §§ 74.1050 and 74.2050.

2. Color Additive Labeling

Currently, provisionally listed lakes are subject to the general labeling requirements for color additives in § 70.25. FDA is proposing to continue the applicability of these requirements to permanently listed lakes by including a provision in proposed §§ 74.50, 74.1050, and 74.2050 to prescribe that the label of a lake conform to the requirements of § 70.25.

To reflect the proposed deletion of the provisional listings for color additives, the agency is also proposing to amend § 70.25(a) by removing the reference to part 81. As a result of the proposed change in the definition of "straight color" and the proposed new definition of "listed color," the agency is proposing to maintain the general labeling requirements for color additives by amending § 70.25(a)(1) and (a)(3) to replace the term "straight color" with the term "listed color." As amended, § 70.25(a)(1) would require the label of a package of lake to include the name of the lake, as prescribed in part 74 (§§ 74.50, 74.1050, or 74.2050).

As a result of the proposed new certification procedure for batches of lakes, the agency is also proposing to amend § 70.25(a)(3), which requires that the label of certified colors that are subject to a tolerance (quantitative limitation on use) bear directions to prevent products to which the color may be added from exceeding the tolerance. As amended, § 70.25(a)(3) would provide that, where regulations impose a tolerance for a general or specific use of a straight color, the amount of a straight color present in a lake would be included in the total amount of the straight color.

In addition, the agency is proposing to amend § 70.25(d) *Special labeling for color additives not exempt from certification* to establish separate labeling requirements for color additives subject to the certification procedures of § 80.31(a) and lakes subject to the certification procedures of § 80.31(b). Proposed § 70.25(d)(1) would apply to color additives subject to certification under § 80.31(a) and would incorporate the provisions of current § 70.25(d). Proposed § 70.25(d)(2) would prescribe special labeling requirements for lakes subject to certification procedures under § 80.31(b). The proposed paragraph would require that the labeling for such lakes include the total color content of the lake, the amount of color contributed by each straight-color component of the lake, and FDA's acceptance number for the notice claiming certification of the batch. The information on the total color content and content of each straight color in the lake would enable the user of the lake to comply with any quantitative limitations on the use of the straight-color component of a lake. This information would also assist the user in the formulation of products using the lake. The inclusion of the FDA acceptance number for the notice claiming certification for the batch would facilitate agency verification of the records and other information for the batch.

3. Product Labeling

a. *Food ingredient labeling.* i. *Statutory authority.* Currently, lakes are provisionally listed colors subject to certification. Therefore, under section 403(i) of the act (21 U.S.C. 343), as amended by the Nutrition Labeling and Education Act of 1990 (Pub. L. 101–535) (the NLEA), lakes must be listed as ingredients on the label of food products that contain them. Before the NLEA was enacted, the act provided that color additives added to food need not be declared individually by their common or usual names but could be designated by the collective term "colorings." In 1990, the NLEA amended section 403(i) of the act to exempt from label

declaration only colors not required to be certified. To implement amended section 403(i), the agency revised its labeling regulations in § 101.22 by adding new paragraph (k), which became effective on May 8, 1993. Under § 101.22(k)(1), the lake of a color additive subject to certification must be individually identified on the food label. Because all lakes for food use are made from straight colors subject to certification and are themselves certified color additives, the presence of a lake in a food product must always be individually identified on the label of the product under § 101.22(k)(1). The agency is now proposing to list lakes permanently as color additives subject to certification. Therefore, in accordance with section 403(i) of the act (21 U.S.C. 343(i)), the agency is proposing to retain the requirement that lakes be declared on the food label under their individual names rather than as "colorings."

Section 721(b)(3) of the act (21 U.S.C. 379e(b)(3)) provides that regulations for the listing of a color additive "shall, to the extent deemed necessary * * * to assure the safety of the use or uses for which a particular color additive is listed, prescribe the conditions under which such additive may be safely employed for such use or uses (including, but not limited to * * * directions or other labeling or packaging requirements for such additive)." The straight colors FD&C Yellow No. 5 and FD&C Yellow No. 6 have been reported to cause hypersensitivity in some individuals. Declaration of the lakes of FD&C Yellow No. 5 and FD&C Yellow No. 6 on the label of foods that contain them will provide the means for consumers who are sensitive to these color additives to identify the foods that contain them and thereby avoid suffering a reaction. Therefore, the agency tentatively concludes that such a label declaration requirement is necessary.

Label declaration of the straight color FD&C Yellow No. 5 is required under § 74.705 for all foods that contain this color additive, including butter, cheese, and ice cream (foods exempted under section 403(k) of the act (21 U.S.C. 343(k)) from the requirement to declare the presence of certified color additives). In the **Federal Register** of July 21, 1995 (60 FR 37611), the agency published a proposal to require declaration of FD&C Yellow No. 6 on the labels of butter, cheese, and ice cream (hereinafter referred to as the July 1995 proposal). Declaration of FD&C Yellow No. 6 in other foods is already required under § 101.22(k)(1). The agency notes that both its original proposal to require the labeling of FD&C Yellow No. 5 in foods and ingested drugs (42 FR 6835, February 4, 1977) and the pending proposal to require the labeling of FD&C Yellow No. 6 in butter, cheese, and ice cream refer to the need for label declaration of the presence of the color additive in food for humans—whether added as a straight color, a mixture, or a lake—to enable persons intolerant to the color additive to minimize exposure to it. Therefore, the agency tentatively concludes that the lakes of FD&C Yellow No. 5 and FD&C Yellow No. 6 should be subject to the same label declaration requirements for foods as the straight colors. Accordingly, this proposal modifies the July 1995 proposal to include lakes.

Proposed § 74.50(e)(2) would require that the label of food products for human use that contain a lake declare the presence of the lake in accordance with § 101.22(k) of this chapter. Proposed § 74.50(e)(3) would require that the labels of butter, cheese, and ice cream that contain a lake of FD&C Yellow No. 5 or FD&C Yellow No. 6 declare such lake in the list of ingredients.

ii. *Format.* Currently, § 101.22(k)(1) provides for the declaration of certified color additives, including lakes, in the ingredient listing on the food label and cites part 74 or 82 as the source of the name of such color additive. In this rulemaking, the agency is proposing to list lakes permanently in part 74 and to remove parts 81 and 82. Therefore, the agency is proposing to remove the reference to part 82 as a source of the name for a certified color additive for declaration on the food label.

Section 101.22(k)(1) states that it is not necessary to include the "FD&C" prefix or the term "No." in the declaration of a color additive on the food label, but that the term "Lake" must be included in the declaration of a lake. However, the example given in § 101.22(k)(1) ("Blue 1 Lake") to illustrate the declaration of a lake does not include the identity of the precipitant cation, although the precipitant cation is part of the listed name of the lake under current § 82.51. In addition, in this rulemaking, the agency is proposing in § 74.50 to include the substratum as well as the precipitant cation in the listed name of a lake.

The agency tentatively concludes that the current abbreviated nomenclature (e.g., Blue 1 Lake) for food ingredient labeling is still appropriate and that the inclusion of the identity of the precipitant cation and substratum in the name of the lake on the food label is unnecessary and may be confusing to consumers. Inclusion of these components of lakes as part of the name of the lake in the ingredient list would greatly lengthen the name of the lake on the food label without providing any additional information about the color additive, since the agency is proposing to permit only the aluminum cation and the substratum alumina in lakes for food use.

As discussed in section IV.A.1.d. of this document, the agency is also proposing in new § 74.50 to allow the use of more than one straight color in a lake. Accordingly, the agency is proposing to amend § 101.22(k)(1) to require that all straight colors used to prepare a lake be included in the name of the lake. Amended § 101.22(k)(1) would also specify that it is not necessary to include the name of the precipitant cation or the substratum in the name of a lake when listing it as an ingredient in a food product. Thus, a lake would be identified on a food label by a name consisting of the names of the straight colors (in descending order of predominance) present in the lake (without the "FD&C" designation or the term "No.") followed by the word "Lake." For example, a lake that contains 10 percent FD&C Yellow No. 5, 5 percent FD&C Blue No. 1, the aluminum cation, and alumina substratum would be declared on the food label as "Yellow 5 and Blue 1 Lake."

b. *Cosmetic ingredient labeling.* Currently, § 701.3 requires that the label of each package of a cosmetic bear a declaration of the name of each ingredient in descending order of predominance. Section 701.3(c) also designates, in order of priority, the sources from which the names of cosmetic ingredients are to be derived for the purpose of declaration of ingredients. Under § 701.3(c)(1), if FDA has established a name for the ingredient in § 701.30, that name is used. However, § 701.3(c)(1) does not cite the color additive regulations as the preferred source for names of color additives. The agency is proposing to correct this oversight by amending § 701.3(c) to include the color additive listings in parts 73 and 74 as the preferred source of names for the declaration of ingredients on the cosmetic label.

Currently, under § 701.3(c)(2) (21 CFR 701.3(c)(2)), a lake is declared on the cosmetic label by the name under which it is listed in the CTFA Cosmetic Ingredient Dictionary, 2d ed. (1977). This name is the same as the listed name of the color additive, which, under §§ 82.51, 82.1051, and 82.2051, is formed from the name of the straight color, the name of the precipitant

cation, and the word "lake." As discussed in previous sections of this document, the agency is proposing in § 74.2050(c) to change the listed name of a lake to include the name of the substrata used in the lake, and is also proposing to allow the use of more than one straight color to make a lake. The agency recognizes that these proposed changes would result in a long listed name for a lake. As with food labels, the agency is concerned that the additional information that such a name on a cosmetic label would provide to consumers would be overshadowed by consumer confusion about the identity and composition of the color additive.

Unlike lakes added to food (which, under the proposed regulation, would be permitted to contain only one cation precipitant (aluminum) and one substratum (alumina)), however, lakes added to cosmetics would continue to contain a range of possible cation precipitants and substrata. The straight color and the substrata are the principal components of the lake by weight, making up over 95 percent of the total weight of the lake. Currently, the name of a lake provides only the identity of the straight color and the precipitant. The complete name of a lake would provide additional information to consumers about the substrata present in lakes. On the other hand, the space available for ingredient declaration on a cosmetic label is limited, and under the proposed new nomenclature that would be required by § 74.2050, the name of a lake would occupy a significantly greater amount of space than currently. Furthermore, the amount of space on the label that would be allocated to declaring the presence of a lake would give undue prominence to the lake as an ingredient and overshadow the other ingredients of the cosmetic product, although lakes are not necessarily more important to the consumer.

Therefore, the agency tentatively concludes that the abbreviated nomenclature permitted for declaring lakes as ingredients on the food label under § 101.22(k) should be permitted for cosmetic labels as well. The agency believes that the abbreviated name would provide consumers with more understandable information about the identity of the color additive because it would clearly identify the ingredient as a color additive and highlight the color component of the lake, which is its primary characterizing feature from the consumer's point of view. The agency tentatively finds that adopting uniform nomenclature for color additives, including lakes, on food and cosmetic ingredient labels would assist consumers in identifying these ingredients as color additives. Therefore, the agency tentatively concludes that the extension of abbreviated nomenclature for ingredient labeling of lakes to cosmetics as well as foods will provide maximum benefit to consumers.

For consistency, the agency also tentatively concludes that this abbreviated nomenclature for cosmetic ingredient labeling should apply to all certified color additives, not just to lakes. Currently, straight colors are declared on the cosmetic label by the listed name of the straight color (e.g., FD&C Blue No. 2). However, as discussed above, under § 101.22(k) the agency permits the use of abbreviated names for identifying straight colors in the ingredient statement on the food label. The agency tentatively concludes that the abbreviated name now being used on the food label (the listed name without the prefix "FD&C" or "D&C," and without the term "No.") would meet the purpose of ingredient declaration on the cosmetic label to prevent consumer deception and to facilitate value comparisons (38 FR 28912, October 17, 1973).

However, for cosmetics, the prefix "Ext." would still be required as part of the abbreviated name to uniquely identify different color additives. For example, D&C Yellow No. 7 (21 CFR 74.1707 and 74.2707) and Ext. D&C Yellow No. 7 (21 CFR 74.1707a and 74.2707a) are different chemical compounds, although they are both listed as color additives for use in externally applied drug and cosmetic products. Under the proposed abbreviated nomenclature, Ext. D&C Yellow No. 7 would be declared as Ext. Yellow 7, whereas D&C Yellow No. 7 would be declared as Yellow 7.

Adopting this abbreviated nomenclature for ingredient declaration of certified colors on cosmetic labels would eliminate the current inconsistency between the nomenclature used to identify certified colors on food labels and the nomenclature used on cosmetic labels, as well as any resulting consumer confusion. Therefore, the agency is further proposing to adopt as an option, for the purpose of declaring certified colors as ingredients on the labels of cosmetics, the same abbreviated nomenclature currently permitted under § 101.22(k) for declaring certified colors on the food label, except that the "Ext." prefix must be included where applicable. For example, the color additive D&C Red No. 28 could be declared on the cosmetic label as "Red 28," and a lake containing 10 percent FD&C Yellow No. 5, 5 percent D&C Red No. 28, the precipitant cations aluminum and calcium, and 50 percent barium sulfate and 35 percent rosin, could be declared on the cosmetic label as "Yellow 5 and Red 28 Lake." The requirement that the prefix "Ext." be included on cosmetic labels would not create an inconsistency with the nomenclature for food labels because, by definition, "Ext." color additives are for external use and cannot be used in foods.

To accomplish the changes discussed above, the agency is proposing to amend § 701.3(c) by establishing new paragraphs (c)(1)(i) and (c)(1)(ii). Proposed paragraph (c)(1)(ii) would incorporate the existing citation to § 701.30 as a source of names. Proposed paragraph § 701.30(c)(1)(i) would identify the color additive regulations in parts 73 and 74 as the preferred source of names for color additives. This proposed paragraph would further state that for color additives listed in part 74 it is not necessary to include the prefix "FD&C" or "D&C" or the term "No." in the ingredient declaration, but that the prefix "Ext." shall be included in the declaration. For lakes, it would also not be necessary to include the identity of precipitant cations or substrata, but the term "Lake" would have to be included in the name.

c. *Labeling of drug products.* Under §§ 201.20 (a) and (b) (21 CFR 201.20 (a) and (b)) and § 74.1705(c), certain over-the-counter and prescription drug products intended for human use must declare the presence of FD&C Yellow No. 5 as a color additive. The regulations specify that the labeling for these drug products shall bear a statement such as "Contains FD&C Yellow No. 5 (tartrazine) as a color additive" or "Contains color additives including FD&C Yellow No. 5 (tartrazine)," and prescribe a more detailed warning that must be included in the "Precautions" section of the labeling.

Under the July 1995 proposal, the labels of certain over-the-counter and prescription drug products would be required to declare the presence of FD&C Yellow No. 6 as a color additive. The agency had previously published a final rule adopting the same requirement for such drug products (51 FR 41765, November 19, 1986), but subsequently, in compliance with a stipulation for the dismissal of a lawsuit challenging the 1986 final rule, the agency published a notice in the **Federal Register** of December 6, 1988 (53 FR 49138), announcing that the requirement would not be enforced pending a reproposal of the action.

The provisional listings of the lakes of FD&C Yellow No. 5 (§ 82.705) and FD&C Yellow No. 6 (§ 82.706) do not contain any reference to the declaration of these lakes in drug products. However, FDA's proposal to require the labeling of FD&C Yellow No. 5 in foods and ingested drugs (42 FR 6835, February 4, 1977) explicitly states that "a label declaration of the presence of FD&C Yellow No. 5 in food for humans, whether added as the straight color, a mixture, or a lake, would enable persons intolerant to FD&C Yellow No. 5 to minimize exposure to the color." The July 1995 proposal contains almost identical language in the foods section of the proposal (60 FR 37611 at 37613 to 37614). Although these proposals were silent as to whether the labeling requirement would encompass all forms (straight color, mixture, or lake) of the color additive when added to drugs, the safety issue necessitating such labeling in drugs is the same as for foods. Therefore, the agency tentatively concludes that the presence of FD&C Yellow No. 5 should be declared as prescribed by § 74.1705 (c)(2) and (c)(3) and by § 201.20 (a) and (b) when a lake of FD&C Yellow No. 5 is used in these products, and that the presence of FD&C Yellow No. 6 should be declared as prescribed by proposed §§ 74.1706(c)(2) and 201.20(c) when a lake of FD&C Yellow No. 6 is used. Accordingly, this proposal modifies the July 1995 proposal to include lakes of FD&C Yellow No. 5 and FD&C Yellow No. 6. The agency notes that the declaration of FD&C Yellow No. 5 and FD&C Yellow No. 6 in these drug products is intended as a warning statement about the presence of these color additives, not as an ingredient declaration.

To minimize confusion, the agency is proposing that the declaration for the presence of a lake of FD&C Yellow No. 5 in drug products should be the same as that required for the straight color in §§ 74.1705(c) and 201.20. Therefore, the agency is proposing to require in § 74.1050(e)(2) that drugs that contain a lake of FD&C Yellow No. 5 be labeled in accordance with § 74.1705 (c)(2) and (c)(3). Similarly, the agency is proposing to require in § 74.1050(e)(3) that drugs that contain a lake of FD&C Yellow No. 6 be labeled in accordance with proposed § 74.1706(c)(2). The agency is also proposing to amend § 201.20 to state that a drug product that contains a lake of FD&C Yellow No. 5 or a lake of FD&C Yellow No. 6 is subject to the same labeling requirements as a drug product that contains the straight color. Finally, the agency is proposing to amend § 74.1705 (c)(2) and (c)(3) to clarify that drugs made with a lake of FD&C Yellow No. 5 are subject to the same label declaration requirements as drugs made with the straight color, and to modify proposed § 74.1706(c)(2) to clarify that drugs made with a lake of FD&C Yellow No. 6 are subject to the same label declaration requirements as drugs made with the straight color.

Under the current regulations, certain drug products that are also cosmetics, such as antibacterial mouthwashes and fluoride toothpastes, need not comply with the label declaration requirements for FD&C Yellow No. 5 in §§ 74.1705(c) and 201.20, provided that they comply with the ingredient labeling provisions for cosmetics in § 701.3. The pending July 1995 proposal for declaration of FD&C Yellow No. 6 in ingested drugs contains the same proviso. The agency is proposing to allow the labeling of such drug/cosmetic products that contain lakes of FD&C Yellow No. 5 or FD&C Yellow No. 6 to use the abbreviated nomenclature for ingredient declaration of lakes in proposed § 701.3(c)(1), which is discussed in section VI.C.3.b. of this document.

4. Other Amendments

As a result of the proposed change in the definition of "straight color" and the proposed new definition of "listed color," the agency is also proposing to amend §§ 70.20, 73.1, and 73.1001 to replace the term "straight color" with the term "listed color."

As a result of the deletion of the provisional listings (parts 81 and 82), the agency is also proposing to amend § 178.3297(d) by removing the references to parts 81 and 82.

VII. Summary of Information Requested

To protect the confidentiality of the requested identity and process information, interested parties may submit such information, as well as reference samples of rosin products, directly to the Office of Cosmetics and Colors (address above).

A. In Situ Manufacturing Processes

As discussed in section V.A.2. of this document, the agency is aware that some substrata, including aluminum benzoate, alumina, barium sulfate (blanc fixe), and gloss white, may be currently prepared in situ during the manufacture of lakes. The agency is proposing conditions for the in situ preparation of alumina and aluminum benzoate as substrata and is requesting, as comments on this proposal, information on appropriate methods of preparation and ingredient specifications for barium sulfate produced in situ. If such comments are received, the agency will consider modifying the proposal to permit the in situ preparation of barium sulfate as a substratum.

B. Identity and Specifications for Rosin

As discussed in section V.A.2.k. of this document, the agency is requesting, as comments on this proposal, information (e.g., a manufacturer's product specification sheet or analytical data sheet) about identity and specifications for any type of rosin that does not meet the identity and specifications proposed in this document, but that is currently used as the substratum "rosin" under §§ 82.1051 or 82.2051. The agency is also requesting a 5-pound reference sample of each type of rosin identified in a comment. Comments should identify the specific type(s) of rosins used by the lake manufacturer and describe any treatment of the rosin prior to incorporation in a lake. Furthermore, the agency requests data concerning the dermal safety of any rosin intended for use as a diluent in color additives for externally applied drug use.

If the agency receives satisfactory information for additional types of rosin, the agency will expand the definition of rosin in its final action on this rulemaking to provide for the use of the additional products as substrata in lakes for drug or cosmetic use. In addition, to alleviate the concerns raised by literature reports of allergic reactions and dermal irritation caused by some forms of free rosin, the agency is requesting information on the safety of rosin as a diluent in color additive mixtures used in externally applied drugs. If the requested data are received and they demonstrate that rosin used as a diluent in externally applied drugs is safe, the agency will consider listing rosin for such use in the final rule.

C. Anions in Precipitants

As discussed above, the agency is proposing to allow only the anions chloride (Cl^{-1}) and sulfate (SO_4^{-2}) for use as components of precipitants. However, because the provisional listing regulations did not specify the anions that could be used in lakes, the agency is requesting comments on the use of other anions in the preparation of lakes for food, drug, or cosmetic use. This information should include data to document the current use of such anions in preparing lakes and to demonstrate their safety for such use. If the agency receives information to confirm the current safe use of anions other than chloride and sulfate in lakes, the agency will consider listing these anions in the final rule.

VIII. Effective Date

Section 701(e) of the act (21 U.S.C. 371(e)) allows 30 days for the filing of objections to a final rule listing a color additive and states that such a final rule may not become effective until the period for filing objections is over. Thus, the earliest possible effective date for a final rule listing a color additive is 31 days after publication. FDA typically sets a longer effective date for changes in labeling requirements.

In accordance with section 701(e) of the act, the agency is proposing that the final rule resulting from this proposal become effective 31 days following its publication, except for the proposed provisions of §§ 201.20, 74.1050(e), 74.1705(c), and 74.1706(c)(2) concerning declaration of lakes of FD&C Yellow No. 5 and FD&C Yellow No. 6 on the labels of certain drug products, and the proposed provisions of §§ 74.50(e)(3) and 74.706(d)(2) concerning declaration of lakes of FD&C Yellow No. 6 on the labels of butter, cheese, and ice cream. FDA is proposing that these provisions, which are part of the rulemaking initiated by the July 1995 proposal (as modified by this proposal), become effective when the final rule resulting from that proposal takes effect.

Although this proposal contains changes in the ingredient labeling provisions applicable to cosmetics, the proposed abbreviated nomenclature for declaration of lakes as ingredients in these products is optional, and manufacturers may continue to use the old labeling nomenclature if they wish. Therefore, FDA tentatively concludes that the amendments to the labeling regulations for lakes in cosmetics do not necessitate a delay in the effective date of the final rule.

IX. Inspection of Documents

The documents that FDA considered and relied upon in developing this proposal are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person (address above). As provided in § 71.15 (21 CFR 71.15), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

X. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(3) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Paperwork Reduction Act

This proposed rule contains collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Therefore, in accordance with 44 U.S.C. 3506(c)(2)(B) and 5 CFR part 1320, FDA is providing below the title, description, and respondent descriptions for the collections of information contained in this proposal along with an estimate of the resulting annual collection of information burden. Included in the estimate is the time needed to review instructions, to gather the required information, and to disclose the information.

FDA invites comments on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, where appropriate, or other forms of information technology.

Title: Certification and Labeling Requirements for Color Additive Lakes.

Description: Section 721(c) of the act requires the certification of color additives where a certification requirement is necessary in the interest of the public health. Currently, lakes are subject to certification under §§ 80.21 and 80.31 and recordkeeping as required in § 80.39. The proposed rule would establish a new simplified procedure for certification of batches of lakes. Under § 80.33 of the proposed rule, the manufacturer or repacker of a lake would submit a notice claiming certification, in lieu of a request for certification. The notice would contain information about the ingredients and chemical composition of the batch. The manufacturer or repacker would be required to keep records, including a sample taken from the batch, to document the information in the notice. After certification, the manufacturer or repacker would be required to keep records of the disposition of the batch. The proposal would also require that these records be made available to FDA upon request. Because most of the records that would be required by the proposed rule are already kept in the usual course of business, the agency believes that the proposed provisions will add only a minor additional record retention burden for firms subject to the proposed provisions.

Section 721(b)(3) of the act provides that a color additive regulation shall prescribe the conditions under which the additive may be safely employed for use in foods, drugs, or cosmetics, including any labeling or packaging requirements necessary to ensure the safety of the additive. The presence of FD&C Yellow No. 5 or FD&C Yellow No. 6 in food has been reported to cause allergic-type reactions. To ensure that consumers who are sensitive to these color additives will be able to identify and avoid them, the agency is proposing to require in § 74.50(e)(3) that lakes of FD&C Yellow No. 5 and FD&C Yellow No. 6 that are used as ingredients in butter, cheese, and ice cream be declared on the labels of these foods. (Declaration of these lakes in all foods is already required both by statute and regulation.) However, because the agency is unaware of any current use of lakes of FD&C Yellow No. 5 or FD&C Yellow No. 6 in butter, cheese, or ice cream, the agency tentatively concludes that no burden would result from this proposed change.

Proposed § 701.3(c)(1)(i) changes the reference for the names under which color additives, including lakes, are declared on the cosmetic label, and provides for the optional use of abbreviated nomenclature for the declaration of color additives as ingredients on the cosmetic label. Proposed § 701.3(c)(1)(i) would also allow continued use of the current nomenclature, however. The agency does not anticipate that cosmetic manufacturers will change their labels immediately to take advantage of the abbreviated nomenclature; rather, the agency expects that manufacturers will start using the abbreviated nomenclature when they institute a label change for some other reason. Therefore, the agency tentatively concludes that proposed § 701.3(c)(1)(i) would introduce no startup costs or other burden.

To avoid double-counting, certain labeling provisions in this proposal have not been included in the burden estimate because they merely cross-reference labeling requirements contained in other regulations. Accordingly, proposed §§ 74.50(e)(1) and (e)(2), 74.1050(e), and 74.2050(d) do

not appear in the burden estimate table. Provisions that merely continue existing labeling requirements, such as proposed § 101.22(k)(1), also have not been included in the burden estimate for this proposal.

Other proposed labeling changes do not constitute collections of information because they provide for disclosure of information supplied by FDA. Proposed §§ 201.20, 74.1705(c)(2) and (c)(3), and 74.1706(c)(2) would require disclosure of the presence of FD&C Yellow No. 5 and FD&C Yellow No. 6 on the labels and in the labeling of certain drug products. The proposed regulations specify the wording of the required disclosures. Also, proposed § 70.25(d)(2) would require disclosure, on the package label of the lake, of the number assigned by FDA to its acceptance of the notice claiming certification for the batch of lake. These labeling requirements provide for "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" and are, therefore, exempt from OMB review under 5 CFR 1320.3(c)(2). Finally, some proposed requirements have been excluded from the burden estimate because the agency tentatively concludes that the resources necessary to comply with these requirements would be expended by businesses in the normal course of their activities and that the reporting, recordkeeping, or disclosure activities required by the proposed regulation are, thus, usual and customary (5 CFR 1320.3(b)(2)). For example, the information on percent total color and percent color from each straight color used in a batch of lake that must appear on the package label of the lake under proposed § 70.25(d)(2)(i) and (ii) is needed by the purchaser of the lake to properly formulate the purchaser's food, drug, or cosmetic product. Therefore, as a matter of business necessity, a manufacturer or repacker would obtain and disclose this information to clients, regardless of FDA requirements.

Description of Respondents: Businesses, including small businesses.

ESTIMATED ANNUAL REPORTING BURDEN

CFR Section	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating and Maintenance Costs
21 CFR 74.50(e)(3)	0	0	0	0	0	0
21 CFR 80.33	20	80	1,600	0.25	400	$48,000
21 CFR 701.3(c)(1)(i)	0	0	0	0	0	0
Totals					400	48,000

ESTIMATED ANNUAL RECORDKEEPING BURDEN

CFR Section	Number of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
21 CFR 80.22	20	1	20	2.65	53
21 CFR 80.39	20	1	20	37.35	747
Totals				40	800

The agency expects that the number of respondents and the annual burden hours will not change significantly over succeeding years because it believes that the use of lakes in foods, drugs, and cosmetics will remain constant. There are no anticipated capital or startup costs associated with the proposed information collection requirements.

The agency has submitted copies of the proposed rule to OMB for review of the portions of the proposal that are within the ambit of the Paperwork Reduction Act of 1995. Interested persons are requested to send comments regarding information collection by April 3, 1996, but not later than May 3, 1996, to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, rm. 10235, Washington, DC 20503, ATTN: Desk Officer for FDA.

XII. Comments

As noted in section XI. of this document, interested parties may, on or before May 3, 1996, submit to the Office of Information and Regulatory Affairs, OMB (address above) written comments regarding the collections of information contained in this proposal. For other issues in the proposed rule, interested persons may, on or before June 3, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number of the rulemaking or rulemakings to which the comment is relevant. Comments on modifications to the July 1995 proposal regarding label declaration of FD&C Yellow No. 6 should be identified with both docket numbers found in brackets in the heading of this document; comments on other aspects of this proposal should be identified with docket number 79N–0043 only. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In addition, interested persons may, on or before June 3, 1996, submit to the Office of Cosmetics and Colors (address above) written comments containing process information relating to the identity and current use of substrata (including rosin) in lakes, and samples of such substrata. Written comments regarding the use of anions other than chloride and sulfate in precipitants may also be submitted to this address. Two copies of each comment and one 5-pound sample are to be submitted, and each submission is to be identified with the docket number (79N–0043) found in brackets in the heading of this document.

XIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Kubo, Y., T. Iijima, "Dye Elution from Aluminum Lake Synthetic Food Colors (VI) Brilliant Blue FCF Lakes," *Shikisai*, 60(1): 2–13, 1987.

2. Kubo, Y., M. Shirai, T. Iijima, "Dye Elution from Aluminum Lake Synthetic Food Colors (VII) Lakes Produced by One-Step Method," *Shikisai*, 60(2):83–93, 1987.

3. Kubo, Y., H. Kawaguchi, "Dye Elution from Aluminum Lake Synthetic Food Colors (V) Indigo Carmine Lakes," *Shikisai*. 59(11):663–669, 1986.

4. U.S. Patent 2,418,416 to Locke, R. C., Salem, NJ assignor to E.I. du Pont de Nemours and Co., Wilmington, DE, "Manufacture of Azo Lakes," April 1, 1947.

5. U.S. Patent 2,478,768 to Locke, R. C., Salem, NJ assignor to E.I. du Pont de Nemours and Co., Wilmington, DE, "Manufacture of Azo Lakes," August 9, 1949.

6. Clark, G. R., "Report on Pure Dye, Impurities, and Substrata in Pigments," *Journal of the Association of Official Agricultural Chemists*, 28(4):938–941, 1942.

7. Clark, G. R., "Report on Lakes and Pigments," *Journal of the Association of Officiol Agricultural Chemists*, 24(4):904–906, 1941.

8. Holtzman, H., "The Hydrous Oxides of Aluminum and Color Lake Formation," agency internal progress report, 1942.

9. Zuckerman, S., "Color in Cosmetics: *Cosmetics, Science and Technology*," edited by E. Sagarin, Interscience Publishers, New York, NY, pp. 539–572, 1974.

10. United States Department of Agriculture, Food Inspection Decision 76, July 13, 1907.

11. United States Department of Agriculture, "Certification of Coal-Tar Colors Begun by Food and Drug Administration," information for the press, May 11, 1939.

12. Faulkner, E. B., "Coping with International Color Regulations," *Cosmetics & Toiletries*, 107:45–49, 1992.

13. Memorandum dated June 27, 1988, from the Additives Evaluation Branch, FDA, to the Division of Food and Color Additives, FDA.

14. Memoranda dated July 13, 1994, and August 22, 1994, from Research Chemist, Office of Cosmetics and Colors, FDA (HFS-128), to Aydin Örstan, FDA (HFS–217).

15. Memorandum dated December 3, 1986, from the Division of Food and Color Additives, FDA, to the Division of Colors and Cosmetics, FDA.

16. *Color Index*, 3d ed., vol. 4, Society of Dyers and Colourists, Bradford, Yorkshire, England, pp. 4003, 4009–4011, 4013, 4379, 4417, 4435, 4593–4594, 1971.

17. Marmion, D. M., *Handbook of U.S. Colorants for Foods, Drugs, and Cosmetics*, 2d ed., John Wiley and Sons, New York, NY, pp. 48, 64–89, 1984.

18. Food and Drug Administration, "Report on the Certification of Color Additives, Foreign and Domestic Manufacturers, fiscal year 1995."

19. Color Additive Master File No. 9, entry nos. 550, 550A, and 550-addendum 1, dated September 3, 1986, October 8, 1986, and June 3, 1987.

20. Memoranda from the Division of Colors and Cosmetics, FDA, to the Division of Food and Color Additives, FDA, dated October 2, 1986, November 21, 1986, and October 7, 1987.

21. Food and Drug Administration, Office of Cosmetics and Colors, "Intermediates and Subsidiary Colors in FD&C Blue No. 2 Straight Color and Lake," September 14, 1995.

22. Lykens, D. N., "Thermal Stability of FD&C Lake Pigments," *Plastics Compounding*, pp. 35 to 40, November/December, 1986.

23. Memorandum from the Food and Color Additives Review Section, FDA, to the Direct Additives Branch, FDA, dated March 19, 1991.

24. Memorandum from the Additives Evaluation Branch, FDA, to the Direct Additives Branch, FDA, dated April 17, 1991.

25. Committee on GRAS List Survey—Phase III. "The 1977 Survey of Industry on the Use of Food Additives," vol. 1, National Academy of Sciences, Washington, DC, pp. 1175 to 1192, 1979.

26. King, J., "Method for Determination of Color Stability in Laking; The Results of Experiments with the Method of Establishing the Stability of Color in Laking for FD&C Red No. 4 and D&C Orange No. 4," January 28, 1980.

27. Food and Drug Administration, "Report of FY–95 Certification Results for Batches of D&C Lakes of D&C Orange No. 5, D&C Red Nos. 21, 22, 27 and 28," December 1, 1995.

28. Food and Drug Administration, "Report of FY–95 Certification Results for Batches of D&C Yellow No. 10 Lakes Prepared from Certified Batches of Straight Color," December 1, 1995.

29. The Cosmetic, Toiletry, and Fragrance Association, edited by Wenninger, J. A., and G. N. McEwen, "International Cosmetic Ingredient Dictionary, 5th ed.,", vol. 1, Washington, DC, p. 640, 1993.

30. Hercules, Product Data Sheet no. 7248, for Dresinate Dry Powder Soaps.

List of Subjects

21 CFR Part 70

Color additives, Cosmetics, Drugs, Labeling, Packaging and containers.

21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 74

Color additives, Cosmetics, Drugs, Incorporation by reference.

21 CFR Part 80

Color additives, Cosmetics, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 81

Color additives, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Cosmetics, Drugs.

21 CFR Part 101

Food Labeling, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 178

Food additives, Food packaging.

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 701

Cosmetics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the transitional provisions of the Color Additive Amendments of 1960, and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Associate Commissioner for Regulatory Affairs, it is proposed that 21 CFR parts 70, 73, 74, 80, 81, 82, 101, 178, 201 and 701 be amended as follows:

PART 70—COLOR ADDITIVES

1. The authority citation for 21 CFR part 70 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 512, 601, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 360b, 361, 371, 379e).

2. Section 70.3 is amended by revising paragraphs (j), (k), (l), and (n), and by adding new paragraphs (w) and (x) to read as follows:

§ 70.3 Definitions.

* * * * *

(j) The term *straight color* means a color additive listed in parts 73 or 74 of this chapter, but does not include color additive mixtures or lakes.

(k) The term *mixture* means a color additive made by mixing two or more listed colors, or one or more listed colors and one or more diluents, without an accompanying chemical reaction.

(l) The term *lake* means a color additive made by extending one or more straight colors on one or more substrata by adsorption, coprecipitation, or chemical combination, but does not include mixtures.

* * * * *

(n) The term *substratum* means the substance on which the straight color in a lake is extended.

* * * * *

(w) The term *listed color* means a color additive listed in parts 73 or 74 of this chapter and includes lakes.

(x) The term *repack* means all or a portion of a batch of certified color additive that has been sealed in accordance with § 70.20 and labeled in accordance with § 70.25, but has been reopened solely for repackaging without further processing, or relabeled for shipment or delivery, by a person other than the person to whom the certificate or acceptance of a notice claiming certification was issued.

3. Section 70.20 is amended by revising the section heading and first sentence to read as follows:

§ 70.20 Packaging requirements for listed colors and mixtures (other than hair dyes).

Listed colors and mixtures shall be packaged in containers which prevent changes in composition. * * *

* * * * *

4. Section 70.25 is amended in paragraph (a), introductory text, by removing from the first sentence "80, and 81" and adding in its place "and 80"; in paragraph (a)(1) by removing the words "straight color" and adding in their place the words "listed color"; in paragraph (a)(3) by removing the words "straight color" and adding in their place the words "listed color" the two times they appear and by adding a new sentence at the end of the paragraph; and by revising paragraph (d) to read as follows:

§ 70.25 Labeling requirements for color additives (other than hair dyes).

(a) * * *

(3) * * * The amount of such straight color in a lake shall be considered part of the total amount of such straight color.

* * * * *

(d) *Special labeling for color additives not exempt from certification.* (1) Color additives subject to the certification procedures of § 80.31(a) of this chapter shall in addition include in the labeling the lot number assigned by the Color Certification Branch, Center for Food Safety and Applied Nutrition (CFSAN), Food and Drug Administration, except that in the case of any mixture for household use which contains not more than 15 percent of pure color and which is in packages containing not more than 3 ounces there appears on the label, a code number which the manufacturer has identified with the lot number by giving to the Food and Drug Administration written notice that such code number will be used in lieu of the lot number.

(2) Lakes subject to the certification procedures of § 80.31(b) of this chapter shall in addition include in the labeling:

(i) The total color content of the lake;

(ii) The amount of color contributed by each straight-color component of the lake; and

(iii) The FDA acceptance number assigned to the firm's notice claiming certification for the batch.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

5. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e).

§ 73.1 [Amended]

6. Section 73.1 *Diluents in color additive mixtures for food use exempt from certification* is amended in the introductory text by removing the words "straight color" and adding in their place the words "listed color".

7. Section 73.1001 is amended in the first sentence of the introductory text by removing the words "straight color" and adding in their place the words "listed color", and in the table in paragraph (a)(1) by alphabetically adding four new entries to read as follows:

§ 73.1001 Diluents in color additive mixtures for drug use exempt from certification.

* * * * *

(a) * * *

(1) * * *

Substances	Definitions and specifications	Restrictions
. .	. .	. .
Aluminum benzoate	As set forth in § 74.1050(a)(3)(ii) of this chapter	
Barium sulfate	As set forth in § 74.1050(a)(3)(iii) of this chapter	
. .	. .	. .
Kaolin	As set forth in § 74.1050(a)(3)(v) of this chapter	
. .	. .	. .
Rosin	As set forth in § 74.1050(a)(3)(vi) of this chapter	For use only in ingested drugs.
. .	. .	. .

* * * * *

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

8. The authority citation for 21 CFR part 74 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 of the Federal Food, Drug, and Cosmetic Act.

(21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)

9. Section 74.50 is added to subpart A to read as follows:

§ 74.50 Lakes for use in foods.

(a) *Identity.* (1) Lakes listed in this section are color additives made by extending one or more certified batches of one or more straight colors listed in paragraph (a)(2) of this section on a substratum of alumina that conforms to the requirements of paragraph (a)(3) of this section using one or more precipitants that form aluminum (Al^{+3}) cation and chloride (Cl^{-1}) or sulfate (SO_4^{-2}) anion.

(2) Lakes listed in this section may contain one or more of the following straight colors:

(i) FD&C Blue No. 1;
(ii) FD&C Blue No. 2;
(iii) FD&C Green No. 3;
(iv) FD&C Red No. 40;
(v) FD&C Yellow No. 5; and
(vi) FD&C Yellow No. 6.

(3) Lakes listed in this section shall contain the substratum alumina, which may either conform to the requirements for alumina under § 73.1010(a)(1) and (b) of this chapter, or may be a suspension in water of precipitated aluminum hydroxide that is formed from aluminum sulfate that meets the requirements of the Food Chemicals Codex, 2d. ed., 1972, pp. 39–40, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, and sodium carbonate or sodium hydroxide that meets the specifications of the Food Chemicals Codex, 3d. ed., 1981, p. 280 (sodium carbonate) or p. 287 (sodium hydroxide), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(4) Color additive mixtures for food use (including dietary supplements) made with lakes listed in this section may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring foods. Such mixtures shall be used in accordance with paragraph (c) of this section.

(b) *Specifications.* Lakes listed in this section shall conform to the following specifications and shall be free from impurities other than those named, to the extent that such other impurities may be avoided by current good manufacturing practice:

(1) Lead (as Pb), not more than 10 parts per million;

(2) Arsenic (as As), not more than 3 parts per million; and

(3) Mercury (as Hg), not more than 1 part per million.

(c) *Uses and restrictions.* Lakes listed in this section may be safely used for coloring foods generally (including dietary supplements) in amounts consistent with current good manufacturing practice, except that:

(1) They may not be used to color foods for which standards of identity have been promulgated under section 401 of the act unless added color is authorized by such standards; and

(2) Any restriction on the use of a straight color shall also apply to the use of a lake of such straight color. If a lake is prepared using a single straight color, the lake may be used in the same manner as permitted for the straight color. If a lake is prepared using more than one straight color, its use shall be restricted to those uses common to all of the component straight colors.

(d) *Identification.* Each lake made as prescribed in paragraph (a) of this section shall be considered to be a listed color and to be listed therein under the name that is formed as follows:

(1) The listed names of the straight colors present in the lake (in descending order of predominance);

(2) The name of the cation precipitant "Aluminum," followed by the words "Lake on Alumina." (For example, the name of a lake prepared by the extension of FD&C Yellow No. 5 and FD&C Blue No. 1 on alumina using aluminum chloride as a precipitant is "FD&C Yellow No. 5 and FD&C Blue No. 1 Aluminum Lake on Alumina.")

(e) *Labeling.* (1) The label of each lake listed in this section and any mixtures prepared from them that are intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(2) Foods for human use that contain lakes listed in this section shall declare the presence of such lakes in accordance with § 101.22(k)(1) of this chapter.

(3) Butter, cheese, and cream that contain a lake of FD&C Yellow No. 5 or FD&C Yellow No. 6 shall be labeled in accordance with § 101.22(k)(1) of this chapter.

(f) *Certification.* All batches of lakes listed in this section shall be certified in accordance with regulations in part 80 of this chapter.

10. Section 74.101 is amended by adding new paragraph (a)(3) to read as follows:

§ 74.101 FD&C Blue No. 1.

(a) * * *

(3) Lakes made with FD&C Blue No. 1 shall conform to the requirements of § 74.50.

* * * * *

11. Section 74.102 is amended by adding new paragraph (a)(3) to read as follows:

§ 74.102 FD&C Blue No. 2.

(a) * * *

(3) Lakes made with FD&C Blue No. 2 shall conform to the requirements of § 74.50.

* * * * *

12. Section 74.203 is amended by adding new paragraph (a)(3) to read as follows:

§ 74.203 FD&C Green No. 3.

(a) * * *

(3) Lakes made with FD&C Green No. 3 shall conform to the requirements of § 74.50.

* * * * *

13. Section 74.340 is amended by revising paragraph (a)(3); in paragraph (d) by removing the words "lakes or"; and in paragraph (e) by removing the words "and lakes thereof", to read as follows:

§ 74.340 FD&C Red No. 40.

(a) * * *

(3) Lakes made with FD&C Red No. 40 shall conform to the requirements of § 74.50.

* * * * *

14. Section 74.705 is amended by revising paragraph (a)(3) to read as follows:

§ 74.705 FD&C Yellow No. 5.

(a) * * *

(3) Lakes made with FD&C Yellow No. 5 shall conform to the requirements of § 74.50.

* * * * *

15. Section 74.706 is amended by adding new paragraph (a)(3) to read as follows:

§ 74.706 FD&C Yellow No. 6.

(a) * * *

(3) Lakes made with FD&C Yellow No. 6 shall conform to the requirements of § 74.50.

* * * * *

16. Section 74.1050 is added to subpart B to read as follows:

§ 74.1050 Lakes for use in drugs.

(a) *Identity.* (1) Lakes listed in this section are color additives made by extending one or more certified batches of one or more straight colors specified in paragraph (a)(2) of this section on one or more substrata specified in paragraph (a)(3) of this section, using one or more precipitants that form aluminum (Al^{+3}), barium (Ba^{+2}), calcium (Ca^{+2}), potassium (K^{+1}), sodium (Na^{+1}), strontium (Sr^{+2}), or zirconium (Zr^{+4}) cation, and chloride (Cl^{-1}) or sulfate (SO_4^{-2}) anion.

(2) Lakes listed in this section may contain one or more of the following straight colors:

(i) FD&C Blue No. 1;
(ii) FD&C Blue No. 2;
(iii) FD&C Green No. 3;
(iv) FD&C Yellow No. 5;
(v) FD&C Yellow No. 6;
(vi) FD&C Red No. 4;
(vii) FD&C Red No. 40;
(viii) D&C Blue No. 4;
(ix) D&C Orange No. 4;
(x) D&C Orange No. 5;
(xi) D&C Orange No. 10;
(xii) D&C Red No. 6;
(xiii) D&C Red No. 7;
(xiv) D&C Red No. 21;
(xv) D&C Red No. 22;
(xvi) D&C Red No. 27;
(xvii) D&C Red No. 28;
(xviii) D&C Red No. 31;
(xix) D&C Red No. 33;
(xx) D&C Red No. 34; and
(xxi) D&C Yellow No. 10.

(3) Lakes listed in this section may contain one or more of the following substrata:

(i) Alumina that conforms to the requirements of § 74.50(a)(3) of this chapter; and

(ii) Aluminum benzoate that is prepared from aluminum chloride or aluminum sulfate that conforms to the requirements of the United States Pharmacopeia, 23d ed. (1995), p. 64 (aluminum chloride) or p. 68 (aluminum sulfate), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, and benzoic acid that conforms to the requirements of the United States Pharmacopeia, 23d ed. (1995), pp. 176 and 177, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the United States Pharmacopoeial Convention, Inc., 12601 Twinbrook Pkwy., Rockville, MD 20852, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(iii) Barium sulfate that conforms to the requirements of the United States Pharmacopeia, 23d ed. (1995), pp. 165 and 166, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (a)(3)(ii) of this section.

(iv) Calcium carbonate that conforms to the requirements of § 73.1070(a)(1) and (b) of this chapter.

(v) Kaolin that conforms to the requirements of the United States Pharmacopeia, 23d ed. (1995), p. 863, which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (a)(3)(ii) of this section.

(vi) Rosin, which is the pale, cream-colored sodium soap of the residue left after distilling off the volatile oil from the oleoresin obtained from *Pinus palustris* and other species of *Pinus*, and which conforms to the following specifications:

(A) Solids, not less than 95 percent;

(B) Acid number, not greater than 7.5; and

(C) Free alkali, not greater than 2.5 percent.

(vii) Talc that conforms to the requirements of § 73.1550(a)(1) and (b) of this chapter.

(viii) Titanium dioxide that conforms to the requirements of § 73.575 (a)(1) and (b) of this chapter.

(ix) Zinc oxide that conforms to the requirements of § 73.1991(a)(1) and (b) of this chapter.

(4) Color additive mixtures for drug use made with lakes listed in this section may contain only those diluents that are suitable and that are listed in part 73 of this chapter as safe for use in color additive mixtures for coloring drugs. Such mixtures shall be used in accordance with paragraph (c) of this section.

(b) *Specifications.* Lakes listed in this section shall conform to the following specifications and shall be free from impurities other than those named, to the extent that such other impurities may be avoided by current good manufacturing practice:

(1) Lead (as Pb), not more than 20 parts per million;

(2) Arsenic (as As), not more than 3 parts per million;

(3) Mercury (as Hg), not more than 1 part per million; and

(4) For a lake that contains a barium salt, soluble barium (in dilute HCl) as $BaCl_2$, not more than 0.05 percent.

(c) *Uses and restrictions.* Lakes listed in this section may be safely used for coloring drugs generally in amounts consistent with current good manufacturing practice, except that:

(1) Any restriction on the use of a straight color shall also apply to the use of a lake of such straight color. If a lake is prepared using a single straight color, the lake may be used in the same manner as permitted for the straight color. If a lake is prepared using more than one straight color, its use shall be restricted to those uses common to all of the component straight colors. (For example, a lake produced using two straight colors, one listed for use in coloring drugs generally and one listed for use in coloring externally applied drugs only, may be used only for coloring externally applied drugs.)

(2) Where regulations impose quantitative limitations for a general or specific use of a straight color, the amount of such straight color in a lake shall be considered part of the total amount of such straight color in a drug product.

(3) The aluminum lakes on alumina of FD&C Blue No. 1, FD&C Red No. 40, and FD&C Yellow No. 5, prepared in accordance with the requirements of § 74.50, may be safely used for coloring drugs intended for use in the area of the eye, in amounts consistent with current good manufacturing practice. Use of these lakes in the area of the eye is subject to the limitations in § 70.5 (b) and (c) of this chapter and does not include use in articles intended for use in injections or as a surgical suture in the area of the eye.

(d) *Identification.* Each lake made as prescribed in paragraph (a) of this section shall be considered to be a listed color and to be listed therein under the name that is formed as follows:

(1) The listed names of the straight colors present in the lake (in descending order of predominance);

(2) The names of the cations of the precipitants, followed by the words "Lake on _____";

(3) The names of the substrata (in descending order of predominance). (For example: The name of a lake prepared by the extension of FD&C Red No. 40 and D&C Orange No. 5 on alumina and titanium dioxide using aluminum chloride and calcium chloride as precipitants is "FD&C Red No. 40 and D&C Orange No. 5 Aluminum/Calcium Lake on Alumina and Titanium Dioxide.")

(e) *Labeling.* (1) The label of each lake listed in this section and any mixtures prepared from them that are intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(2) Drugs that contain a lake of FD&C Yellow No. 5 shall be labeled in accordance with § 74.1705 (c)(2) and (c)(3).

(3) Drugs that contain a lake of FD&C Yellow No. 6 shall be labeled in accordance with § 74.1706(c)(2).

(f) *Certification.* All batches of lakes listed in this section shall be certified in accordance with regulations in part 80 of this chapter.

17. Section 74.1101 is amended by adding a new paragraph (a)(4), by removing paragraphs (b)(2) and (c)(2) and redesignating paragraph (b)(1) and (c)(1) as paragraphs (b) and (c), respectively, to read as follows:

§ 74.1101 FD&C Blue No. 1.

(a) * * *

(4) Lakes made with FD&C Blue No. 1 shall conform to the requirements of § 74.1050.

* * * * *

18. Section 74.1102 is amended by adding new paragraph (a)(3) to read as follows:

§ 74.1102 FD&C Blue No. 2.

(a) * * *

(3) Lakes made with FD&C Blue No. 2 shall conform to the requirements of § 74.1050.

* * * * *

19. Section 74.1104 is amended by adding new paragraph (a)(3) to read as follows:

§ 74.1104 FD&C Blue No. 4.

(a) * * *

(3) Lakes made with FD&C Blue No. 4 shall conform to the requirements of § 74.1050.

* * * * *

20. Section 74.1203 is amended by adding a new paragraph (a)(3) to read as follows:

§ 74.1203 FD&C Green No. 3.

(a) * * *

(3) Lakes made with FD&C Green No. 3 shall conform to the requirements of § 74.1050.

* * * * *

21. Section 74.1254 is amended by adding new paragraph (a)(3) to read as follows:

§ 74.1254 D&C Orange No. 4.

(a) * * *

(3) Lakes made with D&C Orange No. 4 shall conform to the requirements of § 74.1050.

* * * * *

22. Section 74.1255 is amended by adding new paragraph (a)(3) to read as follows:

§ 74.1255 D&C Orange No. 5.

(a) * * *

(3) Lakes made with D&C Orange No. 5 shall conform to the requirements of § 74.1050.

* * * * *

23. Section 74.1260 is amended by adding new paragraph (a)(3) to read as follows:.

§ 74.1260 D&C Orange No. 10.

(a) * * *

(3) Lakes made with D&C Orange No. 10 shall conform to the requirements of § 74.1050.

* * * * *

24. Section 74.1304 is amended by adding new paragraph (a)(3) to read as follows:

§ 74.1304 FD&C Red No. 4.

(a) * * *

(3) Lakes made with FD&C Red No. 4 shall conform to the requirements of § 74.1050.

* * * * *

25. Section 74.1306 is amended by adding new paragraph (a)(3) to read as follows:

§ 74.1306 D&C Red No. 6.

(a) * * *

(3) Lakes made with D&C Red No. 6 shall conform to the requirements of § 74.1050.

* * * * *

26. Section 74.1307 is amended by adding new paragraph (a)(3) to read as follows:

§ 74.1307 D&C Red No. 7.

(a) * * *

(3) Lakes made with D&C Red No. 7 shall conform to the requirements of § 74.1050.

* * * * *

27. Section 74.1321 is amended by adding new paragraph (a)(3) to read as follows:

§ 74.1321 D&C Red No. 21.

(a) * * *

(3) Lakes made with D&C Red No. 21 shall conform to the requirements of § 74.1050.

* * * * *

28. Section 74.1322 is amended by adding new paragraph (a)(3) to read as follows:

§ 74.1322 D&C Red No. 22.

(a) * * *

(3) Lakes made with D&C Red No. 22 shall conform to the requirements of § 74.1050.

* * * * *

29. Section 74.1327 is amended by adding new paragraph (a)(3) to read as follows:

§ 74.1327 D&C Red No. 27.

(a) * * *

(3) Lakes made with D&C Red No. 27 shall conform to the requirements of § 74.1050.

* * * * *

30. Section 74.1328 is amended by adding new paragraph (a)(3) to read as follows:

§ 74.1328 D&C Red No. 28.

(a) * * *

(3) Lakes made with D&C Red No. 28 shall conform to the requirements of § 74.1050.

* * * * *

31. Section 74.1331 is amended by adding new paragraph (a)(3) to read as follows:

§ 74.1331 D&C Red No. 31.

(a) * * *

(3) Lakes made with D&C Red No. 31 shall conform to the requirements of § 74.1050.

* * * * *

32. Section 74.1333 is amended by adding new paragraph (a)(3) to read as follows:

§ 74.1333 D&C Red No. 33.

(a) * * *

(3) Lakes made with D&C Red No. 33 shall conform to the requirements of § 74.1050.

* * * * *

33. Section 74.1334 is amended by adding new paragraph (a)(3) to read as follows:

§ 74.1334 D&C Red No. 34.

(a) * * *

(3) Lakes made with D&C Red No. 34 shall conform to the requirements of § 74.1050.

* * * * *

34. Section 74.1340 is amended by revising paragraph (a)(3); by removing paragraph (b)(2); by redesignating paragraph (b)(1) as paragraph (b); by amending newly redesignated paragraph (b) by removing the phrase "and FD&C Red No. 40 Aluminum Lake"; by amending paragraph (c) by removing the phrase "lakes or"; and by amending paragraph (d) by removing the phrase "and lakes thereof" to read as follows:

§ 74.1340 FD&C Red No. 40.

(a) * * *

(3) Lakes made with FD&C Red No. 40 shall conform to the requirements of § 74.1050.

* * * * *

35. Section 74.1705 is amended by revising paragraph (a)(2); by removing paragraph (b)(2); by redesignating paragraph (b)(1) as paragraph (b); and by removing in the first sentence of paragraph (c)(2) and paragraph (c)(3), the phrase "containing FD&C Yellow No. 5" and adding in its place the phrase "containing FD&C Yellow No. 5 or a lake of FD&C Yellow No. 5".

§ 74.1705 FD&C Yellow No. 5.

(a) * * *

(2) Lakes made with FD&C Yellow No. 5 shall conform to the requirements of § 74.1050.

* * * * *

36–37. Section 74.1706 is amended by adding new paragraphs (a)(3) and (c)(2) to read as follows:

§ 74.1706 FD&C Yellow No. 6.

(a) * * *

(3) Lakes made with FD&C Yellow No. 6 shall conform to the requirements of § 74.1050.

* * * * *

(c) * * *

(2) The label of over-the-counter and prescription drug products intended for human use and administered orally, nasally, rectally, or vaginally containing FD&C Yellow No. 6, or a lake of FD&C Yellow No. 6, shall specifically declare the presence of FD&C Yellow No. 6 by listing the color additive using the name FD&C Yellow No. 6. The labels of certain drug products subject to this labeling requirement that are also cosmetics, such as antibacterial mouthwashes and fluoride toothpastes, need not comply with this requirement provided they comply with the requirements of § 701.3 of this chapter.

38. Section 74.1710 is amended by adding new paragraph (a)(3) to read as follows:

§ 74.1710 D&C Yellow No. 10.

(a) * * *

(3) Lakes made with D&C Yellow No. 10 shall conform to the requirements of § 74.1050.

* * * * *

39. Section 74.2050 is added to subpart C to read as follows:

§ 74.2050 Lakes for use in cosmetics.

(a) *Identity and specifications.* Lakes listed in this section shall conform in identity and specifications to the requirements of § 74.1050(a)(1), (a)(2), (a)(3), and (b), except that the straight color FD&C Blue No. 2 shall not be a component of such lakes.

(b) *Uses and restrictions.* Lakes listed in this section may be safely used for coloring cosmetics generally in amounts consistent with current good manufacturing practice, except that:

(1) Any restriction on the use of a straight color shall also apply to the use of a lake of such straight color. If a lake is prepared using a single straight color, the lake may be used in the same manner as permitted for the straight color. If a lake is prepared using more than one straight color, its use shall be restricted to those uses common to all of the component straight colors. (For example, a lake produced using two straight colors, one listed for use in coloring cosmetics generally and one listed for use in coloring externally applied cosmetics only, may be used only for coloring externally applied cosmetics.)

(2) Where regulations impose quantitative limitations for a general or specific use of a straight color, the amount of such straight color in a lake shall be considered a part of the total amount of such straight color in a cosmetic product.

(3) The aluminum lakes on alumina of FD&C Blue No. 1, FD&C Red No. 40, and FD&C Yellow No. 5, prepared in accordance with the requirements of § 74.50, may be safely used for coloring cosmetics intended for use in the area of the eye, in amounts consistent with current good manufacturing practice. Use of these lakes in the area of the eye is subject to the limitations in § 70.5(b) and (c) of this chapter, and does not include use in articles intended for use in injections or as a surgical suture in the area of the eye.

(c) *Identification.* Each lake made as prescribed in paragraph (a) of this section shall be considered to be a listed color and to be listed therein under the name that is formed as prescribed in § 74.1050(d).

(d) *Labeling.* (1) The label of each lake listed in this section and any mixtures prepared from that are intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(2) Cosmetics that contain lakes listed in this section shall declare the presence of such lakes in accordance with § 701.3(c)(1)(i) of this chapter.

(e) *Certification.* All batches of lakes listed in this section shall be certified in accordance with regulations in part 80 of this chapter.

40. Section 74.2101 is amended by removing paragraphs (b)(2) and (c)(2); by redesignating paragraphs (a), (b)(1), and (c)(1) as paragraphs (a)(1), (b), and (c), respectively; and by adding new paragraph (a)(2) to read as follows:

§ 74.2101 FD&C Blue No. 1.

(a) * * *

(2) Lakes made with FD&C Blue No. 1 shall conform to the requirements of § 74.2050.

* * * * *

41. Section 74.2104 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding new paragraph (a)(2) to read as follows:

§ 74.2104 D&C Blue No. 4.

(a) * * *

(2) Lakes made with D&C Blue No. 4 shall conform to the requirements of § 74.2050.

* * * * *

42. Section 74.2203 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding new paragraph (a)(2) to read as follows:

§ 74.2203 FD&C Green No. 3.

(a) * * *

(2) Lakes made with FD&C Green No. 3 shall conform to the requirements of § 74.2050.

* * * * *

43. Section 74.2254 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding new paragraph (a)(2) to read as follows:

§ 74.2254 D&C Orange No. 4.

(a) * * *

(2) Lakes made with D&C Orange No. 4 shall conform to the requirements of § 74.2050.

* * * * *

44. Section 74.2255 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding new paragraph (a)(2) to read as follows:

§ 74.2255 D&C Orange No. 5.

(a) * * *

(2) Lakes made with D&C Orange No. 5 shall conform to the requirements of § 74.2050.

* * * * *

45. Section 74.2260 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding new paragraph (a)(2) to read as follows:

§ 74.2260 D&C Orange No. 10.

(a) * * *

(2) Lakes made with D&C Orange No. 10 shall conform to the requirements of § 74.2050.

* * * * *

46. Section 74.2304 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding new paragraph (a)(2) to read as follows:

§ 74.2304 FD&C Red No. 4.

(a) * * *

(2) Lakes made with FD&C Red No. 4 shall conform to the requirements of § 74.2050.

* * * * *

47. Section 74.2306 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding new paragraph (a)(2) to read as follows:

§ 74.2306 D&C Red No. 6.

(a) * * *

(2) Lakes made with D&C Red No. 6 shall conform to the requirements of § 74.2050.

* * * * *

48. Section 74.2307 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding new paragraph (a)(2) to read as follows:

§ 74.2307 D&C Red No. 7.

(a) * * *

(2) Lakes made with D&C Red No. 7 shall conform to the requirements of § 74.2050.

* * * * *

49. Section 74.2321 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding new paragraph (a)(2) to read as follows:

§ 74.2321 D&C Red No. 21.

(a) * * *

(2) Lakes made with D&C Red No. 21 shall conform to the requirements of § 74.2050.

* * * * *

50. Section 74.2322 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding new paragraph (a)(2) to read as follows:

§ 74.2322 D&C Red No. 22.

(a) * * *

(2) Lakes made with D&C Red No. 22 shall conform to the requirements of § 74.2050.

* * * * *

51. Section 74.2327 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding new paragraph (a)(2) to read as follows:

§ 74.2327 D&C Red No. 27.

(a) * * *

(2) Lakes made with D&C Red No. 27 shall conform to the requirements of § 74.2050.

* * * * *

52. Section 74.2328 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding new paragraph (a)(2) to read as follows:

§ 74.2328 D&C Red No. 28.

(a) * * *

(2) Lakes made with D&C Red No. 28 shall conform to the requirements of § 74.2050.

* * * * *

53. Section 74.2331 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding new paragraph (a)(2) to read as follows:

§ 74.2331 D&C Red No. 31.

(a) * * *

(2) Lakes made with D&C Red No. 31 shall conform to the requirements of § 74.2050.

* * * * *

54. Section 74.2333 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding new paragraph (a)(2) to read as follows:

§ 74.2333 D&C Red No. 33.

(a) * * *

(2) Lakes made with D&C Red No. 33 shall conform to the requirements of § 74.2050.

* * * * *

55. Section 74.2334 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding new paragraph (a)(2) to read as follows:

§ 74.2334 D&C Red No. 34.

(a) * * *

(2) Lakes made with D&C Red No. 34 shall conform to the requirements of § 74.2050.

* * * * *

56. Section 74.2340 is amended by revising paragraph (a)(2); by removing in the introductory text of paragraph (b) the phrase "except that only FD&C Red No. 40 and FD&C Red No. 40 Aluminum Lake may be safely used in coloring" and adding in its place the word "including", in paragaph (b)(2) by removing the words "additives" and "their" and adding in their place the words "additive" and "its", respectively, to read as follows:

§ 74.2340 FD&C Red No. 40.

(a) * * *

(2) Lakes made with FD&C Red No. 40 shall conform to the requirements of § 74.2050.

* * * * *

57. Section 74.2705 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding new paragraph (a)(2), by removing paragraph (b)(2) and (c)(2) and redesignating paragraphs (b)(1) and (c)(1) as paragraphs (b) and (c), respectively, to read as follows:

§ 74.2705 FD&C Yellow No. 5.

(a) * * *

(2) Lakes made with FD&C Yellow No. 5 shall conform to the requirements of § 74.2050.

* * * * *

58–59. Section 74.2706 is amended by redesignating paragraph (a) as paragraph(a)(1) and by adding new paragraph (a)(2) to read as follows:

§ 74.2706 FD&C Yellow No. 6.

(a) * * *

(2) Lakes made with FD&C Yellow No. 6 shall conform to the requirements of § 74.2050.

* * * * *

60. Section 74.2710 is amended by redesignating paragraph (a) as paragraph(a)(1) and by adding a new paragraph (a)(2) to read as follows:

§ 74.2710 D&C Yellow No. 10.

(a) * * *

(2) Lakes made with D&C Yellow No. 10 shall conform to the requirements of § 74.2050.

* * * * *

PART 80—COLOR ADDITIVE CERTIFICATION

61. The authority citation for 21 CFR Part 80 continues to read as follows:

Authority: Secs. 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371, 379e).

62. Section 80.10 is amended in paragraph (a) by revising the paragraph heading and by removing the phrase "and (j)(2)"; in paragraph (b), introductory text, by revising the paragraph heading and by removing "§ 80.21(j)(3) and (j)(4)" and adding in its place "§ 80.21(j)(2) and (j)(3)"; by redesignating paragraphs (c), (d), (e), and (f) as paragraphs (d), (e), (f), and (g), respectively, by amending newly redesignated paragraph (d) by removing the phrase "(a) and (b)" and adding in its place the phrase "(a), (b), and (c)", and by adding new paragraph (c) to read as follows:

§ 80.10 Fees for certification services.

(a) *Fees for straight colors.* * * *

* * * * *

(b) *Fees for repacks of certified straight colors and color additive mixtures.* * * *

* * * * *

(c) *Fees for lakes and repacks of certified lakes.* The fee for the services provided under the regulations in this part in the case of each notice claiming certification submitted in accordance with § 80.33 shall be $30.00.

* * * * *

63. Section 80.21 is amended in paragraph (g)(1) by removing the phrase "and lakes"; by amending paragraph (g)(2) by adding the words "of straight colors" at the end of the sentence; by revising paragraph (h)(1); by removing paragraph (h)(2) and redesignating paragraphs (h)(3) and (h)(4) as paragraphs (h)(2) and (h)(3), respectively; by revising newly redesignated paragraph (h)(3); by amending paragraph (j), introductory text, by removing the words "a lake," and by removing the phrase "previously certified color additive" and adding in its place the phrase "previously certified straight color"; by removing paragraph (j)(2) and redesignating paragraphs (j)(3) and (j)(4) as paragraphs (j)(2) and (j)(3), respectively; and by revising the paragraph heading of newly designated paragraph (j)(2) to read as follows:

§ 80.21 Request for certification.

* * * * *

(h) * * *

(1) The name of a straight color shall be the name of the color additive as listed in part 74 of this chapter.

* * * * *

(3) The name of a repack shall be the name described in paragraph (h)(1) or (h)(2) of this section, whichever is applicable.

* * * * *

(j) * * *

(2) *Request for certification of a repack of a batch of certified straight color.* * * *

* * * * *

64. Section 80.22 is revised to read as follows:

§ 80.22 Samples to accompany requests for certification or to be held as records.

(a) *Straight colors and their mixtures and repacks.* A sample of a batch of color additive which is to accompany a request for certification shall:

(1) Be taken only after such batch has been so thoroughly mixed as to be of uniform composition throughout;

(2) Be held under the control of the person requesting certification until certified; and

(3) Be labeled to show:

(i) The name of the color additive;

(ii) The manufacturer's batch number;

(iii) The quantity of such batch;

(iv) The name and post office address of the person requesting certification of such batch; and

(v) Be accompanied by any label or labeling intended to be used.

(b) *Lakes and their repacks.* A sample of a batch of lake that is to be held by a firm claiming certification for the batch shall:

(1) Be taken prior to submission of the notice claiming certification;

(2) Be taken only after such batch has been so thoroughly mixed as to be of uniform composition throughout;

(3) Be sealed and stored in such a manner as to prevent change in composition;

(4) Be held by the firm claiming certification for the batch, as required by § 80.39(b)(3); and

(5) Be labeled to show:

(i) The name of the lake;

(ii) The percent total color for the batch and, if the batch contains more than one straight color, the percent color in the batch for each straight color;

(iii) The firm's batch number and the date the sample was taken;

(iv) The quantity of the batch;

(v) The name and place of business of the firm claiming certification for the batch;

(vi) A copy of any label or labeling intended to be used with the batch; and

(vii) After receipt of an acceptance of the notice claiming certification for the batch, FDA's acceptance number.

65. Section 80.31 is amended in paragraph (a) by adding a new heading; by removing in paragraph (a)(2) in the phrase "parts 81 and 82" and adding in its place "part 74", by removing in paragraph (a)(3) the phrase "81, and 82", by revising paragraph (b), and by adding new paragraph (c) to read as follows:

§ 80.31 Certification.

(a) *Straight colors and their mixtures and repacks.* * * *

* * * * *

(b) *Lakes and their repacks.* If the Commissioner determines, after such investigations as the Commissioner considers to be necessary, that:

(1) A notice submitted in accordance with § 80.33 appears to contain no untrue statement of a material fact;

(2) Such lake conforms to the specifications and any other conditions set forth therefor in part 74 of this chapter;

(3) The manufacturer of the lake is the firm that was issued the certificate for each batch of straight color used in the lake;

(4) The manufacturer or repacker of the batch has complied with the notification requirements in § 80.33 and the recordkeeping requirements in § 80.39; and

(5) The batch covered by such notice otherwise appears to comply with the regulations in this chapter, the Commissioner shall issue to the firm that submitted the notice, an acceptance showing the acceptance number assigned to such notice. Upon issuance of such an acceptance, the batch covered by the notice, subject to the terms, conditions and restrictions prescribed by part 74 of this chapter, is a certified batch.

(c) If the Commissioner determines, after such investigation as the Commissioner considers to be necessary, that a request submitted in accordance with § 80.21, or the batch of color additive covered by such request, does not comply with the requirements prescribed by paragraph (a) of this section for the issuance of a certificate, or that a notice submitted in accordance with § 80.33, or the batch of lake covered by such notice, does not comply with the requirements prescribed by paragraph (b) of this section for the issuance of an acceptance of the notice, the Commissioner shall refuse to certify such batch and shall give notice thereof to the person who submitted such request, or such notice, stating the Commissioner's reasons for refusal. Any person who contests such refusal shall have an opportunity for a regulatory hearing before the Food and Drug Administration pursuant to part 16 of this chapter.

66. Section 80.32 is amended by revising the section heading and paragraphs (a), (b), (c), and the introductory text of paragraph (d); in paragraphs (e), (f), introductory text, and (g) by adding the words "or an acceptance of a notice claiming certification" after the words "A certificate"; and in paragraph (h) by revising the first sentence to read as follows:

§ 80.32 Limitations of certification.

(a) If a certificate or an acceptance of a notice claiming certification is obtained through fraud or misrepresentation of a material fact, such certificate or acceptance shall not be effective, and a color additive from the batch on which such certificate or acceptance was issued, or from any batch of lake prepared with such color additive, shall be considered to be from a batch that has not been certified in accordance with the regulations in this part. Whenever the Commissioner learns that any certificate or acceptance of a notice claiming certification has been obtained through fraud or material misrepresentation, the Commissioner shall notify the holder of the certificate or acceptance that it is of no effect.

(b) If, between the time a sample of color additive accompanying a request for certification or retained by a firm that has submitted a notice claiming certification is taken from a batch of color additive and the time a certificate or an acceptance of the notice claiming certification for such batch is received by the person to whom such certificate or acceptance is issued, any such color additive becomes changed in composition, such certificate or such acceptance shall not be effective with respect to such changed color additive, and such changed color additive, and any lake prepared with such color additive, shall be considered to be from a batch that has not been certified in accordance with the regulations in this part.

(c) If, at any time after a certificate or an acceptance of a notice claiming certification is received by the person to whom it is issued, any color additive from the batch covered by such certificate or acceptance becomes changed in composition, such certificate or acceptance shall expire with respect to such changed color additive. After such expiration, such color additive and any lake prepared with such color additive shall be considered to be from a batch that has not been certified in accordance with this part; except that such color additive or lake shall not be so considered when used for coloring a food, drug, or cosmetic, or for the purpose of certifying a batch of a mixture in which such color additive was used as an ingredient, or for use in preparing a batch of a mixture for which exemption from certification has been authorized, or for use in preparing a batch of lake for which certification is claimed under § 80.31(b), if such change resulted solely from such use.

(d) A certificate or an acceptance of a notice claiming certification shall expire with respect to any color additive covered thereby if the package in which such color additive was closed for shipment or delivery is opened. After such expiration such color additive shall be considered to be from a batch that has not been certified, except that such color additive shall not be so considered when the package is opened;

* * * * *

(h) When the listing or the specifications for a color additive are revoked or amended, the final order effecting the revocation or amendment may specify, in addition to its own effective date, a date on which all previous certificates or acceptances of

notices claiming certification for existing batches and portions of batches of such a color additive issued under the revoked or amended regulations shall cease to be effective; and any such lots or batches of the color additive, and any batches of lake prepared from such lots or batches, shall be regarded as uncertified after the date specified unless a new certificate or, for a lake, a new acceptance of a notice claiming certification, can be and is obtained in conformance with the new regulations.

* * *

67. New § 80.33 is added to subpart B to read as follows:

§ 80.33 Notice claiming certification for a batch of lake.

A notice claiming certification for a batch of lake or lake repack shall:

(a) Be addressed to the Commissioner of Food and Drugs;

(b) Be prepared in the manner set forth in paragraph (i) of this section;

(c) Be submitted in duplicate;

(d) Be signed by a responsible officer of the firm submitting the notice. In the case of a foreign company, the notice must be signed by a responsible officer of such firm, and by an agent of the firm who resides in the United States;

(e) Show the name and place of business (street address, city, State, and zip code) of the firm submitting the notice;

(f) Be accompanied by the fee prescribed in § 80.10 unless the firm has established an advanced deposit to be used for prepayment of such fees. In no case shall the Commissioner consider a notice claiming certification for a batch of lake or lake repack if the fee accompanying such notice is less than that required by § 80.10 or if such fee exceeds the amount held in the advance deposit account of the firm submitting such notice; and

(g) Be accompanied by any label or labeling intended to be used with the batch.

(h) The name of a lake shall be the name derived in the manner described in part 74 of this chapter.

(i) The form for submission of the notice shall be one of the following, depending on whether the color additive is a new batch of lake or a repack of a previously certified batch of lake:

(1) *Notice claiming certificotion for a new batch of lake.*

Date _____

Division of Programs and Enforcement Policy (HFS–105), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

In accordance with the regulations promulgated under the Federal Food, Drug, and Cosmetic Act, we hereby give notice that we claim certification for a batch of lake.

Name of lake _____

Batch number _____

Batch weighs _____ pounds (or kilograms)

Total color _____ percent of batch

For each straight color used:

Color content _____ percent of batch.

How stored pending certification _____

_____

(State conditions of storage, with kind and size of containers, location, etc.)

For use in _____

_____

(State proposed uses)

Ingredients of batch

Name of each straight color used _____

_____

For each straight color used:

Certified Lot number _____

Quantity used _____ pounds (or kilograms)

For each precipitant or substratum ingredient used:

Name of ingredient used _____

Quantity used _____ pounds (or kilograms)

If any previously certified batches of lake have been used, provide the following information for each such batch.

Name of lake _____

FDA acceptance number (or certified lot number) _____

Quantity used _____ pounds (or kilograms), Required fee, § 30.00 (drawn to the order of Food and Drug Administration.)

This batch of lake was manufactured by the undersigned firm and meets the requirements of 21 CFR parts 74 and 80. The records required by 21 CFR 80.39, including a representative sample of the batch, are available for FDA inspection at the undersigned firm.

(Signed) _____

By _____

(Title)

(2) *Notice claiming certificotion for a repack of a batch of certified lake.*

Date _____

Division of Programs and Enforcement Policy (HFS–105), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

In accordance with the regulations promulgated under the Federal Food, Drug, and Cosmetic Act, we hereby give notice that we claim certification for a batch of lake repack.

Name of lake _____

Original batch:

FDA acceptance number (or certified lot number) _____

Total color _____ percent of batch

For each straight color used:

Color content _____ percent of batch.

This lake obtained from (provide name and place of business of manufacturer of the lake)

Batch number _____

Batch weighs _____ pounds (or kilograms)

Repacked batch:

Total color _____ percent of batch

For each straight color used:

Color content _____ percent of batch.

How stored pending certification _____

_____

(State conditions of storage, with kind and size of containers, location, etc.)

Certified for use in _____

_____

_____

(State proposed uses)

Required fee, $30.00 (drawn to the order of Food and Drug Administration).

This batch of lake was repacked by the undersigned firm and meets the requirements of 21 CFR parts 74 and 80. The records required by 21 CFR 80.39, including a representative sample of the batch, are available for FDA inspection at the undersigned firm.

(Signed) _____

By _____

(j) The Food and Drug Administration will furnish a response to each notifier within 5 working days of receipt of the notice. The response will either:

(1) Accept the notice claiming certification; or

(2) Reject the notice claiming certification, in which case the batch of lake covered by the notice has not complied with the requirements of § 80.31(b) of this chapter and is not a certified batch.

§ 80.34 [Amended]

68. Section 80.34 *Authority to refuse certification service* is amended in paragraph (a)(1) by removing the phrase "a certificate" and adding in its place the phrase "a certificate or an acceptance of a notice claiming certification"; and in paragraph (a)(4) by removing the phrase "color additives and intermediates" and adding in its place "color additives, intermediates and substrata".

§ 80.35 [Amended]

69. Section 80.35 *Color additive mixtures; certification and exemption from certification* is amended in paragraphs (a) and (b) by removing the words "straight colors" and adding in their place the words "listed colors"; and in paragraph (b) by removing the words "straight color" and adding in their place the words "listed color" the three times they appear.

70. Section 80.37 is revised to read as follows:

§ 80.37 Treatment of batch pending certification.

Immediately after the sample is taken that (for a batch of color additive subject to certification under § 80.31(a)) is to accompany a request for certification of the batch or (for a batch of lake subject to certification under § 80.31(b)) is to be

retained by the firm preparing or repacking the batch, the batch shall be:

(a) Stored in containers of such kind as to prevent change in composition.

(b) Held under the control of the person requesting or claiming certification until certified.

(c) Marked, by labeling or otherwise, in a manner such that there can be no question as to the identity of the batch and no question that it is not to be used until the requested certificate or acceptance of the notice claiming certification has been issued.

71. Section 80.38 is revised to read as follows:

§ 80.38 Treatment of batch after certification.

(a) *Labeling.* (1) Immediately upon notification that a batch of color additive has been certified under § 80.31(a), the person requesting certification thereof shall identify such batch, by labeling, with the certified lot number.

(2) Immediately upon notification that the notice submitted in accordance with § 80.33 has been accepted, the firm claiming certification for the batch shall identify such batch, by labeling, with the FDA acceptance number.

(b) *Storage.* The person requesting or claiming certification shall maintain storage in such manner as to prevent change in composition until such batch has been packaged and labeled as required by §§ 70.20 and 70.25 of this chapter, except that the person requesting or claiming certification may use such color additive for the purpose of coloring a food, drug, or cosmetic.

72. Section 80.39 is revised to read as follows:

§ 80.39 Records.

(a) *Records of distribution.* (1) The person to whom a certificate is issued or the firm to which FDA issues an acceptance of a notice claiming certification shall keep complete records showing the disposal of all the color additive from the batch covered by such certificate or such acceptance. These records shall show:

(i) Each quantity used by such person or firm from such batch and the date and kind of such use.

(ii) The date and quantity of each shipment or delivery from such batch, and the name and post office address of the person to whom such shipment or delivery was made.

(2) Upon the request of any officer or employee of the Food and Drug Administration or of any other officer or employee acting on behalf of the Secretary of Health and Human Services, such person or such firm, at all reasonable hours until at least 2 years after disposal of all such color additive, shall make the records required by paragraph (a)(1) of this section available to any such officer or employee, and shall accord to such officer or employee full opportunity to make inventory of stocks of such color additive on hand and otherwise to check the correctness of such records.

(b) *Certification records for lakes.* (1) The manufacturer or repacker of a lake certified under § 80.31(b) shall keep complete records showing that the batch of lake covered by the notice claiming certificaion is in compliance with parts 74 and 80 of this chapter.

(i) For both manufacturers and repackers, these records shall include:

(A) A copy of the notice claiming certification for the batch;

(B) A copy of FDA's acceptance of the notice; and

(C) Complete reports of all chemical analyses performed on the batch. Such analyses shall include, for each batch, analyses that establish the percent total color for the batch and, if the batch contains more than one straight color, the percent color for each straight color in the batch.

(ii) For manufacturers only, the records shall also include:

(A) A copy of the certificate for each batch of straight color used to prepare the batch of lake;

(B) For each certified batch of lake that was used as an ingredient, a copy of FDA's acceptance of the notice claiming certification for the batch, or if certified before (date of publication of the final rule), a copy of the certificate for the batch;

(C) Manufacturer specifications for substratum and precipitant ingredients used in the preparation of the batch; and

(D) For each batch that contains a barium salt as provided in §§ 74.1050 and 74.2050 of this chapter, analyses that show that the batch meets the specification for soluble barium in § 74.1050(b) of this chapter.

(2) A firm claiming certification for a batch of lake under § 80.31(b) shall retain an 8-ounce sample of the batch as required by § 80.22(b); however, such sample need not be submitted to FDA.

(3) Upon the request of any officer or employee of the Food and Drug Administration or of any other officer or employee acting on behalf of the Secretary of Health and Human Services, such firm, at all reasonable hours until at least 2 years after disposal of all such color additive, shall make the records and the sample required by paragraphs (b)(1) through (b)(3) of this section available to any such officer or employee, and shall accord to such officer or employee full opportunity to make inventory of stocks of such color additive on hand and otherwise to check the correctness of such records.

(c) The records required to be kept by paragraphs (a) and (b) of this section shall be kept separately from all other records.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

73. The authority citation for 21 CFR part 81 continues to read as follows:

Authority: Secs. 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371, 379e).

PART 81—[REMOVED]

74. Part 81 is removed.

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

75. The authority citation for 21 CFR part 82 continues to read as follows:

Authority: Secs. 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371, 376, 379e).

PART 82—[REMOVED]

76. Part 82 is removed.

PART 101—FOOD LABELING

77. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

78. Section 101.22 is amended in paragraph (k)(1) by revising the first sentence and by removing the phrase "or part 82" in the second sentence to read as follows:

§ 101.22 Foods; labeling of spices, flavorings, colorings and chemical preservatives.

* * * * *

(k) * * *

(1) A color additive, including a lake, subject to certification under section 721(c) of the act shall be declared by the name of the color additive listed in the applicable regulation in part 74 of this chapter, except that it is not necessary to include the "FD&C" prefix or the term "No." in the declaration, and for lakes it is also not necessary to identify the aluminum cation or alumina substratum, but the term "Lake" shall be included in the declaration (e.g., Blue 1 Lake). * * *

* * * * *

PART 178—INDIRECT FOOD ADDITIVES; ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

79. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

§ 178.3297 [Amended]

80. Section 178.3297 *Colorants for polymers* is amended in paragraph (d) by removing the phrase ", 81, and 82".

PART 201—LABELING

81. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 201, 301, 501, 502, 503, 505, 506, 507, 508, 510 512, 530–542, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg-360ss, 371, 374, 379e); secs 215, 301, 351, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 264).

§ 201.20 [Amended]

82. Section 201.20 *Declaration of presence of FD&C Yellow No. 5 and/or FD&C Yellow No. 6 in certain drugs for human use* is amended in paragraph (a) by adding the words "or a lake of FD&C Yellow No. 5" before the words "as a color additive using the names", in paragraph (b) by adding the words "or a lake of FD&C Yellow No. 5" before the words "that are administered", and in paragraph (c) by adding the words "or a lake of FD&C Yellow No. 6" before the words "shall specifically".

PART 701—COSMETIC LABELING

83. The authority citation for 21 CFR part 701 continues to read as follows:

Authority: Secs. 201, 502, 601, 602, 603, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 352, 361, 362, 363, 371, 374); secs. 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1454, 1455).

84. Section 701.3 is amended by redesignating paragraph (c)(1) as paragraph (c)(1)(ii) and by adding new paragraph (c)(1)(i) to read as follows:

§ 701.3 Designation of ingredients.

* * * * *

(c) * * *

(1)(i) For color additives, the name of the color additive listed in the applicable regulation in part 73 or 74 of this chapter, except that it is not necessary to include the "FD&C" or "D&C" prefix or the term "No." in the declaration, but the prefix "Ext." shall be included in the declaration. (For example, Ext. D&C Yellow No. 7 may be declared as Ext. Yellow 7.) For lakes, it is also not necessary to identify the cation precipitants or the substrata, but the term "Lake" shall be included in the declaration. (For example, the name of a lake prepared by the extension of FD&C Red No. 40 and D&C Yellow No. 10 on alumina and titanium dioxide using aluminum chloride and calcium chloride precipitants is "Red 40 and Yellow 10 Lake.").

* * * * *

Dated: February 16, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–4584 Filed 2–29–96; 8:45 am]

BILLING CODE 4160–01–P

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federal register

Monday
March 4, 1996

Part IV

Department of the Treasury

Fiscal Service

31 CFR Part 357

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills; Proposed Rule

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series, No. 2–86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Proposed rule.

SUMMARY: Treasury is proposing regulations that will govern Treasury bonds, notes, and bills (marketable Treasury securities) in book-entry form held in the commercial book-entry system. The rules incorporate recent and significant changes in commercial and property law addressing the holdings of securities through financial intermediaries. The proposed rules would replace existing Treasury regulations that contain outdated legal concepts.

DATES: Comments must be submitted on or before May 3, 1996.

ADDRESSES: Send comments to the Office of the Chief Counsel, Bureau of the Public Debt, Room 503, E Street Building, Washington, DC 20239–0001. Comments received will be available for public inspection and copying at the Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Walter T. Eccard, Chief Counsel (202) 219–3320, or Cynthia E. Reese, Deputy Chief Counsel, (202) 219–3320.

SUPPLEMENTARY INFORMATION:

I. Introduction

Treasury is reproposing rules for the Treasury/Reserve Automated Debt Entry System ("TRADES"). The adoption of TRADES is the culmination of a 27-year Treasury process of moving from issuing securities only in definitive (physical/certificated/paper) form to issuing marketable securities exclusively in book-entry form.

Some numbers help put the scope of this process in perspective. In 1967, the year before Treasury issued its first book-entry security, there were $211 billion of marketable Treasury securities outstanding—all in definitive form. As of December 31, 1995, there were approximately $3.3 trillion of marketable Treasury securities outstanding (not counting Treasury securities held by various government trust funds), 99.7% of which were in book-entry form.

Treasury had considered the potential benefits of converting from definitive securities to securities in book-entry form at various times since as early as 1940. In 1964, following substantial losses of definitive securities, Treasury and the Federal Reserve Banks began a four-year study of the practical and legal aspects of initiating a book-entry system.

As a culmination of this study, the first Treasury book-entry securities regulations were issued effective January 1, 1968.[1] Securities converted to book-entry form pursuant to these regulations consisted of marketable Treasury securities held by Federal Reserve Banks that were either held as collateral pledges to the United States or represented proprietary holdings of member banks. The Federal Reserve Banks, which already acted as Treasury's fiscal agent with respect to transactions in definitive U.S. securities, began to act in that capacity with respect to Treasury's book-entry securities as well.

During the following year, the then applicable regulations were revised to extend the book-entry system to Treasury securities held by the Federal Reserve Banks that were pledged to third parties, such as courts or other public officials, for the performance of certain obligations or to secure deposits of public funds. The book-entry conversion authority initiated in 1968 and 1969 allowed the Federal Reserve Banks to reduce both the increasing volume of definitive securities stored in their vaults and the risk of loss. Studies were undertaken at that time to determine the feasibility of expanding the system to include other Treasury securities not initially eligible for the Treasury book-entry system.

In 1971, Treasury regulations were further revised to allow for all marketable Treasury securities to be held in book-entry form.[2] The regulations permitted member banks to place in book-entry form securities held for customers, including those of dealers. Pursuant to these regulations, holding marketable Treasury securities in book-entry form was optional and book-entry securities could be converted to definitive form.

Issuance of these regulations was significant in several respects. They were a key factor in averting a crisis in the government securities market. At that time, banks, brokers and dealers were being threatened with cancellation of insurance coverage because of large losses resulting from the theft of definitive securities. The dramatic increase in thefts and losses of government securities during the late 1960's ($30 million in 1969 and again in 1970) required Treasury to obtain new legislation and implement new claims procedures to grant relief to claimants through replacement of lost or stolen securities prior to maturity.[3] At the close of fiscal year 1971, about $230 billion of marketable Treasury securities were outstanding and about $125 billion of that amount was in book-entry form.

This initial success led to Treasury's decision to expand its efforts to move toward a complete book-entry system. A Treasury and Federal Reserve Bank task force was formed in 1976 to plan for the expansion of the book-entry system for issuing Treasury securities. The goal of the task force was to eliminate the issuance of definitive securities in all new marketable Treasury offerings, with an overall purpose of reducing paperwork, protecting against loss, theft, and counterfeiting, and reducing printing costs. The task force planned for a timed phase-out of the issuance of all definitive securities, beginning in late 1976.

In December 1976, with the promulgation of new regulations,[4] Treasury took the first step towards an exclusive book-entry environment by offering Treasury bills only in that form, phasing in this change for the various bill maturities. A 52-week bill issue in December 1976 became the first offering of securities exclusively in book-entry form. Use of book entry was expanded to include 26-week bills in June 1977 and 13-week bills in September 1977.

Also, beginning in December 1976, Treasury, for the first time, began to provide book-entry accounts for investors who did not choose to hold their book-entry securities accounts at financial institutions or dealers. As of September 30, 1977, Treasury maintained 6,690 book-entry accounts holding a total $182 million of Treasury bills. These accounts were the predecessor to the current TREASURY DIRECT system,[5] which was established in 1986. Treasury notes and bonds were issued in book-entry only form beginning in August 1986, upon implementation of the TREASURY

[1] 32 FR 15672 (November 14, 1967).

[2] 35 FR 20001 (December 31, 1970) and 36 FR 6749 (April 16, 1971).

[3] Pub. L. No. 92–19, May 27, 1971, 85 Stat. 74.

[4] 41 FR 5335 (December 6, 1976).

[5] TREASURY DIRECT is a system in which persons purchasing or already owning marketable Treasury securities may hold such securities directly with the Treasury in book-entry accounts maintained in their names. As of December 31, 1995, there were 922,397 accounts holding $85.3 billion of marketable Treasury book-entry securities.

DIRECT system pursuant to new Treasury regulations.[6]

With the issuance of these regulations, all original issues of marketable Treasury securities (bills, notes, and bonds) were required to be in book-entry form. Book-entry holdings in Treasury securities have increased dramatically since that time. The following chart illustrates this rapid increase.

TOTAL MARKETABLE SECURITIES OUTSTANDING[7]

Year	Percent in book-entry
June 1965	0
August 1976	82
August 1982	95.6
August 1986	97.2
December 1995	99.7

[7] Exclusive of securities held in various government trust funds.

Adoption of the TRADES regulations, to govern the commercial book-entry system counterpart to TREASURY DIRECT, will mark a major step in the evolution of Treasury's full book-entry securities project by providing a clearer legal framework for all commercially-maintained marketable Treasury book-entry securities.

II. Legal Development

As Treasury began to issue securities in book-entry form, it confronted a legal landscape that did not provide a framework for describing how such securities should be treated. As described by Professor James Rogers, the reporter for the drafting committee that produced Revised Article 8, Investment Securities of the Uniform Commercial Code (UCC), adopted by the American Law Institute ("ALI") and the National Conference of Commissioners on Uniform State Laws ("NCCUSL") in 1994 ("Revised Article 8"), the version of Article 8 in effect in the late 1960s and early 1970s "* * * was based on the assumption that possession and delivery of physical certificates are the key elements in the securities holding system."[8] Those assumptions, however, did not fit the commercial reality of marketable Treasury book-entry securities.

As noted above, beginning in 1968, Treasury began to promulgate regulations for its marketable securities held in book-entry form. These regulations provided, for the first time, a legal framework for treating marketable book-entry securities issued by Treasury. These regulations, particularly those adopted in 1971, contained several important innovations. First, they described transfers of interests in securities by means other than by moving paper certificates.[9] As currently set forth in the regulations,[10] a transfer of a marketable Treasury book-entry security occurs when a Federal Reserve Bank makes an entry in its records. Second, the regulations implicitly acknowledged that interests in marketable Treasury book-entry securities held in the commercial book-entry system were held in a tiered system.[11]

Specifically, the regulations developed by Treasury had rules for transfers both at the level of institutions having accounts at a Federal Reserve Bank and rules for transfers at custodial levels below that level. These were significant innovations.

The regulations developed by Treasury to describe the nature of a book-entry security, however, also deemed such security to be the equivalent of a bearer-definitive security. This bearer-definitive security fiction, as it came to be known, had the advantage of simplicity. It was also, at the time of its adoption, a useful concept that allowed for the application of existing law at a time when holding securities in book-entry form was a new development. Ultimately, however, the bearer- definitive fiction proved to be unsatisfactory because the attempt to graft the rules of certificated securities onto book-entry securities left too many questions unanswered.[12] This uncertainty poses risks in the event of systemic failure.[13] TRADES is designed to ameliorate these risks.

In 1978 the existing UCC Article 8 was amended and, as part of that process, there was an attempt to provide some guidance on the treatment of book-entry securities. That attempt did not provide sufficient guidance for a tiered system of ownership such as the one that exists for Treasury securities because the rules of that version of Article 8 "were based on the assumption that changes in ownership of securities would be effected by delivery of physical certificates or by registration of transfer on the books of the issuer."[14] In the Treasury system that assumption was not correct. A second level of confusion was created because the Treasury regulations continued to rely on the bearer-definitive fiction but referenced state law (which for most states included the 1978 revision to Article 8). Thus, there was lack of clarity as to how the 1978 amendments to Article 8 and the bearer-definitive fiction interacted and how interests at levels below a Federal Reserve Bank were to be treated.[15]

By 1984 Treasury had concluded that it needed to change its existing book-entry regulations. Several events buttressed that conclusion. As described above, the outstanding amount of marketable Treasury book-entry securities increased dramatically. In 1984 representatives of a number of financial institutions brought to Treasury's attention the need for certainty in the market and raised a number of questions about the existing regulations that they believed undermined that certainty. With the growth of the size of the Treasury market came an increase in the need for, and the use of, short-term financing techniques, such as repurchase transactions, structured to be low risk. In order to preserve the liquidity of this most liquid of markets, it was critical that participants be able to settle their transactions quickly with a high degree of certainty.

Disruptions in the market caused by the failure of some government securities broker-dealers further

[6] 31 CFR Part 357, Subpart C.

[8] James Steven Rogers, Boston College Law School, Reporter, Drafting Committee to Revise U.C.C. Article 8 Investment Securities, Prefatory Note, page 1, U.C.C. Article 8 (1994 official text with comments), hereinafter "Prefatory Note."

[9] UCC § 8–320, added in 1962, provided for transfers within a central depository system by the making of appropriate entries on the books of a clearing corporation. Unlike the Treasury regulatory formulation, this UCC provision originally contemplated the deposit of paper certificates with the depository.

[10] 31 CFR 306.118(a).

[11] The Federal Reserve Banks maintain book-entry security accounts for depository institutions and other entities such as government and international agencies and certain foreign central banks. In their book-entry accounts at the Federal Reserve, the depository institutions may maintain their own security holdings and holdings for customers, which may include other depository institutions, dealers, brokers, institutional investors and individuals. In turn, the depository institutions' customers may maintain accounts for their customers. This creates a tiered chain of custodial relationships. Thus, there frequently are multiple levels between the issuer of the security and the ultimate holder of the beneficial interest in that security.

[12] These uncertainties are well described in Charles W. Mooney, Jr., "Beyond Negotiability: A New Model for Transfer and Pledge of Interests in Securities Controlled by Intermediaries," 12 Cardozo L. Rev. 305 (1990) (hereinafter "Beyond Negotiability").

[13] "What led to the revision of Revised Article 8 is not intermediary risk itself, that is, the risk that customers of a failed intermediary might suffer loss, but *systemic risk*, that is, the risk that a failure of one security firm might cause others to fail." Rogers, *supra*, memorandum accompanying U.C.C. Revised Article 8, (1994 official text with comments), "Revised U.C.C. Article 8—Why it's Needed—What it Does."

[14] Rogers, *supra*, U.C.C. Revised Article 8, Prefatory Note, page 4.

[15] Mooney, Beyond Negotiability, *supra*, pp. 345–350.

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underscored the need for certainty in the minds of market participants. Events post-1984, such as the 1987 market break and the failure of Drexel Burnham, Lambert validated the concern that lack of certainty, given the magnitude of the dollars involved, posed serious systemic risks—both to the market for Treasury securities and all financial markets.[16] More recently, there has been reaffirmation of the importance of certainty for transactions involving book-entry securities. In a March 3, 1995 speech, Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System, stated, "* * * my experience with financial crises has convinced me that the greatest threat to the liquidity of our financial markets is the potential for disturbance to the clearance and settlement process for financial transactions." He went on to note, "The most important set of concerns relates to the legal and institutional foundations of book entry settlement systems." [17]

III. Previous Trades Proposals

In 1985 Treasury began the process of revising its book-entry security regulations. Treasury recognized early on that the process would be quite complicated.

For reasons already explained, the first decision made in the initial proposal of the TRADES regulations [18] was to eliminate the bearer-definitive fiction. This proposed elimination, however, presented two major difficulties in determining what should replace the bearer-definitive fiction. First, state law was not uniform. In 1986 all states had not adopted the 1978 version of UCC Article 8. Because of this lack of uniformity, Treasury determined that for purposes of clarity and certainty, the basic mechanical rules for transfer and pledge of marketable Treasury book-entry securities needed to be set out in the Federal regulations.

The second difficulty was that the provisions in the 1978 version of Article 8 could not be used as a model for the TRADES rules without significant modifications to fit the Treasury book-entry system. As a consequence, although this first proposal was based on provisions of the 1978 version of Article 8, there were some significant modifications. Treasury's goal was to clarify the rules for marketable Treasury book-entry securities to the extent possible without causing unnecessary changes in market practice.

The most problematic issue raised in the March 1986 proposal, however, was the resolution of competing claims to interests in the same securities when held through intermediaries ("book-entry custodians," now referred to as "Securities Intermediaries"). In other words, under some circumstances (particularly in scenarios involving failures of intermediaries), more than one person (e.g., owner or secured creditor) could claim entitlement to a Treasury security. How should such disputes be sorted out? After considering several different alternatives to deal with this issue, all of which had some disadvantages, the initial proposal of TRADES left the resolution of questions involving competing claims to state law.

Comments on the first TRADES proposal were wide-ranging in their content and helpful. Most of the detailed comments dealt with the issue of competing claims and urged some form of bona fide purchaser rule (providing that an innocent purchaser would take a security free of prior adverse claims) and some form of a priority clearing lien for entities that perform the critical function of extending credit as a part of a clearing function in the government securities market. These and other new areas suggested by commenters were added to the second regulatory proposal published in November 1986.[19]

Another difficult issue that was raised in the TRADES rulemaking was the interaction between Federal and State law and the extent to which the Federal regulations should preempt State law. The opinions of the commentators on this point varied. The preamble to the second TRADES proposal in November, 1986 noted that:

> * * * With respect to book-entry securities, there is not an accepted body of principles [uniform state laws] that operates to provide predictable results * * * Even where such rules [the 1978 UCC Article 8] have been adopted, some of the litigation arising from recent failures of government securities dealers suggests that important legal issues are yet to be resolved that stem from some of the concepts and relationships that arise where interests in securities are transferred without the transfer of a certificate.[19a]

Because of the difficulties in drawing lines between coverage of Federal and State law, the November 1986 proposal adopted an approach of complete preemption of State law. Like the first TRADES proposal, the second proposal generated a large volume of detailed and helpful comments.

Another significant development that had an impact on the TRADES rulemaking was the passage, at about the time the November 1986 proposal was issued, of the Government Securities Act of 1986 ("GSA").[19b] The GSA granted Treasury rulemaking authority over the government securities market, including custodial holding of government securities. It also required the registration of government securities brokers and dealers for the first time and imposed a regulatory framework that had not previously existed for those entities. Treasury exercised its authority by promulgating rules in July 1987 in the areas of financial responsibility, protection of investor securities and balances, recordkeeping, and reporting and audit. In addition, the GSA rules imposed, for the first time, standards for the safeguarding and use of government securities by depository institutions that hold such obligations in custody for the account of customers. This new regulatory framework addressed many of the practices that had been involved in dealer failures and increased customer protection for securities held in the commercial book-entry system. It also provided, for the first time, comprehensive Federal regulation of the custody practices for government securities.

In the next few years, other groups also explored many of the same issues raised in the proposed TRADES regulations. In 1988, in response to concerns raised about securities clearance and settlement as a result of the stock market break of 1987, the American Bar Association established an Advisory Committee on Settlement of Market Transactions. In addition, the Market Transactions Advisory Committee was established by the Securities and Exchange Commission under the Market Reform Act of 1990. Finally, and most significantly, a major effort to revise existing Article 8 commenced in 1991.

Under the aegis of the ALI and NCCUSL, a group of scholars and practitioners began work on a multi-year process that by 1994 produced Revised UCC Article 8. The importance of their work cannot be overstated. Representatives of Treasury, the Federal Reserve Banks and the Federal Reserve Board participated in virtually all of their drafting sessions. It soon became obvious that the drafters of Revised Article 8 were dealing with many of the issues that Treasury had considered in its earlier versions of TRADES, including the difficult questions involving the resolution of competing claims. While Treasury continued to work on TRADES and produced a third draft in 1992, Treasury ultimately concluded that it made sense to wait for work to be completed on Revised Article 8 so that Treasury would have the benefit of their final product.[19c] Treasury believes that decision was prudent.

The many difficult issues resolved by the drafters of Revised Article 8 have been of significant benefit to Treasury as it has worked on this proposal for TRADES. Based on its participation in the many drafting sessions that produced Revised Article 8, and after a detailed study, Treasury has concluded that Revised Article 8 represents a major advance in commercial law. For the first time, there is a comprehensive set of rules to govern the modern book-entry systems. Treasury agrees with Professor Rogers when he notes that, "The present version of Article 8 [the 1978 version], which is based on legal concepts adopted to the paper-based systems of the past, is not adequate to that task in the modern world of computerized recordkeeping and global securities trading." [20] Accordingly, as set forth in detail below, Treasury has concluded that it is appropriate to rely on Revised Article 8 in a significant way in this proposal for TRADES.[21]

IV. Comparison of Trades and Treasury Direct

A person can hold interests in marketable Treasury book-entry securities either in TRADES [22] or TREASURY DIRECT. The following summarizes the major differences between the two systems.

As previously described, persons holding marketable Treasury book-entry securities in TRADES hold their interests in such securities in a tiered system of ownership accounts. In TRADES, Treasury, through its fiscal agents, the Federal Reserve Banks, knows the identity only of Participants (persons with a direct account relationship with a Federal Reserve Bank). While Participants may be beneficial owners of interests in marketable Treasury book-entry securities, there are many beneficial owners of such interests that are not Participants. Such beneficial owners hold their interests through one or more Securities Intermediaries such as banks, brokerage firms or securities clearing organizations.

The rights of non-Participant beneficial owners can be exercised only through Securities Intermediaries. Neither Treasury nor the Federal Reserve Banks have any obligations to a non-Participant beneficial owner of an interest in a marketable Treasury book-entry security. Two examples illustrate this principle. First, Federal Reserve Banks, as Treasury's fiscal agents, will act only on instructions of the Participant in whose Securities Account the marketable Treasury book-entry security is maintained in recording transfers of an interest in a marketable Treasury book-entry security. A beneficial owner of such an interest that is a non-Participant has no ability to direct a transfer on the books of a Federal Reserve Bank. Second, Treasury discharges its payment obligation with respect to a marketable Treasury book entry security when payment is credited to a Participant's account or paid in accordance with such Participant's instructions. Neither Treasury nor a Federal Reserve Bank has any payment obligation to a non-Participant beneficial owner of an interest in a marketable Treasury book-entry security. A non-Participant beneficial owner receives its payment when its Securities Intermediary credits such owner's account.

Persons holding marketable Treasury book-entry securities in TREASURY DIRECT, on the other hand, hold their securities accounts on records maintained by Treasury through its fiscal agents, the Federal Reserve Banks. The primary characteristic of TREASURY DIRECT is a direct account relationship between the beneficial owner of a marketable Treasury book-entry security and Treasury. In TREASURY DIRECT, Treasury discharges its payment obligation when payment is credited to the depository institution specified by the beneficial owner of the marketable Treasury book-entry security. Unlike TRADES, TREASURY DIRECT does not provide a mechanism for the exchange of cash in a sales transaction, nor are pledges of marketable Treasury book-entry securities generally recognized. Accordingly, TREASURY DIRECT is suited for persons who plan to hold their Treasury securities until maturity, and provides an alternative for investors who are concerned about holding securities through intermediaries and who do not wish to hold their interests in Treasury securities indirectly in TRADES.

V. Scope of Proposed Regulation

Just as the scope of Revised Article 8 is limited,[23] the scope of this regulation is limited. It is not a comprehensive codification of the law governing securities, transactions in securities or the law of contracts for the purchase or sale of securities. Similarly, it is not a codification of all laws that could affect a person's interest in a marketable Treasury book-entry security. For example, state laws regarding divorce or intestate succession could well affect which persons have rights in the interest in a marketable Treasury book-entry security. This regulation does not displace such laws—with the sole exception that such laws cannot affect either Treasury or the Federal Reserve Banks.

VI. Section by Section Analysis

A. Dual Book-Entry Systems

Section 357.0 sets forth that Treasury provides two systems for maintaining marketable Treasury book-entry securities—TRADES and TREASURY DIRECT. Subpart A of Part 357 of 31 CFR contains general information about TRADES and TREASURY DIRECT. Subpart B will contain the TRADES

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[16] As set forth in the May 1988 Interim Report of the Working Group on Financial Markets, "the laws of the various states do not have uniform requirements for * * * transfers and pledges of certificated and uncertificated stocks * * * investors, market professionals and their lenders should have a single, clear set of rules for the transfer and pledge of securities similar to those being developed by the United States Treasury." The working group consisted of the chairpersons of the Board of Governors of the Federal Reserve System, the Securities and Exchange Commission and the Commodity Futures Trading Commission and the Department of the Treasury Under Secretary for Finance.

[17] Remarks by Alan Greenspan at the Financial Markets Conference of the Federal Reserve Bank of Atlanta, Coral Gables, Florida, March 3, 1995.

[18] 51 FR 8846 (March 14, 1986).

[19] 51 FR 43027 (November 28, 1986).

[19a] 51 FR 43029 (November 28, 1986).

[19b] Pub. L. No. 99–571, October 28, 1986, 100 Stat. 3208.

[19c] The third TRADES proposal was published in April 1992 (57 FR 12244, April 9, 1992). In response to the comments on the second proposal, Treasury reexamined and articulated the Federal interest in the regulations. That interest was described as "to provide that degree of certainty in the law that is needed by participants in the Government securities market to facilitate transactions in book-entry securities and to assure the continued liquidity and efficiency of the market." In that proposal, the extent of Federal preemption was cut back from the prior proposal, and some areas that had been included in prior proposals (e.g., warranties) were left to state law. The 1992 proposal retained provisions dealing with competing claims, while recognizing that the examination of legal principles in this area was continuing. The overall content of the rules, however, was not significantly different from the prior two proposals. Commenters to this third proposal urged Treasury to suspend its efforts and await the completion of the Revised Article 8 project. On November 12, 1993, Treasury agreed to that suggestion. (58 FR 59972, November 12, 1993).

[20] Letter from James Rogers, Reporter, Drafting Committee to Revise U.C.C. Article 8, to James Wong, Chief Consultant, (California) Senate Judiciary Committee (April 10, 1995).

[21] Copies of Article 8 are available upon request from the Bureau of the Public Debt's Public Affairs Officer, (202) 219–3302.

[22] In TRADES a person's interest in a marketable Treasury book-entry security is a Security Entitlement. See the discussion at VI.D.4. below.

[23] Prefatory Note at 12.

regulations. Subpart C contains the TREASURY DIRECT regulations. Subpart D contains miscellaneous provisions. Thus, in its totality, Part 357 sets forth in one place the complete set of governing rules for marketable Treasury securities issued in book-entry form.

B. Effective Date

Section 357.1 establishes the effective date for TRADES. Treasury contemplates that TRADES will apply to outstanding securities currently governed by 31 CFR Part 306, Subpart O. Conforming changes to Part 306 will be made with the publication of TRADES in final form. Consistent with the approach set forth in Revised Article 8 (see § 8–603 and the official comment thereto), on and after the effective date these regulations will apply to all transactions, including transactions commenced prior to the effective date.

Treasury proposes that the effective date for TRADES will be 90 days following the publication of TRADES in final form in the **Federal Register**. While TRADES is based in large part on Revised Article 8 that has received widespread attention in the financial community and already has been adopted in 13 states,[24] Treasury is proposing that TRADES will become effective 90 days following publication of the final TRADES rule to ensure a smooth transition to TRADES. Such an effective date, when combined with TRADES being published in proposed form with a 60-day comment period, should provide sufficient time for an orderly transition to the new TRADES rules. Treasury specifically seeks comments on whether the proposed effective date of TRADES is sufficient to permit an orderly transition.

C. Definitions

Section 357.2 contains definitions for use in Subparts B and C. While most of the definitions are straightforward, four terms—Participant, Entitlement Holder, Security Entitlement and Securities Intermediary—are critical to an understanding of the proposed TRADES regulations.

1. Participant

A Participant is a person that has an account relationship in its name with a Federal Reserve Bank. Accordingly, the Federal Reserve Bank and Treasury know both the identity of the persons maintaining these accounts and the marketable Treasury book-entry securities held in these accounts.

2. Securities Intermediary

Securities Intermediaries are persons (other than individuals, except as described below) that are in the business of holding interests in marketable Treasury book-entry securities for others. Participants can be, and usually are, Securities Intermediaries. In addition, entities such as clearing corporations, banks, brokers and dealers can be Securities Intermediaries in a single chain of ownership of a Treasury security. An individual, unless registered as a broker or dealer under the federal securities laws, cannot be a Securities Intermediary. As an illustration of a possible chain of ownership, in the following chart, the Federal Reserve Bank, Participant and Broker-Dealer are all Securities Intermediaries.

Treasury

Federal Reserve Bank

Participant

Broker-Dealer

Individual Holder

3. Entitlement Holder

An Entitlement Holder is any person for whom a Securities Intermediary holds an interest in a marketable Treasury book-entry security. In the above example Individual Holder, Broker-dealer and Participant are all Entitlement Holders. Thus, a person can be both a Securities Intermediary and an Entitlement Holder.

4. Security Entitlement

A Security Entitlement is the interest that an Entitlement Holder has in a marketable Treasury book-entry security. In the example, Participant, Broker-Dealer and Individual Holder all hold Security Entitlements. The rights and property interests associated with a Security Entitlement of a Participant held on the books of a Federal Reserve Bank ("Participant's Security Entitlement") are, however, different from the rights and property interests associated with other Security Entitlements. As provided in Section 357.10(a), Federal law defines the scope and nature of a Participant's Security Entitlement. While TRADES is based in large part on Revised Article 8, the meaning of Security Entitlement under federal law is different than under Revised Article 8. For example, Participants have a direct claim against the United States for interest and principal even though, under state law, an Entitlement Holder would only have a claim against its Securities Intermediary for such payment. To the extent not inconsistent with this regulation, the scope and nature of a Security Entitlement of an Entitlement Holder below the level of a Participant (Broker-dealer and Individual Holder in the example above), is defined by applicable state law, as determined pursuant to Section 357.11.

D. Law Governing the United States and Reserve Banks

Section 357.10(a) provides that the rights and obligations of the United States and the Federal Reserve Banks (with one exception detailed below), with respect to both the TRADES system and marketable Treasury book-entry securities maintained in TRADES are governed solely and exclusively by Federal law. Thus, claims against the United States and Federal Reserve Banks of both Participants and all other persons with an interest (or claiming an interest) in a marketable Treasury book-entry security maintained in TRADES are governed by Federal law. Federal law is defined to include TRADES, the offering circulars pursuant to which the Treasury securities are sold, the offering announcements and Federal Reserve Bank Operating Circulars. Prior to March 1, 1993, the terms of each offering of marketable Treasury securities, except for Treasury bills, were set forth in an offering circular published in the **Federal Register**.[25] Since March 1, 1993, all marketable Treasury book-entry securities have been offered pursuant to a uniform offering circular set forth at 31 CFR Part 356.

While TRADES is based in large measure on Revised Article 8, a fundamental principle of these regulations (and a divergence from Revised Article 8) is that the obligations of the issuer (the United States) and the Federal Reserve Banks, as well as all claims with respect to TRADES or a marketable Treasury book-entry security against Treasury or a Federal Reserve Bank, are governed solely by Federal law. Thus, for example, those parts of Revised Article 8 that detail obligations of issuers (or their agents) of securities are not applicable to either the United States or Federal Reserve Banks. In addition, neither the United States nor Federal Reserve Banks have any obligations to persons holding their interests in a marketable Treasury book-entry security at levels below the level of a Participant or to any other person claiming an interest in a marketable Treasury book-entry security (with the limited exception set out in Section 357.12(c)(1)). Thus, there are no derivative rights against either the United States or the Federal Reserve Banks.

Section 357.10(b) sets forth the law applicable with respect to security interests granted to Federal Reserve Banks. There are three possible ways that such security interests are granted. First, security interests granted to a Federal Reserve Bank by a Participant in which such Bank does not mark its books are governed by the law of the state in which the head office of the Federal Reserve Bank is located. If the state in which the head office of a Federal Reserve Bank is located has not adopted Revised Article 8, the law of such jurisdiction is deemed to include Revised Article 8. (See discussion of federal pre-emption below). Second, if a Federal Reserve Bank does not mark its books, a security interest granted by a non-Participant is governed by the law specified in the agreement with a Federal Reserve Bank. Third, if a Participant or non-Participant grants a Federal Reserve Bank a security interest and the Federal Reserve Bank marks its books, Section 357.12(c)(1) governs.

For purposes of applying the state law specified in Section 357.10(b), Federal Reserve Banks are treated as clearing corporations. As a result, security interests granted under Section 357.12(c)(2) in favor of a Federal Reserve Bank have the same priority as security interests granted to other clearing corporations under state law.

E. Law Governing Other Interests

1. Law Governing the Rights and Obligation of Participants and Third Parties

Section 357.11 is a choice of law rule. The substantive matters subject to this choice of law rule are set forth in Section 357.11(a). The matters set forth in Section 357.11(a) are meant to be coextensive with those matters covered by Revised Article 8 with respect to a person's interest in a marketable Treasury book-entry security (other than those related to a person's relationship to Treasury or a Federal Reserve Bank which are governed solely by federal law). For purposes of this choice of law rules, both Participants and Federal Reserve Banks are Securities Intermediaries.

Section 357.11(b) adopts Revised Article 8's choice of law rule. Section 357.11(c) sets forth a special choice of law rule with respect to security interests perfected by filing. Generally, the law applicable to the Securities Intermediary will govern matters involving an interest in a book-entry security held through that intermediary. This approach is not followed with respect to security interests created by filing. In those cases, the law applicable to the debtor is the governing law. Since filing systems are based on the location of the debtor, this approach should reduce uncertainty and preserve the normal practice of searching records based on the debtor's location.[26]

Section 357.11(d) provides for the application of Revised Article 8 if the choice of law analysis required by Section 357.11(b) results in the choice of the law of a jurisdiction that has not yet adopted Revised Article 8. This section also provides that, for purposes of applying state law, the Federal Reserve Banks are clearing corporations and Participants' interests in book-entry securities are Security Entitlements.

2. Limited Scope of Federal Preemption

As noted above, in an earlier TRADES proposal Treasury contemplated adopting a comprehensive regulation governing the rights of all persons in marketable Treasury book-entry securities held in TRADES. Such an approach was proposed because Treasury believed that a uniform rule was necessary to preserve the efficiency and liquidity of the market for Treasury securities—the most liquid and efficient market in the world. Treasury believed then, and believes now, that the material rights of a holder in the United States of an interest in a Treasury security should not vary solely by virtue of such holder's geographic location or the location of the financial institution through which it holds its interest in Treasury securities. In light of Revised Article 8, Treasury has determined that it is possible to achieve this uniformity without developing an independent system of Federal commercial law.[27] The questions inherent in a tiered system of ownership have been analyzed, and, in Treasury's view, satisfactorily addressed by Revised Article 8.

As of the date of this release, 13 states have adopted Revised Article 8 and Treasury understands that it will soon be adopted in additional states. As with all uniform laws, the adoption process takes several years. In order to assure uniformity, in light of the unavoidable delays in the state-by-state adoption process of Revised Article 8, Treasury is proposing a limited form of preemption. As provided in both Sections 357.10(c) and 357.11(d), if the choice of law rules set forth in TRADES would lead to the application of the law of a state that has not yet adopted Revised Article 8, TRADES will apply Revised Article 8 (with conforming and miscellaneous amendments to other Articles) in the form approved by the ALI and NCCUSL. Treasury expects that these provisions will be operative only during the state-by state adoption process and would plan to amend TRADES to delete reference to these provisions once the adoption process has been completed.

While Revised Article 8 is defined to mean the official text of Article 8 as approved by the ALI and NCCUSL, Treasury recognizes that states may make minor changes in that text when adopting Article 8. Treasury has concluded that minor changes should not prevent Revised Article 8, as adopted by a state, from being the appropriate law. In other words, if a state passes a version of Article 8 that is substantially identical to Revised Article 8, reference to Revised Article 8 (as defined) would no longer be required. This approach represents a significantly reduced form of preemption of state law from former versions of TRADES and preserves Treasury's preeminent interest in a uniform system of rules applicable to all holders of interests in marketable Treasury book-entry securities.

F. Obtaining an Interest in a Book-Entry Security

1. Creation of a Participant's Security Entitlement

A Participant's interest in a marketable Treasury book-entry security is a Securities Entitlement. Section 357.12(a) provides that a Participant's Securities Entitlement is created when a Federal Reserve Bank indicates by book entry that a Book-entry Security has been credited to a Participant's Securities Account. Instead of the concept of initial credit and transfer of a marketable Treasury book-entry security, as set forth in the existing regulations, this proposal focuses on the creation of a Participant's Securities Entitlement and, in this way, is similar to Section 8–501 of Revised Article 8.

The regulation focuses on the creation of a Participant's Security Entitlement because Security Entitlement is the term used to describe the Participant's interest in a marketable Treasury book-

[24] As of January 1, 1996, those states are: Arizona, Arkansas, Idaho, Illinois, Indiana, Louisiana, Minnesota, Nebraska, Oklahoma, Oregon, Texas, Washington and West Virginia.

[25] Treasury bills were issued pursuant to one master offering circular (31 CFR Part 349, removed, and replaced by 31 CFR Part 356) effective March 1, 1993. (58 FR 412)

[26] The substantive effect of filing is limited and applies only in states which have adopted Revised Article 8. Since the effect of filing is a unique state law matter, in this one area, Treasury has determined that possible lack of uniformity does not justify altering state law.

[27] As noted previously, the substantive scope of this regulation is limited.

entry security. Once a Participant obtains that interest, the regulation sets forth what that interest is. Thus, as provided in Section 357.10, federal law describes a Participant's rights against the United States and the Federal Reserve Bank where it maintains its Securities Account. To the extent not inconsistent with Section 357.10, Section 357.11 describes the applicable law to determine Participants' rights and obligations with respect to all other persons. Under these regulations, Participants can still transfer their interests in a marketable Treasury book-entry security as they do today—by issuing a Transfer Message to the Federal Reserve Bank where they hold such interest. Transfer of interests between Participants can occur by a Participant holding such interest issuing a Transfer Message. As a result of such message, the Federal Reserve Bank will make a book entry in favor of the receiving Participant (thereby creating a Security Entitlement in favor of such Participant) and also will make a book entry deleting the initiator Participant's interest in such marketable Treasury book-entry security (thereby eliminating that Participant's Security Entitlement). In addition, if authorized under applicable state law, Participants may enter into agreements with other Participants that, as to the Participants, constitute a transfer. Such action is without effect to either the United States or a Federal Reserve Bank.

2. Creation and Priority of a Security Interest

Security Interests of the United States.

Section 357.12(b) provides that a security interest in favor of the United States has priority over the interests of any other person in a marketable Treasury book-entry security. The United States obtains security interests in Treasury securities as collateral to secure funds in a variety of situations such as Treasury Tax and Loan accounts; government agency funds or funds under the control of the Federal Courts held at financial institutions; and securities pledged in lieu of surety by contractors and others. The priority provided the United States in these situations is consistent with existing law.

In addition, Federal Reserve Banks do recognize on their books and records security interests in favor of the United States. In that situation, the Federal Reserve Bank will not transfer the security without the permission of the United States. This section provides that a Federal Reserve Bank may rely exclusively on the directions of an authorized representative of the United States to transfer a security and is protected in so relying.

Security Interests on the Books of a Reserve Bank

In a limited number of situations, Federal Reserve Banks will agree to record a security interest on their books. It is important to note that there is no obligation for either Treasury or a Federal Reserve Bank to agree to record a security interest on the books of a Federal Reserve Bank. If they do so, the security interest is perfected when the Federal Reserve Bank records a security interest on its books. In addition, the security interest has priority over all other interests in the marketable Treasury book-entry security except an interest of the United States.

Other Security Interests

As provided in Section 357.12(c)(2), Participants can create security interests in any manner authorized by applicable state law.[28] The perfection and priority of such interests shall be governed by such applicable law. In applying such law, when a Participant grants a Federal Reserve Bank a security interest, the Federal Reserve Bank is treated as a clearing corporation.

If a person perfects a security interest pursuant to Section 357.12(c)(2) obligations of the Treasury and the Federal Reserve Banks with respect to that security interest are limited. Specifically, unless special arrangements are agreed to by the United States or a Federal Reserve Bank pursuant to Section 357.12(c)(1), neither the Federal Reserve Bank nor the United States will recognize the interests of any person other than the person in whose securities account the interest in a marketable Treasury book-entry security is maintained. This does not mean that such a security interest is invalid. Rather, it means that the creditor's recourse will be solely against the debtor Participant or other third party.

G. Rights and Obligations of Treasury and the Reserve Banks

1. Adverse Claims

Section 357.13(a) sets forth the general rule that, except as provided in Section 357.12(e)(1), Treasury and the Federal Reserve Banks will recognize only the interest of a Participant in a marketable Treasury book-entry security in whose Securities Account such interest is maintained.

As noted previously, marketable Treasury book-entry securities maintained in TRADES are held in a tiered system of ownership. The records of a Federal Reserve Bank reflect only the ownership at the top tier. Institutions maintaining a Securities Account with a Federal Reserve Bank frequently will hold interests in marketable Treasury book-entry securities for their customers (which can include broker-dealers and other Securities Intermediaries) and in certain cases those customers will hold interests in securities for their customers. Accordingly, neither Treasury nor a Federal Reserve Bank will know the identity or recognize a claim of a Participant's customer if that customer were to present it to Treasury or a Federal Reserve Bank.

In addition, except as provided in Section 357.12(c)(1), neither the Treasury nor a Federal Reserve Bank will recognize the claims of any other person asserting a claim in a marketable Treasury book-entry security. Persons at levels below the Participant level must present their claims to their Securities Intermediary.

2. Payment Obligations

Section 357.13(b) contains a corollary to the rule set forth in Section 357.13(a). This section provides that Treasury discharges its payment responsibility with respect to a security that it has issued when a Federal Reserve Bank credits the funds account of a Participant with amounts due on that security or makes payment in such other manner specified by the Participant. This is consistent with existing law and the first TRADES proposal.[29] In Revised Article 8, the issuer discharges its obligations when it makes payment to an owner registered on its books. Under common commercial practice, the registered owner in the indirect system may be a clearing corporation or the clearing corporation's nominee. Unlike Revised Article 8, even though Federal Reserve Banks are deemed to be clearing corporations, Treasury remains liable until payment is made to a Participant. Section 357.13(b)(2) establishes the mechanism of how marketable Treasury book-entry securities are paid at maturity. This paragraph makes clear that such payment takes place automatically and that, unlike with physical certificates, there is no act of presentment required by the Participant.

H. Authority of Reserve Banks

Section 357.14 provides that Federal Reserve Banks are authorized, as fiscal agents of Treasury, to operate the commercial book-entry system for Treasury.

[28] If the state has not yet adopted Revised Article 8, applicable state law would be Revised Article 8.

[29] 51 FR 8846, 8848 (March 14, 1986).

I. Notices

Section 357.44 contains a revised version of a provision that appeared in earlier TRADES proposals. Similar to the rule in Revised Article 8 (see § 8–112), it provides where certain legal process should be directed. While providing instructions on where notice should be directed, it makes clear that the regulations do not establish whether a Federal Reserve Bank is required to honor any such order or notice.

VII. Procedural Requirements

This proposed rule does not meet the criteria for a "significant regulatory action" pursuant to Executive Order 12866.

Although this proposed rule is being issued in proposed form to secure the benefit of public comment, the notice and public comment procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There are no collections of information contained in this proposed rule. Therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Part 357

Bonds, Electronic funds transfer, Federal Reserve System, Government securities, Securities.

For the reasons set forth in the preamble, Title 31, Chapter II, Subchapter B, Part 357 is proposed to be amended as follows:

PART 357—[AMENDED]

1. The authority citation for Part 357 continues to read as follows:

Authority: 31 U.S.C. Chapter 31; 5 U.S.C. 301; 12 U.S.C. 391.

2–3. Sections 357.0 and 357.1 are added to read as follows:

§ 357.0 Dual book-entry systems.

(a) Treasury securities shall be maintained in either of the following two book-entry systems:

(1) *Treasury/Reserve Automated Debt Entry System (TRADES).* A Treasury security is maintained in TRADES if it is credited by a Federal Reserve Bank to a Participant's Securities Account. See Subpart B for rules pertaining to TRADES.

(2) *TREASURY DIRECT Book-entry Securities System (TREASURY DIRECT).* A Treasury security is maintained in TREASURY DIRECT if it is credited to a TREASURY DIRECT account as described in Section 357.20 of this Part. Such accounts may be accessed by investors in accordance with Subpart C through any Federal Reserve Bank or the Bureau of the Public Debt. *See* Subpart C for rules pertaining to TREASURY DIRECT.

(b) A Treasury security eligible to be maintained in TREASURY DIRECT under the terms of its offering circular or pursuant to notice published by the Secretary may be transferred to or from an account in TRADES from or to an account in TREASURY DIRECT in accordance with Section 357.22(a).

§ 357.1 Effective date.

Subpart B of this Part, and other changes made to this Part with the publication of Subpart B in final form, are effective on and after [insert date 90 calendar days after the date of publication in final form]. Subpart C and other provisions in this Part published in final form on May 16, 1986, or as amended prior to [insert date 90 calendar days after the date of publication in final form] (related to TREASURY DIRECT) remain in effect.

§ 357.3 [Redesignated and § 357.2; amended]

4. Section 357.3 is redesignated § 357.2, the introductory text of the section is designated as paragraph (a) introductory text, the definition of *security interest and pledge* is removed, the definition of *TRADES* is revised, the remaining definitions are added in alphabetical order, and a new paragraph (b) is added to read as follows:

§ 357.2 Definitions.

(a) * * *

* * * * *

Book-entry Security means, in Subpart B, a Treasury Security maintained in TRADES and, in Subpart C, a Treasury Security maintained in TREASURY DIRECT.

* * * * *

Entitlement Holder means a Person to whose account an interest in a Book-entry Security is credited on the records of a Securities Intermediary.

* * * * *

Federal Reserve Bank Operating Circular means the uniform publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Reserve Bank maintains Book-entry Securities accounts and transfers Book-entry Securities.

* * * * *

Funds Account means a reserve and/or clearing account at a Federal Reserve Bank to which debits or credits are posted for transfers against payment, book-entry securities transaction fees, or principal and interest payments.

* * * * *

Issue means a group of securities, as defined in this section, that is identified by the same CUSIP (Committee on Uniform Securities Identification Practices) number.

* * * * *

Participant means a Person that maintains a Participant's Securities Account with a Federal Reserve Bank.

Participant's Securities Account means an account in the name of a Participant at a Federal Reserve Bank to which Book-entry Securities held for a Participant are or may be credited.

Person means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, and any other similar organization, but does not mean or include the United States or a Federal Reserve Bank.

* * * * *

Revised Article 8 means Uniform Commercial Code, Revised Article 8, Investment Securities (with Conforming and Miscellaneous Amendments to Articles 1, 4, 5, 9, and 10) 1994 Official Text, as set forth in Appendix B of this part.

Securities Intermediary means:

(1) A Person that is registered as a "clearing agency" under the federal securities laws; a Federal Reserve Bank; any other person that provides clearance or settlement services with respect to a Book-entry Security that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority; or

(2) A Person (other than an individual, unless such individual is registered as a broker or dealer under the federal securities laws) including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

Security means a bill, note, or bond, each as defined in this section. It also means any other obligation issued by the Department that, by the terms of the applicable offering circular or announcement, is made subject to this Part. Solely for purposes of this Part, it also means:

(1) the interest and principal components of a security eligible for Separate Trading of Registered Interest

and Principal of Securities ("STRIPS"), if such security has been divided into such components as authorized by the express terms of the offering circular under which the security was issued and the components are maintained separately on the books of one or more Federal Reserve Banks; and

(2) the interest coupons that have been converted to book-entry form under the Treasury's Coupons Under Book-Entry Safekeeping Program ("CUBES"), pursuant to agreement and the regulations in 31 CFR Part 358.

Security Entitlement means the rights and property interest of an Entitlement Holder with respect to a Book-entry Security.

* * * * *

TRADES is the Treasury/Reserve Automated Debt Entry System, also referred to as the commercial book-entry system.

* * * * *

Transfer Message means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Security maintained in TRADES, as set forth in Federal Reserve Bank Operating Circulars.

* * * * *

(b) Unless the context requires otherwise, terms not defined in this section have the meanings as set forth in Revised Article 8.

5. Subpart B, consisting of Sections 357.10 through 357.14, is added to read as follows:

Subpart B—Treasury/Reserve Automated Debt Entry System (TRADES)

357.10 Law governing rights and obligations of United States and Federal Reserve Banks; rights of any Person against United States and Federal Reserve Banks.
357.11 Law governing other interests.
157.12 Creation of Participant's Security Entitlement; security interests.
357.13 Obligations of United States; no adverse claims.
357.14 Authority of Federal Reserve Banks.

Subpart B—Treasury/Reserve Automated Debt Entry System (TRADES)

§ 357.10 Law governing rights and obligations of United States and Federal Reserve Banks; rights of any Person against United States and Federal Reserve Banks.

(a) Except as provided in paragraph (b) of this section, the rights and obligations of the United States and the Federal Reserve Banks with respect to: a Book-entry Security or Security Entitlement and the operation of the Treasury book-entry system; and the rights of any Person, including a Participant, against the United States and the Federal Reserve Banks with respect to: a Book-entry Security or Security Entitlement and the operation of the Treasury book-entry system; are governed solely by Treasury regulations, including the regulations of this Part, the applicable offering circular (which is 31 CFR Part 356, in the case of securities issued on and after March 1, 1993), the announcement of the offering, and Federal Reserve Bank Operating Circulars.

(b) A security interest granted to a Federal Reserve Bank, in the manner described in Section 357.12(c)(2), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant's Securities Account is located. For purposes of the application of such law, the Federal Reserve Bank shall be deemed a clearing corporation. A security interest granted to a Federal Reserve Bank by a Person that is not a Participant, is governed by the law specified in the agreement between the Federal Reserve Bank and the non-Participant.

(c) If the jurisdiction specified in paragraph (b) of this section is a State or territory or possession of the United States that has not adopted Revised Article 8, then the law specified in paragraph (b) shall be Revised Article 8.

§ 357.11 Law governing other interests.

(a) To the extent not inconsistent with these regulations, the law (not including the conflict-of-law rules) of a Securities Intermediary's jurisdiction governs:

(1) the acquisition of a Security Entitlement from the Securities Intermediary;

(2) the rights and duties of the Securities Intermediary and Entitlement Holder arising out of a Security Entitlement;

(3) whether the Securities Intermediary owes any duties to an adverse claimant to a Security Entitlement;

(4) whether an adverse claim can be asserted against a Person who acquires a Security Entitlement from the Securities Intermediary or a Person who purchases a Security Entitlement or interest therein from an Entitlement Holder; and

(5) except as otherwise provided in paragraph (c), the perfection, effect of perfection or non-perfection and priority of a security interest in a Security Entitlement.

(b) The following rules determine a "Securities Intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the Securities Intermediary and its Entitlement Holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(2) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify the governing law as provided in paragraph (b)(1), but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(3) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2), the Securities Intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the Entitlement Holder's account.

(4) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) and an account statement does not identify an office serving the Entitlement Holder's account as provided in paragraph (b)(3), the Securities Intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the Securities Intermediary.

(c) Notwithstanding the general rule in paragraph (a)(5) of this section, the law (but not the conflict-of-law rules) of the jurisdiction in which the Person creating a security interest is located governs whether such security interest may be perfected by filing a financing statement and the effect of perfection or nonperfection and priority of such security interest.

(d) If the jurisdiction specified in paragraph (b) of this section is a State or territory or possession of the United States that has not adopted Revised Article 8, then the law for the matters specified in paragraph (a) of this section shall be Revised Article 8. For purposes of the application of the matters specified in paragraph (a) of this section, the Federal Reserve Bank maintaining the Securities Account shall be deemed a clearing corporation, and the Participant's interest in a Book-entry Security is a Security Entitlement.

§ 357.12 Creation of Participant's Security Entitlement; security interests.

(a) A Participant's Security Entitlement is created when a Federal Reserve Bank indicates by book entry that a Book-entry Security has been credited to a Participant's Securities Account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, the Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the security. For purposes of this paragraph, an "authorized representative of the United States" is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) The United States and the Federal Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank or a Person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in Section 357.10(b) or Section 357.11. The perfection, effect of perfection or non-perfection and priority of a security interest are governed by such applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under such law, including with respect to the effect of perfection and priority of such security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§ 357.13 Obligations of United States; no adverse claims.

(a) Except as provided in Section 357.12(b) and (c)(1), for the purposes of this Subpart B, the United States and the Federal Reserve Banks shall treat the Participant to whose Securities Account an interest in a Book-entry Security has been credited as the person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to such Security, notwithstanding any information or notice to the contrary. Neither the Federal Reserve Banks nor Treasury is liable to a Person asserting or having an adverse claim to a Security Entitlement or to a Book-entry Security in a Participant's Securities Account, including any such claim arising as a result of the transfer or disposition of a Book-entry Security by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of the United States to make payments of interest and principal with respect to Book-entry Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest on Book-entry Securities is either credited by a Federal Reserve Bank to a Funds Account maintained at such Bank or otherwise paid as directed by the Participant.

(2) Book-entry Securities are redeemed in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the Participant's Securities Account in which they are maintained and by either crediting the amount of the redemption proceeds, including both principal and interest, where applicable, to a Funds Account at such Bank or otherwise paying such principal and interest as directed by the Participant. No action by the Participant is required in connection with the redemption of a Book-entry Security.

§ 357.14 Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the United States to perform functions with respect to the issuance of Book-entry Securities offered and sold by the Department to which this Subpart applies, in accordance with the terms of the applicable offering circular and with procedures established by the Department; to service and maintain Book-entry Securities in accounts established for such purposes; to make payments of principal and interest, as directed by the Department; to effect transfer of Book-entry Securities between Participants' Securities Accounts as directed by the Participants; and to perform such other duties as fiscal agent as may be requested by the Department.

(b) Each Federal Reserve Bank may issue Operating Circulars not inconsistent with this Part, governing the details of its handling of Book-entry Securities, Security Entitlements, and the operation of the book-entry system under this Part.

6. In Subpart D, Section 357.41 is revised and the text of §§ 357.42 and 357.44 are added, to read as follows:

Subpart D—Additional Provisions

* * * * *

§ 357.41 Waiver of regulations.

The Secretary reserves the right, in the Secretary's discretion, to waive any provision(s) of these regulations in any case or class of cases for the convenience of the United States or in order to relieve any person(s) of unnecessary hardship, if such action is not inconsistent with law, does not adversely affect any substantial existing rights, and the Secretary is satisfied that such action will not subject the United States to any substantial expense or liability.

§ 357.42 Liability of Department and Federal Reserve Banks.

The Department and the Federal Reserve Banks may rely on the information provided in a tender, transaction request form, or Transfer Message, and are not required to verify the information. The Department and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in a tender, transaction request form, or Transfer Message, or evidence submitted in support thereof.

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§ 357.44 Notice of attachment for securities in TRADES.

The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. These regulations do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

* * * * *

7. Appendix B and Appendix C to Part 357 are added and reserved as follows:

Appendix B to Part 357—Revised Article 8 [Reserved]

Appendix C to Part 357—TRADES Commentary [Reserved]

Dated: February 22, 1996.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 96–4481 Filed 3–1–96; 8:45 am]

BILLING CODE 4810–39–W

federal register

Monday
March 4, 1996

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 880 and 890

Medical Devices; Protective Restraints; Revocation of Exemptions From the 510(k) Premarket Notification Procedures and Current Good Manufacturing Practice Regulations; Final Rule and 510(k) Guidance Document; Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0487]

21 CFR Parts 880 and 890

Medical Devices; Protective Restraints; Revocation of Exemptions From the 510(k) Premarket Notification Procedures and Current Good Manufacturing Practice Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the classification regulations for protective restraints and wheelchair accessories intended for use as restraints, by revoking the existing exemptions for these devices from premarket notification and current good manufacturing practices (CGMP) regulations. FDA is also modifying the classification regulations for protective restraints and for wheelchair accessories to clarify the definitions of these devices. FDA is taking these actions in response to a number of recent reports of deaths and serious injuries that may have been associated with improper supervision of restrained patients or improper application of protective restraints. FDA believes that these actions will have minimal economic effect and will not disrupt the supply of these devices. In a notice published elsewhere in this issue of the Federal Register, FDA is announcing the availability of a draft guidance document for the preparation of premarket notification (510(k)) submissions for protective restraints.

DATES: Effective September 3, 1996.

FOR FURTHER INFORMATION CONTACT: Viola S. Hibbard, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1287.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the Federal Register of October 21, 1980 (45 FR 69678 at 69729), FDA published a final rule, in accordance with the procedures contained in section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), classifying as a device a protective restraint, usually a wristlet, anklet, or other type of strap, that is intended for medical purposes and that limits a patient's movement to the extent necessary for treatment, examination, or protection of the patient. In that regulation, FDA exempted manufacturers of protective restraints, which are class I devices, from the premarket notification procedures in part 807 (21 CFR part 807), and the CGMP regulations in part 820 (21 CFR part 820), with the exception of §§ 820.180 and 820.198, relating to general requirements concerning records and complaint files, respectively. FDA granted these exemptions because, at that time, FDA did not have information that caused serious concerns about safety problems related to the use of protective restraint devices.

Since the October 1980 publication of these classifications that exempted protective restraints from premarket notification and CGMP requirements, FDA has become aware of numerous reports of serious injuries and deaths that have been attributed to incorrect supervision, handling, or application of protective restraints. In the Federal Register of June 19, 1992 (57 FR 27397), FDA, in response to these adverse event reports, published a proposed rule to revoke the exemptions from premarket notification procedures and CGMP regulations for protective restraints and wheelchair accessories intended for use as protective restraints. FDA's proposed revocations complement the Health Care Financing Administration (HCFA) regulations (42 CFR part 483) and HCFA's February 5, 1992 (57 FR 4516), proposed rulemaking that address clinical indications for use of restraints that protect individuals from inappropriate use of restraints for discipline or convenience. The revocation of the exemption from the premarket notification procedures will permit the agency to monitor the marketing of these devices, and review and identify unclear labeling that may result in incorrect application of the devices. The revocation of the exemption from CGMP requirements will help ensure that restraints are safe by conforming to appropriate specifications for design, materials, performance, and labeling. A 60-day comment period, ending on August 18, 1992, was provided to allow interested persons an opportunity to submit comments on the proposed changes.

In addition to this rule, FDA has taken other steps to ensure that protective restraints are used safely. On July 15, 1992, FDA issued a Safety Alert on potential hazards with restraint devices (Ref. 1) to hospital administrators, directors of nursing, directors of emergency room services, and long-term care facilities. FDA also issued a letter to manufacturers in February 1992 stating that FDA considered restraints to be prescription devices which must bear a prescription legend as prescribed in § 801.109 (21 CFR 801.109) to help ensure appropriate medical intervention in the application and use of restraints (Ref. 2).

FDA received 24 comments in response to the proposal of June 19, 1992, from individuals, manufacturers, professional societies, and consumer and health associations. The comments were primarily supportive of FDA's proposed actions. Several comments, however, stated that FDA should consider additional regulation of protective restraints. These comments are discussed below.

II. Summary and Analysis of Comments and FDA's Response

A. General Comments

1. One comment stated that it would be helpful for FDA to recommend that facilities use one standard brand of each type of restraint (e.g., vest) to provide consistency and increase the likelihood that the restraint would be applied correctly. Another comment suggested restraints be uniformly designed so the front and back are easily identifiable.

Although standardization of brands in a facility may increase the likelihood that restraints will be applied correctly, it is critical that the correct type and size restraint be applied to maximize the safety of these devices. Accordingly, FDA encourages standardization as long as it can be achieved without compromising the use of the appropriate restraint type and size. Ultimately, however, this decision must be made by each facility. FDA cannot endorse one uniform design. Restraints used under different circumstances must necessarily incorporate different designs.

2. Several comments indicated support for a prescription requirement by licensed health care practitioners, specifying the appropriate restraint type, duration of application, and circumstances for use. One comment stated that FDA has avoided the issue of whether anyone other than a licensed health care worker should be permitted to apply restraints. Another comment stated that FDA did not address the issue of appropriate frequency of monitoring.

The determination of appropriate individuals to apply restraints or appropriate frequency of monitoring is beyond the scope of this regulation. However, FDA believes the use of restraints should be limited to those circumstances when they are clearly clinically indicated, and that they should be used only for a strictly defined period of time and only under the supervision of a licensed health care provider. For these reasons, FDA informed protective restraint manufacturers in February 1992 that it considered these devices to be prescription devices that may only be used under the direction of a licensed health care practitioner. In addition, FDA strongly encourages that after restraints are prescribed by a licensed health care practitioner, they be applied only by adequately trained personnel, in accordance with State licensure and Federal certification requirements for facilities.

3. While several comments were supportive of FDA's proposal to revoke 510(k) and CGMP exemptions, three comments opposed the revocation of the exemptions. One comment suggested withdrawing the proposed regulations until more complete information is available. Another comment stated that the revocations are unjustified based on the relatively small number of associated deaths and injuries compared to the large annual usage of restraints. Another comment by a manufacturer stated that the revocations were unwarranted because it was unaware of any deaths or serious injuries associated with its restraint products.

FDA disagrees that it needs to have more complete information before it revokes premarket notification and CGMP requirements. Although complete information concerning the problems associated with restraints is not available, FDA does have sufficient information about these problems to warrant revocation of the exemptions from premarket notification and CGMP requirements. As explained in the preamble to the proposed rule, the revocation of these exemptions will allow FDA to gather more information to help ensure the safety of these devices.

FDA believes that the exemption revocations are justified based on the numbers of reports of deaths and injuries associated with protective restraint use. FDA notes that since publication of the proposed rule of June 19, 1992, the total numbers of deaths and serious injuries reported under the Device Experience Network (DEN), which includes the mandatory Medical Device Reporting Program and the MedWatch Reporting Program, have increased from 41 deaths and 16 serious injuries to 130 deaths and 48 injuries. In addition, several comments support FDA's belief that injuries and deaths associated with protective restraints are seriously underreported.

FDA does not agree with the comment from one manufacturer that revocations of the exemptions were not warranted for its restraints because the manufacturer was not aware of any deaths or serious injuries associated with its products. Reports of these problems encompass many different restraint types, regardless of manufacturer or design; various types of patient populations, regardless of clinical indications for the use of the restraint; and various types of health care facilities, including hospitals, home use situations, and nursing homes. The fact that problems have been reported from a wide spectrum of protective restraint types and situations indicates that the problems associated with protective restraints are not specific to one particular type of restraint. Moreover, given the probability of underreporting of protective restraint-associated deaths and injuries, the absence of complaints for one particular manufacturer does not indicate that that manufacturer's devices are free of the problems associated with other restraints.

4. One comment from a restraint manufacturer disagreed with the economic impact analysis of the proposed rule and stated that revocations of the exemptions would result in substantial economic costs. To avoid incurring the costs associated with compliance with the regulation, the manufacturer stated that their company may disavow the "medical device" classification of their product line and continue to sell their restraint devices to interested members of the health care industry.

FDA advises that protective restraints, within the meaning of section 201(h) of the act (21 U.S.C. 321(h)), are medical devices because they are intended for use in the cure, mitigation, treatment, or prevention of disease. Therefore, on or after the effective date of this final rule, any manufacturer distributing a restraint device not meeting the provisions of this final rule would violate the act by distributing devices that are: (1) Misbranded, in that no premarket notification submission has been filed pursuant to section 510(k) of the act (21 U.S.C. 360(k)); and (2) adulterated, if CGMP requirements are not met under section 520(f) of the act (21 U.S.C. 360j(f)). FDA strongly discourages any noncompliance with this regulation and is prepared to take enforcement actions against persons who violate this regulation. Such actions may include seizure, injunction, civil penalties, and criminal prosecution.

Furthermore, FDA disagrees that a substantial economic impact would result from these regulations. The comment estimated that the company would incur costs of $200,000 for 100 510(k) applications and as much as $500,000 to attain compliance with CGMP's, which could force the company out of business. The comment did not present any data to support claims of substantially higher costs for complying with CGMP's.

FDA has reconsidered its economic analysis and believes that the costs of premarket notification submissions and compliance with CGMP's are considerably lower than suggested in this comment. Also, FDA expects to allow some grouping by product category in a 510(k) submission as discussed in comment 10 of this document, which should limit the number of 510(k)'s that have to be submitted by any particular manufacturer.

5. One comment questioned the benefit of simply revoking the exemptions, but believed that the revocations were necessary as an interim measure while reclassification of the devices to a more stringent regulatory category is considered. Three comments believed the proposed revocations to be a totally inadequate response to problems with restraints and inconsistent with requirements issued by HCFA. These comments stated that FDA should convene a device classification panel to determine whether restraint devices should be reclassified to class II or III.

FDA is continuing to evaluate the need for reclassification of these devices. However, FDA believes that revocation of the premarket notification exemption will facilitate more immediate improvements in the labeling of restraint devices that quickly will provide increased safety and effectiveness in the use of restraints, and that revocation of CGMP exemptions will facilitate improvements in the manufacture of restraint devices. FDA believes that these measures will greatly reduce the risk associated with use of protective restraints. FDA retains the option to reclassify the devices at a later time, if such additional action is believed necessary to protect the public health.

FDA disagrees that its actions are inconsistent with those of HCFA. As stated in the preamble to FDA's June 19, 1992, proposed rule, the intent of HCFA's requirements on use of restraints in nursing homes is to protect nursing home residents from use of restraints for purposes of convenience or discipline. FDA's actions complement these requirements by ensuring that for those instances where

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restraints are clinically indicated, the labeling and instructions for use of the restraints will facilitate correct application by health care providers.

6. One comment requested immediate recall action on restraints that have a higher association with death and serious injury than others. The comment believed that criss-crossed vests were the most dangerous, although the comment acknowledged that the higher number of death reports associated with vest restraints may be due to more frequent use of those devices.

FDA does not believe that the criteria for requiring the recall of any particular protective restraint have been met. Under section 518(e) of the act (21 U.S.C. 360h(e)), FDA may order a recall of a device only after finding that the device would cause serious adverse health consequences or death. FDA does not have information that any type of restraint, including criss-crossed vests *if used properly*, would cause serious adverse health consequences or death. Furthermore, restraints can provide benefits that outweigh the risks for some patients, for example, by preventing patients with medically related cognitive deficits from involuntarily discontinuing life-support or other needed medical interventions, by temporarily reducing the mobility of agitated patients who may otherwise hurt themselves or others, or by helping patients feel safer in a bed or wheelchair. FDA does not believe that recalling these restraints where the benefits outweigh the risks would be in the best interest of the public health. Furthermore, FDA believes that the risks associated with restraints will be further reduced by the measures taken in this regulation. FDA, however, will certainly initiate 518(e) recall action in the future if the agency determines that individual circumstances warrant such action.

7. Four comments requested that FDA resume plans to conduct clinical and human factors engineering tests on restraining devices to assess their safety and effectiveness. Several comments stated that FDA should gather and study information from other sources besides DEN, including the Consumer Product Safety Commission, HCFA, State and local agencies that regulate nursing homes, the courts, review of patient records, review of the literature, and consultation with experts in the field.

FDA notes that in developing its course of action regarding protective restraints, the agency gathered considerable information from many other sources besides DEN, including literature reviews, interviews with health care professionals and professional organizations, visits to user facilities, and discussions with manufacturers of restraints. It is the manufacturers' responsibility to conduct testing to assess safety and effectiveness. FDA, however, would welcome any additional research information regarding restraint use from health and consumer groups and encourages research by such groups that would promote safer use of restraints. By revoking the premarket notification and CGMP exemptions, FDA will gain further information that will enable the agency to ensure safe use of these devices. FDA will continue to evaluate information received from other available sources.

8. One comment stated that FDA has "exhibited confusion" about the appropriate circumstances for use of restraints. The comment noted that the proposed rule states that restraints may be needed to keep agitated patients from hurting themselves, but an FDA Medical Alert warned that restraints may only add to this agitation and confusion and therefore may place the patient in jeopardy.

Whether restraints should be used may vary depending on the circumstances presented by the individual patient. While FDA realizes that restraints can adversely affect a patient by increasing agitation, they may sometimes be necessary under certain circumstances to restrain agitated patients from harming themselves. The determination of whether restraint use is appropriate should be made by clinicians for each patient individually, after assessing the risks and benefits of restraint use.

9. Several comments that supported the revocations suggested that manufacturers who fail to submit a 510(k) or fail to adhere to CGMP's should not only be prohibited from future sales of restraints, but should be compelled to remove from use (at the manufacturers' expense) all previously sold restraint products.

FDA disagrees that recalling devices is necessarily an appropriate remedy for failure to comply with CGMP or premarket notification requirements. As explained in comment 6 of this document, FDA will initiate recalls only if the statutory criteria under section 518(e) of the act are met, and will decide whether those criteria are met on a case-by-case basis. As stated in FDA's response to comment 4 of this document, manufacturers who fail to comply with CGMP and premarket notification requirements are subject to various enforcement actions by FDA.

10. Five comments requested that manufacturers be allowed to submit 510(k)'s by product category (e.g., vests, limb holders etc.), rather than for each individual product, because some products differ only in minor design aspects, while their function, application, and use is identical.

FDA agrees that grouping of similar devices in a 510(k) submission would be acceptable to a limited extent. For example, vests of similar design but composed of different fabrics might be grouped into one 510(k). However, submissions for devices differing substantially in design (and therefore risk) should not be grouped in a single 510(k). FDA will review this issue on a case-by-case basis.

11. One comment expressed concern regarding what criteria FDA is using to determine safety and effectiveness, and whether manufacturers could be assured that 510(k)'s will not be delayed on the basis of individual reviewers' perceptions of what constitutes safe and effective.

FDA advises that there will be uniformity in the criteria that reviewers consider to determine the safety and effectiveness of these devices. Section 513(i) of the act (21 U.S.C. 360c(i)) and its implementing regulations in part 807 (21 CFR part 807) describe the criteria used by FDA to determine substantial equivalence. FDA provided guidance that described labeling for restraints at an October 1991 meeting with a medical device trade organization. This guidance has been incorporated into a draft 510(k) submission guidance that will be used by FDA reviewers to assist in evaluating 510(k) submissions. Additional general labeling guidance is available in the Human Health Services (HHS) publication "Labeling: Regulatory Requirements for Medical Devices" (Ref. 3), the Office of Device Evaluation's labeling guidance document (Ref. 4), and the publication "Write It Right," a guidance on labeling for home use products (Ref. 5). The draft 510(k) submission guidance recommends that manufacturers' 510(k) submissions for restraints address the following: (1) Specific intended use of the device; (2) ease of release of the device in the event of emergencies; (3) tear strength of the materials; (4) potential for injury (e.g., whether there are abrasive materials, such as metal fasteners, that would come in contact with the patient's skin, and similar considerations); (5) ease of identification of size; (6) completeness, conspicuousness, and simplicity of directions and labeling; (7) care/cleaning instructions; (8) whether the material is biocompatible; and (9) any safety testing data available for the device, including an analysis of bench simulation testing data; and for certain circumstances, (10) patient testing data.

Manufacturers may contact the reviewing division to discuss the appropriate content of their submissions on a case-by-case basis. FDA, elsewhere in this issue of the **Federal Register**, is publishing a notice of availability of this draft guidance and requesting comments on it.

12. Five comments stated that to ensure that protective restraints continue to be available for medical use, manufacturers need to be able to continue to market their products during the interim period between the effective date of the final rule revoking the 510(k) exemptions and the date that products are cleared by FDA. The comments also stated that manufacturers need to be given a reasonable amount of time (at least 6 months) after their final labeling is approved to exhaust the remaining existing supplies of their products and phase in products with the new labeling. Additionally, three comments stated that manufacturers need to be given a reasonable amount of time (for example, 2 years) to attain compliance with CGMP's.

FDA realizes that there will be a time period between the filing of a 510(k) submission required by this regulation, and FDA's determination, based on that submission, of whether the device has marketing clearance. During the time period between the filing of a 510(k) and the FDA's substantial equivalence decision, FDA, in exercising its enforcement discretion, does not intend to initiate enforcement action relating to the distribution of protective restraint devices that are adulterated under 21 U.S.C. 351(f)(1)(B) because they fail to have FDA marketing clearance if: (1) The devices were initially introduced into interstate commerce prior to September 3, 1996; and (2) the sponsor has filed a 510(k) submission as of September 3, 1996.

FDA, however, intends to exercise its enforcement discretion to initiate regulatory action against protective restraint devices that have not received marketing clearance after June 4, 1997 if FDA has been unable to reach a decision determining substantial equivalence because the 510(k) submission fails to contain sufficient information. FDA will notify the sponsor if such additional information is necessary.

FDA has extended the effective date of the final rule requiring submission of 510(k)s and compliance with CGMP's from 90 days to 180 days. FDA believes this time period is appropriate.

FDA first informed restraint manufacturers about FDA's planned actions regarding 510(k) and CGMP requirements at a meeting with a medical device trade organization in October 1991. FDA again notified manufacturers in FDA's June 19, 1992, proposed rule, that the agency intended to revoke these exemptions. Given the fact that industry has been on notice since 1991 of FDA's plans to revoke these exemptions, FDA does not believe manufacturers need an additional 2 years to comply with CGMP's or 6 months after their labeling is approved to exhaust supplies of labeling.

B. Restraint Identification

13. Two comments agreed with FDA's identification of a protective restraint as it was published in the proposed rule. Several comments stated that the identification of restraint used in the proposed rule is too narrow, leaving major gaps in the coverage of a growing list of potentially dangerous devices that are routinely used to restrain patients or residents and that are "falsely marketed" as alternatives to restraints. To alleviate these concerns, several comments suggested using the broader definition of restraint proposed by HCFA in order to include the concept of a method of restriction of movement.

FDA disagrees that the identification of protective restraints is too narrow and leaves major gaps that do not cover devices that are "falsely marketed" as alternatives to restraints. Although the identification gives examples of protective restraints, such as wristlets, vests, and straps, the identification of protective restraints is not limited to those examples. The identification is based on the product's intended use. Under § 801.4, evidence of a device's intended use is not limited to labeling claims or to verbal representations. It may be shown by the circumstances that the device is offered and used for a purpose for which it is neither labeled nor advertised. FDA considers any actions that otherwise represent a device's intended use, as well as labeling, to determine a device's intended use. Therefore, even devices that are "falsely marketed" as alternatives to restraints will fall under the identification of protective restraint if their intended use is to function as a protective restraint. If a manufacturer intends a device to be used as a restraint or is aware that the device is used as a restraint, that manufacturer must comply with requirements for protective restraints. FDA encourages consumers or health care workers to report instances where manufacturers of such products are not complying with the requirements for protective restraints.

Other comments suggested that the identification should state that a restraint is any device which a resident cannot remove easily and which restricts freedom of movement or easy access to their body. FDA does not agree that the protective restraint identification should be this broad. FDA may only regulate as devices products that fall within the definition under section 201(h) of the act. Many products that restrict freedom of movement or easy access to the body do not fall under FDA's jurisdiction (e.g., safety belts, car seats). Also, even if products that restrict freedom or access are medical devices (e.g., geriatric chairs), FDA believes it is inappropriate to identify all such devices as protective restraints where that is not the intended use of such devices.

14. One comment objected to the use of "or others" after "protection of the patient" at the end of § 880.6760 (21 CFR 880.6760) because it is an established rule that restraints may only be used to "ensure the physical safety of the resident *or other residents*" (Social Security Act, section 1919 (42 U.S.C. 1396q)). The comment also objected to the use of the term "patients" in the restraint identification, because it is not appropriate in many non-hospital settings. The term "patients or other residents" was suggested as a substitute.

FDA disagrees with the comments. Restraints are sometimes used in situations to protect individuals other than the person in restraints. For example, hospitals may use restraints in emergency rooms to protect staff, or other patients/residents from harm (e.g., due to patient drug abuse or comparable circumstances). With regard to the objection to the term "patients" in the context of non-hospital settings, FDA believes that since restraints are medical devices, any resident who is restrained constitutes a patient within the broad meaning of the term in this section while wearing the restraint. Therefore, FDA rejects these comments.

15. One comment stated that FDA should define bedrails and geriatric chairs as restraints.

FDA notes that bedrails and geriatric chairs are currently classified under §§ 880.5100, 880.5110, 880.5120, and 880.5140 (bedrails); and §§ 890.3100 and 890.3110 (21 CFR 890.3100 and 890.3110) (geriatric chairs). For the reasons stated in response to comment 13 of this document, FDA believes that the current definition of restraints is appropriate.

16. One comment requested that FDA modify the restraint identification to exclude from the regulation those restraints that are used with radiotherapy linear accelerators and simulators, because of the controlled

conditions under which such restraints are used and the benefit they provide. The comment requested that the identification of a restraint be modified as follows:

A protective restraint is a device * * * that is intended for medical purposes and that limits the patient's movements to the extent necessary for treatment, examination, or protection of the patient or others, excluding restraints which are used for a short duration under the continual supervision of qualified personnel.

FDA does not believe that it would be appropriate to modify the restraint identification to exclude restraints which are used for a short duration under continual supervision from 510(k) and CGMP requirements. These requirements are necessary for restraints that are intended to be used for short periods of time under supervision because such restraints may pose risks to patients if they are not used in the manner the manufacturer intended. FDA advises that "restraints" for use with radiation therapy systems are included under the classification regulations for radiation therapy systems in §§ 892.5050 and 892.5300 (21 CFR 892.5050 and 892.5300). Under those classification regulations, such restraints are already subject to 510(k) and CGMP requirements. Manufacturers of restraints that are accessories to other devices should submit their 510(k) submissions to the appropriate reviewing division for the primary device.

C. Wheelchair Accessories

17. Two comments supported the proposal to revise the classification regulation for wheelchair accessories labeled or otherwise represented as restraints. One comment, however, stated that restraints should not be classified as wheelchair accessories because this minimizes the importance of decisions regarding whether a restraint should be used at all and the selection of the appropriate type of restraint.

FDA disagrees that the chosen classification of wheelchair accessories intended for use as restraints diminishes the importance of decisions regarding use of those devices. FDA specifically emphasized in the proposed rule and in the July 1992 FDA Safety Alert that the same safety considerations, including proper selection and labeling, are equally important for wheelchair accessories that are used as protective restraints.

18. Two comments recommended that FDA adopt an identification of wheelchair accessories intended for use as restraints that includes all accessories and all wheelchair components that are manufactured and marketed with the intent of restricting the patients' movement, regardless of whether the devices are labeled or represented as restraints.

FDA agrees with these comments. As discussed in paragraph 13 of this document, the definition of protective restraint includes any device that "is intended for medical purposes and that limits the patient's movements to the extent necessary for treatment, examination, or protection of the patient or others." In stating in FDA's June 19, 1992, proposed regulation that FDA was exempting wheelchair accessories from CGMP and premarket notification requirements that were not "labeled or otherwise represented" as a protective restraint, FDA did not mean to imply that it was exempting those wheelchair accessories that are not labeled or represented as restraints if they are intended for use as restraints. To clarify that all wheelchair accessories which are intended to be used as protective restraints must comply with premarket notification and CGMP requirements, FDA is replacing the words "labeled or otherwise represented" with "intended for use" in the final regulation.

D. Labeling/Human Factors

19. Six comments requested that the agency consider the wide variety of protective restraints available and evaluate each device according to its intended use/size/design, without imposing a "blanket" labeling requirement for all restraints. For example, devices such as vests should be labeled to clearly distinguish the front and back of the restraint, whereas other restraints which have no front and back should not be required to have such labeling.

FDA agrees that a "blanket" labeling requirement in this sense should not be imposed and that the risks and benefits of each restraint device should be reviewed individually in determining appropriate specific labeling for restraint devices. FDA believes, however, that similar protective restraints should have similar labeling. FDA also believes that protective restraints should include step-by-step instructions on how to apply the device and where to secure the ties, have securely attached warning labels that clearly identify the front and back of the restraints, and warn users of the dangers of reversal, preferably using pictorials. Additional labeling instructions are listed in the draft guidance document discussed in comment 12 of this document.

20. Several comments expressed concern that the FDA regulation implies that the only danger of restraints is in their potential misapplication and that they are safe when used in accordance with the manufacturer's instructions, and that HCFA's regulations will be undermined.

FDA disagrees with these comments. FDA's regulation does not imply that it alone will ensure safe and effective use of restraints. As explained more fully in both the preamble to FDA's June 1992 proposed rule and comment 5 of this final rule, FDA's regulations and HCFA's regulations complement each other, they do not undermine each other. HCFA laws and regulations ensure that restraints are only used on persons who need restraints, and FDA's regulations will help ensure that if clinically appropriate, such restraints will be applied safely.

21. Several comments requested that FDA require that restraint labeling contain specific information including information about all potentially harmful effects from the use of restraints, including hazards, side effects, warnings/precautions, and contraindications for their use. The comments also requested requiring clear delineation in the device labeling as follows: (1) The front and back of the restraint; (2) top and bottom of the restraint; (3) length of time the restraint can be applied safely; (4) frequency with which the restraint should be released; (5) frequency with which the patient should be monitored; and (6) minimum standards or qualifications of personnel to administer restraints. Several comments stated that labeling should be required to be on the inside or underside of the device in as discrete a manner as possible to convey necessary information and/or instructions to users, in order to preserve the dignity and self-esteem of the individual being restrained.

FDA advises that this regulation will allow FDA to review the labeling for protective restraints, and that all labeling must provide material information related to its safe use in accordance with section 502(a) of the act (21 U.S.C. 352(a)). In the preamble to the proposed rule, FDA stated certain labeling practices that FDA believes are necessary to help ensure the safe use of devices. Also, specific suggested labeling is stated in the draft guidance document discussed in comment 11 of this document. After receipt of individual premarket notifications, FDA will review the labeling on a case-by-case basis.

With regard to placement of labeling, FDA encourages placement of labeling in a manner that respects the patient's dignity, as long as the placement does not compromise the visibility of the labeling to the person applying the restraint.

22. Several comments noted support for the utilization in all product labeling of pictorials, languages other than English, and textual information written for low language comprehension levels, in sufficiently large type to clearly express the message. Several comments suggested that the use of languages other than English is not feasible and that the manufacturer's obligation should be limited to adequate step-by-step instructions in English, with translations made available by individual employers.

FDA agrees that pictorials and text materials written for low language comprehension levels are important for effective conveyance of application and hazard information. FDA also encourages manufacturers that distribute devices for use by populations who do not use English as a first language to provide instructions in foreign languages to the extent possible and in accordance with the foreign language requirements of § 801.15(c). FDA has discussed human factors considerations related to labeling with manufacturers, including the selection of legible font types and sizes. Under 21 U.S.C. 352(c) labeling statements required by or under the authority of the act must be placed with conspicuousness and in such terms as to render them likely to be read and understood by the ordinary individual under customary conditions of purchase and use. See 21 CFR 801.15.

23. Several comments suggested that in addition to improved labeling, posters should be made available for use and kept in accessible view, such as in the restrained patient's room, nurses stations, and physical therapy facilities.

FDA agrees that posters could be very helpful in promoting proper use of restraints and has encouraged manufacturers to develop such posters. Several manufacturers have already implemented instructions on posters. Placement of such posters should be done in such a way that they will be readily accessible to personnel but still comply with nursing facility requirements for a homelike environment, in accordance with provisions of 42 CFR 483.15(h)(1).

24. One comment noted that warnings and instructions for restraints should be conveyed in a form suitable for home use as well as institutional use.

FDA agrees with the comment and encourages use of FDA's guidance on developing user instruction manuals for medical devices used in home health care (Ref. 5). The document, entitled "Write It Right," has been distributed to all domestic and foreign medical device manufacturers. Copies may be obtained from the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health, 800–638–2041.

25. One comment stated that experience demonstrates that product labels and directions cannot in and of themselves protect patients from injury or death. The comment stated that while the labeling guidelines proposed by FDA represent a positive step in recognizing the potential dangers of inappropriately applied or inappropriately supervised use of restraints, such guidelines may do more to help shield manufacturers involved in product liability suits than to protect patients from avoidable accidents.

FDA agrees that product labeling alone cannot protect patients from injury or death. However, well-presented labeling that is written in a salient, informative, and concise manner can motivate the user to read instructions, which can reinforce demonstration instruction and prevent misuse of devices. Studies, as early as 1960, illustrate that behavior can be affected by warnings and safety posters in the workplace (Ref. 6). More recent studies demonstrate that user behavior is clearly influenced by the presence and location of warnings and adequate instructions for use (Ref. 7).

FDA agrees that clearer labeling may in some instances help shield manufacturers from product liability. However, regardless of any effect on product liability, improved labeling, which may help reduce the incidence of injury and death is important. To supplement the beneficial effects of improved labeling, FDA advises that adequate training and education of health care providers is necessary for safe and effective use of restraints.

26. One comment stated that knots tied in some restraints are often difficult to untie in the event of an emergency, and if it were at all possible, restraints that tie should be replaced by those that release with a clasp of some kind.

FDA supports the development of safe innovations that would improve the ease of use of restraint devices.

E. Sizing/Color Coding

27. Several comments stated that a universal color coded sizing system should be adopted throughout the industry to help facilitate selection of the appropriate restraint size and reduce incidences of misapplication of an incorrect size that could lead to deaths or injuries.

FDA agrees with the comments. FDA also notes the availability of a voluntary new sizing standard for women over the age of 55, which might be of use in designing restraints for geriatric patients, who typically have upper torso dimensions that are substantially different from younger patients. The standard, entitled "The Development of Body Measurement Tables for Women 55 and Older and the Relationship to Ready to Wear Garment Sizes," is available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.

28. One comment from a manufacturer noted that for 54 years their company has manufactured restraints in accordance with a particular color code for size, and that this color code has become the most commonly used and understood color code by users of restraints. The comment stated that if FDA decides to adopt a different color standard than what the comment perceives as the "prevailing standard," it will create serious confusion among users because of the extensive user familiarity with that color coding standard. Another comment stated that color coding sizes for restraints would have a substantial financial impact on industry.

This regulation is not requiring the adoption of a color-coded sizing standard. However, FDA encourages manufacturers to develop an industry-wide voluntary standard.

29. Two comments noted that manufacturers produce a selection of sizes of certain types of restraints (e.g., vests), but that this does not ensure that facilities have purchased adequate sizes or the entire line of vest restraints for utilization in their facility.

FDA advises that selection of the appropriate size and type of restraint is critical for safe and effective use of the device and that clinicians and purchasing agents should consult medical practice guidelines and instructions for use in determining the appropriate size.

F. Flame Retardancy

30. FDA explicitly solicited comments regarding whether some or all restraints should be made of flame resistant materials. Several comments supported a universal requirement for flame resistant restraints, citing the following reasons:

(1) There have been reports to FDA of at least six patients dying or being injured as a result of deliberately or accidentally igniting their restraints;

(2) Clinicians report having seen many restraints with ash and cigarette burns in them, further indicating a

safety problem with respect to flammable materials;

(3) Many of the persons who are restrained may retain their right to smoke in designated areas. These patients may have poor posture control or hand dexterity, or may be confused, increasing the chances of an accident. Also, visitors and other residents unaware of a potential fire hazard may give smoking materials to the resident without staff knowledge;

(4) Many nursing home residents may use oxygen, or be in close proximity to other residents who use oxygen, increasing the danger of fire.

Alternatively, multiple comments opposed requiring all protective restraints to be constructed of flame resistant material, citing the following reasons:

(1) Adequate and appropriate supervision is the best means of prevention of burn and smoke inhalation injuries to individuals who are being restrained;

(2) Many other items found on or near the bed are not flame resistant, such as bed linens, pajamas, clothing, and even the patient's hair, so having restraints made of flame resistant materials would not serve a useful purpose. Residents might be better served through establishment of a smoke-free environment;

(3) Labeling of restraints as flame resistant might actually encourage smoking in bed by providing a false sense of security to both residents and health care providers, who might relax smoking policies;

(4) The availability and effectiveness of flame resistant restraints is limited by current technology. Some device components are not readily available in flame resistant material, so requiring restraints with this property might be prohibitively expensive. Also, textile materials treated with flame resisting chemicals will burn if a source of ignition is present, and the flame retardancy of some devices is destroyed after the first laundering of the device. Warnings against the exposure of protective restraints to ignition sources should adequately address concerns related to burn injuries;

(5) Flame resistant vests are now marketed with very little success due to the higher price (approximately 30 percent). This cost outweighs the negligible benefit that might be derived with a universal requirement for flame resistant restraints.

Several comments also stated that FDA should study the actual contribution to patient safety that would be afforded by flame resistant restraints versus the economic impact of replacing devices currently in use. One comment suggested that the comfort and care of the patient should be the primary concern and that secondary issues should include whether fire resistant materials make the restraint less flexible or more likely to cause rubbing or irritation; the effect on safety features of the device; and the extent of protection flame resistant materials would actually offer in the event of fire.

FDA has carefully considered the comments submitted and concluded that although there are potential fire hazard concerns for some patients, adequate and appropriate supervision is the most effective and useful means of preventing fire-related injuries associated with restrained patients. Some additional benefit, however, may occur by using flame-resistant restraint material on patients who smoke. Although FDA does not believe it is appropriate to require the use of flame-resistant materials for all restraints, FDA recommends that health care institutions develop and implement policies for the use of flame-resistant restraints for patients who smoke while in restraints.

G. Training, Education, and Guidelines for Use

31. Several comments advocated increased training, education, and FDA development of guidelines for restraint use to promote the safe application of restraint devices. Several comments suggested that FDA should publish a consumer (family) guide or brochure on the appropriate use of restraints, the risks and benefits of restraint prescription and application, and the potential side effects and hazards of restraint use.

FDA agrees that adequate training and education for users of restraints in all care scenarios is critical to the safe and effective use of restraints and FDA strongly encouraged increased education about restraint use in its July 1992 Safety Alert issued to health care professionals. FDA has actively participated with health care associations in the development of guidelines for use of medical devices in the past and is willing to participate in such efforts for protective restraints. FDA advises that in using restraints, institutions are required to meet all State and local laws and HCFA requirements, and are encouraged to meet guidelines developed by professional health care organizations. With regard to publication of a consumer guide, the FDA 1992 Safety Alert on restraints contains information about restraint use specifically directed towards patients and family members. Copies of FDA's Safety Alert are available upon request from the Office of Surveillance and Biometrics (HFZ–500), Center for Devices and Radiological Health, 5600 Fishers Lane, Rockville, MD 20857.

32. One comment stated that because the liability burden for patient morbidity and mortality caused by restraints is increasingly shifted to nursing home staff, FDA should consider requiring manufacturers to offer training and accessible advice to nursing homes with device questions or problems, as a component of the new premarket notification and CGMP rules.

Such requirements are beyond the scope of this rulemaking. However, FDA encourages health care facilities to request training when purchasing restraints and if such training is not made available, to reconsider their purchasing policies. Manufacturers have already been strongly urged by FDA to develop training videos and other materials to assist health care facilities in training their staff in the proper application and use of their products.

H. Chemical Restraints

33. Two comments noted that they do not support the use of pharmaceutical options as chemical restraints in substitute for physical restraints and stated that FDA is well positioned to address the issue of the misuse of chemical restraints. The comments recommended that FDA consider labeling recommendations for manufacturers of drug products frequently used for chemical restraint.

FDA is advised that guidelines for the use of chemical restraints in nursing homes are being finalized by HCFA, but such controls are beyond the scope of this medical device rule. If the comments wish to express concerns regarding labeling of specific drug products believed to be misused as chemical restraints, those comments should be referred to FDA's Center For Drug Evaluation and Research, Division of Neuropharmacological Drug Products (HFD–120), 5600 Fishers Lane, Rockville, MD 20857.

III. The Final Rule

Persons required to file premarket notification submissions under section 510(k) of the act (21 U.S.C. 360(k)) and the procedures in subpart E of 21 CFR part 807 must file a premarket notification submission for any protective restraint device already marketed or intended to be introduced or delivered for introduction into interstate commerce for commercial distribution on or after September 3, 1996.

All protective restraints that are introduced or delivered for introduction into interstate commerce on or after September 3, 1996, are required to be manufactured in compliance with the CGMP regulations in 21 CFR part 820.

In a notice published elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a draft guidance document for the preparation of a premarket notification (510(k)) submission.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this final rule only removes an exemption and subjects manufacturers of patient restraints to the same requirements as manufacturers of other devices, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "FDA Safety Alert: Potential Hazards with Restraint Devices," Food and Drug Administration, Rockville, MD, July 15, 1992.

2. Johnson, R., FDA, letter to restraint manufacturers, February, 1992.

3. "Labeling: Regulatory Requirements for Medical Devices," HHS Publication No. FDA 89–4203, Food and Drug Administration, Rockville, MD, August, 1989.

4. Office of Device Evaluation, "Device Labeling Guidance," No. G91–1, Food and Drug Administration, Rockville, MD, March 8, 1991.

5. "Write It Right: Recommendations for Developing User Instruction Manuals for Medical Devices Used in Home Health Care," Food and Drug Administration, Rockville, MD, August, 1993.

6. Laner, S., and R. G. Sell, "An Experiment on the Effect of Specially Designed Safety Posters," *Occupational Psychology*, 34:153–169, 1960.

7. Wolgalter, M. S. et al., "Effectiveness of Warnings," *Human Factors*, 29(5):599–612, 1987.

List of Subjects

21 CFR Parts 880 and 890

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 880 and 890 are amended as follows:

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

1. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 880.6760 is revised to read as follows:

§ 880.6760 Protective restraint.

(a) *Identification.* A protective restraint is a device, including but not limited to a wristlet, anklet, vest, mitt, straight jacket, body/limb holder, or other type of strap, that is intended for medical purposes and that limits the patient's movements to the extent necessary for treatment, examination, or protection of the patient or others.

(b) *Classification.* Class I (general controls).

PART 890—PHYSICAL MEDICINE DEVICES

3. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

4. Section 890.3910 is revised to read as follows:

§ 890.3910 Wheelchair accessory.

(a) *Identification.* A wheelchair accessory is a device intended for medical purposes that is sold separately from a wheelchair and is intended to meet the specific needs of a patient who uses a wheelchair. Examples of wheelchair accessories include but are not limited to the following: armboard, lapboard, pusher cuff, crutch and cane holder, overhead suspension sling, head and trunk support, and blanket and leg rest strap.

(b) *Classification.* Class I (general controls). If the device is not intended for use as a protective restraint as defined in § 880.6760 of this chapter, it is exempt from the premarket notification procedures in subpart E of part 807 of this chapter, and is also exempt from current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Dated: February 15, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–4719 Filed 3–1–96; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N–0487]

Medical Devices; Protective Restraints; Draft 510(k) Guidance Document; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document for the preparation of premarket notification (510(k)) submissions for protective restraints and wheelchair accessories intended for use as restraints. The draft guidance document is intended to assist manufacturers in complying with premarket notification requirements. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule revoking exemptions for these devices from premarket notification and current good manufacturing practices regulations.

DATES: Written comments by June 3, 1996.

ADDRESSES: Submit written requests for single copies of the draft guidance document to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597, or 1–800–638–2041. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the 510(k) guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: James E. Dillard, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1287.

SUPPLEMENTARY INFORMATION: FDA is revising the classification regulations for protective restraints (21 CFR 880.6760) and wheelchair accessories intended for use as restraints (21 CFR 890.3910). In a final rule published elsewhere in this issue of the **Federal Register**, FDA is revoking the existing exemptions for these devices from premarket notification and current good manufacturing practices regulations. This action is being taken in response to a number of recent reports of deaths and serious injuries that may have been associated with improper supervision of restrained patients or improper application of protective restraints.

Manufacturers and initial distributors of protective restraints and wheelchair accessories intended for use as restraints will be required to submit premarket notification submissions by September 3, 1996. Therefore, FDA is announcing the availability of a draft guidance document for the preparation and submission of 510(k) submissions for these devices. This draft guidance will be used by FDA reviewers to assist in evaluating 510(k) submissions. Characteristics that manufacturers should address in their 510(k) submissions for restraints include the following: (1) Specific intended use of the device; (2) ease of release of the device in the event of emergencies; (3) tear strength of the materials; (4) potential for injury (e.g., whether there are abrasive materials, such as metal fasteners, that would come in contact with the patient's skin, and similar considerations); (5) ease of identification of size; (6) completeness, conspicuousness, and simplicity of directions and labeling; (7) care/cleaning instructions; (8) whether the material is biocompatible; (9) any safety testing data available for the device, including an analysis of bench simulation testing data; and for certain circumstances, (10) patient testing data. The draft guidance document contains more detailed information on restraint premarket submission requirements and should be useful to manufacturers during 510(k) preparation. The draft guidance document may be obtained from the Division of Small Manufacturers Assistance (address above). Manufacturers may contact the reviewing division to discuss the appropriate contents of their submissions on a case-by-case basis.

Guidance documents do not create or confer any rights for or on any person and do not operate to bind FDA or others; however, they do represent the agency's current thinking on the subjects of the guidance documents. Interested persons may, on or before June 3, 1996, submit to the Dockets Management Branch (address above) written comments on the 510(k) guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 15, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–4718 Filed 3–1–96; 8:45 am]

BILLING CODE 4160–01–F

federal register

Monday
March 4, 1996

Part VI

Department of Housing and Urban Development

Office of Assistant Secretary for Community Planning and Development

Notice of Funding Availability; Youthbuild Program—Fiscal Year 1996; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[Docket No. FR–4005–N–01]

Notice of Funding Availability Youthbuild Program—Fiscal Year 1996

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability for the FY 1996 Youthbuild Competition.

SUMMARY: This Notice of Funds Availability (NOFA) announces the expected availability of up to $37.5 million of Fiscal Year 1996 program funds for grant assistance under the Youthbuild Program established by the Housing and Community Development Act of 1992. These funds will be awarded competitively. Only implementation grants will be funded. The body of this NOFA contains information on the following: the purpose of the NOFA, information regarding eligibility, available funding, the application process and selection criteria.

The Congress has not yet enacted a FY 1996 appropriations for HUD. However, HUD is publishing this notice in order to give potential applicants adequate time to prepare applications. The amount of funds announced in this NOFA is an estimate of the amount that may be enacted in 1996. HUD is not bound by the estimate set forth in this notice. The estimated amount may be adjusted downward based on the enacted 1996 appropriation.

APPLICATION SUBMISSION: An original and one copy of the completed application for grant funds must be received in HUD Headquarters prior to 12 midnight EST on May 6, 1996. Applicants may include another copy of their application on 3.5" computer diskettte. Applications will be accepted at the following address: Processing and Control Unit, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7255, Washington, DC 20410. ATTN: Youthbuild. At close of business on the deadline date, applications will be received at either room 7255 or the South Lobby of the Department of Housing and Urban Development at the above address.

Applications which are mailed prior to May 6, 1996, but not received until after the deadline will be deemed to have been received by the date if postmarked by the United States Postal Service by no later than May 3, 1996. Express delivery items received after May 6, 1996 will be deemed to have been received by the deadline upon submission of documentary evidence that they were placed in transit with the express delivery service by no later than May 5, 1996. Applications may not be submitted by facsimile (FAX).

FOR A COPY OF THE APPLICATION PACKAGE, CONTACT: Requests for application packages, including an instructional video, for the current competition can be made by calling Community Connections at 1–800–998–9999 or through the internet at gopher://amcom.aspensys.com:75/11/funding. You may also contact the HUD Processing and Control Unit, Office of Community Planning and Development, U. S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7255, Washington, DC 20410. Requests for application packages may be faxed to HUD at (202) 708–3363. (This is not a toll-free number.) Requests for application packages must refer to "Youthbuild" document FR–4005–N–01. The Youthbuild application package contains appropriate instructions, forms and required certifications for completing a grant request. Requests for Youthbuild application packages for the current competition should be made immediately.

FOR FURTHER INFORMATION CONTACT: All procedural and substantive questions should be directed to the Office of Economic Development, Department of Housing and Urban Development, Room 7136, 451 Seventh Street SW., Washington DC 20410; telephone (202) 708–2035 or TDD (202) 708–1455 for the hearing impaired. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this Notice have been approved under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) by the Office of Management and Budget (OMB), and have been assigned OMB control number 2506–0142, expiration date August 31, 1996.

I. Program Purpose

The purposes of the Youthbuild program are (1) to provide economically disadvantaged young adults with opportunities to obtain education, employment skills and meaningful on-site work experience as a service to their communities and a means to achieve self-sufficiency; (2) to foster the development of leadership skills and commitment to community; and (3) to expand the supply of permanent affordable housing for homeless and low- and very low-income persons by providing planning grants for program design and implementation grants for carrying out a Youthbuild Program.

A. Authority

The Youthbuild program is authorized under subtitle D of title IV of the National Affordable Housing Act (42 U.S.C. 8011) (the Act), as added by section 164 of the Housing and Community Development Act of 1992 (Pub. L. 102–550). Implementing regulations are found in the Final Rule published in the **Federal Register** dated February 21, 1995 and in CFR 24 part 585.

B. Funding Availability

This Notice announces the availability of approximately $37.5 million in program funds. Five percent of the funds may be set aside for emergency purposes. In addition, $1.87 million (five percent of the appropriation) is planned for technical assistance consistent with section 458(d) of the Act.

The Congress has not yet enacted a FY 1996 appropriations for HUD. However, HUD is publishing this notice in order to give potential applicants adequate time to prepare applications. The amount of funds announced in this NOFA is an estimate of the amount that may be enacted in 1996. HUD is not bound by the estimate set forth in this notice. The estimated amount may be adjusted downward based on the enacted 1996 appropriation.

C. Objectives

The Youthbuild program is designed to help disadvantaged young adults who have dropped out of high school to 1) obtain the education and employment skills necessary to achieve economic self-sufficiency and 2) develop leadership skills and a commitment to community development in low-income communities. Grant funds can be used to fund eligible educational and support services and activities, as defined by the Act, composed of basic skills instruction and remedial education, employment skills and leadership development, and counseling and other support services.

Another important objective of the Youthbuild program is to expand the supply of permanent affordable housing for homeless persons and members of low- and very low-income families. Providing disadvantaged young adults with meaningful on-site training experiences in housing construction and rehabilitation enables them to provide a service to their communities by helping to meet the housing needs of homeless and low-income families.

An additional purpose of the program is to give, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, job training, employment, contracting and other economic opportunities to low-income persons and business concerns. To that purpose, section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) is applicable to Youthbuild implementation grant recipients.

II. Overview of Youthbuild Implementation Grants

HUD will award Youthbuild implementation grants to eligible applicants for the purpose of carrying out Youthbuild programs in accordance with subtitle D of title IV of the National Affordable Housing Act (NAHA). Applications will be selected in a competition in accordance with the grant selection process described in section V. below.

B. Maximum Awards

Under the competitions established by this NOFA, the maximum award for a Youthbuild implementation grant is $700,000. HUD reserves the right to determine the maximum or minimum of any Youthbuild award per application, project, program or budget line item. No amendments will be made to awards under this competition that will increase previously approved grant amounts.

C. Locational Considerations

Each application for an implementation grant may only include activities to carry out one Youthbuild program, i.e., to start a new Youthbuild program or to fund new classes of Youthbuild participants for an existing program. The same applicant organization may submit more than one application in the current competition if the proposed program's participant recruitment and housing areas are in different jurisdictions. HUD will not approve multiple applications for implementation grants in the same jurisdiction unless HUD determines that the jurisdiction is sufficiently large to justify approval of more than one application.

D. Eligible Applicants

Eligible applicants are public or private nonprofit agencies, state or local housing agencies or authorities, state or local units of general local government, Indian tribes or any other entity eligible to provide education and employment training under other Federal employment training programs, as further defined in 24 CFR 585.4.

E. Youthbuild Program Components

Youthbuild programs receiving assistance under this NOFA must contain the three components described in items (1), (2) and (4) below. Other activities described in item (3) are optional.

(1) Educational and job training services.

(2) Leadership training, counseling and other support activities.

(3) Special activities such as entrepreneurial training, drivers' education, internships, programs for those with learning disabilities, and in-house staff training. (Optional)

(4) On-site training through actual housing rehabilitation and/or construction work. Each program must be structured so that 50 percent of each participant's time is spent in on-site training.

Refer to 24 CFR 585.3 for a detailed description of program components.

F. Eligible Participants

Participants in a Youthbuild program must be very low-income high school dropouts between the ages of 16 and 24, inclusive, at the time of enrollment. Up to 25 percent of participants may be above very low-income or high school graduates (or equivalent), but must have educational needs that justify their participation in the program.

G. Eligible Activities

Activities used to conduct a Youthbuild implementation program may include:

(a) Work and activities associated with the acquisition, rehabilitation, or construction of the housing and related facilities to be used in the program;

(b) Relocation payments and other assistance required to comply with 24 CFR 585.308;

(c) Costs for the ongoing training and technical assistance needs of the applicant that are related to carrying out a Youthbuild program;

(d) Education, job training, counseling, employment and leadership development services and activities;

(e) Wages, benefits and need-based stipends for participants; and

(f) Administrative costs. Youthbuild funds for these costs may not exceed 15 percent of the total amount of Youthbuild assistance.

Refer to 24 CFR 585.305 for further details on eligible implementation activities.

H. Resources From Other Federal, State, Local or Private Entities

Applicants are encouraged to use existing housing and homeless assistance programs administered by HUD or other Federal, State, local or private housing programs as part of their Youthbuild programs. Use of other Federal, State, local or private funds available for vocational, adult and bilingual education programs or for job training under the JTPA Act and the Family Support Act of 1988 is also encouraged. The selection process described in this NOFA provides for applicants to receive points where grant applications contain commitments from Federal, State, local, or private sources to provide resources to carry out Youthbuild activities.

I. Environmental Procedures and Standards

Applicants are encouraged to select hazard-free and problem-free properties for their Youthbuild projects. Environmental procedures apply to HUD approval of implementation grants when the applicant proposes to use Youthbuild funds to cover any costs for the lease, acquisition, rehabilitation, or new construction of real property proposed for housing project development. Environmental procedures do not apply to HUD approval of implementation applications when applicants propose to use their Youthbuild funds solely to cover any costs for classroom and/or on-the-job construction training and support services.

For those applicants that propose to use their Youthbuild funds to cover any costs of the lease, acquisition, rehabilitation, or new construction of real property, the applicant shall submit all relevant environmental information in its application to support HUD decision-making in accordance with the environmental procedures and standards set forth in 24 CFR 585.307.

J. Grant Period

Funds awarded for an implementation grant should be used within 30 months of the effective date of the implementation grant agreement.

III. Selection Criteria for Youthbuild Applications

HUD will review each application and assign points in accordance with the selection criteria described in this section. Each application will be assigned up to 100 points. In addition, applications may receive up to 5 bonus points for AmeriCorps participation (see section F below), and 10 housing priority points (see section G below).

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A. Capability

The qualifications and experience of the applicant and participating parties. (Maximum Points: 25) The capability of the applicant and participating parties to implement a successful young adult education and training program within a reasonable time period and in an a cost-effective manner as demonstrated through past performance. In assigning points for this criterion, HUD will consider evidence in the application that demonstrates:

(a) Experience in implementing a comprehensive, integrated, multi-disciplinary program with the following components:

(1) Young adult education and training programs, including programs for low-income persons from economically distressed neighborhoods.

(2) Young adult leadership development training and activities for young adults.

(3) Young adult on-site training in housing construction or rehabilitation for the production of sound and affordable housing for the homeless and low-income families.

(b) The extent to which the applicant has been successful in past education, training and employment programs and activities.

(c) The extent to which the applicant has demonstrated past ability to leverage other resources to cover administrative, educational and training costs and has demonstrated ability to implemented creative and innovative cost-saving measures.

(d) The extent of prior program quality and cost-effectiveness.

B. Need

The need for the proposed program, as determined by the degree of distress of the community. (Maximum Points: 20) In assigning points for this criterion, HUD will consider the relative degree of distress of the jurisdiction(s) from which participants will be recruited and in which the housing will be constructed or rehabilitated. HUD will calculate the degree of need of the jurisdiction(s) in which the program will be located from generally available data. In addition, HUD will consider information provided by the applicant on the distress of target areas within the jurisdiction(s).

C. Program Quality and Feasibility

Comprehensiveness and effectiveness of the proposed Youthbuild program. (Maximum Points: 35) HUD will consider the overall quality and feasibility of the proposed program as measured by the principles and goals of the proposed program, whether proposed program activities meet the overall objectives of the Youthbuild program, whether the proposed program activities will be accomplished within a reasonable time and in a cost effective manner, whether the proposed program activities are comprehensive and integrated, and the potential success of the proposed program. Areas to be considered in the evaluation of the overall quality of the proposed program are:

(1) Outreach, recruitment and selection activities: A description of the proposed (a) outreach, recruitment (including specific steps to be taken to attract potential eligible participants who are unlikely to be aware of this program because of race, ethnicity, sex, or disability) and selection strategies; (b) special outreach efforts to recruit eligible young women and young women with dependent children; and (c) recruitment arrangements made with public agencies, courts, homeless shelters, local school systems, community-based organizations, etc.;

(2) Educational and job training services and activities: A description of the educational component of the program, including: (a) the types of instructional services to be provided; (b) the number and qualifications of program instructors and ratio of instructors to participants; (c) realistic scheduling plan for classroom and on-the-job training; and (d) reasonable payments of participant wages, stipends, and incentives.

(3) Leadership development and support services: A description of the leadership development, counseling, and referral services to be offered to participants, including: (a) leadership development strategies and activities and plans to build group cohesion and peer support; and (b) the type of counseling and support services and/or need-based stipends to be provided.

(4) Coordination and Cost-efficiency: A description of how the Youthbuild program will benefit the maximum number of young adults by making use of other public and private resources, programs, services and facilities to sufficiently reduce the cost burden to the Youthbuild program in the following areas: (a) educational, job training, child care, social services, counseling and referral services; (b) on-site housing construction/rehabilitation training; (c) homeless and housing programs; (d) apprenticeship programs of local building trade unions; and (e) administrative, overhead and salary costs.

(5) On-site training: A description of (a) the housing construction or rehabilitation activities to be undertaken by participants at the site(s) to be used for the on-site training component of the program, (b) the qualifications and number of on-site supervisors; and (c) the amounts, reasonable wages and/or stipends to be paid to participants during on-site work.

(6) Job placement assistance: A description of the applicant's strategies and procedures for (a) participant placement in meaningful employment, enrollment in post-secondary education programs, job development, starting business enterprises, or other opportunities leading to economic independence; and (b) follow-up assistance and support activities to program graduates.

(7) Program evaluation: A description of a comprehensive evaluation plan that is designed to measure the success of the program.

(8) Innovativeness and creativity.

D. Program Resources

Commitment of resources obtained from other Federal, State, local and private sources. (Maximum Points: 10) In assigning points for this criterion, HUD will consider the level of non-housing resources obtained for cash or in-kind contributions to cover the following kinds of areas:

(1) Social services (i.e. counseling and training);

(2) Use of existing vocational, adult, bilingual educational courses;

(3) Donation of labor, resource personnel, supplies, materials, classroom and/or meeting space;

(4) other commitments.

E. Empowerment Zone/Enterprise Community

Up to 10 points will be assigned if the proposed Youthbuild program's participant recruitment and/or housing areas are, in whole or in part, in a Federally designated urban or rural Empowerment Zone, Enterprise Community, or Supplemental Empowerment Zone, as selected by HUD. Application must receive a combined score of at least 50 points for selection criteria (A), (B) and (C) under Section III in order be eligible for Empowerment Zone/Enterprise Community points.

F. AmeriCorps Participation Bonus

Up to 5 points may be assigned to Youthbuild applicants who provide evidence of application and/or selection as an AmeriCorps program sponsor. Application must receive a combined score of at least 50 points for selection criteria (A), (B) and (C) under Section III in order be eligible for Empowerment Zone/Enterprise Community points.

G. Housing Program Priority Points

Ten (10) priority points will be assigned to all applications that contain evidence of housing resources from other Federal, State, local or private sources are available to cover the costs, in full, for the following housing activities for the proposed Youthbuild program: acquisition, architectural and engineering fees, construction, and rehabilitation. Implementation applications proposing to use Youthbuild grant funds, in whole or in part, for any one of the housing activities listed above will not be entitled to the ten priority points. Housing resources will not be used in evaluation of program resources criterion.

IV. Application Requirements

Applicants must complete and submit applications for Youthbuild grants in accordance with instructions contained in the FY 1996 Youthbuild application package. The application package will request information in sufficient detail for HUD to determine whether the proposed activities are feasible and meet all the requirements of applicable statutes and regulations. The application package requires a description of the applicant's and participating parties' experiences in young adult and housing programs, a description of the proposed Youthbuild program, a description of other public and private resources to be used for the program, including other housing resources, a schedule for the program, budgets, identification of housing sites(s), and demonstration of site access. The application package also contains certifications that the applicant will comply with fair housing and civil rights requirements, program regulations, regulations in 24 CFR part 135 with regard to economic opportunities for low-income persons and business concerns, and other Federal requirements. Applicants must also certify that the proposed activities are consistent with the HUD-approved Consolidated Plan in accordance with 24 CFR part 91. Applicants should refer to the Youthbuild application package for further instructions.

V. Selection process

In order to afford applicants every opportunity to submit a ratable application, while at the same time ensuring the fairness and integrity of the selection process, HUD is adopting the following application submission and selection procedures:

A. Initial Screening

During the period immediately following the application deadline, HUD will screen each application to determine eligibility. Applications will be rejected if they (1) Are submitted by ineligible applicants, (2) do not use the current FY 96 application package, (3) propose a program for which significant activities are ineligible, (4) there are any outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance, and (5) are submitted by applicants that have major unresolved audit or monitoring findings.

B. Rating and Ranking

Each eligible application will be rated based upon the criteria described in section III of this NOFA, with a maximum of 115 points assigned. Using the scores assigned, the applications will be placed in rank order. Applications will be preliminarily selected for funding in accordance with their rank order. To promote geographic diversity, HUD reserves the right to select lower-rated applications if necessary or to limit the amount or number of awards per application, project, program, jurisdiction or State.

If two or more applications have the same score and there are insufficient funds to fund all of them, the application(s) with the highest score for the Program Quality and Feasibility criterion shall be selected for funding. If a tie still remains, the application(s) with the highest score for the Capability criterion shall be selected. In the event of a procedural error that, when corrected, would result in selection of an otherwise eligible applicant during the funding round under this NOFA, HUD may select that application when sufficient funds become available.

C. Clarification of Application Information

In accordance with the provisions of 24 CFR part 4, subpart B, HUD may contact an applicant to seek clarification of an item in the application, or to request additional or missing information, but the clarification or the request for additional or missing information shall not relate to items that would improve the substantive quality of the application pertinent to the funding decision. For the Youthbuild program, these clarification items include, but are not limited to: (a) missing or unsigned program certifications; (b) budget errors or inconsistencies; (c) failure to identify the address or equivalent property site identification for the housing project(s) to be used for the on-site training; (d) incomplete documentation to show that the applicant has obtained access to the housing site(s) if the applicant does not own it; (e) failure to structure the proposed program so that fifty percent of the time spent by program participants is devoted to educational and support services and activities and fifty percent to on-site training; (f) failure to target the outreach and recruitment efforts to disadvantaged young adults between the ages of 16 and 24 years old; and (g) failure to designate the housing to be produced in conjunction with the program for the use of the homeless and low- and very low-income families. If an applicant fails to provide the clarification as requested, the application may be rejected.

D. Potential Environmental Disqualification

HUD reserves the right to disqualify an implementation application where one or more environmental thresholds are exceeded if it is determined that the environmental review cannot be conducted and satisfactorily completed by HUD within the HUD review period. (See 24 CFR 585.307.)

E. Reduction in Requested Grant Amount

As provided in Section B above, HUD may approve an application for an amount lower than the amount requested by the applicant. In addition, HUD will adjust line items in the proposed grant budget within the amount requested if it determines that:

(1) The amount requested for one or more eligible activities is not supported in the application or is unreasonably related to the service or activity to be carried out;

(2) An activity proposed for funding does not qualify as an eligible activity and can be separated in the budget;

(3) The amount requested exceeds the total cost limitation established for an implementation grant; or

(4) Insufficient funds remain for the entire request.

F. Notification of Approval or Disapproval

HUD will notify the selected applicants and the applicants that have not been selected. HUD's notification to a selected applicant of the amount of the

grant award, based on the approved application, will constitute a preliminary approval by HUD, subject to HUD and recipient execution of the grant agreement to initiate program activities.

VI. Other Matters

A. Environmental Impact.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

B. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that some of the policies contained in this NOFA will have a potential significant impact on the formation, maintenance, and general well-being of the family. The expected expansion of the housing supply for homeless and low- and very low-income persons and the provision of opportunities to economically disadvantaged young adults to enhance their education and employment skills will provide a positive impact on the family maintenance and general well-being. However, since the impact on the family is beneficial and the program involves very little HUD discretion, no further review is necessary.

C. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of the Executive Order 12612, *Federalism,* has determined that the policies contained in this NOFA do not have "Federalism" implications because they do not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

D. Section 102 of the HUD Reform Act—Accountability in the Provision of HUD Assistance

1. Documentation and Public Access

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five year period beginning not less than thirty days after the award for assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR part 12, subpart B, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these requirements.)

2. Disclosures

HUD will make available to the public for five years all applicant disclosure reports (form HUD–2880) submitted in connection with this NOFA. Update reports (also form HUD–2880) will be made available along with the applicants disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (95 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on disclosure requirements.)

E. Section 103 of the HUD Reform Act—Prohibition of Advance Disclosures of Funding Decisions

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

F. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87 and 7 CFR part 1944, Subpart G, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

Required Reporting. A certification is required at the time application for funds is made that Federally appropriated funds are not being or have not been used in violation of section 319 and the *disclosure* will be made of payments for lobbying with other than federally appropriated funds. Also, there is a standard disclosure form, SF-LLL, "Disclosure Form to Report Lobbying", which must be use to disclose lobbying with other than Federally appropriated funds at the time of application.

G. Drug-Free Workplace

The Drug-Free Workplace Act of 1988 (41 U.S.C. 701) requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with the drug-free workplace requirements of the

Drug-Free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

H. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program title and number is 14.243.

Authority: 42 U.S.C. 8011; Pub.L. 102–550.

Dated: January 6, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–4680 Filed 3–1–96; 8:45 am]

BILLING CODE 4210–29–P

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Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 330

Labeling of Drug Products for Over-the-Counter Human Use; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 330

[Docket No. 92N–454A]

RIN 0910–AA01

Labeling of Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its general labeling policy for over-the-counter (OTC) drug products to allow for the interchangeable use of certain labeling terms required by an OTC drug monograph. Examples of words already allowed include: "doctor" or "physician," "consult" or "ask," and "indications" or "uses." This proposal provides an additional phrase ("unless a doctor tells you") that can be used in place of several other phrases found in various OTC drug monographs.

DATES: Written comments by May 20, 1996; written comments on the agency's economic impact determination by May 20, 1996. The agency is proposing that any final rule that may issue based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–105), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2304.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 5, 1993 (58 FR 17553), the agency proposed to amend its general labeling policy for OTC drug products to allow for the interchangeable use of certain words in the labeling required by an OTC drug monograph. The agency had previously proposed in a number of tentative final monographs and included in a number of final monographs a provision that the words "doctor" and "physician" may be used interchangeably in the labeling of OTC drug products. Instead of including this provision in each OTC drug monograph, the agency proposed to include such a provision in § 330.1 (21 CFR 330.1) as part of the general conditions under which an OTC drug is generally recognized as safe, effective, and not misbranded. The agency also proposed that, at manufacturers' discretion, the word "ask" could be substituted for the word "consult," which appears in the directions for many OTC drug monograph ingredients. Thus, the agency proposed that the phrases "consult a physician," "consult a doctor," "ask a physician," and "ask a doctor" could be used interchangeably. The agency invited comments and suggestions as to such other terms that could be used interchangeably, i.e., terms general in nature that appear in more than one OTC drug monograph. The comments received in response to the proposed rulemaking were favorable and suggested a number of additional terms that could be used interchangeably.

In a final rule published in the **Federal Register** of January 28, 1994 (59 FR 3998), the agency allowed the following terms to be used interchangeably in the labeling of OTC drug products: (1) "Ask" or "consult," (2) "assistance" or "help," (3) "clean" or "cleanse," (4) "continue" or "persist," (5) "continues" or "persists," (6) "doctor" or "physician," (7) "indication" or "use," (8) "indications" or "uses," and (9) "lung" or "pulmonary." These terms are included in § 330.1(i).

In the **Federal Register** of August 3, 1994 (59 FR 39499), the agency proposed to amend § 330.1(i) so that the phrases "Drug interaction precaution," "Avoid mixing drugs," or "Do not mix drugs" could be used interchangeably. The agency also requested public comment on changing the wording of warnings from negative phraseology to a more positive approach (e.g., "Do not use more than 7 days" to "Use only 7 days," "Do not use in * * *" to "Avoid use in * * *," "Do not use longer than 1 week * * *" to "Use only 1 week * * *," and "Do not use this product except under the advice and supervision of a physician if * * *," to "Use only with a physician's help if * * *" or "Use only with the help of a doctor if * * *").

The agency has received a number of comments on the proposal, and they are being evaluated at this time. The agency intends to publish a final rule in a future issue of the **Federal Register**.

The agency intends to continue to examine labeling required by OTC drug monographs to provide consumers more simplified and understandable information. This includes interchangeable terms, alternative phraseology, and possibly a new or different labeling format. At this time, the agency is proposing an additional phrase that could be used interchangeably.

Labeling information about not using an OTC drug product under certain circumstances (e.g., "unless directed by a doctor," or "except under the advice and supervision of a physician") appears in different OTC drug monographs in different language. This has occurred because various OTC advisory review panels recommended different wording, and OTC drug rulemakings have been completed over a period of years.

The phrase "* * * unless directed by a doctor" appears in the warning statements of many recent OTC drug monographs. (See, for example, § 341.76(c)(2) (21 CFR 341.76(c)(2)) which states: "Do not use this product if you have * * * unless directed by a doctor.") In a number of other monographs, terms with the same (or similar) meaning have been used. For example, the OTC antacid drug products monograph in § 331.30(c)(1) and (c)(4) through (c)(7) (21 CFR 331.30(c)(1) and (c)(4) through (c)(7)) uses the phrase "except under the advice and supervision of a physician," and the OTC ophthalmic drug products monograph in § 349.75(c)(2) (21 CFR 349.75(c)(2)) uses the phrase "except under the advice and supervision of a doctor." That terminology has not been used in more recent OTC drug monographs.

For OTC antihistamine drug products in § 341.72(c)(3) and (c)(4) (21 CFR 341.72(c)(3) and (c)(4)), and for OTC anorectal drug products in § 346.50(c)(7)(ii) (21 CFR 346.50(c)(7)(ii)), the phrase "* * * without first consulting your doctor" is used. In § 341.72(c)(6)(i) through (c)(6)(iii), the phrase "* * * without first consulting the child's doctor" is used. The warning statements for OTC dandruff, seborrheic dermatitis, and psoriasis drug products in § 358.750(c)(2)(ii), (c)(3), and (c)(4) (21 CFR 358.750(c)(2)(ii), (c)(3), and (c)(4)) include the phrases "* * * without consulting a doctor," "* * * except on the advice of a doctor," and "* * * unless directed to do so by a doctor." Thus, a number of different phrases have been used to convey the same message. The phrase "unless directed by a doctor" has been used more recently and most frequently.

The agency believes that all of these phrases can be interpreted in the same way (e.g., "* * * unless a doctor tells you"). The agency believes this simpler phrase may be better understood by consumers than some of the other phrases. Accordingly, the agency is proposing to amend § 330.1(i) to include the phrase "unless a doctor tells you" as an alternative for these other phrases where they appear in the labeling of OTC drug products. In a few instances, the words "or your child's doctor" would be used as part of this phrase. The agency is asking whether it would be preferable to say "your" child's doctor or "the" child's doctor, or whether it does not make any difference which wording is used. The agency is requesting comment from manufacturers, health professionals, and consumers on whether it would be desirable to use this alternative phrase interchangeably with the other phrases and/or whether a single uniform phrase should appear in all of the cited regulations. The agency also seeks comment whether there are additional, simpler, informative ways in which this information may be stated.

II. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. If this proposed rule becomes a final rule, the labeling options could be implemented at very little cost by manufacturers at the next printing of labels, for those products for which the manufacturer chooses to make a change. Accordingly, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on the labeling of OTC drug products. Types of impact may include, but are not limited to, costs associated with relabeling. Comments regarding the impact of this rulemaking on OTC drug products should be accompanied by appropriate documentation. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

III. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the proposed labeling statements are a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before May 20, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Written comments on the agency's economic impact determination may be submitted on or before May 20, 1996. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 330

Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 330 be amended as follows:

PART 330—OVER-THE-COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

1. The authority citation for 21 CFR part 330 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 330.1 is amended by adding new paragraph (i)(11), to read as follows:

§ 330.1 General conditions for general recognition as safe, effective and not misbranded.

* * * * *

(i) * * *

(11) "Unless a doctor" (or "your child's doctor," where applicable) "tells you" may be used in place of any of the following phrases:

(i) "Except on the advice of a doctor".

(ii) "Except under the advice and supervision of a" ["physician" or "doctor"].

(iii) "Unless directed by a doctor".

(iv) "Unless directed to do so by a doctor".

(v) "Without consulting a doctor".

(vi) "Without first consulting your" (or "your child's" or "the child's") "doctor".

* * * * *

Dated: February 23, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–4912 Filed 3–1–96; 8:45 am]

BILLING CODE 4160–01–F

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Part VIII

Department of Education

34 CFR Part 75
Education Department General Administrative Regulations—Direct Grant Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 75

RIN 1880–AA68

Education Department General Administrative Regulations—Direct Grant Programs

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary amends the Education Department General Administrative Regulations (EDGAR) that govern discretionary grant programs. These regulations clarify that the Secretary may reject applications that propose project funding levels that exceed the maximum award amount established in an application notice published in the **Federal Register**. The Secretary issues these regulations to clarify the meaning of existing regulations that govern the application review process.

EFFECTIVE DATE: These regulations take effect on April 3, 1996.

FOR FURTHER INFORMATION CONTACT: Mary A. Smith, Office of the General Counsel, U.S. Department of Education, 600 Independence Avenue SW., Room 5113, FB10, Washington, D.C. 20202–2241. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Secretary takes this action to implement a recommendation made by a quality improvement team for improving the discretionary grant award process.

Under current practice, the Department reviews applications that exceed the upper dollar limit of the estimated range of grant awards expected to be made under a competition but, when the awards are made, in most cases, the Department funds the projects at amounts within the funding range.

In conducting competitions, the Department generally publishes application notices that specify the estimated amounts or estimated ranges of awards. However, because these amounts or ranges are estimated, applicants often request funding at levels above the estimated levels. Under most competitions, the practice of the Department has been to establish grant award amounts for successful applicants that are at or below the amounts specified in the estimates. However, in some cases, the Department has made awards that exceeded the estimates specified in the application notice.

The Department has been guided by the underlying principle that applicants for discretionary grants must be afforded basic fairness in the competitive grant award process. Most of the time applicants who propose projects that exceed the upper limit of the specified range of awards can propose to do significantly more than applicants who propose funding consistent with the estimates. In these circumstances, applicants who request funds that exceed these amounts are likely to receive better scores from reviewers. If those applicants are then selected for funding, the Department, in most cases, negotiates with the applicants to reduce the cost of the projects to bring them within the estimated funding range. As a result, many of the activities in these applications have to be significantly modified, reduced, or eliminated. The result is that the projects negotiated for final award often differ substantially from the applications that were highly rated by the reviewers. This practice has the potential of rewarding applicants who originally request funding above the funding range and penalizing applicants who follow the estimates.

However, this is not always the case. Sometimes the Department is unsure what a highly qualified project should cost. This is especially true when an educational technology is being explored or the Department is supporting research in a new field. In these situations, the Department may not have confidence that it has correctly estimated what the funded projects will cost. Thus, the Secretary would not put a maximum limitation on the competition to account for the possibility that applicants might need more funds than specified in the expected range in order to successfully implement the program's goals.

These regulations would clarify that the Secretary has discretion to establish funding limits for awards, and provide for the inclusion of information on maximum funding levels in application notices.

Under § 75.101(a)(2), the Secretary may include in an application notice the amount of funds available for grants and the estimated number and amounts of those grants. Some application notices have included the estimated amount of funds available for each grant, and some application notices have given an estimated award amount. As the provision in § 75.101(a)(2) is currently worded, it is unclear whether the application notice may include a maximum award amount. These amendments to § 75.101 clarify that the Secretary may include an estimated amount of funds available for each grant and, if appropriate, a maximum amount of funds available for each grant.

The Secretary also amends 34 CFR 75.104 to require that if a maximum award amount is established, the Secretary may reject applications that propose a budget that would exceed the maximum award amount.

These amendments will ensure better service to the Department's customers by permitting the Department to reject applications that exceed a maximum amount. This process will enable the Department to make awards more quickly and at less cost.

Executive Order 12866

These regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of the regulatory action.

In assessing the potential costs and benefits—both quantitative and qualitative—the Secretary has determined that the benefits of the regulations in clarifying and improving the Department's grant application review process justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of potential costs and benefits: There are no identified costs associated with these regulations. The potential benefits of these regulations are discussed elsewhere in this preamble under the following heading: Supplementary Information.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected would be small local educational agencies, community-based organizations, nonprofit organizations, and institutions of higher education. However, these regulations would have no economic impact on any of the entities affected and would merely ensure a fairer application review process.

Paperwork Reduction Act of 1995

These regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Waiver of Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with the Administrative Procedure Act (5 U.S.C. 553). However, because the Secretary is interpreting existing regulations to allow an application notice to include an estimated amount of funds available for each grant or a maximum amount of funds available for each grant and because the Secretary is establishing a procedural rule necessary for the Department to conduct grant application review processes, the Secretary has determined, pursuant to 5 U.S.C. 553(b)(A), that proposed rulemaking requirements do not apply.

List of Subjects in 34 CFR Part 75

Education Department, Grant programs—education, Grant administration, Incorporation by reference.

Dated: February 28, 1996.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary amends Part 75 of Title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for Part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e-3 and 3474, unless otherwise noted.

2. Section 75.101 is amended by revising paragraph (a)(2) to read as follows:

§ 75.101 Information in the application notice that helps an applicant apply.

(a) * * *

(2) The amount of funds available for grants, the estimated number of those grants, the estimated amounts of those grants and, if appropriate, the maximum award amounts of those grants.

* * * * *

3. Section 75.104 is revised to read as follows:

§ 75.104 Applicants must meet procedural rules.

(a) The Secretary may make a grant only to an eligible party that submits an application.

(b) If a maximum award amount is established in a notice published in the **Federal Register**, the Secretary may reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount.

(Authority: 20 U.S.C. 1221e–3 and 3474)

[FR Doc. 96–4911 Filed 3–1–96; 8:45 am]

BILLING CODE 4000–01–P

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Part IX

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 202

Approval of Lending Institutions and Mortgagees Streamlining; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 202

[Docket No. FR–4036–F–01]

RIN 2502–AG68

Approval of Lending Institutions and Mortgagees Streamlining

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations at 24 CFR part 202 relating to Approval of Lending Institutions and Mortgagees. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline subparts A & B, which relate to approval of Title I Lending Institutions and Approval of Mortgagees, respectively, because certain provisions are not necessary.

EFFECTIVE DATE: April 3, 1996.

FOR FURTHER INFORMATION CONTACT: Karen Garner-Wing, Director, Lender Approval and Recertification Division, Office of Lender Activities and Land Sales Registration, Room 9146, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone: (202) 708–3976. (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed via TDD by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for Approval of Lending Institutions and Mortgagees can be streamlined to remove provisions which are no longer necessary to be codified in the Code of Federal Regulations. This rule will not change the substantive requirements of the part but will eliminate redundant provisions.

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely removes unnecessary regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by eliminating administrative provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations regarding the Approval of Lending Institutions and Mortgagees. That finding remains applicable to this rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

List of Subjects in 24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 202 is amended as follows:

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

1. The authority citation for part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

Subpart A—Approval of Title I Lending Institutions

2. Section 202.3 is amended by:

a. Removing and reserving paragraph (d); and

b. Revising paragraph (j) to read as follows:

§ 202.3 General approval requirements.

* * * * *

(d) [Reserved]

* * * * *

(j) Except for Government Institutions as defined in § 202.2, it shall pay an application fee and annual fee, including an additional fee for each branch office authorized by the Secretary to originate Title I loans. These fees shall be in such amounts as the Secretary may require.

* * * * *

§ 202.4 [Amended]

3. Section 202.4 is amended by removing and reserving paragraph (b).

§ 202.5 [Amended]

4. Section 202.5 is amended by removing and reserving paragraph (b).

5. Section 202.9 is revised to read as follows:

§ 202.9 Administrative actions.

(a) *General.* The provisions of 24 CFR part 25 shall be applicable to a lender participating in the Title I program. Administrative actions which may be applied are set forth in 24 CFR 25.5. Civil money penalties may also be imposed against Title I lenders pursuant to 24 CFR 25.13 and part 30 of this title. For purposes of this section the term "lender" shall also include loan correspondents as defined in § 202.2(b) of this subpart A.

(b) *Grounds for administrative actions.* Administrative actions shall be based upon both the grounds set forth in 24 CFR 25.9 and as follows:

(1) Failure to properly supervise and monitor dealers under the provisions of 24 CFR part 201;

(2) Exhaustion of the general insurance reserve established under 24 CFR part 201;

(3) Maintenance of a claims/loan ratio representing an unacceptable risk to the Department; or

(4) Transfer of a Title I loan to a party that does not have a valid Contract of Insurance.

Subpart B—Approval of Mortgagees

6. Section 202.11 is amended by:

a. Revising paragraphs (a)(1) introductory text, (a)(1)(i), and (b); and

b. Removing and reserving paragraphs (a)(3) and (c), to read as follows:

§ 202.11 Approval, recertification, withdrawal of approval and termination of approval agreement.

(a) *Approval.* (1) A mortgagee may be approved for participation in the mortgage insurance programs authorized by the National Housing Act upon filing a request for approval on a form prescribed by the Secretary and signed by the applicant. The approval form shall be accompanied by such documentation as may be prescribed by the Secretary to support the request for approval. Approval of the application shall constitute:

(i) The Secretary's agreement that the mortgagee shall be considered an approved mortgagee unless suspended or withdrawn pursuant to 24 CFR part 25, or unless the mortgagee voluntarily relinquishes its approval;

* * * * *

(3) [Reserved]

* * * * *

(b) *Recertification of approval.* On each anniversary of the approval of a mortgagee, the Secretary shall undertake a recertification procedure to determine whether continued approval is appropriate. The Secretary shall review the yearly verification report required by § 202.12(h)(2) and other pertinent documents, determine whether all application and annual fees which are due have been paid, and request any additional information needed to make a determination regarding continuation of approval.

(c) [Reserved]

* * * * *

7. Section 202.12 is amended by:

a. Removing and reserving paragraph (e), and

b. Redesignating paragraph (o) as paragraph (n)(5) and revising newly redesignated paragraph (n)(5); and

c. Reserving paragraph (o), to read as follows:

§ 202.12 General approval requirements.

* * * * *

(e) [Reserved]

* * * * *

(n) * * *

(5) Mortgagees shall have the required net worth upon approval, except that supervised and nonsupervised mortgagees may have a net worth of $250,000 for the first year of approval.

(o) [Reserved]

* * * * *

8. Section 202.18 is revised to read as follows:

§ 202.18 Approval for servicing.

All mortgagees who wish to service FHA-insured mortgages must be approved by the Secretary under § 202.13, (supervised mortgagees), § 202.14, (nonsupervised mortgagees), or § 202.17 (governmental institutions).

9. Section 202.19 is revised to read as follows:

§ 202.19 Report requirements.

(a) *Definitions.* For the purpose of this section:

(1) Normal rate for early serious defaults and early claims means the rate set forth in § 202.11(d)(i).

(2) Early serious defaults or claims higher than the normal rate means the rate set forth in §§ 202.11(d)(ii) and 202.11(d)(iii).

(3) Endorsement means initial endorsement or initial/final endorsement, as applicable, with respect to multifamily mortgages.

(b) *Requirements.* If a mortgagee approved for participation in the insurance programs under §§ 202.10 through 202.18 is notified by the Secretary that it had a rate of early serious defaults or early claims on HUD-insured mortgages during the preceding year, or during recent years, which was higher than the normal rate for the geographic area or areas in which it does business, it shall submit a report, within 60 days, containing an explanation for the above-normal rate of early serious defaults or early claims and, if required by the Secretary, a plan for corrective action with regard to mortgages in default and its mortgage processing system in general. In determining whether a plan is required, the Secretary may consider relevant information and statements from the mortgagee.

10. Section 202.20 is amended by revising paragraph (i) to read as follows:

§ 202.20 Tiered Pricing.

* * * * *

(i) Request for determination of compliance. Pursuant to section 539(a) of the National Affordable Housing Act, any person may file a request that the Secretary determine whether a mortgagee or Title I lender is in compliance with this section or with sections implementing sections 223(a)(7) and 535 of the National Housing Act (12 U.S.C. 1701 *et seq.*), such as §§ 201.10(g), 203.18d, and 203.43(c)(5) of this chapter (only Section 535 applies to Title I lenders). The request for determination shall be made to the following address: Department of Housing and Urban Development, Office of Lender Activities and Land Sales Registration, 451 Seventh Street, SW, Washington, DC 20410. The Secretary shall inform the requestor of the disposition of the request. The Secretary shall publish in the **Federal Register** the disposition of any case referred by the Secretary to the Mortgagee Review Board.

Dated: February 22, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–4909 Filed 3–1–96; 8:45 am]

BILLING CODE 4210–27–P

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Part X

The President

Presidential Determination No. 96–10 of February 23, 1996

Presidential Determination No. 96–11 of February 23, 1996

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Presidential Documents

Title 3—

The President

Presidential Determination No. 96–10 of February 23, 1996

Eligibility of Bosnia and Herzegovina to be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing of defense articles and services to the Government of Bosnia and Herzegovina will strengthen the security of the United States and promote world peace.

You are authorized and directed to report this finding to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, February 23, 1996.

[FR Doc. 96–5161
Filed 3–1–96; 8:45 am]
Billing code 4710–10–M

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Presidential Documents

Presidential Determination No. 96–11 of February 23, 1996

Presidential Determination on Military Drawdown for Jordan

Memorandum for the Secretary of State and the Secretary of Defense

Pursuant to the authority vested in me by the laws and Constitution of the United States, including section 572 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1996 (Public Law 104–107) (the "Act"), and section 301 of title 3 of the United States Code, I hereby:

(1) direct the drawdown for Jordan for the purpose of part II of the Foreign Assistance Act of 1961, of up to $100 million in defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training;

(2) delegate the functions vested in me pursuant to section 572(a) of the Act to the Secretary of Defense, who is authorized to redelegate those functions consistent with applicable law.

The Secretary of State is authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, February 23, 1996.

[FR Doc. 96–5162
Filed 3–1–96; 8:45 am]
Billing code 4710–10–M

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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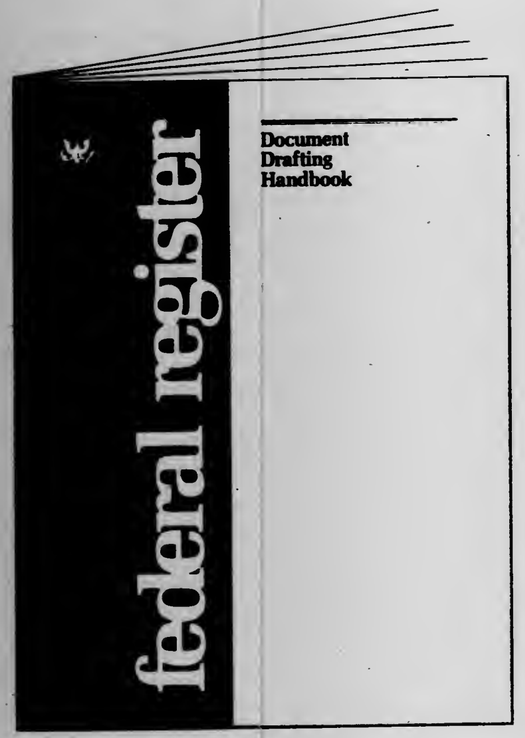
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The President

Executive Order 12990 of February 29, 1996

Adjustments of Rates of Pay and Allowances for the Uniformed Services, Amendment to Executive Order No. 12984

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 601 of Public Law 104-106, it is hereby ordered as follows:

Section 1. The rates of monthly basic pay (37 U.S.C. 203(a)), the rates of basic allowances for subsistence (37 U.S.C. 402), and the rates of basic allowances for quarters (37 U.S.C. 403(a)) for members of the uniformed services and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)(1)) are adjusted as set forth on the schedule attached hereto and made a part hereof.

Sec. 2. The adjustments in rates of pay and allowances set forth on the attached schedule are effective on January 1, 1996.

Sec. 3. Section 4 and Schedule 8 of Executive Order No. 12984 of December 28, 1995, are superseded.

William J. Clinton

THE WHITE HOUSE,
February 29, 1996.

Billing code 3195–01–P

PAY AND ALLOWANCES OF THE UNIFORMED SERVICES
(Effective on January 1, 1996)

Part I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
COMMISSIONED OFFICERS															
O-10**	$7,145.70	$7,397.10	$7,397.10	$7,397.10	$7,397.10	$7,681.20	$7,681.20	$8,106.60	$8,106.60	$8,686.50	$8,686.50	$9,268.20*	$9,268.20*	$9,268.20*	$9,845.40*
O-9	6,333.00	6,498.90	6,637.50	6,637.50	6,637.50	6,806.10	6,806.10	7,089.30	7,089.30	7,681.20	7,681.20	8,106.60	8,106.60	8,106.60	8,686.50
O-8	5,736.00	5,908.20	6,048.30	6,048.30	6,048.30	6,498.90	6,498.90	6,806.10	6,806.10	7,089.30	7,397.10	7,681.20	7,870.50	7,870.50	7,870.50
O-7	4,766.10	5,090.40	5,090.40	5,090.40	5,318.70	5,318.70	5,626.80	5,626.80	5,908.20	6,498.90	6,945.90	6,945.90	6,945.90	6,945.90	6,945.90
O-6	3,532.50	3,881.10	4,135.50	4,135.50	4,135.50	4,135.50	4,135.50	4,135.50	4,276.20	4,952.40	5,205.00	5,318.70	5,626.80	5,817.00	6,102.60
O-5	2,825.40	3,317.40	3,546.90	3,546.90	3,546.90	3,546.90	3,654.00	3,851.10	4,109.10	4,416.60	4,669.50	4,811.40	4,979.40	4,979.40	4,979.40
O-4	2,381.40	2,900.10	3,093.60	3,093.60	3,150.90	3,289.80	3,514.50	3,711.90	3,881.10	4,051.80	4,163.10	4,163.10	4,163.10	4,163.10	4,163.10
O-3***	2,213.10	2,474.40	2,645.40	2,926.80	3,066.90	3,176.70	3,348.90	3,514.50	3,600.60	3,600.60	3,600.60	3,600.60	3,600.60	3,600.60	3,600.60
O-2***	1,929.90	2,107.50	2,532.30	2,617.20	2,671.50	2,671.50	2,671.50	2,671.50	2,671.50	2,671.50	2,671.50	2,671.50	2,671.50	2,671.50	2,671.50
O-1***	1,675.50	1,743.90	2,107.50	2,107.50	2,107.50	2,107.50	2,107.50	2,107.50	2,107.50	2,107.50	2,107.50	2,107.50	2,107.50	2,107.50	2,107.50
COMMISSIONED OFFICERS WITH OVER 4 YEARS OF ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER															
O-3E	-	-	-	$2,926.80	$3,066.90	$3,176.70	$3,348.90	$3,514.50	$3,654.00	$3,654.00	$3,654.00	$3,654.00	$3,654.00	$3,654.00	$3,654.00
O-2E	-	-	-	2,617.20	2,671.50	2,756.10	2,900.10	3,011.10	3,093.60	3,093.60	3,093.60	3,093.60	3,093.60	3,093.60	3,093.60
O-1E	-	-	-	2,107.50	2,251.80	2,334.60	2,419.20	2,503.20	2,617.20	2,617.20	2,617.20	2,617.20	2,617.20	2,617.20	2,617.20

* Basic pay for these officers is limited to the rate of basic pay for level V of the Executive Schedule, which is $9,016.80 per month.

** While serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is calculated to be $10,863.60, regardless of cumulative years of service computed under section 205 of title 37, United States Code. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level V of the Executive Schedule, which is $9,016.80 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
WARRANT OFFICERS															
W-5	-	-	-	-	-	-	-	-	-	-	-	$3,848.10	$3,993.90	$4,109.40	$4,282.50
W-4	$2,254.80	$2,419.20	$2,419.20	$2,474.40	$2,586.90	$2,700.90	$2,814.30	$3,011.10	$3,150.90	$3,261.60	$3,348.90	3,456.90	3,572.70	3,684.00	3,851.10
W-3	2,049.30	2,223.00	2,223.00	2,251.80	2,277.90	2,444.70	2,586.90	2,671.50	2,756.10	2,838.60	2,926.80	3,041.10	3,150.90	3,150.90	3,261.60
W-2	1,794.90	1,941.90	1,941.90	1,998.30	2,107.50	2,223.00	2,307.30	2,391.90	2,474.40	2,561.40	2,645.40	2,728.50	2,838.60	2,838.60	2,838.60
W-1	1,495.20	1,714.50	1,714.50	1,857.60	1,941.90	2,025.00	2,107.50	2,194.50	2,277.90	2,362.80	2,444.70	2,532.30	2,532.30	2,532.30	2,532.30
ENLISTED MEMBERS															
E-9*	-	-	-	-	-	-	-	$2,623.20	$2,682.00	$2,742.60	$2,805.60	$2,868.60	$2,924.10	$3,077.40	$3,197.40	$3,377.10
E-8	-	-	-	-	-	-	$2,199.60	2,262.90	2,322.30	2,382.60	2,445.60	2,501.40	2,562.90	2,713.50	2,834.40	3,015.90
E-7	$1,535.70	$1,658.10	$1,719.00	$1,779.60	$1,840.20	1,898.70	1,959.60	2,020.80	2,112.00	2,172.00	2,232.00	2,261.40	2,413.20	2,533.20	2,713.50
E-6	1,321.20	1,440.30	1,500.00	1,563.90	1,622.70	1,680.90	1,742.70	1,832.40	1,890.00	1,950.90	1,980.60	1,980.60	1,980.60	1,980.60	1,980.60
E-5	1,159.50	1,262.10	1,323.30	1,380.90	1,471.80	1,531.80	1,592.10	1,650.90	1,680.90	1,680.90	1,680.90	1,680.90	1,680.90	1,680.90	1,680.90
E-4	1,081.20	1,142.10	1,209.30	1,302.60	1,354.20	1,354.20	1,354.20	1,354.20	1,354.20	1,354.20	1,354.20	1,354.20	1,354.20	1,354.20	1,354.20
E-3	1,019.10	1,074.90	1,117.50	1,161.90	1,161.90	1,161.90	1,161.90	1,161.90	1,161.90	1,161.90	1,161.90	1,161.90	1,161.90	1,161.90	1,161.90
E-2	980.70	980.70	980.70	980.70	980.70	980.70	980.70	980.70	980.70	980.70	980.70	980.70	980.70	980.70	980.70
E-1**	874.80	874.80	874.80	874.80	874.80	874.80	874.80	874.80	874.80	874.80	874.80	874.80	874.80	874.80	874.80
E-1***	809.10	-	-	-	-	-	-	-	-	-	-	-	-	-	-

* While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $4,104.90, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 3)

Part II--BASIC ALLOWANCE FOR QUARTERS RATES

Pay Grade	Without dependents Full rate*	Partial rate**	With dependents
COMMISSIONED OFFICERS			
O-10	$788.40	$50.70	$970.50
O-9	788.40	50.70	970.50
O-8	788.40	50.70	970.50
O-7	788.40	50.70	970.50
O-6	723.30	39.60	873.90
O-5	696.60	33.00	842.40
O-4	645.60	26.70	742.50
O-3	517.50	22.20	614.40
O-2	410.40	17.70	524.70
O-1	345.60	13.20	468.90
COMMISSIONED OFFICERS WITH OVER 4 YEARS OF ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER			
O-3E	$558.60	$22.20	$660.30
O-2E	474.90	17.70	595.80
O-1E	408.30	13.20	550.50
WARRANT OFFICERS			
W-5	$655.80	$25.20	$716.70
W-4	582.60	25.20	657.00
W-3	489.60	20.70	602.10
W-2	434.70	15.90	553.80
W-1	363.90	13.80	479.10
ENLISTED MEMBERS			
E-9	$478.50	$18.60	$630.60
E-8	439.20	15.30	581.40
E-7	375.00	12.00	539.70
E-6	339.60	9.90	498.90
E-5	313.20	8.70	448.50
E-4	272.40	8.10	390.00
E-3	267.30	7.80	363.00
E-2	217.20	7.20	345.60
E-1	193.50	6.90	345.60

* Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed services without dependents is authorized by section 403 of title 37, United States Code, and Part IV of Executive Order 11157, as amended.

** Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under section 403(b) or (c) of title 37, United States Code, are not entitled to the full rate of basic allowance for quarters, is authorized by section 1009(c)(2) of title 37, United States Code, and Part IV of Executive Order 11157, as amended.

Part III--BASIC ALLOWANCE FOR SUBSISTENCE

Officers (per month)		$149.67
Enlisted Members (per day):	E-1 (less than 4 months of active duty)	All Other
Enlisted		
When on leave or authorized to mess separately	$6.59	$7.15
When rations in-kind are not available	7.43	8.06
When assigned to duty under emergency conditions where no messing facilities of the United States are available	9.86	10.67

Part IV--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c)(1) of title 37, United States Code, is $558.04.

FR Doc. 96-5263
Filed 3-1-96; 3:01 pm
Billing code 4410-01-C

Rules and Regulations

Federal Register
Vol. 61, No. 44
Tuesday, March 5, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 785

[Docket No. 960221039-6039-01]

RIN 0694-AB31

Exports to Iran; Imposition of Economic Sanctions

AGENCY: Bureau of Export Administration.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) to reflect the imposition of additional economic sanctions on Iran as a result of the issuance of Executive Order 12959 on May 6, 1995. The Executive Order delegates implementation responsibility to the Department of the Treasury's Office of Foreign Assets Control (OFAC), including authority for exports and certain reexports.

EFFECTIVE DATE: March 5, 1996.

FOR FURTHER INFORMATION CONTACT: Hillary Hess, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482-2440.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1995, President Clinton issued Executive Order 12959 (60 FR 24757), imposing significant new economic sanctions on Iran. The effective date of the Executive Order was May 7, 1995 at 12:01 EDT, except that an effective date of June 6, 1995, 12:01 a.m. EDT applied for exports and reexports under contracts that were entered into prior to May 7, 1995, and that were authorized pursuant to regulations in force immediately prior to May 6, 1995. The Department of the Treasury's Office of Foreign Assets Control (OFAC) has responsibility for implementing the Executive Order, including issuing licenses for exports and certain reexports to Iran. (See OFAC's Iranian Transactions Regulations, 31 CFR part 560.) If OFAC authorizes an export or reexport, no separate authorization from BXA is necessary. This rule makes clear that enforcement action may be taken under the EAR with respect to an export or reexport prohibited both by the EAR and by the Executive Order and not authorized by OFAC.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, as extended by the President's notice of August 15, 1995 (60 Fed. Reg. 42767).

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E. O. 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005, 0694-0007, and 0694-0010. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Hillary Hess, Office of Exporter Services, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553(a)(1) or by any other law, under sections 3(a) and 4 (a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

List of Subjects in 15 CFR Part 785

Exports.

Accordingly, Part 785 of the Export Administration Regulations (15 CFR Parts 730-799) is amended as follows:

1. The authority citation for 15 CFR Part 785 continues to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; Pub. L. 102-484, 106 Stat. 2575 (22 U.S.C. 6004); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); E.O. 12924 of August 19, 1994 (59 FR 43437, August 23, 1994); E.O. 12938 of November 14, 1994 (59 FR 59099 of November 16, 1994); E.O. 12957 of March 15, 1995 (60 FR 14615 of March 17, 1995); E.O. 12959 of May 6, 1995 (60 FR 24757 of May 9, 1995); and Notice of August 15, 1995, 60 FR 42767.

PART 785—[AMENDED]

2. Section 785.4 is amended by adding paragraph (b) to read as follows:

§ 785.4 Country Groups T & V.

* * * * *

(b) *Iran.*

Note: The Treasury Department's Office of Foreign Assets Control (OFAC) administers a comprehensive trade and investment embargo against Iran under the authority of the International Emergency Economic

Powers Act of 1977, as amended, section 505 of the International Security and Development Cooperation Act of 1985, and Executive Orders 12957 and 12959 of March 15, 1995 and May 6, 1995, respectively. This embargo includes prohibitions on export and certain reexport transactions involving Iran, including transactions dealing with items subject to the EAR. (See OFAC's Iranian Transactions Regulations, 31 CFR part 560.)

(1) The controls on exports and reexports to Iran, as specified in the CCL and in paragraph (d) of this section, continue to apply. To avoid duplication, exporters or reexporters are not required to seek separate authorization from BXA for an export or reexport subject both to the EAR and to OFAC's Iranian Transactions Regulations. Therefore, if OFAC authorizes an export or reexport, no separate authorization from BXA is necessary.

(2) Section 3 of the Executive Order directs all agencies of the United States Government to take all appropriate measures within their jurisdiction to carry out the order. Accordingly, no validated license, general license or other authorization constitutes authority for any export or reexport prohibited by the Iranian Transactions Regulations unless authorized by OFAC, and no person may export or reexport items subject to both the EAR and OFAC's Iranian Transactions Regulations without prior OFAC authorization. Any export or reexport prohibited both by the EAR and by the Executive Order and not authorized by OFAC is a violation of the EAR.

(3) Exporters should consult with OFAC (Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Annex, 2nd Floor, Washington, D.C. 20220. Telephone (202) 622–2480) for authorization for:

(i) Exports from the United States involving Iran;

(ii) Exports or reexports to Iran from a third country, when the exporter or reexporter is a United States person (as defined in OFAC's Iranian Transactions Regulations, 31 CFR part 560); or

(iii) Reexports to Iran of U.S.-origin items that were subject to any export license application requirements prior to Executive Order 12959 of May 6, 1995.

(Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Annex, 2nd Floor, Washington, D.C. 20220. Telephone (202) 622–2480.)

* * * * *

Dated: February 29, 1996.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 96–5103 Filed 3–4–96; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to set forth the current organizational structure of the agency as well as the current addresses for headquarters and field offices. This action is necessary to ensure accuracy of the regulations.

EFFECTIVE DATE: March 5, 1996.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: The regulations are being amended in 21 CFR 5.100 to reflect the current addresses for headquarters and for field and district offices.

Notice and comment on these amendments are not necessary under the Administrative Procedure Act because this is a rule of Agency organization (5 U.S.C. 553(b)).

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354, 361, 362, 1701–1706; 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

§ 5.100 [Amended]

2. Section 5.100 is amended by revising footnotes 9 and 12, and by adding new footnote 17 to the entry for "Division of Clinical Laboratory Devices."To read as follows:

§ 5.100 Headquarters.

* * * * *

Center for Biologics Evaluation and Research[9]

* * * * *

Office of Device Evaluation[12]

* * * * *

Division of Clinical Laboratory Devices[17]

* * * * *

Dated: February 26, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–4977 Filed 3–4–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Part 52

[AG ORDER No. 2012–96]

RIN 1105–AA43

Revision of Policy Concerning Consent To Try Civil Matters Before Magistrate Judges

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The United States Department of Justice is publishing a final rule to revise and clarify Department policy concerning consent to try civil matters before magistrate judges.

EFFECTIVE DATE: This final rule is effective March 5, 1996.

FOR FURTHER INFORMATION CONTACT: Mary C. Morgan, Deputy Assistant Attorney General, Office of Policy Development, Department of Justice, Washington, DC 20530, telephone (202) 514–0052.

[9] Mailing address: 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448.

[12] Mailing address: 9200 Corporate Blvd., Rockville, MD 20850.

[17] See footnote 13.

SUPPLEMENTARY INFORMATION: A working group consisting of representatives from senior Justice Department offices and litigating divisions and the United States Attorneys' Offices reviewed the Department's policy concerning consent to try civil matters before magistrate judges. As a result of this review, the Department reaffirms its existing policy of encouraging the use of magistrate judges to assist the district courts in resolving civil disputes whenever possible, as set forth in 28 CFR 52.01, but makes several clarifying changes.

Paragraphs (1) through (4) of § 52.01(a) merely summarize provisions of federal statutory and case law set forth elsewhere. This rule eliminates those paragraphs, thus streamlining the Code of Federal Regulations.

This rule deletes from § 52.01(b) the two sentences immediately following paragraph (7). The first sentence—referring to cases "involving significant rights of large numbers of persons, or complex, sensitive, or unusually important issues"—is unnecessary and inconsistent with existing Department policy set forth elsewhere in this Part. Instead, this rule amends § 52.01(b)(1) to include a reference to the involvement of significant rights of large numbers of persons as a factor to be considered relating to the complexity of the case.

The second sentence—referring to a formal consultation process with the appropriate Assistant Attorney General—is unnecessary given the large number of cases in which a consultation with the Assistant Attorney General is not required because redelegation authority has been exercised. This rule amends § 52.01(b) to require that the determination by the government attorney whether to consent to a trial before a magistrate judge simply be made "with the concurrence of his or her supervisor." The rule retains the requirement currently existing in § 52.01(d), but incorporates it into § 52.01(c), for consultation with the appropriate Assistant Attorney General regarding consent to an appeal to the district court rather than to the court of appeals but deletes the phrase "to a trial before a magistrate." The rule amends § 52.01(b) by adding the phrase "as set forth in this paragraph" to clarify that the determination is based upon consideration of all the enumerated factors.

This rule conforms the terminology of §§ 52.01 and 52.02 to the Judicial Improvements Act of 1990, Pub. L. 101–650, section 321, which changed the designation of persons appointed under 28 U.S.C. 631 from United States magistrate to that of United States magistrate judge.

Administrative Procedure Act 5 U.S.C. 553

Because these regulations relate to agency management or personnel, the Department of Justice finds good cause for exempting them from the provision of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b). The Attorney General has determined that this rule is not a significant regulatory action under Executive Order 12866, section 3(f), and, accordingly, this rule has not been reviewed by the Office of Management and Budget.

List of Subjects in 28 CFR Part 52

Courts.

Accordingly, for the reasons set forth in the preamble, part 52 of chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

PART 52—PROCEEDINGS BEFORE U.S. MAGISTRATE JUDGES

1. The heading for Part 52 is revised to read as set forth above.

2. The authority citation for part 52 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3401(f).

3. Section 52.01 is revised to read as follows:

§ 52.01 Civil proceedings: Special master, pretrial, trial, appeal.

(a) Sections 636 (b) and (c) of title 28 of the United States Code govern pretrial and case-dispositive civil jurisdiction of magistrate judges, as well as service by magistrate judges as special masters.

(b) It is the policy of the Department of Justice to encourage the use of magistrate judges, as set forth in this paragraph, to assist the district courts in resolving civil disputes. In conformity with this policy, the attorney for the government is encouraged to accede to a referral of an entire civil action for disposition by a magistrate judge, or to consent to designation of a magistrate judge as special master, if the attorney, with the concurrence of his or her supervisor, determines that such a referral or designation is in the interest of the United States. In making this determination, the attorney shall consider all relevant factors, including—

(1) The complexity of the matter, including involvement of significant rights of large numbers of persons;

(2) The relief sought;

(3) The amount in controversy;

(4) The novelty, importance, and nature of the issues raised;

(5) The likelihood that referral to or designation of the magistrate judge will expedite resolution of the litigation;

(6) The experience and qualifications of the magistrate judge; and

(7) The possibility of the magistrate judge's actual or apparent bias or conflict of interest.

(c) (1) In determining whether to consent to having an appeal taken to the district court rather than to the court of appeals, the attorney for the government should consider all relevant factors including—

(i) The amount in controversy;

(ii) The importance of the questions of law involved;

(iii) The desirability of expeditious review of the magistrate judge's judgment.

(2) In making a determination under paragraph (c)(1) of this section the attorney shall, except in those cases in which delegation authority has been exercised under 28 CFR 0.168, consult with the Assistant Attorney General having supervisory authority over the subject matter.

§ 52.02 [Amended]

4. Section 52.02 is amended by removing the word "magistrate" wherever it appears and adding, in its place, "magistrate judge" and by removing the word "magistrate's" wherever it appears and adding, in its place, "magistrate judge's".

Dated: February 26, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–4927 Filed 3–4–96; 8:45 am]

BILLING CODE 4410–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7636]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date. contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Acting Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region VI				
Texas: Terrell, city of, Kaufman County	480416	June 18, 1976, Emerg; Sept. 30, 1980, Reg; Mar. 4, 1996, Susp.	03–04–96	Mar. 4, 1996.
Region II				
New York: Clarence, town of, Erie County	360232	Apr. 4, 1975, Emerg; Apr. 1, 1982, Reg; Mar. 5, 1996, Susp.	03–05–96	Mar. 5, 1996.
Region III				
Pennsylvania:				
Fayette City, borough of, Fayette County	420464	July 30, 1975, Emerg; Feb. 3, 1982, Reg; Mar. 5, 1996, Susp.	12–19–95	Do.
North Charleroi, borough of, Washington County.	422137	Dec. 13, 1974, Emerg; July 16, 1981, Reg; Mar. 5, 1996, Susp.	.....do	Do.
West Virginia:				
Bath, town of, Morgan County	540005	May 20, 1975, Emerg; Jan. 20, 1980, Reg; Mar. 5, 1996, Susp.	03–05–96	Do.
Morgan County, unincorporated areas	540144	Oct. 28, 1975, Emerg; July 1, 1987, Reg; Mar. 5, 1996, Susp.	.....do	Do.
Paw Paw, town of, Morgan County	540252	Oct. 2, 1975, Emerg; Nov. 2, 1984, Reg; Mar. 5, 1996, Susp.	.....do	Do.
Region V				
Indiana: Tipton, city of, Tipton County	180255	Oct. 29, 1975, Emerg; Mar. 5, 1996, Reg; Mar. 5, 1996, Susp.	.....do	Do.
Michigan:				
Plymouth, city of, Wayne County	260236	Aug. 6, 1975, Emerg; Feb. 18, 1981, Reg; Mar. 5, 1996, Susp.	01–05–96	Do.
Plymouth, Charter township of, Wayne County.	260237	Aug. 6, 1975, Emerg; Mar. 2, 1981, Reg; Mar. 5, 1996, Susp.	.....do	Do.
Minnesota:				
Aitkin County, unincorporated areas	270628	Apr. 23, 1974, Emerg; Mar. 15, 1982, Reg; Mar. 5, 1996, Susp.	02–02–96	Do.
Hopkins, city of, Hennepin County	270166	May 2, 1974, Emerg; May 5, 1981, Reg; Mar. 5, 1996, Susp.	12–19–95	Do
Wisconsin:				
Cadott, village of, Chippewa County	550043	Jan. 23, 1975, Emerg; Mar. 5, 1996, Reg; Mar 5, 1996, Susp.	03–05–96	Do.
Dane County, unincorporated areas	550077	Oct. 20, 1972, Emerg; Sept. 29, 1978, Reg; Mar. 5, 1996, Susp.	.....do	Do.
Madison, city of, Dane County	550083	July 17, 1975, Emerg; Sept. 30, 1980, Reg; Mar. 5, 1996, Susp.	.....do	Do.
Middleton, city of, Dane County	550087	June 27, 1974, Emerg; May 1, 1980, Reg; Mar. 5, 1996, Susp.	... do	Do.
Region VI				
Louisiana: Duson, town of, Lafayette County	220104	Nov. 11, 1975, Emerg; Sept. 30, 1981, Reg; Mar. 5, 1996, Susp.	02–02–96	Do

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: February 27, 1996.

Richard W. Krimm,

Acting Associate Director, Mitigation Directorate.

[FR Doc. 96–5088 Filed 3–4–96; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 2, 5, 21, 22, 23, 25, 73, 78, 80, 90, 94, and 95

[FCC 95–423]

Reorganization of the Compliance and Information Bureau

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action restructures the Compliance and Information Bureau. The Commission reviewed the operations of the Bureau in light of principles of the National Performance Review to makes its operations more cost effective and to privatize those that could be handled by the private sector It is the intent of this action to improve service to the public at a reduced cost.

EFFECTIVE DATE: February 9, 1996.

FOR FURTHER INFORMATION CONTACT: Wayne T. McKee, Compliance and Information Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 418–1191.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*.

FCC 95–423, adopted October 6, 1995, and released, February 9, 1996. The full text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, NW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street NW, Washington, DC 20037, telephone (202) 857–3800.

Summary of Order

1. The Commission completed a full review of the mission, processes, and organization of the Compliance and Information Bureau and has determined to make changes to them in order to create a more effective organization within the limits of our budgetary constraints.

2. The Commission will automate the high frequency direction-finding network by installing new technology which can be remotely-controlled from a single office. The Commission will also establish a complaint and inquiry intake center, with a toll-free (800 or 888) number, to centralize and make more efficient agency provision of information and processing of complaints. The Commission will close its offices in Buffalo, New York; Miami, Florida; St. Paul, Minnesota; Norfolk, Virginia; Portland, Oregon; Houston, Texas; San Juan, Puerto Rico; Anchorage, Alaska; and Honolulu, Hawaii. Two technical staff will be retained in each of these cities as resident enforcement agents. The remaining offices will be fully staffed and equipped to maintain the Commission's Enforcement program.

3. The amendments adopted pertain to agency organization, procedure, and practice. Consequently, the requirement of notice and comment and the effective date provisions of the Administrative Procedures Act, 5 U.S.C. § 553(b), (d), do not apply.

4. Authority for the amendments adopted is contained in Sections 4(i), 5(b), 5(c)(1) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(b), 155(c)(1), 303(r).

List of Subjects

47 CFR Part O

Organization and functions (Goverment agencies), Delegation of authority.

47 CFR Part 2

Communications equipment, Imports.

47 CFR Part 5

Monitoring stations, Radio.

47 CFR Part 21

Monitoring stations, Radio.

47 CFR Part 22

Monitoring stations, Radio.

47 CFR Part 23

Monitoring stations, Radio.

47 CFR Part 25

Monitoring stations, Radio.

47 CFR Part 73

Monitoring stations, Radio broadcasting.

47 CFR Part 78

Monitoring stations, Radio.

47 CFR Part 80

Communications equipment, Inspections, Marine safety, Monitoring Stations, Overtime Compensation. Radio, Telegraph, Telephone, Vessels.

47 CFR Part 90

Monitoring stations, Radio.

47 CFR Part 94

Monitoring stations, Radio.

47 CFR Part 95

Monitoring stations, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rules

Title 47 of the Code of Federal Regulations, Parts 0, 2, 5, 21, 22, 23, 25, 73, 78, 80, 90; 94, and 95 are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part O continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended: 47 U.S.C. 155

2. Section 0.5 is amended by adding paragraph (a)(15) to read as follows:

§ 0.5 General description of Commission organization and operations.

(a) * * *

(15) Compliance and Information Bureau.

* * * * *

3. Section 0.111 and its preceding centered heading are revised to read as follows:

Compliance and Information Bureau

§ 0.111 Functions of the Bureau.

(a) Enforce the Commission's Rules and Regulations; provide support to other governmental units, investigate all non-government communications matters; issue sanctions.

(b) Disseminate to the public on a local basis information regarding communications issues and Commission rules, policies, and programs.

(c) Collect information through a customer intelligence network to inform the Commission on the needs of its customer and on the impact of regulations and necessary refinements to them as suggested by the users and the public.

(d) Participate in international conferences dealing with monitoring and measurement; serve as the point of contact for the U.S. Government in matters of international monitoring, fixed and mobile direction-finding, and interference resolution. Provide technical and administrative support on the administration of the ITU Fellowship program and oversee coordination of non-routine communications and materials between the Commission and international or regional public organizations or foreign administrations.

(e) Reduce or eliminate interference to authorized communications. Promote private sector solutions to interference problems; investigate and resolve those unsuitable for private sector resolution or where the private sector is unable to provide solutions. Work, in conjunction with the Office of Engineering and Technology, with technical standards bodies.

(f) Perform investigations in support of Commission policies.

(g) Maintain, operate, and manage the toll-free telephone receiving center for complaint and inquiries. Coordinate with the Office of Public Affairs and maintain liaison with the rest of the agency to ensure that the needs of the public for information are handled promptly, accurately, and comprehensively and that complaints are directed to those charged with acting upon them.

(h) Under the general direction of the Defense Commissioner, coordinate the defense activities of the Commission, and provide support to the Defense Commissioner in his participation in the Joint Telecommunication Resources Board and the National Security Telecommunications Advisory Committee, including recommendation of national emergency plans and preparedness programs covering

Commission functions during national emergencies. Support the Chief, Common Carrier Bureau on assignment of Telecommunications Service Priority System priorities and the administration of this system. The Chief, Compliance and Information Bureau, or the designee of that person, acts as the FCC Defense Coordinator and the principal of the Commission to the National Communications System.

4. Section 0.185 is amended by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 0.185 Responsibilities of the bureaus and staff offices.

The head of each of the bureaus and staff offices, in rendering assistance to the Chief, Compliance and Information Bureau in the performance of that person's duties with respect to defense activities will have the following duties and responsibilities:

(a) To keep the Chief, Compliance and Information Bureau informed of the investigation, progress, and completion of programs, plans, or activities with respect to defense in which they are engaged or have been requested to engage.

(b) To render assistance and advice to the Chief, Compliance and Information Bureau on matters which relate to the functions of their respective bureaus or staff offices.

* * * * *

5. Section 0.284(a)(3) and (a)(4) are revised to read as follows:

§ 0.284 Actions taken under delegated authority.

(a) * * *

(3) Requests for waiver of tower painting and lighting specifications-Wireless Telecommunications Bureau.

(4) Matters involving emergency communications, including the issuance of Emergency Alert System Authorizations (FCC Form 392)—Compliance and Information Bureau.

* * * * *

§ 0.311 [Amended]

6. Section 0.311 is amended by removing the words, "Chief, Field Operations Bureau, or his designee," and adding in their place, "Chief, Compliance and Information Bureau, or that person's designee," wherever they occur and by removing the words, "Field Operations Bureau" and adding in their place "Compliance and Information Bureau" wherever they occur.

§ 0.445 [Amended]

7. Section 0.445(g) is amended by removing the words, "FOB Manual" and adding in their place, "CIB Manual" wherever they occur and by removing the words, "Field Operations Bureau" and adding in their place, "Compliance and Information Bureau" wherever they occur.

§§ 0.15, 0.91, 0.121, 0.317, 0.332, 0.387, 0.401, 0.431, 0.443 [Amended]

8. Sections 0.15(i), 0.91(l), 0.121(a), 0.317, 0.332(d), 0.332(h), 0.387(b), 0.401(a)(4), 0.431, and 0.443 are amended by removing the words "Field Operations Bureau" and adding in their place, "Compliance and Information Bureau" wherever they occur.

PART 2—FREQUENCY ALLOCATION AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act, as amended, 47 U.S.C. Sections 154, 302, 303, and 307, unless otherwise noted.

2. Section 2.1204(a)(4) is amended by revising the third sentence to read as follows:

§ 2.1204 Import conditions.

(a)* * *

(4) * * * Prior to importation of more than ten units, written approval must be obtained from the Chief, Compliance Division, Compliance and Information Bureau, FCC.* * *

* * * * *

PART 5—EXPERIMENTAL RADIO SERVICES (OTHER THAN BROADCAST)

1. The authority citation for Part 5 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or imply sec. 301, 48 Stat. 1081, as amended; 47 U.S.C. 301.

§ 5.67 [Amended]

2. Section 5.67(d)(2) is amended by removing the words, "Field Operations Bureau" and adding in their place, "Compliance and Information Bureau" wherever they occur.

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for Part 21 continues to read as follows:

Authority: Secs. 1, 2 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

§ 21.113 [Amended]

2. Section 21.113(c)(2) is amended by removing the words, "Field Operations Bureau" and adding in their place, "Compliance and Information Bureau" wherever they occur.

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

§ 22.369 [Amended]

2. Section 22.369(c)(3) is amended by removing the words, "Field Operations Bureau" and adding in their place, "Compliance and Information Bureau" wherever they occur.

PART 23—INTERNATIONAL FIXED PUBLIC RADIOCOMMUNICATIONS SERVICES

1. The authority citation for Part 23 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303. Interpret or apply sec. 301, 48 Stat. 1081; 47 U.S.C. 301.

§ 23.20 [Amended]

2. Section 23.20(e)(2) is amended by removing the words, "Field Operations Bureau" and adding in their place, "Compliance and Information Bureau" wherever they occur.

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101–104, 76 Stat. 419–427; 47 U.S.C. 701–744; 47 U.S.C. 554.

§ 25.203 [Amended]

2. Section 25.203(g)(2) is amended by removing the words, "Field Operations Bureau" and adding in their place, "Compliance and Information Bureau" wherever they occur.

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 to read as follows:

Authority: 47 U.S.C. 154, 303, 334.

§ 73.1030 [Amended]

2. Section 73. 1030(c)(2) is amended by removing the words, "Field Operations Bureau" and adding in their place, "Compliance and Information Bureau" wherever they occur.

PART 78—CABLE TELEVISION RELAY SERVICE

1. The authority citation for Part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

§ 78.19 [Amended]

2. Section 78.19(e)(2) is amended by removing the words, "Field Operations Bureau" and adding in their place, "Compliance and Information Bureau" wherever they occur.

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

§ 80.21 [Amended]

2. Sections 80.21(b)(1) and 80.59(e) are amended by removing the words, "Field Operations Bureau" and adding in their place, "Compliance and Information Bureau" wherever they occur.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

§ 90.177 [Amended]

2. Section 90.177(d)(2) is amended by removing the words, "Field Operations Bureau" and adding in their place, "Compliance and Information Bureau" wherever they occur.

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

1. The authority citation for Part 94 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

§ 94.25 [Amended]

2. Section 94.25(i)(2) is amended by removing the words, "Field Operations Bureau" and adding in their place, "Compliance and Information Bureau" wherever they occur.

PART 95—PERSONAL RADIO SERVICES

1. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

§ 95.39 [Amended]

2. Section 95.39 is amended by removing the words, "Field Operations Bureau" and adding in their place, "Compliance and Information Bureau" wherever they occur.

[FR Doc. 96–5041 Filed 3–4–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 90

[PR Docket No. 93–35; FCC 96–53]

Channel Exclusivity to Qualified Private Paging Systems at 929–930 MHz

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: In this *Memorandum Opinion and Order*, the Commission reviews six petitions for reconsideration and/or clarification of the *PCP Exclusivity Order* in this docket establishing channel exclusivity for qualified local, regional, and nationwide paging systems in the 929–930 MHz band, and grants the petitions in part and denies them in part. The petitions requesting exclusivity to regional 929 MHz systems in regions defined by state borders, rather than based on their actual service areas, are denied. The petitions that seek to increase the maximum transmitter power for local and regional systems are granted. Additionally, the Commission partially grants certain pending waiver requests of incumbent licensees seeking additional time to comply with multi-frequency transmitter specifications. The intended effect of this order is to affirm that exclusivity to regional 929 MHz systems is granted based on the service area as set forth in the *PCP Exclusivity Order* and to amend the rules to facilitate the rapid and efficient licensing of paging in the 929–930 MHz band. These amendments to the regional channel exclusivity scheme established in the *PCP Exclusivity Order* will facilitate the development of seamless, wide-area 900 MHz paging systems.

EFFECTIVE DATE: April 4, 1996.

FOR FURTHER INFORMATION CONTACT: Mika Savir, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Memorandum Opinion and Order* in PR Docket No. 93–35; RM Docket 7986, adopted February 8, 1996, and released February 13, 1996, is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street N.W., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street N.E., Suite 140, Washington D.C. 20037 (202) 857–3800.

Synopsis of Memorandum Opinion and Order

I. Introduction

Before the Commission are six petitions for reconsideration and/or clarification of our *PCP Exclusivity Order*, Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929–930 MHz, *Report and Order*, PR Docket No. 93–35, 58 FR 62289 (November 26, 1993) (*PCP Exclusivity Order*), establishing channel exclusivity for qualified local, regional, and nationwide paging systems in the 929–930 MHz band. After reviewing the issues involved, the Commission grants the petitions in part and denies them in part. In particular, the Commission denies petitions requesting that exclusivity be granted to regional 929 MHz systems in regions defined by state borders, rather than based on their actual service areas. The Commission partially grants those petitions that seek to increase the maximum transmitter power for local and regional systems. The Commission also partially grants certain pending waiver requests of incumbent licensees seeking additional time to comply with the multi-frequency transmitter specifications. The Commission otherwise affirms the rules governing 929 MHz private paging as adopted in the *PCP Exclusivity Order*.

Additionally, the Commission is adopting a *Notice of Proposed Rule Making* in WT Docket No. 96–18, 61 FR 6199 (February 16, 1996) to examine ways to promote continued growth of the paging industry. In the *Notice of Proposed Rulemaking*, the Commission proposes to adopt new rules providing that future licensing of all exclusive paging channels, including 929 MHz channels, will be based on market-defined service areas, with mutually exclusive applications to be resolved by competitive bidding. Therefore, the conclusions reached in this *Memorandum Opinion and Order* are subject to future modification based on the outcome of the comprehensive paging rulemaking.

II. Background

PCP Exclusivity Order. In the *PCP Exclusivity Order*, the Commission implemented a system of exclusive licensing for qualified local, regional, and nationwide 929 MHz private paging systems on 35 of 40 available channels. Prior to this action, all private paging frequencies, including those at 929 MHz, were assigned on a non-exclusive basis. The *PCP Exclusivity Order* concluded that enabling 929 MHz paging systems to operate on an exclusive basis is in the public interest, due to the efficiencies and incentives such an approach encourages in the marketplace. Specifically, the Commission indicated that continued sharing of frequencies would undermine efficient use of 929 MHz paging channels as demand for paging services expands in the future. The Commission observed that, while sharing is technically feasible, dividing air time among multiple licensees imposes significant constraints on the efficiency and quality of service in crowded markets. The Commission also indicated that in a shared environment, licensees are reluctant to invest in advanced paging technology because of the risk that others will be assigned to the same frequency in the future. The Commission concluded that exclusivity would create a stable, predictable environment necessary for the industry to attract investment in wide-area, high capacity paging systems in the 929–930 MHz band.

The *PCP Exclusivity Order* established the requirements for licensees to obtain channel exclusivity in the 929 MHz band. In particular, the Commission established minimum standards for the configuration of protected systems, including the number of transmitters required for local, regional, and nationwide systems, and the treatment of multi-frequency transmitters. The Commission also implemented geographic separation standards for placement of co-channel stations, to protect qualified local or regional systems, and established effective radiated power (ERP) limits for all such systems.

The *PCP Exclusivity Order* also set forth other prerequisites to obtaining exclusivity. Most notably, the Commission conditioned exclusivity on construction of a qualified system within eight months of licensing. For larger systems, the Commission indicated that a new applicant may request an extension of up to three years, based on its showing of need, a construction timetable, and its establishment of an escrow account or securing of a performance bond to cover construction costs. Other matters addressed in the *PCP Exclusivity Order* include issues associated with application of exclusivity to existing systems and to future licensing, and certain transitional procedures. In particular, the Commission grandfathered all existing systems and indicated that it would grant immediate exclusivity to existing systems that satisfied the new exclusivity criteria.

Petitions for Reconsideration/Waivers. The Commission received petitions for reconsideration of the *PCP Exclusivity Order* from the following businesses and organizations: (1) the National Association of Business and Educational Radio and its Association for Private Carrier Paging Section (NABER); (2) First American National Paging (First National); (3) Afro-American Paging, Inc. (AAP); (4) American Mobilephone, Inc. (AMI); (5) Paging Network, Inc. (PageNet); MAP Mobile Communications, Inc. (MAP); and (6) Metrocall, Inc. The Commission has sought and received comment on the issues raised by these petitions. Some parties also have filed petitions asking that various provisions of the new exclusivity rules be waived to accommodate specific hardship situations. These requests generally involve waiver of the construction requirements, ERP limits, or system configuration rules. For the most part, the Commission will decide these waiver requests in other proceedings. The Commission partially grants the waiver requests of certain grandfathered licensees seeking time to convert their systems from multi-frequency transmitter to single-frequency transmitter operations for exclusivity purposes.

III. Discussion

A. Configuration of Local Systems

Background. To qualify for channel exclusivity under the 929 MHz paging rules, the *PCP Exclusivity Order* provided that a local system must consist of at least six contiguous transmitters, except in the New York, Los Angeles, and Chicago markets, where 18 contiguous transmitters are required. The Commission also provided that transmitters will be considered contiguous if (1) each transmitter is located within 25 miles of at least one other transmitter in the system; (2) the combined area defined by a 12.5 mile radius around each transmitter forms a single contiguous area; and (3) no transmitter is co-located with any other transmitter being counted as part of the local system.

Petitions for Reconsideration/Comments. On reconsideration, AAP challenges Section 90.495 (a)(1)(ii) of the rules, as adopted in the *PCP Exclusivity Order*, which requires that a 12.5 mile radius surrounding each transmitter form a single contiguous area. AAP argues that there was no notice of this rule change, because the restriction was not part of our original proposal and is not a logical outgrowth of the *PCP Exclusivity Notice*, Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929–930 MHz, *Notice of Proposed Rulemaking*, PR Docket No. 93–35, 58 FR 17819 (April 6, 1993) (*PCP Exclusivity Notice*). AAP claims that as a result of the added 12.5 mile radius requirement, one of its systems now is disqualified from obtaining exclusivity. AAP contends that if it is the Commission's goal to confine systems to smaller geographic areas, a 15 mile radius standard is more equitable. The Commission has received no comments on AAP's reconsideration proposal.

Decision. The Commission will not eliminate or alter the requirement for local exclusivity that requires that a 12.5 mile radius surrounding each transmitter form a single contiguous area. The 12.5 mile rule is a necessary component of the exclusivity rules, because it ensures that a local system will serve a contiguous geographic area. Without such a requirement, licensees could obtain local exclusivity based on non-contiguous placement of transmitters, undermining the Commission's effort to establish truly local systems serving an indigenous locale or community. Proportionately, the 12.5 mile distance is one-half the distance of the 25 mile rule, and thereby works well to ensure that transmitters are located to serve a single contiguous geographic territory.

While the 12.5 mile rule was not expressly included in the *PCP Exclusivity Notice*, the Commission believes that this restriction nonetheless is a "sufficiently minor" difference from the rule proposed to be a "logical outgrowth" of the Commission's efforts to establish a system of local exclusivity. The *PCP Exclusivity Notice* sought comment on the configuration of locally protected systems. Specifically, the Commission proposed that each transmitter in a qualified system would have to be within 25 miles of another transmitter to count toward the number required for exclusivity. Incorporation of the 12.5 mile restriction in the final rules constitutes a minor, technical

change to the original proposal, which is necessary to ensure that local exclusivity is awarded to operators that locate transmitters in close proximity to one another within a system. The 12.5 mile rule effectively closes a loophole in the original proposal, and comports with the Commission's intent to create local paging systems in the 929–930 MHz band. Only AAP has objected to the change, apparently based on its own unique situation, that one of its transmitters is 13.2 miles from the nearest other transmitter, which is best resolved by a request for waiver.

B. Configuration of Regional Systems

Background. The *PCP Exclusivity Order* provided protection for exclusive regional systems based on the location of stations comprising the system. To qualify for exclusivity, a regional system must consist of 70 or more transmitters, not necessarily contiguous, located in no more than twelve adjacent states in the continental United States. The rules provide regional systems with exclusivity based on a prescribed separation distance around each of the regional licensee's stations, ranging from 112 to 187 kilometers (70 to 116 miles) depending on the class of the station. Also, in each of the top thirty markets, specified in Section 90.741 of the Commission's rules, no transmitter may be counted as part of a regional system unless it also meets the requirements for local exclusivity in that market. *Petitions for Reconsideration/Comments.* NABER and PageNet argue that the geographic scope of exclusivity granted to 929 MHz regional systems should be based on state borders, rather than the location of the system's stations. According to NABER, allowing regional paging systems statewide exclusivity in each state in which the system provides service is needed to promote the development of regional systems. NABER and PageNet also express concern that under the current rules, speculators can file applications in strategic locations designed solely to extract payment from regional systems seeking to expand their coverage. NABER therefore recommends that the Commission grant regional applicants (*i.e.*, applicants proposing a system of 70 or more transmitters) exclusivity extending to the borders of any state in which the applicant constructs at least one transmitter, except that in states having markets listed among the top 30, the applicant must construct six or 18 transmitters, depending on the size of the market. NABER also requests that the Commission permit regional licensees to locate transmitters anywhere within any state included in the system, as long as they maintain the required geographic separation from facilities in adjoining regions.

AMI and ADC express concern about the application of NABER's proposal to licensees who are entitled to regional exclusivity under our existing rules. In general, these commenters are opposed to any change that would result in divesting licensees of existing exclusivity rights. ADC suggests that the Commission not apply statewide exclusivity to licensees whose applications (including those for local exclusivity) were received by NABER for coordination on or before March 31, 1994, at least where a portion of the involved local system was constructed and in operation before October 14, 1993.

ARCH, API, and Airtouch, on the other hand, favor statewide exclusivity for licensing as proposed by NABER and PageNet. According to these commenters, permitting licensees to achieve exclusivity on a statewide basis is essential to the development of truly regional systems. Airtouch and ARCH believe AMI and ADC's opposition to statewide exclusivity stems from the unique market situation of these licensees, and contend that the appropriate remedy for AMI and ADC is a waiver, not a decision to retain the status quo.

Decision. The Commission declines to reconsider the rules defining regional exclusivity for 929 MHz regional systems in this proceeding. The Commission is considering the issue of revising the paging licensing area definitions in a separate *Notice of Proposed Rule Making* on market-area licensing. Under the market-area licensing proposal, paging systems in general, including 929 MHz systems, no longer would be licensed on a station-by-station basis. Instead, licensees would be licensed within Commission-defined service areas, and would be afforded the same flexibility, to the extent feasible, as cellular and PCS licensees to locate, design, construct, and modify system facilities throughout those areas. Because the Commission is addressing this issue in a broader context than 929 MHz paging alone, it is premature to modify the rules for this single category of paging service in response to NABER's reconsideration petition.

Moreover, the Commission is not persuaded that paging licensing areas should be based on state borders, as NABER proposes. In all other services where Commission-defined licensing areas have been adopted, as opposed to station-by-station licensing, the Commission has used licensing area definitions based on economic markets or trading areas (*e.g.*, MSAs/RSAs for cellular, and MTAs/BTAs for PCS and 900 MHz SMR). By contrast, using state borders would create licensing areas with political boundary lines which do not necessarily correspond to economic markets or trading areas and, in some instances, which may cut across them. The Commission therefore concludes that the status quo should prevail while alternative licensing area definitions more consistent with our approach in other services are considered.

C. Effective Radiated Power

Background. In the *PCP Exclusivity Order*, the Commission established effective radiated power (ERP) limits of 1000 watts for local and regional 929 MHz systems and 3500 watts for nationwide systems. The Commission noted that the 3500 watt limit for nationwide systems was the same as the limit for nationwide common carrier paging systems in the 931 MHz band. The Commission declined to adopt a 3500 watt limit for non-nationwide systems, notwithstanding the fact that the Part 22 rules then in effect allowed 931 MHz non-nationwide common carrier licensees to operate internal system sites at 3500 watts. The Commission reasoned that higher power limits for 931 MHz licensees were justified because demand for 931 MHz licenses largely was confined to expansion by existing systems. The Commission concluded that a 1000 watt maximum for 929 MHz non-nationwide systems was appropriate to preserve opportunities for entry by new systems.

Petitions for Reconsideration/ Comments. NABER and PageNet request that the Commission increase the maximum ERP for 929 MHz regional systems from 1000 watts to 3500 watts, provided that adjacent co-channel systems remain protected. NABER claims that, in the context of the statewide regional licensing scheme it has proposed, a 3500 watt power limit would not restrict opportunities for the entry of new systems into the market, which was the reason the Commission rejected a 3500 watt ERP previously. According to NABER and PageNet, use of high-power transmitters within the boundaries of a regional system will enable licensees to offer superior service at a lower cost. Celpage, ARCH, Airtouch, and API support NABER's proposal.

MAP seeks clarification on whether the 1000 watt ERP restriction applies only to facilities that define the exterior of the licensee's service area, and whether higher power facilities are permitted at internal sites within existing service areas. MAP observes that 931 MHz common carrier paging licensees are permitted to operate at 3500 watts ERP at internal sites within their service areas. MAP asserts that principles of regulatory parity require us to apply the same rule to private paging systems. The Commission received no comments on MAP's request for clarification.

Decision. Except in certain limited circumstances discussed below, the Commission declines to raise the maximum ERP for non-nationwide 929 MHz systems at this time. NABER's proposal to raise the ERP limit is premised on the Commission adopting its proposal to base regional exclusivity on state borders, rather than site location. The Commission has declined to reconsider the definition of regional exclusivity, therefore NABER's rationale for raising the ERP limit does not apply. The Commission's decision on this issue does not preclude future changes to the rules if the Commission adopts some form of market-based licensing for 929 MHz channels. The Commission seeks further comment on height and power limits for common carrier and private carrier paging in the *Notice of Proposed Rule Making.*

The Commission agrees with commenters that under certain circumstances, allowing local and regional 929 MHz licensees to operate at greater than 1000 watts ERP may be appropriate. Specifically, if operation of sites at a higher power would not expand a licensee's existing service-area contour, there is no reason to prohibit operation at such higher power. The Commission will modify the rules to allow non-nationwide licensees to operate sites within their existing service area at up to 3500 watts ERP, provided that such operation does not increase the minimum geographic separation applicable to co-channel systems under Section 90.495(b)(2) of the Commission's rules. This will give licensees greater flexibility to build technically and economically efficient systems, without compromising opportunities for co-channel entry in areas adjacent to those systems.

D. Slow Growth Eligibility

Background. In the *PCP Exclusivity Order*, the Commission adopted rules allowing for so-called "slow growth" extensions of the eight-month construction requirement for larger system applicants. Specifically, for applications filed after October 14, 1993, a period of up to three years may be authorized for construction and commencement of operations if the proposed system is composed of more than 30 transmitters and the applicant submits specific justification for an extended implementation period. Applicants must provide a detailed construction timetable and evidence of the ability to fund construction, either in the form of a construction escrow account or a performance bond covering construction costs.

Petitions for Reconsideration/ Comments. NABER, PageNet, Metrocall, First National Paging, and AMI challenge the Commission's decision to make the three-year slow-growth option available only to post-October 14, 1993 paging applicants. NABER contends that the Commission did not provide adequate notice of the rule, because the *PCP Exclusivity Notice* did not expressly propose to limit the slow growth option to new applicants. According to NABER, the restriction has a detrimental impact on existing licensees because of the added construction demands posed by the Commission's treatment of multi-frequency transmitters under the exclusivity rules. AMI suggests that slow-growth eligibility be extended to licensees who filed for exclusivity after the March 31, 1993 release date of the *PCP Exclusivity Notice*, rather than limited to applicants filing after the October 14, 1993 date established in the *PCP Exclusivity Order.* According to AMI, there is no link between the October 14, 1993 date and the decision by any affected licensee to rebuild its facilities.

Commenters generally support extending the slow growth option to grandfathered licensees on the grounds that additional construction time is needed for incumbents to transition to our new system of channel exclusivity. Celpage, however, is concerned about the treatment of licensees who relied on single-frequency, as opposed to multi-frequency, transmitters. Celpage does not want operators that decided to build dedicated facilities at each licensed site, rather than to rely on inter-carrier agreements allowing them to utilize other licensees' dual-frequency transmitters, to be penalized under an extended transition period. Celpage therefore seeks reinstatement of certain "single use" transmitter licenses, whose authorizations expired while the exclusivity rules were under consideration. Arch and Airtouch support a slow growth period for existing licensees, but argue that the bond and escrow requirements for new construction should not apply in such cases.

Decision. The Commission will not change the rules to make pre-October 14, 1993 applicants automatically eligible for the extended implementation construction schedule. October 14, 1993, the date of the Sunshine Notice on the *PCP Exclusivity Order*, is the cutoff date for slow growth eligibility. The Commission will deny slow growth extensions to grandfathered licensees generally. As of our Sunshine Notice on October 14, 1993, applicants reasonably could anticipate that the Commission was going to adopt channel exclusivity rules for 929–930 MHz paging licensees. To deter speculative filings, therefore, the Commission decided not to grandfather anyone that filed after October 14, 1993. The date for dividing "old" from "new" applicants also is the appropriate date for triggering slow growth eligibility. Moreover, the Commission never suggested that slow growth extensions would apply to grandfathered licensees. Indeed, in an April 6, 1993 *Order*, Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929–930 MHz, *Order*, PR Docket No. 93–35, 58 FR 21111 (April 19, 1993) (*Order*), the Commission indicated that all parties in the application and coordination process were expected to comply with existing eight-month construction requirements while the rule making was underway. Consequently, applicants falling into the grandfathered category cannot legitimately claim that they expected to be eligible for slow growth extensions.

E. Multi-Frequency Transmitters

Background. In the *PCP Exclusivity Order*, the Commission considered the issue of whether licensees should be allowed to count multi-frequency transmitters for exclusivity purposes on more than one channel. The Commission concluded that licensees should not be barred from using multi-frequency transmitters, but that each such transmitter would be counted only once for exclusivity purposes. This requirement was to ensure that licensees would not claim exclusivity on multiple channels by repeatedly counting the same transmitter. The Commission noted that a licensee using multi-frequency transmitters could qualify for exclusivity on two frequencies by constructing twice the number of transmitters required to obtain one channel.

Petitions for Reconsideration/ Comments. Several parties urge the Commission to relax the "single-count" rule to accommodate incumbent licensees who had constructed systems based on multi-frequency transmitters prior to the adoption of the *PCP Exclusivity Order.* NABER argues that these licensees need time to construct

sufficient single-frequency transmitters to comply with the exclusivity requirements on a single-count basis. PageNet suggests that existing licensees be given two years from the time they qualify for earned exclusivity to make this conversion. First National Paging suggests establishing a reasonable transition period for incumbent licensees, beyond the existing eight-month construction requirement.

In addition to reconsideration petitions on this issue, the Commission has received waiver requests from Arch, Comtech, First National Paging, Metrocall, Airtouch, and Message Center Beepers. At the time the *PCP Exclusivity Order* became effective, each of these petitioners was operating systems on dual channels using multi-channel transmitters. The number of transmitters in place in each system is sufficient to qualify for regional or nationwide exclusivity on one channel, but under the single-count rule petitioners would be required to construct additional sites to obtain protection for their operations on the second channel. Because their construction plans prior to the *PCP Exclusivity Order* relied on use of dual-channel transmitters, petitioners request twenty-four months rather than eight months to reconfigure their systems and construct additional sites to meet the requirements of the single-count rule.

Decision. The Commission declines to modify the general rule that no transmitter may be counted more than once for exclusivity purposes. This rule prevents the potential hoarding of multiple frequencies, by requiring paging licensees seeking more than one exclusive frequency to meet a higher construction threshold. Licensees may continue to use multi-frequency transmitters in their systems, but exclusivity will be conferred on multiple channels only if the total number of transmitters is sufficient to qualify for exclusivity on each channel on a single-count basis.

The Commission will grant some additional time to those grandfathered licensees who have filed waiver requests to bring existing systems into compliance with the single-count rule. Prior to the adoption of the *PCP Exclusivity Order*, these licensees had embarked on construction and operation of substantial systems relying on dual-frequency transmitters. The adoption of the single-count rule required these licensees to modify their plans to add additional transmitters in order to gain full exclusivity protection for their existing systems. The Commission believes that a reasonable time should be afforded to petitioners to make this adjustment. The Commission notes that the risk of allowing hoarding of frequencies is not present here, because the systems at issue already are grandfathered on both channels, petitioners substantially have constructed their systems and are providing service to the public on a dual-channel basis, and the additional construction needed will promote increased coverage and better quality service.

The petitioners filed their initial requests for a twenty-four month construction period in early 1994. Since that time, petitioners have had substantial opportunity to construct additional facilities on a single-frequency transmitter basis to bring their systems into compliance. The Commission concludes that because of this elapsed time, petitioners should be granted an amount of time consistent with their original estimate of the time required to bring their systems into compliance. The Commission grants Arch, Comtech, First National Paging, Metrocall, Airtouch, and Message Center Beepers until six months after the publication date of this *Memorandum Opinion and Order* in the **Federal Register** to demonstrate that their grandfathered systems qualify for exclusivity on a single-count basis.

F. Modification of Existing Systems

Background. In the *PCP Exclusivity Order*, the Commission concluded that all existing 929 MHz licensees should be grandfathered under the new rules whether or not they qualified for exclusivity. Thus, incumbent systems that did not qualify for exclusivity would be allowed to continue operating their existing facilities, and any licensee granted exclusivity on the same channel in the same area would be required to share the channel with the grandfathered system. Grandfathered systems would not be allowed to add new facilities to their systems, however, if such expansion conflicted with exclusivity rights granted to another licensee.

Petitions for Reconsideration/ Comments. MAP contends that the Commission should allow grandfathered licensees who do not qualify for exclusivity to modify their existing systems in order to continue service to subscribers. MAP argues that allowable modifications should include changes in the number of paging receivers, type of emission, antenna height, power, class of station, ownership or corporate structure, and location of existing facilities. API opposes MAP's proposal. API believes that minor and reasonable modifications to existing facilities should be allowed, but that other changes should not be permitted, particularly if the effect is to diminish or impair the development of a co-channel system which already has qualified for exclusivity in the same area. MAP replies that it is not asking to expand the rights of grandfathered licensees, but only is seeking a clarification of the types of "minor" modifications that the FCC will allow. MAP does not want the rules interpreted in a manner that hampers the ability of existing licensees to improve service, respond to customer needs, and adjust to business changes.

Decision. The rules provide that grandfathered licensees who do not qualify for exclusivity may make modifications to existing facilities that do not impair the exclusivity rights of co-channel licensees or otherwise violate our rules. There is no reason to change this rule, based on MAP's petition. This issue is raised more broadly in the *Notice of Proposed Rule Making* in WT Docket No. 96–18. Therefore, the Commission will defer additional consideration of the issues raised by MAP to that proceeding.

G. Miscellaneous

In the *PCP Exclusivity Order*, the Commission addressed the issue of conditional operation of 929–930 MHz stations located above "Line A," *i.e.*, within 250 miles of the Canadian border. Noting that a 1992 agreement between the Commission and Canada's Department of Communications had eliminated the need for international coordination of these channels, the Commission stated that it would allow operation of 929 MHz stations above Line A, provided all other requirements of the rules are met. Some licensees have misconstrued this language in the *PCP Exclusivity Order* to open all channels in the 929–930 MHz band to operation by U.S. licensees above Line A. In fact, the 1992 U.S.-Canada agreement provides that only channels between 929.5 and 930 MHz may be used by U.S. licensees above Line A. To eliminate any possible confusion, the Commission clarifies that operation above Line A (which is now within 75 miles of the Canadian border) is allowed only on these channels. In accordance with the 1992 agreement, no U.S. licensee may operate conditionally or otherwise on channels from 929.0 MHz to 929.5 MHz.

IV. Conclusion

The Commission is amending the rules as described above to facilitate the rapid and efficient licensing of paging in the 929–930 MHz band. The limited amendments to the regional channel exclusivity scheme established in the *PCP Exclusivity Order* will facilitate the development of seamless, wide-area 900 MHz paging systems. Otherwise, the Commission affirms the rules as adopted in the *PCP Exclusivity Order.*

V. Procedural Information

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

A. Need for and Purpose of This Action

This *Memorandum Opinion and Order* makes amendments to Part 90 of the Commission's rules relating to channel exclusivity for qualified local, regional, and nationwide private paging systems on certain channels at 929–930 MHz. The amendments will promote the efficient use of paging channels by encouraging investment in new paging technology. They also will foster the development of more efficient paging systems on a local, regional, and nationwide basis.

B. Summary of Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis

Only one party, Radiofone, filed comments responding to the Initial Regulatory Flexibility Analysis (IRFA). Radiofone argued that the Commission has not adequately addressed the impact of the proposal on small paging systems and that exclusive licensing will preclude small business entry at 900 MHz. The Commission reviewed Radiofone's concerns in the context of *PCP Exclusivity Order.* No additional comments have been submitted.

C. Significant Alternatives Considered and Rejected

As the Commission determined in the *PCP Exclusivity Order* and affirms in this *Memorandum Opinion and Order*, this action is fully consistent with the Commission's small business policy objectives. The Commission noted in the IRFA that this action imposes certain conditions on the licensing of smaller 929–930 MHz paging systems, but these requirements are not unduly burdensome. The new rules contain significant benefits for small businesses by protecting dozens of small existing systems in place, allowing many such systems to obtain exclusivity, and creating opportunities for expansion and new entry by small business licensees.

Ordering Clauses

It is ordered that pursuant to the authority of Sections 4(i), 303(g) 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(g), 303(r) and 332(a), 47 CFR Part 90, is amended as set forth below, effective April 4, 1996.

It is further ordered that the petitions for reconsideration filed by National Association of Business and Educational Radio/ Association for Private Carrier Paging Section, First National Paging Company, Inc., Afro-American Paging, American Mobilephone, Inc., Paging Network, Inc., MAP Mobile Communications, Inc. and Metrocall, Inc. are granted to the extent described above and are denied in all other respects.

It is further ordered that the waiver requests filed by American Mobilephone, Inc., Arch Communications Group, Inc., Comtech, Inc., First National Paging Company, Inc., Message Center Beepers, Inc., Metrocall, Inc. and PacTel Paging (now "Airtouch Paging") are granted to the extent described above.

It is further ordered that, pursuant to the authority of Section 0.331 of the Communications Act of 1934, as amended, we delegate to the Wireless Telecommunications Bureau the authority to address any request for waiver of our exclusivity rules, which shall be evaluated based on criteria set forth above.

It is further ordered that this proceeding is terminated.

List of Subjects in 47 CFR Part 90

Common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Amendments

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.494 is amended by revising paragraph (g) to read as follows:

§ 90.494 One-way paging operations in the 929–930 MHz band.

* * * * *

(g) Stations operating as part of regional or local systems under § 90.495(a)(1) or (a)(2) may also operate sites within their existing service area at a maximum effective radiated power of 3500 watts, provided that such an increase in power does not expand the licensee's service-area contour, and the requirements of § 90.495(b)(2) are met as to any co-channel system that has preexisting exclusivity rights.

[FR Doc. 96–4723 Filed 3–4–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 380

[Docket No. 950707173–6036–02; I.D. 012296E]

RIN 0648–AF51

Antarctic Marine Living Resources Convention Act of 1984; Conservation and Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary) amends the regulations governing harvesting and reporting of Antarctic living marine resource catches by vessels of, and persons subject to the jurisdiction of, the United States. The regulations implement conservation and management measures implemented by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR or Commission) and accepted in whole by the Government of the United States to regulate catches in Convention for the Conservation of Antarctic Marine Living Resources (Convention) statistical reporting areas 48 and 58. These measures restrict the use of gear, restrict the directed taking and bycatch of certain species of fish, prohibit the taking of other species, and require real-time and other reporting of the harvest of certain species.

EFFECTIVE DATE: February 29, 1996.

ADDRESSES: A copy of the framework environmental assessment may be obtained from the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Comments regarding burden estimates or collection of information aspects of this rule should be sent to Robin Tuttle, (See **ADDRESSES**), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503, Attention: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Robin Tuttle, NMFS International Organizations and Agreements Division, 301–713–2282.

SUPPLEMENTARY INFORMATION:

Background

At its annual meeting in Hobart, Tasmania, in 1986, CCAMLR, of which the United States is a member, adopted a conservation measure requiring the Commission at subsequent meetings to adopt limitations on catch, or to implement equivalent measures, which would be binding for species upon which fisheries are permitted in Convention subarea 48.3 (South Georgia), depicted at (Figure 1 to part 380). The Commission has, also, adopted measures that apply to other Convention subareas.

The measures adopted at the 1995 meeting of the Commission address the 1995–96 and 1996–97 fishing seasons. The measures are based upon the advice of the Scientific Committee and take into account research conducted by Commission members and the reports and recommendations of the Scientific Committee's working groups. The 1995–96 fishing season is defined as the period from November 4, 1995, to the end of the Commission meeting in 1996 (November 1, 1996). The 1996–97 fishing season is defined as the period from the end of the Commission meeting in 1996 (November 1, 1996) to the end of the Commission meeting in 1997 (likely October 31, 1997). The 1997–98 fishing season is not defined, but will likely run for the period from October 31, 1997 to the end of the Commission meeting in 1998. There are shorter fishing periods defined for specific fisheries.

Comments and Responses

The measures were announced and public comments invited (until January 9, 1996) by a **Federal Register** notice on December 12, 1995 (60 FR 63752). Comments supporting the measures were received from the Pacific Seabird Group (PSG) and H.T. Harvey & Associates (Harvey).

PSG suggested that longline gear be modified to release hooks and longlines underwater. Department of State (DOS) noted that the United States tabled a paper at the 1995 CCAMLR meeting on the potential for longline systems which release baited line underwater. The paper was strongly supported and CCAMLR requested that Members using such systems report to the Scientific Committee on their effectiveness in eliminating seabird bycatch.

PSG recommended that CCAMLR study whether the number of seabirds attracted to longline sets would decrease if the dumping of offal were reduced. DOS noted that CCAMLR has prohibited the discharge of offal during setting or hauling on the side of the vessel on which longlines are set or hauled.

PSG also suggested that CCAMLR study measures to decrease the effects of longlines on nocturnal foragers, like petrels, that become entangled and die when nets are set at night. DOS reported that CCAMLR has recognized the urgent need for research into ways of reducing the bycatch of white-chinned petrels, especially at night, and has called for further work on relationships between hook size and the bycatch of petrels.

PSG urged that longline fishery measures be enforced, and their effects monitored and made public. DOS noted that in the *Dissostichus eleginoides* (Patagonian toothfish) fishery in subarea 48.3, the primary fishery in which seabird mortality has been a problem, all vessels are required by CCAMLR to have at least one scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, aboard throughout all fishing activities within the fishing period.

With respect to the krill fishery, PSG recommended that CCAMLR scientists continue to monitor the fishery to determine whether the current precautionary limit is appropriate. DOS noted that the United States has concerns about the proposed use of a new krill productivity model and will ensure that the lower existing krill catch rate is maintained until the integrity of the newer model can be assured.

Both PSG and Harvey recommended a study of the importance of *Electrona carlsbergi* (lanternfish) to the Scotia Sea ecosystem and foodwebs. DOS indicated that it will forward the suggestion to the interagency group involved in preparations for the 1996 meeting of CCAMLR.

A. Changes in Taxonomy

The Commission recognized changes in taxonomy for *Notothenia squamifrons (grey rockcod)*, now called *Lepidorhirus squamifrons*, and *Notothenia gibberifrons* (humped rockcod), now called *Gobionotothen gibberifrons*.

B. Data Reporting Requirements

The Commission has, at past annual meetings, adopted detailed, fine-scale reporting requirements. These measures continue in force until amended or revoked. The Commission reduced the overall reporting burden for the 1995–96 fishing season.

The Commission reopened the fishery for *Champsocephalus gunnari* (mackerel icefish) in statistical area 48.3 and required the use of: (1) CCAMLR Form C1 to report haul-by-haul data finescale catch and effort for trawl fisheries, and (2) CCAMLR Form B2 to report length composition measurements. The forms must be submitted at the end of each month of fishing. This reporting is a lesser level of reporting than in 1993–94, when the fishery was last open and during which fishers were also required to report catch and effort on a 5-day basis.

The Commission modified the data requirements for the exploratory crab fishery in statistical subarea 48.3 by requiring a count of and estimated weight total for *D. eleginoides* and *Notothenia rossii* (marbled rockcod) and estimated total weight of other species taken as bycatch. The regulations impose this additional requirement, but remove past requirements for a Commercial Vessel Daily Activity Logbook; a Commercial Vessel Fishing Effort Logbook; and a Commercial Vessel CCAMLR Subsample Logbook. The data reporting required by the experimental harvest regime (adopted by the Commission in 1993 and included in previous regulations) serves the purpose of those logbook requirements.

The Commission identified the bycatch species (any cephalopod, crustacean or fish species other than *E. carlsbergi*) to which the continuing requirement for monthly biological data reporting for *E. carlsbergi* in statistical subarea 48.3 applies. The regulations note these species.

The Commission required the use of the existing systems of every 10-day catch and effort reporting and monthly effort and biological data reporting to report data from the new fisheries for *D. eleginoides* and *Dissostichus mawsoni* (Antarctic toothfish) in statistical division 58.4.3 and deep-water species in statistical division 58.5.2. However, since these bottom-trawling only fisheries are limited to Australian vessels, the data reporting requirements are not included in the regulations.

The Commission made reporting for *C. gunnari* and *D. eleginoides* in statistical subarea 58.5.2 less burdensome, by reducing the frequency of required catch and effort reporting from every 5 days to every 10 days.

C. Longline Fishing

The Commission further defined the actions which fishers must take while longline fishing or conducting longline fishing research in the Convention Area in order to minimize the incidental mortality of seabirds. The regulations are amended to permit longline fishing consistent with Commission restrictions.

D. Finfishing in Subareas 48.1 (South Shetlands Islands)

The Commission continued prohibitions on the taking of all species of finfish, other than for scientific research purposes, in subareas 48.1 and 48.2 from November 6, 1993, until at least such time that a survey of stock biomass is carried out, and a decision that the fishery is to be reopened is made by the Commission based on the advice of the Scientific Committee.

E. Finfishing in Subarea 48.3 (South Georgia)

The Commission took action on finfishing in subarea 48.3 for the 1995–96, 1996–97, and 1997–98 fishing seasons, as follows:

The prohibition on directed fishing for *G. gibberifrons, Chaenocephalus aceratus* (blackfin icefish), *Pseudochaenichthys georgianus* (South Georgia icefish), *L. squamifrons*, and *Patagonotothen brevicauda guntheri* (Patagonian rockcod) for the 1994–95 and 1995–96 fishing seasons is continued.

In any directed fishery in the subarea, in any fishing season, the bycatch limit for *G. gibberifrons* is 1,470 metric tons (mt); the bycatch limit for *C. aceratus* is 2,200 mt; and the bycatch limit for *P. georgianus, N. rossii*, and *L. squamifrons* is 300 mt each, the 1992–93 levels. This measure was previously given seasonal application.

The total allowable catch (TAC) for *E. carlsbergi* is reduced. The TAC for the 1995–96 fishing season is 109,000 mt. In addition, the TAC for *E. carlsbergi* is 14,500 mt in the Shag Rocks region. The directed fishery for *E. carlsbergi* will close if a bycatch limit set for *G. gibberifrons, C. aceratus, P. georgianus, N. rossii*, or *L. squamifrons* is reached for any of these species or if the TAC for *E. carlsbergi* reaches 109,000 mt, whichever comes first.

The directed fishery for *E. carlsbergi* in the Shag Rocks region will close if a bycatch limit for any of the bycatch species is reached, or if the TAC of 14,500 mt is reached, whichever comes first. If, in the course of the directed fishery for *E. carlsbergi*, the bycatch of any one haul of the bycatch species exceeds 5 percent, the fishing vessel must move to another fishing location within the subarea. This location was not defined for the 1994–95 season. For the 1995–96 season, it is defined as a fishing location not closer than 5 nautical miles (9.26 km) distant. The fishing vessel must not fish for at least 5 days within 5 nautical miles (9.26 km) of the location in which the catch of species, other than the target species, exceeded 5 percent. The relocation distance and the use of a 5-day waiting period were adopted pending the adoption of a more appropriate distance and period.

The TAC of *D. eleginoides* was increased to 4,000 mt for a fishing season defined from March 1, 1996, to August 31, 1996, or until the TAC is reached, whichever comes first. Each vessel participating in the fishery must carry at least one scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, aboard throughout all fishing activities within the fishing period. Directed fishing must be by longlines only. Submission of catch and effort data continue to be required on an every-5-day reporting basis. The monthly reporting of representative samples of length composition measurements using forms provided by the Scientific Committee continues to be required during the 1995–96 fishing season. Failure by any Contracting Party, including the United States, to submit length composition data for three consecutive reporting periods will result in the closure of the fishery to the vessels of the Contracting Party.

The fishery for *C. gunnari* was reopened with a TAC of 1,000 mt. The directed fishery for *C. gunnari* will close when the bycatch limit for any designated bycatch species is reached. If, in the course of the directed fishery, the bycatch of any one haul of a designated bycatch species exceeds 5 percent, the fishing vessel must move to another location not closer than 5 nautical miles (9.26 km) distant. For at least 5 days, the fishing vessel must fish within 5 nautical miles (9.26 km) of the location in which the bycatch exceeded 5 percent. Vessels must undertake a scientific survey carried out in accordance with a survey design specified in the CCAMLR Draft Manual for Bottom Trawl Surveys in the Convention Area. Each vessel must have a scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, aboard throughout all fishing activities within the fishing season.

F. Finfishing in Subarea 48.4 (South Sandwich Islands)

The TAC for *D. eleginoides* in subarea 48.4 is 28 mt for the 1995–96 fishing season beginning March 1, 1996, and ending on the earliest of August 31, 1996; reaching the TAC for *D. eleginoides* in subarea 48.3; or reaching the TAC for *D. eleginoides* in subarea 48.4. Each vessel participating in the fishery must carry at least one scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, aboard throughout all fishing activities within the fishing period.

Every 5-day catch and effort data and monthly reporting of representative samples of length composition measurements using forms provided by the Scientific Committee continue to be required.

G. Finfishing in Division 58.4.3

Finfishing for *Dissostichus* species in statistical division 58.4.3 for the 1995–96 fishing season is closed to all but Australian vessels.

H. Finfishing in Division 58.4.4 (Ob and Lena Banks)

Measures adopted in 1992 setting TACs for the 1993–94 fishing season were continued at the 1994 meeting for the 1994–95 and 1995–96 fishing seasons. The TAC for *L. squamifrons* for the 2-year period is 1,150 mt with 715 mt allocated to Lena Bank and 435 mt allocated to Ob Bank. Each vessel participating in the fishery in 1994–95 and 1995–96 must carry at least one scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, aboard throughout all fishing activities within the fishing period.

I. Finfishing in Division 58.5.32 (McDonald and Heard Islands)

In 1994, the Commission adopted a measure of continuing application setting precautionary catch limits in division 58.5.2 of 311 mt for *C. gunnari* and 297 mt (by trawling only) for *D. eleginoides*. The monthly effort and biological data reporting requirement established previously for other fisheries continues to apply, but the 5-day reporting of catch and effort has been reduced to 10-day reporting.

Fishing seasons commence in each year at the close of the annual meeting of the Commission and continue until the earlier of June 30 or reaching the precautionary catch limits.

If in the course of a directed fishery for *D. eleginoides* or *C. gunnari*, the bycatch in any haul of the species *L. squamifrons, N. rossii, Channichthys rhineratus* (unicorn icefish) of *Bathyraja spp.* (Antarctic rays) exceeds 5 percent, the fishing vessel must move to another fishing location not closer than 5 nautical miles (9.26 km) distant. For a period of at least 5 days, the fishing vessel must not fish within 5 nautical

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miles (9.26 km) of the location in which the bycatch exceeded 5 percent. The relocation distance and the use of a 5-day waiting period were adopted pending the adoption of a more appropriate distance and period.

In statistical division 58.5.2, fishing for deep-water species other than *D. eleginoides* is closed to all but Australian vessels for the 1995–96 fishing season.

J. Fishing for Euphausia superba (Antarctic Krill)

Measures adopted by the Commission at its 1991 and 1992 meetings capping the catch of krill at 1.5 million mt in area 48 in any season continues in force. The cap in subarea 58.4.2 was raised to 450,000 mt during any fishing season.

K. Fishing for Antarctic Crab

The Commission continued measures adopted in 1992 limiting the exploratory crab fishery in subarea 48.3 and specifying data requirements through the 1995–96 fishing season. The crab fishery continues to be limited to a TAC of 1,600 mt and to one vessel per Commission Member.

An experimental harvest regime (EHR) adopted in 1993 was extended through the 1997–98 fishing season. Vessels conducting Phase 2 of the EHR are no longer required to fish within squares as defined by specific longitude and latitude. Fishing during Phase 2 requires that vessels fish in 3 squares measuring approximately 26 square nautical miles (48.15 square km) in an area and with overall dimensions of 6° lat by 7.5° long. Vessel captains determine the location of the 3 squares to be fished, but the squares selected must be contiguous and the distance between the boundaries of any 2 squares must be at least 4 nautical miles (7.41 km). This will allow vessels to fish in preferred depth ranges.

The soak time for each string of crab pots is defined as the time between the start of setting and the start of hauling.

Classification

NMFS has determined that this rule is necessary to implement the Antarctic Marine Living Resources Convention Act of 1984 (the Act) and to give effect to the management measures adopted by CCAMLR and agreed to by the United States.

This final rule has been determined to be not significant for purposes of E.O. 12866.

It is exempt from section 553 of the Administrative Procedure Act, because it involves a foreign affairs function of the United States.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of information has been approved by OMB under OMB Control Number 648–0194, which expires August 31, 1997. The annual reporting burden for this collection of information is estimated to average 44½ hours in harvesting and import permit-related activities; 1½ hours in CCAMLR Ecosystem Monitoring Program permit-related activities; ½ hour for finfish reporting in the crab fishery; 6½ hours for crab data reporting; 1 hour of radio contact; and ½ hour for reporting biological data in the finfish and crab fisheries: The response estimates shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Robin Tuttle, NMFS, and to the Office of Information and Regulatory Affairs (see **ADDRESSES**).

List of Subjects in 50 CFR Part 380

Administrative practice and procedure, Antarctica, Fish, Imports, Marine resources, Reporting and recordkeeping requirements, Treaties, Wildlife.

Dated: February 23, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 380 is amended as follows:

PART 380—ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984

1. The authority citation for part 380 continues to read as follows:

Authority: 16 U.S.C. 2431 *et seq.*

§ 380.2 [Amended]

2. In § 380.2, the definition of "fishing season" is removed, and in the definition for "Antarctic finfishes", in the table, the entries in the left column *Notothenia gibberifrons* and *Notothenia squamifrons* are removed and the entries *Gobionotothen gibberifrons* and *Lepidorhirus squamifrons* are added in their place, respectively.

3. In § 380.23, paragraphs (b)(1), (c) through (j), paragraphs (k) introductory text, (k)(5)(v)(A), (k)(5)(ix), and (k)(5)(xiii) are revised and paragraphs (k)(5)(ii)(G) and (l) through (n) are added to read as follows:

§ 380.23 Catch restrictions.

* * * * *

(b) * * *

(1) The total catch of *E. superba* shall not exceed 450,000 mt in any fishing season.

* * * * *

(c) The following catch restrictions apply to *D. eleginoides* in statistical subarea 48.4 (Figure 1 to part 380):

(1) The total catch of *D. eleginoides* shall not exceed 28 mt.

(2) For the purposes of applying this catch restriction, the fishing season begins on March 1, 1996, and ends on August 31, 1996.

(3) Each vessel participating in the fishery must carry at least one scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, aboard throughout all fishing activities within the fishing period.

(d) The following directed fishing is prohibited in statistical subarea 48.3 (Figure 1 to part 380):

(1) Directed fishing on *N. rossii.*

(2) Directed fishing on *G. gibberifrons, C. aceratus, P. georgianus, L. squamifrons,* and *P.b. guntheri* from November 5, 1994, through November 1, 1996.

(e) The following bycatch limitations apply in statistical subarea 48.3 during any fishing season:

(1) The bycatch of *G. gibberifrons* shall not exceed 1,470 mt.

(2) The bycatch of *C. aceratus* shall not exceed 2,200 mt.

(3) The bycatch of *P. georgianus, N. rossii,* and *L. squamifrons* shall not exceed 300 mt each.

(f) The following catch restrictions apply to *D. eleginoides* in statistical subarea 48.3 from March 1, 1996, through August 31, 1996, or until the total allowable catch is reached, whichever comes first:

(1) The total catch of *D. eleginoides* shall not exceed 4,000 mt.

(2) Each vessel participating in the fishery must carry at least one scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, aboard throughout all fishing activities within the fishing period.

(g) The following catch restrictions apply to *E. carlsbergi* in statistical subarea 48.3 from November 3, 1995, through November 1, 1996:

(1) The total catch of *E. carlsbergi* shall not exceed 109,000 mt.

(2) The total catch of *E. carlsbergi* shall not exceed 14,500 mt in the Shag Rocks region, defined as the area bounded by 52°30′ S. lat., 40° W. long.; 52°30′ S. lat., 44° W. long.; 54°30′ S. lat., 40° W. long.; and 54°30′ S. lat., 44° W. long..

(3) If in the course of the directed fishery for *E. carlsbergi,* the bycatch in any one haul exceeds 5 percent of any bycatch species in paragraph (e), the fishing vessel must move to another fishing location within the subarea not closer than 5 nautical miles (9.26 km), for a period of at least 5 days.

(h) The taking of finfish, other than for scientific research purposes, is prohibited in subareas 48.1 and 48.2 (Figure 1 to part 380).

(i) The following catch restrictions apply to *L. squamifrons* in statistical division 58.4.4 (Figure 1 to part 380) from November 5, 1994, through November 1, 1996:

(1) The total catch of *L. squamifrons* for this period shall not exceed 715 m on Lena Bank and 435 mt on Ob Bank.

(2) Each vessel participating in the fishery shall carry a scientific observer, appointed in accordance with the CCAMLR scheme of International Scientific Observation aboard throughout all fishing activities within the fishing period.

(j) The following catch restrictions apply to statistical division 58.5.2 (Figure 1 to part 380) for each fishing season. (For purposes of applying this limit, a fishing season begins at the close of the annual meeting of CCAMLR and continues until the earlier of June 30 or until respective precautionary catch limits are reached, whichever comes first):

(1) The total catch limit for *C. gunnari* is 311 mt.

(2) The total catch limit for *D. eleginoides* is 297 mt.

(3) If in the course of a directed fishery for *C. gunnari* or *D. eleginoides,* the bycatch in any haul exceeds 5 percent for *L. squamifrons, N. rossii, C. rhinoceratus or Bathyraja spp.*, the fishing vessel shall move to another location not closer than 5 nautical miles (9.26 km) distant. For a period of at least 5 days, the fishing vessel shall not fish within 5 nautical miles (9.26 km) of the location in which the bycatch exceeded 5 percent.

(k) The following catch restrictions apply to fishing for any Antarctic crab species in the crab group Order *Decapoda,* Suborder *Reptantia,* in statistical area 48 from November 4, 1995, through November 1, 1996:

* * * * *

(5) * * *

(ii) * * *

(G) Soak time is defined for each string of crab pots as the time between the start of setting and the start of hauling.

* * * * *

(v) * * *

(A) Every vessel conducting Phase 2 shall fish in 3 small squares measuring approximately 26 nautical miles (48.15 km) in area (the dimension of these squares shall be 6.0° lat. by 7.5° long. The squares shall be subdivisions of the blocks delineated in Phase 1 of the experimental regime. Vessel captain shall determine the location of the 3 squares that will be fished, but selected squares may not be contiguous and the distance between the boundaries of any 2 squares must be at least 4 nautical miles (7.41 km).

* * * * *

(ix) Data collected during the experimental harvest regime up to June 30 in any split-year shall be submitted to the CCAMLR Data manager by August 31 of the following split year.

* * * * *

(xiii) The experimental regime shall be instituted for a period of 3 split-years (1995–96 to 1997–98). Fishing vessels that begin experimental fishing in the 1997–98 split-year must complete the regime during the 1998–99 split-year.

(l) The following catch restrictions apply to *C. gunnari* in statistical subarea 48.3 from November 3, 1995, through March 31, 1996:

(1) The total catch of *C. gunnari* shall not exceed 1,000 mt.

(2) The fishery shall close if the bycatch of any of the species listed in paragraph (e) above reaches its bycatch limit or if the total catch of *C. gunnari* reaches 1,000 mt, whichever comes first.

(3) If, in the course of the directed fishery for C. gunnari, the bycatch in any one haul exceeds 5 percent for any of the species listed in paragraph (e) of this section, the fishing vessel shall move to another location not closer than 5 nautical miles (9.26 km) distant. For a period of at least 5 days, the fishing vessel shall not fish within 5 nautical miles (9.26 km) of the location in which the bycatch exceeded 5 percent.

(4) Each vessel participating in the directed fishery for *C. gunnari* is required to undertake a scientific survey carried out in accordance with the survey design specified in the CCAMLR Draft Manual for Bottom Trawl Surveys in the Convention Area.

(5) Each vessel participating in the directed fishery for *C. gunnari* shall have a scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, aboard throughout all fishing activities within the fishing season.

(m) Vessels of, and persons subject to the jurisdiction of, the United States shall not fish for *D. eleginoides* and *D. mawsoni* in statistical 58.4.3 from November 4, 1995, through June 30, 1996.

(n) Vessels of, and persons subject to the jurisdiction of, the United States shall not fish for deep-water species other than *D. eleginoides* and *C. gunnari* in statistical division 58.5.2 from November 4, 1995, through June 30, 1996.

4. In § 380.24, the introductory text to paragraphs (a) through (d) are revised, paragraph (e) is removed, paragraphs (f) and (g) are redesignated as paragraphs (e) and (f) respectively, the introductory text to redesignated paragraphs (e), (f), (f)(1), and redesignated paragraphs (f)(2) and (f)(3) are revised, and paragraphs (e)(4), (e)(5) and (f)(4) are added to read as follows:

§ 380.24 Reporting requirements.

(a) Five-day catch and effort reporting is established for catches in the Convention Area greater than 5 mt taken during fishing for research purposes; for *D. eleginoides* in statistical subareas 48.3 and 48.4; and for *L. squamifrons* in statistical division 58.4.4 as follows:

* * * * *

(b) Ten-day catch and effort reporting is established for fishing for any member of the crab group (Order Decapoda, Suborder *Reptania*) in statistical area 48; *C. gunnari* in statistical division 58.5.2; and *D. eleginoides* in statistical division 58.5.2 as follows:

* * * * *

(c) Monthly catch and effort reporting is established for *E. superba* in statistical area 48 and in statistical subdivision 58.4.2; and for *E. carlsbergi* in statistical subarea 48.3 as follows:

* * * * *

(d) Monthly effort and biological data reporting for trawl fisheries is established for *E. carlsbergi* in statistical subarea 48.3; for the bycatch of any cephalopod, crustacean or fish species other than *E. carlsbergi* in the directed fishery for *E. carlsbergi* in statistical area 48.3; for *L. squamifrons* in statistical division 58.4.4; for the bycatch of *D. eleginoides* in the directed fishery for *L. squamifrons* in statistical division 58.4.4. for *C. gunnari* in statistical division 58.5.2; and for *D. eleginoides* in statistical division 58.5.2 as follows:

* * * * *

(e) Monthly effort and biological data *D. eleginoides* for fishing in statistical subareas 48.3 and 48.4 from November 3, 1995, through November 1, 1996, is established as follows:

* * * * *

(4) Haul-by-haul data must be reported to the Assistant Administrator For Fisheries, NOAA (AA) not later than the end of following month on the CCAMLR fine-scale catch and effort data form for longline fisheries (Form C2, latest version). These data shall include numbers of seabirds and marine mammals of each species caught and released or killed.

(5) Completed forms B2 and C2 must be conveyed by cable, telex, rapidfax, or other appropriately timely method to the number or address specified in the vessel's permit, and must include the vessel's name, permit number, month of reporting, and the catch in metric tons (to the nearest tenth of a metric ton). If no restricted species are taken during a reporting period, the operator must submit a form showing no catch or bycatch.

(f) Reporting for crab fishing (Order *Decapoda*, Suborder *Reptania*) in statistical area 48 is required as follows:

(1) The following data must be reported to the CCAMLR Data Manager by August 31, 1996 for catches taken between November 4, 1995, and July 31, 1996; by September 30, 1996 for catches taken between July 31, 1996 and August 31, 1996; and by November 17, 1996 for catches taken between August 31, 1996 and November 1, 1996:

* * * * *

(2) Data gathered during the experimental harvest regime described in § 380.23 (k) shall be reported to CCAMLR Data Manager upon the completion of each phase of the experimental harvest.

(3) Every 10-day reporting of catch and effort data, as described in paragraph (b), is required during normal fishing between Phase 1 and Phase 2, and between Phase 2 and Phase 3 of the experimental harvest regime. Reports shall be submitted to the CCAMLR Data Manager.

(4) Copies of all data provided directly to the CCAMLR Data Manager shall be concurrently provided to the AA to the number or address specified in the vessel's permit, and must include the vessel's name, permit number, month of reporting, and catch in metric tons (to the nearest tenth of a metric ton).

5. In § 380.26, paragraphs (b) through (i) are revised to read as follows:

§ 380.26 Closures.

* * * * *

(b) The fishery for *D. eleginoides* in statistical subarea 48.3 shall close on August 31, 1996, or when the total catch reaches 4,000 mt, whichever comes first.

(c) The fishery for *D. eleginoides* in statistical subarea 48.4 shall close on August 31, 1996, reaching the total allowable catch for *D. eleginoides* in statistical subarea 48.3, or when the total catch reaches 28 mt, whichever comes first.

(d) The fishery for *C. gunnari* in statistical subarea 48.3 shall close on November 1, 1996, or when the total catch reaches 1,000 mt, whichever comes first.

(e) The directed fishery for E. carlsbergi in statistical subarea 48.3 shall close November 1, 1996, or when the bycatch of any of the species *G. gibberifrons, C. aceratus, N. rossii, L. squamifrons, P. georgianus*, or *P.B. guntheri* reaches its bycatch limit, or when the total catch of *E. carlsbergi* reaches 109,000 mt, whichever comes first.

(f) The directed fishery for *E. carlsbergi* in the Shag Rocks region of statistical subarea 48.3 shall close November 1, 1996, or when the bycatch of any of the species named in paragraph (e) of this section reaches its bycatch limit, or when the total catch of *E. carlsbergi* reaches 14,500 mt, whichever comes first.

(g) The fishery for *L. squamifrons* on Lena Bank in statistical division 58.4.4 shall close November 1, 1996, or when the total catch reaches 715 mt, whichever comes first.

(h) The fishery for *L. squamifrons* on Ob Bank in statistical division 58.4.4 shall close November 1, 1996, or when the total catch reaches 435 mt whichever comes first.

(i) The fishery for *C. gunnari* and *D. eleginoides* in statistical division 58.5.2 shall close the earlier of June 30 or until precautionary catch limits of 311 mt and 297 mt, respectively, are reached, whichever comes first.

6. Section 380.27 is revised to read as follows:

§ 380.27 Gear restrictions.

(a) Longline fishing or longline fishing research in the Convention area (except for waters adjacent to the Kerguelen and Crozet Islands and the Prince Edward islands) shall be conducted as follows:

(1) Fishing operations shall be conducted in such a way that the baited hooks sink as soon as possible after they are put in the water. Only thawed bait shall be used.

(2) For vessels using the Spanish method of longline fishing, weights should be released before line tension occurs; whenever possible weights of at least 6 kg mass should be used, spaced at 20 m intervals.

(3) Longlines shall be set only at night (between the times of nautical twilight). During longline fishing at night, only the minimum ship's lights necessary for safety shall be used. Wherever possible, setting of lines should be completed at least 3 hours before dawn (to reduce loss of bait to/catches of white-chinned petrels).

(4) The dumping of offal shall be avoided as far as possible while longlines are being set or hauled; if discharge of offal is unavoidable, the discharge must take place on the opposite side of the vessel to that where longlines are set or hauled.

(5) Every effort should be made to ensure that birds captured alive during longlining are released alive and that wherever possible hooks are removed without jeopardizing the life of the bird concerned.

(6) A streamer line designed to discourage birds from settling on baits during deployment of longlines shall be towed. Specification of the streamer line is given in Figure 2 to part 380. Details of the construction relating to the number and placement of swivels may be varied so long as the effective sea surface covered by the streamers is no less than that covered by the currently specified design. Details of the device dragged in the water in order to create tension in the line may also be varied.

(7) The streamer line is to be suspended at the stern from a point approximately 4.5 m above the water and such that the line is directly above the point where the baits hit the water.

(8) The streamer line is to be approximately 3 mm diameter, have a minimum length of 150 m and have a device at the end to create tension so that the main line streams directly behind the ship even in cross winds.

(9) At 5 m intervals commencing from the point of attachment to the ship five branch streamers each comprising two strands of approximately 3 mm cord should be attached. The length of the streamer should range between approximately 3.5 m nearest the ship to approximately 1.25 m for the fifth streamer. When the streamer line is deployed the branch streamers should reach the sea surface,and periodically dip into it as the ship heaves. Swivels should be placed in the streamer line at the towing point, before and after the point of attachment of each branch streamer and immediately before any weight placed at the end of the streamer line. Each branch streamer should also have a swivel at its attachment to the streamer line.

(10) Variations in the design of the streamer lines may be tested on vessels carrying two observers, at least one appointed in accordance with the CCAMLR Scheme of International Scientific observation, providing that all other elements of this paragraph are complied with. The streamer lines under test should be constructed and operated taking full account of principles developed by the CCAMLR Working Group on Incidental Mortality Arising from Longline fishing (WG-IMALF) and available from the AERG. Testing should be carried out independently of actual commercial fishing and in a manner consistent with § 380.30 on exploratory fisheries.

(b) The use of net monitor cables on harvesting vessels in the Convention Area (Figure 1 to part 380) is prohibited.

(c) The use of bottom trawls in the directed fishery for *C. gunnari* in statistical subarea 48.3 from November 3, 1995, through November 1, 1996, is prohibited.

(d) The use of any gear, except trawls, in the fisheries for *C. gunnari* and *D. eleginoides* in statistical subdivision 58.2.2 is prohibited.

(e) The use of any gear, except longlines, in the directed fishery for *D. eleginoides* in statistical subarea 48.3 from November 3, 1995, through November 1, 1996, is prohibited.

(f) The use of any gear, except longlines, in the directed fishery for *D. eleginoides* in statistical subarea 48.4 from November 3, 1995, through November 1, 1996, is prohibited.

(g) The use of any gear, except crab pots (traps), in the crab fishery in statistical area 48 from November 3, 1995, through November 1, 1996, is prohibited.

Figure 2 [Redesignated as Appendix A to Part 380; Amended]

7. Figure 2 to part 380 is redesignated as Appendix A to part 380 and Table 2 to newly redesignated Appendix A is removed.

Figure 3 [Redesignated as Appendix B to Part 380]

8. Figure 3 to part 380 is redesignated as Appendix B to part 380 and revised to read as follows:

Appendix B to Part 380—Data Requirements for the Crab Fishery in Statistical Subarea 48.3

I. Catch and Effort Data

(1) *Cruise Descriptions*: Cruise code, vessel code, permit number, year.

(2) *Pot Descriptions*: Pot shape, dimensions, mesh size, funnel attitude, number of chambers, presence of an escape port.

(3) *Effort Descriptions*: Date, time, latitude, and longitude of the start set, compass bearing of the set, total number of pots set, spacing of pots on the line, number of pots lost depth, soak time, bait type.

(4) *Catch Descriptions*: Retained catch in numbers, bycatch of all species, incremental record number for linking with sample information.

II. Data Requirements for Bycatch Species in the Exploratory Crab Fishery in Statistical Subarea 48.3

Species	Data requirements
Dissostichus eleginoides.	Numbers and estimated total weight.
Notothenia rossii	Numbers and estimated total weight.
Other species	Estimated total weight.

III. Biological Data

For these data, crabs are to be sampled from the line hauled just prior to noon, by collecting the entire contents of a number of pots spaced at intervals along the line so that between 35 and 50 specimens are represented in the subsample.

(1) *Cruise Descriptions*: Cruise code, vessel code, permit number.

(2) *Sample Descriptions*: Date, position at the start of the set, line number.

(3) *Data*: Species, sex, length of at least 35 individuals, presence/absence of rhizocephalan parasites, record of the destination of the crab (kept, discarded, destroyed), record of the pot numbers from which the crab come.

9. In part 380, the words "Figure 2" and "Figure 3" are removed wherever they appear and the words "Appendix A" and "Appendix B" are added in their place, respectively.

10. A new Figure 2 is added to part 380 to read as follows:

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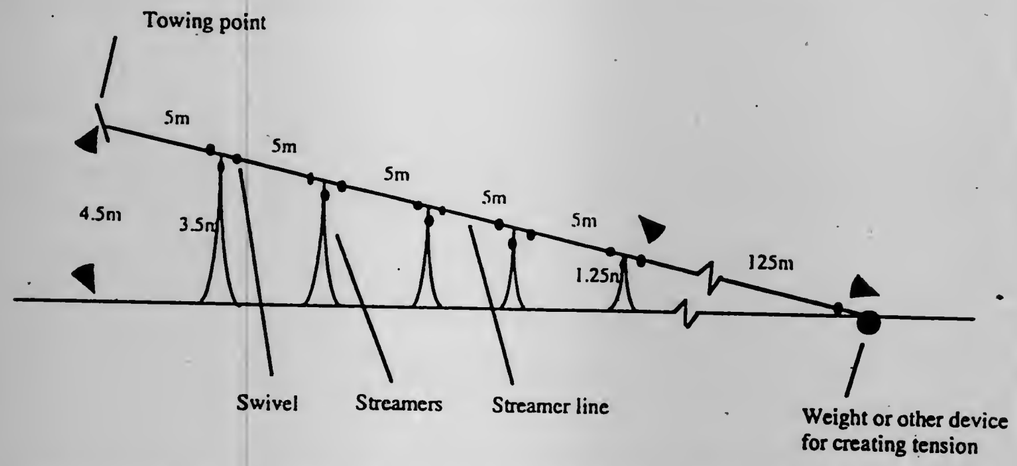


Figure 2 to Part 380—The Use of Streamer Lines to Minimize the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research Operations in the Convention Area (see § 380.27 for specifications on use)

[FR Doc. 96–4756 Filed 2–29–96; 3:19 pm]
BILLING CODE 3510–22–C

50 CFR Part 650

[Docket No. 9602226047–6047–01; I.D. 020696B]

RIN 0648–AI37

Atlantic Sea Scallop Fishery; Reduction in Crew Size Limit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 7 to the Atlantic Sea Scallop Fishery Management Plan (FMP). This framework adjustment permanently reduces the maximum crew size from nine to seven.

EFFECTIVE DATE: March 11, 1996.

ADDRESSES: Copies of Amendment 4, its regulatory impact review and the final regulatory flexibility analysis contained therein, the final supplemental environmental impact statement (SEIS), and the supporting documents for Framework Adjustment 7 are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

The final rule implementing Amendment 4 to the FMP was published on January 19, 1994 (59 FR 2777), with implementation of most measures on March 1, 1994. The amendment retained the FMP's objectives to: (1) Restore adult stock abundance and age distribution; (2) increase yield-per-recruit for each stock; (3) evaluate plan research, development, and enforcement costs; and (4) minimize adverse environmental impacts on sea scallops.

Amendment 4 changed the primary management strategy from a meat count (size) control to effort control. The amendment controls total fishing effort through limited access permits and a schedule of reductions in allowable days at sea (DAS). Supplemental measures include limits on increases in vessel fishing power to control the amount of fishing pressure and to help control the size of scallops landed, gear restrictions, and limits on the number of crew members. Additionally, the amendment includes a framework procedure for adjusting the management measures in the FMP. Initially, the maximum crew size was set at nine.

In response to very high levels of recruitment documented in the Mid-Atlantic resource area, the New England Fishery Management Council (Council) recommended lowering the maximum crew size from nine to seven, because a smaller crew lowers shucked-scallop production. This reduced production is exacerbated if a vessel operator is targeting small scallops. Thus, this restriction provides an incentive to target larger scallops in order to obtain the same amount of yield from fewer scallops. Framework Adjustments 1 (59 FR 36720, July 19, 1994) and 4 (59 FR 36720, April 5, 1995), temporarily lowered the maximum crew size from nine to seven. The current framework adjustment 4 expires on February 29, 1996.

Because the conditions that justified lowering the maximum crew size to seven still exist, the Council recommended reducing the maximum crew-size permanently from nine to seven, until changed by plan amendment or other action.

In Framework 1, the 7–member crew limit was expected to increase yield-per-recruit, which would be realized during 1995 and 1996. No preliminary 1995 data are available to document that year's yield-per-recruit results. Yields would increase and spawning stock biomass would be greatly enhanced, but only during 1994. With an extension of the 7–member crew limit, similar results are expected as analyzed in Framework 1. Increased yield-per-recruit would occur during 1997 and 1998, and spawning stock biomass would be enhanced during 1996.

The extension of the 7–member crew limit is expected to reduce total landings of sea scallops, resulting in an increase in ex-vessel prices in 1996. The increase in ex-vessel prices should mitigate the decrease in landings. During 1997 and 1998, landings and ex-vessel revenues are expected to increase. After 1998, the projected impact of the 7–member crew limit on ex-vessel revenues is projected to be negligible when compared with projected ex-vessel revenues associated with the 9–member crew limit.

The adjustments being made through the framework process (§ 650.40) are within the scope of analyses contained in Amendment 4 and the final SEIS. Supplemental rationale and analyses of expected biological effects, economic impacts, impacts on employment, and safety concerns are contained within the supporting documents for Framework Adjustments 1, 4, and 7 (see **ADDRESSES**).

The Council requests publication of the management measures as a final rule after considering the required factors stipulated in the regulations governing the sea scallop fishery (§ 650.40) and providing supporting analysis for each factor considered. The Director, Northeast Region, NMFS concurs with the Council's recommendation and has determined that Framework 7 should be published as a final rule.

NMFS is adjusting the scallop regulations following the procedure for framework adjustments established by Amendment 4 and codified in 50 CFR part 650, subpart C. The Council followed this procedure when making adjustments to the FMP, by developing and analyzing the actions over the span of a minimum of at least two Council meetings, on December 13, 1995, and January 25, 1996.

Comments and Responses

In accordance with the regulations, public comments on the framework adjustment were taken by the Council during its December 13, 1995, and January 25, 1996, meetings. Four members of the industry and two fishing organizations commented at the December and January meetings. The comments were in support of the recommended adjustment and urged timely implementation to avoid a hiatus when the current restriction expires.

Written comments were also received from four individuals. One comment was in favor of the 7–member crew limit and requires no response. The remaining comments and responses follow.

Comment 1: All commenters questioned the safety aspects of the maximum crew size.

Response: The analysis included in the Council's framework package suggests that, based on recent U.S. Coast Guard information (contained in a November 8, 1995, letter, with enclosure, from Captain P. J. Howard) about the scallop fishery, there is no relationship between the size of the crew and accidents aboard scallop vessels. Fishers have stated publicly that most New Bedford scallop boats carried less than seven crew members in the winter of 1994–95, simply because scallop stocks were low. Many fishers have also stated that there is nothing inherently dangerous about using a 7–person crew and that safety ultimately depends upon on-board safety practices rather than crew size. The Coast Guard reported to the Council in the above-mentioned November 8 letter and enclosure that there was no statistical evidence that the number of personnel casualties has increased due to the maximum crew restrictions.

Comment 2: The 7–person crew limit discriminates against those who have larger, more expensive vessels. Crew size limits, if required, should be based on horsepower, vessel length, tonnage, and size of gear fished.

Response: The Council's policy is to treat all vessels, within the full-time, part-time, and occasional categories, equally. The 7–person crew limit is based on the typical full-time vessel, which generally includes the largest, most expensive vessels and is intended to reduce the incentive to target small scallops. Although there may be smaller, less expensive vessels in the full-time category that already use 7–person crews, or less, it is unlikely due to their limited crew that these vessels pursue small scallops.

Comment 3: Wheelhouses are unmanned during haulbacks because of the 7–person crew limit.

Response: Members of the Council's Sea Scallop Industry Advisory Committee have reported that unmanned wheelhouses are a practice found regardless of crew size, in both dredges and groundfish trawls. The First Coast Guard District reported to the Council that this is a common practice among many fishing vessel operators and not unique to the scallop fishery. In any event, the decision not to man the wheelhouse is not a result of the 7–member crew limit but rather an operational decision of the captain.

Adherence to Framework Procedure Requirements

Neither data availability nor the need to have the 7–person crew limit in place for the entire harvesting season were factors considered by the Council in its decision to recommend publishing the adjusted management measures as a final rule.

The public had adequate opportunity to express opinions at several meetings. The crew-limit issue was discussed at the Scallop Oversight Committee meeting held in East Boston, MA, on November 6, 1995, and at the Council meetings held in Danvers, MA, on December 13, 1995, and January 24 and 25, 1996.

There is an immediate need to protect the resource by reducing the crew limit to seven before March 11, 1996, when the current temporary crew limit expires. Unnecessary delay in effecting this adjustment would significantly increase the danger to the new incoming year-class during early spring.

The Council will continue to evaluate the effectiveness of this crew-size limit. This continuing evaluation will be made on the basis of landings data and enforcement activity.

NMFS has determined that the framework adjustment to the FMP that this rule would implement is consistent with the national standards, other provisions of the Magnuson Fishery Conservation and Management Act, and other applicable law. NMFS, in making that determination, has taken into account the information, views, and comments received during the comment period of the FMP's framework adjustment mechanism in 50 CFR 650.40.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

In that this regulation is not subject to the requirement to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law, this rule is exempt from the requirement to prepare an initial or final regulatory flexibility analysis under the Regulatory Flexibility Act. As such, none has been prepared.

This rule is implemented in compliance with all procedural requirements established by the Administrative Procedure Act. The Council requests publication of the management measures as a final rule after considering the required factors stipulated under the Framework Measures in the final rule for Amendment 4 and providing supporting analysis for each factor considered. Public meetings held by the Council to discuss the management measures implemented by this rule provided adequate opportunity for public comment to be considered. The Assistant Administrator (AA) for

Fisheries, NOAA, finds there is good cause to waive prior and an opportunity for public comment notice under 5 U.S.C. 553(b)(B) as such notice and public procedure thereon are unnecessary.

The AA finds that under 5 U.S.C. 553(d) the need to protect the resource by having the regulation in place by March 1, 1996, when the current temporary crew-size limit expires, constitutes good cause to waive the 30-day delay in effectiveness of this rule. Delay in effecting this crew-size limit would significantly increase the danger to the new incoming year class of sea scallops during early spring.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: February 28, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 650 is amended as follows:

PART 650—ATLANTIC SEA SCALLOP FISHERY

1. The authority citation for part 650 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 650.21, paragraph (c) is revised to read as follows:

§ 650.21 Gear and crew restrictions.

* * * * *

(c) *Crew restrictions.* Limited access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, when not docked or moored in port, unless participating in the small dredge program specified in paragraph (e) of this section, or otherwise authorized by the Director, Alaska Region, NMFS.

* * * * *

[FR Doc. 96–5017 Filed 2–29–96; 4:00 pm]

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50 CFR Part 651

[Docket No. 960226048–6048–01; I.D. 020996A]

RIN 0648–AI79

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 14 to Amendment 5 of the Northeast Multispecies Fishery Management Plan (FMP). This rule implements a spring closure for gillnet gear in the Revised Mid-coast Closure Area and establishes a new Cape Cod South Closure Area off Southern New England. The intent of this rule is to further reduce harbor porpoise mortality in the Gulf of Maine sink gillnet fishery to meet the New England Fishery Management Council's (Council) bycatch reduction goals.

EFFECTIVE DATES: The addition of § 651.32(a)(1)(iv) and Figure 9 is effective March 8, 1996. The amendment to § 651.32(a)(1)(ii)(B) is effective March 25, 1996.

ADDRESSES: Copies of Amendment 5, its regulatory impact review (RIR) and the final regulatory flexibility analysis (FRFA) contained with the RIR, its final supplemental environmental impact statement (FSEIS), and Framework Adjustment 14 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, 508–281–9272.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing Amendment 5 to the FMP were published on March 1, 1994 (59 FR 9872). One of Amendment 5's principal objectives was to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery by the end of Year 4 of plan implementation to a level not to exceed 2 percent of the population, based on the best available estimates of abundance and bycatch. In addition, Amendment 5 established a requirement that by September 15 of each year, the Council's Harbor Porpoise Review Team (HPRT) complete an annual review of harbor porpoise bycatch and abundance data in the Gulf of Maine and evaluate the impacts of other measures that reduce harbor porpoise take. It also encouraged the HPRT to make recommendations on other "reduction-of-take" measures to achieve the harbor porpoise mortality reduction goals and established a framework procedure for timely implementation of appropriate measures.

With the issuance of implementing regulations for Framework Adjustment 4 to Amendment 5 of the Northeast Multispecies Fishery Management Plan (59 FR 26972, May 25, 1994), a series of time and area closures to sink gillnet gear were implemented based on an analysis by the Northeast Fisheries Science Center (NEFSC) of the seasonal and spatial distribution of harbor porpoise and sink gillnet fishing activity in the Gulf of Maine.

This action is necessary in order to make further progress toward the Council's bycatch reduction goals for Year 2 (1995–96) of the Program. The target adopted by the Council was a 40 percent reduction in the bycatch or approximately 780 animals. Due in part to the increased bycatch rates in the Mid-coast region, incidental take of harbor porpoise for that year may still exceed 1,500 animals. This information and the fact that porpoise takes had also been well documented in late March, April and May of 1995 in the Revised Mid-coast Closure Area creates a situation in which total bycatch for the 1994–95 season had likely exceeded target levels. Prior to the proposed framework adjustment, there have been no closures implemented to reduce entanglement as animals move northward into the northern Gulf of Maine and the Bay of Fundy in the spring.

This final rule implements a spring closure from March 25 through April 25 in the Revised Mid-coast Closure Area (see Figure 8), establishes an additional closure area—the Cape Cod South Closure Area—south of Massachusetts and Rhode Island (Figure 9), and implements the closure of that area from March 8 through March 30 in 1996 and from March 1 through March 30 in subsequent years. These closure areas will be monitored to determine whether displaced gillnet activity, if it occurs, results in increased porpoise takes.

Revised Mid-coast Closure Area—Figure 8

This area is closed from March 25 through April 25 for each fishing year.

Point	Latitude	Longitude
MC1	42°30′ N	Massachusetts shoreline.
MC2	42°30′ N.	70°15′ W.
MC3	42°40′ N.	70°15′ W.
MC4	42°40′ N.	70°00′ W.
MC5	43°00′ N.	70°00′ W.
MC6	43°00′ N.	69°30′ W.
MC7	43°15′ N.	69°30′ W.
MC8	43°15′ N.	69°00′ W.
MC9	Maine shoreline	69°00′ W.

Cape Cod South Closure Area—Figure 9

This area is closed from March 1 through March 30 of each fishing year, except in 1996 when the area is closed from March 8 through March 30.

Point	Latitude	Longitude
CCS1	RI shoreline	71°45′ W.
CCS2	40°40′ N.	71°45′ W.
CCS3	40°40′ N.	70°30′ W.
CCS4	MA shoreline	70°30′ W.

Comments and Responses

The Council has considered information, views and comments made at a meeting of its Marine Mammal Committee (MMC) held in Saugus, MA on November 28, 1995; at an informal meeting between Council staff and southern New England gillnet fishermen in Tiverton, RI on December 7, 1995; and at a full Council meeting (the first meeting for initiating the framework action) held in Danvers, MA on December 13, 1995. Documents summarizing the Council's proposed action, the biological analyses upon which this decision was based and potential economic impacts were available for public review 5 days prior to the second meeting required under the framework adjustment process. Written comments were accepted up to and at the January 25, 1996, Council meeting in Danvers, MA, at which time the decision to finalize this framework adjustment was made. Several individuals commented on the Council's proposal.

Comment 1: A gillnet representative requested that the Massachusetts Bay Closure Area continue to be effective from March 1 through March 30.

Response: The MMC proposed no change to that closure area. The Council and NMFS agree and the Massachusetts Bay Closure will remain as is, i.e., closed from March 1 through March 30.

Comment 2: A gillnet fisherman from Rhode Island asked that the Cape Cod South Closure Area period be from the last 2 weeks in February through the first 2 weeks in March.

Response: The analysis prepared by the NEFSC indicates that the harbor porpoise takes for that area are highest in March. There have been no takes observed in February.

Comment 3: A member of the HPRT recommended that the spring Mid-coast area closure be longer than just April.

Response: The MMC recommended, and the Council and NMFS agree, that effecting the Revised Mid-coast Closure Area from March 25 through April 25 will provide the maximum harbor porpoise bycatch reduction while minimizing the loss of fishing opportunity to harvesters using gillnet gear, as determined by the NEFSC analysis. The Council may seek to adjust this closure period at some future date.

Comment 4: A member of the HPRT recommended that the spring closure in Massachusetts Bay be extended from February 1 through March 30. The commenter also noted that it may be necessary to extend the closures in the Mid-coast and Cape Cod South Closure Areas once additional data are available.

Response: The Council considered several changes to the Massachusetts Bay area closure times and determined that it had no basis for making a change. All area closures and experimental fisheries will be evaluated annually by the HPRT and recommendations for adjustments will be made as necessary.

Comment 5: A member of the HPRT commented that the Council action represented the best that could be done until more data become available to gauge the effectiveness of previous closures.

Response: The Council will consider modifying its harbor porpoise bycatch reduction goal to match the MMPA goal established under the 1994 amendments.

The Council also received several comments pertaining to an experimental fishery using small acoustic devices called pingers to deter harbor porpoise bycatch in the sink gillnet fishery. The Council forwarded these comments to the Regional Director requesting that such an experimental fishery be established in the closure areas during the closure periods. The Regional Director is considering such fisheries, which may mitigate negative economic impacts of the closures for some fishermen. The Council considered the public comments pertaining to this framework adjustment prior to making its recommendation to the Regional Director under the framework provisions for the FMP.

Adherence to Framework Procedure Requirements

Data were not available for a proposed rule, and the need for regulations to be in place for an entire fishing season is not an issue for this particular action. The public was provided adequate opportunity to express opinions at several meetings. These opportunities were provided at the Council's MMC held in Saugus, MA, on November 28, 1995; at an informal meeting between Council staff and southern New England gillnet fishermen in Tiverton, RI, on December 7, 1995; and at two full Council meetings held in Danvers, MA, on December 13, 1995, and January 25, 1996. There is an immediate need to provide more protection for the harbor porpoise beyond the existing management measures. There will be further evaluation of these management measures based on landings data, enforcement activity, and an expected experimental fishery. NMFS has determined that the framework adjustment to the FMP that this rule would implement is consistent with the national standards, other provisions of the Magnuson Conservation and Management Act, and other applicable law. NMFS, in making that determination, has taken into account the information, views, and comments received during the comment period of the FMP's framework adjustment mechanism in 50 CFR 651.40.

Classification

In that this regulation is not subject to the requirement to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law, this rule is exempt from the requirement to prepare an initial or final regulatory flexibility analysis under the Regulatory Flexibility Act. As such, none has been prepared.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant Administrator for Fisheries, NOAA (AA) finds there is good cause to waive prior notice and an opportunity for public comment under 5 U.S.C. 553(b)(B) as such notice and public procedure thereon are unnecessary. Public meetings held by the Council to discuss the management measures implemented by this rule provided adequate prior notice and an opportunity for public comment to be heard and considered. The AA finds that under 5 U.S.C. 553(d), the need to have the closure of the Revised Mid-coast Closure Area effective March 25 and the closure of the Cape Cod South Closure Area effective as soon as possible after March 1 while at the same time providing fishermen adequate notice to comply, to avoid delay that would likely impede the achievement of harbor porpoise mortality reduction goals, constitutes good cause to waive a portion of the 30-day delay in effectiveness of this regulation. Accordingly, the closure of the Revised Mid-coast Closure Area is effective March 25, 1996, and the closure of the Cape Cod South Closure Area is effective March 8, 1996.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 28, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 651.32 the first sentence of paragraph (a)(1)(ii)(B) is revised and paragraph (a)(1)(iv) is added to read as follows:

§ 651.32 Sink gillnet requirements to reduce harbor porpoise takes.

(a) * * *
(1) * * *
(ii) * * *

(B) Notwithstanding any other provisions in this part, from March 25 through April 25 of each fishing year the restrictions and requirements specified in the introductory text of paragraph (a) of this section apply to an area known as the Revised Mid-coast Closure Area, which is an area bounded by straight lines connecting the following points in the order stated (see Figure 8 of this part). * * *

(iv) *Cape Cod South Closure Area.* From March 6 through March 30 of fishing year 1996 and from March 1 through March 30 of subsequent fishing years, the restrictions and requirements specified in the introductory text of paragraph (a) of this section apply to an area known as the Cape Cod South Closure Area, which is an area bounded by straight lines connecting the following points in the order stated (see Figure 9 of this part).

CAPE COD SOUTH CLOSURE AREA

Point	Latitude	Longitude
CCS1	RI shoreline	71°45′ W.
CCS2	40°40′ N	71°45′ W.
CCS3	40°40′ N	70°30′ W.
CCS4	MA shoreline	70°30′ W.

* * * * *

3. Figure 9 is added to part 651 to read as follows:

BILLING CODE 3510-22-W

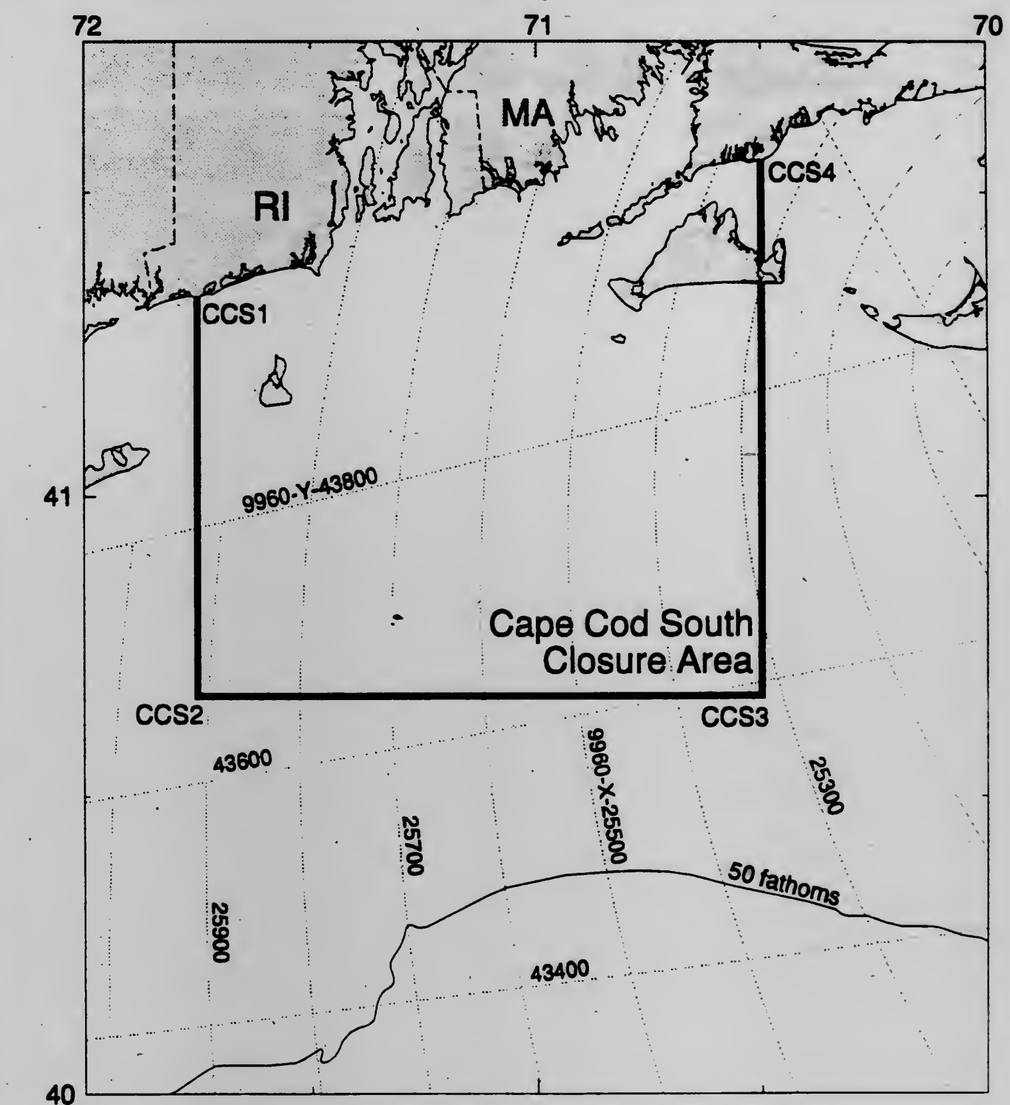


Figure 9 to Part 651—Cape Cod South Closure Area for the Protection of Harbor Porpoise

[FR Doc. 96–5016 Filed 3–1–96; 9:26 am]
BILLING CODE 3510–22–W

50 CFR Part 655

[Docket No. 951211295–6035–02; I.D. 111595C]

RIN 0648–XX37

Atlantic Mackerel, Squid, and Butterfish Fisheries; Final 1996 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final specifications for the 1996 Atlantic mackerel, squid, and butterfish fisheries.

SUMMARY: NMFS issues the final initial specifications for the 1996 fishing year for Atlantic mackerel, squid, and butterfish (SMB).

EFFECTIVE DATE: January 1, 1996, through December 31, 1996.

ADDRESSES: Copies of the Environmental Assessment are available from the Northeast Regional Office, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Copies of the Mid-Atlantic Fishery Management Council's quota paper and recommendations are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, 508–281–9104.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 655. These regulations require NMFS to publish a document specifying the initial annual amounts of the initial optimum yield (IOY) as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species. Procedures for determining the initial annual amounts are found in § 655.22.

These specifications are unchanged from the proposed specifications that were published in the **Federal Register** on December 21, 1995 (60 FR 66249). The following table contains the final 1996 initial specifications for Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish.

FINAL INITIAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 1996 (mt)

Specifications	Squids		Atlantic Mackerel	Butterfish
	Loligo	Illex		
Max OY[1]	44,000	30,000	[2]N/A	16,000
ABC[3]	30,000	30,000	1,175,500	7,200
IOY	25,000	21,000	105,500	5,900
DAH	25,000	21,000	[4]105,500	5,900
DAP	25,000	21,000	50,000	5,900
JVP	0	0	35,000	0
TALFF	0	0	0	0

[1] Max optimum yield (OY) as stated in the FMP.
[2] Not applicable, see the FMP.
[3] IOY can increase to this amount.
[4] Contains 20,500 mt projected recreational catch based on the formula contained in the regulations (50 CFR part 655).

This document also announces four special conditions that would affect any foreign joint venture fishery for Atlantic mackerel, should one occur in 1996: (1) Joint ventures are allowed south of 37°30′ N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Regional Director, Northeast Region, NMFS, will monitor fishing operations and manage harvest to reduce impacts on marine mammals in prosecuting the Atlantic mackerel fishery; (3) the mackerel OY may be increased during the year as described under § 655.21(b)(2)(v), in consultation with the Council, but the total should not exceed 125,500 mt; and (4) applications from a particular nation for a joint venture for 1996 will not be approved until the Regional Director determines, based on an evaluation of performances, that the nation's purchase obligations for previous years have been fulfilled. There were no comments received regarding these conditions.

Comment and Response

One comment was received during the public comment period concerning the proposed IOY specifications for both *Illex* and *Loligo* squid.

Comment: The commenter urged the rejection of the proposed specifications for the squids due to the differences of 5,000 mt and 9,000 mt between the IOY and the ABC specifications for the *Loligo* and *Illex* fisheries, respectively. The commenter believed that both IOYs should be set at 30,000 mt, the ABC, because the proposed IOYs would be deleterious to New England vessels wishing to harvest squid.

Response: The Council provided a firm biological rationale for IOY reductions, noting that the 17th Northeast Regional Stock Assessment Workshop concluded that both squids have an annual lifespan and are susceptible to recruitment overfishing. Furthermore, the IOY is not allocated by region and New England vessels have the same harvest rights as others participating in the fishery. Should events occur in these fisheries that would require additional IOY, the regulations at § 655.22 give the Regional Director authority to raise or lower IOY if it is beneficial to the Nation.

Classification

This action is authorized by 50 CFR part 655, and these final specifications are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 27, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 96–4999 Filed 3–4–96; 8:45 am]

BILLING CODE 3510–22–P

50 CFR Part 661

[Docket No. 950426116–5116–01; I.D. 022796C]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Inseason Adjustment, Point Arena, CA, to the U.S.-Mexican Border

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS announces that the retention of coho salmon will be prohibited in the recreational salmon fishery in the area from Point Arena, CA, to the U.S.-Mexican border when the season opens on March 2, 1996. This adjustment is intended to ensure conservation of coho salmon.

DATES: Effective 0001 hours local time, March 2, 1996, until the effective date of the 1996 management measures, as published in the *Federal Register*. Comments will be accepted through March 15, 1996.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070; or Hilda Diaz-Soltero, Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213. Information relevant to this action has been compiled in aggregate form and is available for public review during business hours at the office of the Director, Northwest Region, NMFS (Regional Director).

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140, or Rodney R. McInnis, 310–980–4030.

SUPPLEMENTARY INFORMATION: In the 1995 annual management measures for ocean salmon fisheries, NMFS announced 1996 recreational salmon seasons opening earlier than May 1, 1996 (60 FR 21746, May 3, 1995). The 1996 recreational fishery in the area between Point Arena, CA, and the U.S.-Mexican border is scheduled to open on March 2 (the nearest Saturday to March 1) for all salmon, unless an evaluation indicates low coho abundance in 1996, in which case inseason action may be taken to prohibit retention of coho salmon.

The best available information on February 6 indicated that the 1996 preseason index abundance estimate for Oregon Production Index (OPI) area coho stocks is 427,300 fish, about 4 percent below the 1995 preseason estimate of 443,000 fish. In 1994 and 1995, preseason abundance estimates for Oregon coastal natural (OCN) coho salmon, an OPI area stock component, were at record low levels, resulting in no coho retention south of Cape Falcon, OR, when commercial and recreational salmon seasons opened May 1. Due to the continuing low preseason abundance estimates for OPI coho and OCN coho in 1996, it is necessary to modify the recreational fishery in the area between Point Arena, CA, and the U.S.-Mexican border such that it will open on March 2 for all salmon except coho.

Modifications in the species which may be caught and landed during specific seasons and the establishment or modification of limited retention regulations are authorized by regulations at 50 CFR 661.21(b)(1)(ii). All other restrictions that apply to this fishery remain in effect as announced in the annual management measures.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the California Department of Fish and Game regarding this adjustment. The State of California will also prohibit retention of coho salmon in the recreational fishery in State waters adjacent to this area of the exclusive economic zone. Because of the need for immediate action to conserve coho salmon, NMFS has determined that good cause exists to take this action without affording a prior opportunity for public comment. This action does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 29, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–5100 Filed 2–29–96; 4:00 pm]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 960129019–6019–01; I.D. 022396G]

Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Ocean Perch in the Central Aleutian District

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the total allowable catch (TAC) of Pacific ocean perch in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 29, 1996, until 12 midnight, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907 586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) for the BSAI established 2,571 metric tons (mt) as the initial TAC catch of Pacific ocean perch for the Central Aleutian District. At the same time, the directed fishery for Pacific ocean perch in the Central Aleutian District was closed to directed fishing under § 675.20(a)(8) in order to reserve amounts anticipated to be needed for incidental catch in other fisheries. NMFS has determined that as of February 10, 1996, 2,571 mt remain unharvested.

The Director, Alaska Region, NMFS, has determined that the 1996 TAC for Pacific ocean perch in the Central Aleutian District has not been reached. Therefore, NMFS is terminating the previous closure and is reopening directed fishing for Pacific ocean perch in the Central Aleutian District.

All other closures remain in full force and effect.

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 27, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–4997 Filed 2–28–96; 3:58 pm]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 960129019–6019–01; I.D. 022396F]

Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Ocean Perch in the Eastern Aleutian District

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the total allowable catch (TAC) of Pacific ocean perch in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 29, 1996, until 12 midnight, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907 586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) for the BSAI established 2,571 metric tons (mt) as the initial total allowable catch of Pacific ocean perch for the Eastern Aleutian District. At the same time, the directed fishery for Pacific ocean perch in the Eastern Aleutian District was closed to directed fishing under § 675.20(a)(8) in order to reserve amounts anticipated to be needed for incidental catch in other fisheries. NMFS has determined that as of February 10, 1996, 2,485 mt remain unharvested.

The Director, Alaska Region, NMFS, has determined that the 1996 TAC for Pacific ocean perch in the Eastern Aleutian District has not been reached. Therefore, NMFS is terminating the previous closure and is reopening directed fishing for Pacific ocean perch in the Eastern Aleutian District.

All other closures remain in full force and effect.

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 27, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–4996 Filed 2–28–96; 3:58 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 61, No. 44

Tuesday, March 5, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

Investment and Deposit Activities

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed Rule; extension of comment period.

SUMMARY: On November 29, 1995 (60 FR 61219) the National Credit Union Administration (NCUA) published a rule regarding natural person credit union investment and deposit activities. The comment period for this proposed rule was to have expired on March 28, 1996. To encourage additional comments, the NCUA Board has decided to extend the comment period on the proposed rule for an additional 90 days. The extended comment period now expires June 26, 1996.

DATES: The comment period has been extended and now expires June 26, 1996. Comments must be received on or before June 26, 1996.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. Post comments on NCUA's electronic bulletin board by dialing (703) 518–6480. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: David M. Marquis, Director, Office of Examination and Insurance, (703) 518–6360, or Daniel Gordon, Senior Investment Officer, (703) 518–6620, or at the above address.

By the National Credit Union Administration Board on February 23, 1996.

Becky Baker,

Secretary of the Board.

[FR Doc. 96–5110 Filed 3–4–96; 8:45 am]

BILLING CODE 7535–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 405

Trade Regulation Rule on Misbranding and Deception as to Leather Content of Waist Belts

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission ("Commission") announces the commencement of a rulemaking proceeding for the trade regulation rule on Misbranding and Deception as to Leather Content of Waist Belts ("Leather Belt Rule" or "Rule"). The proceeding will address whether or not the Leather Belt Rule should be repealed. The Commission invites interested parties to submit written data, views, and arguments on how the Rule has affected consumers, businesses and others, and on whether there currently is a need for the Rule. This document includes a description of the procedures to be followed, an invitation to submit written comments, a list of questions and issues upon which the Commission particularly desires comments, and instructions for prospective witnesses and other interested persons who desire to participate in the proceeding.

DATES: Written comments must be submitted on or before April 4, 1996.

Notifications of interest in testifying must be submitted on or before April 4, 1996. If interested parties request the opportunity to present testimony, the Commission will publish a document in the **Federal Register** stating the time and place at which the hearings will be held and describing the procedures that will be followed in conducting the hearings. In addition to submitting a request to testify, interested parties who wish to present testimony must submit, on or before April 4, 1996, a written comment or statement that describes the issues on which the party wishes to testify and the nature of the testimony to be given.

ADDRESSES: Written comments and requests to testify should be submitted to Office of the Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number (202) 326–2506. Comments and requests to testify should be identified at "16 CFR Part 405—Comment—Leather Belt Rule" and "16 CFR Part 405—Request to Testify—Leather Belt Rule," respectively. If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: Lemuel Dowdy or Edwin Rodriguez, Attorneys, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2981 or (202) 326–3147.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41–58, and the Administrative Procedure Act, 5 U.S.C. 551–59, 701–06, by this Notice of Proposed Rulemaking ("NPR") the Commission initiates a proceeding to consider whether the Leather Belt Rule should be repealed or remain in effect.[1] The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to determine their effectiveness, impact, cost and need. This proceeding also responds to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations.

II. Background Information

The Leather Belt Rule was promulgated on June 27, 1964, to remedy deceptive practices involving misrepresentations about the leather content of waist belts that are not offered for sale as part of a garment. The Rule prohibits representations that belts not made from the hide or skin of an animal are made of leather or that belts are made of a specified animal hide or skin when such is not the case. In addition, the Rule requires that belts

[1] In accordance with section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted this NPR to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives, 30 days prior to its publication in the **Federal Register**.

made of split leather, and ground, pulverized or shredded leather bear a label or tag disclosing the kind of leather of which the belt is composed. The Rule also requires that non-leather belts having the appearance of leather bear a tag or label disclosing their composition or disclosing that they are not leather.

As part of its continuing review of its trade regulation rules to determine their current effectiveness and impact, the Commission published a **Federal Register** notice[2] on March 27, 1995,[3] asking questions about the benefits and burdens of the Rule to consumers and industry. The request for comments elicited ten comments.[4] Six comments were from consumers[5] and four from leather or leather goods manufacturers.[6]

The consumer comments expressed continuing support for the Rule, contending that its disclosure requirements help consumers make informed purchasing decisions. One industry comment supported the Rule for the same reason.[7] These commenters stated that the Rule helps consumers identify belts made of different types of cowhide leather, such as top grain leather, and split leather.[8] In addition, the comments stated that the disclosures required by the Rule allow consumers to identify belts made of vinyl, plastic, polyurethane, paper and other synthetic materials that can be made to look like leather.[9] The consumer commenters stated that, without the required disclosures, consumers cannot be certain of the quality of the leather used in belts, or that belts are made of leather at all.[10]

Three comments recommended that the Commission amend the Rule to allow the use of the term "bonded leather" when a leather good is made of ground, pulverized, or shredded leather that is bonded with an adhesive.[11] Seven comments supported the continuation of the Leather Belt Rule as it currently exists.[12] Two comments from industry members expressed support for consolidating the Rule and the Guides into one set of guidelines that apply to all finished leather goods.[13]

On September 18, 1995, the Commission announced that, to eliminate unnecessary duplication, it had rescinded the three separate guides for various leather products[14] and sought comment on one set of proposed, consolidated guidelines: the Guides for Select Leather and Imitation Leather Products.[15] Because the proposed Guides would cover belts, the Commission published, on the same day, an Advance Notice of Proposed Rulemaking ("ANPR") stating that it had tentatively determined that a separate Leather Belt Rule is no longer necessary, and seeking comments on the proposed repeal of the Rule.[16] In accordance with section 18 of the FTC Act, 14 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives.

The ANPR comment period closed on October 18, 1995. The Commission received two comments in response to the ANPR.[17] One of these comments supports retention of the existing Leather Belt Rule. The commenter believes that rescission of the Rule may decrease the accuracy of the labeling of waist belts, making the selection and purchase of belts more difficult for consumers.[18] The other comment supports consolidating the Rule into one set of guidelines governing disclosures of the leather content of leather goods, and recommends that the term "bonded leather" be allowed by those guidelines.[19]

After reviewing the comments submitted, the Commission has determined that the benefits of the Rule are retained through the inclusion of belts in the proposed Guides for Select Leather and Imitation Leather Products. While repealing the Rule would eliminate the Commission's ability to obtain civil penalties for any future misrepresentations of the leather content of belts, the Commission has determined that it would not seriously jeopardize the Commission's ability to act effectively. Any significant problems that might arise could be addressed on a case-by-case basis, administratively under Section 5 of the FTC Act, 15 U.S.C. 45, or through court actions under Section 13(b), 15 U.S.C. 53(b), in federal district court. Prosecuting serious or knowing misrepresentations in district court allows the Commission to seek injunctive relief as well as equitable remedies, such as redress or disgorgement.

The Commission believes that the proposed Guides serve the public interest better than maintaining a Rule for leather belts and separate Guides for various other leather products. Accordingly, the Commission has determined that a separate Leather Belt Rule is not necessary. The Commission therefore seeks comments on the proposed repeal of the Leather Belt Rule.

[2] 60 FR 15725. The Commission's Office of the Secretary has assigned document number B172445 to this notice. All comments submitted in response to this notice are sequentially numbered and filed under number B172445 in the public record, starting with number B17244500001. Any request for copies or inspection of the comments to this notice should refer to document number B172445.

[3] On the same date, the Commission published a **Federal Register** notice soliciting comment on its Industry Guides for luggage, shoes, and Ladies' handbags. 60 FR 15724. *See* Guides for the Luggage and Related Products Industry, 16 CFR Part 24; Guides for Shoe Content Labeling and Advertising, 16 CFR Part 231; and Guides for the ladies' Handbag Industry, 16 CFR Part 247.

[4] For purposes of this NPR, we cite these ten comments using the name of the commenter and the sequential number of the comment in parentheses, without repeating the B172445 prefix.

[5] The following is a list of the consumer commenters: Stephen Toso (1), Ross E. Kettering (2), Matt Anderson (3), Marilyn Raeth (4), James A. McGarry (5), and Lenna Mae Gara (8).

[6] The following is a list of comments received from industry members: Enger Kress Company (manufactures mens and ladies wallets and occasionally leather belts) (6), Cromwell leather Company, Inc. (produces leather that is sold to producers of finished leather goods) (7), Humphreys, Inc. (manufacturer of leather belts) (9), and Leather Industries of America, Inc. (trade association representing the leather tanning industry) (10).

[7] Enger Kress (6).

[8] Toso (1), Kettering (2), Anderson (3), Raeth (4), McGarry (5), and Gara (6).

[9] Toso (1) states that the use in belts of synthetic materials that look like leather makes it difficult to determine the true leather content of belts. The comment gives as an example the use of "P.U. Glove Leather" where the "P.U." stands for polyurethane. Kettering (2) also opposes rescinding the Leather Belt Rule because of the difficulty consumers face in identifying belts that are made of real leather when manufacturers try to pass off vinyl or other materials as leather; the comment states that the Rule's disclosures allow consumers to make informed choices by identifying the leather contents of belts. Anderson (3), p.2.

[10] Toso (1) states that the discount stores are growing and that they will be tempted to deceive consumers by claiming that belts are made a higher quality leather than they actually are. Raeth (4) expresses the concern that manufacturers may pass off cheaper, inferior goods to consumers if the Rule is eliminated.

[11] Cromwell (7), Humphreys (9), and Leather Industries (10). These commenters recommend that the Rule include a prohibition on the use of the term "bonded leather" unless at least 75% of the fibers in the product are leather. This issue has been addressed in the proposed Guides, which allow the use of the term "bonded leather" if certain required disclosures are made.

[12] Toso (1), Kettering (2), Anderson (3), Raeth (4), McGarry (5), Enger Kress (6), and Gara (8).

[13] Cromwell (7) and Leather Industries (10).

[14] 60 FR 48027.

[15] 60 FR 48056. In particular the Commission sought comment as to whether the consolidated Guides should cover leather, or imitation leather, products in addition to shoes, luggage, handbags, and belts. The deadline for comment on the proposed Guides was October 18, 1995, but it was subsequently extended until November 15, 1995. 60 FR 54316 (Oct. 23, 1995).

[16] 60 FR 48070. The Commission's Office of the Secretary has assigned document number B183789 to the ANPR. All comments submitted in response to the ANPR are sequentially numbered and filed under document number B183789 in the public record, starting with number B18378900001. The comments submitted in response to the ANPR are identified in this NPR by the name of the commenter and the sequential number, without repeating the document number.

[17] The comments were submitted by Larry E. Gundersen (1), a consumer, and Humphreys Inc. (2), a manufacturer of leather belts.

[18] Gundersen (1).

[19] Humphreys Inc. (2). See footnote 11 above regarding the term "bonded leather."

III. Rulemaking Procedures

The Commission finds that the public interest will be served by using expedited procedures in this proceeding. First, there do not appear to be any material issues of disputed fact to resolve in determining whether to repeal the Rule. Second, the use of expedited procedures will support the Commission's goal of eliminating obsolete or unnecessary regulations without an undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views and arguments on whether the Commission should repeal the Rule.

The Commission, therefore, has determined, pursuant to 16 CFR 1.20, to use the procedures set forth in this notice. These procedures include: (1) Publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposal to repeal the Rule; (3) holding an informal hearing, if requested by interested parties; (4) obtaining a final recommendation from staff; and (5) announcing final Commission action in a notice published in the **Federal Register.**

IV. Invitation To Comment and Questions for Comment

Interested persons are requested to submit written data, views or arguments on any issue of fact, law or policy they believe may be relevant to the Commission's decision on whether to repeal the Rule. The Commission requests that commenters provide representative factual data in support of their comments. Individual firms' experiences are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Commenters opposing the proposed repeal of the Rule should explain the reasons they believe the rule is still needed and, if appropriate, suggest specific alternatives. Proposals for alternative requirements should include reasons and data that indicate why the alternatives would better protect consumers from unfair or deceptive acts or practices under section 5 of the FTC Act, 15 U.S.C. 45.

Although the Commission welcomes comments on any aspect of the proposed repeal of the Rule, the Commission is particularly interested in comments on questions and issues raised in this Notice. All written comments should state clearly the question or issue that the commenter is addressing.

Before taking final action, the Commission will consider all written comments timely submitted to the Secretary of the Commission and testimony given on the record at any hearings scheduled in response to requests to testify. Written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Federal Trade Commission, Public Reference Room, Room H–130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, DC 20580, telephone number (202) 326–2222.

Questions

(1) Is the misrepresentation of the leather contents of belts by manufacturers and distributors of belts still a significant problem in the marketplace?

(2) What benefits do consumers derive from the Rule?

(3) Should the Rule be kept in effect or should it be repealed?

(4) How would repealing the Rule affect the benefits experienced by consumers?

(5) How would repealing the Rule affect the benefits and burdens experienced by firms subject to the Rule's requirements?

(6) Are there any other federal or state laws or regulations, or private industry standards, that eliminate the need for the Rule?

(7) Are the proposed Guides for Select Leather and Imitation Leather Products likely to provide all or most of the benefits now provided by the Rule?

(8) How, if at all, would repeal of the Rule, and the resulting elimination of civil penalty enforcement actions now available to enforce it, likely affect the accuracy of the advertising, labeling, or marketing of leather belts?

V. Requests for Public Hearings

Because there does not appear to be any dispute as to the material facts or issues raised by this proceeding and because written comments appear adequate to present the views of all interested parties, a public hearing has not been scheduled. If any person would like to present testimony at a public hearing, he or she should follow the procedures set forth in the **DATES** and **ADDRESSES** sections of this notice.

VI. Preliminary Regulatory Analysis

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the proposed repeal of the Rule on small businesses.[20] The analysis must contain, as applicable, a description of the reasons why action is being considered, the objectives of and legal basis for the proposed action, the class and number of small entities affected, the projected reporting, recordkeeping and other compliance requirements being proposed, any existing federal rules which may duplicate, overlap or conflict with the proposed action, and any significant alternatives to the proposed action that accomplish its objectives and, at the same time, minimize its impact on small entities.

A description of the reasons why action is being considered and the objectives of the proposed repeal of the Rule have been explained elsewhere in this Notice. Repeal of the Rule would appear to have little or no effect on any small business. The Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule.

In light of these reasons, the Commission certifies, pursuant to section 605 of RFA, 5 U.S.C. 605, that if the Commission determines to repeal the Rule that action will not have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, however, the Commission requests comments on this issue. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis.

VII. Paperwork Reduction Act

The Leather Belt Rule imposes third-party disclosure requirements that constitute "information collection requirements" under the Paperwork

[20] Section 22 of the FTC Act, 15 U.S.C. 57b–3, also requires the Commission to issue a preliminary regulatory analysis relating to proposed rules when the Commission publishes a notice of proposed rulemaking. The Commission has determined that a preliminary regulatory analysis is not required by section 22 in this proceeding because the Commission has no reason to believe that repeal of the Rule: (1) will have an annual effect on the national economy of $100,000,000 or more; (2) will cause a substantial change in the cost or price of goods or services that are used extensively by particular industries, that are supplied extensively in particular geographical regions, or that are acquired in significant quantities by the Federal Government, or by State or local governments; or (3) otherwise will have a significant impact upon persons subject to the Rule or upon consumers.

Reduction Act, 44 U.S.C. 3501 *et seq.* Accordingly, repeal of the Rule would eliminate any burdens on the public imposed by these disclosure requirements.

VIII. Additional Information for Interested Persons

A. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

B. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission's Rules of Practice, 16 CFR 1.18(c), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications relating to such oral communications. Memoranda prepared by a Commissioner or Commissioner's advisor setting forth the contents of any oral communications from members of Congress shall be placed promptly on the public record. If the communication with a member of Congress is transcribed verbatim or summarized, the transcript or summary will be placed promptly on the public record.

List of Subjects in 16 CFR Part 405

Advertising, Clothing, Labeling, Leather and leather products industry, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–5043 Filed 3–4–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 54, 312, 314, 320, 330, 601, 807, 812, 814, and 860

[Docket No. 93N–0445]

Financial Disclosure by Clinical Investigators; Reopening of Comment Period and Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period and notice of meeting.

SUMMARY: The Science Board to the Food and Drug Administration (FDA), an FDA advisory committee, will hold an open committee meeting to discuss the proposed rulemaking on Financial Disclosure by Clinical Investigators, which published in the **Federal Register** of September 22, 1994. At the same time, FDA is reopening the comment period for the proposed rule. The proposed rule would require that the sponsor of any drug, biological product, or device submit certain information concerning the compensation to, and financial interests of, any clinical investigator conducting clinical studies to determine whether that product meets the marketing requirements specified by the agency. FDA is taking these actions in order to obtain additional comment on whether the provision on "significant payments of other sorts" should be eliminated from the proposed rule.

DATES: The comment period is reopened until April 29, 1996. Those desiring to make formal presentations to the Science Board must notify the contact person before March 14, 1996, and submit a brief statement of the general nature of the evidence or arguments they may wish to present, and the names and addresses of proposed participants. Each presenter will be limited in time and not all requests to speak may be able to be accommodated. All written statements submitted in a timely fashion will be provided to the board.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. The meeting will be held at the Sheraton National Hotel, North Ballroom, 900 South Orme St. (Columbia Pike and Washington Blvd.), Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Mary Gross, Office of External Affairs (HF–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD, 20857, 301–827–3440; or the FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area) Science Board to the Food and Drug Administration, code 12603.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 22, 1994 (59 FR 48708), FDA proposed regulations to require that the sponsor of any drug, biological product, or device submit certain information concerning the compensation to, and financial interests of any clinical investigator conducting clinical studies to determine whether that product meets the marketing requirements specified by the agency. The agency is proposing to require that sponsors either certify to the absence of certain financial interests of clinical investigators or disclose those financial interests when clinical studies are submitted to FDA in support of product marketing.

FDA has asked the Science Board to discuss, at the March 29, 1996, meeting proposed § 54.4(a)(2)(ii), which would require disclosure by clinical investigators of "significant payments of other sorts" from sponsors. The proposed definition of such payments is "* * * payments that exceed $5,000 (e.g., grants to fund ongoing research, compensation in the form of equipment on retainers for ongoing consultation, or honoraria) or that exceed 5 percent of the total equity in a publicly held and widely traded company." FDA specifically seeks discussion of the following issues:

(1) In proposing to require disclosure of any significant equity interest held by a clinical investigator in the sponsor, the agency has defined a significant equity interest as "any ownership interest, stock options, or other financial interest whose value cannot be readily determined through reference to public prices, or any equity interest in a publicly traded corporation that exceeds 5 percent of total equity." Is 5 percent equity interest in a publicly traded corporation an appropriate threshold to trigger disclosure of financial information to FDA? Should a threshold dollar amount also be specified? If so, what might be a reasonable threshold amount?

(2) Are there financial arrangements that may be overlooked that could affect study outcome if FDA eliminates the provision entitled "significant payments of other sorts," from the proposed rule?

(3) Does it help to narrow the scope of the provision "significant payments of other sorts" by raising the current payment level that would trigger disclosure of this information from $5,000 to $50,000 annually? Are there other options that allow retention of the provision but effectively narrow its scope?

These issues will be discussed at the March 29, 1996, advisory committee meeting. Because FDA wants to provide adequate time for the submission of all relevant information related to this important public health issue, FDA is reopening the comment period.

Interested persons may, on or before April 29, 1996, submit to Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

For further information on the administrative procedure for holding the Science Board to the Food and Drug Administration meeting and the general function of this advisory committee, see the document entitled "Advisory Committee; notice of meeting," that published in the **Federal Register** of February 28, 1996 (61 FR 7117).

Dated: February 27, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–5116 Filed 3–4–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, and 1316

[DEA Number 139P]

RIN Number 1117–AA33

Consolidation, Elimination, and Clarification of Various Regulations

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Proposed rule.

SUMMARY: DEA proposes to amend the language in title 21, Code of Federal Regulations, parts 1300 through 1316. In concert with the President's National Performance Review, Regulatory Reinvention Initiative (NPR), DEA proposes to consolidate, eliminate, and clarify many of its regulations to address areas of confusion frequently raised by the pharmaceutical, chemical, and health care industries; and to correct inaccurate citations, office designations, and typographical errors.

DATES: Written comments or objections must be received by July 3, 1996.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: A comprehensive review has been conducted of title 21, Code of Federal Regulations (21 CFR), parts 1300 through 1316. Title 21 contains the rules and regulations by which DEA implements the Controlled Substances Act, the Narcotic Addict Treatment Act, the Controlled Substances Import/Export Act, the Chemical Diversion and Trafficking Act, and the Domestic Chemical Diversion Control Act. These regulations are designed to detect and deter the diversion of controlled substances and listed chemicals. DEA undertook this review to update, simplify, and consolidate its regulations in concert with the President's Regulatory Reform Initiative under the NPR; to clarify areas of confusion which have been raised by the pharmaceutical, chemical, and health care industries; and to correct inaccurate citations, office designations and typographical errors. In this effort, DEA intends to reduce some of the regulatory burden on the affected industries. The changes proposed herein build upon DEA's longstanding commitment to internal self-examination, to respond to technological advances, and to work with industry to develop the most effective and least intrusive methods of preventing and detecting the diversion of controlled substances and listed chemicals.

Among the changes being proposed, which are further described below, are the consolidation into a chart of the frequency of registration, coincident activities, and fee schedules; allowing manufacturers more latitude to set individual labeling standards; reducing the frequency of ARCOS reports from monthly to quarterly, and reducing the number of transactions to be reported by manufacturers; permitting some pharmacies to file prescriptions without marking them with a red "C", to transfer prescriptions for refill purposes more than once, and to retain faxed prescriptions as original documents for patients in home/hospice care; and combining and streamlining various reporting, recordkeeping, and inventory requirements.

The following summarizes the changes proposed to be made to each part of the regulations:

Part 1300

DEA is proposing to move the definitions set out in 21 CFR parts 1301 through 1313 into a new part 1300. This will provide a single source for definition of the terms used in 21 CFR parts 1301 through 1313, avoiding the need for duplicate definitions in the various parts. The definitions set out in Part 1316 will remain listed in that part due to the specificity of the definitions to the subject matter of the part.

Part 1301

DEA is proposing to amend 21 CFR, part 1301 to provide a simple and clear set of requirements concerning the registration of manufacturers, distributors, dispensers, importers and exporters of controlled substances. In this regard, DEA is proposing to incorporate into 21 CFR, part 1301 the requirements relating to the registration of importers and exporters which were previously set out in 21 CFR, part 1311.

In order to provide easier reference to the primary regulations regarding registration (including separate registration for independent activities, coincident activities, the application forms and fees required for registration and reregistration, and the registration period for the various activities) DEA is proposing to amend 21 CFR, part 1301 to list such requirements in table form. Use of the table form allows for "at-a-glance" reference to the fundamental regulations concerning the registration requirements, rather than requiring reference to multiple pages of text in separate sections.

In addition to revising the format of 21 CFR, part 1301, DEA is proposing to transfer the definitions previously listed in § 1301.02 to the proposed new part 1300, and to remove §§ 1301.27, 1301.29, and 1301.53, relating to civil defense authorities, provisional registration of narcotic treatment programs (NTP), and waiver and modification of rules in hearings, respectively. Sections 1301.27 and 1301.29 are obsolete and § 1301.53 is duplicated by § 1316.44. With respect to civil defense authorities, DEA will continue to work with the appropriate Federal and state agencies to insure that the proper policies and procedures are in place to deal with the availability and

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security of controlled substances during emergencies. Further, the fee exemption provisions (formerly in § 1301.13 and now in § 1301.21) and the provision regarding when a registrant may apply for reregistration (formerly in § 1301.31(b) and now in § 1301.13(b)) have been amended. The fee exemption provision has been amended to provide that Federal, state or local officials who must obtain an individual practitioner registration in order to carry out their official duties are exempted from the fees for registration and reregistration. This action is being taken to insure that those individual government practitioners who are not able to practice under the registration number of a hospital or clinic are subject to the same exemption as those government physicians carrying out official duties in such facilities. The reregistration provision has been amended to allow that a person registered as either a bulk manufacturer of Schedule I or II controlled substances or an importer of Schedule I or II controlled substances may apply to be reregistered no more than 120 days prior to the expiration date of his/her registration. The current limitation of no more than 60 days prior to the expiration date does not allow sufficient time prior to the applicant's expiration date to satisfy the notice and comment and hearing procedures required under §§ 1301.33 and 1301.34 of this chapter. The additional 60 days should provide sufficient time to allow for satisfaction of those requirements for most applications prior to the expiration date. However, in no circumstances will DEA grant such an applicant reregistration more than 60 days prior to the applicant's registration expiration date.

DEA is also proposing to incorporate the language found in § 1307.12 of this chapter into the coincident activities table and the language found in § 1307.14 into § 1301.62. Additionally, DEA is proposing to combine §§ 1301.62 and 1301.63 into one section and revise the new section to allow that a registration cannot be assigned or transferred unless specific, written authority has been granted by the Administration.

The proposed changes will result in a substantial restructuring of part 1301, including the redesignation of most of the sections within the part. Only the sections relating to the Security Requirements (§ 1301.71–1301.76) and Employee Screening—Non-Practitioners (§ 1301.90–1301.93) are unchanged. For the sake of clarity, DEA is proposing in the regulatory text to remove the old §§ 1301.11 through 1301.63 and replace them with new §§ 1301.11 through 1301.52. While the appearance of the new sections is significantly changed, readers should keep in mind that there are only minor changes to the specific regulatory requirements contained in the old parts 1301 and 1311.

Part 1302

This part contains the requirements governing the labeling and packaging of controlled substances pursuant to sections 305 and 1008(e) of the Act (21 U.S.C. 825 and 958(e)). The proposed changes made in part 1302 would move the definitions into Part 1300 for ease of reference and, in general, allow more latitude to the registrant in the design of labels for products which contain controlled substances. While continuing to require an identifiable marking on labels of a commercial container which contains a controlled substance, the proposed changes would allow the registrant to meet the requirement by its own design of a label and placement of the required symbol. Further, language regarding labeling requirements at the inception of the Controlled Substances Act (on May 1, 1971) has been proposed to be removed as no longer necessary. The effective date for implementing the labeling requirements for substances transferred or added to a schedule is proposed to be established in the final order. Finally, the requirement for sealing of a commercial package is proposed to be amended to include all controlled substances, making it consistent with the Federal Food, Drug, and Cosmetic Act, and to allow more latitude in the design of the seal, while retaining the primary purpose of a seal which is to detect tampering of the commercial package.

Part 1303

This part contains the procedures governing the establishment of production and manufacturing quotas for basic classes of controlled substances listed in Schedules I and II. Changes are being proposed in this part to correct inaccurate citations and typographical errors and to move the definitions to part 1300 for ease of reference.

Part 1304

This part sets forth inventory and recordkeeping requirements for registrants who handle controlled substances. In accordance with 21 U.S.C. 827 and 958(e), registrants who manufacture, distribute, or dispense controlled substances must maintain complete and accurate records of such substances manufactured, received, sold, delivered or otherwise disposed of. Modifications to several sections of part 1304 are being proposed to eliminate the requirement for reports which are outdated, to remove redundancies in recordkeeping and inventory requirements, to change obsolete references, and to correct typographical errors.

Section 1304.02 is proposed to be revised to remove all definitions to Part 1300.

Section 1304.03 is proposed to be revised to combine researcher activities into one paragraph, thereby eliminating redundancies in the recordkeeping requirements.

Section 1304.04 is proposed to be revised to correct a typographical error in paragraph (a), to update language in paragraph (e), and amend paragraph (h)(2) to permit pharmacies with automatic data processing systems to file Schedule III–V prescriptions without marking them with a red "C".

Section 1304.11 is proposed to be revised to combine all general requirements for inventories thereby eliminating redundancies. Paragraphs (b) and (c) were combined and the frequency statement was revised to permit the biennial inventory to be taken on any date as long as it is within two years of the previous biennial inventory; the requirements contained in §§ 1304.12, 1304.13, 1304.14, 1304.15, 1304.16, 1304.17, 1304.18 and 1304.19 were combined and included in 1304.11. In § 1304.12, the reference to the May 1, 1971 date is proposed to be deleted. Paragraph references are proposed to be changed to reflect revisions.

Section 1304.21 paragraph (a): The May 1, 1971 date is proposed to be deleted and paragraph references changed to reflect revisions.

Sections 1304.22, 1304.23, 1304.24, 1304.25 and 1304.26 are proposed to be combined. Paragraph references are proposed to be changed to reflect revisions.

Sections 1304.31 through 1304.38 are proposed to be revised, combined, or removed to delete obsolete forms and references, and reflect changes to manufacturer reporting from existing regulations to conform with current practice. Reporting requirements are proposed to be revised to reflect changes in frequency of reporting (from monthly to quarterly) and to reduce the number of transactions (i.e., quality control samples, manufacturing waste, etc.) required to be reported by manufacturers.

Part 1305

This part contains the procedures governing the issuance, use, and preservation of order forms pursuant to section 308 of the Act (21 U.S.C. 828). The changes proposed to be made in part 1305, in general, delete redundant requirements and move the definitions into part 1300 for ease of reference. Section 1305.05, Power of Attorney, is amended only to correct certain citations; however, the existing Power of Attorney format is repeated in its entirety. Additionally, the Official Order Form for Schedule I & II Controlled Substances contains instructions that need not be repeated in the regulations. Regulations requiring reporting of lost or stolen Order Forms are modified to standardize reporting to local DEA offices of responsibility.

Part 1306

This part contains the specific regulatory requirements for the issuance, filling, and filing of prescriptions. Changes to this part are being proposed to reduce regulatory requirements for pharmacies. Additional changes are being made to correct typographical errors in the existing text.

Section 1306.02 contains a number of definitions which are proposed to be moved to part 1300 for ease of reference.

Section 1306.11 establishes the requirements for prescriptions for controlled substances listed in Schedule II. Under § 1306.11, the length of time a pharmacy is permitted to obtain a written prescription to cover an emergency oral prescription for a Schedule II controlled substance is 72 hours. Many pharmacists have expressed the view that there often is not enough time to meet their obligation within the time permitted. DEA is therefore proposing to extend the time allowed to obtain the written prescription from 72 hours to 7 days.

This same section permits pharmacists to dispense Schedule II narcotics to patients in Long Term Care Facilities (LTCFs) pursuant to prescriptions transmitted by facsimile. The facsimile then acts as the original written prescription for recordkeeping purposes. DEA is proposing to add a paragraph to § 1306.11 to give pharmacies the same authority to fill Schedule II narcotic prescriptions transmitted by facsimile for patients in a home hospice setting as exists for patients in LTCFs. The physician issuing the prescription will be required to note that the patient is a hospice patient on the face of the faxed prescription.

Section 1306.13 contains the rules for the partial filling of Schedule II prescriptions. A prescription for a Schedule II controlled substance written for a patient in a LTCF or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units. Section 1306.13(b) requires that prior to any subsequent partial filling the pharmacist must determine that the additional partial fillings are necessary. DEA is proposing to remove this requirement.

The requirements for Schedule III and IV controlled substances are currently delineated separately from those in Schedule V. In order to more clearly differentiate those requirements that are identical from those that are not, where appropriate, identical rules affecting the controlled substances in Schedule V are proposed to be merged with those for Schedule III and IV. DEA is proposing to add Schedule V references to § 1306.21 and delete the corresponding § 1306.31. The language in these two sections is virtually identical and, therefore, will have no effect on the requirements currently in place.

Several typographical errors and an obsolete term are proposed to be corrected in § 1306.22.

Section 1306.23, which currently allows for the partial filling of Schedule III and IV prescriptions, is proposed to be expanded to add Schedule V controlled substances.

Section 1306.25, which refers to the rules for filing Schedule HI and IV prescriptions contained in § 1304.04(h), is proposed to be removed and replaced by a new paragraph (§ 1306.24(c)).

Section 1306.26 establishes the rules for the transfer between pharmacies of prescription information for Schedules III, IV, and V controlled substances for refill purposes. A principal requirement for transferring prescription information is that the original prescription may be transferred on a one time basis only. This limitation was and is extremely important in preventing illegal and unauthorized refills from being dispensed. The prevention of diversion through unauthorized refills is significantly impacted by the ability of pharmacists and investigators to locate and confirm the authenticity of original prescription records. However, in situations where the prescription information, to include the entire refill history, is immediately accessible to the pharmacist, some exceptions to the one time only rule are proposed.

DEA is proposing to permit pharmacies sharing a real-time, on-line electronic database, to transfer prescription information for refill purposes for Schedule III, IV, and V controlled substances as often as refills are authorized by law and the original prescription. In addition to the requirements currently imposed on prescription transfers, it is proposed that a pharmacy filling a transferred prescription will be required to record the dates of all previous refills.

Part 1307

This part is a miscellaneous part which addresses the application of state law and other Federal Law, exceptions to regulations, special exceptions for manufacture and distribution of controlled substances, disposal of controlled substances, and special exempt persons. Changes to this part are being proposed to correct citation errors and omissions and to consolidate similar requirements. Section 1307.01 contains a definition which is proposed to be moved to part 1300. DEA proposes to remove § 1307.12 and include its provisions in the chart of coincident activities contained in Part 1301. DEA proposes to incorporate § 1307.14, Distribution upon discontinuance or transfer of business, with the redesignated § 1301.52, Transfer of registration. Section 1307.21 is proposed to be amended so that the requirements for reporting controlled substances to be disposed of will be uniform for all registrants regardless of whether or not they file reports to ARCOS.

Part 1308

This part sets forth the schedules of controlled substances and mechanisms for scheduling, rescheduling, or decontrolling a substance. Section 1308.04 is proposed to be removed as unnecessary since it is outdated. The following tables are proposed to be removed which contain information given out routinely to the industry and is available upon request: Section 1308.24—Exempt Chemical Preparations; § 1308.26—Excluded Veterinary Anabolic Steroid Implant Products; § 1308.32—Exempted prescription products; and § 1308.34—Exempt Anabolic Steroid Products. The sections will contain a reference on the procedure to request a copy of the tables.

Sections 1308.43, 1308.46, and 1308.47 relating to hearings are proposed to be removed as their requirements are already contained in part 1316. Proposed to be added to Section 1308.42 is a sentence which provides information on where to locate additional information on hearings related to this part.

Part 1309

Part 1309 is proposed to be amended by moving the definitions set out in § 1309.02 into part 1300. This will

provide a centralized source for all definitions for parts 1301 through 1313.

Further, §§ 1309.53 and 1309.57 are proposed to be removed, as they duplicate § 1316.44 and 1316.67 respectively. Sections 1309.54 through 1309.56 are proposed to be redesignated as §§ 1309.53 through 1309.55. In addition, §§ 1309.21 (a) and (b), 1309.25 (a) and (b), and 1309.71(a)(2) are proposed to be amended to change the citation from § 1310.01(f)(1)(iv) to § 1300.01(c)(28)(i)(D).

Part 1310

Part 1310 is proposed to be amended by moving the definitions set out in § 1310.01 into part 1300. Sections 1310.05 and 1310.08 will be amended to remove references to definitions in § 1310.01. Section 1310.10(a) is proposed to be amended to change the citation from § 1310.01(f)(1)(iv) to § 1300.01(c)(28)(i)(D) and §§ 1310.14(a) and 1310.15(d) are proposed to be amended to change the citation from § 1310.01(f)(1)(iv)(A) to § 1300.01(c)(28)(i)(D)(1). Finally, § 1310.09 is proposed to be removed, as this section was applicable only during the initial chemical registration period.

Part 1311

This part is proposed to be removed and reserved. The requirements contained in part 1311 have been incorporated into the proposed revisions to part 1301.

Part 1312

This part contains the procedures governing the importation, exportation, transshipment, and intransit shipment of controlled substances. Changes are being proposed in this part to correct inaccurate citations and typographical errors, to update office designations and addresses, and to move the definitions to part 1300 for ease of reference.

Part 1313

Part 1313 is proposed to be amended by moving the definitions set out in § 1313.02 into part 1300. In addition, §§ 1313.15, 1313.21 and 1313.24 are proposed to be amended to remove references to the definitions in § 1313.02.

Part 1316

This part contains the regulatory requirements and authorities related to Administrative Inspections, Protection of Researchers and Research Subjects, Enforcement Proceedings, Administrative Hearings, Seizure, Forfeiture, and Disposition of Property and Expedited Forfeiture Proceedings for Certain Property. Changes to this part are being proposed to correct citation errors and omissions and to consolidate similar requirements. DEA proposes to revise § 1316.13 to replace the present schedule of inspections with a system where the frequency of inspections will be determined by the history of the registrant, potential for diversion, or the amount of controlled substances found in the illicit market. DEA will focus inspection resources on diversion prevention and problem areas, reducing the intended frequency of inspections of registrants with a demonstrated record of compliance. This revision only applies to distributors of controlled substances listed in Schedules II through V and manufacturers of controlled substances listed in Schedules III through V. The yearly inspection for manufacturers of controlled substances listed in Schedules I and II and distributors of controlled substances listed in Schedule I remains unchanged. This proposal is intended to reduce the expenditure of time and effort, both on the part of DEA and the registrants who have shown a history of compliance in the past and continue to comply with the requirements of the CSA.

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed regulation and by approving it certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. This proposed regulation will streamline the current regulations set out in title 21, Code of Federal Regulations, parts 1300 to end and to provide regulatory relief to registrants.

This proposed regulation has been drafted in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Managment and Budget has reviewed this proposed rule and determined that it is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review.

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Parts 1300–1316

Administrative practice and procedure, Drug traffic control, Security measures, Exports, Imports, Labeling, Packaging and containers, Reporting requirements, Prescription drugs, Narcotics, List I and List II chemicals, Research, Seizures and forfeitures.

21 CFR Part 1300 is proposed to be added to read as follows:

PART 1300—DEFINITIONS

Sec.

1300.01 Definitions relating to controlled substances.
1300.02 Definitions relating to listed chemicals.

Authority: 21 U.S.C. 802, 871(b), 951, 958(f).

§ 1300.01 Definitions relating to controlled substances.

(a) Any term not defined in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802), except that certain terms used in part 1316 of this chapter are defined at the beginning of each subpart of that part.

(b) As used in parts 1301 through 1308 and part 1312 of this chapter, the following terms shall have the meanings specified:

(1) The term *Act* means the Controlled Substances Act, as amended (84 Stat. 1242; 21 U.S.C. 801) and/or the Controlled Substances Import and Export Act, as amended (84 Stat. 1285; 21 U.S.C. 951).

(2) The term *Administration* means the Drug Enforcement Administration.

(3) The term *Administrator* means the Administrator of the Drug Enforcement Administration. The Administrator has been delegated authority under the Act by the Attorney General (28 CFR 0.100).

(4) The term *anabolic steroid* means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes:

(i) Boldenone;
(ii) Chlorotestosterone (4-chlortestosterone);
(iii) Clostebol;
(iv) Dehydrochlormethyltestosterone;
(v) Dihydrotestosterone (4-dihydrotestosterone);
(vi) Drostanolone;
(vii) Ethylestrenol;
(viii) Fluoxymesterone;
(ix) Formebulone (formebolone);
(x) Mesterolone;
(xi) Methandienone;
(xii) Methandranone;
(xiii) Methandriol;
(xiv) Methandrostenolone;

(xv) Methenolone;
(xvi) Methyltestosterone;
(xvii) Mibolerone;
(xviii) Nandrolone;
(xix) Norethandrolone;
(xx) Oxandrolone;
(xxi) Oxymesterone;
(xxii) Oxymetholone;
(xxiii) Stanolone;
(xxiv) Stanozolol;
(xxv) Testolactone;
(xxvi) Testosterone;
(xxvii) Trenbolone; and
(xxviii) Any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this paragraph.

(5) The term *basic class* means, as to controlled substances listed in Schedules I and II:

(i) Each of the opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, listed in § 1308.11(b) of this chapter;

(ii) Each of the opium derivatives, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, listed in § 1308.11(c) of this chapter;

(iii) Each of the hallucinogenic substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, listed in § 1308.11(d) of this chapter;

(iv) Each of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium, including raw opium, opium extracts, opium fluid extracts, powdered opium, granulated opium, deodorized opium and tincture of opium;
(B) Apomorphine;
(C) Codeine;
(D) Etorphine hydrochloride;
(E) Ethylmorphine;
(F) Hydrocodone;
(G) Hydromorphone;
(H) Metopon;
(I) Morphine;
(J) Oxycodone;
(K) Oxymorphone;
(L) Thebaine;
(M) Mixed alkaloids of opium listed in Section 1308.12(b)(2) of this chapter;
(N) Cocaine; and
(O) Ecgonine;

(v) Each of the opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, listed in § 1308.12(c) of this chapter; and

(vi) Methamphetamine, its salts, isomers, and salts of its isomers;

(vii) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(viii) Phenmetrazine and its salts;

(ix) Methylphenidate;

(x) Each of the substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, listed in § 1308.12(e) of this chapter.

(6) The term *commercial container* means any bottle, jar, tube, ampule, or other receptacle in which a substance is held for distribution or dispensing to an ultimate user, and in addition, any box or package in which the receptacle is held for distribution or dispensing to an ultimate user. The term commercial container does not include any package liner, package insert or other material kept with or within a commercial container, nor any carton, crate, drum, or other package in which commercial containers are stored or are used for shipment of controlled substances.

(7) The term *compounder* means any person engaging in maintenance or detoxification treatment who also mixes, prepares, packages or changes the dosage form of a narcotic drug listed in Schedules II, III, IV or V for use in maintenance or detoxification treatment by another narcotic treatment program.

(8) The term *Controlled Substance* has the meaning given in section 802(6) of Title 21, United States Code (U.S.C.).

(9) The term *customs territory* of the United States means the several States, the District of Columbia, and Puerto Rico.

(10) The term *detoxification* treatment means the dispensing, for a period of time as specified below, of a narcotic drug or narcotic drugs in decreasing doses to an individual to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period of time. There are two types of detoxification treatment: Short-term detoxification treatment and long-term detoxification treatment.

(i) Short-term detoxification treatment is for a period not in excess of 30 days.

(ii) Long-term detoxification treatment is for a period more than 30 days but not in excess of 180 days.

(11) The term *dispenser* means an individual practitioner, institutional practitioner, pharmacy or pharmacist who dispenses a controlled substance.

(12) The term *export* means, with respect to any article, any taking out or removal of such article from the jurisdiction of the United States (whether or not such taking out or removal constitutes an exportation within the meaning of the customs and related laws of the United States).

(13) The term *exporter* includes every person who exports, or who acts as an export broker for exportation of, controlled substances listed in any schedule.

(14) The term *hearing* means:

(i) In part 1301 of this chapter, any hearing held for the granting, denial, revocation, or suspension of a registration pursuant to sections 303, 304, and 1008 of the Act (21 U.S.C. 823, 824 and 958).

(ii) In part 1303 of this chapter, any hearing held regarding the determination of aggregate production quota or the issuance, adjustment, suspension, or denial of a procurement quota or an individual manufacturing quota.

(iii) In part 1308 of this chapter, any hearing held for the issuance, amendment, or repeal of any rule issuable pursuant to section 201 of the Act (21 U.S.C. 811).

(15) The term *home infusion pharmacy* means a pharmacy which compounds solutions for direct administration to a patient in a private residence, Long Term Care Facility or hospice setting by means of parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion.

(16) The term *import* means, with respect to any article, any bringing in or introduction of such article into either the jurisdiction of the United States or the customs territory of the United States, and from the jurisdiction of the United States into the customs territory of the United States (whether or not such bringing in or introduction constitutes an importation within the

meaning of the tariff laws of the United States).

(17) The term *importer* includes every person who imports, or who acts as an import broker for importation of, controlled substances listed in any schedule.

(18) The term *individual practitioner* means a physician, dentist, veterinarian, or other individual licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he/she practices, to dispense a controlled substance in the course of professional practice, but does not include a pharmacist, a pharmacy, or an institutional practitioner.

(19) The term *institutional practitioner* means a hospital or other person (other than an individual) licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which it practices, to dispense a controlled substance in the course of professional practice, but does not include a pharmacy.

(20) The term *interested person* means any person adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811).

(21) The term *inventory* means all factory and branch stocks in finished form of a basic class of controlled substance manufactured or otherwise acquired by a registrant, whether in bulk, commercial containers, or contained in pharmaceutical preparations in the possession of the registrant (including stocks held by the registrant under separate registration as a manufacturer, importer, exporter, or distributor).

(22) The term *isomer* means the optical isomer, except as used in § 1308.11(d) and § 1308.12(b)(4). As used in § 1308.11(d), the term isomer means the optical, positional, or geometric isomer. As used in § 1308.12(b)(4), the term isomer means the optical or geometric isomer.

(23) The term *jurisdiction of the United States* means the customs territory of the United States, the Virgin Islands, the Canal Zone, Guam, American Samoa, and the Trust Territories of the Pacific Islands.

(24) The term *label* means any display of written, printed, or graphic matter placed upon the commercial container of any controlled substance by any manufacturer of such substance.

(25) The term labeling means all labels and other written, printed, or graphic matter:

(i) Upon any controlled substance or any of its commercial containers or wrappers, or

(ii) accompanying such controlled substance.

(26) The term *Long Term Care Facility (LTCF)* means a nursing home, retirement care, mental care or other facility or institution which provides extended health care to resident patients.

(27) The term *maintenance treatment* means the dispensing for a period in excess of twenty-one days, of a narcotic drug or narcotic drugs in the treatment of an individual for dependence upon heroin or other morphine-like drug.

(28) The term *manufacture* means the producing, preparation, propagation, compounding, or processing of a drug or other substance or the packaging or repackaging of such substance, or the labeling or relabeling of the commercial container of such substance, but does not include the activities of a practitioner who, as an incident to his/her administration or dispensing such substance in the course of his/her professional practice, prepares, compounds, packages or labels such substance. The term manufacturer means a person who manufactures a drug or other substance, whether under a registration as a manufacturer or under authority of registration as a researcher or chemical analyst.

(29) The term *mid-level practitioner* means an individual practitioner, other than a physician, dentist, veterinarian, or podiatrist, who is licensed, registered, or otherwise permitted by the United States or the jurisdiction in which he/she practices, to dispense a controlled substance in the course of professional practice. Examples of mid-level practitioners include, but are not limited to, health care providers such as nurse practitioners, nurse midwives, nurse anesthetists, clinical nurse specialists and physician assistants who are authorized to dispense controlled substances by the state in which they practice.

(30) The term *name* means the official name, common or usual name, chemical name, or brand name of a substance.

(31) The term *narcotic drug* means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(i) Opium, opiates, derivatives of opium and opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation. Such term does not include the isoquinoline alkaloids of opium.

(ii) Poppy straw and concentrate of poppy straw.

(iii) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine and derivatives of ecgonine or their salts have been removed.

(iv) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(v) Ecgonine, its derivatives, their salts, isomers and salts of isomers.

(vi) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (b)(31) (i) through (v) of this section.

(32) The term *narcotic treatment program* means a program engaged in maintenance and/or detoxification treatment with narcotic drugs.

(33) The term *net disposal* means, for a stated period, the quantity of a basic class of controlled substance distributed by the registrant to another person, plus the quantity of that basic class used by the registrant in the production of (or converted by the registrant into) another basic class of controlled substance or a noncontrolled substance, plus the quantity of that basic class otherwise disposed of by the registrant, less the quantity of that basic class returned to the registrant by any purchaser, and less the quantity of that basic class distributed by the registrant to another registered manufacturer of that basic class for purposes other than use in the production of, or conversion into, another basic class of controlled substance or a noncontrolled substance or in the manufacture of dosage forms of that basic class.

(34) The term *pharmacist* means any pharmacist licensed by a State to dispense controlled substances, and shall include any other person (e.g., pharmacist intern) authorized by a State to dispense controlled substances under the supervision of a pharmacist licensed by such State.

(35) The term *person* includes any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity.

(36) The term *prescription* means an order for medication which is dispensed to or for an ultimate user but does not include an order for medication which is dispensed for immediate administration to the ultimate user. (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.)

(37) The term *proceeding* means all actions taken for the issuance, amendment, or repeal of any rule issued pursuant to section 201 of the Act (21 U.S.C. 811), commencing with the publication by the Administrator of the proposed rule, amended rule, or repeal in the **Federal Register**.

(38) The term *purchaser* means any registered person entitled to obtain and execute order forms pursuant to § 1305.04 and 1305.06.

(39) The term *readily retrievable* means that certain records are kept by automatic data processing systems or other electronic or mechanized recordkeeping systems in such a manner that they can be separated out from all other records in a reasonable time and/or records are kept on which certain items are asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the records.

(40) The terms *register* and *registration* refer only to registration required and permitted by sections 303 or 1007 of the Act (21 U.S.C. 823 or 957).

(41) The term registrant means any person who is registered pursuant to either section 303 or section 1008 of the Act (21 U.S.C. 823 or 958).

(42) The term *supplier* means any registered person entitled to fill order forms pursuant to § 1305.08.

§ 1300.02 Definitions relating to listed chemicals.

(a) Any term not defined in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802), except that certain terms used in part 1316 of this chapter are defined at the beginning of each subpart of that part.

(b) As used in parts 1309, 1310 and 1313 of this chapter, the following terms shall have the meaning specified:

(1) The term *Act* means the Controlled Substances Act, as amended (84 Stat. 1242; 21 U.S.C. 801) and/or the Controlled Substances Import and Export Act, as amended (84 Stat. 1285; 21 U.S.C. 951) as amended.

(2) The term *Administration* means the Drug Enforcement Administration.

(3) The term *Administrator* means the Administrator of the Drug Enforcement Administration. The Administrator has been delegated authority under the Act by the Attorney General (28 CFR 0.100).

(4) The terms *broker* and *trader* mean any individual, corporation, corporate division, partnership, association, or other legal entity which assists in arranging an international transaction in a listed chemical by—

(i) Negotiating contracts;

(ii) Serving as an agent or intermediary; or

(iii) Fulfilling a formal obligation to complete the transaction by bringing together a buyer and seller, a buyer and transporter, or a seller and transporter, or by receiving any form of compensation for so doing.

(5) The term *chemical export* means transferring ownership or control, or the sending or taking of threshold quantities of listed chemicals out of the United States (whether or not such sending or taking out constitutes an exportation within the meaning of the Customs and related laws of the United States).

(6) The term *chemical exporter* is a regulated person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the listed chemical out of the United States.

(7) The term *chemical import* means with respect to a listed chemical, any bringing in or introduction of such listed chemical into either the jurisdiction of the United States or into the Customs territory of the United States (whether or not such bringing in or introduction constitutes an importation within the meaning of the tariff laws of the United States).

(8) The term *chemical importer* is a regulated person who, as the principal party in interest in the import transaction, has the power and responsibility for determining and controlling the bringing in or introduction of the listed chemical into the United States.

(9) The term *chemical mixture* means a combination of two or more chemical substances, at least one of which is not a listed chemical, except that such term does not include any combination of a listed chemical with another chemical that is present solely as an impurity or which has been created to evade the requirements of the Act.

(10) The term *customs territory of the United States* means the several States, the District of Columbia, and Puerto Rico.

(11) The term *encapsulating machine* means any manual, semi-automatic, or fully automatic equipment which may be used to fill shells or capsules with any powdered, granular, semi-solid, or liquid material.

(12) The term *established business relationship with a foreign customer* means the regulated person has exported a listed chemical at least once within the past six months, or twice within the past twelve months to a foreign manufacturer, distributor, or end user of the chemical that has an established business in the foreign country with a fixed street address. A person or business which functions as a broker or intermediary is not a customer within the meaning of this section. The term also means that the regulated person has provided the Administration with the following information in accordance with the Waiver of 15-day advance notice requirements of § 1313.24 of this chapter:

(i) The name and street address of the chemical exporter and of each regular customer;

(ii) The telephone number, telex number, contact person, and where available, the facsimile number for the chemical exporter and for each regular customer;

(iii) The nature of the regular customer's business (i.e., importer, exporter, distributor, manufacturer, etc.), and if known, the use to which the listed chemical or chemicals will be applied;

(iv) The duration of the business relationship;

(v) The frequency and number of transactions occurring during the preceding 12-month period;

(vi) the amounts and the listed chemical or chemicals involved in regulated transactions between the chemical exporter and regular customer;

(vii) The method of delivery (direct shipment or through a broker or forwarding agent); and

(viii) Other information that the chemical exporter considers relevant for determining whether a customer is a regular customer.

(13) The term *established record as an importer* means that the regulated person has imported a listed chemical at least once within the past six months, or twice within the past twelve months from a foreign supplier. The term also means that the regulated person has provided the Administration with the following information in accordance with the waiver of the 15-day advance notice requirements of § 1313.15 of this chapter:

(i) The name, DEA registration number (where applicable), street address, telephone number, telex number, and, where available, the facsimile number of the regulated person and of each foreign supplier; and

(ii) The frequency and number of transactions occurring during the preceding 12 month period.

(14) The term *hearing* means any hearing held for the granting, denial, revocation, or suspension of a registration pursuant to sections 303, 304, and 1008 of the Act (21 U.S.C. 823, 824 and 958).

(15) The term *international transaction* means a transaction involving the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trader located in the United States participates.

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(16) The term *jurisdiction of the United States* means the customs territory of the United States, the Virgin Islands, the Canal Zone, Guam, American Samoa, and the Trust Territories of the Pacific Islands.

(17) The term *listed chemical* means any List I chemical or List II chemical.

(18) The term *List I chemical* means a chemical specifically designated by the Administrator in § 1310.02(a) of this chapter that, in addition to legitimate uses, is used in manufacturing a controlled substance in violation of the Act and is important to the manufacture of a controlled substance.

(19) The term *List II chemical* means a chemical, other than a List I chemical, specifically designated by the Administrator in § 1310.02(b) of this chapter that, in addition to legitimate uses, is used in manufacturing a controlled substance in violation of the Act.

(20) The term *name* means the official name, common or usual name, chemical name, or brand name of a substance.

(21) The term *person* includes any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity.

(22) The term *readily retrievable* means that certain records are kept by automatic data processing systems or other electronic or mechanized recordkeeping systems in such a manner that they can be separated out from all other records in a reasonable time and/or records are kept on which certain items are asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the records.

(23) The terms *register* and *registration* refer only to registration required and permitted by sections 303 or 1007 of the Act (21 U.S.C. 823 or 957).

(24) The term *registrant* means any person who is registered pursuant to either section 303 or section 1008 of the Act (21 U.S.C. 823 or 958).

(25) The term *regular customer* means a person with whom the regulated person has an established business relationship for a specified listed chemical or chemicals that has been reported to the Administration subject to the criteria established in § 1300.01(b)(12).

(26) The term *regular importer* means, with respect to a listed chemical, a person that has an established record as an importer of that listed chemical that is reported to the Administrator.

(27) The term *regulated person* means any individual, corporation, partnership, association, or other legal entity who manufactures, distributes, imports, or exports a listed chemical, a tableting machine, or an encapsulating machine, or who acts as a broker or trader for an international transaction involving a listed chemical, tableting machine, or encapsulating machine.

(28) The term *regulated transaction* means:

(i) A distribution, receipt, sale, importation, or exportation of a listed chemical, or an international transaction involving shipment of a listed chemical, or if the Administrator establishes a threshold amount for a specific listed chemical, a threshold amount as determined by the Administrator, which includes a cumulative threshold amount for multiple transactions, of a listed chemical, except that such term does not include:

(A) A domestic lawful distribution in the usual course of business between agents or employees of a single regulated person; in this context, agents or employees means individuals under the direct management and control of the regulated person;

(B) A delivery of a listed chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman, except that if the carriage or storage is in connection with the distribution, importation, or exportation of a listed chemical to a third person, this paragraph does not relieve a distributor, importer, or exporter from compliance with this part or parts 1309 and 1313 of this chapter;

(C) Any category of transaction or any category of transaction for a specific listed chemical or chemicals specified by regulation of the Administrator as excluded from this definition as unnecessary for enforcement of the Act;

(D) Any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act unless—

(*1*) The drug contains ephedrine or its salts, optical isomers, or salts of optical isomers as the only active medicinal ingredient or contains ephedrine or its salts, optical isomers or salts of optical isomers and therapeutically insignificant quantities of another active medicinal ingredient. For purposes of this paragraph, the term "therapeutically insignificant quantities" shall apply if the product formulation (i.e., the qualitative and quantitative composition of active ingredients within the product) is not listed in any of the following compendiums: *American Pharmaceutical Association (Apha) Handbook of Nonprescription Drugs; Drug Facts and Comparisons* (published by Wolters Kluwer Company); or *USP DI* (published by authority of the United States Pharmacopeial Convention, Inc.); or the product is not listed in § 1310.15 of this chapter as an exempt drug product. For drug products having formulations not found in the above compendiums, the Administrator shall determine, pursuant to a written request as specified in § 1310.14 of this chapter, whether the active medicinal ingredients are present in quantities considered therapeutically significant for purposes of this paragraph; or

(*2*) The Administrator has determined pursuant to the criteria in § 1310.10 of this chapter that:

(*i*) The drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

(*ii*) The quantity of ephedrine or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Administrator;

(E) Any transaction in a chemical mixture listed in § 1310.13 of this chapter.

(ii) A distribution, importation, or exportation of a tableting machine or encapsulating machine except that such term does not include a domestic lawful distribution in the usual course of business between agents and employees of a single regulated person; in this context, agents or employees means individuals under the direct management and control of the regulated person.

(29) The term retail distributor means a distributor whose List I chemical activities are restricted to the sale of drug products that are regulated as List I chemicals pursuant to § 1300.01(b)(28)(i)(D), directly to walk-in customers for personal use.

(30) The term *tableting machine* means any manual, semi-automatic, or fully automatic equipment which may be used for the compaction or molding of powdered or granular solids, or semi-solid material, to produce coherent solid tablets.

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877, 952, 956, 957, 958, unless otherwise noted.

2. Section 1301.01 is proposed to be revised to read as follows:

§ 1301.01 Scope of part 1301.

Procedures governing the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances pursuant to sections 301–304 and 1007–1008 of the Act (21 U.S.C. 821–824 and 957–958) are set forth generally by those sections and specifically by the sections of this part.

3. Section 1301.02 is proposed to be revised to read as follows:

§ 1301.02 Definitions.

Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or Part 1300 of this chapter.

4. As set forth in the Preamble, part 1301 is also proposed to be amended by revising §§ 1301.11 through 1301.52 and the undesignated center headings and by removing §§ 1301.53 through 1301.63 and the undesignated center headings:

Registration

§ 1301.11 Persons required to register.

(a) Every person who manufactures, distributes, dispenses, imports, or exports any controlled substance or who proposes to engage in the manufacture, distribution, dispensing, importation or exportation of any controlled substance shall obtain a registration unless exempted by law or pursuant to §§ 1301.22–1301.26. Only persons actually engaged in such activities are required to obtain a registration; related or affiliated persons who are not engaged in such activities are not required to be registered. (For example, a stockholder or parent corporation of a corporation manufacturing controlled substances is not required to obtain a registration.)

§ 1301.12 Separate registrations for separate locations.

(a) A separate registration is required for each principal place of business or professional practice at one general physical location where controlled substances are manufactured, distributed, imported, exported, or dispensed by a person.

(b) The following locations shall be deemed not to be places where controlled substances are manufactured, distributed, or dispensed:

(1) A warehouse where controlled substances are stored by or on behalf of a registered person, unless such substances are distributed directly from such warehouse to registered locations other than the registered location from which the substances were delivered or to persons not required to register by virtue of subsection 302(c)(2) or subsection 1007(b)(1)(B) of the Act (21 U.S.C. 822(c)(2) or 957(b)(1)(B));

(2) An office used by agents of a registrant where sales of controlled substances are solicited, made, or supervised but which neither contains such substances (other than substances for display purposes or lawful distribution as samples only) nor serves as a distribution point for filling sales orders; and

(3) An office used by a practitioner (who is registered at another location) where controlled substances are prescribed but neither administered nor otherwise dispensed as a regular part of the professional practice of the practitioner at such office, and where no supplies of controlled substances are maintained.

§ 1301.13 Application for registration; time for application; expiration date; registration for independent activities; application forms, fees, contents and signature; coincident activities.

(a) Any person who is required to be registered and who is not so registered may apply for registration at any time. No person required to be registered shall engage in any activity for which registration is required until the application for registration is granted and a Certificate of Registration is issued by the Administrator to such person.

(b) Any person who is registered may apply to be reregistered not more than 60 days before the expiration date of his/her registration, except that a bulk manufacturer of Schedule I or II controlled substances or an importer of Schedule I or II controlled substances may apply to be reregistered no more than 120 days before the expiration date of their registration.

(c) At the time a manufacturer, distributor, researcher, analytical lab, importer, exporter or narcotic treatment program is first registered, that business activity shall be assigned to one of twelve groups, which shall correspond to the months of the year. The expiration date of the registrations of all registrants within any group will be the last date of the month designated for that group. In assigning any of the above business activities to a group, the Administration may select a group the expiration date of which is less than one year from the date such business activity was registered. If the business activity is assigned to a group which has an expiration date less than three months from the date of which the business activity is registered, the registration shall not expire until one year from that expiration date; in all other cases, the registration shall expire on the expiration date following the date on which the business activity is registered.

(d) At the time a retail pharmacy, hospital/clinic, practitioner or teaching institution is first registered, that business activity shall be assigned to one of twelve groups, which shall correspond to the months of the year. The expiration date of the registrations of all registrants within any group will be the last day of the month designated for that group. In assigning any of the above business activities to a group, the Administration may select a group the expiration date of which is not less than 28 months nor more than 39 months from the date such business activity was registered. After the initial registration period, the registration shall expire 36 months from the initial expiration date.

(e) Any person who is required to be registered and who is not so registered, shall make application for registration for one of the following groups of controlled substances activities, which are deemed to be independent of each other. Application for each registration shall be made on the indicated form, and shall be accompanied by the indicated fee. Fee payments shall be made in the form of a personal, certified, or cashier's check or money order made payable to the "Drug Enforcement Administration". The application fees are not refundable. Any person, when registered to engage in the activities described in each subparagraph in this paragraph, shall be authorized to engage in the coincident activities described without obtaining a registration to engage in such coincident activities, provided that, unless specifically exempted, he/she complies with all requirements and duties prescribed by law for persons registered to engage in such coincident activities. Any person who engages in more than one group of independent activities shall obtain a separate registration for each group of activities, except as provided in this paragraph under coincident activities. A single registration to engage in any group of independent activities listed below may include one or more controlled substances listed in the schedules authorized in that group of independent activities. A person registered to conduct research with controlled substances listed in Schedule I may conduct research with any substances listed in Schedule I for which he/she has filed and had approved a research protocol.

(1)

Business activity	Controlled substances	DEA application forms	Application fee	Registration period	Coincident activities allowed
(i) Manufacturing	Schedules I through V.	New—225 ... Renewal—225a.	$875 875	1 year	Schedules I through V: May distribute that substance or class for which registration was issued; may not distribute any substance or class for which not registered. Schedules II through V: May conduct chemical analysis and preclinical research (including quality control analysis) with substances listed in those schedules for which authorization as a manufacturer was issued.
(ii) Distributing	Schedules I through V.	New—225 ... Renewal—225a.	438 438	1 year.	
(iii) Dispensing or Instructing (Includes Practitioner Hospital/Clinic, Retail Pharmacy, Teaching Institution).	Schedules II through V.	New—224 ... Renewal—224a.	210 210	3 years	May conduct research and instructional activities with those substances for which registration was granted, except that a mid-level practitioner may conduct such research only to the extent expressly authorized under state statute. A pharmacist may manufacture an aqueous or oleaginous solution or solid dosage form containing a narcotic controlled substance in Schedule II through V in a proportion not exceeding 20 percent of the complete solution, compound, or mixture.
(iv) Research or Instructing	Schedule I	New—225 ... Renewal—225a.	70 70	1 year	A researcher may manufacture or import the basic class of substance or substances for which registration was issued, provided that such manufacture or import is set forth in the protocol required in Section 1301.18 and to distribute such class to persons registered or authorized to conduct research with such class of substance or registered or authorized to conduct chemical analysis with controlled substances.
(v) Research	Schedules II through V.	New—225 ... Renewal—225a.	70 70	1 year	May conduct chemical analysis with controlled substances in those schedules for which registration was issued; manufacture such substances if and to the extent that such manufacture is set forth in a statement filed with the application for registration or reregistration; import such substances for research purposes; distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances, and to persons exempted from registration pursuant to Section 1301.24, and to conduct instructional activities with controlled substances.
(vi) Narcotic Treatment Program (including compounder).	Narcotic Drugs in Schedules II through V.	New—363 ... Renewal—363a.	70 70	1 year.	
(vii) Importing	Schedules I through V.	New—225 ... Renewal—225a.	438 438	1 year	May distribute that substance or class for which registration was issued; may not distribute any substance or class for which not registered.
(viii) Exporting	Schedules I through V.	New—225 ... Renewal—225a.	438 438	1 year.	
(ix) Chemical Analysis	Schedules I through V.	New—225 ... Renewal—225a.	70 70	1 year	May manufacture and import controlled substances for analytical or instructional activities; may distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances and to persons exempted from registration pursuant to Section 1301.24; may export such substances to persons in other countries performing chemical analysis or enforcing laws relating to controlled substances or drugs in those countries, and to conduct instructional activities with controlled substances.

(2) DEA Forms 224, 225, and 363 may be obtained at any area office of the Administration or by writing to the Registration Unit, Drug Enforcement Administration, Department of Justice, Post Office Box 28083, Central Station, Washington, DC 20005.

(3) DEA Forms 224a, 225a, and 363a will be mailed, as applicable, to each registered person approximately 60 days before the expiration date of his/her registration; if any registered person does not receive such forms within 45 days before the expiration date of his/her registration, he/she must promptly give notice of such fact and request such forms by writing to the Registration Unit of the Administration at the foregoing address.

(f) Each application for registration to handle any basic class of controlled substance listed in Schedule I (except to conduct chemical analysis with such classes), and each application for registration to manufacture a basic class of controlled substance listed in Schedule II shall include the Administration Controlled Substances Code Number, as set forth in part 1308 of this chapter, for each basic class to be covered by such registration.

(g) Each application for registration to import or export controlled substances shall include the Administration Controlled Substances Code Number, as set forth in part 1308 of this chapter, for each controlled substance whose importation or exportation is to be authorized by such registration. Registration as an importer or exporter shall not entitle a registrant to import or export any controlled substance not specified in such registration.

(h) Each application for registration to conduct research with any basic class of controlled substance listed in Schedule II shall include the Administration Controlled Substances Code Number, as set forth in part 1308 of this chapter, for each such basic class to be manufactured or imported as a coincident activity of that registration. A statement listing the quantity of each such basic class or controlled substance to be imported or manufactured during the registration period for which application is being made shall be included with each such application. For purposes of this paragraph only, manufacturing is defined as the production of a controlled substance by synthesis, extraction or by agricultural/horticultural means.

(i) Each application shall include all information called for in the form, unless the item is not applicable, in which case this fact shall be indicated.

(j) Each application, attachment, or other document filed as part of an application, shall be signed by the applicant, if an individual; by a partner of the applicant, if a partnership; or by an officer of the applicant, if a corporation, corporate division, association, trust or other entity. An applicant may authorize one or more individuals, who would not otherwise be authorized to do so, to sign applications for the applicant by filing with the Registration Unit of the Administration a power of attorney for each such individual. The power of attorney shall be signed by a person who is authorized to sign applications under this paragraph and shall contain the signature of the individual being authorized to sign applications. The power of attorney shall be valid until revoked by the applicant.

§ 1301.14 Filing of application; acceptance for filing; defective applications.

(a) All applications for registration shall be submitted for filing to the Registration Unit, Drug Enforcement Administration, Department of Justice, Post Office Box 28083, Central Station, Washington, DC 20005. The appropriate registration fee and any required attachments must accompany the application.

(b) Any person required to obtain more than one registration may submit all applications in one package. Each application must be complete and should not refer to any accompanying application for required information.

(c) Applications submitted for filing are dated upon receipt. If found to be complete, the application will be accepted for filing. Applications failing to comply with the requirements of this part will not generally be accepted for filing. In the case of minor defects as to completeness, the Administrator may accept the application for filing with a request to the applicant for additional information. A defective application will be returned to the applicant within 10 days following its receipt with a statement of the reason for not accepting the application for filing. A defective application may be corrected and resubmitted for filing at any time; the Administrator shall accept for filing any application upon resubmission by the applicant, whether complete or not.

(d) Accepting an application for filing does not preclude any subsequent request for additional information pursuant to § 1301.15 and has no bearing on whether the application will be granted.

§ 1301.15 Additional information.

The Administrator may require an applicant to submit such documents or written statements of fact relevant to the application as he/she deems necessary to determine whether the application should be granted. The failure of the applicant to provide such documents or statements within a reasonable time after being requested to do so shall be deemed to be a waiver by the applicant of an opportunity to present such documents or facts for consideration by the Administrator in granting or denying the application.

§ 1301.16 Amendments to and withdrawal of applications.

(a) An application may be amended or withdrawn without permission of the Administrator at any time before the date on which the applicant receives an order to show cause pursuant to § 1301.37. An application may be amended or withdrawn with permission of the Administrator at any time where good cause is shown by the applicant or where the amendment or withdrawal is in the public interest.

(b) After an application has been accepted for filing, the request by the applicant that it be returned or the failure of the applicant to respond to official correspondence regarding the application, when sent by registered or certified mail, return receipt requested, shall be deemed to be a withdrawal of the application.

§ 1301.17 Special procedures for certain applications.

(a) If, at the time of application for registration of a new pharmacy, the pharmacy has been issued a license from the appropriate State licensing agency, the applicant may include with his/her application an affidavit as to the existence of the State license in the following form:

Affidavit for New Pharmacy

I, _____, the _____ (Title of officer, official, partner, or other position) of _____ (Corporation, partnership, or sole proprietor), doing business as _____ (Store name) at _____ (Number and Street), _____ (City) _____ (State) _____ (Zip code), hereby certify that said store was issued a pharmacy permit No. _____ by the _____ (Board of Pharmacy or Licensing Agency) of the State of _____ on _____ (Date).

This statement is submitted in order to obtain a Drug Enforcement Administration registration number. I understand that if any information is false, the Administration may immediately suspend the registration for this store and commence proceedings to revoke under 21 U.S.C. 824(a) because of the danger to public health and safety. I further understand that any false information

contained in this affidavit may subject me personally and the above-named corporation/partnership/business to prosecution under 21 U.S.C. 843, the penalties for conviction of which include imprisonment for up to 4 years, a fine of not more than $30,000 or both.

_____

Signature (Person who signs Application for Registration) State of _____

County of_____ _____

Subscribed to and sworn before me this _____ day of _____, 19___.

_____

Notary Public

(b) Whenever the ownership of a pharmacy is being transferred from one person to another, if the transferee owns at least one other pharmacy licensed in the same State as the one the ownership of which is being transferred, the transferee may apply for registration prior to the date of transfer. The Administrator may register the applicant and authorize him to obtain controlled substances at the time of transfer. Such registration shall not authorize the transferee to dispense controlled substances until the pharmacy has been issued a valid State license. The transferee shall include with his/her application the following affidavit:

Affidavit for Transfer of Pharmacy

I, _____, the _____ (Title of officer, official, partner or other position) of _____ (Corporation, partnership, or sole proprietor), doing business as _____ (Store name) hereby certify:

(1) That said company was issued a pharmacy permit No. _____ by the _____ (Board of Pharmacy of Licensing Agency) of the State of _____ and a DEA Registration Number _____ for a pharmacy located at _____ (Number and Street) _____ (City) _____ (State) _____ (Zip Code); and

(2) That said company is acquiring the pharmacy business of _____ (Name of Seller) doing business as _____ with DEA Registration Number _____ on or about _____ (Date of Transfer) and that said company has applied (or will apply on _____ (Date) for a pharmacy permit from the board of pharmacy (or licensing agency) of the State of _____ to do business as _____ (Store name) at _____ (Number and Street) _____ (City) _____ (State) _____ (Zip Code).

This statement is submitted in order to obtain a Drug Enforcement Administration registration number.

I understand that if a DEA registration number is issued, the pharmacy may acquire controlled substances but may not dispense them until a pharmacy permit or license is issued by the State board of pharmacy or licensing agency.

I understand that if any information is false, the Administration may immediately suspend the registration for this store and commence proceedings to revoke under 21 U.S.C. 824(a) because of the danger to public health and safety. I further understand that any false information contained in this affidavit may subject me personally to prosecution under 21 U.S.C. 843, the penalties for conviction of which include imprisonment for up to 4 years, a fine of not more than $30,000 or both.

_____

Signature (Person who signs Application for Registration)

State of _____

County of _____

Subscribed to and sworn before me this _____ day of _____, 19___.

_____

Notary Public

(c) The Administrator shall follow the normal procedures for approving an application to verify the statements in the affidavit. If the statements prove to be false, the Administrator may revoke the registration on the basis of section 304(a)(1) of the Act (21 U.S.C. 824(a)(1)) and suspend the registration immediately by pending revocation on the basis of section 304(d) of the Act (21 U.S.C. 824(d)). At the same time, the Administrator may seize and place under seal all controlled substances possessed by the applicant under section 304(f) of the Act (21 U.S.C. 824(f)). Intentional misuse of the affidavit procedure may subject the applicant to prosecution for fraud under section 403(a)(4) of the Act (21 U.S.C. 843(a)(4)), and obtaining controlled substances under a registration fraudulently gotten may subject the applicant to prosecution under section 403(a)(3) of the Act (21 U.S.C. 843(a)(3)). The penalties for conviction of either offense include imprisonment for up to 4 years, a fine not exceeding $30,000 or both.

§ 1301.18 Research protocols.

(a) A protocol to conduct research with controlled substances listed in Schedule I shall be in the following form and contain the following information where applicable:

(1) Investigator:

(i) Name, address, and DEA registration number; if any.

(ii) Institutional affiliation.

(iii) Qualifications, including a curriculum vitae and an appropriate bibliography (list of publications).

(2) Research project:

(i) Title of project.

(ii) Statement of the purpose.

(iii) Name of the controlled substances or substances involved and the amount of each needed.

(iv) Description of the research to be conducted, including the number and species of research subjects, the dosage to be administered, the route and method of administration, and the duration of the project.

(v) Location where the research will be conducted.

(vi) Statement of the security provisions for storing the controlled substances (in accordance with § 1301.75) and for dispensing the controlled substances in order to prevent diversion.

(vii) If the investigator desires to manufacture or import any controlled substance listed in paragraph (a)(2)(iii) of this section, a statement of the quantity to be manufactured or imported and the sources of the chemicals to be used or the substance to be imported.

(3) Authority:

(i) Institutional approval.

(ii) Approval of a Human Research Committee for human studies..

(iii) Indication of an approved active Notice of Claimed Investigational Exemption for a New Drug (number).

(iv) Indication of an approved funded grant (number), if any.

(b) In the case of a clinical investigation with controlled substances listed in Schedule I, the applicant shall submit three copies of a Notice of Claimed Investigational Exemption for a New Drug (IND) together with a statement of the security provisions (as prescribed in paragraph (a)(2)(v) of this section for a research protocol) to, and have such submission approved by, the Food and Drug Administration as required in 21 U.S.C. 355(i) and § 130.3 of this title. Submission of this Notice and statement to the Food and Drug Administration shall be in lieu of a research protocol to the Administration as required in paragraph (a) of this section. The applicant, when applying for registration with the Administration, shall indicate that such notice has been submitted to the Food and Drug Administration by submitting to the Administration with his/her DEA Form 225 three copies of the following certificate:

I hereby certify that on _____ (Date), pursuant to 21 U.S.C. 355(i) and 21 CFR 130.3, I, _____ _____ _____ (Name and Address of IND Sponsor) submitted a Notice of Claimed Investigational Exemption for a New Drug (IND) to the Food and Drug Administration for:

_____ (Name of Investigational Drug).

_____ (Date)

_____ (Signature of Applicant).

(c) In the event that the registrant desires to increase the quantity of a controlled substance used for an approved research project, he/she shall submit a request to the Registration Unit, Drug Enforcement Administration, Post Office Box 28083, Central Station, Washington, DC 20005, by registered mail, return receipt requested. The request shall contain the following information: DEA registration number; name of the controlled substance or substances and the quantity of each authorized in the approved protocol; and the additional quantity of each desired. Upon return of the receipt, the registrant shall be authorized to purchase the additional quantity of the controlled substance or substances specified in the request. The Administration shall review the letter and forward it to the Food and Drug Administration together with the Administration comments. The Food and Drug Administration shall approve or deny the request as an amendment to the protocol and so notify the registrant. Approval of the letter by the Food and Drug Administration shall authorize the registrant to use the additional quantity of the controlled substance in the research project.

(d) In the event the registrant desires to conduct research beyond the variations provided in the registrant's approved protocol (excluding any increase in the quantity of the controlled substance requested for his/her research project as outlined in paragraph (c) of this section), he/she shall submit three copies of a supplemental protocol in accordance with paragraph (a) of this section describing the new research and omitting information in the supplemental protocol which has been stated in the original protocol. Supplemental protocols shall be processed and approved or denied in the same manner as original research protocols.

Exceptions To Registration and Fees

§ 1301.21 Exemption from fees.

(a) The Administrator shall exempt from payment of an application fee for registration or reregistration:

(1) Any hospital or other institution which is operated by an agency of the United States (including the U.S. Army, Navy, Marine Corps., Air Force, and Coast Guard), of any State, or any political subdivision or agency thereof.

(2) Any individual practitioner who is required to obtain an individual registration in order to carry out his or her duties as an official of an agency of the United States (including the U.S. Army, Navy, Marine Corps., Air Force, and Coast Guard), of any State, or any political subdivision or agency thereof.

(b) In order to claim exemption from payment of a registration or reregistration application fee, the registrant shall have completed the certification on the appropriate application form, wherein the registrant's superior (if the registrant is an individual) or officer (if the registrant is an agency) certifies to the status and address of the registrant and to the authority of the registrant to acquire, possess, or handle controlled substances.

(c) Exemption from payment of a registration or reregistration application fee does not relieve the registrant of any other requirements or duties prescribed by law.

§ 1301.22 Exemption of agents and employees; affiliated practitioners.

(a) The requirement of registration is waived for any agent or employee of a person who is registered to engage in any group of independent activities, if such agent or employee is acting in the usual course of his/her business or employment.

(b) An individual practitioner who is an agent or employee of another practitioner (other than a mid-level practitioner) registered to dispense controlled substances may, when acting in the normal course of business or employment, administer or dispense (other than by issuance of prescription) controlled substances if and to the extent that such individual practitioner is authorized or permitted to do so by the jurisdiction in which he or she practices, under the registration of the employer or principal practitioner in lieu of being registered him/herself.

(c) An individual practitioner who is an agent or employee of a hospital or other institution may, when acting in the normal course of business or employment, administer, dispense, or prescribe controlled substances under the registration of the hospital or other institution which is registered in lieu of being registered him/herself, provided that:

(1) Such dispensing, administering or prescribing is done in the usual course of his/her professional practice;

(2) Such individual practitioner is authorized or permitted to do so by the jurisdiction in which he/she is practicing;

(3) The hospital or other institution by whom he/she is employed has verified that the individual practitioner is so permitted to dispense, administer, or prescribe drugs within the jurisdiction;

(4) Such individual practitioner is acting only within the scope of his/her employment in the hospital or institution;

(5) The hospital or other institution authorizes the individual practitioner to administer, dispense or prescribe under the hospital registration and designates a specific internal code number for each individual practitioner so authorized. The code number shall consist of numbers, letters, or a combination thereof and shall be a suffix to the institution's DEA registration number, preceded by a hyphen (e.g., APO 123456–10 or APO123456–A12); and

(6) A current list of internal codes and the corresponding individual practitioners is kept by the hospital or other institution and is made available at all times to other registrants and law enforcement agencies upon request for the purpose of verifying the authority of the prescribing individual practitioner.

§ 1301.23 Exemption of certain military and other personnel.

(a) The requirement of registration is waived for any official of the U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, Public Health Service, or Bureau of Prisons who is authorized to prescribe, dispense, or administer, but not to procure or purchase, controlled substances in the course of his/her official duties. Such officials shall follow procedures set forth in part 1306 of this chapter regarding prescriptions, but shall state the branch of service or agency (e.g., "U.S. Army" or "Public Health Service") and the service identification number of the issuing official in lieu of the registration number required on prescription forms. The service identification number for a Public Health Service employee is his/her Social Security identification number.

(b) The requirement of registration is waived for any official or agency of the U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, or Public Health Service who or which is authorized to import or export controlled substances in the course of his/her official duties.

(c) If any official exempted by this section also engages as a private individual in any activity or group of activities for which registration is required, such official shall obtain a registration for such private activities.

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§ 1301.24 Exemption of law enforcement officials.

(a) The requirement of registration is waived for the following persons in the circumstances described in this section:

(1) Any officer or employee of the Administration, any officer of the U.S. Customs Service, any officer or employee of the United States Food and Drug Administration, and any other Federal officer who is lawfully engaged in the enforcement of any Federal law relating to controlled substances, drugs or customs, and is duly authorized to possess or to import or export controlled substances in the course of his/her official duties; and

(2) Any officer or employee of any State, or any political subdivision or agency thereof, who is engaged in the enforcement of any State or local law relating to controlled substances and is duly authorized to possess controlled substances in the course of his/her official duties.

(b) Any official exempted by this section may, when acting in the course of his/her official duties, procure any controlled substance in the course of an inspection, in accordance with § 1316.03(d) of this chapter, or in the course of any criminal investigation involving the person from whom the substance was procured, and may possess any controlled substance and distribute any such substance to any other official who is also exempted by this section and acting in the course of his/her official duties.

(c) In order to enable law enforcement agency laboratories, including laboratories of the Administration, to obtain and transfer controlled substances for use as standards in chemical analysis, such laboratories shall obtain annually a registration to conduct chemical analysis. Such laboratories shall be exempted from payment of a fee for registration. Laboratory personnel, when acting in the scope of their official duties, are deemed to be officials exempted by this section and within the activity described in section 515(d) of the Act (21 U.S.C. 885(d)). For purposes of this paragraph, laboratory activities shall not include field or other preliminary chemical tests by officials exempted by this section.

(d) In addition to the activities authorized under a registration to conduct chemical analysis pursuant to § 1301.13(e)(1)(ix), laboratories of the Administration shall be authorized to manufacture or import controlled substances for any lawful purpose, to distribute or export such substances to any person, and to import and export such substances in emergencies without regard to the requirements of part 1312 of this chapter if a report concerning the importation or exportation is made to the Drug Operations Section of the Administration within 30 days of such importation or exportation.

§ 1301.25 Registration regarding ocean vessels, aircraft, and other entities.

(a) If acquired by and dispensed under the general supervision of a medical officer described in paragraph (b) of this section, or the master or first officer of the vessel under the circumstances described in paragraph (d) of this section, controlled substances may be held for stocking, be maintained in, and dispensed from medicine chests, first aid packets, or dispensaries:

(1) On board any vessel engaged in international trade or in trade between ports of the United States and any merchant vessel belonging to the U.S. Government;

(2) On board any aircraft operated by an air carrier under a certificate of permit issued pursuant to the Federal Aviation Act of 1958 (49 U.S.C. 1301); and

(3) In any other entity of fixed or transient location approved by the Administrator as appropriate for application of this section (e.g., emergency kits at field sites of an industrial firm).

(b) A medical officer shall be:

(1) Licensed in a state as a physician;

(2) Employed by the owner or operator of the vessel, aircraft or other entity; and

(3) Registered under the Act at either of the following locations:

(i) The principal office of the owner or operator of the vessel, aircraft or other entity or

(ii) At any other location provided that the name, address, registration number and expiration date as they appear on his/her Certificate of Registration (DEA Form 223) for this location are maintained for inspection at said principal office in a readily retrievable manner.

(c) A registered medical officer may serve as medical officer for more than one vessel, aircraft, or other entity under a single registration, unless he/she serves as medical officer for more than one owner or operator, in which case he/she shall either maintain a separate registration at the location of the principal office of each such owner or operator or utilize one or more registrations pursuant to paragraph (b)(3)(ii) of this section.

(d) If no medical officer is employed by the owner or operator of a vessel, or in the event such medical officer is not accessible and the acquisition of controlled substances is required, the master or first officer of the vessel, who shall not be registered under the Act, may purchase controlled substances from a registered manufacturer or distributor, or from an authorized pharmacy as described in paragraph (f) of this section, by following the procedure outlined below:

(1) The master or first officer of the vessel must personally appear at the vendor's place of business, present proper identification (e.g., Seaman's photographic identification card) and a written requisition for the controlled substances.

(2) The written requisition must be on the vessel's official stationery or purchase order form and must include the name and address of the vendor, the name of the controlled substance, description of the controlled substance (dosage form, strength and number or volume per container) number of containers ordered, the name of the vessel, the vessel's official number and country of registry, the owner or operator of the vessel, the port at which the vessel is located, signature of the vessel's officer who is ordering the controlled substances and the date of the requisition.

(3) The vendor may, after verifying the identification of the vessel's officer requisitioning the controlled substances, deliver the control substances to that officer. The transaction shall be documented, in triplicate, on a record of sale in a format similar to that outlined in paragraph (d)(4) of this section. The vessel's requisition shall be attached to copy 1 of the record of sale and filed with the controlled substances records of the vendor, copy 2 of the record of sale shall be furnished to the officer of the vessel and retained aboard the vessel, copy 3 of the record of sale shall be forwarded to the nearest DEA Division Office within 15 days after the end of the month in which the sale is made.

(4) The vendor's record of sale should be similar to, and must include all the information contained in, the below listed format.

Sale of Controlled Substances to Vessels

(Name of registrant)

(Address of registrant)

(DEA registration number)

* * * TABLE START * * *

Line No.	Number of packages ordered	Size of packages	Name of product	Packages distributed	Date distributed
1					
2					
3					

FOOTNOTE: Line numbers may be continued according to needs of the vendor.

* * * TABLE END * * *

Number of lines completed

Name of vessel

Vessel's official number

Vessel's country of registry

Owner or operator of the vessel

Name and title of vessel's officer who presented the requisition

Signature of vessel's officer who presented the requisition

(e) Any medical officer described in paragraph (b) of this section shall, in addition to complying with all requirements and duties prescribed for registrants generally, prepare an annual report as of the date on which his/her registration expires, which shall give in detail an accounting for each vessel, aircraft, or other entity, and a summary accounting for all vessels, aircraft, or other entities under his/her supervision for all controlled substances purchased, dispensed or disposed of during the year. The medical officer shall maintain this report with other records required to be kept under the Act and, upon request, deliver a copy of the report to the Administration. The medical officer need not be present when controlled substances are dispensed, if the person who actually dispensed the controlled substances is responsible to the medical officer to justify his/her actions.

(f) Any registered pharmacy which wishes to distribute controlled substances pursuant to this section shall be authorized to do so, provided that:

(1) The registered pharmacy notifies the nearest Division Office of the Administration of its intention to so distribute controlled substances prior to the initiation of such activity. This notification shall be by registered mail and shall contain the name, address, and registration number of the pharmacy as well as the date upon which such activity will commence; and

(2) Such activity is authorized by state law; and

(3) The total number of dosage units of all controlled substances distributed by the pharmacy during any calendar year in which the pharmacy is registered to dispense does not exceed the limitations imposed upon such distribution by § 1307.11(a) (4) and (b) of this chapter.

(g) Owners or operators of vessels, aircraft, or other entities described in this section shall not be deemed to possess or dispense any controlled substance acquired, stored and dispensed in accordance with this section. Additionally, owners or operators of vessels, aircraft, or other entities described in this section or in Article 32 of the Single Convention on Narcotic Drugs, 1961, or in Article 14 of the Convention on Psychotropic Substances, 1971, shall not be deemed to import or export any controlled substances purchased and stored in accordance with that section or applicable article.

(h) The Master of a vessel shall prepare a report for each calendar year which shall give in detail an accounting for all controlled substances purchased, dispensed, or disposed of during the year. The Master shall file this report with the medical officer employed by the owner or operator of his/her vessel, if any, or, if not, he/she shall maintain this report with other records required to be kept under the Act and, upon request, deliver a copy of the report to the Administration.

(i) Controlled substances acquired and possessed in accordance with this section shall not be distributed to persons not under the general supervision of the medical officer employed by the owner or operator of the vessel, aircraft, or other entity, except in accordance with § 1307.21 of this chapter.

§ 1301.26 Exemptions from import or export requirements for personal medical use.

Any individual who has in his/her possession a controlled substance listed in schedules II, III, IV, or V, which he/she has lawfully obtained for his/her personal medical use, or for administration to an animal accompanying him/her, may enter or depart the United States with such substance notwithstanding sections 1002–1005 of the Act (21 U.S.C. 952–955), providing the following conditions are met:

(a) The controlled substance is in the original container in which it was dispensed to the individual; and

(b) The individual makes a declaration to an appropriate official of the U.S. Customs Service stating:

(1) That the controlled substance is possessed for his/her personal use, or for an animal accompanying him/her; and

(2) The trade or chemical name and the symbol designating the schedule of the controlled substance if it appears on the container label, or, if such name does not appear on the label, the name and address of the pharmacy or practitioner who dispensed the substance and the prescription number, if any.

Action on Applications for Registration: Revocation or Suspension of Registration

§ 1301.31 Administrative review generally.

The Administrator may inspect, or cause to be inspected, the establishment of an applicant or registrant, pursuant to subpart A of part 1316 of this chapter. The Administrator shall review, the application for registration and other information gathered by the Administrator regarding an applicant in order to determine whether the applicable standards of section 303 of the Act (21 U.S.C. 823) or section 1008 (21 U.S.C. 958) have been met by the applicant.

§ 1301.32 Action on applications for research in Schedule I substances.

(a) In the case of an application for registration to conduct research with controlled substances listed in Schedule I, the Administrator shall process the application and protocol and forward a copy of each to the Secretary within 7 days after receipt. The Secretary shall determine the qualifications and competency of the applicant, as well as the merits of the protocol (and shall notify the Administrator of his/her determination) within 21 days after receipt of the application and complete protocol, except that in the case of a clinical investigation, the Secretary shall have 30 days to make such determination and notify the Administrator. The Secretary, in determining the merits of the protocol,

shall consult with the Administrator as to effective procedures to safeguard adequately against diversion of such controlled substances from legitimate medical or scientific use.

(b) An applicant whose protocol is defective shall be notified by the Secretary within 21 days after receipt of such protocol from the Administrator (or in the case of a clinical investigation within 30 days), and he/she shall be requested to correct the existing defects before consideration shall be given to his/her submission.

(c) If the Secretary determines the applicant qualified and competent and the research protocol meritorious, he/she shall notify the Administrator in writing of such determination. The Administrator shall issue a certificate of registration within 10 days after receipt of this notice, unless he/she determines that the certificate of registration should be denied on a ground specified in section 304(a) of the Act (21 U.S.C. 824(a)). In the case of a supplemental protocol, a replacement certificate of registration shall be issued by the Administrator.

(d) If the Secretary determines that the protocol is not meritorious and/or the applicant is not qualified or competent, he/she shall notify the Administrator in writing setting forth the reasons for such determination. If the Administrator determines that grounds exist for the denial of the application, he/she shall within 10 days issue an order to show cause pursuant to § 1301.37 and, if requested by the applicant, hold a hearing on the application pursuant to § 1301.41. If the grounds for denial of the application include a determination by the Secretary, the Secretary or his duly authorized agent shall furnish testimony and documents pertaining to his determination at such hearing.

(e) Supplemental protocols will be processed in the same manner as original research protocols. If the processing of an application or research protocol is delayed beyond the time limits imposed by this section, the applicant shall be so notified in writing.

§ 1301.33 Application for bulk manufacture of Schedule I and II substances.

(a) In the case of an application for registration or reregistration to manufacture in bulk a basic class of controlled substance listed in Schedule I or II, the Administrator shall, upon the filing of such application, publish in the **Federal Register** a notice naming the applicant and stating that such applicant has applied to be registered as a bulk manufacturer of a basic class of narcotic or nonnarcotic controlled substance, which class shall be identified. A copy of said notice shall be mailed simultaneously to each person registered as a bulk manufacturer of that basic class and to any other applicant therefor. Any such person may, within 60 days from the date of publication of the notice in the **Federal Register**, file with the Administrator written comments on or objections to the issuance of the proposed registration.

(b) In order to provide adequate competition, the Administrator shall not be required to limit the number of manufacturers in any basic class to a number less than that consistent with maintenance of effective controls against diversion solely because a smaller number is capable of producing an adequate and uninterrupted supply.

(c) This section shall not apply to the manufacture of basic classes of controlled substances listed in Schedules I or II as an incident to research or chemical analysis as authorized in § 01.13(e)(1).

§ 1301.34 Application for importation of Schedule I and II substances.

(a) In the case of an application for registration or reregistration to import a controlled substance listed in Schedule I or II, under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)), the Administrator shall, upon the filing of such application, publish in the **Federal Register** a notice naming the applicant and stating that such applicant has applied to be registered as an importer of a Schedule I or II controlled substance, which substance shall be identified. A copy of said notice shall be mailed simultaneously to each person registered as a bulk manufacturer of that controlled substance and to any other applicant therefor. Any such person may, within 30 days from the date of publication of the notice in the **Federal Register**, file written comments on or objections to the issuance of the proposed registration, and may, at the same time, file a written request for a hearing on the application pursuant to § 1301.43. If a hearing is requested, the Administrator shall hold a hearing on the application in accordance with § 1301.41. Notice of the hearing shall be published in the **Federal Register**, and shall be mailed simultaneously to the applicant and to all persons to whom notice of the application was mailed. Any such person may participate in the hearing by filing a notice of appearance in accordance with § 1301.43 of this chapter. Notice of the hearing shall contain a summary of all comments and objections filed regarding the application and shall state the time and place for the hearing, which shall not be less than 30 days after the date of publication of such notice in the **Federal Register**. A hearing pursuant to this section may be consolidated with a hearing held pursuant to §§ 1301.35 or 1301.36 of this part.

(b) The Administrator shall register an applicant to import a controlled substance listed in Schedule I or II if he/she determines that such registration is consistent with the public interest and with U.S. obligations under international treaties, conventions, or protocols in effect on May 1, 1971. In determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in Schedule I or II compounded therefrom into other than legitimate medical, scientific research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes;

(2) Compliance with applicable State and local law;

(3) Promotion of technical advances in the art of manufacturing these substances and the development of new substances;

(4) Prior conviction record of applicant under Federal and State laws relating to the manufacture, distribution, or dispensing of such substances;

(5) Past experience in the manufacture of controlled substances, and the existence in the establishment of effective control against diversion;

(6) That the applicant will be permitted to import only:

(i) Such amounts of crude opium, poppy straw, concentrate of poppy straw, and coca leaves as the Administrator finds to be necessary to provide for medical, scientific, or other legitimate purposes; or

(ii) Such amounts of any controlled substances listed in Schedule I or II as the Administrator shall find to be necessary to provide for the medical, scientific, or other legitimate needs of the United States during an emergency in which domestic supplies of such substances are found by the Administrator to be inadequate; or

(iii) Such amounts of any controlled substance listed in Schedule I or II as the Administrator shall find to be necessary to provide for the medical, scientific, or other legitimate needs of the United States in any case in which the Administrator finds that competition among domestic manufacturers of the controlled substance is inadequate and will not be rendered adequate by the registration of additional manufacturers under section 303 of the Act (21 U.S.C. 823); or

(iv) Such limited quantities of any controlled substance listed in Schedule I or II as the Administrator shall find to be necessary for scientific, analytical or research uses; and

(7) Such other factors as may be relevant to and consistent with the public health and safety.

(c) In determining whether the applicant can and will maintain effective controls against diversion within the meaning of paragraph (b) of this section, the Administrator shall consider among other factors:

(1) Compliance with the security requirements set forth in §§ 1301.71–1301.76 and

(2) Employment of security procedures to guard against in-transit losses within and without the jurisdiction of the United States.

(d) In determining whether competition among the domestic manufacturers of a controlled substance is adequate within the meaning of paragraphs (b)(1) and (b)(6)(iii) of this section, as well as section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)), the Administrator shall consider:

(1) The extent of price rigidity in the light of changes in:

(i) Raw materials and other costs and

(ii) Conditions of supply and demand;

(2) The extent of service and quality competition among the domestic manufacturers for shares of the domestic market including:

(i) Shifts in market shares and

(ii) Shifts in individual customers among domestic manufacturers;

(3) The existence of substantial differentials between domestic prices and the higher of prices generally prevailing in foreign markets or the prices at which the applicant for registration to import is committed to undertake to provide such products in the domestic market in conformity with the Act. In determining the existence of substantial differentials hereunder, appropriate consideration should be given to any additional costs imposed on domestic manufacturers by the requirements of the Act and such other cost-related and other factors as the Administrator may deem relevant. In no event shall an importer's offering prices in the United States be considered if they are lower than those prevailing in the foreign market or markets from which the importer is obtaining his/her supply;

(4) The existence of competitive restraints imposed upon domestic manufacturers by governmental regulations; and

(5) Such other factors as may be relevant to the determinations required under this paragraph.

(e) In considering the scope of the domestic market, consideration shall be given to substitute products which are reasonably interchangeable in terms of price, quality and use.

(f) The fact that the number of existing manufacturers is small shall not demonstrate, in and of itself, that adequate competition among them does not exist.

§ 1301.35 Certificate of registration; denial of registration.

(a) The Administrator shall issue a Certificate of Registration (DEA Form 223) to an applicant if the issuance of registration or reregistration is required under the applicable provisions of sections 303 or 1008 of the Act (21 U.S.C. 823 and 958). In the event that the issuance of registration or reregistration is not required, the Administrator shall deny the application. Before denying any application, the Administrator shall issue an order to show cause pursuant to § 1301.37 and, if requested by the applicant, shall hold a hearing on the application pursuant to § 1301.41.

(b) If a hearing is requested by an applicant for registration or reregistration to manufacture in bulk a basic class of controlled substance listed in Schedule I or II, notice that a hearing has been requested shall be published in the **Federal Register** and shall be mailed simultaneously to the applicant and to all persons to whom notice of the application was mailed. Any person entitled to file comments or objections to the issuance of the proposed registration pursuant to § 1301.33(a) may participate in the hearing by filing notice of appearance in accordance with § 1301.43. Such persons shall have 30 days to file a notice of appearance after the date of publication of the notice of a request for a hearing in the **Federal Register**.

(c) The Certificate of Registration (DEA Form 223) shall contain the name, address, and registration number of the registrant, the activity authorized by the registration, the schedules and/or Administration Controlled Substances Code Number (as set forth in part 1308 of this chapter) of the controlled substances which the registrant is authorized to handle, the amount of fee paid (or exemption), and the expiration date of the registration. The registrant shall maintain the certificate of registration at the registered location in a readily retrievable manner and shall permit inspection of the certificate by any official, agent or employee of the Administration or of any Federal, State, or local agency engaged in enforcement of laws relating to controlled substances.

§ 1301.36 Suspension or revocation of registration; suspension of registration pending final order; extension of registration pending final order.

(a) For any registration issued under section 303 of the Act (21 U.S.C. 823), the Administrator may:

(1) Suspend the registration pursuant to section 304(a) of the Act (21 U.S.C. 824(a)) for any period of time.

(2) Revoke the registration pursuant to section 304(a) of the Act (21 U.S.C. 824(a)).

(b) For any registration issued under section 1008 of the Act (21 U.S.C. 958), the Administrator may:

(1) Suspend the registration pursuant to section 1008(d) of the Act (21 U.S.C. 958(d)) for any period of time.

(2) Revoke the registration pursuant to section 1008(d) of the Act (21 U.S.C. 958(d)) if he/she determines that such registration is inconsistent with the public interest as defined in section 1008 or with the United States obligations under international treaties, conventions, or protocols in effect on October 12, 1984.

(c) The Administrator may limit the revocation or suspension of a registration to the particular controlled substance, or substances, with respect to which grounds for revocation or suspension exist.

(d) Before revoking or suspending any registration, the Administrator shall issue an order to show cause pursuant to § 1301.37 and, if requested by the registrant, shall hold a hearing pursuant to § 13.01.41.

(e) The Administrator may suspend any registration simultaneously with or at any time subsequent to the service upon the registrant of an order to show cause why such registration should not be revoked or suspended, in any case where he/she finds that there is an imminent danger to the public health or safety. If the Administrator so suspends, he/she shall serve with the order to show cause pursuant to § 1301.37 an order of immediate suspension which shall contain a statement of his findings regarding the danger to public health or safety.

(f) Upon service of the order of the Administrator suspending or revoking registration, the registrant shall immediately deliver his/her Certificate of Registration, any order forms, and

any import or export permits in his/her possession to the nearest office of the Administration. The suspension or revocation of a registration shall suspend or revoke any individual manufacturing or procurement quota fixed for the registrant pursuant to part 1303 of this chapter and any import or export permits issued to the registrant pursuant to part 1312 of this chapter. Also, upon service of the order of the Administrator revoking or suspending registration, the registrant shall, as instructed by the Administrator:

(1) Deliver all controlled substances in his/her possession to the nearest office of the Administration or to authorized agents of the Administration; or

(2) Place all controlled substances in his/her possession under seal as described in sections 304(f) or 1008(d)(6) of the Act (21 U.S.C. 824(f) or 958(d)(6)).

(g) In the event that revocation or suspension is limited to a particular controlled substance or substances, the registrant shall be given a new Certificate of Registration for all substances not affected by such revocation or suspension; no fee shall be required to be paid for the new Certificate of Registration. The registrant shall deliver the old Certificate of Registration and, if appropriate, any order forms in his/her possession to the nearest office of the Administration. The suspension or revocation of a registration, when limited to a particular basic class or classes of controlled substances, shall suspend or revoke any individual manufacturing or procurement quota fixed for the registrant for such class or classes pursuant to part 1303 of this chapter and any import or export permits issued to the registrant for such class or classes pursuant to part 1312 of this chapter. Also, upon service of the order of the Administrator revoking or suspending registration, the registrant shall, as instructed by the Administrator:

(1) Deliver to the nearest office of the Administration or to authorized agents of the Administration all of the particular controlled substance or substances affected by the revocation or suspension which are in his/her possession; or

(2) Place all of such substances under seal as described in sections 304(f) or 958(d)(6) of the Act (21 U.S.C. 824(f) or 958(d)(6)).

(h) Any suspension shall continue in effect until the conclusion of all proceedings upon the revocation or suspension, including any judicial review thereof, unless sooner withdrawn by the Administrator or dissolved by a court of competent jurisdiction. Any registrant whose registration is suspended under paragraph (e) of this section may request a hearing on the revocation or suspension of his/her registration at a time earlier than specified in the order to show cause pursuant to § 1301.37, which request shall be granted by the Administrator, who shall fix a date for such hearing as early as reasonably possible.

(i) In the event that an applicant for reregistration (who is doing business under a registration previously granted and not revoked or suspended) has applied for reregistration at least 45 days before the date on which the existing registration is due to expire, and the Administrator has issued no order on the application on the date on which the existing registration is due to expire, the existing registration of the applicant shall automatically be extended and continue in effect until the date on which the Administrator so issues his/her order. The Administrator may extend any other existing registration under the circumstances contemplated in this section even though the registrant failed to apply for reregistration at least 45 days before expiration of the existing registration, with or without request by the registrant, if the Administrator finds that such extension is not inconsistent with the public health and safety.

§ 1301.37 Order to show cause.

(a) If, upon examination of the application for registration from any applicant and other information gathered by the Administration regarding the applicant, the Administrator is unable to make the determinations required by the applicable provisions of section 303 and/or section 1008 of the Act (21 U.S.C. 823 and 958) to register the applicant, the Administrator shall serve upon the applicant an order to show cause why the registration should not be denied.

(b) If, upon information gathered by the Administration regarding any registrant, the Administrator determines that the registration of such registrant is subject to suspension or revocation pursuant to section 304 or section 1008 of the Act (21 U.S.C. 824 and 958), the Administrator shall serve upon the registrant an order to show cause why the registration should not be revoked or suspended.

(c) The order to show cause shall call upon the applicant or registrant to appear before the Administrator at a time and place stated in the order, which shall not be less than 30 days after the date of receipt of the order. The order to show cause shall also contain a statement of the legal basis for such hearing and for the denial, revocation, or suspension of registration and a summary of the matters of fact and law asserted.

(d) Upon receipt of an order to show cause, the applicant or registrant must, if he/she desires a hearing, file a request for a hearing pursuant to § 1301.43. If a hearing is requested, the Administrator shall hold a hearing at the time and place stated in the order, pursuant to § 1301.41.

(e) When authorized by the Administrator, any agent of the Administration may serve the order to show cause.

Hearings

§ 1301.41 Hearings generally.

(a) In any case where the Administrator shall hold a hearing on any registration or application therefor, the procedures for such hearing shall be governed generally by the adjudication procedures set forth in the Administrative Procedure Act (5 U.S.C. 551–559) and specifically by §§ 303, 304, and 1008 of the Act (21 U.S.C. 823–824 and 958), by §§ 1301.42–1301.46 of this part, and by the procedures for administrative hearings under the Act set forth in §§ 1316.41–1316.67 of this chapter.

(b) Any hearing under this part shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under the Act or any other law of the United States.

§ 1301.42 Purpose of hearing.

If requested by a person entitled to a hearing, the Administrator shall hold a hearing for the purpose of receiving factual evidence regarding the issues involved in the denial, revocation, or suspension of any registration, and the granting of any application for registration to manufacture in bulk a basic class of controlled substance listed in Schedule I or II. Extensive argument should not be offered into evidence but rather presented in opening or closing statements of counsel or in memoranda or proposed findings of fact and conclusions of law.

§ 1301.43 Request for hearing or appearance; waiver.

(a) Any person entitled to a hearing pursuant to §§ 1301.32 or 1301.34–1301.36 and desiring a hearing shall, within 30 days after the date of receipt of the order to show cause (or the date of publication of notice of the application for registration in the **Federal Register** in the case of

§ 1301.34), file with the Administrator a written request for a hearing in the form prescribed in § 1316.47 of this chapter.

(b) Any person entitled to participate in a hearing pursuant to § 1301.34 or § 1301.35(b) and desiring to do so shall, within 30 days of the date of publication of notice of the request for a hearing in the **Federal Register**, file with the Administrator a written notice of intent to participate in such hearing in the form prescribed in § 1316.48 of this chapter. Any person filing a request for a hearing need not also file a notice of appearance.

(c) Any person entitled to a hearing or to participate in a hearing pursuant to § 1301.32 or §§ 1301.34–1301.36 may, within the period permitted for filing a request for a hearing or a notice of appearance, file with the Administrator a waiver of an opportunity for a hearing or to participate in a hearing, together with a written statement regarding such person's position on the matters of fact and law involved in such hearing. Such statement, if admissible, shall be made a part of the record and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.

(d) If any person entitled to a hearing or to participate in a hearing pursuant to §§ 1301.32 or 1301.34–1301.36 fails to file a request for a hearing or a notice of appearance, or if such person so files and fails to appear at the hearing, such person shall be deemed to have waived the opportunity for a hearing or to participate in the hearing, unless such person shows good cause for such failure.

(e) If all persons entitled to a hearing or to participate in a hearing waive or are deemed to waive their opportunity for the hearing or to participate in the hearing, the Administrator may cancel the hearing, if scheduled, and issue his/her final order pursuant to § 1301.46 without a hearing.

§ 1301.44 Burden of proof.

(a) At any hearing on an application to manufacture any controlled substance listed in Schedule I or II, the applicant shall have the burden of proving that the requirements for such registration pursuant to section 303(a) of the Act (21 U.S.C. 823(a)) are satisfied. Any other person participating in the hearing pursuant to § 1301.35(b) shall have the burden of proving any propositions of fact or law asserted by such person in the hearing.

(b) At any hearing on the granting or denial of an applicant to be registered to conduct a narcotic treatment program or as a compounder, the applicant shall have the burden of proving that the requirements for each registration pursuant to section 303(g) of the Act (21 U.S.C. 823(g)) are satisfied.

(c) At any hearing on the granting or denial of an application to be registered to import or export any controlled substance listed in Schedule I or II, the applicant shall have the burden of proving that the requirements for such registration pursuant to sections 1008 (a) and (d) of the Act (21 U.S.C. 958 (a) and (d)) are satisfied. Any other person participating in the hearing pursuant to § 1301.34 shall have the burden of proving any propositions of fact or law asserted by him/her in the hearings.

(d) At any other hearing for the denial of a registration, the Administration shall have the burden of proving that the requirements for such registration pursuant to section 303 or section 1008 (c) and (d) of the Act (21 U.S.C. 823 or 958 (c) and (d)) are not satisfied.

(e) At any hearing for the revocation or suspension of a registration, the Administration shall have the burden of proving that the requirements for such revocation or suspension pursuant to section 304(a) or section 1008(d) of the Act (21 U.S.C. 824(a) or 958(d)) are satisfied.

§ 1301.45 Time and place of hearing.

The hearing will commence at the place and time designated in the order to show cause or notice of hearing published in the **Federal Register** (unless expedited pursuant to § 1301.36(h)) but thereafter it may be moved to a different place and may be continued from day to day or recessed to a later day without notice other than announcement thereof by the presiding officer at the hearing.

§ 1301.46 Final order.

As soon as practicable after the presiding officer has certified the record to the Administrator, the Administrator shall issue his/her order on the granting, denial, revocation, or suspension of registration. In the event that an application for registration to manufacture in bulk a basic class of any controlled substance listed in Schedule I or II is granted, or any application for registration is denied, or any registration is revoked or suspended, the order shall include the findings of fact and conclusions of law upon which the order is based. The order shall specify the date on which it shall take effect. The Administrator shall serve one copy of his/her order upon each party in the hearing.

Modification, Transfer and Termination of Registration

§ 1301.51 Modification in registration.

Any registrant may apply to modify his/her registration to authorize the handling of additional controlled substances or to change his/her name or address, by submitting a letter of request to the Registration Unit, Drug Enforcement Administration, Department of Justice, Post Office Box 28083, Central Station, Washington, DC 20005. The letter shall contain the registrant's name, address, and registration number as printed on the certificate of registration, and the substances and/or schedules to be added to his/her registration or the new name or address and shall be signed in accordance with § 1301.13(j). If the registrant is seeking to handle additional controlled substances listed in Schedule I for the purpose of research or instructional activities, he/she shall attach three copies of a research protocol describing each research project involving the additional substances, or two copies of a statement describing the nature, extent, and duration of such instructional activities, as appropriate. No fee shall be required to be paid for the modification. The request for modification shall be handled in the same manner as an application for registration. If the modification in registration is approved, the Administrator shall issue a new certificate of registration (DEA Form 223) to the registrant, who shall maintain it with the old certificate of registration until expiration.

§ 1301.52 Termination of registration; transfer of registration; distribution upon discontinuance of business.

(a) Except as provided in paragraph (b) of this section, the registration of any person shall terminate if and when such person dies, ceases legal existence, or discontinues business or professional practice. Any registrant who ceases legal existence or discontinues business or professional practice shall notify the Administrator promptly of such fact.

(b) No registration or any authority conferred thereby shall be assigned or otherwise transferred except upon such conditions as the Administration may specifically designate and then only pursuant to written consent. Any person seeking authority to transfer a registration shall submit a written request, providing full details regarding the proposed transfer of registration, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration,

Department of Justice, Washington, DC 20537.

(c) Any registrant desiring to discontinue business activities altogether or with respect to controlled substances (without transferring such business activities to another person) shall return for cancellation his/her certificate of registration, and any unexecuted order forms in his/her possession, to the Registration Unit, Drug Enforcement Administration, Department of Justice, Post Office Box 28083, Central Station, Washington, DC 20005. Any controlled substances in his/her possession may be disposed of in accordance with § 1307.21 of this chapter.

(d) Any registrant desiring to discontinue business activities altogether or with respect to controlled substance (by transferring such business activities to another person) shall submit in person or by registered or certified mail, return receipt requested, to the Special Agent in Charge in his/her area, at least 14 days in advance of the date of the proposed transfer (unless the Special Agent in Charge waives this time limitation in individual instances), the following information:

(1) The name, address, registration number, and authorized business activity of the registrant discontinuing the business (registrant-transferor);

(2) The name, address, registration number, and authorized business activity of the person acquiring the business (registrant-transferee);

(3) Whether the business activities will be continued at the location registered by the person discontinuing business, or moved to another location (if the latter, the address of the new location should be listed);

(4) Whether the registrant-transferor has a quota to manufacture or procure any controlled substance listed in Schedule I or II (if so, the basic class or class of the substance should be indicated); and

(5) The date on which the transfer of controlled substances will occur.

(e) Unless the registrant-transferor is informed by the Special Agent in Charge, before the date on which the transfer was stated to occur, that the transfer may not occur, the registrant-transferor may distribute (without being registered to distribute) controlled substances in his/her possession to the registrant-transferee in accordance with the following:

(1) On the date of transfer of the controlled substances, a complete inventory of all controlled substances being transferred shall be taken in accordance with § 1304.11 of this chapter. This inventory shall serve as the final inventory of the registrant-transferor and the initial inventory of the registrant-transferee, and a copy of the inventory shall be included in the records of each person. It shall not be necessary to file a copy of the inventory with the Administration unless requested by the Special Agent in Charge. Transfers of any substances listed in Schedule I or II shall require the use of order forms in accordance with part 1305 of this chapter.

(2) On the date of transfer of the controlled substances, all records required to be kept by the registrant-transferor with reference to the controlled substances being transferred, under part 1304 of this chapter, shall be transferred to the registrant-transferee. Responsibility for the accuracy of records prior to the date of transfer remains with the transferor, but responsibility for custody and maintenance shall be upon the transferee.

(3) In the case of registrants required to make reports pursuant to part 1304 of this chapter, a report marked "Final" will be prepared and submitted by the registrant-transferor showing the disposition of all the controlled substances for which a report is required; no additional report will be required from him, if no further transactions involving controlled substances are consummated by him. The initial report of the registrant-transferee shall account for transactions beginning with the day next succeeding the date of discontinuance or transfer of business by the transferor-registrant and the substances transferred to him shall be reported as receipts in his/her initial report.

§ 1301.75 Physical security controls for practitioners.

* * * * *

(b) Controlled substances listed in Schedules II, III, IV, and V shall be stored in a securely locked, substantially constructed cabinet. However, pharmacies and institutional practitioners may disperse such substances throughout the stock of noncontrolled substances in such a manner as to obstruct the theft or diversion of the controlled substances.

* * * * *

6. Section 1301.76 is proposed to be amended by revising paragraph (c) to read as follows:

§ 1301.76 Other security controls for practitioners.

* * * * *

(c) Whenever the registrant distributes a controlled substance (without being registered as a distributor, as permitted in § 1301.13(e)(1) and/or §§ 1307.11–1307.12) he/she shall comply with the requirements imposed on nonpractitioners in § 1301.74 (a), (b), and (e).

§ 1301.72 [Amended]

7. In 21 CFR 1301.72(b)(4)(i)(b) remove the word "lay" and add, in its place, the word "lag".

PART 1302—[AMENDED]

1. The authority citation for part 1302 continues to read as follows:

Authority: 21 U.S.C. 821, 825, 871(b), 958 (e).

2. Section 1302.02 is proposed to be revised to read as follows:

§ 1302.02 Definitions.

Any term contained in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or Part 1300 of this chapter.

3. Section 1302.04 is proposed to be revised to read as follows:

§ 1302.04 Location and size of symbol on label and labeling.

The symbol shall be prominently located on the label or the labeling of the commercial container and/or the panel of the commercial container normally displayed to dispensers of any controlled substance. The symbol on labels shall be clear and large enough to afford easy identification of the schedule of the controlled substance upon inspection without removal from the dispenser's shelf. The symbol on all other labeling shall be clear and large enough to afford prompt identification of the controlled substance upon inspection of the labeling.

§ 1302.05 [Removed]

4. Section 1302.05 is proposed to be removed.

5. Section 1302.06 is proposed to be redesignated as Section 1302.05 and revised to read as follows:

§ 1302.05 Effective dates of labeling requirements.

All labels on commercial containers of, and all labeling of, a controlled substance which either is transferred to another schedule or is added to any schedule shall comply with the requirements of § 1302.03, on or before the effective date established in the final order for the transfer or addition.

6. Section 1302.07 is proposed to be redesignated as § 1302.06 and revised to read as follows:

§ 1302.06 Sealing of controlled substances.

On each bottle, multiple dose vial, or other commercial container of any controlled substance, there shall be securely affixed to the stopper, cap, lid, covering, or wrapper or such container a seal to disclose upon inspection any tampering or opening of the container.

7. Section 1302.08 is proposed to be redesignated as § 1302.07, and revised to read as follows:

§ 1302.07 Labeling and packaging requirements for imported and exported substances.

(a) The symbol requirements of §§ 1302.03–1302.05 apply to every commercial container containing, and to all labeling of, controlled substances imported into the jurisdiction of and/or the customs territory of the United States.

(b) The symbol requirements of §§ 1302.03–1302.05 do not apply to any commercial containers containing, or any labeling of, a controlled substance intended for export from the jurisdiction of the United States.

(c) The sealing requirements of § 1302.06 apply to every bottle, multiple dose vial, or other commercial container of any controlled substance listed in schedule I or II, or any narcotic controlled substance listed in schedule III or IV, imported into, exported from, or intended for export from, the jurisdiction of and/or the customs territory of the United States.

PART 1303—[AMENDED]

1. The authority citation for part 1303 continues to read as follows:

Authority: 21 U.S.C. 821, 826, 871(b).

2. Section 1303.02 is proposed to be revised to read as follows:

§ 1303.02 Definitions.

Any term contained in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

3. In addition to the proposed amendments set forth above, DEA is proposing to amend each section indicated in the left column by removing the words indicated in the middle column and adding the words in the right column:

Section	Remove	Add
1303.12(b)	(or BND) each place it appears.	
1303.12(b)	Drug Control Section	Drug & Chemical Evaluation Section.
1303.12(d)	Drug Control Section	Drug & Chemical Evaluation Section.
1303.12(e)(1)	subsance	substance.
1303.12(e)(3)	1301.22(b)	1301.13.
1303.21(a)	1301.45 and 1301.46	1301.36.
1303.22	(or BND) each place it appears.	
1303.22	Drug Control Section	Drug & Chemical Evaluation Section.
1303.26	1301.45 or 1301.46	1301.36.
1303.27	Drug Control Section	Drug & Chemical Evaluation Section.
1303.32(b)	1301.45 or 1301.46	1301.36.
1303.35(a)	aggregrate	aggregate.

PART 1304—[AMENDED]

1. The authority citation for part 1304 is proposed to be corrected to read as follows:

Authority: 21 U.S.C. 821, 827, 871(b), 958(e), 965, unless otherwise noted.

2. Section 1304.02 is proposed to be revised to read as follows:

§ 1304.02 Definitions.

Any term contained in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

3. Section 1304.03 is proposed to be amended by removing paragraphs (g) and (h), and revising paragraph (f) to read as follows:

§ 1304.03 Persons required to keep records and file reports.

* * * * *

(f) Registered persons using any controlled substances while conducting preclinical research, in teaching at a registered establishment which maintains records with respect to such substances or conducting research in conformity with an exemption granted under section 505(i) or 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i) or 360b(j)) at a registered establishment which maintains records in accordance with either of those sections are not required to keep records if he/she notifies the Administration of the name, address, and registration number of the establishment maintaining such records. This notification shall be given at the time the person applies for registration or reregistration and shall be made in the form of an attachment to the application, which shall be filed with the application.

4. Section 1304.04 is proposed to be amended by removing "executed" in paragraph (a) and by adding "executed" and by revising paragraphs (e) and (h) to read as follows:

§ 1304.04 Maintenance of records and inventories.

* * * * *

(e) All central recordkeeping permits previously issued by the Administration expired September 30, 1980.

* * * * *

(h) Each registered pharmacy shall maintain the inventories and records of controlled substances as follows:

(1) Inventories and records of all controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy, and prescriptions for such substances shall be maintained in a separate prescription file; and

(2) Inventories and records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the pharmacy or in such form that the information required is readily retrievable from ordinary business records of the pharmacy, and prescriptions for such substances shall be maintained either in a separate prescription file for controlled substances listed in Schedules III, IV, and V only or in such form that they are readily retrievable from the other prescription records of the pharmacy. Prescriptions will be deemed readily retrievable if, at the time they are initially filed, the face of the prescription is stamped in red ink in the lower right corner with the letter "C" no less than 1-inch high and filed either in the prescription file for controlled substances listed in Schedules I and II or in the usual consecutively numbered prescription file for non-controlled substances. However, if a pharmacy employs an ADP system or other electronic recordkeeping system for prescriptions which permits

identification by prescription number and retrieval of original documents by prescriber's name, patient's name, drug dispensed, and date filled, then the requirement to mark the hard copy prescription with a red "C" is waived.

5. Section 1304.11 is proposed to be revised to read as follows:

§ 1304.11 Inventory requirements.

(a) *General requirements.* Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken, and shall be maintained in written, typewritten, or printed form at the registered location. An inventory taken by use of an oral recording device must be promptly transcribed. Controlled substances shall be deemed to be "on hand" if they are in the possession of or under the control of the registrant, including substances returned by a customer, ordered by a customer but not yet invoiced, stored in a warehouse on behalf of the registrant, and substances in the possession of employees of the registrant and intended for distribution as complimentary samples. A separate inventory shall be made for each registered location and each independent activity registered, except as provided in paragraph (e)(4) of this section. In the event controlled substances in the possession or under the control of the registrant are stored at a location for which he/she is not registered, the substances shall be included in the inventory of the registered location to which they are subject to control or to which the person possessing the substance is responsible. The inventory may be taken either as of opening of business or as of the close of business on the inventory date and it shall be indicated on the inventory.

(b) *Initial inventory date.* Every person required to keep records, shall take an inventory of all stocks of controlled substances on hand on the date he/she first engages in the manufacture, distribution, or dispensing of controlled substances, in accordance with paragraph (e) of this section as applicable. In the event a person commences business with no controlled substances on hand, he/she shall record this fact as the initial inventory.

(c) *Biennial inventory date.* After the initial inventory is taken, the registrant shall take a new inventory of all stocks of controlled substances on hand at least every two years. The biennial inventory may be taken on the day of the year on which the initial inventory was taken or on any other fixed date which does not vary by more than 6 months from the biennial date that would otherwise apply. If the registrant elects to take the biennial inventory on another fixed date, he/she shall notify the Administration of this election and of the date on which the biennial inventory will be taken.

(d) *Inventory date for newly controlled substances.* On the effective date of a rule by the Administrator pursuant to §§ 1308.45, 1308.46, or § 1308.47 of this chapter adding a substance to any schedule of controlled substances, which substance was, immediately prior to that date, not listed on any such schedule, every registrant required to keep records who possesses that substance shall take an inventory of all stocks of the substance on hand. Thereafter, such substance shall be included in each inventory made by the registrant pursuant to paragraph (c) of this section.

(e) *Inventories of manufacturers, distributors, dispensers, researchers, importers, exporters and chemical analysts.* Each person registered or authorized (by §§ 1301.13 or §§ 1307.11–1307.13 of this chapter) to manufacture, distribute, dispense, import, export, conduct research or chemical analysis with controlled substances and required to keep records pursuant to § 1304.03 shall include in the inventory the information listed below.

(1) *Inventories of manufacturers.* Each person registered or authorized to manufacture controlled substances shall include the following information in the inventory:

(i) For each controlled substance in bulk form to be used in (or capable of use in) the manufacture of the same or other controlled or non-controlled substances in finished form, the inventory shall include:

(A) the name of the substance and

(B) the total quantity of the substance to the nearest metric unit weight consistent with unit size.

(ii) For each controlled substance in the process of manufacture on the inventory date, the inventory shall include:

(A) The name of the substance;

(B) the quantity of the substance in each batch and/or stage of manufacture, identified by the batch number or other appropriate identifying number;

(C) the physical form which the substance is to take upon completion of the manufacturing process (e.g., granulations, tablets, capsules, or solutions), identified by the batch number or other appropriate identifying number, and if possible the finished form of the substance (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter) and the number or volume thereof.

(iii) For each controlled substance in finished form the inventory shall include:

(A) The name of the substance;

(B) each finished form of the substance (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter);

(C) the number of units or volume of each finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial); and

(D) the number of commercial containers of each such finished form (e.g. four 100-tablet bottles or six 3-milliliter vials).

(iv) For each controlled substance not included in paragraphs (e)(1) (i), (ii) or (iii) of this section (e.g., damaged, defective or impure substances awaiting disposal, substances held for quality control purposes, or substances maintained for extemporaneous compoundings) the inventories shall include:

(A) The name of the substance;

(B) the total quantity of the substance to the nearest metric unit weight or the total number of units of finished form; and

(C) the reason for the substance being maintained by the registrant and whether such substance is capable of use in the manufacture of any controlled substance in finished form.

(2) *Inventories of distributors.* Each person registered or authorized to distribute controlled substances shall include in the inventory the same information required of manufacturers pursuant to paragraphs (e)(1) (iii) and (iv) of this section.

(3) *Inventories of dispensers and researchers.* Each person registered or authorized to dispense or conduct research with controlled substances shall include in the inventory the same information required of manufacturers pursuant to paragraphs (e)(1) (iii) and (iv) of this section. In determining the number of units of each finished form of a controlled substance in a commercial container which has been opened, the dispenser shall do as follows:

(i) If the substance is listed in Schedule I or II, make an exact count or measure of the contents or

(ii) if the substance is listed in Schedule III, IV or V, make an estimated count or measure of the contents, unless the container holds more than 1,000 tablets or capsules in which case he/she must make an exact count of the contents.

(4) *Inventories of importers and exporters.* Each person registered or authorized to import or export controlled substances shall include in the inventory, the same information required of manufacturers pursuant to paragraphs (e)(1) (iii) and (iv) of this section. Each such person who is also registered as a manufacturer or as a distributor shall include in his/her inventory as an importer or exporter only those stocks of controlled substances that are actually separated from his stocks as a manufacturer or as a distributor (e.g., in transit or in storage for shipment).

(5) *Inventories of chemical analysts.* Each person registered or authorized to conduct chemical analysis with controlled substances shall include in his inventory the same information required of manufacturers pursuant to paragraphs (e)(1) (iii) and (iv) of this section as to substances which have been manufactured, imported, or received by such person. If less than 1 kilogram of any controlled substance (other than a hallucinogenic controlled substance listed in Schedule I), or less than 20 grams of a hallucinogenic substance listed in Schedule I (other than lysergic acid diethylamide), or less than 0.5 gram of lysergic acid diethylamide, is on hand at the time of inventory, that substance need not be included in the inventory. Laboratories of the Administration may possess up to 150 grams of any hallucinogenic substance in Schedule I without regard to a need for an inventory of those substances. No inventory is required of known or suspected controlled substances received as evidentiary materials for analysis.

§§ 1304.12—1304.19 [Removed]

6. Sections 1304.12, 1304.13, 1304.14, 1304.15, 1304.16, 1304.17, 1304.18 and 1304.19 are proposed to be removed.

7. Section 1304.21 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

§ 1304.21 General requirements for continuing records.

(a) Every registrant required to keep records pursuant to Section 1304.03 shall maintain on a current basis a complete and accurate record of each such substance manufactured, imported, received, sold, delivered, exported, or otherwise disposed of by him/her, except that no registrant shall be required to maintain a perpetual inventory.

(b) * * *

(c) Separate records shall be maintained by a registrant for each independent activity for which he/she is registered, except as provided in § 1304.22(d).

* * * * *

8. Section 1304.22 is proposed to be revised to read as follows:

1304.22 Records for manufacturers, distributors, dispensers, researchers, importers and exporters.

Each person registered or authorized (by § 1301.13(e) or §§ 1307.11–1307.13 of this chapter) to manufacture, distribute, dispense, import, export or conduct research with controlled substances shall maintain records with the information listed below.

(a) *Records for manufacturers.* Each person registered or authorized to manufacture controlled substances shall maintain records with the following information:

(1) For each controlled substance in bulk form to be used in, or capable of use in, or being used in, the manufacture of the same or other controlled or noncontrolled substances in finished form,

(i) The name of the substance;

(ii) The quantity manufactured in bulk form by the registrant, including the date, quantity and batch or other identifying number of each batch manufactured;

(iii) The quantity received from other persons, including the date and quantity of each receipt and the name, address, and registration number of the other person from whom the substance was received;

(iv) The quantity imported directly by the registrant (under a registration as an importer) for use in manufacture by him/her, including the date, quantity, and import permit or declaration number for each importation;

(v) The quantity used to manufacture the same substance in finished form, including:

(A) The date and batch or other identifying number of each manufacture;

(B) The quantity used in the manufacture;

(C) The finished form (e.g., 10-milligram tablets or 10-milligram concentration per fluid ounce or milliliter);

(D) The number of units of finished form manufactured;

(E) The quantity used in quality control;

(F) The quantity lost during manufacturing and the causes therefore, if known;

(G) The total quantity of the substance contained in the finished form;

(H) The theoretical and actual yields; and

(I) Such other information as is necessary to account for all controlled substances used in the manufacturing process;

(vi) The quantity used to manufacture other controlled and noncontrolled substances, including the name of each substance manufactured and the information required in paragraph (a)(1)(v) of this section;

(vii) The quantity distributed in bulk form to other persons, including the date and quantity of each distribution and the name, address, and registration number of each person to whom a distribution was made;

(viii) The quantity exported directly by the registrant (under a registration as an exporter), including the date, quantity, and export permit or declaration number of each exportation;

(ix) The quantity distributed or disposed of in any other manner by the registrant (e.g., by distribution of complimentary samples or by destruction), including the date and manner of distribution or disposal, the name, address, and registration number of the person to whom distributed, and the quantity distributed or disposed;

(x) The originals of all written certifications of available procurement quotas submitted by other persons (as required by § 1303.12(f) of this chapter) relating to each order requiring the distribution of a basic class of controlled substance listed in Schedule I or II.

(2) For each controlled substance in finished form,

(i) The name of the substance;

(ii) Each finished form (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial);

(iii) The number of containers of each such commercial finished form manufactured from bulk form by the registrant, including the information required pursuant to paragraph (a)(1)(v) of this section;

(iv) The number of units of finished forms and/or commercial containers received from other persons, including the date of and number of units and/or commercial containers in each receipt and the name, address, and registration number of the person from whom the units were received;

(v) The number of units of finished forms and/or commercial containers imported directly by the person (under a registration or authorization to import), including the date of, the number of units and/or commercial containers in, and the import permit or declaration number for, each importation.

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(vi) The number of units and/or commercial containers manufactured by the registrant from units in finished form received from others or imported, including:

(A) The date and batch or other identifying number of each manufacture;

(B) The operation performed (e.g., repackaging or relabeling);

(C) The number of units of finished form used in the manufacture, the number manufactured and the number lost during manufacture, with the causes for such losses, if known; and

(D) Such other information as is necessary to account for all controlled substances used in the manufacturing process;

(vii) The number of commercial containers distributed to other persons, including the date of and number of containers in each distribution, and the name, address, and registration number of the person to whom the containers were distributed;

(viii) The number of commercial containers exported directly by the registrant (under a registration as an exporter), including the date, number of containers and export permit or declaration number for each exportation; and

(ix) The number of units of finished forms and/or commercial containers distributed or disposed of in any other manner by the registrant (e.g., by distribution of complimentary samples or by destruction), including the date and manner of distribution or disposal, the name address, and registration number of the person to whom distributed, and the quantity in finished form distributed or disposed.

(b) *Records for distributors.* Each person registered or authorized to distribute controlled substances shall maintain records with the same information required of manufacturers pursuant to paragraphs (a)(2) (i), (ii), (iv), (v), (vii), (viii) and (ix) of this section.

(c) *Records for dispensers and researchers.* Each person registered or authorized to dispense or conduct research with controlled substances shall maintain records with the same information required of manufacturers pursuant to paragraph (a)(2) (i), (ii), (iv) and (ix) of this section. In addition, records shall be maintained of the number of units or volume of such finished form dispensed, including the name and address of the person to whom it was dispensed, the date of dispensing, the number of units or volume dispensed, and the written or typewritten name or initials of the individual who dispensed or administered the substance on behalf of the dispenser.

(d) *Records for importers and exporters.* Each person registered or authorized to import or export controlled substances shall maintain records with the same information required of manufacturers pursuant to paragraphs (a)(2) (i), (iv), (v) and (vii) of this section. In addition, the quantity disposed of in any other manner by the registrant (except quantities used in manufacturing by an importer under a registration as a manufacturer), which quantities are to be recorded pursuant to paragraphs (a)(1) (iv) and (v) of this section; and the quantity (or number of units or volume in finished form) exported, including the date, quantity (or number of units or volume), and the export permit or declaration number for each exportation, but excluding all quantities (and number of units and volumes) manufactured by an exporter under a registration as a manufacturer, which quantities (and numbers of units and volumes) are to be recorded pursuant to paragraphs (a)(1)(xiii) or (a)(2)(xiii) of this section.

§§ 1304.23—1304.26 [Removed]

9. Sections 1304.23 through 1304.26 are proposed to be removed.

§ 1304.27 [Redesignated as § 1304.23]

10. Section 1304.27 is proposed to be redesignated as § 1304.23.

§ 1304.28 [Redesignated as § 1304.24 and amended]

11. Section 1304.28 is proposed to be redesignated as § 1304.24 and reference in § 1304.28(b) to "§ 1304.24" is proposed to be revised to read "§ 1304.22", and in paragraph (d), the words "part 1401 of this title" are proposed to be revised to read "42 CFR Part 2."

§ 1304.29 [Redesignated as § 1304.25]

12. Section 1304.29 is proposed to be redesignated as § 1304.25.

13. Section 1304.31 is proposed to be revised to read as follows:

§ 1304.31 Reports from manufacturers importing narcotic raw material.

(a) Every manufacturer which imports or manufactures from narcotic raw material (opium, poppy straw, and concentrate of poppy straw), shall submit information which accounts for the importation and for all manufacturing operations performed between importation and the production in bulk or finished marketable products, standardized in accordance with the U.S. Pharmacopeia, National Formulary or other recognized medical standards. Reports shall be signed by the authorized official and submitted quarterly on company letterhead to the Drug Enforcement Administration, Drug and Chemical Evaluation Section, Washington, D.C. 20537, on or before the 15th day of the month immediately following the period for which it is submitted.

(b) The following information shall be submitted for each type of narcotic raw material (quantities are expressed as grams of anhydrous morphine alkaloid):

(1) Beginning inventory;
(2) Gains on reweighing;
(3) Imports;
(4) Other receipts;
(5) Quantity put into process;
(6) Losses on reweighing;
(7) Other dispositions and
(8) Ending inventory.

(c) The following information shall be submitted for each narcotic raw material derivative including morphine, codeine, thebaine, oxycodone, hydrocodone, medicinal opium, manufacturing opium, crude alkaloids and other derivatives (quantities are expressed as grams of anhydrous base or anhydrous morphine alkaloid for manufacturing opium and medicinal opium):

(1) Beginning inventory;
(2) Gains on reweighing;
(3) Quantity extracted from narcotic raw material;
(4) Quantity produced/manufactured/synthesized;
(5) Quantity sold;
(6) Quantity returned to conversion processes for reworking;
(7) Quantity used for conversion;
(8) Quantity placed in process;
(9) Other dispositions;
(10) Losses on reweighing and
(11) Ending inventory.

(d) The following information shall be submitted for importation of each narcotic raw material:

(1) Import permit number;
(2) Date shipment arrived at the United States port of entry;
(3) Actual quantity shipped;
(4) Assay (percent) of morphine, codeine and thebaine and
(5) Quantity shipped, expressed as anhydrous morphine alkaloid.

(e) Upon importation of crude opium, samples will be selected and assays made by the importing manufacturer in the manner and according to the method specified in the U.S. Pharmacopoeia. Where final assay data is not determined at the time of rendering report, the report shall be made on the basis of the best data available, subject to adjustment, and the necessary adjusting entries shall be made on the next report.

(f) Where factory procedure is such that partial withdrawals of opium are made from individual containers, there shall be attached to each container a stock record card on which shall be kept a complete record of all withdrawals therefrom.

(g) All in-process inventories should be expressed in terms of end-products and not precursors. Once precursor material has been changed or placed into process for the manufacture of a specified end-product, it must no longer be accounted for as precursor stocks available for conversion or use, but rather as end-product in-process inventories.

14. Section 1304.32 is proposed to be revised to read as follows:

§ 1304.32 Reports of manufacturers importing coca leaves.

(a) Every manufacturer importing or manufacturing from raw coca leaves shall submit information accounting for the importation and for all manufacturing operations performed between the importation and the manufacture of bulk or finished products standardized in accordance with U.S. Pharmacopoeia, National Formulary, or other recognized standards. The reports shall be submitted quarterly on company letterhead to the Drug Enforcement Administration, Drug and Chemical Evaluation Section, Washington, DC 20537, on or before the 15th day of the month immediately following the period for which it is submitted.

(b) The following information shall be submitted for raw coca leaf, ecgonine, ecgonine for conversion or further manufacture, benzoylecgonine, manufacturing coca extracts (list for tinctures and extracts; and others separately), other crude alkaloids and other derivatives (quantities should be reported as grams of actual quantity involved and the cocaine alkaloid content or equivalency):

(1) Beginning inventory;
(2) Imports;
(3) Gains on reweighing;
(4) Quantity purchased;
(5) Quantity produced;
(6) Other receipts;
(7) Quantity returned to processes for reworking;
(8) Material used in purification for sale;
(9) Material used for manufacture or production;
(10) Losses on reweighing;
(11) Material used for conversion;
(12) Other dispositions and
(13) Ending inventory.

(c) The following information shall be submitted for importation of coca leaves:

(1) Import permit number;
(2) Date the shipment arrived at the United States port of entry;
(3) Actual quantity shipped;
(4) Assay (percent) of cocaine alkaloid and
(5) Total cocaine alkaloid content.

(d) Upon importation of coca leaves, samples will be selected and assays made by the importing manufacturer in accordance with recognized chemical procedures. These assays shall form the basis of accounting for such coca leaves, which shall be accounted for in terms of their cocaine alkaloid content or equivalency or their total anhydrous coca alkaloid content. Where final assay data is not determined at the time of submission, the report shall be made on the basis of the best data available, subject to adjustment, and the necessary adjusting entries shall be made on the next report.

(e) Where factory procedure is such that partial withdrawals of medicinal coca leaves are made from individual containers, there shall be attached to the container a stock record card on which shall be kept a complete record of withdrawals therefrom.

(f) All in-process inventories should be expressed in terms of end-products and not precursors. Once precursor material has been changed or placed into process for the manufacture of a specified end-product, it must no longer be accounted for as precursor stocks available for conversion or use, but rather as end-product in-process inventories.

§ 1304.33 [Removed]

15. Section 1304.33 is proposed to be removed.

§ 1304.34 [Redesignated as § 1304.33]

16. Section 1304.34 is proposed to be redesignated as § 1304.33 and revised to read as follows:

§ 1304.33 Reports to ARCOS.

(a) *Reports generally.* All reports required by this section shall be filed with the ARCOS Unit, PO/ 28293, Central Station, Washington, DC 20005 on DEA Form 333, or on media which contains the data required by DEA Form 333 and which is acceptable to the ARCOS Unit.

(b) *Frequency of reports.* Acquisition/Distribution transaction reports shall be filed every quarter not later than the 15th day of the month succeeding the quarter for which it is submitted; except that a registrant may be given permission to file more frequently, (but not more frequently than monthly), depending on the number of transactions being reported each time by that registrant. Inventories shall provide data on the stocks of each reported controlled substance on hand as of the close of business on December 31 of each year. These reports shall be filed not later than January 15 of the following year. Manufacturing transaction reports shall be filed annually for each calendar year not later than January 15 of the following year.

(c) *Persons reporting.* For controlled substances in Schedules I, II or narcotic controlled substances in Schedule III, each person who is registered to manufacture in bulk or dosage form, or package, repackage, label or relabel and each person who is registered to distribute shall report acquisition/distribution transactions. In addition to reporting acquisition/distribution transactions, each person who is registered to manufacture controlled substances in bulk or dosage form shall report manufacturing transactions on controlled substances in Schedules I and II, each narcotic controlled substance listed in Schedules III, IV, and V, and on each psychotropic controlled substance listed in Schedules III and IV as identified in paragraph (d) of this section.

(d) *Substances covered.* Manufacturing and acquisition/distribution transaction reports shall include data on each controlled substance listed in Schedules I and II and on each narcotic controlled substance listed in Schedule III (but not on any material, compound, mixture or preparation containing a quantity of a substance having a stimulant effect on the central nervous system, which material, compound, mixture or preparation is listed in Schedule III or on any narcotic controlled substance listed in Schedule V). Additionally, reports on manufacturing transactions shall include the following psychotropic controlled substances listed in Schedules III and IV:

Schedule III

(1) Benzphetamine;
(2) Cyclobarbital;
(3) Methyprylon; and
(4) Phendimetrazine.

Schedule IV

(1) Barbital;
(2) Diethylpropion (Amfepramone);
(3) Ethchlorvynol;
(4) Ethinamate;
(5) Lefetamine (SPA);
(6) Mazindol;
(7) Meprobamate;
(8) Methylphenobarbital;
(9) Phenobarbital;
(10) Phentermine; and
(11) Pipradrol.

Data shall be presented in such a manner as to identify the particular

form, strength, and trade name, if any, of the product containing the controlled substance for which the report is being made. For this purpose, persons filing reports shall utilize the National Drug Code Number assigned to the product under the National Drug Code System of the Food and Drug Administration.

(e) *Transactions reported.* Acquisition/distribution transaction reports shall provide data on each acquisition to inventory (identifying whether it is, e.g., by purchase or transfer, return from a customer, or supply by the Federal Government) and each reduction from inventory (identifying whether it is, e.g., by sale or transfer, theft, destruction or seizure by Government agencies). Manufacturing reports shall provide data on material manufactured, manufacture from other material, use in manufacturing other material and use in producing dosage forms.

(f) *Exceptions.* A registered institutional practitioner who repackages or relabels exclusively for distribution or who distributes exclusively to (for dispensing by) agents, employees, or affiliated institutional practitioners of the registrant may be exempted from filing reports under this section by applying to the ARCOS Unit of the Administration.

(Approved by the Office of Management and Budget under control number 1117–0003)

§§ 1304.35—1304.38 [Removed]

17. Sections 1304.35 through 1304.38 are proposed to be removed.

PART 1305—[AMENDED]

1. The authority citation for part 1305 continues to read as follows:

Authority: 21 U.S.C. 821, 828, 871(b) unless otherwise noted.

2. Section 1305.02 is proposed to be revised to read as follows:

§ 1305.02 Definitions.

Any term contained in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or Part 1300 of this chapter.

3. Section 1305.03 is proposed to be revised to read as follows:

§ 1305.03 Distributions requiring order forms.

An order form (DEA Form 222) is required for each distribution of a Schedule I or II controlled substance except to persons exempted from registration under part 1301 of this chapter; which are exported from the United States in conformity with the Act; or for delivery to a registered analytical laboratory, or its agent approved by DEA.

4. Section 1305.06 is proposed to be amended to read as follows:

§ 1305.06 Procedure for executing order forms.

(a) Order forms shall be prepared and executed by the purchaser simultaneously in triplicate by means of interleaved carbon sheets which are part of the DEA Form 222. Order forms shall be prepared by use of a typewriter, pen, or indelible pencil.

(b) Only one item shall be entered on each numbered line. An item shall consist of one or more commercial or bulk containers of the same finished or bulk form and quantity of the same substance. The last line completed shall be noted on that form at the bottom of the form, in the space provided. Order forms for carfentanil, etorphine hydrochloride, and diprenorphine shall contain only these substances.

(c) The name and address of the supplier from whom the controlled substances are being ordered shall be entered on the form. Only one supplier may be listed on any form.

(d) Each order form shall be signed and dated by a person authorized to sign an application for registration. The name of the purchaser, if different from the individual signing the order form, shall also be inserted in the signature space. Unexecuted order forms may be kept and may be executed at a location other than the registered location printed on the form, provided that all unexecuted forms are delivered promptly to the registered location upon an inspection of such location by any officer authorized to make inspections, or to enforce, any Federal, State, or local law regarding controlled substances.

5. Section 1305.07 is proposed to be amended to read as follows:

§ 1305.07 Power of attorney.

Any purchaser may authorize one or more individuals, whether or not located at the registered location of the purchaser, to obtain and execute order forms on his/her behalf by executing a power of attorney for each such individual. The power of attorney shall be signed by the same person who signed the most recent application for registration or reregistration and by the individual being authorized to obtain and execute order forms. The power of attorney shall be filed with the executed order forms of the purchaser, and shall be retained for the same period as any order form bearing the signature of the attorney. The power of attorney shall be available for inspection together with other order form records. Any power of attorney may be revoked at any time by executing a notice of revocation, signed by the person who signed (or was authorized to sign) the power of attorney or by a successor, whoever signed the most recent application for registration or reregistration, and filing it with the power of attorney being revoked. The form for the power of attorney and notice of revocation shall be similar to the following:

Power of Attorney for DEA Order Forms

_____
(Name of registrant)

_____
(Address of registrant)

(DEA registration number) _____

I, _____ (name of person granting power), the undersigned, who is authorized to sign the current application for registration of the above-named registrant under the Controlled Substances Act or Controlled Substances Import and Export Act, have made, constituted, and appointed, and by these presents, do make, constitute, and appoint

(name of attorney-in-fact), _____

my true and lawful attorney for me in my name, place, and stead, to execute applications for books of official order forms and to sign such order forms in requisition for Schedule I and II controlled substances, in accordance with section 308 of the Controlled Substances Act (21 U.S.C. 828) and part 1305 of Title 21 of the Code of Federal Regulations. I hereby ratify and confirm all that said attorney shall lawfully do or cause to be done by virtue hereof.

_____
(Signature of person granting power)

I, _____ (name of attorney-in-fact), hereby affirm that I am the person named herein as attorney-in-fact and that the signature affixed hereto is my signature.

_____
(Signature of attorney-in-fact)

Witnesses:

1. _____.
2. _____.

Signed and dated on the _____ day of _____, (year), at _____.

Notice of Revocation

The foregoing power of attorney is hereby revoked by the undersigned, who is authorized to sign the current application for registration of the above-named registrant under the Controlled Substances Act of the Controlled Substances Import and Export Act. Written notice of this revocation has been given to the attorney-in-fact _____ this same day.

_____
(Signature of person revoking power)

Witnesses:

1. _____.
2. _____.

Signed and dated on the _____ day of _____, (year), at _____.

6. Section 1305.12 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1305.12 Lost or stolen order forms.

* * * * *

(b) Whenever any used or unused order forms are stolen or lost (otherwise than in the course of transmission) by any purchaser or supplier, he/she shall immediately upon discovery of such theft or loss, report the same to the Special Agent in Charge of the Drug Enforcement Administration in the Divisional Office responsible for the area in which the registrant is located, stating the serial number of each form stolen or lost. If the theft or loss includes any original order forms received from purchasers and the supplier is unable to state the serial numbers of such order forms, he/she shall report the date or approximate date of receipt thereof and the names and addresses of the purchasers. If an entire book of order forms is lost or stolen, and the purchaser is unable to state the serial numbers of the order forms contained therein, he/she shall report, in lieu of the numbers of the forms contained in such book, the date or approximate date of issuance thereof. If any unused order form reported stolen or lost is subsequently recovered or found, the Special Agent in Charge of the Drug Enforcement Administration in the Divisional Office responsible for the area in which the registrant is located shall immediately be notified.

7. In addition to the proposed amendments set forth above, DEA is proposing to amend each section indicated in the left column by removing the words indicated in the middle column and adding the words in the right column:

Section	Remove	Add
1305.04(b)	his	his/her.
1305.05(b)	him (twice) ...	him/her.
1305.08(a)	he	he/she.
1305.08(a)	his (twice)	his/her.
1305.09(b)	he	he/she.
1305.09(d)	his ovn	his/her own.
1305.10(a)	hall	shall.
1305.10(a)	he	he/she.
1305.13(a)	He	He/She.
1305.13(b)	he	he/she.
1305.13(c)	he	he/she.
1305.13(c)	1305.06(e) ...	1305.06(d).
1305.14	he (twice)	he/she.
1305.14	1301.45 or 1301.46.	1301.36.
1305.16(b)	he	he/she.

PART 1306—[AMENDED]

1. The authority citation for Part 1306 continues to read as follows:

Authority: 21 U.S.C. 821, 829, 871(b).

2. Section 1306.02 is proposed to be revised to read as follows:

§ 1306.02 Definitions.

Any term contained in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

3. Section 1306.11 is proposed to be amended by revising paragraphs (a) and (d)(4), and adding a new paragraph (g) to read as follows:

§ 1306.11 Requirement of prescription.

(a) A pharmacist may dispense directly a controlled substance listed in Schedule II, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, only pursuant to a written prescription signed by the practitioner, except as provided in paragraph (d) of this section. A prescription for a Schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile equipment, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance, except as noted in paragraph (e), (f), or (g) of this section. The original prescription shall be maintained in accordance with § 1304.04(h) of this chapter.

* * * * *

(d) * * *

(4) Within 7 days after authorizing an emergency oral prescription, the prescribing individual practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of § 1306.05, the prescription shall have written on its face "Authorization for Emergency Dispensing," and the date of the oral order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail it must be postmarked within the 7 day period. Upon receipt, the dispensing pharmacist shall attach this prescription to the oral emergency prescription which had earlier been reduced to writing. The pharmacist shall notify the nearest office of the Administration if the prescribing individual practitioner fails to deliver a written prescription to him; failure of the pharmacist to do so shall void the authority conferred by this paragraph to dispense without a written prescription of a prescribing individual practitioner.

* * * * *

(g) A prescription prepared in accordance with § 1306.05 written for a Schedule II narcotic substance for a patient released by a registered institution to a home hospice setting which continues to provide daily skilled nursing care to the home hospice setting may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The practitioner or the practitioner's agent will note on the prescription that the patient is a hospice patient. The facsimile serves as the original written prescription for purposes of this paragraph (g) and it shall be maintained in accordance with § 1304.04(h) of this chapter.

4. Section 1306.13 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1306.13 Partial filling of prescriptions.

* * * * *

(b) A prescription for a Schedule II controlled substance written for a patient in a Long Term Care Facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist must contact the practitioner prior to partially filling the prescription. The pharmacist must record on the prescription whether the patient is "terminally ill" or an "LTCF patient." Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. The pharmacist must record on the prescription whether the patient is "terminally ill" or an "LTCF patient." A prescription that is partially filled and does not contain the notation "terminally ill" or "LTCF patient" shall be deemed to have been filled in violation of the Act. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of Schedule II controlled substances dispensed in all partial fillings must not exceed the total quantity prescribed. Schedule II prescriptions for patients in a LTCF or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of medication.

* * * * *

5. Section 1306.14 is proposed to be amended by revising the heading and adding a new paragraph (c) to read as follows:

§ 1306.14 Labeling of substances and filling of prescriptions.

* * * * *

(c) All written prescriptions and written records of emergency oral prescriptions shall be kept in accordance with requirements of § 1304.04(h) of this chapter.

6. Section 1306.15 is proposed to be removed.

7. The center undesignated heading preceding § 1306.21 and § 1306.21 are proposed to be revised to read as follows:

Controlled Substances Listed in Schedules III, IV, and V

§ 1306.21 Requirement of prescription.

(a) A pharmacist may dispense directly a controlled substance listed in Schedule III, IV, or V which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, only pursuant to either a written prescription signed by a practitioner or a facsimile of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the pharmacy or pursuant to an oral prescription made by an individual practitioner and promptly reduced to writing by the pharmacist containing all information required in § 1306.05, except for the signature of the practitioner.

(b) An individual practitioner may administer or dispense directly a controlled substance listed in Schedule III, IV, or V in the course of his/her professional practice without a prescription, subject to § 1306.07.

(c) An institutional practitioner may administer or dispense directly (but not prescribe) a controlled substance listed in Schedule III, IV, or V only pursuant to a written prescription signed by an individual practitioner, or pursuant to a facsimile of a written prescription or order for medication transmitted by the practitioner or the practitioner's agent to the institutional practitioner-pharmacist, or pursuant to an oral prescription made by an individual practitioner and promptly reduced to writing by the pharmacist (containing all information required in § 1306.05 except for the signature of the individual practitioner), or pursuant to an order for medication made by an individual practitioner which is dispensed for immediate administration to the ultimate user, subject to § 1306.07.

8. Section 1306.23 is proposed to be amended by revising the introductory text to read as follows:

§ 1306.23 Partial filling of prescriptions.

The partial filling of a prescription for a controlled substance listed in Schedule III, IV, or V is permissible, provided that:

* * * * *

9. Section 1306.24 is proposed to be revised to read as follows:

§ 1306.24 Labeling of substances and filling of prescriptions.

(a) The pharmacist filling a prescription for a controlled substance listed in Schedule III, IV, or V shall affix to the package a label showing the pharmacy name and address, the serial number and date of initial filling, the name of the patient, the name of the practitioner issuing the prescription, and directions for use and cautionary statements, if any, contained in such prescription as required by law.

(b) The requirements of paragraph (a) of this section do not apply when a controlled substance listed in Schedule III, IV, or V is prescribed for administration to an ultimate user who is institutionalized: provided, that:

(1) Not more than a 34-day supply or 100 dosage units, whichever is less, of the controlled substance listed in Schedule III, IV or V is dispensed at one time;

(2) The controlled substance listed in Schedule III, IV or V is not in the possession of the ultimate user prior to administration;

(3) The institution maintains appropriate safeguards and records the proper administration, control, dispensing, and storage of the controlled substance listed in Schedule III, IV or V; and

(4) The system employed by the pharmacist in filling a prescription is adequate to identify the supplier, the product and the patient, and to set forth the directions for use and cautionary statements, if any, contained in the prescription or required by law.

(c) All prescriptions for controlled substances listed in Schedules III, IV and V shall be kept in accordance with § 1304.04(h) of this chapter.

§ 1306.25 [Removed]

10. Section 1306.25 is proposed to be removed.

§ 1306.26 [Redesignated as § 1306.25 and amended]

11. Section 1306.26 is proposed to be redesignated as § 1306.25 and amended by revising paragraphs (a) and (b) to read as follows:

§ 1306.25 Transfer between pharmacies of prescription information for Schedules III, IV, and V controlled substances for refill purposes.

(a) The transfer of original prescription information for a controlled substance listed in Schedules III, IV or V for the purpose of refill dispensing is permissible between pharmacies on a one time basis only. However, pharmacies electronically sharing a real-time, on-line database may transfer up to the maximum refills permitted by law and the prescriber's authorization. Transfers are subject to the following requirements:

(1) The transfer is communicated directly between two licensed pharmacists and the transferring pharmacist records the following information:

(i) Write the word "VOID" on the face of the invalidated prescription.

(ii) Record on the reverse of the invalidated prescription the name, address and DEA registration number of the pharmacy to which it was transferred and the name of the pharmacist receiving the prescription information.

(iii) Record the date of the transfer and the name of the pharmacist transferring the information.

(b) The pharmacist receiving the transferred prescription information shall reduce to writing the following:

(1) Write the word "transfer" on the face of the transferred prescription.

(2) Provide all information required to be on a prescription pursuant to 21 CFR 1306.05 and include:

(i) Date of issuance of original prescription;

(ii) Original number of refills authorized on original prescription;

(iii) Date of original dispensing;

(iv) Number of valid refills remaining and date(s) and locations of previous refill(s);

(v) Pharmacy's name, address, DEA registration number and prescription number from which the prescription information was transferred;

(vi) Name of pharmacist who transferred the prescription.

(vii) Pharmacy's name, address, DEA registration number and prescription number from which the prescription was originally filled;

(3) The original and transferred prescription(s) must be maintained for a period of two years from the date of last refill.

* * * * *

§ Undesignated center heading and § 1306.31 [Removed]

12. The undesignated heading preceding § 1306.31 and § 1306.31 are proposed to be removed.

§ 1306.32 [Redesignated as § 1306.26 and amended]

13. Section 1306.32 is proposed to be redesignated as § 1306.26 and the introductory text and paragraph (a) are revised to read as follows:

§ 1306.26 Dispensing without prescription.

A controlled substance listed in Schedules II, III, IV or V which is not a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, may be dispensed by a pharmacist without a prescription to a purchaser at retail, provided that:

(a) Such dispensing is made only by a pharmacist (as defined in Part 1300 of this chapter), and not by a nonpharmacist employee even if under the supervision of a pharmacist (although after the pharmacist has fulfilled his professional and legal responsibilities set forth in this section, the actual cash, credit transaction, or delivery, may be completed by a nonpharmacist);

* * * * *

14. In addition to the proposed amendments set forth above, DEA is proposing to amend each section indicated in the left column by removing the words indicated in the middle column and adding the words in the right column:

Section	Remove	Add
1306.03(a)(2)	1301.24(c)	1301.22(c).
1306.03(a)(2)	1301.25	1301.23.
1306.05(b)	1301.24(c)	1301.22(c).
1306.05(c)	1301.25	1301.22(c).
1306.22(a)(2)	practioner	practitioner.
1306.22(b)	retrival	retrieval.
1306.22(b)(2)	duing	during.
1306.22(b)(4)	Compliance ..	Diversion.

PART 1307—[AMENDED]

1. The authority citation for part 1307 continues to read as follows:

Authority: 21 U.S.C. 821, 822(d), 871(b).

2. Section 1307.01 is proposed to be revised to read as follows:

§ 1307.01 Definitions.

Any term contained in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or Part 1300 of this chapter.

3. Section 1307.02 is proposed to be revised to read as follows:

§ 1307.02 Application of State law and other Federal law.

Nothing in this chapter shall be construed as authorizing or permitting any person to do any act which such person is not authorized or permitted to do under other Federal laws or obligations under international treaties, conventions or protocols, or under the law of the State in which he/she desires to do such act nor shall compliance with such parts be construed as compliance with other Federal or State laws unless expressly provided in such other laws.

4. Section 1307.03 is proposed to be revised to read as follows:

§ 1307.03 Exceptions to regulations.

Any person may apply for an exception to the application of any provision of this chapter by filing a written request stating the reasons for such exception. Requests shall be filed with the Administrator, Drug Enforcement Administration, Department of Justice, Washington, DC 20537. The Administrator may grant an exception in his discretion, but in no case shall he/she be required to grant an exception to any person which is otherwise required by law or the regulations cited in this section.

§ 1307.12 [Removed]

5. Section 1307.12 is proposed to be removed.

§ 1307.13 [Redesignated as § 1307.12]

6. Section 1307.13 is proposed to be redesignated as § 1307.12.

§ 1307.14 [Removed]

7. Section 1307.14 is proposed to be removed.

§ 1307.15 [Redesignated as § 1307.13]

8. Section 1307.15 is proposed to be redesignated as § 1307.13.

9. Section 1307.21 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1307.21 Procedure for disposing of controlled substances.

(a) Any person in possession of any controlled substance and desiring or required to dispose of such substance may request the Special Agent in Charge of the Administration in the area in which the person is located for authority and instructions to dispose of such substance. The request should be made as follows:

(1) If the person is a registrant, he/she shall list the controlled substance or substances which he/she desires to dispose of on DEA Form 41, and submit three copies of that form to the Special Agent in Charge in his/her area; or

(2) If the person is not a registrant, he/she shall submit to the Special Agent in Charge a letter stating:

(i) The name and address of the person;

(ii) The name and quantity of each controlled substance to be disposed of;

(iii) How the applicant obtained the substance, if known; and

(iv) The name, address, and registration number, if known, of the person who possessed the controlled substances prior to the applicant, if known.

* * * * *

10. In addition to the proposed amendments set forth above, DEA is proposing to amend each section indicated in the left column by removing the words indicated in the middle column and adding the words in the right column:

Section	Remove	Add
1307.11(a)(2)	1304.24(e) ...	1304.22(c).
1307.11(a)(2)	1304.24(c)	1304.22(c).
1307.11(a)(4)	1301.28	1301.25.
1307.11(b)	1301.28	1301.25.
1307.22	28083	20537.

PART 1308—[AMENDED]

1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Section 1308.02 is proposed to be revised to read as follows:

§ 1308.02 Definitions.

Any term contained in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

§ 1308.04 [Removed]

3. Section 1308.04 is proposed to be removed.

4. Section 1308.24 is proposed to be amended by removing the Exempt Chemical Preparations Table and revising paragraphs (a) and (i) to read as follows:

§ 1308.24 Exempt chemical preparations.

(a) The chemical preparations and mixtures approved pursuant to § 1308.23 are exempt from application of sections 302, 303, 305, 306, 307, 308, 309, 1002, 1003 and 1004 of the Act (21 U.S.C. 822–823, 825–829, 952–954) and § 1301.74 of this chapter, to the extent described in paragraphs (b) to (h) of this section. Substances set forth in paragraph (j) shall be exempt from the application of Sections 305, 306, 307, 308, 309, 1002, 1003 and 1004 of the Act (21 U.S.C. 825–829, 952–954) and §§ 1301.71–1301.73 and 1301.74 (a), (b), (d), (e) and (f) of this chapter to the extent as hereinafter may be provided.

* * * * *

(i) A listing of exempt chemical preparations may be obtained by submitting a written request to the Drug and Chemical Evaluation Section, Drug

Enforcement Administration, Washington, DC 20537.

* * * * *

5. In Section 1308.26(a) the Table of Excluded Veterinary Anabolic Steroid Implant Products is proposed to be removed. As revised, § 1308.26(a) is proposed to read as follows:

§ 1308.26 Excluded veterinary anabolic steroid implant products.

(a) The anabolic steroid-containing products, which are expressly intended for administration through implants to cattle or other nonhuman species and which have been approved by the Secretary of Health and Human Services for such administration are excluded from all schedules pursuant to Section 102(41)(B)(I) of the Act (21 U.S.C. 802(41)(B)(I)). A listing of the excluded products may be obtained by submitting a written request to the Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington DC 20537.

* * * * *

6. In § 1308.32, the Table of Exempted Prescription Products is proposed to be removed. As revised § 1308.32 is proposed to read as follows:

§ 1308.32 Exempted prescription products.

The compounds, mixtures, or preparations which contain a nonnarcotic controlled substance listed in § 1308.12(e) or in § 1308.13 (b) or (c) or in § 1308.14 or in § 1308.15 listed in the Table of Exempted Prescription Products have been exempted by the Administrator from the application of sections 302 through 305, 307 through 309, 1002 through 1004 of the Act (21 U.S.C. 822–825, 827–829, and 952–954) and Sections 1301.13, 1301.22, and §§ 1301.71 through 1301.76 of this chapter for administrative purposes only. An exception to the above is that those products containing butalbital shall not be exempt from the requirement of 21 U.S.C. 952–954 concerning importation, exportation, transshipment and in-transit shipment of controlled substances. Any deviation from the quantitative composition of any of the listed drugs shall require a petition of exemption in order for the product to be exempted. A listing of the Exempted Prescription Products may be obtained by submitting a written request to the Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537.

7. In Section 1308.34, the Table of Exempt Anabolic Steroid Products is proposed to be removed. As revised, § 1308.34 is proposed to read as follows:

§ 1308.34 Exempt anabolic steroid products.

The anabolic steroid containing compounds, mixtures, or preparations which have been exempted by the Administrator from application of sections 302 through 309 and 1002 through 1004 of the Act (21 U.S.C. 822–829 and 952–954) and §§ 1301.13, 1301.22, and 1301.71 through 1301.76 of this chapter for administrative purposes only may be obtained by submitting a written request to the Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537.

8. Section 1308.42 is proposed to be revised to read as follows:

§ 1308.42 Purpose of hearing.

If requested by any interested person after proceedings are initiated pursuant to § 1308.43 of this chapter, the Administrator shall hold a hearing for the purpose of receiving factual evidence and expert opinion regarding the issues involved in the issuance, amendment or repeal of a rule issuable pursuant to Section 201(a) of the Act (21 U.S.C. 811(a)). Extensive argument should not be offered into evidence but rather presented in opening or closing statements of counsel or in memoranda or proposed findings of fact and conclusions of law. Additional information relating to hearings to include waivers or modification of rules, request for hearing, burden of proof, time and place, and final order are set forth in Part 1316 of this chapter.

§ 1308.43 [Removed]

9. Section 1308.43 is proposed to be removed.

§ 1308.44 [Redesignated as § 1308.43]

10. Sections 1308.44 is proposed to be redesignated as § 1308.43 and the citation "1308.45" in paragraph (f) is changed to read "1308.44".

§ 1308.45 [Redesignated as § 1308.44]

11. Section 1308.45 is proposed to be redesignated as 1308.44 and the citation "1308.48" in paragraph (e) changed to read "1308.45".

§ 1308.46 and 1308.47

[Removed]

12. Sections 1308.46 and 1308.47 are proposed to be removed.

§§ 1308.48—1308.50 [Redesignate as §§ 1308.45–1308.47]

13. Sections 1308.48 through 1308.50 are proposed to be redesignated as §§ 1308.45 through 1308.47.

§ 1308.5 [Removed]

14. Section 1308.51 is proposed to be removed.

§ 1308.52 [Redesignated as § 1308.49 and corrected]

15. Section 1308.52 is proposed to be redesignated as § 1308.49 and the typographical error "withott" in the introductory text is corrected to read "without".

16. In addition to the proposed amendments set forth above, DEA is proposing to amend each section indicated in the left column by removing the words indicated in the middle column and adding the words in the right column:

Section	Remove	Add
Table of Contents for Part 1308.	1308.52 sheduling.	1308.52 scheduling.
1308.03(a)	1301.44 and 1311.43.	1301.35.
1308.12(g)	prectrsors	precursors.
1308.13(b)(1)	quantitive	quantitative.
1308.13(b)(1)	lirted	listed.
1308.13(b)(1)	308.32	1308.32.
1308.22	nonarcotic	nonnarcotic.
1308.23(c)(7)	1302.01	Part 1300 of this chapter.
1308.23(f)	revoje	revoke.
1308.24(d)	Drug Control	Drug and Chemical Evaluation.
1308.33(a)	1308.02	Part 1300 of this chapter.
1308.33(b)	1308.02	Part 1300 of this chapter.

PART 1309—[AMENDED]

1. The authority citation for part 1309 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

2. Section 1309.02 is proposed to be revised to read as follows:

§ 1309.02 Definitions.

Any term used in this part shall have the definition set forth in Section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

§§ 1309.53 and 1309.57 [Removed] and §§ 1309.54–1309.56 [Redesignated as §§ 1309.53–1309.55]

3. Sections 1309.53 and 1309.57 are proposed to be removed and §§ 1309.54 through 1309.56 are proposed to be redesignated as §§ 1309.53 through 1309.55.

4. In addition to the proposed amendments set forth above, DEA is proposing to remove the words "Section 1310.01(f)(1)(iv) and add in their place the words "Section 1300.01(b)(28)(i)(D)" in the following places:

(a) Section 1309.02(g)
(b) Section 1309.21 (a) and (b)
(c) Section 1309.25 (a) and (b); and
(d) Section 1309.71(a)(2).

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.01 is proposed to be revised to read as follows:

§ 1310.01 Definitions.

Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

§ 1310.05 [Amended]

2. Section 1310.05(c) is proposed to be amended removing the words "as defined in § 1310.01(i)" and "as defined in § 1310.01(j)"

§ 1310.08 [Amended]

3. Section 1310.08, introductory text, is proposed to be amended removing the words "containted in 21 CFR 1310.01(f) and 1313.02(d)"

§ 1310.09 [Removed]

4. Section 1310.09 is proposed to be removed.

5. In addition to the proposed amendments set forth above, DEA is proposing to amend each section indicated in the left column by removing the words indicated in the middle column and adding the words in the right column:

Section	Remove	Add
1310.10(a)	1310.01(f)(1)(iv)	1300.01(b)(28)(i)(D).
1310.14(a)	1310.01(f)(1)(iv)(A)	1300.01(b)(28)(i)(D)(1).
1310.15(d)	1310.01(f)(1)(iv)(A)	1300.01(b)(28)(i)(D)(1).

PART 1311—[REMOVED AND RESERVED]

Part 1311 is proposed to be removed and reserved.

PART 1312—[AMENDED]

1. The authority citation for part 1312 continues to read as follows:

Authority: 21 U.S.C. 952, 953, 954, 957, 958.

2. Section 1312.02 is proposed to be revised to read as follows:

§ 1312.02 Defintions.

Any term contained in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or Part 1300 of this chapter.

3. Part 1312 is proposed to be amended to remove the words, "1405 EYE Street, NW.", in the following sections:

(a) 1312.12(a);
(b) 1312.16(b);
(c) 1312.18(b);
(d) 1312.19(b);
(e) 1312.22(a);
(f) 1312.24(a);
(g) 1312.27(a);
(h) 1312.27(b)(5)(iv);
(i) 1312.28(d);
(j) 1312.31(b); and
(k) 1312.32(a).

4. In addition to the proposed amendments set forth above. DEA is proposing to amend each section indicated in the left column by removing the words indicated in the middle column and adding the words in the right column:

Section	Remove	Add
1312.12(a)	Drug Control Section	Drug Operations Section.
1312.14(a)	Drug Control Section	Drug Operations Section.
1312.16(b)	Drug Control Section	Drug Operations Section.
1312.17	304	1304.
1312.18(b)	Drug Control Section	Drug Operations Section.
1312.18(c)	(or BND)	
1312.19(a)	Drug Control Section	Drug Operations Section.
1312.19(b)	Drug Control Section	Drug Operations Section.
1312.22(a)	Drug Control Section	Drug Operations Section.
1312.24(a)	Bureau	Administration.
1312.24(a)	Drug Control Section	Drug Operations Section.
1312.25	Drug Control Section	Drug Operations Section.
1312.27(a)	regirtered	registered.
1312.27(a)	Drug Control Section	Drug Operations Section.
1312.27(b)(5)(iii)	inital	initial.
1312.27(b)(5)(iv)	Drug Control Section	Drug Operations Section.
1312.28(d)	Drug Control Section	Drug Operations Section.
1312.28(d)	1327.27(b)(4)	1312.27(b0(4).
1312.31(b)	Drug Control Section	Drug Operations Section.
1312.32(a)	Drug Control Section	Drug Operations Section.

PART 1313—[AMENDED]

1. The authority citation for part 1313 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b), 971.

2. Section 1313.02 is proposed to be revised to read as follows:

§ 1313.02 Definitions.

Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

3. Section 1313.15(a) is proposed to be amended by removing the words "§ 1313.02(i)" and replace them with the words "§ 1300.01(b)(13)"

4. Section 1313.21(c)(1) is proposed to be amended by removing the words "as defined § 1313.02(j)"

5. Section 1313.24(a) is proposed to be amended by removing the words "§ 1313.02(j)" and replacing them with the words "§ 1300.01(b)(12)"

PART 1316—[AMENDED]

1. The authority citation for part 1316 continues to read as follows:

Authority: 21 U.S.C. 822(f), 871(b), 880, 958(f), 965.

2. Section 1316.02 is proposed to be amended by revising paragraph (g) to read as follows:

§ 1316.02 Definitions.

* * * * *

(g) Any term not defined in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

3. Section 1316.13 is proposed to be amended by revising the text to read as follows:

§ 1316.13 Frequency of administrative inspections.

Except where circumstances otherwise dictate, it is the intent of the Administration to inspect all manufacturers of controlled substances listed in Schedules I and II and distributors of controlled substances listed in Schedule I once each year. Distributors of controlled substances listed in schedules II through V and manufacturers of controlled substances listed in Schedules III through V shall be inspected as circumstances may require, based in part on the registrant's history of compliance with the requirements of this chapter and maintenance of effective controls and procedures to guard against the diversion of controlled substances.

4. Section 1316.42 is proposed to be amended by revising paragraph (h) to read as follows:

§ 1316.42 Definitions.

* * * * *

(h) Any term not defined in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

5. Section 1316.71 is proposed to be amended by revising paragraph (f) to read as follows:

§ 1316.71 Definitions.

* * * * *

(f) Any term not defined in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

6. In addition to the proposed amendments set forth above, DEA is proposing to amend each section indicated in the left column by removing the words indicated in the middle column and adding the words in the right column:

Section	Remove	Add
1316.03, introductory text	Adminirtrator	Administrator.
1316.05	1314.06	1316.06.
1316.05	1316.09–1316.14	1316.09–1316.13.
1316.23(b)	1405 I Street	
1316.24(c)	1316.21(b)	1316.23(b).
1316.24(c)	1316.22(b)	1316.24(b).
1316.41	1303.41–1303.47	1303.31–1303.37.
1316.46(b)(1)	1301.32(a)(3)	1313.51–1313.57.
1316.52(a)	1301.60	1301.32(a)(6).
1316.77(a)	Forward	1301.56.
1316.81	proceeeding	Forward.
		proceeding.

Dated: February 26, 1996.

Stephen H. Greene,

Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 96–4663 Filed 3–4–96; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[SPATS No. CO–029–FOR]

Colorado Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of revisions pertaining to a previously proposed amendment to the Colorado regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions of Colorado's proposed rules pertain to the definitions of "Permit area" and "Self-bonding;" permit application information concerning the legal right to enter and proposed operations in which the affected area is within 100 feet of a public road; the content of public notices in which the affected areas would be within 100 feet of a public road or operations which propose to close or relocate a public road; decisions on requests to disclose confidential information; the area of the proposed surface coal mining operation which is subject to the requirements concerning valid existing rights; the right to comment on technical revisions; approval of and conditions for self bonds; the requirements for vegetative cover at the time of release of bond coverage for liability associated with temporary drainage and sediment control facilities; and the contents of a showing in lieu of the requirement for an engineer's certification of the construction or reconstruction of haul and access roads that were completed prior to August 1, 1995. The amendment is intended to revise the Colorado program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by the revised Federal regulations, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.s.t. March 20, 1996.

ADDRESSES: Written comments should be mailed or hand delivered to James F. Fulton at the address listed below. Copies of the Colorado program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Western Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3300, Denver, Colorado 80202

Colorado Division of Minerals and Geology, Department of Natural Resources, 215 Centennial Building, 1313 Sherman Street, Denver, Colorado 80203, Telephone: (303) 866–3567

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 672–5524.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, **Federal Register** (45 FR 82173). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.15, 906.16, and 906.30.

II. Proposed Amendment

By letter dated November 20, 1995, Colorado submitted a proposed amendment to its program (administrative record No. CO–675) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Colorado submitted the proposed amendment at its own initiative; in partial response to May 7, 1986, and March 22, 1990, letters (administrative record No. CO–282 and CO–496) that OSM sent to Colorado in accordance with 30 CFR 732.17(c); and in response to the requirement that Colorado amend its program at 30 CFR 906.16(a).

OSM announced receipt of the proposed amendment in the December 7, 1995, **Federal Register** (60 FR 62789), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. CO–675–2). Because no one requested a public hearing or meeting, none was held. The public comment period ended on January 8, 1996.

During its review of the amendment, OSM identified a concern relating to Rule 3.02.4(1)(c), concerning the regulatory authority's discretionary acceptance of self bonds, in addition to apparent typographical errors. OSM notified Colorado of the concern and typographical errors by letter dated January 25, 1996 (administrative record No. CO–675–8). Colorado responded in a letter dated February 16, 1996, by submitting a revised amendment (administrative record No. CO–675–9).

Colorado proposes revisions at:

Rule 1.04(89), concerning the definition of "Permit area," to provide gender-neutral language;

Rule 1.04(116), concerning the definition of "Self-bonding," to replace the words "regulatory authority" with the word "Division;"

Rule 2.03.6(1), concerning right of entry information, to clarify that a permit application must include a legal description of the permit boundary for which the applicant has the legal right of entry;

Rule 2.07.3(2)(e), concerning permit applications for operations in which proposed affected areas would be within 100 feet of a public road, to clarify that the 100 feet is to be measured horizontally;

Rules 2.07.3(2) (e) and (f), concerning the content of a public notice for an operation in which the proposed affected area would be within 100 feet, measured horizontally, of a public road, or an operation which proposes to close or relocate a public road, to clarify that the public notice must include information regarding the availability of a public hearing;

Rule 2.07.5(2)(c), concerning confidential information for which persons have sought disclosure, to clarify that the information will be released only after Colorado has made a decision allowing such disclosure;

Rule 2.07.6(2)(d), concerning valid existing rights, to clarify that it is the affected area of the proposed surface coal mining and reclamation operation which is subject to the requirements concerning valid existing rights;

Rule 2.08.4(6)(b)(ii), concerning proposed technical revisions, to clarify that interested parties have the right to comment on the proposed revision;

Rule 3.02.4(1)(c), concerning approval of a self bond, to clarify that the decision by Colorado to accept a self bond is discretionary;

Rule 3.02.4(2)(e)(v)(B), concerning the conditions for a self bond, to clarify which corporate officers must sign an indemnity agreement;

Rule 3.03.1(5), concerning the release of bond coverage for liability associated with temporary drainage and sediment control facilities, to clarify that, at bond release, the vegetative cover must be adequate to control erosion and similar to the reclaimed area or surrounding undisturbed area; and

Rules 4.03.1(1)(d)(ii) and 4.03.2(1)(f)(ii), concerning an exemption from the requirement for an engineer's certification of the construction or reconstruction of haul and access roads that were completed prior to August 1, 1995, if the applicant provides a showing that the road meets the performance standards of Rule 4.03.2, to clarify that Colorado has the right to determine what information must be included in a relevant showing.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Colorado program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed revisions to the amendment satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Colorado program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Denver Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the

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submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 27, 1996

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 96–5109 Filed 3–4–96; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 936

[SPATS No. OK–017–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Oklahoma regulatory program (hereinafter referred to as the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of a revision to the Oklahoma regulations that adds a new permit condition concerning protected activity. The proposed amendment is intended to revise the Oklahoma regulations to be consistent with the Federal regulations.

DATES: Written comments must be received by 4:00 p.m., c.s.t. April 4, 1996. If requested, a public hearing on the proposed amendment will be held on April 1, 1996. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t. on March 20, 1996.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Jack R. Carson, Acting Director, Tulsa Field Office at the first address listed below.

Copies of the Oklahoma program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430

Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859

FOR FURTHER INFORMATION CONTACT: Jack R. Carson, Acting Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. Background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.10, 936.15, and 936.16.

II. Discussion of the Proposed Amendment

By letter dated February 21, 1996, Oklahoma submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. OK–973). Oklahoma submitted the proposed amendment at its own initiative. The provisions of the Oklahoma regulations that Oklahoma proposes to amend are at Oklahoma Administrative Code (OAC) 460:20–15–7 concerning permit conditions. Specifically, Oklahoma proposes to revise OAC 460:20–15–7 by adding a new permit condition at subsection (5) concerning protected activity that reads as follows.

(5) No person shall discharge or in any other way discriminate against or cause to be fired or discriminated against any employee or any authorized representative of employees because that employee or representative has—

(A) Filed, instituted or caused to be filed or instituted any proceedings under the Act by—

(1) Reporting alleged violations or dangers to the Secretary, the State Regulatory Authority, or the employer or his representative;

(2) Requesting an inspection or investigation; or

(3) Taking any other action which may result in a proceeding under the Act.

(B) Made statements, testified, or is about to do so—

(1) In any informal or formal adjudicatory proceeding;

(2) In any informal conference proceeding;

(3) In any rulemaking proceeding;

(4) In any investigation, inspection or other proceeding under the Act;

(5) In any judicial proceeding under the Act.

(C) Has exercised on his own behalf or on behalf of others any right granted by the Act.

(D) Each employer conducting operations which are regulated under this Act, shall within 30 days from the effective day of these regulations, provide a copy of this part to all current employees and to all new employees at the time of their hiring.

Existing subsections (5) through (8) are renumbered (6) through (9).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on March 20, 1996. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et. seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 28, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 96–5107 Filed 3–4–96; 8:45 am]

BILLING CODE 4310–05–M

Bureau of Land Management

43 CFR Chapter II

[WO–310–3110–02 1A]

Promotion of Development, Reduction of Royalty for Marginal Gas Properties

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of request for information and suggestions regarding an incentive for producers of marginal gas from Federal leases.

SUMMARY: The Bureau of Land Management (BLM) is seeking public comments and suggestions on a possible incentive for producers of marginal gas from Federal leases. The incentive would encourage continued production through a possible reduction in Federal royalties for producers of marginally economic gas properties. If the comments indicate that such a reduction in royalties is warranted and will result in a greater ultimate recovery of gas resources (without a net loss in revenues to the states and/or the Federal government), the BLM will initiate a public outreach program in order to discuss comments and suggestions received as a result of this request. Based upon those meetings, the BLM will prepare a proposed rule for subsequent publication.

DATES: Written comments should be received on or before June 3, 1996.

ADDRESSES: Dr. John W. Bebout, Senior Technical Specialist, Bureau of Land Management (WO–301), 1849 C Street, NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Dr. John W. Bebout (BLM) (202) 452–0340.

SUPPLEMENTARY INFORMATION: The United States has a vast and diverse natural gas resource base. In their 1992 study entitled The Potential for Natural

Gas in the United States, the National Petroleum Council (NPC) concluded that the technically recoverable natural gas resource base is 1,295 trillion cubic feet (TCF) for the lower 48 states. Of this amount, 600 TCF was believed to be recoverable in the future at a wellhead price of $2.50 per million British thermal unit (1990 dollars). According to the NPC (Marginal Wells, July 1994), however, the wellhead price on a current basis trended upward to a high of $2.66 per thousand cubic feet (MCF) during the 1974–1984 period and has declined to around $1.60–$1.80 per MCF over the last eight years.

There is a legitimate concern that low gas prices will result in premature abandonment of the marginal properties with the concurrent loss of potentially recoverable reserves as well as royalties, taxes and employment opportunities. A 1992 study by the Interstate Oil and Gas Compact Commission estimated that there were approximately 215,000 idle or shut-in oil, gas and injection wells in the United States at that time. The NPC believes that as many as 50 percent of these wells are gas and injection wells. While some of these wells are undoubtedly shut-in or temporarily abandoned while waiting for pipeline connections, a large portion of these gas wells are idle because they are uneconomical to produce as a result of low producing rates, low gas prices and/or high operating costs (NPC, Marginal Wells, July 1994).

It is clear that whatever combination of price and cost factors currently define the economic limit of a marginal gas well, production-based incentives will improve gas well economics and extend their lives. Because premature abandonment of marginal wells results in the loss of domestic reserves, such incentives may be the only way to maintain the economic viability of the production and resources that these wells represent.

Comments and suggestions on a reduction in Federal royalties should concentrate not only on the value of a royalty rate reduction for producers of marginal gas, but also on how the royalty rate reduction might best be implemented. Respondents should particularly consider the following issues:

1. The need for economic relief for marginal gas properties. Respondents, both for and against the proposal, should document any economic arguments to the extent practicable. The documentation should include all economic assumptions used for estimated costs, profits, effects on employment, etc. The BLM would especially appreciate detailed source citations for verification and reference.

2. A workable definition of a "marginal" gas property. Before its repeal, the Natural Gas Policy Act of 1978 defined a "stripper" gas well as one producing 60,000 cubic feet of gas or less per day (MCF/D). For Minerals Management Service accounting purposes, however, any proposal for royalty reductions should be based on a property (i.e., units, communitization agreements, leases, etc.) rather than a well-by-well basis.

3. Discouraging false reporting and manipulation. Proposals should describe measures to discourage manipulation of production rates in order to qualify for a royalty reduction. In addition, it would be useful to the BLM if respondents would suggest possible requirements for qualification and the time frames for subsequent qualification periods, if applicable.

4. Minimal administrative burden. All proposals should be designed in a manner which minimizes the administrative burden placed upon the government and private industry. For example, consideration might be given to a notification process rather than a formal application process.

5. Minimal Program Overlap. When preparing proposals, special consideration should be given to avoiding overlap with existing programs such as the Heavy Oil and Stripper Property royalty rate reductions.

Dated: February 26, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary of the Interior.

[FR Doc. 96–4975 Filed 3–4–96; 8:45 am]

BILLING CODE 4310–84–P

Minerals Management Service

43 CFR Part 14

Aboriginal Title To The Alaska Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Department of the Interior.

ACTION: Notice of receipt of petition for rulemaking and request for comments.

SUMMARY: The Department of the Interior announces receipt of, and requests comments on, a petition for rulemaking on issues regarding claimed aboriginal title and aboriginal hunting and fishing rights of federally recognized tribes in Alaska exercisable on the federal Outer Continental Shelf (OCS).

DATES: Comments on the petition are requested through April 4, 1996.

ADDRESSES: Comments on the petition should be directed to: Paul Stang, Chief, Branch of Leasing Coordination, Office of Program Development and Coordination, (MS–4410) Minerals Management Service, 381 Elden Street, Herndon, Virginia 20270–4817. Please indicate that your comment is in response to the petition for rulemaking on aboriginal title and rights on the Alaska OCS.

FOR FURTHER INFORMATION CONTACT: William Quinn at (703) 787–1191.

SUPPLEMENTARY INFORMATION: The Villages of Eyak, Tatilek, Chenega, Port Graham and Nanwalek have petitioned the Secretary to promulgate a rule stating that 225 federally recognized tribes in Alaska may claim aboriginal title and aboriginal hunting and fishing rights to the Outer Continental Shelf (OCS) and to make leases on the OCS off Alaska subject to claimed aboriginal title and rights of such tribes. The MMS is the agency within the Department of the Interior responsible for issuing and managing mineral leases on the OCS pursuant to the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, hence its involvement in this matter.

The initial petition was addressed to both the Secretary of the Interior and the Secretary of Commerce and did not designate any existing rule for revision or propose a new rule text. Therefore, the Secretary's office notified the Villages that under 43 CFR 14.2, a petition for rulemaking must include the text of a rule that the petitioner proposes for adoption. On September 1, 1995, the Solicitor of the Department received a letter from counsel for the petitioning Villages proposing the following rule:

"Proposed regulation of the Secretary of the Interior for the protection of aboriginal title and aboriginal hunting and fishing rights on the Outer Continental Shelf of federally recognized tribes in Alaska.

"1. The Department recognizes that the 225 native Villages on the Secretary's list of "Native Entities within the State of Alaska Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs," 60 Fed. Reg. 9250, February 16, 1995, are Native Tribes capable of possessing aboriginal claims. *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 233 (1974).

"2. Although the existence and scope of the aboriginal titles of individual Alaskan tribes has not yet been determined, based on the historical and contemporary evidence available the Department recognizes that many Alaska coastal tribes have continuously and exclusively occupied areas of the OCS off Alaska for long periods of time and thus possess the potential to establish prima facie cases of aboriginal title to their respective traditional use areas.

"3. The Department recognizes that the aboriginal title and rights of such tribes were not extinguished by the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1601, et seq., the Outer continental Shelf Lands Act, 43 U.S.C. 1331, et seq. or by any other Congressional Act. Nor, is the continuing existence of such rights contrary to the Paramountcy Doctrine (see *United States v. California*, 332 U.S. 19 (1947); *United States v. Maine*, 420 U.S. 515 (1975); and *United States v. Louisiana*, 339 U.S. 699 (1950) or to the Ninth Circuit decisions in *Native Village of Gambell v. Hodel*, 869 F.2d 1273 (9th Cir. 1989) (*Gambell III*) or *Gambell v. Babbitt*, 999 F.2d 403 (9th Cir. 1993) (*Gambell IV*).

"4. Hereafter all Alaska native tribes whose aboriginal territory or aboriginal rights to the OCS would likely suffer trespass or be disturbed or affected in any significant way by Departmental leases of the OCS off the coast of Alaska, shall be given written notice of such sale and of this regulation at least 180 days prior to the official sale of such leases. Oil, gas, or other mineral leases that would likely cause disruptive effects merely by nature of their proximity to aboriginal territory are included within this notice requirement.

"The types of disruptions or effects requiring such prior notice include any potential trespass upon the tribes' aboriginal hunting and fishing grounds, or any potentially significant disturbance, depletion, or interference with Native hunting, fishing or exploitation of other resources or other uses of their aboriginal territory.

"5. The Department recognizes that all existing as well as future leases of the OCS off Alaska are subject to the aboriginal title and aboriginal hunting and fishing rights of Alaskan Native Tribes."

The matter addressed in the petition has been the subject of litigation for many years now and is currently the subject of litigation brought by the petitioning Villages seeking to halt proposed OCS Lease Sale 149 in the Cook Inlet in Alaska. *Native Village of Eyak, et al.* v. *Trawler Diane Marie, Inc., et al.*, Case No. A95–0063 CIV (HRH) (D. Alaska, filed Feb. 23, 1995). The Government has consistently taken the position that no person or entity has title to, or hunting and fishing rights on, the Alaska OCS. Rather, the Alaska OCS is subject to the paramount authority of the Federal Government, and to uses permitted by the United States pursuant to the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*

Nevertheless, in fairness to the Villages, the MMS is publishing the text of the rule pursuant to 43 CFR part 14 and invites knowledgeable parties to comment on it and to consider the following:

1. Should we engage in this rulemaking?

2. Would such a rule be consistent with the laws governing the OCS?

3. Would granting the rule be consistent with the paramount interest of the United States?

4. Do we have other mechanisms sufficient to protect claimed Native interests? and,

5. Where should undertaking such rulemaking fit in among the other priorities of the agency?

Anyone so wishing should submit comments to MMS at the address above. In a separate **Federal Register** notice, MMS is also pursuing factual inquiry into the potential nature and extent of the claims of the five petitioning Villages with respect to the areas proposed for lease in Cook Inlet Sale 149 and Gulf of Alaska-Yakutat Sale 158 in connection with the decisions to conduct such sales.

Dated: February 26, 1996.

Cynthia Quarterman,

Director, Minerals Management Service.

[FR Doc. 96–5009 Filed 3–4–96; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 108, 110, 111, 112, 113, and 161

[CGD 94–108]

RIN 2115–AF24

Electrical Engineering Requirements for Merchant Vessels

AGENCY: Coast Guard, DOT.

ACTION: Correction to proposed rule.

SUMMARY: This document contains corrections to the notice of proposed rulemaking, which was published Friday, February 2, 1996, as part of the President's Regulatory Reinvention Initiative, the proposed rule amends the Coast Guard's electrical engineering regulations.

EFFECTIVE DATE: March 5, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Project Manager, or LT(jg) Jacqueline M. Twomey, Project Engineer, Design and Engineering Standards Division (G–MMS), (202) 267–2206.

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections amends the Coast Guard's electrical engineering regulations to reduce the regulatory burden on the marine industry, purge obsolete regulations and replaces prescriptive requirements with performance-based regulations that incorporate international standards.

Need for Correction

As published, the final rule contains typographical errors and omissions which may prove to be misleading and are in need of correction.

Correction of Publication

Accordingly, the publication on February 2, 1996, of the notice of proposed rulemaking at 61 FR 4132, which was the subject of FR Doc. 96–2149, is corrected as follows:

1. On page 4135, in the first column, in the paragraph entitled "Section 111.05–33," sixth line, the word "a" should be added before the word "current."

2. On the same page, in the second column, in the paragraph entitled "Section 111.12–1," seventh line, remove the word "governor" and add, in its place, the words "overspeed device".

3. On page 4136, in the first column, in the paragraph entitled "Section 111.30–4," tenth line, remove the words "a section", and add in their place the word "sections".

4. On page 4137, in the first column, in the paragraph entitled "Section 111.60–3," fourth line, "IEC Publication 352" should be replaced with "IEC Publication 92–352".

5. On page 4146, in the list of Underwriters Laboratories' standards, the section affected for UL 62, Flexible Cord and Fixture Wire, should read "111.60–13(a)".

6. On page 4153, in the second column, in § 111.60–13(a), fourth and fifth lines, remove the words "NEMA WC 3 and NEMA WC 8" and add, in their place the words, "NEMA WC 3, NEMA WC 8 or UL 62."

7. On page 4159, in the third column, in the paragraph numbered "154," second line, remove "(q)" and add, in its place, "(g)".

8. On page 4161, in the third column, in the paragraph numbered "184," second and third lines, remove the words "(g), (h), and (i) are revised and paragraph (j) is added" and add, in their place, the words "(g) and (h) and paragraphs (i) and (j) are added".

9. On page 4163, in the first column, in § 113.50–5(g), fourth line, add the word "or" before "4X".

10. On the same page, in the second column, in the paragraph numbered "201," third line, add the words "paragraph (e) is removed;" before the words "and Table 1135.50–15" and after § 113.50–15(d) remove the five asterisks.

Dated: February 26, 1996.

Joseph J. Angelo,

Director for Standards, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 96–5060 Filed 3–4–96; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 960216032–6032–01; I.D. 021296E]

RIN 0648–AH70

Northeast Multispecies Fishery; Amendment 7

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 7 to the Northeast Multispecies Fishery Management Plan (FMP). These regulations would: Establish an annual target Total Allowable Catch (TAC) for regulated species; accelerate the current days-at-sea (DAS) effort reduction program; eliminate most of the current exemptions to the effort control program; add new closed areas; restrict fisheries in the Gulf of Maine/Georges Bank (GOM/GB) and Southern New England (SNE) regulated mesh areas having more than a minimal bycatch of regulated species; establish a possession limit for vessels 30 ft (9.1 m) or less in length; establish the current experimental Nantucket Shoals dogfish fishery as an exempted fishery; modify the permit categories; establish restrictions on charter or party, and recreational vessels; revise and expand the existing framework provisions; and revise the harbor porpoise protection framework procedures. The intended effect of this rule is to rebuild multispecies stocks.

DATES: Comments are invited on the proposed Amendment 7 and its supporting documents, including the regulatory impact review (RIR) and the initial regulatory flexibility analysis (IRFA) contained within the RIR, and the proposed rule through April 19, 1996.

ADDRESSES: Comments should be sent to Dr. Andrew A. Rosenberg, Director, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Multispecies Plan."

Comments regarding burden-hour estimates for collection-of- information requirements contained in this proposed rule should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

Copies of proposed Amendment 7, its RIR and the IRFA contained within the RIR, and the Final Supplemental Environmental Impact Statement (FSEIS) are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (US Rte. 1), Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 5 to the FMP were published on March 1, 1994 (59 FR 9872). Amendment 5's principal objective was to eliminate the overfished condition of the multispecies finfish stocks. An emergency rule to further protect the severely depleted haddock resource was issued by NMFS and published January 3, 1994 (59 FR 26). This rule was extended through further rulemaking and permanently became effective with the publication of Secretarial Amendment 6 to the FMP (59 FR 32134).

Amendment 7 development began in response to an unprecedented report entitled, "Special Advisory: Groundfish Status on Georges Bank," issued and delivered by the Northeast Regional Stock Assessment Workshop to the New England Fishery Management Council (Council) at its August 9–10, 1994, meeting. The Advisory announced that Amendment 5 to the FMP is inadequate to achieve the reductions in fishing mortality rates needed to rebuild the principal groundfish stocks of cod, haddock and yellowtail flounder and cautioned that fishing mortality "should be reduced to as low a level as possible, approaching zero" to prevent further decline and to rebuild already collapsed stocks.

In response to this advice, the Council began development of Amendment 7 to the FMP. As an interim measure, the Council initiated, and NMFS approved, an emergency interim rule (59 FR 63926, December 12, 1994) to afford some additional protection to the multispecies resource during the development of Amendment 7. This emergency action was extended on March 13, 1995 (60 FR 13078). At the request of the Council, NMFS approved Framework Adjustment 9 to the FMP (60 FR 19364, April 18, 1995) to implement measures contained in the emergency action on a permanent basis, until Amendment 7 could be finalized and implemented.

Recent scientific information from the Northeast Fisheries Science Center (NEFSC) confirms that groundfish stocks are at historical lows. Results from Stock Assessment Workshop 19 (SAW 19), presented to the Council at its February 15–16, 1995, meeting concluded that GOM cod continues to be overexploited and exhibits persisting low biomass levels. Stock assessment scientists counsel that spawning stock biomass decline for GOM cod should be halted and reversed immediately. Similarly, results from SAW 20 on GB haddock, presented at the August 10–11, 1995, Council meeting indicate that this stock remains in an overfished and collapsed condition and that fishing mortality needs to remain as low as possible.

In addition, the most recent U.S. and Canadian bottom trawl survey indices, through fall 1995 for GB and SNE yellowtail flounder and GB and GOM cod, indicate no significant new recruitment in any of these stocks and suggest a continuation of consistently low biomass levels. Overall, there is very little recruitment and very low biomass levels observed for all of these stocks and conservation of the vulnerable existing year classes has become critical. In the absence of immediate measures to husband older year classes and begin stock rebuilding, scientists caution that the recovery period may be substantially lengthened.

For haddock, both U.S. and Canadian survey results indicate a small amount of recruitment into the fishery, which, if mortality levels are kept low, may contribute to rebuilding these stocks.

Amendment 7

This Amendment would implement Alternative 3 of the Council's Amendment 7 public hearing document as refined and modified by the Council for adoption as its preferred alternative. The foundation of this action is an acceleration of the Amendment 5 effort-reduction schedule. This action would build and expand upon the current management system, serving as a basic structure to be further developed by the Council through the framework process.

Disapproved Measures

Three measures proposed in Amendment 7 have been disapproved by NMFS and are not included in this proposed rule. The allowance of additional DAS for trawl vessels in the Individual DAS category that use 8-inch mesh; the 300-lb (136.1-kg) possession allowance of regulated species for trawl vessels that use 8-inch mesh in an exempted fishery; and the establishment of a Limited Access permit category for vessels that fished in the Possession Limit Open Access category under Amendment 5, have been determined to be inconsistent with the national standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act) or other applicable law.

The first measure, which would grant additional DAS for large mesh trawl vessels, was proposed by the Council based on its policy to provide incentives for using mesh larger than the minimum size. The Council provided this incentive to trawl and gillnet vessels that would have received the Fleet category DAS allocation and to trawl vessels that would receive the Individual category DAS allocation, but did not provide it to the gillnet vessels that may be permitted in this category. This omission, whether intentional or unintentional, is inequitable; and was therefore disapproved, because it is inconsistent with Magnuson Act National Standard 4. Increased DAS for large mesh Fleet category vessels (both gillnet and trawls) was not disapproved, because no inequity is established within that category.

The 300-lb (136.1-kg) allowance of regulated species bycatch for vessels fishing in an exempted fishery (i.e., a fishery that has less than five-percent bycatch of regulated species) was disapproved, because it conflicts with the Council's proposed exempted fishery measure. A fishery can be exempted only if sufficient information is available to demonstrate that it would have a minimal bycatch of regulated species, otherwise the fishery is not allowed. The exemption standard is a strong disincentive against regulated species bycatch. The 300-lb (136.1-kg) allowance would provide an incentive for regulated species bycatch, counteracting the effect of the bycatch prevention measure. Therefore, because this measure would counteract the conservation effect of the bycatch protection measures, it cannot be reasonably calculated to promote conservation; therefore it is inconsistent with National Standard 4.

The proposed establishment of a new possession limit category was also disapproved. This category would establish an inequity and impose an undue administrative burden on NMFS. The Council set the possession limit for this category at zero, making it effectively more restrictive than the open access categories. Thus, a vessel applying to fish in this category would be committing to at least one year without the ability to land regulated species. The administrative burden of establishing this category is likely to be significant due to the permit eligibility reviews and appeal process. The Amendment does not make clear the purpose of the category, that is, which sector of the industry would be served by it. This measure would present a significant administrative cost to NMFS with no discernable benefit or purpose.

The Council will have the opportunity to reconsider, modify, and possibly resubmit these measures under the Magnuson Act's 60-day accelerated review schedule.

Measures of Concern

Public comments are particularly sought on several measures. The first such measure is the possession allowance for the Open Access Handgear Category that would allow a directed fishery on multispecies with only a 300-lb (136.1-kg) constraint on cod, haddock and yellowtail catch and a requirement to use hand gear. Charter/Party permit holders and recreational vessels may obtain the Handgear permit, which raises enforcement concerns about determining which set of rules a vessel may be fishing under at any given time. A call-in requirement for Charter/Party vessels is proposed to aid in distinguishing which type of trip a vessel is conducting, but this would only provide a partial solution at the expense of complicating the DAS call-in program.

The second measure is the white hake exemption program presented in the Amendment as an option for future implementation by the Director, Northeast Regional, NMFS (Regional Director). This exemption would allow a directed fishery on a regulated species, white hake, outside the constraint of a DAS. This possible exemption raises concern as this fishery is currently fully exploited and may not be able to withstand additional pressure.

Third, the Large Mesh DAS permit, which would allocate additional DAS to vessels using mesh larger than the minimum size, is based on the notion that the selectivity of this mesh would compensate for the additional allocation of DAS. However, no mesh selectivity studies for 7- (17.8 cm) and 8-inch (20.3 cm) mesh in these fisheries exist yet.

Fourth, the Council proposed a change to the boundary for the Mid-Atlantic area to incorporate the inshore waters of New York. For the purposes of enforcement, the proposed rule simplifies the Council's definition of the new boundary line by using fewer coordinates. The simplified definition would appear to achieve the Council's objective. This rule proposes to define the Mid-Atlantic regulated mesh area as the area bounded on the east by a line running from the Rhode Island shoreline along 71°47.5′ W. long. to its intersection with the three-nautical mile line, south along the three-nautical mile line to Montauk Point, southwesterly along the three-nautical mile line to the intersection of 72°30′ W. long., and south along that line to the intersection of the outer boundary of the EEZ (see Figure 1 to part 651).

Amendment 7 did not specifically exempt mid-water trawl gear from the proposed GOM area closures, but left open the possibility that this gear may become exempt in the future. NMFS is seeking public comment on this possibility.

Because Amendment 7 proposes to eliminate the DAS exemption for gillnet vessels, most gillnet vessels will become permitted in either the Fleet or the Individual DAS category. NMFS is seeking comment on how to calculate the number of DAS for any gillnet vessel that may appeal the number of Individual DAS assigned to it by NMFS because a vessel's initial allocation of DAS is currently based on time away from the dock and a gillnet DAS is proposed to be counted under this rule as time when gear is in the water.

Fifth, the Council proposed the allowance of a possession limit for winter flounder in the Mid-Atlantic regulated mesh area. NMFS is concerned about the impact of this, and the Winter Flounder State Waters exemptions because of the severely overfished status of this resource.

The following summarizes the remaining proposed measures.

Total Allowable Catch

The Amendment would establish a procedure for setting annual target TAC levels for specific cod, haddock, and yellowtail flounder stocks (GB cod, haddock, and yellowtail flounder, SNE yellowtail flounder, and GOM cod), and an aggregate TAC for the combined stocks of the other regulated species (pollock, redfish, white hake, witch flounder, American plaice, winter flounder and windowpane flounder). This procedure would be used annually to set TACs, with the exception of TACs for 1996, which would be set by this rule. The TACs would be set based on the best available scientific information and would provide a measure by which to evaluate the effectiveness of the management program and to make determinations on the need for

adjustments to this program on an annual basis. The TAC levels would be set so as to attain a fishing mortality rate that would allow cod, haddock, and yellowtail flounder stocks to rebuild over time, and to maintain current potential yield for the seven other regulated species.

The 1994 special advisory concluded that fishing mortality "should be reduced to as low a level possible, approaching zero" for GB stocks of cod, haddock and yellowtail flounder, and SNE yellowtail flounder. The biological reference point of $F_{0.1}$ was selected by the Council as the most practicable way to achieve this goal, considering the needs of the fishery. For GOM cod, a biological reference point of F_{max} was selected because this stock is not as depleted as the others. TACs for the remaining regulated species would be set at levels corresponding to recent fishing mortality rates to ensure that effort is not redirected on these stocks. Because the Council's overriding management objective is to rebuild the five primary stocks of cod, haddock and yellowtail flounder, the management program established under Amendment 5, and expanded in this Amendment, is based on these primary stocks as well. In other words, the remaining multispecies stocks, other than cod, haddock and yellowtail flounder, would be protected under the management program developed for the primary stocks.

Using the 1993 fishing mortality rates contained in Amendment 5 as a baseline, an 80 percent average reduction in the fishing mortality rate is required to achieve the fishing mortality goals for the above mentioned stocks. This Amendment proposes to accomplish the reduction primarily through a combination of reductions in DAS, bycatch controls, area closures and elimination of previously established exemptions to effort reduction programs.

Specification of 1996 and 1997 TAC and Adjustments

For the period May 1, 1996, through April 30, 1997, the TAC levels that would correspond to the fishing mortality rate objectives are contained in the table below (calculation of the TACs is based on scientific assessment incorporating data and estimates of stock sizes, recruitment patterns, natural and fishing mortality, growth, etc.).

TABLE 1.—1996 TAC SPECIFICATIONS

Species	1996 target TACs (metric tons)
Georges Bank cod	1,851
Georges Bank haddock	2,801
Georges Bank yellowtail flounder	385
Gulf of Maine cod	2,761
Southern New England yellowtail flounder	150
Aggregate for remaining regulated species	25,500

Specification of TACs and adjustments for 1997 and beyond would be accomplished through the annual review framework process discussed later in this document.

Days-at-Sea Effort Control Program

The Amendment proposes to reduce DAS in two equal increments, on May 1, 1996 and May 1, 1997, to the level called for in the final year of the current Amendment 5 DAS reduction schedule. In addition, vessels previously exempted from the DAS program would be subject to the effort control program through this Amendment. Specifically, vessels in the 45-ft (13.7 m)-and-less, Hook-Gear and Gillnet Permit categories were exempted from the DAS program. Amendment 7 proposes to eliminate these exemptions and allocate DAS to all but the smallest group of vessels, those 30 ft (9.1 m) or less in length.

Existing limited access vessels subject to the effort-control program would continue under reduced DAS allocations. Vessels currently in the Individual and Combination DAS permit categories would have their DAS allocation reduced by 35 percent of their Amendment 5 baseline in fishing year 1996 and by 50 percent in fishing year 1997. Vessels assigned to the Fleet DAS limited access permit category would receive an allocation of 139 DAS in the fishing year 1996 and 88 DAS in the fishing year 1997.

Limited access vessels that agree to use sink gillnet gear with a minimum mesh size of 7 inches (17.8 cm) for the entire fishing year could opt to fish under a new permit category "Large Mesh DAS" and would be allocated 155 DAS in 1996, and 120 DAS in 1997. Similarly, trawl vessels choosing to fish exclusively with nets with a minimum mesh size of 8 inches (20.32 cm) when fishing under a groundfish DAS allocation could also enroll in this category and receive the same DAS allocation. Again, DAS allocations for 1997 may change as the result of the annual review process described under the framework provisions.

Limited access vessels 30 ft (9.1 m) or less in length that do not fish under a DAS program would be restricted to a cod, haddock and yellowtail flounder possession limit of up to a maximum combined weight of 300 lb (136.1 kg), but would not be subject to any limits on other multispecies finfish. These vessels may choose instead to fish under the DAS program. Vessels issued a 1995 valid limited access multispecies permit and fishing under the Small boat exemption (less than or equal to 45 ft (13.7 m)) that are 20 ft (6.1 m) or less in length, would initially be assigned to the Small Vessel (less than or equal to 30 ft (9.1 m)) category. However, due to different methods of measuring overall length, vessels greater than 20 ft (6.1 m) but less than or equal to 30 ft (9.1 m) would need to provide verification of overall length to obtain a Small Vessel category permit.

With the exception of one 20-consecutive-day block of time between March 1 through May 31 that all vessels subject to the effort-control program would be required to "take out" of the fishery, this rule would eliminate the Fleet DAS category requirement of taking blocks of time "out" of the multispecies fishery as well as the layover day provision currently required after completion of a multispecies DAS.

Upon implementation of this rule, DAS will be prorated to account for a full fishing year beginning May 1, 1996, through April 30, 1997.

Closed Areas

In addition to retaining the current closed areas, the Amendment would close additional areas, seasonally, to reduce further fishing mortality. The areas selected for closure correspond to the current time/area closures imposed on sink gillnet vessels in the GOM, that is, the Northeast Closure Area, the Mid-Coast Closure Area, and the Massachusetts Bay Closure Area to reduce the bycatch of harbor porpoise. These areas would be closed to all gear types capable of catching multispecies. By extending the closure of these areas to all gear capable of catching multispecies, the goal of reducing bycatch of harbor porpoise can be realized in a less complex and more enforceable manner, while at the same helping to achieve the goal of reducing fishing mortality for regulated species in the GOM. Further, because the closure areas range from the U.S.-Canadian boundary, down through Massachusetts Bay; and would be closed for different seasons and for relatively short periods of time, they would affect vessels more or less equally throughout the GOM region. All vessels would be allowed to transit these areas, provided that their gear is properly stowed. To minimize the impact of these closures on other fisheries, gears that have little or no impact on regulated species would be exempt from the closures.

Exempted Fisheries

Under this proposed rule, vessels fishing in the GOM/GB and SNE regulated mesh areas would be allowed to fish only in an exempted fishery, under a DAS (multispecies or scallop), or under the small vessel category. An exempted fishery is one in which it has been determined that there is a minimal bycatch of regulated species. Currently, a five-percent standard is applied to fisheries utilizing mesh smaller than the minimum mesh size in the GOM, GB or SNE regulated mesh areas. This rule would extend the restriction to large mesh fisheries and would revise the requirement to reflect the Council's intent that the five-percent standard is an absolute maximum and that other restrictions on fishing gear and/or seasons may be considered to reduce bycatch.

Changes To Permit Categories

The Amendment would establish two additional limited access permit categories and allow some vessels in an open access category an opportunity to qualify for a limited access permit under specified criteria.

During the development of Amendment 5, the open access Hook-Gear category was promoted by the Council as the remaining opportunity for new entrants into the multispecies fishery. Under Amendment 7, vessels holding open access permits would no longer be allowed to target regulated species. Consequently, individuals that may have invested in vessels and gear based on the Council's guidance and that have participated in the fishery would be given an opportunity to qualify for a Hook-Gear limited access permit, if they meet the following criteria: The vessel held a 1995 open access Hook-Gear permit and submitted to the Regional Director, no later than January 26, 1996, fishing log reports dated between June 1, 1994 and June 1, 1995, documenting landings of at least 500 lb (226.8 kg) of multispecies finfish. Under Amendment 5 regulations, all vessels issued a multispecies permit are required to submit logbooks within 15 days after the end of each month. The January 26, 1996 deadline, therefore, actually is less restrictive than the current provision. Vessels fishing under the limited access Hook-Gear permit would be restricted to setting no more than 4,500 hooks per day. And finally, vessels qualifying for the limited access Hook-Gear permit under this provision would be restricted to that limited access category and could not select a different limited access permit category.

A new limited access category also would be established for vessels that currently have limited access status and that choose to use larger than the minimum size mesh in exchange for an increased allocation of DAS. The mesh requirements for this category were described under "Days at Sea Effort Control Program."

Vessels 30 ft (9.1 m) or less in length that choose to fish under the Small Vessel permit category and vessels possessing an open access Handgear permit category would not be allowed to fish for, possess, or land regulated multispecies between March 1 and March 20 of each year.

This rule also proposes three new open access permit categories: Handgear, Charter/party and Scallop Multispecies Possession Limit. Vessels holding Handgear permits could possess, land, and sell up to 300 lb (136.1 kg), combined weight, of cod, haddock, and yellowtail flounder, and unlimited amounts of the other multispecies finfish, provided they use rod and reel or handlines only (no jigging machines). Charter/party permits would be required for vessels that carry passengers for hire and that do not possess a limited access permit. These vessels would be restricted by the recreational fishing provisions on minimum fish sizes, gear, and a prohibition on sale. Charter/party permit holders could also obtain an open access Handgear permit to fish commercially for multispecies finfish when they are not fishing under hire. Limited access scallop vessels could obtain an open access Scallop Multispecies Possession Limit permit and possess, land and sell up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS.

Other Measures

The current experimental dogfish trawl fishery in the Nantucket Shoals area would be implemented on a permanent basis during the time period of June 1 through October 15 of each year. Extensive sea sampling conducted by the Massachusetts Division of Marine Fisheries has shown that this fishery has a very low bycatch of regulated species and is, therefore, an appropriate candidate for exemption to the mesh restrictions. Vessels participating in the Nantucket Shoals dogfish exemption program would be required to have on board an authorization letter issued by the Regional Director and would be allowed to retain the bycatch species and amounts allowed in the GB/GOM small mesh exemption area, as well as skates in an amount up to 10 percent of other fish on board.

Limited access vessels would be allowed to continue fishing under the current state waters winter flounder exemption program. This program is available to vessels fishing in the waters of any state that is in compliance with the Atlantic States Marine Fisheries Commission's (ASMFC) Winter Flounder Fishery Management Program. Additionally, limited access vessels that are not fishing under the DAS program would be allowed to retain up to 500 lb (226.8 kg) of winter flounder when fishing under this exemption program.

Vessels fishing in the Mid-Atlantic regulated mesh area, when not fishing under a DAS, would be allowed to possess, land, and sell winter flounder up to 10 percent by weight of all other species on board, or 200 lb (90.72 kg), whichever is less.

Vessels fishing in the SNE regulated mesh area would be allowed to retain a bycatch of skate or skate parts up to 10 percent of the total weight of other fish possessed on board, when fishing under the small-mesh exemption provision. This possession limit represents a legitimate bycatch when fishing in the exempted species program, while eliminating the incentive to conduct a directed fishery on skate.

A provision would be added to the Observer Program section that would allow the Regional Director to accept observer coverage funded by sources other than NMFS, provided certain conditions are met. These conditions are: That all observer coverage is determined by NMFS to be in compliance with NMFS' sea-sampling guidelines and procedures; that the owner or operator of the vessel complies with all requirements under the multispecies plan; and that the observer is approved by the Regional Director.

Because the Small Mesh Area 1 exemption area lies entirely within the Mid-coast Closure Area, the season termination date for this exemption would be changed to coincide with the closure of this area. The current Small Mesh Area 1 season of July 15 through November 15 would, therefore, be changed to July 15 through October 31.

Amendment 7 requires that recreational and charter/party vessels comply with the following restrictions: A 20-inch (50.8-cm) minimum fish size for cod and haddock for the first year of the plan increasing to 21-inches (53.3 cm) in the second year; a prohibition on the sale of multispecies finfish; and a two hook-per-line limit for each angler.

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In addition, there would be a 10 fish bag limit on cod and haddock, combined, for recreational anglers. This would not include charter/party vessels.

Charter/party vessels not fishing under the DAS program that possess limited access multispecies permits or open access Handgear permits would be required to fish under the recreational provisions, when fishing for hire.

Amendment 7 would expand the FMP's existing framework provision to remove the current 10-percent cap on annual reductions in fishing mortality and establish an annual process to review progress towards fishing mortality goals and to make changes in the management program, including recreational provisions. A Multispecies Monitoring Committee (MSMC) would be established to consist of technical staff from the New England and Mid-Atlantic Council's, the NMFS Northeast Regional Office, the NEFSC, and representatives from the U.S. Coast Guard, the fishing industry, and from affected coastal states appointed by the ASMFC. The MSMC would meet annually and, based on a review of the status of the resource, would recommend to the Multispecies Committee of the Council annual DAS adjustments by fleet sector, target TACs and any other management measure adjustments necessary to achieve the FMP's goals. After considering this recommendation, and any public comment, the Council would then make a recommendation to the Regional Director on annual TACs and adjustments to management measures, if any, for the following fishing year. If the Council fails to submit a recommendation to the Regional Director by February 1 that meets the FMP goals and objectives, the Regional Director may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objective and is consistent with other applicable law. If, after considering public comment, the Regional Director decides to approve the option published as a proposed rule, the action will be published as a final rule in the **Federal Register**.

This rule would revise the current haddock possession limit to be 1,000 lb (453.6 kg) for vessels fishing under a multispecies DAS. Existing regulations limit possession of haddock to 500 lb (226.8 kg) or its equivalent, as measured by the volume of four standard boxes or five standard totes. This volumetric measure has, in practice, allowed vessels to land more than the 500-lb (226.8-kg) haddock trip limit because volumetric equivalent measures turned out to be too generous. This has made enforcement of this provision problematic for cases based solely on landing records. Therefore, in response to the elimination of the use of this volumetric measure and to address that industry concern over vessels catching more than the 500-lb (226.8-kg) haddock trip limit and consequently discarding fish, the possession limit of haddock would be increased to 1,000 lb (453.6 kg). Although the status of haddock remains critical, other more restrictive conservation measures proposed under this plan would afford additional benefits to this species.

For clarity, Latin nomenclature for genus and species has been added to the Definitions section and removed from all other sections.

Unless changed by this proposed rule, all measures currently in place under the FMP would remain in effect.

Classification

This action has been determined to be economically significant for the purposes of E.O. 12866.

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires NMFS to publish implementing regulations proposed by a Council within 15 days of the receipt of an amendment and proposed regulations. At this time, NMFS has not determined whether the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. NMFS, in making that determination, will take into account the information, views and comments received during the comment period.

The Council prepared a FSEIS for Amendment 7 describing the possible impacts on the environment as a result of this rule. This amendment is expected to have a significant impact on the human environment. A copy of the FSEIS may be obtained from the Council (see **ADDRESSES**).

The Biological Opinion (BO) for the original consultation on the initial FMP in 1986 concluded that the fishing activities resulting from that action may affect but are not likely to jeopardize the continued existence of endangered and threatened species of marine mammals, sea turtles, and fish or their critical habitat(s) found in the affected area. This conclusion was re-evaluated in a BO for the Marine Mammal Exemption Program MMEP initiated in 1989 under the Marine Mammal Protection Act of 1972. New information regarding incidental take was introduced and the conclusion of no jeopardy was reached. Amendment 5 to the FMP contained measures to reduce the incidental take of marine mammals and implemented significant effort reduction measures. Due to the scope of the proposed amendment and the fact that right whale critical habitat has been designated since the BO for Amendment 5 to the Multispecies FMP was written, formal consultation was re-initiated. This consultation does not change the basis for the original determination. The consultation concluded that the provisions of the proposed amendment may affect but are not likely to jeopardize the continued existence of endangered and threatened species or their critical habitat(s).

Adverse impacts on marine mammals resulting from fishing activities conducted under this rule are discussed in the FSEIS.

In compliance with the Regulatory Flexibility Act, the Council has prepared an IRFA as part of the RIR contained in Amendment 7 that concludes that this proposed rule would have significant economic impacts on a substantial number of small entities. The measures proposed are restrictive, and impacts on the industry are expected to be significant. In the early years of the program, some vessels may be unable to cover their costs, in part because of these restrictions and also due to the poor condition of the stocks. Such vessels are expected to leave the fishery. Relative to the status quo, however, this proposal produces positive significant effects on a substantial number of small entities after stock abundance of groundfish recovers. The majority of the vessels in the Northeast Multispecies Fishery are considered small entities. The proposed action will reduce the overall revenues of the multispecies industry by approximately 10 to 25 percent in the first three years of the program compared to the status quo. The impact of the proposed action will not be uniform for all vessels or all sectors. Instead, the action will have different effects on different gear groups, with trawlers being relatively more disadvantaged than other vessels. This is primarily because trawlers produce the largest share of total groundfish landings and have higher costs. Alternately, smaller independent vessels are well suited to adapting to year to year changes in species as availability changes. Generally, smaller vessels are more flexible and have lower costs. The proposed action would allow vessels 30 ft (9.1 m) or less in length to be exempt from the DAS program, provided they comply with the 300-lb (136.1-kg) cod, haddock, and yellowtail flounder possession limit. Cod, haddock, and yellowtail flounder comprise 15 percent of the revenue of these vessels.

The negative effects of the non-selected alternatives would be greater than those of the proposed measures. Expected impacts of the proposed action on crew income are negative in the first 5 years of the program and positive thereafter. Likewise, the level of employment is expected to decline in the short-term to an undetermined extent but will rebound over the long term. Projected revenues from fishing will be positive beginning in the year 2001, which will create demand for other goods and services in the area and lead to increased production and employment. The overall impacts will be positive. The proposed action is expected to increase net benefits to the nation by $18 million over the 10-year rebuilding period. The recreational sector is not expected to be negatively impacted by this action.

The proposed action is economically significant for the purposes of E.O. 12866, but probably will not have an annual impact on the economy of $100 million or more, and will not adversely affect the productivity, environment, public health or safety or state, local or tribal governments or communities in the long term. By increasing multispecies catch rates in the long term and reducing operating costs, the proposed action is expected to make the industry more productive after recovery of groundfish stock abundance and to increase the competitiveness of the domestic industry in comparison to foreign suppliers.

This proposed rule contains six new collection-of-information requirements subject to the Paperwork Reduction Act and have been submitted to OMB for approval. The public reporting burden for these collection-of-information requirements are indicated in the parentheses in the following statements and include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this reporting burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

The new requirements are:

1. The Nantucket Shoals Dogfish exemption, OMB# 0648–0202, will require vessel notification (2 minutes/response).

Revisions to the existing requirements are:

2. Proof of VTS installation, OMB# 0648–0202, (2 minutes/response);

3. Call-in or card system, OMB# 0648–0202, (2 minutes/response);

4. Limited access permit, OMB# 0648–0202. Appeal of the DAS allocation will require written submission (2 hours/response);

5. Limited access permit appeals, OMB# 0648–0202, appeal of denied permits will require written submission (0.5 hours/response);

6. Three new vessel permit categories (Handgear, Charter/Party and Scallop Multispecies Possession Limit), OMB# 0648–0202, are created with no increase in burden above that currently associated with vessel permits.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 26, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is proposed to be amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 651.2, the definition for "Charter and party boats" is removed, and the definitions for "Alewife", "American shad", "Atlantic croaker", "Black sea bass", "Blowfish", "Bluefish", "Charter or party boat or charter/party boat", "Conger eels", "Cunner", "Dogfish", "Exempted gear", "Fourspot flounder", "Hagfish", "Handgear", "Handline or handline gear", "Hickory shad", "John Dory", "Longhorn sculpin", "Mullet", "Multispecies Monitoring Committee", "Rod and reel", "Scup", "Sea raven", "Searobin", "Skate", "Spot", "Summer flounder", "Swordfish", "Target Total Allowable Catch (TAC)", "Tautog", "Tilefish", and "Weakfish" are added, in alphabetical order; the definitions for "DAS (Days-at-sea)", "Out of the multispecies fishery or DAS program", and "Sink gillnet" are revised to read as follows:

§ 651.2 Definitions.

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Alewife means *Alosa pseudoharengus.*

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American shad means *Alosa sapidissima.*

Atlantic croaker means *Micropogonias undulatus.*

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Black sea bass means *Centropristis striata.*

Blowfish (puffer) means any species in the family *Tetraodontidae.*

Bluefish means *Pomatomus saltatrix.*

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Charter or party boat or charter/party boat means any vessel carrying passengers for hire to engage in recreational fishing and that is not fishing under a DAS.

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Conger eels means *Conger oceanicus.*

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Cunner means *Tautogolabrus adspersus.*

DAS (Days-at-sea) means the 24-hour periods of time during which a fishing vessel is absent from port in which the vessel intends to fish for, possess or land, or fishes for, possesses, or lands regulated species, or for gillnet vessels, the 24-hour periods of time beginning when the gillnet vessel leaves port with the intent to fish for, possess or land, or fishes for, possesses or lands regulated species, and ending when a gillnet vessel returns to port with all of its gillnet gear that was in the water on board.

* * * * *

Dogfish means spiny dogfish, *Squalus acanthias*, or smooth dogfish, *Mustelus canis.*

* * * * *

Exempted gear means gear that is deemed to be not capable of catching multispecies finfish and includes: pelagic hook and line, pelagic longline, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, purse seines, shrimp trawls (with a properly configured grate as defined under this part), and mid-water trawls.

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Fourspot flounder means *Paralichthys oblongus.*

* * * * *

Hagfish means *Myxine glutinosa.*

Handgear means handline or rod and real gear.

Handline or handline gear means fishing gear that is released by hand and consists of one main line to which is attached up to two leaders for a total of

not more than three hooks. Handlines are retrieved only by hand, not by mechanical means.

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Hickory shad means *Alosa mediocris.*

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John Dory means *Zenopsis conchifera.*

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Longhorn sculpin means *Myoxocephalus octodecimspinosus.*

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Mullet means any species in the family *Mugilidae.*

* * * * *

Multispecies Monitoring Committee means a team of scientific and technical staff appointed by the Council to review, analyze, and recommend adjustments to the management measures. The team will consist of staff from the New England and Mid-Atlantic Fishery Management Councils, the NMFS Northeast Regional Office, the NEFSC, the U.S. Coast Guard, an industry representative, and representatives from affected coastal states appointed by the Atlantic States Marine Fisheries Commission.

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Out of the multispecies fishery or DAS program means the period of time during which a vessel is absent from port and is not fishing for regulated species under the multispecies DAS program.

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Rod and reel means a hand-held (including rod holder) fishing rod with a manually operated reel attached.

* * * * *

Scup means *Stenotomus chrysops.*

Sea raven means *Hemitripterus americanus.*

Searobin means any species in the family *Triglidae.*

Sink gillnet means a bottom-tending gillnet, which is any gillnet, anchored or otherwise, that is designed to be, or is fished on or near the bottom in the lower third of the water column.

Skate means any species in the family *Rajidae.*

Spot means *Leiostomus xanthurus.*

* * * * *

Summer flounder means *Paralichthys dentatus.*

Swordfish means *Xiphias gladius.*

Target Total Allowable Catch (TAC) means the annual domestic harvest targets for regulated species.

Tautog (blackfish) means *Tautoga onitis.*

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Tilefish means *Lopholatilus chamaeleonticeps.*

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Weakfish means *Cynoscion regalis.*

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3. In § 651.4, paragraphs (a), (b), (c), (e), (f), (h)(1)(ii), (h)(1)(iii) and (q) are revised to read as follows:

§ 651.4 Vessel permits.

* * * * *

(a) *General.* Any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid Federal multispecies permit issued under this part to fish for, possess or land multispecies finfish in or from the EEZ. Recreational vessels and vessels fishing for multispecies exclusively in state waters are exempt from this requirement.

(b) *Limited access permits*—(1) *Eligibility*—

(i) *Limited access multispecies permit.* To be eligible for a multispecies limited access permit, specified in § 651.22, in 1996 and thereafter, a vessel must have been issued a limited access multispecies permit for the preceding year, must be replacing a vessel that was issued a limited access multispecies permit for the preceding year, or must qualify for a 1996 limited access multispecies permit under paragraph (b)(1)(ii) of this section.

(ii) *Limited access hook-gear permit.* A vessel issued a 1995 open access hook-gear permit may apply for and obtain a 1996 limited access hook-gear permit provided it meets the criteria for eligibility described below. Vessels must apply for a limited access Hook-Gear permit before September 1, 1996, to receive an automatic mailing of an application to renew their permit in 1997 and to be insured that their permit application will be processed within the 30 days allowed under paragraph (e) of this section. Vessels applying after December 31, 1996, will be ineligible to apply for a 1997 limited access hook-gear permit. A vessel qualifying for a limited access hook-gear permit may not change its limited access permit category. The criteria for eligibility are:

(A) The vessel held a 1995 open access Hook-Gear permit and submitted to the Regional Director, no later than January 26, 1996, fishing log reports dated between June 1, 1994 and June 1, 1995, documenting landings of at least 500 lb (226.8 kg) of multispecies finfish; or

(B) The vessel is replacing a vessel that meets the criteria set forth in paragraph (b)(1)(ii)(A) of this section.

(2) *Qualification restriction.* Unless the Regional Director determines to the contrary, no more than one vessel may qualify, at any one time, for a limited access multispecies permit based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access multispecies permit, based on one vessel's fishing and permit history, the Regional Director shall determine who is entitled to qualify for the limited access multispecies permit and the DAS allocation according to paragraph (b)(3) of this section.

(3) *Change in ownership.* The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

(4) *Replacement vessels.* To be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any applicable criteria under paragraph (b)(5) of this section:

(i) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel that was initially issued a limited access multispecies permit as of the date the initial vessel applied for such permit; and

(ii) The replacement vessel's length, gross registered tonnage, and net tonnage may not exceed by more than 10 percent the length, gross registered tonnage, and net tonnage of the vessel that was initially issued a limited access multispecies permit as of the date the initial vessel applied for such permit. For purposes of this paragraph, a vessel not required to be documented under title 46, U.S.C. will be considered to be 5 net tons. For undocumented vessels, gross registered tonnage does not apply.

(5) *Upgraded vessel.* To remain eligible to retain a valid limited access permit under this part, or to apply for or renew a limited access permit under this part, a vessel may be upgraded, whether through refitting or replacement, only if the upgrade complies with the following limitations:

(i) The vessel's horsepower may be increased, whether through refitting or replacement, only once. Such an increase may not exceed 20 percent of the horsepower of the vessel initially issued a limited access multispecies permit as of the date the initial vessel applied for such permit; and

(ii) The vessel's length, gross registered tonnage, and net tonnage may be upgraded, whether through refitting or replacement, only once. Such an increase shall not exceed 10 percent each of the length, gross registered tonnage, and net tonnage of the vessel initially issued a limited access multispecies permit as of the date the initial vessel applied for such permit. This limitation allows only one upgrade, at which time any or all three specifications of vessel size may be increased. This type of upgrade may be done separately from an engine horsepower upgrade.

(6) *Consolidation restriction.* Limited access permits under this permit and DAS allocations may not be combined or consolidated.

(7) *Appeal of denial of limited access multispecies permit.*

(i) Any applicant eligible to apply for an initial limited access Hook-Gear permit who is denied such permit may appeal the denial to the Regional Director within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal:

(A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make the initial decision on the appeal.

(iii) The appellant may request a review of the initial decision by the Regional Director by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision shall become the final administrative action of the Department of Commerce.

(iv) Upon receiving the findings and a recommendation, the Regional Director will issue a final decision on the appeal. The Regional Director's decision is the final administrative action of the Department of Commerce.

(v) Status of vessels pending appeal of a limited access permit denial. A vessel denied a limited access Hook-Gear permit may fish under the limited access Hook-Gear category, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Director authorizing the vessel to fish under the limited access Hook-Gear category. The Regional Director will issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity pending a final decision on the appeal. The authorizing letter must be carried on board the vessel. If the appeal is finally denied, the Regional Director shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(8) *Limited access permit restrictions.*

(i) A vessel may be issued a limited access multispecies permit in only one category during a fishing year. Vessels are prohibited from changing limited access multispecies permit categories during the fishing year, except as provided in paragraph (f)(3) of this section. A vessel issued a limited access Hook-Gear permit may not change its limited access permit category at any time.

(ii) With the exception of Combination Vessels, sea scallop dredge vessels are prohibited from being issued a limited access multispecies permits.

(9) *Confirmation of Permit History.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, may apply for and receive a Confirmation of Permit History if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a Confirmation of Permit History, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid and current Confirmation of Permit History preserves the eligibility of the applicant to apply for or renew a limited access multispecies permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified at § 651.4. A Confirmation of Permit History must be applied for and received on an annual basis in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. If fishing privileges have been assigned or allocated previously under this part based on the qualifying vessel's fishing and permit history, the Confirmation of Permit History also preserves such fishing privileges. Any decision regarding the issuance of a Confirmation of Permit History for a qualifying vessel that has applied for or been issued previously a limited access permit under this part is a final agency action subject to judicial review under 5 U.S.C. 704. Applications for a Confirmation of Permit History must be received by the Regional Director by the beginning of the fishing year for which the Confirmation of Permit History is required. Information requirements for the Confirmation of Permit History application shall be the same as those for a limited access permit with any request for information about the vessel being applicable to the qualifying vessel that has been sunk, destroyed or transferred. Vessel permit applicants who have been issued a Confirmation of Permit History and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (b)(4) of this section.

(c) *Open access permits.* Subject to the restrictions in § 651.33, a U. S. vessel that has not been issued a limited access multispecies permit may obtain an open access Handgear or Charter/party permit. Vessels that are issued a valid scallop limited access permit under § 650.4 of this chapter and that have not been issued a limited access multispecies permit may obtain an open access Scallop Multispecies Possession Limit permit.

* * * * *

(e) *Vessel permit application.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Director. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. Applicants for limited access multispecies permits shall provide information with the application sufficient for the Regional Director to determine whether the vessel meets the eligibility requirements specified.

(f) *Information requirements.* (1) In addition to applicable information required to be provided by paragraph (e) of this section, an application for a permit must contain at least the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of the vessel's current U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the current state registration; party/charter boat license; home port and principal port of landing; length overall; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-

hold capacity; type of fishing gear used by the vessel; number of crew; number of party or charter passengers licensed to carry (if applicable); permit category; if the owner is a corporation, a copy of the current Certificate of Incorporation, or other corporate papers showing incorporation and the names of the current officers in the Corporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the current Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners owning a 25 percent interest or more; and, name and signature of the owner or the owner's authorized representative.

(2) Applications for an initial limited access Hook-Gear permit must also contain the following information:

(i) If the engine horsepower was changed or a contract to change the engine horsepower had been entered into prior to May 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal Fisheries Permit before May 1, 1996, sufficient documentation to ascertain the different engine horsepower. However, the engine replacement must be completed within one year of the date of when the contract for the replacement engine was signed.

(ii) If the length, gross tonnage, or net tonnage was changed or a contract to change the length, gross tonnage or net tonnage had been entered into prior to May 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal Fisheries Permit, sufficient documentation to ascertain the different length, gross tonnage or net tonnage. However, the upgrade must be completed within one year from the date when the contract for the upgrade was signed.

(3) A vessel issued a limited access multispecies permit may request a change in permit category, unless otherwise restricted by paragraph (b)(8) of this section. In 1996, any such change must be requested by submitting an application to the Regional Director within 45 days of implementation of this rule. After 45 days, the vessel must fish only in the DAS program assigned for the remainder of the 1996 fishing year. Any DAS that a vessel uses prior to a change in permit category will be counted against its allocation received under any subsequent permit category. For 1997 and beyond, limited access multispecies vessels eligible to request a change in permit category must elect a category prior to the start of each fishing year and must remain in that permit category for the duration of the fishing year. A vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Director at any time.

(4) If the vessel is a combination vessel, or if the applicant elects to take an Individual DAS allocation or to use a VTS unit, although not required, a copy of the vendor installation receipt from a NMFS-certified VTS vendor as described in § 651.28(a).

* * * * *

(h) * * *

(1) * * *

(ii) The application was not received by the Regional Director by the deadlines set forth in paragraphs (b)(1)(ii), and (q) of this section; or

(iii) The applicant and applicant's vessel failed to meet all eligibility requirements described in paragraph (b)(1) of this section; or

* * * * *

(q) *Limited access multispecies permit renewal.* To renew or apply for a limited access multispecies permit a completed application must be received by the Regional Director by the first day of the fishing year for which the permit is required. Failure to renew a limited access multispecies permit in any year bars the renewal of the permit in subsequent years.

* * * * *

4. Section 651.9 is revised to read as follows:

§ 651.9 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a valid Federal multispecies vessel permit issued under this part, issued a permit under § 651.5 or a letter under § 651.4(b)(7)(v), to do any of the following:

(1) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application as required under § 651.4(m) or § 651.5(k).

(2) Fish for, possess, or land multispecies finfish unless the operator of the vessel has been issued an operator's permit under § 651.5, and a valid permit is on board the vessel.

(3) Sell, barter, trade, or transfer, or attempt to sell, barter, trade, or transfer to a dealer any multispecies finfish unless the dealer has a valid Federal dealer's permit issued under § 651.6.

(4) Sell, barter, trade, or transfer, or attempt to sell, barter, trade, or otherwise transfer, for a commercial purpose, other than transport, any multispecies, unless the transferee has a dealer permit issued under § 651.6.

(5) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of § 651.7(b).

(6) Fail to affix and maintain permanent markings as required by § 651.8.

(7) Enter, fail to remove gear from, or be in the areas described in § 651.21(f)(1) through § 651.21(h)(1) during the time period specified, except as provided in § 651.21(d), (f)(2), (g)(2), and (h)(2).

(8) Possess or land multispecies finfish smaller than the minimum sizes specified in § 651.23 or § 651.34, as appropriate.

(9) Land, or possess on board a vessel, more than the possession limits specified in § 651.27(a), or violate any of the other provisions of § 651.27.

(10) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove, or otherwise transfer fish from one vessel to another vessel or other floating conveyance unless authorized in writing by the Regional Director pursuant to § 651.30(a).

(11) Refuse or fail to carry an observer if requested to do so by the Regional Director.

(12) Interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer conducting his or her duties aboard a vessel.

(13) Fail to provide an observer with the required food, accommodations, access, and assistance, specified in § 651.31.

(b) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a limited access multispecies permit under § 651.4(b) or a letter under § 651.4(b)(7)(v), to do any of the following:

(1) Fish for, possess, or land multispecies finfish with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 651.4(b)(4) or § 651.4(b)(5).

(2) Fish for, possess, or land multispecies finfish with or from a vessel that has had the length, gross registered tonnage, or net tonnage of such vessel or its replacement increased or upgraded in excess of limitations specified in § 651.4(b)(4) or § 651.4(b)(5).

(3) Combine, transfer, or consolidate DAS allocations.

(4) Fish for, possess at any time during a trip, or land per trip more than the possession limit of regulated species specified in § 651.27(c) after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 651.22, unless otherwise exempted under §§ 651.22(b)(3) or 651.34.

(5) Possess or land per trip more than the possession limit specified under § 651.22(b)(3)(i) if the vessel has been issued a limited access Small Vessel permit.

(6) Fail to comply with the restrictions on fishing and gear specified in § 651.22(b)(4) if the vessel has been issued a limited access Hook-Gear permit.

(7) Fail to declare and be out of the multispecies fishery as required by § 651.22(g), using the procedure described under § 651.22(h), as applicable.

(8) Land, or possess on board a vessel, more than the possession limit of winter flounder specified in § 651.27(b), or violate any of the other provisions specified in § 651.27(b).

(9) If required to have a VTS unit specified in § 651.28(a) or § 651.29(a):

(i) Fail to have a certified, operational, and functioning VTS unit that meets the specifications of § 651.28(a) on board the vessel at all times.

(ii) Fail to comply with the notification, replacement, or any other requirements regarding VTS usage specified in § 651.29(a).

(10) Fail to comply with any requirement regarding the DAS notification specified in § 651.29(a) or § 651.29(b).

(11) Fail to comply with other notification requirements, including a call-in system specified in § 651.29(c), if required by the Regional Director.

(12) Fail to provide notification of the beginning or ending of a trip, as required under § 651.29(b) and § 651.29(d).

(c) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a Handgear permit under § 651.4(c) to do any of the following:

(1) Possess at any time during a trip, or land per trip, more than the possession limit of regulated species specified in § 651.33(a), unless the regulated species were harvested by a charter or party vessel.

(2) Use, or possess on board, gear capable of harvesting multispecies finfish other than rod and reel or handline while in possession of, or fishing for, multispecies finfish.

(3) Possess or land multispecies finfish during the time period specified in § 651.33(a)(2).

(d) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a Scallop Multispecies Possession Limit permit under § 651.4(c) to do any of the following:

(1) Possess or land more than the possession limit of regulated species specified in § 651.33(c).

(2) Possess or land regulated species when not fishing under a scallop DAS.

(e) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified in paragraphs (a) through (d) of this section, it is unlawful for any person to do any of the following:

(1) Fish for, possess, or land multispecies finfish unless: (i) The multispecies finfish were being fished for or harvested by a vessel issued a valid Federal multispecies permit under this part, or a letter under § 651.4(b)(7)(v), and the operator aboard such vessel was issued an operator's permit under § 651.5 and a valid permit is on board the vessel;

(ii) The multispecies finfish were harvested by a vessel not issued a Federal multispecies permit that fishes for multispecies finfish exclusively in state waters; or

(iii) The multispecies finfish were harvested by a recreational fishing vessel.

(2) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer, for a commercial purpose, any multispecies finfish from a trip unless the vessel is issued a valid Federal multispecies permit under this part, or a letter under § 651.4(b)(7)(v), and is not fishing under the charter/party restrictions specified in § 651.34(d), or unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(3) To be or act as an operator of a vessel fishing for or possessing multispecies finfish in or from the EEZ, or issued a Federal multispecies permit under this part, without having been issued and possessing a valid operator's permit issued under § 651.5.

(4) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose in the capacity of a dealer, multispecies finfish taken from a fishing vessel, unless in possession of a valid dealer permit issued under § 651.6; except that this prohibition does not apply to multispecies finfish taken from a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(5) Purchase, possess, or receive for a commercial purpose or attempt to purchase, possess, or receive multispecies finfish caught by a vessel other than one issued a valid Federal multispecies permit under this part, or a letter under § 651.4(b)(7)(v), unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(6) Land, offload, cause to be offloaded, sell, or transfer; or attempt to land, offload, cause to be offloaded, sell, or transfer multispecies finfish from a fishing vessel, whether on land or at sea, as an owner or operator without accurately preparing and submitting, in a timely fashion, the documents required by § 651.7, unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(7) Purchase or receive multispecies finfish, or attempt to purchase or receive multispecies finfish, whether on land or at sea, as a dealer without accurately preparing, submitting in a timely fashion, and retaining the documents required by § 651.7.

(8) Possess or land fish caught with nets of mesh smaller than the minimum size specified in § 650.20 of this chapter, or with scallop dredge gear, unless said fish are caught, possessed or landed in accordance with § 651.20, or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(9) Fish with, use, or have on board, within the area described in § 651.20(a)(1) nets of mesh size smaller than the minimum mesh size specified in § 651.20(a)(2), except as provided in § 651.20 (a)(3) through (a)(6), (a)(8), (a)(9), (e), (f) and (j), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(10) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 651.20(a)(3).

(11) Fish within the areas described in § 651.20(a)(4) with nets of mesh smaller than the minimum size specified in § 651.20(a)(2), unless the vessel is issued and possesses on board the vessel an authorizing letter issued under § 651.20(a)(4)(i).

(12) Violate any provisions of the Cultivator Shoals Whiting Fishery specified in § 651.20(a)(4).

(13) Fail to comply with the requirements of § 651.20(a)(5).

(14) Fail to comply with the requirements of § 651.20(a)(8).

(15) Fail to comply with the requirements of § 651.20(a)(9).

(16) Fish with, use, or have available for immediate use within the area described in § 651.20(c)(1) nets of mesh size smaller than the minimum size specified in § 651.20(c)(2), except as provided in § 651.20(c)(3), (e), (f), and (j), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(17) Fish with, use, or have available for immediate use within the area described in § 651.20(d)(1) nets of mesh size smaller than the minimum size specified in § 651.20(d)(2), except as provided in § 651.20(d)(3), § 651.20(e), § 651.20(f), and § 651.20(j), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(18) Fish for the species specified in § 651.20 (e) or (f) with a net of mesh size smaller than the applicable mesh size specified in § 651.20(a)(2), § 651.20(c)(2) or § 651.20(d)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 651.20(e) or § 651.20(f), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(19) Obstruct or constrict a net as described in § 651.20(h)(1) and § 651.20(2).

(20) Fish for, land, or possess multispecies finfish harvested by means of pair trawling or with pair trawl gear, except under the provisions of § 651.20(e), or unless the vessels that engaged in pair trawling qualify for the exception specified in paragraph (e)(1)(ii) of this section.

(21) Violate any of the restrictions on fishing with scallop dredge gear specified in § 651.20(i).

(22) Violate any of the provisions of § 651.20(j).

(23) Enter or be in the area described in § 651.21(a)(1) on a fishing vessel, except as provided in § 651.21(a)(2) and § 651.21(d).

(24) Enter or be in the area described in § 651.21(b)(1) on a fishing vessel, except as provided in § 651.21(b)(2).

(25) Enter or be in the area described in § 651.21(c)(1), on a fishing vessel, except as provided in § 651.21(c)(2) and § 651.21(d).

(26) Enter or be on a fishing vessel, or fail to remove gear from the EEZ portion of the areas described in § 651.21(f)(1) through § 651.21(h)(1), during the time period specified, except as provided in § 651.21(d), § 651.21(f)(2), § 651.21(g)(2), and § 651.21(h)(2).

(27) Import, export, transfer, land, buy, sell or possess regulated species smaller than the minimum sizes specified in § 651.23, unless the regulated species were harvested from a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(28) Violate any terms of a letter authorizing experimental fishing pursuant to § 651.24 or fail to keep such letter on board the vessel during the period of the experiment.

(29) Fail to comply with the gear-marking requirements of § 651.25.

(30) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, fish in excess of the possession limits specified for vessels issued a Federal multispecies permit.

(31) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VTS, VTS unit, or VTS signal required to be installed on or transmitted by vessel owners or operators required to use a VTS by this part.

(32) Violate any provision of § 651.29.

(33) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer multispecies finfish from one vessel to another vessel, unless both vessels qualify under the exception specified in paragraph (e)(1)(ii) of this section, or unless authorized in writing by the Regional Director pursuant to § 651.30(a).

(34) Assault, resist, oppose, impede, harass, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(35) Make any false statement, oral or written, to an authorized officer or employee of NMFS, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any multispecies finfish.

(36) Make any false statement in connection with an application under § 651.4 or § 651.5 or on any report required to be submitted or maintained under § 651.7.

(37) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search relating to the enforcement of this part.

(f) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified in paragraphs (a) through (e) of this section, it is unlawful for the owner or operator of a charter or party boat issued a permit under § 651.4, or of a recreational vessel, as applicable, to:

(1) Fish with gear in violation of the restrictions specified in § 651.34(a).

(2) Possess regulated species smaller than the minimum sizes specified in § 651.34(b).

(3) Possess cod and haddock in excess of the possession limits specified in § 651.34(c).

(4) Sell, trade, barter, or otherwise transfer, or attempt to sell, trade, barter or otherwise transfer, multispecies finfish for a commercial purpose as specified in § 651.34(d).

(g) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(h) *Presumption.* The possession for sale of regulated species that do not meet the minimum sizes specified in § 651.23 will be prima facie evidence that such regulated species were taken or imported in violation of these regulations. Evidence that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

5. In § 651.20, paragraph (a)(9) is added and paragraphs (a)(2), (a)(3)(i)(B), (a)(4)(i)(E), (a)(6)(iii)(C), (a)(7), the introductory text of paragraph (a)(8) preceding the tables, paragraphs (a)(8)(i), (a)(8)(iii)(B), (c)(1), (c)(2), (c)(3)(ii), (c)(5), (d), (e)(2), (f)(2), (i), (j) introductory text and (j)(7) are revised to read as follows:

§ 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(2) *Gear restrictions.* (i) Except as provided in paragraphs (a)(2)(iii) and (j) of this section, and unless otherwise restricted under paragraphs (a)(2)(ii) and (a)(5) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, mid-water trawl, or purse seine, on a vessel, or used by a vessel fishing under a DAS in the multispecies DAS program in the GOM/GB regulated mesh area, shall be 6 inches (15.24 cm) square or diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq. ft (0.81 m^2)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(ii) *Large Mesh vessels.* When fishing in the GOM/GB regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 651.22(b)(6) shall be 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program shall be 8-inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq. ft (0.81 m)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(iii) *Other gear and mesh exemptions.* The minimum mesh size for any trawl net, sink gillnet, Scottish seine, mid-water trawl, or purse seine, on a vessel, or used by a vessel, when not fishing under the multispecies DAS program and when fishing in the GOM/GB regulated mesh area, is provided for under the exemptions specified in paragraphs (a)(3), (a)(4), (a)(6), (a)(8), (a)(9), (e), (f), (i), and (j) of this section. Vessels that are not fishing in one of these exemption programs, with exempted gear (as defined under this part), or under the Scallop state waters exemption program specified in § 650.27 of this chapter, or under a multispecies DAS are prohibited from fishing in the GOM/GB regulated mesh area.

(3) * * *

(i) * * *

(B) The following may be retained, with the restrictions noted, as allowable bycatch species in the northern shrimp fishery as described in this section: Longhorn sculpin; up to two standard totes of silver hake (whiting); monkfish and monkfish parts up to 10 percent by weight of all other species on board; and American lobster up to 10 percent by weight of all other species on board or two hundred lobsters, whichever is less.

* * * * *

(4) * * *

(i) * * *

(E) The following may be retained, with the restrictions noted, as allowable bycatch species in the Cultivator Shoal whiting fishery exemption area as described in this section: longhorn sculpin; monkfish and monkfish parts up to 10 percent by weight of all other species on board; and American lobster up to 10 percent by weight of all other species on board or two hundred lobsters, whichever is less.

* * * * *

(6) * * *

(iii) * * *

(C) Vessels may not fish for, possess on board, or land any species of fish except when fishing in the areas specified in paragraphs (a)(4), (a)(9), (c) and (d) of this section. Vessels may retain exempted small mesh species as provided in paragraphs (a)(4)(i), (a)(9)(i), (c)(3) and (d)(3), of this section.

(7) *Addition or deletion of exemptions.* (i) An exemption may be added in an existing fishery for which there is sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Director, after consultation with the Council, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent by weight of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Director may take into consideration factors such as, but not limited to, juvenile mortality. A fishery can be defined, restricted or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Director determines that the catch of regulated species is equal to or greater than 5 percent by weight of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications will be made through publication of a rule in the **Federal Register.**

(ii) The Council may recommend to the Regional Director, through the framework procedure specified in § 651.40(b), additions or deletions to exemptions for fisheries either existing or proposed for which there may be insufficient data or information for the Regional Director to determine, without public comment, percentage catch of regulated species.

(iii) The Regional Director may, using the process described in either paragraphs (a)(7) (i) or (ii) of this section, authorize an exemption for a white hake fishery by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such fishery shall not include white hake.

(iv) *Restrictions on exempted fisheries.* Exempted fisheries authorized under this paragraph are subject, at minimum, to the following restrictions:

(A) With the exception of fisheries authorized under paragraph (a)(7)(iii) of this section, possession of regulated species will be prohibited.

(B) Possession of monkfish or monkfish parts will be limited to 10 percent by weight of all other species on board.

(C) Possession of lobsters will be limited to 10 percent by weight of all other species on board or 200 lobsters, whichever is less.

(D) Possession of skate or skate parts in the SNE regulated mesh area will be limited to 10 percent by weight of all other species on board.

(8) *Small Mesh Area 1/Small Mesh Area 2.* Fisheries using nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in subareas described as Small Mesh Area 1 and Small Mesh Area 2 of the Small Mesh Exemption Area as specified under paragraph (a)(3) of this section, and defined in this paragraph (a)(8), have been found to meet the exemption qualification requirements specified in paragraph (a)(7) of this section. Therefore, vessels subject to the mesh restrictions specified in paragraph (a)(2) of this section may fish with or possess nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in these areas, if the vessel complies with the restrictions specified in paragraphs (a)(8)(i) through (iii) of this section. These subareas are defined by straight lines connecting the following points in the order stated (see Figure 4 to part 651):

* * * * *

(i) The fishing season is from July 15 through October 31 when fishing under the exemption in Small Mesh Area 1.

* * * * *

(iii) * * *

(B) *Allowable bycatch.* Vessels fishing for the exempted species identified in paragraph (a)(8)(iii)(A) of this section may also possess and land the following species, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; monkfish and monkfish parts up to 10 percent by weight of all other species on board; and American lobster up to 10 percent by weight of all other species on board or two hundred lobsters, whichever is less.

(9) *Nantucket Shoals dogfish fishery exemption area.* The Nantucket Shoals dogfish fishery as defined in this part has been found to meet the exemption qualification requirements specified in paragraph (a)(7) of this section. Therefore, vessels subject to the mesh restrictions specified in paragraph (a)(2) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in the Nantucket Shoals dogfish fishery exemption area, if the vessel complies with the requirements specified in paragraph (a)(9)(i) of this section. The Nantucket Shoals dogfish fishery exemption area is defined by straight lines connecting the following points in the order stated (see Figure 4 to part 651):

NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	Latitude	Longitude
NS1	41°45′ N	70°00′ W.
NS2	41°45′ N	69°20′ W.
NS3	41°30′ N	69°20′ W.
CI1	41°30′ N	69°23′ W.
NS5	41°26.5′ N	69°20′ W.
NS6	40°50′ W	69°20′ N.
NS7	40°50′ W	70°00′ N.
NS1	41°45′ N	70°00′ W.

(i) *Requirements.* Vessels authorized to fish in this fishery must have on board an authorizing letter issued by the Regional Director. Vessels are subject to the following conditions:

(A) Authorized vessels may not fish for, possess on board or land any species of fish other than dogfish except as provided under paragraph (a)(9)(i)(D) of this section.

(B) Authorized vessels may fish under this exemption during the season of June 1 through October 15.

(C) When transiting the GOM/GB regulated mesh area as specified under paragraph (a)(1) of this section, any nets of mesh smaller than the regulated mesh size specified in paragraph (a)(2) of this section, must be stowed according to the provisions of paragraph (c)(4) of this section.

(D) The following may be retained, with the restrictions noted, as allowable bycatch species in the Nantucket Shoals dogfish fishery exemption area as described in this section: Longhorn sculpin, up to two standard totes of silver hake (whiting); monkfish and monkfish parts up to 10 percent by weight of all other species on board; American lobster up to 10 percent by weight of all other species on board or two hundred lobsters, whichever is less; and skate or skate parts up to 10 percent by weight of all other species on board.

(E) Authorized vessels must comply with any additional gear restrictions specified in the authorization letter issued by the Regional Director.

(ii) *Sea Sampling.* The Regional Director may conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species.

* * * * *

(c) *Southern New England regulated mesh area. (1) Area definition.* The Southern New England regulated mesh area is that area bounded on the east by straight lines connecting the following points in the order stated (see Figure 1 part 651):

SOUTHERN NEW ENGLAND REGULATED MESH AREA

Point	Latitude	Longitude
G5	41°18.6′ N	66°24.8′ W.
G6	40°55.5′ N	66°38′ W.
G7	40°45.5′ N	68°00′ W.
G8	40°37′ N	68°00′ W.
G9	40°30.5′ N	69°00′ W.
NL3	40°22.7′ N	69°00′ W.
NL2	40°18.7′ N	69°40′ W.
NL1	40°50′ N	69°40′ W.
G11	40°50′ N	70°00′ W.
G12		70°00′ W.[1]

[1] Northward to its intersection with the shoreline of mainland Massachusetts; and on the west by the eastern boundary of the Mid-Atlantic regulated mesh area.

(2) *Gear restrictions.* (i) Except as provided in paragraphs (c)(2)(iii) and (j) of this section, and unless otherwise restricted under paragraph (c)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or mid-water trawl, in use, or available for immediate use as described under paragraph (c)(4) of this section, by a vessel fishing under a DAS in the multispecies DAS program in the Southern New England (SNE) regulated mesh area, shall be 6 inches (15.24 cm) square or diamond mesh throughout the entire net. This restriction does not apply to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(ii) *Large Mesh vessels.* When fishing in the SNE regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 651.22(b)(6) shall be 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program shall be 8-inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m)×3 ft (0.9 m), (9 sq. ft (0.81 m^2)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(iii) *Other gear and mesh exemptions.* The minimum mesh size for any trawl net, sink gillnet, Scottish seine, mid-water trawl, or purse seine, in use, or available for immediate use as described under paragraph (c)(4) of this section, by a vessel when not fishing under the multispecies DAS program and when fishing in the SNE regulated mesh area, is provided for under the exemptions specified in paragraphs (c)(3), (e), (f), (i), and (j) of this section. Vessels that are not fishing in one of these exemption programs, with exempted gear (as defined under this part), or under the Scallop state waters exemption program specified in § 650.27 of this chapter, or under a multispecies DAS are prohibited from fishing in the SNE regulated mesh area.

(3) * * *

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (c)(2)(i) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(4) of this section, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(2)(i) of this section. Vessels fishing for the exempted species identified in paragraph (c)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; searobins; black sea bass; red hake; tautog (blackfish); blowfish (puffer); cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea ravens; Atlantic croaker; spot; swordfish; monkfish and monkfish parts up to 10 percent by weight of all other species on board; American lobster up to 10 percent by weight of all other species on board or two hundred lobsters, whichever is less; and skate and skate parts up to 10 percent by weight of all other species on board.

* * * * *

(5) *Addition or deletion of exemptions.* An exemption may be added, deleted or modified pursuant to the procedure described in paragraph (a)(7) of this section.

(d) *Mid-Atlantic regulated mesh area.* (1) *Area definition.* The Mid-Atlantic (MA) regulated mesh area is that area bounded on the east by a line running from the Rhode Island shoreline along 71°47.5′ W. long. to its intersection with the 3 nautical mile line, south along the 3 nautical mile line to Montauk Point, southwesterly along the 3 nautical mile line to the intersection of 72°30′ W. long., and south along that line to the intersection of the outer boundary of the EEZ (see Figure 1 to part 651).

(2) *Gear restrictions.* (i) Except as provided in paragraphs (d)(3) and (j) of this section, and unless otherwise restricted under paragraph (d)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or mid-water trawl, in use, or available for immediate use as described under paragraph (c)(4) of this section, by a vessel fishing under a DAS in the multispecies DAS program in the MA regulated mesh area shall be that specified in the summer flounder regulations at § 625.24(a) of this chapter. This restriction does not apply to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(ii) *Large mesh vessels.* When fishing in the MA regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 651.22(b)(6) shall be 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program shall be 8-inch (20.32-cm) diamond mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m)×3 ft (0.9 m), (9 sq. ft (0.81 m^2)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(3) *Exemptions.* Vessels in the MA regulated mesh area may fish with or possess nets of mesh size smaller than the minimum size specified in paragraph (d)(2) of this section provided that they do not possess or land multispecies finfish, except as provided in § 651.27(b).

(ii) *Net stowage exemption.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (d)(2)(i) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(4) of this section, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (d)(2)(i) of this section.

(4) *Additional exemptions.* The Regional Director may, using the process described in either (a)(7)(i) or (a)(7)(ii), authorize an exemption for a white hake fishery by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such a fishery shall not include white hake.

(e) * * *

(2) When fishing under this exemption in the GOM/GB Regulated Mesh Area vessels must have on board an authorizing letter issued by the Regional Director;

* * * * *

(f) * * *

(2) When fishing under this exemption in the GOM/GB Regulated Mesh Area vessels must have on board an authorizing letter issued by the Regional Director;

* * * * *

(i) *Scallop vessels.* (1) Except as provided in paragraph (i)(2) of this section, scallop vessels that possess a limited access permit under § 650.4 of this chapter, and that are fishing under the scallop DAS program described in § 650.24, may possess and land up to 300 lb (136.1 kg) of regulated species, unless otherwise restricted pursuant to § 651.27(a)(2).

(2) Combination vessels fishing under a multispecies DAS are subject to the gear restrictions specified in § 651.20 and may possess and land unlimited amounts of regulated species. Such vessels may simultaneously fish under a scallop DAS.

(j) *State waters winter flounder exemption.* Any vessel issued a Federal limited access multispecies permit under this part may fish for, possess, or land winter flounder while fishing with nets of mesh smaller than the minimum size specified in paragraphs (a)(2), (c)(2), and (d)(2) of this section provided that:

* * * * *

(7) The vessel, when not fishing under the DAS program, does not fish for, possess, or land more than 500 lb (226.8 kg) of winter flounder;

* * * * *

6. In § 651.21, paragraphs (a)(2)(i), (b)(2)(i), (c)(2)(i), (d) and (e) introductory text are revised, and paragraphs (f), (g), and (h) are added to read as follows:

§ 651.21 Closed areas.

(a) * * *

(2) * * *

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, and that have no other gear on board capable of catching multispecies finfish; and

* * * * *

(b) * * *

(2) * * *

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, and that have no other gear on board capable of catching multispecies finfish;

* * * * *

(c) * * *

(2) * * *

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, and that have no other gear on board capable of catching multispecies finfish;

* * * * *

(d) *Transiting.* Vessels may transit Closed Area I, the Nantucket Lightship Closed Area, the Northeast Closure Area, the Mid-coast Closure Area, and the Massachusetts Bay Closure Area, as defined in paragraphs (a)(1), (c)(1), (f)(1), (g)(1) and (h)(1), respectively, of this section, provided that their gear is stowed in accordance with the provisions of paragraph (e) of this section.

(e) *Gear stowage requirements.* Vessels transiting the closed areas must stow their gear as follows:

* * * * *

(f) *Northeast Closure Area.* (1) During the period August 15 through September 13, no fishing vessel or person on a fishing vessel may enter, fish, or be, and no fishing gear capable of catching multispecies finfish, unless otherwise allowed in this part may be, in the area known as the Northeast Closure Area (Figure 3 to part 651), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (f)(2) of this section:

Point	Latitude	Longitude
NE1	Maine shoreline	68°55.0′ W.
NE2	43°29.6′ N	68°55.0′ W.
NE3	44°04.4′ N	67°48.7′ W.
NE4	44°06.9′ N	67°52.8′ W.
NE5	44°31.2′ N	67°02.7′ W.
NE6	Maine shoreline	67°02.7′ W.

(2) *Exceptions.* Paragraph (f)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) That have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters;

(ii) Fishing with or using exempted gear as defined under this part, excluding mid-water trawl gear, provided that there is no other gear on board capable of catching multispecies finfish; and

(iii) Classified as charter, party, or recreational.

(g) *Mid-coast Closure Area.* (1) During the period November 1 through December 31, no fishing vessel or person on a fishing vessel may enter, fish, or be, and no fishing gear capable of catching multispecies finfish unless otherwise allowed in this part may be,

in the area known as the Mid-coast Closure Area (Figure 3 to part 651), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (g)(2) of this section:

Point	Latitude	Longitude
MC1	42°30'N	Massachusetts shoreline.
MC2	42°30'N	70°15'W.
MC3	42°40'N	70°15'W.
MC4	42°40'N	70°00'W.
MC5	43°00'N	70°00'W.
MC6	43°00'N	69°30'W.
MC7	43°15'N	69°30'W.
MC8	43°15'N	69°00'W.
MC9	Maine shoreline	69°00'W.

(2) *Exceptions.* Paragraph (g)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) That have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters;

(ii) Fishing with or using exempted gear as defined under this part, excluding mid-water trawl gear, provided that there is no other gear on board capable of catching multispecies finfish; and

(iii) Classified as charter, party, or recreational.

(h) *Massachusetts Bay Closure Area.* (1) During the period March 1 through March 30, no fishing vessel or person on a fishing vessel may enter, fish, or be, and no fishing gear capable of catching multispecies finfish, unless otherwise allowed in this part may be, in the area known as the Massachusetts Bay Closure Area (Figure 3 to part 651), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (h)(2) of this section:

Point	Latitude	Longitude
MB1	42°30' N	Massachusetts shoreline.
MB2	42°30' N	70°30' W.
MB3	42°12' N	70°30' W.
MB4	42°12' N	70°00' W.
MB5	Cape Cod shoreline	70°00' W.
MB6	42°00' N	Cape Cod shoreline.
MB7	42°00' N	Massachusetts shoreline.

(2) *Exceptions.* Paragraph (h)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) That have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters;

(ii) Fishing with or using exempted gear as defined under this part, excluding mid-water trawl gear, provided that there is no other gear on board capable of catching multispecies finfish; and

(iii) Classified as charter, party, or recreational.

7. Section 651.22 is revised to read as follows:

§ 651.22 Effort-control program for limited access vessels.

(a) A limited access multispecies vessel issued a permit under § 651.4(b) may not fish for, possess or land regulated species except during a DAS as allocated under and in accordance with the applicable DAS program described below, unless otherwise provided in these regulations.

(b) *DAS program—Permit categories, allocations and initial assignments to categories.* Beginning with the 1996 fishing year, all limited access multispecies permit holders shall be assigned to one of the following DAS permit categories according to the criteria specified. Permit holders may request a change in permit category for the 1996 fishing year and all fishing years thereafter as specified in § 651.4(f)(3). Each fishing year shall begin on May 1 and extend through April 30 of the following year.

(1) *Individual DAS Category*—(i) *DAS allocation.* Vessels fishing under the Individual DAS category shall be allocated 65 percent of their initial 1994 allocation baseline as established under Amendment 5 to the FMP for the 1996 fishing year and 50 percent of the vessel's initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

(ii) *Initial assignment.* All vessels issued valid Individual DAS limited access multispecies permits, including vessels also issued limited access multispecies Gillnet category permits, as of the effective date of the final rule for Amendment 7, shall be initially assigned to this category.

(2) *Fleet DAS Category*—(i) *DAS allocation.* Vessels fishing under the Fleet DAS category shall be allocated 139 DAS for the 1996 fishing year, and 88 DAS for the 1997 fishing year and beyond.

(ii) *Initial assignment.* As of the effective date of the final rule for Amendment 7, vessels issued valid permits in one of the following categories shall be initially assigned to this category: Fleet DAS permit holders, including vessels also issued limited access multispecies Gillnet category permits; limited access multispecies Hook-Gear permit holders; limited access multispecies Gillnet permit holders that have not also been issued a permit in a DAS permit category; limited access multispecies ≤45 ft (13.7 m) category permit holders that are larger than 20 ft (6.1 m) in length as determined by the most recent permit application.

(3) *Small vessel category*—(i) *DAS allocation.* Vessels qualified and electing to fish under the Small Vessel category may retain cod, haddock, and yellowtail flounder, combined up to 300 lb (136.1 kg) per trip without being subject to DAS restrictions. These vessels are not subject to a possession limit for the other multispecies finfish.

(ii) *Initial assignment.* All vessels issued a valid limited access multispecies permit and fishing under the Small boat exemption (less than or equal to 45 ft (13.7 m)) permit as of the effective date of the final rule for Amendment 7, and that are 20 ft (6.1 m) or less in length as determined by the vessel's last application for a permit shall be initially assigned to this category. Other vessels may elect to change into this category as provided for in § 651.4(f)(3) if such vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern;

(B) Vessels for which construction was begun after May 1, 1994, must be constructed such that the quotient of the overall length divided by the beam will not be less than 2.5; and

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be U.S. Guard documentation or state registration papers. For vessels over 20 ft (6.1 m) in length, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the boat's construction plans, or by other means determined acceptable by the Regional Director. A copy of the verification must accompany an application for a Federal multispecies permit issued under § 651.4.

(D) Adjustments to the small-boat category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(4) *Hook-Gear Category*—(i) *DAS allocation.* Vessels issued a valid limited access multispecies Hook-Gear permit shall be allocated 139 DAS for the 1996 fishing year and 88 DAS for the 1997 fishing year and beyond. A vessel fishing in this permit category under the DAS program must meet or comply with the following while fishing for, in possession of, or landing, regulated species:

(A) Vessels, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel; and

(B) Vessels, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 4,500 hook limit. A "snap-on" hook is deemed to be a replacement hook if it is not rigged or baited.

(ii) *Initial assignment.* No vessel shall be initially assigned to the Hook-Gear category. Any vessel that meets the qualifications specified in § 651.4(b)(1) may apply for and obtain a permit to fish under this category.

(5) *Combination Vessel Category*—(i) *DAS allocation.* Vessels fishing under the Combination Vessel category shall be allocated 65 percent of their initial 1994 allocation baseline as established under Amendment 5 to the FMP for the 1996 fishing year and 50 percent of the vessel's initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

(ii) *Initial assignment.* All vessels issued a valid limited access multispecies permit qualified to fish as a Combination Vessel as of the effective date of the final rule for Amendment 7 shall be assigned to this category.

(6) *Large Mesh DAS Category*—(i) *DAS allocation.* Vessels fishing under the Large Mesh DAS category shall be allocated 155 DAS for the 1996 fishing year, and 120 DAS for the 1997 fishing year and beyond. To be eligible to fish under the Large Mesh DAS permit category a vessel must fish with gillnet gear with a minimum mesh net of 7-inch (17.78-cm) diamond or trawl gear with a minimum mesh size of 8-inch (20.32-cm) diamond, as described under § 651.20(a)(2)(ii), (c)(2)(ii), and (d)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the Large Mesh DAS category. Any vessel that is initially assigned to the Individual DAS, Fleet DAS, or Small Vessel permit category may request and be granted a change in category into this category as specified in § 651.4(f)(3).

(c) *1996 DAS appeals.* A vessel that was issued a valid 1995 limited access multispecies permit and fishing under the Small boat exemption (less than or equal to 45 ft (13.7 m)), Hook-Gear or Gillnet permit categories, that elects to fish under the Individual DAS category, and has not previously been allocated Individual DAS, is eligible to appeal its allocation of DAS if it has not previously done so, as described under paragraph (d)(2) of this section. Each of these vessel's initial allocation of Individual DAS will be considered to be 176 for purposes of this appeal (that is, the Fleet DAS category baseline prior to the 1996–1997 reductions).

(d) *Individual DAS allocations*—(1) *Calculation of a vessel's Individual DAS.* The DAS assigned to a vessel for purposes of determining that vessel's annual allocation under the Individual DAS Program shall be calculated as follows:

(i) Calculate the total number of the vessel's multispecies DAS for the years 1988, 1989, and 1990. Multispecies DAS are deemed to be the total number of days the vessel was absent from port for a trip where greater than 10 percent of the vessel's total landings were comprised of regulated species, minus any days for such trips in which a scallop dredge was used;

(ii) Exclude the year of least multispecies DAS; and

(iii) If 2 years of multispecies DAS are remaining, average those years' DAS, or, if only 1 year remains, use that year's DAS.

(2) *Appeal of DAS allocation*—(i) *Appeal criteria.* Initial allocations of Individual DAS to those vessels authorized to appeal under paragraph (c) of this section may be appealed to the Regional Director if a request to appeal is received by the Regional Director no later than July 31, 1996, or 30 days after the initial allocation is made, whichever is later. Any such appeal must be in writing and be based on one or more of the following grounds:

(A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make an initial decision on the written appeal.

(iii) If the applicant is not satisfied with the initial decision, the applicant may request that the appeal be presented at a hearing before an officer appointed by the Regional Director.

(iv) The hearing officer shall present his/her findings to the Regional Director and the Regional Director will make a decision on the appeal. The Regional Director's decision on this appeal is the final administrative decision of the Department of Commerce.

(3) *Status of vessels pending appeal of DAS allocations.* Vessels, while their Individual DAS allocation is under appeal, may fish under the Fleet DAS category until the Regional Director has made a final determination on the appeal. Any DAS spent fishing for regulated species by a vessel while that vessel's initial DAS allocation is under appeal, shall be counted against any DAS allocation that the vessel may ultimately receive.

(e) *Accrual of DAS.* DAS shall accrue in hourly increments, with all partial hours counted as full hours.

(f) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea for one of the following reasons, and that can document the occurrence through the U.S. Coast Guard, will be credited for the time documented:

(1) Time spent assisting in a U.S. Coast Guard search and rescue operation; or

(2) Time spent assisting the U.S. Coast Guard in towing a disabled vessel.

(g) *Spawning season restrictions.* Vessels issued a valid Small Vessel category permit under paragraph (b)(3) of this section may not fish for, possess, or land regulated species between March 1 and March 20 of each year. All other vessels issued limited access permits must declare out and be out of the regulated multispecies finfish fishery for a 20-day period between March 1 and May 31 of each fishing year using the notification requirements specified under § 651.29. If a vessel owner has not declared, or taken, the period of time required between March 1 and May 31 of each fishing year on or before May 12 of each such year, the vessel is prohibited from fishing for, possessing or landing any regulated species during the period May 12 through May 31, inclusive.

(h) *Declaring DAS and 20-day blocks.* A vessel's owner or authorized representative shall notify the Regional Director of a vessel's participation in the DAS program and declaration of its 20-day spawning period out of the multispecies fishery using the notification requirements specified under § 651.29.

(i) *Adjustments in annual DAS allocations.* Adjustments in annual DAS allocations, if required to meet fishing mortality goals, may be made following

a reappraisal and analysis as specified in subpart C of this part.

8. In § 651.23, the introductory text of paragraph (a) and paragraphs (d) and (e) are revised to read as follows:

§ 651.23 Minimum fish size.

(a) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a multispecies DAS are specified in § 651.34. All other vessels are subject to minimum fish sizes (total length) as follows:

* * * * *

(d) *Exception.* (1) Each person aboard a vessel issued a limited access permit and fishing under the DAS program may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter.

(e) *Adjustments of minimum size.* (1) At anytime when information is available, the Council will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) Upon determination of the appropriate minimum sizes, the Council shall propose the minimum fish sizes to be implemented following the procedures specified in subpart C of this part.

(3) Additional adjustments or changes to the minimum fish sizes specified in paragraphs (a) and (b) of this section, and exemptions as specified in paragraphs (a) and (b) of this section, and exemptions as specified in paragraph (c) of this section, may be made at any time after implementation of the final rule as specified under subpart C of this part.

9. Section 651.27 is revised to read as follows:

§ 651.27 Additional possession limits on haddock and winter flounder.

(a) *Haddock*—(1) *Multispecies DAS vessels.* A vessel issued a limited access multispecies permit under this part that is fishing under a multispecies DAS may land, or possess on board, up to 1000 lb (453.6 kg) of haddock. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(2) *Scallop dredge vessels*—(i) No person owning or operating a scallop dredge vessel issued a permit under this part may land haddock from, or possess haddock on board, a scallop dredge vessel, from January 1 through June 30.

(ii) No person owning or operating a scallop dredge vessel without a permit under this part may possess haddock in, or harvested from, the EEZ, from January 1 through June 30.

(iii) From July 1 through December 31, no scallop dredge vessel or persons owning or operating a scallop dredge vessel, that is fishing under the scallop DAS program as described in § 651.20(i), may land, or possess on board, more than 300 lbs (136.1 kg) of haddock. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(b) *Winter flounder.* A vessel issued a limited access permit under this part that is fishing in the MA regulated mesh area and is not fishing under a multispecies DAS, may land, or possess on board, winter flounder up to 10 percent by weight of all other species on board or 200 lb (90.7 kg), whichever is less. Winter flounder on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection in standard totes.

(c) Vessels are subject to any other applicable possession limit restrictions of this part.

10. In § 651.28, the heading and the first sentence of paragraph (a), and paragraphs (b) and (c) are revised to read as follows:

§ 651.28 Monitoring requirements.

(a) *Individual DAS limited access multispecies vessels.* Unless otherwise authorized or required by the Regional Director under § 651.29(b), vessel owners fishing under the Individual DAS program and Combination Vessels must have installed on board an operational VTS unit that meets the minimum performance criteria specified in paragraph (a)(2) of this section, or as modified annually as specified in paragraph (a)(1) of this section. * * *

(b) *Fleet DAS and other limited access multispecies vessels.* Vessels issued limited access multispecies permits who are participating in a DAS program and who are not required to provide notification using a VTS shall be subject to the call-in requirements specified in § 651.29(b).

(c) *Charter/party vessels.* Charter/party vessels that are not fishing under a multispecies DAS are subject to the following requirements:

(1) A vessel must declare into and out of the charter/party fishery providing notification under § 651.29(b).

(2) Vessels that declare into the charter/party fishery are subject to the restrictions in § 651.34.

(3) Once a vessel has declared into the charter/party fishery, that vessel must remain in the charter/party fishery for a minimum of 24 hours.

11. Section 651.29 is revised to read as follows:

§ 651.29 DAS notification program.

(a) *VTS notification.* Unless otherwise authorized by the Regional Director as specified in paragraph (c) of this section, owners of vessels issued limited access multispecies permits that have elected to or are required to use a VTS system shall be subject to the following requirements:

(1) Vessels that are issued limited access multispecies permits, that have crossed the demarcation line specified under paragraph (d)(ii) of this section, are deemed to be fishing under the DAS program unless the vessel's owner or authorized representative declares the vessel out of the multispecies fishery, by notifying the Regional Director through the VTS. The owner or authorized representative of any vessel that has been declared out of the multispecies fishery must notify the Regional Director through the VTS prior to leaving port on the vessel's next trip under the DAS program.

(2) If the VTS is not available, or not functional, and if authorized by the Regional Director, a vessel owner must comply with the call-in notification requirements specified in paragraph (b) of this section.

(3) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A change in status of a vessel cannot be made after the vessel leaves port or before it returns to port on any fishing trip.

(b) *Call-in notification.* Vessel owners authorized or required to provide notification using the call-in system shall be subject to the following requirements:

(1) The vessel owner or authorized representative shall notify the Regional Director, prior to leaving port, that the vessel will be participating in the applicable DAS program, or the charter party fishery, by calling 1–800–260–8204 or 508–281–9335, and providing the following information: Vessel name and permit number, owner and caller name and phone number, the type of trip to be taken, the port of departure, and that the vessel is beginning a trip.

(2) A multispecies DAS, or a vessel's participation in the charter/party fishery, begins once the call has been received and confirmation given by the Regional Director.

(3) A vessel must keep its confirmation number on board for the duration of the trip and must provide it to an authorized officer upon request.

(4) Upon returning to port, at the conclusion of a trip as defined in paragraph (d) of this section or when the vessel is leaving the charter/party fishery, the vessel owner or owner's representative shall notify the Regional Director that the trip has ended by calling 1–800–260–8204 or 508–281–9335, and providing the following information: Vessel name and permit number, owner and caller name and telephone number, port landed, confirmation number, and that the trip has ended.

(5) A DAS, or the vessel's participation in the charter/party fishery, ends when the call has been received and confirmation given by the Regional Director.

(6) Any vessel issued a limited access multispecies permit subject to the DAS program and call-in requirement, that possess or lands regulated species, except as provided in § 651.23, shall be deemed in the DAS program for purposes of counting DAS, regardless of whether or not the vessel's owner or authorized representative provided adequate notification as required by this part.

(7) Any change in status of a vessel cannot be done after leaving port on any fishing trip.

(c) *Temporary authorization for use of the call-in system.* The Regional Director may authorize or require, on a temporary basis, the use of an alternative call-in system of notification. If the call-in system is authorized or required, the Regional Director shall notify effected permit holders through a letter, notification in the **Federal Register**, or other appropriate means. Vessel owners authorized or required by the Regional Director to provide notification by a call-in system under this paragraph shall be subject to the requirements specified in paragraph (b) of this section.

(d) *Counting of DAS.* DAS shall be counted as follows:

(1) *Vessels fishing under the VTS system.* (i) DAS for vessels that are under the VTS monitoring system described in § 651.29(a) are counted beginning with the first hourly location signal received showing that the vessel crossed the Vessel Tracking System Demarcation Line leaving port. A trip concludes and accrual of DAS ends with the first hourly location signal received showing that the vessel crossed the Vessel Tracking System Demarcation Line upon its return to port.

(ii) *Vessel Tracking System Demarcation Line.* The VTS Demarcation Line is defined as straight lines connecting the following points in the order stated (see Figures 6 and 7 to part 651):

VESSEL TRACKING SYSTEM DEMARCATION LINE

Description	Longitude	Latitude
1. Northern terminus point (Canada land mass)	45°03′ N	66°47′ W.
2. A point east of West Quoddy Head Light	44°48.9′ N	66°56.1′ W.
3. A point east of Little River Light	44°39.0′ N	67°10.5′ W.
4. Whistle Buoy "8BI" (SSE of Baker Island)	44°13.6′ N	68°10.8′ W.
5. Isle au Haut Light	44°03.9′ N	68°39.1′ W.
6. Pemaquid Point Light	43°50.2′ N	69°30.4′ W.
7. A point west of Halfway Rock	43°38.0′ N	70°05.0′ W.
8. A point east of Cape Neddick Light	43°09.9′ N	70°34.5′ W.
9. Merrimack River Entrance "MR" Whistle Buoy	42°48.6′ N	70°47.1′ W.
10. Halibut Point Gong Buoy "1AHP"	42°42.0′ N	70°37.5′ W.
11. Connecting reference point	42°40′ N	70°30′ W.
12. Whistle Buoy "2" off Eastern Point	42°34.3′ N	70°39.8′ W.
13. The Graves Light (Boston)	42°21.9′ N	70°52.2′ W.
14. Minots Ledge Light	42°16.2′ N	70°45.6′ W.
15. Farnham Rock Lighted Bell Buoy	42°05.6′ N	70°36.5′ W.
16. Cape Cod Canal Bell Buoy "CC"	41°48.9′ N	70°27.7′ W.
17. A point inside Cape Cod Bay	41°48.9′ N	70°05′ W.
18. Race Point Lighted Bell Buoy "RP"	42°04.9′ N	70°16.8′ W.
19. Peaked Hill Bar Whistle Buoy "2PH"	42°07.0′ N	70°06.2′ W.
20. Connecting point, off Nauset Light	41°50′ N.	69°53′ W.
21. A point south of Chatham "C" Whistle Buoy	41°38′ N.	69°55.2′ W.
22. A point in eastern Vineyard Sound	41°30′ N	70°33′ W.
23. A point east of Martha's Vineyard	41°22.2′ N	70°24.6′ W.
24. A point east of Great Pt. Light, Nantucket	41°23.4′ N.	69°57′ W.
25. A point SE of Sankaty Head, Nantucket	41°13′ N	69°57′ W.
26. A point west of Nantucket	41°15.6′ N	70°25.2′ W.
27. Squibnocket Lighted Bell Buoy "1"	41°15.7′ N	70°46.3′ W.
28. Wilbur Point (on Sconticut Neck)	41°35.2′ N	70°51.2′ W.
29. Mishaum Point (on Smith Neck)	41°31.0′ N	70°57.2′ W.
30. Sakonnet Entrance Lighted Whistle Buoy "SR"	41°25.7′ N	71°13.4′ W.
31. Point Judith Lighted Whistle Buoy "2"	41°19.3′ N	71°28.6′ W.
32. A point off Block Island Southeast Light	41°08.2′ N	71°32.1′ W.
33. Shinnecock Inlet Lighted Whistle Buoy "SH"	40°49.0′ N	72°28.6′ W.
34. Scotland Horn Buoy "S", off Sandy Hook (NJ)	40°26.5′ N	73°55.0′ W.
35. Barnegat Lighted Gong Buoy "2"	39°45.5′ N	73°59.5′ W.
36. A point east of Atlantic City Light	39°21.9′ N	74°22.7′ W.
37. A point east of Hereford Inlet Light	39°00.4′ N	74°46′ W.
38. A point east of Cape Henlopen Light	38°47′ N	75°04′ W.
39. A point east of Fenwick Island Light	38°27.1′ N	75°02′ W.
40. A point NE of Assateague Island (VA)	38°00′ N	75°13′ W.
41. Wachapreague Inlet Lighted Whistle Buoy "A"	37°35.0′ N.	75°33.7′ W.
42. A point NE of Cape Henry	36°55.6′ N	75°58.5′ W.
43. A point east of Currituck Beach Light	36°22.6′ N	75°48′ W.

VESSEL TRACKING SYSTEM DEMARCATION LINE—Continued

Description	Longitude	Latitude
44. Oregon Inlet (NC) Whistle Buoy	35°48.5′ N	75°30′ W.
45. Wimble Shoals, east of Chicamacomico	35°36′ N	75°26′ W.
46. A point SE of Cape Hatteras Light	35°12.5′ N	75°30′ W.
47. Hatteras Inlet Entrance Buoy "HI"	35°10′ N	75°46′ W.
48. Ocracoke Inlet Whistle Buoy "OC"	35°01.5′ N	76°00.5′ W.
49. A point east of Cape Lookout Light	34°36.5′ N	76°30′ W.
50. Southern terminus point	34°35′ N	76°41′ W.

(2) *Gillnet vessels under the call-in system.* Accrual of DAS under the call-in notification system for vessels fishing with gillnet gear begins once the phone call has been received, and confirmation has been given by the Regional Director. DAS continue to accrue as long as the vessel's gillnet gear remains in the water or on the vessel when returning to port. A trip concludes and accrual of DAS ends when a vessel returns to port with all of its gillnet gear that was in the water on board, the phone call has been received, and confirmation has been given by the Regional Director.

(3) *All other vessels under the call-in system.* Accrual of DAS under the call-in notification system begins once the phone call has been received and confirmation has been given by the Regional Director. A trip concludes and accrual of DAS ends when after returning to port, the phone call has been received and confirmation has been given by the Regional Director.

12. In § 651.31, paragraph (d) is added to read as follows:

§ 651.31 At-sea observer coverage.

* * * * *

(d) *Industry funded observer coverage.* NMFS may accept observer coverage funded by outside sources provided the following requirements are met:

(1) All coverage conducted by such observers is determined by NMFS to be in compliance with NMFS' observer guidelines and procedures;

(2) The owner or operator of the vessel complies with all other provisions of this part; and

(3) The observer is approved by the Regional Director.

13. Section 651.32 is revised to read as follows:

§ 651.32 Sink gillnet requirements to reduce harbor porpoise takes.

(a) *Areas closed to sink gillnets.* The closed area restrictions prohibiting sink gillnets in the areas and times specified in § 651.21(f) through § 651.32(h) are implemented in order to reduce the takes of harbor porpoise consistent with the harbor porpoise mortality reduction goals. Additional restrictions may be implemented following a reappraisal and analysis under the framework provisions specified in paragraph (b) of this section.

(b) *Framework adjustment.* (1) At least annually the Regional Director will provide the Council with the best available information on the status of Gulf of Maine harbor porpoise including estimates of abundance and estimates of bycatch in the sink gillnet fishery. Within 60 days of receipt of that information, the Council's Harbor Porpoise Review Team shall complete a review of the data, assess the adequacy of existing regulations, evaluate the impacts of other measures that reduce harbor porpoise take and, if necessary, recommend additional measures in light of the Council's harbor porpoise mortality reduction goals. In addition, the HPRT shall make a determination on whether other conservation issues exist that require a management response to meet the goals and objectives outlined in the FMP. The HPRT shall report its findings and recommendations to the Council.

(2) After receiving and reviewing the HPRT's findings and recommendations, the Council shall determine whether adjustments or additional management measures are necessary to meet the goals and objectives of the FMP. If the Council determines that adjustments or additional management measures are necessary, or at any other time in consultation with the HPRT, it shall develop and analyze appropriate management actions over the span of at least two Council meetings.

(3) The Council may request at any time that the HPRT review and make recommendations on any harbor porpoise take reduction measures or develop additional take reduction proposals.

(4) The Council shall provide the public with advance notice of the availability of the proposals, appropriate rationale, economic and biological analyses, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the categories specified under § 651.40(b)(1).

(5) If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the factors specified in § 651.40(b)(2).

(6) The Regional Director may accept, reject, or with Council approval, modify the Council's recommendation, including the Council's recommendation to publish a final rule, as specified under § 651.40(b)(3).

14. Section 651.33 is revised to read as follows:

§ 651.33 Open access permit restrictions.

(a) *Handgear permit.* A vessel issued a valid open access Handgear permit issued under § 651.4(c) is subject to the following restrictions:

(1) The vessel may possess and land up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, per trip, and unlimited amounts of the other multispecies finfish provided that it does not use, or possess on board, gear other than rod and reel or handlines while in possession of, fishing for, or landing multispecies finfish.

(2) A vessel may not fish for, possess, or land regulated species between March 1 and March 20 of each year.

(b) *Charter/party permit.* A vessel that has been issued a valid open access Charter/party permit under § 651.4(c), and has declared into the charter/party fishery, is subject to the restrictions on gear, recreational minimum fish sizes and prohibitions on sale specified in § 651.34, and any other applicable provisions of this part.

(c) *Scallop Multispecies Possession Limit Permit.* A vessel that has been issued a valid open access Scallop Multispecies Possession Limit permit under § 651.4(c) may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS as described under § 651.20(i), provided the vessel does not fish for, possess or land haddock during January 1 through June 30 as specified under § 651.27(a)(2)(i).

15. Section 651.34 is added to subpart B to read as follows:

§ 651.34 Recreational and charter/party restrictions.

(a) *Recreational gear restrictions.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are prohibited from fishing with more than two hooks per line and one line per angler and must stow all other fishing gear on board the vessel as specified under §§ 651.20(c)(4) and 651.21(e)(2), 651.21(e)(3) and 651.21(e)(4).

(b) *Recreational minimum fish sizes.* (1) Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are subject to minimum fish sizes (total length) as follows:

RECREATIONAL

Species	Inches	
	1996	1997+
Cod	20 (50.8 cm)	21 (53.3 cm).
Haddock	20 (50.8 cm)	21 (53.3 cm).
Pollock	19 (48.3 cm)	19 (48.3 cm).
Witch flounder (gray sole)	14 (35.6 cm)	14 (35.6 cm).
Yellowtail flounder	13 (33.0 cm)	13 (33.0 cm).
American plaice (dab)	14 (35.6 cm)	14 (35.6 cm).
Winter flounder (blackback)	12 (30.5 cm)	12 (30.5 cm).
Redfish	9 (22.9 cm)	9 (22.9 cm).

(2) *Exception.* Vessels may possess fillets less than the minimum size specified if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(c) *Possession restrictions.* Each person on a recreational vessel may not possess more than 10 cod and/or haddock, combined, in or harvested from the EEZ:

(1) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing fillet number by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(2) Cod and haddock harvested by recreational vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons aboard. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(3) Cod and haddock must be stored, so as to be readily available for inspection.

(d) *Restrictions on sale.* It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, multispecies finfish caught or landed by charter or party vessels permitted under this part not fishing under a DAS or a recreational fishing vessels fishing in the EEZ.

15. Section 651.40 is revised to read as follows:

§ 651.40 Framework Specifications.

(a) *Annual review.* The Multispecies Monitoring Committee (MSMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year and options for Council consideration on any changes, adjustment or additions to DAS allocations, closed areas or other measures necessary to achieve the FMP goals and objectives.

(1) The MSMC must review available data pertaining to the following:

(i) Catch and landings;

(ii) DAS and other measures of fishing effort;

(iii) Survey results;

(iv) Stock status;

(v) Current estimates of fishing mortality; and

(vi) Any other relevant information.

(2) Based on this review, the MSMC shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The MSMC must demonstrate through analysis and documentation that the options it develops are expected to meet the FMP goals and objectives. The MSMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MSMC may include any of the management measures in the FMP including, but not limited to:

(i) The annual target TACs which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 10 regulated species;

(ii) DAS changes;

(iii) Possession limits;

(iv) Gear restrictions;

(v) Closed areas;

(vi) Permitting restrictions;

(vii) Minimum fish sizes;

(viii) Recreational fishing measures; and

(ix) Any other management measures currently included in the FMP.

(3) The Council shall review the recommended target TACs and all of the options developed by the MSMC, other relevant information, consider public comment, and develop a recommendation to meet the FMP objective that is consistent with other applicable law. If the Council does not submit a recommendation that meets the FMP objectives and is consistent with other applicable law, the Regional Director may adopt any option developed by the MSMC, unless rejected by the Council, as specified in (a)(5) of this section, provided that the option meets the FMP objective and is consistent with other applicable law.

(4) Based on this review, the Council shall submit a recommendation to the Regional Director of any changes, adjustments or additions to DAS allocations, closed areas or other measures necessary to achieve the FMP's goals and objectives. Included in the Council's recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(5) If the Council submits, on or before January 7, a recommendation to the Regional Director after one Council meeting, and the Regional Director concurs with the recommendation, the Regional Director shall publish the Council's recommendation in the **Federal Register** as a proposed rule. The **Federal Register** notification of proposed action will provide for a 30-

day public comment period. The Council may instead submit its recommendation on or before February 1 if it chooses to follow the framework process outlined in paragraph (b) of this section and requests that the Regional Director publish the recommendation as a final rule. If the Regional Director concurs that the Council's recommendation meets the FMP objective and is consistent with other applicable law and determines that the recommended management measures be published as a final rule, the action will be published as a final rule in the **Federal Register**. If the Regional Director concurs that the recommendation meets the FMP objective and is consistent with other applicable law and determines that a proposed rule is warranted, and as a result the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used by a vessel on or after May 1 will be counted against any DAS allocation the vessel ultimately receives for that year.

(6) If the Regional Director concurs in the Council' s recommendation, a final rule shall be published in the **Federal Register** on or about April 1 of each year, with the exception noted in paragraph (a)(5) of this section. If the Council fails to submit a recommendation to the Regional Director by February 1 that meets the FMP goals and objectives, the Regional Director may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objective and is consistent with other applicable law. If, after considering public comment, the Regional Director decides to approve the option published as a proposed rule, the action will be published as a final rule in the **Federal Register**.

(b) *Within season management action.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP.

(1) *Adjustment process.* After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories:

(i) DAS changes;
(ii) Effort monitoring;
(iii) Data reporting;
(iv) Possession limits;
(v) Gear restrictions;
(vi) Closed areas;
(vii) Permitting restrictions;
(viii) Crew limits;
(ix) Minimum fish sizes;
(x) Onboard observers;
(xi) Minimum hook size and hook style;
(xii) The use of crucifiers in the hook fishery;
(xiii) Fleet sector shares;
(xiv) Recreational fishing measures;
(xv) Area closures and other appropriate measures to mitigate marine mammal entanglements and interactions; and
(xvi) Any other management measures currently included in the FMP.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Director. The Council's recommendation must include supporting rationale, and, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Regional Director action.* If the Council's recommendation includes adjustments or additions to management measures, and if after reviewing the Council's recommendation and supporting information:

(i) The Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final rule based on the factors specified in paragraph (b)(2) of this section, the action will be published in the **Federal Register** as a final rule; or

(ii) The Regional Director concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Director concurs with the Council recommendation, the action will be published as a final rule in the **Federal Register**; or

(iii) The Regional Director does not concur, the Council will be notified, in writing, of the reasons for the non-concurrence.

(c) Nothing in this section is meant to derogate from the authority of the Secretary of Commerce to take emergency action under section 305(e) of the Magnuson Act.

16. Figure 5 to part 651 is removed and reserved, and Figures 1, 3, and 4 to part 651 are revised to read as follows:

BILLING CODE 3510-22-W

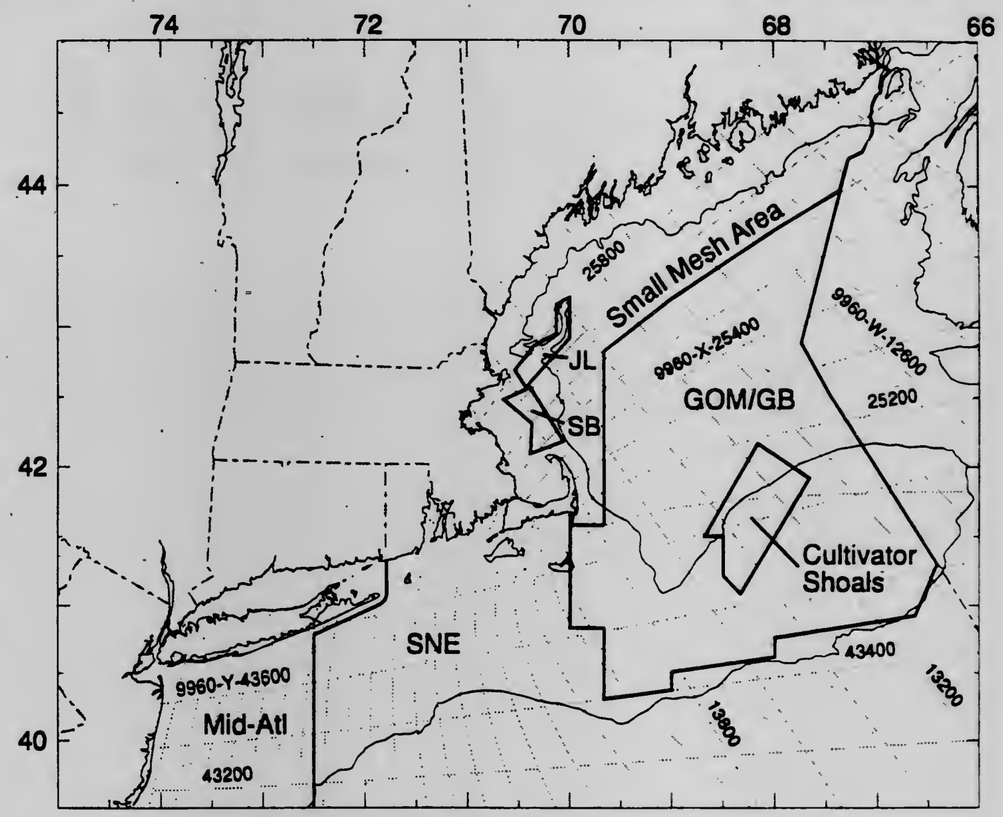


Figure 1 to part 651--Regulated Mesh Area.

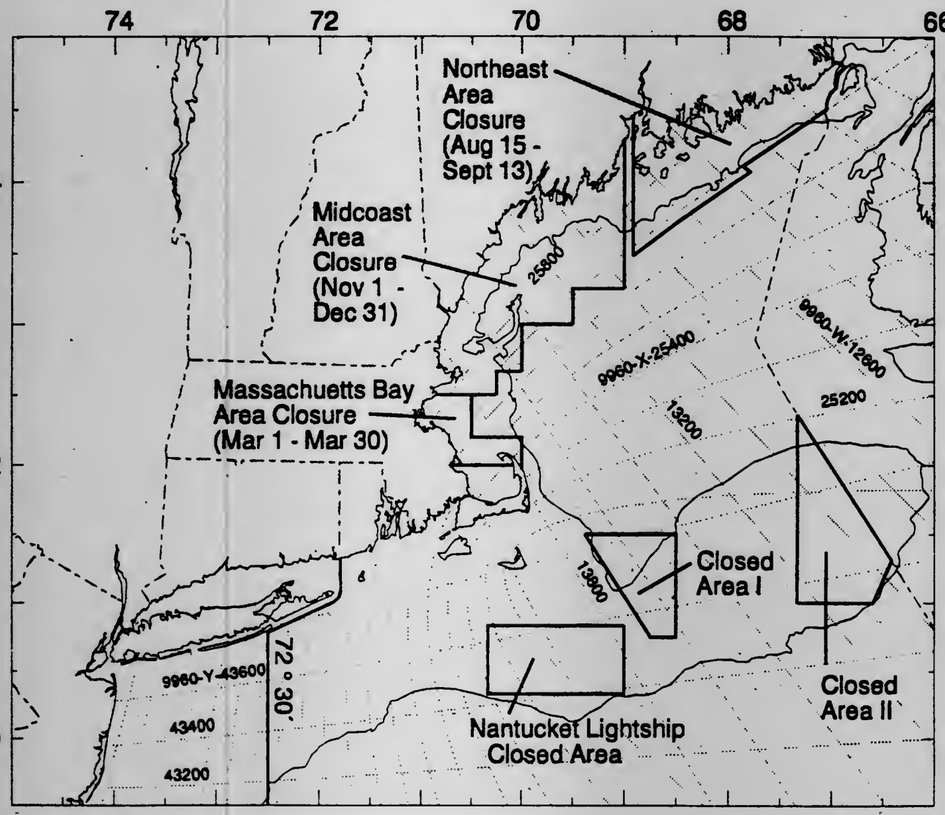


Figure 3 to part 651--Closed Areas.

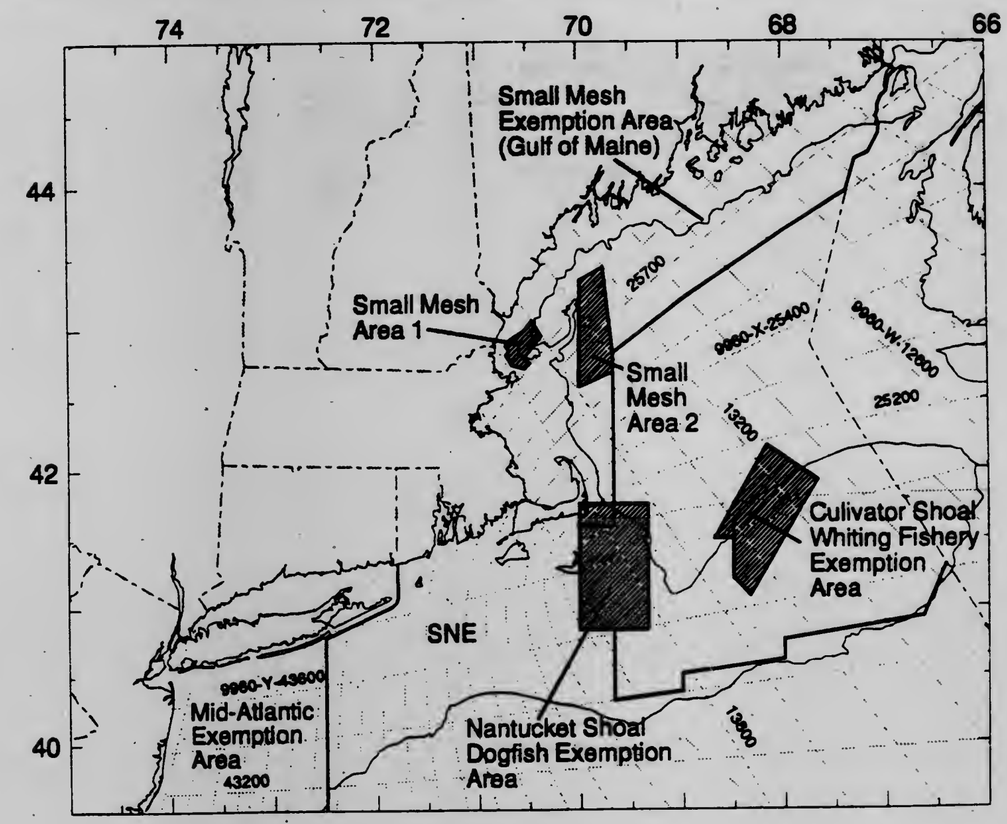


Figure 4 to part 651--Exemption Areas.

[FR Doc. 96–4709 Filed 2–29–96; 2:05 pm]
BILLING CODE 3510–22–C

50 CFR Part 686

[I.D. 022696A]

Golden Crab Fishery Off the Southern Atlantic States; Initial Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan and request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council has submitted the Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. Written comments are requested from the public.

DATES: Written comments must be received on or before April 25, 1996.

ADDRESSES: Comments must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the FMP, which includes a regulatory impact review, a social impact assessment, and an environmental assessment, should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 803–571–4366; FAX 803–769–4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a council-prepared fishery management plan (plan) be submitted to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon receiving a plan, immediately publish a document in the **Federal Register** stating that the plan is available for public review and comment.

The FMP proposes to: (1) Define the management unit and optimum yield for the golden crab fishery; (2) define overfishing for species in the management unit; (3) establish a controlled access program, including initial eligibility criteria for vessel permits, restricted fishing zones, and procedures for appeals, transfers, and renewal of permits; (4) specify authorized gear for the fishery; (5) establish gear identification requirements; (6) specify maximum allowable trap sizes; (7) require escape gaps and a degradable panel on each trap; (8) establish minimum depth limits for use of traps; (9) prohibit tending of traps by unauthorized individuals; (10) modify the definition of the term "crustacean trap" in the regulations governing the South Atlantic snapper-grouper fishery (50 CFR part 646) to accommodate use of traps in the golden crab fishery; (11) prohibit the sale of female golden crabs and limit retention of female crabs to no more than 0.5 percent, by number, of all golden crabs on board the vessel; (12) require that golden crabs be landed whole; (13) limit sale of golden crab by permitted vessels to permitted golden crab dealers; (14) require that permitted golden crab dealers purchase golden crab caught in the exclusive economic zone only from permitted vessels; (15) prohibit possession of snapper-grouper species in whole, gutted, or filleted form on board a vessel fishing for or possessing golden crab; (16) establish permit and reporting requirements for fishermen and dealers; (17) require mandatory observer coverage if a vessel is selected; and (18) establish a regulatory adjustment framework procedure to allow timely implementation of changes in the FMP's management measures.

Based on a preliminary evaluation of the FMP, the Director, Southeast Region, NMFS, (Regional Director), has disapproved a provision of the FMP that would have required 100 percent of the owners or operators of permitted vessels to maintain and submit vessel logbook information. The Regional Director believes that the methods of obtaining management data requested by the Council, and the appropriate sampling system for such data, are operational determinations properly made by NMFS. Accordingly, NMFS has determined that the level of sampling of vessels required to obtain the Council's requested data is not a matter of sufficient scope and substance warranting review under subsection 304(a)(1)(A) of the Magnuson Act. Initially, NMFS intends to select all permitted vessels to submit logbooks but may reduce the level of reporting if NMFS subsequently determines that 100 percent coverage is no longer necessary.

Proposed regulations to implement those measures of the FMP that were not disapproved based on the preliminary evaluation are scheduled for publication within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 28, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–5015 Filed 2–29–96; 10:52 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 61, No. 44

Tuesday, March 5, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Supplemental Environmental Impact Statement for the Revised Land and Resource Management Plan, George Washington National Forest—Oil and Gas Leasing in Laurel Fork Special Management Area

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare a supplemental Environmental Impact Statement.

SUMMARY: The Forest Service will prepare a draft and final supplement to the Final Environmental Impact Statement (FEIS) for the George Washington National Forest's Revised Land and Resource Management Plan (Forest Plan) filed in January 1993. The supplement is for a proposed action to reconsider the consent and availability decisions on oil and gas leasing in the Laurel Fork Special Management Area. This proposed action is likely to result in a nonsignificant amendment to the Forest Plan.

The agency invites written comments and suggestions that are within the scope of the proposed action and analysis for the supplement. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal, so those interested and affected may participate in the process and contribute to the final decision.

DATE: A draft supplement to the FEIS is expected to be available for public comment by June 1996. Public comments on the proposal are welcome prior to the draft supplement as well.

ADDRESSES: Send written comments and suggestions to William E. Damon, Jr., Forest Supervisor, 5162 Valleypointe Parkway, Roanoke, VA 24019–3050.

FOR FURTHER INFORMATION CONTACT: Ken Landgraf, Planning Staff Officer at (540) 265–6054 or Dave Plunkett, Interdisciplinary (ID) Team Leader at (540) 564–8300.

SUPPLEMENTARY INFORMATION: The Revised George Washington National Forest Land and Resource Management Plan (Forest Plan) was approved on January 21, 1993. In the Forest Plan, the agency determined that the biological and recreational values of the Laurel Fork Special Management Area (SMA) can be protected while allowing oil and gas leasing. However, the agency has now determined that these values in Laurel Fork might be better maintained and enhanced under a different management scenario. Therefore, to avoid future conflicts over management of surface and subsurface resources, the agency believes there is a need to change the Plan to more tightly focus management on these values.

Currently, the Regional Forester has given consent to the Bureau of Land Management (BLM) to lease the Laurel Fork area in the future for surface occupancy by using controlled surface use stipulations. This area was made available for leasing with such stipulations in the Revised Forest Plan.

Laurel Fork is located in the very northwest corner of Highland County, about 10 miles from Monterey, Virginia.

The agency and the public have long recognized that Laurel Fork is unique for its biological features not commonly found elsewhere in Virginia. It contains one of Virginia's finest examples of a northern boreal natural community of northern hardwoods and red spruce. At least 25 species of plants and animals have their only known occurrence within the state there. The area contains three endangered species (the federally endangered Virginia northern flying squirrel, the state endangered snowshoe hare and water shrew). These biological features make visiting the area a unique recreational experience.

The scope of this analysis is limited to the 18,000-acre Laurel Fork SMA (Management Area 21 and its associated riparian MA 18). The analysis would not cover the road corridor area (MA 7) along Forest Development Road 106; nor would it be for any other portion of the Alleghany Front Lease Area as described in the FEIS prepared for the Forest Plan (page 3–72).

Within the SMA, three leases are currently known to be issued. One BLM lease (BLM–A–0022918) is held under a Communitization Agreement (CA) for as long as a well is considered capable of producing. Existing lease stipulations cannot be changed. Thus, the oil and gas leasing standard (Standard 21–4, Forest Plan page 3–115) in the Forest Plan does not apply to either the BLM lease or the remaining existing leases. Since these leases are already issued, their administration will be governed by post-lease procedures, specifically the Application for Permit to Drill (APD). Any new decisions about oil and gas leasing in Laurel Fork would not affect existing leases, only future leases. If the BLM lease were ever relinquished by the lessee, the subsurface area would be managed under whatever decision is reached from this analysis.

Individuals who, in the past, have indicated an interest in the Laurel Fork area and the Forest's planning process will be notified about the scope of the proposed action and about the process to identify issues. General notice to the public concerning the scope of the proposed action will also be published in a news release.

In preparing the draft supplement to the FEIS, the Forest Service will develop information pertaining to the following tentative alternatives:

1. The agency proposes to both withdraw consent to the BLM for future oil and gas leasing in the SMA and amend the Forest Plan to make Laurel Fork SMA unavailable for oil and gas leasing.

2. The agency is considering an alternative that would give consent to the BLM to lease the entire SMA with a "No Surface Occupancy" stipulation. The Forest Plan would be amended to allow this stipulation.

3. The agency is considering an alternative that would withdraw consent to the BLM to lease that portion of the SMA recognized as the Special Biological Area; but there would be no change in the consent decision for the remaining portion (east of Laurel Fork stream). This eastern area would continue to be available for surface occupancy by using controlled surface use stipulations. The Forest Plan would be amended to make the Special Biological portion of Laurel Fork unavailable for oil and gas leasing.

Alternative 8A (Revised Forest Plan), as currently discussed in the FEIS, would represent taking no action. The consent decision would remain as currently discussed in the FEIS. The

current direction in the Forest Plan would not be amended. The SMA area would continue to be available for surface occupancy by using controlled surface use stipulations.

The draft supplement to the FEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June 1996. At that time, EPA will publish a notice of availability of the draft supplement in the **Federal Register**.

The comment period for the draft supplement to the FEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft supplement to the environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft supplement, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the final supplement to the environmental impact statement. The final is scheduled to be completed by September 1996. The responsible official will consider the comments, responses, environmental consequences discussed in the final supplement, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision (ROD). This ROD will be consistent with the scope of the environmental analysis in the supplement and address only the two oil and gas leasing decisions (consent and availability) within the Laurel Fork SMA. That decision will be subject to appeal under 36 CFR 217.

The Forest Service is the lead agency. The BLM will be a cooperating agency in this supplement.

The responsible official is Robert C. Joslin, Regional Forester, Southern Region, 1720 Peachtree Road, NW, Atlanta, Georgia 30367.

Dated: February 23, 1996.

Robert D. Bowers,

Acting Regional Forester.

[FR Doc. 96–5023 Filed 3–4–96; 8:45 am]

BILLING CODE 3410–11–M

Eldorado National Forest, CA; Notice of Intent

AGENCY: Forest Service, USDA.

ACTION: Revision of notice of intent to prepare an Environmental Impact Statement.

SUMMARY: On November 7, 1989, the Forest Service filed a notice of intent in the **Federal Register** to prepare an environmental impact statement (EIS) to analyze management of off-highway vehicle use in the Rock Creek area, Eldorado National Forest, Georgetown Ranger District, El Dorado County, California. This notice is being filed to update that notice of intent and to notify interested parties that the Draft EIS will soon be available for comment.

ADDRESSES: Raymond LaBoa, District Ranger, Georgetown Ranger District, Eldorado National Forest, ATTN: Rock Creek EIS, 7600 Wentworth Springs Road, Georgetown, California 92634.

FOR FURTHER INFORMATION CONTACT: Direct questions about the EIS to Linda Earley, Interdisciplinary Team Leader, Georgetown Ranger District, 7600 Wentworth Springs Road, Georgetown, California 95634; phone (916) 333–4312.

SUPPLEMENTARY INFORMATION: Work on the EIS began in 1989 with a study of impacts to the Pacific Deer Herd. Since that time the deer study has been completed, issues identified, alternative management plans developed, and extensive data collection and analysis conducted. The Draft Rock Creek Recreational Trails EIS is now nearly complete and is expected to be released late in March 1996.

The Draft EIS analyzes alternative management plans for all types of recreation uses on the trails: hiking, equestrians, mountain bikes, and OHVs. The need to look at all uses of the trails arose from concerns that other types of recreation use may have some of the same impacts as OHVs; as well as concerns about compatibility of uses.

Another concern identified in the analysis is open road densities which exceed limits established in the Eldorado National Forest Land and Resource management Plan (LRMP). Because the EIS analyzes road and trail densities, and because the EIS proposes designation of both open and closed roads for OHV use, it was decided that proposals for road closures to meet the LRMP management direction would be also analyzed in this EIS.

The following issues identified during scoping for this EIS were used to develop and compare alternative management plans.

1. Erosion: The bare soils on road and trail surfaces create a potential for erosion. The amount of erosion may be affected by total miles of roads and trails, soil type, trail location, design, maintenance, grade, vegetative cover, and use in excessively wet or dry conditions.

2. Water Quality: Erosion of soils can impact water quality by adding sedimentation to streams. Sedimentation may be affected by trail location and design, stream crossings, and proximity of trails to stream. Another potential impact to water quality from use of trails is the risk of oil or fuel spills at stream crossings.

3. Wildlife Species: Use of the trails has the potential to impact wildlife species primarily through disturbance by human presence or noise. Road and trail densities influence the potential disturbance by providing increased or decreased access into the area.

4. Air Quality: Air quality may be affected by emissions from motorized vehicles as well as dust from use of roads and trails.

5. Noise: The sound of OHVs is unacceptable to many people, and therefore may have a negative impact on adjacent landowners and the experience of other Forest users. The sound of OHV's may also contribute to disturbance of wildlife.

6. Opportunity and Quality of the Recreation Experience: The quality of the recreation experience may be affected by: the condition, variety, and level of challenge of the trails; the availability of staging areas and the level of development there; other uses allowed on the trails; and the aesthetics of the trail experience. Opportunity for recreation is determined by the trail mileage available and uses allowed on each; the number and size of recreation

evens allowed; and the frequency and duration of trail closures.

7. Health and Safety: Safety may be affected by a variety of factors. Width of trails may affect speeds traveled, and therefore risk of accidents. Intersections of roads and trails may pose increased risks of accidents. Combination of equestrian and mountain bike use of trails may pose a risk since bikes come up quietly and may startle horses. Two-way traffic poses a risk for OHVs since they cannot hear each other coming, which could result in a head-on collison. Chipsealing of road surfaces poses a risk to equestrians due to the slippery contact between the chipseal and the horseshoes. Trail structures such as gabions and cinderblocks may also pose a risk to horses. Health may be affected by availability of drinking water and sanitation facilities for recreationists; or by impacts to air quality and water quality.

8. Risk of Fire: Risk of fire is increased by human activity such as campfires and smoking that may be associated with use of trails. Internal combustion engines, such as OHVs also increase the risk, particularly if proper spark arresters are not in place.

9. Funding: Levels of funding available affects the ability to maintain trails properly, the number of trails that can be maintained, ability to construct trails, ability to effectively rehabilitate closed trails, the amount of monitoring that can be conducted, and the level of law enforcement that can be maintained. These in turn, affect the ability to implement the management plan and, therefore, to protect the environment and the quality of the recreation experience.

The following alternatives are analyzed in the Draft EIS:

Alternative 1—No Action: This alternative would continue the current management of the Rock Creek Trails. Most trails in the area are multiple use, open to all four use types: hiking, equestrians, mountain bikes, and OHVs. There are approximately 140 miles of multiple use routes (roads and trails) and 5 miles of routes restricted to non-motorized uses. The current management plan includes clousure of the Critical Deer Winter Range to OHVs and mountain bikes from November 1 to may 1 each year. Trails are also closed to OHVs during wet weather conditions.

Alternative 2—No OHV Use: OHV use would be eliminated in this alternative. There would be approximately 46 miles of non-motorized routes available. Approximately 31 miles of roads would be closed. Trails would be closed to equestrians and mountain bikes during wet weather conditions, and staging areas in the Critical Deer Winter Range would be closed from February 1 to May 1. Up to two large recreation events, with up to 300 participants, would be allowed each year for each non-motorized use type.

Alternative 3—Increased Multiple Use Recreation: This alternative reduces trail closures and allows the maximum trail density. Approximately 141 miles of multiple use routes would be available, and 15 miles of non-motorized routes. Approximately 28 miles of roads would be closed. There would be no closure of the Critical Deer Winter Range. Wet weather closures would apply to OHVs, equestrians, and mountain bikes, but an all-season route would be provided that could be used during those closures. Up to two large recreation events per year, with up to 500 participants each, would be allowed for each use type.

Alternative 4—Separated Multiple Use Recreation: This alternative addresses concerns about shared use of trails by different types of uses. The system would include approximately 84 miles of multiple use routes, 17 miles of non-motorized routes, 5 miles of hiking only routes, and 11 miles of hiking and equestrian routes. Approximately 26 miles of roads would be closed. Staging areas in the Critical Deer Winter Range would be closed from February 1 to May 1. Trails would be closed to OHVs, equestrians, and mountain bikes during wet weather conditions. One large recreation event would be allowed per year for each use type, with up to 300 participants in each.

Alternative 5—Reduced Multiple Use Recreation: This alternative includes approximately 69 miles of multiple use routes and 29 miles of non-motorized routes. Approximately 32 miles of roads would be closed. Routes in the Critical Dear Winter Range would be closed to all uses from November 10 to May 1 of each year. Roads and trails would be closed to OHVs, equestrians, and mountain bikes during the Forest seasonal road closures (generally November through March). Trails would be closed to OHVs during Forest fire restrictions (generally August and September). Large recreation events with over 75 people involved would be prohibited.

Alternative 6—"Carrying Capacity" Alternative: This alternative was developed based on a review of effects of other alternatives. The goal of the alternative is to maximize recreation opportunity while providing protection of the natural resources. The system would include approximately 108 miles of multiple use routes, and 13 miles of non-motorized routes. Approximately 32 miles of roads would be closed. Routes in the Critical Dear Winter Range would be closed to all uses from December 1 to May 1 each year, with the exception of an all-season route which traverses the area. Routes would be closed to OHVs, equestrians, and mountain bikes during wet weather conditions with the exception of the all season routes. Up to two recreation events, with up to 300 participants, would be allowed each year for each type of use.

Raymond LaBoa, District Ranger, Georgetown Ranger District, Eldorado National Forest, is the responsible official.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in late March 1996. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date EPA's notice of availability appears in the **Federal Register**. It is very important that reviewers participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by September 1996. The Forest Service is required to respond in the final EIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental

consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal.

Dated: February 23, 1996.

Raymond E. LaBoa,

District Ranger, Georgetown Ranger District, Eldorado National Forest.

[FR Doc. 96–5085 Filed 3–4–96; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Computer System Security and Privacy Advisory Board, Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Wednesday, March 27 and Thursday, March 28, 1996 from 9:00 a.m. to 5:00 p.m. The Advisory Board was established by the Computer Security Act of 1987 (P.L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on March 27 and 28, 1996 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology, Gaithersburg, Maryland 20899–0001.

Agenda:

—Welcome, Introduction of New Members, and Overview
—Issues Update
—Encryption Update
—Telecommuting Security Issues
—NARA E–Mail Policy Briefing
—Pending Business
—Public Participation
—Agenda development for June meeting
—Wrap-Up

Public participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer Systems Laboratory, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001. It would be appreciated if fifteen copies of written material were submitted for distribution to the Board by March 11, 1996. Approximately 20 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Board Secretariat, Computer Systems Laboratory, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899–0001, telephone: (301) 975–3696.

Dated: February 27, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–5027 Filed 3–4–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 022796A]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council's Squid, Mackerel, Butterfish Committee and Large Pelagics Committee will hold public meetings.

DATES: The meetings will be held on March 19, 1996. The Squid, Mackerel, Butterfish Committee will meet from 9:30 a.m. until 1:00 p.m. The Large Pelagics Committee will meet from 2:00 p.m. until 5:00 p.m.

ADDRESSES: The meetings will be held at the Days Inn (at airport), 4101 Island Avenue, Philadelphia, PA; telephone: (215) 492–0400.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to review material prepared by staff for resubmission of Amendment 5 to the Squid, Mackerel, Butterfish Plan, and to discuss the quota for large coastal sharks and issues related to Atlantic tunas and swordfish.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at (302) 674–2331 at least 5 days prior to the meeting date.

Dated: February 28, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–5099 Filed 3–4–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022796B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for a scientific research permit (P770#70) and modifications to two scientific research permits (P563A and P510).

SUMMARY: Notice is hereby given that the Coastal Zone and Estuarine Studies Division, NMFS, in Seattle, WA (CZESD) has applied in due form for a permit and the Northern Wasco County People's Utility District in The Dalles, OR (NWCPUD) and the Shoshone-Bannock Tribes in Fort Hall, ID (SBT) have applied in due form for modifications to permits to take endangered and threatened species for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on any of these applications must be received on or before April 4, 1996.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226 (301-713-1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232-4169 (503-230-5400).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: CZESD requests a permit and NWCPUD and SBT request modifications to permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

CZESD (P770#70) requests a 3-year permit to directly take juvenile, threatened, Snake River spring/summer and fall chinook salmon (*Oncorhynchus tshawytscha*) and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) and to indirectly take juvenile, threatened, Snake River spring/summer and fall chinook salmon and juvenile, endangered, Snake River sockeye salmon associated with four studies designed to evaluate existing and proposed juvenile fish bypass systems at four hydroelectric dams on the Snake and Columbia Rivers. Study 1 will evaluate the new juvenile bypass facility at Ice Harbor Dam. Listed juvenile fish are proposed to be collected and sacrificed for blood chemical analysis as a means to measure stress reaction to stimulus experienced by fish at the facility. A greater proportion of listed juvenile fish are proposed to be indirectly captured and released to acquire the juvenile fish to be sacrificed for the study. The take associated with Study 1 is requested annually for three years.

Studies 2–4 will evaluate the effectiveness of juvenile fish guidance devices and other important bypass system components at Little Goose Dam, McNary Dam, and John Day Dam respectively. A proportion of the listed juvenile fish that are successfully diverted from hydropower turbines are proposed to be captured, anesthetized, examined, counted, allowed to recover from the anesthetic, and released. A proportion of the listed juvenile fish that fail to enter the fish bypass system at John Day Dam only (Study 4) are proposed to be captured and sacrificed. Some indirect mortalities of the listed juvenile fish proposed to be taken for Studies 2–4 are likely to occur. The takes associated with Studies 2–4 are requested for 1996 only.

NWCPUD (P563A) requests modification 1 to permit 948 for an increase in their authorized annual take of ESA-listed species associated with scientific research and monitoring activities. Permit 948 authorizes a take of juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*); juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); and juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with an annual study designed to assess run-of-the-river juvenile anadromous fish condition after passage through the screened turbine intake channel at The Dalles Dam, located on the Columbia River. A greater number of juvenile, listed, artificially-propagated, Snake River spring/summer chinook salmon and juvenile, listed, Snake River fall chinook salmon are requested to be captured and handled, with a corresponding increase in the number of indirect mortalities, as a result of NMFS's 1996 juvenile outmigration estimates. Modification 1 is requested for the duration of the permit. Permit 948 expires on September 30, 1999.

SBT (P510) requests modification 3 to scientific research permit 849. Permit 849 authorizes a take of adult and juvenile, threatened, Snake River spring/summer chinook salmon associated with stock assessment and fish condition surveys in the Salmon River subbasin and the pond series of Yankee Fork, Salmon River in Idaho. For modification 3, SBT requests to expand the area of their electrofishing research to include the Salmon River subbasin, an area previously unspecified for this research activity. Modification 3 would be valid for the duration of the permit. Permit 849 expires on November 30, 1997.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on any of these applications would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these application summaries are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: February 27, 1996.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–4998 Filed 3–4–96; 8:45 am]

BILLING CODE 3510–22–P

COUNCIL ON ENVIRONMENTAL QUALITY

Operational Summary of Grayrocks Reservoir and Water Usage of the Laramie River Station, 16th Annual Report, for the Water Year Ending September 30, 1995, published in conjunction with the Endangered Species Act exemption granted to Grayrocks Dam and Reservoir by the Endangered Species Committee in February, 1979

FOR FURTHER INFORMATION CONTACT: Dinah Bear, General Counsel, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C. 20503. Telephone: 202/395–5750.

Elisabeth Blaug,

Associate General Counsel, Council on Environmental Quality.

Operational Summary of Grayrocks Reservoir and Water Usage of the Laramie River Station—16th Annual Report For the Water Year Ending September 30, 1995

Purpose of Report

In compliance with the AGREEMENT OF SETTLEMENT AND COMPROMISE, the Missouri Basin Power Project has agreed to submit an annual report to all signed parties of the AGREEMENT OF SETTLEMENT AND COMPROMISE concerning the operation of Grayrocks Reservoir. This report provides data gathered from metering and gaging stations pertinent to the operation and administration of Grayrocks Reservoir and the Laramie River Station in compliance with the AGREEMENT OF SETTLEMENT AND COMPROMISE.

Report of Operation

The 1994–1995 water year started out as another drought year; from October 1, 1994 until March 25, 1995 Grayrocks Reservoir only gained 300.0 acre feet in storage. From March 25, 1995 to May 8, 1995 Grayrocks Reservoir storage decreased 2000.0 acre feet. However, spring and earlier summer rain and snow kept the Laramie River inflow to Grayrocks Reservoir above 300.0 cfs from May 8 until July 12.

Grayrocks Reservoir physically filled (104,109 acre feet) on June 6, 1995 and reached a peak storage of 110,603 acre feet on June 10, 1995. The peak inflow to Grayrocks Reservoir occurred on June 8 with a flow of 4220.0 cfs; the peak release from Grayrocks Reservoir occurred on June 10 with a flow of 3038.0 cfs as measured at Grayrocks Reservoir outflow gage.

Grayrocks Reservoir storage on September 30, 1995 was 99,217 acre feet (1.4 feet from being physically filled).

The following is a chronological summary of major occurrences during the operation of Grayrocks Dam and Reservoir for the 1994–1995 water year.

October 1, 1994—Began year with 74,840 acre feet in storage.

October 31, 1994—October releases approximately 40.0 acre feet in excess of "Agreement" as measured at Grayrocks Outflow Gage and 602.0 acre feet in excess of "Agreement" as measured at the Fort Laramie Gage.

November 30, 1994—November releases approximately 95.0 acre feet in excess of "Agreement" as measured at Grayrocks Outflow Gage and 285.0 acre feet in excess of "Agreement" as measured at the Fort Laramie Gage.

December 31, 1994—December releases approximately 37.0 acre feet in excess of "Agreement" as measured at Grayrocks Outflow Gage and 143.0 acre feet in excess of "Agreement" as measured at the Fort Laramie Gage.

January 31, 1995—January releases approximately 159.0 acre feet in excess of "Agreement" as measured at Grayrocks Outflow Gage and 293.0 acre feet in excess of "Agreement" as measured at the For Laramie Gage.

February 28, 1995—February releases approximately 60.0 acre feet in excess of "Agreement" as measured at Grayrocks Outflow Gage and 206.0 acre feet in excess of "Agreement" as measured at the Fort Laramie Gage.

March 31, 1995—March releases approximately 36.0 acre feet in excess of "Agreement" as measured at Grayrocks Outflow Gage and 64.0 acre feet in excess of "Agreement" as measured at the Fort Laramie Gage.

April 1, 1995—Increased releases to 50 cfs according to "Agreement".

April 30, 1995—April releases approximately 456.0 acre feet in excess of "Agreement" as measured at Grayrocks Outflow Gage and 118.0 acre feet in excess of "Agreement" as measured at the Fort Laramie Gage.

Grayrocks Reservoir minimum storage for year; 72,786 acre feet.

May 1, 1995—Maintaining Grayrocks Reservoir releases at 40 cfs or 75% of the inflow which ever is greater not to exceed 200 cfs nor more than 12,000 acre feet per month.

May 8, 1995—Grayrocks Reservoir inflow over 300.0 cfs.

May 12, 1995—Grayrocks Reservoir releases over 200.0 cfs.

May 19, 1995—Grayrocks Reservoir inflow over 500.0 cfs.

May 27, 1995—Grayrocks Reservoir inflow over 1000.0 cfs.

May 30, 1995—May releases approximately 298.0 acre feet in excess of "Agreement" as measured at Grayrocks Outflow Gage and 2.0 acre feet in excess of "Agreement" as measured at the Fort Laramie Gage.

June 3, 1995—Grayrocks Reservoir inflow over 1600.0 cfs. Grayrocks Reservoir releases over 300.0 cfs.

June 4, 1995—Grayrocks Reservoir releases over 400.0 cfs.

June 6, 1995—Grayrocks Reservoir releases over 600.0 cfs.

June 7, 1995—Grayrocks Reservoir releases over 800.0 cfs.

June 8, 1995—Grayrocks Reservoir peak inflow 4220.0 cfs (24 hour average). Grayrocks Reservoir releases over 2000.0 cfs.

June 9, 1995—Grayrocks Reservoir releases over 3000.0 cfs.

June 12, 1995—Grayrocks Reservoir inflow below 3000.0 cfs. Grayrocks Reservoir releases below 3000.0 cfs.

June 14, 1995—Grayrocks Reservoir inflow below 2000.0 cfs.

June 15, 1995—Grayrocks Reservoir releases below 2000.0 cfs.

June 16, 1995—Grayrocks Reservoir inflow below 1500.0 cfs.

June 20, 1995—Grayrocks Reservoir releases below 1000.0 cfs.

June 26, 1995—Grayrocks Reservoir inflow below 1000.0 cfs.

June 30, 1995—June releases approximately 59,500.0 acre feet in excess of "Agreement" as measured at Grayrocks Outflow Gage and 52,088.0 acre feet in excess of "Agreement" as measured at the Fort Laramie Gage.

July 7, 1995—Grayrocks Reservoir releases below 500.0 cfs.

July 9, 1995—Grayrocks Reservoir inflow below 500.0 cfs.

July 19, 1995—Grayrocks Reservoir inflow below 200.0 cfs. Grayrocks Reservoir releases below 200.0 cfs.

July 27, 1995—Grayrocks Reservoir inflow below 100.0 cfs.

July 28, 1995—Grayrocks Reservoir releases below 100.0 cfs.

July 31, 1995—July releases approximately 10,400.0 acre feet in excess of "Agreement" as measured at Grayrocks Outflow Gage and 10,000.0 acre feet in excess of "Agreement" as measured at the Fort Laramie Gage.

August 31, 1995—August releases approximately 950.0 acre feet in excess of "Agreement" as measured at Grayrocks Outflow Gage and 438.0 acre feet in excess of "Agreement" as measured at the Fort Laramie Gage.

September 30, 1995—September releases approximately 520.0 acre feet in excess of "Agreement" as measured at Grayrocks Outflow Gage and 595.0 acre feet in excess of "Agreement" as measured at the Fort Laramie Gage.

Grayrocks Reservoir end of year storage at 99,217 acre feet (1.4 feet from being filled).

On April 13, 1995 when the Boughton Water Transfer came into priority, there was only 1.0 cfs at the Bosler Gage. Until the spring rain and snow showers came with the resulting runoff, there was not any water available for the Boughton Water Transfer right. Then with the high runoff and Grayrocks Reservoir being filled, no Boughton Water was transferred. The Inundated Water rights were fully utilized.

During the 1994–1995 year, releases from Grayrocks Reservoirs totaled approximately 126,421.95 acre feet as measured at Grayrocks outflow gage; at the Ft. Laramie Gage the releases total approximately 118,689.42 acre feet. The releases called for in the "AGREEMENT OF SETTLEMENT AND COMPROMISE" were approximately 53,833.50 acre feet for the 1994–1995 water year.

The Laramie River Station water usage for 1994–1995 water year totaled 17,591.43 acre feet, gross generation was 11,420,657 megawatts, and the net generation was 10,706,705 megawatts. With two unit outrages this year the Laramie River Station plant factor was 74%.

Attached are the "Laramie River Station Water Sources and Station Useage Monthly Reports and Annual Summary" for the 1994–1995 Water Year.

BASIN ELECTRIC POWER COOPERATIVE—LARAMIE RIVER STATION WATER SOURCES AND STATION USAGE ANNUAL SUMMARY FOR 1994–1995

Grayrocks inflows:		
Boughton water at Bosler	AF	0.00
Conveyance loss Bosler to Grayrocks	AF	0.00
Laramie River above Grayrocks	AF	191,356.77
Boughton water at Grayrocks	AF	0.00
Inundated water rights	AF	1,647.28
Natural flow above Grayrocks	AF	189,689.23
Senior downstream rights	AF	0.00
Water available to Grayrocks	AF	189,689.23
Grayrocks releases:		
Laramie River below Grayrocks	AF	126,421.95
Laramie River at Fort Laramie	AF	118,689.42
Bypass for senior rights	AF	0.00
Releases charged again storage	AF	33,191.90
Flood storage releases	AF	4,557.21
Physical spill	AF	93,214.16

BASIN ELECTRIC POWER COOPERATIVE—LARAMIE RIVER STATION WATER SOURCES AND STATION USAGE ANNUAL SUMMARY FOR 1994–1995—Continued

Inundated water to temporary storage	AF	173.23
Boughton water to LRS	AF	0.00
Boughton water to temporary storage	AF	0.00
Direct diversion to LRS	AF	15,914.96
Temporary storage to LRS	AF	199.29
Permanent storage to LRS	AF	0.00

BASIN ELECTRIC POWER COOPERATIVE—LARAMIE RIVER STATION WATER SOURCES AND STATION USAGE ANNUAL SUMMARY FOR 1994–1995—Continued

Red well water to LRS	AF	1.76
Green well water to LRS	AF	1.45
Total water to LRS	AF	17,591.43
Grayrocks Reservoir storage accounting:		
Ending reservoir elevation	FT	4,402.60
Reservoir evaporation	AF	12,398.43

BASIN ELECTRIC POWER COOPERATIVE—LARAMIE RIVER STATION WATER SOURCES AND STATION USAGE ANNUAL SUMMARY FOR 1994–1995—Continued

Evaporation loss for temporary storage	AF	41.72
Transferred water to temporary storage	AF	173.23
Direct flow to permanent storage	AF	43,879.66
Direct flow to flood storage	AF	17,166.77
Ending physical storage	AF	99,217.00
Agreements required releases	AF	53,833.50

GRAYROCKS RESERVOIR STORAGE IN ACRE FEET FOR 1994–1995 WATER YEAR

	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sept.
1	74,840	73,373	72,493	72,786	73,666	74,253	74,547	72,786	93,769	107,332	105,541	101,650
2	.....	73,080	.....	.....	.....	.....	.....	.....	94,783	106,974	.....	101,299
3	.....	.....	.....	.....	.....	.....	.....	.....	96,135	.....	105,183	100,947
4	.....	.....	.....	.....	.....	74,547	.....	.....	98,183	106,616	.....	100,596
5	.....	72,786	72,199	.....	73,960	.....	74,253	.....	101,299	106,258	.....	.....
6	.....	.....	.....	.....	.....	.....	.....	73,080	104,109	.....	.....	100,251
7	74,547	73,080	.....	.....	.....	74,840	.....	.....	105,900	106,616	105,183	99,907
8	74,253	.....	.....	.....	.....	.....	.....	73,666	106,974	.....	.....	.....
9	.....	.....	.....	73,080	.....	.....	73,960	74,253	109,875	.....	104,825	.....
10	.....	.....	.....	.....	.....	.....	.....	74,840	110,603	106,974	.....	.....
11	.....	.....	.....	.....	73,666	.....	.....	75,140	110,239	106,616	.....	.....
12	.....	.....	.....	73,373	.....	75,140	.....	74,840	109,875	106,974	.....	98,873
13	.....	.....	.....	.....	.....	.....	.....	75,739	108,418	106,616	.....	.....
14	73,960	.....	72,493	.....	.....	.....	73,666	76,039	106,616	106,258	104,467	.....
15	.....	.....	.....	.....	.....	.....	.....	.....	106,258	.....	.....	.....
16	.....	72,786	.....	.....	73,373	.....	.....	76,339	105,900	.....	104,109	98,528
17	74,253	.....	.....	.....	73,666	.....	.....	76,639	105,541	.....	.....	.....
18	.....	.....	.....	.....	.....	.....	.....	76,939	105,183	.....	.....	.....
19	.....	.....	.....	.....	.....	.....	73,373	77,538	105,541	105,900	103,758	.....
20	.....	.....	.....	73,666	73,960	.....	.....	78,144	.....	.....	.....	.....
21	73,960	.....	72,786	.....	.....	.....	.....	79,062	105,183	.....	103,406	.....
22	73,666	.....	.....	.....	.....	.....	.....	79,674	105,541	.....	.....	.....
23	.....	.....	.....	.....	.....	.....	.....	80,286	.....	106,258	.....	.....
24	.....	.....	.....	73,373	.....	.....	.....	81,210	105,900	105,900	103,055	.....
25	.....	.....	.....	.....	74,253	74,840	73,080	82,460	105,541	.....	.....	.....
26	.....	72,493	.....	73,666	.....	.....	.....	83,709	.....	.....	102,704	98,873
27	73,373	.....	.....	.....	.....	.....	.....	84,977	105,183	.....	.....	.....
28	.....	.....	.....	.....	74,253	.....	.....	86,888	106,616	.....	102,353	.....
29	.....	.....	.....	.....	.....	74,547	.....	88,831	106,974	105,541	102,001	99,217
30	.....	.....	.....	.....	.....	74,840	72,786	90,786	107,690	.....	.....	99,217
31	73,373	72,493	72,786	73,666	.....	74,840	.....	92,443	.....	105,541	101,650	.....

BASIN ELECTRIC POWER COOPERATIVE—LARAMIE RIVER STATION WATER SOURCES AND STATION USEAGE MONTHLY REPORT

SEPTEMBER 1995		
Grayrocks Inflows:		
Boughton water at Bosler	AF	0
Conveyance loss Bosler to Grayrocks	AF	0
Laramie River above Grayrocks	AF	3,684.35
Boughton water at Grayrocks	AF	0
Inundated water rights	AF	32.21
Natural flow above Grayrocks	AF	3,652.14
Senior downstream rights	AF	0
Water available to Grayrocks	AF	3,652.14
Grayrocks Downstream Release:		
Laramie River below Grayrocks	AF	2,904.44
Laramie River at Ft. Laramie	AF	2,975.05
Bypass for senior rights	AF	0

BASIN ELECTRIC POWER COOPERATIVE—LARAMIE RIVER STATION WATER SOURCES AND STATION USEAGE MONTHLY REPORT—Continued

Releases charged against storage	AF	0
Water for storage or diversion	AF	3,652.14
Flood storage releases	AF	0
Physical spill	AF	2,904.44
LRS Water Useage:		
Inundated water to LRS	AF	32.18
Inundated water to temporary storage	AF	0.03
Boughton water to LRS	AF	0
Boughton water to temporary storage	AF	0
Direct diversion to LRS	AF	1,032.62
Temporary storage to LRS	AF	47.69
Permanent storage to LRS	AF	0
Red Well water to LRS	AF	0
Green Well water to LRS	AF	0
Total water to LRS	AF	1,112.49
Grayrocks Reservoir Storage Accounting:		
Ending reservoir elevation	FT	4402.6
Reservoir evaporation	AF	808.40
Evap. loss for temporary storage	AF	2.08
Trans. water to temporary storage	AF	0.03
Direct diversion to perm. storage	AF	2,619.52
Direct diversion to flood storage	AF	0
Ending physical storage	AF	99,217
Total required releases	AF	2,380.20

AUGUST 1995

Grayrocks Inflows:		
Boughton water at Bosler	AF	0
Conveyance loss Bosler to Grayrocks	AF	0
Laramie River above Grayrocks	AF	2,984.18
Boughton water at Grayrocks	AF	0
Inundated water rights	AF	407.05
Natural flow above Grayrocks	AF	2,577.12
Senior downstream rights	AF	0
Water available to Grayrocks	AF	2,577.12
Grayrocks Downstream Release:		
Laramie River below Grayrocks	AF	3,631.19
Laramie River at Ft. Laramie	AF	3,111.71
Bypass for senior rights	AF	0
Releases charged against storage	AF	0
Water for storage or diversion	AF	2,577.12
Flood storage releases	AF	534.89
Physical spill	AF	3,631.18
LRS Water Useage:		
Inundated water to LRS	AF	399.28
Inundated water to temporary storage	AF	7.75
Boughton water to LRS	AF	0
Boughton water to temporary storage	AF	0
Direct diversion to LRS	AF	1,415.96
Temporary storage to LRS	AF	87.54
Permanent storage to LRS	AF	0
Red Well water to LRS	AF	0
Green Well water to LRS	AF	0
Total water to LRS	AF	1,902.78
Grayrocks Reservoir Storage Accounting:		
Ending reservoir elevation	FT	4403.3
Reservoir evaporation	AF	6,580.39
Evap. loss for temporary storage	AF	22.10
Trans. water to temporary storage	AF	7.75
Direct diversion to perm. storage	AF	230.55
Direct diversion to flood storage	AF	50.27
Ending physical storage	AF	101,650
Total required releases	AF	2,672.83

JULY 1995

Grayrocks Inflows:		
Boughton water at Bosler	AF	0

BASIN ELECTRIC POWER COOPERATIVE—LARAMIE RIVER STATION WATER SOURCES AND STATION USEAGE MONTHLY REPORT—Continued

Conveyance loss Bosler to Grayrocks	AF	0
Laramie River above Grayrocks	AF	20,847.58
Boughton water at Grayrocks	AF	0
Inundated water rights	AF	407.05
Natural flow above Grayrocks	AF	20,440.52
Senior downstream rights	AF	0
Water available to Grayrocks	AF	20,440.52
Grayrocks Downstream Release:		
Laramie River below Grayrocks	AF	19,622.57
Laramie River at Ft. Laramie	AF	19,231.02
Bypass for senior rights	AF	0
Releases charged against storage	AF	0
Water for storage or diversion	AF	20,440.52
Flood storage releases	AF	1,551.91
Physical spill	AF	19,622.55
LRS Water Useage:		
Inundated water to LRS	AF	393.90
Inundated water to temporary storage	AF	13.13
Boughton water to LRS	AF	0
Boughton water to temporary storage	AF	0
Direct diversion to LRS	AF	1,368.43
Temporary storage to LRS	AF	0
Permanent storage to LRS	AF	0
Red Well water to LRS	AF	0
Green Well water to LRS	AF	0
Total water to LRS	AF	1,762.33
Grayrocks Reservoir Storage Accounting:		
Ending reservoir elevation	FT	4404.4
Reservoir evaporation	AF	1,911.05
Evap. loss for temporary storage	AF	6.98
Trans. water to temporary storage	AF	13.13
Direct diversion to perm. storage	AF	0
Direct diversion to flood storage	AF	1,001.41
Ending physical storage	AF	105,541
Total required releases	AF	9,213.00

JUNE 1995

Grayrocks Inflows:		
Boughton water at Bosler	AF	0
Conveyance loss Bosler to Grayrocks	AF	0
Laramie River above Grayrocks	AF	101,386.60
Boughton water at Grayrocks	AF	0
Inundated water rights	AF	393.92
Natural flow above Grayrocks	AF	100,992.68
Senior downstream rights	AF	0
Water available to Grayrocks	AF	100,992.68
Grayrocks Downstream Release:		
Laramie River below Grayrocks	AF	71,412.94
Laramie River at Ft. Laramie	AF	63,989.30
Bypass for senior rights	AF	0
Releases charged against storage	AF	4,562.05
Water for storage or diversion	AF	100,992.68
Flood storage releases	AF	2,470.41
Physical spill	AF	66,850.90
LRS Water Usage:		
Inundated water to LRS	AF	338.48
Inundated water to temporary storage	AF	55.42
Boughton water to LRS	AF	0
Boughton water to temporary storage	AF	0
Direct diversion to LRS	AF	1,057.61
Temporary storage to LRS	AF	0
Permanent storage to LRS	AF	0
Red Well water to LRS	AF	0
Green Well water to LRS	AF	0
Total water to LRS	AF	1,396.09
Grayrocks Reservoir Storage Accounting:		
Ending reservoir elevation	FT	4,405.00

BASIN ELECTRIC POWER COOPERATIVE—LARAMIE RIVER STATION WATER SOURCES AND STATION USEAGE MONTHLY REPORT—Continued

Reservoir evaporation	AF	838.53
Evap. loss for temporary storage	AF	2.98
Trans. water to temporary storage	AF	55.42
Direct diversion to perm. storage	AF	14,877.44
Direct diversion to flood storage	AF	16,115.09
Ending physical storage	AF	107,690.00
Total required releases	AF	11,901.00

MAY 1995

Grayrocks Inflows:		
Boughton water at Bosler	AF	0
Conveyance loss Bosler to Grayrocks	AF	0
Laramie River above Grayrocks	AF	32,796.18
Boughton water at Grayrocks	AF	0
Inundated water rights	AF	407.05
Natural flow above Grayrocks	AF	32,389.13
Senior downstream rights	AF	0
Water available to Grayrocks	AF	32,389.13
Grayrocks Downstream Release:		
Laramie River below Grayrocks	AF	10,549.64
Laramie River at Ft. Laramie	AF	10,253.11
Bypass for senior rights	AF	0
Releases charged against storage	AF	10,549.66
Water for storage or diversion	AF	32,389.13
Flood storage releases	AF	0
Physical spill	AF	0
LRS Water Usage:		
Inundated water to LRS	AF	310.13
Inundated water to temporary storage	AF	96.90
Boughton water to LRS	AF	0
Boughton water to temporary storage	AF	0
Direct diversion to LRS	AF	821:88
Temporary storage to LRS	AF	0
Permanent storage to LRS	AF	0
Red Well water to LRS	AF	0.01
Green Well water to LRS	AF	0.03
Total water to LRS	AF	1,132.05
Grayrocks Reservoir Storage Accounting:		
Ending reservoir elevation	FT	4,400.60
Reservoir evaporation	AF	11.92
Evap. loss for temporary storage	AF	0.04
Trans. water to temporary storage	AF	96.90
Direct diversion to perm. storage	AF	21,067.79
Direct diversion to flood storage	AF	0
Ending physical storage	AF	92,443.00
Total required releases	AF	10,251.34

APRIL 1995

Grayrocks Inflows:		
Boughton water at Bosler	AF	0
Conveyance loss Bosler to Grayrocks	AF	0
Laramie River above Grayrocks	AF	3,170.62
Boughton water at Grayrocks	AF	0
Inundated water rights	AF	0
Natural flow above Grayrocks	AF	3,170.62
Senior downstream rights	AF	0
Water available to Grayrocks	AF	3,170.62
Grayrocks Downstream Release:		
Laramie River below Grayrocks	AF	3,431.85
Laramie River at Ft. Laramie	AF	3,093.27
Bypass for senior rights	AF	0
Releases charged against storage	AF	3,322.94
Water for storage or diversion	AF	3,170.62
Flood storage releases	AF	0
Physical spill	AF	108.89
LRS Water Usage:		
Inundated water to LRS	AF	0
Inundated water to temporary storage	AF	0

BASIN ELECTRIC POWER COOPERATIVE—LARAMIE RIVER STATION WATER SOURCES AND STATION USEAGE MONTHLY REPORT—Continued

Boughton water to LRS	AF	0
Boughton water to temporary storage	AF	0
Direct diversion to LRS	AF	1,605.72
Temporary storage to LRS	AF	0
Permanent storage to LRS	AF	0
Red Well water to LRS	AF	0.24
Green Well water to LRS	AF	0.06
Total water to LRS	AF	1,606.02
Grayrocks Reservoir Storage Accounting:		
Ending reservoir elevation	FT	4,394.30
Reservoir evaporation	AF	719.17
Evap. loss for temporary storage	AF	2.40
Trans. water to temporary storage	AF	0
Direct diversion to perm. storage	AF	127.10
Direct diversion to flood storage	AF	0
Ending physical storage	AF	72,786
Total required releases	AF	2,975.25

MARCH 1995

Grayrocks Inflows:		
Boughton water at Bosler	AF	0
Conveyance loss Bosler to Grayrocks	AF	0
Laramie River above Grayrocks	AF	4,731.64
Boughton water at Grayrocks	AF	0
Inundated water rights	AF	0
Natural flow above Grayrocks	AF	4,731.64
Senior downstream rights	AF	0
Water available to Grayrocks	AF	4,731.64
Grayrocks Downstream Release:		
Laramie River below Grayrocks	AF	2,496.04
Laramie River at Ft. Laramie	AF	2,524.16
Bypass for senior rights	AF	0
Releases charged against storage	AF	2,496.05
Water for storage or diversion	AF	4,731.64
Flood storage releases	AF	0
Physical spill	AF	0
LRS Water Useage:		
Inundated water to LRS	AF	0
Inundated water to temporary storage	AF	0
Boughton water to LRS	AF	0
Boughton water to temporary storage	AF	0
Direct diversion to LRS	AF	1,317.40
Temporary storage to LRS	AF	0
Permanent storage to LRS	AF	0
Red Well water to LRS	AF	0.03
Green Well water to LRS	AF	0.41
Total water to LRS	AF	1,317.84
Grayrocks Reservoir Storage Accounting:		
Ending reservoir elevation	FT	4,395
Reservoir evaporation	AF	907.91
Evap. loss for temporary storage	AF	3.01
Trans. water to temporary storage	AF	0
Direct diversion to perm. storage	AF	1,021.79
Direct diversion to flood storage	AF	0
Ending physical storage	AF	74,840
Total required releases	AF	2,459.54

FEBRUARY 1995

Grayrocks Inflows:		
Boughton water at Bosler	AF	0
Conveyance loss Bosler to Grayrocks	AF	0
Laramie River above Grayrocks	AF	5,208.67
Boughton water at Grayrocks	AF	0
Inundated water rights	AF	0
Natural flow above Grayrocks	AF	5,208.67
Senior downstream rights	AF	0

BASIN ELECTRIC POWER COOPERATIVE—LARAMIE RIVER STATION WATER SOURCES AND STATION USEAGE MONTHLY REPORT—Continued

Water available to Grayrocks	AF	5,208.67
Grayrocks Downstream Release:		
Laramie River below Grayrocks	AF	2,282.41
Laramie River at Ft. Laramie	AF	2,428.00
Bypass for senior rights	AF	0
Releases charged against storage	AF	2,282.38
Water for storage or diversion	AF	5,208.67
Flood storage releases	AF	0
Physical spill	AF	0
LRS Water Useage:		
Inundated water to LRS	AF	0
Inundated water to temporary storage	AF	0
Boughton water to LRS	AF	0
Boughton water to temporary storage	AF	0
Direct diversion to LRS	AF	1,222.94
Temporary storage to LRS	AF	0
Permanent storage to LRS	AF	0
Red Well water to LRS	AF	0
Green Well water to LRS	AF	0
Total water to LRS	AF	1,222.94
Grayrocks Reservoir Storage Accounting:		
Ending reservoir elevation	FT	4,394.8
Reservoir evaporation	AF	0
Evap. loss for temporary storage	AF	0
Trans. water to temporary storage	AF	0
Direct diversion to perm. storage	AF	1,742.04
Direct diversion to flood storage	AF	0
Ending physical storage	AF	74,253
Total required releases	AF	2,221.52

JANUARY 1995

Grayrocks Inflows:		
Boughton water at Bosler	AF	0
Conveyance loss Bosler to Grayrocks	AF	0
Laramie River above Grayrocks	AF	5,163.05
Boughton water at Grayrocks	AF	0
Inundated water rights	AF	0
Natural flow above Grayrocks	AF	5,163.05
Senior downstream rights	AF	0
Water available to Grayrocks	AF	5,163.05
Grayrocks Downstream Release:		
Laramie River below Grayrocks	AF	2,618.82
Laramie River at Ft. Laramie	AF	2,752.70
Bypass for senior rights	AF	0
Releases charged against storage	AF	2,522.60
Water for storage or diversion	AF	5,163.05
Flood storage releases	AF	0
Physical spill	AF	96.20
LRS Water Useage:		
Inundated water to LRS	AF	0
Inundated water to temporary storage	AF	0
Boughton water to LRS	AF	0
Boughton water to temporary storage	AF	0
Direct diversion to LRS	AF	1,465.17
Temporary storage to LRS	AF	0
Permanent storage to LRS	AF	0
Red Well water to LRS	AF	0.49
Green Well water to LRS	AF	0.26
Total water to LRS	AF	1,465.92
Grayrocks Reservoir Storage Accounting:		
Ending reservoir elevation	FT	4,394.6
Reservoir evaporation	AF	0
Evap. loss for temporary storage	AF	0
Trans. water to temporary storage	AF	0
Direct diversion to perm. storage	AF	1,188.06
Direct diversion to flood storage	AF	0
Ending physical storage	AF	73,666

BASIN ELECTRIC POWER COOPERATIVE—LARAMIE RIVER STATION WATER SOURCES AND STATION USEAGE MONTHLY REPORT—Continued

Total required releases	AF	2,459.54

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Grayrocks Inflows:		
Boughton water at Bosler	AF	0
Conveyance loss Bosler to Grayrocks	AF	0
Laramie River above Grayrocks	AF	4,870.48
Boughton water at Grayrocks	AF	0
Inundated water rights	AF	0
Natural flow above Grayrocks	AF	4,870.48
Senior downstream rights	AF	0
Water available to Grayrocks	AF	4,870.48
Grayrocks Downstream Release:		
Laramie River below Grayrocks	AF	2,497.03
Laramie River at Ft. Laramie	AF	2,603.34
Bypass for senior rights	AF	0
Releases charged against storage	AF	2,496.96
Water for storage or diversion	AF	4,870.48
Flood storage releases	AF	0
Physical spill	AF	0
LRS Water Usage:		
Inundated water to LRS	AF	0
Inundated water to temporary storage	AF	0
Boughton water to LRS	AF	0
Boughton water to temporary storage	AF	0
Direct diversion to LRS	AF	1,628.62
Temporary storage to LRS	AF	0
Permanent storage to LRS	AF	0
Red well Water to LRS	AF	0.38
Green Well water to LRS	AF	0.26
Total water to LRS	AF	1,629.26
Grayrocks Reservoir Storage Accounting:		
Ending reservoir elevation	FT	4,394.3
Reservoir evaporation	AF	0
Evap. loss for temporary storage	AF	0
Trans. water to temporary storage	AF	0
Direct diversion to perm. storage	AF	827.95
Direct diversion to flood storage	AF	0
Ending physical storage	AF	72,786
Total required releases	AF	2,459.54
Grayrocks Inflows:		
Boughton water at Bosler	AF	0
Conveyance loss Bosler to Grayrocks	AF	0
Laramie River above Grayrocks	AF	3,661.54
Boughton water at Grayrocks	AF	0
Inundated water rights	AF	0
Natural flow above Grayrocks	AF	3,661.54
Senior downstream rights	AF	0
Water available to Grayrocks	AF	3,661.54
Grayrocks Downstream Release:		
Laramie River below Grayrocks	AF	2,475.61
Laramie River at Ft. Laramie	AF	2,665.63
Bypass for senior rights	AF	0
Releases charged against storage	AF	2,475.57
Water for storage or diversion	AF	3,661.54
Flood storage releases	AF	0
Physical spill	AF	0
LRS Water Usage		
Inundated water to LRS	AF	0
Inundated water to temporary storage	AF	0
Boughton water to LRS	AF	0
Boughton water to temporary storage	AF	0
Direct diversion to LRS	AF	1,428.77
Temporary storage to LRS	AF	0
Permanent storage to LRS	AF	0
Red Well water to LRS	AF	0.44
Green Well water to LRS	AF	0.41

BASIN ELECTRIC POWER COOPERATIVE—LARAMIE RIVER STATION WATER SOURCES AND STATION USEAGE MONTHLY REPORT—Continued

Total water to LRS	AF	1,429.62
Grayrocks Reservoir Storage Accounting:		
Ending reservoir elevation	FT	4,394.2
Reservoir evaporation	AF	0
Evap. loss for temporary storage	AF	0
Trans. water to temporary storage	AF	0
Direct diversion to perm. storage	AF	150.65
Direct diversion to flood storage	AF	0
Ending physical storage	AF	72,493
Total required releases	AF	2,380.20
Grayrocks Inflows:		
Boughton water at Bosler	AF	0
Conveyance loss Bosler to Grayrocks	AF	0
Laramie River above Grayrocks	AF	2,851.88
Boughton water at Grayrocks	AF	0
Inundated water rights	AF	0
Natural flow above Grayrocks	AF	2,831.64
Senior downstream rights	AF	0
Water available to Grayrocks	AF	2,831.64
Grayrocks Downstream Release:		
Laramie River below Grayrocks	AF	2,499.41
Laramie River at Ft. Laramie	AF	3,062.13
Bypass for senior rights	AF	0
Releases charged against storage	AF	2,483.69
Water for storage or diversion	AF	2,831.64
Flood storage releases	AF	0
Physical spill	AF	0
LRS Water Usage:		
Inundated water to LRS	AF	0
Inundated water to temporary storage	AF	0
Boughton water to LRS	AF	0
Boughton water to temporary storage	AF	0
Direct diversion to LRS	AF	1,549.84
Temporary storage to LRS	AF	64.06
Permanent storage to LRS	AF	0
Red Well water to LRS	AF	0.17
Green Well water to LRS	AF	0.02
Total water to LRS	AF	1,614.09
Grayrocks Reservoir Storage Accounting:		
Ending reservoir elevation	FT	4,394.5
Reservoir evaporation	AF	621.06
Evap. loss for temporary storage	AF	2.13
Trans. water to temporary storage	AF	0
Direct diversion to perm. storage	AF	26.77
Direct diversion to flood storage	AF	0
Ending physical storage	AF	73,373
Total required releases	AF	2,459.54

[FR Doc. 96–4807 Filed 3–4–96; 8:45 am]
BILLING CODE 3125–01–M

COMMODITY FUTURES TRADING COMMISSION

Application of the Chicago Mercantile Exchange for Designation as a Contract Market in Futures and Options on the Indice de Precios y Cotizaciones "IPC" (Index of Prices and Quotes) of the Bolsa Mexicana de Valores (Mexican Stock Exchange)

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in futures and futures options on the Indice de Precios y Cotizaciones "IPC" (Index of Prices and Quotes) of the Bolsa Mexicana de Valores (Mexican Stock Exchange). The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before April 4, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW., Washington, DC 20581. Reference should be made to the CME IPC contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, Washington, DC, 20581, telephone 202–418–5277.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on February 28, 1996.

Blake Imel,

Acting Director.

[FR Doc. 96–5029 Filed 3–4–96; 8:45 am]
BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission; Washington, DC.

TIME AND DATE: Wednesday, March 6, 1996, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Multiple Tube Mine & Shell Fireworks

The staff will brief the Commission on a final rule addressing the tip-over of large multiple tube mine and shell fireworks devices.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: February 29, 1996.

Sadye E. Dunn,

Secretary.

[FR Doc. 96–5280 Filed 3–10–96; 3:20 pm]
BILLING CODE 6355–01–M

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission; Washington, DC.

TIME AND DATE: Thursday, March 7, 1996, 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: February 29, 1996.

Sadye E. Dunn,

Secretary.

[FR Doc. 96–5281 Filed 3–1–96; 3:10 pm]
BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Acceptance of Group Application Under Pub. L. 95–202 and Department of Defense Directive (DODD) 1000.20; "U.S. Civilian Flight Crew and Aviation Ground Support Employees of Northeast Airlines Atlantic Division, Who Served Overseas as a Result of Northeast Airlines Contract With the Air Transport Command During the Period December 7, 1941 Through August 14, 1945"

Under the provisions of Section 401, Public Law 95–202 and DoD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of the group known as: "U.S. Civilian Flight Crew and Aviation Ground Support Employees of Northeast Airlines Atlantic Division, who served Overseas as a result of Northeast Airlines Contract with the Air Transport Command During the Period December 7, 1941, through August 14, 1945." Persons with information or documentation pertinent to the determination of whether the service of this group should be considered active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DOD Civilian/Military Service Review Board, Secretary of the Air Force Personnel Council, 1535 Command Drive, EE–Wing, Third Floor, Andrews AFB, MD 20762–7002. Copies of documents or other materials submitted cannot be returned. For further information, contact Mr. Johnston, (301) 981–5329.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–5084 Filed 3–4–96; 8 45 am]
BILLING CODE 3910–01–M

Defense Logistics Agency

Cooperative Agreement Revised Procedures

AGENCY: Defense Logistics Agency (DLA).

ACTION: Cooperative Agreements Proposed Revised Procedures.

SUMMARY: This proposed revised procedure implements Title 10, United States Code, Chapter 142, as amended, which authorizes the Secretary of Defense, acting through the Director, Defense Logistics Agency, to enter into cost sharing cooperative agreements to support procurement technical

assistance programs established by state and local governments, private nonprofit organizations, Tribal organizations, and Indian-owned economic enterprises. Subpart III of this issuance establishes the proposed administrative procedures to be implemented by DLA to enter into such agreements for this purpose.

DATES: Comments will be accepted until March 29, 1996. Proposed effective date: April 8, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Sim Mitchell, Program Manager, Office of Small and Disadvantaged Business Utilization (DDAS), Defense Logistics Agency, 8725 John J. Kingsman Rd., Suite 2533, Fort Belvoir, VA 22060–6221, Telephone (703) 767–1650.

Sim C. Mitchell,

Program Manager, Office of Small and Disadvantaged Business Utilization.

I. Background Information

The Procurement Technical Assistance Cooperative Agreement Program (PTACAP) was established by the Fiscal Year (FY) 1985 Department of Defense (DoD) Authorization Act, Public Law 98–525. The Public Law amended Title 10, United States Code (U.S.C.), by adding Chapter 142. Title 10, U.S.C., as amended, continues to authorize the Secretary of Defense, acting through the Director, Defense Logistics Agency (DLA), to enter into cost sharing cooperative agreements to support procurement technical assistance (PTA) programs established by eligible entities.

DoD's efforts to increase competition in the private sector have been supplemented by many state and local governments, and other entities that operate PTA programs. The DoD PTACAP provides assistance to eligible entities by sharing the cost of establishing new and/or maintaining existing PTA programs.

The enabling legislation placed the following limitation on the use of funds allocated to the program:

A. DoD's share of an eligible entity's net program cost shall not exceed 50%, unless the eligible entity proposes to cover a distressed area. If the eligible entity proposes to cover a distressed area, the DoD share may be increased to an amount not to exceed 75%. In no event shall DoD's share of net program cost exceed $150,000 for programs providing less than statewide coverage or $300,000 for programs providing statewide coverage.

B. For the American Indian program, DoD's share of net program cost shall not exceed 75% or $150,000, whichever is less, for programs providing services on reservations within one Bureau of Indian Affairs (BIA) service area. For programs providing services to 100% of the reservations located within one BIA service area and at least 50% of the reservations located within another BIA service area (multi-area coverage), DoD's share of net program cost shall not exceed 75% or $300,000, whichever is less.

C. No funds available to DoD may be provided by grant or contract to any institution of higher education that has a policy of denying, or which effectively prevents, the Secretary of Defense from obtaining for military recruiting purposes—

1. entry to campuses or access to students (individuals who are 17 years of age or older) on campuses; or

2. access to directory information pertaining to students.

D. No funds appropriated or otherwise available to the Department of Defense may be obligated by contract or by grant (including a grant of funds to be available for student aid) to any institution of higher education that, as determined by the Secretary of Defense, has an anti-ROTC policy and at which, as determined by the Secretary, the Secretary would otherwise maintain or seek to establish a unit of the Senior Reserve Officer Training Corps or at which the Secretary would otherwise enroll or seek to enroll students for participation in a unit of the Senior Reserve Officer Training Corps at another nearby institution of higher education. The term "anti-ROTC policy" means a policy or practice of an institution of higher education that—

1. prohibits, or in effect prevents, the Secretary of Defense from maintaining or establishing a unit of the Senior Reserve Officer Training Corps at that institution, or

2. prohibits, or in effect prevents, a student at that institution from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education.

The purpose of the proposed revised procedure is to make available to all eligible entities the prerequisites, policies and procedures that will govern the award of cooperative agreements by DLA. Also, this procedure establishes the guidelines that will govern the administration of cooperative agreements.

Although this procedure will affect all eligible entities desiring to enter into a DLA awarded cooperative agreement, DLA has determined that this procedure does not involve a substantial issue of fact or law, and that it is unlikely to have a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. This determination is based on the fact that the proposed cooperative agreement procedure implements policies already published by the Office of Management and Budget (OMB) pursuant to Title 31, U.S.C., Chapter 63, Using Procurement Contracts and Grants and Cooperative Agreements. In addition, DLA cooperative agreements will be entered into pursuant to the authorities and restrictions contained in the annual DoD Authorization and Appropriation Acts. Therefore, public hearings were not conducted.

II. Other Information

The language contained in the current cooperative agreement procedure limited the period of coverage to the FY 95 Program in that it addressed the FY 95 Authorization Act requirements in specific terms. This proposed revision to the procedure will provide general guidance for cooperative agreements entered into by the DLA and will become a permanent document for the duration of the FYs 96, 97 and 98 Programs.

Comments are invited on the procedure. Comments should be submitted to DLA, Office of Small and Disadvantaged Business Utilization, ATTN: DDAS, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221. Comments received after March 29, 1996 may not be considered in formulating revisions to the Procedure.

III. Proposed Revision to DLA Procedure—Cooperative Agreements

3–1 Policy

A. Applications for cooperative agreements are obtained through the issuance of a DLA solicitation for cooperative agreement applications (hereafter referred to as a SCAA). The contents of this procedure shall be incorporated, in whole or in part, into the SCAA to establish administrative requirements to execute and administer DLA awarded cooperative agreements. The SCAA may include additional administrative requirements that are not included herein.

B. The SCAA is issued by the PTACAP Manager (hereafter referred to as Program Manager) of the DLA Office of Small and Disadvantaged Business Utilization every third fiscal year, i.e., FY 96, FY 99, etc. The Program Manager will respond to any SCAA questions that may arise.

C. Only one application will be accepted from a single eligible entity. An entity that submits more than one application, or is listed as a subagreement applicant in another entity's application will not be considered for an award. D. Applications will not be accepted from applicants that apply as coequal partners or joint ventures. Only one organization can take the lead and primary responsibility for the proposed program. In other words, only one eligible entity can submit an application.

E. Applications will not be accepted from applicants who propose to provide less than county or equivalent (i.e., parish, borough) coverage. For example, if an applicant proposes to service any part of a county or equivalent, the applicant must service the entire county or equivalent.

F. Cooperative agreements will be awarded on a competitive basis consistent with the SCAA. It is DLA's policy to encourage fair and open competition when awarding cooperative agreements.

G. Letters of support and recommendation from Members of Congress are not necessary and will not be considered in the evaluation and selection of applications to receive cooperative agreement awards.

H. The SCAA shall be given the widest practical dissemination. It will be made available to all known eligible entities and to those that request copies after its issuance. All eligible entities interested in submitting an application under the SCAA will be invited to participate in a pre-application conference. Pre-application conferences will be held at the locations designated in the SCAA, approximately 30 calendar days prior to the SCAA's closing date.

I. The SCAA shall not be considered to be an offer made by DoD. It will not obligate DoD to make any awards under this Program.

J. In the event that insufficient funds are available to award all applicants that meet the minimum requirements, only those applicants found to be the most meritorious will be funded for an award.

K. If selected for an award, the applicant is bound to perform the services described in its application when the application is incorporated into the cooperative agreement award document.

L. DoD is not responsible for any monies expended or expenses incurred by applicants prior to the award of a cost sharing cooperative agreement. However, actual travel expenses incurred by FY 96 award recipients to participate in a FY 96 pre-application and/or postaward training conference may be reimbursed under the FY 96 cooperative agreement award subject to the provisions of the applicable cost principles.

M. The award of a cooperative agreement under this Program shall not, in any way, obligate DoD to enter into a contract or give preference for the award of a contract to a business or firm which is or becomes a client of a DLA cooperative agreement recipient.

N. Cooperative agreement recipients must give special emphasis to assisting small disadvantaged business (SDB) firms and any historically black colleges and minority institutions that participate or aspire to participate in DoD prime and subcontracting opportunities. A concerted effort must be made by recipients to identify SDB firms and provide them with marketing and technical assistance, particularly where such firms are referred for assistance by a DoD component, other Federal agencies, and state and/or local governments.

O. Award recipients are not required to obtain or retain private, profit and/or nonprofit consultants to support the program. Any subcontract costs being proposed for consulting services shall not exceed 10% of total program cost for the general program or 25% of total program cost under the American Indian program. Applications containing subcontracting costs for consultant services in excess of 10% of total program cost for the general program and 25% of total program cost for the American Indian program, will be removed from consideration for an award.

P. Reasonable quantities of government publications, such as "Selling to the Military," may be furnished to award recipients at no cost, subject to availability. All requests for such publications must be submitted to the cognizant Deputy for Small Business.

Q. Each cooperative agreement recipient's area of performance will be limited to the county(ies) or equivalent specified in its cooperative agreement award. Recipients may voluntarily service clients outside their area of performance provided that the client's location is not being serviced by another PTA recipient. For the American Indian program, the recipient's area of performance will be limited to the reservation(s) specified in its cooperative agreement.

R. For the American Indian program, if a tribal organization is to perform services benefiting other Indian tribe(s), written approval must be obtained by the eligible entity from each Indian tribe it plans to service. Approval will consist of a written statement (signed by a responsible official authorized to legally bind the Indian tribe it plans to service) indicating that the Indian tribe approves and agrees to accept the services to be provided by the tribal organization.

S. Cooperative agreement awards shall not be made to entities listed in the General Services Administration's (GSA) "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs." Cooperative agreements will not be awarded to entities who employ any person listed in GSA's "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs."

T. Applications submitted in response to the SCAA shall cover a 12, 24 or 36-month period. All other applications proposing different periods will not be considered for an award.

U. To be considered during the evaluation process, part-time PTA program employees must be employed by the PTA program a minimum of three calendar months per year for the base year and each of the option years. Time employed must be performed continuously or incrementally for each 12-month period.

V. Cooperative agreement recipients shall not purchase non-expendable tangible personal property with a delivery date later than 90 days prior to the expiration of the cooperative agreement's effective period. Cost of non-expendable tangible personal property delivered later than 90 days prior to the expiration of the cooperative agreement's effective period will be disallowed.

W. Cooperative agreement recipients will be authorized to use GSA's subscription schedules. Usage will be limited to subscription services only.

X. Cooperative agreement recipients are required to provide information to their clients relating to the objectives of the Government's Electronic Commerce/Electronic Data Interchange (EC/EDI) initiatives which are as follow:

1. Exchange procurement information such as solicitations, offers, contracts, purchase orders, invoices, payments, and other contractual documents electronically between the private sector and the Federal government to the maximum practicable extent;

2. Provide businesses, including small, small disadvantaged, and women-owned businesses with greater access to Federal procurement opportunities;

3. Ensure that potential suppliers are provided simplified access to the Federal government's electronic commerce system;

4. Employ nationally and internationally recognized data formats that serve to broaden and ease the

electronic inter- change of data. (These formats are the ANSI ASC X–12 and UNEDIFACT formats); and

5. Use agency and industry systems and networks to enable the Government and potential suppliers to exchange information and access Federal procurement data.

Y. The recipient may add funds to its program after all program funds are properly expended and before expiration of the cooperative agreement's effective period. In the event funds are added to the program, the reimbursable ratio will not be affected and the funds will not require allocation by object class category. However, total funds expended during the effective period must be reported on the DLA Form 1806, Procurement Technical Assistance Cooperative Agreement Performance Report. The expenditure of additional funds shall be made in accordance with the applicable cost principles.

Z. If the recipient charges or plans to charge a fee or service charge for PTA given to business firms/clients, or receives any other income as a result of operating the PTACAP, the amount of such reimbursement must be added to total program cost.

3–2 Scope

This procedure implements Title 10, U.S.C., Chapter 142, as amended, and establishes procedures and guidelines for the award and administration of cost sharing cooperative agreements entered into between DLA and eligible entities. Under these agreements, financial assistance provided by DoD to recipients will cover the DoD share of the cost of establishing new and/or maintaining existing PTA programs which furnish PTA to business entities.

3–3 Definitions

The following definitions apply for the purpose of this procedure.

A. Act. The enabling legislation that authorizes the establishment and continuation of the PTA Cooperative Agreement Program each fiscal year.

B. Administrative Grants Officer (AGO). A person with the authority to administer grants or cooperative agreements consistent with the authority delegated by the Grants Officer.

C. Agency. A field office, of one of the twelve service areas, as published by the Bureau of Indian Affairs (BIA), US Department of the Interior.

D. American National Standards Institute (ANSI) Standard. A document published by ANSI that has been approved through the consensus process of public announcement and review. Each of these standards must have been developed by an ANSI committee and must be revisited by that committee within five years after approval for update.

E. Cash contributions. The recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

F. Civil jurisdiction. All cities with a population of at least 25,000 and all counties. Townships of 25,000 or more population are also considered as civil jurisdictions in four States (Michigan, New Jersey, New York, and Pennsylvania). In Connecticut, Massachusetts, Puerto Rico and Rhode Island where counties have very limited or no government functions, the classifications are done for individual towns.

G. Client. A recognized business entity, including a corporation, partnership, or sole proprietorship, organized for profit or nonprofit, which is small or other than small, that has the potential or is seeking to market its goods and/or services as a prime or subcontractor to DoD, other Federal agencies, state and/or local governments. For the American Indian program, the client must be located on a reservation.

H. Commercial Item.

1. Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that—

a. has been sold, leased, or licensed to the general public; or,

b. Has been offered for sale, lease, or license to the general public;

2. Any item that evolved from an item described in paragraph 1. of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

3. Any item that would satisfy a criterion expressed in paragraph 1. or 2. of this definition, but for—

a. Modifications of a type customarily available in the commercial marketplace; or

b. Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

4. Any combination of items meeting the requirements of paragraph 1., 2., 3., or 5. of this definition that are of a type customarily combined and sold in combination to the general public;

5. Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraph 1., 2., 3., or 4. of this definition, and if the source of such services—

a. Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

b. Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

6. Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

7. Any item, combination of items, or service referred to in paragraphs 1. through 6., notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

8. A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

I. Consultant services. Marketing and technical assistance obtained from private nonprofit and/or profit making individuals, organizations or otherwise qualified business entities to augment the capabilities of the PTA center.

J. Cooperative agreement. A binding legal instrument reflecting a relationship between DLA and the recipient of a cooperative agreement when the principal purpose of the relationship is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring property or services for the direct benefit or use of the US Government. Substantial involvement is expected between DLA and the recipient when carrying out the activity contemplated in the agreement.

K. Cooperative agreement Application. An applicant's response to the SCAA describing its planned PTA program.

L. Cooperative agreement award recipient. An organization receiving financial assistance directly from DLA to carry out a PTA program. Awards will only be made to legal entities recognized under the laws in the State in which the entity is organized.

M. Cost matching or sharing. The portion of project or program costs not borne by the Federal Government.

N. Counseling session. A documented counseling session (telephone call, correspondence or personal discussion) held with a business firm/client, where professional guidance is provided to assist the business firm/client in marketing its goods and/or services to DoD, other Federal agencies, and state and local governments. This includes, but is not limited to, providing advice and assistance such as:

1. assisting business firms by providing marketing and technical assistance in selling their goods and/or services to DoD, other Federal agencies, and state and local governments;

2. assisting with understanding specifications;

3. preparing applicants to be placed on solicitation mailing lists;

4. preparing offers;

5. providing postaward assistance in areas such as production, quality system requirements, finance, engineering, transportation and packaging; and

6. providing information to business firms/clients on the DoD Mentor-Protege Pilot Program; Defense Conversion, Reinvestment and Transition Assistance Act of 1992; The Metric Conversion Act; Electronic Commerce/Electronic Data Interchange (EC/EDI); and commercial item acquisitions. The distribution of publications, specifications, bid matches or simply referring business firms/clients to another source for advice or assistance is not a counseling session.

O. Direct cost. Any cost that can be identified specifically with a particular final cost objective. No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective.

P. Distressed area. The geographical area to be serviced by an eligible entity in providing PTA to business firms physically located within an area that:

1. has a per capita income of 80% or less of that State's average;

2. has an unemployment rate that is one percent greater than the national average for the most recent 24-month period in which statistics are available; or

3. is a "reservation" which includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act.

Q. Duplicate coverage. A situation caused by two or more applicants offering to provide marketing and technical assistance to clients located within the same county(ies) or equivalent within the same geographic area.

R. Electronic Commerce (EC). The end-to-end, paperless business environment that integrates electronic transfer and automated business systems. EC includes EDI, FAX, Bar Coding, Electronic Funds Transfer, etc.

S. Electronic Commerce in Contracting (ECIC). Refers to electronic procurement transactions.

T. Electronic Data Interchange (EDI). A subset of EC. EDI is the computer-to-computer exchange of routine business transactions.

U. Eligible entities. Organizations qualifying to submit an application as follows:

1. General Program:

a. State government. Any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, exclusive of local governments. The term does not include any public and Indian housing agency under the US Housing Act of 1937.

b. Local government. A county, municipality, city, town, township, local public authority (including any public and Indian Housing agency under the US Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity (such as regional planning agencies), or any agency or instrumentality of a local government. The term does not include institutions of higher education and hospitals.

c. Private, nonprofit organizations.

(1) A business entity organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under section 501 of the Internal Revenue Code.

(2) American Indian Program:

(a) Indian Economic enterprise. Any Indian-owned (as defined by the Secretary of the Interior) commercial, industrial, or business activity established or organized, whether or not such economic enterprise is organized for profit or nonprofit purposes: Provided, That such Indian ownership shall constitute not less than 51 per centum of the enterprise.

(b) Indian/Tribal Organization). The recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body, or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a cooperative agreement is made to an organization to perform services benefitting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such cooperative agreement.

V. Existing program. Any PTA program that had a cooperative agreement with DLA for one or more years.

W. Federal funds authorized. The total amount of Federal funds obligated by the Federal government for use by the recipient.

X. Follow-up counseling session. A counseling session held with a client subsequent to the initial counseling session.

Y. Grants officer. An official with the authority to enter into, administer, and/or terminate grants or cooperative agreements.

Z. Indian. Any person who is a member of any Indian tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the BIA and any "Native" as defined in the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.].

AA. Indian tribe. Any Indian tribe, band, group, pueblo, or community, including Native villages and Native groups (including corporations organized by Kenai, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act [43 USC Section 1601 et

seq.], which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

AB. Indirect cost. Any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or an intermediate cost objective. An indirect cost is not subject to treatment as a direct cost.

AC. Initial counseling session. The first counseling session held by a recipient with a business firm. The initial counseling session may determine that the business firm has no potential to do business with a Federal agency and/or state and local government.

AD. In-kind contributions. The value of noncash contributions provided by the eligible entity and non-Federal parties to the PTA Program. Only when authorized by Federal legislation may property or services purchased with Federal funds be considered as in-kind contributions. In-kind contributions may be in the form of charges for real property and nonexpendable personal property and the value of goods and services directly benefiting and specifically identifiable to the project or program.

AE. Integrated automated information environment. Computer-to-computer exchange of public standard formatted messages through use of a VAN.

AF. Multi-area coverage. A PTA program that proposes to service 100% of the reservations located within one BIA service area and at least 50% of the reservations located within another BIA service area.

AG. Net program cost. The total program cost from all authorized sources- less any program income and/or other Federal funds not authorized to be shared.

AH. Networking. A method of providing assistance throughout the area to be serviced. Examples include:

1. locating assistance offices in area of industrial concentration;

2. establishing and/or maintaining data links with other organizations; and

3. creating data exchanges.

AI. New start. An eligible entity that is not an existing program.

AJ. Non-profit agencies representing the blind and severely disabled. A qualified nonprofit agency for the blind or the severely disabled which produces a commodity for, or provides a service to, the Government. For the PTACAP workshops may be treated as small businesses.

AK. Other Federal funds. Federal funds such as those provided by Federal agency(ies) other than the DoD PTA Cooperative Agreement Program. When authorized by statute, Federal funds received from other sources, including grants, may be used as cost sharing and/or cost matching contributions.

AL. Outlays/expenditures. Charges made to the PTA program. They may be reported on a cash or accrual basis.

1. Cash basis. For reports prepared on a cash basis, outlays are the sum of:

a. cash disbursements for direct charges for goods and services;

b. the amount of indirect expense charged;

c. the value of third party in-kind contributions applied; and

d. the amount of cash advances and payments made to subrecipients.

2. Accrual basis. For reports prepared on an accrual basis, outlays are the sum of:

a. cash disbursements for direct charges for goods and services;

b. the amount of indirect expense incurred;

c. the value of in-kind contributions applied:

d. the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees; and

e. other amounts becoming owed under programs for which no current services or performance are required.

AM. Per capita income. The estimated average amount per person of total money income received during the calendar year for all persons residing in a given political jurisdiction as published by the US Department of Commerce, Bureau of the Census.

AN. Prior approval. Written approval given by an authorized official evidencing prior consent as required by the cooperative agreement award document.

AO. Procurement Technical Assistance Cooperative Agreement Program (PTACAP). A program established to generate employment and improve the general economy of a locality by assisting business firms in obtaining and performing under DoD, other Federal agency and state and local government contracts.

AP. Program income. Gross income earned by the recipient or subrecipient from cooperative agreement supported activities. Program income includes fees for services performed, and the use or rental of personal property acquired with cooperative agreement funds. Except as otherwise provided in program regulations or the terms and conditions of the award, program income does not include the receipt of principal, interest or loans, rebates, credits, discounts, refunds, etc., or interest earned on any of them.

AQ. Public Standard Format. A data exchange format which includes the ANSI format ASC X–12 and/or the United Nations Electronic Data Interchange for Administration, Commerce and Transport (UNEDIFACT).

AR. Reservation. Includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act [43 U.S.C.A., Section 1601 et seq.].

AS. Service area. Any one of twelve area offices, as published by the US Department of the Interior, BIA, to include: Aberdeen, Albuquerque, Anardako, Billings, Eastern, Juneau, Minneapolis, Muskogee, Navajo, Phoenix, Portland and Sacramento.

AT. Small business (SB). As used in this solicitation, a business, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as SB under the criteria and size standards in 13 CFR 121.

AU. Small disadvantaged business (SDB). As used in this solicitation, a SB concern that is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and that has its management and daily business controlled by one or more such individuals. This term also means a SB concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian organization, or publicly owned business that has at least 51 percent of its stock unconditionally owned by one of these entities, that has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian organization that meets the requirements of 13 CFR 124.

AV. Solicitation for cooperative agreement applications (SCAA). A document issued by DLA containing provisions and evaluation factors applicable to all applicants which apply for a PTA cooperative agreement.

AW. Statewide coverage. A PTA program which proposes to service at least 50% of a State's counties or equivalent and 75% of the State's labor force.

AX. Subrecipient. The legal entity to which a written subagreement is awarded and which is accountable to the recipient of a cooperative agreement from DLA and any modification(s) thereto.

AY. Third party in-kind contributions. The value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the PTACAP.

AZ. Total program cost. All allowable costs as set forth in OMB Circular A–21, A–87 and A–122, as applicable.

A1. Total program outlays. All charges made to the PTA program. These charges include cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received for services performed by employees, contractors and other payees, and other amounts becoming owed under programs for which no current services or performances are required.

A2. Unliquidated obligations. For financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

A3. Unobligated balance. The portion of the funds authorized by DLA that has not been obligated by the recipient which is determined by deducting the cumulative obligations from the cumulative funds authorized.

A4. Value added network (VAN). A commercial telecommunications service provider which passes electronic commerce traffic between a government entity and a commercial, private sector vendor.

A5. Woman-owned small business (WOB). A small business concern—(i) which is at least 51 per centum owned by one or more women; or in the case of a publicly owned business, at least 51 per centum of the stock of which is owned by one or more women; and (ii) whose management and daily business operations are controlled by one or more women.

3–4 Program Purpose and Requirements

A. The purpose of the PTACAP is to generate employment and to improve the general economy of a locality by assisting business firms in obtaining and performing under Federal, state and local government contracts.

B. Each PTA center must meet these minimum requirements set forth below. Failure to meet any of these requirements will be cause to deny or terminate an award.

1. Service Area

Analyze the service area to identify its geographic and demographic characteristics. The applicant must maintain and provide information regarding the characteristics of the local economy (distressed or nondistressed) and the type of business firms located in the service area (SB, WOB, SDB, OTSB). Information must include:

a. An explanation how the business community will be made aware of the PTA Program; the types of assistance being offered to clients; what is required from a business firm to become a PTA center's client; and the impact the PTA center will have in generating employment within the service area.

b. The total number of counties or equivalent within the State and the identification of each county the applicant plans to service.

c. The average unemployment level for each county the applicant plans to service.

d. The average per capita income of the State and each county the applicant plans to service.

e. The total number of procurement outreach conferences the applicant plans to sponsor.

f. The total number of procurement outreach conferences the applicant plans to participate in other than as a sponsor.

g. The state's total population and the percent of the population that the applicant plans to service.

h. The total number of SB, WOB, SDB, and OTSB the applicant plans to service.

2. Counseling and Client Information

Applicants must provide clients with counseling and information regarding marketing their goods and services to DoD, other Federal agencies, and state and local governments. The applicant shall:

a. Analyze the types of business firms within their geographic area to determine the types to be counseled (by product or service offered).

b. Shall maintain regulations and publications (or identify sources for obtaining) that govern Federal, state and local government procurement, as applicable.

c. Identify marketing opportunities for clients consistent with their products and services.

d. Assist and advise clients concerning post award functions.

e. Educate clients in the following areas:

(1) DoD Mentor-Protege Pilot Program.

(2) Defense Conversion, Reinvestment and Transition Assistance Act of 1992.

(3) The Metric Conversion Act.

(4) The requirements and procedures used by DoD and other Federal agencies in the acquisition of commercial products.

f. Maintain records to document services provided during all counseling sessions (initial and follow-up) to include preparation of bidders mailing list applications.

3. Electronic Commerce/Electronic Data Interchange

(EC/EDI)—Applicant must provide its clients with information pertaining to Electronic Commerce in Contracting (ECIC), including the routine computer exchange of procurement information such as solicitations, offers, contracts, purchase orders, invoices, payments, and other contractual documents electronically exchanged between the private sector and the Federal Government, to the maximum extent practicable, using ANSI ASC X–12 standards. Information to be provided to the client should include:

a. An explanation of how the business community will benefit from using EC/EDI.

b. A complete understanding of the Federal Government EC/EDI program to include:

(1) An identification and explanation of the functions of the various components of EC/EDI, such as Value Added network (VANs) and Value Added Services (VASs), Government gateways and networks, translation software, necessary hardware, and the Central Contractor Registration (CCR) system.

(2) An explanation of current OSD and Federal policies regarding ECIC.

(3) An explanation of transaction sets and implementation conventions.

(4) An explanation of the impact and applicability of the Internet on ECIC, including identification of Government home pages, electronic catalogs, electronic bulletin boards and other relevant net sites.

(5) Explanation of FACNET requirements and DoD and Federal efforts (and status) on meeting these requirements.

4. Postaward Assistance

Applicant must assist, as appropriate, their clients with understanding Federal, state and local government requirements applicable to contracting for services, manufacturing, construction or other markets. As a minimum, the assistance should include but is not limited to:

a. Production
b. Quality System
c. Accounting system requirements, and contract payments
d. Transportation
e. Packaging
f. Subcontracting
g. Property

5. Performance Reporting

The PTA center shall collect sufficient information from its clients to supplement information maintained in its files to report current, complete and accurate information required by the Procurement Technical Assistance Cooperative Agreement Performance Report (DLA Form 1806). The DLA Form 1806 shall be submitted to the cognizant contract administration activity on a semiannual basis. The PTA center shall:

a. Segregate data by origin of award (DoD, other Federal agency, state and local government) and type of business (small and other than small) and socioeconomic status of the business receiving the award (SB, SDB, WOB, OTSB).

b. Have on file:

(1) A minimum of five success stories attesting to the PTA provided to DoD clients during the base and each option year. Each success story must be verified by a letter from the applicant's client stating that the story is true and has resulted from the direct and exclusive effort on behalf of the client by the PTA center.

(2) The number and dollar value of prime and subcontract awards received.

(3) A means of validating the number and dollar value for prime and subcontract awards received.

(4) A signed statement from the client confirming that the reported prime and/or subcontract awards were obtained as a result of the assistance provided by the PTA center.

(5) When requested by the reviewing activity, obtain detailed information such as: the contract awarding activity; name and telephone number of the point of contact at the contract awarding activity; and the contract number and dollar value of prime and/or subcontract awards from the client to support the information reported on the DLA Form 1806, when the information is not available in the PTA center's files.

c. Have on file for the PTA center the number of jobs generated and/or retain for the base and each option year resulting from the assistance provided by the PTA center.

6. Client Satisfaction

Clients serviced by the award recipient shall be surveyed annually, as a minimum, to document client satisfaction with the assistance provided by the PTA center. The client shall be requested to assess the performance of the PTA center and its personnel in terms of:

a. Timeliness and responsiveness to general and specific client needs;

b. Flexibility and ability to change with evolving client circumstances;

c. Commitment to the client's stated goals;

d. Training offered and received, as appropriate; and,

e. Overall capability to provide relevant advice and assistance to the client.

Clients shall rate the PTA center as satisfactory or unsatisfactory. The file will reflect, in sufficient detail, the PTA center's efforts to overcome areas of client dissatisfaction. The above information will be compiled, documented and maintained as a part of each client's permanent file, and as a collective report for the entire PTA center. The client rating information shall be made available to the Grants Officer or designated representative for review upon request.

C. The recipient and subrecipient(s) shall operate their PTA centers on a forty (40) hour week basis, or during the normal business hours of the state or local government or PTA center's parent organization throughout the effective period of the cooperative agreement. Vacation benefits and holidays allowed to the staff of the recipient and subrecipient(s) shall conform to the policy of the state or local government or PTA center's parent organization.

3–5 Procedures

A. The SCAA and selection criteria are developed and prepared by the Headquarters (HQ), DLA PTA Cooperative Agreement Program Manager (hereafter referred to as Program Manager). The SCAA and selection criteria are approved by the HQ DLA PTA Cooperative Agreement Program Policy Committee (hereafter referred to as Policy Committee). The Policy Committee is comprised of representatives from HQ DLA. The Director, office of Small and Disadvantaged Business utilization, serves as the Policy Committee Chairman.

B. The Policy Committee is the final administrative appeal authority for disputes and protests.

C. Grants Officer (GO) as used herein refers to the GO assigned to HQ DLA Office of Small and Disadvantaged Business Utilization.

D. Applications and revisions received after the deadline for receipt of applications, as specified in the SCAA, will not be evaluated unless acceptable evidence is provided by the applicant. Acceptable evidence to support an otherwise late application or revision received after the closing time and date shall consist of:

1. An original U.S. Post Office receipt for registered or certified mail showing the date of mailing not later than five calendar days before the date specified for receipt of applications and revisions; or

2. When sent by U.S. Postal Service - Express Mail Next Day Service—Post Office to Addressee, the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the US Postal Service. The postmark date must be two working days prior to the date specified for receipt of applications. The term working days excludes weekends and Federal holidays. Applicants should request the postal clerk to place a legible hand cancellation "bull's-eye" postmark on both the receipt and envelope or wrapper.

3. If the application or revision is hand delivered, the specific time and delivery date shall be supported by a receipt given by the GO or designated representative.

E. The evaluation of applications and selection of award recipients resulting from responses to the SCAA shall be conducted as detailed below:

1. The GO will evaluate each application received to determine if the application: (i) offers at least a county or equivalent coverage; (ii) contains sufficient management, technical, cost, and other required information; (iii) has been signed by a responsible official authorized to bind the eligible entity; and (iv) otherwise meets the requirements of the SCAA. Applications that fail to meet the requirements of the SCAA will be removed from further consideration for an award by the GO and the applicant will be promptly notified of the reason for removal. The applicant's application will be retained with any other unsuccessful application(s) by the GO.

2. Program status classification. The GO will review and verify the accuracy of the applicant's program status stated in item 8, "Type of Application" of the Standard Form (SF) 424. If the GO considers the program status misclassified, the matter will be reviewed with the applicant. If the applicant and the GO cannot agree, the GO will determine the applicant's program status based upon the information contained in the application at the time the solicitation closed. The GO's decision regarding the program's status is final.

3. Minor informalities and mistakes. The GO shall provide an applicant the opportunity to cure any deficiency resulting from a minor informality or irregularity contained in the offer or waive the deficiency, whichever is to the advantage of the Government. A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in an offer or variation of an offer from the exact requirements of the solicitation that can be corrected or waived without being prejudicial to other applicants. The defect or variation is immaterial when the effect on program quality is negligible when contrasted with the program's total cost. Two examples of minor informalities include the failure of the applicant to: (i) return the required number of copies of its application; and (ii) execute the certifications required by the SCAA clauses.

a. In cases of apparent mistakes and in cases where the GO has reason to believe that a mistake may have been made, the GO shall request verification from the applicant that the offer "should read as stated" calling attention to the suspected mistake. Any clerical mistake apparent in the offer may be corrected by the GO. Examples of apparent mistakes are: (i) obvious misplacement of a decimal point; (ii) incorrect transposition of numbers; and (iii) obvious mistake in identifying the program status (existing versus new start program). The GO shall obtain from the applicant a written verification of the offer intended.

b. Correction of a mistake by the GO shall be effected by attaching the verification to the original offer. The GO shall not make corrections on the application. Corrections shall be restated in the cooperative agreement award document, if the applicant receives an award.

c. If an applicant request permission to correct a mistake, and clear and convincing evidence establishes the existence of the mistake, the GO may make a determination permitting the applicant to correct the mistake. The determination to allow correction of mistakes will be made provided that both the existence of the mistake and the application actually intended are established by clear and convincing evidence from the solicitation and application.

4. Notification of application removal from consideration for an award. The GO will notify the applicant by certified mail (return receipt requested) if its application is removed from further consideration for an award.

5. Duplicate coverage. An application shall not duplicate more than 25%, on an individual or cumulative basis, any of the counties or equivalent (for the general program) or any of the reservations (for the Indian program) proposed by other applicants. When the GO determines that two or more applicants are proposing to provide duplicate coverage in excess of 25%, selection priority will be given to the applicant that is determined to be best qualified by the evaluation team. Only one statewide program (under the general program) will be awarded in a state.

6. Each application will be reviewed by an evaluation team consisting of two procurement functionals, one technical functional, and one small business functional. Each evaluation factor will receive individual adjectival ratings (highly acceptable, acceptable, marginally acceptable, and unacceptable) based on the merit of the applicant's support for the particular evaluation element. The team will then collectively assess the overall application, taking into consideration the strengths and weaknesses of the application as it relates to each individual evaluation factor. A single adjectival rating will be assigned to the application which will be used to determine final award status. Applicants should be aware that ultimate award and inclusion into the DLA PTACAP may depend on funding limitations and constraints placed upon the Agency.

7. Award. The award recommendations are approved by the Program Manager and executed by the GO.

3–6 Evaluation Plan

A. Selection Procedures

1. This section outlines the procedures the Government will use during the selection process for the FY 96 PTACAP. The Government contemplates that multiple awards will be made from the applications submitted for the PTACAP. The Government at its discretion may select multiple applicants to perform PTACAP requirements at statewide and other than statewide coverage levels provided that any individual application shall not duplicate any counties or equivalent (general program), or reservations (Indian program), proposed by other applicants.

2. The section entitled Evaluation Criteria describes the criteria the Government will use to select those applicants that provide the best overall value to satisfy PTACAP requirements. Evaluation criteria (in order of importance) are:

a. Past Performance (Existing Programs Only);

b. Management;

c. Technical Qualifications;

d. Service Area (geographic and demographic characteristics); and

e. Cost Realism.

3. Information provided regarding past performance will be evaluated by the Government to determine the applicant's ability to perform PTACAP requirements. Applicants selected for the basic award will be considered for award of option(s) if their demonstrated performance is equal or better than that required by the base year or first option year cooperative agreement award and a satisfactory or better performance rating is received from the cognizant contract administration activity. In the absence of acceptable performance by the original awardee, other applicants may be selected to complete the option period(s).

4. Although cost realism is of lesser importance, the importance of cost realism could increase among applicants that are rated equally or nearly equal. Should applicants become equal or nearly equal in terms of the factors shown above, other factors listed below may be used as discriminating elements for determining the selection of applications among otherwise substantially equal applicants. These factors in descending order of importance are:

a. Duplication of effort;

b. Demographic make-up, to include population, unemployment, and labor surplus area coverage;

c. Alternative methods employed to stimulate outreach efforts aimed at small disadvantaged businesses; and,

d. Other strengths and weaknesses of note demonstrated in the application.

5. The recommendation of applicants to participate in the PTACAP will be made by the Evaluation Team based on an integrated assessment of all applications submitted in response to the solicitation and other terms and conditions agreed upon prior to award. The integrated assessment will involve a determination by the Government of the overall value of each proposal

judged in terms of the applicant's capability. Throughout the evaluation process, the Government will independently identify deficiencies within the applications. The team will collectively assess the overall application, taking into account the strengths and weaknesses of the application as it relates to each individual evaluation factor. A single adjectival rating will be assigned to the application, which will be used to determine final award status.

B. Evaluation Criteria

1. Past Performance (Existing Programs Only)

a. The Government will evaluate the quality of the applicant's past performance. The assessment of the past performance will be used in two (2) ways:

(1) First, the assessment of the offeror's performance will be used as one means of evaluating the credibility of the applicant's application. A record of marginal or unacceptable past performance may be considered an indication that the representations made by the applicant are less than reliable. Such an indication may be reflected in the overall assessment of the applicant's application.

(2) Second, the assessment of the applicant's past performance will be used as one means of evaluating the relative capability of the applicant and the other applicants to meet the performance requirements of the PTACAP. Thus, an applicant with an exceptional record of past performance may receive a more favorable evaluation than another whose record is acceptable, even though both may have otherwise equally acceptable applications.

b. In investigating an applicant's past performance, the Government will consider the information in the applicant's proposal and information obtained from other sources, such as past and present clients, other Government agencies, and others who may have useful information.

c. Evaluation of past performance will be a subjective assessment based on a consideration of all relevant facts and circumstances. It will not be based on absolute standards of acceptable performance. The Government is seeking to determine whether the offeror has consistently demonstrated a commitment to client satisfaction and timely delivery of quality service at reasonable costs. This is a matter of judgement. Applicants may be given an opportunity to address especially unfavorable reports of past performance, and the applicant's response or lack thereof will be taken into consideration.

d. By past performance, the Government means the applicant's record of conforming to the PTACAP requirements, including the administrative aspects of performance, reputation for reasonable and cooperative behavior, commitment to client satisfaction, and generally, the applicant's businesslike concern for the interests of the client.

2. Management

a. The proposed management team will be rated to determine the degree of experience offered by the team proposed and the likelihood of successful management under the PTACAP.

b. Management will be evaluated to determine whether it meets the PTACAP requirements.

c. The application will be evaluated to determine the financial strength and soundness of the organization. The availability of resources under the application will also be assessed. The strength of the plan will be assessed to determine the adequacy of the plan proposed.

3. Technical Qualifications

Understanding of and ability to meet PTACAP requirements by the personnel involved for this factor will be evaluated to determine the extent to which it meets the program requirements and the likelihood of success of the PTACAP as it relates to these requirements. Benefits will be evaluated in terms of management substance and achievability.

4. Service Area (Geographic and Demographic Characteristics)

a. The service area will be evaluated based upon the population to be serviced as well as the unemployment conditions in the area to determine the scope and nature of the coverage proposed.

b. Demographic characteristics will be evaluated including the total population of the state and the percentage of the population to be served and the unemployment conditions in the area. The unemployment rate for the most recent 24 month period for which statistics are available will be used in this process.

c. Service area will be evaluated to assess the extent to which the program maximizes coverage and achieves PTACAP requirements and objectives.

5. Cost Realism

Cost realism will be evaluated on the basis of the applicant's ability to project cost which indicates an understanding of the nature and scope of the work required. The costs proposed will also be evaluated for reasonableness. Reasonsbleness is a judgement of the proposed program costs as compared to expected needs of the PTACAP, appropriate indices and other relevant measures. Implicit in the assessment is the need to establish that any application considered for an award must also be realistic with respect to the relationship of the cost to the level of performance proposed. This determination is critical to determining the offeror's understanding of the PTACAP requirements and probability of successful performance. Upon a determination of cost realism, a comparison of proposed costs will be made to the other evaluation factors and the Evaluation Team will make a decision as to which applications represent the best value to the Government. It is to be noted that this assessment will be a subjective judgement as to the relative value of the applications received. The Government reserves the right to verify any and all aspects of each applicant's application.

3–7 Evaluation Factors

Applications will be evaluated for merit and compliance with the PTACAP's solicitation requirements. In order to provide full consideration of the applicant's qualification for an award, each applicant should ensure that the information furnished is factual current, accurate, and complete. The content should be presented in a manner that will allow evaluators to determine the applicant's understanding of the SCAA, the operating environment desired in PTA centers, and how the applicant's overall concept meets requirements of the SCAA. Failure to provide the information requested may result in a determination that the application is unacceptable and will be removed from further consideration for an award. The Government reserves the right to verify information provided by the applicant for evaluation purposes and to request additional supporting information, if needed. The evaluation factors (in their order of importance) are:

A. Past Performance (Existing Programs Only). Applicants having no record of past performance under a DLA PTACAP will receive a neutral rating for this evaluation factor. A neutral rating for new programs will have no adverse effect on the determination for award. Each applicant will be evaluated on its most recent 12-month performance period (prior to 1 April 1996) under the existing solicitation regarding compliance with requirements; management of the program; and, ability to account for and document associated costs. The applicant must summarize the requirements in its most recent 12-month performance period and describe how its program satisfied those requirements to include jobs generated and/or retained and justification for any funds that were or will be deobligated. Evaluation of past performance will be a subjective assessment based on a consideration of all relevant facts and circumstances. The most recent copy of the cognizant contract administration activity's evaluation report must be provided. The following criteria will be used to evaluate the application:

1. Highly acceptable—The application must demonstrate a high degree of success in satisfying all PTA Program requirements during the most recent 12-month performance period. The cognizant administration activity's evaluation report must substantiate that the applicant has an above average program.

2. Acceptable—The application must demonstrate that the applicant has met all PTA Program requirements during the most recent 12-month performance period. The cognizant administration activity's evaluation report must substantiate that the applicant has an adequate program.

3. Marginally acceptable—The application must demonstrate that the applicant has satisfied most of the PTA Program requirements during the most recent 12-month performance period. The cognizant administration activity's evaluation report must substantiate that the applicant has implemented most program requirements.

4. Unacceptable—The applicant has fulfilled few of the PTA Program requirements during the most current 12-month performance period. The cognizant administration activity's evaluation report must substantiate that the applicant has an inadequate program.

Note: Limit this discussion to 4 single-spaced, type-written pages.

B. Management

Each applicant will be evaluated on its management approach to successfully implement the PTA Program. The applicant shall describe the methods and procedures it plans to employ to manage the PTA Program in an efficient and effective manner. The applicant's approach will be rated to determine the degree of experience offered and the likelihood of successful management under the concept proposed. In addition, the evaluation will include an assessment of the overall strength and soundness of the organization. The following criteria will be used to evaluate the application:

1. Highly acceptable—The applicant has fully demonstrated that the techniques and methodology it intends to employ will enable it to exceed all PTA Program requirements during the period of performance.

2. Acceptable—The applicant has demonstrated that the techniques and methodology it intends to employ are adequate and that its management approach will enable it to satisfy all PTA Program requirements.

3. Marginally acceptable—The applicant has minimally demonstrated that the management techniques and methodology it intends to employ will satisfy most of the PTA Program requirements.

4. Unacceptable—The applicant has not demonstrated an adequate understanding of the management techniques and methodology needed to successfully operate a PTA Program and satisfy requirements.

Note: Limit this discussion to 3 single-spaced, type-written pages.

C. Technical Qualifications

Each applicant will be evaluated on the qualifications of its personnel regarding the number of years of procurement experience, including government and industry experience, procurement related training, and education. The applicant must describe how its personnel fulfills these requirements. The following criteria will be used to evaluate the application:

1. Highly acceptable—The majority of the applicant's professional personnel have at least four years of acquisition experience; a baccalaureate degree, preferably in business related subject; and, have experience in operating a PTA Center or equivalent type organization.

2. Acceptable—The majority of the applicant's professional personnel have at least two years of acquisition experience; a baccalaureate degree, preferably in business related subject; and, have experience in operating a PTA Center or equivalent type organization.

3. Marginally acceptable—The majority of the applicant's professional personnel do not have more than one year of acquisition experience; have a baccalaureate degree, preferably in business related subject; and, have at least some experience in operating a PTA Center or equivalent type organization.

4. Unacceptable—The majority of the applicant's professional personnel do not have at least one year of acquisition experience; do not have a baccalaureate degree; and, have no experience in operating a PTA Center or equivalent type organization.

Note: Limit this discussion to 2 single-spaced, type-written pages.

D. Service Area (geographic and demographic characteristics)

Each applicant will be evaluated on the population base the applicant identifies and the unemployment level in the area to be serviced. Demographic characteristics will be evaluated including the total population of the State and the percentage of the population to be served and the unemployment conditions in the area. The following criteria will be used to evaluate the application:

1. Highly acceptable—The applicant will service an area that consists of the lesser of either: (i) at least one million residents or (ii) at least 75% of the population of the State. In addition, the level of unemployment in the area to be serviced must be at least 1.25 times the national unemployment rate for the most recent 24 month period for which statistics are available.

2. Acceptable—The applicant will service an area that consists of the lesser of either: (i) at least five hundred thousand residents or (ii) at least 50% of the population of the State. In addition, the level of unemployment in the area to be serviced must be at least equal to the national unemployment rate for the most recent 24 month period for which statistics are available. In the event that the level of unemployment in the area to be serviced is at least 1.5 times the national unemployment rate for the most recent 24 month period for which statistics are available, then the number of residents to be serviced need only to exceed three hundred and fifty thousand.

3. Marginally acceptable—The applicant will service an area that consists of the lesser of either: (i) two hundred and fifty thousand residents or (ii) at least 25% of the population of the state. In addition, the level of unemployment in the area to be serviced must be at least equal to the national unemployment rate for the most recent 24 month period for which statistics are available. In the event that the level of unemployment in the area to be serviced is at least 1.5 times the national unemployment rate for the most recent 24 month period for which statistics are available, then the number of residents to be serviced need only to exceed one hundred and fifty thousand.

4. Unacceptable—The applicant will service an area that consists of neither: (i)two hundred and fifty thousand residents for areas where the level of unemployment in the area to be

serviced is less than 1.5 times the national unemployment rate for the most recent 24 month period for which statistics are available or one hundred and fifty thousand where the level of unemployment in the area to be serviced is at least 1.5 times the national unemployment rate for the most recent 24 month period for which statistics are available or (ii) at least 25% of the population of the State.

Note: Limit this discussion to 1 single-spaced, type-written page.

E. Cost Realism

Each applicant's response to this element will be evaluated for reasonableness and realism in managing cost. Implicit in the assessment is the need to demonstrate the relationship of the estimated overall program cost to the proposed level of performance. The applicant shall describe the measures intended to control, account for, and document relevant costs. For example, describe the ratio of program management cost to counselor cost and the ratio of program management cost to total program cost, with an objective of optimizing the percent of total program cost to be spent on direct counseling and assistance to clients. Unrealistic cost reflected in the application will be deemed indicative of the applicant's inability to perform the PTA Program. Such applications may also reflect lack of understanding of the complexity or the risks in scope of the requirement. As such, they will no longer be considered eligible for award.

The following criteria will be used to evaluate the application:

1. Highly acceptable—The applicant must demonstrate that its approach to cost management satisfies all PTA Program requirements in an above average manner.

2. Acceptable—The applicant must demonstrate that its approach to cost management is adequate to satisfy all PTA Program requirements.

3. Marginally acceptable—The applicant must demonstrate that it has the capability to satisfy the majority of the PTA Program requirements.

4. Unacceptable—The applicant has indicated through its response to this element that its cost management approach is inadequate to fulfill minimum PTA Program requirements.

Note: Limit this discussion to 1 single-spaced, type-written pages.

3–9 Cost Sharing Limitations

A. General program.

1. The DoD share of net program cost shall not exceed 50%, except in a case where an eligible entity meets the criteria for a distressed area. When the prerequisite conditions to qualify as a distressed area are met, the DoD share may be increased to an amount not to exceed 75%. In no event shall the DoD share of net program cost exceed $150,000 for programs providing less than statewide coverage or $300,000 for programs providing statewide coverage.

2. Consultant services provided by private nonprofit and/or profit making individuals, organizations or otherwise qualified business entities may be used to augment a cooperative agreement recipient's internal capabilities subject to the 10% total program cost limitation.

B. American Indian Program.

1. The DoD share shall not exceed 75% of net program cost or $150,000 for a program providing service on reservations within one BIA service area, or $300,000 for a program providing multi-area coverage.

2. Consultant services provided by private nonprofit and/or profit making individuals, organizations or otherwise qualified business entities may be used to augment a cooperative agreement recipient's internal capabilities subject to the 25% total program cost limitation.

C. The type and value of third-party in-kind contributions is limited to no more than 25% of total program cost. Third-party in-kind contributions shall meet the requirements set forth by subparagraphs 3–10E and 3–10F below.

D. Indirect cost and/or indirect rate used in the application are subject to downward revision only.

E. The applicant shall submit a copy of the current negotiated indirect rate memorandum issued by its cognizant Federal agency.

F. Indirect cost for educational institutions shall be limited to actual cost incurred for administration expenses and cannot exceed 26%.

3–10 Cost Sharing Criteria

A. Cost contributions may be either direct or indirect costs, provided such costs are otherwise allowable in accordance with the applicable cost principles. Allowable costs which are absorbed by the applicant as its share of costs may not be charged directly or indirectly or may not have been previously charged, in part or in whole, to the Federal Government under other contracts, agreements, or grants.

B. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant.

C. Program income or other Federal funds, that are not authorized for use by Federal statute, (excluding loan guarantee agreements since these do not provide for disbursement of Federal funds) are not acceptable for use as the applicant's cost matching funds. Inclusion of other Federal funds in the program as part of total program cost is subject to authorization by Federal statute and the terms of the instrument containing such funds or written advice obtained from the agency awarding the Federal funds. Any Federal funds used by the eligible entity, other than the DoD PTA Cooperative Agreement Program funds, must be disclosed and identified in the eligible entity's proposal.

D. Neither costs nor the values of third party in-kind contributions may count toward satisfying a cost sharing or matching requirement of the SCAP if they have been or will be counted toward satisfying a cost sharing or matching requirement of another Federal grant, a Federal procurement contract, or any other award of Federal funds.

E. All applicant contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria; (1) are verifiable from the records of recipients, subrecipients, or cost-type contractors (these records must show how the value placed on third party in-kind contributions was derived and to the extent feasible, volunteer services must be supported by the same methods that the organization uses to support the allocability of regular personnel costs); (2) are not included as contributions for any other federally-assisted project or program; (3) are necessary and reasonable for proper and efficient accomplishment of the project or program objectives; (4) are allowable under the applicable cost principles; (5) are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching; (6) are provided for in the budget and (7) conform to other provisions for uniform administration requirements under the applicable OMB Circular.

F. Third party in-kind contributions may satisfy a cost sharing or matching requirement only when the payments would be allowable costs if the party receiving the contributions were to pay for them. Some third party in-kind contributions are goods and services that would have been an indirect cost if the recipient, subrecipient or contractor had been required to pay for them. Cost sharing or matching credit for such contribu- tions may be given only if the recipient, subrecipient or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

G. Where distressed funding (greater than 50%) is requested and the civil jurisdiction(s) which the applicant plans to service is both distressed and nondistressed, two budgets must be submitted identifying the anticipated distribution of total program cost between these two areas. In addition, the recipient's accounting system must segregate and accumulate costs in each of the two budget areas.

H. Recipients of PTA cooperative agreements are required to maintain records adequate to reflect the nature and extent of their costs and expenditures, and to ensure that their required cost participation is achieved.

3–11 Option To Extend the Term of the Cooperative Agreement

A. A SCAA will be issued every third fiscal year, i.e., 1996, 1999, etc. Cooperative agreements will be awarded for a base year with one or two option periods of twelve months each.

B. The awarding of a cooperative agreement for a base year with one or two option periods of twelve months each does not guarantee the recipient that an option(s) will be exercised. The Government at its sole discretion may elect not to exercise an option(s), to exercise an option(s) or to replace an existing program with either another existing or new start program. The determination to exercise or not to exercise an option will be made on a program by program basis. Duplicate coverage, the number of DLA funded PTA centers operating in a state and DoD funds available may be considered when deciding to or not to exercise an option.

C. An option may be exercised by the Government providing the recipient's:

1. Demonstrated performance is equal or better than that required by the base year or first option year cooperative agreement award and a satisfactory or better performance rating is received from the cognizant administrative contracting officer.

2. Technical capability is equal or better than that required by the base year or first option year cooperative agreement award.

3. Cost matching funds are available.

4. Five client success stories that resulted from the direct and exclusive effort of the PTA center are verified by the Government and—

5. No other new application(s) (existing or new start) are received by DLA that can provide similar or better services at a lower cost to the Government.

D. The Government shall give the cooperative agreement recipient a preliminary written notice of its intent to extend the cooperative agreement performance period no later than 120 calendar days prior to the end of the Government's current fiscal year (1 October thru 30 September). The preliminary notice does not commit the government to an extension. The Government may extend the effective period of the cooperative agreement by giving written notice to the cooperative agreement recipient no later than 105 calendar days after issuance of the preliminary notice.

E. New applications for cooperative agreements must be submitted no earlier than 1 April and received no later than 30 April of each calendar year. The application shall be prepared in accordance with the most recent solicitation for cooperative agreement application. Generally, awards will be made during the month of July.

1. Applications received prior to April 30, 1996, if selected to receive an award, will be awarded for a base year with two option periods of twelve months each.

2. Applications received prior to April 30, 1997, if selected to receive an award, will be awarded for a base year with one option period of twelve months.

3. Applications received prior to April 30, 1998, if selected to receive an award, will be awarded for a base year only.

4. The base year application submitted prior to 30 April 1996 or 1997, unless otherwise extended, must include separate SF 424s and SF 424As for the option year(s). Detailed budget information for the option year(s) is not required to be submitted with the base year application. However, the net program cost and geographic area of coverage shall be the same for the option period(s) as that provided for the base year.

F. The notice of award for the base year will provide funding for a 12-month period only. Option year(s) are subject to the availability of funds as set forth by the clause entitled "Availability of funds."

G. Option Year(s) requirements.

Upon receipt of the Government's preliminary written notice of its intent to extend, at least 120 calendar days prior to the end of the Government's current fiscal year, the cooperative agreement recipient that desires exercising of the option, shall prepare and submit, to the Grants Officer no later than 30 calendar days after receipt of the Government's preliminary notice, the following:

1. Completed SF 424A for the option year with a complete narrative justification for budgeted costs.

2. Completed goal work sheet.

3. Copy of its current negotiated indirect cost rate agreement, if there are any changes.

4. Certification of cost match.

5. Updated personnel form.

6. Five client success stories that resulted from the direct and exclusive effort of the PTA center.

7. The number of jobs generated and/or retained resulting from the procurement technical assistance provided by the recipient.

8. A summary of its most recent 12-month performance period, description of how its program satisfies the criteria set forth below and justification for any funds that were deobligated.

H. Evaluation of past performance will be a subjective assessment based on a consideration of all relevant facts and circumstances. The most recent copy of the contract administration activity's Evaluation Report must be provided.

1. Highly acceptable—The application must demonstrate a high degree of success in satisfying all PTA Program requirements during the most current 12-month performance period. The evaluation report must substantiate that the applicant has an above average program.

2. Acceptable—The application must demonstrate that the applicant has met all PTA Program requirements during the most recent 12-month performance period. The evaluation report must substantiate that the applicant has an adequate program.

3. Marginally acceptable—The application must demonstrate that the applicant has satisfied most of the PTA Program requirements during the most recent 12-month performance period. The evaluation report must substantiate that the applicant has implemented most program requirements.

4. Unacceptable—The applicant has fulfilled few of the PTA Program requirements during the most recent 12-month performance period. The evaluation report must substantiate that the applicant has an inadequate program.

Note: Limit this discussion to 3 single-spaced, type-written pages.

3–12 Administration

A. Cooperative agreements with state and local governments, nonprofit organizations and Indian economic enterprises will be assigned to the cognizant Defense Contract Management Command for administration. Cooperative agreements with educational institutions will be assigned to the Office of Naval Research for administration.

B. The organization having cognizance for postaward administration will periodically review the recipient's performance under the cooperative agreement to include:

1. management control systems;

2. financial management systems;

3. progress being made by the recipient in meeting its program requirements; and

4. compliance with certifications, representations and other performance factors. The cognizant Deputy for Small Business will be the focal point for the Administrative Contracting Officer for small business issues and for all recipient publication and training requests.

C. For recipients covered by OMB Circular No. A–102, Grants and Cooperative Agreements with State and Local Governments, or OMB Circular No. A–110, Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-profit Organizations, the administrative requirements specified in those circulars will apply.

D. Each state and local entity that receives Federal funding is required to have audits performed in accordance with the requirements of OMB Circular A–128. Nonprofit organizations and institutions of higher education are required to have audits performed in accordance with the requirements of OMB Circular A–133. Indian economic enterprises (for profit only) will have audits performed in accordance with the requirements of OMB Circular A–133. Recipients shall submit one copy of any audit report that results from any audit performed pursuant to the requirements of the PTA cooperative agreement to the Office of the Assistant Inspector General for Audit, Policy and Oversight, Office of the Inspector General, 400 Army-Navy Drive, Room 1076, Arlington, VA 22202–2884.

E. The following OMB Circulars will be used to determine allowable costs in performance of the program:

1. OMB Circular No. A–21, Cost Principles for Educational Institutions;

2. OMB Circular No. A–87, Cost Principles for State and Local Governments; and

3. OMB Circular No. A–122, Cost Principles for Nonprofit Organizations. This circular will also be used by for-profit organizations.

[FR Doc. 96–5062 Filed 3–4–96; 8:45 am]

BILLING CODE 3620–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 6, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 28, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Report of Children and Youth with Disabilities Receiving Special Education Under Part B of Individuals with Disabilities Education Act.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting Burden and Recordkeeping: Responses: 58; Burden Hours: 15,196.
Abstract: This package provides instructions and forms necessary for States to report the number of children with disabilities served under the Individuals with Disabilities Education Act (IDEA)-B receiving special education and related services. It serves as the basis for distributing federal assistance, monitoring, implementing, and Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Individuals with Disabilities Education Act, Part B, Implementation of FAPE Requirement.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting Burden and Recordkeeping: Responses: 58; Burden Hours: 198,418.
Abstract: This package provides instructions and forms for States to report the setting in which children with disabilities served under the Individuals with Disabilities Education Act (IDEA)-B receive special education and related services. The form satisfies reporting requirements in this area and is used to monitor SEAs and for Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Personnel Employed and Needed to Provide Special Education and Related Services for Children and Youth with Disabilities.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting Burden and Recordkeeping: Responses: 58; Burden Hours: 10,585.
Abstract: This package provides instructions and forms for States to report the number of personnel employed and needed in the provision of special education and related services. Data are obtained from state and local education agencies, and are used to assess the implementation of the Individuals with Disabilities Education Act (IDEA) and for monitoring, planning and reporting to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Report of Children and Youth with Disabilities Exiting Special Education During the 1996–97 School Year.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting Burden and Recordkeeping: Responses: 58; Burden Hours: 16,124.
Abstract: This package provides instructions and a form necessary for States to report the settings in which children with disabilities served under Individuals with Disabilities Education Act (IDEA)-B receive special education and related services. The form satisfies reporting requirements and is used by the Office of Special Education Programs to monitor SEAs and for Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Number and Type of Personnel Employed and Contracted and Additional Personnel Needed to Provide Early Intervention Services for Infants and Toddlers with Disabilities and Their Families.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting Burden and Recordkeeping: Responses: 58; Burden Hours: 13,596.
Abstract: This package provides instructions and forms necessary for States to report the number of personnel employed and needed in the provision of early intervention services for infants and toddlers with disabilities served under Individuals with Disabilities Education Act (IDEA), Part H. Data are obtained from state and local service agencies and are used to assess the implementation of IDEA and for monitoring, implementing, and Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: Forms Clearance Package for the Projects with Industry Program.
Frequency: Annually.
Affected Public: Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting Burden and Recordkeeping: Responses: 101; Burden Hours: 4,040.
Abstract: The purpose of collecting compliance indicator data on the Projects with Industry program is to comply with the Congressional mandate to assess project performances based on evaluation standards as established under the 1986 Rehabilitation Act Amendments.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Report of Infants and Toddlers Receiving Intervention Services in accord with Part H and Report of Early Intervention Services on IFSPS Provided to Infants and Toddlers and Their Families in Accord with Part H.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reported Burden and Recordkeeping: Responses: 58; Burden Hours: 2,378.
Abstract: This package provides instructions and forms necessary for States to report the number of infants and toddlers with disabilities served under Individuals with Disabilities Education Act (IDEA), Part H receiving early intervention services and the services provided as indicated on the Individualized Family Service Plan (IFSP). Data are obtained from state and local service agencies and are used to assess the implementation of IDEA and for monitoring, implementing, and Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Report of Program Settings Where Early Intervention Services are Provided to Infants and Toddlers with Disabilities and Their Families.
Frequency: Annually.
Affected Public: State, local of Tribal Gov't, SEAs or LEAs. *Reported Burden and Recordkeeping:* Responses: 58; Burden Hours: 928.
Abstract: This package provides instructions and forms necessary for States to report program settings where early intervention services are provided to infants and toddlers with disabilities served under Individuals with Disabilities Education Act (IDEA), Part H. Data are obtained from state and local service agencies and are used to assess the implementation of IDEA and for monitoring, implementing, and Congressional reporting.

Office of Postsecondary Education

Type of Review: New.
Title: Quick Response Information System (QRIS).
Frequency: One-time.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden: Responses: 4,308; Burden Hours: 3,228.
Abstract: This is a request for system clearance of the QRIS survey system which consists of the Fast Response Survey System (FRSS) and, as of Fall 96, the Postsecondary Education Quick Information System (PEQIS). FRSS primarily conducts surveys of the elementary/secondary sector and public libraries while PEQIS focuses on the postsecondary education sector. The FRSS and PEQIS were established (in 1975 and 1991 respectively) to meet quick turnaround data requests of Department of Education and others with requirements for education data that are not available elsewhere and are needed to formulate policy; to make legislative, budgeting, and planning decisions for existing programs; and to develop new programs. The surveys are characterize by short survey forms with short response time and typical sample sizes of around 1,000. It is anticipated that about five surveys will be conducted under QRIS this year.

[FR Doc. 96–5052 Filed 3–4–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Planning Guidance for Contractor Work Force Restructuring

AGENCY: Department of Energy.

ACTION: Notice of Interim Planning Guidance.

SUMMARY: The Department of Energy today publishes for public comment interim Planning Guidance that has been issued to Department of Energy field organizations and other components responsible for planning and implementing contractor work force restructuring at defense nuclear facilities and other DOE facilities. The Guidance includes procedures, interpretations, and policies that the field organizations should use in developing site-specific plans consistent with section 3161 of the National Defense Authorization Act for Fiscal Year 1993. The Secretary has decided that the section 3161 planning process should apply, to the extent practicable and allowed by law, to work force restructuring at all Department of Energy facilities.

DATES: Written comments (7 copies) are due on or before May 6, 1996. The Guidance is effective upon publication in the **Federal Register**.

ADDRESSES: Comments must be submitted to: U.S. Department of Energy, Office of Worker and Community Transition, WT–1, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Sullivan, U.S. Department of Energy, Washington, D.C. 20585, phone: 202–586–0452.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Energy (Department or DOE) has broad authority to develop generally applicable policies covering all aspects of defense nuclear facilities. The Atomic Energy Act, 42 U.S.C. 161(i)(3) and 2201(p). In addition, section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 U.S.C. 7274h, requires the Department to develop a plan for restructuring the work force at a defense nuclear facility whenever the DOE determines that a change in the work force is necessary. Defense nuclear facilities within the meaning of section 3161 include facilities conducting atomic energy defense activities involving production or utilization of special nuclear material, nuclear waste storage or disposal facilities, testing and assembly facilities, and atomic weapons research facilities. The Department has issued the Guidance published in this notice to assist field organizations in developing site-specific plans consistent with section 3161 and other applicable laws and is voluntarily publishing this Guidance for public comment. The Department intends to revise the Guidance periodically as appropriate in light of public comments and experience. Various inadvertent errors and possible ambiguities in the Guidance distributed on April 5, 1995, have been corrected and clarified in this version. One significant respect in which the Guidance has been clarified is to make it clear that all notices of involuntary reductions in force of more than 100 employees at a single site require specific Secretarial approval. Secretarial approval of a work force restructuring plan does not authorize a site to give involuntary separation notices without specific Secretarial approval for the involuntary separations, although specific Secretarial approval of the involuntary separations may be provided at the same time as approval of the plan. Section 3161 furthers President Clinton's "Putting People First" policy, which emphasizes the importance of conserving and efficiently redirecting the Government's valuable human resources from pursuit of the Cold War to new missions. Some DOE defense nuclear facilities are being downsized as a result of decisions to reduce the nuclear weapons stockpile and terminate production of nuclear weapons. Another major change at DOE defense nuclear facilities has been the increase in recent years in environmental restoration and waste management activities. At other defense nuclear facilities, work force modification is needed because of different kinds of shifts in the mission of the facility. Still other work force changes are the consequence of reductions in the Department's budget. The essential requirement of section 3161 is that the DOE must develop work force restructuring plans to minimize the social and economic impacts of work force changes at defense nuclear facilities.

Section 3161(c) sets forth six objectives that shall guide the Department in preparing a work force restructuring plan for a defense nuclear facility. First, changes in the work force at a DOE defense nuclear facility: (1) should be accomplished so as to minimize social and economic impacts; (2) should be made only after the provision of notice of such changes not later than 120 days before the commencement of such changes to such employees and the communities in which such facilities are located; and (3) should be accomplished, when possible, through the use of retraining, early retirement, attrition, and other options that minimize layoffs.

Second, employees whose employment in positions at such facilities is terminated shall, to the extent practicable, receive preference in any hiring by the DOE (consistent with applicable employment seniority plans or practices of the DOE and with section 3152 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 103 Stat. 1682)). Third, employees shall, to the extent practicable, be retrained for work in environmental restoration and waste management activities at DOE facilities.

Fourth, the Department should provide relocation assistance to employees who are transferred to other DOE facilities as a result of the plan.

Fifth, the Department should assist terminated employees in obtaining appropriate retraining, education, and reemployment assistance (including employment placement assistance).

Sixth, the Department should provide local impact assistance to communities that are affected by the restructuring plan and coordinate the provision of such assistance with (1) programs carried out by the Department of Labor pursuant to the Job Training Partnership Act (29 U.S.C. 1501 et seq.); (2) programs carried out pursuant to the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990 (Part D of Public Law 101–510; 10 U.S.C. 2391 note); and (3) programs carried out by the Department of Commerce pursuant to title IX of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3241 et seq.).

In establishing the Task Force on Worker and Community Transition on April 21, 1993, the Secretary of Energy directed that, for reasons of fairness, the planning process set forth in section 3161 should be applied, to the extent practicable and permitted by law, wherever work force restructuring takes place in the Department. On April 23, 1993, the Task Force issued draft General Planning Guidelines for Work Force Restructuring.

The formulation and execution of any work force restructuring plan is subject to the availability of appropriations, and differences in benefits provided at different sites or to defense and non-defense workers may reflect different levels of available funding.

II. Stakeholder Participation in Work Force Restructuring Planning

Pursuant to section 3161, all aspects of a defense nuclear facility work force restructuring plan, including the mix and level of benefits offered, shall be developed in consultation with affected DOE employees (including employees of Department contractors and subcontractors), representatives of collective-bargaining units of Department employees, interested Federal, State, and local government agencies, educational institutions and other institutions and groups in communities that will be affected by restructuring.

The Guidance provides that draft plans shall be distributed for stakeholder comment at appropriate points during the planning process. The Department will not approve Plans developed by field organizations unless there is a showing of meaningful stakeholder involvement in the planning process. The Guidance also identifies specific methods field organizations may use to obtain stakeholder input in the development of site-specific plans.

In addition to site-specific stakeholder involvement, the Department has involved stakeholders in work force restructuring policymaking at the national level. The Guidance published today reflects this extensive dialogue with stakeholders. Shortly after section 3161 was enacted, the Secretary of Energy established a Task Force on Worker and Community Transition to implement the new law and to address more generally the impacts of defense conversion. The Task Force held a National Stakeholders meeting on June 11, 1993, and published a report on July 29, 1993, that summarized issues raised by the stakeholders.

Based on continued stakeholder input and lessons learned from the ongoing development of site work force restructuring plans, the Department issued revised draft planning guidelines on March 24, 1994. Additional policy guidelines were subsequently included in a Report on the Department's Worker and Community Transition Program, issued by the Under Secretary on August 24, 1994. In September 1994, the Office of Worker and Community Transition replaced the Task Force and held a second National Stakeholders meeting on November 15–16, 1994. A third National Stakeholders meeting was held in Denver on April 20–21, 1995, and a fourth was held in Albuquerque on September 13–15, 1995. Another National Stakeholders meeting will be held in March 1996 in Atlanta.

III. The General Purpose of the Interim Guidance

The interim Guidance published today was prepared by the Department's Office of Worker and Community Transition to plan for and mitigate the impacts of changes in the Department's contractor work force. The Guidance was developed to assist DOE field organizations that are primarily responsible for developing section 3161 plans. The Guidance sets forth generally non-prescriptive procedures for coordinating Department activities related to section 3161 planning, and contains interpretations and policy statements to help DOE field organizations implement section 3161 consistently with applicable contract provisions and other laws and obligations of the Department.

IV. Request for Public Comment

Although not required by law, the Department has chosen to publish this revised interim Guidance for public comment so that all stakeholders and the general public have an opportunity to influence the general policies the Department is following during the section 3161 planning process. The Department will publish final Guidance with appropriate revisions in light of the public comments and experience with the interim Guidance.

Although the public is invited to comment on all aspects of the Guidance, the Department is especially interested in receiving views on the following provisions:

A. The "Trigger" or Threshold for Section 3161 Planning

Section 3161 directs the Department to develop a plan when it is determined that "a change in the work force at a defense nuclear facility is necessary," and to submit the plan to Congress. The Department has interpreted section 3161 to apply only where a change in the nature or structure of the work force may affect 100 or more employees at a site within a 12-month period. While a formal plan is not required below this threshold, the Department will consider the objectives of section 3161 during the planning process in such cases.

B. Hiring Preference for "Employees Who Participated in Efforts To Maintain the Notion's Nuclear Deterrent During the Cold War"

The Guidance lists several benefits which field organizations should consider offering displaced workers, taking into account the skills of the workers at the affected site, overall budget constraints, contractual provisions, applicable pension and other benefits plans, and other legal requirements and obligations. However, the Guidance directs field organizations to provide a specific benefit—a hiring preference—to employees who participated in efforts to maintain the Nation's nuclear deterrent during the Cold War. This class of employees, in whom the Department has invested heavily to develop skills important to the Nation, is defined as employees who were working for a DOE contractor on September 27, 1991, the day the first unilateral reduction of the Nation's nuclear weapons stockpile was announced, and who have continued to work for DOE since that date, as set forth in greater detail in the attached Appendix D of the Guidance, which has been revised to correct inadvertent omissions in Appendix G as originally distributed on April 5.

The Guidance provides that employees who participated in efforts to maintain the Nation's nuclear deterrent during the Cold War, whose employment is terminated involuntarily (except those terminated for cause) and who are qualified for the job at the time the work is to begin, shall receive preference in any hiring conducted by the DOE and its contractors and subcontractors (whose contracts equal or exceed $500,000 in value) to fill vacancies, to the extent practicable and consistent with veterans' preference, other applicable law, employment seniority plans, and other legally binding preferences or practices, as set forth in greater detail in Section V.A. of the Guidance.

Nothing in the Guidance is intended to obligate a contractor to hire an employee who is not qualified to perform the work. The preference is not applicable in situations where positions become available and existing employees are offered a right of first refusal to those positions, e.g., where one contractor has replaced another and existing employees are offered a right of first refusal to employment with the replacement contractor.

C. Retraining for New Missions Including Cleanup

Section 3161 directs the Department, to the extent practicable, to retrain employees for environmental restoration and waste management activities at the site of their employment or at other DOE facilities. Eligibility for retraining benefits is not limited to employees who have been terminated during a work force restructuring.

The Guidance provides, in the "General Guidance" section, that early in the planning process, an analysis should be made of the facilities' future mission and the work force skills and capabilities that will be needed to fulfill that mission. The analysis should compare those future requirements with the skills and capabilities of current workers at the facility to identify workers who possess critical skills that will be needed for the future mission and to determine the retraining that will be necessary to provide existing employees with these skills.

Accordingly, the "Specific Benefits for Consideration" section provides that work force planning should identify training needs and provide the training to prepare the existing work force for the DOE's new missions (including environmental restoration and waste management). Furthermore, this section recommends a standard for determining whether retraining of employees for new missions, including cleanup, should be considered "practicable" under section 3161(c)(3). The recommended standard is that the training should be aimed at jobs for which (1) vacancies are expected in the near term and (2) training of current employees to fill those vacancies can be completed

within not more than six months at a cost of not more than $10,000. (This training is different from the educational assistance provided for separated employees.)

V. Opportunity for Public Comment

Interested persons are invited to participate in this proceeding by submitting data, views, or comments with respect to today's notice.

Seven copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. Comments should be identified on the outside of the envelope and on the documents themselves with the designation "Contractor Work Force Restructuring Guidance." In the event any person wishing to provide written comments cannot provide 7 copies, alternative arrangements can be made in advance with the Department.

All comments received will be available for public inspection as part of the administrative record on file for this matter in the Department of Energy Freedom of Information Office Reading Room, IE–090, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202–586–6020, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on February 1, 1996.

Robert W. DeGrasse, Jr.,

Director, Office of Worker and Community Transition.

Interim Planning Guidance for Contractor Work Force Restructuring

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Interim Planning Guidance for Contractor Work Force Restructuring

I. Introduction

This planning guidance was prepared by the Department of Energy's Office of Worker and Community Transition (the Office) to plan for and mitigate the impacts of changes in the Department's contractor work force. The Office is directed to assure fair treatment of all concerned, while at the same time recognizing the unique conditions at each site and in each contract.

This guidance replaces guidelines issued by the Task Force on Worker and Community Transition on March 24, 1994. It is a product of the Department's experience over the past 2 years, and an extensive process of stakeholder and public involvement in shaping our worker and community transition policies. This process included national meetings on June 11, 1993, and on November 15 and 16, 1994. Comments were solicited from the public on a report, issued by Under Secretary Charles B. Curtis on August 24, 1994. Comments were also solicited on earlier versions of this guidance issued on April 22, 1993, and March 24, 1994. Additional stakeholder meetings were held on April 20 and 21, and September 13 through 15, 1995.

This guidance contains revisions and technical corrections to the document originally distributed on April 5, 1995. The Office intends to revise this interim guidance from time-to-time as warranted, based on comments received through notice and publication in the **Federal Register**, and other stakeholder comments and consultation.

Except where otherwise noted, this guidance is not prescriptive. Cognizant field organizations have responsibility for planning work force restructuring. The Department's field organizations are in the best position to conduct full consultation with affected stakeholders on these plans and to understand the unique needs of work force restructuring at field facilities. Points-of-contact at each field organization are listed in Appendix A.

II. Legislative Provisions

On April 21, 1993, Secretary of Energy Hazel R. O'Leary created a task force "to coordinate worker and community transition assistance as the Department goes through periods of changing priorities." In large measure, the task force was created to implement section 3161 of the National Defense Authorization Act (the Act) for Fiscal Year 1993. For reasons of fairness, the Secretary directed that the process set forth in section 3161 should be applied to the extent practicable wherever work force restructuring takes place in the Department.

Section 3161 requires the Secretary of Energy to develop a plan for restructuring the work force for a defense nuclear facility whenever there is a determination that a change in the work force is necessary. The plan is to be developed in consultation with local, state, and national stakeholders, and submitted to Congress 90 days after notice of a planned work force restructuring has been given to the affected employees and communities. A work force restructuring plan must be updated annually and should include an evaluation of the implementation of the plan during the preceding year.

Section 3161 of the Act provides specific objectives to guide the preparation of the plan to minimize worker and community impacts. The plan should provide at least 120 days notice to employees and communities prior to beginning any involuntary separations. Reductions should be accomplished, when possible, through use of retraining, early retirement, attrition, and other options that minimize layoffs. To the extent practicable, the Department should offer a hiring preference to involuntarily separated employees. Employees should, to the extent practicable, be retrained for work in environmental restoration and waste management. Employees transferred to other Department facilities should receive relocation assistance. Terminated employees should be assisted in obtaining reemployment assistance, including Out placement services, appropriate retraining and education opportunities. The Department should provide local impact assistance to affected communities. Relevant sections of the Act are available from the sources listed in Appendix B.

Pursuant to section 3163, "defense nuclear facilities" for the purposes of section 3161 include the following types of facilities under the control or jurisdiction of the Secretary of Energy: atomic energy defense facilities involving production or utilization of special nuclear material; nuclear waste storage or disposal facilities; testing and assembly facilities; and atomic weapons research facilities. Department of Energy facilities that have been determined to be defense nuclear facilities for the purposes of section 3161 are listed in Appendix C.

III. General Guidance

All work force changes, regardless of cause, should be managed by the cognizant field organization consistent with the objectives of section 3161 of the Act, and DOE Order 3309.1A covering Reductions in Contractor Employment.[1] Each plan should be developed by the field organization consistent with budget constraints, contractual provisions or other obligations. All aspects of a plan, including the mix and level of benefits offered, should be developed in consultation with the stakeholders at the affected facility, and other appropriate stakeholders to ensure, among other things, the judicious expenditure of public funds. The Office encourages field organizations to utilize the combination of work force restructuring mechanisms that will most effectively accomplish the restructuring objectives.

A. Threshold for Plans

Work force restructuring plans should be developed where changes in the nature or structure of the work force may affect 100 or more employees at a site within a 12-month period. Even when a full plan is not required, the objectives of section 3161 should be followed, to the extent practicable within available resources. While the objectives of section 3161 should be considered in cases of smaller reductions, the formal process required by the law is not necessary. Approval from the Office and the responsible program and funding office should be received before any work force change is implemented.

[1] Order 3309.1A is being revised to incorporate the requirements of section 3161 of the Act and the organizational changes resulting from the creation of the Office of Worker and Community Transition.

B. Timing of Plans

Upon determining that a change in the work force is necessary, the appropriate field organization should immediately begin planning for the restructuring, and develop a schedule for preparing a work force restructuring plan, if required. One of the objectives of the Act is to give at least 120 days notice to the employees before involuntary layoffs begin. Although a 120-day advance notification may not always be possible, every effort should be made to meet or exceed this important objective. Field organizations should work with the Office to develop a schedule for plan development that meets the needs of the site. The work force planning described below should occur on a timeline that supports this advanced notification objective, to the extent practicable.

C. Work Force Planning

The Office is developing an integrated process for a work force planning system, pursuant to the Secretary's direction. In the interim, we will employ the best possible work force planning practices available, consistent with the objectives set forth below.

Developing a baseline assessment of the skills and capabilities of the current work force should be the initial step in the work force planning process. Field organizations should then consider the future missions and budget estimates to project the required work force skills needed to achieve the desired outcomes. Strategies should be developed for making the transition from the current baseline to the projected need, including retraining, voluntary separation incentives, and reductions-in-force. Particular attention should be directed to ensuring that workers with critical skills are retained.

D. Local Impact Assistance to Communities

The work force restructuring plan should be developed in coordination with, and in support of, the economic development objectives of nearby communities. Therefore, local officials and institutions involved in mitigating social and economic impacts anticipated to be caused by the Department's actions should be consulted in development of the plan. The plan should provide demographic and skills information about the affected work force, as well as other data that could help frame the community's economic development challenges and options. It should also discuss benefits, such as education and training, that will be provided to eligible employees that can augment community-based economic development initiatives. Finally, it should address ways the Department can support local business creation, expansion, and attraction activities. Separate guidance was issued August 24, 1994, on economic development efforts that may be supported by the Worker and Community Transition Program. Copies of this guidance may be obtained from the Office.

E. Stakeholder Input to Plans

Consultation with local, State, and national stakeholders, as well as State and local Government officials, is an essential element of the work force restructuring process. Input should be solicited and given consideration at appropriate points throughout the development of plans for work force restructuring. When possible, the Office recommends that field organizations make this Interim Planning Guidance available to their stakeholders in advance of the 120-day notification. This will give stakeholders a perspective on the parameters within which plans are prepared.

F. Role of Counsel

Work force restructuring raises many legal issues under a wide variety of statutes. Failure to comply with applicable laws can have significant consequences for both the Department and its contractors. It is therefore essential that counsel be involved in the formation and execution of the plans. Failure to present properly structured plans to the Office can result in delay and increased cost. Therefore, field organizations should include counsel as a member of the planning team.

G. The Role of DOE Contractors

While the Department may seek the assistance of its contractors in developing work force restructuring plans, the plans are Department of Energy products. In general, it is the Department's policy to make information available to the public that is available to the operating contractors and has bearing on the plans, unless such information is protected by law or regulation.

Department contractors are not identified by section 3161 of the Act as stakeholders who must be consulted in the preparation of work force restructuring plans. The exclusion of these contractors would be inappropriate, however, as they may be the principal resource of institutional knowledge on many restructuring issues, and may be the only source for certain information necessary for

preparing a plan. They are the employers of the affected employees and are generally the administrators of the pension and other benefit plans involved. They are responsible for fulfilling their obligations to bargain with the collective-bargaining representatives of their employees regarding changes in contracts, pension plans, other benefits, and any other mandatory bargaining issues necessitated by the restructuring plan, as well as for obtaining any waivers of claims or reemployment appropriate in any given situation. However, the Department is responsible for developing the plans.

H. Approval of Plans

By law, the Secretary submits work force restructuring plans to Congress, and thus is the official responsible for final approval. Involuntary separations should be carried out consistent with DOE Order 3309.1A, which requires prior notification to Headquarters. All notices of involuntary separation that affect more than 100 management and operating (M&O) employees at a single site require Secretarial approval. Early retirements and other voluntary separations may begin before final plan approval, after written approval by the Office, in order to reduce the number of involuntary layoffs. Draft plans should be submitted to the Office for concurrence prior to their release to stakeholders.

I. Plan Updates

Within a year of a work force restructuring plan's submission to Congress, or earlier if events suggest that it would be appropriate, the cognizant field organization should submit an update of the plan to the Office for the Secretary's approval and submission to Congress. The plan update, which is required by law, should evaluate the plan's implementation, including the number of workers receiving each benefit and the overall cost, and cost per participant of that benefit, together with information on retraining of retained employees, and subsequent reemployment of displaced workers. These plan updates should be provided to the Office for submission to the Congress even when a new plan is under development.

J. Funding for Plans

Limited funds are available for implementing the objectives of section 3161 of the Act for defense nuclear facilities, including economic development assistance. Funding for work force restructuring plans at facilities other than defense nuclear facilities should be sought from the program responsible for the activities subject to the work force restructuring. Likewise, benefits for workers at defense nuclear facilities affected by the changes due to business or efficiency decisions should be sought from the appropriation of the program making the change. These decisions include initiatives such as privatization, commercialization and reductions aimed at achieving improved efficiency.

The allocation of funds to mitigate the impact of restructuring on the workers decreases the funds available for continuing program responsibilities and economic development. No "standardized" allocation of funds is contemplated as it is highly unlikely that the needs of any two work forces and communities undergoing a restructuring would be the same.

IV. Specific Benefits for Consideration

After work force planning has identified the classifications of workers at risk, consideration of specific benefits to mitigate involuntary separations should take into account available funding and the status of affected employees. In implementing the objectives of section 3161 of the Act, the Department recognizes a special responsibility to minimize the impact of work force restructuring on employees who were employed before September 27, 1991, the day President Bush announced the first unilateral reduction of the Nation's nuclear weapons stockpile, and the date the Department has chosen as the end of the Cold War. Appendix D contains the job attachment test that has been developed for determining those employees who participated in efforts to maintain the Nation's nuclear deterrent during the Cold War.

In developing a work force restructuring plan, the following benefits may be considered for affected workers. If adopted, specific offers and conditions should be described in the plan.

A. Early Retirement

The potential loss of employees with skills critical to achieving Departmental missions is a primary consideration in determining the appropriateness of early retirement incentives. When early retirement incentives are offered, it has generally been the Department's practice that the incentives are made available to all eligible employees. It is legally permissible to limit benefits by reasonable, objective categories such as job classification if such limitations do not give rise to unlawful discrimination or disparate impact of any kind. Enumeration of employees by name, or criteria having substantially the same effect, is not generally considered reasonable, unless the employer has utilized written, objective and neutral criteria in the selection process. Early retirement incentive programs must be consistent with applicable contracts.

All proposed retirement incentives including lump sum payments, additional years of service or reduction in age penalties, should be analyzed with respect to the likely candidates to accept, and potential effects on critical skills. Employee Retirement Income Security Act (ERISA), Age Discrimination In Employment Act (ADEA), and other related legal concerns must be considered and resolved early in the process. It is essential that proposed early retirement programs receive appropriate actuarial validation establishing that they do not result in discrimination in favor of highly compensated employees within the meaning of the Internal Revenue Code, or in discrimination on the basis of any protected category of employees with respect to employment laws such as ADEA, Title VII of the Civil Rights Act, and the Americans with Disabilities Act.

Employees receiving an incentive to retire should not receive educational assistance or relocation assistance. It is anticipated that the value of early retirement incentives will exceed the value of the benefits provided to other separating employees. Any lump sum incentives paid to retirees in lieu of pension formula enhancements may not exceed his or her previous year's salary consistent with Department of Energy Acquisition Regulation Part 970.3102–2(1)(6) and Federal Acquisition Regulation Part 31.205–6(j)(7).

The cognizant field organization should adopt as part of its plan mechanisms to ensure that individuals accepting an early retirement incentive are not inappropriately rehired. Such mechanisms could include post-employment restrictions, requiring repayment of the incentive, and limiting the number of waivers of any such restrictions for critically skilled individuals.

B. Voluntary Separation Incentives

Voluntary separations may be encouraged by offering severance, or enhanced severance payments. Applications for voluntary separation may be refused in order to preserve critical knowledge or skills. Those volunteering for separation may be offered educational assistance, and relocation assistance, and they may receive Displaced Workers Medical Benefits.

The cognizant field organization should adopt as part of its plan mechanisms to ensure that individuals accepting a voluntary separation incentive are not inappropriately rehired. Such mechanisms could include post-employment restrictions and require repayment of the incentive upon rehire. Individuals with critical skills should not be offered voluntary separation incentives unless sufficient personnel are available to fulfill mission requirements.

C. Educational Assistance for Separated Employees

Educational assistance should be considered for employees being voluntarily or involuntarily separated, except for employees accepting early retirement incentives. It is recommended that tuition assistance, and other reasonable and necessary educational expenses, be limited to not more than a total of $10,000 over a period of not more than 4 years.

D. Relocation Assistance

Relocation assistance should be considered for workers being terminated and for those voluntarily separating, except for employees accepting early retirement incentives. Such assistance should particularly be considered for employees involuntarily separated who are hired at other Department facilities, but who do not qualify for relocation assistance under the hiring contractor's policies. It is recommended that relocation assistance include actual and reasonable expenses for transportation, movement of household goods, and temporary living accommodations within a range of $2,000 to $5,000.

E. Retraining for New Missions Including Cleanup

Work force planning should identify training needs and provide such training to transition the existing work force to new missions as early in the process as possible. The Office recommends that all retraining for cleanup or other missions meet the following practicability test: the training should be aimed at jobs for which vacancies are expected in the near term; and the training should be able to be completed within a reasonable time-frame in relationship to those vacancies (not more than 6 months), and at a reasonable cost (not to exceed $10,000). The suggested $10,000 cap includes tuition, course materials and related instructional costs, but not trainee salaries.

F. Displaced Workers Medical Benefits

Displaced Workers Medical Benefits, while not specifically mentioned in the objectives of section 3161 of the Act, should be offered to all employees of M&O or other prime contractors to the Department as an extension of current medical benefits eligibility. Department of Energy Acquisition Letter No. 93–4, dated April 7, 1993, establishes guidelines for implementing this program.[2]

Eligible employees include voluntarily and involuntarily separated employees of M&O contractors who are not otherwise eligible for such coverage under another program. Under certain circumstances, an employee may be able to continue coverage, at the employee's expense, for pre-existing medical conditions excluded from coverage under another plan for which he or she becomes eligible. Retirees who are provided medical coverage through retirement programs or Medicare are not eligible for this program.

During the first year following separation, the contractor will continue to pay its portion of the former worker's medical premium, and the former employee will pay his or her normal share. During the second year, the former employee will pay half of the Consolidated Omnibus Budget and Reconciliation Act (COBRA) rate. During the third and subsequent years, the former employee will pay the full COBRA rate.

V. Mandatory Benefits

The benefits described below must be offered to eligible employees:

A. Preference in Hiring

Section 3161 of the Act provides that, to the extent practicable, terminated employees at a defense nuclear facility should receive preference in filling vacancies in the work force of the Department of Energy and its contractors and subcontractors. The Department has determined that employees must be identified as having helped maintain the Nation's nuclear deterrent during the Cold War in order to qualify for this preference. The preference should be honored by all prime contractors, and by subcontractors whose contracts with the Department equal or exceed $500,000 in value.

The Department has established the following criteria for determining eligibility for the hiring preference: the individual must be a former employee (1) who was involuntarily terminated (except if terminated for cause); (2) who meets the eligibility standards in Appendix D; and (3) who is qualified for the job at the time the work is to begin. Where qualifications are approximately equal, eligible individuals will be given preference in hiring. However, the preference will be administered consistent with applicable law, regulation, or executive order, and collective bargaining agreements. This preference is not immediately applicable in situations where positions become available through an outsourcing action or follow-on contract in which the current employees should first be offered their same or similar job with the replacement contractor in order to avoid a layoff.

An individual's hiring preference continues until termination by the action (or inaction) of that individual. Initially, and on an annual basis thereafter, eligible individuals must certify their desire to retain their hiring preference. The Office has developed a Preference in Hiring Eligibility Form for this purpose (Appendix E) which eligible individuals should submit to their DOE field organization. Actions that would terminate an individual's hiring preference include: voluntary termination or termination for cause from a position that was obtained through the exercise of the preference, or failure to comply with the annual certification requirement.

The Department developed the Job Opportunity Bulletin Board System (JOBBS) to simplify implementation of the hiring preference by eligible individuals, and by contractors and subcontractors. Those individuals who have applied for and have been determined to be eligible for the preference may have their résumés entered into JOBBS where they will be specifically identified as job seekers with hiring preference. Companies doing new hiring for Department of Energy work should place job announcements into JOBBS. Contractors and designated subcontractors (those whose DOE contracts equal or exceed $500,000 in value) will be instructed by the cognizant field organization to first seek eligible workers among those with the hiring preference listed in JOBBS. All other subcontractors should be encouraged to use JOBBS when hiring for DOE work. Eligible individuals who

[2] Subsequent to the issuance of Acquisition Letter No. 93–4, the Displaced Medical Benefits Program was expanded by memoranda to field organizations dated August 12, and December 2, 1993. The Department is currently revising Acquisition Letter No. 93–4 based on these memorandums. All separating employees of M&O contractors who were eligible for medical benefits prior to their separation from employment are eligible for continued coverage under the Displaced Workers Medical Benefits Program regardless of whether they meet the section 3161 job attachment test.

do not want to enter their résumés into JOBBS are responsible for informing potential employers of their preference.

Each field organization should develop procedures to ensure that the hiring preference is being honored by all prime contractors and designated subcontractors. The procedures should state that eligible individuals have the responsibility to: (1) Apply for the preference by submitting the Preference in Hiring Eligibility Form to the DOE field organization along with any necessary documentation for verification of their eligibility; (2) inform potential employers of their preference status; and (3) certify their continuing status through annual submission of the Preference in Hiring Eligibility Form. Field organization procedures should also describe how JOBBS can be used by eligible individuals to help fulfill these responsibilities and to aid their search for job openings that should honor the preference. The procedures may establish criteria for use by hiring contractors who must choose among eligible workers who are equally qualified for the same job opening. One example would be assigning a higher priority to candidates within commuting distance of the new job. The procedures should also describe how potential disputes will be resolved. The Office will review the field organization procedures. The procedures should be posted where other material of worker interest is normally posted, such as employee bulletin boards.

The Department encourages negotiation to incorporate the hiring preference by agreements for division of work and arrangements for accommodations of internal union rules that might otherwise be obstacles to implementation of flowdown of the hiring preference to applicable subcontracts. Field organizations may facilitate implementation of the hiring preference by developing subcontract award criteria or performance measures and related fee incentives based on the hiring preference.

B. Construction Worker Benefit

Construction wage rates and benefits are structured to take into account the intermittent nature of construction work. In recognition of this, early plans generally limited benefits for construction workers to tuition assistance, outplacement support, preference in hiring and relocation assistance. However, it has been noted that many construction workers have maintained long-term relationships with the Department, and structured their lives around work at our facilities. Many of these relationships, which had been expected to continue, have been terminated as the general level of construction work declined following the end of the Cold War.

The Department has determined that construction workers who meet the job attachment test (Appendix D) may elect to receive a one-time benefit. In return for that benefit, these construction workers, like other employees, may be required to waive the hiring preference. The one-time benefit should be consistent with the employer's established separation pay benefit, if applied, but should not exceed 6 weeks at base pay rates. The specific amount of this benefit, as well as other benefits for construction workers should be defined during the plan development and stakeholder consultation process. The Office does not suggest that special payments should be made into either pension or health and welfare benefits funds for these workers. The Office does not view this special benefit as a precedent-setting action for the construction industry since this benefit carries out the intent of legislation that uniquely applies to the Department of Energy's Federal, contractor and subcontractor work force.

Construction workers who receive the special benefit should be restricted from employment at a Department facility for a period not less than the period equal to the salary value of the benefit without specific approval of the Department or pro rata repayment of this benefit.

VI. Administrative Procedures

This section describes the administrative procedures that should be followed in developing a new work force restructuring plan or for modifying an existing plan.

A. 120-Day Notification

Field organizations should notify workers and communities of impending work force restructuring at least 120 days prior to making any involuntary separations. The cognizant field organization should issue a general announcement to all employees, employee representatives, and to the community at large that work force changes are required at the facility. The draft announcement should be coordinated with the Office. We will seek concurrence from Congressional, Public, and Intergovernmental Affairs and the appropriate program offices. Field organizations should allow at least 1 week for Headquarters approval of 120-day announcements.

It is important that the notice emphasize that the estimate of employees affected set out in the 120-day notice is a good faith estimate based on the information available at the time. The notice is the beginning of a downsizing process; this process and the related budget issues are necessarily fraught with uncertainties, making it difficult to predict the exact number of employees that will be affected. It is recognized that a 120-day notification may not be practicable under certain extraordinary circumstances; however, as much advance notice should be given as possible.

B. Develop Baseline Data

Field organizations should establish and maintain a baseline employment database that categorizes the total number of personnel employed on-site by contractor, program funding source and skill mix. As a basis for categorizing skills, the Office encourages field organizations to utilize the Common Occupational Classification System to ensure consistency across the Department. The baseline should also contain the number of people employed on a temporary or intermittent basis, and by subcontractor or support service contractors. Field organizations should provide this information to the Office on a quarterly basis. Field organizations are responsible for carrying out the data collection and analysis. Once the baseline information is established, the Office intends to conduct an independent audit to ensure data reliability, as appropriate in particular circumstances.

C. Analyze Mission Requirements

Field organizations should analyze, and revise as necessary, future mission requirements and the work force skills required to carry out those missions. Appropriate program offices are responsible for defining the parameters of the future missions. New or modified work force restructuring plans should include a detailed description of the methodology and analysis used to define the work force necessary to execute the missions.

D. Identify Positions Excess to Future Requirements

Based on the current work force, and the work force necessary to carry out future missions, the plan should identify the classification of employees that should be:

1. Retained because they possess critical skills;
2. Retained with little or no retraining;
3. Retained with appropriate retraining; and
4. Considered for voluntary separation incentives.

The analysis should also identify those job skills that are unlikely to be satisfied by existing workers.

E. Stakeholder Involvement

Early involvement of stakeholders in developing a work force restructuring plan is essential to identify and address issues and concerns that might impede the implementation of the plan. Stakeholders should also be given appropriate opportunity to comment on drafts of any new or modified work force restructuring plan as soon as the draft plan has been cleared by the Office for release to the public. The Office will endeavor to concur on draft plans within 2 weeks of submission.

Stakeholder input may be received at public meetings, or through written or oral comments. Comments and suggestions of all stakeholders are important and should be considered in developing the final plans and incorporated where appropriate. For those comments and suggestions not incorporated in the draft plans, a brief explanation of the reason for not doing so should be documented. Every effort should be made to make the plan approved by the Secretary available to each stakeholder who commented on an earlier draft of the plan. A discussion of stakeholder involvement should be included as part of each plan.

F. Develop Voluntary Separation Program

After appropriate work force planning has been completed, field organizations should consider voluntary separation incentives to facilitate work force transition. Voluntary incentives must be approved in writing by the Office. Such approval can be sought, and the incentive can be offered, prior to completion of any new or modified work force restructuring plan.

Retirement incentives, accompanied by the appropriate analysis, should be presented for approval to the Office. The Office will coordinate analysis and evaluation of proposals with the Office of Procurement and Assistance Management, the Office of General Counsel, and the program office. Employees being offered early retirement or voluntary separation incentives must receive sufficiently specific information to satisfy ERISA requirements.

Early retirement incentives will be evaluated for their consistency with maintaining critically needed skills and any request should include a full justification in conformance with this requirement. Field organizations should provide an assessment of the costs and benefits of the proposed voluntary incentives, particularly in work force transitions designed to increase organizational efficiency. Field organizations should plan to provide at least 2 weeks for review by the Office and appropriate headquarters organizations.

Voluntary separation programs should not be offered to employees at the same time as early retirement programs, except in special circumstances and with prior approval. Voluntary incentive programs should be completed prior to any involuntary separations.

In exchange for the enhanced benefits employees receive in a voluntary separation program, it is the Department's policy to obtain from employees who separate under such a program a release of claims related to their employment and separation. The Department has adopted a model form of release, which is provided in Appendix F. Variations from the model may be required by state law or other special circumstances. However, departures from the model will require Department approval, including from the Office of General Counsel.

G. Plan Approval

The Office will coordinate the appropriate review by other Headquarters offices before concurring with plans or approving requests to implement voluntary incentive programs. In general, the Office will seek review from the affected program office, General Counsel, Field Management, and Human Resources and Administration. Field organizations should allow 1 month for Secretarial approval of final Work Force Restructuring Plans.

Thirty copies, plus 1 reproducible master, of the final plan should be submitted to the Office for subsequent submission by the Secretary to the appropriate Congressional committees and delegations from affected States. The responsible field organization should also make distribution to interested local stakeholders, and to the points-of-contact at each cognizant field organization. The Office will make additional copies, if necessary, from the master for distribution within Headquarters and to interested national stakeholders.

H. Involuntary Separation

In general, involuntary separation notices may not be given until after Secretarial approval. The notices should identify the specific numbers and job titles to be laid off. Each affected individual should be notified of his or her termination. Involuntarily separated employees shall be fully advised of any benefits or services for which they are ellgible. Appropriate labor representatives should be notified and letters prepared for local, county and state governments.

If layoffs are required that fall under the provisions of the Worker Adjustment and Retraining Notification Act (WARN), the employers must give the affected employees written notice of the layoffs at least 60 days prior to the date of the intended layoff. Employers may conduct the involuntary layoff by providing written notice to the affected employees that their termination date will occur 60 days thereafter. Compensation will continue during the 60-day period following the notice and where appropriate, employees may be excused from some or all duties during that period. If, during the 60-day period, an employee successfully obtains new employment, the employee must terminate the current employment relationship before beginning the new job, at which time the remaining salary payments shall cease. If this salary was paid in a lump sum, the pro rata share attributable to the period after the employee commences the new employment should be repaid. Repayment terms should be established within the restructuring plan and explained to employees during the exit interview process.

As a goal, all affected employees should receive their individual notification 60 days before layoff. When this is not possible, and the work force change is not subject to the provisions of the WARN Act, affected workers should receive as much layoff notice as practicable, but not less than 14 days. Intermittent workers are terminated when their work is completed.

I. Outplacement Assistance

Field organizations may provide Out placement assistance (including training and education) to voluntarily separated employees as soon as they exercise that option, and to involuntarily separated employees as soon as they are notified. Appropriate outplacement assistance can also be made available to employees who may be at risk after the 120-day announcement has been made. Out-placement assistance should be planned in advance and should be appropriate in light of the number of employees expected to need such assistance. Field organizations are encouraged to track the employment, education, and insurance status of displaced workers for at least 1 year after separation.

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J. Budgeting for Plans

Plans must include a budget estimate for each initiative or benefit planned for mitigating impacts on workers. Budget estimates should be based on a realistic projection of the number of workers who will participate in each initiative and reflect the best cost estimates available. Estimated incremental costs to pension funds for early retirements should be based on actuarial estimates. It is not acceptable to request funds based simply on maximum possible participation in each initiative or benefit. For planning purposes, an average cost of $15,000 to $25,000 per position eliminated is a reasonable range for guiding decisions about the range of benefits offered. Where work force restructuring is justified by business efficiency decisions, the budget estimates should be accompanied by savings estimates and the proposed use of those savings. In general, funding authorizations will be made following final approval of a plan. Funding authorizations for certain initiatives, such as those encouraging voluntary separations, may be made earlier.

Appendix A—Office of Worker and Community Transition Contacts

Director:
Bob DeGrasse—202–586–7550, FAX 586–8403
Deputy Director:
Terry Freese—202–586–5907, FAX 586–8403
Work Force Restructuring:
Terry Freese—202–586–5907, FAX 586–8403
Lew Waters—202–586–4010, FAX 586–8403
Work Force Planning:
Debby Swichkow—202–586–0876, FAX 586–8403
Lew Waters—202–586–4010, FAX 586–8403
Labor Relations:
Lyle Brown—202–586–0431, FAX 586–8403
Deborah Sullivan—202–586–0452, FAX 586–1540
Community Transition:
Bob Baney—202–586–3751, FAX 586–1540
Mike Mescher—202–586–3924, FAX 586–1540
Debby Swichkow—202–586–0876, FAX 586–8403
Public Participation:
Laurel Smith—202–586–4091, FAX 586–8403

Work Force Restructuring Field Contacts

Felix Ortiz, Albuquerque Operations Office—505–845–4207, FAX 845–4715
Elaine Kocolowski, Chicago Operations Office—708–252–2334, FAX 252–2919
Luella Bennett, Idaho Operations Office—208–526–1913, FAX 526–5969
Bob Agonia, Nevada Operations Office—702–295–1005, FAX 295–1876
Bill Truex, Oak Ridge Operations Office—423–576–0662, FAX 576–6964
Harry Printz, Oakland Operations Office—510–637–1829, FAX 637–2008
Ken Briggs, Ohio Field Office—513–865–4267, FAX 865–4312
Dom Sansotta, Richland Operations Office—509–376–7221, FAX 376–5335
Lenora Lewis, Rocky Flats Field Office—303–966–4263, FAX 966–3321
Dave Hepner, Savannah River Operations Office—803–725–1206, FAX 725–5968
Gil Gilyard, Savannah River Operations Office—803–725–7645, FAX 725–7631
Pat Lillard, Kansas City Area Office—816–997–3348, FAX 997–5059
Alan Goetz, Pinellas Area Office—813–541–8114, FAX 541–8370
Gene Gillespie, Portsmouth Site Office—614–897–2001, FAX 897–2982
Jimmie Hodges, Paducah Site Office—502–441–6800, FAX 441–6801

Appendix B—Statement of Availability

Sections 3161 and 3163 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484, October 23, 1992) are available from the Superintendent of Documents, the Government Printing Office, the Office of the Federal Register, by contacting Laurel Smith from the Office of Worker and Community Transition, Department of Energy or on the Office of Worker and Community Transition Home Page under "Documents for Review and Comment." (http://www.stat-usa.gov/owct.html)

Appendix C—Listing of Defense Nuclear Facilities

The list below reflects facilities receiving funding for Atomic Energy Defense activities of the Department of Energy, with the exception of activities under Naval Reactor Propulsion. It is recognized that these facilities have varying degrees of defense activities, ranging from a total defense dedication to a very small portion of their overall activity. This may cause certain difficulties in implementing the intent of the section 3161 legislation. Regardless, this listing will be used by the Office for possible application of funding received for defense worker assistance and community transition purposes.

Kansas City Plant
Pinellas Plant
Mound Facility
Fernald Environmental Management Project Site
Pantex Plant
Rocky Flats Environmental Technology Site, including the Oxnard Facility
Savannah River Site
Los Alamos National Laboratory
Sandia National Laboratory
Argonne National Laboratory
Brookhaven National Laboratory
Lawrence Livermore National Laboratory
Oak Ridge National Laboratory
Nevada Test Site
Y–12 Plant
K–25 Plant
Hanford Site
Idaho National Engineering Laboratory
Waste Isolation Pilot Project
Portsmouth Gaseous Diffusion Plant
Paducah Gaseous Diffusion Plant

Appendix D—Job Attachment Test

In implementing the objectives of section 3161 of the Act, the Department recognizes a special responsibility to minimize the impact of work force restructuring on employees who participated in efforts to maintain the Nation's nuclear deterrent during the Cold War. September 27, 1991, the day President Bush announced the first unilateral reduction of the Nation's stockpile, has generally been recognized by this Department as the end of the Cold War.

In general, employees who meet the job attachment test discussed below should be eligible for most benefits offered in a work force restructuring plan. However, the benefits offered at a specific site should be tailored to specific conditions, to the demographics of the workers at that site, and must be practicable and reasonable with respect to budget constraints, contractual provisions, and other obligations. Thus, those who meet the job attachment test are not likely to be offered exactly the same benefits at all sites.

To identify employees who helped maintain our nuclear deterrent during the Cold War, the criteria listed below should be followed at all sites:

A. Regular Employees

1. Must have been working at a defense nuclear facility on September 27, 1991;
2. Must have worked full-time (or regular part-time) at a facility from that date through the date of the 120-day notification; and
3. Must accept a voluntary separation incentive or have been involuntarily separated.

B. Intermittent Workers, Including Construction Workers

1. Must have worked at a defense nuclear facility on or before September 27, 1991;
2. Must have worked at a facility within 180 days preceding the work force restructuring notification;
3. Must have worked at a facility a total time, including time worked prior to September 27, 1991, equivalent to an employee having worked full-time from September 27, 1991 to the date of the 120-day notification, or have actually worked the industry standard of full-time from September 27, 1991 through the date of the 120-day notification; and
4. Must have been affected by the announced restructuring within a reasonable period of time (1 year is suggested). For an intermittent worker, this includes the interruption of a project before its anticipated completion, or the completion of the assignment or project without prospect for a follow-on assignment at the site where the employee had a reasonable expectation of a follow-on assignment.

Appendix E—Example of Form for Establishing Preference in Hiring

Statement of Interest in Maintaining Section 3161 Employment Eligibility

Name: _____
First Middle Last
Social Security Number: ___–___–____
Address: _____
Street
_____
Apartment No.
_____
City State Zip
Telephone No. (____) ____–____
Date of Lay-off resulting from Work Force Restructuring: _____ (Month/Day/Year)
Occupational Classifications held: _____
_____

I hereby request that my name be placed, or retained, on the Section 3161 Preference in Hiring List for the (*site name*) and be considered for any job opportunities that may arise for which I am qualified at this or any other Department of Energy site. I also certify that I have not been terminated for cause from employment by a Department of Energy Contractor or Subcontractor while performing work at a Department of Energy site.

_____
Signature

_____
Date

Appendix F—Sample Release for Use in Work Force Restructuring Programs

Voluntary Separation Payment Program General Release and Waiver

This Voluntary Separation Payment Program, General Release and Waiver ("Agreement") is entered into by and between _____ ("Employee") and _____ ("Employer"), as part of Employee's voluntary election to terminate employment with the Employer.

In Exchange for the Promises Set Forth Below, the Parties Agree as Follows:

1. Employee voluntarily terminates his/her employment with Employer effective _____, 1995. Employee agrees not to seek employment with or become employed at the _____ Site by the Employer or any other future or current contractor or subcontractor at the Site for a period of _____ year(s) from the date of Employee's resignation. This includes but is not limited to temporary employment service contracts, general task order assignments, indefinite quantity contracts, basic ordering agreements, and consultant contracts. However, this does not preclude Employee from employment with a company providing supplies, equipment, materials, or commodities to the Site under a fixed-price contract or purchase order.

2. Employee agrees that the Employer has no obligation to reemploy Employee in the future, and Employee waives any recall, rehire, or rehire preference rights, such as those that may arise under Section 3161 of the National Defense Authorization Act for Fiscal 1993. Employee agrees to perform all steps required by Employer's policies and procedures at the separation of his/her employment.

3. Except as set forth in paragraph 4 below, Employee, on behalf of himself/herself and any person or entity entitled to sue on Employee's behalf, waives and releases Employer, its parents, subsidiaries, and affiliates, the Department of Energy, and their employees, officers, directors, shareholders, agents, and successors from any causes of action or claims, whether known or unknown, that arise out of the Employee's resignation and separation of employment with Employer and any causes of action or claims that arise out of Employee's employment with Employer, up to and including the date of Employee's resignation, under any federal, state or local law, including but not limited to the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act of 1990, Title VII of the 1964 Civil Rights Act, the Equal Pay Act, the Family and Medical Leave Act, the Employee Retirement Income Security Act, and the Americans with Disabilities Act, or applicable state or local law. Employee will not assert any claim or cause of action released under this agreement in any administrative or judicial proceeding.

However, Employee does not waive:

(i) Any causes of action or claims that arise out of Employee's employment with Employer, up to and including the date of Employee's resignation, that have been asserted in writing and filed with the appropriate agency or court prior to the date on which this Program was announced,[1]

(ii) Any rights or claims that may arise after the date this Agreement is executed,

(iii) Any claims relating to pension or retiree health benefits that currently may be accrued under the Company's standard retirement program,

(iv) Any claims under any applicable state worker's compensation laws, or

(v) Any claims for occupational injuries or illnesses arising from Employee's employment with Employer that are not known or reasonably knowable by the Employee at the time of the execution of this Agreement.

5. In exchange for Employees' voluntary separation and execution of this Agreement, Employer will give Employee the consideration and benefits outlined in the description attached to this Agreement. The identification number or other designation for the document describing the benefits constituting consideration for this Agreement should be inserted at this point.[2]

6. If Employee becomes employed as prohibited in paragraph 1 or otherwise violates any provision of this Agreement, then, in addition to any other remedies Employer has under this Agreement, Employer may require Employee to repay payments or other benefits under this Agreement, and Employee agrees to such repayment.

7. Employee has been advised to consider this Agreement and to consult with an attorney of his/her choice, and Employee has had the opportunity to do so. Employee has had the right to consider this Agreement for a period of at least forty-five (45) days prior to entering into this Agreement. Employee has the right to revoke this Agreement for a period of seven (7) days following execution of this Agreement by giving written notice to the local Human Resources representative. If Employee revokes the Agreement, it shall not be effective and enforceable and Employee will not receive any of the benefits described in paragraph 5. Employee has read and understands the terms and contents of this Agreement, and Employee freely, voluntarily, and without coercion enters into this Agreement and agrees to be bound by its terms.

6. This Agreement constitutes the entire understanding and agreement of Employee and Employer and can only be modified in writing agreed to by both parties.

9. Employee has received all of the information required to be disclosed in these circumstances under the Age Discrimination in Employment Act regarding who is covered by the Program, the eligibility factors, the time limits of the Program, the ages and job titles of everyone eligible for the Program, and the ages of ineligible employees in the same job classification or organizational unit.

Please Read This Agreement Carefully. It Contains a Release of Known and Unknown[3] Claims as Described in Paragraph 3, Above, Subject To The Limitations Expressly Set Forth in Paragraph 4.

Agreed to:

_____
Employee/date

_____
{Employer}/date

Notes:

1. The issuing organization should insert at this point a *specific date* on which the Separation Program involved was first announced. In determining this date, the issuing organization should consider the specificity of information provided to the public in work force restructuring plans issued pursuant to section 3161, as well as the announcement of the individual separation program involved.

2. When this Agreement is used in association with early retirement programs, the following language should be added here: "Employer reserves the right to provide equivalent benefits in another form in the unlikely event that any aspect of the Program is improper under law."

3. Counsel should check to be sure that this aspect of the Model Release fully comports with applicable state or local law.

[FR Doc. 96–4401 Filed 3–04–96; 8:45 am]
BILLING CODE 6450–01–P

[Docket No. CP96–199–000]

Federal Energy Regulation Commission

Egan Hub Partners, L.P., Notice of Application

February 28, 1996.

Take notice that on February 16, 1996, Egan Hub Partners, L.P. (Egan Hub) filed an application in Docket No. CP96–199–000 pursuant to Section 7(c) of the Natural Gas Act and Parts 157 and 284 of the Commission's Regulations (regulations) requesting: (1) a certificate of public convenience and necessity pursuant to Subpart A of Part 157 authorizing the operation of natural gas facilities initially constructed to provide Natural Gas Policy Act (NGPA) Section 311(a)(2) storage and transportation services at market-based rates; (2) a blanket certificate pursuant to subpart G of Part 284 authorizing Egan Hub to provide open access storage and transportation services on behalf of others; (3) a blanket construction certificate pursuant to Subpart F of Part 157 authorizing certain construction and operation of facilities abandonments, and certificate amendments; (4) a blanket sales certificate pursuant to Subpart J of Part 284 authorizing Egan Hub to provide unbundled sales service for the limited purpose of disposing of gas in storage that shippers may fail to remove; and (5) approval of the FERC Gas Tariff included at Exhibit P to the application; all as more fully set forth in the application on file with the Commission and open to public inspection.

Egan Hub also requests, if market-based rates are approved, waivers of (1) the requirements of Section 284.8(d) of the regulations, which require that rates be designed using a straight fixed-variable rate design methodology; (2) the requirements of Section 157.14 of the regulations to permit Egan Hub to omit Exhibits K, N, and O to the application; and (3) the accounting and reporting requirements under Part 201 and Section 260.2 of the regulations.

The storage and transportation facilities for which Egan Hub seeks approval to operate are located in Acadia Parish, Louisiana. Egan Hub says the facilities consist of an underground storage cavern and related natural gas transportation facilities which were initially constructed to provide NGPA 311(a)(2) service. Approval is requested to operate the existing storage cavern with a 3.5 Bcf working gas capacity and pipeline facilities consisting of:

- 1.75 miles of dual 20-inch pipeline and 3.62 miles of dual 20-inch pipeline interconnecting Egan Hub with Trunkline Gas Company, ANR Pipeline Company, Tennessee Gas Pipeline Company, and Texas Gas Transmission Corporation; and
- 6.70 miles of 24-inch pipeline interconnecting Egan Hub with Columbia Gulf Transmission Company.

Egan Hub proposes to charge and collect market-based rates for these storage and transportation services.

Egan Hub also requests a certificate of public convenience and necessity pursuant to Subpart A of Part 157 authorizing construction and operation of a second cavern and appurtenant facilities necessary to provide additional new storage and transportation services at market-based rates. The Commission's Staff will defer processing this request pending NE Hub's filing a supplement to this application which specifically describes the proposed new facilities and services and includes required environmental and engineering/geological data.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 6, 1996, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filled with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of he certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Edgan Hub to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5077 Filed 3–4–96; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. TM96–4–34–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 28, 1996.

Take notice that on February 23, 1996, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective April 1, 1996, the following tariff sheets:

Thirteenth Revised Sheet No. 8A
Seventh Revised Sheet No. 8A.01
Fifth Revised Sheet No. 8A.02
Eleventh Revised Sheet No. 8B
Fourth Revised Sheet No. 8B.01

FGT states that the instant filing is submitted pursuant to Section 27 of the General Terms and Conditions (GTC) contained in FGT's Tariff which provides that FGT will file a Fuel Reimbursement Charge Adjustment to be effective each April 1 and October 1, as applicable. Section 27.A. of the GTC provides for the submission of workpapers supporting any revisions to the Fuel Reimbursement Charge Percentage at least thirty days prior to the proposed effective date of the adjustment. Section 27.C. states that the Current Fuel Reimbursement Charge Percentage will be the quotient resulting from fuel used and lost and unaccounted for gas, less fuel retained for Western Division transportation service, divided by volumes delivered, excluding Western Division deliveries, during the six-month period commencing one year prior to the effective date of the Fuel Reimbursement Charge Adjustment.

FGT states the historical figures for the six-month period of April through September, 1995, reflect an extremely high utilization of FGT's newly expanded system. These historically high throughput levels of 264,362,538 MMBtu, or over 1,444,000 MMBtu per day, were in large part a result of the economic attractiveness of natural gas compared to alternate fuels for the generation of electricity. The total throughput included 9,967,431 MMBtu, or over 54,000 MMBtu per day, transported under FGT's interruptible rate schedules. While FGT historically experiences high load factors during the summer period, FGT does not expect to achieve the levels of throughput which were transported from April through September 1995 because natural gas currently is selling at a considerable premium over alternate fuels which can be utilized by FGT's electric generation customers.

FGT further states because fuel usage is a function of throughput on FGT's system, and because of the expectation that throughput during the upcoming Summer period will be reduced from prior levels, FGT believes that collecting the 3.54% in-kind fuel reimbursement supported by the historical figures will result in an overcollection of fuel on a current basis. Consequently, the instant filing reflects an adjustment to the historical fuel usage percentage. This adjustment is calculated by dividing projected throughput for the upcoming Summer period of 1,390,137 MMBtu per day (historical deliveries net of interruptible transportation—approximately 96% load factor) by the 1,444,604 MMBtu per day of actual throughput from April through September of 1995, and multiplying that ratio times the fuel use experienced during the historical period. As a result of this adjustment, FGT is proposing a Current Fuel Reimbursement Charge of 3.41%.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5067 Filed 3–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–148–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

February 28, 1996.

Take notice that on February 23, 1996, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets proposed to be effective April 1, 1996:

Fourth Revised Sheet Nos. 1 and 2;
Twelfth Revised Sheet No. 6;
Original Sheet Nos. 97A through 97M;
First Revised Sheet No. 150;
Fourth Revised Sheet No. 205;
First Revised Sheet No. 210F;
Second Revised Sheet Nos. 211 and 212;
Fourth Revised Sheet Nos. 236 and 237; and
Original Sheet Nos. 284A through 284F

National states that these tariff sheets propose to include a new FSS–ST Rate Schedule to provide an option for customers to purchase firm storage service on a short-term basis. This new rate schedule will give National additional flexibility in re-marketing 3.2 Bcf of firm storage capacity formerly sold under the SS–1 and SS–2 Rate Schedules which will be turned-back on March 31, 1996, pursuant to written notices of termination.

National further states that copies of this filing were served upon the company's jurisdictional customers and upon the Regulatory Commission of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5070 Filed 3–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–206–001]

Pacific Gas Transmission Company; Notice of Report of Linepack Sales

February 28, 1996.

Take notice that on February 23, 1996, Pacific Gas Transmission Company (PGT), filed its Annual Report of Linepack Sales, pursuant to Office of Pipeline Regulation Letter Order of March 31, 1995 and Section 284.288 of the Commission's Regulations.

PGT states that it had no linepack sales during calendar year 1995. PGT further states that a copy of this report has been served upon all jurisdictional customers, interested state regulatory agencies, and all parties on the service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed on or before March 6, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5072 Filed 3–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. SA96–2–000]

Teco Pipeline Company; Notice of Petition for Adjustment

February 28, 1996.

Take notice that on January 17, 1996, Teco Pipeline Company (Teco) filed pursuant to section 502(C) of the Natural Gas Policy Act of 1978 (NGPA), a petition for adjustment from Section 285.123(b)(1)(ii) of the Commission's Regulations to permit Teco to use its tariff on file with the Railroad Commission of Texas (TRC), for suspendable firm and interruptible transportation services performed pursuant to NGPA Section 311.

In support of its petition, Teco states that it provides intrastate transportation service within the State of Texas, and is a gas utility subject to the jurisdiction of the TRC. Teco states that it will in the future perform transportation services pursuant to NGPA Section 311(a)(2) on behalf of interstate pipeline companies and/or local distribution companies served by interstate pipeline companies. It is anticipated that its system is or will soon be connected to the interstate facilities of Texas Eastern Transmission Corporation, Trunkline Gas Company, Tennessee Gas Pipeline Company, and Transcontinental Gas Pipeline Corporation. Teco will transport gas under Section 311(a)(2) pursuant to negotiated agreements, at rates not

greater than those for comparable intrastate service in its tariffs on file with the TRC. Teco at present has on file with the TRC a tariff which provides for certain intrastate firm and interruptible transportation services.

The regulations applicable to this proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission within 15 days after publication of this notice in the **Federal Register**. The petition for adjustment is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5069 Filed 3–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–211–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

February 28, 1996.

Take notice that on February 26, 1996, Tennessee Gas Pipeline Company (Tennessee), P.O. 2511, Houston, Texas 77252, filed in Docket No. CP96–211–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon 3 sales meters along Tennessee's right-of-way in Wharton, Victoria and Jackson Counties, Texas, under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act; all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to abandon the 3 meters, which were used for irrigation of rice farms, because they are no longer required by the customers and no gas is flowing through them. It is stated that Tennessee would abandon the meters, related value assemblies and all above-ground appurtenant facilities by removal and dispose of the material as scrap. It is asserted that the meters were installed in the 1950's and 1960's and that Tennessee's contracts for sales to the customers have all been terminated. Tennessee has provided letters from the three customers agreeing to the proposed abandonments.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5074 Filed 3–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–423–004]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 28, 1996.

Take notice that on February 23, 1996, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets contained in Appendix A to become effective on the dates indicated.

Texas Gas states that this filing is made to comply with the provisions identified in the letter order which approved the Stipulation and Agreement in Docket No. RP94–423 issued February 20, 1996. Texas Gas intends to implement the provisions of the settlement in the referenced docket.

Texas Gas states that copies of the filing have been served upon Texas Gas's jurisdictional customers, all parties on the Commission's official service list in this proceeding, interested state commissions, and the FERC Staff.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5071 Filed 3–4–96; 8:45 am]

BILLING CODE 6717–01–M

Appendix A—Texas Gas Transmission Corporation

FERC Gas Tariff First Revised Volume No. 1

Tariff Sheets Effective April 1, 1995

Substitute Third Revised Sheet No. 1
Substitute First Revised Sheet No. 9
Second Substitute Eighth Revised Sheet No. 10
Second Substitute Fifth Revised Sheet No. 11
Second Substitute Original Sheet No. 11A
Second Substitute Tenth Revised Sheet No. 12
Substitute Second Revised Sheet No. 12A
Second Substitute Third Revised Sheet No. 13
Second Substitute Second Revised Sheet No. 15
Second Substitute Second Revised Sheet No. 16
Substitute Second Revised Sheet No. 17
Substitue Fifth Revised Sheet No. 18
Second Substitute First Revised Sheet No. 122
Original Sheet No. 122A
Second Revised Sheet No. 145
Third Revised Sheet No. 207
Second Revised Sheet No. 208
First Revised Sheet No. 209
Third Revised Sheet No. 235
Second Revised Sheet No. 236

Tariff Sheets Effective June 1, 1995

Substitute Ninth Revised Sheet No. 10
Substitute Sixth Revised Sheet No. 11
Substitute First Revised Sheet No. 11A
Substitute Eleventh Revised Sheet No. 12

Tariff Sheets Effective September 1, 1995

Substitute Tenth Revised Sheet No. 10
Substitute Seventh Revised Sheet No. 11
Substitute Second Revised Sheet No. 11A
Substitute Twelfth Revised Sheet No. 12

Tariff Sheets Effective October 1, 1995

Substitute Eleventh Revised Sheet No. 10
Substitute Eighth Revised Sheet No. 11
Substitute Third Revised Sheet No. 11A
Substitute Thirteenth Revised Sheet No. 12
Substitute Fourth Revised Sheet No. 13

Tariff Sheets Effective November 1, 1995

Substitute Twelfth Revised Sheet No. 10
Substitute Ninth Revised Sheet No. 11
Substitute Fourth Revised Sheet No. 11A
Substitute Fourteenth Revised Sheet No. 12

Tariff Sheets Effective January 1, 1996

Substitute Thirteenth Revised Sheet No. 10
Substitute Tenth Revised Sheet No. 11
Substitute Fifth Revised Sheet No. 11A
Substitute Fifteenth Revised Sheet No. 12
Substitute Fifth Revised Sheet No. 13

Tariff Sheets Effective February 1, 1996

Substitute Fourteenth Revised Sheet No. 10
Substitute Eleventh Revised Sheet No. 11
Substitute Sixth Revised Sheet No. 11A
Substitute Third Revised Sheet No. 15

Substitute Third Revised Sheet No. 16

Tariff Sheets Effective March 1, 1996

Substitute Twelfth Revised Sheet No. 11
Substitute Seventh Revised Sheet No. 11A
Substitute Sixteenth Revised Sheet No. 12
Substitute Fourth Revised Sheet No. 16
Substitute Third Revised Sheet No. 17

FPC Gas Tariff Original Volume No. 2

Tariff Sheets Effective April 1, 1996

Substitute Nineteenth Revised Sheet No. 82
Substitute Twentieth Revised Sheet No. 547
Substitute Twenty-second Revised Sheet No. 982
Substitute Twentieth Revised Sheet No. 1005
Substitute Fourteenth Revised Sheet No. 1085

[FR Doc. 96–5071 Filed 3–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–206–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

February 28, 1996.

Take notice that on February 12, 1996, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed an application pursuant to Section 7(b) of the Natural Gas Act, for authority (1) To abandon by transfer to Williams Gas Processing-Gulf Coast (WPG), its affiliate, certain onshore and offshore certificated, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that as part of an ongoing corporate-wide restructuring of the Williams Companies, Inc. (Williams) with the objective of separating all gathering facilities from the jurisdictional transmission companies, Transco seeks to spin down to WPG all its onshore and offshore facilities which are used primarily for the purpose of gathering. It is indicated that WPG is organized as a separate, stand-alone company independent of the interstate pipeline affiliates and that the focus of its business is providing competitive unbundled gathering services.

Transco proposes to abandon two onshore systems, five offshore systems, and other miscellaneous onshore and offshore stub facilities. The onshore systems are The Tilden/McMullen Gathering System, which includes facilities in Frio, La Salle, McMullen, Atascosa, Live Oak, Bee, San Patricio, Goliad, Victoria, De Witt, Jackson, and Wharton Counties, Texas and the Kings Ranch Plant Gas Gathering System, which includes facilities in Hidalgo, Starr, Willacy, Brooks, Duval, Jim Wells, and Kleberg Counties, Texas. The offshore systems are the North Padre Island Gathering System, the Central Texas Gathering System, and the North High Island/West Cameron Gathering System in offshore Texas and the Central Louisiana and Southeast Louisiana Gathering Systems in offshore Louisiana. In addition, Transco proposes to abandon certain miscellaneous offshore and onshore facilities, most of which are non-contiguous to Transco's system and connect instead with third-party pipelines. Transco proposes to abandon the facilities at net book value, which as of December 31, 1995, was approximately $230,423,155.

Transco states that WPG has made a related filing in Docket No. CP96–207–000, requesting a declaratory order finding that the facilities which it will acquire will not be subject to the Commission's jurisdiction.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 20, 1996, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5076 Filed 3–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–207–000]

Williams Gas Processing—Gulf Coast Company, L.P.; Notice of Petition for Declaratory Order

February 28, 1996.

Take Notice that on February 21, 1996, Williams Gas Processing—Gulf Coast Company, L.P. (WGP), P.O. Box 1396, Houston, Texas 77251, filed a petition for declaratory order in Docket No. CP96–207–000, requesting that the Commission declare that WGP's proposed acquisition, ownership, and operation of certain onshore and offshore natural gas gathering systems and other facilities currently owned by Transcontinental Gas Pipe Line Corporation (Transco) would not subject WGP or any potion of its facilities, rates, or services to the jurisdiction of the Commission under the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

WGP seeks a declaratory order finding that:

- The facilities described in its petition that WGP wishes to acquire from Panhandle will be gathering facilities exempt from the Commission's jurisdiction pursuant to Section 1(b) of the Natural Gas Act;
- WGP will not be a "natural gas company" pursuant to Section 2 of the Natural Gas Act by virtue of its proposed acquisition, ownership, and operation of such facilities;
- The gathering services to be performed by WGP will be non-jurisdictional gathering services exempt from the Commission's jurisdiction under Section 1(b) of the Natural Gas Act; and
- WGP's rates, and charges for gathering services will not be subject to the Commission's jurisdiction pursuant to Sections 4 and 5 of the Natural Gas Act.

WGP states that it is a wholly-owned subsidiary of The Williams Companies, Inc. (Williams). WGP is organized as a separate, stand-alone company independent of the interstate pipeline affiliates and that the focus of its business is providing competitive unbundled gathering services.

WGP indicates that it would acquire facilities directly from Transco

including gathering systems in onshore Texas, Louisiana, New Mexico, Oklahoma, and Mississippi, and in the adjacent offshore state waters and adjacent Outer Continental Shelf. Specifically, WGP would acquire two onshore systems, five offshore systems, and other miscellaneous onshore and offshore stub facilities. The onshore systems are The Tilden/McMullen Gathering System, which includes facilities in Frio, La Salle, McMullen, Atascosa, Live Oak, Bee, San Patricio, Goliad, Victoria, De Witt, Jackson, and Wharton Counties, Texas and the Kings Ranch Plant Gas Gathering System, which includes facilities in Hidalgo, Starr, Willacy, Brooks, Duval, Jim Wells, and Kleberg Counties, Texas. The offshore systems are the North Padre Island Gathering System, the Central Texas Gathering System, and the North High Island/West Cameron Gathering System in offshore Texas and the Central Louisiana and Southeast Louisiana Gathering Systems in offshore Louisiana. In addition, WGP will acquire certain miscellaneous offshore and onshore facilities, most of which are non-contiguous to Transco's system and connect instead with third-party pipelines. WGP notes that Transco has filed a related application in Docket No. CP96–206–000 requesting authority pursuant to Section 7(b) to abandon such facilities.

WGP states that it has initiated discussions and negotiations for post-abandonment gathering agreements with many of Transco's existing shippers and intends to negotiate with all existing customers. In the event WGP is unable to finalize negotiated agreements with all existing shippers, WGP asserts that it will ensure continuity of service for existing shippers in the manner required by the Commission.

It is argued that the facilities to be acquired by WGP meet the physical and non-physical criteria for determining gathering as set forth in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983), as modified by subsequent Commission orders. WGP further argues that the offshore facilities it will acquire qualify as gathering in accordance with the "modified primary function test" as set forth in *Amerada Hess Corp. et al.*, 52 FERC ¶ 61,268 (1990).

Any person desiring to be heard or to make any protest with reference to said petition should on or before March 20, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5075 Filed 3–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–389–006, et al.]

North American Energy Conservation et al.; Electric Rate and Corporate Regulation Filings

February 27, 1996.

Take notice that the following filings have been made with the Commission:

1. Tenaska Power Services Company Energy Resource Marketing, Inc., and Phibro Inc.

[Docket Nos. ER94–389–006, ER94–1580–005, ER95–430–004 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 29, 1996, Tenaska Power Services Company filed certain information as required by the Commission's May 26, 1994 order in Docket No. ER94–389–000.

On February 21, 1996, Energy Resource Marketing, Inc. filed certain information as required by the Commission's September 30, 1994 order in Docket No. ER94–1580–000.

On February 22, 1996, Phibro filed certain information as required by the Commission's June 9, 1995 order in Docket No. ER95–430–000.

2. Arkansas Power & Light Company

[Docket No. ER95–711–001]

Take notice that on February 15, 1996, Arkansas Power & Light Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Dartmouth Power Associates Partnership

[Docket No. ER96–149–001]

Take notice that on January 31, 1996, Dartmouth Power Associates Partnership tendered for filing a revised version of FERC Rate Schedule No. 2 for the open-ended marketing of electricity at market-based rates.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER96–409–001]

Take notice that on February 21, 1996, Cinergy Services, Inc. tendered for filing its refund report in the above-referenced docket.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Dayton Power & Light Company

[Docket No. ER96–708–000]

Take notice that on February 21, 1996, Dayton Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Maine Public Service Company

[Docket No. ER96–727–000]

Take notice that on February 15, 1996, Maine Public Service Company tendered for filing revised Appendix B to replace Appendix B filed December 29, 1995.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Electric and Gas Company

[Docket No. ER96–952–000]

Take notice that on February 21, 1996, Public Service Electric and Gas Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Kentucky Utilities Company

[Docket No. ER96–1067–000]

Take notice that on February 13, 1996, Kentucky Utilities Company tendered for filing the first revisions of Appendix D to Kentucky Utilities Company's Transmission Service Tariff.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Cleveland Electric Illuminating Company

[Docket No. ER96–1073–000]

Take notice that on February 15, 1996, Cleveland Electric Illuminating Company tendered for filing Service Agreements with Koch Power Services, Inc., CNG Power Services Corporation, Louis Dreyfus Electric Power, Inc., Enron Power Marketing, Inc., Coastal Electric Services Company, Catex Vitol Electric, L.L.C., Noram Energy Services, Inc., Midcon Power Services Corp., and Citizens Lehman Power Sales.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. South Carolina Electric & Company

[Docket No. ER96–1085–000]

Take notice that on February 20, 1996, SCANA Energy Marketing, Inc., tendered for filing additional material to the February 16, 1996, filing in the above-referenced docket.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Texas Utilities Electric Company

[Docket No. ER96–1087–000]

Take notice that on February 16, 1996, Texas Utilities Electric Company (TU Electric) tendered for filing amendments to the transmission service agreements (TSA's) with Delhi Energy Services, Inc. and Sonat Power Marketing Inc. that were originally filed herein on January 8, 1996.

TU Electric requests an effective date for the TSA's that will permit them to become effective on or before the service commencement date under the TSA's. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on Delhi Energy Services, Inc. and Sonat Power Marketing Inc., as well as the Public Utility Commission of Texas.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER96–1112–000]

Take notice that on February 20, 1996, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (Entergy Operating Companies), tendered for filing a Second Amendment to the Non-Firm Transmission Service Agreement (Amendment) between Entergy Services, Inc. and NorAm Energy Services. Entergy Services states that the Amendment extends the effective date of Non-Firm Transmission Service Agreement.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Kentucky Utilities Company

[Docket No. ER96–1113–000]

Take notice that on February 20, 1996, Kentucky Utilities Company (KU), tendered for filing an Amendment to the Interconnection Agreement between KU and the Big Rivers Electric Corporation. The filing provides for establishment of a new interconnection point at KU's Green River Power Plant 161 KV Substation near Central City, Kentucky. The Amendment also establishes an additional service schedule for Transmission Losses and a new contract termination provision. The Agreement between the parties dated September 1, 1989, which is on file with this Commission, Company Rate Schedule FERC No. 201, provides for establishing additional interconnection points and related amendments as needs arise.

Company states that copies of the filing have been sent to Big Rivers Electric Corporation, the Public Service Commission of Kentucky and the Virginia State Corporation Commission.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc.

[Docket No. ER96–1114–000]

Take notice that on February 20, 1996, Entergy Services, Inc. (Entergy), on behalf of Gulf States Utilities Company (GSU) and Louisiana Power & Light Company (LP&L), tendered for filing a supplement to the Power Interconnection Agreement between GSU and Louisiana Energy and Power Authority (LEPA), GSU Rate Schedule No. 136, dated November 15, 1982, and the Electric System Interconnection Agreement between LP&L and LEPA, LP&L Rate Schedule No. 72, dated October 1, 1982.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER96–1115–000]

Take notice that on February 20, 1996, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (Entergy Operating Companies), tendered for filing a Second Amendment to the Non-Firm Transmission Service Agreement (Amendment) between Entergy Services, Inc. and Noram Energy Services. Entergy Services states that the Amendment extends the effective date of Non-Firm Transmission Service Agreement.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Entergy Services, Inc.

[Docket No. ER96–1116–000]

Take notice that on February 20, 1996, Entergy Services, Inc. (Entergy Services), on behalf of the Arkansas Power & Light Company (AP&L) tendered for filing the Twenty-Fourth Amendment to the Power Coordination, Interchange and Transmission Service Agreement between Entergy Services, Inc. (Entergy Services), acting as agent for the Arkansas Power & Light Company (AP&L) and the Arkansas Electric Cooperative Corporation (AECC), dated June 27, 1977, which is on file with the Commission as AP&L Rate Schedule FERC No. 82. The Amendment changes the transmission and distribution service rate formulas currently in effect for AECC to the corresponding rate formulas currently in effect for AP&L's other formula rate customers. Conforming the AECC rate formulas will not result in any change in AP&L's charges to AECC for transmission and distribution service.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–1117–000]

Take notice that on February 20, 1996, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing an agreement with Virginia Electric & Power Company ("VPC") to provide for the sale of energy and capacity. For energy the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per KWhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity is $7.70 per megawatt hour.

Con Edison states that a copy of this filing has been served by mail upon VPC.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Kansas City Power & Light Company

[Docket No. ER96–1118–000]

Take notice that on February 20, 1996, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated March 1, 1996, between KCPL and Illinois Power

Company (IPC). KCPL proposes an effective date of March 1, 1996, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and IPC.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges which were conditionally accepted for filing by the Commission in Docket No. ER94–1045–000.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Kibler Energy Ltd.

[Docket No. ER96–1119–000]

Take notice that on February 20, 1996, Kibler Energy Ltd. tendered for filing a Petition for Order Accepting Initial Rate Schedule for Filing, Determining Rates to be Just and Reasonable, Waving Regulations and Granting Preapproval.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Pennsylvania Power & Light Company

[Docket No. ER96–1120–000]

Take notice that on February 20, 1996, Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission two Service Agreements (the Agreements) between PP&L and Southern Energy Marketing, Inc., dated January 12, 1996; and (2) US Gen Power Services, L.P., dated January 26, 1996.

The Agreements supplement a Short Term Capacity and Energy Sales umbrella tariff approved by the Commission in Docket No. ER95–782–000 on June 21, 1995.

In accordance with the policy announced in *Prior Notice and Filing Requirements Under Port II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified and reh'g granted in part and denied in part*, 65 FERC ¶ 61,081 (1993), PP&L requests the Commission to make the Agreement effective as of February 20, 1996, because service will be provided under an umbrella tariff and each service agreement is filed within 30 days after the commencement of service. In accordance with 18 C.F.R. 35.11, PP&L has requested waiver of the sixty-day notice period in 18 C.F.R. 35.2(e). PP&L has also requested waiver of certain filing requirements for information previously filed with the Commission in Docket No. ER95–782–000.

PP&L states that a copy of its filing was provided to the customers involved and to the Pennsylvania Public Utility Commission.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Duke/Louis Dreyfus Energy Services (New England) L.L.C.

[Docket No. ER96–1121–000]

Take notice that on February 20, 1996, Duke/Louis Dreyfus Energy Services (New England) L.L.C. (the Applicant), tendered for filing its FERC Electric Rate Schedule No. 1 to be effective April 21, 1996, and requested that the Commission waive certain of its regulations and grant blanket approval with respect to the issuance of securities and assumption of obligations or liabilities.

The Applicant was formed by Duke/Louis Dreyfus L.L.C. and EUA Energy Services, Inc.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. NFR Power, Inc.

[Docket No. ER96–1122–000]

Take notice that on February 21, 1996, NFR Power, Inc. (NFR Power), 478 Main Street, Buffalo, New York 14202, petitioned the Commission for acceptance of NFR Power Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations. NFR Power is a subsidiary of National Fuel Gas Company, an integrated natural gas company.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Cinergy Services, Inc.

[Docket No. ER96–1123–000]

Take notice that on February 21, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Electric Sales Agreement, dated February 1, 1996, between Cinergy, CG&E, PSI and Missouri Public Service (MPS).

The Electric Sales Agreement provides for the following service between Cinergy and MPS.

1. Service Schedule A—Emergency Service
2. Service Schedule B—System Energy
3. Service Schedule C—Negotiated Capacity and Energy

Cinergy and MPS have requested an effective date of March 1, 1996.

Copies of the filing were served on Missouri Public Service Commission, the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Florida Power & Light Company

[Docket No. TX93–4–005]

Take notice that on February 21, 1996, Florida Power & Light Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: March 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5003 Filed 3–4–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 3574–004]

Continental Hydro Corp. and Gas Company; Notice of Availability of Environmental Assessment

February 28, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a license for the Tiber Dam Hydroelectric Project No. 3574–004, located at the Bureau of Reclamation's existing Tiber Dam and Lake Elwell, on the Marias River in Liberty County, Montana. The Commission has prepared a draft Environmental Assessment (EA) for the project. The draft EA contains the Commission staff's analysis of the potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the EA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. For further information, contact Surender M. Yepuri, Environmental Coordinator, at (202) 219–3847.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5068 Filed 3–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2310–073 California]

Pacific Gas & Electric Co.; Notice of Availability of Environmental Assessment

February 28, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed a non-capacity related amendment of license for the Drum Spaulding Hydroelectric Project, No. 2310–073. The Drum Spaulding Project is located on the Bear, South Yuba, and North Fork American Rivers in Placer and Nevada Counties, California. The plan is for a revised recreation plan for the project. An Environmental Assessment (EA) was prepared for the plan. The EA finds that approving the plan would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5073 Filed 3–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM96–5–000]

Gas Pipeline Facilities and Services on the Outer Continental Shelf—Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act; Statement of Policy

Issued February 28, 1996.

I. Introduction

In this docket, the Commission has been exploring the issue of the application of its jurisdiction under the Natural Gas Act (NGA) [1] and the Outer Continental Shelf Lands Act (OCSLA) over natural gas facilities and services on the Outer Continental Shelf (OCS).[2] In response to several recent requests that the Commission declare existing certificated offshore systems [3] and proposed offshore facilities in the Gulf of Mexico[4] to be exempt gathering facilities, and in view of increases in successful offshore exploration and development activities, the Commission has elected to review issues concerning the status, scope, and effect of its regulation of gathering and transportation on the OCS. In view of the importance of current OCS production,[5] and its potential as a source of new production, the Commission seeks in this proceeding to assure that regulatory policies do not impede or distort development activities on the OCS.

The Commission solicited comments on the operational considerations pertaining to OCS exploration and development activities, and the legal and policy issues implicated in either maintaining or departing from present policy.[6] Thirty-five responses were submitted by representatives of all segments of the industry.[7] The Commission has reviewed these comments and will clarify its regulation of OCS facilities and services, as discussed below.

II. Background

In 1989, in response to the decision in *EP Operating Co.* v. *FERC (EP Operating)*[8]—which reversed a Commission determination that a 16-inch diameter, 51-mile long pipeline connecting an OCS production platform to an offshore processing plant was a jurisdictional transportation facility—the Commission set upon a review of its gathering policy. The purpose of that review was to assess the impact of *EP Operating* as well as the continuing viability and relevance of the "primary function" test, which at that time was the Commission's preferred methodology for determining the jurisdictional status of gas pipeline facilities.[9] That review culminated in

[1] Section 1(b) of the NGA grants the Commission regulatory jurisdiction over "the transportation of natural gas in interstate commerce" and "the sale in interstate commerce of natural gas for resale." At the same time, section 1(b) exempts from the NGA's coverage "the production or gathering of natural gas." Thus, section 1(b) first grants to the Commission broad plenary authority to regulate the business of transporting and of wholesaling natural gas moving in interstate commerce. Secondly, section 1(b) removes from that plenary grant of federal jurisdiction those aspects of natural gas regulation which are the proper subject of state regulation.

[2] Generally, sections 5(e) and 5(f)(1) of the OCSLA give the Commission certain responsibilities and authorizations to ensure that natural gas pipelines on the OCS transport for non-owner shippers in a nondiscriminatory manner and operate in accordance with certain competitive principles. Section 5(e) of the OCSLA requires pipelines to transport natural gas produced from the OCS "without discrimination" and in such "proportionate amounts" as the Commission, in consultation with the Secretary of Energy, determines to be reasonable. In addition, section 5(f)(1) of the OCSLA requires pipelines transporting gas on or across the OCS to adhere to certain "competitive principles." These "competitive principles" include a requirement that the pipeline must provide "open and nondiscriminatory access to both owner and nonowner shippers." The applicability of the provisions of sections 5(e) and 5(f)(1) is not restricted to interstate pipelines that are subject to the Commission's NGA jurisdiction.

The only pipelines that may be exempt from the Commission's authority under the OCSLA are certain "feeder lines," which are defined in section 5(f)(2) of the OCSLA as a pipeline that feeds into a facility where oil and gas are "first collected" or a facility where oil and gas are "first separated, dehydrated, or otherwise processed." These "feeder lines" may only be exempted from the requirements of the OCSLA by order of the Commission.

[3] *See* Sea Robin Pipeline Company (Sea Robin), 71 FERC ¶ 61,351 (1995) (denying request for declaration of gathering status), *reh'g pending*; Enron Gulf Coast Gathering L.P., Docket No. CP95–516–000; and, Venice Gathering Company, Docket No. CP95–202–000.

[4] *See* Shell Gas Pipeline Company (SGPC), Docket No. CP96–9–000 (issued contemporaneously with this policy statement) and SGPC, Docket No. CP96–113–000.

[5] The Gulf of Mexico is the largest single domestic source of natural gas production, currently representing 27 percent of the lower 48 states' total dry gas production and 17 percent of proven reserves. Energy Information Administration, 1994 Annual Gas Liquids Reserves, Table 8 at 28 and Table 9 at 31 (October 1995).

[6] *See* Notice of Inquiry into Jurisdictional Issues Respecting Natural Gas Pipeline Facilities and Services on the Outer Continental Shelf (NOI), 73 FERC ¶ 61,227 (1995).

[7] Four parties filed comments out-of-time, which for good cause shown, we accept. Minerals Management Service and Williams Field Services filed supplemental comments and OCS Producers filed reply comments. A list of the commenters is included as an appendix to this policy statement.

[8] 876 F.2d 46 (5th Cir. 1989).

[9] The "primary function" test was articulated in Farmland Industries, Inc. (Farmland), 23 FERC ¶ 61,063 (1983). In Farmland the Commission enumerated several physical and geographic criteria to be included in the analysis for determining whether the primary function of a facility is the

Continued

the Commission's articulation and application of the "modified primary function" test in *Amerada Hess Corporation, (Amerada Hess I)*.[10]

Amerada Hess I explained that because of recent advances in engineering and available technology, offshore drilling operations were moving further offshore and further from existing interstate pipeline interconnections. Accordingly, a relatively long pipeline on the OCS may be consistent with a primary function of gathering or production whereas an onshore pipeline of similar length would not. Therefore, in applying the primary function test to offshore pipeline facilities, the Commission modified that test in order to apply, in effect, a sliding scale that would allow for the use of gathering pipelines of increasing lengths and diameters in correlation to the distance from shore and the water depth of the offshore production area. Specifically, when applying the *Farmland* criteria, the Commission stated that it would consider, especially for offshore facilities, the changing technical and geographic nature of exploration and production.

III. The Notice of Inquiry

As explained in the NOI, the Commission has been prompted to reexamine its approach to regulating OCS facilities in view of the fact that several companies have filed, or indicated their intent to file, requests for exempt gathering status for proposed projects designed to bring gas onshore from significant, newly developed deep water reserves in the Gulf of Mexico. Additionally, there are pending requests to declare existing certificated offshore systems to be gathering, including Sea Robin's request for rehearing of the Commission's June 15, 1995 order denying gathering status for its offshore system. Accordingly, the NOI set out issues to be addressed by commenters regarding the need for continued NGA regulation of offshore facilities. The NOI contained a number of specific questions, among them whether the Commission should: continue to distinguish between gathering and transportation on the OCS; declare all OCS facilities to be gathering exempt from the Commission's jurisdiction under NGA section 1(b); issue a rule under the NGA declaring all OCS facilities to be jurisdictional transportation facilities; adopt a "light-handed" regulatory approach that relies on complaints of discriminatory access and/or the regulatory authority provided by the OCSLA; or, continue application of the modified primary function test on a case-by-case basis.

IV. Comments[11]

The commenters overwhelmingly reject the suggestion that the Commission eliminate the distinction between transportation and gathering, maintaining that it is necessary, as a practical and legal matter, to continue to segregate facilities that perform primarily different functions.[12] Generally, interstate pipelines assert that regulation under the OCSLA is adequate given OCS competition and parties' recourse to a complaint proceeding; generally producers believe continued NGA rate regulation is necessary to protect against OCS interstate pipelines' market power.

Commenters maintain that a declaration that all OCS facilities are of one generic type would constitute a precipitous departure from the Commission's past practice of case-specific consideration, upset parties' reliance upon functional classifications in developing offshore reserves and accepting terms and conditions of service, and invite judicial reversal. Gatherers Leviathan and Tejas note that NGA section 1(b) specifically exempts gathering facilities from the Commission's NGA jurisdiction; thus, particularly in light of *EP Operating*, the Commission is without authority under the NGA to find all OCS facilities to be jurisdictional. OCS Producers[13] concur, and add that it would constitute an abdication of the Commission's regulatory responsibility under NGA section 1(b) to classify all OCS facilities as gathering. OCS Producers argue that pipeline systems, including facilities offshore, perform different functions, that the Commission's historical practice has been to recognize the different functions through application of a primary function test, and that courts have upheld this practice. OCS Producers also raise concerns about the Commission's need to regulate the rates charged by the pipelines. Producers Blue Dolphin Exploration and Energy Development assert that OCS pipelines possess market power and it is the Commission's responsibility under the NGA is to protect gas consumers from the exercise of such power.

The NOI sought comments on whether absent NGA regulation of OCS facilities or services, the Commission's regulatory authority under the OCSLA alone would be sufficient to protect the public interest, or would result in a regulatory gap.

Section 5(f)(1) of the OCSLA provides that pipelines must provide open and nondiscriminatory access. Parties recognize that the scope of the Commission's regulatory reach over gas gathering and transportation under the OCSLA is largely untested and differ in their interpretation of the extent and type of action the Commission might take to assure open and nondiscriminatory access. However, parties agree that the OCSLA does not provide for NGA-type cost-based rate regulation.

Interstate pipelines,[14] producer-owned pipelines, gatherers Leviathan, Tejas, and Williams Field Services, and LDC Brooklyn Union consider the Commission's authority under the OCSLA to be sufficient to protect the public interest.[15] These parties generally maintain that because of the competitive environment offshore, light-handed OCSLA oversight, coupled with a complaint procedure, can provide an adequate safeguard against the exercise of market power.[16] PanEnergy contends the Commission's authority under the OCSLA is broad enough to encompass establishing nondiscriminatory rates. These parties do not anticipate that reliance upon the OCSLA alone will produce a regulatory gap.

In contrast, producers[17] and industrial end users[18] are wary of relying solely on the OCSLA and what they view as a cumbersome complaint procedure. They contend that absent the Commission's NGA rate regulation, barriers to entry and a current lack of transportation alternatives leave OCS producers subject to OCS transportation pipelines' potential to exercise market power. For example, Energy Development states the OCSLA protects only access, but does not provide the Commission authority to regulate OCS transportation rates, and without rate regulation there is no effective check on the exercise of market power. Producers and end users predict that removing NGA rate regulation would result in a regulatory gap.[19]

Several commenters stress that the Commission may not opt to substitute OCSLA regulation for NGA regulation, since simultaneous regulation is mandated by statute.[20] Enserch, NGSA, and Texaco speculate that if the Commission were to rely solely on the OCSLA and remedial complaint procedures, rate and litigation uncertainties would chill offshore exploration and development.

The NOI asked whether the Commission should, under a light-handed regulatory approach, distinguish between new and existing OCS pipelines. Most interstates[21] and gatherers[22] assert that a distinction between OCS facilities based on age would be inappropriate, unlawful, and place existing facilities which are subject to NGA rate regulation at a competitive disadvantage. However, interstate Koch, and producer Texaco, suggest that new facilities be presumed to be gathering, and thus eligible for light-handed regulation under the OCSLA. Tejas comments that new gathering lines will be less likely to exert market power than existing pipelines.

Some producers[23] argue that a lack of market power, not vintage, is the proper criteria to consider in distinguishing which facilities might appropriately be subject to light-handed regulation. OCS Producers accept that vintage might be considered as a factor when determining whether light-handed regulation is appropriate in a particular instance. Total Minatome urges that light-handed regulation apply only to production from OCS leases granted after promulgation of such regulation so as not to thwart the expectations upon which prior development was undertaken. Leviathan proposes to distinguish existing facilities which have customers who have relied on a certain level of regulation from new facilities which have customers with no such reliance.

The NOI requested comments on the option of allowing all rate regulation to end at any point that a pipeline and a non-affiliated shipper agree. INGAA and PanEnergy endorse the proposal. OCS Producers, Process Gas Consumers, Blue Dolphin Pipe Line, and Tejas disagree with this option. Tennessee asserts there should be no rate regulation behind the processing plant, regardless of agreement. Total Minatome claims this option is not needed, since pipelines can currently negotiate discounts with any customer and minimum rates are low enough to not inhibit freely negotiated rates. Leviathan also rejects this option and proposes market-based rates for new supply facilities 24 inches in diameter or less, light-handed rate regulation for new supply facilities greater than 24 inches in diameter, and light-handed rate regulation (through a rate freeze and an inflation adjustment) for existing OCS faculties.

Several parties addressed particular concerns involving rates. Atlanta Gas, Brooklyn Union, and Natural argue that if the Commission were to declare existing OCS jurisdictional facilities to be gathering, then it should promptly require pipelines to revise their rates to exclude costs associated with their OCS facilities from their rates. Leviathan proposes an anti-cost-shifting limitation to prevent cross-subsidies between existing and new facilities by barring discount rate adjustments for jurisdictional purposes by a market area pipeline in setting downstream rates for downstream transportation of gas transportation on OCS facilities of that pipeline or its affiliates. Brooklyn Union claims a number of interstate pipelines have onshore or offshore points of aggregation, and that transportation facilities upstream of these pooling points provide the same function as OCS facilities; consequently, these facilities, like OCS facilities, should be subject only to light-anded regulation.

The NOI asked parties to consider the rationale for and consequences of declaring all offshore facilities to be either gathering or transportation. No party adopted the proposition that all OCS facilities be declared transportation. Columbia, Natural, Tennessee, and Brooklyn Union argued for a generic determination that all offshore facilities are gathering. CNG proposes a limited declaration of nonjurisdictional status for OCS pipelines owned by producers (or their affiliates) and used exclusively by the same producers (or their affiliates), claiming such facilities function as extensions of the production platforms to which they are connected. All other parties seek to maintain, to one degree or another, the distinction between gathering and transportation, or else express no opinion.

If the Commission did declare all offshore facilities gathering, Leviathan, Sea Robin, Tejas, and Tennessee suggest existing customers' expectations may be protected, as they have been onshore, through a default contract mechanism. Leviathan proposes a term that runs for the life of the currently connected reserves with an option to purchase gas supplies attached to competing offshore pipelines. Tennessee suggests a contract term of two years, and adds that issues relating to existing customers could be resolved in individual abandonment proceedings. Total Minatome proposes retaining the existing rate structure for current shippers for the life of production and providing that current

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transportation or the gathering or production of natural gas. These factors are: (1) the length and diameter of the line, (2) the extension of the facility beyond the central point in the field, (3) the lines' geographic configuration, (4) the location of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) the operating pressure of the line. The primary function test has been found by the Commission to be applicable to both onshore and offshore facilities. The criteria set out in Farmland were not intended to be all inclusive. The Commission has also considered nonphysical criteria such as the intended purpose, location, and operation of the facility, the general business activity of the owner of the facility, and whether the jurisdictional determination is consistent with the objectives of the NGA and the Natural Gas Policy Act of 1978 (NGPA).

[10] 52 FERC ¶ 61,268 (1990).

[11] Marathon Oil submitted a response requesting that the Commission establish a priority for casinghead gas. However, as Marathon Oil notes, this particular concern is "not included in the Commission's list of questions;" therefore, this policy statement does not address the merits of Marathon Oil's request. We note a similar proposal to provide a priority for casinghead gas was considered and rejected in Order Nos. 509 and 509-A. interpretation of, and Regulation of the OCSLA Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the OCS, 53 FR 50,925 (December 19, 1988), FERC Stats. & Regs., ¶ 30,842 at 31,290 (1988), on *reh'g*, 54 FR 8,301 (February 28, 1989), FERC Stats. & Regs., ¶ 30,846 at 31,347-48 (1989).

The State of Louisiana urged the Commission not to take any action that might extend federal regulation to include gathering activities in state waters which have traditionally been considered subject to regulation by the states. The Commission does not anticipate the clarification of its primary function test contained herein will affect the regulatory scheme now in effect offshore in state waters.

[12] Four parties—Interstates Columbia, Natural, and Tennessee, and local distribution company (LDC) Brooklyn Union—argued for a blanket gathering declaration; the remaining thirty commenters seek to maintain, to one degree or another, the distinction between gathering and transportation, or else express no opinion.

[13] OCS Producers represents the interests of major producers of oil and gas on the OCS, and marketers, and/or shippers on OCS pipelines and consists of: Amerada Hess Corporation; Amoco Production Company and Amoco Energy Trading Corporation; Anadarko Petroleum Corporation; Ashland Exploration Inc.; Chevron U.S.A. Inc; Conoco Inc.; Exxon Corporation; Marathon Oil Company; Meridian Oil Inc.; Mobile Natural Gas Inc.; Oryx Energy Company; OXY USA Inc.; Phillips Petroleum Company; Shell Offshore Inc.; Texaco Natural Gas Inc.; and, Union Pacific Fuels, Inc.

[14] Excepting Blue Dolphin Pipe Line, which argues that absent a legislative mandate, the Commission cannot displace its NGA regulatory obligations by acting exclusively under the OCSLA.

[15] Tejas conditions its endorsement of OCSLA-only regulation upon the Commission's finding "that interstate transportation on the entire OCS is workably competitive and that no interstate pipelines have market powar over OCS transportation."

[16] Leviathan would not rely entirely on complaints. Leviathan proposes to maintain cost-of-service based rates for existing OCS pipelines for three years, with annual inflation adjustments, and would similarly apply cost-based rates to new facilities exceeding 24 inches in diameter. Blue Dolphin Pipe Line is concerned about the administrative burden born by the complainant and the fact that relief will be, at best, prospective.

[17] OCS Producers, IPAA, NGSA, Blue Dolphin Exploration, CNG, Energy Development, Total Minatome, and Vastar.

[18] Process Gas Consumers and NGSA.

[19] OCS Producers, IPAA, NGSA, Blue Dolphin Exploration, Energy Development, Total Minatome, Process Gas Consumers, and NGSA.

[20] Blue Dolphin Exploration, Energy Development, CNG, IPAA, OCS Producers, NGSA, and Process Gas Consumers.

[21] INGAA, Columbia, Sea Robin, PanEnergy, and Tennessee.

[22] Centana and Williams Field Services.

[23] Blue Dolphin Exploration and IPAA.

shippers receive any lesser rate that might be negotiated by new shippers. PanEnergy rejects the need for a default contract, noting gathering facilities offshore remain subject to the Commission's OCSLA jurisdiction. Columbia, Enron, and PanEnergy believe that vigorous competition and the Commission's ability to remedy discrimination under the OCSLA will protect existing customers' expectations. Blue Dolphin Exploration states that the Commission should protect existing customers by (1) conditioning any declaration of gathering status for existing facilities owned by interstates or their affiliates upon divestiture of those facilities to a non-pipeline, non-pipeline affiliate party, and, (2) requiring interstate pipelines to divest all interests in offshore gathering facilities to unaffiliated, non-interstate owned or controlled third parties. OCS Producers contend that without NGA rate regulation, no uniform standard conditions could adequately protect historical customers.

As noted above, the vast majority of comments received reject the prospect of a blanket declaration and instead advocate continuing to distinguish between gathering and transportation on a case-by-case basis. However, while producers and industrial end users endorse a continued application of the Commission's current modified primary function test, other parties propose that that test be altered in various ways.

Interstate and producer-owned pipelines complain that nonjurisdictional gatherers enjoy competitive advantages over regulated transporters and urge the Commission to apply the primary function test in a manner that favors finding OCS facilities to be gathering. For example, INGAA asserts the Commission should continue with a case-specific analysis, but should "customize its analysis for offshore facilities," recognizing that size, ownership, and vintage are not necessarily determinative of gathering offshore, whereas the behind-the-plant location of many offshore lines demonstrates their "true gathering nature." Rather than relying exclusively on a bright-line physical test, Sea Robin urges the Commission to consider the commercial function of an OCS facility. ANR would eliminate ownership as a factor when considering the status of jurisdictional stand-alone OCS facilities. Williams Field Services maintains that gathering systems' facilities may extend beyond a processing plant to deliver into multiple transportation systems.

Enron and PanEnergy propose adopting a rebuttable presumption that all offshore facilities are gathering. Hence, gathering status for new and existing facilities would be granted unless parties opposed demonstrate the facilities function primarily as transportation. Koch and Texaco would limit the presumption to new offshore facilities so as not to disturb the expectations of existing owners and customers. Texaco would also require that an existing jurisdictional pipeline seeking gathering status be evaluated in view of the technology employed at the time the facilities were constructed and be obliged to demonstrate that circumstances have changed since the facilities were initially classified.

On the other hand, producers and industrial end users generally urge the Commission to continue applying the primary function test without any change which would skew that test in favor of a gathering determination. OCS Producers, IPAA, NGSA, and Process Gas Consumers maintain there is no legal or policy basis for altering the Commission's present application of the modified primary function test. OCS Producers claim that revisions of the test such as elevating the behind-the-plant factor above all others, "would lead to the conclusion that virtually all pipeline facilities on the OCS are nonjurisdictional gathering." OCS Producers, Vastar, and Blue Dolphin Exploration endorse the outcome of the Commission's application of the primary function test in *Sea Robin*.

CNG would have the Commission disregard the behind-the-plant and central-point-in-the-field factors, and the facilities' geographic configuration and ownership, in favor of those factors deemed relevant to determining an offshore facility's core operation, namely: size, location of connecting platforms, operating pressures, and compression. According to CNG, pipelines with a single or serial attachment of supply sources serve as surrogate supply laterals and are likely to be gathering, whereas systems that generate economies of scale in aggregating multiple, scattered sources of supply are likely to be transportation.

Total Minatome considers offshore production platforms to function as the central point in a field, aggregating gas from different wells. Accordingly, Total Minatome views the large diameter lines that move gas from platforms as transportation lines, and proposes that the short, low-pressure lines linking multiple platforms be considered feeder lines under the OCSLA and gathering lines under the NGA.

Leviathan, a gatherer, proposes a novel jurisdictional test whereby new OCS system extensions of market area pipelines—*i.e.*, expansions to reach new production or attach additional OCS supplies—would be treated as jurisdictional transportation if the pipe diameters exceeded 24 inches. Market area pipelines' new supply pipe with a diameter of 24 inches or less would be treated as gathering. New jurisdictional production area facilities greater than 24 inches in diameter, including extensions of jurisdictional pipelines, would be treated as jurisdictional transportation facilities. Existing and new gathering facilities, including new OCS supply pipe with a diameter of 24 inches or less, would be presumed to be nonjurisdictional. Existing OCS transportation facilities would be treated as they have been historically.

V. Commission Response and OCS Policy

As stated in the NOI, the Commission has been presented with recent requests to clarify the jurisdictional status of OCS pipeline facilities. These facilities are an integral part of proposals to explore and develop natural gas reserves in deep water areas of the Gulf of Mexico and bring gas from such projects onshore for processing and delivery into the onshore interstate transportation grid. On the one hand, the Commission recognizes that such projects are expensive, and would not be undertaken in an atmosphere of regulatory uncertainty. We do not want to employ a policy that might impede exploration and development of these new areas. On the other hand, we are mindful of our obligations under the NGA to prevent the exercise of market power by companies that transport natural gas.

To strike a balance between these different objectives, we will retain our existing primary function test and clarify how we intend to apply that test for determining whether particular facilities constitute gathering facilities exempt from our jurisdiction under NGA section 1(b). We will add a new factor to our primary function test that will apply to facilities that are designed to collect gas produced in water depths of 200 meters or greater. Such facilities will be presumed to qualify as gathering facilities up to the point or points of potential connection with the interstate pipeline grid. From there on, the facilities will be evaluated under our existing primary function test and if found to be primarily transportation facilities, will be subject to our jurisdiction under NGA section 7.

We realize this statement of our gathering policy will require further refinement in that it leaves unresolved a number of questions that will have to be addressed in individual cases. For instance, what constitutes a point of potential connection with the interstate pipeline grid may depend on individual circumstances. In *SGPC*, Docket No. CP96–9–000, which we are issuing contemporaneously with this policy statement, the platform and downstream stub lines interconnecting with Texas Eastern Transmission Corporation's interstate line six miles away are considered gathering. All facilities downstream of these are deemed to be transportation. To consider another example, the Viosca Knoll system (which predates this policy statement, but which we believe is consistent with it) was constructed in depths less than 200 meters, but was specifically designed to access new, deep water production. Viosca Knoll, a 20-inch diameter, 95-mile pipeline, was constructed roughly parallel to the edge of the Continental Shelf in a type of "header" configuration interconnecting with interstate pipelines at either end. The facility was declared to be gathering then and a similar project would qualify for a presumption of gathering under the policy we are adopting today.[24]

Despite the issues that will still need to be addressed in individual cases, we believe the above policy provides the necessary certainty for most new projects and fairly balances the concerns raised by the commenters in this proceeding. Many commenters, for instance, opposed any initiative that would effectively eliminate NGA regulation on the OCS and rely only on the OCSLA to provide a level playing field. Commenters pointed to reliance on the existing regulatory scheme for access to reasonably priced transportation and protection against market power by interstate pipelines. The policy adopted here would not upset that scheme. Existing interstate pipelines and gathering facilities would retain their status barring some change in circumstances, and new proposals for construction on the OCS would be considered under the current primary function test for gathering.

At a depth of roughly 200 meters, however, geographical and topographical changes on the sea floor make a rigid application of the modified primary function test undesirable. This is the point at which the Outer Continental Shelf drops off sharply to very deep waters. Of necessity, exploration past this point must rely on large, floating production platforms. The expense of exploring for and producing gas at these depths is considerably greater than in shallower waters.[25] This depth also is consistent with the 200 meter depth specified in the Outer Continental Shelf Deep Water Royalty Relief Act, which provides royalty relief to encourage new oil and gas production in deep water lease blocks in the Gulf of Mexico. *See* P.L. 104–58, Title III, 43 USC § 1337 (1995).

There is little point in attempting to distinguish between new projects of this kind based on their physical features. Such deep water projects perform essentially the same function and they are all primarily engaged in production and gathering activities. We think the better approach is to consider all such facilities as production and gathering facilities up to the point where they duplicate or are in proximity to facilities that are established as transportation facilities; downstream of that point, we will determine the facilities' jurisdictional status based on our primary function test.

At present, there are a limited number of projects that produce from these depths, so there is no significant reliance by investors, producers, or shippers on an established regulatory scheme. Further, the companies who are sponsoring pending projects are large companies that intend to produce, gather, and transport their own gas and who appear less in need of regulatory protection than others closer to shore. As noted in the comments, these producers closer to shore have relied on regulated interstate pipelines to transport most, if not all, of their gas onshore and may be captive to these pipelines if Commission oversight were suddenly withdrawn. In sum, it is our view that under current circumstances the need for NGA regulation of deep water projects far offshore is significantly less than it is elsewhere.

Having said this, however, we note that where gas is destined for interstate commerce, there is necessarily a point at which the gathering or collection of the gas ends, and interstate transportation begins. The original primary function test was designed to help identify this point. For the reasons explained, though, the rigid application of that test has not been helpful in categorizing the new large projects designed to bring gas onshore from deep water production areas. For long lines designed to bring gas onshore from deep water, we believe the place where gathering or collection ends and transportation begins is the point or points of potential connection with the existing interstate pipeline grid. Whether the lines actually interconnect there or not, we see little difference in function between an interstate transportation line that takes gas to shore and a newly built line that, for all practical purposes, runs parallel to it and serves the same purpose of moving gas to shore.

One of the principles underlying our policy on the OCS is to hold all owners of facilities that perform similar functions to the same regulatory requirements that our statutory jurisdiction allows. It would be inconsistent to allow new, large pipelines that perform a function no different from nearby existing lines subject to NGA regulation to operate outside the framework of Order No. 636 while, at the same time, applying the requirements of Order No. 636 to existing pipelines with the same physical features and function.

For example, in the *SGPC* order,[26] the Commission is issuing a certificate under NGA section 7(c) for that portion of the proposed facility that performs a transportation function. The Commission will regulate the WD 143 to Venice Line as an NGA facility because, under the Commission's "primary function" test, the line is "representative of the other long-haul transportation systems in the area that serve to move OCS production, that has been aggregated at interconnection platforms, to shore for processing and subsequent redelivery onto the onshore interstate transportation grid."[27] Like other interstate pipelines performing the same function, the Commission will require SGPC to comply with all the requirements of Order No. 636.[28]

The Commission will continue to exercise rate jurisdiction for gathering facilities that are owned by natural gas companies (irrespective of whether these natural gas companies are existing interstate pipelines or new deep water producers that also own transportation

[24] Viosca Knoll Gathering System, 66 FERC ¶ 61,237 (1994), *reh'g denied*, 68 FERC ¶ 61,050 (1994).

[25] "In 1991, total costs for the average exploratory natural gas well in the lower 48 states were almost $600,000 onshore, and over $5 million offshore. In deep water, a tension leg platform in 3,000 feet of water can cost a billion dollars." U.S. Senate Committee on Energy and Natural Resources, Report 103–248 (April 11, 1994) (commenting on S. 318, a draft of what became the Outer Continental Shelf Deep Water Royalty Relief Act, Title III, P.L. 104–58, enacted November 28, 1995).

[26] *See* Docket No. CP96–9–000, issued contemporaneously with this policy statement.

[27] *Id.*, slip op. at 20.

[28] In response to the interstate pipelines' concerns about competing on the OCS with unregulated entities, the Commission notes it recently issued a policy statement that allows a pipeline to negotiate creative approaches to pricing other than traditional cost-of-service ratemaking if its cost-based recourse rate is available. *See* Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, 74 FERC ¶ 61,076 (1996).

facilities).[29] As noted in the *SGPC* order, the Commission will have jurisdiction over rates charged by SGPC for gathering services over those facilities upstream of the WD 143 platform.

Moreover, in addition to our NGA "in connection with" jurisdiction over gathering rates charged by natural gas companies, the Commission has jurisdiction pursuant to sections 5(e) and 5(f) of the OCSLA. Such jurisdiction is not restricted to interstate pipelines subject to the Commission's NGA jurisdiction, but rather extends to all pipelines on the OCS, including gathering lines owned by non-interstate pipelines.[30] The Commission acknowledged this jurisdiction in Order Nos. 509 and 509–A. In Order No. 509–A, the Commission stated that "the open-access mandate of the OCSLA applies to all pipeline operations on the OCS, and will consider appropriate measures for remedying discriminatory access to other OCS facilities on a case by case basis."[31]

The Commission continues to believe this and will treat seriously, and respond promptly to, complaints filed pursuant to the OCSLA by shippers on OCS gathering pipelines that are not otherwise subject to the Commission's NGA "in connection with" jurisdiction. The Commission interprets the nondiscrimination mandates of sections 5(e) and 5(f) of the OCSLA to require, at a minimum, nondiscriminatory access and nondiscrimination with respect to rates and terms and conditions of service.

In particular, the Commission believes it has the authority under the OCSLA to take those steps necessary to guarantee that all OCS pipelines, including those not subject to the NGA, provide fair and unrestricted access in a manner that ensures the efficient development of OCS natural gas resources. The Commission stated in Order No. 509 that if it received complaints it would "use its ancillary authority, its authority under sections 4 and 5 of the NGA, and its authority under section 5 of the OCSLA, as appropriate under the circumstances presented."[32]

In sum, the Commission will continue to determine the primary function of offshore facilities on a case-by-case basis, as the majority of commenters advocate. However, in applying our primary function test to facilities offshore, in recognition of the technology and topography particular to operations in deep water, we will presume facilities located in deep water are primarily engaged in gathering or production. Other than this clarification regarding the primary function of facilities offshore, after consideration of the comments, we find no cause to seek to alter our regulatory authority under the NGA and OCSLA over natural gas facilities and services on the OCS. By the Commission.

Lois D. Cashell,

Secretary.

Appendix

Parties submitting comments in Docket No. RM96–5–000:

American Gas Association (AGA)
Amoco Energy Trading Corporation jointly with Amoco Production Company (Amoco)
ANR Pipeline Company (ANR)
Atlanta Gas Light Company jointly with Chattanooga Gas Company (Atlanta)
Brooklyn Union Gas Company (Brooklyn Union)
Blue Dolphin Exploration Company (Blue Dolphin Exploration)
Blue Dolphin Pipe Line Company (Blue Dolphin Pipe Line)
Centana Gathering Company (Centana)
Chemical Manufactures Association (Chemical Manufactures) *
Columbia Gas Transmission Corporation jointly with Columbia Gulf Transmission Company (Columbia)
Consolidated Natural Gas Company (CNG)
Energy Development Corporation (Energy Development)
Enron Interstate Pipelines (Enron)
Enserch Exploration, Inc. (Enserch)
Independent Petroleum Association of America (IPAA)
Interstate Natural Gas Association of America (INGAA)
Koch Gateway Pipeline Company (Koch)
Leviathan Gas Pipeline Company (Leviathan)
Marathon Oil Company
Maryland Department of the Environment *
Minerals Management Service, U.S. Department of Interior (MMS) *
Natural Gas Pipeline Company of America (Natural)
Natural Gas Supply Association (NGSA) *
OCS Producers
PanEnergy Companies (PanEnergy)
Process Gas Consumers Group jointly with American Iron and Steel Institute and Georgia Industrial Group (Process Gas Consumers)
Sea Robin Pipeline Company (Sea Robin)
State of Louisiana (Louisiana)
Tejas Power Corporation (Tejas)
Tennessee Gas Pipeline Company (Tennessee)
Texaco Natural Gas Inc. (Texaco)
Total Minatome Corporation (Total Minatome)
Vastar Resources, Inc. (Vastar)
Venice Gathering Company (Venice)
Williams Field Services Group, Inc. jointly with Transcontinental Gas Pipe Line Corporation (Williams Field Services)

* Filed out-of-time.

[FR Doc. 96–5066 Filed 3–4–96; 8:45 am]

BILLING CODE 6717–01–P

[29] Under sections 4 and 5 of the NGA, the Commission has jurisdiction over the rates and charges received by natural gas companies for or "in connection with" the jurisdictional transportation of gas. Thus, an interstate pipeline's gathering rates generally are subject to the Commission's jurisdiction because they are in connection with the pipeline's jurisdictional transportation services. *See* Northern Natural Gas Company, 929 F.2d 1261 (8th Cir. 1991), *cert. denied*, 112 S.Ct. 169 (1991).

[30] The only pipelines that may be exempt from the Commission's jurisdiction under the OCSLA are certain "feeder lines," which are defined in section 5(f) of the OCSLA, 43 USC 1334(f)(2), as a pipeline which feeds into a facility where oil and gas are "first collected" or a facility where oil and gas are "first separated, dehydrated, or otherwise processed." Moreover, these "feeder lines" only may be exempted from the requirements of the OCSLA by order of the Commission.

[31] Interpretation of, and Regulations Under, Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf, 54 FR 8,301 (February 28, 1989), FERC Stats. & Regs. ¶ 30,848 at 31,334 (1989).

[32] Interpretation of, and Regulations Under, Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf, 53 FR 50,925 (December 19, 1988), FERC Stats. & Regs. ¶ 30,842 at 31,269 (1988).

[Docket No. CP96–201–000, et al.]

Algonquin Gas Transmission Company, et al.; Natural Gas Certificate Filings

February 26, 1996.

Take notice that the following filings have been made with the Commission:

1. Algonquin Gas Transmission Company

[Docket No. CP96–201–000]

Take notice that on February 20, 1996, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135 filed an application pursuant to Sections 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities necessary to connect Algonquin's existing pipeline system with facilities owned by The Connecticut Light and Power Company (CL&P) in Middletown, Connecticut (the "Middletown Plant"). Algonquin's application is on file with the Commission and open to public inspection.

Algonquin proposes to construct and operate approximately 8.4 miles of 20-inch pipeline lateral, a meter station and appurtenant facilities (the "Middletown Lateral"), extending from a point on Algonquin's existing mainline system in Glastonbury, Connecticut, south through Portland, Connecticut and across the Connecticut River to CL&P's Middletown Plant. Algonquin plans to construct the lateral facilities generally within CL&P's electric transmission light right-of-way. Algonquin states that the facilities would be constructed during the Spring and Summer of 1997 for an in-service date of July 1, 1997; and, the cost of the facilities is estimated to be approximately $15.1 million.

Algonquin proposes to construct and operate the Middletown Lateral for the transportation of up to 82,500 MMBtu per day of natural gas for CL&P. Algonquin states that CL&P intends to use the gas as an alternate fuel for the No. 2 and No. 3 Units of its electric generating station at the Middletown Plant. Algonquin and CL&P have executed a precedent agreement dated February 15, 1996, contemplating firm transportation service under Algonquin's Rate Schedule AFT–1 following the construction of the facilities necessary to provide that service. Algonquin states that upon satisfaction of the conditions specified in the precedent agreement, principally Commission approval, Algonquin and CL&P will execute a service agreement for transportation service for a term of twenty years.

Comment date: March 18, 1996, in accordance with Standard Paragraph F at the end of this notice.

2. Williston Basin Interstate Pipeline Company

[Docket No. CP96–202–000]

Take notice that, on February 20, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed a request, pursuant to its blanket certificate in Docket No. CP82–487–000 *et al.* (30 FERC ¶ 61,143), section 7 of the Natural Gas Act (NGA) and §§ 157.205 and 157.211 of the Commission's Regulations, for authorization to construct and operate a new metering station and appurtenant facilities to provide deliveries of transportation service volumes to Montana-Dakota Utilities Company (Montana-Dakota), a local distribution company, for ultimate use by Dunbar Resorts of Deadwood, South Dakota, all as more fully set forth in the request, which is on file with the Commission and open to public inspection.

Williston Basin states that the proposed facilities are estimated to cost $17,000 and will consist of a meter, regulators, and miscellaneous gauges and valves. The delivery point that Williston Basin will use to serve Dunbar Resorts is an existing farm tap which was installed in the late 1950's to serve a right-of-way grantor. Williston Basin states that the Commission authorized this tap, and the service Williston Basin provides to Montana-Dakota through it, in Williston Basin's above-referenced blanket certificate proceeding. Williston Basin further states that the transportation service it will provide to Montana-Dakota through the proposed facilities will be performed under its FERC Gas Tariff, Second Revised Volume No. 1, under Rate Schedules FT–1 and/or IT–1.

The proposed meter station facilities are to be located on existing pipeline right-of-way, in the NE¼ of the NW¼ of Section 14, T5N, R3E, in Lawrence County, South Dakota. Williston Basin states that the currently estimated maximum quantity of natural gas to be delivered to Montana-Dakota through this meter station is 120 Mcfd, that the proposed facilities will be designed to deliver gas at a rate of up to 1,200 Mcfd, and that the costs incurred to increase the design capacity of the facilities in excess of current projected usage are minimal and will allow for expected future growth in the area.

Williston Basin adds that all of the proposed facilities will be enclosed within a security fence, that such enclosure will be approximately 10 feet by 15 feet, and that the soil within such area will be sterilized and covered with aggregate to prevent any undesirable vegetation growth.

Comment date: April 11, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company

[Docket No. CP96–203–000]

Take notice that on February 20, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–203–000 a request pursuant Sections 157.205(b) and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205(b) and 157.212) for a authority to upgrade an existing delivery point, located in Olmsted County, Minnesota, to accommodate natural gas deliveries to UtiliCorp United, Inc. (UCU) under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that service would be provided to UCU under currently effective interruptible throughput service agreement(s). Northern asserts that the upgrade of Elcor Asphalt TBS is required in order to provide additional transportation service to the Elcor Asphalt plant.

It is further asserted that the incremental volumes that would be delivered to UCU at the Elcor Asphalt TBS are 296 MMBtu on a peak day and 52,435 MMBtu on an annual basis. Northern states that the total estimated cost to upgrade the existing Elcor Asphalt TBS is $9,500.

Comment date: April 11, 1996, in accordance with Standard Paragraph G at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP96–204–000]

Take notice that on February 20, 1996, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP96–204–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new natural gas delivery point located in Goochland County, Virginia under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate a new delivery point (West Creek) consisting of a 4-inch tap, a filter separator, and a 4-inch meter for Commonwealth Gas Services, Inc. (COS). Columbia states that the new facilities would cost approximately $102,000 and COS would reimburse Columbia for these costs.

Columbia states that COS would receive 500 Dth of gas per day and 400,000 Dth of gas per year at the West Creek point and would reduce by like quantity the amount of gas it receives at the existing Monocan delivery point. Columbia mentions that since COS has not requested an increase in its firm entitlement, there is no impact on Columbia's existing peak day obligations.

Comment date: April 11, 1996, in accordance with Standard Paragraph G at the end of this notice.

5. ANR Pipeline Company

[Docket No. CP96–208–000]

Take notice that on February 21, 1996, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP96–208–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to use additional work space associated with a pipeline replacement project in St. Landry Parish, Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR proposes to replace a 1.2 mile segment of its Southeast Mainline because of increased population density and in order to satisfy U.S. Department of Transportation safety regulations. ANR states that in order to accomplish this replacement construction it will have to utilize work areas which may not have been included in the scope of the authorizations for these facilities when they were originally certificated and constructed. Therefore, ANR requests the temporary use of work space adjacent to the right-of-way of the pipeline being replaced. It is stated that the construction will be done under the authority of Section 2.55 of the Commission's Regulations, which authorizes replacement within the existing right-of-way.

Comment date: March 18, 1996, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5002 Filed 3–4–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5434–3]

Agency Information Collection Activities Under OMB Review; New Source Performance Standards, Calciners and Dryers in the Mineral Processing Industry; OMB# 2060–0251, EPA# 0746.03

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(A)(1)(D), this notice announces that the Information Collection Request (ICR) for Standards of Performance for New Stationary Sources—Calciners and Dryers in the Mineral Industry (Subpart UUU) described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual date collection instrument.

DATES: Comments must be submitted on or before April 4, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 746.03 and OMB No. 2060–0251.

SUPPLEMENTARY INFORMATION: *Title:* Standards of Performance for Calciners and Dryers in Mineral Industries (Subpart UUU) OMB Control No. 2060–0251; EPA ICR No. 0746.03. This is a request for revision of a currently approved collection.

Abstract: The Administrator has judged that PM emissions from calciners and dryers in the mineral industry cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of calciners and dryers must notify EPA of construction, modification, startups, shut downs, date and results of initial performance test. Owners/operators with facilities using any wet scrubbing device shall install, calibrate, and maintain continuous monitoring devices to measure pressure drop and flow rate. Weekly records of the pressure drop and flow rate are to be maintained, and semi-annual reports are to be submitted when the pressure drop is less than 90% of the average value, and/or the flow rate is less than 80% or greater than 120%, from the most recent performance test recorded according to § 60.736(c).

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 29, 1995 and no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 51 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 155.

Estimated Number of Responses: 310.

Frequency of Response 2.

Estimated Total Annual Hour Burden: 15,668 hours.

Estimated Total Annualized Cost Burden: $477,090.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0746.03 and OMB Control No. 2060–0251 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW., Washington, DC 20460
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: February 27, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–5030 Filed 3–4–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5434–4]

TSCA; Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Office of Prevention, Pesticides and Toxic Substances (OPPTS) is seeking the renewal of an existing Information Collection Request (ICR) from the Office of Management and Budget (OMB). OPPTS has forwarded the following ICR to OMB: TSCA Section 12(b) Notification of Chemical Exports (OMB Control No. 2070–0030, EPA ICR No. 795), which is abstracted below. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument. EPA requested comments on this ICR and its proposed renewal in a **Federal Register** notice on September 29, 1995 (60 FR 50568). The sole comment received was considered prior to finalizing this ICR.

DATES: Comments must be submitted on or before April 4, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA (202) 260–2740, and refer to EPA ICR No. 0795.09.

SUPPLEMENTARY INFORMATION: *Title:* Notification of Chemical Exports (OMB Control No. 2070–0030, EPA ICR No. 0795). This is a request for extension of a currently approved information collection which expires on April 30, 1996.

Abstract: Section 12(b)(2) of the Toxic Substances Control Act (TSCA) requires that any person who exports or intends to export to a foreign country a chemical substance or mixture that is regulated under TSCA sections 4, 5, 6 and/or 7 submit to EPA notification of such export or intent to export. Upon receipt of notification, EPA will advise the government of the importing country of the U.S. regulatory action with respect to that substance. EPA uses the information obtained from the submitter via this collection to advise the government of the importing country. Responses to the collection of information are mandatory (see 40 CFR part 707). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2. However, notwithstanding any claims of confidentiality, the government of the importing country will be notified of the export of the substances in question.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.55 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Respondents/Affected Entities: Those which export or engage in wholesale sales of chemicals.

Estimated No. Of Respondents: 200.

Estimated Total Annual Burden on Respondents: 3,800 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following address. Please refer to EPA ICR No. 0795.09 and OMB Control No. 2070–0030 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: February 27, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–5031 Filed 3–4–96; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–62152; FRL–4985–9]

Asbestos-Containing Materials in Schools; State Request for Waiver from Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed waiver.

SUMMARY: EPA has received from the State of Maine a request for a waiver from the requirements of 40 CFR part 763, Subpart E, Asbestos-Containing Materials in Schools. This document announces an opportunity for public review and comment on the State waiver request.

DATES: Comments on the waiver request must be received by May 6, 1996.

ADDRESSES: Written comments must be sent in triplicate, identified by the

docket control number OPPTS–62152 to: James M. Bryson, Regional Abatement Coordinator, Environmental Protection Agency, OEP 309 Region I, John F. Kennedy Federal Building, Boston, MA 02203–0001. Copies of the Maine waiver request are on file and may be reviewed at the EPA Region I Office.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: bryson.jamesm@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–62152. No CBI should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in the SUPPLEMENTARY INFORMATION unit of this document.

FOR FURTHER INFORMATION CONTACT: James M. Bryson at the address listed above.

SUPPLEMENTARY INFORMATION: This document is issued under the authority of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2641, *et seq.* TSCA Title II was enacted as part of the Asbestos Hazard Emergency Response Act (AHERA), Pub. L. 99–519. AHERA is the name commonly used to refer to the statutory authority for EPA's rules affecting asbestos in schools. For purposes of this document, EPA will use the AHERA designation. In the **Federal Register** of October 30, 1987 (52 FR 41846), EPA issued a final rule as required in AHERA, the Asbestos-Containing Materials in Schools Rule (40 CFR part 763, Subpart E), which requires all Local Education Agencies (LEAs) to identify Asbestos-Containing Building Materials (ACBMs) in their school buildings and to take appropriate actions to control the release of asbestos fibers. The LEAs are required to describe their asbestos control activities in management plans, which must be available to all concerned persons and submitted to the State Governor's Designee. The rule requires LEAs to use specially trained and accredited persons to conduct inspections for asbestos, develop management plans, and design and conduct actions to control asbestos.

The recordkeeping and reporting burden associated with waiver requests was cleared under OMB control number 2070–0091. This document merely announces the Agency's receipt of a waiver request and therefore impose no additional burden beyond that which was covered under existing OMB control number 2070–0091. Send any comments regarding the burden estimate or any other aspect of this collection to Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer.

Under section 203 of TSCA Title II, EPA may, upon request of a State Governor and after notice and comment and opportunity for a public hearing in the State, waive in whole or in part the requirements of the rule promulgated under section 203, if the State has established and is implementing or intends to implement a program of asbestos inspection and management which is at least as stringent as the requirements of 40 CFR part 763, Subpart E. The AHERA rule requests specific information be included in a waiver request submitted to EPA, establishes a process for reviewing waiver requests, and sets forth procedures for oversight and rescission of waivers granted to the States.

The rule requires States seeking waivers to submit requests to the Regional Administrator for the EPA Region in which the State is located. EPA is hereby issuing a notice in the **Federal Register** announcing receipt of the request and soliciting written comments from the public pertaining to the State of Maine's asbestos waiver request, and Senate Bill 38 MSRA impact on the implementation and enforcement of Maine's Regulation 16B. Comments must be submitted by May 6, 1996. If during the comment period, EPA receives a written objection to the State's request, EPA will schedule a hearing to be held in the affected State after the close of the comment period.

On December 20, 1994, Assistant Attorney General Jon H. Edwards submitted to John P. DeVillars, Regional Administrator, EPA Region I, a request for a waiver under the AHERA 40 CFR 763.98. The request was received by the Regional Office on January 3, 1995. The State's submittal requested a waiver from all requirements of 40 CFR part 763, Subpart E.

The State's waiver request was complete in that it contained all of the following provisions which are required by the AHERA:

1. A copy of the State provisions and proposed provisions relating to its program of asbestos inspection and management in schools for which the request is made.

2. The name of the State agency that is responsible for administering and enforcing the requirements for which a waiver is requested, the names and job titles of responsible officials in that agency, and phone numbers where the officials can be contacted.

3. Detailed reasons, supporting papers, and the rationale for concluding that the State's asbestos inspection and management program provisions for which the request is made are at least as stringent as the requirements of 40 CFR part 763, Subpart E.

4. A discussion of any special situations, problems, and needs pertaining to the waiver request accompanied by an explanation of how the State intends to handle them.

5. A statement of the resources that the State intends to devote to the administration and enforcement of the provisions relating to the waiver request.

6. Copies of any specific or enabling State laws and regulations relating to the request, including provisions for assessing criminal and/or civil penalties.

7. Assurance from the Governor/Attorney General or the lead agency that the lead agency has the legal authority necessary to carry out the requirements relating to the request.

EPA may waive some or all of the requirements of 40 CFR part 763, Subpart E if:

1. *The State has the legal authority necessary to carry out the provisions of asbestos inspection and management in schools relating to the waiver request.* The Maine Department of Environmental Protection recognizes that asbestos exposure in schools (and elsewhere) is a serious concern. The Maine General Assembly also recognized this, and during a 1987 legislative session a bill was passed authorizing the Air Pollution Control Division, Maine Department of Environmental Protection to implement State requirements under the AHERA, establish a certification program for abatement contractors, develop and implement asbestos work practices and exposure standard, collect fees, and levy fines. Effective June 30, 1993, Maine's revised asbestos regulation required the certification of all persons engaging in asbestos-related work. The requirement applies to all public and commercial buildings as well as schools. The revised regulation also contains more stringent work practices for asbestos abatement and expands the enforcement capabilities of the State in regards to false training documents submitted to obtain certification. The Maine General Assembly has enacted authority for the Maine Air Quality Control Commission to enforce rules and regulations to minimize the risk to the public from the exposure to asbestos, including specifically, requirements for asbestos management plans to be submitted and implemented by schools. All requisite legislative/legal authority to implement the AHERA waiver program have been adopted, and no problems are anticipated in meeting waiver objectives.

2. *The State's asbestos inspection and management will be at least as stringent as the requirements of 40 CFR part, 763 Subpart E.* The requirements of Subpart E of 40 CFR part 763 have been adopted in its entirety, with the exception of §§ 763.97 and 763.98 into the Maine Air Quality Control Commission's Regulation No. 16B, Chapter 12A, "Emission Standards for Asbestos" School Requirements. The State intends to administer these regulations in a manner that would be at least as stringent as the requirements of 40 CFR part 763, Subpart E.

3. *The State has the appropriate enforcement resources to devote to the administration and enforcement of the provisions relating to the waiver request.* The State conducts routine AHERA inspections, abatement inspections and "for cause" inspections. Routine AHERA inspections result in a determination of compliance with the need to have and implement an adequate, updated management plan. Routine inspections focus on assessing compliance with the AHERA and State asbestos requirements, including such things as implementation of appropriate work practices, compliance with accreditation (State Certification) requirements and proper recordkeeping. "For cause" inspections, are initiated as a result of tips or complaints, and are made to assess compliance with any applicable State or EPA asbestos rules. The State will continue to update its existing Neutral Administrative Inspection Scheme (NAIS) in support of targeting LEAs and other "persons" for AHERA compliance inspections. The NAIS will include a specific method or criteria for selecting inspection targets and will comply with EPA's National Compliance Monitoring Strategies for AHERA. The State has devoted four full-time employees to the existing TSCA Enforcement Grant and will continue to devote at least that amount of time to stringently enforce the requirements of 40 CFR part 763, Subpart E. The State has completed an enforcement response policy to determine the most appropriate enforcement action for each violation of the State's laws and regulations.

4. *The State has or will have qualified personnel to carry out the provisions relating to the waiver request.* The program will be carried out by staff in the Maine Department of Environmental Protection, Air Pollution Control Division. The State is currently well staffed on the TSCA Asbestos program. The staff is fully trained and certified as Building Inspector/Management Planners and Contractor/Supervisors. Two of three staff persons are conducting full AHERA inspections. One staff person is conducting Worker Protection inspections and is currently training to conduct full AHERA inspections. The fourth person administers the grant and works on case development resulting from inspections.

5. *The State will devote adequate resources to the administration and enforcement of the asbestos inspection and management provisions relating to the waiver request.* Based upon review by the EPA Region I Office, the Agency feels that the Maine Department of Environmental Protection has resources to effectively implement and administer the asbestos program in Maine.

6. *When specified by EPA, the State gives satisfactory assurances that necessary steps, including specific actions it proposes to take and a time schedule for their accomplishment, will be taken within a reasonable time to conform with applicable criteria in items 2 through 5 above.* Final approval of the program by EPA will require effective implementation and continued use of the EPA-approved NAIS, logging and tracking system, enforcement strategy/standard operating procedure, enforcement response policy, and communication strategy. EPA's final approval of the State's program will require the State to provide adequate resources to support the administration of the program.

The reporting and recordkeeping provisions relating to State waivers from the requirements of the Asbestos-Containing Materials in Schools Rule (40 CFR part 763) have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and have been assigned OMB control number 2070–0091.

On June 16, 1993, Maine Governor Angus S. King signed Senate Bill 38 M.R.S.A. (S.B. 38). S.B. 38 M.R.S.A. may have an impact on enforcement of Maine's asbestos rules and regulations. S.B. 38 M.R.S.A. S.B. 38 appears to create a statutory privilege for environmental audits and a presumption against imposition of penalties for voluntary disclosures arising out of an environmental self-evaluation. EPA is concerned that S.B. 38 restricts the enforcement options available to the State and, therefore, may not be as stringent as the AHERA. Prior to making a final decision on Maine's request for an AHERA waiver, the State, should clarify S.B. 38's impact on the State's enforcement capabilities. EPA intends to request a legal analysis from the State on whether S.B. 38 applies to Maine's asbestos rules and regulations, and if so, to what extent. In addition, EPA specifically requests public comment on this issue.

EPA with this document is hereby announcing receipt of the State's request and soliciting written comments from the public pertaining to the State of Maine's asbestos waiver request, and Senate Bill 38 M.R.S.A. impact on the implementation and enforcement of Maine's Regulation 8. Comments must be submitted by May 6, 1996. If during the comment period, EPA receives a written objection to the State's request, EPA will schedule a hearing to be held in the affected State after the close of the comment period.

A record has been established for this document under docket number "OPPTS–62152 including comments and data submitted electronically as described below. A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is maintained in Region I at the location listed under the ADDRESSES unit of this document.

Electronic comments can be sent directly to EPA at:
bryson.jamesm@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this document, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Lists of Subjects

Environmental protection and Asbestos.

Dated: February 14, 1996.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 96–4968 Filed 3–4–96; 8:45 am]

BILLING CODE 6560–60–F

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

AGENCY: Executive Office of the President, Office of National Drug Control Policy.

ACTION: The Drug Control Research, Data, and Evaluation Committee (DCRDEC); Notice of establishment.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Director of the Office of National Drug Control Policy has established the Drug Control Research, Data, and Evaluation Committee (DCRDEC).

The Committee shall provide an avenue of communications by which a distinguished expert group representing scientific, engineering, law enforcement, treatment, and associated international scientific communities may advise the Director of the Office of National Drug Control Policy (ONDCP) on questions related to national drug control research. In pursuing this objective, the DCRDEC may operate in subgroups composed of selected committee members to conduct detailed examinations of specific issues related to national drug control policy research.

The Committee will identify gaps in current data collection to improve the generation of accurate and useful information on which to base national drug control policy. It will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act fifteen (15) days from the date of this publication.

The Committee will be comprised of approximately fourteen members. The full DCRDEC subgroup will meet approximately twice per year in plenary sessions at the convenience of the Director of the ONDCP. In addition, various sub-committees meet periodically throughout the year.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the Drug Control Research, Data, and Evaluation Committee (DCRDEC) should be directed to Mr. Edward H. Jurith, General Counsel, Office of National Drug Control Policy, Executive Office of the President, 750 17th Street, N.W., Washington, D.C. 20500, (202) 395-6709.

Signed at Washington, DC, this 26th day of February, 1996.

Edward H. Jurith,

General Counsel.

[FR Doc. 96–5021 Filed 3–4–96; 8:45 am]

BILLING CODE 3180–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1104–DR]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1104–DR), dated February 23, 1996, and related determinations.

EFFECTIVE DATE: February 23, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 23, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:.

I have determined that the damage in certain areas of the State of Alabama, resulting from a severe winter storm, ice and flooding on February 1–12, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Hazard Mitigation Assistance may be provided at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Glenn C. Woodard of the Federal Emergency Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster:

Cullman, DeKalb, Jackson, Limestone, Marshall and Morgan for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 96–5092 Filed 3–4–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1102–DR]

Idaho; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Idaho (FEMA–1102–DR), dated February 11, 1996, and related determinations.

EFFECTIVE DATE: February 27, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 23, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–5090 Filed 3–4–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1105–DR]

Montana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Montana (FEMA–1105–DR), dated February 23, 1996, and related determinations.

EFFECTIVE DATE: February 23, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 23, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Montana, resulting from severe storms, flooding and ice jams on February 4, 1996 and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Montana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David P. Grier, IV, of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Montana to have been affected adversely by this declared major disaster:

Chouteau, Deer Lodge, Gallatin, Lewis and Clark, Lincoln, Meagher, Missoula, Ravalli, Sanders and Silver Bow for Public Assistance and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 96–5093 Filed 3–4–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1103–DR]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1103–DR), dated February 23, 1996, and related determinations.

EFFECTIVE DATE: February 23, 1996,

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 23, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of North Carolina, resulting from a winter storm on February 2–9, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Hazard Mitigation Assistance may be provided at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Glenn C. Woodard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared major disaster:

Alexander, Burke, Caldwell, Catawba, Cherokee, Cleveland, Davidson, Forsyth, Gaston, Guilford, Halifax, Henderson, Iredell, Lincoln, McDowell, Polk, Stokes, Wilkes, and Yadkin for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 96–5091 Filed 3–4–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1099–DR]

Oregon; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oregon (FEMA–1099–DR), dated February 9, 1996, and related determinations.

EFFECTIVE DATE: February 23, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 21, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–5094 Filed 3–4–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1099–DR]

Oregon; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oregon, (FEMA–1099–DR), dated February 9, 1996, and related determinations.

EFFECTIVE DATE: February 26, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oregon, is hereby amended to include

the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1996:

Coos, and Deschutes Counties for Individual Assistance.
Gilliam, and Morrow Counties for Individual Assistance (already designated for Public Assistance and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–5095 Filed 3–4–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1093–DR]

Pennsylvania; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania, (FEMA–1093–DR), dated January 21, 1996, and related determinations.

EFFECTIVE DATE: February 27, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Pennsylvania, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 21, 1996:

Forest County for Public Assistance (already designated for Individual Assistance and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–5096 Filed 3–4–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–3117–EM]

Texas; Amendment to Notice of a Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Texas, (FEMA–3117–EM), dated February 23, 1996, and related determinations.

EFFECTIVE DATE: February 27, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Texas, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of February 23, 1996:

Parker County for emergency assistance as defined in the declaration letter of February 23, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–5097 Filed 3–4–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1100–DR]

Washington; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington (FEMA–1100–DR), dated February 9, 1996, and related determinations.

EFFECTIVE DATE: February 26, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Washington is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1996:

Skagit County for Individual Assistance, Public Assistance, and Hazard Mitigation

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–5089 Filed 3–4–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 218–011530.

Title: Samson/Sea-Land Cooperative Working Agreement.

Parties: Samson Tug & Barge Sea-Land Service, Inc.

Synopsis: The proposed Agreement authorizes the parties to engage in an exclusive transshipment arrangement in the trade between Cordova, King Cove, and Sand Point, Alaska and points served via such ports and ports and points in Europe and Asia.

Agreement No.: 203–011531.

Title: Wilhelmsen/AADL/Safbank/Lykes Space Charter and Sailing Agreement.

Parties: American-Africa-Delmas Line (AADL), Lykes Bros. Steamship Co., Inc., Safbank Line Limited, Wilhelmsen Lines A/S.

Synopsis: The proposed Agreement authorizes the parties to parties to consult and agree upon the deployment of vessels, to charter or exchange space with one another, and rationalize sailings. The parties may also, on a voluntary and non-binding basis, consult and agree upon terms and conditions, rates, rate policy, charges, service items, terms and conditions of service contracts or tariffs maintained by any party or by any conference, rate or discussion agreement in trade from U.S. Atlantic and Gulf Coast ports and points and ports and points in West Africa.

Agreement No.: 224–200974.

Title: Tampa Port Authority/Tampa Bay International Terminals, Inc. Wharfage Incentive Agreement.

Parties: Tampa Port Authority ("Port"), Tampa Bay International Terminals, Inc. ("TBIT").

Synopsis: The proposed Agreement permits the Port to assess an incentive wharfage rate of $1.05 per net ton to TBIT on movements of iron or steel wire in coils, subject to a minimum annual volume of 10,000 net tons.

Dated: February 29, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–5121 Filed 3–4–96; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Desert Net, Inc., World Trade Center, 401 E. Pratt Street, Baltimore, MD 21202. Officers: Mohammad D. Al-Dhoheyan, Director; Mohammad D. Al-Ahmed, President

JF Hillebrand USA West Coast, Inc., 821 West Spain Street, Sonoma, CA 95476. Officers: Christophe Bernard, President; Dorothee Maier, Vice President

All America Freight Services Corp., 10913 NW. 30th Street, Suite 100, Miami, Florida 33172. Officers: Osvaldo Perez, President; Helen M. Layton, Vice President.

Dated: February 28, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–4985 Filed 3–4–96; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

International Logistics, Inc., 11015 I Street, Omaha, NE 68137. Officers: Michael Contreras, President; Steve Pitzl, Vice President

American Worldwide, Inc., 5861 So. Kyrene Road, Suite #9, Tempe, AZ 85283. Officers: Nicholas J. Matyas, President; Nicholas W. Matyas, Corporate Secretary.

Dated: February 29, 1996.

[FR Doc. 96–5120 Filed 3–4–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations, to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. § 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. § 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Acadiana Bancshares, Inc., Lafayette, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of LBA Savings Bank, Lafayette, Louisiana.

2. Monticello Bancshares, Inc., Monticello, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Monticello, Monticello, Georgia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Capitol Bancorp Ltd., Lansing, Michigan; to acquire 51 percent of the voting shares of Bank of Tucson, Tucson, Arizona (in organization).

2. Home Financial Bancorp, Spencer, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Owen Community Bank, s.b., Spencer, Indiana.

3. LeMars Bancorporation, Inc., LeMars, Iowa; to merge with Brunsville Bancorporation, Inc., Brunsville, Iowa, and thereby indirectly acquire First State Bank, Brunsville, Iowa, and to merge with Merrill Bancorporation, Inc., Merrill, Iowa; and thereby indirectly acquire Farmers State Bank, Merrill, Iowa.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Union Texas Bancorporation, Inc., Laredo, Texas, and thereby indirectly acquire Union National Bank, Laredo, Texas.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. R. Banking Limited Partnership, Oklahoma City, Oklahoma; to acquire up to 49.99 percent of the voting shares of BancFirst Corporation, Oklahoma City, Oklahoma, and thereby indirectly acquire BancFirst, Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, February 28.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96-5004 Filed 3-4-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or the Acquisition of Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. § 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to commence or to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. § 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 19, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. NationsBank Corporation, Charlotte, North Carolina; to acquire LDI Corporation, Cleveland, Ohio, and thereby engage in leasing technology and data processing equipment, telecommunications products, and other capital equipment and to engage in commercial finance activities, pursuant to §§ 225.25(b)(5) and (b)(1)(iv) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Community Trust Financial Services Corporation, Hiram, Georgia; to acquire Community Loan Company, Hiram, Georgia, through its subsidiary, Personal Finance Service, Inc., Rossville, Georgia, and Rock City Enterprises, Inc., Rockmart, Georgia, and thereby engage in consumer finance business, credit insurance, and tax planning and preparation services, pursuant to §§ 225.25(b)(1)(i), 225.25(b)(8)(ii) and 225.25(b)(21) of the Board's Regulation Y. The activities will be conducted throughout the State of Georgia.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Midstates Bancshares, Inc., Harlan, Iowa; to engage *de novo* through its subsidiary, Midstates Financial Services, Inc., Harlan, Iowa, in acting as principal, agent, or broker for credit related insurance, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y; and in any insurance agency activity in a place where the bank holding company or a subsidiary of the bank holding company has a lending office and that has a population not exceeding 5,000, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

In addition, Applicant also proposes to engage *de novo* through its subsidiary, Midstates Trust and Farm Management, Inc., Harlan, Iowa, in trust functions and activities, including activities of a fiduciary, agency or custodial nature, pursuant to § 225.255(b)(3) of the Board's Regulation Y; and in real estate and personal property appraising, pursuant to § 225.25(b)(13) of the Board's Regulation Y.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Texhoma Bancshares, Inc., Texhoma, Oklahoma; to acquire 100 percent of the nonvoting, nonconvertable preferred shares of Texhoma Homes, Inc., Texhoma, Oklahoma, and thereby engage in the development of low-to-moderate residential housing, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Comments regarding this application must be received by March 11, 1996.

Board of Governors of the Federal Reserve System, February 28, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96-5005 Filed 3-4-96; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO-96-10]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639-3453.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Supplement to HIV/AIDS Surveillance (SHAS)—Extension—(0920-0262) There continues to be significant interest from public health, community, minority groups, and affected groups in obtaining more information on persons with HIV/AIDS infection. Since 1989, the Centers for Disease Control and Prevention (CDC), in collaboration with 12 state and local health agencies, has collected data through the national Supplemental HIV/AIDS Surveillance (SHAS) project. The objective of this project is to obtain increased descriptive information on persons with newly reported HIV and AIDS infections, including socioeconomic characteristics, risk behaviors, use of health care services, women's reproductive history and children's health, and information on disabilities. This information supplements information that is routinely collected through national HIV/AIDS surveillance. The information gained from SHAS is used to improve our understanding of minority issues related to the epidemic of HIV, target educational efforts to prevent transmission, and improve services for persons with HIV disease.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Georgia	409	1	0.75	307
California	325	1	0.75	244
Michigan	164	1	0.50	82
New Mexico	83	1	0.75	62
Arizona	283	1	0.75	212
Colorado	168	1	0.75	126
Connecticut	213	1	0.75	160
Delaware	202	1	0.50	101
Florida	261	1	0.50	131
So. Carolina	206	1	0.50	103
New Jersey	224	1	0.75	168
Washington	146	1	0.75	110
Total	.....	.....	.....	1,806

The cost to the federal government of the SHAS project component of the HIV/AIDS Cooperative Agreement is approximately $1.85 million.

2. Assessment of the Training Needs of Clinical and Environmental Laboratories—New—The National Laboratory Training Network (NLTN) was established in 1989 through a cooperative agreement between the Centers for Disease Control and Prevention (CDC) and the Association of State and Territorial Public Health Laboratory Directors (ASTPHLD). Its mission is to enhance the quality of laboratory testing in the nation's laboratories by providing training necessary for laboratory staff to improve their knowledge and skills in all aspects of the testing process. To accomplish this mission, seven NLTN offices were established at various sites throughout the nation giving all states and territories access to laboratory training through this Network.

NLTN staff was charged with (1) assessing the training needs (2) developing programs, (3) delivering training and, (4) evaluating the effectiveness of the training. Staff in the seven offices must meet unique needs in the geographical area for which they are responsible. Assessing need is particularly important because more than 100,000 laboratories are doing 16,380 different tests of 631 analytes. NLTN staff must determine the most efficient and effective means to provide training where the greatest need exits.

Need for training in laboratories may be dependent on where the laboratories are located and what population they serve. For example, small laboratories in physicians' offices (POLs) may have very different needs than large, independent laboratories, hospital or state laboratories. Manufacturers develop different products for laboratories that test in high volumes and can afford very sophisticated equipment than for small laboratories that do a limited number of tests. Education and training of personnel in the laboratories also very considerably. Current training needs are vastly different for people who have complete bachelor's degrees in medical technology or a science and those who have no formal laboratory education.

This information collection request is for clearance of a bank of questions from which NLTN staff may periodically select certain ones to use in survey to assess needs - and for flexibility to develop questions in specified formats to address specific practices related to the many tests available. This will allow the NLTN to focus on the appropriate lab type, target audience and test.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Laboratory*	2,000	1	0.5	1,000
Total	.....	.....	.....	1,000

* These respondents will vary depending on the type of need assessment required by the laboratory. In total, we estimate conducting no more than 2,000 assessments.

The total cost to respondents is estimated at $450,000.

Dated: February 28, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 96–5023 Filed 3–4–96; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0005]

Review of Infant Formula Nutrient Requirements; Announcement of Study; Request for Scientific Data and Information; Announcement of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB) is about to begin a review of data on the nutritional needs of infants and to make recommendations on appropriate concentrations of nutrients in formulas for term infants. The Infant Formula Act of 1980 directed FDA to ensure the safety and nutritional quality of infant formulas. Nutrient specifications for infant formulas are codified under the regulations for food and human consumption that were most recently revised in 1985. This review by LSRO/FASEB was requested by the agency, and it is is intended to provide FDA with an up-to-date review of the nutritional needs of infants and of how those needs should be reflected in the levels of nutrients in formulas for term infants. To assist in the preparation of its scientific report, LSRO/FASEB is inviting the submission of scientific data and information on this topic. In addition, LSRO/FASEB will provide an opportunity for oral presentations at an open meeting.

DATES: The LSRO will hold a 1-day public meeting on this topic on May 31, 1996. The meeting will begin at 9 a.m. Requests to make oral presentations at the open meeting must be submitted in writing and received by May 10, 1996. Written presentations of scientific data, information, and views should be submitted on or before May 31, 1996.

ADDRESSES: Submit written requests to make oral presentations of scientific data, information, and views at the open meeting to Sue Ann Anderson, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301–530–7030, and to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of the scientific data, information, and views should be submitted to each office.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Yetley, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION: FDA has a contract (223–92–2185) with FASEB concerning the analysis of scientific issues that bear on the safety of foods and cosmetics. The objectives of this contract are to provide information to FDA on general and specific issues of scientific fact associated with the analysis of human nutrition.

The Infant Formula Act of 1980 (Pub. L. 96–359) directed that FDA ensure the safety and nutritional quality of infant formulas. Regulations for infant formulas are codified in part 107 (21 CFR part 107) and include nutrient specifications for these products (§ 107.100). These nutrient specifications were last revised in 1985. In 1986, the infant formula provisions of the Federal Food, Drug, and Cosmetic Act (the act) were amended (Pub. L. 99–570). Among the changes that Congress made was to add the list of specifications to section 412(i)(1) of the act (21 U.S.C. 350a(i)(1)). The act also provides that the Secretary of Health and Human Services (and by delegation FDA) can revise this list by regulation (section 412(i)(2) of the act).

Since 1985, new data on nutritional needs of infants have accumulated from scientific investigations. In addition, a recommended dietary allowance (RDA) was set for selenium and estimated safe and adequate daily dietary intakes (ESADDI) were recommended for fluoride, chromium, and molybdenum by the National Research Council in 1989 (see Ref. 1). These four minerals are not included in the nutrient specifications for infant formulas in section 412(i) of the act or § 107.100.

FDA is announcing that it has asked FASEB, as a task under contract 223–92–2185, to provide FDA's Center for Food Safety and Applied Nutrition with an up-to-date review of nutritional needs of infants and of the resultant effects of new information about nutritional needs of infants on recommendations for levels of nutrients in formulas for term infants. In response to this request, FASEB has directed its Life Sciences Research Office to obtain state-of-the-art scientific information on infant nutritional needs and related scientific questions on infant formula specifications. The LSRO/FASEB will undertake a study and prepare a documented scientific report that summarizes the available information related to these questions. LSRO has advised FDA that in preparing this report, it will consult with academic and medical experts and professional organizations concerned with nutritional needs of infants.

The objectives of this report will include evaluations of the following types of information: (1) New findings on nutrient requirements of infants and on any resultant need to establish or revise minimum and maximum amounts of nutrients required in formulas for term infants; (2) for macronutrients, evidence to support the addition of specific proteins (e.g., lactoferrin), carbohydrates (e.g., lactose), or fats (e.g., omega-3 fatty acids) to infant formulas; (3) information on the dietary essentiality of certain minerals (selenium, chromium, molybdenum, and fluoride), whether they should be included in infant formulas and, if so, at what levels; (4) scientific information on effects of ingestion of nucleotides, taurine, carnitine, urea, cholesterol, glutathione, and oligosaccharides; (5) information on differences in nutrient requirements of older infants (4 months of age and older) compared to infants younger than 4 months; (6) factors affecting nutrient stability and the product shelf life of infant formulas; and (7) the scientific basis for use of methods other than the protein efficiency ratio (PER) to ensure the quality of proteins used in infant formulas. A comprehensive final report that documents and summarizes the results of the evaluation will be prepared.

FDA and FASEB are announcing that LSRO/FASEB will hold a public meeting on this topic on May 31, 1996. The meeting will begin at 9 a.m. It is anticipated that the public meeting will be held for 1 day, depending on the number of requests to make oral presentations. Requests to make oral presentations at the open meeting must be submitted in writing and received by May 10, 1996. Written requests to make oral presentations of scientific data, information, and views at the open meeting should be submitted to LSRO/FASEB (address above) and to the Dockets Management Branch (HFA–305), Food and Drug Administration (address above). Two copies of the material to be presented must be submitted to each office on or before the date of the open meeting.

FDA and LSRO/FASEB are also inviting submission of written presentations of scientific data, information, and views. These materials should be submitted on or before May 31, 1996. Two copies of the written materials must be submitted to both offices.

Under its contract with FDA, FASEB will provide the agency with a scientific report on or about March 31, 1997.

Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. National Research Council, "Recommended Dietary Allowances," 10th ed., Washington, DC, National Academy Press, 1989.

Dated: February 27, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–5117 Filed 3–4–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Notice of Hearing: Reconsideration of Disapproval of Pennsylvania State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on April 10, 1996; 10:00 a.m. in Room 5020; 3535 Market Street, Philadelphia, Pennsylvania to reconsider our decision to disapprove Pennsylvania SPA 94–17.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by March 20, 1996.

FOR FURTHER INFORMATION CONTACT: Stan Katz, Presiding Officer, HCFA, C1–04–27, 7500 Security Boulevard, Baltimore, Maryland 21224–1850, Telephone: (410) 786–2661.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Pennsylvania State plan amendment (SPA) number 94–17.

Section 1116 of the Social Security Act (the Act) and 42 CFR, Part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

Pennsylvania submitted SPA 94–17 for approval on December 29, 1995. The issues involved in this reconsideration are as follows: (1) The revised supplement submitted with SPA 94–17 provides for DSH payments to county nursing facilities prior to the proposed effective date of the plan amendment in violation of federal law at 42 CFR 447.256(c); (2) federal appropriations law, as interpreted by HCFA prohibit the "retroactive payment adjustments" which would be authorized under SPA 94–17; (3) the Department failed to publish adequate public notice in advance of the alleged change in its payment methods in accordance with the requirements at 42 CFR 447.205(c); and (4) the Department did not submit adequate information in support of its Medicare upper limit assurance at 42 CFR 447.272 and 447.253(b)(2).

In this plan amendment, the State of Pennsylvania revises significantly the State's nursing facility payment plan methodology to provide the formula for calculating a "disproportionate share" payment to county nursing facilities for State fiscal years (SFYs) 1993, 1994, and 1995.

These "disproportionate share" payments to county nursing facilities began in SFY 1991 and were continued in SFY 1992 under an approved State plan amendment. The State has revised significantly its nursing facility payment methodology three times since then (SFYs 1993, 1994 and 1995), but did not amend the State plan concerning these payments before the payments were made. Since Pennsylvania sought approval of a payment adjustment that was earlier than permissible under long-standing regulatory provisions governing effective dates for plan amendments, HCFA disapproved the amendment.

Issue Regarding Effective Date of Payment Adjustments

Federal regulations at 42 CFR 447.256 specify that an approved state plan amendment becomes effective not earlier than the first day of the calendar quarter in which an approvable amendment is submitted. This amendment was submitted on December 29, 1994. Consequently, the *earliest* date for which Federal financial participation would be available for "disproportionate share" payments made under this amendment, if approved, was October 1, 1994. Even though this is the proposed effective date for SPA 94–17 requested by the State, this amendment could not be approved, as it would provide for retroactive "disproportionate share" payments for periods prior to the proposed effective date.

Pennsylvania's retroactive payment adjustments are also prohibited by the Department's appropriations law. The appropriations law provides that Medicaid payments may be made for any quarter with respect to state plan amendments which are in effect in that quarter, and which were submitted in, or prior to, that quarter and approved in that, or any later quarter. HCFA has interpreted this to mean that there can be no retroactive payments for any plan amendment which could result in an increase in Medicaid payments. If approved, this amendment would have increased Medicaid payments in quarters prior to the quarter in which the amendment was submitted; therefore, HCFA had no choice but to disapprove this SPA.

Issue Regarding Public Notice

Federal regulations provide that public notice of any significant proposed change in methods or standards for setting payment rates must be published before the proposed effective date of the change. Pennsylvania requested an effective date of October 1, 1994. However, the notice published on July 31, 1993, and relied on by the State to support the revised "disproportionate share" payments for SFY 1995, was defective. Even though the July 31, 1993, notice appears to be adequate for the SFY 1994 revised payment methodology, it is not sufficient for the SFY 1995 payment methodology because it did not contain an estimate of the expected increases in annual expenditures for SFY 1995, as required by Federal rules. Pennsylvania did not submit a plan amendment for

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SFY 1995 payments in accordance with the effective date rules of 42 CFR 447.256(c). Therefore, the State's retroactive payment adjustments are not eligible for Federal financial participation.

While the State did publish notice of the SFY 1993 and 1994 adjustments, the State had indicated that public notice is not required because this amendment did not represent a significant change in the methods and standards for setting payment rates. HCFA disagreed. Since the State's currently approved plan provides for a nursing facility payment methodology for "disproportionate share" payments for SFYs 1991 and 1992 only, the State does not have methods or standards to presently authorize making such payments. Accordingly, the submission of this amendment, that established a new methodology in that a different percentage of medical assistance cost is used to determine the "disproportionate share" payments to county nursing facilities for SFYs 1993, 1994, and 1995, is a significant change for setting payment rates that must comply with the public notice requirements of 42 CFR 447.205(c).

Issue Regarding the Upper Limit

The State has not provided sufficient documentation in support of its assurance that the Medicare upper limit will not be exceeded because it did not incorporate the "disproportionate share" payments in the upper limit calculation. Pennsylvania was correct in stating that Federal law does not prohibit these payments; however, the State must establish that its payment rates, including these additional payments, meet the requirements of 42 CFR 447.253(b)(2) and 447.272. These two references state that aggregate Medicaid payments, to nursing facilities, will not exceed the amount that can reasonably be estimated to have been paid for those services under the Medicare payment principles.

Issue Regarding "Deemed Approval"

The State contends TN 94–17 was deemed approved by operation of law because it did not receive HCFA's request for additional information within 90 days of HCFA's receipt of the State's amendment. The applicable regulations at 42 CFR 447.256(b) state that if HCFA does not send notice to the State of its determination as to whether the assurances regarding a State plan amendment are acceptable within 90 days of the date HCFA receives the amendment, the assurances and the amendment will be deemed approved. In this case, the assurances and related rate information were received by HCFA on January 3, 1995, making the 90th day April 3, 1995. As HCFA requested additional information regarding the proposed amendment by letter dated March 31, 1995, the 90-day requirement was met. The State's response, dated August 23, 1995, indicated that HCFA's request for additional information was postmarked April 5, 1995, and received on April 7, 1995. By letter dated September 19, 1995, the Philadelphia Regional Office notified the State that the 90-day requirement does not require that the State receive HCFA's response within 90 days. Because the Regional Office sent the response on March 31, 1995, it informed the State that the 90-day requirement had been met and that the amendment was not deemed approved.

The deficiencies described above allowed HCFA no choice but to recommend disapproval of Pennsylvania 94–17.

The notice to Pennsylvania announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Feather O. Houstoun,
Secretary, Department of Public Welfare, Health and Welfare Building, P.O. Box 2675, Harrisburg, Pennsylvania 17120

Dear Ms. Houstoun: I am responding to your request for reconsideration of the decision to disapprove Pennsylvania State Plan Amendment (SPA) 94–17.

Pennsylvania submitted SPA 94–17 for approval on December 29, 1994. The issues involved in this reconsideration are as follows: (1) the revised supplement submitted with SPA 94–17 provides for DSH payments to county nursing facilities prior to the proposed effective date of the plan amendment in violation of federal law at 42 CFR 447.256(c); (2) Federal appropriations law, as interpreted by HCFA prohibit the "retroactive payment adjustments" which would be authorized under SPA 94–17; (3) the State failed to publish adequate public notice in advance of the alleged change in its payment methods in accordance with the requirements at 42 CFR 447.205(c); and (4) the State did not submit adequate information in support of its Medicare upper limit assurance at 42 CFR 447.272 and 447.253(b)(2).

I am scheduling a hearing on your request for reconsideration to be held on April 10, 1996, on the Fifth Floor; Room 5020; 3535 Market Street; Philadelphia, Pennsylvania. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2661.

Sincerely,

Bruce C. Vladeck,
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: February 23, 1996.

Bruce C. Vladeck,
Administrator, Health Care Financing Administration.

[FR Doc. 96–5001 Filed 3–4–96; 8:45 am]
BILLING CODE 4120–01–P

Health Resources and Services Administration

Rural Health Research Centers; Availability of Funds

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Office of Rural Health Policy (ORHP), Health Resources and Services Administration, announces that applications are being accepted for cooperative agreements to support Rural Health Research Centers. This program is authorized by Section 301, Title III, of the Public Health Service Act. These centers will conduct policy relevant research on rural health services issues of multi-state and national significance, and disseminate the findings of their research.

This program announcement for the above stated program is subject to the appropriation of funds. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, awards can be made in a timely fashion consistent with the needs of the program. At this time, given a continuing resolution and the absence of FY 1996 appropriations for this program, the award of cooperative agreements cannot be assured and the amount of funds available cannot be estimated. Should funds become available, awards will be made to up to five Rural Health Research Centers for up to $480,000 per center per year in total costs (direct plus indirect). The project period for these cooperative agreements is not to exceed 4 years, subject to the availability of funds. Should funds become available, notification of the total funding amount

available will be mailed to all persons who received application packets from the Grants Management Officer, c/o Global Exchange, Inc.

DATES: Applications must be received by the close of business May 31, 1996, to be considered for competition. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing. Applications not meeting the deadline will be returned to the applicant.

ADDRESSES: Requests for application packets and completed applications should be addressed to: The Grants Management Officer, c/o Global Exchange, Inc., 7910 Woodmont Avenue, Suite 400, Bethesda, Maryland 20814; tel: 1–800–784–0345; fax: 301–652–5264.

FOR FURTHER INFORMATION CONTACT: For information on program aspects, contact: Patricia Taylor, Ph.D., Office of Rural Health Policy, Room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0835.

For information or technical assistance regarding business, budget, or financial issues contact: the Office of Grants Management, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East West Highway, 11th Floor, Bethesda, Maryland 20814, 301/594–4260.

The Standard Application Form and general instructions for competing applications, Form PHS 398 (revised 5/95) Public Health Service Grant, have been approved by the Office of Management and Budget (OMB No. 0925–0001). The narrative description of the research plan and the budget justification may not exceed a combined length of 30 pages.

SUPPLEMENTARY INFORMATION:

Eligible Applicants

All public and private entities, both non-profit and for-profit, are eligible to apply.

Information Session for Prospective Applicants

An information session for prospective applicants will be held at 10 a.m., Wednesday, April 3, 1996, in Room H, Parklawn Conference Center, Third Floor, Parklawn Building, 5600 Fishers Lane, Rockville MD. The information session will focus on the programmatic and administrative details of the program. Also, questions from prospective applicants will be answered. A summary of this meeting will be available by faxed request to "Meeting Summary, RHRC Program," 301/443–2803.

Applications

Applicants should follow the instructions in Application Form PHS 398 where appropriate and the Supplemental Instructions where indicated. Applicants are strongly encouraged to obtain the application materials from the Grants Manager Officer, c/o Global Exchange, Inc., at the address above. This will assure that applicants have the complete application packet including the Supplemental Instructions.

Notification

In order to allow ORHP to plan for the Objective Review Process, applicants are encouraged to notify ORHP in writing of their intent to apply. This notification serves to inform ORHP of the anticipated number of applications which are being submitted. The address is: Patricia Taylor, Ph.D.; Office of Rural Health Policy; Health Resources and Services Administration; Parklawn Building Room 9–05; Rockville MD 20857. If notification is offered, it should be received by April 30, 1996.

Program Objectives

These awards will enable organizations to support research centers that conduct policy relevant research on rural health issues. Should funds become available, awards will be made for up to three general Rural Health Research Centers and up to two analytic Rural Health Research Centers for project periods not to exceed 4 years. These centers will be expected to (1) conduct policy relevant rural health services research and policy analyses and (2) disseminate their research findings and policy analyses to the rural health policy audience.

Background

The objective of the Rural Health Research Center cooperative agreement program is to increase the amount of high quality, policy relevant rural health services research and policy analysis being conducted in the nation. It is intended that the research and policy analysis reports of these centers will be useful to policy makers as they work to maintain and improve the availability, affordability and accessibility of health care services for rural residents.

The work carried out by each center will be multi-disciplinary, conducted principally by social scientists in such disciplines as economics, organizational behavior, statistics, political science, sociology, and geography. Center staff may also include researchers from other relevant disciplines, for example, medicine, nursing, law and public health.

The general centers and analytic centers will have different emphases. The general Rural Health Research Centers will concentrate on rural health services research. Individual projects, which will generally require one to two years to complete, may include but are not limited to collection and analysis of new data, secondary analysis of existing data, comparative case studies, and evaluation of demonstration projects. These centers will be responsive to the diverse policy information needs of rural health policy makers in their multi-state regions as well as at the national level.

The analytic Rural Health Research Centers will concentrate on analytic policy studies that will be immediately useful in national policy development activities. These analyses, which will generally be completed in less than a year, will rely primarily on existing national data bases or synthesize findings from a variety of other studies to address national health policy issues affecting rural residents, communities and providers. These centers will have demonstrated capabilities in policy analysis, research methodologies, and data handling. In particular, they will have extensive experience with and access to large scale national data sets; and expertise in the linkage of and analyses across data sets.

In each year of the cooperative agreement, a center will be funded to carry out a number of research or policy analytic projects. These projects together constitute a center's research agenda or policy analysis agenda for the year. Each applicant's proposed research or policy analysis agenda should be well focused, preferably on no more than three clearly delineated areas of rural health services research or policy. Examples of focus areas include but are not limited to:

Rural Health Care Financing/System Reform

—Rural impact of Medicare, Medicaid and private insurer policies
—Rural impact of managed care, including managed care carve-outs, on access, cost and quality of health and mental health services
—Rural considerations in health care insurance, legislative, regulatory and other reforms

Rural Systems Building

—Maintenance of health services capacity in rural communities through system development
—Development and operation of rural networks, managed care organizations, and provider sponsored organizations
—Alternative models for delivering health services, including alternative models for small rural hospitals

Rural Health Professions Supply

—Financing
—Training
—Recruitment
—Retention
—Mid-level health care practitioners

Meeting the Health Care Needs of Rural Populations

—Low income residents
—Racial and cultural groups
—Age groups (e.g., adolescents)
—Occupational groups (e.g., farm families)

Awards will be in the form of cooperative agreements. The ORHP involvement in the conduct of the cooperative agreements will generally include:

• Approval of key research staff
• Joint center/program staff participation in development of the center's annual agenda of research and policy analytic projects
• Possible center/program staff cooperation in study and survey designs
• Possible center/program staff cooperation in preparation and publication of results
• Joint center/program staff participation in designing strategies for dissemination of center reports to the rural health policy audience

Healthy People 2000

The Health Resources and Services Administration urges applicants to submit proposed research agendas that address specific objectives of "Healthy People 2000." Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–783–3238).

Review Procedures

Applications will be assessed for responsiveness to this notice. Any applications judged nonresponsive because they are incomplete, in an improper type size or exceed the specified page limit will be returned without further consideration. All responsive applications will undergo objective review for scientific merit.

Review Criteria for General Rural Health Research Centers

Grant applications for general rural health research centers will be evaluated on the basis of the following criteria:

1. The qualifications and achievements of the principal investigator, including level of productivity and quality of research on general and rural health services; record in use of research findings by health policy makers at state and national levels; record in timely completion of Department of Health and Human Services' funded health services research studies; experience in leading research teams; and appropriateness of time commitment. Expertise in Medicare and Medicaid is desirable.
2. The multi-disciplinary mix, number, qualifications and achievements of the senior personnel of the center, including level of productivity and quality of research on rural and general health services, demonstrated methodological skills, and experience in management and use of large data sets; record in use of their research findings by health policy makers at state and national levels; record in timely completion of U.S. Department of Health and Human Services' funded health services research studies; and appropriateness of their specific time commitments. Expertise in Medicare and Medicaid is desirable.
3. The quality of the organizational, physical and institutional arrangements to operate the proposed center, including computer facilities, access to large national data sets, and the availability of adequate space for routine interaction among the core research staff.
4. The planned level of commitment of the applicant institution to the proposed center including its specific plans to support research personnel and the organizational and management structure of the center.
5. The quality of the two individual research project proposals presented as part of this application.
6. The importance and relevance of the center's proposed Year One research agenda to rural health policy issues of multi-state and national concern, whether it is focused on no more than three clearly delineated substantive areas of rural health services, and degree to which it is a realistic and well conceived program in view of available skills and funding resources.
7. The appropriateness of the proposed budget.

Review Criteria for Analytic Rural Health Research Centers

Grant applications for analytic rural health research centers will be evaluated on the basis of the following criteria:

1. The qualifications and achievements of the principal investigator, including level of productivity and quality of national health policy analyses on general and rural issues; experience in leading research teams; and appropriateness of time commitment. Expertise in Medicare, Medicaid and rural health policy is highly desirable.
2. The multi-disciplinary mix, number, qualifications and achievements of the senior personnel of the center, including level of productivity and quality of national health policy analyses and health services research on rural and general issues, expertise in Medicare, Medicaid and rural health policy, demonstrated methodological skills, experience in production of analytic reports suitable for professional and lay audiences, experience in management and use of large data sets, and expertise in the linkage of and analyses across data sets; and appropriateness of their specific time commitments.
3. The record of the applicant organization and the lead investigators in timely completion of health services research and policy analytic studies funded by the U.S. Department of Health and Human Services.
4. The quality of the organizational, physical and institutional arrangements to operate the proposed center, including computer facilities, access to large scale national data sets, and the availability of adequate space for routine interaction among the core research staff.
5. The quality of the two individual analytic policy study proposals presented as part of this application.
6. The importance and relevance of the center's proposed Year One agenda of analytic policy studies to rural health policy issues of national concern, whether it is focused on no more than three well delineated substantive areas of rural health policy, and the degree to which it is a realistic and well conceived program in view of available skills and funding resources.
7. The appropriateness of the proposed budget.

In awarding grants, geographic distribution of centers will be considered.

Other Information

The Rural Health Research Centers Grant Program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The OMB Catalog of Federal Domestic Assistance number is 93.155.

Dated: February 29, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–5113 Filed 3–4–96; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Center for Human Genome Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix), notice is hereby given of the following meeting:

Name of Committee: Human Genome Research Initial Review Group.
Date: March 18, 1996.
Time: 2:00–6:00 pm.
Place: Teleconference, NIH, Building 38A, Room 605, 9000 Rockville Pike, Bethesda, Maryland.
Contact Person: Ms. Linda Engel, Chief, Office of Scientific Review, National Center for Human Genome Research, National Institutes of Health, Building 38A, Room 604, Bethesda, Maryland 20892, (301) 402–0838.
Purpose Agenda: To review and evaluate grant applications and/or contract proposals. The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: February 28, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–5019 Filed 3–4–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Nursing Science Review Committee.
Date: March 14–15, 1996.
Time: 8:30 a.m. until adjournment.
Place: Holiday Inn Chevy Chase, Chase Meeting Room, 5520 Wisconsin Avenue, Bethesda, Maryland 20815.
Contact Person: Dr. Mary Stephens-Frazier, 9000 Rockville Pike, Building 45, Room 3AN.12, Bethesda, Maryland 20892, (301) 594–5971.
Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the partial shutdown of the Federal Government and urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Programs No. 93.361, Nursing Research, National Institutes of Health.)

Dated: February 27, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–5018 Filed 3–4–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of a Closed Meeting

Prusuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: Endocrine Disrupting Chemicals and Women's Health Outcomes (RFA–96–003).
Date: March 19–21, 1996.
Time: 8:00 P.M.
Place: (3/19/96) Omni Europa Hotel, Research Triangle Park, NC. (3/20–21/96) NIEHS, South Campus Building 101–C, Research Triangle Park, NC.
Contact Person: Dr. Carol Shreffler, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1445.
Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health.)

Dated: February 28, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–5114 Filed 3–4–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agendo/Purpose: To review and evaluate grant applications.
Committee Nome: National Institute of Mental Health Special Emphasis Panel.
Date: March 21, 1996.
Time: 10 a.m.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.
Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–3936.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282).

Dated: February 28, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–5115 Filed 3–4–96; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Cosponsorship of the Caring for Every Child's Mental Health: Communities Together Campaign

AGENCY: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of opportunity for cosponsorship.

SUMMARY: The Center for Mental Health Services (CMHS), a component of the

Substance Abuse and Mental Health Services Administration (SAMHSA), announces the opportunity for for-profit and nonprofit organizations to cosponsor the Caring for Every Child's Mental Health: Communities Together Campaign.

DATES: To receive consideration, requests to participate as a cosponsor must be received by Ms. Charlotte Mehuron, Director, Office of External Liaison, CMHS, Parklawn Building, Room 13–103, 5600 Fishers Lane, Rockville, Maryland 20857; Fax (301) 443–5163. There are no deadlines applicable to this cosponsorship opportunity.

FOR FURTHER INFORMATION CONTACT: Ms. Valna Montgomery, Project Officer, Office of External Liaison, CMHS, Parklawn Building, Room 13–103, 5600 Fishers Lane, Rockville, Maryland 20857; (301) 443–2792.

SUPPLEMENTARY INFORMATION:

Background

America's young people are at risk, and they desperately need the Nation's attention. Preliminary studies suggest that, at any given time, at least one in five children and adolescents may have behavioral, emotional, or mental health problems that, without help, can lead to school failure, alcohol and other drug use, family discord, or violence. At least 1 in 20—or as many as 3 million young people—may have a serious emotional disturbance that disrupts his or her ability to function. Tragically, an estimated two-thirds of all these young people are not getting the help they need.

Recognizing the need for increased national awareness of and support for children and adolescents with mental health problems and their families, the CMHS initiated a 4-year national education campaign in October 1994. The campaign, Caring for Every Child's Mental Health: Communities Together, hereinafter called Children's Campaign, is managed by the CMHS Office of External Liaison in collaboration with the Child, Adolescent and Family Branch, Division of Demonstration Programs, CMHS. CMHS is also collaborating with the National Institute of Mental Health, a component of the National Institutes of Health (NIH) and the Maternal and Child Health Bureau in the Health Resources and Services Administration (HRSA). SAMHSA, HRSA, and NIH are agencies in the U.S. Department of Health and Human Services.

The goals of the Children's Campaign are to: (1) Increase public awareness that the mental health of every child and adolescent is as important as physical health; (2) help families, educators, health care and social service professionals, and others recognize mental health problems in children and adolescents, and seek appropriate intervention and services early; (3) diminish the stigma associated with mental health problems; (4) assist and support the Comprehensive Community Mental Health Services for Children Program grantees with their community-based education; and (5) nationally disseminate knowledge gained from model programs and science-based research.

Requirements of Cosponsorship

The Children's Campaign is seeking partnership with one or more public and private for-profit and nonprofit organizations to develop and distribute information to effectively impart the Children's Campaign messages to target groups, such as children and adolescents and their families; teachers, counselors, and principals; youth organizations; primary care providers and mental health care professionals; government agencies; community organizations; and the general public. The Campaign messages are:

- Every child's mental health is important.
- Many children have mental health problems.
- These problems are real and painful and can be recognized and treated.
- Caring families and communities working together can help.
- Information is available; call (800) 789–2647.

CMHS will reserve the right to determine the form and content of the information provided to the target groups. We envision cosponsorship with a wide variety of organizations concerned about children and adolescents with mental health problems and their families in the development and dissemination of information. The duties of the cosponsors may include such activities as implementation of an information campaign for dissemination of the Children's Campaign messages, including but not limited to, printing brochures or booklets; production of public service announcements or videos; press briefings and media events; and production and distribution of other materials, such as posters, flyers, paid advertising, and an exhibit designed for young people, families, educators or health care providers.

Availability of Funds

There are no Federal funds available to conduct the cosponsored activities for the Children's Campaign. It will be the unilateral responsibility of the cosponsor(s) to bear all costs.

Eligibility of Cosponsorship

To be eligible, an interested party must be: (1) A public or private nonprofit or for-profit organization or corporation and (2) an entity that, by virtue of its nature and purpose, has a legitimate interest in the target groups.

Expression of Interest

Each request for cosponsorship should be in writing and contain information pertinent to the cosponsorship opportunity.

Evaluation Criteria

The cosponsors will be selected by the Children's Campaign management staff, CMHS, based on the following evaluation criteria: (1) The qualifications and capability of the interested party to develop and produce materials for dissemination of the Children's Campaign messages to the target population, and (2) the ability of the interested party to arrange for funding for development and dissemination of Children's Campaign information materials or messages.

Neither this notice nor actions pursuant thereto, creates a proprietary right or right of any kind in any natural or artificial person requesting cosponsorship. CMHS has the unilateral right to refuse to enter into a cosponsorship arrangement with any entity; exercise of this right is solely within the discretion of CMHS.

Other Information

Prior to the selection of the cosponsors, the Children's Campaign staff will meet separately with interested parties who best meet the evaluation criteria. In situations where the Food and Drug Administration (FDA) regulates the labeling of products manufactured by cosponsors, the inclusion of the Children's Campaign logo on such products will be subject to FDA review and may require agency authorization, depending on how and the context in which the logo is to be used. Moreover, other Federal agencies may be involved in the cosponsorship process. Furthermore, as a general rule, restrictions will apply to the use of the Children's Campaign logo or other indicia, to avoid suggestions that DHHS, or any other department or agency of the Federal Government, endorses any of the products involved in the Children's Campaign. Once details of the program have been mutually agreed upon, cosponsors will be required to enter into a cosponsorship agreement with the CMHS setting forth the rights and responsibilities of the cosponsor and CMHS, especially the right of CMHS to approve the Children's Campaign messages and use of the Campaign logo.

Dated: February 29, 1996.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 96–5119 Filed 3–4–96; 8:45 am]

BILLING CODE 4162–20–P

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substence Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/205–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

CORNING Clinical Laboratories, 4771 Regent Blvd., Irving, TX 75063, 800–526–0947 (formerly: Damon Clinical Laboratories, Damon/MetPath)

CORNING Clinical Laboratories, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–284–7515 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories)

CORNING Clinical Laboratories, 24451 Telegraph Rd., Southfield, MI 48034, 800–444–0106 ext. 650 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath)

CORNING Clinical Laboratories Inc., 1355 Mittel Blvd., Wood Dale, IL 60191, 708–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories)

CORNING Clinical Laboratories, South Central Divison, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 (formerly: Metropolitan Reference Laboratories, Inc.)

CORNING Clinical Laboratory, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories)

CORNING National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science)

CORNING Nichols Institute, 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT))

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–836–3093

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 813–936–5446/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468,

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

Holmes Regional Medical Center Toxicology Laboratory, 5200 Babcock St., N.E., Suite 107, Palm Bay, FL 32905, 407–726–9920

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.),

Laboratory Corporation of America, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100 (Formerly: National Health Laboratories Incorporated)

Laboratory Corporation of America, 21903 68th Ave. South, Kent, WA 98032, 206–395–4000 (Formerly: Regional Toxicology Services)

Laboratory Corporation of America Holdings, 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–

4986 (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961
Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835
MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213
Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466
Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199
MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808(x4512)
National Psychopharmacology Laboratory, Inc., 9320 Park W. Blvd., Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 503–687–2134
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619–279–2600/800–882–7272
Premier Analytical Laboratories, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784 (formerly: Drug Labs of Texas)
Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640
Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–244–8800, 800–999–LABS
Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–989–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 904–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 1737 Airport Way South, Suite 200, Seattle, WA 98134, 206–623–8100
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory),

No laboratories withdrew from the Program during February 1996.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 96–5132 Filed 3–4–96; 8:45 am]

BILLING CODE 4160–20–U

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Notice of Public Hearing Postponement and Extended Comment Period

Due to scheduling conflicts and other issues prohibiting the participation of several commissioners, the Advisory Commission on Intergovernmental Relations (ACIR) has postponed the scheduled March 8 public hearing on the preliminary report, *The Role of Federal Mandates in Intergovernmental Relations* until Tuesday, March 26, 1996. The exact time and location of the rescheduled hearing will be announced as soon as the information is available.

In addition, ACIR is extending the public comment period on the preliminary report until Friday, March 29, 1996.

FOR FURTHER INFORMATION CONTACT: Advisory Commission on Intergovernmental Relations, 800 K Street, NW, Suite 450, South Tower, Washington, DC 20575. Phone: (202) 653–5540/FAX: (202) 653–5429/ Internet: ir002529@interramp.com.

Dated: March 1, 1996.

William E. Davis,

Executive Director.

[FR Doc. 96–5252 Filed 3–4–96; 8:45 am]

BILLING CODE 5500–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–4130–02–24 1A]

Notice of Proposed Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request approval for the collection of information from mining claimants and operators conducting activities on the Public Lands under the authority of the mining laws. The purpose of the collection is to prevent unnecessary or undue degradation and prevent impairment of wilderness suitability as required by Sections 302(b) and 603(c) the Federal Land Policy and Management Act.

DATES: Comments on the proposed information collection must be received by May 6, 1996 to be assured of consideration.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: WO140@attmail.com. Please include "ATTN: Surface Management" and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW, Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 A.M. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard E. Deery, (202) 452–0353.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.8(d), BLM is required to provide 60-day notice in the **Federal Register** concerning a proposed collection of information to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Accordingly, BLM will not require any of the information proposed to be collected as described below until it receives and analyzes any comments and obtains approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and OMB assigns a clearance number.

In 1980, the BLM published two final rules to establish procedures for managing prospecting, exploration, mining and processing activities on lands subject to the operation of the mining law (45 FR 13974, March 3, 1980 and 45 FR 78902, November 26, 1980). The two rule makings put into place the regulations at 43 C.F.R. Subpart 3802 (Exploration and Mining, Wilderness Review Program) and Subpart 3809 (Surface Management). The principal authorities for these two sets of regulations are the mining law (30 U.S.C. 22 *et seq.*) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*). OMB approved the information collections contained in these regulations and assigned OMB clearance numbers 1004–0110 (34 C.F.R. 3802) and 1004–0104 (43 C.F.R. 3809).

BLM and the public generally refer to the two sets of regulations as the "surface management" regulations. Under the terms of these rules, anyone planning to conduct activities the public lands under the mining law must submit various types of information to the BLM to obtain a benefit: use of the public lands to prospect, explore, develop, mine, or process Federally owned mineral resources pursuant to the mining law. Depending on the lands involved in the activity, the mining claimant or operator must submit the information in either a Notice (43 C.F.R. 3809.1–3) or a Plan of Operations (43 C.F.R. 3802.1–4 and 3809.1–5). Casual use activities require no submission of information to the BLM in either set of regulations. For the convenience of the public, BLM proposes to treat both rules in a single information collection approval. Consolidation of the information collection burden is appropriate because on several occasions, activities regulated under both sets of regulations have been embraced by a single mineral property under the control of a single operator.

The types of information generally contained within each type of response include: (1) The mining claimant or operator's name, address and phone number; (2) the activity's location; (3) when available, the mining claim recordation number(s); (4) the methods and equipment to be employed during the operations; (5) a description of the proposed activity sufficient to locate it on the ground; (6) a description of reclamation or mitigation measures to be employed to prevent unnecessary or undue degradation; (7) a description of location of aircraft landing areas; (8) a description of access routes and equipment used in construction; and (9) a description of measures to be taken during periods of non-operation. In addition to the project information, various types of financial information, financial instruments and forms associated with bonding and financial guarantees required to ensure reclamation will be required under pending modifications of 43 C.F.R. 3809. For details on these requirements, see the proposed bonding regulations at 56 FR 31602, published on July 11, 1991.

When mining claimants or operators propose to conduct mineral development operations on the public lands, they may have to submit information to State agencies as well. Prior to the promulgation of the surface management regulations, relatively robust State programs were developed in most of the western States. In recognition of these programs, the regulations explicitly allow for the creation, by memorandums of agreement, of joint State/Federal programs for administration and enforcement of the regulations. Thus, in addition to the information noted above, any information currently required by State mining or reclamation laws and regulations for a permit or other approval to conduct exploration or mining operations is to be submitted BLM and the appropriate State agency.

When the required information is properly filed, BLM uses the information to determine if the proposed activities will prevent unnecessary or undue degradation of the public lands. If lands under wilderness review are involved, BLM will also make a determination regarding the prevention of wilderness impairment. In the latter case, a determination that impairment may occur will result in the rejection of the proposed plan. In the case where there is no land under wilderness review, BLM will either approve a plan as submitted if it prevents unnecessary or undue degradation or modify it to prevent unnecessary or undue degradation. In making both of these determinations, BLM makes use of the National Environmental Policy Act (NEPA) process.

For Notice level actions, the information submitted by the respondent is subject to review by BLM field staff, but no BLM approval is necessary. BLM will examine any activity that may result in unnecessary or undue degradation. In the event an activity may result in unnecessary or undue degradation, BLM will advise the respondent not to undertake that activity unless it is modified to eliminate the conflict. Road construction resulting in inside cuts greater than three feet can prompt a consultation requirement if the BLM decides such consultation is necessary.

Based on BLM's experience administering the surface management program over the past 15 years, the public reporting burden for this entire collection is estimated to average 15 hours per response. The respondents are mining claimants and operators of prospecting, exploration, mining, and processing operations. The number of responses per respondent is one per operation, and most responses are generally sufficient for several year's worth of proposed activities. The number of responses per year is

estimated to be about 1,300. The estimated total annual burden on new respondents is collectively 19,500 hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: February 28, 1996.

Annetta L. Cheek,

Regulatory Management Team.

[FR Doc. 96–4993 Filed 3–4–96; 8:45 am]

BILLING CODE 4310–84–P

[WO–310–1310–01–24 1A]

Extension of Currently Approved Information Collection; OMB Approval Number 1004–0162

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request extension of approval for the collection of information from those persons who: (1) Submit a notice of intent (Form 3150–4) to conduct oil and gas geophysical exploration operations on Federal lands, and (2) submit a notice of completion (Form 3150–5) of oil and gas exploration operations. BLM uses the information to determine who is conducting geophysical operations on public lands and to ensure that appropriate measures are taken to protect the environment as required by the National Environmental Policy Act of 1969.

DATE: Comments on the proposed information collection must be received by May 6, 1996 to be considered.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C. Street NW, Room 401 LS Bldg., Washington, D.C. 20240.

Comments may be sent via Internet to: WO140@attmail.com. Please include "Attn: 1004–0162" and your name and return address in your Internet message.

Comments may be hand delivered to the Bureau of Land Management Administrative Record, Room 401, L Street, NW, Washington, D.C.

Comments will be available for public review at the L Street address during regular business hours (7:45 A.M. to 4:15 P.M., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Gloria J. Austin, (202) 452–0340.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.8(d), BLM is required to provide 60-day notice in the **Federal Register** concerning a proposed collection of information to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Mineral Leasing Act (MLA) of 1920 (30 U.S.C. 181 *et seq.*) gives the Secretary of the Interior responsibility for oil and gas leasing on approximately 570 million acres of public lands and national forests, and private lands where mineral rights have been retained by the Federal Government. The Act of August 7, 1947, (Mineral Leasing Act of Acquired Lands) authorizes the Secretary to lease lands acquired by the United States (30 U.S.C. 341–359). The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) establishes a public land policy and provides for the management, protection, development and enhancement of the public lands.

The regulations at 43 CFR Group 3150 establish procedures for conducting oil and gas geophysical exploration operations on public lands when authorization for such operations is required from the Bureau of Land Management (BLM). The regulations were last revised in 1988. The notice of intent (Form 3150–4) to conduct oil and gas geophysical exploration operations and the notice of completion (Form 3150–5) of oil and gas exploration operations were developed in 1990, and the information required from the public remains the same.

BLM needs the information requested on the notice of intent to allow it to process applications for geophysical exploration operations on public lands and manage environmental compliance requirements in accordance with the laws, regulations, and land use plans. BLM uses the information to determine that geophysical operation activities will be conducted in a manner consistent with the regulations, local land use plans, and Environmental Assessments. BLM needs the information requested on the notice of completion to determine whether rehabilitation of the lands is satisfactory or whether additional rehabilitation is necessary.

The forms may be submitted in person or by mail to the proper BLM office. The company name, address and phone number is needed to identify the person/entity conducting operations. BLM assigns the BLM Case Number to track each specific operation. Where a particular operation requires State approval also, the State Case Number is assigned by the appropriate State agency so that the Bureau may coordinate exploration activity with the State. The legal land description is required to determine where the involved public lands are located.

Based on its experience administering onshore oil and gas geophysical exploration activities, BLM estimates the public reporting burden for completing the notice of intent (Form 3150–4) to conduct geophysical exploration operations is one hour. BLM estimates it will take an average time of 20 minutes to complete the notice of completion (Form 3150–5) of oil and gas exploration operations. The information required is clearly outlined on the form and in the terms and conditions attached. The information is already maintained by the respondents for their own record-keeping purposes and needs only to be transferred or attached to the forms.

It is estimated that approximately 600 notices of intent and 600 notices of completion will be filed annually for a total annual burden of 800 hours. Respondents vary from small businesses to major corporations.

Any interested member of the public may request and obtain, without charge, a copy of Form 3150–4 or 3150–5 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.** All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become part of the public record.

Dated: February 29, 1996.

Annetta L. Cheek,

Regulatory Management Team, Chief.

[FR Doc. 96–5104 Filed 3–4–96; 8:45 am]

BILLING CODE 4310–84–P

[WO–310–1310–01–24 1A]

Extension of Currently Approved Information Collection; OMB Approval Number 1004–0145

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request extension of approval for the collection of information which will be used to determine the eligibility of an applicant to hold, explore for, and produce oil and gas on Federal lands. The information supplied allows the Bureau of Land Management to determine whether an applicant is qualified to conduct geophysical operations and to hold a lease to obtain a benefit under the terms of the Mineral Leasing Act of 1920.

DATES: Comments on the proposed information collection must be received by May 6, 1996 to be considered.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street NW, Room 401 LS Bldg., Washington, D.C. 20240.

Comments may be sent via Internet to: WO140@attmail.com. Please include "Attn: 1004–0145" and your name and address in your Internet message.

Comments may be hand delivered to the Bureau of Land Management Administrative record, Room 401 L Street, N.W., Washington, D.C.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Gloria J. Austin, (202) 452–0340.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.8(d), BLM is required to provide a 60-day notice in the **Federal Register** concerning a proposed collection of information to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Mineral Leasing Act (MLA) of 1920 (30 U.S.C. 181 *et seq.*) gives the Secretary of the Interior responsibility for oil and gas leasing on approximately 570 million acres of public lands and national forests, and private lands where mineral rights have been reserved by the Federal Government. The Act of May 21, 1930 (30 U.S.C. 301–306), authorizes the leasing of oil and gas deposits under railroads and other rights-of-way. The Act of August 7, 1947 (Mineral Leasing Act of Acquired Lands), authorizes the Secretary to lease lands acquired by the United States (30 U.S.C. 341–359).

The regulations at 43 CFR Group 3100 outline procedures for members of the public to submit applications, offers, statements, petitions, and various forms. BLM needs the information requested in the applications, statements and petitions to determine whether an applicant is qualified to hold a lease to obtain a benefit under the terms of the MLA of 1920 and its subsequent amendments and implementing regulations.

BLM uses the information to determine the eligibility of an applicant to lease, explore for, and produce oil and gas on Federal lands. Applicants may submit information in person or by mail to the proper BLM office or the Department of the Interior, Minerals Management Service. Applicants are required to certify that they are citizens of the United States, and do not own or control in excess of 246,080 acres each in public domain and acquired lands of Federal oil and gas leases in a particular State as required by law under 30 U.S.C. 184(d)(1), and in accordance with the regulations at 43 CFR 3101.2 and 3102. Legal descriptions of lands are required to determine where the involved Federal lands are located. The names and addresses are needed to identify the applicant and allow the authorized officer to ensure that the applicant meets the requirements of the law. An attorney-in-fact or agent signature is needed only if an attorney or agent is filing the information required on behalf of an applicant or lessee. The information required on the statements, petitions, offers and applications is needed for orderly processing of oil and gas leases and is needed to comply with the terms and conditions of the statutes. BLM also needs the information to determine whether an entity is qualified to hold a lease to obtain a benefit. Attestations to compliance with the regulations concerning parties of interest and qualifications is necessary, subject to criminal sanctions in accordance with 18 U.S.C., Section 1001. If the information contained on the applications statements, petitions and offers is not collected, the leasing of oil and gas could not occur to allow a benefit and millions of dollars in revenue to the Federal Government would be lost.

All information collections in the regulations at 43 CFR Subparts 3000–3120 that do not require a form are covered by this notice. BLM intends to submit these information collections collectively for approval by the Office of Management and Budget, as they were originally submitted and approved.

BREAKDOWN OF INFORMATION COLLECTIONS AND TOTAL HOURS

Information collection	No. of responses	Reporting hours per respondent	Total hours
3100.3–1	30	1	30
3100.3–3	50	1	50
3101.2–4(a)	10	1	10
3101.2–6	10	1.5	15
3101.3–1	50	1	50
3103.4–1	20	2	40
3105.2	150	2	300
3105.3	50	2	100
3105.4	20	1	20
3105.5	50	1	50
3106.8–1	40	1	40
3106.8–2	60	1	60
3106.8–3	100	2	200
3107.8	30	1	30
3108.1	150	.5	75
3108.2	500	.5	250
3109.1	20	1	20
3152.1	20	1	20
3152.6	20	1	20
3152.7	20	1	20
Total	1,400		1,400

Based on its experience managing oil and gas leasing activities, BLM estimates that it will take an average of 1 hour to complete the applications, petitions, offers and statements required. The applicants have access to records, plats and maps necessary for providing legal land descriptions. The type of information necessary is outlined in the regulations and is already maintained by the respondents for their own record-keeping purposes and needs only to be compiled in a reasonable format. The estimate also includes the time required for assembling the information, as well as the time of clerical personnel if needed.

BLM estimates that approximately 1,400 applications, offers, petitions or statements will be filed annually for a total of 1,400 reporting hours.

Respondents vary from individuals to small businesses and major corporations.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become part of the public record.

Dated February 29, 1996.

Annetta L. Cheek,

Chief, Regulatory Management Team.

[FR Doc. 96–5105 Filed 3–4–96; 8:45 am]

BILLING CODE 4310–84–P

[UT–040–06–1020–00]

Notice of Intent to Amend Management Framework Plan

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of intent to amend Management Framework Plan.

SUMMARY: The Bureau of Land Management (BLM) is preparing an Environmental Assessment (EA) to consider a proposed amendment to the Pinyon Management Framework Plan (MFP). The proposed amendment would consider alternatives for additional opportunities for land tenure adjustments in Iron County.

DATES: The comment period for identification of issues for the proposed plan amendment will commence with the date of publication of this notice. Comments must be submitted on or before April 14, 1996.

FOR FURTHER INFORMATION CONTACT: Arthur L. Tait, Beaver River Resource Area Manager, Bureau of Land Management, Cedar City District, 176 D.L. Sargent Drive, Cedar City, Utah 84720, telephone (801) 586–2401. Comments on the proposed plan amendment should be sent to the above address.

SUPPLEMENTARY INFORMATION: The Beaver River Resource Area (BRRA) Of the Cedar City district, BLM, is proposing to amend the Pinyon MFP to allow for land tenure adjustments on the following federal properties not previously identified in the MFP:

Federal land: 5,975.71 acres

Salt Lake Meridian

T. 35 S., R. 17 W.,
Sec. 18 lots 1, 2, 3, 4; E½SW¼; E½NW¼;
T. 35 S., R. 18 W.,
Sections: 13; 14 E½; 24 NW¼;
T. 34 S., R. 17 W.,
Sec. 19 lots 3 and 4 inclusive;
T. 33 S., R. 17 W.,
Sections: 23 W½; 34 W½; 35 W½;
T. 31 S., R. 13 W.,
Sections: 1 lots 4, 5, and 12; 3; 4 lots 1 to 4 and 7 to 10, inclusive; 5 lots 1 to 6, inclusive, 11, and 12; 6 lots 1 and 2; 8 E½; 9; 10 W½; 20 E½;

The main purpose is to identify and analyze the land for exchange to private parties for acquisition of lands that result in a net gain of important and manageable resource values on public land. The United States is considering the acquisition of the following described *NON-FEDERAL:*

Land: 6,590.44 acres

Salt Lake Meridian

T. 35 S., R. 18 W.,
Sections: 23 NW¼; 25 W½; 27 N½; 29 N½; 33 S½; 34 N½; 35 W½.
T. 31 S., R. 15 W.,
Sections: 2; 16; 36 W½NE¼, W½, and NW¼SE¼.
T. 31 S., R. 17 W.,
Section 32;
T. 32 S., R. 17 W.
Sections: 2 lots 1 to 4, inclusive, S½N½, SW¼, N½SE¼, and SW¼SE¼; 16.
T. 34 S., R. 19 W.,
Section 16.

Lands transferred out of Federal Ownership as a result of the exchange, would be available to meet the various needs of the respective parties. An EA will be prepared to analyze the impacts of this proposed plan amendment and alternatives.

Public participation is being sought at this initial stage in the planning process to ensure the MFP amendment addresses all issues, problems and concerns from those interested in the management of lands within the BRRA. Necessary amendments to the approved plan will keep the document viable.

Doug Koza,

Acting State Director, Utah.

[FR Doc. 96–5020 Filed 3–4–96; 8:45 am]

BILLING CODE 4310–DQ–P

Minerals Management Service

Aboriginal Title and Rights Claims Information in Cook Inlet and Prince William Sound, AL

AGENCY: Minerals Management Service (MMS), Department of the Interior.

ACTION: Request for information regarding claims of aboriginal title and rights in Cook Inlet and Prince William Sound of southern Alaska.

SUMMARY: This notice solicits factual data relevant to claims of aboriginal title and rights to unspecified portions of the Alaska Federal Outer Continental Shelf (OCS) included in the areas proposed for lease in OCS Lease Sales 149 (Cook Inlet) and 158 (Gulf of Alaska/Yakutat).

In a separate **Federal Register** notice, the Department of the Interior announced receipt of, and requested comments on, a petition for rulemaking on issues regarding claimed aboriginal title and aboriginal hunting and fishing rights of federally recognized tribes in Alaska exercisable on the OCS.

DATES: Comments on this request for information are requested through April 4, 1996.

ADDRESSES: Comments should be directed to: Paul Stang, Chief, Branch of Leasing Coordination, Office of Program Development and Coordination, (MS–4410) Minerals Management Service, 381 Elden Street, Herndon, Virginia 20270–4817. Please indicate that your comment is in response to the request for factual data regarding aboriginal title and rights on the Alaska OCS.

FOR FURTHER INFORMATION CONTACT: William Quinn at (703) 787–1191.

SUPPLEMENTARY INFORMATION: The Minerals Management Service (MMS) exercises the delegated duties of the Secretary of the Interior under the Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.* for management of the resources of the OCS, the seabed seaward of three miles from the coastline (except in the case of Texas and Florida). Pursuant to the current 1992–1977 5-Year OCS Leasing Program, announced July 1, 1992, MMS has advanced to the final planning stages for the scheduled 1996 offering of natural gas and oil leases on the federal OCS in Cook Inlet, Sale 149. This is the fourth federal OCS lease sale in Cook Inlet. The State of Alaska has included portions of Cook Inlet in 28 of its offshore lease sales.

The Native Villages of Eyak, Tatilek, Chenega, Port Graham, and Nanwalek have, through correspondence, petition and litigation, advised MMS of their claims of aboriginal title and aboriginal hunting and fishing rights to unspecified portions of the sale area. The Villages are located in the Cook Inlet and Prince William Sound area of southern Alaska. The Villages have submitted a petition for rulemaking requesting the promulgation of regulations that recognize and protect such Villages' "exclusive fishing rights" on the Alaska OCS. Petitioners claim that there is legal support for the existence and recognition of such rights under the doctrine of aboriginal title and that such Villages have "exclusively used and occupied" the OCS for "subsistence purposes" since "time immemorial". The Villages assert that Sale 149 would interfere with the existence of their rights and deprive them of mineral income rightfully theirs. This information will also be considered in making final decisions on Sale 149, Cook Inlet and Sale 158, Gulf of Alaska, Yakutat.

The Government has consistently taken the position that no person or entity has title to, or hunting and fishing rights on, the Alaska OCS, which is subject to the paramount authority of the Federal Government exercised pursuant to the above cited statute. In fairness to the Villages, however, the MMS is carefully pursuing a factual inquiry into the potential nature and extent of such Native claims. MMS requests that any knowledgeable party submit any information pertinent to the Villages' claims regarding the federal OCS, whether such information supports or disputes the claims.

The MMS has received a report on claimed aboriginal use of the OCS from Kayak Island to the Lower Cook Inlet. That report suggests that even if aboriginal claims could exist on the OCS, the factual predicate for a claim by the Native Villages of Eyak, Tatilek, Chenega, Port Graham, and Nanwalek, is not present. The MMS invites comments on that report which can be obtained by contacting Paul Stag or William Quinn at the addresses shown above.

MMS also invites knowledgeable parties to provide factual responses to any of the following questions and to supply any other relevant information:

1. What is the physical/territorial location of the "ancestral fishing areas" on the federal OCS of each of the five Native Villages? Please cite known anthropological data regarding historical use indicating that the use occurred more than three miles from the coastline on the federal OCS.

2. What is the size of each Village's historical fishing areas on the federal OCS? Do any of them overlap? Have the dimensions and geographic descriptions of such areas remained constant over time? If not, please describe how they have changed.

3. How long has each Village used such areas on the federal OCS? During this period has such historical use been continuous and exclusive of others?

4. For what type of subsistence uses have such areas on the federal OCS been historically used?

a. To what extent, if any, have they been exclusively and continually used in this manner? If so for how long? What distance from the coast have these activities occurred?

b. If such use was ever interrupted, for what reason and for how long?

c. What species of fish, invertebrates, birds, and/or marine mammals were hunted over the federal OCS?

(i) During what time of year was each species hunted?

(ii) At what depth?

(iii) What kinds of equipment were historically used to harvest such resources? Are newer or different methods and equipment used now? If so, when did such changes occur?

5. What was the impact of Russian or American expansion into the region on such uses?

6. Has the possession and use of such areas been exclusive of other Alaska Native entities?

If not, is there any evidence of "joint" or "concurrent" use by other Villages? If so, what is the basis and nature of such joint usage and when did such usage begin?

7. When was the first use of the seabed and its resources and by whom? Its mineral resources (including geological and geophysical work preparatory to such exploitation)?

MMS will consider all such information (along with responses to the other request mentioned above) in making final decisions on Sale 149 and Sale 158.

Dated: February 26, 1996.

Cynthia Quarterman,

Director, Minerals Management Service.

[FR Doc. 96–5008 Filed 3–4–96; 8:45 am]

BILLING CODE 4310–MR–M

Bureau of Mines

Termination of Advisory Committee

AGENCY: Bureau of Mines, Interior.

ACTION: Notice of termination of the U.S. Bureau of Mines Advisory Board.

SUMMARY: In accordance with 41 CFR 101–6.1027, Termination of advisory committees, the U.S. Bureau of Mines Advisory Board terminates its charter, effective November 7, 1995.

DATES: Termination of the charter of the U.S. Bureau of Mines Advisory Board, will be effective as of November 7, 1995.

ADDRESSES: U.S. Bureau of Mines, U.S. Department of the Interior, 810 Seventh Street, N.W., Washington, D.C. 20241. Tel: (202) 501–9365.

FOR FURTHER INFORMATION CONTACT: For information contact David S. Brown at the address and telephone identified above.

Dated: January 26, 1996.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 96–5000 Filed 3–4–96; 8:45 am]

BILLING CODE 4310–63–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 24, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by March 20, 1996.

Carol D. Shull,

Keeper of the National Register.

FLORIDA

Volusia County

Bethune—Cookman College Historic District, (Historic Resources of Daytona Beach), 620 Dr. Mary McLeod Bethune Blvd., Daytona Beach, 96000298

MARYLAND

Frederick County

Bowlus Mill House, 8123 Old Hagerstown Rd., Spoolsville, 96000300

Somerset County

Tull, William T., House, MD 413, W side of, Westover, 96000302

Worcester County

Crockett House, 900 Market St., Pocomoke City, 96000299

Mar-Va Theater, 103 Market St., Pocomoke City, 96000301

MASSACHUSETTS

Worcester County

Whitney Tavern, 11 Patriots Rd., Templeton and Gardner, 96000304

NEW YORK

Erie County

Citizens National Bank, 5 W. Main St., Springville, 96000295

Scobey Power Plant and Dam, Jct. of Scobey Hill Rd. and Cattaraugus Cr., Springville vicinity, 96000296

OKLAHOMA

Garfield County

Enid Cemetery and Calvary Catholic Cemetery, 200 block of W. Willow Ave., Enid, 96000305

WISCONSIN

Door County

Meridian (schooner) (Great Lakes Shipwrecks of Wisconsin) Address Restricted, Sister Bay vicinity, 96000294

La Crosse County

District School No. 1, US 14/61 E of Jct. with WI 35, Shelby, 96000303

[FR Doc. 96–5026 Filed 3–4–96; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: review and status of the CALFED Bay-Delta Program; financial strategy for the long-term program; review and discussion of the draft alternatives; and scoping for the long-term program. This meeting is open to the public. For the meeting, interested persons may make oral statements to the BDAC or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council meeting will be held from 9:00 am to 4:00 pm on Thursday, March 21, 1996.

ADDRESS: The Bay-Delta Advisory Council will meet at the Beverly Garland Hotel, 1780 Tribute Road (at Exposition Boulevard/West), Sacramento, CA.

CONTACT PERSON FOR MORE INFORMATION: Sharon Gross, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort is being carried out under the policy direction of CALFED. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the CALFED Bay-Delta Program, BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff.

Minutes of the meeting will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: February 27, 1996.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 96–5098 Filed 3–4–96; 8:45 am]

BILLING CODE 4310–94–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, telephone 202–395–7340.

Title: AVS Industry Seminar Questionnaire.

OMB Approval Number: Not yet assigned.

Abstract: Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The information supplied by this questionnaire will determine customer satisfaction with AVS Industry Seminars and to identify future topics of interest.

Bureau form number: None.

Frequency: On Occasion.

Description of Respondents: Industry groups.

Estimated Completion Time: 10 minutes.

Annual Responses: 75.

Annual Burden Hours: 15.

Bureau Clearance Officer: John A. Trelease, 202–208–2617.

Dated: February 23, 1996.

Gene E. Krueger,

Acting Chief, Office of Technology Development and Transfer.

[FR Doc. 96–5108 Filed 3–4–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, as Amended

Notice is hereby given that a proposed consent decree in the consolidated actions entitled *Elf Atochem North America, Inc.* versus *United States, et al.*, Civil Action No. 92–7458 and *United States* versus *Witco Corporation*, Civil Action No. 94–0662 (E.D. Pa.), was lodged on February 27, 1996, with the United States District Court for the Eastern District of Pennsylvania. The consent decree resolves the United States' claim, on behalf of the U.S. Environmental Protection Agency ("EPA"), against defendant Witco Corporation ("Witco") in Civil Action No. 94–0662, and Witco's counterclaim against the United States, on behalf of the Departments of Commerce, the Army, and the General Services Administration ("Settling Federal Agencies"), in Civil Action No. 94–0662 under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for contamination at the Myers Property Superfund Site in Franklin Township, Hunterdon County, New Jersey (the "Site"). In the proposed consent decree, Witco will pay the United States $400,000 in settlement of the United States' claims for past response costs incurred by EPA at the Site, and to dismiss its counterclaim against the Settling Federal Agencies. The Settling Federal Agencies agree to pay into the Hazardous Substance Superfund the sum of $600,000 in reimbursement of EPA's past response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *Elf Atochem North America, Inc.* versus *United States, et al.*, Civil Action No. 92–7458 and *United States* versus *Witco Corporation*, Civil Action No. 94–0662 (E.D. Pa.), DOJ Ref. Number 90–11–2–662A.

The proposed consent decree may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania 19106; the Region Ii Office of the Environmental Protection Agency, 290 Broadway, New York, NY 10278; and the Consent Decree' Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–5034 Filed 3–4–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that on February 20, 1996, a Consent Decree was lodged in *United States* v. *Hercules, et al.*, Civil Action No. 89–562–SLR, with the United States District Court for the District of Delaware.

The Complaint in this case, as amended, was filed under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, with respect to the Delaware Sand & Gravel Superfund Site ("DS&G Site") located in New Castle County, Delaware, against numerous defendants, many of whom have agreed to settlement terms under prior consent decrees. Pursuant to the terms of the Consent Decree with Harvey & Harvey, Inc., the United States will receive a payment of $1.3 million over four years for costs incurred in connection with the Site.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Hercules, et al.*, Civil Action No. 89–562–SLR, Ref. No. 90–11–2–298. The proposed Consent Decree may be examined at the office of the United States Attorney, District of Delaware, Chemical Bank Plaza, 1201 Market Street, Suite 100, Wilmington, Delaware 19899. Copies of the Consent Decree may also be examined and obtained by mail at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202–624–0892) and the offices of the Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. When requesting a copy by mail, please enclose a check in the amount of $11.00 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–5035 Filed 3–4–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy and 28 CFR § 50.7, notice is hereby given that on February 21, 1996, a proposed consent decree in *United States* v. *Reliance Battery Mfg. Co.*, Civil Action No. 1–94–CV–80018, was lodged with the United States District Court for the Southern District of Iowa. This consent decree represents a settlement of claims against Reliance Battery Mfg. Co., William S. Grant, and Rosemary V. Grant ("Defendants") under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*

On April 25, 1994, the United States filed a Complaint pursuant to Sections 107(a) and (c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a) and (c)(3) for response costs and punitive damages against Defendants. Subsequently, the United States and Defendants reached a settlement which resolves the issues set forth in the Complaint. Under this settlement between the United States and Defendants, Defendants will pay the United States $20,000 towards response costs incurred by the United States in connection with the release of hazardous substances from the Reliance Battery Mfg. Co. facility in Council Bluffs, Iowa. The consent decree also provides that Defendants will clean up existing contamination at the Reliance Battery Mfg. Co. site and will reimburse the United States for all costs it incurs in connection with this cleanup. In addition, the consent decree contains measures designed to prevent future releases of hazardous substances to the environment.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Reliance Battery Mfg. Co.*, D.J. ref. 90–11–2–961.

The proposed consent decree may be examined at the following locations: (1) Office of the United States Attorney, Southern District of Iowa, 115 U.S. Courthouse, East 1st and Walnut Streets, Des Moines, Iowa; (2) Office of the Environmental Protection Agency, Region VII, 726 Minnesota Ave, Kansas City, Kansas; and (3) the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $13.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–5036 Filed 3–4–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. Browning-Ferris, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), that a proposed Final Consent Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in the above-captioned case.

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On February 15, 1996, the United States filed a civil antitrust Complaint to prevent and restrain Browning-Ferris Industries, Inc. ("BFI"), Browning-Ferris Industries of Iowa, Inc. ("BFII"), and Browning-Ferris Industries of Tennessee, Inc. ("BFIT") from maintaining and enhancing their market power by using contracts that have restrictive and anticompetitive effects, in violation of Section 2 of the Sherman Act, 156 U.S.C. 2.

The Complaint alleges that: (1) Defendant BFIT has market power in small containerized hauling service in the Memphis, TN market and Defendant BFII has market power in small containerized hauling service in the Dubuque, IA market; (2) Defendants, acting with specific intent, used and enforced contracts containing restrictive provisions to exclude and constrain competition and to maintain and enhance their market power in small containerized hauling service in those markets; (3) in the context of their large market shares and market power, and Dubuque markets has had anticompetitive and exclusionary effects by significantly increasing barriers to entry facing new entrants and barriers to expansion faced by small incumbents; (4) Defendants' market power is maintained and enhanced by their use and enforcement of those contracts; and, (5) as a result, there is a dangerous probability that Defendants will achieve monopoly power in the Memphis and Dubuque markets.

The proposed Final Judgment would require that in dealing with small-container customers in the Memphis and Dubuque markets, Defendants only enter into contract containing significantly less restrictive terms than the contracts they now use in those markets. Specifically, the Defendants will be prohibited from using any contract with small-container customers in the Memphis and Dubuque markets that:

(1) Has an initial term longer than two years (unless a longer term is requested by the customer and other conditions are met);

(2) Has any renewal term longer than one year;

(3) Requires the customer give notice of termination more than 30 days prior to the end of a term;

(4) Requires the customer to pay liquidated damages over 3 times the greater of its prior monthly charge or its average monthly charge during the first year of the initial term of the customer's contract, or over 2 times the greater of its prior monthly charge or its average monthly charge thereafter;

(5) Is not labeled "Contract for Solid Waste Services" and is not easily readable; or

(6) Requires a customer to give BFI the right or opportunity to provide hauling services for all solid wastes and recyclables, unless the customer affirmatively indicates that is its desire.

The proposed Consent Final Judgment also requires that the Defendants notify customers in the two relevant markets of these changes and prohibits the Defendants from enforcing terms in existing contracts that are inconsistent with the settlement in those markets. Furthermore, Defendants would be prohibited from enforcing provisions in existing contracts that are inconsistent with the Final Judgment.

Public comment is invited within the statutory 60-day period. Such comments will be published in the **Federal Register** and filed with the Court. Comments should be addressed to Anthony V. Nanni, Chief, Litigation I Section, U.S. Department of Justice, Antitrust Division, 1401 H St., NW., Suite 4000, Washington, DC 20530. (phone 202/307–6576).

Rebecca P. Dick,

Deputy Director of Operations.

United States District Court for the District of Columbia

In the matter of *United States of America*, Plaintiff, v. *Browning-Ferris Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries, Inc.*, Defendants.

[Civil Action No.: 1–96–V00297]

Filed: February 15, 1996.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto for the purposes of this proceeding. Defendant Browning-Ferris Industries, Inc. transacts business and is found within the district. Defendants Browning-Ferris Industries of Tennessee, Inc. and Browning-Ferris Industries of Iowa, Inc. consent to personal jurisdiction in this proceeding. Defendants waive any objections as to venue and stipulate that venue for this action is proper in the District of Columbia;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16 (b)–(h)), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the Defendants and by filing that notice with the Court; and

3. Defendants agree to be bound by the provisions of the proposed Final Judgment pending its approval by the Court. If the Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

Dated this 15th day of February, 1996.

Respectfully submitted,

For the plaintiff the United States of America:

Anne K. Bingaman,

Assistant Attorney General, Antitrust Division, U.S. Department of Justice.

Lawrence R. Fullerton,

Deputy Assistant Attorney General.

Rebecca P. Dick,

Deputy Director of Operations.

Anthony V. Nanni,

Chief, Litigation I Section.

Willie L. Hudgins, Jr.,

DC Bar #37127.

Nancy H. McMillen.

Peter H. Goldberg,

DC Bar #055608.

Evangelina Almirantearena,

Attorneys, U.S. Department of Justice, Antitrust Division, City Center Building, Suite 4000, 1401 H Street, NW., Washington, DC 20530, 202/307–5777.

For Defendants Browning-Ferri Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries, Inc.:

David Foster,

Esquire, DC Bar #358247, Fulbright & Jaworski L.L.P., 801 Pennsylvania Ave., NW, Market Square, Washington, DC 20004–2604, 202/662–0200.

Richard N. Carrell,

Esquire, Fulbright & Jaworski L.L.P., 1301 McKinney, Suite 5100, Houston, Texas 77010–3095, 713/651–5151.

Rufus Wallingford,

Esquire, Senior Vice President & General Counsel, Browning-Ferris Industries, Inc., 757 N. Eldridge at Memorial Drive, Houston, Texas 77079, 713/870–8100.

Lee J. Keller,

Esquire, Senior Attorney, Browning-Ferris Industries, Inc., 757 N. Eldridge at memorial Drive, Houston, Texas 77079, 713/870–8100.

Attorneys for Defendants.

United States District Court for the District of Columbia

In the matter of *United States of America*, Plaintiff, v. *Browning-Ferris Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries, Inc.*, Defendants.

[Civil Action No.: 1–96–V00297]

Filed: Feb. 15, 1996.

Final Judgment

Whereas Plaintiff, United States of America, having filed its Complaint in this action on February 15, 1996, and Plaintiff and Defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence or admission by any party with respect to any issue of fact or law;

Now, therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, adjudged and decreed as follows:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of the persons of the Defendants, Browning-Ferris Industries, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries of Iowa, Inc. The Complaint states a claim upon which relief may be granted against the Defendants under Section 2 of the Sherman Act, 15 U.S.C. 2.

II. Definitions

As used in this Final Judgment:

(A) "Memphis market" means the counties of Shelby, TN; Fayette, TN; Crittenden, AK; DeSoto, MS; Marshall, MS; Tate, MS; and Tunica, MS.

(B) "Dubuque market" means the counties of Dubuque and Jackson, IA.

(C) "Solid waste hauling" means the collection and transportation to a disposal site of trash and garbage (but not construction and demolition debris; medical waste; hazardous waste; organic waste; or special waste, such as contaminated soil, or sludge; or recyclable materials) from residential, commercial and industrial customers. Solid waste hauling includes hand pick-up, containerized pick-up, and roll-off service.

(D) "Defendants" means defendant Browning-Ferris Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas, defendant Browning-Ferris Industries of Tennessee, Inc., a Tennessee corporation with offices in Memphis, TN, and defendant Browning-Ferris Industries of Iowa, Inc., an Iowa corporation with offices in Des Moines, IA, and includes their officers, directors, managers, agents, employees, successors, assigns, parents and subsidiaries.

(E) "Small Container" means a 1 to 10 cubic yard container.

(F) "Small Containerized Solid Waste Hauling Service" means providing solid waste hauling service to customers by providing the customer with a Small Container that is picked up mechanically using a frontload, rearload, or sideload truck, and expressly excludes hand pick-up service, and service using stationary compactors.

(G) "Customer" means a Small Containerized Solid Waste Hauling Service customer.

III. Applicability

This Final Judgment applies to Defendants and to their officers, directors, managers, agents, and employees, successors, assigns, parents and subsidiaries, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. Nothing contained in this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV. Prohibited Conduct

Defendants are enjoined and restrained as follows:

(A) Except as set forth in paragraph IV (B) and (G), Defendants shall not enter into any contract with a Customer for a service location in the Memphis or Dubuque markets that:

(1) Has an initial term longer than two (2) years;

(2) Has any renewal term longer than one (1) year;

(3) Requires that the Customer give Defendants notice of termination more than thirty (3) days prior to the end of any initial term or renewal term;

(4) Requires that the Customer pay liquidated damages in excess of three times the greater of its prior monthly charge or its average monthly charge over the most recent six months during the first year it is a Customer of Defendants;

(5) Requires that the Customer pay liquidated damages in excess of two times the greater of its prior monthly charge or its average monthly charge over the most recent six months after the Customer has been a Customer of Defendants for a continuous period in excess of one (1) year;

(6) Is not easily readable (e.g., formatting and type-face) and is not labeled, in large letters, CONTRACT FOR SOLID WASTE SERVICES; or

(7) Requires a Customer to give Defendants the right or opportunity to provide hauling service for recyclable or more than one type of solid waste hauling service for a Customer unless the Customer affirmatively indicates its desire for all such services on the front of the contract.

(B) Notwithstanding the provisions of paragraph IV(A) of this Final Judgment, Defendants may enter into a contract with a Customer for a service location in the Memphis or Dubuque markets with an initial term in excess of two years provided that:

(1) Defendants have not implemented any organized, management—authorized sales or marketing plan designed, through pricing or other incentives, to induce Customers to use other than the form contracts Defendants are required herein to offer generally to Customers;

(2) The Customer has the right to terminate the contract after 2 years by giving notice to Defendants thirty (30) days or more prior to the end of that 2 year period; and,

(3) The contract otherwise complies with the provisions of paragraph IV(A)(2)–(7).

(C) From the date of filing of an executed Stipulation in the form attached hereto as Exhibit A, Defendants shall offer to new Customers with service locations in the Memphis and Dubuque markets only contracts that conform to the requirements of paragraphs IV(A) or (B) of this Final Judgment, except as provided in IV(G).

(D) Except as provided in IV(G), Defendants shall send to all existing Customers with service locations in the Memphis and Dubuque markets with contracts having an initial term longer than 2 years and which otherwise do not conform with paragraph IV(B) a notice in the form attached hereto as Exhibit B (for Memphis customers) and as Exhibit C (for Dubuque customers) in accordance with the following schedule:

(1) Defendants shall send notices to Customers with service locations in the Memphis market within ninety (90) days following entry of this Final Judgment; and

(2) Defendants shall send notices to Customers with service locations in the Dubuque market within thirty (30) days following the entry of this Final Judgment.

(E) Except as provided in IV(G), for each Customer with a contract having

an initial term longer than 2 years and which otherwise does not conform to paragraph IV(B) that enters a renewal term 120 days after entry of this Final Judgment, Defendants shall send a reminder to that Customer in the form attached hereto as Exhibit D ninety (90) days or more prior to the effective date of the renewal term. This reminder may be sent to the customer as part of a monthly bill, but if it is, it must be displayed on a separate page and in large print.

(F) Upon entry of this Final Judgment, Defendants may enforce existing contract provisions only to an extent consistent with this Final Judgment. (For example, if an existing service agreement provides for six months' liquidated damages, Defendants may only seek three months' worth of such damages, consistent with IV(A)(4)).

(G) Notwithstanding the provisions of this Final Judgment, Defendants may enter into contracts with municipal or governmental entities that are not in compliance with paragraphs IV(A)–(F) provided that those contracts are awarded to Defendants on the basis of a formal request for bids or a formal request for proposals issued by the Customer.

(H) Notwithstanding the provisions of this Final Judgment, Defendants shall not be required to do business with any Customer.

V. Reporting

(A) To determine or secure compliance with this Final Judgment, duly authorized representatives of the Plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice given to Defendants at this principal offices, subject to any lawful privilege, be promised:

(1) Access during normal office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other documents and records in the possession, custody, or control of Defendants, which may have counsel present, relating to any matters contained in this Final Judgment.

(2) Subject to the reasonable convenience of Defendants and without restraint or interference from them, to interview officers, employees, or agents of Defendants, who may have counsel present, regarding any matters contained in this Final Judgment.

(B) Upon written request of the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice given to Defendants at this principal offices, subject to any lawful privilege, Defendants shall submit such written reports, under oath if requested, with respect to any matters contained in this Final Judgment.

(C) No information or documents obtained by the means provided by this Section shall be divulged by the Plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States government, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by Defendants to Plaintiff, Defendants represent and identify in writing the material in any such information or document to which a claim or protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten days notice shall be given by Plaintiff to Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendants are not a party.

VI. Further Elements of Judgment

(A) This Final Judgment shall expire on the tenth anniversary of the date of its entry.

(B) Jurisdiction is retained by this Court over this action and the parties thereto for the purpose of enabling any of the parties thereto to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provision, to enforce compliance, and to punish violations of its provisions.

VII. Public Interest

Entry of this Final Judgment is in the public interest.

Entered: _____

UNITED STATES DISTRICT JUDGE

_____

EXHIBIT A

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Browning-Ferris Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries, Inc.*, Defendants.

[Civil Action No.: 1–96–V00297]

Filed: February 15, 1996.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto for the purposes of this proceeding. Defendant Browning-Ferris Industries, Inc. transacts business and is found within the district. Defendants Browning-Ferris Industries of Tennessee, Inc. and Browning-Ferris Industries of Iowa, Inc. consent to personal jurisdiction in this proceeding. Defendants waive any objections as to venue and stipulate that venue for this action is proper in the District of Columbia;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16 (b)–(h)), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the Defendants and by filing that notice with the Court; and

3. Defendants agree to be bound by the provisions of the proposed Final Judgment pending its approval by the Court. If the Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

Dated this _____th day of _____, 1996.

Respectfully submitted,

For the Plaintiff the United States of America.

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Lawrence R. Fullerton,
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For defendants Browning-Ferris Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries, Inc.:

David Foster, Esquire,
DC Bar #358247, Fulbright & Jaworski, 801 Pennsylvania Ave., NW., Market Square, Washington, D.C. 20004–2604, 202/662–0200.

EXHIBIT B

Notice to Customers

Dear Customer:

BFI is offering a new two year contract to its small containerized solid waste hauling customers with service locations in [insert market here]. In most cases, this new contract will have terms that are more advantageous to customers than their current contracts. This new contract has the following features:

- an initial term of no longer than 2 years (unless you request a longer term);
- a renewal term of 1 year;
- at the end of your initial term, you may take no action and your contract will renew or you may choose not to renew by giving us notice at any time up to 30 days prior to the end of the initial term;
- if you request a contract with a term longer than 2 years, you can cancel that contract by giving us notice at any time up to 30 days prior to the end of the first 2 years;
- you can choose to terminate the contract at any other time, but you will be required to pay, as liquidated damages, no more than 3 times the greater of your prior monthly or average monthly charge, but if you have been a customer continuously for more than 1 year, the liquidated damages would be reduced to 2 times the greater of your prior monthly or average monthly charge;
- you will be able to choose on the contract which specific types of waste hauling services you would like us to perform.

On or before the termination date of your existing service contract, BFI will offer you continued service under the new contract. BUT AS AN EXISTING CUSTOMER, YOU WILL IMMEDIATELY GAIN THE ADVANTAGES OF THE REVISED CONTRACT SINCE BFI WILL NOT ENFORCE ANY PROVISION IN YOUR CONTRACT IN ANY MANNER INCONSISTENT WITH ONE OF THE NEW TERMS OFFERED ABOVE. THERE IS, THEREFORE, NO NEED TO SIGN A REVISED CONTRACT AT THIS TIME. HOWEVER, IF YOU WOULD LIKE TO ENTER A NEW CONTRACT IN THE MEANTIME, PLEASE SEND A LETTER TO [insert name and address] AND WE WILL CONTACT YOU.

Thank you for your attention.

EXHIBIT C

Notice to Customers

Dear Valued Customer:

BFI is offering a new two year contract to all small containerized solid waste hauling customers with service locations in the countries of Dubuque and Jackson, IA. We would like to take this opportunity to offer this contract to you. Of course, if you prefer, you can continue with your existing contract.

In most cases, this new contract will have terms that are more advantageous to customers than their current contracts. This new contract has the following features:

- an initial term of no longer than 2 years (unless you request a longer term);
- a renewal term of 1 year;
- you can choose not to renew the contract by simply giving us notice at any time up to 30 days prior to the end of your term;
- if you request a contract with a term longer than 2 years, you can cancel that contract by giving us notice at any time up to 30 days prior to the end of the first 2 years;
- you can choose to terminate the contract at any other time, but you will be required to pay, as liquidated damages, no more than 3 times the greater of your prior monthly or average monthly charge. If you've been a customer continuously for more than 1 year, the liquidated damages would be reduced to 2 times the greater of your prior monthly or average monthly charge;
- you will be able to choose on the contract which specific types of waste hauling services you would like us to perform.

You may obtain a new contract containing these terms by calling [insert BFI contact and number].

If you prefer, you may continue with your existing contract. If you retain your existing contract, we will not enforce any terms that are inconsistent with the new form contract terms.

If you have any questions, please call [BFI contact person and phone number.]

EXHIBIT D

REMINDER: Your contract will automatically renew 90 days from the date of this notice unless we receive your cancellation within 60 days from the date of this notice.

You may also obtain a new form contract for solid waste hauling services with some terms more advantageous to you than your current contract. We will send you a copy on request.

Existing contract terms inconsistent with the new form will not be enforced against you.

United States District Court for the District of Columbia

In the matter of *United States of America*, Plaintiff, v. *Browning-Ferris Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries Inc.*, Defendants.

[Case Number: 1–96–V00297]

JUDGE: Thomas Pennfield Jackson.
DATE STAMP: February 15, 1996.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil proceeding.

I. Nature and Purpose of the Proceeding

On February 15, 1996, the United States filed a civil antitrust Complaint to prevent and restrain Browning-Ferris Industries, Inc. ("BFI"), Browning-Ferris Industries of Iowa, Inc. ("BFII"), and Browning-Ferris Industries of Tennessee, Inc. ("BFIT") from using contracts that have restrictive and anticompetitive effects on small containerized hauling service markets in Memphis and Dubuque, in violation of Section 2 of the Sherman Act, 15 U.S.C. 2. As alleged in the Complaint, Defendants have attempted to monopolize small containerized hauling service in the Memphis and Dubuque geographic markets by using and enforcing contracts containing restrictive provisions to maintain and enhance their existing market power there.

The Complaint alleges that: (1) Defendant BFIT has market power in small containerized hauling service in the Memphis, TN market and Defendant BFII has market power in small containerized hauling service in the Dubuque, IA market; (2) Defendants, acting with specific intent, used and enforced contracts containing restrictive provisions to exclude and constrain competition and to maintain and enhance their market power in small containerized hauling service in those markets; (3) in the context of their large market shares and market power, Defendants' use and enforcement of those contracts in the Memphis and Dubuque markets has had anticompetitive and exclusionary effects by significantly increasing barriers to entry facing new entrants and barriers to expansion faced by small incumbents; (4) Defendants' market power is maintained and enhanced by their use and enforcement of those contracts; and, (5) as a result, there is a dangerous probability that Defendants will achieve

monopoly power in the Memphis and Dubuque markets.

In its Complaint, Plaintiffs seeks, among other relief, a permanent injunction preventing Defendants from continuing any of the anticompetitive practices alleged to violate the Sherman Act, and thus affording fair opportunities for other firms to compete in small containerized hauling service in the Memphis and Dubuque markets.

The United States and Defendants also have filed a Stipulation by which the parties consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of Defendants' actions in the Memphis and Dubuque markets. Under the proposed Final Judgment, as explained more fully below, in dealing with small-container customers in the Memphis and Dubuque markets, Defendants would only be permitted to enter into contracts containing significantly less restrictive terms than the contracts they now use in those markets. Furthermore, Defendants would be prohibited from enforcing provisions in existing contracts that are inconsistent with the Final Judgment.

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

Browning-Ferris Industries, Inc. ("BFI"), is the world's second-largest company engaged in the solid waste hauling and disposal business, with operations throughout the United States. Browning-Ferris Industries, Inc. had revenues of approximately $4 billion in its 1994 fiscal year.

Browning-Ferris Industries of Iowa, Inc. ("BFII") is a subsidiary of BFI with its principal offices in Des Moines, IA. It is the largest solid waste hauling and disposal company in the Dubuque, IA market. BFII had revenues of over $2.6 million in its 1994 fiscal year.

Browning-Ferris Industries of Tennessee, Inc., ("BFIT") is also a subsidiary of BFI. It has its principal offices in Memphis, TN. It is the largest solid waste hauling and disposal company in the Memphis, TN market. BFIT had revenues over $40.9 million in its 1994 fiscal year.

A. The Solid Waste Hauling Industry

Solid waste hauling involves the collection of paper, food, construction material and other solid waste from homes, businesses and industries, and the transporting of that waste to a landfill or other disposal site. These services may be provided by private haulers directly to residential, commercial and industrial customers, or indirectly through municipal contracts and franchises.

Service to commercial customers accounts for a large percentage of total hauling revenues. Commercial customers include restaurants, large apartment complexes, retail and wholesale stores, office buildings, and industrial parks. These customers typically generate a substantially larger volume of waste than do residential customers. Waste generated by commercial customers is generally placed in metal containers of one to ten cubic yards provided by their hauling company. One to ten cubic yards containers are called "small containers." Small containers are collected primarily by frontend load vehicles that lift the containers over the front of the truck by means of a hydraulic hoist and empty them into the storage section of the vehicle, where the waste is compacted. Service to commercial customers that use small containers is called "small containerized hauling service."

Solid waste hauling firms also provide service to residential and industrial (or "roll-off") customers. Residential customers, typically households and small apartment complexes that generate small amounts of waste, use noncontainerized solid waste hauling service, normally placing their waste in plastic bags, trash cans, or small plastic containers at curbside.

Industrial or roll-off customers include factories and construction sites. These customers either generate noncompactible waste, such as concrete or building debris, or very large quantities of compactible waste. They deposit their waste into very large containers (usually 20 to 40 cubic yards) that are loaded onto a roll-off truck and transported individually to the disposal site where they are emptied before being returned to the customers' premises. Some customers, like shopping malls, use large, roll-off containers with compactors. This type of customer generally generates compactible trash similar to the waste of commercial customers, but in much greater quantities; it is more economical for this type of customer to use roll-off service with a compactor than to use a number of small containers picked up multiple times a week.

B. Relevant Product Market

The relevant product market is a small containerized hauling service. There are no practical substitutes for this service. Small containerized hauling service customers will not generally switch to noncontainerized service in the event of a price increase, because it is too impractical and more costly for those customers to bag and carry their volume of trash to the curb for hand pick-up. Similarly, roll-off service is much too costly and the container takes up too much space for most small containerized hauling service customers. Only customers that generate the largest volumes of compactible solid waste can economically consider roll-off service, and for customers that do generate large volumes of waste, roll-off service is usually the only viable option.

C. Relevant Geographic Markets

The relevant geographic markets are the Memphis market and the Dubuque market. Small containerized solid waste hauling services are generally provided in very localized areas. Route density (a large number of customers that are close together) is necessary for small containerized solid waste hauling firms to be profitable. In addition, it is not economically efficient for heavy trash hauling equipment to travel long distances from customers without collecting significant amounts of waste. Thus, it is not efficient for a hauler to serve major metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served.

D. Defendants' Attempt to Monopolize

Defendant BFIT has market power in small containerized hauling service in the Memphis market. BFIT has maintained a very high market share for over 10 years—consistently in excess of 60 percent.

Defendant BFII has market power in small containerized hauling service in the Dubuque market. BFII entered that market in 1979. It maintains a very high market share—in excess of 60 percent.

There are substantial barriers to entry and to expansion into the small containerized hauling markets in Memphis and in Dubuque. A new entrant or small incumbent hauler must be able to achieve minimum efficient scale to be competitive. First, it must be able to generate enough revenues to cover significant fixed costs and overhead.

Second, a new entrant or small incumbent hauler must be able to obtain enough customers to use its trucks efficiently. For example, it is not efficient to use a truck half a day because the firm doesn't have enough customers to fill up the truck.

Third, a new entrant or small incumbent hauler needs to obtain customers that are close together on its routes (called "route density"). Having customers close together enables a company to pick up more waste in less time (and generate more revenues in less time). The better a firm's route density, the lower its operating costs.

Until a firm overcomes these barriers, the new entrant or small incumbent will have higher operating costs than Defendants in the relevant geographic markets, may not operate at a profit, and will be unable effectively to constrain pricing by Defendants in those markets.

Defendant BFIT in the Memphis market and Defendant BFII in the Dubuque market have entered into written contracts with the vast majority of their small containerized hauling customers. Many of these contracts contain terms that, when taken together in the relevant markets where Defendants have market power, make it more difficult and costly for customers to switch to a competitor of Defendants and allows Defendants to bid to retain customers approached by a competitor.

The contracts enhance and maintain Defendants' market power in the Memphis and Dubuque markets by significantly raising the cost and time required by a new entrant or small incumbent firm to build its customer base and obtain efficient scale and route density. Therefore, Defendants' use and enforcement of these contracts in the Memphis and Dubuque markets raise barriers to entry and expansion in those markets. Those contract terms are:

a. A provision giving Defendants the exclusive right or opportunity to collect and dispose of all the customers' solid waste and recyclables;

b. An initial term of three years;

c. A renewal term of three years that automatically renews unless the customer sends Defendants a written notice of cancellation by certified mail more than 60 days from the end of the initial or renewal term; and

d. A term that requires a customer that terminates the contract at any other time to pay Defendants, as liquidated damages, its most recent monthly charge times six (if the remaining term is six or more months) or its most recent monthly charge times the number of months remaining under the contract (if the remaining term is less than six months).

The appearance and format of the contracts also enhances Defendants' ability to use the contracts to maintain their market power in these markets. The provisions that make it difficult for a customer to switch to a competing hauler are not obvious to customers in the relevant markets. The document is not labeled "Contract" so its legally binding nature is not always apparent to the customer. Also, all the restrictive provisions mentioned above are in small print and the provision described in (d) is on the back of the document.

Defendants' use and enforcement of the contracts described above in the Memphis and Dubuque markets have raised the barriers already faced by new entrants and small existing firms in those markets. Defendants' use and enforcement of the contracts has reduced the likelihood that customers will switch to a Defendant's competitor. Given Defendants' market power, this has made it more difficult for competitors to achieve efficient scale, obtain sufficient customers to use their trucks efficiently, and develop sufficient route density to be profitable and to constrain Defendants' pricing in those markets.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will end the unlawful practices currently used by Defendants to perpetuate and enhance their market power in the Memphis and Dubuque markets. It requires Defendants to offer less restrictive contracts to small containerized hauling customers in the Memphis and Dubuque markets.[1]

In particular, Paragraphs IV (A) and (B) prohibit Defendants from entering into contracts containing the type of restrictive terms described above. Paragraphs IV (C), (D), (E), and (F) are designed to bring existing contracts into compliance with the proposed Final Judgment on an expeditious basis.

A. Prohibition of Contract Terms and Formats

The contracts used most frequently by Defendants in the relevant markets have an initial term of three years and renew automatically and perpetually for additional three-year terms unless cancelled by the customer. In these markets, given that the Defendants have market power and a vast majority of their existing customers are subject to such contracts, the long initial term and long renewal terms prevent new entrants and small incumbents, no matter how competitive, from quickly obtaining enough customers that are close together to be profitable. Shortening the initial term and the renewal term will allow competitors to compete for more of the customer base each year and, if they compete effectively, to obtain efficient scale and route density more quickly. This, in turn, will enhance competition in the relevant markets and will help offset Defendants' market power.

Paragraph IV(A)(1) prohibits Defendants from using contracts for service locations in the Memphis and Dubuque markets that have an initial term longer than two years, except under certain very limited circumstances.

A contract with an initial term in excess of two years in the relevant markets is permitted, under limited circumstances, pursuant to Paragraph IV(B) of the proposed Final Judgment, but the contracts must otherwise conform to the Final Judgment. The United States is aware that some customers, for valid business reasons such as long-term price assurance, want contracts with an initial term longer than two years. Paragraph IV(B) is intended to permit customers who want them to have such contracts, while ensuring that customers who have not made such a choice do not, nevertheless, find themselves with long contracts. Under Paragraph IV(B)(1), Defendants may sign a contract of longer than two years with a customer, but only if the Defendants have not implemented any organized, management-authorized sales or marketing plan designed, through pricing or other incentives to induce customers to use other than the form contracts Defendants are required to offer by the proposed Final Judgment. Even if the customer signs a contract with an initial term longer than two years, the customer retains the right to terminate that contract at the end of the first 2 years without payment of any liquidated damages, pursuant to Paragraph IV(B)(2). Paragraph IV(B) was included to give Defendants the ability to contract with customers who truly want a longer term, for the United States anticipates that contracts with initial terms longer than two years will be the exception, not the rule.

[1] The proposed Final Judgment applies to all contracts entered into by Defendants with customers for service locations in the relevant markets except contracts described in Paragraph IV(G). Contracts awarded to Defendants by municipal or government entities as a result of a formal request for bids or a formal request for proposals need not contain the provisions dictated by the proposed Final Judgment. These contracts were excluded from the decree to assure that competition for such bids would not be adversely affected by preventing Defendants from bidding.

Paragraph IV(A)(2) prohibits Defendants from signing a contract with a renewal term longer than one year in length, down from the three-year renewal term used as a standard in the Memphis and Dubuque markets.

Paragraph IV(A)(3) increases the period of time that a customer may notify Defendants of its intention not to renew the contract from a period ending 60 days before the end of any initial or renewal term to a period ending 30 days before the end of any such term. This allows the customer to make a decision concerning renewal closer to the end of the contract term. A customer is more likely to consider whether or not it wants its existing contract renewed the closer that customer is to the end of the contract term. Paragraph IV(A)(3) assures that a customer will be able to choose not to renew its contract up to 30 days from the end of the contract term. Paragraph IV(A)(3) also eliminates the requirement that a customer give its nonrenewal notice in writing and send it to Defendants by certified mail. A telephone call or letter is sufficient under the proposed Final Judgment. These changes in the notification provisions make it easier for the customer not to renew within the terms of the contract. This, in turn, enhances customer choice and enables small incumbents to compete for more customers.

A liquidated damages provision is intended to allow a seller to recover otherwise unrecoverable costs where the amount of the damage resulting from a breach of contract is difficult to determine. Defendants do incur some unrecoverable costs, including sales costs, in contracting with customers for small containerized solid waste hauling services. The contract currently most widely used by Defendants in the relevant markets contains the following liquidated damages provision for early termination: the customer must pay six times its most recent monthly charge unless the contract has a remaining term of less than six months, in which case the customer pays its most recent monthly charge times the number of months remaining in its contract term. If this case went to trial, the United States believes it could prove that these liquidated damages far surpass the contracting costs the Defendants incur, and that, in the relevant markets where Defendants have market power, Defendants have threatened to enforce such liquidated damages provisions with the effect that customers did not switch to new entrants and small incumbents when they desired to do so. In the presence of market power, the threat of enforcing large liquidated damages provisions can deter sufficient customers from switching to a competitor and harm competition.

Paragraphs IV(A) (4) and (5) reduce the amount of liquidated damages Defendants can collect from a customer. The liquidated damages Defendants may collect from a customer in the relevant markets during the first year of the initial term of a customer's contract are reduced to the greater of three times the customer's prior monthly charge or average monthly charge over the prior six months. A firm that has been a customer of a Defendant for a continuous period in excess of one year can be required to pay Defendants no more than two times the greater of the customer's prior monthly charge or average monthly charge over the prior six months. The changes made in the liquidated damages provisions make it less expensive (and therefore more likely) that a customer can switch to a competing hauler should it choose to do so during the contract term. Defendants have incurred costs to sign small containerized solid waste hauling customers to contracts. However, as customers pay their monthly bills over time, the unrecovered amount of those costs decreases. That fact is reflected in the proposed Final Judgment by the reduction of the liquidated damages Defendants may collect once a firm has been Defendants' customer for more than one year.

The contracts predominantly used by Defendants in the relevant markets currently give Defendants the exclusive right to perform all of a customer's solid waste hauling services and recycling, just because the customer has signed a contract for small containerized solid waste hauling service. Those contracts also contain a provision requiring the customer to give BFI the opportunity to provide the customer's need for additional services during the contract term.[2] Paragraph IV(A)(7) of the proposed Final Judgment prohibits these provisions in the relevant markets. Instead, it provides that Defendants may perform only those services a customer selects. Defendants may perform all types of solid waste hauling services and recycling for a customer, but only if the customer chooses to have Defendants do so by affirmatively indicating its desire for such additional services on the front of the contract.[3] The United States does not intend this provision to prohibit Defendants from requiring that it be the exclusive supplier of any one type of service for which it contracts with a customer. For example, if a customer contracts with Defendants to perform small containerized solid waste hauling service at a specific service location, Defendants may require that it be the exclusive supplier for that service at the location.

Paragraph IV(A)(6) of the proposed Final Judgment requires Defendant to change the appearance and format of its contracts in the relevant markets. If this case went to trial, evidence from customers in those markets would show that some of them were not aware they had signed legally binding documents. Therefore, the proposed Final Judgment requires that the document be labeled "CONTRACT FOR SOLID WASTE SERVICES" in large letters. Furthermore, evidence from customers in the relevant markets would show that the contractual provisions that enable a firm with market power to restrict customers from switching to a competitor are in small print and not readily noticed by all customers. The proposed Final Judgment requires that the contracts used in the relevant markets be easily readable in formatting and type-face.

B. Transition Rules

In the Stipulation consenting to the entry of the proposed Final Judgment, Defendants agreed to abide by the provisions of the proposed Final Judgment immediately upon the filing of the Complaint, *i.e.*, as of February 15, 1996. Among other things, the transition provisions described herein will require Defendants to abide by the foregoing limitations and prohibitions when entering into any contracts with new small containerized hauling customers after February 15, 1996. Certain additional provisions of the proposed Final Judgment also apply to existing customer contracts that are inconsistent with the proposed Final Judgment's requirements for new customer contracts.

Under Paragraph IV(C), Defendants must offer contracts that conform with Paragraphs IV (A) or (B) of the proposed Final Judgment to all new customers with service locations in the Memphis and Dubuque markets beginning today,

[2] That provision reads: "OPPORTUNITY TO PROVIDE ADDITIONAL SERVICES. BFI values the opportunity to meet all of Customer's nonhazardous waste collection and disposal needs. Customer will provide BFI the opportunity to meet those needs and to provide, on a competitive basis, any additional nonhazardous waste disposal and collection services during the term of this Agreement."

[3] The United States anticipates that the customer should be able to affirmatively indicate its choice of service types by checking a box, or writing in the type of service it wants on the front of the contract, or by some similar mechanism.

the date of the filing of the executed Stipulation.

Under Paragraph IV(D), within ninety (90) days following entry of the Final Judgment Defendants must notify existing customers with service locations in the Memphis market who have an initial term longer than two years and do not otherwise comply with the proposed Final Judgment of their right to sign a new contract complying with the proposed Final Judgment. Defendants must send a similar notice within thirty (30) days following entry of the Final Judgment for customers with service locations in the Dubuque market. These notices must also inform any customers choosing to retain their existing contracts that no provisions inconsistent with the proposed Final Judgment will be enforced against them. The Final Judgment provides more time for Defendants to notify customers in Memphis than in Dubuque because Defendants have vastly more customers in Memphis than in Dubuque; they will need a longer time to provide the required notices and answer consumer inquiries in Memphis than they will need in Dubuque. With regard to municipal and government entities, Defendants are not required to notify those entities with nonconforming contracts that were awarded on the basis of a formal request for bids or a formal request for proposals issued by the customer.

Paragraph IV(E) requires Defendants to give an additional notice in the form of a reminder to any customer subject to a nonconforming contract that enters a renewal term 120 days or more after the entry to the proposed Final Judgment. Defendants must send the reminder to each such customer ninety days or more prior to the effective date of the renewal term. The reminder informs the customer that it must cancel its contract by a certain date or the contract will renew. It also reminds the customer that it may enter into a new contract conforming to the proposed Final Judgment on request and that terms in the customer's existing contract that are inconsistent with the new form will not be enforced against it. Defendants may send this reminder as part of a monthly bill, as long as it appears on a separate page and in large print so that it will be noticeable.

Under Paragraph IV(F), Defendants may enforce existing contract provisions only to the extent consistent with the Final Judgment upon entry of the Final Judgment by the Court.

Finally, under paragraphs IV (G) and (H), the proposed Final Judgment makes clear that contracts awarded by municipal or government entities on the basis of a formal request for bids or proposals issued by the customer need not comply with Paragraphs IV(A)–(F). Moreover, nothing in the proposed Final Judgment requires Defendants to do business with any customer.

Paragraphs IV (C)–(F) further two consistent goals. Opportunities for competition in small containerized hauling service in the relevant markets will be fostered by a rapid end to the provisions that significantly raise entry barriers in the relevant markets. At the same time, the transition rules avoid creating any unnecessary disruption of the customers' trash hauling service that might result from voiding all nonconforming contracts. Existing customers are not required to terminate or amend their existing contracts with Defendants; the choice belongs to the customer. However, Defendants may not enforce against any customer any provision inconsistent with the proposed Final Judgment.

To ensure that existing customers learn of their rights under the proposed Final Judgment, Paragraphs IV (D) and (E) require Defendants to notify customers of their rights under the Final Judgment and remind them annually of their right to terminate their existing contract or to sign a new contract form.

C. Enforcement

Section V of the proposed Final Judgment establishes standards and procedures by which the Department of Justice may obtain access to documents and information from Defendants related to their compliance with the proposed Final Judgment.

D. Duration

Section VI of the proposed Final Judgment provides that the Final Judgment will expire on the tenth year after its entry. Jurisdiction will be retained by the Court to conduct further proceedings relating to the Final Judgment, as specified in Section VI.

IV. Remedies Available To Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530. The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, litigation against Defendants. The United States could have brought suit and sought preliminary and permanent injunctions against the use and enforcement of these contracts by Defendants in the relevant markets. The United States is satisfied, however, that the relief outlined in the proposed Final Judgment will eliminate Defendants' ability to use restrictive and anticompetitive contracts to maintain and enhance their market power in the relevant markets. The United States believes that these contracts will no longer inhibit the ability of a new entrant to compete with the Defendants. The relief sought will allow new entry

and expansion by existing firms in those markets.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1462 (D.C. Cir. 1995). In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[4]

Rather, absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

The Court's inquiry, under the APPA, is whether the settlement is "within the reaches of the public interest."[5] The proposed Final Judgment enjoins the Defendants' continued use of overly restrictive contract terms and opens local markets to increased competition, thus effectively furthering the public interest.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: February 15, 1996.

Respectfully submitted,

Nancy H. McMillen,

Peter H. Goldberg,

DC Bar #055608,

Evangelina Almirantearena,

Attorneys, Antitrust Division, U.S. Department of Justice, 1401 H. Street, N.W., Suite 4000, Washington, D.C. 20530, (202) 307–5777.

Certification of Service

I hereby certify that a copy of the foregoing has been served upon Browning-Ferris Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries, Inc., by placing a copy of this Competitive Impact Statement in the U.S. mail, directed to each of the above-named parties at the addresses given below, this 15th day of February, 1996.

Rufus Wallingfood,

Esquire, Executive Vice President and General Counsel,

Lee Keller,

Esquire, Senior Litigation Counsel, Browning-Ferris Industries, Inc., 757 North Eldridge Street, Houston, TX 77079.

David Foster,

Esquire, Fulbright & Jaworski, L.L.P., 801 Pennsylvania Avenue, NW, Market Square, Washington, D.C. 20004–2604.

Richard N. Carrell,

Esquire, Fulbright & Jaworski, L.L.P., 1301 McKinney, Suite 5100, Houston, Texas 77010–3095.

Nancy H. McMillen,

Attorney, U.S. Department of Justice, Antitrust Division, 1401 H. Street, N.W., Suite 4000, Washington, D.C. 20530, (202) 307–5777.

United States District Court for the District of Columbia

In the matter of *United States of America*, Plaintiff, v. *Browning-Ferris Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries, Inc.*, Defendants.

[Case number: 1–96–V00297]

Judge: Thomas Penfield Jackson
Deck Type: Antitrust.
Date Stamp: Feb. 15, 1996.

Motion of United States to Exclude Case From all Discovery Requirements and to Follow the Procedures of the Antitrust Procedures and Penalties Act

The United States of America hereby moves the Court for an order to exclude this case from all discovery requirements under the Federal Rules of Civil Procedure given that the disposition of a negotiated civil antitrust case brought and settled by the United States is governed by the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h) [hereinafter "the APPA"].

As set forth below, the parties have consented to the entry of the proposed Final Judgment without trial or adjudication of any issue of fact or law, and without the Final Judgment constituting any evidence against or an admission by any party with respect to any such issue. Pursuant to the procedures of the APPA, discovery between the parties is unnecessary and would be contrary to the intentions of the parties. Therefore, the United States respectfully requests that the Court enter the attached Order which excludes the case from discovery requirements of the Federal Rules of Civil Procedure, and states that the disposition of the case will be consistent with the APPA.

1. On February 15, 1996, the United States filed a Complaint and a Stipulation by which the parties agreed to the Court's entry of an attached proposed Final Judgment following compliance with the APPA.

2. The United States also filed on February 15, 1996, a Competitive Impact Statement as required by 15 U.S.C. 16(b).

3. The APPA also requires the United States to publish a copy of the proposed Final Judgment and the Competitive Impact Statement in the **Federal Register**. It further requires the publication of summaries of the terms of the proposed Final Judgment and the Competitive Impact Statement in at least two newspapers of general circulation. This notice will inform members of the public that they may submit comments about the Final Judgment to the United States Department of Justice, Antitrust Division. 15 U.S.C. 16 (b)–(c).

4. Following such publication in the newspapers and **Federal Register**, a sixty-day waiting period will begin. During this time, the United States will consider, and at the close of that period respond to, any public comments that it receives. It will publish the comments and its responses in the **Federal Register**. 15 U.S.C. 16(d).

5. After the expiration of the sixty-day period, the United States will file with the Court the comments, the Government's responses, and a Motion For Entry of the Final Judgment. 15 U.S.C. 16(d).

6. After the filing of the Motion for Entry of the Final Judgment, the Court may enter the Final Judgment without a hearing, if it finds that the Final Judgment is in the public interest. 15 U.S.C. 16 (e)–(f).

7. The parties fully intend to comply with the requirements of the APPA.

As stated above, the Antitrust Procedures and Penalties Act governs the disposition of civil antitrust cases brought and settled by the United States. Discovery between the parties, which have consented to the proposed settlement filed with the Court, is unnecessary. Accordingly, the attached Order is justified and should be entered by the Court.

Respectfully submitted,

Nancy H. McMillen,

Trial Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530, Tel: (202) 307–5777.

Certificate of Service

I hereby certify that on February 15, 1996, a true and correct copy of the foregoing has been served on the parties below by placing a copy of this MOTION OF UNITED STATES TO EXCLUDE CASE FROM ALL DISCOVERY REQUIREMENTS AND TO FOLLOW THE PROCEDURES OF THE ANTITRUST PROCEDURES AND PENALTIES ACT in the U.S. Mail, postage prepaid, to the address given below:

For Defendants Browning-Ferris Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries, Inc.:

David Foster, *Esquire,*

Fulbright & Jaworski, L.L.P., 801 Pennsylvania Ave., N.W., Market Square, Washington, D.C. 20004–2604.

Rufus Wallingford, *Esquire,*

Executive Vice President and General Counsel,

Lee Keller, Esquire,

Senior Litigation Counsel, Browning-Ferris Industries, Inc., 757 North Eldridge Street, Houston, TX 77079.

Richard N. Carrell, *Esquire,*

Fulbright & Jaworski, L.L.P., 1301 McKinney, Suite 5100, Houston, TX 77010–3095.

Nancy H. McMillen,

Trial Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530, (202) 307–5777.

United States District Court for the District of Columbia

In the matter of *United States of America*, Plaintiff, v. *Browning-Ferris Industries of Iowa, Inc., Browning-Ferris Industries of Tennessee, Inc., and Browning-Ferris Industries, Inc.*, Defendants.

[Civil Action No.: 1–96–V00297]

Filed: Feb. 15, 1996.

Order Excluding Case From All Discovery Requirements and To Follow the Procedures of the Antitrust Procedures and Penalties Act

Plaintiff, the United States of America, has moved the Court to exclude this case from all discovery requirements under the Federal Rules of Civil Procedure given that the disposition of negotiated civil antitrust consent decrees are governed by the *Antitrust Procedures and Penalties Act*, 15 U.S.C. 16 (b)–(h). The Court is of the opinion that this motion should be granted.

It is therefore ORDERED that this case is excluded from all discovery requirements under the Federal Rules of Civil Procedure.

It is also therefore ORDERED that the procedures to be followed in this case shall be consistent with the *Antitrust Procedures and Penalties Act*, 15 U.S.C. § 16 (b)–(h).

Dated: _____

_____

UNITED STATES DISTRICT JUDGE.

[FR Doc. 96–5033 Filed 3–4–96; 8:45 am]

BILLING CODE 4410–01–M

United States v. Waste Management, Inc.; Proposal Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Consent Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Southern District of Georgia in the above-captioned case.

On February 15, 1996, the United States filed a civil antitrust Complaint to prevent and restrain Waste Management, Inc. ("WMI"), Waste Management of Georgia, Inc. ("WMG"), d/b/a Waste Management of Savannah, and Waste Management of Louisiana, Inc. ("WML"), d/b/a Waste Management of Central Louisiana from maintaining and enhancing their market power by using contracts that have restrictive and anticompetitive effects, in violation of Section 2 of the Sherman Act, 15 U.S.C. 2.

The Complaint alleges that: (1) Defendant WMG has market power in small containerized hauling service in the Savannah, GA market and Defendant WML has market power in small containerized hauling service in the Central Louisiana market; (2) Defendants, acting with specific intent, used and enforced contracts containing restrictive provisions to exclude and constrain competition and to maintain and enhance their market power in small containerized hauling service in those markets; (3) in the context of their large market shares and market power, Defendants' use and enforcement of those contracts in the Savannah and Central Louisiana markets has had anticompetitive and exclusionary effects by significantly increasing barriers to entry facing new entrants and barriers to expansion faced by small incumbents; (4) Defendants' market power is maintained and enhanced by their use and enforcement of those contracts; and, (5) as a result, there is a dangerous probability that Defendants will achieve monopoly power in the Savannah and Central Louisiana markets.

The proposed Final Consent Judgment would require that, in dealing with small-container customers in the Savannah and Central Louisiana markets, Defendants only to enter into contracts containing significantly less restrictive terms than the contracts they now have in use in those markets. Specifically, the Defendants will be

[4] 119 Cong. Rec. 24598 (1973). *See United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[5] *United States v. Bechtel*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see United States v. BNS, Inc.*, 858 F.2d 456, 463 (9th Cir. 1988); *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716. *See also United States v. American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984); *United States v. American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) *quoting United States v. Gillette Co.*, supra, 406 F. Supp. at 716; *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

prohibited from using any contract with small-container customers in the Savannah and Central Louisiana markets that:

(1) Has an initial term longer than two years (unless a longer term is requested by the customer and other conditions are met);

(2) Has any renewal term longer than one year;

(3) Requires the customer give notice of termination more than 30 days prior to the end of a term;

(4) Requires the customer to pay liquidated damages over 3 times the greater of its prior monthly charge or its average monthly charge during the first year of the initial term of the customer's contract, or over 2 times the greater of its prior monthly charge or its average monthly charge thereafter;

(50 Requires the customer to give Waste Management notice of any offer by or to another solid waste hauling firm or requires the customer to give it a reasonable opportunity the right to respond to such an offer for any period not covered by the contract ("right to compete" clause);

(6) Is not labeled "Service Contract" and is not easily readable; or

(7) Requires a customer to give Waste Management the right or opportunity to provide hauling services for all solid wastes and recyclables, unless the customer affirmatively indicates that is its desire. Furthermore, Defendants would be prohibited from enforcing provisions in existing contracts that are inconsistent with the Final Judgment.

Public comment is invited within the statutory 60-day period. Such comments will be published in the **Federal Register** and filed with the Court. Comments should be addressed to Anthony V. Nanni, Chief, Litigation I Section, U.S. Department of Justice, Antitrust Division, 1401 H St., N.W., Suite 4000, Washington, D.C. 20530 (phone 202/307–6576).

Rebecca P. Dick,

Deputy Director of Operations.

United States District Court for the Southern District of Georgia, Savannah Division

In the matter of *United States of America,* Plaintiff, v. *Waste Management of Georgia, Inc., d/b/a Waste Management of Savannah, and Waste Management of Louisiana, Inc., d/b/a Waste Management of Central Louisiana, and Waste Management, Inc.,* Defendants. Civil Action No.: CV496–35, filed: February 15, 1996.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto for the purposes of this proceeding. Defendant Waste Management of Georgia, Inc., d/b/a Waste Management of Savannah, transacts business and is found within the district. Defendants Waste Management of Louisiana, Inc., d/b/a Waste Management of Central Louisiana, and Waste Management, Inc. consent to personal jurisdiction in this proceeding. Defendants waive any objections as to venue and the parties stipulate that venue for this action is proper in the Southern District of Georgia;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)–(h)), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the Defendants and by filing that notice with the Court; and

3. Defendants agree to be bound by the provisions of the proposed Final Judgment pending its approval by the Court. If the Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

Dated this 15th day of February, 1996.

Respectfully submitted,

For the Plaintiff the United States of America:

Anne K. Bingaman,

Assistant Attorney General, Antitrust Division, U.S. Department of Justice.

Lawrence R. Fullerton,

Deputy Assistant Attorney General.

Rebecca P. Dick,

Deputy Director of Operations.

Harry D. Dixon, Jr.,

United States Attorney, Southern District of Georgia.

Anthony V. Nanni,

Chief, Litigation I Section.

Nancy H. McMillen,

Peter H. Goldberg,

Evangelina Almirantearena,

Attorneys, U.S. Department of Justice, Antitrust Division, City Center Building, Suite 4000, 1401 H Street, N.W., Washington, D.C. 20530, 202/307–5777.

For the Defendants Waste Management, Inc., Waste Management of Georgia, Inc., and Waste Management of Louisiana, Inc.:

Robert Bloch, Esquire,

Mayer Brown & Platt, 2000 Pennsylvania Ave., N.W., Washington, D.C. 20006.

Michael Sennett, Esquire,

Bell, Boyd & Lloyd, 3 First National Plaza, 70 West Madison Street, Chicago, IL 60602.

Glen M. Darbyshire, Esquire (Georgia Bar #205210),

Hunter, Maclean, Exley & Dunn, P.C., 200 East St. Julian Street, Savannah, GA 31412–0048, (912) 236–0261.

United States District Court for the Southern District of Georgia, Savannah Division

In the matter of *United States of America,* Plaintiff, v. *Waste Management of Georgia, Inc., d/b/a Waste Management of Savannah, Waste Management of Louisiana, Inc., d/b/a Waste Management of Central Louisiana, and Waste Management, Inc.,* Defendants. Civil Action No.: CF496–35, filed: Feb. 15, 1996.

Final Judgment

Whereas Plaintiff, United States of America, having filed its Complaint in this action on February 15, 1996, and Plaintiff and Defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence or admission by any party with respect to any issue of fact or law;

Now, therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, adjudged and decreed as follows:

I.

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of the persons of the Defendants, Waste Management, Inc., Waste Management of Georgia, Inc., d/b/a Waste Management of Savannah, and Waste Management of Louisiana, Inc., d/b/a Waste Management of Central Louisiana. The Complaint states a claim upon which relief may be granted against the Defendants under Section 2 of the Sherman Act, 15 U.S.C. 2.

II.

Definitions

As used in this Final Judgment:

(A) "Savannah market" means Chatham, Effingham, and Bryan Counties, Georgia.

(B) "Central Louisiana market" means Rapides, Natchitoches, Avoyelles, Red River, Winn, and Sabine Parishes, Louisiana.

(C) "Solid waste hauling" means the collection and transportation to a disposal site of trash and garbage (but not construction and demolition debris; medical waste; hazardous waste; organic waste; or special waste, such as contaminated soil, or sludge; or recyclable materials) from residential, commercial and industrial customers. Solid waste hauling includes hand pick-up, containerized pick-up, and roll-off service.

(D) "Defendants" means defendant Waste Management, Inc., a Delaware corporation with its headquarters in Oak Brook, Illinois, defendant Waste Management of Georgia, Inc. d/b/a Waste Management of Savannah, a Georgia corporation with offices in Savannah, Georgia, and defendant Waste Management of Louisiana, Inc., d/b/a Waste Management of Central Louisiana, a Louisiana corporation with offices in Alexandria, Louisiana, and includes their officers, directors, managers, agents, employees, successors, assigns, parents, and subsidiaries.

(E) "Small Container" means a 2 to 10 cubic yard container.

(F) "Small Containerized Solid Waste Hauling Service" means providing solid waste hauling service to customers by providing the customer with a Small Container that is picked up mechanically using a frontload, rearload, or sideload truck, and expressly excludes hand pick-up service, and service using a compactor attached to or part of a small container.

(G) "Customer" means a Small Containerized Solid Waste Hauling Service customer.

III.

Applicability

This Final Judgment applies to Defendants and to their officers, directors, managers, agents, employees, successors, assigns, parents and subsidiaries, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. Nothing contained in this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV.

Prohibited Conduct

Defendants are enjoined and restrained as follows:

(A) Except as set forth in paragraph IV (B) and (G), Defendants shall not enter into any contract with a Customer for a service location in the Savannah or Central Louisiana markets that:

(1) Has an initial term longer than two (2) years;

(2) Has any renewal term longer than one (1) year;

(3) Requires that the Customer give Defendants notice of termination more than thirty (30) days prior to the end of any initial term or renewal term;

(4) Requires that the Customer pay liquidated damages in excess of three times the greater of its prior monthly charge or its average monthly charge over the most recent six months during the first year of the initial term of the Customer's contract;

(5) Requires that the Customer pay liquidated damages in excess of two times the greater of its prior monthly charge or its average monthly charge over the most recent six months after the Customer has been a Customer of a Defendant for a continuous period in excess of one (1) year;

(6) Requires the Customer to give Defendants notice of any offer by or to another solid waste hauling firm or requires the Customer to give Defendants a reasonable opportunity to respond to such an offer for any period of covered by the contract (sometimes referred to as a "right to compete" clause);

(7) Is not easily readable (e.g., formatting and typeface) and is not labeled, in large letters, SERVICE CONTRACT; or

(8) Requires a Customer to give Defendants the right or opportunity to provide hauling service for recyclables or more than one solid waste hauling service for a Customer unless the Customer affirmatively chooses to have Defendant do so by so stating on the front of the contract.

(B) Notwithstanding the provisions of paragraph IV(A) of this Final Judgment, Defendants may enter into a contract with a Customer for a service location in the Savannah or Central Louisiana markets with an initial term in excess of two years provided that:

(1) The Customer has acknowledged in writing that the Defendants have offered to the Customer the form contracts Defendants are required herein to offer generally to Customers;

(2) the Customer has the right to terminate the contract after 2 years by giving notice to Defendants thirty (30) days or more prior to the end of that 2 year period;

(3) the contract otherwise complies with the provisions of paragraph IV(A)(2)–(8); and

(4) the number of service locations subject to contracts permitted under subparagraph (B) in either the Savannah or Central Louisiana markets does not exceed 25% of the total number of service locations for small containerized solid waste hauling service in each such market in any year.

(C) From the date of filing of an executed Stipulation in the form attached hereto as Exhibit A, Defendants shall offer to new Customers with service locations in the Savannah and Central Louisiana markets only contracts that conform to the requirements of paragraphs IV (A) or (B) of this Final Judgment, except as provided in IV(G).

(D) Except as provided in IV(G), within thirty (30) days following the entry of this Final Judgment, Defendants shall send to all existing Customers with service locations in the Savannah and Central Louisiana markets with contracts having an initial term longer than 2 years and which otherwise do not conform with paragraph IV(B) a notice in the form attached hereto as Exhibit B.

(E) Except as provided in IV(G), for each Customer with a contract having an initial term longer than 2 years and which otherwise does not conform to paragraph IV(B) that enters a renewal term 120 days after entry of this Final Judgment, Defendants shall send a reminder to that Customer in the form attached hereto as Exhibit C ninety (90) days or more prior to the effective date of the renewal term. This reminder may be sent to the Customer as part of a monthly bill, but if it is, it must be displayed on a separate page and in large print.

(F) Upon entry of this Final Judgment, Defendants may not enforce those

contract provisions that are inconsistent with this Final Judgment.

(G) Notwithstanding the provisions of this Final Judgment, Defendants may enter into contracts with municipal or governmental entities that are not in compliance with paragraphs IV (A)–(F) provided that those contracts are awarded to Defendants on the basis of a formal request for bids or a formal request for proposals issued by the Customer.

(H) Notwithstanding the provisions of this Final Judgment, Defendants shall not be required to do business with any Customer.

V.

Reporting

(A) To determine or secure compliance with this Final Judgment, duly authorized representatives of the Plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice given to Defendants at their principal offices, subject to any lawful privilege, be permitted:

(1) Access during normal office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other documents and records in the possession, custody, or control of Defendants, which may have counsel present, relating to any matters contained in this Final Judgment.

(2) Subject to the reasonable convenience of Defendants and without restraint or interference from them, to interview officers, employees, or agents of Defendants, who may have counsel present, regarding any matters contained in this Final Judgment.

(B) Upon written request of the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice given to Defendants at their principal offices, subject to any lawful privilege, Defendants shall submit such written reports, under oath if requested, with respect to any matters contained in this Final Judgment.

(C) No information or documents obtained by the means provided by this Section shall be divulged by the Plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States government, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by Defendants to Plaintiff, Defendants represent and identify in writing the material in any such information or document to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material "Subject to Claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten days notice shall be given by Plaintiff to Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendants are not a party.

VI.

Further Elements of Judgment

(A) This Final Judgment shall expire on the tenth anniversary of the date of its entry.

(B) Jurisdiction is retained by this Court over this action and the parties thereto for the purpose of enabling any of the parties thereto to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

VII.

Public Interest

Entry of this Final Judgment is in the public interest.

Entered: _____

United States District Judge

Exhibit A

United States District Court for the Southern District of Georgia, Savannah Division

In the matter of *United States of America*, Plaintiff, v. *Waste Management of Georgia, Inc., d/b/a Waste Management of Savannah, and Waste Management of Louisiana, Inc., d/b/a Waste Management of Central Louisiana, and Waste Management, Inc.*, Defendants. Civil Action No.: CV496–35, filed: February 15, 1996.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto for the purposes of this proceeding. Defendant Waste Management of Georgia, Inc., d/b/a Waste Management of Savannah, transacts business and is found within the district. Defendants Waste Management of Louisiana, Inc., d/b/a Waste Management of Central Louisiana, and Waste Management, Inc. consent to personal jurisdiction in this proceeding. Defendants waive any objection as to venue and the parties stipulate that venue for this action is proper in the Southern District of Georgia;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16 (b)–(h)), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the Defendants and by filing that notice with the Court; and

3. Defendants agree to be bound by the provisions of the proposed Final Judgment pending its approval by the Court. If the Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

Dated this ____th day of February, 1996.

Respectfully submitted,

For the Plaintiff the United States of America:

Anne K. Bingaman,

Assistant Attorney General, Antitrust Division, U.S. Department of Justice.

Lawrence R. Fullerton,

Deputy Assistant Attorney General.

Rebecca P. Dick,

Deputy Director of Operations.

Harry D. Dixon, Jr.,

United States Attorney, Southern District of Georgia.

Anthony V. Nanni,

Chief, Litigation I Section.

Nancy H. McMillen,

Peter H. Goldberg,

Evangelina Almirantearena,

Attorneys, U.S. Department of Justice, Antitrust Division, City Center Building, Suite 4000, 1401 H. Street, N.W., Washington, D.C. 20530, 202/307–5777.

For the Defendants Waste Management, Inc., Waste Management of Georgia, Inc., and Waste Management of Louisiana, Inc.:

Robert Bloch, Esquire,

Mayer Brown & Platt, 2000 Pennsylvania Ave., N.W., Washington, D.C. 20006.

Michael Sennett, Esquire,

Bell, Boyd & Lloyd, 3 First National Plaza, 70 West Madison Street, Chicago, IL 60602.

Exhibit B

Notice to Customers

Dear Valued Customer: [Insert name of local operating company] is offering a new two year contract to all small containerized solid waste hauling customers with service locations in [insert market here]. We would like to take this opportunity to offer this contract to you. Of course, if you prefer, you can continue with your existing contract.

In most cases, this new contract will have terms that are more advantageous to customers than their current contracts. This new contract has the following features:

- an initial term of 2 years (unless you request a longer term);
- a renewal term of 1 year;
- at the end of your initial term, you may take no action and your contract will renew or you can choose not to renew the contract by simply giving us notice at any time up to 30 days prior to the end of your term:

1 if you request a contract with a term longer than 2 years, you can cancel that contract after 2 years by giving us notice at any time up to 30 days prior to the end of the first 2 years;

- if you terminate the contract at any other time, you will be required to pay, as liquidated damages, no more than 3 times the greater of your prior monthly or average monthly charge. If you've been a customer continuously for more than 1 year, the liquidated damages would be reduced to 2 times the greater of your prior monthly or average monthly charge;
- you will not be required to give us notice of any offer from another waste hauling firm or to give us an opportunity to make a counteroffer although you may do so if you wish;
- you will be able to choose on the contract which specific types of waste hauling services you would like us to perform.

You may obtain a new contract containing these terms by calling [insert CSR telephone number or sales rep name and number].

If you prefer, you may continue with your existing contract. If you retain your existing contract, we will not enforce any terms that are inconsistent with the new form contract terms.

We thank you for your business and look forward to a continued relationship with you. If you have any questions, please call [WM contact person and phone number].

Reminder to Customers

Your contract will automatically renew on MM/DD/YY unless we receive your cancellation by MM/DD/YY.

You may also obtain a new form contract with some terms more advantageous to you than your current contract.

You may obtain a new contract containing these terms by calling (insert CSR telephone number or sales rep name and number).

United States District Court for the Southern District of Georgia Savannah Division

In the matter of *United States of America*, Plaintiff, v. *Waste Management of Georgia, Inc.,d/b/a Waste Management of Savannah, Waste Management of Louisiana, Inc., d/b/a Waste Management of Central Louisiana, and Waste Management, Inc.*, Defendants. [Civil Action No.: CV496–35 Filed: February 15, 1996.]

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16 (b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil proceeding.

I.

Nature and Purpose of the Proceeding

On February 15, 1996, the United States filed a civil antitrust Compliant to prevent and restrain Waste Management, Inc. ("WMI"), Waste Management of Georgia, Inc. ("WMG"), d/b/a Waste Management of Savannah, and Waste Management of Louisiana, Inc. ("WML"), d/b/a Waste Management of Central Louisiana from using contracts that have restrictives and anticompetitive effects in the small containerized hauling service markets in Savannah and Central Louisiana, in violation of Section 2 of the Sherman Act, 15 U.S.C. As alleged in the Compliant, Defendants has attempted to monopolize small containerized hauling service in the Savannah and Central Louisiana geographic markets by using and enforcing contracts containing restrictive provisions to maintain and enhance their existing market power there.

The Complaint alleges that: (1) Defendant WMG has market power in small containerized hauling services in the Savannah, GA market and Defendant WML has market power in small containerized hauling service in the Central Louisiana market; (2) Defendants, acting with specific intent, used and enforced contracts containing restrictives provisions to exclude and constrain competition and to maintain and enhance their market power in small containerized hauling service in those markets; (3) in the context of their large market shares and market power, Defendants' use and enforcement of those contracts in the Savannah and Central Louisiana markets has had anticompetitive and exclusionary effects by significantly increasing barriers to entry facing new entrants and barriers to expansion faced by small incumbents; (4) Defendants' market power is maintained and enhanced by their use and enforcement of those contracts; and, (5) as a result, there is a dangerous probability that Defendants will achieve monopoly power in the Savannah and Central Louisiana markets.

In its Compliant, Plaintiff seeks, among other relief, a permanent injunction preventing Defendants from continuing any of the anticmpetitive practices alleged to violate the Sherman Act, and thus affording fair opportunities for other firms to compete in small containerized hauling service in the Savannah and Central Louisiana markets.

The United States and Defendants also have filed a stipulation by which the parties consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of Defendants' actions in the Savannah and Central Louisiana markets. Under the proposed Final Judgment, as explained more fully below, in dealing with small-container customers in the Savannah and Central Louisiana markets, Defendants would only be permitted to enter into contracts containing significantly less restrictive terms than the contracts they now in use in those markets. Furthermore, Defendants would be prohibited from enforcing provisions in existing contracts that are inconsistent with the Final Judgment.

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would

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terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

Description of the Events Giving Rise to the Alleged Violation

Waste Management, Inc. ("WMI"), a subsidiary of WMX Technologies, Inc., is the world's largest company engaged in the solid waste hauling and disposal business, with operations throughout the United States. WMI had total 1994 revenues of approximately $5.8 billion.

Waste Management of Georgia, Inc. ("WMG"), d/b/a Waste Management of Savannah, is a subsidiary of WMI with its principal offices in Savannah, GA. It is the largest solid waste hauling and disposal company in the Savannah market. WMG had revenues of over $14 million in its 1994 fiscal year.

Waste Management of Louisiana, Inc. ("WML"), d/b/a Waste Management of Central Louisiana, is also a subsidiary of WMI. It has offices in Alexandria, LA and Natchitoches, LA. It is the largest solid waste hauling and disposal company in the Central Louisiana market. WML had revenues over $3 million in its 1994 fiscal year.

A. The Solid Waste Houling Industry

Solid waste hauling involves the collection of paper, food, construction material and other solid waste from homes, businesses and industries, and the transporting of that waste to a landfill or other disposal site. These services may be provided by private haulers directly to residential, commercial and industrial customers, or indirectly through municipal contracts and franchises.

Service to commercial customers accounts for a large percentage of total hauling revenues. Commercial customers include restaurants, large apartment complexes, retail and wholesale stores, office buildings, and industrial parks. These customers typically generate a substantially larger volume of waste than do residential customers. Waste generated by commercial customers is generally placed in metal containers of two to ten cubic yards provided by their hauling company. In the markets at issue, two to ten cubic yard containers are called "small containers" Small containers are collected primarily by frontend load vehicles that lift the containers over the front of the truck by means of a hydraulic hoist and empty them into the storage section of the vehicle, where the waste is compacted. Service to commercial customers that use small containers is called "small containerized hauling service."

Solid waste hauling firms also provide service to residential and industrial (or "roll-off") customers. Residential customers, typically households and small apartment complexes that generate small amounts of waste, use noncontainerized solid waste hauling service, normally placing their waste in plastic bags, trash cans, or small plastic containers at curbside.

Industrial or roll-off customers include factories and construction sties. These customers either generate non-compactible waste, such as concrete or building debris, or very large quantities of compactible waste. They deposit their waste into very large containers (usually 20 to 40 cubic yards) that are loaded onto a roll-off truck and transported individually to the disposal site where they are emptied before being returned to the customer's premises. Some customers, like shopping malls, use large, roll-off containers with compactors. This type of customer generally generates compactible trash similar to the waste of commercial customers, but in much greater quantities; it is more economical for this type of customer to use roll-off service with a compactor than to use a number of small containers picked up multiple times a week.

B. Relevant Product Market

The revelant product market is small containerized hauling service. There are no practical substitutes for this service. Small containerized hauling service customers will not generally switch to noncontainerized service in the event of a price increase, because it is too impractical and more costly for those customers to bag and carry their volume of trash to the curb for hand pick-up. Similarly, roll-off service is much too costly and the container takes up too much space for most small containerized hauling service customers. Only customers that generate the largest volumes of compactible solid waste can economically consider roll-off service, and for customers that do generate large volumes of waste, roll-off service is usually the only viable option.

C. Relevant Geographic Markets

The relevant geographic markets are the Savannah market and the Central Louisiana market. Small containerized solid waste hauling services are generally provided in very localized areas. Route density (a large number of customers that are close together) is necessary for small containerized solid waste hauling firms to be profitable. In addition, it is not economically efficient for heavy trash hauling equipment to travel long distances from customers without collecting significant amounts of waste. Thus, it is not efficient for a hauler to serve major metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served.

D. Defendants' Attempt to Monopolize

Defendant WMG has market power in small containerized hauling service in the Savannah market. WMG has maintained a very high market share since at least 1991—consistently in excess of 60 percent.

Defendant WML has market power in small containerized hauling service in the Central Louisiana market. WML has maintained a very high market share since at least 1988—consistently in excess of 60 percent.

There are substantial barriers to entry and to expansion into the small containerized hauling markets in Savannah and in Central Louisiana. A new entrant or small incumbent hauler must be able to achieve minimum efficient scale to be competitive. First, it must be able to generate enough revenues to cover significant fixed costs and overhead.

Second, a new entrant or small incumbent hauler must be able to obtain enough customers to use its trucks efficiently. For example, it is not efficient to use a truck half a day because the firm doesn't have enough customers to fill up the truck.

Third, a new entrant or small incumbent hauler needs to obtain customers that are close together on its routes (called "route density"). Having customers close together enables a company to pick up more waste in less time (and generate more revenues in less time). The better a firm's route density, the lower its operating costs.

Until a firm overcomes these barriers, the new entrant or small incumbent will have higher operating costs than Defendants in the relevant geographic markets, may not operate at a profit, and will be unable effectively to constrain pricing by Defendants in those markets.

Defendant WMG in the Savannah market and Defendant WML in the Central Louisiana market have entered into written contracts with the vast majority of their small containerized hauling customers. Many of these contracts contain terms that, when taken together in the relevant markets where Defendants have market power, make it more difficult and costly for customers to switch to a competitor of Defendants and allows Defendants to bid to retain customers approached by a competitor.

The contracts enhance and maintain Defendants' market power in the Savannah and Central Louisiana markets by significantly raising the cost and time required by a new entrant or small incumbent firm to build its customer base and obtain efficient scale and route density. Therefore, Defendants' use and enforcement of these contracts in the Savannah and Central Louisiana markets raise barriers to entry and expansion in those markets. Those contract terms are:

a. A provision giving Defendants the exclusive right to collect and dispose of all the customers' solid waste and recyclables;

b. An initial term of three years;

c. A renewal term of three years that automatically renews unless the customer sends Defendants a written notice of cancellation by certified mail more than 60 days from the end of the initial or renewal term;

d. A term that requires a customer that terminates the contract at any other time to pay Defendants, as liquidated damages, its most recent monthly charge times six (if the remaining term is six or more months) or its most recent monthly charge times the number of months remaining under the contract (if the remaining term is less than six months); and

e. A "right to compete" clause that requires the customer to give Defendants notice of any offer by or to a hauling competitor or requires the customer to give Defendants a reasonable opportunity to respond to such an offer for any period not covered by the contract.

The appearance and format of the contracts also enhances Defendants' ability to use the contracts to maintain their market power in these markets. The provisions that make it difficult for a customer to switch to a competing hauler are not obvious to customers in the relevant markets. The document is not labeled "Contract" so its legally binding nature is not always apparent to the customer. Also, all the restrictive provisions mentioned above are in small print on the back of the document.

Defendats' use and enforcement of the contracts described above in the Savannah and Central Louisiana markets have raised the barriers already faced by new entrants and small existing firms in those markets. Defendants' use and enforcement of the contracts has reduced the likelihood that the customers will switch to a Defendant's competitor. Given Defendants' market power, this has made it more difficult for competitors to achieve efficient scale, obtain sufficient customers to use their trucks efficiently, and develop sufficient route density to be profitable and to constrain Defendants' pricing in those markets.

III

Explanation of the Proposed Final Judgment

The proposed Final Judgment will end the unlawful practices currently used by Defendants to perpetuate and enhance their market power in the Savannah and Central Louisiana markets. It requires Defendants to offer less restrictive contracts to small containerized hauling customers in the Savannah and Central Louisiana markets.[1]

In particular, Paragraphs IV (A) and (B) prohibit Defendants from entering into contracts containing the type of restrictive terms described above. Paragraphs IV(C), (D), (E), and (F) are designed to bring existing contracts into compliance with the proposed Final Judgment on an expeditious basis.

A. Prohibition of Contract Terms and Formats

The Contracts used most frequently by defendants in the relevant markets have an initial term of three years and renew automatically and perpetually for additional three-year terms unless cancelled by the customer. In these markets, given that the Defendants have market power and a vast majority of their existing customers are subject to such contracts, the long initial term and long renewal terms prevent new entrants and small incumbents, no matter how competitive, from quickly obtaining enough customers that are close together to be profitable. Shortening the initial term and the renewal term will allow competitors to compete for more of the customer base each year and, if they compete effectively, to obtain efficient scale and route density more quickly. This, in turn, will enhance competition in the relevant markets and will help offset Defendants' market power.

Paragraph IV(A)(1) prohibits Defendants from using contracts for service locations in the Savannah and Central Louisiana markets that have an initial term longer than two years, except under certain very limited circumstances.

A contract with an initial term in excess of two years in the relevant markets is permitted, under limited circumstances, pursuant to Paragraph IV(B) of the proposed Final Judgment, but the contracts must otherwise conform to the Final Judgment. The United States is aware that some customers, for valid business reasons such as long-term price assurance, want contracts with an initial term longer than two years. Paragraph IV(B) is intended to permit customers who want them to have such contracts, while ensuring that customers who have not made such a choice do not, nevertheless, find themselves with long contracts. Under Paragraph IV(B)(1), Defendants may sign a contract of longer than two years with a customer, but only if the customer has been offered the two year contract and has acknowledged, in writing, that this offer was made.[2] Even if the customer signs a contract with an initial term longer than two years, the customer retains the right to terminate that contract at the end of the first two years, without payment of any liquidated damages, pursuant to Paragraph IV(B)(2). Paragraph IV(B) was included to give Defendants the ability to contract with customers who truly want a longer term, for the United States anticipates that contracts with initial terms longer than two years will be the exception, not the rule, To assure such an outcome, Paragraph IV(B)(4) limits the number of service locations subject to such contracts in either the Savannah or Central Louisiana markets to no more than 25 percent of the total number of small containerized solid waste hauling service locations in each relevant market.

Paragraph IV(A)(2) prohibits Defendants from signing a contract with a renewal term longer than one year in length, down from the three-year renewal term used as a standard in the Savannah and Central Louisiana markets.

Paragraph IV(A)(3) increases the period of time that a customer may notify Defendants of its intention not to renew the contract from a period ending 60 days before the end of any initial or renewal term to a period ending 30 days before the end of any such term. This allows the customer to make a decision concerning renewal closer to the end of

[1] The proposed Final Judgment applies to all contracts entered into by Defendants with customers for service locations in the relevant markets except contracts described in Paragraph IV (G). Contracts awarded to Defendants by municipal or government entities as a result of a formal request for bids or a formal request for proposals need not contain the provisions dictated by the proposed Final Judgment. These contracts were excluded from the decree to assure that competition for such bids would not be adversely affected by preventing Defendants from bidding.

[2] The United States envisions that the customer's written acknowledgment that the two year contract was offered, but declined, by the customer could be made by having the customer check an appropriate box on the face of the contract near the customer's signature, or by some similar mechanism.

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the contract term. A customer is more likely to consider whether or not it wants its existing contract renewal the closer than customer is to the end of the contract term. Paragraph IV(A)(3) assures that a customer will be able to choose not to renew its contract up to 30 days from the end of the contract term. Paragraph IV(A)(3) also eliminates the requirement that a customer give its nonrenewal notice in writing and send it to Defendants by certified mail. A telephone call or letter is sufficient under the proposed Final Judgment. These changes in the notification provisions make it easier for the customer not to renew within the terms of the contract. This, in turn, enhances customer choice and enables a new entrant or small incumbent to compete for more customers.

A liquidated damages provision is intended to allow a seller to recover otherwise unrecoverable costs where the amount of the damage resulting from a breach of contract is difficult to determine. Defendants do incur some unrecoverable costs, including sales costs, in contracting with customers for small containerized solid waste hauling services. The contract currently most widely used by Defendants in the relevant markets contain the following liquidation damages provision for early termination: the customer must pay six times its prior monthly charge unless the contract has a remaining term of less than six months, in which case the customer pays its prior monthly charge times the number of months remaining in its contract term. If this case went to trial, the United States believes it could prove that these liquidated damages far surpass the contracting costs the Defendants incur, and that, in the relevant markets where Defendants have market power, Defendants have threatened to enforce such liquidated damages provisions with the effect that customers did not switch to new entrants and small incumbents when they desired to do so. In the presence of market power, the threat of enforcing large liquidated damages provisions can deter sufficient customers from switching to a competitor and harm competition.

Paragraphs IV(A) (4) and (5) reduce the amount of liquidated damages Defendants can collect from a customer. The liquidated damages Defendants may collect from a customer in the relevant markets during the first year of the initial term of a customer's contract are reduced to the greater of three times the customer's prior monthly charge or average monthly charge over the prior six months. A firm that has been a customer of a Defendant for a continuous period in excess of one year can be required to pay Defendants no more than two times the greater of the customer's prior monthly charge or average monthly charges over the past six months. The changes made in the liquidated damages provisions make it less expensive (and therefore more likely) that a customer can switch to a competing hauler should it choose to do so during the contract term. Defendants have incurred costs to sign small containerized solid waste hauling customers to contracts. However, as customers pay their monthly bills over time, the unrecovered amount of those costs decreases. That fact is reflected in the proposal Final Judgment by the reduction of the liquidated damages Defendants may collect once a firm has been Defendants' customer for more than one year.

Paragraph IV(A)(6) prohibits Defendants from including a "right to compete" clause in their contracts in the relevant markets. That clause requires a customer to give Defendants notice of any offer by or to another solid waste hauling firm or requires the customer to give Defendants a reasonable opportunity to respond to such an offer for any period not covered by the contract. Defendants currently use a clause in the vast majority of contracts in use in the Savannah and Central Louisiana markets.[3] Such a clause enables a firm with market power easily to deny a sufficient customer base to new entrants or small incumbents because the customer must notify it of the terms of offers from competitors before the competitor obtains a single customer's business. It is a simple matter for the dominant firm to match or beat the competitor's price and induce the customer not to switch to the competitor. Furthermore, it allows the dominant firm to target price reductions only to those customers approached by a competitor without dropping prices across the board. The existence of this clause reduces a new entrant's expected profitability for luring a customer away from Defendants. It has the effect of retarding entry. The Final Judgment prohibits the use of this provision in the relevant markets.

The contracts predominantly used by Defendants in the relevant markets currently give Defendants the exclusive right to perform all of a customer's solid waste hauling services and recycling, just because the customer has signed a contract for small containerized solid waste hauling service. Paragraph IV(A)(8) of the proposed Final Judgment prohibits this provision in the relevant markets. Instead, it provides that Defendants may perform only those services a customer selects. Defendants may perform all types of solid waste hauling services and recycling for a customer only if the customer affirmatively chooses to have Defendants do so by so stating on the front of the contract.[4] The United States does not intend this provision to prohibit Defendants from requiring that it be the exclusive supplier of any type of service for which it contracts with a customer. For example, if a customer contracts with Defendants to perform small containerized solid waste hauling service at a specific service location, Defendants may require that it be the exclusive supplier for that service at that location.

Paragraph IV(A)(7) of the proposed Final Judgment also requires Defendant to change the appearance and format of its contracts in the relevant markets. If this case went to trial, evidence from customers in those markets would show that some of them were not aware they had signed legally binding documents. Therefore, the proposed Final Judgment requires that the document be labeled "SERVICE CONTRACT" in large letters. Furthermore, evidence from customers in the relevant markets would show that the contractual provisions that enable a firm with market power to restrict customers from switching to a competitor are in very small print on the back of the document. The proposed Final Judgment requires that the contracts used in the relevant markets be easily readable in formatting and type-face.

B. Transition Rules

In the Stipulation consenting to the entry of the proposed Final Judgment, Defendants agreed to abide by the provisions of the proposed Final Judgment immediately upon the filing of the Complaint, *i.e.*, as of February 15, 1996. Among other things, the transition provisions described herein will require Defendants to abide by the foregoing limitations and prohibitions when entering into any contracts with new small containerized hauling customers after February 15, 1996. Certain additional provisions of the proposed Final Judgment also apply to existing customer contracts that are inconsistent with the proposed Final Judgment's requirements for new customer contracts.

Under Paragraph IV(C), Defendants must offer contracts that conform with Paragraphs IV(A) or (B) of the proposed Final Judgment to all new customers with service locations in the Savannah and Central Louisiana markets beginning today, the date of the filing of the executed Stipulation.

Under Paragraph IV(D), within 30 days of the entry of the proposed Final Judgment, Defendants must notify existing customers in the Savannah and Central Louisiana markets who have contracts with an initial term longer than two years and do not otherwise comply with the proposed Final Judgment of their right to sign a new contract complying with the proposed Final Judgment. These notices must also inform any customers choosing to retain their existing contracts that no provisions inconsistent with the proposed Final Judgment will be enforced against them. With regard to municipal and government entities, Defendants are not required to notify those entities with nonconforming contracts that were awarded on the basis of a formal request for bids or a formal request for proposals issued by the customer.

Paragraph IV(E) requires Defendants to give an additional notice in the form of a reminder to any customer subject to a nonconforming contract that enters a renewal term 120 days or more after the entry of the proposed Final Judgment. Defendants must send the reminder to each such customer ninety (90) days or more prior to the effective date of the renewal term. The reminder informs the customer that it must cancel its contract by a certain date or the contract will renew. It also reminds the customer that it may enter into a new contract conforming to the proposed Final Judgment on request and that terms in the customer's existing contract that are inconsistent with the new form will not be enforced against it. Defendants may send this reminder as part of a monthly bill, as long as it appears on a separate page and in large print so that it will be noticeable.

Under Paragraph IV(F), Defendants may not enforce contract provisions inconsistent with the Final Judgment upon entry of the Final Judgment by the Court.

Under Paragraphs IV (G) and (H), the proposed Final Judgment makes clear that contracts awarded by municipal or government entities on the basis of a formal request for bids or proposals issued by the customer need not comply with Paragraphs IV (A)–(F). Moreover, nothing in the proposed Final Judgment requires Defendants to do business with any customer.

Paragraphs IV (C)–(F) further two consistent goals. Opportunities for competition in small containerized hauling service in the relevant markets will be fostered by a rapid end to the provisions that significantly raise entry barriers in the relevant markets. At the same time, the transition rules avoid creating any unnecessary disruption of the customers' trash hauling service that might result from voiding all nonconforming contracts. Existing customers are not required to terminate or amend their existing contracts with Defendants; the choice belongs to the customer. However, Defendants may not enforce against any customer any provision inconsistent with the proposed Final Judgment.

To ensure that existing customers learn of their rights under the proposed Final Judgment, Paragraphs IV (D) and (E) require Defendants to notify customers of their rights under the Final Judgment and remind them of their right to terminate their existing contract or to sign a new contract form.

C. Enforcement

Section V of the proposed Final Judgment establishes standards and procedures by which the Department of Justice may obtain access to documents and information from Defendants related to their compliance with the proposed Final Judgment.

D. Duration

Section VI of the proposed Final Judgment provides that the Final Judgment will expire on the tenth year after its entry. Jurisdiction will be retained by the Court to conduct further proceedings relating to the Final Judgment, as specified in Section VI.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI

Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, litigation against Defendants. The United States could have brought suit and sought preliminary and permanent injunctions against the use and enforcement of these contracts by Defendants in the relevant markets. The United States is satisfied, however, that the relief outlined in the proposed Final Judgment will elimination Defendants' ability to use restrictive and anticompetitive contracts to maintain and enhance their market power in the relevant markets. The United States believes that these contracts will no

[3] The clause reads: "RIGHT TO COMPETE. Customer grants to Contractor the right to compete with any offer which Customer receives (or intends to make) relating to the provision of nonhazardous waste collection and disposal services upon the termination of this Agreement for any reason, and agrees to give Contractor written notice of any such offer and reasonable opportunity to respond to it."

[4] The United States anticipates that the customer should be able to affirmatively indicate its choice of service types by checking a box, by writing in the type of service it wants on the front of the contract, or by some similar mechanism.

longer inhibit the ability of a new entrant to compete with the Defendants. The relief sought will allow new entry and expansion by existing firms in those markets.

VII

Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the D.C. Circuit recently held this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1462 (D.C. Cir. 1995). In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[5] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

The Court's inquiry, under the APPA, is whether the settlement is "within the reaches of the public interest."[6] The proposed Final Judgment enjoins the Defendants' continued use of overly restrictive contract terms and opens local markets to increased competition, thus effectively furthering the public interest.

VIII.

Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: February 15, 1996.

Respectfully submitted,

Nancy H. McMillen,

Peter H. Goldberg,

Evangelina Almirantearena,

Attorneys, Antitrust Division, U.S. Department of Justice, 1401 H Street NW., Suite 4000, Washington, D.C. 20530, (202) 307–5777.

Certification of Service

I hereby certify that a copy of the foregoing has been served upon Waste Management, Inc., Waste Management of Georgia, Inc., and Waste Management of Louisiana, Inc., by placing a copy of this Competitive Impact Statement in the U.S. mail, directed to each of the above-named parties at the addresses given below, this 15th day of February, 1996.

Michael Sennett,

Esquire, Bell, Boyd & Lloyd, 3 First National Plaza, 70 West Madison Street, Chicago, IL 60602.

Robert E. Bloch,

Esquire, Mayer, Brown & Platt, 2000 Pennsylvania Ave., N.W., Washington, D.C. 20003.

Harold Hellin,

Esquire,

Glen Darbyshire,

Esquire, Hunter, MacLean, Exler & Dunn, 200 East Street Julian, Savannah, GA 31401.

Nancy H. McMillen,

Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530, (202) 307–5777.

United States District Court for the Southern District of Georgia, Savannah Division

In the matter of *United States of America, Plaintiff,* v. *Waste Management of Georgia, Inc., d/b/a Waste Management of Savannah, Waste Management of Louisiana, Inc., d/b/a Waste Management of Central Louisiana, and Waste Management, Inc.* Defendants. [Civil Action No.: CV496–35] filed February 15, 1996.

Motion of United States to Exclude Case From All Discovery Requirements and To Follow the Procedures of the Antitrust Procedures and Penalties Act

The United States of America hereby moves the Court for an order to exclude this case from all discovery requirements under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Southern District of Georgia, given that the disposition of a negotiated civil antitrust case brought and settled by the United States is governed by the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h) [hereinafter "the APPA"]. The United States further moves the Court for inclusion in this Order for an exemption from the requirement that Defendants file any responsive pleading to the Complaint.

As set forth below, the parties have consented to the entry of the proposed Final Judgment without trial or adjudication of any issue of fact or law, and without the Final Judgment constituting any evidence against or an admission by any party with respect to any such issue. Pursuant to the procedures of the APPA, discovery between the parties is unnecessary and would be contrary to the intentions of the parties. Therefore, the United States respectfully requests that the Court enter the attached Order which excludes the case from all discovery requirements

[5] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Responses to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[6] *United States v. Bechtel*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); (citations omitted) (emphasis added); *see United States v. BNS, Inc.*, 858 F.2d 456, 463, (9th Cir. 1988); *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716; *see also United States v. American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984); *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) *quoting United States v. Gillette Co., supra*, 406 F. Supp. at 716; *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

of the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Southern District of Georgia, and states that the disposition of the case will be consistent with the APPA.

1. On February 15,1996, the United States filed a Complaint and a Stipulation by which the parties agreed to the Court's entry of an attached proposed Final Judgment following compliance with the APPA.

2. The United States also filed on February 15, 1996, a Competitive Impact Statement as required by 15 U.S.C. 16(b).

3. The APPA also requires the United States to publish a copy of the proposed Final Judgment and the Competitive Impact Statement in the **Federal Register**. It further requires the publication of summaries of the terms of the proposed Final Judgment and the Competitive Impact Statement in at least two newspapers of general circulation. This notice will inform members of the public that they may submit comments about the Final Judgment to the United States Department of Justice, Antitrust Division. 15 U.S.C. 16(b)–(c).

4. Following such publication in the newspapers and **Federal Register**, a sixty-day waiting period will begin. During this time, the United States will consider, and at the close of that period respond to, any public comments that it receives. It will publish the comments and its responses in the **Federal Register**. 15 U.S.C. 16(d).

5. After the expiration of the sixty-day period, the United States will file with the Court the comments, the Government's responses, and a Motion For Entry of the Final Judgment. 15 U.S.C. 16(d).

6. After the filing of the Motion For Entry of the Final Judgment, the Court may enter the Final Judgment without a hearing, if it finds that the Final Judgment is in the public interest. 15 U.S.C. 16(e)–(f).

7. The parties fully intend to comply with the requirements of the APPA.

As stated above, the Antitrust Procedures and penalties Act governs the disposition of civil antitrust cases brought and settled by the United States. Discovery between the parties, which have consented to the proposed settlement filed with the Court, is unnecessary. Accordingly, the attached Order is justified and should be entered by the Court.

Respectfully submitted,

Harry D. Dixon, Jr.,

United States Attorney, Southern District of Georgia, 100 Bull Street, Suite 201, Savannah, GA 31401, Tel.: (912) 652–4422.

Nancy H. McMillen,

Trial Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street NW., Suite 4000, Washington, DC 20530, Tel.: (202) 307–5777.

Certificate of Service

I hereby certify that on February 15, 1996, a true and correct copy of the foregoing has been served on the parties below by placing a copy of this MOTION OF UNITED STATES TO EXCLUDE CASE FROM ALL DISCOVERY REQUIREMENTS AND TO FOLLOW THE PROCEDURES OF THE ANTITRUST PROCEDURES AND PENALTIES ACT in the U.S. Mail, postage prepaid, to the addresses given below.

For Defendants Waste Management of Georgia, Inc., Waste Management of Louisiana, Inc., and Waste Management, Inc.:

Michael Sennett, Esquire, Bell, Boyd & Lloyd, 3 First National Plaza, 70 West Madison Street, Chicago, IL 60602

Robert Bloch, Esquire, Mayer, Brown & Platt, 2000 Pennsylvania Ave. NW., Washington, DC 20006

Harold Hellin, Esquire, Glen Darbyshire, Esquire, Hunter, MacLean, Exler & Dunn, 200 East Street Julian, Savannah, GA 31401.

Nancy H. McMillen,

Trial Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street NW., Suite 4000, Washington, DC 20530, (202) 307–5777.

United States District Court for the Southern District of Georgia Savannah Division

In the matter of *United States of America, Plaintiff,* v. *Waste Management of Georgia, Inc., d/b/a Waste Management of Savannah, Waste Management of Louisiana, Inc. d/b/a Waste Management of Central Louisiana, and Waste Management, Inc.*, Defendants. Civil Action No.: CV496–35, filed: Feb. 15, 1996.

Order Excluding Case From All Discovery Requirements and To Follow the Procedures of the Antitrust Procedures and Penalties Act

Plaintiff, the United States of America, has moved the Court to exclude this case from all discovery requirements under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Southern District of Georgia, given that the disposition of negotiated civil antitrust consent decrees are governed by the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h). The Court is of the opinion that this motion should be granted.

It is therefore Ordered that this case is excluded from all discovery requirements under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Southern District of Georgia. It is further ORDERED that the Defendants are not required to file any responsive pleading to the Complaint.

It is also therefore Ordered that the procedures to be followed in this case shall be consistent with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h).

Dated: _____

United States District Judge.

[FR Doc. 96–5040 Filed 3–4–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IHDT Cooperative Agreement Program

Notice is hereby given that, on November 6, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), IHDT Cooperative Agreement Program, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the Program. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Bell Helicopter Textron Inc., Hurst, TX; and McDonnell Douglas Helicopter Systems, Mesa, AZ.

The nature and objectives of this Program are the development of integrated software and database architecture that will assist U.S. aerospace companies and civilian and military program managers to reduce cycle time and to improve product affordability in the design, manufacture, and maintenance of rotocraft.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–5038 Filed 3–4–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Research and Development Venture Agreement for Industrial Refrigeration

Notice is given that, on July 14, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Philip W. Winkler, Manager, Cryrogenic Refrigerants & Systems of Air Products & Chemicals, Inc., has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture agreement. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Air Products & Chemicals, Inc., 7201 Hamilton Boulevard, Allentown, PA 18195–1501; and Lewis Energy Systems, Inc., 300 West 1100 North, North Salt Lake, UT 84054, and the general areas of their planned activity are to develop and demonstrate a new form of industrial refrigeration equipment using dry air as the working fluid in a closed cycle at high pressures; an award from the National Institute of Standards and Technology, U.S. Department of Commerce will partially fund this joint research and development activity.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–5039 Filed 3–4–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 94–14

Notice is hereby given that, on February 9, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301, *et seq.* ("the Act"), the participants in the Petroleum Environmental Research Forum ("PERF") Project No. 94–14, titled "Cooperative Bioremediation Research Program," have filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to PERF Project No. 94–14 and (2) the nature and objectives of the research program to be performed in accordance with the Project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the current parties participating in PERF Project No. 94–14 are: Exxon Research & Engineering Company, Florham Park, NJ; Marathon Oil Company, Littleton, CO; Amoco Corporation, Chicago, IL; Texaco, Inc., Port Arthur, TX; Phillips Petroleum Company, Houston, TX; and RETEC, Inc., Pittsburgh, PA.

The nature and objective of the research program performed in accordance with PERF Project No. 94–14 is to provide planning and response guidelines for the use of solidifiers for upstream/downstream petroleum (on land) operations.

Participation in this project will remain open to interested persons and organizations until issuance of the final project report. The participants intend to file additional written notifications disclosing all changes in its membership.

Information about participating in PERF Project No. 94–14 may be obtained by contacting Mr. William Dahl, Exxon Research & Engineering Company, Florham Park, NJ.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–5037 Filed 3–4–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 95–45]

Gilbert Ross, M.D.; Revocation of Registration

On May 24, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Gilbert Ross, M.D., (Respondent) of Great Neck, New York, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AR5677060, under 21 U.S.C. 824(a)(5), and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). Specifically, the Order to Show Cause alleged in substance that: (1) On November 19, 1992, the Respondent was indicated by a federal grand jury in the Southern District of New York on a 131-count indictment on charges of racketeering (RICO), mail fraud and money laundering arising from the operation of four sham medical clinics in upper Manhattan and the Bronx; (2) on November 10, 1993, after judgment was entered against the Respondent, following a jury trial, on one count of racketeering (RICO) in violation of 18 U.S.C. 1962(d), one count of conspiracy in violation of 18 U.S.C. 1962(c), ten counts of mail fraud in violation of 18 U.S.C. 1341 and 1342, and one count of money laundering in violation of 18 U.S.C. 982 (a)(1) and (b)(1)(A), he was sentenced to 46 months incarceration followed by three years of supervised release and ordered to make restitution to the State of New York in the amount of $612,855.00; and (3) on June 10, 1994, the Respondent was notified by the Department of Health and Human Services of his ten-year mandatory exclusion from participation in the Medicare/Medicaid program pursuant to 42 U.S.C. 1320a–7(a), as a result of the above-referenced conviction.

On June 26, 1995, the Respondent, through counsel, filed a timely request for a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On July 28, 1995, Counsel for the Government filed a Motion to Amend Order to Show Cause and for Summary Disposition, alleging, additionally, that on or about July 20, 1995, DEA received notice from the Administrative Review Board for Professional Medical Conduct of the Department of Health for the State of New York (Medical Board), that the Respondent's license to practice medicine in New York had been revoked effective July 24, 1995. The motion was supported by a copy of the Medical Board's Decision and Order.

On August 10, 1995, the Respondent filed a request for an adjournment of this matter, asserting that judicial review of the Medical Board's decision was pending before a State court. Judge Bittner denied that request on August 11, 1995. The Respondent did not subsequently file a response to the Government's Motion for Summary Disposition. Further, the Respondent did not deny that his State license had been revoked.

On August 24, 1995, Judge Bittner issued her Opinion and Recommended Decision, Conclusions of Law and Recommended Ruling, in which she (1) found that the Respondent lacked authorization to practice medicine in New York; (2) found that the Respondent therefore lacked authorization to handle controlled substances in New York; (3) granted the Government's Motion for Summary Disposition, and (4) recommended that the Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her decision, and on September 25, 1995, Judge Bittner transmitted her opinion and the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the decision of the Administrative Law Judge. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the State in which he conducts his business. 21 U.S.C. 802(21), 832(f), and 824(a)(3). This prerequisite has been consistently upheld. *See Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *James H. Nickens, M.D.*, 57 FR 59847 (1992); *Roy E. Hardman, M.D.*, 57 FR 49195 (1992); *Myong S. Yi, M.D.*, 54 FR 30618 (1989); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Judge Bittner also properly granted the Government's motion for summary disposition. Here, the parties did not dispute that the Respondent was unauthorized to practice medicine and to handle controlled substances in New York, the State in which he maintains his DEA Certificate of Registration. Although the Respondent disagreed with the action of the Medical Board, he presented no evidence to contradict the fact that he is currently without authorization to handle controlled substances. Therefore, it is well-settled that when no question of fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. *See Dominick A. Ricci, M.D.*, 58 FR at 51104 (finding it "well settled that where there is no material question of fact involved, a plenary, adversarial administrative hearing [was] not required. Congress did not intend administrative agencies to perform meaningless tasks."); *see also Phillip E. Kirk, M.D.*, 48 FR 32887 (1983), *aff'd sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984); *Alfred Tennyson Smurthwaite, M.D.*, 43 FR 11873 (1978); *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AR5677060, previously issued to Gilbert Ross, M.D., be, and it hereby is, revoked, and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective April 4, 1996.

Dated: February 28, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–5006 Filed 3–4–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Employment Service Reporting System

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)).

The Employment Service Program Reporting System provides data on State public employment service agency program activities and expenditures, including services to veterans, for use at the Federal level by the U.S. Employment Service and the Veterans Employment and Training Service in program administration and provides reports to the President and Congress. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision of information collection for the Employment Service Reporting System, on Form ETA 9002 A–C, ETA Quarterly Report; Form VET 200 A & B, VETS 200 DVOP/LVER Quarterly Report; Form VETS 300, VETS 300 Cost Accounting Report; and the Manager's Report on Services to Veterans.

Proposed revisions are: (1) To delete the line item reporting Non-Personal Service and Administrative Overhead on the VETS 300 Cost Accounting Report—minimal burden reduction; and (2) to reduce burden hours by eliminating the need for reprogramming of information on the SMOCTA program; and (3) to incorporate the approved burden hours for the Manager's Report on Services to Veterans.

A copy of the proposed information collection request can be obtained by contracting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before May 6, 1996. Written comments should evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Pearl Wah, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4470, 200 Constitution Avenue, N.W., Washington, D.C. 20210. 202–219–5185 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Information on basic labor exchange services is necessary to assure that States are complying with legal requirements of the Wagner-Peyser Act as amended by the Job Training Partnership Act (JTPA). Program data items are required from States reporting to the Department of Labor as part of other information in order to determine if States are complying with the basic labor exchange requirements.

Information regarding employment and training services provided to veterans by State public employment service agencies must be collected by the Department of Labor to satisfy legislative requirements, as follows: (a) To report annually to Congress on specific services (38 U.S.C. 2007(c) and 2012(c)); (b) to establish administrative controls (38 U.S.C. 2007(b)); and (c) for administrative purposes.

II. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A) to revise the collection of information previously approved and assigned OMB Control No. 1205–0240. This package will incorporate the burden activity and hours previously approved and assigned OMB Control No. 1293–0007 for the Manager's Report on Services to Veterans.

Type of Review: Revision.
Agency: Employment and Training Administration.
Titles: Employment Service Program Reporting System.
Form Numbers: ETA 9002 Quarterly Report; VETS 200 LVER Quarterly Report; and VETS 300 Cost Accounting Report.
Agency Number: 1205–1240.
Estimated Burden Hours: 8249.

Reports	Respondents	Frequency	Responses	Avg. time per response	Burden
USES Rpt.	54	4	216	2.75	594
VETS Rpt.	54	4	216	.25	54
USES Rec.	54	1	54	12.00	648
VETS 200A	54	4	216	.75	162
VETS 200B	54	4	216	.75	162
VETS 300	54	4	216	1.00	216
Mgt. Rpt.	1,600	4	6,400	.83	5,333
Totals			7,534		8,249

Comments submitted in response to this notice will be summarized and/or included in the request for Office Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 23, 1996.

John M. Robinson,

Deputy Assistant Secretary, Employment Training Administration.

[FR Doc. 96–5047 Filed 3–4–96; 8:45 am]

BILLING CODE 4510–30–M

Office of Federal Contract Compliance Programs

Rampart Electric, Inc., Debarment

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of debarment, Rampart Electric, Inc.

SUMMARY: This notice advises of the debarment of Rampart Electric, Inc. (hereafter "Rampart"), as an eligible bidder on Government contracts and subcontracts and federally assisted construction contracts and subcontracts. The debarment is effective immediately.

FOR FURTHER INFORMATION CONTACT: Annie Blackwell, Director Program Policy, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Ave., NW, Room C–3325, Washington, DC. 20210 (202–219–9430).

SUPPLEMENTARY INFORMATION: On September 11, 1995, pursuant to 41 CFR 60–30.30, the Secretary of Labor issued a Final Decision and Order of Debarment and Related Sanctions: (1) Finding Rampart in violation of Executive Order 11246, as amended, and its implementing regulations; (2) cancelling all Federal contracts and subcontracts and all federally assisted construction contracts and subcontracts of Rampart, and of its officers, (including Jeff Dwyer a/k/a Jeff Droyer and Jeff Dryer), agents, servants, employees, direct or beneficial owners, divisions or subsidiaries, and of those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise; declaring Rampart ineligible for extensions or other modifications of any existing Government contracts or subcontracts; and declaring Rampart and its successors, officers, agents, servants, employees, direct or beneficial owners, divisions or subsidiaries, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, ineligible for the award of any Government contracts or subcontracts until Rampart satisfies the Deputy Assistant Secretary for Federal Contract Compliance Programs that is in compliance with Executive Order 11246, as amended. A copy of the Decision and Order is attached.

Signed October 26, 1995, Washington, DC.

Shirley J. Wilcher,

Deputy Assistant Secretory For Federal Contract Compliance Programs.

U.S. Department of Labor

Secretary of Labor, Washington, DC

Date: September 11, 1995
Case No. 89–OFC–14.

In the Matter of *Office of Federal Contract Compliance Programs, United States Department of Labor,* Plaintiff v. *Rampart Electric, Inc.,* Defendant.

Before: The Secretary of Labor

Final Decision and Order of Debarment and Related Sanctions

This proceeding arises under Executive Order No. 11,246, 3 CFR 339 (1964–65), *reprinted as amended* in 42 U.S.C. 2000e note (1988). Upon the Defendant's failure to respond and participate in these proceedings, the Administrative Law Judge (ALJ) issued a [Recommended] Decision and Order (R.D. and O.), holding that the Defendant had thereby admitted the material allegations of fact in Plaintiff Office of Federal Contract Compliance's (OFCCP's) Administrative Complaint and had waived its right to a hearing. The ALJ recommended cancellation, termination, and suspension of existing Government contracts[1] and federally assisted construction contracts, ineligibility for the receipt of future Government contracts and federally assisted construction contracts, and prohibition against extensions or other modifications of current contracts. R.D. and O. at 3.

After referring to the Defendant's failures to respond to the ALJ's Notice of Docketing and the Show Cause Order directing the Defendant to show why its failure to file either an answer to OFCCP's complaint or to the Notice of Docketing should not constitute an admission of OFCCP's allegations under 41 CFR 60–30.6, the ALJ held the following:

Defendants [sic] persistent refusal to pursue this matter has left this forum no alternative other than to find that it has ADMITTED all the material allegations of fact contained in the complaint and has hereby WAIVED its right to a hearing on this matter. Accordingly it is FOUND that:

1. Defendant Rampart Electric, Inc., at all times material hereto, has been a corporation engaged in construction, and has maintained corporate offices at 6605 Alberta Drive, Colorado Springs, Colorado 80918.

2. Defendant, at all times material hereto, has had a contract with the Army and Air Force Exchange Service as the subcontractor in an expansion project in Colorado Springs, Colorado, the value of which was in excess of $10,000. Defendant was therefore a Government contractor within the meaning

[1] Contracts also connote subcontracts. *See* 41 CFR 60–1.3 (1995) (definitions of contract, contractor, federally assisted construction contract, government contract, prime contractor, subcontract, subcontractor); 41 CFR 60–4.1.

of Executive Order (E.O.) 11246, and was subject to the contractual obligations imposed on Government Contractors by E.O. 11246, and the implementing regulations, including the regulations found at 41 CFR Part 60–4 (affirmative action requirements for construction contractors and subcontractors).

3. A compliance review under E.O. 11246 was conducted. On June 21, 1987, plaintiff notified defendant of the problem areas which were identified in the compliance review. * * *

4. On July 17, 1987, defendant entered into a Conciliation Agreement with OFCCP, committing defendant to submit Monthly Manpower Utilization Reports (Standard Form CC–257) to OFCCP. * * *

5. Defendant failed to submit the required Monthly Manpower Utilization Reports (Standard Form CC–257), as provided for in the Conciliation Agreement.

6. OFCCP unsuccessfully attempted to secure the reports and defendant's compliance through means of conciliation and persuasion.

7. On January 28, 1989, OFCCP sent defendant a notice to show cause pursuant to 41 CFR 60–4.8 to which defendant failed to respond with (sic) 15 days. * * *

8. Defendant continues to refuse to submit the reports which were due and is in violation of E.O. 11246, the implementing regulations and its Conciliation Agreement.

R.D. and O. at 1–2.

Although the Defendant's failure to file an answer constituted an admission of OFCCP's complaint allegations, 41 CFR 60–30.6(b), a waiver of hearing and a lawful basis for the ALJ's subsequent adoption of OFCCP's material facts as alleged in its complaint, 412 CFR 60–30.6(c), the Defendant was further provided "an opportunity to file exceptions to (the R.D. and O.) and to file briefs in support of the exceptions." 41 CFR 60–30.6(c). The Defendant made no such filings with the Secretary.

The Office of Administrative Appeals (OAA) subsequently issued an Order to Ensure Service and Establish Briefing Schedule in response to Plaintiff's Motion for Entry of Default Judgment and Entry of Sanctions. Defendant did not reply to OAA's order and the document was returned with a notation (without attribution) that the Defendant had moved.[2]

[2] Review of the various documents in the record reveals that the name of Rampart Electric's President, Jeff Dwyer, has been spelled three different ways. The Conciliation Agreement is signed by "Joni Dwyer for" the typed name "Jeff Dwyer." The certificates of service in the Administrative Complaint, the Notice of Docketing and the Order to Show Cause refer to him as "Jeff Droyer." The certificates of service in the Motion for Judgment on the Pleadings and the R.D. and O. list him as "Jeff Dryer." The certificate of service in Plaintiff's Motion for Entry of Default Judgment and Entry of Sanctions and OAA's Order to Ensure Service and Establish Briefing Schedule refer to "Jeff Dwyer." All documents refer to him as President of Rampart Electric at 6605 Alberta Drive, Colorado Springs, Colorado. Subsequent inquiries, including communications with the Colorado Secretary of State, have been unable to locate Mr. Dwyer and/or Rampart Electric.

I agree with the R.D. and O. and OFCCP's motion for entry of a default judgment and sanctions. Accordingly, I enter this default judgment and order sanctions, including debarment, for the Defendant's breach of its Conciliation Agreement to submit Monthly Manpower Utilization Reports necessary to measure compliance thereunder; its failure to respond to OFCCP's attempts to secure these reports through conciliation and persuasion and to respond to OFCCP's notice of violations; and its repeated failures to participate in the ALJ proceeding. Debarment and other procurement-related sanctions are authorized for both substantive and procedural violations of the Executive Order and implementing regulations. *Uniroyal, Inc.* v. *Marshall,* 482 F. Supp. 364, 371–75 (D.D.C. 1979); *OFCCP* v. *Milwaukee Fence Co.,* Case No. 91–OFC–3, Sec. Dec. and Fin. Admin. Ord., Oct. 6, 1992, slip op. at 1–4; *OFCCP* v. *Disposable Safety Wear Inc.,* Case No. 92–OFC–11, Sec. Dec. and Fin. Admin. Ord., Sept. 29, 1992, slip op. at 1–6, 13.

Accordingly, I make the following ORDER:

1. All federal contracts and subcontracts and federally assisted construction contracts and subcontracts of Defendant, Rampart Electric, Inc., its successors, officers, agents, servants, employees, direct or beneficial owners, divisions or subsidiaries and those persons acting in concern with them shall be canceled, terminated and suspended; and

2. Defendant, Rampart Electric, Inc., its successors, officers, agents, servants, employees, direct or beneficial owners, divisions or subsidiaries and those persons in active concert or participation with them shall be ineligible for the award of new federal contracts and subcontracts or federally assisted construction contracts or subcontracts or the extension or modification of any such existing contracts or subcontracts.

These sanctions shall be implemented and shall remain in effect until such time as Defendant, Rampart Electric, Inc., its officers, agents,[3] servants, employees, direct or beneficial owners, divisions or subsidiaries, successors or assigns, and those persons in active concert or participation with them have satisfied the OFCCP Director, pursuant to 41 CFR 60–1.31, that Defendant is in compliance with the provisions of Executive Order No. 11,246, as amended; and the rules and regulations issued thereunder.

So Ordered.

Washington, DC.

Robert B. Reich,

Secretary of Labor.

Certificate of Service

Case Name: *OFCCP, USDOL* v. *Rampart Electric, Inc.*
Case No: 89–OFC–14.
Document: Final Decision and Order of Debarment and Related Sanctions.

A copy of the above-referenced document was sent to the following persons on September 11, 1995.

Kathleen Gorham.

Certified Mail

Jeff Dwyer, President, (a/k/a/ Jeff Droyer, Jeff Dryer), Rampart Electric, Inc., 6605 Alberta Drive, Colorado Springs, CO 80910
Corporation Section, Colorado Secretary of State, 1560 Broadway, Suite, 200, Denver, CO 80202
Business Regulation Unit, Colorado Attorney General, 1525 Sherman Street, 5th Fl., Denver, CO 80203
Legal Services Unit (Public Contracts), Colorado Attorney General, 1525 Sherman Street, 5th Fl., Denver, CO 80203
Tedrick A. Housh, Jr., Regional Solicitor/USDOL, 1585 Federal Bldg., 1961 Stout Street, Denver, CO 80294, Attn: Henry C. Mahlman, S. Lorrie Ray

Hand Delivered

James Henry, Associate Solicitor, Civil Rights Division/SOL, U.S. Department of Labor, Room N–2464, 200 Constitution Avenue, NW., Washington, DC 20210
Heidi Finger, Esq., Willie Alexander, Esq., Civil Rights Division/SOL, U.S. Department of Labor, Room N–2464, 200 Constitution Avenue, NW., Washington, DC 20210
Diane A. Heim, Esq., Heather A. Joys, Esq., Civil Rights Division/SOL, U.S. Department of Labor, Room N–2464, Washington, DC 20210

Regular Mail

Hon. John M. Vittone, Acting Chief Administrative Law Judge, Office of Administrative Law Judge, 800 K Street, Suite 400, Washington, DC 20001–8002

[FR Doc. 96–5048 Filed 3–4–96; 8:45 am]

BILLING CODE 4510–27–M

[3] "Officers" and "agents" in this Order include Jeff Dwyer, a/k/a Jeff Droyer and Jeff Dryer in various portions of the record.

Occupational Safety and Health Administration

Washington State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for

Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standard changes and on its own initiative the State submitted by letter dated August 19, 1994, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, a State standard corrective housekeeping amendment comparable to 29 CFR 1910.1017, Vinyl Chloride, as published in the **Federal Register** (58 FR 35310) on June 30, 1993. The State's original Vinyl Chloride standard was approved in the **Federal Register** on August 17, 1976 (FR 35896). The change was adopted in Washington Administrative Order 94–07 on July 20, 1994, effective September 20, 1994. In addition, on its own initiative, the State submitted by letter dated February 8, 1991, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment. The amendment added clarifying language on end-of-service-life indicators on respirator canisters or cartridges for vinyl chloride. The State standard is comparable to 29 CFR 1910.1017, Vinyl Chloride. The change was adopted in Administrative Order 90–18 on January 10, 1991 and effective February 12, 1991. Also, on its own initiative, the State submitted by letter dated September 26, 1986, from G. David Hutchins, Assistant Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment. The amendment eliminated obsolete language and updated types of respirators to be used by employees exposed to vinyl chloride. The State standard is comparable to 29 CFR 1910.1017, Vinyl Chloride. The change was adopted in Administrative Order 86–28 on July 25, 1986 and effective August 25, 1986.

In response to Federal standard changes the State submitted by letter dated October 14, 1994, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, and incorporated as part of the state plan, a State standard amendment. The amendment added clarifying language and made minor housekeeping changes comparable to 29 CFR 1910.132, Personal Protective Equipment, General Provisions, 29 CFR 1910.133, Eye and Face Protection, 29 CFR 1910.136, Foot Protection, 29 CFR 1910.138, Hand Protection, Appendix A to Subpart I, References for further Information (Non-mandatory) and Appendix B to Subpart I, Non-mandatory Compliance Guidelines for Hazard Assessment and Personal Protective Equipment Selection, as published in the **Federal Register** (59 FR 16360) on April 6, 1994 and corrections as published in the **Federal Register** (59 FR 33910) on July 1, 1994. The changes were adopted in Administrative Order 94–16 on September 30, 1994, effective November 20, 1994.

In response to Federal standard changes and on its own initiative the State submitted letters from the Director of Washington Department of Labor and Industries to James W. Lake, Regional Administrator, State standard amendments comparable to 29 CFR 1910.120 and 1926.65, Hazardous Waste Operations and Emergency Response. The Federal-initiated amendments and corrections were published in the **Federal Register** on March 6, 1989, final rule (54 FR 429317); April 13, 1990, corrections (55 FR 14072); April 18, 1991, corrections (56 FR 16832); and August 22, 1994, amended, (59 FR 40964). The only significant difference is that the State requires eighty hours of training for workers in certain site zones. The changes and amendments were adopted in: Administrative Order 89–10, October 10, 1989, effective November 24, 1989; Administrative Order 90–01, April 10, 1990, effective May 25, 1990; Administrative Order 90–14, October 1, 1990, effective November 15, 1990; Administrative Order 91–01, May 20, 1991, effective June 20, 1991; Administrative Order 91–07, November 22, 1991, effective December 24, 1991; Administrative Order 93–04, September 22, 1993, effective November 1, 1993; Administrative Order 94–07, July 20, 1994, effective September 20, 1994; Administrative Order 94–08, August 3, 1994, effective September 12, 1994 and Administrative Order 94–22, January 18, 1995, effective March 10, 1995.

In response to Federal standard changes, the State submitted by letters from Richard A. Davis and Joseph A. Dear, Directors, to James W. Lake, Regional Administrator, a State standard amendment comparable to the Federal standard amendment, 29 CFR 1910.401(a)(2)(iv), and the definition for Scientific Diving in 1910.402, Commercial Diving Operations, as published in the **Federal Register** (47 FR 53365) on November 26, 1982. In addition, in the same letters, the State, on its own initiative, submitted amendments to WAC 296–37–510 through 590, Safety Standards for Commercial Diving Operations. The code was originally approved in the **Federal Register** (46 FR 50445) on October 13, 1981. The State's first submission was adopted December 26, 1986, effective January 25, 1987, under Administrative Order 86–44. National Office review revealed discrepancies and the submission was returned to the State for correction. On November 18, 1992, the State submitted a corrective amendment which incorporated all of the Federal amendments and State-initiated changes to date. The minor differences in the standard are: The State included requirements for air compressors and alarms; the State included a requirement for a safety line; the State uses the word recompression rather than decompression; and the State added a reference to its recordkeeping standards. The State has also submitted by letter dated August 19, 1994, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, a State corrective amendment identical to the Federal amendment at 29 CFR 1910.401(a)(2)(iii), Commercial Diving, published in the **Federal Register** (58 FR 35310) on June 30, 1993. The State amendment was adopted on July 20, 1994, effective September 20, 1994, under Administrative Order 94–07.

In response to Federal standards changes, the State submitted by letter dated April 24, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, a State standard amendment comparable to 29 CFR 1910.66, Powered Platforms for Building Maintenance, as published in the **Federal Register** (54 FR 31408) on July 28, 1989. On February 8, 1991, the State submitted additional changes to its standard to make it identical to the OSHA standard in four places. On December 20, 1991, the State made a minor change to a reference to another part of its standard. Upon review of the State standard, it was determined to be less effective than the OSHA standard, and on November 18, 1993, the State was asked to make corrections. On August 19, 1994, the State submitted the necessary minor corrections. The State's standard replaces, in its entirety, the original State standard, WAC 296–24–87, Powered Platforms for Exterior Building Maintenance, which received Federal approval (41 FR 34836) on August 17, 1976. The State standard, which is substantially identical to the Federal standard, is contained in WAC 296–24–870. It was adopted on April 10, 1990, effective April 25, 1990 under Administrative Order 84–18. The minor changes asked for by OSHA in its November 18, 1993 letter were adopted in Administrative Order 94–07 on July 20, 1994, effective September 20, 1994. The change made in the February 8, 1991 letter was adopted in Administrative Order 90–18, on January 10, 1991, effective February 12, 1991, and the change made in the December 20, 1991 letter was adopted in Administrative Order 91–07 on November 22, 1991, effective December 24, 1991.

On its own initiative, the State of Washington has submitted by letter dated September 5, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, a repeal of WAC 296–155–580 and adoption of WAC 296–155–48531, comparable to 29 CFR 1926.556, Aerial Lifts. The repeal and adoption occurred in Administrative Order 86–14, on January 21, 1986, effective February 20, 1986. Under Administrative Order 90–10, which was adopted on August 13, 1990, effective September 24, 1990, minor housekeeping changes were made. National Office review revealed discrepancies and the submission was returned to the State for correction. On September 8, 1992, the State submitted a corrective amendment that made the necessary changes. This submission was adopted on August 10, 1992, effective September 10, 1992, under Administrative Order 92–06. The significant differences are: The State uses the more recent ANSI 92.2–1979 as the reference; adds requirements for specification and data display and placarding; adds requirements for elevation and reach determination and insulated aerial devices; and adds requirements for inspections. The State code was originally approved in the **Federal Register** (47 FR 5956) on February 9, 1982.

On its own initiative, the State of Washington has submitted by letter dated June 15, 1989, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, a State standard for forklift elevated work platforms in construction. The State's submission, which is contained in WAC 296–155–48536, was adopted on May 15, 1989, effective June 30, 1989, under Administrative Order 89–03. National Office review revealed discrepancies and the submission was returned to the State for correction. On November 25, 1992, the State submitted a corrective amendment that made the changes requested by the National Office. This submission was adopted on October 30, 1992, effective December 8, 1992, under Washington Administrative Order 92–06.

On its own initiative, the State has submitted by letter dated February 9, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, a change to its previously approved Grain Elevator standards at WAC 296–99–015 and 050. The change to WAC 296–99–015 incorporated an OSHA determination contained in a March 27, 1989 memorandum from the Directorate of Compliance Programs that the standard does not apply to alfalfa processing plants that are not involved with grain handling. The change to WAC 296–99–050 incorporated a court decision to stay the 1/8 inch action level contained in 29 CFR 1910.272(i)(2). These changes were adopted on January 11, 1990, effective February 26, 1990, under Administrative Order 89–20. On June 20, 1991, a letter from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, made another State-initiated change to WAC 296–99–050. This change made the State standard identical to the Federal standard 29 CFR 1910.272(i)(2). This change was necessary to incorporate the lifting of the stay by the courts to the 1/8 inch action level. This change was adopted on May 20, 1991, effective June 20, 1991, under Washington Administrative Order 91–01. The State standard was originally approved in the **Federal Register** (54 FR 7304) on February 17, 1989.

On its own initiative, the State submitted by letter dated October 29, 1993, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, a State standard amendment comparable to 29 CFR 1910.1000, Table Z-3, Mineral Dusts. The significant difference is: the State lowered the permissible exposure limit for nuisance dust to 10 milligrams per cubic meter. The change was adopted under Administrative Order 92–15 on December 11, 1992 and became effective on January 15, 1993.

On its own initiative, the State of Washington has submitted by letters dated February 8, 1991, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, amendments to its standards for Mechanical Power Presses, WAC 296–24–195; Powered Industrial Trucks, WAC 296–24–23023 and 296–24–23027; Cylinders and Containers, WAC 296–24–68203; Stairway Railings and Guards, WAC 296–24–75009; Railings, Toeboards, and Cover Specifications, WAC 296–24–75011; and Xenon Bulb Safety Procedures, WAC 296–24–95611. The amendments were made to incorporate previously approved Washington Regional Directives (WRDs). For Mechanical Power Presses, WRDs 78–38 and 79–25 were adopted in response to OSHA Directives STD 1–12.20 and 1–12.24 respectively. For Powered Industrial Trucks, WRDs 77–37 and 81–22 were adopted in response to OSHA Directives STD 1–11.3 and 1–11.7 respectively. For Railings, Toeboards, and Cover Specifications, WRD 81–18 was adopted in response to OSHA Directive STD 1–1.10. The WRDs for Cylinders and Containers, Stairway Railings and Guards and Xenon Bulbs were 79–43, 77–11 and 85–1, respectively, and were State-initiated. The State amendments were adopted on January 10, 1991, effective February 12, 1991, under Washington Administrative Order 90–18.

All of these State standards changes have been incorporated as part of the Washington State plan. All of the Washington Administrative Orders were adopted pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08.

2. *Decision.* OSHA has determined that the State standards and amendments for Hazardous Waste Operations and Emergency Response, Aerial Lifts, and Mineral Dusts are at least as effective as the comparable Federal standards, as required by Section 18(c)(2) of the Act. The Hazardous Waste amendments have been in effect since November 15, 1990, the Aerial Lifts standard has been in effect since September 10, 1992, and the Mineral Dusts amendment has been in effect since January 15, 1993. During this time OSHA has received no indication of significant objection to these different State standards either as to their effectiveness in comparison to the Federal standards or as to their conformance with product clause requirements of section 18(c)(2) of the Act. (A different State standard applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.)

OSHA has also determined that the differences between the State and Federal amendments for all the remaining standards in this notice are minimal and that these State standards amendments are thus substantially identical. OSHA therefore approves these standards; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212; State of Washington Department of Labor and Industries, 7273 Linderson Way, S.W., Tumwater, Washington 98501; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3700, 200 Constitution Avenue, NW, Washington, D.C. 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The standard amendments were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective (Sec. 18, Pub. L. 91–596, 84 STAT. 6108 [29 U.S.C. 667]).

Signed at Seattle, Washington, this 28th day of April 1995.

Richard S. Terrill,

Acting Regional Administrator.

[FR Doc. 96–5010 Filed 3–4–96; 8:45 am]

BILLING CODE 4510–26–P

Pension and Welfare Benefits Administration

[Application No. D–09986, et al.]

Proposed Exemptions NBD Bancorp

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice To Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

NBD Bancorp; Located in Detroit, Michigan; Proposed Exemption

[Application No. D–09986]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to the merger of the INB Principal Stability Fund (the PS Fund) into the NBD Stable Asset Income Fund (the SAI Fund).[1]

The proposed exemption is conditioned upon satisfaction of the following requirements:

(1) On the date the merger is executed, the assets in the PS Fund and the assets in the SAI Fund will be valued in the same manner, under identical guidelines, by the same individuals;

(2) Upon completion of the merger of the PS Fund into the SAI Fund, the aggregate fair market value of the interests of the employee benefit plans (the Plans) participating in the SAI Fund immediately following the merger, together with any cash received in lieu of fractional units, equals the aggregate fair market value of each participating Plans' interest in such Funds immediately before the merger;

(3) The assets of each of the participating Plans are invested in the same type of investments both before and after the proposed merger;

(4) Neither NBD Bancorp nor any of its affiliates receives fees or commissions in connection with the merger;

[1] For purposes of this proposed exemption, the PS Fund and the SAI Fund described herein are collectively referred to as the Funds.

(5) The Plans will pay no sales commissions or fees, as a result of the transaction; and

(6) A fiduciary who is acting on behalf of each affected Plan and who is independent of and unrelated to NBD Bancorp and any of its affiliates receives advance written notice of the merger of the PS Fund into the SAI Fund.

Summary of Facts and Representations

1. The Plans involved in this proposed exemption are certain pension, profit sharing, or stock bonus plans which are exempt from Federal income taxation under section 501(a) of the Code by reason of qualifying under section 401(a) of the Code.

2. The proposed exemption is requested on behalf of National Bank of Detroit (herein referred to as NBD Michigan) and on behalf of NBD Bank, N.A. (herein referred to as NBD Indiana). NBD Michigan and NBD Indiana are national banking associations and members of an "affiliated group," as defined in section 1504 of the Code. NBD Michigan is a wholly-owned subsidiary of NBD Bancorp, a bank holding company with principal offices in Detroit, Michigan. NBD Indiana, with principal offices in Indianapolis, Indiana, is a wholly-owned subsidiary of NBD Indiana, Inc., another bank holding company. It is represented that since 1992, NBD Indiana, Inc. has also been wholly-owned by NBD Bancorp.

3. The SAI Fund and the PS Fund are common funds maintained for the collective investment of monies contributed thereto by the Plans. NBD Michigan and NBD Indiana, respectively, serve as trustees for the SAI Fund and the PS Fund. The SAI Fund is one of twenty-five (25) separate collective investment funds under a group trust now known as the National Bank of Detroit Investment Fund for Employee Benefit Plans (the NBD Pooled Fund) which was established on May 12, 1960, by the National Bank of Detroit, a predecessor of NBD Michigan, and which, as amended, is now maintained by NBD Michigan. The PS Fund is one of the collective investment funds under a group trust known as the INB National Bank Group Trust for Employee Pension and Profit-Sharing Trusts B (the INB Group Trust) which was established on July 18, 1990, by INB National Bank, a predecessor of NBD Indiana, and which, as amended, is now maintained by NBD Indiana.

4. Both the SAI Fund and the PS Fund have substantially identical investment objectives, and the assets of each are invested in similar types of guaranteed insurance contracts. As of September 26, 1994, approximately 405 Plans participated in the SAI Fund, and 83 Plans participated in the PS Fund. As of January 23, 1996, it is represented that there were 44 Plans participating in the PS Fund. The aggregate fair market value of the SAI Fund, as of September 30, 1994, was $189,876,000. As of November 30, 1994, the aggregate fair market value of the PS Fund was approximately $12,829,000.

5. In order to improve the administration of the SAI Fund and the PS Fund, thereby improving service to the Plans participating in those Funds, NBD Michigan and NBD Indiana desire to merge the SAI Fund and the PS Fund, with the SAI Fund being the surviving fund. It is represented that the trustees of the Plans which participate in the PS Fund were notified of the proposed merger of the PS Fund into the SAI Fund on or about July 1994. Such notification advised the Plans participating in the PS Fund of the right to withdraw from such fund and the rules and procedures applicable to such withdrawal. Plans under the terms of the guaranteed investment contracts held by the Funds are permitted to withdraw any or all of their investment upon twelve (12) months prior written notice. It is represented that from the time the notification was sent in July 1994, none of the Plans participating in the PS Fund expressed concern regarding the merger. It is represented that, if it had been inclined to do so, a Plan participating in the PS Fund could have submitted its withdrawal request at the time the notification was given in July 1994, (or even several months later), and could already have received a distribution of its interest in the PS Fund. In this regard, it is represented that none of the Plans participating in the PS Fund subsequently elected to withdraw as a result of the proposed merger.

Because NBD Michigan exercises authority and control over the assets of the SAI Fund, it is deemed to be a fiduciary with respect to each of the Plans participating in the SAI Fund. Similarly, because NBD Indiana exercises authority and control over the assets of the PS Fund, it is deemed to be a fiduciary with respect to each of the Plans participating in the PS Fund.

6. As fiduciaries, NBD Michigan and NBD Indiana believe that because of their affiliation in executing the merger of the PS Fund into the SAI Fund, they each may be acting on behalf of adverse parties to the Plans each represents; and thus, a violation of section 406(b)(2) of the Act may occur. Accordingly, NBD Michigan and NBD Indiana have requested an administrative exemption from the prohibitions as set forth in section 406(b)(2) of the Act for the proposed transaction.

7. It is represented that the proposed merger is administratively feasible in that it constitutes a single transaction, the terms of which can be reviewed and approved in advance by the Department. Further, NBD Michigan and NBD Indiana will bear the cost of filing the application for exemption, the cost of notifying interested persons, and the expenses associated with the proposed transaction.

8. NBD Michigan and NBD Indiana have determined that the merger would be in the best interest of the Plans participating in the SAI Fund and the PS Fund. In this regard, the merger of the PS Fund and the SAI Fund will create a larger pool of assets which will result in better investment diversity and will increase the bargaining power of the SAI Fund when purchasing new contracts. It is anticipated that the increased size of the SAI Fund will create certain administrative efficiencies, and will serve to avoid or postpone any future fee increases. In addition, inasmuch as the SAI Fund has substantially greater liquidity than the PS Fund, Plans wishing to withdraw from the SAI Fund after the merger may be able to do so in as little as ninety (90) days), rather than twelve (12) months.

9. NBD Michigan and NBD Indiana have determined that the rights of the Plans participating in the Funds are protected in that the fair market value of the investment of each of the Plans in the Funds involved in the proposed transaction will not be changed as a result of the merger. In this regard, it is represented that the valuation methodology followed by both the PS Fund and the SAI Fund is identical, in that both of the Funds are valued daily and processed under the same guidelines by precisely the same individuals.

More specifically, it is represented that there are only two classes of assets in each of the Funds. The first class consists of cash held by each of the Funds in short-term money market funds. In this regard, the applicants maintain that although the interest rate earned in these money market fund varies, such money market funds are valued as cash. The second class of assets consists of various fixed rate and variable rate guaranteed investment contracts purchased by the Funds from highly rated insurance companies and held to term. It is represented that both the Funds hold fixed rate guaranteed investment contracts, and that only the SAI Fund holds variable rate guaranteed investment contracts. It is represented

that no default presently exists, nor has there previously been any default, under any guaranteed investment contract held by the Funds.

It is represented that these guaranteed investment contracts held by the Funds have been and will continue to be valued on the basis of the principal value plus accrued interest to the date of valuation calculated at the rate applicable to each contract through the date of valuation. In this regard, with respect to the four (4) variable rate guaranteed investment contracts held by the SAI Fund, it is represented that the rate of interest applicable to such contracts is determined and announced by the issuing insurance company on a monthly basis, and that the rate so determined is fixed for the following thirty (30) day period. For example, if the merger date were specified to be December 31, 1996. the applicable rate under each of these four (4) contracts as of that date would be fixed and certain, such that the contracts could be valued to that date using the established rate. Accordingly, the applicants represent that there is no significant benefit to be derived from an independent valuation of the assets held in the Funds, because the straightforward method by which the value of both the fixed rate and variable rate guaranteed investment contracts is determined can be readily verified by the Department and by the investors in the Funds.

10. It is represented that the merger will not create any additional fees for the Plans participating in the Funds. In this regard, neither NBD Michigan, NBD Indiana, nor any affiliated party will receive any fees or commissions with respect to the proposed merger, nor will the Plans pay any sales commissions or fees, as a result of the proposed transaction. Other than the incidental administrative efficiencies which will result from the merger of the PS Fund and the SAI Fund, it is represented that neither NBD Michigan and NBD Indiana nor any affiliated party will derive any financial benefit from the merger of the Funds.

It is represented that at the present time, NBD Michigan has employee benefit trust customers, including the Plans, which have assets invested in the SAI Fund, but NBD Michigan has no employee benefit trust customers invested in the PS Fund. It is further represented that at the present time, NBD Indiana has employee benefit trust customers, including the Plans, which have assets invested in the PS Fund, and some employee benefit trust customers which have already invested assets in the SAI Fund. The annual investment fee charged by NBD Indiana to participants in either the SAI Fund or the PS Fund consists of an annual base fee of $400, plus a market value based fee determined as follows: .85% on the first $1 million; .50% on the next $2 million; .35% on the next $2 million; .25% on the next $5 million; .15% on the next $10 million; and .10% on the excess over $20 million. The annual investment fee charged by NBD Michigan to participants in the SAI Fund is currently .75% of the market value of the SAI Fund.[2]

Following the merger of the PS Fund into the SAI Fund, both NBD Michigan and NBD Indiana will have employee benefit trust customers, including the Plans, participating in the SAI Fund. In this regard, it is represented that NBD Indiana and NBD Michigan will continue to service their respective employee benefit trust customers, including the Plans, and the investment fees charged to those Plans will be determined by the NBD Bancorp subsidiary (*i.e.* NBD Indiana or NBD Michigan) which originated that customer. Accordingly, it is represented that the investment fees, as described above, charged to the Plans by NBD Michigan and NBD Indiana, to the respective Plans that each services will not change following the merger of the PS Fund and the SAI Fund.

With respect to the amount of the investment fees charged to the Plans by NBD Michigan and NBD Indiana, the applicants point out that, although owned by a common parent corporation, NBD Michigan and NBD Indiana are separate corporations (one state-chartered and one federally-chartered) with separate fee schedules and separate customers served by employees of their separate trust departments. The applicants state that the fees charged by each bank include compensation for services relating to the administration of each of the Funds, such as acquiring the guaranteed investment contracts, performing valuations, and satisfying reporting and recordkeeping requirements, as well as compensation for the sales and consulting services provided by the separate staff of each bank to its respective trust clients. It is represented that the level of services, the personnel providing these services, and the overhead costs (*e.g.* rent, compensation levels, etc.) associated with the provision of such services is entirely different for each bank. Further, it is represented that the separate fee schedules of NBD Michigan and NBD Indiana, as described above, are primarily a function of the different markets served by each bank, and are intended to be responsive to and competitive with the fees charged by other financial institutions in the area in which each bank operates. In this regard, both NBD Michigan and NBD Indiana maintain that their respective fee structures are reasonable and competitive with the other institutions in the markets they each serve.[3]

11. To accomplish the merger of the SAI Fund and the PS Fund, the assets of the Funds (including all accrued income) will be valued as of the date the merger is executed (the Merger Date). The Merger Date will be declared by NBD Michigan and NBD Indiana following the grant of this proposed exemption. As of the Merger Date, NBD Indiana will transfer all of the assets of the PS Fund to NBD Michigan, as trustee of the SAI Fund. It is represented that all of the assets of the PS Fund meet the investment criteria of the SAI Fund, and accordingly, the SAI Fund will accept the transfer of all of the assets of the PS Fund, without exception. As all of the assets of the PS Fund will be transferred to the SAI Fund, the PS Fund will cease to exist immediately following the merger.

The transferred assets will be commingled for investment following the Merger Date, and all income will be deemed to have been earned in the SAI Fund. The Plans which participated in the PS Fund immediately preceding the merger will become participants in the SAI Fund, as of the Merger Date. Each of the Plans participating in the PS Fund immediately preceding the merger will have allocated to it, as of the Merger Date, the proportion of the allocated units in the SAI Fund equal to its proportion of units in the PS Fund immediately preceding the merger. No fractional units of participation in the SAI Fund will be issued in the merger. The SAI Fund will pay cash equal to the fair market value of any such fractional unit to which each of the participating Plans in the PS Fund would otherwise be entitled.

[2] It is represented that NBD Michigan and NBD Indiana rely upon the statutory exemption, as set forth in section 408(b)(2) of the Act, for the receipt of fees for investment management services provided with respect to the Funds. The Department, herein, expresses no opinion as to whether the provision of services by NBD Michigan and NBD Indiana to the Funds and the compensation received therefore satisfy the terms and conditions, as set forth in section 408(b)(2) of the Act.

[3] ERISA's general standards of fiduciary conduct would apply to the investment of plan assets in the SAI Fund. Accordingly, the plan fiduciary must act prudently with respect to its decision to enter into a new compensation arrangement, which under the particular facts and circumstances, may result in the plan paying additional amounts for similar investment services.

12. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) on the date the merger is executed, the assets in the PS Fund and the assets in the SAI Fund will be valued in the same manner, under identical guidelines, by the same individuals;

(b) the fair market value of the interests of the Plans participating in the affected Funds will remain unchanged as a result of the proposed merger;

(c) the assets of each participating Plan will be invested in the same type of investment both before and after the execution of the merger;

(d) the proposed merger will result in greater operational efficiencies and economies of scale, as well as greater opportunities for investment diversification;

(e) neither NBD Bancorp nor any of its affiliates will receive any fees or commissions in connection with the proposed merger;

(f) the Plans will pay no sales commissions or fees, as a result of the transaction; and

(g) A fiduciary who is acting on behalf of each affected Plan and who is independent of and unrelated to NBD Bancorp and any of its affiliates has received advance written notice of the merger of the PS Fund into the SAI Fund.

Notice to Interested Persons

The applicant maintains that persons who may be interested in the pendency of the requested exemption include the independent fiduciaries of all of the Plans participating under the NBD Pooled Fund and the INB Group Trust. It is represented within fifteen (15) days of the date of publication of the Notice of Proposed Exemption (the Notice) in the **Federal Register**, that notification in writing of the Notice will be provided by mail to the independent fiduciaries of all of the Plans participating under the NBD Pooled Fund and the INB Group Trust. Such notification will include a copy of the Notice, as published in the **Federal Register**, and a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2). The notification will inform such interested persons of their right to comment or request a hearing within a time period specified in the notification.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department (202) 219–8883. (This is not a toll-free number.)

Biscayne Bay Pilots, Inc. Money Purchase Pension Plan (M/P Plan) and Biscayne Bay Pilots, Inc. 401(k) Profit Sharing Plan (P/S Plan; Collectively, the Plans); Located in Miami, Florida; Proposed Exemption

[Application Nos. D–10036 and D–10037]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of certain improved real property (the Property) by a trust (the HK Trust) established on behalf of Helge Krarup (Mr. Krarup) within the Plans to Mr. Krarup, a party in interest with respect to the Plans; provided that the following conditions are satisfied:

(a) the proposed sale will be a one-time cash transaction;

(b) the HK Trust will receive the current fair market value for the Property established at the time of the sale by an independent qualified appraiser;

(c) the HK Trust will pay no expenses associated with the sale;

(d) the sale will provide the HK Trust with liquidity; and

(e) only the assets in the HK Trust will be affected by the transaction.

Summary of Facts and Representations

1. The Plans were established January 1, 1989. The M/P Plan and the P/S Plan are defined contribution plans. As of March 31, 1995, the M/P Plan had 25 participants and the P/S Plan had 26 participants. As of March 31, 1995, the Plans had aggregate net assets of $944,804.67. Biscayne Bay Pilots, Inc. (Biscayne Bay) is the sponsor of the Plans.

Biscayne Bay is a Florida corporation in the business of providing support services to Biscayne Bay Pilots Association (the Association), which furnishes harbor pilot support services to ships in the Port of Miami. Once a pilot is licensed by the State of Florida, a pilot sets up a corporation of which he is the sole officer, director, shareholder and employee. Currently, there are fifteen separate pilot corporations (the Pilot Corporations), which make up the partners of the Association. Biscayne Bay and the Pilot Corporations constitute an affiliated service group under section 414(m) of the Internal Revenue Code of 1986.

Biscayne Bay and the Pilot Corporations have all adopted the Plans. The Plans' trustees are Stephen E. Nadeau, William M. Breese and John R. Fernandez, who respectively are the President, the Vice-President, and the Secretary of Biscayne Bay. Each participant in the Plans can elect to, among other things, establish their own trust within the Plans using only their funds to fund the trust. This trust contains the participant's funds within the two Plans, and the participants are required to bear the expenses associated with investing in their own trust. HK Trust is such a trust containing only the assets in Mr. Krarup's accounts in the Plans.

2. Helge Krarup, Inc. (HK Inc.) is a Florida corporation that was formed on August 26, 1981. Mr. Krarup is the sole officer, director and shareholder of HK Inc. On June 9, 1989, HK Inc. established the HK Trust as a trust within the Plans. HK Trust has one participant, Mr. Krarup. Mr. Krarup's account balances in the Plans were deposited in the HK Trust. The trustees of the HK Trust are Mr. Krarup and his wife Bente Krarup. As of December 31, 1994, the HK Trust had net assets of $565,444.

3. In December 1983, the Helge Krarup, Inc. Defined Benefit Pension Plan (the HK Plan)[4] purchased the Property from Kenneth and Eunice Stein (the Steins), who were unrelated third parties, for $245,000 plus appropriate closing costs. The Property contains a residence (the Residence) which is located on two acres of land. The HK Plan made a down payment in the amount of $40,000 and took a mortgage secured by the Property for the remaining $205,000 from the Steins. The mortgage had a duration of fifteen years (15) and an interest rate of 12% per annum. The applicant represents that accelerated payments were made under the mortgage and the mortgage was paid off by August 15, 1987. Mr. Krarup as the trustee and the sole participant of the HK Plan, made the decision to purchase the Property as a long-term investment for the HK Plan. It is represented that the Property is not adjacent to any real property owned by Mr. Krarup or any other party in interest, and that the Property has never been used by a party in interest. As of December 31, 1983, the Property

[4] Mr. Krarup was the only participant in the HK Plan.

represented in excess of 90% of the HK Plan's total assets.[5]

4. When the HK Plan was terminated, the two deeds evidencing the Property were transferred to the HK Trust on February 28, 1990. The applicant represents that there were two deeds because the Property was described on the original deed in two parcels. Accordingly, one deed was done for each parcel. The applicant states that at the time of the transfer, the Property constituted approximately 65% of the HK Trust's total assets. Currently, the Property is not encumbered by debt and is owned outright by the HK Trust.

5. The Property, located at 1510 NE Dixie Highway, Jensen Beach, Florida, was appraised on June 19, 1995 (the Appraisal). The Appraisal was prepared by Mary Ann Haskell and by Daniel K. Deighan, MAI, independent Florida state certified appraisers (the Appraisers), who are with Deighan Appraisal Associates, Inc. The Appraisers indicated that the Residence on the Property has not been adequately maintained, and as of the date of inspection there was evidence of roof leaks in both of the upstairs bedrooms and of extensive wood rot on the enclosed porch. Because of deferred maintenance and other deficiencies, the structure of the Residence is considered to be in "tear down" condition and contributes little to the overall value of the Property. The Appraisers relied primarily on the Sales Comparison approach, as supported by the Cost Approach, and determined that as of June 19, 1995, the "as is" market value of the Property was $210,000. The Appraisers stated that the Income approach was considered inapplicable due to insufficient rental data in this market.

6. Furthermore, the applicant also contacted Johnson & Johnson, a local real estate firm (the J&J Firm), regarding prospects of increasing rentals on the Property or selling the Property. In this regard, Ms. Kim Johnson of the J&J Firm, made the following observations: among other things, the Residence is very old and rundown, and any prospective purchaser would buy the Property solely for the land value and would not consider the Residence to be of any value. Furthermore, the shape of the Property is very irregular and it might be difficult to fit a large house on the Property, even though the Property is over two acres in size. In the last year in the immediate area of the Property, there has been only one purchase of a large ocean front lot, which was on the market for a significant period of time before it sold. Ms. Johnson believes that the Property could take a year or more to sell for approximately $300,000, and the real estate commission would be approximately 6% and the closing costs would be approximately 1% to be paid by the seller.

6. The applicant represents that the Property has been leased since April 1984 to unrelated third parties. The Property is currently leased under a month-to-month agreement to Kim Johnson and Chris Tyler, who are unrelated third parties, for a rental amount of $650 per month. The applicant maintains that the fair rental value of the Property was determined by establishing the rentals charged for houses of similar size and with similar amenities in the area. Because the Property has been rented, the applicant submitted a "return on investment" analysis for the Property, covering the period 1984 through 1994. Return on investment value ratios were derived by the applicant by dividing net income by the original acquisition price of the Property for each year of ownership. An average of the "return on investment" figures was determined to be approximately one percent (1%). Also, in this regard, the total expenses during the period 1984–94 sustained by the HK Trust for the Property were approximately $51,303, and the total income received by the HK Trust during this period was approximately $67,116. Therefore, the net income received by the HK Trust for the Property during 1984–94 was $15,813 ($67,116–$51,303).

7. Mr. Krarup now proposes to purchase the Property from the HK Trust in a one-time cash transaction. The applicant represents that the proposed transaction is in the best interest and protective of the HK Trust because the HK Trust will pay no expenses or commissions associated with the sale. Also, the fair market value of the Property has been determined by the independent qualified Appraisers to be $210,000. In this regard, Mr. Krarup will pay the HK Trust the current fair market value for the Property established at the time of the sale by the independent qualified Appraisers. The sale of the Property will increase the liquidity of the HK Trust's portfolio. The sale will also enable the HK Trust to sell an illiquid asset which currently represents approximately 45% of the HK Trust's total assets and which has depreciated in value over time. It is represented that because the HK Trust is a one participant trust within the Plans, no other participant in the Plans will be affected by the proposed transaction.

8. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) the proposed sale will be a one-time cash transaction;

(b) the HK Trust will receive the current fair market value for the Property established at the time of the sale by the independent qualified Appraisers;

(c) the HK Trust will pay no expenses associated with the sale;

(d) the sale will provide the HK Trust with liquidity; and

(e) only the assets in the HK Trust will be affected by the transaction.

Notice To Interested Persons

Because Mr. Krarup is the sole participant of the HK Trust, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

Society National Bank; KeyTrust Company of Ohio; Society Asset Management, Inc; and KeyCorp; Located in Cleveland, Ohio; Proposed Exemption

[Application No. D–10063]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Exemption for In-Kind Transfer of CIF Assets

If the exemption is granted, the restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply as of December 1, 1993, to the in-kind transfer of assets of plans for which Society National Bank, KeyTrust Company of Ohio, N.A., Society Asset Management, Inc., and KeyCorp or an affiliate (collectively, the Bank) serves as a fiduciary (the Client Plans), other than plans established and maintained by the Bank, that are held in certain collective investment funds maintained by the Bank (the CIFs), in exchange for shares of The Victory Portfolios (collectively, the Funds), an open-end investment company registered under the Investment Company Act of 1940 (the 1940 Act), for which the Bank acts as an investment adviser as well as a custodian, sub-administrator, and/or shareholder servicing agent, or provides some other "secondary service" as defined in Section IV(h), in connection with the termination of such CIFs, provided that the following conditions and the general conditions of Section III below are met:

(a) No sales commissions or other fees are paid by the Client Plans in connection with the purchase of Fund shares through the in-kind transfer of CIF assets and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the Funds.

(b) All or a pro rata portion of the assets of a CIF are transferred to a Fund in exchange for shares of such Fund.

(c) Each Client Plan receives shares of a Fund which have a total net asset value that is equal to the value of the Client Plan's pro rata share of the assets of the CIF on the date of the transfer, based on the current market value of the CIF's assets, as determined in a single valuation performed in the same manner at the close of the same business day, using independent sources in accordance with Rule 17a–7(b) of the Securities and Exchange Commission (SEC) under the 1940 Act and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the CIF transfers, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

(d) A second fiduciary who is independent of and unrelated to the Bank (the Second Fiduciary) receives advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure of information concerning the Funds, including:

(1) A current prospectus for each Fund in which a Client Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, any secondary services as defined in Section IV(h), and all other fees to be charged to or paid by the Client Plan and by the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why the Bank considers investing in the Fund is an appropriate investment decision for the Client Plan;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Client Plan may be invested in a Fund, and, if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, if granted, once such documents are published in the **Federal Register**.

(e) After consideration of the foregoing information, the Second Fiduciary authorizes in writing the in-kind transfer of the Client Plan's CIF assets to a corresponding Fund in exchange for shares of the Fund.

(f) For all in-kind transfers of CIF assets to a Fund following the publication of this proposed exemption in the **Federal Register**, the Bank sends by regular mail to each affected Client Plan the following information:

(1) Within 30 days after completion of the transaction, a written confirmation containing:

(i) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4);

(ii) The price of each such security involved in the transaction;

(iii) The identity of each pricing service or market-maker consulted in determining the value of such securities; and

(2) Within 90 days after completion of each in-kind transfer, a written confirmation containing:

(i) The number of CIF units held by the Client Plan immediately before the transfer, the related per unit value, and the total dollar amount of such CIF units; and

(ii) The number of shares in the Funds that are held by the Client Plan following the transfer, the related per share net asset value, and the total dollar amount of such shares.

(g) The conditions set forth in paragraphs (e), (f) and (n) of Section II below are satisfied.

Section II—Exemption for Receipt of Fees

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply as of October 1, 1995 to: (1) the receipt of fees by the Bank from the Funds for acting as an investment adviser to the Funds in connection with the investment by the Client Plans in shares of the Funds; and (2) the receipt and retention of fees by the Bank from the Funds for acting as custodian, sub-administrator and shareholder servicing agent to the Funds, as well as for providing any other services to the Funds which are not investment advisory services (i.e. "secondary services"), in connection with the investment by the Client Plans in shares of the Funds, provided that the following conditions and the general conditions of Section III are met:

(a) No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds and no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value per share at the time of the transaction, as defined in Section IV(e), and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) The Bank, including any officer or director of the Bank, does not purchase or sell shares of the Funds to any Client Plan.

(d) Each Client Plan receives a credit, either through cash or the purchase of additional shares of the Funds pursuant to an annual election made by the Client Plan, of such Plan's proportionate share of all fees charged to the Funds by the Bank for investment advisory services, including any investment advisory fees paid by the Bank to third party sub-advisors, within no more than one business day of the receipt of such fees by the Bank.

(e) For each Client Plan, the combined total of all fees received by the Bank for the provision of services to the Client Plan, and in connection with the provision of services to the Funds in which the Client Plan may invest, is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.[6]

[5] The Department notes that the decisions to transfer and hold the Property by the HK Trust, as well as the maintaining and renting of the Property by the HK Trust are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act, and the Department herein is not providing relief for any violations of Part 4 which may have arisen as a result of these fiduciary decisions. Accordingly, this exemption extends relief only for the proposed sale of the Property to Mr. Krarup.

[6] In addition, the Department notes that Section 404(a) of the Act requires, among other things, that

Continued

(f) The Bank does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions.

(g) The Client Plans are not employee benefit plans sponsored or maintained by the Bank.

(h) The Second Fiduciary receives, in advance of any initial investment by the Client Plan in a Fund, full and detailed written disclosure of information concerning the Funds, including but not limited to:

(1) A current prospectus for each Fund in which a Client Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, any secondary services as defined in Section IV(h), and all other fees to be charged to or paid by the Client Plan and by the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why the Bank may consider such investment to be appropriate for the Client Plan;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Client Plan may be invested in the Funds, and if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, if granted, once such documents are published in the **Federal Register**.

(i) After consideration of the information described above in paragraph (h), the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in each particular Fund, the fees to be paid by such Funds to the Bank, and the purchase of additional shares of a Fund by the Client Plan with the fees credited to the Client Plan by the Bank.

(j) All authorizations made by a Second Fiduciary regarding investments in a Fund and the fees paid to the Bank are subject to an annual reauthorization wherein any such prior authorization referred to in paragraph (i) shall be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (i) above (the Termination Form) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually; provided that the Termination Form need not be supplied to the Second Fiduciary pursuant to this paragraph sooner than six months after such Termination Form is supplied pursuant to paragraph (l) below, except to the extent required by such paragraph in order to disclose an additional service or fee increase. The instructions for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary; and

(2) Failure to return the Termination Form will result in continued authorization of the Bank to engage in the transactions described in paragraph (i) on behalf of the Client Plan.

(k) The Second Fiduciary of each Client Plan invested in a particular Fund receives full written disclosure, in a statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by the Bank to the Funds for secondary services (as defined in Section IV(h) below) at least 30 days prior to the effective date of such increase, accompanied by a copy of the Termination Form, and receives full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by the Bank to the Funds for investment advisory services even though such fees will be credited as required by paragraph (d) above.

(l) In the event that the Bank provides an additional secondary service to a Fund for which a fee is charged or there is an increase in the amount of fees paid by the Funds to the Bank for any secondary services resulting from a decrease in the number or kind of services performed by the Bank for such fees in connection with a previously authorized secondary service, the Bank will, at least thirty days in advance of the implementation of such additional service or fee increase, provide written notice to the Second Fiduciary explaining the nature and the amount of the additional service for which a fee will be charged or the nature and amount of the increase in fees of the affected Fund. Such notice shall be accompanied by the Termination Form, as defined in Section IV(i) below.

(m) On an annual basis, the Bank provides the Second Fiduciary of a Client Plan investing in the Funds with:

(1) A copy of the current prospectus for the Funds and, upon such fiduciary's request, a copy of the Statement of Additional Information for such Funds which contains a description of all fees paid by the Funds to the Bank;

(2) A copy of the annual financial disclosure report of the Funds in which such Client Plan is invested which includes information about the Fund portfolios as well as audit findings of an independent auditor within 60 days of the preparation of the report; and

(3) Oral or written responses to inquiries of the Second Fiduciary as they arise.

(n) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than dealings with other shareholders of the Funds.

Section III—General Conditions

(a) The Bank maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504 (a)(2) and (b) of the Act, the records referred to in paragraph (a) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1) (ii) and (iii) shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

For purposes of this proposed exemption:

(a) The term "Bank" includes Society National Bank, KeyTrust Company of Ohio, Society Asset Management, Inc., KeyCorp and any affiliate thereof as defined below in paragraph (b)(1) of this section.

(b) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "Fund" or "Funds" shall include the Victory Portfolios, or any other diversified open-end investment company or companies registered under the 1940 Act for which the Bank serves as an investment adviser and may also serve as a custodian, shareholder servicing agent, transfer agent or provide some other "secondary service" (as defined below in paragraph (h) of this Section) which has been approved by such Funds.

(e) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(f) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term "Second Fiduciary" means a fiduciary of a Client Plan who is independent of and unrelated to the Bank. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner or employee of the Bank (or is a relative of such persons) or any affiliate thereof;

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, employee of the Bank (or relative of such persons), or affiliate thereof, is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Client Plan's investment adviser, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of this section shall not apply.

(h) The term "secondary service" means a service other than an investment management, investment advisory, or similar service, which is provided by the Bank to the Funds. For purposes of this proposed exemption, the term "secondary service" will include securities lending services provided by the Bank to the Funds, but will not include any brokerage services provided to the Funds by the Bank for the execution of securities transactions engaged in by the Funds.

(i) The term "Termination Form" means the form supplied to the Second Fiduciary which expressly provides an election to the Second Fiduciary to terminate on behalf of a Client Plan the authorization described in paragraph (j) of Section II. Such Termination Form may be used at will by the Second Fiduciary to terminate an authorization without penalty to the Client Plan and to notify the Bank in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by the Bank of the form; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such sale.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of December 1, 1993, for the transactions described in Section I above, and October 1, 1995, for the transactions described in Section II above.

Summary of Facts and Representations

1. The applicants described herein are Society National Bank (SNB), a national banking association, KeyTrust Company of Ohio, N.A. (KeyTrust), Society Asset Management, Inc. (SAM), and KeyCorp and its subsidiaries, including affiliates of SNB, KeyTrust, and SAM. Specifically, the exemption request is being made on behalf of: (i) SNB as former trustee of certain collective investment funds under the 1993 Amendment and Restatement of the Plan of the Retirement Trust of the Ameritrust Company National Association (the SNB-Ameritrust Collective Trust) and the 1993 Amendment and Restatement of Declaration of Trust Establishing Society National Bank Multiple Investment Trust for Employee Benefit Trusts (the SNB Collective Trust); (ii) KeyTrust, a wholly-owned subsidiary of SNB and, effective January 1, 1995, successor to SNB's trust operations and successor trustee of SNB-Ameritrust Collective Trust and SNB Collective Trust (SNB, prior to January 1, 1995 and KeyTrust, after January 1, 1995, are hereafter referred to as either "the Bank" or "the Trustee"); (iii) SAM, an Ohio Corporation, a wholly-owned subsidiary of KeyCorp Asset Management Holdings, Inc., which is a wholly-owned subsidiary of the Bank; and (iv) KeyCorp, an Ohio Corporation of which the Bank is a wholly-owned subsidiary. KeyCorp is a bank holding company that owns directly or indirectly a number of subsidiaries, which together constitute a controlled group of corporations within the meaning of section 414(b) of the Code. Thus, KeyCorp and its various subsidiaries are included herein within the definition of the term "Bank" (see Section IV(a) above).

2. The Bank is a trustee and, primarily through SAM, is an investment manager for a number of employee benefit plans subject to Title I of the Act as well as Keogh plans and individual retirement accounts (i.e. the Client Plans). The Bank is also trustee of two employee benefit plans sponsored by the Bank (the Bank Plans). The Bank has caused these plans to invest in certain collective investment funds (i.e. the CIFs) which are maintained by the Bank as trustee of the SNB-Ameritrust Collective Trust and the SNB Collective Trust. In December, 1993, the Bank liquidated certain of the CIFs and, to the extent practicable, distributed the assets held in such CIFs to the Plans.

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a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Thus, the Department believes that the Bank should ensure, prior to any investments made by a Client Plan for which it acts as a trustee or investment manager, that all fees paid by the Funds, including fees paid to parties unrelated to the Bank and its affiliates, are reasonable. In this regard, the Department is providing no opinion as to whether the total fees to be paid by a Client Plan to the Bank, its affiliates, and third parties under the arrangements described herein would be either reasonable or in the best interests of the participants and beneficiaries of the Client Plans.

In the case of assets distributed by the CIFs to each Client Plan with respect to which an independent fiduciary had consented to the transaction, the Bank immediately used the distributed assets to purchase shares of the Funds. Before the distribution of assets from the CIFs and the closing of the purchase transactions (the Fund Transactions), the applicant states that the Bank complied with the requirements of Prohibited Transaction Exemption (PTE) 77–3, 42 FR 18734 (April 8, 1977), with respect to the Bank Plans, and PTE 77–4, 42 FR 18732 (April 8, 1977), with respect to the Client Plans.[7]

Before the Fund Transactions, the CIFs consisted of six separate collective investment funds maintained by the Bank under the SNB Collective Trust, and eleven separate collective investment funds maintained by the Bank under the SNB-Ameritrust Collective Trust. The assets used to purchase shares of the Funds in the Fund Transactions consisted of assets distributed by four of the CIFs under the SNB Collective Trust and eight of the CIFs under the SNB-Ameritrust Collective Trust.

The Bank contemplates that in the future similar transactions structured either identically to the Fund Transactions or in the form of an in-kind transfer of assets from CIFs to the Funds, with no intermediate distribution to the Client Plans, may be in the best interests of the Client Plans. In this regard, the Bank proposes to modify the manner in which it receives approval from independent fiduciaries of the Client Plans for changes in its fees and any fees received by other affiliates of the Bank from the Funds (as discussed below).

3. The Funds are a Massachusetts business trust operating as an open-end investment management company registered under the 1940 Act. The Bank, through SAM, serves as the investment adviser to each of the Funds that received assets from Plans in the Fund Transactions. The Bank receives investment advisory fees from the Funds for its investment advisory services under the terms of an investment advisory agreement adopted in accordance Section 15 of the 1940 Act. The Bank performs services for the Funds as shareholder servicing agent, sub-administrator and custodian. Both the Funds and the service agreements between the Fund and the Bank, including any fee arrangements, are described in prospectuses for the Funds.

4. The Winsbury Company is the distributor, administrator and principal underwriter of the Funds. The Winsbury Service Corporation, an affiliate of The Winsbury Company, serves as transfer agent and provides accounting services to the Funds. Neither The Winsbury Company nor The Winsbury Service Corporation are affiliates of the Bank.

The Fund Transactions

5. In December 1993, the Bank, acting as trustee or investment manager of the Plans, withdrew the assets held in the CIFs for the benefit of the Plans. For each Client Plan for which the consent of an independent fiduciary was given, the assets were then used to purchase shares of a Fund with investment objectives similar to the CIF that had distributed the assets. Each Client Plan received shares of each Fund in consideration for, and in proportion to, its share of the assets used to purchase shares of the Fund and with a value equal to the value of those assets at the time of the Fund Transactions. The CIFs from which assets were distributed, and the corresponding Fund, which has similar investment objectives, are as follows:

CIF	Fund
EB Balanced	Fund Balanced Fund.
EB Capital Appreciation Fund	Special Growth Stock Fund.
EB Equity Index Fund	Stock Index Fund.
EB Fixed Income Fund	Investment Quality Bond Fund.
EB Government Mortgage Fund	U.S. Government Income Fund.
EB Growth Equity Fund	Growth Stock Fund.
EB Intermediate Bond Fund	Intermediate Income Fund.
EB Intermediate Fixed Bond Fund	Intermediate Income Fund.
EB Small Capitalization Growth	Special Growth Stock Fund.
EB Small Capitalization Value Fund	Special Value Stock Fund.
EB. Technology Fund	Special Value Stock Fund.
EB Value Fund	Value Stock Fund.

All of the Funds, other than the U.S. Government Income Fund, were established in connection with the Fund Transactions and held no assets before the Fund Transactions.

6. The valuation of securities used to purchase shares of the Funds was implemented pursuant to purchase agreements between the Funds and the Bank (the Purchase Agreements). In accordance with the Purchase Agreements, the securities used to purchase shares of the Funds included only cash and securities that had a readily ascertainable market value. The securities were valued at their current market value in accordance with SEC Rule 17a–7(b). Under Rule 17a–7, the "current market price" for specific types of CIF securities involved in the transactions is determined as follows:

a. If the security is a "reported security" as the term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934 (the '34 Act), the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System); or, if there are no reported transactions in the Consolidated System that day, the average of the highest current independent bid and the lowest current independent offer for such security (reported pursuant to Rule 11Ac1–1 under the '34 Act), as of the close of business on the CIF valuation date.

b. If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange or, if there are no reported transactions on such exchange that day, the average of the highest current independent bid and lowest current independent offer on the exchange as of the close of business on the CIF valuation date.

c. If the security is not a reported security and is quoted in the NASDAQ system, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ as of the close of business on the CIF valuation date.

d. For all other securities, the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry from at least three independent sources as of the close of business on the CIF valuation date.

The pricing information required for securities that were either a "reported security" (as defined in SEC Rule 11Aa3–1 under the Securities Exchange Act of 1934) or traded on an exchange or quoted by the NASDAQ system, was obtained from Interactive Data Corporation, a recognized independent pricing service.[8] Securities which were not a "reported security", and were not traded on an exchange or quoted by the NASDAQ system, were priced on the date of the transaction by having the Bank's portfolio managers under the CIFs obtain bid and offer prices from three independent brokers and using the average of the highest independent bid and lowest independent offer price.[9]

The Bank represents that these valuation procedures were applied uniformly for all assets held by the CIFs. A single market value was used for each unit of the same security distributed from the CIFs. For the newly established Funds, the value determined for the assets used to purchase shares of the Funds was also used to determine the net asset value of the Funds and the pro-rated value of the shares issued to the Client Plans purchased with the assets distributed from the CIFs. Immediately following the consummation of the Fund Transactions, the value of the shares of the Funds, as so determined, held by each Client Plan was equal to the value of the assets received by the Client Plans from the CIFs immediately prior to the consummation of the Fund Transactions.

In connection with the Bank's proposal that assets be used to purchase shares of the Funds, the Bank delivered to an independent fiduciary for each Client Plan with assets invested in a CIF (i.e., a Second Fiduciary) copies of the prospectuses and summaries of supplemental information relating to the Funds. The Second Fiduciary for each Client Plan received a schedule of the rates of all trustee, investment management and other fees charged to the Client Plan by the Bank. Participation in the Fund Transactions by a Plan was conditioned upon receipt of a letter (the Consent Letter) executed by the Second Fiduciary, acknowledging receipt and review of the informational materials and approving the fees to be paid to the Bank by the Funds and the Client Plan.

In the case of Client Plans from which the Bank did not receive Consent Letters, any assets that would otherwise have been distributed by a CIF to such Plans either were retained in the CIF, if the CIF was continuing, or were liquidated and the proceeds invested in other CIFs or in other investments permitted under the terms of the related trust or investment management agreement with the Bank.

No sales commissions, loads or other fees were charged to, or paid by, any Client Plan in connection with the Fund Transactions. In addition, no redemption fees were charged to or paid by any Client Plan for the redemption of any of its shares in the Funds.

7. In consideration of its management of the Funds, SAM received investment advisory fees from the Funds that were computed daily and paid monthly based on the average daily net assets of the Funds. The portion of those fees attributable to a Client Plan were credited to the Client Plan each month as an income item and shown separately on the monthly financial statements prepared for the Client Plan by the Bank. The fees were allocated among the Client Plans invested in the Funds based on the value of the Plan's investment in each Fund, determined daily. Fees for services by the Bank were billed to each Client Plan monthly or quarterly, after the portion of SAM's investment advisory fees allocable to the Client Plan for the month or quarter were credited to the Client Plan. The Bank believes that this fee structure was consistent with the conditions required by PTE 77–4.[10]

The Bank represents that no fees or other compensation, directly or indirectly, have been received from the Funds, or from The Winsbury Company or its affiliates (Winsbury), other than: (i) The investment advisory fees paid to SAM by the Funds that were credited to the Client Plans as described above, (ii) fees for investment advisory services paid to SAM by the Funds that were based on assets of the Funds that were not attributable to the investment in the Funds by Client Plans, and (iii) fees paid to the Bank for providing administrative services as a shareholder servicing agent, custodian and sub-administrator. In this regard, the Bank has not received any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with transactions involving any shares of the Funds.

Prior to the subject exemption request, the Bank states that the rates of fees charged to or paid by a Client Plan or the Funds to the Bank in connection with the Client Plan's investment in the Funds were not changed unless an independent fiduciary of the Plan was notified of the change in advance and approved, in writing, the continuation of the Client Plan's investment in the Funds or additional purchases and sales of shares of the Funds.

Future Conversion Transactions

8. The Bank anticipates that in the future it may engage in transactions like the Fund Transactions. The Bank represents that such transactions will be structured either (i) exactly as the Fund Transactions, with assets being distributed from CIFs to Plans and then used by the Client Plans to purchase shares of the Funds, or (ii) without intermediate distribution to the Client Plans, with assets being transferred in-kind from CIFs to the Funds in exchange for shares of the Funds. In each instance, all or a pro rata portion of the assets of a CIF will be transferred to a Fund in exchange for shares of such Fund.

Prior to any conversion transaction involving a CIF, the Bank will obtain the approval of an independent fiduciary of the Plan (i.e., a Second Fiduciary), who will generally be the Client Plan's named fiduciary, trustee, or sponsoring employer. The Bank will provide the Second Fiduciary with a current

[7] PTE 77–3 permits the acquisition or sale of shares of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter, provided certain conditions are met.

PTE 77–4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that, among other things, the plan does not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment.

The Department is expressing no opinion in this proposed exemption regarding whether any of the transactions with the Funds by the Bank Plans or the Client Plans were covered by either PTE 77–3 or PTE 77–4, respectively.

[8] The applicant states that securities held by the CIFs which were priced by Interactive Data Corporation were the type of securities described under SEC Rule 17a–7(b) (1)–(3).

[9] The applicant states that securities held by the CIFs which were priced by the average between the highest bid and lowest offer prices quoted by three independent brokers were securities described under SEC Rule 17a–7(b)(4).

[10] Section II(c) of PTE 77–4, in pertinent part, permits the payment of investment advisory fees by the investment company to a plan fiduciary under the terms of an investment advisory agreement adopted in accordance with section 15 of the 1940 Act. Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan to the plan fiduciary based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company to such plan fiduciary.

prospectus for each Fund and a written statement giving full disclosure of the fee structure under which investment advisory fees received by the Bank (i.e., SAM) will be credited back to the Plan. The disclosure statement will explain why the Bank believes the investment of assets of the Plan in the Funds is appropriate. The disclosure statement will also describe, as applicable, any limitations on the Bank regarding which plan assets may be invested in shares of the Funds and, if so, the nature of such limitations.

After consideration of such information, the Second Fiduciary may authorize the Bank to invest plan assets in the Funds, to receive fees from the Funds, and to purchase additional shares of the Funds with the fees credited back to the Client Plan by the Bank. The authorization will be terminable at will by the Second Fiduciary, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination.

A form expressly providing an election to terminate the authorization (a "Termination Form"), with instructions on the use of the form, will be supplied to the Second Fiduciary no less than annually. The Termination Form will instruct the Second Fiduciary that the authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary, and that failure to return the form will result in the continued authorization of the Bank to engage in the subject transactions on behalf of the Client Plan and to receive fees therefor.

The Termination Form may be used to notify the Bank in writing to effect a termination by selling the shares held by the Client Plan requesting such termination within one business day following receipt by the Bank of the form. If, due to circumstances beyond the Bank's control, the sale cannot be executed within one business day, the Bank will complete the sale within the next business day.

For all in-kind transfers of CIF assets to a Fund following the publication of this proposed exemption in the **Federal Register**, the Bank will send by regular mail to each affected Client Plan, within 30 days after completion of the transaction, a written confirmation containing:

(i) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4);

(ii) The price of each such security involved in the transaction;

(iii) The identity of each pricing service or market-maker consulted in determining the value of such securities.

In addition to the information described above, the Bank will send, within 90 days after completion of each in-kind transfer, a written confirmation containing:

(i) The number of CIF units held by the Client Plan immediately before the transfer, the related per unit value, and the total dollar amount of such CIF units; and

(ii) The number of shares in the Funds that are held by the Client Plan following the transfer, the related per share net asset value, and the total dollar amount of such shares.

The price paid or received by a Client Plan for shares in a Fund will be the net asset value per share at the time of the transaction, as defined in Section IV(e), and will be the same price which would have been paid or received for the shares by any other investor at that time.

Current Fee Arrangement

9. Effective as of October 1, 1995, the applicant represents that the Bank has implemented a new fee structure (the Fee Structure) for the Client Plans allowing for direct credits to each Client Plan, in the form of cash or additional Fund shares, of such Plan's proportionate share of all investment advisory fees received by the Bank from the Funds. The Bank states that the Fee Structure is at least as advantageous to the Client Plans as an arrangement, as described in PTE 77–4, whereby investment advisory fees paid by the Funds to the Bank are offset against fees paid directly to the Bank by the Client Plans.

Under the Fee Structure, the Bank charges its standard fees to the Client Plans for serving as either a trustee, directed trustee, investment manager, or custodian.[11] These fees are usually billed on a quarterly basis. The annual charges for a Client Plan account are individually negotiated with the Bank based on the Bank's standard fee schedules. The Bank provides investment services to the Client Plans for which it acts as a trustee with investment discretion, including sweep services for uninvested cash balances in such Plans, under a bundled or single fee arrangement which is calculated as a percentage of the market value of the Plan assets under management. Thus, in such instances, there are no separate charges for the provision of particular services to the Client Plans. However, for Client Plans where investment decisions are directed by a Second Fiduciary, a separate charge is assessed for particular services where the Second Fiduciary specifically agrees to have the Bank provide such services to the Client Plan. With respect to sweep services, the Bank represents that such services are provided at no additional charge where the Bank exercises investment discretion for the Client Plan's assets and, in any event, are provided only if approved by a Second Fiduciary for the Client Plan after disclosure of the services to be provided.[12]

In addition, the Bank (i.e., SAM or some other affiliate as described herein) charges the Funds investment advisory fees in accordance with investment advisory agreements between SAM and the Funds. These agreements have been approved by the independent members of the Board of Directors of the Funds (the Directors) in accordance with the applicable provisions of the 1940 Act, and any changes in the fees will also be approved by the Directors. These fees are paid on a monthly basis by the Funds.

At the beginning of each month, and essentially simultaneously with the payment of the investment advisory fees by the Funds to the Bank (in no event later than the same business day), the Bank credits to each Client Plan its proportionate share of all investment advisory fees charged by the Bank (i.e., SAM or an affiliate) to the Funds, including any investment advisory fees paid by the Bank to third party sub-advisors (referred to hereafter as "the Alternative Credit Program"). The credited fees are used to acquire additional shares of the Funds on behalf of the Client Plan or are returned to the Client Plan's trust account in the form of cash, as directed by the Second Fiduciary.

The Bank retains fees received from the Funds for custody and shareholder services and will retain additional fees received in the future for other secondary services. The Bank states that

[11] The applicant represents that all fees paid by Client Plans directly to the Bank for services performed by the Bank are exempt from the prohibited transaction provisions of the Act by reason of section 408(b)(2) of the Act and the regulations thereunder (see 29 CFR 2550.408b–2). The Department notes that to the extent there are prohibited transactions under the Act as a result of services provided by the Bank directly to the Client Plans which are not covered by section 408(b)(2), no relief is being proposed herein for such transactions.

[12] See DOL Letter dated August 1, 1986 to Robert S. Plotkin, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, stating the Department's views regarding the application of the prohibited transaction provisions of the Act to sweep services provided to plans by fiduciary banks and the potential applicability of certain statutory exemptions as described therein.

such secondary services are distinct from the services provided by the Bank as trustee to a Client Plan. Trustee services rendered at the Plan-level include maintaining custody of the assets of the Client Plan (including the Fund shares, but not the assets underlying the Fund shares), processing benefit payments, maintaining participant accounts, valuing plan assets, conducting non-discrimination testing, preparing Forms 5500 and other required filings, and producing statements and reports regarding overall plan and individual participant holdings. These trustee services are necessary regardless of whether the Client Plan's assets are invested in the Funds. Thus, the Bank represents that its proposed receipt of fees for both secondary services at the Fund-level and trustee services at the Plan-level would not involve the receipt of "double fees" for duplicative services to the Client Plans because a Fund is charged for custody and other services relative to the individual securities owned by the Fund, while a Client Plan is charged for the maintenance of Plan accounts reflecting ownership of the Fund shares and other assets.[13]

The Bank represents that for each Client Plan, the combined total of all fees received by the Bank for the provision of services to the Client Plan, and in connection with the provision of services to the Funds in which the Client Plan may invest, will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.[14]

[13] The Department notes that although certain transactions and fee arrangements are the subject of an administrative exemption, a Client Plan fiduciary must still adhere to the general fiduciary responsibility provisions of section 404 of the Act. Thus, the Department cautions the fiduciaries of the Client Plans investing in the Funds that they have an ongoing duty under section 404 of the Act to monitor the services provided to the Client Plans to assure that the fees paid by the Client Plans for such services are reasonable in relation to the value of the services provided. Such responsibilities would include determinations that the services provided are not duplicative and that the fees are reasonable in light of the level of services provided.

The Department also notes that the Bank, as a trustee and investment manager for a Client Plan in connection with the decision to invest Client Plan assets in the Funds, has a fiduciary duty to monitor all fees paid by a Fund to the Bank, its affiliates, and third parties for services provided to the Fund to ensure that the totality of such fees is reasonable and would not involve the payment of any "double" fees for duplicative services to the Fund by such parties.

[14] The Department is providing no opinion in this proposed exemption as to whether the conditions required for exemptive relief under section 408(b)(2) of the Act, and the regulations thereunder (see 29 CFR 2550.408b(2), would be met for all fees received by the Bank for the provision of services to the Client Plans.

The Bank states that the Alternative Credit Program ensures that the Bank does not receive any investment advisory fees from the Funds as a result of the investment in the Funds by the Client Plans. Thus, the Fee Structure with the Alternative Credit Program essentially has the same effect in crediting the Bank's investment advisory fees received from the Funds as an arrangement allowing for an offset of such fees against investment management fees charged directly to the Client Plans. The Bank prefers the Fee Structure with the Alternative Credit Program because it allows fees for fiduciary services charged at the Plan-level to remain fixed without any adjustments to such fees based on the investment advisory fees paid by the Funds to the Bank.

10. The Bank is responsible for establishing and maintaining a system of internal accounting controls for the crediting of fees under the Alternative Credit Program. In addition, the Bank has retained the services of Ernst & Young LLP (E&Y) in Cleveland, Ohio, an independent accounting firm, to audit annually the crediting of fees to the Client Plans under this program. In this regard, the Bank states that in the future either E&Y or some other qualified independent auditor will be retained by the Bank to perform annual audits of the Alternative Credit Program (the Auditor). Such audits provide independent verification of the proper crediting of such fees to the Client Plans. Information obtained from the audits is used in the preparation of required financial disclosure reports for the Client Plans. In its annual audit of the Alternative Credit Program, the Auditor is required to: (i) review and test compliance with the specific operational controls and procedures established by the Bank for making the credits; (ii) verify on a test basis the daily credit factors transmitted to the Bank by the Funds; (iii) verify on a test basis the proper assignment of credit identification fields to the Client Plans; (iv) verify on a test basis the credits paid in total to the sum of all credits paid to each Client Plan; and (v) recompute the amount of the credits determined for selected Client Plans and certify that the credits were made to the proper Client Plan.

The Bank will correct any error identified either by the internal audit by the Bank or by the independent auditor. With respect to any shortfall in credited fees to a Client Plan involving cash credits, the Bank will make a cash payment to the Client Plan equal to the amount of the error plus interest paid at money market rates offered by the Bank for the period involved. With respect to any shortfall in credited fees involving a Client Plan where the Second Fiduciary's election was to have credited fees invested in shares of the Funds, the Bank will make a cash payment equal to the amount of the error plus interest based on the rate of return for shares of the Fund that would have been acquired. Any excess credits made to a Client Plan will be corrected by an appropriate deduction and reallocation of cash during the next payment period to reflect accurately the amount of total credits due to the Client Plan for the period involved.

11. As discussed above, the Bank currently acts as a custodian, sub-administrator, and/or shareholder servicing agent for the Funds, and anticipates providing additional "secondary services" to the Funds in the future. In this regard, the Bank represents that certain of the Funds may institute a securities lending program (the Program) which will be administered by SAM or another affiliate of the Bank. SAM, as the investment adviser for the Fund, would be responsible for negotiating the terms of the loans, selecting borrowers, and investing cash collateral. SAM would receive an additional fee for its services to the Fund in connection with the Program, subject to the supervision and approval of the Directors. The Bank, under a separate agreement or an amendment to the current custody agreement with the Fund, would agree to provide additional custodial and administrative tasks associated with the Program. The Fund would pay the Bank a fee based on the number and complexity of the tasks the Bank is required to perform in connection with the Program, that would take into account the responsibilities and expenses incurred by the Bank. As custodian for the Fund under the Program, the Bank would perform the following tasks: (i) deliver loaned securities from the Fund to borrowers; (ii) arrange for the return of loaned securities to the Fund at the termination of the loans; (iii) monitor daily the value of the loaned securities and collateral; (iv) request that borrowers add to the collateral when required by the loan agreement; and (v) provide recordkeeping and accounting services necessary for the operation of the Program. The Bank proposes to charge fees for its services to the Funds under the Program no sooner than 30 days following the issuance of a notice and Termination Form to the Second Fiduciary of each of the Client Plans invested in the participating Funds.

The Bank represents that the terms of any securities loan under the Program would comply with the conditions required for an exemption under PTE 81–6, 46 FR 7527 (January 23, 1981) as amended (see 52 FR 18754, May 19, 1987), as though the participating Fund were an employee benefit plan subject to such conditions.[15]

Therefore, the Bank believes that the interests of the Client Plans, as Fund investors, will be protected under the Program. The Bank notes that the SEC issued on May 25, 1995, a "no-action" letter in connection with the Program.

12. With respect to the receipt of fees by the Bank from a Fund in connection with any Client Plan's investment in the Fund, the Bank states that a Second Fiduciary receives full and detailed written disclosure of information concerning the Fund in advance of any investment by the Client Plan in the Fund. On the basis of such information, the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in the Fund and the fees to be paid by the Fund to the Bank. In addition, the Bank represents that the Second Fiduciary of each Client Plan invested in a particular Fund will receive full written disclosure, in a statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by the Bank to the Funds for secondary services, which are above the rate reflected in the prospectus for the Fund, at least 30 days prior to the effective date of such increase. In the event that the Bank provides an additional secondary service to a Fund for which a fee is charged or there is an increase in the amount of fees paid by the Funds to the Bank for any secondary services, resulting from a decrease in the number or kind of services performed by the Bank for such fees in connection with a previously authorized secondary service, the Bank will, at least thirty days in advance of the implementation of such additional service or fee increase, provide written notice to the Second Fiduciary explaining the nature and the amount of the additional service for which a fee will be charged or the nature and amount of the increase in fees of the affected Fund.[16] Such notice will be made separate from the Fund prospectus and will be accompanied by a Termination Form. The Second Fiduciary will also receive full written disclosure in a Fund prospectus or otherwise of any increases in the rate of fees charged by the Bank to the Funds for investment advisory services even though such fees will be credited, as required by Section II(d) above.

Any authorizations by a Second Fiduciary regarding the investment of a Client Plan's assets in a Fund and the fees to be paid to the Bank, including any future increases in rates of fees for secondary services, are or will be terminable at will by the Second Fiduciary, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. The Bank states that a Termination Form expressly providing an election to terminate the authorization with instructions on the use of the form is supplied to the Second Fiduciary no less than annually. The instructions for the Termination Form include the following information:

(a) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary; and

(b) Failure to return the form will result in continued authorization of the Bank to engage in the subject transactions on behalf of the Client Plan.

The Termination Form may be used to notify the Bank in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by the Bank of the form. The Bank states that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank will complete the sale within the next business day.

Any disclosure of information regarding a proposed increase in the rate of any fees for secondary services will be accompanied by an additional Termination Form with instructions on the use of the form as described above. Therefore, the Second Fiduciary will have prior notice of the proposed increase and an opportunity to withdraw from the Funds in advance of the date the increase becomes effective. Although the Second Fiduciary will also have notice of any increase in the rates of fees charged by the Bank to the Funds for investment advisory services, through an updated prospectus or otherwise, such notice will not be accompanied by a Termination Form since all increases in investment advisory fees will be credited by the Bank to the Client Plans and will be subject to an annual reauthorization as described above. However, if the Termination Form has been provided to the Second Fiduciary for the authorization of a fee increase, then a Termination Form for an annual reauthorization will not be provided by the Bank for that year unless at least six months has elapsed since the Termination Form was provided for the fee increase.

The Bank states that the Second Fiduciary always receives a current prospectus for each Fund and a written statement giving full disclosure of the Fee Structure prior to any investment in the Funds. The disclosure statement explains why the Bank believes that the investment of assets of the Client Plan in the Funds is appropriate. The disclosure statement also describes whether there are any limitations on the Bank with respect to which Client Plan assets may be invested in shares of the Funds and, if so, the nature of such limitations.[17]

The Bank states further that the Second Fiduciary receives an updated prospectus for each Fund at least annually and either annual or semi-annual financial reports for each Fund, which include information on the Auditor's findings as to the proper crediting of the investment advisory fees by the Bank to the Client Plan. The Bank also provides monthly reports to the Second Fiduciary of all transactions engaged in by the Client Plan, including purchases and sales of Fund shares.

13. No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds. In addition, no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds. The applicant states that the Bank does not, and will not in the future, receive any fees payable pursuant to Rule 12b-1 under the 1940 Act in connection with the transactions. The applicant states further that all other dealings between the Client Plans and the Funds, the Bank or any affiliate, are on a basis no less favorable to the Client Plans than such dealings are with the other shareholders of the Funds.

14. In summary, the applicant represents that the transactions described herein satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) the Funds provide the Client Plans with a more effective investment vehicle than collective investment funds maintained by the Bank without any increase in investment management, advisory or similar fees paid to the Bank; (b) the Bank requires annual audits by an independent accounting firm to verify the proper crediting to the Client Plans of investment advisory fees charged by the Bank to the Funds; (c) with respect to any investments in a Fund by the Client Plans and the payment of any fees by the Fund to the Bank, a Second Fiduciary receives full written disclosure of information concerning the Fund, including a current prospectus and a statement describing the Fee Structure, and authorizes in writing the investment of the Client Plan's assets in the Fund and the fees paid by the Fund to the Bank; (d) any authorizations made by a Client Plan regarding investments in a Fund and fees paid to the Bank, or any increases in the rates of fees for secondary services which are retained by the Bank, are or will be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination from the Second Fiduciary; (e) no commissions or redemption fees are paid by the Client Plan in connection with either the acquisition of Fund shares or the sale of Fund shares; (f) the Bank does not receive any fees payable pursuant to Rule 12b-1 under the 1940 Act in connection with the transactions; (g) the in-kind transfers of CIF assets into the Funds are done with the prior written approval of independent fiduciaries (i.e. the Second Fiduciary) following full and detailed written disclosure concerning the Funds; (h) each Client Plan receives shares of a Fund which have a total net asset value that is equal to the value of the Client Plan's pro rata share of the assets of the CIF on the date of the in-kind transfer, based on the current market value of the CIF's assets as determined in a single valuation performed in the same manner at the close of the same business day in accordance with independent sources and the procedures established by the Funds for the valuation of such assets; and (i) all dealings between the Client Plans, the Funds and the Bank, are on a basis which is at least as favorable to the Client Plans as such dealings are with other shareholders of the Funds.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all Second Fiduciaries of Client Plans described herein that had investments in a terminating CIF and from whom approval was sought, or will be sought prior to the granting of this proposed exemption, for a transfer of a Client Plan's CIF assets to a Fund. In addition, interested persons shall include the Second Fiduciaries of all Client Plans which are currently invested in the Funds, as of the date the notice of the proposed exemption is published in the **Federal Register**, where the Bank provides services to the Funds and received fees which would be covered by the exemption, if granted.

Notice to interested persons shall be provided by first class mail within fifteen (15) days following the publication of the proposed exemption in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs all interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

[15] PTE 81–6, as amended, permits the lending of securities that are assets of an employee benefit plan to a broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act) or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted Government securities (as defined in section 3(a)(12) of the 1934 Act) or to a bank. The conditions of PTE 81–6 require, among other things, that the plan receive from the borrower (either by physical delivery or by book entry in a securities depository) by the close of the lending fiduciary's business on the day in which the securities lent are delivered to the borrower, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a person other than the borrower or an affiliate thereof, or any combination thereof, having, as of the close of business on the preceding business day, a market value or in the case of letters of credit a stated amount, equal to not less than 100 percent of the then market value of the securities lent.

[16] With respect to increases in fees, the Department notes that an increase in the amount of a fee for an existing secondary service (other than through an increase in the value of the underlying assets in the Funds) or the imposition of a fee for a newly-established secondary service shall be considered an increase in the rate of such fees. However, in the event a secondary service fee has already been described in writing to the Second Fiduciary and the Second Fiduciary has provided authorization for the fee, and such fee was temporarily waived, no further action by the Bank would be required in order for the Bank to receive such fee at a later time. Thus, for example, no further disclosure would be necessary if the Bank had received authorization for a fee for custodial services from Plan investors and subsequently determined to waive the fee for a period of time in order to attract new investors but later charged the fee.

[17] See section II(d) of PTE 77–4 which requires, in pertinent part, that an independent plan fiduciary receive a current prospectus issued by the investment company and a full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including a discussion of whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations.

Zausner Foods Corp. Savings Plus Plan (the Plan); Located in New Holland, Pennsylvania; Proposed Exemption

[Application No. D–10064]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale by the Plan of certain units of limited partnership interests (the Units) to Zausner Foods Corp. (Zausner Foods), a party in interest with respect to the Plan, provided that the following conditions were satisfied: (1) the sale was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sale; and (3) the purchase price was the greater of: (a) the fair market value of the Units as determined by a qualified, independent appraiser, or (b) the original acquisition cost of the Units plus attributable opportunity costs.

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of December 29, 1995.

Summary of Facts and Representations

1. The Plan is a profit sharing plan sponsored by Zausner Foods. Zausner Foods is a member of a controlled group of corporations that manufactures and sells various food products, including milk-related products. As of December 31, 1994, the Plan had 1,021 participants and total assets of approximately $12,256,538. Prior to January 1, 1996, Charles Schwab Trust Co. served as the Plan trustee. Effective January 1, 1996, Dreyfus Trust Co. became the Plan trustee.

2. Among the assets of the Plan were the Units, which were 64 shares of the MLH Income Realty Partnership V (the Partnership). The Partnership was formed as of December 31, 1983 for purposes of investing in commercial, industrial, and residential real estate. The Plan acquired the Units in 1991 when the AltaDena Certified Dairy (AltaDena) Savings & Investment Plan (the AltaDena Plan) was merged into, and survived by, the Plan. The AltaDena Plan, on the recommendation of an investment counselor at Merrill Lynch, acquired at various public offerings in 1985 a total of 70 Units at a cost of $1,000 per Unit. When the Plan and the

AltaDena Plan were merged in 1991, the two owners of AltaDena, who were also AltaDena Plan participants, received a total of six of the Units as an in-kind distribution upon the termination of their employment. At the time of the merger, the Plan's trustees froze the investment in the Partnership by not permitting participants to invest in it. The applicant represents that neither Zausner Foods, AltaDena, nor any of their respective officers or directors separately invested in the Partnership and that the other investors in the Units are unrelated third parties. The Partnership had made cash distributions with respect to the 64 Units in the cumulative amount of $43,042.56 ($672.54 per Unit), through November 13, 1995.

The Partnership originally intended to lease the properties for a period of six to ten years from the date of the Partnership's formation, then sell off the appreciated properties at a gain. Investors were to receive yearly cash distributions derived from the rental properties and from the sale proceeds of the properties as they were liquidated. However, due to subsequent adverse conditions in the real estate market and the economy in general, the Partnership has been unable to sell a number of the properties for a profit. The Partnership has therefore altered its plans and continues to hold these properties.

3. The applicant represents that the Units are a highly illiquid investment for which there is a very limited secondary market.[18] Merrill Lynch provides a service to assist clients wishing to buy and sell Partnership Units. The applicant represents that at the time the Plan and the AltaDena Plan were merged in 1991, the Plan's trustees contacted Merrill Lynch in order to discuss a possible sale of the remaining 64 Units but were told that there was no interest in the investments. Recently, Joseph E. Lundy, Vice President at Merrill Lynch's Lancaster, Pennsylvania office, advised the applicant that there was no market for the Units, that no market was likely to develop in the foreseeable future, and that if a purchaser for the Units were to be found, the price obtained would be approximately $350–$390 per Unit, less than one-half the original cost of the investment.

The applicant also obtained an independent appraisal of the Units from Jack L. Hess, CPA, of Hess & Hess, Certified Public Accountants, located in Lancaster, Pennsylvania. After reviewing the pertinent data, Mr. Hess estimated that the Units' fair market value as of May 9, 1995 was $450 per Unit. Mr. Hess also noted that, as of December 31, 1994, the Units had a net asset value of $535 per Unit, a figure which is provided to Merrill Lynch by an independent valuation service on an annual basis. The appraisal states that the Partnership, which has been liquidating its holdings, expects to sell its remaining properties over the next two years. Provided that the Partnership sells its remaining properties during that period, investors may expect to receive approximately $500 per Unit in final cash distributions over the next two years. The value of the Units on the secondary market, estimated at $450 per Unit, reflects the present value of this expected benefit, as well as a trading discount.

4. On December 29, 1995, Zausner Foods purchased the Units from the Plan for $55,118.72, which was allocated on a pro rata basis among the participants' accounts that had invested in the Units. This amount represents the greater of: (a) the fair market value of the Units as determined by a qualified, independent appraiser, or (b) the Units' original acquisition cost to the AltaDena Plan plus opportunity costs attributable to the Units. Because the fair market value of the Units was less than their acquisition cost, Zausner Foods purchased the Units from the Plan for the latter amount. Taking into account the purchase price ($55,118.72) and all cash distributions ($43,042.56), the Plan received a rate of return on the Units' acquisition cost ($64,000) slightly in excess of five percent for each of the ten years that the Plan (and its predecessor) had held the Units. The sale was a one-time transaction for cash, and the Plan paid no commissions nor other expenses relating to the sale.

The applicant represents that the subject transaction was in the interests of the Plan because if the Plan had attempted a sale of the Units on the open market, the Plan would have received substantially less than the amount the applicant was willing to pay. In addition, the sale converted the Units into liquid assets that are now available for any required distributions, as well as being subject to professional management.

5. In summary, the applicant represents that the subject transaction satisfied the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (1) the sale was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sale; (3) the sale enhanced the liquidity of the assets of the Plan; and (4) the purchase price was the greater of: (a) the fair market value of the Units as determined by a qualified, independent appraiser, or (b) the original acquisition cost of the Units plus attributable opportunity costs.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons by personal delivery and by first-class mail within 10 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and/or to request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 40 days of the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

IRA Rollover FBO John W. Meisenbach (the IRA); Located in Seattle, Washington; Proposed Exemption

[Application No. D–10114]

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the IRA of certain stock (the Stock) to John W. Meisenbach, a disqualified person with respect to the IRA, provided that the following conditions are satisfied: (a) the sale is a one-time transaction for cash; (b) the IRA pays no commissions nor other expenses relating to the sale; and (c) the purchase price is the fair

[18] The Department expresses no opinion herein on whether the acquisition and holding of the Units by the Plan violated any of the provisions of Part 4 of Title I in the Act.

market value of the Stock as determined by a qualified, independent appraiser as as of the date of the sale.[19]

Summary of Facts and Representations

1. The IRA is an individual retirement account, as described under section 408(a) of the Code. The IRA was established by John W. Meisenbach, who is the sole participant. As of July 28, 1995, the IRA had total assets of approximately $7,691,680.45. The trustee of the IRA is the Delaware Charter Guarantee & Trust Company.

2. Among the assets of the IRA are 422,265 shares of closely-held Stock in Garden Botanika, Inc. (Garden Botanika), which markets cosmetic and personal care products featuring natural and herbal ingredients via a chain of company-owned specialty retail stores. The applicant represents that the IRA acquired most of the Stock from the issuer, as well as 40,000 shares from a private individual, at various times and at various prices during the period from September 9, 1993 to January 1, 1995. An IRA account statement dated July 28, 1995 lists the Stock as having an aggregate fair market value of $677,262.50.[20] The applicant represents that the total acquisition cost of the Stock was less than or equal to that amount.

3. The applicant has obtained an independent appraisal of the Stock from Dennis H. Locke, CFA, ASA, of Management Advisory Service, located in Seattle, Washington. Relying on the discounted cash flow method of valuing a business enterprise, Mr. Locke estimated that the Stock's fair market value as of August 31, 1995 was $2.10 per share (or a total of $886,756.50), based on 33,822,315 diluted shares outstanding. Mr. Locke stated that his appraisal takes into account future expectations for the performance of Garden Botanika and for business and market conditions in general, as well as a 10% discount to reflect the Stock's limited marketability.

4. Mr. Meisenbach proposes to purchase the Stock from his own IRA for the fair market value of the Stock as of the date of the sale, based on an updated independent appraisal. In light of the extreme volatility of non-publicly traded stocks, Mr. Meisenbach desires to divest the IRA of the Stock so as to protect the IRA's current asset value, create liquidity, and provide for his long-term security. The applicant, who is now 59 years of age, intends to receive distributions from the IRA soon after attaining age 59½. The sale will be a one-time transaction for cash, and the IRA will pay no commissions nor other expenses relating to the sale.

The applicant represents that the likelihood of selling such a large block of the Stock at its appraised value to an unrelated third party is questionable, due to the limited marketability of the Stock. In addition, the applicant represents that the proposed transaction is in the interests of the IRA because the sale will reduce the risk of large losses in the IRA, as well as the administrative burdens involved in valuing the IRA assets.

5. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 4975(c)(2) of the Code for the following reasons: (a) the sale will be a one-time transaction for cash; (b) the IRA will pay no commissions nor other expenses relating to the sale; (c) the sale will enhance the liquidity and protect the current value of the IRA assets; (d) the purchase price will be the fair market value of the Stock as determined by a qualified, independent appraiser as as of the date of the sale; and (e) Mr. Meisenbach is the only participant who will be affected by the proposed transaction.

Notice to Interested Persons

Because Mr. Meisenbach is the sole participant in his IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing with respect to the proposed exemption are due within 30 days of the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Floral Glass and Mirror, Inc. Profit Sharing Plan and Trust (the Plan); Located in Hauppage, New York; Proposed Exemption

[Application No. D–10144]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of 20 shares of stock of Floral Glass Industries, Inc. (FGI) by the Plan to Mr. Charles Kaplanek, Jr. (Kaplanek), a party in interest with respect to the Plan, provided the following conditions are satisfied: (a) the sale is a one-time transaction for cash; (b) the Plan pays no commissions or other expenses in connection with the transaction; (c) the Plan will receive the fair market value of the shares as determined by a qualified, independent appraiser; and (d) all terms and conditions of the sale will be at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party at the time of the sale.

Summary of Facts and Representations

1. The Plan is sponsored by Floral Glass and Mirror, Inc. (the Employer), a New York corporation. The Plan is a profit sharing plan that permits participants to direct the investment of the assets in their accounts. Participants who do not wish to direct the investments of their own accounts may, instead, have their accounts invested by the Plan trustees. The Plan has 29 participants and beneficiaries, and had assets of $3,203,599 as of March 31, 1995.

2. Kaplanek is an 80% shareholder of the Employer and is also a trustee of the Plan and a participant in the Plan. On January 1, 1981, Kaplanek's individual account (the Account) in the Plan purchased, at Kaplanek's direction, 20 shares of stock in FGI, a Connecticut corporation with its principal place of business in Cheshire, Connecticut. The 20 shares represented 100% of the outstanding shares of FGI. The purchase price of the Stock was $20,000, and the Stock was acquired from FGI.

3. The Account still owns the 20 shares, or 100% of the shares of FGI.[21] In addition, Kaplanek is 100% owner of two related corporations, Shapes and Services Limited of Bohemia, New York, and Floral Glass Industries, Inc. of East Rutherford, New Jersey, as well as 80%

[19] Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[20] The Department notes the applicant's representation that due to the limited marketability of non-publicly traded stocks, the value of the Stock is difficult to establish, and, therefore, the Stock's value appearing on the IRA account statement dated July 28, 1995 represents an approximation of its fair market value.

[21] The Department notes that under section 2510.3–101(h)(3) of the plan asset regulations, it appears that the Plan's assets include the stock of FGI and all of the underlying assets of FGI. In this regard, the applicant has not asked for relief concerning the operation of FGI, nor is the Department proposing any such relief herein.

owner of the Employer (collectively, the Corporations).

4. The Corporations intend to undergo a reorganization pursuant to which they will be consolidated and/or reorganized into a single corporation. As part of this reorganization, the 20 shares of FGI would be exchanged for shares in the surviving or reorganized corporation. Rather than leaving the 20 shares of FGI in the Plan, Kaplanek instead proposes to purchase the shares from the Account prior to the reorganization.[22]

5. FGI is a manufacturer of insulated glass. In addition, it cuts to size other glass and mirror products and distributes them to the New England region. FGI's products include several items which are registered or bear trademarks. Mr. Martin P. Randisi, President of Rand Consulting Group, Inc., an independent business evaluation and appraisal firm located in Smithtown, New York, has appraised the shares of FGI. Mr. Randisi is a member of the American Society of Appraisers and the American Institute of Certified Public Accountants. Mr. Randisi has represented that he has performed over 1,000 valuations of closely held companies since 1982. Mr. Randisi represents that both he and his firm are independent of, and unrelated to, the Employer and FGI. Mr. Randisi has concluded that as of March 31, 1995, the 20 shares of FGI stock had a value of $953,000.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 408(a) of the Act because: (a) the sale will be a one-time transaction for cash; (b) the Plan will not be required to pay any commissions, fees or other expenses in connection with the sale; (c) the Plan will receive as sales price for the shares the fair market value of the shares as determined by a qualified, independent appraiser; (d) all terms and conditions of the sale will be at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; and (e) Kaplanek's Account in the Plan is the only account to be affected by the transaction, and Kaplanek has determined that the transaction is appropriate for his Account and has determined that the transaction should be consummated.

NOTICE TO INTERESTED PERSONS: Since Kaplanek is the only Plan participant to be affected by the proposed transaction, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due within 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[22] The applicant represents that FGI is not a Plan sponsor or a contributing employer to the Plan, and that the stock of FGI does not constitute "qualifying employer securities" within the meaning of section 407(d)(5) of the Act.

Coin Acceptors, Inc. Savings and Protection Plan (the Plan); Located in St. Louis, Missouri; Proposed Exemption

[Application No. D–10183]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale by the Plan of certain publicly traded securities (the Securities) to Coin Acceptors, Inc. (Coin Acceptors), a party in interest with respect to the Plan, provided that the following conditions were satisfied: (1) the sale was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sale; (3) the purchase price was the aggregate fair market value of the Securities as of the date of the sale, as determined by the Plan's independent investment manager by reference to the closing prices for the Securities on the New York Stock Exchange (NYSE); and (4) the terms of the sale were at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of September 29, 1995.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with a 401(k) feature sponsored by Coin Acceptors. Coin Acceptors is engaged in the business of manufacturing coin and currency handling devices for use in vending machines. As of September 29, 1995 the Plan had approximately 1,000 participants and total assets of approximately $10,000,000. Effective September 29, 1995, the Mercantile Bank of St. Louis, N.A. became the Plan trustee.

2. Among the assets of the Plan were the Securities, which were 14 publicly traded securities originally purchased by the Plan on the open market. These 14 Securities were: Actava Group, Bristol Myers Squibb Co., Citicorp, Exide Corp., Grace WR & Co., MBIA, Inc., MGIC Investment Corp., Mercantile Bancorp, Inc., Merry Land & Investment Co., Pep Boys Manny Moe & Jack, Sun Microsystems, Inc., Sysco Corp., United HealthCare Corp., and Verifone, Inc. On September 29, 1995, Coin Acceptors purchased the Securities from the Plan for a total of $998,519. The Plan realized, in the aggregate, a gain of approximately $243,737 as a result of the sale.

The applicant represents that all the Plan's assets were being liquidated at that time in connection with a modification to the Plan. Effective October 1, 1995, the Plan permitted participants to direct the investment of their respective individual accounts among six mutual funds. Coin Acceptors, which maintains its own investment portfolio, was interested in purchasing 14 of the Plan's securities which were to be liquidated. The applicant represents that the purchase price of $998,519 was the aggregate fair market value of the Securities as of the date of the sale. The fair market value of the Securities was determined by Pin Oak Capital, Ltd., one of the Plan's independent investment managers, by reference to the closing prices of the Securities on the NYSE on September 28, 1995 quoted in the *Wall Street Journal* on September 29, 1995, the date of the sale. The applicant maintains, therefore, that the terms of the sale were at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party. The sale was a one-time transaction for cash, and the Plan paid no commissions nor other expenses relating to the sale. Further, the costs of this exemption application will be borne by the applicant.

The applicant represents that selling the Securities to Coin Acceptors, in lieu of selling them on the open market, was in the interests of the Plan because it saved the Plan brokerage commissions totalling at least $1,458 (based on a commission of $0.06 per share). In addition, the Plan had the use of the sale proceeds two business days earlier than if the Plan had sold the Securities on the open market through a broker.

The applicant represents they were not aware that the sale would constitute a violation of the prohibited transaction provisions of the Act until October 24, 1995, when the applicant's accountants conducted the annual audit of the Plan. Outside legal counsel was then consulted, and it was recommended that Coin Acceptors file an application for a retroactive exemption.

5. In summary, the applicant represents that the subject transaction satisfied the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (1) the sale was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sale; (3) the purchase price was the aggregate fair market value of the Securities as of the date of the sale, as determined by the Plan's independent investment manager by reference to the closing prices for the Securities on the NYSE; and (4) the terms of the sale were at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons by personal delivery and by first-class mail within 15 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and/or to request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 45 days of the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 28th day of February, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–5022 Filed 3–4–96; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–019]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

SUMMARY: NASA hereby gives notice that 3M Company of St. Paul, Minnesota 55144–1000, has requested an exclusive license to practice the invention protected by a U.S. Patent Application entitled "Anti–Icing or De–Icing Fluid," NASA Cast No. ARC–12,069–2, which was filed in the U.S. Patent and Trademark Office on January 24, 1996, and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. Ken Warsh, Patent Counsel, Ames Research Center.

DATES: Responses to this Notice must be received by (insert 60 days from the date of publication in the in the **Federal Register**).

FOR FURTHER INFORMATION CONTACT: Mr. Ken Warsh, Patent Counsel, Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035; telephone (415) 604–1592.

Dated: February 26, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–4990 Filed 3–4–96; 8:45 am]

BILLING CODE 7510–10–M

[Notice 96–023]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Air Products and Chemicals, Inc. of Allentown, Pennsylvania has requested an exclusive license to practice the invention described and claimed in a pending U.S. Patent application, entitled "Two-Phase Quality/Flow Meter," NASA Case Number KSC–11725, which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license to Air Products and Chemicals, Inc. should be sent to Ms. Beth Vrioni, Patent Attorney, John F. Kennedy Space Center.

DATES: Responses to this Notice must be received on or before May 6, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Beth A. Vrioni, John F. Kennedy Space Center, Mail Code: DE–TPO, Kennedy Space Center, FL 32899; telephone (407) 867–2544.

Dated: February 26, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–4986 Filed 3–4–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–021]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Aqua-Terra-Aqua Technologies Corporation of 1240 Valley Belt Road, Cleveland, Ohio 44131, has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,373,110, entitled "ion Exchange Polymer and Method of Making," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The field of use will be limited to removal of heavy metals from industrial waste water. Written objections to the prospective grant of a license to Aqua-Terra-Aqua Technologies Corporation should be sent to Mr. Kent Stone.

DATES: Responses to this Notice must be received by (insert 60 days from date of publication in the **Federal Register**).

FOR FURTHER INFORMATION CONTACT: Mr. Kent Stone, Patent Attorney, NASA Lewis Research Center, Cleveland, Ohio 44135; telephone (216) 433–2320.

Dated: February 26, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–4988 Filed 3–4–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–018]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Atlas Technology Corporation, of 6000 Park of Commerce, Boulevard, Suite E, Boca Raton, Florida 33487, has requested an exclusive license to practice the invention protected by U.S. Patent No. 5,355,724 entitled "Optical Broadcasting Wind Indicator," which was issued on October 18, 1994, and is assigned to the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. William J. Sheehan, Patent Counsel, Kennedy Space Center.

DATES: Response to this notice must be received by (insert 60 days from date of publication in the **Federal Register**).

FOR FURTHER INFORMATION CONTACT: Mr. William J. Sheehan, Patent Attorney, Kennedy Space Center, Mail Code DE–TPO, Kennedy Space Center, FL 32899; (407) 867–2544.

Dated: February 26, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–4991 Filed 3–4–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–022]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that The Invention Factory, P.O. Box 1033, Waitsfield, Vermont 05673, has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,373,100, entitled "Ion Exchange Polymer and Method of Making," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The field of use will be limited to removal of heavy metals from aqueous foods, including maple syrup, other than water. Written objections to the prospective grant of a license to The Invention Factory should be sent to Mr. Kent Stone.

DATES: Responses to this Notice must be received by (insert 60 days from date of publication in the **Federal Register**).

FOR FURTHER INFORMATION CONTACT: Mr. Kent Stone, Patent Attorney, NASA Lewis Research Center, Cleveland, Ohio 44135; telephone (216) 433–2320.

Dated: February 26, 1996.

Edward A. Frankle,

General Counsel

[FR Doc. 96–4987 Filed 3–4–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–024]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Lee Associates, Inc. of 313 West Shore Road, South Hero, Vermont 05486, has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,373,110, entitled "Ion Exchange Polymer and Method of Making," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The fields of use will be limited to: (i) Test kits for water purity; and (ii) recovery of precious metals for ores and electroplating processing materials. Written objections to the prospective grant of a license to Lee Associates, Inc. should be sent to Mr. Kent Stone.

DATES: Responses to this Notice must be received by (insert 60 days from date of publication in the **Federal Register**).

FOR FURTHER INFORMATION CONTACT: Mr. Kent Stone, Patent Attorney, NASA Lewis Research Center, Cleveland, Ohio 44135; telephone (216) 433–2320.

Dated: February 26, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–5112 Filed 3–4–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–017]

Notice of Prospective Patent License

AGENCY: National Aeronautics.and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Microcosm, Inc., of Annapolis Junction, Maryland, has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,485,482, entitled "Method for Design and Construction of Efficient, Fundamental Transverse Mode Selected, Diode Pumped, Solid State Lasers," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license to Microcosm, Inc. should be sent to Mr. R. Dennis Marchant, Patent Counsel, NASA Goddard Space Flight Center, Code 204, Greenbelt, Maryland 20771.

DATES: Response to this Notice must be received by (insert 60 days from date of publication in the **Federal Register**).

FOR FURTHER INFORMATION CONTACT: Mr. R. Dennis Marchant, Patent Counsel, (301) 286–7351.

Dated: February 26, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–4992 Filed 3–4–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–020]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Moen Incorporated of 15300 Al Moen Drive, North Olmstead, Ohio 44070, has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,373,110, entitled "Ion Exchange Polymer and Method of Making," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The field of use will be limited to removal of lead from drinking water. Written objections to the prospective grant of a license to Moen Incorporated should be sent to Mr. Kent Stone.

DATES: Responses to this Notice must be received by (insert 60 days from date of publication in the **Federal Register**).

FOR FURTHER INFORMATION CONTACT: Mr. Kent Stone, Patent Attorney, NASA Lewis Research Center, Cleveland, Ohio 44135; telephone (216) 433–2320.

Dated: February 26, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–4989 Filed 3–4–96; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Privacy Act of 1974; Amendment to an Existing System of Records

AGENCY: National Credit Union Administration.

ACTION: Amendment to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974 (Privacy Act), the National Credit Union Administration (NCUA or NCUA Board) is publishing amendments to the existing system of records entitled Investigative Reports Involving Any Crime or Suspected Crime against a Credit Union, NCUA (NCUA 15) and is amending appendix B to its System of Records. The changes to NCUA 15 reflect a new interagency suspicious activity reporting process, combining the criminal referral and suspicious financial transactions reporting requirements of the federal financial regulatory agencies and the U.S. Department of the Treasury (Treasury), and involving the use of a new computerized database maintained by the Financial Crimes Enforcement Network (FinCEN), of the Treasury, on behalf of these agencies and Treasury. Additional changes are made to NCUA 15 to update the system. The changes to appendix B (which applies to all of NCUA Systems of Records) updates the listing of NCUA regional offices and the states covered by each region.

EFFECTIVE DATE: The revised system will become effective without further notice on April 1, 1996, unless comments postmarked, received or posted on NCUA's Electronic Bulletin Board on or before April 1 cause a contrary decision. If based on NCUA's review of comments received, changes are made, NCUA will publish a new notice.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Special Counsel to the General Counsel, NCUA, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION: Section (e)(4) of the Privacy Act of 1974, 5 U.S.C. 552a(e)(4) (Privacy Act), requires each agency to publish a notice of the establishment of or revision to each system of records maintained by the agency. The NCUA Board is amending existing system NCUA 15 by changing its name from "Investigative Reports Involving Any Crime or Suspected Crime Against a Credit Union, NCUA" to "Investigative Reports Involving Any Crime, Suspected Crime or Suspicious Activity Against a Credit Union, NCUA." Other changes to the system are discussed below. Exemption rules promulgated pursuant to exemption (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), continue to apply for the amended system.

Certain of the changes to the system reflect an agreement between FinCEN and the NCUA Board, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the Federal Reserve Board (FRB) (the federal financial regulatory agencies) to store Suspicious Activity Reports (SAR) in electronic form in a database maintained by FinCEN and located in Detroit, Michigan. The SAR is being adopted by all federal financial regulatory agencies and by the Treasury as a replacement for the Criminal Referral Form, which has been in use by financial institutions to report suspected criminal activity by individuals to the federal financial regulatory agencies and the federal law enforcement authorities (see FRB, OCC and OTS proposed rulemakings at 60 FR 34481, July 3, 1995; 60 FR 34476, July 3, 1995; and 60 FR 36366, July 17, 1995; respectively). NCUA will be amending its criminal referral form regulation (12 CFR part 748) at a later date. Information from the Criminal Referral Form has always been included in the existing system and similar information will continue to be collected by the SAR. In addition to reports of suspected criminal activity, the SAR will also allow a credit union or other financial institution to report suspicious financial transactions under federal money laundering statutes, pursuant to Treasury regulations, (31 CFR part 103). Some of this information is currently reported on currency transaction reports required to be filed by financial institutions. Only the information collected by the SAR, and its status updates, will be located in the database maintained by FinCEN; all other information in the system will be located at the NCUA.

Pursuant to the interagency agreement between FinCEN and the federal financial regulatory agencies, FinCEN will manage a computerized database containing the SAR and status updates, which is information currently collected and/or maintained separately by each of the federal financial regulatory agencies. With regard to this database, only those records that are generated under the jurisdiction of the NCUA Board are considered to be NCUA records for purposes of the Privacy Act. Access to and use of these NCUA records by other agencies will continue to be governed by the routine uses in NCUA's System 15.

Accordingly, the "Routine Uses" element is being amended to reflect the sharing among federal financial regulatory agencies and law enforcement agencies of the information collected by the SAR and the status updates. Additionally, the "Safeguards" element is amended to add that on-line access to the computerized database maintained by FinCEN is limited to authorized individuals who have been specified by each federal financial regulatory agency and Treasury, and who have been issued a nontransferable identifier or password.

Other amendments reflect an overall update to the system including the addition of "persons participating in the affairs of a credit union" as a category of individuals covered by the system; the addition of a paragraph explaining the purpose of the system; the addition of several routine uses and record source categories; and changes in the system manager and address. The exemption for this system of records continues to be (k)(2), because the information consists of investigatory material compiled for law enforcement purposes.

The NCUA Board is also updating appendix B to its Systems of Records, to reflect correct addresses for the six NCUA regional offices and the states covered by each.

In accordance with 5 U.S.C. 552(r), a report of this amended system of records is being filed with the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget (OMB). OMB has oversight authority over agency implementation of the Privacy Act. This amended system of records will become effective on April 1, 1996, without further notice, unless the Board publishes a notice to the contrary in the **Federal Register**.

Accordingly, the Board has amended the system of records NCUA 15, newly entitled "Investigative Reports Involving Any Crimes, Suspected Crime or Suspicious Activity Against a Credit Union, NCUA", and appendix B to its Systems of Records as follows:

NCUA–15

SYSTEM NAME:

Investigative Reports Involving Any Crime, Suspected Crime or Suspicious Activity Against a Credit Union, NCUA.

SYSTEM LOCATION:

Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Computerized records of Suspicious Activity Reports (SAR), with status updates, are managed by the Financial Crimes Enforcement Network (FinCEN), Department of the Treasury, pursuant to a contractual agreement, and are stored in Detroit, Michigan. Authorized personnel at NCUA's Central Office and six regional offices have on-line access to the computerized database managed by FinCEN through individual work stations that are linked to the database central computer.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Directors, officers, committee members, employees, agents, and persons participating in the conduct of the affairs of federally insured credit unions who are reported to be involved in suspected criminal activity or suspicious financial transactions and are referred to law enforcement officials; and other individuals who have been involved in irregularities, violations of law, or unsafe or unsound practices referenced in documents received by the NCUA in the course of exercising its supervisory functions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inter- and intra-agency correspondence, memoranda and reports. The SAR contains information identifying the credit union involved, the suspected person, the type of suspicious activity involved, and any witnesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1786 and 1789.

PURPOSE(S):

The overall system serves as a NCUA repository for investigatory or enforcement information related to its responsibility to examine and supervise federally insured credit unions. The system maintained by FinCEN serves as the database for the cooperative storage, retrieval, analysis, and use of information relating to Suspicious Activity Reports made to or by the NCUA Board, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, (collectively, the federal financial regulatory agencies), and FinCEN to various law enforcement agencies for possible criminal, civil, or administrative proceedings based on known or suspected violations affecting or involving persons, financial institutions, or other entities under the supervision or jurisdiction of such federal financial regulatory agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Information in these records may be used to:

(1) Determine if any further agency action should be taken.

(2) Provide the federal financial regulatory agencies and FinCEN with information relevant to their operations;

(3) Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(4) With regard to formal or informal enforcement actions; release information pursuant to 12 U.S.C. 1786(s), which requires the NCUA Board to publish and make available to the public final orders and written agreements, and modifications thereto; and

(5) Standard routine uses as set forth in appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records will be maintained in electronic data processing systems and paper files.

RETRIEVABILITY:

Computer output and file folders are retrievable by indexes of data fields, including name of the credit union, NCUA Region, and individuals' names.

SAFEGUARDS:

Paper records and word processing discs are stored at the NCUA in lockable metal file cabinets. The database maintained by FinCEN complies with applicable security requirements of the Department of the Treasury. On-line access to the information in the database is limited to authorized individuals who have been designated by each federal financial regulatory agency and FinCEN, and each such individual has been issued a nontransferable identifier or password.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, NCUA, 1775 Duke Street, Alexandria, VA 22314–3428.

NOTIFICATION PROCEDURES:

Inquiries should be sent to the System Manager as noted above.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above.

CONTESTING RECORDS PROCEDURES:

Same as "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information received by the NCUA Board from various sources, including, but not limited to law enforcement and other agency personnel involved in sending inquiries to the NCUA Board, NCUA examiners, credit union officials, employees, and members. The information maintained by FinCEN is compiled from SAR and related historical and updating forms compiled by financial institutions, the NCUA Board, and the other federal financial regulatory agencies for law enforcement purposes.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

This system is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4) (G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

Appendix B—List of Regional Offices (Addresses and States Covered by Each Region)

I. NCUA Region I Office: 9 Washington Square, Washington Avenue Extension, Albany, NY 12205, Phone: 518–464–4180, FAX: 518–464–4195. States covered: Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont.

II. NCUA Region II Office: 1775 Duke Street, Suite 4206, Alexandria, VA 22314–3437, Phone: 703–838–0401, FAX: 703–838–0571. States covered: Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, West Virginia.

III. NCUA Region III Office: 7000 Central Parkway, Suite 1600, Atlanta, GA 30328, Phone: 404–396–4042, FAX: 404–698–8211. States covered: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina Tennessee, Virgin Islands.

IV. NCUA Region IV Office: 4225 Naperville Road, Suite 125, Lisle, IL 60532, Phone: 708–245–1000, FAX: 708–245–1016. States covered: Illinois, Indiana, Michigan, Missouri, Ohio, Wisconsin.

V. NCUA Region V Office: 4807 Spicewood Springs Road, Suite 5200, Austin, TX 78759–8490, Phone 512–482–4500, FAX: 512–482–4511. States covered: Arizona, Colorado, Iowa, Kansas, Minnesota, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming.

VI. NCUA Region VI Office: 2300 Clayton Road, Suite 1350, Concord, CA 94520, Phone: 510–825–6125, FAX: 510–486–3729. States covered: Alaska, American Samoa, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Washington.

By the National Credit Union Administration Board on this 29th day of February, 1996.

Becky Baker,

Secretary of the Board.

[FR Doc. 96– 5111 Filed 3–4–96; 8:45 am]

BILLING CODE 7535–01–U

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 4, 11, 18, and 25, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 4

Thursday, March 7

4:00 p.m.
Affirmation Session (Public Meeting)
a. Cleveland Electric Illuminating Co.—Licensee's Petition for Review of LBP–95–17
(Contact: Andrew Bates, 301–415–1963)

Friday, March 8

1:00 p.m.
Briefing by Low Level Waste Forum (LLWF) (Public Meeting)
(Contact: Jim Kennedy, 301–415–6668)
2:30 p.m.
Briefing on Design Certification Issues (Public Meeting)
(Contact: Ted Quay, 301–415–1118)

Week of March 11—Tentative

There are no meetings scheduled for the Week of March 11.

Week of March 18—Tentative

Tuesday, March 19

10:30 a.m.
Briefing on U.S. Enrichment Corporation Certification (Public Meeting)
(Contact: John Hickey, 301–415–7192)

Week of March 25—Tentative

Wednesday, March 27

10:30 a.m.
Meeting with Nuclear Safety Research Review Committee (NSRRC) (Public Meeting)
(Contact: Jose Cortez, 301–415–6596)

ADDITIONAL INFORMATION: By a vote of 3–0 on February 27, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of 'Sequoyah Fuel Corporation and General Atomics; LBP–95–18 Approving Joint Settlement with Sequoyah Fuels Corp.' and 'Yankee Atomic Electric Company (Yankee Nuclear Power Station), Docket No. 50–029'" (PUBLIC MEETING) be held on February 27, and on less than one week's notice to the public.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: February 29, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–5208 Filed 3–1–96; 11:41 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

The White House,
Washington, February 21, 1996.

Dear Mr. Speaker: In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report three rescission proposals of budgetary resources, totaling $820 million. These rescissions offset the emergency FY 1996 Defense supplemental appropriations, which support the Bosnia peace implementation force. The rescissions affect the Department of Defense.

Sincerely,

William J. Clinton

The Honorable Newt Gingrich,
Speaker of the House of Representatives.
Washington, D.C. 20515.

Note: A secret attachment to this document was not included in the original received by the Office of the Federal Register and is not published in the **Federal Register**.

Department of Defense

Research, Development, Test & Evaluation, Air Force

Of the amounts appropriated in fiscal year 1995 "Research, Development, Test & Evaluation, Air Force," $245,000,000 is hereby rescinded.

These funds are excess to requirements and are recommended for rescission to fund higher priority costs associated with the Bosnia peace implementation force.

Department of Defense

Research, Development, Test & Evaluation, Air Force

Of the amounts appropriated in fiscal year 1995 "Other Procurement, Air Force," $265,000,000 is hereby rescinded.

These funds are excess to requirements and are recommended for rescission to fund higher priority costs associated with the Bosnia peace implementation force.

Department of Defense

Research, Development, Test & Evaluation, Air Force

Of the amounts appropriated in fiscal year 1995 "Missile Procurement, Air Force," $310,000,000 is hereby rescinded.

These funds are excess to requirements and are recommended for rescission to fund higher priority costs associated with the Bosnia peace implementation force.

[FR Doc. 96–5028 Filed 3–4–96; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

USTR Announces Allocation of the Tariff-rate Quota Increase for Raw Cane Sugar

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the country-by-country allocation of the 400,000 metric ton increase in the tariff-rate quota for imported raw cane sugar for the period

that begins October 1, 1995, and ends September 30, 1996. This is in addition to the previous allocations of the tariff-rate quota of 1,417,195 mt for imported raw cane sugar.

EFFECTIVE DATE: January 17, 1996.

ADDRESSES: Inquiries may be mailed or delivered to Tom Perkins, Senior Economist, Office of Agricultural Affairs (Room 421), Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT:
Tom Perkins, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains a tariff-rate quota for imports of raw sugar. the in-quota quantity of the tariff-rate quota for the period October 1, 1995-September 30, 1996, has been increased by 400,000 metric tons by the Secretary of Agriculture, resulting in a new total of 1,817,195 metric tons, raw value.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative under paragraph (3) of Presidential Proclamation No. 6763 (60 FR 1007).

I have determined to allocate the increase in the tariff-rate quota among supplying countries or customs areas. Accordingly, the country-by-country tariff-rate quota allocations in metric tons, raw value, for raw cane sugar allowed into the United States at the in-quota quantity tariff rate for the October 1, 1995-September 30, 1996, period are as follows:

1995–96 RAW SUGAR TRQ ALLOCATION
[In Metric tons]

Country	Current fiscal year 1996 allocation	Additional allocation	New fiscal year 1996 allocation
Argentina	58,285	17,339	75,623
Australia	112,503	33,468	145,971
Barbados	9,488	2,823	12,311
Belize	14,910	4,435	19,346
Bolivia	10,844	3,226	14,069
Brazil	196,541	58,468	255,009
Colombia	32,531	9,677	42,208
Congo	7,258	0	7,258
Cote d'Ivoire	7,258	0	7,258
Costa Rica	20,332	6,048	26,380
Dominical Republic	238,561	70,968	309,528
Ecuador	14,910	4,435	19,346
El Salvador	35,242	10,484	45,726
Fiji	12,199	3,629	15,828
Gabon	7,258	0	7,258
Guatemala	65,062	19,355	84,417
Guyana	16,265	4,839	21,104
Haiti	7,258	0	7,258
Honduras	13,555	4,032	17,587
India	10,844	3,226	14,069
Jamaica	14,910	4,435	19,346
Madagascar	7,258	0	7,258
Malawi	13,555	4,032	17,587
Mauritius	16,265	4,839	21,104
Mexico	7,258	0	7,258
Mozambique	17,621	5,242	22,863
Nicaragua	28,465	8,468	36,932
Panama	39,308	11,694	51,002
Papua New Guinea	7,258	0	7,258
Paraguay	7,258	0	7,258
Peru	55,574	16,532	72,106
Philippines	182,987	54,435	237,422
South Africa	31,176	9,274	40,450
St. Kitts & Nevis	7,258	0	7,258
Swaziland	21,687	6,452	28,139
Taiwan	16,265	4,839	21,104
Thailand	18,976	5,645	24,622
Trinidad-Tobago	9,488	2,823	12,311
Uruguay	7,258	0	7,258
Zimbabwe	16,265	4,839	21,104
Total	1,417,195	400,000	1,817,195

The allocation includes the following minimum quota-holding countries: Congo Cote d'Ivoire, Gabon, Haiti, Madagascar, Mexico, Papua New Guinea, Paraguay, St. Kitts & Nevis, and Uruguay.

Michael Kantor,
United States Trade Representative.

[FR Doc. 96–4777 Filed 3–4–96; 8:45 am]
BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21789; File No. 812–9746]

Tomorrow Funds Retirement Trust, et al.

February 27, 1996.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Tomorrow Funds Retirement Trust (the "Trust"), and Weiss, Peck & Greer, L.L.C. (the "Adviser").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the Trust and beneficial interests and/or shares of any other investment company (or series thereof) that is designed to fund variable insurance products and for which the Adviser, or any of its affiliates, may serve now or in the future, as investment adviser, administrator, manager, principal underwriter or sponsor (collectively, "Insurance Products Funds") to be sold to and held by (a) variable annuity and variable life separate accounts of both affiliated and unaffiliated life insurance companies ("Participating Insurance Companies"), and (b) qualified pension and retirement plans ("Qualified Plans").

FILING DATE: The application was filed on September 6, 1995, and amended on February 20, 1996.

HEARING AND NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 25, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Jay C. Nadel, Weiss, Peck & Greer, L.L.C., One New York Plaza, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT:
Mark C. Amorosi, Attorney, or Patrice M. Pitts, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. The Trust is a series Delaware business trust which is registered under the 1940 Act as an open-end management investment company. The Trust consists of six diversified series mutual funds (collectively, the "Funds"). The Trust's initial registration statement on Form N–1A was declared effective on November 21, 1995.[1]

2. Each Fund of the Trust is authorized to offer two classes of shares. The Adviser Class of shares may be purchased only by Qualified Plans. The Institutional Class of shares may be purchased by Qualified Plans or by separate accounts of Participating Insurance Companies to serve as investment vehicles for variable annuity and variable life insurance contracts.

3. Various fees and charges are imposed by the Trust. The Tomorrow Post-Retirement Fund will pay the Adviser a monthly fee equal on an annual basis to 0.65% of its average daily net assets. The remaining Funds will each pay the Adviser a monthly fee equal on an annual basis to 0.75% of the Fund's average daily net assets. Pursuant to an administration agreement, the Adviser also will serve as administrator for each Fund for which the Adviser will receive a fee, computed daily and payable monthly, at an annual rate equal to 0.09% of each Fund's average daily net assets.

4. Applicants state that the Trust, on behalf of each Fund, has adopted a service plan pursuant to which each Fund pays service fees at an aggregate annual rate of up to 0.25% of a Fund's average daily net assets attributable to the Institutional Class shares. The service fee is intended to be compensation for Qualified Plan fiduciaries for providing personal services and/or account maintenance services to the underlying beneficial owners of the Institution Class shares. The Trust, on behalf of the applicable Fund, will make monthly payments to Qualified Plan fiduciaries based on the average net asset value of the Institutional Class shares which are attributable to the applicable Qualified Plan.

5. Shares of the Insurance Products Funds will be offered to separate accounts of other insurance companies, including insurance companies that are not affiliated with one another, to serve as the investment vehicle for various types of insurance products, which may include variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts and flexible premium variable life insurance contracts.

6. Applicants state that upon commencement of operation, each Fund of the Trust will be managed and its shares will be distributed by the Adviser which will not be affiliated with any Participating Insurance Company whose variable contracts utilize the Trust as the underlying investment. The Adviser, a Delaware limited liability company, consists of 44 general principals, one of whom is a member of the New York Stock Exchange, and certain associate principals. The Adviser, together with its wholly-owned subsidiary, Weiss, Peck & Greer Advisers, Inc., acts as investment adviser for approximately $13 billion of institutional and private investment accounts.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act.[2] The exemptions granted by Rule 6e–2(b)(15) are available only where a management investment company underlying a unit investment trust ("underlying fund") offers its shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life

[1] File Nos. 33–60841 and 811–7315.

[2] The relief provided by Rule 6e–2 is available to a separate account's investment adviser, principal underwriter, and sponsor or depositor.

insurance company." Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any affiliated or unaffiliated life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company or of any affiliated insurance company is referred to herein as "mixed funding."

2. In addition, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as "shared funding."

3. In connection with the funding of flexible premium variable life insurance contracts issued through a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act.[3] The exemptions granted by Rule 6e–3(T) are available only where a unit investment trust's underlying fund offers its shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company * * *." Therefore, Rule 6e–3(T) permits mixed funding for flexible premium variable life insurance. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible permium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts (including flexible premium variable life insurance separate accounts) of unaffiliated life insurance companies.

4. Applicants state that the relief granted by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) is not affected by the purchase of shares of an Insurance Products Fund by a Qualified Plan. Applicants note, however, that exemptive relief is requested with respect to the sale of shares to Qualified Plans because the separate accounts investing in the Insurance Products Funds are themselves investment companies seeking relief under Rules 6e–2 and 6e–3(T) and do not wish to be denied such relief if the Insurance Products Funds sell shares to Qualified Plans.

5. Applicants state that in 1989, due to changes in the tax law, underlying funds such as the Trust were afforded the opportunity to increase their asset base through the sale of shares of the Insurance Products Funds to Qualified Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the underlying assets of variable contracts. The Code provides that such contracts shall not be treated as annuity contracts or life insurance contracts for any period in which the investments are not, in accordance with regulations prescribed by the Department of the Treasury, adequately diversified. On March 2, 1989, the Department of the Treasury issued regulations which established diversification requirements for the investment portfolios underlying variable contracts. Treas. Reg. § 1.817–5 (1989). The regulations provide that, to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts. Treas. Reg. § 1.817–5(f)(3)(iii).

6. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury regulations. Applicants assert that, given the then current tax law, the sale of shares of the same investment company to both separate accounts and qualified pension and retirement plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Applicants therefore request that the Commission, under its authority in Section 6(c) of the 1940 Act, grant relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit mixed and shared funding.

8. Section 9(a) of the 1940 Act provides that is unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to any disqualification specified in Sections 9(a)(1) or 9(a)(2). Rule 6e–2(b)(15) (i) and (ii) and Rule 6e–3(T)(b)(15) (i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) participate in the management or administration of the fund.

9. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9(a), in effect, limits the monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that Rules 6e–2 and 6e–3(T) recognize that it is not necessary for the protection of investors or for the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals employed by the Participating Insurance Companies, most of whom will have no involvement in matters pertaining to an investment company within that organization. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Insurance Products Funds. Therefore, Applicants submit that there is no regulatory reason to apply the provisions of section 9(a) to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Trust as the funding medium for variable contracts.

10. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions from Sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contract owners in certain limited circumstances.

11. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that an insurance company may disregard voting instructions of its contract owners with respect to the investment of an underlying investment company or any contract between an investment company and its investment adviser when required to do so by an insurance regulatory authority.

12. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that an insurance company may disregard contract owners' voting instructions if the contract owners initiate any change in such company's investment policies or any principal underwriter or investment adviser, provided that disregarding such voting instructions is reasonable and subject to other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of each Rule.

13. Applicants state that Rule 6e–2 recognizes that variable life insurance contracts have important elements unique to insurance contracts and are subject to extensive state regulation. Applicants maintain, therefore, that, in adopting Rule 6e–2, the Commission expressly recognized that exemptions from pass-through voting requirements were necessary "to assure the solvency of the life insurer and the performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer." Applicants state that flexible premium variable life insurance contracts and variable annuity contracts are subject to substantially the same state insurance regulatory authority, and therefore, the corresponding provisions of Rule 6e–3(T) presumably were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e–2. Applicants argue that these considerations are no less important or necessary when an insurance company funds its separate accounts on a mixed and shared funds basis and that such funding does not compromise the goals of the insurance regulatory authorities or of the Commission.

14. Applicants assert that the sale of shares to Qualified Plans will not have any impact on the relief requested in this regard. Shares of the Insurance Products Funds sold to Qualified Plans will be held by the trustees of the Qualified Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"). Section 403(a) also provides that the trustee must have exclusive authority and discretion to manage and control the plan with two exceptions: (1) when the plan expressly provides that the trustee is subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the plan and not contrary to ERISA, and (2) when the authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in Qualified Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans.

15. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. Applicants note that where Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants state that the possibility, however, is no different and no greater than exists where a single insurer and its affiliates offer their insurance products in several states.

16. Applicants argue that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(15)) discussed below are designed to safeguard against any adverse effects that different state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Insurance Products Funds.

17. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company properly may disregard voting instructions of contract owners. Potential disagreement is limited be the requirement that the decision by the Participating Insurance Company to disregard voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Insurance Products Funds, to withdraw its investment in that fund and no charge or penalty will be imposed as a result of such withdrawal.

18. Applicants state that there is no reason why the investment policies of an Insurance Products Fund with mixed funding would or should be materially different from what those policies would or should be if such investment company or series thereof funded only variable annuity or only variable life insurance contracts. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants state that, assuming it were possible, the Insurance Products Funds will not be managed to favor or disfavor any particular insurer or type of contract.

19. Applicants note that no single investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. An investment company supporting even one type of

[3] The relief provided by Rule 6e–3(T) is available to a separate account's investment adviser, principal underwriter, and sponsor or depositor.

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insurance product must accommodate those diverse factors.

20. A further note that Section 817 of the Code is the only section in the Code where separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, "qualified pension or retirement plans" and separate accounts to share the same underlying management investment company. Therefore, neither the Code, the Treasury regulations nor the Revenue Rulings thereunder recognize any inherent conflicts of interest if Qualified Plans, variable separate accounts and variable life insurance separate accounts all invest in the same management investment company.

21. While there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Qualified Plans, Applicants state that the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account or the Qualified Plan is unable to net purchase payments to make the distributions, the separate account or the Qualified Plan will redeem shares of the affected Trust at their net asset value. The Qualified Plan will then make distributions in accordance with the terms of the Qualified Plan and the life insurance company will make distributions in accordance with the terms of the variable contract.

22. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans. Applicants state that the transfer agent for each Insurance Products Fund will inform each Participating Insurance Company of its share ownership in each separate account, as well as inform the trustees of the Qualified Plans of their holdings. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

23. Applicants argue that the ability of the Insurance Products Funds to sell their shares directly to Qualified Plans does not create a "senior security," as such term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as compared to a participant under a Qualified Plan. Regardless of the rights and benefits of participants and contract owners under the respective Qualified Plans and contracts, the Qualified Plans and the separate accounts have rights only with respect to their respective shares of the Insurance Products Fund. Such shares may be redeemed only at net asset value. No shareholder of any Insurance Products Fund has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

24. Finally, Applicants assert that there are no conflicts between variable contract owners of the separate accounts and participants under the Qualified Plans with respect to the state insurance commissioners' veto powers (direct with respect to variable life insurance and indirect with respect to variable annuities) over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree that there are any inherent conflicts of interest between shareholders. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one fund and invest in another fund. To accomplish such redemptions and transfers, complex, time-consuming transactions must be undertaken. One the other hand, trustees of Qualified Plans can make the decision quickly and implement the redemption of shares from an Insurance Products Fund and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, hold cash pending suitable investment. Based on the foregoing, Applicants maintain that even should there arise issues where the interests of contract owners and the interests of Qualified Plans conflict, the issues can be resolved almost immediately because trustees of the Qualified Plans can, independently, redeem shares out of the Insurance Products Fund.

25. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. These factors include the cost of organizing and operating an investment funding medium, the lack of expertise with respect to investment management and the lack of public name recognition of certain insurers as investment professionals. Applicants argue that use of the Insurance Products Funds as common investment media for variable contracts would ameliorate these concerns. Applicants submit that mixed and shared funding should benefit variable contract owners by: (a) eliminating a significant portion of the costs of establishing and administering separate funds; (b) allowing for a greater amount of assets available for investment by the Insurance Products Funds, thereby promoting economies of scale, permitting greater safety through greater diversification, and/or making the addition of new portfolios more feasible; and (c) encouraging more insurance companies to offer variable contracts, resulting in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

Applicants' Conditions

The Applicants have consented to the following conditions:

1. A majority of the Board of Trustees or Directors (each, a "Board" and referred to herein collectively as "Boards") of each Insurance Products Fund will consist of persons who are not "interested persons" thereof, as defined by Section 2(a)(19) of the 1940 Act and the Rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (i) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (ii) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. The Boards will monitor their respective Insurance Products Funds for the existence of any material irreconcilable conflict between the interests of the variable contract owners of all separate accounts investing in the Insurance Products Funds. A material irreconcilable conflict may arise for a variety of reasons, including: (a) state insurance regulatory authority action; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Insurance Products Funds are being managed; (e) a difference in voting instructions given by variable annuity and variable life insurance contract owners; (f) a decision by a Participating Insurance Company to disregard contract owner voting instructions; and (g) if applicable, a decision by a Qualified Plan to

disregard the voting instructions of Qualified Plan participants.

3. Any Participating Insurance Company, the Adviser (or any other investment adviser of the Insurance Products Funds), and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Products Fund will report any potential or existing conflicts, of which they become aware, to the Board and will be obligated to assist the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company and the Adviser to inform the Board whenever it has determined to disregard contract owner voting instructions and, if pass-through voting is applicable, an obligation by the Adviser and a Qualified Plan to inform the Board whenever it has determined to disregard Qualified Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Boards will be contractual obligations of the Adviser and all Participating Insurance Companies and Qualified Plans investing in Insurance Products Funds under their agreements governing participation therein, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the contract owners, and if applicable, Qualified Plan participants.

4. If a majority of the Board of an Insurance Products Fund, or a majority of the disinterested members of such Board, determines that a material irreconcilable conflict exists, the Adviser and the relevant Participating Insurance Companies and Qualified Plans will, at their expense and to the extent reasonably practicable (as determined by a majority of disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict. Such steps could include: (a) withdrawing the assets allocable to some or all of the separate accounts from an Insurance Products Fund or any series thereof and reinvesting such assets in a different investment medium, which may include another series of the Insurance Products Fund or another Insurance Products Fund; (b) submitting the question of whether such segregation should be implemented to a vote of all affected variable contract owners and, as appropriate, segregating the assets of any appropriate groups (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected variable contract owners the option of making such a change; and (c) establishing a new registered management investment company (or series thereof) or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the relevant Insurance Products Fund, to withdraw its separate account's investment therein, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Products Fund to withdraw its investment in such Insurance Products Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of the Adviser and all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Insurance Products Funds and these responsibilities will be carried out with a view only to the interests of the contract owners, and, if appropriate, Qualified Plan participants.

5. For purposes of condition 4, a majority of disinterested members of the applicable Board will determine whether any proposed action adequately remedies any irreconcilable material conflict, but in no event will the relevant Insurance Products Fund or the Adviser (or any other investment adviser of the Insurance Products Fund) be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by a vote of a majority of contract owners materially and adversely affected by the irreconcilable material conflict.

6. The determination by any Board of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to the Adviser, all Participating Insurance Companies and Qualified Plans.

7. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners so long as the Commission continues to interpret the 1940 Act to require pass-through voting privileges for variable contract owners. Accordingly, the Participating Insurance Companies will vote shares of an Insurance Products Fund held in their separate accounts in a manner consistent with voting instructions timely received from variable contract owners. Participating Insurance Companies will be responsible for assuring that each of their separate accounts that participates in the Insurance Products Funds calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Insurance Products Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Insurance Products Fund. Each Participating Insurance Companies will vote shares for which it has not received timely voting instructions as well as shares attributable to it in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

8. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict of interest, notifying the Adviser, Participating Insurance Companies and Qualified Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. Each Insurance Products Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Insurance Products Fund will disclose in its prospectus that: (a) shares of the Insurance Products Fund may be offered to insurance company separate accounts which fund both annuity and life

insurance contracts, and to Qualified Plans; (b) because of differences of tax treatment and other considerations, the interests of various contract owners participating in the Insurance Products Funds and the interests of Qualified Plans investing in the Insurance Products Funds may conflict; and (c) the Board will monitor its respective Insurance Products Fund for any material conflicts of interest and determine what action, if any, should be taken.

10. Each Insurance Products Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Insurance Products Fund), and, in particular, each such Insurance Products Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act), as well as with Sections 16(a) and, if applicable, Section 16(b) of the 1940 Act. Further, each Insurance Products Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. If and to the extent Rule 6e–2 and Rule 6e–3(T) are amended (or if Rule 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provisions of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Insurance Products Funds and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extend such rules are applicable.

12. No less than annually, the Adviser, the Participating Insurance Companies and Qualified Plans shall submit to the Boards such reports, materials or data as the Boards may reasonably request so that the Boards may carry out fully the obligations imposed upon them by these stated conditions. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the applicable Boards. The obligations of the Adviser, the Participating Insurance Companies and Qualified Plans to provide these reports, materials, and data to the Boards when it so reasonably requests, shall be a contractual obligation of the Adviser, the Participating Insurance Companies and Qualified Plans under the agreements governing their participation in the Insurance Products Funds.

13. If a Qualified Plan becomes an owner of 10% or more of the assets of an Insurance Products Fund, such Qualified Plan will execute a fund participation agreement with the applicable Insurance Products Fund including the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Qualified Plan's initial purchase of the shares of the Insurance Products Fund.

Conclusion

For the reasons stated above, Applicants state that the requested exemptions, in accordance with the standards of Section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5046 Filed 3–4–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36896; File No. SR–CBOE–96–05]

Self-Regulation Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Limitation of Liability of Index Reporting Authorities

February 27, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 7, 1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the IProposed Rule Change

The CBOE proposes to amend Exchange Rule 24.14, which provides for disclaimers of liability on behalf of designated index reporting authorities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 24.14, which in its present form contains four separate disclaimers of liability on behalf of four different index reporting authorities.[3] Index reporting authorities provide index values to the Exchange that serve as the basis for the various classes of index options listed and traded on the Exchange. Pursuant to the terms of the Exchange's contracts with certain index reporting authorities, the Exchange has agreed to include these specific liability disclaimers in its rules. Although the substance of each of these disclaimers is the same, they differ somewhat in their language, as reflected in the four paragraphs of existing Exchange Rule 24.14. The proposed rule change would combine the four existing disclaimers in a single paragraph in order to eliminate editorial differences among them, and add the CBOE and any other designated index reporting authorities as persons entitled to the benefit of the disclaimer.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and with Section 6(b)(5) in particular,[4] in that by

[3] In Exchange Rule 24.1(h), the CBOE defines the term "reporting authority" in respect of e particular index as the institution or reporting service designated by the Exchange as the official source for calculating the level of the index from the reported prices of the underlying securities that are the basis of the index and reporting such level.

[4] 15 U.S.C. § 78f(b)(5) (1988).

retaining and clarifying existing disclaimers of liability that have been found to satisfy statutory standards, the proposed rule change will improve the basis on which index options are listed and traded on the CBOE, which, in turn, will serve to promote just and equitable principles of trade as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the CBOE consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–05 and should be submitted by March 26, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5044 Filed 3–4–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36894; File No. SR–CBOE–96–06]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Arbitration Procedures

February 27, 1996.

Pursuant to Section 19)b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 7, 1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is approving this proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, paragraph (c), "Pre-Hearing Exchange," of CBOE Rule 18.22, "General Provisions Governing Pre-hearing Proceeding," provides that, at least ten calendar days prior to the first hearing date, all parties must serve on each other copies of documents in their possession that they intend to present at the hearing and identify witnesses they intend to present at the hearing. The CBOE proposes to amend Exchange Rule 18.22(c) to provide that at least 20 calendar days prior to the first hearing date: (1) the parties shall serve on each other copies of documents in their possession that they intend to present at the hearing; (2) the parties may provide each other and the Director of Arbitration with a list of documents that have already been produced pursuant to other provisions of CBOE Rule 18.22 in lieu of the actual documents; and (3) the parties shall serve on each other and on the Director of Arbitration a list identifying witnesses they intend to present at the hearing by name, address, and business affiliation. In addition, the CBOE proposes to amend CBOE Rule 18.22(g), "Power to Direct Appearances and Production of Documents." to clarify that arbitrators may direct the appearance of any CBOE member without resort to the subpoena process.

The text of the proposal is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements my be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to amend CBOE Rule 18.22(c) to conform the Exchange's rule to Section 20(c) of the Uniform Code of Arbitration ("Uniform Code"), as amended by the Securities Industry Conference on Arbitration ("SICA").[1] In addition, the CBOE proposes to amend CBOE 18.22(g) to clarify that arbitrators have power over members to direct appearance and produce documents without resort to the subpoena process. According to the CBOE, the proposed changes to CBOE Rule 18.22(c) have been adopted by the National Association of Securities Dealers ("NASD") and the New York Stock Exchange ("NYSE").[2]

Currently, CBOE Rule 18.22(c) requires the parties, at least ten calendar days prior to the first scheduled hearing date, to serve each other with any documents in their possession and to identify witnesses they intend to present at the hearing. The proposed amendment to Exchange Rule 18.22(c) allows parties to provide a list of documents that have been produced

[5] 17 CFR 200.30–3(a)(12) (1994).

[1] CBOE Rule 18.22(c) corresponds to SICA Uniform Code Section 20(c) (as amended January 7, 1993, and October 21, 1994).

[2] *See* Securities Exchange Act Release Nos. 36222 (September 13, 1995) 60 FR 48576 (September 19, 1995) (order approving File No. SR–NYSE–95–25); and 35525 (March 23, 1995), 60 FR 16219 (March 29, 1995) (order approving File No. SR–NASD–95–05) ("Arbitration Approval Orders").

previously to the other side, in lieu of producing the same documents again. The CBOE believes that the proposed change will provide for more efficient pre-hearing exchanges by not requiring the parties to again exchange those documents that have been produced previously. The proposal also requires that the witness list include the address and business affiliation of the witnesses identified. This will allow the parties to receive advance notice as to the background of witnesses and the location of nonparty witnesses. Finally, the proposed amendment to CBOE Rule 18.22(c) requires prehearing exhanges to occur 20 days in advance of the hearing, instead of ten days, as is presently required. The Exchange believes that this part of the proposal will serve to provide the parties with sufficient time to organize and present their cases in an efficient manner.

In addition, the CBOE proposes to amend CBOE Rule 18.22(g). Currently, CBOE Rule 18.22(g) empowers arbitrators, without resorting to the subpoena process, to direct the appearance of employees of members and associated persons of members, and order those persons, as well as member organizations, to produce records in their control. The proposed change to paragraph (g) clarifies that arbitrators have the same power over members to direct appearances and produce documents without resort to the subpoena process.

By conforming the rules of the Exchange to those of other self-regulatory organizations ("SROs"), the CBOE believes that the proposed rule change is consistent with the Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by improving the administration of an impartial arbitration forum for the resolution of disputes between members, persons associated with members, and public investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The CBOE has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act because the proposed amendments to CBOE Rule 18.22(c) have been proposed previously by other SROs and approved by the Commission.[3] The Exchange believes good cause exists for approving the proposal on an accelerated basis in order to ensure and promote uniformity in the rules governing the administration of arbitration facilities offered by the SROs.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act[4] in that the proposal is designed to promote just and equitable principles of trade, to prevent unfair discrimination between customers, issuers, brokers, or dealers, and, in general, to protect investors and the public interest. The CBOE proposes to amend Exchange Rule 18.22(c) to allow parties to: (1) Provide a list of documents that have been produced previously to the other side, instead of providing the actual documents; (2) require the list identifying witnesses to include the address and business affiliation of the witnesses listed; and (3) require pre-hearing exchanges of documents and the list of documents previously produced to occur 20 days in advance of the hearing, instead of ten days, as is presently required. The Commission believes that the proposed amendments to CBOE Rule 18.22(c) should increase the efficiency of the arbitration process by eliminating duplicative prehearing documents exchanges. In addition, the Commission believes that the proposed amendments should: (1) Assist parties in the process of preparing and organizing their cases by providing them with advance notice regarding the background of witnesses and the location of nonparty witnesses; (2) reduce the number of instances of surprise; and (3) provide parties with a more reasonable time frame in which to address last minute discovery requests.

The Commission finds that the proposed amendment to CBOE Rule 18.22(g) is designed to protect investors and the public interest by clarifying the power of arbitrators to direct the appearance of CBOE members, as well as persons employed by or associated with CBOE members, without resort to the subpoena process.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because the proposed amendments to Exchange Rule 18.22(c) are identical to rules adopted previously by other SROs.[5] The Commission notes that the proposals by the NYSE and the NASD were published for comment in the **Federal Register** and that no comments were received concerning their proposals. The Commission does not believe that the CBOE's amendments to Exchange Rule 18.22(c) raise new regulatory issues. In addition, the Commission finds good cause for approving the CBOE's amendment to Exchange Rule 18.22(g) because the amendment clarifies the power of arbitrators to direct the appearance of Exchange members without resort to the subpoena process.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 26, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–CBOE–96–06), is approved.

[3] *See* Arbitration Approval Orders, *supra* note 2.

[4] 15 U.S.C. § 78f(b)(5) (1982).

[5] *See* Arbitration Approval Orders, *supra* note 2.

[6] 15 U.S.C. § 78s(b)(2) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5045 Filed 3–4–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Augusta District Advisory Council Public Meeting

The U.S. Small Business Administration, Augusta District Advisory Council will hold a public meeting on Thursday, April 4, 1996 at 9:00 am at Androscoggin Valley Council of Governments, 125 Manley Road, Auburn, Maine, to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Roy Perry, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine 04330, (207) 622–8242.

Dated: February 27, 1996.

Bill Combs,

Associate Administrator for Office of Communication and Public Liaison.

[FR Doc. 96–5032 Filed 3–4–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 96–007]

Civil GPS Service Interface Committee Meeting Announcement

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Civil Global Positioning System (GPS) Service Interface Committee (CGSIC) will meet to discuss various issues. Agenda items include GPS Policy, interference problems, and status of GPS initiatives. This meeting is open to the public.

DATES: The General Committee meeting will meet on 19–20 March 1996, from 8:30 a.m. to 5:50 p.m. daily. The Subcommittee will meet on 21 March 1996.

ADDRESSES: The meeting will be held at the DoubleTree Hotel, 7801 Leesburg Pike, Falls Church, VA.

FOR FURTHER INFORMATION CONTACT: Rebecca Casswell, United States Coast Guard Navigation Center, at (703) 313–5930 or FAX at (703) 313–5805. The meeting agenda is available to the Electronic Bulletin Board System (BBS) at the Navigation Information Service (NIS) in Alexandria, Virginia, at (703) 313–5910. For information on the BBS, call the watchstander of NIS at (703) 313–5900.

SUPPLEMENTARY INFORMATION: The CGSIC was formed to exchange GPS information and to identify GPS issues and needs that affect the nonmilitary user (e.g. navigation, timing, and positioning). This is done in support of the DOT's Civil GPS Service Program and as a function of the Assistant Secretary for Transportation Policy's outreach program to the civil GPS Service user community. The CGSIC is open to representatives from relevant private, government, and industry user groups, both U.S. and international. The meeting is chaired by the Department of Transportation's Radionavigation Policy and Planning Staff Chief.

Dated: February 28, 1996.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 96–5058 Filed 3–4–96; 8:45 am]

BILLING CODE 4910–14–M

[CGD 96–009]

Commerical Fishing Industry Vessel Advisory Committee (CFIVAC) Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: CFIVAC will meet to discuss various issues relating to fishing industry vessel safety. The meetings are open to the public.

DATES: The CFIVAC meeting will be held on Wednesday and Thursday, April 24–25, 1996, from 8:30 a.m. to 5 p.m. daily. Persons wishing to make oral presentations or provide written material during the meeting should notify the Executive Director, listed below under **ADDRESSES,** on or before April 15, 1996.

ADDRESSES: The CFICAC meeting will be held at the Stouffer Madison Renaissance Hotel, 515 Madison Street, Seattle, Washington 98104. Written material should be submitted to CDR Adan D. Guerrero, Executive Director, Commandant (G–MOS–2), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: CDR Adan D. Guerrero, Executive Director, or LCDR Mark D. Bobal, Assistant to the Executive Director, Commandant (G–MOS–2), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–1181, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The agenda for the CFIVAC meeting will include discussion of the following topics:

(1) Seek committee input on implementation of the Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessels, (STCW–F);

(2) Committee discussion on Prevention Through People (PTP) Initiatives and how this program can update NVIC 5–86 dealing with voluntary standards for commercial fishing industry vessels;

(3) Committee discussion on fires in refrigerated holds on fish processing vessels;

(4) Committee discussion on major conversion issues for commercial fishing industry vessels;

(5) Sub—Committee working session on stability standards for commercial fishing industry vessels;

(6) Sub—Committee working sessions on updating the voluntary standards of U.S. uninspected commercial fishing vessels found in Navigational and Vessel Inspection Circular, (NVIC), 5–86.

Attendance at the meeting is open to the public. With advance notice, and at the Chairman discretion, members of the public may made oral presentations at the meeting. Persons wishing to make oral presentations should notify the Executive Director, listed above under "ADDRESSES", no later than April 22, 1996. Written material may be submitted at any time for presentation to CFIVAC.

Howver, to ensure advance distribution to each member, persons submitting written material are asked to provide 20 copies to the Executive Director no later than April 15, 1996.

Dated: February 28, 1996.

Joseph J. Angelo,

Director for Standards, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 96–5059 Filed 3–4–96; 8:45 am]

BILLING CODE 4910–14–M

[CGD 96–008]

National Offshore Safety Advisory Committee (NOSAC), Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

[7] 17 CFR 200.30–3(a)(12) (1995)

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SUMMARY: NOSAC will meet to discuss various issues relating to offshore safety. The meeting will be open to the public.

DATES: The NOSAC meeting will be held on Friday, March 29, 1996, from 9 a.m. to 3:30 p.m. Persons wishing to make oral presentations or provide written material during the meeting should notify the Executive Director, listed below under **ADDRESSES**, on or before March 15, 1996.

ADDRESSES: The NOSAC meeting will be held in Rooms 4436/4440, of the NASSIF Building, 400 7th Street, SW., Washington, DC. Written material should be sent to Captain R. L. Skewes, Executive Director, Commandant (G–MOS), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Captain R. L. Skewes, Executive Director, or Mr. Jim Magill, Assistant to the Executive Director, Commandant (G–MOS–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–0214, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. The agenda for the NOSAC will include discussion of the following topics:

(1) Revision of Subchapter "N";

(2) Implementation of Subchapter "L" on Offshore Supply Vessels (OSVs) and Liftboats;

(3) Establishment of Pipeline-free Anchorages for Mobile Offshore Drilling Units (MODUs), Liftboats and Vessels;

(4) Implementation of "Prevention Through People" in the Offshore Industry;

(5) Coordination of International Safety Management Code and Safety and Environmental Management Program for MODUs and platforms;

(6) International Maritime Organization (IMO)/International Organization of Standardization Issues;

(7) IMO Code of Safe Practice for OSVs.

Attendance at the meeting is open to the public. With advance notice, and at the Chairman's discretion, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the Executive Director, listed above under **ADDRESSES**, no later than March 28, 1996. Written material may be submitted at any time for presentation to NOSAC. However, to ensure advance distribution to each Committee member, persons submitting written material are asked to provide 20 copies to the Executive Director no later than March 15, 1996.

Dated: February 28, 1996.

Joseph J. Angelo,

Director for Standards, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 96–5061 Filed 3–4–96; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Emergency cease and desist order and notice of enforcement policy

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Emergency Cease and Desist Order and Notice of Enforcement Policy.

SUMMARY: This order and policy statement is necessary to address safety concerns arising from the interception and destruction of two U.S. civilian aircraft in international airspace north of Cuba and the unauthorized operation of U.S. aircraft in Cuban territorial airspace.

EFFECTIVE DATE: February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Peter J. Lynch, Assistant Chief Counsel for Enforcement, Enforcement Division, Office of the Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9956.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 1996, Cuban military aircraft intercepted and destroyed two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba. These aircraft posed no credible threat to Cuba's security. The President directed his Administration to take immediate steps in response to the Cuban Government's actions. Among other steps, the United States sought condemnation of Cuba's actions by the United Nations Security Council and the International Civil Aviation Organization. The President also suspended all commercial charter flights to Cuba indefinitely.

On February 27, 1996, the United Nations Security Council strongly deplored the destruction of the two civil aircraft by the Cuban air force, and requested that the International Civil Aviation Organization investigate the incident in its entirety and reports its findings to the Security Council as soon as possible.

Unauthorized operation of U.S.-registered civil aircraft in Cuban territorial airspace is prohibited by the Federal Aviation Regulations. The United States Government has issued statements warning of the serious consequences that could occur should any person conduct such operations.

Notwithstanding such advice and warnings of the United States Government and the unlawfulness of the conduct, operations without authorization in Cuban territorial airspace have occurred.

Based on the circumstance described above, I find that an emergency exists relating to safety in air commerce, and that there is an immediate need to take action for reasons of safety of flight in the vicinity of the Florida Straits and to ensure against the unauthorized entry of U.S. civil aircraft into Cuban territorial airspace. Unauthorized operation of U.S.-registered civil aircraft into the territorial airspace of the Republic of Cuba is prohibited.

Statement of Policy

Now, therefore, it is ordered that any person holding a U.S. airman certificate and/or operating U.S.-registered civil aircraft who has conducted unauthorized operations within Cuban territorial airspace Cease and desist from this unlawful activity.

It is further ordered that all persons holding U.S. airman certificates and/or operating U.S.-registered civil aircraft comply with the Federal Aviation Regulations prohibiting unauthorized operation within Cuban territorial airspace.

Enforcement Policy

Take notice that, effective immediately, any person who makes unauthorized entry into the territorial airspace of the Republic of Cuba in violation of the Federal Aviation Regulations will be subject to enforcement action to the maximum extent permitted by law, including, but not limited to the following: Immediate revocation of pilot certificate; maximum civil penalties; seizure of aircraft involved in such a violation; and appropriate judicial remedies.

(Authority: 49 U.S.C. Sections 40113(a), 44709, 46105(c), 46301, 46304(b), 46106, and 46107.)

Further, any person who operates or attempts to operate an aircraft after pilot certificate revocation, or otherwise without a valid airman certificate, is subject to criminal penalties of up to 3 years in prison, and/or fines (49 U.S.C. Section 46306(b)(7)).

Issued in Washington, DC, on February 29, 1996.

David R. Hinson,

Administrator.

[FR Doc. 96–5183 Filed 3–1–96; 10:22 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[FRA Emergency Order No. 20, Notice No. 2]

Commuter and Intercity Passenger Railroads, Including Public Authorities Providing Passenger Service, and Affected Freight Railroads; Clarification of Emergency Order Requiring Enhanced Operating Rules and Plans for Ensuring the Safety of Passengers Occupying the Leading Car of a Train With Appropriate Amendments

Introduction

On February 20, 1996, the Federal Railroad Administration (FRA) issued Emergency Order No. 20 (Notice No. 1). The order required prompt action to immediately enhance passenger train operating rules and emergency egress and to develop a more comprehensive interim system safety plan addressing cab car forward and multiple unit (MU) operations that do not have either cab signal, automatic train stop, or automatic train control systems. Subsequent to issuance of the order, FRA and the Federal Transit Administration (FTA) recognized that the original order's safety measures, while establishing requirements to abate the safety risks at issue, would benefit from refinements increasing their effectiveness. Three aspects of the original order are being refined in this notice. FRA is: (1) More sharply focusing and strengthening the provisions relating to the delay in block rule; (2) tailoring the signal calling provisions to reflect more diverse operating situations; and (3) providing more detailed guidance on the emergency egress sampling provision. FRA is also clarifying measures that apply to defective cab signal, automatic train stop (ATS) and automatic train control (ATC).

Emergency Order No. 20 generally applies to commuter and intercity passenger railroads using push-pull and MU operations where cab signal, ATS, or ATC is not in operation and trains are operating in excess of 30 miles per hour. Although enroute failures are rare events, if cab signals, ATS or ATC fail, the relevant safety measures of this order apply. The only exception would be when cab signal, ATS or ATC fail on track that is not governed by wayside signals. In those instances, adherence to existing federal standards and applicable operating rules provide a comparable level of safety. It is important to note, however, that railroads are not expected to conduct efficiency testing when cab signal, ATS, or ATC is the normal method of operation and there is an occasional failure. Therefore, railroads are not expected to interfere with normal operation of the cab signal, ATS, or ATC systems for such efficiency testing. All changes and the clarification addressed above reflect discussions that FRA and FTA held with the commuter and intercity railroads subsequent to issuance of the order.

(1) Delayed in Block

The original order required application of the delay-in-block provisions regardless of the train's location on the railroad although, in the relevant accidents that formed the basis for the order, the trains involved were operating in a block immediately preceding an interlocking or controlled point. Additionally, the original order provided no maximum speed for delayed-in-block movements other than that provided in relevant railroad rules. The FRA's refined approach will limit the order's applicability to blocks immediately preceding interlockings and controlled points and require that the train reduce speed in accordance with applicable operating rules, but in no case may speed exceed 40 miles per hour. FRA established the maximum speed of 40 miles per hour in accordance with the reduced speed imposed under its regulations addressing failure of cab signal, ATS, or ATC devices (*see* 49 CFR 236.567, 236.811). This will more clearly focus the rule on the situations intended to be addressed by the original order and ensure that the maximum reduced speed permitted where the rule applies is standardized and is based on a known standard. In other words, the maximum speed where the rule applies will be 40 miles per hour or less, depending upon the railroad's rules. FRA is also strengthening the delay-in-block rule by adding a measure requiring that appropriate signs be installed at each affected signal and at the departure end of stations. This will prevent confusion as to where the rule applies.

(2) Signal Calling

The modification to the signal calling provision reflects the reality that designated crew members will be positioned in varying locations when receiving the verbal communication identifying the signal indication. Although the initial version of the order specified a particular location on the train (i.e. in a trailing unit or car), the underlying safety concern can be satisfied by having the crew member receive and acknowledge the communication regardless of the responder's physical location on the train.

(3) Emergency Egress

The original order required but did not set parameters for testing a representative sample of emergency exits. The alteration to the emergency egress provisions requires that sampling of emergency window exits be conducted in conformity with either of two alternate methods commonly recognized for such efforts. This modification provides a degree of uniformity industry wide. These methods require sampling meeting a 95 percent confidence level that all emergency window exits operate properly (i.e., the methods do not accept a defect rate of 5 percent). Although the original order would have required testing all exits on a specific series or type of car if one such car had a defective window exit, the amended order permits the use of these commonly accepted sampling techniques to determine how many additional windows in test. In general, these principles require that the greater the percentage of windows initially found defective, the greater the percentage of windows that will have to be tested.

In addition, FRA has modified the emergency egress portion of the order to clarify that the exterior marking requirement applies to those windows that may be employed for access by emergency responders, which may be windows other than, or in addition to, those designed for emergency egress for passengers. In addition, FRA has modified the interim system safety plan portion of the order to require discussion of the railroad's programs and plans for liaison with and training of emergency responders with respect to emergency access to passengers. The original order required discussion only of methods used to inform passengers of the location and method of emergency exits.

Finding and Order

FRA concludes that certain current conditions and practices on commuter and intercity passenger railroads pose an imminent and unacceptable threat to public and employee safety. Of greatest concern are push-pull and MU operations lacking the protection

provided by cab signal, automatic train stop, or automatic train control systems. Based on the matters discussed in Notice No. 1 of this order, I found that the unsafe conditions discussed there create an emergency situation involving a hazard of death or injury to persons. While I continue to find an emergency situation to exist, I have concluded that certain modifications to the order are necessary. For the convenience of those subject to this order, I have set forth here all of its terms, as amended. Accordingly, pursuant to the authority of 49 U.S.C. § 20104, delegated to me by the Secretary of Transportation (49 CFR § 1.49), it is hereby ordered that each commuter and intercity passenger railroad, and any other entity (*e.g.*, freight railroads over whose lines affected passenger operations are conducted) whose actions are necessary to effectuate the directives in this order, take the following actions:

(1) Delayed-in-Block Rule

Note: This rule applies to all push-pull and MU operations unless cab signal, automatic train stop, or automatic train control is in operation, speeds do not exceed 30 m.p.h., or within yard or terminal limits as specified for this purpose by the railroad.

- (A) On March 4, 1996, at 12:01 a.m., have in effect, publish in its code of operating rules, and comply with a rule that requires: If a passenger train operating in the block immediately preceding an interlocking or controlled point stops for any reason, or its speed is reduced below 10 m.p.h., the train shall proceed under the reduced speed set forth in applicable operating rules governing such circumstances and be prepared to stop before passing the next signal. In no event shall this reduced speed exceed 40 m.p.h., although lower speeds are permissible. The train must maintain the prescribed reduced speed until the next wayside signal is clearly visible and that signal displays a proceed indication. A copy of the rule will be provided to the FRA Office of Safety Assurance and Compliance in care of James T. Schultz, Staff Director, Operating Practices.
- (B) Within 30 days of issuance of the railroad's rule, a railroad operating supervisor shall personally contact each engineer and conductor in passenger service and inform them in a face-to-face meeting of the requirements of that rule. Such briefing shall be documented and such documentation shall be available for FRA review upon request, including date, time, location, crew members contacted, and supervisor making the contact.
- (C) Within 60 days of issuance of the railroad's rule, each engineer/conductor in such passenger service shall receive an unannounced operational ("efficiency") test on the rule which requires a full stop at the signal ahead; and, within 90 days of rule publication, an on-board operational monitoring ride shall be conducted by an operating supervisor of the railroad to ensure a complete understanding of rule provisions. Such tests and operational monitoring checks shall be documented and such documentation shall be available for FRA review upon request, including date, time, location, crew members involved, and supervisor making the test/monitoring ride.
- (D) The railroad's program of operational tests and inspections under 49 CFR Part 217 shall be revised as necessary to include this rule, and shall specifically include a minimum of two such tests per year for each passenger engineer.
- (E) Within 30 days of issuance of the railroad's rule, an appropriate qualifying appurtenance shall be affixed to each signal governing the approach to an interlocking or controlled point signal to serve as a visual reminder to the engineer. Appropriate signage shall be displayed at the departure end of passenger stations located in the block immediately preceding interlockings or controlled points.

(2) Crew Communications Rule

Note: This rule applies to all push-pull and MU operations unless cab signal, automatic train stop, or automatic train control is in operation, speeds do not exceed 30 m.p.h., or within yard or terminal limits as specified for this purpose by the railroad.

- (A) On March 4, 1996, at 12:01 a.m., have in effect, publish in its operating rules, and comply with a rule that requires: A crew member located in the operating cab of a controlling locomotive, cab car, or MU car, shall have means to communicate orally and shall communicate the indication and location of each wayside signal affecting the movement of the train as soon as the signal becomes visible, for all signals which require either (1) that the train be prepared to stop at the next wayside signal, or (2) that the train be prepared to pass the next wayside signal at restricted speed. In multiple track territory, the crew member shall include the affected track number. A copy of the rule shall be provided to the FRA Office of Safety Assurance and Compliance in care of James T. Schultz, Staff Director, Operating Practices.
- (B) A designated crew member shall immediately acknowledge the transmission, and confirm the information to the crew member(s) on the controlling locomotive by repeating the message. If the designated crew member fails to acknowledge the communication, the engineer must ascertain at the next scheduled stop why the message is not being confirmed. If necessary due to radio equipment failure, alternative means shall be established by the operating crew (*e.g.*, via intercom, cellular telephone, etc.) to accomplish the procedure.
- (C) If the engineer fails to control the train movement in accordance with either a wayside signal indication or other restrictions imposed upon the train, the designated crew member shall at once communicate with and caution the engineer regarding the restriction, and, if necessary, take appropriate action to ensure the safety of the train, including stopping the movement if appropriate.
- (D) Within 30 days of the issuance of the railroad's rule, a railroad operating supervisor shall personally contact each engineer and conductor in passenger service and inform them in a face-to-face meeting of the requirements of this rule. Such briefing shall be documented and such documentation shall be available for FRA review upon request, including date, time, location, crew members contacted, and supervisor making the contact.
- (E) Within 60 days of the issuance of the railroad's rule, each engineer/conductor in such passenger service shall receive an unannounced operational "efficiency" test on the rule; and, within 90 days of rule publication, an on-board operational monitoring ride shall be conducted by an operating supervisor of the railroad to ensure a complete understanding of rule provisions. Such tests and operational monitoring checks shall be documented and such documentation shall be available for FRA review upon request, including date, time, location, crew members involved, and supervisor making the test/monitoring ride.
- (F) The railroad's program of operational tests and inspections under 49 CFR Part 217 shall be revised as necessary to include this rule, and shall specifically include a minimum of two such tests per year for each passenger engineer.

(3) Emergency Egress: Marking and Inspecting Exits

- (A) No later than April 20, 1996, ensure that each emergency exit location is marked inside the car for passenger and crew information. Markings for egress from inside the car shall be accompanied by clear and legible instructions for operation of the exit. Also, clear markings shall also be provided on the exterior of each car indicating which windows may be employed for access by emergency responders. All such markings must be clearly visible and legible at egress locations. This paragraph does not require action where reasonably conspicuous and fully legible markings and instructions already exist.
- (B) Immediately begin, and by April 20 complete, a program to test a representative sample of emergency window exits on cars in its fleets to verify proper operation. Sampling must be conducted to meet a 95% confidence level and in accordance with Military Standard MIL-STD–105(D) Sampling for Attributes or American National Standards Institute ANSI-ASQC Z1.4–1993 Sampling Procedures for Inspections by Attributes. Defective units will be repaired before the car is returned to service. Railroads must report to FRA when such action is necessary, and shall include a timetable for window inspection and replacement on the car series to remedy the problem in the most expeditious manner.
- (C) Records of the date, car number, and verification of proper exit operation shall be maintained and available for FRA review upon request. Each railroad shall also verify emergency exit operation as part of routine vehicle maintenance cycles.

(4) Interim System Safety Plans

Each authority operating or contracting for the operation of push-pull, EMU or DMU service (including Amtrak) shall, not later than April 5, 1996, submit to FRA an interim system safety plan for the purpose of enhancing the safety of such operations. In developing such plans, the authority shall provide opportunity for the riding public and designated representatives of railroad employees to comment on proposed actions that may affect the quality of service, including passenger safety.

The plan shall address the following hazards associated with passenger occupancy of lead units:

- Train-to-train collisions.
- Derailments giving rise to the hazard of impact with fixed structures.
- Collisions with heavy vehicles at highway-rail crossings.

The plan shall take into consideration the overall safety of all passengers and crew members and shall, at a minimum, address the following opportunities for risk reduction:

(A) *Use of cab car/MU car.* The authority shall specify the circumstances under which occupancy of a cab or MU car in the lead position is permitted, by route and train assignment. The authority shall propose or report appropriate modifications in such practices, taking into consideration service needs (*e.g.*, equipment capacity, passenger loadings) and safety issues (*e.g.*, train densities, method of operation, availability of cab signals and automatic control, issues related to standing passengers, grade crossing exposure, and other relevant factors).

(B) *Operating rules.* The authority shall review railroad operating rules and practices pertinent to the hazards listed above to determine if further enhancements in safety are warranted and advise FRA as to what action is necessary to enhance the level of safety. Changes in existing rules shall be specified. In conducting this review, the operating authority shall analyze the measures imposed in sections 1 and 2 of this order and may propose alternative approaches that ensure the same enhancements in safety associated with those measures.

(C) *Adverse conditions.* In conducting the review of railroad operating rules and practices, consideration shall be given to adverse or unusual operating conditions such as weather (*e.g.*, fog, heavy rain or snow, flooding, etc.).

(D) *Short-term technology enhancements.* The authority shall consider short-term enhancements in technology that may improve the safety of train operations, such as use of alerting devices, equipping of additional locomotives with cab signal/ATC apparatus (where in effect on the territory), or other available enhancements to enhance engineer performance or provide warning of operation in excess of authority provided by the wayside signal system. In addition, the authority shall consider whether the installation of additional signals on any particular line would appreciably reduce the risk of train collisions.

(E) *Crew management.* The authority shall review crew management practices in light of contemporary literature regarding shift work and cumulative fatigue to determine if the alertness and performance of employees can be promoted by changes in those practices. Special attention shall be given to the issue of night split shifts.

(F) *Highway-rail grade crossings.* The authority shall review risks to passengers associated with occupancy of cab or MU cars in the lead while passing over highway-rail crossings, particularly crossings utilized by heavy vehicles and vehicles transporting hazardous materials, and shall address measures that can reduce these risks.

(G) *Emergency exit notification.* The authority shall review methods it uses, in addition to marking emergency exits, to inform passengers of the location and operation of those exits, such as flyers dropped on seats, announcements to passengers, explanations on the face of passenger tickets, etc. The authority shall specify any plans it has to increase passenger awareness of the location and operation of emergency exits. The authority shall also discuss its plans for liaison with and training of emergency responders with respect to emergency access to passenger cars.

Upon receipt of plans responsive to the above-reference requirements, the Administrator, in consultation with the FTA Administrator, will determine whether other mandatory action appears necessary to address hazards associated with the subject rail passenger service.

Relief

Petitions for special approval to take actions not in accordance with this order may be submitted to the Associate Administrator for Safety, who shall be authorized to dispose of those requests without the necessity of amending this order. A copy of this petition should be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

Penalties

Any violation of this order shall subject the person committing the violation to a civil penalty of up to $20,000. 49 U.S.C. §§ 21301. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. § 20112.

Effective Date and Notice to Affected Persons

The amendments to this order shall take effect at 12:01 a.m. on March 4, 1996. The original order would have required the railroad to have its revised operating rules on delay in block and crew communications to be in place by March 2. The additional two days granted here is intended to ensure that it is feasible to revise, issue, and implement the revised rules by Monday, March 4. Other deadlines (i.e., for compliance with the emergency egress and interim system safety plan requirements) are not changed, but actual dates have been inserted to avoid confusion about how to count the days allotted for certain tasks. This notice will be published in the **Federal Register** as soon as possible. Prior to publication, copies of this notice will be delivered by overnight mail or facsimile to the affected passenger railroads, public authorities, and railroad labor organizations.

Review.

Opportunity for formal review of this Emergency Order will be provided in accordance with 49 U.S.C. § 20104(b) and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR Part 211. *See* 49 CFR §§ 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, D.C. on February 29, 1996.

Jolene M. Molitoris,

Administrator.

[FR Doc. 96–5216 Filed 3–1–96; 2:06 pm]

BILLING CODE 4910–60–P

National Highway Traffic Safety Administration

Announcing the Fourteenth Meeting of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the fourteenth meeting of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The Committee was established in accordance with the provisions of the Federal Advisory Committee Act to obtain independent advice on motor vehicle safety research. Discussions at this meeting will include specific topics in NHTSA's Crashworthiness, Crash Avoidance and Behavioral Research research programs.

DATE AND TIME: The meeting is scheduled from 9:00 a.m. to 5:00 p.m. on Wednesday, March 20, 1996.

ADDRESSES: The meeting will be held in Room 6244–48 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for motor vehicle safety research. The MVSRAC will provide information, advice and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

The meeting is open to the public, but attendance may be limited due to space availability. Participation by the public will be determined by the Committee Chairperson.

A public reference file (Number 88–01) has been established to contain the products of the Committee and will be open to the public during the hours of 9:30 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street, SW., Washington, DC 20590, telephone: (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Coleman, Office of Research and Development, 400 Seventh Street, SW., Room 6206, Washington, DC 20590, telephone: (202) 366–1537.

Issued on: February 28, 1996.

William A. Boehly,

Chairperson, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 96–5086 Filed 3–4–96; 8:45 am]

BILLING CODE 4910–59–P

Research and Development Programs Meeting Agenda

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice provides the agenda for a public meeting at which the National Highway Traffic Safety Administration (NHTSA) will describe and discuss specific research and development projects.

DATES AND TIMES: As previously announced, NHTSA will hold a public meeting devoted primarily to presentations of specific research and development projects on March 12, 1996, beginning at 1:30 p.m. and ending at approximately 5:00 p.m.

ADDRESSES: The meeting will be held at the Royce Hotel—Detroit Metro Airport, 31500 Wick Road, Romulus, MI 48174.

SUPPLEMENTARY INFORMATION: This notice provides the agenda for the twelfth in a series of public meetings to provide detailed information about NHTSA's research and development programs. This meeting will be held on March 12, 1996. The meeting was announced on February 12, 1996 (61 FR 5438). For additional information about the meeting consult that announcement.

Starting at 1:30 p.m. and concluding by 5:00 p.m., NHTSA's Office of Research and Development will discuss the following topics:

- Crash test dummy component development including agency plans and status regarding refinements to the Hybrid III dummy,
- Preliminary rearend collision avoidance system guidelines and pedestrian detection devices for school bus safety,
- Status and update on agency efforts for upgraded side impact protection,
- Status and plans for 1996 for the National Accident Sampling System Crashworthiness Data System (NASS CDS), and
- Online tracking system for NHTSA research projects—status and update of efforts to present information on NHTSA's ongoing research to the public.

NHTSA has based its decisions about the agenda, in part, on the suggestions it received by February 22, 1996, in response to the announcement published February 12, 1996.

As announced on February 12, 1996, in the time remaining at the conclusion of the presentations, NHTSA will provide answers to questions on its research and development programs, where those questions have been submitted in writing by 4:15 p.m. on March 4, 1995, to William A. Boehly, Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Washington, DC 20590. Fax number: 202–366–5930.

FOR FURTHER INFORMATION CONTACT: Rita I. Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–4862. Fax number: 202–366–5930.

Issued: February 28, 1996.

William A. Boehly,

Associate Administrator for Research and Development.

[FR Doc. 96–5087 Filed 3–4–96; 8:45 am]

BILLING CODE 4910–59–P

Research and Special Programs Administration

[Notice No. 96–4]

Information Collection Activities; Comment Request

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Research and Special Programs Administration invites comments on certain information collections, pertaining to hazardous materials transportation safety and oil spill prevention and response planning, for which RSPA intends to request approval from the Office of Management and Budget.

DATES: Interested persons are invited to submit comments on or before May 6, 1996.

ADDRESSES: Please address written comments to Dockets Unit (DHM–30), Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (202) 366–5046. Comments may also be faxed to (202) 366–3753. Comments should identify this notice number (96–4) and the appropriate Office of Management and Budget (OMB) Control Number(s). Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the notice number. Public information may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except holidays.

Requests for a copy of an information collection should be directed to Jackie Smith, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

FOR FURTHER INFORMATION CONTACT: Jackie Smith, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Office of Management and Budget (OMB) regulations (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that RSPA is submitting to OMB for extension or reinstatement, as appropriate. These collections are contained in (1) 49 CFR 107, Hazardous Materials Program Procedures; (2) 49 CFR 110, Hazardous Materials Public Sector Training and Planning Grants; (3) 49 CFR 130, Oil Spill Prevention and Response Plans; and (4) 49 CFR 171 through 180, Hazardous Materials Regulations (HMR). RSPA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. RSPA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approval in the Federal Register.

Comments are invited on: (1) The need for the collection of information for the proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated, electronic or other technological means of collecting information. A summary of public comments will accompany RSPA's submission of the information collection requests to OMB.

The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity, including the need for and use of the collection; (4) description of the affected public; (5) estimate of total annual reporting and recordkeeping burden; and (7) frequency of collection.

Title: Inspection and Testing of Portable Tanks and Intermediate Bulk Containers [Former title: Portable Tank Inspection and Testing].

OMB Control Number: 2137–0018.

Summary: This information collection consolidates provisions for documenting qualifications, inspections and tests pertaining to the manufacture and use of portable tanks and intermediate bulk containers under various provisions in parts 173, 178 and 180 of the HMR. It is needed to ascertain whether portable tanks and intermediate bulk containers have been qualified, inspected and retested in accordance with the HMR. For example, 49 CFR 173.32 requires that portable tanks be periodically retested, and prescribes both retest markings and retention of records as a demonstration of compliance. The information is used to verify that portable tanks and intermediate bulk containers meet required performance standards prior to being authorized for initial use or reuse as bulk packagings for hazardous materials.

Affected Public: Manufacturers and owners of portable tanks and intermediate bulk containers.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 314.

Total Annual Responses: 51,220.

Total Annual Burden Hours: 51,340.

Frequency of Collection: Design qualification testing is performed at the start of production for each new or different design type, periodic design type retesting is performed at one year intervals for intermediate bulk containers only, and periodic requalification of tanks in use is performed every 2–5 years, depending on the type of testing required and the tank specification. Certification markings are applied to each packaging at time of manufacture.

Title: Testing, Inspection, and Marking Requirements for Cylinders [Former title: Recordkeeping and Information Collection for Cylinders].

OMB Control Number: 2137–0022.

Summary: This information collection consolidates provisions for documenting qualifications, inspections and tests pertaining to the manufacture and use of cylinders under various provisions in parts 173, 178 and 180 of the HMR. It is needed to ascertain whether cylinders have been qualified, inspected and retested in accordance with the HMR. For example, provisions in 49 CFR 173.34 for qualification, maintenance and use of cylinders require that cylinders be periodically inspected and retested to ensure continuing compliance with packaging standards. Information collection requirements also address registration of retesters and marking of cylinders by retesters and recertifiers. The information is used to verify that cylinders meet required manufacturing standards prior to being authorized for initial use, and that once manufactured the cylinders are maintained and used in compliance with applicable requirements of the HMR as packagings for hazardous materials.

Affected Public: Fillers, owners, users and retesters of reusable cylinders.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 139,352.

Total Annual Responses: 153,287.

Total Annual Burden Hours: 171,681.

Frequency of Collection: Reports are required for cylinders as they are manufactured and initially tested. Cylinders are required to be marked after manufacture with specific information. Inspection reports are also required to very compliance with the provisions of the HMR, including verification that the cylinders passed the required tests. Registration of retesters is performed on a one-time basis. Retester marking on a cylinder is performed once every 5 to 20 years depending on cylinder specification and type of service. Pressure verification for acetylene cylinders is performed daily.

Title: Hazardous Materials Incident Reports

OMB Control Number: 2137–0039

Summary: This collection is applicable upon occurrence of incidents as prescribed in 49 CFR 171.15 and 171.16. Basically, a Hazardous Materials Incident Report, DOT Form F 5800.1, must be completed by a carrier of hazardous materials after a hazardous material transportation incident occurs, such as a release of material, serious accident, evacuation or highway shutdown. Serious incidents meeting criteria in 49 CFR 171.15 also require a telephonic report by the carrier. This information collection enhances RSPA's ability to evaluate the effectiveness of its regulatory program, determine the need for regulatory changes and address emerging hazardous materials transportation safety issues. The requirement applies to all carriers engaged in the transportation of hazardous materials by rail, air, water and highway.

Affected Public: Each carrier who transports hazardous materials.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 700.

Total Annual Responses: 16,600.

Total Annual Burden Hours: 24,190.

Frequency of Collection: Reports are required upon occurrence of a reportable incident.

Title: Flammable Cryogenic Liquids [Previous title: Cryogenic Liquids Requirements].

OMB Control Number: 2137–0542.

Summary: Provisions in 49 CFR 177.818 require the carriage on a motor vehicle of written procedures for venting flammable cryogenic liquids and for responding to emergencies. Sections 173.318(g), 177.840(h), and 180.405(h) specify certain safety procedures and documentation requirements for drivers of these motor vehicles. These requirements are intended to ensure a high level of safety when transporting flammable cryogenics due to their extreme flammability.

Affected Public: Carriers of flammable cryogenic liquids in bulk.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 65.

Total Annual Responses: 18,200.

Total Annual Burden Hours: 1,213.

Frequency: A response is required for each shipment of a flammable cryogenic material.

Title: Approvals for Hazardous Materials.

OMB Control Number: 2137–0557.

Summary: There are over one hundred approval provisions contained in the HMR and associated procedural regulations. Responses to these collections of information are required to obtain benefits, such as to become an approval or certification agency or obtain a variance from packaging or handling requirements based on information provided by the respondent. This information is used by RSPA to: (1) Determine whether applicants who apply to become designated approval agencies are qualified to evaluate package design, test packages, classify hazardous materials, etc.; (2) verify that various containers and special loading requirements meet the requirements of the HMR; (3) assure that regulated hazardous materials pose no danger to life and property during transportation; and (4) allow minor variations to regulatory requirements, based on information provided by respondents, without requiring the respondent to apply using less timely and more burdensome exemption procedures.

Affected Public: Businesses and other entities who must meet the approval requirements in the HMR.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 3,503.

Total Annual Responses: 3,853.

Total Annual Burden Hours: 18,302.

Frequency: On occasion of application for a benefit.

Title: Testing Requirements for Packaging.

OMB Control Number: 2137–0572.

Summary: Detailed packaging manufacturing specifications have been replaced by a series of performance tests that a non-bulk packaging must be capable of passing before it is authorized to be used for transporting hazardous materials. The HMR require proof that packagings meet these testing requirements. Manufacturers must retain records of design qualification tests and periodic retests. Manufacturers must notify, in writing, persons to whom packagings are transferred of any specification requirements that have not been met at the time of transfer. Subsequent distributors, as well as manufacturers must provide written notification. Performance-oriented packaging standards allow manufacturers and shippers much greater flexibility in selecting more economical packagings.

Affected Public: Each non-bulk packaging manufacturer that tests packaging to ensure the safe transportation of hazardous materials.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 5,000.

Total Annual Responses: 15,000.

Total Annual Burden Hours: 30,000.

Frequency: Tests are performed at start of production of a packaging design type and repeated at one or two-year intervals, depending on the type of packaging. Written notification is provided at time of first transfer, to each person to whom a packaging is transferred.

Title: Container Certification Statement [Previous title: Statement of Structural Serviceability for Freight Containers to be used for Class 1.1 and 1.2 Explosives].

OMB Control Number: 2137–0582.

Summary: As required in § 176.27, shippers of hazardous materials, in freight containers or transport vehicles by vessel, are required to certify that the freight container or transport vehicle is serviceable, that the hazardous materials are properly marked, labeled, or placarded, loaded and secured. For explosives in Division 1.1 and 1.2, shippers are required to certify on shipping documentation that the freight container or transport vehicle meets minimal structural serviceability requirements (see § 176.172). These requirements are intended to ensure an adequate level of safety for transport of hazardous materials aboard vessel and ensure consistency with similar requirements in international standards.

Affected Public: Shippers of hazardous materials, including explosives in freight containers or transport vehicles by vessel.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 530.

Total Annual Responses: 604,000.

Total Annual Burden Hours: 15,100.

Frequency: The statement is required for each shipment of hazardous material in a freight container or transport vehicle aboard a vessel.

Title: Hazardous Materials Public Sector Planning and Training Grants.

OMB Control Number: 2137–0586.

Summary: Part 110 of 49 CFR sets forth procedures for reimbursable grants for public sector planning and training in support of the emergency planning and training efforts of States, Indian tribes and local communities to deal with hazardous materials emergencies, particularly those involving transportation. Sections in this part address information collection and recordkeeping with regard to applying for grants, monitoring expenditures, reporting and requesting modifications.

Affected Public: State and local governments, Indian tribes.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 66.

Total Annual Responses: 66.

Total Annual Burden Hours: 4,082.

Frequency: Application for a grant is at the discretion of the applicant and can be made as frequently as every annual grant cycle. Financial status reports are submitted quarterly. Grantees must complete a performance report at the end of the grant period.

Title: Response Plans for Shipments of Oil [Previous title: Preparation of Response Plans for Shipments of Oil].

OMB Control Number: 2137–0591.

Summary: In recent years several major oil discharges damaged the marine environment of the United States. As required by the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, RSPA has issued regulations that require preparation of written spill response plans and, in certain instances, submission of these plans to RSPA for the transportation of oil in bulk by motor vehicle or rail car. These plans are intended to aid in the mitigation of the effects of unintended discharges of oil to the environment.

Affected Public: Carriers that transport oil in bulk, by motor vehicle or rail.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 8,000.

Total Annual Responses: 8,000.

Total Annual Burden Hours: 10,560.

Frequency: One time report, plus notification of changes when needed.

Issued in Washington, DC, on February 28, 1996.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 96–5064 Filed 3–4–96; 8:45 am]

BILLING CODE 4910–60–P

Surface Transportation Board [1]

[Finance Docket No. 32769]

Central New England Railroad, Inc., Modified Certificate

On October 11, 1995, Central New England Railroad, Inc. filed a notice under 49 CFR Part 1150, Subpart C—*Modified Certificate of Public Convenience and Necessity* to operate approximately 13.5-miles of an abandoned [2] rail line between milepost 8.8 at Enfield, CT (on the Connecticut-Massachusetts State line) and milepost 23.3 at East Windsor Hill, CT, owned by the Connecticut Department of Transportation (ConnDOT).

The Commission will serve a copy of this notice on the Association of American Railroads (Car Service Division), as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Decided: February 28, 1996.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–5063 Filed 3–4–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former sections of the statute, unless otherwise indicated.

[2] The 5.5-mile portion of the line between milepost 12.5 (Hazardville, CT) and milepost 18.0 (East Windsor, CT), was formerly owned by the Trustee of Penn Central Transportation Company, one of the eastern railroads reorganized under the Regional Rail Reorganization Act, and was never designated in the United States Railway Associations's *Final System Plan* for transfer to Consolidated Rail Corporation (CR). The line was abandoned by the Trustee in 1976 pursuant to section 308 of the Regional Rail Reorganization Act of 1973, 45 U.S.C. 744(b) and acquired by the State of Connecticut's Department of Transportation (ConnDOT) for continued rail service.

The 3.7-mile portion of the line between milepost 12.5 (Hazardville, CT) and milepost 8.8 (Enfield, CT) was abandoned by the Boston and Maine Corporation in 1993. *See Boston and Maine Corporation—Abandonment Exemption—In Hartford County, CT, and Hampden County, MA,* AB–32 (Sub-No. 62X), and *Springfield Terminal Railway Company—Discontinuance Exemption—In Hartford County, CT, and Hampden County,* AB–355 (Sub-No. 14X) (ICC served Nov. 24, 1993).

The 4.3-mile portion of the line between milepost 18.0 and milepost 22.3 (East Windsor Hill, CT/CR milepost 6.77—Troy Road Connection) was abandoned by CR in 1987. *See Conrail Abandonment in Hartford County, CT,* Docket No. AB–167 (Sub-No. 984N) (ICC served Feb. 23, 1987). ConnDOT subsequently acquired this portion of the line on May 11, 1995, for continued rail service.

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UMI

federal register

Tuesday
March 5, 1996

Part II

Department of Housing and Urban Development

24 CFR Part 941, et al.

Streamlining the Comprehensive Improvement Assistance and Comprehensive Grant Programs; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 941, 950, 965, and 968

[Docket No. FR–3967–F–01]

RIN 2577–AB59

Streamlining the Comprehensive Improvement Assistance Program and Comprehensive Grant Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule amends 24 CFR parts 950 (formerly 905) and 968 to streamline, simplify and eliminate unnecessary requirements for the Department's two modernization programs used in the public housing and Indian housing programs. The Comprehensive Improvement Assistance Program (CIAP) is used by Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) that own or operate fewer than 250 public housing units. The Comprehensive Grant Program (CGP) is used by PHAs and IHAs that own or operate 250 or more public housing units.

The rule also combines into provisions of a part dealing with general provisions applicable to PHA-owned projects (part 965) the nearly identical provisions concerning prevailing wage rates that have been found in the development and modernization parts for public housing (parts 941 and 968).

EFFECTIVE DATE: April 4, 1996.

FOR FURTHER INFORMATION CONTACT:

For Public Housing: William J. Flood, Director, Office of Capital Improvements, Public and Indian Housing, Department of Housing and Urban Development, Room 4134, 451 Seventh Street, S.W., Washington, D.C. 20410–5000, telephone (202) 708–1640.

For Indian Housing: Deborah M. LaLancette, Director, Housing Management Division, Office of Native American Programs, Public and Indian Housing, Room B–133, Department of Housing and Urban Development, 451 Seventh Street S.W., Washington, D.C. 20410, telephone (202) 755–0088.

Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or (202) 708–9300. (Other than the "800" TDD number, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this rule remain essentially unchanged. They are merely moved to different section numbers as part of this consolidation effort. (See §§ 950.618, 950.622, 950.630, 950.632, 950.634, 950.636, 968.135, 968.145, 968.210, 968.215, 968.225, and 968.230, previously approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3501–3520) under OMB control number 2577–0044 (CIAP). See also §§ 950.650, 950.656, 950.658, 968.310, 968.325, and 968.330, previously approved by OMB under control number 2577–0157 (CGP).)

II. Background

Upon assuming the leadership of the Department of Housing and Urban Development (HUD) in 1993, Secretary Cisneros made the reinvention of HUD one of his first priorities. HUD's reinvention efforts took place in the context of a broader, government-wide reinvention process, the National Performance Review, under the leadership of Vice President Gore. At that time, HUD established five program goals to accomplish its mission that involved working for healthy growth in cities, providing adequate housing for all, and protection of society's most vulnerable people.

HUD determined that one of the first steps needed in its transformation from the old HUD to a new HUD was the consolidation and streamlining of funding programs. HUD recently submitted to Congress sweeping changes to transform public housing to a resident-based program.

Another aspect of the reinvention involves HUD's rules, which have been at the forefront of HUD's reinvention efforts since those efforts commenced in 1993. The foundation of HUD's regulatory process is Executive Order 12866 (Regulatory Planning and Review) issued by President Clinton on September 30, 1993. This order directs agencies to, among other things, explore regulatory alternatives and, if regulations are determined to be necessary, to select approaches that maximize benefits and involve enhanced public accessibility and participation in the rulemaking process.

HUD has done a comprehensive review of 24 CFR part 968, Public Housing Modernization. Part 968 contains 3 subparts, covering general requirements and separate requirements for the Comprehensive Improvement Assistance Program (CIAP) and Comprehensive Grant Program (CGP). Based on its comprehensive review, HUD has determined that certain provisions from CIAP and CGP can be consolidated in the general provisions, subpart A. HUD also has determined that there are a number of revisions that should be made to simplify subpart B for CIAP and subpart C for CGP. Similar changes are also being made to 24 CFR part 950, subpart I, which covers the modernization program requirements for Indian Housing.

In addition to the simplifications mentioned above and described in more detail in Part III below, the Department is also responding in this rule to public comments received on the interim CIAP rule published March 15, 1993 (58 FR 13916). This rule also makes changes resulting from experience gained during the Federal Fiscal Years (FFYs) 1993, 1994, and 1995 funding competitions (see Part IV below).

[The reader should note that, hereafter, for ease of discussion, the preamble to this final rule uses the term "housing authorities (HAs)" to refer to both public housing agencies (PHAs) and Indian Housing Authorities (IHAs) and the term "public housing" to refer to both Public and Indian housing, unless otherwise stated. In addition, the term "development" is used to refer to "low-income projects," as defined at section 3(b)(1) of the Act.]

III. Reinvention Changes for CIAP and CGP

As a part of other pending rulemakings, various Federal requirements that are applicable to a number of the Department's programs, including modernization, are being moved to Department-wide common rules. One example of such provisions are those now contained in § 968.110, Other Federal requirements.

The current section covers civil rights compliance, minority and women's business enterprise opportunity, lead-based paint poisoning prevention, environmental clearance, flood insurance, and wage rates, as well as audits, uniform administrative requirements, and energy conservation. Most of the civil rights authorities, including references to minority and women's business enterprise opportunity, have been consolidated into the Department-wide rule (24 CFR part 5) listing provisions applicable to all of the Department's programs. That rulemaking revised § 968.110 to refer to the Department-wide rule, leaving a few additional authorities in § 968.110(a). Another pending rulemaking addresses

the applicability of lead-based paint poisoning prevention.

This rulemaking also revises § 968.110 as follows: § 968.110(i), Audits, is being moved to a new § 968.145, Fiscal closeout; § 968.110(j), Uniform administrative requirements, is being moved to a new § 968.135, Contracting requirements; § 968.110(l), Energy conservation, is being moved to a revised § 968.115, Modernization and energy conservation standards; and the cross-reference in paragraph (e)(3) for preemption of prevailing wage rates is changed to 24 CFR 965.101. (Section 965.101 is amended in this rulemaking to broaden the coverage of its preemption of prevailing wage rates to extend to development and modernization, as well as to operations.)

Existing § 968.120, dealing with preemption of State prevailing wage requirements, is being moved to and combined with § 965.101.

The Indian housing program is not affected by the consolidation of general provisions by the other pending rulemaking. Consequently, § 950.120 still contains comparable provisions.

IV. Relation of Current Regulations Sections to Final Rule Sections

The following chart shows the locations of similar provisions:

New section	Current sections
950.604	950.601
950.606	950.667
950.608	950.615, 950.666
950.610	950.603
950.612	[New provision]
950.614	950.635
950.616	950.639
950.618	950.642
950.620	950.645
950.622	950.657
950.630	950.618
950.632	950.624
950.634	950.648
950.636	950.651
950.638	[New provision]
950.640	950.654, 950.675
950.650	950.669
950.652	950.672
950.654	950.675
950.656	950.678
950.658	950.684
950.660	950.687
968.104	968.312
968.112	968.210, 968.310
968.125	968.225
968.130	968.230
968.135	968.235
968.140	968.240
968.145	968.260
968.210	968.215
968.215	968.220
968.225	968.245
968.230	968.250
968.235	[New provision]
968.240	968.345
968.310	968.315
968.315	968.320
968.320	968.325
968.325	968.330
968.330	968.340
968.335	968.345

V. Public Comments and Description of the Simplified CIAP

A. Public Comments

The Department received public comments on the March 1993 interim rule from four HAs and two HA interest groups (National Association of Housing and Redevelopment Officials (NAHRO) and Public Housing Authorities Directors Association (PHADA)). The commenters agreed that HUD has made substantial progress in simplifying the CIAP, and pointed out additional areas for simplification or clarification.

Relocation requirements. The March 1993 interim rule revised parts 905 (now 950) and 968 by updating the displacement, relocation and acquisition requirements pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and by removing the relocation requirements from the "Other program requirements" sections and creating separate sections for the relocation requirements at new §§ 905.117 (now 950.117) and 968.108.

Comment: PHADA and two HAs recommended that HUD be required to respond to an HA's request for a determination of coverage under the relocation requirements (§§ 968.108(g)(3) and 950.117(g)(3)) within 30 calendar days or within a longer stated period or provide a rebuttal period or the HA's interpretation would be accepted as final.

Response: The Department agrees that dialogue between HUD and an HA is important and should start in the planning stage. Technical assistance on relocation matters is readily available from Community Planning and Development relocation staff in HUD Field Offices. HUD will make every effort to respond promptly to HA requests for assistance. However, HUD cannot restrict the time period for a response as suggested. HUD's relocation rules implementing statutory requirements guaranteeing benefits to eligible persons cannot be amended by this rulemaking. In fact, HUD relies on regulations issued by the Department of Transportation for government-wide requirements, at 49 CFR part 24 (see 24 CFR part 42). A delay in HUD's response does not relieve an HA of its responsibility to comply with the Uniform Relocation Act, where applicable.

Definition of modernization capability. Comment: PHADA commented that the determination of no modernization capability be afforded an appeal to the Regional Administrator, and that HUD be required to inform the HA as to why the determination was made and what facts the determination is based on. *Response:* With regard to the Public Housing Management Assessment Program (PHMAP), the PHA may appeal its score on the Modernization indicator to the Field Office; if that appeal is denied, the PHA may appeal to HUD Headquarters. The HUD reorganization eliminated the Regional Offices. With regard to the CIAP technical review factor of modernization capability, HUD will provide guidance in the revised CIAP Handbook on how Field Offices should score the technical review factors, including modernization capability, to ensure greater uniformity among Field Offices. In addition, HUD has made clarifying changes to the definitions of modernization capability at §§ 950.102 and 968.205 to ensure that no arbitrary exclusion of participation due to lack of modernization capability will occur.

Management improvement costs. Comment: PHADA agreed with HUD on allowing CIAP programs composed solely of management improvements. Two HAs questioned whether training related to management improvements is eligible. *Response:* Training costs related to carrying out CIAP-approved physical and management improvements are eligible. See §§ 950.608(g)(2)(ii) and 968.112(g)(2)(ii).

Comment: Two HAs also asked if office space and storage space are eligible costs. *Response:* Such costs are eligible. See §§ 950.608(c) and 968.112(c).

Comment: PHADA indicated that some Field Offices have traditionally frowned on management improvement requests. *Response:* This rule clarifies that eligible management improvements, either development specific or HA-wide, may be approved as single work items under Other Modernization. In addition, this rule specifically states that the establishment of a preventive maintenance system or improvement of an existing system is an eligible management improvement. See §§ 950.608(g)(2)(v) and 968.112(g)(2)(v).

Reasonable cost and total development cost (TDC). Comment: PHADA agreed with the definition of reasonable cost (hard costs not exceeding 90% of TDC) for most cases, but suggested exceptions for compliance with accessibility requirements and

remedying environmental problems, such as asbestos and lead-based paint. It was suggested that these types of situations are not taken into account by the cost indices upon which TDC is based and, therefore, should be excluded from the definition. In addition, many IHAs with large numbers of homeownership (Mutual Help) units are performing comprehensive-type, not piecemeal, modernization.

Response: The rule has been revised to use the previous definition of reasonable cost (90% of TDC) and to handle any special cases on a case-by-case basis. The Department had tried a method that allowed more flexibility, which we have now determined to be inappropriate.

In the August 30, 1995, final rule streamlining the CGP, the Department added a second method of determining cost reasonableness to provide HAs with greater flexibility in determining the cost of rehabilitation versus the cost of demolition and new development. HAs could choose one of two methods which were: (1) unfunded modernization hard costs do not exceed 90 percent of computed total development cost (TDC); or (2) individual work items are reasonable in accordance with National cost indices, adjusted by local conditions and the HA's own recent procurement experience. During the FY 1995 program year, it became evident that use of the second method was having unintended consequences by allowing some very high cost developments to be determined to have reasonable cost. This result is inappropriate in the current environment of limited funding. Since it is clear that resources for Public and Indian Housing will remain constrained, it is incumbent on both the Department and the HAs to assure maximum return for the dollars invested. It is not tolerable to allow large-scale Federal investments to be made in properties which will remain uneconomical or provide marginally suitable housing even after such investments are made.

Accordingly, the Department has eliminated the second method of determining cost reasonableness, but has provided that the 90 percent of TDC limit may be exceeded where justified, and applied this procedure to both CIAP and CGP. If the HA and the Field Office recommend funding for a development which exceeds 90 percent of TDC, the Field Office must submit written justification to Headquarters for final decision.

Social services. Comment: PHADA and three HAs suggested that eligible costs include the direct provision of social services, because it is essential to enhance the living conditions and self-sufficiency opportunities for residents of small HAs. It was suggested that HUD allow start-up costs and reasonable operating costs for three years conditioned on the HA being able to provide HUD up-front with a reasonable plan for continuing the program after the CIAP funds are expended. *Response:* Although the 1995 Rescissions Act expanded the eligible activities that may be funded under Section 14 of the Act with FFY 1995 and prior year modernization funds, to include the direct provision of social services, there is no permanent statutory authority for eligibility of such activities. Therefore, the rule excludes the direct provision of social services from future year funding unless otherwise provided by law. If a later appropriation act specifically permits eligibility for these services, that change will be handled by language in the Notices of Funding Availability for the affected years.

Program benefit. Comment: PHADA and four HAs questioned the program benefit rules at §§ 950.615(j)(3) and 968.210(j)(3) (now found in §§ 950.608(n)(3) and 968.112(n)(3)). *Response:* The rule provides that where the physical or management improvement will benefit programs other than Public or Indian housing, such as Section 8 or local revitalization, eligible costs are limited to the amount directly attributable to the Public or Indian Housing Program. CIAP assistance must be used for the purposes expressed in the statute and not for other programs or purposes. OMB Circular A–87 also requires this program benefit rule. There is no statutory authority to use CIAP funds to subsidize the Section 8 program as suggested.

Ineligible costs. Comment: PHADA and four HAs mentioned arguments HAs have had with Field Offices regarding ineligible costs. The rule at §§ 950.615(k) and 968.210(k) stated that an HA shall not make luxury improvements, or carry out any other ineligible activities, as specified by HUD. *Response:* HUD has consulted with HA industry groups on the eligibility and ineligibility of various work items. In January 1994, the Department revised its policy, under the Public Housing Development Program and the CGP, on work items previously considered amenities to provide HAs with maximum flexibility. The Department is now extending that revised policy to the CIAP to allow work items that are modest in design and cost, but still promote the blending in of Public and Indian housing with the design and architecture of the surrounding community by including amenities, quality materials and design and landscaping features that are customary for the locality and culture. However, no additional operating subsidy will be provided. Accordingly, the CIAP provisions on ineligible costs at §§ 950.615(b) and 968.210(b) have been revised and moved to §§ 950.608(o) and 968.112(o) to incorporate this policy. The CGP provisions on ineligible costs at §§ 950.666(c) and 968.310(c) also have been revised and moved to §§ 950.608 and 968.112 to incorporate this policy, consolidating in one section for IHAs and another for PHAs the policy applicable to both the CIAP and CGP.

Administrative and maintenance space guidelines. Comment: PHADA and three HAs commented that HUD needs to reexamine the standards for allowable administrative and maintenance space. *Response:* HUD has consulted with HA industry groups on this issue during the CGP rulemaking. A survey by NAHRO concluded that the variation among HAs is so great in terms of the programs which they operate for the benefit of the Public or Indian Housing Program, it is impossible to establish standards for such space. The Department agrees that establishing space standards is very difficult and, accordingly, is eliminating the maximum space guidelines for management, maintenance and community space. Instead, Field Offices are given, at §§ 950.608(c) and 968.112(c), the authority to approve space in accordance with the general principles of program need and benefit, as well as sound business practices.

Expedited NOFA publication. Comment: PHADA and two HAs urged HUD to publish CIAP NOFAs within 60 days of passage of an Appropriations Act or 30 calendar days from the start of a FFY, whichever is later, assuming there are no major statutory changes adopted in the Appropriations Act. *Response:* Secretary Cisneros has made expedited publication of NOFAs a priority. However, the amount of funds available for the CIAP each year cannot be determined until the modernization formula is run. The formula determines the funding split between the CIAP and the CGP. Revisions to the CGP (e.g., earlier update of the Formula Characteristics Report for CGP agencies) have enabled the Department to run the modernization formula earlier in the FFY, which, in turn, has benefitted the CIAP. The Department will continue its efforts to make CIAP funds available as soon as possible in the FFY.

Application process. Comment: PHADA suggested that a general format should be developed by HUD to assist small HAs gather the information being requested. *Response:* The CIAP Application form (HUD–52822) provides a format for HAs to record their physical and management improvement needs. The Department believes that any other format may be burdensome to small HAs. The Department is open to the development of guidance material which may be helpful to small HAs and welcomes specific suggestions.

Replacement estimate for equipment, systems or structural elements. Comment: PHADA and two HAs questioned why the CIAP Application required identification of a cost estimate for the equipment, systems or structural elements which would normally be replaced over the remaining period of the Annual Contributions Contract (ACC) or during the 30-year period beginning on the date of submission of the application. *Response:* This was a burdensome statutory requirement from which HUD sought legislative relief. A technical amendment to section 14(d)(2) of the Act, was signed into law on April 11, 1994 (Pub. L. 103–233, 108 Stat. 369). Accordingly, the Department has eliminated this requirement on Form HUD–52822, CIAP Application.

Application requirements for management improvements. Comment: PHADA requested simplification of the application requirements for management improvements. *Response:* It appeared to PHADA that the regulation at §§ 950.610(g)(2)(i) and 968.215(c)(2) required a general recital of the management and administrative capabilities of the HA. In order to clarify that such items were only examples of eligible management improvements, the items have been moved to the eligible costs section at §§ 950.608(g)(2)(i) and 968.112(g)(2)(i).

Development deficiencies. Comment: PHADA pointed out a possible problem with §§ 950.618(e)(1)(ii) and 968.215(e)(1)(ii). Each development for which work is proposed must be at least three years old from the end of the initial operating period (EIOP). Since warranties are generally one year and some builders may go bankrupt, PHADA asked for relief to be provided for the unusual circumstance in which early assistance from CIAP is required. Such relief would be simpler than having to come to the Assistant Secretary for Public and Indian Housing for a regulatory waiver. *Response:* In order to make the CIAP consistent with the CGP, the Department has changed the threshold for development eligibility from EIOP to Date of Full Availability (DOFA) and under ACC at §§ 968.210(e)(1) and 950.630(e)(1). However, the Department stresses that the first avenue of correction of a development deficiency is from the architect or contractor, as appropriate. Where there is no approved actual development cost certificate (ADCC), HUD will continue to look to development funds first to correct the development deficiency; if development funds are not available, the Field Office may approve use of CIAP funds for correction, without Headquarters approval. Once there is an approved ADCC, any subsequently identified development deficiency may be funded by CIAP funds.

Eligibility review. Comment: PHADA was concerned about a situation where an HA is improperly managed and may be found to be ineligible under the regulatory criteria even if a new executive director or key staff member has been employed and is sincerely trying to correct the HA's problems. PHADA thought this situation may require a waiver of the eligibility criteria at §§ 950.618(e) or 968.215(e). *Response:* HUD disagrees with that interpretation and refers the commenter to the revised definitions of modernization and management capability found in §§ 968.205 and 950.102. A Troubled PHA shall be considered for funding of non-emergency improvements where it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement (or equivalent) or has obtained alternative oversight of its management functions. The Field Office shall determine whether the HA has a reasonable prospect of acquiring management or modernization capability through CIAP-funded management improvements and administrative support, such as hiring staff or contracting for assistance.

Technical review factors. Comment: PHADA and two HAs questioned if the technical review factors are relevant for CIAP, considering the size of the HAs participating in CIAP. Specifically, items 5, 6, and 7 which deal with resident involvement, initiatives, and employment are difficult for many small HAs. While PHADA was not opposed to these items in theory, it was concerned about their practicality. PHADA suggested reexamination of these technical review factors since small HAs find it is very difficult to get residents involved and the opportunities for resident employment with the HA are severely limited. NAHRO stated that the degree to which resident programs are operating is more often a function of fund availability and the type of unit, elderly or family. Also, in some small towns, the local elected leadership may be anti-public housing. Item 8 (local government support for proposed modernization) may prevent improvements needed by the residents. NAHRO urged that while vacancies are a problem which should be addressed whenever possible through CIAP, when assigning weights to this factor, the Department should utilize data from the Vacancy Reduction Program to ascertain the extent to which modernization needs are causing vacancies in this size category of HAs. NAHRO indicated that anecdotal evidence thus far indicates that the vacancies in this size group are often caused by market conditions or an insufficient number of applicants, not modernization need.

Response: Section 14(d) of the Act requires CIAP Applications to be developed in consultation with the appropriate local officials and with residents of the housing developments for which assistance is requested; therefore, the technical review factors must, at a minimum, reflect these requirements. The other factors are a matter of Secretarial discretion. The Department supports strong resident involvement in all aspects of the Public or Indian Housing Program. These technical review factors reflect HUD's goals for the CIAP. HUD realizes that resident involvement varies depending on the size and resources of the HA, and those distinctions are considered in scoring the technical review factors. It also should be noted that the technical review factor on extent of vacancies has been clarified to indicate that points will be given only if the vacancies are not due to insufficient demand.

PHMAP and rating. Comment: PHADA and one HA were concerned about reinventing CIAP and PHMAP. It was suggested that no PHA should be rated down in management capability unless there is a failing PHMAP score or some unusual change occurs at the PHA. Conversely, a low PHMAP score should be used to increase the chances of needed management improvements being funded. *Response:* If a PHA needs CIAP funds for a management improvement to address a low PHMAP score, it is not penalized. Again, refer to the revised definition of management capability in § 968.205.

Application review. Comment: PHADA suggested that an application should be rejected only on new grounds once. PHADA wanted to avoid possible endless resubmissions. *Response:* The Department notes that the completeness review is not complex and that operating experience has indicated that only a relatively small number of HAs are required to correct or resubmit

documents. HUD cannot overlook deficiencies in HA submissions. Although HUD will make every effort to provide technical assistance to HAs before the application deadline date, HAs have a responsibility to prepare applications which meet HUD requirements.

Debriefing for unsuccessful applications. Comment: PHADA and two HAs were concerned that too often an HA not receiving the CIAP assistance it requested is not adequately informed as to why it was not funded. PHADA requested that the regulation be modified to require a debriefing for HAs whose applications are not funded so they can improve their situation for the next funding round. *Response:* HUD already requires the Field Office to inform an HA in writing as to why its application was unsuccessful. This requirement has been included in the final rule at §§ 950.630(i) and (j) and 968.210(i) and (j).

Residual receipts. Comment: PHADA and NAHRO noted that an HA will not be selected for Joint Review if it has residual receipts to carry out the modernization activities for which it is applying. PHADA, NAHRO and one HA indicated that residual receipts should be used as long as a HA is allowed to retain 50 percent of the maximum allowable reserves or $50,000, whichever is higher. This way, a reasonable amount of reserves can be used and at the same time the HA is not placed in financial jeopardy. *Response:* The Department has eliminated the requirement for PHAs to remit residual receipts, effective for HAs with fiscal years beginning on or after January 1, 1995. This change will make the retention or return of residual receipts a moot issue since there will no longer be funds identified as residual receipts and no provision on residual receipts in the rule. Accordingly, the Department has eliminated the provision in § 968.210(i) regarding non-selection for Joint Review where the PHA has residual receipts.

Contracting and budget revisions approvals. Comment: PHADA, NAHRO and one HA disagreed with HUD's approval procedures for contracting and budget revisions. They suggested that these situations could be modified so that if HUD does not act on an HA's submission within 15 calendar days, it is automatically approved and the project can proceed. NAHRO requested that HUD clarify the processes to be used by Field Offices in establishing more frequent reporting or more stringent requirements related to thresholds or prior HUD approval. NAHRO urged that PHMAP should be used and cross referenced here.

Response: Field Offices are required to establish thresholds as high as possible to give CIAP agencies flexibility while protecting HUD's interests in the contracting area. These thresholds are based on an HA's in-house technical capability and past performance. The revised CIAP Handbook will establish time frames for Field Office review and action on documents which must be submitted for prior HUD approval. The Department will continue to urge Field Offices to respond in a timely manner, including use of form letters, where appropriate, and to monitor Field Office performance in this area.

The Department has streamlined the requirements regarding budget revisions by requiring that a budget revision be submitted for prior HUD approval only where an HA plans to deviate from the competitively funded modernization program. Prior HUD approval is not required for revisions that are consistent with, and necessary to, completion of the original modernization program. The regulation also clarifies that modernization funds may not be used for developments that are not covered by the original CIAP application, even where there are leftover funds remaining after the originally approved modernization program has been completed. See §§ 968.225 and 950.634.

Modernization coordinator or contract administrator. Comment: PHADA seeks appeal rights whenever HUD requires an HA to hire a modernization coordinator or contract administrator in order to receive the CIAP grant. PHADA considers this to be justified in certain cases, but urges that the regulation specifically allow the HA to appeal this to the Regional Administrator and also be informed specifically why HUD feels this is necessary. PHADA suggest that if these modifications are not made, this provision could be abused by some due to petty personal differences. NAHRO suggested that the Department establish in PHMAP the requirements or conditions for HAs who have performed poorly in the past. Additionally, NAHRO suggested that if the Field Office requires a contract administrator, the HA must be notified at Joint Review. This practice would give the HA the opportunity to protest, or if there is agreement, the time to search for one who can take over immediately following the execution of the ACC.

Response: It has been the Department's experience that some smaller HAs do not have in-house capacity to administer the CIAP and require administrative and technical assistance to implement their approved programs. The Department must be assured that approved programs will be carried out in an economical and effective manner. During Joint Review, the Field Office will discuss with the HA the type and amount of administrative and technical assistance which it may need during implementation of its CIAP program. However, such needs may not be finalized until the scope of work and amount of funding are determined after Joint Review. The Field Office has the final determination on this matter.

Force account. Comment: PHADA and two HAs recommended that §§ 950.635(a) and 968.225(a) be changed to allow HAs to use force account labor to carry out modernization in all cases except where it is specifically forbidden. *Response:* To provide a reward for high-performing HAs and to achieve consistency with the CGP, the Department has eliminated prior HUD approval for use of force account labor by PHAs that are designated as both over-all high performers and mod-high performers under the PHMAP and by all IHAs. See §§ 950.612(a) and 968.120(a). PHAs that are not both over-all high performers and mod-high performers will continue to obtain prior HUD approval to use force account labor through their CIAP budgets or budget revision submissions. The Field Office will approve or disapprove such use as part of the budget/budget revision approval process.

Modernization priorities. Comment: Following the CGP model, PHADA urged HUD to respect an HA's priorities and only modify the priorities after the HA agrees to the modification. *Response:* The key difference between CIAP and CGP is that CIAP is a competitive, not a formula, program. Although HUD does not set priorities for HAs in either program, HUD must assess the relative extent and urgency of need among CIAP agencies in rating and ranking the CIAP Applications.

Comparability with CGP. Comment: NAHRO noted that the CIAP is now similar in many respects to the CGP. It encouraged HUD to strive for comparability between the two programs on the issue of technical review. *Response:* Except for statutory differences, the Department has made every attempt to make the CIAP comparable to the CGP.

Formula approach. Comment: PHADA and one HA requested HUD to examine whether the competitive CIAP process could be replaced by a CGP formula distribution. *Response:* As part of HUD's reinvention, the Department has proposed to the Congress the establishment of a Capital Fund in the first stage of transforming public and Indian housing. The Capital Fund would replace both the existing CIAP and CGP programs and provide formula funding to all HAs, regardless of size. In FFY 1995, the 904 CGP agencies were eligible to receive 89 percent of the available funds and the 2,496 CIAP agencies were eligible to receive 11 percent of the available funds.

Board Resolution. Comment: NAHRO questioned the HUD requirement for the Board of Commissioners to certify that the budget, implementation schedule or other documents are accurate and complete. It was suggested that the Board should be able to delegate responsibility to the Executive Director to make certain certifications on behalf of the HA. Accountability could be achieved by the fact that the Executive Director is accountable to the Board. *Response:* HUD requires that, after an HA is selected for funding, the HA submit the Board Resolution Approving the CIAP Budget, Form HUD–52820, with the CIAP budget and other required documents. The Board resolution does not require certification as to the accuracy and completeness of the budget, including the implementation schedule, and other documents. The Board resolution does contain various certifications and agreements regarding HA compliance with HUD policies, procedures, requirements, regulations and Federal statutes. The Department is willing to accept the certification by the Executive Director, in lieu of the Board, in these matters, where the Executive Director has been delegated this authority by the Board and is permitted to do so under State law.

B. Description of Simplified CIAP

This final rule continues the simplification of the CIAP, as set forth in the interim rule, in the areas of HA application requirements, modernization types, application processing and implementation. The final rule provides increased efficiency, reduces unnecessary requirements, and provides new flexibility for both the participating HAs and HUD. The changes to CIAP are the same for both Public and Indian housing, with the exception of the Mutual Help Program. Many of these changes are the result of recent meaningful dialogue with small HAs and experience gained through administering CIAP.

C. Simplification of Procedures for Obtaining Approval of a Modernization Program

Previously, the process for receiving CIAP funds involved multiple steps. This final rule continues the approach set forth in the interim rule regarding the elimination, combination or simplification of many of those previous requirements.

HUD expects that after modernization funds for a particular Federal Fiscal Year become available, HUD would continue to publish in the **Federal Register** a NOFA and the time frame for submission for applications. HUD currently publishes an annual CIAP NOFA for this purpose and, in the last two years, the CIAP NOFA has been significantly improved to describe clearly submission requirements, available amounts, eligibility, technical review factors, application processing, Joint Review selections, and funding decisions. The improvements to the CIAP NOFA also are intended to promote fair competition in the program.

This final rule establishes the following steps for obtaining approval of a modernization program: (1) application submission by the HA; (2) completeness review by HUD; (3) eligibility review by HUD; (4) technical review, including rating and ranking, by HUD; and (5) Joint Review by HUD and the HA; (6) funding decisions by HUD; (7) budget submission by HA; and (8) ACC amendment. Based on actual operating experience in FFYs 1993, 1994, and 1995, processing time was significantly reduced.

The first step for obtaining a CIAP grant is the application submission by the HA. As previously noted, the requirement to provide a cost estimate for the replacement of equipment, systems or structural elements over a 30-year period is no longer mandated by the statute and has been eliminated.

An HA has the option of including only the specific developments for which it is requesting funding or of including all its developments in the CIAP Application. The consequences of not including all its developments in the CIAP Application are that HUD may not, as a result of Joint Review, consider funding of any non-emergency work at excluded developments or subsequently approve use of leftover funds at excluded developments. The benefits derived from including all its developments are the ability to: (1) revise specific work items among developments at Joint Review; and (2) use leftover funds upon completion of the modernization for modernization needs at other developments covered by the application. An HA must evaluate and describe its modernization needs and the estimated costs for each development covered by the application.

HUD will ensure that documentation and other information regarding each application submitted pursuant to the CIAP NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 calendar days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulation at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to the CIAP NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR §§ 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

The second step for obtaining a CIAP grant is the completeness review by HUD. The final rule clarifies that if the CIAP Application (Form HUD–52822) or any other essential document, as specified in the NOFA, is missing, the HA's application will be considered substantially incomplete and, therefore, ineligible for further processing. If there is a technical mistake, such as no signature on a submitted form, the HA will be given an opportunity to correct the deficiency. This is not additional time to substantially revise the application. Deficiencies that may be corrected at this time are inadvertently omitted documents, as specified in the NOFA, or clarifications of previously submitted material and other changes which are not of such a nature as to improve the competitive position of the application. In addition, the final rule clarifies that if the HA does not correct the deficiency within the specified time period, the HA is ineligible for further processing.

The third step for obtaining a CIAP grant is the eligibility review by HUD. Based on operating experience in FFYs 1993, 1994, and 1995, the Department has made the following changes from the interim rule:

(1) Eliminated work item eligibility and need which may be difficult to determine before Joint Review;

(2) Changed the requirement that each development on which work is proposed be at least three years old from the End of Initial Operating Period (EIOP) to a requirement that each development must have reached the Date of Full Availability (DOFA) and be under ACC; Also, clarified the eligibility of a development/building/unit assisted with Major Reconstruction of Obsolete Projects (MROP) funding, under section

5(j)(2) of the Act (see Section F of this Preamble). These changes make development eligibility under the CIAP consistent with the CGP;

(3) Eliminated the restriction on processing where the HA has not submitted the fiscal audit to HUD within one year after the end of the audit period, or requested an extension for submission, in conformance with the Single Audit Act requirements. The Department has decided to use regular monitoring as a more effective method of obtaining audit compliance rather than eliminating the HA up-front from full funding consideration;

(4) Eliminated the restriction on processing where the HA owes funds to the Department as a result of excess development, modernization or operating funds previously provided and the HA has not repaid the funds, or has not entered into a repayment agreement, or is not meeting its obligations under a repayment agreement. The Department has decided to use regular monitoring as a more effective method of obtaining funds owed to the Department rather than eliminating the HA up-front from full funding consideration;

(5) Where the HA has not completed the structural changes identified by the Section 504 Needs Assessment, added the restriction on processing to Emergency Modernization or physical work needed to meet Section 504 requirements;

(6) Where the HA has not complied with the statutory requirement to complete Lead Based Paint (LBP) testing on all pre-1978 family units, added the restriction on processing to Emergency Modernization or work needed to complete LBP testing; and

(7) Where the HA has not complied with Fair Housing and Equal Opportunity (FHEO) requirements, continued the restriction on processing to Emergency Modernization or work needed to remedy civil rights deficiencies.

The fourth step for obtaining a CIAP grant is technical review by HUD. The Department is retaining the provisions of the interim rule regarding technical processing, categorizing the eligible HAs and their developments into two processing groups (Group 1 for Emergency Modernization and Group 2 for Other Modernization), and rating and ranking of applications in Group 2. Preference is given to all HA applications in Group 1 since such applications involve emergencies which are an immediate threat to resident health or safety. Accordingly, such applications are not rated and ranked during technical processing and are automatically selected for Joint Review.

The Field Office rates the Group 2 HAs/developments against the technical review factors to determine relative ranking. In accordance with section 14(h) of the Act, the Department will continue the preference given to HAs which request assistance for developments having conditions which threaten the health or safety of the residents or having a significant number of vacant, substandard units, and which have demonstrated a capability of carrying out the proposed activities. This preference is reflected in the technical review factors and their maximum point scores.

The final rule recognizes the change in the Department's field structure by eliminating reference to the Regional Office. Since each Field Office receives its own allocation of CIAP funds, the Field Office will proceed to Joint Review selection after rating and ranking. The Field Office will identify for selection the highest ranking HA applications in Group 2 in descending order, and other Group 2 HAs with lower ranking applications but with high priority needs which most reasonably approximate the amount of modernization which can be funded by the Field Office. High priority needs are non-emergency needs, but related to: health or safety; vacant, substandard units; structural or system integrity; or compliance with statutory, regulatory or court-ordered deadlines. Again, all Group 1 applications will be automatically selected for Joint Review.

The fifth step for obtaining a CIAP grant is Joint Review. The purpose of Joint Review is for the Field Office to discuss with an HA the proposed modernization program, as set forth in the application, and determine the size of the grant, if any, to be awarded. The Field Office will notify those HAs whose applications have been selected for further processing as to whether the Joint Review will be conducted on-site or off-site (*e.g.*, by telephone or in-office meeting). If conducted on-site, the Joint Review may include an inspection of the proposed physical work. An HA will prepare for Joint Review by preparing a draft CIAP budget and reviewing the other items to be covered during Joint Review, as prescribed by HUD. The Field Office will review long-term viability and reasonable cost determinations during Joint Review.

HAs not selected for Joint Review will be notified by letter stating the reasons, such as the low priority of its physical improvement needs relative to available funding. If, prior to scheduling the Joint Reviews, there is determined to be a duplication of funding, the HA will not be selected for Joint Review. Where a duplication of funding is determined during Joint Review, the HA will not be selected for funding.

The sixth and seventh steps for obtaining a CIAP grant are funding decisions by HUD and budget submission by the HA. Upon completion of Joint Review, the Field Office will adjust the HAs/developments and work items to be funded and the amounts to be awarded, including processing groups, as necessary, based on information obtained at Joint Review, the results of FHEO review, and completion of the environmental reviews. After Congressional notification, the Field Office will announce the HAs selected for CIAP grants, subject to their submission of an approvable CIAP budget and other required documents. The Field Office will request the funded HA to submit a CIAP budget, which includes an implementation schedule, a resolution by the HA Board of Commissioners containing certifications required by HUD, and any other required documents. The Field Office will select all bona fide emergencies in Group 1 for funding before funding Group 2 applications. HAs not selected for funding will be notified in writing of the reason for non-selection.

After Field Office approval of the CIAP budget, the eighth step for obtaining a CIAP grant is that the Field Office and the HA enter into an ACC Amendment in order for the HA to obtain modernization funds. The ACC Amendment will require low-income use of the housing for not less than 20 years from the date of the ACC Amendment (subject to sale of homeownership units in accordance with the terms of the ACC). It should be noted that HUD has the authority to condition the ACC Amendment (*e.g.*, to require an HA to hire a modernization coordinator or contract administrator to administer its modernization program).

The final rule continues the streamlined ACC Amendment process by allowing Field Office program staff to complete and forward the ACC Amendment to the HA with the budget approval letter, and by allowing the HA Executive Director, where authorized by the Board and permitted by State law, to sign and return the ACC Amendment to the Field Office for execution. This is identical to the ACC Amendment process in the CGP. Excluding Mutual Help developments, an HA also will, where necessary, execute and file for record a Declaration of Trust, as provided under the ACC, to protect the rights and interests of HUD throughout the 20-year period during which the HA is obligated to operate the developments receiving modernization funds in accordance with the ACC, the Act, and HUD regulations and requirements.

D. Other Simplifications and Revisions to CIAP

When the revised CGP final rule was published on August 30, 1994, at 59 FR 44810, the Department eliminated the requirement that the cost of non-emergency health and safety work items increase the purchase price and amortization period for Turnkey III or Mutual Help homebuyer families. This requirement already was eliminated for the CGP and CIAP at §§ 950.602 and 968.102.

CIAP agencies shall administer previously approved CIAP grants under this final rule. It would be problematic for both HUD and CIAP agencies to administer CIAP programs in progress under differing requirements. HUD will continue to allow revisions to previously approved CIAP budgets, where appropriate.

E. Major Reconstruction of Obsolete Projects (MROP)

Section 111(b) of the Housing and Community Development Act of 1992 amended section 14(c) of the Act and provided that a building which is assisted with MROP funding (under section 5(j)(2) of the Act) is not eligible for CIAP funding. This statutory provision was implemented in the interim rule at § 968.101(b)(5). To provide further clarification, § 968.101(b)(5) is revised in the final rule to clarify that a development/building/unit is eligible for CIAP funding where it was funded under MROP after FFY 1988 and has reached DOFA or where it was funded under MROP during FFYs 1986–1988 and all MROP funds have been expended.

F. Long-Term Viability

The final rule clarifies at §§ 905.608(b) and 968.112(b) that HAs may expend funds on a non-viable development for essential non-routine maintenance needed to keep the property habitable until the demolition or disposition application is approved and residents are relocated.

G. Previous Participation

On June 20, 1994, the Department published at 59 FR 31521, an interim rule, which eliminated the requirement for HAs to submit Form HUD–2530, Previous Participation Certificate, on modernization contracts. Accordingly, §§ 950.642(d)(3) and 968.235(d)(3), requiring previous participation clearance, have been eliminated and §§ 950.642(g) (now 950.618) and 968.235 (now 968.135) have been modified to delete reference to previous participation.

H. Time Extensions

The Department has added new §§ 950.638 and 968.235 to specify requirements regarding time extensions to the obligation or expenditure deadline date approved by HUD in the original implementation schedule. HUD approves implementation schedules as part of the budget approval process (refer to Part III of the CIAP budget). The Department is allowing CIAP agencies to execute (as CGP agencies now are authorized to do), without prior HUD approval, time extensions commensurate with the delay no later than 30 calendar days after the obligation or expenditure deadline date where the HA is able to certify that the delay is due to reasons outside of the HA's control, such as the need to use leftover funds from a completed modernization program for additional work, unforeseen delays in contracting or contract administration, litigation, and HUD or other institutional delay. Where the delay is not due to reasons outside of the HA's control, the HA must request HUD approval of a time extension no later than 30 calendar days after the obligation or expenditure deadline date to avoid recapture of funds.

I. Threshold for Performance and Payment Bond for CGP Agencies

The Department's procurement regulations, as set forth in 24 CFR 85.36(h), require that HA contractors furnish a bid guarantee and a performance bond and payment bond for each construction or equipment contract over $100,000. For the CIAP and the CGP, the Department had reduced that threshold from $100,000 to $25,000 in order to protect the Federal interest. The Department has reconsidered this matter and has raised the threshold from $25,000 to $100,000 for both CIAP and CGP agencies at §§ 950.618(b) and 968.135(b). The Department inadvertently omitted the requirement of the bid guarantee when it reduced the threshold for the performance and payment bonds and has included it with this rule. In addition, the Department is continuing its policy of allowing for both CGP and CIAP agencies two other alternative methods of assurance to performance and payment bonds, which are a twenty percent cash escrow or a twenty-five percent letter of credit.

VI. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:00 p.m. weekdays) in the Office of the Rules Docket Clerk, Room 10272, 451 Seventh Street, SW., Washington, DC 20410.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the rule does not have substantial, direct effects on HAs. The revised modernization program is consistent with federalism principles since it reduces unnecessary burdens on HAs. While the program is revised, the primary change is only in the way that HUD processes and reviews HA modernization activities, and not the modernization activities themselves. This rule will not diminish the importance of State and local governments with respect to the Federal Government. As a result, the rule is not subject to review under the order.

Impact on the Family

This rule has been developed in accordance with Executive Order 12606, *the Family*. The General Counsel, as the Designated Official under the Executive Order, has determined that this rule does not have the potential for significant impact on family formation, maintenance, or general well-being, since its effect is limited to revising program procedures for HAs applying for discretionary grants. Families are not affected since HAs will continue to carry out modernization activities at public housing developments.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule codifies revisions to the existing CIAP under which HAs receive modernization assistance from HUD on a competitive basis. HUD does not anticipate a significant economic impact on small entities since HAs will continue to carry out their modernization activities by entering

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into contracts for the work as they now do.

Catalog of Domestic Assistance

The Catalog of Domestic Assistance numbers for the programs affected by this rule are 14.146, 14.147, 14.850, 14.851, 14.852, and 15.141.

List of Subjects

24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

24 CFR Part 950

Aged, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 968

Grant programs—housing and community development, Indians, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, parts 941, 950, 965, and 968 of title 24 of the Code of Federal Regulations are amended as follows:

PART 941—PUBLIC HOUSING DEVELOPMENT

1. The authority citation for 24 CFR part 941 continues to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437g, and 3535(d).

2. In § 941.208, paragraph (c) is revised to read as follows:

§ 941.208 Other Federal requirements.

* * * * *

(c) *Prevailing wage rates.* See part 965 of this chapter for applicable requirements on this subject.

* * * * *

3. In § 941.503, paragraph (d) is revised to read as follows:

§ 941.503 Construction requirements.

* * * * *

(d) *Prevailing wage rates.* See § 965.101 of this chapter.

PART 950—INDIAN HOUSING PROGRAMS

4. The authority citation for 24 CFR part 950 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa–1437ee, and 3535(d).

5–6. Section 950.102 is amended by adding a definition of "*other modernization (modernization other than emergency)*" in alphabetical order, and by revising the definitions of "*emergency modernization*", "*modernization capability*", and "*modernization project*", to read as follows:

§ 950.102 Definitions.

* * * * *

Emergency modernization (CIAP). A type of modernization program for a development that is limited to physical work items of an emergency nature, that pose an immediate threat to the health or safety of residents or is related to fire safety, *and* that must be corrected within one year of CIAP funding approval.

* * * * *

Modernization capability. An IHA has modernization capability if it is:

(1) Not designated as high risk under § 950.135; or

(2) Designated as high risk, but has a reasonable prospect of acquiring modernization capability through CIAP-funded management improvements and administrative support, such as hiring staff or contracting for assistance. An IHA that has been classified high risk with regard to modernization is eligible for emergency modernization only, unless it is making reasonable progress toward meeting the performance targets established in its management improvement plan under § 950.135(f)(2) or has obtained alternative oversight of its modernization functions. Where an IHA does not have a funded modernization program in progress, the Area ONAP shall determine whether the IHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

* * * * *

Modernization project. The improvement of one or more existing Indian housing developments under an unique number designated for that modernization program (CIAP). For each modernization project, HUD and the IHA shall enter into an ACC amendment, requiring low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC).

* * * * *

Other Modernization (modernization other than emergency). A type of modernization program for a development that includes one or more physical work items, where HUD determines that the physical improvements are necessary and sufficient to extend substantially the useful life of the development, and/or one or more development specific or IHA-wide management work items (including planning costs), and/or LBP testing, professional risk assessments, interim containment, and abatement.

* * * * *

7. Subpart I of Part 950, is revised to read as follows:

Subpart I—Modernization Program

General Provisions

Sec.

950.600 Purpose and applicability.
950.602 Special requirements for Turnkey III and Mutual Help developments.
950.604 Allocation of funds under section 14.
950.606 Reserve for emergencies and disasters.
950.608 Eligible costs.
950.610 Modernization and energy conservation standards.
950.612 Force account.
950.614 Initiation of modernization activities.
950.616 Fund requisition.
950.618 Contracting requirements.
950.620 On-site inspections.
950.622 Fiscal closeout.

Comprehensive Improvement Assistance Program (For IHAs That Own or Operate Fewer Than 250 Indian Housing Units)

950.630 Procedures for obtaining approval of a modernization program.
950.632 Resident and homebuyer participation.
950.634 Budget revisions.
950.636 Progress reports.
950.638 Time extensions.
950.640 HUD review of IHA performance.

Comprehensive Grant Program (For IHAs That Own or Operate 250 or More Indian Housing Units)

950.650 Determination of formula amount.
950.652 Comprehensive plan (including Five-Year Action Plan).
950.654 HUD review and approval of comprehensive plan (including Five-Year Action Plan).
950.656 Annual submission of activities and expenditures.
950.658 IHA Performance and Evaluation Report.
950.660 HUD review of IHA performance.

Subpart I—Modernization Program

General Provisions

§ 950.600 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to set forth the policies and procedures for the Modernization program, authorizing HUD to provide financial assistance to Indian Housing Authorities (IHAs).

(b) *Applicability.* (1) The sections under the undesignated heading "General Provisions" apply to all modernization under this subpart. The sections under the undesignated heading "Comprehensive Improvement Assistance Program" (CIAP) set forth the requirements and procedures for the CIAP for IHAs that own or operate fewer than 250 Indian housing units. An IHA that qualifies for participation in the Comprehensive Grant Program (CGP) is not eligible to participate in the CIAP. The sections under the undesignated heading "Comprehensive Grant program (CGP)" set forth the requirements and procedures for the CGP for IHAs that own or operate 250 or more Indian housing units. An IHA that has already qualified to participate in the CGP remains eligible to participate in the CGP so long as it owns or operates at least 200 units.

(2) This subpart applies to IHA-owned low-income Indian housing developments (including developments managed by a Resident Management Corporation pursuant to a contract with the IHA). This subpart also applies to the implementation of modernization programs which were approved before FFY 1996. Rental developments that are planned for conversion to homeownership under sections 5(h), 21, or 301 of the Act (42 U.S.C. 1437c, 1437s, 1437aaa), but that have not yet been sold by an IHA, continue to qualify for assistance under this subpart. This subpart does not apply to developments under the Section 23 Leased Housing Non-Bond Financed program, the Section 10(c) Leased program, or the Section 23 or Section 8 Housing Assistance Payments programs.

(c) *Transition.* Any amount that HUD has obligated to an IHA shall be used for the purposes for which the funding was provided, or:

(1) For a CGP IHA, for purposes consistent with an approved annual statement or five-year action plan submitted by the IHA, as the IHA determines to be appropriate; or

(2) For a CIAP IHA, in accordance with a revised CIAP budget under § 950.634.

(d) *Other applicable requirements.* See subpart A of this part for applicable requirements, other than the Act, that apply to modernization under this subpart I.

(e) *Approved information collections.* The following sections of this subpart have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 and assigned OMB approval number 2577–0044: §§ 950.618, 950.622, 950.630, 950.632, 950.634, and 950.636. The following sections of this subpart have been similarly approved and assigned approval number 2577.0157: §§ 950.650, 950.656, and 950.658.

§ 950.602 Special requirements for Turnkey III and Mutual Help developments.

(a) *Modernization costs.* Modernization work on a Mutual Help or Turnkey III unit shall not increase the purchase price or amortization period of the home.

(b) *Eligibility of paid-off and conveyed units for assistance.* (1) *Paid-off units.* A Mutual Help or Turnkey III unit that is paid off but has not been conveyed at the time work is included for it in the CIAP application or CGP Annual Statement is eligible for any physical improvements provided under § 950.608. However, in accordance with the provisions of § 950.440(e)(8), an IHA may perform nonemergency work on a paid-off Mutual Help unit only after all delinquencies are repaid.

(2) *Conveyed units.* Where modernization work has been approved prior to conveyance, the IHA may complete the work even if title to the unit is subsequently conveyed before the work is completed. However, once conveyed, the unit is not eligible for additional or future assistance. An IHA shall not use funds provided under this subpart for the purpose of modernizing units if the modernization work was not approved before conveyance of title.

(c) *Other.* The homebuyer family shall be in compliance with its financial obligations under its homebuyer agreement in order to be eligible for nonemergency physical improvements, with the exception of work necessary to meet statutory and regulatory requirements (e.g., accessibility for disabled persons, lead-based paint testing, interim containment, professional risk assessment, and abatement) and the correction of development deficiencies. Notwithstanding the above requirement, an IHA may, with prior HUD approval, complete nonemergency physical improvements on any homeownership unit if the IHA demonstrates that, due to economies of scale or geographic constraints, substantial cost savings may be realized by completing all necessary work in a development at one time.

§ 950.604 Allocation of funds under section 14.

(a) *General.* This section describes the process for allocating modernization funds to the aggregate of IHAs and PHAs participating in the CIAP (i.e., agencies that own or operate fewer than 250 units), and to individual IHAs and PHAs participating in the CGP (i.e., agencies that own or operate 250 or more units). The program requirements governing PHA participation in the CIAP and CGP are contained in 24 CFR part 968.

(b) *Set-aside for emergencies and disasters.* For each FFY, HUD shall reserve from amounts approved in the appropriation act for grants under this part and part 968 of this title, an amount not to exceed $75 million (which shall include unused reserve amounts carried over from previous FFYs), which shall be made available to IHAs and PHAs for modernization needs resulting from natural and other disasters, and from emergencies. HUD shall replenish this reserve at the beginning of each FFY. Any unused funds from previous years may remain in the reserve until allocated. The requirements governing the reserve for disasters and emergencies and the procedures by which an IHA may request such funds are set forth in § 950.606.

(c) *Set-aside for credits for mod troubled PHAs under 24 CFR part 968, subpart C.* (1) *General.* After deducting amounts for the reserve for natural and other disasters and for emergencies under paragraph (b) of this section, HUD shall set aside no more than five percent of the remaining amount for the purpose of providing credits to PHAs under 24 CFR part 968, subpart C that were formerly designated as mod troubled agencies under the Public Housing Management Assessment Program (PHMAP) at 24 CFR part 901. The purpose of this set-aside is to compensate such PHAs for amounts previously withheld by HUD because of their prior designation as a mod troubled agency.

(2) *Nonapplicability to IHAs.* Since the PHMAP performance indicators under 24 CFR part 901 do not apply to IHAs, these agencies cannot be deemed mod troubled for purposes of the CGP. Hence, IHAs are not subject to any reduction in funding under section 14(k)(5)(a) of the Act, nor do they participate in the set-aside of credits established under paragraph (c)(1) of this section.

(d) *Formula allocation based on relative needs.* After determining the

amounts to be reserved under paragraphs (b) and (c) of this section, HUD shall allocate the amount remaining pursuant to the formula set forth in paragraphs (e) and (f) of this section, which are designed to measure the relative backlog and accrual needs of IHAs and PHAs.

(e) *Allocation for backlog needs.* HUD shall allocate half of the formula amount under paragraph (d) of this section based on the relative backlog needs of IHAs and PHAs, as follows:

(1) *Determination of backlog need.* (i) *Statistically reliable data.* Where HUD determines that the data concerning the categories of backlog need identified under paragraph (e)(4) of this section are statistically reliable for individual IHAs and PHAs with 250 or more units, or the aggregate of IHAs and PHAs with fewer than 250 units not participating in the formula funding portion of the modernization program, it will base its allocation on direct estimates of the statutory categories of backlog need, based on the most recently available, statistically reliable data.

(ii) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning the categories of backlog need identified under paragraph (e)(4) of this section are not available for individual IHAs and PHAs with 250 or more units, it will base its allocation of funds under this section on estimates of the categories of backlog need using:

(A) The most recently available data on the categories of backlog need under paragraph (e)(4) of this section;

(B) Objectively measurable data concerning the following IHA or PHA, community, and development characteristics:

(*1*) The average number of bedrooms in the units in a development (Weighted at 2858.7);

(*2*) The proportion of units in a development available for occupancy by very large families (Weighted at 7295.7);

(*3*) The extent to which units for families are in high-rise elevator developments (Weighted at 5555.8);

(*4*) The age of the developments, as determined by the DOFA date (date of full availability). In the case of acquired developments, HUD will use the DOFA date unless the IHA provides HUD with the actual date of construction, in which case HUD will use the age of the development (or for scattered sites, the average age of all the buildings), subject to a 50 year cap. (Weighted at 206.5);

(*5*) In the case of a large agency, the number of units with 2 or more bedrooms (Weighted at .433);

(*6*) The cost of rehabilitating property in the area (Weighted at 27544.3);

(*7*) For family developments, the extent of population decline in the unit of general local government determined on the basis of the 1970 and 1980 censuses (Weighted at 759.5); and

(C) An equation constant of 1412.9.

(2) *Calibration of backlog need for developments constructed prior to 1985.* The estimated backlog need, as determined under either paragraphs (e)(1)(i) or (e)(1)(ii) of this section, shall be adjusted upward for developments constructed prior to 1985 by a constant ratio of 1.5 to more accurately reflect the costs of modernizing the categories of backlog need under paragraph (e)(4) of this section, for the Indian housing stock as of 1991.

(3) *Deduction for prior modernization.* HUD shall deduct from the estimated backlog need, as determined under either paragraphs (e)(1)(i) or (e)(1)(ii) of this section, amounts previously provided to an IHA or PHA for modernization, using one of the following methods:

(i) *Standard deduction for prior CIAP and MROP.* HUD shall deduct 60 percent of the CIAP funds made available on an IHA-wide or PHA-wide basis from FFY 1984 to 1991, and 40 percent of the funds made available on a development-specific basis for the Major Reconstruction of Obsolete Projects (MROP) (not to exceed the estimated formula need for the development), subject to a maximum 50 percent deduction of an IHA's or PHA's total need for backlog funding;

(ii) *Newly constructed units.* Units with a DOFA date of October 1, 1991 or thereafter will be considered to have a zero backlog; or

(iii) *Acquired developments.* Developments acquired by an IHA with major rehabilitation, with a DOFA date of October 1, 1991 or thereafter, will be considered to have a zero backlog.

(4) *Categories of backlog need.* The most recently available data to be used under either paragraphs (e)(1)(i) or (e)(1)(ii) of this section shall pertain to the following categories of backlog need:

(i) Backlog of needed repairs and replacements of existing physical systems in Indian housing developments;

(ii) Items that shall be added to developments to meet HUD's modernization standards under § 950.610, and State, local and tribal codes; and

(iii) Items that are necessary or highly desirable for the long-term viability of a development, in accordance with HUD's modernization standards.

(f) *Allocation for accrual needs.* HUD shall allocate the other half remaining under the formula allocation under paragraph (d) of this section based upon the relative accrual needs of IHAs and PHAs, determined as follows:

(1) *Statistically reliable data.* If HUD determines that statistically reliable data are available concerning the categories of need identified under paragraph (f)(3) of this section for individual IHAs and PHAs with 250 or more units and for the aggregate of IHAs and PHAs with fewer than 250 units, it shall base its allocation of assistance under this section on the needs that are estimated to have accrued since the date of the last objective measurement of backlog needs under paragraph (e)(1)(i) of this section; or

(2) *Statistically reliable data are unavailable.* If HUD determines that statistically reliable data concerning the categories of need identified under paragraph (f)(3) of this section are not available for individual IHAs and PHAs with 250 or more units, it shall base its allocation of assistance under this section on estimates of accrued need using:

(i) The most recently available data on the categories of backlog need under paragraph (f)(3) of this section;

(ii) Objectively measurable data concerning the following IHA or PHA, community, and development characteristics:

(A) The average number of bedrooms in the units in a development (Weighted at 100.1);

(B) The proportion of units in a development available for occupancy by very large families (Weighted at 356.7);

(C) The age of the developments (Weighted at 10.4);

(D) The extent to which the buildings in developments of an agency average fewer than 5 units (Weighted at 87.1.);

(E) The cost of rehabilitating property in the area (Weighted at 679.1);

(F) The total number of units of each IHA or PHA that owns or operates 250 or more units (Weighted at .0144); and

(iii) An equation constant of 602.1.

(3) *Categories of need.* The data to be provided under either paragraph (f)(1) or (f)(2) of this section shall pertain to the following categories of need:

(i) Backlog of needed repairs and replacements of existing physical systems in Indian housing developments; and

(ii) Items that shall be added to developments to meet HUD's modernization standards under § 950.610, and State, local, and tribal codes.

(g) *Allocation for CIAP.* The formula amount determined under paragraphs (e) and (f) of this section for IHAs and PHAs with fewer than 250 units shall be allocated to IHAs in accordance with

the requirements under the undesignated heading of this subpart "Comprehensive Improvement Assistance Program" (CIAP) and to PHAs in accordance with the requirements of 24 CFR part 968, subpart B.

(h) *Allocation for CGP.* The formula amount determined under paragraphs (e) and (f) of this section for IHAs with 250 or more units shall be allocated in accordance with the requirements under the undesignated heading of this subpart "Comprehensive Grant Program," and for PHAs in accordance with the requirements of 24 CFR part 968, subpart C. An IHA that is eligible to receive a grant under the CGP may appeal the amount of its formula allocation under this section in accordance with the requirements set forth in § 950.650. An IHA that is eligible to receive modernization funds under the CGP because it owns or operates 250 or more units, is disqualified from receiving assistance under the CIAP under this part.

(i) *Use of formula allocation.* Any amounts allocated to an IHA under paragraphs (e) and (f) of this section may be used for any eligible activity under this subpart, notwithstanding that the allocation amount is determined by allocating half based on the relative backlog needs and half based on the relative accrual needs of IHAs and PHAs.

(j) *Calculation of number of units.* For purposes of determining under this section the number of units owned or operated by an IHA or PHA, and the relative modernization needs of IHAs and PHAs, HUD shall count as one unit each existing rental, Mutual Help, and section 23 Bond-Financed unit under the ACC, except that it shall count as one-fourth of a unit each existing unit under the Turnkey III program. New development units that are added to an IHA's or PHA's inventory will be added to the overall unit count so long as they are under ACC amendment and have reached DOFA by the first day in the FFY in which the formula is being run. Any increase in units (reaching DOFA and under ACC amendment) as of the beginning of the FFY shall result in an adjustment upwards in the number of units under the formula. New units reaching DOFA after this date will be counted for formula purposes as of the following FFY.

(k) *Demolition, disposition, and conversion of units.* (1) *General.* Where an existing unit under an ACC is demolished, disposed of, or converted into a larger or smaller unit, HUD shall not adjust the amount the IHA or PHA receives under the formula, unless more than one percent of the units are affected on a cumulative basis. Where more than one percent of the existing units are demolished, disposed of, or converted, HUD shall reduce the formula amount for the IHA or PHA over a 3-year period to reflect removal of the units from the ACC.

(2) *Determination of one percent cap.* In determining whether more than one percent of the units are affected on a cumulative basis, HUD will compare the units eligible for funding in the initial year under formula funding with the number of units eligible for funding for the current year under formula funding, and shall base its calculations on the following:

(i) Increases in the number of units resulting from the conversion of existing units will be added to the overall unit count so long as they are under ACC amendment by the first day in the FFY in which the formula is being run;

(ii) Units that are lost as a result of demolition, disposition, or conversion shall not be offset against units subsequently added to an IHA's or PHA's inventory;

(iii) For purposes of calculating the number of converted units, HUD shall regard the converted size of the unit as the appropriate unit count (e.g., a unit that originally was counted as one unit under paragraph (j) of this section, but which later was converted into two units, shall be counted as two units under the ACC).

(3) *Phased-in reduction of units.* (i) *Reduction less than one percent.* If HUD determines that the reduction in units under paragraph (k)(2) of this section is less than one percent, the IHA or PHA will be funded as though no change had occurred.

(ii) *Reduction greater than one percent.* If HUD determines that the reduction in units under paragraph (k)(2) of this section is greater than one percent, the number of units on which formula funding is based will be the number of units reported as eligible for funding for the current program, plus two-thirds of the difference between the initial year and the current year in the first year, plus one-third of the difference in the second year, and at the level of the current year in the third year.

(iii) *Exception.* A unit that is conveyed under the Mutual Help or Turnkey III programs will result in an automatic (rather than a phased-in) reduction in the unit count. Paid-off Mutual Help or Turnkey III units continue to be counted until they are conveyed.

(4) *Subsequent reductions in unit count.* (i) Once an IHA's or PHA's unit count has been fully reduced under paragraph (k)(3)(ii) of this section to reflect the new number of units under the ACC, this new number of units will serve as the base for purposes of calculating whether there has been a one percent reduction in units on a cumulative basis.

(ii) A reduction in formula funding, based upon additional reductions to the number of an IHA's or PHA's units, will also be phased in over a 3-year period, as described in paragraph (k)(2) of this section.

§ 950.606 Reserve for emergencies and disasters.

(a) *Emergencies.* (1) *Eligibility for assistance.* An IHA (including an IHA that is determined to be high risk under § 950.135) may obtain funds at any time, for any eligible emergency work item as defined in § 950.102 (for IHAs participating in CGP) or for any eligible emergency work item (described as emergency modernization in § 950.102) (for IHAs participating in CIAP), from the reserve established under § 950.604(b). However, emergency reserve funds may not be provided to an IHA participating in CGP that has the necessary funds available from any other source, including its annual formula allocation under § 950.604(e) and (f), other unobligated modernization funds, and its replacement reserves under § 950.608. An IHA is not required to have an approved Comprehensive Plan under § 950.652 before it can request emergency assistance from this reserve. Emergency reserve funds may not be provided to an IHA participating in CIAP unless it does not have the necessary funds available from any other source, including unobligated CIAP, and no CIAP modernization funding is available from HUD for the remainder of the fiscal year.

(2) *Procedure.* To obtain emergency funds, an IHA shall submit a request, in a form to be prescribed by HUD, that demonstrates that without the requested funds from the set-aside under this section, the IHA does not have adequate funds available to correct the conditions that present an immediate threat to the health or safety of the residents. HUD will immediately process a request for such assistance, and if it determines that the IHA's request meets the requirements of paragraph (a)(1) of this section, it shall approve the request, subject to the availability of funds in the reserve.

(3) *Repayment.* A CGP IHA that receives assistance for its emergency needs from the reserve under § 950.604(b) shall repay such assistance from its future allocations of assistance,

as available. For IHAs participating in the CGP, HUD shall deduct up to 50 percent of an IHA's succeeding year's formula allocation under § 950.604(e) and (f) to repay emergency funds previously provided by HUD to the IHA. The remaining balance, if any, shall be deducted from an IHA's succeeding years' formula allocations.

(b) *Natural and other disasters.* (1) *Eligibility for assistance.* An IHA (including an IHA that has been determined by HUD not to be administratively capable under § 950.135) may request assistance at any time from the reserve under § 950.604(b) for the purpose of permitting the IHA to respond to a natural or other disaster. To qualify for assistance, the disaster shall pertain to an extraordinary event affecting only one or a few IHAs, such as an earthquake or hurricane. Any disaster declared by the President (or that HUD determines would qualify for a Presidential declaration if it were on a larger scale) qualifies for assistance under this paragraph. An IHA may receive funds from the reserve regardless of the availability of other modernization funds or reserves, but only to the extent its needs are in excess of its insurance coverage. An IHA is not required to have an approved Comprehensive Plan under § 950.652 before it can request assistance from the reserve under § 950.604(b).

(2) *Procedure.* To obtain funding for natural or other disasters under § 950.604(b), an IHA shall submit a request, in a form prescribed by HUD, that demonstrates that it meets the requirements of paragraph (b)(1) of this section. HUD will immediately process a request for such assistance, and if it determines that the request meets the requirements under paragraph (b)(1) of this section, it will approve the request, subject to the availability of funds in the reserve.

(3) *Repayment.* Funds provided to an IHA under paragraph (b)(1) of this section for natural and other disasters are not required to be repaid.

§ 950.608 Eligible costs.

(a) *General.* An IHA may use financial assistance received under this part for the following eligible costs:

(1) For a CGP IHA, the eligible costs are:

(i) Undertaking activities described in its approved Annual Statement under § 950.656(e) and approved Five-Year Action Plan under § 950.652(e)(5);

(ii) Carrying out emergency work, whether or not the need is indicated in the IHA's approved Comprehensive Plan, including Five-Year Action Plan, or Annual Statement;

(iii) Funding a replacement reserve to carry out eligible activities in future years, subject to the restrictions set forth in paragraph (f) of this section;

(iv) Preparing the Comprehensive Plan and Five-Year Action Plan under § 950.652 and the Annual Submission under § 950.656, including reasonable costs necessary to assist residents to participate in a meaningful way in the planning, implementation and monitoring process; and

(v) Carrying out an audit, in accordance with 24 CFR part 44.

(2) For a CIAP IHA, the eligible costs are activities approved by HUD and included in an approved CIAP budget.

(b) *Demonstration of viability.* Except in the case of emergency work, an IHA shall only expend funds on a development for which the IHA has determined, and HUD agrees, that the completion of the improvements and replacements (for CGP IHAs, as identified in the comprehensive plan) will reasonably ensure the long-term physical and social viability of the development at a reasonable cost (as defined in § 950.102), or for essential non-routine maintenance needed to keep the property habitable until the demolition or disposition application is approved and residents are relocated.

(c) *Physical improvements.* Eligible costs include alterations, betterments, additions, replacements, and non-routine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in § 950.610. These mandatory standards may be exceeded when the IHA (and HUD in the case of CIAP IHAs) determine that it is necessary or highly desirable for the long-term physical and social viability of the individual development. Development specific work includes work items that are modest in design and cost, but still blend in with the design and architecture of the surrounding community by including amenities, quality materials and design and landscaping features that are customary for the locality and culture. The Field Office has the authority to approve nondwelling space where such space is needed to administer, and is of direct benefit to, the Public and Indian Housing Program. If demolition or disposition is proposed, an IHA shall comply with subpart M of this part. Additional dwelling space may be added to existing units.

(d) *Turnkey III developments.* (1) *General.* Eligible physical improvement costs for existing Turnkey III developments are limited to work items that are not the responsibility of the homebuyer families *and* that are related to health and safety, correction of development deficiencies, physical accessibility, energy audits and cost-effective energy conservation measures, or LBP testing, interim containment, professional risk assessment and abatement. In addition, management improvements are eligible costs.

(2) *Ineligible costs.* Routine maintenance or replacements, and items that are the responsibility of the homebuyer families are ineligible costs.

(3) *Exception for vacant or non-homebuyer-occupied Turnkey III units.* (i) Notwithstanding the requirements of paragraph (d)(1) of this section, an IHA may substantially rehabilitate a Turnkey III unit whenever the unit becomes vacant or is occupied by a non-homebuyer family in order to return the unit to the inventory or make the unit suitable for homeownership purposes. An IHA that intends to use funds under this paragraph must identify in its CIAP Application or CGP Annual Submission the estimated number of units proposed for substantial rehabilitation and subsequent sale. In addition, an IHA must demonstrate that it has homebuyers who both are eligible for homeownership, in accordance with the requirements of this part, and have demonstrated their intent to be placed into each of the Turnkey III units proposed to be substantially rehabilitated.

(ii) Before an IHA may be approved for substantial rehabilitation of a unit under this paragraph (d), it must first deplete any Earned Home Payments Account (EHPA) or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit, and request the maximum amount of operating subsidy. Any increase in the value of a unit caused by its substantial rehabilitation under this paragraph shall be reflected solely by its subsequent appraised value, and not by an automatic increase in its selling price.

(e) *Demolition and conversion costs.* Eligible costs include:

(1) Demolition of dwelling units or non-dwelling facilities, where the demolition is approved by HUD under subpart M of this part, and related costs, such as clearing and grading the site after demolition and subsequent site improvement to benefit the remaining portion of the existing development; and

(2) Conversion of existing dwelling units to different bedroom sizes or to non-dwelling use.

(f) *Replacement reserve costs (for CGP only).* (1) Funding a replacement reserve to carry out eligible activities in future years is an eligible cost, subject to the following restrictions:

(i) Annual CGP funds are not needed for existing needs, as identified by the IHA in its needs assessments; or

(ii) A physical improvement requires more funds than the IHA would receive under its annual formula allocation; or

(iii) A management improvement requires more funds than the IHA may use under its 20% limit for management improvements (except as provided in paragraph (n)(2)(i) of this section), and the IHA needs to save a portion of its annual grant, in order to combine it with a portion of subsequent year(s) grants to fund the work item.

(2) The IHA shall invest replacement reserve funds so as to generate a return equal to or greater than the average 91-day Treasury bill rate.

(3) Interest earned on funds in the replacement reserve will not be added to the IHA's income in the determination of an IHA's operating subsidy eligibility, but must be used for eligible modernization costs.

(4) To the extent that its annual formula allocation and any unobligated balances of modernization funds are not adequate to meet emergency needs, an IHA must first use its replacement reserve, where funded, to meet emergency needs, before requesting funds from the reserve under § 950.606.

(5) An IHA is not required to use its replacement reserve for natural and other disasters.

(g) *Management improvement costs.* (1) *General.* Management improvements that are development-specific or IHA-wide in nature are eligible costs where needed to upgrade the operation of the IHA's developments, sustain physical improvements at those developments or correct management deficiencies. An IHA's ongoing operating expenses are ineligible management improvement costs. For CIAP IHAs, management improvements may be funded as a single work item.

(2) *Eligible costs.* Eligible costs include:

(i) *General management improvement costs.* Eligible costs include general management improvement costs, such as: management, financial, and accounting control systems of the IHA; adequacy and qualifications of IHA personnel, including training; resident programs and services through the coordination of the provision of social services from tribal or local government or other public and private entities; resident and development security; resident selection and eviction; occupancy; rent collection; maintenance; and equal opportunity.

(ii) *Economic development costs.* Eligible costs include job training for residents and resident business development activities, for the purpose of carrying out activities related to the modernization-funded management and physical improvements. HUD encourages IHAs, to the greatest extent feasible, to hire residents as trainees, apprentices, or employees to carry out the modernization program under this part, and to contract with resident-owned businesses for modernization work.

(iii) *Resident management costs.* Eligible costs include technical assistance to a resident council or resident management corporation (RMC), as defined in § 950.962, in order to: determine the feasibility of resident management to carry out management functions for a specific development or developments; train residents in skills directly related to the operations and management of the development(s) for potential employment by the RMC; train RMC board members in community organization, board development, and leadership; and assist in the formation of an RMC.

(iv) *Resident homeownership costs.* Eligible costs are limited to the study of the feasibility of converting rental to homeownership units and the preparation of an application for conversion to homeownership or sale of units.

(v) *Preventive maintenance system.* Eligible costs include the establishment of a preventive maintenance system or improvement of an existing system. A preventive maintenance system must provide for regular inspections of building structures, systems and units and determine the applicability of work eligible for operating funds (routine maintenance) and work eligible for modernization funding (non-routine maintenance).

(h) *Drug elimination costs.* Eligible costs include drug elimination activities involving management or physical improvements, as specified by HUD.

(i) *LBP costs.* Eligible costs include professional risk assessments and interim containment of family developments/buildings constructed before 1980, testing and abatement of family developments/buildings constructed before 1978, and costs for insurance coverage for pollution hazards associated with the testing, abatement, clean-up and disposal of LBP on applicable surfaces of family developments/buildings constructed before 1978.

(j) *Administrative costs.* Administrative costs necessary for the planning, design, implementation and monitoring of the physical and management improvements are eligible costs and include the following:

(1) *Salaries.* The salaries of non-technical and technical IHA personnel assigned full-time or part-time to modernization are eligible costs only where the scope and volume of the work are beyond that which could be reasonably expected to be accomplished by such personnel in the performance of their non-modernization duties. An IHA shall properly apportion to the appropriate program budget any direct charges for the salaries of assigned full- or part-time staff (e.g., to the CIAP, CGP or operating budget);

(2) *Employee benefit contributions.* IHA contributions to employee benefit plans on behalf of non-technical and technical IHA personnel are eligible costs in direct proportion to the amount of salary charged to the CIAP or CGP, as appropriate;

(3) *Preparation of CIAP or CGP required documents.*

(4) *Resident participation.* Eligible costs include those associated with ensuring the meaningful participation of residents in the development of the CIAP application or the CGP Annual Submission and Comprehensive Plan and the implementation and monitoring of the approved modernization program; and

(5) *Other administrative costs,* such as telephone and facsimile, as specified by HUD.

(k) *Audit costs (for CGP only).* Eligible costs are limited to the portion of the audit costs that are attributable to the modernization program.

(l) *Architectural/engineering and consultant fees.* Eligible costs include fees for planning, identification of needs, detailed design work, preparation of construction and bid documents and other required documents, LBP professional risk assessments and testing, and inspection of work in progress.

(m) *Relocation costs.* Eligible costs include relocation and other assistance for permanent and temporary relocation, as a direct result of rehabilitation, demolition or acquisition for a modernization-funded activity, where this assistance is required by 49 CFR part 24 or 24 CFR 950.117.

(n) *Cost limitations.* (1) *CIAP costs.* (i) *Management improvement costs.* Management improvement costs shall not exceed a percentage of the CIAP funds available to a Field Office in a particular FFY, as specified by HUD.

(ii) *Planning costs.* Planning costs are costs that are incurred before HUD approval of the CIAP application and that are related to developing the CIAP application or carrying out eligible modernization planning, such as detailed design work, preparation of

solicitations, and LBP professional risk assessment and testing. Planning costs may be funded as a single work item. If an IHA incurs planning costs without prior HUD approval, an IHA does so with the full understanding that the costs may not be reimbursed upon approval of the CIAP application. Planning costs shall not exceed 5 percent of the CIAP funds available to a Field Office in a particular FFY.

(2) *CGP costs.* (i) *Management improvement costs.* Notwithstanding the full fungibility of work items, an IHA shall not use more than a total of 20 percent of its annual grant for management improvement costs in account 1408, unless specifically approved by HUD.

(ii) *Administrative costs.* Notwithstanding the full fungibility of work items, an IHA shall not use more than a total of 10 percent of its annual grant on administrative costs in account 1410, excluding any costs related to lead-based paint or asbestos testing (whether conducted by force account employees or by a contractor), in-house architectural/engineering (A/E) work, or other special administrative costs required by tribal or State law, unless specifically approved by HUD.

(3) *Program benefit.* Where the physical or management improvement, including administrative cost, will benefit programs other than Indian housing, such as Section 8 or local revitalization programs, eligible costs are limited to the amount directly attributable to the Indian housing program.

(4) *No duplication.* Any eligible cost for an activity funded by CIAP or CGP shall not also be funded by any other HUD program.

(o) *Ineligible costs.* Ineligible costs include:

(1) Luxury improvements;

(2) Indirect administrative costs (overhead), as defined in OMB Circular A–87;

(3) Indian housing operating assistance;

(4) Direct provision of social services, through either force account or contract labor, from FFY 1996 and future FFYs funds, unless otherwise provided by law; and

(5) Other ineligible activities, as specified by HUD.

(p) *Expanded eligibility for FFY 1995 and prior year modernization funds.* The FFY 1995 Rescissions Act expanded the eligible activities that may be funded with CIAP or CGP assistance provided from FFY 1995 and prior FFY funds. Such activities include, but are not limited to:

(1) New construction or acquisition of additional Indian housing units, including replacement units;

(2) Modernization activities related to the Indian housing portion of housing developments held in partnership, or cooperation with non-Indian housing entities; and

(3) Other activities related to Indian housing, including activities eligible under the Urban Revitalization Demonstration (HOPE VI).

§ 950.610 Modernization and energy conservation standards.

All improvements funded under this part shall:

(a) Meet the modernization standards as prescribed by HUD;

(b) Incorporate cost-effective energy conservation measures, identified in the IHA's most recently updated energy audit, conducted pursuant to part 950, subpart K;

(c) Where changing or installing a new utility system, conduct a life-cycle cost analysis, reflecting installation and operating costs; and

(d) Provide decent, safe, and sanitary living conditions in IHA-owned and IHA-operated public housing.

§ 950.612 Force account.

(a) An IHA may undertake the activities using force account or contract labor, including contracting with an RMC, without prior HUD approval.

(b) If the entirety of modernization activity (including the planning and architectural design of the rehabilitation) is administered by the RMC, the IHA shall not retain for any administrative or other reason, any portion of the modernization funds provided, unless the IHA and the RMC provide otherwise by contract.

§ 950.614 Initiation of modernization activities.

After HUD has approved the modernization program and entered into an ACC amendment with the IHA, an IHA shall undertake the modernization activities and expenditures set forth in its approved CIAP budget or CGP Annual Statement/Five-Year Action Plan in a timely, efficient and economical manner. All approved funding must be obligated within two years of approval and expended within three years of approval unless HUD approves a longer time period in the IHA's implementation schedule, as set forth in the CIAP budget or CGP Annual Statement. HUD may approve a longer time period for such reasons as the large size of the grant or the complexity of the work.

§ 950.616 Fund requisitions.

To draw down modernization funds against the approved CIAP budget or CGP Annual Statement, as appropriate, an IHA shall comply with requirements prescribed by HUD.

§ 950.618 Contracting requirements.

In addition to the requirements specified in 24 CFR parts 85 and subpart B of this part, the following provisions apply:

(a) *Architect/engineer and other professional services contracts.* For CIAP only and notwithstanding 24 CFR 85.36(g), an IHA shall comply with HUD requirements to either:

(1) Where the proposed contract amount exceeds the HUD-established threshold, submit the contract for prior HUD approval before execution or issuance; or

(2) Where the proposed contract amount does not exceed the HUD-established threshold, certify that the scope of work is consistent with the originally approved modernization program, and that the amount is appropriate and does not result in the total HUD-approved CIAP budget being exceeded.

(b) *Assurance of completion.* For CIAP and CGP and notwithstanding 24 CFR 85.36(h), for each construction contract over $100,000, the contractor shall furnish a bid guarantee from each bidder equivalent to 5% of the bid price; and one of the following:

(1) A performance and payment bond for 100 percent of the contract price; or

(2) Separate performance and payment bonds, each for 50% or more of the contract price; or

(3) A 20% cash escrow; or

(4) A 25% irrevocable letter of credit.

(c) *Construction solicitations.* For CIAP only and notwithstanding 24 CFR 85.36(g), an IHA shall comply with HUD requirements to either:

(1) Where the estimated contract amount exceeds the HUD-established threshold, submit a complete construction solicitation for prior HUD approval before issuance; or

(2) Where the estimated contract amount does not exceed the HUD-established threshold, certify receipt of the required architect's/engineer's certification that the construction documents accurately reflect HUD-approved work and meet the modernization and energy conservation standards and that the construction solicitation is complete and includes all mandatory items.

(d) *Contract awards.* (1) For CIAP only, an IHA shall obtain HUD approval of the proposed award of a contract if the contract work is inconsistent with

the originally approved modernization program or if the procurement meets the criteria set forth in 24 CFR 85.36(g)(2)(i) through (iv). In all other instances, an IHA shall make the award without HUD approval after the IHA has certified that:

(i) The solicitation and award procedures were conducted in compliance with tribal, State or local laws and Federal requirements;

(ii) The award does not meet the criteria in 24 CFR 85.36(g)(2)(i) through (iv) for prior HUD approval; and

(iii) The contractor is not on the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.

(2) For CGP only, an IHA shall obtain HUD approval of the proposed award of a contract if the procurement meets the criteria set forth in 24 CFR 85.36(g)(2)(i) through (iv).

(e) *Contract modifications.* For CIAP only and notwithstanding 24 CFR 85.36(g), except in an emergency endangering life or property, an IHA shall comply with HUD requirements to either:

(1) Where the proposed contract modification exceeds the HUD-established threshold, submit the proposed modification for prior HUD approval before issuance; or

(2) Where the proposed contract modification does not exceed the HUD-established threshold, certify that the proposed modification is within the scope of the contract and that any additional costs are within the total HUD-approved CIAP budget amount.

(f) *Construction requirements.* Where indicated by poor performance, an IHA may be required to submit to HUD periodic progress reports and, for prior HUD approval, construction completion documents above a HUD-specified amount. For CGP only, an IHA is notified of additional construction requirements by a notice of deficiency or a corrective action order.

§ 950.620 On-site inspections.

It is the responsibility of the IHA, not HUD, to provide, by contract or otherwise, adequate and competent supervisory and inspection personnel during modernization, whether work is performed by contract or force account labor, and with or without the services of an architect/engineer, to assure work quality and progress.

§ 950.622 Fiscal closeout.

(a) *Actual modernization cost certificate (AMCC).* Upon expenditure by the IHA of all funds, or termination by HUD of the activities funded in a modernization program, an IHA shall submit the AMCC, in a form prescribed by HUD, to HUD for review and approval for audit. After audit verification, HUD shall approve the AMCC.

(b) *Audit.* The audit shall follow the guidelines prescribed in 24 CFR part 44, Non-Federal Government Audit Requirements. If the pre-audit or post-audit AMCC indicates that there are excess funds, an IHA shall immediately remit the excess funds as directed by HUD. If the pre-audit or post-audit AMCC discloses unauthorized or ineligible expenditures, an IHA shall immediately take such corrective actions as HUD may direct.

Comprehensive Improvement Assistance Program (For IHAs that Own or Operate Fewer than 250 Indian Housing Units)

§ 950.630 Procedures for obtaining approval of a modernization program.

(a) *HUD notification.* After modernization funds for a particular FFY become available, HUD shall publish in the **Federal Register** a notice of funding availability (NOFA) and the time frame for submission of the CIAP application, and other pertinent information.

(b) *IHA consultation with tribal/local officials and residents/homebuyers.* An IHA shall develop the application in consultation with tribal and local officials and with residents and homebuyers, as set forth in § 950.632.

(c) *IHA application.* An IHA shall submit to HUD an application, in a form prescribed by HUD. Where an IHA has not included all its developments in the CIAP application, HUD may not consider funding any nonemergency work at excluded developments or subsequently approve use of leftover funds at excluded developments.

(d) *Completeness review.* To be eligible for processing, an application must be physically received by HUD by the time and date specified in the NOFA. Immediately after the application deadline, HUD shall perform a completeness review to determine whether the application is complete, responsive to the NOFA, and acceptable for technical processing.

(1) If the application form or any other essential document, as specified in the NOFA, is missing, the IHA's application will be considered substantially incomplete and, therefore, ineligible for further processing. HUD shall immediately notify the IHA in writing.

(2) If other required documents, as specified in the NOFA, are missing or there is a technical mistake, such as no signature on a submitted form, HUD shall immediately notify the IHA in writing to submit or correct the deficiency within a specified period of time from the date of HUD's written notification. This is not additional time to substantially revise the application. Deficiencies that may be corrected at this time are inadvertently omitted documents or clarifications of previously submitted material and other changes which are not of such a nature as to improve the competitive position of the application.

(3) If an IHA fails to submit or correct the items within the required time period, the IHA's application will be ineligible for further processing. HUD shall immediately notify the IHA in writing after this occurs.

(4) An IHA may submit an application for Emergency Modernization whenever needed.

(e) *Eligibility review.* (1) *Eligibility for processing.* To be eligible for processing each eligible development for which work is proposed must have reached the Date of Full Availability (DOFA) and be under ACC amendment at the time of CIAP application submission.

(2) *Eligibility for processing on reduced scope.* When the following conditions exist, an IHA will be reviewed on a reduced scope:

(i) *Section 504 compliance.* Where an IHA has not completed all required structural changes to meet the need for accessible units, as identified in the IHA's Section 504 needs assessment, the IHA is eligible for processing only for Emergency Modernization or physical work needed to meet Section 504 requirements.

(ii) *Lead-based paint (LBP) testing compliance.* Where an IHA has not complied with the statutory requirement to complete LBP testing on all pre-1978 family units, the IHA is eligible for processing only for Emergency Modernization or work needed to complete the testing.

(iii) *Fair Housing and Equal Opportunity (FHEO) compliance.* Where an IHA has not complied with any applicable FHEO requirements set forth in § 950.115, as evidenced by an enforcement action, finding or determination, the IHA is eligible for processing only for Emergency Modernization or for work needed to remedy civil rights deficiencies—unless the IHA is implementing a voluntary compliance agreement or settlement agreement designed to correct the area(s) of noncompliance. The enforcement actions, findings, or determinations that trigger limited eligibility are described in paragraphs (e)(2)(iii)(A) through (E) of this section:

(A) A pending proceeding against the IHA based upon a charge of

discrimination issued under the Fair Housing Act. A charge of discrimination is a charge under section 810(g)(2) of the Fair Housing Act (42 U.S.C. 3610(g)(2)), issued by the Department's General Counsel or legally authorized designee;

(B) A pending civil rights suit against the IHA, referred by the Department's General Counsel and instituted by the Department of Justice;

(C) Outstanding HUD findings of IHA noncompliance with civil rights statutes and executive orders under § 950.115, or implementing regulations, as a result of formal administrative proceedings;

(D) A deferral of the processing of applications from the IHA imposed by HUD under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1) and HUD implementing regulations (24 CFR 1.8), the Attorney General's Guidelines (28 CFR 50.3), and procedures (HUD Handbook 8040.1), or under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD implementing regulations (24 CFR 8.57); or

(E) An adjudication of a violation under any of the authorities specified in § 950.115 in a civil action filed against the IHA by a private individual.

(f) *Technical processing.* After all CIAP applications are reviewed for eligibility, HUD shall categorize the eligible IHAs and their developments into two processing groups: Group 1 for Emergency Modernization; and Group 2 for Other Modernization. IHA developments may be included in both groups and the same development may be in each group. However, an IHA is only required to submit one CIAP application. Group 1 developments are not subject to the technical review rating and ranking and the long-term viability and reasonable cost determination. Group 2 developments are subject to the technical review rating and ranking and the long-term viability and reasonable cost determination. Preference will be given to IHAs which request assistance for developments that either have conditions that threaten the health or safety of the residents or have a significant number of vacant, substandard units, and which have demonstrated a capability of carrying out the proposed activities.

(g) *Rating on technical review factors.* After categorizing the eligible IHAs/developments into Group 1 and Group 2, HUD shall review and rate each Group 2 IHA on each of the following technical review factors:

(1) Extent and urgency of need, including need to comply with statutory, regulatory, or court-ordered deadlines;

(2) Extent of vacancies, where the vacancies are not due to insufficient demand;

(3) IHA's modernization capability;

(4) IHA's management capability;

(5) Degree of resident involvement in IHA operations;

(6) Degree of IHA activity in resident initiatives, including resident management, economic development, and drug elimination efforts;

(7) Degree of resident employment;

(8) Tribal/local government support for proposed modernization; and

(9) Such additional factors as the Secretary determines necessary and appropriate.

(h) *Ranking and selection for Joint Review.* After rating all Group 2 IHAs/developments, the Area ONAP shall then rank each Group 2 IHA based on its total score, list Group 2 IHAs in descending order, subject to confirmation of need and cost at Joint Review, and identify for Joint Review selection the highest IHA ranking applications in Group 2 and other Group 2 IHAs with lower ranking applications, but with high priority needs, which most reasonably approximate the amount of modernization which can be funded. High priority needs are nonemergency needs, but related to: health or safety; vacant, substandard units; structural or system integrity; or compliance with statutory, regulatory, or court-ordered deadlines. All Group 1 applications are automatically selected for Joint Review.

(i) *Joint review.* The purpose of the Joint Review is for HUD to discuss with an IHA the proposed modernization program, as set forth in the CIAP application, review long-term viability and cost reasonableness determinations, and determine the size of the grant, if any, to be awarded. HUD shall notify each IHA whose application has been selected for further processing as to whether Joint Review will be conducted on-site or off-site (e.g., by telephone or in-office meeting). An IHA shall prepare for Joint Review by preparing a draft CIAP budget, and reviewing the other items to be covered during Joint Review, as prescribed by HUD. If conducted on-site, Joint Review may include an inspection of the proposed physical work. IHAs not selected for Joint Review will be advised in writing of the reasons for non-selection.

(j) *Funding decisions.* After all Joint Reviews are completed, HUD shall adjust the IHAs, developments, and work items to be funded and the amounts to be awarded, on the basis of information obtained from Joint Reviews, environmental reviews, and FHEO review, and make the funding decisions. An IHA will not be selected for CIAP funding if there is a duplication of funding. HUD shall select all bona fide emergencies in Group 1 before funding Group 2 applications. After funding announcement, HUD shall request a funded IHA to submit a CIAP budget, including an implementation schedule, and any other required documents, including the ACC amendment. IHAs not selected for funding will be advised in writing of the reasons for non-selection.

(k) *ACC amendment.* After HUD approval of the CIAP budget, HUD and the IHA shall enter into an ACC amendment in order for the IHA to draw down modernization funds. The ACC amendment shall require low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). The IHA Executive Director, where authorized by the Board of Commissioners and permitted by tribal or State law, may sign the ACC amendment on behalf of the IHA. HUD has the authority to condition an ACC amendment (e.g., to require an IHA to hire a modernization coordinator or contract administrator to administer its modernization program).

(l) *Declaration of trust.* As HUD may require, an IHA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the IHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements. A Declaration of Trust is not required for Mutual Help units.

(Approved by the Office of Management and Budget under control number 2577–0044. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.)

§ 950.632 Resident and homebuyer participation.

An IHA shall establish a Partnership Process, as defined in § 950.102, to develop, implement, and monitor the CIAP. Before submission of the CIAP application, an IHA shall consult with the residents, the resident organization, or the resident management corporation (see subpart O of this part) (herein referred to as the resident) of the development(s) being proposed for modernization, regarding its intent to submit an application and to solicit resident comments. An IHA shall give residents a reasonable opportunity to present their views on the proposed modernization and alternatives to it and shall give full and serious consideration to resident recommendations. An IHA shall respond in writing to the residents, indicating its acceptance or rejection of resident recommendations, consistent with HUD requirements and the IHA's own determination of efficiency, economy, and need. After HUD approval of the modernization program, an IHA shall inform the residents of the approved work items and its progress during implementation. Where HUD does not approve the modernization program, an IHA shall so inform the residents.

§ 950.634 Budget revisions.

(a) An IHA shall not incur any modernization cost in excess of the total HUD-approved CIAP budget. An IHA shall submit a budget revision, in a form prescribed by HUD, if the IHA plans to deviate from the originally approved modernization program, as it was competitively funded, by deleting or substantially revising approved work items or adding new work items that are unrelated to the originally approved modernization program.

(b) In addition to the provisions of paragraph (a) of this section, an IHA shall comply with the following requirements:

(1) An IHA is not required to obtain prior HUD approval if, in order to complete the originally approved modernization program, the IHA needs to delete or revise approved work items or add new related work items consistent with the original modernization program. In such case, an IHA shall certify that the revisions are necessary to carry out the approved work and do not result in substantial changes to the competitively funded modernization program.

(2) An IHA shall not incur any modernization cost on behalf of any development that is not covered by the original CIAP application.

(3) Where there are funds leftover after completion of the originally approved modernization program, an IHA may, without prior HUD approval, use the remaining funds to carry out other eligible modernization activities at developments covered by the original CIAP application.

§ 950.636 Progress reports.

For each six-month period ending March 31 and September 30, until completion of the modernization program or expenditure of all funds, an IHA shall submit a progress report, in a form prescribed by HUD, to the HUD Area ONAP. Where HUD determines that an IHA is having implementation problems, HUD may require more frequent reporting.

§ 950.638 Time extensions.

An IHA shall not obligate or expend funds after the obligation or expenditure deadline date approved by HUD in the original implementation schedule without a time extension, as follows:

(a) *Certification.* An IHA may extend an obligation or expenditure deadline date no later than 30 calendar days after the existing deadline date, without prior HUD approval, for a time period commensurate with the delay, where the IHA certifies that the delay is due to reasons outside the IHA's control, such as:

(1) Need to use leftover funds from a completed modernization program for additional work;

(2) Unforeseen delays in contracting or contract administration;

(3) Litigation; and

(4) Delay by HUD or other institutions. Delay by the IHA's staff or Board of Commissioners or a change in the Executive Director is not considered to be outside of the IHA's control.

(b) *Prior HUD approval.* Where an IHA is unable to meet an obligation or expenditure deadline date and the delay is not due to reasons within the IHA's control, the IHA must request HUD approval of a time extension no later than 30 calendar days after the deadline date, to avoid recapture of funds. The request shall include an explanation of the delay, the steps taken to prevent future delay, and the requested extension.

§ 950.640 HUD review of IHA performance.

HUD shall periodically review IHA performance in carrying out its approved modernization program to determine compliance with HUD requirements, the quality of an IHA's inspections as evidenced by the quality of work, and the timeliness of the work. HUD's review may be conducted either in-office or on-site. Where conducted in-office, an IHA shall forward any requested documents to HUD for post-review. Where deficiencies are noted, an IHA shall take such corrective actions as HUD may direct.

Comprehensive Grant Program (For IHAs That Own or Operate 250 or More Indian Housing Units)

§ 950.650 Determination of formula amount.

(a) *Submission of formula characteristics report.* (1) *Formula characteristics report.* In its first year of participation in the CGP, each IHA shall verify and provide data to HUD, in a form and at a time to be prescribed by HUD, concerning IHA and development characteristics, so that HUD can develop the IHA's annual funding allocation under the CGP in accordance with § 950.604(e) and (f). If an IHA fails to submit to HUD the formula characteristics report by the prescribed deadline, HUD will use the data that it has available concerning IHA and development characteristics for purposes of calculating the IHA's formula share. After its first year of participation in the CGP, an IHA is not required to submit formula characteristics report data to HUD, but is required to respond to data transmitted by HUD if there have been changes to its inventory from that previously reported, or when requested by HUD. On an annual basis, HUD will transmit to the IHA the formula characteristics report that reflects the data that will be used to determine the IHA's formula share. The IHA will have at least 30 calendar days to review and advise HUD of errors in this HUD report. Necessary adjustments will be made to the IHA's data before the formula is run for the current FFY.

(2) *IHA Board Resolution.* In its first year of participation in the CGP, the IHA must include with its formula characteristics report under paragraph (a)(1) of this section, a resolution adopted by the IHA Board of Commissioners approving the report, and certifying that the data contained in the formula characteristics report are accurate.

(b) *HUD notification of formula amount; appeal rights.* (1) *Formula amounts notification.* After HUD determines an IHA's formula allocation under § 950.604(e) and (f) based upon the IHA, development, and community characteristics, it shall notify the IHA of its formula amount and provide instructions on the Annual Submission in accordance with §§ 950.652(a) and 950.656;

(2) *Appeal based upon unique circumstances.* An IHA may appeal in writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of "unique circumstances." The IHA shall indicate what is unique, specify the manner in which it is different from all other IHAs participating in the CGP, and provide any necessary supporting documentation. HUD shall render a written decision on an IHA's appeal under this paragraph within 60 calendar days of the date of its receipt of the IHA's request for an appeal. HUD shall publish in the **Federal Register** a description of the facts supporting any successful appeals based upon "unique

circumstances." Any adjustments resulting from successful appeals in a particular FFY under this paragraph shall be made from the subsequent years' allocation of funds under this part;

(3) *Appeal based upon error.* An IHA may appeal in writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of an error. The IHA may appeal on the basis of error the correctness of data in the formula characteristics report. The IHA shall describe the nature of the error and provide any necessary supporting documentation. HUD shall respond to the IHA's request within 60 calendar days of the date of its receipt of the IHA's request for an appeal. Any adjustment resulting from successful appeals in a particular FFY under this paragraph shall be made from subsequent years' allocation of funds under this part;

(c) *IHAs determined to be high risk.* If an IHA is determined to have serious deficiencies in accordance with § 950.135, or if the IHA fails to meet, or to make reasonable progress toward meeting, the goals previously established in its management improvement plan under § 950.135, HUD may designate the IHA as high risk. If HUD designates the IHA as high risk with respect to modernization, HUD may withhold some or all of the IHA's annual grant; HUD may declare a breach of the grant agreement with respect to all or some of the IHA's functions, so that the IHA or a particular function of the IHA may be administered by another entity; or HUD may take other sanctions authorized by law or regulation.

§ 950.652 Comprehensive plan (including Five-Year Action Plan).

(a) *Submission.* As soon as possible after modernization funds first become available for allocation under this subpart, HUD shall notify IHAs in writing of their formula amount. For planning purposes, IHAs may use the amount they received under CGP in the prior year in developing their comprehensive plan, or they may wait for the annual HUD notification of formula amount under § 950.650(b)(1).

(b)(1) *Resident participation.* An IHA is required to develop, implement, monitor, and annually amend portions of its comprehensive plan in consultation with residents of the developments covered by the comprehensive plan, and with democratically elected resident groups. In addition, the IHA shall also consult with resident management corporations (RMCs) to the extent that an RMC manages a development covered by the comprehensive plan. The IHA, in partnership with the residents, shall develop and implement a process for resident participation that ensures that residents are involved in a meaningful way in all phases of the CGP. Such involvement shall include implementing the Partnership Process as a critical element of the CGP.

(2) *Establishment of Partnership Process.* The IHA, in partnership with the residents of the developments covered by the plan (and which may include resident leaders, resident organizations, resident advisory councils/boards and RMCs) must establish a Partnership Process to develop and implement the goals, needs, strategies, and priorities identified in the Comprehensive Plan. After residents have organized to participate in the CGP, they may decide to establish a volunteer advisory group of experts in various professions to assist them in the CGP Partnership Process. The Partnership Process shall be designed to achieve the following:

(i) To assure that residents are fully briefed and involved in developing the content of, and monitoring the implementation of, the Comprehensive Plan including, but not limited to, the physical and management needs assessments, viability analysis, five-year action plan, and annual statement. If necessary, the IHA shall develop and implement capacity building strategies to ensure meaningful resident participation in CGP. Such technical assistance efforts for residents are eligible management improvement costs under CGP;

(ii) To enable residents to participate, on an IHA-wide or area-wide basis, in ongoing discussions of the comprehensive plan and strategies for its implementation, and in all meetings necessary to ensure meaningful participation.

(3) *Public notice.* Within a reasonable amount of time before the advance meeting for residents and duly elected resident organizations under paragraph (b)(4) of this section, and the public hearing under paragraph (b)(5) of this section, the IHA shall provide public notice of the advance meeting and the public hearing in a manner determined by the IHA and which ensures notice to all duly elected resident organizations;

(4) *Advance meeting for residents and duly elected resident organizations.* The IHA shall hold, within a reasonable amount of time before the public hearing under paragraph (b)(5) of this section, a meeting for residents and duly elected resident organizations at which the IHA shall explain the components of the comprehensive plan. The meeting shall be open to all residents and duly elected resident organizations;

(5) *Public Hearing.* The IHA shall hold at least one public hearing, and any appropriate number of additional hearings, to present information on the comprehensive plan/annual submission and the status of prior approved programs. The public hearing shall provide ample opportunity for residents, tribal government officials, and other interested parties to express their priorities and concerns. The IHA shall give full consideration to the comments and concerns of residents, tribal government officials, and other interested parties.

(c) *Tribal/local government participation.* An IHA shall consult with and provide information to appropriate tribal and local government officials with respect to the development of the comprehensive plan. In the case of an IHA with developments in multiple jurisdictions, the IHA may meet this requirement by consulting with an advisory group representative of all the jurisdictions. At a minimum, such consultation shall include providing such officials with:

(1) Advance written notice of the public hearing required under paragraph (b)(5) of this section;

(2) A copy of the summary of total preliminary estimated costs to address physical needs by each development and management/operations needs IHA-wide, a specific description of the IHA's process for maximizing the level of participation by residents, a summary of the general issues raised on the plan by residents and others during the public comment process, and the IHA's response to the general issues. IHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the IHA's files and made available to residents, resident organizations, and other interested parties upon request; and

(3) An opportunity to express their priorities and concerns to ensure due consideration in the IHA's planning process.

(d) *Contents of Comprehensive Plan.* The comprehensive plan shall identify all of the physical and management improvements needed for an IHA and all of its developments, and that represent needs eligible for funding under § 950.608. The plan shall also include preliminary estimates of the total cost of these improvements. The plan shall set forth general strategies for addressing the identified needs, and highlight any special strategies, such as major redesign or partial demolition of a development, that are necessary to

ensure the long-term physical and social viability of the development. Where long-term physical and social viability of the development is dependent upon revitalization of the surrounding neighborhood in the provision of or coordination of public services, or the consolidation or coordination of drug prevention and other human service initiatives, the IHA shall identify these needs and strategies. Each comprehensive plan shall contain the following elements:

(1) *Executive summary.* An IHA shall include as part of its comprehensive plan an executive summary to facilitate review and comprehension by development residents and by the public. The executive summary shall include:

(i) A summary of total preliminary estimated costs to address physical needs by each development and IHA-wide physical and management needs; and

(ii) A specific description of the IHA's process for maximizing the level of participation by residents during the development, implementation, and monitoring of the comprehensive plan, a summary of the general issues raised on the plan by residents and others during the public comment process, and the IHA's response to the general issues. IHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the IHA's files and made available to residents, duly elected resident organizations, and other interested parties, upon request;

(2) *Physical needs assessment.* (i) *Requirements.* The physical needs assessment identifies all of the work that an IHA would need to undertake to bring each of its developments up to the modernization and energy conservation standards, as required by the Act, to comply with lead-based paint testing and abatement requirements under § 950.120(g), and to comply with other program requirements under § 950.120. The physical needs assessment is completed without regard to the availability of funds, and shall include the following information with respect to each of an IHA's developments:

(A) A brief summary of the physical improvements necessary to bring each development to a level at least equal to the modernization and energy conservation standards set forth in § 950.610, to comply with the lead-based paint testing and abatement requirements under § 950.120(g), and to comply with other program requirements under § 950.120. The IHA also should indicate the relative urgency of need. If the IHA has no physical improvement needs at a particular development at the time it completes its comprehensive plan, it must so indicate. Similarly, if the IHA intends to demolish, partially demolish, convert, or dispose of a development (or units within a development), it must so indicate in the summary of physical improvements;

(B) The replacement needs of equipment systems and structural elements that will be required to be met (assuming routine and timely maintenance is performed) during the period covered by the action plan;

(C) A preliminary estimate of the cost to complete the physical work; and

(D) In addition, the IHA shall provide with respect to vacant or non-homebuyer-occupied Turnkey III units, the estimated number of units that the IHA is proposing for substantial rehabilitation and subsequent sale, in accordance with § 950.608(d)(3).

(ii) *Sources of data.* The IHA shall identify in its needs assessment the sources from which it derived data to develop the physical needs assessment under this paragraph (d)(2), and shall retain such source documents in its files.

(3) *Management needs assessment.* (i) *Requirements.* The plan shall include a comprehensive assessment of the improvements needed to upgrade the management and operation of the IHA and of each viable development, so that decent, safe, and sanitary living conditions will be provided. The management needs assessment shall include the following, with the relative urgency of need indicated:

(A) An identification of the most current needs related to the following areas (to the extent that any of these needs is addressed in a HUD-approved management improvement plan, the IHA may simply include a cross-reference to these documents):

(*1*) The management, financial, and accounting control systems of the IHA;

(*2*) The adequacy and qualifications of personnel employed by the IHA in the management and operation of its developments, for each significant category of employment;

(*3*) The adequacy and efficacy of:

(*i*) Resident programs and services;

(*ii*) Resident and development security;

(*iii*) Resident selection and eviction;

(*iv*) Occupancy;

(*v*) Maintenance;

(*vi*) Resident management and resident capacity building programs;

(*vii*) Resident opportunities for employment and business development and other self-sufficiency opportunities for residents; and

(*viii*) Homeownership opportunities for residents.

(B) Any additional deficiencies identified through audits and HUD monitoring reviews that are not addressed under paragraph (e)(3)(i)(A) of this section. To the extent that any of these is addressed in a HUD-approved management improvement plan, the IHA may include a cross-reference to these documents;

(C) Any other management and operations needs that the IHA wants to address at the IHA-wide or development level; and

(D) An IHA-wide preliminary cost estimate for addressing all the needs identified in the management needs assessment, without regard to the availability of funds.

(ii) *Sources of data.* The IHA shall identify in its needs assessment the sources from which it derived data to develop the management needs assessment under paragraph (d)(3) of this section, and shall retain such source documents in its files.

(4) *Demonstration of long-term physical and social viability.* (i) *General.* The plan shall include, on a development-by-development basis, an analysis of whether completion of the improvements and replacements identified under paragraphs (e)(2) and (e)(3) of this section will reasonably ensure the long-term physical and social viability, including achieving structural/system soundness and full occupancy, of the development at a reasonable cost. For cost reasonableness, the IHA shall determine whether the unfunded hard costs satisfy the definition of "reasonable cost." Where the IHA wishes to fund a development, for other than emergencies, where hard costs exceed that reasonable cost, the IHA shall submit written justification to the Field Office. If the Field Office agrees with the IHA's request, the Field Office shall forward its recommendation to Headquarters for final decision. Where the estimated per unit unfunded hard cost is equal to or less than the per unit TDC for the smallest bedroom size at the development, no further computation of the TDC limit is required. The IHA shall keep documentation in its files to support all cost determinations. The Field Office will review cost reasonableness as part of its review of the Annual Submission and the Performance and Evaluation Report. As necessary, HUD will review the IHA's documentation in support of its cost reasonableness, taking into account broader efforts to revitalize the neighborhoods in which the development is located;

(ii) *Determination of non-viability.* When an IHA's analysis of a development, under paragraph (e) of

this section, establishes that completion of the identified improvements and replacements will not result in the long-term physical and social viability of the development at a reasonable cost, the IHA shall not expend CGP funds for the development, except for emergencies and essential nonroutine maintenance necessary to maintain habitability until residents can be relocated. The IHA shall specify in its comprehensive plan the actions it proposes to take with respect to the nonviable development (*e.g.*, demolition or disposition under subpart M of this part).

(5) *Five-Year Action Plan.* (i) *General.* The comprehensive plan shall include a rolling five-year action plan to carry out the improvements and replacements (or a portion thereof) identified under paragraphs (e)(2) and (e)(3) of this section. In developing its five-year action plan, the IHA shall assume that the current year funding or formula amount will be available for each year of its five-year action plan, whichever the IHA is using for planning purposes, plus the IHA's estimate of the funds that will be available from other sources, such as tribal, state, and local governments. All activities specified in an IHA's five-year action plan are contingent upon the availability of funds.

(ii) *Requirements.* Under the action plan, an IHA must indicate how it intends to use the funds available to it under the CGP to address the deficiencies, or a portion of the deficiencies, identified under its physical and management needs assessments, as follows:

(A) *Physical condition.* With respect to the physical condition of an IHA's developments, an IHA must indicate in its action plan how it intends to address, over a five-year period, the deficiencies (or a portion of the deficiencies) identified in its physical needs assessment so as to bring each of its developments up to a level at least equal to the modernization and energy conservation standards. This would include specifying the work to be undertaken by the IHA in major work categories (e.g., kitchens, electrical systems, etc.); establishing priorities among the major work categories by development and year based upon the relative urgency of need; and estimating the cost of each of the identified major work categories. In developing its action plan, an IHA shall give priority to the following:

(*1*) Activities required to correct emergency conditions;

(*2*) Activities required to meet statutory (or other legally mandated) requirements;

(*3*) Activities required to meet the needs identified in the Section 504 needs assessment within the regulatory timeframe; and

(*4*) Activities required to complete lead-based paint testing and abatement requirements.

(B) *Management and operations.* An IHA shall address in its action plan the management and operations deficiencies (or a portion of the deficiencies) identified in its management needs assessment, as follows:

(*1*) With respect to the management and operations needs of the IHA, the IHA shall identify how it intends to address with CGP funds, if necessary, the deficiencies (or a portion thereof) identified in its management needs assessment, including work identified through audits, HUD monitoring reviews, and self-assessments (this would include establishing priorities based upon the relative urgency of need); and

(*2*) A preliminary IHA-wide cost estimate, by major work category.

(iii) *Procedure for maintaining current Five-Year Action Plan.* The IHA shall maintain a current Five-Year Action Plan by annually amending its Five-Year Action Plan, in conjunction with the Annual Submission;

(6) *Tribal/local government statement.* The Comprehensive Plan shall include a statement signed by the chief executive officer of the appropriate governing body (or in the case of an IHA with developments in multiple jurisdictions, from the CEO of each such jurisdiction), certifying as to the following:

(i) The IHA developed the comprehensive plan/five-year action plan or amendments thereto in consultation with officials of the appropriate governing body and with development residents covered by the comprehensive plan/five-year action plan, in accordance with the requirements of paragraphs (b) and (c) of this section;

(ii) The comprehensive plan/five-year action plan or amendments thereto are consistent with the appropriate governing body's assessment of its low-income housing needs and that the appropriate governing body will cooperate in providing resident programs and services; and

(iii) The IHA's proposed drug elimination activities are coordinated with, and supportive of, local drug elimination strategies and neighborhood improvement programs, if applicable.

(7) *IHA resolution.* The plan shall include a resolution, in a form prescribed by HUD, adopted by the IHA Board of Commissioners, and signed by the Board Chairman of the IHA, approving the comprehensive plan or any amendments.

(e) *Amendments to the Comprehensive Plan.* (1) *Extension of time for performance.* An IHA shall have the right to amend its comprehensive plan (including the action plan) to extend the time for performance whenever HUD has not provided the amount of assistance set forth in the comprehensive plan or has not provided the assistance in a timely manner.

(2) *Amendments to needs assessments.* The IHA shall amend its plan by revising its needs assessments whenever it proposes to carry out activities in its five-year action plan or annual statement that are not reflected in its current needs assessments (except in the case of emergencies). The IHA may propose an amendment to its needs assessments, in connection with the submission of its annual submission (see § 950.656(b)), or at any other time. These amendments shall be reviewed by HUD in accordance with § 950.654;

(3) *Six-year revision of Comprehensive Plan.* Every sixth year following the initial year of participation, the IHA shall submit to HUD, with its annual submission, a complete update of its comprehensive plan. An IHA may elect to revise some or all parts of the comprehensive plan more frequently.

(4) *Annual revision of Five-Year Action Plan.* Annually, the IHA shall submit to HUD, with its annual submission, an update of its five-year action plan, eliminating the previous year and adding an additional year. The IHA shall identify changes in work categories (other than those included in the new fifth year) from the previous year five-year action plan when making this Annual Submission.

(5) *Required submissions.* Any amendments to the comprehensive plan under this section shall be submitted with the IHA resolution under § 950.652(e)(7).

(f) *Prerequisite for receiving assistance.* (1) *Prohibition of assistance.* No financial assistance, except for emergency work to be funded under §§ 950.604(b) and 950.606, and for modernization needs resulting from disasters under § 950.604(b), may be made available under this subpart unless HUD has approved a comprehensive plan submitted by the IHA that meets the requirements of § 950.652. An IHA that has failed to obtain approval of its comprehensive plan by the end of the FFY shall have its formula allocation for that year (less any formula amounts provided to the IHA for emergencies) added to the subsequent year's appropriation of funds for grants under this part. HUD shall allocate such funds to PHAs and IHAs participating in the CGP in accordance with the formula under § 950.604(e) and (f) in the subsequent FFY. An IHA that elects in any FFY not to participate in the CGP under this subpart may participate in the CGP in subsequent FFYs.

(2) *Requests for emergency assistance.* An IHA may receive funds from its formula allocation to address emergency modernization needs even if HUD has not approved the IHA's comprehensive plan. To request such assistance, the IHA shall submit to HUD a request for funds in such form as HUD may prescribe, including any documentation necessary to support its claim that an emergency exists. HUD shall review the request and supporting documentation to determine if it meets the definition of "emergency work," as set forth in § 950.102.

§ 950.654 HUD review and approval of comprehensive plan (including Five-Year Action Plan).

(a) *Submission of comprehensive plan.* (1) Upon receipt of a comprehensive plan from an IHA, HUD shall determine whether:

(i) The plan contains each of the required components specified at § 950.652; and

(ii) If applicable, the IHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate IHA performance, audit findings, or civil rights compliance findings.

(2) *Acceptance for review.* If the IHA has submitted a Comprehensive Plan (including the action plan) that meets the criteria specified in paragraph (a)(1) of this section, HUD shall accept the Comprehensive Plan for review, within 14 calendar days of its receipt in the Area ONAP. The IHA shall be notified in writing that the plan has been accepted by HUD, and that the 75-day review period is proceeding.

(3) *Time period for review.* A Comprehensive Plan that is accepted by HUD for review shall be considered to be approved unless HUD notifies the IHA in writing, postmarked within 75 calendar days of the date of HUD's receipt of the Comprehensive Plan for review, that HUD has disapproved the plan. HUD shall not disapprove a Comprehensive Plan on the basis that it cannot complete its review within the 75-day deadline.

(4) *Rejection of Comprehensive Plan.* If an IHA has submitted a Comprehensive Plan (including the action plan) that does not meet the requirements of paragraph (a)(1) of this section, HUD shall notify the IHA within 14 calendar days of its receipt that HUD has rejected the plan for review. In such case, HUD shall indicate the reasons for rejection, the modifications required to qualify the Comprehensive Plan for HUD review, and the deadline date for receipt of any modifications.

(b) *HUD approval of Comprehensive Plan (including action plan).* (1) A Comprehensive Plan (including the action plan) that is accepted by HUD for review in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the IHA in writing, postmarked within 75 days of the date of HUD's receipt of the Comprehensive Plan for review, that HUD has disapproved the plan, indicating the reasons for disapproval, and the modifications required to make the Comprehensive Plan approvable. The IHA shall re-submit the Comprehensive Plan to HUD, in accordance with the deadline established by HUD, which may allow up to 75 calendar days before the end of the FFY for HUD review. If the revised plan is disapproved by HUD following its resubmission, or the IHA fails to resubmit the plan by the deadline established by HUD, any funds that would have been allocated to the IHA shall be added to the subsequent year's appropriation of funds for grants under this subpart. HUD shall allocate such funds to IHAs and PHAs participating in the CGP in accordance with the formula under 24 CFR § 950.604 and 968.103. HUD shall not disapprove a Comprehensive Plan on the basis that HUD cannot complete its review under this section within the 75-day deadline.

(2) HUD shall approve the comprehensive plan except where it makes a determination in accordance with one or more of the following:

(i) Comprehensive plan is incomplete in significant matters;

(ii) Identified needs are plainly inconsistent with facts and data;

(A) Identified physical improvements and replacements are inadequate;

(B) Identified management improvements are inadequate;

(C) Proposed physical and management improvements fail to address identified needs;

(iii) Action plan is plainly inappropriate to meeting identified needs;

(iv) Inadequate demonstration of long-term viability at reasonable cost; or

(v) Contradiction of tribal/local government certification or IHA resolution.

(c) *Effect of HUD approval of Comprehensive Plan.* After HUD approves the Comprehensive Plan (including the Five-Year Action Plan), or any amendments to the plan, it shall be binding upon HUD and the IHA, until such time as the IHA submits, and HUD approves, an amendment to its plan. The IHA is expected to undertake the work set forth in the Annual Statement. However, the IHA may undertake any of the work identified in any of the other four years of the latest approved Five-Year Action Plan, current approved Annual Statement or previously approved CIAP budgets, without further HUD approval. Actual uses of the funds are to be reflected in the IHA annual Performance and Evaluation Report for each grant. See § 950.658. HUD encourages the IHA to inform the residents of significant changes (such as changes in scope of work or whenever it moves work items within the approved Five-Year Action Plan). The IHA shall retain documentation of that information in its files. If HUD determines as a result of an audit or monitoring findings that an IHA has provided false or substantially inaccurate data in its Comprehensive Plan/Annual Submission or has circumvented the intent of the program, HUD may condition the receipt of assistance, in accordance with § 950.660. Moreover, in accordance with 18 U.S.C. 1001, any individual or entity who knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

§ 950.656 Annual submission of activities and expenditures.

(a) *General.* The Annual Submission is a collective term for all documents that the IHA shall submit to HUD for review and approval before accessing the current FFY grant funds. Such documents include the Annual Statement, Work Statements for years two through five of the Five-Year Action Plan, local government statement, IHA Board Resolution, materials demonstrating the partnership process, and any other documents as prescribed by HUD. For planning purposes, an IHA may use either the amount of funding received in the current year or the actual formula amount provided in HUD's notification under § 950.650 in

developing the Five-Year Action Plan for presentation at the resident meetings and public hearing. Work Statements cover the second through the fifth years of the Five-Year Action Plan and set forth the major work categories and costs, by development or IHA-wide, that the IHA intends to undertake in each year of years two through five. In preparing these Work Statements, the IHA shall assume that the current FFY formula amount will be available in each year of years two through five. The Work Statements for all five years will be at the same level of detail so that the IHA may interchange work items as discussed in § 950.652. An IHA may budget up to 8 percent of its annual grant in a contingency account for cost overruns.

(b) *Submission.* After receiving HUD notification of the formula amount estimating how much funding will be available from other sources, such as State and tribal governments, and determining its activities and costs based on the current FFY formula amount, the IHA shall submit its Annual Submission.

(c) *Acceptance for review.* (1) Upon receipt of an Annual Submission from an IHA, HUD shall determine whether:

(i) The Annual Submission contains each of the required components; and

(ii) The IHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate IHA performance, audit findings, and civil rights compliance findings.

(2) If the IHA has submitted a complete Annual Submission and all required information and assurances, HUD will accept the submission for review, as of the date of receipt. If the IHA has not submitted all required material, HUD will promptly notify the IHA that it has disapproved the submission, indicating the reasons for disapproval, the modifications required to qualify the Annual Submission for HUD review, and the date by which such modifications shall be received by HUD.

(d) *Resident and local government participation.* An IHA is required to develop its Annual Submission, including any proposed amendments to its Comprehensive Plan as provided in § 950.652, in consultation with officials of the appropriate governing body (or in the case of an IHA with developments in multiple jurisdictions, in consultation with the CEO of each such jurisdiction or with an advisory group representative of all jurisdictions) and with residents and duly elected resident organizations of the developments covered by the Comprehensive Plan, as follows:

(1) *Public notice.* Within a reasonable amount of time before the advance meeting for residents under paragraph (d)(2) of this section, and the public hearing under paragraph (d)(3) of this section, the IHA shall annually provide public notice of the advance meeting and the public hearing in a manner determined by the IHA and that ensures notice to all duly elected resident organizations;

(2) *Advance meeting with residents.* The IHA shall at least annually hold a meeting open to all residents and duly elected resident organizations. The advance meeting shall be held within a reasonable amount of time before the public hearing under paragraph (d)(3) of this section. The IHA will provide residents with information concerning the contents of the IHA's Five-Year Action Plan (and any proposed amendments to the IHA's Comprehensive Plan to be submitted with the Annual Submission) so that residents can comment adequately at the public hearing on the contents of the Five-Year Action Plan and any proposed amendments to the Comprehensive Plan.

(3) *Public hearing.* The IHA shall annually hold at least one public hearing, and any appropriate number of additional hearings, to present information on the Annual Submission and the status of prior approved programs. The public hearing shall provide ample opportunity for residents of the developments covered by the Comprehensive Plan, officials of the appropriate governing body, and other interested parties, to express their priorities and concerns. The IHA shall give full consideration to the comments and concerns of residents, local government officials, and other interested parties in developing its Five-Year Action Plan, or any amendments to its Comprehensive Plan.

(4) *Expedited scheduling.* IHAs are encouraged to hold the meeting with residents and duly elected resident organizations under paragraph (d)(2) of this section, and the public hearing under paragraph (d)(3) of this section, between July 1 (i.e., after the end of the program year—June 30) and September 30, using the formula amount for the current FFY. If an IHA elects to use such expedited scheduling, it shall explain at the meeting with residents and duly elected resident organizations and at the public hearing that the current FFY amount is not the actual grant amount for the subsequent year, but is rather the amount used for planning purposes. It shall also explain that the Five-Year Action Plan will be adjusted when HUD provides notification of the actual formula amount, and explain which major work categories at which developments may be added or deleted to adjust for the actual formula amount and that any added work categories/developments will come from the Comprehensive Plan.

(e) *Contents of Annual Submission.* The Annual Statement for each year shall include, for each development or on an IHA-wide basis for management improvements or certain physical improvements for which work is to be funded out of that year's grant:

(1) A list of development accounts with an identification of major work categories;

(2) The cost for each major work category, as well as a summary of cost by development account;

(3) The IHA-wide or development-specific management improvements to be undertaken during the year;

(4) For each development and for any management improvements not covered by a HUD-approved management improvement plan, a schedule for the use of current year funds, including target dates for the obligation and expenditure of the funds (see § 950.614);

(5) A summary description of the actions to be taken with non-CGP funds to meet physical and management improvement needs that have been identified by the IHA in its needs assessments;

(6) Documentation supporting the IHA's actions in carrying out its responsibilities under the National Environmental Policy Act and other related authorities in accordance with § 950.120(a) and (b);

(7) Other information, as specified by HUD and approved by OMB under the Paperwork Reduction Act; and

(8) An IHA resolution approving the Annual Submission or any amendments thereto, as set forth in § 950.652.

(f) *Additional submissions with Annual Submission.* An IHA shall submit with the Annual Submission any amendments to the Comprehensive Plan, as set forth in § 950.652, and such additional information as may be prescribed by HUD. HUD shall review any proposed amendments to the Comprehensive Plan in accordance with review standards under § 950.654.

(g) *HUD review and approval of Annual Submission.* (1) *General.* An Annual Submission accepted in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the IHA in writing, postmarked within 75 calendar days of the date that HUD receives the Annual Submission for review under paragraph (c) of this section, that HUD has disapproved the Annual Submission, indicating the reasons for disapproval, the modifications required to make the Annual Submission approvable, and the date by which such modifications shall be received by HUD. HUD may request additional information (e.g., for eligibility determinations) to facilitate review and approval of the Annual Submission during the 75-day review period. HUD shall not disapprove an Annual Submission on the basis that HUD cannot complete its review under this section within the 75-day deadline;

(2) *Bases for disapproval for Annual Submission.* HUD shall approve the Annual Submission, except when:

(i) *Plainly inconsistent with Comprehensive Plan.* HUD determines that the activities and expenditures proposed in the Annual Submission are plainly inconsistent with the IHA's approved Comprehensive Plan;

(ii) *Contradiction of IHA resolution.* HUD has evidence that tends to challenge, in a substantial manner, the certifications contained in the board resolution, as required by § 950.672(d)(7).

(h) *Amendments to Annual Statement.* The IHA shall advise HUD of all changes to the IHA's approved Annual Statement in its Performance and Evaluation Report submitted under § 950.658. The IHA shall submit to HUD for prior approval any additional work categories (except for emergency work) that are not within the IHA's approved Five-Year Action Plan.

(i) *Failure to obligate formula funding and extension of time for performance.* (1) *Failure to obligate formula funds.* If the IHA fails to obligate formula funds within the approved or extended time period, the IHA may be subject to an alternative management strategy, which may involve third-party oversight or administration of the modernization function. HUD would only require such action after a corrective action order had been issued under § 950.660 and the IHA failed to comply with the order. HUD could then require an alternative management strategy in a corrective action order. An IHA may appeal in writing the corrective action order requiring an alternative management strategy within 30 calendar days of that order. HUD Headquarters shall render a written decision on an IHA's appeal within 30 calendar days of the date of its receipt of the IHA's appeal.

(2) *Extension of time for performance.* An IHA may extend the target dates for fund obligation and expenditure in the approved Annual Statement whenever any delay outside the IHA's control occurs, as specified by HUD, and the extension is made in a timely manner. Such revision is subject to HUD review under § 950.660 as to the IHA's continuing capacity. HUD shall not review as to an IHA's continuing capacity any revisions to an IHA's Comprehensive Plan and related statements when the basis for the revision is that HUD has not provided the amount of assistance set forth in the Annual Submission, or has not provided such assistance in a timely manner.

(j) *ACC Amendment.* After HUD approval of each year's Annual Submission, HUD and the IHA shall enter into an ACC amendment in order to draw down modernization funds. The ACC amendment shall require low-income use of housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC).

(k) *Declaration of Trust.* As HUD may require, the IHA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the IHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements. A Declaration of Trust is not required for Mutual Help units.

§ 950.658 IHA Performance and Evaluation Report.

For any FFY in which an IHA has received assistance under this subpart, the IHA shall submit a Performance and Evaluation Report, in a form and at a time to be prescribed by HUD, describing its use of assistance in accordance with the approved Annual Statement. The IHA shall make reasonable efforts to notify residents and officials of the appropriate governing body of the availability of the draft report, make copies available to residents in the development office, and provide residents with at least 30 calendar days in which to comment on the report.

§ 950.660 HUD review of IHA performance.

(a) *HUD determination.* At least annually, HUD shall carry out such reviews of the performance of each IHA as may be necessary or appropriate to make the determinations required by this paragraph (a), taking into consideration all available evidence.

(1) *Conformity with Comprehensive Plan.* HUD will determine whether the IHA has carried out its activities under this subpart I in a timely manner and in accordance with its Comprehensive Plan.

(2) *Continuing capacity.* HUD will determine whether the IHA has a continuing capacity to carry out its Comprehensive Plan in a timely manner. After the first full operational year of CGP, CIAP experience will not be taken into consideration except when the IHA has not yet had comparable experience under the CGP.

(3) *Reasonable progress.* HUD shall determine whether the IHA has satisfied, or has made reasonable progress towards satisfying, the applicable performance standards.

(b) *Notice of deficiency.* Based on HUD reviews of IHA performance and findings of any of the deficiencies in paragraph (d) of this section, HUD may issue to the IHA a notice of deficiency stating the specific program requirements that the IHA has violated and requesting the IHA to take any of the actions in paragraph (e) of this section.

(c) *Corrective action order.* (1) Based on HUD reviews of IHA performance and findings of any of the deficiencies paragraph (d) of this section, HUD may issue to the IHA a corrective action order, whether or not a notice of deficiency has previously been issued in regard to the specific deficiency on which the corrective action order is based. HUD may order corrective action at any time by notifying the IHA of the specific program requirements that the IHA has violated, and specifying that any of the corrective actions listed in paragraph (e) of this section shall be taken. HUD shall design corrective action to prevent a continuation of the deficiency, mitigate any adverse effects of the deficiency to the extent possible, or prevent a recurrence of the same or similar deficiencies.

(2) Before ordering corrective action, HUD will notify the IHA and give it an opportunity to consult with HUD regarding the proposed action.

(3) Any corrective action ordered by HUD shall become a condition of the grant agreement.

(4) If HUD orders corrective action by an IHA in accordance with this section, the IHA's Board of Commissioners shall notify affected residents of HUD's determination, the bases for the determination, the conditioning requirements imposed under paragraph (c) of this section, and the consequences to the IHA if it fails to comply with HUD's requirements.

(d) *Basis for corrective action.* HUD may order an IHA to take corrective action only if HUD determines:

(1) The IHA has not submitted a performance and evaluation report, in accordance with § 950.658;

(2) The IHA has not carried out its activities under the CGP program in a timely manner and in accordance with its Comprehensive Plan or HUD requirements, as described in paragraph (a)(1) of this section;

(3) The IHA does not have a continuing capacity to carry out its Comprehensive Plan in a timely manner or in accordance with its Comprehensive Plan or HUD requirements, as described in paragraph (a)(2) of this section;

(4) The IHA has not satisfied, or has not made reasonable progress towards satisfying, the performance standards described in paragraph (a)(3) of this section;

(5) An audit conducted in accordance with 24 CFR part 44 and § 950.120, or pursuant to other HUD reviews (including monitoring findings) reveals deficiencies that HUD reasonably believes require corrective action;

(6) The IHA has failed to repay HUD for amounts awarded under the CGP program that were improperly expended; or

(7) The IHA has been determined to be high risk, in accordance with § 950.135.

(e) *Types of corrective action.* HUD may direct an IHA to take one or more of the following corrective actions:

(1) Submit additional information:

(i) Concerning the IHA's administrative, planning, budgeting, accounting, management, and evaluation functions, to determine the cause for a IHA not meeting the standards in paragraphs (a)(1), (2), or (3) of this section;

(ii) Explaining any steps the IHA is taking to correct the deficiencies;

(iii) Documenting that IHA activities were not inconsistent with the IHA's annual statement or other applicable laws, regulations, or program requirements; and

(iv) Demonstrating that the IHA has a continuing capacity to carry out the Comprehensive Plan in a timely manner;

(2) Submit detailed schedules for completing the work identified in its Annual Statements and report periodically on its progress on meeting the schedules;

(3) Notwithstanding 24 CFR 85.36(g), submit to HUD the following documents for prior approval, which may include, but are not limited to:

(i) Proposed agreement with the architect/engineer (prior to execution);

(ii) Complete construction and bid documents (prior to soliciting bids);

(iii) Proposed award of contracts, including construction and equipment contracts and management contracts; or

(iv) Proposed contract modifications prior to issuance, including modifications to construction and equipment contracts, and management contracts.

(4) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the IHA's Comprehensive Plan, Five-Year Action Plan, or Performance and Evaluation Report;

(5) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the IHA's Comprehensive Plan, Five-Year Action Plan, or Performance and Evaluation Report;

(6) Reimburse, from non-HUD sources, one or more program accounts for any amounts improperly expended;

(7) Take such other corrective actions HUD determines appropriate to correct IHA deficiencies.

(8) Submit to an alternative management strategy which may involve third-party oversight or administration of the modernization function (see § 950.650); and

(9) Take such other corrective actions HUD determines appropriate to correct IHA deficiencies.

(f) *Failure to take corrective action.* In cases in which HUD has ordered corrective action and the IHA has failed to take the required actions within a reasonable time, as specified by HUD, HUD may take one or more of the following steps:

(1) Withhold some or all of the IHA's grant;

(2) Declare a breach of the ACC grant amendment with respect to some or all of the IHA's functions; or

(3) Any other sanction authorized by law or regulation.

(g) *Reallocation of funds that have been withheld.* If HUD has withheld for a prescribed period of time some or all of an IHA's annual grant, HUD may reallocate such amounts to other IHAs/PHAs under the CGP program, subject to approval in appropriations acts. The reallocation shall be made to IHAs that HUD has determined to be administratively capable under § 950.135, and to PHAs under the CGP program that are not designated as either troubled or mod troubled under the PHMAP at 24 CFR part 901, based upon the relative needs of these IHAs and PHAs, as determined under the formula at § 950.604.

(h) *Right to appeal.* Before withholding some or all of the IHA's annual grant, declaring a breach of the ACC grant amendment, or reallocating funds that have been withheld, HUD will notify the IHA and give it an opportunity, within a prescribed period of time, to present to ONAP Headquarters, in writing, any arguments or additional facts and data concerning the proposed action.

(i) *Notification of residents.* The IHA's Board of Commissioners shall notify affected residents of HUD's final determination to withhold funds, declare a breach of the ACC grant amendment, or reallocate funds, as well as the basis for, and the consequences resulting from, such a determination.

(j) *Recapture.* In addition, HUD may recapture for good cause any grant amounts previously provided to an IHA, based upon a determination that the IHA has failed to comply with the requirements of the CGP program. Before recapturing any grant amounts, HUD will notify the IHA and give it an opportunity to appeal in accordance with paragraph (h) of this section. Any reallocation of recaptured amounts will be in accordance with paragraph (g) of this section. The IHA's board of Commissioners shall notify affected residents of HUD's final determination to recapture any funds.

PART 965—PHA-OWNED OR LEASED PROJECTS—GENERAL PROVISIONS

8. The heading for part 965 is revised to read as set forth above.

9. The authority citation for part 965 continues to read as follows:

Authority: 42 U.S.C. 1437, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

Subpart A—Preemption of State Prevailing Wage Requirements

10. The heading of subpart A is revised as set forth above.

§ 965.101 [Amended]

11. Section 965.101 is amended by:

a. Removing from the section heading the words, "With Respect to Maintenance and Operation of Projects";

b. Removing the parenthetical phrase "(including modernization)" from the introductory text of paragraph (a); and

c. Removing the words, "maintenance and operation" wherever they appear in paragraphs (a) introductory text, (a)(2), (b)(1) introductory text, (b)(2), and (b)(3), and adding in their place, the words, "development, maintenance, and modernization".

PART 968—PUBLIC HOUSING MODERNIZATION

12. The authority citation for 24 CFR part 968 continues to read as follows:

Authority: 42 U.S.C. 1437d, 1437*l*, and 3535(d).

Subpart A—General

13. Section 968.101 is amended by revising paragraph (a); removing the second sentence of paragraph (b)(2); revising paragraphs (b)(1), (b)(5), and (c); and adding a new paragraph (d), to read as follows:

§ 968.101 Purpose and applicability.

(a) *Purpose.* The purpose of this part is to set forth the policies and procedures for the Modernization program authorizing HUD to provide financial assistance to Public Housing Agencies (PHAs).

(b) *Applicability.* (1) Subpart A of this part applies to all modernization under this part. Subpart B of this part sets forth the requirements and procedures for the Comprehensive Improvement Assistance Program (CIAP) for PHAs that own or operate fewer than 250 public housing units. Subpart C of this part sets forth the requirements and procedures for the Comprehensive Grant Program (CGP) for PHAs that own or operate 250 or more units. A PHA that qualifies for participation in the CGP is not eligible to participate in the CIAP. A PHA that has already qualified to participate in the CGP may elect to continue to participate in the CGP so long as it owns or operates at least 200 units.

* * * * *

(5) A development/building/unit which is assisted under section 5(j)(2) of the Act (Major Reconstruction of Obsolete Projects) (MROP) is eligible for section 14 funding (CIAP or CGP) where it received MROP funding after FFY 1988 and has reached Date of Full Availability (DOFA) or where it received MROP funding during FFYs 1986–1988 and all MROP funds have been expended.

(c) *Transition.* Any amount that HUD has approved for a PHA must be used for the purposes for which the funding was provided, or:

(1) For a CGP PHA, for purposes consistent with an approved Annual Statement or Five-Year Action Plan submitted by the PHA, as the PHA determines to be appropriate; or

(2) For a CIAP PHA, in accordance with a revised CIAP budget.

(d) *Approved information collections.* The following sections of this subpart have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 and assigned OMB approval number 2577–0044: §§ 968.135, 968.145, 968.210, 968.215, 968.225, and 968.230. The following sections of this subpart have been similarly approved and assigned approval number 2577.0157: §§ 968.310, 968.315, 968.325, and 968.330.

§ 968.102 [Amended]

14. Section 968.102 is amended by removing the reference to "§ 968.310(d)" in paragraph (b) and adding in its place a reference to "§ 968.112(d)".

15. Section 968.103 is amended by revising paragraphs (a), (b), (c), (e)(1) (i) and (ii) introductory text, (f)(1), (f)(2) introductory text, (f)(2)(i), (f)(2)(ii) (f), (g), and (h), and the heading to paragraph (e)(4), to read as follows:

§ 968.103 Allocation of funds under section 14.

(a) *General.* This section describes the process for allocating modernization funds to the aggregate of PHAs and IHAs participating in the CIAP and to individual PHAs and IHAs participating in the CGP.

(b) *Set-aside for emergencies and disasters.* For each FFY, HUD shall reserve from amounts approved in the appropriation act for grants under this part and part 950 of this title, an amount not to exceed $75 million (which shall include unused reserve amounts carried over from previous FFYs), which shall be made available to PHAs and IHAs for modernization needs resulting from natural and other disasters, and from emergencies. HUD shall replenish this reserve at the beginning of each FFY. Any unused funds from previous years may remain in the reserve until allocated. The requirements governing the reserve for disasters and emergencies and the procedures by which a PHA may request such funds, are set forth in § 968.104.

(c) *Set-aside for credits for mod troubled PHAs under subpart C of this part.* After deducting an amount for the reserve for natural and other disasters and for emergencies under paragraph (b) of this section, HUD shall set aside from the funds remaining no more than five percent for the purpose of providing credits to PHAs that were formerly designated as mod troubled agencies under the Public Housing Management Assessment Program (PHMAP) (see 24 CFR part 901). The purpose of this set-aside is to compensate these PHAs for amounts previously withheld by HUD because of a PHA's prior designation as a mod troubled agency. Since part 901 of this chapter does not apply to IHAs, they are not classified as "mod troubled" and they do not participate in the set-aside credits established under paragraph (c) of this section.

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(e) * * *

(1) * * *

(i) *Statistically reliable data are available.* Where HUD determines that the data concerning the categories of backlog need identified under paragraph (e)(4) of this section are statistically reliable for individual IHAs and PHAs with 250 or more units, or for the aggregate of IHAs and PHAs with fewer than 250 units, which are not participating in the formula funding portion of the modernization program, it will base its allocation on direct estimates of the statutory categories of backlog need, based on the most recently available, statistically reliable data;

(ii) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning the categories of backlog need identified under paragraph (e)(4) of this section are not available for individual PHAs and IHAs with 250 or more units, it will base its allocation of funds under this section on estimates of the categories of backlog need using:

* * * * *

(4) *Categories of backlog need.* * * *

(f) * * *

(1) *Statistically reliable data are available.* Where HUD determines that statistically reliable data are available concerning the categories of need identified under paragraph (f)(3) of this section for individual PHAs and IHAs with 250 or more units, and for the aggregate of PHAs and IHAs with fewer than 250 units, it shall base its allocation of assistance under this section on the needs that are estimated to have accrued since the date of the last objective measurement of backlog needs under paragraph (e)(1)(i) of this section;

(2) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning the categories of need identified under paragraph (f)(3) of this section are not available for individual PHAs and IHAs with 250 or more units, it shall base its allocation of assistance under this section on estimates of accrued need using:

(i) The most recently available data on the categories of accrual need under paragraph (f)(3) of this section;

(ii) * * *

(F) The total number of units of each PHA or IHA that owns or operates 250 or more units. (weighted at .0144);

* * * * *

(g) *Allocation of CIAP.* The formula amount determined under paragraphs

(e) and (f) of this section for PHAs and IHAs with fewer than 250 units shall be allocated to PHAs in accordance with the requirements of subpart B of this part (the CIAP), and to IHAs in accordance with the requirements of 24 CFR part 950, subpart I.

(h) *Allocation for CGP.* The formula amount determined under paragraphs (e) and (f) of this section for PHAs with 250 or more units shall be allocated in accordance with the requirements of subpart C of this part (the CGP), and for IHAs in accordance with the requirements of 24 CFR part 950, subpart I. A PHA that is eligible to receive a grant under the CGP may appeal the amount of its formula allocation in accordance with the requirements set forth in § 968.310(b). A PHA that is eligible to receive modernization funds under the CGP because it owns or operates 250 or more units is disqualified from receiving assistance under the CIAP under this part.

* * * * *

16. Section 968.105 is amended by adding in alphabetical order new definitions for *"CGP"*, *"modernization program"*, *"modernization project"*, and *"reasonable cost"*; by revising the definition *"Force account labor"*; removing the definition for *"CIAP program"*; and adding a definition for *"CIAP"* to read as follows:

§ 968.105 Definitions.

* * * * *

CGP. The Comprehensive Grant Program, which provides modernization funds on a formula basis to PHAs with 250 or more public housing units.

CIAP. The Comprehensive Improvement Assistance Program, which provides modernization funds on a competitive basis to PHAs with fewer than 250 public housing units.

* * * * *

Force account labor. Labor employed directly by the PHA on either a permanent or a temporary basis. See § 968.120.

* * * * *

Modernization program. A PHA's program for carrying out modernization, as set forth in the approved CIAP budget or CGP Annual Statement.

Modernization project. The improvement of one or more existing public housing developments under a unique number designated for that modernization program. For each modernization project, HUD and the PHA shall enter into an ACC amendment, requiring low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). The terms "modernization project number" and "comprehensive grant number" are used interchangeably.

* * * * *

Reasonable cost. Total unfunded hard cost needs for a development that do not exceed 90 percent of the computed Total Development Cost (TDC) for a new development with the same structure type and number and size of units in the market area.

* * * * *

§ 968.312 [Redesignated as § 968.104]

17. Section 968.312 is redesignated as § 968.104; and newly redesignated § 968.104 is amended by:

a. Removing from paragraph (a)(1) the phrase "under § 968.310(a)(3)";

b. Removing references to "PHAs participating in CGP" and "PHAs participating in CIAP" in paragraphs (a)(1) and (a)(3), and adding in their place references to "CGP PHAs" and "CIAP PHAs", respectively;

c. Removing references to "PHA participating in CGP" and "PHA participating in CIAP" in paragraph (a)(1), and adding in their place references to "CGP PHA" and "CIAP PHA", respectively;

d. Adding a sentence at the end of paragraph (a)(3);

e. Removing from paragraphs (a)(1) and (b)(1) the two references to "§ 968.320" and adding in their place references to "§ 968.315";

f. Amending paragraph (b)(1) in the fourth sentence, by adding after the words "insurance coverage" and before the period, the words "or other Federal assistance"; and in the fifth sentence, by adding before the word "PHA", the word "CGP"; and

g. Amending paragraph (b)(3) by removing the phrase, "shall be in the form of a grant, and"; to read as follows:

§ 968.104 Reserve for emergencies and disasters.

* * * * *

(a) * * *

(3) * * * A CIAP PHA is not required to repay assistance for its emergency needs from the reserve.

* * * * *

§ 968.108 [Amended]

18. Section 968.108 is amended by removing paragraph (f)(2) and redesignating paragraph (f)(3) as paragraph (f)(2).

§ 968.110 [Amended]

19. Section 968.110 is amended by removing and reserving paragraphs (i), (j), and (l), by removing from paragraph (e)(3) the words "or tribal", and by removing from paragraph (e)(3) the reference to "§ 968.120" and adding in its place a reference to "§ 965.101 of this chapter".

20. A new § 968.112 is added, to read as follows:

§ 968.112 Eligible costs.

(a) *General.* A PHA may use financial assistance received under this part for the following eligible costs:.

(1) For a CGP PHA, the eligible costs are:

(i) Undertaking activities described in its approved Annual Statement under § 968.325 and approved Five-Year Action Plan under § 968.315(a)(5);

(ii) Carrying out emergency work, whether or not the need is indicated in the PHA's approved Comprehensive Plan, including Five-Year Action Plan, or Annual Statement;

(iii) Funding a replacement reserve to carry out eligible activities in future years, subject to the restrictions set forth in paragraph (f) of this section;

(iv) Preparing the Comprehensive Plan and Five-Year Action Plan under § 968.315 and the Annual Submission under § 968.325, including reasonable costs necessary to assist residents to participate in a meaningful way in the planning, implementation and monitoring process; and

(v) Carrying out an audit, in accordance with 24 CFR part 44.

(2) For a CIAP PHA, the eligible costs are activities approved by HUD and included in an approved CIAP budget.

(b) *Demonstration of viability.* Except in the case of emergency work, a PHA shall only expend funds on a development for which the PHA has determined, and HUD agrees, that the completion of the improvements and replacements (for CGP PHAs, as identified in the Comprehensive Plan) will reasonably ensure the long-term physical and social viability of the development at a reasonable cost (as defined in § 968.105), or for essential non-routine maintenance needed to keep the property habitable until the demolition or disposition application is approved and residents are relocated.

(c) *Physical improvements.* Eligible costs include alterations, betterments, additions, replacements, and non-routine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in § 968.115. These mandatory standards may be exceeded when a PHA (and HUD in the case of CIAP PHAs) determines that it is necessary or highly desirable for the long-term physical and social viability of the individual development. Development specific work includes work items that are modest in design and cost, but still blend in with the design and architecture of the surrounding community by including amenities, quality materials and design and landscaping features that are customary for the locality and culture. The Field Office has the authority to approve nondwelling space where such space is needed to administer, and is of direct benefit to, the public housing program. If demolition or disposition is proposed, a PHA shall comply with 24 CFR part 970. Additional dwelling space may be added to existing units.

(d) *Turnkey III developments.* (1) *General.* Eligible physical improvement costs for existing Turnkey III developments are limited to work items that are not the responsibility of the homebuyer families and that are related to health and safety, correction of development deficiencies, physical accessibility, energy audits and cost-effective energy conservation measures, or LBP testing, interim containment, professional risk assessment and abatement. In addition, management improvements are eligible costs.

(2) *Ineligible costs.* Routine maintenance or replacements, and items that are the responsibility of the homebuyer families are ineligible costs.

(3) *Exception for vacant or non-homebuyer-occupied Turnkey III units.*

(i) Notwithstanding the requirements of paragraph (d)(1) of this section, a PHA may substantially rehabilitate a Turnkey III unit whenever the unit becomes vacant or is occupied by a non-homebuyer family in order to return the unit to the inventory or make the unit suitable for homeownership purposes. A PHA that intends to use funds under this paragraph must identify in its CIAP application or CGP annual submission the estimated number of units proposed for substantial rehabilitation and subsequent sale. In addition, a PHA must demonstrate, for each of the Turnkey III units proposed to be substantially rehabilitated, that it has homebuyers who both are eligible for homeownership, in accordance with the requirements of 24 CFR part 904, and have demonstrated their intent to be placed into the unit.

(ii) Before a PHA may be approved for substantial rehabilitation of a unit under this paragraph, it must first deplete any Earned Home Payments Account (EHPA) or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit, and request the maximum amount of operating subsidy. Any increase in the value of a unit caused by its substantial rehabilitation under this paragraph shall be reflected solely by its subsequent appraised value, and by an automatic increase in its selling price.

(e) *Demolition and conversion costs.* Eligible costs include:

(1) Demolition of dwelling units or non-dwelling facilities, where the demolition is approved by HUD under 24 CFR part 970, and related costs, such as clearing and grading the site after demolition and subsequent site improvement to benefit the remaining portion of the existing development; and

(2) Conversion of existing dwelling units to different bedroom sizes or to non-dwelling use.

(f) *Replacement reserve costs* (for CGP only). (1) Funding a replacement reserve to carry out eligible activities in future years is an eligible cost, subject to the following restrictions:

(i) Annual CGP funds are not needed for existing needs, as identified by the PHA in its needs assessments; or

(ii) A physical improvement requires more funds than the PHA would receive under its annual formula allocation; or

(iii) A management improvement requires more funds than the PHA may use under its 20% limit for management improvements (except as provided in paragraph (n)(2)(i) of this section), and the PHA needs to save a portion of its annual grant, in order to combine it with a portion of subsequent year(s) grants to fund the work item.

(2) The PHA shall invest replacement reserve funds so as to generate a return equal to or greater than the average 91-day Treasury bill rate.

(3) Interest earned on funds in the replacement reserve will not be added to the PHA's income in the determination of a PHA's operating subsidy eligibility, but must be used for eligible modernization costs.

(4) To the extent that its annual formula allocation and any unobligated balances of modernization funds are not adequate to meet emergency needs, a PHA must first use its replacement reserve, where funded, to meet emergency needs, before requesting funds from the reserve under § 968.104.

(5) A PHA is not required to use its replacement reserve for costs related to natural and other disasters.

(g) *Management improvement costs.* (1) *General.* Management improvements that are development-specific or PHA-wide in nature are eligible costs where needed to upgrade the operation of the PHA's developments, sustain physical improvements at those developments or correct management deficiencies. A PHA's ongoing operating expenses are ineligible management improvement costs. For CIAP PHAs, management improvements may be funded as a single work item.

(2) *Eligible costs.* Eligible costs include:

(i) *General management improvement costs.* Eligible costs include general management improvement costs, such as: management, financial, and accounting control systems of the PHA; adequacy and qualifications of PHA personnel, including training; resident programs and services through the coordination of the provision of social services from tribal or local government or other public and private entities; resident and development security; resident selection and eviction; occupancy; rent collection; maintenance; and equal opportunity.

(ii) *Economic development costs.* Eligible costs include job training for residents and resident business development activities, for the purpose of carrying out activities related to the modernization-funded management and physical improvements. HUD encourages PHAs, to the greatest extent feasible, to hire residents as trainees, apprentices, or employees to carry out the modernization program under this part, and to contract with resident-owned businesses for modernization work.

(iii) *Resident management costs.* Eligible costs include technical assistance to a resident council or resident management corporation (RMC), as defined in part 964, in order to: determine the feasibility of resident management to carry out management functions for a specific development or developments; train residents in skills directly related to the operations and management of the development(s) for potential employment by the RMC; train RMC board members in community organization, board development, and leadership; and assist in the formation of an RMC.

(iv) *Resident homeownership costs.* Eligible costs are limited to the study of the feasibility of converting rental to homeownership units and the preparation of an application for conversion to homeownership or sale of units.

(v) *Preventive maintenance system.* Eligible costs include the establishment of a preventive maintenance system or improvement of an existing system. A preventive maintenance system must provide for regular inspections of building structures, systems and units and distinguish between work eligible for operating funds (routine maintenance) and work eligible for modernization funding (non-routine maintenance).

(h) *Drug elimination costs.* Eligible costs include drug elimination activities involving management or physical improvements, as specified by HUD.

(i) *LBP costs.* Eligible costs include professional risk assessments and interim containment of family developments/buildings constructed before 1980, testing and abatement of family developments/buildings constructed before 1978, and costs for insurance coverage for pollution hazards associated with the testing, abatement, clean-up and disposal of LBP on applicable surfaces of family developments/buildings constructed before 1978.

(j) *Administrative costs.* Administrative costs necessary for the planning, design, implementation and monitoring of the physical and management improvements are eligible costs and include the following:

(1) *Salaries.* The salaries of non-technical and technical PHA personnel assigned full-time or part-time to modernization are eligible costs only where the scope and volume of the work are beyond that which could be reasonably expected to be accomplished by such personnel in the performance of their non-modernization duties. A PHA shall properly apportion to the appropriate program budget any direct charges for the salaries of assigned full- or part-time staff (*e.g.*, to the CIAP, CGP or operating budget);

(2) *Employee benefit contributions.* PHA contributions to employee benefit plans on behalf of non-technical and technical PHA personnel are eligible costs in direct proportion to the amount of salary charged to the CIAP or CGP, as appropriate;

(3) *Preparation of CIAP or CGP required documents;*

(4) *Resident participation.* Eligible costs include those associated with ensuring the meaningful participation of residents in the development of the CIAP Application or the CGP Annual Submission and Comprehensive Plan and the implementation and monitoring of the approved modernization program; and

(5) *Other administrative costs,* such as telephone and facsimile, as specified by HUD.

(k) *Audit costs (CGP only).* Eligible costs are limited to the portion of the audit costs that are attributable to the modernization program.

(l) *Architectural/engineering and consultant fees.* Eligible costs include fees for planning, identification of needs, detailed design work, preparation of construction and bid documents and other required documents, LBP professional risk assessments and testing, and inspection of work in progress.

(m) *Relocation costs.* Eligible costs include relocation and other assistance for permanent and temporary relocation, as a direct result of rehabilitation, demolition or acquisition for a modernization-funded activity, where this assistance is required by 49 CFR part 24 or § 968.108.

(n) *Cost limitations.* (1) *CIAP costs.* (i) *Management improvement costs.* Management improvement costs shall not exceed a percentage of the CIAP funds available to a Field Office in a particular FFY, as specified by HUD.

(ii) *Planning costs.* Planning costs are costs incurred *before* HUD approval of the CIAP application *and* which are related to developing the CIAP application or carrying out eligible modernization planning, such as detailed design work, preparation of solicitations, and LBP professional risk assessment and testing. Planning costs may be funded as a single work item. If a PHA incurs planning costs without prior HUD approval, a PHA does so with the full understanding that the costs may not be reimbursed upon approval of the CIAP application. Planning costs shall not exceed 5 percent of the CIAP funds available to a Field Office in a particular FFY.

(2) *CGP costs.* (i) *Management improvement costs.* Notwithstanding the full fungibility of work items, a PHA shall not use more than a total of 20 percent of its annual grant for management improvement costs in account 1408, unless specifically approved by HUD or the PHA has been designated as both an over-all high performer and mod-high performer under the PHMAP.

(ii) *Administrative costs.* Notwithstanding the full fungibility of work items, a PHA shall not use more than a total of 10 percent of its annual grant on administrative costs in account 1410, excluding any costs related to lead-based paint or asbestos testing (whether conducted by force account employees or by a contractor), in-house architectural/engineering (A/E) work, or other special administrative costs required by State or local law, unless specifically approved by HUD.

(3) *Program benefit.* Where the physical or management improvement, including administrative cost, will benefit programs other than Public Housing, such as Section 8 or local revitalization programs, eligible costs are limited to the amount directly attributable to the public housing program.

(4) *No duplication.* Any eligible cost for an activity funded by CIAP or CGP shall not also be funded by any other HUD program.

(o) *Ineligible costs.* Ineligible costs include:

(1) Luxury improvements;

(2) Indirect administrative costs (overhead), as defined in OMB Circular A–87;

(3) Public housing operating assistance;

(4) Direct provision of social services, through either force account or contract labor, from FFY 1996 and future FFYs funds, unless otherwise provided by law; and

(5) Other ineligible activities, as specified by HUD.

(p) *Expanded eligibility for FFY 1995 and prior year modernization funds.* The FFY 1995 Rescissions Act expanded the eligible activities that may be funded with CIAP or CGP assistance provided from FFY 1995 and prior FFY funds. Such activities include, but are not limited to:

(1) New construction or acquisition of additional public housing units, including replacement units;

(2) Modernization activities related to the public housing portion of housing developments held in partnership, or cooperation with non-public housing entities; and

(3) Other activities related to public housing, including activities eligible under the Urban Revitalization Demonstration (HOPE VI).

21. Section 968.115 is revised to read as follows:

§ 968.115 Modernization and energy conservation standards.

All improvements funded under this part shall:

(a) Meet the modernization standards as prescribed by HUD;

(b) Incorporate cost-effective energy conservation measures, identified in the PHA's most recently updated energy audit, conducted pursuant to part 965, subpart C;

(c) Where changing or installing a new utility system, conduct a life-cycle cost analysis, reflecting installation and operating costs; and

(d) Provide decent, safe, and sanitary living conditions in PHA-owned and PHA-operated public housing.

22. Section 968.120 is revised to read as follows:

§ 968.120 Force account.

(a) For both CIAP and CGP, a PHA may undertake the activities using force account labor, only where specifically approved by HUD in the CIAP budget or CGP Annual Statement, except no prior HUD approval is required where the PHA is designated as both an overall high performer and Modernization high performer under the PHMAP.

(b) If the entirety of modernization activity (including the planning and architectural design of the rehabilitation) is administered by the RMC, the PHA shall not retain for any administrative or other reason, any portion of the modernization funds provided, unless the PHA and the RMC provide otherwise by contract.

23. New §§ 968.125, 968.130, and 968.135 are added, to read as follows:

§ 968.125 Initiation of modernization activities.

After HUD has approved the modernization program and entered into an ACC amendment with the PHA, a PHA shall undertake the modernization activities and expenditures set forth in its approved CIAP budget or CGP Annual Statement/Five-Year Action Plan in a timely, efficient and economical manner. All approved funding must be obligated within two years of approval and expended within three years of approval unless HUD approves a longer time period in the PHA's implementation schedule, as set forth in the CIAP budget or CGP Annual Statement. HUD may approve a longer time period for such reasons as the large size of the grant or the complexity of the work.

§ 968.130 Fund requisitions.

To draw down modernization funds against the approved CIAP budget or CGP Annual Statement, a PHA shall comply with requirements prescribed by HUD.

§ 968.135 Contracting requirements.

In addition to the requirements specified in 24 CFR parts 5, 85, and 965, subpart A, and § 968.110(e), the following provisions apply:

(a) *Architect/engineer and other professional services contracts.* For CIAP only and notwithstanding 24 CFR 85.36(g), a PHA shall comply with the following HUD requirements:

(1) Where the proposed contract amount exceeds the HUD-established threshold, submit the contract for prior HUD approval before execution or issuance; or

(2) Where the proposed contract amount does not exceed the HUD-established threshold, certify that the scope of work is consistent with the originally approved modernization program, and that the amount is appropriate and does not result in the total HUD-approved CIAP budget being exceeded.

(b) *Assurance of completion.* For both CIAP and CGP and notwithstanding 24 CFR 85.36(h), for each construction contract over $100,000, the contractor shall furnish a bid guarantee from each bidder equivalent to 5% of the bid price; and one of the following:

(1) A performance and payment bond for 100 percent of the contract price; or

(2) Separate performance and payment bonds, each for 50% or more of the contract price; or

(3) A 20% cash escrow; or

(4) a 25% irrevocable letter of credit.

(c) *Construction solicitations.* For CIAP only and notwithstanding 24 CFR 85.36(g), a PHA shall comply with HUD requirements to either:

(1) Where the estimated contract amount exceeds the HUD-established threshold, submit a complete construction solicitation for prior HUD approval before issuance; or

(2) Where the estimated contract amount does not exceed the HUD-established threshold, certify receipt of the required architect's/engineer's certification that the construction documents accurately reflect HUD-approved work and meet the modernization and energy conservation standards and that the construction solicitation is complete and includes all mandatory items.

(d) *Contract awards.* (1) For CIAP only, a PHA shall obtain HUD approval of the proposed award of a contract if the contract work is inconsistent with the originally approved modernization program or the procurement meets the criteria set forth in 24 CFR 85.36(g)(2)(i) through (iv). In all other instances, a PHA shall make the award without HUD approval after the PHA has certified that:

(i) The solicitation and award procedures were conducted in compliance with State or local laws and Federal requirements;

(ii) The award does not meet the criteria in 24 CFR 85.36(g)(2)(i) through (iv) for prior HUD approval; and

(iii) The contractor is not on the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs;

(2) For CGP only, a PHA shall obtain HUD approval of the proposed award of a contract if the procurement meets the criteria set forth in 24 CFR 85.36(g)(2)(i) through (iv).

(e) *Contract modifications.* For CIAP only and notwithstanding 24 CFR 85.36(g), except in an emergency endangering life or property, a PHA shall comply with HUD requirements to either:

(1) Where the proposed contract modification exceeds the HUD-established threshold, submit the proposed modification for prior HUD approval before issuance; or

(2) Where the proposed contract modification does not exceed the HUD-established threshold, certify that the proposed modification is within the scope of the contract and that any additional costs are within the total HUD-approved CIAP budget amount.

(f) *Construction requirements.* Where indicated by poor performance, a PHA may be required to submit to HUD periodic progress reports and, for prior HUD approval, construction completion documents above a HUD-specified amount. For CGP only, a PHA is notified of additional construction requirements by a notice of deficiency or a corrective action order.

(g) *Reward for high performers.* For CIAP only, if a PHA is both an overall high performer and a modernization high performer under the Public Housing Management Assessment Program (PHMAP), HUD will not establish thresholds, and the PHA is not required to obtain prior HUD approval, under paragraphs (a), (c), and (e) of this section.

§ 968.240 [Redesignated as § 968.140]

24. Section 968.240 is redesignated as § 968.140.

25. A new § 968.145 is added to subpart A, to read as follows:

§ 968.145 Fiscal closeout.

(a) *Actual modernization cost certificate (AMCC).* Upon expenditure by the PHA of all funds, or termination by HUD of the activities funded in a modernization program, a PHA shall submit the AMCC, in a form prescribed by HUD, to HUD for review and approval for audit. After audit verification, HUD shall approve the AMCC.

(b) *Audit.* The audit shall follow the guidelines prescribed in 24 CFR part 44, Non-Federal Government Audit Requirements. If the pre-audit or post-audit AMCC indicates that there are excess funds, a PHA shall immediately remit the excess funds as directed by HUD. If the pre-audit or post-audit AMCC discloses unauthorized or ineligible expenditures, a PHA shall immediately take such corrective actions as HUD may direct.

26. Subpart B is revised to read as follows:

Subpart B—Comprehensive Improvement Assistance Program (For PHAs That Own or Operate Fewer Than 250 Units)

968.205 Definitions.
968.210 Procedures for obtaining approval of a modernization program.
968.215 Resident and homebuyer participation.

968.225 Budget revisions.
968.230 Progress reports.
968.235 Time extensions.
968.240 HUD review of PHA performance.

Subpart B—Comprehensive Improvement Assistance Program (For PHAs That Own or Operate Fewer Than 250 Units)

§ 968.205 Definitions.

In addition to the definitions in § 968.105, the following definitions apply to this subpart:

Emergency Modernization (CIAP). A type of modernization program for a development that is limited to physical work items of an emergency nature that poses an immediate threat to the health or safety of residents or is related to fire safety, *and* that must be corrected within one year of CIAP funding approval.

Management capability. A PHA has management capability if it is:

(1) Not designated as Troubled under part 901 of this chapter, Public Housing Management Assessment Program (PHMAP); or

(2) Designated as Troubled, but has a reasonable prospect of acquiring management capability through CIAP-funded management improvements and administrative support. A Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under § 901.140 of this chapter or has obtained alternative oversight of its management functions.

Modernization capability. A PHA has modernization capability if it is:

(1) Not designated as Modernization Troubled under part 901 of this chapter, PHMAP; or

(2) Designated as Modernization Troubled, but has a reasonable prospect of acquiring modernization capability through CIAP-funded management improvements and administrative support, such as hiring staff or contracting for assistance. A Modernization Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under § 901.140 of this chapter or has obtained alternative oversight of its modernization functions. Where a PHA does not have a funded modernization program in progress, the Field Office shall determine whether the PHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

Other Modernization (modernization other than emergency). A type of modernization program for a development that includes one or more physical work items, where HUD determines that the physical improvements are necessary and sufficient to extend substantially the useful life of the development, and/or one or more development specific or PHA-wide management work items (including planning costs), and/or lead-based paint testing, professional risk assessments, interim containment, and abatement.

Work item. Any separately identifiable unit of work constituting a part of a modernization program.

§ 968.210 Procedures for obtaining approval of a modernization program.

(a) *HUD notification.* After modernization funds for a particular FFY become available, HUD shall publish in the **Federal Register** a notice of funding availability (NOFA), the time frame for submission of the CIAP Application, and other pertinent information.

(b) *PHA consultation with local officials and residents/homebuyers.* A PHA shall develop the application in consultation with local officials and residents/homebuyers, as set forth in § 968.215.

(c) *PHA application.* A PHA shall submit to HUD an application, in a form prescribed by HUD. Where a PHA has not included some of its developments in the CIAP application, HUD may not consider funding any non-emergency work at excluded developments or subsequently approve use of leftover funds at excluded developments.

(d) *Completeness Review.* To be eligible for processing, an application must be physically received by HUD by the time and date specified in the NOFA. Immediately after the application deadline, HUD shall perform a completeness review to determine whether the application is complete, responsive to the NOFA, and acceptable for technical processing.

(1) If the application form or any other essential document, as specified in the NOFA, is missing, the PHA's application will be considered substantially incomplete and, therefore, ineligible for further processing. HUD shall immediately notify the PHA in writing.

(2) If other required documents, including certifications, as specified in the NOFA, are missing or there is a technical mistake, such as no signature on a submitted form, HUD shall immediately notify the PHA in writing to submit or correct the deficiency within a specified period of time from the date of HUD's written notification. This is not additional time to substantially revise the application. Deficiencies which may be corrected at this time are inadvertently omitted documents or clarifications of previously submitted material and other changes which are not of such a nature as to improve the competitive position of the application.

(3) If a PHA fails to submit or correct the items within the required time period, the PHA's application will be ineligible for further processing. HUD shall immediately notify the PHA in writing after this occurs.

(4) A PHA may submit an application for Emergency Modernization whenever needed.

(e) *Eligibility Review.* (1) *Eligibility for processing.* To be eligible for processing:

(i) Each eligible development for which work is proposed has reached the Date of Full Availability (DOFA) and is under ACC at the time of CIAP application submission; and

(ii) Where funded under Major Reconstruction of Obsolete Projects (MROP) after FFY 1988, the development/building/unit has reached DOFA or, where funded during FFYs 1986–1988, all MROP funds for the development/building have been expended.

(2) *Eligibility for processing on reduced scope.* When the following conditions exist, a PHA will be reviewed on a reduced scope:

(i) *Section 504 compliance.* Where a PHA has not completed all required structural changes to meet the need for accessible units, as identified in the PHA's Section 504 needs assessment, the PHA is eligible for processing only for Emergency Modernization or physical work needed to meet Section 504 requirements.

(ii) *Lead-based paint (LBP) testing compliance.* Where a PHA has not complied with the statutory requirement to complete LBP testing on all pre-1978 family units, the PHA is eligible for processing only for Emergency Modernization or work needed to complete the testing.

(iii) *Fair Housing and Equal Opportunity (FHEO) compliance.* Where a PHA has not complied with FHEO requirements set forth in § 968.110, as evidenced by an enforcement action, finding or determination, the PHA is eligible for processing only for Emergency Modernization or for work needed to remedy the civil rights deficiencies—unless the PHA is implementing a voluntary compliance agreement or settlement agreement designed to correct the area(s) of noncompliance. The enforcement actions, findings, or determinations that trigger limited eligibility are described in paragraphs (e)(2)(iii) (A) through (E) of this section:

(A) A pending proceeding against the PHA based upon a charge of discrimination issued under the Fair Housing Act. A charge of discrimination is a charge under section 810(g)(2) of the Fair Housing Act (42 U.S.C. 3610(g)(2)), issued by the Department's General Counsel or legally authorized designee;

(B) A pending civil rights suit against the PHA, referred by the Department's General Counsel and instituted by the Department of Justice;

(C) Outstanding HUD findings of PHA noncompliance with civil rights statutes and executive orders specified in 24 CFR part 5 and § 968.110 or implementing regulations, as a result of formal administrative proceedings;

(D) A deferral of the processing of applications from the PHA imposed by HUD under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1) and HUD implementing regulations (24 CFR 1.8), the Attorney General's Guidelines (28 CFR 50.3), and procedures (HUD Handbook 8040.1), or under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD implementing regulations (24 CFR 8.57); or

(E) An adjudication of a violation under any of the civil rights authorities specified in 24 CFR part 5 and § 968.110 in a civil action filed against the PHA by a private individual.

(f) *Technical processing.* After all CIAP applications are reviewed for eligibility, HUD shall categorize the eligible PHAs and their developments into two processing groups: Group 1 for Emergency Modernization; and Group 2 for Other Modernization. PHA developments may be included in both groups and the same development may be in each group. However, a PHA is only required to submit one CIAP application. Group 1 developments are not subject to the technical review rating and ranking and the long-term viability and reasonable cost determination. Group 2 developments are subject to the technical review rating and ranking and the long-term viability and reasonable cost determination. Preference will be given to PHAs which request assistance for developments having conditions which threaten the health or safety of the residents or having a significant number of vacant, substandard units, and which have demonstrated a capability of carrying out the proposed activities.

(g) *Rating on technical review factors.* After categorizing the eligible PHAs/developments into Group 1 and Group 2, HUD shall review and rate each Group 2 PHA on each of the following technical review factors:

(1) Extent and urgency of need, including need to comply with statutory, regulatory or court-ordered deadlines;

(2) Extent of vacancies, where the vacancies are not due to insufficient demand;

(3) PHA's modernization capability;

(4) PHA's management capability;

(5) Degree of resident involvement in PHA operations;

(6) Degree of PHA activity in resident initiatives, including resident management, economic development, and drug elimination efforts;

(7) Degree of resident employment;

(8) Local government support for proposed modernization; and

(9) Such additional factors as the Secretary determines necessary and appropriate.

(h) *Ranking and selection for Joint Review.* After rating all Group 2 PHAs/developments, HUD shall then rank each Group 2 PHA based on its total score, list Group 2 PHAs in descending order, subject to confirmation of need and cost at Joint Review, and identify for Joint Review selection the highest PHA ranking applications in Group 2 and other Group 2 PHAs with lower ranking applications, but with high priority needs, which most reasonably approximate the amount of modernization which can be funded. High priority needs are non-emergency needs, but related to: health or safety; vacant, substandard units; structural or system integrity; or compliance with statutory, regulatory or court-ordered deadlines. All Group 1 applications are automatically selected for Joint Review.

(i) *Joint Review.* The purpose of Joint Review is for HUD to discuss with a PHA the proposed modernization program, as set forth in the CIAP Application, review long-term viability and cost reasonableness determinations, and determine the size of the grant, if any, to be awarded. HUD shall notify each PHA whose application has been selected for further processing as to whether Joint Review will be conducted on-site or off-site (*e.g.*, by telephone or in-office meeting). A PHA shall prepare for Joint Review by preparing a draft CIAP budget and reviewing the other items to be covered during Joint Review, as prescribed by HUD. If conducted on-site, Joint Review may include an inspection of the proposed physical work. PHAs not selected for Joint Review will be advised in writing of the reasons for non-selection.

(j) *Funding decisions.* After all Joint Reviews are completed, HUD shall adjust the PHAs, developments, and work items to be funded and the amounts to be awarded, on the basis of information obtained from Joint Reviews, environmental reviews, and FHEO review, and make the funding decisions. A PHA will not be selected for CIAP funding if there is a duplication of funding. HUD shall select all bona fide emergencies in Group 1 before funding Group 2 applications. After funding announcement, HUD shall request a funded PHA to submit a CIAP budget, including an implementation schedule, and any other required documents, including the ACC amendment. PHAs not selected for funding will be advised in writing of the reasons for non-selection.

(k) *ACC amendment.* After HUD approval of the CIAP budget, HUD and the PHA shall enter into an ACC amendment in order for the PHA to draw down modernization funds. The ACC amendment shall require low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). The PHA Executive Director, where authorized by the Board of Commissioners and permitted by State law, may sign the ACC amendment on behalf of the PHA. HUD has the authority to condition an ACC amendment (*e.g.*, to require a PHA to hire a modernization coordinator or contract administrator to administer its modernization program).

(l) *Declaration of trust.* As HUD may require, the PHA shall execute and file for record a Declaration of Trust, as provided under the ACC, to protect the rights and interests of HUD throughout the 20-year period during which the PHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements.

§ 968.215 Resident and homebuyer participation.

A PHA shall establish a Partnership Process, as defined in § 968.105, to develop, implement and monitor the CIAP. Before submission of the CIAP application, a PHA shall consult with the residents, the resident organization, or the resident management corporation (see part 964, subpart C of this chapter) (herein referred to as the resident) of the development(s) being proposed for modernization, regarding its intent to submit an application and to solicit resident comments. A PHA shall give residents a reasonable opportunity to present their views on the proposed modernization and alternatives to it and shall give full and serious consideration

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to resident recommendations. A PHA shall respond in writing to the residents, indicating its acceptance or rejection of resident recommendations, consistent with HUD requirements and the PHA's own determination of efficiency, economy, and need. After HUD approval of the modernization program, a PHA shall inform the residents of the approved work items and its progress during implementation. Where HUD does not approve the modernization program, a PHA shall so inform the residents.

§ 968.225 Budget revisions.

(a) A PHA shall not incur any modernization cost in excess of the total HUD-approved CIAP budget. A PHA shall submit a budget revision, in a form prescribed by HUD, if the PHA plans to deviate from the originally approved modernization program, as it was competitively funded, by deleting or substantially revising approved work items or adding new work items that are unrelated to the originally approved modernization program, or to change the method of accomplishment from contract to force account labor, except as provided in paragraph (b)(4) of this section.

(b) In addition to the requirements of paragraph (a) of this section, a PHA shall comply with the following requirements:

(1) A PHA is not required to obtain prior HUD approval if, in order to complete the originally approved modernization program, the PHA needs to delete or revise approved work items or add new related work items consistent with the original modernization program. In such case, a PHA shall certify that the revisions are necessary to carry out the approved work and do not result in substantial changes to the competitively funded modernization program.

(2) A PHA shall not incur any modernization cost on behalf of any development that is not covered by the original CIAP application.

(3) Where there are funds leftover after completion of the originally approved modernization program, a PHA may, without prior HUD approval, use the remaining funds to carry out eligible modernization activities at developments covered by the original CIAP application.

(4) If a PHA is both an overall high performer and a modernization high performer under the Public Housing Management Assessment Program (PHMAP), the PHA is not required to obtain prior HUD approval to change the method of accomplishment from contract to force account labor.

§ 968.230 Progress reports.

For each six-month period ending March 31 and September 30, until completion of the modernization program or expenditure of all funds, a PHA shall submit to HUD a progress report, in a form prescribed by HUD. Where HUD determines that a PHA is having implementation problems, HUD may require more frequent reporting.

§ 968.235 Time extensions.

A PHA shall not obligate or expend funds after the obligation or expenditure deadline date approved by HUD in the original implementation schedule without a time extension, as follows:

(a) *Certification.* A PHA may extend an obligation or expenditure deadline date no later than 30 calendar days after the existing deadline date, without prior HUD approval, for a period commensurate with the delay, where the PHA certifies that the delay is due to reasons outside of the PHA's control, such as:

(1) Need to use leftover funds from a completed modernization program for additional work;

(2) Unforeseen delays in contracting or contract administration;

(3) Litigation; and

(4) Delay by HUD or other institutions. Delay by the PHA's staff or Board of Commissioners or a change in the Executive Director is not considered to be outside of the PHA's control.

(b) *Prior HUD approval.* Where a PHA is unable to meet an obligation or expenditure deadline date and the delay is due to reasons within the PHA's control, the PHA may request HUD approval of a time extension no later than 30 calendar days after the deadline date, to avoid recapture of funds. The request shall include an explanation of the delay, steps take to prevent future delay, and the requested extension.

§ 968.240 HUD review of PHA performance.

HUD shall periodically review PHA performance in carrying out its approved modernization program to determine compliance with HUD requirements, the adequacy of a PHA's inspections as evidenced by the quality of work, and the timeliness of the work. HUD's review may be conducted either in-office or on-site. Where conducted in-office, a PHA shall forward any requested documents to HUD for post-review. Where deficiencies are noted, a PHA shall take such corrective actions as HUD may direct.

27. The heading for subpart C is revised to read as follows:

Subpart C—Comprehensive Grant Program (for PHAs That Own or Operate 250 or More Public Housing Units)

§ 968.301 [Removed]

28. Section 968.301 is removed.

§ 968.305 [Amended]

29. Section 968.305 is amended by:

a. Removing the definition for "*comprehensive grant number*"; and

b. Removing references to "§ 968.310(a)(3)", "968.320(d)(5)", and "968.320(d)", wherever they appear, and adding in their place, respectively, references to "968.112(f)", "968.315(e)(5)", and "968.315(e)".

§ 968.310 [Removed]

30. Section 968.310 is removed.

§ 968.315 [Redesignated as § 968.310]

31. Section 968.315 is redesignated as § 968.310; and newly redesignated § 968.310 is amended by:

a. Removing from paragraph (a)(1) the phrase, "under this subpart,";

b. Removing from paragraph (b)(1) the references to "968.320" and "968.330" and adding in their place references to "968.315" and "968.325", respectively;

c. Removing from paragraph (c)(5) the references to "part 905" and "§ 905.135" and adding in their place references to "part 950" and "§ 950.135", respectively;

d. Removing paragraph (d); and

e. Revising the section heading to read, "*§ 968.310 Determination of formula amount.*"

32. A new § 968.315 is added, to read as follows:

§ 968.315 Comprehensive Plan (Including Five-Year Action Plan).

(a) *Submission.* As soon as possible after modernization funds first become available for allocation under this subpart, HUD shall notify PHAs in writing of their formula amount. For planning purposes, PHAs may use the amount they received under CGP in the prior year in developing their comprehensive plan, or they may wait for the annual HUD notification of formula amount under § 968.310(b)(1).

(b)(1) *Resident participation.* A PHA is required to develop, implement, monitor and annually amend portions of its comprehensive plan in consultation with residents of the developments covered by the comprehensive plan. In addition, the PHA shall consult with resident management corporations (RMCs) to the extent that an RMC manages a development covered by the comprehensive plan. The PHA, in partnership with the residents, must develop and implement a process for

resident participation that ensures that residents are involved in a meaningful way in all phases of the CGP. Such involvement shall involve implementing the Partnership Process as a critical element of the CGP.

(2) *Establishment of Partnership Process.* The PHA, in partnership with the residents of the developments covered by the plan (and which may include resident leaders, resident councils, resident advisory councils/boards, and RMCs) must establish a Partnership Process to develop and implement the goals, needs, strategies and priorities identified in the comprehensive plan. After residents have organized to participate in the CGP, they may decide to establish a volunteer advisory group of experts in various professions to assist them in the CGP Partnership Process. The Partnership Process shall be designed to achieve the following:

(i) To ensure that residents are fully briefed and involved in developing the content of, and monitoring the implementation of, the comprehensive plan including, but not limited to, the physical and management needs assessments, viability analysis, Five-Year Action Plan, and Annual Statement. If necessary, the PHA shall develop and implement capacity building strategies to ensure meaningful resident participation in CGP. Such technical assistance efforts for residents are eligible management improvement costs under CGP;

(ii) To enable residents to participate, on a PHA-wide or area-wide basis, in ongoing discussions of the comprehensive plan and strategies for its implementation, and in all meetings necessary to ensure meaningful participation.

(3) *Public notice.* Within a reasonable amount of time before the advance meeting for residents under paragraph (b)(4) of this section and the public hearing under paragraph (b)(5) of this section, the PHA shall provide public notice of the advance meeting and the public hearing in a manner determined by the PHA that ensures notice to all duly elected resident councils.

(4) *Advance meeting for residents.* The PHA shall hold, within a reasonable amount of time before the public hearing under paragraph (b)(5) of this section, a meeting for residents and duly elected resident councils at which the PHA shall explain the components of the comprehensive plan. The meeting shall be open to all residents and duly elected resident councils.

(5) *Public hearing.* The PHA shall hold at least one public hearing, and any appropriate number of additional hearings, to present information on the comprehensive plan/annual submission and the status of prior approval programs. The public hearing shall provide ample opportunity for residents, local government officials, and other interested parties to express their priorities and concerns. The PHA shall give full consideration to the comments and concerns of residents, local government officials, and other interested parties.

(c) *Local government participation.* A PHA shall consult with and provide information to appropriate local government officials with respect to the development of the comprehensive plan to ensure that there is coordination between the actions taken under the consolidated plan (see 24 CFR part 91) for project and neighborhood improvements where public housing units are located or proposed for construction and/or modernization and improvement and to coordinate meeting public and human service needs of the public and assisted housing projects and their residents. In the case of a PHA with developments in multiple jurisdictions, the PHA may meet this requirement by consulting with an advisory group representative of all the jurisdictions. At a minimum, such consultation must include providing such officials with:

(1) Advance written notice of the public hearing required under paragraph (b)(5) of this section;

(2) A copy of the summary of total preliminary estimated costs to address physical needs by each development and management/operations needs PHA-wide and a specific description of the PHA's process for maximizing the level of participation by residents and a summary of the general issues raised on the plan by residents and others during the public comment process and the PHA's response to the general issues. PHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the PHA's files and made available to residents, resident organizations, and other interested parties upon request; and

(3) An opportunity to express their priorities and concerns to ensure due consideration in the PHA's planning process;

(d) *Participation in coordinating entities.* To the extent that coordinating entities are set up to plan and implement the consolidated plans (under 24 CFR part 91), the PHA shall participate in these entities to ensure coordination with broader community development strategies.

(e) *Contents of comprehensive plan.* The comprehensive plan shall identify all of the physical and management improvements needed for a PHA and all of its developments, and that represent needs eligible for funding under § 968.112. The plan also shall include preliminary estimates of the total cost of these improvements. The plan shall set forth general strategies for addressing the identified needs, and highlight any special strategies, such as major redesign or partial demolition of a development, that are necessary to ensure the long-term physical and social viability of the development. Where long-term physical and social viability of the development is dependent upon revitalization of the surrounding neighborhood in the provision of or coordination of public services, or the consolidation or coordination of drug prevention and other human service initiatives, the PHA shall identify these needs and strategies. In addition, the PHA shall identify the funds or other resources in the consolidated plan that are to be used to help address these needs and strategies and the activities in the comprehensive plan that strengthen the consolidated plan. Each comprehensive plan shall contain the following elements:

(1) *Executive summary.* A PHA shall include as part of its comprehensive plan an executive summary to facilitate review and comprehension by development residents and by the public. The executive summary shall include the following:

(i) A summary of total preliminary estimated costs to address physical needs by each development and PHA-wide physical and management needs; and

(ii) A specific description of the PHA's process for maximizing the level of participation by residents during the development, implementation and monitoring of the Comprehensive Plan, a summary of the general issues raised on the plan by residents and others during the public comment process and the PHA's response to the general issues. PHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the PHA's files and made available to residents, duly elected resident councils, and other interested parties, upon request;

(2) *Physical needs assessment.* (i) *Requirements.* The physical needs assessment identifies all of the work that a PHA would need to undertake to bring each of its developments up to the modernization and energy conservation standards, as required by the Act, to comply with lead-based paint testing and abatement requirements under this part, and to comply with other program requirements under § 968.110. The

physical needs assessment is completed without regard to the availability of funds, and shall include the following:

(A) A brief summary of the physical improvements necessary to bring each such development to a level at least equal to applicable HUD standards with respect to modernization standards, energy conservation and life-cycle cost effective performance standards, lead-based paint testing and abatement standards. This summary must indicate the relative urgency of need. If the PHA has no physical improvement needs at a particular development at the time it completes its comprehensive plan, it must so indicate. Similarly, if the PHA intends to demolish, partially demolish, convert, or dispose of a development (or units within a development) it must so indicate in the summary of physical improvements;

(B) The replacement needs of equipment systems and structural elements that will be required to be met (assuming routine and timely maintenance is performed) during the period covered by the action plan;

(C) A preliminary estimate of the cost to complete the physical work;

(D) Any physical disparities between buildings occupied predominantly by one racial or ethnic group and, in such cases, the physical improvements required to correct the conditions; and

(E) In addition, with respect to vacant or non-homebuyer occupied Turnkey III units, the estimated number of units that the PHA is proposing for substantial rehabilitation and subsequent sale, in accordance with § 968.112(d)(3).

(ii) *Source of data.* The PHA shall identify in its needs assessment the sources from which it derived data to develop the physical needs assessment under this paragraph (e)(2) and shall retain such source documents in its files;

(3) *Management needs assessment* (i) *Requirements.* The plan shall include a comprehensive assessment of the improvements needed to upgrade the management and operation of the PHA and of each viable development so decent, safe, and sanitary living conditions will be provided. The management needs assessment shall include the following, with the relative urgency of need indicated:

(A) An identification of the most current needs related to the following areas (to the extent that any of these needs is addressed in a HUD-approved memorandum of agreement or improvement plan, the PHA may simply include a cross-reference to these documents):

(*1*) The management, financial, and accounting control systems of the PHA;

(*2*) The adequacy and qualifications of personnel employed by the PHA in its management and operation, for each significant category of employment;

(*3*) The adequacy and efficacy of:

(*i*) Resident programs and services;

(*ii*) Resident and development security;

(*iii*) Resident selection and eviction;

(*iv*) Occupancy;

(*v*) Maintenance;

(*vi*) Resident management and resident capacity building programs;

(*vii*) Resident opportunities for employment and business development and other self-sufficiency opportunities for residents; and

(*viii*) Homeownership opportunities for residents;

(B) Any additional deficiencies identified through PHMAP, audits and HUD monitoring reviews that are not addressed under paragraph (e)(3)(i)(A) of this section. To the extent that any of these is addressed in a HUD-approved memorandum of agreement or improvement plan, the PHA may include a cross-reference to these documents;

(C) Any other management and operations needs that the PHA wants to address at the PHA-wide or development level; and

(D) A PHA-wide preliminary cost estimate for addressing all the needs identified in the management needs assessment, without regard to the availability of funds;

(ii) *Sources of funds.* The PHA shall identify in its needs assessment the sources from which it derived data to develop the management needs assessment under this paragraph (e)(3) and shall retain such source documents in its files;

(4) *Demonstration of long-term physical and social viability.* (i) *General.* The plan shall include, on a development-by-development basis, an analysis of whether completion of the improvements and replacements identified under paragraphs (e)(2) and (e)(3) of this section will reasonably ensure the long-term physical and social viability, including achieving structural/system soundness and full occupancy, of the development at a reasonable cost. For cost reasonableness, the PHA shall determine whether the unfunded hard costs satisfy the definition of "reasonable cost." Where the PHA wishes to fund a development, for other than emergencies, where hard costs exceed that reasonable cost, the PHA shall submit written justification to the Field Office. If the Field Office agrees with the PHA's request, the Field Office shall forward its recommendation to Headquarters for final decision. Where the estimated per unit unfunded hard cost is equal to or less than the per unit TDC for the smallest bedroom size at the development, no further computation of the TDC limit is required. The PHA shall keep documentation in its files to support all cost determinations. The Field Office will review cost reasonableness as part of its review of the annual submission and the performance and evaluation report. As necessary, HUD will review the PHA's documentation in support of its cost reasonableness, taking into account broader efforts to revitalize the neighborhoods in which the development is located;

(ii) *Determination of non-viability.* Where a PHA's analysis of a development under paragraph (e) of this section establishes that completion of the identified improvements and replacements will not result in the long-term physical and social viability of the development at a reasonable cost, the PHA shall not expend CGP funds for the development, except for emergencies and essential non-routine maintenance necessary to maintain habitability until residents can be relocated. The PHA shall specify in its comprehensive plan the actions it proposes to take with respect to the non-viable development (e.g., demolition or disposition under 24 CFR part 970);

(5) *Five-year action plan.* (i) *General.* The comprehensive plan shall include a rolling five-year action plan to carry out the improvements and replacements (or a portion thereof) identified under paragraphs (e)(2) and (e)(3) of this section. In developing its five-year action plan, the PHA shall assume that the current year funding or formula amount will be available for each year of its five-year action plan, whichever the PHA is using for planning purposes, plus the PHA's estimate of the funds that will be available from other sources, such as state and local governments. All activities specified in a PHA's five-year action plan are contingent upon the availability of funds;

(ii) *Requirements.* Under the action plan, a PHA must indicate how it intends to use the funds available to it under the CGP to address, over a five-year period, the deficiencies (or a portion of the deficiencies) identified in its physical and management needs assessments, as follows:

(A) *Physical condition.* With respect to the physical condition of a PHA's developments, a PHA must indicate in its action plan how it intends to address, over a five-year period, the

deficiencies (or a portion of the deficiencies) identified in its physical needs assessment so as to bring each of its developments up to a level at least equal to the modernization and energy conservation standards. This includes specifying the work to be undertaken by the PHA in major work categories (e.g., kitchens, electrical systems, etc.); establishing priorities among the major work categories by development and year, based upon the relative urgency of need; and estimating the cost of each of the identified major work categories. In developing its action plan, a PHA shall give priority to the following:

(*1*) Activities required to correct emergency conditions;

(*2*) Activities required to meet statutory or other legally mandated requirements (e.g., compliance with a court-ordered desegregation plan or voluntary compliance agreement);

(*3*) Activities required to meet the needs identified in the Section 504 needs assessment within the regulatory timeframe; and

(*4*) Activities required to complete lead-based paint testing and abatement requirements;

(B) *Management and operations.* A PHA must address in its action plan the management and operations deficiencies (or a portion of the deficiencies) identified in its management needs assessment, as follows:

(*1*) With respect to the management and operations needs of the PHA, the PHA must identify how it intends to address with CGP funds, if necessary, the deficiencies (or a portion thereof) identified in its management needs assessment, including work identified through PHMAP, audits, HUD monitoring reviews, and self-assessments. The action plan must indicate the relative urgency of need;

(*2*) A preliminary PHA-wide cost estimate, by major work category.

(iii) *Procedure for maintaining current five-year action plan.* The PHA shall maintain a current five-year action plan by annually amending its five-year action plan, in conjunction with the annual submission;

(6) *Local government statement.* The comprehensive plan shall include a statement signed by the chief executive officer of the unit of general local government (or, in the case of a PHA with developments in multiple jurisdictions, from the CEO of each such jurisdiction) certifying to the following:

(i) The PHA developed the comprehensive plan/five-year action plan or amendments thereto in consultation with officials of the appropriate governing body and with development residents covered by the comprehensive plan/five-year action plan, in accordance with the requirements of paragraphs (b) and (c) of this section;

(ii) The comprehensive plan/five-year action plan or amendments thereto are consistent with the appropriate governing body's assessment of its low income housing needs (as evidenced by its consolidated plan under 24 CFR part 91, if applicable), and that the appropriate governing body will cooperate in providing resident programs and services; and

(iii) The PHA's proposed drug elimination activities are coordinated with, and supportive of, local drug elimination strategies and neighborhood improvement programs, if applicable; and

(7) *PHA resolution.* The plan shall include a resolution, in a form prescribed by HUD, adopted by the PHA Board of Commissioners, and signed by the Board Chairman of the PHA, approving the comprehensive plan or any amendments.

(f) *Amendments to the comprehensive plan.*—(1) *Extension of time for performance.* A PHA shall have the right to amend its comprehensive plan (including the action plan) to extend the time for performance whenever HUD has not provided the amount of assistance set forth in the comprehensive plan or has not provided the assistance in a timely manner;

(2) *Amendments to needs assessments.* The PHA shall amend its plan by revising its needs assessments whenever it proposes to carry out activities in its five-year action plan or annual statement that are not reflected in its current needs assessments (except in the case of emergencies). The PHA may propose an amendment to its needs assessments, in connection with the submission of its annual submission (see § 968.325) or at any other time. These amendments shall be reviewed by HUD in accordance with § 968.320.

(3) *Six-year revision of comprehensive plan.* Every sixth year following the initial year of participation, the PHA shall submit to HUD, with its annual submission, a complete update of its comprehensive plan. A PHA may elect to revise some or all parts of the comprehensive plan more frequently.

(4) *Annual revision of five-year action plan.* Annually, the PHA shall submit to HUD, with its annual submission, an update of its five-year action plan, eliminating the previous year and adding an additional year. The PHA shall identify changes in work categories (other than those included in the new fifth year) from the previous year five-year action plan when making this annual submission.

(5) *Required submissions.* Any amendments to the comprehensive plan under this section must be submitted with the PHA resolution under § 968.315(e)(7).

(g) *Prerequisite for receiving assistance.*—(1) *Prohibition of assistance.* No financial assistance, except for emergency work to be funded under §§ 968.103(b) and 968.112(a)(1)(ii), and for modernization needs resulting from disasters under § 968.103(b), may be made available under this subpart unless HUD has approved a comprehensive plan submitted by the PHA that meets the requirements of this section. A PHA that has failed to obtain approval of its comprehensive plan by the end of the FFY shall have its formula allocation for that year (less any formula amounts provided to the PHA for emergencies) added to the subsequent year's appropriation of funds for grants under this part. HUD shall allocate such funds to PHAs and IHAs participating in the CGP in accordance with the formula under § 968.103(e) and (f) in the subsequent FFY. A PHA that elects in any FFY not to participate in the CGP may participate in the CGP in subsequent FFYs;

(2) *Requests for emergency assistance.* A PHA may receive funds from its formula allocation to address emergency modernization needs where HUD has not approved a PHA's comprehensive plan. To request such assistance, a PHA shall submit to HUD a request for funds in such form as HUD may prescribe, including any documentation necessary to support its claim that an emergency exists. HUD shall review the request and supporting documentation to determine if it meets the definition of "emergency work" as set forth in § 968.305.

(Approved by the Office of Management and Budget under control number 2577–0157)

§ 968.320 [Removed]

33. Section 968.320 is removed.

§ 968.325 [Redesignated as § 968.320]

34. Section 968.325 is redesignated as § 968.320; and newly redesignated § 968.320 is amended by:

a. Removing from paragraph (a)(1)(i) the reference to "§ 968.320(d)" and adding in its place a reference to "§ 968.315(e)";

b. Removing from paragraph (c) the references to "§ 968.340" and "§ 968.345" and adding in their place references to "§ 968.330" and "§ 968.335", respectively; and

c. Revising paragraph (b)(2) to read as follows:

§ 968.320 HUD review and approval of comprehensive plan (including five-year action plan).

* * * * *

(b) * * *

(2) HUD shall approve the Comprehensive Plan except where it makes a determination in accordance with one or more of the following:

(i) Comprehensive Plan is incomplete in significant matters;

(ii) Identified needs are plainly inconsistent with facts and data;

(A) Identified physical improvements and replacements are inadequate;

(B) Identified management improvements are inadequate;

(C) Proposed physical and management improvements fail to address identified needs;

(iii) Action plan is plainly inappropriate to meeting identified needs;

(iv) Inadequate demonstration of long-term viability at reasonable cost; and

(v) Contradiction of local government certification or PHA resolution.

* * * * *

§ 968.330 [Redesignated as § 968.325]

35. Section 968.330 is redesignated as § 968.325; and newly redesignated § 968.325 is amended by:

a. Removing from paragraph (a) the reference to "§ 968.315(b)(1)" and adding in its place a reference to "§ 968.310(b)(1)" and by moving the phrase ", as discussed in § 968.320(d)(5)(i)" from the end of the penultimate sentence in the paragraph to the end of the sentence before it, and revising the number "§ 968.320" in that phrase to read "§ 968.315";

b. Removing from paragraph (d) introductory text the reference to "§ 968.320" and adding in its place a reference to "§ 968.315";

c. Removing from paragraph (e)(8) the reference to "§ 968.320(d)(7)" and adding in its place a reference to "§ 968.315(e)(7)";

d. Removing from paragraph (f) references to "§ 968.320(e)" and "§ 968.325" and adding in their place references to "§ 968.315(f)" and "§ 968.320";

e. Removing from paragraph (g)(2)(ii) the reference to "§ 968.320(d)" and adding in its place a reference to "§ 968.315(e)";

f. Removing from paragraph (h) the reference to "§ 968.305" and adding in its place a reference to "§ 968.330";

g. Removing from paragraph (i)(1) references to "§ 968.345" and adding in their place references to "§ 968.335";

h. Removing from paragraph (j) the words "to obtain" and adding in their place the words "in order for the PHA to draw down"; and

i. Revising the section heading and paragraph (e)(4), to read as follows:

§ 968.325 Annual submission of activities and expenditures.

* * * * *

(e) * * *

(4) For each development and for any management improvements not covered by a HUD-approved memorandum of agreement or management improvement plan, a schedule for the use of current year funds, including target dates for the obligation and expenditure of the funds (see § 968.125);

* * * * *

§ 968.335 [Removed]

36. Section 968.335 is removed.

§ 968.340 [Redesignated as § 968.330]

37. Section 968.340 is redesignated as § 968.330, and newly redesignated § 968.330 is amended by removing the paragraph designation and heading from paragraph (a), and by removing paragraph (b).

§ 968.345 [Redesignated as § 968.335]

38. Section 968.345 is redesignated as § 968.335; and newly redesignated § 968.335 is amended by:

a. Removing paragraphs (a)(1)(i) and (a)(1)(ii), paragraphs (a)(2)(i) and (a)(2)(ii), and paragraphs (a)(3)(i) through (a)(3)(iii);

b. Removing from paragraph (d) the reference to "§ 905.684" and adding in its place a reference to "§ 968.330";

c. Removing from paragraph (e)(7) the words "(see § 968.315(d))";

d. Removing from paragraph (g) references to "§ 905.135" and "§ 905.601" and adding in their place references to "§ 950.135" and "§ 968.103(e) and (f)", respectively;

e. Removing from paragraph (j) references to "§ 978.345(h)" and "§ 968.345(g)" and adding in their place references to "paragraph (h) of this section" and "paragraph (g) of this section", respectively; and

f. Removing the reference in paragraph (k) to "§ 968.312(c)" and adding in its place a reference to "§ 968.310(c)".

Subpart D—Vacancy Reduction Program

§§ 968.401, 968.403, 968.405, 968.407, 968.410, and 968.413 [Removed]

39. Sections 968.401, 968.403, 968.405, 968.407, 968.410, and 968.413 are removed.

Dated: February 8, 1996.

Michael B. Janis,

General Deputy Assistant Secretary for Distressed and Troubled Housing Recovery.

[FR Doc. 96–4814 Filed 3–4–96; 8:45 am]

BILLING CODE 4210–33–P

federal register

Tuesday
March 5, 1996

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Food Labeling: Health Claims and Label Statements; Folate and Neural Tube Defects; Proposed Rule and Final Rule

21 CFR Part 136, 137, and 139

Food Standards: Amendment of Standards of Identity for Enriched Grain Products To Require Addition of Folic Acid; Final Rule

21 CFR Part 172

Food Additives Permitted for Direct Addition to Food for Human Consumption; Folic Acid (Folacin); Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 93N-0481]

RIN 0910-AA23

Food Labeling: Health Claims and Label Statements; Folate and Neural Tube Defects; Revocation

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revoke a regulation authorizing a health claim on the relationship between folic acid and neural tube defects (NTD's) on the labels and in the labeling of dietary supplements that became final by operation of law. The agency intends to replace this revoked regulation with one that is published elsewhere in this issue of the **Federal Register**. This action is being taken to ensure that the regulation that authorizes claims on this nutrient disease relationship is fully responsive to the public comments that FDA has received on this matter.

DATES: Written comments by April 4, 1996. The agency is proposing that any final rule that may issue based on this proposal become effective on the date of publication of the final rule in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jeanne I. Rader, Center for Food Safety and Applied Nutrition (HFS-175), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5375.

SUPPLEMENTARY INFORMATION:

I. Background

The Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101-535) amended the Food, Drug, and Cosmetic Act (the act) to give the Secretary of the Department of Health and Human Services (the Secretary), and by delegation FDA, the authority to issue regulations authorizing health claims on the labels and in the labeling of foods. Section 403(r)(1)(B) of the act (21 U.S.C. 343(r)(1)(B)) provides that a product is misbranded if it bears a claim that characterizes the relationship of a nutrient to a disease or health-related condition, unless the claim is made in accordance with procedures and standards established under section 403(r)(3) and (r)(5)(D) of the act.

The 1990 amendments also directed the Secretary to determine through rulemaking whether claims regarding 10 nutrient-disease relationships met the requirements of the act. The relationship of folic acid and NTD's was among those 10 topics (section 3(b)(1)(A)(x) of the 1990 amendments).

A. The 1991 Proposed Rule

In the **Federal Register** of November 27, 1991 (56 FR 60537), FDA proposed to not authorize a health claim on folic acid and NTD's. The agency tentatively concluded that the available evidence did not establish that the standard that FDA had proposed for health claims for dietary supplements under section 403(r)(5)(D) of the act was met; that is, that there was not significant scientific agreement, based on the totality of publicly available scientific evidence, that the claim is valid.

B. The Public Health Service Recommendations

In September 1992, following the availability of significant new data, the Public Health Service (PHS) issued a recommendation that all women of childbearing age in the United States who are capable of becoming pregnant should consume 0.4 milligram (mg) of folic acid per day for the purpose of reducing their risk of having a pregnancy affected with spina bifida or other NTD's. The recommendation was based on data suggesting that folic acid, when given at a high dose (4 mg), can reduce the risk of recurrence of NTD's and on studies that used multivitamins containing folic acid at dose levels from 0 to 1,000 micrograms per day. The PHS recommendation identified approaches and identified outstanding issues, including the recommended intake of folate, the potential role of other nutrients in reduction of risk of NTD's, safety concerns, and the "folate-preventable" fraction of NTD's.

C. The Dietary Supplement Act of 1992

In October 1992, the Dietary Supplement Act of 1992 (the DS act) was enacted. This statute imposed a moratorium on FDA's implementation of the 1990 amendments with respect to dietary supplements until December 15, 1993. The DS act directed FDA to issue proposed rules to implement the 1990 amendments with respect to dietary supplements by June 15, 1993, and to issue final rules based on these proposals by December 31, 1993. The DS act also amended the so-called "hammer" provision of the 1990 amendments, section 3(b)(2) of the 1990 amendments, to provide that if the agency did not meet the established December 31, 1993, timeframe for issuance of final rules, the proposed regulations would be considered final regulations.

D. The 1993 Final Rules for Health Claims for Food in Conventional Food Form

In the **Federal Register** of January 6, 1993 (58 FR 2606), FDA published a final rule to not authorize a health claim for folic acid and NTD's. However, the agency reaffirmed its support of the PHS recommendation that all women of childbearing age in the United States who are capable of becoming pregnant should consume 0.4 mg of folic acid daily to reduce their risk of having a pregnancy affected with spina bifida or other NTD's. The agency noted, however, that unresolved questions about the safe use of folate remained. The agency concluded that it could not authorize a health claim until these questions were resolved. Because of the DS act, FDA took no final action with respect to the use of a health claim on folic acid and NTD's on dietary supplements.

E. The 1993 Proposal to Authorize a Health Claim on Folic Acid and NTD's

In the **Federal Register** of October 14, 1993 (58 FR 53254), FDA published a proposed rule to authorize the use of a health claim about the relationship of folate and NTD's on the labels of foods in conventional food form and dietary supplements. FDA tentatively concluded, based on its discussions with an advisory committee, that it could ensure the safe use of folate. FDA provided 60 days for comment on this proposed action. The comment period closed on December 13, 1993.

F. The 1994 Final Rule

Section 3(b)(2) of the 1990 amendments, as amended by section 202(a)(2)(B)(ii) of the DS act, provides that if the Secretary does not promulgate final regulations on any of the health claims applicable to dietary supplements in a timely manner, the proposed regulations shall be considered final regulations but not until December 31, 1993. Because FDA was unable to publish a final rule by December 31, 1993, in the proceeding instituted in October of 1993, FDA published a notice in the **Federal Register** of January 4, 1994 (59 FR 433), announcing that the regulation that it had proposed in the October 1993 folate/NTD proposal was considered to be a final regulation for dietary supplements by operation of law, effective July 1, 1994.

This document did not conclude the rulemaking begun in October of 1993, however. Rather, the January 4, 1994, document was part of a separate proceeding that is compelled under section 3(b)(2) of the 1990 amendments (see H. Rept. 101-538, 101st Cong., 2d Sess. 18 and 136 Congressional Record 5842 on the effect of this "hammer" provision).

In the January 4, 1994 document, FDA stated that the rulemaking that it instituted in October of 1993 was ongoing, and that it intended to issue a final rule that would resolve the issues in that ongoing proceeding. Elsewhere in this issue of the **Federal Register**, FDA is issuing a final rule to conclude that proceeding. Given that FDA has now issued that final rule, the regulation that resulted must to supersede the regulation that became final by operation of law. The agency is now instituting this rulemaking to bring about this supersession.

II. The Proposal

FDA is proposing to withdraw the regulation that became final by operation of law on January 4, 1994 (the January 4, 1994, regulation). FDA tentatively finds that this action is in the best interests of consumers, manufacturers, and regulatory officials for several reasons.

The January 4, 1994, regulation did not have the benefit of public comment. It reflects FDA's initial views on the folic acid/NTD health claim and what it should say. From the comments received in response to the folic acid/NTD health claim proposal, it is clear that the January 4, 1994, regulation does not adequately address several issues related to this health claim. Because the regulation included in the final rule published elsewhere in this issue of the **Federal Register** addresses the comments that the agency received and includes changes that the agency has made in response to those comments, FDA tentatively finds that that regulation is better able to implement the act than the January 4, 1994, regulation, and that it provides for a more useable and scientifically valid health claim.

FDA tentatively finds that replacing the January 4, 1994, regulation with the regulation included in the final rule will not result in any hardship to manufacturers who have relied on the January 4, 1994, regulation. The regulation in the final rule in most respects is consistent with the January 4, 1994, regulation. The only differences are those modifications that have been made to shorten the claim and to provide more flexibility to those who decide to use it on their labels or in their labeling. Thus, replacing the January 4, 1994, regulation with the final regulation published elsewhere in this issue of the **Federal Register** will not present manufacturers with a situation in which they must adjust to a dramatic shift in the standard that they must meet.

FDA is also proposing to limit the comment period to 30 days, and to make any final rule that issues in this proceeding effective on the date of publication. FDA is proposing both of these actions for the same reason. FDA believes that, if the regulation in the final rule is to supersede the January 4, 1994, regulation, this action should proceed as expeditiously as possible. Expeditious action will minimize the possibility for confusion and ambiguity created by this action. FDA tentatively finds that the proposed steps are necessary to facilitate expeditious action, and thus that there is good cause for both of these proposed actions.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because FDA has fully assessed the economic impact of replacing the January 4, 1994, regulation with the regulation contained in the final rule and has determined this proposal will impose no costs, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Comments

Interested persons may, on or before April 4, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

§ 101.79 [Removed]

2. Section 101.79 *Health claims: folate and neural tube defects* is removed.

Dated: February 26, 1996.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 96-5011 Filed 2-20-96; 12:01pm]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 91N–100H]

RIN 0910–AA19

Food Labeling: Health Claims and Label Statements; Folate and Neural Tube Defects

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is authorizing the use on the labels and in the labeling of food, including dietary supplements, of health claims on the association between adequate intake of folate and the risk of neural tube birth defects. This rule is issued in response to provisions of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) that bear on health claims. The agency has concluded that, based on the totality of the publicly available scientific evidence, there is significant scientific agreement among qualified experts that, among women of childbearing age in the general U.S. population, maintaining adequate folate intakes, particularly during the periconceptional interval, may reduce the risk of a neural tube birth defect-affected pregnancy.

EFFECTIVE DATE: April 19, 1996.

FOR FURTHER INFORMATION CONTACT: Jeanne I. Rader, Office of Food Labeling (HFS–175), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5375.

SUPPLEMENTARY INFORMATION:

I. Background

A. Procedural History

1. The 1990 Amendments

The 1990 amendments to the Federal Food, Drug, and Cosmetic Act (the act) provided for extensive changes in the way foods are labeled. Under these amendments, FDA can authorize the use, in the labeling of foods, of health claims that characterize the relationship of a nutrient to a disease or a health-related condition. Section 403(r)(1)(B) of the act (21 U.S.C. 343(r)(1)(B)) provides that a product is misbranded if it bears a claim that characterizes the relationship of a nutrient to a disease or a health-related condition unless the claim is made in accordance with procedures and standards established under section 403(r)(3) and (r)(5)(D) of the act. The 1990 amendments required that FDA evaluate 10 nutrient/disease relationships with respect to their appropriateness as the subjects of health claims. The topic of folic acid and neural tube defects was among those 10 topics.

In the **Federal Register** of November 27, 1991 (56 FR 60537), in conformity with the requirements of the 1990 amendments, the agency proposed to establish general principles that would govern the appropriateness and validity of health claims on dietary supplements as well as on foods in conventional food form. The agency also proposed to authorize four health claims and to not authorize six others, including a claim on folate and neural tube defects.

2. The Dietary Supplement Act of 1992 (DS Act)

In October of 1992, the Dietary Supplement Act (DS Act; Title II of Pub. L. 102–571) was enacted. It imposed a moratorium until December 15, 1993, on FDA implementation of the 1990 amendments with respect to dietary supplements. The DS Act directed FDA to issue proposed rules to implement the 1990 amendments with respect to dietary supplements by June 15, 1993, and to issue final rules based on these proposals by December 31, 1993.

The DS Act also amended the so-called "hammer" provision of the 1990 amendments to provide that, if the agency did not meet the established December 31, 1993, timeframe for issuance of final rules, the proposed regulations would be considered final regulations.

Accordingly, when FDA issued its final rules on health claims in the **Federal Register** of January 6, 1993 (58 FR 2478), they did not cover dietary supplements.

3. The 1993 Final Rules

On January 6, 1993, FDA published its final rules on general principles for health claims (58 FR 2478) and the 10 nutrient disease-relationships (58 FR 2537 through 2849). The general principles regulation provides that FDA will issue regulations authorizing health claims only when it determines, based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner that is consistent with generally recognized scientific procedures and principles) that there is significant agreement, among experts qualified by training or experience to evaluate such claims, that the claim is supported by the scientific evidence.

On January 6, 1993, the agency also issued regulations announcing its decisions with respect to conventional foods for each of the 10 nutrient-disease relationships that the 1990 amendments directed it to consider. The agency authorized claims on all foods, including dietary supplements, on seven nutrient-disease relationships: Calcium and osteoporosis; sodium and hypertension; fat and cancer; saturated fat and cholesterol and coronary heart disease (CHD); fiber-containing grain products, fruits, and vegetables and cancer; fruits, vegetables, and grain products that contain fiber and risk of CHD; and fruits and vegetables and cancer.

Because of the DS Act, FDA took no final action with respect to the use on dietary supplements of health claims on dietary fiber and cancer; dietary fiber and CHD; omega-3-fatty acids and CHD; zinc and immune function in the elderly; antioxidant vitamins and cancer; and folic acid and neural tube defects.

With respect to folic acid, the agency explained that, while the Public Health Service (PHS) had recommended that all women of childbearing age in the United States consume 0.4 milligram (mg) of folic acid daily to reduce their risk of having a pregnancy affected with spina bifida or other neural tube defects, PHS had also identified several issues that remained outstanding, including the appropriate level of folic acid in food and safety concerns regarding increased intakes of folic acid. Sections 403(r)(3)(A)(ii), 402(a), and 409 of the act (21 U.S.C. 342(a) and 348) establish that the use of a substance in food must be safe. Questions raised in the PHS recommendation (see 58 FR 2606 at 2609) included the safety of high intakes of folate by the target population as well as by other segments of the population who may unintentionally be exposed to high intakes if overfortification of the food supply with folic acid were to occur as a result of the PHS recommendation. FDA concluded that it could not authorize a health claim on folic acid until the questions regarding the safety of the use of this nutrient, as well as other concerns raised by PHS, were satisfactorily resolved (58 FR 2606 at 2614).

4. The Dietary Supplement Proposals

In the **Federal Register** of June 18, 1993 (58 FR 33700), FDA published a proposal on health claims on dietary supplements. FDA proposed to revise its food labeling regulations to make dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances subject to the same general requirements that apply to all other types of food with respect to health claims.

In the **Federal Register** of October 14, 1993 (58 FR 53296), FDA published a proposal not to authorize health claims on the labels of dietary supplements on five nutrient-disease relationships: Dietary fiber and cancer; dietary fiber and CHD; antioxidant vitamins and cancer; omega-3-fatty acids and CHD; and zinc and immune function in the elderly. However, in the same issue of the **Federal Register** (58 FR 53254), the agency did propose to authorize the use on the labels and labeling of conventional foods and dietary supplements of a health claim on the relationship between folate and risk of neural tube defects and to provide for safe use of folic acid in foods by amending several of its regulations that permit use of folic acid in foods (see also 58 FR 53305 and 58 FR 53312).

5. The Dietary Supplement Health Claim Final Rule

In the **Federal Register** of January 4, 1994 (59 FR 395), FDA announced that it was amending its food labeling regulations to make dietary supplements subject to the same general requirements that apply to all other types of food with respect to the use on the label or in labeling of health claims that characterize the relationship of a substance to a disease or health-related condition.

Also in the **Federal Register** of January 4, 1994 (59 FR 433), the agency announced that, in accordance with the 1990 amendments, as amended by the DS Act, the regulation on folate and neural tube defects that it proposed on October 14, 1993 (58 FR 53254), was considered a final regulation for dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances (dietary supplements). In its notice, the agency stated that the document was part of a separate rulemaking contemplated by Congress if a final regulation on the proposal issued on October 14, 1993, was not issued by December 31, 1993, and noted that the notice bore a separate docket number (i.e., No. 93N–0481) to distinguish it from the one assigned to the October 14, 1993 rulemaking (i.e., No. 91N–100H), which, the agency said, was ongoing.

In this document, FDA is finalizing its October 14, 1993, proposal to authorize health claims on the relationship between folate and neural tube defects. This final rule pertains to conventional food as well as to dietary supplements. Elsewhere in this issue of the **Federal Register**, FDA is proposing to revoke the regulation on this nutrient-disease relationship that became final by operation of law.

6. The Dietary Supplement Health and Education Act of 1994

The President signed the Dietary Supplement Health and Education Act of 1994 (Pub. L. 103–417) (hereinafter referred to as the DSHEA) into law on October 25, 1994. Among other things, the DSHEA defines "dietary supplements" (in section 3(a)).

In the October 14, 1993, proposal, FDA used the terms "dietary supplements of vitamins, minerals, herbs, and other nutritional substances" and "food in conventional food form." Under the changes effected by the DSHEA (see sections 3 (a) and (c) of the DSHEA), the form of a product is no longer determinative of whether the product is a dietary supplement. Accordingly, with the exception noted below, FDA will use the terms "food" or "foods" in this document to reflect this change and the act's definition of "dietary supplements." FDA will use the terms "conventional food" and "dietary supplement" in response to comments dealing with the bioavailability of folate, for which a distinction needs to be made between foods and dietary supplements. Where other terminology was used in the regulatory language of the October 14, 1993, proposal, FDA has modified that language to conform to the changes effected by DSHEA.

B. Relationship Between Folate and Neural Tube Defects

The agency reviewed and updated the scientific literature on the relationship between folate and neural tube defects in the **Federal Register** of November 27, 1991 (56 FR 60610), January 6, 1993 (58 FR 2606), and October 14, 1993 (58 FR 53254), and provides only a brief summary here.

Folate. The term "folate," as used in this document, includes the entire group of folate vitamin forms: That is, folic acid (pteroylglutamic acid), the form of the vitamin added to dietary supplements and to fortified foods, and the naturally- occurring folylpolyglutamates (pteroylpolyglutamates) which are found in foods. "Folate" is thus the general term used to include any form of the vitamin, without reference to the state of reduction, degree of substitution, or number of glutamates. As a vitamin, folate functions metabolically in the synthesis of amino acids and nucleic acids. Insufficient quantities of folate in the diet lead to impaired cell multiplication and alterations in protein synthesis (Ref. 1). These effects are most noticeable in rapidly growing or dividing cell populations (Ref. 1). Pregnancy increases the need for folate and many other nutrients because of the need of the mother to maintain adequate nutrition and to meet the nutritional requirements of the developing fetus.

Neural tube defects. Neural tube defects are serious birth defects that can result in infant mortality or serious disability. The birth defects anencephaly and spina bifida are the most common forms of neural tube defects and account for about 90 percent of these defects. These defects result from failure of closure of the covering of the brain or spinal cord during early embryonic development. The neural tube forms between the 18th and 20th days of pregnancy and closes between the 24th and 27th days. Because the neural tube forms and closes during early pregnancy, the defect may occur before a woman realizes that she is pregnant.

Each year, about 2,500 cases of neural tube defects occur among about 4 million births in the United States (i.e., in approximately 6 of 10,000 births annually). Recent data from State-based birth defects surveillance systems show declining trends for neural tube defects in the United States for about the last 30 years (Ref. 2). The Maternal and Child Health Bureau of the Health Resources and Services Administration reported that the neural tube defect rate in the United States has declined from 1.3 per 1,000 live births in 1970 to 0.6 per 1,000 live births in 1989 (Ref. 3).

The majority of neural tube defects are isolated defects and are believed to be caused by multiple factors. About 90 percent of infants with a neural tube defect are born to women who do not have a family history of these defects. Neural tube defects have been reported to vary with a wide range of factors including genetics, geography, socioeconomic status, maternal birth cohort, month of conception, race, nutrition, and maternal health, including maternal age and reproductive history (Ref. 4). Women with a close relative (i.e., sibling, niece, nephew) with a neural tube defect, with insulin-dependent diabetes mellitus, and with seizure disorders who are being treated with valproic acid or carbamazepine are at significantly increased risk compared with women without these characteristics. Rates for neural tube defects also vary within the United States, with lower rates observed on the west coast than on the east coast.

Several lines of evidence led to the hypothesis that nutritional factors might be associated with some human neural

tube defects (see 56 FR 60610, 58 FR 2606, and 58 FR 53254). Among the nutrients that were hypothesized to play a role in reducing the risk of neural tube defects, folate, a B vitamin, received the greatest attention because of associations between folate intake and reduced risk of neural tube defects found in observational studies in humans and because of the well-recognized role of folate in cell division and growth. Because the neural tube forms early in embryonic development, interventions aimed at reducing the risk of these defects must occur periconceptionally (i.e., during the interval extending from at least 1 month before conception and continuing through the first 6 weeks of pregnancy).

In the folate health claim proposal (58 FR 53254), FDA tentatively concluded that the available data show that folate alone may reduce the risk of recurrence of neural tube defects when given periconceptionally at high-dose levels (i.e., 4 mg/day) to women at high risk of such a recurrence. Additionally, based on a synthesis of information from several observational studies that reported periconceptional use of multivitamins containing 0 to 1,000 micrograms (mcg or µg) of folic acid, FDA inferred that folic acid intake at levels of 0.4 mg (400 mcg) per day may reduce the risk of occurrence of neural tube defects. Protective effects measured by reduction in incidence of neural tube defects have been found in several observational studies that reported periconceptional use of multivitamin supplements containing about 400 mcg folic acid.

Public health significance. Reduction in adverse pregnancy outcomes such as birth defects is an important public health goal. Because most neural tube defects occur in women without a history of such outcomes, interest in reducing the risk of first occurrences has been very high. PHS has inferred that if all women of childbearing age consumed 0.4 mg (400 mcg) folic acid daily throughout their childbearing years, there might be a reduction in neural tube defects of about 50 percent (i.e., about 1,250 cases per year) (Ref. 5).

C. Regulatory and Other Activities Related to Folate and Neural Tube Defects

Since the passage of the 1990 amendments in November 1990, the rapidly evolving nature of the science relative to folate and the risk of neural tube defects and a number of PHS activities have intertwined with the regulatory process on the question of whether a health claim should be authorized on this topic. These developments have resulted in a dynamic process that began with the publication of a proposed rule not to authorize a health claim on folic acid and neural tube defects (56 FR 60610); saw PHS issue a recommendation that all women of childbearing age in the United States should consume 0.4 mg of folic acid per day for the purpose of reducing their risk of having a pregnancy affected with spina bifida or other neural tube defect (Ref. 5); included meetings of FDA's Folic Acid Subcommittee and Food Advisory Committee (Refs. 6 and 7); and was marked by FDA publishing a final rule that noted that, while the PHS recommendation evidenced that significant scientific agreement exists regarding the relationship between folate and neural tube defects, there were significant unresolved questions about the safe use of folic acid in food (58 FR 2606). In its January 6, 1993, **Federal Register** document, the agency concluded that it could not authorize a health claim for folate until the questions regarding the safe use of this nutrient, as well as other concerns raised by PHS, were satisfactorily resolved.

The process proceeded to the point where, in October 1993, FDA stated that it had tentatively concluded that the safety questions had been resolved, and that there is significant scientific agreement about the validity of the relationship between folate and neural tube defects (58 FR 53254). The agency also tentatively concluded that, based on its discussions with the Folic Acid Subcommittee and its analyses of food intake data, daily folate intakes can be maintained within safe ranges by allocating fortification with folic acid to specific foods in the food supply through an amendment to the food additive regulation for folic acid.

The agency therefore proposed to authorize a health claim relating diets adequate in folate to a reduced risk of neural tube defect-affected pregnancies (58 FR 53254). In companion documents published in the same issue of the **Federal Register**, the agency also proposed to provide for the safe use of folic acid in foods by amending the food additive regulations for folic acid (58 FR 53312) and to amend the standards of identity for specific enriched cereal-grain products to require the addition of folic acid (58 FR 53305).

The agency convened the Folic Acid Subcommittee and the Food Advisory Committee on October 14 and 15, 1993 (Ref. 8). Members were asked to comprehensively review the October 14, 1993, proposals and to provide comments. The agency requested that the Folic Acid Subcommittee give priority to the health claim issue because the DS Act required that health claim regulations be finalized by December 31, 1993. The agency treated the discussions of the Folic Acid Subcommittee as comments. A summary of the discussions that occurred during the meetings is provided in the summary of comments below.

As stated above, in January 1994, FDA announced (59 FR 433) that, by operation of law, the regulation that it proposed on October 14, 1993 (58 FR 53254), to authorize the use of a health claim about the relationship between folate and the risk of neural tube defects was a final regulation applicable to the label and labeling of dietary supplements only. The agency also advised that, given the PHS recommendation and the results of the agency's review of the evidence on this claim, in addition to authorizing the claim on dietary supplements, it had no intention of taking action against conventional foods that are naturally high in folate that bear a claim on this nutrient-disease relationship, so long as the claim fully complies with the provisions of the regulation that became final for dietary supplements by operation of law.

D. Scope of This Document

In the **Federal Register** of October 14, 1993 (58 FR 53254), the agency posed a series of questions for itself. These questions, and the agency's proposed answers, provided the outline for the October 14, 1993 document. The questions were: (1) Is a health claim on the relationship between folate and neural tube defects appropriate on food labels? (2) If the agency concludes that a health claim can be safely implemented, what should such a claim say about folate and neural tube defects? (3) Should the food supply be fortified with folic acid to ensure that women have adequate folate intakes? If so, is it necessary to limit the foods to which folic acid can be added and the levels at which it can be added to those foods? (4) If there are to be limitations on the foods that can be fortified with folic acid, which foods are most appropriate for fortification, and at what levels should they be fortified?

During the development of this final rule, data on the folate status of the U.S. population obtained during Phase 1 of the Third National Health and Nutrition Examination Survey (NHANES III, Phase 1, 1988–1991) became available. The agency anticipated evaluating red blood cell (RBC) and serum folate data, and data on folate intake from foods and dietary supplements from this survey. Additionally, because the NHANES III folate consumption data are more current than the data used by the agency in developing its October 14, 1993, proposals for food fortification and for amending the agency's food additive regulation for folic acid (58 FR 53305 and 58 FR 53312, respectively), the agency considered delaying completion of these rulemakings until evaluation of the newer data was complete.

However, in late 1993, FDA became aware of a methodological problem associated with the radioassay kits used in NHANES III (1988 to 1994) that affected serum folate and RBC folate values and, consequently, data interpretation. FDA's Center for Food Safety and Applied Nutrition requested that the Life Sciences Research Office (LSRO), Federation of American Societies for Experimental Biology (FASEB), review, under a contract with FDA, the issues and report its findings to the agency. FDA requested that LSRO/FASEB: (1) Examine the analytical bases of the discrepancies associated with serum folate and RBC folate values derived from use of certain analytical kits used in NHANES III (1988 to 1991); (2) evaluate the scientific basis and validity of procedures proposed by the Centers for Disease Control and Prevention (CDC) to make corrections to serum folate and RBC folate values obtained in NHANES III Phase 1 (1988 to 1991); (3) reexamine current "cutoff" values used for estimation of "deficient," "low status," etc., in light of the need for application of a correction factor; and (4) determine whether these approaches are still useful for estimating the prevalence of inadequate folate nutriture in the U.S. population.

A full description of the problem, the analytical issues involved, the issues that arose that are related to the interpretation of NHANES III Phase 1 (1988 to 1991) data, and LSRO/FASEB's conclusions are presented in "Assessment of Folate Methodology Used in the Third National Health and Nutrition Examination Survey (NHANES III, 1988–1991)" (Ref. 9). A major conclusion of LSRO/FASEB was that neither adjustment of the serum folate or RBC folate data from NHANES III Phase 1 (1988 to 1991) to correct for the analytical problem, the use of the data without adjustment, nor the use of either data set with adjusted criteria for normalcy and deficiency, by themselves, can predict the prevalence of inadequate folate nutriture of the U.S. population.

Based on LSRO/FASEB's report and its own review of the data, the agency has concluded that while there is a need for further evaluation of the NHANES III (1988 to 1991) serum folate and RBC folate data set, the agency will not delay this rulemaking until such evaluation is complete.

The complete data from NHANES III (1988 to 1994) on folate intake from food and dietary supplements are not yet publicly available. Therefore, the agency cannot evaluate total folate intakes from foods and from dietary supplements from this survey data. The agency has concluded that it will also not delay the fortification and food additive rulemakings until the expected availability of these data in 1996.

II. Summary of Comments and the Agency's Responses

The agency received nearly 100 comments in response to its October 14, 1993, proposed rule on a health claim on folate and neural tube defects. In addition, as stated above, FDA submitted the transcript of the October 14 and 15, 1993, meetings of the Folic Acid Subcommittee and Food Advisory Committee, in which the proposed rule was discussed, to the docket 91N–100H as a comment (Ref. 8). Comments were received from individual members of FDA's Folic Acid Subcommittee and Food Advisory Committee and invited guest consultants; other Federal agencies; a foreign government; State departments of agriculture, consumer services, or health; health care professionals; consumers; consumer advocacy groups; national organizations of health care professionals; State and territorial public health nutrition directors; manufacturers and suppliers of vitamins to the conventional food industry and the dietary supplement industry; manufacturers of finished foods including breakfast cereals, frozen foods, and bakery products; and trade associations of dietary supplement manufacturers, bakers, millers, and food processors. A number of comments were received that were more appropriately answered in other dockets, and these were forwarded to the appropriate dockets for response.

FDA has considered all of the comments on a health claim on folate and neural tube defects that it received. The agency reviewed all of the documents, including letters, press releases, scientific articles and data supporting these articles, review articles, and recommendations, that were included in the comments. A summary of the comments that the agency received and the agency's responses follow.

A. Advisability of Authorizing Health Claims

1. Some comments endorsed health claims because of their potential educational benefits, while other comments stated that health claims on foods that focus on single nutrients are a bad idea because combinations of foods, not single nutrients, build health. The advisability of health claims was also discussed at the October 14 and 15, 1993, meeting of the Folic Acid Subcommittee (Ref. 8).

The agency notes that the issue of whether health claims should be permitted in food labeling is moot because the 1990 amendments authorized claims on the relationship between substances and diseases or health-related conditions if the scientific validity standard is met.

B. Advisability of Authorizing a Health Claim for Folate and Neural Tube Defects

In § 101.79(c)(2)(i)(A) (21 CFR 101.79(c)(2)(i)(A)), FDA proposed to authorize health claims on labels or in labeling of conventional foods and dietary supplements on the relationship between folate and neural tube defects in women of childbearing age.

1. Scientific Validity Standard: Adequacy of the Scientific Data

2. Many comments supported FDA's tentative decision to authorize a health claim on the relationship between folate and neural tube defects but did not provide any specific reasons for their support. Several comments noted that the scientific basis for the claim was as strong as that used to authorize other claims (e.g., those relating calcium and osteoporosis and saturated fat and heart disease). Members of the Folic Acid Subcommittee who supported a health claim noted that such claims would provide information to the target population, and that such claims tend to be more effective than educational programs alone.

Other comments opposed the health claim, identifying specific concerns with the quality and quantity of the data used to develop the PHS recommendation and to support the proposed health claim. Members of the Folic Acid Subcommittee who opposed a health claim cited the weakness of the data supporting the relationship, including the very small number, and observational nature, of studies relating intake of folate at levels attainable from usual diets to reduced risk of neural tube defects and the many issues associated with the interpretation of these studies (58 FR 53265).

Several comments noted that because of the variety of micronutrients in addition to folic acid contained in supplements whose use was reported in several case-control studies, and because foods high in folate are also important sources of other micronutrients, it is not possible to isolate an independent role for folate in reduction in risk of first occurrences of neural tube defects. Other comments also expressed concern regarding the lack of folate-specific data at intakes of 400 mcg daily and noted that studies showing a positive impact of use of multivitamins containing 400 to 1,000 mcg of folic acid may have been showing a combined effect of folic acid and vitamin B12 or of folic acid and other components of the multivitamin preparations.

A comment noted that there is little knowledge about biological mechanisms that would explain the role of folate in reduction in risk of neural tube defects. The comment stated that it was inappropriate to conclude that, because folic acid alone at a supraphysiologic dose (i.e., 4,000 mcg/day; 4 mg/day) is effective in reducing the risk of neural tube defects among women at recurrent risk, it would also reduce the risk of such defects among women at much lower risk of a first occurrence when consumed at lower doses (i.e., at 400 mcg/day; 0.4 mg/day). Another comment expressed the opinion that the agency should not authorize a claim because there is not significant scientific agreement that the evidence supports the claim.

Section 101.14(c) (21 CFR 101.14(c)) states that the agency will issue a regulation authorizing a health claim when it determines, based on the totality of the publicly available scientific evidence, that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence.

For folate and neural tube defects, the agency evaluated all of the available scientific evidence, consulted with the Folic Acid Subcommittee and Food Advisory Committee about this evidence, and considered all the information contained in the comments. Based on this review, FDA has concluded that there is significant scientific agreement that the data associating folate intake and reduced risk of neural tube defects support a health claim on this relationship.

The strongest evidence for this relationship comes from the randomized controlled Medical Research Council intervention study (Ref. 14) that showed that women at risk of a recurrence of a neural tube defect-affected pregnancy who consumed a supplement containing 4 mg (4,000 mcg; 10 times the reference daily intake (RDI) folic acid daily throughout the periconceptional period had a significantly reduced risk of having another child with a neural tube defect. This study demonstrated, for the first time, that there was a significant reduction in recurrence of neural tube defects with high levels of folic acid but not with other vitamins and minerals. This study identified a specific role for folic acid in reducing the risk of recurrence of neural tube defect-affected pregnancies in women with a history of this defect and thus established the scientific basis for a relationship between folate intake and the occurrence of neural tube defects.

In addition, protective effects against occurrence of neural tube defects were found in a Hungarian randomized controlled trial that used a multivitamin/multimineral preparation containing 0.8 mg folic acid daily (Ref. 15). Four of five observational studies have also reported a reduced risk of neural tube defects among women who reported consuming 0.4 to 1.0 mg folate daily from multivitamin supplements (Refs. 10, 11, 13, and 16). Several of these studies (Refs. 11, 13, and 16) have also reported beneficial effects against occurrence of neural tube defects of dietary folate intakes of 100 to 250 mcg or more daily.

Based on its review of all of these studies, the agency has concluded that their results are consistent with the conclusion that folate, at levels attainable from usual diets, may reduce the risk of occurrence of neural tube defects.

The agency agrees that there are still significant gaps in our knowledge about the etiology of neural tube defects; about how folate, either alone or in combination with other nutrients, reduces the risk of neural tube defects; about dose-response relationships between folate intake and reduction in risk of neural tube defect-affected pregnancies; and about the role of other essential nutrients in the etiology of neural tube defects. However, the randomized controlled Medical Research Council trial (Ref. 14) clearly established the specific effectiveness of increased folate intake in reducing the risk of recurrence of some neural tube defects, and the findings of most of the studies cited above (Refs. 9, 10, 11, 13, and 16) are consistent with the conclusions drawn from the results of the Medical Research Council trial.

Because of the consistency between the results of the Medical Research Council trial and the results of the smaller observational studies, PHS has inferred that folate alone, at levels attainable in usual diets, may reduce the risk of neural tube defects (Ref. 5). FDA participated in the development of the PHS recommendation and noted in the folate health claim proposal (58 FR 53266) that the recommendation evidenced that significant scientific agreement exists regarding the validity of an association between folate intake and risk of neural tube defects.

FDA has therefore concluded, based on its own review of the scientific literature, that there is significant scientific agreement regarding the validity of the relationship, and that the statutory requirements for authorizing a health claim in this topic area have thus been met. Therefore, the agency is adopting § 101.79(c)(2)(i)(A) as proposed.

2. Appropriateness of Providing for a Claim

In addition to comments addressing the scientific validity of a health claim on folate and neural tube defects, the agency received comments questioning the advisability of authorizing a claim on this topic.

a. *General comments.*

3. Some comments stated that it was advisable to provide for a folate/neural tube defects health claim because such a claim can serve to broaden public knowledge of the relationship between folate and neural tube defects. A comment noted that the folate/neural tube defect claim might be especially beneficial for women who had previously had a child with a neural tube defect. One comment suggested that a health claim for folate and neural tube defects would increase intake of folate by women of childbearing age.

Others expressed concern by noting that consumers will find it difficult to understand the claim and will begin to associate folate-containing foods with an effect on birth defects in general. A comment noted that, given that many occurrences of neural tube defects will not be affected by folate intake, the claim will give a false hope of avoidance of the defect. A comment expressed concern that publication of the claim might cause unnecessary alarm among women who are pregnant. Other comments noted that neural tube defects are not the result of folate deficiency per se or noted the lack of evidence that there is a need in the general U.S. population for an increase in folate intake. Another comment, in considering the agency's proposed model health claims, noted that FDA

was trying to make the food label do more than it can.

Another comment emphasized that the context in which data from the major controlled intervention trial of effects of folic acid at levels approaching those obtainable from diets (i.e., the Hungarian trial; Ref. 15) were obtained (e.g., women who volunteered for the trial gave up drinking and smoking, consumed healthful diets before pregnancy, and in general pursued good health practices in the periconceptional interval) is not the same context in which women in the general population will receive folate.

The agency agrees with the comments above that a health claim for folate and neural tube defects may have an educational benefit and has the potential for increasing folate intake among women in the target population by informing them of the importance of folate intake during their childbearing years. The agency also recognizes the importance of informing women of childbearing age of the need to ensure that their diets include adequate folate throughout this time of their lives and notes that providing information at the point of purchase of food by means of health claims and nutrient content claims can be an effective means of getting the information to consumers and of helping consumers to maintain healthful diets. Given that about half of all pregnancies are unplanned, many women in the general population can benefit from the information provided in the health claim because it will motivate them to increase their folate intake, even if they are not anticipating a pregnancy in the near future.

The agency recognizes that women in the Hungarian trial (Ref. 15) were advised to adopt specific health conscious practices before attempting to become pregnant, and that women in the general population may not adopt such practices before becoming pregnant. The agency notes, however, that there are no data to indicate that the outcome of the Hungarian trial was related to or dependent upon the adoption of those practices, and that all women in the trial were urged to adopt those practices, not only those receiving folate-containing supplements. The agency finds no basis to deny the claim based on such a consideration. In addition, although emphasis is frequently placed upon estimates that about half of all pregnancies in the United States are unplanned, the agency notes that the large numbers of women who do plan their pregnancies (i.e., about 50 percent) may be adopting health-conscious practices before conception and thus may receive folate in a context similar to that employed in the Hungarian trial.

The agency recognizes that there is the potential for the health claim to be misleading and has addressed that potential by requiring that all claims contain specific information that informs women about the effect that adequate intake of folate during their childbearing years may have on their risk of a specific type of birth defect, without implying that adequate folate intake will provide 100 percent protection against that, or any other, birth defect. The agency recognizes that many nutrients, as well as attention to overall diet and healthful lifestyles, are important for obtaining the best possible outcome of pregnancy and has incorporated these concepts into the language of the health claim.

Specifically, in this health claim regulation, the agency identifies the target population for the claim as women during their childbearing years (§ 101.79(c)(2)(i)(A)); describes the effect of folate intake on the risk of neural tube defects, a very specific type of birth defect (§ 101.79(c)(2)(i)(C)); requires that claims not imply that folate intake is the only recognized risk factor for neural tube defects (§ 101.79(c)(2)(i)(D)); summarizes the significance of appropriate folate intake relative to reduction in risk of neural tube defects in the total dietary context by requiring that claims state that healthful diets are also needed (§ 101.79(c)(2)(i)(H)); and provides for optional (voluntary) identification of a variety of sources of folate in the claim (§ 101.79(c)(3)(vii)). In describing the requirements for foods to bear the claim, the agency has defined characteristics that will qualify a food for bearing the folate/neural tube defect health claim with an eye to ensuring that such foods will be good sources of folate (§ 101.79(c)(2)(ii)(A)).

Provision of such information will assist women in understanding the relationship of folate intake to the risk of neural tube defects and the significance of the information in the context of the total daily diet. Thus, the claim includes facts essential for consumer understanding of the conditions and circumstances under which the claimed effect is more likely to be obtained.

b. *Small size of the population at risk.*

4. Some comments disagreed with the agency's proposal to authorize a health claim for folate and neural tube defects because other authorized claims are different from this one. They pointed out that the folate claim deals with a problem that affects a very small number of people, while other authorized claims deal with reducing the risk of long-developing conditions affecting very large segments of the population (e.g., calcium and osteoporosis; fat and heart disease). Another comment noted that there have been large unexplained declines in neural tube defects in the United States since the 1930's. Another comment noted that neural tube defects constitute only a small fraction of all birth defects and stated that the proposed claim could lead to a false sense of security regarding protection from risk of all birth defects. Another comment noted that despite their distressful nature, because neural tube defect-affected births are a relatively rare phenomena, they should be attacked at a medical level.

The agency disagrees with comments that it should not authorize a folate/neural tube defect health claim on the basis that the affected population is small in number. The eligibility requirements for a health claim do not limit such claims solely to disease or health-related conditions affecting significant portions of the population. Rather, the general eligibility requirements for health claims require that for a substance to be eligible for a health claim, the substance must be associated with a disease or health-related condition for which the general population or an identified U.S. population subgroup (e.g., the elderly) is at risk (see § 101.14(b)(1)).

As FDA explained in the final rule establishing § 101.14(b)(1) (58 FR 2478 at 2499), the agency will interpret this provision flexibly and will disqualify few claims under it. However, the agency also advised that if the affected population is small in size or is not readily identifiable, information on prevalence in the U.S. population will be a material fact that must be disclosed to avoid misbranding the product.

FDA agrees that the prevalence of pregnancies affected by neural tube defects in the United States is low. However, because it is not currently possible to predict when a pregnancy will be affected, the U.S. subpopulation potentially at risk is large (i.e., women capable of becoming pregnant). The agency, consequently, disagrees that this health claim should not be authorized because a large subpopulation is potentially at risk of a neural tube defect-affected pregnancy.

c. *Potential impact of new data.*

5. Several comments expressed concern that results of research in progress on the potential role of factors other than folate could lead to revisions of the current PHS recommendation that all women consume 0.4 mg of folate daily throughout their childbearing

years to reduce their risk of neural tube birth defects. A comment noted that, based on testimony presented at the April 15 and 16, 1993, meeting of the Folic Acid Subcommittee, data from ongoing studies in South Carolina and Texas will be available soon and should provide information on the effectiveness of folate-containing supplement intervention programs in these areas. Another comment noted that data reported at the recent meeting of the American Public Health Association suggested that while reported intake of folate-containing supplements appeared to be associated with a reduced incidence of neural tube defect-affected pregnancies overall, the association was not statistically significant for Hispanic women who have a higher risk for neural tube defects than many other women.

Some members of the Folic Acid Subcommittee questioned whether new data on vitamin B_{12} (summarized in section II.E.6. of this document) should influence the agency's position on the relationship between folate and neural tube defects. Another Folic Acid Subcommittee member stated that regardless of the new findings, the agency should move ahead with the folate/neural tube defect health claim.

The agency is aware that data from several ongoing studies have been discussed at national meetings, but until these data and detailed descriptions of study designs, methodologies, and full results are publicly available, the agency cannot act on them. New data that have become publicly available during this rulemaking are reviewed in Section II.E.6 of this document. The agency notes, however, that the validity of the relationship between folate and neural tube defects has been established by the Medical Research Council trial (Ref. 14). New findings are not likely to detract from the validity of that relationship.

C. Issues Regarding the Substance/Disease Relationship That Is the Basis of the Claim

1. Identifying the Substance (Folic Acid Versus Folate)

In developing its proposed regulation, the agency considered how best to describe the relationship between folate and neural tube defects. In the proposed statement of the substance/disease relationship (§ 101.79(c)(2)(i)(A)), FDA described the substance that is the subject of the claim as "folate." FDA also used this term in proposed § 101.79(a)(2), (b)(1), (b)(3), (c)(2)(i)(B), (c)(2)(i)(F), (c)(2)(ii)(A), (c)(2)(ii)(B), (c)(2)(iv), (c)(3)(ii), and (d). The agency's use of this term differed from the wording of the 1990 amendments which required that FDA evaluate the relationship between "folic acid" and neural tube defects.

Based on its review of the available studies, the agency in its October 14, 1993, proposed rule (58 FR 53254 at 53280) described its rationale for broadening the topic by noting that the term "folates" is used broadly to represent the entire group of nutritionally active folate vitamin forms and includes both synthetic folic acid and the folylpolyglutamates that occur naturally in foods.

In reviewing the scientific evidence on the relationship between folate and neural tube defects, the agency noted that some studies reported effects of use of supplements of folic acid in combination with intakes of food folates (Ref. 10), while other studies reported effects of dietary intakes of food folates alone (Refs. 11, 13, and 16). Based on its review of these studies, the agency tentatively concluded that the diet/disease relationship is more accurately described as being related to all of the biologically active vitamin forms of folate rather than just to the synthetic form of the vitamin (i.e., folic acid). Thus, in its review of the substance/disease relationship, FDA considered the effect of all of the nutritionally active forms of this vitamin (i.e., folates) on neural tube defects and not just the effect of the form of the vitamin specified in the 1990 amendments (i.e., folic acid). Use of the term "folate" in proposed § 101.79(a)(2), (b)(1), (b)(3), (c)(2)(i)(B), (c)(2)(i)(F), (c)(2)(ii)(A), (c)(2)(ii)(B), (c)(2)(iv), (c)(3)(ii), and (d) was consistent with the scope of the agency's review.

6. A comment stated that FDA had unjustifiably changed the demonstrated efficacious form of the vitamin from "folic acid" to "dietary folate," and that because dietary food folate has not been demonstrated to reduce the incidence of neural tube defects, such a change is not justified. Several comments stated that FDA, in its health claims proceedings, had departed from the PHS recommendation, which uses the term "folic acid" in its title and in describing dietary change associated with reduced risk of neural tube defects, and that FDA, instead, concentrated inappropriately on food folate.

FDA does not agree with these comments and concludes that it was justified in expressing the food substance/disease relationship as "folate and neural tube defects" rather than as "folic acid and neural tube defects." FDA also disagrees with the comments that folic acid is the only substance that was appropriately the subject of FDA's review, and that dietary food folate has not been demonstrated to reduce the incidence of neural tube defects.

a. *Efficacy of food folate.* In reviewing the scientific evidence on the relationship between folate and neural tube defects, the agency noted that one study attributed all observed effects to consumption of dietary supplements of undefined composition without quantifying contribution of folate either from the supplements or from food (Ref. 10), while other studies attempted to specifically quantify intakes of folate from food as well as from dietary supplements (Refs. 11, 13, and 16).

Some studies reported protective effects of use of supplements containing folic acid in combination with intakes of food folates (Refs. 11, 13, and 16), while other studies reported protective effects from dietary improvement in general (Ref. 17) or from intakes of food folates alone (i.e., without supplement use) (Refs. 11 and 13).

Milunsky et al. (Ref. 11), Bower and Stanley (Ref. 16), and Werler et al. (Ref. 13) presented data on the relationship of dietary folate to risk of neural tube defects among nonusers of dietary supplements. Each of these studies found reduced risk of neural tube defects associated with increasing dietary intake of food folate. In the prospective study of Milunsky et al. (Ref. 11), the relative risk of neural tube defects was 0.42 for those women ingesting more than 100 mcg folate per day compared with those ingesting less than 100 mcg folate per day. Bower and Stanley (Ref. 16), in a study in Western Australia, found reduced risk of neural tube defects among women consuming more than 240 mcg food folate per day versus community controls. Werler et al. (Ref. 13) reported a significant trend of reduced occurrence of neural tube defects with increasing dietary food folate.

Laurence et al. (Ref. 17) performed a trial of dietary education without prescribing supplements and found that improvement in women's diets from "poor" to "good" led to a 50 percent reduction in recurrence of neural tube defects in women at high risk of this complication. Dietary improvement is assumed to increase intake of folate and many other nutrients by unspecified amounts. Specifically, these authors reported no cases of neural tube defects among women who were judged to have eaten "good" or "fair" diets (Ref. 17). All recurrences occurred among the 30 of 186 women who were judged to have eaten "poor" diets. "Poor" diets were defined as those considered to be deficient in first-class protein, usually no fruits and vegetables, and generally with excessive amounts of carbohydrates. "Good" diets were defined as those providing good intakes of all essential foods, including protein, and with no excessive amounts of refined carbohydrates, sweets, and soft drinks (see 58 FR 53253, October 14, 1993).

The studies of Milunsky et al. (Ref. 11), Bower and Stanley (Ref. 16), Werler et al. (Ref. 13), and Laurence et al. (Ref. 17) have all demonstrated that food folates provide protective effects against risk of neural tube defects.

b. *Interchangeability of the terms "folate" and "folic acid" in common usage and in nutrition labeling.* FDA notes that, in common usage, the terms "folic acid" and "folate" are frequently used interchangeably to describe the biologically active forms of the vitamin. Folates are ubiquitous in nature, being present in nearly all natural foods (Ref. 18), and occurring in a wide range of forms (Ref. 19). Human nutritional requirements for folate can be met by a variety of naturally occurring forms of the vitamin from many sources as well as by pteroylglutamic acid, the form of the vitamin added as a fortificant to breakfast cereals and other foods, and the form present in dietary supplements.

In nutrition labeling, "folic acid," "folate," and "folacin" are allowable synonyms (§ 101.9(c)(8)(iv) and (c)(7)(iv)). All of these terms provide a way to describe the nutritional value of folate vitamin forms, although the term "folacin" is now rarely used.

c. *Interchangeability of the terms "folate" and "folic acid" in the PHS recommendation.* FDA disagrees that the PHS statement emphasizes synthetic folic acid, the form of the vitamin used as a fortificant in conventional foods and in dietary supplements. In point of fact, the PHS statement, consistent with lay information and with nutrition labeling regulations, uses the terms "folic acid" and "folate" interchangeably (Ref. 5). For example, the PHS recommendation states that "folate intake ≧ 0.4 mg/day can be obtained from the diet through careful selection of foods," that improvement in dietary habits is one potential approach "for the delivery of folic acid to the general population in the dosage recommended," and that "women should be careful to keep their total daily folate consumption at < 1 mg per day" (Ref. 5).

That some ambiguity with respect to use of the terms "folic acid" and "folate" was present in the PHS recommendation was recognized during finalization of the recommendation at a CDC-sponsored meeting held in Atlanta on July 27, 1992. At that meeting, CDC staff noted that the ambiguity was deliberate (Ref. 20):

> INVITED SPEAKER WALD: There is an ambiguity here over whether it's total or extra, unless you have a particularly kind of astute legal perspective on this. * * * I have a question, though. Was the ambiguity deliberate?
>
> CDC's ERICKSON: Yes.
>
> INVITED SPEAKER WALD: You see, I think t would have probably inserted the same ambiguity myself. Because the intention is to get something going. * * * And one has the 0.4 mg figure from the previous RDA * * * at least that is a psychological fixing point.

Thus, there was some ambiguity in the PHS recommendation from the time of its development, and the recommendation does not identify synthetic folic acid as the sole active form of the vitamin.

d. *Conclusion.* Based on its review of the available studies, the agency tentatively concluded in the proposed rule that the food substance/disease relationship is most accurately expressed as "folate and neural tube defects" rather than as "folic acid and neural tube defects" because the term "folate" encompasses all forms of the vitamin from any source. In addition, at intakes attainable from usual diets, both folate from foods and folic acid from fortified foods or dietary supplements are converted into the same functional, metabolically active, reduced coenzyme vitamin forms in the body (Ref. 19). Thus, nutritional requirements are met by a variety of forms of folate, and, with respect to reduction in risk of neural tube defects, the utility of increased folate intake, whether achieved through improved food choices or through use of dietary supplements, has been shown.

The comments summarized above do not provide a basis for the agency to change the relationship statement because they are inconsistent with the scientific data, and they do not provide data that demonstrate that "folic acid" performs nutritional functions different from those performed by naturally occurring food folates. Thus, making a distinction between "folate" and "folic acid" when all forms of the vitamin are capable of conversion to active vitamin coenzymes and metabolic function is artificial and inappropriate.

Therefore, in § 101.79, FDA is authorizing a health claim on labels and in labeling of conventional foods and dietary supplements about the relationship between folate and neural tube defects in women of childbearing age. The agency is retaining this terminology throughout the codified language. However, § 101.79(c)(2)(i)(B) states that any one of several synonyms may be used, including "folic acid" and "folate," when specifying the nutrient in a health claim.

FDA notes that in proposed § 101.79(c)(2)(i)(F), the term "folic acid" was used instead of the intended term "folate," which was otherwise consistently used throughout the proposed codified language. FDA is correcting this terminology in the final codified language, which for other reasons described in this preamble is redesignated as § 101.79(c)(2)(i)(E).

2. Issues of Source and Amount

In § 101.79(c)(2)(i)(H), the agency proposed to prohibit statements in the health claim that a specified amount of folate (e.g., 400 mcg (100 percent of the Daily Value (DV)) in a dietary supplement) is more effective in reducing the risk of neural tube defects than a lower amount (e.g., 100 mcg (25 percent of the DV) in a breakfast cereal or from diets rich in fruits and vegetables). The agency proposed this limitation because it is consistent with scientific data showing that reduced risk of neural tube defects has been associated with general dietary improvement, which is assumed to increase folate intake by unspecified amounts. In response to this proposed limitation, the agency received comments addressing the separate issues of source of folate and amount of folate.

a. *Source.*

7. Several comments agreed with the agency's proposal, stating that health claims should not contain statements that adequate diets cannot provide sufficient folate, or that only fortified foods or supplements can provide adequate folate. Other comments disagreed, stating that FDA should require claims to state that the evidence that folate reduces the risk of neural tube defects is stronger for supplements than for food. Other comments stated that evidence that folate-rich diets reduce the risk of neural tube defects is only suggestive, while evidence that folic acid containing-supplements reduce the risk of neural tube defects is conclusive.

The agency agrees with comments that health claims should not contain statements that diets cannot provide sufficient folate to affect the risk of a neural tube defect because such statements are inconsistent with the available scientific evidence.

The studies of Milunsky et al. (Ref. 11), Bower and Stanley (Ref. 16), Werler et al. (Ref. 13), and Laurence et al. (Ref. 17) were summarized in response to comment 6, above. Milunsky et al. (Ref.

11), Bower and Stanley (Ref. 16), and Werler et al. (Ref. 13) all presented data on the relationship of dietary folate to risk of neural tube defects among nonusers of dietary supplements. Each of these studies found reduced risk of neural tube defects associated with increasing intakes of dietary folate. Laurence et al. (Ref. 17) found fairly strong protection against recurrence of neural tube defects associated with improvement in overall diets.

FDA concludes, based on its review of the scientific literature, that the proposed limitation in § 101.79 on statements that specific sources are superior to others is appropriate because the scientific literature does not support the superiority of any one source over others. As noted above, both folate from conventional foods and folic acid from fortified foods or dietary supplements are converted into functional, metabolically active coenzyme forms for use in the body (Ref. 19). Thus, in the absence of the limitation, manufacturers would be free to put statements that would be false and misleading in their labeling. The agency's conclusion is consistent with PHS's recommendation that advises that careful selection of foods is one means by which women can increase their folate intakes.

b. *Amount.*

8. Several comments agreed with the agency that the claim should not state that a specific amount of folate is more effective than another amount. Several comments noted that dose/response data to justify such statements do not exist, and that scientists do not yet know the requisite folate level that will protect the fetus from a neural tube defect. Other comments disagreed, stating that claims should state that experts recommend 400 mcg per day or 100 percent of the DV when referring to adequate amounts of folate. Another comment stated that while the 400 mcg level is admittedly imprecise, it is the recommendation of PHS. Another comment stated that consumers need to be reminded that a reduction in neural tube defects will only occur if all women consume 400 mcg folate per day throughout their childbearing years.

The agency agrees with comments that dose/response data are insufficient to provide a basis for stating that a specific amount of folate is more effective than another amount. The quantitative results from the studies of Milunsky et al. (Ref. 11), Bower and Stanley (Ref. 16), and Werler et al. (Ref. 13) suggest that amounts *lower* than the current recommendation of 400 mcg may be protective.

After reviewing the comments above and the available scientific literature, FDA concludes that the comments do not provide a basis for the agency to change its position regarding prohibition of statements in the claim that imply that specific amounts of folate are superior to other amounts because such statements are inconsistent with the scientific data. FDA's conclusion is consistent with information provided in the PHS recommendation that states that amounts of folate lower than 400 mcg may reduce the risk of neural tube defects, and that additional research is needed to establish the minimum effective dose (Ref. 5). Again, a contrary position by the agency would permit false statements to appear on the label.

In the final codified language, the agency is redesignating proposed § 101.79(c)(2)(i)(H) as § 101.79(c)(2)(i)(G) and, for the reasons stated above, is prohibiting in § 101.79(c)(2)(i)(G) claims that a specified amount of folate per serving from one source is more effective in reducing the risk of neural tube defects than a lower amount per serving from another source.

c. *Restriction of claims to specific products.*

9. Several comments stated that the health claim should be limited to supplements containing 400 or 800 mcg of folate or limited to dietary supplements or breakfast cereals containing 400 mcg of folate. Other comments stated that health claims should not be allowed for naturally occurring food folates. Another comment stated that to allow health claims solely on supplements or fortified foods would undermine the need for women to learn to eat more healthfully and to obtain a full array of nutrients found in a balanced diet.

The agency disagrees with comments that recommended that it limit claims to dietary supplements or to dietary supplements and fortified breakfast cereals that contain 400 mcg or more of folate. The agency's review of the scientific literature, summarized in response to comments 6 to 8 above, provides no basis for making a distinction in source or in amount between folate from conventional foods and folic acid from dietary supplements or fortified cereals because the available evidence shows that increased folate intake, rather than the source of the folate, is what is of importance in reducing the risk of neural tube defects (Ref. 5). Increasing total folate intake among women of childbearing age, rather than emphasis on one source versus another, is what is of importance. This conclusion is consistent with PHS's recommendation, which states that improvement in dietary habits and use of dietary supplements are both appropriate approaches by which women may increase their folate intake.

d. *Target intake goal.* The agency proposed in § 101.79(c)(3)(iv) to include as optional information in the health claim a statement that the DV level of 400 mcg of folate is the target intake goal.

10. Several comments stated that all health claims should refer to the likely effectiveness of 400 mcg of folate, or that claims should be required to state that experts recommend 400 mcg per day. Other comments stated that 400 mcg is the PHS recommendation, and without this information, women may assume that lower amounts are adequate.

The agency disagrees with these comments. FDA chose not to propose to require that claims identify 400 mcg as the target intake goal because it tentatively concluded that there is uncertainty as to the optimal intake of folate with respect to reduction in risk of neural tube defects (Ref. 5). As noted above, several studies (Refs. 11 and 13) have found reductions in risk of neural tube defect-affected pregnancies at folate intakes below 400 mcg per day. None of the comments provided evidence that showed that these findings were not valid. Thus, FDA concludes that a requirement that claims state that women must consume 400 mcg folate per day to achieve a reduction in risk of a neural tube defect-affected pregnancy would be inconsistent with the available scientific data.

However, because 400 mcg is the reference daily intake (RDI), because PHS recommends a 400 mcg/day intake, and because the Folic Acid Subcommittee supported the 400 mcg/day intake goal, the agency has concluded that it may be helpful to some consumers if the health claim were to include information that the RDI of 400 mcg per day is the target intake goal. Therefore, FDA is adopting § 101.79(c)(3)(iv) to allow for optional inclusion of this information, with the target intake goal (400 mcg; 0.4 mg) expressed as 100 percent DV. Claims may identify 100 percent of the DV (400 mcg folate) as the target intake goal and may state the PHS recommended daily intake (400 mcg folate, 0.4 mg).

3. Focusing on the Periconceptional Interval

In proposed § 101.79(a)(1), the agency defined neural tube defects as serious birth defects of the brain or spinal cord. The agency noted that these defects result from a failure of the covering of the brain or spinal cord to close during early embryonic development and further noted that, because the neural tube forms and closes during early pregnancy, the defect may occur before a woman realizes that she is pregnant. In proposed § 101.79(a)(2), the agency described the relationship between adequate folate intake and reduced risk of a neural tube defect-affected pregnancy and summarized the studies whose results provide the basis for the health claim.

11. A number of comments stated that studies have shown that folic acid added to the diet before pregnancy reduces the risk of neural tube defects, and that the relationship statement should be corrected to reflect this fact.

The agency agrees that the studies that provide the basis for the relationship between folate and neural tube defects focused on improved folate nutriture before conception and continuing into early pregnancy. Therefore, the agency is modifying several of the statements in § 101.79(a)(2) to more precisely describe the results of these studies. Specifically, FDA is modifying the second sentence of § 101.79(a)(2) to state that in the studies described, folic acid was consumed daily "before conception and continuing into early pregnancy * * *," and the fourth sentence to state that the study involved reported periconceptional use of multivitamins that contained folic acid.

12. A comment suggested that claims be allowed to be more precise in describing the period during which adequate folate is needed. The comment noted that the statement relating to daily consumption of folate throughout the childbearing years implies that body folate stores must be built up over decades, while studies have shown that it is sufficient to consume folate during the weeks before the neural tube closes. The comment proposed that a statement that women who consume adequate amounts of folate during the month before and after becoming pregnant may reduce their risk of a neural tube defect would convey this information. Another comment criticized the model health claims provided by the agency because they failed to alert women to the critical periconceptional period.

The agency recognizes that the scientific data support the need for specific attention to folate intake in the periconceptional interval and has modified § 101.79(a)(2) to reflect this fact by specifically mentioning periconceptional use.

The agency notes that one of the purposes of health claims is to assist women in recognizing the importance of healthful diets, including adequate folate nutriture throughout their childbearing years (see H. Rept. 101–538, 101st Cong., 2d Sess. 9–10 (1990)). Given that about 50 percent of pregnancies are unplanned, and that many women may not recognize that they are pregnant until after the critical period of neural tube closure, it is important for women to maintain healthful diets throughout their childbearing years. While some women who plan their pregnancies might benefit from the more specific information suggested in the comment, the agency concludes that the more general wording in the model claims will reach a wider group of women and provide them with useful and important information.

FDA is adopting § 101.79(c)(3)(ii), which states that health claims may include statements from paragraphs § 101.79 (a) and (b). Through the use of statements derived from § 101.79(a)(2), manufacturers will be able to provide information that alerts women to the importance of the periconceptional period.

4. "Will Reduce" Versus "May Reduce"

13. One comment stated that proposed § 101.79(a)(2), which stated that available data show that diets adequate in folate may reduce the risk of neural tube defects, was misleading and recommended that this section be reworded to state that "studies have shown that folic acid added to the diet before a pregnancy occurs will reduce the risk of neural tube defects."

The agency disagrees with the assertion that adequate folate intake *will* reduce the risk of neural tube defects. The available data show that in an area of low prevalence of neural tube defects, folate intake from dietary supplements or from fortified cereals was not associated with reduced risk of neural tube defects (Ref. 12). The agency did not receive any data or information challenging this data.

The agency notes that use of the term "will reduce" is overly promissory to the individual and is misleading because it is not consistent with the available data. Prevalence rates for neural tube defects vary with a wide range of factors including genetics, socioeconomic status, maternal health, and race. The agency has discussed the multifactorial nature of neural tube defects (and will do so again below (see comment 36 of this document)). It has concluded that claims need to reflect this aspect of the nature of these defects because folate intake is not the only risk factor for them. Use of the term "will reduce" in the claim is not consistent with the multifactorial nature of neural tube defects. Thus, FDA finds no basis to change the wording of § 101.79(a)(2), and it is including the sentence "The available data show that diets adequate in folate may reduce the risk of neural tube defects" in the final regulation without change.

5. Need for Healthful Diets

14. Some members of the Folic Acid Subcommittee expressed concern about a single nutrient approach to the problem of neural tube defects because nutrients function together in the body. Another comment felt that a health claim for folic acid could be misinterpreted to mean that folic acid could prevent all birth defects. One comment noted that, because nutrients function synergistically in the body, increasing a single nutrient is unwise. Another comment stated that by focusing on the relationship between a single nutrient and a single outcome, opportunities to improve overall health are missed. Another comment expressed concern about singling out one vitamin for a health claim when the major sources of the vitamin (e.g., fruits and vegetables) are being promoted for good health. Other comments noted that in pregnancy it is the total diet, not a single nutrient, that is related to health outcome.

The agency agrees with the comments that expressed concern about the problems in focusing on a single-nutrient, particularly in women of childbearing age. Many nutrients affect healthy pregnancy, and the claim should not lead women to focus undue attention on one nutrient, or on a single dietary factor, instead of on overall healthful diets and health conscious behaviors.

In addition, because healthy pregnancies and good pregnancy outcomes are dependent upon an overall good diet, adequate in protein, vitamins and minerals, and many other nutrients, women should not be misled into believing that folate is the only nutrient about which they need to be concerned in preparing for a pregnancy. With respect to neural tube defects, FDA in its proposed rule (58 FR 53254) reviewed evidence that nutrients other than folate (e.g., methionine, vitamin B_{12}, pantothenic acid) have roles in reducing the risk of neural tube defects, and additional evidence is summarized in section II.E.6. of this document. Thus, normal fetal development requires many nutrients in addition to the nutrient that is the subject of the health claim.

Based on these considerations, the agency has concluded that information regarding overall improvement in a woman's diet and nutrition in the

periconceptional interval, as well as throughout her childbearing years, is of considerable importance because pregnancy outcome depends upon adequate intakes of a wide range of nutrients. This concern needs to be balanced against the fact that the available evidence provides the basis for significant scientific agreement that dietary intakes of folate may reduce the risk of neural tube defect-affected pregnancies.

Therefore, in response to these comments, FDA is including in § 101.79(c)(2)(i)(H) in the final regulation a requirement that the claim state that folate needs to be consumed as part of a healthy diet. This requirement will ensure that, while highlighting the role of adequate folate intake, the health claim will not cause women to place undue emphasis on consumption of this nutrient. Thus, this information is necessary to ensure that the claim is properly balanced.

D. Requirements for Foods Bearing the Claim

1. Qualifying Amounts

In § 101.79(c)(2)(ii)(A), FDA proposed that the food or dietary supplement meet or exceed the requirements for a "good source" of folate as defined in § 101.54 (i.e., containing ≥ 10 percent of the RDI). In proposing this eligibility requirement, FDA considered that folate is ubiquitously distributed in the U.S. food supply. While a number of foods (e.g., some legumes, okra, broccoli, spinach, turnip greens, asparagus, Brussels sprouts, endive, lentils) contain more than 80 mcg of folate/serving (the amount that is greater than or equal to 20 percent of the RDI (i.e., that amount that would be required for a claim of a "rich" source)), the great majority of foods contain folate at lower levels. For example, oranges, grapefruit, many berries, peas, many vegetable juices, beets, and parsnips contain folate at levels of 40 to 80 mcg/serving (i.e., at or above 10 percent of the RDI or at levels that meet the requirement of a claim of a "good" source) (Ref. 22).

a. *General comments.*

15. Many comments and the Folic Acid Subcommittee and Food Advisory Committee were generally satisfied with the eligibility requirements and supported FDA's proposal to allow claims on foods that were at least a good source of folate. These comments supported the criterion because it would accommodate a wide variety of fruits and vegetables that would be excluded if the eligibility requirement was set at a higher level. One comment, however, suggested that the proposed amount was too high and might exclude some commonly consumed foods such as peas.

A third group of comments thought that the proposed amount was too low. Some of the comments said that claims should not be permitted unless the food provides at least 20 percent of the RDI (i.e., 80 mcg folate/serving), arguing that it was poor policy to make exception to the general health claims requirements regulations, and that if the goal is to maximize intake of folate, then 20 percent of the RDI should be the minimum amount allowed for the claim. Others felt strongly that the claim should be limited to those foods or supplements that provide 100 percent of the RDI per serving or per dose.

The agency is concerned that if it required (in accord with § 101.14(d)(2)(vii)) that the food contain 20 percent or more of the RDI for folate (i.e., 80 mcg or more folate per reference amount customarily consumed; an amount sufficient to qualify for a "high" or "excellent source of" nutrient content claim) to bear a health claim, many good food sources of folate would not qualify without fortification.

One of Congress' purposes in providing for health claims was to enable Americans to maintain a balanced and healthful diet (H. Rept. 101–538, supra, pp. 9–10). Given this fact, and given that the evidence demonstrates that the risk of neural tube defects can be affected by consuming foods that, while good sources of this nutrient, do not provide the high level that is provided by supplements and highly fortified foods (see Refs. 11, 13, 16, and 17), FDA concludes that it would not be consistent with the intent of the 1990 amendments to set requirements that would limit eligibility to bear a health claim to the foods that are high in folate.

Use of a qualifying criterion for the health claim that is consistent with the "good source" definition (i.e., 10 to 19 percent of the DV; 40 to 76 mcg folate/serving) provides for an amount of the nutrient that allows a wide variety of fruits, vegetables, and whole grain products to qualify to bear the health claim, is consistent with current Federal guidelines for general dietary patterns, and yet is still likely to result in a daily dietary intake of folate that the data show may reduce the risk of neural tube defects. For example, current Federal dietary guidelines recommend five or more servings of fruits and vegetables and six or more servings of grain products per day. Consumption of fruits, vegetables, and grain products in the recommended amounts would likely result in daily intakes of folate of 0.4 mg (400 mcg) or more, even though individually many of the foods consumed contain less than 20 percent of the RDI for folate per reference serving (Ref. 22).

Accordingly, FDA is adopting § 101.79(c)(2)(ii)(A), which provides that conventional foods and dietary supplements can bear a folate/neural tube defect health claim if they contain 10 percent or more of the RDI for folate per reference amount customarily consumed (i.e., meet the definition for a "good source" claim in § 101.54 (21 CFR 101.54)). The availability of the claim for a wide variety of products will provide flexibility to women in deciding how to individually achieve the target intake by selecting from among foods that naturally contain folate, dietary supplements, and highly fortified foods.

b. *Higher qualifying amounts for dietary supplements than for foods.*

16. Several comments stated that to qualify to bear the claim, each food should provide at least 25 percent of the RDI, and each supplement should provide 100 percent of the RDI. However, these comments did not provide any support for the levels that they suggested or for why supplements should have to have a higher level of the nutrient than a conventional food.

Having dealt with the level necessary to qualify to bear the claim in response to the previous comment, the agency will deal here with the question of whether, to qualify for a claim, dietary supplements should be required to provide more folate than foods. The agency concludes that there is no reason why they should. In response to comment 7 of this document, the agency concluded that the available scientific evidence establishes that sources of folate are equivalent in their ability to provide folate. Thus, there is no basis for requiring that either dietary supplements or conventional foods provide more than 10 percent of the RDI for folate per reference amount customarily consumed to qualify for the claim.

2. Disintegration and Dissolution of Dietary Supplements

FDA proposed in § 101.79(c)(2)(ii)(C) to disqualify dietary supplements from bearing a health claim if they fail to meet the United States Pharmacopeia (USP) standards for disintegration and dissolution. The agency tentatively concluded that the benefits of folate intake from food and dietary supplements can only be obtained if the folate is available for absorption and metabolism by the body. The agency noted that a dietary supplement that does not disintegrate and dissolve clearly does not provide the nutrient in an assimilable form, and that a claim for such a supplement would be misleading because the supplement would not provide the nutrient that is the subject of the health claim (58 FR 58283).

17. Several comments agreed with the agency's proposed requirement and urged the agency to require all dietary supplements to meet such quality standards. Another comment proposed that the agency use the USP standards that are currently under development, and that the dissolution requirement become effective when the USP proposal becomes effective. The USP commented and proposed wording for use in § 101.79(c)(2)(ii)(C): "Folic acid present in dietary supplement dosage forms (e.g., tablets, capsules) shall meet the requirements of the United States Pharmacopeia as defined in Section 201(j) of the act."

Another comment stated that in making this proposed requirement effective for dietary supplements, the agency would accord the same claim to foods (i.e., conventional foods) without similar requirements for bioavailability, and that excluding foods from this requirement was scientifically unjustified. The comment did not identify conventional foods from which folate had been demonstrated to be unavailable or elaborate on the concern.

The agency proposed that dietary supplements meet USP standards for dissolution and disintegration, and that bioavailability under conditions of use stated on the label be shown *only* if there are no applicable USP standards for disintegration and dissolution. Thus, the agency proposed that a demonstration of bioavailability would be required *only* if there were no USP method available to check for dissolution and disintegration.

The comment that stated that in making the requirement proposed in § 101.79(c)(2)(ii)(C) effective for dietary supplements, the agency would accord the same claim to conventional foods without similar requirements, may have misread the agency's proposed requirement. "Bioavailability" includes, but is not limited to, dissolution and disintegration. Dissolution and disintegration are necessary preconditions for absorption and subsequent metabolism. Digestive processes ensure that conventional foods are digested, and that components are liberated for absorption. With respect to the bioavailability of folate from conventional foods, the agency is aware that the bioavailability of folate varies widely but is not aware of any foods from which folate has been shown to be unavailable.

However, dietary supplements, including folate-containing supplements, can be manufactured in a manner that prevents dissolution and disintegration (e.g., extremely compressed preparations), and the digestive processes may be insufficient to ensure the liberation of the components for absorption. The components of such a supplement would not be available for absorption and utilization by the body. A claim on a dietary supplement that does not disintegrate or dissolve would be misleading because the supplement would not meet the preconditions necessary to ensure that the nutrient that is the subject of the claim is available for absorption.

The agency did not receive other comments contending that dietary supplements should not meet USP standards for disintegration and dissolution, or that bioavailability should not be demonstrated when applicable USP disintegration and dissolution standards are not available. The agency is adopting § 101.79(c)(2)(ii)(C) as proposed and is redesignating it as § 101.79(c)(2)(ii)(B).

3. No Health Claim on Foods or Supplements Containing More Than 100 Percent of the RDI for Preformed Vitamin A or Vitamin D

In § 101.79(c)(2)(iii), FDA proposed that a health claim for folate and neural tube defects be prohibited on conventional foods and on dietary supplements that contain more than 100 percent of the RDI for vitamin A as retinol or preformed vitamin A or vitamin D per serving or per unit. The agency proposed this limitation because of the recognized toxicity of high intakes of these vitamins for the fetus and the teratogenic effects of these nutrients at levels not greatly in excess of the RDI.

18. Several comments agreed with FDA's proposal, noting that many dietary supplements currently contain more than 100 percent of the RDI for vitamin A, and that such levels are unnecessary and potentially harmful. Another comment misread the proposed requirement regarding vitamin A and noted that since manufacturers were now increasing the β-carotene content of supplements because of health benefits, these supplements should not be excluded from carrying a folate/neural tube defect claim because of their high β-carotene content.

The agency is aware that folate is often combined with other nutrients, particularly vitamins and minerals, in dietary supplement formulations or in highly fortified foods. In light of the expectation that the presence of a health claim on the label of such products is likely to result in increased intake of these products, FDA is concerned that some consumers may try to increase their folate intake by consuming multiple doses of dietary supplements or multiple servings of highly fortified foods. The agency was concerned that, for some fortified foods and dietary supplements that contain both folate and preformed vitamin A or vitamin D, consumers could be exposed to excessive vitamin A or vitamin D intakes in their attempts to obtain increased amounts of folate. The agency, however, did not propose similar requirements for β-carotene because the agency is not aware of data on potential teratogenic or other adverse effects of β-carotene on the fetus.

This limitation is consistent with other recent recommendations. In 1991, the CDC recommendation for increased intake of folate by women with a history of a neural tube defect- affected pregnancy (Ref. 23) warned against overconsumption of multivitamins because of the potential for excessive intakes of vitamins A and D from such preparations and the known adverse effects of these vitamins on the health of the fetus. In addition, recent recommendations in Canada for women of childbearing age regarding folic acid and neural tube defects recognized the teratogenicity of high levels of vitamin A and cautioned against excessive intakes of this nutrient (Ref. 24).

With the exception of the comment regarding β-carotene discussed above, the agency received no comments objecting to this requirement. Thus, the agency is adopting § 101.79(c)(2)(iii) as proposed. The agency advises that the limitation contained in this provision pertains only to conventional foods or to dietary supplements that contain more than 100 percent of the RDI for vitamin A as retinol or preformed vitamin A or vitamin D.

E. Label Information

1. Mandatory Nutrition Labeling

In § 101.79(c)(2)(iv), FDA proposed to require that the nutrition label of conventional foods or dietary supplements bearing the folate/neural tube defect health claim provide information about the amount of folate in the food or dietary supplement. This proposed requirement is consistent with § 101.9(c)(8)(ii) (21 CFR 101.9(c)(8)(i)), which states that the declaration of vitamins and minerals on the nutrition label shall include any of the vitamins

and minerals listed in § 101.9(c)(8)(iv) when a claim is made about them.

19. One comment agreed with the proposed requirement for mandatory nutrition labeling on products bearing the folate/neural tube defects health claim. Another comment noted that use of multiple terms such as "micrograms," milligrams," etc., would probably confuse lay persons.

The agency agrees with the comments and is adopting, with the modifications noted below, the requirement in § 101.79(c)(2)(iv) that products bearing the health claim include in the nutrition labeling information about the amount of folate in the food.

FDA adopted the 1980 Recommended Dietary Allowance (RDA) values as RDI values, with folate values expressed on the label in milligrams (mg) and percent of the DV (58 FR 2206, January 6, 1993). In the **Federal Register** of January 4, 1994 (59 FR 427 at 431), FDA proposed to amend § 101.9 by revising paragraph (c)(8)(iv) to state, among other things, the RDI for folate in micrograms (i.e., 400 micrograms; 400 mcg). The agency stated that changing the current unit of measure for folate will facilitate consumer comprehension of quantitative nutrient information because consumers are more familiar with this nutrient being expressed in microgram units.

In § 101.79(c)(2)(i)(F) and (c)(3)(iv), FDA has modified the codified language so that all references to folate intake in the health claim will be required to be expressed as percent DV with the option of adding the microgram equivalent in parentheses. That is, values for folate will be expressed as percent of the DV (i.e., the percent of the RDI as established in § 101.9(c)(8)(iv)). FDA has modified the codified language in § 101.79(c)(2)(i)(F) so that reference to the safe upper limit of daily folate intake in the health claim will also be required to be expressed as percent DV with the option of adding the microgram equivalent in parentheses (see comment 32 of this document). Thus, in response to the comment's concern about the confusion that would result if multiple terms are used to describe the level of folate, FDA has modified the regulations to provide for consistent terminology.

2. Identifying the Nutrient

In proposed § 101.79(c)(2)(i)(B), FDA considered the use of synonyms for "folate" and the need to aid consumers in understanding this nutrient. The agency provided for the use of synonyms and for additional description of this term through phrases such as "folate," "folic acid," "folacin," "folate, a B vitamin," "folic acid, a B vitamin," and "folacin, a B vitamin."

20. Several comments agreed that the agency's proposed synonyms are appropriate. Other comments urged that a single term, for example, "folic acid," "folic acid, a B vitamin," "folate," or "folate, a B vitamin," be used throughout all claims. Other comments agreed with the use of the agency's proposed synonyms to encourage the consumption of healthy diets but recommended that claims be worded in such a way as to demonstrate that "folic acid" is the effective form. Several comments disagreed with use of the term "folacin," noting that it was rarely used.

The agency notes that the descriptive term "a B vitamin" in conjunction with "folate," "folacin," or "folic acid" is commonly used in lay information for consumers and may be useful for consumers in indicating the nutritive function of folate as a vitamin. FDA is thus retaining the provision for its optional use in § 101.79(c)(2)(i)(B).

FDA recognizes that current regulations for nutrition labeling in §§ 101.9 and 101.36 do not include the term "folic acid" as an allowable synonym for folate. This omission was an oversight when the agency amended § 101.9 (58 FR 2079 at 2178, January 6, 1993), and when it promulgated § 101.36 (59 FR 373, January 4, 1994). Before it was amended, § 101.9 had listed folic acid as the preferred term, with folacin as an allowable parenthetical synonym. When it proposed amendments to § 101.9 in 1990 (55 FR 29847, July 19, 1990), the agency explained why the term "folate" was preferable to "folacin". However, an explanation for use of "folic acid" was inadvertently omitted in that document, as was inclusion of the term "folic acid" as an allowable synonym.

The agency has advised firms that it would have no objection to the use of the term "folic acid" in nutrition labeling. In light of common usage and FDA policy, and for consistency among nutrition labeling and health claim regulations, the agency is making a technical amendment to §§ 101.9 and 101.36 in this final rule to include "folic acid" as an allowable synonym for folate.

The agency notes that, as discussed in comment 6, above, the terms "folic acid" and "folate" are both used in the PHS recommendation (Ref. 5). By allowing the use of these terms, the PHS recommendation can be quoted directly on the label if all other requirements for the health claim are met. The inappropriateness of limiting the term to "folic acid" to describe the relationship has been discussed in response to comment 6 of this document. Therefore, FDA is adopting § 101.79(c)(2)(i)(B) as proposed.

3. Identifying Diets Adequate in Folate

In § 101.79(c)(2)(ii)(B), the agency proposed to require that health claims relating folate to neural tube defects identify sources of folate by stating that adequate amounts of folate may be obtained by making specific dietary choices of folate-rich foods, as well as through use of dietary supplements or fortified breakfast cereals. The purpose of this proposed requirement was to assist women in obtaining adequate amounts of folate in their diets by providing information on sources of folate. In proposed § 101.79(c)(2)(ii)(B), the agency provided examples of the types of phrases that could be used to meet this requirement (e.g., "Adequate amounts of folate, a B vitamin, can be obtained from diets rich in fruits, dark green leafy vegetables and legumes, enriched grain products, fortified cereals, or from dietary supplements").

21. Many comments agreed with the proposal to require statements that dietary sources such as fruits, vegetables, and grains may contribute folate to the diet, although some comments disagreed with providing specific details, such as recommended numbers of servings. Other comments supported the agency's proposed approach, emphasizing that the health claim must help consumers understand that, in pregnancy, it is the total diet, not a single food, that is related to health outcome, and that there is good evidence for dietary claims regarding increased folate intake and reduced risk of neural tube defects. Another comment stated that health claims should not reveal a bias against food forms, fortificants, or dietary supplements.

Other comments disagreed with the proposal to identify healthful dietary patterns on the basis that many women will not change their eating habits, and that it is therefore important to point out the importance of use of dietary supplements. Other comments noted that the statements regarding beneficial diets were overly focused on food and should be made optional, that adding dietary information to the health claim reduces its educational effectiveness, and that inclusion of such information was neither required by law nor consistent with other authorized health claims such as that for calcium and osteoporosis. Several comments recommended that statements regarding diets adequate in folate be made optional because such information is better presented in educational materials.

The agency disagrees with the comments that stated that the proposed statements regarding sources of folate were overly focused on food. Such comments imply that FDA was biasing the statements against dietary supplements. In fact, each example included dietary supplements in the list of sources of folate (e.g., fruits, vegetables, enriched grain products, fortified cereals, and dietary supplements). The agency also disagrees that the educational effectiveness of the claim is reduced by inclusion of the proposed statement because statements of this type provide, in an abbreviated form, information on sources of folate about which a consumer may be unaware.

In the context of a total diet, the consumer needs flexibility in deciding how to increase folate intake. Provision of this information is consistent with section 403(r)(3)(B)(iii) of the act, which states that the claim shall be stated in a way that enables the public to understand the relative significance of the claim in the context of the total daily diet. Awareness of the food sources of folate, including dietary supplements, will assist women in recognizing the significance of the claim in the context of the total diet. Provision of information on sources of folate in the health claim will assist consumers by making them aware that specific foods and dietary supplements contain folate.

However, FDA recognizes that while there has been a noticeable increase in the use of health claims over the last 2 years, the number of products that bear health claims is not as great as the agency had anticipated. The agency is therefore interested in simplifying claims to facilitate their increased use. The agency is particularly interested in removing so-called "required" elements that are not necessary to ensure that the claims are truthful, not misleading, and scientifically valid. While the agency agrees with the comments that supported inclusion of information on the dietary sources of folate, and while it supports health claim statements that include examples of dietary sources of this nutrient, the agency is concerned that requiring such specific information will increase the length of the claim and may dissuade manufacturers from including it in their labeling.

In comment 14 of this document, the agency concluded that information regarding overall improvement in a woman's diet and nutrition throughout her childbearing years is of considerable importance because pregnancy outcome depends upon adequate intake of a wide range of nutrients. The agency is adopting § 101.79(c)(2)(i)(H), which requires that the health claim state that there is a need for a healthful diet as well as adequate folate intake. FDA has concluded that this information is necessary to ensure that the claims have proper balance.

The agency is persuaded that shorter claims that state the need for a healthful diet, without reference to specific foods, will meet the objective of encouraging broader use of the claim while alerting women to the importance of overall diet during the childbearing years. Therefore, FDA is requiring that claims state that adequate folate needs to be consumed as part of a healthful diet (see section II.C.5. of this document, and new § 101.79(c)(2)(i)(H)) without identifying specific sources. The appearance of the claim on a wide range of qualifying foods will itself convey information about the variety of sources of folate available to women as part of a healthful total diet.

Therefore, the agency is removing proposed § 101.79(c)(2)(ii)(B) in its entirety and is adding in the codified language a provision (§ 101.79(c)(3)(vii)) for optionally including in the claim information that identifies sources of folate. Because of these changes, FDA has adopted proposed § 101.79(c)(2)(ii)(C) as § 101.79(c)(2)(ii)(B).

4. Identifying the Health-Related Condition

In developing proposed § 101.79(c)(2)(i)(C), FDA considered whether women might be confused or not understand the term "neural tube defect" and provided for some qualification of this term through use of alternate phrases such as "the birth defect spina bifida," "the birth defects spina bifida and anencephaly," "spina bifida and anencephaly, birth defects of the brain or spinal cord," and "birth defects of the brain or spinal cord, spina bifida and anencephaly."

22. The agency received several comments regarding these proposed synonyms. A comment agreed with the agency that the health-related condition must be specified and stated that the agency's proposed synonyms were appropriate. Another comment noted that "anencephaly" is not a familiar term, and that a phrase such as "certain serious birth defects, neural tube defects" is preferable. Another comment recommended that only the statement "neural tube defect" be allowed because it is the more appropriate and accurate term, and because consumers will benefit from seeing the same identifying statements in health claims on many products. Several comments, however, asserted that consumers will not understand "neural tube defects" and stated that a more understandable term might be "birth defects of the brain and/or spinal cord."

The agency has considered these comments and concludes that the term and qualifiers provided in its proposed rule, i.e., "neural tube defects," "the birth defect spina bifida," "birth defects spina bifida and anencephaly," "spina bifida and anencephaly, birth defects of the brain or spinal cord," and "birth defects of the brain or spinal cord anencephaly or spina bifida," will allow manufacturers considerable flexibility in crafting claims and in educating consumers. The agency is also persuaded to include the option of using the simpler terms "birth defects of the brain or spinal cord" or "brain or spinal cord birth defects" and has modified § 101.79(c)(2)(i)(C) accordingly. The agency accepts the suggestion that use of the latter terms will make the claims simpler and more useful to consumers because the phrase may be more understandable than phrases that include medical terms such as "neural tube defects" or "anencephaly".

The agency also considered whether use of the very general terms "some birth defects" or "some serious birth defects" would be appropriate. As discussed in its January 1993 final rule on folate and neural tube defects (58 FR 2606 at 2610), the act requires that claims on foods be truthful and not misleading. The agency recognizes that, based on the results of the Medical Research Council trial, the association between folate intake and birth defects is limited to neural tube defects. The Medical Research Council trial found that folic acid, while significantly reducing the risk of neural tube defects in women at high risk of recurrence of this complication, did not significantly alter the incidences of a wide variety of other birth defects in the population studied (Ref. 14). Similarly, Czeizel et al. (Ref. 15) reported that the results of the Hungarian trial that studied use of a multivitamin/multimineral supplement containing 0.8 mg of folic acid showed no reduction in incidences of birth defects other than neural tube defects.

FDA also points out that the prevalence of neural tube defects in the United States has been steadily declining in recent decades, and that the estimated incidence is presently about 1 in 1,600 births (Ref. 25). Currently, estimated incidences of other serious birth defects are considerably higher than that for neural tube defects. For

instance, estimated incidences are 1 in 115 for birth defects involving the heart and circulation, 1 in 130 for those involving the muscles and skeleton, 1 in 135 for those involving the genital and urinary tract, 1 in 235 for those involving the nervous system and eye, 1 in 735 for club foot, and 1 in 635 for chromosomal syndromes (Ref. 25).

Because neural tube defects constitute a relatively small fraction of all birth defects, women should not be misled into a false sense of security that they can affect their risk of all birth defects through diets adequate in folate. The agency has therefore decided not to include use of the more general terms "some birth defects" or "some serious birth defects" because use of such terms would fail to disclose the material fact that the food substance/disease relationship is specifically between folate and neural tube defects. Use of such general terms can create the impression that adequate folate intake will reduce a woman's risk of other serious birth defects, and women might, as a result, discount risk factors for other birth defects (e.g., alcohol use, drug abuse).

5. Safe Upper Limit of Daily Intake

Sections 403(r)(3)(A)(ii), 402(a), and 409 of the act establish that the use of a substance in a food must be safe. Based on concerns discussed in the **Federal Register** of January 6, 1993 (58 FR 2606), the agency concluded that it could not authorize a health claim on folate and neural tube defects at that time. The agency was concerned that the possibility exists that folic acid itself could be a substance that increases the risk of a disease or a health-related condition in persons in the general population (see section 403(r)(3)(A)(ii) of the act).

Recognizing the potential for adverse effects from high intakes of folate, PHS included a caution statement in its recommendation that "because the effects of higher intakes are not well known but include complicating the diagnosis of vitamin B_{12} deficiency, care should be taken to keep total folate consumption at <1 mg per day, except under the supervision of a physician" (Ref. 5).

In § 101.79(c)(2)(i)(G), FDA proposed to require a statement as part of the health claim on fortified foods in conventional food form and on dietary supplements containing more than 25 percent of the RDI for folate per unit or per serving that 1 mg of folate per day is the safe upper limit of intake. The agency noted that the availability of the health claim would likely encourage increased intakes of health-claim labeled foods, and that, if intakes of highly fortified foods and dietary supplements were increased, it could result in folate intakes above the level known to be safe.

The agency received comments addressing two issues related to safe use of foods bearing health claims: (1) Is there a need for concern about a safe upper limit of daily intake? (2) If so, should a statement identifying a safe upper limit of intake be included in a health claim, and how should such a statement be worded?

a. *Need for concern about a safe upper limit of daily intake.* FDA tentatively concluded that, under certain circumstances, there was a need to disclose the safe upper limit of intake in the health claim and tentatively decided to use 1 mg per day (1,000 mcg; 250 percent of the DV) of total folate as the upper limit for such intake (58 FR 53254 at 53273).

The agency noted in the final rule of January 6, 1993 (58 FR 2606 at 2612), and the proposed rule of October 14, 1993 (58 FR 53254 at 53266), that there is a general paucity of evidence on the safety of daily folate intakes above 1,000 mcg (1 mg). The agency noted that there may be risks attendant upon increased consumption of folate for some groups in the population. The agency stated that, at the present time, the potential adverse effect that has been most extensively documented is a masking of anemia in persons with vitamin B_{12} deficiency, while irreversible neurologic damage progresses. Other groups at risk from excessive intakes of folate include pregnant women, persons on antiseizure (i.e., antiepileptic) medications, and those on antifolate medications. There were no data to identify the magnitude of other possible risks of increased folate intake or to establish safe use at daily intakes above 1,000 mcg.

In its proposal of October 14, 1993 (58 FR 53254 at 53266), the agency described how it had reached its tentative decision that 1 mg of total folate per day was the safe upper limit of intake. Based on its review of the scientific literature and its discussions with the Folic Acid Subcommittee, the agency tentatively concluded that: (1) For those with vitamin B_{12} deficiency, there was little likelihood of problems at daily intakes lower than 1 mg (58 FR 53254 at 53268 to 53270); (2) an upper limit of intake of 1 mg of folate per day was safe for pregnant women and for persons with epilepsy; (3) doses of folic acid of up to 1 mg per day have not been reported to reduce the effectiveness of medications that interfere with folate metabolism; (4) effects of long-term continuous exposures of body tissues to elevated blood levels of folic acid, which occur when the body's capacity to metabolize folic acid is exceeded, have not been evaluated; and (5) there have been no long-term studies to quantitate the effects, if any, of increased folate intake on the metabolism of other nutrients.

The agency stated (58 FR 53254 at 53268) that it knew of no data that would support the long-term safety of continuous daily folate intakes of more than 1 mg. The agency, noting that the value of 1 mg for a safe upper limit of daily folate intake could be modified if data were available to support such a decision, solicited comments and data on this point.

In addition, the agency described how it had reached its tentative decision that a statement that 1 mg of total folate per day was the safe upper limit of daily intake should be required on products bearing the health claim and fortified above 25 percent of the RDI for folate. The agency's tentative conclusion was based on, among other considerations: (1) The scientific evidence, and the view expressed by experts, that there are no data to ensure that adverse effects are not likely to occur at daily intakes above 1 mg (Refs. 6, 7, 8, and 26); (2) the PHS recommendation that folate intake of women of childbearing age should not exceed 1 mg per day (Ref. 5); and (3) the support by the Folic Acid Subcommittee of FDA's use of 1 mg of total folate per day as a safe upper limit guide when considering fortification strategies. The upper safe limit of intake that FDA proposed was based on its best scientific judgment at the time. The agency solicited comments and data on its tentative judgment.

Some comments expressed uncertainty regarding an amount that would represent a safe upper limit of daily intake of folate, while other comments strongly agreed or strongly disagreed with FDA's proposal that 1,000 mcg of total folate per day is the safe upper limit of intake.

The agency did not receive any data relating to safety of long-term intakes of folate at levels above 1 mg per day for any of the groups considered at potential risk from increased intakes.

23. Several comments noted that the agency should not misconstrue the absence of safety data on folate intakes of 1 to 4 mg (1,000 to 4,000 mcg) per day as evidence of the absence of harm; that because daily intakes for the general population are well below 1 mg, it has never been established that 1 mg per day of folate from all sources is a safe daily upper limit; and that the upper safe limit of intake for African-Americans, and perhaps Hispanic Americans, is not known. Several comments noted that pernicious anemia has an earlier age-at-onset among African-Americans than among Caucasians, and that vitamin B_{12} deficiency is not rare in persons with sickle cell anemia. Another comment noted that the level of folate that will accelerate the neurologic disorders of vitamin B_{12} deficiency is unknown, and that physicians see patients who have been taking folic acid supplements who present with neuropsychiatric disturbances. Another comment noted that there were uncertainties regarding effects of chronic exposures of children, whose requirements for folate are lower than those of adults, to increased intakes of folic acid. Uncertainties regarding safety of increased intakes of this nutrient were the major factor in the opposition in the Folic Acid Subcommittee/Food Advisory Committee to FDA's proposed rules (Ref. 8).

Many comments agreed with FDA's estimate of 1 mg of folate as an upper safe limit of intake given the paucity of information concerning the possible risks of excess folate intakes. Other comments noted that the masking of pernicious anemia is real, but that there is no evidence for folate toxicity at daily intakes of 1 mg/day or less. The comments said that the value of 1 mg/day has, therefore, emerged as being safe. Other comments recognized that overconsumption of folate may complicate the diagnosis of vitamin B_{12} deficiency, but that there is limited evidence regarding effects of intakes of folic acid between 400 mcg and 5,000 mcg per day.

FDA notes that a major factor in both the Folic Acid Subcommittee's and the Food Advisory Committee's concern about FDA's proposals was the fundamental issue of lack of documentation of safety of long-term daily intakes at levels above 1,000 mcg (Ref. 8). The agency is also aware that the Committee members expressed considerable concern about the lack of information on the size of the population potentially at risk from increased intakes of folate. Specifically, the agency did not receive data regarding potential adverse effects of increased folate intakes in African-American women or in children. The agency notes that the absence of data on long-term effects of increased folate intakes does not allow the agency to adequately identify those potentially at risk.

As stated above, the agency is not aware of any data that establish the safety of long-term intakes of folate above 1,000 mcg per day. The absence of any data that allow systematic evaluation of intakes above this level means that potential risks and at-risk groups cannot be adequately defined or described. FDA notes that some members of the Folic Acid Subcommittee and most folate and vitamin B_{12} experts submitting comments (Ref. 8) were concerned about the lack of documentation of safety of daily long-term intakes of folate above the level of 1 mg/day. In addition to concerns regarding those with low vitamin B_{12} status, other safety concerns included uncertainties of effects of increased folate intakes by young children and the unknown physiological significance of circulating free folic acid in the blood, particularly in pregnant women. In its proposed rule (58 FR 53254 at 53269), the agency summarized evidence from the scientific literature that high levels of free folic acid are not normally found in the circulation, and that folic acid is concentrated in crossing the placenta and accumulates in fetal tissues. The agency also noted that no information is available to ascertain whether developing neural tissue is protected from the neurotoxic effects of very high circulating levels of free folic acid. None of these issues were addressed in comments that the agency received.

Comments that disagreed with FDA's proposal to consider 1,000 mcg folate/day as the safe upper limit of intake raised several issues which are considered below:

i. *Basis for a safe upper limit: Synthetic folic acid versus total folate.*

24. A comment stated that the limit should be based on supplemental synthetic folic acid only because only this form has been associated with masking of the anemia of pernicious anemia. This issue of whether the upper limit should be based on total folate or on synthetic crystalline folic acid was raised in several comments, with some comments of the opinion that it was appropriate to use estimated consumption of folate from all sources in defining the safe upper limit of intake and others recommending use of "crystalline folic acid" only.

The agency disagrees that the safe upper limit of daily intake should be based on "crystalline folic acid" rather than total folate from all sources. FDA notes that the distinction between "synthetic folic acid," referring only to crystalline folic acid, and "folate," referring only to naturally occurring food folates, with respect to the 1,000 mg/day estimate of safe daily intake, is an artificial one and is not consistent with what is known about the nutritional interrelatedness of a variety of folate vitamin forms in providing coenzyme forms of the vitamin for meeting the body's needs for this essential nutrient. Issues relating to "folic acid" versus "folate" are discussed in response to comment 6 of this document.

Metabolic needs for folate are met from body pools of reduced coenzymes, regardless of whether these coenzymes are derived from synthetic folic acid or from naturally occurring food folates. While it is true that evidence relative to the masking of the anemia of vitamin B12 deficiency has been obtained from persons who consumed or were treated with synthetic folic acid, such individuals were also consuming unknown quantities of folate from foods. Thus, total daily folate exposures associated with the masking have not been quantified, and the effect of food folates on adverse effects is not known. It is also not known whether the variable responses, in terms of masking effects, to low levels of folic acid in supplements are the result of differences in folate intakes from background diets or of other factors that are currently not understood. For these reasons, it is not possible to attribute all adverse effects solely to crystalline folic acid.

In addition, high intakes of food folates can have adverse effects in persons with poor vitamin B_{12} status. With respect to nonpernicious anemia-related vitamin B_{12} deficiency, Sanders and Reddy (Ref. 27) noted that megaloblastic anemia is rarely encountered in Caucasian vegetarians and vegans because of their high intakes of folate. These authors reported that, for example, the folate content of diets of vegan children aged 6 to 13 years was twice as high as that of omnivorous children aged 7 to 12 years (Ref. 27). Because the high folate intakes would at least temporarily improve the associated anemia, vitamin B_{12} deficiency usually presents with neurological signs and symptoms in infants (Ref. 27). Herbert reported that studies over several decades have all indicated that major myelin synthesis damage from vitamin B_{12} deficiency with only minor hematopoietic (i.e., hematologic) damage reflects better folate status because folate improves hematologic, but not neurologic, manifestations of the deficiency (Ref. 28). He also found generally higher red cell folate in persons with greater myelin damage (that only vitamin B_{12} deficiency produces) than in persons with greater hematologic damage (which deficiency of either folate or vitamin B_{12} produces) (Ref. 28).

The observations above suggest that a safe upper limit of daily intake is more

accurately based on total folate intake than on just intake of crystalline folic acid because under conditions in which vitamin B_{12} utilization or intake is limited (i.e., in pernicious anemia or in nonpernicious anemia-related vitamin B_{12} deficiency), either crystalline folic acid or food folate may cause adverse effects when consumed in excess.

The agency noted in response to comment 6 of this document, that use of a distinction between "folic acid" and "folate" is inconsistent with the PHS recommendation, which uses these terms interchangeably (Ref. 5), and with advice provided by FDA's and CDC's advisory panels. Moreover, use of such a distinction is not supported by recent statements from experts on folate and vitamin B_{12} (Refs. 7, 8, and 26). Therefore, the agency concludes that the safe upper limit of daily intake should be based on total folate intake (i.e., on consumption of folate from all sources).

ii. *Lack of evidence of untoward effects of increased intakes.*

25. Several comments that disagreed with the agency's tentative conclusion that 1 mg folate per day from all sources is the safe upper limit of intake stated that there is no evidence that maximum intakes of 1,500 mcg to 2,000 mcg will result in any untoward effects. Another comment reviewed the literature describing the effects of intakes of 1,000 to 5,000 mcg folic acid per day in persons with vitamin B_{12} deficiency and concluded that the literature did not reveal any substantial safety concerns. Another comment stated that 5,000 mcg/day should replace 1,000 mcg/day as the upper limit of safe intake.

The agency is aware that the literature describing the effects of intakes of folic acid between 1,000 and 5,000 mcg per day is very limited but disagrees that there is no evidence of untoward effects of daily folate intakes of 1,500 to 2,000 mcg per day, and that 5,000 mcg per day should be identified as the safe upper limit of intake.

The literature describing the effects of daily intakes of 1,000 to 5,000 mcg folic acid includes three uncontrolled intervention trials involving 15 persons (Refs. 29, 30, and 31) and 16 case reports (Refs. 32, 33, 34, 35, 36, and 37). These reports represent a very small data base, with information from a total of only 31 individuals. Moreover, the agency notes that, among these data, exposures of 9 individuals to daily intakes of 1,000 to 5,000 mcg folic acid lasted for less than 30 days (e.g., Refs. 30, 31, 32, and 33). Therefore, these reports are not useful in assessing the safety of life-long exposures. However, hematological responses that could lead to a delay in the diagnosis of vitamin B_{12} deficiency were observed in 9 of the 16 patients (i.e., in more than 50 percent) whose daily oral intakes of folic acid were in the range of 1,000 to 5,000 mcg and continued for 1 month or more (Refs. 29, 32, 33, 35, and 37). Thus, the limited scientific literature shows that approximately half of the patients with pernicious anemia associated with vitamin B_{12} deficiency will respond to folate at doses between 1,000 and 5,000 mcg per day when they are given the vitamin for relatively short periods of time (e.g., several months).

In addition, in discussing safety issues in its proposed rule (58 FR 53254 at 53267), the agency noted that, although there was a lack of systematic evaluation of the effect of folic acid on the anemia of vitamin B_{12} deficiency at intakes of less than 5,000 mcg per day, several case reports have described hematologic improvement in pernicious anemia patients with doses of folic acid lower than 1,000 mcg/day (e.g., at 200 to 500 mcg/day; Refs. 38, 39, 40, 41, 42, 64 through 65, and 72 through 74). Thus, adverse effects have been reported at daily doses of less than 1,000 mcg, at doses of 1,000 to 5,000 mcg, and at doses greater than 5,000 mcg.

iii. *Lack of evidence of toxic effects of increased folate intakes in pregnant women.*

26. Another comment that disagreed with the agency's tentative conclusion noted that millions of pregnant women have taken prenatal vitamins containing 1,000 mcg folic acid, that folic acid at dosages of 4,000 mcg per day has been extensively studied in pregnant women, and that no toxic effects have been shown in healthy individuals.

The agency disagrees with the comment that folic acid at doses of 4,000 mcg per day have been extensively studied in pregnant women and are without toxic effects. The agency recognizes that pregnant women take prenatal supplements which usually contain 800 mcg of folic acid, and that such supplements have been in use for many years. FDA notes that, while there is no evidence that 800 mcg of folic acid per day (i.e., the RDA level for pregnant or lactating women) is unsafe for this group, such dosages are usually taken only during the second and third trimesters of pregnancy or during lactation to meet specific nutritional needs for limited periods of time and are usually taken under physician supervision. The Institute of Medicine in *Nutrition During Pregnancy* stated that the safety of large doses of folic acid in pregnant women has not been systematically determined (Ref. 43).

The agency notes also that the comment that folic acid at doses of 4,000 mcg per day has been extensively studied in pregnant women, and that such doses are without toxic effects, is not substantiated by the scientific data. In the only study utilizing 4,000 mcg folic acid/day, the Medical Research Council (MRC) trial, about 910 women took supplements containing 4,000 mcg of folic acid from the time of randomization into the trial until the 12th week of pregnancy (Ref. 14). At the conclusion of the study, the author stated that, although the MRC trial had sufficient statistical power to demonstrate the efficacy of the intervention, it did not have sufficient power to answer the question of safety for public health purposes. Consequently, this study does not provide a basis on which to determine whether the use of 4,000 mcg/day of folic acid by pregnant women is safe.

Thus, the agency has not received any data or information that would persuade it that any level other than 1 mg (1,000 mcg) folate per day is the appropriate safe upper limit of intake for pregnant women.

iv. *Adverse effects in those with vitamin B_{12} deficiency can be detected with clinical care.*

27. Another comment disagreed with the proposed 1,000 mcg safe intake limit and noted that adverse effects of high intakes of folate with respect to vitamin B_{12} deficiency can be detected with clinical care. Other comments stated that the issue of masking of vitamin B_{12} deficiency was overstated and predated modern clinical nutrition.

FDA is aware that, in many instances, the adverse effects of increased folate intake associated with the masking of the anemia of vitamin B_{12} deficiency can be detected with clinical care but disagrees that this fact provides adequate justification for increasing the safe limit of daily intake. The agency notes that measurements of vitamin B_{12} status are not performed on a routine basis by physicians. Currently, there are no population-based data on how many people in the United States have undiagnosed vitamin B_{12} deficiency and thus might be at risk from increased intakes of folate. The agency noted in the January 6, 1993 final rule (58 FR 2606 at 2615), that significant percentages of the elderly, demented patients, acquired immune deficiency syndrome (AIDS) patients, and patients with malignant diseases have subnormal vitamin B_{12} levels without having any of the classical manifestations of vitamin B_{12} deficiency. Lindenbaum et al. recently reported that the prevalence of vitamin B_{12} deficiency was greater than

12 percent in a large study (n=548) of free-living elderly Americans (Ref. 44). In addition, 5 to 10 percent of all patients, regardless of age or clinical status, are found to have low serum vitamin B_{12} levels (58 FR 2606 at 2615). Little is known about whether folate supplementation would have any adverse effect on such persons, who are far more numerous in the U.S. population than are persons with pernicious anemia.

The argument that adverse effects in persons with vitamin B_{12}-related problems can be identified with clinical care fails to consider whether such persons, who may be unaware of their vitamin B_{12} status, would recognize an adverse effect as being the result of increased folate intake, and whether they would seek medical attention if subtle adverse effects were experienced. Thus, the agency concludes that the argument that adverse effects in persons with vitamin B_{12}-related problems can be identified with clinical care does not provide a sufficient basis for increasing the safe upper limit of intake for such persons or for other persons in the general population for whom there are currently no data to establish the effects, if any, of high intakes of folate. In developing its proposed rule,

FDA was aware of the contentious nature of a proposed upper limit and specifically asked for data on this issue. This topic was also extensively discussed by FDA's Folic Acid Advisory Committee and Food Advisory Committee (Refs. 7 and 8). No data were submitted in any of the comments that addressed the issue of the safety of intakes above 1,000 mcg per day either for persons in the general population or for any of the groups identified as potentially at risk from increased folate intakes. The agency also notes that its position regarding use of 1,000 mcg folate per day as the safe upper limit of daily intake was supported by all comments from individuals with known expertise in folate and vitamin B_{12} metabolism and related diseases.

Because there are inadequate data and information on the safety of consuming more than 1,000 mcg folate per day, the agency is unable to conclude that there is a reasonable certainty of no harm to persons consuming more than 1,000 mcg folate per day. In the absence of data on high intakes of folate, the agency is unable to adequately define the nature or magnitude of potential risk from increased folate intakes. At this time, the agency has no data to support a conclusion of safe use of folate above 1,000 mcg per day or data that would provide a basis for a change from the proposed upper limit of 1,000 mcg per day to an upper limit of 5,000 mcg per day. In addition, for the reasons explained above, the agency has not been persuaded by the comments that it should consider synthetic folic acid as the only active form of the vitamin and thus base its estimate of a safe upper limit of intake on this form of the vitamin only.

The agency therefore concludes that, because of the lack of evidence of safe use at intakes greater than 1,000 mcg folate daily, and the potential for serious harm to some persons from such intakes, daily intakes above 1,000 mcg by the general population should not be encouraged.

b. *Including a safe upper limit of daily intake in the claim.* In recognition of comments and safety concerns discussed in its proposal, FDA, in § 101.79(c)(2)(i)(G), proposed to require a statement on fortified foods in conventional food form and on dietary supplements that contain more than 25 percent of the RDI (i.e., more than 100 mcg per reference amount customarily consumed or, for supplements, per unit) about the maximum safe daily limit for folate consumption. The agency proposed that such a statement (e.g., "Folate consumption should be limited to 1,000 mcg per day from all sources.") was necessary to prevent the health claim from being misleading regarding potential risks from excessive intakes.

In the October 14, 1993 proposal (58 FR 53254 at 53282), the agency, noting that the safe upper limit of intake was 1 mg (1,000 mcg), stated that a fortified food that contains more than 100 mcg folate per serving contributes more than 25 percent of the RDI and more than 10 percent of the daily limit. Therefore, it continued, consumption of such foods should be monitored by the consumer, so that he or she will not consistently or significantly exceed the upper limit.

In its proposed rule (58 FR 53254 at 53282), the agency also noted that it was not proposing to require that this statement be included in claims on the relatively small number of conventional foods that contain more than 100 mcg of folate without fortification (e.g., dark green leafy vegetables, certain legumes). The agency stated that it believed that there is no need for the consumer to monitor intakes of these foods because their folate content consists of reduced pteroylpolyglutamates whose bioavailability is generally considered lower than that of the folic acid (i.e., pteroylmonoglutamate) added as a fortificant to foods. The agency received many comments on this aspect of the proposal.

c. *General comments.*

28. Comments supporting inclusion of a caution statement in health claims stated that an admonition regarding excessively high intakes is absolutely essential in the health claim, and that the agency must require a meaningful and useful disclosure regarding the risks of excess intake. One comment stated more specifically that health claims related to folate and neural tube defects should be balanced by a warning statement that increased intakes of folate may increase the frequency of irreversible neurologic damage from vitamin B_{12} deficiency. A related comment stated that, among Black and Hispanic females, folic acid fortification or supplementation is likely to do more harm than good, and that a caution statement was important for such groups. One comment recognized the need to set upper limits of safe intake but noted that, in the absence of strong evidence, it is inappropriate to warn consumers about potential adverse effects and detract from the benefits of the health claim.

Other comments supported the use of a statement of a safe upper limit of intake but found FDA's proposed language in § 101.79(c)(2)(i)(G) and in the model health claims (§ 101.79(d)) unsatisfactory because the agency failed to provide specific information on the potential adverse effects of overconsumption and failed to identify the subpopulations at risk from high intakes (e.g., the elderly).

The agency does not agree that it is inappropriate to warn consumers about the potential adverse effects of increased folate intake because adverse effects have been documented in the scientific literature. The agency's responses to comments 23, 25, and 27 of this document make clear that, for some population groups, there are risks attendant upon increased folate intake. Such groups include those with vitamin B_{12} deficiency and African-American women. As noted above, the agency did not receive data providing evidence rebutting the risks of folate intakes above 1 mg per day (1,000 mcg/day) for these and other at-risk groups, such as pregnant women, children, persons on antiseizure medications, or persons on antifolate medications.

Therefore, the agency agrees with the comments that stated that it should require that a useful statement regarding risks of excessive intakes be included in the health claim. In response to the comment that the model health claims were unsatisfactory because they failed to identify specific subpopulations at risk from increased intakes (e.g., the elderly), the agency is advising that it will not require identification of specific

at-risk groups in the caution statement because the limited data available from populations consuming folate at the level of 1 mg per day (1,000 mcg per day) and above do not allow an adequate identification of all such groups to be made. Identification in the claim of only some of the groups at risk (e.g., the elderly) would be misleading because persons in other at-risk groups that were not identified in the claim could conclude that because they were not mentioned, they were not at risk from high intakes.

d. *Inappropriate to include caution statement only on fortified foods and supplements.*

29. Other comments stated that it was inappropriate to single out only fortified foods or supplements that contain folate above 25 percent of the DV for carrying a warning statement.

The agency proposed not to require the caution statement in health claims on the relatively small number of conventional foods that contain more than 100 mcg of folate without fortification (e.g., dark green leafy vegetables, certain legumes) because many of these foods are not consumed on a daily basis, and even when consumed regularly, the bulk and energy value of such foods tends to limit their consumption.

The agency has reevaluated whether foods that are naturally high in folate (e.g., those containing more than 25 percent of the DV) should carry the caution statement proposed for fortified foods or supplements containing more than 25 percent of the DV. The agency agrees with the comment that it is inappropriate to single out fortified foods and supplements for a caution statement because there is no justification for distinguishing between added and naturally-occurring nutrients. This decision is consistent with the agency's conclusion (see comment 23 of this document) that total folate intake from all sources needs to be considered in arriving at a safe upper limit of daily intake. For this reason, FDA has decided to require that the modified caution statement described in comment 31 of this document appear on any conventional food or dietary supplement that meets the criteria set out in § 101.79(c)(2)(i)(F).

e. *Optional caution statement.*

30. Another comment advised the agency to permit the identification of the 1,000 mcg per day limit as optional information.

The agency rejects this comment. Given the point of the health claim message, it is unlikely that an optional caution statement would be included in most health claims. Therefore, most consumers would not be alerted to the potential adverse effects of high levels of folate or might assume that claim-bearing products without the caution statement were safer than products that bore a claim that included the caution statement. Consumption of products bearing the caution statement might come to be associated with potential adverse effects, while consumption of other products with an identical folate content that did not bear the caution statement would not be associated with such potential adverse effects. Because potential adverse effects are related to increased intakes of folate from any source, it would be illogical for the agency not to require the caution statement on all products that carry the health claim and that meet the criteria for the caution statement. Claims on products that meet the criteria and that fail to carry the caution statement would be misleading because they would fail to alert consumers to the material fact that there may be risks attendant upon excessive folate intakes.

f. *Upper limit of safe intake expressed as percent DV.*

31. Another comment agreed with the use of a caution statement but felt that the safe upper limit of intake should be expressed as percent of the DV.

The agency agrees with this comment because this method of communicating the safe upper limit of intake will provide consistency with the nutrition label, thereby enhancing the comprehensibility of the information. The agency notes that, as stated in response to comment 19 of this document and in the codified language in § 101.79(c)(2)(i)(F), the upper limit of daily intake is to be expressed in the claim as percent of the DV, with manufacturers having the option of including the microgram equivalent in parentheses (e.g., 250 percent DV (1,000 mcg)).

g. *Limit caution statement to products with 100 percent DV.*

32. Several comments said that a warning statement should be limited to higher-dose foods or dietary supplements (those containing 100 percent or more of the DV) unless further research and monitoring demonstrate that the risks of increased folate intakes from lower-dose foods or supplements are also significant. Other comments argued that there is no need to include a warning statement and noted that supplements and cereals with 100 percent of the DV have never carried such awarning statement. Other comments expressed the opinion that the warning statement would discourage increased consumption of folic acid supplements.

The agency has considered whether requiring that the caution statement appear in claims on foods or dietary supplements that contain more than 25 percent of the DV is too restrictive. The agency recognizes that such a requirement would require that caution statements appear as part of health claims on a wide range of products that contain more than 100 mcg folate per serving (e.g., dietary supplements, breakfast cereals) that have not previously carried such a statement. The agency agrees with the comment that the result of such caution statements could well be to discourage consumption of such products. It was not the agency's intent to cause such a result because breakfast cereals and dietary supplements have traditionally been important sources of folate for consumers who use them. Additionally, in the case of many dietary supplements, a statement regarding daily consumption (e.g., "consume one per day") is already included in the labeling and serves to inform consumers as to the appropriate daily intake.

The agency notes, however, that the health claim is intended to encourage women to increase their intakes of folate, and that the claim is likely to encourage some women to consume more of particular products, particularly those bearing the claim that are very high in folate, than they might otherwise consume. Thus, a caution statement regarding excessive intakes is appropriate on foods that contain very high levels of folate because the possibility is created by the claim itself that some women will achieve high folate intakes.

The agency has concluded that a statement about high consumption of folate is necessary if a product contains more than 100 percent of the DV (i.e., 400 mcg when labeled for use by adults and children 4 or more years of age; 800 mcg when labeled for use by pregnant or lactating women; 58 FR 2206 at 2213, January 6, 1993; Food Labeling; Reference Daily Intakes and Daily Reference Values). Such an amount of folate would exceed not only the DV's but the PHS recommended folate intake for women of childbearing age. Thus, the caution statement is required only on products that contain more than current recommended daily intakes of folate per serving.

The agency has redesignated proposed § 101.79(c)(2)(i)(G) as § 101.79(c)(2)(i)(F) and has modified this provision to read that:

> Claims on foods that contain more than 100 percent of the Daily Value (DV) (400 mcg) when labeled for use by adults and children 4 or more years of age, or 800 mcg when labeled for use by pregnant or lactating women) shall identify the safe upper limit of daily intake with respect to the DV. The safe upper limit of daily intake value of 1,000 mcg (1 mg) may be included in parentheses.

h. *Upper limit useless without reference to intake goal.*

33. Other comments opposed including a reference to the upper limit of 1,000 mcg per day in any health claim because, they argued, consumers cannot determine their total daily intakes from all sources. These comments noted that stating an upper limit was useless unless all food types were labeled with their folate content. Another comment opposing the inclusion of a warning statement on foods or supplements containing more than 25 percent of the DV stated that inclusion of an upper limit was problematic if reference was not made to the 400 mcg/day intake goal.

The agency recognizes that there was an inconsistency in the way that proposed § 101.79(c)(2)(i)(G) was worded in that the safe upper limit of daily intake was expressed as 1,000 mcg rather than as a percent of the DV. The agency has corrected this inconsistency, as noted above in response to comment 32 of this document.

The agency disagrees that inclusion of the 400 mcg intake goal is necessary to make a caution statement understandable, and that a caution statement is useless unless all foods are labeled with their folate contents. The agency notes that diets that do not contain highly fortified foods and dietary supplements rarely provide daily folate intakes of more than 1,000 mcg. The likelihood of achieving daily intakes exceeding 1,000 mcg arises from consumption of highly fortified foods and dietary supplements, particularly those that contain more than the DV per unit or per serving. Under current labeling requirements, such foods and supplements must, or soon will have to, carry nutrition labeling. The safe upper limit of daily intake will thus appear on those products whose use provides the greatest potential for contributing to overconsumption (e.g., highly fortified foods and supplements whose label bears a health claim that explains a potential benefit of increased consumption). The agency concludes that it is necessary to require inclusion of the caution statement, with the safe upper limit of daily intake expressed as percent of the DV (percent DV), as part of the health claim on such products.

The agency also notes that the availability of the health claim may result in increased consumption of foods with high folate content that carry the claim. The expression of the folate content as a percent of the DV will help consumers who select a health claim-labeled food that contains more than 100 percent of the DV and that is labeled with a statement that folate intakes should be limited to 250 percent of the DV, to recognize that the product provides more than the full amount of the DV while still leaving a considerable allowance for consumption of other foods of lower folate content. The percent DV labeling will also allow a consumer who selects four health claim-labeled foods that each contain more than 100 percent of the DV to quickly compute that these four products alone will provide more than 400 percent of the DV, an amount in excess of the safe upper limit of daily intake of 250 percent of the DV. Thus, the agency does not believe that explicit reference to the 400 mcg target intake goal is necessary to make the caution statement understandable. The agency advises, however, that manufacturers wishing to include reference to the 400 mcg intake goal may do so (§ 101.79(c)(3)(iv)).

i. *Caution statement on all products with >25 percent DV.*

34. One comment interpreted the proposed regulation to mean that the agency was proposing to require use of a caution statement on all products with more than 100 mcg folate/serving, whether or not they bore the health claim.

This comment misunderstood the proposal. The agency advises that it is requiring that the caution statement be used only on conventional foods or dietary supplements that bear the folate/neural tube defects health claim and that contain more than 100 percent of the DV (400 mcg when labeled for use by the general population or 800 mcg when labeled for use by pregnant or lactating women).

j. *Warnings on supplements without adequate vitamin B_{12}.*

35. One comment suggested that the agency should require warnings on supplements that do not provide amounts of vitamin B12 adequate to provide protection from the potential problem in nearly all cases.

This comment was based on the assumption that the greatest potential for adverse effects of high folate intake is the masking of the anemia of vitamin B_{12} deficiency, with continued progression of neurologic damage, and that provision of oral vitamin B_{12} will negate this concern. The comment did not provide data or information identifying the amount of oral vitamin B_{12} that would protect nearly all persons from masking of a vitamin B_{12} deficiency and, thus, the level below which a warning statement would be required.

The agency disagrees with this suggestion. The agency is aware that very high doses of vitamin B_{12} (e.g., about 1 mg; 500 times the RDI for this vitamin) without intrinsic factor (i.e., without the protein factor necessary for the absorption of vitamin B_{12} and the factor whose lack causes pernicious anemia) have provided adequate treatment for some persons with pernicious anemia (Ref. 45). It has been suggested, based in part on observations that some patients with pernicious anemia can be maintained on oral vitamin B_{12}, that high doses of vitamin B_{12} be added to foods and dietary supplements fortified with folic acid to reduce the potential for adverse effects in persons with vitamin B_{12} deficiency.

Several experts at a CDC meeting on surveillance for adverse effects of increased intakes of folate (Ref. 26) commented on this suggestion. One expert noted that in the presence of other nutrients (e.g., vitamin C, thiamin, iron), vitamin B_{12} may be converted into analogs, some of which may have antivitamin B_{12} activity.

In the proposal of October 14, 1993 (58 FR 53254 at 53280), the agency discussed the issue of whether high doses of vitamin B_{12} should be added to foods or supplements fortified with folic acid to reduce the potential for adverse effects in persons with vitamin B_{12} deficiency. The agency requested comments, specifically data, on the appropriateness, potential effectiveness, and safety of such fortification. The agency did not receive data or other information on this issue.

Given this lack of information, FDA finds no basis to require a warning statement on supplements based on their content of vitamin B_{12} because there are no data on the effects of various folate/vitamin B_{12} combinations on which to base a warning. In addition, relating a caution statement only to the vitamin B_{12} content of a product would fail to recognize the potential adverse effects of increased folate intakes on other population groups, including, as discussed above, pregnant women, children, those on antiepileptic medications, and those on antifolate medications, because it would fail to recognize that potential adverse effects of increased intakes are not limited only to those with vitamin B_{12}-related problems.

Because data are not available that address for the general population on the issue of simultaneous fortification of foods or dietary supplements with both folate and vitamin B_{12}, the agency cannot establish a level of oral vitamin

B_{12} that is sufficient to protect most persons with vitamin B_{12}-related problems from the adverse effects of increased intakes of folate. In addition, questions regarding the appropriateness, potential effectiveness, and safety of such an approach remain unanswered. Vitamin B_{12} deficiency, including pernicious anemia, is a serious condition, which, if untreated, can lead to irreversible neurological damage. Regardless of the widespread availability of oral vitamin B_{12} preparations, patients with pernicious anemia, and others at risk of vitamin B_{12} deficiency, should be diagnosed, treated, and monitored by a physician (Ref. 45).

6. Multifactorial Nature of Neural Tube Defects

The general requirements for health claims for conventional foods (§ 101.14(d)(2)(iii)) provide that, where factors other than dietary intake of the substance affect the relationship between the substance and the disease or health-related condition, FDA may require that such factors be addressed in the health claim. FDA has decided that health claims on dietary supplements should be subject to the same requirement (see 59 FR 395 at 425).

It is well-recognized that neural tube defects have many causes, some of which are not related to folate status. Genetic and environmental factors contribute to the multifactorial nature of neural tube defects. Environmental factors associated with neural tube defects include, for example, maternal health, maternal family history of neural tube defects, and maternal use of certain antiseizure medications (see 58 FR 53254 at 53258 for references).

FDA discussed the multifactorial nature of neural tube defects in several sections of its proposed rule. In proposed § 101.79(b)(1), FDA discussed the fact that neural tube defects are caused by many factors and also noted that a significant risk factor is a personal or family history of a pregnancy affected by a neural tube defect. In § 101.79(c)(2)(i)(D), FDA proposed to require that claims state that neural tube defects have many causes, and that claims not imply that folate intake is the only recognized risk factor for neural tube defects. The agency included language to this effect in the agency's proposed model claims (§ 101.79(d)).

The agency received several general comments and new data in response to the sections of the proposed codified language addressing the multifactorial nature of neural tube defects.

a. *General comments.*

36. Several comments agreed that the claim should include information on the multifactorial nature of neural tube defects to be consistent with claims for other diet-disease relationships. These comments asserted that the claims would be misleading if such information were not included. Other comments disagreed that the multifactorial nature of neural tube defects should be recognized in the claim because, for example: (1) Folate is the most important risk factor, or (2) there is no educational value in identifying the multifactorial nature of the condition. Another comment stated that only factors that can be controlled, or those on which women could take action, should be included in the claim.

FDA is in the process of reconsidering the need to include in health claims the fact that the disease that is the subject of the claim has many causes. In the January 1993 final rules on health claims, FDA included this fact as a required element of the claim. However, as discussed below, FDA has come to tentatively conclude, at least in part in response to a petition from the National Food Processors Association (Docket No. 94P–0390), that, at least for most claims, a statement about their multifactorial etiology adds length to the claim without conveying information that would directly affect the dietary choices of the consumers.

The agency is particularly concerned that manufacturers will be disinclined to use unnecessarily lengthy health claims on food labels, that additional verbiage may detract from the central consumer message of the claim, and that, as a result, health claims will be infrequently used, and the benefits of communicating information on diet-disease relationships to consumers through such claims will not be realized.

The issue of manufacturers' reluctance to use lengthy health claims is particularly significant in the case of the folate/neural tube defects health claim because this topic has received much less attention than has been given to chronic illnesses such as osteoporosis, heart disease, and cancer. The lower level of public familiarity with this topic was confirmed in a recent survey conducted for the March of Dimes Birth Defects Foundation regarding knowledge and practices of women of childbearing age in the United States with respect to consumption of folic acid from supplements and breakfast cereals (Ref. 53).

During January and February 1995, the Gallup Organization conducted for the March of Dimes a proportionate, stratified random-digit-dialed telephone survey of a national sample of 2,010 women aged 18 to 45 years. The response rate was 50 percent. Estimates were statistically weighted to reflect the total population of women aged 18 to 45 years in the continental United States. In response to the question "Have you ever heard or read anything about folic acid?", 52 percent of women reported ever hearing of or reading about this nutrient. Of these, 9 percent answered that folic acid helps to prevent birth defects and 6 percent that folic acid helps to reduce the risk for spina bifida; 45 percent were unable to recall what they had heard or read. Fifteen percent of respondents reported having knowledge of the PHS recommendation regarding the use of folic acid; 4 percent reported that the recommendation was for prevention of birth defects and 1 percent, for the prevention of spina bifida (Ref. 52).

Respondents were also asked "From what you know, is there anything a woman can do to reduce her risk of having a baby with birth defects?" A total of 88 percent of respondents reported that a woman can help reduce the risk for having an infant with birth defects. The most common responses about how to reduce risk were avoiding alcohol and drugs (73 percent), and not smoking (63 percent); 1 percent of women reported that folic acid could reduce risk.

This study found that while most women interviewed recognized that there were a number of factors that might affect their risk of having a baby with a birth defect, there was a low level of awareness that consumption of folate from supplements, breakfast cereals, and other foods may specifically help to reduce their risk of a neural tube defect-affected pregnancy.

The results of the March of Dimes survey are consistent with recent findings by FDA. As part of FDA's ongoing review of its regulations governing health claims, the agency conducted six focus groups in May and June 1995 to evaluate consumer understanding of health claim messages. In a report on these focus groups, Levy (Ref. 54) noted that while almost all participants were aware of health effects of fat, calcium, and fruits and vegetables, very few had heard much about folic acid. Participants appreciated information provided in the folate/neural tube defects model claims but considered it insufficient to inform them as adequately as they wished to be informed.

Thus, recently available information suggests that there is a low level of awareness of the potential impact that

increased folate intake may have on the risk of a serious type of birth defect.

The agency has concluded, based in part on the studies mentioned above, that the need to provide a succinct health claim in this topic area is very important. Succinctness in the claim will increase the likelihood that firms will use it and thus will increase its educational value. To facilitate the use of such a claim by manufacturers, it needs to be no longer than necessary to convey the central consumer message.

With respect to the issue of whether explicit identification of the multifactorial nature of neural tube defects is necessary to prevent the folate/neural tube defects health claim from being misleading, the agency notes that use of the term "may reduce" in the claim describes the potential of folate to affect the risk of neural tube defects and serves to reflect the multifactorial nature of this birth defect. In addition, data obtained in the March of Dimes survey described above indicate that many women already recognize that birth defects in general may have many causes. The agency has therefore concluded that explicit reference to "may have many causes" is redundant when included with the phrase "may reduce."

The agency has concluded that it is not necessary to include explicit reference to the multifactorial nature of neural tube defects in the claim.

The agency notes, however, that the fact remains that neural tube defects are multifactorial in nature. This fact is confirmed by new data of which FDA has become aware and that are discussed in the following section. Because of this fact, the claim must not imply that folate intake is the only risk factor for these birth defects.

Therefore, the agency is modifying § 101.79(c)(2)(i)(D) by deleting the requirement that the claim state that neural tube defects have many causes but is retaining the requirement that claims shall not imply that folate intake is the only recognized risk factor for neural tube defects.

The agency is also advising that manufacturers who wish to do so may include, on an optional basis, information in the claim on additional risk factors for neural tube defects. Information that may be included is described in § 101.79(c)(3)(i).

b. *Data received in comments.* 1. The agency received new data from an Irish study that found that plasma levels of vitamin B_{12}, as well as folate, were independent risk factors for neural tube defects (Ref. 51). These data were reviewed at the October 14 and 15, 1993, meeting of the Folic Acid Subcommittee and are summarized here because the agency did not have the data in sufficient time to include them in its October 14, 1993, proposed rule. Kirke et al. (1993) (Ref. 51) compared values for plasma folate, plasma vitamin B_{12}, and red blood cell folate in 81 women who had a neural tube defect-affected pregnancy and 247 control women. Values for all three parameters were significantly lower in case mothers than in control mothers. Plasma vitamin B_{12} and red cell folate were both significantly positively correlated in case mothers but not in control mothers. Multiple regression analysis showed that plasma vitamin B_{12} and plasma folate were independent predictors of red cell folate in case mothers but not in control mothers.

The authors concluded that plasma vitamin B_{12} and plasma folate were independent risk factors for neural tube defects and suggested that the enzyme methionine synthetase was involved directly or indirectly in the etiology of neural tube defects. They noted that the correlation between plasma vitamin B_{12} and red cell folate, observed in case mothers only, was difficult to explain on a purely nutritional basis and favored the etiology of neural tube defects as being the result of some metabolic abnormality in the mother, and possibly in the embryo, interacting with maternal plasma levels of folate and vitamin B_{12} (Ref. 50).

Mooij et al. (Ref. 46) measured levels of seven vitamins in blood of women who had a neural tube defect-affected pregnancy and reported that such measurements were not suitable for identifying women at high risk of another affected pregnancy. The authors hypothesized that the effect of folic acid was attributable, at least in part, to its overriding a metabolic disorder.

2. The agency received additional new data in a comment relating to a possible role of a deficiency of one or more antioxidant enzymes in the development of neural tube defects. The comment discussed the hypothesis that a genetic defect in antioxidant enzyme systems that protect neuronal membranes from excessive lipid peroxidation may play a role in the etiology of neural tube defects. The comment noted that abnormalities of the neural tube have been documented in cultured rat embryos exposed to oxygen radicals generated in vitro by xanthine plus xanthine oxidase. The severity of these abnormalities, which increases in a dose-responsive manner with exposure to xanthine oxidase, can be moderated by substances with known antioxidant activity such as glutathione, catalase, L-ascorbic acid (vitamin C), or DL-alpha tocopherol (vitamin E).

This comment provided the results of a pilot study that tested the hypotheses in children with neural tube defects and their immediate families. In testing the hypothesis, the investigators assessed a number of red blood cell free radical-scavenging enzymes in eight families with one or more children with the neural tube defect meningomyelocele. Seventeen healthy adults without a history of neural tube defects served as controls. All meningomyelocele-affected children were found to be deficient in red blood cell glutathione peroxidase, with 5 in the range of moderately to severely deficient. At least one parent of seven of the eight affected children was deficient in red blood cell glutathione peroxidase activity, with four of seven in the moderately to severely deficient range. Nine additional children with meningomyelocele or other neural tube defects (specifically, encephalocele and iniencephaly) were also studied. Red blood cell glutathione peroxidase activities were low in all of the nine additional affected children, with values in six of the nine in the moderately to severely deficient range.

The comment also noted that pterin aldehyde, a contaminant that may be present at a level of about 4 percent in commercially available folic acid preparations, may reduce exposure of the developing neural tube to toxic oxygen free radicals through its activity in inhibiting xanthine oxidase. The comment suggested (Comment 68H to docket 93N-100H) that a combination of genetic factors, deficient antioxidant enzyme capacities, exogenous or endogenous teratogens, periconceptional diets with inadequate amounts of free radical scavenging substances, or suboptimal concentrations of pterin aldehyde-like agents may provide further explanations for tissue-specific injury in some pregnancies.

The comment concluded that, while the mechanisms of neural tube defect formation likely fit into a complex ecogenetic model, a deficiency of one or more antioxidant enzymes may increase the risk for the development of neural tube defects. The comment recommended further study to determine whether reduced antioxidant activity predisposes the embryo to the development of neural tube defects.

c. *Data that were published after the close of the comment period.* 1. Mills et al. (1995) (Ref. 47) reported that women with neural tube defect-affected pregnancies had significantly higher levels of homocysteine than did vitamin B_{12}-matched controls. Mills et al. (1995)

(Ref. 47) noted that their study showed that an abnormality of homocysteine metabolism, apparently related to methionine synthase, is present in many pregnancies that resulted in neural tube defects.

2. Mechanistic studies in cultured rat embryos have also provided insights into roles for nutrients in addition to folate in the etiology of neural tube defects. Chambers and coworkers identified autoantibodies (i.e., antibodies directed against tissue components of the same organism) to the extracellular basement membrane (i.e., the noncellular layer underlying the epithelium) protein laminin as an agent that caused neural tube defects in whole embryo cultures (see Ref. 48 for additional references). Such antibodies were found initially in the embryotoxic sera of monkeys with poor reproductive histories. Chambers et al. (1995) (Ref. 48) recently reported that methionine overcomes neural tube defects in rat embryos cultured on sera from monkeys immunized against laminin. The authors noted that the association of autoimmune diseases and fetal loss has received closer attention in recent years, but that neither the mechanisms of fetal loss nor treatments have been well defined (Ref. 48). The authors suggested that epidemiologic studies are needed to establish a possible role for autoantibodies in the etiology of neural tube defects and to determine the efficacy of methionine supplementation in overcoming such defects.

3. Data addressing the etiologic heterogeneity of neural tube defects were also derived from observations that infants and fetuses with isolated neural tube defects have different risk factors than those with neural tube defects occurring with other birth defects and from reported differences in recurrence risks for neural tube defects based on the level of the affected infant's defect (Ref. 49; Shaw et al., 1994, for references). Shaw et al. (1994) (Ref. 49), used population-based case ascertainment by the California Birth Defects Monitoring Program in an ethnically diverse population of more than 700,000 live births and fetal deaths to investigate whether heterogeneity existed among various anatomic and pathogenetic subclasses of neural tube defects for a variety of commonly collected child and parental characteristics. Among cases of anencephaly, increased risks were found for Hispanic white women with risk estimates highest for nonisolated cases. This population-based study showed increased risk for Hispanic women specifically among subclassifications of neural tube defects, and provides some evidence that further classification of neural tube defects may reveal subgroupings of cases with different etiologies.

Shaw et al. (1995) (Ref. 50) used a case-control study design (549 cases and 540 controls) to investigate whether intake of supplemental folic acid or dietary folate reduced the risk of a neural tube defect-affected pregnancy (Ref. 50). The authors found that women with any use of a folic acid-containing vitamin in the 3 months prior to conception had a lower risk of having an NTD-affected pregnancy. Odds ratios were similar for average daily folic acid intakes of <400 mcg, 400 to 900 mcg, and >900 mcg/day, and thus, no dose-response pattern was apparent. Use of 400 to 900 mcg folic acid/day in the 3 months after conception was also associated with reduced risk of a neural tube defect-affected pregnancy. The authors also observed that women who did not begin using a folic acid-containing vitamin until the second trimester of pregnancy also had a reduced risk of neural tube defects and suggested that although the finding may be indicative of errors in reporting vitamin use in general, it also weakens the attribution of a direct preventive effect of folate on neural tube defects in the study population (Ref. 50).

When race/ethnicity were considered, nonHispanic white women who used a folic acid-containing vitamin in the 3 months before conception had a reduced risk of a neural tube defect-affected pregnancy. However, risk of a neural tube defect-affected pregnancy was not reduced in Hispanic women who consumed a folic acid-containing vitamin in the 3 months before conception. The overall results of this study are consistent with other studies showing associations between folate intake and reduced risk of neural tube defects. However, the data also suggest that the folate-associated reduction in risk may be specific to subsets of the population, primarily nonHispanic women (Ref. 50).

These recent studies are of significance for the insights that they provide into understanding the multifactorial etiology of neural tube defects. They support the hypothesis that neural tube defects are not the result of a wide-spread nutritional deficiency of folate in the U.S. population but may result from metabolic defects or other physiologic conditions affecting a small part of the population. These new data support FDA's decision to require that claims not imply that folate intake is the only recognized risk factor for neural tube defects.

7. Prevalence Statements

In § 101.79(c)(2)(i)(E), the agency proposed to require that the claim provide information that neural tube defects "while not widespread, are extremely significant." Because the affected population is few in number and not readily identifiable, FDA proposed to require that this information be disclosed to prevent women from being misled into believing that neural tube defects are very common birth defects, or that, lacking a personal or family history of such defects or other recognized risk factors, their risk of having a pregnancy affected with such a birth defect is very high.

37. The agency received a number of comments on the proposed prevalence statement. Some comments stated that the wording "while not widespread" was not clear, and one comment suggested use of "uncommon" rather than "while not widespread" in describing the prevalence of neural tube defects. One comment noted that statements indicating that neural tube defects had a low prevalence in the United States would discourage women from taking folic acid supplements because women would believe that the health claim is not applicable to them, and they would be misled into not taking the health claim seriously. One comment noted that there is no standard for the proposed term "not widespread." One comment noted that because the behavior intended to result from authorization of the health claim was to have women consume more folic acid, qualifiers regarding prevalence of the condition had no educational benefit. One comment, noting that statements regarding the extent of the disease-related conditions were optional in other approved health claims, and that the rarity of spina bifida and related birth defects is obvious to virtually all consumers, urged the agency to make prevalence statements optional in the folate/neural tube defect claim.

The Folic Acid Subcommittee also commented on issues of prevalence and demographics of neural tube defects at all of its meetings (e.g., Ref. 8). The Folic Acid Subcommittee discussed the decline in the rate of neural tube defects from a high in Boston in the 1930's of 5 per 1,000 births to the current overall U.S. rate of about 0.6 per 1,000 births (i.e., about 2,500 cases/year in the United States). In addressing the prevalence of neural tube defects among different ethnic groups, one Folic Acid Subcommittee member noted that African-American women have a rate lower than the overall U.S. rate, while Mexican-American women have a rate about two and one-half times the national average. The participant also noted that there is about a two- fold higher rate among women in lower socio-economic groups than among those in higher socio-economic groups (Ref. 8).

The agency has reviewed the comments that it received and agrees that use of the proposed wording "while not widespread" is not clear because it is not quantitative. The agency notes that even though the occurrence of neural tube defect-affected pregnancies is low, the population at risk may be quite large because about half of pregnancies are unplanned. Therefore, the agency concludes that a statement of prevalence is not a material fact in light of the other statements made in the claim. For this reason, the agency concludes that it is not necessary to require that the claim state that the prevalence of neural tube defects is low to ensure that the claim is not misleading. Therefore, the agency is deleting the requirement proposed in § 101.79(c)(2)(i)(E) and redesignating subsequent sections as discussed below and as shown in the codified language.

However, given the other comments cited above and its discussions with the Folic Acid Subcommittee, the agency does not agree that there would be no educational benefit from providing prevalence information in the health claim. The agency concludes, based on the comments above, that prevalence information can be useful to consumers because it can provide a context that increases understanding of how frequently neural tube defects actually occur among pregnancies in the U.S. population.

The agency recognizes that it has provided for inclusion, on an optional rather than required basis, in other authorized health claims of information on the number of people in the United States who have the health-related condition (e.g., see saturated fat and cardiovascular disease claim and dietary fiber and cancer claims). Thus, in response to the comments above, and consistent with other authorized health claims, FDA, in § 101.79(c)(3)(v), is authorizing the use of optional statements to provide the estimated numbers on an annual basis of neural tube defect births among live births to women in the general U.S. population. Currently, this estimate is 0.6 cases per 1,000 live births, or 6 cases per 10,000 live births, or about 2,500 cases among 4 million live births, or about 1 case per 1,600 live births. These estimates are based on information for the U.S. population from PHS. FDA finds, based on a review of how such statistics are generally presented, that expressing this information as the estimated annual number of neural tube defects per a specified number of births (e.g., per 1,000 live births or per 10,000 live births) will help to make this information as useful as possible. Section 101.79(c)(3)(v) provides for use of these estimates unless more current estimates from PHS become available, in which case, the newer estimates may be used.

8. Quantifying Risk Reduction

In § 101.79(c)(2)(i)(F), the agency proposed that the claim contain a statement that some women may reduce their risk of a neural tube defect-affected pregnancy by maintaining adequate folate intake during their childbearing years. Such a statement is consistent with the estimate provided in the PHS recommendation that about half of neural tube defects (i.e., about 1,250 annually) might be averted if all women of childbearing age in the United States who are capable of becoming pregnant consumed 0.4 mg of folate daily throughout their childbearing years. FDA tentatively concluded that such a statement is necessary to ensure that women do not conclude on the basis of the claim that adequate intake of folate will prevent all occurrences of neural tube defects. The agency also proposed in § 101.79(c)(2)(i)(F) that the claim not attribute any specific degree of reduction in risk of neural tube defects to maintaining an adequate folate intake throughout the childbearing years.

38. Several comments agreed with the agency that a specific degree of reduction in risk should not be stated in the health claim. Other comments noted that while occurrence of neural tube defects will be averted by only some women, the risk of occurrence will be reduced for the population. Other comments objected to the proposal to prohibit use of the PHS estimated percent risk reduction of 50 percent. Some comments argued that the 50 percent estimate should be stated because it was a scientific finding, and that failure to include this estimate could have a negative effect on how much effort women make to ensure that they have adequate folate intake. Another comment stated that the estimate of 50 percent reduction should be included because it is preferable for women to know the exact benefit of folic acid rather than to be informed that "some but not all women may benefit."

The agency disagrees with comments that the PHS estimate of 50 percent is a scientific finding and represents an exact benefit achievable by all women who consume adequate folate daily throughout their childbearing years. The PHS recommendation states that the 50 percent estimate was derived from studies that associated recalled use of folic acid-containing multivitamins with reduced risk of neural tube defect-affected pregnancies and states that "the protective effect found in the studies of lower-dose folic acid, measured by the reduction in neural tube defect incidence, ranged from *none* to *substantial*" (Ref. 5) (emphasis added). The PHS recommendation also noted that:

> It is expected that consumption of adequate folic acid will avert some, but not all, neural tube defects. The underlying causes of neural tube defects are not known. Thus, it is not known what proportion of neural tube defects will be averted by adequate folic acid consumption. From the available evidence, CDC estimates that there is the potential for averting 50 percent of cases that now occur. However, until further research is done, no firm estimate of this proportion will be available (Ref. 5).

The agency also notes that there may be minimal or no effect of periconceptional use of folate in areas of low prevalence or in areas where other factors are contributing to an increased prevalence. This observation is consistent with scientific evidence that shows that, in an area of low prevalence in the United States, women who consumed folate from multivitamins or fortified breakfast cereals did not have a lower risk of having a neural tube defect-affected pregnancy than did women who did not consume multivitamins or fortified breakfast cereals (Ref. 12; Mills et al.).

Thus, the estimate of a potential for a 50 percent reduction in neural tube defect-affected pregnancies, if all women consumed adequate folate throughout their childbearing years, is not a scientific finding and may not be applicable to estimating potential risk reduction in areas of low prevalence. The agency notes further that the estimate of 50 percent is not applicable to risk reduction that might be experienced by individual women, whose personal risk factors are not fully understood. In addition, the estimated proportion may change with the availability of new scientific data and information. The agency recognizes, however, that manufacturers may wish to use the PHS recommendation, including the estimate of the potential for a 50 percent reduction in the incidence of neural tube defects, as labeling for folate-containing products. The agency also notes that there is considerable potential for making a misleading claim if such information is not presented in an accurate context.

The agency has concluded that an estimate of potential risk reduction can be included in the health claim because it may help some consumers better understand the potential population-based impact on neural tube defect-affected pregnancies if all women consumed adequate folate throughout their childbearing years. Therefore, FDA is providing in § 101.79(c)(2)(i)(E) that population-based estimates of risk reduction may be included in the claim so long as the claim makes clear that the estimate does not reflect risk reduction that may be experienced by individual women. Provision of such information will reduce the likelihood of women being misled that adequate folate intake will prevent an occurrence of a neural tube defect-affected pregnancy.

The agency has revised § 101.79(b)(3) to provide information from the PHS recommendation that explains how the estimate of a potential for reduction in incidence of neural tube defects of 50 percent was derived and provides the context in which the estimate can be understood by individual women.

FDA has also redesignated proposed § 101.79(c)(2)(i)(F) as § 101.79(c)(2)(i)(E) and revised this section to remove the prohibition against use of the PHS estimate. Section 101.79(c)(2)(i)(E) includes reference to new § 101.79(c)(3)(vi) which provides for optional inclusion of statements about population-based estimates of risk reduction. The requirement that claims state that some women may reduce their risk of a neural tube defect-affected pregnancy through adequate intake of folate throughout their childbearing years is retained in § 101.79(c)(2)(i)(E).

New § 101.79(c)(3)(vi) states that an estimate of the reduction in the number of neural tube defect-affected births that might occur in the United States if all women consumed adequate folate throughout the childbearing years (i.e., 50 percent) may be included in the claim if such an estimate is accompanied by information that states that it is a population-based estimate and does not reflect reduction in risk that may be experienced by individual women. New § 101.79(c)(3)(vi) also provides for use in the claim of information in revised § 101.79(b)(3).

9. Optional Health Claim Information

In § 101.79(c)(3)(i), the agency proposed to permit manufacturers, in addition to including the fact that neural tube defects have many causes, to specifically identify risk factors for neural tube defects. The agency stated that specific examples of other risk factors include a personal history of such a defect, maternal diabetes mellitus, use of the antiepileptic drug valproic acid, maternal febrile illness, or a close relative with a neural tube defect (§ 101.79(b)(1) and (b)(2)). The agency requested comments on whether such additional information would be useful to consumers.

a. *Identifying other risk factors.*

39. Some comments expressed the opinion that most of the optional information was helpful, while others stated that there was no educational value in identifying the multifactorial nature of neural tube defects, and that women cannot control other risk factors.

The agency disagrees with the comments that stated that identification of other risk factors would not be helpful to women. Certain conditions, such as diabetes mellitus, are known to increase a woman's risk of a neural tube defect-affected pregnancy. Identification of these risks in the claim may serve to alert some women to their higher risk and encourage them to seek advice from their health care providers before becoming pregnant.

The agency is providing in § 101.79(c)(3)(i) for the inclusion of optional information in the claim. Information in § 101.79(b)(1) or (b)(2) or drawn from other parts of § 101.79(c)(3) may be included in the claim. Use by manufacturers of factors listed in the regulation will ensure that claims will only include scientifically-based information and will not include information that has not been well-documented (e.g., "Birth defects of the brain or spinal cord may have many causes, such as exposure to pesticides * * *").

b. *Consult a physician.* In § 101.79(c)(3)(iii), the agency proposed that a claim could include a statement that women with a history of a neural tube defect pregnancy should consult their physicians or health care providers before becoming pregnant. The agency tentatively concluded that such a statement would encourage such women to obtain medical guidance and thereby decrease their risk of a recurrence of a neural tube defect-affected pregnancy. The available data show that women with a history of a neural tube defect-affected pregnancy are at very high risk of another affected pregnancy (e.g., risk of a recurrence of a neural tube defect pregnancy is significantly greater than risk of an occurrence of this birth defect). The agency requested comments on whether provision of such information would be helpful to consumers.

40. The agency received several comments on this proposed optional information. All comments that addressed this issue recommended that it be broadened to include all women rather than only those with a personal history of a neural tube defect- affected pregnancy. Comments stated that prenatal care was critical for all women and suggested that health claims should include a statement that all women planning a pregnancy should consult a physician or health care provider for information about adequate diets for their and their babies' health. Several comments suggested that such a statement be mandatory rather than optional.

FDA does not believe that it is appropriate, in general, for health claims to bear statements concerning the need to seek medical advice for treating the disease or health-related condition mentioned in the claim. The agency is concerned that the appearance of a statement concerning the treatment of a disease on the label of a food could mislead some consumers to believe that the food possesses therapeutic value for an existing disease or health-related condition (58 FR 2478 at 2514).

The agency originally proposed such a statement regarding women at recurrent risk of a neural tube defect-affected pregnancy because their risk of recurrence is very high, and because a specific recommendation from PHS has been made to such women when they are planning a pregnancy (i.e., they are advised to take 4 mg folic acid daily under a physician's supervision; Ref. 52).

Because all comments favored broadening the advice to include all women, and because the agency recognizes that it is important for all women to consult a health care provider before becoming pregnant, the agency is persuaded to modify § 101.79(c)(3)(iii) as suggested in the comments and to provide for claims to include, in addition to a statement regarding women at recurrent risk of a neural tube defect, a statement that all women should consult a health care provider before becoming pregnant (e.g., "Women, including those with a history of a neural tube defect pregnancy, should consult their health care provider when planning a pregnancy.").

However, because the length of claims has been consistently a concern of the comments, the agency is not persuaded that the information provided for in § 101.79(c)(3)(iii) should be required in all health claims, as suggested by one comment above. 10. Model Health Claims

FDA provided several model claims in the proposal that contained the elements described in its proposal. The agency included these model claims to assist manufacturers in formulating appropriate claims.

a. *Toll-free number, pregnancy information symbol.*

41. Several comments stated that less detailed model claims were needed and proposed that the agency establish a toll-free 800 number through which women could obtain more information or recommended that the agency devise a uniform pregnancy information symbol for food labels that would alert women to look for products that bear the symbol.

The agency agrees that educational information is of great importance in increasing awareness among women of the need for adequate nutrition, including adequate folate intake, during their childbearing years. The agency is considering how best to evaluate consumer understanding of the health claim and is working with other PHS agencies to develop strategies to implement the PHS recommendation on folate intake.

With respect to the use of a pregnancy information symbol, the agency noted above that many pregnancies are unplanned, and for this reason, women need to be informed of the need for adequate nutrition throughout their childbearing years. While a pregnancy symbol might draw the attention of women who are already pregnant or who might be planning a pregnancy, it may not be helpful to women whose pregnancies are unplanned or to women whose pregnancies are too far advanced for folate intake to alter their risk of giving birth to a neural tube defect-affected infant. Such a symbol may also discourage other women from using the product because they do not think they will become pregnant.

The agency also notes that many of the foods that will bear the health claim will be consumed by the general population, and the appearance of a pregnancy symbol on the label might be incorrectly interpreted by some consumers to mean that the product is specifically intended for use in pregnancy.

For these reasons, the agency is not persuaded to use a pregnancy symbol with the health claim.

b. *General comments.*

42. Many comments criticized the length of the model claims and their required components. Comments stated that the model messages were too lengthy and complex and unwieldy, and that therefore manufacturers would be disinclined to use them. Other comments noted that the claims included unnecessary disclosures and requested that FDA remove the requirements relating to the multifactorial nature of neural tube defects, sources of folate other than dietary supplements, and the caution statement. Several comments, stating that the model claims were overly focused on foods, urged the agency to develop a condensed claim for dietary supplements and suggested that such a claim should not need to identify other sources of folate or state a maximum daily limit on intake.

Another comment noted that in formulating the claim, the agency should be guided by the need to communicate the benefits of increased folate intake from food sources or dietary supplements, and that the message must also convey proper cautions, including the fact that increased folate intake will not prevent all birth defects or even all neural tube defects. Several comments praised portions of the model claims that required disclosure of the multifactorial nature of neural tube defects and the inclusion of information regarding sources of folate. One comment recommended that claims use the information in the PHS recommendation, including the warning statement, as closely as possible. Several comments noted that the model claims were not educationally strong enough, while others recognized the problem of providing the guidance that needs to be included in the claim without having the claim become so long as to be unusable. Some comments provided examples of shorter claims that they proposed as more appropriate than the agency's model claims.

As discussed in the proposal and elsewhere in this final rule, certain information is needed in the health claim, whether for conventional foods or for dietary supplements, for such claims to be truthful, scientifically valid, and not misleading to segments of the population that are not at high risk of having a neural tube defect-affected pregnancy or for whom no link between folate intake and risk of neural tube defect-affected pregnancies has been established.

The agency has addressed the issues of mandatory requirements relating to the multifactorial nature of neural tube defects, sources of folate other than dietary supplements, and the caution statement in response to comments 36, 21, and 32, respectively. The agency disagrees that all of these elements should be removed. Specifically, the agency has discussed in response to comment 36 why claims shall not imply that folate intake is the only risk factor for neural tube defects. In response to comments 28 through 34, the agency explained why a caution statement is necessary, as well as its reasoning in limiting the requirement for such a statement to very narrow circumstances. The agency in response to comments has dropped the requirement that sources of folate be identified in the claim and instead has provided for optional inclusion of such information.

The agency also disagrees that its proposed model claims were overly focused on foods because each of the proposed claims specifically identified sources of folate as fruits, vegetables, whole grain products, fortified cereals, and dietary supplements.

The agency rejects the comments that urged it to develop a condensed claim for dietary supplements and not identify a safe upper limit of daily intake. Throughout its responses to the comments it received, the agency has been even-handed in considering conventional foods and dietary supplements (comments 29 and 32, above). Since increased folate intake is what is of importance, and since a variety of dietary sources of folate are available, it would be inconsistent with the available evidence for the agency to set different requirements for claims on dietary supplements than for claims on conventional foods.

Thus, the agency, in developing this final rule, has been guided by the need to communicate the effects on the risk of neural tube defects of increased folate intake while providing sufficient cautions to prevent claims from being misleading and to ensure that they are scientifically valid.

FDA has modified the model claims to reflect the changes that it has made in § 101.79 in response to the comments. The agency has sought to illustrate in the model claims that it is possible to fully comply with § 101.79 and still produce a claim that uses less than 30 words (see Examples 1 and 2 in § 101.79(d)). The agency also notes that in response to the petition from the National Food Processors Association, mentioned above, it is exploring the possibility of permitting a shortened version of the claim to appear on the front panel of the food label as long as the full claim appears on the label. FDA is considering how this can be accomplished while still ensuring that there is full compliance with section 403 (a) and (r) of the act. FDA anticipates publishing a proposal on these matters in the near future.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore,

neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

FDA has examined the impacts of this final rule to authorize the use on the labels and in the labeling of conventional food and dietary supplements of health claims on the relationship between adequate folate intake and risk of neural tube birth defects as required by Executive Order 12866 and the Regulatory Flexibility Act. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts and equity). The Regulatory Flexibility Act (Pub. L. 96–654) requires analyzing options for regulatory relief for small businesses. FDA finds that this final rule is not a significant regulatory action as defined by Executive Order 12866. In compliance with the Regulatory Flexibility Act, the agency certifies that the final rule will not have a significant impact on a substantial number of small businesses.

On October 14, 1993, FDA published an analysis of the economic impact of the proposed rule under the previous Executive Order (E.O. 12291). In that analysis, the agency stated that folate health claims may result in increased demand for products containing folate, and that an increase in consumption of products containing folate is likely to result in health benefits in terms of fewer neural tube defects. The agency also stated that there would be no costs associated with folate health claims as use of these claims is voluntary.

The agency concluded that it was not able to estimate the number of products that will bear health claims, or the effect that folate health claims will have on consumer demand for products containing folate, and requested comments. As mentioned previously, the agency received nearly 100 comments in response to the proposed rule on health claims for folate and neural tube defects. None of the comments provided information that would alter the agency's economic impact conclusion.

V. Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et. seq.).

VI. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m. Monday through Friday.

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List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.9 *Nutrition labeling of food* is amended in paragraph (c)(8)(v) by revising the entry for folate to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(c) * * *

(8) * * *

(v) * * *

Folate—either Folic acid or Folacin may be used.

* * * * *

§ 101.36 [Amended]

3. Section 101.36 *Nutrition labeling of dietary supplements of vitamins and minerals* is amended in paragraph (b)(3)(v) by removing the words "folate (folacin)," and by adding in their place the words "folate—either folic acid or folacin may be used."

4. Section 101.79 is revised to read as follows:

§ 101.79 Health claims: Folate and neural tube defects.

(a) *Relationship between folate and neural tube defects—(1) Definition.* Neural tube defects are serious birth defects of the brain or spinal cord that can result in infant mortality or serious disability. The birth defects anencephaly and spina bifida are the most common forms of neural tube defects and account for about 90 percent of these defects. These defects result from failure of closure of the covering of the brain or spinal cord during early embryonic development. Because the neural tube forms and closes during early pregnancy, the defect may occur before a woman realizes that she is pregnant.

(2) *Relationship.* The available data show that diets adequate in folate may reduce the risk of neural tube defects. The strongest evidence for this relationship comes from an intervention study by the Medical Research Council of the United Kingdom that showed that women at risk of recurrence of a neural tube defect pregnancy who consumed a supplement containing 4 milligrams (mg)(4,000 micrograms (mcg)) folic acid daily before conception and continuing into early pregnancy had a reduced risk of having a child with a neural tube defect. (Products containing this level of folic acid are drugs). In addition, based on its review of a Hungarian intervention trial that reported periconceptional use of a multivitamin and multimineral preparation containing 800 mcg (0.8 mg) of folic acid, and its review of the observational studies that reported periconceptional use of multivitamins containing 0 to 1,000 mcg of folic acid, the Food and Drug Administration concluded that most of these studies had results consistent with the conclusion that folate, at levels attainable in usual diets, may reduce the risk of neural tube defects.

(b) *Significance of folate—(1) Public health concern.* Neural tube defects

occur in approximately 0.6 of 1,000 live births in the United States (i.e., approximately 6 of 10,000 live births; about 2,500 cases among 4 million live births annually). Neural tube defects are believed to be caused by many factors. The single greatest risk factor for a neural tube defect-affected pregnancy is a personal or family history of a pregnancy affected with a such a defect. However, about 90 percent of infants with a neural tube defect are born to women who do not have a family history of these defects. The available evidence shows that diets adequate in folate may reduce the risk of neural tube defects but not of other birth defects.

(2) *Populations at risk.* Prevalence rates for neural tube defects have been reported to vary with a wide range of factors including genetics, geography, socioeconomic status, maternal birth cohort, month of conception, race, nutrition, and maternal health, including maternal age and reproductive history. Women with a close relative (i.e., sibling, niece, nephew) with a neural tube defect, those with insulin-dependent diabetes mellitus, and women with seizure disorders who are being treated with valproic acid or carbamazepine are at significantly increased risk compared with women without these characteristics. Rates for neural tube defects vary within the United States, with lower rates observed on the west coast than on the east coast.

(3) *Those who may benefit.* Based on a synthesis of information from several studies, including those which used multivitamins containing folic acid at a daily dose level of ≥400 mcg (≤0.4 mg), the Public Health Service has inferred that folate alone at levels of 400 mcg (0.4 mg) per day may reduce the risk of neural tube defects. The protective effect found in studies of lower dose folate measured by the reduction in neural tube defect incidence, ranges from none to substantial; a reasonable estimate of the expected reduction in the United States is 50 percent. It is expected that consumption of adequate folate will avert some, but not all, neural tube defects. The underlying causes of neural tube defects are not known. Thus, it is not known what proportion of neural tube defects will be averted by adequate folate consumption. From the available evidence, the Public Health Service estimates that there is the potential for averting 50 percent of cases that now occur (i.e., about 1,250 cases annually). However, until further research is done, no firm estimate of this proportion will be available.

(c) *Requirements.* The label or labeling of food may contain a folate/neural tube defect health claim provided that:

(1) *General requirements.* The health claim for a food meets all of the general requirements of § 101.14 for health claims, except that a food may qualify to bear the health claim if it meets the definition of the term "good source."

(2) *Specific requirements*—(i) *Nature of the claim*—(A) *Relationship.* A health claim that women who are capable of becoming pregnant and who consume adequate amounts of folate daily during their childbearing years may reduce their risk of having a pregnancy affected by spina bifida or other neural tube defects may be made on the label or labeling of food provided that:

(B) *Specifying the nutrient.* In specifying the nutrient, the claim shall use the terms "folate," "folic acid," "folacin," "folate, a B vitamin," "folic acid, a B vitamin," or "folacin, a B vitamin."

(C) *Specifying the condition.* In specifying the health- related condition, the claim shall identify the birth defects as "neural tube defects," "birth defects spina bifida or anencephaly," "birth defects of the brain or spinal cord anencephaly or spina bifida," "spina bifida and anencephaly, birth defects of the brain or spinal cord," "birth defects of the brain or spinal cord;" or "brain or spinal cord birth defects."

(D) *Multifactorial nature.* The claim shall not imply that folate intake is the only recognized risk factor for neural tube defects.

(E) *Reduction in risk.* The claim shall not attribute any specific degree of reduction in risk of neural tube defects from maintaining an adequate folate intake throughout the childbearing years. The claim shall state that some women may reduce their risk of a neural tube defect pregnancy by maintaining adequate intakes of folate during their childbearing years. Optional statements about population-based estimates of risk reduction may be made in accordance with paragraph (c)(3)(vi) of this section.

(F) *Safe upper limit of daily intake.* Claims on foods that contain more than 100 percent of the Daily Value (DV) (400 mcg) when labeled for use by adults and children 4 or more years of age, or 800 mcg when labeled for use by pregnant or lactating women) shall identify the safe upper limit of daily intake with respect to the DV. The safe upper limit of daily intake value of 1,000 mcg (1 mg) may be included in parentheses.

(G) *The cloim.* The claim shall not state that a specified amount of folate per serving from one source is more effective in reducing the risk of neural tube defects than a lower amount per serving from another source.

(H) The claim shall state that folate needs to be consumed as part of a healthful diet.

(ii) *Nature of the food*—(A) *Requirements.* The food shall meet or exceed the requirements for a "good source" of folate as defined in § 101.54;

(B) *Dietary supplements.* Dietary supplements shall meet the United States Pharmacopeia (USP) standards for disintegration and dissolution, except that if there are no applicable USP standards, the folate in the dietary supplement shall be shown to be bioavailable under the conditions of use stated on the product label.

(iii) *Limitation.* The claim shall not be made on foods that contain more than 100 percent of the RDI for vitamin A as retinol or preformed vitamin A or vitamin D per serving or per unit.

(iv) *Nutrition labeling.* The nutrition label shall include information about the amount of folate in the food. This information shall be declared after the declaration for iron if only the levels of vitamin A, vitamin C, calcium, and iron are provided, or in accordance with § 101.9 (c)(8) and (c)(9) if other optional vitamins or minerals are declared.

(3) *Optional information*—(i) *Risk factors.* The claim may specifically identify risk factors for neural tube defects. Where such information is provided, it may consist of statements from § 101.79(b)(1) or (b)(2) (e.g., Women at increased risk include those with a personal history of a neural tube defect-affected pregnancy, those with a close relative (i.e., sibling, niece, nephew) with a neural tube defect; those with insulin-dependent diabetes mellitus; those with seizure disorders who are being treated with valproic acid or carbamazepine) or from other parts of this paragraph (c)(3)(i).

(ii) *Relationship between folate and neural tube defects.* The claim may include statements from paragraphs (a) and (b) of this section that summarize the relationship between folate and neural tube defects and the significance of the relationship except for information specifically prohibited from the claim.

(iii) *Personal history of a neural tube defect-affected pregnancy.* The claim may state that women with a history of a neural tube defect pregnancy should consult their physicians or health care providers before becoming pregnant. If such a statement is provided, the claim shall also state that all women should consult a health care provider when planning a pregnancy.

(iv) *Daily value.* The claim may identify 100 percent of the DV (100% DV; 400 mcg) for folate as the target intake goal.

(v) *Prevalence.* The claim may provide estimates, expressed on an annual basis, of the number of neural tube defect-affected births among live births in the United States. Current estimates are provided in § 101.79(b)(1), and are approximately 6 of 10,000 live births annually (i.e., about 2,500 cases among 4 million live births annually). Data provided in § 101.79(b)(1) shall be used, unless more current estimates from the U.S. Public Health Service are available, in which case the latter may be cited.

(vi) *Reduction in risk.* An estimate of the reduction in the number of neural tube defect-affected births that might occur in the United States if all women consumed adequate folate throughout their childbearing years may be included in the claim. Information contained in paragraph (b)(3) of this section may be used. If such an estimate (i.e., 50 percent) is provided, the estimate shall be accompanied by additional information that states that the estimate is population-based and that it does not reflect risk reduction that may be experienced by individual women.

(vii) *Diets adequate in folate.* The claim may identify diets adequate in folate by using phrases such as "Sources of folate include fruits, vegetables, whole grain products, fortified cereals, and dietary supplements." or "Adequate amounts of folate can be obtained from diets rich in fruits, dark green leafy vegetables, legumes, whole grain products, fortified cereals, or dietary supplements." or "Adequate amounts of folate can be obtained from diets rich in fruits, including citrus fruits and juices, vegetables, including dark green leafy vegetables, legumes, whole grain products, including breads, rice, and pasta, fortified cereals, or a dietary supplement."

(d) *Model health claims.* The following are examples of model health claims that may be used in food labeling to describe the relationship between folate and neural tube defects:

(1) *Examples 1 and 2.* Model health claims appropriate for foods containing 100 percent or less of the DV for folate per serving or per unit (general population). The examples contain only the required elements:

(i) Healthful diets with adequate folate may reduce a woman's risk of having a child with a brain or spinal cord birth defect.

(ii) Adequate folate in healthful diets may reduce a woman's risk of having a child with a brain or spinal cord birth defect.

(2) *Example 3.* Model health claim appropriate for foods containing 100 percent or less of the DV for folate per serving or per unit. The example contains all required elements plus optional information: Women who consume healthful diets with adequate folate throughout their childbearing years may reduce their risk of having a child with a birth defect of the brain or spinal cord. Sources of folate include fruits, vegetables, whole grain products, fortified cereals, and dietary supplements.

(3) *Example 4.* Model health claim appropriate for foods intended for use by the general population and containing more than 100 percent of the DV of folate per serving or per unit: Women who consume healthful diets with adequate folate may reduce their risk of having a child with birth defects of the brain or spinal cord. Folate intake should not exceed 250% of the DV (1,000 mcg).

Dated: February 26, 1996.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 96–5013 Filed 2–29–96; 1:12 pm]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 136, 137, and 139

[Docket No. 91N–100S]

RIN 0910–AA19

Food Standards: Amendment of Standards of Identity For Enriched Grain Products to Require Addition of Folic Acid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the standards of identity for several enriched grain products and, by cross-reference, the standards of identity for enriched bromated flour, enriched vegetable macaroni, and enriched vegetable noodle products, to require the addition of folic acid. The agency is requiring that these products be fortified with folic acid at levels ranging from 0.43 milligrams (mg) to 1.4 mg per pound (mg/lb) or 95 micrograms (μg) to 309 μg/100 grams (g), of product. These values are based on a fortification level of 140 μg/100 g (0.635 mg/lb) of the cereal grain product. This action is being taken to help women of childbearing age to reduce their risk of having a pregnancy affected with spina bifida or other neural tube defects (NTD's) and to comply with the recommendation of the U.S. Public Health Service (PHS) that they consume at least 0.4 mg (400 μg) of folic acid daily. This action also responds to a citizen petition submitted by Glenn Scott.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Felicia B. Satchell, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

Recent estimates state that there are approximately 4,000 pregnancies each year, including 2,500 live births, that are affected by spina bifida and other neural tube defects. In September 1992, PHS recommended that all women of childbearing age in the United States consume 0.4 mg (400 μg) of folic acid daily to reduce their risk of having a pregnancy affected with spina bifida or other NTD's (Ref. 1). Furthermore, PHS identified several possible approaches by which folate intake by the target population could be increased. These approaches included: (1) Improvement of dietary habits, (2) fortification of the U.S. food supply, and (3) daily use of folic acid supplements by women throughout their childbearing years. However, the PHS recommendation cautioned against daily intakes of folate above 1 mg. A recognized adverse effect of high intakes of folate is a masking of the anemia of vitamin B12 deficiency, allowing the neurologic damage to progress untreated. PHS noted that care should be taken to keep total folate consumption at less than 1 mg (1,000 μg)/day, except under the supervision of a physician (Ref. 1).

Following publication of the PHS recommendation, FDA convened a Folic Acid Subcommittee from its Food Advisory Committee (hereinafter referred to as the Folic Acid Subcommittee) to consider some of the issues raised by the recommendation. After consideration debate, the Folic Acid Subcommittee identified several approaches that might assist women of childbearing age to increase their daily folate intake. These approaches included: (1) Development of a fortification program such that 90 percent of women of childbearing age could receive at least 400 μg per day from all sources, while preventing

excessively high folate intakes by nontarget groups; (2) appropriate labeling of foods, including dietary supplements; and (3) implementation of an educational program directed primarily at women of childbearing age that emphasizes the importance of folate intake before pregnancy, and continuing into early pregnancy and its potential effect on reducing the incidence of NTD's. (For a detailed discussion of the issues and concerns raised by the Folic Acid Subcommittee please refer to the Health Claims proposed rule (58 FR 23254 at 23256) and the final rule authorizing a health claim about the relationship between folate and neural tube defects (hereinafter referred to as the claims final rule) published elsewhere in this issue of the **Federal Register**.)

After considering the suggestions of PHS and the Folic Acid Subcommittee, FDA tentatively concluded that development and implementation of a fortification program for the addition of folic acid to the food supply could be an effective part of an overall plan to increase the folate intake of women of childbearing age to assist them in reducing their risk of having a NTD-affected pregnancy. Food fortification, as noted by the Folic Acid Subcommittee and expert speakers who testified before the Folic Acid Subcommittee, has the advantage of reaching a great number of women in the target population before conception and during early pregnancy. It also has the advantage of providing folic acid in a continuous and passive manner and, thus, represents a potentially effective means for improving the folate nutriture of women throughout their childbearing years. However, fortification must be controlled to ensure that daily intake of folate by the target population, as well as by the general population, is no more than 1 mg.

The issues raised by a fortification program were highlighted for the agency in the **Federal Register** of October 14, 1993 (58 FR 53254), in a document entitled "Food Labeling: Health Claims and Label Statements; Folate and Neural Tube Defects," (hereinafter referred to as the folic acid health claims proposal) when it proposed to authorize a health claim about the relationship between folate and the risk of neural tube birth defects on the labels or in the labeling of foods and dietary supplements. In the folic acid health claims proposal (58 FR 53254 at 53270), FDA acknowledged that authorizing a health claim on folate and NTD's would create the likelihood that manufacturers would fortify their products with folic acid so that they could qualify to bear the claim, thereby increasing the possibility of uncontrolled fortification of the food supply. Consequently, FDA said that any fortification program that it adopted must be consistent with a safe range of intake for all population groups and yet be capable of maximizing the folate intakes of the target population within this safe range.

The options that FDA considered for providing folic acid to women of childbearing age through food fortification included the addition of folic acid to cereal-grain products, fruit juices, and dairy products. In weighing these options, FDA considered the effects of the inclusion of folic acid in breakfast cereals and in dietary supplements. The agency's decision to factor the amount of folic acid supplied by breakfast cereals and supplements in its estimates of the effects of fortification is fully discussed in the folic acid health claims proposal (58 FR 53254 at 53276).

In determining the appropriate levels of fortification with folic acid, the agency used the U.S. Department of Agriculture's (USDA's) 1987 to 1988 national food consumption data (Ref. 2) to estimate the daily intake of folate for the target population, as well as for the general population, with fortification at different levels for cereal-grain products, dairy products, and juices. The agency estimated the effects of fortification using three values: 70, 140, and 350 µg of folic acid/100 g of cereal-grain product. As discussed in the folic acid health claims proposal, the value of 70 µg/100 g (0.317 µg/lb) is the amount recommended in 1974 by the Food and Nutrition Board, National Research Council, National Academy of Sciences, and would restore the folate lost in the milling of cereal-grain products (Ref. 3). The value of 140 µg/100 g is twice that amount, and 350 µg/100 g is five times that amount.

FDA's analysis showed that when fortification included fruit juices and dairy products in addition to cereal-grain products, ready-to-eat breakfast cereals, and dietary supplements, intakes by consumers in some nontarget groups exceeded 1 mg/day even at the lowest level of fortification. However, when fortification is limited to cereal-grain products at levels of 70 µg/100 g or 140 µg/100 g, estimates of daily intakes remained below 1 mg/100 g. At fortification levels of 350 µg/100 g, FDA estimated the daily intake to reach levels of 1,220 µg/day, which exceeds the recommended safe upper limit.

The agency also estimated the daily intake of folate for consumers who follow Federal government dietary guidance, such as the U.S. Dietary Guidelines and the DHHS/USDA Food Guide Pyramid, and consume cereal-grain products fortified with folic acid, to determine whether these consumers will have daily intakes in excess of the recommended safe upper limit of 1 mg/day.

These estimates showed that consumers who followed even the low-end of recommendations from the USDA Food Guide Pyramid could, without supplement use, easily consume 420 µg or more of folate per day from cereal-grain products fortified with 70 µg/100 g. Further, such consumers' daily intake could triple if such products were fortified with 350 µg folic acid/100 g.

As a result of its analysis of fortification of several cereal-grain, dairy, and juice products, FDA tentatively determined that fortification should be limited to cereal-grain products and not extended to dairy products and fruit juices. The agency noted that intakes by very large segments of the general population could reach several milligrams per day if all of these foods were fortified with folic acid.

The agency also tentatively decided that the appropriate fortification level for cereal-grain products was 140 µg/100 g. Based on the results of its analysis, FDA determined that fortification of cereal-grain products with 140 µg/100 g, along with fortification of ready-to-eat breakfast cereals up to 100 µg/serving and dietary supplements up to 400 µg per unit or per serving, would provide increased intakes of folate for women in their childbearing years, while keeping daily intakes for the nontarget population within the recommended safe upper limit of approximately 1 mg/day. The agency noted that even with supplement use, 95th percentile intakes by adults 51+ years of age could reach 840 to 860 µg/day if these enriched cereal-grain products are fortified with 140 µg/100 g. While the agency recognized that this level approached the recommended safe upper limit and did not take into account likely underreporting biases regarding food intakes and underestimation of folate content of foods, it tentatively concluded that fortification of cereal-grain products with 140 µg/100 g folic acid was the most appropriate fortification level of the three levels analyzed.

In addition to estimating daily intakes of folate at the levels cited above, FDA reviewed the existing food additive regulation § 172.345 (21 CFR 172.345) governing the use of folic acid to determine whether the regulation was adequate to ensure that addition of folic acid to foods would be consistent with

the fortification proposals discussed above. As a result of its review, FDA recognized that the existing regulation lacked the guidance necessary for manufacturers to decide which foods are appropriate for fortification, and the levels at which folic acid can be added. More importantly, FDA realized that the regulation would not have limited the addition of folic acid to enriched cereal-grain products, breakfast cereals, and dietary supplements. In fact, the regulation as written would have permitted folic acid addition to virtually any food.

Thus, in the same issue of the **Federal Register** that the agency proposed to authorize a health claim about the relationship of folate and NTD's (58 FR 53254 at 53270), it published a proposal entitled "Food Additives Permitted for Direct Addition to Food for Human Consumption, Folic Acid (Folacin)" (58 FR 53312) (hereinafter referred to as the food additives proposal) to amend the food additive regulation to restrict the addition of folic acid to specific foods. In that document, FDA proposed, among other things, to establish a limitation on the addition of folic acid to breakfast cereals of 100 µg folic acid per serving, to retain current limitations (i.e., 400 µg/daily) on the use of folic acid in dietary supplements, and to permit the addition of folic acid to foods as authorized by the standards of identity. The agency tentatively concluded that such action was necessary to establish safe conditions of use for folic acid in the food supply and still assist the target population, women of childbearing age, to achieve the goal recommended by PHS that they consume at least 400 µg of folate per day.

Also, in the October 14, 1993, issue of the **Federal Register**, FDA published a proposal entitled "Food Standards: Amendment of the Standards of Identity for Enriched Grain Products to Require Addition of Folic Acid," (58 FR 53305) (hereinafter referred to as the standards of identity proposal) to amend the following standards of identity to require the addition of folic acid at a fortification level of 140 µg/100 g: enriched bread, rolls, and buns (§ 136.115 (21 CFR 136.115)); enriched flour (§ 137.165 (21 CFR 137.165)); enriched self-rising flour (§ 137.185 (21 CFR 137.185)); enriched corn grits (§ 137.235 (21 CFR 137.235)); enriched corn meals (§ 137.260 (21 CFR 137.260)); enriched farina (§ 137.305 (21 CFR 137.305)); enriched rice (§ 137.350 (21 CFR 137.350)); enriched macaroni products (§ 139.115 (21 CFR 139.115)); enriched nonfat milk macaroni products (§ 139.122 (21 CFR 139.122)); and enriched noodle products (§ 139.155 (21 CFR 139.155)) and, by cross-reference, the standards of identity for enriched bromated flour (§ 137.160 (21 CFR 137.160)), enriched vegetable macaroni products (§ 139.135 (21 CFR 139.135)), and enriched vegetable noodle products (§ 139.165 (21 CFR 139.165)).

FDA received approximately 170 letters in response to its proposal to amend the standards of identity for enriched cereal-grain products to require folic acid fortification at 140 µg/100 g. Each letter contained one or more comments. The letters were from a wide range of sources, including individual members of FDA's Folic Acid Subcommittee and Food Advisory Committee, Federal and State Government agencies, a foreign government, health care organizations, academia, consumer organizations, medical professionals, consumers, industry, and industry trade associations. Some comments supported various provisions of the proposal. Other comments suggested modifications, revisions, or revocations of various provisions of the proposal. Some comments raised concerns that were more germane to issues discussed in the folic acid health claims and food additive proposals. These comments were forwarded to the appropriate dockets for response. Some comments raised issues that were outside the scope of this rulemaking and will not be addressed in this final rule. A summary of the relevant comments, the agency's responses to the comments, and a complete discussion of the agency's conclusions with respect to the fortification of enriched cereal-grain products follow.

II. Comments and Agency Response

A. Fortification

1. The majority of comments recognized the need to assist women of childbearing age to increase their daily intake of folate to reduce their risk of an NTD-affected pregnancy. Many of these comments agreed with the PHS' and Folic Acid Subcommittee's recommendations that fortification of the food supply is an appropriate approach to achieve this goal. Several comments, however, opposed the use of fortification as a mechanism to address this need. Some of the comments opposed fortification because of uncertainties in the efficacy data. These comments stated that the available data do not indicate what minimum level of folate is needed to effect a significant reduction in NTD's, and they argued that, therefore, the decision to fortify is premature. These comments suggested that the agency wait until additional studies have been completed that better define the minimum level of folate needed to be effective or that identify other alternatives that would be effective in increasing the daily folate intake of the target population.

While FDA recognizes that there is some uncertainty in the literature as to the optimal intake of folate required to reduce the risk of NTD's, PHS, in examining the data from the available human studies, found the evidence sufficiently consistent to make its recommendation that all women capable of becoming pregnant should consume 400 µg folic acid daily. This target intake goal represents the best scientific judgment based on available data. It has also been supported by the Folic Acid Subcommittee.

Furthermore, PHS, the Folic Acid Subcommittee, as well as other medical experts, recommended food fortification as part of an overall program to improve the folate intake of women of childbearing age. This recommendation is based on the fact that 50 percent of pregnancies are unplanned, and that a large segment of women in the target group will not use folic acid supplements daily. Thus, a passive means of ensuring that these women have adequate folate intake is important. The comments that opposed fortification did not submit any data in support of their position. Thus, the agency has no basis to reject the recommendations of PHS and the Folic Acid Subcommittee to develop a folate fortification program to assist women of childbearing age in consuming at least 400 µg/day.

Although the agency is aware that there are several ongoing studies on the relationship between folate and NTD's, it has not been persuaded by the comments to wait until additional studies have been completed to determine what minimum level of folate intake is likely to be effective. The agency has confidence in the data that suggest that at intake levels of 400 µg/day, the incidence of NTD's can be reduced. Thus, the agency concludes that it would not be in the best interest of women in the target group to wait until these studies are completed and reviewed before implementing a program to assist them in increasing their daily intake of folate.

The evidence that is available supports the position that the consumption of folate plays an important role in reducing the risk of neural tube birth defects. Weighing this evidence and recognizing that the majority of women in the target population do not consume the levels of

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folic acid recommended to reduce the risk of neural tube birth defects (Ref. 1), the agency concludes that it is appropriate to implement a fortification program at this time.

Further, the agency is concerned that without the limitations that it is adopting in this final rule, and in the final rule entitled "Food Additives Permitted for Direct Addition to Food for Human Consumption; Folic Acid (Folacin)" (hereinafter referred to as the food additives final rule) which is published elsewhere in this issue of the **Federal Register**, to control the addition of folic acid to the food supply, the authorization of the health claim about folate and NTD's may encourage overfortification of the U.S. food supply and increase the risk of overconsumption of folate. Because the current food additive regulation does not limit or specify the types of foods that can be fortified with folic acid, approval of the claim, without any other action by the agency, could encourage manufacturers to fortify a variety of foods to qualify the food for a health claim. Consequently, without proper control over the types of foods that can be fortified with folic acid, overfortification could result.

The amendment to the standards of identity for enriched cereal-grain products to require the addition of folic acid at specific levels will help to ensure that the addition of folic acid to the food supply is done in a safe, rational, and reasonable manner because it will limit the number of foods that can be fortified and limit the level of fortification. The levels of fortification established in this final rule, coupled with the provisions governing addition of folic acid to nonstandardized foods established in the food additives final rule, will meet the goal of increasing folate intake among women of childbearing age while keeping the daily consumption of folate below the safe upper limit of 1 mg/day.

2. Comments that opposed fortification asserted that consumers believe that fortification as proposed denies freedom of choice and control over daily folate intake and is, therefore, viewed as an attempt to medicate people without obtaining informed consent. These comments further asserted that fortification, as proposed, subjects them to the risk of overconsumption. As an alternative, these comments suggested that the effort to increase dietary folate intake in the target population focus on the use of dietary supplements because the amount of intake can be better controlled. They suggested that FDA work with other public health service agencies to establish policy initiatives equivalent to those used by the food and dietary supplement industries to market their products.

The agency disagrees with these comments. The agency is providing for fortification with folic acid only in the standards of identity for enriched cereal-grain products. Unenriched cereal-grain products without folic acid will continue to be available. Consumers will be able to select foods made with the unenriched version of the product if they wish to avoid folic acid. Furthermore, the estimated daily intakes that will result from the level of fortification established in this final rule are well below the level of folic acid traditionally used to treat persons with folate deficiency. Therapeutic dosages of folic acid used for treatment of folate deficiency are generally in the range of 1 to 5 mg/day and are administered under the supervision of a physician. Therefore, the comments that suggest that fortification of enriched cereal-grain products is an attempt to medicate the U.S. population simply have no basis in fact.

Furthermore, the intakes that are likely to result from the level of fortification established in this final rule do not present a health concern to the general population, especially in conjunction with the provisions of the food additive final rule published elsewhere in this issue of the **Federal Register**. FDA has projected the total daily intake of folate that is likely to result from the levels of fortification that FDA is requiring and determined that it is well within the safe upper limit of intake. Moreover, cereal-grain products have a long history of being vehicles for improving the nutrient intake of the U.S. population. FDA requires the addition of niacin, thiamin, and riboflavin in the standards of identity for enriched cereal-grain products to improve the daily intake of these nutrients. Fortification of these products was instrumental in reducing the prevalence of diseases related to insufficient intake of these vitamins.

In response to the comments that suggested that FDA rely on the use of dietary supplements to increase daily folate intake, the agency notes that in requiring the fortification of enriched cereal-grain products, it is not discounting the use of dietary supplements to assist women in the target group to increase their daily folate intake. In fact, the agency included the use of dietary supplements in its estimates to determine the appropriate level for fortification of enriched cereal-grain products. However, the agency is not confident that the use of dietary supplements alone will be sufficient to reach the target population when folate intake is critical (i.e., before and during the first 6 weeks of pregnancy).

During the first 6 weeks of pregnancy many women are not even aware that they are pregnant and would likely not be under the care of a physician. Thus, as stated in several comments, there would be no reason to expect the many women who do not normally take supplements daily to be motivated to change this behavior. Therefore, supplement use cannot be relied on as the sole source for increasing dietary folate intake. As discussed above, the use of fortification of cereal-grain products has the advantage of providing folic acid in a continuous and passive manner and, therefore, should be an effective means for improving the folate nutriture of women in their childbearing years.

3. A few comments opposed to fortification suggested that, as an alternative, FDA encourage women in the target group to increase their daily folate intake by increasing consumption of foods that naturally contain high levels of folate such as blackeye peas.

While FDA finds merit in the comments' suggestion to encourage women in the target group to increase their daily folate intake by increasing their consumption of foods naturally high in folate, the agency is not persuaded that such action makes food fortification unnecessary. The dietary guidance suggested by the comment can be used in conjunction with food fortification, as part of a program designed to help women in the target group to increase their daily folate consumption. A health claim about the relationship between folate and NTD's on a food that qualifies to bear the claim will contribute to such a program, regardless of whether the food naturally qualifies to bear the claim or qualifies on the basis of its fortification level. In addition, foods that naturally contain folate and qualify to bear a health or nutrient content claim are likely to be highlighted as a source of this nutrient. Such claims will encourage women in the target group to select these foods as a part of their diet.

Most significantly, however, given the value of adequate folate intake by women of childbearing age and given the value of a program that allows women to obtain adequate folate by simply consuming such staples as bread and rolls, FDA sees no reason not to require fortification of such foods, even though foods exist that are naturally high in folate.

4. Some comments opposed to fortification opined that fortification would not assure physicians and health care professionals that their patients are obtaining adequate amounts of folate from the food supply because the bioavailability of folate in foods is 25 to 75 percent depending on the food.

As discussed in the folic acid health claims proposal, FDA considered several issues in developing its options for fortification. With respect to issues of bioavailability, FDA concluded that bioavailability cannot be meaningfully factored into fortification scenarios because issues of bioavailability are very complex, and no systematic data are available on many of the factors that affect bioavailability. Consequently, the estimates developed by FDA focused more on consumption patterns of various staple foods, and their availability and use in the U.S. food supply, than on the bioavailability of folic acid from a specific food.

The comment did not provide information to persuade the agency that the complexity associated with bioavailability would significantly reduce the effectiveness of food fortification as part of an overall effort to improve folate nutriture among women in the target group.

5. Two comments recommended revising the proposal to require the addition of vitamin B_{12} in a one-to-one ratio with folic acid. The comments contended that doing so will not only prevent vitamin B_{12} deficiency, but it will also prevent the masking effect that may be caused with high consumption of folate. One comment urged FDA to design research that will determine the safety and effectiveness of fortifying the food supply with vitamin B_{12} along with folic acid because such fortification could eliminate the adverse effect of folate on vitamin B_{12} deficiency.

The agency is not persuaded that the approach suggested by these comments addresses all of the safety concerns relating to persons with vitamin B_{12} deficiencies. As fully discussed in the food additives final rule, FDA rejects this recommendation because the available data do not establish that requiring the addition of vitamin B_{12} whenever folic acid is added will eliminate the safety concerns relating to persons with vitamin B_{12} deficiencies that arise because of deficiencies in intrinsic factor (pernicious anemia) or other B_{12}-related deficiencies.

6. Two comments opposed to fortification stated that FDA should take the same position with respect to folic acid fortification that it did when it decided not to fortify foods with iron in the 1970's because of the concern about iron storage diseases.

While the agency acknowledges that it considered taking a similar approach to increase the amount of iron provided by the diet when it proposed to double the amount of iron added to enriched cereal-grain products, the agency did not finalize that proposal because of significant safety concerns regarding the risk of iron storage diseases. Rather, the agency retained the existing level of iron fortification for cereal-grain products. The agency does not have similar safety concerns about the level of folic acid fortification that it is requiring in this final rule because it has concluded, based on a safety review (as fully discussed in the food additives proposal and final rule), that this required level is safe and will not result in overconsumption of folate.

B. Covered Products

7. Some comments stated that dietary consumption studies indicate that women of reproductive age are less likely than other groups to consume enriched cereal-grain products that conform to a standard of identity, and that, therefore, the use of such foods as a vehicle for folic acid fortification would not significantly affect the risk of NTD's. These comments argued that, instead, fortifying these foods will only increase the amount of daily folate intake among the nontarget groups.

In selecting cereal-grain products as vehicles for fortification, the agency started with the basic principle that fortification of staple products that are commonly consumed in significant amounts by virtually all members of the target population is most likely to result in increased intakes of a specific nutrient by the target population. Although the agency recognizes that current survey data suggest that consumption of enriched grain products may be somewhat lower in the target population than in other groups, these foods still are reported to be consumed on a daily basis by more than 90 percent of women of childbearing age (Ref. 4). In addition, data show that the difference between target and nontarget populations in consumption of other foods considered as fortification vehicles, such as dairy products and juices, is even greater (Ref. 4). Therefore, the other foods would be no more appropriate as fortification vehicles for maximizing folate intake by the target group, and yet maintaining safe consumption by nontarget groups, than cereal-grain products.

The agency notes that cereal-grain products were recommended by the Food and Nutrition Board in its 1974 report on food fortification as fortification vehicles because of the patterns of consumption of these foods. In addition, enriched cereal-grain products have a long history of being successful vehicles for improving the nutriture of the U.S. population and for reducing the risk of nutrient deficiency diseases. Thus, the agency concludes that enriched cereal-grain products are an appropriate vehicle to increase daily folate intake among women of childbearing age. In fact, the estimates that FDA developed in evaluating options for folic acid fortification demonstrate that the addition of folic acid to enriched cereal-grain products, coupled with the addition of this nutrient to breakfast cereals and dietary supplements, will help to significantly increase the daily folate intake of women in the target group (see Table 7 of 58 FR 53254 at 53295)).

Furthermore, increasing awareness of the role of folate in reducing the risk of neural tube birth defects through the use of health claims and other educational initiatives should encourage women in the target group to increase their daily folate intake by consuming folate containing foods, including enriched cereal-grain products. Consumption of cereal-grain products is also likely to be influenced by current dietary guidelines that promote increased consumption of these foods.

8. Other comments requested that FDA permit the addition of folic acid to other cereal-grain products such as whole grain flours, breads, cereals, macaroni products, rice, and grits and not just the enriched cereal-grain foods that conform to a standard of identity. The comments argued that without these products being fortified, consumers may be encouraged to eat enriched refined grains instead of their whole grain counterparts and consequently follow dietary patterns that are inconsistent with current dietary guidelines to eat whole grain products.

FDA did not propose to provide for the addition of folic acid to whole grains or products from whole grains because, traditionally, these products are not enriched. Whole grain wheat products naturally contain higher levels of the B vitamins, including folate, because the germ and bran layer are not removed when the wheat kernel is processed. FDA's standards of identity for cracked wheat, crushed wheat, and whole wheat flour, in §§ 137.190, 137.195, and 137.200, respectively, state that the proportions of the natural constituents of such wheat, other than the moisture, remain unaltered by the manufacturing process. In establishing the standards of identity for the enriched cereal-grain products, the agency's initial goal was to

restore thiamin, niacin, and riboflavin, nutrients that are removed when the bran layer and germ are removed during the processing of wheat. Subsequently, the agency required the addition of iron to the enriched grain and also provided for the optional addition of other nutrients, such as calcium and vitamin D.

The estimates that the agency has relied on in selecting a fortification level of 140 µg/100 g considered only fortification of breakfast cereals, dietary supplements, and standardized enriched cereal grain products and did not include fortification of other nonstandardized or unenriched standardized cereal-grain products. Consequently, including such foods in the fortification program could result in a daily intake of folate that is above the safe upper limit of 1 mg/day. Thus, the agency is not persuaded by the comment that other cereal-grain products should be fortified with folic acid.

With regard to the concern raised in the comment that fortification of enriched cereal grain products may encourage consumers to choose these products over their whole grain counterparts, the comment did not provide any support for its concern. The decision to fortify enriched cereal grain products at the level of 140 µg/100 g is based on current dietary consumption patterns. The agency is not persuaded by the comments that the addition of folic acid will significantly change consumption patterns of the target population. There is no evidence that women will suddenly start consuming enriched products instead of whole grain foods. In fact, one reason the agency has decided to require the fortification of enriched cereal-grain products is to enable women of childbearing age to significantly increase their daily folate intake without changing their dietary habits. Finally, the agency notes that while current dietary recommendations do encourage increased consumption of whole grain foods, they also encourage consumption of all cereal-grain products.

9. One comment expressed concern that the agency's tentative decision to fortify cereal-grain products was unfair to the cereal-grain industry because it singled out one segment of industry to address a health concern. (The agency notes that the comment was not submitted by a member of the cereal grains industry.)

As discussed in the folic acid health claims proposal, FDA considered several options that included fortification of dairy products and juices before concluding that the most appropriate option was to limit fortification to enriched cereal-grain products. Aside from the fact that these products have a long history of successful use as vehicles for increasing nutrient intake among U.S. consumers, consumption data and other relevant information reviewed by the agency show that these products are consumed routinely on a daily basis by 90 percent of women in the target group. Furthermore, some comments submitted to the docket by representatives of the cereal grains industry stated that, generally, these products can be easily fortified with folic acid. Therefore, FDA concludes that the enriched cereal-grain products are the appropriate foods for fortification, and that fortification of these products is not unfair to the industry.

C. Fortification Level

10. In the standards of identity proposal, FDA requested comments on whether the proposed fortification levels discussed for enriched cereal-grain products were appropriate. Comments responding to this issue were varied. Some comments that supported fortification of cereal-grain products stated that the proposed levels were too low to have any appreciable effect on reducing the risk of NTD's in the target population. One of these comments urged the agency to revise its proposal and require fortification at levels of at least 210 µg/100 g. However, the majority of these comments recommended that FDA require fortification of folic acid within the range of 250 to 350 µg/100 g. In support of their position, these comments contended that this range was well within limits for safety and should not mask the effects of vitamin B_{12} deficiency. One comment further argued that at a fortification level of 350 µg/100 g, 95 percent of persons in the nontarget population would not consume more than 1 mg per day. One comment recommended 400 µg/100 g for cereal-grain products. This comment argued that fortification of enriched cereal-grain products should be at the same level as dietary supplements.

However, supplemental comments submitted by a majority of the organizations supporting a higher fortification level, stated that implementing fortification at a level of at least 140 µg/100 g will constitute a critically important step forward for the health of American children. Some of these comments further stated that fortification with at least 140 µg/100 g will be the most efficient and cost-effective approach to ensuring that women of childbearing age consume the level of folic acid recommended to reduce the risk of having a neural tube defect affected pregnancy.

The agency agrees with the latter comments. As discussed in the folic acid health claims proposal (58 FR 53254 at 53279), fortification of cereal-grain products at 140 µg/100 g will produce a significant increase in daily folate intake, even for women who make food choices from the "low" range of the USDA Food Guide Pyramid and consume only 5 servings/day of cereal-grain products and 1 bowl of cereal containing a minimum of 100 µg of folic acid. From these sources alone, these women will consume about 320 µg of folic acid. Addition of a serving or two of vegetables, or of a serving of fruit, will provide them with a folate intake above 500 µg/day. Thus, fortification of cereal-grain products at 140 µg/100 g is an important step in assisting women of childbearing age achieve the PHS recommendation of consuming 400 µg.

However, if cereal-grain products were fortified at 350 µg/100 g, and the dietary choices indicated above were made, a "low" consumer would obtain 610 µg folic acid daily from these sources alone. Thus, at a fortification level of 350 µg/100 g a "high" consumer could reach intakes of folic acid of more than 1 mg/day from bread, noodle, rice, and pasta products alone. Additional consumption of breakfast cereals, fruits, vegetables, and a dietary supplement by "high" consumers could result in daily intakes of folate of about 2.5 mg/day, a level significantly above the safe upper limit of daily intake of 1 mg.

The comments supporting fortification of enriched cereal-grain products at levels above 140 µg/100 g did not provide any information to the agency that it had not considered in developing its proposed rules. Nor did the comments offer alternative fortification schemes that would allow addition of folic acid to enriched cereal-grain products at levels exceeding 140 µg/100 g yet limit the daily intake of folate to levels that are within the safe upper limit of 1 mg/day. Consequently, FDA disagrees with those comments that suggested that enriched cereal-grain products be fortified at levels of at least 210 µg/100 g. There simply is no evidence in the record that such a fortification program would keep folate intakes within the safe upper limit.

Accordingly, as proposed, the agency is requiring the addition of folic acid to enriched cereal grain products at a fortification level of 140 µg/100 g. FDA concludes that 140 µg/100 g is the maximum level of fortification of enriched cereal-grain products that would be safe for all groups.

Nonetheless, as the agency states in the final rule on the use of folic acid as a food additive, which is published elsewhere in this issue of the **Federal Register**, given the nature of the support for higher folic acid fortification levels in the comments, if evidence becomes available to support that there is a reasonable certainty of no harm at folate intakes above 1 mg/day, FDA would be willing to reconsider the fortification levels that it is adopting and to consider raising those levels.

11. Other comments opposed fortification at the proposed level of 140 µg/100 g on the grounds that it is too high. These comments asserted that such fortification may increase the risk of consuming folate at levels in excess of the safe upper limit of 1 mg/day in a substantial portion of the general population. Some of these comments suggested that FDA consider the lower fortification level of 70 µg/100 g in conjunction with an educational campaign that could still be effective in reducing the risk of NTD's yet not pose the risk of daily consumption of folate in excess of 1 mg/day.

In support of their position, some of these comments noted that the Food and Nutrition Board recommended the fortification of cereal-grain products at 70 µg/100 g to restore folate lost in the milling of cereal-grain products. Another comment supporting fortification at the restoration level contended that such action would permit additional restorations of nonstandardized foods such as breakfast cereals. One comment from a foreign government questioned FDA's decision to require folic acid fortification of all enriched cereal-grain products when the data do not clearly establish the effectiveness and safety of the proposed intervention program. However, the comment suggested support of the Food and Nutrition Board's 1974 proposal for cereal grain fortification, i.e., fortification with folic acid at 70 µg/100 g.

In the standards of identity proposal, FDA tentatively concluded that fortification of cereal-grain products with 140 µg/100 g folic acid was the most appropriate fortification level of the three levels analyzed to ensure that folate intakes by the target population would increase. The comments have not persuaded the agency that a fortification level of 70 µg/100 g could be as effective in assisting women in the target population to achieve the PHS recommended daily intake of 400 µg. In fact, at a fortification level of 70 µg/100 g, the estimated daily folate intake by "low" consumers among women of childbearing age is not likely to reach the PHS recommended levels of 400 µg/day without changes in their food selection practices (see Table 4 of 58 FR 53254 at 53292). While the agency must ensure that the use of folic acid in the food supply is safe, it must also provide as great an opportunity as is prudent and rational for all women of childbearing age to increase their intake to the recommended level. The agency concludes that a level of 140 µg/100 g is the most appropriate fortification level for enriched cereal-grain products because, based on the results of its estimated daily intakes, fortification at this level will provide daily intakes for the nontarget population that remain within the recommended safe upper limit of 1 mg/day, while providing increased intakes of folate for women in their childbearing years (see Table 7 of 58 FR 53254 at 53295).

The agency notes, however, that it has reconsidered its proposed fortification level for breakfast cereals. As fully discussed in the food additives final rule, published elsewhere in this issue of the **Federal Register**, FDA is permitting breakfast cereals to contain up to 400 µg of folic acid per serving. As explained in that document, the estimates for total daily folate intake that FDA presented in the folic acid health claims proposal were based on the assumption that all breakfast cereals were fortified at 400 µg/serving. Based on those estimates, daily folate intake for certain groups in the nontarget population could exceed the recommended safe upper limit of 1 mg/day. Currently, however, only about 3 to 6 percent of breakfast cereals fortify at 400 µg/serving. The agency has found no reason to expect that this percentage will change and, therefore, considers it unlikely that daily folate intake in the nontarget population will exceed 1 mg with the fortification program adopted in this final rule and in the food additives final rule.

D. Optional Versus Mandatory

Because of the increased health risk to persons with vitamin B_{12} deficiency caused by increased levels of folate intake, FDA solicited comments in the standards of identity proposal on whether the addition of folic acid to enriched cereal-grain products should be required as proposed or made optional.

12. A few comments fully supported the agency's proposal to require folic acid addition to the enriched cereal-grain products. These comments contended that required addition of folic acid was an appropriate means of increasing the daily folate intake of women in the target population. However, the majority of the comments that responded to this issue stated that fortification should be voluntary. The comments cited varied reasons in support of their position. Some comments stated that the addition of folic acid to enriched cereal-grain products should be optional pending further evidence that the benefits outweigh the risk of masking vitamin B_{12} deficiency. These comments contended that mandatory fortification of a wide variety of common products may create difficulty for people wishing to avoid folic acid. Furthermore, the comments asserted that FDA failed to establish why mandatory fortification would be necessary given that under current regulations voluntary fortification of standardized foods with folic acid is prohibited.

Other comments recommended optional fortification so that millers will not have to change their enrichment premixes for the general flour supply, thereby minimizing the costs associated with fortification, i.e., label changes, analytical testing, and inventory and supply coordination, especially for products exported to countries that do not permit folic acid fortification. The comments also stated that voluntary fortification would facilitate compliance with the various State enrichment laws.

A few comments opposed to mandatory fortification stated that FDA failed to offer information as to why voluntary fortification would not be sufficient to accomplish the public health goal of decreasing the incidence of pregnancies with neural tube birth defects. The comments urged FDA to establish a voluntary fortification program for enriched cereal-grain products and to reassess the need for a mandatory fortification in several years. One of these comments acknowledged, however, that it is difficult to predict the extent of voluntary fortification.

A small number of comments supported voluntary fortification for only the enriched noodle and macaroni products. The comments contended that voluntary compliance is consistent with FDA's current standards of identity for enriched noodle and macaroni products with regard to vitamin D, calcium, and wheat germ.

The agency does not agree with the comments that argued that the fortification of enriched cereal-grain products should be voluntary. In accepting the PHS' and Folic Acid Subcommittee's recommendation to include fortification as part of an overall plan to increase the folate nutriture of women of childbearing age, FDA has concluded that in order for a fortification program to be effective,

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fortification must be mandatory for the enriched cereal-grain products. FDA is concerned that if it made fortification voluntary, and voluntary fortification were not widespread, there would be only a negligible increase in the daily folate intake of the target group, and the intent of this rulemaking would have been defeated. FDA finds that there is a public health need for women in their childbearing years to have adequate folate intake, and that the only way that it can ensure that they will have such an intake is through mandatory fortification.

FDA has traditionally used mandatory fortification to restore nutrients lost during the processing of cereal grains and thereby to address the need for reducing the risk of certain vitamin deficiency-related problems. The comments have not persuaded the agency that the same basic approach should not be applied in this case, where low folate intake represents a risk factor for a neural tube defect-affected pregnancy. USDA consumption data show that 90 percent of women of childbearing age consume cereal-grain products. Thus, mandatory fortification of cereal grains will, as stated above, increase folate intake among the target group, without requiring significant change in dietary patterns. Consequently, mandatory fortification of enriched cereal grains will help to ensure that the daily intake among the target group will reach the PHS recommended level of 400 µg. Voluntary fortification does not offer the same likelihood that folate intake will result in intakes that approach the PHS recommendation because the decision to fortify with folic acid will be at the discretion of individual manufacturers. Therefore, voluntary fortification will not adequately address the need for increased folate intake among women of childbearing age.

FDA derived the fortification levels established in this final rule based in part on a safe upper limit of 1 mg folate/day. The agency has concluded that mandatory fortification of the enriched cereal-grain products at the levels provided in this final rule is not likely to increase the risk of "masking" anemia in vitamin B_{12} deficient persons. Thus, the fortification program that FDA is adopting will help to ensure that the amount of folate that people in all groups of the population can reasonably be expected to consume will not exceed 1 mg/day. As discussed in the food additives final rule, the agency has examined the available data on the levels of folate that may mask anemia of vitamin B_{12} deficiency and concluded that a daily intake of up to 1 mg of folate is safe.

In response to concerns raised by millers regarding label changes, analytical testing, and inventory and supply coordination, FDA recognizes that manufacturers will need ample time to implement the changes required by this amendment of the standards of identity. As discussed below in the effective date section, FDA is permitting manufacturers time to coordinate any necessary changes that need to be made throughout the chain of food production to comply with the requirements established in this final rule as well as with the requirements set out in part 101 (21 CFR part 101).

The agency notes that manufacturers will continue to have the option of using unenriched cereal-grain products as ingredients in foods and to add enrichment nutrients to those products as they choose. Several comments from industry representatives raised a concern that the provisions in the food additive proposal would not permit addition of folic acid at the bakery site. To the contrary, as discussed in the food additives final rule, FDA will permit addition of folic acid at the bakery site as long as it is in compliance with the governing standard of identity. Consequently, manufacturers will have the same option of adding folic acid as they have with other enrichment nutrients when preparing foods that are made with unenriched cereal-grain ingredients. The agency notes, however, that any products marketed as a standardized enriched cereal-grain product will have to contain folic acid at the levels established in this final rule, and that these requirements preempt state enrichment requirements that are not identical (see section 403(a) of the act (21 U.S.C. 343(a))).

With regard to exported products, the agency recognizes that manufacturers may be required to maintain separate inventories for foreign and domestic sales. While FDA recognizes the importance of reducing trade barriers, its first obligation is to protect and promote the health of U.S. consumers. In that regard, the agency concludes that, because the fortification program adopted in this final rule is necessary to significantly reduce the incidence of neural tube defect affected pregnancies, it would not constitute an illegal trade barrier.

E. Other Issues

13. One comment from a consumer interest group recommended that if research and monitoring does not establish in the next 2 years that the risk of increasing folate intakes is significant for persons affected with vitamin B_{12} deficiency or any folate-related diseases, then FDA should increase the fortification levels in grain products or other foods and require that upper safe limits be disclosed in higher dose products. This comment urged FDA to initiate a rulemaking to restore refined grain products with most of the vitamins and minerals that are removed during milling as recommended by the Food and Nutrition Board in 1974. The comment stated its belief that such an approach would raise few safety concerns and would not be costly because manufacturers are already equipped to add nutrients to food.

FDA cannot at this time commit to increasing the levels of folic acid that may be added to food within the next several years. However, as stated above, should data become available that demonstrate that modifications need to be made to improve the effectiveness of the intervention program, and evidence be developed that the safe upper limit can be raised, FDA will decide what action is necessary. The agency notes, however, that the action it is taking in this rulemaking will more than compensate for the amount of folate lost during the milling process.

As for the comment's request that FDA initiate rulemaking to restore to refined grain products other vitamins and minerals that are removed during milling raises, the agency notes that the request issues outside the scope of this rulemaking. Therefore, no action on this request is appropriate at this time.

14. Several comments raised concern regarding the impact of the proposed regulation on foreign trade. One comment from a foreign trade association urged FDA to delay finalizing the proposed regulation to provide the International Harmonization Working Groups the opportunity to review the proposal and recommend a strategy that would serve public health goals, while achieving the spirit and intent of the North American Free Trade Agreement (NAFTA). Another comment stated that the extra costs and inherent inefficiencies of separate production runs could preclude some manufacturers from the export marketplace.

Other comments stated that the lack of consistent requirements for folic acid fortification between major trading partners, e.g., the United States and Canada, would create problems in cross-border trade and could result in higher costs for both U.S. and foreign consumers. Furthermore, these comments asserted that inconsistent requirements could reduce the competitiveness of domestic manufacturers who export their products. Thus, the comments urged FDA to resolve the issue of exporting folic acid enriched products to foreign countries by working with foreign governments to permit export of folic acid-enriched food.

FDA recognizes that the provisions it is adopting in this final rule may be inconsistent with the fortification policies of other countries. However, as discussed above, the agency finds that the action that it is taking in this final rule is necessary to adequately protect the public health of U.S. consumers. FDA will continue to work with officials in other countries, particularly parties to NAFTA, to find ways to reduce barriers to cross-border trading of cereal-grain products and other foods.

F. Specific Standards of Identity

In this document, the agency is providing for the addition of folic acid at the level of 140 µg/100 g to the individual enriched cereal-grain products that are the subject of standards of identity. The agency described indepth the method that it used in arriving at the levels of addition for folic acid in the specific standards of identity in the standards of identity proposal. FDA will not describe that method again in this document except to the extent that clarification is warranted in response to specific comments. For a complete discussion of the basis on which FDA established the enrichment levels for the subject standards of identity, the agency refers interested persons to the standards of identity proposal (58 FR 53305 at 53307 to 53309).

1. Bakery and Wheat Flour Products

15. One comment, while supportive of the proposal to fortify cereal-grain products, suggested that a range of levels be permitted for addition of folic acid to all enriched cereal-grain products because of the inherent variation in the addition of the vitamins, the distribution of the vitamins in a food, and the analytical methodology. The comment suggested that FDA permit the addition of folic acid within a range of 24 to 35 percent over the amount established for each individual standard. For example, the comment suggested that the proposed amount of 0.7 mg/lb for enriched flour should be revised to 0.7 to 0.91 mg/lb. The comment argued that this scheme is the same as that used for enrichment in the macaroni and noodle standards and is needed for the same reasons that it is provided for in those standards.

FDA does not agree that it is necessary to provide for a range in the level of folic acid used in the production of all enriched cereal-grain products. Providing for a single level, with provision for reasonable overages within the limits of current good manufacturing practice (CGMP), has worked well with the other nutrients (thiamin, niacin, riboflavin, and iron) required to be added to enrich bread, rolls, and buns and various flour products. The provision for "reasonable overages" in the standards for enriched bread, rolls, and buns (§ 136.115(a)(3)) and enriched flour (§ 137.165(c)) provides manufacturers with flexibility to ensure that required levels for the added nutrients will be met, and that these levels will be maintained throughout the shelf life of the food under customary conditions of distribution and storage. While FDA is not establishing a specific upper limit for folic acid addition, the agency advises that reasonable variations for overages of folic acid will be assessed on the same basis as that for the other added nutrients in these foods. Those reasonable variations are based on a number of factors, including the technology of nutrient addition, the possibility of nutrient deterioration, the firms' quality control procedures, and appreciation by the manufacturer of these factors.

FDA acknowledges that some of the standards for enriched cereal-grain products that are the subject of this final rule specify the levels of added nutrient (thiamin, riboflavin, and iron) in terms of ranges, and FDA has continued this approach with respect to the addition of folic acid in those products. In addition, the agency notes that it received a petition (Docket No. 94P–0413/CP 1) subsequent to the issuance of the folic acid health claims proposal to amend the standards for enriched macaroni and noodle products to provide for nutrient addition in terms of a single level with provision for reasonable overages. However, FDA is not making the change to a single enrichment level in those standards at this time because, while it has reached a final decision on folic acid fortification, it has not had an opportunity to fully analyze the petition. FDA is not aware of any reason why it should delay action in the present rulemaking while it analyzes the petition. Thus, until such time as the agency rules on the petition, the standards in question will continue to provide for nutrient addition in terms of ranges.

The ranges established in those standards provide a measure of flexibility in selecting the target level when nutrients are added to foods that consist of large particles such as farina or rice, or for preparations (e.g., semolina or other ingredients) used for manufacturing enriched macaroni or noodle products. The nutrients, which usually are in the form of a fine powder, have a tendency to settle out and to make uniform blends with the cereal grains more difficult to achieve. In such instances, manufacturers, depending on their application process, may select target levels at the upper end of the range to ensure that the minimum levels established for the nutrients will be met. Thus, to enable manufacturers to adhere to procedures that will deliver the minimum level of nutrients required by the standards and to compensate for variables in the processing operations, the agency is continuing to provide for nutrient additions in terms of ranges for the other enriched foods as set forth below.

FDA also notes that the regulations for nutrition labeling in § 101.9(g)(4)(i) require that added nutrients be present in the food at levels that are at least equal to the amount declared on the label. In addition, § 101.9(g)(6) provides for reasonable overages within the limits of CGMP. Thus, the manufacturer bears the responsibility of ensuring that not only will the requirements for added nutrients in the respective standards of identity be met, but also that the content of any added nutrient is accurately declared in nutrition labeling. Therefore, consumers should receive the stated quantity of each added nutrient whether the standard provides for the added nutrient in terms of a single level or a range.

a. *Enriched flour.* No specific comments were received on the fortification of enriched flour with folic acid. Thus, as proposed, FDA is requiring that enriched flour contain 0.7 mg/lb of folic acid. FDA derived this value by adding the fortification level of 0.635 mg/lb to the Food and Nutrition Board's folate value of unfortified flour of 0.076 mg/lb, which yields 0.711 mg/lb. The agency rounded this value to 0.7 mg/lb. Accordingly, based on this calculation, FDA is amending the standards of identity for enriched flour (§ 137.165) and enriched self-rising flour (§ 137.185), and, by cross-reference, enriched bromated flour (§ 137.160), to require that these foods contain 0.7 mg/lb of folic acid.

b. *Enriched bread, rolls, and buns.* FDA is amending the standards of identity for enriched bread, rolls, and buns in § 136.115 to require that these foods contain 0.43 mg/lb of folic acid. This rate of fortification is proportionally consistent with the fortification rate for the B vitamins (thiamin, riboflavin, and niacin) when

enriched flour is used in making these foods. For example, the levels of thiamin, riboflavin, and niacin in enriched flour (§ 137.165) are 2.9, 1.8, and 24.0 mg/lb, respectively, and in enriched bread (§ 136.115) are 1.8, 1.1, and 15.0 mg/lb, resulting in a ratio of approximately 1.62 to 1. In the case of the level of folic acid, the level for enriched flour is 0.7 mg/lb compared to 0.43 mg/lb for bread, resulting in a ratio 1.63 to 1. The levels of enrichment specified for the B vitamins and folic acid content are slightly lower in enriched bread products than in enriched flour to allow the bread products to be made from the standardized enriched flour without further fortification.

c. *Enriched farina.* In the standards of identity proposal, FDA proposed to establish a fortification level for folic acid in enriched farina (§ 137.305) on the same basis as that for enriched wheat flour, i.e., 1 lb of the food would contain not less than 0.7 mg of folic acid.

One comment disagreed with the agency's rationale and argued that enriched farina is a different product than enriched wheat flour and therefore should not be fortified at the same level as enriched wheat flour. The comment asserted that farina is used differently than flour. For example, according to the comment, farina is often used as an ingredient in the less expensive pastas to replace the more expensive semolina. The comment pointed out that farina is also eaten as a hot cereal, and that precooked breakfast cereals are fortified with folic acid. The comment did not offer an alternative fortification level or data on which an alternative level could be based.

Because both wheat flour and farina are made from the endosperm of wheat, that portion of the wheat kernel that remains after the bran layer and germ have been removed, and because it is the bran layer and germ that contain most of the B vitamins, including the naturally occurring folate, the amount of B vitamins lost during processing would be similar in both foods. Therefore, the agency finds that it is reasonable to fortify both flour and farina on the same basic level of 140 µg/100 g.

However, FDA acknowledges that enriched farina and enriched flour may serve different functions. Farina is often used as a substitute for a flour-containing food, e.g., as a hot cereal at breakfast, with or without other cereal-grain products being consumed at that meal, and it may be used in other foods such as pasta. However, the agency finds no basis to change the fortification level based on these possible end uses of the products because these uses are governed by other regulations. For example, when farina is used as an ingredient in the manufacture of precooked or instant breakfast cereal products, the level of enrichment is governed by the food additive regulation in § 172.345. That regulation provides that such ready-to-eat cereals may be enriched with folic acid up to 100 percent of the daily value per serving (i.e., 400 µg/serving). Neither this final rule nor the food additive final rule published elsewhere in this issue of the **Federal Register**, would affect the continued addition of folic acid to the precooked or ready-to-eat breakfast cereals that are manufactured with farina.

With respect to pasta products, the agency notes that the standard of identity for enriched macaroni and noodle products provides for the use of farina as an ingredient. However, the agency is not persuaded that it should adjust the fortification level for farina based on this possible use of this food. In cases where farina is used as an ingredient in an enriched macaroni or noodle product, the manufacturer has the option of adding enrichment nutrients to the farina at the flour mill or at the manufacturing facility to meet the requirements of the standard of identity for enriched macaroni or noodle products.

One comment pointed out that farina is not washed before cooking as had been noted in the proposal, and, thus, washing should not be a factor in determining appropriate fortification levels.

The agency acknowledges that current farina product labels do not suggest that enriched farina products need to be rinsed before cooking. Thus, with current technology, rinsing of the enriched farina product would not be a factor in deciding on an appropriate value for vitamin and mineral addition to farina. However, the agency notes that the proposed upper limit was not based solely on the fact that the product may be rinsed but also on the fact that it may be diluted when prepared in other recipes. The comment did not offer data to persuade the agency to deviate from the proposed upper limit of folic acid addition. Thus, as proposed, the agency is amending the standard of identity for enriched farina to provide for an upper limit for folic acid addition (0.87 mg/lb) that is approximately 25 percent higher than the minimum of 0.7 mg/lb as it has done for the other B vitamins (thiamin, riboflavin, and niacin) that are required to be present in enriched farina.

2. Corn and Rice Products

a. *Enriched corn grits.* No specific comments were received regarding the addition of folic acid to enriched corn grits. Thus, as proposed, FDA is amending § 137.235 to require fortification of enriched corn grits with the same level of folic acid as that established for enriched wheat flour products, such that each pound of the food would contain at least 0.7 mg of folic acid. FDA is also establishing the proposed upper limit for folic acid fortification of 1.0 mg/lb, which is approximately 50 percent higher than the minimum of 0.7 mg/lb, as it has done for the other B vitamins (thiamin, riboflavin, and niacin) that are required to be present in enriched corn grits.

The agency notes that it published a proposed rule in the **Federal Register** of October 13, 1995 (60 FR 53480), that would revoke the standard of identity for enriched corn grits. If comments to the proposal support revocation of this standard of identity, the provisions set forth in this final rule for enriched corn grits will also be revoked. FDA believes, however, that enriched corn grits is a widely consumed food that is likely to be eaten by women in need of additional sources of folate. Therefore, should FDA revoke this standard of identity, the agency is prepared to amend § 172.345, the food additive regulation on folic acid, to include fortified grits to the list of nonstandardized foods to which folic acid may be added.

b. *Enriched corn meals.* No specific comments were received regarding the enrichment of corn meal products with folic acid. Thus, as proposed, FDA is amending the standard of identity in § 137.260 to provide for a minimum folic acid level that is consistent with that established for enriched flour, such that each pound of the food contains 0.7 mg. Because corn meal products may be used as substitutes for wheat flour products, the agency believes, as discussed in the standards of identity proposal (58 FR 53305 at 53308), that consumers expect to be able to obtain the same levels of nutrients from enriched corn meals as from enriched wheat flour. FDA is also establishing an upper limit for folic acid addition (i.e., 1.0 mg/lb which is approximately 50 percent higher than the minimum fortification level), as has been done for the added B vitamins. The upper limit on the other B vitamins is intended to prohibit addition of excessive amounts of the nutrient and to ensure uniformity in composition of corn meals. FDA finds that, for the same reasons, an upper limit on the addition of folic acid of 1.0 mg/lb is necessary.

c. *Enriched rice.* The folic acid content of rice varies from 0.008 mg/100 g (0.036 mg/lb) for white rice to 0.020 mg/100 g (0.090 mg/lb) for brown rice (Ref. 7). FDA proposed to amend the standard of identity for enriched rice to provide for the addition of not less than 0.7 mg and not more than 1.4 mg of folic acid per pound (58 FR 53305 at 53312). The agency also noted in the standards of identity proposal that rice in the United States may be enriched by addition of a powder mixture containing the added nutrients or by use of a rice premix consisting of rice kernels coated with a concentrated nutrient mix. When the powder enrichment procedure is used, the label of the package generally bears a statement that the rice should not be rinsed before or drained after cooking, in accordance with § 137.350(c), to ensure that the rice retains the added nutrients. However, the agency stated, there is no assurance that these instructions are being followed. In the case of the rice premix, a special coating is applied to the rice kernels, so that the added nutrients will not be washed off if the product is rinsed before cooking. Rice coated with the premix is blended with unenriched rice such that the finished enriched rice product will contain the required minimum levels of added nutrients. The agency stated that the proposed range would provide flexibility in the production of the enriched rice and ensure that the food, when prepared for consumption, will contain the required minimum levels of nutrients.

16. According to comments on the standards of identity proposal, most enriched rice produced in this country is manufactured using the powder procedure to add nutrients. A comment stated that some rice processors are very concerned about the addition of an enrichment powder mix containing folic acid because folic acid could result in off colors, taste, and aromas in the enriched rice. The comment maintained that firms fear that consumers may reject the enriched rice product if it does not possess the usual white color. It further stated that processors needed additional time to conduct research on the addition of folic acid to rice.

While FDA acknowledges that the provision in the enriched rice standard for the addition of riboflavin has been stayed because of objections from the industry stating that riboflavin addition results in a yellow discoloration being imparted to the rice that is unacceptable to consumers (23 FR 1170, February 25, 1958), the agency has not received any information from rice processors that demonstrates that addition of folic acid to rice will result in off colors, taste, or aromas in the enriched rice product. Thus, as proposed, the agency is amending the standard of identity for enriched rice (§ 137.350) to include a range for the folic acid fortification level, 0.7 mg/lb to 1.4 mg/lb, with the lower limit being consistent with the folic acid fortification level for enriched wheat flour. FDA concludes that use of the same minimum level of fortification is appropriate because it is consistent with the Food and Nutrition Board's recommendation that the same restoration level be used for wheat flour, corn products, and rice (although the Food and Nutrition Board only recommended addition at restoration levels). FDA is also establishing an upper limit for folic acid fortification of enriched rice of 1.4 mg/lb, as it has done with other enrichment nutrients added to rice. As discussed in the standards of identity proposal (58 FR 53305 at 53309), the upper level is based on the way that rice is fortified in this country.

The agency recognizes that manufacturers will need time to experiment with the addition of folic acid to their products. FDA is providing approximately 2 years from the publication date of this final rule to allow manufacturers to test their ability to comply with the new requirements and to make appropriate label changes.

17. One comment stated that, because the powder-enriched rice suffers substantial nutrient loss when it is washed (as rice is by many consumers), it is unlikely that folate intakes will increase as much as FDA estimates. The comment suggested that the agency should, consequently, increase the fortification level.

FDA disagrees with the comment. For those consumers who wish to consume "enriched" rice, the agency has provided requirements in the standard of identity for enriched rice to ensure delivery of the required nutrients. Section 137.350(c) requires that enrichment nutrients be present in the rice in such form and at such levels that if the enriched rice is washed, it contains not less than 85 percent of the minimum quantities of the nutrients required to be present in the enriched rice. If they are not present in such form or at such levels to comply with these minimum requirements, the label of the enriched rice must bear the statement "to retain vitamins do not rinse before or drain after cooking" immediately following the name of the food. In addition, the label cannot bear cooking directions that call for washing or draining the enriched rice. In the case of precooked enriched rice, the package must be labeled with directions for preparation that, if followed, will avoid washing away or draining off enrichment ingredients.

As discussed above, FDA is providing for addition of folic acid at the level of 140 µg/100 g of the enriched cereal-grain products. The agency has concluded that this fortification level is necessary to help ensure that the total consumption level will not exceed the recommended daily consumption level of 1 mg (or 1,000 µg). To minimize the potential losses in enrichment nutrients in rice, the agency had provided for a range in the levels, with an upper limit that is twice that of the minimum level required to be present in the rice. Thus, rice processors who use the powder-enrichment procedure, where nutrient losses would be expected to be greater, will be able to use a level of enrichment nutrients that makes it likely that consumers will receive the minimum levels of nutrients required to be in the food.

3. Macaroni and Noodle Products

The standards of identity for enriched macaroni products (§ 139.115), enriched nonfat milk macaroni products (§ 139.122), and enriched noodle products (§ 139.155), and the cross-referenced standards of identity for enriched vegetable macaroni products (§ 139.135) and enriched vegetable noodle products (§ 139.165), provide for significantly higher levels of nutrient addition than the related flour standards of identity because these products are usually cooked in a large amount of water that is usually discarded after cooking and before consumption of the macaroni and noodle products.

18. One comment asserted that because of the preparation process for macaroni and noodle products, vitamin retention data are absolutely essential before any level of enrichment can be discussed. Thus, the comment recommended that FDA delay implementation of folic acid fortification of cereal-grain products until more concrete information is available on vitamin retention with cooking.

FDA is not delaying the implementation of folic acid fortification, as suggested by the comment, because of the need to increase the folic acid levels in the diets of women of childbearing age. The agency recognizes that there will be losses in the content of water soluble vitamins when the enriched macaroni and enriched noodle products are cooked in water, and that water is drained from the foods before consumption (Ref. 8). The agency also

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acknowledges that data on retention of the vitamins (thiamin, niacin, and riboflavin) required to be added to enrich these foods are limited, and that it is difficult to make inferences as to the retention of added folic acid when folic acid enriched products are cooked in water, and the water is discarded. However, there are some data to suggest that the retention rates are similar.

According to a study conducted by Ranhortra, et al. (Ref. 8), on the retention rates of the thiamin, niacin, and riboflavin in three enriched pasta products (spaghetti, noodles, and macaroni), at least 50 percent (75 to 77 percent on average) of the added nutrients was retained after cooking in water and draining. This study looked at the retention of the naturally occurring folate in the pasta products, before and after cooking, and found that the retention rate was 77 to 79 percent. Based on this data, FDA does not expect that the retention rate of folic acid in these products would be significantly different from the retention rates of the other B vitamins.

FDA recognizes that, as with other grain products, manufacturers will need to conduct research on the most effective means of adding folic acid and of ensuring that the added folic acid will be available in the finished food. Such studies will need to focus on not only the method of adding the nutrient but also on the stability of the vitamin during usual conditions of distribution and storage. The agency notes that similar studies were required when FDA established requirements for the addition of the other B vitamins to enriched cereal-grain products. In addition to studies, it may be necessary for manufacturers to develop label instructions on how the product should be prepared, e.g., instructions on limiting the amount of water to be used in its preparation or cooking time, and on whether the cooked food can be rinsed without loss of nutrients before serving, to ensure maximum retention of folic acid and the added water soluble nutrients.

FDA is requiring the addition of folic acid to macaroni and noodle products in the same proportion as it is requiring such addition to enriched flour, except that the required level (expressed in terms of a range) will be approximately 25 percent higher for macaroni and noodle products than the required level of folic acid that is to be added to flour. This 25-percent increment is consistent with the requirements for the other added nutrients (thiamin, riboflavin, niacin, and iron) in the enriched macaroni and noodle products standards, compared to those in the standards of identity for flour products.

Accordingly, as proposed, FDA is requiring that the enriched macaroni and noodle products contain from 0.9 to 1.2 mg/lb of folic acid.

G. Effective Date

19. Many comments expressed concern over the statement in the standards of identity proposal that the final rule would become effective 1 year after publication. The comments stated that it would be difficult and impractical to synchronize the addition to a food of a folic acid-fortified enriched cereal- grain product with the availability of revised labels for that food that declare folic acid in the ingredient statement. These comments pointed out that enrichment nutrients are generally not added to each separately labeled product but are added to thousands of pounds of flour at the flour mill, the flour is sold to other manufacturers as an ingredient, and then this ingredient is used in many different products. Thus, the comments asserted that as a matter of economic necessity, the enrichment of all these products occurs at the same time, regardless of the availability of new labeling. One comment recommended that FDA establish an effective date of at least 2 years from the date of publication of the final rule. The comment asserted that a 2-year period would allow adequate time to incorporate changes on labels of slower moving products as well as products with higher retail turn rates. Thus, the comment continued, existing packaging inventory could be used, thereby reducing the cost impact of the regulation. Another comment suggested a "phase-in" period of at least 3 years or, in the alternative, an effective date consistent with the next uniform effective date, whichever is later. In support of the suggestion, the comment asserted that a "phase-in" period would allow label changes to take place concurrent with the folic acid addition on a product-by-product basis. In addition, the comment contended, such action would allow manufacturers to exhaust their current label inventory and reduce the economic impact of the regulation. Moreover, the comment continued, additional time is needed for analytical testing for declaration of folic acid in nutrition labeling.

FDA acknowledges the concerns raised in these comments regarding label changes that must accompany the addition of folic acid to enriched cereal-grain products and to foods in which these products are used as ingredients. FDA is persuaded by the concerns raised in the comments to establish an effective date that will provide manufacturers with time to implement the label and formulation changes required by the amendments established in this final rule. The agency agrees with the comment that suggested that FDA establish an effective date of at least 2 years from the date of publication of the final rule. A 2-year period would allow manufacturers time to exhaust current packaging inventory, add folic acid to their statement of ingredients and the nutrition facts panel as other changes are made to update package labeling, and subsequently ensure that packaging is available that accurately reflects the addition of folic acid to their products. Furthermore, the agency points out that a 2-year period is consistent with the amount of time given for implementation of the Nutrition Labeling and Education Act (NLEA) requirements. Thus, the effective date of this final rule will be January 1, 1998. The agency notes, however, that compliance with the requirements established in this final rule may begin immediately, provided that the label accurately reflects that folic acid has been added to the product. Furthermore, the agency will not object to the use of stickers to bring a product label into compliance with the ingredient labeling and nutrition labeling provisions. The agency notes, however, that unless the standardized food bears a claim about folate, the declaration of folate in the nutrition label is voluntary.

20. A few comments that raised concern about label changes that must accompany the addition of folic acid suggested that the agency permit folic acid to be added to the product without requiring declaration in the ingredient statement. One comment contended that there was no safety issue regarding folic acid that would require its declaration on the label.

Traditionally, the agency has not permitted manufacturers who change their formulas by adding or deleting ingredients to use noncompliant labels. Furthermore, as discussed in response to the previous comment, the agency is establishing an effective date in this final rule that will provide industry ample time to ensure that products enriched with folic acid are labeled in compliance with the regulations.

In response to the argument that the addition of folic acid need not be declared because it does not raise a safety issue, the agency advises that the act requires that all foods fabricated from two or more ingredients declare each of its ingredients by common or usual name in a list of ingredients. This

requirement applies without regard to whether there is a safety issue regarding the food. Consequently, the agency has not been persuaded by the comments to permit the addition of folic acid to foods without also requiring that folic acid be declared in ingredient labeling.

III. Economic Impact

FDA has examined the impacts of this final rule to require the addition of folic acid to enriched cereal-grain products that conform to a standard of identity as required by Executive Order 12866 and the Regulatory Flexibility Act. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act (Pub. L. 96–654) requires the analysis of options for regulatory relief for small businesses. FDA finds that this final rule is not a significant regulatory action as defined by Executive Order 12866. In compliance with the Regulatory Flexibility Act, the agency certifies that this final rule will not have a significant impact on a substantial number of small businesses.

On October 14, 1993 (58 FR 53305 at 53309), FDA published an economic impact analysis of the proposed requirements under the previous Executive Order (E.O. 12291). In the analysis, the agency evaluated the following regulatory options:

1. Improve dietary practices among women of childbearing age.
2. Require fortification with folic acid at 140 µg/100 g.
3. Require fortification with folic acid at: (a) A lower level, specifically 70 µg/100 g; or (b) a higher level, specifically 350 µg/100 g.

In response to the standards of identity proposal, the agency received several comments that provided information that has altered its economic impact analysis. Costs and benefits for each of the regulatory options are examined below.

A. Costs

Cost estimates are revised first for fortification at 140 µg/100 g followed by the cost estimates for fortification at 70 µg/100 g and 350 µg/100 g.

1. Require Fortification With Folic Acid at 140 µg/100 g

Costs of fortifying with folic acid at 140 µg/100 g include health costs and reformulation costs.

a. *Health costs.* Potential health costs of this regulatory option include the costs of neurologic disease associated with masking of the anemia of vitamin B_{12} deficiency. Several studies have found that folic acid can mask the anemia of vitamin B_{12} deficiency at levels as low as 250 µg/day. Although there is no scientific consensus on the percentage of diagnoses of vitamin B_{12} deficiency anemia that would be complicated by folate intake at this level, the agency has determined that adverse health effects are not significant until folate intake reaches 1 mg/day. In the proposal, FDA tentatively concluded that the 140 µg/100 g level for fortification of enriched cereal grain products was the most appropriate level based on a regulation that would have required that fortification of all breakfast cereals be limited to 100 µg folic acid/serving. This limitation was proposed under a separate food additive. regulation published elsewhere in the same **Federal Register** (58 FR 53312). With this option, 140 µg/100 g, FDA preliminarily concluded that intake of persons in the target and nontarget populations would remain below 1 mg/day.

Comments submitted in response to the proposal to limit breakfast cereals to 100 µg folic acid/serving persuaded the agency to allow breakfast cereals to continue to contain up to 400 µg folic acid/serving. If all breakfast cereals were fortified at the level of 400 µg/serving, some high end consumers could consume more than 1 mg folate/day. However, most cereals currently are fortified at a level of 100 µg/serving (25 percent of the reference daily intake (RDI)) and only an estimated 5 percent of breakfast cereals fortify at a level of 400 µg (100 percent of the RDI).

Further, it is unlikely that manufacturers of breakfast cereals will increase the folic acid level in cereals from 100 µg/serving to 400 µg/serving. Since most breakfast cereals that contain at least 40 µg/serving (10 percent of the RDI) of folic acid can now make health claims (if all other criteria are met), manufacturers have no incentive to reformulate from 100 µg to 400 µg per serving and incur reformulation costs.

There are a number of confounding uncertainties that make it difficult to estimate the potential health costs of folic acid fortification of enriched grain products (Ref. 9). These include:

1. Current intakes estimated from food consumption survey data may underestimate actual intakes due to underreporting of food intake;
2. The folate content of foods may be underestimated due to methodologic difficulties;
3. Good data on the distribution of dietary supplement intake are not available;
4. Estimates of masking of anemia (with subsequent progression of neurologic symptoms) based on enumerating only those associated with pernicious anemia would underestimate potential adverse effects because all vitamin B_{12} deficiencies may lead to neurologic problems; and
5. It is difficult to predict effects of changes in dietary patterns that occur simultaneously with, but independently of, this regulation. Such changes may be the result of educational efforts by various organizations, physicians, and health care providers or in response to health claims.

The last factor is particularly problematic. Recent surveys have shown a growing awareness of the value of increased folate intake among both the population as a whole and, specifically, among women of childbearing age. From 1994 to 1995, awareness of the problems associated with insufficient folic acid intake grew from 28 to 44 percent among women of all ages (Ref. 10). As awareness grows, it is likely that folic acid intake will increase in the target group. In addition, new label claims allowed by the final rule for health claims on the association between folate intake and a reduced risk of NTD's are also expected to increase folic acid intake among women of childbearing age. However, the survey mentioned above also showed that such awareness is strongly positively correlated with education, so that these messages may not reach less well-educated women in the population.

In the folic acid health claims proposal, FDA tentatively found that there were several nontarget groups whose intake levels of folate may approach 1 mg/day (intakes > 800 µg/day) with a level of 140 µg/day and use of dietary supplements. These include individuals in groups including children 4 through 10 years of age and males 11 through 18, 19 through 50, and 51+ years of age. Individuals at risk of pernicious anemia include both males and females over 51 and Hispanic females ages 40 and above. The largest group at potential risk includes males over 51 who take dietary supplements. In order to be at risk of potential adverse effects from consuming greater than 1 mg folate/day individuals must: (1) Consume an excessive amount of folic acid through some combination of supplements containing folic acid and consumption of fortified enriched grain products and other products containing folic acid; and (2) have low vitamin B_{12} status or have vitamin B_{12} deficiency.

Because of the difficulties mentioned above, it is not possible to estimate the number of people in the high risk subgroup who fit all of these categories.

However, one such attempt has been made between the time of the standards of identity proposal and this final rule. In this analysis, Romano et. al. made the following assumptions:

1. The annual incidence of pernicious anemia is 9.5 to 16.7 per 100,000 persons (based on two European population-based studies);

2. With low level fortification, 5 to 10 percent of these patients would receive enough folic acid to mask the anemia of vitamin B_{12} deficiency; and

3. Between "24 and 26 percent of patients with pernicious anemias whose anemias respond to folic acid develop neurologic signs" (Ref. 11).

Based on these assumptions, the authors estimated that approximately 500 people per year would develop neurologic disease as a result of low level folic acid fortification. Other authors contend that this estimate may considerably understate the number of cases (Ref. 12). On the other hand, one uncertainty not acknowledged by this analysis is that this rule may create a market for cereal-grain products that are not "enriched." A nonstandardized cereal-grain product could be produced that was not labeled as being enriched with folate (although it could have other vitamins and minerals added and be labeled to reflect this fact) and could be marketed to people at risk of vitamin B_{12} deficiency. If such a market developed, and at-risk persons were encouraged to consume products not enriched with folic acid, this problem might be reduced. In addition, sale to high risk subgroups of nonstandardized products such as whole wheat breads (mentioned earlier in this preamble) which do not need to be enriched, may increase as a result of this rule.

Another uncertainty that would reduce the number of cases of masked anemia, mentioned by one comment, is the percentage of cases of B_{12} deficiency that could be discovered with routine population screening. If such tests were performed proactively, B_{12} deficiencies might be identified before neurologic symptoms developed.

In addition, it is not clear whether the European population-based studies that reported the annual incidence of diagnosed pernicious anemia are relevant to the U.S. population. Some population groups in the United States (e.g., African-American women) appear to experience an earlier age-at-onset of pernicious anemia than occurs with pernicious anemia in Northern European countries, which are predominantly Caucasian populations.

Although not able to estimate an absolute number, FDA has calculated a cost per case of neurologic symptoms resulting from masking of the anemia of pernicious anemia so that a break-even point may be calculated at which point benefits would equal the costs. The cost-per-illness will be calculated using the sum of medical costs and the cost of lost utility. The majority of medical costs, which include costs for physicians, other hospital services, and drugs, are normally paid by insurance such that estimates based on willingness-to-pay to avoid death would not be likely to be included. Other utility losses, including death, pain and suffering, immobility, and lost productivity associated with morbidity, are calculated as a function of the willingness- to-pay (WTP) to avoid death. Thus, for example, each day of morbidity is a day spent in less than perfect health engendering some utility loss. That is, each day of illnesses is somewhere between a day of full utility, 1, and death, 0. Because WTP to avoid death does not include the medical expenditures mentioned above, these costs are calculated separately.

The expected utility loss estimates were calculated in the preliminary economic impact analysis (the PRIA) in the standards of identity proposal. The most common symptoms of a delay in the diagnosis of vitamin B_{12} deficiency are permanent paresthesia (numbness or tingling) in the hands or feet and ataxia (inability to coordinate voluntary muscular movements).

In the standards of identity proposal, FDA estimated the cost per case to be approximately $538,000 (Ref. 13). This estimate was calculated using weighted probabilities of a mild (95 percent) and a severe case (5 percent) and the value of expected utility loss per case of neurologic disability. For each state, mild and severe, a health status value was calculated that related the state to a day of "perfect health". Thus, a person with a mild case of neurologic disability is calculated to enjoy only 70 percent of the utility per day as that of a person in a perfectly healthy state. For a more severe case it would be approximately 50 percent (Ref. 14). Using the likely duration of each illness, the utility loss from a severe neurologic disability was found to be equivalent to a loss of 5.56 perfect-health years. From the value of a perfect health year, $138,889 (Ref. 14), the value of expected utility loss per case of mild neurologic disability was estimated to be $525,598. The utility loss due to severe neurologic disability was estimated in a similar fashion to be $772,598 per case. The weighted value (based on likelihood of a mild versus severe case) of a case of masked pernicious anemia leading to permanent adverse health effects was calculated as the weighted mean: $(0.95 \times 525{,}598) + (0.05 \times 772{,}598) = \$537{,}948$.

In addition to utility costs, hospital costs of neurologic effects due to pernicious anemia have been estimated by Romano et al. (Ref. 11). In this study, each neurologic case requires hospitalization once for an average duration of 16 days at $867/day. After factoring in physician services and other direct and indirect costs, the total direct outlay cost of neurologic disease as a result of folic acid fortification was estimated to be $33,000 per case (Ref. 11). Total costs per case are thus calculated to be $570,000.

However, as mentioned in Romano et al., the cost estimate may be too high because these estimates assume that all neurologic disease would be severe, and mild cases may not require hospitalization (Ref. 11). In addition, this estimate may be too high if there were routine population wide screening for vitamin B_{12} deficiency, although this is not currently occurring nor is it likely to be instituted. At the same time, however, the estimate may be too low if a case leads to later complications or to the need for lifelong skilled nursing care (Ref. 11).

These costs, lost utility and hospital costs, are not annual costs. Once someone has experienced permanent adverse health effects from masked pernicious anemia, that person ought not to be included in the costs estimated for subsequent years, since the discounted value of their permanent adverse health effects has already been calculated and attributed to the first year. Any costs in subsequent years would involve only those entering the at-risk age pool.

b. *Other health costs.* FDA is aware of the potential for other health problems resulting from increased long-term intakes of folic acid but has no data with which to quantify these costs.

c. *Reformulation costs.* Reformulation costs associated with this option were estimated in the proposal to be $27 million for the first year. The cost of adding the required folic acid is approximately $4 million per year. The cost of testing was estimated to be about $2.5 million per year and the cost of the required label changes $20 million. FDA will use these costs for this final rule as no comments were received on this part of the analysis.

In addition, some countries, such as Canada, do not allow folic acid fortification of these products. Thus, this option would require that separate production runs be made for fortified products exported, to and imported from, these countries. This requirement may preclude some manufacturers from the export market. None of the comments provided information that would assist in determining the costs of having different international requirements.

2. Costs of Requiring Fortification With Folic Acid at Either 70 µg/100 g or 350 µg/100 g

The total cost of the option to fortify at 70 µg/100 g in the first year was estimated in the proposal to be $25 million plus the cost of separate production runs for these products exported to and imported from certain foreign countries. For the option of fortifying with folic acid at 350 µg/100 g, the PRIA estimated a cost of $1.88 billion annually.

With the latter option, the folate intake of some consumers at risk of vitamin B_{12} deficiency (including pernicious anemia) would be raised to levels exceeding 1 mg per day. One comment to the proposal said that the estimated health costs of fortifying at this (higher) level were unrealistically high as FDA had failed to take into account that each subsequent year should only account for new cases (Ref. 11). Because of the problems with estimating numbers of people who will become ill at either level, FDA will not quantify these costs.

Reformulation costs. In the proposal, the cost of the folic acid required to fortify at 350 µg/100 g was estimated to be approximately $10 million per year. The cost of testing was estimated to be $2.5 million and the cost of the required label changes was estimated to be $20 million.

B. Benefits

1. Require Fortification with Folic Acid at 140 µg/100 g

The primary benefit of this option is a reduction in the number of infants born with NTD's each year. In addition, a possible benefit will be a reduction in cardiovascular diseases from intake of increased folate. However, there is still tremendous uncertainty with respect to the latter effect (for a more complete discussion, see folic acid food additive document published elsewhere in this **Federal Register**).

Based on a synthesis of information from several studies, including those which used multivitamins containing folic acid at a daily dose level of ≥ 0.4 mg, it was inferred that folic acid alone at levels of 0.4 mg per day will reduce the risk of NTD's. This conclusion was based on two studies, one from a high risk population (Hungary) with a small number of subjects that was found to be 100 percent effective and another from a study that showed zero risk reduction in a low prevalence population (California and Illinois). From these studies, the PHS estimated a reduction of 50 percent of the number of NTD's in the United States. Other studies evaluated by PHS varied in their results. A possible explanation for the lack of effectiveness was that studies were conducted in populations with a low prevalence of NTD's which may not have had a folate-related subset of NTD's.

In a study by Shaw et al., the reduction in NTD risk associated with folate intake is consistent with other studies, but the reduced risk was found to be specific to particular subsets of the population, primarily non-Hispanic women and women whose education did not exceed high school (Ref. 15). For Hispanic women, the risk reduction was approximately 10 percent. In a study by Romano et. al., the 50 percent estimate of reduced risk of NTD's was used with literature-based sensitivity limits of 67 percent (Ref. 16) and 20 percent (Refs. 11 and 17).

In the proposal, FDA estimated that under the 140 µg/100 g option, 116 NTD's per year would be prevented (50 percent reduction). Initiation of this option was also estimated to prevent an additional 25 infant deaths each year. Total benefits of this option were estimated to be between $651 and $788 million per year.

There is no consensus on the dose-response relationship between folate intake and the reduction in risk of NTD's. However, using a lower bound of 10 percent and an upper bound of a 50 percent reduction in NTD's, the estimated reductions in total cases would be between 25 (5 deaths) and 125 (27 deaths) resulting in quantified benefits ranging from $220 to $700 million.

2. Require Fortification with Folic Acid at 70 µg/100 g and 350 µg/100 g

a. *70 µg/100 g.* The benefit of requiring fortification of these products at 70 µg/100 g was estimated in the proposal to be between $328 and $394 million. Using the sensitivity limits mentioned above, 10 to 50 percent of the estimated benefits would range from $110 to $346 million.

b. *350 µg/100 g.* The benefit of requiring fortification of these products at 350 µg/100 g is estimated to be between $550 million and $1.4 billion. This option is the only option that would generate significant health costs.

C. Conclusion

In accordance with Executive Order 12866, the agency has analyzed the economic effects of this final rule and has determined that this rule, if issued, will not be an economically significant rule as defined by that order.

The cost of this final rule in the first year is estimated to be approximately $27 million which includes the cost of relabeling, testing, and fortification. In addition, there may be some health costs associated with neurologic symptoms resulting from masking the anemia of vitamin B_{12} deficiency as well as the cost of separate production runs for products exported to and imported from certain foreign countries. The cost of the proposed action in each year after the first year should be approximately 25 percent of the first year cost. The benefits are estimated to be between $220 and $700 million per year. Using a value of $570,000 per case of masked pernicious anemia resulting in neurologic damage, the break-even number of these cases at which costs would equal benefits would fall between 386 and 1,228.

Although reformulation costs of this option are approximately $27 million, the cost per firm is expected to be very small. Therefore, in accordance with the Regulatory Flexibility Act, FDA has determined that this rule will not have an adverse impact on a substantial number of small businesses.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Centers for Disease Control and Prevention, "Recommendations for the Use of Folic Acid to Reduce the Number of Cases of Spina Bifida and Other Neural Tube Defects," in *Morbidity and Mortality Weekly Reports*, 41, 1–7, 1992.

2. USDA, Nationwide Food Consumption Survey/Individual Intake-1987–1988, accession no. PB90–504044, National

Technical Information Service, Springfield, VA, 1990.

3. Food and Nutrition Board, National Research Council, National Academy of Sciences, Proposed Fortification Policy for Cereal-Grain Products, Washington, DC, 36 pp., 1974.

4. Nationwide Food Consumption Survey, Continuing Survey of Food Intakes by Individuals: Women 19–50 Years Old and Their Children 1–5 years, 1 day, 1985; United States Department of Agriculture, Hyattsville, MD; NFCS, CSFII, Report No. 85–1, 1985.

5. Subcommittee on Food Technology, Committee on Food Protection, Food and Nutrition Board, National Research Council, National Academy of Sciences, Proceedings of a Workshop on Technology of Fortification of Cereal-Grain Products, Washington, DC, May 16–17, 1977.

6. USDA Handbook 8–20: Composition of Foods, Cereal Grains, and Pasta, Raw Processed, Prepared. Rev., October 1989.

7. Hoffpauer, D.W., "Rice Enrichment for Today," *Cereal Foods World*, vol. 37, No. 10, pp. 757–759, 1992.

8. Ranhortra, G.S., J.A. Gelroth, F.A. Novak, and R.H. Matthews, "Retention of Selected B Vitamins in Cooked Pasta Products," *Cereal Chemistry*, vol. 60, No. 6, pp. 476–477, 1985.

9. Crane, N. et al., "Evaluating Food Fortification Options: General Principles Revisited with Folic Acid," *American Journal of Public Health*, vol. 85, No. 5, pp. 660–666, 1995.

10. FDA, Health and Diet Survey, 1994 and 1995.

11. Romano, P.S. et al., "Folic Acid Fortification of Grain: An Economic Analysis," *American Journal of Public Health*, vol. 85, No. 5, pp. 667–676, 1995.

12. Perez-Escamilla, R., "Folic Acid Fortification for the Prevention of Neural Tube Defects: Consensus Needed on Potential Adverse Effects," *American Journal of Public Health*, vol. 85, No. 11, pp. 1587–1588, 1995.

13. Healton, E.B., D.G. Savage, J.C. Brust, T.J. Garett, J. Lindenbaum, "Neurologic Aspects of Cobalamin Deficiency," *Medicine*, vol. 7, No. 4, pp. 229–245, 1991.

14. Research Triangle Institute, "Quality of Well-Being Scale in Estimating the Value of Consumers' Loss from Food Violating the FD&C Act," vol. II, Final Report, 1988.

15. Shaw, G.M. et al., "Periconceptional Vitamin Use, Dietary Folate and the Occurrence of Neural Tube Defects," Epidemiology Resources Inc., 1995.

16. MRC Vitamin Study Research Group, "Prevention of Neural Tube Birth Defects: Results of the Medical Research Council Vitamin Study," *Lancet*, vol. 338, pp. 131–137, 1991.

17. Mills, J.L., G.G. Rhoads, J.L. Simpson, G.C. Cunningham, M.R. Conley, M.R. Lassman, M.E. Walden, D.R. Depp, H.J. Hoffman, "The Absence of a Relation Between the Periconceptional Use of Vitamins and Neural-tube Defects," *New England Journal of Medicine*, 321:430–435, 1989.

List of Subjects

21 CFR Part 136

Bakery products, Food grades and standards.

21 CFR Part 137

Cereals (food), Food grades and standards.

21 CFR Part 139

Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR parts 136, 137, and 139 are amended as follows:

PART 136—BAKERY PRODUCTS

1. The authority citation for 21 CFR part 136 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

2. Section 136.115 is amended by revising paragraph (a)(1) to read as follows:

§ 136.115 Enriched bread, rolls, and buns.

(a) * * *

(1) Each such food contains in each pound 1.8 milligrams of thiamin, 1.1 milligrams of riboflavin, 15 milligrams of niacin, 0.43 milligrams of folic acid, and 12.5 milligrams of iron.

* * * * *

PART 137—CEREAL FLOURS AND RELATED PRODUCTS

3. The authority citation for 21 CFR part 137 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

4. Section 137.165 is amended by revising paragraph (a) to read as follows:

§ 137.165 Enriched flour.

* * * * *

(a) It contains in each pound 2.9 milligrams of thiamin, 1.8 milligrams of riboflavin, 24 milligrams of niacin, 0.7 milligrams of folic acid, and 20 milligrams of iron.

* * * * *

5. Section 137.185 is amended by revising paragraph (a) to read as follows:

§ 137.185 Enriched self-rising flour.

* * * * *

(a) It contains in each pound 2.9 milligrams of thiamin, 1.8 milligrams of riboflavin, 24 milligrams of niacin, 0.7 milligrams of folic acid, and 20 milligrams of iron.

* * * * *

6. Section 137.235 is amended by revising paragraph (a)(1) to read as follows:

§ 137.235 Enriched corn grits.

(a) * * *

(1) It contains in each pound not less than 2.0 milligrams (mg) and not more than 3.0 mg of thiamin, not less than 1.2 mg and not more than 1.8 mg of riboflavin, not less than 16 mg and not more than 24 mg of niacin or niacinamide, not less than 0.7 mg and not more than 1.0 mg of folic acid, and not less than 13 mg and not more than 26 mg of iron (Fe);

* * * * *

7. Section 137.260 is amended by revising paragraph (a)(1) to read as follows:

§ 137.260 Enriched corn meals.

(a) * * *

(1) It contains in each pound not less than 2.0 milligrams (mg) and not more than 3.0 mg of thiamin, not less than 1.2 mg and not more than 1.8 mg of riboflavin, not less than 16 mg and not more than 24 mg of niacin or niacinamide, not less than 0.7 mg and not more than 1.0 mg of folic acid, and not less than 13 mg and not more than 26 mg of iron (Fe);

* * * * *

8. Section 137.305 is amended by revising paragraph (a)(1) to read as follows:

§ 137.305 Enriched farina.

(a) * * *

(1) It contains in each pound not less than 2.0 milligrams (mg) and not more than 2.5 mg of thiamin, not less than 1.2 mg and not more than 1.5 mg of riboflavin, not less than 16.0 mg and not more than 20.0 mg of niacin or niacinamide, not less than 0.7 mg and not more than 0.87 mg of folic acid, and not less than 13.0 mg of iron (Fe).

* * * * *

9. Section 137.350 is amended by revising paragraph (a)(1) to read as follows:

§ 137.350 Enriched rice.

(a) * * *

(1) Not less than 2.0 milligrams (mg) and not more than 4.0 mg of thiamin, not less than 1.2 mg and not more than 2.4 mg of riboflavin, not less than 16 mg and not more than 32 mg of niacin or niacinamide, not less than 0.7 mg and not more than 1.4 mg of folic acid, and not less than 13 mg and not more than 26 mg of iron (Fe).

* * * * *

PART 139—MACARONI AND NOODLE PRODUCTS

10. The authority citation for 21 CFR part 139 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

11. Section 139.115 is amended by revising paragraph (a)(1) to read as follows:

§ 139.115 Enriched macaroni products.

(a) * * *

(1) Each such food contains in each pound not less than 4.0 milligrams (mg) and not more than 5.0 mg of thiamin, not less than 1.7 mg and not more than 2.2 mg of riboflavin, not less than 27 mg and not more than 34 mg of niacin or niacinamide, not less than 0.9 mg and not more than 1.2 mg of folic acid, and not less than 13 mg and not more than 16.5 mg of iron (Fe);

* * * * *

12. Section 139.122 is amended by revising the first sentence of paragraph (a)(3) to read as follows:

§ 139.122 Enriched nonfat milk macaroni products.

(a) * * *

(3) Each such food contains in each pound not less than 4.0 milligrams (mg) and not more than 5.0 mg of thiamin, not less than 1.7 mg and not more than 2.2 mg of riboflavin, not less than 27 mg and not more than 34 mg of niacin or niacinamide, not less than 0.9 mg and not more than 1.2 mg of folic acid, and not less than 13 mg and not more than 16.5 mg of iron (Fe). * * *

* * * * *

13. Section 139.155 is amended by revising paragraph (a)(1) to read as follows:

§ 139.155 Enriched noodle products.

(a) * * *

(1) Each such food contains in each pound not less than 4 milligrams (mg) and not more than 5 mg of thiamin, not less than 1.7 mg and not more than 2.2 mg of riboflavin, not less than 27 mg and not more than 34 mg of niacin or niacinamide, not less than 0.9 mg and not more than 1.2 mg of folic acid, and not less than 13 mg and not more than 16.5 mg of iron (Fe);

* * * * *

Dated: February 26, 1996.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 96–5014 Filed 2–29–96; 12:03 pm]

BILLING CODE 4160–01–P

21 CFR Part 172

[Docket No. 91N–100F]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Folic Acid (Folacin)

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of folic acid in foods that are the subject of a standard of identity that requires the addition of folic acid; to provide for its addition to breakfast cereals on a per serving basis; to permit its use in infant formulas, medical foods, and foods for special dietary use; and to incorporate specifications for folic acid consistent with those in the Food Chemicals Codex. This action is being taken to ensure that the amount of folic acid that all segments of the population are reasonably expected to consume is safe under the Federal Food, Drug, and Cosmetics Act (the act) and to implement Public Health Service's (PHS) recommendation to increase folic acid intake by women of childbearing age, thereby reducing the risk of pregnancies affected by neural tube defects (NTD's).

DATES: Effective March 5, 1996; written objections and requests for a hearing by April 4, 1996. The Director of the Office of the **Federal Register** approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in 21 CFR 103.35(d)(3)(v), effective March 5, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Dennis M. Keefe, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 14, 1993 (58 FR 53312), FDA proposed to amend the regulation that establishes safe conditions of food use for folic acid, § 172.345 (21 CFR 172.345)). In the proposed rule, which was entitled "Food Additives Permitted for Direct Addition to Food for Human Consumption; Folic Acid (Folacin)," FDA said that it intended to amend § 172.345 to: (1) Set limitations on the use of folic acid on a per serving basis, in accord with the Nutrition Labeling and Education Act of 1990; (2) allow for the addition of folic acid in foods for which standards of identity exist, where such standards permit the addition of folic acid; (3) restrict to breakfast cereals the foods for which standards of identity do not exist, to which folic acid may be added; (4) continue to permit the use of folic acid in infant formulas, dietary supplements, and foods for special dietary use; and (5) incorporate specifications for folic acid consistent with those in the Food Chemicals Codex.

Interested persons were given until December 13, 1993, to comment on the proposal. FDA received 59 letters, each containing one or more comments, from consumers, members of the Folic Acid Subcommittee of FDA's Food Advisory Committee, the United States Pharmacopeial Convention, Inc., consumer interest groups, food manufacturers, trade associations, and dietary supplement manufacturers. Most comments generally supported the proposed amendments. Some comments suggested modifications of various provisions of the proposed rule or requested clarification of certain issues. A number of comments were received that were more appropriate to other dockets, and these were forwarded to the appropriate dockets (Docket Nos. 91N–100H or 91N–100S) for response. A summary of the comments and the agency's responses are presented in section II of this document.

II. Comments to the Proposal

A. Safe Upper Limit

As part of FDA's implementation of the PHS recommendation that women of childbearing age consume 400 micrograms (µg) of folic acid per day to reduce their risk of a pregnancy affected by an NTD (Ref. 1), FDA initiated this proceeding, as well as a rulemaking to authorize a health claim on the relationship between folate and NTD's and a rulemaking to require the addition of folic acid to certain standardized cereal-grains. As part of FDA's rulemaking to authorize a folate health claim, the agency found it necessary to address the issue of the safe upper limit of daily folate intake. In the health claim proceeding, FDA was confronted with all of the issues related to a safe upper limit that have been presented in this proceeding. Thus, FDA's response to the comments that addressed the safe upper limit for folic acid intake in the present rulemaking draws largely on the agency's response to similar comments as laid out in a final rule authorizing a

health claim about the relationship of folate and neural tube defects published elsewhere in this issue of the **Federal Register**.

The agency's overriding goal in this food additive rulemaking is to ensure that the amount of folic acid that all segments of the population are reasonably expected to consume is safe under section 409(c)(3)(A) and (c)(5)(A) of the act (21 U.S.C. 348(c)(3)(A) and (c)(5)(A)), while concurrently aiding compliance with the PHS recommendation on folate and NTD's by increasing the folate content of the U.S. food supply.

The agency noted in the final folate health claim rule of January 6, 1993 (58 FR 2606 at 2612), and the folate health claim final rule published elsewhere in this issue of the **Federal Register**, that there may be risks attendant upon increased consumption of folate for some groups in the population. At the present time, the potential adverse effect for which there is the most evidence is a masking of anemia in persons with vitamin B_{12} deficiency, while severe and irreversible neurologic damage may progress. There is currently no way to determine how many persons in the general U.S. population have undiagnosed vitamin B_{12} deficiency, and thus, how many are potentially at risk of developing pernicious anemia. However, marginal vitamin B_{12} nutritional status is not uncommon in the U.S. population (58 FR 53254 at 53266 to 53268), and it is observed not only in persons with pernicious anemia from an inability to absorb dietary vitamin B_{12} but also in approximately 10 to 20 percent of elderly persons, more than 25 percent of demented patients, 15 to 20 percent of acquired immune deficiency syndrome (AIDS) patients, and 15 to 20 percent of patients with malignant diseases.

The agency further noted that other groups may be at risk from excessive intakes of folate. These other groups include pregnant women (with the potential for high levels of free folic acid affecting the embryo during early gestation) and persons on medications (the effectiveness of which could be adversely affected by high dietary folate intakes) used in the treatment of various cancers, psoriasis, rheumatoid arthritis, and bronchial asthma). Throughout its folate rulemaking proceedings, FDA evaluated the safety of high intakes of folate for all of these potentially at-risk groups. In its folate health claim final rule published elsewhere in this issue of the **Federal Register**, the agency described how it had reached its decision that 1 mg of total folate per day was the safe upper limit of intake.

In the folate health claim proposed rule (58 FR 53254, October 14, 1993), the agency provided data demonstrating the difficulty of concurrently achieving the PHS recommended increase in folate intake for all women of childbearing age without raising folate intakes of other segments of the population to unsafe levels. Thus, the agency recognized the significance of the proposed upper limit for daily folate intake in limiting the ability of fortification of the food supply alone to enable all women of childbearing age to achieve the PHS recommendation on folate intake. The agency also noted that there is a general paucity of evidence on the safety of daily folate intakes above 1,000 µg (1 mg). Therefore, in the folate food additive proposal, FDA specifically requested comments and data on the use of 1 mg per day total folate as a safe upper limit for establishing restrictions on food additive uses of folic acid. FDA further noted that the 1 mg daily safe upper limit for folate intake may need to be modified if data became available to support such a decision. Several comments supported FDA's tentative conclusion of 1 mg total dietary folate per day as the safe upper limit because they felt that the 1 mg per day limit is based on the best available data. As described below, other comments felt that this level was either too high or too low.

1. Folate intakes of 1 mg or Less Daily

Several comments contended that current scientific knowledge is insufficient to set the safe upper limit at 1 mg folate per day, and that perhaps the safe upper limit may actually be lower than 1 mg folate per day. These comments cited published studies suggesting that 500 µg folic acid per day may mask the anemia of vitamin B_{12} deficiency and urged that FDA set the safe upper limit below 500 µg folic acid per day. None of the commenters provided any new data to support their arguments.

FDA disagrees with those comments that contended that the safe upper limit of intake of 1 mg folate daily is too high, and that the limit should be set at a lower level. In its proposed folate health claim rule (58 FR 53254 at 53266 to 53270, October 14, 1993), FDA stated that it was aware that several published case reports suggest that there is evidence of masking of pernicious anemia in patients who consumed supplements that provided less than 1 mg folic acid daily. FDA was also aware of limited reports of masking of the anemia of vitamin B_{12} deficiency at levels as low as 250 µg folic acid daily. These reports were the basis for the agency's amendment, in the **Federal Register** of October 17, 1980, to its drug regulation on the therapeutic uses of folic acid (45 FR 69043 at 69044). In that instance, the agency required that the labeling of oral and parenteral preparations of folic acid include a "Precautions" statement that "Folic acid in doses above 0.1 mg daily may obscure pernicious anemia in that hematologic remission can occur while neurological manifestations remain progressive" (see discussion in proposed health claims rule, 58 FR 53254 at 53257, October 14, 1993).

FDA, as part of its review of the scientific literature and its discussions with the Folic Acid Subcommittee, carefully considered the reports of masking at relatively low levels of folate. In its folate health claim proposal, FDA noted that the effects of intakes of less than 1 mg are infrequent, suboptimal, and less predictable than those occurring at higher intakes (58 FR 53254 at 53267, October 14, 1993).

A safe upper limit of daily folate intake of 1 mg for persons with vitamin B_{12} deficiency was discussed by experts during a Centers for Disease Control and Prevention (CDC) workshop on surveillance for adverse effects of increased folic acid intakes. Those experts stated that there was little likelihood of problems at daily intakes lower than 1 mg (Ref. 2).

Most commenters with expertise in folate and vitamin B_{12} metabolism and nutrition also supported a safe upper limit of 1 mg folate daily based on their scientific knowledge and clinical experiences (see folate health claim final rule published elsewhere in this issue of the **Federal Register**). Moreover, a safe upper limit of 1 mg folate daily is consistent with the current Reference Daily Intakes (RDI's) for folate (i.e., 400 µg daily for the general population and 800 µg daily for pregnant women, levels that were the same as the U.S. RDA's that were used as early standards for nutrition labeling (Ref. 3)) and is consistent with the 1992 PHS recommendation for women of childbearing age (Ref. 1).

Therefore, FDA concludes that for those with vitamin B_{12} deficiency, there is little likelihood of problems if daily folate intakes are 1 mg or less. Moreover, FDA received no comments that disagreed with the agency's tentative conclusions that daily folate intakes of 1 mg or less are safe for pregnant women and for persons on medications whose effectiveness could be adversely affected by high folate intakes. Thus, FDA concludes that there is a reasonable certainty of no harm from a daily intake of up to 1 mg folate.

2. Folate Intakes Above 1 mg Daily

Other comments asserted that FDA's tentative conclusion of a safe upper limit of intake of 1 mg daily was too low. These comments contended that there is no evidence that folic acid intakes of 1.5 to 2 mg per day would result in any untoward effects and recommended that FDA set the safe upper limit at 1.5 to 2 mg folic acid per day. Another comment opined that setting the safe upper limit for folate intake at 1 mg per day is "arbitrary" and "paranoid." One comment claimed that the 1 mg limit is inappropriate because it is not based on substantive medical data. Several comments claimed that there is no evidence to suggest that folic acid doses at 1 mg per day are toxic. One comment argued that "[t]here is no toxicity for folic acid per se," and that "[t]he fact one mg. is needed to treat megaloblastic anemia really represents a floor. It does not speak to the intakes of Americans from food and fortification and supplements. Because Americans are laggards in their intake, a relative ceiling of 2 mgs. is not likely to be reached." This comment argued that, because the food bioavailability of folacin is fair but not excellent, fortificant and supplement intakes of folic acid are not likely to exceed one mg. None of these comments provided data to support their views.

Several comments focused on the safety of high folate intakes for pregnant women. These comments suggested that concerns about the safety of high intakes of folate in pregnant women were unfounded. In support of this contention one comment claimed that "* * * millions of pregnant women have safely consumed prenatal vitamins with 1 mg of folic acid in addition to their diet over the past 15–20 years." Several comments questioned why FDA set the safe upper limit at 1 mg per day while the United Kingdom (UK) was recommending a much higher limit of 5 mg folic acid per day.

Other comments focused on FDA's concern about the absence of data on safe use for persons with marginal vitamin B_{12} nutritional status. One comment asserted that FDA overstated the issue of the masking of B_{12} deficiency by folate. Another comment claimed that a hematologic response to folic acid in dosages between 1 mg and 5 mg per day appears to occur in persons with clinical vitamin B_{12} deficiency, but the frequency, magnitude, and duration of this response is unknown. The comment also stated that it is not known whether this hematological response could lead to a delay in the diagnosis of vitamin B_{12} deficiency. While agreeing that the masking of pernicious anemia is a concern, these comments argued that there is evidence that a substantial proportion of persons with pernicious anemia do not present with anemia before neurological symptoms. Therefore, these comments argued, these individuals would suffer the effects of undiagnosed pernicious anemia with or without folic acid supplementation. These comments did not provide any new data to support their view.

In proposing the safe upper limit at 1 mg folate per day, FDA carefully considered the available evidence on the safety for all segments of the population that might be placed at risk if folate intakes were to become excessively high. In response to the proposal, the agency did not receive any comments that provided data relating to the safety of long-term intakes of folate at levels above 1 mg per day for any of the groups considered et potential risk from increased intakes. FDA notes that both the Folic Acid Subcommittee and the Food Advisory Committee expressed concerns about the lack of information to support the safety of long-term daily intakes at levels above 1 mg (Ref. 4). The Food Advisory Committee also expressed concern about the lack of information on the size of the population potentially at risk from increased intakes of folate.

The agency is not aware of data that establish the safety of long-term intakes of folate above 1 mg per day. The absence of any data allowing systematic evaluation of intakes above this level means that potential risks and at-risk groups cannot be adequately defined or described. FDA notes that most folate and vitamin B_{12} experts submitting comments were concerned about the lack of documentation of safety of long-term daily intakes of folate above the level of 1 mg per day. In addition to expressing safety concerns regarding those with low vitamin B_{12} status, experts cited uncertainties about the effects of increased folate intakes by young children and the unknown physiological significance of circulating free folic acid in the blood, particularly in pregnant women. In its folate health claim proposed rule (58 FR 53254 at 53269, October 14, 1993), the agency summarized evidence from the scientific literature that high levels of free folic acid are not normally found in the circulation, and that folic acid is concentrated in crossing the placenta and accumulates in fetal tissues. At that time, the agency noted that no information was available to ascertain whether developing neural tissue is protected from the neurotoxic effects of very high circulating levels of free folic acid. Neither these issues nor issues related to long-term folate intakes of greater than 1 mg daily by other risk groups were addressed in the comments that the agency received.

The agency finds that the comments that suggested that there is evidence of safe use of high intakes of folate by pregnant women are misleading and erroneous. The agency disagrees with comments asserting that folic acid at doses of 4 mg per day have been extensively studied in pregnant women and are without toxic effects. The agency recognizes that pregnant women take prenatal supplements that usually contain 800 µg of folic acid, and that such supplements have been in use for many years. FDA notes, however, that while there is no evidence that 800 µg of folic acid per day (i.e., the U.S. RDA level for pregnant or lactating women) is unsafe for this group, such dosages are usually taken only during the second and third trimesters of pregnancy, or during lactation, to meet specific nutritional needs for limited periods of time and are usually taken under a physician's supervision. FDA further notes that the Institute of Medicine has stated that the safety of large doses of folic acid in pregnant women has not been systematically determined (Ref. 5).

FDA also disagrees with the comments that stated that the recommendations of the government of the UK are directly relevant to inferring that 5 mg daily is a safe level of intake for pregnant women. FDA notes that these comments fail to reveal the full content of the UK recommendations (Ref. 6). The UK government made two recommendations relating daily folate intake to women of child-bearing age. The first recommendation is for health care professionals to prescribe a dietary supplement containing 4 or 5 mg (4,000 or 5,000 µg) folic acid daily until the 12th week of pregnancy to women who have already had a pregnancy affected by a neural tube birth defect and, therefore, are at a particularly high risk for another affected pregnancy. The second recommendation is that women of child-bearing age, who have not had a previous pregnancy affected by a neural tube defect and who are likely to become pregnant, should increase their intakes of folate-rich foods and take a dietary supplement containing 400 µg folic acid daily. The supplement use is recommended from the start of attempting to conceive until the 12th week of pregnancy. Clearly, the UK recommendation for women in the general population is the relevant recommendation to this rulemaking

rather than the recommendation for the use of high potency supplements, by prescription, for women at high risk of an affected pregnancy. Moreover, the UK recommendation for women in the general population is consistent with the PHS recommendation, to which FDA subscribes. Finally, and most significant to this rulemaking, the UK recommendations do not directly address the safety of fortification for the entire food supply. FDA, therefore, finds that, contrary to the suggestion in the comment, the UK's folate intake recommendations for women anticipating pregnancy, but who have not had a history of a prior affected pregnancy, are consistent with FDA's conclusions of safe intakes for pregnant women.

FDA also disagrees with the comment that asserted that folic acid at doses of 4 mg per day has been extensively studied in pregnant women, and that such doses are without toxic effects. In the only study utilizing 4 mg folic acid per day, the Medical Research Council trial, about 910 women took supplements containing 4 mg of folic acid from the time of randomization into the trial until the 12th week of pregnancy (Ref. 7). The authors of this study concluded that, although this trial had sufficient statistical power to demonstrate the efficacy of the intervention, it did not have sufficient power to answer the question of safety for public health purposes. Consequently, this study does not provide a basis on which to determine whether the chronic use of 4 mg per day of folic acid by pregnant women is safe. The agency is not aware of any other studies on the effect of daily folate intakes of 4 mg in pregnant women, or of any other data or information that would persuade the agency that 4 mg folate per day is the appropriate safe upper limit of intake for pregnant women.

FDA is also not convinced by the comments on masking of the anemia of vitamin B_{12} deficiency that a higher value for a safe upper limit of folate intake is appropriate. As stated in the food additive proposed rule (58 FR 53312, October 14, 1993), one of the safety concerns associated with high intakes of folate is the potential for masking the anemia associated with vitamin B_{12} deficiency which may delay accurate diagnosis and prompt treatment of this problem while neurologic damage progresses. The symptoms of vitamin B_{12} deficiency include both hematologic and neurologic effects. While the hematologic effects of vitamin B_{12} deficiencies are reversible, the associated neurologic effects may be irreversible depending on how far they have progressed before detection and treatment. Any increase in the potential for masking the hematologic effects of vitamin B_{12} deficiency may compromise prompt and effective treatment, thereby making irreversible neurologic damage more likely.

The scientific literature describing the effects of intakes of folic acid between 1 and 5 mg per day is very limited. Nonetheless, FDA disagrees with the comments that asserted that there is no evidence of untoward effects of daily folate intakes of 1.5 to 2 mg per day, and that 5 mg per day should be identified as the safe upper limit of intake.

The literature describing the effects of daily intakes of 1 to 5 mg folic acid includes three uncontrolled intervention trials involving 15 persons (Refs. 8, 9, and 10) and 16 case reports (Refs. 11, 12, 13, 14, 15, and 16). These reports represent a very small data base, with information from a total of only 31 individuals. Moreover, the agency notes that, among these data, exposures of 9 individuals to daily intakes of 1 to 5 mg folic acid lasted for less than 30 days (e.g., Refs. 9, 11, 12, and 17). These short-term reports are inadequate for assessing the safety of life-long exposures. FDA notes, however, that hematological responses that could lead to a delay in the diagnosis of vitamin B_{12} deficiency were observed in 9 of the 16 patients (i.e., in more than 50 percent) whose daily oral intakes of folic acid were in the range of 1 to 5 mg and continued for 1 month or more (Refs. 8, 11, 12, 14, and 16). Thus, the scientific literature, although limited, shows that approximately half of the patients with pernicious anemia associated with vitamin B_{12} deficiency responded to folate at doses between 1 and 5 mg per day when they are given the vitamin for relatively short periods of time (e.g., several months).

FDA also is not convinced by the comments that noted that adverse effects of high intakes of folate with respect to vitamin B_{12} deficiency can be detected with clinical care and that the issue of masking of vitamin B_{12} deficiency predated modern clinical nutrition. FDA is aware that, in many instances, the adverse effects of increased folate intake associated with the masking of the anemia of vitamin B_{12} deficiency can be detected with clinical care but disagrees that clinical care alone is sufficient to ensure a reasonable certainty of no harm should the intake of folate exceed 1 mg folate per day. The agency notes that measurements of vitamin B_{12} status are not performed on a routine basis by physicians, and that there is no way to systematically determine how many people in the United States have undiagnosed vitamin B_{12} deficiency and thus might be at risk from increased intake of folate. The agency noted in the January 6, 1993, folate health claim final rule (58 FR 2606 at 2615) that significant percentages of the elderly, demented patients, AIDS patients, and patients with malignant diseases have subnormal vitamin B_{12} levels without having any of the classical manifestations of vitamin B_{12} deficiency. It has been reported, in a large study (n = 548) that the prevalence of vitamin B_{12} deficiency is greater than 12 percent among free-living elderly Americans (Ref. 18). In addition, 5 to 10 percent of all patients, regardless of age or clinical status, are found to have low serum vitamin B_{12} levels (58 FR 2606 at 2615, January 6, 1993). Little is known about whether folate supplementation would have any adverse effect on such persons, who are far more numerous in the U.S. population than are persons with pernicious anemia.

The argument that adverse effects in persons with vitamin B_{12}-related problems can be identified with clinical care fails to consider whether such persons, who may be unaware of their vitamin B_{12} status, would recognize an adverse effect as being the result of increased folate intake, and whether they would seek medical attention if such an effect occurred. There is no reason to conclude that they would. Thus, the agency concludes that the argument that adverse effects in persons with vitamin B_{12}-related problems can be identified with clinical care does not provide a sufficient basis for the agency to conclude that increasing the safe upper limit of intake provides a reasonable certainty of no harm.

In developing its proposed rules, FDA was aware of the contentious nature of the proposed 1 mg folate per day upper limit and specifically asked for data on this issue. This topic was also extensively discussed by FDA's Folic Acid Subcommittee and the full Food Advisory Committee (Refs. 4 and 19). No data were submitted in any of the comments that addressed the issue of the safety of intakes above 1 mg per day either for persons in the general population or for any of the groups identified as potentially at risk from increased folate intakes. The agency also notes that its position regarding use of 1 mg folate per day as the safe upper limit of daily intake was supported by all comments from individuals with known expertise in folate and vitamin B_{12} metabolism and related diseases.

Because there are inadequate data and information on the safety of consuming more than 1 mg folate per day, the agency finds that it cannot conclude that there is a reasonable certainty of no harm to persons who consume more than 1 mg folate per day. In the absence of safety data on daily intakes of folate above 1 mg per day, the agency is unable to adequately define the nature, or assess the magnitude, of potential risk from increased folate intakes. Therefore, the agency concludes that, because of the lack of evidence to support the safety of intake at levels greater than 1 mg folate daily, and the potential for serious harm to some persons from such intakes, the safe upper limit for daily folate intakes is appropriately set at 1 mg, the highest intake level that meets the safety standard for food additives that there is a reasonable certainty of no harm from use of the additive.

FDA finds that 1 mg per day as the safe upper limit for folate intake is supported by: (1) The totality of the available scientific evidence and the views expressed by experts with recognized expertise in folate and vitamin B_{12} nutrition and metabolism, that there are no data to ensure that adverse effects are not likely to occur at daily intakes above 1 mg (Refs. 2, 4, 19, and 20); (2) the PHS recommendation that folate intake of women of childbearing age should not exceed 1 mg per day (Ref. 1); and (3) the Folic Acid Subcommittee's use of 1 mg of total folate per day as a safe upper limit guide when considering fortification strategies.

The agency also is aware, however, of the rapidly evolving and potentially significant research suggesting a possible link between folate intakes and reduced risk of heart disease. The agency notes that a recent expert workshop sponsored by the National Heart, Lung, and Blood Institute of the National Institutes of Health reviewed the state-of-the art science in this area (Ref. 21). The expert working group found that the currently available data, while highly suggestive of a relationship, were insufficient to demonstrate the validity of this hypothesis. Nonetheless, FDA intends to monitor and review new data and information on both the safety of daily folate intakes at levels above 1 mg daily and on the potential need for improving the folate nutritional status of large segments of the U.S. population. Should persuasive evidence emerge that provides a reasonable certainty that daily intakes of folate at higher levels are safe, the agency will take action to modify the 1 mg per day safe upper limit for daily folate intake.

B. Concurrent Vitamin B_{12} Addition

One comment recommended requiring the addition of vitamin B_{12} to all foods containing added folic acid as a means to alleviate some of the concerns about the masking of the effects of vitamin B_{12} deficiencies. Another comment claimed that many dietary supplements contained 100 percent of the RDI for vitamin B_{12} as well as 100 percent of the RDI for folic acid and asserted that this level of vitamin B_{12} should allay the concerns about masking vitamin B_{12} deficiencies.

FDA is aware that very high oral doses of vitamin B_{12} (e.g., about 1 mg; 500-times the RDI for this vitamin) have provided effective treatment for some persons with pernicious anemia (Ref. 22). These findings have led some scientists to suggest that high doses of vitamin B_{12} could be added to foods and dietary supplements fortified with folic acid to reduce the potential for adverse effects in persons with vitamin B_{12} deficiency.

This suggestion was discussed during a meeting on surveillance for adverse effects of increased intakes of folate organized by CDC (Ref. 2). Several experts noted that even if an individual has pernicious anemia because of vitamin B_{12} malabsorption, they are able to absorb a small amount of oral vitamin B_{12} (about 1 to 2 percent). Several experts, however, suggested that one possible question about using foods or food products containing added vitamin B_{12} is that in the presence of other nutrients (e.g., vitamin C, thiamin, iron), vitamin B_{12} may be converted into analogs, some of which may have antivitamin B_{12} activity. The participants in this meeting noted the paucity of data about this matter. There were no conclusions or recommendations by this expert group on these issues.

In the folate health claim proposal of October 14, 1993 (58 FR 53254 at 53280), the agency discussed the issue of whether high doses of vitamin B_{12} should be added to foods or supplements fortified with folic acid to reduce the potential for adverse effects in persons with vitamin B_{12} deficiency. The agency requested comments, and specifically data, on the appropriateness, potential effectiveness, and safety of such fortification. The agency did not receive any data or other information on this issue.

Because data are not available that address the safety of simultaneous fortification of foods or dietary supplements with both folate and vitamin B_{12}, the agency cannot establish a level of oral vitamin B_{12} that is safe for the general population, safe for persons with vitamin B_{12}-related problems, and sufficiently high to protect persons with vitamin B_{12}-related problems from the adverse effects of increased intakes of folate. Furthermore, FDA notes that, because difficulty in absorbing oral vitamin B_{12} is the primary reason for inadequate vitamin B_{12} nutriture in many persons, the amount of vitamin B_{12} to be added would likely need to be very high, perhaps up to 500 times the RDI. Questions regarding the appropriateness, potential effectiveness, and safety of such an approach remain unanswered.

Given that vitamin B_{12} deficiency, including pernicious anemia, is a serious condition, which if untreated can lead to irreversible neurological damage, patients with pernicious anemia, and others at risk of vitamin B_{12} deficiency, should be diagnosed, treated, and monitored by a physician (Ref. 22). Moreover, the addition of both vitamin B_{12} and folic acid to a food is not relevant to other potential safety issues associated with high folate intakes (e.g., high intakes in pregnant women and adverse interactions in persons on some medications). Therefore, the agency rejects the suggestion that it require the addition of vitamin B_{12} to all foods containing added folic acid because there is not sufficient information to demonstrate that the addition of vitamin B_{12} whenever folic acid is added will be effective for its intended purpose and will ensure the safety of the use of folic acid.

C. Folate Versus Folic Acid

Several comments supported FDA's proposal to fortify certain cereal-grain products based on a safe upper limit for total folate rather than folic acid. Some comments stated that the use of total folate as opposed to only added folic acid to set the safe upper limit of intake was advisable because this approach provides an additional safety factor. Other comments recommended that the safe upper limit should be based solely on added folic acid and not total folate intake.

In support of establishing the safe upper limit based on folic acid intakes, one comment claimed that the 1 mg limit should be based on folic acid rather than folate because the bioavailability of folate is fair but not excellent. One comment argued that using folic acid rather than folate as the benchmark for measuring the safe upper limit of total folate intake is consistent with FDA's historical treatment of the

distinction between folic acid and folate. The comment pointed out that in 1971, for example, FDA concluded that "[f]olic acid especially in doses above 1.0 mg daily may obscure pernicious anemia * * *" (36 FR 6843, April 7, 1971). According to this comment, in 1979, FDA warned that for products containing 1 mg folic acid "[t]he use of folic acid for treatment of anemia without the direction of a physician may be dangerous." (44 FR 16126 at 16149, March 16, 1979.)

Several comments questioned why FDA proposed to establish the safe upper limit on a folate basis, rather than on a folic acid basis, given the fact that the human trials were run with folic acid, and there is no evidence of food folate reducing the incidence of NTD's.

Another comment recommended that the safe upper limit be established on a folic acid basis because:

> * * * (1) all evidence relative to the delay in diagnosis of vitamin B_{12} deficiency at consumption levels of 1,000 mcg and above, however equivocal, derives from persons who took *folic acid* supplements orally or received folic acid parenterally and who were simultaneously consuming folates from their diets, and, (2) for years, the cut point between 'over the counter' and prescription *folic acid* supplements has been 1,000 mcg. FDA's 1971 drug use/safety regulation governing oral and parenteral usage of folic acid (36 FR 6843) stated that "folic acid especially in doses above 1.0 mg daily may obscure pernicious anemia in that hematologic remission may occur while neurological manifestations remain progressive."

As discussed previously and in the proposed rule (58 FR 53312, October 14, 1993), FDA is aware of the effect on the choice of a fortification option if the safe upper limit were established based on total folate rather than the added form of the vitamin, folic acid. FDA notes that the distinction between "synthetic folic acid," referring only to folic acid, and "folate," referring only to naturally occurring food folates, with respect to the 1 mg estimate of safe daily intake is an artificial one and is not consistent with what is known about the metabolic interrelatedness and substitutability of a variety of folate vitamin forms.

The agency acknowledges that evidence relative to the masking of the anemia of vitamin B_{12} deficiency has been obtained from persons who consumed or were treated with synthetic folic acid. However, these individuals were also consuming unmeasured quantities of folate from foods. Thus, total daily folate exposures were unknown. The extent to which variations in background food folate intakes affected the variable responses, in terms of masking effects, cannot be determined. The absence of data on this issue means that it is not possible to conclude that only added folic acid is responsible for any masking effects.

Moreover, the agency notes that studies in vegetarians can provide some insights into the question of whether high intakes of folates from food sources alone can have adverse effects in persons with poor vitamin B_{12} status. Vegetarians present a model group for evaluating this question because their diets are very low in vitamin B_{12} (because animal foods are the sole dietary source of vitamin B_{12}) and usually very high in foods rich in folate (e.g., fruits, vegetables and legumes). Thus, vegetarians are at risk of developing vitamin B_{12} deficiency in the presence of high folate intakes. In one study of vegetarians, the authors reported that megaloblastic anemia (i.e., the type of anemia associated with vitamin B_{12} deficiency) is rarely encountered in Caucasian vegetarians and vegans (Ref. 23). This study also reported that the folate content of diets of vegan children aged 6 to 13 years was twice as high as that of omnivorous children aged 7 to 12 years. When infants of vegetarian mothers developed vitamin B_{12} deficiency, they usually presented first with neurological signs and symptoms rather than anemia. Another article reported that studies conducted over several decades in vegetarian populations have all indicated that major damage to myelin synthesis (i.e., synthesis of the covering of nerves) occurs with only minor hematopoietic damage (i.e., inability to synthesis red blood cells, resulting in anemia) (Ref. 24). This report also found generally higher red cell folate in persons with greater myelin damage of the type that only vitamin B_{12} deficiency produces than in persons with greater hematologic damage (i.e., anemia). These studies are suggestive that high food folate intakes alone can mask early hematologic symptoms of vitamin B_{12} deficiency in vegetarians, thus, suggesting that food folates and synthetic folic acid are each capable of causing masking effects.

These observations support the view that a safe upper limit of daily intake is more accurately based on total folate intake than on just intake of synthetic (or added) folic acid. Under conditions in which vitamin B_{12} utilization or intake is limited, either synthetic folic acid or food folate may cause masking of vitamin B_{12}-related anemia, and these two sources appear to be additive.

FDA also disagrees with the comments that the historical concern with safety of folate intakes for drugs, as well as for FDA's food additive regulations, was limited only to synthetic folic acid. The agency notes that the commenters' references to FDA's 1971 drug regulation in which intakes of synthetic folic acid above 1 mg daily were stated to cause masking of anemia related to vitamin B_{12} deficiency are misleading in that they fail to note that in 1980, FDA revised the 1971 drug regulation to require a warning statement that intakes as low as 0.1 mg daily may obscure pernicious anemia (45 FR 69043 at 69044, October 17, 1980). Clearly, for the food supply, a safe upper limit of intake of 0.1 mg would be inadequate to provide the known folate nutritional requirements of the U.S. population. Thus, considerations in drugs that are intended for the treatment of persons with diagnosed diseases and health-related conditions are not necessarily directly applicable to questions of food safety.

FDA further finds that suggestions that the historical examination of food additive regulations dealt only with synthetic folic acid are not helpful. Food additive regulations on folate addition to foods necessarily specify that the added form is synthetic because that is the only form that can be a food additive. On the other hand, it is common practice when evaluating the safety of an added food ingredient to consider the safety within the context of total dietary exposures, regardless of source.

As to comments on possible differences in bioavailability between food sources and synthetic sources of folic acid and the potential of these differences to affect safety considerations, FDA discussed this issue in its proposed health claim rule (58 FR 53254 at 53273 to 53274). FDA tentatively concluded that the issue of bioavailability is complex, and that no systematic data are available on many of the factors that affect bioavailability. FDA was not aware of any meaningful way to factor bioavailability into fortification scenarios or, by extension, into evaluations of safety. FDA received no new data on this matter. Therefore, FDA has no basis on which to factor possible differences in bioavailability of synthetic, as opposed to food, folates into its determination of the safe upper limit of folate intakes.

Significantly, the use of a distinction between folic acid and folate for the purposes of establishing a safe upper limit of folate intake was not supported by any expert group that the agency consulted during this rulemaking proceeding or by comments from experts in folate and B_{12} metabolism and related diseases (Refs. 2, 4, and 19).

Nor was it supported by any of the folate or vitamin B_{12} experts who submitted written comments to the record. FDA received no new data or compelling arguments in this regard. Therefore, the agency concludes that the safe upper limit of daily intake should be based on total folate intake (i.e., on consumption of folate from all sources).

D. Breakfast Cereals

Several comments supported the proposal to limit the fortification of breakfast cereals to 100 µg per serving. One comment supported the proposed rule's distinction between the consumption of dietary supplements and breakfast cereals, noting that:

> The document appropriately makes the distinction between breakfast cereal and vitamin supplements noting that some persons may consume many more than one serving of breakfast cereal per day.

In contrast, however, another comment argued that:

> * * * the potential for overconsumption of folic acid is greater for dietary supplements in pill/tablet/capsule form than for supplement cereals. Supplement cereal consumption is self-limiting in light of volume and caloric considerations. In contrast, smaller supplements have the potential to be consumed excessively, for example, by adults using a multivitamin/mineral product to increase vitamin C intake to combat a cold, or by children, with the potential result of iron toxicity.

Several comments recommended that currently marketed breakfast cereals containing 400 µg per serving folic acid should be allowed to continue to be formulated at this level. One breakfast cereal manufacturer argued that allowing dietary supplements to contain the full RDI level of folic acid while limiting the folic acid added to breakfast cereal to 25 percent of the RDI did not seem to be based on any scientific rationale:

> If 100% RDI is a safe level for a vitamin supplement in tablet form, it surely is a safe level in a food form. In fact, food is potentially a safer alternative since the consumption is self-limiting; whereas there is greater potential for over consuming supplements in tablet form.

Several comments stated that they did not understand how FDA could reduce the level of added folic acid in breakfast cereals and still implement the PHS recommendation to have women of childbearing age consume 400 µg folic acid per day. Other comments argued that FDA should allow some breakfast cereals to contain 100 percent of the RDI for folic acid per serving as an alternative to taking dietary supplement tablets.

Still other comments argued that FDA should not make a regulatory distinction between dietary supplements in conventional and unconventional food forms. The comments asserted that both should be allowed to provide 100 percent of the daily value of folic acid.

One comment suggested that for breakfast cereals to contain 100 percent of the RDI for folic acid, they must contain 100 percent of the RDI for at least 10 vitamins for which RDI's have been determined to preserve their status as rationally balanced supplement products.

In the proposal, FDA tentatively concluded that if cereal-grain products were fortified at 140 µg folic acid per 100 g, the addition of folic acid to breakfast cereals should be limited to 100 µg folic acid per serving. FDA stated that fortification of all breakfast cereals to 400 µg folic acid per serving would result in the estimated daily intake of folate among significant portions of the population exceeding the safe upper limit of 1 mg folate per day.

FDA recognizes that fortification of some breakfast cereals at 400 µg folic acid per serving provides women of child-bearing age flexibility to meet the PHS recommendation that such women consume 400 µg of folic acid per day as a means to reduce their risk of having a pregnancy affected by an NTD. FDA emphasizes that the estimates of folate consumption presented in the health claims proposal (58 FR 53295, October 14, 1993) were based on calculations that assumed all breakfast cereals would be fortified at 0, 100 µg, or 400 µg folic acid per serving. As discussed in the proposal, most breakfast cereals are fortified at 100 µg folic acid per serving, and only 3 to 6 percent of breakfast cereals are fortified at 400 µg folic acid per serving (Nielsen Scantrack Data, A.C. Nielsen Marketing Research, Inc., Cherry Hill, New Jersey).

FDA has no basis to conclude that the current market distribution of breakfast cereals fortified at 400 µg folic acid per serving will substantially change as the result of the authorization of a health claim on the relationship of folate to NTD's. In fact, the agency notes that the health claim on the relationship between folate and NTD's may be included in the labeling of foods that are good sources of folate (40 to 76 µg folic acid per serving). Because most breakfast cereals contain folic acid at levels (100 µg folic acid per serving) that permit them to bear this health claim, there is no need for breakfast cereal manufacturers to increase their level of folic acid fortification to qualify to bear the claim.

Moreover, FDA has provided in 21 CFR 101.79(c)(2)(i)(G) that the health claim for folate and NTD's cannot state that a specified amount of folate per serving from one source is more effective in reducing the risk of NTD's than a lower amount per serving from another source. Thus, the health claim regulation provides no incentive for increasing the level of folic acid fortification in breakfast cereals.

Therefore, given the small number and limited market share of breakfast cereals that are fortified with 400 µg of folic acid per serving, the lack of incentive for there to be any significant increase in this number, and the fact that, if used appropriately, breakfast cereals can contribute to a healthful diet and provide flexibility for women in selecting foods to meet the PHS recommendation, FDA has concluded that it is not necessary to limit the addition of folic acid to breakfast cereals to 100 µg folic acid (25 percent of the RDI) per serving. FDA has determined that addition of up to 400 µg folic acid per serving in breakfast cereals is safe as long as this practice does not become widespread. FDA intends to monitor the marketplace, however, and should the proportion of breakfast cereals fortified at 400 µg folic acid change substantially, FDA may find it necessary to reconsider this conclusion.

E. Fruit Juice Replacements

One comment recommended that fruit juice replacements be permitted to add folic acid at 20 percent of the RDI.

FDA has considered this recommendation in light of its efforts towards implementation of the PHS recommendation and establishing safe conditions of use for folic acid.

In examining options for providing folate to women of childbearing age through food fortification, the agency considered various options including allocation of folate to products such as cereal-grain products, fruit juices, and dairy products.

In selecting foods to consider as vehicles for fortification, the agency started with the basic principle that fortification of staple products that are commonly consumed in significant amounts by virtually all members of the target population is most likely to result in increased intakes of a specific nutrient by the target population (Ref. 26). The agency notes that, based on this general principle, cereal-grain products were the fortification vehicle recommended by the Food and Nutrition Board (Ref. 26).

Recent food consumption data confirm that 90 percent of women of childbearing age consume cereal-grain

products on a daily basis (Ref. 26). Therefore, all fortification options that the agency considered included fortification of cereal-grain products. Other commonly consumed food categories that may lend themselves to fortification with nutrient additives, including juices and dairy products, were also considered. Examples of dairy products and fruit juices that the agency considered for fortification included: Fluid cows' milk, reconstituted dry milk, condensed and evaporated milks, yogurts, and fruit juices such as orange, grapefruit, lemon, pineapple, apple, and grape.

FDA also included breakfast cereals in evaluating all fortification strategies because these products represent a traditional source of many nutrients, including folate, for those who consume them. Breakfast cereals are also consumed by many women of childbearing age (Ref. 27). Similarly, because approximately 30 to 40 percent of women of childbearing age use dietary supplements (Ref. 28), the agency also included the availability and continued use of dietary supplements in all fortification options.

In the agency's analyses of potential intakes from fortified foods, FDA applied different levels (70, 140, and 350 µg per 100 unit) of fortification to the broad range of food products under consideration, including certain dairy products and fruit juices.

When fortification at the lowest level, (i.e., 70 µg per unit) included fruit juices and dairy products in addition to cereal-grain products, intakes of high consumers exceeded the safe upper limit of 1 mg folate per day for most age groups. For example, fortification of cereal-grain products, fruit juices, and dairy products with 70 µg folic acid per unit, in addition to usual patterns of dietary supplement and breakfast cereal use, was estimated to result in daily folate intakes of high consumers in many groups in excess of 1 mg (58 FR 53254 at 53292, October 14, 1993).

On the other hand, as discussed more fully in the folate health claim proposal, FDA examined the effects of not including fruit juices and dairy products in its fortification model. As noted above, cereal-grain products are more widely consumed than dairy products or fruit juices by women of childbearing age. The agency examined the following fortification levels: 70, 140, or 350 µg folic acid per unit. If cereal-grain products were fortified with 70 µg folic acid per 100 g, folate intakes by adult population groups of "high consumers" would remain below 1 mg per day (58 FR 53254 at 53292, October 14, 1993). If fortification of cereal-grain products was 140 µg per 100 g, intakes by adults 51+ years who were "high consumers" and who used supplements would approach but not exceed 1 mg folate per day. Fortification of cereal-grain products at 350 µg per 100 g could result in estimated daily intakes by "high consumers" among several sex/age groups in excess of 1 mg folate per day (58 FR 53254 at 53292, October 14, 1993).

As discussed above, FDA has concluded that 1 mg folate per day is the safe upper limit for folate intake. To ensure that the safe upper limit is not exceeded, FDA finds that folic acid fortification must be limited to the cereal-grain products that are the subject of a standard of identity that requires the addition of this substance at a level of 140 µg per 100 g. Fortification of other standardized foods with folic acid would cause the total daily folate intake of some segments of the population to exceed the safe daily intake of folate.

Because fruit juices and fruit juice replacements are not as widely consumed as cereal-grain products by women of childbearing age, they do not provide as effective a means for addressing the PHS recommendation that women of childbearing age consume 400 µg folic acid per day. Moreover, allowing their fortification in addition to the fortification of cereal-grain products would cause some members of the population to exceed the safe upper limit of intake. Therefore, FDA rejects the comments recommending that fruit juice replacements be permitted to add folic acid.

F. Infant Formula

One comment by a trade association representing infant formula manufacturers supported proposed § 172.345(e) which explicitly permits the addition of folic acid to infant formula, consistent with section 412(i) of the act (21 U.S.C. 350a(i)).

Another comment expressed concern that proposed § 172.345(e) would allow the addition of elevated levels of folic acid to infant formula.

FDA notes that in accordance with section 412(i) of the act, infant formulas are required to contain all essential nutrients, including folic acid. This rulemaking amends the food additive regulations to make clear that the use of folic acid in infant formula at a level necessary to provide 4 µg of folate is safe and meets the known nutrient requirements of infants when used at the required level. This level was set in accordance with the 1967 recommendations of the Committee on Nutrition of the American Academy of Pediatrics (Ref. 29) and was incorporated into the 1980 Infant Formula Act and the 1986 Amendments to the act. Therefore, FDA concludes that addition of folic acid to infant formula at levels that comply with section 412 of the act is safe.

G. Dietary Supplements

In the proposal, FDA tentatively concluded that it should continue to provide for the use of folic acid in dietary supplements (58 FR 53312 at 53316, October 14, 1993). FDA received several comments supporting this tentative conclusion. Since publication of the proposal, however, the Dietary Supplement Health and Education Act of 1994 (DSHEA) was enacted. The DSHEA amended the act to exempt dietary ingredients, including vitamins, used in dietary supplements from the definition of a "food additive" (section 201(s)(6) of the act). Therefore, there is no need to provide for the use of folic acid in dietary supplements in the food additive regulations. Consequently, FDA has modified the proposed revision of § 172.345 by removing paragraph (f) and redesignating paragraph (g) as paragraph (f).

H. Medical Foods

A comment from a trade association that represents manufacturers of medical foods supported FDA's proposal to allow the addition of folic acid to medical foods.

FDA recognizes that it is necessary and appropriate to provide for the use of folic acid in foods that are formulated to be consumed or administered enterally under the supervision of a physician and that are intended for the specific dietary management of a disease condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation (medical foods). Therefore, FDA is providing for the use of folic acid in medical foods in § 172.345(f). In the proposal, FDA provided for medical foods as a subset of foods for special dietary use (see proposed § 172.345(g)). However, FDA has reevaluated this approach and concludes that it is more consistent with the act to provide for medical foods as a separate class of products (see section 403(r)(5)(A) of the act and compare section 411(c)(3) (21 U.S.C. 350(c)(3)) of the act with section 5(b)(3) of the Orphan Drug Act (21 U.S.C. 360ee(b)(3)).

FDA has provided for the addition of folic acid to foods for special dietary use in this final rule (§ 172.345(g)).

I. Meal-Replacements

Several comments recommended that FDA allow the fortification of meal-replacement products with folic acid. These comments stated that weight control meal-replacement products should be allowed to be fortified with folic acid at a level based on the proportion of the total daily caloric intake that the product is intended to provide. One comment argued that meal-replacement products are unlikely to contribute to excess folic acid in the diet because their use is self-limiting. In addition, several comments argued that the addition of folic acid to meal-replacement products is consistent with the rationale used by FDA to justify the fortification of breakfast cereals, because meal-replacement products are alternatives to breakfast cereals, and like breakfast cereals, meal-replacement products are consumed typically as a single serving at the beginning of the day. In support of allowing addition of folic acid to meal-replacement products, one comment argued that these products are often consumed by women of childbearing age at breakfast in place of cereal, or they are eaten as a mid-morning snack when breakfast is skipped.

Another comment recommended that any meal-replacement products be permitted to contain up to 100 percent of the RDI per serving of folic acid. The comment argued that this level was justified because these products are usually promoted and knowingly purchased at a premium for their nutrient properties.

FDA recognizes that meal-replacement products intended to be consumed as the sole item of a meal or a diet provide persons consuming such products with essential nutrients. Moreover, folic acid fortification of such products provides an alternative to breakfast cereals and dietary supplements for women of child-bearing age that want to follow the PHS recommendation that they consume 400 µg of folic acid per day. Therefore, FDA concludes that meal-replacement products represented as a sole item of a meal or a diet may contain added folic acid.

To ensure that consumers of such meal-replacement products do not exceed the safe upper limit for folate per day, FDA has concluded that meal-replacement products that are intended to be consumed once per day may contain up to 400 µg folic acid per serving. However, to ensure that consumption of meal-replacement products does not result in folate intakes exceeding the safe upper limit of 1 mg folate per day, FDA has concluded that meal-replacement products intended to be consumed more than once per day may contain up to 200 µg folic acid per serving (§ 172.345(h)).

J. Foodstuff Premixes

One comment requested that the agency clarify whether folic acid may be added to foodstuff premixes made with unenriched flour, but whose labeling indicates that the product contains enriched flour.

FDA recognizes that current manufacturing practices can involve the addition of nutrients, including folic acid, to premixes containing unenriched cereal-grain. FDA advises that the addition of folic acid to premixes made with unenriched cereal-grain flours, where a regulation establishing a standard of identity exists and where the standard specifically requires the addition of folic acid, is viewed by the agency as use in accordance with § 172.345(c).

K. Specifications

Several comments requested that the proposed specifications for folic acid (§ 172.345(b)) be modified to include standards established by the United States Pharmacopeia (USP) for the use of folic acid in dietary supplements. These comments maintained that current USP and Food Chemicals Codex standards for folic acid are identical, and that including the USP requirements would help resolve any differences should USP improve the standards for folic acid. The comments noted that USP intends to establish new standards for folic acid.

As discussed previously, in response to the DSHEA, FDA has removed all references to the use of folic acid in dietary supplements from § 172.345. Establishing specifications for the use of folic acid in dietary supplements, as recommended in the comments, is beyond the scope of this rulemaking. Therefore, FDA concludes that new § 172.345(b) will specify FCC specifications for the food additive use of folic acid.

L. Analytical Methodology

A comment noted that the current Association of Official Analytical Chemists (AOAC) method for folate quantitation in food is inadequate, and that there is a critical need for an improved method. Another comment noted that the current AOAC method is subject to considerable variability and requires 5 to 7 days to complete. The comment noted that this length of time is not practical for in-plant quality control purposes.

The agency recognizes that current methods for folate quantitation in foods may present a problem. FDA notes that folate is one of the most labile of the water-soluble vitamins, and the instability of the numerous folate forms in food has proven to be an obstacle to their quantitation.

Current methods to quantitate the level of folate in foods generally involve a two-step process consisting of extraction of folate from the food matrix followed by quantitation of folate levels. Extraction of folate from the food matrix is the most technically challenging step in the analysis. The AOAC has approved two methods for folate quantitation in food (Ref. 30). Both are microbiological assays. These assays can be completed within 72 hours after extraction of folate from the food sample.

Attempts to improve the extraction of folate from food matrices have focused on the use of a triple enzymatic digestion procedure using a broad specificity protease, an α-amylase, and chicken pancreatic conjugase. Use of the triple enzyme procedure has been found to increase measurable folate from a wide range of food matrices and has been shown to be particularly effective on cereal-grain based foods and milk and milk by-products. The triple enzyme procedure has been adapted into analysis protocols at FDA's Atlanta Center for Nutrient Analysis for the quantitation of folate in FDA's Total Diet samples (Ref. 31).

FDA scientists are studying the triple enzyme extraction procedure to identify foodstuffs for which the extraction method is most applicable. The agency also notes that a number of high pressure liquid chromatography (HPLC) methods for folate analysis and quantitation have been described in the literature. Because such HPLC methods are more rapid than the microbial methods currently in use, they offer the potential for development of a rapid folate quantitation assay for quality control purposes.

FDA will continue to work with AOAC to improve the methodology for quantitation of folate in food. The agency anticipates that the use of the triple enzyme extraction procedure and HPLC will result in advances over the current folate assays by reducing variability and assay time.

III. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not

required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

IV. Objections

Any person who will be adversely affected by this regulation may at any time on or before April 4, 1996 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m. Monday through Friday.

1. Department of Health and Human Services, Public Health Service, Recommendations for the Use of Folic Acid to Reduce the Number of Cases of Spina Bifida and Other Neural Tube Defects, *Morbidity and Mortality Weekly Report* 41/No. RR–14, pp. 1–7, September 11, 1992.
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5. Institute of Medicine, National Academy of Sciences, "Nutrition During Pregnancy," Washington, DC, National Academy Press, 1990.
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7. Wald, N., Prevention of NTD's: Results of the Medical Research Council Vitamin Study, *Lancet*, 338:131–131, 1991; and editorial, "Folic Acid and Neural Tube Defects," *Lancet*. 338:153–154, 1991.
8. Ross, F. J., H. Belding, and B. L. Paegel, "The Development and Progression of Subacute Combined Degeneration of the Spinal Cord in Patients with Pernicious Anemia Treated with Synthetic Pteroylglutamic (Folic) Acid." *Blood*, 3:68–90, 1948.
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17. Davidson, L.S.P., and R.H. Girdwood, "Folic Acid as Therapeutic Agent," *British Medical Journal*, 1:587–591, 1947.
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19. Transcript of meeting of Folic Acid Subcommittee/Food Advisory Committee Meeting, Arlington, VA, April 15–16, 1993.
20. Briefing material, Folic Acid Subcommittee Meeting, April 15, 1993.
21. National Heart, Lung, and Blood Institute of the National Institutes of Health Workshop.
22. Hathcock, J., and G. Troendle, "Oral Cobalamin for Treatment of Pernicious Anemia," *Journal of the American Medical Association*, 265:96–97, 1991.
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List of Subjects in 21 CFR Part 172

Food additives, Incorporation by Reference, Reporting and recordkeeping requirements.

Therefore under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 379e).

2. Section 172.345 is revised to read as follows:

§ 172.345 Folic acid (folacin).

Folic acid (CAS Reg. No. 59–30–3), also known as folacin or folate, may be safely used in food as a nutrient in accordance with the following prescribed conditions:

(a) Folic acid is the chemical *N*-[4-[[(2-amino-1,4-dihydro-4-oxo-6-pteridinyl)methyl]amino]benzoyl]-*L*-glutamic acid.

(b) Folic acid meets the specifications of the "Food Chemicals Codex," 3d ed. (1981), pp. 125 to 126, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) Folic acid may be added to foods subject to a standard of identity established under section 401 of the Federal Food, Drug, and Cosmetic Act (the act) when the standard of identity specifically provides for the addition of folic acid.

(d) Folic acid may be added, at levels not to exceed 400 micrograms (µg) per serving, to breakfast cereals, as defined under § 170.3(n)(4) of this chapter.

(e) Folic acid may be added to infant formula in accordance with section 412(i)(1) of the act or with regulations issued under section 412(i)(2) of the act which are codified in § 107.100 of this chapter.

(f) Folic acid may be added to a medical food, as defined in section 5(b)(3) of the Orphan Drug Act (21 U.S.C. 360ee(b)(3)), at levels not to exceed the amount necessary to meet the distinctive nutritional requirements of the disease or condition for which the food is formulated.

(g) Folic acid may be added to food for special dietary use at levels not to exceed the amount necessary to meet the special dietary needs for which the food is formulated.

(h) Folic acid may be added to foods represented as meal-replacement products, in amounts not to exceed:

(1) Four hundred µg per serving if the food is a meal-replacement that is represented for use once per day; or

(2) Two hundred µg per serving if the food is a meal-replacement that is represented for use more than once per day.

Dated: February 28, 1996.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 96–5012 Filed 2–29–96; 12:04 pm]

BILLING CODE 4160–01–P

VOL
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federal register

Tuesday
March 5, 1996

Part IV

Department of Education

Research in Education of Individuals With Disabilities Program; Notices

DEPARTMENT OF EDUCATION

Research in Education of Individuals With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Secretary announces a final priority for the Research in Education of Individuals with Disabilities Program. The Secretary may use this priority in Fiscal Year 1996 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve outcomes for children with disabilities. This final priority is intended to ensure wide and effective use of program funds.

EFFECTIVE DATE: This priority takes effect on April 4, 1996.

FOR FURTHER INFORMATION CONTACT: Doris Andres, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3526, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8125. Fax: (202) 205–8105. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953. Internet: Doris—Andres@ed.gov

SUPPLEMENTARY INFORMATION: The Research in Education of Individuals with Disabilities Program, authorized by Part E of the Individuals with Disabilities Education Act (20 U.S.C. 1441–1443), provides support: to advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals in regular education environments—to provide children with disabilities effective instruction and enable these children to learn successfully.

On November 7, 1995, the Secretary published a notice of proposed priority for this program in the **Federal Register** (60 FR 56192–56193).

This final priority supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

The publication of this priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements. Funding of particular projects depends on the availability of funds, and the quality of the applications received. Further, FY 1996 priorities could be affected by enactment of legislation reauthorizing these programs.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, four parties submitted comments. An analysis of the comments and of the changes in the proposed priority follows. Technical and other minor changes—as well as suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Priority—Initial Career Awards

Comment: Two commenters expressed concern about limiting the priority to researchers in the initial phases of their careers. One commenter opposed limiting the competition to one category of researcher given the limited amount of funding, if any, that may be available over the next few years for research. The commenter felt strongly that the priority should focus on the highest quality of research that will continue to move the field forward, irrespective of the status of the careers of the researchers. The commenter also suggested that the priority be changed to encourage applications from persons with disabilities and from professionals who have demonstrated success in service delivery. Another commenter felt the priority could penalize those researchers who have spent a few years outside academia in the "real world" of service systems and programmatic realities, before they define research lines of interest for their research careers.

Discussion: The Department has a basic three pronged approach to develop the capacity of the special education research community. First, there is the Student-Initiated Research Projects priority (begun in 1974) that targets students at the post-secondary level to encourage students to pursue special education research. Second, the Initial Career Awards (ICA) competition (begun in 1990) is intended to bridge the gap between students and established researchers by providing support to individuals who are in the initial phases of their careers to initiate and develop promising lines of research. Third, the Field-Initiated Research Projects competition (begun in 1964 and the oldest continuous source of Federal funding in education) provides support to researchers who may be associated with institutions of higher education, State and local educational agencies, and other public agencies and nonprofit private organizations. The Department believes this approach should be maintained because historically the students and beginning researchers have a difficult time competing against established researchers, and the Department believes it is important to encourage and support their participation to expand the special education research capacity into as broad a range as possible. The priority as written provides for the involvement of individuals with recognized professional expertise in the subject matter, and researchers with disabilities are encouraged to apply along with other eligible applicants.

The Secretary agrees with the commenter that researchers who have spent a few years outside academia are deserving of support, and they are eligible to apply to the Field-Initiated Research Projects competition.

Regarding the concern that there could be increasingly limited funding for research activities, the Secretary notes that final action on the 1996 appropriation is difficult to predict. Congress has not yet enacted a fiscal year 1996 appropriation for the Department of Education, and is considering proposals to eliminate or reduce funding in fiscal year 1996 for many of the discretionary grant programs administered by the Department for which the President requested funds. In order to ensure that the Department has the ability to award funds in the event they become available for programs for which funding is uncertain, the Department is proceeding with the publication of priorities and the conduct of planned competitions. The Department will make final decisions on the appropriate priorities and mix of awards for each program once a final appropriation is enacted.

Changes: None.

Comment: Two commenters suggested other areas that proposals should focus on including: (1) Natural settings for infants and young children; (2) inclusive classrooms; (3) the effective utilization of technology and telecommunications; (4) students with disabilities meeting educational standards established for all students; (5) integrating students with disabilities with their nondisabled peers throughout their educational experience; and (6) effective transition planning so that individuals with disabilities successfully participate in postsecondary education and are employed in integrated work settings.

Discussion: The Secretary concurs with the importance of the focus areas listed above.

However, the priority as written does not preclude proposals on the suggested topics. The Secretary prefers that applicants be given flexibility to propose their particular area of inquiry, and believes it would be overly prescriptive to limit potential applicants to certain topics.

Changes: None.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

Absolute Priority—Initial Career Awards

Background: There is a need to enable individuals in the initial phases of their careers to initiate and develop promising lines of research that would improve early intervention services for infants and toddlers, and special education for children and youth with disabilities. Support for research activities among individuals in the initial phases of their careers is intended to develop the capacity of the special education research community. This priority would address the additional need to provide support for a broad range of field-initiated research projects—focusing on the special education and related services for children and youth with disabilities and early intervention for infants and toddlers—consistent with the purpose of the program as described in 34 CFR 324.1.

Priority: The Secretary establishes an absolute priority for the purpose of awarding grants to eligible applicants for the support of individuals in the initial phases of their careers to initiate and develop promising lines of research consistent with the purposes of the program. For purposes of this priority, the initial phase of an individuals career is considered to be the first three years after completing a doctoral program and graduating (e.g., for fiscal year 1996 awards, projects may support individuals who completed a doctoral program and graduated no earlier than the 1991–92 academic year).

Projects must—

(a) Pursue a line of inquiry that reflects a programmatic strand of research emanating either from theory or a conceptual framework. The line of research must be evidenced by a series of related questions that establish directions for designing future studies extending beyond the support of this award. The project is not intended to represent all inquiry related to the particular theory or conceptual framework; rather, it is expected to initiate a new line or advance an existing one;

(b) Include, in its design and conduct, sustained involvement with nationally recognized experts having substantive or methodological knowledge and expertise relevant to the proposed research. Experts do not have to be at the same institution or agency at which the project is located, but the interaction must be sufficient to develop the capacity of the researcher to pursue effectively the research into mid-career activities. At least 50 percent of the researcher's time must be devoted to the project;

(c) Prepare its procedures, findings, and conclusions in a manner that informs other interested researchers and is useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families; and

(d) Disseminate project procedures, findings, and conclusions to appropriate research institutes and technical assistance providers.

A project's budget must include funds to attend the two-day Research Project Directors' meeting to be held in Washington, D.C. each year of the project.

Applicable Program Regulations: 34 CFR Part 324.

Program Authority: 20 U.S.C. 1441–1443.

(Catalog of Federal Domestic Assistance Number 84.023, Research in Education of Individuals with Disabilities Program)

Dated: February 28, 1996.

Katherine D. Seelman,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–5056 Filed 3–4–96; 8:45 am]

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[CFDA No.: 84.023N]

Research in Education of Individuals With Disabilities Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Purpose of Program: To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals in regular education environments—to provide children with disabilities effective instruction and enable them to successfully learn. This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Eligible Applicants: Eligible applicants are State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; (b) The regulations for this program in 34 CFR Part 324; and (c) The priority in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Deadline for Transmittal of Applications: May 17, 1996.

Applications Available: March 15, 1996.

Estimated Number of Awards: 5.

Project Period: Up to 36 months.

Available Funds: In fiscal year 1996, the Department proposes to allocate approximately $375,000 to support an estimated 5 projects, with a maximum size of award of $75,000 for the first twelve months of the project. Multi-year projects will be level funded unless there are increases in costs attributable to significant changes in activity level.

The Congress has not yet enacted a fiscal year 1996 appropriation for the Department of Education. The Department is publishing this notice in order to give potential applicants adequate time to prepare applications. The estimate of the amount of funds that will be available for this competition is based in part on the President's 1996 budget request and in part on the level of funding available for fiscal year 1995.

Potential applicants should note, however, that the Congress is considering proposals to eliminate or to reduce funding in 1996 for many of the discretionary grant programs administered by the Department, including the program under which this competition would be conducted. Final action on the 1996 appropriation may require the Department to cancel the competition announced in this notice.

Note: The Department of Education is not bound by any estimates in this notice.

For Applications and General Information Contact: Requests for applications and general information should be addressed to: Claudette Carey.

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U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3525, Washington, D.C. 20202–2641. Telephone: (202) 205–9864. FAX: (202) 205–8105. Internet: Claudette—Carey@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

For Technical Information Contact: Doris Andres, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3526, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8125. FAX: (202) 205–8105. Internet: Doris—Andres@ed.gov

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web at http://www.ed.gov/money.html However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1441–1443.

Dated: February 28, 1996.

Katherine D. Seelman,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–5057 Filed 3–4–96; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
March 5, 1996

Part V

Department of Housing and Urban Development

24 CFR Parts 962 and 984
Family Self-Sufficiency Program; Streamlining Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 962 and 984

[Docket No. FR–3989–F–01]

RIN 2577–AB61

Office of the Assistant Secretary for Public and Indian Housing; Family Self-Sufficiency Program; Streamlining Final Rule

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations for the Family Self-Sufficiency (FSS) Program. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline the Family Self-Sufficiency Program regulations by consolidating the public housing and the Section 8 FSS regulations and by eliminating redundant or otherwise unnecessary provisions. This final rule will make the Family Self-Sufficiency regulations clearer and more concise.

EFFECTIVE DATE: April 4, 1996.

FOR FURTHER INFORMATION CONTACT: Louise K. Hunt, Director for Policies and Procedures, Room 4216, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–3887, ext. 330. This number may be accessed through TDD by calling the Federal Relay Service at (202) 708–9300 or 1–800–877–TDDY (1–800–877–8389). (Other than the "1–800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

This rule does not alter existing information collection requirements. The information collection requirements contained in §§ 962.201, 962.302, 962.305, and 962.401 of this rule were previously submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995 (42 U.S.C. 3501–3520) and had been approved under the control number 2577–0178. The Department's request for reinstatement of this control number is pending at OMB. (See notice published in the **Federal Register** on November 30, 1995, at 60 FR 61563.) An agency may not conduct or sponsor, and person is not required to respond to a collection of information unless the collection displays a valid control number. The OMB control number, when reinstated, will be added by separate notice in the **Federal Register**.

Background

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for the public housing and Section 8 FSS Programs can be improved and streamlined by consolidating these regulations. The two current Code of Federal Regulations parts affected (part 962 for the public housing FSS Program and part 984 for the Section 8 FSS program) contain many identical provisions. Consolidating the parts should especially benefit HAs that operate both a public housing and a Section 8 FSS program.

Some provisions in the regulations are not regulatory requirements. For example, several sections in the regulations contain nonbinding guidance or explanations. While this information is very helpful to recipients, HUD will more appropriately provide this information through handbook guidance or other materials rather than maintain it in the CFR.

Section 984.201, Action Plan, contains revisions to conform to changes to administrative plan requirements in 24 CFR part 982 for the Section 8 Tenant-Based Assistance Program. (See 24 CFR 982.54, as added by 60 FR 34698, July 3, 1995, and the related preamble discussion of the FSS action plan at 60 FR 34661.) In conformity with those changes this rule removes the requirement in the current Section 8 FSS program regulation to include certain FSS policies in the administrative plan rather than in the action plan.

This rule does not affect the Indian housing FSS Program, which is codified at 24 CFR part 950 with other Indian housing programs. This rule applies to Indian Housing Authorities that opt or have opted to participate in the Section 8 FSS Program.

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely consolidates existing CFR parts and removes unnecessary regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing redundant or unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations initially implementing the FSS Program (HUD Docket No. FR–2961). That finding remains applicable to this rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

Catalog

The Catalog of Federal Domestic Assistance numbers for the programs affected by this proposed rule is 14.850, 14.855, and 14.887.

List of Subjects

24 CFR Part 962

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 984

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, under the authority of 42 U.S.C. 3535(d), parts 962 and 984 of 24 Code of Federal Regulations are amended as follows:

PART 962—[REMOVED]

1. Part 962 is removed.

2. Part 984 is revised to read as follows:

PART 984—SECTION 8 AND PUBLIC HOUSING FAMILY SELF-SUFFICIENCY PROGRAM

Subpart A—General

Sec.
984.101 Purpose, scope, and applicability.
984.102 Program objectives.
984.103 Definitions.
984.104 Basic requirements of the FSS program.
984.105 Minimum program size.

Subpart B—Program Development and Approval Procedures

984.201 Action Plan.
984.202 Program Coordinating Committee (PCC).
984.203 FSS family selection procedures.
984.204 On-site facilities.

Subpart C—Program Operation

984.301 Program implementation.
984.302 Administrative fees.
984.303 Contract of participation.
984.304 Total tenant payment, family rent, and increases in family income.
984.305 FSS account.
984.306 Section 8 residency and portability requirements.

Subpart D—Reporting

984.401 Reporting.

Authority: 42 U.S.C. 1437f, 1437u, and 3535(d).

Subpart A—General

§ 984.101 Purpose, scope, and applicability.

(a) *Purpose.* (1) The purpose of the Family Self-Sufficiency (FSS) program is to promote the development of local strategies to coordinate the use of public and Indian housing assistance and housing assistance under the Section 8 rental certificate and rental voucher programs with public and private resources, to enable families eligible to receive assistance under these programs to achieve economic independence and self-sufficiency.

(2) The purpose of this part is to implement the policies and procedures applicable to operation of a local FSS program, as established under section 23 of the 1937 Act (42 U.S.C. 1437u), under HUD's rental voucher, rental certificate, and public housing programs.

(b) *Scope.* (1) Each PHA that received funding for public housing units under the FY 1991 and FY 1992 FSS incentive award competitions must operate a public housing FSS program.

(2) Each HA that received funding for Section 8 rental certificates or rental vouchers under the combined FY 1991/1992 FSS incentive award competition must operate a Section 8 FSS program.

(3) Unless the HA receives an exception from the program as provided in § 984.105, each HA that, in FY 1993 or any subsequent FY, received or receives funding for additional rental certificates or rental vouchers must operate a Section 8 FSS program or for additional public housing units must operate a public housing FSS program.

(c) *Applicability*—(1) *Public housing.* This part applies to public housing assisted under the 1937 Act.

(2) *Indian Housing Authorities.* This part does not apply to Indian housing. The regulations governing Indian housing FSS programs are set forth in 24 CFR part 950, subpart R. The operation of a Section 8 FSS program is optional for Indian Housing Authorities (IHAs) that operate a certificate or voucher program. IHAs that elect to operate a Section 8 FSS program are subject to the requirements of this part, except that § 984.105(c) of this subpart A governing minimum program size does not apply to IHAs. Additionally, IHAs that received section 8 units under the FSS incentive award competitions and are operating a section 8 FSS program are not subject to the minimum program size requirements.

(3) *Section 8.* This part also applies to the Section 8 rental certificate program and the Section 8 rental voucher program authorized by Section 8 of the 1937 Act and implemented at 24 CFR parts 882, 887, and 982.

§ 984.102 Program objectives.

The objective of the FSS program is to reduce the dependency of low-income families on welfare assistance and on Section 8, public or Indian housing assistance, or any Federal, State, or local rent or homeownership subsidies. Under the FSS program, low-income families are provided opportunities for education, job training, counseling, and other forms of social service assistance, while living in assisted housing, so that they may obtain the education, employment, and business and social skills necessary to achieve self-sufficiency, as defined in § 984.103 of this subpart A. The Department will measure the success of a local FSS program not only by the number of families who achieve self-sufficiency, but also by the number of FSS families who, as a result of participation in the program, have family members who obtain their first job, or who obtain higher paying jobs; no longer need benefits received under one or more welfare programs; obtain a high school diploma or higher education degree; or accomplish similar goals that will assist the family in obtaining economic independence.

§ 984.103 Definitions.

(a) The terms *1937 Act, Fair Market Rent, HUD, Indian Housing Authority (IHA), Public Housing Agency (PHA), Secretary,* and *Section 8*, as used in this part, are defined in 24 CFR 5.100.

(b) As used in this part:

Certification means a written assertion based on supporting evidence, provided by the FSS family or the HA, as may be required under this part, and which:

(1) Shall be maintained by the HA in the case of the family's certification, or by HUD in the case of the HA's certification;

(2) Shall be made available for inspection by HUD, the HA, and the public, as appropriate; and

(3) Shall be deemed to be accurate for purposes of this part, unless the Secretary or the HA, as applicable, determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

Chief executive officer (CEO). The CEO of a unit of general local government means the elected official or

the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. The CEO for an Indian tribe is the tribal governing official.

Contract of participation means a contract in a form approved by HUD, entered into between a participating family and an HA operating an FSS program that sets forth the terms and conditions governing participation in the FSS program. The contract of participation includes all individual training and services plans entered into between the HA and all members of the family who will participate in the FSS program, and which plans are attached to the contract of participation as exhibits. For additional detail, see § 984.303 of this subpart A.

Earned income means income or earnings included in annual income from wages, tips, salaries, other employee compensation, and self-employment. (See 24 CFR 813.106(b)(1), (2) and (8) and 913.106(b)(1), (2) and (8).) Earned income does not include any pension or annuity, transfer payments, any cash or in-kind benefits, or funds deposited in or accrued interest on the FSS escrow account established by an HA on behalf of a participating family.

Effective date of contract of participation means the first day of the month following the month in which the FSS family and the HA entered into the contract of participation.

Eligible families means:

(1) For the public housing FSS program, current residents of public housing. Eligible families also include current residents of public housing who are participants in local public housing self-sufficiency programs; and

(2) For Section 8 FSS program, current Section 8 rental certificate or rental voucher program participants, including participants in the Project Self-Sufficiency or Operation Bootstrap or other local self-sufficiency programs.

Enrollment means the date that the FSS family entered into the contract of participation with the HA.

Family Self-Sufficiency program or FSS program means the program established by an HA within its jurisdiction to promote self-sufficiency among participating families, including the provision of supportive services to these families, as authorized by section 23 of the 1937 Act.

FSS account means the FSS escrow account authorized by section 23 of the 1937 Act, and as provided by § 984.305 of this subpart A.

FSS credit means the amount credited by the HA to the participating family's FSS account.

FSS family or participating family means a family that resides in public housing or receives assistance under the rental certificate or rental voucher programs, and that elects to participate in the FSS program, and whose designated head of the family has signed the contract of participation.

FSS related service program means any program, publicly or privately sponsored, that offers the kinds of supportive services described in the definition of "supportive services" set forth in this § 984.103.

FSS slots refer to the total number of public housing units or the total number of rental certificates or rental vouchers that comprise the minimum size of an HA's respective public housing FSS program or Section 8 FSS program.

FY means Federal Fiscal Year (starting with October 1, and ending September 30, and designated by the calendar year in which it ends).

HA means a Housing Authority—either a Public Housing Agency (PHA) or an Indian Housing Authority (IHA).

Head of FSS family means the adult member of the FSS family who is the head of the household for purposes of determining income eligibility and rent.

Housing subsidies means assistance to meet the costs and expenses of temporary shelter, rental housing or homeownership, including rent, mortgage or utility payments.

Individual training and services plan means a written plan that is prepared for the head of the FSS family, and each adult member of the FSS family who elects to participate in the FSS program, by the HA in consultation with the family member, and which sets forth:

(1) The supportive services to be provided to the family member;

(2) The activities to be completed by that family member; and

(3) The agreed upon completion dates for the services and activities. Each individual training and services plan must be signed by the HA and the participating family member, and is attached to, and incorporated as part of the contract of participation. An individual training and services plan must be prepared for the head of the FSS family.

JOBS Program means the Job Opportunities and Basic Skills Training Program authorized under part F of title IV of the Social Security Act (42 U.S.C. 402(a)(19)).

JTPA means the Job Training Partnership Act (29 U.S.C. 1579(a)).

Low-income family. See definitions in 24 CFR 813.102 and 913.102.

Participating family. See definition for "FSS family" in this section.

Program Coordinating Committee or PCC is the committee described in § 984.202 of this part.

Public housing means housing assisted under the 1937 Act, excluding housing assisted under Section 8 of the 1937 Act.

Self-sufficiency means that an FSS family is no longer receiving Section 8, public or Indian housing assistance, or any Federal, State, or local rent or homeownership subsidies or welfare assistance. Achievement of self-sufficiency, although an FSS program objective, is not a condition for receipt of the FSS account funds. (See § 984.305 of this part.)

Supportive services means those appropriate services that an HA will make available, or cause to be made available to an FSS family under a contract of participation, and may include:

(1) *Child care*—child care of a type that provides sufficient hours of operation and serves an appropriate range of ages;

(2) *Transportation*—transportation necessary to enable a participating family to receive available services, or to commute to their places of employment;

(3) *Education*—remedial education; education for completion of secondary or post secondary schooling;

(4) *Employment*—job training, preparation, and counseling; job development and placement; and follow-up assistance after job placement and completion of the contract of participation;

(5) *Personal welfare*—substance/alcohol abuse treatment and counseling;

(6) *Household skills and management*—training in homemaking and parenting skills; household management; and money management;

(7) *Counseling*—counseling in the areas of:

(i) The responsibilities of homeownership;

(ii) Opportunities available for affordable rental and homeownership in the private housing market, including information on an individual's rights under the Fair Housing Act; and

(iii) Money management; and

(8) *Other services*—any other services and resources, including case management, reasonable accommodations for individuals with disabilities, that the HA may determine to be appropriate in assisting FSS families to achieve economic independence and self-sufficiency.

Unit size or size of unit refers to the number of bedrooms in a dwelling unit.

Very low-income family. See definitions in 24 CFR 813.102 and 913.102.

Welfare assistance means income assistance from Federal or State welfare programs, and includes assistance provided under the Aid to Families with Dependent Children (AFDC) Program, Supplemental Security Income (SSI) that is subject to an income eligibility test; Medicaid, food stamps, general assistance, or other assistance provided under a Federal or State program directed to meeting general living expenses, such as food, health care, child care, but does not include assistance solely directed to meeting housing expenses, and does not include transitional welfare assistance provided to JOBS participants.

§ 984.104 Basic requirements of the FSS program.

An FSS program established under this part shall be operated in conformity with:

(a) The regulations of this part, and for a Section 8 FSS program, the rental certificate and rental voucher regulations, codified in 24 CFR parts 882, 887, and 982 respectively, and for a public housing FSS program, the applicable public housing regulations, including the regulations in 24 CFR parts 913, 960, and 966;

(b) An Action Plan, as described in § 984.201, and provide comprehensive supportive services as defined in § 984.103; and

(c) An FSS program established under this part shall be operated in compliance with the nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5, with the exception of Executive Orders 11246, 11625, 12432, and 12138.

§ 984.105 Minimum program size.

(a) *General.* Unless otherwise excepted from operation of an FSS program as provided in paragraph (c) of this section, or from operation of an FSS program of the minimum size as provided in paragraph (d) of this section, an HA shall operate an FSS program of the minimum size as determined in this section.

(1) *Determining minimum program size.* The minimum size of a FSS program:

(i) For a public housing FSS program, is equal to:

(A) The total number of public housing units reserved in FY 1993, and each subsequent FY; plus (if applicable)

(B) The number of public housing units reserved in FY 1991 and FY 1992 under the FSS incentive award competitions;

(ii) For a Section 8 FSS program, is equal to:

(A) The total number of rental certificates and rental vouchers reserved in FY 1993, and each subsequent FY; plus (if applicable)

(B) The number of rental certificates and rental vouchers reserved under the combined FY 1991/1992 FSS incentive award competition.

(2) *Applicable units and certificates and vouchers.* In determining minimum program size, for a public housing FSS program, all new public housing rental units reserved will be counted and, for a Section 8 FSS program, all rental certificates and rental vouchers reserved will be counted, except those used to replace rental certificates or rental vouchers (renewals).

(b) *Maintaining minimum program size.* As the contracts of participation for FSS families are completed or terminated, replacement FSS families must be selected to maintain the minimum program size. A replacement family must be selected in accordance with the FSS family selection procedures set forth in § 984.203.

(c) *Exception to program operation.* (1) Upon approval by HUD, an HA will not be required to establish and carry out a public housing or a Section 8 FSS program if the HA provides to HUD a certification, as defined in § 984.103, that the establishment and operation of such an FSS program is not feasible because of local circumstances, which may include, but are not limited to:

(i) Lack of accessible supportive services funding, including lack of the availability of programs under JTPA or JOBS;

(ii) Lack of funding for reasonable administrative costs;

(iii) Lack of cooperation by other units of State or local government; or

(iv) Lack of interest in participating in the FSS program on the part of eligible families.

(2) An exception will not be granted if HUD determines that local circumstances do not preclude the HA from effectively operating an FSS program that is smaller than the minimum program size.

(d) *Reduction in program size.* Upon approval by HUD, an HA may be permitted to operate a public housing or a Section 8 FSS program that is smaller than the minimum program size if the HA provides to HUD a certification, as defined in § 984.103, that the operation of an FSS program of the minimum program size is not feasible because of local circumstances, which may include, but are not limited to:

(1) Decrease in or lack of accessible supportive services, including decrease in the availability of programs under JTPA or JOBS;

(2) Decrease in or lack of funding for reasonable administrative costs;

(3) Decrease in or lack of cooperation by other units of State or local government;

(4) Decrease in or lack of interest in participating in the FSS program on the part of eligible families.

(e) *Review of certification records.* HUD reserves the right to examine, during its management review of the HA, or at any time, the documentation and data that an HA relied on in certifying to the unfeasibility of its establishing and operating an FSS program, or of operating an FSS program of less than minimum program size.

Subpart B—Program Development and Approval Procedures

§ 984.201 Action Plan.

(a) *Requirement for Action Plan*—(1) *General.* To participate in the FSS program, an HA must have a HUD-approved Action Plan that complies with the requirements of this section.

(2) [Reserved]

(b) *Development of Action Plan.* The Action Plan shall be developed by the HA in consultation with the chief executive officer of the applicable unit of general local government, and the Program Coordinating Committee.

(c) *Initial submission and revisions*—(1) *Initial submission.* Unless the dates set forth in this paragraph (c) are extended by HUD for good cause, an HA that is establishing its first FSS program must submit an Action Plan to HUD for approval within 90 days of notification by HUD of approval of:

(i) The HA's application for incentive award units; or

(ii) If the HA did not apply for FSS incentive award units, other funding that establishes the obligation to operate an FSS program.

(2) *Revision.* Following initial approval of the Action Plan by HUD, no further approval of the Action Plan is required unless the HA proposes to make policy changes to the Action Plan, or changes are required by HUD. Any changes to the Action Plan must be submitted to, and approved by, HUD.

(d) *Contents of Plan.* The Action Plan shall describe the policies and procedures of the HA for operation of a local FSS program, and shall contain, at a minimum, the following information:

(1) *Family demographics.* A description of the number, size, characteristics, and other demographics (including racial and ethnic data), and the supportive service needs of the families expected to participate in the FSS program;

(2) *Estimate of participating families.* A description of the number of eligible

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FSS families who can reasonably be expected to receive supportive services under the FSS program, based on available and anticipated Federal, tribal, State, local, and private resources;

(3) *Eligible families from other self-sufficiency program.* If applicable, the number of families, by program type, who are participating in Operation Bootstrap, Project Self-Sufficiency, or any other local self-sufficiency program who are expected to agree to execute an FSS contract of participation.

(4) *FSS family selection procedures.* A statement indicating the procedures to be utilized to select families for participation in the FSS program, subject to the requirements governing the selection of FSS families, set forth in § 984.203. This statement must include a description of how the HA's selection procedures ensure that families will be selected without regard to race, color, religion, sex, handicap, familial status, or national origin.

(5) *Incentives to encourage participation—a description of the incentives that the HA intends to offer eligible families to encourage their participation in the FSS program (incentives plan).* The incentives plan shall provide for the establishment of the FSS account in accordance with the requirements set forth in § 984.305, and other incentives, if any, designed by the HA. The incentives plan shall be part of the Action Plan.

(6) *Outreach efforts.* A description of:

(i) The HA's efforts, including notification and outreach efforts, to recruit FSS participants from among eligible families; and

(ii) The HA's actions to be taken to assure that both minority and non-minority groups are informed about the FSS program, and how the HA will make this information known.

(7) *FSS activities and supportive services.* A description of the activities and supportive services to be provided by both public and private resources to FSS families, and identification of the public and private resources which are expected to provide the supportive services.

(8) *Method for identification of family support needs.* A description of how the FSS program will identify the needs and deliver the services and activities according to the needs of the FSS families;

(9) *Program termination; withholding of services; and available grievance procedures.* A description of the HA's policies concerning: terminating participation in the FSS program, withholding of supportive services, or terminating or withholding Section 8 assistance, on the basis of a family's failure to comply with the requirements of the contract of participation; and the grievance and hearing procedures available for FSS families.

(10) *Assurances of non-interference with rights of non-participating families.* An assurance that a family's election not to participate in the FSS program will not affect the family's admission to public housing or to the Section 8 program or the family's right to occupancy in accordance with its lease.

(11) *Timetable for program implementation.* A timetable for implementation of the FSS program, as provided in § 984.301(a)(1), including the schedule for filling FSS slots with eligible FSS families, as provided in § 984.301;

(12) *Certification of coordination.* A certification that development of the services and activities under the FSS program has been coordinated with the JOBS Program; the programs provided under the JTPA; and any other relevant employment, child care, transportation, training, and education programs (e.g., Job Training for the Homeless Demonstration program) in the applicable area, and that implementation will continue to be coordinated, in order to avoid duplication of services and activities; and

(13) *Optional additional information.* Such other information that would help HUD determine the soundness of the HA's proposed FSS program.

(e) *Eligibility of a combined program.* An HA that wishes to operate a joint FSS program with other HAs may combine its resources with one or more HAs to deliver supportive services under a joint Action Plan that will provide for the establishment and operation of a combined FSS program that meets the requirements of this part.

(f) *Single action plan.* HAs implementing both a Section 8 FSS program and a public or Indian housing FSS program may submit one Action Plan.

§ 984.202 Program Coordinating Committee (PCC).

(a) *General.* Each participating HA must establish a PCC whose functions will be to assist the HA in securing commitments of public and private resources for the operation of the FSS program within the HA's jurisdiction, including assistance in developing the Action Plan and in implementing the program.

(b) *Membership*—(1) *Required membership.* The PCC must: (i) For a public housing FSS program, consist of representatives of the PHA, and the residents of public housing. The public housing resident representatives shall be solicited from one or more of the following groups:

(A) An area-wide or city-wide resident council, if one exists;

(B) If the PHA will be transferring FSS participants to vacant units in a specific public housing development, the resident council or resident management corporation, if one exists, of the public housing development where the public housing FSS program is to be carried out;

(C) Any other public housing resident group, which the PHA believes is interested in the FSS program, and would contribute to the development and implementation of the FSS program; and

(ii) For a Section 8 FSS program, consist of representatives of the HA, and of residents assisted under the section 8 rental certificate or rental voucher program or under HUD's public or Indian housing programs.

(2) *Recommended membership.* Membership on the PCC also may include representatives of the unit of general local government served by the HA, local agencies (if any) responsible for carrying out JOBS training programs, or programs under the JTPA, and other organizations, such as other State, local or tribal welfare and employment agencies, public and private education or training institutions, child care providers, nonprofit service providers, private business, and any other public and private service providers with resources to assist the FSS program.

(c) *Alternative committee.* The HA may, in consultation with the chief executive officer of the unit of general local government served by the HA, utilize an existing entity as the PCC if the membership of the existing entity consists or will consist of the individuals identified in paragraph (b)(1) of this section, and also includes individuals from the same or similar organizations identified in paragraph (b)(2) of this section.

§ 984.203 FSS family selection procedures.

(a) *Preference in the FSS selection process.* An HA has the option of giving a selection preference for up to 50 percent of its public housing FSS slots and of its Section 8 FSS slots respectively to eligible families, as defined in § 984.103, who have one or more family members currently enrolled in an FSS related service program or on the waiting list for such a program. The HA may limit the selection preference given to participants in and applicants for FSS related service programs to one or more eligible FSS related service programs. An HA that chooses to exercise the selection preference option must include the following information in its Action Plan:

(1) The percentage of FSS slots, not to exceed 50 percent of the total number of FSS slots for each of its FSS programs, for which it will give a selection preference;

(2) The FSS related service programs to which it will give a selection preference to the programs' participants and applicants; and

(3) The method of outreach to, and selection of, families with one or more members participating in the identified programs.

(b) *FSS selection without preference.* For those FSS slots for which the HA chooses not to exercise the selection preference provided in paragraph (a) of this section, the FSS slots must be filled with eligible families in accordance with an objective selection system, such as a lottery, the length of time living in subsidized housing, or the date the family expressed an interest in participating in the FSS program. The objective system to be used by the HA must be described in the HA's Action Plan.

(c) *Motivation as a selection factor*—(1) *General.* An HA may screen families for interest, and motivation to participate in the FSS program, provided that the factors utilized by the HA are those which solely measure the family's interest, and motivation to participate in the FSS program.

(2) *Permissible motivational screening factors.* Permitted motivational factors include requiring attendance at FSS orientation sessions or preselection interviews, and assigning certain tasks which indicate the family's willingness to undertake the obligations which may be imposed by the FSS contract of participation. However, any tasks assigned shall be those which may be readily accomplishable by the family, based on the family members' educational level, and disabilities, if any. Reasonable accommodations must be made for individuals with mobility, manual, sensory, speech impairments, mental or developmental disabilities.

(3) *Prohibited motivational screening factors.* Prohibited motivational screening factors include the family's educational level, educational or standardized motivational test results, previous job history or job performance, credit rating, marital status, number of children, or other factors, such as sensory or manual skills, and any factors which may result in discriminatory practices or treatment toward individuals with disabilities or minority or non-minority groups.

§ 984.204 On-site facilities.

Each HA may, subject to the approval of HUD, make available and utilize common areas or unoccupied dwelling units in public housing projects (or for IHAs, in Indian housing projects) to provide supportive services under an PSS program, including a Section 8 FSS program.

Subpart C—Program Operation

§ 984.301 Program implementation.

(a) *Program implementation deadline*—(1) *Program start-up.* Except as provided in paragraph (a)(3) of this section, operation of a local FSS program must begin within 12 months of the earlier of notification to the HA of HUD's approval of the incentive award units or of other funding that establishes the obligation to operate an FSS program. Operation means that activities such as outreach, participant selection, and enrollment have begun. Full delivery of the supportive services to be provided to the total number of families required to be served under the program need not occur within 12 months, but must occur by the deadline set forth in paragraph (a)(2) of this section.

(2) *Full enrollment and delivery of service.* Except as provided in paragraph (a)(3) of this section, the HA must have completed enrollment of the total number of families required to be served under the FSS program (based on the minimum program size), and must have begun delivery of the supportive services within two years from the date of notification of approval of the application for new public housing units for a public housing FSS program or for new rental certificates or rental vouchers for a Section 8 FSS program.

(3) *Extension of program deadlines for good cause.* HUD may extend the deadline set forth in either paragraph (a)(1) or paragraph (a)(2) of this section if the HA requests an extension, and HUD determines that, despite best efforts on the part of the HA, the development of new public housing units will not occur within the deadlines set forth in this paragraph (a), the commitment by public or private resources to deliver supportive services has been withdrawn, the delivery of such services has been delayed, or other local circumstances warrant an extension of the deadlines set forth in this paragraph (a).

(b) *Program administration.* An HA may employ appropriate staff, including a service coordinator or program coordinator to administer its FSS program, and may contract with an appropriate organization to establish and administer the FSS program, including the FSS account, as provided by § 984.305.

§ 984.302 Administrative fees.

(a) *Public housing FSS program.* The performance funding system (PFS), provided under section 9(a) of the 1937 Act, shall provide for the inclusion of reasonable and eligible administrative costs incurred by PHAs in carrying out the minimum program size of the public housing FSS programs. These costs are subject to appropriations by the Congress. However, a PHA may use other resources for this purpose.

(b) *Section 8 FSS program.* The administrative fees paid to HAs for HUD-approved costs associated with operation of an FSS program are established by the Congress and subject to appropriations.

§ 984.303 Contract of participation.

(a) *General.* Each family that is selected to participate in an FSS program must enter into a contract of participation with the HA that operates the FSS program in which the family will participate. The contract of participation shall be signed by the head of the FSS family.

(b) *Form and content of contract*—(1) *General.* The contract of participation, which incorporates the individual training and services plan(s), shall be in the form prescribed by HUD, and shall set forth the principal terms and conditions governing participation in the FSS program, including the rights and responsibilities of the FSS family and of the HA, the services to be provided to, and the activities to be completed by, the head of the FSS family and each adult member of the family who elects to participate in the program.

(2) *Interim goals.* The individual training and services plan, incorporated in the contract of participation, shall establish specific interim and final goals by which the HA, and the family, may measure the family's progress toward fulfilling its obligations under the contract of participation, and becoming self-sufficient. For each participating FSS family that is a recipient of welfare assistance, the HA must establish as an interim goal that the family become independent from welfare assistance and remain independent from welfare assistance at least one year before the expiration of the term of the contract of participation, including any extension thereof.

(3) *Compliance with lease terms.* The contract of participation shall provide that one of the obligations of the FSS family is to comply with the terms and

conditions of the respective public housing lease or Section 8-assisted lease.

(4) *Employment obligation*—(i) *Head of family's obligation.* The head of the FSS family shall be required under the contract of participation to seek and maintain suitable employment during the term of the contract and any extension thereof. Although other members of the FSS family may seek and maintain employment during the term of the contract, only the head of the FSS family is required to seek and maintain suitable employment.

(ii) *Seek employment.* The obligation to seek employment means that the head of the FSS family has applied for employment, attended job interviews, and has otherwise followed through on employment opportunities.

(iii) *Determination of suitable employment.* A determination of suitable employment shall be made by the HA based on the skills, education, and job training of the individual that has been designated the head of the FSS family, and based on the available job opportunities within the jurisdiction served by the HA.

(5) *Consequences of noncompliance with the contract.* The contract of participation shall specify that if the FSS family fails to comply, without good cause, with the terms and conditions of the contract of participation, which includes compliance with the public housing lease or the Section 8-assisted lease, the HA may:

(i) Withhold the supportive services;

(ii) Terminate the family's participation in the FSS program; or

(iii) For the Section 8 FSS program, terminate or withhold the family's Section 8 assistance, except in the case where the only basis for noncompliance with the contract of participation is noncompliance with the lease, or failure to become independent from welfare assistance. However, failure to become independent from welfare assistance because of failure of the head of household to meet the employment obligation described in paragraph (a)(4) of this section, or failure of the FSS family to meet any other obligation under the contract of participation, except the interim goal concerning welfare assistance, is grounds for the HA to terminate or withhold Section 8 assistance.

(c) *Contract term.* The contract of participation shall provide that each FSS family will be required to fulfill those obligations to which the participating family has committed itself under the contract of participation no later than 5 years after the effective date of the contract.

(d) *Contract extension.* The HA shall, in writing, extend the term of the contract of participation for a period not to exceed two years for any FSS family that requests, in writing, an extension of the contract, provided that the HA finds that good cause exists for granting the extension. The family's written request for an extension must include a description of the need for the extension. As used in this paragraph (d), "good cause" means circumstances beyond the control of the FSS family, as determined by the HA, such as a serious illness or involuntary loss of employment. Extension of the contract of participation will entitle the FSS family to continue to have amounts credited to the family's FSS account in accordance with § 984.304.

(e) *Unavailability of supportive services*—(1) *Good faith effort to replace unavailable services.* If a social service agency fails to deliver the supportive services pledged under an FSS family member's individual training and services plan, the HA shall make a good faith effort to obtain these services from another agency.

(2) *Assessment of necessity of services.* If the HA is unable to obtain the services from another agency, the HA shall reassess the family member's needs, and determine whether other available services would achieve the same purpose. If other available services would not achieve the same purpose, the HA shall determine whether the unavailable services are integral to the FSS family's advancement or progress toward self-sufficiency. If the unavailable services are:

(i) Determined not to be integral to the FSS family's advancement toward self-sufficiency, the HA shall revise the individual training and services plan to delete these services, and modify the contract of participation to remove any obligation on the part of the FSS family to accept the unavailable services, in accordance with paragraph (f) of this section; or

(ii) Determined to be integral to the FSS family's advancement toward self-sufficiency (which may be the case if the affected family member is the head of the FSS family), the HA shall declare the contract of participation null and void. Nullification of the contract of participation on the basis of unavailability of supportive services shall not be grounds for termination of Section 8 assistance.

(f) *Modification.* The HA and the FSS family may mutually agree to modify the contract of participation. The contract of participation may be modified in writing with respect to the individual training and services plans, the contract term in accordance with paragraph (d) of this section, and designation of the head of the family.

(g) *Completion of the contract.* The contract of participation is considered to be completed, and a family's participation in the FSS program is considered to be concluded when one of the following occurs:

(1) The FSS family has fulfilled all of its obligations under the contract of participation on or before the expiration of the contract term, including any extension thereof; or

(2) 30 percent of the monthly adjusted income of the FSS family equals or exceeds the published existing housing fair market rent for the size of the unit for which the FSS family qualifies based on the HA's occupancy standards. The contract of participation will be considered completed and the family's participation in the FSS program concluded on this basis even though the contract term, including any extension thereof, has not expired, and the family members who have individual training and services plans have not completed all the activities set forth in their plans.

(h) *Termination of the contract.* The contract of participation is automatically terminated if the family's Section 8 assistance is terminated in accordance with HUD requirements. The contract of participation may be terminated before the expiration of the contract term, and any extension thereof, by:

(1) Mutual consent of the parties;

(2) The failure of the FSS family to meet its obligations under the contract of participation without good cause, including in the Section 8 FSS program the failure to comply with the contract requirements because the family has moved outside the jurisdiction of the HA;

(3) The family's withdrawal from the FSS program;

(4) Such other act as is deemed inconsistent with the purpose of the FSS program; or

(5) Operation of law.

(i) *Option to terminate Section 8 housing and supportive service assistance.* The HA may terminate or withhold Section 8 housing assistance, the supportive services, and the FSS family's participation in the FSS program, if the HA determines, in accordance with the hearing procedures provided in 24 CFR 982.555 that the FSS family has failed to comply without good cause with the requirements of the contract of participation as provided in paragraph (b)(5) of this section.

(j) *Transitional supportive service assistance.* An HA may continue to offer to a former FSS family who has completed its contract of participation and whose head of family is employed, appropriate FSS supportive services in becoming self-sufficient (if the family still resides in public housing, or Section 8-assisted housing), or in remaining self-sufficient (if the family no longer resides in public, Section 8-assisted housing, or other assisted housing).

§ 984.304 Total tenant payment, family rent, and increases in family income.

(a)(1) *Public housing FSS program: Calculation of total tenant payment.* Total tenant payment for a family participating in the public housing FSS program is determined in accordance with the regulations set forth in 24 CFR part 913.

(2) *Section 8 FSS program: Calculation of family rent.* For the rental certificate program, total tenant payment for a family participating in the Section 8 FSS program and the amount of the housing assistance payment is determined in accordance with the regulations set forth in 24 CFR parts 813 and 882. For the rental voucher program, the housing assistance payment for a family participating in the FSS program is determined in accordance with the regulations set forth in 24 CFR part 887.

(b) *Increases in FSS family income.* Any increase in the earned income of an FSS family during its participation in an FSS program may not be considered as income or a resource for purposes of eligibility of the FSS family for other benefits, or amount of benefits payable to the FSS family, under any other program administered by HUD, unless the income of the FSS family equals or exceeds 80 percent of the median income of the area (as determined by HUD, with adjustments for smaller and larger families).

§ 984.305 FSS account.

(a) *Establishment of FSS account*—(1) *General.* The HA shall deposit the FSS account funds of all families participating in the HA's FSS program into a single depository account. The HA must deposit the FSS account funds in one or more of the HUD-approved investments.

(2) *Accounting for FSS account funds*—(i) *Accounting records.* The total of the combined FSS account funds will be supported in the HA accounting records by a subsidiary ledger showing the balance applicable to each FSS family. During the term of the contract of participation, the HA shall credit periodically, but not less than annually, to each family's FSS account, the amount of the FSS credit determined in accordance with paragraph (b) of this section.

(ii) *Proration of investment income.* The investment income for funds in the FSS account will be prorated and credited to each family's FSS account based on the balance in each family's FSS account at the end of the period for which the investment income is credited.

(iii) *Reduction of amounts due by FSS family.* If the FSS family has not paid the family contribution towards rent, or other amounts, if any, due under the public housing or section 8-assisted lease, the balance in the family's FSS account shall be reduced by that amount (as reported by the owner to the HA in the Section 8 FSS program) before prorating the interest income. If the FSS family has fraudulently under-reported income, the amount credited to the FSS account will be based on the income amounts originally reported by the FSS family.

(3) *Reporting on FSS account.* Each HA will be required to make a report, at least once annually, to each FSS family on the status of the family's FSS account. At a minimum, the report will include:

(i) The balance at the beginning of the reporting period;

(ii) The amount of the family's rent payment that was credited to the FSS account, during the reporting period;

(iii) Any deductions made from the account for amounts due the HA before interest is distributed;

(iv) The amount of interest earned on the account during the year; and

(v) The total in the account at the end of the reporting period.

(b) *FSS credit*—(1) *Computation of amount.* For purposes of determining the FSS credit, "family rent" is: for the public housing program, the total tenant payment as defined in 24 CFR part 913; for the rental certificate program, the total tenant payment as defined in 24 CFR part 813; and for the rental voucher program, 30 percent of adjusted monthly income. The FSS credit shall be computed as follows:

(i) For FSS families who are very low-income families, the FSS credit shall be the amount which is the lesser of:

(A) Thirty percent of current monthly adjusted income less the family rent, which is obtained by disregarding any increases in earned income (as defined in § 984.103) from the effective date of the contract of participation; or

(B) The current family rent less the family rent at the time of the effective date of the contract of participation.

(ii) For FSS families who are low-income families but not very low-income families, the FSS credit shall be the amount determined according to paragraph (b)(1)(i) of this section, but which shall not exceed the amount computed for 50 percent of median income.

(2) *Ineligibility for FSS credit.* FSS families who are not low-income families shall not be entitled to any FSS credit.

(3) *Cessation of FSS credit.* The HA shall not make any additional credits to the FSS family's FSS account when the FSS family has completed the contract of participation, as defined in § 984.303(g), or when the contract of participation is terminated or otherwise nullified.

(c) *Disbursement of FSS account funds*—(1) *General.* The amount in an FSS account, in excess of any amount owed to the HA by the FSS family, as provided in paragraph (a)(3)(iii) of this section, shall be paid to the head of the FSS family when the contract of participation has been completed as provided in § 984.303(g), and if, at the time of contract completion, the head of the FSS family submits to the HA a certification, as defined in § 984.103, that, to the best of his or her knowledge and belief, no member of the FSS family is a recipient of welfare assistance.

(2) *Disbursement before expiration of contract term.* (i) If the HA determines that the FSS family has fulfilled its obligations under the contract of participation before the expiration of the contract term, and the head of the FSS family submits a certification that, to the best of his or her knowledge, no member of the FSS family is a recipient of welfare assistance, the amount in the family's FSS account, in excess of any amount owed to the HA by the FSS family, as provided in paragraph (a)(3)(iii) of this section, shall be paid to the head of the FSS family.

(ii) If the HA determines that the FSS family has fulfilled certain interim goals established in the contract of participation and needs a portion of the FSS account funds for purposes consistent with the contract of participation, such as completion of higher education (i.e., college, graduate school), or job training, or to meet start-up expenses involved in creation of a small business, the HA may, at the HA's sole option, disburse a portion of the funds from the family's FSS account to assist the family meet those expenses.

(3) *Verification of family certification.* Before disbursement of the FSS account funds to the family, the HA may verify that the FSS family is no longer a recipient of welfare assistance by

requesting copies of any documents which may indicate whether the family is receiving any welfare assistance, and contacting welfare agencies.

(d) *Succession to FSS account.* If the head of the FSS family ceases to reside with other family members in the public housing or the Section 8-assisted unit, the remaining members of the FSS family, after consultation with the HA, shall have the right to designate another family member to receive the funds in accordance with paragraph (c) (1) or (2) of this section.

(e) *Use of FSS account funds for homeownership.* A public housing FSS family may use its FSS account funds for the purchase of a home, including the purchase of a home under one of HUD's homeownership programs, or other Federal, State, or local homeownership programs unless such use is prohibited by the statute or regulations governing the particular homeownership program.

(f) *Forfeiture of FSS account funds—*(1) *Conditions for forfeiture.* Amounts in the FSS account shall be forfeited upon the occurrence of the following:

(i) The contract of participation is terminated, as provided in § 984.303(e) or § 984.303(h); or

(ii) The contract of participation is completed by the family, as provided in § 984.303(g), but the FSS family is receiving welfare assistance at the time of expiration of the term of the contract of participation, including any extension thereof.

(2) *Treatment of forfeited FSS account funds—*(i) *Public housing FSS program.* FSS account funds forfeited by the FSS family will be credited to the PHA's operating reserves and counted as other income in the calculation of the PFS operating subsidy eligibility for the next budget year.

(ii) *Section 8 FSS program.* FSS account funds forfeited by the FSS family will be treated as program receipts for payment of program expenses under the HA budget for the applicable Section 8 program, and shall be used in accordance with HUD requirements governing the use of program receipts.

§ 984.306 Section 8 residency and portability requirements.

(a) *Relocating FSS family.* For purposes of this section, the term "relocating FSS family" refers to an FSS family that moves from the jurisdiction of an HA at least 12 months after signing its contract of participation.

(b) *Initial occupancy.* A family participating in the Section 8 FSS program must lease an assisted unit, for a minimum period of 12 months after the effective date of the contract of participation, in the jurisdiction of the HA which selected the family for the FSS program. Thereafter, the FSS family may move outside the jurisdiction of the initial HA consistent with the regulations of 24 CFR part 982.

(c) *Portability: relocation but continued participation in the FSS program of the initial HA—*(1) *General.* A relocating FSS family may continue in the FSS program of the initial HA if the family demonstrates to the satisfaction of the initial HA that, notwithstanding the move, the relocating FSS family will be able to fulfill its responsibilities under the initial or modified contract of participation at its new place of residence. (For example, the FSS family may be able to commute to the supportive services specified in the contract of participation, or the family may move to obtain employment as specified in the contract.)

(2) *Single contract of participation.* If the relocating family remains in the FSS program of the initial HA, there will only be one contract of participation, which shall be the contract executed by the initial HA.

(d) *Portability: relocation and participation in the FSS program of the receiving HA—*(1) *General.* A relocating FSS family may participate in the FSS program of the receiving HA, if the receiving HA allows the family to participate in its program. An HA is not obligated to enroll a relocating FSS family in its FSS program.

(2) *Two contracts of participation.* If the receiving HA allows the relocating FSS family to participate in its FSS program, the receiving HA will enter into a new contract of participation with the FSS family for the term on the remaining contract with the initial HA. The initial HA will terminate its contract of participation with the family.

(e) *Single FSS account.* Regardless of whether the relocating FSS family remains in the FSS program of the initial HA or is enrolled in the FSS program of the receiving HA, there will be a single FSS account which will be maintained by the initial HA. When an FSS family will be absorbed by the receiving HA, the initial HA will transfer the family's FSS account to the receiving HA.

(f) *FSS program termination; loss of FSS account; and termination of Section 8 assistance.* (1) If an FSS family that relocates to another jurisdiction, as provided under this section, is unable to fulfill its obligations under the contract of participation, or any modifications thereto, the HA, which is party to the contract of participation, may:

(i) Terminate the FSS family from the FSS program and the family's FSS account will be forfeited; and

(ii) Terminate the FSS family's Section 8 assistance on the ground that the family failed to meet its obligations under the contract of participation.

(2) In the event of forfeiture of the family's FSS account, the funds in the family's FSS account will revert to the HA maintaining the FSS account for the family.

Subpart D—Reporting

§ 984.401 Reporting.

Each HA that carries out an FSS program under this part shall submit to HUD, in the form prescribed by HUD, a report regarding its FSS program. The report shall include the following information:

(a) A description of the activities carried out under the program;

(b) A description of the effectiveness of the program in assisting families to achieve economic independence and self-sufficiency;

(c) A description of the effectiveness of the program in coordinating resources of communities to assist families to achieve economic independence and self-sufficiency; and

(d) Any recommendations by the HA or the appropriate local program coordinating committee for legislative or administrative action that would improve the FSS program and ensure the effectiveness of the program.

Dated: February 26, 1996.

Kevin E. Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–4908 Filed 3–4–96; 8:45 am]

BILLING CODE 4210–33–P

Federal Register

Tuesday
March 5, 1996

Part VI

Department of Housing and Urban Development

NOFA for Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–4002–N–01]

NOFA for Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability.

SUMMARY: This NOFA announces the availability of approximately $1,150,000 in funds for emergency shelter grants to be allocated to Indian tribes and Alaskan Native villages by competition for Fiscal Year (FY) 1996. Assistance provided to Indian tribes and Alaskan Native villages under this NOFA will be used to help improve the quality of existing emergency shelters for the homeless, to make available additional emergency shelters, to meet the costs of operating emergency shelters and of providing essential social services to homeless individuals, and to help prevent homelessness. This ESG set-aside allocation will increase the availability and expedite receipt of program funds to Native American communities. This NOFA contains: (1) Information concerning eligible applicants, (2) Information on funding available within each HUD Indian program region, (3) Information on application requirements and procedures, and (4) A description of applicable statutory changes to the ESG program.

Note: The Congress has not yet enacted an FY 1996 appropriation for HUD. However, HUD is publishing this notice in order to give potential applicants adequate time to prepare applications. The amount of funds announced in this NOFA is an estimate of the amount likely to be enacted in 1996. HUD is not bound by the estimate set forth in this notice. The estimated amount may be adjusted based on the enacted 1996 appropriation.

DATES: Applications must be received by the appropriate HUD Office of Native American Programs (ONAP) by no later than 3:00 p.m. local time (i.e., the time in the office to which the application is submitted) on April 19, 1996.

ADDRESSES: Application packages are available from the HUD Offices of Native American Programs (ONAPs) listed in Appendix 2 to this NOFA. The Office of Native American Programs (ONAP) serving the area in which the applicant's project is located must receive an original application and one copy by the deadline described in the "Dates" section of this NOFA.

FOR FURTHER INFORMATION CONTACT: Applicants may contact the appropriate Office of Native American Programs (ONAPs) for further information. Appendix 2 to this NOFA contains a complete list of these offices with their addresses and telephone numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this Notice of Funding Availability (NOFA) have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0205. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Purpose and Substantive Description

A. Authority and Purpose

The Emergency Shelter Grants (ESG) program was first established in section 101(g) of Public Law 99–500 (approved October 18, 1986), making appropriations for Fiscal Year (FY) 1987 as provided in H.R. 5313. The program was reauthorized with amendments in the Stewart B. McKinney Homeless Assistance Act, as amended (42 U.S.C. 11371–11378) (McKinney Act). Section 832(f) of the National Affordable Housing Act (NAHA) (Pub. L. 101–625, approved November 28, 1990) provided for the explicit eligibility of Indian tribes for ESG program assistance, and established a set-aside allocation for Indian tribes that is equal to 1 percent of the amounts appropriated for the ESG program. Regulations governing the ESG program are in 24 CFR part 576, except as superseded by statutory amendments under NAHA and the Housing and Community Development Act of 1992 (1992 Act) (Pub. L. 102–550, approved October 28, 1992), as discussed below.

Approximately $1,150,000 is available for the Indian Emergency Shelter Grants (ESG) Program as authorized by subtitle B, title IV of the Stewart B. McKinney Homeless Assistance Act, as amended. The proposed rule on Emergency Shelter Grants Program; Set-Aside Allocation for Indian Tribes and Alaskan Native Villages, published in the **Federal Register** on April 5, 1993 (58 FR 17764), describes the method for allocating these funds.

Note: The Congress has not yet enacted an FY 1996 appropriation for HUD. However, HUD is publishing this notice in order to give potential applicants adequate time to prepare applications. The amount of funds announced in this NOFA is an estimate of the amount likely to be enacted in 1996. HUD is not bound by the estimate set forth in this notice. The estimated amount may be adjusted based on the enacted 1996 appropriation.

These grants will be governed by all provisions applicable to the ESG program, including the provisions in the Housing and Community Development Act of 1992 that became effective upon that law's enactment; such as the authorization to make eligible the use of grant funds for staff costs relating to the operation of emergency shelters up to a maximum amount of 10 percent of the grant, and the requirement that the recipient establish a "formal process" in order to terminate assistance under the program.

Assistance provided to Indian tribes and Alaskan Native villages under this NOFA will be used to help improve the quality of existing emergency shelters for the homeless, make available additional emergency shelters, meet the costs of operating emergency shelters and of providing essential social services to homeless individuals, and help prevent homelessness. This ESG set-aside allocation will increase the availability and expedite receipt of program funds to Native American communities.

B. Statutory Amendments

This NOFA addresses section 832 of NAHA, which contains numerous amendments to the McKinney Act, and several amendments to the ESG program in the 1992 Act. These statutory amendments supersede applicable provisions of the program regulations found in 24 CFR part 576. This NOFA describes these statutory changes to assist Indian tribes in complying with program requirements, including the NAHA and 1992 Act amendments (see Appendix 1 of this NOFA for a listing of statutory amendments that apply to this program).

II. Application Process

A. Allocation Amounts

This NOFA announces the availability of approximately $1,150,000 in funding for FY 1996 to fund competitive grants to Indian tribes for emergency shelter grants. Set-aside allocations of the total amount to each area Office of Native American Programs (ONAP) are detailed in the following chart:

ALLOCATION OF ESG SET-ASIDE FOR INDIAN TRIBES BY HUD AREA ONAPS FOR FY 1996

	Percent
Eastern/Woodlands	16.70
Southern Plains	19.75
Northern Plains	18.92
Southwest	26.70
Northwest	8.60
Alaska	9.33
Total	100.00

HUD reserves the right to negotiate reductions in the amounts requested by applicants based on the overall demand for the funds. HUD further reserves the right to reallocate these amounts as provided in section II.F, Ranking and Selection, of this NOFA. Each Indian tribe must spend all of the grant amounts it is awarded within 24 months of the date of the grant award by HUD. Any emergency shelter grant amounts that are not spent within this time period may be recaptured and added to the following fiscal year's ESG set-aside for Indian tribes.

B. Eligibility and Threshold Requirements

(1) Eligible Applicants

Eligible applicants are any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan native village of the United States which is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450), or which had been an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221). Eligible recipients under the State and Local Fiscal Assistance Act of 1972 are those that have been determined eligible by the Department of the Treasury, Office of Revenue Sharing.

Tribal organizations which are eligible under title I of the Indian Self-Determination and Education Assistance Act may apply on behalf of any Indian Tribe, band, group, nation, or Alaskan native village eligible under that act for funds under this part when one or more of these entities have authorized the Tribal organization to do so through concurring resolutions. Such resolutions must accompany the application for funding. Eligible Tribal organizations under title I of the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs.

Only eligible applicants shall receive grants. However, eligible applicants may contract or otherwise agree with noneligible entities such as States, cities, counties, or other organizations to assist in the preparation of applications and to help implement assisted activities. For instance, private nonprofit organizations are not eligible to apply directly to HUD for a grant, but may receive funding from a grantee if the grantee determines that the nonprofit has the financial and organizational capacity to carry out the proposed activities.

(2) Thresholds

The selection process for the Indian tribe set-aside program includes a preliminary threshold review. The applicant must clearly demonstrate and HUD will review each application to determine whether:

(a) The application is adequate in form, time, and completeness;

(b) The applicant is eligible; and

(c) The proposed activities and persons to be served are eligible for assistance under the program.

C. Obtaining Applications

Application packages are available from the HUD area Offices of Native American Programs listed in Appendix 2 to this NOFA.

D. Submitting Applications

The ONAP serving the area in which the applicant's project is located must receive an original application and one copy no later than 3:00 p.m. local time (i.e., the time in the office to which the application is submitted) on the deadline date April 19, 1996. Applications transmitted by FAX will not be accepted. A determination that an application was received on time will be made solely on receipt of the original application at the appropriate Office of Native American Programs serving the applicant's project.

The deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat any application that is received after the deadline as ineligible for consideration. Applicants should take this practice into account and make early submission of their materials to avoid any risk of ineligibility brought about by unanticipated delays or other delivery-related problems.

E. Rating Criteria

Applications that fulfill each of the threshold review requirements described in Section II.B, Eligibility and Threshold Requirements, of this NOFA will be rated up to 100 points based on the following criteria.

(1) *Applicant capacity (30 points).* HUD will award up to 30 points to an applicant that demonstrates the ability to carry out activities under its proposed program within a reasonable time, and in a successful manner, after execution of the grant agreement by HUD. Reviewers' knowledge of the applicant's previous experience will weigh heavily in the scoring. Documented evidence of poor or slow performance will enter strongly into that determination. The applicants that rate highest on this criterion will show substantial experience as an organization and/or staff in past endeavors that are directly related to the proposed project.

The applicant will receive the following points if it:

30 Shows *substantial* experience as an organization and/or staff in past endeavors that are *directly and comprehensively* related to the proposed projects; and demonstrates *assurance* of assisting the homeless within a reasonable time.

20 Shows *substantial* experience as an organization and/or staff in past endeavors that are *closely* (but not directly or comprehensively) related to the proposed project; and shows *promise* of assisting the homeless within a reasonable time.

10 Shows *limited* experience as an organization and/or staff in past endeavors that are *closely* (but not directly or comprehensively) related to the proposed project; and shows *promise* of assisting the homeless within a reasonable time.

5 Shows *limited* experience as an organization and/or staff in past endeavors that are only *remotely* related to the proposed project; or some evidence exists that brings into question the organization's capacity to implement the proposed project; and it is *unclear* whether the organization will be able to assist the homeless within a reasonable time.

0 Shows *no* evidence as an organization and/or staff in past endeavors that relate to the demands of the proposed project; *and* substantial evidence exists that the organization is *incapable* of implementing the proposed project; and documented evidence exists that the organization *will not be able* to assist the homeless within a reasonable time.

(2) *Need (20 points).* HUD will award up to 20 points to an applicant that demonstrates the existence of an unmet need for the proposed project in the area to be served. The applicants that rate

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highest on this criterion will: (a) clearly define the unmet housing and essential services needs of the homeless population proposed to be served in the area to be served by the project, (b) demonstrate in-depth knowledge of the population to be served and its needs, and (c) set forth an outreach strategy that assures that the intended population will be served.

The applicant will receive the following points if it:

20 *Clearly* defines the unmet housing and supportive services needs of the homeless population(s) to be served *in the area to be served* by the project. That unmet need (as described) is *great* relative to other applications reviewed. Presents evidence of use of *credible* surveys or other data gathering mechanisms to support claims made. Application reveals *in-depth* understanding of the population(s) to be served and of its unmet housing and supportive services needs. Entry and outreach policies will *ensure* that the population(s) proposed to be served will *actually* be served by the project.

15 *Generally* defines the unmet housing and supportive services needs of a homeless population(s) to be served, but not as is comparable in magnitude to most other applications reviewed. Presents evidence of use of *acceptable* surveys or other data gathering mechanisms to support claims made. Application reveals *in-depth* understanding of the population(s) to be served and of its unmet housing and supportive services needs. Entry and outreach policies will *ensure* that the population(s) proposed to be served will *actually* be served by the project.

10 *Generally* defines the unmet housing and supportive service needs of a homeless population(s) to be served, but not as clearly in the specific area to be served. That unmet need (as described) is comparable in magnitude to most other applications reviewed. Presents evidence of use of *acceptable* surveys or other data gathering mechanisms to support claims made. Application reveals *general* understanding of the population(s) to be served and of its unmet housing and supportive services needs. Entry and outreach policies will *likely ensure* that the population(s) proposed to be served will *actually* be served.

5 Offers a *fragmentary description* of the unmet housing and supportive services needs of the homeless population(s) to be served by the project with *minimal evidence supporting the claim*. That unmet need (as described) is less in magnitude than most other applications reviewed. Supportive documentation is *very limited or tangential* to the unmet needs described. Application reveals only *limited* understanding of the population(s) proposed to be served or of its unmet needs. Entry and outre ich policies relate *only indirectly* to the population(s) that the applicant proposes to serve.

0 *Fails to delineate* the unmet housing and supportive services needs of the homeless population(s) to be served by the project. Application reveals a *complete absence of understanding* of the population(s) to be served or of its unmet housing and supportive services needs.

(3) *Service to homeless population (20 points).* HUD will award up to 20 points to an applicant that proposes to serve that part of the Indian homeless population that is most difficult to reach and serve, i.e., those persons having a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, sleeping accommodations for human beings. In urban areas, this is usually referred to as living "on the street." To the extent that Indians living on reservations live in such situations (e.g., sleeping in cars, abandoned structures, out in the open), they meet the definition of living in conditions similar to living on the street.

HUD will focus upon proposed outreach and intake plans, and especially the degree to which such plans would maximize the likelihood that homeless persons would be served by the proposed project. The outreach strategy/intake procedures to seek out and evaluate the needs of the population to be served should be clearly described in the application.

The applicant will receive the following points if it:

20 *Clearly* specifies the reasons that individuals will be hard to reach in terms of their geographic location, specific problems, or their willingness to enter into the program; and states *clearly* how outreach to these individuals will be achieved by the applicant or with other organizations; and *specifically* reveals how intake process will be used to identify the needs of the population to be served.

10 States only that individuals will be hard to reach and does not contain any description of their geographic location, specific problems, or their willingness to enter into the program; and does not describe what outreach process will be used to seek out those individuals by the applicant or with other organizations; and states that an intake process will be used to identify the needs of the population to be served.

5 States only that individuals will be hard to reach and does not contain any description of their geographic location, specific problems, or their willingness to enter into the program; and does not describe what outreach process will be used to seek out those individuals by the applicant or with other organizations; and contains *little information* about what intake process will be used to identify the needs of the population to be served.

0 *Fails* to delineate that the population is hard to reach or what outreach measures will be used to contact the population to be served by the project.

(4) *Appropriateness of essential services (30 points).* HUD will award up to 30 points to an applicant that proposes essential services that: (a) are appropriate to the needs of the population proposed to be served; (b) are used or coordinated with existing sources of supportive services and networks of support in the community; and (c) to the degree possible, help to move residents to longer term housing situations. Applicants should describe what services are available and how they will make those services accessible to the people they serve. In addition, HUD will evaluate the means by which the people to be served will be assisted in moving to permanent housing that is appropriate and affordable. Applicants should describe what resources are available to assist the population they serve to find permanent housing.

The applicant will receive the following points if it:

30 Proposes a program of essential services that is *comprehensive* and that gives promise of being of very high quality; and that is *generally appropriate* to the needs of the population proposed to be served, responds to the changing needs of that population(s), *offers a personalized response* to the individual needs of the residents served; and *coordinates extensively* with other sources, public and private, of essential services and networks of support already existing within the community; and *can demonstrate with reasonable certainty* that the results of the program are likely to be successful. The applicant will have access to housing counseling, assistance with applying for other Federal, State, or local housing assistance programs, referrals to other organizations involved in these activities, or other assistance such as moving assistance, security deposits, or landlord/tenant negotiation directly related to entering transitional or permanent adequate and affordable housing.

20 Proposes a program of essential services that is *reasonably comprehensive* and that gives promise of being of good quality; that responds to a genuine need, as identified in Element (3); proposes use of other sources of essential services and existing networks of support; and offers *reasonable assurance* that the results of the program are likely to be successful. The applicant will have access to housing counseling, assistance with applying for other Federal, State, or local housing assistance programs, referrals to other organizations involved in these activities, or other assistance such as moving assistance, security deposits, or landlord/tenant negotiation directly related to entering transitional or permanent adequate and affordable housing.

10 Proposes a program of essential services that is *reasonably comprehensive* and that gives promise of being of good quality; that responds to a genuine need, as identified in Element (3); proposes use of other sources of essential services and existing networks of support; and offers *reasonable assurance* that the results of the program are likely to be successful. The applicant will have access to housing counseling, assistance with applying for other Federal, State, or local housing assistance programs, or be able to make referrals to other organizations involved in these activities.

5 Presents a proposed project with a *few* services that meet basic needs but are *not designed* to encourage residents to move to greater independence within an emergency shelter environment.

0 Presents a proposed project with *no essential services* or with *services that are clearly inappropriate* to the population to be served; success is *highly unlikely*. The application fails to indicate how or when residents will be able to leave emergency shelter for transitional or permanent housing.

F. Ranking and Selection

Applications from Indian tribes within the area served by the applicable HUD Office of Native American Programs will be assigned a rating score and placed in ranked order, based upon the rating criteria listed in Section II.E of this NOFA. Only those applications receiving at least 50 total points will be given funding consideration. In the final stage of the selection process, qualified applicants will be selected for funding in accordance with their ranked order within each area ONAP, to the extent that funds are available within that area ONAP's jurisdiction.

In the event of a tie between applicants, the applicant with the highest total points for rating criterion (2), Need, in section II.E of this NOFA, will be selected. In the event of a procedural error that, when corrected, would warrant selection of an otherwise eligible applicant under this NOFA, HUD may select that applicant when sufficient funds become available.

Depending on the availability of funds, HUD may fund qualified applications regardless of location. If an area ONAP has insufficient funds to make awards to all of its qualified applicants, HUD may reallocate funds to that office from any other area ONAP that has funds remaining after making awards to all of its qualified applications.

III. Checklist for Application Submission Requirements

A checklist of submission requirements is provided at Appendix 3 to this NOFA, to assist the applicant in preparing a complete application.

IV. Corrections To Deficient Applications

HUD will notify the applicant if there are any curable technical deficiencies in the application. Curable technical deficiencies relate to minimum eligibility requirements (such as certifications and signatures) that are necessary for funding approval but that do not relate to the quality of the applicant's program proposal under the selection criteria. The applicant must submit corrections in accordance with the information provided by HUD within 14 calendar days of the date of the HUD notification.

In accordance with the provisions of 24 CFR part 4, subpart B, HUD may contact an applicant to seek clarification of an item in an applicant's application, or to request additional or missing information. The clarification or the request for additional or missing information shall not relate to items that would improve the substantive quality of the application pertinent to the funding decision.

V. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. This Finding is available for public inspection between 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk in the Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, this NOFA is not subject to review under the Order. This NOFA announces the availability of funds set aside for Indian tribes for emergency shelter activities and invites applications from eligible applicants.

C. Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, *The Family*, has determined that this NOFA, to the extent the funds provided under it are directed to families, has the potential for a beneficial impact on family formation, maintenance, and general well-being. Since any impact on families is beneficial, no further review is considered necessary.

D. Economic Opportunities for Low- and Very Low-Income Persons

All applicants are herein notified that the provisions of section 3 of the Housing and Urban Development Act of 1968, as amended, and the regulations in 24 CFR part 135 are applicable to funding awards made under this NOFA. One of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal,

State, and local laws and regulations, job training, employment, contracting, and other economic opportunities to section 3 residents and section 3 business concerns. Tribes that receive HUD assistance described in this part shall comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).

E. Section 102 of the HUD Reform Act: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

F. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), was published in the **Federal Register** on May 13, 1991 (56 FR 22088), and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to this funding competition. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4. Applicants or employees who have ethics related questions should contact the HUD Office of Ethics at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether a particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the Byrd Amendment), and the implementing regulations in 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of their sovereign power are excluded from coverage, but IHAs established under State law are not excluded from coverage.

I. The Catalog of Federal Domestic Assistance program number is 14.231.

Authority: 42 U.S.C. 11376; 42 U.S.C. 3535(d).

Dated: January 26, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

Appendix 1—Statutory Amendments (Section I.B)

National Affordable Housing Act Amendments: Sections (1)–(6) below describe the relevant NAHA amendments.

(1) *Extension of eligibility to Indian tribes.* Section 832(f) of NAHA (42 U.S.C. 11371–11378) expressly extends eligibility for assistance under the ESG program to Indian tribes, and has the effect of applying the same formula as used in the Community Development Block Grant (CDBG) program for determining the amount of ESG funds to be set aside for Indian tribes. The 1 percent figure for the Indian tribe set-aside is dictated by sections 832(f)(3) and 913(b) of NAHA (42 U.S.C. 5306).

(2) *Administrative costs.* Section 832(b)(1) of NAHA (42 U.S.C 11378) permits recipients to use up to 5 percent of an ESG program grant for administrative purposes. This amount equals 5 percent of the total of amounts of ESG funds requested for all other eligible activities. Administrative costs include: costs of accounting for the use of grant funds, preparing reports for submission to HUD or to the State, obtaining program audits, conducting environmental reviews, coordinating program activities, and similar costs related to administering the grant. These costs do not include the costs of carrying out other activities eligible under the ESG program.

(3) *Use of funds for essential services.* Section 832(c) of NAHA (42 U.S.C. 11374(a)(2)(B)) increased the percentage of a grant that may be used to provide essential services from 20 percent to 30 percent. Consistent with this amendment, HUD will apply its waiver authority in section 414(b) of the McKinney Act to the new, higher 30 percent limitation. As with the previous 20 percent limit, the 30 percent limit is to be measured against the aggregate amount of each emergency shelter grant to an Indian tribe. Section 832(f)(6) of NAHA makes the limitations on the provision of essential services applicable to Indian tribes.

(4) *Use of funds for prevention of homelessness.* Homelessness prevention was added as a category of eligible activities by section 423 of the Stewart B. McKinney Homeless Assistance Amendments Act (Pub. L. 100–688, approved November 7, 1988), which also treated these activities as "essential services." However, section 832(d) of NAHA (42 U.S.C 11374(a)(4)) withdraws homelessness prevention activities from categorization as "essential services," and imposes a separate limit of 30 percent of the aggregate amount of assistance to any recipient, including an Indian tribe, that may be used for efforts to prevent homelessness.

Thus, under NAHA, essential services and homelessness prevention are now each subject to a 30 percent cap. However, unlike the category of essential services, there is no statutory authority to permit a waiver of the cap on the amount of assistance that may be used for homelessness prevention activities. By its express terms, the statutory waiver is available only in the category of essential services.

(5) *Confidentiality of records for family violence services.* Section 832(e) of NAHA (42 U.S.C. 11375(c)(5)) requires each recipient to certify that it will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services with ESG program assistance. In addition, the address or location of any ESG-assisted housing used as a family violence shelter may not be made public without the written authorization of persons responsible for the operation of the shelter. This new certification is included in the application kit, as provided in Section III of this NOFA.

(6) *Establishes habitability standards.* Section 832(g) of NAHA (42 U.S.C. 11376(c)) requires the Secretary to prescribe the minimum standards of habitability appropriate to ensure that emergency shelters assisted by this program are environments that provide appropriate privacy, safety, and sanitary and other health-related conditions for homeless persons and families. A description of the Minimum Habitability Standards and the required certification is included in the application kit, as provided in Section III of this NOFA. The Habitability Standards that have been developed under section 832(g) of NAHA to apply to emergency shelters are as follows:

(a) *Structure and materials.* The shelter shall be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the occupants from the environment.

(b) *Access.* The shelter shall be accessible and capable of being utilized without unauthorized use of other private properties. The building shall provide an alternate means of egress in case of fire.

(c) *Space and security.* Each occupant shall be afforded adequate space and security for the occupant's person and belongings. Each occupant shall be provided an acceptable place to sleep.

(d) *Interior air quality.* Every room or space shall be provided with natural or mechanical ventilation. The shelter shall be free of pollutants in the air at levels that threaten the health of the occupants.

(e) *Water supply.* The water supply shall be free from contamination at levels that threaten the health of the recipients.

(f) *Sanitary facilities.* Shelter occupants shall have access to sanitary facilities that are in proper operating condition, can be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(g) *Thermal environment.* The shelter shall have adequate heating and cooling facilities in proper operating condition.

(h) *Illumination and electricity.* The shelter shall have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. Sufficient electrical sources shall be provided to permit use of essential electrical appliances while assuring safety from fire.

(i) *Food preparation and refuse disposal.* All food preparation areas shall contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.

(j) *Sanitary condition.* The shelter and its equipment shall be maintained in sanitary condition.

Housing and Community Development Act of 1992 Amendments: Sections (7)–(9) below describe the relevant changes of the 1992 Act.

(7) *Certification of involvement of homeless individuals and families.* The recipient must certify that, to the maximum extent practicable, it will involve homeless individuals and families, through employment, volunteer services, or otherwise, in providing services and in constructing, renovating, maintaining, and operating facilities, when assistance is provided for those activities under the program.

(8) *Termination of assistance.* The recipient may terminate assistance provided to an individual or a family only in accordance with a formal process established by the recipient that recognizes the rights of the individuals affected, which may include a hearing.

(9) *Eligibility of staff costs.* Staff costs relating to the operation of emergency shelters are specifically recognized as an eligible activity, but not more than 10 percent of the amount of any grant may be used for these costs. Staff costs for maintenance of and security for emergency shelters will not be counted against the 10 percent cap.

APPENDIX 2.—HUD OFFICES OF NATIVE AMERICAN PROGRAMS

Tribes and IHAs located	ONAP address
East of the Mississippi River (including all of Minnesota and Iowa).	Eastern/Woodlands Office of Native American Programs, 5P, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, (312) 353–1282 or (800) 735–3239, TDD Numbers: 1–800–927–9275 or 312–886–3741.
Louisiana, Missouri, Kansas, Oklahoma, and Texas except for Isleta del Sur.	Southern Plains Office of Native American Programs, 6.IPI, 500 W. Main, Suite 400, Oklahoma City, Oklahoma 73102, (405) 553–7428, TDD Numbers: 405–231–4181 or 405–231–4891.
Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Northern Plains Office of Native American Programs, 8P, First Interstate Tower North, 633 17th Street, Denver, Colorado 80202–3607, (303) 672–5462, TDD Number: 303–672–5248.
Arizona, California, New Mexico, Nevada, and Isleta del Sur in Texas.	Southwest Office of Native American Programs, 9EPID, Two Arizona Center, 400 North Fifth Street, Suite 1650, Phoenix, Arizona 85004–2361, (602) 379–4156, TDD Number: 602–379–4461. or Albuquerque Division of Native American Programs, 9EPIDI, Albuquerque Plaza, 201 3rd Street, N.W., Suite 1830, Albuquerque, New Mexico 87102–3368, (505) 766–1372, TDD Number: None. or Northern California Division of Native American Programs, 450 Golden Gate Avenue, 8th Floor, Box 36003, San Francisco, CA 94102–3448, (415) 436–8121, TDD Number: (415) 556–8357.
Idaho, Oregon, and Washington	Northwest Office of Native American Programs, 10PI, 909 First Avenue, Suite 300, Seattle, Washington 98104–1000, (206) 220–5270, TDD Number: (206) 220–5185.
Alaska	Alaska Office of Native American Programs, 10.1PI, 949 East 36th Avenue, Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4633, TDD Number: (907) 271–4328.

Appendix 3—Checklist of Application Submission Requirements

Applicants must complete and submit applications in accordance with the instructions contained in the application kit. The following is a checklist of the application contents that will be specified in the application kit:

—(1) Applicant Information, including name, address, contact person, and telephone number;

—(2) Standard Form 424;

—(3) Certifications of compliance with the requirements of:

—(a) 24 CFR 576.21(a)(4)(ii), concerning assistance provided for homelessness prevention activities; § 567.51(b)(2)(v), concerning the funding of ESG activities

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in commercial facilities; § 576.73, concerning the continued use of buildings as emergency shelters for the population to be served; § 576.75, concerning building standards; 576.77, concerning assistance to the homeless; and § 576.80, concerning displacement and relocation;

—(b) The Indian Civil Rights Act (25 U.S.C. 1301), and section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b));

—(c) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

—(d) The Age Discrimination Act of 1975 (42 U.S.C. 6101–07);

—(e) Executive Orders 11625, 12432, and 12138, promoting the use of minority business enterprises and women-owned businesses to the maximum extent consistent with the Indian Self-Determination and Education Assistance Act;

—(f) The requirements of 24 CFR part 24, concerning the Drug-Free Workplace Act of 1988;

—(g) Section 832(e)(2)(C) of NAHA, concerning the confidentiality of records pertaining to any individual provided family violence prevention or treatment services;

—(h) Section 832(g) of NAHA, concerning minimum habitability standards prescribed by the Department;

—(i) Section 104(g) of the Housing and Community Development Act of 1974 and 24 CFR part 58, concerning assumption of the HUD environmental review responsibilities;

—(j) Section 576.71(b)(2)(vii), concerning compliance with Tribal law in the submission of an application for an emergency shelter grant, and possession of legal authority to carry out emergency shelter grant activities;

—(k) Prohibitions on the use of Federal funds for lobbying, and the completion of SF-LLL, Disclosure Form to Report Lobbying, if applicable;

—(l) 42 U.S.C. 11375(c)(7), as added by the Housing and Community Development Act of 1992, concerning the involvement through employment, volunteer services, or otherwise, to the maximum extent practicable, of homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESG program, and in providing services for occupants of these facilities;

—(m) Section 3 of the Housing and Urban Development Act of 1968, as amended, and the regulations in 24 CFR part 135;

—(4) Form HUD–2880, Applicant/Recipient Disclosure/Update Form, if applicable;

—(5) Project Summary and Proposed Budgets;

—(6) Description of the homeless population to be served;

—(7) Facility Description;

—(8) Narrative addressing the rating criteria;

—(9) Matching funds certification as required under § 576.51(b)(2)(ii), § 576.71, and section 415 of the McKinney Act (42 U.S.C. 11375(a)). Each grantee must match the funding provided by HUD with an equal amount of funds from sources other than under this part.

These funds must be provided after the date of the grant award to the grantee.

[FR Doc. 96–5081 Filed 3–4–96; 8:45 am]
BILLING CODE 4210–33–P

federal register

Tuesday
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Part VII

Department of Education

Research in Education of Individuals With Disabilities Program; Extension Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.023C]

Office of Special Education and Rehabilitative Services; Research in Education of Individuals With Disabilities Program

ACTION: Extension Notice.

PURPOSE: On August 10, 1995, the Secretary published in the **Federal Register** (60 FR 40956) a combined application notice (CAN) inviting applications for new awards for fiscal year 1996 under a number of the Department's direct grant and fellowship programs. Included in the CAN under the Research in Education of Individuals with Disabilities Program was a closing date for the Field-Initiated Research Projects competition, CFDA No. 84.023C. On October 30, 1995 an extension notice was published in the **Federal Register** (60 FR 55247) that revised the closing date for that competition to March 29, 1996. The purpose of this notice is to revise, once again, the closing date for the Field-Initiated Research Projects competition.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: April 30, 1996.

This action is taken in consideration of the current proposals in the Congress that either eliminate or substantially reduce funding for the program. Extending the closing date for this competition allows the Department and potential applicants time to consider further developments related to the fiscal year 1996 appropriation.

FOR FURTHER INFORMATION CONTACT: Claudette Carey, U.S. Department of Education, 600 Independence Avenue, S.W., room 3525, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9864. FAX: (202) 205–8105. Internet: Claudette_____Carey@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Program Authority: 20.U.S.C. 1441–1442, 34 CFR 324.

Dated: February 28, 1996.

Katherine D. Seelman,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–5054 Filed 3–4–96; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
March 5, 1996

Part VIII

Department of Education

National Institute on Disability and Rehabilitation Research; Applications for New Awards Under the Research and Demonstration Program for Fiscal Years 1996–1997; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133A]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under the Research and Demonstration Program for Fiscal Years 1996–1997

Purpose of Program: Research and Demonstration Projects support research and demonstrations in single project areas on problems encountered by individuals with disabilities in their daily activities. These projects may conduct research on rehabilitation techniques and services, including analysis of medical, industrial, vocational, social, psychiatric, psychological, recreational, economic, and other factors to improve the rehabilitation of individuals with disabilities. In addition, the projects may conduct studies, analyses, and demonstrations of architectural and engineering design, including universal design, adapted to meet the special needs of individuals with disabilities.

Eligible Applicants: Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

Deadline for Transmittal of Applications: May 17, 1996.

Application Available: March 15, 1996.

Available Funds: $425,000.

Estimated Average Size of Awards Per Year: Architectural and Engineering Design—$250,000, Recreation—$175,000.

Estimated Number of Awards: 2.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86; and (b) the regulations for this program in 34 CFR Parts 350 and 351.

Note: The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

This notice supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Priorities: Under 34 CFR 75.105(b)(2)(v) and (c)(3) and Section 204(a) of the Rehabilitation Act of 1973, as amended, the Secretary gives an absolute preference to applications that meet one or both of the following priorities. The Secretary funds under this competition only applications that meet one or both of these absolute priorities:

Absolute Priority 1—Architectural and Engineering Design

Studies, analyses, and demonstrations utilizing architectural and engineering designs to address the special needs of individuals with disabilities.

Invitational Priority 1: Within absolute priority 1, the Secretary is particularly interested in applications that address the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications:

Universal design is a holistic approach to creating environments and products that are usable by many people regardless of their abilities or age (Strategies for Teaching Universal Design, ed. by P. Welch, Adaptive Environments Center, Boston, MA, 1995). Manufacturers who apply principles of universal design to their products are making a significant contribution toward promoting the independence and inclusion of persons with disabilities in the mainstream of society. They are also increasing the market for their products by making those products attractive to or useable by larger numbers of people. Understanding the decision-making process of manufacturers who adopt principles of universal design can contribute to its increased utilization. The Secretary invites applications to investigate the factors contributing to the application of principles of universal design by manufacturers who have designed and marketed universally designed products.

Absolute Priority 2—Recreation

Studies and analysis on the effects of recreation on the rehabilitation of individuals with disabilities.

Invitational Priority 2: Within the absolute priority 2, the Secretary is particularly interested in applications that address the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications:

Regular physical exercise and the resulting fitness can reduce the likelihood of heart disease, obesity, low back pain, depression, and other ailments associated with inactivity. Incorporating exercise into the lives of individuals with disabilities enables them to enjoy the physical and psychological benefits of fitness, achieve greater independence, and perform activities of daily living with less fatigue. The Secretary invites applications related to exercise and fitness for persons with disabilities. The Secretary invites applications on topics such as: (1) Measuring the fitness level of persons with disabilities and comparing it to the level of fitness of persons without disabilities; (2) evaluating the exercise habits of persons with disabilities; (3) determining the level of participation of persons with disabilities in utilizing fitness centers, programs, and products and identifying barriers to participation; or (4) designing modifications to exercise regimens to accommodate the needs of persons with disabilities.

FOR APPLICATIONS CONTACT: In order to obtain an application package, contact William H. Whalen, U.S. Department of Education, 600 Independence Avenue S.W., Switzer Building, Room 3411, Washington, D.C. 20202. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

FOR FURTHER INFORMATION CONTACT: David Esquith, U.S. Department of Education, 600 Independence Avenue S.W., Switzer Building, Room 3424, Washington, D.C. 20202. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8133. Internet: DAVID___ESQUITH@ED.GOV.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web at http://www.ed.gov/money.html.

However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 761a and 762.

Dated: February 28, 1996.

Katherine D. Seelman.

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–5055 Filed 3–4–96; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
March 5, 1996

Part IX

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 332

Antiflatulent Drug Products for Over-the-Counter Human Use; Final Rule

21 CFR PART 332

[DOCKET NO. 87N–0053]

RIN 0910–AA01

Antiflatulent Drug Products for Over-the-Counter Human use; Amendment of Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the monograph for over-the-counter (OTC) antiflatulent drug products by adding a statement of identity section to conform to the format of other OTC drug final monographs and by revising the indications to include additional descriptive terms, and by adding a definition for the term "antigas." FDA is issuing this final rule after considering public comments on the agency's proposed regulation and all new data and information on OTC antiflatulent drug products that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Effective March 5, 1997; written comments by June 3, 1996.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–105), Food and Drug Administration, 5600 Fishers Lane,Rockville, MD 20857, 301–827–2304.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 4, 1974 (39 FR 19862), FDA issued a final monograph for OTC antiflatulent drug products (21 CFR part 332) that established conditions under which these drug products are generally recognized as safe and effective and not misbranded.

In the **Federal Register** of January 29, 1988 (53 FR 2716), the agency published a proposed amendment of the monograph for OTC antiflatulent drug products to add a statement of identity section to conform to the format of other OTC drug final monographs and to revise the indications for use to include additional descriptive terms describing the symptoms that are commonly referred to as "gas." The proposed statement of identity was "antiflatulent," antigas," or "antiflatulent (antigas)." FDA issued that proposal after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (the Miscellaneous Internal Panel) and public comments on the advance notice of proposed rulemaking for OTC digestive aid drug products (47 FR 454, January 5, 1982), that was based on those recommendations. Interested persons were invited to submit comments, objections, or requests for oral hearing by March 29, 1988.

In the **Federal Register** of April 19, 1988 (53 FR 12778 and 12779), the agency extended the comment period from March 29, 1988, until May 27, 1988, to allow adequate time for one manufacturer to fully evaluate information it had received from the agency and to prepare comments to the notices of proposed rulemaking for OTC antiflatulent drug products and OTC digestive aid drug products.

In response to the proposed monograph amendment, three drug manufacturers and three physicians submitted comments. One comment requested an oral hearing before the Commissioner of Food and Drugs. That request concerned the inclusion of activated charcoal in the OTC antiflatulent monograph if the ingredient was found to be Category I in the OTC digestive aid monograph. The agency addressed the hearing request in comment 1 of the final rule for OTC digestive aid drug products (58 FR 54450 at 54451, October 21, 1993), and concluded that activated charcoal will not be included in either monograph, and a hearing is not necessary."Copies of the comments and the hearing request received are on public display in the Dockets Management Branch (H.A.–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23 Rockville, MD 20857, and may be seen between 9 a.m. and 4 p.m., Monday through Friday. Any additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

In proceeding with this final rule, the agency has considered all comments, objections, and the request for oral hearing. A summary of the comments and the new data with FDA's responses to them follows.

II. Summary of the Comments Received

1. One comment agreed with the agency's use of the term "antigas"as interchangeable with "antiflatulent." The comment expressed concern, however, that the agency was prohibiting other terminology, e.g., "antigas formulation relieves gas trapped in the intestine" or "for gas pain." The comment stated that the basis for the agency's labeling restriction appeared to be recommendations of the Miscellaneous Internal Panel (47 FR 454), which were at variance with the findings of the Advisory Review Panel on OTC Antacid Drug Products (38 FR 8714, April 5, 1973) (the Antacid Panel) that recognized the cause of "bloating," "pressure," and "fullness" as being the result of gas. The comment cited the Antacid Panel's recommended indication "alleviate or relieve the symptoms of gas" for simethicone-containing products as support for its position that excess gas causes discomfort. The comment also cited the double-blind, placebo-controlled clinical study by McDonald, O'Leary, and Stratton (Ref. 1) as demonstrating that dosing with simethicone results in a reduction of gastrointestinal foam. Finally, the comment stated that terms such as "relieves gas trapped in the intestine," "for gas pain," and "relieves the symptoms of gas should not be prohibited under the antiflatulent final monograph because consumers use these terms. The comment referred, specifically, to the consumer survey discussed in the proposed amendment (53 FR 2716) and indicated that the terms " bloating," "pressure," "stuffed feeling," and "fullness" are very meaningful to and used by consumers to describe "gas." The comment concluded by stating it is unclear whether the existing indication in § 332.30(a), "to alleviate or relieve the symptoms of gas," is still permitted because the proposal appears to omit this indication.

The agency is no longer including the indication "to alleviate or relieve the symptoms of gas" in the antiflatulent monograph. As explained in the proposal to amend the antiflatulent monograph (53 FR 2716), the agency modified the wording of this indication to ("alleviates" or "relieves") "the symptoms referred to as gas." The agency also recognized that consumers use the terms "bloating, pressure, fullness,"
" or "stuffed feeling "to refer to gas and provided an additional indication statement that includes these terms: ("alleviates" or "relieves") ("bloating, pressure, fullness, or stuffed feeling) commonly referred to as gas."

The agency disagrees with the comment's statement that the Antacid Panel recognized the cause of "bloating," "pressure, "and "fullness" as being the result of gas. The Antacid Panel stated that claims or indications such as "full feeling" or "gas" encourage the user to draw conclusions as to the cause of such symptoms, "a conclusion that even the medical profession is incapable of drawing at this time," and placed claims such as "full feeling" or "gas" in Category III (38 FR 8714 at 8722 to 8723). Further, while these symptoms describe discomfort, as noted by the Antacid Panel, the Panel did not include "pain" as one of the symptoms of gas (38 FR 8722 to 8723).

In the proposal to amend the antiflatulent monograph, the agency also stated that phrases such as "antigas formulation relieves gas trapped in the intestine" and "for gas pain" would be considered inappropriate (53 FR 2716). The agency reviewed the study by McDonald, O'Leary, and Stratton (Ref. 1), cited by the comment, which discusses the effectiveness of simethicone in eliminating foam and bubbles that may obscure the visual field in peroral endoscopy. According to the study results, simethicone is effective as a defoaming agent, but the study does not define the term "bubbles" or explain the source of the foam or bubbles that obscure the visual field. Without knowing whether the bubbles are derived from gas or air, the study cannot support the phrases "relieves gas trapped in the intestine" and "for gas pain."

In the advance notice of proposed rulemaking for OTC digestive aid drug products (47 FR 454), the Miscellaneous Internal Panel discussed at length the question of whether excessive gas is the causative agent of distress in the upper gastrointestinal tract and concluded that data were insufficient to make this assumption. In the tentative final monograph for OTC digestive aid drug products (53 FR 2706, January 29, 1988), the agency acknowledged that the word "gas" is commonly used by consumers. Therefore, the agency had no objection to use of the word "gas" in the labeling of OTC digestive aid drug products, provided there was no implication that the presence of gas, in the literal sense of excess gas bubbles in the gastrointestinal tract, is the cause of the symptoms. The agency discussed the consumer survey mentioned by the comment and agreed that a number of terms were commonly used by consumers in describing what is commonly, if not accurately, referred to as "gas" (53 FR 2706 at 2710). However, the terms did not include "gas pain."

Based on all of the data evaluated to date, the agency finds the claims "antigas formulation relieves gas trapped in the intestine" and "for gas pain" inappropriate for OTC antiflatulent drug products. The agency concludes that the general term "antigas" is appropriate when used for the indications provided in the monograph, e.g., "relieves the symptoms referred to as gas." However, the agency acknowledges that the term could be interpreted by some as the mechanism of action for these products. While this is not supported scientifically, the agency concludes that this term is understood by consumers and is an appropriate statement of identity for these products.

The agency is adding the following definition for the term "antigas" in the monograph: "Antigas is a term that may be used interchangeably with the term antiflatulent. Neither term should be considered as describing the mechanism of action of the active ingredient contained in the product." This definition appears in new § 332.3 of the final monograph.

Reference

(1) McDonald, G. B., R. O'Leary, and C. Stratton, "Pre-Endoscopic Use of OralSimethicone," Gastrointestinal Endoscopy, 24:283, 1978.

2. Three comments, submitting to both the OTC antiflatulent and digestive aid drug products rulemakings, contended that activated charcoal was solely an antiflatulent drug and did not belong in the digestive aid drug products rulemaking. Another comment expressed concern that activated charcoal was not included as a monograph ingredient in the 1988 proposal to amend the final monograph for OTC antiflatulent drug products. The comments cited studies (Refs. 1 through 5) in the literature to support monograph status for activated charcoal. One comment mentioned that physicians who use charcoal to treat lower intestinal gas symptoms indicate that charcoal is effective under certain circumstances. The comment referred to studies by Jain et al. (not cited), as well as its own studies (not submitted), as evidence that activated charcoal decreased intestinal gas and relieved associated symptoms. The comment argued that the need for additional studies and ongoing research should not deter the availability or use of activated charcoal for excessive gas and related symptoms for which it is reasonably expected to be effective. The comment felt charcoal was not approved because it had a stigma as "an old remedy," which is difficult to overcome.

Two advisory review panels (Antacid (38 FR 8714) and Miscellaneous Internal (47 FR 454)) evaluated charcoal for antiflatulent and digestive aid use. Both panels concluded that more data were needed to establish effectiveness for these uses.

Subsequently, after the comments were submitted, the agency received additional data, including studies done by one comment and by Jain et al. (referenced by the comment). The agency discussed these studies and the references provided by the comments in the final rule for OTC digestive aid drug products (58 FR 54450 at 54451). The agency found the data insufficient to support the effectiveness of activated charcoal as a digestive aid or as an antiflatulent (58 FR 54453). No new data have been provided to the agency.

The agency has never attached a "stigma" to a drug because it has been in the marketplace for many years. The agency has proposed a number of very old ingredients (e.g., aspirin, bran, cascara, and psyllium) as monograph ingredients. The data that have been provided have not been adequate to include activated charcoal in a monograph for use as an antiflatulent. Manufacturers have the option to petition the agency to amend the antiflatulent monograph in the future should additional data become available to support the effectiveness of activated charcoal as an antiflatulent.

References

(1) Jain, N. K. et al., "Efficacy of Activated Charcoal in Reducing Intestinal Gas: A Double-Blind Clinical Trial," American Journal of Gastroenterology, 81:532–535, 1986.

(2) Jain, N. K., V. P. Patel, and C. Pitchumoni, "Activated Charcoal, Simethicone, and Intestinal Gas: A Double-Blind Study," Annals of Internal Medicine, 105:61–62, 1986.

(3) Potter, T., C. Ellis, and M. Levitt, "Activated Charcoal: In Vivo and In Vitro Studies of Effect on Gas Formation," Gastroenterology, 88:620624, 1985.

(4) Hall, R. G., H. Thompson, and A. Strother, "Effects of Orally Administered Activated Charcoal on Intestinal Gas," The American College of Gastroenterology, 75:192–196, 1981.

(5) Vargo, D., L. Ozick, and M. H. Floch, "The Effect of Activated Charcoal on Dietary Carbohydrate Fermentation" American Journal of Gastroenterology, (abst.), 82:950, 1987.

3. Three manufacturers submitted protocols to study the effectiveness of activated charcoal in decreasing gastrointestinal distress. One manufacturer did not pursue studies after 1989.

The agency met with representatives of the other two manufacturers (Ref. 1) to discuss their study protocols. Both manufacturers submitted revised protocols in response to the agency's comments. The agency provided written comments on only one of the protocols (Ref. 2) because one manufacturer indicated that it intended to begin its study and that no further review by the agency was necessary.

Subsequently, one manufacturer informed FDA that it had decided not to pursue studies (Ref. 3). The other manufacturer (Ref. 4) has not submitted

any study results to date. In the absence of new data; the agency concludes there is no basis to include activated charcoal in the OTC antiflatulent drug products monograph at this time. Manufacturers have the option to petition the agency to amend the antiflatulent monograph in the future should additional data become available to support the effectiveness of activated charcoal as an antiflatulent.

References

(1) Memorandum of Meeting between FDA representatives and representatives from Kramer Laboratories and Requa, Inc., coded MM4, Docket No. 81N–0106, Dockets Management Branch.

(2) Letter from W. E. Gilbertson, FDA, to J. Geils, Requa, Inc., dated July 22, 1994, coded LET 20, Docket No. 81N–0106, Dockets Management Branch.

(3) Memorandum of Telephone Conversation between M. Barach, of Akin, Gump, Strauss, Hauer & Feld on behalf of Kramer Laboratories, and B. Ryland, FDA, coded MT3, Docket No. 81N–0106, Dockets Management Branch.

(4) Memorandum of Telephone Conversation between B. Marlin, Requa Consultant, and B. Ryland, FDA, coded MT4, Docket No. 81N–0106, Dockets Management Branch.

III. The Agency's Final Conclusions

The agency has carefully evaluated the comments' proposals and concludes that the terms "antigas" and "antiflatulent" are interchangeable. The agency is providing manufacturers the option of using either term or both as the statement of identity for their products. Although "antigas" is now the preferable term, the agency is also allowing "antiflatulent."

In respect to the one comment's concern that activated charcoal is not a monograph ingredient, the agency points out that manufacturers of products containing this ingredient have had over 20 years to provide sufficient data to support claims for activated charcoal as an antiflatulent and have failed to do so. Accordingly, simethicone remains the only antiflatulent monograph ingredient.

Interested persons may, on or before June 3, 1996, submit to the Dockets Management Branch (address above) written comments on these warnings. Comments should be identified with the docket number found in brackets in the heading of this document. Three copies of all comments are to be submitted, except that individuals may submit one copy. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IV. Analysis of Impacts

No comments regarding the economic impact of this rulemaking were received. FDA has examined the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order. This final rule provides for minor labeling revisions that can be implemented at very little cost by manufacturers at the next printing of labels. The agency is providing 12 months for these revisions to be made and, thus, believes that this rule will have no significant economic impact. Accordingly, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Rather, the labeling statements are a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 332

Labeling, Over-the-counter drugs.Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 332 is amended as follows:

PART 332—ANTIFLATULENT PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 332 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. New § 332.3 is added to Subpart A to read as follows:

Subpart A—General Provisions

§ 332.3 Definitions.

As used in this part:

Antigas. A term that may be used interchangeably with the term antiflatulent. Neither term should be considered as describing the mechanism of action of the active ingredient contained in the product.

3. Subpart D consisting § § 332.30 and 332.31 is redesignated as Subpart C; and § 332.30 is amended by revising the section heading; by redesignating paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d), respectively; by adding new paragraph (a); and by revising newly redesignated paragraph (b) to read as follows:

Subpart—Labeling

§ 332.30 Labeling of antiflatulent drug products.

(a) Statement of identity. The labeling of the product contains the established name of the drug, if any, and identifies the product as an "antiflatulent," "antigas," or "antiflatulent (antigas)."

(b) Indications. The labeling of the product states, under the heading "Indications," one or more of the phrases listed in this paragraph (b), as appropriate. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph (b), may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) (Select one of the following: "Alleviates or Relieves") "the symptoms referred to as gas."

(2) (Select one of the following: "Alleviates" or "Relieves") (select one or more of the following: "bloating," "pressure," "fullness," or "stuffed feeling") "commonly referred to as gas."

* * * * *

Dated: February 23. 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordintion.

[FR Doc. 96–5118 Filed 3–4–96; 8:45 am]

BILLING CODE 4160–01–F

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Part X

The President

Proclamation 6867—Declaration of a National Emergency and Invocation of Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

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Presidential Documents

Title 3—

The President

Proclamation 6867 of March 1, 1996

Declaration of a National Emergency and Invocation of Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

By the President of the United States of America

A Proclamation

WHEREAS, on February 24, 1996, Cuban military aircraft intercepted and destroyed two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba;

WHEREAS the Government of Cuba has demonstrated a ready and reckless willingness to use excessive force, including deadly force, in the ostensible enforcement of its sovereignty;

WHEREAS, on July 13, 1995, persons in U.S.-registered vessels who entered into Cuban territorial waters suffered injury as a result of the reckless use of force against them by the Cuban military; and

WHEREAS the entry of U.S.-registered vessels into Cuban territorial waters could again result in injury to, or loss of life of, persons engaged in that conduct, due to the potential use of excessive force, including deadly force, against them by the Cuban military, and could threaten a disturbance in international relations;

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States of America, including section 1 of title II of Public Law 65-24, ch. 30, June 15, 1917, as amended (50 U.S.C. 191), sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, find and do hereby proclaim that a national emergency does exist by reason of a disturbance or threatened disturbance of international relations. In order to address this national emergency and to secure the observance of the rights and obligations of the United States, I hereby authorize and direct the Secretary of Transportation (the "Secretary") to make and issue such rules and regulations as the Secretary may find appropriate to regulate the anchorage and movement of vessels, and delegate to the Secretary my authority to approve such rules and regulations, as authorized by the Act of June 15, 1917.

Section 1. The Secretary may make rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, which may be used, or is susceptible of being used, for voyage into Cuban territorial waters and that may create unsafe conditions and threaten a disturbance of international relations. Any rule or regulation issued pursuant to this proclamation may be effective immediately upon issuance as such rule or regulation shall involve a foreign affairs function of the United States.

Sec. 2. The Secretary is authorized to inspect any vessel, foreign or domestic, in the territorial waters of the United States, at any time; to place guards on any such vessel; and, with my consent expressly hereby granted, take full possession and control of any such vessel and remove the officers and crew, and all other persons not specifically authorized by the Secretary to go or remain on board the vessel when necessary to secure the rights and obligations of the United States.

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Sec. 3. The Secretary may request assistance from such departments, agencies, officers, or instrumentalities of the United States as the Secretary deems necessary to carry out the purposes of this proclamation. Such departments, agencies, officers, or instrumentalities shall, consistent with other provisions of law and to the extent practicable, provide requested assistance.

Sec. 4. The Secretary may seek assistance from State and local authorities in carrying out the purposes of this proclamation. Because State and local assistance may be essential for an effective response to this emergency, I urge all State and local officials to cooperate with Federal authorities and to take all actions within their lawful authority necessary to prevent the unauthorized departure of vessels intending to enter Cuban territorial waters.

Sec. 5. All powers and authorities delegated by this proclamation to the Secretary may be delegated by the Secretary to other officers and agents of the United States Government unless otherwise prohibited by law.

Sec. 6. This proclamation shall be immediately transmitted to the Congress and published in the **Federal Register.**

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 96–5306
Filed 3–4–96; 8:45 am]
Billing code 3195–01–P

federal register

Tuesday
March 5, 1996

Part XI

The President

Proclamation 6868—Irish-American Heritage Month, 1996
Proclamation 6869—Save Your Vision Week, 1996

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Title 3—

The President

Proclamation 6868 of March 1, 1996

Irish-American Heritage Month, 1996

By the President of the United States of America

A Proclamation

I am pleased to count myself among the over 40 million Americans who can trace their heritage back to Ireland. Like so many of our forebears, immigrants from the Emerald Isle came to this country seeking dignity and prosperity, and they brought with them traditions rooted in the values of family and faith. Some arrived on our shores even before our Nation was founded, lending their energy to the establishment of our Republic; nine sons of Ireland signed the Declaration of Independence, and our first President, George Washington, proudly claimed Irish ancestry.

The largest wave of Irish immigration occurred 150 years ago, when more than 1 million people left Ireland for America as potato blight and famine devastated their homeland. These sons and daughters of Erin transformed our cities, stimulating industry and commerce from New York to Boston to Chicago. In pursuing the American Dream, they set an example of courage, hard work, and determination that was to be followed again and again by hopeful newcomers.

Today, Irish Americans celebrate this history and the contributions that their brethren have made to all aspects of American life—providing leadership in Government, the law, business, finance, literature, and the arts. Renewed interest in Gaelic culture has led to university courses in Irish studies, and hundreds of Saint Patrick's Day parades across the country attest to the vigor of Irish American communities. This month and throughout the year, let us recognize the gifts brought to America by children of Ireland and honor the strengths they have added to our national character.

In tribute to all Irish Americans, the Congress, by Public Law 103-379, has designated March 1996 as "Irish-American Heritage Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 1996 as Irish-American Heritage Month. I call upon all the people of the United States to observe this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 96-5358
Filed 3-4-96; 11:12 am]
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Proclamation 6869 of March 1, 1996

Save Your Vision Week, 1996

By the President of the United States of America

A Proclamation

Vision is a remarkable gift. Our eyes allow us to read, to see the faces of our loved ones, and to experience many of life's greatest pleasures. Too often, we take our sight for granted and must be reminded that our eyes require regular care and attention. The more we learn about preventing eye disease and vision loss, the better equipped we will be to take care of these vital organs.

Many young people suffer from vision-related learning disabilities that jeopardize their academic success. However, with early intervention, such sight problems are often easily correctable. Senior citizens, too, are particularly vulnerable to eye difficulties, but we are fortunate that advances in medical research are improving our understanding of the diseases that often rob older Americans of their sight.

As a result of these new technologies and discoveries in the field of eye care, many diseases that would have caused permanent sight loss just decades ago can now be treated with excellent prospects for full recovery. For example, people with diabetes can reduce their risk of blindness with timely laser surgery, the effects of glaucoma can often be prevented, and studies are exploring the role of vitamins and minerals in slowing the progression of age-related macular degeneration and cataract.

To educate people about these strides and to encourage all Americans to protect their precious eyesight, the Congress, by joint resolution approved December 30, 1963 (77 Stat. 629; 36 U.S.C. 169a), has authorized and requested the President to proclaim the first week in March of each year as "Save Your Vision Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim March 3 through March 9, 1996, as Save Your Vision Week. I urge all the people of the United States to participate in this observance by making eye care and eye safety a priority and to recognize the important contributions that vision research makes to our lives. I invite eye care professionals, the media, and all public and private organizations committed to the goal of sight preservation to join in activities that educate our citizens about the simple steps they can take to save their vision.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 96–5359
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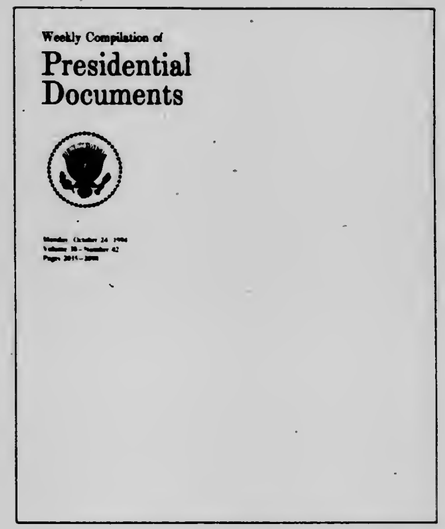
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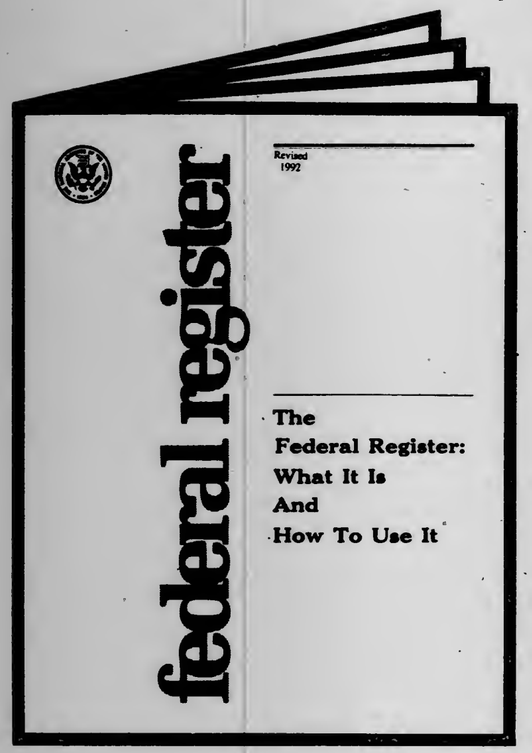
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[Two Sessions]

WHEN: March 12, 1996 at 9:00 am and March 26, 1996 at 9:00 am

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB24

Common Crop Insurance Regulations; Malting Barley Price and Quality Endorsement Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation ("FCIC") hereby issues additional regulations for provisions to insure malting barley. This action will add a second endorsement, the Malting Barley Price and Quality Endorsement, under which malting barley may be insured. The current malting barley endorsement will remain in effect for the 1996 crop only and, effective with the 1997 crop year, will be replaced by the new Malting Barley Price and Quality Endorsement. The intended effect of this rule is to improve the insurance coverage now available for producers who grow malting barley under contract and provide a new option that will allow producers without contracts (open market producers) to obtain insurance for their malting barley.

EFFECTIVE DATE: March 4, 1996.

ADDRESSES: For information concerning submission of comments on information collection, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For further information and a copy of the Cost-Benefit Analysis to the Malting Barley Price and Quality Endorsement Crop Insurance provisions, contact Diana Moslak, United States Department of Agriculture, Federal Crop Insurance Corporation, Washington, D.C. 20250. Telephone (202) 720–0713.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Departmental Regulation 1512–1

This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 2000.

This rule has been determined to be "significant" for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget ("OMB").

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that the expected benefits of this action outweigh the costs. The new Malting Barley Price and Quality Endorsement will simplify program operations, benefit FCIC and reinsured companies, and enhance the insurance coverage for malting barley producers.

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments, data, and opinions on information collection requirements previously approved by OMB under OMB control number 0563–0003 through September 30, 1998. No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. The impact of obtaining or delivering these policies will not vary significantly from that required to obtain or deliver the present policy. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The

administrative appeal provisions at 7 CFR part 11, must be exhausted before action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Monday, December 11, 1995, FCIC published a proposed rule in the **Federal Register** at 60 FR 63457 to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.103, Malting Barley Option Provisions, effective for the 1996 and succeeding crop years. However, the December 31, 1995, date by which contract changes must be made for the 1996 crop year passed before the provisions could be published as a final rule. Therefore, for the 1996 crop year only, FCIC will make both the current Malting Barley Endorsement (§ 457.103) and this new Malting Barley Price and Quality Endorsement (§ 457.118) available. The new endorsement will make insurance coverage available to malting barley producers who do not hold a production contract with a malting or brewing company, and to improve coverage for those producers who do have such a contract. Beginning with the 1997 crop year, the Malting Barley Price and Quality Endorsement will replace the current Malting Barley Endorsement.

Following publication of the proposed rule, the public was afforded 15 days to submit written comments, data, and opinions. FCIC received 33 comments. The comments received and FCIC responses are as follows:

Comment: One comment received from a State Commissioner of Agriculture recommended adding the following to the supplementary information in the preamble: "FCIC must offer producers the right to mediation as required under Pub. L. No. 103–354, as part of the informal administrative appeal process."

Response: FCIC agrees that mediation may be required in some instances but that requirement is contained in the appeal regulations.

Comment: Three comments were received regarding the length of the comment period for the proposed rule. One received from the legal counsel of a reinsured company stated that FCIC's proposed rulemaking is in violation of the Administrative Procedure Act. Two comments, one from the insurance industry and one from a State Commissioner of Agriculture, indicated that the comment period was too short.

Response: FCIC published its proposed regulation with a shortened comment period in order to allow sufficient time to consider all comments and publish the final rule with sufficient time before the sales closing date to permit the sale of the insurance policies and training of insurance providers. Further, interested parties were kept apprised of the proposed changes to the malting barley program, and the date of its publication, in order to facilitate their ability to provide meaningful comments within the short time period. No violation of the Administrative Procedure Act has occurred.

Comment: One comment received from the insurance industry recommended that implementation of this rule be delayed until the 1997 crop year. The comment indicated that it is too late to implement the proposed program changes for the 1996 crop year because: (1) The Standard Reinsurance Agreement (SRA) is already in place and approved; (2) Agent training is completed in many areas, and procedures for 1996 are in place; and (3) Little time for training and marketing will be available. The comment states that changing the endorsement for the 1996 crop year will require FCIC to allow companies to make changes to the SRA fund and percentage elections; and that reimbursement of company costs associated with marketing, training, and reissuance of procedures will need to be addressed under the 1996 SRA.

Response: There is nothing in the SRA that precludes FCIC from changing the terms of an insurance contract prior to the contract change date or offering new insurance products after implementation of the current years' SRA. FCIC is offering the new Malting Barley Price and Quality Endorsement as a new insurance product to be sold in conjunction with the currently available malting barley endorsement. Nothing requires any company to sell the endorsement. The Company may do so if it believes that making the option available is good business.

Comment: One comment received from a barley industry organization indicated that the new endorsement will offer an important option to many North Dakota open-market barley producers. The comment further stated that these producers now will be afforded the opportunity to insure against quality losses at representative prices.

Response: FCIC agrees.

Comment: One comment received from the Farm Service Agency (FSA) asked if the endorsement will be available in all counties that currently have a feed barley insurance program or only in counties that currently have malting barley insurance.

Response: The new endorsement will initially be available only in counties that currently have a malting barley insurance program in place.

Comment: One comment received from the insurance industry indicated it would be advantageous for producers to elect Option A or B on a yearly basis rather than the initial selection being continuous. The comment stated that insureds with Option B will think they have an endorsement in effect even if they fail to execute a malting barley contract.

Response: This recommendation would result in unnecessary additional paperwork and administrative expense each crop year. The endorsement is clear that there is no coverage when the producer fails to obtain a malting barley contract. Further, a producer can cancel an Option and select another, provided it is done prior to the sales closing date. Also, there are large malt barley growing areas in which there is very little, if any, contracted production. Requiring producers to affirmatively select option A each year is unnecessary in these areas. No changes in the proposed provisions have been made.

Comment: One comment received from a State Commissioner of Agriculture suggested adding the following language to section 2 of the endorsement: "Producers who sign up for coverage Option A at the time of the sales closing date, and subsequently enter into a contract with some or all of their malting barley production will retain the Option A malting barley coverage. The malting barley production guarantee for the producer then will be the same as the coverage guaranteed under the Option A insurance contract." The comment indicated that malting barley contracts can be entered into in the late spring and that growers with Option A coverage should not forego their insurance coverage if they do enter into such a contract.

Response: FCIC agrees with the comment. Section 2 and language in the heading of Option A have been amended accordingly.

Comment: Two comments were received, one from FSA and one from

the insurance industry, that recommended clarifying whether the additional value price election percentage can vary from that selected for feed barley or if the percentages must be the same.

Response: It is intended that producers be allowed to select a price election percentage for malting barley that varies from that selected for feed barley. FCIC agrees that clarification is needed and has amended the provisions in section 3 accordingly.

Comment: One comment received from the insurance industry indicated that the provision requiring a producer to select an additional value price election at the time of application would work the first year of insurance, but would be a problem in succeeding years. The comment also asked what procedure would be followed to change price elections from year to year.

Response: Under any crop insurance policy, the producer is required to select a price election. There is greater uncertainty under Option B because the price upon which the election is based is not established prior to the sales closing date. However, there is too great a risk of adverse selection associated with permitting producers to select their price elections after their prices have been established by contract. The maximum price election is stated in Option B. Procedures to change price elections from year to year will be the same as those in effect for other crops. No change has been made to the proposed provision.

Comment: One comment received from a State Commissioner of Agriculture recommended providing prevented planting coverage under the terms of the endorsement.

Response: Determining a producer's intentions would make prevented planting difficult to administer. Under other insurance products, all terms of the contract are known on or before the sales closing date. However, under this endorsement, a producer may not know if the malting barley will be under contract, the number of acres insurable under the endorsement or the price until the acreage reporting date. This uncertainty makes it difficult to establish an actuarially sound premium rate. Therefore, FCIC finds it appropriate to provide prevented planting coverage on the basis of the feed barley production guarantee and price election. If reliable methods to administer a prevented planting program can be devised, then the endorsement can later be amended. No change to the proposed provision has been made.

Comment: One comment received from a producer organization indicated that the proposed "cap" of 200% of the maximum additional value price election shown on the Special Provisions is too low to cover the contract prices received for malting barley. The comment suggested "capping" the additional value price election under Option B at $2.00 per bushel.

Response: FCIC agrees and has revised the provisions as recommended.

Comment: One comment received from the insurance industry recommended changing the time by which a producer must submit a claim for indemnity to the earlier of the date of final disposition of all production or May 31 of the calendar year following the year the crop is normally harvested.

Response: FCIC agrees that the time of disposition of all production should be considered and has amended the provisions in section 7 accordingly.

Comment: Two comments received from the insurance industry indicated concern regarding the extended date for settling claims. One comment stated that keeping claims open until May 31 places the insurance provider well into the following crop year when early losses are being worked, and increases the likelihood of errors. This comment also recommended using a system of discount factors to allow claims to be worked at harvest time. The other comment indicated that the settlement date will delay needed benefits to producers and complicate settlement under the Standard Reinsurance Agreement.

Response: Losses will have initially been adjusted as soon as possible after the notice of loss. It is only when there is production that fails to meet the quality criteria that the claim remains open. If the claim remains open, adjustment only occurs if, and when, the producer is able to sell such production. If such production is later sold, there is little or no economic loss to producers. Even though settlement of claims may be delayed, the use of discount factors or settlement of claims at harvest time is not actuarially sound since it will allow the producer to receive payments to which he may not be entitled. Further, since the May 31 deadline still falls under the same Standard Reinsurance Agreement, settlement should not be complicated by this delay. Therefore, no change has been made to the proposed provisions.

Comment: One comment received from the insurance industry indicated that some producers may contract the production from some acreage but also grow additional acreage for open-market sales. The comment indicated that it would be difficult to track the acreage separately and that the problem might be rectified by allowing the uncontracted acreage to be insured under Option A.

Response: The endorsement already requires producers who grow both contracted and non-contracted production within the same crop year to insure such production under Option A. As indicated in the comment, it is difficult to track the specific acreage from which malting barley production is harvested. Therefore, no change is required.

Comment: Two comments received from the insurance industry recommended using the same Actual Production History (APH) database for both feed and malting barley. One of the comments recommended using a temporary yield in the malting barley APH database to avoid a one year difference in the databases between malting and feed barley. This comment also recommended making reference to the APH crop year in section 1 of Option A to avoid confusion.

Response: FCIC considered using temporary yields in malting barley databases but elected not to do so because of the extra paperwork and administrative expense involved with replacing the temporary yields each year. FCIC agrees that adding a reference to APH in section 1 of Option A may help clarify record requirements and has amended the section accordingly.

Comment: One comment received from the insurance industry recommended that the malting barley APH database reflect only acreage from which malting barley was actually sold. The comment indicated that a guarantee based on the total acreage planted to malting varieties and the production sold for malting purposes would misrepresent potential production.

Response: Since all acreage planted to approved malting varieties is insured and the production available for sale, it must be considered in the database. Otherwise, FCIC would be providing insurance for changes in the market, which is not an insured cause of loss. No changes have been made to the proposed provisions.

Comment: One comment received from a State Commissioner of Agriculture recommended changing the number of yearly records of sale of malting barley that are required from at least four years to three out of the previous five years. The comment further recommended that "acceptable records" be defined.

Response: Allowing the producer to select the years for which production

records are provided might result in the poorest production years not being reflected in the data base. This would result in excessive production guarantees, losses, and loss ratios. Specific production record requirements are statutory and will be contained in procedural handbooks. No change has been made to the proposed provision.

Comment: One comment received from a State Commissioner of Agriculture recommended removing provisions that limit the malting barley production guarantee to that determined for feed barley. The comment recommends using only the malting barley records to determine coverage under Option A, and only the contracted amount of production to determine coverage under Option B.

Response: The production guarantee is intended to determine that portion of the expected production that will be insured. Producers should not receive a guarantee in excess of what the acreage could reasonably be expected to produce. Under Option A, the best indicator of the expected production is using the APH for feed barley because it takes into consideration all the actual production from the insured acreage, whether or not sold as malting barley. Under Option B, the producer's insurance is limited to contracted acreage or production. However, the contracted amount may differ from the actual production of the acreage. Therefore, the actual production must be taken into consideration. No change has been made to the proposed provisions.

Comment: One comment received from the insurance industry recommended changing the date by which a producer must submit a copy of the malting barley contract from the acreage reporting date to the sales closing date. The comment stated that adverse selection would be reduced by changing this requirement to an earlier date.

Response: In many cases, malting barley contracts are not completed until April or May. Changing the contract submission date to the March 15 sales closing date would cause many growers who normally complete contracts after this date to be ineligible for coverage under Option B. No change has been made in the proposed provisions.

Comment: One comment received from the insurance industry stated that the insurance guarantee under Option B would be underestimated when a grower plants more acreage to approved malting varieties than the number of acres grown under contract.

Response: Option B is not available to producers who grow more acreage of malting barley than is under contract. Option A should be used by producers who grow all open-market production or a combination of contracted and open-market production.

Comment: One comment received from the insurance industry asked if an additional data base would have to be established for malting barley.

Response: Separate production data bases will be required for any acreage planted to approved malting barley varieties and acreage planted for feed barley.

Comment: One comment received from the FSA recommended expanding the premium computation contained in Option B, section 3(b) (redesignated as 3(c) in the final rule) to include the factors to be applied, whether or not a separate liability is to be calculated, and the applicable premium rate (feed barley or a separate rate).

Response: The comment misinterprets the term "premium" in this subsection. As used in Option B, section 3(c), the term refers to an additional dollar amount (above the base) paid to the producer for barley production meeting contractual requirements rather than the premium amount charged for insurance. The provision has been clarified by using the term "premium price per bushel."

Comment: One comment received from the FSA recommended that the definition of unit be clarified to indicate that units by share will be available. The comment stated that the proposed provisions indicate that basic units will not be available.

Response: All acreage of malting barley is insurable under a single unit; basic units are not available. All insurable shares in the malting barley will be designated on the acreage report for the single unit. No changes have been made in the proposed provisions.

Comment: One comment received from a State Commissioner of Agriculture recommended that producers have the option of designating, on an acre by acre basis, either feed barley insurance coverage or malting barley insurance coverage. The comment further suggested that producers have the option of designating separate insurance units.

Response: To prevent selecting against the insurance provider, all acreage planted to approved malting varieties must be insured as malting barley. Allowing malting barley insurance only on acreage selected by the producers would allow them to designate malting barley insurance only on acreage where they have had difficulty producing barley meeting malting barley standards and, thus, receiving a larger indemnity than would be available for feed barley. Allowing units would create situations in which growers could deliver 100 percent or more of the malting barley guarantee and still receive an indemnity for a malting barley loss on one or more units. This not only violates an accepted principle of insurance that the insured should not profit by a loss, it also makes it difficult to develop an adequate premium rate for the coverage. No changes in the provisions have been made.

Comment: One comment received from a State Commissioner of Agriculture recommended removing the requirement that potential unharvested production be counted against the insurance guarantee. The comment indicated that the intent of provisions in section 4(a)(2) of Option B is unclear.

Response: This section may be unclear because of a drafting error. Section 4(a)(2) of Option B should not begin with the word "either." This correction has been made. This section is intended to require that all harvested production and all production that is not harvested be considered when determining the amount of production to count against the production guarantee.

Comment: One comment received from the FSA pointed out a typographical error in the second sentence of section 7 (redesignated as section 6 in this final rule) in Option B. The sentence should read as follows: Assume that *each* unit contains....

Response: The correction has been made.

Comment: One comment received from the insurance industry asked for clarification of the 2,100 bushel guarantee reference in section 7 (redesignated as section 6 in this final rule) of Option B.

Response: This provision has been revised to clarify how an indemnity will be paid.

Comment: One comment received from the crop insurance industry indicated that the producer's share needs to be added to the provisions regarding calculation of the claim amount.

Response: FCIC agrees and has amended the provisions as recommended.

In addition to the changes indicated above, FCIC has determined that it is necessary to:

(1) Modify the definition of "Malting barley contract" for the purpose of clarification;

(2) Add provisions in section 9 to indicate that production of approved malting varieties and any production of feed barley varieties must not be commingled prior to the insurance provider making all necessary determinations for the purposes of this coverage; Failure to keep production separate may result in denial of indemnity under the endorsement;

(3) Delete the definition of "Value per bushel." This definition was used to describe how production not meeting quality standards contained in the endorsement was to be valued if such production was ultimately sold as malting barley. The definition is unnecessary because the value of such production will simply be the sale price per bushel of the damaged production;

(4) Add provisions in section 4(b) of both Options A and B to allow conditioning costs to be subtracted from the value of production that could not be sold for malting purposes without conditioning; and

(5) Relocate provisions regarding delayed settlement of claims from section 5 of both Options to section 7 of the provisions that apply to both Options. These provisions were identical in the proposed rule and should not be duplicated. Provisions 6 and 7 of both Options have been redesignated as sections 5 and 6, respectively.

Good cause is shown to make this rule effective upon publication in the **Federal Register** and without the 30-day period required by the Administrative Procedure Act. This rule substantially improves the malting barley insurance coverage. Public interest requires the agency to act immediately to make this endorsement available for the 1996 crop year. The rule expands coverage availability to producers who do not hold a production contract with a malting or brewing company and improves coverage for those producers who do have such a contract, Therefore, good cause is shown to make this final rule effective in less than 30 days after publication.

List of Subjects in 7 CFR Part 457

Crop insurance, Malting Barley Price and Quality Endorsement Crop Provisions.

Final Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. § 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Common Crop Insurance Regulations (7 CFR part 457) by adding a new § 457.118, effective for the 1996 and succeeding crop years, to read as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. 7 CFR part 457 is amended by adding a new § 457.118 to read as follows:

§ 457.118 Malting Barley Crop Insurance.

The malting barley crop insurance provisions for the 1996 and succeeding crop years are as follows:

United States Department of Agriculture
Federal Crop Insurance Corporation Small Grains Crop Insurance Malting Barley Price and Quality Endorsement

(This is a continuous endorsement. Refer to section 2 of the Common Crop Insurance Policy.)

In return for your payment of premium for the coverage contained herein, this endorsement will be attached to and made part of the Common Crop Insurance Policy (§ 457.8) and Small Grains Crop Provisions (§ 457.101), subject to the terms and conditions described herein.

1. You must have the Common Crop Insurance Policy (§ 457.8) and the Small Grains Crop Insurance Provisions (§ 457.101) in force to elect to insure malting barley under this endorsement.

2. You must select either Option A or Option B on or before the sales closing date. Failure to select either Option A or Option B, or if you elect Option B but fail to have a malting barley contract in effect by the acreage reporting date, will result in no coverage under this endorsement for the applicable crop year. If you elect coverage under Option A, and subsequently enter into a malting barley contract, your coverage will continue under the terms of Option A. Your selection (Option A or B) will continue from year to year unless you cancel or change your selection on or before the sales closing date.

3. You must select either an additional value price election or a percentage of the maximum additional value price election on or before the sales closing date. The percentage of the maximum additional value price election you select does not have to be the same as that selected under the Small Grains Crop Provisions for feed barley. In the event that you choose a percentage of the maximum additional value price election, we will multiply that percentage by the maximum additional value price election specified in Option A or B to determine the additional value price election that pertains to your contract.

4. The additional premium amount for this coverage will be determined by multiplying your malting barley production guarantee per acre by your selected additional value price election, times the premium rate stated in the Actuarial Table, times the acreage planted to approved malting barley varieties, times your share at the time coverage begins.

5. In addition to the reporting requirements contained in section 6 of the Common Crop Insurance Policy (§ 457.8), you must provide the information required by the Option you select.

6. In lieu of the provisions regarding units and unit division in the Common Crop Insurance Policy (§ 457.8) and the Small Grains Crop Provisions (§ 457.101), all barley acreage in the county that is planted to malting varieties that is insurable under the Small Grains Crop Provisions for feed barley and your selected Option must be insured under this endorsement and will be considered as one unit regardless of whether such acreage is owned, rented for cash, or rented for a share of the crop. The producer's shares in the malting barley acreage to be insured under this endorsement must be designated on the acreage report.

7. In lieu of the provisions in the Common Crop Insurance Policy (§ 457.8) that requires us to pay your loss within 30 days after we reach agreement with you, whenever any production fails one or more of the quality criteria specified herein, the claim may not be settled until the earlier of:

(a) The date you sell, feed, donate, or otherwise utilize such production for any purpose; or

(b) May 31 of the calendar year immediately following the calendar year in which the insured malting barley is normally harvested.

If the production meets all quality criteria contained herein or grades U.S. No. 4 or lower in accordance with the grades and grade requirements for the subclasses Six-rowed and Two-rowed barley, and for the class Barley in accordance with the Official United States Standards for Grain, the claim will be settled within 30 days in accordance with the Common Crop Insurance Policy (§ 457.8).

8. This endorsement does not provide additional prevented planting coverage. Such coverage is only provided in accordance with the provisions of the Small Grain Crop Provisions for feed barley.

9. Production from all acreage insured under this endorsement and any production of feed barley varieties must not be commingled prior to our making all determinations necessary for the purposes of this insurance. Failure to keep production separate may result in denial of your claim for indemnity.

10. Definitions:

(a) APH—Actual production history as determined in accordance with 7 CFR part 400, subpart G.

(b) Approved malting variety—A variety of barley specified as such in the Special Provisions.

(c) Brewery—A facility where malt beverages are commercially produced for human consumption.

(d) Contracted production—A quantity of barley the producer agrees to grow and deliver, and the buyer agrees to accept, under the terms of the malting barley contract.

(e) Licensed grain grader—A person authorized by the U.S. Department of Agriculture to inspect and grade barley under the U.S. Standards for malt barley.

(f) Malting barley contract—An agreement in writing between the producer and a brewery or a business enterprise that produces or sells malt or processed mash to a brewery, or a business enterprise owned by such brewery or business, that contains the

amount of contracted production, the purchase price, or a method to determine such price, and other such terms that establish the obligations of each party to the agreement.

(g) Objective test—A determination made by a qualified person using standardized equipment that is widely used in the malting industry, and following a procedure approved by the American Society of Brewing Chemists when determining percent germination or protein content; grading performed by following a procedure approved by the Federal Grain Inspection Service when determining quality factors other than percent germination or protein content; or by the Food and Drug Administration when determining concentrations of mycotoxins or other substances or conditions that are identified as being injurious to human or animal health.

(h) Subjective test—A determination made by a person using olfactory, visual, touch or feel, masticatory, or other senses unless performed by a licensed grain grader; or that uses non-standardized equipment; or that does not follow a procedure approved by the American Society of Brewing Chemists, the Federal Grain Inspection Service, or the Food and Drug Administration.

(i) Unit—All insurable acreage of approved malting varieties in the county on the date coverage begins for the crop year.

Option A—(Available for Producers of Production Contracted After the Sales Closing Date, Non-Contracted Production, or a Combination of Contracted and Non-Contracted Production)

This option provides coverage for malting barley production and quality losses at a price per bushel greater than that offered under the Small Grains Crop Provisions.

1. To be eligible for coverage under this option, you must provide us acceptable records of your sales of malting barley and the number of acres planted to malting varieties for at least the four crop years in your APH database prior to the crop year immediately preceding the current crop year. For example, to determine your production guarantee for the 1996 crop year, records must be provided for the 1991 through the 1994 crop years, if malting barley varieties were planted in each of those crop years. Failure to provide acceptable records or reports as required herein will make you ineligible for coverage under this endorsement. You must provide these records to us no later than the production reporting date specified in the Common Crop Insurance Policy (§ 457.8).

2. Your malting barley production guarantee per acre will be the lesser of:

(a) The production guarantee for feed barley for acreage planted to approved malting varieties calculated in accordance with the Small Grains Crop Provisions and APH regulations; or

(b) A production guarantee calculated in accordance with APH procedures using the malting barley sales and acreage records provided by you.

3. The additional value price per bushel elected cannot exceed the maximum price designated in the Special Provisions.

4. The amount of production to count against your malting barley production guarantee will be determined as follows:

(a) Production to count will include all:

(1) Appraised production determined in accordance with sections 11(c)(1) (i) and (ii) of the Small Grains Crop Provisions;

(2) Harvested production and potential unharvested production that meets, or would meet if properly handled;

(i) Tolerances established by the Food and Drug Administration or other public health organization of the United States for substances or conditions, including mycotoxins, that are identified as being injurious to human health; and

(ii) The following quality standards, as applicable:

	Six-rowed malting barley (percent)	Two-rowed malting barley (percent)
Protein (dry basis).	14.0 maximum.	14.0 maximum
Plump kernels.	65.0 minimum.	75.0 minimum
Thin kernels .	10.0 maximum.	10.0 maximum
Germination .	95.0 minimum.	95.0 minimum
Blight damaged.	4.0 maximum	4.0 maximum
Injured by mold.	5.0 maximum	5.0 maximum
Mold damaged.	0.4 maximum	0.4 maximum
Sprout damaged.	1.0 maximum	1.0 maximum
Injured by frost.	5.0 maximum	5.0 maximum
Frost damaged.	0.4 maximum	0.4 maximum

(3) Harvested production that does not meet the quality standards contained in section 4(a)(2) of this Option, but is accepted by a buyer for malting purposes. For such production, the production to count may be reduced or the price used to settle the claim may be adjusted in accordance with sections 4 (b), (c), and (d) of this Option.

(b) The quantity of production that initially fails any quality standard contained in section 4(a)(2), but is sold as malting barley (except production included in section 4(c)), may be reduced as described in this subsection, provided the failure of such production to meet these standards is due to insurable causes. The production to count of production sold under section 4(a)(3) will be determined by:

(1) Adding the maximum barley price election under the Small Grains Crop Provisions and the maximum additional value price;

(2) Dividing the result of paragraph (1) by the price per bushel received for the damaged production; and

(3) Multiplying the result of paragraph (2) (not to exceed 1.000) by the number of bushels of damaged production.

(c) The production to count for production that initially fails any quality standard contained in section 4 (a)(2), sold as malting barley, but is conditioned before the sale will not be reduced under section 4(b). Such production will be considered separately from all other production to count. (See section 5(d).)

(d) The additional value price election per bushel used to determine the value of the production to count for production that initially fails any quality standard contained in section 4(a)(2), but is sold as malting barley, may be reduced by the cost incurred for any conditioning required to improve the quality of production so that it is marketable as malting barley, provided the failure of such production to meet these standards is due to insurable causes.

(e) No reduction in the production to count or the additional value price election will be allowed for moisture content, damage due to uninsured causes; costs or reduced value associated with drying, handling, processing, or quality factors other than those contained in section 4(a)(2) of this Option; or any other costs associated with normal handling and marketing of malting barely.

(f) All grade and quality determinations must be based on the results of objective tests. No indemnity will be paid for any loss established by subjective tests. We may obtain one or more samples of the insured crop and have tests performed at an official grain inspection location established under the U.S. Grain Standards Act or laboratory of our choice to verify the results of any test. In the event of a conflict in the test results, our results will determine the amount of production to count.

5. In the event of loss or damage covered by this policy, we will settle your claim by:

(a) Multiplying the insured acreage times your malting barley production guarantee per acre;

(b) Multiplying the result in subsection (a) of this section times your additional value price election per bushel;

(c) Multiplying the number of bushels of production to count determined in accordance with sections 4(a) and (b) of this Option times your elected additional value price per bushel;

(d) Multiplying the production to count determined under section 4(c) of this Option times the additional value price per bushel determined in section 4(d) of the Option;

(e) Adding the results of subsections (c) and (d) of this section;

(f) Subtracting the result of subsection (e) of this section from the result in subsection (b); and

(g) Multiplying the result of subsection (f) of this section times your share.

6. For example, assume you insure two units of barley under the Small Grains Crop Provisions in which you have a 100% share and that are planted to approved malting varieties. Assume the following:

(a) Each unit contains 40 acres;

(b) You have sold an average of 20 bushels per acre of malting barley for each of the last 6 years;

(c) You have selected the 70 percent coverage level;

(d) Your production guarantee under the Small Grains Crop Provisions and the APH regulations for feed barley is 30 bushels per acre;

(e) Your total production from all units under the Small Grains Crop Provisions is

1,000 bushels, all of which fails to meet the quality standards specified by this Option. Two hundred bushels are sold for malting purposes after conditioning. Conditioning costs are $0.05 per bushel; and

(f) Your additional value price election is $0.40 per bushel.

Your malting barley production guarantee is 1120.0 bushels (the lesser of 20 or 30×70 percent coverage level ×80 acres). The value of your production guarantee is $448.00 (1120 bushels ×$0.40 per bushel). Your production to count is 200 bushels. The value of your production to count is $70.00 (200 bushels ×$0.35 ($0.40—$0.05)). Your indemnity for the malting barley unit is $378.00 (($448.00—$70.00) ×100 percent share). Any remaining loss is paid under the Small Grains Crop Provisions for feed barley.

Option B—(Available for Producers of Contracted Production Only)

This option provides coverage for malting barley production and quality losses at a price per bushel greater than that offered under the Small Grains Crop Provisions provided you have a malting barley contract.

1. If you elect this option you must provide us a copy of your malting barley contract on or before the acreage reporting date. All terms and conditions of the contract, including the contract price or futures contract premium price, must be specified in the contract and be effective on or before the acreage reporting date. If you fail to timely provide the contract, or any terms are omitted, we may elect to determine the relevant information necessary for insurance under this Option (B), or deny liability. Only contracted production or acreage is covered by this Option (B).

2. Your malting barley guarantee per acre will be the lesser of:

(a) The production guarantee for feed barley for acreage planted to approved malting barley varieties calculated in accordance with the Small Grains Crop Provisions and APH regulations; or

(b) The number of bushels obtained by:

(1) Dividing the number of bushels of contracted production by the number of acres planted to approved malting varieties in the current crop year; and

(2) Multiplying the result by the percentage for the coverage level you elected under the Small Grains Crop Provisions.

3. The additional value price election per bushel will be the lesser of, as applicable:

(a) The guaranteed sale price per bushel established in the malting barley contract (without regard to discounts or incentives that may apply) minus the maximum price election for feed barley; or

(b) The premium price per bushel (without regard to discounts or incentives) if the sale price is based on a future market price as specified in the malting barley contract.

Under no circumstances will the additional value price election per bushel exceed $2.00 per bushel.

4. The amount of production to count against your malting barley production guarantee will be determined as follows:

(a) Production to count will include all:

(1) Appraised production determined in accordance with sections 11(c)(1) (i) and (ii) of the Small Grains Crop Provisions;

(2) Harvested production and potential unharvested production that meets, or would meet if properly handled, the minimum acceptance standards contained in the malting barley contract for protein, plump kernels, thin kernels, germination, blight damage, mold injury or damage, sprout damage, frost injury or damage, and mycotoxins or other substances or conditions identified by the Food and Drug Administration or other public health organization of the United States as being injurious to human health, or the following quality standards as applicable:

	Six-rowed malting barley (percent)	Two-rowed malting barley (percent)
Protein (dry basis).	14.0 maximum.	14.0 maximum
Plump kernels.	65.0 minimum.	75.0 minimum
Thin kernels .	10.0 maximum.	10.0 maximum
Germination .	95.0 minimum.	95.0 minimum
Blight damaged.	4.0 maximum	4.0 maximum
Injured by mold.	5.0 maximum	5.0 maximum
Mold damaged.	0.4 maximum	0.4 maximum
Sprout damaged.	1.0 maximum	1.0 maximum
Injured by frost.	5.0 maximum	5.0 maximum
Frost damaged.	0.4 maximum	0.4 maximum

(3) Harvested production that does not meet the quality standards contained in section 4(a)(2) of this Option, but is accepted by a buyer for malting purposes. For such production, the production to count may be reduced or the price used to settle the claim may be adjusted in accordance with sections 4 (b), (c), and (d) of this Option.

(b) The quantity of production that initially fails any quality standard contained in section 4(a)(2), but is sold as malting barley (except production included in section 4(c)), may be reduced as described in this subsection, provided the failure of such production to meet these standards is due to insurable causes. The production to count of production sold under section 4(a)(3) will be determined by:

(1) Adding the maximum barley price election under the Small Grains Crop Provisions and the maximum additional value price;

(2) Dividing the result of paragraph (1) by the price per bushel received for the damaged production; and

(3i) Multiplying the result of paragraph (2) (not to exceed 1.000) by the number of bushels of damaged production.

(c) The production to count for production that initially fails any quality standard contained in section 4(a)(2), sold as malting barley, but is conditioned before the sale will not be reduced under section 4(b). Such production will be considered separately from all other production to count. (See section 5(d).)

(d) The additional value price election per bushel used to determine the value of the production to count for production that initially fails any quality standard contained in section 4(a)(2), but is sold as malting barley, may be reduced by the cost incurred for any conditioning required to improve the quality of production so that it is marketable as malting barley, provided the failure of such production to meet these standards is due to insurable causes.

(e) No reduction in the production to count or the additional value price election will be allowed for moisture content, damage due to uninsured causes; costs or reduced value associated with drying, handling, processing, or quality factors other than those contained in section 4(a)(2) of this Option; or any other costs associated with normal handling and marketing of malting barely.

(f) All grade and quality determinations must be based on the results of objective tests. No indemnity will be paid for any loss established by subjective tests. We may obtain one or more samples of the insured crop and have tests performed at an official grain inspection location established under the U.S. Grain Standards Act or laboratory of our choice to verify the results of any test. In the event of a conflict in the test results, our results will determine the amount of production to count.

5. In the event of loss or damage covered by this policy, we will settle your claim by:

(a) Multiplying the insured acreage times your malting barley production guarantee per acre;

(b) Multiplying the result in subsection (a) of this section times your additional value price election per bushel;

(c) Multiplying the number of bushels of production to count determined in accordance with sections 4 (a) and (b) of this Option times your elected additional value price per bushel;

(d) Multiplying the production to count determined under section 4(c) of this Option times the additional value price per bushel determined in section 4(d) of the Option;

(e) Adding the results of subsections (c) and (d) of this section;

(f) Subtracting the result of subsection (e) of this section from the result in subsection (b); and

(g) Multiplying the result of subsection (f) of this section times your share.

6. For example, assume you insure two units of barley under the Small Grains Crop Provisions in which you have a 100% share and that are planted to approved malting varieties. Assume the following:

(a) Each unit contains 40 acres;

(b) You have a contract for the sale of 2500 bushels of malting barley;

(c) You have selected the 70 percent coverage level;

(d) Your production guarantee under the Small Grains Crop Provisions and the APH regulations for feed barley is 35 bushels per acre;

(e) Your total production from all units under the Small Grains Crop Provisions is 1,000 bushels, all of which fails to meet the quality standards specified by this Option.

Two hundred bushels are sold for malting purposes after conditioning. Conditioning cost $0.05 per bushel; and

(f) Your additional value price election is $0.60 per bushel.

Your malting barley production guarantee is 1750.0 bushels (the lesser of 35 or 21.875 (2500 contracted bushels ÷80 acres x 70 percent coverage) x 80 acres). The value of your production guarantee is $1050.00 (1750 bushels x $0.60 per bushel). Your production to count is 200 bushels. The value of your production to count is $110.00 (200 bushels x $0.55 ($0.60—$0.05)). Your indemnity for the malting barley unit is $940.00 (($1050.00—$110.00) x 100 percent share). Any remaining loss is paid under the Small Grains Crop Provisions for feed barley.

Done in Washington, D.C., on March 1, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–5383 Filed 3–4–96; 1:01 pm]

BILLING CODE 3410–FA–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 242

[INS No. 1716–95]

RIN 1115–AE13

Order to Show Cause and Notice of Hearing; Apprehension, Custody and Detention

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends existing Immigration and Naturalization Service (Service) regulations, by adding the position of institutional hearing program director to the list of Immigration and Naturalization Service officials authorized to issue orders to show cause and warrants of arrest. This is an internal change only and is necessitated by the placement of Service special agents at correctional institution sites to process criminal aliens for deportation proceedings. The modification is intended to facilitate the processing of incarcerated criminal aliens. The position of patrol agent in charge is also being added to the list of officials authorized to issue orders to show cause and warrants of arrest. This change will allow the Service to obtain more efficient use of its personnel and resources and is in keeping with current organizational command structure and program responsibility with a Border Patrol sector. This rule also deletes positions from the list of officials authorized to issue orders to show cause and warrants of arrest which are no longer necessary.

EFFECTIVE DATE: March 6, 1996.

FOR FURTHER INFORMATION CONTACT: Ira L. Frank, Senior Special Agent, Investigations Division, Immigration and Naturalization Service, 425 I Street NW., Room 1000, Washington, DC 20536, telephone: (202) 514–0747.

SUPPLEMENTARY INFORMATION: This rule adds the position of institutional hearing program director and patrol agent in charge to the list of Immigration and Naturalization Service officials authorized to issue orders to show cause, thereby initiating deportation proceedings pursuant to 8 CFR 242.1(a). It also amends 8 CFR 242.2(c)(1) to permit the same officials to sign warrants of arrest.

The Institutional Hearing Program (IHP) represents one of the Service's major undertakings to process criminal aliens while they are incarcerated in correctional institutions and to obtain orders of deportation prior to their release from imprisonment. The correctional institutions designated as IHP sites are often geographically situated a great distance from an existing Service office that has an official designated to sign orders to show cause and warrants of arrest. Sending orders to show cause or warrants of arrest to another Service office location frequently causes as unnecessary delay in the processing of the criminal alien. This rule will permit the institutional hearing program director, in charge of a staff at a correctional institution designated as an IHP site, to sign orders to show cause and warrants of arrest.

Frequently, patrol agents in charge are also geographically remote from the sector officials currently authorized to issue orders to show cause and warrants of arrest. The addition of patrol agents in charge to the list of immigration officials authorized to issue orders to show cause and warrants of arrest will allow the Service to obtain more efficient use of its personnel and resources, and is in keeping with current organizational command structure and program responsibility within a Border Patrol sector.

The Service is withdrawing authorization for the Director, Organized Crime Drug Enforcement Task Force (OCDETF), and the Assistant Director, OCDETF (New York, NY; Houston, TX; Los Angeles, CA; and Miami, FL), to issue orders to show cause and warrants of arrest. These organizational positions cease to exist. The Service is also withdrawing authorization for the Assistant Commissioner, Refugees, Asylum and Parole, to issue orders to show cause, because this organizational position no longer exists.

The Service's implementation of this rule as a final rule is based upon the "good cause" exception found at 5 U.S.C. 553(b)(B). The reason and the necessity for immediate implementation of this final rule is as follows: This is a rule of agency organization, practice, or procedure and does not include action which goes beyond formality and substantially affects the rights of those over whom the agency exercises authority.

The rule will not have a significant economic impact. It does not affect parties that are small entities.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities as discussed in the Supplemental section of this document.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 242

Administrative practice and procedure, Aliens, Deportation.

Accordingly, part 242 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

1. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252a, 1252b, 1254, 1362; 8 CFR part 2.

2. Section 242.1, paragraph (a) is revised to read as follows:

§ 242.1 Order to show cause and notice of hearing.

(a) *Commencement.* Every proceeding to determine the deportability of an alien in the United States is commenced by the filing of an order to show cause with the Office of the Immigration Judge, except for an alien who has been admitted to the United States under the provisions of section 217 of the Act and Part 217 of this chapter other than such an alien who has applied for asylum in the United States. In the proceeding, the alien shall be known as the respondent. Orders to show cause may be issued by:

(1) District directors (except foreign);

(2) Deputy district directors (except foreign);

(3) Assistant district directors for investigations;

(4) Deputy assistant district directors for investigations;

(5) Assistant district directors for deportation;

(6) Deputy assistant district directors for deportation;

(7) Assistant district directors for examinations;

(8) Deputy assistant district directors for examinations;

(9) Officers in charge (except foreign);

(10) Assistant officers in charge (except foreign);

(11) Chief patrol agents;

(12) Deputy chief patrol agents;

(13) Associate chief patrol agents;

(14) Assistant chief patrol agents;

(15) Patrol agents in charge;

(16) The Assistant Commissioner, Investigations;

(17) Service center directors;

(18) Supervisory asylum officers; or

(19) Institutional Hearing Program Directors.

* * * * *

3. In § 242.2, paragraph (c)(1) (i) through (xvii) is revised to read as follows:

§ 242.2 Apprehension, custody, and detention.

* * * * *

(c) * * *

(1) * * *

(i) District directors (except foreign);

(ii) Deputy district directors (except foreign);

(iii) Assistant district directors for investigations;

(iv) Deputy assistant district directors for investigations;

(v) Assistant district directors for deportation;

(vi) Deputy assistant district directors for deportation;

(vii) Assistant district directors for examinations;

(viii) Deputy assistant district directors for examinations;

(ix) Officers in charge (except foreign);

(x) Assistant officers in charge (except foreign);

(xi) Chief patrol agents;

(xii) Deputy chief patrol agents;

(xiii) Associate chief patrol agents;

(xiv) Assistant chief patrol agents;

(xv) Patrol agents in charge;

(xvi) The Assistant Commissioner, Investigations; or

(xvii) Institutional Hearing Program Directors.

* * * * *

Dated: February 22, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–5176 Filed 3–5–96; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASO–1]

Removal of Class D and E2 Airspace; Lawrenceville, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, withdrawal.

SUMMARY: This action withdraws the final rule published in the **Federal Register** on January 23, 1996, with an effective date of April 25, 1996. The rule revoked the Class D and E2 airspace at Lawrenceville, GA. The planned opening of a non-federal control tower at the Lawrenceville/Gwinnett County-Briscoe Field Airport was delayed indefinitely due to construction problems. Therefore, the Class D and E2 airspace was not necessary, and action was undertaken to remove this airspace. However, the Gwinnett County Airport Authority has been able to secure a temporary tower until the permanent tower can be completed. Therefore, the Class D and E2 airspace will be necessary, and action to revoke this airspace is being withdrawn.

DATES: The withdrawal is effective March 6, 1996.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

Class D and E2 airspace at Lawrenceville, GA, was established to support the planned opening of a non-federal control tower at the Lawrenceville/Gwinnett County-Briscoe Field Airport. Due to construction problems, the opening was delayed indefinitely. Therefore, on January 23, 1996, the FAA published a final rule stating that, since the Class D and E2 airspace was not necessary, the Class D and E2 airspace in the vicinity of the Lawrenceville/Gwinnett County-Briscoe Field Airport was being revoked (61 FR 1705). However, the Gwinnett County Airport Authority has been able to secure a temporary control tower until the permanent control tower can be completed. As a result, the Class D and E2 airspace will be necessary. Therefore, the action to revoke the Class D and E2 airspace at Lawrenceville, GA, is being withdrawn.

Conclusion

In consideration of the action taken to provide the Lawrenceville/Gwinnett County-Briscoe Field Airport with a temporary control tower until the permanent tower is completed, action to revoke the airspace is unnecessary.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Withdrawal of Final Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 96–ASO–1, as published in the **Federal Register** on January 23, 1996 (61 FR 1705), is hereby withdrawn.

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

Issued in College Park, Georgia, on February 21, 1996.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–5125 Filed 3–5–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 201 and 284

[Docket No. RM95–4–001; Order No. 581–A]

Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies; Order on Rehearing

Issued February 29, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule; Order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission is issuing an order on the requests for rehearing of Order No. 581, the final rule amending the Commission's Uniform System of Accounts, its forms, and its reports and statements for natural gas companies. In the final rule, the Commission sought to simplify and streamline its requirements to reduce the burden of respondents. The revisions here address issues raised and clarifications requested by parties in this proceeding.

DATES: The revised regulations will become effective April 5, 1996.

FOR FURTHER INFORMATION CONTACT: Erica J. Yanoff, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0708.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document, excluding Appendices A (Revised Pages of FERC Form No. 2) and B (Revised Pages of FERC Form No. 2–A) in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours at 888 First Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397 if dialing locally or 1–800–856–3720 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS indefinitely in ASCII and WordPerfect 5.1 format. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

I. Introduction

On September 28, 1995, the Federal Energy Regulatory Commission (Commission) issued Order No. 581, amending its Uniform System of Accounts, its forms, and its reports and statements for natural gas companies.[1] In Order No. 581, the Commission, with respect to the Uniform System of Accounts, addressed the treatment of gas in underground storage reservoirs and in pipelines, and of revenues and gas supply expenses, eliminated all accounts for Nonmajor respondents, and redesignated accounts used only by Major respondents for use by all respondents. The Commission also modified various forms, reports, and statements in an effort to create documents that reflect the current regulatory environment of unbundled pipeline sales for resale at market-based prices and open-access transportation of natural gas. This included changes to, and deletions from, the FERC Form No. 11 (Form No. 11), "Natural gas pipeline company monthly statement," the FERC Form No. 2 (Form No. 2), "Annual report of Major natural gas companies," and the FERC Form No. 2–A (Form No. 2–A), "Annual report of Nonmajor natural gas companies."

The Commission also sought to simplify and streamline its requirements to reduce the burden on respondents. Hence, the Commission eliminated certain reporting requirements (as well as a few non-reporting requirements) that were outdated or nonessential in light of current regulation, or were duplicative of other reporting requirements. This included the deletion of the Form No. 8, "Underground Gas Storage Report." At the same time, the Commission imposed new reporting requirements, too, most notably, the electronic Index of Customers.

All of the revisions, especially of Form No. 2, were designed to provide financial, rate, and statistical information on transactions that is more useful than what is currently available to regulatory agencies and other users of the financial statements and reports of natural gas companies.

ANR Pipeline Company and Colorado Interstate Gas Company (ANR/CIG), jointly, and the National Registry of Capacity Rights, Inc. (Registry) request rehearing of Order No. 581.[2] Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (collectively, Columbia) also request rehearing, but do so alternatively, if the Commission does not clarify Order No. 581 as they request. The Interstate Natural Gas Association of America (INGAA), the Natural Gas Supply Association (NGSA), and the PEC Pipeline Group[3] each filed a request for clarification of Order No. 581.

Generally, the issues raised and clarifications requested by these parties concern Order No. 581's holdings with respect to storage accounting in the Uniform System of Accounts, the lack of receipt and delivery point information in the Index of Customers, and the disclosure of commercially sensitive information in the Index of Customers and the discount rate report. In addition, Louis Dreyfus Energy Corp. (Louis Dreyfus) filed a petition for reconsideration of Order No. 581's elimination of the Form No. 8.

This order grants in part, and denies in part, the rehearing requests, denies Louis Dreyfus' petition for reconsideration, and clarifies Order No. 581.

II. Uniform System of Accounts

A. Storage Accounting

1. Accounting for Use of System Gas Under Fixed Asset Model

ANR/CIG request rehearing with respect to the Commission's treatment of new Account 117.4, "Gas Owed to System Gas." In the final rule, the Commission permitted pipelines to account for system gas using either the inventory method or the fixed asset method. For pipelines using the fixed asset method, the Commission adopted accounting provisions which require

[1] Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, 60 FR 53019 (October 11, 1995), II FERC Stats. & Regs. ¶ 20,000 *et seq.* (1995) (regulatory text), III FERC Stats. & Regs. ¶ 31,026 (1995) (preamble). This order on rehearing is a companion to the order on rehearing, issued concurrently in Docket No. RM95–3–001, which concerned amendments to the form and composition of interstate natural gas pipeline tariffs and the filing of rates and charges for the transportation of natural gas. *See* Filing Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs, Order No. 582, 60 FR 52960 (October 11, 1995).

[2] ANR/CIG's request is titled "Request for Rehearing and Clarification."

[3] The "PEC Pipeline Group" refers, collectively, to Panhandle Eastern Pipe Line Company, Trunkline Gas Company, Texas Eastern Transmission Corporation, and Algonquin Gas Transmission Company.

that future encroachments on system gas, resulting from transportation imbalances, no-notice transportation, and other operational needs, be credited to Account 117.4 at the then-current market price of gas, with a corresponding charge to Account 808.1, "Gas Withdrawn From Storage-Debit." The Commission stated that if the volumes withdrawn are used to meet transportation imbalances, Account 806, "Exchange Gas," will be credited and Account 174, "Miscellaneous Current and Accrued Assets," will be debited simultaneously with the entries to the system gas account.[4]

ANR/CIG argue that this accounting treatment will result in a fluctuating balance for Account 117 (the sum of Accounts 117.1, 117.2, 117.3, and 117.4), which is designated as a fixed asset. In order to treat the balance in Account 117 as a fixed asset, and prevent potential monthly fluctuations, which ANR/CIG assert is inconsistent with the nature of a fixed asset, ANR/CIG urge the Commission to establish an additional contra account within the Account 117 series, instead of using the current asset Account 174.

The Commission will not adopt ANR/CIG's suggestion for the following reason. Although the receivable may have originally been generated by the encroachment of system gas, the settlement of the receivable is not dependent on the replacement of the system gas volumes. For example, a customer may "cash-out" his receivable with the pipeline in one month, while the pipeline replaces the volumes into storage in another month. The amount of the receivable may also differ from the amount of the encroachment if, e.g., the pipeline revalues its encroachments. Because of the lack of one-to-one correspondence between the receivable and the replacement of the encroachment volumes, the Account 117 series would become misstated if we were to allow recording of the receivable within them. It would also not be appropriate to mix one type of asset (*i.e.*, a receivable) with a completely different type of asset (*i.e.*, system gas volumes).

2. Losses on Settlement of Imbalances

In explaining how the simplified recordkeeping requirements under the fixed asset method should mitigate CNG Transmission Corporation's concerns over the recordkeeping required to calculate imbalance gains or losses, the Commission stated:

> For imbalances in which the pipeline has delivered more than the shipper injected at the receipt point, gains (or losses) will be the difference between the cash-out price and the pipeline's purchase cost of replacement gas volumes. For cashed-out imbalances in which the pipeline has delivered less than the shipper has tendered into the pipeline, the gain (or loss) will be the difference between the cash-out price paid by the pipeline and the current price of volumes recorded in Account 117.4.[5]

INGAA asserts that this accounting treatment assumes that all pipelines that elect the fixed asset model use a monthly cash-out, and purchase replacement volumes concurrently. However, INGAA states that some pipelines roll imbalances over month-to-month after assigning a dollar value to the imbalance, and that pipelines do not necessarily purchase or track replacement volumes on a transaction-by-transaction basis.

INGAA argues that it appears that the intended accounting treatment, based on other statements in the final rule under "Use of System Gas, Fixed Asset Method,"[6] and on the Account 174 and 242 definitions, is for the gain or loss to equal the difference between the cash out (or the current value of gas physically received or delivered) and the imbalance receivable or payable balance. Therefore, INGAA requests that the Commission modify the wording under "Losses on Settlement of Imbalances" to be consistent with the intended accounting.

The Commission will not clarify Order No. 581 as requested by INGAA. The final rule correctly stated that the difference between the cash-out price and the pipeline's purchase costs of replacement gas volumes is the amount of the gain or loss on imbalances involving cash-out settlements. Such gain or loss consists of two components: (1) Gain or loss on the settlement of receivables/payables (i.e., the difference between the recorded amount of the receivable/payable and the actual cash-out amount); and (2) gain or loss on the difference between the injection price and the actual cost of replacement gas.

Contrary to INGAA's assertion, the accounting requirements for storage imbalances do not assume that all pipelines settle cash-outs concurrently with the replacement of system gas; the prescribed accounting is designed to accommodate different cash-out settlement dates and replacement dates. For example, if a pipeline recorded a $100 imbalance receivable in month one, and rolled it over to month two, in which it had an additional $200 imbalance receivable, it could settle the $300 receivable (or any part of it) by debiting cash and crediting the receivable, and would recognize a gain or loss on the difference between the recorded amount of receivable and the settlement amount. If the pipeline replaced the gas in month six, it would recognize a gain or loss on the difference between its cost of replacement gas and the accounting value of the storage injection. The gain or loss on the settlement of the receivable and the replacement activity would be reflected in the gain or loss accounts in the period in which they occur. There would be no tracking of gains or losses on transactions for individual customers.

3. Pricing of Losses of System Gas

The Commission stated in Order No. 581 that, under the fixed asset model, "losses of system gas should be priced at the same rate used to price withdrawals in the month in which the gas loss is recognized (*i.e.*, the current market price of gas available to the utility)."[7] According to Columbia, this is appropriate for accounting for losses of working gas, but not for accounting for losses of cushion gas.

In support, Columbia argues that losses of system gas often occur over long periods of time, and are recognized only after extensive periods of analyses of storage fields. A pipeline may choose not to replace cushion gas losses. Additionally, Columbia maintains that in instances where a pipeline accrues a reserve for cushion gas losses, it would be inappropriate to use a value which differs from the actual cost of the gas. Thus, Columbia requests that the Commission clarify that losses of cushion gas must be recorded at book value, not at the present market value, or in the alternative, grant rehearing on this issue.

Columbia also reiterates its recommendation in its initial comments that the Commission add another subaccount or provision to Account 117.1 to allow for recognition of extraordinary gas storage losses as a reduction of the asset which has incurred the loss. Columbia states that the Commission did not address this issue in the final rule, and therefore, requests rehearing.

The Commission will not clarify Order No. 581 to permit losses of cushion gas to be recorded at book value. Under the fixed asset model, losses of both working gas and cushion gas are accounted for in the same manner—Account 117.4 is credited (and Account 823 is charged) with the current market value of the lost gas. The

[4] III FERC Stats. & Regs. at 31,454–55.

[5] III FERC Stats. & Regs. at 31,459.

[6] Id. at 31,455.

[7] III FERC Stats. & Regs. at 31,459–60.

underlying presumption is that all encroachments of system gas (including gas losses) will be replaced in order to maintain authorized system gas levels.

However, the Commission will grant rehearing, in part, and allow pipelines to credit the system gas accounts (*i.e.*, Account 117.1 or 117.2) directly with the historical cost of the decrease in authorized system gas volumes in the unusual situation where a pipeline determines, and the Commission authorizes, a decrease in system gas volumes (due to, for example, extraordinary storage losses, changes in system operational needs, etc.). The Commission does not believe that it is necessary, though, to create a separate subaccount under Account 117, or include another provision in the regulations to accommodate these unusual occurrences. Because Commission approval is required to change authorized system gas levels, a pipeline should not record permanent reductions in authorized system gas volumes prior to receiving Commission approval. Instead, prior to receiving Commission approval, a pipeline should credit Account 117.4 with the market value of the losses.

4. Use of Customer-Owned Storage Quantities for Balancing

In Columbia's comments to the NOPR, Columbia sought confirmation that entries to Account 117.4 to record encroachments by customers resulting from imbalances, no-notice transportation, and other operational needs should be made only after Columbia has exhausted other options for resolving the encroachments, such as using customer-owned storage quantities. Columbia stated that Account 117.4 should be used only after the balance of all customer gas has been withdrawn, and the only remaining gas belongs to the pipeline. In Order No. 581, the Commission responded:

> Columbia is permitted to borrow the gas from storage because of an arrangement between Columbia and its customers that, consistent with Columbia's tariff, allows Columbia to use its customer's gas for balancing purposes. Thus, Columbia and any other similarly situated pipeline would record amounts in Account 117.4 only after customer gas available to the utility for system balancing purposes has been exhausted. This accounting is appropriate because the pipeline is using its customers' gas to meet imbalances on its transportation system.[8]

Columbia now requests clarification that the Commission's holding in Order No. 581 with respect to the use of customer gas for storage withdrawals, above, will not require Columbia to make revisions to its present tariff. It states that the Commission's language could be interpreted to require that Columbia's present accounting methodology for gas imbalances be conditioned upon specific tariff provisions. Columbia further states that the storage accounting it employs is based upon its system operations as reviewed and accepted by the Commission in its restructuring proceeding. Thus, Columbia seeks confirmation that Order No. 581 approved its storage accounting, and was not intended to require Columbia to revise its current tariff.

Order No. 581 allows Columbia, and similarly situated pipelines, to recognize that gas borrowed from storage (to the extent that there is customer gas in storage) to meet imbalances belongs to the storage customers. This recognition is permissible where there are arrangements between the pipeline and its customer(s), consistent with the pipeline's tariff, that permit the pipeline to use its customer's gas for balancing purposes. In Columbia's case, Rate Schedule FSS specifically provides for customers' storage to be used for extinguishing imbalances arising under the customers' various service agreements:

> Buyer's FSS Inventory under this Rate Schedule shall be increased or decreased by any actual imbalances (actual receipts compared to actual deliveries) created under any other Service Agreement(s) Buyer has with Seller and the imbalance shall be removed from such other Service Agreement(s). Such increase or decrease shall be deemed to be a storage injection or withdrawal under Buyer's FSS Service Agreement.[9]

It was this and similar provisions in Columbia's tariff which prompted the Commission's response in Order No. 581.

However, we clarify that where the pipeline's retained system gas is used for balancing, no-notice service, or other uses associated with maintaining efficient transmission operations, entries to Account No. 117.4 are necessary. Columbia's tariff contains two rate schedules, Rate Schedules NTS and SIT, which rely on Columbia's retained storage.[10]

Further, in the restructuring proceeding, Columbia asserted that retained storage would be used for balancing purposes. As described by the Commission:

> Columbia avers the allocation of retained storage costs to FTS service is appropriate to recognize the use of storage for operational balancing agreements (OBAs) with upstream pipelines. Columbia also argues its retained storage handles the hourly swings of customers and imbalances within tolerance levels. Allocation of retained storage costs thus recognizes system balancing for all services.[11]

Therefore, Columbia (and any similarly situated pipeline) must comply with the applicable Uniform System of Accounts instructions for recording system gas injections and withdrawals whenever it uses its own system gas for balancing, no-notice, or other uses associated with maintaining efficient transmission operations.

Columbia additionally asks the Commission, *assuming arguendo*, that the Commission finds that storage encroachments by customers must be recorded in Account No. 117.4 before all customer gas has been physically withdrawn, to expand the instructions in Account 117.4 to address the accounting treatment of gas resulting from a net overtender position (*i.e.*, when shippers put more gas into the system than they take out). Columbia seeks clarification of the accounting entries required when customers are in an overtendered position, which physically requires an injection of gas into storage.

The Commission believes that overtendered gas should be treated the same as customer contract gas physically held by the pipeline. That is, records of stored volumes should be maintained, but no formal accounting recognition of dollar amounts should be given to the overtendered volumes.

5. Conforming Corrections to Regulation Text

Several parties have identified instances in which the findings and rulings of the Commission, as described in Order No. 581, are not reflected in the text of the new regulations. In those instances, discussed below, the parties maintain that the Part 201 regulations need to be amended accordingly. Also identified below are minor typographical errors.

INGAA and the PEC Pipeline Group state that the use of Account 117.2 to credit withdrawals of storage gas under the inventory method, as permitted by Order No. 581, is not specified in the instructions for Account 808. The Commission will conform the instructions for Account 808.1, Gas Withdrawn from storage-Debit, and Account 808.2, Gas Injected into storage-Credit, to reflect withdrawals and injections of gas under the inventory method of accounting.

INGAA states that the changes in the final rule that explicitly require that storage losses be charged to Account 823 are not reflected in the Part 201 instructions. The Commission will modify the instructions to the text of Account 823, Gas Losses, and the Special Instructions to Accounts 117.1, 117.2 and 117.3, to require losses of gas stored in underground reservoirs to be charged to Account 823.

INGAA and the PEC Pipeline Group state that in the Special Instructions to Accounts 117.1, 117.2, and 117.3, (b) Fixed Asset Method, the first sentence of the fourth paragraph is incomplete, and should be revised to: "When replacement of the gas is made, the amount carried in Account 117.4 for such volumes must be cleared *with an offsetting entry to* Account 808.2." The Commission agrees, and will revise the instruction accordingly.

INGAA and the PEC Pipeline Group state that the last sentence of the instructions to Account 117.4, Gas Owed to System Gas, must be corrected by changing the word "revolve" to "revalue". The Commission agrees and will revise the instruction accordingly.

B. Shipper-Supplied Gas

1. Recordkeeping

In Order No. 581, the Commission revised the recordkeeping requirements for shipper-supplied fuel to require records to be maintained and readily available for shipper-supplied gas on a rate schedule and zone basis.[12] INGAA requests that the Commission clarify that for companies that calculate shipper-supplied fuel based on delivered volumes, the accounts of retained fuel and unaccounted-for volumes be maintained on the basis of gas delivered, rather than gas received.

The Commission clarifies that it is permissible to maintain records of shipper-supplied gas on the basis of gas delivered or gas received, as appropriate in the circumstances.

2. Conforming Changes to Regulation Text

According to NGSA, Order No. 581 states that "the value of gas received from shippers under tariff allowances that is not consumed in operations nor returnable to customers through rate tracking mechanisms shall be credited to Account 495, Other Gas Revenues and charged to Account 805."[13] However, NGSA states that this language does not appear in the revised regulations. NGSA requests that the Commission clarify this matter by including a statement in the regulations which explicitly requires such accounting treatment.

The Commission will add a new paragraph to the text of Account 805, Other gas purchases, to address the treatment of retained shipper-supplied gas.

C. Revenues

In Order No. 581, the Commission modified the accounting treatment it had proposed for gains and losses on imbalance transactions, in instances where a pipeline's tariff requires such gains and losses to be passed along to customers. Rather than requiring a gain or loss to be initially recorded in Accounts 495 or 813, respectively, the Commission stated that it would require pipelines to record the gain or loss on imbalances directly in Account 254, Other Regulatory Liabilities, or Account 182.3, Other Regulatory Assets, as appropriate.[14]

INGAA and the PEC Pipeline Group argue that the corresponding instructions do not appear in Account 174 of the Balance Sheet Accounts; they state that Account 174 only includes instructions to record all gains and losses from balancing transactions in Accounts 495 and 813, respectively. INGAA and the PEC Pipeline Group request that the Commission clarify the regulations to reflect its decision to record certain gains and losses from imbalance transactions in the deferred accounts, Account 254 and Account 182.3, respectively.

The Commission will not clarify the regulations as requested by the parties. Because the Uniform System of Accounts already provides instructions for accounting for regulatory assets and liabilities,[15] the Commission believes that it is unnecessary to modify the text of Accounts 174, Miscellaneous Current and Accrued Assets, and Account 242, Miscellaneous Current and Accrued Liabilities, to specifically address regulatory assets and liabilities related to imbalances. As with any revenue, expense, gain, or loss that would have been included in net income determinations in one period under the general requirements of the Uniform System of Accounts were it not for the probability that such items would be included in a different period for ratemaking purposes (or, in the case of regulatory liabilities, would be required to be refunded),[16] imbalance gains and losses to be collected from or returned to customers in future rates must be accounted for as regulatory assets and liabilities in accordance with Definition No. 31, and the instructions to Accounts 182.3 and 254 of the Uniform System of Accounts.

D. Gas Supply Expenses

In Order No. 581, the Commission found that the amounts recorded in Account 806, Exchange Gas, should be based on the measurement attribute of the gas received or delivered in the exchange.[17] INGAA and the PEC Pipeline Group maintain that the instructions in the final rule for recording the amounts in Account 806 do not appear in the Account 806 regulations. They assert that in the final rule, the Commission properly stated that if a company is using the inventory method, and the gas delivered in an exchange has been priced on a historical cost basis, the costs to be recorded in Account 806 would be based on the historical cost of the gas. The parties state that the text of the Account 806 regulation states that "costs are to be determined from the current market price of gas at the time gas is tendered for transportation," reflecting a pipeline's use of only the fixed asset method. Therefore, INGAA and the PEC Pipeline Group ask that the regulations for Account 806 be clarified to reflect the appropriate accounting for both the fixed asset *and* the inventory method.

The Commission will modify the text of Account 806 to reflect the use of the inventory method, as well as the use of the fixed asset method.

The PEC Pipeline Group states in Order No. 581, the Commission adopted Panhandle Eastern Pipeline Company's suggestion to move the detailed recordkeeping requirements for cash-out transactions to other accounts.[18] The PEC Pipeline Group argues that paragraph B of the Part 201 instructions for Account 806, establishing the recordkeeping requirement, should be deleted, and the detailed recordkeeping requirements for all balancing transactions should be moved to other accounts (*i.e.*, Account 174, Miscellaneous Current and Accrued Assets, and Account 242, Miscellaneous Current and Accrued Liabilities).

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[8] III FERC Stats. & Regs. at 31,460.

[9] Substitute Original Sheet No. 165, Second Revised Volume No. 1 of Columbia's FERC Gas Tariff.

[10] *See* orders addressing Columbia's compliance filings, Columbia Gas Transmission Corporation, 65 FERC ¶ 61,344 at 62,726 (1993) and 64 FERC ¶ 61,060 at 61,528 (1993).

[11] 64 FERC ¶ 61,060 at 61,528 (1993).

[12] III FERC Stats. & Regs. at 31,463.

[13] *Id.* at 31,461.

[14] *Id.* at 31,464–65.

[15] *See* Definition No. 31 of the Uniform System of Accounts, 18 C.F.R. Part 201 (1995).

[16] This defines "regulatory assets and liabilities." *Id.*

[17] III FERC Stats. & Regs. at 31,466.

[18] *Id.*

In response to Panhandle's comments on the NOPR, the Commission reduced the level of recordkeeping requirements, and moved the instructions for accounting for settlement of imbalance receivables and payables from Account 806 to Accounts 174 and 242, respectively. Included in the new Paragraph B of the instructions to Accounts 174 and 242 is a requirement that pipelines maintain for each party entering gas exchange, load balancing, or no-notice transportation transactions, the quantity and cost of gas delivered and received. This is the same requirement as now appears in paragraph B of Account 806. Therefore, to avoid unnecessary duplication, the Commission will delete paragraph B of Account 806, as requested by the PEC Pipeline Group.

III. Form Nos. 2 and 2–A

Only one corrective change to the Form No. 2 was requested by the parties. INGAA and the PEC Pipeline Group note that on page 220, in Column (e) for Account 117.4, lines 2 and 3 should not be blacked out. Similarly, INGAA states that lines 2 and 3 in Column (b) for Account 117.1 also should not be blacked out. INGAA states that if a pipeline is using the fixed asset method, it will show entries in both Account 117.1 and Account 117.4 for contra accounts Gas Delivered to Storage (line 2) and Gas Withdrawn From Storage (line 3). The Commission agrees that those lines should not be blacked out, and will delete the shading from those lines.

The Commission has identified several other editorial, typographical, and conforming changes that must be made to the Form No. 2, and where applicable, to the Form No. 2–A, also. These changes are listed below, and appear in the revised pages of the forms in Appendices A and B[19] to this order:

General Information—Page i

In section III, paragraph (b), the second sentence of the parenthetical is revised to read: "Indicate by checking the appropriate box on page 3, * * *."

In section III, paragraph (c)(i), the word "aspects" is revised to "respects."

General Information—Page ii

In section III, paragraph (c)(ii), the pages referring to schedule "Statement of Income" are revised to "114–116," and the page referring to schedule "Notes to Financial Statements" are revised to "122."

[19] These Appendices are not being published in the **Federal Register**, but are available from the Commission's Public Reference Room.

In section III, paragraph (d), the word "Branch" is added to the end of the phrase "Public Reference and Files Maintenance."

General Instructions—Page iii

In section IV, paragraph (b), the Commission is omitting the reference to page 4.

List of Schedules (Natural Gas Company)—Page 3

In Column (a), under Income Account Supporting Schedules, the word "Other" in the second and third lines is revised to "Others." In addition in Column (a), under Common Section, the page reference for Distribution of Salaries and Wages is revised to "354–355."

Comparative Balance Sheet (Assets and Other Debits)—Page 110

The page number reference of 200–201 on line 1 is moved to line 3. The page number reference of 221 on lines 17 and 18 is eliminated. In addition, line 21 is revised to read: "(For Cost of Account 123.1 See Footnote Page 224, line 40)."

Statement of Income for the Year—Page 116

The account titles on lines 29 through 34 are indented.

Statement of Retained Earnings for the Year—Pages 118–119

On page 118, Columns (b), (c), and (d) for the account title "UNAPPROPRIATED RETAINED EARNINGS," and on lines 2 and 3, are shaded.

On page 119, Column (b), "Contra Primary Account Affected," is eliminated for all lines.

Notes to Financial Statements—Page 122

The Commission is modifying instruction 9 to require explanation for only those *significant* changes in accounting methods made during the year which had an effect on net income.

Gas Plant in Service (Accounts 101,102, 103, and 106)—Pages 204–209

On page 204, the Commission is adding instructions to each line showing a total (*i.e.*, lines 5 and 26), instructions to total the applicable lines. The Commission is also shading Columns (b) and (c) on line 27.

On page 205, the Commission is adding shading to all columns of line 27.

On page 206, the Commission is adding to each line showing a total (*i.e.*, lines 36, 37, 39, 54, 65, 75, and 76), instructions to total the applicable lines.

On page 208, the Commission is adding to each line showing a total (*i.e.*, lines 86, 102, 114, 116, and 121), instructions to total the applicable lines.

On page 209, the Commission is removing the shading on line 119, and adding shading to Column (d) on line 118.

General Description of Construction Overhead Procedure—Page 218

The Commission is adding the word "the" at the beginning of instruction 1(a). The title of Column (c), "Capital Ratio," is revised to read "Capitalization Ratio." In addition, the Commission is repositioning the parentheses and brackets in the formulas listed in items 2 and 3 to correctly present the formulas.

Gas Stored (Accounts 117.1, 117.2, 117.3, 117.4, 164.1, 164.2, and 164.3)—Page 220

In addition to deleting the shading on lines 2 and 3 of Columns (b) and (e), the Commission is deleting the parenthetical "(contra account)" from lines 2 and 3 of Column (a), and is revising the parenthetical on the last line in instruction 3, to read, "(*i.e.*, fixed asset method or inventory method)."

Investments in Subsidiary Companies (Account 123.1)—Page 224

After the word "Total" on line 40, the Commission is adding the phrase "Cost of Account 123.1 $_____" to Column (a), and the word "Total" to Column (c).

Other Regulatory Assets (Account 182.3)—Page 232

The title of Column (d) is revised to "Account Charged."

Miscellaneous Deferred Debits (Account 186)—Page 233

On line 39, the Commission is adding shading to Columns (c), (d), and (e).

IV. Form No. 8

All natural gas companies operating an underground natural gas storage field have been required to file with the Commission, under section 260.11, a monthly report of its storage activities—the Form No. 8, "Underground Gas Storage Report." In the NOPR, the Commission stated the following, with respect to both section 260.11 and section 260.4 (prescribing the Form No. 14, "Annual Report for Importers and Exporters of Natural Gas"):

"The Commission is not proposing any substantive changes to these sections in this NOPR. However, the Commission is seeking comments on whether the collection of the information contained in these forms by other governmental or private sources is currently adequate, making the collection of the same information in these Commission forms unnecessary[20]

The Commission received comments indicating that essentially the same storage information is collected by the Department of Energy (DOE) in the more comprehensive Form EIA–191, "Underground Gas Storage Report." In the final rule, the Commission determined that the data from Form EIA–191 could be used to meet the Commission's requirements for storage data in lieu of the Form No. 8 information, and therefore eliminated the requirement to file Form No. 8. The Commission held that elimination of this form was consistent with the overall objective of the rulemaking proceeding to eliminate duplicative reporting requirements.

Louis Dreyfus has filed a petition for reconsideration of the Commission's elimination of the Form No. 8. Louis Dreyfus maintains that the ready availability of the storage-related information reported on Form No. 8 is essential to the continual maturation of the primary and secondary gas transmission and storage markets and to improved natural gas commodity price discovery. Louis Dreyfus argues that the Commission erred in eliminating the Form No. 8 both on substantive grounds, asserting that there is no adequate alternative source from which to obtain the storage capacity and inventory data in the Form No. 8, and on procedural grounds, asserting that the Commission failed to provide notice that it might eliminate the form.

A. Necessity of Form No. 8

Louis Dreyfus argues that the Form EIA–191 is not an exact duplicate of, or adequate substitute for, the FERC Form No. 8, and that the two forms differ radically in their usefulness to the public and as sources of information. Louis Dreyfus states that the information filed in Form EIA–191 is confidential and is never made available to the public on a company-by-company basis, while the company-by-company information contained in Form No. 8 is made public within a few weeks of its submission. It claims that only after a delay is aggregated Form EIA–191 data made available to the public, and that such aggregated data is insufficient to meet its needs as a natural gas marketer.[21]

[20] IV FERC Stats. & Regs. ¶ 32,512 at 33,017.

[21] The Form No. 8 collects monthly pipeline storage data such as injections, withdrawals, and balances. This data in the Form No. 8 is reported on a company-by-company basis, aggregating all storage fields operated by a company. Reservoir capacity and ownership is reported separately by storage field. The Form EIA–191 collects monthly data on the location and operetions of all active underground natural gas storage fields, such as injections, withdrawals, base gas, working gas, and peak day withdrawals. It also collects annual data on the capecity, type of facility, maximum deliverability, and pipelines to which the field is connected. Thus, the Form EIA–191 is more comprehensive, and collects the data by reservoir. However, the Form EIA–191 is subject to certain confidentiality requirements, and therefore is not public information. DOE does, though, aggregate the Form EIA–191 data by geographical jurisdiction, and makes that aggregated data available publicly.

Louis Dreyfus maintains that without timely access to the information reported in Form No. 8, market participants will be hampered in their efforts to compete fairly in natural gas markets. It argues that marketers, particularly those not affiliated with storage-owning pipelines, must be able to evaluate the state of storage capacity and storage balances in pricing their products. It claims that marketers lacking the data formerly collected and made publicly available through Form 8 will be at a disadvantage to marketers that can gain access to storage-related information.Louis Dreyfus also argues that any efforts by DOE to have the confidentiality requirements of Form EIA–191 removed, which the Commission endorsed in Order No. 581, are unlikely to succeed. In its comments to the NOPR, DOE stated that the opposition to having the confidentiality requirements lifted that was voiced when DOE attempted to do so in 1993, may have decreased with the implementation of Order No. 636. However, Louis Dreyfus argues that that opposition was based on the position that Order No. 636 and increased competition were the precise reasons why data on storage field performance by reservoir must not be made public.

Most of the reporting requirements under review in this rule exist in large part to enable the Commission to carry out its regulatory mission. They are intended to provide the Commission with the information it needs to conduct its regulatory review activities. Accordingly, one of the Commission's main goals in this rulemaking proceeding has been to eliminate filing requirements that may be unnecessary to meet the Commission's regulatory responsibilities, either because they are duplicative, or outdated, or because of other reasons. In keeping with this goal, the Commission determined in Order No. 581 that Form No. 8 and Form EIA–191 are similar enough that it is unnecessary for both DOE and the Commission to require the reporting of the information contained in those forms. The Commission further found that it could eliminate Form No. 8 and use the data collected in Form EIA–191 to meet its regulatory needs.

Moreover, the Energy Information Administration (EIA), within DOE, is subject to a statutory obligation to collect and publish energy information and statistics.[22] The information that is collected by the EIA must be "promptly provide[d]" to other offices within DOE when requested.[23] Thus, the Commission is confident that it will be able to readily obtain the storage data in Form EIA–191 when needed, and therefore, that replacing the Form No. 8 data collection with access to storage data through the Form EIA–191 will be adequate to meet the Commission's needs.

With respect to Louis Dreyfus' needs, Louis Dreyfus complains that the Form EIA–191 data is insufficient for its purposes because the EIA only makes publicly available aggregated storage data from the Form EIA–191 due to the confidentiality restrictions, and because such data is not company-specific. However, the EIA is under an obligation, upon request to "promptly [make] available to the public in a form and manner easily adaptable for public use" the information that it collects.[24] Louis Dreyfus is free to pursue any changes to the EIA's publication of the EIA–191 data with the EIA.

B. Adequacy of Notice Provided

Louis Dreyfus asks that the Commission exercise its discretion to reconsider the elimination of Form No. 8 in light of the alleged lack of notice

[22] Section 205(a)(2) of the Department of Energy Organization Act provides that the Administrator of EIA shall be responsible for carrying out a central comprehensive, and unified energy dete end information program which will collect, evaluate, assemble, analyze, and disseminate date and information which is relevent to energy resource reserves, energy production, demend, and technology, and related economic and statistical information, or which is relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

42 U.S.C.A. § 7135(a)(2) (1995).

[23] Section 205(f) states: The Administrator shall, upon request, promptly provide any information or analysis in his possession pursuant to this section to any other administration, commission, or office within the Department which such administration, commission or office determines reletes to the functions of such administration, commission, or office.

42 U.S.C.A. § 7135(f) (1995).

[24] Section 205(g) of the Department of Energy Organization Act provides, in pertinent part:

"Information collected by the Energy Information Administration shall be cateloged and, upon request, any such information shall be promptly made available to the public in a form and manner easily edaptable for public use, except that this subsection shall not require disclosure of matters exempted from mendatory disclosure by section 552(b) of Title 5, United Stetes Code.

42 U.S.C.A. § 7135(g) (1995).

afforded to it. Louis Dreyfus states that the Commission never suggested in the NOPR that it might eliminate the Form No. 8 filing requirement, but rather "reassured potentially interested parties that the Form No. 8 reporting requirements were 'not on the table' for elimination."[25] Louis Dreyfus argues that the Commission's failure to provide any notice of the possibility that it could wholly eliminate the Form No. 8 reporting requirement, or to provide an adequate comment period for all interested parties to express their concerns about such proposal, violates the provisions of Section 553 of the Administrative Procedure Act (APA),[26] and applicable case law. As a remedy for Order No. 581's alleged legal error in eliminating the Form No. 8 without adequate notice, Louis Dreyfus argues that the Commission must reinstate the Form No. 8 reporting requirements, or in the alternative, reopen the matter by issuing a supplemental notice of proposed rulemaking that proposes the elimination of Form No. 8 and invites comments thereon.

The Commission denies Louis Dreyfus' request for reconsideration. The primary purpose of the notice requirement under Section 553(b) of the APA is to provide an opportunity for the public to participate in the rulemaking process through a commenting procedure. The purpose of section 553 of the APA has been met by the notice given in the NOPR with respect to the Form No. 8. While the Commission did not explicitly propose to eliminate the Form No. 8, the notice provided was adequate under the APA to justify elimination because the Commission expressly invited parties to comment on whether the collection of the Form No. 8 information is unnecessary. In so doing, the notice raised the issue of the necessity and continuing existence of the Form No. 8, and gave interested parties an opportunity to comment on that issue. Given the goal of the rulemaking proceeding to simplify and streamline its regulations to reduce the reporting burden, the reasonable implication from the Commission's invitation for comments was that if commenters advised the Commission that the collection of storage information in the Form No. 8 was unnecessary because the collection of the same information by other entities was adequate, the Commission would eliminate the Form No. 8. Thus, the notice did indeed raise the prospect of a potential elimination of the Form No. 8.

The notice with respect to the Form 8 was also adequate under applicable case law. Louis Dreyfus argues that courts have found notice of an adopted change to be inadequate in cases such as this one, where "there were major substantive differences between the proposed rule and the rule adopted."[27] However, substantive differences between a proposed and final rule do not always invalidate the final rule for lack of notice. The standard generally invoked by the courts with respect to the sufficiency of notice, where the final rule differs from the proposed rule, is that if the rule finally adopted is a "logical outgrowth" of, or is "in character with," the proposed rule, the rulemaking proceeding, or the comments received, a second notice and comment period is unnecessary, and the final rule will not be invalidated.[28] However, "if the final rule deviates too sharply from the proposal, affected parties will be deprived of notice and an opportunity to respond to the proposal."[29]

In this case, the elimination of Form No. 8 as an unnecessary reporting requirement is a "logical outgrowth" of, and "in character with" the nature of the proposed rule, which was designed to simplify and streamline the Commission's reporting requirements in an effort to reduce the reporting burden, as well as with the comments received.

In the NOPR, the Commission proposed to eliminate numerous unnecessary reporting requirements because they were "outdated or nonessential in light of current regulation, or [were] duplicative of other reporting requirements."[30] Thus, the Commission's action taken in eliminating the Form No. 8 fell within the general rubric, or "original scheme" of the NOPR, and Louis Dreyfus should have anticipated that elimination of the Form No. 8 was possible.

Moreover, in determining whether a final rule is a "logical outgrowth" of a proposed rule, "the key focus is on whether the purposes of notice and comment have been adequately served."[31] In this case, parties were given an adequate opportunity to comment on the Form No. 8, specifically on its relationship to other sources of storage information, and its necessity. Five parties did, in fact, comment in favor of the elimination of the Form No. 8 reporting requirement, indicating that they understood what was being proposed. Louis Dreyfus had the same opportunity to comment on the retention of the Form No. 8, but chose to ignore the Commission's request.

Louis Dreyfus claims that it relied on the Commission's statement that it was "not proposing any substantive changes to [the Form No. 8] in this NOPR." It claims that such reliance is the reason it failed to comment prior to the final rule, and the reason that it was unaware of the Commission's "surprise repeal" of the Form No. 8 in time to file a timely rehearing request.[32]

That statement in the NOPR, taken alone, would have indicated to the public that no substantive changes would appear in the final rule. However, read together with the NOPR's invitation for comments on whether the Form No. 8 might be unnecessary, the statement put the public on notice that the Commission was contemplating eliminating the form; the solicitation for comments following the statement conveyed to the public that the Commission did not yet have enough information upon which to propose the elimination of the form, but that it simply needed comments to fully and carefully consider the issue.

The Commission finds that reinstatement of the Form No. 8 on procedural grounds is unwarranted. Similarly, Louis Dreyfus' request in the alternative for reconsideration of the Form No. 8 issue through additional notice and comment procedures is denied. The Commission has already reconsidered the issue on the merits, *supra*, based on Louis Dreyfus' petition for reconsideration, and has determined that the Form No. 8 will not be reinstated.

[25] Petition for Reconsideration at 5.

[26] Section 553(b) of the APA requires that an agency's notice of proposed rulemaking provide "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. §553(b)(3) (1994).

[27] Chrysler Corporation v. Dept. of Transportation, 515 F.2d 1053, 1061 (6th Cir. 1975). Louis Dreyfus cites other cases, as well, stressing the importance of specificity in agency notice. *See* Petition for Reconsideration at 4–5.

[28] Shell Oil Company v. EPA, 950 F.2d 741, 750–51 (D.C. Cir. 1991) (citations omitted) ("An agency, of course, may promulgate final rules that differ from the proposed regulations. To avoid 'the absurdity that * * * the agency can learn from the comments on its proposals only at the peril of starting a new procedural round of commentary,' we have held that final rules need only be a "logical outgrowth" of the proposed regulations."); Rybachek v. U.S. EPA, 904 F.2d 1276, 1287–88 (9th Cir. 1990) ("[T]he fact that a final rule varies from a proposal, even substantially, does not automatically void the regulations. Rather, we must determine whether the * * * final rule was in character with the original proposal and a logical outgrowth of the notice and comments received."); City of Stoughton, Wisconsin v. U.S. EPA, 858 F.2d 747, 753 (D.C. Cir. 1988) ("[A]n agency may promulgate a final rule that differs from its proposed rule without allowing further comment if the relevant changes are a 'logical outgrowth" of the proposed rule and the notice and comments upon it."); Natural Resources Defense Council, Inc. v. U.S. EPA, 824 F.2d 1258, 1283 (1st Cir. 1987) (citations omitted) ("An agency can make even substantial changes from the proposed version, as long as the final changes are 'in character with the original scheme' and a 'logical outgrowth' of the notice and comment.").

[29] Small Refiner Lead Phase-Down Task Force v. U.S. EPA, 705 F.2d 506, 547 (D.C. Cir. 1983).

[30] IV Stats. & Regs. ¶ 32,512 at 32,996.

[31] Fertilizer Institute v. U.S. EPA, 935 F.2d 1303, 1311 (D.C. Cir. 1991) (citations omitted) ["This means that a final rule will be deemed to be the logical outgrowth of a proposed rule if a new round of notice and comment would not provide commenters with 'their first occasion to offer new and difference criticisms which the agency might find convincing.'"); *see* Small Refiner Lead Phase-Down Task Force v. U.S. EPA, 705 F.2d at 547.

[32] Petition for Reconsideration at 8. Louis Dreyfus states that it learned of the elimination of the Form No. 8 from reading the trade press.

V. Discount Rate Report

A. Disclosure of Commercially Sensitive Information

In their comments to the NOPR, ANR/CIG objected to the public disclosure of the customer-specific data that was included in the proposed discount report. The discount report that was proposed in section 284.7(c)(6) represented a combination of the requirements contained in the existing discount reporting and maintenance provisions in section 284.7(d)(5)(iv) and 250.16(d), and thus, required expanded public reporting of discount information. The proposed discount report included: (1) The shipper's contract number (for all discounts on firm transportation); (2) any affiliate role in the transaction; (3) the quantity of gas delivered during the billing period at the discounted rate; and (4) the zone of delivery (for interruptible). ANR/CIG argued that the disclosure of much of the information in the discount report would cause competitive harm to both pipelines and their customers. Therefore, ANR/CIG sought the elimination of the discount report, or at a minimum, the deletion of the contract number, affiliate's role, quantities delivered, and delivery zone.

The Commission heard the concerns of ANR/CIG and other commenters regarding the release of sensitive commercial information, and consequently, abandoned its proposal for an expanded discount reporting requirement under section 284.7. Thus, the Commission eliminated many of the proposed data elements from the discount report, and limited the information required to be filed to the discount data that was currently required to be filed under existing section 284.7(d)(5)(iv).[33] However, on rehearing, ANR/CIG request that the Commission reconsider its decision to require disclosure of the information that was retained; essentially, ANR/CIG continue to seek elimination of the requirement that pipelines file discount rate reports.

By retaining the existing discount rate report requirement, the Commission has already met ANR/CIG's original, alternative request that the contract number, affiliate's role, quantities delivered, and delivery zone be eliminated from the discount report. The Commission, however, will not go one step further and eliminate entirely the discount rate report.

The purpose of the discount rate report is to ensure that discounts are offered on a nondiscriminatory basis. The public disclosure of the discount rate information is a critical element of the requirement to produce the data; it enables the discount report to achieve the purposes for which it was designed. Public reporting permits the Commission, as well as other interested parties, to maintain a vigil against discriminatory pricing. Making it more difficult to access this information will diminish the ability of the Commission and the public to discover problem deals. This concept was supported by the United States Court of Appeals for the D.C. Circuit when it condoned rate discounting:

> The reporting system will enable the Commission to monitor behevior end to ect promptly when it or another party detects behavior arguably falling under the bans of [sections] 4 and 5.[34]

B. Customer Codes

At a minimum, if the Commission continues to require the filing of a discount rate report, ANR/CIG request that in all instances where customer-specific information is sought, the Commission permit pipelines, at their option, to use a customer code to identify customers. ANR/CIG state that each customer would be apprised of its customer code, and the code would be used consistently in all filings where customer information is required. ANR/CIG argue that if the need arises to identify any customer in any proceeding, that information could be sought in discovery, and such need evaluated on a case-by-case basis. Thus, ANR/CIG support the use of customer codes, rather than shipper names. For example, ANR/CIG assert that the provision of customer-specific information in the discount report, identified by customer code, with an identification of which codes represent affiliates of the pipeline, would be equally useful as a discount report containing the full name of the shipper.

The Commission will not permit the use of customer codes in place of the full legal name of the shipper in the discount rate report. As noted above, the key purpose of the discount rate report is to enable shippers to determine whether a pipeline has offered a discount to a similarly situated shipper. Since under ANG/CIG's proposal, only the shipper receiving the discount would know its code, other shippers would be unable to determine whether the discount given was to a "similarly situated" shipper. In other words, shippers need to know the name of the shipper being given a discount to evaluate if they are similarly situated. Therefore, the substitution of a secret code for the name of the shipper will thwart the purpose of the discount rate report, and the collection of the discount rate data will become useless.

VI. Index of Customers

A. Receipt Point Data

In Order No. 581, the Commission required interstate pipelines transporting gas under subparts B and G to establish an Index of Customers through a downloadable electronic file. Under new section 284.106(c), on the first day of each calendar quarter, the electronic Index of Customers must be posted on the pipeline's electronic bulletin board (EBB), and filed with the Commission in electronic form. A paper copy of the Index is not required to be filed.

The Index of Customers, as finally adopted by Order No. 581, contains for all firm customers under contract as of the first day of the calendar quarter, the full legal name of the shipper, the rate schedule number for which service is contracted, the contract effective and expiration dates, and the maximum daily contract quantities. This is a more limited Index of Customers than the Index of Customers that was proposed in the NOPR. The proposed Index had included a number of additional data elements, including the receipt and delivery points associated with the shippers' maximum daily quantities (MDQs).[35]

However, in light of the primary goal of the rulemaking proceeding to eliminate unnecessary regulations, and in response to comments that much of the proposed information was commercially sensitive, and that its disclosure would be harmful and

[33] The discount rate report adopted in new section 284.7(c)(6) contains the name of the shipper, the corporate affiliation between the shipper and the transporting pipeline, the maximum rate or fee, and the rate or fee actually charge during the billing period.

[34] Associated Gas Distributors v. FERC, 824 F.2d 981, 1009. (D.C. Cir. 1987).

[35] IV Stats. & Regs. ¶ 32,512 at 33,039.

burdensome, the Commission reconsidered the regulatory need for the information in the proposed Index. The Commission found that many items, such as the receipt and delivery points, extended beyond that which the Commission needs to receive from all pipelines on a regular basis to regulate the natural gas industry today. Thus, in the final rule, the Commission eliminated such items, reducing the information contained in the proposed Index of Customers to only that information absolutely necessary for the Commission's regulatory purposes.

On rehearing, the Registry argues that capacity information at receipt and delivery points must be included in the Index of Customers because it is crucial to the development and functioning of the capacity market. The Registry states that point rights define the location, nature, and extent of capacity rights, and are the only way to determine segment rights. It argues that knowing the quantity of rights in a contract alone is useful neither to shippers, nor to regulators. The Registry argues that the Commission's deletion of point rights information from the Index of Customers will ensure that the capacity release market will function improperly, and that in taking such action, the Commission has abdicated its responsibility to protect the public interest.

The Registry analogizes the operation of the capacity release market without disclosure of point rights to the operation of the securities market without disclosure of the quantity of stocks or bonds available in each class, or disclosure of their maturity, rate, and redemption/conversion terms. The Registry uses this analogy to argue that absent access to point information, the capacity release market will fail, since the securities market failed due to a lack of confidence, prior to securities registration.

In a nutshell, the Registry explains that if users cannot identify the quantity of rights that they own to move gas into and out of a point relative to the quantity of rights others own to move gas into and out of the pipeline at the same and other locations, shippers will not know the value of their capacity and will discount the value they ascribe to owning the pipeline's capacity. In other words, without the availability of point quantity information, there is no method for market participants to monitor the quantity of rights sold or available for sale, or to measure the relative amount of rights held in relation to the total of rights. The Registry asserts that this lack of knowledge of the true value of capacity in the capacity release market will lead to a lack of confidence in the market and in the real value of capacity rights.

According to the Registry, a lack of confidence in the capacity market will lead to an avoidance of long-term commitments, which in turn, will result in an unhealthy gas market and market failure. The Registry argues that a healthy gas business is in the public interest, and that it is the Commission's fundamental role and responsibility to provide confidence in, and contribute to, a healthy, functioning natural gas market, and to thereby protect consumers.

Finally, the Registry argues that receipt and delivery point information is not overly burdensome or needless; it argues point data is essential, otherwise the market will fail, and heavy-handed regulation will return. The Registry believes that this information is most likely currently contained in one or more computerized databases and/or control systems operating at the pipelines, since pipelines need this information to determine releases and valid nominations for the flow of gas. According to the Registry, the only tool necessary to "publish" this information would be an electronic application to extract the information from the computerized system it is contained in, and to place it into the defined format for download. Since this application has to be developed anyway to supply the rest of the information contained in the Index of Customers, argues the Registry, the marginal cost to extract and include point level information in the application is far less than the benefits to the natural gas market of having the information available.

In the final rule, the Commission found that it was unpersuaded that it should require pipelines to maintain a comprehensive list of capacity rights by receipt and delivery points to aid the secondary capacity market, or to assist third-party-run exchanges and market center developers. The Commission stated that it was not clear what practical effect providing the proposed receipt and delivery point information would have on the secondary market. The Commission remains unpersuaded that inclusion of capacity information by receipt and delivery points in the Index of Customers is essential to the continued viability of the capacity market.

One of the goals of this rulemaking proceeding is to simplify and streamline the Commission's reporting requirements, and to reduce the reporting burden on pipelines. For the Commission to add to the reporting burden by including receipt and delivery point data in the Index of Customers, a conclusive showing would need to be made that a problem in the secondary market exists, and that the inclusion of the point information would solve the problem. The Registry has not made such a showing in its request for rehearing. Instead, the Registry has presented a general claim that the market will fail to function properly, or will collapse completely, without the availability of the information.

Receipt and delivery point information has never before been available in an electronic index. At best, the information was embedded in the initial and subsequent reports that pipelines were required to file, and thus, not easily accessible. Without the ready availability of receipt and delivery point information, the secondary capacity market was created, and has grown to a healthy market. Since the market has expanded to what it is today, without market participants' access to capacity information at receipt and delivery points throughout its infancy and development, it is logical to assume that a continued lack of access to this information will not cause it to fail or collapse.

The Registry rests its belief that the market is destined to fail on the lack of confidence in the market and of knowledge of the true value of capacity that will be caused by a lack of access to receipt and delivery point information. It states that without capacity information by point, there is no method for market participants to monitor the quantity of rights sold or available for sale.

However, market participants may determine the quantity of rights sold, at particular receipt and delivery points, through the capacity release data sets that pipelines are required to make publicly available through EDI transmission and information posted on each pipeline's EBB. Second, even if the contract quantity by receipt and delivery point were posted in the Index of Customers, there is no way of knowing what proportion of the posted capacity is available for release. In any given time frame, some capacity is available for release, some is used by the owner, and some is idle.

Finally, the Commission is not abdicating its responsibility to the natural gas market and to the public by failing to require that this information be included in the Index of Customers for the purpose of aiding the secondary market. The Commission has all indications that the market can function adequately without the electronic posting of this information in an Index of Customers. Moreover, we have determined that requiring this information to be included in a quarterly Index of Customers is unnecessary for the Commission to fulfill its regulatory oversight responsibilities. We find that there is enough information included in the capacity release data sets for the Commission to monitor the secondary market. Accordingly, the Commission will not require that receipt and delivery point information be included in the Index of Customers. Rehearing is denied.

B. Customer Codes

As with the discount reports, ANR/CIG are concerned that the dissemination of the information in the Index of Customers could cause competitive harm. Therefore, ANR/CIG also seek the use of customer codes instead of customer names for the customer-specific information required in the Index of Customers.

The Commission will not permit the use of customer codes in the Index of Customers. ANR/CIG has proposed the use of customer codes to ensure that the information required by the Index of Customers is kept confidential. However, this information, including the shipper's name, is information that appears in the contract between the pipeline and the shipper, and is the type of information that section 4(c) of the Natural Gas Act (NGA) requires the pipeline to make publicly available.[36]

Furthermore, it has not been demonstrated that the release of a shipper's name, and the other information included in the Index of Customers, would cause competitive harm. First, the data is basic contract information of an identifying nature, and does not include commercially sensitive rate information. Second, the Commission does not presume the existence of competition in the natural gas transportation market, since there is a presumption that a pipeline still retains a substantial degree of market power in the transportation of natural gas, unless proven otherwise. When the claim of confidentiality has been asserted in Commission proceedings, the Commission has required the claim to be supported with specificity, rather than with vague and speculative allegations of competitive harm,[37] since the Commission must "balance the need for public disclosure against the harm caused by release of the information."[38] ANR/CIG's request for rehearing on this issue is denied.

3. Clarification of Quarterly Posting Requirement

Section 284.106(c) provides that each calendar quarter, a pipeline must post on the pipeline's electronic bulletin board (EBB), and file with the Commission in electronic form, an electronic index of firm customers under contract as of the first day of the calendar quarter. The Commission clarifies this provision to require pipelines to post and file its index of customers that are under contract as of the first day of the calendar quarter, on the first *business* day of the calendar quarter. This will conserve the pipelines' personnel resources in the event the first day of the calendar quarter falls on a weekend or a holiday.

VII. Effective Date

The amendments to the Commission's regulations adopted in this order on rehearing will become effective April 5, 1996, except for the changes to the Form Nos. 2 and 2–A, which will be effective January 1, 1996. In the final rule, the Commission adopted an effective date of January 1, 1996 for the changes to Form Nos. 2, 2–A, and 11 to afford the pipelines adequate opportunity to adapt to the requirements of the final rule, and to make the necessary modifications to their recordkeeping systems. Adopting the January 1, 1996 effective date means that data for the report year 1995 will be submitted in the format for Form Nos. 2 and 2–A in effect prior to January 1, 1996. Similarly, for report months November 1995 and December 1995, pipelines will report Form No. 11 data in the format in effect prior to January 1, 1996. This is true even though the filing dates for the forms fall subsequent to January 1, 1996.

List of Subjects

18 CFR Part 201

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission denies rehearing in part, grants rehearing in part, clarifies Order No. 581 as described above, and amends Parts 201 and 284, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 201–UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

1. The authority citation for Part 201 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352, 7651–7651o.

2. In Part 201, Balance Sheet Accounts, Special Instructions to Accounts 117.1, 117.2, and 117.3, a new subparagraph is added after the last subparagraph in paragraph (a), and paragraph (b) is revised to read as follows:

Balance Sheet Accounts

* * * * *

Special Instructions to Accounts 117.1, 117.2 and 117.3

* * * * *

(a) *Inventory Method*— * * *

Adjustments for inventory losses related to gas held in underground reservoirs due to cumulative inaccuracies of gas measurements, or from other causes, must be charged to Account 823, Gas Losses. Losses of system gas not associated with underground reservoirs must be charged to Account 813, Other Gas Supply Expenses.

(b) *Fixed Asset Method*— * * *

When replacement of the gas is made, the amount carried in Account 117.4 for such volumes must be cleared with a contra entry to Account 808.2, Gas Delivered to Storage—Credit. Any difference between the utility's cost of replacement gas volumes and the amount cleared from Account 117.4 must be recognized as a gain in Account 495, Other gas revenues, or as a loss in Account 813, Other gas supply expenses, with contra entries to Account 808.2.

Adjustments for inventory losses related to gas held in underground reservoirs due to cumulative inaccuracies of gas measurements, or from other causes, must be charged to Account 823, Gas Losses. Losses of system gas not associated with underground reservoirs must be charged to Account 813, Other Gas Supply Expenses. Gas losses must be priced at the market price of gas available to the utility in the month the loss is recognized.

[36] 15 U.S.C. § 717c(c) (1994).

[37] See Trunkline Gas Company, 49 FERC ¶ 61,227 (1989).

[38] ANR Pipeline Company, 65 FERC ¶ 61,280 at 62,305 (1993).

Gas owned by the utility and injected into its system will be deemed to satisfy any encroachment on system gas first before any other use.

3. In part 201, Balance Sheet Accounts, Account 117.4, the word "revolve" is removed, and the word "revalue" is added in its place.

4. In Part 201, Operation and Maintenance Expense Accounts, Account 805, a new paragraph D is added to read as follows:

Operation and Maintenance Expense Accounts

* * * * *

805 Other gas purchases.

* * * * *

D. The value of gas received from shippers under tariff allowances that is not consumed in operations nor returnable to customers through rate tracking mechanisms must be credited to Account 495, Other Gas Revenues and charged to this account. Utilities must simultaneously charge Accounts 117.3 or 117.4 as appropriate, with contra credits to Account 808.2, Gas Delivered to Storage—Credit. Records are to be maintained and readily available that include the name of shipper, quantity of gas, and the publication and price used to value shipper-supplied gas.

* * * * *

5. In Part 201, Operation and Maintenance Expense Accounts, Account 806 is revised to read as follows:

Operation and Maintenance Expense Accounts

* * * * *

806 Exchange gas.

This account includes debits or credits for the cost of gas in unbalanced transactions where gas is received from or delivered to another party in exchange, load balancing, or no-notice transportation transactions. The costs are to be determined consistent with the accounting method adopted by the utility for its system gas. If the utility has adopted the inventory method of accounting, the amounts to be recorded in Account 806 must be based on the historical cost of the gas. If the utility has adopted the fixed asset method of accounting, the amounts to be recorded in Account 806 must be based on the current market price of gas at the time gas is tendered for transportation. (See the Special Instructions to Accounts 117.1, 117.2, and 117.3 for a description of the inventory and fixed asset methods and the definition of the current market price of gas.) Contra entries to those in this account are to be made to account 174, Miscellaneous Current and Accrued Assets, for gas receivable and to account 242, Miscellaneous Current and Accrued Liabilities, for gas deliverable under such transactions. Such entries must be reversed and appropriate contra entries made to this account when gas is received or delivered in satisfaction of the amounts receivable or deliverable.

* * * * *

6. In part 201, Operation and Maintenance Expense Accounts, paragraph A of Accounts 808.1 and 808.2 are revised to read as follows:

Operation and Maintenance Expense Accounts

* * * * *

808.1 Gas withdrawn from storage-Debit.

A. This account shall include debits for the cost of gas withdrawn from storage during the year. Contra credits for entries to this account shall be made to accounts 117.1 through 117.4, or account 164.2, Liquefied Natural Gas Stored, as appropriate. (See the Special Instructions to accounts 117.1, 117.2, and 117.3).

* * * * *

808.2 Gas delivered to storage-Credit.

A. This account shall include credits for the cost of gas delivered to storage during the year. Contra debits for entries to this account shall be made to accounts 117.1 through 117.4, or account 164.2, Liquefied Natural Gas Stored, as appropriate. (See the Special Instructions to accounts 117.1, 117.2, and 117.3).

* * * * *

7. In Part 201, Operation and Maintenance Expense Accounts, Account 823 is revised to read as follows:

823 Gas losses.

This account shall include the amounts of inventory adjustments representing the cost of gas lost or unaccounted for in underground storage operations due to cumulative inaccuracies of gas measurements or other causes. (See the Special Instructions to Accounts 117.1, 117.2 and 117.3). If however, any adjustment is substantial, the utility may, with approval of the Commission, amortize the amount of the adjustment to this account over future operating periods.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

8. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7201–7352; 43 U.S.C. 1331–1356.

* * * * *

Subpart B—Certain Transportation by Interstate Pipelines

9. In § 284.106, the first sentence of paragraph (c)(1) is revised to read as follows:

§ 284.106 Reporting requirements.

* * * * *

(c) *Index of customers.* (1) On the first business day of each calendar quarter, subsequent to the initial implementation of this provision, an interstate pipeline must provide for electronic dissemination of an index of all its firm transportation and storage customers under contract as of the first day of the calendar quarter.* * *

* * * * *

[FR Doc. 96–5164 Filed 3–5–96; 8:45 am]

BILLING CODE 6717–01–P

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18 CFR Part 284

[Docket No. RM95–4–000]

Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies

February 29, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; Notice Adopting Electronic Filing Specifications for the Index of Customers and Discount Transportation Rate Report.

SUMMARY: On September 28, 1995, the Commission issued a final rule in this proceeding requiring pipelines to file electronically, a quarterly Index of Customers through a downloadable file, and the discount transportation rate reports previously filed only on paper. The Commission is adopting specifications and instructions for the electronic filing of these reports. These filing specifications are entitled "Instruction Manual for Electronic Filing of the Index of Customers," and "Instruction Manual for Electronic Filing of the Discount Transportation Rate Report," respectively.

DATES: Pipelines must implement the data sets for the Index of Customers starting on April 1, 1996, and for the discount transportation rate reports, starting with the first filing after April 1, 1996.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Richard A. White, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, (202) 208–0491

Elizabeth A. Taylor, Office of Pipeline Regulation, 888 First Street NE., Washington, D.C. 20426, (202) 208–0826.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of the document during normal business hours in Room 2–A, 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397 if dialing locally or 1–800–856–3720 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice will be available on CIPS indefinitely in ASCII and WordPerfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in the Public Reference Room, 888 First Street, N.E., Washington, D.C. 20426.

The Commission's bulletin board system can also be accessed through the FedWorld system directly by modem or through the Internet. To access the FedWorld system by modem:

- Dial (703) 321–3339 and logon to the FedWorld system.
- After logging on, type: /go FERC

To access the FedWorld system, through the Internet:

- Telnet to: fedworld.gov
- Select the option: [1] FedWorld
- Logon to the FedWorld system
- Type: /go FERC

Or:

- Point your Web Browser to: http://www.fedworld.gov
- Scroll down the page to select FedWorld Telnet Site
- Select the option: [1] FedWorld
- Logon to the FedWorld system
- Type: /go FERC

On September 28, 1995, the Federal Energy Regulatory Commission (Commission) issued Order No. 581, amending its Uniform System of Accounts, its forms, and its reports and statements for natural gas companies.[1] These changes include modifications to the Commission's electronic filing requirements.

Order No. 581 contains several new and revised electronic filing requirements. Interstate pipelines transporting or storing gas under subparts B and G must now provide an electronic Index of Customers through a downloadable file that is updated quarterly.[2] The discount rate report, previously filed only on paper, will now be filed both on paper and electronically.[3] In addition, the electronic filing requirements for Form Nos. 2, 2–A, and 11 must be modified to recognize changes made to these forms.

Although Order No. 581 imposed new electronic filing requirements, it did not include the final electronic filing specifications. The Commission wanted to provide the industry the opportunity to participate in the formulation of the specifications and formats for the electronic filing requirements. To ensure the widest possible input, the Commission directed its staff to convene an informal technical conference. The first conference was convened on December 1, 1995. As a result of the discussions at that meeting, the Commission's staff has formulated the final electronic filing requirements for the Index of Customers and the discount rate reports, attached as Appendices A and B, respectively.[4] Work on Form Nos. 2, 2–A, and 11 will be completed by the working group established for that purpose.[5]

The Index of Customers consists of five data elements: the customer name, the rate schedule under which service is rendered, the contract effective date, the contract termination date, and the maximum daily contract quantity, for either transportation or storage service, as appropriate. Since the expiration date of the contract may depend on the terms of an evergreen or roll-over provision,[6] a separate field is provided to enter the number of days in the roll-over or evergreen period. For example, if a contract has passed its primary expiration date, and is continuing on a month-to-month basis, the pipeline would report the number 31. This number was chosen since the next possible expiration date would be in one month's time. For three of the four reporting dates, that is 31 days away. To minimize the number of changes each quarter to the Index, the working group participants agreed to use the number 31 to designate an evergreen period of one month and 365 to designate one year. If the primary term has not yet expired and, therefore, the contract is not operating under an evergreen or roll-over clause, this field would be empty. That is, two tabs would appear side-by-side.

The primary term must be reported for every record. When the contract is operating under an evergreen clause, the next possible termination date can only be determined by using the primary term date and the number of days reported in the "Days Until Next Possible Contract Expiration" field.

In a departure from past practice, a three-character code to identify the filing pipeline will be used for the Index of Customers and the discount rate reports. Previously, the electronic filing requirements specified a six-digit company code available from the Energy Information Agency. In the future, the three-digit code assigned by the Commission as part of the docket number in all dockets with the prefix "TM," will be used to identify the filing pipeline. The new code's short length allows it to be used not only in the data, but as part of the filename. A complete list of the pipelines' three-digit codes is included in these filing specifications.

In addition to the file specifications and definitions, the filing instructions contain aids to filing. One such aid is a presentation of a sample tab-delimited file, and a sample of what it would look like when displayed in a text editor. These samples are intended to help the pipeline accurately create the file. Also included is a section entitled "File Creation Hints/ Do's and Don'ts, which contains helpful hints on creating a tab-delimited file in several popular software applications.

These electronic filing specifications for the Index of Customers and discount

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[1] Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, 60 FR 53019 (October 11, 1995).

[2] *See* 18 CFR 284.106(c) and 284.223(b). II FERC Stats. & Regs. ¶¶ 24,866 and 24,943. No paper copies of the Index of Customers are required to be filed.

[3] *See* 18 CFR 284.7(c)(6). II FERC Stats. & Regs. ¶ 24,847. In its "Order on Clarification and Granting Rehearing Solely for the Purpose of Further Consideration," 73 FERC ¶ 61,215 (1995), the Commission clarified that the discount rate reports should be filed solely on paper until the electronic filing specifications are issued.

[4] The Appendices are not being published in the **Federal Register**, but are available from the Commission's Public Reference Room.

[5] The Working Group—Forms met on December 12, 1995, and again on February 7, 1996.

[6] These terms are defined in the electronic filing specifications as they are defined in Order No. 636. III FERC Statutes and Regulations ¶ 30,939 at 30,445.

rate reports, entitled "Instruction Manual for Electronic Filing of the Index of Customers," and "Instruction Manual for Electronic Filing of the Discount Transportation Rate Report," respectively, and attached to this notice as Appendices A and B, are hereby adopted. The first electronic filing of the Index of Customers under sections 284.106(c) and 284.223(b) will be April 1, 1996. April 1 is one of the four scheduled filing dates provided for in the referenced regulations. The first discount rate reports to be filed electronically will be the reports due for the month of March 1996. Those reports are due within 15 days of the close of the March billing period.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5166 Filed 3–5–96; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, and 524

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor for 28 approved new animal drug applications (NADA's) from Coopers Animal Health, Inc., to Mallinckrodt Veterinary, Inc.

EFFECTIVE DATE: March 6, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Coopers Animal Health, Inc., 1201 Douglas Ave., Kansas City, KS 66103–1438, has informed FDA that it has transferred the ownership of, and all rights and interests in, the following approved NADA's to Mallinckrodt Veterinary, Inc., Mundelein, IL 60060.

NADA No.	Trade name	Active ingredient
6–602	A–H Tablets 25 milligrams (mg)/100 mg.	Doxylamine Succinate
6–983	A–H Injection	Doxylamine Succinate, Chlorobutanol
10–987	Butazolidin Tablets/Bolus.	Phenylbutazone
11–222	Diquel Tablets	Ethylisobutrazine Hydrochloride
11–575	Butazolidin Injection 20%.	Phenylbutazone
11–877	Jenotone Tablets.	Aminopromazine Fumarate
11–893	Dermathycin Injection.	Thyroid Stimulating Hormone
15–182	Canopar Tablets.	Thenium Closylate
13–181	Jenomycin Tablets.	Aminopromazine Fumarate, Neomycin Sulfate
34–477	Jenotone Solution.	Aminopromazine Fumarate
35–016	Scolaban 400	Bunamidine Hydrochloride
35–265	Diquel Solution.	Ethylisobutrazine Hydrochloride
38–800	Butazolidin Granules.	Phenylbutazone
44–757	Prolate I–E	Phosmet
48–913	Halox Wormer Drench.	Haloxon
65–476	Cortisporin Veterinary Ophthalmic Ointment.	Bactricin ZN, Neomycin Sulfate, Polymyxin B Sulfate, Hydrocortisone Acetate
65–485	Neosporin Ophthalmic Ointment.	Bactricin ZN, Neomycin Sulfate, Polymyxin B Sulfate
92–483	Halox Bolus ..	Haloxon
95–614	Tribrissen 30/120/480/960 Tablets.	Sulfadiazine, Trimethoprim
97–288	Imizol Equine Injection.	Imidocarb Dipropionate
101–161	Thenatol PW Tablets.	Thenium Closylate, Piperazine Phosphate
105–093	Tribrissen 24% Injection.	Trimethoprim, Sulfadiazine Sodium
106–965	Tribrissen 48% Injection.	Trimethoprim, Sulfadiazine
116–087	Burazolidin Paste/Butazolidin/Phenylzone/Bute.	Phenylbutazone
120–326	Filban Chewable Wafers.	Diethylcarbamazine Citrate
124–842	Filban Tablets	Diethylcarbamazine Citrate
131–918	Tribrissen 400 Oral Paste.	Trimethoprim, Sulfadiazine
136–741	Tribrissen 60 Oral Suspension.	Trimethoprim, Sulfadiazine

The agency is amending 21 CFR 510.600(c)(1) and (c)(2), and parts 520, 522, and 524 to reflect the change of sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, and 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "Coopers Animal Health, Inc."; and in the table in paragraph (c)(2) by removing the entry for "017220".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.82a [Amended]

4. Section 520.82a *Aminopropazine fumarate tablets* is amended in paragraph (b) by removing "017220" and adding in its place "011716".

§ 520.82b [Amended]

5. Section 520.82b *Aminopropazine fumarate, neomycin sulfate tablets* is amended in paragraph (b) by removing "017220" and adding in its place "011716".

§ 520.222 [Amended]

6. Section 520.222 *Bunamidine hydrochloride* is amended in paragraph (c) by removing "017220" and adding in its place "011716".

§ 520.622c [Amended]

7. Section 520.622c *Diethylcarbamazine citrate chewable tablets* is amended in paragraph (b)(5) by removing "017220" and adding in its place "011716".

§ 520.784 [Amended]

8. Section 520.784 *Doxylamine succinate tablets* is amended in paragraph (b) by removing "017220" and adding in its place "011716".

§ 520.863 [Amended]

9. Section 520.863 *Ethylisobutrazine hydrochloride tablets* is amended in paragraph (b) by removing "017220" and adding in its place "011716".

§ 520.1120a [Amended]

10. Section 520.1120a *Haloxon drench* is amended in paragraph (c) by removing "017220" and adding in its place "011716".

§ 520.1120b [Amended]

11. Section 520.1120b *Haloxon boluses* is amended in paragraph (c) by removing "017220" and adding in its place "011716".

§ 520.1720a [Amended]

12. Section 520.1720a *Phenylbutazone tablets and boluses* is amended in paragraph (b)(1) by removing "017220" and adding in its place "011716".

§ 520.1720b [Amended]

13. Section 520.1720b *Phenylbutazone granules* is amended in paragraph (b) by removing "017220" and adding in its place "011716".

§ 520.1720c [Amended]

14. Section 520.1720c *Phenylbutazone paste* is amended in paragraph (b) by removing "017220" and adding in its place "011716".

§ 520.1805 [Amended]

15. Section 520.1805 *Piperazine phosphate with thenium closylate tablets* is amended in paragraph (b) by removing "017220" and adding in its place "011716".

§ 520.2362 [Amended]

16. Section 520.2362 *Thenium closylate tablets* is amended in paragraph (c) by removing "017220" and adding in its place "011716".

§ 520.2610 [Amended]

17. Section 520.2610 *Trimethoprim and sulfadiazine tablets* is amended in paragraph (b) by removing "017220" and adding in its place "011716".

§ 520.2611 [Amended]

18. Section 520.2611 *Trimethoprim and sulfadiazine oral paste* is amended in paragraph (b) by removing "017220" and adding in its place "011716".

§ 520.2612 [Amended]

19. Section 520.2612 *Trimethoprim and sulfadiazine oral suspension* is amended in paragraph (b) by removing "017220" and adding in its place "011716".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

20. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.82 [Amended]

21. Section 522.82 *Aminopropazine fumarate sterile solution injection* is amended in paragraph (b) by removing "017220" and adding in its place "011716".

§ 522.784 [Amended]

22. Section 522.784 *Doxylamine succinate injection* is amended in paragraph (b) by removing "017220" and adding in its place "011716".

§ 522.863 [Amended]

23. Section 522.863 *Ethylisobutrazine hydrochloride injection* is amended in paragraph (b) by removing "017220" and adding in its place "011716".

§ 522.1155 [Amended]

24. Section 522.1155 *Imidocarb dipropionate sterile powder* is amended in paragraph (b) by removing "017220" and adding in its place "011716".

§ 522.1720 [Amended]

25. Section 522.1720 *Phenylbutazone injection* is amended in paragraph (b)(1) by removing "017220" and adding in its place "011716".

§ 522.2610 [Amended]

26. Section 522.2610 *Trimethoprim and sulfadiazine sterile suspension* is amended in paragraphs (a)(2) and (b)(2) by removing "017220" and adding in its place "011716".

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

27. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 524.154 [Amended]

28. Section 524.154 *Bacitracin or bacitracin zinc-neomycin sulfate-polymyxin B sulfate ophthalmic ointment* is amended in paragraph (a)(2) by removing "017220" and adding in its place "011716".

§ 524.155 [Amended]

29. Section 524.155 *Bacitracin zinc-polymyxin B sulfate neomycin sulfate-hydrocortisone or hydrocortisone acetate ophthalmic ointment* is amended in paragraph (a)(1) by removing "017220" and adding in its place "011716".

§ 524.1742 [Amended]

30. Section 524.1742 *N-(Mercaptomethyl) phtholimide S-(O,O-dimethyl phosphorodithioate) emulsifiable liquid* is amended in paragraph (b) by removing "017220" and adding in its place "011716".

Dated: February 28, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–5213 Filed 3–5–96; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–71–2–6062a; FRL–5427–4]

Approval and Promulgation of Implementation Plans—Kentucky: Approval of Revision To The State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves a revision to the Kentucky State Implementation Plan (SIP) adopted by the Kentucky Natural Resources and Environmental Protection Cabinet (KNREP) on March 4, 1993, for the

purpose of implementing a Stage II vapor recovery program in Jefferson County, Kentucky.

DATES: This final rule is effective May 6, 1996 unless adverse or critical comments are received by April 5, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to Alan Powell at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Kentucky Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Alan Powell, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4209. Reference file KY–71–2.

SUPPLEMENTARY INFORMATION: On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act as amended in 1990 (CAA) includes new requirements for the improvement of air quality in ozone nonattainment areas. Under section 181(a) of the CAA, nonattainment areas were categorized by the severity of the area's ozone problem, and progressively more stringent control measures were required for each category of higher ozone concentrations. The basis for classifying an area in a specific category was the ambient air quality data obtained in the three year period 1987–1989. The CAA delineates in section 182 the SIP requirements for ozone nonattainment areas based on their classifications. Specifically, section 182(b)(3) requires areas classified as moderate to implement Stage II controls unless and until EPA promulgates On Board Vapor Recovery (OBVR) regulations pursuant to section 202(a)(6) of the CAA. Based on consultation with the National Highway Transportation Safety Board, EPA determined that OBVR were unsafe and therefore moderate areas must implement a Stage II program. On January 22, 1993, the United States Court of Appeals for the District of Columbia ruled that EPA's previous decision not to require OBVR controls be set aside and that OBVR regulations be promulgated pursuant to section 202(a)(6) of the CAA. Subsequently, EPA reached a settlement with the plaintiffs which required EPA to promulgate final regulations by January 22, 1994. After such promulgation, moderate areas will not be required to implement Stage II regulations, but Kentucky has indicated that the Commonwealth intends to continue Stage II as part of its ozone attainment plan for the Jefferson County, Kentucky area. The EPA Administrator signed the OBVR final rule on January 24, 1994.

Under section 182(b)(3), EPA was required to issue guidance as to the effectiveness of Stage II systems. In November 1991, EPA issued technical and enforcement guidance to meet this requirement. These two documents are entitled "Technical Guidance-Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (EPA–450/3–91–022) and "Enforcement Guidance for Stage II Vehicle Refueling Control Programs." In addition, on April 16, 1992, EPA published the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498). The guidance documents and the General Preamble discuss Stage II statutory requirements and indicate what EPA believes a State submittal needs to include to meet those requirements.

The Pollution Control District of Jefferson County approved these regulations and on February 24, 1993, the Commonwealth of Kentucky granted prior concurrence according to the provision in KRS 224.20–130. The Jefferson County regulation is summarized as follows.

Regulation 6.40—Standards of Performance for Gasoline Transfer to Motor Vehicles (Stage II Vapor Recovery)

The CAA specifies that the state regulation must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer (ISBM), any facility that dispenses more than 50,000 gallons of gasoline per month. Section 324 of the CAA defines an ISBM. The Jefferson County regulation does not allow the ISBM exemption and all gasoline dispensing stations with a throughput of more than 10,000 gallons per month must comply.

Consistent with EPA's guidance, the regulation requires that Stage II systems be tested and certified to meet a 95 percent emission reduction efficiently by using a system approved by the California Air Resources Board (CARB). The regulation requires sources to verify proper installation and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation and every five years or upon major modification of a facility (i.e., 75 percent or more equipment change). The County has also established an inspection program consistent with that described in EPA's guidance and has established procedures for enforcing violations of the Stage II requirements.

EPA has evaluated the Kentucky submittal for consistency with the CAA, EPA regulations, and EPA policy. EPA has determined that the rule addressed in this notice meets all of the CAA requirements and is approving under section 110(k)(3), Regulation 6.40 of the Air Pollution Control District of Jefferson County as part of the Kentucky SIP.

Final Action

EPA is approving this revision because it meets the requirements of EPA and the CAA. This action is being taken without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective May 6, 1996 unless, by April 5, 1996 adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective May 6, 1996.

The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the CAA. The Agency has determined that this action conforms with those requirements.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 6, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the Commonwealth is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2) and 7410(k)(3).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Madates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section (insert) of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has examined whether the rules being approved by this action will impose no new requirements, since such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 10, 1996.

Phyllis P. Harris,

Acting Regional Administrator.

52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart S—Kentucky

2. Section 52.920, is amended by adding paragraph (c) (82) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(82) Revision to the Kentucky State Implementation Plan; Regulation 6.40 of the Air Pollution Control District of Jefferson County which was submitted to EPA on March 4, 1993.

(i) Incorporation by reference.

Regulation 6.40 Standards of Performance for Gasoline Transfer to Motor Vehicles (Stage II Vapor Recovery and Control) which were adopted on December 16, 1992.

(ii) Other material. None.

[FR Doc. 96–5082 Filed 3–5–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[IN002; FRL–5434–2]

Clean Air Act Final Interim Approval of the Operating Permits Program; Indiana; Correction

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final interim approval; Correction.

SUMMARY: On November 14, 1995 (60 FR 57191), EPA promulgated interim approval of the 40 CFR Part 70 Operating Permits Program for the State of Indiana. The document correctly identified the effective date as December 14, 1995. However, the language to amend 40 CFR part 70 listed an incorrect effective date and an incorrect expiration date for the interim approval of this program.

EFFECTIVE DATE: December 14, 1995.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886–3189.

SUPPLEMENTARY INFORMATION: In the document published on November 14, 1995, at 60 FR 57191, column 3, the effective date and expiration date were incorrect. This final rule corrects the language to amend 40 CFR part 70 in a manner which is consistent with the November 14, 1995 rule. The correct effective date of this interim approval is December 14, 1995, and the correct expiration date of this interim approval is December 14, 1997.

The USEPA regrets any inconvenience the earlier information has caused.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: January 25, 1996.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Appendix A to part 70 is amended by revising the entry for Indiana to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Indiana

(a) The Indiana Department of Environmental Management: submitted on August 10, 1994; interim approval effective on December 14, 1995; interim approval expires December 14, 1997.

(b) Reserved

* * * * *

[FR Doc. 96–5053 Filed 3–5–96; 8:45 am]

BILLING CODE 6560–60–P

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40 CFR Part 152

[OPP–300360A; FRL 4984–8]

RIN 2070–AC87

Exemption of Certain Pesticide Substances From Federal Insecticide, Fungicide, and Rodenticide Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule establishes an exemption from regulation under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for certain pesticides. EPA has determined that these pesticides, under certain conditions, are of a character not necessary to be regulated under FIFRA in order to carry out the purposes of the Act. EPA has concluded that exemption of products covered by this final rule will not pose unreasonable risks to public health or the environment and will, at the same time, relieve producers of the burden associated with regulation. Pesticidal products that do not meet the conditions of this final rule will continue to be regulated under FIFRA.

DATES: This rule becomes effective May 6, 1996.

FOR FURTHER INFORMATION CONTACT: Robert S. Brennis, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. Office location: Room 713, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. Telephone: 703–305–7501, e-mail: brennis.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Authority: This rule is issued under the authority of FIFRA section 25(b).

EPA issued a proposed rule in the **Federal Register** on September 15, 1994 to exempt from FIFRA regulation certain pesticidal substances (59 FR 47289). In its proposal, EPA identified a total of 31 pesticidal active ingredients that it believed were not of a character necessary to be regulated under FIFRA.

In developing its list of exempted substances, EPA applied certain factors. Consideration was given to such factors as, (1) whether the pesticidal substance is widely available to the general public for other uses; (2) if it is a common food or constituent of a common food; (3) if it has a nontoxic mode of action; (4) if it is recognized by the Food and Drug Administration (FDA) as safe; (5) if there is no information showing significant adverse effects; (6) if its use pattern will result in significant exposure, and (7) if it is likely to be persistent in the environment.

EPA also proposed, as a condition of exempted status, several restrictions. First, the proposal identified active ingredients and listed certain inert ingredients that would be permitted in exempted formulations. Pesticide formulations would qualify only if all of the ingredients contained in the product were exempt. All inert ingredients contained in the formulation would have to be from the list of inerts identified as minimum risk inerts as published in the **Federal Register** as List 4A inerts. This list was last published in the **Federal Register**, September 28, 1994 (59 FR 49400).

Second, in order to qualify for the exemption, the pesticide product label must identify all the ingredients of the product. Third, labels must comply with established regulations regarding false and misleading statements (40 CFR 156.10(a)(5)(i) through (viii)). And fourth, the substance or product could not bear claims either to control or mitigate microorganisms that pose a threat to human health or carriers of such microorganisms.

In its proposal, EPA solicited comments on the list of substances themselves, the evaluation factors and the conditions of exemption.

EPA has determined, with the conditions imposed by this rule, that use of these pesticides poses insignificant risks to human health or the environment in order to carry out the purposes of the Act, and the burden imposed by regulation is, therefore, not justified. The Agency, in promulgating this rule, is responding to society's increasing demand for more natural and benign methods of pest control, and to the desire to reduce governmental regulations and ease the burden on the public. The regulatory steps required to register any pesticide substance are formidable, not only for the Agency but for the applicants, who often are small businesses. The novice registrant often requires extra attention and instruction. EPA believes that both the applicant and the Agency are consuming valuable time, energy, and money to register chemicals that pose such low risk.

II. Implementation

Products registered with EPA which now qualify for exemption from pesticide regulation under this rule, will remain registered until further action is taken by the registrant. The Agency encourages voluntary cancellation of these registrations. Cancellation requests should be mailed to James A. Hollins, Office of Pesticide Programs (7502C) EPA, 401 M St., SW., Washington, DC 20460. The letter should request cancellation under FIFRA section 25(b) and specify the product to be canceled by both name and EPA registration number. Existing stocks may be distributed for 1 year after the date of cancellation. After that date, it will be a violation of FIFRA for the former registrant to sell or distribute stock with an EPA registration number displayed on the label. Products in channels of trade may be sold and used until supplies are exhausted.

Producers of products that are exempted from regulation by this final rule, will not be obligated to comply with the established registration and reporting requirements of FIFRA, section 7 with respect to exempted products. Producers who wish to market exempted products do not need to notify the Agency or obtain confirmation that the product is exempt. Provided the producer complies with all conditions of this rule, product may be distributed. To comply, producers must refer to this rule, the most recently published 4A inerts list, and a copy of the false and misleading labeling requirements contained in 40 CFR 156.10(a)(5)(i) through (viii).

It is important to note that this rule only affects Federal regulation of pesticide products. Pesticide producers of exempt products should contact the pesticide agency in each State in which they wish to market their products, to determine if there are State requirements which need to be met.

III. Public Comment and Agency Response

Fifty-six commenters responded to the proposed rule. Of these, 29 (52%) generally opposed the proposal, and 23 (41%) generally supported it. Fourteen of the 29 commenters who opposed the rule as proposed, expressed support for some form of reduced regulation of low-risk pesticides.

Supporters of the proposal include the "organic" industry, Greenpeace and companies likely to benefit from deregulation of these substances. Those opposed to the proposal include the States' FIFRA Issues Research Evaluation Group (SFIREG); State lead agencies with pesticide enforcement responsibilities in Arizona, California, New Jersey and Vermont; the Armed Forces Pest Management Board; the U.S. Department of Health and Human Services' Center for Disease Control; the National Coalition Against the Misuse of Pesticides (NCAMP); mosquito and vector control agencies; and several members of the regulated pesticide industry.

The supporters of the proposal generally agreed with EPA that regulation of the listed substances is not necessary to prevent unreasonable adverse effects on human health or the environment. Many commented that deregulation would encourage the development and use of "safer" pesticides and that the exemptions would benefit business, especially small business and the organic industry. Many supporters felt that EPA should more fully implement the proposal by greatly expanding the lists of exempted active ingredients and permitted inerts. Approximately 80 additional active ingredients and 50 inerts were proposed for future consideration. The Agency will evaluate each active ingredient and will include those it feels qualify for exemption in its next proposal. The inerts are presently being reviewed for possible inclusion in the next published list of inerts of minimum concern (inerts 4A list).

Among objections to the proposal, the most often repeated concern was that deregulation would result in a proliferation of ineffective products making false or misleading claims about product performance and/or safety and that the public would pay the price for inadequate oversight by EPA and the Federal Trade Commission (FTC). SFIREG, the State Lead Agencies, and others expressed concern that deregulation would create a number of serious enforcement problems for States. Other significant concerns included the fear that deregulation of arthropod repellents would adversely affect public health; that certain substances proposed for exemption or included on the list of permitted inerts were not "safe" or could cause adverse effects when used in combination or in ways not anticipated by EPA; that EPA's factors and process for determining which substances to exempt or its process for revoking exemptions in the face of reported adverse effects were inadequate; and that deregulation of these substances would give an unfair competitive advantage to manufacturers of exempt pesticide products. Although more than 50 percent of the commenters opposed the proposed exemptions, nearly half (14 of 29) of the opponents expressed support for some form of reduced regulation of low-risk pesticides.

In response to concerns regarding labeling and enforcement, the Agency has changed the rule to provide specific label requirements as indicated in the following section of this rule. If these conditions are not met by products being distributed, then the conditions for exemption from regulation have not been met, and the Agency retains authority to bring enforcement action under FIFRA.

It is significant to point out, that since one condition for exemption is that the product label cannot make false or misleading claims, it is important for formulators and distributors of unregulated products to ensure that they are not making any unsupported efficacy claims for any pest, particularly for those which may be of a possible public health concern.

The final rule clearly and concisely states which conditions manufacturers must meet to obtain exempted status for certain low-risk pesticides. States need only review whether a product meets those conditions to determine exempt status. The Agency is convinced that the deregulation of low risk products is wise. Exempted products should not require significant monitoring and it will not be difficult for States to identify properly exempted products. Those States which do not allow exemptions from State registration are free to continue to enforce their State provisions.

Many commenters expressed concern that deregulation of some pesticides would give a competitive advantage to manufacturers of deregulated products. EPA's regulatory authority under FIFRA is primarily a licensing authority and every decision has some potential effect on competitors. The Agency does not consider potential impact on competitors to be a valid and sufficient reason to preclude an exemption under FIFRA.

While no one submitted compelling evidence that the listed substances should not be exempted from regulation, several people took issue with the way EPA approached exempting pesticides in general and expressed concerns about the specific factors the Agency used to arrive at its selections. The Agency agrees that any one factor, taken alone, is insufficient to make a minimum risk determination. Admittedly, many chemicals that are available to the public on a daily basis, pose some level of risk, and several higher-risk pesticides were once listed on FDA's Generally Recognized As Safe (GRAS) list. It is important to stress that these factors were not applied exclusive of one another, but rather in conjunction with all of the others. Moreover, the factors themselves are not meant to be absolute criteria and certainly some factors are unsupported for some of the substances. But, taken as a whole, EPA believes that the factors applied to each of the substances indicate that the substances will not pose a risk that warrants regulation under FIFRA. EPA researched each substance prior to proposing it for exemption. A general literature search was performed in addition to an in-house search of the Agency's own data base.

In its proposal, the Agency invited the public to add to the list of factors or submit information that might be appropriate to consider in determining whether a substance should be exempted from FIFRA regulation. No information was submitted by commenters about the proposed pesticides to support their comments. Any person may submit evidence that refutes the Agency's conclusions that any exempted pesticide should no longer be exempted because of newly uncovered risk. EPA will consider such information in determining whether the exemption should be continued.

Commenters indicated that EPA should adopt a position similar to FDA's that allows cosmetics manufacturers to use the generic term "fragrance" on their labels. The requirement to list all ingredients on the exempted product label presents problems, since fragrances are often purchased from independent vendors, and their formulations are proprietary. Fragrances can be skin sensitizers or have other adverse effects, particularly at higher concentrations. The Agency's evaluation of fragrances is concentration dependent; that is, it is based upon the amount of fragrance that will be used in

a given formulation. What is acceptable at 0.1% concentration, may not be acceptable at 2%. In deregulating, the Agency would not be able to regulate the concentration of these fragrances in a formulation. The Agency understands the proprietary nature of many fragrance formulations, and we have evaluated ways of including fragrances on inerts list 4A. The Agency has found no workable solutions for this issue. The rule has not been changed.

All public comments and more detailed responses to specific issues, are available in the public docket.

IV. Revisions Made to the Rule in Response to Comments

The Agency has made the following changes from the proposed rule in response to the comments it received.

1. The ingredients cinnamon, citronella, garlic, and sesame have been revised to include their oils.

2. The requirement that the product label must indicate the percentage (by weight) of active ingredient(s) contained in the product has been added.

3. The requirement, "The substance or product must not bear claims either to control or mitigate microorganisms that pose a threat to human health or carriers of such microorganisms", has been amended to read, "The substance or product must not bear claims either to control or mitigate microorganisms that pose a threat to human health, including, but not limited to disease transmitting bacteria or viruses, or claims to control insects or rodents carrying specific diseases, including, but not limited to ticks that carry Lyme disease."

4. The requirement that products must not include any false and misleading labeling statements, including those listed in 40 CFR 156.10(a)(5)(i) - (viii) has been added.

V. Public Docket

EPA has established a public docket for this rulemaking (OPP–300350 and 300350A). All comments received in response to the proposed and final rule are available in the public docket. A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m, Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Please address all written inquiries to the Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

VI. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), it has been determined that this rule is not "significant" and is therefore not subject to review by the Office of Management and Budget.

B. Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub.L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 et seq.). EPA has determined that this rule will have a positive economic impact on a substantial number of small businesses which will no longer be subject to FIFRA regulation, thereby reducing their costs and regulatory burdens.

Accordingly, I certify that this rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This rule contains no information collection requirements. Therefore, the Paperwork Reduction Act is not applicable.

D. SAP, USDA and Congressional Review

In accordance with FIFRA section 25, the FIFRA Scientific Advisory Panel (SAP) has waived review of this rule. A copy of the rule has been forwarded to the U.S. Department of Agriculture before publication. Copies of the final rule also were forwarded to the Committee of Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate.

List of Subjects in 40 CFR Part 152

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: February 28, 1996.

Carol M. Browner,

Administrator.

Therefore, 40 CFR chapter I, part 152 is amended as follows:

PART 152—[AMENDED]

1. The authority citation for part 152 continues to read as follows:

Authority: 7 U.S.C. 136–136y.

2. In § 152.25 by adding a new paragraph (g) to read as follows:

§ 152.25 Exemptions for pesticides of a character not requiring FIFRA regulation.

* * * * *

(g) *Minimum risk pesticides*— (1) *Exempted products.* Products containing the following active ingredients are exempt from the requirements of FIFRA, alone or in combination with other substances listed in this paragraph, provided that all of the criteria of this section are met.

Castor oil (U.S.P. or equivalent)
Cedar oil
Cinnamon and cinnamon oil
Citric acid
Citronella and Citronella oil
Cloves and clove oil
Corn gluten meal
Corn oil
Cottonseed oil
Dried Blood
Eugenol
Garlic and garlic oil
Geraniol
Geranium oil
Lauryl sulfate
Lemongrass oil
Linseed oil
Malic acid
Mint and mint oil
Peppermint and peppermint oil
2-Phenethyl propionate (2-phenylethyl propionate)
Potassium sorbate
Putrescent whole egg solids
Rosemary and rosemary oil
Sesame (includes ground sesame plant) and sesame oil
Sodium chloride (common salt)
Sodium lauryl sulfate
Soybean oil
Thyme and thyme oil
White pepper
Zinc metal strips (consisting solely of zinc metal and impurities)

(2) *Permitted inerts.* A pesticide product exempt under paragraph (g)(1) of this section may only include inert ingredients listed in the most current List 4A. This list is updated periodically and is published in the **Federal Register**. The most current list may be obtained by writing to Registration Support Branch (4A Inerts List) Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460.

(3) *Other conditions of exemption.* All of the following conditions must be met for products to be exempted under this section:

(i) Each product containing the substance must bear a label identifying the name and percentage (by weight) of each active ingredient and the name of each inert ingredient.

(ii) The product must not bear claims either to control or mitigate microorganisms that pose a threat to human health, including but not limited to disease transmitting bacteria or viruses, or claims to control insects or rodents carrying specific diseases, including, but not limited to ticks that carry Lyme disease.

(iii) The product must not include any false and misleading labeling statements, including those listed in 40 CFR 156.10(a)(5)(i) through (viii).

[FR Doc. 96–5240 Filed 3–5–96; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 64

[FCC 96–34]

Inmate Calling Services—Prison Payphones

AGENCY: Federal Communications Commission.

ACTION: Declaratory ruling.

SUMMARY: On January 30, 1996, the Commission adopted a Declaratory Ruling that inmate-only payphone instruments are customer premises equipment (CPE) that must be provided on an unregulated basis. The Commission additionally denied petitioner's request that certain inmate-only services be considered enhanced services. The intended effect is to ensure that the inmate-only payphone market remains competitive.

EFFECTIVE DATE: March 6, 1996.

FOR FURTHER INFORMATION CONTACT: Alan A. Thomas, Attorney, Network Services Division, Common Carrier Bureau, (202) 418–2338.

SUPPLEMENTARY INFORMATION: This report summarizes the Commission's Declaratory Ruling in the matter of Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force—Prison Payphones, (RM–8181, FCC 96–34, adopted January 30, 1996 and released February 20, 1996). The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., N.W., Washington D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 2100 M St., N.W., Suite 140, Washington, D.C. 20037, phone (202) 857–3800.

Analysis of Proceeding

1. Petitioner requested the Commission to rule that LECs must provide inmate-only payphone instruments as detariffed CPE and must offer certain prison inmate payphone services as unregulated enhanced services. Petitioner argued that inmate-only payphone service is distinguishable from pay telephone service offered to the "transient mobile public," as defined in Tonka Tools, Inc. 58 RR 2d 903, 50 FR 24694 (June 12, 1985) and therefore not entitled to special treatment pursuant to Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II), 77 FCC 2d 384 (1980), 45 FR 24694 (May 13, 1980).

2. In this Declaratory Ruling, the Commission concluded that the decision in Tonka resulted from a concern that payphones should be available to the "transient mobile" or general public. Those concerns, the Commission concluded, are not applicable in the context of prison payphones. Thus the Commission agreed with Petitioner that inmate-only payphones are to be considered CPE for regulatory purposes.

3. Additionally, the Commission rejected Petitioner's argument that inmate phone services such as call monitoring and blocking, and restrictions on call timing and duration are enhanced services under the Commission's Computer II decisions. The Commission concluded that these services may be characterized as adjuncts to basic service under existing precedent. The Commission also concluded that the record provided insufficient detail to support a ruling that inmate Personal Identification Numbers (PINs) are an enhanced service.

4. Ordering Clauses. *It is ordered,* pursuant to Section 4 of the Communications Act as amended, 47 U.S.C. §§ 154, that the petition for declaratory ruling filed by the Inmate Calling Services Providers Task Force of the American Public Communication Council is Granted to the extent discussed and otherwise IS Denied.

5. *It is further ordered* that carriers shall notify their customers in writing for prison payphone service of the change in status of inmate-only customer premises equipment from a regulated activity to a nonregulated activity by July 1, 1996. Accordingly, by September 2, 1996, the LECs must reclassify any inmate-only pay telephone investment recorded in Account 32.2351, Public telephone terminal equipment, along with the associated depreciation and tax reserves and any related expenses, from a regulated activity to nonregulated activity pursuant to our Part 64 rules. The LECs shall also establish whatever Part 64 cost pools are needed to accomplish this reclassification and shall file revisions to their Cost Allocation Manuals reflecting this reclassification within sixty (60) days prior to the effective date of the change. In addition, carriers must make appropriate tariff changes pursuant to Part 61 of the Commission's Rules.

6. List of Subjects in 47 CFR Parts 61 and 64

Inmate-only payphone equipment, Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–5187 Filed 3–5–96; 8:45 am]
BILLING CODE 6712–01–P

47 CFR Part 64

[CC Docket No. 91–115; FCC 96–38]

Tariffing Requirements for Billing Name and Address

AGENCY: Federal Communications Commission.

ACTION: Final Rule; petition for reconsideration.

SUMMARY: On February 1, 1996, the Commission adopted a Third Order on Reconsideration in this proceeding denying two petitions for reconsideration filed by US West Communications, Inc. (US West). In its first petition, US West sought reconsideration of the Commission's denial of its petition for stay of the Order requiring LECs to file tariffs governing the provision of billing name and address (BNA) information. The Commission denied this petition as repetitious, because the Commission had addressed all of US West's arguments in a previous Order. In the other petition, US West sought reconsideration of the prohibition against using BNA information for marketing purposes, which the Commission adopted in 1993 to protect end user privacy when local exchange carriers provide BNA information under tariff. US West also claimed that the previous Orders in this proceeding did not explain whether the BNA rules applied to all BNA information, or only to BNA information associated with calling card, third party, and collect calls. The Commission denied this petition to the extent it sought to eliminate the prohibition against using BNA information for marketing purposes, and granted it to the extent it

sought clarification of the application of the BNA requirements.

EFFECTIVE DATE: April 5, 1996.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, Tariff Division, Common Carrier Bureau, (202) 418–1530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Order on Reconsideration adopted February 1, 1996, and released February 9, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street NW., Washington, DC 20037.

Regulatory Flexibility Analysis

The Commission has determined that Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to these rules because they do not have a significant economic impact on a substantial number of small entities. The definition of a "small entity" in Section 3 of the Small Business Act excludes any business that is dominant in its field of operation. Although some of the local exchange carriers that will be affected are very small, local exchange carriers do not qualify as small entities because each of them has a monopoly on ubiquitous access to the subscribers in their service area. The Commission has also found all exchange carriers to be dominant in its competitive carrier proceeding. *See* 85 FCC 2d 1, 23–24 (1980). To the extent that small telephone companies will be affected by these rules, the Commission hereby certifies that these rules will not have a significant effect on a substantial number of "small entities."

Summary of Report and Order

In the Second Report and Order in this Docket, 58 FR 36143, July 6, 1993, the Commission required local exchange carriers (LECs) to provide their customers' BNA information to interexchange carriers and other telecommunications service providers on a common carrier basis. Because widespread disclosure of BNA information could conflict with customers' reasonable expectations of privacy, the Commission also limited BNA disclosure, thus safeguarding these expectations. In particular, the Commission prohibited parties obtaining BNA information from using it for marketing purposes. In the Second Order on Reconsideration in this docket, 58 FR 65669, December 16, 1993, the Commission revised some of its privacy protections, but again expressly forbade parties from using BNA information for marketing purposes.

In its petitions for reconsideration, US West argued that the record did not adequately demonstrate the need for any privacy protections, that adopting these rules violated US West's due process rights, that these rules were inconsistent with rules we adopted in a different proceeding, and that the restriction against marketing was an unconstitutional restriction on BNA purchasers' freedom of speech. The Commission found that none of these arguments warranted revision of the BNA privacy protections.

US West also claimed that the previous Orders in this proceeding did not explain whether the rules applied to all BNA information, or only to BNA information associated with calling card, third party, and collect calls. The Commission explained which of its rules apply to all BNA information, and which apply only to BNA information associated with calling card, third party, and collect calls. The Commission also revised Section 64.1201(e)(3) of its rules, to make its application more clear.

Ordering Clauses

Accordingly, *It is ordered*, Pursuant to Section 1:429(i) of the Commission's Rules, 47 CFR § 1.429(i), that the petition for reconsideration of the First BNA Reconsideration Order filed by US West Communications, Inc. *is dismissed as repetitious.*

It is further ordered, Pursuant to Section 1.429(i) of the Commission's Rules, 47 CFR § 1.429(i), that the petition for reconsideration of the Second BNA Reconsideration Order filed by US West Communications, Inc. *is granted* to the extent indicated above, and otherwise *is denied.*

It is further ordered, That the policies, rules and requirements set forth herein *are adopted.*

List of Subjects in 47 CFR Part 64

Communications common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Title 47 of the CFR, Part 64, is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Rule Changes

1. The authority citation for Part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted.

2. Section 64.1201(e)(3) is revised to read as follows:

§ 64.1201 Restrictions on billing name and address disclosure.

* * * * *

(e) * * *

(3) No local exchange carrier shall disclose the billing name and address information associated with any calling card call made by any subscriber who has affirmatively withheld consent for disclosure of BNA information, or for any third party or collect call charged to any subscriber who has affirmatively withheld consent for disclosure of BNA information.

[FR Doc. 96–5189 Filed 3–5–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 87–433; RM–5994 and RM–6181]

Radio Broadcasting Services; Punxsutawney, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Chief, Policy and Rules Division denied the petition for reconsideration, filed by Renda Radio, Inc., licensee of Station WPXZ-FM, Punxsutawney, Pennsylvania, of the letter decision by the Chief, Allocations Branch, to return as procedurally defective Renda's petition for rule making. With this action, the proceeding is terminated.

EFFECTIVE DATE: March 6, 1996.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, MM Docket No. 87–433, adopted February 16, 1996 and released February 29, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–5191 Filed 3–5–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 89–594, RM–7142, RM–7318]

Radio Broadcasting Services; Harrisburg and Albemarle, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Chief, Policy and Rules Division denied the petition for reconsideration, filed by Piedmont Crescent Communications, Inc., of the *Report and Order* in this proceeding, 58 FR 1650, published January 15, 1992. The *Report and Order* granted RM–7142 to allot Channel 224A to Harrisburg and partially denied another proposal, treated as a counterproposal and filed by Piedmont, to substitute Channel 264A for Channel 265A at Albemarle, North Carolina, to reallot Channel 264A to Harrisburg, North Carolina, and to modify the license of Albemarle Station WABZ-FM accordingly, and also to allot Channel 224A to Harrisburg. With this action, the proceeding is terminated.

EFFECTIVE DATE: March 6, 1996.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, MM Docket No. 89–594, adopted February 16, 1996 and released February 29, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–5190 Filed 3–5–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[FRA Docket No. RSGC–2, Notice No. 10]

RIN 2130–AA80

Locomotive Visibility; Minimum Standards for Auxiliary Lights

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA amends the locomotive safety standards to increase train visibility. This action requires that certain locomotives be equipped with auxiliary lights to enable motorists, railroad employees and pedestrians to recognize approaching trains at a greater distance. The rule requires that locomotives operated over public highway-rail crossings at greater speeds than 20 miles per hour be equipped with auxiliary lights.

EFFECTIVE DATE: May 6, 1996.

ADDRESSES: Petitions for reconsideration should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8201, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Gordon Davids, Bridge Engineer, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: 202–366–0507); Grady Cothen, Jr., Deputy Associate Administrator for Safety Standards, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: 202–366–0897); or Kyle M. Mulhall, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: 202–366–0635).

SUPPLEMENTARY INFORMATION: On August 28, 1995, FRA published a notice of proposed rulemaking (NPRM) that would change headlight regulations for locomotives by requiring two auxiliary lights that would be placed on the front of the locomotive to form a triangle with the headlight. 60 FR 44457. Publication of this final rule was required by section 14 of the Amtrak Authorization and Development Act (Pub. L. 102–533). This legislation added a new subsection (u) to § 202 of the Federal Railroad Safety Act of 1970 (FRSA) [45 U.S.C. 431(u)], to address locomotive visibility. On July 5, 1994, § 202(u) of the FRSA, together with all the other general and permanent Federal railroad safety laws, was simultaneously repealed, revised and reenacted without substantive change, and recodified as positive law at 49 U.S.C. 20143. As recodified, the section now reads as follows:

Locomotive Visibility

(a) *Definition.*—In this section, "locomotive visibility" means the enhancement of day and night visibility of the front end locomotive of a train, considering in particular the visibility and perspective of a driver of a motor vehicle at a grade crossing.

(b) *Interim Regulations.*—Not later than December 31, 1992, the Secretary of Transportation shall prescribe temporary regulations identifying ditch, crossing, strobe, and oscillating lights as temporary locomotive visibility measures and authorizing and encouraging the installation and use of those lights. Subchapter II of chapter 5 of title 5 does not apply to a temporary regulation or to an amendment to a temporary regulation.

(c) *Review of Regulations.*—The Secretary shall review the Secretary's regulations on locomotive visibility. Not later than December 31, 1993, the Secretary shall complete the current research of the Department of Transportation on locomotive visibility. In conducting the review, the Secretary shall collect relevant information from operational experience by rail carriers using enhanced visibility measures.

(d) *Regulatory Proceeding.*—Not later than June 30, 1994, the Secretary shall begin a regulatory proceeding to prescribe final regulations requiring substantially enhanced locomotive visibility measures. In the proceeding, the Secretary shall consider at least—

(1) Revisions to the existing locomotive headlight standards, including standards for placement and intensity;

(2) Requiring the use of reflective material to enhance locomotive visibility;

(3) Requiring the use of additional alerting lights, including ditch, crossing, strobe, and oscillating lights;

(4) Requiring the use of auxiliary lights to enhance locomotive visibility when viewed from the side;

(5) The effect of an enhanced visibility measure on the vision, health, and safety of train crew members; and

(6) Separate standards for self-propelled, push-pull, and multiple unit passenger operations without a dedicated head end locomotive.

(e) *Final Regulations.*—(1) Not later than June 30, 1995, the Secretary shall prescribe final regulations requiring enhanced locomotive visibility measures. The Secretary shall require that not later than December 31, 1997,

a locomotive not excluded from the regulations be equipped with temporary visibility measures under subsection (b) of this section or the visibility measures the final regulations require.

(2) In prescribing regulations under paragraph (1) of this subsection, the Secretary may exclude a category of trains or rail operations from a specific visibility requirement if the Secretary decides the exclusion is in the public interest and is consistent with rail safety, including grade-crossing safety.

(3) A locomotive equipped with temporary visibility measures prescribed under subsection (b) of this section when final regulations are prescribed under paragraph (1) of this subsection is deemed to be complying with the final regulations for 4 years after the final regulations are prescribed.

After publication of the NPRM, FRA held a public hearing at the request of the Association of American Railroads (AAR) and The American Short Line Railroad Association (ASLRA). This hearing was held in Washington, on November 28, 1995. FRA also extended the comment period on the NPRM. FRA now responds to the comments concerning this rulemaking.

FRA Study of Auxiliary Lights

FRA's Office of Research and Development, through the Volpe National Transportation Systems Center (VNTSC), has studied the impact of auxiliary lights as alerting devices to improve locomotive visibility. A copy of the final report was placed in the docket of this rulemaking.

As part of this study, FRA initially evaluated various lighting systems, paint schemes, and reflective materials. Four of the alerting light systems were selected for further study: standard locomotive headlights and crossing, ditch, and strobe lights. FRA evaluated the lights for compliance with FRA's interim advisory standards and for cost and reliability and conducted field tests on their ability to increase an approaching train's visibility.

The results were that the addition of auxiliary lights significantly increased train visibility compared to the use of standard headlights alone. Results indicated a 10 to 20 percent increase in the distance an approaching train can be recognized. Tests also indicated that motorists are better able to predict the time it takes for an approaching train to enter a crossing. Limited data collected from three railroads participating in the study suggested that accident rates drop significantly when auxiliary lights are used.

The AAR dismisses FRA's findings on two grounds; one, that the field tests did not adequately reproduce real conditions at highway-rail grade crossings; and, two, that FRA failed to separate locomotives that were and were not equipped with auxiliary lights when it determined there was a drop in the accident rate after auxiliary lights were installed on some locomotives.

FRA replies that the field tests were not intended to simulate real conditions at highway-rail grade crossings. They were intended to compare the responses of a selected group of subjects to the approach of trains with several configurations of auxiliary lights, and a control sample with no auxiliary lights. Real conditions at highway-rail grade crossings involve so many variables that testing for all possible conditions would not have been possible within the time and resources available for this project. The tests were successful in measuring the subjects'' response to the carefully selected parameters.

The in-service accident data was requested from the participating railroads by VNTSC after the periods for which the data had been accumulated. FRA used data that was available at the time, and the data had not been collected with this rulemaking in mind. Therefore, the data was not available for an ideal detailed statistical analysis. However, the trend favoring the accident-reduction potential of auxiliary lights was obvious throughout the analysis that was performed and reported by VNTSC.

Section Analysis

1. Three-Light Triangle: § 229.125(d)

It continues to be FRA's belief that a uniform light configuration on locomotives will help the public become familiar with and quickly recognize the appearance of an approaching locomotive. A configuration of three front-mounted lights is the most common system adopted by the railroad industry since the issuance of the first interim rule in 1993. Those three lights form a triangle with one major dimension (base or vertical axis) of at least 60 inches.

In its post-hearing comments, AAR objects to the standard measures used for placing auxiliary lights. AAR argues that 236 Canadian National locomotives, which operate over the United States border with Canada, would have to be refitted to come into compliance since their auxiliary lights are not arranged as required by this rule. As an AAR spokesman at the public hearing states, however, "[w]e could understand FRA is looking toward standardization of some type over time, and we support that."

FRA is indeed concerned with giving a consistent warning so motorists are not confused. In addition, the Canadian National filed comments with FRA addressing the NPRM and did not raise this objection. FRA did, however, consider AAR's latest comment.

The normal human eye can discern two objects as separate when the objects are spaced to form a visual angle of approximately one-half of one degree. When the lights are seen as separate, the observer can better estimate the speed of an approaching train because as the locomotive moves closer the lights will appear to move further apart. It is the goal of this rule to give a uniform warning. If the lights are arranged in a standard position, then motorists at grade crossings will become accustomed to judging the train's rate of approach. If the distance between the lights vary, from locomotive to locomotive, then the motorists will not be receiving a consistent warning. The Canadian National locomotives have a maximum axis of as little as 44.5 inches. The smaller axis reduces the distance at which the lights can be discerned as separate, and would give a false visual indication of a greater than actual distance from the train.

It is also unclear under what circumstances these Canadian National locomotives will operate in this country, or if all of these locomotives are intended to be used in the United States. Given the fact that all carriers have been aware of the proposed dimensions for several years, it is difficult to understand why locomotives in use in this country would have been fitted with auxiliary lights which were not in compliance with the interim standards or the NPRM.

Given the prevalence and practicality of the three-light triangle system, the desire for a uniform appearance of an approaching locomotive, and the physical advantages of this system, FRA believes it to be the best lighting system to accomplish the purpose of this rule.

The dimensions for the three-light triangle are the same as those specified in the interim rule as revised on May 13, 1994. Those dimensions were prescribed as the result of comments made on the first interim rule of February 3, 1993. They are functionally the same, but the second interim rule permitted more flexibility in light placement on locomotives to accommodate various locomotive configurations and placement of other vital appliances. FRA will, however, permit the light arrangement on the Canadian National locomotives to be grandfathered. Any locomotive equipped before May 30, 1994, with a three-auxiliary-light arrangement with one axis at least 44 inches, will be considered in compliance with this rule until such time as the locomotive is rebuilt or retired. This liberalization of the grandfathering provision will validate early investment in visibility measures that increase safety.

The 36-inch minimum vertical axis requirement aids the observer's sight distance. The maximum vertical curve recommended by the American Railway Engineering Association for main track has a rate of change of grade of 0.2 percent per 100 feet. On this vertical curve, a light three feet above the track will be visible to an observer at a distance of 1,095 feet, provided the observer's eyes are three feet above the track. A reduction in height of one foot, of either the observer or the light, reduces the sight distance by approximately 100 feet.

One comment to the first interim rule requested a lower height above the rail for lights on cab control cars in suburban passenger service. FRA believes that an inflexible requirement to place lights on cab control cars or other multiple unit locomotives as defined in this regulation at a height of 36 inches might lead to a reduction in the integrity of the car body structure at this critical location. Such reduced structural integrity could increase the risk of injury to the occupants of the equipment in the event of an accident. The final rule would therefore permit auxiliary lights to be mounted at heights down to 24 inches above the rail on equipment that would not readily accommodate a higher placement.

However, the lower, 24-inch minimum height for multiple unit locomotives and cab control cars is not suitable for general railroad service, owing to the reduced visibility on vertical curves, and susceptibility to damage from snow and foreign material away from commuter lines. FRA therefore retains the minimum height of 36 inches for auxiliary lights for all other applications.

Horizontal orientation of the auxiliary lights should also be reasonably uniform in order to ensure recognition. FRA has selected the "crossing light" configuration (focused within plus or minus 15 degrees of a line parallel to the centerline of the locomotive) in lieu of the extreme "ditch light" configuration as described in the grandfathering rule (turned outward up to 45 degrees). In the extreme ditch light configuration, there appears to be a risk that the auxiliary lights might affect the night vision of motorists on parallel roadways. Several parties commented that this was a legitimate fear, although no direct evidence was presented.

FRA had also requested comment as to whether a dimmer feature should be required for auxiliary lights similar to the dimmer used on headlights. The comments received on this point indicated that the dimmer feature would be unnecessary. FRA can identify no compelling safety need for a dimmer on auxiliary lights. The one argument made for dimmers was that the device might prevent blinding motorists. As noted above, FRA believes that aligning the lights as required in the final rule should reduce this possibility. Several parties also argued that requiring dimmers would significantly increase installation cost per locomotive.

The interim rule and the proposed rule provided a minimum intensity requirement of 200,000 candela for each auxiliary light. The criterion assumes steady-state operation. Field observations suggest that current alerting light pulsing systems provide more than adequate effective candela; however, research conducted to date evaluated only strobe lights for effective intensity in a pulsing or flashing mode. No comments were received suggesting a separate effective intensity requirement be stated in the final rule for systems that operate pulsing. At this time, FRA can identify no compelling safety reason to set a different candela intensity for pulsing auxiliary lights.

FRA's final rule permits the use of either the steady-state or pulsing auxiliary lights, drawing permissible features from both the "ditch lights" and "crossing lights" as described in the interim requirements.

It should be noted that nomenclature for auxiliary lights is not standard. For example, most non-pulsing installations referred to by railroads as "ditch lights" have, in practice, been aligned within 15 degrees of centerline and would therefore meet FRA's requirements for permanent auxiliary lights. This rule does not elect a single option from among the configurations that railroads continue to evaluate. Rather, it proposes a minimum standardization of placement and alignment of the two auxiliary lights that, with the locomotive headlight, form the distinct triangle.

Speed Limits

Much comment has been received concerning FRA's low speed exclusion from the auxiliary lights requirement. FRA proposed this exception for two reasons; one, accidents at lower speeds are significantly less likely to cause injuries or fatalities (for example, on an annual average, 92 percent of accident fatalities occur at speeds greater than 20 miles per hour); and two, FRA believed the cost of equipping these locomotives, which are, on average, nearer the end of their useful life, would not produce the justifying benefits, given the shorter time for recovering the costs of upgrading.

FRA originally considered requiring the use of auxiliary lights only during the 20 seconds before a locomotive entered a public highway-rail grade crossing. It was quickly concluded, however, that it would be too difficult for a train operator to tell whether or not he was 20 seconds approach time from the crossing. FRA concluded, therefore, that the interest of safety would be best served if all locomotives required by this rule to be equipped with auxiliary lights were required to use those lights whenever the locomotive is moving. Only locomotives which never exceeded 20 miles per hour would be allowed to operate without ever using auxiliary lights.

AAR, ASLRA, and parties representing tourist railroads requested an increase in this speed limit. These parties asked that FRA raise the speed exclusion to 30 miles per hour. FRA has considered this option and also the option of raising the limit to 25 miles per hour. After much consideration, FRA has concluded that the projected reduction in accidents that would occur at speeds greater than 20 miles per hour if locomotives at those speeds were equipped with auxiliary lights significantly outweighs any cost savings from not having to equip the affected class of locomotives.

FRA also believes that having large numbers of unequipped locomotives would confuse the public. Many unequipped locomotives would be able to operate on freight main lines if the speed were significantly raised. Motorists crossing such lines will likely expect to see the light triangle. This might be particularly true in rural areas where many crossings are only passively signed. FRA's analysis of costs and benefits, discussed further below, confirmed the positive contribution that auxiliary lights can make to grade crossing safety, even at speeds only slightly above 20 miles per hour. FRA therefore will retain the 20 miles per hour speed exclusion.

FRA is required to issue a rule that would require that by December 31, 1997, locomotives be equipped with a form of auxiliary lights. In order to develop additional information that may later provide a basis for distinguishing between steady-burning and alternately-pulsing arrangements, AAR has indicated that they would conduct a

further study under which two or more major railroads would equip portions of their fleets used in the same service with steady and pulsing lights. In order to eliminate transient effects, the study would follow the two matched fleets for a period of approximately three years. The progress of this study will be tracked on an annual basis, and at the conclusion of the study, FRA will review the data to determine if a statistically significant difference can be discerned between the effectiveness of steady and flashing lights. The results of the study should provide a factual basis for determining whether further refinement of the rule is appropriate and, if so, the degree of urgency associated with any such change.

2. Flash Rates: § 229.125(e)

Subsection (e) provides that auxiliary lights may be illumined continuously or may be arranged to flash on approach to a highway-rail grade crossing. If flashing lights are used, the rate must be not fewer than 40 and not more than 180 per minute, as provided in the second interim rule. FRA has received no negative comments regarding the range of flash rates permitted for locomotive visibility lights in the second interim rule or the NPRM. The rates are constrained by the need for visibility but also the need to avoid a "flicker vertigo" effect on train crew members.

FRA leaves control of flashing lights to the discretion of the railroad. Depending on their operations, some railroads might consider it advisable to interconnect the horn and lighting controls to provide joint activation when approaching a crossing, but that question need not be addressed in a regulation.

3. Operation of Auxiliary Lights: § 229.125(f)

In subsection (f), FRA proposed to require operation of auxiliary lights for a period of at least 20 seconds prior to arrival of the locomotive at the crossing. FRA received comments, however, that estimating the approach time to a crossing is too difficult an assignment to be reliably carried out by the locomotive engineer. FRA agrees that this is an unfair responsibility to place on the train crew. The Final Rule, therefore, requires continuous use of auxiliary lights. Railroads using locomotives with flashing lights shall include in the railroad's operating rules standard procedures for use of this model of auxiliary light.

FRA received several comments from railroads asking allowance for not using auxiliary lights under certain circumstances for the safety of motorists, or railroad employees working in the area, or for certain weather conditions. FRA believes that any exception should be made only in the best interest of safety to avoid grade crossing accidents where there has been a railroad decision not to use the auxiliary lights.

Railroads may wish to extinguish auxiliary lights when the headlight is dimmed under existing operating rules. Rule 5.9 of the General Code of Operating Rules, for instance, requires that the headlight be dimmed at stations and yards where switching is done, when the engine is stopped close behind another engine, when passing another train, and under other specified circumstances.

FRA will allow railroads subject to this rule to except, for a public safety purpose, auxiliary light use at any highway-rail grade crossing so designated in the railroads" operating rules, timetable, or special order. These exceptions will be subject to disapproval by FRA's Associate Administrator for Safety, or one of FRA's Regional Administrators, after investigation and opportunity for response by the railroad, for good cause stated.

FRA believes there will be little burden on the industry from this requirement since it is currently standard practice for railroads to so print such directions for use by train crews. Under existing railroad rules, there are few exceptions, limited primarily to situations where two trains are approaching each other and it is necessary to avoid blinding their respective locomotive engineers.

4. Other Uses of Auxiliary Lights: Proposed § 229.125(g)

FRA's proposed subsection (g) is deleted from the Final Rule. Continuous use of auxiliary lights is now required for any lead locomotive that is equipped with such lights.

5. Defective En Route: § 229.125(g)

FRA's proposed subsection (h) is relettered, and its provisions are now contained at subsection (g).

FRA received comments from several carrier representatives that more flexibility was needed for making auxiliary light repairs. FRA's proposed subsection regarding movement of defective locomotives permitted a lead locomotive with one defective auxiliary light to proceed to a point where repairs could be made. If both auxiliary lights were out, § 229.9 (movement of non-complying locomotives) would apply, which would ordinarily require that the locomotive be switched to a trailing position or be operated at less than 20 miles per hour. It should be noted that the requirement for auxiliary lights applies only to a lead locomotive.

FRA recognizes that light failures should be infrequent, and accidents occurring during a period of failure even more rare. Although each is important, the large number of safety items on a locomotive presents a challenge with respect to appropriate use of an asset that may be valued as high as two million dollars.

FRA's final rule requires that if either of the two auxiliary lights on a lead locomotive is inoperative at an initial terminal, then each inoperative auxiliary light must be fully repaired prior to the train's departure. At any other time, a lead locomotive may continue with one auxiliary light out to the place where the next calendar day inspection is conducted. An en route failure of both lights would require repair at the next location in the direction of movement where repairs of the kind can be made. This movement must be consistent with § 229.9.

6. Exception for Historic Equipment: § 229.125(h)

FRA also received comments on its proposed rule from parties concerned with historic locomotive models that are not steam driven. FRA agrees that requiring these rare locomotives to be equipped with auxiliary lights is unnecessary and would compromise their historic appearance. These locomotives, including inter-urban electric cars, operate at low speeds on limited operations, and generally during daylight hours. Fitting these historic locomotives with auxiliary lights can entail the upgrading of the entire electrical system. This expense seems unnecessary. FRA has been informed that these locomotives were no longer built after the end of 1948. FRA will therefore allow an exception for historic locomotives built before December 31, 1948. This exception does not apply to any locomotive used in regular commuter or inter-city passenger service. This exception does apply to locomotives operated by historic or tourist railroads.

In 1992, FRA reviewed its policy regarding tourist, scenic and excursion railroads that transport passengers on lines separate from the general railroad system of transportation. While in the past FRA has usually limited its exercise of jurisdiction over passenger operations to those on the general system, FRA determined that public safety required a uniform floor of regulation for this growing segment of the railroad marketplace. Only those railroads deemed "insular" were excluded from this exercise of jurisdiction; however, several existing sets of regulations, including Part 229, do not apply to passenger railroads that are not part of the general rail system. Since a major criterion of non-insular status is the presence of a public highway-rail grade crossing, the issue is presented in this proceeding whether these non-general system railroads should be required to equip their locomotives with auxiliary alerting lights.

FRA has determined that any passenger railroad that is not part of the general railroad system of transportation should not be required to comply with this rule. The small number of locomotives, if any, that would fit in this category present little safety risk at grade crossings. These trains tend to operate at lower speeds, carry fewer passengers over grade crossings, and are used predominately during daytime when visibility is better. This locomotive visibility rule already excludes locomotives operated at 20 miles per hour or less. This exclusion renders the rule inapplicable to many non-steam locomotives owned and operated by passenger railroads off the general system.

7. Grandfathering: § 229.133

The interim provisions on auxiliary lights are contained in 49 CFR 229.133. Subsection (c), which makes use of auxiliary lights elective during the period prior to December 31, 1997, would be repealed on that date.

The interim provisions identify four alerting light arrangements that FRA believed would increase locomotive visibility. First, ditch lights, which are composed of two white lights focused within 45 degrees of the longitudinal centerline of the locomotive. Second, strobe lights, which are two white stroboscopic lights that flash at a rate between one pulse every 1.0 to 1.3 seconds. Third, crossing lights, which are two white standard lights that flash at the same rate as the strobes and are focused within 15 degrees of the longitudinal centerline of the locomotive. And the final alerting lights system, an oscillating light, which is composed of one or more white lights that cast a moving beam in circular or elliptical shapes in front of the locomotive. These alerting light systems will be "grandfathered" and considered in temporary compliance with any final rule.

By law, "grandfathered" auxiliary lights installed before the final rule is issued may continue in use for four years from the date the final rule is issued.

During the comment period on the NPRM, FRA was asked to extend the grandfathering period beyond the minimum set by the statute. This request was referred to as "supergrandfathering." These comments concerned oscillating and strobe lights.

FRA did consider the use of oscillating lights and strobe lights for inclusion in the NPRM and final rule in § 229.125(d). Both light systems offer significant advantages but have unique drawbacks. An oscillating light can provide a startling effect when the light rapidly reflects off nearby objects, fog, or snow. However, in general, oscillating lights are costly and difficult to maintain. Oscillating lights have often been used individually, a configuration inconsistent with the triangular signature common in European railroad operators.

Desirable effects can also be achieved with pulsating strobe lights, particularly those lights operated in pairs. However, extensive use of strobe and oscillating-type lights on emergency vehicles has reduced their usefulness as a distinct warning of an approaching train. Further, strobe lights can tend to wash out against a light background and may not compete well for attention in a nighttime environment with a variety of light sources.

Research in support of this proceeding indicates that crossing lights and ditch lights—the auxiliary lights most widely used by U.S. railroads—also appear to perform well under both experimental conditions and in revenue service. Experimental field tests compared the performance of a lone headlight with combinations of a headlight and each of the following:

(i) pulsing "crossing lights" that were aligned straight down the railroad,

(ii) steady burning "ditch lights" that were outwardly aligned at 15 degrees, and

(iii) dual strobe lights mounted on the top of the locomotive.

All three types of auxiliary lights outperformed the lone headlight by significantly increasing the distance a train can be detected and improving an observer's ability to estimate a train's arrival time at the crossing. For detection distance, the crossing light performed best, followed by the ditch and strobe lights. With respect to estimation of time of arrival, the crossing lights were judged to result in the smallest estimation errors for actual arrival time intervals between 7 and 22 seconds. However, the ditch lights clearly aided estimation of arrival, as well.[1]

The Volpe Center gathered limited data from Norfolk Southern, Conrail, and CalTrans (California) comparing accident experience of locomotives equipped with crossing lights to locomotives equipped with a headlight alone. These data suggest that the use of crossing lights may result in a greater than 50- percent reduction in accident rates. Although these trials lasted from only nine to twenty-four months, and some of the accident reduction may have resulted from a "novelty effect" (an initial impact that wanes as risk-taking motorists become accustomed to the new lights), there is no reason to believe that there will not be substantial and continuing benefits from use of auxiliary lights.

All of the service applications examined by the Volpe Center involved pulsing auxiliary lights, and the experimental field tests potentially relevant to this issue involved a confounding variable (angle of alignment). Accordingly, no empirically-based comparisons can be made at this time between lights that pulse (alternately flash) on approach to a crossing and those that burn steadily.

FRA agrees with those parties who argued that evidence that crossing lights are superior is not, however, extensive. FRA also recognizes that it has been the agency's policy to encourage early installation of auxiliary lights. Many carriers made just such good faith investments in safety. FRA therefore will permit "supergrandfathering" for certain light arrangements. The final rule will consider oscillating lights, installed in newly-acquired equipment ordered prior to January 1, 1996, as permanently grandfathered. Use of these lights is concentrated in low speed and commuter operations over territories where an oscillating pattern should provide significant benefits. Strobe lights will be permitted on a locomotive until the locomotive is retired or rebuilt. Strobe lights will be permanently grandfathered on any locomotive that is limited to operating at speeds no greater than 40 miles per hour. FRA believes this approach best validates early

[1] In the field tests, observers wore headphones to mask noise from the oncoming locomotive. FRA has conducted separate analyses that indicate locomotive horns provide a very powerful (though not always sufficient) warning to motorists that the train is present and its arrival at the crossing is imminent. FRA recognizes that some overlap may exist between the two warning systems; however, to the extent this overlap may be beneficial in modifying risky behavior, its potential should be exploited. The actual service experience tends to confirm the possibility that such an effect may exist.

investment in safety, while encouraging uniform light configurations.

FRA notes that application of strobe or oscillating lights, as attention-getting supplements to the triangular pattern of auxiliary lights made standard by this rule, can have further beneficial effects on safety. Nothing in this final rule should be construed to discourage use of such systems as supplements to the triangle pattern, either through retention of existing lights or new installations.

Related Issues

Reflective Materials

The enabling legislation requires that the Secretary consider the use of reflective materials to enhance locomotive visibility. Research has shown that the frontal visibility of a locomotive displaying a headlight is not affected by reflective material or distinctive colors. The headlight is visible at a far greater distance than any light reflected from the front of the locomotive.

Analysis of the 4,240 highway-rail grade crossing accidents reported to FRA in 1993 shows that the lead locomotive of a train struck the motor vehicle in 3,171 of the accidents. The motor vehicle struck the lead locomotive in 664 accidents. In the remaining 405 accidents, the motor vehicle struck the train at a point behind the lead locomotive.

This information suggests that enhancing the visibility of the front of the train could affect up to 90 percent of crossing accidents. The effect of increasing the visibility of the side of the train does not have as clearly defined a potential to reduce accidents. Nevertheless, FRA continues to conduct research, including analysis of recently designed retro-reflective materials and evaluation of the accident experience of car fleets equipped with retro-reflective material. FRA is required by other legislation to consider the use of retro-reflective materials on railroad cars as well as locomotives, and will address the issue in a separate proceeding. See 49 U.S.C. 20148, Pub. L. 103–440, § 212 (Nov. 2, 1994). As soon as sufficient information becomes available to support a decision on whether to place reflective material on cars and locomotives, FRA will act accordingly.

Applicability: Steam Locomotives

This rule amends Part 229 of title 49, Code of Federal Regulations, which applies, in general, to railroads in the general system and only to non-steam locomotives. FRA believes that, as a general rule, steam locomotives are used with relatively less frequency or at lower speeds than non-steam locomotives. Equipping steam locomotives with alerting lights would cost more per locomotive because of the need to update generators, and some steam operators have commented that the modification would detract from the historic authenticity of this antique equipment. FRA presently has insufficient specific information indicating that safety would benefit from application of auxiliary lights to steam locomotives.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and is considered "nonsignificant" under Executive Order 12866. It is also considered to be not significant under DOT policies and procedures. See 44 FR 11034.

Although the rule is "nonsignificant," FRA nonetheless has prepared a regulatory evaluation addressing the economic impact of the rule. This regulatory evaluation has been placed in the docket and is available for public inspection and copying during normal business hours in Room 8201, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590. Copies may also be obtained by submitting a written request to the FRA Docket Clerk at the above address.

The evaluation found costs and benefits associated with this rule calculated for a twenty-year period using the seven percent discount rate required by federal regulatory evaluation guidelines.

This rule allows two distinct light system specifications—a pulsing light system and a steady beam light system. Auxiliary light requirements can be met by equipping locomotives with the lower cost steady beam lights. However, realistically, some locomotives will have steady beam lights installed and others will have pulsing lights installed. Information available to FRA suggests that at least 8,327 locomotives are currently equipped with auxiliary lights complying with the rule. About 52.84 percent of these locomotives have pulsing lights. The remainder (47.16 percent) have steady beam lights. Small operators involved mainly in shortline service may choose to equip their affected locomotive fleet with the less expensive steady beam lights. Assuming locomotives which operate at speeds below 30 m.p.h. are equipped with steady beam lights and all others continue to be equipped in the current proportions, we expect twenty-year costs to total about $83 million. This includes installation and maintenance costs which the railroad industry would not incur in the absence of this rule.

Although specifications for pulsing and steady beam lights differ, data is not available to establish that one light system is more effective than the other. This analysis assumes both are equally effective than the other. For total benefits or the auxiliary lights to justify incurring $83 million in costs, use of the lights must prevent an average of about nine accidents annually. FRA estimates that the use of auxiliary lights will prevent at least 3,300 grade crossing accidents (involving about 750 fatalities and 1,800 injuries) valued at $1.3 billion over twenty years, or an average of about 165 accidents annually. Analysis indicates this accident reduction will almost certainly be achieved and probably will be substantially exceeded as a result of using auxiliary lights. The benefit/cost ratio is 15.7:1.

Analysis of costs and benefits of locomotives operating at maximum speeds between 21 and 25 m.p.h. indicates that for that particular sector this rule has a benefit/cost ratio of no less than 1.3:1. The return on investment represented by the ratio is relatively lower for this sector. However, the increased safety still justifies incurring the costs associated with applying the rule to this sector.

Costs and benefits associated with the in-service tests are not quantified in this analysis. FRA recognizes that participating railroads will incur data collection costs. However, given the permissive nature of the industry in-service tests, we cannot determine the level of participation or the magnitude of costs which the industry will incur. Nevertheless, safety benefits resulting from application of the knowledge gained should far outweigh costs incurred by the participants. Including test costs would not change the final outcome of this analysis.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities, unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. It is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule will require that railroads note any grade crossings excluded from

auxiliary light use in the railroads" operating rules, time tables, or special orders. It is therefore necessary to estimate the public reporting burden for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

FRA is currently preparing this analysis. Once it is completed, before the rule takes effect in December, 1997, the paperwork reduction review will be placed in the docket.

FRA is anticipating a minimal paperwork impact from this rule given the fact that railroad operating rules standardly contain the type of operating instructions now required by FRA.

Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. It has been determined that this rule will not have any effect on the quality of the environment.

Federalism Implications

This rule will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, a Federalism Assessment is not necessary.

Under 49 U.S.C. 20106 (superseding at 45 U.S.C. 434), issuance of this regulation preempts any State law, rule, regulation, order, or standard covering the same subject matter, except for a provision directed at a local safety hazard if that provision is consistent with this rule and does not impose an undue burden on interstate commerce.

List of Subjects in 49 CFR Part 229

Railroad safety.

The Final Rule

In consideration of the foregoing, FRA amends Part 229, Title 49, Code of Federal Regulations as follows:

1. The authority citation for Part 229 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20116–20112, 20114, 20133, 20137, 20138, 20143, 20301–20303, 20306, 20701–20703, 21301-21302, 21304, 21306, and 21311; 49 CFR 1.49 (c), (g) and (m).

2. Section 229.9 is amended by revising paragraph (a) introductory text to read as follows:

§ 229.9 Movement of non-complying locomotives.

(a) Except as provided in paragraphs (b), (c) and § 229.125(h), a locomotive with one or more conditions not in compliance with this part may be moved only as a lite locomotive or a dead locomotive after the carrier has complied with the following:

* * * * *

3. Section 229.125 is amended by revising the section heading and by adding (d), (e), (f), (g), and (h) to read as follows:

§ 229.125 Headlights and auxiliary lights.

* * * * *

(d) Effective December 31, 1997, each lead locomotive operated at a speed greater than 20 miles per hour over one or more public highway-rail crossings shall be equipped with operative auxiliary lights, in addition to the headlight required by paragraph (a) or (b) of this section. A locomotive equipped on March 6, 1996 with auxiliary lights in conformance with § 229.133 shall be deemed to conform to this section until March 6, 2000. All locomotives in compliance with § 229.133(c) shall be deemed to conform to this section. Auxiliary lights shall be composed as follows:

(1) Two white auxiliary lights shall be placed at the front of the locomotive to form a triangle with the headlight.

(i) The auxiliary lights shall be at least 36 inches above the top of the rail, except on MU locomotives and control cab locomotives where such placement would compromise the integrity of the car body or be otherwise impractical. Auxiliary lights on such MU locomotives and control cab locomotives shall be at least 24 inches above the top of the rail.

(ii) The auxiliary lights shall be spaced at least 36 inches apart if the vertical distance from the headlight to the horizontal axis of the auxiliary lights is 60 inches or more.

(iii) The auxiliary lights shall be spaced at least 60 inches apart if the vertical distance from the headlight to the horizontal axis of the auxiliary lights is less than 60 inches.

(2) Each auxiliary light shall produce at least 200,000 candela.

(3) The auxiliary lights shall be focused horizontally within 15 degrees of the longitudinal centerline of the locomotive.

(e) Auxiliary lights required by paragraph (d) of this section may be arranged

(1) to burn steadily or

(2) flash on approach to a crossing.

If the auxiliary lights are arranged to flash;

(i) they shall flash alternately at a rate of at least 40 flashes per minute and at most 180 flashes per minute,

(ii) the railroad's operating rules shall set a standard procedure for use of flashing lights at public highway-rail grade crossings, and

(iii) the flashing feature may be activated automatically, but shall be capable of manual activation and deactivation by the locomotive engineer.

(f) Auxiliary lights required by paragraph (d) of this section shall be continuously illuminated immediately prior to and during movement of the locomotive, except as provided by railroad operating rules, timetable or special instructions, unless such exception is disapproved by FRA. A railroad may except use of auxiliary lights at a specific public highway-rail grade crossing by designating that exception in the railroad's operating rules, timetable, or a special order. Any exception from use of auxiliary lights at a specific public grade crossing can be disapproved for a stated cause by FRA's Associate Administrator for Safety or any one of FRA's Regional Administrators, after investigation by FRA and opportunity for response from the railroad.

(g) Movement of locomotives with defective auxiliary lights.

(1) A lead locomotive with only one failed auxiliary light must be repaired or switched to a trailing position before departure from the place where an initial terminal inspection is required for that train.

(2) A locomotive with only one auxiliary light that has failed after departure from an initial terminal, must be repaired not later than the next calendar inspection required by § 229.21.

(3) A lead locomotive with two failed auxiliary lights may only proceed to the next place where repairs can be made. This movement must be consistent with § 229.9.

(h) Any locomotive subject to Part 229, that was built before December 31, 1948, and that is not used regularly in commuter or intercity passenger service, shall be considered historic equipment and excepted from the requirements of paragraphs (d) through (h) of this section.

4. Amend § 229.133 by revising paragraph (c) to read as follows:

§ 229.133 Interim locomotive conspicuity measures—auxiliary external lights.

* * * * *

(c)(1) Any lead locomotive equipped with oscillating lights as described in paragraph (b)(4) that were ordered for installation on that locomotive prior to

January 1, 1996, is considered in compliance with § 229.125(d) (1) through (3).

(2) Any lead locomotive equipped with strobe lights as described in paragraph (b)(2) and operated at speeds no greater than 40 miles per hour, is considered in compliance with § 229.125(d) (1) through (3) until the locomotive is retired or rebuilt, whichever comes first.

(3) Any lead locomotive equipped with two white auxiliary lights spaced at least 44 inches apart on at least one axis which was equipped with these auxiliary lights before May 30, 1994, will be considered in compliance with § 229.125(d) (1) through (3) until the locomotive is retired or rebuilt, whichever comes first.

Appendix B [Amended]

5. Amend Appendix B to Part 229—Schedule of Civil Penalties—by adding in numerical sequence by section number the following:

Section	Violation	Willful violation
. . . . .		
229.125:		
(a) Headlights	2,500	5,000
(d) Auxiliary lights	2,500	5,000
. . . . .		

Issued in Washington, DC, on February 28, 1996.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 96–4838 Filed 3–5–96; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 960129018–6018–01; I.D. 030196B]

Groundfish of the Gulf of Alaska; Pacific Cod for Processing by the Inshore Component

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the allocation of Pacific cod for processing by the inshore component in the Western Regulatory Area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 2, 1996, until 12 midnight, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the allocation of Pacific cod for processing by the inshore component in the Western Regulatory Area was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 16,965 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the allocation of Pacific cod total allowable catch for processing by the inshore component in the Western Regulatory Area soon will be reached. The Regional Director established a directed fishing allowance of 15,965 mt, with consideration that 1,000 mt will be taken as incidental catch in directed fishing for other species in the Western Regulatory Area. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 1, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–5228 Filed 3–1–96; 2:35 pm]

BILLING CODE 3510–22–P

50 CFR Part 675

[Docket No. 960129019–6019–01; I.D. 022996B]

Groundfish of the Bering Sea and Aleutian Islands Area; Inshore Component Pollock in the Bering Sea subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first allowance of the pollock total allowable catch (TAC) for vessels catching pollock for processing by the inshore component in the BS.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 2, 1996, until 12 noon, A.l.t., April 15, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the first seasonal allowance of pollock for the inshore component in the BS was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) as 159,311 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined in accordance with § 675.20(a)(8), that the first seasonal allowance of pollock TAC for vessels catching pollock for processing by the inshore component in the BS soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 147,311 mt with consideration that 12,000 mt will be taken as incidental catch in directed fishing for other species in the BS. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the BS. This closure is effective March 2, 1996, until 12 noon, A.l.t., April 15, 1996. Under § 675.20(a)(2)(ii), the second seasonal allowance will be available from 12 noon, A.l.t., August 15 through the end of the fishing year.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 29, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Mmarine Fisheries Service.

[FR Doc. 96–5181 Filed 3–1–96; 10:23 am]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 960129019–6019–01; I.D. 022996A]

Groundfish of the Bering Sea and Aleutian Islands Area, Trawl Closure to Protect Red King Crab

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS has determined that an interim closure to all trawling is necessary in a part of the Bristol Bay area of the Bering Sea and Aleutians Islands (BSAI) management area. Results of the 1995 bottom trawl survey conducted by NMFS in Bristol Bay indicate that the red king crab stock in Bristol Bay continues to be severely depressed. NMFS anticipates that the condition of this stock could worsen if vessels fishing for groundfish with trawl gear were allowed to conduct operations in a particular part of Bristol Bay that is important to red king crab during a period after they have molted and are in a softshell condition. NMFS is closing part of Bristol Bay to trawling for groundfish for purposes of protecting red king crab from anticipated adverse impacts due to trawl operations. This measure is necessary to respond to the continued decline of red king crab stocks in the BSAI management area. It is intended to accomplish the objectives of the North Pacific Fishery Management Council (Council) with respect to management of red king crab stocks.

DATES: Effective April 1, 1996, through June 15, 1996. Comments must be submitted by April 5, 1996.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, Attention: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the BSAI is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801, et seq.) (Magnuson Act), and is implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 675 and 676. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620.

High rates of prohibited species bycatch may warrant inseason adjustment to close an area to fishing for groundfish. Authority for interim closures of a specific area is contained in regulations at § 675.20(e). This inseason adjustment prohibits fishing for groundfish by operators of vessels using trawl gear from April 1, 1996, through June 15, 1996, in that portion of the Bering Sea that is bounded by straight lines connecting the following coordinates in the order listed below.

Latitude	*Longitude*
56°00′ N.;	163°00′ W.;
56°00′ N.;	164°00′ W.;
57°00′ N.;	164°00′ W.;
57°00′ N.;	163°00′ W.; and
56°00′ N.;	163°00′ W.

This action is necessary to protect depressed stocks of red king crab from being taken by the groundfish trawl fisheries during a period when the crab are in a softshell condition and are particularly vulnerable to injury. Further reasons for the inseason adjustment under § 675.20(e)(1)(iv) follow.

Results of the 1995 NMFS-conducted bottom-trawl survey in Bristol Bay indicate that the total population of red king crab continues to be at low levels. Although the number of legal male red king crab was 6.3 million, which represents a 15 percent increase from 1994, the number of pre-recruits was 5.4 million, which represents an 11 percent decrease from 1994. The number of large female crab was 8.0 million, which is 400,000 fewer than the number considered to be the "threshold" in the FMP for the Commercial King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands (crab FMP). Under the crab FMP, the Acceptable Biological Catch in the directed red king crab fishery is defined as zero when the female red king crab stock is at or below threshold. Accordingly, the Alaska Department of Fish and Game (ADF&G) closed the directed red king crab fishery in 1995.

Likewise, because NMFS survey results in 1994 also indicated that the number of female red king crab was below threshold, ADF&G closed the red king crab fishery in 1994. Due to the 1994 and 1995 closures of the red king crab fishery in Bristol Bay, ADF&G closed the area east of 163° W. longitude to Chionoecetes bairdi Tanner crab fishing for both years to reduce incidental mortality of red king crab in this area.

The Council responded to the 1994 results by recommending that NMFS close by emergency rule an area between 56° and 57° N. lat. and 162° and 164° W. long. to trawling during the rock sole roe fishery. NMFS implemented that emergency rule (60 FR 4866, January 25, 1995), and it remained in effect from January 20 through April 25, 1995. At that time, the Council directed its staff to analyze alternative closure areas that could be implemented permanently under an FMP amendment to provide long-term protection to Bristol Bay red king crab.

At its September 1995 meeting, the Council recommended implementation of proposed Amendment 37 to the FMP, an action similar to the emergency rule. This includes a closure of the Red King Crab Savings Area to vessels using non-pelagic trawl gear as well as an increase in observer coverage. NMFS has not yet received that amendment from the Council for review under Section 304 of the Magnuson Act.

On January 20, 1996, NMFS implemented an inseason adjustment (60 FR 63451, December 11, 1995) under its authority at 50 CFR 675.20(e) to close the above-described area through March 31, 1996. The purpose of this action was to protect female red king crab during a time when the trawl fishery for rock sole was ongoing.

On January 30, 1996, the Council met jointly with the Alaska Board of Fisheries (BOF) and reviewed the best available scientific information about the status of red king crab and the potential effectiveness of measures that have been taken to protect red king crab.

The Council and BOF were especially concerned about potential adverse impacts of trawl operations on red king crab during a period when crab are in a softshell condition. This condition occurs during the months of January through mid-June when crab molt and then mate. When in this softshell condition, red king crab could be damaged by physical impacts of the bottom trawl itself or by additional handling when they are caught in a trawl, brought aboard a vessel, sorted, and eventually returned to the sea. The Council also received agency reports summarizing the result of the 1995 NMFS trawl survey, which provided the aforementioned status of red king crab.

The Council and BOF heard testimony about existing management measures, including the aforementioned inseason adjustment that will be in effect through March 31, which are intended to protect red king crab in the management area. These measures include a year round closure of Federal Statistical Srea 512 to trawling, and a closure of Federal Statistical Area 516 from March 15 through June 15 to protect red king crab during their molting and mating period. An analysis of data from the NMFS-conducted trawl surveys in 1993, 1994, and 1995 indicates that a substantial proportion (19 percent) of mature male crab are located in part of Federal Statistical Area 516. This analysis also indicates that another substantial proportion (21 percent) of male red king crab is located between the same latitudes immediately to the west between 163° W. and 164° W. long. Without further regulatory action, the area west of Statistical Area 516 would open to trawling once the aforementioned inseason adjustment expires on March 31, 1996, which could aggravate the depressed condition of red king crab during the period when they are in a softshell condition.

On February 2, 1996, after reviewing new information obtained during its January 30 meeting with the BOF and additional information from the public as well as NMFS and ADF&G testimony, the Council recommended that an emergency rule be implemented to close an area in part of Bristol Bay to fishing by vessels using trawl gear through June 15, 1996. The particular area is located between 183° and 164° W. long. and 56° N. and 57° N. lat. This area is to the west of, and immediately adjacent to, Statistical Area 516, which is closed under existing regulations from March 15 through June 15. A closure of the additional area to the west through June 15 would provide necessary protection for red king crab during the period they are in a softshell condition and are particularly susceptible to fishing mortality.

The Council intends to review current management regimes that govern groundfish fishing to determine whether the protection measures afforded red king crab and other crab species managed under the crab FMP are adequate or should be changed to respond to new information concerning both the groundfish and crab fisheries. NMFS anticipates that the Council will recommend potential regulatory changes in the near future.

The Council's emergency rule recommendation is intended to avoid significant direct economic loss to fishermen who might otherwise benefit in the future as red king crab stocks rebuild to harvestable levels. Public testimony at the Council's January 1996 meeting, indicated that the groundfish trawl fishing industry was concerned about not being able to trawl for yellowfin sole in the closed area, should yellowfin sole be present during the month of April in schooling concentrations as they migrate to more northerly locations in Bristol Bay. Industry members indicated that the amount of time required to complete a tow with trawl gear may be about a ½ hour compared to more than 2 hours when yellowfin school stocks are not concentrated. If these vessel operators are not allowed to operate in the closed area, their operating costs (including fuel and crew time) could increase as they fish at lower catch rates where yellowfin sole stocks are not concentrated.

NMFS does not have information to quantify what these increased costs might be, because vessels' operating costs differ. NMFS notes that the locations of the migrating yellowfin sole might even be outside the closed area where they could still be targeted by participating vessels. The actual costs would depend on the ability of these vessel operators to achieve their harvest goals, which will depend on market conditions, catch rates, and possibly premature closures resulting from other regulations.

NMFS anticipates that large numbers of red king crab could be adversely impacted in this area by trawl operations during their softshell period. Therefore, NMFS has determined that a closure to trawling in the area described above is necessary to protect red king crab through June 15 while they are in a softshell condition. Notwithstanding the Council's recommendation that NMFS implement this closure by emergency rule, NMFS is implementing it under the inseason adjustment authority at § 675.20(e). Inseason adjustments are authorized for a period of 60 days, which would be less than the Council's intended closure period. Regulations at § 675.20(e)(6) authorize closures beyond 60 days if warranted by available data. The available scientific information indicates that the relative distribution and abundance of red king crab in the closure area is high. The Director, Alaska Region, NMFS has determined that this interim closure is based on the best available scientific information concerning the seasonal distribution and abundance of red king crab and the bycatch rates of red king crab associated with groundfish trawl fisheries.

Classification

This action is taken under § 672.20(e) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 1, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–5227 Filed 3–1–96; 2:35 pm]

BILLING CODE 3510–22–P

50 CFR Part 683

[Docket No. 950803202–6040–02; I.D. 070395C]

RIN 0648–AH48

Western Pacific Bottomfish Fisheries; Enforcement of Permit and Other Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to make minor changes to regulations governing the Bottomfish Fisheries of the Western Pacific Region. In addition to making some technical changes, the rule requires operators of bottomfish vessels to display their official number to enhance enforcement, and fish dealers to make available to authorized officers records of fish landings and sales they are required by state law to maintain to facilitate monitoring of the fishery. These changes are intended to make existing regulations clearer and more effective.

EFFECTIVE DATE: April 4, 1996.

ADDRESSES: Send comments on the collection-of-information requirement to Ms. Hilda Diaz-Soltero, Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Paperwork Reduction Project 0648–0306, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. James Morgan, 310–980–4036; or Alvin Z. Katekaru, 808–973–2985.

SUPPLEMENTARY INFORMATION: The Western Pacific Fishery Management Council recommended that NMFS amend the existing regulations governing the bottomfish fishery to make the regulations clearer and more effective. The changes made by this final rule were proposed in the **Federal Register** on August 18, 1995 (60 FR 43106). The public comment period on the proposed changes ended on October 16, 1995. No comments were received.

The final rule makes the following changes in addition to a number of editorial changes:

1. Adding a prohibition to the prohibitions section of the regulations to clarify that fishing for bottomfish in the Mau Zone of the Northwestern Hawaiian Islands without a permit is unlawful;

2. Adding a requirement that the official number of a bottomfish vessel be prominently displayed; and

3. Adding a requirement that any person, such as fish dealers, make available to authorized officers records of fish landings and sales that are required to be maintained by state law.

Classification

This action has been determined to be not significant for the purposes of E.O. 12866.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless the collection of information displays a currently valid OMB Control Number.

This rule contains a collection of information requirement subject to the PRA, namely the requirement that vessels display their official number in a specified manner. This collection of information has been approved by OMB under OMB Control Number 0648–0306, which expires September 29, 1998. The burden estimate for compliance is 45 minutes. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden to Hilda Diaz-Soltero, NMFS, or the Office of Information and Regulatory Affairs, OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 683

Administrative practice and procedure, Fisheries, Reporting and recordkeeping requirements.

Dated: February 29, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 683 is amended as follows:

PART 683—WESTERN PACIFIC BOTTOMFISH AND SEAMOUNT GROUNDFISH FISHERIES

1. The authority citation for part 683 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 683.2, the definition of "Council" is revised to read as follows:

§ 683.2 Definitions.

* * * * *

Council means the Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813, 808–522–8220.

* * * * *

3. In § 683.4, paragraph (d) is added to read as follows:

§ 683.4 Recordkeeping and reporting.

* * * * *

(d) Any person who is required by state laws and regulations to maintain records of landings and sales for vessels regulated by this part, shall make those records immediately available for Federal inspection and copying upon request by an authorized officer.

4. In § 683.6, paragraphs (i) and (j) are amended by removing the word "fishing" and replacing it with the word "fish"; and paragraphs (f) through (k) are redesignated as paragraphs (g) through (l), respectively, and paragraphs (f), (m), and (n) are added to read as follows:

§ 683.6 Prohibitions.

* * * * *

(f) Fish for bottomfish in the Mau Zone without a permit issued under § 683.21.

* * * * *

(m) Fail to affix and maintain vessel markings, as required by § 683.9.

(n) Refuse to make available to an authorized officer for inspection any records that must be made available in accordance with § 681.4.

5. Sections 683.9 and 683.10 are redesignated as §§ 683.10 and 683.11, respectively, and a new § 683.9 is added as follows:

§ 683.9 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this part must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft.

(b) *Numerals.* In each of the three locations specified in paragraph (a), the official number must appear in block Arabic numerals at least 18 inches (45.7 cm) in height for fishing vessels of 65 ft (19.8 m) in length or longer, and at least 10 inches (25.4 cm) in height for other vessels. Markings must be legible and of a color that contrasts with the background.

(c) *Duties of operator.* The operator of each fishing vessel subject to this part must:

(1) Keep the displayed official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

§ 683.29 [Amended]

6. In § 683.29, paragraph (a) is amended by removing the telephone number "808–955–8831" and adding, in its place "808–973–2939".

[FR Doc. 96–5182 Filed 3–5–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 45
Wednesday, March 6, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 310, 318, 319, and 381

[Docket No. 88–026E]

Substances Approved for Use in Preparation of Meat and Poultry Products—Reopening of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is reopening the comment period for the proposed rule, "Substances Approved for Use in the Preparation of Meat and Poultry Products" (60 FR 67459), published in the **Federal Register** on December 29, 1995, in response to a request for additional time to answer comments. FSIS is interested in receiving properly evaluated and thoughtful comments on the proposal. Therefore, FSIS is reopening the comment period for 60 days.

DATES: Comments must be received on or before May 6, 1996.

ADDRESSES: Send an original and two copies of written comments to: FSIS Docket Clerk, Docket #88–026P, Room 4352, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Stafko, Deputy Director, Policy, Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 3835, South Agriculture Building, Washington, DC 20250–3700; (202) 720–7773.

Done at Washington, DC, on: February 28, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–5160 Filed 3–5–96; 8:45 am]
BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–85–AD]

Airworthiness Directives; Airbus Industrie Model A300, A300–600, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A300, A300–600, and A310 series airplanes. This proposal would require inspections to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, and repair, if necessary. This proposal is prompted by reports that fatigue cracking has been found on the lower spar of the pylon. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the lower spar of the pylon.

DATES: Comments must be received by April 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–85–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–85–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–85–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A300, A300–600, and A310 series airplanes. The DGAC advises that fatigue cracks have been found on the lower spar of the pylon between ribs 6 and 7 on airplanes equipped with General Electric and Pratt & Whitney engines. These cracks initiated at the pylon center stiffener beyond the flat area. Fatigue cracking in this area, if not detected and corrected in a timely manner, could result in reduced structural integrity of the lower spar of the pylon.

Relevant Service Information

Airbus has issued the following inspection service bulletins:

- Airbus Service Bulletin A300–54–0073 (for Model A300 series airplanes), Revision 1, dated March 28, 1994;
- Airbus Service Bulletin A300–54–6014 (for Model A300–600 series airplanes), Revision 1, dated March 28, 1994; and
- Airbus Service Bulletin A310–54–2017 (for Model A310 series airplanes), Revision 1, dated March 28, 1994.

These inspection service bulletins describe procedures for repetitive internal eddy current inspections to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, and repair, if necessary. These service bulletins permit further flight with pylons that are cracked within certain limits. In such instances, the service bulletins recommend that, following repair of cracking within specified limits, repaired areas should be inspected repetitively using eddy current techniques to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair and on the fasteners located at the edge of the doubler. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 93–228–154(B), dated December 22, 1993, in order to assure the continued airworthiness of these airplanes in France.

Airbus also has issued the following modification service bulletins:

- Airbus Service Bulletin A300–54–0080 (for Model A300 series airplanes), Revision 1, dated January 16, 1995;
- Airbus Service Bulletin A300–54–6020 (for Model A300–600 series airplanes), dated October 15, 1993, as amended by Service Bulletin Change Notice O.A., dated February 22, 1994; and
- Airbus Service Bulletin A310–54–2023 (for Model A310 series airplanes), dated October 15, 1993.

These modification service bulletins describe procedures for modification of the lower spar between ribs 6 and 7. The modification involves installation of an outer doubler on the undamaged structure of the lower spars between ribs 6 and 7. For Model A300 and A300–600 series airplanes, accomplishment of the modification reduces the probability of cracking in the lower spar of the pylon and, thereby, allows an extension of the initial inspection threshold and repetitive interval for accomplishing the internal eddy current inspections. For Model A310 series airplanes, accomplishment of the modification eliminates the need for the internal eddy current inspections.

Proposed Requirements of the Rule

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive internal eddy current inspections to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, and repair, if necessary. The actions would be required to be accomplished in accordance with the inspection service bulletins described previously.

For Model A300 and A300–600 series airplanes, the proposed AD would provide for an optional modification, which, if accomplished, would allow an extension of the initial inspection threshold and repetitive interval for accomplishing the required inspections. For Model A310 series airplanes, the proposed AD also would provide for an optional terminating modification, which, if accomplished, would constitute terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with the modification service bulletins described previously.

Differences Between the Proposed Rule and Relevant Service Information

Operators should note that this proposed rule would not permit further flight after detection of cracking of the lower spar axis of the pylons, as allowed by the inspection service bulletins. Instead, this proposed rule would require repair of the crack in accordance with the applicable service bulletin prior to further flight; or, if cracking is within certain limits, stop-drilling the crack in accordance with the Structural Repair Manual (SRM) as a temporary measure for a specified number of landings until the repair or modification is accomplished. (Stop-drilling the crack does not constitute a repair; rather, it is only an interim measure that would temporarily reduce the stress concentration effect of the crack tip before the repair or modification is accomplished to restore the structure to its ultimate load capability.) In addition, this proposed AD also provides for installation of an optional terminating modification in accordance with the applicable service bulletin prior to further flight.

The SRM for the affected airplanes identifies the pylon as "primary structure." As defined in the SRM, primary structure is that structure which contributes significantly to carrying flight, ground, and pressurization loads. The SRM further classifies the main frame of the pylon as a "restricted area," where repairs could affect the load carrying capability of the pylon for some flight and crash conditions. In light of this, the FAA finds that an adequate level of safety for the affected fleet requires that cracking of the lower spar axis of the pylons must be addressed immediately by repair or temporary measures, as specified previously. The FAA has determined that, in cases where certain known unsafe conditions exist, and where actions to detect and correct those unsafe conditions can be readily accomplished, those actions must be required.

Cost Impact

The FAA estimates that 99 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $47,520, or $480 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator of a Model A300 series airplane elect to accomplish the optional modification that would be provided by this AD action, it would take approximately 100 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $1,500 per airplane. Based on these figures, the cost impact of the optional modification for Model A300 series airplanes is estimated to be $7,500 per airplane.

Should an operator of a Model A300–600 or A310 series airplane elect to accomplish the optional modification that would be provided by this AD action, it would take approximately 110 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $1,500 per airplane. Based on these figures, the cost impact of the optional modification for Model A300–600 and A310 series airplanes is estimated to be $8,100 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 95–NM–85–AD.

Applicability: Model A300, A300–600, and A310 series airplanes; as listed in Airbus Industrie Service Bulletins A300–54–0073, A300–54–6014, and A310–54–2017, all Revision 1, all dated March 28, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (k) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the lower spar, accomplish the following:

(a) For Model A300 series airplanes equipped with General Electric CF6–50C engines, and having pylons that have not been modified in accordance with Airbus Industrie Service Bulletin A300–54–0080, Revision 1, dated January 16, 1995: Prior to the accumulation of 10,900 total landings, or within 500 landings after the effective date of this AD, whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–0073, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 6,700 landings.

(2) If any crack is found that is less than 35 mm, prior to further flight, stop-drill the crack in accordance with the procedures specified in Section 51–41–10 of the Structural Repair Manual (SRM). Thereafter, prior to the accumulation of 250 landings after crack discovery, repair in accordance with the service bulletin. Prior to the accumulation of 17,900 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair and on the fasteners located at the edge of the doubler, in accordance with the service bulletin.

(i) If no crack is found, repeat the inspection required by paragraph (a)(2) of this AD thereafter at intervals not to exceed 15,000 landings.

(ii) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(3) If any crack is found that is greater than or equal to 35 mm, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(b) For Model A300 series airplanes equipped with General Electric CF6–50C engines, and having pylons that have been modified in accordance with Airbus Industrie Service Bulletin A300–54–0080, Revision 1, dated January 16, 1995: Prior to the accumulation of 30,300 landings since installation of the modification, or within 500 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–0073, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the eddy current inspection thereafter at intervals not to exceed 21,300 landings.

(2) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(c) For Model A300 series airplanes equipped with Pratt & Whitney JT9D–59A engines, and having pylons that have not been modified in accordance with Airbus Industrie Service Bulletin A300–54–0080, Revision 1, dated January 16, 1995: Prior to the accumulation of 8,600 total landings, or within 500 landings after the effective date of this AD, whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–0073, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 5,700 landings.

(2) If any crack is found that is less than 35 mm, prior to further flight, stop-drill the crack in accordance with the procedures specified in Section 51–41–10 of the SRM. Thereafter, prior to the accumulation of 250 landings after crack discovery, repair in accordance with the service bulletin. Prior to the accumulation of 14,200 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair and on the fasteners located at the edge of the doubler, in accordance with the service bulletin.

(i) If no crack is found, repeat the inspection required by paragraph (c)(2) of this AD thereafter at intervals not to exceed 12,800 landings.

(ii) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(3) If any crack is found that is greater than or equal to 35 mm, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(d) For Model A300 series airplanes equipped with Pratt & Whitney JT9D–59A engines, and having pylons that have been modified in accordance with Airbus Industrie Service Bulletin A300–54–0080, Revision 1, dated January 16, 1995: Prior to the accumulation of 24,000 landings since installation of the modification, or within 500 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–0073, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the eddy current inspection thereafter at intervals not to exceed 18,200 landings.

(2) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(e) For Model A300–600 series airplanes equipped with General Electric CF6–80C2 engines, and having pylons that have not been modified in accordance with Airbus Industrie Service Bulletin A300–54–6020, dated February 22, 1994: Prior to the accumulation of 9,400 total landings, or within 500 landings after the effective date of this AD, whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–6014, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 6,100 landings.

(2) If any crack is found that is less than or equal to 35 mm, prior to further flight, stop-drill the crack in accordance with the procedures specified in Section 51–41–10 of the SRM. Thereafter, prior to the accumulation of 250 landings after crack discovery, repair in accordance with the service bulletin. Prior to the accumulation of 15,600 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair and on the fasteners located at the edge of the doubler, in accordance with the service bulletin.

(i) If no crack is found, repeat the inspection required by paragraph (e)(2) of this AD thereafter at intervals not to exceed 13,600 landings.

(ii) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(3) If any crack is found that is greater than or equal to 35 mm, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(f) For Model A300–600 series airplanes equipped with General Electric CF6–80C2 engines, and having pylons that have been modified in accordance with Airbus Industrie Service Bulletin A300–54–6020, dated February 22, 1994: Prior to the accumulation of 26,400 landings since installation of the modification, or within 500 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–6014, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the eddy current inspection thereafter at intervals not to exceed 19,400 landings.

(2) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(g) For Model A300–600 series airplanes equipped with Pratt & Whitney JT9D–7R4 or PW 4000 engines, and having pylons that have not been modified in accordance with Airbus Industrie Service Bulletin A300–54–6020, dated February 22, 1994: Prior to the accumulation of 5,700 total landings, or within 500 landings after the effective date of this AD, whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–6014, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 4,400 landings.

(2) If any crack is found that is less than 35 mm, prior to further flight, stop-drill the crack in accordance with the procedures specified in Section 51–41–10 of the SRM. Thereafter, prior to the accumulation of 250 landings after crack discovery, repair in accordance with the service bulletin. Prior to the accumulation of 10,100 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair and on the fasteners located at the edge of the doubler, in accordance with the service bulletin.

(i) If no crack is found, repeat the inspection required by paragraph (g)(2) of this AD thereafter at intervals not to exceed 10,000 landings.

(ii) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(3) If any crack is found that is greater than or equal to 35 mm, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(h) For Model A300–600 series airplanes equipped with Pratt & Whitney JT9D–7R4 or PW 4000 engines, and having pylons that have been modified in accordance with Airbus Industrie Service Bulletin A300–54–6020, dated February 22, 1994: Prior to the accumulation of 14,500 landings since installation of the modification, or within 500 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–6014, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the eddy current inspection thereafter at intervals not to exceed 14,500 landings.

(2) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(i) For Model A310 series airplanes equipped with General Electric CF6–80C2, or Pratt & Whitney JT9D–7R4, or Pratt & Whitney PW4000 engines: Prior to the accumulation of 36,700 total landings, or within 500 landings after the effective date of this AD, whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–2017, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 15,000 landings.

(2) If any crack is found that is less than 35 mm, prior to further flight, stop-drill the crack in accordance with the procedures specified in Section 51–41–10 of the SRM. Thereafter, prior to the accumulation of 250 landings after crack discovery, repair in accordance with the service bulletin. Prior to the accumulation of 40,000 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair and on the fasteners located at the edge of the doubler, in accordance with the service bulletin.

(i) If no crack is found, repeat the inspection required by paragraph (i)(2) of this AD thereafter at intervals not to exceed 33,000 landings.

(ii) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(3) If any crack is found that is greater than or equal to 35 mm, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(j) For Model A310 series airplanes equipped with General Electric CF6–80C2, or Pratt & Whitney JT9D–7R4, or Pratt & Whitney PW4000 engines: Accomplishment of the modification specified in Airbus Industrie Service Bulletin A310–54–2023, dated October 15, 1993, constitutes terminating action for the inspections required by paragraph (i) of this AD.

(k) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(l) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be eccomplished.

Issued in Renton, Washington on February 27, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–5223 Filed 3–5–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–198–AD]

Airworthiness Directives; Airbus Model A320–111, –211, –212, and –231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320–111, -211, -212, and -231 series airplanes. This proposal would require removing the existing forward pintle nut and cross bolt on the main landing gear (MLG), and installing a new nylon spacer and cross bolt and nut. This proposal is prompted by results of fatigue testing which revealed that the cross bolt and nut in the forward pintle pin of the MLG were damaged due to fatigue cracking. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which could result in collapse of the MLG.

DATES: Comments must be received by April 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–198–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–198–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–198–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that during fatigue tests on an Airbus Model A320 test article, the cross bolt and nut in the forward pintle pin of the main landing gear (MLG) were found to be damaged due to fatigue cracking. Such fatigue cracking, if not detected and corrected in a timely manner, could result in collapse of the MLG.

Airbus has issued Service Bulletin A320–32–1119, Revision 1, dated June 13, 1994, which describes procedures for removing the existing forward pintle nut and cross bolt on the MLG, and installing a new nylon spacer and cross bolt and nut. The new nylon spacer will absorb deflections and reduce the loads on the cross bolt and the nut. Additionally, the cross bolt is longer than the existing cross bolt to accommodate the addition of the nylon spacer. (The Airbus service bulletin references Dowty Aerospace Service Bulletin 200–32–194, Revision 1, dated October 4, 1993, as an additional source of service information for accomplishment of these procedures.) The DGAC classified the service bulletin as mandatory and issued French airworthiness directive 94–057–052 (B), dated March 16, 1994, in order to assure the continued airworthiness of these airplanes in France.

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require removing the existing forward pintle nut and cross bolt on the MLG; and installing a new nylon spacer and cross bolt and nut. The actions would be required to be accomplished in accordance with the Airbus service bulletin described previously.

The FAA estimates that 90 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the parts manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,400, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 95–NM–198–AD.

Applicability: Model A320–111, -211, -212, and -231 series airplanes, on which Airbus Modification 23573 (Airbus Service Bulletin A320–32–1119, Revision 1, dated June 13, 1994), has not been installed; certificated in any category.

Note 1. This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent collapse of the main landing gear (MLG) during landing, due to failure of the forward pintle pin cross bolt, accomplish the following:

(a) Remove the existing forward pintle nut and cross bolt; and install a new nylon spacer and post-mod cross bolt and nut of the MLG, in accordance with Airbus Service Bulletin A320–32–1119, Revision 1, dated June 13, 1994, at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the accumulation of 20,000 total landings, or at the next main landing gear overhaul, whichever occurs first.

(2) Within 500 landings after the effective date of this AD.

Note 2: The Airbus service bulletin references Dowty Aerospace Service Bulletin 200–32–194, Revision 1, dated October 4, 1993, as an additional source of service information for accomplishment of these procedures.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 27, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–5222 Filed 3–5–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–150–AD]

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300–600 series airplanes. This proposal would require an eddy current inspection to detect cracks on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, and various follow-on actions. This proposal is prompted by reports of cracking in the radius of frame 40 adjacent to the tension bolts at the center/outer wing junction due to fatigue-related stress. The actions specified by the proposed AD are intended to prevent such fatigue-related cracking, which could result in reduced structural integrity of the wings.

DATES: Comments must be received by April 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report

summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–150–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 15, 1993, the FAA issued AD 93–01–24, Amendment 39–8478 (58 FR 6703, February 2, 1993), which is applicable to all Airbus Model A300 B2, B4–100, and B4–200 series airplanes. That AD requires supplemental structural inspections to detect fatigue cracking, and repair or replacement, if necessary; or the installation of specific modifications. That action was prompted by a structural reevaluation, which identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original fatigue design life goal. The requirements of that AD are intended to prevent reduced structural integrity of these airplanes.

Since the issuance of that AD, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Airbus Model A300–600 series airplanes. The DGAC advises that, during sampling inspections required by AD 93–01–24, cracking was found in the radius of frame 40 adjacent to the tension bolts at the center/outer wing junction. The cracking occurred on Model A300 B2 and B4 series airplanes that had accumulated between 15,000 and 24,000 total flight cycles. The cause of such cracking has been attributed to fatigue-related stress. Such fatigue-related cracking, if not corrected, could result in reduced structural integrity of the wings.

The subject area on certain Model A300–600 series airplanes is almost identical to that on the affected Model A300 B2 and B4 series airplanes. Therefore, those Model A300–600 series airplanes may be subject to the same unsafe condition revealed on the Model A300 B2 and B4 series airplanes.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–57–6062, dated February 14, 1995, which describes procedures for an eddy current inspection to detect cracks on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, and various follow-on actions. (These follow-on actions include applying a sealant, eddy current inspections, and blending of cracks.) This service bulletin permits further flight, under certain conditions, with forward fittings that are cracked within certain limits. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 95–063–177(B), dated April 12, 1995, in order to assure the continued airworthiness of these airplanes in France.

Explanation of the Proposed Rule

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require an eddy current inspection to detect cracks on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, and various follow-on actions. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Differences Between the Proposed Rule and Relevant Service Information

Operators should note that, unlike the procedures described in the referenced service bulletin, this proposed AD would not permit further flight with cracking detected in the forward fittings. The FAA has determined that, due to the safety implications and consequences associated with such cracking under certain conditions, the subject forward fittings that are found to be cracked must be repaired. In addition, if any crack is removed and the blend out is greater than 50 mm long and/or 2 mm deep, the forward fitting must be repaired. These repairs would be required to be accomplished in accordance with a method approved by the FAA.

In addition, the service bulletin specifies that inspection thresholds and intervals should be adjusted based on the average utilization rate of the airplane. However, the FAA has determined that, in some cases, such adjustments would not address the unsafe condition in a timely manner. Therefore, this proposed AD does not permit such adjustments. In developing the appropriate inspection thresholds and intervals for the proposed rule, the FAA considered not only the manufacturer's recommendation and the average utilization rate of the affected U.S. registered airplanes, but the safety implications involved with cracking in the radius of frame 40 adjacent to the tension bolts at the center/outer wing junction. In light of these factors, the FAA finds the compliance times specified in the proposed AD for initiating the required actions to be warranted, in that they represent an appropriate interval of time allowable for the affected airplanes to continue to operate without compromising safety.

Furthermore, the service bulletin specifies that operators need not count touch-and-go landings in determining the total number of landings between two consecutive inspections, even if those landings are less than five percent of the landings between inspection intervals. Since fatigue cracking that was found in the radius of frame 40 adjacent to the tension bolts at the center/outer wing is aggravated by landing, the FAA finds that all touch-and-go landings must be counted in determining the total number of landings between two consecutive inspections.

Cost Impact

The FAA estimates that 35 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 22 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $46,200, or $1,320 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 95–NM–150–AD.

Applicability: All Model A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue-related cracking, which could result in reduced structural integrity of the wing, accomplish the following:

(a) Perform an eddy current inspection to detect cracks on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, in accordance with Airbus Service Bulletin A300–57–6062, dated February 14, 1995, at the applicable time specified in either paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes that have accumulated 12,400 total landings or less as of the effective date of this AD: Inspect prior to the accumulation of 10,500 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated more than 12,400 total landings as of the effective date of this AD: Inspect within 750 landings after the effective date of this AD.

(b) If no crack is detected during the inspection required by paragraph (a) of this AD, prior to further flight, apply sealant, in accordance with Airbus Service Bulletin A300–57–6062, dated February 14, 1995. Repeat the eddy current inspection thereafter at intervals not to exceed 4,500 landings.

(c) If any crack is detected during the inspection required by paragraph (a) of this AD, prior to further flight, blend it out in accordance with Airbus Service Bulletin A300–57–6062, dated February 14, 1995. Prior to further flight after accomplishing the blend out, perform an eddy current inspection to verify that the crack has been removed, in accordance with the service bulletin.

(1) If any crack is removed and the blend out is equal to or less than 50 mm long and/or 2 mm deep, repeat the eddy current inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 950 landings.

(2) If any crack exists, or if any crack is removed and the blend out is more than 50 mm long and/or 2 mm deep, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 27, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–5221 Filed 3–5–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 95–AGL–21]

Establishment of Class D Airspace; Minneapolis, Anoka, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace at Anoka County-Blaine Airport, Anoka, MN. Class D airspace is needed during the specific times that the Anoka County-Blaine Air Traffic Control Tower (ATCT) is in operation. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before April 25, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 95–AGL–21, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Peter H. Salmon, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AGL–21." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Anoka County-Blaine Airport, Anoka, MN. Class D airspace is needed during the specific times that the Anoka County-Blaine ATCT is in operation. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 5000 General

* * * * *

AGL MN D Minneapolis, Anoka, MN [New]

Minneapolis, Anoka County-Blaine Airport, MN

(Lat. 45°08'41.6"N, long. 93°12'39.8"W)

That airspace extending upward from the surface to and including 3400 feet MSL within a 3.9-mile radius of Anoka County-Blaine Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on January 25, 1996.

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 96–5122 Filed 3–5–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 94P–0390 and 95P–0241]

Food Labeling: Nutrient Content Claims, General Principles; Health Claims, General Requirements and Other Specific Requirements for Individual Health Claims; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of December 21, 1995 (60 FR 66206). The document proposed to amend the food labeling regulations on nutrient content claims and health claims to provide additional flexibility in the use of these claims on food products. The document was published with some typographical errors. This document corrects those errors.

DATES: Written comments by March 20, 1996. The agency is proposing that any final rules that may issue based upon this proposal become effective on the date of publication.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12140 Parklawn Dr., rm. 1–23, Rockville, MD 20857, 301–443–1751.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Center for Food Safety and Applied Nutrition (HFS–150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

In FR Doc. 95–31008, appearing on page 66206 in the **Federal Register** of Thursday, December 21, 1995, the following corrections are made:

1. On page 66213, in the first column, in the second full paragraph, beginning in the third line, "thiamin, niacin, or carbohydrates" is corrected to read "thiamin, niacin, or complex carbohydrates", and beginning in the tenth line, "thiamin, niacin, or carbohydrates" is corrected to read "thiamin or niacin".

2. On page 66214, in the third column, in the second full paragraph, in the fifteenth line, "of formation" is corrected to read "of information".

Dated: February 27, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–5214 Filed 3–5–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250, 251, and 256

RIN 1010–AB92

Revision of Requirements Governing Surety Bonds for Outer Continental Shelf Leases

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Extension of comment period for proposed rule.

SUMMARY: This document extends to May 6, 1996, the deadline for the submission of comments on the proposed revision of requirements governing surety bonds for Outer Continental Shelf (OCS) leases that were published December 8, 1995.

DATES: MMS will consider all comments we receive by May 6, 1996. We will begin reviewing comments at that time and may not fully consider comments we receive after May 6, 1996, in this rulemaking.

ADDRESSES: Written comments must be mailed or hand-carried to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4700; Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Engineering and Technology Division, Telephone (703) 787–1609.

SUPPLEMENTARY INFORMATION: The MMS has been asked to extend the deadline for respondents to submit comments on the proposed revisions of MMS's requirements governing surety bonds for OCS leases that were published December 8, 1995 (60 FR 63011). The request explains that more time is needed to allow respondents time to prepare detailed and comprehensive comments and recommendations on the complex factual and legal issues posed by MMS's proposal.

Dated: February 28, 1996.

Thomas M. Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 96–5106 Filed 3–5–96; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–71–2–6062b; FRL–5427–5]

Approval and Promulgation of Implementation Plans; Kentucky: Approval of Revisions to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revision submitted by the Commonwealth of Kentucky for the purpose of establishing a Stage II vapor recovery program in Louisville, Kentucky. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by April 5, 1996.

ADDRESSES: Written comments on this action should be addressed to Alan Powell at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Kentucky Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Alan Powell, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4209. Reference file KY–71–2.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 10, 1996.

Phyllis P. Harris,

Acting Regional Administrator.

[FR Doc. 96–5083 Filed 3–5–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300414; FRL–5347–7]

RIN 2070–AB18

Triphenyltin Hydroxide; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes to revoke tolerances for residues of Triphenyltin Hydroxide in or on carrots, peanuts and peanut hulls. All domestic registrations for use on these crops have been cancelled, therefore there is no longer a need to maintain these tolerances.

DATES: Written comments should be submitted to EPA by May 6, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental

Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information." CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday. excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket-epamail.epa.gov Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–300414]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: Jude Andreasen, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone: (703) 308-8016; e-mail:andreasen.jude-epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Legal Authorization

The Federal Food, Drug, and Cosmetic Act (FFDCA, 21 U.S.C. 301 et seq.) authorizes the establishment of tolerances (maximum legal residue levels) and exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities pursuant to section 408 [21 U.S.C. 346(a)]. Without such tolerances or exemptions, a food containing pesticide residues is considered "adulterated" under section 402 of the FFDCA, and hence may not legally be moved in interstate commerce [21 U.S.C. 342]. To establish a tolerance or an exemption under section 408 of the FFDCA, EPA must make a finding that the promulgation of the rule would "protect the public health" [21 U.S.C. 346a(b)]. For a pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136 et seq.).

In 1988, Congress amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136 et seq.) and required EPA to review and reassess the potential hazards arising from currently registered uses of pesticides registered prior to November 1, 1984. As part of this process, the Agency must determine whether a pesticide is eligible for reregistration or whether any subsequent actions are required to fully attain reregistration status. EPA has chosen to include in the reregistration process a reassessment of existing tolerances or exemptions from the need for a tolerance. Through this reassessment process, based on more recant data, EPA can determine whether a tolerance must be amended, revoked, or established, or whether an exemption from the requirement of one or more tolerances must be amended or is necessary.The procedure for establishing, amending, or revoking tolerances or exemptions from the requirement of tolerances is set forth in 40 CFR parts 177 through 180. The Administrator or EPA, or any person by petition, may initiate an action proposing to establish, amend, revoke, or exempt a tolerance for a pesticide registered for food uses. Each petition or request for a new tolerance, an amendment to an existing tolerance, or a new exemption from the requirement of a tolerance must be accompanied by a fee. Current Agency policy on tolerance actions identified during the reregistration process is to waive the payment of fees if the tolerance action concerns revision or revocation of an established tolerance, or if the proposed exemption from the requirement of a tolerance requires the concurrent revocation of an approved tolerance. Comments submitted in response to the Agency's published proposals are reviewed; the Agency then publishes its final determination regarding the specific tolerance actions.

II. Chemical—Specific Information and Proposed Actions On Triphenyltin hydroxide: Revocation of Tolerances

1. *Regulatory background.* Triphenyltin hydroxide (TPTH) was first registered under FIFRA in 1971; a Registration Standard was issued in September, 1984. The Standard established the restricted use classification, announced EPA's intent to initiate a Special Review based on developmental toxicity, imposed label warnings, established a 24-hour reentry period, and required data to fill gaps in product chemistry, residue chemistry, environmental fate, ecological effects and toxicology.

Data Call-In Notices were issued in 1986, 1988, 1990 and 1993. Worker exposure studies and reentry studies for pecan harvesters were submitted in early 1995 and are under review. The registrants (Griffin Corporation, Elf Atochem and Hoechst, now Agrevo) formed a Task Force and agreed that carrots and peanuts would not be supported uses, but that data for use on sugar beets, potatoes and pecans would be generated jointly by the Task Force.

A notice announcing receipt of a request for a voluntary cancellation of the use of TPTH on carrots was published in the **Federal Register** on March 6, 1991 (56 FR 9358). No comments were received in connection with this notice and the registration was subsequently canceled 60 days later. Earlier, the technical registrant, Griffin Corporation, submitted an application and proposed label amendments which deleted the use of TPTH on peanuts. The Agency approved this action on June 13, 1988.

2. *Current proposal.* Revocation of tolerances under 40 CFR 180.236 are proposed. Registrants are not supporting the use of TPTH on peanuts or carrots. Therefore, the Agency is proposing to revoke the tolerances for peanuts, peanut hulls and carrots.

III. Public Comment Procedures

EPA invites interested parties to submit written comments, information, or data in response to this proposed rule. Comments must be submitted by May 6, 1996. Comments must bear a notation indicating the docket number. Three copies of the comments should be submitted to either location listed under the "ADDRESSES" section above.

Information submitted as a comment concerning this document may be claimed confidential by marking any or all of that information as "Confidential Business Information" (CBI). EPA will not disclose information so marked, except in accordance with procedures set forth in 40 CFR part 2. A second copy of such comments, with the CBI deleted, must also be submitted for inclusion in the public record. EPA may publicly disclose without prior notice information not marked confidential.

Any person who has registered or submitted an application for registration of a pesticide, under FIFRA, as amended, that contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

EPA has established a record for this proposed rule under docket number [OPP–300414] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall 12, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket-epamail.epa.gov

The official record for this proposed rule, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official proposed rule record which will also include all comments submitted directly in writing. The official proposed rule record is the paper record maintained at the "ADDRESSES" listed at the beginning of this document.

IV. References

1. U.S. Environmental Protection Agency. 56 FR 9358, TPTH: Deletion of Uses and Directions for Use on Carrots, March 6, 1991.

2. Application and revised label from Griffin Corporation to EPA, October 16, 1987, deleting the use on peanuts for EPA registration number 1812-244. Accepted application, June 13, 1988.

V. Regulatory Assessment Requirements

To satisfy requirements for analysis specified by Executive Order 12866, the Regulatory Flexibility Act, the Paperwork Reduction Act, and the Unfunded Mandates Reform Act, EPA has considered the impacts of this proposal.

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal tribal governments or communities (also referred to as "economically significant"; (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not a "significant regulatory action," because it does not meet any of the regulatory-significance criteria listed above. The use sites for which tolerance revocation is proposed have been cancelled for some time. Revoking the tolerances is not expected to have any significant impact.

B. Regulatory Flexibility Act

EPA has reviewed this proposed rule under the Regulatory Flexibility Act of 1980 [Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601*et seq.*], and has determined that it will not have a significant economic impact on any small businesses, governments, or organizations. The proposed rule is not expected to have any significant impact on entities of any size. Accordingly, I certify that this proposed rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

D. Unfunded Mandates

This proposed rule contains no Federal mandates under Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, for State, local, or tribal governments or the private sector, because it would not impose enforceable duties on them.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 22, 1996.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 would continue to read as follows:
Authority: 15 U.S.C. 346a and 371.

2. Section 180.236 is revised to read as follows:

§ 180.236 Triphenyltin hydroxide; tolerances for residues.

Tolerances are established for residues of the fungicide triphenyltin hydroxide in or on raw agricultural commodities as follows:

0.1 part per million in or on sugar beet roots.

0.05 part per million in or on pecans and potatoes.

0.05 part per million in the kidney and liver of cattle, goats, hogs, horses and sheep.

[FR Doc. 96–5242 Filed 3–5–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300416; FRL–5349–7]

RIN 2070–AC18

Pesticide Tolerance for Prosulfuron

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to extend the tolerances for residues of the herbicide prosulfuron, 1-(4-methoxy-6-methyl-triazin 2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea in or on the raw agricultural commodities corn (forage, fodder, grain and fresh [including sweet kernels plus cobs with husks removed]) at 0.01 part per million (ppm), milk at 0.01 ppm, and fat, kidney, liver, meat by-products, of cattle, goats, hogs, horses, and sheep at at 0.05 ppm. The Agency has not completed the regulatory assessment of our science findings; therefore, the Agency is proposing to extend these tolerances until December 1999.

DATES: Comments must be sumitted by April 5, 1996.

ADDRESSES: By mail, submit written comments, identified by the docket number [OPP–300416] to: Public Response and Program Resources Branch, Field Operations Division (7506C) Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2, 1921 Jefferson Davis Highway., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking part or all that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–300416]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–305–6800, e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of (60 FR 24788, May 10, 1995) which established tolerances for residues of the herbicide prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea in or on the raw agricultural commodities corn (forage, fodder, grain, and fresh [including sweet kernels plus cobs with husks removed]) at 0.01 ppm, milk at 0.01 ppm, and meat, fat and meat by-products, of cattle, goats, hogs, horses, and sheep at at 0.05 ppm, with an expiration date of December 31, 1995 [PP 4F4336/R2133]. These tolerances with an expiration date were required by EPA to allow the petitioner, Ciba-Geigy Corp. to submit additional data concerning the method trial and corn metabolism and ruminant metabolism data. The petitioner has submitted the method and the method has been validated by an independent laboratory. Additional time is being required to complete review of this method trial and allow additional time to complete and submit the required metabolism data.

Based on the information cited above and in the document establishing the time-limiting tolerance for prosulfuron (60 FR 24788), the Agency has determined that when used in accordance with good agricultural practice, this ingredient is useful and the tolerances will protect the public health. Therefore, EPA is proposing to establish the tolerances as described below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the active ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the docket number [OPP–300416]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8:00 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [OPP–300416] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

The Office of Management and Budget has exempted this proposed rule from the requirements of section 3 of Executive Order 112866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 21, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a. and 371.

2. By revising § 180.481 to read as follows:

§ 180.481 Prosulfuron; tolerances for residues.

Tolerances that expire on December 31, 1999 are being extended for residues of the herbicide prosulfuron 1-[4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoro propyl)-phenylsulfonyl]-urea in or on the following raw aqricultural commodities:

Commodities	Parts per million
Corn, forage	0.01
Corn, fodder	0.01
Corn, grain and fresh (including sweet kernels plus cobs with husks removed))	0.01
Milk	0.01
Meat, fat, kidney, liver & meat by-products, of cattle, goats, hogs, horses, and sheep of cattle, goats, sheep	0.05

[FR Doc. 96–5241 Filed 3–5–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[ET Docket No. 96-20, RM-8638; FCC 96-55]

Fixed-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this *Notice of Proposed Rule Making (NPRM)*, the Commission proposes to allocate the 13.75–14.0 GHz band to the Fixed-Satellite Service ("FSS") on a co-primary basis for Earth-to-space ("uplink") transmissions. Adoption of this proposal would accommodate growing demand for FSS services and would provide satellite operators with increased flexibility in the design of their systems.

DATES: Comments must be submitted on or before April 1, 1996 and reply comments must be submitted on or before April 16, 1996.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 418–2450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *NPRM* in ET Docket No. 96-20, adopted on February 13, 1996, and released on February 23, 1996. The complete *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington D.C. 20037.

Summary of NPRM

1. The Commission proposes to amend Part 2 of its rules to allocate the 13.75–14.0 GHz frequency band to the FSS on a co-primary basis for uplink transmissions and to make conforming revisions to the associated service rules in Part 25. The FSS is a radiocommunication service between earth stations at a specified fixed point or any fixed point within specified areas and one or more satellites. In some cases this service includes satellite-to-satellite links, which may also be operated in the inter-satellite service. The FSS may also include feeder links for other space radiocommunication services. In addition, the Commission proposes to adopt domestically the international footnotes that specify the spectrum sharing criteria between incumbent services and the FSS as contained in the United States Proposals for the 1995 World Radiocommunication Conference ("WRC–95"). The Commission notes that WRC–95 has recently concluded and that it adopted most of the United States' proposals. The Commission is reviewing the decisions made at WRC–95 and will consider the international footnotes adopted for the 13.75–14.0 GHz band later in this proceeding. The Commission also proposes to adopt a United States footnote that would require that all FSS applications requesting the use of any frequency in the 13.75–13.8 GHz band segment be coordinated in order to minimize harmful interference to the Federal Government's Tracking and Data Relay Satellite System. This action would be consistent with the international allocation for this band made at the 1992 World Administrative Radio Conference, and would provide incumbent operations in this band with adequate interference protection from FSS uplinks.

List of Subjects

47 CFR Part 2

Radio.

47 CFR Part 25

Radio, Satellites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–5166 Filed 3–5–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 87

[WT Docket No. 96–1, FCC 96–2]

Automatic Operation of Aeronautical Advisory Stations (Unicoms)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a *Notice of Proposed Rule Making (NPRM)* which seeks to permit unattended, automatic operation of aeronautical advisory stations (unicoms) to enhance service to the general aviation community. This action stems from a Petition for Rule Making filed by Potomac Aviation Technology Corporation (PATC). The proposed rules would facilitate more efficient use of previously-allocated radio spectrum, make unicom services more widely available within the general aviation community, and increase safety in air navigation.

DATES: Comments must be filed on or before March 29, 1996, and reply comments must be filed on or before April 29, 1996. Written comments by the public on the proposed and/or modified information collections are due on or before March 29, 1996, and reply comments on or before April 29, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before May 6, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503 or via the Internet to fain—t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Roger Noel of the Wireless Telecommunications Bureau at (202) 418–0680. For additional information concerning the information collections contained in this *NPRM* contact Dorothy

Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *NPRM*, WT Docket No. 96–1, FCC 96–2, adopted January 11, 1996, and released January 29, 1996. The full text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800. This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

Summary of Notice of Proposed Rule Making

1. The unicom service was established in the 1950s to provide weather and runway advisories, radio checks, and other services necessary to the safe and expeditious operation of general aviation aircraft, and is a primary source of this type of information at many of the nation's 15,000 general aviation airfields. Many smaller airfields, however, cannot afford personnel to operate unicom stations full-time, nor can they afford other already-available but more complex automated advisory systems such as automatic weather observation stations (AWOS) or automatic terminal information stations (ATIS). The instant proceeding was initiated by a petition for rulemaking filed by Potomac Aviation Technology Corporation (PATC). PATC has been operating several automatic unicom stations under a developmental license since February, 1994.

2. The Commission proposes to expand the unicom service by permitting unicom stations to transmit in automatic mode without a live operator at the control point. Unicoms operating in automatic mode will be subject to all of the rules applicable to non-automatic unicoms. In order to reduce the potential for increased congestion on the unicom frequencies, however, unicoms in automatic mode must be configured to imitate basic congestion-reducing techniques employed by live operators.

3. Specifically, unicoms in automatic mode must transmit only in response to pilot interrogation via brief keyed RF signals from aircraft stations (generated by briefly depressing the "push-to-talk" button on an aircraft's microphone), monitor the unicom frequency before transmitting, and transmit only when the frequency has been silent for at least three seconds.

4. Under the proposed rules, only one unicom station will be permitted to operate in automatic mode at any airport. There will be no special licensing requirements for automated unicom operation beyond those applicable to a non-automatic unicom station; however, if an automatic unicom is to operate at an airport where more than one unicom station has been authorized, all of the unicom operators at that airport must come to an arrangement concerning who will control the automatic operations or how control will be shared. The Commission seeks specific comments concerning the proposed rule amendments set forth at the end of this document.

5. This *NPRM* is issued under the authority of sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r).

Initial Regulatory Flexibility Analysis

Reason for Action

The Commission proposes to permit Aeronautical Advisory Stations (Unicoms) to operate in automatic mode.

Objectives

We seek to increase unicom service availability without allocating new spectrum to the service or causing an increase in congestion on the unicom frequencies.

Legal Basis

The proposed action is authorized under Sections 4(i) and 303(r) of the Communications Act, 47 U.S.C. §§ 154(i) and 303(r).

Reporting, Recordkeeping and Other Compliance Requirements

Our proposed addition of 47 CFR § 87.219 would require all unicom licensees at airports having more than one unicom to jointly sign a letter of agreement, prior to the operation of a unicom in automatic mode at such an airport, stating the name(s) of the licensee(s) who will control the automatic unicom and, if applicable, how control of the automatic unicom will be divided.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None; however, FAA Advisory Circular 150/5340, "Air-to-Ground Radio Control of Airport Lighting Systems" addresses the method of activating automated systems contained in our proposed amendments and permitted under our current rules. Any proposed changes to 47 CFR. § 87.187(y) should be fully compatible with the FAA Advisory Circular.

Description, Potential Impact, and Small Entities Involved

Permitting Aeronautical Advisory Stations (Unicoms) to operate in automatic mode will make efficient use of previously-allocated spectral resources, will make unicom services more widely available within the general aviation community, will likely create a small number of manufacturing jobs, and will benefit pilots who rely on unicom information.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

None.

Paperwork Reduction Act

This *NPRM* contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on this *NPRM*; OMB comments are due 60 days from date of publication of this *NPRM* in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: N/A.
Title: Proposed 87.219 Automatic operations (NPRM in WT Dck No 96–1).
Form No.: N/A.
Type of Review: New collection.
Respondents: Business or other for-profit.

Number of Respondents: 50.
Estimated Time Per Response: 0.7 hour.
Total Annual Annualized Cost: $5,500.
Total Annual Burden: 35.
Needs and Uses: This rule requires that if airports have control towers or FAA flight service stations, and more than one licensee and want to have an automated aeronautical advisory station (unicom), they must write an agreement outlining who will be responsible for the unicom's operation, sign the agreement and keep a copy of the agreement with each licensee's station authorization. The information will be used by compliance personnel for enforcement purposes and by licensees to clarify responsibility in operating unicom.

List of Subjects in 47 CFR Part 87

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Proposed Rules

Chapter I of Title 47 of the Code of Federal Regulations, Part 87, is proposed to be amended as follows:

PART 87—AVIATION SERVICES

The authority citation for Part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

Section 87.5 is amended by revising the definition of "automatic weather observation station" to read as follows:

§ 87.5 Definitions.

* * * * *

Automatic weather observation station (AWOS) or automatic surface observation station (ASOS). A land station located at an airport and used to automatically transmit weather information to aircraft.

* * * * *

3. Section 87.187 is amended by revising paragraph (y) introductory text and the first sentence in paragraph (y)(4) to read as follows:

§ 87.187 Frequencies.

* * * * *

(y) Brief keyed RF signals (keying the transmitter by momentarily depressing the microphone "push-to-talk" button) may be transmitted from aircraft for the control of automated unicoms on the unicom frequencies listed in paragraph (y)(3) of this section, or for the control of airport lights on the following frequencies:

* * * * *

(4) Aviation support station frequencies listed in § 87.323(b): * * * * * * * * *

4. A new Section 87.219 is added to Subpart G to read as follows:

§ 87.219 Automatic operations.

(a) A station operator need not be present when an automated unicom is in operation.

(b) In addition to the requirements applicable to non-automated unicom operations, unicoms operating in an automated mode must:

(1) Monitor the unicom frequency prior to transmission, and transmit only when no detectable signals are received for at least three seconds;

(2) Transmit only in response to brief keyed RF signals from aircraft stations as specified in § 87.187(y);

(3) Automatically shut down after three minutes of continuous transmission.

(c) Automated advisory transmissions must be as brief as possible, and must include the time and date of the advisory message's last update in each transmission.

(d) Only one automated unicom may be operated at an airport. Prior to the operation of an automated unicom at an airport with more than one unicom licensee, all of the licensees at that airport must sign a letter of agreement stating which licensee(s) control the automated unicom operations, and, if control is to be shared among several operators, how that control will be divided or scheduled. The original or a copy of the letter of agreement must be kept with each licensees' station records. Within 90 days of the date upon which a new unicom operator is licensed at an airport where more than one unicom is authorized, and an automated unicom is being operated, an amended letter of agreement that includes the new licensee's signature must be signed or automated unicom operations must cease.

5. Section 87.419 is revised to read as follows:

§ 87.419 Supplemental eligibility.

Only one control tower or RCO will be licensed at an airport.

6. Subpart S is amended by revising the heading to read as follows:

Subpart S—Automatic Weather Stations (AWOS/ASOS)

7. Section 87.525 is revised to read as follows:

§ 87.525 Scope of service.

Automatic weather observation stations (AWOS) and automatic surface observation stations (ASOS) must provide up-to-date weather information including the time of the latest weather sequence, altimeter setting, wind speed and direction, dew point, temperature, visibility and other pertinent data needed at airports having neither a full-time control tower nor a full-time FAA Flight Service Station. When a licensee has entered into an agreement with the FAA, an AWOS or an ASOS may also operate as an automatic terminal information station (ATIS) during the control tower's operating hours.

8. Section 87.527 is amended by revising the first sentence of paragraph (b) and paragraph (c) to read as follows:

§ 87.527 Supplemental eligibility.

* * * * *

(b) Eligibility for an AWOS, an ASOS, or an ATIS is limited to the owner or operator of an airport or to a person who has entered into a written agreement with the owner or operator for exclusive rights to operate and maintain the station. Where applicable a copy of the agreement between the applicant and owner or operator of the airport must be submitted with an application. * * *

(c) Only one AWOS, ASOS, or ATIS will be licensed at an airport.

9. Section 87.529 is amended by revising the fourth and fifth sentences to read as follows:

§ 87.529 Frequencies.

* * * Normally, frequencies available for air traffic control operations set forth in subpart E will be assigned to an AWOS, ASOS, or to an ATIS. When a licensee has entered into an agreement with the FAA to operate the same station as both an AWOS and as an ATIS, or as an ASOS and an ATIS, the same frequency will be used in both modes of operation.

[FR Doc. 96–5185 Filed 3–5–96; 8:45 am]
BILLING CODE 6712–01–P

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Notices

Federal Register

Vol. 61, No. 45

Wednesday, March 6, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Information Collection Requirements Submitted for Public Comment and Recommendations; Correction and Extension of Comment Period

In accordance with the Paperwork Reduction Act of 1995, the Food and Consumer Service is correcting language regarding submission of comments in a previously published notice which sought public comment on information collection requests. In addition, the comment period on this **Federal Register** notice is being extended to allow further public comment based on the corrected language.

Correction

FR Doc. 96–3032, published on February 12, 1996 at 61 FR 5373, column 1 is corrected by adding a new paragraph between the first and second paragraph of the Addresses section to read as follows:

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Extension of Comment Period

The comment period for this notice is being extended for ten days to allow additional comments based on the corrected language above. Comments must be received by April 26, 1996.

Comments should be sent to Rose McClyde, Accounting Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 415, Alexandria, VA 22032.

Dated: February 29, 1996.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 96–5251 Filed 3–5–96; 8:45 am]

BILLING CODE 3410–30–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: March 12, 1996; 9:00 a.m.

PLACE: Cohen Building, 330 Independence Avenue, S.W., Room 3709, Washington, D.C. 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Barbara Floyd at (202) 401–3736.

Dated: March 4, 1996.

David W. Burke,

Chairman.

[FR Doc. 96–5423 Filed 3–4–96; 2:07 pm]

BILLING CODE 6155–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:00 p.m. on March 22, 1996, at the Wyndham Garden Hotel, 427 North 44th Street, Phoenix, Arizona 85008. The purpose of the meeting is to discuss plans for release of a report and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Manuel Peña, 602–542–4171, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 28, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–5146 Filed 3–5–96; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Wyoming Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on March 30, 1996, at the BW Hitching Post Inn, 1700 W. Lincolnway, Cheyenne, Wyoming 82001. The purpose of this meeting is to brief the Committee on Commission and regional activities, discuss current civil rights issues in the State, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Oralia G. Mercado, 307–472–2105, or John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 28, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–5147 Filed 3–5–96; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: National Oceanic and Atmospheric Administration.

Title: Coastal Information Management Customer Survey.

Agency Number: None.

OMB Number: None.

Type of Request: New Collection.

Burden: 198 hours.

Number of Respondents: 600.

Avg. Hours Per Response: 20 minutes.

Needs and Uses: The National Oceanic and Atmospheric Administration's Coastal Service Center bridges the gap between scientists and managers in the coastal zone management community. The goal is to provide marine ecosystem and coastal watershed data to coastal resource managers. This survey request is for a customer survey to identify the services and products users want and expect, as well as to determine their satisfaction with existing services. The information will be used to make quality improvements to the products and services offered.

Affected Public: Federal, state, local or tribal governments.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Adele Morris, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC's Acting Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information should be sent to Adele Morris, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: February 29, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–5178 Filed 3–5–96; 8:45 am]

BILLING CODE 3510–12–P

Bureau of the Census

1996 Test Census—Special Place Facility Questionnaire DT–351

ACTION: Proposed Agency Information Collection Activity; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 6, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Charles Moore, Bureau of the Census, Room 1769 #3, Washington, DC 20230, (301) 457–2050.

SUPPLEMENTARY INFORMATION:

I. Abstract

Planning is currently underway for the 1996 Test Census which is an integral part of the overall planning process for the Year 2000 Decennial Census. The Census Bureau must provide everyone in our test sites the opportunity to be counted including persons living at group quarters (GQs) student dorms, shelters and housing units (HUs) at and/or associated with special places (SPs). One of the major requirements for enumeration of persons at SP facilities is to identify the GQs and any associated HUs at each SP.

We will phone each SP in the 1996 Test Census and conduct interviews to identify and collect updated information about the GQs and HUs at each SP using the DT–351 Special Place Facility Questionnaire.

II. Method of Collection

Telephone interviews will be conducted using a paper questionnaire. We plan to conduct this operation via Computer Assisted Telephone Interviewing (CATI) for the year 2000 census. However, resources did not allow us to implement this approach in the 1996 Test Census. Form modifications should reduce the amount of time needed to conduct the interview as well as eliminate other problems caused by personal visit interviews.

III. Data

OMB Number: Not available.

Form Number: DT–351.

Type of review: Regular Submission.

Affected Public: Individuals, Businesses or other for-profit organizations, non-profit institutions and small businesses or organizations.

Estimated number of Respondents: 40 SPs in the 1995 Test Census sites.

Estimated Time Per Response: Each interview should take about 15 minutes (0.250 hours).

Estimated Total Annual Burden Hours: 10 hours.

Estimated Total Annual Cost: All costs for the Special Place Facility Questionnaire Operation ($700) are covered by funding for the 1996 Test Census. There is no cost to respondents for providing information on this operation, except for a few minutes of their time.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 29, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–5145 Filed 3–5–96; 8:45 am]

BILLING CODE 3510–07–P

Bureau of Export Administration

One-Time Report for Foreign Software or Technology Eligible for De Minimis Exclusion

ACTION: Proposed Collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 6, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, U.S. Dept. of Commerce, 14th and Constitution Avenue., NW., room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 734.4 exempts from the Export Administration Regulations reexports of foreign technology commingled with or drawn from controlled U.S. origin technology valued at 10% or less of the total value of the foreign technology. Any company seeking exemption from export controls on foreign software and technology commingled with U.S. software or technology must submit a one-time report to BXA prior to reliance upon this *de minimis* exclusion.

II. Method of Collection

Exporters intending to rely on the *de minimis* exclusion for foreign software and technology commingled with U.S. software and technology must file a one-time written report for the foreign software or technology.

III. Data

OMB Number: 0694–0101.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 10.

Estimated Time Per Response: 25 hours.

Estimated Total Annual Burden Hours: 250.

Estimated Total Annual Cost: $5,000 for preparation of report. There are no equipment or maintenance costs associated with this collection.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 29, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–5179 Filed 3–5–96; 8:45 am]

BILLING CODE 3510–DT–P

Miscellaneous Activities

ACTION: Proposed Collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 6, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, U.S. Dept. of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

On September 30, 1993, the Secretary of Commerce submitted to the Congress a report of the Trade Promotion Coordinating Committee, entitled Toward a National Export Strategy. The report included the goal to "Undertake a comprehensive review of the Export Administration Regulations to simplify, clarify, and make the regulations more user-friendly". To carry out this recommendation, BXA has rewritten the entire EAR. During the course of this process, many activities imposed on the public were changed to reduce the burden, however the methods varied. Some were merely eliminated; others had old activities replaced with newer, simpler activities, and still others had new activities added to permit participation in programs where prohibitions once existed. Therefore, to the extent activities have been added or changed but not deleted, this collection represents the authority to collect, on rare occasions, certain information from the public. This assembly of information collection activities is comprised of three activities. Two of these—"Registration Of U.S. Agricultural Commodities For Exemption From Short Supply Limitations On Export", and "Petitions For The Imposition Of Monitoring Or Controls On Recyclable Metallic Materials; Public Hearings" are statutory in nature and—though they never have been applied—must remain a part of the EAR. The third—The Commerce Control List—became necessary as the rewrite of the Export Administration Regulations sought to harmonize the U.S. ECCN system with the European system for consistency and future simplicity. For the purpose of clarity, this abstract will refer to these three activities as follows:

USAG will refer to Registration Of U.S. Agricultural Commodities For Exemption From Short Supply Limitations On Export activities;

Petitions will refer to Petitions For The Imposition Of Monitoring Or Controls On Recyclable Metallic Materials; Public Hearings activities; and

CCL will refer to Commerce Control List activities that are associated with export license applications.

II. Method of Collection

For USAG, the method is a written application for the exemption from Short Supply Limitations on Export Activities.

For Petitions, the method is a written petition requesting the monitoring of exports or the imposition of export controls, or both, with respect to certain materials.

For CCL, the method is by electronic or paper submissions related to export license applications.

III. Data

OMB Number: 0694–0102.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 2.

Estimated Time Per Response:

USAG: 5 hours per response.

Petition: 5 hours per response.

CCL: n/a—time is part of license application requirements.

Estimated Total Annual Burden Hours: 10.

Estimated Total Annual Cost: $200.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 29, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–5180 Filed 3–5–96; 8:45 am]

BILLING CODE 3510–DT–P

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the preliminary and final results of the review of polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea. The review covers four manufacturers/exporters of the subject merchandise to the United States and the period June 1, 1994 through May 31, 1995.

EFFECTIVE DATE: March 6, 1996.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4475 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

Because it is not practicable to complete this review within the time limits mandated by the URAA (245 days from the last anniversary month for preliminary determinations, 120 additional days for final determinations), pursuant to Section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended, the Department is extending the time limits for completion of the preliminary results until June 30, 1996. We will issue our final results for this review by October 31, 1996.

These extensions are in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: February 22, 1996.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 96–5144 Filed 3–5–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–201–504]

Notice of Preliminary Results of Antidumping Duty Administrative Review; Porcelain-on-Steel Cookware From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by petitioner, the Department of Commerce is conducting an administrative review of the antidumping duty order on porcelain-on-steel cookware from Mexico. The review covers shipments of this merchandise to the United States during the period December 1, 1991 through November 30, 1992. The review indicates the existence of dumping margins during the review period. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 6, 1996.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Dolores Peck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone, (202) 482–4929.

SUPPLEMENTARY INFORMATION:

Background

On December 4, 1992, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the Antidumping Duty Order on Porcelain-on-Steel Cookware from Mexico (57 FR 57419). In accordance with 19 C.F.R. 353.22(a)(2), on December 16, 1992, General Housewares Corporation requested an administrative review of the antidumping order covering the period December 1, 1991, through November 30, 1992. We initiated the administrative review on February 23, 1993 (58 FR 11026), and are conducting it in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by this review are shipments of porcelain-on-steel cookware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are

enameled or glazed with vitreous glasses. This merchandise is currently classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) item number 7323.94.00. Kitchenware currently entering under HTS item number 7323.94.00.30 is not subject to the order. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

The review covers two manufacturers/exporters, Acero Porcelanizado, S.A. de C.V. (APSA) and Cinsa, S.A. de C.V. (CINSA) of Mexican porcelain-on-steel cookware. The period of review (POR) is December 1, 1991 to November 30, 1992.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Product Comparisons

In accordance with the Department's standard methodology, we first compared identical merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of product type, quality, color, and number of enamel coats for CINSA and product type and quality for APSA.

CINSA argued that beginning in the fifth review period (1990–91), its home market costs and prices began to differentiate between items having different colors and enamel coats. We analyzed the information on the record in the sixth review (1991–92) and determined that appreciable differences in costs may result from different coats/colors for a product otherwise the same which is sold in the same period of time. We also noted that CINSA's home market pricing appears to differentiate between items having different colors and enamel coats, as argued by respondent. Accordingly, in addition to the product type and quality criteria, we have also used color and coat as matching criteria for CINSA.

APSA argues that color and coat should not be used in its product comparisons since the difference in its cost of producing cookware of different colors and coats is insignificant in relation to the total cost of production (COP). Moreover, APSA argued that the Department had matched only by product and quality in past reviews. As a result of our analysis of the information on the record, we concluded that there is no evidence indicating that the previous matching criteria are inappropriate for purposes of this review for this company. Accordingly, for APSA, we have compared products using only the product type and quality criteria, as was done in past reviews. (*See* Concurrence Memorandum dated September 13, 1995, for further discussion of this issue).

For those U.S. sales for which we found no contemporaneous sales of comparable merchandise sold in the home market and for which there was no constructed value (CV) date on the record, we used best information available (BIA). (See **United States Price** section of this notice).

United States Price

A. APSA

We based United States price (USP) on both exporter's sales price (ESP) and purchase price (PP), in accordance with section 772 of the Act, because the subject merchandise was sold both before and after importation into the United States. We based ESP and PP on the packed, ex-factory price to unrelated purchasers in the United States.

For both PP and ESP sales we made deductions from USP, where appropriate, for foreign and U.S. inland freight and insurance, Mexican and U.S. brokerage and U.S. import duties and user fees, in accordance with section 772(d)(2) of the Act. We also made deductions for discounts and rebates.

We made further deductions from ESP, where applicable, for commissions, credit expenses and indirect selling expenses, pursuant to section 772(e)(1) and (2) of the Act.

For three U.S. products, we found no identical home market products sold in contemporaneous periods, and APSA did not provide an adjustment for differences in merchandise or constructed value information, as we had repeatedly requested. Therefore, we used BIA for these sales pursuant to Section 776(C) of the Act. As partial BIA, we used the weighted-average of 8.75 percent from *Porcelain-On-Steel Cookware From Mexico; Final Results of Antidumping Duty Administrative Review (3rd Administrative Review)*, 58 FR 32095 (June 8, 1993),because it is the highest rate ever determined for APSA. This is consistent with the Department's general application of partial BIA (*see, e.g., Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et. al.*,(AFBs), 60 FR 10900, 10907 (February 28, 1995)).

B. CINSA

We based USP on PP, in accordance with section 772 of the Act, because the subject merchandise was sold before importation into the United States. We based PP on the packed, ex-factory price to unrelated purchasers in the United States.

We made deductions from USP, where appropriate, for foreign and U.S. inland freight and insurance, Mexican and U.S. brokerage and U.S. import duties, in accordance with section 772(d)(2) of the Act.

We added to USP the amount of import duties which have been rebated, or which not have been collected, by reason of the exportation of the subject merchandise to the United States.

C. CINSA and APSA

For both CINSA and APSA we made an adjustment to USP for the value-added tax (VAT) paid on the comparison sales in Mexico. In light of the Federal Circuit's decision in *Federal Mogul* v. *United States*, CAFC No. 94–1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States*, 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States*, 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a "zero" pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the "*Zenith* footnote 4" methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the "*Zenith* footnote 4" methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the *Federal Circuit* has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the "*Zenith* footnote 4" methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Also, for both APSA and CINSA, the Department verified in the original investigation and in previous reviews that both companies incur the same packing expenses for sales of the subject merchandise in the United States and in Mexico. Therefore, as in previous reviews, no adjustment was made for packing.

Foreign Market Value

A. APSA

In calculating foreign market value (FMV), the Department used home market price, as defined in section 773 of the Act. Home market price was based on the packed, ex-factory price to certain related and unrelated purchasers in the home market. In our margin calculations, we used sales to related parties which we found were at arm's length. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 60 FR 44012 (August 24, 1995).

We made deductions from the home market price for discounts and rebates. For comparison to PP sales, pursuant to section 773(a)(4)(B) and 19 C.F.R. 353.56(a)(2), we made a circumstance-of-sale (COS) adjustment, where appropriate, for differences in credit expenses. For comparison to ESP sales, we also deducted credit expenses from FMV.

We adjusted for differences in commissions in accordance with 19 CFR 353.56(a)(2)(1994).

Regarding indirect selling expenses, APSA calculated inventory carrying costs based on sales price. We recalculated these costs based on APSA's cost of goods sold.

We adjusted for VAT in accordance with our practice. (See the **United States Price** section of this notice, above.)

B. CINSA

We also used home market price for CINSA, when sufficient quantities of such or similar merchandise were sold in the home market, at or above the cost of production (COP), to provide a basis for comparison.

Home market price was based on the packed, delivered and ex-factory price to certain related and unrelated purchasers in the home market. In our margin calculations, we used sales to related parties which we found were at arm's length. We made deductions from home market price for discounts, where applicable.

In light of the Court of Appeals for the Federal Circuit's decision in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement* v. *United States*, 13 F.3d 398 (Fed. Cir. 1994), the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we adjust for those expenses under the COS provision of 19 CFR 353.56(a). Accordingly, in the present case, we adjusted for post-sale home market inland freight charges under the COS provision of 19 CFR 353.56(a). We did not deduct pre-sale inland freight charges because, as in the fifth administrative review, CINSA did not demonstrate to the Department's satisfaction that these expenses are directly related to sales of the subject merchandise. Because CINSA did not report warehousing as a direct selling expense, it is reasonable to assume that freight to the warehouse also is not directly related to sales. *See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand*, 60 FR 29553, 29563 (June 5, 1995) for a complete discussion on the Department's policy concerning pre-sale movement charges.

Pursuant to section 773(a)(4)(B) and 19 C.F.R. 353.56(a)(2), we made a COS adjustment, where appropriate, for differences in credit expenses. We recalculated home market credit using the revised interest rate reported in the May 2, 1994, supplemental response. Also, as stated in this response, we did not calculate credit expenses for sales in the home market where there were missing pay dates. We determined that the bank fees associated with the letter of credit transactions for certain U.S. customers are a direct selling expense and have added these fees to FMV. We deducted home market commissions and added U.S. indirect selling expenses capped by the amount of home market commissions.

We adjusted for VAT in accordance with our practice. (*See* the "**United States Price**" section of this notice, above.)

Cost of Production

With regard to CINSA, there is a history of sales below the COP. In order to determine whether home market prices were below COP within the meaning of section 773(b) of the Act, we performed a product-specific cost test, in which we examined whether each home market product sold during the POR was priced below the COP of that product. For CINSA's home market models for which there were insufficient sales at or above the COP, we used CV.

Regarding APSA, petitioner's June 18, 1993, letter requested an extension for filing a sales below cost allegation, however, no such allegation was filed with the Department. Therefore, we did not perform a sales below cost analysis of APSA.

A. Calculation of COP

We calculated COP based on the sum of respondent's cost of materials, fabrication, general expenses and packing costs, in accordance with 19 CFR 353.51(c). In our COP analysis, we have relied on COP information submitted by CINSA, except in the following instances where it was not appropriately quantified or valued: 1) We included expenses related to employee profit sharing in the cost of manufacture; 2) We revised CINSA's submitted interest costs to exclude the calculation of negative interest expense; and adjusted the VAT amount included in COP.

B. Test of Home Market Sales Prices

As required by section 773(b) of the Act, we tested whether a substantial quantity of respondent's home market sales of subject merchandise were made at prices below COP over an extended period of time. We also tested whether such sales were made at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. On a product-specific basis, we compared the COP (net of selling expenses) to the reported home market prices, less any applicable movement charges, rebates, and direct and indirect selling expenses. To satisfy the requirement of section 773(b)(1) of the Act that below-cost sales be disregarded only if made in substantial quantities, we applied the following methodology. If over 90 percent of the respondent's sales of a given product were at prices equal to or greater than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." If between 10 and 90 percent of the respondent's sales of a given product were at prices equal to or greater than the COP, and sales of that product were also found to be made over an extended period of time, we disregarded only the below-cost sales. Where we found that more than 90 percent of the respondent's sales of a product were at prices below the COP, and the sales were made over an extended period of time, we disregarded all sales of that product, and calculated FMV based on CV, in accordance with section 773(b) of the Act.

In accordance with section 773(b)(1) of the Act, in order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POR in which that product was sold. If a product was sold in three or more months of the POR, we do not exclude below-cost sales unless there were below-cost sales in at least three months during the POR. When we found that sales of a product only occurred in one or two months, the number of months in which the sales occurred constituted the extended period of time, *i.e.*, where sales of a product were made in only two months, the extended period of time was two months; where sales of a product were made in only one month, the extended period of time was one month. *See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the United Kingdom*, 60 FR 10558, 10560 (February 27, 1995).

C. Results of COP Test

We found that for certain products, between 10 and 90 percent of CINSA's home market sales were sold at below COP prices over an extended period of time. Because CINSA provided no indication that the disregarded sales were at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with section 773(b) of the Act, we based FMV on CV for all U.S. sales left without a home market sales match as a result of our application of the COP test.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, general expenses and packing costs. In accordance with section 773(e)(1)(B) (i) and (ii), we used: (1) The actual amount of general expenses because those amounts were greater than the statutory minimum of ten percent and (2) the actual amount of profit where it exceeded the statutory minimum of eight percent.

We recalculated the respondent's CV based on the methodology described in the calculation of COP above, with the exception of the VAT adjustment. In addition, we revised CV profit based upon the calculation provided by CINSA.

Price-to-CV Comparisons

Where we made CV to PP comparisons, we made a COS adjustment for direct selling expenses.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period December 1, 1991, through November 30, 1992:

Manufacturer/exporter	Review period	Margin (percent)
APSA	12/1/91–11/30/92	1.65
CINSA	12/1/91–11/30/92	4.93

Interested parties may request a disclosure within 5 days of publication of this notice and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held no later than seven days after the scheduled date for submission of rebuttal briefs. Case briefs will be due on April 22, 1996, and rebuttal briefs, limited to issues raised in the case briefs, will be due on April 29, 1996. We will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirement will be effective for all shipments of subject merchandise from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rates for the reviewed companies will be those rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "all others" rate of 29.52 percent from the original investigation.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 29, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–5257 Filed 3–5–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–427–811]

Certain Stainless Steel Wire Rods From France: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by Imphy S.A., and Ugine-Savoie, respondents, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain stainless steel wire rods from France. This review covers the above manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is August 5, 1993 through December 31, 1994.

We have preliminarily determined that respondents sold subject merchandise at less than normal value (NV) during the POR. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding should also submit with the argument (1) a statement of the issue, and (2) a brief (no longer than five pages, including footnotes) summary of the argument.

EFFECTIVE DATE: February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques or Jean Kemp, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3434 or (202) 482–4037, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On December 29, 1993, the Department published in the **Federal Register** (58 FR 68865) the final affirmative antidumping duty determination on certain stainless steel wire rods from France, and published an amended final determination and antidumping duty order on January 28, 1994. On January 12, 1995, the Department published the Opportunity to Request an Administrative Review of this order for the period August 5, 1993–December 31, 1994 (60 FR 2941). The Department received a request for administrative review from Imphy, S.A., ("Imphy") and Ugine Savoie ("Ugine"), related producers/exporters of the subject merchandise on January 30, 1995. We initiated the review on February 15, 1995. On November 7, 1995, the Department published in the **Federal Register** its notice extending the deadline in this review (60 FR 56142).

The Department is now conducting this review in accordance with section 751 of the Act. The review covers sales of certain stainless steel wire rods by Imphy, Ugine, and their affiliated companies, Metalimphy Alloys Corp. ("MAC"), and Techalloy Company, Inc. ("Techalloy").

Scope of the Review

The products covered by this administrative review are certain stainless steel wire rods (SSWR), products which are hot-rolled or hot-rolled annealed, and/or pickled rounds, squares, octagons, hexagons, or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling, are normally sold in coiled form, and are of solid cross section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed, and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this review is currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Verification

As provided in section 782(i) of the Tariff Act, we verified information provided by the respondent by using standard verification procedures, including onsite inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Transactions Reviewed

In accordance with Section 751 of the Act, the Department is required to determine the normal value and export price (EP) or constructed export price (CEP) of each entry of subject merchandise during the relevant review period. Because there can be a significant lag between entry date and sale date for CEP sales, it has been the Department's practice to examine U.S. CEP sales during the period of review. *Gray Portland Cement and Clinker from Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 48826 (1993) (Dept. did not consider ESP (now CEP) entries which were sold after the POR). The Court of International Trade has upheld the Department's practice in this regard. *See, The Ad Hoc Committee of Southern California Producers of Gray Portland Cement* v. *United States*, CIT Slip Op. 95–195, December 1, 1995.[1]

The Department has adopted an exception to its practice of examining all U.S. sales during the period of review. That exception applies when a respondent is able to demonstrate, to the satisfaction of the Department, that the merchandise covered by a particular sale entered prior to the suspension of liquidation pursuant to the Department's preliminary determination in the LTFV investigation. *See, High-Tenacity Rayon Filament Yarn, Preliminary Results of Antidumping Duty Administrative Review*, 59 FR 32181 (1994) (specific sales excluded when linked to pre-suspension entries); *compare, Certain Corrosion-Resistant Carbon Steel Flat Products from Australia; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 42507 (1995) (sales not excluded when respondent unable to link them to specific pre-suspension entries). Merchandise proven to have entered the U.S. prior to the suspension of liquidation (and in the absence of an affirmative critical circumstances finding) is not subject merchandise within the meaning of section 771(25) of the Act.

In this review, respondent claimed that certain merchandise was not

[1] Although the CIT, in *Ad Hoc*, accepted that "consideration of all sales, rather than entries, made during the period of review *may* result in the consideration of entries made prior to the suspension of liquidation", *Ad Hoc* is not a case in which the respondent linked specific sales during the POR to specific entries prior to the suspension of liquidation. *Ad Hoc*, Slip Op. at 19 (emphasis added).

subject to review because it entered prior to the period of review for sale by an affiliated U.S. company during the period of review. The Department verified that respondent was able to link certain sales during the period to entries of merchandise prior to the suspension of liquidation. Because respondent has demonstrated that certain merchandise entered prior to the suspension of liquidation, we excluded sales of that merchandise from our analysis.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the description in the Scope of the Review section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix III of the Department's June 20, 1995 antidumping questionnaire and additional specifications listed in our December 1, 1995 supplemental questionnaire. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents and verified by the Department.

Level of Trade

As set forth in section 773(a)(2)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, at 829–831, to the extent practicable, the Department will calculate normal value based on sales at the same level of trade as the U.S. sale. When the Department is unable to find sale(s) in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at a different level of trade.

In accordance with section 773(a)(7)(A) of the Act, if we compare a U.S. sale at one level of trade to normal value sales at a different level of trade, the Department will adjust the normal value to account for the difference in level of trade if two conditions are met. First, there must be differences between the actual selling functions performed by the seller at the level of trade of the U.S. sale and at the level of trade of the NV sale. Second, the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which normal value is determined. When constructed export price is applicable, section 773(a)(7)(B) of the Act establishes the procedures for making a constructed export price offset when: (1) normal value is at a different level of trade, and (2) the data available do not provide an appropriate basis for a level of trade adjustment from the U.S. sale. Also, in accordance with section 773(a)(7)(B), to qualify for a CEP offset, the level of trade in the home market must also constitute a more advanced stage of distribution than the level or trade of the CEP.

In order to identify levels of trade, the Department must review information concerning selling functions of the exporter. Therefore, in addition to the questions related to the level of trade in our June 20, 1995, questionnaire, on December 13, 1995, we sent respondents supplemental questions related to level of trade comparisons and adjustments. We asked respondents to establish any claimed levels of trade based on selling functions performed and services offered to each customer or customer class, and to document and explain any claims for a level of trade adjustment.

Respondents' reported one level of trade in the home market (to end users) and two channels of distribution: 1) direct to end users; and 2) through Ugine Service, a joint-venture between Imphy and Ugine which acts as a selling arm. We examined and verified the selling functions performed in each channel and found that the two sales channels provided many of the same or similar selling functions including: strategic planning, order evaluation, warranty claims, technical services, inventory maintenance, packing and freight and delivery. We found some differences between the two channels of trade in advertising, customer contacts, computer systems (order input/invoice system), and administrative functions. Overall, we determine that the selling functions between the two sales channels are sufficiently similar to consider them as one level of trade in the home market.

For the U.S. market, respondents claimed that they sold to two levels of trade: 1) end users through MAC (EP sales); and 2) distributors, e.g., MAC, Techalloy and US&A (CEP sales). We examined and verified the selling functions performed for U.S. sales to end users through MAC and determined that they are at the same level of trade as home market sales. We then examined and verified that different (fewer) selling functions were performed for U.S. sales to distributors than for home market sales. Specifically, we found the selling functions were sufficiently different in customer sales contacts, technical services, inventory maintenance, computer systems and administrative functions to warrant treating U.S. sales to distributors and the home market sales as different levels of trade.

To the extent practicable, we compared normal value at the same level of trade as the U.S. sale. Because we compared these CEP sales to home market sales at a different level of trade, we examined whether a level of trade adjustment may be appropriate. In this case, respondent only sold at one level of trade in the home market; therefore, there is no basis upon which respondent can demonstrate a consistent pattern of price differences between levels of trade. Further, we do not have information which would allow us to examine pricing patterns based on respondent's sales of other products and there are no other respondents or other record information on which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a level of trade adjustment but the level of trade in the HM is a more advanced stage of distribution than the LOT of the CEP sale, a CEP offset is appropriate. Respondents claimed a CEP offset for those U.S. CEP and CEP/FM (CEP/Further Manufactured) sales compared to sales in France through Ugine Service. We included a CEP offset for all sales in France which are compared with CEP and CEP/FM sales in the United States since the comparison of home market sales to CEP sales is at a different level of trade. We applied the CEP offset to normal value or constructed value, as appropriate (See *Fair Value Comparisons Section*, below). The level of trade methodology employed by the Department in these preliminary results of review is based on the facts particular to this review. The Department will continue to examine its policy for making level of trade comparisons and adjustments for its final results of review.

Fair Value Comparisons

To determine whether sales of SSWR by respondents to the United States were made at less than fair value, we compared the EP or CEP to the normal value (NV), as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions. Where possible, in calculating a monthly weighted average normal value, we averaged home market sales across the channel of distribution most comparable to that in which the U.S. transaction was made. Where there were no home market sales through that channel of distribution, we averaged home market sales through the other channel of distribution.

Export Price and Constructed Export Price

We used EP, in accordance with subsections 772(a) and (c) of the Act, where the subject merchandise was sold directly or indirectly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts of record. In addition, we used CEP in accordance with subsections 772(b), (c) and (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States.

We made adjustments as follows:

We calculated EP based on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for discounts, foreign inland freight, foreign brokerage and handling, international freight, U.S. inland freight, U.S. brokerage and handling, and U.S. Customs duties. We also adjusted the starting price for billing adjustments to the invoice price.

We calculated CEP sales based on packed prices to unaffiliated customers. Where appropriate, we made deductions for early payment discounts, credit expenses, warranty expenses, other direct selling expenses and commissions. We deducted those indirect selling expenses, including inventory carrying costs and product liability premiums, that related to commercial activity in the United States. We also made deductions for foreign brokerage and handling, foreign inland freight, international freight, U.S. inland freight, U.S. brokerage and handling, and U.S. duty and harbor fees. We also adjusted the starting price for billing adjustments to the invoice price and for interest revenue. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

Further Manufacturing

For product that was further manufactured after importation, we adjusted for all value added in the United States, including the proportional amount of profit attributable to the value added. We computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity (including further manufacturing costs), based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since respondents' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales.

Where appropriate, we deducted discounts, credit expenses, warranty expenses, inland freight, inland insurance and packing. We also adjusted the starting price for billing adjustments to the invoice price and interest revenue. We did not adjust the starting price for commissions in the home market (please see the Concurrence Memo for a discussion of this issue).

To calculate the CEP offset, we took the home market indirect selling expenses and deducted this amount from normal value, on home market sales which were compared to U.S. CEP sales. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses incurred in the United States.

We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In accordance with the Department's practice, where the difference in merchandise adjustment for any product comparison exceeded 20 percent, we based normal value on CV. In addition, in accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Further, because we disallowed all home market commissions, we deducted from normal value the lesser of either (1) the amount of commission paid on a U.S. sale for a particular product, or (2) the amount of indirect selling expenses incurred on the home market sales for a particular product.

Price to CV Comparisons

Where we compared CV to EP, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses.

Cost of Production Analysis

Based on the fact that the Department had disregarded sales in the LTFV investigation because they were made below the cost of production (COP), the Department found reasonable grounds in this review, in accordance with section 773(b)(2)(A)(ii) of the Act, to believe or suspect that respondents made sales in the home market at prices below the cost of producing the merchandise. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POR at prices below their COP within the meaning of section 773(b) of the Act.

Before making any fair value comparisons, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of respondents' cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general, and administrative expenses (SG&A) and packing costs in accordance with section 773(b)(3) of the Act. We relied on the respondents' reported COP amounts.

B. Test of Home Market Prices

We used the respondents' weighted-average COP for the POR. We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at below-cost prices within an extended period of time in substantial quantities, and whether they were at prices which permit recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and direct and indirect selling expenses.

C. Results of COP Test

Pursuant to section 773(b)(2)(c), where less than 20 percent of respondents' sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were at prices less than the COP, we disregarded the

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below-cost sales because we determined that the below-cost sales were made within an extended period of time in "substantial quantities" in accordance with section 773(b)(2)(B) of the Act, and because we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product, and calculated NV based on CV, in accordance with section 773(b)(1) of the Act.

D. Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of respondents' cost of materials, fabrication, SG&A , U.S. packing costs, interest expenses and profit as reported in the U.S. sales databases. In accordance with sections 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. We relied on the respondents' reported CV amounts. For selling expenses, we used the weighted-average home market selling expenses.

Arm's-Length Sales

Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct and indirect selling expenses, discounts and packing. Where the price to the related party was 99.5 percent or more of the price to the unrelated party, we determined that the sale made to the related party was at arm's-length. Where no related customer ratio could be constructed because identical merchandise was not sold to unrelated customers, we were unable to determine that these sales were made at arm's length and, therefore, excluded them from our analysis. See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37062, 37077 (July 9, 1993)). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made comparison to the next most similar model.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." For these preliminary results of review, we have determined that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. Therefore, when we determined a fluctuation existed, we substituted the benchmark for the daily rate.

Preliminary Results of the Review

As a result of our comparison of USP and NV, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/exporter	Period	Margin
Imphy/Ugine-Savoie	8/5/93–12/31/94	5.01

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or other written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 180 days after the date of publication of this notice.

Upon completion of this review, the following deposit requirements will be effective upon publication of the final results of this antidumping duty review for all shipments of SSWR from France, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Tariff Act: (1) the cash deposit rate for the reviewed companies will be that established in the final results of review; (2) for exporters not covered in this review, but covered in the LTFV investigation, the cash deposit rate will continue to be the company-specific rate from the LTFV investigation; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 24.51 percent, the "All Others" rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of review are published pursuant to section 751(a)(1) of the Act and 19 CFR 353.22.

Dated: February 28, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–5259 Filed 3–5–96; 8:45 am]

BILLING CODE 3510–25–P

[A–489–501]

Certain Standard Welded Carbon Steel Pipe and Tube from Turkey; Extension of Time Limits of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the preliminary and final results in the administrative review of the antidumping duty order on certain standard welded carbon steel pipe and tube (pipe and tube) from Turkey, covering the period May 1, 1994, through April 30, 1995, since it is not practicable to complete the review within the time limits mandated by the Tariff Act of 1930, as amended, 19 U.S.C. 1675(a) (the Act).

EFFECTIVE DATE: March 6, 1996.

FOR FURTHER INFORMATION CONTACT: Kris Campbell or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce received a request to conduct an administrative review of the antidumping duty order on pipe and tube from Turkey. On June 13, 1995, the Department initiated this administrative review covering the period May 1, 1994, through April 31, 1995. The Department adjusted the time limits by 28 days due to the government shutdowns, which lasted from November 14, 1995, to November 20, 1995, and from December 15, 1995, to January 6, 1996. *See* Memorandum to the file from Susan G. Esserman, Assistant Secretary for Import Administration, January 11; 1996.

It is not practicable to complete this review within the time limits mandated by section 751 (a) (3) (A) of the Act. Therefore, in accordance with that section, the Department is extending the time limits for the preliminary results to June 27, 1996, and for the final results to December 24, 1996.

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 353.34 (b).

These extensions are in accordance with section 751 (a) (3) (A) of the Act.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

Dated: February 28, 1996.

[FR Doc. 96–5258 Filed 3–5–96; 8:45 am].

BILLING CODE 3510–DS–P

Minority Business Development Agency

[Docket No. 960214029–6029–01]

RIN 0640–XX01

Implementation of Pilot Community-Based Enhanced Services (CBES) Initiative in Baltimore, Maryland, and the Identification of Other Markets To Be Considered as Alternatives to the Minority Business Development Center Program for the Delivery of Management and Technical Assistance to Minority Firms and Entrepreneurs

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) will begin to implement, on a pilot basis, its Community-Based Enhanced Services (CBES) Initiative in the Baltimore, Maryland Metropolitan Statistical Area (MSA) as an alternative to the Minority Business Development Center (BDC) Program. Under the CBES Initiative, the Department of Commerce has made a financial assistance award to the Empower Baltimore Management Corporation (Empower Baltimore), a Maryland non-profit corporation, to assist Empower Baltimore in establishing a comprehensive minority business assistance program. Through the efforts of Empower Baltimore, the services provided under this award shall be coordinated with the activities of Baltimore's Federal Empowerment Zone. Should the Baltimore pilot prove successful, MBDA has also identified other markets which will be assessed to determine the feasibility of providing services under a fully developed and implemented CBES Initiative.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Webber, IV, Assistant Director for Operations, Minority Business Development Agency, U.S. Department of Commerce, Washington, D.C. 20230. (202) 482–3237.

SUPPLEMENTARY INFORMATION: The CBES Initiative is a community-based strategy that seeks to identify joint venture partners with whom MBDA can collaborate in order to provide an enhanced level of services to minority firms. The purpose of the CBES program is to enable MBDA to enter into strategic alliances, coordinating the delivery of its services with those of other entities capable of assisting in minority and/or small and disadvantaged business development in a particular market. The collaborative approach of CBES is intended to maximize opportunities for MBDA to leverage its funding with state, local, public, non-profit and private funding in order to produce the most effective coordinated services available to the local service area.

Under this pilot CBES Initiative, Empower Baltimore has been selected as the recipient of federal funding. Empower Baltimore is the non-profit corporation established by the City of Baltimore to coordinate all activities arising from Baltimore's designation as a Federal Empowerment Zone, and to administer all funds earmarked for the Zone. Services to the minority business community under this award will be provided by the Council for Economic and Business Opportunity, Inc. (CEBO), a Maryland-based non-profit organization with over twenty-seven (27) years of experience in minority business development. The total annual cost of this project will be $575,000. The federal share will be $250,000 per year. The recipient's non-federal share, in the amount of $325,000, will be derived from client fees, in-kind contributions, and substantial additional funding awarded to CEBO by the City of Baltimore, Baltimore County and other non-federal sources.

The terms of this award require CEBO to continue to provide general management and technical assistance and other business assistance to minority firms and entrepreneurs in the Baltimore MSA, using its existing non-federal funding. The proceeds from the federal financial assistance will be used to provide specialized and enhanced management and technical assistance in the areas of 1) finance and capital development, and 2) marketing and procurement. As the singular organization charged with managing Baltimore's Empowerment Zone, Empower Baltimore brings a unique capability to coordinate all of the economic development activity within the Zone, and to insure that MBDA's goals for minority business development are achieved.

The selection of CEBO as subcontractor was based on a comprehensive market assessment prepared by the research firm of D.J. Miller & Associates, Inc., an independent consultant under contract with MBDA. The purpose of the assessment was to examine the business environment for minority firms in the Baltimore, MSA, identifying the particular needs of local minority firms, and to identify resource providers and service organizations providing assistance to the minority business community. Since the Baltimore pilot is being used to test the CBES Initiative, MBDA proceeded to conduct an internal review of the organizations listed in the report to determine which one would be best able to accomplish the program goals of the award, based on existing capabilities and funding levels. CEBO was identified from this review as the most suitable provider. Should the Baltimore pilot prove to be successful and the CBES Initiative expanded to other markets, the Department of Commerce will make future awards on a competitive basis.

Statement of Policy:

The CBES Initiative is considered to be an alternative service delivery program which could replace the BDC Program in certain selected markets. The Empower Baltimore Award will be

used to test the feasibility of the Initiative. One of the key benefits of the CBES approach is that it enables MBDA, with the participation of joint venture partners, to deliver management and technical assistance services that are specifically tailored for a given minority business community.

In its initial stage, markets targeted for CBES will undergo a comprehensive community assessment, which will be used to determine the feasibility of providing service to those markets under the CBES Initiative and, if appropriate, to design a coordinated funding and service delivery strategy for its subject market, including the identification of community-based organizations and service providers who, by virtue of their resources and expertise, would constitute potential joint venture partners. Subject to funding availability, and shifts in the Agency's program goals with respect to specific markets, MBDA expects to assess the following locations to determine the feasibility of providing service to these markets under the CBES Initiative: Anaheim/Santa Ana, California; Los Angeles, California; Oxnard, California; San Francisco, California; Jacksonville, Florida; Orlando, Florida; Tampa/St. Petersburg, Florida; Atlanta, Georgia; Chicago, Illinois; Shreveport, Louisiana; Boston, Massachusetts; Las Vegas, Nevada; Newark/Jersey City, New Jersey; Bronx, New York; Charlotte, North Carolina; Cincinnati, Ohio; Brownsville, Texas; Corpus Christi, Texas; El Paso, Texas; Houston, Texas; Laredo, Texas; McAllen, Texas; San Antonio, Texas; and Washington, D.C.

The comprehensive market assessments of these locations will also be prepared by the research firm of D.J. Miller & Associates, Inc. These assessments will result in written final reports which will then be used to determine the optimum service delivery strategy for each market. Organizations interested in being included in the market assessments should contact the further information contact listed at the beginning of this notice.

MBDA will contribute federal funding to selected joint ventures, and its best practices experience and technical support from its headquarters and regional offices. Recipients of direct federal funding will be limited to non-profit organizations, state, local or Indian tribal entities. State and local governments, as well as private funding sources, will be attracted to the joint venture because the pooling effect of funds for a common mission will allow all partners to realize a greater return on investment. Furthermore, the delivery of enhanced services through community-based partners decreases the dependency of the project on any single funding source, and facilitates the development of the project as a long-term resource in its local market.

Individual notices, which will solicit applications for Federal funding on a competitive basis, will be published in the Federal Register as new markets are identified for inclusion in the CBES Initiative.

Authority:

15 U.S.C. § 1512 and Executive Order 11625.

Dated: February 28, 1996.

Joan Parrott-Fonseca,

Director, Minority Business Development Agency.

[FR Doc. 96–5260 Filed 3–5–96; 8:45 am]

BILLING CODE 3510–21–P

National Oceanic and Atmospheric Administration

[Docket No. 960130020–6020–01]

RIN 0648–2A18

Joint and Cooperative Institute Program

AGENCY: Office of Oceanic and Atmospheric Research (OAR), Environmental Research Laboratories (ERL), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: NOAA issues this notice to announce its Fiscal Year 1996 funding plan to continue its financial support of the Cooperative and Joint Institutes sponsored by the NOAA Environmental Research Laboratories. The Cooperative and Joint Institute Program establishes formal, collaborative research agreements between ERL through the Office of the Director and participating universities. The primary purpose of each institute is to create a mechanism to bring together the resources of a research-oriented university, the ERL and other branches of NOAA in order to develop a center of excellence in research relevant to understanding the Earth's oceans, the Great Lakes, inland waters, arctic regions, solar terrestrial environment, intermountain west and the atmosphere.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Moll, Program Manager, OAR/ERL Joint Institute Program 1315 East-West Highway (R/E), Silver Spring, Maryland 20910. (301) 713–2474. Internet:mmoll@rdc.noaa.gov.

SUPPLEMENTARY INFORMATION: The institutes represent a close research link between ERL, other branches of NOAA and the academic units of various universities. The collaboration between the universities and NOAA provides an interdisciplinary approach and a pooling of resources required to address the needs of the universities and NOAA for better scientific understanding, and of NOAA for improved capability of environmental prediction and other mission-related goals. NOAA funds activities of the institutes through cooperative agreements with the universities to support and stimulate research in defined areas which comport with NOAA's mission as authorized pursuant to 49 U.S.C. App. § 1463, 33 U.S.C. § 883d, and 15 U.S.C. § 2904.

The institutes are established by a Memorandum of Understanding (MOU) between NOAA and each university. The MOU identifies the unique capabilities of the university, the interdisciplinary areas for proposed themes of research, and structure of the institute. Each participating organization takes full financial and operational responsibility for its employees affiliated with the institute. The director of the institute is a university senior faculty/staff member. The location of the institutes are generally on university property. Financial assistance is not provided through the MOU. The research themes and associated administrative costs of the institutes are currently funded by a cooperative agreement. The period of the cooperative agreement for the Fiscal Year 1996 funding cycle will be for five years.

Subject to the availability of funds, NOAA intends to continue supporting the following institutes during the Fiscal Year 1996 funding cycle.

The Cooperative Institute for Research in Environmental Sciences/University of Colorado (CIRES). The University of Colorado is the only university co-located with NOAA research laboratories in Boulder, and the only university in the Colorado area that has the critical mass or the quality of atmospheric chemistry to support the Climate and Global Change and Air Quality programs of NOAA. CIRES' research themes include environmental chemistry, atmospheric and climate dynamics and solid earth sciences.

The Cooperative Institute for Research in the Atmosphere/Colorado State University (CIRA). The Colorado State University is the only other Colorado university co-located with a NOAA research program, and is the only university in Colorado that has a graduate meteorological program that is required to support the Climate and Global Change and weather research missions of NOAA. CIRA's research themes include global climate dynamics, local weather forecasting, applied cloud physics, satellite observations, air quality, and numerical modeling.

The Cooperative Institute for Mesoscale Meteorological Studies/University of Oklahoma (CIMMS). The University of Oklahoma is the only university in the Norman area co-located with the NOAA research laboratory, and it is unique in graduate mesoscale meteorology research and training—a primary consideration for the study of tornadoes and severe convective storm processes. Also co-located with CIMMS are the National Weather Service Forecast Office and the Operational Support Facility, CIMMS' research themes include basic convective and mesoscale research, forecast improvements, climate effects of/controls on mesoscale processes, socioeconomic effects of mesoscale weather systems and regional climate variations.

The Cooperative Institute for Limnology and Ecosystems Research/University of Michigan (CILER). The University of Michigan is the only university co-located with the NOAA Great Lakes ERL. The University is the only one in the Ann Arbor area that has expertise in Great Lakes limnology and ecosystems research. CILER's research themes include climate and large lakes dynamics, coastal and nearshore processes, and large lake ecosystem structure and function.

The Cooperative Institute for Marine and Atmospheric Studies/University of Miami (CIMAS). The Rosenstiel School of Marine Atmospheric Sciences, University of Miami, is the only university component co-located with NOAA/AOML. It is also co-located with NOAA/Southeast Fisheries Center, is the only university in the Miami region that has a graduate program in meteorological and oceanic research, and has the number and caliber of researchers able to effectively coordinate research with NOAA Fisheries, Climate and Global Change, Coastal Ocean and Hurricane research elements. CIMAS' research themes include climate variability, fishery dynamics and coastal ocean ecosystem processes.

The Cooperative Institute for Arctic Research/University of Alaska (CIFAR). The University of Alaska is the only university situated in the Arctic region that has graduate programs in the collaborative research areas of fisheries oceanography, hydrographic studies and sea ice dynamics, atmospheric research, climate dynamics and variability, tsumani research and prediction, and environmental assessment, monitoring and numerical modeling. CIFAR's research themes include all phases of arctic research.

The Cooperative Institute of Atmospheric Sciences and Terrestrial Applications/Desert Research Institute of the University and Community College System of Nevada (CIASTA). The Desert Research Institute (DRI) represents the University and Community College system of Nevada. NOAA's National Weather Service forecast office is co-located on DRI's campus. DRI and NOAA will continue to collaborate on weather, climate and remote sensing research. CIASTA's research themes include atmospheric physics and chemistry in mountainous regions, hydrology and water supply in the arid regions, aerospace remote sensing, atmospheric modification, and global environmental change.

The Joint Institute for the Study of Atmosphere and Oceans/University of Washington (JISAO). The University of Washington is the only university in the Seattle area co-located with NOAA/PMEL and is the only university in the Seattle area that has graduate research programs in oceanography and meteorology which coordinate research and support NOAA's Climate and Global Change, Coastal Ocean and Weather Research offices. JISAO's research themes include climate variability, estuarine processes, environmental chemistry, and interannual variability of fisheries recruitment.

The Joint Institute for Marine and Atmospheric Research/University of Hawaii (JIMAR). The University of Hawaii is co-located with the Tsunami Forecast Center, the National Marine Fisheries Center, the National Weather Service, is the closest university to the NOAA observatory on Mauna Loa and is the only U.S. university that supports graduate programs in Tsunami research. It is the only U.S. university that has a Pacific sea level measuring program, and is the only U.S. university sited geographically close enough to maintain a viable research program in fishery recruitment on volcanic islands in the Pacific. JIMAR's research themes include tsunamis, climate research, equatorial oceanography, fisheries oceanography and tropical meteorology.

Each of the universities provide the location/space, staff, and share in the financial support to operate the institutes. NOAA utilizes the institutes to collaborate on research and provides financial support to enhance the public benefits to be derived by universities' research activities. The institutes with universities are established based on their geographical location associated with the NOAA Environmental Research Laboratories and expertise in the research activity related to NOAA's mission.

The base funding for each institute generally ranges from $100,000 to $700,000 a year. The institutes' funding cycle will be contingent upon the appropriation of funds by the Congress of the United States and the legislature of the universities' states necessary for NOAA and the universities to meet all of their respective financial obligations.

NOAA does not intend to establish or fund new institutes at this time. This notice is not a solicitation for proposals.

Catalogue of Federal Domestic Assistance

The ERL institute program is listed in the Catalogue of Federal Domestic Assistance under number 11.432, Environmental Research Laboratories Cooperative Institutes and under number 11.455, Cooperative Science and Education Program.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Dated: December 19, 1995.

Marilyn Moll,

Program Manager, OAR/ERL Joint Institute Program.

[FR Doc. 96–5267 Filed 3–5–96; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020196C]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammals

AGENCIES: National Marine Fisheries Service, (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; and U.S. Fish and Wildlife Service (FWS), Interior.

ACTION: Issuance of scientific research permit No. 985 (P405B).

SUMMARY: Notice is hereby given that a permit for scientific research has been issued to The Burke Museum, University of Washington, Seattle, WA 98195.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

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Director, Northwest Region, NMFS, 7600 Sandpoint Way, NE BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250); and

Director, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813/570–5301).

SUPPLEMENTARY INFORMATION: On November 15, 1995, a document was published in the **Federal Register** (60 F.R. 57401) that a request for a scientific research permit had been submitted by the above-named individual. The request was to collect and import and/or export an unspecified number of specimen materials from dead individuals of all cetacean species, all pinniped species, all sirenian species, polar bears, sea and marine otters, worldwide, over a 5-year period for purposes of scientific research. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972 (MMPA) as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA) as amended (16 U.S.C. 1531 *et seq.*), the regulations governing endangered species permits (50 CFR parts 217–227), and the Fur Seal Act of 1966 (16 U.S.C. 1151 *et seq.*) and regulations (50 CFR 215).

Issuance of this Permit as required by the ESA of 1973 was based on a finding that the permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the ESA.

Dated: February 16, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: February 23, 1996.

Margaret Tieger,

Chief, Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 96–5234 Filed 3–5–96; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Notice of Meeting To Provide Information to the Public About the Sequence Search Systems Utilized by the Patent and Trademark Office

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Meeting.

SUMMARY: The Patent and Trademark Office (PTO) will hold a meeting to provide information to the public on the search systems used at the PTO to search nucleic acid sequences found in the patent applications. interested members of the public are invited to attend the meeting and provide input to the PTO on other available search systems.

DATES: The meeting will be held on Wednesday, April 3, 1996 from 9:00 a.m. until 1:00 p.m.

ADDRESSES: The meeting will be held in the PTO Patent Academy, Crystal Square 4, Suite 700, 1745 Jefferson Davis Highway, Arlington, Virginia, 22202.

FOR FURTHER INFORMATION CONTACT: John Doll by telephone at (703) 308–1123, by facsimile transmission to (703) 308–4930, by electronic mail at seqmeet@uspto.gov, or by mail marked to his attention addressed to the Assistant Commissioner for Patents, Box Comments-Patents, Washington, D.C., 20231.

SUPPLEMENTARY INFORMATION: The Commission of Patents and Trademarks is authorized under 35 U.S.C. 131 to cause an examination to be made of patent applications. The PTO has received a small number of patent applications each of which claim thousands of nucleic acid sequences. The search and examination of these applications will require the dedication of human and computer resources far in excess of normal workloads. These relatively few applications alone will require a large share of resources from both the sequences searching staff of the PTO Scientific and Technical Information Center (STIC) and the biotechnology examining staff for over a year. In an effort to get public suggestions on how the PTO can best meet this challenge, the PTO is establishing a dialog with its customers. On April 3, 1996, from 9:00 a.m. to 1:00 p.m., the PTO will host an open house meeting to provide information about our current sequence search systems, including the hardware and software utilized, types of claims found in typical biotechnology applications, and the search times and costs associated with the volume of sequences which have been filed. The meeting will take place in the PTO Patent Academy, Crystal Square 4, Suite 700, 1745 Jefferson Davis Highway, Arlington, Virginia 22202. PTO would welcome recommendations from the public on available search systems, strategies, automated solutions or suggestions for efficiencies to address these search and examination challenges.

Space is limited and reservations will be allotted on a first come, first served basis. Individuals interested in participating should contact John Doll, Director, Patent Examining Group 1800, by telephone at (703) 308–1123, by fax at (703) 308–4930, by mail marked to his attention addressed to the Assistant Commissioner for Patents, Box Comments-Patents, Washington, D.C. 20231 or over the Internet to seqmeet@uspto.gov. A request for participation should include the names and addresses of attendees, the number of spaces requested, affiliation, the area of expertise for each attendee and telephone number. PTO will confirm your participation by telephone.

Dated: March 1, 1996.

Lawrence J. Goffney,

Acting Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 96–5245 Filed 3–5–96; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 6 & 7 March 1996.

Time of Meeting: 0900–1700, 6 March 1996; 0930–1700, 7 March 1996.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board (ASB) Ad Hoc Study Group on "Army Digitization Vulnerabilities" will meet to hear selected briefings relative to the subject under study. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 96–5135 Filed 3–5–96; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 29 February 1996.

Time of Meeting: 0900–1700.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board (ASB) C4I Issue Group on "A Strategy for Leveraging Commercial Technologies for Future Army Radios" will meet to write a final report for the study. This meeting will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this meeting. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 96–5136 Filed 3–5–96; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 28 & 29 February 1996.

Time of Meeting: 0745–1730, 28 February1996; 0745–1300, 29 February 1996.

Place: USASSDC—Huntsville, AL.

Agenda: The Army Science Board (ASB) Independent Assessment Panel on "Hit-To-Kill Interceptor Lethality" will meet to consolidate lethality information from individual members and prepare a format for the outbrief. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 96–5137 Filed 3–5–96; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10a(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB), Special Study Panel on Reengineering the Acquisition and Modernization Processes of the Institutional Army.

Date of Meeting: 12 March 1996.

Time: 1000–1500 hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board Special Study Panel on Reengineering the Acquisition and Modernization Processes of the Institutional Army will meet to discuss the current status of Army Modernization and to discuss plans to reengineer the Acquisition and Modernization processes. Discussion will include the current shortfalls in modernization and the attendant vulnerabilities to the U.S. Army. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified information to be discussed is so inextricably intertwined so as to preclude opening any portion of the meeting. Ms. Michelle Diaz may be contacted for further information at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 96–5138 Filed 3–5–96; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10a(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB), Special Study Panel on Reengineering the Acquisition and Modernization Processes of the Institutional Army.

Date of Meeting: 6 March 1996.

Time: 1000–1600 hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board Special Study Panel on Reengineering the Acquisition And Modernization Processes of the Institutional Army will meet to discuss the current status of Army Modernization and to discuss plans to reengineer the Acquisition and Modernization processes. Discussion will include the current shortfalls in modernization and the attendant vulnerabilities to the U.S. Army. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified information to be discussed is so inextricably intertwined so as to preclude opening any portion of the meeting. Ms. Michelle Diaz may be contacted for further information at (703)695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 96–5139 Filed 3–5–96; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–205–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

February 29, 1996.

Take notice that on February 20, 1996, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed a prior notice request with the Commission in Docket No. CP96–205–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to upgrade an existing delivery point to Cincinnati Gas and Electric Company (Cincinnati) in Butler County, Ohio, under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Columbia proposes to upgrade its existing Millville/Menton Road Measuring Station [1] in Butler County, at which Texas Eastern Transmission Corporation (TETCO) has agreed to install additional measurement and regulation equipment and station piping. Columbia states that the proposed modifications would increase the capacity of the Millville/Menton Road Measuring Station from its current capacity of 7,600 Dth/day to 14,000 Dth/day in order to deliver gas to Cincinnati, who would then deliver the gas to Oxford Natural Gas Company (Oxford) at their existing Butler County Interconnection. Columbia also states

[1] Columbia owns this facility which is located on TETCO's Line 1 and serves as a Columbia receipt point from TETCO, as well as a Columbia delivery point to Cincinnati.

that it would pay the estimated construction cost of $146,640.

Columbia states that it would provide gas service to Oxford under Rate Schedules FTS and ITS of its FERC Gas Tariff. Columbia also states that the contracted natural gas volumes would be within certificated volumes.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5169 Filed 3–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–140–000]

Columbia Gas Transmission Corporation; Notice of Limited Waiver of Tariff Provision

February 29, 1996.

Take notice that on February 26, 1996, Columbia Gas Transmission Corporation (Columbia), pursuant to Rule 212 of the Commission's Rules of Practice and Procedure (18 CFR 385.212) filed a petition for a limited waiver of Section 5 of its MS Rate Schedule to the extent necessary for Columbia's storage facilities to be treated as a point of sale for certain base gas to be retired by sale to Columbia's firm Storage Service (FSS) customers.

Columbia states that the prompt Commission action is justified given the time sensitive nature of the retirement proposal. Columbia states that the FSS customers' storage gas quantities have decline significantly as a result of recent cold weather. That decline has or will soon limit the customers' maximum daily withdrawal quantities (MDWQ) under applicable tariff provisions. The immediate availability of this base gas, which is already in storage, will allow the FSS customers to replenish their storage accounts without delay, thereby minimizing the deterioration of their FSS inventory.

Columbia states that it is proposing a retirement by sale of natural gas that is at least potentially subject to the regulations promulgated by Order Nos. 497 and 566. Columbia requests that its disposition of the base gas not be subject to Order Nos. 497 and 566 and their regulations.

Columbia requests that, to the extent deemed necessary by the Commission, Columbia be granted waiver by March 5, 1996 of Section 5 of its MS Rate Schedule in order to permit the immediate retirement by sale of the base gas out of storage as well as the separate waiver referenced covering Order Nos. 497 and 566.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before March 7, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5173 Filed 3–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER95–321–000 and ER96–195–000]

Consolidated Edison Company of New York, Inc.; Notice of Filing

February 29, 1996.

Take notice that on February 16, 1996, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing an amendment to its filing regarding Con Edison Rate Schedule FERC No. 129, a facilities agreement with Orange and Rockland Utilities, Inc. ("O&R").

Con Edison states that a copy of this filing has been served by mail upon O&R.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, Dockets Room, Room 2A, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 12, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5171 Filed 3–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–210–000]

Koch Gateway Pipeline Co; Notice of Application

February 29, 1996.

Take notice that on February 23, 1996, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77521–1478, filed in Docket No. CP96–210–000 an application pursuant to Section 7(b) of the Natural Gas Act and Section 157.18 of the Commission's Regulations for an order permitting and approving the abandonment in place and removal of its Sharon Compressor Station and associated facilities located in Claiborne Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should, on or before March 21, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Koch Gateway to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5170 Filed 3–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1864]

Upper Peninsula Power Company; Notice Extending Time to File Scoping Comments

February 29, 1996.

The Federal Energy Regulatory Commission (FERC) issued an Environmental Impact Statement Scoping Document for relicensing the Bond Falls Hydroelectric Project, FERC Project No. 1864, on December 5, 1995. This hydropower project is located on major branches of the Ontonagon River, a tributary of western Lake Superior, in Ontonagon and Gogebic counties of the upper peninsula of Michigan, and Vilas County in northern Wisconsin.

In response to a letter filed by the Michigan Department of Natural Resources, and supported by other parties to be proceedings, FERC is extending the scoping comment period until March 16, 1996.

Anyone wishing to submit written scoping comments must do so no later than March 16, 1996. Comments should be addressed to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Reference should be clearly made to: Bond Falls Hydroelectric Project (Project No. 1864).

For further information, please contact Frankie Green at (202) 501–7704.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5172 Filed 3–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM95–3–000 and Docket No. RM95–4–000]

Filing and Reporting Requirements for Interstate Natural Gas Companies Rate Schedules and Tariffs and Revisions to Uniform System of Accounts Forms, Statements, and Reporting Requirements for Natural Gas Companies; Notice of Data Availability for Working Groups

February 29, 1996.

Take notice that data is available on the Federal Energy Regulatory Commission's (Commission's) bulletin board system (BBS) for review by the Working Group—Forms and Working Group—Filings. The following information is now available on the Gas Pipeline Data (GPD) portion of the BBS:

—The meeting summaries for the working group meetings held on February 7 and 8, 1996, and

—The draft specifications for filing the Form No. 11 both on paper and electronically, incorporating the changes discussed at the working Group—Forms meeting held February 7.

In addition to the above, the Commission has enabled the upload feature of its bulletin board system for use by the working group participants and other interested persons. Any files uploaded to the Commission's bulletin board are not considered filed with the Commission. These files are solely for review by the working group and other interested parties to help in the development of formats for electronic filing requirements specified in Order Nos. 581 and 582.

The Commission invites written comments on the draft specifications for filing Form No. 11. Such comments may be uploaded to the Commission's BBS or addressed to Richard A. White, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426. Comments should be received by March 5, 1996. We encourage commenters to submit their written comments also on a 3½" diskette in Rich Text Format or ASCII so they can be posted on the Commission's bulletin board. it is preferable for comments uploaded to the Commission's BBS to be in ASCII format so files may be viewed on-line and easily converted to other software formats.

The upload option, available under the Order No. 581/582 Working Group Menu, is designed to permit members of the public to upload a file to the Commission's bulletin board. To do so, select upload from the Working Group menu. You will be prompted for the File Mask. Enter the Drive, directory, if applicable, and the filename. If more than one file is to be uploaded, enter the file mask using wildcard characters for the unique portion of the filename. For example:

File Mask? C:/FERC/Form—11.txt

or

File Mask? C:/*tst.wk1 to represent Altst.wk1 B1tst.wk1, etc.

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In addition to this notice, the most current list of those that signed up for participation in the working groups will, also, be posted on CIPS. Information concerning working group meetings will be posted on CIPS on a regular basis. Up-to-date information can be found in bulletin 20 on CIPS or bulletin 9 on GPD.

To access the Commission's bulletin board system, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200, or 300 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format.

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By modem:

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Point your Web Browser to: http://www.fedworld.gov
Scroll down the page to select FedWorld Telnet Site
Select the option: [1] FedWorld
Logon to the FedWorld system
Type: /go FERC

Lois D. Cashell,

Secretary.

[FR Doc. 96–5168 Filed 3–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER91–435–018, et al.]

DC Tie, Inc., et al.; Electric Rate and Corporate Regulation Filings

February 28, 1996.

Take notice that the following filings have been made with the Commission:

1. D.C. Tie, Inc., R.J. Dahnke & Associates, PowerTec International

[Docket No. ER91–435–018; Docket No. ER94–1352–006; Docket No. ER96–1–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On February 8, 1996, D.C. Tie, Inc. filed certain information as required by the Commission's July 11, 1991, order in Docket No. ER91–435–000.

On February 5, 1996, R.J. Dahnke & Associates filed certain information as required by the Commission's August 10, 1994, order in Docket No. ER94–1352–000.

On February 15, 1996, Powertec International filed certain information as required by the Commission's December 1, 1995, order in Docket No. ER96–1–000.

2. Tucson Electric & Power Company

[Docket No. ER94–1424–000]

Take notice that on February 12, 1996, Tucson Electric & Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Pennsylvania Power & Light Company

[Docket No. ER96–932–000]

Take notice that on February 21, 1996, Pennsylvania Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Houston Lighting & Power Company

[Docket No. ER96–1124–000]

Take notice that on February 21, 1996, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with Southwestern Electric Power Company (SWEPCO) for Economy Energy and Emergency Power Transmission Service under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of January 31, 1996.

Copies of the filing were served on SWEPCO and the Public Utility Commission of Texas.

Comment date: March 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Co.

[Docket No. ER96–1125–000]

Take notice that on February 21, 1996, Southern California Edison Company (Edison), tendered for filing the following agreement between Edison and the City of Azusa: Application and Contract for Added Facilities Between the City of Azusa and Southern California Edison Company.

Edison requests waiver of the Commission's 60-day notice requirement and an effective date of June 28, 1991.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Appalachian Power Company

[Docket No. ER96–1126–000]

Take notice that on February 21, 1996, Appalachian Power Company (APCo), tendered for filing with the Commission an Electric Service Agreement (ESA) that was executed by APCo and Old Dominion Electric Cooperative (ODEC) on February 12, 1996. The ESA sets forth the terms pursuant to which APCo proposes to supply additional wholesale electric service to ODEC at its existing Evington delivery point.

To match the effective date requested by ODEC, APCo proposes an effective date of March 15, 1996. APCo also states that a copy of its filing was served on ODEC, Virginia Electric and Power Company, which currently provides service to ODEC at its Evington delivery point, and the Virginia State Corporation Commission.

Comment date: March 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Century Power Corporation

[Docket No. ER96–1127–000]

Take notice that on February 21, 1996, Century Power Corporation tendered for filing Notices of Cancellation with respect to (i) Century's FERC Electric Tariff, Original Volume No. 1, and (ii) Century's Rate Schedule FERC No. 1. These are the last two Century schedules on file with the Commission for jurisdictional services.

Century states that it no longer owns any electric generating assets or makes any sales of electric energy at wholesale or retail. Century further states that a copy of its filing has been served on San Diego Gas & Electric Company, the only customer under either of the affected schedules.

Comment date: March 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Power Company

[Docket No. ER96–1128–000]

Take notice that on February 21, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and North Carolina Electric Membership Corporation (NCEMC). Duke states that the TSA sets out the transmission arrangements under which Duke will provide NCEMC firm transmission service under its Transmission Service Tariff.

Comment date: March 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Power Company

[Docket No. ER96–1129–000]

Take notice that on February 21, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and North Carolina Electric Membership Corporation (NCEMC). Duke states that the TSA sets out the transmission arrangements under which Duke will provide NCEMC non-firm transmission service under its Transmission Service Tariff.

Comment date: March 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Duke Power Company

[Docket No. ER96–1130–000]

Take notice that on February 21, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and NorAm Energy Services, Inc. (NorAm). Duke states that the TSA sets out the transmission arrangements under which Duke will provide NorAm non-firm transmission service under its Transmission Service Tariff.

Comment date: March 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Montaup Electric Company

[Docket No. ER96–1131–000]

Take notice that on February 21, 1996, Montaup Electric Company (Montaup) filed a credit of $4,172,382.35 under its Purchased Capacity Adjustment Clause (PCAC) to true up the amounts billed in 1995 under a forecast billing rate to conform with actual purchased capacity costs. The credit will appear in bills for January 1996 service rendered for all requirements service to Montaup's affiliates Eastern Edison Company in Massachusetts and Blackstone Valley Electric Company and Newport Electric Corporation in Rhode Island, and for contract demand service to two non-affiliates: Pascoag Fire District in Rhode Island and the Town of Middleborough in Massachusetts.

Comment date: March 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Power and Light Company

[Docket No. ER96–1132–000]

Take notice that on February 21, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing an Agreement dated January 31, 1996, establishing Coastal Electric Services Company as a customer under the terms of WP&L's Point-to-Point Transmission Tariff.

WP&L requests an effective date of January 31, 1996 and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: March 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. South Carolina Electric & Gas Company

[Docket No. ER96–1133–000]

Take notice that on February 22, 1996, South Carolina Electric & Gas Company, tendered for filing proposed Contract for Purchases and Sales of Power and Energy between South Carolina Electric & Gas Company and LG&E Power Marketing, Inc.

Under the proposed contract, the parties will purchase and sell electric energy and power between themselves. South Carolina Electric and Gas Company also requested waiver of notice in order that the contract be effective on March 1, 1996.

Copies of this filing were served upon LG&E Power Marketing, Inc.

Comment date: March 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. UtiliCorp United Inc.

[Docket No. ER96–1134–000]

Take notice that on February 22, 1996, UtiliCorp United Inc. (UtiliCorp) filed a service agreement with Heartland Energy Services, Inc. for service under its interruptible open access transmission service tariff for its operating division, Missouri Public Service.

Comment date: March 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. UtiliCorp United Inc.

[Docket No. ER96–1135–000]

Take notice that on February 22, 1996, UtiliCorp United Inc. (UtiliCorp) filed a service agreement with Heartland Energy Services, Inc. for service under its interruptible open access transmission service tariff for its operating division, WestPlains Energy-Colorado.

Comment date: March 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. UtiliCorp United Inc.

[Docket No. ER96–1136–000]

Take notice that on February 22, 1996, UtiliCorp United Inc. (UtiliCorp) filed a service agreement with Heartland Energy Services, Inc. for service under its interruptible open access transmission service tariff for its operating division, WestPlains Energy-Kansas.

Comment date: March 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Union Electric Company

[Docket No. ER96–1137–000]

Take notice that on February 22, 1996, Union Electric Company (UE), tendered for filing an Interchange Agreement dated January 30, 1996, between UE and the Byng Public Works Authority, Ada, Oklahoma. UE asserts that the purpose of the Agreement is to set out specific rates, terms, and conditions for the types of power and energy to be exchanged.

Comment date: March 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. UtiliCorp United Inc.

[Docket No. ES96–18–000]

Take notice that on February 22, 1996, UtiliCorp United Inc. (UtiliCorp), filed an application, under § 204 of the Federal Power Act, seeking authorization to issue (i) corporate guaranties in support of Debt Securities in an amount of up to and including $40 million (Canadian) to be issued in one or more series by West Kootenay Power, Ltd. (WKP) on or before December 31, 1997, (ii) corporate guaranties in support of obligations under working capital lines of credit in an amount of up to and including $20 million (Canadian), and (iii) a $3.1 million Junior Subordinated Debenture to UtiliCorp Capital L.P. and for exemption from competitive bidding and negotiated placement requirements. WKP is a wholly-owned subsidiary of UtiliCorp British Columbia Ltd., which in turn is a wholly-owned subsidiary of UtiliCorp.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. TPC 4, Inc.

[Docket No. QF88–364–003]

On January 16, 1996, as amended on February 20, 1996, TPC 4 Inc. (Applicant) of 1455 Frazee Road, 9th Floor, San Diego, California 92108 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the small power production facility is located in Kern County, California, to the west of the town of Mojave. The Commission previously certified the facility as a small power production facility.

Gamma Mariah, Inc., 44 FERC ¶ 61,442 (1988). A notice of self-certification was filed on December 30, 1994. The facility was recertified in *Gamma Mariah, Inc.* 53 FERC 62,243 (1990). The instant application for recertification is due to a change in the ownership structure of the facility.

Comment date: Thirty days after the date of publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5167 Filed 3–5–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34089; FRL 5349–8]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on June 4, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 23 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before June 4, 1996 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000829–00236	SA-50 Brand Fruit Spray Concentrate	Methoxychlor	Plums
001386–00352	Methoxychlor Emulsifiable Concentrate	Methoxychlor	Grain storage bins
001386–00494	50% Methoxychlor Wettable Powder	Methoxychlor	Grain storage bins
002217–00129	50% Methoxychlor Wettable Powder	Methoxychlor	Farm buildings (livestock bldgs & premises), asparagus
002217–00131	Methoxychlor Emulsion Concentrate	Methoxychlor	Aerial applications, beaches, standing water, mosquito breeding areas, farm buildings, grain storage bins, elevator tunnels, peanut warehouses, freight cars, grain trucks, ships' hold, cranberries, asparagus
002217–00470	Alfa-Spray	Methoxychlor	Aerial application
002393–00280	Hopkins Malathion 57% Emulsifiable Liquid Insecticide B	Malathion	Almonds, apples, cowpea hay, filberts, peanuts, pears, plums, prunes, quinces, safflower, soybeans, sweet potatoes, tobacco, commercial greenhouse uses, forest crops, household uses, domestic pets, in and around house, dairies, food processing plants, livestock uses, stored products, in & around wineries, processing plants
002935–00385	Methoxychlor 2 Spray	Methoxychlor	Aerial application, grain/ cereal storage bins
003125–00449	DYLOX 80 SP Nursery Insecticide	Trichlorfon	Turf (sod farm) use
010107–00005	Methoxychlor E-2	Methoxychlor	Cranberries, farm buildings, grain storage bins, non-agricultural land
010107–00138	Rotenone Plus Copper Dust	Basic Cupric Sulfate	Terrestrial uses

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
010107–00139	Magestic Green 1% Rotenone Dust	Rotenone	Beans, cucumbers, melons, squash, pumpkins, tomatoes, potatoes, egg plants, cabbage, asparagus
010163–00172	Imidan Technical	Phosmet	Corn, citrus
028293–00153	Unicorn Rotenone Dip	Pyrethrins	Terrestrial crop uses
033955–00528	Acme Methoxychlor 50% Wettable	Methoxychlor	Farm buildings, asparagus
034704–00018	Clean Crop Malathion ULV Concentrate Insecticide	Malathion	Safflower, soybeans, sugar beets, beef cattle feed lots & holding pens, non- agricultural lands, tomatoes, forestry
034704–00102	Clean Crop Methoxychlor 2EC	Methoxychlor	Mosquito control on beaches, cranberries, dumps, elevator tunnels, farm buildings, freight cars, grain storage bins, grain trucks, mushroom houses, non-agricultural land, peanut warehouses, pet bedding, public parks, ships' holds, standing water, acreage & aerial application
034704–00108	Clean Crop Malathion 57EC	Malathion	Almonds, apples, cowpea hay, filberts, peanuts, pears, plums, prunes, quinces, safflower, soybeans strawberries, tobacco, stored commodity treatment, animal uses, bagged citrus pulp
034704–00119	Clean Crop Malathion 8EC Insecticide	Malathion	Almonds, apples cranberries, dates, filberts, pears, plums, quinces, inside buildings, stored grain, field & garden seeds, bagged citrus pulp, bagged surface treatment
034704–00205	Clean Crop Malathion/Methoxychlor Spray	Methoxychlor	Mosquito control on beaches, cranberries, dumps, elevator tunnels, farm buildings, freight cars, grain storage bins, grain trucks, mushroom houses, non-agricultural land, peanut warehouses, pet bedding, public parks, ships' holds, standing water, acreage & aerial application
034704–00565	Clean Crop Malathion	ULV Concentrate Insecticide	Flax, peas, safflower, soybeans, sugar beets, tomatoes, beef cattle feed lots & holding pens, forestry
034704–00679	Liquid Seed Treater	PCNB	Rice, sugar beets
034704–00749	Malathion 2 Home Lawn & Garden Spray	Malathion	Almonds, apples, plums, prunes, quinces, cranberries, soil incorporated application on strawberries

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000829	Southern Agricultural Insecticide, Inc., P.O. Box 218, Palmetto FL 34220.
001386	Universal Cooperatives, Inc., 7801 Metro Parkway, P.O. Box 460, Minneapolis, MN 55440.
002217	PBI/Gordon Corp., 1217 W. 12th St., P.O. Box 4090, Kansas City, MO 64101.
002393	Haco, Inc., P.O. Box 667, Greeley, CO 80632.
002935	Wilbur-Ellis Co., 191 W. Shaw Ave., Suite 107, Fresno, CA 93704.
003125	Bayer Corp., P.O. Box 4913, 8400 Hawthorn Rd., Kansas City, MO 64120.
010163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366.
010107	Cornbelt Chemical Co., P.O. Box 410, McCook, NE 69001.
028293	Unicorn Laboratories, 13535 Feather Sound Drive, Suite 400, Clearwater, FL 34622.
033955	PBI/Gordon Corp., P.O. Box 014090, 1217 West 12th Street, Kansas City, MO 64101.
034704	Platte Chemical Co., 419 18th Street, P.O. Box 667, Greeley, CO 80632.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: February 15, 1996.

Oscar Morales,

Acting Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 96–4969 Filed 3–5–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66221; FRL 5348–2]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by June 4, 1996, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This notice announces receipt by the Agency of requests to cancel some 22 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000000 ID–95–0011	Provado 1.6 Flowable	1-((6-Chloro-3-pyridinyl)methyl)-*N*-nitro-2-imidazolidinimine
000000 WA–95–0026	Provado 1.6 Flowable	1-((6-Chloro-3-pyridinyl)methyl)-*N*-nitro-2-imidazolidinimine
000100 OR–91–0017	Funginex	*N,N'*-(1,4-Piperazinediyldis(2,2,2-trichloroethylidine)bis(formamide)
000100 WI–93–0004	Funginex	*N,N'*-(1,4-Piperazinediyldis(2,2,2-trichloroethylidine)bis(formamide)
000491–00201	Selig's Mister Trim No. 10	6,7-Dihydrodipyrido(1,2-a:2',1'-c)pyrazinediiumdibromide
000572–00053	Rockland Rotenone 1% Dust	Rotenone Cube Resins other than Rotenone
000572–00058	Rockland "homeowner" Vegetable-Tomato Dust	Copper sulfate Rotenone Cube Resins other than Rotenone
001270–00192	ZEP Mistic	Ethanol Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12}) Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C_{12}, 32%C_{14})
001685–00064	Formula 268 Aqua-Quat	6,7-Dihydrodipyrido(1,2-a:2',1'-c)pyrazinediiumdibromide
001791–00019	Super Chlor	Sodium hypochlorite
002217–00251	Mill and Farm Bin Spray	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
003125 OR–95–0011	Provado 1.6 Flowable	1-((6-Chloro-3-pyridinyl)methyl)-*N*-nitro-2-imidazolidinimine
005197–00040	Viro-Phene	Isopropanol 4-tert-Amylphenol *o*-Phenylphenol 1,2-Propanediol
006836–00176	Bio Guard SI-25 Hospital Spray Disinfectant and Deodorant	Isopropanol Alkyl* dimethyl benzyl ammonium chloride *(58%C_{14}, 28%C_{16}, 14%C_{12})
006922–00024	Perkacit Thiram - 99	Tetramethyl thiuramdisulfide

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
010182 MN–93–0002	Fusilade 2000 Herbicide	Butyl (*R*)-2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)propanoate
010663–00011	Yardman	6,7-Dihydrodipyrido(1,2-a:2',1'-c)pyrazinediiumdibromide
010807–00168	Misty Accur Spray III Wasp & Hornet Killer	(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
033955–00527	Acme Pestroy 25% Methoxychlor	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane)
034704–00759	1% Rotenone Dust	Rotenone Cube Resins other than rotenone
036301–00009	J-Chlor-2 Concentrate	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane)
064240–00012	Combat Ant and Roach Killer III	*d*-cis-trans-Allethrin *N*-Octyl bicycloheptene dicarboxiimide 4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000491	The Selig Chemical Industries, 840 Selig Dr., SW, Atlanta, GA 30378.
000572	Rockland Corp., 686 Passaic Ave., Box 809, West Caldwell, NJ 07007.
001270	ZEP Mfg. Co., Box 2015, Atlanta, GA 30301.
001685	The State Chemical Mfg. Co., 3100 Hamilton Ave., Cleveland, OH 44114.
001791	Savolite Inc., 10848 E. Marginal Way So., Seattle, WA 98168.
002217	James Armbruster, Regulatory Services, PBI-Gordon, Agent For: PBI/Gordon Corp., Box 014090, Kansas City, MO 64101.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
005197	Systems General, Inc., Box 152170, Irving, TX 75015.
006836	Lonza Inc., 17–17 Rte 208, Fair Lawn, NJ 07410.
006922	Akzo Chemie America, 300 S. Riverside Plaza, Chicago, IL 60606.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
010663	Sentry Chemical Co., 1481 Rock Mountain Blvd., Stone Mountain, GA 30086.
010807	AMREP, Inc., 990 Industrial Dr., Marietta, GA 30062.
033955	James Armbruster, Regulatory Services, PBI-Gordon, Agent For: PBI/gordon Corp., Box 014090, Kansas City, MO 64101.
034704	Platte Chemical Co. Inc., c/o William M. Mahlburg, Box 667, Greeley, CO 80632.
036301	Degesch America, Inc., Houston Division, 14802 Park Almeda Drive, Box 451036, Houston, TX 77245.
064240	Combat Insect Control Systems, c/o PS & RC, Box 493, Pleasanton, CA 94566.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before June 4, 1996. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific

disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: February 15, 1996.

Oscar Morales,

Acting Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 96–4970 Filed 3–5–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180993; FRL 5349–6]

Bifenthrin; Receipt of Applications for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the California Environmental Protection Agency and the Arizona Department of Agriculture (hereafter referred to as the "Applicants") to use the pesticide bifenthrin [CAS 82657–04–3 (cis isomer) and CAS 83322–02–5 (trans isomer)] to treat up to 113,000 and 28,000 acres, respectively, of cucurbits (cucumbers, melons, pumpkins, and squash) to control the sweet potato whitefly. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before March 21, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180993," should be submitted by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–180993]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicants have requested the Administrator to issue specific exemptions for the use of bifenthrin on cucurbits to control the sweet potato whitefly. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The sweet potato whitefly (SPWF) is a relatively new pest on cucurbits. The SPWF has caused severe economic damage to several other commodities nationwide including cotton, lettuce, squash, beans, peanuts, and ornamentals. SPWF causes damage through feeding activities, and also indirectly through the production of a honeydew, which encourages growth of sooty mold and other fungi. This pest also causes a physiological disorder resulting in irregular ripening of fruit, believed to be caused by transmission of a geminivirus. The Applicants claim that adequate control of the SPWF is not being achieved with the currently registered compounds. The Applicants claim that significant economic losses are expected in California and Arizona cucurbit production if the SPWF is not adequately controlled, and are therefore requesting this use of bifenthrin.

The Applicants propose to apply bifenthrin at a maximum rate of 0.1 lb. active ingredient (a.i.) (6.4 oz. of product) per acre with up to three applications allowed, and a maximum of 0.3 lb. a.i. per acre per season, on a total of 113,000 acres of cucurbits in California, and 28,000 acres of cucurbits in Arizona. It is possible to produce two cucurbit crops per calendar year on a given acre, and therefore, the acreage could potentially receive 6 applications, (maximum of 0.6 lb. a.i. per acre) per calendar year. Therefore, use under these exemptions could potentially amount to a maximum total of 60,000 lbs. of active ingredient in California and 8,400 lbs. of active ingredient in Arizona.

This notice does not constitute a decision by EPA on the applications themselves. This is the sixth year that this use has been requested under section 18. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a pesticide if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use and/or a petition for tolerance for residues in or on the commodity has not been submitted to the Agency [40 CFR 166.24(a)(6)].

A record has been established for this notice under docket number [OPP–180993] (including comments and data

submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the California Environmental Protection Agency and the Arizona Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: February 23, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–4971 Filed 3–5–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180994; FRL 5350–1]

Mancozeb; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Wisconsin Department of Agriculture, Trade, and Consumer Protection (hereafter referred to as the "Applicant") to use the pesticide, mancozeb to treat up to 4,167 acres of ginseng to control stem and leaf blight. An emergency exemption for this use has been requested for the previous 3 years, and a complete application for registration of this use and tolerance petition has not been submitted to the Agency. In addition, this emergency exemption has been subject to a Special Review. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 21, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180994," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–180994]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8347; e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of mancozeb on ginseng to control stem and leaf blight.

Information in accordance with 40 CFR part 166 was submitted as part of this request. According to the Applicant, Alternaria blight rarely kills the ginseng root, which is the marketed portion; however, loss of the foliage results in significant root yield loss in a harvested crop, and retards root growth and overwintering ability in younger crops. Infestations of Alternaria blight in one season greatly increase the potential for epidemics in subsequent seasons, since the fungus remains in the infected plant debris. Rovral 50W, the only fungicide carrying a section 3 label for use against Alternaria blight on ginseng, is no longer effective since Alternaria panax has developed resistance to it. If not controlled, Alternaria blight can be expected to infest all of Wisconsin's 5,000 acres of ginseng and growers will suffer significant economic loss.

Under the proposed exemption 2.0 lbs of product [(1.5 lbs of active ingredient (a.i.)] per acre will be used on 4,167 acres. A maximum of 12 applications at a minimum of 7-day intervals will be made by ground equipment using a minimum of 80 gallons of water per acre. A 28 day pre-harvest interval will be observed.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been subject to a Special Review, and is intended for a use that could pose a risk similar to the risk posed by any use of the pesticide which is or has been

subject of the Special Review. [CFR 166.24 (a)(5)].

The Agency initiated a Special Review of the ethylene bisdithiocarbamate (EBDC) fungicides on July 17, 1987, which includes mancozeb. A notice of final determination was issued March 2, 1992. The Agency took this action based on an assessment of the risks from exposure to ethylenethiourea (ETU) present in, or formed as a result of metabolic conversion from, pesticide products containing the active ingredient mancozeb. ETU, a potential human carcinogen, teratogen, and thyroid toxicant, is present as a contaminant, degradation product, and metabolite of all the EBDC pesticides. The Agency concluded that the estimated cumulative risk of 10^{-5} from all current 55 food uses was unacceptable and, therefore, canceled the following 11 food uses: apricots, carrots, celery, collards mustard greens, nectarines, peaches, rhubarb, spinach succulent beans and turnips. These cancellations reduce estimated lifetime dietary risk to 1.6×10^{-6} which the Agency has determined does not outweigh the benefits of the 44 retained uses.

The regulations also require the Agency to publish a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24(a)(6)]. Exemptions for the use of mancozeb on ginseng have been requested for the past 9 years (1987 – 1996). The registrant, Rohm and Haas, has indicated that they intend to pursue a registration in cooperation with IR–4 this year. However, an application for registration of this use has not been submitted to the Agency.

A record has been established for this notice under docket number [OPP–180994] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Wisconsin Department of Agriculture, Trade, and Consumer Protection.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: February 22, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–4965 Filed 3–5–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180995; FRL 5350–2]

Metolachlor; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption requests from the Wisconsin Department of Agriculture, Trade and Consumer Protection and the Virginia Department of Agriculture and Consumer Services (hereafter referred to as the "Applicants") to use the pesticide metolachlor to treat up to 160 acres in Jefferson, Marquette and Waushara counties in Wisconsin and 1,000 acres in Virginia of spinach to control grasses and weeds. The Applicants propose the use of an emergency exemption which has been requested for the previous 3 years. A complete application for registration of this use and a tolerance petition has not been submitted to the Agency. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 21, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180995," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–180995]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8347; e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicants have requested the Administrator to issue specific exemptions for the use of metolachlor on spinach to control grasses and weeds. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicants, the discontinued production of diethatyl ethyl (Antor) by Nor-Am Chemical Company has left spinach growers without an efficacious registered alternative. Spinach is grown entirely on drained muck soil in Wisconsin. These high organic matter soils render the registered alternative, Roneet 6E ineffective as a pre-emergent treatment to control grasses and weeds. Roneet does not control the pineapple weed nor galinsoga weeds of Virginia. These weeds contaminate the spinach and cannot be economically removed by hand on cleaning belts in packing houses. Without the use of metolachlor, spinach growers could suffer significant economic losses.

Under the proposed exemptions, a maximum of one ground application at the rate of 2.00 pounds of active ingredient per acre will be used on 160 acres of spinach in Jefferson, Marquette, and Waushara counties in Wisconsin. A maximum of one pre-emergence application per crop (three harvest periods) at a rate of 0.75 to 1.0 pounds of active ingredient per acre by ground or air equipment will be made on 1,000 acres in Virginia.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of an emergency exemption which has been requested in any 3 previous years, and a complete application for registration of the use and/or a tolerance petition has not been submitted to the Agency [40 CFR 166.24 (a)(6)]. This is the fourth year this use has been requested under section 18 of FIFRA and no tolerance petition has yet to be submitted. According to applicants, IR-4 is planning to prepare a petition package in late 1996. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–180995] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Wisconsin Department of Agriculture, Trade, and Consumer Protection and the Virginia Department of Agriculture and Consumer Services.

List of Subjects

Environmental protection, pesticides and pests, emergency exemptions.

Dated: February 22, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–4966 Filed 3–5–96 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Proposed Related Services; Real Estate Brokerage, Farm Management, and Minerals Management

AGENCY: Farm Credit Administration.

ACTION: Public notice.

SUMMARY: On July 17, 1995, the Farm Credit Administration (FCA or Agency), published a request for public comments regarding an inquiry by a Farm Credit System (System or FCS) institution for approval to offer Real Estate Brokerage, Farm Management, and Minerals Management service programs as authorized "Related Services." The public comment period closed on September 15, 1995. Subsequently, the request for approval by the FCS institution was withdrawn, and the Agency is no longer considering the request.

FOR FURTHER INFORMATION CONTACT:

Linda C. Sherman, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Gary K. Van Meter, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On July 17, 1995, the FCA requested public comment (60 FR 36415) on the following related services that were being contemplated under § 618.8000: Real Estate Brokerage Services, Farm Management Services, and Minerals Management Services.

The regulation at § 618.8000 requires a prior determination that any new services, not previously authorized and placed on the Related Services List (RS List), are legally authorized and do not present excessive risk to the requesting institution or the System as a whole. Because of the complex nature of these proposed services, the FCA solicited public comment prior to acting on the request, in accordance with the guidelines recently adopted in § 618.8010(b)(3).

Many comments were received from FCS institutions, real estate brokers, auctioneers, commercial bankers, and Members of Congress. However, before the Agency completed its deliberations, the FCS institution that had originally requested approval of real estate brokerage, farm management, and minerals management services withdrew its request. Because the request was withdrawn, approval of the three services and their addition to the RS List is no longer under consideration by the Agency.

Dated: March 4, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–5421 Filed 3–4–96; 2:07 pm]

BILLING CODE 6705–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 96–05]

Rose International, Inc. v. Overseas Moving Network International, et al.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Rose International, Inc. ("Complainant") against Overseas Moving Network International ("OMNI"), OMNI Shipping Services, Inc., American International, Inc., Cartwright International Van Lines, Inc., Crown Overseas Movers, Inc., Graebel Movers International, Inc., Movers International, Inc., Ocean-Air International, Inc., Sentry Household Shipping, Inc. and Victory Van Corporation (collectively designated "Respondents") was served February 29, 1996. Complainant alleges that Respondents have violated, and continue to violate, sections 10(a)(1), (b)(1), (b)(2), (b)(3), (b)(4), (b)(6), (b)(10), (b)(11), (b)(12) and (d)(1) of the Shipping Act of 1984, 46 U.S.C. app. §§ 1709(a)(1), (b)(1), (b)(2), (b)(3), (b)(4), (b)(6), (b)(10), (b)(11), (b)(12), and (d)(1), in connection with their activity and practices surrounding service contracts between OMNI and the Trans-Atlantic Conference Agreement, and its predecessor, the Trans-Atlantic Agreement.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by February 28, 1997, and the final decision of the Commission shall be issued by June 30, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 96–5143 Filed 3–5–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. § 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. § 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Home Financial Bancorp, Spencer, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Owen Community Bank, s/b/, Spencer, Indiana.

Applicant also has applied to engage directly in making loans and other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Republic Bancshares, Inc., Natoma, Kansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of United National Bank of Natoma, Natoma, Kansas.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Medina Community Bancshares, Inc., Hondo, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank, Hondo, Texas.

Board of Governors of the Federal Reserve System, February 29, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–5175 Filed 3–5–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 952–3388]

Georgetown Publishing House Limited Partnership; Georgetown Publishing, Inc.; Daniel Levinas; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the Washington, D.C.-based publishing firm from misrepresenting that an advertisement is an independent review or article, or that it is not a paid advertisement. The consent agreement settles allegations that Georgetown used deceptive advertising practices to promote the sale of a book titled *The American Speaker: Your Guide to Successful Speaking.*

DATES: Comments must be received on or before May 6, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston, Federal Trade Commission, S–4002, 6th and Pennsylvania Avenue NW., Washington, DC 20580. (202) 326–3153. Lesley Anne Fair, Federal Trade Commission, S–4002, 6th and Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–3081.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of: Georgetown Publishing House Limited Partnership, a limited partnership: Georgetown Publishing House, Inc., a corporation; and Daniel Levinas, individually and as an officer of said corporation.

File No. 952–3388.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Georgetown Publishing House Limited Partnership, a limited partnership; Georgetown Publishing House, Inc., a corporation; and Daniel Levinas, individually and as an officer of Georgetown Publishing House, Inc. ("proposed respondents"); and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Georgetown Publishing House Limited Partnership, by its duly authorized General Partner; Georgetown Publishing House, Inc., by its duly authorized officer; and Daniel Levinas, individually and as an officer of Georgetown Publishing House, Inc.; and counsel for the Federal Trade Commission that:

1. Proposed respondent Georgetown Publishing House Limited Partnership is a limited partnership organized, existing, and doing business under and by virtue of the laws of the District of Columbia, with its principal office or place of business at 1101 30th Street NW., Washington, D.C. 20007.

Proposed respondent Georgetown Publishing House, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the District of Columbia, with its principal office or place of business at 1101 30th Street NW., Washington, D.C. 20007. Georgetown Publishing House, Inc., is General Partner of Georgetown Publishing House Limited Partnership.

Proposed respondent Daniel Levinas is an officer of Georgetown Publishing House, Inc. Individually or in concert with others, he formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondents Georgetown Publishing House Limited Partnership, a limited partnership, and its successors and assigns; Georgetown Publishing House, a corporation, its successors and assigns, and its officers; and Daniel Levins, individually and as an officer of said corporation; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or indirectly, that such product has been independently reviewed or evaluated;

B. Misrepresenting, directly or indirectly, that an advertisement is an independent review or article or is not a paid advertisement.

II

It is further ordered that respondents Georgetown Publishing House Limited Partnership and Georgetown Publishing House, Inc., their successors and assigns, shall for a period of five (5) years from the date of entry of this Order maintain and make available to the Federal Trade Commission within seven (7) business days of the date of the receipt of a written request, business records demonstrating compliance with the terms and provisions of this order.

III

It is further ordered that respondents Georgetown Publishing House Limited Partnership and Georgetown Publishing House, Inc., their successors and assigns, shall:

A. Within thirty (30) days after service of this order, provide a copy of this order to each of its current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order; and

B. For a period of ten (10) years from the date of entry of this order, provide a copy of this order to each of its future principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order within three (3) days after the person commences his or her responsibilities.

IV

It is further ordered that respondents Georgetown Publishing House Limited Partnership and Georgetown Publishing House, Inc., their successors and assigns, shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in structure, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation or partnership, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other change in the corporation or partnership that may affect compliance obligations arising out of this order.

V

It is further ordered that respondent Daniel Levinas shall, for a period of five (5) years from the date of entry of this order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment which involves the sale of consumer products. Each notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

VI

It is further ordered that this order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

VII

It is further ordered that respondents shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Georgetown Publishing House Limited Partnership; Georgetown Publishing House, Inc.; and Daniel Levinas, the president of Georgetown Publishing House. The respondents sell various business publications, including *The American Speaker: Your Guide to Successful Speaking*, which are advertised through direct mail promotions to consumers.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

In this case, proposed respondents sent direct mail solicitations to consumers for *The American Speaker: Your Guide to Successful Speaking*. The solicitation was headed with the word "REVIEW" and was printed on glossy paper with a torn left margin, similar in appearance to an article torn out of a magazine. The bottom of the page included the words "page 17" and "November 1994," suggesting that the "review" had appeared on that page of a monthly magazine. The second page of the "review" included the carry-over conclusion of an unrelated article crossed out by hand that was purportedly "continued from page 12." Attached to the purported "review" was a post-it note containing the handwritten notation:

[Recipient's name],

Try this.

It works!

I

The Commission's complaint in this matter charges the proposed respondents with falsely representing that the direct mail solicitation was a book review written by an independent journalist and reviewer and had been disseminated in a magazine or other independent publication. In fact, according to the complaint, the clipping was not an independent review from a magazine sent by an acquaintance. Rather it was an advertisement written and sent by the proposed respondents.

The proposed order contains provisions designed to remedy the alleged violations. Part I of the proposed order prohibits the proposed respondents from misrepresenting that any product has been independently reviewed or evaluated. In addition, Part I prohibits the proposed respondents from misrepresenting that an advertisement is an independent article or review or is not a paid advertisement. The proposed order also contains standard recordkeeping and reporting requirements, including a provision sunsetting the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–5225 Filed 3–5–96; 8:45 am]

BILLING CODE 6750–01–M

[File No. 952–3014]

Mrs. Fields Cookies, Inc.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the Salt Lake City, Utah-based corporation from misrepresenting the amount of fat, saturated fat, cholesterol, or calories in any bakery food products. The consent agreement settles allegations that Mrs. Fields touted a cookie line as "low fat" in advertising and promotional materials when the fat content of two cookies in the line exceeded the amount of fat that qualifies as "low fat" under Food and Drug Administration regulations.

DATES: Comments must be received on or before May 6, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Phoebe D. Morse, Boston Regional Office, Federal Trade Commission, 101 Merrimac Street, Suite 810, Boston, Massachusetts 02114–4719, (617) 424–5960.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of: Mrs. Fields Cookies, Inc., a corporation. File No. 952 3014.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Mrs. Fields Cookies, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Mrs. Fields Cookies, Inc., by its duly authorized officer and attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Mrs. Fields Cookies, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 462 West Bearcat Drive, Salt Lake City, UT 84115.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any rights it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent Mrs. Fields Cookies, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of

any food in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of fat, saturated fat, cholesterol or calories in any bakery food product, whether cooked or uncooked. If any representation covered by this Part either directly or by implication conveys any nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration, compliance with this Part shall be governed by the qualifying amount for such defined claim as set forth in that regulation.

II

Nothing in this Order shall prohibit respondent from making any representation that is specifically permitted in labeling for any food by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

III

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All test, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the respondent which may affect compliance obligations arising out of this Order.

V

It is further ordered that respondent shall, within thirty (30) days after service of this Order, distribute a copy of this Order to each of its operating divisions, to each manager of its company-owned and franchised stores, and to each of its officers, agents, representatives, and employees engaged in the preparation or placement of advertisements or promotional materials covered by this Order.

It is further ordered that respondent shall, within sixty (60) days after service of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

VII

This Order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph of this Order that terminates in less than twenty (20) years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Mrs. Fields Cookies, Inc. ("Mrs. Fields").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns claims made by Mrs. Fields in its advertising for three new cookies it introduced in 1994. The Commission's complaint charges Mrs. Fields with engaging in unfair or deceptive practices in connection with the advertising these cookies. According to the complaint, Mrs. Fields falsely represented that all three of the new cookies are low fat.

The consent order contains provisions designed to remedy the violations charged and to prevent Mrs. Fields from engaging in similar deceptive and unfair acts and practices in the future.

Part I of the order prohibits Mrs. Fields from misrepresenting the existence or amount of fat, saturated fat, cholesterol or calories in any bakery food product, whether cooked or uncooked. Part I also requires that any representation covered by this Part that conveys a nutrient content claim defined for labeling by any regulation of the Food and Drug Administration ("FDA") must comply with the qualifying amount set forth in that regulation.

Part II of the order provides that representations that would be specifically permitted in food labeling, under regulations issued by the FDA pursuant to the Nutrition Labeling and Education Act of 1990, are not prohibited by the order.

Part III of the order requires Mrs. Fields to maintain copies of all materials relied upon in making any representation covered by the order.

Part IV of the order requires Mrs. Fields to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part V of the order requires Mrs. Fields to distribute copies of the order to its operating divisions and to various officers, agent and representatives of Mrs. Fields.

Part VI of the order requires Mrs. Fields to file with the Commission one or more reports detailing compliance with the order.

Part VII of the order is a "sunset" provision, dictating that the order will terminate twenty (20) years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–5226 Filed 3–5–96; 8:45 am]

BILLING CODE 6750–01–M

OFFICE OF GOVERNMENT ETHICS

Proposed Extension of Collection; Comment Request for the SF 278 Public Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics plans to submit the Standard Form (SF) 278 which it sponsors for a three-year extension of approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The SF 278 is henceforth to be accompanied by agency notification to filers of certain modified reporting requirements not yet incorporated into the form itself; OGE also intends to work on a future modified form to eventually replace the existing SF 278.

DATES: Comments on this proposed extension should be received by May 20, 1996.

ADDRESSES: Comments should be sent to William E. Gressman, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. Comments may also be sent electronically to OGE's Internet E-mail address at oge@attmail.com (for E-mail messages, the subject line should include the following reference—"SF 278 paperwork comment").

FOR FURTHER INFORMATION CONTACT: Mr. Gressman at the Office of Government Ethics; telephone: 202–523–5757, ext. 1110; FAX: 202- 523–6325. A copy of a blank SF 278 form may be obtained, without charge, by contacting Mr. Gressman.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is planning to submit, after this notice and comment period, the SF 278 Executive Branch Personnel Public Financial Disclosure Report (OMB control number 3209–0001) for a three-year extension of approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The current paperwork approval for the SF 278 is scheduled to expire at the end of September 1996. Since, for now (see discussion below), no modification to the standard form is being proposed, OGE will not need to seek General Services Administration (GSA) clearance for the future request for extension of OMB paperwork approval.

The Office of Government Ethics, as the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act (the "Ethics Act"), is the sponsoring agency for the SF 278, the most recent edition of which is that of June 1994. The prior January 1991 edition also remains usable until supplies are exhausted. In accordance with section 102 of the Ethics in Government Act, 5 U.S.C. app. § 102, and OGE's implementing financial disclosure regulations at 5 CFR part 2634, the SF 278 collects pertinent financial information from certain officers and high-level employees in the executive branch for conflicts of interest review and public disclosure. The financial information collected under the statute and regulations relates to: assets and income; transactions; gifts, reimbursements and travel expenses; liabilities; agreements or arrangements; outside positions; and compensation over $5,000 paid by a source—all subject to various reporting thresholds and exclusions.

The SF 278 is completed by candidates, nominees, new entrants, incumbents and terminees of certain high-level positions in the executive branch of the Federal Government. The Office of Government Ethics, along with the agencies concerned, conducts the review of the SF 278 reports of Presidential nominees subject to Senate confirmation. This group of nominee reports forms the basis of OGE's paperwork estimates. In light of OGE's experience over the past three years (1993–1995), the estimate of the total number, on average, of such nominee's SF 278 forms expected to be filed annually at OGE by members of the public (as opposed to current Federal employees), primarily by private citizen nominees and private representatives (lawyers, accountants, brokers and bankers) of both private citizen and Federal employee nominees, remains 280.

The estimated average amount of time to complete the report form, including review of the instructions, is also the same—three hours. Thus, the overall estimated annual public burden for the SF 278 for the nominee report forms processed at the Office of Government Ethics will stay at 840 hours. Moreover, OGE estimates, based on the agency ethics program questionnaire responses for 1994 (the most recent survey available), that some 22,500 SF 278 report forms are filed annually at departments and agencies throughout the executive branch. Most of those executive branch filers are current Federal employees at the time they file, but certain candidates for President and Vice President, nominees, new entrants and terminees complete the form either before or after their Government service. The percentage of private citizen filers branchwide is estimated at no more than 5% to 10%, or some 1,125 to 2,250 at most.

As noted above, the Office of Government Ethics is asking executive branch departments and agencies to notify filers of the SF 278 of certain recent changes in the reporting law as regards higher-category (over $1,000,000) assets, income and liabilities. In addition, OGE itself will notify concerned filers holding qualified blind trusts of a modification as to reportable trust interests. See sections 20 and 22 of the Lobbying Disclosure Act of 1995, Public Law 104–65, which amended the Ethics in Government Act. There may also be a need to modify the gifts/reimbursement reporting thresholds if the "minimal value" under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342, is raised by GSA to over $250 (the Ethics Act reporting thresholds are pegged to any increase over that amount of "minimal value"). If so, this change would likewise be handled for now by OGE and agency notification to filers. In the next year or two, OGE intends to begin work on an eventual successor form to the current version of the SF 278 that would reflect these recent changes as well as add express mention, on the public burden information block, of a statement pursuant to the 1995 amendments to the paperwork law to the effect that "an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number," together with a parenthetical mention that such number is displayed in the upper right-hand corner of the front page of the form. Serious consideration will also be given to any other appropriate changes, including possible redesign of the form at that time. That future form may either be a modified standard form or a new OGE form and will be subject to appropriate clearances before issuance. Again, for now, OGE is not proposing to modify the SF 278 report form itself, but rather will ask that departments and agencies notify their filers of the modifications to the reporting requirements and new paperwork statement when the existing SF 278 forms are provided for completion (OGE will notify concerned filers of the changes as to qualified blind trust interests).

Based on an OGE request last year as approved by the General Services Administration, the SF 278 Public Financial Disclosure Report can now be electronically duplicated without standard form exception clearance pursuant to GSA's Federal Information Resources Management Regulation Bulletin B–3, provided that the bulletin's strict duplication standards (precisely paralleling the original paper form to the extent feasible) are complied with. Thus, departments and agencies can develop their own electronic SF 278 forms. The Office of Government Ethics is also considering development of a stand-alone electronic SF 278 form that would be made available free of charge or at cost to executive branch departments and agencies. In addition, that electronic version of the form could be placed on OGE's electronic bulletin board entitled "The Ethics Bulletin Board System" (TEBBS). For now, OGE notes that even with these electronic initiatives, the SF 278 reports, once completed, will still need to be printed out and signed manually. Electronic filing is not authorized at the present time for the SF 278s.

Public comment is invited on each aspect of the SF 278 Public Financial Disclosure Report as set forth in this notice, including specifically views on the need for and practical utility of this collection of information, the accuracy of OGE's burden estimate, the potential for enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

Comments received in response to this notice will be summarized for, and may be included with, the OGE request for extension of the OMB paperwork approval for this information collection. The comments will also become a matter of public record.

Approved: February, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 96–5250 Filed 3–5–96; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Availability of the Report of the Commission on Research Integrity

Notice is hereby given of the availability of the final Report of the Commission on Research Integrity: Integrity and Misconduct in Research. The mandate of the Commission was to develop recommendations for the Secretary of Health and Human Services (DHHS) and the Congress on the administration of Section 493 of the Public Health Service Act, as amended by and added to by Section 161 of the NIH Revitalization Act of 1993.

Henrietta D. Hyatt-Knorr, Executive Secretary of the Commission on Research Integrity, can be reached at Rockwall II, Suite 700, 5515 Security Lane, Rockville MD 20852, (301) 443–3400 (phone), (301) 443–5351 (fax), or at hhyatt@osophs.ssw.dhhs.gov (Internet). The report is available on the World Wide Web (WWW) at the ORI Homepage at http://phs.os.dhhs.gov/phs/ori/ ori—home.html. To access the report go to "Publications", "Additional", and Number 10: "Integrity and Misconduct in Research." All interested parties are encouraged to access the report in this manner.

The Executive Secretary can also provide a WordPerfect 5.1 or 6.1 version on a disk. Please submit the request along with a 3½", formatted disk (IBM-compatible) and a self-addressed, stamped envelope.

Printed copies of the report are availeble free of charge from the Executive Secretary.

Henrietta D. Hyatt-Knorr,

Executive Secretary, Commission on Research Integrity.

[FR Doc. 96–5210 Filed 3–5–96; 8:45 am]

BILLING CODE 4160–17–P

Administration for Children and Families

Office of Community Services

[Program Announcement No. OCS–96–02]

Request for Applications Under the Office of Community Services' Fiscal Year 1996 National Youth Sports Program

AGENCY: Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for applications under the Office of Community Services' National Youth Sports Program.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under Section 682 of the Community Services Block Grant Act of 1981, as amended. This Program Announcement contains forms and instructions for submitting an application.

CLOSING DATE: The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) April 22, 1996.

Applications received after 4:30 p.m. will be classified as late.

CONTACT: Joseph R. Carroll, Acting Director, Division of Community Discretionary Programs, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, (202) 401–9345.

This Announcement is accessible on the OCS Electronic Bulletin Board for downloading through your computer modem by calling 1–800–627–8886. For assistance in accessing the Bulletin Board, a Guide to Accessing and Downloading is available from Ms. Minnie Landry at (202) 401–5309.

Part A—Preamble

1. Legislative Authority

Section 682 of the Community Services Block Grant Act, as amended, authorizes the Secretary of Health and Human Services to make a grant to an eligible service provider to administer national or regional programs designed to provide instructional activities for low-income youth.

2. Definitions of Terms

For purposes of this Program Announcement the following definitions apply:

—Low-income youth: a youth between the ages of 10 through 16 whose family income does not exceed the DHHS Poverty Income Guidelines.
—Eligible Applicant: A national private nonprofit organization, a coalition of such organizations, or a private nonprofit organization applying jointly with a business concern that has demonstrated experience in operating a program providing instructions to low-income youth.
—Budget period: The interval of time into which a grant period of assistance is divided for budgetary and funding purposes.
—Project period: The total time for which a project is approved for support, including any approved extensions.

Part B—Application Prerequisites

1. Eligible Applicants

OCS will only consider those applications received from entities which are eligible applicants as specified in Part A 2. of this Announcement. Non-profit organizations must submit proof of their non-profit status in their applications at the time of submission. Failure to do so will result in rejection of their applications. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate, *and* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

2. Number of Grants, Grant Amount, and Matching Requirements

a. Number of Grants

The OCS anticipates, subject to the availability of funds, that one grant will be made under this program.

b. Grant Amounts

Estimated twelve million dollars ($12,000,000) subject to final appropriation.

c. Matching Requirements

The grants require a match of either cash or third party in-kind of one dollar for each dollar awarded up to $9,400,000 and a cash match of 29% of the Federal funds requested in excess of $9,400,000.

3. Project Period and Budget Period

The project and budget periods must not exceed 12 months, with significant amount of program activities to be undertaken in the period covering June, July and August 1996.

4. Administrative Costs/Indirect Costs

No funds from a grant made under this program may be used for administrative expenses. To the extent that indirect costs are not administrative in nature, such costs may be allowed provided the grantee has negotiated an approved Indirect Cost Rate Agreement which excludes administrative expenses. However, it should be understood that indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant.

5. Program Beneficiaries

Projects proposed for funding under this Announcement must result in direct benefits targeted toward 10–16 year olds from low-income families.

Attachment A to this Announcement is an excerpt from the most recently published Poverty Income guidelines. Annual revisions of these Guidelines are normally published in the **Federal Register** in February or early March of each year and are applicable to projects being implemented at the time of publication. Grantees will be required to apply the most recent Guidelines throughout the project period. The **Federal Register** may be obtained from public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. In addition, it may be obtained by downloading from the OCS Electronic Bulletin Board. (See instructions under **CONTACT** at the beginning of this document.)

No other government agency or privately defined poverty guidelines are applicable to the determination of low-income eligibility for this OCS program.

6. Multiple Submittals

An applicant organization should not submit more than one application under this Program Announcement.

Part C—Purpose and project Requirements

1. Purpose

The Department of Health and Human Services is committed to improving the health and physical fitness of young people, particularly those that are members of low-income families and residents of economically disadvantaged areas of the United States.

The Department seeks to improve the lives of these young people through sports skill instruction, counseling in good health practices, and counseling related to anti-drug and anti-alcohol abuse.

2. Project Requirements

Any instructional activity carried out by an eligible service provider receiving a grant under this Program Announcement shall be carried out on the campus of an institution of higher education (as defined in section 1201(a) of the Higher Education Act) and shall include—

a. access to the facilities and resources of such institution;

b. an initial medical examination and follow-up referral or treatment, without charge, for youth during their participation in such activity;

c. at least one nutritious meal daily, without charge, for participating youth during each day of participation;

d. high quality instruction in a variety of sports (that shall include swimming and that may include dance and any other high quality recreational activity) provided by coaches and teachers from institutions of higher education and from elementary and secondary schools (as defined in sections 1471(8) and 1471(21) of the Elementary and Secondary Education Act of 1965); and

e. enrichment instruction and information on matters relating to the well-being of youth, to include educational opportunities and study practices, education for the prevention of drug and alcohol abuse, health and nutrition, career opportunities, and family and job responsibilities.

Part D—Review Criteria

Applications which pass the initial screening and pre-rating review described in Part G 5. will be assessed and scored by reviewers. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in this Announcement.

The in-depth evaluation and review process will use the criteria set forth below coupled with the specific requirements described in Part G.

Applicants should write their project narrative according to the review criteria using the same sequential order.

Criteria for Review and Evaluation of Applications Submitted Under This Program Announcement

1. Criterion I: Location and number of institutions of Higher Education (Maximum: 20 points).

a. Applicant must describe and document the number and location of Institutions of Higher Education committed to participation in this program, with special attention to documenting the accessibility of the schools to economically disadvantaged communities (0–12 points).

b. Applicant must describe in the aggregate the facilities which will be available on the campuses of the institutions to be used in the program (swimming pools, medical facilities, food preparation facilities, etc.) (0–8 points).

2. *Criterion II:* Adequacy of Work Program (Maximum: 20 Points).

a. Applicant must set forth realistic weekly time targets (for the summer program) and quarterly time targets (for any extended-year program activities). The time targets should specify the tasks to be accomplished in the given timeframes. (0–8 points).

b. Applicant must address the legislatively-mandated activities found in Part C.2., to include: (1) project priorities and rationale for selecting them; (2) project goals and objectives; and (3) project activities. (0–12 points).

3. *Criterion III:* Significant and Beneficial Impact (Maximum: 20 points).

a. Applicant proposes to improve nutritional services to the participating youths (0–5 points).

b. Project incorporates medical examinations along with follow-up referral or treatment (0–5 points).

c. Project includes counseling, related to anti-drug and anti-alcohol abuse, by counselors with experience in those areas as a major element (0–5 points).

d. Project makes use of an existing outreach activity of a community action agency or some other community-based organization (0–5 points).

4. *Criterion IV:* Organizational Experience in Program Area and Staff Responsibilities (Maximum: 30 points).

a. Organizational experience in program area (0–10 points).

Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided significant benefits to low-income youth. Information provided should also address the achievements and competence of the participating institutions.

b. Management history (0–10 points).

Applicants must fully detail their ability to implement sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also detail that they have consistently complied with financial and program progress reporting and audit requirements. Applicants should submit any available documentation on their management practices and progress reporting procedures. Applicant should also submit a statement by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect any Federal funds which may be awarded under this program.

c. Staffing skills, resources and responsibilities (0–10 points).

Applicant must briefly describe the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities are relevant to the successful implementation of the project. If the key staff person has not been identified, the application should contain a comprehensive position description which indicates that the responsibilities assigned to the project director are relevant to the successful implementation of the project.

The application must indicate that the applicant and the subgrantees or delegate institutions have adequate facilities and resources (i.e. space and equipment) to successfully carry out the work plan. The application must clearly show that sufficient time of the project director and other senior staff will be budgeted to assure timely implementation and oversight of the project and that the assigned responsibilities of the staff are appropriate to the tasks identified for the project.

5. *Criterion V:* Adequacy of Budget (Maximum: 10 points).

Budget is adequate and funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the program. The estimated cost of the project to the government is reasonable in relation to the anticipated results.

Part E—Contents of Application and Receipt Process

1. Contents of Application

Each application package should include one signed original and two additional copies of the following:

a. A signed Application for Federal Assistance (SF–424);

b. Budget Information—Non-Construction Programs (SF–424A);

c. A signed—Assurances—Non-construction Programs (SF–424B);

d. A Project Narrative consisting of the following elements preceded by a consecutively numbered Table of Contents that describes the project in the following order:

(i) Eligibility confirmation.

(ii) Number and location of Institutions of Higher Education committed to the program and their accessibility to youth from economically disadvantaged areas.

(iii) Organization experience and staff responsibilities.

(iv) Work program (including Executive Summary)

(v) Appendices, including Bylaws; Articles of Incorporation; proof of non-profit status; resume of project director; statement by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect Federal funds; Single Point of Contact comments, if available; certifications regarding Lobbying, Debarment and Drug Free Workplace activities.

The total number of pages for the entire application package should not exceed 50 pages. Applications should be two holed punched at the top and fastened separately with a compressor slide paper fastener or a binder clip. The submission of bound applications, or applications enclosed in binder, is especially discouraged.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½ x 11 inch paper only. They should not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They may be discarded, if included.

2. Acknowledgement of Receipt

All applicants will receive an acknowledgement postcard with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their application which can be attached to this acknowledgement postcard. The assigned identification number must be referred to in all subsequent communications with ACF concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone (202) 401–9365.

Part F—Instructions for Completing Application Package

It is suggested that the applicant reproduce the SF–424 and SF–424A, and type your application on the copies. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested write NA for "Not Applicable".

Prepare your application in accordance with the standard instructions given in Attachments B and C corresponding to the forms, as well as specific instructions set forth below:

1. SF–424 "Application for Federal Assistance"

Item Numbers

1. For the purposes of this Announcement, all projects are considered "Applications"; there are no "Pre-applications". All projects are non-construction projects. Check the appropriate box under "Application".

5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (EIN) and the Payment Identifying Number (PIN), if one has been assigned, in the Block entitled "Federal Identifier" located at the top right hand corner of the form.

7. If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "Other." Proof of non-profit status must be included in the application at the time of submission. This can be accomplished by providing a copy of the applicant's listing in the Internal Revenue Services' (IRS) most recent list of tax-exempt organizations in section 501(c)(3) of the IRS code or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

8. For the purposes of this Announcement, all applications are "New".

9. Enter DHHS–ACF/OCS.

10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this Announcement is 93.570. The title is "CSBG Discretionary Awards."

2. SF–424A—"Budget Information—Non-Construction Programs"

See instructions accompanying this form as well as the instructions set forth below:

In completing these sections, the "Federal Funds" budget entries will relate to the requested OCS discretionary funds only, and "Non-Federal" will include mobilized funds from all other sources—applicant, state, local, and other. Federal funds other than requested OCS discretionary funding should be included in "Non-Federal" entries.

The budget forms in SF–424A are only to be used to present grant costs and major budget categories. Other internal project cost data must be separate and should appear as part of other project implementation data. Applicants are reminded that grant funds may not be utilized for administrative expenses.

Sections A and D of SF–424A must contain entries for both Federal (OCS) and Non-Federal (mobilized) funds. Section B contains entries for Federal (OCS) funds only. Clearly identified continuation sheets in SF–424A format should be used as necessary.

Section A—Budget Summary

Lines 1–4, Col. (a): Line 1 Enter "CSBG Discretionary"; Col. (b): Line 1 Enter "93.570"; Col. (c): and (d); Applicants should leave columns (c) and (d) blank.

Cols. (e)–(g): For line 1, enter in columns (e), (f) and (g) the appropriate amounts needed to support the project for the budget period.

Line 5, Enter the figures from Line 1 for all columns completed as required, (c), (d), (e), (f), and (g).

Section B—Budget Categories

Allowability of costs are governed by applicable cost principles set forth in 45 CFR Part 74.

Columns (1) and (5): In OCS applications, it is only necessary to complete Columns (1) and (5). Column 1: Enter the total requirements for OCS Federal funds by the Object Class Categories of this section:

Personnel—Line 6A: Enter the total costs of salaries and wages of applicant/grantee staff only. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits—Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Travel—Line 6c: Enter total costs of all travel by employees of the project. Do not enter costs for consultant's travel. Provide justification for requested travel costs.

Equipment—Line 6d: Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property" means tangible property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. An applicant may use its own definition of non-expendable personal property, provided that such a definition would at least include all tangible personal property as defined in the preceding sentence. (See Line 21 for additional requirements).

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Contractual—Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations including delegate agencies and specific project(s) to be financed by the applicant.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include but are not limited to insurance, food, medical and dental costs (non-contractual), fees and travel paid directly to individual consultants, space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training services costs including wage payments to individuals and supportive services payments, and staff development costs.

Total Direct Charges—Line 6i: Show the total of Lines 6a through 6h.

Indirect Charges—Lines 6j: Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another Federal agency or is awaiting such approval.

Applicants should enclose a copy of the current rate agreement.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately, upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent *DHHS Guide for Establishing Indirect Cost Rates*, and submit it to the appropriate DHHS Regional Office. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Totals—Line 6k: Enter the total amounts of Lines 6i and 6j. The total amount should be shown in Section B, Column 1: Carry totals from Column 1 to Column 5 for all line items.

Section C—Non-Federal Resources

This section is to record the amounts of "non-Federal" resources that will be used to support the project. "Non-Federal" resources mean other than OCS funds for which the applicant is applying. Therefore, mobilized funds from other Federal programs, such as the Job Training Partnership Act Program, should be entered on these lines. Provide a brief listing of the non-Federal resources on a separate sheet and describe whether it is a grantee-incurred cost or a third-party in-kind contribution.

Line 8: Column (a): Enter the project title. Column (b): Enter the amount of contributions to be made by the applicant to the project. Column (c): Enter the State contribution. Column (d): Enter the amount of cash and in-kind contributions to be made from all other sources. Column (e): Enter the total of columns (b), (c), and (d).

Line 9, 10, and 11 should be left blank.

Line 12: Carry the total of each column of lines 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, column (f).

Section D—Forecasting Cash Needs

Line 13: Enter the amount of Federal (OCS) cash needed for this grant by quarter.

Section F—Other Budget Information

Line 21: Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to

facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

1. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

2. Any foreign travel;

3. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds and which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in the program narrative.

4. Contractual: Major items or groups of smaller items; and

5. Other: Group into major categories all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Line 22: Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

Line 23: Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF–424B "Assurances—Non-Construction"

Applicants requesting financial assistance for a non-construction project must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B (Attachment D) with their applications.

4. Restrictions on Lobbying Activities

Certification for Contracts, Grants, Loans, and Cooperative Agreements: Fill out, sign and date form found at Attachment H.

5. Disclosure of Lobbying Activities, SF–LLL

Fill out, sign and date form found at Attachment H, if applicable.

6. Project Narrative

The project narrative must address the specific concerns and requirements mentioned under Parts C and D of this Announcement. After confirmation of eligibility (as required by Part B), the narrative should follow the order and respond to the content of the criteria detailed under Part D.

Part G—Application Procedures

1. Availability of Forms

Application for awards under this OCS program must be submitted on Standard Forms (SF) 424, 424A, and 424B. Part F and Attachments B, C, and D to this Program Announcement contain all the instructions and forms required for submitting of applications. The forms may be reproduced for use in submitting applications. Copies of the **Federal Register** containing this Announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources they may be obtained by writing or telephoning the office listed in the section entitled **CONTACT** at the beginning of this Announcement.

2. Application Submission

The date by which applications must be received is indicated under **CLOSING DATE** at the beginning of this announcement.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., Mail Stop 6C–462, Washington, D.C. 20447, Attention: Application for National Youth Sports Program. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications handcarried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grant, ACF Mailroom, S.W., Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of Date or Time of submission and time of receipt.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

Paperwork Reduction Act of 1980: Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to OMB for review and approval any reporting and recordkeeping requirements in regulations, including Program Announcements. This Program Announcement does not contain information collection requirements beyond those approved for ACF grant applications under OMB Control Number 0348–0040.

3. Intergovernmental Review

Executive Order 12372—Notification Process: This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contacts (SPOCs). Applicants from these twenty jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(1)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 6th Floor, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment G of this Announcement.

4. Application Consideration

Applications which meet the screening requirements in Section 5 below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this Announcement. Applications will be reviewed by persons outside of the OCS unit which would be directly responsible for programmatic management of the grant. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other factors deemed relevant including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants. OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applications

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this Announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

a. Initial Screening

(1) The application must contain a completed Standard Form SF–424 signed by an official of the entity applying for the grant who has authority to obligate the organization legally;

(2) a budget (SF–424A); and

(3) "Assurances" (SF–424B) signed by the appropriate official.

b. Pre-rating Review

Applications which pass the initial screening will be forwarded to reviewers for analytical comment and scoring based on the criteria detailed in the section below and the specific requirements contained in Part C of this Announcement. Prior to the programmatic review, these reviewers and/or OCS staff will verify that the applications comply with this Program Announcement in the following areas:

(1) Eligibility: Applicant meets the eligibility requirements found in Part A2.

(2) Target Populations: The application clearly targets the specific outcomes and benefits of the project to low-income participants as defined in the DHHS Poverty Income Guidelines (Attachment A).

(3) Grant Amount: The amount of funds requested does not exceed the estimated amount of $12 million.

(4) Program Focus: The application addresses the geographic scope and project requirements described in Part C of this Announcement.

c. Evaluation Criteria

Applications which pass the initial screening and pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this Announcement.

Part H—Post-Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds for use in the project period, the budget period for which support is provided, and the terms and conditions of the award.

In addition to the General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grant, the grantee will be subject to the provisions of 45 CFR Part 74 along with OMB Circulars A–122, A–133, and, for institutions of higher education, A–21.

Grantee will be required to submit progress and financial reports (SF–269).

Grantee is subject to the audit requirements in 45 CFR Part 74.

Applicants requesting financial assistance for a non-construction project must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a certification concerning Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their applications.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

Copies of the certifications and assurances are located at the end of this Announcement.

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying when an applicant has engaged in lobbying activities or is expected to lobby in trying to obtain the grant. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of nonappropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the nonappropriated funds and (3) to file quarterly updates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification. The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H for certification and disclosure forms to be submitted with the applications for this program.

Attachment I indicates the regulations which apply to all applicants/grantees under the Discretionary Grants Program.

Dated: February 28, 1996.

Donald Sykes,

Director, Office of Community Services.

ATTACHMENT A

Size of family unit	Proverty guideline
1995 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA	
1	$ 7,470
2	10,030
3	12,590
4	15,150
5	17,710
6	20,270
7	22,830
8	25,390

For family units with more than 8 members, add $2,560 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

POVERTY INCOME GUIDELINES FOR ALAKSA	
1	$ 9,340
2	12,540
3	15,740
4	18,940
5	22,140
6	25,340
7	28,540
8	31,740

For family units with more than 8 members, add $3,200 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in figures above.)

POVERTY GUIDELINES FOR HAWAII	
1	$ 8,610
2	11,550
3	14,490
4	17,430
5	20,370
6	23,310
7	26,250
8	29,190

For family units with more than 8 members, add a $2,940 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

BILLING CODE 4184–01–M

Attachment B

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (*give city, county, state, and zip code*): | Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (*specify*): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*)

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184–01–C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. it will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representatives of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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Attachment C

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget			
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1		$	$	$	$	$
2						
3						
4						
5 TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES					
6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7 Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Section A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)—For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title one each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)—For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amounts(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Column (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similer column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shone in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts of Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section annotate accordingly and how the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment D—Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the cese, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Besed Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

BILLING CODE 4184–01–M

Attachment E

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Attachment F

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicated or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency;

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment G—OMB State Single Point of Contact Listing*

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–1305

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

Alabama

Jon C. Strickland, Alabama Department of Economic and Community Affairs, Planning and Economic Development Division, 401 Adams Avenue, Montgomery, AL 36103–5690, Telephone: (205) 242–5483, FAX: (205) 242–5515

California

Grants Coordinator, Office of Planning & Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone (916) 323–7480, FAX (916) 323–3018

Delaware

Francine Booth, State Single Point of Contect, Executive Department, Thomas Collins Building, P.O. Box 1401, Dover, Delaware 19903, Telephone: (302) 739–3326, FAX: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contect, Office of Grants Mgmt. & Dev., 717 14th Street, N.W.—Suite 500, Washington, D.C. 20005, Telephone: (202) 727–6554, FAX: (202) 727–1617

Florida

Florida State Clearinghouse, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399–2100, Telephone: (904) 922–5438, FAX: (904) 487–2899

Georgia

Tom L. Reid III, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW.,—Room 401J, Atlanta, Georgia 30334, Telephone: (404) 656–3855 or (404) 656–3829, FAX: (404) 656–7938

Illinois

Barbara Beard, State Point of Contact, Department of Commerce and Community Affairs, 620 East Adams, Springfield, Illinois 62701, Telephone: (217) 782–1671, FAX: (217) 534–1627

Indiana

Amy Brewer, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone: (317) 232–5619, FAX: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4859

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone: (502) 573–2382, FAX: (502) 573–2512

Maine

Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

Maryland

William G. Carroll, Manager, State Clearinghouse for Intergovernmental Assistance, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 225–4490, FAX: (410) 225–4480

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 1900 Edison Plaza, 660 Plaza Drive, Detroit, Michigan 48226, Telephone: (313) 961–4266

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone: (601) 359–6762, FAX: (601) 359–6764

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, FAX: (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–4065, FAX: (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Jersey

Gregory W. Adkins, Assistant Commissioner, New Jersey Department of Community Affairs

Please direct all correspondence and questions about intergovernmental review to: Andrew J. Jaskolka, State Review Process, Intergovernmental Review Unit CN 800, Room 813A, Trenton, New Jersey 08625–

0800, Telephone: (609) 292–9025, FAX: (609) 633–2132.

New Mexico

Robert Peters, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605

North Carolina

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX: (701) 224–2308

Ohio

Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411

Please direct correspondence and questions about intergovernmental review to: Linda Wise, Telephone: (614) 466–0698, FAX: (614) 466–5400

Rhode Island

Daniel W. Varin, Associate Director, Department of Administration/Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2083

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street—Room 477, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0385

Texas

Tom Adams, Governor's Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 463–1880

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX: (801) 538–1547

Vermont

Nancy McAvoy, State Single Point of Contact, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05609, Telephone: (802) 828–3326, FAX: (802) 828–3339

West Virginia

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248

Wisconsin

Martha Kerner, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–2125, FAX: (608) 267–6931

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone: (307) 777–7574, FAX: (307) 638–8967

TERRITORIES

Guam

Mr. Giovanni T. Sgambelluri,
Director,
Bureau of Budget and Management Research,
Office of the Governor,
P.O. Box 2950,
Agana, Guam 96910,
Telephone: 011–671–472–2285
FAX: 011–671–472–2825

Puerto Rico

Norma Burgos/Jose E. Caro,
Chairwoman/Director,
Puerto Rico Planning Board,
Federal Proposals Review Office,
Minillas Government Center,
P.O. Box 41119,
San Juan, Puerto Rico 00940–1119,
Telephone: (809) 727–4444, (809) 723–6190,
FAX: (809) 724–3270, (809) 724–3103

North Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Virgin Islands

Jose George
Director, Office of Management and Budget,
#41 Norregade Emancipation Garden, Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069.

Attachment H—Certification Regarding Lobbying

Certificotion for Contracts; Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modificetion of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 end not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*: $ _____ ☐ actual ☐ planned	13. Type of Payment *(check all that apply)*: ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

BILLING CODE 4184–01–C

Attachment I

The following DHHS regulations apply to all applicants/grantees under the National Youth Sports Program:

Title 45 of the *Code of Federal Regulations:*
- Part 16—Procedures of the Departmental Grant Appeals Board
- Part 74—Administration of Grants (non-governmental)
- Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):

Sections
- 74.62(a) Non-Federal Audits
- 74.173 Hospitals
- 74.174(b) Other Nonprofit Organizations
- 74.304 Final Decisions in Disputes
- 74.710 Real Property, Equipment and Supplies
- 74.715 General Program Income

- Part 75—Informal Grant Appeals Procedures
- Part 76—Debarment and Suspension form Eligibility for Financial Assistance
- Subpart F—Drug Free Workplace Requirements
- Part 80—Non-discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services, Effectuation of Title VI of the Civil Rights Act of 1964
- Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
- Part 84—Non-discrimination on the Basis of Handicap in Programs
- Part 86—aNondiscrimination on the basis of sex in the admission of individuals to training programs
- Part 91—Non-discrimination on the basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
- Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)
- Part 93—New Restrictions on Lobbying
- Part 100—Intergovernmebntal Review of Department of Health and Human Services Programs and Activities

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

[FR Doc. 96–5148 Filed 3–5–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 95N–0288]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish a notice in the **Federal Register** concerning each collection of information and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to the approval and labeling of color additives.

DATES: Submit written comments on the information collection requirements by May 6, 1996.

ADDRESSES: Submit written comments on the information collection requirements to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–443–4055.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c). To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Sections 70.25 *Labeling requirements for color additives (other than hair dyes)* (21 CFR 70.25) and 71.1 *Petitions* (21 CFR 71.1) (OMB Control Number 0910–0185—Extension)

Section 721(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379e) provides that a color additive shall be deemed to be unsafe unless the additive and its use are in conformity with a regulation that describes the condition(s) under which the additive may safely be used, or unless the additive and its use conform to the terms of an exemption for investigational use issued under section 721(f) of the act. Color additive petitions are submitted by individuals or companies to obtain approval of a new color additive or a change in the conditions of use permitted for a color additive that is approved already. Section 71.1 specifies the information that a petitioner must submit in order to establish the safety of a color additive and to secure the issuance of a regulation permitting its use.

FDA scientific personnel review color additive petitions to ensure that the intended use of the color additive in or on food, drugs, cosmetics, and medical devices is suitable and safe. Color additive petitions were specifically provided for by Congress when it enacted the Color Additive Amendments of 1960 (Pub. L. 94–295). If FDA stopped accepting color additive petitions or stopped requiring them to contain the information specified in § 71.1, the number of new color additives approved would decrease.

FDA's color additive labeling requirements in § 70.25 require that color additives that are to be used in foods, drugs, devices, or cosmetics be labeled with sufficient information to ensure their safe use.

FDA estimates the burden of complying with the information collection provisions of the agency's color additive regulations as follows:

Estimated Annual Reporting Burden

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours Per Response	Total Hours	Total Operating & Maintenance Costs
70.25	2	1	2			
71.1	2	1	2	1,700	3,415	$6,000
Total	2				3,415	$6,000

There are no capital costs associated with this collection.

This estimate is based on the number of new color additive petitions received in 1994. Although the burden varies with the type of petition submitted, a color additive petition involves analytical work and appropriate toxicology studies, as well as the work of drafting the petition itself. Because labeling requirements under § 70.25 for a particular color additive involve information required as part of the color additive petition safety review process, the estimate for the number of respondents is the same for § 70.25 as for § 71.1, and the burden hours for labeling are included in the estimate for § 71.1.

Dated: February 27, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–5212 Filed 3–5–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96D–0067]

Guidance for Industry, Designing Clinical Programs for Developing Human Drugs, Medical Devices, or Biological Products Intended for the Treatment of Rheumatoid Arthritis; Availability of Draft Guidance; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled "Draft Guidance for Industry in Designing Clinical Programs for Developing Human Drugs, Medical Devices, or Biological Products Intended for the Treatment of Rheumatoid Arthritis." The agency is also announcing a public workshop to discuss the draft guidance document. The draft guidance document was prepared by the Rheumatology Working Group comprised of members from: The Center for Drug Evaluation and Research, the Center for Biologics Evaluation and Research, and the Center for Devices and Radiological Health. The workshop will enable experts in rheumatology clinical trials and interested representatives of industry, academia, and the public to exchange ideas on developing and assessing new treatment modalities for rheumatoid arthritis (RA) and to discuss the types of claims that might be reasonably pursued and the data necessary to support such claims.

DATES: The public workshop will be held Wednesday, March 27, 1996, from 8 a.m. to 6 p.m. There is no registration fee for the workshop, but advance registration is requested. Interested parties are encouraged to register early because space is limited. Written comments on the draft guidance for consideration at the workshop should be submitted by March 22, 1996. The administrative docket will remain open until May 30, 1996, for the submission of written comments, data, information, or views on the draft guidance or the workshop.

ADDRESSES: The public workshop will be held at the DoubleTree Hotel, 1750 Rockville Pike, Plaza 1 and 2, Rockville, MD 20852. Persons interested in attending should Fax their registration to Rose Cunningham at 301–594–5493. The Fax should include the participant's name and title; organization name, if any; address; and telephone number.

A copy of the draft guidance document entitled "Draft Guidance for Industry in Designing Clinical Programs for Developing Human Drugs, Medical Devices, or Biological Products Intended for the Treatment of Rheumatoid Arthritis" is available through the Center for Drug Evaluation and Research's Fax-on-Demand, 301–827–0577 or 800–342–2722, under the index "Guidance to industry," document no. 0806. The draft guidance is also available via Internet by connecting to the CDER file transfer protocol server (CDVS2.CDER.FDA.GOV). A transcript of the workshop will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, approximately 10 business days after the workshop at a cost of 10¢ per page.

Written comments on the draft guidance or the workshop should be submitted to the Dockets Management Branch (HFA–305), 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rose Cunningham, Center for Drug Evaluation and Research (HFD–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5470.

SUPPLEMENTARY INFORMATION: A variety of new treatment modalities are being developed for RA, and many of these are anticipated to have beneficial effects that are different from traditional agents. However, uncertainty exists among experts in rheumatology clinical trials about the types of claims that might be reasonably pursued for these agents and what data would be necessary to support such claims. In addition, there is a need to identify appropriate outcome measures for RA, including composite indices, quality of life measures, and radiographic techniques. Parallel developments of treatment modalities for RA in the human drug, biological, and medical device communities have provided further impetus to the creation of this draft guidance document.

FDA, through its Rheumatology Working Group, has developed a draft guidance document for industry that provides an overview of the kinds of design problems that are encountered in RA trials intended for product

development, and offers a variety of suggested approaches that may be considered for improving the reliability, robustness, and clinical relevance of such trials. FDA is sponsoring a public workshop to provide an opportunity for experts in rheumatology clinical trials and interested representatives of industry, academia, and the public to discuss the working draft of the guidance document and to exchange ideas on developing and assessing new treatment modalities for RA as well as the types of claims that might be reasonably pursued and the data necessary to support such claims.

After consideration of all data, information, or views submitted on the draft guidance and at the workshop, FDA will issue a final guidance document and announce its availability with a notice published in the Federal Register.

Dated: February 29, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–5211 Filed 3–5–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Ryan White Title IV Grants for Coordinated HIV Services and Access to Research for Children, Youth, Women, and Families

AGENCY: Health Resources and Services Administration (HRSA), PHS.

ACTION: Notice of availability of funds.

SUMMARY: The HRSA announces that applications will be accepted for fiscal year (FY) 1996 funds for grants for projects that enhance access to clinical research trials and other research, and develop and support the provision of coordinated comprehensive services and activities for children, youth, women and families infected/affected by the Human Immunodeficiency Virus (HIV). Projects will be funded to implement programs of family-centered, community-based coordinated care and research for children, youth, women, and families infected/affected by HIV, or those at risk for developing infection. These projects are authorized under, and expected to meet provisions contained within, Section 2671 of the Public Health Service Act [as enacted by Title IV, of the Ryan White Comprehensive AIDS Resource Emergency (CARE) Act of 1990, Public Law 101–381 (42 U.S.C. 300ff–11 *et seq.*)]. Within the HRSA, Ryan White Title IV projects are administered by the Maternal and Child Health Bureau (MCHB).

This program announcement is subject to the appropriation of funds. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. At this time, given a continuing resolution and the absence of FY 1996 appropriations for the EMSC program, the amount of available funding for this specific grant program cannot be estimated. In addition, reauthorization of the Ryan White CARE Act, currently pending in Congress, could add new Title IV grant requirements in addition to those included in this notice.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS national activity for setting priority areas. Title IV directly addresses the Healthy People 2000 objectives related to the priority area of HIV infection. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock Number 017–001–0474–0) or *Healthy People 2000* (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202 783–3238).

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases any portion of a facility) in which regular routine education, library, day care, child care or early development services are provided to children.

ADDRESSES: Grant applications for the Ryan White Title IV Program (PHS form #5161–1, approved under OMB #0937–0189) must be obtained from and submitted to: Mona D. Thompson, Grants Management Branch, Office of Program Support, Maternal and Child Health Bureau, HRSA, Room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3429. You must obtain application materials in the mail.

Federal Register notices and application guidance for MCHB programs are available on the World Wide Web via the Internet at address: http://www.os.dhhs.gov/hrsa/mchb. Click on the file name you want to download to your computer. It will be saved as a self-extracting (Macintosh or) Wordperfect 5.1 file. To decompress the file once it is downloaded, type in the file name followed by a <return>. The file will expand to a Wordperfect 5.1 file. If you have difficulty accessing the MCHB Home Page via the Internet and need technical assistance, please contact Linda L. Schneider at 301–443–0767 or "lschneider@hrsa.ssw.dhhs.gov".

DATES: The application deadline date is April 19, 1996. Competing applications will be considered to be on time if they are:

(1) Received on or before the deadline date, or

(2) Postmarked on or before deadline date and received in time for orderly processing.

As proof of timely mailing, applicants should obtain a legibly dated receipt from the commercial carrier or the U.S. Postal Service; private metered postmarks will not be accepted as proof of timely mailing.

Late applications not accepted for processing or those sent to an address other than specified in the **ADDRESSES** section will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Additional information regarding technical and program issues may be obtained from: the Division of Services for Children with Special Health Needs, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–9051. Requests for information concerning business management issues should be directed to: Sandra Perry, Acting Grants Management Officer (GMO), Maternal and Child Health Bureau, at the address specified in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

The Pediatric AIDS Program was initiated in 1988. The program grew from 13 projects funded at $4.4 million to a total of 59 projects funded at $25.4 million in FY 1995. Since 1988, the program has evolved from a primary focus on the coordination of services for the management and care of infected children and their families to also address the broader prevention and care needs of youth and women infected/affected by HIV. In FY 1994, Congress funded the Pediatric AIDS Program under section 2671, Title IV of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act 1990, Public Law 101–381 (Title IV). As a result of

authorization under Title IV, the focus of the program was expanded to include the development of innovative models linking clinical trials offered by the National Institutes of Health (NIH) and other research entities, with systems of comprehensive primary/community-based medical and social services.

In 1994 published results from a NIH clinical trial (ACTG 076) demonstrated the potential for reducing perinatal HIV transmission by two-thirds when pregnant women and their newborns were given zidovidine (ZDV). The ZDV therapy regimen has been published in the Centers for Disease Control's Morbidity and Mortality Weekly Report (MMWR 1994:43 (RR–11).

Over the past year, the CDC has issued recommendations for enhanced voluntary HIV counseling and testing for women of child bearing age, and the HRSA issued an *Advisory: The Use of Zidovidine (ZDV) to reduce Perinatal HIV Transmission in HRSA–Funded Programs.* This advisory contains practical, specific steps for implementing U.S. Public Health Services recommendations for offering zidovidine (ZDV) to pregnant women. A copy of this advisory will be mailed to all Title IV applicants with the application guidance. Applicants are expected to review this advisory and describe how they will implement these recommendations in their application.

Reauthorization of the Ryan White CARE Act is pending in Congress. The final version of the Act, which will include Title IV, is expected to contain new requirements concerning arrangements between Title IV programs and research entities and enhancement of opportunities for Title IV Clients to participate in clinical research. Reauthorization of the Ryan White CARE Act could result in incorporation of additional requirements for Title IV grants in the applications guidance for these projects.

Purpose

The purpose of Title IV funding is to link clinical research and other research activities with comprehensive care systems, and to improve and expand the coordination of a system of comprehensive care for children, youth, women, and families who are infected/affected by HIV. Funds will be used to support programs that: (1) cross established systems of care to coordinate service delivery, HIV prevention efforts, and clinical research and other research activities; and (2) address the barriers to comprehensive care and research experienced by children, youth, women, and families infected/affected by HIV.

While children, youth, and women represent the most recently impacted and rapidly growing population groups affected by HIV, they also represent the groups facing the greatest barriers in accessing care and research. These groups are disproportionately members of communities of color with limited economic resources. Given these realities, children, youth, and women affected by HIV are confronted with a complex array of economic and social issues that increase their need for comprehensive services and increase the cost and intensity of care. Existing systems of care are often not prepared to respond to these needs and require targeted resources and interventions in order to develop infrastructures and provider capacities that would allow them to provide quality care to these populations.

Given these unmet needs, activities under these grants should address the following goals:

—Link HIV/AIDS clinical research trials and other research activities with comprehensive systems of care, resulting in increased access for children, youth, women, and their families.

—Foster the development and support of comprehensive care infrastructures, including primary care, that increase access to culturally-competent, family-centered, community-based, coordinated care.

—Emphasize prevention within the comprehensive care system in order to reduce the spread of the HIV infection to vulnerable populations.

Funding Category

Applications which do not fall within this program category will not be considered for funding.

The Ryan White Title IV Program for Children, Youth, Women, and Families develops and supports innovative projects that foster collaboration between clinical research institutions and family-centered, primary/community-based medical and social service programs, and that coordinate systems of comprehensive HIV care for children, youth, women and their families. Projects will focus on local capacity-building, making maximum use of all available public and private resources for reaching and providing health care and supportive services to the target population. Projects should strengthen existing comprehensive care infrastructures by: (1) broadening the coalition of agencies, providers, community organizations and consumers that participate in the identification of needs, services planning, the coordination and delivery of services, and the financing of services for HIV affected populations; and (2) identifying and addressing systemic issues that affect provider collaboration and impact the provision of coordinated high quality comprehensive care.

Preference for funding in this category will be given to projects that have: (1) established and currently support a comprehensive, coordinated, system of HIV care serving either children, youth, women, or families; and (2) linked with, or initiated activities to link with clinical trials or other research. This means that these projects will be funded ahead of new groups of applications in this category.

Special Concerns

Grantees supported by Title IV of the Ryan White CARE Act should coordinate their projects with other Federal, State, and local programs concerned with HIV and/or serving the target population of children, youth, women and families affected by or at risk for HIV, particularly: Title V Maternal ad Child Health programs; Ryan White Titles I, II and III(b) programs; providers funded by the Substance Abuse and Mental Health Services Administration; the Health Resources and Services Administration; the Centers for Disease Control prevention efforts; and clinical trials funded by NIH or other sources.

HRSA's Maternal and Child Health Bureau places special emphasis on improving service delivery to women, children and youth from communities with limited access to comprehensive care. In order to assure access and cultural competence, it is expected that projects will involve individuals from the populations to be served in the planning and implementation of the project. The Bureau's intent is to ensure that project interventions are responsive to the cultural and linguistic needs of special populations, that services are accessible to consumers, and that the broadest possible representation of culturally distinct and historically underrepresented groups is supported through programs and projects sponsored by the MCHB.

In keeping with the goals of advancing the development of human potential, strengthening the Nation's capacity to provide high quality education by broadening participation in MCHB programs of institutions that may have perspectives uniquely reflecting the Nation's cultural and linguistic diversity, and increasing opportunities for all Americans to participate in and benefit from Federal public health programs, HRSA will place a funding priority on projects from

Historically Black Colleges and Universities (HBCU) or Hispanic Serving Institutions (HSI) in all categories and subcategories in this notice for which applications from academic institutions are encouraged. This is in conformity with the Federal Government's policies in support of White House Initiatives on Historically Black Colleges and Universities (Executive Order 12876) and Educational Excellence for Hispanic Americans (Executive Order 12900). An approved proposal from a HBCU or HSI will receive a 0.5 point favorable adjustment of the priority score in a 4 point range before funding decisions are made.

Applications will be reviewed with particular attention to inclusion of women and persons from culturally distinct populations. Funding will be provided to those which, in the Department's view, best meet the statutory purposes of the Ryan White Title IV Program and address achievement of the Health People 2000 objectives related to HIV infection.

Review Criteria

Applications for grant categories will be reviewed and rated by objective review panels according to the following weighted criteria:

1. Documentation of the HIV medical and social support service needs of children, youth, women and families. Weight: 15 percent.

2. Demonstration of capacity to coordinate and support a comprehensive system of HIV care for children, youth, women and families. Weight: 25 percent.

3. Demonstrated capacity to provide clinical trials or to establish linkages with providers offering clinical trials, or other research. Weight: 15 percent.

4. The degree to which the Title IV's program priority of consumer involvement has been implemented. Weight: 10 percent.

5. The degree to which the proposed plan:

- Addresses the issues identified in response to Review Criteria I;
- Reflects the legislative and programmatic priorities of the Title IV program (access to clinical trials, reduction of perinatal HIV transmission, and consumer involvement);
- Contains goals and objectives that are clear, measurable, and time framed; and
- Presents an evaluation strategy capable of documenting the achievement of project goals. Weight: 25 percent.

6. The degree to which the proposed budget clearly supports administrative and programmatic activities necessary to manage the program and accomplish proposed goals and activities. Weight: 10 percent.

Eligible Applicants

Grants may be awarded to public or nonprofit private entities that provide or arrange for primary health care. Eligible entities may include, but are not limited to, State or local health departments, university medical centers, public or nonprofit private hospitals, community health centers (as defined in section 330(a) of the Act), hemophilia treatment centers, drug abuse treatment agencies, tribal health programs, school based clinics and institutions of higher education.

If any additional eligibility requirements are established in a reauthorized Ryan White CARE Act, they will be clearly identified in the application guidance.

Allowable Costs

The HRSA may support reasonable and necessary costs of HIV Project grants within the scope of approved projects. Allowable costs may include salaries, equipment and supplies, travel, contractual arrangements, consultants, and others, as well as indirect costs. The HRSA adheres to administrative standards reflected in the *Code of Federal Regulations* (45 CFR Part 92 and 45 CFR Part 74). All other sources of funding to support this project must be accurately reflected in the applicant's budget.

Reporting Requirements

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR Part 74, Subpart J, Monitoring and Reporting of Program Performance, with the exception of State and local governments to which 45 CFR Part 92.40 will apply. Financial reporting will be required in accordance with 45 CFR Part 74, Subpart I, with the exception of State and local governments, to which 45 CFR Subpart C will apply.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 5161).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

The project abstract may be used in lieu of the one-page PHSIS, if the applicant is required to submit a PHSIS.

Executive Order 12372

The Title IV Program has been determined to be subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100.

Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice (Form PHS 5161–1 with revised face sheet HHS Form 424 and with Program Narrative and Checklist approved under OMB 0937–0189) will contain a listing of States which have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date. (See Part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements.)

(The OMB Catalog of Federal Domestic Assistance number for the HIV Program for Children, Youth, Women, and Families is 93.153)

Dated: February 29, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–5209 Filed 3–5–96; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: Development of Deuterated Nitroso Spin Traps for Identifying Xenobiotic Free Radical Metabolites (SBIR Phase I Topic 45) & Synthesis of New Nitrones in Spin Traps (Phase II Topic 38) (Telephone Conference Call).

Date: March 11, 1996.

Time: 10:30 A.M.

Place: National Institute of Environmental Health Sciences North Campus, Building 17, Conference Room 1713 Research Triangle Park, NC.

Contact Person: Dr. John Braun, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1446.

Purpose/Agenda: To review and evaluate contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health.)

Dated: March 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–5314 Filed 3–1–96; 4:33 pm]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research

[Docket No. FR–3917–N–49]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: May 6, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: John Carson, Research Analyst, Office of Policy Development and Research—telephone (202) 708–3700 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and, (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology (e.g. permitting electronic submission of responses).

This notice also lists the following information:

Title of Proposal: Survey of Vouchered-out Households.

Description of the need for the information and proposed use: Currently, HUD's Office of Property Disposition is in the process of disposing, through demolition, several privately-owned multifamily assisted properties which have been acquired by the Department as a result of foreclosure or deteriorating safety and social conditions. Prior to disposing of these properties, eligible resident households are provided with Section 8 housing vouchers to obtain alternative housing. In order to gain insight into the transformation of project-based programs to tenant-based assistance, the Department proposes to study several of these vouchered-out projects. Specifically, the Department is interested in learning more about housing and neighborhood outcomes for renter households who receive a voucher to leave multifamily assisted housing for residence in unassisted housing. The results of this study will have a direct bearing on the Department's policies for re-locating households from distressed assisted housing.

Members of affected public: 200 households who received a voucher to leave assisted housing will be interviewed concerning their experiences in obtaining alternative housing with a voucher.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information will be collected through one-time telephone interviews with 200 members of households who moved from assisted housing to private housing with a voucher. These interviews will last an average of .417 hours (25 minutes) for a total respondent burden of 83.4 hours (200 X .417).

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.c. Chapter 35, as amended.

Dated: February 27, 1996.

Michael A. Stegman,

Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 96–5194 Filed 3–5–96; 8:45 am]

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Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. FR–3917–N–50]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: May 6, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Oliver Walker, Telephone number (202) 708–1694 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Description of Materials.

OMB Control Number: 2502–0192.

Description of the need for the information and the proposed use: HUD–92005 is needed so that builders and sponsors can describe the materials and assembly of dwellings and other improvements to property. This form and the drawings define the scope and limits of the construction and is used by HUD to estimate value for FHA Mortgage Insurance.

Agency form numbers: HUD–92005.

Members of affected public: Builders and sponsors.

An estimation of the total numbers of hours needed to prepare the information collection is 50,000, number of respondents is 100,000, frequency response is dependent upon the occurrence of the application process, and the hour of response is 0.05 of an hour.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 26, 1996.

Nicolas P. Retsinas,

A/S Secretary for Housing Federal Housing Commissioner.

[FR Doc. 96–5195 Filed 3–5–96; 8:45 am]

BILLING CODE 4210–27–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR–3917–N–51]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: May 6, 1996.

ADDRESSES: Interested persons are invited to submit comment regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Oliver Walker, Telephone number (202) 708–1694 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Notice also lists the following information:

Title of Proposal: Construction Complaint for Newly Constructed Property.

OMB Control Number: 2502–0047.

Description of the need for the information and proposed use: A homebuyer who has purchased a newly constructed property must complete the form to identify items of their construction complaint, to identify builders not conforming to applicable standards and to request financial assistance for a structural.

Agency form numbers: HUD–92556.

Members of affected public: Individuals or households.

An estimation of the total numbers of hours needed to prepare the information collection is 2,300, the number of respondents is 4,600 frequency of response is on occasion, and the hour of response is 0.5.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 26, 1996.

Nicolas P. Retsinas,

A/S Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–5196 Filed 3–5–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–3917–N–46]

Office of the Assistant Secretary for Administration; Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* May 6, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Gloria S. Diggs, Reports Liaison Officer, Office of Administration, Department of Housing & Urban Development, 451–7th Street, SW, Room 4176, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Larry S. DeWalt, 202–708–0294 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of proposal: Solicitation Mailing List Application.

OMB Control Number, if applicable: 2535–0086.

Description of the need for the information and proposed use: This information will be used by potential sources to indicate their particular field(s) of expertise or interest. HUD will use this information to target the types of solicitations that organizations receive as a result of being placed on the Solicitation Mailing List.

Agency form numbers, if applicable: HUD–24010 and SF–129.

Members of affected public: Business or Other For-Profit, Individuals or Households, Not-For-Profit Institutions, and State, Local, or Tribal Government

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 1,200 respondents × 1 time per year × 5 minutes per respondent = 1,200 burden hours.

Status of the proposed information collection: Extension, no change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 21, 1996.

David S. Cristy,

Acting Director, Information Resource Management Policy and Management Division.

[FR Doc. 96–5198 Filed 3–5–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–3917–N–47]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: April 5, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 26, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Supportive Housing Program Renewal Application.

Office: Community Planning and Development.

OMB Approval Number: 2506–0134.

Description of the Need for the Information and Its Proposed Use:

State and local governments, nonprofit organizations, and Indian Tribes are required to submit proposals for reapplication for continued participation in the Supportive Housing Program. This program provides grants to stimulate community-wide efforts to assist homeless families and individuals.

Form Number: HUD–40109.

Respondents: Not-For-Profit Institutions and State, Local, or Tribal Government.

Frequency of Submission: Annually and On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	215		1		20		4,300

Total Estimated Burden Hours: 4,300.
Status: Reinstatement with change.
Contact: Maggie Taylor, HUD, (202) 708–4300, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 26, 1996.

[FR Doc. 96–5197 Filed 3–5–96; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. FR–3917–N–48]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* April 5, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 26, 1996.

David S. Cristy,
Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Assessing Service Quality: Section 203(k) Loan Program.
Office: Policy Development and Research.
OMB Approval Number: None.
Description of the Need for the Information and Its Proposed Use: This information collection will survey actual and potential customers of the Federal Housing Administration (FHA) Section 203(k) Rehabilitation Loan Program. The survey will assist FHA in expanding the use of Section 203(k) loans. These loans provide an important vehicle for community revitalization and for expanding homeownership opportunities.
Form Number: None.
Respondents: Business or Other For-Profit and Not-For-Profit Institutions.
Frequency of Submission: One-Time.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	800		1		.25		200

Total Estimated Burden Hours: 200.
Status: New.
Contact: David Chase, HUD, (202) 708–4504 x111, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 28, 1996.

[FR Doc. 96–5199 Filed 3–5–96; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit [4310–55]

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–811599

Applicant: Steven John Camp, Keller, TX.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) from Zimbabwe for the purpose of enhancement of the survival of the species.

PRT–811771

Applicant: Jesse T. Kirk, Irving, TX.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) from Namibia for the purpose of enhancement of the survival of the species.

Applicant: George Washington University, Washington, DC, PRT–811643

The applicant requests a permit to import haitian and tissue samples from captive-held, captive-born, and wild-caught solenodon (*Solenodon paradoxus*) in the Dominican Republic for the purpose of scientific research to enhance the survival of the species.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–811418

Applicant: Zoological Society of San Diego, San Diego, CA.

Type of Permit: Import for public Display.

Name and Number of Animals: Polar Bear (*Ursus maritimus*), 2.

Summary of Activity to be Authorized: The applicant has requested a permit to import 0.2 polar bears from Jungle Cat World, Orono, Ontario, Canada for the purposes of public display.

Source of Marine Mammals for Research/Public Display: Canada; originally recovered as orphaned cubs approximately 10 month old.

Period of Activity: Up to five years from issuance of a permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420(c), Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: March 1, 1996.

Caroline Anderson,
Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–5239 Filed 3–5–96; 8:45 am]
BILLING CODE 4310–55–P

Bureau of Indian Affairs

Operation and Maintenance Rate Adjustment: Wapato Irrigation Project, Washington

ACTION: Notice of operation and maintenance rate increase.

SUMMARY: The Bureau of Indian Affairs is changing the assessment rates for operating and maintaining the Wapato Irrigation Project for 1996 and subsequent years. The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance means the expenses we incur to provide direct support or benefit to the project's activities for administration, operation, maintenance, and rehabilitation. We must include at least:

(a) Personnel salary and benefits for the project engineer/manager and our employees under his management control,

(b) Materials and supplies, © Major and minor vehicle and equipment repairs,

(d) Equipment, including transportation, fuel, oil, grease, lease and replacement,

(e) Capitalization expenses,

(f) Acquisition expenses, and

(g) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project

FOR FURTHER INFORMATION CONTACT: Area Director, Bureau of Indian Affairs, Portland Area Office, 911 NE 11th Avenue, Portland, Oregon 97232–4169, telephone (503) 231–6702.

DATE: This rate is effective for the 1996 irrigation season and all subsequent years until modified.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Assistant Secretary of Indian Affairs by 5 U.S.C. 301 and the Act of August 15, 1914 (38 Stat. 583, 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8. 1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

This notice is given in accordance with Section 171.1(e) of part 171, Subchapter H, Chapter 1, of Title 25 of the Code of Federal Regulations, which provides for the Area Director to fix and announce the rates for annual operation and maintenance assessments and related information of the Wapato Irrigation Project for Calendar Year 1996 and subsequent years.

The purpose of this notice is to announce an increase in the Wapato Project assessment rates proportionate with actual operation and maintenance costs. The assessment rates for 1996 will amount to an increase of 11% for the Wapato Satus Unit A Lands and 21% for B lands due to increased storage charges and an 11% increase for the Toppenish-Simcoe & Ahtanum Units.

Charges for Special Services

Charges will be collected for various special services requested by the general public, water users and other organizations during the Calendar Year 1996 and subsequent years until further notice, as detailed below:

(1) Requests for Irrigation Accounts and Status Reports, Per Report $15.00
(2) Requests for Verification of Account Delinquency Status, Per Report.....$10.00
(3) Requests for Splitting of Operation and Maintenance Bills (In addition to minimum billing fee)
Per Bill.....$10.00
(4) Requests for Billing of Operation and Maintenance to Other than Owner or Lessee of Record (in addition to minimum billing fee)
Per Bill.....$10.00
(5) Requests for Other Special Services Similar to the above, when appropriate,
Per Report.....$10.00
(6) Requests for elimination of lands from the Project. In the event that the elimination is approved, a portion of the fee will be used to pay the Yakima County Recording Fee.....$10.00
(7) Review of subdivision plats.....$10.00

Ahtanum Unit

Charges

(A) The operation and maintenance rate on lands of the Ahtanum Irrigation Unit for the Calendar Year 1996 and subsequent years until further notice, is fixed at $10.00 per acre per annum for land to which water can be delivered from the project works.

(B) In addition to the foregoing charges there shall be collected a billing charge of $5.00 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5.00. A one acre charge shall be levied on all tracts of less than one acre.

Toppenish-Simcoe Unit

Charges

(A) The operation and maintenance rate for the lands under the Toppenish-Simcoe Irrigation Unit for the Calendar Year 1996 and subsequent years until further notice, is fixed at $10.00 per acre per annum for land for which an application for water is approved by the Project Engineer.

(B) In addition to the foregoing charges there shall be collected a billing charge of $5.00 for each tract of land for which operation and maintenance bills are prepared. The bills issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5.00. A one acre charge shall be levied on all tracts of less than one acre.

Wapato-Satus Unit

Charges

(A) The basic operation and maintenance rates on assessable lands under the Wapato-Satus Unit are fixed for the Calendar Year 1996 and subsequent years until further notice as follows:

(1) Minimum charge for all tracts.....$40.00
(2) Basic rate upon all farm units or tracts for each assessable acre except Additional Works lands $40.00
(3) Rate per assessable acre for all lands with a storage water rights, known as .b. lands, in addition to other charges per acre.....$8.00
(4) Basic rate upon all farm units or tracts for each assessable acre of Additional Works lands $44.00
(5) Basic rate for each assessable acre of Water Rental Agreement Lands $49.00

(B) In addition to the foregoing charges there shall be collected a billing charge of $5.00 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5.00. A one acre charge shall be levied against all tracts of less than one acre.

Payments

The water charge becomes due on April 1 of each year and are payable on or before that date. No water shall be delivered to any of these lands until all irrigation charges have been paid.

Interest and Penalty Fees

Interest and penalty fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

The Notice proposing this increase to the Wapato Irrigation Project's operation and maintenance assessment rate was published on December 21, 1995 (60 FR 66315). A 30-day comment period was allowed. The Bureau received 23 comments. All, except one comment, came from the Yakima Reservation Irrigation District and its members or the tribe. The Bureau held a meeting with the Irrigation District and the tribe on February 13, 1996. All issues were fully discussed and the need for the increase explained to every one. The one comment from a congressional representative was answered directly by the Portland Area office.

Dated: February 28, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–5130 Filed 3–5–96; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[AZ-020–7122–00–5499; AZA 28636]

Notice of Availability of the Record of Decision for the Final Environmental Impact Statement (FEIS), Proposed Tailings and Waste Rock Disposal Areas, Cyprus Bagdad Copper Corporation, Bagdad, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability, record of decision for Final Environmental Impact Statement (FEIS).

SUMMARY: The Bureau of Land Management, Phoenix District, in response to a Mining Plan of Operations (MPO) filed by Cyprus Bagdad Copper Corporation (CBCC), has prepared an Environmental Impact Statement (EIS) in compliance with the Federal Land Policy and Management Act of 1976, as amended, 43 CFR 3809, and Section 102(2)(c) of the National Environmental Policy Act of 1969. The proposed action involves development of a new tailings impoundment, expansion of an existing waste rock disposal area, and continuation of expansion of the existing open pit in order to continue copper mining and milling operations in Bagdad, Arizona for 35 years. The BLM has approved the Mining Plan of Operations as described in the proposed action. The Record of Decision is now available to the public.

ADDRESSES/FOR FURTHER INFORMATION, CONTACT: Copies of the Record of Decision may be requested from: Mary Johnson, Project Manager, Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, AZ 85027, or telephone (602) 780–8090, ext. 564.

DATES: The publication of this notice in the **Federal Register** constitutes public notice of the decision. The decision may be appealed on or before April 5, 1996 by any person adversely affected by the decision, to the Interior Board of Land Appeals (IBLA), Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4. Information on filing appeals may be obtained from the Project Manager listed above.

Dated: February 28, 1996.

David J. Miller,

Associate District Manager.

[FR Doc. 96–5065 Filed 3–5–96; 8:45 am]

BILLING CODE 4310–32–P

[UT–040–06–1430–01; UTU–71138, UTU–71175]

Realty Actions; Sales, Leases, Etc.; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability and Notice of Realty Action.

SUMMARY: Notice is hereby given that an environmental assessment and proposed plan amendment for the Cedar, Beaver, Garfield, Antimony Resource Management Plan have been completed. Pursuant to the environmental assessments and proposed plan amendments, 87.5 acres of public land have been found suitable for sale, under the authority of the provisions of the Recreation and Public Purposes Act of 1926, as amended. Iron County would purchase 7.5 acres located at Salt Lake Meridian, T. 36 S., R. 15 W., sec. 20, NW¼NE¼NE¼SW¼, N½NW¼NE¼SW¼, Iron County, Utah and Beaver County would purchase 80 acres located at Salt Lake Meridian, T.29S., R., 7 W., sec. 8, NW¼NE¼, SE¼NW¼, Beaver County, Utah. The land will not be offered for sale until at least 60 days after the date of this notice and is contingent upon the signing of a decision record approving the proposed amendment.

DATES: The proposed plan amendment may be protested. The protest period will commence with the date of publication of this notice. Protests must be submitted on or before April 5, 1996. Also, for a period of 45 days from March 6, 1996, interested parties may submit comments on the proposed land sale to the District Manager, Cedar City District, at the address below.

ADDRESSES: Protests to the proposed plan amendment should be addressed to the Director, Bureau of Land Management (460), Resource Planning Team, 1849 C Street NW., Washington, DC 20240, within 30 days after the date of publication of this Notice for the proposed planning amendments. All comments concerning this proposed sale should be addressed to A.J. Meredith, District Manager, Cedar City District, 176 East DL Sargent Drive, Cedar City, UT 84720.

FOR FURTHER INFORMATION CONTACT: Arthur L. Tait at 176 East DL Sargent Drive, Cedar City, UT 84720, telephone (801) 865–3080.

SUPPLEMENTARY INFORMATION: The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from March 6, 1996, whichever occurs first. Only the surface estate will be sold. The patents, when issued, will contain certain reservations to the United States and will be subject to existing rights-of-way. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Cedar City District Office at the address listed above. Any person who participated in the planning process and has an interest which is or may be adversely affected by these proposed amendments may protest to the Director of the Bureau of Land Management. The protest must be in writing and filed within 30 days of the date of publication of this Notice of Availability in the **Federal Register**. The protest shall contain the name, mailing address, telephone number and interest of the person filing the protest; a statement of the issue or issues being protested; a statement of the part of the amendment (s) being protested; a copy of all documents addressing the issue or issues that were submitted during the planning process and a concise statement explaining why the State Director's proposed decision is believed to be wrong. In the absence of timely objections, these proposals shall become the final determination of the Department of the Interior.

Douglas M. Koza,

Acting State Director.

[FR Doc. 96–5202 Filed 3–5–96; 8:45 am]

BILLING CODE 4310–DQ–P

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., February 27, 1996.

The plat representing the dependent resurvey of a portion of the subdivision and the survey of lot 7, in section 9, and correcting certain information as shown on the plat accepted and in the field notes approved November 15, 1993, T. 14 S., R. 32 E., Boise Meridian, Idaho, Group No. 930, was accepted, February 27, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706–2500.

Dated: February 27, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–5134 Filed 3–5–96; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

Notice of Inventory Completion for Human Remains and Funerary Objects in the Possession of Everglades National Park, Homestead, FL

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003(d), of the completion of an inventory of human remains and funerary objects in the possession of the Everglades National Park, Homestead, FL.

A detailed assessment and inventory of the human remains and associated objects has been made by National Park Service professional staff in consultation with the Miccosukee Tribe of Indians of Florida.

In 1982, as part of an authorized survey, a single tooth was found at a site located on a hammock island in Shark River Slough. Archeological and ethnographic information indicates that the island was occupied by members of the Miccosukee tribe in the early 20th Century. The tooth is believed to have been extracted and disposed of in a traditional manner by the Miccosukee man who lived at the site. The identity of the individual has not been determined.

A site located on another hammock island located in the vicinity of Broad River was also excavated during the 1982 project. Human remains were observed at the site and efforts were made to avoid disturbing them. However, during the course of the fieldwork, one tooth representing one individual was collected. No known individual was identified. The 41 objects found in association with the remain include: medicine and wine bottles, a glass pitcher, an earthenware jug, a creamware saucer, a padlock, a coral pendant, and several marine shells (Busycon and mercenaria). Museum records indicate that a carbide lamp and a brass signal lamp were also collected at the site but can not be located. Archeological and ethnographic information indicates that the Mosquito Island Site was a Miccosukee campsite during the mid-20th Century.

Based on the above mentioned information, officials of the National Park Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the National Park Service have determined that the 41 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Further, officials of the National Park Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the human remains and funerary object and the Miccosukee Tribe of Indians of Florida.

This notice has been sent to officials of the Miccosukee Tribe of Indians of Florida. Representatives of any other Indian tribe which believes itself to be culturally affiliated with the human remains or funerary objects should contact Richard Ring, Superintendent, Everglades National Park, 40001 State Road 9336, Homestead, FL 33034, telephone (305) 242–7710, before April 5, 1996. Repatriation of the human remains and funerary objects to the Miccosukee Tribe of Indians of Florida

may begin after that date if no additional claimants come forward.

Dated: February 29, 1996

Francis P. McManamon

Departmental Consulting Archeologist
Chief, Archeological Assistance Division

[FR Doc. 96–5266 Filed 3–5–96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Intent to Repatriate Cultural Items in the Possession of the Museum of New Mexico, Santa Fe, NM

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005(a)(2), of the intent to repatriate cultural items in the possession of the Museum of Indian Arts and Culture, Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM which meet the definition of "sacred object" as defined in Section 2 of the Act.

The ten objects include: one snake effigy; one parrot effigy; two wooden balls; two katsina figures; three fetishes; and prayersticks, fetishes, and talismans comprising one shrine.

Between 1928 and 1972, the Museum of New Mexico accessioned these ten cultural items into its collections.

In 1928, the three wooden cylindrical fetishes were purchased at the Pueblo of Acoma by Mr. George H. Huddy during a Fred Harvey Car tour.

On October 6, 1957, Mr. and Mrs. G. Olmi illegally removed a shrine from Acoma tribal lands, and donated the shrine consisting of prayersticks, wood fetishes, and talismans to the Museum of New Mexico.

In 1958, one red and white cylindrical katsina figure was purchased from Mr. James K. Riley, and the other brown, white, blue, and black cylindrical Mountain katsina figure purchased from Mr. James Byrns.

In 1968, the Museum of New Mexico purchased the green carved foot-tall parrot effigy from Mr. Joe Chavez of San Fidel, NM.

In 1972, the second small unpainted wooden ball was improperly removed from Acoma lands by a Museum of New Mexico archeologist.

The Museum has no information concerning the collection or donation of the snake effigy or one of the wooden balls. The wood snake effigy is undecorated. The small wooden ball is unpainted, with a notation "purchase MCS". Museum records do not indicate the meaning of "purchase MCS".

During consultation with the Museum of New Mexico, representatives of the Pueblo of Acoma identified these objects as necessary for the practice of traditional Acoma religion. Provenance information indicates the objects are Acoma in origin and most likely used by Acoma during the last one hundred years, and as recently as the 1950s.

Based on the above-mentioned information, officials of the Museum of New Mexico have determined that, pursuant to 25 U.S.C. 3001(3)(C), these cultural items are specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents. Officials of the Museum of New Mexico have also determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these items and the Pueblo of Acoma.

This notice has been sent to representatives of the Pueblo of Acoma. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these objects should contact Dr. Bruce Bernstein, Director, Museum of Indian Arts and Culture/ Museum of New Mexico, P.O. Box 2087, Santa Fe, NM 87504–2087, telephone (505) 827–6344 before April 5, 1996. Repatriation of these objects to the Pueblo of Acoma may begin after that date if no additional claimants come forward.

Dated:

Francis P. McManamon

Departmental Consulting Archeologist
Chief, Archeology and Ethnography Program

[FR Doc. 96–5265 Filed 3–5–96; 8:45 am]

BILLING CODE 4310–70–F

Sunshine Act Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, March 21, 1996.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 pm at Blackstone Town Hall, 15 St Paul Street, Blackstone, MA for the following reasons:

1. Presentation by the Town of North Smithfield
2. Other Commission Business

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James R. Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from James R. Pepper, Executive Director of the Commission at the aforementioned address.

James R. Pepper,

Executive Director BRVNHCC.

[FR Doc. 96–5343 Filed 3–4–96; 10:12 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

American River Water Resources Investigation, Central Valley, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public workshops and public hearings on draft planning report/draft environmental impact statement/draft environmental impact report.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 and the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and the Sacramento Metropolitan Water Authority (SMWA) have prepared a draft planning report/ draft environmental impact statement/ draft environmental impact report (DPR/ DEIS/DEIR) for the American River Water Resources Investigation (ARWRI). The DPR/DEIS/DEIR was made available to the public on February 2, 1996. Reclamation and SMWA have scheduled five public workshops to present material on the alternatives and to answer questions. Five public hearings will also be held to receive comments from interested organizations and individuals on the environmental impacts of the project.

DATES: The public workshops will be held at the following locations:

- March 19, 1996, 7:00 p.m., Folsom Community Center, 52 Natoma Street, Folsom, CA 95630.
- March 20, 1996, 1:00 p.m., Red Lion Sacramento Inn, 1401 Arden Way (at Business 80), Sacramento, CA 95815.
- March 21, 1996, 7:00 p.m., Auburn Holiday Inn, 120 Grass Valley Highway, Auburn, CA 95603.
- March 27, 1996, 2:00 p.m., Best Western Placerville Inn, 6850 Greenleaf Drive, Placerville, CA 95667.
- March 28, 1996, 7:00 p.m., Stockton Hilton, 2323 Grand Canal Boulevard, Stockton, CA 95207.

The public hearings will be held at the following locations:

- April 9, 1996, 7:00 p.m., Stockton Hilton, 2323 Grand Canal Boulevard, Stockton, CA 95207.
- April 10, 1996, 7:00 p.m., Auburn Holiday Inn, 120 Grass Valley Highway, Auburn, CA 95603.
- April 11, 1996, 7:00 p.m., Folsom Community Center, 52 Natoma Street, Folsom, CA 95630.
- April 16, 1996, 7:00 p.m., Best Western Placerville Inn, 6850 Greenleaf Drive, Placerville, CA 95667
- April 17, 1996, 7:00 p.m., Red Lion Sacramento Inn, 1401 Arden Way (at Business 80), Sacramento, CA 95815.

ADDRESSES: Written comments should be addressed to Mr. Alan R. Candlish, Study Manager, CC–102, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom CA 95630; telephone: (918) 989–7255.

FOR FURTHER INFORMATION CONTACT: Mr. Alan R. Candlish, Study Manager, CC–102, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom CA 95630, telephone: (916) 989–7255; Mr. Gene Robinson, Sacramento Metropolitan Water Authority, 5620 Birdcage Street, Suite 180, Citrus Heights, CA 95610–7632, telephone: (916) 967–7692; or Mr. David M. Haisten, Activity Manager, MP–700, Bureau of Reclamation, 2800 Cottage Way, Sacramento CA 95825–1898, telephone: (916) 979–2338.

SUPPLEMENTARY INFORMATION

Requests to Testify

Written or telephone requests to present oral comments at the April 1996 public hearings should be addressed to Ms. Lynnette Wirth, MP–140, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825–1898, (916) 979–2837. Registration cards for presenting oral comments will also be at each public hearing.

Oral comments at each hearing will be limited to 5 minutes. The hearing officer may allow any speaker to provide additional oral comment after all persons wishing to comment have been heard. Speakers not present when called will lose their privilege in the scheduled order, and will be recalled at the end of the scheduled speakers. Written comments from those unable to attend or those wishing to supplement their oral presentation at the hearing should be received by Reclamation by April 18, 1996, for inclusion in the hearing record. Written comments received after April 18, 1996, will not be included in the hearing record but will be included in the public comment period which will close on May 3, 1996. All written comments should be addressed to Mr. Alan R. Candlish, Study Manager, CC–102, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom CA 95630, telephone: (916) 989–7255.

Dated: February 29, 1996.

Franklin E. Dimick,

Acting Regional Director.

[FR Doc. 96–5184 Filed 3–5–96; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94–34 and 92–78]

AML Corporation, d/b/a G & O Pharmacy, and G & O Pharmacy Revocation of Registration

On July 23, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to G & O Pharmacy (Respondent), DEA Registration, AG2999691, of Paducah, Kentucky, notifying it of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, and deny any pending applications, under 21 U.S.C. 823(f) and 824(a)(4), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged in substance, that: (1) in July 1990, an individual had overdosed on Demerol received from the owner-manager pharmacist of the Respondent, Randall Lockhart, without benefit of prescription; (2) accountability audits conducted of the Respondent by DEA investigators in 1990 revealed shortages of Schedules II and III controlled substances; (3) the Respondent had filled at least 217 call-in prescriptions not authorized by the physicians whose names appeared on the Respondent's records; and (4) at least one individual, on multiple occasions, had received controlled substances from Mr. Lockhart without seeing the physician listed on the call-in prescriptions.

Respondent, through counsel, filed a timely request for a hearing, and the case was docketed as G & O Pharmacy, Docket No. 92–78. Following prehearing procedures, a hearing was held in Louisville, Kentucky, on March 10 and 11, 1993. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, counsel for both parties submitted proposed findings of fact, conclusions of law and argument.

Subsequently, on December 16, 1993, counsel for the Government filed a motion to reopen the proceedings. The motion alleged that Mr. Lockhart had transferred the ownership of Respondent G & O Pharmacy to AML Corporation (AML). Further, the motion alleged that AML had applied for and received a DEA registration, BA3838553, to operate the Respondent, and that DEA had not been notified, pursuant to 21 CFR 1301.82 and 1307.14(b), that G & O Pharmacy had ceased doing business under the previous ownership or that Mr. Lockhart had transferred ownership to another entity. The Respondent did not answer the motion, and on January 12, 1994, Administrative Law Judge Mary Ellen Bittner issued an order reopening the proceedings in Docket No. 92–78.

On March 11, 1994, an Order to Show Cause was issued to AML d/b/a/ G & O Pharmacy, alleging that the Respondent's continued registration was inconsistent with the public interest on the same basis as stated in the July 1992 order in Docket No. 92–78, with the addition of the allegation that Mr. Lockhart had improperly transferred ownership of Respondent without notifying the DEA as required. The Respondent requested a hearing, and on June 1, 1994, Judge Bittner issued an order consolidating the two cases. On November 17, 1994, Judge Bittner conducted a hearing in the consolidated proceedings in Louisville, Kentucky. At this hearing, AML was represented by counsel, and both parties called witnesses to testify and introduced documentary evidence. Following the hearing, both the Government and the Respondent, AML, filed further proposed findings of fact, conclusions of law and argument.

On May 31, 1995, Judge Bittner issued her Opinion and Recommended Ruling, recommending that the Respondent's DEA registration be revoked and that any pending applications be denied. AML and G & O Pharmacy filed exceptions to her opinion, and on July 17, 1995, the Government filed a response to these exceptions. On July 19, 1995, Judge Bittner transmitted the record of these proceedings and the

parties' filings to the Deputy Administrator.

The Deputy Administrator has considered the record and the filings by the parties in their entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, with noted exceptions, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that the Respondent is a pharmacy in Paducah, Kentucky. Randall Lockhart is a registered pharmacist in the Commonwealth of Kentucky, and he has practiced pharmacy since 1959. His wife, Cynthia Lockhart, is a registered nurse who worked at the Respondent's location. In March or April of 1989, Mr. Lockhart bought a 50% ownership in Oehlschlaeger Corporation (Oehlschlaeger), owner of the Respondent pharmacy, and in February of 1990, he bought the remaining 50% ownership interest. Mr. Lockhart continued to work as the pharmacist at G & O Pharmacy.

At the hearing before Judge Bittner, Mr. Lockhart testified that in July 1990, he had received a telephone call from a local dentist (Dentist), requesting injectable Demerol for a planned surgical procedure he was to perform with the assistance of another dentist, Dr. Heine. Mr. Lockhart further testified that he had told the calling Dentist that he had twenty-four vials of Demerol on hand, but that he would either have to write a prescription if the Demerol was for the use of a single patient, or provide a DEA order form, if he wanted the substance for general office use. Demerol is the brand name for meperidine hydrochloride, a Schedule II controlled substance.

Although in dispute, Mr. Lockhart testified that the Dentist then appeared at the pharmacy, gave Mrs. Lockhart what appeared to be a prescription for Demerol, and obtained all twenty-four vials from the pharmacy, telling Mrs. Lockhart that he would return the next day with the requisite DEA order form. The next day, Mr. Lockhart called Dr. Heine and requested that either he or the Dentist provide the required paperwork for the transfer of the Demerol, and that Dr. Heine told him that the Dentist was a drug addict, and that "he wouldn't do a surgical procedure with him in a 100 years." Mr. Lockhart testified that that was the first time he had ever heard the Dentist referred to as a drug addict. Mr. Lockhart then testified that, upon further investigation, he found out that the Dentist was in a hospital emergency room following an overdose.

Mr. Lockhart testified that he subsequently contacted the Inspector of the Kentucky Board of Pharmacy (Kentucky Board) for advice, and that the Inspector advised him to contact the DEA office in Louisville. Mr. Lockhart wrote to the DEA, and following the DEA's advice, also wrote to the Board of Dentistry concerning these events.

Paducah Police Department Officers (Officers) interviewed the Dentist, who stated that he had not written the prescription Mr. Lockhart had for the Demerol. The Dentist also stated that on fifteen to twenty previous occasions he had received controlled substances from Mr. Lockhart merely by asking, and that he had obtained "basically whatever I wanted [a]s long as it wasn't Schedule II." He also stated that he had taken fictitious prescriptions for Percocet to Mr. Lockhart, which he had filled. Percocet contains oxycodone, a Schedule II controlled substance.

The Dentist also told the Officers that he had been a substance abuser since 1985, and that he was sure Mr. Lockhart knew what he intended to do with the drugs he obtained from the Respondent, although he later stated that he had assumed Mr. Lockhart knew of his substance abuse problem. However, at the hearing before Judge Bittner, Mr. Lockhart denied knowing that the Dentist was a substance abuser at the time of this incident.

A DEA diversion investigator (Investigator) testified that the Paducah Police Department had advised him in September of 1990, of the incident with the Dentist, and that on October 10, 1990, a DEA special agent served a federal search warrant on the Respondent. Pursuant to this warrant, DEA personnel seized controlled substance prescriptions and other records.

The Investigator testified that he had used the seized records to conduct an accountability audit of the Respondent's Schedule II controlled substances for the period May 28, 1989, to October 10, 1990, and for various Schedule III through V controlled substances for the period May 1, 1989, through October 10, 1990. In her opinion, Judge Bittner summarized the significant audit results, and the summaries demonstrate that Mr.Lockhart had significant shortages of Dilaudid 4 mg., Meperidine, Mepergan Fortis, Valium 10 mg., APAP #3, Tylenol #3, Lortab 5 mg. and 7.5 mg., and Didrex 50 mg., as well as a significant overage of Demerol 100 mg.

Mr. Lockhart testified before Judge Bittner that he did not think that the DEA audit accurately reflected shortages and overages, but that he was unable to verify the numbers. He also testified that he had not conducted an inventory when he had purchased an interest in the Respondent pharmacy, and that there could have been shortages at that time. The Inspector testified that Mr. Lockhart's records had been seized in a search conducted by the Paducah police officers prior to the DEA search, and that the Officers had not returned them. It is undisputed that the Paducah police executed a search warrant for the Respondent's controlled substance records in August 1990. However, Mr. Lockhart did not indicate that he ever advised the DEA Investigator, at either the time of the DEA search or audit, that G&O's records may have been incomplete.

The Investigator testified that during the October 1990 search, he had noticed that the Respondent had filled disproportionately more call-in prescriptions than other pharmacies. Therefore, he obtained copies of these prescriptions from the Respondent pharmacy. The Investigator then interviewed the physicians (or their office personnel) listed on the prescriptions to verify the authorization for each prescription under review. In ten cases,the physician or office personnel working for the physician, indicated that the person named on the prescription was not his or her patient, and that patient records were not maintained for that named individual. In total, the Investigator testified that he was unable to verify approximately 198 prescriptions purportedly authorized by twenty different doctors. Many of the prescriptions were dated after the time Mr. Lockhart became the 100 percent owner of the pharmacy. All of these prescriptions were dispensed by either Mr. Lockhart or Mr. Oehlschlaeger, another pharmacist and co-owner working at the Respondent pharmacy prior to Mr. Lockhart's becoming the sole owner. Judge Bittner found the Investigator's testimony credible.

However, Mr. Lockhart testified that all of the allegedly unauthorized prescriptions were authorized, and that "almost all [of these unauthorized prescriptions were] what [amounted] to refill prescriptions." He also testified that he had routinely received oral prescriptions from the physicians who had denied authorizing the prescriptions under review.

While the G&O Pharmacy case was pending, Mrs. Lockhart called the Diversion Group Supervisor (Supervisor) at DEA's Louisville office to express her concern about the Respondent's Certificate of Registration. The Certificate was due to expire, and because of the pending proceedings, a renewal certificate had not been issued. Mrs. Lockhart feared suppliers would not fill orders because of the expired certificate. The Supervisor advised Mrs. Lockhart that the registration remained active on a day-to-day basis until a final order was issued by the DEA. The Supervisor also offered to call the Respondent's suppliers to explain the situation. Subsequently, the Investigator, a subordinate of the Supervisor's, did call a supplier and an insurance company and explained that the Respondent remained authorized to handle controlled substances on a day-to-day basis.

On May 31, 1993, Mr. Lockhart executed a renewal application for the respondent's Kentucky pharmacy license, listing Respondent's owner as Oehlschlaeger with himself as the president, and Mrs. Lockhart as the vice president, secretary, and treasurer. On August 11, 1993, Mr. Lockhart executed a renewal application for the Respondent's DEA registration. However, on October 4, 1993, Mrs. Lockhart executed articles of incorporation for AML, listing its business address as the same as the Respondent's, with herself as the incorporator. By letter dated October 13, 1993, Mr. Lockhart advised the Pharmacy Board of the transfer of ownership to AML with Mrs. Lockhart as the sole owner of AML's stock.

Before Judge Bittner, Mrs. Lockhart testified that she and her husband had talked about this transfer of ownership as early as in 1990, and that the primary reason for the transfer of ownership was Mr. Lockhart's health. He had had coronary bypass surgery approximately 9 years prior, and they had both agreed that he should taper his involvement in the business. However, Mr. Lockhart remained the primary pharmacist. Mrs. Lockhart testified that she intended to hire another pharmacist, but due to the uncertainty generated by these proceedings, she had waited to add additional staff until she could provide assurances of long-term employment. Mrs. Lockhart further testified that she had formed a new corporation, rather than merely having her husband transfer his stock from the prior corporation to her, because she wanted a corporate name of her own. The record contains no indication of how much money, if any, AML paid for the business.

On October 15, 1993, Mrs. Lockhart applied for a Kentucky pharmacy license for the Respondent, noting the change of ownership, listing a proposed acquisition date of October 26, 1993, and showing the corporate owner as "AML Corp. DBA G&O Pharmacy." She also listed herself a President, Vice President, And Secretary/Treasurer, and her husband as Pharmacist in Charge.

That same day, Mrs. Lockhart executed an application for a DEA registration, listing herself as president of "AML Corporetion, doing business as G&O Pharmacy," located at the same address as the Respondent. AML was issued a Certificate of Registration, number BA3838553, effective November 15, 1993, with an expiration date of June 30, 1996.

The Investigator testified before Judge Bittner that he had first learned about the AML transaction on or about December 1, 1993, when the Louisville DEA office received copies of DEA order forms dated November 22, 1993, transferring Schedule II controlled substances from "G&O Pharmarcy" to AML. Mrs. Lockhart testified that she had mailed the DEA order forms. She also testified that her husband had mailed to the DEA the prior corporation's unused DEA order forms and the Respondent's expired DEA Certificate of Registration. Although Mrs. Lockhart testified that she had retrained possession of the return mail receipts for both sets of documents, such receipts were not offered into evidence and are not a part of the record. Further, the Investigator testified that he have not personally received any unused order forms from the Respondent, and that there was no record in his office that the forms had been received. Further, the record contains no other evidence to evidence to show that the unused order forms had been received by the DEA or that the DEA has been advised of the transfer of ownership of the Respondent as required by DEA regulations.

The Pharmacy Board Inspector testified that he had inspected the Respondent approximately two to four times per year, and that after Mr. Lockhart had become associated with the pharmacy, it had a "clearner and neater appearance," and its recordkeeping had improved. The Inspector also testified that he had inspected the Respondent after AML had become its owner, and that as far as he knew it was not cited for any violations of Kentucky regulation and remained in good standing with the Pharmacy Board. Further, Mrs. Lockart testified before Judge Bittner, stating that the Respondent was an independent pharmacy, that it was the only pharmacy in the area that compound medications, and that physicians from a nearby hospital routinely called her husband to obtain advice on how to prepare pediatric medications.

Pursuant to 21 CFR 1301.62 and 1301.63, the cessation of business terminates a DEA registration, and a registrant is required to notify the agency promptly and in writing if it ceases doing business. The regulations also require a registrant intending to transfer its business interests to another business entity to provide specified information to the appropriate DEA Special Agency in Charge at least fourteen days in advance of the proposed transfer. Also, pursuant to 21 CFR 1307.14(b), an inventory of all controlled substances must be taken on the date of the transfer, but the regulation does not require filing of the inventory with the DEA.

Further, pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The appplicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., Docket No 88–42, 54 FR 16422 (1989)

In this case, the Deputy Administrator finds factors one, two, four, and five relevant in determining whether the Respondent's continued registration would be inconsistent with the public interest. As to factor one, "recommendation of the appropriate State licensing board," per the Inspector's testimony, the Respondent AML's state licenses are in order, and no adverse actions are pending.

As to factor two, the Respondent's "experience in dispensing * * * controlled substances," it has previously been found that the improper filling of prescriptions by a pharmacist working in a pharmacy could serve as a basis for revoking the DEA Certificate of Registration for that pharmacy. See, e.g., Medic-Aid Pharmacy, Docket No. 89–12, 55 FR 30043 (1990). Also, the regulations implementing the Controlled Substances Act specify that a prescription for a controlled substance "shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner." 21 CFR 1306.05(a). Also, a pharmacist may dispense directly a Schedule II controlled substance "only pursuant to a written prescription signed by the prescribing individual practitioner. * * *" 21 CFR 1306.11(a). The regulations also prohibit practitioners from issuing prescriptions in order "to obtain controlled substances for supplying the individual practitioner for the purpose of general dispensing to patients." 21 CFR 1306.04(b).

It is undisputed that the document left by the Dentist when he took the Demerol in July of 1990, even if he had, in fact, signed it and left it with Mrs. Lockhart, would not have been an adequate document to record the transfer of 24 dosage units of Demerol for in-office use. However, the Deputy Administrator agrees with Judge Bittner's conclusions regarding this incident, when she wrote:

> Assuming *arguendo*, that Mr. Lockhart did not examine the "prescription," and that neither of the Lockharts anticipated that [the Dentist] would take the Demerol without leaving proper documentation, this incident standing alone might not warrant revoking [the] Respondent's DEA registration.

However, this incident does not stand alone, for the record contains other evidence of Mr. Lockhart's dispensing practices. Although Mr. Lockhart testified about flaws in the DEA audit, especially following the Paducah Police search, Judge Bittner noted that "Mr. Lockhart apparently did not think it necessary to advise the DEA auditors that his records might be incomplete, which prompts the inference, which I make, that he was not seriously concerned about the matter." Further, Judge Bittner found that "[the] Respondent adduced no persuasive evidence to explain the shortages." Rather, she noted, and the Deputy Administrator concurs, that the evidence demonstrated that the shortages were substantial, for "some shortages of Schedule III through V controlled substances were in the thousands of dosage units, amounting to more than fifty percent of the total for which [the] Respondent was accountable." The Deputy Administrator also concurs with Judge Bittner's conclusion, that "these shortages constitute a basis for revoking [the] Respondent's DEA registration." See Val Gene Tatum, d/b/a/ Val's Pharmacy, 56 FR 16117 (1991), aff'd sub nom Val G. Tatum v. DEA, 9th Cir. No. 91–70328 (January 16, 1992; unpublished).

As for the evidence of unauthorized dispensing, the Investigator testified that approximately 198 prescriptions were unauthorized, and in 10 cases, he had interviewed doctors or their office personnel, who had stated that the individuals named on the prescriptions were not their patients. Although the Investigator's testimony concerning his conversations with these medical personnel was hearsay, the Deputy Administrator concurs with Judge Bittner's findings and conclusions as to the reliability of this evidence: "I find that the hearsay evidence introduced through [the] Investigator [ ] is more reliable than Mr. Lockhart's testimony, and therefore conclude that [the] Respondent filled controlled substance prescriptions without authorization from physicians. This conduct is further grounds for revoking [the] Respondent's DEA registration." Also significant, and as noted by Judge Bittner, Mr. Lockhart "proffered no explanation as to why various doctors denied authorizing the prescriptions at issue."

As to factor four, the Respondent's "[c]ompliance with applicable State, Federal, or local laws relating to controlled substances," the Deputy Administrator finds significant the Government's evidence of noncompliance with DEA regulations by Mr. Lockhart when he transferred ownership of G & O Pharmacy to AML. Specifically, 21 CFR 1305.14 states, in relevant part: "If the registration of any purchaser terminates (because the purchaser * * * ceases legal existence * * *) * * * he shall return all unused order forms for [Schedules I and II] substance[s] to the nearest office of the Administration." Although Mrs. Lockhart testified that she believed Mr. Lockhart had sent unused DEA order forms to the DEA via registered mail, AML's counsel did not introduce the registered mail receipt, and the DEA Investigator testified that such forms were not received by the DEA.

Furthermore, in this case, 21 CFR 1307.14(b) required Mr. Lockhart to provide the Special Agent in Charge in his area specific information at least 14 days in advance of the date of the proposed transfer of his ownership in the pharmacy. Unrefuted evidence exists to establish that Mr. Lockhart had failed to inform the DEA of his transfer of ownership in compliance with this regulation.

The Deputy Administrator also takes into account Judge Bittner's finding: "Neither Mr. nor Mrs. Lockhart impressed me as credible witnesses. Their testimony appeared tailored to suit [the] Respondent's defenses rather than to accurately reflect relevant events. . . . In contrast, Investigator [ ] appeared to be forthright and to exhibit good recall, and I therefore credit [his] testimony." Thus, the Deputy Administrator concludes that preponderating evidence exists to establish that Mr. Lockhart failed to comply with the cited regulations in effectuating the transfer of ownership of G & O Pharmacy.

As to factor five, "[s]uch other conduct which may threaten the public health or safety," the Deputy Administrator finds significant the continued pattern of Mr. Lockhart's noncompliance with the Controlled Substances Act and the implementing regulations. Specifically, in neither hearing before Judge Bittner did Mr. Lockhart present any evidence of his acknowledging past misconduct by taking responsibility for (1) any of the documented shortages of controlled substances; (2) his customer's having obtained controlled substances without authorization from physicians; or (3) his failure to transfer his ownership in the pharmacy in a manner which would have been in compliance with DEA regulations. Mr. Lockhart's conduct fails to reflect the acceptance of responsibility needed to continue as a registered handler of controlled substances.

As for the transfer of ownership of the Respondent, Judge Bittner wrote that "the preponderance of the record establishes, and I find, that the transfer * * * was not a bona fide transaction, but rather a stratagem to obtain a new DEA registration." However, Mrs. Lockhart testified about the efforts she made to insure AML was clearly a distinct entity from Mr. Lockhart's corporation. Specifically, she testified that on behalf of AML, she had opened a bank account, obtained a federal employer tax identification number, procured insurance for AML, and paid Mr. Lockhart a salary as an employee.

After reviewing this evidence, the Deputy Administrator has determined that he need not make a finding as to the viability of this ownership transaction. Even assuming, arguendo, that the transfer was a bona fide transaction, revocation of AML's registration is still appropriate. For, previously it has been found that revocation of the DEA registration remained appropriate despite a transfer of ownership, where there has been no change in the control exerted by the prior pharmacist who had engaged in misconduct related to the dispensing of controlled substances. Specifically, "[t]he close connection between the former and current owners leads the Administrator to believe that the transfer has not, and will not, alter the way business is conducted at the pharmacy." Absecon Pharmacy, Docket No. 88–76, 55 FR 9029 (1990). Here, the new owner, Mrs. Lockhart, is not a registered pharmacist, is the wife of the former owner, and continues to employ Mr. Lockhart as the "Pharmacist in Charge." Mr. Lockhart continues to hold unrestricted authorization to order and dispense controlled substances. Further, AML did not provide any evidence to demonstrate that any precautions had been taken to provide assurances that controlled substances would not be improperly dispensed in the future by Mr. Lockhart. The Deputy Administrator finds that the risk of diversion by Mr. Lockhart remains, even though G & O Pharmacy is currently under the ownership of AML. Since Mr. Lockhart remains the primary pharmacist of the Respondent, his past misconduct continues to justify the revocation of the Respondent's DEA Certificate of Registration.

The Respondent AML raised several exceptions to Judge Bittner's opinion. First, AML asserted that it was denied procedural due process through the consolidation of the two cases, for AML argued that:

> Due process requires that any denial, revocation, or suspension of AML's registration be based upon the acts and omissions . . . of AML, not a predecessor in interest to its business. Further, fundamental due process requires that AML have notice and an opportunity to confront witnesses and contest the grounds upon which the government seeks to revoke its DEA certificate of registration.

However, the Deputy Administrator notes that the Order to Show Cause issued to AML Corporation on March 11, 1994, specifically set out the allegations of Mr. Lockhart's acts of misconduct, mirroring the notice given to G & O Pharmacy in July Of 1992. By letter dated April 5, 1994, AML's counsel entered his appearance, requested a hearing, and responded to the allegations in the show cause order paragraph by paragraph. Thus, AML had notice of the acts which might constitute the basis for revoking AML's registration.

Further, by order dated June 1, 1994, Judge Bittner ordered G & O's counsel to provide AML's counsel copies of documents from the March 1993 hearing, and she ordered the Government to provide AML's counsel exhibits and a copy of the transcript from that hearing. Judge Bittner, concurrent with the June 1994 order, provided AML's counsel with copies of the Administrative Law Judge's exhibits and the record to date in the G & O case. Also, AML received a hearing, witnesses appeared, and documentary evidence was received. AML thus received notice and had an opportunity to confront witnesses and "contest the grounds upon which the government seeks to revoke its DEA Certificate of registration".

The only reference in the record which even arguably could be viewed as restricting AML's access to witnesses, was the following from the hearing transcript of AML's proceedings:

> [Judge Bittner]: My understanding is that we agreed this morning, prior to the commencement of the hearing, that we weren't going back into the prior case.
>
> Mr. SHANNON: [AML's counsel] Yes, Judge. And I was just getting ready to say I can probably obviate any of the objections. All I want the record to reflect is that [the Investigator] conducted the investigation of Oehlschleeger, Inc., [.] AML Corporation was not audited. They were not in existence.

The Deputy Administrator certainly is not conceding that AML was denied an opportunity to confront and cross-examine witnesses from the preceding hearing. However, even assuming *arguendo*, that AML's access to witnesses was somehow restricted, on the record AML's counsel seems to have affirmatively waived his right to "go back into the prior case," at the hearing before Judge Bittner. Thus, given the complete record of AML's notice, opportunity and access to evidence, and AML's own actions before Judge Bittner, the Deputy Administrator finds that AML's procedural due process rights were not violated by the manner in which these proceedings were conducted.

Further, AML objected to the fact that Judge Bittner did not consider all factors listed in 21 U.S.C. 823(f). As has been previously noted, the Deputy Administrator may review those factors in the disjunctive, and he need not make a finding as to each factor. However, as requested by AML, the Deputy Administrator notes that the record contains no evidence to indicate that AML has been convicted of any federal or state law violations. The remainder of AML's exceptions have been previously addressed.

G & O Pharmacy also filed exceptions to Judge Bittner's opinion. Specifically, G & O objected to Judge Bittner's placing reliance upon the results of the DEA audit. The reliability of the audit results has been addressed by the Deputy Administrator, and needs no further comment here. Second, the Respondent G & O asserts that Judge Bittner erred in admitting hearsay evidence during the administrative hearing. However, since the Respondent's hearing was conducted in accordance with applicable statutes and regulations, the Deputy Administrator declines to adopt the Respondent's exceptions based upon his challenged evidentiary rulings. See, e.g., Klinestiver v. Drug Enforcement Administration, 606 F.2d 1128, 1129–30 (D.C. Cir. 1979); Gary E. Stanford, M.D., No. 91–30, 58 Fed. Reg. 14,430 (1993). As to the probative value, reliability, and "fairness of its use," the Deputy Administrator finds that Judge Bittner addressed these issues in her opinion, that he concurs with her findings, and that no further comment is required.

Therefore, after review of the entire record, the Deputy Administrator finds that the public interest is best served by revoking AML's Certificate of Registration. The Deputy Administrator notes that pursuant to 21 CFR 1301.62, the transfer of ownership of G & O Pharmacy to AML effectively terminated all authority granted under DEA Certificate of Registration AG2999691, previously issued to G & O Pharmacy. *See* 21 CFR 1301.62 and 1301.63. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BA3838553, previously issued to AML Corporation, is revoked and any pending applications denied at this time. This order is effective April 5, 1996.

Dated: February 29, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–5141 Filed 3–5–96; 8:45 am]

BILLING CODE 4410–09–M

National Institute of Justice

[OJP (NIJ) No. 1072]

RIN 1121–ZA28

National Institute of Justice Solicitation for Boot Camp Research and Evaluation for Fiscal Year 1996

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Announcement of the availability of the National Institute of Justice Solicitation for Boot Camp Research and Evaluation for Fiscal Year 1996.

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531.

DATES: The deadline for receipt of proposals is close of business on April 30, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Voncile Gowdy at (202) 307–2951, National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. §§ 3721–23 (1988).

Background

The National Institute of Justice seeks to support evaluations of the impact of selected boot camps funded by the Office of Justice Programs under the 1994 Crime Act. NIJ is soliciting proposals that will provide a knowledge base for understanding all aspects of boot camps. A multisite evaluation, as well as a number of local-level evaluations and planning assessments, will be conducted on boot camp programs funded by the OJP Corrections Program Office. Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Boot Camp Research and Evaluation for Fiscal Year 1996" (refer to document no. SL000139). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via Internet. Telnet to ncjrsbbs.aspensys.com, or gopher to ncjrs.aspensys.com 71. For World Wide Web access, connect to the NCJRS Justice Information Center at http://ncjrs.aspensys.com:81/ncjrshome.html. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set modem at 9600 baud, 8–N–1.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 96–5220 Filed 3–5–96; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

March 1, 1996.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by March 7, 1996. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ([202] 219–5095).

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Pension and Welfare Benefits Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ([202] 395–7316).

The Office of Management and Budget is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Pension and Welfare Benefits Administration.

Title: Notice of Conditional Compliance Program.

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 1,722.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 1,722.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Description: The Department of Labor (the Department) is proposing to adopt the Pension Payback Program which is designed to benefit workers by encouraging employers to restore delinquent participant contributions plus earnings to pension plans. This program is targeted at persons who failed to transfer participant contributions to pension plans defined under section 3(2) of the Employee Retirement Income Security Act of 1974 (the Act), including section 401(k) plans, within the timeframes mandated by the Department's regulations, and thus violated title of the Act.

The conditional compliance program is available to certain persons who voluntarily restore delinquent participant contributions to pension plans. Those who comply with the terms of the program will avoid potential ERISA civil actions initiated by the Department, the assessment of civil penalties under section 502(l) of the Act and Federal criminal prosecutions arising from their failure to timely remit such contributions and non-disclosure of the non-remittance. As part of this compliance program, notice to the Department is required as well as the provision of certain information to affected participants.

On a temporary basis, pending promulgation by the Department of the final class exemption setting forth the conditions for retroactive relief, the Department will not pursue enforcement against persons who comply with the conditions of the Program with respect to any prohibited transaction liability which may have arisen as a result of a delay in forwarding participant contributions. The Internal Revenue Service has advised the Department that it will not seek to impose the Internal Revenue Code section 4975(a) and (b) sanctions with respect to any prohibited transaction that is covered by the proposed class exemption, notwithstanding any subsequent changes to the proposed exemption when it is finalized, provided that all requirements specified in the proposed class exemption have been met.

A notice of proposed exemption which, when finalized, will replace the non-enforcement policy, will be published in the **Federal Register** on the same date as the announcement of the program. It is contemplated that the proposed exemption will require, in part, compliance with the notice and informational requirements of the conditional compliance program. Participation in the program will be available to persons who rely on the proposed exemption notwithstanding any subsequent modifications to the final exemption.

Cheryl A. Robinson,

Acting Departmental Clearance Officer.

[FR Doc. 96–5236 Filed 3–5–96; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Special Emphasis Panel in Biological Sciences (#1754).

Date and Time: March 29–30, 1996; 8:30 a.m.–5 p.m.

Place: National Science Foundation, Room 310, 4201 Wilson Boulevard, Arlington, VA

Type of Meeting: Closed.

Contact Person: Fred Stollnitz, Program Officer for Cross-Directorate Activities in the Division of Integrative Biology and Neuroscience, Room 685, National Science Foundation 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1413.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Planning Grants and Career Advancement Awards for Women Scientists and Engineers (RPG/CAA) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such es salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–5268 Filed 3–5–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Biological Sciences (#1754).

Date and Time: March 27 & 28, 1996.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 340, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Lisa Brooks, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1480.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Career proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–5277 Filed 3–5–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: March 26 & 27, 1996; 8:30 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530 & 580, Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Dr. Oscar W. Dillon, Dr. William A. Spitzig, Program Directors, Mechanics and Materials Program, Division of Civil and Mechanicsl Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1361, x5076/x5078.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government Sunshine Act.

Dated: March 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–5272 Filed 3–5–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time; March 29, 1996; 8:30 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 390, Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Dr. Oscar W. Dillon, Dr. William A. Spitzig, Program Directors, Mechanics and Materials Program, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1361, x5076/x5078

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government Sunshine Act.

Dated: March 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–5273 Filed 3–5–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis in Civil and Mechanical Systems (#1205).

Date and Time: March 28–29, 1996, 8:30 a.m. to 5:00 p.m.

Place: Room 1020, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: John B. Scalzi, Program Director in the Division of Civil and Mechanical Systems, Rm 545, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1362.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Unsolicited IIA Large Structural and Building Systems Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–5275 Filed 3–5–96; 8:45 am]

BILLING CODE 7555–01–M

Division of Environmental Biology: Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings.

Name: Advisory Panel for Ecological Studies (#1751)

Date & Time: March 27–29, 1996, 8:30 a.m.–5:00 p.m. each day.

Place: Room 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Dr. Taber Allison, Program Director, Ecological Studies, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1479.

Minutes: May be obtained from the contact person listed above.

Agenda: To review and evaluate Ecology proposals as part of the selection process for awards.

Name: Advisory Panel for Ecological Studies (#1751)

Date & Time: April 11 & 12, 1996, 8:30 a.m.–5:00 p.m. each day.

Place: Room 680, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Dr. James T. Callahan, Program Director, Ecological Studies, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1479.

Minutes: May be obtained from the contact person listed above.

Agenda: To review and evaluate Ecosystem Studies proposals as part of the selection process for awards.

Name: Advisory Panel for Systematic and Population Biology (#1753).

Date & Time: March 26–29, 1994, 6:00 a.m.–5:00 p.m. each day.

Place: Room 1235, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Dr. Charles O'Kelly, Program Director, Systematic and Population Biology Cluster, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1481.

Minutes: May be obtained from the contact person above.

Agenda: To review and evaluate Systematic Biology Proposals as part of the selection process for awards.

Name: Advisory Panel for Systematic and Population Biology (#1753).

Date & Time: April 11–12, 1996, 8:00 a.m.–5:30 p.m. each day.

Place: Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone: (703) 306–1481.

Contact Person: Dr. Candace Galen, Program Director, Systematic and Population Biology Cluster, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone: (703) 306–1481.

Minutes: May be obtained from the contact person listed above.

Agenda: To review and evaluate Population Biology proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information: financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–5279 Filed 3–5–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name of Committee: Advanced Technological Education (59)

Date and Time: March 14, 1996 7:00 p.m. 10:00 p.m., March 16, 1996 8:00 a.m.–5:00 p.m.

Place: The Latham Hotel 3000 M Street, N.W., Washington, D.C. 20007–3701 (Georgetown).

Type of Meeting: Closed.

Contact Person: Dr. Gerhard Salinger, Program Officer, Division of Elementary, Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1620.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Difficulty in locating acceptable meeting site.

Dated: March 1, 1996.

Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–5270 Filed 3–5–96; 6:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: March 25, 1996: 8:30 a.m. to 5 p.m.; March 26, 1996: 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 310, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Bobbie Wilson, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1634.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Improvement in Minority Institutions proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–5274 Filed 3–5–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR) (# 1203).

Date and Time: March 29, 1996; 8:00 am–5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Room # 1060, Arlington, VA 22230.

Type of Meetings: Closed

Contact Person: Dr. Lorretta J. Inglehart, Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Blvd, Arlington, VA, 22230. Telephone (703) 306–1817.

Purpose of Meeting: To provide advice and recommendations concerning support for Instrumentation for Materials Research proposals.

Agenda: Evaluation of proposals.

Reason for Closing: The proposal being reviewed may include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 1, 1996

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–5271 Filed 3–5–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Mathematical Sciences Research Planning Grants and Career Advancement Awards for Women and Minorities (#1204).

Date and Time: March 25–26, 1996, 8:30 am until 5 pm

Place: Room 1020, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lloyd E. Douglas, Program Director, Division of Mathematical Sciences, Room #1025 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1874.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Planning Grants and Career Advancement Awards for Women and Minorities nominations/applications as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–5278 Filed 3–5–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Office of Systemic Reform; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Code: Office of Systemic Reform/1765.

Date and Time: March 24–26, 1996 (8 am–5 pm).

Place: NSF Headquarters, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Division of Educational System Reform Program Directors, Room 875, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1690.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for Phase 2 of the Statewide Systemic Initiatives Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 1, 1996

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–5269 Filed 3–5–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Systemic Reform; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Systemic Reform (#1765)

Dates and Times: 12:00 noon–6:30 p.m.; March 28, 1996, 8:00 a.m.–12:00 noon; March 29, 1996.

Place: Doubletree Hotel, 300 Army Navy Drive, Arlington, Virginia 22202. Phone: (703) 416–4100, FAX (703) 416–4126.

Type of Meeting: Closed.

Contact: Dr. Richard J. Anderson, Head, Office of Experimental Program to Stimulate Competitive Research, National Science Foundation, Suite 675, 4201 Wilson Blvd., Arlington, VA 22203, (703) 306–16063.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF EPSCoR program for financial support.

Agenda: To review and evaluate science and technology (S&T) proposals from states participating in the Experimental Program to Stimulate Competitive Research. Proposals request support for 36-month EPSCoR Coopersative Agreements and are submitted in response to NSF EPSCoR solicitation 95–141.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–5276 Filed 3–5–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

The Cleveland Electric Illuminating Company, et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing: Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of issuance of amendment to facility operating license, proposed no significant hazards consideration determination, and opportunity for a hearing: Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on February 29, 1996 (61 FR 7823), that states that the Commission is considering issuance of an amendment to Facility Operating License No. NPF–58, issued to the Cleveland Electric Illuminating Company, et al. This action is necessary to change the 30-day filing date to a 15-day filing date.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, telephone (301) 415–7163.

SUPPLEMENTARY INFORMATION: On page 7823, in the third complete paragraph in the third column, the date "April 1, 1996," should read "March 15, 1996."

Dated at Rockville, Maryland, this 28th day of February 1996.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 96–5203 Filed 3–5–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–440]

The Cleveland Electric Illuminating Company, et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58, issued to The Cleveland Electric Illuminating Company, et al. (the licensee), for operation of the Perry Nuclear Power Plan, Unit 1, located in Lake County, Ohio.

The proposed amendment would revise the licensing basis as described in the Updated Safety Analysis Report to allow the drywell personnel airlock shield doors to be opened during plant startup and shutdown (Operational Conditions 1, 2, and 3) until the end of Operating Cycle 6.

The licensee has requested that the review be handled as an exigent amendment to support restart following the end of the current fifth refueling outage. On February 9, 1996, the licensee determined that opening the shield doors at power was a condition outside the original design basis of the facility.

The licensee met with the staff on February 15, 1996, completed engineering analyses, and prepared the request for license amendment in a timely fashion and submitted the request on February 27, 1996. Review of this amendment request will ensure that processing of the amendment will not be the sole item restraining plan restart from the current refueling outage, which is currently scheduled for March 25, 1996. Such a restraint would result in a costly extension to the outage with no corresponding benefit to safety.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

An assessment was made of functionality given occurrence of the loads imposed on the shield doors. This assessment involves the 620′-6″ steel platform, the monorail suspension structure and the shield doors themselves. Although certain structural members of the 620′-6″ platform exceed the design basis acceptance criteria, these members were found to be acceptable when reviewed for functionality using alternate acceptance criteria. This demonstrates that the various supported systems and components that are important to safety will remain OPERABLE (for Technical Specification systems) or functional (for non-Technical Specification systems, structures and components). Even if the 3/4 inch tie rod (which provides lateral stability) and the left support bracket (a vertical load bearing member) were assumed to be failed, the shield doors would remain in a upright position and not fall. The monorail suspension structure and shield doors do not provide support to other systems. There are no interferences, and opening the shield doors has no effect on other systems. Therefore, there will be no increase in the probability of an accident due to the monorail suspension structure or shield doors, with the doors placed in the open position during Operational Conditions 1, 2, and 3.

The primary purpose of the shield doors is to mitigate radiation streaming from the Drywell through the Personnel Airlock into the adjacent areas of the Containment, to maintain doses to personnel working inside containment ALARA (as low as reasonably achievable). Opening the doors during power operation will have no effect on the postulated accident source term, and the shield doors do not provide a barrier against fission products. Therefore, allowing the shield doors to be opened during plant startup and shutdown while in Operational Conditions 1, 2, or 3 will also not increase the consequences of an accident previously evaluated in the USAR.

Based on the above, the proposed changes do not significantly increase the probability or the consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve physical modifications to the plant. There are no interferences with piping or other system components when the doors are placed in the open position during Operational Conditions 1, 2, or 3. Given the initiating events postulated for the various load combinations, non result in a new type of accident. The increase in radiation levels in the immediate vicinity of the open shield doors with the plant at power was verified to have no effect on the qualification and operation of systems, structures, or components important to safety. Since the platform and the monorail suspension structure will continue to provide support for the shield doors, i.e., the doors will not fall from the support structure, no new initiators of accidents are introduced.

The 620′-6″ platform will continue to function with the shield doors open. The equipment supported by the platform will continue to perform their safety related design functions. Although components of the platform and the monorail suspension structure exceed design basis acceptance criteria, analyses have shown that, based on a functional assessment, the monorail suspension structure will continue to function and the doors will remain upright. With no additional loads imposed on other equipment and the continued functioning of the monorail suspension structure, there will be no "different" accidents, since there will be no change, degradation, or prevention of actions described or assumed in any analyzed accident. The radiological consequences and the fission product barriers are not affected.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The NRC has accepted the Perry structural steel design (Safety Evaluation Report, NUREG–0887) based on the Structural Acceptance Criteria in Standard Review Plan Section 3.8.3. Analyses were subsequently performed considering the shield doors to be in the open position during plant operation. Several members and connections of the 620′–6″ platform and monorail suspension structure exceed the allowable stresses based on those acceptance criteria, and therefore a determination was made under the provisions of 10 CFR 50.59 that there was a slight reduction in the margin of safety. However, as described below, the proposed change has been reviewed and determined not to involve a significant reduction in a margin of safety, as discussed in 10 CFR 50.92.

Those members which had exceeded the design basis allowables were found to meet the Functional Evaluation acceptance criteria. This demonstrated functionality of the platform and the monorail structure; i.e., the platform would continue to support systems, structures, and components (SSCs) important to safety, the SSCs would remain functional, and the shield doors would not fall down. Analytical conservatisms within the Functional Evaluations remain to provide edequate assurance of continued function of the affected SSCs.

Placing the shield doors in the open position during Operational Conditions 1, 2, or 3 is not inconsistent with the guidelines of the Technical Specifications for High Radiation Areas and the Radiation Protection Program. The open shield doors will not affect radiological limiting conditions or action limits for plant effluents as described in the Technical Specifications or Operating License. It does not affect the radiological bases as described in the Technical Specifications or Operating License. It does not affect the margin of radiological safety. The offsite radiation doses to members of the public are not increased.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 18, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitioners are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 284–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Gail H. Marcus: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay E. Silberg, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 27, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Perry Public Library, 3753 Main Street, Perry, Ohio.

Dated at Rockville, Maryland, this 29th day of February 1996.

For the Nuclear Regulatory Commission.

Linda L. Gundrum,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–5206 Filed 3–5–96; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corporation, Vermont Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approving disposal in place of slightly contaminated soil located beneath existing plant structures at the Vermont Yankee Nuclear Power Station (VYNPS), pursuant to 10 CFR 20.2002, as requested by the Vermont Yankee Nuclear Power Corporation (the licensee). VYNPS is located in Windham County, Vermont.

Environmental Assessment

Identification of the Proposed Action

The proposed action would approve disposal in place of slightly contaminated soil placed at its present location beneath existing plant structures during original plant construction.

The proposed action is in accordance with the licensee's application dated November 18, 1991, as supplemented by letter dated July 10, 1992.

The Need for the Proposed Action

During plant operation, a leak from a chemistry sample sink drain released small amounts of radioactive contamination to soil located beneath existing plant structures. The licensee proposes to dispose of the contaminated soil in its present location.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed disposition of the soil in its current location will minimize the risk of unexpected exposure.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Vermont Yankee Nuclear Power Station.

Agencies and Persons Consulted

In accordance with its stated policy, on December 21, 1995, the staff consulted with the Vermont State official, Mr. William K. Sherman of the Vermont Department of Public Service, regarding the environmental impact of the proposed action. The State official questioned the impact of the proposed action on decommissioning of VYNPS. At the time of decommissioning, the licensee will be required to demonstrate that the activity levels on the site are sufficiently low to permit releasing the site for general use.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 18, 1991, as supplemented by letter dated July 10, 1992, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Dated at Rockville, Maryland, this 27th day of February, 1996.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–5205 Filed 3–5–96; 8:45 am]

BILLING CODE 7590–01–P

Public Workshop on the Nuclear Regulatory Commission's Materials Licensing Process

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of meeting.

SUMMARY: The NRC will hold a public workshop in Rockville, Maryland, to receive input from licensees and the public on its recent initiative to redesign the materials licensing process. All interested licensees, and members of the public are invited to attend this workshop. The NRC has prepared a workshop agenda and background information on the project. They will be available for review after April 11, 1996. Attendees, who would like a package in advance of the meeting, should call, fax, or E-mail the contact listed in this notice. Interested parties, unable to attend the workshop, are encouraged to provide written comments pertinent to the process, by May 11, 1996.

DATES: The workshop will be held on April 25, 1996, beginning at 9 a.m. and ending at 5 p.m.

ADDRESSES: The public workshop will be held in the NRC auditorium at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the workshop site is located adjacent to the White Flint Station on the Metro Red Line. Seating for the public will be on a first-come, first-served basis. Written comments may be provided at the workshop or to the Secretary, U.S. Nuclear Regulatory Commission, Washington DC 20555, Attention: Docketing and Service Branch. Written comments should be submitted on or before May 11, 1996. Copies of the agenda and related documents can be obtained, after April 11, 1996, from the NRC contact listed below, or from the NRC's Public Document Room, 2120 L Street NW, Lower Level, Washington, DC 20555; telephone 202–634–3273; fax: 202–634–3343.

FOR FURTHER INFORMATION, CONTACT: Sally L. Merchant, Office of Nuclear Material Safety and Safeguards, Mail Stop T 8–F–5, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–7874; fax: 301–415–5369; INTERNET: SLM2@NRC.GOV.

SUPPLEMENTARY INFORMATION: In October 1994, the NRC began to examine its materials licensing process to identify ways to improve it, while maintaining or raising the level of public safety. An improved process would: perform licensing reviews and associated tasks an order of magnitude faster than the current practice; reduce the resources associated with the current licensing practice; and take full advantage of information technology. The staff is using a technique called Business Process Redesign, a process of fundamentally changing the way that work is performed, to achieve significant improvements in speed, cost, and quality.

A detailed plan for implementing this new process was presented to the Commission in May 1995. On June 16, 1995, the Commission directed the staff: (1) to proceed with the detailed design and testing of the new process; (2) to coordinate its efforts closely with the Agreement States, licensees, and the public; (3) to separate the payment of licensing fees from the process of issuing a license and continue to streamline fees; and (4) extend certain qualified licenses for an additional 5 years, on a one-time basis. A final rule to extend qualified licenses was published on January 16, 1996, and effective on February 15, 1996. Implementation of the new licensing process is scheduled to begin early in 1997.

This workshop is one of a series of interactions with the Agreement States, licensees, and the public to gather suggestions and ideas to ensure the success of this licensing initiative. A transcript of this workshop will be available for inspection, and copying for a fee at the NRC Public Document Room, 2120 L Street, NW, Lower Level, Washington, DC 20555, on or about May 23, 1996.

The workshop will be open to the public, and the public will be provided opportunities throughout the workshop to comment on issues under discussion.

Dated: February 29, 1996.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 96–5204 Filed 3–5–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards and Advisory Committee on Nuclear Waste Subcommittee Meeting

The ACRS and ACNW Subcommittee will hold a joint meeting on March 26, 1996, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, March 26, 1996—8:30 a.m. until the conclusion of business.

The Joint Subcommittee will discuss the protocol of the Joint Subcommittee, the activities of the Spent Fuel Program Office, the status of the decommissioning rule and related matters, and perspectives regarding the health effects of low-level radiation. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committees.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS/ACNW staff member named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding these matters.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Senior

Program Analyst, Roxanne Summers (telephone 301/415–7371) between 7:45 a.m. and 4:30 p.m. (EST). Persons planning to attend this meeting are urged to contact the above-named individual one to two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: February 28, 1996.

John T. Larkins,

Executive Director, ACRS/ACNW.

[FR Doc. 96–5207 Filed 3–5–96; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Board of Directors; Sunshine Act Meeting

TIME AND DATE: Tuesday, March 12, 1996, 1:00 p.m. (OPEN Portion); 1:30 p.m. (CLOSED Portion)

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting OPEN to the Public from 1:00 p.m. to 1:30 p.m.; Closed portion will commence at 1:30 p.m. (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report
2. New Appointment
3. Approval of December 12, 1995 Minutes (Open Portion)
4. Meeting schedule through March, 1997

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 p.m.)

1. Finance Project in Brazil
2. Insurance Project in Colombia
3. Finance Project in Argentina
4. Insurance Project in Brazil
5. Finance Project in Paraguay
6. Insurance Project in Morocco
7. Global Investment Fund
8. Investment Fund in South Asia
9. Investment Fund in Latin America
10. Investment Fund amendment in the NIS and Baltic States
11. Pending Major Projects
12. Approval of December 12, 1996 Minutes (Closed Portion)

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 96–5422 Filed 3–4–96; 2:07 pm]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21791; 811–3961]

John Hancock Capital Growth Fund; Notice of Application

February 28, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: John Hancock Capital Growth Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on January 5, 1996 and amended on February 26, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 25, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 101 Huntington Avenue, Boston, Massachusetts 02199–7603.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company. On February 3, 1984, applicant filed a registration statement under the name Criterion Technology Fund, Inc., a Texas corporation, pursuant to section 8(b) of the Act. Applicant reorganized as a Massachusetts business trust on December 17, 1984, and registered an indefinite number of shares under the Securities Act of 1933 on December 31, 1984. The registration statement was declared effective on September 26, 1985, and applicant's initial public offering commenced thereafter. Applicant underwent several name changes, and as of December 22, 1994, was known as the Transamerica Capital Growth Fund. On December 22, 1994, The Berkeley Financial Group, a John Hancock subsidiary, acquired the Transamerica group of funds and applicant became known as the John Hancock Capital Growth Fund.

2. On May 16, 1995, applicant's Board of Trustees ("Trustees"), including a majority of Trustees who were not interested persons of applicant, approved an agreement and plan of reorganization (the "Agreement"), and recommended that applicant's shareholders approve the Agreement. Under the Agreement, applicant would transfer all of its assets and liabilities to John Hancock Growth Fund ("Growth Fund"), a portfolio of John Hancock Capital Series, for shares of Growth Fund. Pursuant to rule 17a–8 of the Act, applicant's Trustees found that participation in the reorganization was in the best interest of applicant and that the interests of applicant's existing shareholders would not be diluted.[1] Proxy materials were filed with the SEC and were distributed to shareholders on July 21, 1995. A meeting held on September 8, 1995, applicant's shareholders approved the Agreement.

3. Pursuant to the Agreement, on September 15, 1995, applicant transferred all of its assets and liabilities to Growth Fund in exchange for shares of Growth Fund. Immediately thereafter, applicant distributed the shares of Growth Fund to applicant's shareholders in complete liquidation. Upon completion of the reorganization, each shareholder of applicant owned shares of Growth Fund with the same net asset value as the shares of applicant owned by the shareholder immediately prior to the reorganization.

4. Applicant and Growth Fund each assumed its own expenses in connection with the reorganization. No brokerage commissions were incurred in connection with the reorganization.

[1] Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers. Applicant and John Hancock Capital Series may deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and/or common officers.

5. At the time of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding.

6. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs. Applicant was terminated as a business trust under the laws of Massachusetts as of September 15, 1995.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5157 Filed 3–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21793; 811–3246]

Lexington Short-Intermediate Government Securities Fund, Inc.; Notice of Application

February 29, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Lexington Short-Intermediate Government Securities Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on January 31, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 26, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Park 80 West, Plaza Two, Saddle Brook, New Jersey 07662.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, an open-end management investment company, is organized as a corporation under the laws of Maryland. On August 19, 1981, applicant registered under the Act and filed a registration statement under the Securities Act of 1933. Applicant's registration statement was declared effective on October 19, 1981 and the initial public offering of its shares commenced on or about that date.

2. On September 12, 1995, applicant's board of directors adopted a plan of complete liquidation and termination (the "Plan"). Prior to the meeting, Lexington Management Corporation (the "Adviser") advised the directors that continued operation was not economically feasible for the Adviser or applicant's shareholders. On September 20, 1995, applicant filed proxy materials with the SEC, and, on October 2, 1995, applicant distributed the proxy materials to shareholders. On November 1, 1995, applicant's shareholders approved the Plan. On December 6, 1995, applicant distributed $2,878,850 in cash to its shareholders, which amount represented the cash value of applicant's portfolio and the net proceeds received from the liquidation of the remaining portfolio of applicant. Each shareholder received his or her proportionate interest based on the net asset value.

3. Applicant retained $15,789 to cover outstanding liabilities associated with the liquidation. These liabilities are estimated to be approximately $15,789. Any costs in excess of this amount will be borne by the Adviser.

4. Applicant has no shareholders. At the time of filing the application, applicant's only debts consisted of the above-mentioned liabilities. Applicant is not a party to any litigation or administrative proceeding.

5. Applicant is not now engaged, nor does it propose to engage, in business activities other than those necessary for the winding-up of its affairs.

6. Applicant intends to file for dissolution, in accordance with the laws of Maryland after the SEC has issued an order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5218 Filed 3–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21792; 812–10016]

McDonald & Company Securities, Inc., et al.; Temporary Order

February 29, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Temporary Order and Notice of Application for Permanent Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: McDonald & Company Securities, Inc. ("McDonald").

RELEVANT ACT SECTIONS: Permanent order requested, and temporary order issued, under section 9(c) granting an exemption from section 9(a).

SUMMARY: McDonald has received a temporary order for sixty days, and has requested a permanent order exemption it from the prohibitions of section 9(a), solely with respect to its conviction on a misdemeanor charge entered by the Common Pleas Court of Franklin County, Ohio, on February 29, 1996. Pending the SEC's action on the request for the permanent order, McDonald has requested an additional temporary order.

FILING DATE: The application was filed on February 29, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on (30 days following publication in the federal registrar) and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 800 Superior Avenue, Cleveland, Ohio 44114.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Robert A Robertson,

Branch Chief, at (202) 942–0572, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants Representations

1. McDonald is registered as a broker-dealer and an investment adviser. McDonald serves as underwriter and, through its Gradison Division, as investment adviser to four open-end series investment companies (the "Funds"). The Gradison Division is not organized as a separate legal entity. The Funds consist of eight series with total assets of approximately $2 billion and 60,000 shareholder accounts as of December 31, 1995.

2. On February 29, 1996, McDonald pled no contest to a fourth degree misdemeanor charge under the laws of the state of Ohio in the Common Pleas Court of Franklin County, Ohio, (Docket No. 96CF 02–1274) and was fined $2,000 (the "Conviction"). McDonald was found to have violated section 101.71(e) of the Ohio Revised Code ("ORC") by failing to report its expenditures accurately to state legislators during the period of May through August of 1993.

3. Section 101.73 of the ORC requires a "statement of expenditures" to be filed with the Ohio Joint Legislative Ethics Committee by any employer of a legislative agent or the agent who makes certain expenditures to the Ohio legislators or their staff. This report must include the amount of the expenditures. Section 101.71(C) provides that no person shall fail to file a statement required to be filed pursuant to section 101.73. Section 101.99 of the ORC states that failure to satisfy this duty is a fourth degree misdemeanor.

4. McDonald was found to have failed to report its expenditures accurately as required pursuant to section 101.73. The expenditures in question totaled $9,540. All but $40 of these expenditures represented payments of honoraria to legislators for agreeing to attend a McDonald sponsored seminar on two successive days. Payments of honoraria were legally permissible under Ohio law at that time. The seminar at issue was attended only by McDonald employees and government affairs consultants acting as McDonald agents. The purpose of the seminar was to educate McDonald employees on current matters pending before the Ohio General Assembly. No specific legislation materially affecting McDonald was discussed at the seminar.

Applicant's Legal Analysis

1. Section 9(a) of the Act disqualifies, among others, any person or company from serving or acting in the capacity of investment adviser or principal underwriter for any registered open-end company, if such person, or an affiliated person of such person, within ten years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as, among other things, an underwriter, a broker, or a dealer.

2. If the conduct that led to the Conviction is deemed to arise out of McDonald's conduct as a underwriter, broker, or dealer, the prohibitions in section 9(a) would apply to McDonald as a result of the Conviction. In addition, the section 9(a) prohibitions would apply to any company which is an affiliated person of McDonald.

3. Section 9(c) of the Act provides that, upon application, the SEC shall grant an exemption from the provisions of section 9(a), either unconditionally or on appropriate temporary or other conditional basis, if it is established that the prohibitions of section 9(a), as applied to the applicant, are unduly or disproportionately severe, or the conduct of such person has been such as to not make it against the public interest or protection of investors to grant the application.

4. McDonald requests a permanent order exempting it from the disqualification provisions of section 9(a) solely with respect to the Conviction, and a temporary order exempting it from section 9(a) pending the SEC's determination with respect to the permanent order. Applicant understands that the SEC's Division of investment Management (the "Division") only has the delegated authority to issue a temporary order for a period not to exceed sixty days. 17 C.F.R. 200.30–5(a)(7). Accordingly, applicant requests that the Division, under its delegated authority, issue a temporary order for sixty days. If the SEC has not made a final determination with respect to the permanent order within the sixty day time period, applicant further requests that the SEC issue an additional temporary order to remain in effect until it makes a final determination concerning the permanent order. McDonald requests that the requested relief extend to all entities that may become affiliated persons (as that term is defined in section 2(a)(3) of the Act) of McDonald in the future. No affiliated person of McDonald currently requires such relief or currently intends to rely upon the requested relief.

5. McDonald believes that the prohibitions of section 9(a) in connection with the Conviction would be unduly or disproportionately severe and its conduct is not such as to make it against the public interest or protection of investors for the SEC to grant the requested relief for the following reasons:

a. The ORC provisions which form the basis of the Conviction apply to any person or organization required to register as an employer of a legislative agent. These are statutes of general applicability and none of these provisions relate solely to underwriters, brokers, or dealers.

b. The matters giving rise to the Conviction are unrelated to any of McDonald's activities regrading registered investment companies, including its position as principal underwriter and investment adviser to the Funds.

c. Upon learning that a report had not been filed accurately, McDonald took remedial actions, including the following: (i) it filed an amended report which accurately reported the expenditures which had been made, (ii) it reassigned direct responsibility for filing these reports to a senior management official who has overall responsibility for McDonald's financial reporting obligations, and (iii) it established a procedure for the prior review of all such filings.

d. McDonald has never previously filed an application for relief pursuant to section 9(c) and is not currently subject to any other judgment or order that would disqualify it under section 9(a), besides the Conviction described herein.

e. A denial of the requested orders would adversely affect the Funds and their shareholders. The Funds and their shareholders would incur additional costs and possible disruption of service if the Funds were required to retain one or more new principal underwriters and investment advisers and to seek related approvals of their boards of trustees and shareholders.

f. In addition, McDonald states that granting a sixty day temporary exemption would protect the interests of the Funds by allowing time for the orderly consideration of the application for permanent relief by the SEC.

g. If the requested exemption is not granted, section 9(a) would have an unduly and disproportionately severe impact on McDonald. The imposition of these prohibitions would prohibit McDonald from acting as the principal underwriter or investment adviser for the Funds and other registered open-end investment companies in the future. McDonald states that acting in these capacities for the Funds is an integral part of McDonald's business as a full-service brokerage firm. McDonald states that it would lose substantial revenue if it were prohibited from conducting this business.

Applicant's Condition

Applicant agrees that the following condition may be imposed in any order of the SEC granting relief:

Any temporary exemption issued pursuant to this application shall be without prejudice to, and shall not limit the SEC's rights in any manner with respect to, any SEC investigation of, or administrative proceedings involving or against, applicant, including without limitation, the consideration by the SEC of the application for a permanent exemption from section 9(a) of the Act requested pursuant to this application or the revocation or removal of any temporary exemptions granted under the Act in connection with this application.

Temporary Order

The Division has considered the matter and, without necessarily agreeing with all of the facts represented or all of the arguments asserted by applicant, finds, in accordance with 17 CFR 200.30–5(a)(7), that it appears that (i) the prohibitions of section 9(a), as applied to applicant, may be unduly or disproportionately severe, (ii) applicant's conduct has been such as not to make it against the public interest or protection of investors to grant the temporary exemption, and (iii) granting the temporary exemption would protect the interests of the investment companies being served by applicant by allowing time for the orderly consideration of the application for permanent relief.

Accordingly, *it is hereby ordered*, under section 9(c), that applicant is granted a temporary exemption for sixty days from the provisions of section 9(a), effective forthwith, solely with respect to the Conviction, subject to the condition in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5217 Filed 3–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36906; File No. 265–19]

Consumer Affairs Advisory Committee

AGENCY: Securities and Exchange Commission.

ACTION: Notice of the Renewal of the Securities and Exchange Commission Consumer Affairs Advisory Committee.

SUMMARY: The Chairman of the Commission, with the concurrence of the other members of the Commission, has renewed the Securities and Exchange Commission's Consumer Affairs Advisory Committee ("Committee"). The Committee will advise the Commission on the interests and concerns of individual investors in the securities market.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265–19. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Jonathan M. Gottsegen, Counsel to the Director, Office of Investor Education and Assistance, at (202) 942–7040; Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., the Securities and Exchange Commission has directed publication of this notice that Chairman Arthur Levitt, with the concurrence of the other member of the Commission, has renewed the "Securities and Exchange Commission Consumer Affairs Advisory Committee." Chairman Levitt certifies that he has determined that the renewal of the Committee is necessary and in the public interest.

The Committee's charter directs the Committee to (1) advise the Commission on the interests and concerns of consumers and individual investors who participate, directly or indirectly, in the U.S. securities markets, and (2) to advise the Commission on how the Commission's existing and proposed rules and programs could be improved to provide better disclosure and protection to individual consumers and investors.

The Committee members represent the varied interests affected by the range of issues being considered. The Committee's membership includes persons who represent investors, issuers, market participants, independent public accountants, regulators and the public at large. The Committee's members represent a variety of viewpoints and have varying experience, and the Committee is balanced in terms of points of view, backgrounds and tasks. The Chairman of the Committee is Chairman Levitt.

The Committee will conduct its operations in accordance with the provisions of the Federal Advisory Committee Act. The duties of the Committee are solely advisory. Determinations of action to be taken and policy to be expressed with respect to matters upon which the Advisory Committee provides advice or recommendations shall be made solely by the Commission. The Committee will meet at such intervals as are necessary to carry out its functions. The Securities and Exchange Commission will provide necessary support services to the Committee.

The Committee will terminate on February 18, 1998 unless its charter is renewed for a further period in accordance with the Federal Advisory Committee Act. The Committee will also terminate on February 18, 1998 if the Chairman, with the concurrence of the other members of the Commission, determine that continuance of the Committee is no longer in the public interest.

Concurrent with publication of this notice in the **Federal Register**, a copy of the charter of the Committee will be filed with the Chairman of the Commission, the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Commerce. A copy of the charter will also be furnished to the Library of Congress and placed in the Commission's Public Reference Room for public inspection.

Dated: February 29, 1996.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–5158 Filed 3–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Release NO. 34–36905; File No. SR–CSE–96–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Cincinnati Stock Exchange Relating To Including Within the Exchange's Minor Rule Plan Rule 4.1 Which Deals With the Maintenance of Records

February 28, 1996.

Pursuant to Section 19(b)(1) of the Secretary Exchange Act of 1934

("Act"),[1] notice is hereby given that on February 8, 1996 The Cincinnati Stock Exchange ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. On February 27, 1996, the Exchange submitted Amendment No. 1 to the proposed rule change to the Commission.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby corrects and amends Rule 8.14 regarding the imposition of fines for minor violations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

1. Purpose

Rule 8.14[3] authorizes the Exchange, in lieu of commencing a disciplinary proceeding before a hearing panel, to impose a fine not to exceed $2,500, on any member, member organization, or registered or non-registered employee of a member organization for a minor violation of certain specified Exchange Rules.[4]

The purpose of the Rule 8.14 procedure is to improve the Exchange's ability to efficiently meet its statutory enforcement responsibilities by establishing a program for the imposition of fines for minor violations of Exchange Rules and by designating certain specified Rule violations as minor Rule violations.[5] In File No. SR–CSE–88–1[6], which initially set forth the provisions and procedures of Rule 8.14, the Exchange indicated that it would periodically prepare and announce to its members and member organizations a revised list of Exchange Rules for violation of which the Exchange may impose fines pursuant to Rule 8.14, as well as the fines that may be imposed for such violation.

The purpose of the proposed Rule change is to add Exchange Rule 4.1[7] to, and correct, Exchange Rule 8.14. Due to a typographical error, Exchange Rule 8.14, which includes a list of Rules to which the minor rule plan applies, referenced Rule 4.1 instead of Rule 4.2, which was added to the Exchange's minor rule plan in 1990.[8] At this time, the Exchange is correcting this reference and adding Rule 4.1, which relates to the maintenance of books and records, to such list. As a result, the list of Rules to which the minor rule plan applies will now reference both Rules 4.1 and 4.2

2. Statutory Basis

The Proposed rule change is consistent with Section 6(b)(6) of the Act[9] in that it will provide a procedure whereby member organizations can be "appropriately disciplined" in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. The rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of Sections 6(b)(7) and 6(d)(1) of the Act.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from February 8, 1996, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (e)(6) of Rule 19b–4 thereunder.[12]

At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of The Cincinnati Stock Exchange. All submissions should refer to File No. SR–CSE–96–02 and should be submitted by March 27, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5154 Filed 3–5–96; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 corrected the CSE's filing to reference Section 6(b)(6) of the Act rather than Section 6(b)(5) thereof as the statutory basis for the proposal. Amendment No. 1 also redesignated the proposed rule change as a "noncontroversial" filing under Section 19(b)(3)(A) and Rule 19b–4(e)(6) thereunder. *See* Letter dated February 27, 1996, from Robert Ackermann, Vice President Regulatory Service, CSE, to Glen Barrentine, Senior Counsel/Team Leader, SEC.

[3] Rule 8.14 was approved by the Commission on September 1, 1988. *See* Securities Exchange Act Release No. 26053 (September 1, 1988), 53 FR 34851 (September 8, 1988) (order approving File No. SR–CSE–88–1). A subsequent addition of a rule to the Rule 8.14 Violations List was made in Securities Exchange Act Release No. 27609 (January 11, 1990), 55 FR 1758 (January 18, 1990) (ordering approving File No. SR–CSE–89–60).

[4] CSE Rule 8.14, entitled Imposition of Fines for Minor Violation(s) of Rules, contains a list of minor rule violations as to which the Exchange may impose such fines. Although the CSE's Board of Trustees makes the initial determination of whether a CSE rule violation is "minor" for purposes of CSE Rule 8.14, this determination is subject to Commission approval pursuant to Section 19(d)(1) of the Act and paragraph (c)(2) of Rule 19d–1 under the Act. *See* Release No. 26053 n.5, *supra* note 2.

[5] *Id.*

[6] *Id.*

[7] CSE Rule 4.1 provides that "each member shall make and keep books, accounts, records, memoranda and correspondence in conformity with Section 17 of the Act and the rules thereunder, with all other applicable laws and the rules, regulations and statements of policy promulgated thereunder, and with Exchange Rules."

[8] CSE Rule 4.2 provides that "every member shall furnish to the Exchange, upon request and in a time and manner required by the Exchange, current copies of any financial information filed with the Commission, as well as any records, files or financial information pertaining to transactions executed on or through the Exchange. Further, the Exchange shall be allowed access, at any time, to the books and records of the member in order to obtain or verify information related to transactions executed on or through the Exchange or activities relating to the Exchange." *See* Release No. 34–27609, *supra* note 3.

[9] 15 U.S.C. 78(b)(6).

[10] 15 U.S.C. 78f(b)(7) and 78f(d)(1).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4.

[Release No. 34–36901; File No. SR-DGOC-96-02]]

Self Regulatory Organizations; Delta Government Options Corp.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Addition of Euro Brokers Maxcor Inc. as an Interdealer Broker for Delta Government Options Corp.'s Repurchase Agreement Clearance System

February 28, 1996

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], notice is hereby given that on January 30, 1996, Delta Government Options Corp. ("DGOC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DGOC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to accommodate Euro Brokers Maxcor Inc. ("Euro Brokers") as an interdealer broker in DGOC's over-the-counter clearance and settlement system for U.S. Treasury repurchase agreement ("repo") transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DGOC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DGOC has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The System clears repo agreements that have been agreed to through the facilities of interdealer brokers that have been specially authorized by DGOC ("Authorized Brokers") to offer their services to DGOC participants.[3] Currently, Liberty Brokerage, Inc. and RMJ Special Brokerage Inc. are Authorized Brokers. The purpose of the proposed rule change is to accommodate Euro Brokers as an Authorized Broker in DGOC's clearance and settlement system for repo trades.

The proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions, and therefore, the proposed rule change is consistent with the requirements of the Act, specifically Section 17A of the Act, and the rules and regulations thereunder.[4]

(B) Self-Regulatory Organization's Statement on Burden on Competition

DGOC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Propose Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b-4(e)(4),[6] in that the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at DGOC. All submissions should refer to File No. SR-DGOC-96-02 and should be submitted by March 27, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5150 Filed 3–5–96; 8:45 am]

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified parts of these statements.

[3] For a complete description of the DGOC's repo clearance system, see Securities Exchange Act Release No. 36367 (October 13, 1995), 60 FR 54095.

[4] 15 U.S.C. 78q–1 (1988).

[5] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[6] 17 CFR 240.19b-4(e)(4) (1995).

[7] 17 CFR 200.30–3(a)(12) (1995).

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[Release No. 34-36997; File No. SR-DTC-96-07]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Proposed Rule Change Seeking to Implement the Initial Public Offering Tracking System

February 27, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on January 2, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by DTC. On January 31, 1996, DTC amended the filing to clarify the proposed rule changes.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC proposes to implement an Initial Public Offering ("IPO") Tracking System that will allow lead managers (also referred to as managing underwriters) and syndicate members[3] of equity underwritings to monitor "flipping"[4] of new issues in an automated book-entry environment.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC is proposing to implement its IPO Tracking System to facilitate the immobilization of newly underwritten equity securities at the time of issuance and to establish the means to effectively track IPOs in a book-entry environment.[6] Currently, many IPOs are distributed entirely in physical, certificated form outside the depositories so that tracking may be accomplished by using certificate numbers to monitor the movements of the securities. This form of tracking is a cumbersome and costly process.

Under DTC's proposed rule change, the lead manager will initiate the IPO Tracking System by notifying DTC of its election to track an issue by 4:00 p.m. two days prior to the closing date. On the closing day of the issue, the underwriting department for the IPO will place the outstanding shares in the lead manager's IPO control account at DTC.[7] Allocation of these shares by the lead manager will depend upon the nature of the ultimate buyer.

Institutional Trade

For an institutional customer, the lead manager will move the shares from its IPO control account into the selling group broker-dealers' IPO accounts at DTC via initial distribution deliver orders ("DOs").[8] The lead manager and selling group may then distribute the institutional portion of the initial distribution to agent banks or prime brokers[9] through DTC's Institutional Delivery ("ID") system or by submitting a DO with an Id agent bank identifier.[10] The DO or ID confirm will contain the Agent Internal Account ("AIA") number and the Broker Internal Account ("BIA") number,[11] which will be captured in order to appropriately populate the IPO database. The selling group member's participant number will be stored in the IPO database along with the BIA number to fully identify the customer to the selling group member.

Agent banks will not have IPO control accounts; therefore, all activity into and out of the agent banks' fee accounts will be monitored to keep track of customer purchases and sales. This monitoring process will ensure that all customer sales are properly reported. When an ID confirm is generated for a sale in a tracked issue, DTC will validate the AIA number on the confirm against the AIA number in the IPO database. A warning message will be produced on the confirmation and on the affirmed confirmation for AIA numbers that do not match AIA numbers contained in the IPO database. Similarly, settlement authorization or DO processing will be prohibited if a match to an AIA number in the IPO database is not found.[12] In order to settle the transaction, the agent bank must either adjust the IPO database using the IPO Customer-Level Adjustment function or submit a DO with an AIA number that matches the IPO database.

Unlike agent banks, prime brokers will have IPO control accounts at DTC. Upon receipt of an initial distribution transaction, shares will be moved to the prime broker's IPO control account, and the IPO database will be updated with customer-level detail information from the ID trade information. The IPO Tracking System will automatically generate releases of IPO positions to the prime broker's free account for affirmed ID trades of secondary market transactions when the AIA number on the confirmation matches an AIA number contained in the IPO database. It is the release of the IPO position that results in a report of a flip.

When an institutional customer has positions in the same security purchased in both an IPO and in the market, the system will use the secondary market position to complete a delivery before using shares received during the initial distribution. Also, when a customer has received shares from multiple broker-dealers and subsequently sells such shares, the system will assign the "flipped" shares on a prorated basis among the selling group members servicing that customer.

Retail Trade

For a retail distribution, the lead manager will move the securities from its IPO control account to the IPO control account of the selling group broker-dealer for the retail customer. Broker-dealers may populate the IPO database with their own customer-level detail information for retail accounts by entering "Add Customer-Level Detail" transactions directly into the IPO Tracking System or may submit daily formatted trade files. Broker-dealers will not be required to provide customer level detail. Broker-dealers also may adjust such information using the IPO Customer Level Adjustment function.

Upon the sale of a position that was established in the initial distribution, the selling group broker-dealer will release the shares from its IPO control account to its free account by using the IPO release capability available using DTC's participant terminal system ("PTS"), computer-to-computer facilities ("CCF"), or main frame dual host ("MDH"). The release instructions will include number of shares, trade date, and price. If the broker-dealer has previously assigned a customer internal account number to the IPO shares, the release instructions must identify such number which must match a previously established IPO database entry or the transaction will be rejected. Upon DTC's acceptance of the release instructions, the shares will move from the broker-dealer's IPO control account to the participant's free account. It is this movement that will mark the activity as a flip. All deliveries and Continuous Net Settlement ("CNS") short positions will be satisfied from the participant's free account.

Correspondent Relationships

When an introducing broker is acting as a selling group member (*i.e.*, it is not a DTC participant), its shares are held by its designated clearing agent, which may be a broker-dealer or agent bank. When distributing these shares, the lead manager identifies the transaction as a correspondent delivery by entering the Correspondent Account ("CA") number on the DO.[13] The IPO Tracking System will capture the CA number from the delivery to the clearing agent. The CA number will be stored in the IPO database with the clearing agent's participant number to fully identify a correspondent (*i.e.*, the introducing broker) as a selling group member. When the ultimate purchaser is a retail customer, clearing agents may enter customer-level details into the IPO database on behalf of correspondents. When the ultimate purchaser is an institution, clearing agents will be able to use the ID system or a properly identified DO to deliver shares as part of the initial distribution to a custodian. Subsequent share movements for correspondents, either sales or account transfers, will require use of the CA number and will be subject to the same release rules that apply to direct DTC participants.

Physical Certificates

DTC will not accept deposits of physical certificates in tracked issues. Participants may request a physical certificate through a withdrawal-by-transfer ("WT") request, which will be processed from the first settlement day of the issue.[14] DTC's automated WT system will be modified to allow input of the AIA, CA, and ID agent bank numbers. If the numbers entered do not match those in the IPO database, the WT will be rejected. If a WT request exceeds the position in the agent bank's account, the request will be rejected and an error message will be generated. For agent banks, the IPO Tracking System will process WT requests first using shares which were not part of the initial distribution and then shares which were part of the initial distribution provided there is sufficient position.

For shares held by broker-dealers, the WT request must contain customer level detail information. DTC will process WT requests using shares in the IPO control account with a matching customer number. When there is a customer number match in the IPO database, DTC will generate a release from the IPO account and will report it on the lead manager's and selling group member's reports as a WT even if the WT is not processed. The released IPO shares will be combined with free account shares, and the WT will be processed from the free account. If the broker-dealer's IPO control account does not contain shares with a matching customer number, the WT will be processed using shares from the free account provided there is sufficient position.

Stock Loan

Participants will be able to process stock loan DOs using stock loan reason codes. Participants will not have to enter individual account numbers (*i.e.*, AIA numbers) to match the IPO database. For brokers, IPO tracked shares do not have to be released by participants to execute stock loans because the IPO system will automatically release these shares.

Customer Account Transfer

Customer account transfers must be processed by the new IPO customer account transfer function for tracked IPO issues. The function allows the deliverer (*i.e.*, the broker-dealer or agent bank) to enter the customer internal account number from which the shares are coming, its participant number, and customer internal account number to which the shares are going. To expedite this process, broker-dealers will be notified by NSCC's Automated Customer Account Transfer system that the issue is a tracked issue and a trade-for-trade ticket will be produced. The transaction can then be entered through the IPO customer account transfer function.

Reclamation

Initial distribution deliveries (*i.e.*, deliveries from the lead manager to a selling group member) that are reclaimed and matched will return to the account from which they originated (*i.e.*, the IPO control account). Reclamations done for shares which were released from a selling-group broker-dealer's IPO control account or a prime broker's control account to a free account to satisfy an obligation on the secondary market will be returned to the delivering participant's free account and such shares will still be registered as flipped. When a reclamation occurs for an agent bank, the reclaimed DO will be matched to the original delivery, and

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Memorandum from Richard B. Nesson, General Counsel, DTC, to Christine Sibille, Senior Counsel, Division of Market Regulation, Commission (January 31, 1996).

[3] Syndicate members are a group of broker-dealers that agree to purchase a new issue of securities from an issuer under an underwriting agreement. The selling group is a group of broker-dealers that market the new issue to the public. Selling group broker-dealers may purchase from a syndicate member or may be a syndicate member.

[4] Flipping occurs when a syndicate's lead manager is supporting the IPO with a stabilization bid (intended to keep the price of the issue from dropping below its initial offering price), and securities that had been distributed to investors are resold by those investors back to the syndicate. The lead manager may wish to identify flipped transactions so that underwriting concessions can be recovered from the appropriate syndicate members.

[5] The Commission has modified the text of the summaries prepared by DTC.

[6] Under the rules of most national securities exchanges and the National Association of Securities Dealers ("NASD"), in order to be listed for trading on a national securities exchange or to be eligible for inclusion in Nasdaq issuers must represent that the CUSIP number identifying the securities to be listed on such exchange or to be eligible for inclusion in Nasdaq has been included in the file of eligible issues maintained by a securities depository registered as a clearing agency under Section 17A of the Act. However, prior to the availability of a flipping tracking system, the managing underwriter may delay the date a security is deemed depository eligible for up to three months after trading has commenced in the security Securities Exchange Act Release No. 35796 (June 1, 1995), 60 FR 30909. Typically, transactions in depository eligible securities between financial intermediaries and between a financial intermediary and a customer with delivery versus payment privileges must be settled by book entry. Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679.

[7] To accommodate IPOs which require that a portion of the shares be distributed to foreign brokers as syndicate members, the initial distribution from the primary lead manager to its second participant account (*i.e.*, co-reporting relationship) at DTC or to another co-manager's participant account (*i.e.*, co-manager relationship) will be identified by the lead manager using a new reason code.

[8] With tracked issues, the lead manager must deliver shares directly into the account of the broker-dealer that will either hold the shares or transfer the shares to a custodian. All other share movements are registered as flips. DTC will not know if a receiving broker-dealer is a syndicate member or has purchased shares through a syndicate member.

[9] A prime broker is a broker-dealer that acts as custodian for institutional customers and uses DTC's ID system (acting as an agent bank).

[10] Alternatively, the lead manager may deliver directly to the custodian of the selling group member's institutional clients. This process is referred to as directed concessions.

[11] The AIA number is the internal number used by the custodian (*i.e.*, agent bank or prime broker) to identify the institutional client. The BIA number is the internal account number that the selling group broker-dealer uses to identify the institutional client.

[12] As a result, the transaction will be marked as a fail.

[13] The CA number is the clearing firm's internal number for the introducing broker.

[14] A WT is used when participants need to withdraw physical stock or registered bond certificates from DTC registered in a name other than DTC's nominee name, Cede & Co. DTC permits participants to withdraw securities in round lots, odd lots, or mixed lots registered in a name designated by the participant.

the information on the IPO database will be reversed (*i.e.*, no flip will be shown).

Over Subscription

Generally, when an issue is oversubscribed the lead manager will purchase securities in the secondary market. These shares will reside in the lead manager's free account. The lead manager will have the option of delivering oversubscribed shares from its free account to selling group members' IPO control accounts or to its IPO control account for its own customers' shares.

Memo Segregation

DTC will enhance memo segregation processing for IPO tracked issues by allowing participants to enter memo segregation instructions with share quantities that represent the combined total of their free and IPO shares.[15] As DTC processes DOs, the share quantity of the memo segregation instruction will be subtracted from the combined share total of the free account and the IPO account and then compared against the quantity on the DO to determine if the delivery can take place. The shares will be removed from the participant's free account.

Termination of Tracking

During the tracking period, the lead manager and selling group members will be able to obtain information on the flipping of shares through hard copy or machine readable daily reports or through a new PTS inquiry function. The lead manager's report combined with market conditions will assist the lead manager in determining when to instruct DTC to discontinue IPO tracking. DTC will discontinue tracking an IPO on the earlier of the business day following DTC's receipt of a termination request from the managing underwriting or 120 calendar days from the date trading commenced. Once IPO tracking is discontinued, any shares remaining in a broker-dealer's IPO control account will be moved to its free account.[16]

At the close of the tracking period the lead manager will receive a final report detailing the selling group members (including the clearing agents) whose customers have flipped. The report will include sale price, trade date, and number of shares as well as the clearing agent's participant number and the CA number. The report also will show: (1) Outstanding CNS short positions for selling group members long in the IPO control account, (2) a total aggregate of all open CNS commitments, (3) WT transfers, and (4) outstanding stock loans by agent bank or broker-dealer. The lead manager's report will not include customer level detail information (*i.e.*, BIA numbers, AIA numbers, or customer internal account numbers).

Selling group members (and lead managers, as part of the syndicate) will receive a report of their institutional or retail customers' sale transactions.[17] Such report will include the original BIA number, the identity of the prime brokers or agent banks, and the AIA number or for retail customer trades, the customer internal account number. This will provide sufficient information for selling group members to identify the clients that have potentially flipped shares during the tracking period.

DTC believes the proposed rule change is consistent with Section 17A of the Act 18 and the rules thereunder because it will promote the immobilization of securities as well as efficiency and safety in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

In 1991, the U.S. Working Committee of the Group of Thirty [19] established a focus group to examine how settlement of IPOs could be processed in a book-entry environment while still providing lead managers with the ability to track flipping. Recognizing that no tracking system would succeed without support from both broker-dealers and agent banks, the focus group established a Flipping Design Committee composed of senior people from a diverse group of broker-dealers and agent banks. Once the design was proposed, a Design Implementation Committee composed of broker-dealers and agent banks was established to finalize the details of the system. The Design Implementation Committee completed its work in December 1994.

The IPO Tracking System has been described in detail in several Important Notices to participants. DTC received several comments on the proposal and has implemented, or anticipates implementing changes to the system as a result of those comments.[20] The development of the IPO Tracking System has been supported by the SIA Clearance and Settlement Committee, SOD Regulatory and Clearance Committee, U.S. Working Committee of the Group of Thirty, New York Clearing House DTC Matters Committee, Bank Depository User Group, and The Cashiers' Association of Wall Street, Inc.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[15] The memo segregation function ("MSEG") creates a memo position within the participant's free account enabling participants to protect customer securities.

[16] DTC will automatically release the shares from the IPO control account to the participant's DTC subaccount segregation account at the close of the tracking period when requested in writing as a standing instruction by individual participants that use the subaccount segregation service. Without this standing instruction, DTC will release shares residing in the IPO control account directly into the participant's free account at the end of the tracking period.

[17] Syndicate members will not see information regarding their selling group broker-dealer customers.

[18] 15 U.S.C. 78q–1 (1988).

[19] The Group of Thirty, established in 1976, is an international, nonprofit organization charged with broadening the understanding of international economic and financial issues, exploring the international repercussions of decisions taken in public and private sectors, and examining the choices available to policymakers. The U.S. Working Committee of the Group of Thirty is an organization made up of representatives of broker-dealers, banks and financial intermediaries charged with analyzing the existing clearance and settlement systems in the U.S. in light of recommendations made by the Group of Thirty.

[20] Specifically, DTC will have the memo segregation processing feature in place prior to implementation of the IPO Tracking System.

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–95–27 and should be submitted within March 27, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5155 Filed 3–5–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36902; International Series Release No. 940; File No. SR–ISCC–95–06]

Self-Regulatory Organizations; International Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to Global Clearance Network Service

February 28, 1996.

On December 2, 1995, the International Securities Clearing Corporation ("ISCC") filed a proposed rule change (File No. SR–ISCC–95–06) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on January 5, 1996, to solicit comments from interested persons.[2] No comments were received. As discussed below, this order approves the proposed rule change.

I. Description

ISCC has established a foreign clearance, settlement, and custody service known as a Global Clearance Network ("GCN") in conjunction with certain banks, trust companies, and other entities. Presently, ISCC has established GCN relationships with Citibank, N.A.; Standard Bank of South Africa; Westpac Custodian Nominees Limited of Australia; Westpac Nominees-NZ-Limited; and S.D. INDEVAL, S.A. de C.V.[3] The proposed rule change accommodates Standard Chartered Bank ("SCB") as an additional GCN service provider.

SCB has provided clearance, settlement, and custodial services in the Asian-Pacific Region for over forty years and has had a banking presence in this region for over one hundred and forty years. The value of overall assets under SCB's administration is approximately US $55 billion. ISCC members will be offered clearance, settlement, and custody services in the Philippines, South Korea, and Taiwan through a division of SCB, Standard Chartered Equitor Group ("The Equitor Group").[4]

The Equitor Group provides clearance and custody services in fifteen markets in the Asian-Pacific Region. The Equitor Group established a branch office in the Philippines in 1872, which has provided local custody services since 1935 and currently has US $1.12 billion in assets under custody. The Equitor Group established a branch office in South Korea in 1984, which has provided local custody services since 1991 and currently has US $1.47 billion in assets under custody. SCB has represented that acting through its branches it meets the requirements of Rule 17f–5 under the Investment Company Act of 1940 to be an eligible foreign custodian.[5] The Equitor Group established a branch office in Taiwan in 1985, which has provided local custody services since 1992 and currently has U.S. $810 million in assets under custody.

In the future, ISCC may offer clearance, settlement, and custody services through SCB in other countries such as Bangladesh, Hong Kong, Indonesia, Japan, Malaysia, Pakistan, Shanghai, Shenzhen, Singapore, Sri Lanka, and Thailand. In Malaysia, SCB operates through its wholly owned subsidiary, Standard Chartered Bank Malaysia Berhad ("SCBM"). SCB has received an exemptive order under Rule 17f–5 on behalf of SCBM.[6]

SCB has entered into an agreement with ISCC pursuant to which SCB has agreed to provide access to its clearance, settlement, and custody services to GCN participants that qualify to be customers of SCB. ICB has agreed to provide the services at reduced prices. ISCC will not provide any volume guarantees to SCB. ISCC will collect fees from the participants on behalf of SCB.[7] The agreement will be terminable by mutual agreement of the parties or on ninety days prior notice.

II. Discussion

The Commission believes the proposal is consistent with the requirements of Section 17A of the Act, and therefore, is approving the proposal.[8] The Commission states in the initial order granting ISCC temporary registration as a clearing agency that the development of efficient and comparable automated national and international clearance, settlement, and payment systems is one of the more important international goals.[9] The Commission noted that without established international systems, broker-dealers and their institutional customers often are forced to devote substantial resources to each task related to trade settlement and must deliver securities by physical means. The Commission also found that clearing linkages facilitate cross-border settlements without compromising the essential soundness and integrity of each national clearing and settlement system.

The GCN service offers participating ISCC members advantages in securities processing including central access for processing trades, standardized operating procedures, receipt of uniform reports on their trades, and reduced costs. The addition of SCB as a GCN provider gives ISCC participants access to settlement services in areas not currently covered by the GCN service and thus increases the utility of the GCN service. Therefore, the Commission believes the proposal is consistent with Section 17A(b)(3)(F) of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions.[10]

III. Conclusion

For the reasons stated above, the Commission finds that ISCC's proposal is consistent with Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the

[20] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. § 78S(B) (1988).

[2] Securities Exchange Act Release No. 36656 (December 29, 1995), 61 FR 430.

[3] Securities Exchange Act Release Nos. 29841 (October 18, 1991), 56 FR 55960; 35392 (February 16, 1995), 60 FR 10415; 36339 (October 5, 1995), 60 FR 53447; and 36791 (January 30, 1996) 61 FR 4508).

[4] The Equitor Group is not a separate legal entity.

[5] Letters from Julie Beyers, Associate Counsel, ISCC, to Michele Bianco, Division of Market Regulation, Commission (December 12, 1995 and December 13, 1995).

[6] Letter from Julie Beyers, Associate Counsel, ISCC, to Michele Bianco, Division of Market Regulation, Commission (December 13, 1995). Investment Company Act of 1940 Release No. 20019, International Series Release No. 628 (January 14, 1994).

[7] ISCC is not responsible for fees not rendered to SCB by participants.

[8] 15 U.S.C. 78q–1 (1988).

[9] Securities Exchange Act Release No. 26812 (May 12, 1989), 54 FR 21691.

[10] 15 U.S.C. 78q–1(b)(32)(F) (1988).

[11] 15 U.S.C. 78s(b)(2) (1988).

proposed rule change (File No. SR–ISCC–95–06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5151 Filed 3–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36900; File No. SR–NASD–96–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Issuer Hearing Fees

February 28, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 22, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to revise the issuer hearing fee under Part IV of Schedule D to the NASD By-Laws.[1] Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Part IV

Listing Fees

* * * * *

Issuer Hearing Fee

I. Hearing Fee

1. Each issuer that applies for an exception under Article IX of the Code of Procedure to the requirements of Parts II or III of Schedule D to the By-Laws shall pay a fee to the Nasdaq Stock Market, Inc. to cover the cost of considering such application as follows:

(a) where the application is to be considered on the basis of written submissions from the issuer, *$1,400* [$500]; or

(b) where the application is to be considered on the basis of an oral hearing, whether in person or by telephone, *$2,300* [$1,000].

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Parts II and III of Schedule D to the NASD By-Laws set forth the requirements applicable to issuers for initial and continued inclusion in the Nasdaq Stock Market. Pursuant to Article IX of the NASD Code of Procedure, issuers may apply for an exception to these requirements, which shall be considered by a hearing panel designated by the Board of Governors. The purpose of the proposed rule change is to increase the hearing fee from $500 to $1,400 for written applications and from $1,000 to $2,300 for oral applications.

The costs associated with the hearing process include fixed costs for all applications and additional variable costs for oral hearing applications. The increased fees relate directly to these costs and reflect the recovery of the fixed costs evenly across all hearing applicants and the recovery of the additional variable costs only from oral hearing applicants. The fees are designed to be revenue neutral based on the number of exception applications for the most recent year.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act[2] in that the fee increases are allocated equitably to provide a forum for issuers seeking to retain a Nasdaq listing or issuers seeking to be listed on Nasdaq under an exception to current listing standards. The new fees are intended to directly offset the costs associated with the hearing process, and are distributed among issuers based on the type of hearing requested.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by March 27, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5156 Filed 3–5–96; 8:45 am]

BILLING CODE 8010–01–M

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[12] 17 CFR 200.30–3(a)(12) (19950.

[1] Pursuant to a new rule numbering system for the NASD Manual anticipated to be effective no later than May 1, 1996, this rule will become Rule 4530. *See* Exchange Act Release No. 36698 (January 11, 1996), 61 FR 1419 (January 19, 1996), order approving new rule numbering system.

[2] 15 U.S.C. 78o–3.

[Release No. 34–36907; File No. SR–NSCC–96–01]

Self-Regulatory Organization; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Establishing Systemized, Standard Prices for Transfers of Non-Continuous Net Settlement Assets Through the Automated Customer Account Transfer Service

February 29, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 5, 1996, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. On February 8, and 20, 1996, NSCC filed amendments to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

NSCC proposes modifying its rules to coincide with its practice of establishing systemized, standard default prices for non-Continuous Net Settlement ("CNS") assets submitted by a member for transfer through NSCC's Automated Customer Account Transfer Service ("ACATS"). Such prices are to be based on the type of asset being transferred.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

A Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify NSCC's rules to coincide with its practice of establishing systemized, standard default prices based on asset type for assets not eligible for CNS submitted by Members for transfer through ACATS. NSCC, through ACATS, currently provides an automated and standardized service for the accurate and timely transfer of assets in a customer account from one brokerage firm to another.[4]

When a customer wants to transfer his or her account to a new broker-dealer ("receiving broker-dealer"), the receiving broker-dealer submits through NSCC a transfer initiation request form to the broker-dealer holding the customer's assets ("delivering broker-dealer"). Within three business days, the delivering broker-dealer must submit to NSCC a list of customer assets held at the delivering broker-dealer. The list must include prices assigned to the non-CNS eligible assets. Transfer of the account generally will take place four business days later.

On settlement date, NSCC automatically debits the delivering broker's settlement account at NSCC with the market value of the assets being transferred through ACATS and credits the receiving broker's settlement account with the same amount. The resulting settlement obligations will appear on the members' initial settlement statements issued in the afternoon. When the non-CNS-eligible assets are delivered through NSCC's envelope delivery service, NSCC will then credit the delivering broker's account at NSCC with the value of those assets and will debit a corresponding amount from the receiving broker's account.[5] Thus, the delivering broker's initial settlement statement will reflect both the debit from the initial ACATS request and a corresponding credit from the delivery of assets resulting in no change to such member's overall settlement obligations. If the assets are not delivered, the delivering broker's settlement bank will be debited the assigned value of the assets at the end-of-day settlement. These funds will be creditede back to the delivering broker when such broker delivers the customer's assets.

CNS assets submitted for transfer through the ACATS system are systematically priced. However, an asset value needs to be assigned to any non-CNS assets (*e.g.*, limited partnerships, mortgaged backed securities, zero coupon bonds, foreign securities, U.S. government and U.S. agency securities, and thinly traded municipal bonds) submitted for transfer through ACATS. NSCC will ascribe non-CNS assets a value by using a pricing service.[6] If there is no price available from a pricing service, NSCC will assign a value based on the higher of (i) the price submitted by the delivering broker or (ii) the price indicated by an industry defined default price matrix. The default price matrix will employ security category indicators and will specify a default price for each identified security category. For example, domestic stock will be valued at $1.00 per share, and municipal bonds will be valued at $85 per $100 principle amount. Once the default value is established, changes by participants are not permitted.

The pricing of additional assets being transferred through ACATS will provide ACATS users with standardized default pricing based on asset type. This method of pricing will decrease discrepancies with respect to asset valuation by reducing exposure to the delivering broker due to the overvaluation of assets and by reducing exposure to the receiving broker due to the undervaluation of assets.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder because establishment of systemized standard default prices for non-CNS assets transferred through ACATS will facilitate the prompt and accurate clearance and settlement of

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[1] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letters from Julie Beyers, Associate Counsel, NSCC, to Christine Sibille, Division of Market Regulation, Commission (February 7 and 15, 1996).

[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] For a complete description of ACATS, refer to Securities Exchange Act Release No. 34879 (October 21, 1994), 59 FR 54229 (File No. SR–NSCC–94–13) (order approving a proposed rule change modifying ACATS). *See also* NSCC Rule 50.

[5] Assets delivered through NSCC's envelope delivery service must be submitted by 11:3 a.m.

[6] NSCC will use the following pricing services (listed in order of preference). Equities: The New York Stock Exchange, the American Stock Exchange, NASDAQ, Vancouver Stock Exchange, average OTC comparison system price, Interactive Data Financial Times information, previous day's system price, or last available price in system. Bonds: Average price in the Bond Comparison System for trades compered on T or T+1, average price in the Bond Comparison System for trades compared on T+2, average price in the Bond Comparison System for trades compared on T+3 or older, Interactive Data Financial Times information, previous day's system price, last available price in system, or for municipal bonds only, if such price is five days or older, the price obtained from J.J. Kenny S&P.

[7] 15 U.S.C. § 78q–1 (1988).

account transfers from one brokerage firm to another.

B. Self-Regulatory Organization's Statement on Burden on Competition.

NSCC does not perceive that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–96–01 and should be submitted by March 27, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5149 Filed 3–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36904; File No. SR–NYSE–96–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendment of Exchange Rule 460.10

February 28, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 5, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, and on February 26, 1996, filed Amendment No. 1 to the proposed rule change,[2] as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Exchange Rule 460.10 to modify certain prohibitions on the ownership by specialists of securities in which they are registered ("specialty securities") and to modify the prohibition on business transactions specialists may have with the issuers of specialty securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Rule 460.10 to modify certain prohibitions on the ownership of specialty securities and business transactions specialists may have with the issuers of specialty securities.

a. Ownership Restrictions

NYSE Rule 460.10 prohibits a specialist[3] from acquiring more than 10% of the outstanding shares of any equity security in which the specialist is registered. If a specialist acquires 5% or more of an equity issue in which he or she is registered, notice is required to be given to Market Surveillance, and the specialist may be directed to reduce the position below that level.

The restrictions on beneficial ownership codified in the rule are intended to ensure that specialists do not enter into a control relationship with an issuer in whose securities the specialist is registered, such that the specialist's status as a significant shareholder may create conflicts of interest with respect to the specialist's affirmative and negative obligations to maintain a fair and orderly market in the security.

The language of the rule refers specifically to "any equity security" in which the specialist is registered, although a specialist may be registered in a particular security where a position in excess of the 5% and 10% parameters would not give rise to the control relationship/potential conflict of interest issue noted above. For example, a specialist registered in both a warrant and the underlying common stock could convert a 10% position in the warrant tinto the common stock, but the resulting position in the common stock would not approach the 10% control relationship threshold. Other examples could be found in convertible securities, or American Depository Receipts or Global Depository Receipts, where conversion of the security would result in a small position in relation to the overall number of shares outstanding in the common stock. The proposed amendment would delete the 10% threshold for such convertible securities, provided that, upon conversion, the position in the underlying common stock does not exceed 10% of the issue.[4]

Another example of a security in which 10% ownership would not present a control issue is presented by certain investment company units (the "units"). In File No. SR–NYSE–95–23,[5] the Exchange described certain entities organized as open-end management investment companies, which would hold securities comprising, or otherwise based on or representing an investment in, an index or portfolio of securities that represent the equity markets of a country. Each unit represents ownership of a portion of a portfolio of securities corresponding to an underlying "country index," as determined by a consortium of investment concerns and the Institute of Actuaries. Specialists may be required to enter into transactions in these securities to effect creation or redemption of the units, and these transactions may result in an ownership of greater than 10% of an issue of units. Pursuant to changes to Rule 460.10 that have been proposed in File No. SR–NYSE–95–23,[6] the specialists' activities in these transactions, however, would be subject to facilitation of their market-making responsibilities. In addition and as described more fully below,[7] Rule 460.10, as proposed to be amended hereby, would allow the specialist to engage in such transactions only according to the same terms and conditions as every other investor. The Exchange believes that given the open-ended nature of these entities in that securities will be issued on a continuous basis, the issue of control by a specialist would not be relevant. The proposed amendment would delete the 10% threshold for certain investment company units, provided that, the redemption of such units would not result in a position, directly or indirectly, in any equity security in which the specialist is registered exceeding the 10% threshold.[8]

The proposed amendment would also exempt from the 10% threshold, with Exchange permission, a specialist registered in a security where the corporate control relationship issue is absent, such as a foreign currency warrant, which trades in relationship to the value of that underlying currency, or an index warrant, which trades in relationship to the value of that underlying index. With respect to these securities, however, the specialist would not be permitted to acquire a position of more than 25% of the issue.

In these situations, the Exchange believes that the specialist should be permitted, to the extent consistent with the specialist's market making responsibilities, to exceed the 10% parameter in Rule 460.10 without being required to liquidate its position in the security.

b. Business Transactions

Rule 460.10 also prohibits a specialist, his or her member organization or any other member, allied member, approved person in such member organization or officer or employee from engaging in any business transaction with any company in whose stock the specialist is registered.[9] This prohibition is designed to prevent a potential conflict of interest with the specialist's market making obligations and any status he or she might attain through business dealings with the issuer. This prohibition, however, may be read to cover any type of business dealing between a specialist and an issuer, including one where the service or good is routinely available to the public and confers no special status to the recipient beyond that of a consumer. The Exchange proposes to amend the rule to permit the receipt of such routine business services by a specialist or other party listed in the rule. For example, a specialist organization may wish to contract for commercial insurance services from one of its specialty stock companies. The amended rule would permit such a transaction, as long as the type of service is generally available to other business entities.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.[10]

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(8) that an Exchange have rules that do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[11] The Exchange does not believe that market makers in derivative securities in other market centers are subject to restrictions such as those contained in Rule 460.10. Thus, the proposed rule change is consistent with these objectives in removing a barrier to competition without compromising investor protection or the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The New York Stock Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing.

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[8] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. § 78s(b)(1).

[2] *See* Letter from Donald Siemer, Director, Market Surveillance, NYSE to Glen Barrentine, Team Leader, Division of Market Regulation, SEC, dated February 23, 1996.

[3] By its terms, Rule 460.10 apply to the specialist, his or her member organization or any other member, allied member or approved person in such member organization or officer or employee thereof, individually or in the aggregate.

[4] The proposed rule does not change the requirement that if a specialist acquires 5% or more of an equity issue in which he or she is registered, he or she must give notice to market surveillance.

[5] *See* Securities Exchange Act Release No. 36032 (July 28, 1995), 60 FR 40403 (Aug. 8, 1995) (File No. SR–NYSE–95–23).

[6] In Release No. 34–36032, *supra*, note 5, the Exchange proposed, among other matters, to amend Rule 460.10 to provide that, notwithstanding the prohibition of Rule 460.10 on specialist engaging in any business transaction with any company in whose stock the specialists is registered, specialists registered in a security issued by an investment company may purchase and redeem the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

[7] *See* part II. A. 1. b. below.

[8] For purposes of Rule 460.10, on investment company unit refers to a security thet represents an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity, all as more completely described in proposed Section 703.16 of the Exchange's Listed Company Manual, which is proposed to be amended in Release No. 34–36032, *supra*, note 5.

[9] Under certain circumstances, NYSE Rule 98 affords exemptive relief to approved persons of a specialist organization from restrictions found in various NYSE rules, including certain provisions of NYSE Rule 460. *See* Securities Exchange Act Release No. 36043 (Aug. 1, 1995), 60 FR 40218 (August 7, 1995) (Order approving File No. NYSE–95–21).

[10] 15 U.S.C. § 78f(b)(5).

[11] 15 U.S.C. § 78f(b)(8).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–96–01 and should be submitted by March 27, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5153 Filed 3–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36899; File No. SR–PHILADEP–95–10]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the Customer Name Mailing Transfer Return Procedures

February 28, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 11, 1995, the Philadelphia Depository Trust Company ("PHILADEP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by PHILADEP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PHILADEP proposes to modify its Customer Name Mailing ("CNM") transfer return procedures to allow a participant to have securities certificates that are registered in a customer's name deposited directly into the participant's PHILADEP account.

[1] 15 U.S.C. § 78s(b)(1) (1988).

II. Self-Regulatory Organization's Statements of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PHILADEP included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PHILADEP has prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify the CNM transfer return procedures. Transfer return is the method by which PHILADEP returns to participants securities that the participant requested to be registered in customer name but for which the customer is no longer the beneficial owner. A typical transfer return situation arises when a customer requests that securities certificates be registered in its name. The participant notifies PHILADEP's CNM department of its request, and the CNM department notifies the appropriate transfer agent. The transfer agent issues the securities certificates in the customer's name and sends them back to PHILADEP. PHILADEP then mails the securities certificates to the customer.[3] If the participant notifies PHILADEP before PHILADEP has mailed the securities to the participant's customer that the customer has sold the securities, PHILADEP employs the transfer return procedures and returns the certificates directly to the participant. At this point, if the participant wants to deposit the certificates in its PHILADEP account, it must return the certificates to PHILADEP with the appropriate deposit information. PHILADEP will send the certificates to the transfer agent to have the certificates reregistered in PHILADEP's nominee name (*i.e.*, PHILADEP & Co.). The transfer agent will send the securities back to PHILADEP, and PHILADEP will deposit them in the participant's PHILADEP account.

The new transfer return procedures eliminate the need for PHILADEP to return to the participant securities certificates that the participant wants deposited in its PHILADEP account. Under the proposed modifications to the transfer return procedures, a participant now will be able to have the securities directly deposited into its PHILADEP account without first having the securities returned to it. For those securities registered in customer name that a participant chooses to directly deposit, the participant will send to PHILADEP a deposit ticket along with a Medallion Guaranteed letter of indemnity or a signed stock or bond power. PHILADEP will send the securities, which are registered in the participant's customer's name, to the transfer agent to be reregistered in the name of PHILADEP & Co. The transfer agent will send the securities back to PHILADEP, and PHILADEP will deposit them into the participant's PHILADEP account.

PHILADEP participants can choose this alternative transfer return procedure by including a letter "D" in the transmission with the Hold Mail Request. The letter "D" indicates to PHILADEP that the participant would like the item directly deposited into their deposit account at PHILADEP.

PHILADEP believes the proposed rule change is consistent with the requirements of the Act and specifically with Sections 17A(b)(3)(A) and (F)[4] because it fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and further assures the safeguarding of securities which are in the custody or control of PHILADEP.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not believe that the proposed rule change will have an impact on or impose a burden on competition.

[2] The Commission has modified the text of the summaries prepared by PHILADEP.

[3] Once PHILADEP receives these securities from the transfer agent, a participant may request that PHILADEP delay mailing these securities for a couple of days in order to verify that the customer in whose name the securities are registered still is the beneficial owner ("Hold Mail Request"). Many participants prefer to check the beneficial ownership of securities before PHILADEP mails them.

[4] 15 U.S.C. §§ 78q–1(b)(3)(A) and (F) (1988).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[5] of the Act and pursuant to Rule 19b–4(e)(4)[6] promulgated thereunder because the proposal effects a change in an existing service of PHILADEP that does not adversely affect the safeguarding of securities or funds in the custody or control of PHILADEP and does not significantly affect the respective rights or obligations or PHILADEP or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of PHILADEP. All submissions should refer to File Number SR–PHILADEP–95–10 and should be submitted by March 27, 1996.

[5] 15 U.S.C. § 78s(b)(3)(A)(iii) (1988).

[6] 17 CFR 240.19b–4(e)(4) (1995).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5152 Filed 3–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36903; File No. SR-Phlx–96–01]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Restrictions on Exercise for A.M-Settled Index Options

February 28, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on January 17, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Phlx has requested accelerated approval for the proposal. This Order approves the Phlx proposal on an accelerated basis and solicits comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rules 1042A (and corresponding Options Floor Procedure Advice G–1) and 1101A to clarify their application to a.m.-settled index options. In addition, Phlx also proposes to clarify in its applicable Rule Commentary that Phlx Super Cap index options trading hours extend until 4:15 p.m. The text of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[7] 17 CFR 200.30–3(a)(12) (1995).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently amended Rule 1006A, "Other Restrictions on Options Transactions and Exercises," to replace the term "business day" with "trading day" in order to correct the application of that rule to a.m.-settled index options.[1] As a result, restrictions on exercise are only in effect until the opening of business on the last business day before expiration, which is generally Friday for all index options. Following further review of the index options rules, however, the Exchange has identified two additional changes necessary to clarify the application of restrictions on exercise to a.m.-settled index options.

First, the Exchange proposes to amend Rule 1042A, "Exercise of Option Contracts," to replace the term "trading day" with "business day" in paragraph (b).[2] Paragraph (a) to Rule 1042A requires members to follow certain procedures when tendering exercise advices. Paragraph (b), however, states that the provisions of paragraph (a) do not apply on the last trading day before expiration. Although all index options expire on Saturday, the last trading day for a.m.-settled index options is Thursday. Under the current Rule, therefore, an investor who exercises an a.m.-settled option on Saturday by notifying his broker on Friday would be required to submit an exercise advice. Changing the term "trading day" to "business day" allows the Exchange to correct an unintended result and more clearly reflects that an exercise advice is not required for exercises of index options submitted on expiration Friday, whether a.m.-settled or p.m.-settled.

Second, the Exchange proposes to amend Commentary .01 to Rule 1101A, Terms of Option Contracts, to replace the language "including the business day prior to expiration" with "through the last trading day prior to expiration." This change is necessary because the old language implies that expiring a.m.-settled index options may trade on the Friday prior to expiration. By changing this language, the Exchange notes that broad-based index options to which the Commentary is applicable will be able

[1] *See* Securities Exchange Act Release No. 35827 (June 8, 1995), 60 FR 31336 (June 14, 1995).

[2] Phlx proposes to make the same change in Options Floor Procedure Advice G–1, Exercise Requirements.

to trade until 4:15 p.m. each business day, through the last trading day prior to expiration, which would be Friday for p.m.-settled index options and Thursday for a.m.-settled index options.

The Phlx notes that Rule 1101A(c) establishes that index options shall trade until 4:10 p.m.. Commentary .01 to this Rule extends the trading session to 4:15 p.m. for certain broad-based index options. Accordingly, the Phlx also proposes to amend the language in Rule 1101A(c) from "business day" to "trading day" in order to clarify that a.m.-settled index options which trade until 4:10 p.m. may not trade on the Friday prior to expiration.

Finally, the Exchange proposes to clarify in Commentary .01 to Rule 1101A that Super Cap Index options trade until 4:15 p.m.

2. Statutory Basis

The Exchange believes the proposed rule changes are consistent with Section 6(b) of the Act in general and further the objectives of Section 6(b)(5) in particular in that they are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[3] Specifically, the Commission notes that the change in terminology to Rules 1042A and 1101A achieves conformity with the language contained in Phlx Rule 1006A with respect to restrictions on exercise. As a result, exercise advices will not be required on the Friday before expiration, regardless of whether an option is a.m. or p.m.-settled, or whether it trades until 4:10 p.m. or 4:15 p.m. Furthermore, implementation of the proposal is necessary to effect the Exchange's intended procedures regarding exercise requirements and restrictions for index options.

The Commission also believes that the Exchange's proposed rule text clarification that trading hours for Super Cap Index options extend until 4:15 p.m. is reasonable. The Commission has previously approved the trading of Super Cap Index options to 4:15 p.m.[4] Therefore, the amendment is technical in nature and does not raise any new or unique regulatory issues.

The Commission finds good cause to approve the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, the Commission finds that because the changes in terminology to Rules 1042A and 1101A simply bring these Rules into conformity with Phlx Rule 1006A and other options exchanges, and the Phlx rule text clarification that Super Cap Index Options trade until 4:15 p.m. is technical in nature, they do not raise any new or unique regulatory issues. Accordingly, the Commission believes it is consistent with the Act to approve the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–96–01 and should be submitted March 27, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[5] that the proposed rule change (SR–Phlx–96–01) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5219 Filed 3–5–96; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. § 78f(b)(5) (1988).

[4] *See* Securities Exchange Act Release No. 36369 (Oct. 13, 1995).

[5] 15 U.S.C. § 78s(b)(2) (1988).

[6] 17 CFR 200.30–3(a)(12) (1994).

DEPARTMENT OF STATE

[Public Notice 2353]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic documentation will meet in the Department of State on Thursday, March 21, 1996 in Conference Room 1205 and Friday, March 22, 1996, in Conference Room 1105.

The Committee will meet in open session from 9 a.m. on the morning of Thursday, March 21, 1996, until 12 noon. The remainder of the Committee's sessions from 1:30 p.m. on Thursday, March 21 until 1 p.m. Friday, March 22, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities will be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail histoff@ix.netcom.com).

Dated: February 27, 1996.

William Z. Slany,

Executive Secretary.

[FR Doc. 96–5174 Filed 3–5–96; 8:45 am]

BILLING CODE 4710–11–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets OST–95–666 and OST–95–667]

APPLICATIONS OF SUNWORLD INTERNATIONAL AIRLINES, INC. FOR ISSUANCE OF NEW CERTIFICATE AUTHORITY

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 96–2–58)

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Sunworld International Airlines, Inc., fit, willing, and able, and (2) awarding it certificates of public convenience and necessity to engage in interstate and foreign scheduled air transportation of persons, property, and mail, for a period of one year.

DATES: Persons wishing to file objections should do so no later than March 7, 1996.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–95–666 and OST–95–667 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590, (202) 366–9721.

Dated: February 29, 1996.

Charles A. Hunnicutt

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96–5192 Filed 3–5–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Special Committee 184]

[RTCA, Inc.; Minimum Performance and Installation Standards for Runway Guard Lights

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. Appendix 2), notice is hereby given for a Special Committee 184 meeting to be held March 26, 1996, starting at 9:30 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: (1) Administrative Announcements; (2) Chairman's Introductory Remarks; (3) Review and Approval of Meeting Agenda; (4) Review and Approval of Minutes of the Previous Meeting; (5) Review Work Assignments from the Previous Meeting; (6) Complete All Sections of Draft in Preparation for Distribution for Comment; (7) Other Business; (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434) (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on February 28, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–5123 Filed 3–5–95; 8:45 am]

BILLING CODE 4810–13–M

Intent to Rule on Application to Use the Revenue From a Passenger Facility Charge (PFC) Collected at Los Angeles International Airport (LAX), Los Angeles, California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Los Angeles International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 15, 1996.

ADDRESSES: Comments on this application may be mailed in triplicate to the following mailing address: Federal Aviation Administration, Airports Division, P.O. Box 92007, WWPC, Los Angeles, CA 90009, or delivered in triplicate to the following street address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Hawthorne, CA 90261.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jerald K. Lee, Deputy Executive Director, Los Angeles Department of Airports, One World Way, Los Angeles, CA 90045.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the, Los Angeles Department of Airports under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Milligan, Supervisor, Standards Section, AWP–621m Airports Division, Federal Aviation Administration, 15000 Aviation Blvd., Hawthorne, CA 90261, Tel (310) 725–3621. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at LAX under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 14, 1996, the FAA determined that the application to use the revenue from a PFC submitted by the Los Angeles Department of Airports was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 31, 1996.

The following is a brief overview of the application (PFC application [?]

Level of PFC: $3.00.

Actual charge effective date: July 1, 1993.

Actual charge expiration date: December 31, 1995.

Total estimated net PFC revenue collected: $168,000,000.

Total estimated PFC revenue to be used: $116,000,000.

The balance of approximately $52,000,000 in PFC revenue is concurrently proposed for airfield projects at Ontario International Airport (ONT) and LAX under a separate PFC application. This is part of an informal resolution process in accordance with section 158.83 of FAR Part 158.

Brief description of proposed project: ONT Terminal Development Program.

Class or classes of air carriers which the public agency has requested not be required to collect: PFCs: Air Taxi/Commercial Operators (ATCO) filing Form 1800–31, including: American Trans Air Execujet, CFI, Inc., Chrysler Aviation, Corporate Flight, Inc., Elliott Aviation, Geneva International, Key Air, KMR Aviation, Louisiana Pacific

Corporation, Mayo Aviation, Inc., Mcathco Enterprises, Inc., Modesto Executive Air Charter, Morgan Equipment, Raleigh Jet Charter, Samaritan Health Services, Valko, Inc., Windstar Aviation Corp., and Yecny Enterprises, Inc.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Los Angeles Department of Airports, Los Angeles International Airport.

Issued in Los Angeles, California on February 16, 1996.

Robert C. Bloom,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 96–5124 Filed 3–5–96; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 95–94; Notice 2]

Decision that Nonconforming 1991 BMW 735IL Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1991 BMW 735IL passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1991 BMW 735IL passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1991 BMW 735IL), and they are capable of being readily altered to conform to the standards.

EFFECTIVE DATE: March 6, 1996.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Champagne Imports, Inc. of Landsale, Pennsylvania (Registered Importer R–90–009) petitioned NHTSA to decide whether 1991 BMW 735IL passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on December 11, 1995 (60 FR 63568) to afford an opportunity for public comment. The Reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–146 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1991 BMW 735IL not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1991 BMW 735IL originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 29, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–5128 Filed 3–5–96; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–96; Notice 2]

Decision that Nonconforming 1992 and 1993 Mercedes-Benz 500SEL Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1992 and 1993 Mercedes-Benz 500SEL passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1992 and 1993 Mercedes-Benz 500SEL passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S.-certified versions of the 1992 and 1993 Mercedes-Benz 500SEL), and they are capable of being readily altered to conform to the standards.

EFFECTIVE DATE: March 6, 1996.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–3766–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to decide whether 1992 and 1993 Mercedes-Benz 500SEL passenger cars are eligible for importation into the United States. NHTSA publishes notice of the petition on December 15, 1995 (60 FR 64468) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–147 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1992 and 1993 Mercedes-Benz 500SEL (Model ID 140.051) passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1992 and 1993 Mercedes-Benz 500SEL passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on February 29, 1996.

Marilynne Jacobs,

Director Office of Vehicle Safety Compliance.

[FR Doc. 96–5129 Filed 3–5–96; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Pipeline Safety User Fees

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice

SUMMARY: This notice announces that the fiscal year 1996 user fee assessments for pipeline facilities will be mailed to pipeline operators on or about February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Lisa Kokoszka, (202) 366–4554, U.S. Department of Transportation, RSPA, Office of Pipeline Safety, 400 Seventh Street, S.W., Washington, DC 20590, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: The fee to be assessed for Natural Gas Transmission, Hazardous Liquid and Liquefied Natural Gas (LNG) are as indicated below:

Natural gas transmission pipelines: $77.49 per mile (based on 290,924 miles of pipeline). Hazardous liquid pipelines: $49.65 per mile (based on 155,649 miles of pipeline).

LNG is based on the number of plants and total storage capacity:

Total Storage Capacity BBLS	Assessment/Plant
<10,000	= $1,250
10,000–100,000	= $2,500
100,000–250,000	= $3,750
250,000–500,000	= $5,000
>500,000	= $7,500

Section 60301 of Title 49, United States Code [1], authorizes the assessment and collection of pipeline user fees to fund the pipeline safety activities conducted under 49 U.S.C. 60101 *et seq.* RSPA assesses each operator of regulated interstate and intrastate natural gas transmission pipelines (as defined in 49 CFR Part 192), and hazardous liquid pipelines carrying petroleum, petroleum products, anhydrous ammonia and carbon dioxide (as defined in 49 CFR Part 195) a share of the total Federal pipeline safety program costs in proportion to the number of miles of pipeline each operator has in service. Operators of LNG facilities are assessed based on total storage capacity (as defined in 49 CFR Part 193).

A final rule on hazardous liquid pipelines operating at 20 percent or less of specified minimum yield strength (low stress pipelines), was published in the **Federal Register** on July 12, 1994. This rule became effective on August 11, 1994. Low Stress Pipelines include pipelines that carry highly volatile liquids (HVL), pipelines or pipeline segments in populated areas, and pipelines or pipeline segments in navigable waterways. Onshore rural gathering pipelines, pipelines that operate at less than 20% of SMYS (non-HVL located outside populated areas and navigable waterways), and other pipelines excluded from regulation by 49 CFR 195, should not be included.

In accordance with the provisions of 49 U.S.C. 60301, Departmental resources were taken into consideration for determining total program costs. The apportionment ratio between gas and liquid, as shown below, is a result of increased program resources to the hazardous liquid program because of environmental requirements following passage of the Pipeline Safety Act of 1992 (Pub. L. 102–508):

Year(s)	General program costs (Gas)	General program costs (Liquid)
1986–1990.	80%	20%
1991–1992.	75%	25%
1993	75% (3/4 yr.)	25% (3/4 yr)
	60% (1/4 yr.)	40% (1/4 yr)
1994	60%	40%
1995	75%	25%
1996	65%	35%

Collection Dates: In accordance with the regulations of the Department of the Treasury, user fees will be due 30 days after the date of the assessment. Interest, penalties, and administrative charges will be assessed on delinquent debts in accordance with 31 U.S.C. 3717.

Issued in Washington, DC on February 29, 1996.

Dr. D.K. Sharma,

Administrator, Research and Special Programs Administration.

[FR Doc. 96–5193 Filed 3–5–96; 8:45 am]

BILLING CODE 4910–60–P

[1] Formerly section 7005 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub.L. 99–272). The change in citation is the result of the enactment, on July 5, 1994, of Pub. L. 103–272, which codified various transportation laws.

Surface Transportation Board [1]

[STB Finance Docket No. 32873]

Arkansas-Oklahoma Railroad Company—Lease and Trackage Rights Exemption—Missouri Pacific Railroad Company and the State of Oklahoma

Arkansas-Oklahoma[1] Railroad Company (AOK), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to assume the Missouri Pacific Railroad's (MP) lease of a rail line which is owned by the State of Oklahoma between Howe, OK, at milepost 295.36 and McAlester, OK, at milepost 364.96, a distance of 69.60 miles. The transaction also includes incidental AOK trackage rights for interchange purposes over MP's Shawnee Branch rail line between milepost 364.96 and milepost 370.5 and between milepost 566.00 and milepost 563.00, a distance of 8.54 miles.

Consummation is scheduled to occur on or after the March 1, 1996 effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32873, must be filed with the Office of the Secretary, Surface Transportation Board, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Kelley E. O'Brien, Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W., Washington, DC 20006.

Decided: February 29, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–5255 Filed 3–5–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

[STB Finance Docket No. 32872]

Minnesota Commercial Railway Company—Trackage Rights Exemption—Soo Line Railroad Company

Minnesota Commercial Railway Company (MNCR) has filed a verified notice under 49 CFR 1180.2(d)(7) to acquire overhead trackage rights from the Soo Line Railroad Company (Soo) over approximately 7.60 miles between milepost 416.14+/− near Merriam Park and milepost 408.54+/− near East Hoffman Avenues in St. Paul, Ramsey County, MN. The trackage rights were scheduled to become effective on February 29, 1996.

The notice states that the MNCR's use of the Soo track will enable MNCR to operate trains it handles in interchange with other carriers.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32872, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Larry D. Starns, Esq., 1000 Soo Line Building, 105 South Fifth Street, Minneapolis, MN 55402.

Decided: February 29, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–5256 Filed 3–5–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323.

DEPARTMENT OF THE TREASURY

Submission for OMB review; comment request

February 22, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Offices/Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1505–0063.
Form Number: TD F 90–22.1.
Type of Review: Extension.
Title: Report of Foreign Bank and Financial Accounts.
Description: The Department of the Treasury requires the information on this form in order to assist it in its efforts to prevent, detect, and enforce laws to combat money laundering and other financial crimes.
Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 140,000.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 11,510,025 hours.
Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices,Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–5246 Filed 3–5–96; 8:45 am]

BILLING CODE 4810–25–P

Submission for OMB review; comment request

February 28, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. CUSTOMS SERVICE (CUS)

OMB Number: 1515–0208.
Form Number: None.
Type of Review: Extension.
Title: North American Free Trade Agreement Duty-Deferral.
Description: The duty deferral claimant will make application to the U.S. Customs for excess duty paid on NAFTA eligible good which has been exported to another NAFTA country. This procedure of refunds will become effective for goods into Canada (Effective 01/01/96) and Mexico (Effective 01/01/01).
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 1,783.
Estimated Burden Hours Per Respondent/Recordkeeper: 15 minutes.
Frequency of Response: Other (as needed).
Estimated Total Reporting/Recordkeeping Burden: 250,065 hours.
Clearance Officer: Norman Waits (202) 927–1551, U.S. Customs Service, Printing and Records Management Branch, Room 6426, 1301 Constitution Avenue, N.W., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–5247 Filed 3–5–96; 8:45 am]

BILLING CODE 4820–02–P

Submission for OMB Review; Comment Request

February 28, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0141.
Form Number: ATF F 2635 (5620.8).
Type of Review: Extension.
Title: Claim—Alcohol, Tobacco and Firearms Taxes.
Description: This form is used by taxpayers to show the basis for a credit remission and allowance of tax on a loss of taxable articles. To request a refund or abatement on taxes excessively or erroneously collected. To request a drawback of tax paid on distilled spirits used in the production of non-beverage products. This form is submitted along with supporting documents to indicate the reason a credit of Federal tax should be made.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions
Estimated Number of Respondents: 10,000.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion, Quarterly, Monthly.
Estimated Total Reporting Burden: 10,000 hours.
OMB Number: 1512–0178.
Form Number: ATF F 4483 (5300.5).
Type of Review: Extension.
Title: Reporting of Firearms Transactions.
Description: This form is used to evaluate firearms transactions by licensee when the Regional Director (Compliance) determines the need to do so. It is prepared from existing records and submitted to the official.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 250.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 250 hours.
OMB Number: 1512–0203.
Recordkeeping Requirement ID Number: ATF REC 5110/06.
Type of Review: Extension.
Title: Distilled Spirits Plants—Excise Taxes.
Description: This collection of information is necessary to account for and verify taxable removals of distilled spirits. The data is used to audit tax payments.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 133.
Estimated Burden Hours Per Recordkeeper: 26 hours.
Frequency of Response: Weekly.
Estimated Total Recordkeeping Burden: 3,458 hours.
OMB Number: 1512–0204.
Form Number: ATF F 5110.38.
Type of Review: Extension.
Title: Claim—Alcohol, Tobacco and Firearms Taxes.
Description: This form is used by taxpayers to show the basis for a credit remission and allowance of tax on a loss of taxable articles. To request a refund or abatement on taxes excessively or erroneously collected. To request a drawback of tax paid on distilled spirits used in the production of non-beverage products. This form is submitted along with supporting documents to indicate the reason a credit of Federal tax should be made.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions
Estimated Number of Respondents: 10,000.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion, Quarterly, Monthly.
Estimated Total Reporting Burden: 10,000 hours.
OMB Number: 1512–0178.
Form Number: ATF F 4483 (5300.5).
Type of Review: Extension.
Title: Reporting of Firearms Transactions.
Description: This form is used to evaluate firearms transactions by licensee when the Regional Director (Compliance) determines the need to do so. It is prepared from existing records and submitted to the official.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 250.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 250 hours.
OMB Number: 1512–0203.
Recordkeeping Requirement ID Number: ATF REC 5110/06.
Type of Review: Extension.
Title: Distilled Spirits Plants—Excise Taxes.
Description: This collection of information is necessary to account for and verify taxable removals of distilled spirits. The data is used to audit tax payments.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 133.
Estimated Burden Hours Per Recordkeeper: 26 hours.
Frequency of Response: Weekly.
Estimated Total Recordkeeping Burden: 3,458 hours.
OMB Number: 1512–0204.
Form Number: ATF F 5110.38.
Type of Review: Extension.
Title: Claim—Alcohol, Tobacco and Firearms Taxes.
Description: This form is used by taxpayers to show the basis for a credit remission and allowance of tax on a loss of taxable articles. To request a refund or abatement on taxes excessively or erroneously collected. To request a drawback of tax paid on distilled spirits used in the production of non-beverage products. This form is submitted along with supporting documents to indicate the reason a credit of Federal tax should be made.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions
Estimated Number of Respondents: 10,000.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion, Quarterly, Monthly.
Estimated Total Reporting Burden: 10,000 hours.
OMB Number: 1512–0178.
Form Number: ATF F 4483 (5300.5).
Type of Review: Extension.
Title: Reporting of Firearms Transactions.
Description: This form is used to evaluate firearms transactions by licensee when the Regional Director (Compliance) determines the need to do so. It is prepared from existing records and submitted to the official.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 250.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 250 hours.
OMB Number: 1512–0203.
Recordkeeping Requirement ID Number: ATF REC 5110/06.
Type of Review: Extension.
Title: Distilled Spirits Plants—Excise Taxes.
Description: This collection of information is necessary to account for and verify taxable removals of distilled spirits. The data is used to audit tax payments.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 133.
Estimated Burden Hours Per Recordkeeper: 26 hours.
Frequency of Response: Weekly.
Estimated Total Recordkeeping Burden: 3,458 hours.
OMB Number: 1512–0204.
Form Number: ATF F 5110.38.

Type of Review: Extension.

Title: Formula for Distilled Spirits Under the Federal Alcohol Administration Act (Supplemental).

Description: ATF F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. The form describes the person filing, type of product to be made, and restrictions to the labeling and manufacture. The form is used by ATF to ensure that a product is made and labeled properly and to audit distilled spirits operations.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,000 hours.

OMB Number: 1512–0369.

Recordkeeping Requirement ID Number: ATF REC 5300/1.

Type of Review: Extension.

Title: Licensed Firearms Manufacturers Records of Production, Disposition, and Supporting Data.

Description: Firearms manufacturers' record is a permanent record of firearms manufactured and records of their disposition. These records are vital to support ATF's mission to inquire into the disposition of any firearms in the course of a criminal investigation.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 1,380.

Estimated Burden Hours Per Recordkeeper: 3 minutes per line item.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 72,023 hours.

OMB Number: 1512–0386.

Recordkeeping Requirement ID Number: ATF REC 7570/1.

Type of Review: Extension.

Title: Records of Acquisition and Disposition—Registered Importers of Arms, Ammunition and Implements of War on the U.S. Munitions Imports List.

Description: These records of items that are listed on the U.S. Munitions List are used to account for the items by the Registered Import and this Bureau in investigation to insure compliance with the Federal Law.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 50.

Estimated Burden Hours Per Recordkeeper: 5 hours.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 250 hours.

Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–5249 Filed 3–5–96; 8:45 am]

BILLING CODE 4810–31–P

Office of Inspector General

Privacy Act of 1974, as Amended; System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Revised System of Records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, the Office of Inspector General (OIG) gives notice of a revised system of records entitled General Allegations and Investigative Records—Treasury/DO.190. The system notice was last published in its entirety in the **Federal Register**, at 60 FR 56664 on November 9, 1995.

DATES: This notice will be adopted without further publication in the **Federal Register** on April 15, 1996, unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: Comments should be sent to Office of Inspector General, Assistant Inspector General for Resources, Room 7119, 1201 Constitution Avenue, NW, Washington, DC 20220. Comments received will be available for inspection in the Office of Inspector General, Resources Directorate, Room 7102, 1201 Constitution Avenue, NW, Washington, DC, during the hours of 9 a.m. to 3 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rennay Nicholas, Resources Directorate, (202) 927–5210.

SUPPLEMENTARY INFORMATION:

The General Allegations and Investigative Records system is being revised to reflect additional system locations, authority for maintenance of the system, and revisions to the storage, retrievability, retention, and system manager sections. The revisions are necessary to accommodate the OIG's expanded size and increased responsibility, which resulted in part from the Inspector General Act Amendments of 1988 (Pub. L. 100–504).

To adequately fulfill its mission, the OIG's Office of Investigations has opened offices in five locations around the country. Keeping investigative files in these locations is essential to the successful operation and adequate record keeping of the Office of Investigations.

The Privacy Act notice data element "Purpose(s)" is being added to the notice to conform with requirements of the Act.

The storage and safeguards of magnetic media have been changed to increase security over those indices.

The investigative index, which previously had been maintained on index cards, has been automated. The automation allows for more rapid retrieval of case numbers and status synopses. Retrievability by case agent's name and number is being added to further assist OIG officials in evaluating workload and case status information. In addition, a correspondence tracking system called the Correspondence Allegations and Investigative Tracking System (CAITS) was developed to more efficiently control investigative correspondence. CAITS is accessed through the OIG's Management Information System (DO.191) menu. However, the records reside in Treasury/DO .190—General Allegations and Investigative Records system.

The retention period for investigative indices stored on magnetic media has been changed to be retained indefinitely. The records will be updated as necessary.

The system manager responsibility has been delegated to the Assistant Inspector General for Investigations for increased office efficiency.

The specific changes to this system of records are set forth below:

Treasury/DO .190

SYSTEM NAME:

General Allegations and Investigative Records—Treasury/DO.

SYSTEM LOCATION:

Office of Inspector General (OIG), Assistant Inspector General for Investigations, 1201 Constitution Avenue, NW, Washington, DC 20220; Regional Inspectors General for Investigations in Washington, DC; Houston, TX; Los Angeles, CA; and Chicago, IL; and Office of Investigations field offices in New York, NY, and Glynco, GA. Addresses may be obtained from the system manager.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as Amended, 5 U.S.C.A. App.3.

PURPOSE(S):

The records and information collected for and maintained in this system are used to (a) receive allegations of violations of the Department's rules of conduct, the Office of Personnel Management merit system, or any other criminal or civil misconduct and to (b) prove or disprove, to the extent possible, allegations which the OIG receives that are made against Department of the Treasury employees.

* * * * *

STORAGE:

Paper records in file jackets are maintained in a secured locked room. Also, magnetic media maintained on the Case Tracking Systems are password protected, secured by an internal lock and locked in a secured room. Backup of the magnetic media is maintained in a locked safe.

RETRIEVABILITY:

Alphabetically by name of subject or complainant, by case number, and by special agent name and/or employee number.

SAFEGUARDS:

Paper records and word processing disks are maintained in locked safes and all access doors are locked when offices are vacant. Automated records are controlled by computer security programs which limit access to authorized personnel who have a need for such information in the course of their duties. The records are available to Office of Inspector General personnel who have an appropriate security clearance on a need-to-know basis.

RETENTION AND DISPOSAL:

Investigative files and paper indices are stored on-site for 3 years. Indices to those files are stored on-site on magnetic media for an indefinite time. The magnetic media will be retained indefinitely; however, they will be updated periodically to reflect changes. Upon expiration of their respective retention periods, the investigative files are transferred to the Federal Records Center, Suitland, Maryland, for storage and in most instances destroyed by burning, maceration or pulping when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS(S):

Assistant Inspector General for Investigations, Room 7320, 1201 Constitution Avenue, NW, Washington, DC 20220.

* * * * *

Dated: February 27, 1996.

Alex Rodriquez,

Deputy Assistant Secretary (Administration).

[FR Doc. 96–5159 Filed 03–05–95; 8:45 am]

BILLING CODE: 4810–25–F

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning Excise Tax Return-Alcohol and Tobacco.

DATES: Written comments should be received on or before May 6, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert Ruhf, Tax Compliance Branch, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Excise Tax Return-Alcohol and Tobacco.

OMB Number: 1512–0467.

Form Number: ATF F 5000.24.

Abstract: Businesses report their Federal excise tax liability on distilled spirits, beer, wine, tobacco products, or cigarette papers and tubes on ATF F 5000.24. ATF needs this form to identify the taxpayer and to determine the amount and type of taxes due and paid.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2800.

Estimated Time Per Respondent: 42 minutes.

Estimated Total Annual Burden Hours: 35,800.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: February 29, 1996.

Bradley A. Buckles,

Acting Director.

[FR Doc. 96–5229 Filed 3–5–96; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Records and Supporting Data: Daily Summaries, Records of Production, Storage, and Disposition, and Supporting Data By Licensed Explosives Manufacturers and Manufacturers (Limited).

DATES: Written comments should be received on or before May 6, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions

should be directed to Janice L. Fields, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8052.

Title: Records and Supporting Data: Daily Summaries, Records of Production, Storage, and Disposition, and Supporting Data By Licensed Explosives Manufacturers and Manufacturers (Limited).

OMB Number: 1512–0372.

Recordkeeping Requirement ID Number: ATF REC 5400/2.

Abstract: These records show daily activities in the manufacture, use, storage, and disposition of explosive materials by manufacturers and manufacturers (limited) covered under 18 U.S.C. Chapter 40. The records are used to show where and to whom explosive materials are sent, thereby ensuring that any diversion will be readily apparent and, if lost or stolen, ATF will be immediately notified on discovery of the loss or theft. ATF requires that records be kept 5 years from date of transaction.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,053.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 68,835.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: February 29, 1996.

Bradley A. Buckles,

Acting Director.

[FR Doc. 96–5230 Filed 3–5–96; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application and Permit to Ship Puerto Rican Spirits to the United States Without Payment of Tax.

DATES: Written comments should be received on or before May 6, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Lou Blake, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Application and Permit to Ship Puerto Rican Spirits to the United States Without Payment of Tax.

OMB Number: 1512–0200.

Form Number: ATF F 5110.31.

Abstract: ATF F 5110.31 is used to allow a person to ship spirits in bulk into the U.S. The form identifies the person in Puerto Rico from where shipments are to be made, the person in the U.S. receiving the spirits, amounts of spirits to be shipped, and the bond of the U.S. person to cover taxes on such spirits.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 450.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: February 29, 1996.

Bradley A. Buckles,

Acting Director.

[FR Doc. 96–5231 Filed 3–5–96; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Excise Tax Return-Alcohol and Tobacco Products (Puerto Rico).

DATES: Written comments should be received on or before May 6, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert Ruhf, Tax Compliance Branch, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–8220.

SUPPLEMENTARY INFORMATION:

Title: Excise Tax Return-Alcohol and Tobacco Products (Puerto Rico).

OMB Number: 1512–0497.

Form Number: ATF F 5000,25.

Abstract: Businesses in Puerto Rico report their Federal excise tax liability on distilled spirits, beer, wine, tobacco products, or cigarette papers and tubes on ATF F 5000.25. ATF needs this form to identify the taxpayer and to determine the amount and type of taxes due and paid.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 30.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 130.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: February 29, 1996.

Bradley A. Buckles,

Acting Director.

[FR Doc. 96–5232 Filed 3–5–96; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Manufacturer of Tobacco Products Monthly Report.

DATES: Written comments should be received on or before May 6, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Clifford A. Mullen, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Manufacturer of Tobacco Products Monthly Report.

OMB Number: 1512–0163.

Form Number: ATF F 5210.5 (3068).

Abstract: ATF F 5210.5 (3068) documents a tobacco products manufacturer's accounting of cigars and cigarettes. The form describes the tobacco products manufactured, articles produced, received, disposed of and statistical classes of large cigars. ATF examines and verifies entries on these reports so as to identify unusual activities, errors and omissions.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 101.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1212.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: February 29, 1996.

Bradley A. Buckles,

Acting Director.

[FR Doc. 96–5233 Filed 3–5–96; 8:45 am]

BILLING CODE 4810–31–P

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federal register

Wednesday
March 6, 1996

Part II

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone; Servicing of Motor Vehicle Air Conditioners; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5426–1]

RIN 2060–AF35

Protection of Stratospheric Ozone; Servicing of Motor Vehicle Air Conditioners

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On July 14, 1992, EPA published a final rule in the **Federal Register** establishing standards and requirements regarding the servicing of motor vehicle air conditioners (MVACs) that use chlorofluorocarbon-12 (CFC–12), a class I refrigerant, and establishing restrictions on the sale of small containers of class I or class II refrigerants, pursuant to section 609 of the Clean Air Act, as amended (the Act).

Pursuant to section 609(b)(1), today's proposed rule would establish standards and requirements for the servicing of motor vehicle air conditioners that use class I or class II substances other than CFC–12 as a refrigerant, or use HFC–134a, a non-ozone-depleting substitute for CFC–12, or any other substitute for a class I or class II substance used in an MVAC.

Today's proposed rule also would require that at motor vehicle disposal facilities, either section 609 certified technicians, or employees, owners or operators of the facilities, be used to recover refrigerant (whether CFC–12 or a substitute) from motor vehicles located at the facilities and bound for disposal. The recovered refrigerant would have to be reclaimed or recycled using approved equipment prior to use in recharging an MVAC or MVAC-like appliance. The proposal would also establish standards for owners and operators of salvage yards, scrap recycling facilities, landfills or other facilities where such vehicles may be located, to sell refrigerant recovered from such vehicles to section 609 certified technicians. Finally, the proposal would establish standards for mobile recovery and recycling service.

Today's proposal increases industry flexibility in selecting and purchasing proper recovery and recycling equipment by establishing standards for equipment that recovers and/or recycles additional refrigerants, and approving independent testing organizations that certify such equipment.

By promoting the recycling or reclamation of all refrigerants from MVACs, this proposed rule will help to lower the risk of depletion of the stratospheric ozone layer and the possibility of global warming, thus diminishing potentially harmful effects to human health and the environment, including increased incidence of certain skin cancers and cataracts.

DATES: Written comments on this proposed rule must be received by April 5, 1996, unless a hearing is requested by March 18, 1996. If a hearing is requested, written comments must be received 30 days after the hearing. Individuals wishing to request a hearing must contact the Stratospheric Ozone Information Hotline at 1–800–296–1996 between 10 a.m. and 4 p.m., Monday through Friday, Eastern time, by March 18, 1996. To find out whether a hearing will take place, contact the Stratospheric Ozone Information Hotline after March 19, 1996.

ADDRESSES: Written comments and data should be sent to Public Docket No. A–95–34. This docket is located in Room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street, S.W. Washington, D.C. 20460. Dockets may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Christine Dibble, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street S.W., Washington, D.C. 20460. (202) 233–9147 or fax (202) 233–9577 or electronically at dibble.christine@epamail.epa.gov. Comments and data submitted electronically will not be accepted. The Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
  A. Statutory Authority
  B. July 14, 1992 Final Rule and May 2, 1995 Supplemental Final Rule
II. Today's Proposed Rule
  A. Service Practices
  1. The Handling of Refrigerant From Motor Vehicles Bound for Disposal and Located at Motor Vehicle Disposal Facilities
  2. Mobile Recovery and Recycling
  B. Standards for Recover/Recycle Equipement
  1. Standard for HFC–134a Recover/Recycle Equipment
  2. Standard for HFC–134a Recover-only Equipment
  3. Standard for Automotive Refrigerant Recycling Equipment Intended for Use With Both CFC–12 and HFC–134a
  4. Standard for Recover-only Equipment That Extracts Class I or Class II Refrigerants Other Than CFC–12
  C. Substantially Identical Equipment
  D. Approved Independent Testing Organizations
  E. Technician Training and Certification
  F. Sales Restrictions
III. Summary of Supporting Analyses
  A. Executive Order 12866
  B. Regulatory Flexibility Analysis
  C. Paperwork Reduction Act
  D. Unfunded Mandates Reform Act

I. Background

A. Statutory Authority

Title VI of the Act is designed to protect the stratospheric ozone layer. Section 609 of the Act requires the Administrator to promulgate regulations establishing standards and requirements regarding the servicing of MVACs. Section 609 defines "refrigerants" to include, as of November 14, 1995, any substance that substitutes for a class I or class II substance used in an MVAC. The statute requires that as of that date: Persons servicing an MVAC system for consideration must use approved recover/recycling equipment. To be approved, equipment must be certified by the Administrator, or by an independent standards testing organization approved by the Administrator, or the equipment must be substantially identical to such equipment if it was purchased prior to the date EPA proposed standards applicable to the equipment. To be certified, the equipment must meet standards established by the Administrator, which shall be at least as stringent as Society of Automotive Engineers (SAE) standard J1990. In addition, any such servicing of an MVAC system for consideration must be performed by a technician trained and certified according to standards established by the Administrator. EPA also sets standards for certification and training, and approves organizations to conduct such training if they meet the Agency's standards. Finally, section 609 prohibits the sale of small containers of class I or class II substances used in MVACs, unless sold to section 609 certified technicians.

B. July 14, 1992 Final Rule and May 2, 1995 Supplemental Final Rule

On July 14, 1992, the Agency published a final rule initially implementing section 609. In that rule, the Agency prohibited the repair or servicing of any MVAC for consideration if such repair or servicing involved the air conditioner refrigerant, unless performed by a trained and certified technician who properly uses approved refrigerant recycling equipment. The Agency also prohibited the sale or distribution of any class I or class II substance suitable for use in an MVAC that is in a container of less than 20 pounds to anyone other than a properly trained and certified section 609 technician.

The July 14, 1992 final rule defines "approved refrigerant recycling equipment" as equipment that recovers and recycles CFC–12 refrigerant and that is certified by the Administrator or by an independent standards testing organization approved by the Agency as meeting the standards set forth in appendix A in the rule. Refrigerant recycling equipment is also considered approved if it was purchased before September 4, 1991, and is substantially identical to the certified equipment. Only equipment certified as meeting the standards or meeting the criteria for substantially identical equipment is approved for use in the servicing of motor vehicle air conditioners under section 609 of the Act.

The July 14, 1992 rule also establishes standards by which (i) an independent standards testing organization may apply to the Agency for approval to test and approve refrigerant recycling equipment, and (ii) a training and certification program may apply to the Agency for approval to train and certify technicians in the proper use of refrigerant recycling equipment for MVACs. Finally, the rule establishes various recordkeeping and reporting requirements.

Underwriters Laboratories (UL) and ETL Testing Laboratories (ETL) are the approved independent standards testing organizations that currently certify equipment using the standards that appear in appendix A of the rule. These standards apply to recover/recycle equipment that extracts CFC–12 refrigerant from a motor vehicle air conditioner and cleans the refrigerant on-site. The regulatory standards are based on those developed by SAE and cover service procedures for recovering CFC–12 (SAE J1989, issued in October 1989), test procedures to evaluate recover/recycle equipment (SAE J1990 issued in October 1989 and revised in 1991) and a purity standard for recycled CFC–12 refrigerant (SAE J1991, issued in October 1989).

As stated above, section 609 prohibits the sale or distribution of any class I or class II substance suitable for use in an MVAC that is in a container of less than 20 pounds to anyone other than a properly trained and certified section 609 technician. It should be noted, however, that EPA expanded this prohibition in the regulations published on May 14, 1993 at 58 FR 28712 under section 608 of the Act (40 CFR 82.154(n)), which prohibits the sale as of November 14, 1994 of any size container of a class I or class II substance, including refrigerant blends that include class I or class II substances, to other than a section 608 or section 609 certified technician.

The July 14, 1992 rule reserved standards for equipment that extracts but does not recycle CFC–12 refrigerant (recover-only equipment) in Appendix B to the rule. On May 2, 1995, EPA published a final rule establishing regulatory standards, again based on those developed by SAE, which apply to certification of recover-only equipment. Specifically, for recover-only equipment, the Agency adopted (i) the recommended service procedure for the containment of CFC–12 described in SAE J1989 and already set forth in appendix A, and (ii) a standard that describes test procedures to evaluate recover-only equipment that is based on SAE J2209 (issued in June, 1992).

II. Today's Proposed Rule

Today's proposed rule further implements section 609(b)(1) of the Act. This section of the preamble reviews the major elements of the proposal. Specifically, the proposed regulations would:

(i) explicitly permit and establish standards for (a) section 609 certified technicians to recover refrigerant (whether CFC–12 or a substitute) from motor vehicles bound for disposal (including vehicles that contain MVAC-like appliances) and recycle that refrigerant in their service facilities for use, and (b) owners or operators of salvage yards, scrap recyclers, landfills or other facilities where such vehicles may be located, to sell refrigerant recovered from such vehicles (whether CFC–12 or a substitute) to section 609 certified technicians without recycling the recovered refrigerant;

(ii) revise the definition of "properly using" to explicitly permit and establish standards for mobile recovery and recycling service;

(iii) establish a standard for approval of recover/recycle equipment that extracts and recycles HFC–134a from MVACs;

(iv) establish a standard for approval of recover-only equipment that extracts HFC–134a from MVACs;

(v) establish a standard for approval of recover-only equipment for FRIGC™, a class II-containing blend refrigerant that has been listed as acceptable for use in MVACs under the Agency's Significant New Alternatives Policy (SNAP) program, and for other class I or class II refrigerants used in MVACs other than CFC–12;

(vi) establish a standard for approval of recover-recycle equipment that extracts and recycles both CFC–12 and HFC–134a using a common refrigerant circuit;

(vii) revise the requirements for Agency approval of independent standards testing organizations to include certification of recover/recycle and recover-only equipment designed to service HFC–134a and FRIGC™ MVAC systems; and

(viii) revise the criteria for approval of technician training and certification programs to reflect the use of recover/recycle and recover-only equipment designed to service HFC–134a, FRIGC™, and other class I or class II refrigerant MVAC systems.

In addition, in this notice EPA describes its intention to grandfather technicians currently certified under section 609, so that they will not need to be recertified to operate recover/recycle and recover-only equipment designed to service HFC–134a, FRIGC™, and other class I or class II refrigerant MVAC systems.

A. Service Practices

Today's proposed rule clarifies the Agency's position on two issues that have not previously been explicitly addressed in the section 609 regulations: (i) Under what conditions it is permissible for a section 609 certified technician to recover refrigerant from motor vehicles located at a motor vehicle disposal facility and bound for disposal, and under what conditions it is permissible for the owner or operator of a motor vehicle disposal facility to sell refrigerant recovered from such vehicles to certified technicians; and (ii) under what conditions it is permissible to conduct mobile recovery and recycling service, *i.e.*, service in which approved recover-only or recover/recycle equipment is transported to the location of an MVAC for servicing by a certified technician.

The Agency intends that the same service practice regulations being proposed today for MVACs will also be proposed for MVAC-like appliances (such as tractors and other farm equipment, construction equipment, and mining and quarry equipment, that meet the definition of MVAC-like appliances set forth in 40 CFR 82.152(l)). Because MVAC-like appliances are governed under section 608 of the Act rather than under section 609, service practice regulations similar to those being proposed today will be proposed for MVAC-like appliances in a separate proposal to amend section 608.

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The proposed changes to the section 608 regulations are intended for publication on or about the date of publication of this section 609 proposed rule.

1. The Handling of Refrigerant From Automobiles Bound for Disposal and Located at Motor Vehicle Disposal Facilities

Since the publication of the July 14, 1992 rule, EPA has received an increasing number of questions concerning the handling of refrigerants from MVACs and MVAC-like appliances bound for disposal and located at motor vehicle disposal facilities. Many owners of motor vehicle disposal facilities have assumed that recovered refrigerant must be sent off-site for reclamation, while others have assumed that they may sell the refrigerant to any interested parties. In response to the increasing cost of CFC–12, some service technicians have begun to recover refrigerant from motor vehicle disposal facilities for use in their own service facilities. In addition, owners and operators of motor vehicle disposal facilities have been recovering refrigerant from automobiles and selling it to service technicians. The rule proposed today would clarify that the Agency permits these activities as long as certain requirements are met during the performance of the activities.

The regulations adopted by EPA at 40 CFR part 82, subparts B and F (*i.e.*, the section 609 and 608 regulations) currently address to some extent activities involving recovery and sale of refrigerant from MVACs and MVAC-like appliances at motor vehicle disposal facilities. Section 82.156(g) requires that all persons recovering refrigerant from MVACs and MVAC-like appliances for purposes of disposal must reduce the pressure of the system to or below 102 mm of mercury vacuum, using equipment that meets the requirements of § 82.158(l). Section 82.154(f) requires that persons who recover refrigerant from MVACs and MVAC-like appliances for purposes of disposal must certify to the Administrator that they have acquired equipment that meets such standards. In addition, persons who take the final step in the disposal process must recover any remaining refrigerant in accordance with applicable requirements. These provisions were adopted pursuant to section 608 of the Act. Within the section 609 regulations, § 82.34(b) requires that small containers of class I or II substances suitable for use in an MVAC may only be sold to certified technicians. This applies to sales of class I or II substances recovered from MVACs or MVAC-like appliances at motor vehicle disposal facilities. Finally, any servicing of an MVAC or MVAC-like appliance with refrigerant recovered from a motor vehicle disposal facility would be subject to the various equipment and use restrictions in 40 CFR Part 82, subparts B and F.

The regulations proposed today would supplement this regulatory scheme with a set of requirements that provide an incentive for the recovery and re-use of refrigerants from MVACs located at motor vehicle disposal facilities, minimize the discharge of refrigerants, and provide for the proper recycling or reclamation of the refrigerants prior to their use in servicing MVACs or MVAC-like appliances. The Agency intends that the regulations to be proposed shortly amending section 608 of the Act will similarly provide an incentive for the recovery and re-use of refrigerants from MVAC-like appliances located at motor vehicle disposal facilities so that the refrigerants are properly recycled or reclaimed prior to their use in servicing MVACs or MVAC-like appliances.

The Agency believes that recovery and recycling of refrigerant from MVACs bound for disposal and located at motor vehicle disposal facilities will be more economically attractive to the MVAC technician and the motor vehicle disposal facility operator if the sale or reuse of unreclaimed refrigerant is explicitly permitted. The MVAC technician will derive higher profit by selling recycled refrigerant to an MVAC service customer than by selling it to a reclaimer. Because of this economic incentive, technicians will seek salvaged MVACs. In addition, motor vehicle disposal facility owners and operators may profit by selling refrigerant directly to technicians, or by charging technicians fees for the opportunity to recover refrigerant at the facility, creating other economic incentives in the refrigerant recycling chain. The Agency believes that encouraging these activities will, by increasing the value of refrigerant to the person recovering it, reduce the amount of refrigerant that either leaks out of MVACs while they await disposal, or is purposely vented during the process of disposal.

Today's proposed rule would revise the definition of "properly using" located at § 82.32(e), add a definition of "motor vehicle disposal facility" at § 82.32(i), and add a new § 82.34(d). The effect of these changes is that upon the recovery of refrigerant from MVACs bound for disposal and located at motor vehicle disposal facilities, a person recovering the refrigerant, whether a certified technician or motor vehicle disposal facility owner, operator, or employee, would be able to transfer the refrigerant off-site for recycling or reclamation in accordance with the conditions described below.

The conditions described below in section (a) propose who may recover refrigerant from a motor vehicle disposal facility, and what kind of equipment should be used to recover refrigerant. Section (b) proposes who may purchase refrigerant recovered from a motor vehicle disposal facility, and section (c) proposes how refrigerant recovered by the persons described in (a) or (b) should be processed prior to reuse. Section (d) discusses recordkeeping and reporting requirements. Section (e) provides a general discussion of minimizing contamination of refrigerant from motor vehicle disposal facilities and requests comment on certain issues relating to the proposals described herein.

a. Recovery of refrigerant from MVACs at motor vehicle disposal facilities. The proposed restriction set forth in § 82.32(e)(3) states that equipment capable of reducing system pressure to or below 102 mm of mercury vacuum must be used to recover the refrigerant. This proposal simply references a provision previously adopted under section 608. It is repeated here for purposes of clarification only.

The proposal would also require in § 82.34(d) that any person recovering refrigerant from MVACs at a motor vehicle disposal facility who is not employed at or by the facility, or who is not the owner or operator of the facility, be a section 608 or section 609 certified technician. With respect to class I and class II substances, sections 608(a) and (b) authorize the restriction on who may recover refrigerant. Under section 608, the Administrator may prescribe standards and equipment regarding the use and disposal of class I or II substances, in order to reduce the use and emissions of these substances to the lowest achievable level, and to maximize the recapture and recycling of these substances. The Administrator also may establish standards and requirements regarding the safe disposal of these substances.

Although sections 608(a) and (b) authorize the restriction on who may recover refrigerant from a motor vehicle disposal facility with respect to class I or II substances, these sections do not directly require regulation of the use of substitute refrigerants that are not class I or class II substances. Section 608(c)(2), however, does prohibit the

knowing[1] venting or release of such substitutes during the maintenance, repair, service or disposal of an appliance where the refrigerant may enter the environment, unless the Administrator has determined that such venting, release, or disposal does not pose a threat to the environment. *De minimis* releases associated with good faith efforts to recapture and recycle or safely dispose of the refrigerant are not subject to this prohibition. Releases associated with recovery that does not comply with the regulations would not be considered *de minimus*. This venting prohibition is self-effectuating, and went into effect on November 15, 1995 with respect to substitutes for class I or class II substances. In today's rulemaking, EPA is proposing to define the kind of recovery and recycling practices that must be followed in order to avoid violating the prohibition on venting substitutes for class I or class II refrigerants. The requirement that only a section 608 or section 609 certified technician or an owner, operator, or employee of a motor vehicle disposal facility extract the substitute refrigerant from an MVAC at a motor vehicle disposal facility is a reasonable exercise of this authority, because extraction is an intentional activity, and any release associated with it would be considered a knowing release. In addition, it is reasonable to presume there will be a release associated with extraction, unless the person can show that in fact there was no such release. EPA is therefore proposing that it be a prohibited act to extract substitute refrigerant from MVACs at motor vehicle disposal facilities without meeting the requirements described in this proposal. A showing that there was no release would serve as an affirmative defense to this prohibition.

The proposed restriction on who may recover refrigerant serves to prohibit from recovering refrigerant at motor vehicle disposal facilities persons who are not certified under the Act to handle refrigerants, unless they are owners, operators or employees of the facilities. Because these persons have not been trained in the proper methods of recovering refrigerant from an MVAC system, they are more likely to vent refrigerant in the process of extracting it, and are less likely to know how to protect the purity of the refrigerant. Allowing these persons to recover class I and class II refrigerants at motor vehicle disposal facilities would not be consistent with the Agency's mandate to establish requirements that would maximize the recapture and recycling of class I and class II refrigerants. Allowing them to recover substitute refrigerants would not be consistent with the section 608(c) venting prohibition.

The Act currently permits owners, operators and employees of motor vehicle disposal facilities to recover refrigerants from MVACs located at the facilities even though they may not be certified and therefore trained in the proper handling of these refrigerants. The Agency intends to continue to permit this activity. Under this proposed rulemaking, refrigerant handled by these persons must be transferred either to a reclaimer, or to a 608 technician, who in turn sells it to a reclaimer, or to a 609 technician, who recycles the refrigerant. In all of these instances, because the refrigerant is either recycled or reclaimed, the purity of that refrigerant should be protected. In addition, many owners, operators and employees of these facilities may have already invested in equipment that they use to recover refrigerant, and may currently have in place contracts to sell the refrigerant extracted from MVACs at the facilities. If the Agency had decided instead to begin to prohibit owners, operators and employees of motor vehicle disposal facilities from recovering refrigerant (so that only certified technicians could recover refrigerant), these persons might be unable to use any equipment they had already purchased, and in violation of contracts previously entered into. In order to assure that motor vehicle disposal facility owners and operators maximize the recapture of class I and class II refrigerants as required by section 608(a) of the Act, and refrain from venting substitute refrigerants as required by section 608(c) of the Act, the Agency has traditionally relied on a combination of providing the industry with informational guidance and requiring the industry to meet regulatory mandates. Rather than requiring that owners and operators of motor vehicle disposal facilities become certified technicians, the Agency proposes to continue to publish guidance alerting the industry of the environmental consequences of releasing refrigerant, refrigerant salvage techniques, and the importance of not mixing different refrigerants.

b. Restriction on sale of recovered refrigerant. The proposal includes a restriction set forth at § 82.34(d) on who may purchase refrigerant recovered from a motor vehicle disposal facility. For class I and II substances recovered from MVACs, sections 608 and 609 authorize the proposed sales restriction. While section 609 is limited to restricting the sale of class I or II substances in small containers for use in MVACs, section 608 authorizes a broader sales restriction. The sales restriction provision proposed today for inclusion in § 82.34(d) basically repeats the sales restrictions previously promulgated at §§ 82.34(b) and 82.154(n). This proposal makes clear that the restriction applies with respect to class I or II substances recovered from MVACs during the disposal process.

The current sales restriction in section 609(e) does not extend to substitute refrigerants that are neither class I nor class II substances. EPA is currently developing a proposal addressing the use of substitutes under section 608, and is considering extending the sales restriction to such substitutes. EPA will address the sale of substitutes recovered from MVACs during the disposal process in that rulemaking. Section F of this preamble provides additional discussion with respect to restrictions on the sales of motor vehicle refrigerants.

c. Subsequent use of recovered refrigerant. Section 82.32(e) of the regulatory text proposed today would require that certified technicians process refrigerant recovered from a motor vehicle disposal facility through section 609 approved recycling equipment before it could be used to charge or recharge an MVAC. (In the concomitant proposed amendments to section 608 of the Act, EPA intends to propose similar requirements for refrigerant that is used to charge an MVAC-like appliance.) The only exception to this recycling requirement would be where the recovered refrigerant has been reclaimed to the appropriate level of purity. Section 609 authorizes this restriction with respect to MVACs, both for class I and class II substances as well as substitutes. A certified technician purchasing or accepting refrigerant from MVACs bound for disposal and located at a motor vehicle disposal facility is responsible to assure that the refrigerant is recycled properly prior to being charged into another MVAC or MVAC-like appliance and should not rely on assurances from the disposal facility that the refrigerant has been recycled.

Further, if refrigerant recovered from a motor vehicle disposal facility is to be recycled in section 609 approved refrigerant recycling equipment prior to reuse, the refrigerant may subsequently be charged only into an MVAC or an MVAC-like appliance. This proposal essentially references the requirement previously adopted in 40 CFR 82.154(g) and (h) that refrigerant recovered from

[1] EPA interprets the term "knowing" as used in section 608(c)(1) to mean a general intent, and not a specific intent to release or vent the refrigerant.

a 608 appliance that is to be charged into any type of appliance other than an MVAC or MVAC-like appliance must first be reclaimed. It is repeated here for purposes of clarification only.

d. Recordkeeping and reporting. Today's proposed rule does not require any additional recordkeeping relating to refrigerant recovered from MVACs prior to disposal. Requiring disposal facilities to track refrigerant, and to demonstrate how the refrigerant in each MVAC was handled prior to the disposal of the vehicle, would inhibit the activity EPA is encouraging in today's rule. Further, a recordkeeping requirement would add an undue administrative burden to industry because of the large number of vehicles disposed of annually, and would provide no additional benefit to the environment.

e. Minimizing contamination/requests for comment. The Agency is concerned that the purity of the supply of each automotive refrigerant be maintained. Although motor vehicle air conditioning has long been dominated by CFC–12, automotive manufacturers now install HFC–134a in new car systems, while some refrigerant manufacturers are attempting to establish large markets for other CFC–12 substitutes in vehicles. This proliferation of refrigerants in the section 609 sector increases the chances of contamination in individual systems. Contaminated refrigerant supplies may create MVAC system failures as well as failures of refrigerant recover/recycle equipment, leading to emissions of refrigerants and to increased costs for both service facilities and motor vehicle owners. In addition, contaminated refrigerant may be extremely difficult to recycle, reclaim, or dispose of, so that it is likely to be vented into the atmosphere.

i. Contaminated MVAC systems entering the disposal facility. Refrigerant recovered from MVACs bound for disposal at motor vehicle disposal facilities may of course be contaminated by refrigerants not approved for motor vehicle use, such as HCFC–22 or blends containing hydrocarbons. The Agency believes that permitting the recovery and recycling/reclamation of refrigerant from these MVACs will not significantly increase the possibility of contamination of the automotive refrigerant supply, for two reasons. First, nearly all MVACs currently being disposed of use only CFC–12. Second, MVACs using any other refrigerants are required by EPA to have unique fittings and a label stating the type of refrigerant used in the air-conditioning system. EPA strongly recommends, but is not requiring, that the person recovering the refrigerant at the facility identify the type of refrigerant prior to recovery, using refrigerant identifier equipment. EPA believes that the proper recovery and recycling/reclamation of refrigerant from vehicles located at disposal facilities, as described in this proposal, should serve to minimize the possibility of contaminated refrigerant supplies from disposal facilities.

ii. Improper practices at disposal facilities which would result in mixing or contamination of refrigerants. In order to minimize the chances of mixed refrigerants coming from motor vehicle disposal facilities, it may be necessary to require that persons recovering refrigerant at the facilities change the type of equipment that they now use. Current regulations in 82.158(l) provide that any person recovering refrigerant from an MVAC at a disposal facility must use equipment capable of reducing the system pressure to 102 mm (about 4 inches) of mercury vacuum. Although the Agency is today proposing to continue to permit persons recovering refrigerant from MVACs at disposal facilities to do so, the Agency is concerned that these persons may not properly purge or clear the recovery equipment prior to extracting another type of refrigerant with that equipment, or that they may not otherwise take the correct precautions to ensure that only one type of refrigerant is recovered into a container. Depending on the design of the equipment, significant quantities of refrigerant may be left behind in the condenser of the equipment after the recovery or recycling process is complete. This issue was discussed at length in the proposal and final rule for the original section 608 regulations. Parties interested in this issue should review the discussion of it in the final 608 regulations at 58 FR 28681–682.

EPA is consequently interested in receiving comments from the public as to whether the current requirement should be changed to satisfy this concern. Specifically, EPA would like to receive comments addressing whether EPA should require that persons recovering refrigerant must instead use (i) only equipment that meets the definition of "approved refrigerant recycling equipment" set forth in § 82.32(b) (*i.e.*, equipment approved under section 609), (ii) only equipment that meets the definition of "certified refrigerant recovery or recycling equipment" set forth in § 82.152(c) (*i.e.*, equipment approved under section 608), or (iii) equipment that meets either the definition set forth in § 82.32(b) or the definition set forth in § 82.152(c). Equipment approved under section 609 is generally dedicated to recovering and/or recycling a single refrigerant, with the exception of certain equipment designed for recycling both CFC–12 and HFC–134a which uses either two separate circuits or common circuitry. The Agency is not aware of any equipment approved under section 609 that recovers but does not recycle multiple refrigerants. Equipment approved under section 608 is generally designed for use with multiple refrigerants but uses a common circuit. Refrigerant from section 608 appliances must either be returned to the same system or reclaimed. For both section 608 and section 609 approved equipment that handles multiple refrigerants using common circuitry, certain equipment features are designed to prevent cross contamination. In addition, technicians are instructed on how to clear the equipment of residual refrigerant between jobs.

In order to minimize the chances of contaminated refrigerants coming from motor vehicle disposal facilities, it may be necessary to limit sales of refrigerant by owners, operators and employees of these facilities to section 608 certified technicians only. Section 609 certified technicians, rather than purchasing refrigerant from the facility owners, would have to recover the refrigerant themselves. Although the Agency does not wish to impose requirements on the disposal industry that would discourage recovery of refrigerants to such an extent that the requirements defeat the goals of Title VI of the Act, the Agency is particularly concerned that facilities that dismantle both refrigerators, residential air conditioners and other section 608 appliances, and motor vehicles, may engage in the practice of recovering from section 608 appliances refrigerant that is high in acid levels due to compressor burn-out, and then selling that refrigerant to a section 609 certified technician for use in an MVAC or MVAC-like appliance. Efforts to identify the refrigerant would not show that the refrigerant was contaminated by these acids. Sources such as residential air conditioners and refrigerators are much more likely to have ceased operation because of compressor burn-out, a condition which may be remedied through reclamation to the ARI 700 standard achieved in reclamation but not through recycling in section 609 approved refrigerant recycling equipment. The Agency is interested in receiving comments on this issue.

2. Mobile Recovery and Recycling

EPA has in the past not permitted a technician to transport his approved refrigerant recycling equipment off-site to perform air conditioning service for an automobile body shop, service station, dealership or other facility that services MVACs or MVAC-like appliances, although the technician has been permitted to take the approved equipment to a facility where such servicing is generally not performed for consideration, such as a farm or personal residence. While this off-site, or mobile, service policy was directly addressed in an Applicability Determination dated July 22, 1994, and later addressed in a September 22, 1994 clarification of that Applicability Determination, the policy was not directly addressed in the original rule.

The original rule does require, however, that refrigerant may only be recycled off-site if the refrigerant is first extracted from an MVAC using recover-only equipment, and is then recycled off-site using equipment owned by the person who owns both the recover-only equipment and the establishment at which the refrigerant is extracted. In all other instances, refrigerant removed from the location where it is extracted has to be reclaimed to ARI 700 standards to assure purity. EPA believes that this requirement minimizes prospects of contamination of MVACs.

This on-site/off-site distinction discussed in the original rule, however, may be distinguished from the mobile service discussed in today's proposal. EPA required the on-site/off-site distinction because of its concern that refrigerant from non-MVAC air conditioning or refrigeration systems might contaminate MVAC systems and recycling equipment, particularly since MVAC recycling equipment is not designed to remove contaminants from non-MVAC systems. In contrast, the mobile service discussed in today's proposal would not increase the risk of contamination from non-MVAC sources, because EPA is limiting the mobile service to MVACs where the refrigerant must still be recycled on-site to the appropriate section 609 standard prior to reuse in another MVAC or in an MVAC-like appliance.

The goal of EPA's past prohibition on transportation of equipment off-site to perform air-conditioning service was to enhance compliance by encouraging MVAC service facilities to obtain their own approved equipment and to have their employees certified under section 609. EPA has based its interpretation that the 609 regulations preclude such mobile recovery and recycling for MVACs on the certification provision at § 82.42(a)(1). In the Applicability Determination dated July 22, 1994, EPA stated that since the certification form specifies the address of the establishment where the equipment will be located, the equipment may therefore not be moved from the address where the service is performed. The Agency also stated in the Determination that while current regulations allow MVACs to be transported to a facility where approved equipment is located and serviced there, that facility may not transport the equipment to a second facility where such equipment is not located, and service the MVAC at the second facility.

EPA is proposing to change these provisions and allow an expanded use of mobile recovery and recycle units. EPA intends to publish an amendment to section 608 of the Act proposing that the same activity be explicitly permitted with respect to the mobile servicing of MVAC-like appliances. EPA believes that the mobile service policy has failed to encourage MVAC service facilities to obtain their own approved equipment or to have their employees certified under section 609. Consequently, today's rulemaking proposes to explicitly permit mobile servicing of MVACs. In its reconsideration, EPA determined that allowing mobile service performed by certified technicians using approved equipment encourages proper use of the equipment and discourages venting of refrigerant. This policy also increases the flexibility of industry to choose the mode of compliance by allowing businesses that do not specialize in MVAC service to contract their MVAC services that involve refrigerant to a section 609 certified technician. The definition of "properly using" set forth in § 82.32(e) would consequently be amended to explicitly permit this activity. This proposed provision would apply to servicing both CFC–12 and any substitutes for CFC–12 in MVACs. An MVAC service facility engaging a mobile technician would be responsible to ensure that the technician is properly certified. The technician's showing the facility his section 609 certification card should provide a sufficient demonstration to the facility that he is properly certified. The Agency is interested in receiving comments with respect to whether the MVAC service facility engaging the technician should be responsible to ensure that the technician is using section 609 approved recycling equipment.

The definition of "properly using" in section 609(b) provides the Administrator discretion to include the use of mobile recovery and recycling. The certification provision in section 609(d) requires that persons who perform service on MVACs for consideration must acquire and properly use approved equipment for servicing involving refrigerant. Where mobile recovery is involved, the person with the service facility has not acquired approved equipment, but the person who actually performs the service under the proposed provision would be a certified technician using approved equipment acquired by that technician or their employer. EPA believes it is a reasonable interpretation of section 609(d) to allow the use of mobile recovery and recycling under these circumstances, as the text of section 609(d) can be interpreted to include this and it will further the purposes of this section by promoting the proper use of approved equipment and reducing the amount of improper servicing or discharge.

B. Standards for Recover/Recycle Equipment

Section 609 of the Act authorizes the Agency to establish standards for the equipment used in recovering and recycling MVAC refrigerant. Section 82.36(a) of the regulations specifies that equipment that recovers and recycles CFC–12 refrigerant must meet the standards set forth in appendix A. Equipment that only recovers CFC–12 to be reclaimed or recycled by separate equipment must meet the standards set forth in appendix B. Today's rulemaking adds standards for HFC–134a recover/recycle equipment, HFC–134a recover-only equipment, service procedures for HFC–134a containment, purity of recycled HFC–134a, equipment intended for use with both CFC–12 and HFC–134a, and recover-only equipment designed to be used with FRIGC™ or other class I and/or class II refrigerants other than CFC–12.

These standards, proposed today as appendix C, D, E and F to the regulations promulgated under section 609, represent a consensus of the Interior Climate Control Committee of SAE. This committee is made up of automotive industry experts, equipment and supply manufacturers, and chemical producers. SAE issued the standards (SAE J1990, J1991, J1989) later adopted by EPA in appendix A and the Agency believes that the standards set forth in today's rulemaking as appendices C, D, E, and F are consistent with the specifications required in those standards for recovery, recycling, refrigerant purity, and service procedures.

The Agency believes that the standards are appropriate for recovery and recycling because they achieve environmental protection through recycling and containment of refrigerant, and protect automobile equipment through minimum refrigerant purity standards and service

procedure standards. The standards being proposed are based on SAE J2099 (Standard of Purity for Recycled HFC–134a), SAE J2211 (Recommended Service Procedure for the Containment of HFC–134a), SAE J2210 (Standard for HFC–134a Recycling Equipment), SAE J1732 (HFC–134a Extraction Equipment for Mobile Air Conditioning Systems) and SAE J1770 (Standard for Recycling Equipment Intended for Use with Both CFC–12 and HFC–134a).

Appendix F, Standard for Recover-only Equipment that Extracts Class I or Class II Refrigerants Other Than CFC–12, is based on SAE J2209 (CFC–12 Extraction Equipment for Mobile Air Conditioning Systems). Since SAE is not at this time developing a standard specifically for FRIGC™ or any other class I or class II refrigerant other than CFC–12, the Agency developed a standard in cooperation with SAE and other industry representatives. Equipment that is certified by an approved testing organization to meet these SAE standards prior to the proposed standards in this rule becoming final will be considered EPA-approved equipment.

Under section 609 of the Act, standards developed by the Administrator for approved refrigerant recycling equipment shall, at a minimum, be as stringent as SAE J1990 in effect as of November 15, 1990. The standards proposed today as appendices C, D, E and F are as stringent as SAE J1990 regarding the equipment standards for refrigerant purification, equipment testing, and equipment operation and performance. The proposed standards are nearly identical to the SAE J1990 standard, with the exception that the standards proposed today are more stringent than J1990, in that they specify a higher minimum vacuum requirement of 102 mm of mercury, compared to the general requirement in J1990 that refrigerant extraction be performed "to a vacuum." This will help prevent any refrigerant from being vented by ensuring that all refrigerant has been removed from an MVAC system prior to opening it to the atmosphere. Among the provisions contained in the appendices proposed today that are as stringent as those in J1990 are the following: The moisture, acid and particulate removal and non-condensable gas purging requirements of the proposed standards; the requirements for operating instructions and safety requirements; the requirements for overfill, pressure relief, portable tanks and containers, hoses, and lubricant separation; and the testing requirements that verify that the equipment operates properly.

The Act also requires that standards establishing proper service procedures shall, at a minimum, be as stringent as SAE J1989 in effect as of November 15, 1990. The standards proposed today are equally as stringent as the SAE J1989 regarding the recovery, recycling and other handling of refrigerant associated with the servicing of MVACs. The proposed standards are nearly identical to the SAE J1989 standards. SAE J1989 required that the recovery equipment be operated until the pressure be reduced "to a vacuum". The proposed standard specifies a vacuum of 102 mm of mercury. The standards provide pressure and temperature tables to provide for safe handling of refrigerant storage containers. The tables are as a stringent as the requirements of J1990.

1. Standards for HFC–134a Recover/Recycle Equipment

Today's proposed rule adopts a standard for HFC–134a recycling equipment for mobile air-conditioning. This standard establishes specific minimum equipment requirements for the recycling of HFC–134a that has been directly removed from, and is intended for reuse in, mobile air-conditioning systems.

Today's proposed rule requires that the recycling equipment meet the standards set forth in appendix C to this rule. The standard contains specifications for labeling the recovery equipment once it is certified, safety requirements, operating instruction and a functional description of the equipment, including hose and fitting specification, overfill protection requirements and storage tank requirements. The standard provides a procedure to test the equipment to verify that it meets the specifications of the standard.

Today's rule adds a standard for purity for recycled HFC–134a that establishes the minimum level of purity required for recycled HFC–134a removed from, and intended for reuse in, mobile air-conditioning systems. The standard sets purity specifications for levels of moisture, lubricant and noncondensable gases, and is set forth in appendix C to this rule.

Today's rule also proposes a standard recommended service procedure for containment of HFC–134a, set forth in appendix C, that provides guidelines for the technicians that service MVACs and operate refrigerant recycling equipment designed for HFC–134a. The proposed standard provides specific procedures to recover the refrigerant by reducing system pressure to at least 102 mm of mercury vacuum. The standard contains requirements for stored refrigerant containers and disposal of empty containers.

The standard set forth in appendix C is nearly identical to the SAE J2210 standard issued by SAE December 1992. The differences between SAE J2210 and appendix C are incidental, such as grammatical corrections and spelling, and do not affect the requirements of the standard.

2. Standard for HFC–134a Recover-Only Equipment

Today's proposed rule adds standards for equipment that recovers refrigerant but does not recycle the refrigerant by removing impurities. Refrigerant recovered by this type of equipment must be properly recycled on-site or reclaimed off-site before it can be reused in an MVAC. The proposed rule requires that equipment meets the standards set forth in appendix D to this rule. The standard requires that the container for used refrigerant be marked in black print "Dirty Refrigerant—Do Not Use Without Recycling." The standard states that the recovery equipment be able to separate the refrigerant from the recovered refrigerant and indicate the amount of lubricant removed so that the technician can return the proper amount of lubricant to the system.

The standard set forth in appendix D is nearly identical to the SAE J1732 standard issued by SAE in December 1994. The differences between SAE J1732 and appendix D are incidental, such as grammatical and spelling, corrections and do not affect the requirements of the standard.

3. Standard for Automotive Refrigerant Recycling Equipment Intended for Use With Both CFC–12 and HFC–134a

Today's proposed rule adds a standard that establishes specific minimum equipment requirements for automotive refrigerant recycling equipment intended for use with both CFC–12 and HFC–134a in a common refrigerant circuit. The proposed rule requires that equipment meets the standards set forth in appendix E to this rule. The proposed standard in appendix E requires labeling of the equipment after certification, and includes requirements to prevent cross contamination before operations involving a different refrigerant can begin. These requirements include interlocks and indications to prevent cross contamination. The standard contains requirements to purify the refrigerant, safety requirements and functional description of the equipment, requirements for labeling of the storage tanks to identify CFC–12 and HFC–134a, and hose and connection requirements. Today's proposed standard also provides guidelines for testing the equipment to verify that it meets the requirements of the standard.

The standard set forth in appendix E is nearly identical to the SAE J1770 standard issued by SAE in December, 1995. The differences between SAE J1770 and appendix E are incidental, such as grammatical and spelling corrections, and do not affect the requirements of the standard.

4. Standard for Recover-Only Equipment That Extracts Class I or Class II Refrigerants Other Than CFC–12

Today's proposed rule adds standards for equipment that recovers but does not recycle refrigerants other than CFC–12 and HFC–134a. The refrigerant that is recovered by this type of equipment must be properly reclaimed before it can be reused in an MVAC. The proposed rule requires that equipment meets the standards set forth in appendix F. Appendix F is based on the recover-only standard for CFC–12. The standard states that the recovery equipment be able to separate the lubricant from the recovered refrigerant and indicate the amount of lubricant removed so that the technician can return the proper amount of lubricant to the system.

C. Substantially Identical Equipment

Section 609 of the Act provides that equipment purchased before the proposal of standards shall be considered certified if it is substantially identical to equipment certified by the EPA or by an independent standards testing organization approved by EPA. Section 82.36(b) of the regulations states that recover/recycle equipment designed for use with CFC–12 and purchased before the proposal of the standards for refrigerant recycling equipment in appendix A (*i.e.*, before September 4, 1991) shall be considered certified if it is "substantially identical" to equipment approved under § 82.36(a).

Today's proposal would apply the Act's "substantially identical" provision to recover/recycle and recover-only equipment that services HFC–134a MVACs, recover/recycle equipment intended for use with both CFC–12 and HFC–134a MVACs, and equipment that recovers but does not recycle class I and class II refrigerants other than CFC–12. These types of equipment will be considered approved if they are substantially identical to equipment approved under § 82.36(a) and if they were purchased prior to the date of today's proposal. A manufacturer or owner may request a determination from EPA on the point of whether a particular model is substantially identical.

The Agency's views on implementation of the "substantially identical" provision are discussed in some detail in the September 4, 1991 Notice. EPA considers equipment to be substantially identical if it performs equivalently to the equipment that is certified to meet all the approved equipment standards but was purchased prior to the date of publication of the appropriate EPA proposed standard. In general, EPA proposes to follow the same strict approach in implementing the substantially identical provision for the equipment subject to the standards proposed today as for recover/recycle and recover-only equipment that services CFC–12 MVACs. EPA is aware of some cases in which equipment purchased before the publication of the proposal to today's rule was produced by manufacturers that have not yet received a certification on any model or by manufacturers that no longer make equipment. In situations where equipment was purchased without certification and no model by that manufacturer achieves certification, EPA will evaluate the equipment on a model-by-model basis before making a substantially identical determination. Owners of the equipment, if they cannot contact manufacturers to determine the status of equipment, may submit process flowsheets and lists of components to EPA. EPA reserves the right to inspect the equipment and request samples of refrigerant if necessary. The address for submittal of information is: MVACs Recycling Program Manager, Stratospheric Protection Division, (6205J), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: Substantially Identical Equipment Review. EPA will maintain a strict interpretation of the substantially identical clause in order to protect the air-conditioning units and the integrity of the recycling program. As a result, the Agency does not anticipate that many types of equipment subject to the standards proposed today will qualify as substantially identical through this evaluation procedure.

The Agency is aware that some HFC–134a recover-only equipment has been sold prior to SAE's issuance of the J1732 standard for HFC–134a recover-only equipment in December, 1994 and that some dual refrigerant recycling equipment has been sold prior to SAE's issuance of the J1770 standard for equipment that recovers both CFC–12 and HFC–134a in December, 1995. Because no SAE standard was in place at the time of sale, the equipment could not be certified for EPA approval by UL or ETL. In such an event, *i.e.*, where units are sold prior to the publication of the appropriate SAE standard, so that there is no sticker or plate on the unit showing that the model has been tested by UL or ETL to meet the appropriate SAE standard, and later, after publication of the standard, units of the same model are certified by UL or ETL, the Agency is considering treating the units sold prior to the publication of the standard to be substantially identical. The Agency reserves the right, however, to terminate such treatment of earlier units in the event the Agency receives evidence that some earlier units of that model (e.g., prior to serial number xxxxx) were not able to achieve one or more of the provisions of the appropriate SAE standard. In that instance, the manufacturer will have to demonstrate to EPA that the units in question are substantially identical before EPA would make a determination to that effect. The Agency recognizes that manufacturers of units sold prior to the publication of the appropriate SAE standard may consider developing retrofit kits to bring pre-certification units up to the performance standard of certified units.

It should be noted that some dual refrigerant recycling equipment sold prior to SAE's issuance of the J1770 standard for equipment that recovers both CFC–12 and HFC–134a in December, 1995, may be labeled with a UL or ETL sticker that indicates that the unit meets SAE J–1990 and J–2210. The Agency does not consider that these units necessarily meet the J1770 standard. In the event that later versions of the same model of equipment become certified by UL or ETL to meet the J1770 standard, then, as discussed above, the Agency is considering treating the units sold prior to the publication of the standard to be substantially identical, although EPA reserves the right to terminate this determination as noted above.

The Agency is aware of several models of automotive refrigerant recycling equipment intended for use with both CFC–12 and HFC–134a where units have been sold prior to the publication of SAE standard J1770. These models are the SPX/Robinair model numbers 12134A and 17600A, the White Industries model number 01234a, and the American Thermoflo model number 18000. After reviewing the equipment specifications and performance for each of these models, the Agency proposes to determine that they are substantially identical to equipment EPA would approve

according to the standards set forth in this proposal.

D. Approved Independent Testing Organizations

Section 82.38 establishes the criteria for approval of testing laboratories or organizations to certify whether equipment governed by the regulations meets the standards set forth in the regulations. Under the July 14, 1992 final rule and the May 2, 1995 supplemental final rule, approved organizations would determine whether recover/recycle and recover-only equipment meets the standards set forth in the appendices to the rule, which were based on SAE standards. Today's rulemaking will expand that provision so that these approved organizations will be able to determine whether the equipment subject to today's proposal meets the standards set forth in the appropriate appendices.

Because the application materials received by the Agency from UL on October 21, 1991, and from ETL on November 27, 1991 demonstrate that both organizations have met the criteria set forth in § 82.38(b) with respect to all equipment subject to today's proposal, and because the Agency has received written requests from both UL and ETL stating that all the application criteria are still being met and requesting that they be approved to certify the equipment subject to today's proposal, the Agency intends to approve UL and ETL to certify this equipment, effective as of the effective date of this final rulemaking.

EPA encourages applications from other facilities that are capable of testing equipment to the necessary standards. Organizations must demonstrate that they have the experience and the appropriate equipment to perform testing. The EPA will maintain a list of approved independent standards testing organizations available upon request at the address set forth in § 82.38. The Agency reserves the right to revoke approval if the testing organization violates any of the requirements contained in § 82.38.

E. Technician Training and Certification

Section 82.40 established the standards for programs approved to train and certify technicians. The standards cover training, the subject material that must be covered by each program, and minimum test administration procedures. Summaries of reviews of programs must be submitted every two years and programs must offer technicians proof of certification upon successful completion of the test.

At this time, over twenty organizations have been approved by EPA to train and certify technicians in the use of recover-recycle and recover-only equipment that services CFC–12 MVACs. Ten of these organizations train and certify their employees, while the remaining train members of the general public. While EPA's approval of these organizations has been limited to equipment that services CFC–12 MVACs, the Agency believes that for purposes of training and certification conducted prior to 30 days after the publication of the final rule following this proposal, these organizations should also be considered as approved for purposes of the equipment and refrigerants subject to today's proposal. As discussed below, the design features of recover/ recycle and recover-only equipment subject to today's proposal are very similar to the design features of CFC–12 equipment, and the procedures for extracting refrigerant are very similar for all types of equipment. The organizations have previously shown their compliance with the provisions regarding test administration and proof of certification. Retraining and recertifying of technicians already certified to use CFC–12 equipment would produce only a limited environmental benefit. In addition, such retraining and recertification would impose a large burden on the technicians and the organizations that certify them. For these reasons, EPA intends to approve the 25 organizations noted above for any training and certification of technicians they conducted prior to 30 days after publication of the final rule in the use of the equipment and refrigerants subject to today's proposal.

EPA also intends to approve the above-noted currently approved organizations for future training and certification of technicians for the use of the equipment and refrigerants subject to today's proposal on the condition that the organization certify in writing to the Agency that its training materials discuss the standards set forth in appendices C, D, E, and F, as finally adopted, and that its testing materials include questions concerning those standards. Each of the above organizations that submits such a certification shall be approved upon the date which is the later of (i) the effective date of the final rule, or (ii) the receipt by the Agency of such a certification. Organizations that do not submit such a certification will not be approved to train and certify future technicians for the use of the equipment and refrigerants subject to today's proposal.

As noted above, the prior training and testing of previously approved technicians for CFC–12 equipment adequately and sufficiently covers the standards set forth in appendices C, D, E, and F because of the large overlap between the text of the standard based on SAE J1990 contained in appendix A and the standards based on the SAE standards contained in appendices C, D, E and F. In all of these appendices, the following provisions are identical or nearly identical: safety requirements; requirement that the manufacturer must provide operating instructions; requirement that the equipment must ensure the refrigerant recovery by reducing system pressure below atmospheric to a minimum of 102 mm of mercury; the preconditioning of the equipment with a contaminated sample; the composition of that contaminated sample; the requirement that the equipment must be certified by UL or an equivalent certifying laboratory; the requirement that the label on the equipment must state that it has been design certified to meet applicable SAE standards; and the additional storage tank requirements.

Where the SAE J1990-based standards in appendix A differ from the SAE J1732-based standards in appendices D and F, they differ largely because appendix A contains many provisions that relate to the recycle portion of the equipment operation and which are thus not applicable to appendices D and F. For example, appendix A describes requirements for the recycling test cycle and for the quantitative determination of moisture, lubricant, and noncondensable gas in that cycle.

A review of SAE J1732 indicates that it contains two provisions that relate to the recovery of refrigerant for which there are no equivalent provisions in SAE J1990. First, section 6.3.2 of SAE J1732 requires that the equipment discharge or transfer fitting shall be ½" ACME thread. SAE did not consider this requirement until after the publication of the final version of J1990. This requirement guards against mixing of different refrigerants by using unique fittings. Second, section 6.1 of SAE J1732 requires that the unit must have a device that assures that refrigerant has been recovered so that outgassing is prevented. Although there is no equivalent to this provision in SAE J1990, J1989 requires safeguards to prevent outgassing.

EPA encourages applications from other organizations that are capable of training and testing technicians. Organizations must demonstrate that they have the appropriate experience to perform the training and testing and meet the other requirements of § 82.40. The materials must cover the subjects described in 40 CFR 82.40. Approved organizations must demonstrate that the tests they offer will be graded by a computer scanner or disinterested, independent party. The EPA will maintain a list of approved testing and training organizations available upon request at the address set forth in § 82.38. The Agency reserves the right to revoke approval of the organization pursuant to provisions set forth in § 82.40.

F. Sales Restrictions

Section 609 made it unlawful, effective November 15, 1992, for any person to sell or distribute, or offer for sale or distribution, except to section 609 certified technicians, any class I or class II substance suitable for use as refrigerant in a motor vehicle air-conditioning system and that is in a container with less than 20 pounds of refrigerant. Consequently, sales of small cans of CFC–12, as well as small cans of FRIGC and any other HCFC blend which EPA's Significant New Alternatives Policy (SNAP) program may determine to be acceptable as a substitute for CFC–12 in MVACs, are limited to section 609 certified technicians. In addition, section 608 regulations that became effective November 14, 1994 (58 FR 28714) restrict the sales of all containers (regardless of size) of any class I or II refrigerant to technicians certified under either section 608 or section 609 of the Act.

In conjunction with the publication of this proposal for changes to the regulations promulgated under section 609 of the Act, the Agency is proposing in a separate rule several changes to the regulations promulgated under section 608 of the Act. The proposed changes to the section 608 regulations are intended for publication on or about the date of publication of this section 609 proposed rule. The proposed changes to the section 608 regulations, pursuant to the mandate of section 608(c)(2), establish standards and requirements for the servicing of appliances and industrial process refrigeration that use refrigerants that substitute for the currently-regulated class I or class II substances. In addition, in that proposal, the Agency may include a provision proposing to restrict the sale of substitute refrigerants, including HFC–134a, to technicians certified under either section 608 or section 609 of the Act. Should the Agency determine to propose such a sales restriction, the proposed changes to the regulatory text and explanatory discussion in the preamble would be entirely contained in the section 608 proposed rule, even though the changes would also affect industries governed under section 609—automotive refrigerant distributors, automobile manufacturers, and the automotive service industry. All parties interested whether EPA decides to institute a sales restriction are therefore urged to review the language contained in the section 608 proposal.

III. Summary of Supporting Analyses

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more. or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order. The Agency prepared an analysis to assess the impact of the proposed regulation (see Regulatory Assessment for EPA's Proposed Rule on Standards and Requirements for Servicing of Motor Vehicle Air Conditioners that use Refrigerants other than Class I or Class II Substances, U.S. EPA Stratospheric Protection Division, November, 1995), which covers both recover/recycle equipment and recover-only equipment, and is available for review in the public docket for this rulemaking.

B. Regulatory Flexibility Analysis

1. Purpose

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Agency has performed an initial regulatory flexibility analysis and determined that this regulation does not affect a substantial number of small businesses. The analysis is found in Appendix A in the Regulatory Assessment for EPA's Proposed Rule on Standards and Requirements for Servicing of Motor Vehicle Air Conditioners that use Refrigerants other than Class I or Class II Substances (U.S. EPA Stratospheric Protection Division, October, 1995) (Regulatory Assessment) and is available for review in the docket. The methodology and results of the analysis are presented below.

2. Methodology and Results

To examine the impacts on small businesses, EPA first characterized the regulated community by identifying the SIC codes that would be involved in the servicing and repair of motor vehicle air conditioners. After determining the number of these entities that are classified as small by the Small Business Act (SBA), the Agency performed impact tests using sales, profits and cash flow measures. The analysis included least expensive and most expensive private cost scenarios for compliance that were developed for the Regulatory Assessment. The least expensive cost scenario assumed recover/recycle equipment is purchased while the more expensive option assumes dual refrigerant recover/recycle equipment is acquired. The analysis also takes the cost of sending refrigerant out for reclamation, labor, and cost savings from using recycled refrigerant into account.

The analysis indicates that the number of small establishments significantly affected by the regulation ranges from 3.4% if the least expensive compliance option is chosen, to 7.4% if the most expensive compliance option is chosen. The Agency frequently defines a "substantial number" of small entities as approximately 20% or more of small establishments. As a result, the Agency certifies that this regulation will not significantly affect a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

C. Paperwork Reduction Act

This proposed rule has no new information requirements subject to the Paperwork Reduction Act.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

Today's proposed rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local or tribal governments or the private sector. As the draft Regulatory Assessment demonstrates, EPA believes that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector, in any one year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

List of Subjects in 40 CFR Part 82

Environmental protection, Chlorofluorocarbons, Motor vehicle air-conditioning, Reporting and recordkeeping requirements, Recover/recycle equipment, Recover-only equipment, Reporting and certification requirements, Stratospheric ozone layer.

Dated: February 12, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.30 is amended by revising paragraph (a) to read to read as follows:

§ 82.30 Purpose and scope.

(a) The purpose of the regulations in this subpart B is to implement section 609 of the Clean Air Act, as amended (Act) regarding the servicing of motor vehicle air conditioners, and to implement section 608 of the Act regarding certain servicing, maintenance, repair and disposal of air conditioners in motor vehicle-like appliances.

* * * * *

3. Section 82.32 is amended by adding a heading to paragraph (e), by revising paragraph (e)(1), and by adding paragraphs (e)(3), (e)(4), and (i) to read as follows:

§ 82.32 Definitions.

* * * * *

(e) *Properly using.* (1) Properly using means using equipment in conformity with the recommended service procedures and practices for the containment of refrigerant set forth in appendices A, B, C, D, E, and F of this subpart, as applicable.

* * * * *

(3) Refrigerant that is extracted from an MVAC located at a motor vehicle disposal facility must be properly processed through approved refrigerant recycling equipment prior to using it to charge or recharge an MVAC or MVAC-like appliance (as that term is defined in § 82.152(e)), unless the refrigerant has been reclaimed in accordance with this subpart B.

(4) Notwithstanding any other terms of this paragraph (e), approved refrigerant recycling equipment may be transported off-site and used to perform air-conditioning service involving refrigerant at other locations where servicing of MVACs occurs. Any such servicing of MVACs or involving refrigerant must meet all of the requirements of this subpart B that would apply if the servicing occurred on-site.

* * * * *

(i) *Motor vehicle disposal facility* means any commercial facility that engages in motor vehicle disposal, dismantling or recycling, including but not limited to scrap yards, landfills and salvage yards engaged in such operations. Motor vehicle repair facilities, including collision repair facilities, are not considered motor vehicle disposal facilities.

4. Section 82.34 is amended by revising the reference "§ 82.42(b)(4)" to read "§ 82.42(b)(3)" in paragraph (b); and by adding paragraph (d) to read as follows:

§ 82.34 Prohibitions.

* * * * *

(d) Any person who recovers refrigerant from an MVAC located at a motor vehicle disposal facility must be a certified technician under this subpart B or under subpart F of this part, except for employees, owners, or operators of the disposal facility. Any sale of a class I or class II substance extracted from an MVAC located at such facility must be to a technician certified under this subpart B or under subpart F of this part.

5. Section 82.36 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 82.36 Approved refrigerant recycling equipment.

(a) * * *

(2) Equipment that recovers and recycles refrigerant must meet the standards set forth in appendix A of this subpart (Recommended Service Procedure for the Containment of CFC–12, Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems, and Standard of Purity for Use in Mobile Air Conditioning Systems), appendix C of this subpart (Recommended Service Procedure for the Containment of HFC–134a and Standards for Recover/Recycle Equipment that Extracts and Recycles HFC–134a and Standard of Purity for Recycled HFC–134a for Use in MVACs) and appendix E of this subpart (Automotive Refrigerant Recycling Equipment Intended for Use with both CFC–12 and HFC–134a), as applicable. Equipment that recovers refrigerant for recycling on-site or for reclamation off-site must meet the standards set forth in appendix B of this subpart (Recommended Service Procedure for the Containment of CFC–12, Extraction Equipment for Mobile Automotive Air-Conditioning Systems), appendix D of this subpart (HFC–134a Recover-Only Equipment, Recommended Service Procedure for the Containment of HFC–134a) and appendix F of this subpart (Recover only Equipment that Extracts Class I or Class II Refrigerants Other Than CFC–12), as applicable.

(b)(1) Refrigerant recycling equipment that has not been certified under paragraph (a) of this section shall be considered approved if it is substantially identical to the applicable equipment certified under paragraph (a) of this section, and:

(i) For equipment that recovers and recycles CFC–12 refrigerant, it was purchased before September 4, 1991;

(ii) For equipment that recovers CFC–12 refrigerant for recycling on-site or reclamation off-site, it was purchased before April 22, 1992;

(iii) For equipment that recovers and recycles HFC–134a refrigerant, it was purchased before March 6, 1996;

(iv) For equipment that recovers HFC–134a refrigerant for recycling on-site or reclamation off-site, it was purchased before March 6, 1996.

(v) For equipment that recovers any class I or class II refrigerant other than CFC–12 for recycling on-site or reclamation off-site, it was purchased before March 6, 1996; and

(vi) For equipment that recovers and recycles HFC–134a and CFC–12 refrigerant, it was purchased before March 6, 1996.

(2) Equipment manufacturers or owners may request a determination by the Administrator by submitting an application and supporting documents that indicate that the equipment is substantially identical to approved equipment to: MVACs Recycling Program Manager, Stratospheric Protection Division (6205J), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attn: Substantially Identical Equipment Review. Supporting documents must include process flow sheets, lists of components and any other information that would indicate that the equipment is capable of processing the refrigerant to the standards in appendix A, B, C, D, E or F of this subpart, as applicable. Authorized representatives of the Administrator may inspect equipment for which approval is being sought and request samples of refrigerant that has been extracted and/or recycled using the equipment. Equipment that fails to meet appropriate standards will not be considered approved.

* * * * *

6. Section 82.38 is amended by revising paragraphs (a) and (b)(1)(iii) to read as follows:

§ 82.38 Approved independent standards testing organizations.

(a) Any independent standards testing organization may apply for approval by the Administrator to certify equipment as meeting the standards in appendix A, B, C, D, E, or F of this subpart, as applicable. The application shall be sent to: MVACs Recycling Program Manager, Stratospheric Protection Division (6205J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(b) * * *

(1) * * *

(iii) Thorough knowledge of the standards as they appear in the applicable appendices of this subpart; and

* * * * *

7. Section 82.40 is amended by revising paragraph (a)(2)(i) to read as follows:

§ 82.40 Technician training and certification.

(a) * * *

(2) * * *

(i) The standards established for the service and repair of motor vehicle air conditioners as set forth in appendices A, B, C, D, E, and F of this subpart. These standards relate to the recommended service procedures for the containment of refrigerant, extraction equipment, extraction and recycle equipment, and the standard of purity for refrigerant in motor vehicle air conditioners.

* * * * *

8. Appendix C is added to Subpart B to read as follows:

Appendix C to Part 82, Subpart B—Standard for Recover/Recycle Equipment for HFC–134a Refrigerant

I. SAE J2210, issued December, 1991.

HFC–134a Recycling Equipment for Mobile Air Conditioning Systems

Foreword

The purpose of this standard is to establish the specific minimum equipment specification required for the recycling of HFC–134a that has been directly removed from, and is intended for reuse in, mobile air-conditioning systems. Establishing such specifications will assure that system operation with recycled HFC–134a will provide the same level of performance and durability as new refrigerant.

1. Scope

The purpose of this standard is to establish specific minimum equipment requirements for recycling HFC–134a that has been directly removed from, and is intended for reuse in, mobile air-conditioning (A/C) systems.

2. References

Applicable Documents—The following publications form a part of this specification to the extent specified.

2.1.1 SAE Publications—Available from SAE, 400 Commonwealth Drive, Warrendale, PA 15096–0001.

SAE J2099—Standard of Purity for Recycled HFC–134a for Use in Mobile Air-Conditioning Systems.

SAE J2196—Service Hoses for Automotive Air-Conditioning.

SAE J2197—Service Hose Fittings for Automotive Air-Conditioning.

2.1.2 CGA Publications—Available from CGA, 1235 Jefferson Davis Highway, Arlington, VA 22202.

CGA Pamphlet S–1.1—Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases.

2.1.3 DOT Publications—Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

DOT Standard, 49 CFR 173.304—Shippers—General Requirements for Shipments and Packagings.

2.1.4 UL Publications—Available from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, IL 60062–2096.

UL 1769—Cylinder Valves.

UL 1963—Refrigerant Recovery/Recycling Equipment.

3. Specification and General Description

3.1 The equipment must be able to remove and process HFC–134a from mobile A/C systems to the purity level specified in SAE J2099.

3.2 The equipment shall be suitable for use in an automotive service garage environment and be capable of continuous operation in ambients from 10 to 49 °C (50 to 120 °F).

3.3 The equipment must be certified that it meets this specification by Underwriters Laboratories (UL) or an equivalent certifying laboratory.

3.4 The equipment shall have a label which states "Design Certified by (Certifying Agent) to meet SAE J2210" in bold-type letters a minimum of 3 mm in height.

4. Refrigerant Recycling Equipment Requirements

4.1 Moisture and Acid—The equipment shall incorporate a desiccant package that must be replaced before saturation with moisture, and whose mineral acid capacity is at least 5% by weight of the dry desiccant.

4.1.1 The equipment shall be provided with a moisture detection means that will reliably indicate when moisture in the HFC–134a reaches the allowable limit and desiccant replacement is required.

4.2 Filter—The equipment shall incorporate an in-line filter that will trap particulates of 15 micron spherical diameter or greater.

4.3 Noncondensable Gases.

4.3.1 The equipment shall either automatically purge noncondensables (NCGs) if the acceptable level is exceeded or incorporate a device that indicates to the operator that the NCG level has been exceeded. NCG removal must be part of the normal operation of the equipment and instructions must be provided to enable the task to be accomplished within 30 minutes.

4.3.2 Refrigerant loss from noncondensable gas purging during the testing described in Section 8 shall not exceed 5% by weight of the total contaminated refrigerant removed from the test system.

4.4 Recharging and Transfer of Recycled Refrigerant—Recycled refrigerant for recharging and transfer shall be taken from the liquid phase only.

5. Safety Requirements

5.1 The equipment must comply with applicable federal, state, and local requirements on equipment related to

handling HFC–134a material. Safety precautions or notices related to safe operation of the equipment shall be prominently displayed on the equipment and should also state "CAUTION—SHOULD BE OPERATED BY QUALIFIED PERSONNEL".

5.2 HFC–134a has been shown to be nonflammable at ambient temperature and atmospheric pressure. However, tests under controlled conditions have indicated that, at pressures above atmospheric and with air concentrations greater than 60% by volume, HFC–134a can form combustible mixtures. While it is recognized that an ignition source is also required for combustion to occur, the presence of combustible mixtures is a potentially dangerous situation and should be avoided.

5.3 Under NO CIRCUMSTANCES should any equipment be pressure tested or leak tested with air/HFC–134a mixtures. Do not use compressed air (shop air) for leak detection in HFC–134a systems.

6. Operating Instructions

6.1 The equipment manufacturer must provide operating instructions, including proper attainment of vehicle system vacuum (*i.e.*, when to stop the extraction process), filter/desiccant replacement, and purging of noncondensable gases (air). Also to be included are any other necessary maintenance procedures, source information for replacement parts and repair, and safety precautions.

6.2 The equipment must prominently display the manufacturer's name, address, the type of refrigerant it is designed to recycle, a service telephone number, and the part number for the replacement filter/drier.

7. Functional Description

7.1 The equipment must be capable of ensuring removal of refrigerant from the system being serviced by reducing the system pressure to a minimum of 102 mm (4 in) of mercury below atmospheric pressure (*i.e.*, vacuum).

7.2 During operation, the equipment shall provide overfill protection to assure that the liquid fill of the storage container (which may be integral or external) does not exceed 80% of the tank's rated volume at 21.1 °C (70 °F) per Department of Transportation (DOT) Standard, 49 CFR 173.304 and the American Society of Mechanical Engineers.

7.3 Portable refillable tanks or containers used in conjunction with this equipment must be labeled "HFC–134a", meet applicable DOT or Underwriters Laboratories (UL) Standards, and shall incorporate fittings per SAE J2197.

7.3.1 The cylinder valve shall comply with the standard for cylinder valves, UL 1769.

7.3.2 The pressure relief device shall comply with the Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases, CGA Pamphlet S–1.1.

7.3.3 The tank assembly shall be marked to indicate the first retest date which shall be 5 years after the date of manufacture. The marking shall indicate that retest must be performed every subsequent 5 years. The marking shall be in letter at least 6 mm (¼ in) high.

7.4 All flexible hoses must comply with SAE J2196.

7.5 Service hoses must have shutoff devices located within 30 cm (12 in) of the connection point to the system being serviced as identified in J2196. All service fittings must comply with SAE J2197.

7.6 The equipment must be able to separate the lubricant from the removed refrigerant and accurately indicate the amount of lubricant removed during the process, in 30 mL (1 fl oz) units. Refrigerant dissolves in lubricants and, as a result, increases the volume of the recovered lubricant sample. This creates the illusion that more lubricant has been recovered than actually has been. The equipment lubricant measuring system must take into account such dissolved refrigerant to prevent overcharging the vehicle system with lubricant. (Note: Use only new lubricant to replace the amount removed during the recycling process. Used lubricant should be discarded per applicable federal, state, and local requirements.)

8. Testing

This test procedure and its requirements are to be used to determine the ability of the recycling equipment to adequately recycle contaminated refrigerant.

8.1 The equipment shall be able to clean the contaminated refrigerant in section 8.3 to the purity level defined in SAE J2099.

8.2 The equipment shall be operated in accordance with the manufacturer's operating instructions.

8.3 Contaminated HFC–134a Sample.

8.3.1 The standard contaminated refrigerant shall consist of liquid HFC–134a with 1300 ppm (by weight) moisture (equivalent to saturation at 38 °C [100 °F]), 45,000 ppm (by weight) HFC–134a compatible lubricant, and 1000 ppm (by weight) of noncondensable gases (air).

8.3.1.1 The HFC–134a compatible lubricant referred to in section 8.3.1 shall be ICI DGLF 118, or equivalent, which shall contain no more than 1000 ppm by weight of moisture.

8.4 Test Cycle.

8.4.1 The equipment must be preconditioned by processing 13.6 kg (30 lb) of the standard contaminated HFC–134a at an ambient of 21 °C (70 °F) before starting the test cycle. 1.13 kg (2.5 lb) samples are to be processed at 5 min intervals. The test fixture, depicted in Figure 1 to Appendix A of this subpart, shall be operated at 21 °C (70 °F).

8.4.2 Following the preconditioning procedure per section 8.4.1, 18.2 kg (40 lb) of standard contaminated HFC–134a are to be processed by the equipment.

8.5 Sample Requirements.

8.5.1 Samples of the standard contaminated refrigerant from section 8.3.1 shall be processed as required in section 8.6 and shall be analyzed after said processing as defined in sections 8.7, 8.8, and section 8.9. Note exception for non-condensable gas determination in section 8.9.4.

8.6 Equipment Operating Ambient.

8.6.1 The HFC–134a is to be cleaned to the purity level, as defined in SAE J2099, with the equipment operating in a stable ambient of 10, 21, and 49 °C (50, 70, 120 °F) while processing the samples as defined in section 8.4.

8.7 Quantitative Determination of Moisture.

8.7.1 The recycled liquid phase sample of HFC–134a shall be analyzed for moisture content via Karl Fischer coulometric titration, or an equivalent method. The Karl Fischer apparatus is an instrument for precise determination of small amounts of water dissolved in liquid and/or gas samples.

8.7.2 In conducting this test, a weighed sample of 30 to 130 g is vaporized directly into the Karl Fischer anolyte. A coulometric titration is conducted and the results are reported as parts per million moisture (weight).

8.8 Determination of Percent Lubricant.

8.8.1 The amount of lubricant in the recycled HFC–134a sample shall be determined via gravimetric analysis. The methodology must account for the hygroscopicity of the lubricant.

8.8.2 Following venting of noncondensable gases in accordance with the manufacturer's operating instructions, the refrigerant container shall be shaken 5 min prior to extracting samples for testing.

8.8.3 A weighed sample of 175 to 225 g of liquid HFC–134a is allowed to evaporate at room temperature. The percent lubricant is calculated from weights of the original sample and the residue remaining after evaporation.

8.9 Noncondensable Gases.

8.9.1 The amount of noncondensable gases shall be determined by gas chromatography. A sample of vaporized refrigerant liquid shall be separated and analyzed by gas chromatography. A Porapak Q column at 130 °C (266 °F) and a hot wire detector may be used for the analysis.

8.9.2 This test shall be conducted on liquid phase samples of recycled refrigerant taken from a full container as defined in section 7.2 within 30 minutes following the proper venting of noncondensable gases.

8.9.3 The liquid phase samples in section 8.9.2 shall be vaporized completely prior to gas chromatographic analysis.

8.9.4 This test shall be conducted at 21 and 49 °C (50 and 120 °F) and may be performed in conjunction with the testing defined in section 8.6. The equipment shall process at least 13.6 kg (30 lb) of standard contaminated refrigerant for this test.

Rationale

Not applicable.

Relationship of Standard to ISO Standard

Not applicable.

Application

The purpose of this standard is to establish the specific minimum equipment requirements for recycling HFC–134a that has been directly removed from, and is intended for reuse in, mobile air-conditioning (A/C) systems.

Reference Section

SAE J2099—Standard of Purity for Recycled HFC–134a for Use in Mobile Air-Conditioning Systems.

SAE J2196—Service Hoses for Automotive Air-Conditioning.

SAE J2197—Service Hose Fittings for Automotive Air-Conditioning.

CGA Pamphlet S–1.1—Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases.

UL 1769—Cylinder Valves.

UL 1963—Refrigerant Recovery/Recycling Equipment.

DOT Standard, 49 CFR 173.304—Shippers—General Requirements for Shipment and Packagings.

II. SAE J2211, issued December, 1991.

Recommended Service Procedure for the Containment of HFC–134a

1. Scope

Refrigerant containment is an important part of servicing mobile air-conditioning systems. This procedure provides guidelines for technicians for servicing mobile air-conditioning systems and operating refrigerant recycling equipment designed for HFC–134a (described in SAE J2210).

2. References

2.1 Applicable Documents—The following publications form a part of this specification to the extent specified. The latest issue of SAE publications shall apply.

2.1.1 SAE Publications—Available from SAE, 400 Commonwealth Drive, Warrendale, PA 15096–0001.

SAE J2196—Service Hoses for Automotive Air-Conditioning.

SAE J2197—Service Hose Fittings for Automotive Air-Conditioning.

SAE J2210—Refrigerant Recycling Equipment for HFC–134a Mobile Air-Conditioning Systems.

SAE J2219—Concerns to the Mobile Air-Conditioning Industry.

2.2 Definitions.

2.2.1 Recovery/Recycling (R/R) Unit—Refers to a single piece of equipment that performs both functions of recovery and recycling of refrigerants per SAE J2210.

2.2.2 Recovery—Refers to that portion of the R/R unit operation that removes the refrigerant from the mobile air-conditioning system and places it in the R/R unit storage container.

2.2.3 Recycling—Refers to that portion of the R/R unit operation that processes the refrigerant for reuse on the same job site to the purity specifications of SAE J2099.

3. Service Procedure

3.1 Connect the recycling unit service hoses, which shall have shutoff devices (*e.g.*, valves) within 30 cm (12 in) of the service ends, to the vehicle air-conditioning (A/C) service ports. Hoses shall conform to SAE J2196 and fittings shall conform to SAE J2197.

3.2 Operate the recycling equipment per the equipment manufacturer's recommended procedure.

3.2.1 Verify that the vehicle A/C system has refrigerant pressure. Do not attempt to recycle refrigerant from a discharged system as this will introduce air (noncondensable gas) into the recycling equipment which must later be removed by purging.

3.2.2 Begin the recycling process by removing the refrigerant from the vehicle A/C system. Continue the process until the system pressure has been reduced to a minimum of 102mm (4 in) of mercury below atmospheric pressure (*i.e.*, vacuum). If A/C components show evidence of icing, the component can be gently heated to facilitate refrigerant removal. With the recycling unit shut off for at least 5 minutes, check A/C system pressure. If this pressure has risen above vacuum (0 psig), additional recycler operation is required to remove the remaining refrigerant. Repeat the operation until the system pressure remains stable at vacuum for 2 minutes.

3.3 Close the valves in the service lines and then remove the service lines from the vehicle system. If the recovery equipment has automatic closing valves, be sure they are operating properly. Proceed with the repair/service.

3.4 Upon completion of refrigerant removal from the A/C system, determine the amount of lubricant removed during the process and replenish the system with new lubricant, which is identified on the A/C system label. Used lubricant should be discarded per applicable federal, state, and local requirements.

4. Service with a Manifold Gauge Set

4.1 High-side, low-side, and center service hoses must have shutoff devices (*e.g.*, valves) within 30 cm (12 in) of the service ends. Valves must be closed prior to hose removal from the A/C system to prevent refrigerant loss to the atmosphere.

4.2 During all service operations, service hose valves should be closed until connected to the vehicle A/C system or to the charging source to exclude air and/or contain the refrigerant.

4.3 When the manifold gauge set is disconnected from the A/C system, or when the center hose is moved to another device that cannot accept refrigerant pressure, the gauge set hoses should be attached to the recycling equipment to recover the refrigerant from the hoses.

5. Supplemental Refrigerant Checking Procedure for Stored Portable Conteiners

5.1 Certified recycling equipment and the accompanying recycling procedure, when properly followed, will deliver use-ready refrigerant. In the event that the full recycling procedure was not followed or the technician is unsure about the noncondensable gas content of a given tank of refrigerant, this procedure can be used to determine whether the recycled refrigerant container meets the specification for noncondensable gases (air). (Note: The use of refrigerant with excess air will result in higher system operating pressures and may cause A/C system damage.)

5.2 The container must be stored at a temperature of 18.3 °C (65 °F) or above for at least 12 hours, protected from direct sunlight.

5.3 Install a calibrated pressure gauge, with 6.9 kPa (1 psig) divisions, on the container and read container pressure.

5.4 With a calibrated thermometer, measure the air temperature within 10 cm (4 in) of the container surface.

5.5 Compare the observed container pressure and air temperature to the values given in Tables 1 and 2 to determine whether the container pressure is below the pressure limit given in the appropriate table. For example, at an air temperature of 21 °C (−70 °F) the container pressure must not exceed 524 kPa (76 psig).

5.6 If the refrigerant in the container has been recycled and the container pressure is less than the limit in Tables 1 and 2, the refrigerant may be used.

5.7 If the refrigerant in the container has been recycled and the container pressure exceeds the limit in Tables 1 and 2, slowly vent, from the top of the container, a small amount of vapor into the recycle equipment until the pressure is less than the pressure shown in Tables 1 and 2.

5.8 If, after shaking the container and letting it stand for a few minutes, the container pressure still exceeds the pressure limit shown in Tables 1 and 2, the entire contents of the container shall be recycled.

TABLE 1.—MAXIMUM ALLOWABLE CONTAINER PRESSURE (METRIC)

Temp, C(F)	kPa
18 (65)	476
19 (66)	483
20 (68)	503
21 (70)	524
22 (72)	545
23 (73)	552
24 (75)	572
25 (77)	593
26 (79)	621
27 (81)	642
28 (82)	655
29 (84)	676
30 (86)	703
31 (88)	724
32 (90)	752
33 (91)	765
34 (93)	793
35 (95)	814
36 (97)	841
37 (99)	876
38 (100)	889
39 (102)	917
40 (104)	945
41 (106)	979
42 (108)	1007
43 (109)	1027
44 (111)	1055
45 (113)	1089
46 (115)	1124
47 (117)	1158
489 (118)	1179
49 (120)	1214

TABLE 2.—MAXIMUM ALLOWABLE CONTAINER PRESSURE (ENGLISH)

Temp, F	Psig
65	69
66	70
67	71
68	73
69	74
70	76
71	77
72	79
73	80
74	82
75	83
76	85
77	86
78	88
79	90

TABLE 2.—MAXIMUM ALLOWABLE CONTAINER PRESSURE (ENGLISH)—Continued

Temp, F	Psig
80	91
81	93
82	95
83	96
84	98
85	100
86	102
87	103
88	105
89	107
90	109
91	111
92	113
93	115
94	117
95	118
96	120
97	122
98	125
99	127
100	129
101	131
102	133
103	135
104	137
105	139
106	142
107	144
108	146
109	149
110	151
111	153
112	156
113	158
114	160
115	163
116	165
117	168
118	171
119	173
120	176

6. Containers for Storage of Recycled Refrigerant

6.1 Recycled refrigerant should not be salvaged or stored in disposable containers (this is one common type of container in which new refrigerant is sold). Use only DOT 49 CFR or UL approved storage containers, specifically marked for HFC–134a, for recycled refrigerant.

6.2 Any container of recycled refrigerant that has been stored or transferred must be checked prior to use as defined in Section 5.

6.3 Evacuate the tanks to at least 635 mm Hg (25 in Hg) below atmospheric pressure (vacuum) prior to first use.

7. Transfer of Recycled Refrigerant

7.1 When external portable containers are used for transfer, the container must be evacuated to at least 635 mm (25 in Hg) below atmospheric pressure (vacuum) prior to transfer of the recycled refrigerant to the container. External portable containers must meet DOT and UL standards.

7.2 To prevent on-site overfilling when transferring to external containers, the safe filling level must be controlled by weight and must not exceed 60% of the container gross weight rating.

8. Safety Note for HFC–134a

8.1 HFC–134a has been shown to be nonflammable at ambient temperature and atmospheric pressure. However, recent tests under controlled conditions have indicated that, at pressures above atmospheric and with air concentrations greater than 60% by volume, HFC–134a can form combustible mixtures. While it is recognized that an ignition source is also required for combustion to occur, the presence of combustible mixtures is a potentially dangerous situation and should be avoided.

8.2 Under NO CIRCUMSTANCE should any equipment be pressure tested or leak tested with air/HFC–134a mixtures. Do not use compressed air (shop air) for leak detection in HFC–134a systems.

9. Disposal of Empty/Near Empty Containers

9.1 Since all refrigerant may not have been removed from disposable refrigerant containers during normal system charging procedures, empty/near empty container contents should be recycled prior to disposal of the container.

9.2 Attach the container to the recycling unit and remove the remaining refrigerant. When the container has been reduced from a pressure to vacuum, the container valve can be closed and the container can be removed from the unit. The container should be marked "Empty", after which it is ready for disposal.

III. SAE J2099, issued December, 1991.

Standard of Purity for Recycled HFC–134a for Use in Mobile Air Conditioning Systems

Foreword

The purpose of this standard is to establish the minimum level of purity required for recycled HFC–134a removed from, and intended for reuse in, mobile air-conditioning systems.

1. Scope

This standard applies to HFC–134a refrigerant used to service motor vehicle passenger compartment air-conditioning systems designed or retrofitted to use HFC–134a. Hermetically sealed, refrigerated cargo systems are not covered by this standard.

2. References

2.1 Applicable Documents—The following publications form a part of this specification to the extent specified. The latest issue of SAE publications shall apply.

2.1.1 SAE publications—Available from SAE, 400 Commonwealth Drive, Warrendale, PA 15096–0001.

SAE J2210—HFC–134a Recycling Equipment for Mobile Air-Conditioning Systems.

SAE J2211—Recommended Service Procedure for the Containment of HFC–134a.

3. Purity Specification

The refrigerant referred to in this standard shall have been directly removed from, and intended to be returned to, a mobile air-conditioning system. Contaminants in this recycled refrigerant shall be limited to moisture, refrigerant system lubricant, and noncondensable gases, which, when measured in the refrigerant liquid phase, shall not exceed the following levels:

3.1 Moisture—50 ppm by weight.

3.2 Lubricant—500 ppm by weight.

3.3 Noncondensable Gases (Air)—150 ppm by weight.

4. Requirements for Recycle Equipment Used in Direct Mobile Air-Conditioning Service Operations

4.1 Such equipment shall meet J2210, which covers additional moisture, acid, and filter requirements.

5. Purity of HFC–134a Supplied from Other Sources

The purity of HFC–134a refrigerant supplied in containers from other sources shall, for servicing mobile air-conditioning systems, meet the refrigerant manufacturer's specification for new HFC–134a intended for mobile air-conditioning system use.

6. Operation of the Recycle Equipment

Recycle equipment operation shall be in accord with SAE J2211.

Application

This Standard applies to HFC–134a refrigerant used to service motor vehicle passenger compartment air-conditioning systems designed or retrofitted to use HFC–134a. Hermetically sealed, refrigerated cargo systems are not covered by this standard.

Reference Section

SAE J2210—HFC–134a Recycling Equipment for Mobile Air-Conditioning Systems.

SAE J2211—Recommended Service Procedure for the Containment of HFC–134a.

9. Appendix D is added to Subpart B to read as follows:

Appendix D to Part 82, Subpart B—Standard for HFC–134a Recover-Only Equipment

SAE J2211, Recommended Service Procedure for Containment of HFC–134a, as set forth under Appendix C of this subpart, also applies to this Appendix D.

SAE J1732, issued December, 1994.

HFC–134a (R–134a) Extraction Equipment for Mobile Automotive Air-Conditioning Systems

Foreword

Appendix C of this part established equipment specifications for on-site recovery and reuse of HFC–134a in air-conditioning systems. These specifications are for HFC–134a extraction only equipment that are intended to be used in conjunction with the on-site recycling equipment currently used at service facilities, or allow for off-site refrigerant reclamation.

1. Scope

a. The purpose of this standard is to provide equipment specification for only the recovery of HFC–134a refrigerant to be returned to a refrigerant reclamation facility that will process it to ARI Standard 700–93 or allow for recycling of the recovered refrigerant to SAE J2210 specifications by using Design Certified equipment of the same ownership. It is not acceptable that refrigerant removed from a mobile air conditioning system with this equipment be directly returned to a mobile air-conditioning system.

b. This information applies to equipment used to service automobiles, light trucks, and other vehicles with similar HFC–134a air conditioning systems.

2. References

2.1 Applicable Documents—The following publications form a part of this specification to the extent specified.

2.1.1 SAE Publications—Available from SAE, 400 Commonwealth Drive, Warrendale, PA 15096–0001.

SAE J639—Vehicle Service Coupling.

SAE J2210—HFC–134a Recycling Equipment for Mobile Automotive Air Conditioning Systems.

SAE J2196—Service Hoses for Automotive Air-Conditioning.

SAE J2197—Service Hose Fittings for Automotive Air-Conditioning.

2.1.2 ARI Publication—Available from Air Conditioning and Refrigerant Institute, 1501 Wilson Blvd. Sixth Floor, Arlington, VA 22209.

ARI 700–93—Specifications for Fluorocarbon Refrigerants.

2.1.3 CGA Publications—Available from CGA, 1235 Jefferson Davis Highway, Arlington, VA 22202.

CGA Pamphlet S–1.1—Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases.

2.1.4 DOT Publications—Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

DOT Standard, 49 CFR 49 173.304 Shippers—General Requirements for Shipments and Packagings.

2.1.5 UL Publications—Available from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, IL 60062–2096.

UL 1769—Cylinder Valves.

3. Specification and General Description

3.1 The equipment must be able to extract HFC–134a from a mobile air-conditioning system.

3.2 The equipment shall be suitable for use in an automotive service garage environment as defined in section 6.8.

3.3 Equipment Certification—The equipment shall be certified by Underwriters Laboratories or an equivalent certifying laboratory to meet this standard.

3.4 Label Requirements—The equipment shall have a label "Design Certified by (Company Name) to meet SAE J1732 for use only with HFC–134a. The refrigerant from this equipment must be processed to ARI 700–93 specifications or to SAE J2210 specifications by using Design Certified equipment of the same ownership." The minimum letter size shall be bold type 3 mm in height.

4. Safety Requirements

4.1 The equipment must comply with applicable federal, state, and local requirements on equipment related to the handling of HFC–134a material. Safety precautions or notices or labels related to the safe operation of the equipment shall also be prominently displayed on the equipment and should state "CAUTION—SHOULD BE OPERATED BY CERTIFIED PERSONNEL." The safety identification shall be located on the front near the controls.

4.2 The equipment must comply with applicable safety standards for electrical and mechanical requirements.

5. Operating Instructions

5.1 The equipment manufacturer must provide operating instructions that include information required by SAE J1629, necessary maintenance procedures, and source information for replacement parts and repair.

5.1.1 The instruction manual shall include the following information on the lubricant removed. Only new lubricant, as identified by the system manufacturer, should be replaced in the mobile air conditioning system. Removed lubricant from the system and/or the equipment shall be disposed of in accordance with the applicable federal, state, and local procedures and regulations.

5.2 The equipment must prominently display the manufacturer's name, address, the type of refrigerant it is designed to extract, a service telephone number, and any items that require maintenance or replacement that affect the proper operation of the equipment. Operation manuals must cover information for complete maintenance of the equipment to assure proper operation.

6. Functional Description

6.1 The equipment must be capable of ensuring removal of refrigerant from the system being serviced by reducing the system pressure to a minimum of 102 mm (4 in) of mercury below atmospheric pressure (*i.e.*, vacuum). To prevent system delayed outgassing, the unit must have a device that assures the refrigerant has been recovered from the air-conditioning system.

6.1.1 Testing laboratory certification of the equipment capability is required which shall process contaminated refrigerant samples at specific temperatures.

6.2 The equipment must be preconditioned by processing 13.6 kg (30 lb) of the standard contaminated HFC–134a at an ambient of 21 °C (70 °F) before starting the test cycle. Sample amounts are not to exceed 1.13 kg (2.5 lb) with sample amounts to be repeated every 5 minutes. The test fixture shown in Figure 1 to Appendix A of this subpart shall be operated at 21 °C. Contaminated HFC–134a samples shall be processed at ambient temperatures of 10 and 49 °C, without equipment shutting due to any safety devices employed in this equipment.

6.2.1 Contaminated HFC–134a sample

6.2.2 Standard contaminated HFC–134a refrigerant, 13.6 kg sample size, shall consist of liquid HFC–134a with 1300 ppm (by weight) moisture at 21 °C and 45,000 ppm (by weight) of oil (polyalkylene glycol oil with 100 cs viscosity at 40 °C or equivalent) and 1000 ppm by weight of noncondensable gases (air).

6.3 Portable refillable containers used in conjunction with this equipment must meet applicable DOT Standards.

6.3.1 The container color must be blue with a yellow top to identify that it contains used HFC–134a refrigerant. It must be permanently marked on the outside surface in block print at least 20 mm high "DIRTY HFC–134a—DO NOT USE, MUST BE REPROCESSED".

6.3.2 The portable refillable container shall have a ½ inch ACME thread.

6.3.3 During operation, the equipment shall provide overfill protection to assure that the storage container liquid fill does not exceed 80% of the tank's rated volume at 21 °C per DOT Standard, 49 CFR 173.304 and the American Society of Mechanical Engineers.

6.4 Additional Storage Tank Requirements.

6.4.1 The cylinder valve shall comply with UL 1769.

6.4.2 The pressure relief device shall comply with CGA Pamphlet S–1.1.

6.4.3 The container assembly shall be marked to indicate the first retest date, which shall be 5 years after date of manufacture. The marking shall indicate that retest must be performed every subsequent 5 years. The markings shall be in letters at least 6 mm high.

6.5 All flexible hoses must meet SAE J2196 for service hoses.

6.6 Service hoses must have shutoff devices located within 30 cm (12 in) of the connection point to the system being serviced to minimize introduction of noncondensable gases into the recovery equipment during connection and the release of the refrigerant during disconnection.

6.7 The equipment must be able to separate the lubricant from recovered refrigerant and accurately indicate the amount removed from the simulated automotive system during processing in 30 mL units.

6.7.1 The purpose of indicating the amount of lubricant removed is to ensure that a proper amount of new lubricant is returned to the mobile air conditioning system for compressor lubrication.

6.7.2 Refrigerant dissolved in this lubricant must be accounted for to prevent system lubricant overcharge of the mobile air-conditioning system.

6.8 The equipment must be capable of continuous operation in ambient temperatures of 10 °C to 49 °C and comply with sections 6.1 and 6.2.

7. For test validation, the equipment is to be operated according to the manufacturer's instructions.

Application

a. The purpose of this standard is to provide equipment specification for only the recovery of HFC–134a refrigerant to be returned to a refrigerant reclamation facility that will process it to ARI Standard 700–93 or allow for the recycling of the recovered refrigerant to SAE J2210 specifications by using Design Certified equipment of the same ownership. It is not acceptable that the refrigerant removed from a mobile air-conditioning system with this equipment be directly returned to a mobile air-conditioning system.

b. This information applies to equipment used to service automobiles, light trucks, and other vehicles with similar HFC–134a air-conditioning systems.

Reference Section

SAE J639—Vehicle Service Coupling.
SAE J2210—HFC–134a Recycling Equipment for Mobile Automotive Air Conditioning Systems.
SAE J2196—Service Hoses for Automotive Air-Conditioning.
ARI 700–93—Specifications for Fluorocarbon Refrigerants.
CGA Pamphlet S–1.1—Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases.
UL 1769—Cylinder Valves.
49 CFR 173.304 —Shippers—General Requirements for Shipment and Packagings.

10. Appendix E is added to Subpart B to read as follows:

Appendix E to Part 82, Subpart B—The Standard for Automotive Refrigerant Recycling Equipment Intended for Use with both CFC–12 and HFC–134a

SAE J2211, Recommended Service Procedure for the Containment of HFC–134a, as set forth under Appendix C of this subpart, and SAE J1989, Recommended Service Procedure for the Containment of CFC–12, as set forth under Appendix A of this subpart, also apply to this Appendix E.
SAE J1770, issued December, 1995.

Automotive Refrigerant Recycle Equipment Intended for Use with Both CFC–12 and HFC–134a

Foreword

The purpose of this standard is to establish specific minimum equipment requirements for automotive refrigerant recycling equipment intended for use with both CFC–12 and HFC–134a in a common refrigerant circuit. Establishing such specifications will assure that this equipment does not cross contaminate refrigerant above specified limits when used under normal operating conditions.

1. Scope

The purpose of this standard is to establish the specific minimum equipment intended for use with both CFC–12 and HFC–134a in a common refrigerant circuit that has been directly removed from, and is intended for reuse in, mobile air-conditioning (A/C) systems. This standard does not apply to equipment used for CFC–12 and HFC–134a having a common enclosure with separate circuits for each refrigerant.

2. References

2.1 Applicable Documents—The following publications form a part of this specification to the extent specified. The latest issue of SAE publications shall apply.

2.1.1 SAE Publications—Available from SAE, 400 Commonwealth Drive, Warrendale, PA 15096–0001.

SAE J2099—Standard of Purity for Recycled HFC–134a for Use in Mobile Air-Conditioning Systems.
SAE 1991—Standard of Purity for Use in Mobile Air-Conditioning Systems.
SAE J2196—Service Hoses for Automotive Air-Conditioning.
SAE J2197—Service Hose Fittings for Automotive Air-Conditioning.
SAE J2210—HFC–134a (R–134a) Recycling Equipment for Mobile A/C Systems.
SAE J1990—Extraction and Recycling Equipment for Mobile A/C Systems.

2.1.2 Compressed Gas Association (CGA) Publications—Available from CGA, 1235 Jefferson Davis Highway, Arlington, VA 22202.

CGA Pamphlet S–1.1—Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases.

2.1.3 DOT Publications—Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

2.1.4 UL Publications—Available from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, IL 60062–2096.

UL 1769—Cylinder Valves.
UL 1963—Refrigerant Recovery/Recycling Equipment.

3. Specification and General Description

3.1 The equipment shall be suitable for use in an automotive service garage environment and be capable of continuous operation in ambients from 10 to 49 °C.

3.2 The equipment must be certified that it meets this specification by Underwriters Laboratories Inc. (UL), or by an equivalent Nationally Recognized Testing Laboratory (NRTL).

3.3 The equipment shall have a label which states "Design Certified by (Certifying Agent) to meet SAE J1770 for recycling CFC–12 and HFC–134a using common refrigerant circuits", in bold-type letters a minimum of 3 mm in height.

4. Equipment Requirements

4.1 General.

4.1.1 The equipment shall be capable of preventing cross contamination to the level required by Section 9.2.1.G before an operation involving a different refrigerant can begin. The equipment must prevent initiation of the recovery operation if the equipment is not set up properly.

4.1.2 If an operator action is required to clear the unit prior to reconnecting for a different refrigerant, the equipment shall be provided with a means which indicates which refrigerant was last processed.

4.1.3 Means shall be provided to prevent recovery from both an CFC–12 and HFC–134a mobile air conditioning system concurrently.

4.1.4 Transfer of recycled refrigerant—Recycled refrigerant for recharging and transfer shall be taken from the liquid phase only.

4.2 Seal Leakage Test.

4.2.1 Valves, including electrically operated solenoid valves, that are used to isolate CFC–12 and HFC–134a refrigerant circuits, shall have a seat leakage rate not exceeding 15 g/yr (½ oz/yr) before and after 100,000 cycles of operation. This Endurance Test shall be conducted with HFC–134a at maximum operating pressure as determined by sections 8.1 and 8.2. The Seat Leakage Test shall be performed at 1.5 times this pressure at an ambient of 24 °C.

4.3 Interlocks.

4.3.1 Electrical interlock devices used to prevent cross contamination of refrigerant shall be operated for 100,000 cycles and there shall be no failure that would permit cross contamination of refrigerant. Solid state interlock devices shall comply with the Transient Overvoltage Test and the Fast Transient (Electric Noise) Test contained in the Standard for Tests for Safety Related Controls Employing Solid-State Devices, UL 991.

4.4 Noncondensable Gases

4.4.1 The equipment shall either automatically purge noncondensables (NCGs) if the acceptable level is exceeded or incorporate a device that indicates to the operator the NCG level has been exceeded. A pressure gauge used to indicate an NCG level shall be readable in 1 psig increments. NCG removal must be part of the normal operation of the equipment and instructions must be provided to enable the task to be accomplished within 30 minutes.

4.4.2 Refrigerant loss from noncondensable gas purging, oil removal, and refrigerant clearing shall not exceed more than 5 percent by weight of the total amount of refrigerant through the equipment as detailed in Sections 8.1, 8.2, and 9.2.

4.5 Filter.

4.5.1 A 15 micron filter, or other equivalent means, to remove particulates of 15 micrometers spherical diameter or greater shall be located before any manual electrically operated valves that may cause cross contamination.

4.6 Moisture and Acid.

4.6.1 The equipment shall incorporate a desiccant package that must be replaced before saturated with moisture, and whose acid capacity is at least 5% by weight of the dry desiccant.

4.6.2 The equipment shall be provided with a moisture detection means that will reliably indicate when moisture in the HFC–134a exceeds 50 ppm, or in the CFC–12 exceeds 15 ppm, and requires the filter/dryer replacement.

5. Operating Instructions

5.1 The equipment manufacturer must provide operating instructions, including proper attainment of vehicle system vacuum (i.e., when to stop the extraction process, and also to stop the extraction process if it is noticed that the A/C system being serviced has a leak), filter/desiccant replacement, and purging of noncondensable gases (air). The instructions shall indicate that the correct sequence of operation be followed so that the equipment can properly remove contaminates to the acceptable level. Also to be included are any other necessary maintenance procedures, source information for replacement parts and repair, and safety precautions.

5.2 The equipment must prominently display the manufacturer's name, address, the type of refrigerant (CFC–12 and HFC–134a), a service telephone number, and the part number for the replacement filter/drier. Operation manuals must cover information for complete maintenance of the equipment to assure proper operation.

6. Safety Requirements

6.1 The equipment must comply with applicable federal, state, and local requirements on equipment related to handling CFC–12 and HFC–134a material.

Safety precautions or notices related to the safe operation of the equipment shall be prominently displayed on the equipment and should also state "CAUTION—SHOULD BE OPERATED BY QUALIFIED PERSONNEL".

6.2 HFC–134a has been shown to be nonflammable at ambient temperature and atmospheric pressure. The following statement shall be in the operating manual: "Caution: HFC–134a service equipment or vehicle A/C systems should not be pressure tested or leak tested with compressed air. Some mixtures of air and HFC–134a have been shown to be combustible at elevated pressures (when contained in a pipe or tank). These mixtures may potentially dangerous, causing injury or property damage. Additional health and safety information may be obtained from refrigerant and lubricant manufacturers."

7. Functional Description

7.1 General.

7.1.1 The equipment must be capable of ensuring recovery of the CFC–12 and HFC–134a from the system being serviced, by reducing the system to minimum of 102 mm of mercury below atmospheric pressure (*i.e.*, vacuum).

7.1.2 The equipment must be compatible with leak detection material that may be present in the mobile A/C system.

7.2 Shut Off Device.

7.2.1 To prevent overcharge, the equipment must be equipped to protect the tank used to store the recycled refrigerant with a shutoff device and a mechanical pressure relief valve.

7.3 Storage Tanks.

7.3.1 Portable refillable tanks or containers shall be supplied with this equipment and must be labeled "HFC–134a" or "CFC–12" as appropriate, meet applicable Department of Transportation (DOT) or NRTL's Standards and be adaptable to existing refrigerant service and charging equipment.

7.3.2 The cylinder valve shall comply with the Standard for Cylinder Valves, UL 1769.

7.3.3 The pressure relief device shall comply with the Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases, CGA Pamphlet S–1.1.

7.3.4 The tank assembly shall be marked to indicate the first retest date, which shall be 5 years after the date of manufacture. The marking shall indicate that retest must be performed every subsequent 5 years. The marking shall be in letters at least 6 mm high.

7.4 Overfill Protection.

7.4.1 During operation, the equipment must provide overfill protection to assure that during filling or transfer, the tank or storage container cannot exceed 80% of volume at 21.1 °C of its maximum rating as defined by DOT standards, 49 CFR 173.304 and American Society of Mechanical Engineers.

7.5 Hoses and Connections.

7.5.1 Separate inlet and outlet hoses with fittings and separate connections shall be provided for each refrigerant circuit.

7.5.2 All flexible hoses and fittings must meet SAE J2196 (for CFC–12) and SAE J2197 (for HFC–134a).

7.5.3 Service hoses must have shutoff devices located within 30 cm of the connection point to the system being serviced.

7.6 Lubricant Separation.

7.6.1 The equipment must be able to separate the lubricant from the removed refrigerant and accurately indicate the amount of lubricant removed during the process, in 30 ml (1 fl oz) units. Refrigerant dissolves in lubricant and, as a result, increases the volume of the recovered lubricant sample. This creates the illusion that more lubricant has been recovered than actually has been. The equipment lubricant measuring system must take into account such dissolved refrigerant removed from the A/C system being serviced to prevent overcharging the vehicle system with lubricant. (**Note:** Use only new lubricant to replace the amount removed during the recycling process. Used lubricant should be discarded per applicable federal, state and local requirements.)

7.6.2 The equipment must be provided with some means, such as a lockout device, which will prevent initiation of the recovery operation after switching to the other refrigerant, if the lubricant has not been drained from the oil separator.

8. Testing

8.0 Equipment shall be tested in sequence as noted in sections 8.1, 8.2 and 9.2. The filter/dryer may be replaced only as noted by section 4.6.2.

8.1 CFC–12 Recycling Cycle.

8.1.1 The maximum operating pressure of the equipment shall be determined when recycling CFC–12 while conducting the following tests. This pressure is needed for the Seal Leakage Test, Section 4.2.

8.1.2 The equipment must be preconditioned with 13.6 kg of the standard contaminated CFC–12 (see section 8.1.2a) at an ambient of 21 °C before starting the test cycle. Sample amounts shall be 1.13 kg with sample amounts to be repeated every 5 minutes. The sample method fixture, defined in Figure 1 to Appendix A of this subpart, shall be operated at 21 °C.

8.1.2a Standard contaminated CFC–12 refrigerant shall consist of liquid CFC–12 with 100 ppm (by weight) moisture at 21°C and 45,000 ppm (by weight) mineral oil 525 suspension viscosity nominal and 770 ppm by weight of noncondensable gases (air).

8.1.3 The high moisture contaminated sample shall consist of CFC–12 vapor with 1000 ppm (by weight) moisture.

8.1.4 The high oil contaminated sample shall consist of CFC–12 with 200,000 ppm (by weight) mineral oil 525 suspension viscosity nominal.

8.1.5 After preconditioning as stated in section 8.1.2, the test cycle is started, processing the following contaminated samples through the equipment.

A. 13.6 kg (1.13 kg per batch) of standard contaminated CFC–12.

B. 1 kg of high oil contaminated CFC–12.

C. 4.5 kg (1.13 kg per batch) of standard contaminated CFC–12.

D. 1 kg of high moisture contaminated CFC–12.

8.1.6 The CFC–12 is to be cleaned to the minimum purity level, as defined in SAE J1991, with the equipment operating in a stable ambient of 10, 21, and 49 °C and processing the samples as defined in section 8.1.5.

8.2 HFC–134a Recycling Cycle.

8.2.1 The maximum operating pressure of the equipment shall be determined when recycling HFC–134a while conducting the following tests. This pressure is needed for the Seal Leakage Test, Section 4.2.

8.2.2 The equipment must be preconditioned by processing 13.6 kg of the standard contaminated HFC–134a (see section 8.2.2a) at an ambient of 21 °C before starting the test cycle. 1.13 kg samples are to be processed at 5 minute intervals. The text fixture shown in Figure 1 to Appendix A of this subpart shall be operated at 21 °C.

8.2.2a The standard contaminated refrigerant shall consist of liquid HFC–134a with 1300 ppm (by weight) moisture (equivalent to saturation at 38 °[100 °F]), 45,000 ppm (by weight) HFC–134a compatible lubricant, and 1000 ppm (by weight) of noncondensable gases (air).

8.2.2b The HFC–134a compatible lubricant referred to in section 8.2.2a shall be a polyalkylene glycol based synthetic lubricant or equivalent, which shall contain no more than 1000 ppm by weight of moisture.

8.2.3 Following the preconditioning procedure per section 8.2.2, 18.2 kg of standard contaminated HFC–134a are to be processed by the equipment at each stable ambient temperature of 10, 21, and 49 °C.

8.2.4 The HFC–134a is to be cleaned to the purity level, as defined in SAE J2099.

9. Refrigerant Cross Contamination Test

9.1 General.

9.1.1 For test validation, the equipment is to be operated according to the manufacturer's instruction.

9.1.2 The equipment shall clean the contaminated CFC–12 refrigerant to the minimum purity level as defined in Appendix A of this subpart, when tested in accordance with the requirements in section 8.1.

9.1.3 The equipment shall clean the contaminated HFC–134a refrigerant to the purity level defined in Appendix C of this subpart, when tested in accordance with the requirements in section 8.2.

9.2 Test Cycle.

9.2.1 The following method shall be used after the tests and requirements in Sections 8.1 and 8.2, respectively, are completed. Following the manufacturer's instructions, the equipment shall be cleared of HFC–134a, prior to beginning step A. The only refrigerant used for this is noted in steps A. C, and E of this section 9.2.1. The test fixture shown in Figure 1 to Appendix A of this subpart shall be used and the test shall be conducted at 10, 21, and 49 °C ambients.

A. A 1.13 kg standard contaminated sample of CFC–12 (see section 8.1.2a) shall be processed by the equipment.

B. Follow manufacturer's instructions to clear the equipment of CFC–12 before processing HFC–134a.

C. Process a 1.13 kg, standard contaminated sample of HFC–134a (see section 8.2.2a) through the equipment.

D. Follow manufacturer's instructions to clear the equipment of HFC–134a before processing CFC–12.

E. Process a 1.13 kg standard contaminated sample of CFC–12 (see section 8.1.2a) through the equipment.

F. Follow manufacturer's instructions to clear the equipment of CFC–12.

G. The amount of cross contaminated refrigerant, as determined by gas chromatography, in samples processed during steps C and E, shall not exceed 0.5 percent by weight.

10. Sample Analysis

10.1 General.

10.1.1 The processed contaminated samples shall be analyzed according to the following procedure.

10.2 Quantitative Determination of Moisture.

10.2.1 The recycled liquid phase sample of refrigerant shall be analyzed for moisture content via Karl Fischer coulometer titration or an equivalent method. The Karl Fischer apparatus is an instrument for precise determination of small amounts of water dissolved in liquid and/or gas samples.

10.2.2 In conducting the test, a weighed sample of 30 to 130 g is vaporized directly into the Karl Fischer anolyte. A coulometer titration is conducted and the results are calculated and displayed as parts per million moisture (weight).

10.3 Determination of Percent Lubricant.

10.3.1 The amount of lubricant in the recycled sample of refrigerant/lubricant is to be determined by gravimetric analysis.

10.3.2 Following venting of noncondensable, in accordance with the manufacturer's operating instructions, the refrigerant container shall be shaken for 5 minutes prior to extracting samples for test.

10.3.3 A weighed sample of 175 to 225 g of liquid refrigerant/ lubricant is allowed to evaporate at room temperature. The percent lubricant is to be calculated from the weight of the original sample and the residue remaining after the evaporation.

10.4 Noncondensable Gas.

10.4.1 The amount of noncondensable gas is to be determined by gas chromatography. A sample of vaporized refrigerant liquid shall be separated and analyzed by gas chromatography. A Propak Q column at 130°C and a hot wire detector may be used for analysis.

10.4.2 This test shall be conducted on liquid phase samples of recycled refrigerant taken from a full container as defined in section 7.4 within 30 minutes following the proper venting of noncondensable gases.

10.4.3 The samples shall be shaken for at least 15 minutes prior to testing while at a temperature of 24°C ± 2.8°C.

10.5 Refrigerant Cross Contamination.

10.5.1 The amount of cross contamination of CFC–12 in HFC–134a or HFC–134a in CFC–12 shall not exceed 0.5 percent by weight as determined by gas chromatography. A sample of vaporized refrigerant liquid shall be separated and analyzed by gas chromatography. A 1% SP–1000 on Carbopack B (60/80 mesh) column may be used for the analysis.

11. Appendix F is added to Subpart B to read as follows:

Appendix F to Part 82, Subpart B—Standard for Recover-only Equipment That Extracts Class I or Class II Refrigerants Other Than CFC–12

Foreword

These specifications are for extraction only equipment used to service FRIGC™ FR–12 or other class I or class II refrigerants other than CFC–12.

1. Scope

The purpose of this standard is to provide equipment specifications for the recovery of FRGC™ FR–12 or other class I or class II refrigerants other than CFC–12 which are either (1) to be returned to a refrigerant reclamation facility that will process the refrigerant to ARI Standard 700–93 or equivalent new product specifications at a minimum, or (2) to be recycled in other EPA approved recycling equipment (in the event that EPA in the future designates a standard for equipment capable of recycling FRGC™ FR–12 or other class I or class II refrigerant, as appropriate). It is not acceptable that the refrigerant removed from a mobile air conditioning system, with this equipment be directly returned to mobile air conditioning system. This standard applies to equipment used to service automobiles, light trucks, and other vehicles with similar air conditioning systems.

2. References

2.1 Applicable Documents—The following publications form a part of this specification to the extent specified. The latest issue of SAE publications shall apply.

2.1.1 SAE Publications—Available from SAE, 400 Commonwealth Drive, Warrendale, PA 15096–0001.

SAE J639–Vehicle Service Coupling.

SAE J2196–Service Hoses for Automotive Air-Conditioning (fittings modified).

2.1.2 ARI Publication—Available from Air Conditioning and Refrigeration Institute, 1501 Wilson Boulevard, Sixth Floor, Arlington, VA 22209.

ARI 700–93—Specifications for Fluorocarbon Refrigerants.

2.1.3 Compressed Gas Association (CGA) Publications—Available from CGA, 1235 Jefferson Davis Highway, Arlington, VA 22202.

CGA Pamphlet S–1.1—Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases.

2.1.4 DOT Publications—Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

DOT Standard, 49 CFR 173.304—Shippers—General Requirements for Shipments and Packagings.

2.1.5 UL Publications—Available from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, IL 60062–2096.

UL 1769—Cylinder Valves.

UL 1963—Refrigerant Recovery Recycling Equipment.

3. Specifications and General Description

3.1 The equipment must be able to extract from a mobile air conditioning system FRIGC™ FR–12 or another class I or class II refrigerant other than CFC–12 to which the equipment is dedicated.

3.2 The equipment shall be suitable for use in an automotive service garage environment as defined in section 6.8.

3.3 The equipment discharge or transfer fitting shall be unique to prevent the unintentional use of the extracted refrigerant for recharging auto air conditioners.

3.4 Equipment Certification—The equipment shall be certified by Underwriters Laboratories or and equivalent certifying laboratory to meet this standard.

3.5 Label Requirements—The equipment shall have a label "Designed Certified by (Company Name) to meet EPA requirements for use only with (the applicable refrigerant). The refrigerant from this equipment must be processed to ARI 700–93 specifications or equivalent new product specifications before reuse in a mobile air-conditioning system." The minimum letter size shall be bold type 3 mm in height.

4. Safety Requirements

4.1 The equipment must comply with applicable federal, state, and local requirements on equipment related to the handling of the applicable refrigerant material. Safety precautions or notices or labels related to the safe operation of the equipment shall also be prominently displayed on the equipment and should state "CAUTION—SHOULD BE OPERATED BY CERTIFIED PERSONNEL". The safety identification shall be located on the front near the controls.

4.2 The equipment must comply with applicable safety standards for electrical and mechanical requirements.

5. Operating Instructions

5.1 The equipment manufacturer must provide operating instructions that include information equivalent to that required by SAE J1629, necessary maintenance procedures, and source information for replacement parts and repair.

5.1.1 The instruction manual shall include the following information on the lubricant removed: Only new lubricant, as identified by the system manufacturer, should be replaced in the air conditioning system. Removed lubricant from the system and/or the equipment shall be disposed on in accordance with the applicable federal, state, and local procedures and regulations.

5.2 The equipment must prominently display the manufacturer's name, address, the type of refrigerant it is designed to extract, a service telephone number, and any items that require maintenance or replacement that affect the proper operation of the equipment. Operation manuals must cover information for complete maintenance of the equipment to assure proper operation.

6. Functional Description

6.1 The equipment must be capable of ensuring removal of refrigerant from the system being serviced by reducing the system pressure to a minimum of 102 mm (4 in) of mercury below atmospheric pressure (*i.e.*, to a vacuum). To prevent system delayed outgassing, the unit must have a device that assures that the refrigerant has been recovered from the air-conditioning system.

6.1.1 Testing laboratory certification of the equipment capability is required which shall process contaminated refrigerant samples at specific temperatures.

6.2 The equipment must be preconditioned by processing 13.6 kg (30 lb) of the standard contaminated refrigerant at an ambient of 21 °C (70 °F) before starting the test cycle. Sample amounts are not to exceed 1.13 kg (2.5 lb) with sample amounts to be processed at 5 min intervals. The test method fixture, depicted in Figure 1 to Appendix A of this subpart, shall be operated at 21 °C (70 °F). Contaminated refrigerant samples shall be processed at ambient temperatures of 10 and 49 °C, without equipment shutting due to any safety devices employed in this equipment.

6.2.1 Standard contaminated refrigerant, 13.6 kg (30 lb) sample size, shall consist of liquid refrigerant with 1300 ppm (by weight) moisture at 21 °C and 45,000 ppm (by weight) of oil (mineral oil and POE) and 1000 ppm by weight of noncondensable gases (air).

6.3 Portable refillable containers used in conjunction with this equipment must meet applicable DOT Standards.

6.3.1 The container color must be colored (with the applicable ARI color code for the specific refrigerant) with a yellow top to identify that it contains used refrigerant. It must be permanently marked on the outside surface in black print at least 20 mm high "DIRTY [NAME OF REFRIGERANT]—DO NOT USE, MUST BE PROCESSED".

6.3.2 The portable refillable container shall have a unique thread connection for the specific refrigerant.

6.3.3 During operation, the equipment shall provide overfill protection to assure that the storage container liquid fill does not exceed 80% of the tank's rated volume at 21 °C per DOT Standard, 49 CFR 173.304, and the American Society of Mechanical Engineers.

6.4 Additional Storage Tank Requirements.

6.4.1 The cylinder valve shall comply with UL 1769.

6.4.2 The pressure relief device shall comply with CGA Pamphlet S–1.1.

6.4.3 The container assembly shall be marked to indicate the first retest date, which shall be 5 years after date of manufacture. The marking shall indicate that retest must be performed every subsequent 5 years. The marking shall be in letters at least 6 mm high.

6.5 All flexible hoses must meet SAE J2196 for service hoses except that fittings shall be unique to the applicable refrigerant.

6.6 Service hoses must have shutoff devices located within 30 cm of the connection point to the system being serviced to minimize introduction of noncondensable gases into the recovery equipment during connection and the release of the refrigerant during disconnection.

6.7 The equipment must be able to separate the lubricant from the recovered refrigerant and accurately indicate the amount removed from the simulated automotive system during processing in 30 ml units.

6.7.1 The purpose of indicating the amount of lubricant is to ensure that a proper amount of new lubricant is returned to the mobile air conditioning system for compressor lubrication.

6.7.2 Refrigerant dissolved in this lubricant must be accounted for to prevent system lubricant overcharge of the mobile air-conditioning system.

6.8 The equipment must be capable of continuous operation in temperatures of 10 to 49 °C and must comply with sections 6.1 and 6.2.

7. For test validation, the equipment is to be operated according to the manufacturer's instructions.

Application

The purpose of this standard is to provide equipment specifications for the recovery of any class I or class II refrigerant other than CFC–12 for return to a refrigerant reclamation facility that will process it to ARI Standard 700–93 (or for recycling in other EPA approved recycling equipment, in the event that EPA in the future designates a standard for equipment capable of recycling FRIGC™ FR–12 or other class I or class II refrigerant, as appropriate). It is not acceptable that the refrigerant removed from a mobile air-conditioning system with this equipment be directly returned to mobile air-conditioning system.

Reference Section

SAE J639—Vehicle Service Coupling.

SAE J2196—Service Hoses for Automotive Air-Conditioning.

ARI 700–93—Specifications for Fluorocarbon Refrigerants.

CGA Pamphlet S–1.1—Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases.

UL 1769—Cylinder Valves.

49 CFR 173.304—Shippers—General Requirements for Shipment and Packagings.

[FR Doc. 96–4033 Filed 3–5–96; 8:45 am]

BILLING CODE 6560–50–P

VOL
61

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1996

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federal register

Wednesday
March 6, 1996

Part III

Department of Housing and Urban Development

24 CFR Part 92
HOME Investment Partnerships Program: Streamlining; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 92

[Docket No. FR–3962–I–01]

RIN 2501–AC06

Office of the Secretary; HOME Investment Partnerships Program: Streamlining Interim Rule

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule streamlines HUD's regulations for the HOME Program by eliminating provisions that are redundant of statutes or are otherwise unnecessary. This rule will make the HOME Program regulations more concise.

EFFECTIVE DATE: April 5, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, Room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–2470. (This is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TDD) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for the HOME Investment Partnerships Program can be improved and streamlined by eliminating unnecessary provisions.

Several provisions in the regulations repeat statutory language from the Cranston-Gonzalez National Affordable Housing Act (NAHA). It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), since those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, this rule will remove repetitious statutory language and replace it with a citation to the specific statutory section for easy reference.

Several other provisions in the regulations apply to more than one program, and therefore HUD repeated these provisions in different subparts. This repetition is unnecessary, and updating these scattered provisions is cumbersome and often creates confusion. Therefore, this rule will consolidate these duplicative provisions, maintaining appropriate cross-references for the reader's convenience.

Some provisions in the regulations are now obsolete. For instance, this rule removes reference to obsolete regulations regarding Cost Effective Energy Standards in subpart F. These guidelines were found in 24 CFR part 39, which has been deleted but will be made available as standards for participating jurisdictions.

Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely removes unnecessary regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary. This rule is being published as an interim rule and not as a final rule because the HOME program regulation at 24 CFR part 92 has not yet been issued as a final rule.

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions. It does not change the environmental review procedures or the physical impact of the program or the projects assisted under the regulations being amended. Findings of No Significant Impact with respect to the environment were made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing the HOME Investment Partnerships Program, and regulations removing 24 CFR part 39. Those findings remain applicable to this rule, and are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes that would affect the relationship between the Federal Government and State and local governments will result from this rule.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

The Catalog of Federal Domestic Assistance Number for the HOME Program is 14.239.

List of Subjects in 24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, part 92 of title 24 of the Code of Federal Regulations is amended as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. The authority citation for part 92 is revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

2. Section 92.1 is revised to read as follows:

§ 92.1 Overview.

This part implements the HOME Investment Partnerships Act (the HOME Investment Partnerships Program). In general, under the HOME Investment Partnerships Program, HUD allocates funds by formula among eligible State and local governments to strengthen public-private partnerships to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing for very low-income and low-income families. Generally, HOME funds must be matched by nonfederal resources. State and local governments that become participating jurisdictions may use HOME funds to carry out multi-year housing strategies through acquisition, rehabilitation, and new construction of housing, and tenant-based rental assistance. Participating jurisdictions are able to provide assistance in a number of eligible forms, including loans, advances, equity investments, interest subsidies and other forms of investment that HUD approves.

3. In § 92.2, the definition "*Act*" is added in alphabetical order, to read as follows:

§ 92.2 Definitions.

Act means the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 *et seq.*

* * * * *

4. Section 92.4 is revised to read as follows:

§ 92.4 Suspension of requirements for disaster areas.

HUD may suspend HOME statutory requirements in connection with disaster areas in accordance with section 290 of the Act.

§ 92.52 [Removed]

5. Section 92.52 is removed.

§ 92.100 [Removed and reserved]

6. Section 92.100 is removed and reserved.

§ 92.212 [Removed and reserved]

7. Section 92.212 is removed and reserved.

8. Section 92.213 is revised to read as follows:

§ 92.213 Development of model programs.

HUD will develop and make available model programs in accordance with section 213 of the Act.

9. In § 92.214, paragraph (a)(2) is revised to read as follows:

§ 92.214 Prohibited activities.

(a) * * *

(2) Provide tenant-based rental assistance for the special purposes of the existing section 8 program in accordance with section 212(d) of the Act.

* * * * *

10. Section 92.215 is revised to read as follows:

§ 92.215 Limitation on jurisdictions under court order.

Limitations on the use of HOME funds in connection with litigation involving discrimination or fair housing are set forth in section 224 of the Act.

§ 92.251 [Amended]

11. Section 92.251 is amended by removing the last sentence in paragraph (a).

12. Section 92.302 is revised to read as follows:

§ 92.302 Housing education and organizational support.

(a) *General.* HUD is authorized to provide education and organizational support assistance in conjunction with HOME funds made available to community housing development organizations in accordance with section 233 of the Act.

(b) *Limitations.* Contracts under this section with any one contractor for a fiscal year may not—

(1) Exceed 20 percent of the amount appropriated for this section for such fiscal year; or

(2) Provide more than 20 percent of the operating budget (which may not include funds that are passed through to community housing development organizations) of the contracting organization for any one year.

(c) *Single-state contractors.* Not less than 40 percent of the funds made available for this section in an appropriations Act in any fiscal year must be made available for eligible contractors that have worked primarily in one state. HUD shall provide assistance under this section, to the extent applications are submitted and approved, to contractors in each of the HUD geographic regions.

(d) *Notice of funding.* HUD will publish a notice in the **Federal Register** announcing the availability of funding under this section, as appropriate. The notice need not include funding for each of the eligible activities, but may target funding from among the eligible activities.

§ 92.358 [Removed and reserved]

13. Section 92.358 is removed and reserved.

14. Section 92.400 is revised to read as follows:

§ 92.400 Coordinated Federal support for housing strategies.

(a) *General.* HUD will provide assistance to increase the capacity to identify and meet the needs to increase the supply of affordable housing in accordance with subtitle C of the Act.

(b) *Notice of funding.* HUD will publish a notice in the **Federal Register** announcing the availability of funding under this section as appropriate.

Dated: February 22, 1996.

Henry G. Cisneros,

Secretary.

[FR Doc. 96–5049 Filed 3–5–96; 8:45 am]

BILLING CODE 4210–32–P

VOL
61

ISS
45

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UMI

federal register

Wednesday
March 6, 1996

Part IV

Department of Housing and Urban Development

24 CFR Part 5, et al.
Regulatory Reinvention: Consolidation of Admission Preferences for Assisted Housing; Final Rule

VOL
61
ISS
45
MR
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UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 5, 880, 881, 882, 883, 884, 885, 886, 889, 904, 960, 982, and 983

[Docket No. FR-3980-F-01]

RIN 2501-AC10

Regulatory Reinvention—Consolidation of Admission Preferences for Assisted Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the various program regulations governing assisted housing programs to remove the nearly identical provisions concerning admission preferences found in numerous parts of title 24 of the Code of Federal Regulations and adds several sections on this subject in 24 CFR part 5. The amendments made by this rule do not change the substance of the provisions but eliminate redundant provisions by placing in a general part the provisions that derive from parallel statutory provisions in the United States Housing Act of 1937.

EFFECTIVE DATE: April 5, 1996.

FOR FURTHER INFORMATION CONTACT: For the Section 8 project-based programs other than the Moderate Rehabilitation and Project-Based Certificate programs: Barbara Hunter, Director, Program Management Division, Office of Housing, telephone (202) 708-3944 (voice).

For the Section 8 Certificate, Voucher and Moderate Rehabilitation programs and for the public housing program: Linda Campbell, Director of Marketing, Leasing and Management Division, Office of Public and Indian Housing, telephone (202) 708-0744 (voice).

Both of these officials are located at the Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410. For hearing- or speech-impaired persons, the above-stated telephone numbers may be accessed via TDD by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

There are no changes to the information collection requirements contained in these provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Background

The impetus for this rule is the Secretary's desire to simplify the Department's regulations. In response to the President's initiative to reinvent regulations, the Secretary has determined that the regulations currently found in parts 880, 881, 882, 883, 884, 885, 886, 889, 904, 960, 982, and 983 concerning preferences in admission to assisted housing for persons that are involuntarily displaced, living in substandard housing, or paying more than 50 percent of income for rent, can be consolidated into one set of provisions to apply to these programs without changing the policies implemented by those provisions. This consolidation will eliminate 56 pages from the Department's regulations codified at title 24 of the Code of Federal Regulations.

The continuing resolution enacted on January 26, 1996, approving partial funding for the Department, provides that the statutory provisions on admissions preferences implemented by the regulations being consolidated in this rulemaking are suspended for Fiscal Year 1996. Therefore, this consolidated rule and the regulations that it amends have no effect until October 1, 1996.

II. Action

The nearly identical provisions in parts 880, 881, 882, 883, 884, 885, 889, 960, 982, and 983 shown in the following chart are being removed and consolidated in the corresponding sections of part 5. Cross references to those sections are revised to refer to the Federal preference provisions of 24 CFR part 5:

CORRESPONDING PREFERENCE PROVISIONS

[New provision at head of column]

5.410	5.415	5.420	5.425	5.430
880.613	880.614	880.615	880.616	880.617
881.613	881.614	881.615	881.616	881.617
882.517	882.518	882.519	882.520	882.521
883.714	883.715	883.716	883.717	883.718
884.226	884.227	884.228	884.229	884.230
886.132	886.133	886.134	886.135	886.136
886.337				
889.611	889.612	889.613	889.614	889.615
904.122				
960.211	960.212	960.213	960.214	960.215
982.209	982.210	982.211	982.212	982.213
983.203				

Findings and Certifications

Justification for Final Rule

It is HUD's policy to publish rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking found at 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that in this case, prior public comment is unnecessary because the removal of nearly identical program requirements and consolidation of these provisions into a single part does not affect or establish policy. The primary purpose of this rule is to relocate provisions concerning admission preferences, not to revise them.

Impact on the Environment

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332 when the admission preference rules (FR-3122 and FR-3727) were promulgated as final rules. Those Findings of No Significant Impact are available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that actions taken in this rule do not have significant impact on States or their political subdivisions, since the rule merely relocates provisions regarding admission preferences for assisted housing.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being. Therefore, the proposed rule is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities. The rule is limited to consolidating identical provisions found in various program regulations.

Regulatory Review

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection at the address stated above for review of the environmental finding.

Catalog

The Catalog of Federal Domestic Assistance numbers for the program affected by this rule are 14.157, 14.182, 14.850, and 14.856.

List of Subjects

24 CFR Part 5

Administrative practive and procedure, Grant programs—housing and community development, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 885

Aged, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 889

Aged, Capital advance programs, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 904

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Public housing.

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, parts 5, 880, 881, 882, 883, 884, 885, 886, 889, 904, 960, 982, and 983 of title 24 of the Code of Federal Regulations are amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation is revised to read as follows:

Authority: 42 U.S.C. 1437a and 3535(d).

2. New §§ 5.410, 5.415, 5.420, 5.425, and 5.430, are added to subpart D of part 5, to read as follows:

Subpart D—Definitions and Other General Requirements for Assistance Under the United States Housing Act of 1937

* * * * *

5.410 Selection preferences.
5.415 Federal preferences: general.
5.420 Federal preference: involuntary displacement.
5.425 Federal preference: substandard housing.
5.430 Federal preference: rent burden.

Subpart D—Definitions and Other General Requirements for Assistance Under the United States Housing Act of 1937

* * * * *

§ 5.410 Selection preferences.

(a) *Applicability.* The selection preferences that are described in this part are applicable to public housing and housing assisted under the Section 8 Housing Assistance Payments program. (Corresponding provisions applicable to the Indian housing program are found in 24 CFR part 950.) These preferences are administered by the entity responsible for admission functions in the programs covered ("responsible entity"), i.e., the public housing agency ("HA") in the public housing and Section 8 Certificate/Voucher and Moderate Rehabilitation programs and the owner in all other Section 8 programs.

(b) *Types of preference.* There are three types of admission preferences:

(1) "Federal preferences" are admission preferences for three categories of families, as prescribed in 42 U.S.C. 1437d(c)(4)(A), 1437f(d)(1)(A), 1437f(o)(3), and 1437f note. Federal preference is given for selection of families that are:

(i) Involuntarily displaced;

(ii) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(iii) Paying more than 50 percent of family income for rent.

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(2) "Ranking preferences" are preferences that may be established by the responsible entity to use in selecting among applicants that qualify for federal preferences.

(3) "Local preferences" are preferences for use in selecting among applicants without regard to their federal preference status. (See 42 U.S.C. 1437d(c)(4)(A), 1437f(d)(1)(A), 1437f(o)(3), and 1437f note.)

(c) *System.* In the Section 8 programs other than the Certificate/Voucher and Moderate Rehabilitation programs, the owner must establish a system for selection of applicants from the waiting list that includes the following:

(1) How the federal preferences will be used;

(2) How any ranking preferences will be used;

(3) How any local preferences will be used; and

(4) How any residency preference will be used.

(d) *Use of preference in selection process.* (1) *Factors other than federal and local preferences.* (i) *Characteristics of the unit.* For developments administered under the Section 8 New Construction and Substantial Rehabilitation programs and the public housing program, the responsible entity may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the responsible entity must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 24 CFR 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the responsible entity will give preference to elderly families and disabled families (see subpart D of part 960 or § 880.612a or § 881.612a of this title).

(ii) *Singles preference.* See § 5.405.

(2) *Local preference admissions.* (i) Local preferences may be adopted or amended by an HA to respond to local housing needs and priorities after the HA has conducted a public hearing.

(ii) For Section 8 programs other than the Section 8 Certificate/Voucher, Project-Based Certificate, and Moderate Rehabilitation programs operated under 24 CFR part 982, 983, and 882, respectively, if the owner wants to use preferences to select among applicants without regard to their federal preference status, it must use the local preference system adopted for use in the Section 8 Certificate/Voucher programs by the housing agency for the jurisdiction. If there is more than one HA for the jurisdiction, the owner shall use the local preference system of the HA for the lowest level of government that has jurisdiction where the project is located. For the public housing program, the HA may use a local preference system it adopts for that program.

(iii) In the Section 8 programs other than the Certificate/Voucher, Project-Based Certificate, and Moderate Rehabilitation programs operated under 24 CFR parts 982, 983 and 882, respectively, before an owner implements the HA's local preferences, the owner must receive approval from the HUD Field Office. HUD shall review these preferences to ensure that they are applicable to any tenant eligibility limitations for the subject housing and that they are consistent with HUD requirements pertaining to nondiscrimination and the Affirmative Fair Housing Marketing objectives. If HUD determines that the local preferences are in violation of those requirements, the owner will not be permitted to admit applicants on the basis of any local preferences.

(iv) In any year, the number of families given preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit. "Local preference limit" means the following:

(A) For an HA's Section 8 Certificate/Voucher program operated under 24 CFR part 982, ten percent of annual waiting list admissions;

(B) For an HA's public housing program, fifty percent of annual admissions;

(C) For an HA's Section 8 Moderate Rehabilitation program, thirty percent of annual admissions;

(D) For Section 8 New Construction, Substantial Rehabilitation, and Loan Management/Property Disposition projects, thirty percent of annual admissions to each project; and

(E) For the Section 8 Project-Based Certificate program, thirty percent of total annual waiting list admissions to the HA's Project-Based Certificate program (including admissions pursuant to 24 CFR 983.203(c)(3)).

(3) *Prohibition of preference if applicant was evicted for drug-related criminal activity.* With respect to the Section 8 Certificate, Voucher, Loan Management, and Property Disposition programs and the public housing program, the HA may not give a preference (federal preference, local preference, or ranking preference) to an applicant if any member of the family is a person who was evicted during the past three years from housing assisted under a 1937 Housing Act program because of drug-related criminal activity. However, the HA may give an admission preference in any of the following cases:

(i) If the HA determines that the evicted person has successfully completed a rehabilitation program approved by the HA;

(ii) If the HA determines that the evicted person clearly did not participate in or know about the drug-related criminal activity; or

(iii) If the HA determines that the evicted person no longer participates in any drug-related criminal activity.

(4) *Retention of federal preference status.* With respect to determining the preference status of an applicant for the Section 8 Certificate/Voucher programs, an applicant who is receiving tenant-based assistance under the HOME program (24 CFR part 92) and an applicant who resides in public or Indian housing of the same HA (and was on the tenant-based program waiting list when admitted to the HA's public or Indian housing on or after April 26, 1993), the HA determines whether the applicant qualifies for federal preference based on the situation of the applicant at the time the applicant began to receive tenant-based assistance under the HOME program or was admitted to the HA's public or Indian housing program (beginning of initial public or Indian housing lease).

(e) *Income-based admission.* (1) In public housing, the HA may only give preference to select a relatively higher income family for admission if the preference is pursuant to a "local preference" admission. (For other income-related restrictions on selection, see 24 CFR 913.105.)

(2) In Section 8 programs, the responsible entity may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(f) *Informing applicants about admission preferences.* (1) The responsible entity must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the responsible entity determines that the notification to all applicants on a waiting list required by paragraph (f)(1) of this section is impracticable because of the length of the list, the responsible entity may provide this notification to fewer than all applicants on the list at any given time. The responsible entity must, however, have notified a sufficient

number of applicants at any given time that, on the basis of the entity's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the responsible entity's framework for applying the preferences under paragraph (c) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(g) *Notice and opportunity for a meeting where preference is denied.* (1) If the responsible entity determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the responsible entity must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the responsible entity to review the determination. The meeting may be conducted by any person or persons designated by the responsible entity, who may be an officer or employee of the responsible entity, including the person who made or reviewed the determination or a subordinate employee.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(h) *Residency preferences.* A "residency preference" is a preference for admission of families that reside anywhere in a specified "residency preference area." A residency preference may be used as a ranking or local preference.

(1) *Section 8 programs other than Certificate/Voucher and Project-Based Certificate.* In these developments, local residency requirements are prohibited.

(2) *Section 8 Certificate/Voucher and Project-Based Certificate programs.* Any residency preference must be approved by HUD.

(i) A county or municipality may be used as a residency preference area.

(ii) An area smaller than a county or municipality may not be used as a residency preference area.

(3) *All projects.* With respect to any residency preference, applicants who are working or who have been notified that they are hired to work in the residency preference area shall be treated as residents of the residency preference area. A residency preference may not be based on how long the applicant has resided in or worked in the residency preference area.

(i) *Nondiscrimination.* (1) Any selection preferences must be established and administered in accordance with the following authorities:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD's affirmative fair housing objectives and (where applicable) the owner's HUD-approved affirmative fair housing marketing plan.

(Approved by the Office of Management and Budget under OMB control numbers 2577–0105 and 2502–0372.)

§ 5.415 Federal preferences: general.

(a) *Definitions.* The definitions of these preference categories stated in §§ 5.420, 5.425, and 5.430 must be used by the responsible entity, except that an HA may use its own alternative definitions if they have been approved by HUD.

(b) *Ranking preferences: selection among federal preference holders.* The responsible entity's system of administering the federal preferences (its admission policy, in the case of the Section 8 Certificate/Voucher programs) may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The responsible entity may give preference to working families—so long as the prohibition of § 5.410 against selection based on income and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. (If a responsible entity adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member, are age 62 or older or are receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) A responsible entity may give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. The responsible entity also may use the housing agency's "local preferences" for the Section 8 Certificate and Voucher programs to rank federal preference holders.

(2) The ranking preferences may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular category of federal preference; or

(iii) Giving greater weight to a federal preference holder who fits a particular category of federal preference.

(c) *Qualifying for a federal preference.* (1) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the responsible entity that the family qualifies for federal preference. The responsible entity must accept this certification, unless the responsible entity verifies that the applicant is not qualified for federal preference.

(2) *Verification of preference.* (i) Before admitting an applicant on the basis of a federal preference, the responsible entity must require the applicant to provide information needed by the responsible entity to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) In the case of Section 8 programs other than the Section 8 Certificate/Voucher, Project-Based Certificate, and Moderate Rehabilitation programs, the owner must use the verification procedures specified in § 5.420(c) (involuntary displacement); § 5.425(c) (substandard housing); and § 5.430(b) (rent burden). In the case of the Section 8 Certificate/Voucher, Project-Based

Certificate, and Moderate Rehabilitation programs and the public housing program, the HA may adopt its own verification procedure.

(iii) Once the responsible entity has verified an applicant's qualification for a federal preference, the responsible entity need not require the applicant to provide information needed by the responsible entity to verify such qualification again unless:

(A) The responsible entity determines reverification is desirable because a long time has passed since verification; or

(B) The responsible entity has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(3) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) *Approval of special conditions satisfying preference definitions.* With respect to Section 8 programs other than the Section 8 Certificate/Voucher, Project-Based Certificate and Moderate Rehabilitation programs, HUD may specify additional conditions under which the federal preferences, as described in §§ 5.420, 5.425, and 5.430, can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.) (Approved by the Office of Management and Budget under OMB control number 2502–0372 and 2577–0105.)

§ 5.420 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.* (See § 5.415(a)(2) and (c)(2)(ii) for applicability of this section to the Section 8 Certificate/Voucher, Project-Based Certificate, and Moderate Rehabilitation programs and the public housing program.)

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the responsible entity.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.* (i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence; or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The responsible entity must determine, in accordance with HUD's administrative instructions, that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the responsible entity has given advance written approval. If the family is admitted, the responsible entity may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.* (i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The responsible entity may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.* (i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The responsible entity must determine, in accordance with HUD's administrative instructions, that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Development Amendments of 1978.

(c) *Involuntary displacement preference: Verification.* A private owner's verification of an applicant's involuntary displacement is established by the following documentation:

(1) *Displacement by disaster.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster that results in the uninhabitability of an applicant's unit.

(2) *Displacement by government action.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by owner action.* Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of owner action.

(4) *Displacement because of domestic violence.* Certification, in a form prescribed by the Secretary, of displacement because of domestic violence from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(5) *Displacement to avoid reprisals.* A threat assessment by a law enforcement agency.

(6) *Displacement by hate crime.* Certification by a law enforcement agency or other reliable information.

(7) *Displacement by inaccessibility of unit.* Certification by a health care professional that a family member has a mobility or other impairment that makes critical elements of the current unit inaccessible, and statement by the owner that it is unable to make necessary changes to the unit to make it accessible.

(8) *Displacement by HUD disposition of multifamily project.* Certification by HUD with respect to the disposition.

§ 5.425 Federal preference: substandard housing.

(a) *When unit is substandard.* (See § 5.415(a)(2) and (c)(2)(ii) for applicability of this section to the Section 8 Certificate/Voucher, Project-Based Certificate, Moderate Rehabilitation programs and the public housing program.) A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.* (1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(2) *Homeless family.* (i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes:

(A) Any person or family that lacks a fixed, regular, and adequate nighttime residence; and

(B) Any person or family that has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

(c) *Substandard housing preference: verification.* The following provisions are applicable to private owners:

(1) Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit is "substandard housing" (as described in this section).

(2) In the case of a "homeless family" (as described in this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

§ 5.430 Federal preference: rent burden.

(a) *Rent burden preference: how determined. (See § 5.415(a)(2) and (c)(2)(ii) for applicability of this section to the Section 8 Certificate/Voucher, Project-Based Certificate, and Moderate Rehabilitation programs and the public housing program.)*

(1) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(2) For purposes of determining whether an applicant qualifies for the rent burden preference:

(i) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(ii) "Rent" means:

(A) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(B) For utilities purchased directly by tenants from utility providers:

(*1*) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program; or

(*2*) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(iii) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(iv) For purposes of the Section 8 Certificate/Voucher programs, rent for an applicant who owns a manufactured home, but rents the space upon which it is located, includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements. In addition, for this program, rent for members of a cooperative means the charges under the occupancy agreement between the members and the cooperative.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference: verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using the standards and procedures that it uses to verify family income under 24 CFR part 813.

(2) *How to verify rent.* The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement; or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) *Utilities.* To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

PART 880–SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

3. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

Subpart F—Management

§ 880.603 [Amended]

4. Section 880.603 is amended by:

a. Amending the introductory text of paragraph (b) by removing the phrase "§§ 880.613 through 880.617." from the end of the paragraph, and adding in its place the phrase "24 CFR part 5.";

b. Amending paragraph (b)(1) introductory text by removing the term "§ 880.613(c)(2)" from the third sentence, and adding in its place the phrase "24 CFR part 5"; and

c. Amending paragraph (b)(2) by removing the term "§ 880.613(k)" from the fifth sentence, and adding in its place "24 CFR 5.410".

§ 880.612a [Amended]

5. In § 880.612a, paragraph (g) is amended by removing the term "§ 880.613" in the two places where it appears, and by adding the term "24 CFR part 5" in those two places.

§§ 880.613, 880.614, 880.615, 880.616, and 880.617 [Removed]

6. Sections 880.613, 880.614, 880.615, 880.616, and 880.617 are removed.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

7. The authority citation for part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

Subpart F—Management

§ 881.603 [Amended]

8. Section 881.603 is amended by:

a. Amending the introductory text of paragraph (b) by removing the phrase "§§ 881.613 through 881.617" from the end of the paragraph, and adding in its place the phrase "24 CFR part 5";

b. Amending paragraph (b)(2) introductory text by removing the term "§ 881.613(c)(2)" from the third sentence, and adding in its place the phrase "24 CFR part 5"; and

c. Amending paragraph (b)(3) by removing the term "§ 881.613(k)" from the fifth sentence, and adding in its place the term "§ 24 CFR 5.410".

§ 881.612a [Amended]

9. In § 881.612a, paragraph (g) is amended by removing the term "§ 881.613" in the two places where it appears, and by adding the term "24 CFR part 5" in those two places.

§§ 881.613, 881.614, 881.615, 881.616, and 881.617 [Removed]

10. Sections 881.613, 881.614, 881.615, 881.616, and 881.617 are removed.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

11. The authority citation for part 882 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

Subpart E—Special Procedures for Moderate Rehabilitation—Program Development and Operation

§ 882.514 [Amended]

12. Section 882.514 is amended by:

a. Amending paragraph (a)(1) by adding, before the term "750" in the parenthetical phrase, the term "5, ", and by removing the last sentence, and

b. Amending the introductory text of paragraph (b) by removing the term "§ 882.517(c)(2)" from the fourth sentence, and adding in its place the phrase "24 CFR part 5".

§§ 882.517, 882.518, 882.519, 882.520, and 882.521 [Removed]

13. Sections 882.517, 882.518, 882.519, 882.520, and 882.521 are removed.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

14. The authority citation for part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

Subpart G—Management of New Construction and Substantial Rehabilitation Projects

§ 883.704 [Amended]

15. Section 883.704 is amended by:

a. Amending the introductory text of paragraph (b) by removing the phrase "parts 750 and 760 of chapter VII", and adding in its place the phrase "24 CFR parts 5, 750, and 760", and by removing the phrase ", including giving a Federal preference in accordance with § 883.714" from the end of the paragraph;

b. Amending paragraph (b)(2) by removing the term "§ 883.714(c)(2)" from the third sentence, and adding in its place the phrase "24 CFR part 5"; and

c. Amending paragraph (b)(3) by removing the term "883.714(k)" from the third sentence, and adding in its place "24 CFR 5.410".

§ 883.704a [Amended]

15a. In § 883.704a, paragraph (g) is amended by removing the term "§ 883.714" in the two places it appears, and adding in its places the term "24 CFR part 5".

§§ 883.714, 883.715, 883.716, 883.717, and 883.718 [Removed]

16. Sections 883.714, 883.715, 883.716, 883.717, and 883.718 are removed.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

17. The authority citation for part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

17a. The table of contents for part 884 is amended to add the reference to "*§ 884.223a Preference for occupancy by elderly families.*"

Subpart B—Project Development and Operation

§ 884.214 [Amended]

18. Section 884.214 is amended as follows:

a. Paragraph (b)(1) is amended by removing the term "§ 884.226" from the parenthetical phrase, and adding in its place the phrase "24 CFR part 5";

b. Paragraph (b)(2) is amended by removing the term "§ 884.226(c)(2)" from the second sentence, and adding in its place the phrase "24 CFR part 5"; and

c. Paragraph (b)(7) is revised, to read as follows:

§ 884.214 Marketing.

* * * * *

(b) * * *

(7) See 24 CFR part 5 for the informal review provisions for the denial of a Federal selection preference.

* * * * *

§ 884.223a [Amended]

19. In § 884.223a, paragraph (g) is amended by removing the term "§ 884.226" in the two places where it appears, and by adding in those places the phrase "24 CFR part 5".

§§ 884.226, 884.227, 884.228, 884.229, and 884.230 [Removed]

20. Sections 884.226, 884.227, 884.228, 884.229, and 884.230 are removed.

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

21. The authority citation for part 885 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f and 3535(d).

Subpart B—Section 202 Projects for the Elderly or Handicapped—Section 8 Assistance

§ 885.427 [Amended]

22. Section 885.427 is amended by removing the term "§§ 880.613–880.617 of this chapter" and adding in its place the phrase "24 CFR part 5, subpart D".

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

23. The authority citation for part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

Subpart A—Additional Assistance Program for Projects With HUD-Insured and HUD-Held Mortgages

§ 886.119 [Amended]

24. In § 886.119, paragraph (a)(3) is amended by removing the term "§ 886.132" and adding in its place the phrase "24 CFR part 5".

25. Section 886.132 is revised to read as follows:

§ 886.132 Selection preferences.

Sections 5.410 through 5.430 of this title govern the use of preferences in the selection of tenants under this subpart A.

§§ 886.133, 886.134, 886.135, and 886.136 [Removed]

26. Sections 886.133, 886.134, 886.135, and 886.136 are removed.

Subpart C—Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects

§ 886.337 [Amended]

27. Section 886.337 is amended by removing the phrase "Sections 886.132 through 886.136" and by adding the phrase "Sections 5.410 through 5.430".

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

28. The authority citation for part 889 is revised to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 3535(d).

Subpart F—Project Management

29. In § 889.610, paragraph (a) is revised to read as follows:

§ 889.610 Selection and admission of tenants.

(a) *Written procedures.* The owner shall adopt written tenant selection procedures that ensure nondiscrimination in the selection of tenants and that are consistent with the purpose of improving housing opportunities for very low-income elderly persons; that are reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease; and that conform to the requirements on preferences contained in 24 CFR part 5. Owners shall promptly inform in writing any rejected applicant of the grounds for any rejection. Additionally, owners shall maintain a written, chronological waiting list showing the name, race, gender, ethnicity and date of each person applying for the program.

* * * * *

§§ 889.611, 889.612, 889.613, 889.614, and 889.615 [Removed]

30. Sections 889.611, 889.612, 889.613, 889.614, and 889.615 are removed.

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

31. The authority citation for part 904 continues to read as follows:

Authority: 42 U.S.C. 1437–1437ee and 3535(d).

Subpart B—Turnkey III Program Description

§ 904.122 [Amended]

32. Section 904.122 is amended by removing the phrase "§§ 960.211 through 960.215" and adding in its place the phrase "24 CFR 5.410 through 5.430".

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

33. The authority citation for part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, and 3535(d).

Subpart B—Admission, Rent and Reexamination

§ 960.203 [Removed and reserved]

34. Section 960.203 is removed and reserved.

§ 960.204 [Amended]

35. In § 960.204, paragraph (a) is amended by adding after the word "chapter", the phrase "and 24 CFR part 5"; and by removing paragraph (d).

§ 960.205 [Amended]

36. In § 960.205, paragraph (c) is amended by removing the two parenthetical phrases that read "(see § 960.211)" and "(But see § 960.211(d)".

§ 960.206 [Amended]

37. In § 960.206, paragraph (a) is amended by removing the reference to "§ 960.211" and by adding in its place the phrase "24 CFR part 5".

§ 960.207 [Amended]

38. In § 960.207, paragraph (a) is amended by removing the phrase "(see § 960.211)".

§§ 960.211, 960.212, 960.213, 960,214, and 960.215 [Removed]

39. Sections 960.211, 960.212, 960.213, 960,214, and 960.215 are removed.

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

40. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

Subpart A—General Information

§ 982.3 [Amended]

41. Section 982.3 is amended by removing the definitions of "*Federal preference,*" *Federal preference holder,*" "*Local preference,*" "*Local preference limit,*" "*Ranking preference,*" "*Residency preference,*" and "*Residency preference area.*"

Subpart E—Admission to Tenant-Based Program

§ 982.202 [Amended]

42. Section 982.202 is amended by:

a. Redesignating paragraph (b)(4)(i) as paragraph (b)(4);

b. Redesignating paragraphs (b)(4)(i)(A), (b)(4)(i)(B), (b)(4)(i)(C), (b)(4)(i)(D), and (b)(4)(i)(E), as paragraphs (b)(4)(i), (b)(4)(ii), (b)(4)(iii), (b)(4)(iv), and (b)(4)(v), respectively; and

c. Removing paragraph (b)(4)(ii).

43. Section 982.207 is revised to read as follows:

§ 982.207 Waiting list: Use of preferences.

(a) The HA must use the following to select among applicants on the waiting list with the same preference status:

(1) Date and time of application; or

(2) A drawing or other random choice technique.

(b)(1) The method for selecting applicants from preference categories must be consistent with requirements governing federal preference and the singles preference, as described in 24 CFR part 5.

(2) In its system for applying the preferences described in 24 CFR part 5, the following provisions apply:

(i) The HA may limit the number of applicants that may qualify for any ranking preference or local preference.

(ii) The local preference limit only applies to admission of an applicant from the HA waiting list. A special admission is not counted against the local preference limit.

(iii) The local preference limit does not apply when an applicant is received in an HA program under portability procedures. The admission of a portability family by a receiving HA does not count against the receiving HA local preference limit. The admission of such a family (not qualified for federal preference) counts against the local preference limit of the initial HA.

(c) The method for selecting applicants from preference categories must leave a clear audit trail that can be used to verify that each applicant has been selected in accordance with the method specified in the administrative plan.

§§ 982.208, 982.209, 982.210, 982.211, 982.212, and 982.213 [Removed]

44. Sections 982.208, 982.209, 982.210, 982.211, 982.212, and 982.213 are removed.

PART 983—SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

45. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

Subpart E—Management

§ 983.203 [Amended]

46. Section 983.203 is amended as follows:

a. Paragraph (a)(1) is amended by removing the phrase, "except (b)(1), and 982.208 through 982.213 of this chapter", and adding in its place the phrase, "and 24 CFR 5.410 through 5.430"; and

b. Paragraph (a)(5) is removed, and paragraphs (a)(6) and (a)(7) are redesignated as paragraphs (a)(5) and (a)(6), respectively.

Dated: February 22, 1996.

Henry G. Cisneros,

Secretary.

[FR Doc. 96–5024 Filed 3–5–96; 8:45 am]

BILLING CODE 4210–32–P

federal register

Wednesday
March 6, 1996

Part V

Department of Education

National Resource Center and Foreign Language and Area Studies Fellowship Programs: Technical Assistance Workshop; Notice

VOL
61
ISS
45
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DEPARTMENT OF EDUCATION

[CFDA No. 84.015]

National Resource Center and Foreign Language and Area Studies Fellowship Programs; Notice of Technical Assistance Workshop

SUMMARY: The U.S. Department of Education will sponsor a two-day technical assistance workshop for colleges and universities interested in learning more about the application process for the National Resource Center (NRC) and Foreign Language and Area Studies Fellowship (FLAS) Programs. This workshop will be conducted by staff of the Center for International Education, Office of Postsecondary Education, U.S. Department of Education. The workshop will cover the guidelines concerning applications for the expected fall 1996 (FY 1997) competition, proposed regulatory changes, and data collection techniques for funded centers. The workshop will also offer suggestions for preparing applications.

Dates: April 1–2, 1996.

Time: 8:30 a.m.–5:30 p.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, D.C., Telephone: (202) 234–0700.

Note: There will be no registration fees. Participants should notify Uri Monson of their intentions to attend by no later than March 15, 1996, by fax: (202) 205–9489 or e-mail: (uri__monson@ed.gov). Registration will take place on March 31, 1996 from 5:00 p.m.–7:00 p.m. at the Omni Shoreham Hotel.

FOR FURTHER INFORMATION CONTACT: Uri Monson at (202) 401–9779, or (uri__monson@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

Dated: February 15, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–5142 Filed 3–5–96; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
March 6, 1996

Part VI

Department of Housing and Urban Development

24 CFR Part 955

Loan Guarantees for Indian Housing; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 955

[Docket No. FR-3814-F-04]

RIN 2577-AB40

Office of the Assistant Secretary for Public and Indian Housing; Loan Guarantees for Indian Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule sets forth regulations to implement the Indian Loan Guarantee Program authorized by section 184 of the Housing and Community Development Act of 1992. The purpose of the program is to provide loan guarantees that will make private financing available to Native Americans on restricted lands where no source of financing is currently available.

EFFECTIVE DATE: April 5, 1996.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Deputy Assistant Secretary for Native American Programs, Room B–133, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 755–0032 (voice) or (202) 708–0850 (TDD for speech or hearing impaired individuals). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in § 955.101 of this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0200. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

II. Background

Section 184 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992) authorized the establishment of the Indian Housing Loan Guarantee Fund (the Fund) to provide access to sources of private financing to Indian families and Indian housing authorities who otherwise could not acquire housing financing because of the unique legal status of Indian trust land. In general, these lands, held in trust by the United States for the benefit of an Indian or Indian tribe, are inalienable. Trust lands under this program also include lands to which the title is held by an Indian tribe subject to a restriction against alienation imposed by the United States. Because titles to individual plots do not convey, and liens do not attach, conventional mortgage lending practices do not operate in this forum.

The Fund addresses these obstacles to mortgage financing by guaranteeing loans made to Indian families or Indian housing authorities to construct, acquire, or rehabilitate 1- to 4-family dwellings that are standard housing and are located on trust land or land located in an Indian or Alaska Native area. Loans may be made by any lender approved by the Secretary of Housing and Urban Development, the Secretary of Agriculture, or the Secretary of Veterans' Affairs; or, any lender which is supervised, approved, regulated or insured by any agency of the Federal Government.

The Department implemented the section 184 Loan Guarantees for Indian Housing program at 24 CFR part 955 by an interim rule published on August 18, 1994 (59 FR 42732). Six public comments, which are discussed in section IV. of this preamble, below, were received in response to the interim rule.

III. Changes Made in the Final Rule

In keeping with the President's mandate to reinvent and reform regulations, part 955 is substantially streamlined in this rule. One of the methods by which the Department is streamlining and reducing its regulations is to remove rule text that only repeats statutory language. Rules will only contain legally binding requirements that are in addition to those contained in a statute. Besides reducing the sheer bulk of rules, this practice will remove the problems that result when a rule that echoes the language of a statute becomes inconsistent with new statutory amendments. The period before such a rule is amended to conform to new statutory language is often one of confusion and uncertainty as to which law applies: the old provisions in the regulations or the new provisions in the statute. The new part 955 promulgated here does not, therefore, repeat any statutory language, but only implements requirements that are in addition to those in Section 184.

The combined statutory and regulatory requirements that apply with respect to Section 184 loan guarantees have been placed in an appendix to this final rule. The final rule will be codified in the Code of Federal Regulations; the appendix will not be codified. However, the appendix is available to the public as a single document which provides a unified overview of the general requirements under Section 184.

This final rule also adds a definition of Section 184, referring to the loan guarantee program, that makes citing the program in the rule more convenient.

IV. Comments on the Interim Rule

HUD solicited public comments on the interim rule. During the comment period HUD received 6 comments from IHAs, Tribal leaders, and financial institutions. This final rule summarizes below the comments according to their relevant subparts and provides HUD's responses to those comments.

Section 955.101 Applicability

Three commentors objected to the interim rule's definition of eligible areas as "restricted Indian lands." These commentors stated that eligible areas should be defined as all lands in Indian country, regardless of title status (including fee lands).

HUD response: Section 184 can be used only with respect to properties which are located on trust/restricted lands or which are located within an Indian area. Some tribes are currently expanding their service area by purchasing fee simple land and placing that land into trust status. These areas are eligible for section 184 assistance because they are restricted lands within an Indian area.

Section 955.103 Definitions

One commentor noted that the Interim Rule refers to "Native Americans" while the statute refers to "Indian families" and "Indian Housing Authorities." The commentor recommended that references to "Native Americans" be removed from the rule.

HUD response: The definition of *Indian* used in the rule means any person recognized as being Indian or Alaska Native by an Indian tribe, the Federal Government, or any State, and includes the term "Native American", which has been added to the regulatory language at the discretion of the Department.

One commentor requested clarification regarding whether Native Hawaiians are eligible borrowers under the section 184 program.

HUD response: The statutory purpose of the section 184 program is given at HCDA 1992 section 184(a) as: "To provide access to sources of private financing to Indian families and Indian housing authorities who otherwise could not acquire housing financing because of the unique legal status of Indian trust land * * *". Native Hawaiians, who are not included within the definition of the term "Indian," do not qualify under this statutory purpose.

Section 955.105 Eligible Loans

Two commentors noted that the restriction on eligible loans should be expanded to include adjustable rate mortgages and balloon payment mortgages.

HUD response: The Department has determined that the section 184 program will be operating in a totally new lending environment and the uncertainty of a balloon payment mortgage or an adjustable rate mortgage of any type would create an unnecessary risk to the borrower, the lender and the Department. This rule clarifies, at § 955.105, that only fixed rate, fixed term loans with even monthly payments are eligible.

Two commentors noted that acquisition and rehabilitation is an eligible activity and requested clarification whether a single guaranteed loan can be made to cover both of these activities for one structure.

HUD response: Yes, a single guaranteed loan can be made to cover both acquisition and rehabilitation for one structure. A section 184 guaranteed loan may be used to "pay off" a Mutual Help home so that the property may be conveyed to the homeowner. A guaranteed loan could be used to pay off *and* rehabilitate a Mutual Help home.

Section 955.107 Eligible Housing

One commenter stated that fee lands within Indian country should be eligible sites. HUD will allow fee simple lands in limited circumstances. Fee simple lands *within a designated Indian area* are eligible sites under section 184.

One commentor recommended that the term "modest in size and design" be defined in specific terms.

HUD response: In order to determine "modest" the section 184 program loan may not exceed 150% of the FHA mortgage limits, as adjusted for the area. These mortgage limits are published by the Federal Housing Administration (FHA) by area of the country on a periodic basis. Thus, the mortgage limit in Anchorage may differ greatly from the mortgage limit in Oklahoma City.

One commentor criticized the lack of specificity in the construction standards at § 955.107(2). The commentor recommended that structures be required to conform to the Uniform Building Code (UBC) and other locally adopted Tribal building ordinances.

HUD response: The section 184 statute provides requirements relating to size; heating, plumbing, and electrical requirements; and energy efficiency. However, the Department emphasizes that the standards represent a *minimum level of requirements.* The tribe, individual owner, or IHA may design and construct a property that meets a higher standard.

Section 955.109 Eligible Lenders

In addressing this section, one commentor stated that the rule should cross reference prohibitions against housing discrimination. The same commentor then stated that lenders should not be able to withhold loans where the fund is fully obligated.

HUD response: The commentor appears to be asking HUD to prohibit lenders from refusing to make loans to eligible borrowers as long as there is section 184 guarantee authority available. Notwithstanding any housing discrimination laws, HUD does not have the authority to compel lenders to participate in this program.

Section 955.111 Eligible Collateral

One commentor suggested that the term "leasehold" be deleted from section § 955.111(b)(3).

HUD response: HUD agrees, and has removed the term "leasehold" from section § 955.111(b)(3) of the final rule.

One commentor stated that there is no time period specified for when the Notice of Default (NOD) is filed or for when it ends, or when the 60 day period starts for the eviction action. Another commentor stated that tribal eviction procedures under § 955.111(4) should be standardized and/or reviewed by OGC and ONAP for approval as a precondition for participation in the section 184 program.

HUD response: Tribes are required to adopt foreclosure, eviction, and priority of lien procedures to be eligible for participation in the section 184 program. HUD does not approve or review the text of each procedure. This function is left to Tribal discretion. The Department will simply ensure that such procedures do exist. In order to provide maximum flexibility and Tribal discretion in the matter of establishing foreclosure and eviction policies HUD has determined to only recognize the existence of such procedures and not a line by line technical review of each tribe's policies.

One commentor stated that the 60-day time period for appealing decisions under § 955.111(b)(4)(ii) should be reduced to 30 days.

HUD response: HUD agrees with the commentor and will change the 60-day time period for appealing decisions under § 955.111(b)(4)(ii) to 30 days.

One commentor stated that Indian nation public policy allows for a wide range of collateral arrangements.

HUD response: The rule takes this into account by specifying that collateral may include, but is not limited to, the categories specified.

One commentor objected to the priority of loan obligation provision, asserting that it gives HUD oversight regarding the substantive content of Indian nation law.

HUD response: This is a critical step to ensure the financial stability of this new loan program and will provide the tribes and the Department with the assurance of prompt action and protection of the guaranteed loan.

One commentor objected to the requirement that tribes must certify that they have in place and will enforce procedures for eviction. The commentor stated that it is not required by the Statute.

HUD response: The Department has attempted to provide the broadest interpretation possible in all instances; however, in a totally new lending environment it is necessary to have in place at least minimal safeguards to the financial integrity of the loan guarantee fund.

One commentor objected to the enforcement requirement under § 955.111(b)(4)(i), stating that it infringes on Indian nation sovereignty.

HUD response: Once again the Department has determined that, in this entirely new lending environment, it is critical to have in place minimal standards that will ensure the financial integrity of the loan guarantee fund.

One commentor requested further clarification on the review of HUD decisions to cease issuing guarantees to specific tribes, saying that it is important to ensure due process rights.

HUD response: The Department has determined that due process rights of appeal have been developed to ensure maximum protection to both the Department and the tribes with several levels of appeal available and a final option to resubmit the appeal based upon new evidence following the exhaustion of all appeal levels.

Section 955.113 Certificate of Guarantee

No comments received concerning this section.

Section 955.115 Guarantee Fee

One commentor requested clarification on what happens to the one percent guarantee fee.

HUD response: Funds received as a result of the one percent guarantee fee are returned to the loan guarantee fund

Section 955.117 Liability Under Guarantee

No comments received concerning this section.

Section 955.119 Transfer and Assumptions

One commentor questioned whether HUD will require that all of the loans under the section 184 program be assumable, stating that many lenders are reluctant to underwrite assumable loans.

HUD response: There is no requirement that all of the loans under the section 184 program be assumable.

One commentor requested clarification regarding whether sales and assignments to financial institutions will be subject to the law of the Indian nations where the loans are made, in addition to being subject to agency supervision under state regulators.

HUD response: Transactions may be subject to tribal laws in addition to agency supervision under state regulations.

Section 955.121 Disqualification of Lenders and Civil Money Penalties

No comments received concerning this section.

Section 955.123 Payment Under Guarantee

Three commentors recommended that consideration be given to the issue of whether the loan guarantee program will allow nonjudicial remedies such as deeds of trust and escrow agents to be utilized as an alternative to judicial foreclosure, as referred to under § 955.123(a)(1)(i) of the interim rule.

HUD response: Any method that promotes collection is encouraged, because the statute requires the holder of the guarantee to exhaust all reasonable possibilities of collection before any payment under a guarantee is made.

Section 955.125 Expiration of Interim Rule

No comments received concerning this section.

V. Other Matters

Impact on Small Entities

The Department, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. Specifically, the requirements of this interim rule are directed to individual borrowers, Indian Housing Authorities, Tribal governments and financial institutions.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under this order. Specifically, the requirements of this rule are directed to individual borrowers and financial institutions.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule has potential for significant impact on family formation, maintenance, and general well-being. The Indian Loan Guarantee Program will make it possible for Native American families to build or acquire homes on their Native lands where homeownership opportunities have been very limited in the past. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

List of Subjects in 24 CFR Part 955

Indians, Loan programs—Indians, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 955 is revised to read as follows:

PART 955—LOAN GUARANTEES FOR INDIAN HOUSING

Sec.

955.101 Applicability and scope.
955.103 Definitions.
955.105 Eligible loans.
955.107 Eligible collateral.
955.109 Guarantee fee.
955.111 Safety and quality standards.

Authority: 42 U.S.C. 1715z-13a and 3535(d).

§ 955.101 Applicability and scope.

Under the provisions of section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1515z-13a), the Department of Housing and Urban Development (the Department) has the authority to guarantee loans for the construction, acquisition, or rehabilitation of 1- to 4-family homes to be owned by Native Americans on restricted Indian lands. This part provides requirements that are in addition to those in section 184.

(Approved by the Office of Management and Budget under control number 2577–0200.)

§ 955.103 Definitions.

In addition to the definitions that appear in Section 184 of the Housing and Community Development Act of 1992, the following definitions are applicable to loan guarantees under Section 184—

Default means the failure by a borrower to make any payment or to perform any other obligation under the terms of a loan, and such failure continues for a period of more than 30 days.

Indian means any person recognized as being Indian or Alaska Native by an Indian tribe, the Federal Government, or any State, and includes the term "Native American".

Mortgage as used in this part, means a first lien as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the property is located and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or another term used in a particular jurisdiction, as well as the credit instrument, or note, secured thereby.

Principal residence means the dwelling where the mortgagor maintains (or will maintain) his or her permanent place of abode, and typically spends (or will spend) the majority of the calendar year. A person may have only one principal residence at any one time.

Section 184 means section 184 (entitled, "Loan Guarantees for Indian Housing") of the Housing and Community Development Act of 1992 (12 U.S.C. 1515z-13a).

§ 955.105 Eligible loans.

(a) *In general.* Only fixed rate, fixed term loans with even monthly payments are eligible under the Section 184 program.

(b) *Eligible borrowers.* A loan guaranteed under Section 184 may be made to a borrower that is:

(1) An Indian who will occupy it as a principal residence and who is otherwise qualified under Section 184; or

(2) An Indian Housing Authority.

(c) *Appraisal of labor value.* The value of any improvements to the property made through the skilled or unskilled labor of the borrower, which may be used to make a payment on account of the balance of the purchase price, must be appraised in accordance with generally acceptable practices and procedures.

(d) *Construction advances.* The Department may guarantee loans from which advances will be made during construction. The Department will provide guarantees for advances made by the mortgagee during construction if all of the following conditions are satisfied:

(1) The mortgagor and the mortgagee execute a building loan agreement, approved by HUD, setting forth the terms and conditions under which advances will be made;

(2) The advances are made only as provided in the commitment;

(3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor or to his or her creditors as provided in the loan agreement; and

(4) The mortgage shall bear interest on the amount advanced to the mortgagor or to his or her creditors and on the amount held in an account or trust for the benefit of the mortgagor.

(e) *Environmental compliance.* Prior to the guarantee of any loan, there must be compliance with the environmental rules as stated in 24 CFR part 50.

§ 955.107 Eligible collateral.

(a) *In general.* A loan guaranteed under Section 184 may be secured by any collateral authorized under Federal, State, or tribal law and determined by the lender and approved by the Department to be sufficient to cover the amount of the loan, and may include, but is not limited to, the following:

(1) The property and/or improvements to be acquired, constructed, or rehabilitated, to the extent that an interest in such property is not subject to the restrictions of trust lands against alienation;

(2) A first or second mortgage on property other than trust land;

(3) Personal property; or

(4) Cash, notes, an interest in securities, royalties, annuities, or any other property that is transferable and whose present value may be determined.

(b) *Trust land as collateral.* If trust land is used as collateral for the loan, the following additional provisions apply:

(1) *Approved Lease.* Any land lease for a unit financed under Section 184 must be on a form approved by both HUD and the Bureau of Indian Affairs, U.S. Department of Interior.

(2) *Assumption or sale of leasehold.* If a leasehold is used as security for the loan, the loan form must contain a provision requiring tribal consent before any assumption of an existing lease, except where title to the leasehold interest is obtained by the Department through foreclosure of the guaranteed mortgage. A mortgagee other than the Department must obtain tribal consent before obtaining title through a foreclosure sale. Tribal consent must be obtained on any subsequent transfer from the purchaser, including the Department, at foreclosure sale. The lease may not be terminated by the lessor without HUD's approval while the mortgage is guaranteed or held by the Department.

(3) *Priority of loan obligation.* Any tribal government whose courts have jurisdiction to hear foreclosures must enact a law providing for the satisfaction of a loan guaranteed or held by the Department before other obligations (other than tribal leasehold taxes against the property assessed after the property is mortgaged) are satisfied.

(4) *Eviction procedures.* Before HUD will guarantee a loan secured by trust land, the tribe having jurisdiction over such property must notify the Department that it has adopted and will enforce procedures for eviction of defaulted mortgagors where the guaranteed loan has been foreclosed.

(i) *Enforcement.* If the Department determines that the tribe has failed to enforce adequately its eviction procedures, HUD will cease issuing guarantees for loans for tribal members except pursuant to existing commitments. Adequate enforcement is demonstrated where prior evictions have been completed within 60 days after the date of the notice by HUD that foreclosure was completed.

(ii) *Review.* If the Department ceases issuing guarantees in accordance with the first sentence of paragraph (c)(1) of this section, HUD shall notify the tribe of the reasons for such action and that the tribe may, within 30 days after notification of HUD's action, file a written appeal with the Field Office of Native American Programs (FONAP) Administrator. Within 30 days after notification of an adverse decision of the appeal by the FONAP Administrator, the tribe may file a written request for review with the Deputy Assistant Secretary, Office of Native American Programs (ONAP). Upon notification of an adverse decision by the Deputy Assistant Secretary, the tribe has 30 additional days to file an appeal with the Assistant Secretary for Public and Indian Housing. The determination of the Assistant Secretary shall be final, but the tribe may resubmit the issue to the Assistant Secretary for review at any subsequent time if new evidence or changed circumstances warrant reconsideration. (Any other administrative actions determined to be necessary to debar a tribe from participating in this program will be subject to the formal debarment procedures contained in 24 CFR part 24.)

§ 955.109 Guarantee fee.

The lender shall pay to the Department, at the time of issuance of the guarantee, a fee for the guarantee of loans under Section 184, in an amount equal to 1 percent of the principal obligation of the loan. This amount is payable by the borrower at closing.

§ 955.111 Safety and quality standards.

Loans guaranteed under Section 184 shall be made only on dwelling units which meet safety and quality standards set forth herein. Each unit must:

(a) Be decent, safe, sanitary, and modest in size and design;

(b) Conform with applicable general construction standards for the region;

(c) Contain a heating system that:

(1) Has the capacity to maintain a minimum temperature in the dwelling of 65 degrees Fahrenheit during the coldest weather in the area;

(2) Is safe to operate and maintain;

(3) Delivers a uniform distribution of heat; and

(4) Conforms to any applicable tribal heating code or, if there is no applicable tribal code, an appropriate county, State, or National code;

(d) Contain a plumbing system that:

(1) Uses a properly installed system of piping;

(2) Includes a kitchen sink and a partitional bathroom with lavatory, toilet, and bath or shower; and

(3) Uses water supply, plumbing and sewage disposal systems that conform to any applicable tribal code or, if there is no applicable tribal code, the minimum standards established by the applicable county or State;

(e) Contain an electrical system using wiring and equipment properly installed to safely supply electrical energy for adequate lighting and for operation of appliances that conforms to any applicable tribal code or, if there is no applicable tribal code, an appropriate county, State, or National code;

(f) Be not less than:

(1) 570 square feet in size, if designed for a family of not more than 4 persons;

(2) 850 square feet in size, if designed for a family of not less than 5 and more than 7 persons; and

(3) 1020 square feet in size, if designed for a family of not less than 8 persons; or

(4) The size provided under the applicable locally adopted standards for size of dwelling units; except that the Department, upon the request of a tribe or Indian housing authority, may waive the size requirements under this paragraph; and

(g) Conform with the energy performance requirements for new construction established by the Department under section 526(a) of the National Housing Act (12 U.S.C. 1735f-4).

Dated: February 26, 1996.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[Note: The following appendix will not be codified in the Code of Federal Regulations.]

Appendix—Guide to Loan Guarantees for Indian Housing

Section 1. Purpose, applicability and scope.
Section 2. Definitions.
Section 3. Eligible loans.
Section 4. Eligible housing.
Section 5. Eligible lenders.
Section 6. Eligible collateral.
Section 7. Certificate of Guarantee.
Section 8. Guarantee fee.
Section 9. Liability under guarantee.
Section 10. Transfer and assumptions.
Section 11. Disqualification of lenders and civil money penalties.
Section 12. Payment under guarantee.

Section 1. Purpose, Applicability and Scope

The purpose of this guide is to present, in a single document, the statutory and regulatory requirements that apply to the Loan Guarantees for Indian Housing Program under section 184 of the Housing and Community Development Act of 1992 (P.L. 102–550, approved October 28, 1992). Although it presents the regulatory and statutory requirements in a combined format, this guide is a secondary source for these requirements. The Code of Federal Regulations (CFR), at 24 CFR, is the primary, governing source for regulatory requirements, and section 184 of the Housing and Community Development Act of 1992 is the primary, governing source for statutory requirements.

Under the provisions of Section 184, the Department of Housing and Urban Development (the Department) has the authority to guarantee loans for the construction, acquisition, or rehabilitation of 1- to 4-family homes to be owned by Native Americans on restricted Indian lands. This guide describes the eligibility of borrowers, lenders and property, as well as the benefits of the Indian Loan Guarantee Program.

Section 2. Definitions

Default means the failure by a borrower to make any payment or to perform any other obligation under the terms of a loan, and such failure continues for a period of more than 30 days.

Department means the U. S. Department of Housing and Urban Development (HUD).

Guarantee Fund means the Indian Housing Loan Guarantee Fund established under section 184(i) of the Housing and Community Development Act of 1992.

Indian means any person recognized as being Indian or Alaska Native by an Indian tribe, the Federal Government, or any State, and includes the term "Native American".

Indian area means the area within which an Indian housing authority is authorized to provide housing.

Indian Housing Authority (IHA) means any entity that is authorized to engage in or assist in the development or operation of low-income housing for Indians and that is established either (1) by exercise of the power of self-government of an Indian tribe independent of State law; or (2) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Mortgage as used in this part, means a first lien as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the property is located and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or another term used in a particular jurisdiction, as well as the credit instrument, or note, secured thereby.

Principal residence means the dwelling where the mortgagor maintains (or will maintain) his or her permanent place of abode, and typically spends (or will spend) the majority of the calendar year. A person may have only one principal residence at any one time.

Secretary means the Secretary of Housing and Urban Development.

Section 184 means section 184 (entitled, "Loan Guarantees for Indian Housing") of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992).

Standard housing means a dwelling unit or housing that complies with the requirements established in this part.

Tribe means any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

Trust land means land, title to which is held by the United States for the benefit of an Indian or Indian tribe; or, land, title to which is held by an Indian tribe, subject to a restriction against alienation imposed by the United States.

Section 3. Eligible Loans

(a) *In general.* Only fixed rate, fixed term loans with even monthly payments are eligible under the Section 184 program.

(b) *Eligible borrowers.* A loan guaranteed under Section 184 may be made to a borrower that is:

(1) An Indian who will occupy it as a principal residence and who is otherwise qualified under this part; or

(2) An Indian Housing Authority

(c) *Terms of loan.* The loan shall:

(1) Be made for a term not exceeding 30 years;

(2) Bear interest (exclusive of the guarantee fee and service charges, if any) at a fixed rate agreed upon by the borrower and the lender and determined by the Department to be reasonable, which may not exceed the rate generally charged in the area (as determined by the Department) for home mortgage loans not guaranteed or insured by any agency or instrumentality of the Federal Government.

(d) *Maximum mortgage amounts.*

(1) A principal obligation may not exceed:

(i) An amount equal to the sum of:

(A) 97 percent of the first $25,000 of the appraised value of the property, as of the date the loan is accepted for guarantee, and

(B) 95 percent of such value in excess of $25,000; and

(ii) Amounts approved otherwise by the Department.

(2) The balance of the purchase price must involve a payment on account of the property that may be:

(i) In cash or other property of equivalent value acceptable to the lender and the Department, or

(ii) The value of any improvements to the property made through the skilled or unskilled labor of the borrower, appraised in accordance with generally acceptable practices and procedures.

(e) *Construction advances:* The Department may guarantee loans from which advances will be made during construction. The Department will provide guarantees for advances made by the mortgagee during construction if all of the following conditions are satisfied:

(1) The mortgagor and the mortgagee execute a building loan agreement, approved by HUD, setting forth the terms and conditions under which advances will be made;

(2) The advances are made only as provided in the commitment;

(3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor or to his or her creditors as provided in the loan agreement; and

(4) The mortgage shall bear interest on the amount advanced to the mortgagor or to his or her creditors and on the amount held in an account or trust for the benefit of the mortgagor.

(f) *Environmental compliance.* Prior to the guarantee of any loan, there must be compliance with the environmental rules as stated in 24 CFR part 50.

Section 4. Eligible Housing

(a) *In general.* A loan guaranteed under Section 184 may be used for the construction, acquisition, or rehabilitation of a 1- to 4-family dwelling unit located on trust land or land located in an Indian area.

(b) *Safety and quality standards.* Loans guaranteed under Section 184 shall be made only on dwelling units which meet safety and quality standards set forth herein. Each unit must:

(1) Be decent, safe, sanitary, and modest in size and design;

(2) Conform with applicable general construction standards for the region;

(3) Contain a heating system that:

(i) Has the capacity to maintain a minimum temperature in the dwelling of 65 degrees Fahrenheit during the coldest weather in the area;

(ii) Is safe to operate and maintain;

(iii) Delivers a uniform distribution of heat; and

(iv) Conforms to any applicable tribal heating code or, if there is no applicable tribal code, an appropriate county, State, or National code;

(4) Contain a plumbing system that:

(i) Uses a properly installed system of piping;

(ii) Includes a kitchen sink and a partitional bathroom with lavatory, toilet, and bath or shower; and

(iii) Uses water supply, plumbing and sewage disposal systems that conform to any applicable tribal code or, if there is no applicable tribal code, the minimum standards established by the applicable county or State;

(5) Contain an electrical system using wiring and equipment properly installed to safely supply electrical energy for adequate lighting and for operation of appliances that conforms to any applicable tribal code or, if there is no applicable tribal code, an appropriate county, State, or National code;

(6) Be not less than:

(i) 570 square feet in size, if designed for a family of not more than 4 persons;

(ii) 850 square feet in size, if designed for a family of not less than 5 and more than 7 persons; and

(iii) 1020 square feet in size, if designed for a family of not less than 8 persons, or

(iv) The size provided under the applicable locally adopted standards for size of dwelling units; except that the Department, upon the request of a tribe or Indian housing authority, may waive the size requirements under this paragraph; and

(7) Conform with the energy performance requirements for new construction established by the Department under section 526(a) of the National Housing Act.

Section 5. Eligible Lenders

The loan shall be made only by a lender approved by and meeting qualifications established in this part, except that loans otherwise insured or guaranteed by any agency of the Federal Government, or made by an organization of Indians from amounts borrowed from the United States shall not be eligible for guarantee under this part. The following lenders are deemed to be approved under this part:

(a) Any mortgagee approved by the Department of Housing and Urban Development for participation in the single family mortgage insurance program under title II of the National Housing Act.

(b) Any lender whose housing loans under chapter 37 of title 38, United States Code are automatically guaranteed pursuant to section 1802(d) of such title.

(c) Any lender approved by the Department of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949.

(d) Any other lender that is supervised, approved, regulated, or insured by any agency of the Federal Government.

Section 6. Eligible Collateral

(a) *In general.* A loan guaranteed under Section 184 may be secured by any collateral authorized under Federal, State, or tribal law and determined by the lender and approved by the Department to be sufficient to cover the amount of the loan, and may include, but is not limited to, the following:

(1) The property and/or improvements to be acquired, constructed, or rehabilitated, to the extent that an interest in such property is not subject to the restrictions of trust lands against alienation;

(2) A first or second mortgage on property other than trust land;

(3) Personal property; or

(4) Cash, notes, an interest in securities, royalties, annuities, or any other property that is transferable and whose present value may be determined.

(b) Trust land as collateral. If trust land is used as collateral for the loan, the following additional provisions apply:

(1) Approved Lease. Any land lease for a unit financed under Section 184 must be on a form approved by both HUD and the Bureau of Indian Affairs, U.S. Department of Interior.

(2) Assumption or sale of leasehold. If a leasehold is used as security for the loan, the loan form must contain a provision requiring tribal consent before any assumption of an existing lease, except where title to the leasehold interest is obtained by the Department through foreclosure of the guaranteed mortgage. A mortgagee other than the Department must obtain tribal consent before obtaining title through a foreclosure sale. Tribal consent must be obtained on any subsequent transfer from the purchaser, including the Department, at foreclosure sale. The lease may not be terminated by the lessor without HUD's approval while the mortgage is guaranteed or held by the Department.

(3) Eviction procedures. Before HUD will guarantee a loan secured by trust land, the tribe having jurisdiction over such property must notify the Department that it has adopted and will enforce procedures for eviction of defaulted mortgagors where the guaranteed loan has been foreclosed.

(i) Enforcement. If the Department determines that the tribe has failed to enforce adequately its eviction procedures, HUD will cease issuing guarantees for loans for tribal members except pursuant to existing commitments. Adequate enforcement is demonstrated where prior evictions have been completed within 60 days after the date of the notice by HUD that foreclosure was completed.

(ii) Review. If the Department ceases issuing guarantees in accordance with the first sentence of paragraph (c)(1) of this section, HUD shall notify the tribe of the reasons for such action and that the tribe may, within 30 days after notification of HUD's action, file a written appeal with the Field Office of Native American Programs (FONAP) Administrator. Within 30 days after notification of an adverse decision of the appeal by the FONAP Administrator, the tribe may file a written request for review with the Deputy Assistant Secretary, Office of Native American Programs (ONAP). Upon notification of an adverse decision by the Deputy Assistant Secretary, the tribe has 30 additional days to file an appeal with the Assistant Secretary for Public and Indian Housing. The determination of the Assistant Secretary shall be final, but the tribe may resubmit the issue to the Assistant Secretary for review at any subsequent time if new evidence or changed circumstances warrant reconsideration. (Any other administrative actions determined to be necessary to debar a tribe from participating in this program will be subject to the formal debarment procedures contained in 24 CFR part 24).

Section 7. Certificate of Guarantee

(a) Extent of guarantee. A certificate issued in accordance with Section 184 guarantees 100 percent of the unpaid principal and interest of the underlying loan.

(b) Approval process. Before the Department approves any loan for guarantee under this part, the lender shall submit the application or the loan to the Department for examination. If the Department approves the loan for guarantee, the Department will issue a certificate under Section 184 as evidence of the guarantee.

(c) Standard for approval. The Department may approve a loan for guarantee under Section 184 and issue a certificate only if the Department determines there is a reasonable prospect of repayment of the loan.

(d) Effect. A certificate of guarantee issued under Section 184 by the Department shall be conclusive evidence of the eligibility of the loan for guarantee under the provisions of Section 184 and the amount of such guarantee. Such evidence shall be incontestable in the hands of the bearer and the full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by the Department as security for such obligations.

(e) Fraud and misrepresentation. Nothing in Section 184 may preclude the Department from establishing:

(1) Defenses against the original lender based on fraud or material misrepresentation; and

(2) Establishing partial defenses, based upon regulations in effect on the date of issuance or disbursement (whichever is earlier), to the amount payable on the guarantee.

Section 8. Guarantee Fee

The lender shall pay to the Department, at the time of issuance of the guarantee, a fee for the guarantee of loans under Section 184, in an amount equal to 1 percent of the principal obligation of the loan. This amount is payable by the borrower at closing.

Section 9. Liability Under Guarantee

The liability under a guarantee provided in accordance with Section 184 shall decrease or increase on a pro rata basis according to any decrease or increase in the amount of the unpaid obligation under the provisions of the loan agreement.

Section 10. Transfer and Assumptions

Notwithstanding any other provision of law, any loan guaranteed under this part, including the security given for the loan, may be sold or assigned by the lender to any financial institution subject to examination and supervision by an agency of the Federal Government or of any State or the District of Columbia.

Section 11. Disqualification of Lenders and Civil Money Penalties

(a) General. If the Department determines that a lender or holder of a guarantee certificate under Section 184 has failed to maintain adequate accounting records, to adequately service loans guaranteed under Section 184, to exercise proper credit or underwriting judgement, or has engaged in practices otherwise detrimental to the interest of a borrower or the United States, the Department may:

(1) Refuse, either temporarily or permanently, to guarantee any further loans made by such lender or holder;

(2) Bar such lender or holder from acquiring additional loans guaranteed under Section 184; and

(3) Require that such lender or holder assume not less than 10 percent of any loss on further loans made or held by the lender or holder that are guaranteed under Section 184.

(b) Civil money penalties for intentional violations. If the Department determines that any lender or holder of a guarantee certificate under Section 184 has intentionally failed to maintain adequate accounting records, to adequately service loans guaranteed under Section 184, or to exercise proper credit or underwriting judgement, the Department may impose a civil money penalty on such lender or holder in the manner and amount provided under section 536 of the National Housing Act with respect to mortgagees and lenders under such Act.

(c) Payment of loans made in good faith. Notwithstanding paragraphs (a) and (b), the Department may not refuse to pay pursuant to a valid guarantee on loans of a lender or holder barred under Section 184, if the loans were previously made in good faith.

Section 12. Payment Under Guarantee

(a) Lender options.

(1) General. In the event of default by the borrower on a loan guaranteed under this part, the holder of the guarantee certificate shall provide written notice of the default to the Department. Upon providing this notice, the holder of the guarantee certificate will be entitled to payment under the guarantee (subject to the provisions of this part) and may proceed to obtain payment in one of the following manners:

(i) Foreclosure. The holder of the certificate may initiate foreclosure proceedings in a court of competent jurisdiction (after providing written notice of such action to the Department) and upon a final order by the court authorizing foreclosure and submission to the Department of a claim for payment under the guarantee, the Department will pay to the holder of the certificate the pro rata portion of the amount guaranteed (as determined in accordance with Section 9 of this guide) plus reasonable fees and expenses as approved by the Department. The Department will be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Department.

(ii) No foreclosure. Without seeking a judicial foreclosure (or in any case in which a foreclosure proceeding initiated under paragraph (i) of this section continues for a period in excess of 1 year), the holder of the guarantee may submit to the Department a claim for payment under the guarantee and the Department will only pay to such holder for a loss on any single loan an amount equal to 90 percent of the pro rata portion of the amount guaranteed (as determined in accordance with Section 9 of this guide). The Department will be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Department.

(2) Requirements. Before any payment under a guarantee is made under paragraph (1) of this section, the holder of the guarantee shall exhaust all reasonable possibilities of collection. Upon payment, in whole or in part, to the holder, the note of judgement evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States.

(b) Assignment by the Department. Notwithstanding paragraph (a) of this section, upon receiving notice of default on a loan guaranteed under Section 184 from the holder of the guarantee, the Department may accept assignment of the loan if the Department determines that the assignment is in the best interests of the United States. Upon assignment the Department will pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as determined in accordance with Section 9 of this guide). The Department will be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Department.

(c) Limitations on liquidation. In the event of default by the borrower on a loan guaranteed under Section 184 involving a security interest in tribal allotted or trust land, the Department will only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe or tribes. If the Department subsequently proceeds to liquidate the account, the Department will not sell, transfer, otherwise dispose of or alienate the property except to one of the entities described in the preceding sentence.

[FR Doc. 96–5050 Filed 3–5–96; 8:45 am]
BILLING CODE 4210–33–P

federal register

Wednesday
March 6, 1996

Part VII

Department of Health and Human Services

Food and Drug Administration

International Harmonisation Conference; Draft Guideline Availability: Stability Testing for New Dosage Forms; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96D–0028]

International Conference on Harmonisation; Draft Guideline on Stability Testing for New Dosage Forms; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline entitled "Stability Testing for New Dosage Forms." The draft guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guideline addresses the generation of stability information for new dosage forms for submission to FDA by the owner of the original application. The draft guideline is an annex to the ICH guideline entitled "Stability Testing of New Drug Substances and Products."

DATES: Written comments by June 4, 1996.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the draft guideline are available from the Division of Communications Management (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1012. An electronic version of this guideline is also available via Internet by connecting to the CDER file transfer protocol (FTP) server (CDVS2.CDER.FDA.GOV).

FOR FURTHER INFORMATION CONTACT:

Regarding the guideline: Guiragos K. Poochikian, Center for Drug Evaluation and Research (HFD–570), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1050.

Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held on November 29, 1995, the ICH Steering Committee agreed that a draft guideline entitled "Stability Testing for New Dosage Forms" should be made available for public comment. The draft guideline is the product of the Quality Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Quality Expert Working Group. Ultimately, FDA intends to adopt the ICH Steering Committee's guideline.

In the **Federal Register** of September 22, 1994 (59 FR 48754), FDA published a guideline entitled "Stability Testing of New Drug Substances and Products." The guideline addresses the generation of stability information for submission to FDA in new drug applications for new molecular entities and associated drug products. For biotechnological/biological products, see "Quality of Biotechnological/Biological Products: Stability Testing of Biotechnological/Biological Products" (60 FR 43501, August 21, 1995).

This draft guideline is an annex to that guideline and addresses the generation of stability information for new dosage forms for submission to FDA by the owner of the original application, after the original submission for new drug substances and products.

In the past, guidelines have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Although this guideline does not create or confer any rights for or on any person and does not operate to bind FDA in any way, it does represent the agency's current thinking on stability testing for new dosage forms.

Interested persons may, on or before June 4, 1996, submit to the Dockets Management Branch (address above) written comments on the draft guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the draft guideline follows:

Stability Testing for New Dosage Forms

1. General

The ICH harmonized Tripartite Guideline on Stability Testing of New Drug Substances and Products was issued on October 27, 1993. This document is an annex to the ICH parent stability guideline and addresses what should be submitted regarding stability of new dosage forms by the owner of the original application, after the original submission for new drug substances and products. For biotechnological/biological products, see the guideline "Quality of Biotechnological/Biological Products: Stability Testing of Biotechnological/Biological Products."

2. New Dosage Forms

A new dosage form is defined as a drug product which is a different pharmaceutical product type but contains the same active substance as included in the existing drug product approved by the pertinent regulatory authority.

Such pharmaceutical product types include products of different administration route (e.g., oral to parenteral), new specific functionality/delivery systems (e.g., immediate release tablet to modified release tablet), and different dosage forms of the same administration route (e.g., capsule to tablet, solution to suspension).

New dosage forms should follow the guidance in the parent stability guideline in principle; however, a reduced stability database at submission time, e.g., 6 months accelerated and 6 months long-term data from ongoing studies, may be acceptable in certain justified cases.

Dated: February 29, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

(FR Doc. 96–5215 Filed 3–5–96; 8:45 am]

BILLING CODE 4160–01–F

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federal register

Wednesday
March 6, 1996

Part VIII

Department of Housing and Urban Development

Environmental Protection Agency

24 CFR Part 35
40 CFR Part 745
Lead; Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 35

RIN 2501–AB68

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–62130A; FRL–5347–9]

RIN 2070–AC75

Lead; Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing

AGENCIES: Department of Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: As a result of past Federal, State, and local efforts to reduce lead in the environment, the percentage of children with elevated levels of lead in their blood has declined considerably over the last 20 years. Approximately 1.7 million children, however, still have blood-lead levels high enough to raise health concerns. Studies suggest that lead exposure from deteriorated residential lead-based paint, contaminated soil, and lead in dust are among the major existing sources of lead exposure among children in the United States. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 directs EPA and HUD to jointly issue regulations requiring disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phaseout of residential lead-based paint use in 1978. Under that authority, EPA and HUD are establishing the following requirements: (1) Sellers and lessors of most residential housing built before 1978 must disclose the presence of known lead-based paint and/or lead-based paint hazards in the housing; (2) sellers and lessors must provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; (3) sellers and lessors must provide purchasers and lessees with a federally approved lead hazard information pamphlet; (4) sellers must provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards before the purchaser is obligated under any purchase contract; (5) sales and leasing contracts must include certain disclosure and acknowledgment language; and (6) agents must ensure compliance with these requirements. These provisions ensure that families receive both specific information on the housing's lead history and general information on lead exposure prevention. With this information, consumers can make more informed decisions concerning home purchase, lease, and maintenance to protect their families from lead hazard exposure.

DATES: Effective date: March 6, 1996 except for 24 CFR 35.88, 35.90, 35.92, and 35.94 and 40 CFR 745.107, 745.110, 745.113, and 745.115 which contain information collection requirements that have not been approved by OMB. Once OMB has approved these information collection requirements, EPA and HUD will publish a document giving notice of the effective date and adding the OMB approval number to 24 CFR part 35 and 40 CFR part 9.

The requirements in this final rule are applicable in the following manner: (1) For owners of more than four residential dwellings, the requirements are applicable on September 6, 1996 and (2) For owners of one to four residential dwellings, the requirements are applicable on December 6, 1996.

FOR FURTHER INFORMATION CONTACT: For general information or to obtain copies of the final rule, pamphlet, or background materials, contact the National Lead Information Clearinghouse (NLIC), toll free, at (800) 424-LEAD or fax requests to the NLIC at (202) 659-1192. Copies of the final rule, a brief question-and-answer document, and the pamphlet *Protect Your Family From Lead In Your Home*, are available on the Internet at the National Safety Council's gopher at cais.com and on the World Wide Web at http://www.nsc.org/nsc/ehc/ehc.html. For technical information: At HUD, contact Conrad C. Arnolts, Office of Lead-Based Paint Abatement and Poisoning Prevention, Department of Housing and Urban Development, 451 7th St., SW., Washington, DC 20410, Telephone: (202) 755-1810, E-mail: conrad—c.—arnolts@hud.gov (use underscore characters), or John B. Shumway, Office of General Counsel, Telephone: (202) 708-9988, E-mail: John—B.—Shumway@hud.gov (use underscore characters). Persons who are hearing impaired may access these telephone numbers by calling the Federal Information Relay Service at 1-800-877-TDDY.

At EPA, contact Charles Franklin, Chemical Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260-1781, E-mail: franklin.charles@epamail.epa.gov.

For general information or to obtain copies of the final rule, pamphlet, or background materials, contact the National Lead Information Clearinghouse (NLIC), toll free, at (800) 424–LEAD or fax requests to the NLIC at (202) 659–1192.

Copies of the final rule, a brief question-and-answer document, and the pamphlet *Protect Your Family From Lead In Your Home*, are available on the Internet at the National Safety Council's gopher at cais.com and on the World Wide Web at http://www.nsc.org/nsc/ehc/ehc.html.

SUPPLEMENTARY INFORMATION:

I. Authority

This final rule is issued under the authority of section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d). The Residential Lead-Based Paint Hazard Reduction Act is Title X of the Housing and Community Development Act of 1992, Pub. L. 102-550.

II. Background

A. Legal Background

Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (hereafter referred to as Title X or the Act) to address the need to control exposure to lead-based paint hazards. In addition to amending the Toxic Substances Control Act (TSCA) and the Lead-Based Paint Poisoning Prevention Act (LBPPPA), Title X established the infrastructure and standards necessary to reduce lead-based paint hazards in housing. Within this law, Congress recognized lead poisoning as a particular threat to children under age 6 and emphasized the needs of this vulnerable population (section 1003 of Title X).

Section 1018 of Title X requires EPA and HUD to promulgate joint regulations for disclosure of any known lead-based paint or any known lead-based paint hazards in target housing offered for sale or lease. (Target housing is defined in section 1004(27) of Title X, section 401(17) of TSCA, and is discussed in Unit IV.C. of this preamble.) Specifically, section 1018 requires the following activities before a purchaser or lessee is obligated under a contract to purchase or lease target housing: (1) Sellers and lessors must provide purchasers and lessees with a lead hazard information pamphlet, as developed under section 406(a) of TSCA; (2) sellers and lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in such housing and provide purchasers and lessees with any lead hazard evaluation report available to the seller or lessor; (3) sellers must permit purchasers a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint hazards; and (4) sales contracts must include an attached Lead Warning Statement and acknowledgment, signed by the purchaser.

Violation of section 1018 may result in civil and criminal penalties and potential triple damages in a private civil suit.

Section 1018 mandated that EPA and HUD promulgate these requirements no later than 2 years after the date of enactment of Title X (October 28, 1994), to take effect 3 years after enactment of Title X (October 28, 1995). Due to promulgation delays, EPA and HUD have revised the effective date provisions for this rule.

This rule represents one of a broad range of interrelated lead exposure reduction activities mandated under Title X. Many of these other activities support and affect the development of the section 1018 rule. Several of the activities most closely related to the disclosure requirements are briefly discussed below.

The statutory provision most closely tied to section 1018 is section 406(a) of TSCA. Section 406(a) directs EPA to develop and publish, after notice and comment, a lead hazard information pamphlet on lead-based paint hazards in the home. EPA developed the pamphlet in consultation with HUD, the Centers for Disease Control and Prevention (CDC), and the Consumer Product Safety Commission (CPSC), which has joined as a co-sponsor of the pamphlet. EPA issued a notice of availability in the **Federal Register** of August 1, 1995 (60 FR 39167), to announce the pamphlet's completion. As mandated under section 1018 of Title X, this lead hazard information pamphlet must be given to purchasers and lessees of target housing.

Under section 403 of TSCA, EPA is charged with issuing regulations that identify lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil, based on the definitions provided in section 401 of TSCA. In July 1994, EPA released an interim guidance document to provide public and private decisionmakers with guidance on identifying and prioritizing lead-based paint hazards for control before the issuance of the final section 403 standards. EPA subsequently issued the interim guidance document in the **Federal Register** of September 11, 1995 (60 FR 47248). EPA is in the process of developing the proposed section 403 standards.

Section 402 of TSCA directs EPA (in consultation with HUD, the Department of Labor (DOL), and the Department of Health and Human Services (HHS)) to promulgate regulations on accreditation of training programs and training and certification of individuals and contractors engaging in lead-based paint evaluation and reduction activities. This section also requires that EPA, in consultation with the above agencies, develop standards for performance of such lead-based paint evaluation and reduction activities. EPA issued the proposed section 402 rule on September 2, 1994 (59 FR 45872), and expects to issue the final rule shortly. Under the section 1018 disclosure requirements issued today, available reports resulting from such evaluation and reduction activities must be provided to the purchaser or lessee.

Pursuant to sections 1012 and 1013 of Title X, HUD is drafting regulations setting out procedures for all federally owned residential property and housing receiving Federal assistance. These procedures concern occupant notification as well as evaluation (such as inspection and risk assessment) and reduction (such as interim controls and abatement) of lead-based paint and/or lead-based paint hazards. The regulations implementing sections 1012 and 1013 will not address the provision of a lead hazard information pamphlet to new purchasers and lessees of target housing, nor any of the other requirements under section 1018. HUD will release these regulations in proposed form as soon as possible for public comment.

Pursuant to section 1015 of Title X, HUD and EPA established a Task Force on Lead-Based Paint Hazard Reduction and Financing, made up of private and public organizations representing the spectrum of interests affected by the lead-based paint issue. The Task Force developed recommendations on evaluating and reducing lead-based paint hazards in private housing. The Task Force released its recommendations on July 11, 1995, in a report entitled *Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing*. A copy of this report has been entered into the public record for this rule.

Pursuant to section 1017 of Title X, HUD and EPA, in cooperation with other Federal Agencies, have revised HUD's guidelines for lead-based paint hazard evaluation and reduction activities. These revised guidelines, entitled *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* (hereafter referred to as the "HUD Guidelines"), were released to the public in June 1995. A copy of the HUD Guidelines is included in the public record for this rule.

B. Lead Poisoning in the United States

Lead affects virtually every system of the body. While it is harmful to individuals of all ages, lead exposure can be especially damaging to children, fetuses, and women of childbearing age. As recent studies have identified previously unrecognized effects, there has been increasing concern about blood-lead levels once thought to be safe. Since 1978, CDC has lowered the blood-lead level of concern from 60 µg/dL (micrograms per deciliter) to 10 µg/dL (Ref. 2).

Lead poisoning has been called "the silent disease" because its effects may occur gradually and imperceptibly, often showing no obvious symptoms. Blood-lead levels as low as 10 µg/dL have been associated with learning disabilities, growth impairment, permanent hearing and visual impairment, and other damage to the brain and nervous system. In large doses, lead exposure can cause brain damage, convulsions, and even death. Lead exposure before or during pregnancy can also alter fetal development and cause miscarriages.

In 1991, the Secretary of HHS characterized lead poisoning as the "number one environmental threat to the health of children in the United States" (Ref. 1). Although the percentage of children with elevated blood-lead levels has declined over the last 20 years, millions of U.S. children still have blood-lead levels high enough to threaten their health (Ref. 1). The Third National Health and Nutrition Examination Survey (NHANES III) indicates that over the past two decades, the average child's blood-lead level has decreased from 12.8 µg/dL to 2.8 µg/dL (Ref. 8). NHANES III also indicates, however, that in 1991 approximately 1.7 million U.S. children under the age of 6 still had blood-lead levels that exceeded the CDC 10 µg/dL level of concern (Ref. 8).

C. Hazards from Past Uses of Lead-Based Paint

Efforts to reduce exposure to lead from sources like gasoline and food cans have played a large role in the past reductions of blood-lead levels in the United States. Despite these successes, a significant human health hazard remains from improperly managed lead-based paint. From the turn of the

century through the 1940's, paint manufacturers used lead as a primary ingredient in many oil-based interior and exterior house paints. Usage gradually decreased through the 1950's and 1960's, as largely lead-free latex paints became more popular. Although the CPSC banned lead-based paints from residential use in 1978 (currently, paints may not have greater than 0.06 percent lead by weight (Ref. 3)), EPA and HUD estimate that 83 percent of the privately owned housing units built in the United States before 1980 contain some lead-based paint. By these estimations, approximately 64 million homes may contain lead-based paint that may pose a hazard to the occupants if not managed properly (Ref. 4).

Lead from exterior house paint can flake off or leach into the soil around the outside of a home, contaminating children's playing areas. Dust caused during normal lead-based paint wear (especially around windows and doors) can create a hard-to-see film over surfaces in a house. In some cases, cleaning and renovation activities can increase the threat of lead-based paint exposure by dispersing fine lead dust particles in the air and over accessible household surfaces. If managed improperly, both adults and children can receive hazardous exposures by inhaling the fine dust or by ingesting paint dust during hand-to-mouth activities. Children under age 6 are especially susceptible to lead poisoning (Ref. 2).

III. Summary of Proposed Rule and Public Comments

Under the authority of Title X, EPA and HUD issued a proposed rule in the **Federal Register** of November 2, 1994 (59 FR 54984). The proposed rule described the basic approach for implementing the requirements under section 1018, including draft regulatory text, definitions, and standardized form language for use in all transactions. In many cases, EPA and HUD also included a range of options for implementing the rule along with requests for comment on specific implementation issues.

In response to the proposed rule, identified by docket number OPPTS-62130A, EPA and HUD received responses from 198 commenters during the 60-day comment period. The largest number of responses (approximately 25 percent) came from the real estate industry. Other commenter groups included representatives from the banking/financial industry (9 percent), letters from State and local officials involved with public health or environmental protection (8 percent), comments from advocacy groups (8 percent), letters from attorneys representing various groups (9 percent), and concerned private citizens (23 percent). Approximately 10 percent of the responses came from education officials, housing authorities, and groups involved with real estate development and construction. The paragraphs that follow briefly describe some of the key areas that were addressed by the commenters.

A number of comments addressed the scope and applicability of the rule. Commenters discussed a range of transaction types for specific exclusion or inclusion.

While numerous comments addressed the various definitions contained in the rule, most suggestions involved revisions and modifications to existing terms as opposed to requests that additional terms be defined. A prevalent theme was consistency of terminology across different rules such as those for sections 402, 404, and 406 of TSCA.

Comments concerning the disclosure requirement targeted issues such as the scope of disclosed information; the precise stage at which disclosures should be made; recordkeeping parameters; and the ways in which common areas of multi-unit buildings will be affected by disclosure.

The lead hazard information pamphlet requirements generated comments in the following three categories: strategies for States and tribes (hereafter, all references to States include Indian tribes) with their own notification materials; making the pamphlet available in other languages; and requests for more varied and active distribution strategies.

The proposed disclosure and acknowledgment form generated requests for simplification and availability in non-English languages. Some suggestions involved revising portions of the Lead Warning Statement.

The section of the proposed rule that received the most comments concerned the proposed 10-day evaluation period. Of particular concern were the commencement and length of the evaluation period; the practical availability of certified inspectors or risk assessors to do the testing; and the practicality and logistics of obligating purchasers to provide a report to sellers.

Other topics that elicited some comment included the role of the agent, the effective date of the rule, and potential penalties for noncompliance.

A more complete summary of the comments received, along with EPA's and HUD's responses, is available in the public record for this rulemaking.

IV. Final Rule Provisions and Key Comments Addressed

EPA and HUD have revised the proposed rule to reflect the Agencies' desire to maximize the rule's clarity, flexibility, consistency with other Federal activities, and consistency with existing real estate practice. These goals are important considerations to ensure quick and widespread implementation of the rule.

In particular, many of the changes to the final rule fall into five general categories. These areas include: (1) Clarifications of the rule's applicability, (2) modification of key definitions, (3) establishment of a clear and common sense disclosure process, (4) development of a concise disclosure record, and (5) development of a flexible framework for the 10-day evaluation period.

Throughout the preamble for this final rule, there are citations to 24 CFR part 35 and 40 CFR part 745. These references reflect the location that the final regulatory text will occupy in the *Code of Federal Regulations* (CFR) following the rule's promulgation. EPA and HUD are adding this final joint EPA/HUD regulation to both titles to ensure that the public can easily locate the requirements. Where the preamble references the actual rule language, therefore, it will regularly include references to the requirements as they appear in each title. While the requirements are identical, in some cases the nomenclature for the two titles may be slightly different.

A. Clarifying the Rule's Scope and Applicability

Section 1018 mandated that the rule apply to sales and leases of target housing. The proposed rule also discussed certain unique types of housing transactions that deserved special attention in implementing the regulations. For example, the preamble of the proposed rule explained the rule's exclusion of the following from the statutory definition of target housing: housing built after 1977, housing for the elderly, housing for the disabled, 0-bedroom dwellings, and commercial lodging. Many commenters recommended that the regulatory text of the final rule clearly designate types of transactions that are included and excluded.

EPA and HUD have expanded the scope and applicability section of the regulatory text to better define the rule's impact on certain types of transactions. Below is a brief discussion of the unique transactions addressed under the scope and applicability section and the rationale for including or excluding them.

1. *Transactions to sell properties at foreclosure.* The final rule retains the exclusion for foreclosure sales presented in the proposed rule. While some commenters opposed exempting foreclosure transactions due to the lack of protection for the purchaser, EPA and HUD believe that the circumstances typically surrounding foreclosure transactions make pre-sale disclosure and evaluation unworkable and impractical. Access to properties during foreclosure proceedings is often limited, making evaluations impossible. Such properties typically are sold on an "as is" basis with regard to all structural and environmental factors. Further, these transactions do not necessarily involve direct interaction between the property owner and the purchaser, and the mortgage holder or trustee is unlikely to have information on the presence of lead-based paint and/or lead-based paint hazards. In light of these circumstances, EPA and HUD believe that it would be inappropriate to extend Federal disclosure and evaluation requirements to foreclosure transactions.

This exclusion does not apply, however, to the sale of housing originally acquired through a foreclosure sale and subsequently resold (an expansion of the exclusion recommended by some commenters). In such cases, EPA and HUD believe that the rule's provisions can be incorporated into the sales process since many of the extenuating circumstances of foreclosure sales no longer apply.

2. *Rental housing found to be free of lead-based paint.* The final rule exempts from coverage leasing transactions involving target housing that is free of lead-based paint, as determined by a certified inspector. For the purposes of this rule, EPA and HUD have defined "lead-based paint free" as the absence of paint with lead levels above those provided in Title X.

In addition to receiving support by many public commenters, this exclusion was recommended by the Task Force on Lead Hazard Reduction and Financing. EPA and HUD strongly encourage the concept of lead-based paint evaluation in rental housing. Evaluations can help lessors to detect the presence of lead-based paint and to determine whether certain management practices and occupant education efforts are necessary. Where evaluations discover lead-based paint, such results will provide lessors and/or lessees with the information necessary to take appropriate hazard reduction steps. EPA and HUD also believe that the exemption will provide a valuable incentive to building owners to conduct inspections and remove lead-based paint where present.

Under the provisions of the regulation, disclosure during rental transactions is limited to the disclosure of known lead-based paint and/or lead-based paint hazards, provision of available records and reports, provision of a lead hazard information pamphlet, and creation and retention of lead warning and acknowledgment language. These activities provide substantially fewer benefits in cases where reliable information indicates that the housing is lead-based paint free. At the same time, EPA and HUD expect that the exemption for lead-based paint free units will not dissuade many lessors from providing their inspection reports to prospective lessees on a voluntary basis. Given the value that lead-safe housing would have to an informed consumer, EPA and HUD expect that owners will see a great benefit in informing lessees of the housing's lead-based paint free status.

Because of the distinct disclosure obligations the statute imposes on sellers, obligations that purchasers assume upon purchase of the housing, EPA and HUD are not allowing the lead-based paint free exemption for sales transactions. Unlike lessees, purchasers take on new obligations to comply with the disclosure provisions during all subsequent sales or leasing transactions. Exempting sales transactions could disrupt the flow of information from owner to owner regarding the status of the target housing and the purchaser's potential disclosure obligations. Further, Title X guarantees purchasers more than just known information and available reports. Title X guarantees each purchaser the opportunity to conduct an evaluation for lead-based paint and/or lead-based paint hazards, regardless of the information disclosed by the seller. Exempting sales transactions based on the information in the possession of the seller would deny the purchaser that evaluation right. While many purchasers will accept the seller's information and waive their evaluation opportunity (especially if the seller provides an evaluation by a certified inspector), some purchasers may prefer to have their own evaluation performed.

Because the Federal training and certification program will not take effect until some time after the effective date of this rule, EPA and HUD recognize the need for a process to allow property owners to seek exclusions for lead-based paint free housing in States without federally authorized certification programs. In the interim period before the Federal certification program (to be issued under subpart L of 40 CFR part 745) takes effect, inspectors qualified under any existing State certification program, and using State-approved methods, are considered qualified to conduct inspections for the purpose of determining whether housing is lead-based paint free. In States without existing certification programs, lessors may use the services of inspectors certified in other States. Once the Federal or federally authorized State certification program has taken effect in a particular State, however, this interim provision will expire and subsequent inspections for the purposes of this exclusion will have to be performed by inspectors with Federal or federally authorized State certification.

Some commenters asked whether lessors hoping to meet the lead-free exemption could correct for possible false (or outdated) positive findings during lead-based paint inspections. The lessor always retains the option of having additional tests performed by certified inspectors. Nothing in either the law or the regulation is intended to revoke or restrict that right. An additional test can sometimes clarify whether or not lead-based paint is present. For example, if a lessor believed that a previous inspection had rendered a false-positive result (all measurement techniques involve some small degree of sampling and analytical error), the lessor could choose to have a certified inspector retest the area in question. If the additional testing by a certified inspector indicated that the initial positive results were false (i.e., that there was in fact no lead-based paint present), then the lessor would qualify for the lead-based paint free exemption. Similarly, suppose a lessor first had a test done in 1982 using an X-ray fluorescence (XRF) device that indicated the presence of lead-based paint. Because testing procedures were less reliable at that time (standard practice often failed to consider the effect of the substrate underneath the paint on the accuracy of the measurement and instrument calibration checks were often deficient), the lessor might choose to conduct a new test using the improved methodology available today. If this second test indicated that lead-based paint was not present, then the lessor would qualify for the lead-based paint free exemption. As a third example, a lessor who had all lead-based paint removed from a rental property following an earlier inspection could choose to have a new inspection or

clearance examination conducted on the abated property. If the new information indicated that lead-based paint was no longer present, then the lessor would qualify for the lead-based paint free exemption. In all three cases, if the second test confirmed the original findings, or if the test was not conducted by a certified inspector, the exemption would not be available.

3. *Short-term leases of 100 days or less.* Many commenters recommended that the final rule clarify the distinction between short-term lodgings and longer term residential housing. The final rule addresses these comments by excluding housing transactions involving leasing agreements of 100 days or less, where no lease renewal or extension can occur. This time period is intended to capture all leasing transactions of 3 months or less, while providing several additional days to allow flexibility in the transaction. Building upon the logic discussed in the proposed rule, the final rule's short-term lease exclusion captures most seasonal vacation rentals and hotel and motel transactions, as well as other forms of short-term lodging. During such transactions, which are typified by short stays and quick occupant turnover, EPA and HUD believe that the disclosure provisions are impractical and counter to Congressional intent. The notification requirements of this rule would apply to vacation rentals in cases where the stay extends beyond a 100-day period. Under such circumstances, EPA and HUD believe that the potential for occupant exposure to lead-based paint and/or lead-based paint hazards merits the disclosure of information required by the rule, regardless of whether the stated purpose of the lease is temporary or permanent housing.

In addition, EPA and HUD have placed a limitation on extensions and renewals of such short-term leases to ensure that month-to-month leasing transactions remain covered by the final rule. Commenters noted that many rental transactions incorporate an open-ended month-to-month leasing agreement. These transactions will still be covered by the final rule unless the parties establish in advance that the term of rental will be no longer than 100 days. In an open-ended month-to-month lease arrangement, for example, the rule still applies since the leasing agreement fails to limit the lease term to 100 days or less, i.e., the lease agreement could possibly be extended beyond 100 days. If both parties wish to extend a previously exempted short-term lease beyond the 100-day limit, all provisions of this rule must be satisfied in full before any such "extension" occurs.

4. *Lease renewals.* The final rule does not require repeated disclosure during the renewal of existing leases in which the lessor has previously disclosed all information required under 24 CFR 35.88 and 40 CFR 745.107 and where no new information has come into the possession of the lessor. As stated in the proposed rule, EPA and HUD do not believe that duplicative disclosure provides significant benefits.

Several commenters noted that in many residential leasing transactions, leasing arrangements switch to month-to-month "at-will" arrangements after an initial period of occupancy. In such cases, the leasing arrangement may continue indefinitely without any "renewal process." Under such circumstances, EPA and HUD interpret renewal to occur at the point when the parties agree to a significant written change in the terms of the lease, such as a rental rate adjustment. Following such alteration of terms, the disclosure requirements apply to any new information obtained subsequent to the original disclosure.

5. *The purchase, sale, or servicing of mortgages.* The final rule does not cover, and was never intended to cover, the purchase, sale, or servicing of mortgages. During the comment period, many commenters expressed concern that the proposed rule could be interpreted to hold liable persons involved in the purchase, sale, or servicing of mortgages where the title of the housing does not change hands as part of the transaction.

6. *The sale or lease of 0-bedroom dwellings.* The final rule does not apply to transactions involving 0-bedroom dwellings, in keeping with the definition of "target housing" provided in section 1004 of Title X. This definition, at the heart of the section 1018 provisions, specifically excludes 0-bedroom dwellings of all types.

7. *Informal rental agreements.* In the proposed rule, EPA and HUD proposed excluding "informal rental agreements which do not involve a lease" (a phrase meant to capture oral leases) because "such arrangements, by virtue of their informality, make the administration and enforcement of these requirements extremely difficult." EPA and HUD have removed any implied exclusion for oral leases. In deciding not to exclude such leases, EPA and HUD drew heavily upon the public comments. Many of these comments suggested that the absence of a written lease may not have bearing on the "formality" of the housing arrangement. Commenters noted that oral leases make up a significant portion of the housing arrangements in certain areas, especially those that lack rental housing codes.

Further, although the absence of a written lease provides challenges for certain Federal enforcement and compliance monitoring approaches, EPA and HUD now believe that enforcement is possible. Other evidence may exist, for example, to demonstrate that a leasing agreement exists between two parties. Congress also provided lessees with opportunities for redress under its civil penalty provisions at section 1018(b)(3). These safeguards are not dependent upon Agency actions and therefore should not be constrained by EPA and HUD limitations.

EPA and HUD have also considered policy reasons for not excluding oral leases. First, EPA and HUD are sympathetic to commenter concerns that an explicit exclusion for oral leasing transactions could create incentives for lessors to avoid written leases. If the rule's exclusion were to indirectly discourage the use of written leases, lessees would lose both their right to information on lead-based paint poisoning prevention and the many other protections afforded by written leases. Commenters also noted that a disproportionate number of oral transactions occur in low-income, disadvantaged communities. These communities are already at greater risk of exposure to lead-based paint hazards.

Nevertheless, while the final rule does not provide an explicit exclusion for oral leasing arrangements, EPA and HUD expect that many oral lease transactions may be excluded for other reasons (length of arrangements, rental of 0-bedroom dwelling, etc.).

B. Effective Date

In the proposed rule, EPA and HUD requested comment on the issue of extending the effective date for the final rule beyond October 28, 1995, in light of the promulgation delays. EPA and HUD noted Congress' inclusion of a 1-year window between the statutory promulgation deadline and the statutorily mandated effective deadline. EPA and HUD received comments in support of and in opposition to an extension.

Commenters opposed to delaying the effective date generally argued that any delay in implementation would increase the number of preventable exposures to lead-based paint hazards. According to these commenters, given the importance of educating consumers about their options for reducing lead hazards, the positive effects of early implementation outweigh the practical difficulties.

While agreeing that this rule addresses an important consumer protection and empowerment goal, EPA and HUD believe that the rule's effective implementation requires an informed and prepared general public and regulated community. EPA and HUD believe that a phase-in period is necessary to provide adequate time for the real estate industry, private lessors, and independent housing sellers and lessors to become familiar with the rule requirements and to set up procedures for compliance.

Sellers and lessors who own more than four residential dwellings will have 6 months from the final rule's promulgation to implement full disclosure during sales and leasing transactions. This phase-in schedule ensures that all such property owners, sellers, lessors, and agents will have adequate notice of the new requirements before they take effect. Believing that property owners with four or fewer dwellings are more likely to be non-professional sellers and lessors, EPA and HUD are providing a 9-month phase-in period for such owners. EPA and HUD encourage all sellers and lessors to begin voluntary disclosure in advance of their relevant effective date.

EPA and HUD also received comments recommending delaying the effective date until after EPA issues its standards for lead hazards in paint, dust, and soil. These commenters stated that the regulated community would be unable to disclose adequately the presence of lead-based paint and lead-based paint hazards in the absence of Federal standards.

EPA and HUD do not believe that this rule requires Federal lead hazard standards to be effective. In section 1018, Congress mandated that sellers and lessors disclose not just lead-based paint hazards but also the presence of lead-based paint, a far more inclusive mandate (since not all lead-based paint is necessarily a hazard).

Further, EPA and HUD expect that records will likely provide purchasers and lessees with information on lead-based paint and, where they exist, lead-based paint hazards. Accordingly, if records pertaining to lead-based paint are fully disclosed, disclosure of lead-based paint hazards should also be accomplished.

The statute and now this rule provide a clear definition for the levels of lead in paint that constitute lead-based paint. The statute also provides a qualitative definition of lead-based paint hazard, including certain exposures to lead-based paint that is peeling or chipping; lead-based paint that is on friction, impact, or chewable surfaces; and lead-contaminated dust and soil.

EPA and HUD have augmented these definitions by providing guidance on identifying lead hazards in paint, dust, and soil (60 FR 47248).

Regarding the need for guidance to help prospective purchasers and lessees with the interpretation of disclosed information, EPA and HUD believe that the statutory definition of "lead-based paint hazard," combined with EPA's lead hazard guidance and the HUD Guidelines, provides sellers, purchasers, lessors, and lessees with valuable information for interpreting any disclosed information.

Some commenters have also recommended delaying the effective date of the final rule until after the activation of the Federal standards for training and certifying lead workers, being developed under section 402 of TSCA. After considering the comments and reexamining the statute, EPA and HUD have determined that such a delay is unnecessary. EPA and HUD believe that the HUD Guidelines will provide adequate interim guidance for the evaluation and management of lead-based paint hazards in target housing, prior to the release of the section 402 training and certification standards.

C. Definitions

EPA and HUD received comments on many of the proposed definitions. Below is a brief discussion of the significant definitions being promulgated under this final rule.

1. *Agent* means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser's representative who receives all compensation from the purchaser.

EPA and HUD initially defined "agent" to be "any party who enters into a contract with a seller or lessor to represent the seller or lessor for the purpose of selling or leasing target housing." Several commenters stated that the language in this definition was needlessly vague. Listing agents typically enter into a contract with the seller and represent the seller. "Buyer" agents, however, often enter into a contractual relationship with a seller or the seller's agent but may represent both the seller and the purchaser in the real estate transaction. EPA and HUD have revised this definition so that any party entering into a contractual relationship directly with the seller or lessor (or indirectly with a representative of the seller or lessor) for the purpose of selling or leasing the target housing, is an "agent" for the purposes of this rule. As a consequence, listing agents, selling agents, and buyer agents (if paid by the seller or through a cooperative brokerage agreement with the listing agent), are "agents" and are responsible for ensuring compliance under the rule. Since section 1018 refers only to agents having entered into a contract with the seller or lessor, buyer's agents paid entirely by the purchaser are not considered "agents" under this rule.

2. *Available* means in the seller's or lessor's possession or reasonably obtainable by the seller or lessor at the time of the disclosure.

Section 1018(a)(1) requires that sellers and lessors provide the purchasers and lessees with "any lead hazard evaluation reports available to the seller or lessor." EPA and HUD interpret available lead hazard evaluation reports to mean records and reports that pertain to lead-based paint and/or lead-based paint hazards in the target housing and that are in the possession of the seller or lessor or that are reasonably obtainable by the seller or lessor at the time of the disclosure.

EPA and HUD expect that most sellers and lessors will retain copies of relevant information in their possession along with other important housing files (title, outstanding leases, etc.). In some cases, however, the seller or lessor may no longer have possession of the records but may have reasonable access to the information. Examples of "reasonably obtainable" records include records retained by a separate or outside entity on behalf of the seller or lessor and copies of reports retained by the original inspector or risk assessor that would be available to the owner in cases where the original records were destroyed or lost. The term "reasonably obtainable" is not intended to impose an obligation on the seller or lessor to conduct further evaluation of the housing.

3. *Common area* means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

This definition is unchanged from the proposed rule. The term "common area" will be used in other TSCA Title IV regulations, some of which may require a broader interpretation of common area. The final rule provides one broadly interpreted term applicable under all of the TSCA rules, to avoid the confusion of multiple rule-specific definitions. Though several commenters recommended minor changes to adjust the scope of the definition, EPA and HUD believe that other regulatory

provisions adequately clarify the relevant scope of the term "common area" as it relates to target housing.

4. *Foreclosure* means any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of a debt, by the taking and selling of real property.

EPA and HUD added this definition in response to requests that the final rule include a regulatory definition of the term. EPA and HUD believe that this definition will help property owners determine the applicability of the foreclosure exemption to their transactions. Recognizing that different jurisdictions may have differing interpretations of what constitutes "foreclosure," EPA and HUD have developed a general definition that provides flexibility to work within established local laws and customs.

5. *Housing for the elderly* means retirement communities or similar types of housing specifically designed for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

In response to public comments, EPA and HUD have added a definition for this term to the regulatory text. This definition is consistent with the definition used by HUD's Supportive Housing for the Elderly Program (See 24 CFR 277.1(f)). While some commenters recommended the use of a "55 years or older" standard (as used to define "older person" in the Fair Housing Act), HUD believes that the current definition is more consistent with HUD's other programs for the elderly.

6. *Lead-based paint* means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

This term has been modified slightly from the language provided in Title X and TSCA to retain consistency with the many HUD programs already using the levels defined under section 302(c) of the Lead-Based Paint Poisoning Prevention Act.

7. *Lead-based paint free housing* means target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

EPA and HUD have added this definition in support of the provision of the rule that allows rental transactions in "lead-based paint free" rental housing to be excluded from the section 1018 requirements. EPA and HUD provide further discussion of this provision in unit IV.A.2. of this preamble.

8. *Lead-based paint hazard* means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

This term, defined in section 1004 of Title X, is unchanged from the proposed rule. EPA has released guidance on identifying lead hazards in paint, dust, and soil (60 FR 47248) and is currently developing Federal standards. In addition, HUD has released comprehensive guidelines for evaluation and control of lead-based paint hazards in housing (Ref. 7).

9. *Lessee* means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

EPA and HUD received limited comments on this definition and have made minor revisions to the language of the definition to clarify its applicability to trusts and subleases.

10. *Lessor* means any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

EPA and HUD received limited comments on this definition and have made minor revisions to the language of the definition to clarify its applicability to trusts and subleases.

11. *Owner* means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner is considered the mortgagor.

EPA and HUD have revised the definition provided in the proposed rule to clarify its applicability to trusts and to clarify one situation in which mortgage lenders (mortgagees), rather than borrowers (mortgagors), hold title and are therefore owners.

12. *Purchaser* means an entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

EPA and HUD received limited comments on this definition and have made minor revisions to the language of the definition to clarify its applicability to trusts.

13. *Risk assessment* means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including: (1) Information gathering regarding the age and history of the housing and occupancy by children under age 6; (2) visual inspection; (3) limited wipe sampling or other environmental sampling techniques; (4) other activity as may be appropriate; and (5) provision of a report explaining the results of the investigation.

This definition, provided in section 1004 of Title X, is unchanged from the proposed rule. Under section 402 of TSCA, EPA will promulgate separate regulations regarding the conduct of such activities, as well as a program for training and certifying workers engaged in these activities. Under section 404 of TSCA, these regulations will also include a process for authorizing States to implement their own training and certification programs.

14. *Seller* means any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. The term "seller" also includes: (1) An entity that transfers shares in a cooperatively owned project, in return for consideration and (2) an entity that transfers its interest in a leasehold in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.

EPA and HUD received limited comments on this definition and have made minor revisions to the language of the definition to clarify its applicability to trusts.

15. *Target housing* means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

This definition was provided by section 1004 of Title X and is unchanged. Where commenters provided recommendations for revising or clarifying the definition, EPA and HUD have addressed those comments within the scope and applicability section of the final rule. Commenters also noted that the proposed rule misstated the statutory definition by limiting the 0-bedroom dwelling exception to housing where no children under 6 reside or are expected to reside. EPA and HUD have modified the definition to reflect the statutory language.

16. *0-bedroom dwelling* means any residential dwelling in which the living area is not separated from the sleeping area. Such term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

In the preamble of the proposed rule, EPA and HUD clarified their interpretation of this term by identifying efficiencies, studio apartments, dormitory housing, military barracks, and other such housing in which the living area is unseparated from the sleeping area as types of dwellings that are not covered under the rule. EPA and HUD have added rentals of individual rooms in a residential dwelling to the types of transactions that would involve a 0-bedroom dwelling. All of these clarifications are included in the regulatory definition in the final rule's regulatory text.

D. Changes to the Disclosure Requirements

Section 1018(a)(1)(B) requires that "before the purchaser or lessee is obligated under any contract to purchase or lease the housing, . . .the seller or lessor shall. . .disclose to the purchaser or lessee the presence of any known lead-based paint or any lead-based paint hazards, in such housing, and provide any lead hazard evaluation report available to the seller or lessor."

EPA and HUD received more than 150 comments on their proposed requirements for such information disclosure, addressing both the proposed disclosure process and the issue of what information should be covered. In particular, recurring themes among the comments included: (1) The need for greater specificity regarding the necessary timing for disclosure activities; (2) concerns over which activities should constitute disclosure; and (3) what kinds of information should be disclosed under this rule. The following is a brief discussion of these key points and a summary of the regulatory requirements.

1. *Timing of disclosure events.* In addressing the need for greater clarity regarding the timing of disclosure activities, EPA and HUD have attempted to maximize the parties' flexibility in incorporating these requirements during negotiations. EPA and HUD believe that this flexibility is important given the many types of transactions covered by these provisions and the existence of distinct local requirements and customs. Therefore, the final rule identifies only the latest point at which full disclosure must occur. Using the statute as a guide, EPA and HUD have identified this point as before the purchaser or lessee becomes obligated under any contract to purchase or lease the housing.

Some commenters raised the concern, however, that without additional clarification regarding how and when information must be disclosed, the final rule could cause unnecessary confusion regarding how the requirements will work in actual practice. After reviewing the framework set out in the proposed rule, EPA and HUD have revised and clarified the requirements in a number of ways. First, the final rule contains numerous minor changes to the wording of definitions and requirements to clarify that the rule does not require mass disclosure to all prospective purchasers, regardless of their degree of interest. Second, the rule requires that certain disclosure and acknowledgment language become part of the final sale or lease contract. In making these changes, EPA and HUD have considered the typical negotiation process involved in leasing and sales transactions.

During sales transactions, for example, purchasers often take the first step toward formalizing a sales agreement by providing a written offer to purchase the housing. If accepted and signed by the seller, this offer typically becomes the sales contract. The statute's mandate that disclosure and notification take place before the purchaser is obligated imposes a requirement on the seller to disclose information before accepting the purchaser's offer, thereby allowing the purchaser an opportunity to review the information and to possibly amend the offer. If a seller were to accept a purchaser's offer and obligate the purchaser before disclosing known information, such a seller would be in violation of Title X and this rule. Of course, the parties can always agree to conduct the disclosure activities in advance of contract discussions, provided that the final contract includes the signed and dated disclosure elements mandated by this rule.

In leasing transactions, the disclosure process is even simpler. While the parties are free to negotiate when the disclosure process occurs, lessors must provide the information and complete the disclosure portions of the lease (or attachment) before the lessee becomes obligated under a contract to lease the housing. By requiring that the disclosure information be included in or as an attachment to the lease, EPA and HUD seek to ensure that the disclosure process automatically occurs during lease negotiations.

The requirement that the contract or an attachment include disclosure language fulfills two additional functions. First, the process of completing and signing these sections ensures that all parties are aware of their rights and obligations and are able to confirm that the appropriate actions have already occurred. Second, this disclosure language provides a clear record of compliance.

While sections 1018(a)(2) and (3) mandate lead warning language for all sales transactions, the inclusion of such language as an attachment to leases is not specifically mandated by Title X. EPA and HUD, however, believe that it is necessary to include the warning language in leases as well. Further, the completion and retention of disclosure and acknowledgment language is a necessary component of any effective, enforceable disclosure requirement for leasing transactions.

2. *Components of full disclosure.* EPA and HUD consider full disclosure to have occurred when the seller or lessor has provided the following items to the purchaser or lessee.

a. *A lead hazard information pamphlet approved by EPA.* As required by TSCA section 406, EPA has developed a lead hazard information pamphlet, entitled *Protect Your Family from Lead in Your Home*, and has made it available through government channels and private sources. EPA issued the final notice of the pamphlet's availability in the **Federal Register** of August 1, 1995 (60 FR 39167). In addition to providing detailed information on how to obtain copies (individually, in bulk, and as camera-ready reprints), the notice describes the process of developing the pamphlet, including considerable public review and comment.

The statute also allows States to develop their own lead hazard information pamphlets under section 406, provided that they obtain authorization and approval from EPA. Several States that already have disclosure provisions have expressed their desire to seek approval to use their own pamphlets in lieu of the Federal pamphlet. EPA and HUD encourage States interested in developing their own materials to seek approval of their pamphlets for distribution under the section 1018 regulations.

b. *Notice of the presence of known lead-based paint and/or lead-based paint hazards.* Sellers and lessors must disclose, based on their actual knowledge, whether the target housing

is known to contain lead-based paint and/or lead-based paint hazards. EPA and HUD received many comments on the types of information under consideration for disclosure under these requirements. Many of the commenters expressed concern that the proposed rule was too vague about what constituted "known information." For example, did EPA and HUD intend for the disclosure requirements to distinguish between information already in the possession of the seller or lessor and information that could be obtained only by some further investigation or inference? Several commenters described this distinction in terms of actual knowledge (knowledge stemming from existing facts and information) versus constructive knowledge (knowledge that could be inferred or obtained by further inquiry). An expectation that the property owners meet a constructive standard for knowledge could create an implied testing requirement.

While the Agencies hope to encourage lead hazard evaluation and reduction efforts through all of their regulatory and non-regulatory programs, neither Agency believes that Congress intended to mandate additional lead hazard evaluation activities in private housing. EPA and HUD believe that Congress intended to limit the disclosure obligation to actual knowledge. The final rule, therefore, embraces an actual knowledge standard as well. With this clear standard, property owners and their agents will be able to take affirmative steps to comply fully with the rule and be confident that they have met the requirements of the law and its implementing regulations. EPA and HUD believe that such finality is a necessary part of this regulation, given the diverse makeup of the regulated community.

c. *Provision of records and reports on lead-based paint and/or lead-based paint hazards available to the seller or lessor.* As mandated by section 1018(a)(1)(B), sellers and lessors must "provide to the purchaser or lessee any lead hazard evaluation report available to the seller or lessor." EPA and HUD have interpreted "available evaluation reports" to mean records and reports that pertain to lead-based paint and/or lead-based paint hazards in the target housing and that are in the possession of the seller or lessor or that are reasonably obtainable by the seller or lessor at the time of the disclosure.

During the proposed rule phase, EPA and HUD requested comment regarding the disclosure of known lead-based paint and/or lead-based paint hazards in other units within target housing. EPA and HUD received both supporting and opposing comments on this requirement. Opponents argued that distinct dwelling units can have very different painting histories, making information on one unit an unreliable indicator of other units. Proponents argued that regardless of differences that may exist, the painting histories of different units in a building are usually similar enough to provide valuable information for individuals considering whether lead hazard exposure precautions are prudent.

EPA and HUD believe that information and reports on other units in the target housing are directly relevant to prospective purchasers and lessees if the information stems from evaluation or reduction efforts in the target housing as a whole. In large multifamily properties, evaluations do not necessarily examine every dwelling unit in the housing. Rather, inspectors or risk assessors examine a representative sample of the dwelling units and apply the findings to the housing as a whole. While such evaluations might not include data on a specific unit, the fact that the evaluation was designed to provide information on the housing as a whole makes the report's findings relevant.

The proposed rule also requested comment on whether sellers and lessors should have to disclose information on past elevated blood-lead levels in other occupants of target housing. Based on the comments and further deliberation, EPA and HUD decided against requiring disclosure of medical information for several reasons. As commenters pointed out, lead exposure, elevated blood-lead levels, or lead poisoning may come from sources other than lead-based paint hazards in the housing. Where elevated blood-lead levels were determined to stem from lead-based paint hazards in the housing, the follow-up environmental assessment activities in the affected person's housing will likely generate more germane records regarding lead-based paint exposure hazards in the housing.

Commenters also questioned whether disclosure requires the actual transfer of all documentation from the seller or lessor, or whether simply making the information accessible for the purchaser's or lessee's evaluation is adequate. Based on the mandate in section 1018(a)(1)(B), EPA and HUD believe that Congress clearly intended for purchasers and lessees to receive their own copies of the records and reports available to the seller or lessor. Therefore, the seller or lessor remains obligated to provide copies of all relevant materials to the purchaser or lessee.

d. *Completed Lead Warning Statement and acknowledgment language, attached to the sales or lease contract.* This information, set out in 24 CFR 35.92 and 40 CFR 745.113, documents the disclosure and acknowledgment process, and serves as the primary confirmation tool for all parties in ensuring full compliance with the regulatory requirements. This information is especially important in cases where purchasers or lessees conduct contract negotiations through their own representatives (requiring sellers, lessors, or their agents to provide documents to the representative instead of the purchaser or lessee). In such cases, the attachment provides a record that sellers, lessors, and agents can use to confirm that purchasers and lessees have received the necessary disclosure materials.

The proposed rule required the use of disclosure forms as attachments to each contract to purchase or lease target housing. These forms would have served as the key mechanisms for documenting compliance with the requirements. EPA and HUD carefully considered the merits of each element, limiting the rule to information necessary for demonstrating full compliance.

The final rule includes some changes to the information that must be included in the contract. Where the proposed rule required that sellers and lessors use federally developed disclosure forms, the final rule provides greater flexibility for negotiating parties to develop their own language, provided that it contains the mandated elements. EPA and HUD eliminated the requirement that parties use a single form. Instead, the final rule mandates only the information elements that must be included without mandating specific formats or forms.

This flexibility is especially important to States that have developed, or are considering developing, their own disclosure requirements. During the comment period, several States requested that the final rule provide flexibility for States to merge their forms with the Federal form, eliminating unnecessary duplication. Under the final rule, States and jurisdictions will be able to make changes to the format as necessary to retain consistency with State and local laws and customs.

The following is a discussion of the required elements.

(i) *Seller, agent, and purchaser requirements.* The final rule requires that each contract to sell target housing include an attachment containing specific disclosure and acknowledgment

elements, in the language of the contract (e.g., English, Spanish). The elements required are described below:

(A) The first required element is the Lead Warning Statement, consisting of the following language:

> Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Congress mandated this language in section 1018(a)(3) of Title X. While several commenters recommended providing simpler language, EPA and HUD are constrained by the mandate and have retained the statement as proposed.

(B) The second required element is a statement disclosing the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The seller must also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist in the housing, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces. The statement must also list all records and reports pertaining to lead-based paint and/or lead-based paint hazards that are available to the seller and that have been provided to the purchaser. If no such records or reports are available to the seller, the statement must so indicate.

(C) The third element is a statement affirming that the purchaser has received the information noted in paragraph (B) above and the lead hazard information pamphlet required under section 406 of TSCA (15 U.S.C. 2696). The pamphlet described above may be the Federal pamphlet entitled *Protect Your Family from Lead in Your Home* or a State-developed pamphlet that has been approved by EPA.

(D) The fourth required element is a statement that the purchaser has received a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards (unless the parties have mutually agreed to a different period of time), before becoming obligated under the contract to purchase the housing. Alternatively, a purchaser who chooses to waive the risk assessment or inspection opportunity must so indicate in writing.

(E) The fifth required element is a statement by any agent involved in the transaction that the agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and that the agent is aware of his/her duty to ensure compliance with the requirements of this rule.

(F) The sixth required element is the signatures of the seller(s), agent(s), and purchaser(s), certifying the accuracy of their statements on the attachment, along with their dates of signature. These signatures document the acceptance by the parties of the information they have provided on the attachment as a whole and alert the various parties to their respective roles and responsibilities.

(ii) *Lessor, agent, and lessee requirements.* Each contract to lease target housing must include the following elements, as an attachment or within the contract, in the language of the contract (e.g., English, Spanish).

(A) The first required element is a Lead Warning Statement with the following language:

> Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

EPA and HUD received a considerable amount of comment regarding the language of the Lead Warning Statement used in the leasing disclosure attachment. EPA and HUD have developed a modified Lead Warning Statement for leasing transactions that uses simpler words and syntax than the purchase warning statement required by Title X.

(B) The second required element is a statement disclosing the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist; the location of the lead-based paint and/or lead-based paint hazards; and the condition of the painted surfaces. The statement must also list any records or reports pertaining to lead-based paint and/or lead-based paint hazards that are available to the lessor and that have been provided to the lessee. If no such records or reports are available to the lessor, the statement must so indicate.

(C) The third required element is a statement affirming that the lessee received the information noted in paragraph (B) above and the lead hazard information pamphlet required under section 406 of TSCA (15 U.S.C. 2686).

(D) The fourth required element is a statement by any agent involved in the transaction that the agent has informed the lessor of the lessor's obligations under the law and that the agent is aware of his/her duty to ensure compliance with the requirements of this rule.

(E) The fifth required element is the signatures of the lessor(s), agent(s), and lessee(s), certifying the accuracy of their statements, along with their dates of signature. These signatures document the acceptance by the parties of the information they have provided as a whole and alert the various parties to the roles and responsibilities of each party.

3. *Sample disclosure attachments.* Recognizing that many parties may prefer having access to a sample format, EPA and HUD have developed sample disclosure formats for sales and leasing contracts for public reference. These samples are not included in the regulatory text itself. Nothing in the rule requires the use of these specific formats if a seller or lessor wishes to develop a separate format that includes all of the required elements.

(Sample Disclosure Format for Target Housing Sales)

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i)—— Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

_____

(ii)——Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the seller (check (i) or (ii) below):

(i)——Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

_____

(ii)—— Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Purchaser's Acknowledgment (initial)

(c)——Purchaser has received copies of all information listed above.

(d)——Purchaser has received the pamphlet *Protect Your Family from Lead in Your Home.*

(e)——Purchaser has (check (i) or (ii) below):

(i)—— received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

(ii)—— waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Agent's Acknowledgment (initial)

(f)——Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____	_____	_____	_____
Seller	Date	Seller	Date
_____	_____	_____	_____
Purchaser	Date	Purchaser	Date
_____	_____	_____	_____
Agent	Date	Agent	Date

(Sample Disclosure Format for Target Housing Rentals and Leases)

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (Check (i) or (ii) below):

(i)—— Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

_____

(ii)——Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (Check (i) or (ii) below):

(i)—— Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

_____

(ii)——Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

(c)——Lessee has received copies of all information listed above.

(d)——Lessee has received the pamphlet *Protect Your Family from Lead in Your Home.*

Agent's Acknowledgment (initial)

(e)——— Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____	_____	_____	_____
Lessor	Date	Lessor	Date
_____	_____	_____	_____
Lessee	Date	Lessee	Date
_____	_____	_____	_____
Agent	Date	Agent	Date

4. *Recordkeeping requirements.* EPA and HUD have retained the recordkeeping requirements under this rule largely as proposed. The seller and any agent are required to retain a copy of the completed disclosure and acknowledgment contract attachment (discussed below), required under §§ 35.92(a) and 745.113(a), for 3 years from the completion date of the sale. Similarly, the lessor and any agent are required to retain a copy of the completed lease or attachment, required under § 35.92(b) and § 745.113(b) of this rule for 3 years from the commencement of the leasing period. EPA and HUD have determined that a 3-year period is an appropriate amount of time to ensure compliance with the requirements of Title X and to support Federal compliance monitoring efforts. This recordkeeping requirement is not intended to place any limitations on civil suits under Title X or to otherwise affect a lessee's or purchaser's rights under the civil penalty provisions of section 1018(b)(3) of Title X.

EPA and HUD requested comment on whether the rule should include an additional recordkeeping provision requiring that property owners retain all records and reports of lead-based paint and/or lead-based paint hazards in the housing for the length of their ownership. Based on the statute's use of the term "available" lead hazard evaluation reports, EPA and HUD have determined that a specific recordkeeping requirement for such reports is beyond the scope of this regulation. EPA and HUD have, however, clarified "available" lead hazard evaluation reports to encompass records and reports in the possession of the seller or lessor or reasonably obtainable by the seller or lessor at the time of the disclosure. This approach recognizes that third parties may in some cases play an independent recordkeeping role for the seller or lessor.

While the Agencies do not mandate the retention of these records, EPA and HUD encourage sellers and lessors to retain relevant records in anticipation of future sale or lease. The information provided can help purchasers and occupants take exposure prevention precautions during later ownership or occupancy. The requirement to disclose the presence of known lead-based paint and/or lead-based paint hazards remains even if the seller or lessor is unable to locate the original reports quantifying the data. Section 1018 requires sellers and lessors to both (1) disclose the presence of known lead-based paint and/or lead-based paint hazards in the housing and (2) provide available written records and reports to the purchaser or lessee. By mandating that both actions occur, Congress recognized the distinction between the two actions, and the fact that the seller or lessor might have actual knowledge of lead-based paint and/or lead-based paint hazards above and beyond that present in available reports.

5. *Failure to fully disclose before ratification of contracts.* As mandated by Title X, the disclosure of information, the provision of the lead hazard information pamphlet, and the purchaser's opportunity to conduct a risk assessment or inspection must occur before the purchaser or lessee becomes obligated under any contract to purchase or lease the dwelling. Section 1018(c) prohibits regulatory provisions that would "affect the validity or enforceability of any sale or contract for the purchase and sale or lease of any interest in residential real property or any loan, loan agreement, mortgage, or lien made or arising in connection with a mortgage loan" and states that nothing in the rule "shall create a defect in title." The disclosure requirements contained in this rule must occur prior to contract ratification and, as such, do not affect the validity of the subsequent contract. Nor does failure to conduct full disclosure before sale or lease affect the validity of the sales or leasing contract itself. Rather, purchasers seeking remedy for the non-disclosure may avail themselves of the civil remedies afforded by section 1018 of Title X.

6. *Opportunity to conduct a risk assessment or inspection.* Section 1018(a) requires that sellers provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards before becoming obligated under a purchase contract. The length of time may be shortened or lengthened by mutual agreement. In the proposed rule, EPA and HUD offered several approaches for implementing this provision of section 1018: (1) Establishing Federal standards for the implementation of the evaluation period, providing flexibility for adjustment by mutual consent; (2) limiting the regulatory text to the statutory language, thereby maximizing the discretion of the two parties in negotiating the terms; (3) codifying contract contingency language for use in complying with the final rule; and (4) establishing requirements for providing evaluation opportunities before the preparation of contracts.

Recognizing that home inspections for various hazards and housing defects are common occurrences during housing transactions around the country, EPA and HUD believe that the market can incorporate this requirement into future transactions without detailed regulatory language. The final rule, therefore, steers away from the proposed rule's preferred approach of codifying Federal standards for the performance of the 10-day evaluation period provision.

However, EPA and HUD also recognize that some private sellers may choose to conduct their housing sales without the aid of a trained agent and may lack familiarity with the standard processes for conducting such evaluations in the sales transaction. For such persons, EPA and HUD are providing the following discussion of several likely approaches for implementing this provision.

First, some purchasers may choose to waive the opportunity for a risk assessment or inspection. Purchasers may be especially inclined to waive the opportunity in cases where the seller provides significant amounts of relevant information on the property during the disclosure process, or in cases where no children are expected to reside in the housing. If the purchaser chooses to waive the evaluation opportunity, the purchaser is still obligated to acknowledge receipt of the evaluation opportunity on the attachment, documenting this voluntary decision to waive the opportunity.

EPA and HUD expect that in most cases where the purchaser chooses to exercise his or her evaluation opportunity, the parties will develop and incorporate into the contract mutually agreeable terms for the conduct and completion of the evaluation opportunity. The final rule provides sellers and purchasers with broad flexibility to develop terms for performing the risk assessment or inspection.

As many commenters noted, home inspections are already common aspects of housing transactions. Frequently, these inspections are incorporated into the sales contracts as contingency clauses, providing mutual agreement on the timing, terms, and conduct of the inspection. Common terms addressed in these clauses include: (i) The starting and ending day of the inspection period; (ii) any contingencies and conditions tied to the contract regarding the inspection period; (iii) the process for removing any contingency or condition following the completion of the inspection; and (iv) the disposition of any earnest money provided by the purchaser before the opportunity to inspect. This general framework is one possible approach that parties can consider when developing mutually agreeable terms for the evaluation period required by section 1018(a) of Title X.

While most commenters stressed the importance of providing flexibility for the parties to develop mutually agreeable evaluation terms, many also recommended the inclusion of sample language as a reference. For the purpose of providing guidance on creating contract language, EPA and HUD have included the following sample contract contingency clause for optional use. This language is offered as a sample only, and nothing in this rule imposes a requirement on either party to accept or reject this language in the current or modified form.

Sample Contract Contingency Language

This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards at the Purchaser's expense until 9 p.m. on the tenth calendar-day after ratification [*Insert date 10 days after contract ratification or a date mutually agreed upon*]. (Intact lead-based paint that is in good condition is not necessarily a hazard. See the EPA pamphlet *Protect Your Family From Lead in Your Home* for more information.) This contingency will terminate at the above predetermined deadline unless the Purchaser (or Purchaser's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within ——— days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Purchaser with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs, or if the Seller makes a counter-offer, the Purchaser shall have ——— days to respond to the counter-offer or remove this contingency and take the property in "as is" condition or this contract shall become void. The Purchaser may remove this contingency at any time without cause.

E. Agent Responsibilities

Title X specifically addresses the responsibilities of agents, requiring them to ensure compliance with the provisions of the law. Agents fulfill this requirement by informing sellers or lessors of their obligations and by making sure that these activities are completed either by the seller or lessor or by the agent personally. Accordingly, 24 CFR 35.94(b) and 40 CFR 745.107(c) identify the seller's affirmative duty to disclose to the agent any known lead-based paint and/or lead-based paint hazards on the property. Provided that the agent has actually informed the seller or lessor of his/her obligation, the final rule notes that the agent will not be responsible for information withheld from the agent by the seller or lessor.

V. Non-Compliance and Enforcement

EPA and HUD received considerable comment on the enforcement provisions discussed in the statute and the proposed rule. Many commenters requested more guidance regarding the Agencies' plans for enforcement of the provisions, as well as assurances that the Agencies recognize the importance of active education and outreach to the regulated community. As all enforcement authority for EPA and HUD derives directly from the authorizing statutory language, both the proposed rule and the final rule contain enforcement language that is essentially the same as language provided in Title X and TSCA. The following is a discussion of the general enforcement authority provided by Congress, along with some discussion of the process that EPA and HUD will use in developing a sensible, effective enforcement approach.

A. HUD Authority

Section 1018(b)(1) of Title X authorizes HUD to impose civil monetary penalties on any person who knowingly violates section 1018. This authority applies to violations of this final rule as well. HUD can impose penalties under section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545). These penalties may be up to $10,000 for each violation. In addition, section 1018(b)(2) of Title X authorizes the Secretary to "take such lawful action as may be necessary to enjoin any violation" of the law's provisions.

B. EPA Authority

1. *Civil.* Section 1018(b)(5) of Title X provides that failure or refusal to comply with section 1018 or its implementing regulations is a violation of TSCA section 409. Violations of TSCA section 409 are subject to TSCA section 16 penalties. Thus, a violator of section 1018 can be subject to the penalty provisions under TSCA section 16 of up to $10,000 for each violation.

2. *Criminal.* TSCA section 16(b) provides that any person who knowingly or willfully violates section 409 (and thus section 1018) could, in addition to or instead of any civil penalty, be subject, upon conviction, to a fine of not more than $25,000 for each day of violation or to imprisonment for not more than 1 year, or both. For the purposes of enforcement under section 1018, Congress has modified the application of TSCA section 16, limiting the fine to $10,000 "for each violation."

C. Enforcement Responses

Because the enforcement provisions of section 1018 are clearly set forth in the statute, the final rule retains largely unchanged the discussion of the enforcement authority.

However, it is EPA's and HUD's intent that outreach and compliance assistance

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will be a major component of the section 1018 compliance program so that individuals are fully informed of the new requirements and their obligations. EPA and HUD also intend to bring clarity and predictability to the enforcement process for section 1018, in acknowledgment of the large and diverse population affected by this rule. Concurrent with this rule's release, EPA will issue a short "Statement of Approach" as it relates to ensuring compliance with the requirements of section 1018, for the information of the general public. This informational document will discuss the Agency's approach to the section 1018 compliance assurance program. EPA is also developing a policy for use by EPA enforcement personnel to achieve a common sense result between a particular violation of section 1018 and a particular enforcement response. This policy includes, but is not limited to, issuing notices of warning (without penalties) as appropriate to let people know that they are out of compliance and to give them an opportunity to come into compliance, while maintaining provisions that will ensure that willful and repeat violators are appropriately penalized. This result is reached in the context of an "Enforcement Response Policy" (ERP), which EPA is developing separately for this rule.

Regarding HUD enforcement actions, HUD's civil money penalty procedures are set out in 24 CFR part 30. These procedures include notices of intent to request civil money penalties, civil money penalty panels, administrative hearings and appeals, judicial review, and collection of penalties. A civil money penalty panel develops guidelines to determine the appropriate penalty for a violation of section 1018. These guidelines include the following factors: the gravity of the offense, awareness of procedures, any history of prior offenses, the ability to pay the penalty, the injury to the public, any benefits received by the violator, any potential benefits to other persons, deterrence of future violators, the violator's culpability, and such other matters as justice may require.

D. Civil Liability–Direct Compensation

In addition to the EPA and HUD enforcement authority for the provisions of this final rule, section 1018(b)(3) of Title X states that "[A]ny person who knowingly violates the provisions of this section shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual." This provision allows the purchaser or lessee to seek direct compensation for any damages incurred based on the seller's or lessor's noncompliance. Section 1018(b)(4) authorizes the court to award court costs, reasonable attorney fees, and expert witness fees to a prevailing plaintiff.

E. Validity of Contracts and Liens

Section 1018(c) provides that nothing in section 1018 (or its implementing rules) "shall affect the validity or enforceability of any sale or contract for the purchase and sale or lease of any interest in residential real property or any loan, loan agreement, mortgage, or lien made or arising in connection with a mortgage loan. . . ." It also provides that nothing in section 1018 (or its implementing rules) shall "create a defect in title."

EPA and HUD have looked at section 1018(c) in the context of other section 1018 provisions, which outline specific clauses that must be attached to contracts for the purchase and sale of target housing and specific procedural protections that must be given to the purchaser or lessee.

The provisions of section 1018 cannot void or nullify the contract after ratification and cannot void any transfer of real estate, even if it can be proven that the seller or lessor violated section 1018 provisions. In such circumstances, the purchaser or lessee is limited to the remedies provided in section 1018. Of course, traditional causes of action under State law would still exist, and possibly could be applied to some section 1018 violations. Also, violations of section 1018 could be subject to civil and criminal penalties administered by EPA and HUD under section 1018(b).

VI. Federal Effect on State and Local Disclosure Requirements

Several commenters noted that some States and municipalities already have requirements for the disclosure of information on lead-based paint in housing. In developing the Federal disclosure requirements, several key questions have been raised regarding such programs: (1) Can States obtain authorization to administer and enforce their programs in lieu of the Federal program? and (2) What effect do the Federal requirements have on the ability of States to run their own programs?

EPA and HUD have determined that Title X does not provide authority to delegate the administration and enforcement of these section 1018 requirements to State programs. Where such authority to authorize State programs was anticipated by Congress (as in TSCA section 402), Congress provided specific authority.

Where possible, EPA and HUD have developed these requirements to make it possible for State and Federal requirements to complement each other. For example, EPA and HUD had State programs in mind when adding flexibility in the development of disclosure and acknowledgment attachments.

Finally, nothing in this rule is intended to relieve a seller, lessor, or agent from any responsibility for compliance with State or local laws, ordinances, codes, or regulations governing notice or disclosure of known lead-based paint and/or lead-based paint hazards.

VII. Summary of Regulatory Impact Analysis

EPA and HUD have prepared a Regulatory Impact Analysis (RIA) that examines the potential costs, benefits, and impacts of regulations for the disclosure of known lead-based paint hazards in residential property upon the transfer of the property for sale or rental. The analysis is presented in five sections:

- Background and Framework for Analysis
- Profile of Sectors Affected
- Estimated Costs to Private Parties and Government
- Effect of the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers on Small Businesses—Regulatory Flexibility Analysis
- Assessment of Benefits

A. Background and Framework for Analysis

Those parties directly affected by the rule are the seller, lessor, agent, property manager, purchaser, and lessee. The required activities that impose regulatory burden on the affected parties fall into four categories for cost estimation purposes:

1. Start-up costs, which include learning the rule's requirements and establishing compliance procedures;
2. Disclosure costs, which refer to the costs resulting from the actual transfer of information and obtaining needed signatures;
3. Recordkeeping costs, which result principally from the requirement that signed acknowledgment forms must be retained by the provider of the information; and
4. Materials costs, which are linked primarily to the disclosure requirement, as the lead hazard information pamphlet must be purchased or photocopied (acknowledgment forms must also be duplicated). Costs may also be incurred for filing where a large number of acknowledgment statements or documents for disclosure are generated (e.g., by agents), though such burden was estimated to be quite modest.

The requirements of section 1018 of the Act fall primarily on the seller or lessor of "target housing," which is defined to be any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling. However, if an agent or property manager acts on behalf of the seller or lessor, which EPA and HUD have estimated to be the case in most transfers, responsibilities to ensure compliance fall to such agents or managers as well.

To estimate the impacts of the rule, EPA and HUD sought data pertaining to the number of affected parties in each classification listed above, the frequency with which affected purchase and lease transactions are completed, and the incremental costs, in labor and materials, added to each transaction by the regulations.

B. Profile of Sectors Affected

The larger of the two affected sectors expected to bear the principal effects of the rule falls within Standard Industrial Classification (SIC) code 651, Real Estate Operators and Lessors. EPA estimates there to be 92,000 establishments potentially affected by the rule. Also affected are business establishments falling within SIC code 653, Real Estate Agents and Managers. An additional 92,000 establishments could be affected by the rule in this sector.

Employment data were obtained for the occupations most likely to be involved in transactions subject to the rule. EPA and HUD estimate that 324,000 real estate agents and 243,000 property managers will be affected.

With regard to transaction volume, 2.9 million sales transactions and 9.3 million rental transactions were estimated to occur annually in target housing.

C. Estimated Costs to Private Parties and Government

Table 1 below summarizes the estimated annual costs associated with the rule. The four costs to private parties, or compliance costs, are discussed briefly below. Costs to government represent rule administration activities.

The first private party cost category, start-up costs, represents about one-third of overall annual compliance costs. Factors affecting the magnitude of these costs include the number of employees having to familiarize themselves with the regulations, both initially (employees in the existing workforce) and over time (new entrants to the affected sectors); the time required to learn the activities that must be undertaken in order to comply; and the hourly compensation of affected employees.

As Table 1 shows, disclosure event costs constitute the greatest portion of overall compliance costs. Factors affecting the magnitude of these costs include the frequencies of regulated events; the time involved in performing required activities, such as providing to the prospective purchaser/lessee the required information and obtaining the required signatures; and the hourly compensation of all involved parties. EPA and HUD also took into account the fact that a number of States have similar requirements pertaining to information transfer regarding potential lead hazards in the sale of residential property. Thus, an allowance was made in the burden estimates for transactions occurring in such States to reflect a certain level of current compliance.

Table 1—Summary of Annual Costs of the Disclosure Rule for Residential Property Transfer

Estimated Annual Costs to Private Parties - Sales Transactions	
Start-up Costs*	$25.8 million
Disclosure Event Costs	20.2 million
Recordkeeping Costs	0.6 million
Materials Costs	2.8 millicn
Total for Sales Transactions:	$49.4 million
Estimated Annual Costs to Private Parties - Rental Transactions	
Start-up Costs*	$ 1.1 million
Disclosure Event Costs	$25.6 million
Recordkeeping Costs	$1.9 million
Materials Costs	$3.4 million
Total for Rental Transactions:	$32.0 million
Total Estimated Annual Costs to Private Parties:	$81.4 million
Costs to Government	
Low Estimate	$2.4 million
High Estimate	$4.3 million
Total Estimated Annual Costs:	
Based on Low Estimate of Government Costs:	$83.8 million
Based on High Estimate of Government Costs:	$85.7 million

* First-year costs annualized at 3 percent rate over 6 years.

Recordkeeping and materials costs account for a relatively modest share of overall annual costs. Factors affecting the magnitude of these costs include the number of affected parties per transaction; the frequency of

transactions, the costs of acquiring/duplicating documents, which include the lead hazard information pamphlet and signed acknowledgment forms; and costs to maintain documents.

Additional, indirect costs resulting from actions taken by consumers in response to the information made available by the rule were not quantified, for reasons detailed in Unit VII.E. of this preamble.

To administer the final regulation, resources will be required to conduct a number of activities, including: inspections; violation case management; establishment and maintenance of cooperative agreements; compliance assistance, development of performance measurement criteria; and management.

D. Effect of the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers on Small Businesses--Regulatory Flexibility Analysis

EPA and HUD investigated the potential impacts of the rule on small businesses and have prepared a Regulatory Flexibility Analysis (RFA). Although a large number of small establishments may be affected by the rule, cost impacts were not found to be of sufficient magnitude to cause undue harm to such establishments. The RFA is summarized separately in Unit X.B. of this preamble.

E. Assessment of Benefits

The market imperfection that the rule is intended to correct is the lack of information available to prospective home purchasers and lessees concerning lead-based paint hazards in homes they may be considering for purchase or rent. Under the rule, general information about the risks associated with lead-based paint will be provided through the provision of a brochure. When available, information about the presence of or abatement of lead in the specific unit being considered for purchase or rent must also be disclosed (e.g., information concerning previous testing for the presence of lead-based paint, abatement history, etc.). The failure of the marketplace to provide this information or to provide prospective home purchasers and lessees the opportunity to develop such information means that prospective purchasers and lessees might purchase or lease a property, or make pricing or rental payment decisions regarding properties, without understanding possible lead-related health risks or risk management costs accompanying the transaction.

EPA and HUD expect that this rulemaking will generate benefits by giving prospective home purchasers and lessees access to information that might otherwise have been unavailable (e.g., information pertaining to abatement activities for a specific residence) or that they might have been able to acquire only through their own effort and at some cost. In addition, EPA believes the information will generate health benefits by leading many purchasers and lessees to modify their behavior in a way that will reduce risks from lead-based paint. For example, purchasers could undertake abatement activities subsequent to taking ownership of a dwelling, change household cleaning practices, or request professional assistance when undertaking renovation activities. The rule may also prompt property owners, due to reluctance on the part of prospective purchasers/lessees to select housing containing lead-based paint, to act to reduce lead-related hazards associated with their residential dwellings. Health benefits resulting from such activities are distinguishable from the more direct benefits of the rule, i.e., the value of improved information. Further, in cases where action is taken to remediate a lead-based paint hazard, additional costs would be incurred, and would have to be subtracted from the expected benefits associated with the remediation.

EPA and HUD no that the regulation does not require actions to reduce lead-based paint hazards in residential housing. Thus, the extent to which lead exposure decreases depends upon how transaction participants (i.e., sellers/lessors and prospective purchasers/lessees) value and respond to the additional information.

The RIA details three approaches that are evolving and that can be seen as a starting point in an effort to expand the level of understanding of how benefits from information products can be valued. However, an information base and the associated accepted analytical methods necessary to predict consumer reaction to information products on lead-based paint hazards are not readily available; thus, quantifying the expected benefits of this rule, either in terms of efficiency gains from improved decisionmaking or risk reduction, would be extremely difficult. Given the high level of uncertainty associated with the results from such a quantitative analysis, and given the prescriptive nature of section 1018 of the Act, EPA and HUD believe that the information provided in the qualitative analysis presented in the RIA served to inform decisionmaking.

VIII. Rulemaking Record

A record for this final rule has been established for both EPA and HUD under docket number "OPPTS-62130." The public version of this record for both agencies (which does not contain any information claimed as Confidential Business Information) is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in EPA's TSCA Nonconfidential Information Center (NCIC), Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

The docket contains reference works that EPA and HUD referred to in developing this regulation. In addition, other documents, including the Regulatory Impact Analysis, Information Collection Request, and copies of all comments on the proposed rule, are included in the docket for public review. The draft of the final rule submitted by EPA and HUD to OMB for review prior to the final rule's promulgation will also be contained in the docket.

IX. References

1. Alliance to End Childhood Lead Poisoning, 1991. *Preventing Childhood Lead Poisoning: The First Comprehensive National Conference; Final Report.* Washington, DC.

2. CDC, 1991. U.S. Centers for Disease Control and Prevention, *Preventing Lead Poisoning in Young Children: A Statement by the Centers for Disease Control.* Atlanta, GA.

3. CPSC, 1977. *Notice Reducing Allowable Levels of Lead in Lead-Based Paint.* **Federal Register**. September 1, 1977: 42 FR 44199.

4. EPA, 1995. U.S. Environmental Protection Agency, *Report on the National Survey of Lead-Based Paint in Housing: Base Report.* Washington, DC: EPA747-R95-003.

5. HUD, 1995. U.S. Department of Housing and Urban Development, Task Force on Lead-Based Paint Hazard Reduction and Financing, *Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing: Final Report.* Washington, DC: HUD-1542-LBP.

6. HUD, 1990. *Lead-Based Paint; Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing; Notice.* **Federal Register**. April 18, 1990: 55 FR 14556.

7. HUD, 1995. Department of Housing and Urban Development, *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.* Washington, DC.

8. Pirkle, 1994. Pirkle, J.L., D.J. Brody, E.W. Gunter, R.A. Kramer, D.C. Paschal, K.M. Flegal, T.D. Matte, *The Decline in Blood Lead Levels in the United States.* Journal of the American Medical Association, 272(4): 284-291.

X. Regulatory Assessment Requirements

A. Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this is a "significant regulatory action" because of potential novel legal or policy issues arising out of the new legal mandates this action implements. This action was submitted to OMB for review, and any comments or changes made during that review have been documented in the public record.

In addition, EPA and HUD have prepared a Regulatory Impact Analysis (RIA) in conjunction with their lead information disclosure rule for real estate transfers. EPA and HUD find that the rule will not have an effect on the economy of $100 million or more, will not result in major increases in costs or prices, and is not anticipated to have significant adverse effects on competition, employment, investment, or productivity in the relevant sectors.

EPA and HUD estimate the overall costs to affected entities to be $81.4 million and costs to government to range from $2.4 to $4.3 million. These estimates include costs for rule familiarization, information disclosure and obtaining required signatures, recordkeeping, materials costs, and government administration costs. EPA and HUD estimate that the provisions of the rule will add about $2.00 to $6.00 to the cost of each transaction.

A copy of the RIA is available in the TSCA Public Docket Office for review and public comment. For information on the public docket, see Unit VIII. of this preamble, entitled Rulemaking Record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires Federal agencies to consider whether a regulatory action will have an adverse economic impact on small entities. Section 605(b) requires the agencies to either certify that the regulatory action will not have a significant economic impact on a substantial number of small entities, or prepare a Regulatory Flexibility Analysis. Under the EPA policy that implements the Regulatory Flexibility Act, EPA performs a Regulatory Flexibility Analysis whenever a regulatory action is anticipated to have any economic impact on any small entities, and will also seek to involve these small entities in the development of the regulatory action to the extent possible. As such, in an effort to identify and characterize the rule's effects on small business, EPA and HUD have prepared a Regulatory Flexibility Analysis. This assessment has been included as part of the RIA and is summarized below.

In preparing the RFA, EPA and HUD first developed an establishment profile for each major sector (SIC 651 and SIC 653). This profile indicated that approximately 75 percent of all establishments in SIC 651 (Real Estate Operators and Lessors) and approximately 73 percent of all establishments in SIC 653 (Real Estate Agents and Managers) fell within the 1 to 4 employee size class. These proportions increased to 90 percent and 87 percent, respectively, when employee size class 1 to 9 was examined.

To measure the cost impacts of the rule on these small establishments, representative or model establishments were designed. These model establishments corresponded to typical establishments in each affected sector, with respect to number of employees and annual transaction volume. Since transaction activity was reported to vary widely, a range of transaction volume was estimated for each establishment type.

For each model establishment, annual regulatory costs were then calculated and compared to annual labor and overhead costs. Ratios were computed for both high and low estimates of the range of transaction activity. In the case of a real estate sales organization, regulatory costs were found to represent from 0.20 to 0.42 percent of labor and overhead costs. In the case of a rental establishment, impacts were slightly higher, ranging from 0.21 to 0.47 percent. An establishment engaged in both activities was projected to sustain impacts of 0.28 to 0.63 percent.

Thus, while a large number of small establishments will be potentially affected by the rule, cost impacts were not found to be of sufficient magnitude to cause undue harm to such establishments. Consequently, no regulatory alternatives are being proposed in connection with small business impacts.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No. 1710.02) and a copy may be obtained from Sandy Farmer OPPE Regulatory Information Division, Environmental Protection Agency (2136), 401 M St., SW., Washington, DC 20460 or by calling (202) 260-2740. The information requirements are not effective until OMB approves them.

The information collection requirements of this rule apply to sellers, lessors, and agents of target housing. Before selling or leasing target housing, the following information collection activities must occur: (1) Disclosure of known lead-based paint and/or lead-based paint hazards; (2) provision of any available records and reports pertaining to lead-based paint in the housing; (3) provision of a federally approved lead hazard information pamphlet; (4) completion and subsequent retention of disclosure and acknowledgment language for 3 years, and (5) provision of a 10-day evaluation opportunity to purchasers before obligation under purchase contracts (this time period can be adjusted or waived by mutual consent).

These requirements will help to: (1) Ensure that purchasers and renters of older housing make informed housing and maintenance decisions before they become obligated under purchase or lease contracts; (2) ensure that all participants in target housing sales and leasing transactions fully understand their rights and obligations under section 1018 and the implementing regulations; (3) document the completion of all disclosure activities by the responsible parties; and (4) provide a record of compliance for use by EPA and HUD enforcement officials. Under the authority of section 1018 of Title X, the information collection requirements of this rule are mandatory for all applicable sales and leasing transactions.

The annual costs to private parties to comply with the requirements of the rule are estimated to be $81.4 million, with an associated burden of 7.1 million hours. Annual costs may be broken down into two components: Initialization or start-up costs, estimated to be $26.9 million (annualized at 3 percent over 3 years); and costs for information disclosure and maintenance of records, estimated to be $54.5 million. Annual burden is estimated to be distributed among 35.1 million responses, averaging 12.2 minutes per response. The number of respondents is estimated to be 15.5 million. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal

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agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. Upon OMB approval, EPA will issue a notice in the **Federal Register** to announce OMB's approval and to make a technical amendment to include a reference to this approval in 40 CFR part 9.

Send comments on the burden estimates and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OPPE Regulatory Information Division, Environmental Protection Agency (2136), 401 M St., SW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

D. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19 and 50.20(o)(2) of the HUD regulations, the policies and procedures contained in this final rule relate only to information services and are, therefore, categorically excluded from the requirements of the National Environmental Policy Act.

E. HUD's Regulatory Agenda

This rule was listed as Item No. 1517 in HUD's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424), in accordance with Executive Order 12866 and the Regulatory Flexibility Act, and was requested by and submitted to the Committee on Banking, Finance and Urban Affairs of the House of Representatives under section 7(o) of the Department of Housing and Urban Development Act.

F. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, EPA and HUD have assessed the effects of this regulatory action on State, local, and tribal governments, and the private sector. This action is not an "unfunded mandate" as defined by that statute and will not result in the expenditure of $100 million or more by any State, local, or tribal government, or by the private sector. Nevertheless, EPA and HUD consulted with several State, local, and tribal governments during the development.

A copy of the RIA is available for public review. For information on the public docket, see Unit VIII. of this preamble, entitled Rulemaking Record.

List of Subjects in 24 CFR Part 35

Environmental protection, Grant programs-housing and community development, Hazardous substances, Lead, Lead poisoning, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead, Recordkeeping and notification requirements.

Dated: February 29, 1996.

Henry Cisneros,

Secretary, Department of Housing and Urban Development.

Dated: February 29, 1996.

Carol M. Browner,

Administrator, Environmental Protection Agency.

Therefore, 24 CFR subtitle A and 40 CFR Chapter I are amended as follows:

24 CFR Subtitle A

PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

1. The authority citation for part 35 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), 4821-4846 and 4852d.

2. A new subpart H is added to part 35 to read as follows:

Subpart H—Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property

Sec.

35.80 Purpose.
35.82 Scope and applicability.
35.84 Effective dates.
35.86 Definitions.
35.88 Disclosure requirements for sellers and lessors.
35.90 Opportunity to conduct an evaluation.
35.92 Certification and acknowledgment of disclosure.
35.94 Agent responsibilities.
35.96 Enforcement.
35.98 Impact on State and local requirements.

Subpart H—Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property

§ 35.80 Purpose.

This subpart implements the provisions of 42 U.S.C. 4852d, which impose certain requirements on the sale or lease of target housing. Under this subpart, a seller or lessor of target housing shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards; provide available records and reports; provide the purchaser or lessee with a lead hazard information pamphlet; give purchasers a 10-day opportunity to conduct a risk assessment or inspection; and attach specific disclosure and warning language to the sales or leasing contract before the purchaser or lessee is obligated under a contract to purchase or lease target housing.

§ 35.82 Scope and applicability.

This subpart applies to all transactions to sell or lease target housing, including subleases, with the exception of the following:

(a) Sales of target housing at foreclosure.

(b) Leases of target housing that have been found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal certification program. Until a Federal certification program or federally accredited State certification program is in place within the State, inspectors shall be considered qualified to conduct an inspection for this purpose if they have received certification under any existing State or tribal inspector certification program. The lessor has the option of using the results of additional test(s) by a certified inspector to confirm or refute a prior finding.

(c) Short-term leases of 100 days or less, where no lease renewal or extension can occur.

(d) Renewals of existing leases in target housing in which the lessor has previously disclosed all information required under § 35.88 and where no new information described in § 35.88 has come into the possession of the lessor. For the purposes of this paragraph, renewal shall include both renegotiation of existing lease terms and/or ratification of a new lease.

§ 35.84 Effective dates.

The requirements in this subpart take effect in the following manner:

(a) For owners of more than four residential dwellings, the requirements shall take effect on September 6, 1996.

(b) For owners of one to four residential dwellings, the requirements shall take effect on December 6, 1996.

§ 35.86 Definitions.

The following definitions apply to this subpart.

The Act means the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d.

Agent means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser's representative who receives all compensation from the purchaser.

Available means in the possession of or reasonably obtainable by the seller or lessor at the time of the disclosure.

Common area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

Contract for the purchase and sale of residential real property means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

EPA means the Environmental Protection Agency.

Evaluation means a risk assessment and/or inspection.

Foreclosure means any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of a debt, by the taking and selling of real property.

Housing for the elderly means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

Inspection means:

(1) A surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and

(2) The provision of a report explaining the results of the investigation.

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-based paint free housing means target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

Lessee means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Lessor means any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

Purchaser means an entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

Residential dwelling means:

(1) A single-family dwelling, including attached structures such as porches and stoops; or

(2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

Risk assessment means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

(1) Information gathering regarding the age and history of the housing and occupancy by children under age 6;

(2) Visual inspection;

(3) Limited wipe sampling or other environmental sampling techniques;

(4) Other activity as may be appropriate; and

(5) Provision of a report explaining the results of the investigation.

Seller means any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. The term "seller" also includes:

(1) An entity that transfers shares in a cooperatively owned project, in return for consideration; and

(2) An entity that transfers its interest in a leasehold, in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

TSCA means the Toxic Substances Control Act, 15 U.S.C. 2601.

0-bedroom dwelling means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

§ 35.88 Disclosure requirements for sellers and lessors.

(a) The following activities shall be completed before the purchaser or lessee is obligated under any contract to purchase or lease target housing that is not otherwise an exempt transaction pursuant to § 35.82. Nothing in this section implies a positive obligation on the seller or lessor to conduct any evaluation or reduction activities.

(1) The seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information

pamphlet. Such pamphlets include the EPA document entitled *Protect Your Family From Lead in Your Home* (EPA #747-K-94-001) or an equivalent pamphlet that has been approved for use in that State by EPA.

(2) The seller or lessor shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) The seller or lessor shall disclose to each agent the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased and the existence of any available records or reports pertaining to lead-based paint and/or lead-based paint hazards. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(4) The seller or lessor shall provide the purchaser or lessee with any records or reports available to the seller or lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. This requirement includes records and reports regarding common areas. This requirement also includes records and reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.

(b) If any of the disclosure activities identified in paragraph (a) of this section occurs after the purchaser or lessee has provided an offer to purchase or lease the housing, the seller or lessor shall complete the required disclosure activities prior to accepting the purchaser's or lessee's offer and allow the purchaser or lessee an opportunity to review the information and possibly amend the offer.

§ 35.90 Opportunity to conduct an evaluation.

(a) Before a purchaser is obligated under any contract to purchase target housing, the seller shall permit the purchaser a 10-day period (unless the parties mutually agree, in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

(b) Notwithstanding paragraph (a) of this section, a purchaser may waive the opportunity to conduct the risk assessment or inspection by so indicating in writing.

§ 35.92 Certification and acknowledgment of disclosure.

(a) *Seller requirements.* Each contract to sell target housing shall include an attachment containing the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement consisting of the following language:

> Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

(2) A statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being sold or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The seller shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the purchaser. If no such records or reports are available, the seller shall so indicate.

(4) A statement by the purchaser affirming receipt of the information set out in paragraphs (a)(2) and (a)(3) of this section and the lead hazard information pamphlet required under section 15 U.S.C. 2696.

(5) A statement by the purchaser that he/she has either:

(i) Received the opportunity to conduct the risk assessment or inspection required by § 35.90(a); or

(ii) Waived the opportunity.

(6) When any agent is involved in the transaction to sell target housing on behalf of the seller, a statement that:

(i) The agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(7) The signatures of the sellers, agents, and purchasers, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

(b) *Lessor requirements.* Each contract to lease target housing shall include, as an attachment or within the contract, the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement with the following language:

> Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

(2) A statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist in the housing, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.

(4) A statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.

(5) When any agent is involved in the transaction to lease target housing on behalf of the lessor, a statement that:

(i) The agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(6) The signatures of the lessors, agents, and lessees certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature.

(c) *Retention of certification and acknowledgment information.*

(1) The seller, and any agent, shall retain a copy of the completed attachment required under paragraph (a) of this section for no less than 3 years from the completion date of the sale. The lessor, and any agent, shall retain a copy of the completed attachment or lease contract containing the information required under paragraph (b) of this section for no less than 3 years from the commencement of the leasing period.

(2) This recordkeeping requirement is not intended to place any limitations on civil suits under the Act, or to otherwise affect a lessee's or purchaser's rights under the civil penalty provisions of 42 U.S.C. 4852d(b)(3).

(d) The seller, lessor, or agent shall not be responsible for the failure of a purchaser's or lessee's legal representative (where such representative receives all compensation from the purchaser or lessee) to transmit disclosure materials to the purchaser or lessee, provided that all required parties have completed and signed the necessary certification and acknowledgment language required under paragraphs (a) and (b) of this section.

§ 35.94 Agent responsibilities.

(a) Each agent shall ensure compliance with all requirements of this subpart. To ensure compliance, the agent shall:

(1) Inform the seller or lessor of his/her obligations under §§ 35.88, 35.90, and 35.92.

(2) Ensure that the seller or lessor has performed all activities required under §§ 35.88, 35.90, and 35.92, or personally ensure compliance with the requirements of §§ 35.88, 35.90, and 35.92.

(b) If the agent has complied with paragraph (a)(1) of this section, the agent shall not be liable for the failure to disclose to a purchaser or lessee the presence of lead-based paint and/or lead-based paint hazards known by a seller or lessor but not disclosed to the agent.

§ 35.96 Enforcement.

(a) Any person who knowingly fails to comply with any provision of this subpart shall be subject to civil monetary penalties in accordance with the provisions of 42 U.S.C. 3545 and 24 CFR part 30.

(b) The Secretary is authorized to take such action as may be necessary to enjoin any violation of this subpart in the appropriate Federal district court.

(c) Any person who knowingly violates the provisions of this subpart shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(d) In any civil action brought for damages pursuant to 42 U.S.C. 4852d(b)(3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(e) Failure or refusal to comply with §§ 35.88 (disclosure requirements for sellers and lessors), § 35.90 (opportunity to conduct an evaluation), § 35.92 (certification and acknowledgment of disclosure), or § 35.94 (agent responsibilities) is a violation of 42 U.S.C. 4852d(b)(5) and of TSCA section 409 (15 U.S.C. 2689).

(f) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation. For purposes of enforcing this subpart, the penalty for each violation applicable under 15 U.S.C. 2615 shall be not more than $10,000.

§ 35.98 Impact on State and local requirements.

Nothing in this subpart shall relieve a seller, lessor, or agent from any responsibility for compliance with State or local laws, ordinances, codes, or regulations governing notice or disclosure of known lead-based paint and/or lead-based paint hazards. Neither HUD nor EPA assumes any responsibility for ensuring compliance with such State or local requirements.

40 CFR Chapter I

1. Part 745 is added to read as follows:

PART 745—LEAD-BASED PAINT POISIONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

Subparts A—E [Reserved]

Subpart F — Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property

Sec.

745.100 Purpose.
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745.113 Certification and acknowledgment of disclosure.
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745.118 Enforcement.
745.119 Impact on State and local requirements.

Authority: 15 U.S.C. 2615, 15 U.S.C. 2689, and 42 U.S.C. 4852d.

Subparts A—E [Reserved]

Subpart F—Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property

§ 745.100 Purpose.

This subpart implements the provisions of 42 U.S.C. 4852d, which impose certain requirements on the sale or lease of target housing. Under this subpart, a seller or lessor of target housing shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards; provide available records and reports; provide the purchaser or lessee with a lead hazard information pamphlet; give purchasers a 10-day opportunity to conduct a risk assessment or inspection; and attach specific disclosure and warning language to the sales or leasing contract before the purchaser or lessee is obligated under a contract to purchase or lease target housing.

§ 745.101 Scope and applicability.

This subpart applies to all transactions to sell or lease target housing, including subleases, with the exception of the following:

(a) Sales of target housing at foreclosure.

(b) Leases of target housing that have been found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal certification program. Until a Federal certification program or federally accredited State certification program is

in place within the State, inspectors shall be considered qualified to conduct an inspection for this purpose if they have received certification under any existing State or tribal inspector certification program. The lessor has the option of using the results of additional test(s) by a certified inspector to confirm or refute a prior finding.

(c) Short-term leases of 100 days or less, where no lease renewal or extension can occur.

(d) Renewals of existing leases in target housing in which the lessor has previously disclosed all information required under § 745.107 and where no new information described in § 745.107 has come into the possession of the lessor. For the purposes of this paragraph, renewal shall include both renegotiation of existing lease terms and/or ratification of a new lease.

§ 745.102 Effective dates.

The requirements in this subpart take effect in the following manner:

(a) For owners of more than four residential dwellings, the requirements shall take effect on September 6, 1996.

(b) For owners of one to four residential dwellings, the requirements shall take effect on December 6, 1996.

§ 745.103 Definitions.

The following definitions apply to this subpart.

The Act means the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d.

Agent means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser's representative who receives all compensation from the purchaser.

Available means in the possession of or reasonably obtainable by the seller or lessor at the time of the disclosure.

Common area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

Contract for the purchase and sale of residential real property means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

EPA means the Environmental Protection Agency.

Evaluation means a risk assessment and/or inspection.

Foreclosure means any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of a debt, by the taking and selling of real property.

Housing for the elderly means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

HUD means the U.S. Department of Housing and Urban Development.

Inspection means:

(1) A surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and

(2) The provision of a report explaining the results of the investigation.

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-based paint free housing means target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

Lessee means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Lessor means any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

Purchaser means an entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

Residential dwelling means:

(1) A single-family dwelling, including attached structures such as porches and stoops; or

(2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

Risk assessment means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

(1) Information gathering regarding the age and history of the housing and occupancy by children under age 6;

(2) Visual inspection;

(3) Limited wipe sampling or other environmental sampling techniques;

(4) Other activity as may be appropriate; and

(5) Provision of a report explaining the results of the investigation.

Secretary means the Secretary of Housing and Urban Development.

Seller means any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. The term "seller" also includes:

(1) An entity that transfers shares in a cooperatively owned project, in return for consideration; and

(2) An entity that transfers its interest in a leasehold, in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

TSCA means the Toxic Substances Control Act, 15 U.S.C. 2601.

0-bedroom dwelling means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

§ 745.107 Disclosure requirements for sellers and lessors.

(a) The following activities shall be completed before the purchaser or lessee is obligated under any contract to purchase or lease target housing that is not otherwise an exempt transaction pursuant to § 745.101. Nothing in this section implies a positive obligation on the seller or lessor to conduct any evaluation or reduction activities.

(1) The seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled *Protect Your Family From Lead in Your Home* (EPA #747-K-94-001) or an equivalent pamphlet that has been approved for use in that State by EPA.

(2) The seller or lessor shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) The seller or lessor shall disclose to each agent the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased and the existence of any available records or reports pertaining to lead-based paint and/or lead-based paint hazards. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(4) The seller or lessor shall provide the purchaser or lessee with any records or reports available to the seller or lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. This requirement includes records or reports regarding common areas. This requirement also includes records or reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.

(b) If any of the disclosure activities identified in paragraph (a) of this section occurs after the purchaser or lessee has provided an offer to purchase or lease the housing, the seller or lessor shall complete the required disclosure activities prior to accepting the purchaser's or lessee's offer and allow the purchaser or lessee an opportunity to review the information and possibly amend the offer.

§ 745.110 Opportunity to conduct an evaluation.

(a) Before a purchaser is obligated under any contract to purchase target housing, the seller shall permit the purchaser a 10-day period (unless the parties mutually agree, in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

(b) Not withstanding paragraph (a) of this section, a purchaser may waive the opportunity to conduct the risk assessment or inspection by so indicating in writing.

§ 745.113 Certification and acknowledgment of disclosure.

(a) *Seller requirements.* Each contract to sell target housing shall include an attachment containing the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement consisting of the following language:

> Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

(2) A statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being sold or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The seller shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the purchaser. If no such records or reports are available, the seller shall so indicate.

(4) A statement by the purchaser affirming receipt of the information set out in paragraphs (a)(2) and (a)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.

(5) A statement by the purchaser that he/she has either:

(i) Received the opportunity to conduct the risk assessment or inspection required by § 745.110(a); or

(ii) Waived the opportunity.

(6) When one or more agents are involved in the transaction to sell target housing on behalf of the seller, a statement that:

(i) The agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(7) The signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature.

(b) *Lessor requirements.* Each contract to lease target housing shall include, as an attachment or within the contract, the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement with the following language:

> Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

(2) A statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint

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hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.

(4) A statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.

(5) When one or more agents are involved in the transaction to lease target housing on behalf of the lessor, a statement that:

(i) The agent has informed the lessor of the lessors obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(6) The signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

(c) *Retention of Certification and Acknowledgment Information.*

(1) The seller, and any agent, shall retain a copy of the completed attachment required under paragraph (a) of this section for no less than 3 years from the completion date of the sale. The lessor, and any agent, shall retain a copy of the completed attachment or lease contract containing the information required under paragraph (b) of this section for no less than 3 years from the commencement of the leasing period.

(2) This recordkeeping requirement is not intended to place any limitations on civil suits under the Act, or to otherwise affect a lessee's or purchaser's rights under the civil penalty provisions of 42 U.S.C. 4852d(b)(3).

(d) The seller, lessor, or agent shall not be responsible for the failure of a purchaser's or lessee's legal representative (where such representative receives all compensation from the purchaser or lessee) to transmit disclosure materials to the purchaser or lessee, provided that all required parties have completed and signed the necessary certification and acknowledgment language required under paragraphs (a) and (b) of this section.

§ 745.115 Agent responsibilities.

(a) Each agent shall ensure compliance with all requirements of this subpart. To ensure compliance, the agent shall:

(1) Inform the seller or lessor of his/her obligations under §§745.107, 745.110, and 745.113.

(2) Ensure that the seller or lessor has performed all activities required under §§ 745.107, 745.110, and 745.113, or personally ensure compliance with the requirements of §§ 745.107, 745.110, and 745.113.

(b) If the agent has complied with paragraph (a)(1) of this section, the agent shall not be liable for the failure to disclose to a purchaser or lessee the presence of lead-based paint and/or lead-based paint hazards known by a seller or lessor but not disclosed to the agent.

§ 745.118 Enforcement.

(a) Any person who knowingly fails to comply with any provision of this subpart shall be subject to civil monetary penalties in accordance with the provisions of 42 U.S.C. 3545 and 24 CFR part 30.

(b) The Secretary is authorized to take such action as may be necessary to enjoin any violation of this subpart in the appropriate Federal district court.

(c) Any person who knowingly violates the provisions of this subpart shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(d) In any civil action brought for damages pursuant to 42 U.S.C. 4852d(b)(3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(e) Failure or refusal to comply with § 745.107 (disclosure requirements for sellers and lessors), § 745.110 (opportunity to conduct an evaluation), § 745.113 (certification and acknowledgment of disclosure), or § 745.115 (agent responsibilities) is a violation of 42 U.S.C. 4852d(b)(5) and of TSCA section 409 (15 U.S.C. 2689).

(f) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation. For purposes of enforcing this subpart, the penalty for each violation applicable under 15 U.S.C. 2615 shall be not more than $10,000.

§ 745.119 Impact on State and local requirements.

Nothing in this subpart shall relieve a seller, lessor, or agent from any responsibility for compliance with State or local laws, ordinances, codes, or regulations governing notice or disclosure of known lead-based paint or lead-based paint hazards. Neither HUD nor EPA assumes any responsibility for ensuring compliance with such State or local requirements.

[FR Doc. 96–5243 Filed 3–5–96; 8:45 am]
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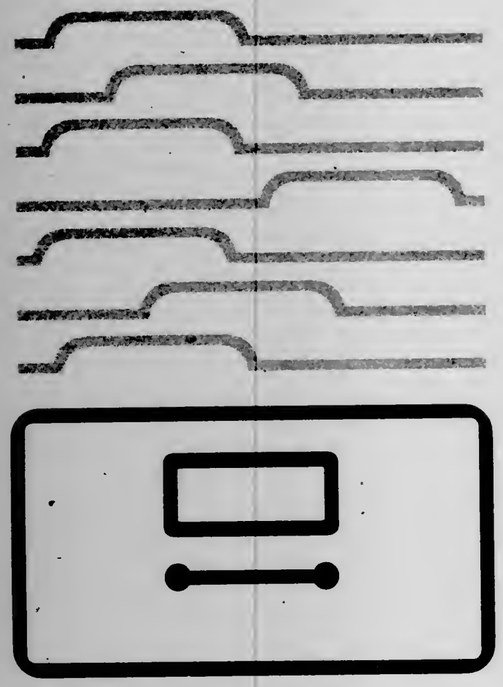
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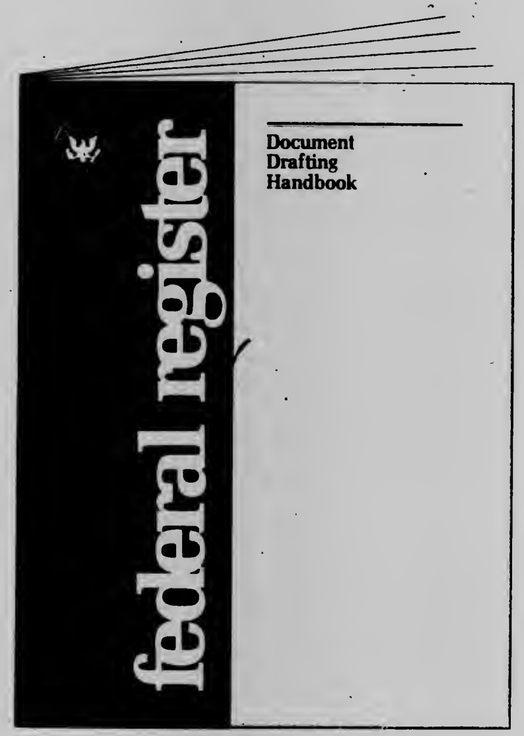
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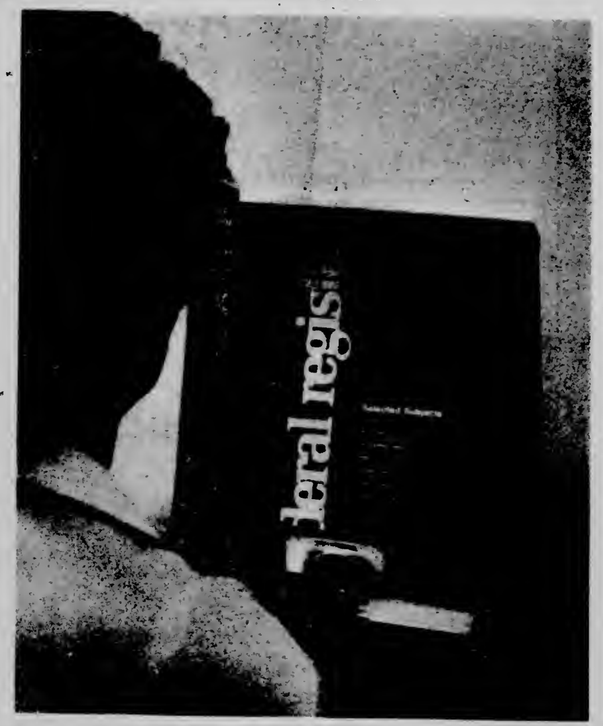
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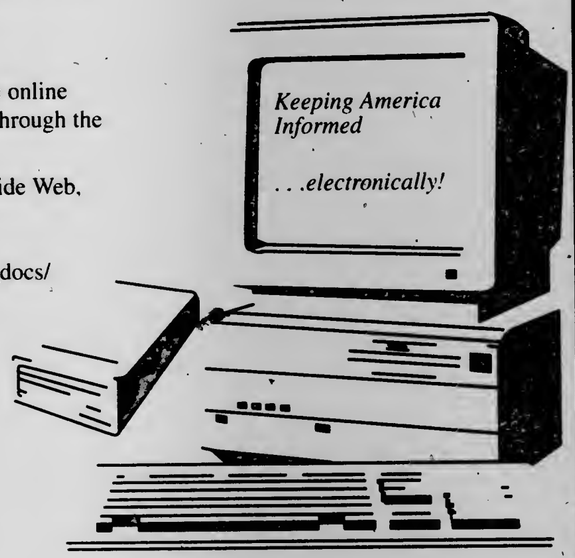
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